



“Review of Eminent Domain Appraisals”

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**“When is a Taking Fair?” presented at the
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And

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Much is written about real estate appraisal methodology, and attorneys who represent clients in Eminent Domain actions are usually fairly familiar with the process. The real problem, of course, is dealing with the “other side’s” appraisal – usually the one proffered by the taking agency. Attorneys and appraisers alike have little in the way of authoritative guidance on reviewing the opposing work, particularly in a contentious litigation setting.

Standards for Real Estate Appraisal Review in Eminent Domain situations are established by the Uniform Standards of Professional Appraisal Practice (USPAP), Standards Rule 3, and in some circumstances the Interagency Standards for Federal Land Acquisition, Chapter C. These standards focus primarily on technical and administrative issues, such as regulatory compliance.

Litigators and property owners are more interested in the final outcome (the value established by the appraisal) and, as a secondary but contributory issue, the methodology followed to arrive at that outcome. While compliance with regulatory standards is a prerequisite for admissibility of the appraiser’s work, it is not the focus of the litigation review.

While reviewers following established review standards may disagree with the findings of an appraisal, there is little in the way of guidance as to how to arrive at that different solution. In other words, there is little authoritative guidance on how to examine the methods followed by the appraiser to determine if the appraisal actually arrived at the fair market value of the subject property.

Numerous studies over the years show that appraisals may be compliant with standards and regulations, but may be biased or inconsistent with respect to the actual underlying value.

The remainder of this paper provides a checklist of elements to examine in an eminent domain appraisal in a litigation situation to ascertain accuracy and consistency. While this is not meant to be a complete or exhaustive list, it does reflect some of the key issues frequently missed by appraisers in eminent domain situations.

Highest and Best Use (HBU) USPAP requires that an opinion of market-value also include a determination of the HBU and that data be developed from comparable HBU sources. In other words, if the HBU for a tract of land is a shopping center, then comparable shopping center land sites should be used for valuation. Using

residential or industrial land sales would be biased and misleading. Often, and particularly in situations where land or even improved real estate is held for speculation, the HBU determination may be highly contentious. The "taking" agency may contend that the current use is the highest, while the market actually values the property at its potential future use, discounted by the costs and time to develop the site.

Non-linear value versus size A whole host of authoritative articles have been written about plattage, plottage, assemblage, and the reasons why a half-acre parcel may be worth something other than one-half of the value of an identical one-acre parcel. In the "old days", eminent domain appraisers followed the 40-30-20-10 rule for valuing road-front property taken for road widening: The front ¼ of the site is worth 40% of the total value, the front ½ is worth (40 + 30 =) 70%, etc. Somehow, the profession seems to have forgotten this sage advice of long ago. Many unique sites, with value which is heavily dependent on frontage, may have even greater skewed impacts.

Non-Market Cap Rates Methodological errors creep in from both aspects – using a "market cap rate" which fails to adjust for differences in risk between the comps and the subject, as well as failing to adequately support risk adjustments actually made. Contaminated property, development sites, and unique business property are all common examples of this situation.

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Greenfield Advisors was founded in Seattle in 1976 to provide high-level analysis and consulting services on complex real estate problems, with a focus on economic, market, and valuation studies. Over the years, Greenfield has advised attorneys, investors, government agencies, trusts, and university endowments on a variety of real estate problems.

The Unity Rule Most jurisdictions require that a "taking" include a valuation of the property as a whole, even if the property is legally defined as multiple parcels. This rule requires that multiple parcels be considered as a unified whole if they are contiguous, have common ownership, and have a common use. A properly conducted HBU analysis will determine if common use results in the highest value. If so, then the property must be valued as a whole, which may result in a substantially different eminent domain value than if only a portion of the property was considered.

Special-Use Properties These include a variety of properties, such as marinas, high-amenity sites, and properties with unique location or physical characteristics. Valuing these can be problematic, and subject to substantial inconsistency. These assignments regularly require large or complex adjustments, thinly-traded comparable data, and considerable appraiser judgment.

Mass Appraisal Models Published academic studies show that large-scale takings (i.e. – right-of-ways, tunnel easements) are usually best handled with hedonic-type models. Unfortunately, these are usually outside the scope of eminent domain assignments. As a result, the large-scale eminent domain appraisals may be inconsistent and potentially biased. Constructing a confidence interval or statistical level of reliability for such appraisals is extremely problematic.