

Vacant Land: A Nightmare for an Appraiser

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A LARGE NUMBER OF LIABILITY INSURANCE CLAIMS ARISE OUT OF INCORRECT OR INCOMPLETE VACANT LAND APPRAISALS. Too many appraisers accept vacant land assignments when they lack the experience to approach these assignments correctly. And for many of them, it begins the biggest nightmare of their career, especially when the appraisal is completed and the claim is served.

It may or may not be surprising to learn that most claims arising from vacant land appraisals are caused by the appraiser actually appraising the wrong property. It is especially frustrating when, after the claim is made or the lawsuit is filed, the appraiser admits that he or she was not certain they inspected the correct parcel, but went ahead and did the report anyway.

Other claims problems arise from this misidentification, one involving determining access to the property. The appraiser drives up to what he/she thinks is the right property on a paved road and assumes that access is not an issue. Counsel comes to learn that the lot that was supposed to be appraised is the adjacent, inland lot, which does not have access to that road.

There may be unrecorded easements or other issues that the appraiser would not and could not discover during the course of the inspection. Besides looking at the right parcel, the appraiser should make sure there is sufficient scope of work language in the report, such as:

"Appraiser cannot guarantee that property is free of encroachments or easements, and recommends further investigation and survey."

Whether or not a parcel of land is buildable will likely have significant impact on value. And again, a problem arises when the lot the appraiser looks at is flat and seemingly buildable, while the lot that was assigned to be appraised has a 90-degree slope. A flat parcel may be buildable, but not always. There could be soil problems, water table issues, etc., that the appraiser would know nothing about. Because these concerns might not be covered by the limiting conditions, it is important

to include language declaring the appraiser is not responsible for and has not undertaken an investigation of unapparent conditions, and cannot render a definitive opinion about buildability. It should be stated that the value is given based on the assumption that the land is buildable:

"Appraiser's conclusion of value is based upon the assumption that there

are no hidden or unapparent conditions of the property that might impact upon buildability. Appraiser recommends due diligence be conducted through local building department or municipality to investigate buildability and whether property is suitable for intended use. Appraiser makes no representations, guarantees or warranties."

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TELL TALE CLAIMS

No access

An appraiser in Arizona estimated a value of \$160,000 for two acres of vacant land for his client, a mortgage broker. This broker, unbeknownst to the appraiser, worked with a hard-money lender. The borrower defaulted on the \$88,000 loan, declaring bankruptcy 90 days after the hard-money lender provided the loan. A second appraiser was retained by the lender to determine value after the foreclosure was finalized. This appraiser estimated the value to be approximately \$90,000 for the land, based on the fact that the lot had no access, i.e., it was land-locked.

The hard-money lender first filed a complaint with the Arizona Board of Appraisal. The Board concluded the appraisal violated the Uniform Standards of Professional Appraisal Practice and imposed certain disciplinary action. The hard-money lender used the findings as a springboard to file a civil lawsuit against the first appraiser for damages, contending professional negligence.

It became clear that the appraiser did not properly research the land he was asked to appraise. The appraiser had been shown the wrong property by the owner/borrower,

who knew that there was no access to the site but failed to tell the appraiser. Instead he led the appraiser to think he was supposed to inspect an adjoining parcel. The appraiser could have easily discovered the problem had he consulted the appropriate maps, clearly showing the location of the two acres serving as security for the loan.

Despite the liability problem, damages were nominal because the value of the land was still about enough to cover the hard-money loan the lender had made to the borrower.

The wrong lot

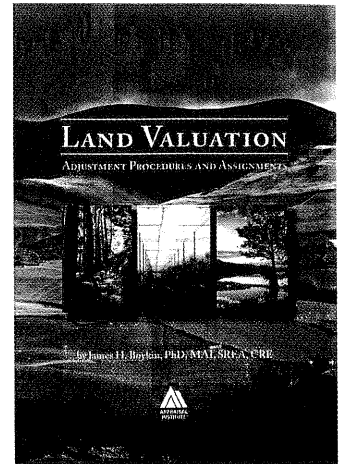
An appraiser in California accepted a vacant land assignment from a mortgage broker despite the fact that the appraiser had done no more than two or three such appraisals in his young career. When he tried to do his inspection, the appraiser was confused by the undeveloped and narrow, winding streets in the hillsides of an affluent community. Finally the appraiser came upon what looked to be the lot he was supposed to appraise, which was flat and fronting a public street. He had some doubts but figured this had to be the site. Comparing similar vacant land sales, he estimated the value

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Land Valuation addresses the appraisal of sites in mature neighborhoods and prospective subdivisions as well as residential waterfront property, industrial and commercial land, farmland and timberland, historic and scenic land, resort lots, wetlands, contaminated sites, and rights of way. It demonstrates how to locate properties in the field, conduct site analysis and determine highest and best use. A variety of adjustment techniques are explained, including adjusting for size differences, changing market conditions, accessibility, public utilities and location. Also covered are ways to use property listings, improved property sales and paired sales analysis to estimate land value and the selection of appropriate units of comparison.

This text can be used as a desk reference by all appraisers involved in the valuation of land, regardless of their level of experience. Illustrations and computations reinforce the discussion of various valuation methods and assignments. Numerous graphics, photographs and charts are incorporated into the book to facilitate the reader's understanding of the material presented.



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of the lot at \$465,000.

When the borrower defaulted, the lender had the property appraised by another appraiser, who was very familiar with the area in question. He quickly determined his client had a big problem. The actual lot that secured the loan was land-locked and far up a slope, obviously rendering it unbuildable, even if access could be secured. The mortgage company had loaned \$190,000 on a lot that could only sell for \$5,000 to an adjoining landowner.

Needless to say, a lawsuit for damages was filed. The appraiser had to admit that he only guessed where the lot was located.

No one met him at the site to show him where it was, and he never questioned his choice or told his client about the difficulties he had encountered when trying to locate the lot. As it turned out, the appraiser had not even been on the right street!

In the appraiser's defense, some of the blame was shifted to the mortgage broker, who knew there was a problem with the lot because another appraiser retained to do an appraisal had reported being unable to locate the property. This information was

not passed along to the insured or to the lender. The mortgage broker also failed to convey to the lender that the borrower had credit problems. The lender violated its own lending guidelines by agreeing to a loan on property located outside the specified geographic area. The lender from northern California would not have ordinarily made a loan on property outside its area without performing a second inspection, or without having the property inspected by one of its own loan officers.

In the end, despite showing negligence on the part of both lender and mortgage broker, the insurer for the appraiser settled for over \$100,000.

Verdict for the appraiser

Not every vacant land appraisal results in a big settlement. An appraiser in Ohio was asked to appraise a 135-acre vacant land site. He estimated the value to be \$3.24 million. The lender made a loan to the borrower of over \$3 million. Only 37 days after the money was disbursed to the borrower, the loan defaulted. The borrower was an Internet company whose business failed. The lender took possession of the land, but made no real effort to resell. Instead of marketing it with a professional commercial

Realtor, a little wooden "for sale" sign was posted on the property, and the appraiser was sued for negligence. A second appraisal for the bank indicated a value of only \$515,000. At trial, the bank claimed the actual value was \$0 because it had never been sold.

An appraiser expert supported the original \$3.24 million estimate. In addition, a banking expert severely criticized many aspects of the bank's conduct in qualifying the borrower for the loan, a Realtor testified about the value of a large commercially zoned parcel with freeway access and the efforts required to market such property appropriately.

In order to avoid the uncertainties of trial, settlement was actively discussed. The bank's insistence that nothing less than \$1 million would be acceptable made trial unavoidable.

The jury rendered a 9-0 verdict in favor of the appraiser, and did not see fit to reward the bank for its failure to mitigate damages by properly attempting to resell the security. As it turned out, the working-class jury related to the appraiser who they saw as just "doing his job" rather than to the bank, which they thought had "dropped the ball."

INSURANCE CONNECTION

Summary

No appraiser should take on an assignment to estimate the value of vacant land without requisite experience, and unless willing to do the level of research necessary to complete the assignment. If you accept such an assignment, it may mean a lot more research, contact with city records and officials, and communication with local real estate brokers and other

appraisers familiar with vacant land in their area and the past history of the site. It may be necessary to provide either a narrative appraisal or an addendum to the one-page vacant land appraisal form many appraisers continue to use. If you don't believe the fee you charge will compensate you for the amount of work that is required, you are better off not to accept the assignment in the first place. ■

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