

Crafting Appraisals for Courtroom Admissibility

Appraisal Institute – Litigation Seminar

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Quick Overview

- Litigation Appraisals vs. Non-Litigation Appraisals
- Common Pitfalls & Case Examples
- Consequences

Litigation Appraisals are Special

- Have to Keep in Mind:
 - Court Rules
 - USPAP standards
 - Type of data being used
 - The crazy things lawyers say
 - Consequences of getting it wrong

FHLBB-APPR-No. 2-10M-3-37 **APPRAISAL REPORT**

1	M				
2	Occupant	Tenant	Owner	Vacant	Untenable
3	Property Address		Subdivision	City	County State
4	BRIEF DESCRIPTION (Bldg. - Lot - District - Zone)				
5	LEGAL DESCRIPTION				
6	DESCRIPTION OF DISTRICT AND LOT				
7	TYPE	RATING	AGE	TREND	RACIAL % UTILITIES STREET DIST. TO BIL. MI.
8	Res.	Best	Old	Up	White Water Paved Schools
9	Apt.	Good	Modern	Down	Colored Light Graded Stores
10	Bur'm.	Fair	New	Stable	Foreign Sewer S. Walls Trans.
11		Poor	Built Up %	To:	Gas Alley City Cent. N S E W
12	BUILDINGS Indicate Rooms (L. D. K. C.)				
13	Bldg. USE	ROOF	EXT. WALLS	FOUNDATN	INT. WALLS INT. DECOR FLOORS Basn't 1st Fl. 2nd Fl. 3rd Fl. Attic
14	A				
15	B				
16	C				
17	EQUIPMENT				
18	No. Bath Rooms	Pln. Tile Shr.	Pibg. Fut.	Lt. Flat.	Type Drainboard Ref'gns. Type Fireplace W. Heater Heat Fuel ADEQUACY Clo. Space Floor Plan
19	A				
20	B				
21	C				
22	GENERAL CONDITION				
23	INTERIOR			EXTERIOR	
24	Bldg.	FLOORS	WALLS HEATING PLUMBING EQUIPMENT	WALLS ROOF FOUNDATION	YARD LOT IMPROVEMENTS
25	A				
26	B				
27	C				
28	BUILDING CALCULATION				
29	Bldg.	DIMENSIONS	CUBIC FEET UNIT COST NEW EFF. AGE % PHYS. DEP. *OTHER DEP. TOTAL DEP. PRES. DEP. VAL.		
30	A	x x			
31	B	x x			
32	C	x x			
33	Plot Size x x				Depreciated Value all Improvements \$
34	Number of Land Units @ \$ Per				Present Justified Value \$
35	Potential Value of Land \$ in Years				Summation Value—"As Is" \$
36	Highest and Best Use of Site				
37	Monthly Rental Unfurnished		Annual Income Analysis †		Fair Market Valuations
38	Unit	Actual Fair-"As Is" Fair (Rep'd)	GROSS EARNINGS \$	PRESENT "AS IS" VALUE \$	
39	A		ESTIMATED EXPENSE \$	REPAIR COST (\$) REP. VALUE \$	
40	B		NET INCOME \$	"AS REPAIRED" VALUE \$	
41	C		ASSESSED VALUES	ANNUAL TAXES	MARKETABILITY "AS IS"
42			Land Buildings Total	General Special	MKTY—"AS REPAIRED"
43			\$ \$ \$	\$ \$	
44	Recommended Repairs				

**COMMON PITFALL NO 1:
*UNCOMPARABLE SALES***

What is Allowed?

Evidence Code, section 816

- Properties that can “shed light” on the property being valued, which can include:
 - Geographic location
 - Date of sale
 - Type of property (character, size, situation, usability, etc.)
 - Use

What is NOT Allowed?

- Properties acquired for public use
- Involuntary sales, e.g., bankruptcy, REO
- Evidence of an offer to purchase or option to purchase
- Assessor's value
- Value of property or interest other than the one being valued
- Influence of noncompensable items of value, damage, injury
- Capitalized value of income from another property

See Evidence Code, section 822

City of Corona v. Liston Brick Company (2012) 208 Cal.App.4th 536

Background:

- City of Corona was acquiring easements.
- A separate government agency was interested in acquiring the remainder of the property. As a result:
 - An Appraisal of the entire property (in fee) was conducted
 - A PSA was entered into with this agency to acquire the rest of the property.
 - PSA included an option to purchase the easements currently under eminent domain if that acquisition fell through; set the purchase option price at \$21 per square foot.

Trial Court excluded the full appraisal and the PSA, with the option price, as inadmissible under Evidence Code section 822, subds. (a)(1), (a)(2), and (a)(4).

Holding: On appeal, the court concluded that all three pieces of evidence were inadmissible, and deemed the entire valuation excluded

- The appraisal → valued a different interest than the acquisition (entire property vs. easements) (Evid. Code, § 822, subd. (a)(4).)
- Purchase Agreement → an acquisition by a public agency (Evid. Code, § 822, subd. (a)(1).)
- Option Price → based on an option (Evid. Code, § 822, subd. (a)(2).)

Be careful that the underlying evidence is admissible, or the entire valuation opinion may be deemed inadmissible!

**COMMON PITFALL NO 2:
VALUING THE COMPARABLE SALES**

County of Glenn v. Foley (2012) 212 Cal.App.4th 393

Background:

- County was acquiring land associated with a landfill
- The owner's appraiser determined the highest and best use was to develop as olive orchards
- The appraiser located comparables that were orchards and made adjustments for quantitative and qualitative variations
- County argued that assigning values in making adjustments violated the rule against valuing the comparables.

Trial Court determined that the properties used under the sales approach were not comparable, excluded them, and ultimately excluded the entire valuation of the property owner.

Holding:

- The opinion should not be excluded because adjustments to comparables is a necessary component of the sales approach, so long as an appraiser is not imposing his own opinion of value onto the property.
- His adjustments for improvements came from university cost studies and were not just his best guess on value.

This case demonstrates that there is a fine line between explaining adjustments to comparable sales versus appraising them.

COMMON PITFALL NO 3: BEING *TOO* CREATIVE

Speculative Valuations

- Developer's Approach
 - See *Contra Costa Water Dist. v. Bar-C Properties* (1992) 5 Cal.App.4th 652.
- Severance Damages
 - Future Damages
 - Temporary Impacts



Solano Transportation Authority v. Anderson, 2021 Cal.App.Unpub. Lexis 2129

Background:

- A narrow strip of land was being acquired for a water conveyance system.
- Property owner claimed there were plans to develop the property at issue as a mitigation bank for the sale of environmental credits.
- The appraiser determined the number of credits available and worked backwards to subtract the costs necessary to develop the property and reach that number of credits.

Holding: Valuation method was too speculative and therefore inadmissible because this was an unapproved development project.

- The issue arises with the speculative nature of the estimated expenses for various aspects of development.
- Also, there is always the question of whether or not the development will actually come to fruition.
 - The property owner was very early in the development process and had received no permits or approvals.

Valuing Income from *Other* Properties

- In valuing an income producing property, in addition to the sales comparison approach, an appraiser may utilize the income approach
 - Appraisers utilize capitalization rates from comparable properties
- Where do you get into trouble?
 - Opinions based on the capitalized value of the income for another property
 - Anticipated rental income from yet-to-be-built improvements

County Sanitation District No. 8 of Los Angeles County v. Watson Land Company (1993) 17 Cal.App.4th 1268

Background:

- District was acquiring easements.
- The appraiser for the property owner attempted to introduce the income value of six license agreements as part of the valuation of the easement acquisition.

Holding: This valuation opinion was inadmissible because:

- It was an improper way to value an easement. In simple terms, easements are valued by taking the land value of the whole then calculating the value of the part taken.
- The appraiser attempted to use the income from the licenses to extrapolate the value of the easement.

Other Pitfalls?

- Reliance on opinions of others
- Hearsay
- Definition of Fair Market Value
- Highest and Best Use



CONSEQUENCES



YOU'RE OUT!

QUESTIONS?

Thank You



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