

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

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APPRAISAL REPORT

1 M									
2 Occupant		3 Tenant		4 Owner		5 Vacant		6 Untenable	
7 Property Address			8 Subdivision			9 City		10 County	
11 BRIEF DESCRIPTION (Bldg. - Lot - District - Zone)									
12 LEGAL DESCRIPTION									
13									
14									
15 DESCRIPTION OF DISTRICT AND LOT									
16 TYPE	17 RATING	18 AGE	19 TREND	20 RACIAL	21 %	22 UTILITIES	23 STREET	24 DIST. TO	25 RIL. MI.
26 Res.	27 Best	28 Old	29 Up	30 White	31	32 Water	33 Paved	34 Schools	35
36 Apt.	37 Good	38 Modern	39 Down	40 Colored	41	42 Light	43 Graded	44 Stores	45
46 Bus'm.	47 Fair	48 New	49 Static	50 Foreign	51	52 Sewer	53 S. Walls	54 Trans.	55
56	57 Poor	58 Built Up	59 %	60 To:	61	62 Gas	63 Alley	64 City Cent.	65 N S E W
66 BUILDINGS									
67 Indicate Rooms (L. D. K. C.)									
68 BLDG. USE	69 ROOF	70 EXT. WALLS	71 FOUNDATN	72 INT. WALLS	73 INT. DECOR	74 FLOORS	75 Beam't	76 1st Fl.	77 2nd Fl.
78 A									
79 B									
80 C									
81 EQUIPMENT									
82 No. Bath Rooms	83 Pln. Tile Shr.	84 Plbg. Fixt.	85 Lt. Fixt.	86 Type Drainboard	87 Ref'g'n.	88 Type Fireplace	89 W. Heater	90 Heat Fuel	91 ADEQUACY
92 A									93 Clo. Space
94 B									95 Floor Plan
96 C									
97 GENERAL CONDITION									
98 INTERIOR					99 EXTERIOR				
100 Bldg.	101 FLOORS	102 WALLS	103 HEATING	104 PLUMBING	105 EQUIPMENT	106 WALLS	107 ROOF	108 FOUNDATION	109 YARD
110 A									111 LOT IMPROVEMENTS
112 B									
113 C									
114 BUILDING CALCULATION									
115 Bldg.	116 DIMENSIONS		117 CUBIC FEET	118 UNIT	119 COST NEW	120 EFF. AGE %	121 PHYS. DEP.	122 *OTHER DEP.	123 TOTAL DEP.
124 A	x	x							125 PRES. DEP. VAL.
126 B	x	x							
127 C	x	x							
128 Plot Size x									129 Depreciated Value all Improvements \$
130 Number of Land Units @ \$ Per									131 Present Justified Value \$
132 Potential Value of Land \$ in Years									133 Summation Value—"As Is" \$
134 Highest and Best Use of Site									
135 Monthly Rental Unfurnished			136 Annual Income Analysis †			137 Fair Market Valuations			
138 Unit	139 Actual	140 Fair—"As Is"	141 Fair (Rep'd)	142 GROSS EARNINGS \$		143 PRESENT "AS IS" VALUE \$			
144 A				145 ESTIMATED EXPENSE \$		146 REPAIR COST (\$) REP. VALUE \$			
147 B				148 NET INCOME \$		149 "AS REPAIRED" VALUE \$			
150 C				151 ASSESSED VALUES		152 ANNUAL TAXES		153 MARKETABILITY "AS IS"	
154 D				155 Land	156 Buildings	157 Total	158 General	159 Special	160 MKTY—"AS REPAIRED"
161 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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