

Common Deficiencies in Eminent Domain Real Estate Appraisals



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COMMON DEFICIENCIES IN EMINENT DOMAIN REAL ESTATE APPRAISALS

Written by Charles B. Jimerson, Esq. – 4/12/17

Eminent domain proceedings are legal proceedings brought by the government, or an entity acting on behalf of the government, to seize private property for public purposes. The government has the right to seize private property for public use only if the property owner receives full compensation. During the eminent domain proceedings, the issue typically turns on whether the landowner has received a fair appraisal in order to receive full compensation for land. Oftentimes, a property is not properly appraised and just compensation is not offered. While the following list below is not an exclusive list, these are common deficiencies that landowners and landowner attorneys can look for when evaluating the adequacy of the government's real estate valuation.

List of Common Appraisal Deficiencies:

- Legal explanations of the property taken are not included in the appraisal reports.
- Rounding down the components of the property, including cost to cure and severance damages.
- Building setbacks in the after condition are not noted on the sketches or discussed in the after analysis (potential damages).

- Adjustments within the vacant or improved sales grid do not match those within the narrative section of the report.
- Subject properties or sales with waterfront amenities, namely lakes, are ignored in the valuation analysis.
- Adjusting the sales prices on the sales sheet, rather than within the analysis (e.g. demolition costs, improvements, real estate commissions, etc.).
- Comparing wetlands with upland sales with no discussion or comparison.
- Furniture, fixtures, and equipment considered as real estate are not properly addressed or ignored within the valuation analysis.
- Two or more economic units combined in the analysis when each tract varies greatly in physical differences and potential use. Further, the takings may have an impact on each economic unit. However, the units are combined as a single parent tract. This method may reduce or eliminate potential damages.
- Failure to recognize improvements within the acquisition area.
- Remainders falling below zoning or other requirements for size, depth, minimum frontage, septic tank permitting, well permitting, etc., with little or no discussion.
- Lack of information and evidence when stating that a property does not have damages.
- Ranges in unit values that increase after adjustments.
- Failure to make common sense decisions concerning damages, when market support is weak or unavailable.
- Assuming an assemblage value when the market does not support the analysis.
- Ignoring demolition costs as a damage in the after condition.
- Mathematical errors in the appraisal process, that creates errors in the values causing a significant impact.

- Sales or rental sheet information does not match up with the narrative discussions within the valuation analysis.
- The lack of support for cost to cures.
- Failure of the appraiser to read and understand information supplied by consultants.

Effectively Attacking an Appraisal Deficiency

In an eminent domain proceeding, it is important to hire an attorney that is proven in eminent domain cases before the government appraisal process even begins. Every move a property owner makes in an eminent domain transaction can impact the just compensation ultimately obtained from the government. In an eminent domain proceeding, it is routine to employ at least one appraiser as an expert, for the purposes of providing a fair and accurate estimated value of the property. A competent landowner attorney will be your quarterback in finding the right real estate expert for appraising the property and working with other experts that may be essential to ascertain the full scope of damages for the condemnation. The appraiser that is ultimately hired will perform his or her analysis on the property, as well as assisting in pointing out flaws in the government's appraisal.

During discovery in an eminent domain lawsuit, all appraisals on the property will be brought into evidence and most all appraisers will be called to testify by both sides. It is key to bring in the best expert appraisers in order to have the highest value of the property presented in advance of trial and at trial. At the end of the day, is up to the jury to properly determine the value of the property that will give the

owner just compensation, and juries almost exclusively rely on the valuation experts.

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