

Not Your Father's Appraisal

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Abstract

Federal, state, and local regulations on such issues as wetlands, contamination, drainage, and pollution control complicate the appraisal of land in ways our fathers never imagined.

For those of us who are a little older, how nostalgic are the blissful days when appraising land was relatively simple. One might do a survey of land sales to find an appropriate price per square foot that could be applied to the subject property, and the valuation would be complete. In those days, land sales were generally the easiest part of an appraiser's work—but no longer. Land sales are complicated now, and like the proverbial snowflakes, the more closely completed sales are examined, the more intricate and apparent their differences become.

The complexity of land sales seems to rise relative to the land regulations of the state in which they occur. The more environmentally active states tend to have more rules and allow more avenues of recourse for those organizations and state agencies that challenge development. Moreover, the layers of bureaucracy that affect development inexorably put land development in a quagmire messier than a

muddy wetland in Oregon. Whether or not one favors development, the fact remains that the appraiser, who has already been forced to don a lawyer's hat to traverse the myriad rules that regulate the appraisal profession, also has to decipher environmental regulations to determine the viability of development; for unless one can accurately estimate the likelihood of development, it is exceedingly difficult to make an accurate assessment.

Some recent federal changes may alleviate some of this, but they also further complicate the job, because now the prognostication process has to consider the new rules as well, and generally their effect will not be known until they are applied, tested, and litigated. Even then, they may be unevenly applied. Land development faces issues of wetlands, protected species, environmental contamination, noise and pollution concerns, drainage, traffic restrictions, building moratoriums, citizen pressure, and other issues. All of this is set against a backdrop of dealing with not just one entity, but rather various echelons of government—federal, state, and local. Some of these are redundant in the areas they regulate and may use different yardsticks in their determinations. How then can one mass appraise land and know the circumstances for each parcel? And if they are not known, how can an accurate assessment be made? Try explaining this to the state department of revenue when they perform a ratio study on your land sales.

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CASE STUDY

Significant Premium Paid for Prime Land

In a rapidly developing area, where getting approval for development is difficult, national retailers sometimes pay a premium for land for which all preliminary work has been accomplished. This further complicates the appraiser's job, because the question arises, should one (1) bring the value of surrounding properties up to the value of a property already approved for development, (2) keep the approved property's value down, or (3) consider an increment of value attributable to the difference?

One reason the gap can be large is that when major retailers "discover" a new area, usually when the population of that area reaches a certain point, they sometimes converge almost simultaneously to buy commercial land. Time is money for these retailers, and the cost of land is relatively minor compared to the rest of their development expenses, so paying more for a site with preliminary approval is cost effective. The time value of money is magnified for these retailers in relation to the profit they expect to make in a new location, and "getting there first" is extremely significant in regard to competition. Their real estate scouts know that in many areas of the country, approvals for projects may take two years or more, expenses can run into the hundreds of thousands of dollars, and there is no certainty of the outcome.

Many things are not easily understood until someone personally experiences them. Consequently, the following case study has been written to give a more personal perspective to the realities of appraising land in today's environment. It is based on a true story, but with fiction added in an attempt to inject some levity into an otherwise mundane subject.

Mr. Payne Becomes Mr. Pain

Mr. Payne owned several hundred acres of land in one of the small communities that surround our city. The community's population is mostly families living on small acreage properties, and very little industry had come into the area. Mr. Payne's land was zoned industrial, and he was attempting to lure some companies out of the city to get them to build on his properties. Almost all of his land was under a farm exemption, which means that he paid taxes based on an agricultural use value. However, if he sold the land

for development, back taxes and a penalty would have to be paid for a certain number of years to make up for the change of land use.

I reassessed Mr. Payne's land one year and quickly received a phone call from him as soon as he got his "change of value" notice.

"You guys are killing me," Mr. Payne said.

"What do you mean?" I asked.

"Your increase on my property is way too high—it's unfair," Mr. Payne protested. "You must think it's all buildable, but it's not. I've got the Army Corps of Engineers breathing down my neck. They keep changing the rules every time I try to develop something. There are wetlands out here that you don't know about."

"Well, I checked our wetlands map, and I looked at the property—but it was summer. If it's wet, we can adjust it," I offered.

"I want you to come out and see," Mr. Payne said. "But it won't look wet—it's the grasses and hydric soils that they are using to call it wetlands. There isn't much water there, even in the winter. And when I sell this stuff, I've got to make up all those taxes, and they're based on your market value!"

"Okay, okay. I'll be out there," I assured him, and we set a time to meet.

It was an overcast day when I met with Mr. Payne. First he spent several minutes denouncing the different agencies he had dealt with in his quest for development. Then, after taking a deep breath, he shook his head back and forth in frustration, and began explaining all the complicated situations regarding the different pieces of land he owned. The first piece we talked about was a fifty-two-acre parcel that had just been designated wetlands—too soon for any of our maps to reflect it. Next we walked over a seventy-six-acre parcel for which I had substantially increased the assessment.

"I think it is a very reasonable value, Mr. Payne," I said.

"It would be if I could develop it for certain," he countered. "But the Army Corp won't let me. I'm claiming it's prior converted land, meaning it was farmed and meets the regulations to allow it to be developed. But they say I have to find all the receipts showing that a certain profit was made on it for a number of years before we even bought it." ("Prior converted" means that the land was farmed for a

certain amount of years, and can therefore be used for industrial development if the criteria for farming are met under the Army Corps of Engineers rules. In this case, the Army Corps questioned Mr. Payne's proof for the land being farmed, and the only way he could get the decision overturned was to go to court against the Army Corps, which was a very expensive proposition.)

"So where do you get that information?" I asked.

"I'm talking to the widow of the farmer, and we're trying to prove it," he answered. "Until then, I'm in limbo—I can't do anything with this property."

"But some of this does look wet," I said. "I figured that only twenty-five acres out of the seventy-six would be developable. If you get prior converted, you can develop all seventy-six acres, which would make you underassessed."

"Yeah, but if I don't win, I can't do anything with it. It's all classified as wetlands because of the grasses and soils. Also, the forty-acre piece north of it is in limbo. But that's not wetlands; they found some Indian artifacts on it, so I can't do anything," he said.

"When will you find out?" I asked.

"That's the problem; I can't get a straight answer out of these people, so lower the value and I'll be happy," he said.

"It's not that easy. With all due respect to you, I have to investigate your claims," I replied.

"Go ahead, I'll give you the phone numbers," he offered.

My first stop was to investigate Mr. Payne's claim regarding the archaeological site. The archaeologist explained that there was an archaeological predictive model, and it was based on five zones. If the property fell into one of those zones, the archeologists would walk over the site and shovel test for artifacts. If they found anything, they would then determine whether or not they were significant.

"So, Mr. Wilson, have you found anything on Mr. Payne's site?" I asked.

"Let's see," he answered, looking through the records. "Oh yes, this might be big," he exclaimed, taking off his glasses for emphasis. "This might be an Indian burial site!"

"You say, 'might.' How will you know?" I asked.

"Well, we found some arrowheads and also some bones, so it could be an Indian burial site. In fact we think we found something that belonged to Hunting Bear," he said, smiling.

"Hunting Bear?" I asked.

"Don't you know your Indian history?" he scolded. "Hunting Bear is famous. There is a legend about him—how he killed two bears with one arrow and a rock. You see, as the story goes, Hunting Bear was hunting, seated backwards on his horse, and ..."

"Why would he sit backwards?" I interrupted.

"Because he was a brave, and braves had to do everything backwards in their initiation. Anyway, it was a full moon that night, and Hunting Bear was—well he wasn't called Hunting Bear at that time. He got that name later after he killed the two bears. In Indian society, the one who provided the most food was always honored the most. Anyway, he turned around and saw two bears in the woods, then he pulled out an arrow and ... Hey, where are you going?" After getting out of my chair, I stopped for a moment. "I don't hunt bear, I have to appraise for food, and I'll be late if I don't leave," I explained.

"So you don't want to hear the legend? You can't understand the significance of the site without the legend!" he protested.

"I'd love to hear about it some other time, but right now I need to know what is going on with this property. Will it have to be excavated?" I asked.

"We don't know until all the exploration is done. But if they have to excavate before they develop, it could be expensive. It is very time consuming to work with little brushes," he said.

"Little brushes?" I asked.

"Yes, each artifact must be brushed when it is dug up, so nothing is damaged. They use camel's hair brushes like this," he said, handing me what looked like a small paintbrush. "So it could take at least a year or so just to figure out what is actually there," he added.

When I got back to the office the phone was ringing. It was Mr. Payne. "Figure it out yet?" he asked.

"Mr. Payne, it's only been two days since I was out there," I said.

"Why don't you just trust me and reduce it? By the way, I gave generously to the assessor's campaign last year," he said.

"I didn't hear that, Mr. Payne," I replied.

"I SAID, I GAVE ...", Mr. Payne started in a loud voice.

CASE STUDY

"Mr. Payne, you're shouting!" I said.

"But you said you couldn't hear me," Mr. Payne countered.

"That's not what I meant, Mr. Payne. What I meant was ... did you ever see the movie, *Serpico*?" I asked.

Mr. Payne thought for a moment, and then answered. "*Serpico*—about the crooked cops on the take and ... yeah. Okay, I get it. Never mind about the contributions. Glad to hear you're straight."

"I'm meeting with the Army Corps of Engineers about your property tomorrow. I'll know more then," I answered.

"Will you let me know as soon as you find out? This tax bill is making me nervous," Mr. Payne said.

"I will call you," I assured him.

"Just email me—my lawyer likes a paper trail," he added.

"Email is fine," I answered.

The geologist with the Army Corps was hard to reach. Finally I had to tell him that I would have to go to his supervisor—then he granted me an appointment. Using a map to refer to the parcels, he explained the different situations.

"We shut him down on that one," he said, pointing to a two-acre parcel. He started building in violation."

"What about the one he claims is prior converted? He said he had to bring in records from the past farmer for you, and if he can't produce them, he can't build," I said.

"Not exactly true. He has never even had a wetland delineation done on that—so we don't know what can be done if he doesn't get prior converted," he said.

I emailed Mr. Payne about this, asking him why he didn't tell me that a delineation was never performed. He called me a few hours later.

"I got your letter," he said. "You're not a very good speller, are you?"

"Why do you say that? I won my eighth-grade spelling bee," I retorted.

"Because my name is spelled Payne, not Pain," he said.

"Oh, sorry for the mistake," I said.

"Well, I have a theory about that," he said. "I was in therapy for many years, and learned that things like that aren't mistakes. I think you have anger and it's coming out at me. You're not controlling your inner child, and that's probably why you overassessed my property."

"Mr. Payne, I never planned to overassess your property," I said defensively. "I did not have all the facts at the time."

"You might consider an old therapy called the primal scream, where you scream your anger out," he offered.

"Mr. Payne, screaming is what I'm trying to avoid," I answered, becoming irritated. "Now can we get back to this?"

"Yes, but you're not supposed to scream at me, you're supposed to go under a bridge when a train goes over it," he added.

"I am going to reduce several of the properties," I said, ignoring his last comment. "But figuring out the amount will take some time."

Several months after the reductions were made, I ran across an article in the newspaper, which said some of Mr. Payne's land had been sold to an Indian tribe that was going to develop it. After checking the records, I found out that the land was the same forty acres that I had been told might be an Indian burial site. I also determined from the contract that the sale negotiations had been in progress before I talked to Mr. Payne. Confused about how this site could be developed, I first called Mr. Wilson. His voice was barely audible when he answered the phone.

"How could this have happened?" I asked. "I thought it had to be excavated."

"It's been desecrated," he said with a low whisper, and then he was quiet for a while.

"Are you all right, Mr. Wilson?" I asked.

"Yes, but Hunting Bear is rolling over in his grave."

"More likely in a bulldozer," I said.

"What was that?" he asked.

"Never mind. How in the world did they get permission so quickly to develop it," I asked.

"They were able to do it because they are Indians," he said. "It's their tribe that was buried there. So they can do what they want."

After talking to Mr. Wilson, I tried to call Mr. Payne, but couldn't reach him. So I sent him an email, asking him why he did not inform me that the tribe was buying his land. He didn't call back, so the next day I called him again.

"I got your note," he said. "You misspelled my name again. Was that a psychological thing or just another boo-boo?" he asked.

"Neither, it was on purpose," I said.
 "Temper, temper, control the inner child," he advised.
 "Why didn't you tell me you had a sale—and for a much higher amount than the assessment?" I asked.
 "You didn't ask. Anyway, I was sworn to secrecy. I couldn't let out any information until the escrow closed. The tribe is very sensitive about these matters," he explained.
 "But you asked for a reduction knowing it was ...," I began, then decided not to pursue the matter.
 "I didn't know if it would close escrow," he said defensively. For a moment neither of us spoke.
 "Mr. Payne," I said.
 "Yes?" he answered.
 "I think you need to go back to therapy," I suggested.
 "Why do you say that?" he asked indignantly. "I'm fine now."
 "You may be okay, but your inner child is running amok and has misbehaved," I said.

Some Practical Advice

In this new era of land appraisal, it is important for appraisers to analyze land according to the level of potential development it falls into. Land that is categorized as prime may mean different things in this day and age, for preliminary approvals generally do not end with one government agency, and the lack of just one approval may mean the difference between a parcel that is usable and one that cannot be built upon. For an accurate assessment, the appraiser should become familiar with the obstacles to development and the cost and time necessary to overcome them. Land can then be categorized according to its phase of development and the probability of development. This can be accomplished using a timeline to establish the various stages of preliminary approvals, the expense of gaining the approvals, and the expense of holding the property for the necessary period. These costs can then be compared to the sale price of a parcel that was completely ready to develop when it sold, and adjustments can be made accordingly.


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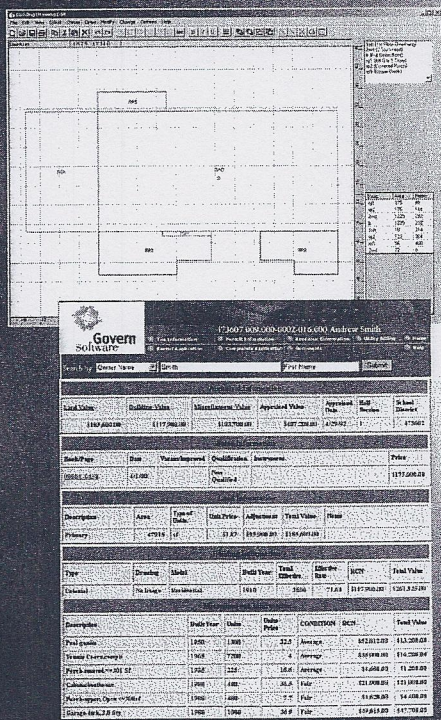
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Example of an Appraisal Information Screen in Govern.NET

Land Code	Building Value	Market Value	Assessed Value	Appraisal Date	Roll Back	School District
10000000	\$117,960.00	\$143,700.00	\$27,230.00	02/07/01	1	475002
BuildType	Size	Phase/Imp	Condition	Income	Price	
10000000	0.00	000	000	000	\$117,960.00	
Description	Area	Type of Dist.	SubType	Adjustment	Total Value	Roll
10000000	0.00	000	000	000	\$117,960.00	
Type	Drawing	Sheet	Plot Size	Total Sheets	Change Size	Scale
10000000			1000	1000	1000	1000
Category	Year	Date	Rate	CONTR	DEBT	Total Value
10000000	1990	12/30	0.22	Average	\$2,011,000	\$13,200.00
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10000000	1990	12/30	0.22	Average	\$2,011,000	\$13,200.00
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