2012 Appraisal Institute Annual Meeting
Aug. 1–3
Loews Coronado Bay Hotel
San Diego, CA
appraisalinstitute.org/aiconnect
Residential Nightmares

(A Complex Residential Litigation Case Studies Workshop)
Three Case Studies

• New House on an Old Dump
• Home with a Disappearing Dock
• A Simple Eminent Domain Easement Purchase with Surprises Galore
New Home
New House

• Ranch style single family home, built 2006
• One story with attic
• Vinyl over Concrete Block
• 3/2 with 2-car garage
• 2,047 square feet
• Covered front porch
• Screen porch on the rear
The Site

- 78,844 sq. feet
- 1.8 acres
- Home built near road frontage
- Two lane asphalt paved residential street
- Purchased from neighbors who owned the land for decades
Wetlands

- 0.7 acres of wetlands
- Situated to rear of site
- 1.1 acres of uplands near road frontage
- Small pond between the residence and the wetlands
Septic Tank

• Home was substantially complete
• The septic tank contractor excavated adjacent to the east side of the house
• Debris was uncovered
• Tires, drums, paint cans, appliances
• Debris was removed, septic tank installed
• Certificate of Occupancy issued
Problem
The Cause
Lawsuit One

- Sellers did not disclose that debris was located on the property
- Sellers had knowledge of same, as they lived next door for decades
- Identification of debris indicated that it had been deposited no longer than 20 years previous
- Lack of disclosure claim
Lawsuit Two

• Contractor excavated debris when digging foundation footers
• Continued with construction, did not report or investigate
• Claim for defective constructive methods and lack of due diligence
Remediation

• Home will continue to sink and lean as debris decomposes and soil washes out
• Environmental problems make removal of debris infeasible
• Foundation pilings must be installed retroactively
$284,559

- Remove interior fixtures, cabinets and floor covering
- Sawcut and remove foundation slab up to 4” from interior walls
- Install 81 “screw pilings” to a depth of 25 feet
- Reinstall foundation
- Refinish interior
Partial Remediation

• Homeowners will have paper trail
• Disclosure to potential buyers:
  – Remediation project and permits
  – Addition engineering documentation
  – Presence of debris remaining under the structure
Appraisal Problem

Estimate Market Value of the Home

• As if built on typical soil
• “As is” after partial remediation
• Effective date of value for both estimates is the Certificate of Occupancy date in 2006
Home on Typical Soil

Requires hypothetical condition

Assumes that which is contrary to what exists, but is supposed for the purposes of analysis
Value as if on typical soil

• Typical Sales Comparison Approach
• Look for comps in market area unaffected by debris or other detrimental conditions
• Easiest part of the analysis

$325,000
Home After Partial Remediation

Requires hypothetical condition

– The remediation was not complete on the effective date of value
– Assume remediation accomplished in a workmanlike manner
– The cost of partial remediation is not a factor in the analysis
Value with Debris Issues

• Typical Sales Comparison Approach not applicable due to lack of sales of new homes on old dumps
• Other analyses necessary to estimate the impact on value due to the detrimental condition
Unfavorable Environmental Conditions

Homes on sinkholes
Chinese Drywall
Fuel Oil Tanks
Presence of Asbestos
Uncertainty and Risk

• Market participants demand a discount for properties which have uncertainty or risk
• Appraiser must quantify the level of discount appropriate for the subject property
• Sale and Resale of unremediated homes provide data for analysis
Chinese Drywall Homes

• Requires remediation due to health hazards and corrosion of building components
• Risk involved with cost and timing of removal of drywall and repair of the home
• Requires second C.O.
• Stigma lingers after remediation complete
• Seller disclosure issues remain
Sale / Resale Pairs

• Three Pairs Identified
• Investors purchased Chinese drywall homes
• Investor paid for repairs
• Discount demanded over and above the estimated cost of repair:
  
  42% to 53%
Sinkhole Homes

• Requires remediation to stabilize the site and the structure
• Risk involved with cost and timing of remediating the sinkhole
• Requires second C.O.
• Stigma lingers after remediation complete
• Seller disclosure issues remain
Sale / Resale Pairs

• Two Pairs Identified
• Engineering firms specializing in sinkhole repair purchased the homes
• The buyers paid for the repairs
• Discount demanded over and above the estimated cost of repair: 42% to 44%
Value as Rental Home

- Market rent for subject is $1,500/month
- GRM is 100 to 110
- Maximum purchase price is $150,000 to $165,000 for the investor
- Home worth $325,000 without issues
- Discount is 49% to 54%
Value after partial remediation

- Discount from $325,000 value
- Range of discount from three analyses:
  - 42% to 54%
  - Reconciled to 50%
- $325,000 x 50% = $162,500
Disappearing Dock
Island Home

- Ranch style single family home, built 1966
- One story concrete block
- 2/2 with 2-car garage
- 1,026 square feet
- 394 sf lanai
Residence
The Site

- 6,375 sq. feet in a small subdivision
- Located on a barrier island, but not waterfront
The Dock

- Deeded boat slip
- Located on community dock
- Home and dock purchased from one owner
- Slip is covered
- Water and electricity available on dock
The Problem

- The Florida Department of Environmental Protection regulates boat docks on Florida waters.
- DEP informed the subdivision HOA that their dock was encroaching on submerged sovereign lands.
- Dock and slips cannot be owned in fee.
- DEP would lease land back to the owners.
Community Dock

AI® Connect
Where people & ideas come together.
Lawsuit

- Title insurance policy included the home and the deeded boat slip
- Property owners made a title insurance claim, which was denied
- Property owners sued to recover loss in value resulting from loss of deeded boat slip
Appraisal Problem

Estimate Market Value of the Home

• With deeded boat slip
• Without deeded boat slip or ability to lease a slip in the future
• Effective date of value for both estimates is the date of purchase
Home with Deeded Slip

Requires hypothetical condition

Assumes that which is contrary to what exists, but is supposed for the purposes of analysis
Value as Insured

• Typical Sales Comparison Approach
• Look for comps in market area
• Retrospective value opinion
• Search for homes with similar beach and water amenities
Beach and Bay, Boating and Strolling
Waterfront Amenities

Access is everything
Every beach community is different
Limited public access and public parking creates value for private access
“Deeded Access”
– Can be difficult to discern from deeds
– MLS information may be wrong
– Always check the subdivision plat and docs
Subject Amenities

- Community boat dock
- One short block away, parking at dock
- Deeded individual boat slip, 7.5 x 20 feet
- Slip is covered, water and electric at slip
- Deeded pedestrian access to dock
- Deeded pedestrian access to bay
- Deeded pedestrian access to beach nearby
Valuation As Insured

Value the home with deeded boat slip, and other amenities such as deeded beach access and deeded pedestrian dock access, as of the date of purchase.
Three comps
One is subject purchase
Non-waterfront
Access to boat dock nearby
Pedestrian access to beach and bay
Different docks and slips
$574,000

<table>
<thead>
<tr>
<th>ELEMENTS OF COMP.</th>
<th>ADJUSTMENT OF COMPARABLE SALES</th>
</tr>
</thead>
<tbody>
<tr>
<td>BLDG LIV AREA (SF)</td>
<td>1,028</td>
</tr>
<tr>
<td>LAND SIZE (SF)</td>
<td>6,375</td>
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<tr>
<td>BEDROOMS/BATHS</td>
<td>2/2</td>
</tr>
<tr>
<td>CAR STORAGE</td>
<td>Garage - 2 car</td>
</tr>
<tr>
<td>YEAR BUILT/CONDITION</td>
<td>1990 - renovated and upgraded</td>
</tr>
<tr>
<td>LOCATION</td>
<td>Interior / bay side</td>
</tr>
<tr>
<td>ZONING/LU</td>
<td>SF / SF</td>
</tr>
<tr>
<td>PEDESTRIAN ACCESS</td>
<td>Beach - nearby</td>
</tr>
<tr>
<td>BEACH AND BAY</td>
<td>Bay - county dock</td>
</tr>
<tr>
<td>BOAT SLIP - RIGHTS</td>
<td>Deeded No. S-5</td>
</tr>
<tr>
<td>AMENITIES</td>
<td>Good boating water</td>
</tr>
<tr>
<td></td>
<td>Slip, water, etc. In covered, gated</td>
</tr>
<tr>
<td></td>
<td>Tile Roof</td>
</tr>
</tbody>
</table>

**COMPOSITE COMPARISON**

<table>
<thead>
<tr>
<th>COMPARISON</th>
<th>Subject</th>
<th>Very Inferior</th>
<th>Similar</th>
</tr>
</thead>
<tbody>
<tr>
<td>VALUE</td>
<td>$285,000</td>
<td>$500,000</td>
<td>$574,000</td>
</tr>
</tbody>
</table>
Value the home with no deeded boat slip, and no opportunity to lease the boat slip from the State of Florida, but recognize other amenities such as deeded beach access and deeded pedestrian dock access, as of the date of purchase.
What are you supposed to appraise?

What is the correct effective date of value?

You are most likely the only person who has thought that through.

So..... be careful!
Three comps
Non-waterfront
Pedestrian access to beach and bay
Adjust for pedestrian access to a dock

$500,000
Contributory Value

The change in the value of a property as a whole, whether positive or negative, resulting from the addition or deletion of a property component.
$ 74,000

- Value as Insured   $574,00
- Value Subject to Defect   $500,000
- Sales Comparison Approach indicates $74,000 for contributory value of the dock
- Change in value is 13%
Test for Reasonableness

- Survey of real estate agents
- Listing and/or selling agent for a non-waterfront home with a boat dock
- Search of 8 years of data yielded 30 agents
- Survey by email
- Follow up phone calls with respondents
Survey Says....

• Access to boat dock and/or slip is valuable
• Individual slip is more valuable than “first come, first served” dock access
• Slip with ability to install a boat lift even more valuable
• 10% to 25% value increase
Value as Dollar Estimate

- Survey 2011 vs. EDOV 2005
- 7 realtors gave dollar value opinions
- $20,000 to $75,000 range in 2011 money
- Time adjustment study
- Range adjusted to 2005 money
  - $34,400 to $129,000
Reasonable?

- Sales Comparison Approach $74,000
- Sales Comparison Approach 13%
- Realtor survey 10% to 25%
- Realtor survey $34,400 to $129,000
The Other Guy’s Opinion

- Subject purchase of $574,000 was above market because 1031 Exchange
- Contributory value cannot exceed independent value of the item
- Used sales of boat slips in marinas $26,000
The Attorneys Battle

• Purchase price = market value?
• Effective date of value 2005 or 2007?
• Consider ability to lease the slip from State of Florida
  – Four years had passed without lease
  – How risky is the lease going forward?
The Trial

• Opening Arguments
• Property Owners Testify
• Plaintiff Appraiser is Qualified
• Voir Dire of Plaintiff appraiser to support motions in limine and legal arguments
• Settled for $99,000
A Simple Eminent Domain Easement Purchase with Surprises Galore
The County is proposing a road widening and sewer expansion plan. Over a hundred residential vacant sites or improved residential lots are involved. All takes are 15’ easements parallel the road frontage. The non-exclusive easement is for utility and drainage improvements. The client does not expect anything out of the ordinary and seeks a summary appraisal report on each parcel.
Questions?

• What does non-exclusive easement mean?

• Could a non-exclusive easement affect the valuation?

• How would you handle non-exclusive easement wording?
## Analysis of rights taken

<table>
<thead>
<tr>
<th></th>
<th>25' Front Setback-RSF 3.5</th>
<th>Utility Easement</th>
<th>Drainage Easement</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Structures</strong></td>
<td>Not permitted</td>
<td>Not permitted</td>
<td>Per Sec. 3-9-75</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Not permitted w/o</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>County Engineer</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>approval</td>
</tr>
<tr>
<td><strong>Fences, Walls, Hedges</strong></td>
<td>Permitted if opaque fence or wall 3’ high or less/Non opaque fences or walls 4’ or less</td>
<td>Permitted but subject to removal if utility maintenance is required.</td>
<td>None other than those allowed by County Engineer/subject to removal if drainage maintenance is required.</td>
</tr>
<tr>
<td><strong>Landscaping</strong></td>
<td>Allowed</td>
<td>Allowed/subject to trimming as needed</td>
<td>Allowed/subject to trimming as needed</td>
</tr>
<tr>
<td><strong>Trees</strong></td>
<td>Allowed</td>
<td>Subject to removal/trimming if maintenance is required</td>
<td>Subject to removal/trimming if maintenance is required</td>
</tr>
</tbody>
</table>
Conclusions:

• Does the 15’ easement take away additional rights the zoning allows?
  – Minor restrictions for fences and landscaping
    • Subject to removal if maintenance in the easement area is needed.
Proposed Improvements

• 12” PVC pipe will be buried approximately 2’ Underground for drainage of surface water
• Outlet box at surface to provide drainage of the subject’s surface water
• Minor contouring around the outlet box
• Sewer line will be expanded in the near future in the same easement area.
• Road widening from two-to-four-lanes with sidewalks and center divider.
Road Plan

Sewer Lift St
Typical Lift Station
Contact

• Owner contacted by letter, which included a copy of the drawing showing the proposed easement

• Owner never responded to the letter and no one was available to answer questions at the time of inspection.
Site Improvements

- Single-Platted lot
- Single-Unit Structure
- Fenced Yard
- Public water to site
- Private septic on site
- Minimal landscaping
Inspection
Observations

• Easement area along the front of the site has no landscape items other than minimal sod.
• Side yard has chain link fence in easement area.
• Front yard has signs of a septic tank suggesting leach field could be in the area of the easement.
• Rear yard has an existing easement in a small area of the side yard easement.
Front View
Area of Take
Rear view and area of take
What next?

- How do you verify location of leach field?
  - Discussion with owner
  - Survey
  - Health Department
Health Dept.

- Health Department reports 30% of all properties involved in the road project have leach fields in the easement area.
Project just changed
Research Results

- Existing Esmt
- Leach Field in area of take
- Chain Link Fence
- Proposed Sewer Lift Station
What about the Lift Station?

• Lift Station is planned for the lot across the street.
• Location will front the road widening and side street.
• Will market resist a house directly across from a lift station?
What’s Next?

• Appraise the rights taken – consider cost-to-cure for leach field intrusion
  • If the leach field is encroached– it could render the property uninhabitable until repair or connection to sewer.

• Contact client and suggest a meeting with the engineers
  • Suggest a change in the easement size to avoid the leach field intrusion
Appraiser Suggestions:

• Consider reducing size of easement

• Purchase vacant lot across the street to locate the sewer lift station a greater distance from the subject house.
Resolution

• Engineer redesigned the road project to avoid the intrusion of all leach fields
• Reduced corner lot easements to reduce side yard easements
• Purchased lot for sewer lift station
  – Cost to purchase entire lot would be less than potential damages to subject improved property
Lessons Learned

- There is no simple easement project.
- Engineers do not see all potential site problems.
- Engineers are not appraisers and are not reviewing project from the market value aspect.
- Appraiser and engineer communication is crucial.
Potential Damages as Designed

2,964 square feet of easement
150 square feet already encumbered
2,814 square feet unencumbered
Cost-to-cure leach field – habitation issue
Market resistance to Lift Station
95 lineal feet of chain link fence
Potential Damages as Redesigned

1,017 square feet unencumbered
Results

Client was pleased – Glad you are working on our team attitude!

Although this assignment created much more time and research than initially estimated, it resulted in a satisfied client that ordered another project within a month.
Call to Action

• Expect the unexpected in potential eminent domain cases.

• Do your research to draw credible conclusions.

• Seek alternatives that will accomplish the client’s goal with minimal damage to the property owner.

• Communicate with the project engineers and your client.