

# **HOT TOPICS**



**IN REAL ESTATE**

**UNIVERSITY SYSTEM OF  
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# What's HOT?



- Establishing (& defending) value/need
- Roads on campus
- ALTA Surveys
- Brownfields

# Establishing/Defending

## • Value

- Why?
  - ✦ Fiduciary/Fairness/Takings
- When?
  - ✦ Sell or Grant, Buy or Gift
- How?
  - ✦ Appraisals
- Who?
  - ✦ Qualified Professional?
- What are the Issues?

## • Need

- Same questions
- Same answers?



## Fiduciary duty

PRIMARILY for another's benefit

Quest for equity/fairness

“Person” on other side of deal is also “People of State of Georgia”

## Risk

Subjective value vs. objective value and decisions

Traditional condemnation – how bad to we NEED it?

Inverse condemnation – courts can force us to be fair



## WHY worry so much about VALUE?

# WHEN do we worry about VALUE?



- **Dispositions/Sales**
  - 3 Appraisals
  - Ensure made whole – building haul-away (demolitions)
- **Acquisitions/Purchase**
  - 3 Appraisals
- **Gifts**
  - 1 Appraisal
  - Grantor will usually do one - within 6 months
- **Grants – Easements/Rights/Leases/Licenses**

# HOW to address the VALUE issue?



- **Appraisals**
  - Very complex field – arm yourself with knowledge...
- **Guidance at websites**
  - [www.usg.edu/ref/real\\_services/submittal/appraisal.phtml](http://www.usg.edu/ref/real_services/submittal/appraisal.phtml)
  - [www.fanniemae.gov/sf/guides/ssg/relatedsellinginf/appcode](http://www.fanniemae.gov/sf/guides/ssg/relatedsellinginf/appcode)
  - [www.netforum.avenra.com/eweb.aspx?site=taf&webcode=uspap](http://www.netforum.avenra.com/eweb.aspx?site=taf&webcode=uspap)
- A qualified professional can (and should) advise the most appropriate appraisal method but must justify decision.
  - TIP: insist on physical inspection not only of property but contents – recommended language: “inspect, measure, appraise all buildings, property and structures”



**Of course it will NEVER be this this obvious...**

Qualified on paper...

Familiarity with market and property type.

How important is MAI?

How important is Value?

Standards?

Ethics?

Cross Examination?



**Qualified Professional?**

# What is an MAI?



- Member of the “Appraisal Institute”
- MAI Appraisers meet and are held to the ethical and professional standards of the Appraisal Institute.
- Qualified to perform both residential or commercial appraisals to those standards
- Recognized qualification in the industry
- <http://www.appraisalinstitute.org/findappraiser/>



## Knowledge to arm yourself with...pt. 1



- Hire Appraiser (and review Appraisal report) with potential litigation in mind. This is evidence.
- Require your review and comment on drafts before final report.
- Require site visit (see earlier tip) and citation of how verified comps were arms-length.
- Discuss with Appraiser appropriate type of appraisal.

## Knowledge to arm yourself with... pt. 2



- Appraisers use 3 general methods to value property.
  - Cost approach – replacement of property and improvements
  - Income approach – present value of potential income
  - Sales approach – value based on sale prices of comparable property
- Appraisal report should explain and apply each of the 3 approaches or explain why not.
- Typically, one approach will be settled on as having the best potential for an accurate value. Rationale?
- N.B.! Please do not discuss the details of your deal with the Appraiser.

# Knowledge to arm yourself with...pt. 3



- If multiple appraisals do not cluster need further analysis
  - Consider the comparables used – were they the same?
    - ✦ Why did one appraiser use some but not others?
    - ✦ How did the analysis of the comparables change – adjustments?
    - ✦ Are all the comparables ACTUAL completed arms length transactions no more than 2 years old? Is it documented how this was verified?
  - Check out analysis of Highest and Best Use!

# Highest and Best Use?



- The interest being appraised – the biggest assumption.
- A robust analysis of this is VITAL!
- 2 fold analysis:
  - 1. Highest and Best Use as if VACANT
  - 2. Highest and Best Use as currently developed
- 4 criteria for each (best done in order):
  - 1. Legal – what's NOT allowed? (Private law as well as public)
  - 2. Physical – what's NOT possible?
  - 3. Financial – what's NOT feasible?
  - 4. Practical – how do these 3 fit together within market context?

# Appraisal wrap up



- Value is an issue with transaction?
- Number of Appraisals?
- Qualified Professional(s) and appropriate type of Appraisal?
- Reviewed draft(s) for:
  - No reference to current deal details
  - Verifiable information re: site visit and comps as arms length
  - Multiple appraisals cluster nicely
  - Title or Environmental Issues considered?



How creation of road impacts ownership and responsibility.

Why would we want to own the roads on our campus?

Why wouldn't we want to own the roads on our campus?



## ROADS on Campus?

# What are the road's origins?



- **Dedication (by plat)**
  - General rule is must be accepted
- **Dedication by deed or contract**
  - General rule is still must be accepted
- **Prescription**
  - General rule is 7 years
- **By law**
  - Fed, State, County's and City's all have empowering legislation

# What is the road's status now?



- **Is it an Easement?**
  - If so, then public has NO title to land upon which “road” simply an easement to traverse it.
  - This result common with prescription or dedication never accepted.
- **Conditionally owned road? – public authority acquired title but with reversion upon abandonment.**
  - Earlier dedicated and accepted roads may fit this category. Now governments insist on fee simple.
- **Fee simple roadway? – title vested in public authority.**
  - Common after 1955, requires express grant of fee simple title in land.



# Any conclusions?



Roads we “own”? Two vital questions:

- 1. How was the road created?
- 2. How did we come to “own” it? How was it transferred?

Road we want to “own”? Very careful abandonment.  
Must be total or public may retain easement.

- **General Rules:**

- 1. Effect of abandonment depends on how title vested.
- 2. Municipalities usually granted power in charter to close roads. Power usually must be exercised for public benefit.
- 3. County’s power by statute: find “no longer useful
- 4. Both City and County can be sued “uniquely damaged.”



Survey vital element of any due diligence!

Only way to know what you might be getting.

HOWEVER,

Boundary survey is like buying a car without inspecting the engine? It's just the outside of the property.

What are you really getting?



**Survey? Yes  
A.L.T.A. why or why not?**



ALTA is an acronym stands for

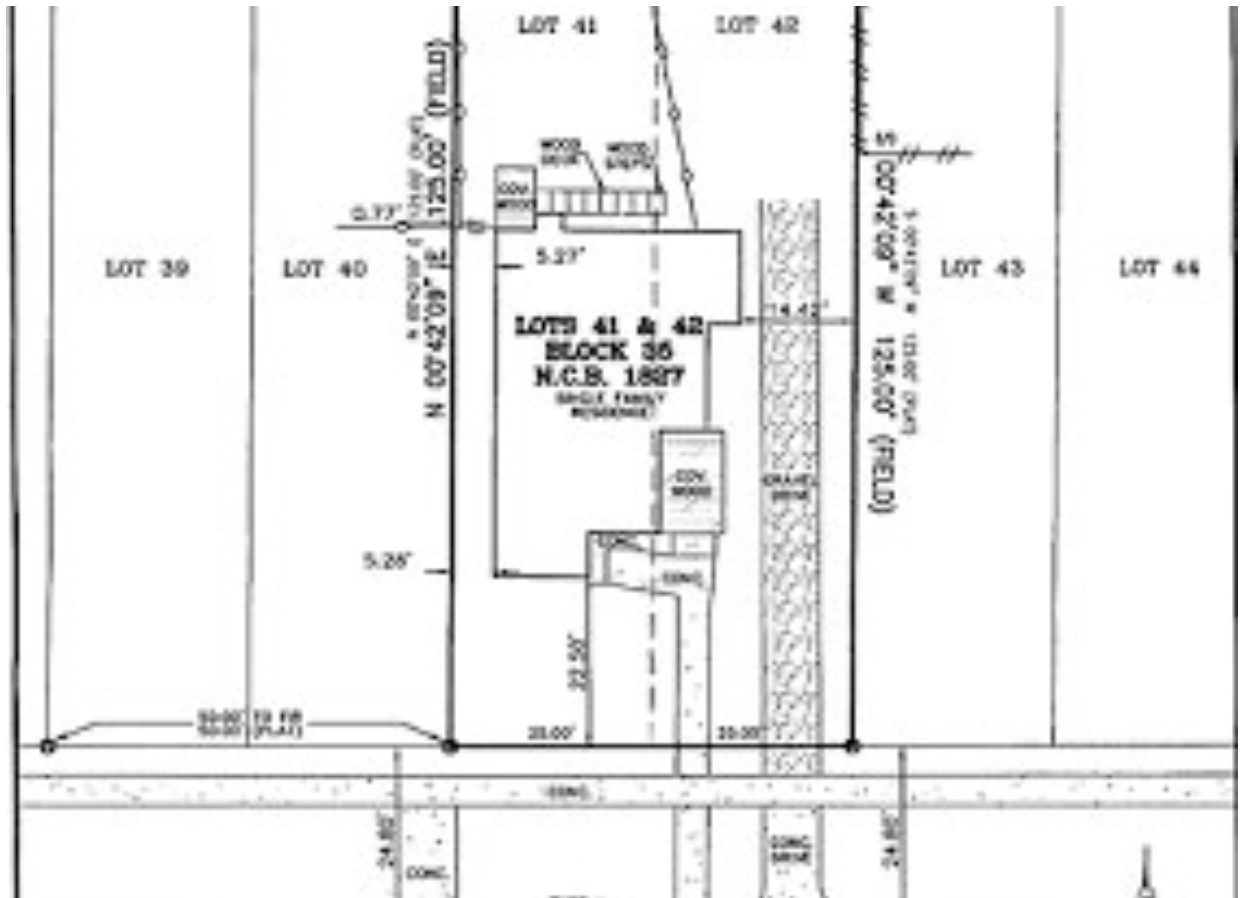
“American Land Title Association”

Parties cooperate to protect buyer by figuring out what asset really is.

Attorney certifies title.

Surveyor translates certified title to survey.

Title company accepts both for insurance purposes and waives survey exception.



**What is an A.L.T.A.?**



Those of record...

You'll know what you can and cannot do where on your property. Will utilities or anything interfere with your proposed use?



**A.L.T.A. MAY help find utilities.**

# Timing concerns...



- Appraisals, environmental studies and surveys all need to work together...
  - Part of environmental assessment is usually a review of title.
  - Part of a good appraisal should include review of title status.
  - Part of good survey should include title (A.L.T.A.)
- Professionals should be willing to work with you. Get drafts even of surveys (“progress prints”).
- Environmental reports can be updated with title.