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Highest and best use of real estate in a changing market

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The supply of vacant land available for sale has increased, partially due to the difficulty in obtaining financing. Due to a slow down in new construction, most builders have too much land available and not enough buyers. Most of the land sales we see taking place are duress sales from one builder who needs cash to another builder at a low price who has cash. Most people are aware that this is not the time to be trying to sell land. There are exceptions of course, where there is still a shortage of lots. You will notice more perfectly good houses being demolished in order for buyers to be able to replace them with bigger and better homes. In New England, many lots are actually nonconforming in size or frontage according to current zoning. So if a house is razed, it can be rebuilt on the same foot print, but not necessarily expanded without going through the local zoning board of appeals. If the lot conforms to current zoning, then you can build anything you want within the parameters of the zoning laws. But if there is no public sewer there may be Title V issues if the number of bedrooms is being increased.

Like residential homes, commercial real estate is also often in transition. If a building is dated and perhaps functionally obsolete, the lot may actually be worth the same or more than the improved property. At that point, a buyer will probably be demolishing the existing structure to put up a new building. However, property owners and real estate brokers need to be aware that if a use is nonconforming, which many improved parcels are, you can not tear down a building and then replace it with any use other than what is allowed by zoning. For example, if a commercial retail building is grandfathered as a preexisting, nonconforming use on an industrial zoned lot, you can not replace the building with anything but what is allowed in an industrial zone in that town.

The other issue that can be very important to understand is the issue of abandonment of an existing nonconforming use that is grandfathered. Abandonment requires "intent", where non use means simply not used. The bylaws in every town will ordinarily refer to one or the other but they are not synonymous. If a bylaw has a 2 year non use clause and a property owner does not use a "grandfathered" property for 2 years that use may not be allowed to resume. A use variance would then be required which is often not possible.

The apartment rental market is strong in most areas. Most towns have not met their affordable housing minimum requirement. There are still some larger parcels that have been approved for 40B developments. Some are economically feasible to develop now. However, some are not and will remain vacant until the demand is strong enough to develop the parcel.

All of these zoning and highest and best use issues are the very foundation of estimating market value. If one of these basic principles is not understood or missed in the research process of an appraisal, the entire appraisal will be erroneous. One valuable lesson one must learn in real estate is never assume anything. If you do, you may pay a huge price for that assumption. Appraisers must further their education so that they can understand these concepts and appraise more than just the

simple straight forward property. There are many more challenging and complex properties to appraise but you must have the knowledge and expertise to take on these assignments. The best way to do this is to take courses from either the Appraisal Institute or the MBREA.

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