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Residential highest and best use pitfalls (two cents worth) - by Russell Barrows

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The majority of residentially oriented appraisal work in Maine provides ample opportunity to exercise the fundamental tools and should cause most of us to refresh these base, foundational concepts. Foremost of these is Highest and Best Use development. More often than not, the highest and best use for residentially zoned (including most “rural” oriented zoning) vacant land is either improve with a residential property or retain as raw, undeveloped land until such time as market conditions warrant said construction. Each of the four determining factors (legally permissible, physically possible, financially feasible and maximally productive) needs to be evaluated, even if the final determination appears to be obvious. It’s more than just checking the appropriate box on the form. There are often instances where a property has sufficient acreage and frontage to be readily partitioned (subject to, of course, Maine’s subdivision laws as well as any applicable local ordinances). It is incumbent on the appraiser to research, analyze and discuss this aspect within the report. Additionally, one must also consider the scope of work, purpose of the appraisal, intended use, intended user and other related criteria. Providing a well-presented report is the goal.

We often encounter older, residential properties located in areas that have been rezoned to allow commercial uses. Frequently, the lender is unaware of this. It is important that the appraiser communicate this aspect to the lender (or duly authorized agent) as soon as possible. We spend a considerable amount of time researching properties prior to assignment acceptance, and this process is directly related to fee, turn-time or even if we’re going to accept the assignment. In short, it assists in setting assignment expectations. It is also important to consider highest and best use, as noted above, for it is possible that the site, if vacant, would be utilized for appropriate commercial development, while the improvements still contribute value over and above the estimated site value. Furthermore, it is important that the appraiser value the land in the appropriate manner under the consistent use practice. There are examples, per the Maine Appraisal Board’s disciplinary actions, where appraisers (mainly residential) do not adequately identify this aspect. In the past, lenders have often made it clear to appraisers that they did not desire to place residential loans on properties in commercially zoned locations. With HVCC, Dodd-Frank and related “firewall” separations, these types of pressures have, thankfully, diminished. Still, it is part of the appraiser’s job to present the discussion in a clear, thorough manner. Commercially zoned residential properties

frequently retain residential use as the highest and best use, as the property may be sufficiently limited in site area, accessibility, frontage, view / visibility or any number of other factors that would largely preclude commercial development. If a report is weakly developed, supported and otherwise explained, it could result in misleading appraisal results. This presents potential liability that most appraisers would like to avoid. Conversely, if the appraiser presents the relevant information in a properly explained manner, supported by the citation or employment of other residential properties also located in commercially oriented zones, then the report is likely to be far more acceptable to the client. While they may not like the results, it is still an otherwise presented and supported appraisal report.

Things have the potential to be further complicated in communities that have no formal land use or zoning ordinance (yes, they still do exist). It is still incumbent on the appraiser to provide sufficient explanation as to how the highest and best use is determined. I have, unfortunately, reviewed reports that cite “residential” as the applicable zone, even though the community has no formal zoning. Again, this could either be due to a lack of research / due diligence (laziness), geographic competency or misrepresentation of relevant municipal data. Again, it is OK if there is no zoning. It is incumbent on the appraiser to provide the details.

Every appraisal report should, in essence, tell a story. Sometimes it’s short one & straight-forward. Other times, it’s quite involved. We have learned that it is important to anticipate what questions may likely be presented and answer them prior to being asked by the client. While it may take a bit more time in the report development process, it’s almost always more efficient than revising a “completed” report.

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