

THE ADDED VALUE OF **ASSEMBLING** PARCELS

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The concept of assemblage is based on combining parcels for the purpose of establishing the highest and best use of a single parcel. Using the assemblage theory can significantly alter the outcome of an appraisal. Even if there are different property owners, the assemblage process helps demonstrate that the combination of parcels can result in a higher use with greater value than a single parcel valued by itself.

In some states, the assemblage of parcels or “plottage” theory of valuation can be an important consideration in the eminent domain process. Although limited in terms of utilization, it can dramatically affect the highest and best uses to be considered during the appraiser’s land valuation.

Combining Parcels

In essence, the assemblage of parcels expands the range of potential highest and best uses because the increased size results in more benefits. It helps lessen the impact of local development standards, takes advantage of any physical opportunities specific to the particular properties and can work to overcome certain types of site constraints that impact future development.

In general, applying the assemblage theory may be appropriate when the following conditions exist in the before condition:

1. The costs required to assemble the land are financially feasible.
2. The assemblage of parcels can be accomplished in the reasonably near future.
3. The owners of the subject properties are willing to participate in the assemblage.
4. It is physically possible, legally permissible, and financially feasible to achieve the highest and best use case scenario through the assemblage theory.
5. The highest and best use case scenario resulting from assemblage will result in the highest value for the subject parcel.

Condemnation Considerations

Some of the key considerations to take into account when applying the assemblage theory are outlined by author Norman Matteoni in his reference book on Condemnation Practice in California. He states, “To take advantage of the assemblage theory, a condemnee must show that joinder or integration of the various parcels in question is reasonably practicable. Factors to consider include the cost of uniting the land, the amount of time necessary to accomplish this, and the willingness of the owners to participate in the assemblage. The weighing of those factors is a question of fact for the jury. Although the decisions concerning union of parcels have not spoken on the point, the party urging the position must lay a foundation showing some probability of joinder and may carry the burden of proof.”

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Case law supports this conclusion, as evidenced in *County of Santa Clara v. Ogata*, from the California 2nd District Court of Appeals. This case dealt with the acquisition of a parcel of land situated adjacent to a corner lot that was available for sale by a municipality as surplus property. The property owner was permitted to show that the corner lot, because of its size and location, would have value only to the abutting owner. This element, along with the fact that the lot was available for sale to the condemnee, was used to prove that the higher and better use of the integrated properties was a service station site.

Relationship to the Larger Parcel

The larger parcel concept is somewhat similar to the assemblage theory in that it deals with the inclusion of property beyond that which is specifically subject to a condemnation. However, the two concepts are completely different in terms of when and how they might be applied.

According to Black’s Law Dictionary, a larger parcel is defined as, “A term used in eminent domain proceedings, signifying that the parcel taken is not a complete parcel but part of a ‘larger parcel;’ the owner, therefore is entitled to damages from the severance as well as the value of the parcel taken. Unity of ownership, use, and contiguity must be present, although federal courts and some states do not require contiguity where there is a strong unity of use.”

An example of the larger parcel might be the condemnation of an 80-foot wide street right of way through a 100-acre open space parcel. In this case, the 100-acre parcel would be the larger parcel.

The assemblage theory differs from the larger parcel concept in that assemblage assumes the parcel taken may be a complete parcel that is theoretically being combined (for the purpose of determining the highest and best use scenario) with an additional parcel that may be owned by different parties, not necessarily by the same party. In addition, the land use of the parcels may be different from one another.

Case Example

In the San Francisco Bay Area, a recent case employed the assemblage theory. It involved the condemnation of a half-acre vacant parcel needed to expand an adjoining one-acre city-owned vacant parcel for future development as a city park. The half-acre parcel was substantially impacted by two earthquake fault-lines that traversed through it, thus limiting the potential area for future structures to approximately 900 square feet. The city’s one-acre parcel was generally not impacted by fault-lines and did not face nearly the same developmental limitations as did the half-acre parcel.

Absent the park project that resulted in the condemnation, the city would not have needed the land for public use. It would therefore have been faced with not having to condemn the half-acre parcel and surplus its one-acre adjoining parcel. It was determined by the property owner’s legal team that the joinder of the half-acre with the one-acre parcel would have resulted in the highest and best use scenario for both parcels. The combined 1.5-acre site created through assemblage would have allowed for a greater range of developable land uses, such as a fast-food restaurant or service station. These uses would not otherwise have been feasible if the parcels were developed independently. The assemblage would have further allowed the half-acre parcel to be utilized for the required parking and much of the required landscaping, thus greatly increasing its potential land value. This case ultimately settled prior to going to trial.

When Size Matters

Implicit in the decision of whether or not to utilize the assemblage theory is the reasonable probability that an assemblage would actually result in a higher use scenario than would the condemned parcel would by itself. There are several important factors to consider in this regard that relate specifically to physical possibility and legal permissibility. The first is expanding the range of potential highest and best uses resulting from the increase in acreage. Parcel acreage plays a major role in determining the range of potential land uses and developmental intensities that are reasonably probable to achieve. Often, the greater the acreage, the more types and intensities of use local jurisdictions will allow. The likelihood of a correspondingly higher market value also increases.

Assembling parcels can result in a combined piece of property with higher development potential than the separate parcels would have if left alone.

Therefore the assemblage of parcels and the resulting increased acreage can create certain opportunities.

For example, commercial parcels containing less than a half-acre are often restricted to uses requiring limited building floor area and parking, such as retail or office. However, if assembled with adjacent land, the combined acreage may reach an area threshold that allows for additional uses, such as a fast-food restaurant or service station. Substantial additional acreage may have the potential to accommodate even more intensive uses, such as a hotel, mixed-use project or high-rise development.

An increase in acreage may also justify the construction of a parking structure. From a highest and best use standpoint, parking structures allow much greater building floor area to be constructed, thus further increasing the number of potential highest and best use candidates. Whether or not to construct a parking structure of course involves many factors of which adequate acreage is an essential one.

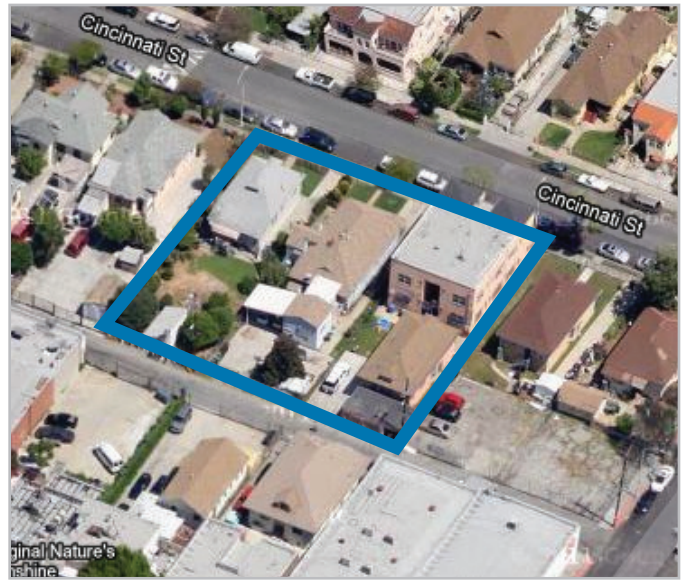
Lessening the Impacts

An increase in land area through assemblage, along with the removal of the previously shared property lines, can help to lessen the impacts of certain local development standards. This in turn results in the potential for greater developmental intensity and land value.

When parcels are combined, the shared property lines that separate them disappear, as do the setback requirements on both sides of those property lines. The proportionate impact caused by the setbacks on development also diminishes accordingly. For example, two five-foot side yard setbacks on a 100-foot wide parcel (ten percent of the total setback area) are far less impacting than the same setbacks on a thirty-foot wide parcel (33 percent of the total setback area) because they allow for a greater percentage of the site to be developed.

In the case of substandard-sized parcels, assemblage with adjacent land may result in one or more parcels becoming standard in terms of area. These parcels will then no longer be considered “non-conforming” by the jurisdiction and will not be burdened with the negative zoning connotation that this sometimes creates.

An increase in acreage may also result in the local jurisdiction applying more flexible zoning standards. In these situations, the planned unit development zoning district might be used to relax regulations pertaining to building height, lot coverage, floor area ratio and other factors. If the site acreage is great



enough, the jurisdiction may further relax its standards to encourage smart growth development that may not otherwise have been possible, such as mixed-use projects or high-density housing. Jurisdictional participation in the funding of certain infrastructure improvements might also become a possibility at this point.

Leveraging Physical Opportunities

Parcels adjoining a condemned parcel may possess certain advantageous physical site characteristics that the condemned parcel does not have. This may be beneficial to the condemned parcel in the assembled condition. Improvements such as those relating to vehicular access, visual exposure and more buildable site configuration can significantly improve the developmental potential of land through assemblage.

Assemblage of an interior parcel, with a corner parcel for example, can create the potential for improved vehicular access to either or both parcels depending upon the site-specific conditions. Reasons for this include:

- An interior parcel may gain access to the second street that a corner parcel fronts onto, thus connecting it to a higher volume of traffic.
- A corner parcel fronting onto a busy street intersection containing medians that preclude left-turn vehicular access may be able to gain left-turn access through assemblage with an adjacent interior parcel that is not restricted by left-turn medians.
- Both interior and corner parcels may gain improved visual exposure to the motorists through greater combined street frontage.

In the case of irregularly shaped parcels, assemblage can improve their developmental potential. Oftentimes, development can be maximized on approximately rectangular-shaped sites. In situations where one or more parcels are irregularly shaped, such as with acute angles, an assemblage can result in a more

developable overall configuration. This makes it easier to plan for large geometric shapes such as parking and building footprints, and works to eliminate unbuildable areas.

Overcoming Site Constraints

In some cases, the condemned or adjacent parcel may contain physical constraints that are not possessed by the other. For example, a significant easement, earthquake fault line or other constraint to development may exist on either of the properties. Regardless of which parcel is constrained, use of the assemblage theory may result in an increased value to each.

Assemblage can create site planning flexibility, potentially allowing for the use of constrained land with required parking and landscaping, while leaving the remaining developable land to be more fully utilized with increased building floor area. Instead of one parcel having limited developmental potential and the other parcels having normal developmental potential, assemblage may allow the combined parcels to all be developed to a greater extent.

The existence of major easements can similarly create opportunities for higher use through site planning flexibility created by assemblage. Easements may involve either underground or above-ground facilities. Easements for underground facilities can include water, sanitary sewer, storm water drainage, fiber-optic and gas transmission lines. Easements for above-ground facilities include high-voltage transmission lines.

In the case of earthquake fault lines such as those in California, the State's Alquist-Priolo Earthquake Fault Zoning Act stipulates that no structure for human occupancy may be placed across an identified fault line. In addition, areas within fifty feet of both sides of the fault line are presumed to be underlain with active branches of the fault, and may not be developed with habitable structures unless this is proven not to be the case by a geologic investigation. Although the restricted fault area might not otherwise be developable with habitable structures, it may be useful in the assemblage condition by providing area for required parking and landscaping. The remainder of the assembled land can then be used for an increased amount of floor area.

Land containing steeply sloping terrain may also present an opportunity for benefiting from assemblage. Take for example a condemned parcel containing steeply sloping land that is joined with a relatively flat developable parcel. If the local jurisdiction has lot coverage and/or floor area ratio regulations that do not specifically exclude steep land from their calculations, then it may be possible to transfer developmental potential from the steeply sloping area to the flatter area.

Other kinds of site constraints also exist that can in some cases be overcome through assemblage. These include certain flood plain areas, archeological sites, airport protection areas, and land possessing contaminated soils or significant geotechnical issues.

The use of conceptual site plans can be particularly helpful in illustrating assemblage schemes. More specifically, they can be used to demonstrate the physical feasibility of the development concepts and their potential to satisfy the local zoning requirements necessary for approval in the before condition. Land use planners, architects and civil engineers can serve as experts to perform this work. Plans are typically prepared and characterized as conceptual to avoid being held inadmissible in court on the grounds that they lead to the valuation of property for a specific purpose.

Summary

Regardless of whether there is one property owner or several owners, the assemblage of parcels is worth consideration. Its use may have its limitations, however it can be an important appraisal tool because it considers a wider range of highest and best uses. As a result, it can potentially generate higher uses than would otherwise be possible through the valuation of a single property. Additionally, it can lessen the impact of local development regulations, while leveraging some of the physical development opportunities. It can even help to overcome certain types of physical site constraints. The end result is an increased range and/or intensity of highest and best uses to be considered during the appraiser's land valuation.

References

- City of Stockton v. Vote (1926) 76 CA 369, 244 P 609.
- Condemnation Practice in California, Second Edition, Norman E. Matteoni, Section 4.21.
- County of Santa Clara v. Ogata (1966) 240 CA2d 262, 269, 49 CR 397.



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