MOBILE HOME PARKS & EMINENT DOMAIN

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Are they real property or personal property?

At first encounter, the appraisal of mobile home parks seems very straightforward. It appears to be like any other income-producing property. In fact, there is not a great deal of difference, but there are certain pitfalls to be aware of.

For an appraiser or an appraisal reviewer, there are certain aspects that must be carefully watched. For the right of way professional there are additional considerations that should not be overlooked. Appraisals are typically for partial acquisitions that require a before and after appraisal. The requirements of the eminent domain code of the particular jurisdiction must be considered as well as the assignment and requirements of the acquiring agency. Appraisals must, of course, be prepared in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP).

Keep in mind that not all mobile home parks are equal. Some parks just provide a place to park a mobile home, utility hook-ups, and no specific requirements. Other parks provide amenities such as a clubhouse, a pool, tennis courts, and/or a variety of other recreational facilities. Although these parks may allow any mobile home into the area, they can set minimum standards of maintenance, require the age of homes to be no older than a certain number of years, or require homes to have skirting and/or a deck.

Mobile home parks also vary in size. There are parks that can accommodate a small number of homes, and enormous parks that can allow for many homes. These factors must be carefully considered. A park that offers amenities and has specific requirements cannot be compared to a park with none.

Are They Real Property or Personal Property?

The treatment of a mobile home owned and occupied by the owner of an individual tract of land has little consequence. While there may be legal or ethical considerations, the acquisition and any relocation assistance should not be affected by the decision. However, in a mobile home park, an incorrect decision can have serious consequences for both the acquisition and the relocation. Homes in a park are generally owned by the occupants and not by the park. Typically, the homes are taxed as personal property by the taxing authority. Although some jurisdictions may allow homes owned by parks to be taxed as real estate, the typical practice is to tax them as personal property since they can easily be sold and moved.

Acquisition agencies sometimes want to consider old mobile homes as real estate. Often, these homes are deteriorating, unsafe and unsanitary. Some agencies mistakenly believe that acquisition and relocation are easier if mobile homes are treated as real estate. This is far from the truth. In fact it can unnecessarily complicate those functions.

Most states operate on the single offer concept. That is, a single offer is made for all interests in the property. The split of the money is up to the courts or the fee owner. In an eminent domain proceeding, the court divides the award. If a tract is settled with the owner by deed, it is up to the property owner to split the award. If a fee owner chooses not to give any of the proceeds to the owner of another interest, the only remedy is court action by the owner of the other interest. In the case of an old mobile home, the cost of litigation to recover the amount of the award attributable to the home would most likely be more than what its worth. Thus, if a home is considered real estate and the fee owner chooses not to split the proceeds with the home owner, there is little to no recourse for the home owner. The home owner's relocation payment is based on what specified amount was due to be received for his property. If this money is not received, the relocation agent is forced to recalculate the relocation assistance and explain the necessity for recalculation. In essence the agency will pay twice for the mobile home.

The situation is further complicated if the fee owner sells the property but, although he received payment, could not convey title to the mobile home. As a consequence, the agency that tries to haul off the home could face an inverse condemnation action from the actual owner of the home.

In the worst case scenario, home owners could sell their interest in the home to a third party. The original home owner would be entitled to relocation assistance and the new owner would have to be compensated for the home. This is not likely if the agency carefully negotiates with the home owner. The agency must require the new owner to give a bill of sale to the old home at the time of relocation or a third party sale could happen.

Considering mobile homes as real estate also affects the income stream. Its rental value must be included in the income stream that often results in an inflated value for the home. It is not uncommon for an old, single-wide home in a small old park to have a salvage value in the neighborhood of $500 or less. Yet this home may easily command $125 per month over and above the lot rent. Figuring expenses at 25 percent and a capitalization rate of 10 percent, the indicated value of the mobile home would be $11,250. Especially in certain parts of the country, even more drastic differences are possible due to very high rental rates. This added bonus to the mobile home park owner

is a direct consequence of the decision to treat the mobile homes as real estate. If the agency's appraiser does not consider the income stream from the home, but instead considers it real estate and the parcel goes to court, then the appraiser will have a hard time defending his failure. It is even possible the entire testimony could be thrown out if the judge decides that the appraisal failed to meet appropriate appraisal standards.

If the agency chooses not to pay the inflated value and the case goes to court, then the plaintiff's attorney can argue that the agency acted in bad faith and the condemnation can be dismissed. The determination of real estate or personal property should be made at the outset of a project. Ideally, a knowledgeable attorney should make an independent determination based on all of the legal criteria. The criteria do not include the ability or inability of the object to be moved without damage. An old, rotted-out abandoned vehicle does not become real estate merely because it cannot be moved without falling apart. One can argue that because mobile homes are not owned by the landowner, they cannot be considered real estate. [*Author's Note;* Negotiators and relocation people should not make a determination of real estate or personal property. Each has a bias due to a desire to make their job easier. Although it really has no material effect on their job, each discipline has a tendency to believe that the determination will make their job easier or more difficult.]

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HIGHEST AND BEST USE OF THE LAND

There are still neighborhoods where a person can build a private drive, put some utilities and mobile home pads, and start renting space. Admittedly these areas are becoming fewer and farther between. Even in such instances there are some restrictions. These neighborhoods are typically located in rural areas, where individual septic systems are required by health departments. The major problem in these locations, however, is demand. Stable occupancy is often difficult to achieve in small, very rural areas. The size of these parks is also limited by demand. While there might be demand for six or seven spaces, it is highly unlikely that there will be demand for 25, 50 or 100 spaces. As a result, most mobile home parks tend to be located near urban or suburban areas where there is greater demand.

Zoning In on the Desirable Neighbor

Urban and suburban areas customarily have many restrictions. Mobile home parks are generally not considered desirable neighbors in residential areas. Industrial areas are typically not desirable locations for mobile home parks. Zoning is usually the first line of defense for residential neighborhoods. Many jurisdictions effectively eliminate the placement of mobile home parks by means of restrictive zoning. The best locations for these parks are often in areas where there are no sufficiently large tracts of land available. Expanding suburban areas would be good

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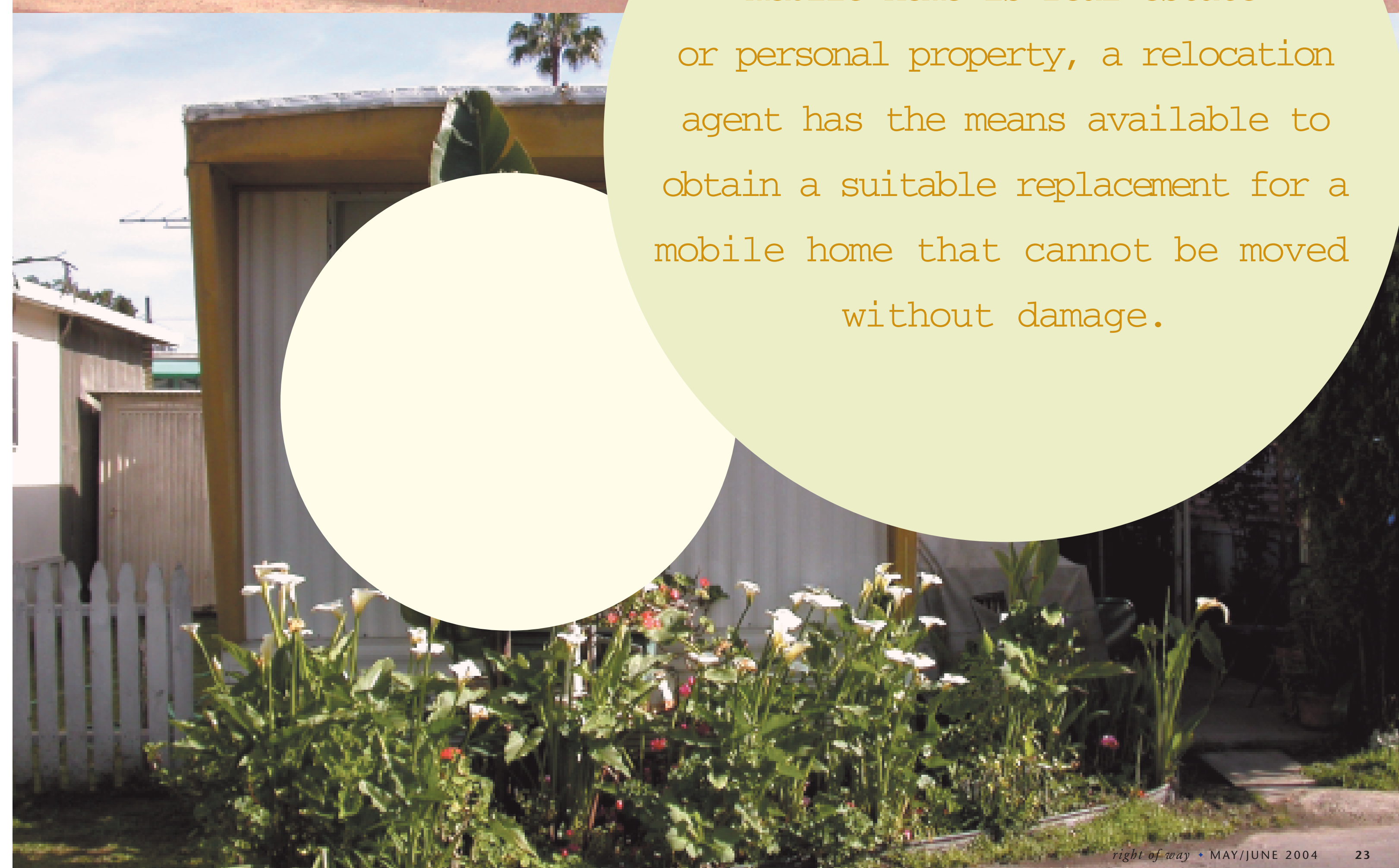

locations but they are typically barred by zoning that was established to ensure the development of single family residential subdivisions. Upscale subdivisions fear that a neighboring park will lessen desirability and depreciate the value of the homes and lots.

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Requirements placed on the pads, utilities and/or amenities can also have the effect of prohibiting these parks.

Land must be valued at its highest and best use as if vacant. A mobile home park is often not the highest and best use of the vacant land. It is often not legally permissible to use the land for that purpose and it is usually unlikely that a variance or a zoning change will be granted. Thus one of the tests for highest and best use cannot be met and other highest and best uses must be investigated and chosen.

THREE APPROACHES TO VALUE

Cost Approach

The cost approach is more than likely the easiest method of valuation to use for a mobile home park. It is also the least useful method. Many mobile home parks are nonconforming uses and are grandfathered in their current use. They can not be replaced if destroyed. They typically have a value much in excess of their reproduction or replacement cost.

While a premium can be added to the cost approach for this factor, the amount of this is generated from two other value approaches. USPAP requires that appraisal reports are not to be misleading. The appraiser should prominently note the inability of the park to be replaced, and the assumptions or hypothetical conditions used and their affect on value. Other aspects of a park can also often not be reproduced. I appraised a park that had each unit on 5,000 square feet of land with a septic system that was grandfathered by the health department. To be replaced, each unit would require at least 15,000 square feet. While a bonus for the grandfathered use could have been found, I felt that the cost approach would be misleading to the average reader.

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Marketing (Sales) Approach

The market (sales) approach must be used cautiously, as there are different markets for mobile home parks. Small parks attract only local buyers. Medium sized parks can attract local and sometimes regional buyers. There is

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a national market for large mobile home parks. As a rough guideline, a park needs 200 hook-ups for this market. Comparable sales must come from parks with the same market appeal. Care must be taken to ensure that comparable sales have similar income characteristics. For instance, if water is provided by the subject, the sales should have water provided or, at the least, appropriate adjustments should be made for this factor. To merely use a cost approach figure for an amenity is not appropriate. Amenities add to the rental rate of mobile home lots. In addition, the requirements for age and maintenance of mobile homes also affect the lot rents. The lot rents have a great deal to do with comparable properties. A comparable property should have similar rental characteristics.

Income Approach

The income approach is the most applicable since a mobile home park is an income-producing property. Income and expenses must be carefully evaluated as it is easy to overlook one or the other. In one appraisal I reviewed, the appraiser subtracted $30,000 for water. The water came through a central meter and the park owner was billed. He failed to note that each hook-up had its own water meter. The owner of the park read these meters each month and prorated his bill to recoup all of the water expenses. The appraiser failed to account for this income, and greatly reduced the indicated value of the park.

The capitalization rate is also an area of concern. Large parks with a national market have a relatively stable and moderate capitalization rate. Smaller parks tend to have increasingly higher capitalization rates since the income stream is the least secure and stable. This is natural since the smaller the park, the greater the risk. The expenses are also proportionately higher in smaller parks. The economy of scale (the greater the quantity, the cheaper to produce, operate etc.) is definitely operational for mobile home parks. Tenants are more likely to skip out in smaller parks and they are less worth pursuing. The impact on the net operating income is also greater since there is less income to begin with.

THE AFTER APPRAISAL

There can be major differences in the after appraisal although the general methodology should be essentially the same. The one aspect to watch carefully is whether or not the acquisition has affected the mobile home park's market. If a mobile home park is reduced from 200 hook-ups to 100 hook-ups, the park has most likely been reduced from a national market to a regional market. Thus the capitalization rate in the income approach would be higher. Different comparable sales would be required in the market approach. In fact, such a reduction in size would result in damage to the mobile home park. A similar percentage reduction from say 10 spaces to five spaces may not constitute damage since the park would still be in the same market. On the other hand it might be too small to operate efficiently so damages could apply. The matter of damages caused by size must be carefully evaluated on a case-by-case basis. The one general principle is that a change in the market (national, regional, local) of the mobile home park will normally be a cause of damage.

CONCLUSION

The mobile home park is not significantly different from the normal income-producing property. Appraisers must be careful to include all income and to carefully analyze the expenses. Highest and best use of the land is of the utmost importance in order to choose the applicable comparables. A great deal of consideration must be given to the fact that mobile home parks are often not a legal use. Comparable sales must have similar income characteristics. Avoid the cost approach if not absolutely required by the agency. The correct application of the cost approach requires the use of the income and/or market approach and thus forces the cost approach value to closely approximate the approach used to derive the adjustment for economic contribution.

Some agencies want a breakdown of the improvements in the acquisition area. Use of the cost approach makes this an easy task. Small items can be valued based on the cost approach, and the large item can be valued as the total value of the acquisition less the land value and less the value of the smaller items. In a sense, the value of the most expensive component is allowed to "float." In the case of a mobile home park, this value would be of each mobile home parking pad that includes the hook-ups.

Agencies should carefully review the appraisals of mobile home parks to ensure that the above caveats are correctly addressed. Unless there is a compelling reason to consider the mobile home as real estate, it should be considered personal property. If a mobile home park owner happens to own and rent out a mobile home, it is easy to back out any income attributable to the mobile home from the income approach. Thus there are no appraisal problems caused by considering the mobile homes as personal property.

The relocation and negotiation problems are reduced by considering the mobile homes personal property. A mobile home park that owns some homes can relocate them or have relocation officers handle them. The park owner will clearly know what is being acquired and he will not be paid for mobile homes that he does not own.❖