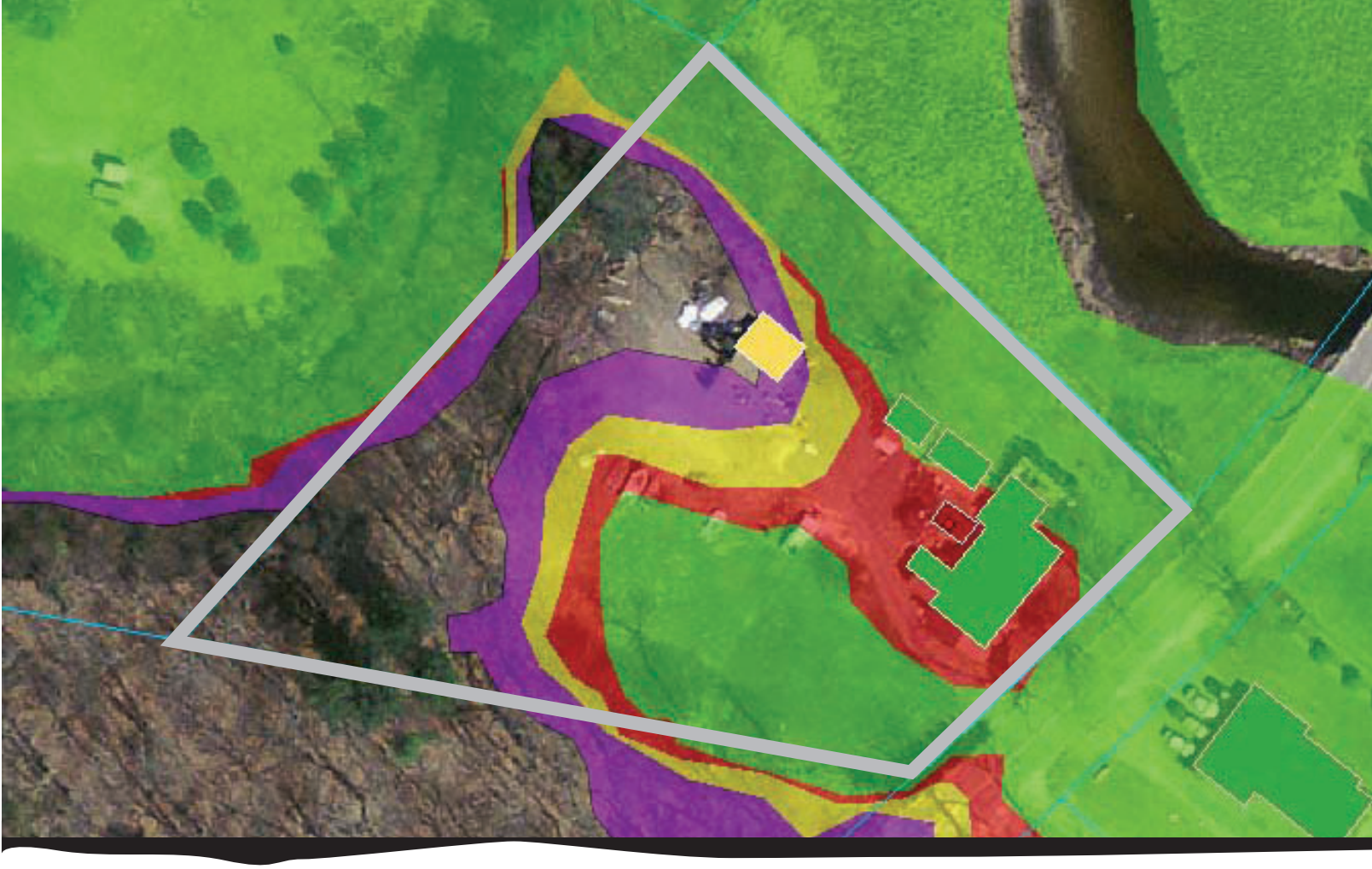


ADDRESSING THE LARGER PARCEL

One of the more vexing problems facing condemnation appraisals today

BY ORELL ANDERSON, MAI, JACK WILLIAMSON, PH.D. AND ALEXANDER WOHL

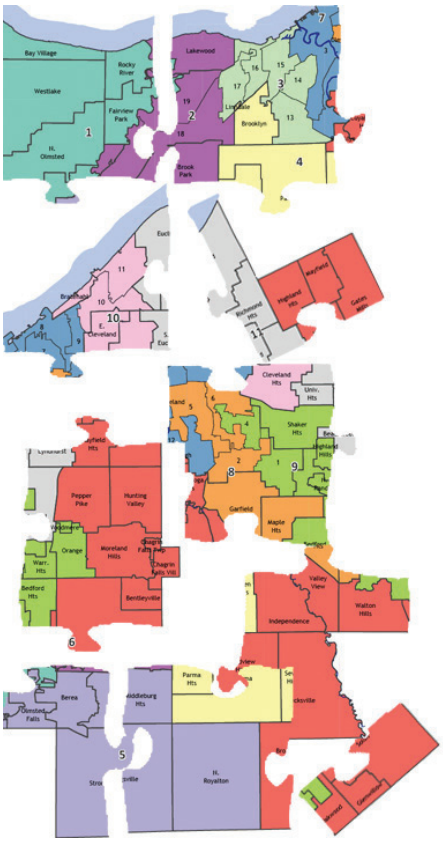
The larger parcel concept, as it is currently understood, leaves much room for interpretation, confusion and abuse. Because it is defined by the courts, it is not static, and our understanding of the larger parcel continues to change as cases are brought before the courts and appraisers are retained to value condemned properties. But for now, the larger parcel remains a vaguely defined, often misunderstood, and yet critical element of condemnation appraisals with the burden of proof often left upon the shoulders of the appraiser.

Reviewing the Literature

For such a key concept, there is little in the scholarly or practitioner literature that discusses the larger parcel and its complexities in much detail, if at all. The Dictionary of Real Estate Appraisal offers a useful definition of the larger parcel, but the term is not mentioned in the Appraisal Institute's, The Appraisal of Real Estate and is only briefly defined in IRWA's Principles of Right of Way.

The Uniform Appraisal Standards for Federal Land Acquisitions or "yellow book," which is published by the Appraisal Institute and the U.S. Department of Justice, offers useful guidelines for determining the larger parcel. However, these are practical guidelines for the appraiser, and they do not venture into the nuances of highest and best use and the larger parcel. While articles discussing the larger parcel have been published in Right of Way Magazine and the Appraisal Institute's Valuation Magazine, these

pieces generally cite state and federal law, influential cases, or J.D. Eaton's Real Estate Valuation in Litigation. Published in 1995, Eaton's work is by far the most cited source. He dedicated a 26-page chapter to the larger parcel, making it the most comprehensive scholarly source ever published. Besides Eaton, there are only a handful of peer-reviewed articles that mention the larger parcel, let alone discuss the concept in detail. The most frequently cited is an article by Tony Sevelka published in the Appraisal Journal back in 2003.



If the highest and best use analysis concludes that two or more vacant, legally separate parcels should be assembled together, this assemblage becomes the larger parcel.

Considering the Conditions

The importance of defining the larger parcel is apparent if we consider the unique conditions of a condemnation appraisal. In a takings case, the appraiser is estimating market value for a non-market transaction with an unwilling seller. In a typical property transaction, market value is the amount a willing buyer would pay to a willing seller in an open market condition. The buyer values the property in some way for its economic use—for development, as a residence, as an investment or personal reason—and the price reflects that value to the buyer. The market, therefore, determines the property's highest and best use through the laws of supply and demand.

However, when a government agency takes real property by the power of eminent domain, there is no willing seller, no market exposure, and the taken land may not stand alone as a parcel that would ever sell in the real estate market. The government may be acquiring an awkwardly shaped strip of dirt for the widening of a highway, a pipeline easement or a transmission line corridor. This strip of land would likely never trade on the market, so to determine the market value, the appraiser has to consider the taken land as part of a larger parcel. In a sense, the appraiser looks at the property through the eyes of the market. Rather than the market determining the property's highest and best use, the appraiser must analyze the highest and best use using market data. This analysis often requires the part taken to be part of a larger parcel. If this highest and best use of the larger parcel is legally permissible, physically possible, financially feasible, and maximally productive, then the value of the taken land is a function of the value of this larger parcel. When the highest and best use analysis leads to the conclusion that two or more vacant, legally separate parcels should be assembled together, then this assemblage of parcels becomes the larger parcel.

If the property's highest and best use requires it to be part of a larger parcel, and if this highest and best use of the larger parcel is legally permissible, physically possible, financially feasible, and maximally productive, then the value of the taken land is a function of the value of this larger parcel.

The Three Tests

The larger parcel determination guides the analysis of highest and best use, consideration of severance damages and selection of comparable sales. And different opinions as to the larger parcel can lead to completely different value opinions. Appraisers use three tests in determining the larger parcel—unity of title, contiguity and unity of use. Unity of title is a legal question and contiguity is an engineering question. But unity of use, the most powerful of the three tests, is an economic question.

Unity of title generally requires that the title be under the control of a single individual or entity—and that the quality of the title be the same for all owners. In other words, the quality of title should be identical. So what about a lot owned in part fee simple and in part leased? Recent cases have been generous about this, recognizing for example, a larger parcel comprised of an easement and a leasehold interest—if the two separate parcels have a unity of highest and best use. In the words of the Uniform Appraisal Standards for Federal

Land Acquisitions, the law "appears somewhat unsettled." Eaton advises appraisers to seek counsel when they are dealing with multiple parcels lacking identical title but with an integrated use. The key element is who controls the property rather than any rigid definitions of ownership.

The contiguity test simply requires that the property be physically contiguous. In the most rigid interpretation, the land may not be separated by another parcel, river, road or anything else. This is the least strictly applied of the three tests, however, and is usually relevant as it relates to unity of title and unity of use. For example, if two parcels possessing unity of use are very far apart, it is more likely that the owner would be able to find a suitable replacement property nearby if one of the parcels were condemned.

The unity of use test is the most important condition. In the strictest terms, it requires that the entire property be devoted to a common use. However, the law generally only requires that the property have an integrated highest and best use. In other words, as Eaton points out, whether or not the property is actually dedicated to a common use on the date of valuation, it constitutes a single larger parcel if it has a common highest and best use. Therefore, a property owner may be compensated for loss of future income that the property could have produced had it not been condemned and been put to its highest and best use. The property doesn't even have to be zoned for this use as of the date of valuation. Such valuation based on potential future use requires strong proof and may be dismissed if it is deemed too speculative.

Reviving the Confusion

Each of these tests must be considered carefully, and not all the tests must be present in all cases. Contiguity and unity of title are dominated by unity of use. Because the unity of use test is inseverable from the highest and best use analysis, the larger parcel is a matter of fact and not law. The jury or trier of fact, not the court, must ultimately answer the larger parcel question.

"...it constitutes a single larger parcel if it has a common highest and best use."

In 1968, Thomas C. Stowe, SR/WA, an independent appraiser and expert witness who passed away last year, wrote an article in the Real Estate Appraiser Magazine in where he referred to the larger parcel determination as "one of the more vexing problems of condemnation appraisal practice." Stowe discusses the three tests, presents scenarios that challenge our understanding of the tests, and asks more questions than he answers. As he concludes, "Confusing? I hope so. Because I have confused you, I have made you think, and perhaps stimulated you to a consideration of the problem in our next appraisal assignment."

This was nearly 50 years ago. And not much has changed since then. ✪

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