



## JURISDICTIONAL EXCEPTION

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# Value in exchange vs. value in use

## INTRODUCTION

This article considers the practice of when and where one would invoke the concept of Jurisdictional Exception. In the field of municipal assessment, it is common practice that a qualified appraiser would invoke the Jurisdictional Exception rule. The following examples show how two similarly qualified appraisers would approach the same appraisal assignment from very different perspectives and reach different final conclusions.

Although the legislation in various provinces differs, the same situations are likely to be encountered. The following examples are based on the experience in the Province of Ontario. The examples used are hypothetical, but the concepts are valid. For the fee appraiser, we are only interested in the final value conclusion. For the assessment appraiser, we are more interested in what part or parts of the *Canadian Uniform Standards* are disregarded and the reason why.

## EXAMPLE #1– FARMLANDS

### **Assignment:**

The subject property is a market garden farm comprising a 200-acre parcel of vacant land that grows various vegetables such as tomatoes, squash, onions and cauliflower. The produce grown is sold to the local market as well as to wholesalers throughout the region. The farm itself is located on the fringe of a town and is surrounded by residential development. The farm operation has been in the

## 3.6 *Canadian Uniform Standards of Professional Appraisal Practice*

- 3.6.1 *An assignment condition that voids the force of a part or parts of the Canadian Uniform Standards of Professional Appraisal Practice (CUSPAP), when compliance would be contrary to law or public policy applicable to the assignment.*
- 3.6.2 *Jurisdiction relates to the legal authority to legislate. Apply or interpret law at either the federal, provincial or local levels of government. It is misleading not to identify the parts or parts disregarded and the legal authority justifying this action. In every case, it is ultimately the responsibility of the appraiser and not the client or other intended users, to determine whether the use of Jurisdictional Exception is appropriate. It is unethical for a member to complete an assignment that a Reasonable Appraiser could not support.*



# Reality

# Your Views

family for generations and has been very successful.

The farm owners have been under some political and demographic pressure in recent years to cease the farming operation and have the lands redeveloped. Recently, they have been offered a considerable sum to sell the farm. The owners retained the services of a qualified appraiser to complete a comprehensive narrative appraisal.

While the appraiser is valuing the farm at its highest and best use, the municipal property appraiser (assessor) is conducting a review of assessments, since this is a re-assessment year for the municipality. How will the two appraisers differ in their respective valuations?

### **AACI appraiser #1 – value in exchange**

We will not go into all the appraisal details in the report except to say that it was well done and researched. The appraiser took the position that, since the surrounding neighbourhood lands were residential, the highest and best use of the subject lands would also be residential. The appraiser

also did considerable research into what types of residential use would be permitted. After careful consideration of the facts, the appraiser relied on the direct comparison approach, since there were a number of recent sales of farmland in the municipality to developers.

The appraiser gave reasons for not utilizing the income and cost approaches to value.

The value estimate for the land was \$40,000 per acre for sites in the 100-acre range, and the appraiser added a further 10% to the land value because the site was better located within the town and was twice as large as the comparables. The final estimate of value was for land only at \$44,000 per acre for a total value of \$8,800,000.

### **AACI appraiser #2 – assessor – value in use**

In Ontario, any appraiser working in the assessment field is required to employ the rules dictated by the *Ontario Assessment Act R.S.O. 1990, c. A.31*. For appraising active farmland the relevant section is as follows:

**Section 19. (1) (5) farmlands and buildings.** – Determining the current value of farm lands used only for farm purposes by the owner or used only for farm purposes by a tenant of the owner and buildings thereon used solely for farm purposes, including the residence of the owner or tenant and of their owner's or tenant's employees and their families on the farm lands:

- (a) consideration shall be given to the current value of the lands and buildings for farm purposes only;
- (b) consideration shall not be given to sales of lands and buildings to persons whose principle occupation is other than farming; and
- (c) the Minister may, by regulation, define 'farm lands' and 'farm purposes.' 2000, c. 25, s. 5(1).

As per the legislative authority, the municipal property appraiser is bound to assess the subject lands as from 'farmer to farmer.'

The highest and best use standard is dismissed and a jurisdictional exception must be declared and discussed.

The property appraiser then looked at farm sales in the vicinity between farmers to farmers. The sales must not include any future development potential and any sales that were suspect were not considered. The result of that analysis was that farmland sales between farmers was \$4,500 per acre. Based on the assessor's research and findings, the final conclusion of value for the farmland was \$900,000. There were no buildings on the land, the appraiser's final value or assessment was \$900,000.

In arriving at the assessor's valuation, the Jurisdictional Exception rule was invoked because of imposed directions by the *Ontario Assessment Act* on the assessor for valuation purposes.

The resultant valuation between the two appraisers is significant due to the Jurisdictional Exception rule utilized by the assessment appraiser.

### **Summary**

For municipal tax purposes, the assessment appraiser disregarded the highest and best use of the property because the *Assessment Act* demanded the property be valued as between farmer to farmer.

## EXAMPLE # 2 – HYDRO ELECTRIC GENERATING FACILITIES

### Assignment:

The subject property is a coal-fired power plant generating power to the Province of Ontario. The property contains some 500 acres of rural unserviced industrial land. The main structure on the subject property is a very large generation building containing some 80,000 square feet of ground floor area. The building is multi-storied, containing a total usable floor area of 240,000 square feet. There are a number of periphery buildings that service the main generating facility.

The property owner has been contacted to see if the property is for sale. Both the owner and the purchaser have requested an appraisal be completed. The owner has contacted a reputable appraisal firm and retained its services to complete a narrative appraisal for the property.

At the same time, the assessor is reviewing the assessment on the property, since it is also being reassessed for the next four-year cycle.

### AACI appraiser #1 – value in exchange

As a summary of the 85-page report, the appraiser utilized the cost approach as the best approach for appraising the subject property. There were no known sales of similar facilities to rely on so the market comparison approach was not used. Due to the nature of the ownership, the income approach was not considered as being an approach to value since no data was available.

The appraiser relied mainly on cost manuals, but did utilize recent costs associated with refurbishing part of the plant. The appraiser also relied heavily on historical cost records within the company. The appraiser's final value conclusion was \$160,000,000.

### AACI appraiser #2 – assessor – value in use

In Ontario, the *Assessment Act* dictates how certain properties are to be valued. A generating power plant is one such property.

**Section 19.0.1 (1) Electricity generating and transformer stations.** *For the purpose of this Act, the assessed value of generating*

*station buildings or structures, transformer station buildings and structures or any buildings or structures prescribed by the Minister that are situated on land owned by a designated utility or municipal electricity utility shall be determined,*

- (a) *On the basis of \$86.11 for each square metre of inside ground floor area of,*
- (i) *Each generating station building or structure housing the generating equipment and machinery and any auxiliary equipment and machinery,*
  - (ii) *Each transformer station building or structure housing the transforming equipment and machinery and any auxiliary equipment and machinery and*
  - (iii) *Any building or structures or portions of buildings or structures prescribed by the Minister;*
- (b) *In the manner prescribed by the Minister for a building or structure or portion of a building or structure prescribed by the Minister; or*
- (c) *By the Minister for a particular building or structure or portion of a building or structure specified by the Minister, as prescribed by the Minister. 2001, c. 23, s. 2(1); 2004, c. 31, Sch. 3, s. 6(1).*
- (1.1) *Same.- Subsection (1) does not apply for the purpose of determining the assessed value of,*
- (a) *The land on which the buildings and structures described in subsection (1) are situated; or*
  - (b) *The buildings or structures on that land other than those described in Subsection (1). 1999, c. 9, s. 12(1).*

As per the *Ontario Assessment Act*, the municipal property appraiser is bound to assess the subject lands as follows. The lands are appraised as they would be by the fee appraiser, but the generating building must be assessed using \$86.11 for each square metre of inside ground floor area. In order to do that the appraiser must invoke the jurisdictional exception rule by disregarding the highest and best use standard of the uniform standards of appraisal practice. The appraiser also had to explain why the cost approach was not followed as recommended by the uniform standards. The following is how the property appraiser valued the property for municipal tax purposes.

The 500 acres were assessed utilizing sales of rural industrial lands in the municipality. The 500 acres were valued at 150 acres @ \$10,500 per acre and the balance at a lower rate of \$1,000 per acre, for a total land assessment of \$1,925,000.

The main generating building was assessed using the equivalent of the \$86.11 per square meter rate of \$8.00 per square foot. The building was assessed at \$640,000 (80,000 square feet x \$8.00 per square foot). The periphery buildings and structures were assessed utilizing a cost manual and garnered a value of \$4,865,000 after applying depreciation. The total value for assessment purposes was \$6,790,000.

The resultant valuation between the two appraisers is significant due to the Jurisdictional Exception rule utilized by the assessment appraiser.

### Summary

For municipal tax purposes, the assessment appraiser disregarded the highest and best use of the property because the *Assessment Act* demands that the main generating building be valued at \$8.00 per square foot. The taxing appraiser also had to describe why the cost approach was altered to conform to the rules under the *Assessment Act*. Both appraisers will also need to discuss why the income approach and market comparison approach were not utilized in their valuations.

There are other examples of where the two appraisers would differ in their approaches to valuing property. Some of them would be encountered when appraising wind turbines, solar panel farms, transformer facilities and others.

Therefore, the Jurisdictional Exception rule is utilized in any appraisal assignment when there is government intervention to the practices normally utilized by appraisers following the uniform standards of professional practice of the Appraisal Institute of Canada.

### ABOUT THE AUTHOR

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