



ZONING AND LAND USE CONTROLS

Professional Excellence Bulletin
selected by **Daniel Doucet, AACI, P. App,**
Volunteer Chair, Professional Practice Committee

Land use controls and planning considerations represent an integral part of the appraisal process. The phrase ‘land use controls’ generally refers to any legislative-based restrictions over the potential uses that can be made of a property. The primary point of reference is typically the local land use or zoning bylaw (and associated maps). Other items that need to be considered include Official Community Plans (OCP), Local Area Plans (LAP), flood plain restrictions, view plan restrictions, agricultural reserves and heritage designations, among others. This bulletin focuses on the primary issue of zoning, but can also generally be applied to other land use controls or planning considerations. In many cases, the issues are relatively straight forward, but the potential for error can arise in a number of areas, ranging from insufficient investigation of applicable zoning and related bylaws to assumptions of changes in zoning that are unreasonable or are not clearly stated in the report.

Note that the *Canadian Uniform Standards of Professional Appraisal Practice (CUSPAP)*, Appraisal Standard Rule states that “land use controls must be identified and their effect on use and value analyzed, together with any reasonably probable modifications of such regulations in light of economic demand, the physical adaptability of the real estate, and market trends.”

Current zoning and land use controls

The current zoning can be verified through a number of sources, but the primary methods are reference to zoning maps on file at the appraiser’s office and/or direct or telephone contact with the applicable planning or zoning authority. The zoning designation for a particular property can change over time and zone requirements such as minimum site size, clearances, setbacks, building heights and parking requirements may also be changed for a given zone from time to time. Problems have arisen where members have relied on information

(maps, bylaws, etc.) retained on file at the appraiser’s office which have subsequently turned out to be inaccurate or out-of-date, thereby resulting in an incorrect statement regarding zoning and permitted uses, as well as unsupportable analysis of highest and best use. Therefore, it is advisable that, if there is any question as to the currency or accuracy of the information on file, a direct contact with the planning authority would serve as a best practice. Many jurisdictions have Geographical Information System (GIS) sections of their websites where zoning maps and regulations are kept up to date, often within days of adoption or amendment. When referencing web-based information, it is important to determine how current the published material is. As with all other third party information employed in the analysis, it is recommended that the source(s) of zoning and planning information be stated in the report, either under the discussion regarding scope of the appraisal or in the zoning/land use controls section itself. The perceived reliability of a given source may prompt the appraiser to make further inquiries or investigations. If the information has not been further verified, that should be so stated.

“The potential for error can arise in a number of areas, ranging from insufficient investigation of applicable zoning and related bylaws to assumptions of changes in zoning that are unreasonable or are not clearly stated in the report.”

Assumptions of zoning changes

When a valuation is being completed on the assumption of a change in zoning, this factor should be clearly identified throughout the report, particularly at points where a value estimate is being stated, as well as any points where the zoning is being stated or discussed. Furthermore, to ensure adherence to *CUSPAP*, any such assumptions are required to be both reasonable and probable.

Conforming and non-conforming uses

Uses that are consistent with the applicable bylaw are generally referred to as legal and conforming uses, while any uses that are in some way inconsistent but are permitted by the applicable authority, are referred to as legal non-conforming uses. This situation might include uses that predate the applicable bylaw or uses that have received permission for a minor variance. All other uses are considered to be illegal uses. A legal non-conforming use requires special consideration in terms of verification of permitted uses, as well as the potential for continuation of the use subsequent to any renovation, expansion or destruction of the existing improvements. The potential inability to re-create a non-conforming use in the event of destruction of some portion of the improvements may well have an influence on overall market value, which would have to be addressed in the analysis and report.

When properties are being appraised on an ‘as if complete’ basis, consideration should be given as to whether the renovated or otherwise altered property will continue to conform to the applicable bylaw or whether a non-conforming and potentially illegal use will have been created. In the case of an existing legal non-conforming use, will an illegal use be created by virtue of a change to the existing improvements?

“From a claims prevention perspective, any unusual circumstances or assumptions or any known shortcomings from usual due diligence cannot be stated too frequently in the report.”

Contract Development Agreements, also known in some jurisdictions as Development Permits, might expressly permit minor or significant variances from the regulations of a zoning bylaw. Such agreements may enhance or restrict the development potential of a property and their impact needs to be considered in conjunction with the zoning regulations. Clearly, an influence on market value may be present, and due consideration should be given to existing documents and agreements as well as to the applicable legislative process, if changes are being assumed for the purposes of the valuation.

Legal and illegal uses

An illegal use should be valued in accordance with the definition of highest and best use employed in the report, which typically refers to (or assumes) a legally permissible use. The only basis for valuation under the existing illegal uses would be where a variance or change to the bylaw could reasonably be expected to be secured, thereby resulting in either a conforming or legal non-conforming use. Any assumptions in this regard should be clearly stated in the report, preferably in any location referring to a final value estimate, as well as in the zoning discussion and highest and best use analysis. If the circumstances are doubtful and could result in a misleading report, then it would be wise to decline the assignment.

Conclusion

As with most aspects of the appraisal process, the due diligence associated with zoning/planning investigations and any necessary assumptions will vary from

region to region as well as on a case-by-case basis, depending on the purpose and intended use of the report as well as the circumstances surrounding a given property. Current information and familiarity with the characteristics of a given planning district are critical to making accurate and reasonable statements (or assumptions) regarding the permitted uses and legality of the subject property. It is important to be clear when explaining the scope of the appraisal, as well as any specific assumptions, so that a user/reader of the report will not misunderstand the conclusions presented in the report. It is equally important to state what you do not know or have been unable to accurately determine about the subject’s circumstances. From a claims prevention perspective, any unusual circumstances or assumptions or any known short-comings from usual due diligence cannot be stated too frequently in the report.

CUSPAP references

Land Use Controls: 6.2.12, 7.13, 14.32

The AIC has a comprehensive list of *Professional Excellence Bulletins* in the member’s section of the website. They can be downloaded via this link www.aicanada.ca/professional-liability/professional-excellence-bulletins/ under the Professional Practice Insurance Program.

Questions and/or comments

on this or any other *Professional Excellence Bulletin* can be directed to directorprofessionalpractice@aicanada.ca 