

Content Outline

ATTACKING & DEFENDING AN APPRAISAL IN LITIGATION PART II

The seminar enhances the framework and considerations for attacking and defending an appraisal in litigation set forth in *Attacking & Defending an Appraisal*, a two day seminar. *Attacking & Defending an Appraisal, Part II* reviews the overall model of Attacking & Defending an Appraisal in the morning of the first day. Consistency and common appraisal theory errors are covered after lunch of the first day and through the first half of day two. The last one-half day enhances common problems in reporting, reviewing and consulting. *Attacking and Defending an Appraisal in Litigation* covers mostly litigation with some appraisal theory topics. *Attacking and Defending an Appraisal, Part II* covers mainly appraisal theory related topics with some litigation skills. Problems are used to highlight theory and skills. The problems will be performed by the students individually and in groups. A financial calculator is needed.

I. The Basic Framework - Effective attack & defense

- A. Summary of the appraisal process
- B. The levels of an appraisal
- C. Framework for attacking & defending an appraisal
- D. The Attacking & Defending Brick Wall

Content: This section includes an overview of the appraisal process in light of the levels of an appraisal. The framework for systematically attacking and defending a real estate appraisal is set forth. The attacking and defending brick wall is an illustration to show the proper method to build up or attack an appraisal that is used in litigation. The focus is to provide a systematic way to approach an appraisal involved in litigation and to understand and attack or defend all the legal and other assumptions behind the estimate of value used in the courts.

II. Foundations - Definitions & 3 Approaches

- A. Four areas of general knowledge you need to know
- B. Four problem areas for all appraiser/consultants
- C. The law versus appraisal
- D. Test - Are you ready for cross examination? Do you understand the basic terminology?
- E. Overview of Uniform Standards of Professional Appraisal Practice (USPAP)
 - 1. Definitions
 - 2. Ethics
 - 3. Competency
 - 4. Departure
 - 5. Jurisdictional Exception
 - 6. Standards 1 & 2
 - 7. Standard 3
 - 8. Standards 4 & 5

Content: This section sets the foundation for the model for attacking and defending an appraisal. The four areas of general knowledge and four problem areas are models of information and potential problems in appraising and litigation. The presentation helps prevent problems in these areas before they occur in a case. The law versus appraisal covers commonly misunderstood friction between the law and common appraisal theory and thus the conflicts inherent in the attorney's and appraiser's ethical considerations. The test is of basic terms but illustrates how there are different opinions on even basic terminology and concepts. An overview of USPAP is given to set up problems in subsequent portions of the seminar.

III. The Cost Approach – Consistency & USPAP requirements

- A. The Cost Approach**
 - 1. Cost
 - 2. Depreciation
 - 3. Site value
 - 4. Leased fee, fee simple & leasehold estates
- B. Residential**
 - 1. Between the market analysis & cost approach
 - 2. Between the sales comparison approach and cost approach
 - 3. Between the site value and depreciation
- C. Commercial**
 - 1. Between the market analysis & cost approach
 - 2. Between the sales comparison approach and cost approach
 - 3. Between the site value and depreciation
 - 4. Between the income approach and cost approach
- D. Between third party reports and the cost approach**
 - 1. Inspector
 - 2. Cost estimator
 - 3. Environmental report

Content: The cost approach is not independent of the sales comparison and income approaches. There is an interrelationship between the inputs in all three approaches. Furthermore, statements made in the market analysis and other sections of the appraisal must be consistent with the performance of the approach.

IV. The Sales Comparison Approach – Consistency & USPAP requirements

- A. The Sales Comparison Approach**
 - 1. Process – Quantitative & Qualitative Techniques
 - 2. Units of Comparison
 - 3. Elements of Comparison & Order of Adjustments
 - 4. Types of Adjustments
 - 5. Leased fee, fee simple and leasehold estates
- B. Residential**
 - 1. Between the market analysis & sales comparison approach
 - 2. Between the cost approach and sales comparison approach
 - 3. Between the site value and adjustments in sales comparison
- C. Commercial**
 - 1. Between the market analysis & sales comparison approach
 - 2. Between the sales comparison approach and cost approach
 - 3. Between the site value and adjustments in sales comparison
 - 4. Between the income approach and sales comparison approach
- D. Between third party reports and the sales comparison approach**
 - 1. Inspector
 - 2. Cost estimator
 - 3. Environmental report

Content: The sales comparison approach is not independent of the cost and income approaches. There is an interrelationship between the inputs in all three approaches. Furthermore, statements made in the market analysis and other sections of the appraisal must be consistent with the performance of the approach. The adjustments and order of adjustments are often contested among appraisers in court cases. Often the arguments between appraisers are a result of misunderstanding the sales comparison approach.

- V. The Income Approach – Consistency & USPAP requirements**
 - A. The Income Approach**
 - 1. Residential
 - 2. Commercial
 - a. Direct capitalization
 - b. Yield capitalization
 - 3. Leased fee, fee simple and leasehold estates
 - B. Residential**
 - 1. Between the market analysis & income approach
 - 2. Between the cost approach and income approach
 - 3. Between the site value and adjustments in sales comparison
 - 4. Between the sales comparison and income approach
 - C. Commercial**
 - 5. Between the market analysis & income approach
 - 6. Between the cost approach and income approach
 - 7. Between the site value and inputs in income comparison
 - 8. Between the sales comparison approach and income approach
 - D. Between third party reports and the income approach**
 - 4. Inspector
 - 5. Cost estimator
 - 6. Environmental report

Content: The income approach is not independent of the cost and sales comparison approaches. There is an interrelationship between the inputs in all three approaches. Furthermore, statements made in the market analysis and other sections of the appraisal must be consistent with the performance of the approach. The rates and multipliers used in the income approach are often unsupported or inconsistent with the market and the income used by an appraiser.

- VI. Report, Review & Consulting Issues in Litigation**
 - A. Report considerations**
 - B. Review considerations**
 - C. Consulting considerations**

Content: The final topic covers practical issues of reporting, reviewing and consulting in litigation. USPAP requirements are highlighted through problems.

Qualifications of Ted Whitmer, MAI

Professional Affiliations

Member of the American Institute of Real Estate Appraisers (#7300)
Member of the State Bar of Texas (#21380020)
State Certified Appraiser - State of Texas (#TX-1321994-G; Exps 1/31/04)
Real Estate Broker - State of Texas (License #281161)
Appraiser Member of Texas Appraiser Licensing & Certification Board, Vice-chair of board & Chair of education committee (appointed by Governor Rick Perry for two years beginning 6/02 & ending 6/04)

Educational Background

J.D. - University of Houston Law Center (1988)
M.B.A. (Finance Major) - Texas A&M University (1981)
B.A.- Stephen F. Austin State University (1977)

Instructor

Comprehensive Appraisal Workshop - I developed and wrote the only review for the MAI comprehensive examination in 1988. Since then I have presented the course to over 2,000 persons, most who now are designated MAI's. The course covers virtually every area of real estate appraisal theory, including the three approaches to value, Standards and Ethics, valuation of partial interests, and other peripheral areas.

Attacking & Defending an Appraisal in Litigation – This seminar is a litigation seminar for attorneys, appraisers and users of appraisals in litigation.

Appraisal Institute - Principles, Valuation Procedures, Capitalization Theory A & B, Case Studies, Report Writing, Standards of Professional Practice, and various seminars.

University of Houston - Principles of Real Estate

Texas A&M University - Business Statistics (as a graduate assistant in 1981) & AG605

a graduate course in appraisal in Spring, 1998, 1999, & 2000.

San Jacinto Junior College - Real Estate Appraisal

American College of Real Estate - Appraisal, Principles, Math, Finance

Jones College of Real Estate - Appraisal

Author

The Comprehensive Appraisal Study Guide, this is now published by the Appraisal Institute as *The Appraisers Complete Review*.

The Encyclopedia of Investments, chapter on "Commercial & Industrial Real Estate"

The Appraisal of Real Estate, 10th edition, published by the Appraisal Institute. I contributed to the chapter on accrued depreciation.

Have written numerous seminars including:

Maximizing the Value of an Appraisal Practice

Current Issues & Misconceptions in Appraisal

Deriving Direct & Yield Capitalization Rates

Attacking & Defending an Appraisal in Litigation

Investor

Single family residences – Purchased, own & sold various single family houses.

Vacant land - Bought land on IH-45 in Houston in 1992 and sold the site to General Mills for an Olive Garden Restaurant.

Retail Center - Formed a partnership of 5 individuals and purchased a shopping center in College Station, Texas for \$1,150,000. Am the managing partner.

Retail Center - Formed a partnership of 3 individuals and purchased a shopping center in Kingwood, Texas for \$490,000.

Sold less than 2 years later for \$720,000 & kept a cell tower paying \$11,750, net per year. (Now owned free & clear)

Sonic Ground Lease – Own 1/3 interest in Sonic ground lease on Main St. in Houston.

Real Estate Courses

Texas A&M University

Real Property Valuation
Mortgage Market Analysis
Analysis of Real Estate Decisions
Real Estate Law
Problems - Syndications

Appraisal Institute

Principles of Appraisal
Basic Valuation Procedures
Residential Valuation
Capitalization Theory & Techniques, Part 1
Capitalization Theory & Techniques, Part 2
Capitalization Theory & Techniques, Part 3
Valuation Analysis and Report Writing
Introduction to Investment Analysis
Standards of Professional Practice

South Texas College of Law

Property I
Property II

University of Houston Law Center

Real Estate Finance Law
Real Estate Development & Finance Law
Many other real estate related seminars

Current Employment

Ted Whitmer, Real Estate Consultant

Previous Employment

Texas Commerce Bancshares- Vice-President & Assistant Manager of the Appraisal Division
Dominy, Ford & McPherson- Associate Fee Appraiser
Texas A&M University – Lecturer in a graduate course on appraisal

Partial Litigation Experience

- Testified in the Fifth Circuit as an expert witness in a criminal fraud case.
- Took depositions as an attorney in property tax appeal cases. I worked on the side of the Ft. Bend County Appraisal District.
- Consulted on The Medical Towers case in Houston concerning the interpretation of an appraisal clause in a long-term ground lease.
- Consulted with St. Paul Insurance Company on a Kansas case involving Board of Director liability in a Savings in Loan. I reviewed over 30 appraisals for USPAP and regulatory compliance.
- Consulted on property tax case in Minnesota on a downtown office building.
- Work on J.C. Penney headquarters property tax appeal
- Worked with Dallas Co. Appraisal District on tax appeal case
- Worked on cases involving valuation clauses in leases
- Have worked in property tax, condemnation, regulatory takings, fraud, deceptive trade practices, and many other types of real estate related cases as a consultant
- Testified in property tax case for Travis County Appraisal District involving downtown office buildings
- Testified in Monroe, Louisiana on lease clause involving ethics of appraiser
- Consulted on case for Walmart on contract dispute
- Consulted on property tax case for AMOCO for refinery property tax appeal

***AOB**

NUMBER:

- 01. Ad Valorem Taxation
- 02. Arbitration
- 03. Business courses related to practice or real estate appraisal
- 04. Construction estimating
- 05. Standards of professional appraisal practice (USPAP)
- 06. Land use planning, zoning and taxation
- 07. Management, leasing, brokerage, timesharing

AOB Acceptable ACE Topics:

- 08. Property development
- 09. Real estate appraisal (valuation/evaluations)
- 10. Real estate law (NOT license law or agency law)
- 11. Real estate litigation
- 12. Real estate financing and investment
- 13. Real estate appraisal related computer applications
- 14. Real estate securities and syndication
- 15. Real property exchange

AQB Topic (use No.)	Time devoted to section	Course Topic Outline
		Attacking & Defending an Appraisal in Litigation, Part II (8:30 - 4:30)
		CLASS BEGINS AT 8:30
11		I. Framework
11	10 minutes	A. Summary of the Appraisal Process
11	10 minutes	B. The Levels of an Appraisal
11	55 minutes	C. A Framework for Attacking & Defending an Appraisal in Litigation
11	15 minutes	D. The Attacking & Defending Brick Wall
	15 minutes	Morning Break 10:00- 10:15
11		II. Foundations
11	5 minutes	A. Four Areas of General Knowledge You Need to Know
11	5 minutes	B. Four Problem Areas for all Appraiser/Consultants
11	5 minutes	C. The Law versus Appraisal
09	30 minutes	D. Test - Are you ready for cross-examination?
05	50 minutes	E. USPAP Overview
	70 minutes	Lunch 11:50 1:00
09		III. The Cost Approach
09		A. Considerations
09	15 minutes	1. Cost
09	45 minutes	2. Depreciation
09	15 minutes	3. Site value
	15 minutes	Afternoon Break 2:15- 2:30
09	30 minutes	B. Residential
09	75 minutes	C. Commercial
09	15 minutes	D. With Third Party Reports
		CONCLUDE CLASS AT 4:30
Total	480 minutes w/breaks	8.00 hours total 375 minutes actual classroom

7.50 '50 minute' hours

***AOB**

NUMBER:

- 01. Ad Valorem Taxation
- 02. Arbitration
- 03. Business courses related to practice or real estate appraisal
- 04. Construction estimating
- 05. Standards of professional appraisal practice (USPAP)
- 06. Land use planning, zoning and taxation
- 07. Management, leasing, brokerage, timesharing

AOB Acceptable ACE Topics:

- 08. Property development
- 09. Real estate appraisal (valuation/evaluations)
- 10. Real estate law (NOT license law or agency law)
- 11. Real estate litigation
- 12. Real estate financing and investment
- 13. Real estate appraisal related computer applications
- 14. Real estate securities and syndication
- 15. Real property exchange

AQB Topic (use No.)	Time devoted to section	Course Topic Outline
		Attacking & Defending an Appraisal in Litigation, Part II - DAY 2 (8:30 - 4:30)
		CLASS BEGINS AT 8:30
		IV. The Sales Comparison Approach
09		A. The Approach
09	20 minutes	1. Process
09	15 minutes	2. Units of comparison
09	35 minutes	3. Elements of comparison & order of adjustments
09	10 minutes	4. Types of adjustments
09	10 minutes	5. Leased fee, fee simple & leasehold estates
	15 minutes	Morning Break 10:00 – 10:15
09	35 minutes	B. Residential
09	45 minutes	C. Commercial
09	15 minutes	D. Third Party Reports
	70 minutes	Lunch 11:50 - 1:00
09		V. The Income Approach
09		A. The Approach
09	20 minutes	1. Residential
09	15 minutes	2. Commercial – Direct capitalization
09	30 minutes	3. Commercial – Yield capitalization
09	10 minutes	4. Leased fee, fee simple & leasehold estates
	15 minutes	Afternoon Break 2:15 - 2:30
09	30 minutes	B. Residential
09	45 minutes	C. Commercial
09	10 minutes	D. Third Party Reports
09		VI. The Report, Reviewing & Consulting
	15 minutes	A. The Report
	10 minutes	B. Review
09	10 minutes	C. Consulting
Total-page	480 minutes w/breaks	8.00 hours total 375 minutes actual classroom 6.25 hours actual classroom
Total	960 minutes w/breaks	16.00 hours total 750 minutes actual classroom 12.50 hours actual classroom

15.00 '50 minute' hours

I am Requesting 15 hours of Continuing Education Credit for The Two-Day Seminar.

Attacking & Defending an Appraisal in Litigation, Part II

Purpose of the Course

The seminar is designed to assist attorneys, appraisers and real estate professionals with valuation and other real estate appraisal questions in the context of litigation. The seminar is two days and offers the professional models to testify, procedural and evidentiary basics, Uniform Standards of Professional Appraisal Practices, and appraisal theory that is often misunderstood or misapplied.

Relevance of the Course

After years of experience and discussions with past students and attorneys that have been involved in cases, it is evident that there are common mistakes and misunderstandings concerning appraisal and consulting roles and applications of law and practice in the courts. There are literally billions of dollars in real estate cases in the country involving condemnation, property tax, leases, divorce, insurance claims and other settings where value and real estate consulting is an issue. However, there are very few quality seminars that help the attorney and real estate professional be a professional in a case. This seminar gives timely advice on how to be ethical and make sure the attorney is ethical. It also helps the participant keep the theory accurate in application and not fall for tricks that, until this seminar, have been learned largely by experience only after causing significant loss to a client.

Content Summary

Description of

ATTACKING & DEFENDING AN APPRAISAL IN LITIGATION, PART II

The seminar provides a framework and considerations for attacking and defending an appraisal in litigation. Common mistakes made in appraising and litigation concerning an appraisal are stressed. The seminar focuses on the appraisal approaches and theory needed to attack and defend the approaches in litigation. ***Attacking & Defending an Appraisal, Part II*** is directed to mainly appraisal theory in litigation, with litigation skills being secondary as an emphasis. Attacking and Defending an Appraisal in Litigation (Part I) was directed primarily at litigation skills, with appraisal skills being secondary. **A financial calculator is need for the seminar.** Problems and solutions are given throughout the seminar.

- I. The Basic Framework***
- II. Foundations***
- III. The Cost Approach***
- IV. The Sales Comparison Approach***
- V. The Income Approach***
- VI. The Report, Review & Consulting***

Learning Objectives

1. To understand models of testifying
2. To understand commonly misapplied ethics within USPAP and conflicts with attorney ethics
3. To understand commonly misapplied standards within USPAP
4. To understand common errors within the Cost Approach
5. To understand common errors within the Income Approach
6. To understand common errors within the Sales Comparison Approach
7. To understand common mistakes in reporting, reviewing and consulting in litigation.

Instructional Strategies

1. Lecture
2. Problems & solutions
3. Question & answer
4. Group discussion

Instructor

Ted Whitmer, MAI
Qualifications are included

Bibliography of Subject Matter

1. *Attacking & Defending an Appraisal in Litigation, Part II*, written by Ted Whitmer, MAI

This may be used for brochures:

About the Instructor

Ted Whitmer, MAI

Mr. Ted Whitmer is an appraiser, attorney, instructor, author, investor, asset manager, and consultant. Mr. Whitmer holds the MAI designation from the Appraisal Institute, is a member of the State Bar of Texas, a broker and the author of *The Comprehensive Appraisal Workshop, Maximizing the Value of an Appraisal Practice* among others. He teaches many courses and seminars including a graduate level course in Real Estate Appraisal at Texas A&M University. Mr. Whitmer received his BA from Stephen F. Austin State University, a MBA from Texas A&M University and a JD from the University of Houston. He is married to Donna and has four children.

For the course description use the Purpose, Relevance & Description on previous page.