

In Search of a CONSULTING EXPERT

How real estate appraisers can provide a competitive edge

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Valuable Insight

Bringing in a consulting expert generally occurs after negotiations have failed or in preparation leading up to a trial. Prior to any type of hearing, hiring a trial consultant may help in settling a case and reaching a win-win situation for both parties.

When seeking out a consulting expert, a real estate appraiser can be a valuable resource. In the context of right of way work, an appraiser hired to testify as an expert witness is usually relied on for their opinion regarding the valuation of the real estate. A seasoned appraiser can also offer important insight from a landowner's perspective about the property being acquired. However, this role will require engaging an appraiser who does not testify or serve as an expert witness.

Typically, an outside consultant may be a traffic engineer, architect or an expert in a specific area that relates directly to the project. When dealing with right of way legal issues, the use of consultants has been limited because budgets are usually tight and right of way is frequently viewed as a roadblock to construction. Some might say this view is "penny wise but pound foolish."

A Fresh Perspective

There are several areas where an appraiser acting as a trial consultant can bring significant value to the table. Once the appraiser has a clear understanding of the theme of the case, they offer a new set of eyes and ears that can add clarity to the issues. Questions such as, "Will the jury understand?" or "What questions might arise?" can be helpful to address up front. Using everyday analogies may add to the jury's understanding.

When swimming in the murky waters of eminent domain, even an experienced lawyer is likely to seek help from a consulting expert. In today's "I want it now" world, the legal team is often swamped with details and multiple properties. Adequate time to prepare a case may be left on the shoulders of a single lawyer, who often times has limited experience in eminent domain. To assist the attorney in presenting their case before a judge or jury, a consulting expert (or trial consultant) can be extremely beneficial. These are experts that have long been used by the legal profession in both civil and criminal cases to help prepare witnesses, improve arguments and rhetoric and to select juries.

In the early stages of the project, it is important that the condemnor understand where the owner's opinions and viewpoints are coming from. Perhaps the landowner has failed to see the why and how aspects of a project. Does the story being told follow a logical and sequential order? While the consultant will not typically interview the property owner, having a new and unbiased viewpoint may open doors of understanding.

Even the most experienced appraiser is not always an effective witness. In these instances, a consultant can assist the testifying appraiser in tailoring their answers in a way that adds clarity. Being able to break down issues into smaller parts and using examples from everyday life may be critical to the outcome of the case. And while every appraisal report has its strengths and weaknesses, it is often difficult for the original author to be objective, especially if they have lived with this report for some time and feel a sense of ownership.

Likewise, the consultant can review the other side's report to ascertain its strengths and weaknesses. While the consultant is not critiquing the quality of the work, there is often a fine line when an opinion is provided. However, as a consulting expert, one is not typically discoverable, as no opinions will be offered at trial. This person is simply consulting with the legal team and providing information and advice. They will not be offering opinions of value before the court.

Functioning as a litigation consultant is an ideal example of performing services within the scope of appraisal practice where standard rules aren't fully defined. However, as this type of work falls within appraisal practice, the work performed must comply with USPAP definitions published in the preamble, ethics rule, competency rule and the jurisdictional exception rule. More detailed explanation is provided within USPAP Advisory Opinion 21.

Achieving the Desired Outcome

Another advantage a consultant can offer is in determining exactly which types of

exhibits will best communicate the facts. For example, in a recent case in Texas, the landowner's appraiser testified that a high-voltage transmission line caused an estimated 20 percent in damages to the 3,500 acres of raw land it crossed. In his deposition, the appraiser admitted that the damages were a result of aesthetics, and had a residential subdivision analysis supporting his damage estimate.

In preparation for trial, the consultant for the condemnor suggested that their appraiser measure the distance from the centerline of the easement to several property corners. The consultant then laid out a map of the city with the courthouse in the middle, and measured the distance from the courthouse as determined from the subject property to known points in the city. In this case, some of the points actually extended beyond the city limits. Also used were ground photos from the various property corners that were taken after construction, and the transmission line was not visible. In this case, the jury actually returned a compensation amount less than the amount testified to by the condemnor's appraiser.

In another situation, the property in question consisted of a large tract of land with several miles of frontage along a newly widened toll road. The property owner's team developed a theme that relied on growth patterns and changing demographics. The use of aerial photography over a 10 to 12 year timespan profoundly illustrated the growth of the area and highlighted development trends. These photos provided the supporting groundwork for the appraiser's opinions that resulted in a substantial favorable award.

Capitalizing on Untapped Resources

In many instances, a consultant can provide coaching tips on how to be a better communicator from the witness stand. Skill and practice in the use of exhibits, proper dress, eye contact, and breathing techniques are just some of the points that can help a mediocre witness become a good one.

The consultant can also assist in preparing for mediations and depositions.

Having the consultant on hand during a mediation hearing can help the parties understand the pros and cons of offers and counteroffers. They may even be able to assist in settlement negotiations by taking the unknowns of a jury trial out of the equation, thereby allowing a project to move forward. In one situation, simply having a consultant sit visibly in the room during mediation placed pressure on the parties to reach a settlement. For depositions, the trial consultant can assist in drafting key questions for a witness and may even be present during the deposition. Having another certified appraiser present during the deposition may be unnerving to an appraiser who may have skated along the thin line of USPAP.

In some areas, finding local appraisers who have the right experience may be a daunting task. Yet, having a seasoned appraiser who can shed light on the habits and "modus operandi" of the other side can add significant value. Engaging a well-known local appraiser as a trial consultant can also prevent this person from testifying due to conflicts of interest. In some areas of the country, this may force the other side to hire their second choice or perhaps an appraiser from outside the local area.

All in all, hiring an experienced local appraiser to serve as a trial consultant is an untapped resource that can result in significant savings in both time and money. ⚡



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