



Kent • Macpherson

# REAL PROPERTY APPRAISALS

An Introduction to Appraisals... *It Depends!*



## National Lands Managers Gathering

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September 26, 2023



# About Kent-Macpherson

- Established in 1973 – 50 years in the Appraisal business
- Reputation for Professionalism and High Standards
- Recognized as one of Canada’s leading authorities in Real Estate Valuation and Consulting
- 20+ Awesome People; including 7 AACI designated Appraisers, plus Associates and Support Staff
- Serving all of B.C., as well as special project assignments nationwide (currently working with 65+ First Nations throughout Canada)

# What Do We Do?

- ✓ First Nations Lands Valuation
- ✓ Treaty Negotiations
- ✓ First Nations Specific Claims
- ✓ Special Use and Institutional Properties
- ✓ Commercial Real Estate Valuation
- ✓ Development, Impact and Feasibility Studies
- ✓ Expropriation Valuation
- ✓ Land Use Evaluation
- ✓ Assessment Review, Negotiation and Appeal
- ✓ Cost Benefit Analysis
- ✓ Commercial Real Estate Lease Evaluation
- ✓ Right-of-Way Valuation and Negotiation
- ✓ Insurance Appraisals
- ✓ Arbitration and Mediation Services
- ✓ Expert Evidence and Litigation Support
- ✓ Ground Rent Reviews
- ✓ Valuation for Mortgage Lending
- ✓ Depreciation Reports/Reserve Fund Studies
- ✓ Educational training and workshops

# Why Are We Here?

- There is a real need for a user-friendly introduction to real estate “jargon” in general and the appraisal profession more specifically
- NALMA & OALA are developing a Real Property Appraisal Toolkit as a practical resource/guide for First Nations
- Summary of some of the key takeaway goals from our participant surveys that have caught my eye:
  - Understand what and how land appraisals are done
  - Reading, and understanding how to read, final reports
  - The formula and process to determine the most reasonable offer
  - To learn about appraisals and how they affect the lands and homes of First Nations
  - *To bring back to my community what I have learned and how we can utilize appraisals within our community.*

# Appraisal Foundations

- What is Real Estate/Real Property?
- Real Property Rights
- Economic Value & Monetary Value
- What is an Appraisal?
- Appraisal Overview

# What is Real Estate/Real Property?

1. In essence, when we talk about Real Estate we are land and buildings/improvements that are fixed to the land
2. “Land” includes resources, such as water, timber, agricultural plantings (this can become very complicated very quickly), etc
3. “Improvements” includes man-made structures that are generally considered permanent in nature (buildings, infrastructure/utility services, etc) but excludes the movable chattels and equipment
4. Real Property includes real estate and other tangible assets, such as chattels, furniture, equipment, etc

# Property Rights

- **Fee-Simple/Freehold Interest:** property with no encumbrances or other constraints on how the owner can possess, control, and use it. The ‘fee simple interest’ in real property is the broadest private property interest known in law. It encompasses absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, expropriation, police power and escheat.
- **Leasehold Interest:** the interest held by the lessee (the tenant or renter) through a lease conveying the rights of use and occupancy for a stated term under certain conditions.
- **Leased Fee Interest:** an ownership interest held by a landlord with the right of use and occupancy conveyed by lease to others. Leases specify the rights of both the lessor and the lessee.
- **Certificate of Possession (CP):** exclusive right to use or occupy reserve land indefinitely, but with a significant restriction/limitation on ownership transferability and marketability (e.g. can’t be sold/transferred outside of the First Nation).
- Other partial interest such as **Permits, Right-of-Ways, Easements, Covenants**, etc.

# Economic Value & Monetary Value

In all honesty... the principles of supply and demand are just as simple as they sound!

- Supply and Demand result from markets (note: markets are essentially just a collection of any given group of individuals) deciding how much we desire something, how useful it is to us, how rare or plentiful it is, and what price we're prepared to pay for it. This is referred to as the Factors of Value, which consist of Utility, Scarcity, Desirability, and Effective Purchasing Power.
- A Market is the interaction of buyers and sellers exchanging money for goods and/or services.



# What is an Appraisal?

1. What is an appraisal?
2. Who is qualified to prepare an appraisal?
  - AACI - Accredited appraisers with a nationally recognized AACI (Accredited Appraiser Canadian Institute) designation are the only ones widely accepted by ISC, CRRNC, and PWGSC, financial institutions, and government agencies
  - P. App. – Professional Appraiser
3. Appraisal standards; CUSPAP (Canadian Uniform Standards of Professional Appraisal Practice)

# Appraisal Overview

There are various purposes for appraisals, but most common are for making informed decisions regarding Current Market Value



# Appraisal Overview



# Appraisal Overview



# Appraisal Overview



# Appraisals & the Appraisal Process

- Terms of Reference
- Definitions of Market Value
- Valuation Implications
- Traditional Valuation Approaches

# Terms of Reference

- The Terms of Reference are critical in every appraisal
- They lay the foundation or basis for the premise of value

# Terms of Reference

- Who is the Client?
- What is the Intended Use and who are the Intended Users?
  - Note: In 2024, Intended Use & Intended User will likely change to Authorized Use & Authorized User
- What is the Purpose of the assignment?
- What are the Interest/Property Rights to be valued?



# Terms of Reference

- Property Rights continued:
  - Is it the CP interest or the Leasehold (prepaid or annual rent) interest?
  - Is it to be considered on an “as if fee simple” basis?
- Does the appraisal consider Current Market Value, Retrospective Market Value, or Prospective Market Value (or some other form of value other than “market value)?
- What assumptions are to be made?
  - Are they reasonable?
  - Does it matter?

# Definition of Market Value

Appraisal Institute of Canada (CUSPAP, 2022):

*“The most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and the seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress.”*

# Definition of Market Value

Implicit in the definition includes:

- the buyer and seller are typically motivated;
- both parties are well informed or well advised, and acting in what they consider their best interests;
- a reasonable time is allowed for exposure in the open market;
- payment is made in terms of cash in Canadian dollars or in terms of financial arrangements comparable thereto; and
- the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

# Example: Family Homes on Reserves and Matrimonial Interests or Rights Act

Section 28 (4) and (5) states:

*“Determination of value*

*(4) For the purposes of subsections (1) to (3), the value of the interests or rights is the difference between*

*(a) the amount that a buyer would reasonably be expected to pay for interests or rights that are comparable to the interests or rights in question, and*

*(b) the amount of any outstanding debts or other liabilities assumed for acquiring the interests or rights or for improving or maintaining the structures and lands that are the object of the interests or rights.*

*Agreement by parties*

*(5) Despite subsection (4), on agreement by the spouses or common-law partners, the value of the interests or rights may be determined on any other basis”*

Note: emphasis added.

# Valuation Implications

What are the Terms of Reference for the Valuation?

- Property Rights to be considered?
  - Certificate of Possession (CP)
  - Leasehold (Lessor's Interest & Lessee's Interest)
  - Fee Simple (actual/encumbered or hypothetical)
- What is the Highest & Best Use for each interest to be considered?
  - Physically Possible
  - Financially Feasible
  - Legally Permitted
  - Maximally Productive

# Valuation Implications

## Highest & Best Use (cont.)

- Physically Possible: Soil conditions, water levels, etc.
- Legally Permitted: Is there zoning in place or specific permitted uses imposed? OCP/CCP?
- Financially Feasible: Is there market demand?
- Maximally Productive: What option yields the greatest return?
  - fourth & final test and can only be applied when a use passes all of the first three tests.

# Three Traditional Valuation Approaches

- Direct Comparison Approach
  - Comparing “apples to apples” (so to speak)
- Cost Approach
  - Vacant land value plus depreciated improvement value
- Income Approach
  - Capitalizing rental revenue to provide an estimate of value

# Challenges Valuing CP Interest

- Accurately identifying the true market for the property
  - Potential purchasers are limited to Band members & the Band itself
- Financing is extremely challenging
  - CP cannot be pledged as security for conventional mortgage financing (impacts ability to pay & motivation to pay)



# Review Terms of Reference

- What are the property rights to be appraised?
- Are there key assumptions/hypothetical conditions to be considered?
- Can influence the approach to valuation, or more importantly change the...
- Highest & Best Use
- *Can the question being asked be answered with a high degree of reliability?*

# Review Terms of Reference



# Review Terms of Reference

## Assumed Facts/Hypothetical Conditions/Extraordinary Assumptions

- Just as influential as TOR
- Sometimes in combination with TOR
- If supplied to support a legal position – are they appropriate or do they go too far?
- May rely upon opinions of other professionals
- If not jointly retained, often utilized by one side and not the other

# Review Terms of Reference

- Example of the importance of clear TOR



- Is this land to be valued as remote oceanfront acreage with no services? Or as a potential timber resource? Or as a potential deep sea port? If as a port, are all approvals & services to be considered in the valuation?

# Review Terms of Reference

- Example of the importance of clear TOR
  - 174.56 acres
  - \$ 3,280,000 per annum

(Market Rent as a special use property)



# QUESTIONS?

Leases

ISC

Appraisal

SARA

Terms of Reference

Market

Specific Claims

PWGSC

Rent

CWS

R/W

Frustrations

CP Interests

Highest & Best Use

Financing

Loss of Use

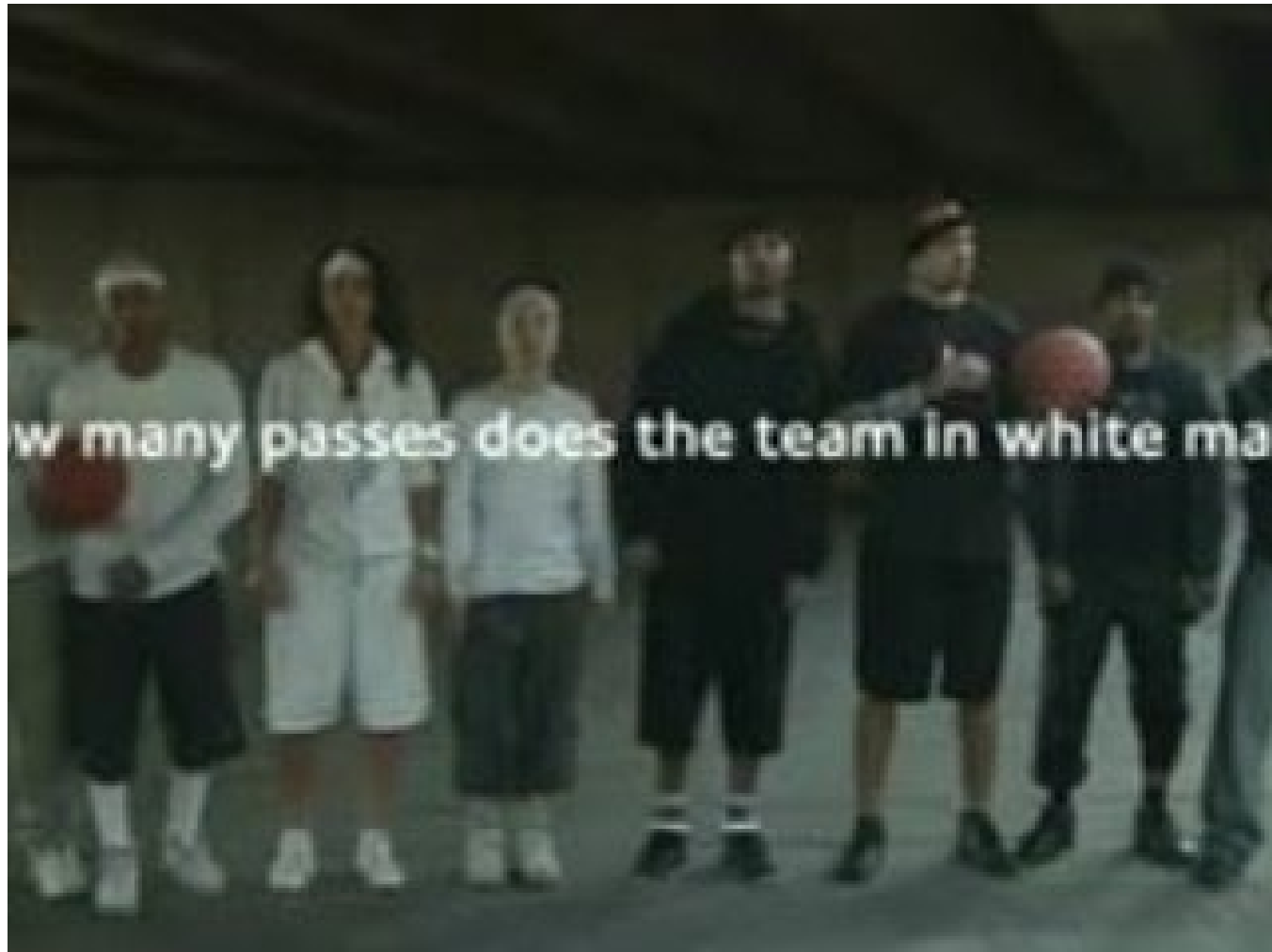
Economy

Market

Expropriation

DOJ

# Retaining an Appraiser & Navigating an Appraisal



# Example of Correspondence:

**From:** Cliff Smirl [<mailto:csmirl@kent-macpherson.com>]

**Sent:** Friday, July 10, 2020 4:16 PM

**To:** XXXXXXXXXX

**Subject:** XXXXXXXXXX

Hi XXXXXXXXX,

As discussed here are a few example photos of the area of concern on XXXXXXXX land. The yellow circle on the map shows the approximately location. The westerly lot boundary is approximately 1,200 feet from the river.

Regards,

Cliff Smirl, AACI, P.App, MAI

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# Example of Correspondence:



# Example of Correspondence:

On Jul 13, 2020, at 9:25 AM, XXXXXXXXXXX wrote:

Thank you for providing this Cliff.

When I write to ISC requesting they in force the environmental clauses in the lease, are you ok with me identifying you as having brought this to our clients attn. as a consequence of your site visit? As XXXXXXXX is your client it is entirely appropriate in my view.

Thanks Cliff

XXXXXX  
XXXXXX  
XXXXXX

# Common First Nation Appraisal Needs

- Land Designation
- Market Rent for leasing activity (prepaid or annual rent are the most common)
- Permits, Easements, Right-of-Ways, other partial interests
- Member to member transfers
- Expropriation
- Estates & MRP
- Specific Claims, Comprehensive Claims/Treaty
- Strategic acquisitions and ATR opportunities

# Common First Nation Appraisal Needs

- Often, the singular most common appraisal need is for land leasing activities
  - Rent reviews, rent disputes/rent reconciliation, sensitivity analysis, feasibility modelling, Joint Venture/Partnership due diligence, etc

# Common First Nation Appraisal Needs

- Land Designation
  - Formal process with unique requirements (can become a slow process)
  - Think big picture and long-term
  - As a best practice, site & use specific details/restrictions should be included within the lease documents rather than the designation terms
  - Be careful about relying on an appraisal completed for a designation vote for future lease negotiations

# Common First Nation Appraisal Needs

- Permits & Other Partial Interests
  - Reflect a partial interest/non-exclusive right of occupancy and tend to be shorter in term/duration
  - Examples include shared access permits, resource extraction, grazing, utility corridors, etc

# Common First Nation Appraisal Needs

- Member to member transfers
  - CP valuations can be very challenging due to the dearth of “market” evidence, especially within rural and more remote locations
- Reversionary Rights
  - Tend to be rare and context specific, but do come into play due to status changes (i.e. relinquishing membership within a First Nation)
  - Reversionary rights may also need to be considered by a CP holder as leases near expiration

# Common First Nation Appraisal Needs

- Expropriation
  - Have been very rare occurrences historically, but are likely to become increasingly common on more developed reserves
  - Based on my experience, many Nations do not have Expropriation laws/bylaws/policies and even those who do, have not yet had to trigger them
  - Can involve multiple property “owners” as CP holders, Lessees, Sub-Lessees, Permittees could all be impacted at the same time and on the same land



# Common First Nation Appraisal Needs

- Estates & Matrimonial Real Property
  - Scope of work required may vary widely
  - Can involve very personal and emotional challenges for Band members (some folks just need more time to understand the process and adjust to significant life changes)
  - Estate planning and dealing with complex undivided interest tend to be more common and more complicated on reserves than off reserves

# Common First Nation Appraisal Needs

- Specific Claims, Comprehensive Claims/Modern Treaties
  - Very complex appraisal requirements and we would need an entire workshop dedicated to this topic to even scratch the surface!
  - If you are involved with such undertakings, engaging highly experienced appraisal and legal professionals is critical (this work requires a unique skillset coupled with significant experience and it will not be fast or cheap)

# Common First Nation Appraisal Needs

- Strategic Planning, Strategic Land Acquisitions, ATRs, etc
  - Strategic Planning can involve land on reserve or off
  - Can go well beyond point-in-time valuation assignments
  - Appraisal professionals can provide valuable consultation services to help you make more informed decisions

# QUESTIONS?

Leases

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Appraisal

SARA

Terms of Reference

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