

The U.S. Mineral Property Valuation Patchwork of Regulations and Standards

Trevor R. Ellis, CPG, CMA, M.AusIMM

Minerals Appraiser

Ellis International Services, Inc.



Denver, Colorado

VP – American Institute of Minerals Appraisers

US Regulatory Difficulties for Minerals Appraisers

- Securities and Exchange Commission (SEC) reporting rules
- State and Federal real estate appraisal laws

Result:

Difficult for minerals appraisers to comply.

Real estate appraisers capturing work.

Appraisal = Valuation

Appraiser = Valuator or Valuer

US Securities & Exchange Commission (SEC)

- Industry Guide 7
 - First in Form S-18, issued March 1981
 - Transferred in 1992
 - Defines Proven and Probable Reserves
 - Restricts disclosure of quantitative estimates to reserves only
 - Restricts value estimates to reserves only

SEC Industry Guide 7

Implications

- Bars reporting of reserves and resources to SME and CMMI definitions
- Resource estimate and exploration information for the subject property is not provided to appraiser
- For sales analysis, can only get reserve estimate and released exploration drilling information

SEC Industry Guide 7

Result

- Incomplete data on the subject property
- Inadequate data on sales for the Sales Comparison Approach
- Incomplete data for the Income Approach
- Can't abide by AusIMM's VALMIN Code on US mineral property appraisals.

Lesson

- Rules designed to control reporting for securities purposes will probably impact mineral valuations performed for the wide variety of purposes unrelated to securities reporting

US National Appraisal Standards and State Licensing History

- In late 1980s, US\$100+ billion in Federal bailout funds required for financial institutions
- Real estate and business appraisers partially blamed due to over valued appraisals
- US Congress authorized The Appraisal Foundation as “The Source of Appraiser Standards and Appraiser Qualifications”

US National Appraisal Standards and State Licensing History

- In 1986-87, first edition of the Uniform Standards of Professional Appraisal Practice (USPAP)
- USPAP revised annually
- Members of the major national appraisal institutes must abide by it

US National Appraisal Standards and State Licensing History

- In 1989, Financial Institutions Reform, Recovery and Enforcement Act (FIRREA)
- Required the states to set standards for appraisals and appraiser licensing.
- By 1995 all 50 states had complied
- All states adopted USPAP

Minerals Appraisals under Federal and State Law

- Minerals are part of the real estate
- Mineral rights are real property
- FIRREA provides some exemption of severable mineral rights (not minerals) from its jurisdiction
- A few states exempt mineral rights from appraiser board jurisdiction, but not if the land surface is included
- Some states mandate state licensing for all real estate appraisals

USPAP

- Minimum appraisal standard for
 - Federally chartered institutions (banks)
 - Federal agencies
 - Most State agencies
- All State licensed appraisers must abide by it
- All members of the major appraisal institutes must abide by it

USPAP

- Contains appraisal standards for conduct and report writing for:
 - Real property
 - Levels of appraisal
 - Levels of reporting
 - Appraisal review
 - Consulting
 - Personal property
 - Business and intangible assets

USPAP

- Liked by appraisal report users
- Most minerals appraisers ignore it
- Real estate appraisers making great inroads into minerals appraisal

State Appraiser Board Certification

- Certified General Appraiser
 - required for non-residential appraisal, such as a mine
 - 3,000 hours of documented USPAP appraisal experience, of which 1,500 non-residential
 - 180 hours of approved appraisal courses
 - Pass the certified general appraiser exam
 - Continuing education

State Appraiser Board Certification

- A few (<10) minerals appraisers were certified when State boards established
- None since to my knowledge
- Very difficult for a minerals appraiser to prove 3,000 hours of legal USPAP appraisal experience

State Registration of Geologists and Appraisers

For minerals appraisal the combination results
in two groups:

Competent but not Qualified

Qualified but not Competent

Lessons

- Poorly designed regulation can prevent those who are competent from practicing their profession
 - Replace with technically qualified but not necessarily competent
- Licensing or certification requirements on a Provincial basis can restrict trade in professional services
- The valuator must have the freedom to go to the deposit, since the deposit cannot come to him.

Federal Land Acquisitions

- Uniform Appraisal Standards for Federal Land Acquisitions
- Based on court history of Federal acquisitions, condemnation, takings
- Strongly advises use of sales comparison approach
- Requires that avoid including business value (income above typical economic rent)

Lesson

- US courts and USPAP distinguish between business value and real property value
- The VALMIN Code does not
- Assure that new rules do not direct the valuator to an incorrect conclusion of value for the assignment

State and Federal Courts

- Real estate appraisers winning
- Courts like sales comparison approach
- We need to learn how to produce strongly defensible appraisals from other sectors

Ingredients of a Market Value Estimate

- Date of Valuation
- Highest and Best Use
- Three Approaches to Value
 - Sales Comparison Approach
 - Cost Approach
 - The Income Approach

Ingredients of a Market Value Estimate

- Comparable Sales Approach
 - Principle of Substitution
- Cost Approach
 - Principle of Contribution to Value
- Income Approach
 - Principle of Anticipation

Ingredients of a Market Value Estimate

The three approaches:

- Each must be considered
- More than one method available for each
- Each can be based on sales analysis
- The value determination results from reconciling all three approaches

The Report

- Clear
- Accurate
- Not misleading
- Provide full disclosure
- Signed certification taking full responsibility

Lessons

- Standards developers should be extremely cautious about barring any specific valuation method
 - Minerals appraisers need all the available methods we can muster to develop indications of value
- Don't make the standards so onerous that they exclude common minerals appraisal
- Enough flexibility needs to be included to allow valuation of low value properties and interests

Conclusion

- Beware of unintended consequences
- Enforcement should be at a national level if possible
- Encourage the use of the three approaches and multiple methods to value estimation
- Don't kill low value appraisals through onerous standards