

Predicting “Reasonably Near Future” in Highest and Best Use



How much time is reasonable for attaining a property's highest value?

BY WAYNE RASMUSSEN

When real estate appraisers determine the market value of real property, the highest and best use identifies which use would produce the highest value, regardless of its actual current use. The highest and best use of a specific parcel of land is not determined through subjective analysis, but rather, is shaped by the competitive forces within the market where the property is located. It involves the reasonably probable use of vacant land (and occasionally improved property that is developable with a higher use), which is physically possible, legally permissible, financially feasible and that results in the highest value.

In establishing a property's value, the concept of the “reasonably near future” is integral to the determination of highest and best use. Potential changes such as a rezoning can significantly impact the viewpoints and actions of potential buyers. When a property is in transition, the new use becomes the highest and best use when its attractiveness for the new use exceeds the value of the existing use in the mind of a buyer.

From a legally permissible standpoint, the reasonably near future generally refers to the amount of time needed to accomplish a rezoning or change of other restriction imposed

by law in order to have the ability to develop the highest and best use. This time period needs to be predictable and close enough to the date of valuation, based upon credible evidence, to affect the market value of the property.

Reasonable Probability

This issue was addressed by the California Appellate Court in the *City of Los Angeles v Decker* (1977) 18 Cal.3d 860, 867-868). In this case, it was determined that “where land sought to be condemned is not presently available for a particular use by reason of a zoning ordinance or other restriction imposed by law, but the evidence tends to show a ‘reasonable probability’ of a change in the near future, the effect of such probability on the minds of the purchasers generally may be taken into consideration in fixing present market value...” Property valuation must therefore take into account the extent to which a rezoning or other change in the reasonably near future could affect the market value.

Local land use planning can play a major role in determining how much time is needed to attain the highest and best use case scenario. Since the planning regulations, review processes, and other development related factors of each jurisdiction are uniquely different, the amount of time necessary to achieve change inherently varies as well. These differences are created by many factors, such as local economic and fiscal conditions, the extent to which communities choose to influence their rate of growth, environmental protection, infrastructure needs, etc.

The Planning Process

The type and extent of planning regulations imposed by local jurisdictions have a direct impact on the amount of time necessary for the review of planning applications, such as comprehensive plan amendments, rezonings and environmental review. Some processes are limited and require as little as a month, while others can take several years.

The required submission of development plans for rezonings is of particular significance. These plans are typically much more time consuming for applicants to prepare and for jurisdictions to review than are standard zoning districts. For example, rezoning applications for standard zoning districts are commonly subject to limited submission requirements and may take as little as six weeks to process. However, some jurisdictions require rezoning applications to be accompanied by conceptual development plans that might add another four

to six months. Other jurisdictions require that certain sites be rezoned to planned development districts which also require the preparation of development plans, also adding the extra four to six months.

Most jurisdictions provide online application checklists and summaries of their planning processes which give a sense as to what's required for application review. Generally, the more extensive the checklist, the more time the jurisdiction will need to review all the documents. The planning staff from the local jurisdiction or other land use planning experts can be a helpful source in estimating the timing involved.

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Key Considerations

There are two key matters to consider when estimating the amount of time that is reasonably necessary to achieve a rezoning or other change of restriction. One consideration is the efficiency of the local jurisdiction, which impacts how long it will take to get through the community's planning review process. Some are well staffed and service-oriented, while others are understaffed or bureaucratic in nature. The local citizenry may or may not also play a major role in the amount of time needed to obtain project approvals, depending on public perception and whether the project has any opposition.

The other consideration involves the application process. First, it is important to understand which governmental actions will be necessary for a rezoning or change of other restriction. This can vary for each project depending on a range of planning-related factors. A series of local planning actions may be required in order to attain a property's highest and best use. While the types of approvals do not vary much among the different jurisdictions, the processing time can vary substantially.

The most common types of approvals that may be required in conjunction with a rezoning or change of other restriction include an environmental certification, which ranges from a three to six week negative declaration (statement of no significant negative environmental impacts), to a one to two year environmental impact report or a federal environmental impact statement. This can involve not only local processing requirements, but regional, state and federal as well, particularly where wetlands and special status species are present.

A standard timeline could include the following:

- Comprehensive plan amendment (2-4 months)
- Area master plan or specific plan preparation (4-18 months)
- Rezoning to a standard zoning district (1-2 months)
- Rezoning to a planned development district (4-6 months)
- Pre-zoning, urban limit line adjustment, sphere of influence expansion or annexation of property located at the outskirts of a city where annexation is necessary for achieving the highest and best use scenario (several years)

Degree of Complication

The least complicated planning scenario might consist of simply a negative declaration and rezoning to a standard zoning district, such as retail or commercial. On the other hand, a more complex scenario could include the preparation of an environmental impact report, comprehensive plan amendment, specific plan preparation, urban growth boundary extension, annexation, and a planned development pre-rezoning and development plan. Although the second scenario is much more time-consuming than the first, there is nonetheless a reasonable timeframe in which both can be expected to be accomplished.

From a land use planning standpoint, either of the above two scenarios are achievable within a reasonable amount of time. In this context, the determination of what constitutes the reasonably near future should take this into account since the practical requirements for each are different. This is an important distinction that should be considered or else what might otherwise be a probable rezoning or change of other restriction to the legally permissible highest and best

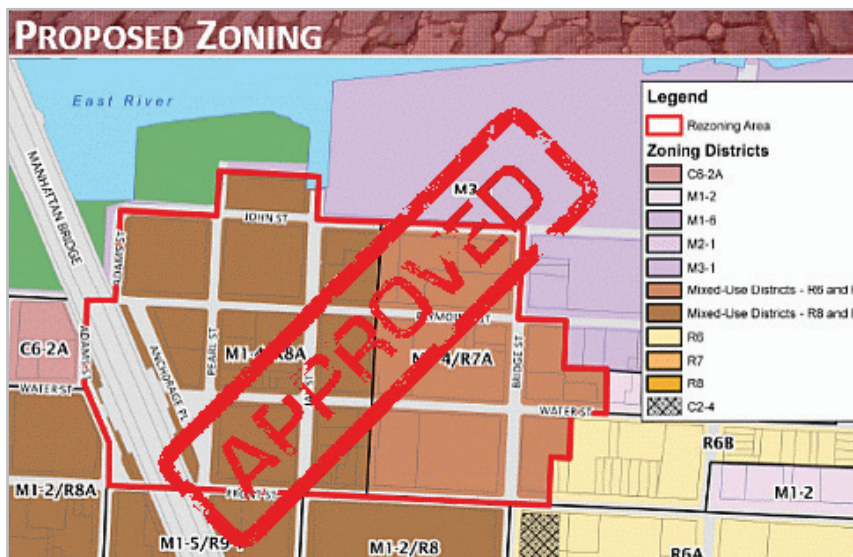


use may become technically unachievable simply because the jurisdictional processing requirements for the second scenario take longer.

Starting the Clock

The timeline for determining whether or not a rezoning or change of other restriction can occur in the reasonably near future generally begins at the date of property valuation and concludes when the requisite planning application becomes effective. Since this varies from jurisdiction to jurisdiction, the following process is suggested for determining such timelines.

1. Identify all planning application approvals needed for a change. A typical example might include a negative declaration and a planned development rezoning/development plan.
2. Outline the requisite planning approval steps, including concurrent steps. The above example might result in a phase one processing of the negative declaration concurrent with the planned development rezoning, while phase two consists of the development plan.
3. Create a realistic timeline that includes marketing the property, preparing a feasibility study to assess the site's developmental potential, executing the land acquisition or contingency agreement, if needed, preparing the planning application documents, completing the local jurisdiction's environmental review and planning application approval processes, and if necessary, allocating time for an appeal.



Getting the local jurisdiction to approve the proposed rezoning is dependent on many variables. The efficiency of the local planning process along with the type and extent of planning regulations will directly impact the amount of time necessary to achieve approval of the highest and best use.

Other Time-Related Influences

In determining the reasonably near future, another consideration is the amount of time required for a property to become physically developable with regard to surrounding infrastructure and other public services, and the extent to which this may affect its market value. These conditions mostly involve land areas that are in a state of transition, such as open space, agricultural land and blighted areas where future development or redevelopment is anticipated, but where adequate infrastructure does not presently exist. This typically occurs in both fast-growing communities that are not able to keep up with their growth in terms of infrastructure, and in deteriorated or underdeveloped areas that are right for redevelopment. In these cases, development may not be approvable by the local jurisdiction until area-wide public improvements are either financed or completed. Necessary improvements might include the expansion of public streets, water and sewer mains and storm water drainage facilities. In some cases, these obstacles can be overcome if the property owner is willing to front the cost or if other funding mechanisms can be established.

Similarly, sites that are otherwise suitable for rezoning to a higher use but which are located within a flood zone may be blocked until area-wide flood control improvements are in place. This may require that a long-term flood control project be completed prior to any further development. This condition may also result in a development moratorium until it can be adequately mitigated. A similar situation can arise if large-scale landslide conditions exist, in which case a geological hazard abatement district needs to be formed and implemented before land within it can be up-zoned.

Other physical conditions that impact timing involve jurisdictions that are experiencing difficulty in keeping up with their rate of growth. If the area is facing an impending shortage of water or wastewater treatment capacity, the jurisdiction may be forced to establish a moratorium on development that can significantly impact the site's potential.

Market Value Potential

Local land use planning plays a major role in determining the amount of time needed to attain the highest and best use case scenario. The type and extent of planning regulations imposed by local jurisdictions

will have a direct impact on the amount of time necessary for the review of planning applications.

The reasonably near future needs to take into account the amount of time needed for a property to become physically developable with regard to land use approvals and the availability of infrastructure, and the extent to which this may affect its market value.

If the amount of time required to overcome the local planning process and the various off-site infrastructure needs or other conditions is generally routine and predictable (based on credible and reasonable evidence), and does not create such a cloud on the property as to preclude investment for future development of the highest and best use scenario, then it should be considered to be developable within the reasonably near future. However, if these conditions prove to be either too unclear or substantial enough, they can postpone the potential for development so far into the future that they cloud the issue of highest and best use. In this situation, the land would not be considered developable with the highest and best use case scenario in the reasonably near future.



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