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# Can an appraiser use comparable sales that closed after the effective date of value?



## Brian's Answer:

Yes. But it is possible that a state has a law precluding the use. However, I have yet to see one. If you know a state that precludes them, please let us know at [ask@NRWRA.com](mailto:ask@NRWRA.com), and we will post a list of those.

Before we dive in and get to David's answer, you will need to understand what "report date" and "effective date" mean:

1. **Report Date** (or date of report) is the date that the report is sent/transmitted to the client. Don't use "signature date" or "date of appraisal." The report date is simply a function of when the work is complete and sent to the client.
2. **Effective Date** is defined by USPAP as the date to which an appraiser's analyses, opinions and conclusions apply — also referred to as "date of value." The effective date can be months, years or decades before the report date (retrospective) or after the report date (prospective). Effective date is determined by the intended use and/or the intended user of the report.

Example: Appraiser X sent his appraisal report to the client on April 21, 2023. The appraisal report had an intended use of developing and reporting an opinion of value of the subject property as it was and given the market conditions on August 15, 2020. Therefore, the date of report is April 21, 2023, and the effective date is August 15, 2020.

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Together, they are the authors behind *Ask an Appraisal Reviewer*.



## David's Answer:

This is a burning question that comes up frequently. The answer is, usually, "Yes. They can!"

Let me first address the issue from a pure appraisal standpoint, without concern for legal standards or issues specific to right of way and infrastructure appraisal. In this case, the answer is clearly YES, one can use them. Comparable sales are simply evidence of value, they do not create it. The appraisal literature does not preclude their use. The Uniform Standards of Professional Appraisal Practice (USPAP) addresses the issues in Advisory Opinion 34. While Advisory Opinions are not binding standards, they offer important guidance.

From USPAP Advisory Opinion 34 (lines 38 to 45): *"A retrospective appraisal is complicated by the fact that the appraiser already knows what occurred in the market after the effective date of the appraisal. Data subsequent to the effective date may be considered in developing the retrospective value as a confirmation of trends that would reasonably be considered by a buyer or seller as of that date. The appraiser should determine a logical cut-off for the data to be used in the analysis because at some point distant from the effective date, the subsequent data will no longer provide an accurate representation of market conditions as of the effective date. This is a difficult determination to make. Studying market conditions as of the date of the appraisal assist the appraiser judging where to make this cut-off. With market evidence that data subsequent to the date was consistent with market expectations as of the effective date, subsequent data should be used."* USPAP also addresses this issue in FAQ 161.

The Appraisal of Real Estate, 15th Edition, as published by the Appraisal Institute (Chicago 2020) discusses retrospective appraisals on Page 387: "Appraisers must also recognize that the sale of a property may be negotiated months or even years before the sale closes. The buyer and the seller make an agreement as of the contract date, but the agreement does not become effective until the closing date."

The basic conclusion here is that adjustments for changes in market conditions may be required whether or not a sale occurs before or after the effective date of value, and that it is appropriate to use a sale so long as there have not been changes in market conditions so significant as to render the sale irrelevant. This can be true with sales that occur before or after the effective date of value. One should also note that sales that close after the effective date of value may have been negotiated before and/or have been pending as of the effective date of value.

There are a few complications when said appraisals are performed for right of way acquisition, however. These include case law in various jurisdictions that address later sales as well as project influence. This latter issue is addressed succinctly in the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA), commonly what is called the "Yellow Book." UASFLA Section 4.4.2.4.7 (*sales after the date of valuation*) states: *"Sales that occur after the date of value may be considered if they are not otherwise incompetent as evidence of value. In the words of the 11th Circuit: 'while post-acquisition sales are not automatically appropriate evidence of comparable value neither are they automatically inappropriate.' But post-acquisition sales may be tainted by government project influence and reflect elements of value that cannot be considered under the scope of the project rule. As a result, before considering such sales the appraiser must analyze whether the sales are tainted and how much the taint distorts true market value..."*

UASFLA goes on to state (in bold) that *"Sales after the date of valuation may be considered if they are reliable indicators of value. Post-acquisition sales may be particularly useful in valuing the remaining property in partial acquisitions."*

In other words, sales after the date of value are permitted for application to the before value if they do not violate the project influence rule. Of course, that concern is not restricted to post valuation date sales as sales that occur before the effective date of value can also be influenced by the pending project. Sales that occur after the taking are useful in determining the after value where the impact of the project is considered (particularly an actual sale of the subject after the taking).

Of course, certain jurisdictions (or even individual judges) may have a different idea. While there is no time here to discuss the law in 50+ different jurisdictions, my research indicates that many have no restriction on using these sales (Alabama, Georgia, Idaho, Michigan and Tennessee are examples). Virginia allows said sales but requires specific attention as to whether there is project influence. Indiana has case law that addresses this issue and limits it. *Gradison v. State* (Supreme Court of Indiana August 14, 1973) states: "post-taking sales are admissible to prove the actual value of the remainder area. But where the sale price reflects important enhancement of value because of the building of the project which has prompted taking, the sale is not admissible." And, "evidence of sales made subsequent to the taking are not admissible unless made almost simultaneously with the taking."

While these post-valuation date sales can clearly be appropriate in most cases, the simple answer for right of way acquisition appraisals is "Ask your local review appraiser!" 🌟



Have a burning question about appraisal review or appraisal? Ask an Appraisal Reviewer is open for questions or topics to tackle! Reach out to [ask@NRWRA.com](mailto:ask@NRWRA.com) to submit your question today.