APPRAISING SEX IN TEXAS

Market-value Secondary Effects: A Survey Of Texas Appraisers

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Agenda

- Types of Sex Businesses – Sex 101
- Intro to Secondary Effects
- Negative Effects on Property Values
- Results of Appraiser Survey
- Tips: Legislative record
- Tips: Zoning Ordinance
- Tips: Licensing Ordinance
So How Big is the Businesses of Sex?

- BIG business …
  - Probably at least 15 percent of all video rentals
- Led technology revolution …
  - VCRs and ultimate victory for VHS format
  - Movement of graphics on Internet
TYPES OF SEX BUSINESSES
How Many Types of Sex Businesses are There??

- Answer .... LOTS!!
More specifically, there are … two types

<table>
<thead>
<tr>
<th>Retail Businesses</th>
<th>On-Site Entertainment</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Business with a small amount of “adult” material</td>
<td>• Video viewing booths</td>
</tr>
<tr>
<td>• Businesses with “backrooms”</td>
<td>• Adult theaters</td>
</tr>
<tr>
<td>• Sex shops</td>
<td>• Adult cabarets</td>
</tr>
<tr>
<td>• XXX media stores</td>
<td>• Dancers in a box</td>
</tr>
<tr>
<td></td>
<td>• Lap dancing</td>
</tr>
<tr>
<td></td>
<td>• Massage parlors</td>
</tr>
<tr>
<td></td>
<td>• Lingerie modeling</td>
</tr>
<tr>
<td></td>
<td>• Nude photography</td>
</tr>
</tbody>
</table>
Retail – With Some Material

- Many book and video stores have at least some material that meets definition of “adult” material

- Pose no adult-use problems
Retail – With Backrooms

- Mainstream stores with large backrooms - most of it hard-core
- If backroom access limited, these stores also have little impact
Retail – Sex Shop

- Sex shops
  - Cater to women
  - Bachelorette parties
  - Novelties … “marital aides”
Retail – Percentage Stores

- Percentage stores
  - “Significant and substantial portion” --- “10 - 50 %”
  - Marginal inventory of old books, t-shirts, pencils, etc.
Retail – XXX Media Stores

- Large % or entire merchandise adult-oriented media
- Advertise as adult store
- Pose problems in communities if unregulated
On-Site Entertainment

- On-site entertainment has much higher impact than retail stores
- Example … Difference between a liquor store and a bar
On-Site – Video Viewing Booths

- Termed “masturbation booths” and often facilitate anonymous sex
- Video Booths vs. “Media Rooms” – 1 seat vs. 11 seats
- In 1970’s …probably protected by 1st Amendment
- Now … many OTHER times/places/manner outlets
On-Site – Adult Theaters

- Structure is the “medium”
- Often operated with video viewing booths, retail store or live entertainment
- Shrinking part of adult market
On-Site – Cabarets (Live Entertainment)

- High-impact use
- Interaction between customers and performers – lap dancing and VIP Rooms
- Typically called …
  - Strip club
  - Gentlemen’s club
  - Adult cabaret, etc.
On-Site – Modeling (Live Entertainment)

- Lingerie and photography modeling
- Encourages one-on-one interactions with customers in a variety of settings
On-Site – Massage Parlors (Live Entertainment)

- Allows direct contact between customer and performer, usually in private room
- Massage providers NOT certified massage therapists
SECONDARY EFFECTS
Secondary Effects Doctrine

- Underlying principle for secondary effects doctrine:
  - Show non-censorial purpose for adopting regulations
- Regulations should be based on …
  - Adequate record of negative secondary effects treated as “content neutral” and subject only to intermediate scrutiny
- Otherwise subject to strict scrutiny and reversal of presumption of validity
Types of Secondary Effects

- Measurable secondary effects include
  - Impact on property values *(Our Focus)*
  - Impact on crime rates *(McCleary Presentation)*

- Legislative Record should include:
  - Evidence that sex businesses cause “negative secondary effects”
  - Explanation of HOW the ordinance will limit or mitigate these effects
Measuring Secondary Effects on Property Values

- Paired Neighborhood Studies
  - Comparing assessed valuations by neighborhood
- “Trending”
  - Comparing assessed valuations near sex businesses with trends in community in general
- Sales
  - Comparisons of actual sales
- Survey of appraisers
  - Impact on market-values
Problems ... Comparing Sales or Assessed Values

- ALWAYS differences between neighborhoods
  - Socio-economic differences
  - Other NEGATIVE impacts such as junk yard, pawn shop, homeless shelter, liquor store, etc.
  - Other POSITIVE land uses such as park, school, religious institutions, etc.
- Comparing relatively small area (area around sex business) to large area (whole community) creates issues of scale and sample size
- Sales ... without information comparing actual characteristics of properties selling such studies are completely unreliable
Survey of Appraisers … Preferred Option

- Why?
  - Most real estate transactions close with a loan
  - Loan value directly affects purchase price
  - Appraisers’ opinions thus become self-fulfilling prophecies
  - Public officials more likely to be familiar with opinions of appraisers than with complex statistical models, laying foundation for “reasonable belief” that evidence shows negative secondary effects
Appraiser Surveys in the Courts

- Two major decisions citing favorably use of surveys of appraisers as evidence
- Hint … “Tips” at end of presentation – survey alone will not save unconstitutional ordinance
SURVEY RESULTS
The Texas Survey

- Survey sent to Texas appraisers (MAI and SRA) who are members of the Appraisal Institute
- Sent electronically, with multiple follow-ups
- Sent with cover e-mail from an Appraisal Institute member
- Designed to hide real purpose of survey – asked about both positive and negative effects and included traditionally negative and positive land uses
If located **within 500 feet**, how would the listed land use potentially affect the market value of a **Single-Family Home**?

<table>
<thead>
<tr>
<th>Land Use</th>
<th>Negative</th>
<th>Positive</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adult Media &amp; Video Store (retail sales)</td>
<td>97.3</td>
<td>.5</td>
<td>.5</td>
</tr>
<tr>
<td>Gentleman’s Club/Strip Club</td>
<td>96.2</td>
<td>0.0</td>
<td>1.6</td>
</tr>
<tr>
<td>Video Peep Booth Business</td>
<td>95.7</td>
<td>1.1</td>
<td>1.1</td>
</tr>
<tr>
<td>Landfill</td>
<td>95.7</td>
<td>1.1</td>
<td>1.6</td>
</tr>
<tr>
<td>Homeless Shelter</td>
<td>95.1</td>
<td>1.6</td>
<td>1.1</td>
</tr>
<tr>
<td>Lounge (with live entertainment)</td>
<td>92.4</td>
<td>.5</td>
<td>3.2</td>
</tr>
<tr>
<td>Lingerie &amp; Adult Novelties Store</td>
<td>91.8</td>
<td>1.1</td>
<td>4.9</td>
</tr>
<tr>
<td>Bar (no live entertainment)</td>
<td>87.6</td>
<td>0.0</td>
<td>10.8</td>
</tr>
<tr>
<td>Pawn Shop</td>
<td>81.4</td>
<td>1.1</td>
<td>14.2</td>
</tr>
<tr>
<td>Package Liquor Store</td>
<td>79.2</td>
<td>1.6</td>
<td>15.8</td>
</tr>
</tbody>
</table>

Note: Table abbreviated from the original *Survey of Texas Appraisers* report.
**Question:** At what **distance** would there be **No Measurable Impact** on the Single-Family Home’s **market value**?

<table>
<thead>
<tr>
<th>Land Use</th>
<th>500 ft to ¼ mile</th>
<th>¼ mile to ½ mile</th>
<th>More than ½ mile</th>
</tr>
</thead>
<tbody>
<tr>
<td>Landfill</td>
<td>2.2</td>
<td>4.4</td>
<td>83.5</td>
</tr>
<tr>
<td>Video Peep Booth Business</td>
<td>2.2</td>
<td>6.6</td>
<td>81.8</td>
</tr>
<tr>
<td>Gentleman’s Club/Strip Club</td>
<td>3.3</td>
<td>7.7</td>
<td>78.7</td>
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<tr>
<td>Homeless Shelter</td>
<td>3.8</td>
<td>9.9</td>
<td>77.5</td>
</tr>
<tr>
<td>Lingerie &amp; Adult Novelties Store</td>
<td>3.3</td>
<td>9.8</td>
<td>76.1</td>
</tr>
<tr>
<td>Adult Media &amp; Video Store (retail sales)</td>
<td>3.3</td>
<td>14.7</td>
<td>71.7</td>
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<tr>
<td>Lounge (with live entertainment)</td>
<td>4.4</td>
<td>15.4</td>
<td>70.9</td>
</tr>
<tr>
<td>Pawn Shop</td>
<td>6.7</td>
<td>21.1</td>
<td>60.0</td>
</tr>
<tr>
<td>Package Liquor Store</td>
<td>7.8</td>
<td>20.0</td>
<td>57.8</td>
</tr>
<tr>
<td>Bar (no live entertainment)</td>
<td>8.7</td>
<td>24.5</td>
<td>56.0</td>
</tr>
</tbody>
</table>

**Note:** Table abbreviated from the original *Survey of Texas Appraisers* report.
If located **within 500 feet**, how would the listed land use potentially affect the market value of a Community Shopping Center?

<table>
<thead>
<tr>
<th>Land Use</th>
<th>Negative</th>
<th>Positive</th>
<th>No Impact</th>
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</thead>
<tbody>
<tr>
<td>Landfill</td>
<td>84.7</td>
<td>1.1</td>
<td>9.8</td>
</tr>
<tr>
<td>Video Peep Booth Business</td>
<td>82.8</td>
<td>0.0</td>
<td>13.4</td>
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<tr>
<td>Homeless Shelter</td>
<td>80.1</td>
<td>1.1</td>
<td>16.1</td>
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<tr>
<td>Gentleman’s Club/Strip Club</td>
<td>79.6</td>
<td>0.0</td>
<td>16.7</td>
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<tr>
<td>Adult Media &amp; Video Store (retail sales)</td>
<td>76.6</td>
<td>0.5</td>
<td>19.7</td>
</tr>
<tr>
<td>Lingerie &amp; Adult Novelties Store</td>
<td>64.5</td>
<td>1.1</td>
<td>30.6</td>
</tr>
<tr>
<td>Lounge (with live entertainment)</td>
<td>41.9</td>
<td>4.8</td>
<td>48.4</td>
</tr>
<tr>
<td>Package Liquor Store</td>
<td>35.7</td>
<td>2.7</td>
<td>56.2</td>
</tr>
<tr>
<td>Bar (no live entertainment)</td>
<td>30.3</td>
<td>4.8</td>
<td>60.6</td>
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Note: Table abbreviated from the original *Survey of Texas Appraisers* report.
At what distance would there be **No Measurable Impact** on the **Community Shopping Center’s** market value?

<table>
<thead>
<tr>
<th>Land Use</th>
<th>500 ft to ¼ mile</th>
<th>¼ mile to ½ mile</th>
<th>More than ½ mile</th>
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<tbody>
<tr>
<td>Video Peep Booth Business</td>
<td>9.6</td>
<td>12.4</td>
<td>63.3</td>
</tr>
<tr>
<td>Landfill</td>
<td>4.0</td>
<td>15.3</td>
<td>62.7</td>
</tr>
<tr>
<td>Homeless Shelter</td>
<td>8.0</td>
<td>20.0</td>
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<tr>
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<td>8.4</td>
<td>25.7</td>
<td>49.7</td>
</tr>
<tr>
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<td>10.4</td>
<td>23.6</td>
<td>48.4</td>
</tr>
<tr>
<td>Lingerie &amp; Adult Novelties Store</td>
<td>14.3</td>
<td>18.3</td>
<td>44.6</td>
</tr>
<tr>
<td>Lounge (with live entertainment)</td>
<td>15.9</td>
<td>21.8</td>
<td>34.7</td>
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<tr>
<td>Bar (no live entertainment)</td>
<td>24.9</td>
<td>17.2</td>
<td>28.4</td>
</tr>
</tbody>
</table>

Note: Table abbreviated from the original *Survey of Texas Appraisers* report.
Would a **concentration** (2 or more uses within a couple of blocks) have **additional impact** on the market value of a **Single Family Home** or **Community Shopping Center**?

<table>
<thead>
<tr>
<th>Concentration of Land Uses</th>
<th>Added Impact on Single-Family</th>
<th>Added Impact on Shopping Center</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gentleman’s Club/Strip Club</td>
<td>89.3</td>
<td>73.4</td>
</tr>
<tr>
<td>Adult Media &amp; Video Store (retail sales)</td>
<td>88.3</td>
<td>74.0</td>
</tr>
<tr>
<td>Video Peep Booth Business</td>
<td>87.2</td>
<td>75.6</td>
</tr>
<tr>
<td>Homeless Shelter</td>
<td>84.4</td>
<td>72.3</td>
</tr>
<tr>
<td>Lounge (with live entertainment)</td>
<td>81.6</td>
<td>43.9</td>
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<tr>
<td>Lingerie &amp; Adult Novelties Store</td>
<td>80.8</td>
<td>61.0</td>
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<td>64.8</td>
<td>37.6</td>
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Survey Findings
Impact on Single Family

- 91%+ of surveyed appraisers believe adult businesses have a negative effect on market value of a single-family home if within 500 feet
- 71%+ believe negative effects do not disappear until … at least a half mile or more
- 80%+ believe a concentration of sexually oriented businesses increases the negative effect
Survey Findings
Impact on Community Shopping Center

- 64%+ of surveyed appraisers believe adult businesses have a negative effect on the market value of a community shopping center if within 500 feet.
- 63%+ believe negative effects do not disappear until at least a quarter of a mile or more (impact of video peep booths did not disappear until a half mile or more).
- 61%+ believe a concentration of sexually oriented businesses increases the negative effect.
Survey Findings Operations & Image

- 89%+ of surveyed appraisers believe having a retail business open after 11 p.m. sometimes has a negative effect on the market value of a single-family home located within 500 feet.
- 94% believe “bright, animated, or garish lighting or graphics” may increase the negative impact on the market value of a single-family home (45% responded “always” and 49% responded “sometimes”);
  - Note that findings related to lighting, signage and operating hours were not limited to sexually oriented businesses.
TIPS FOR REGULATING
Tips – Legislative Record

- Include our study and McCleary’s in record
- Include other RELEVANT studies in record
- Provide public officials with objective SUMMARY of studies
- Have someone go through summary at public hearing, referring to specific pages (have officials open report)
Use testimony, even if anecdotal, to relate studies in record to local situation
- Police testimony on specific issues at establishment
- Neighbor testimony about specific issues
- If practicable, Realtor or individual testimony on problems selling property

Draft detailed findings
- Tying national findings to local situation
- Weaving in local evidence
- Tying ordinance provisions to secondary effects
Tips – First Amendment

- Clearly protected by the First Amendment
  - Books, videos, movies, magazines, other media
  - Movie theaters (the use is the medium)
  - Erotic dance
- Not protected
  - Massage (but see later comments)
  - Lingerie modeling
  - Private nude photo sessions
Tips – Zoning

- **Basics**
  - Designate districts where adult use allowed
    - Protected businesses must be allowed BY RIGHT in some locations
  - Require separation from sensitive uses such as residences, houses of worship, parks, schools
  - Require separation between sex businesses
  - May include some basic lighting and design standards (if no licensing ordinance planned)
Tips – Zoning (2)

- Uses to consider not permitting
  - Bans on video arcades, viewing booths
  - Bans on performance in “back rooms”
  - Bans on lap dancing
- Subject to litigation (but with local governments largely winning)
For mixed-product retail stores:

- Use fixed percentages, not “substantial”
- Apply percentage to items in inventory AND to floor area (either/or) – NOT sales (too hard to police)
- Consider a less-regulated category for retail with modest inventory (less than 30%)
  - Require access-controlled and monitored back room
- Create self-identified category for retail that “holds itself out as ‘adult, sexually oriented, XXX’ or similar”
  - Regulate as sexually oriented business
Separations from sensitive uses

- Can defend separations of 1,500 feet or more based on effects on property values
- BUT in most communities, “strip commercial” may make it necessary to drop to 500 to 700 feet to ensure that there are available sites
Tips – Licensing

- Essential way to control OPERATIONS
  - ON premises activity
  - Cleanliness of premises
  - Lighting of premises
  - Monitoring of customer areas
  - Monitoring management personnel
- BUT complex and expensive to implement, so may not be worthwhile in jurisdiction with only two or three such businesses
Tips – Licensing (2)

- Licensing primarily for establishments with on-premise entertainment
- GOAL is to motivate owners to enforce law OR face loss of business opportunity
- License establishments and require licensed manager on duty during all open hours
- License managers
- OK to license entertainers but does not accomplish much – lot of dancers out there
Must have objective criteria
Process must be administrative
Do not use public hearings – cannot consider public opposition and just creates frustration to hear it
Need tight timelines – maximum 90 days from receipt of complete application
Return incomplete applications promptly, with checklist of omissions
Tips – Licensing (4)

- If review agency (building, fire, health) fails to respond within time, must be deemed to have approved.
- On renewals, allow old license to remain in effect until renewal process (including appeals) complete.
- Include administrative appeal process.
- Provide easy method to terminate process and get to court.
Remember …

- If you’ve only seen one sex business you have NOT seen them all …
- And you should not regulate them as though you have
Final Decision

- Do what works BEST for YOUR community!