

LandThink, #12
December 27, 2008

(This is the seventh in a series on issues raised by a purchase-offer contract.)

Asking price: To set or not to set

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In earlier articles, I've discussed the ways that sellers approach determining the value of their sale property and some of the strategies sellers use in setting an asking price. A few FSBO sellers frame this question differently. They ask: Am I more advantaged in the current market by setting an asking price or by saying to all buyers, "Make me an offer."?

Conventional negotiating wisdom argues that whichever side first proposes a price consigns itself to the weaker position. With property listed with a broker, sellers always set a listing (asking) price and terms. If conventional wisdom is true, this means that buyers are always advantaged by having the seller declare a proposed gross sales price. I have seen non-real-estate negotiations where the conventional wisdom held true...and others where it didn't.

Parties often negotiate over the value of a service or a one-time purchase of a right, like an easement. Whichever party most values what is at issue between them might be better off letting the other side to mention price first, but not always.

Two easement negotiations come to mind. In the first, I needed an underground easement to cross a neighbor's property to hook up a development's water and sewerage lines with the closest town lines. My alternative to a negotiated agreement with the neighbor was to connect at more distant points and install a sewage pump in the project. I valued the easement highly.

The neighbor following conventional wisdom refused to name his price. So I offered \$1,000, which he doubled. I "reluctantly" agreed. My alternative would have cost \$15,000 to \$20,000, and not been as good. In that instance, I, the buyer, was advantaged by naming the first price, which was set very low in comparison to what it was worth. In another example, a partner and I had just bought a timber-heavy but landlocked parcel. A logging road accessed the property and had been used before, but it was not a deeded right of way. I told my partner to visit the neighbor over whose land the road crossed and spread five new \$100 bills out on the kitchen table. We wanted a one-time use of the road and were prepared to put it back to its original condition after we were done. To this seller, we were offering a \$500 windfall. We were, of course, prepared to pay more. Again, we were the first to propose price in an instance where we valued the object of negotiation highly.

With the pipe easement, I deliberately offered a low-ball price, because I knew how the seller's mind worked. With the logging road, we offered a more-than-fair price, which we felt the seller would also understand as more than fair. Different circumstances require

different tactics. In both cases, the first to offer a price -- in each case, the buyer -- got what was wanted at an acceptable price.

With real-estate sales, I have rarely found that sellers who set an asking price are disadvantaged in bargaining over the sale of their property. If the conventional negotiating wisdom had proved itself in the field over time, why would brokers have sellers list properties with asking prices?

A small twist that is not uncommon is for a seller -- either broker or FSBO -- to advertise a property with the exhortation, "Call for a price." I find this annoying and discourages my interest. I can't remember the last time I called for a price. I assume such properties are overpriced, but I may be totally mistaken. Of course, some buyers do call for prices, otherwise why would sellers continue to use this tactic?

Large tracts of land are often put up for sale on the basis of "Make me an offer."

Sometimes this is simply a way for a seller to get a good-faith buyer to give him an idea of current market value without going to the trouble of listing the property or getting it appraised.

The seller places the burden and expense of determining current value squarely on the buyer. From my perspective, that is exactly the right location for this burden...because it ultimately protects the buyer to do this research.

Sellers also use this approach as a way of getting a snapshot of reality in a rapidly appreciating or depreciating market where comps-based appraisals won't be current.

The buyer's unaccepted offer may be the floor price a seller is looking for on which he builds a higher asking price shortly thereafter.

I think legitimate able-and-willing buyers are often discouraged by a large-tract seller who won't price what he's selling. These buyers face time, effort and expense with no guarantee that the offer they produce is in the right ball park.

On the other hand, a buyer can take this opportunity to price the property properly-- on the basis of what it's worth to him, given the property's liabilities and assets and in light of his own resources and plans. The offering price can then be thoroughly supported, and the documentation shown to the seller as a way to center negotiations on the buyer's valuation.

In a market that's moving down fast, a seller should pay careful attention to a "low" offer from a buyer who's done his due diligence. While the offer may be less than the seller paid at the top of the now-vanished bubble, it has credibility to the extent that the buyer has done his homework and is absolutely transparent about his research. In such circumstances, a buyer putting the first number on the table can work it to his advantage, since he's established the pivot price for negotiations. The buyer says to this seller: "I know you paid more for this property and want more than I'm offering, but this is what your property is worth today." The buyer has facts on his side; the seller has hopes.

A buyer in this situation should determine what the seller paid for the property, tax-assessed value and the motive for the seller's need to sell in an unfavorable market. He can present his "low" offer as a take-it-or-leave-it proposition, based on the fact that his research has now established the true value of the property, which the seller had declined to do.

The better way to proceed may be to propose a "low" price with some flexibility in terms and package it with bargaining chips that are intended to be conceded.

The downside of “playing” with a large-tract, “Make-me-an-offer” seller is that a buyer may spend the time and money to work up a price proposal that is not in the seller’s ballpark. Still, all buyers who offer what a property is worth to them assume this risk. It’s only the buyers who anchor their offering price in terms of the seller’s listing price that free themselves of this risk...by assuming the much greater risk of overpaying.

When I’ve faced a “Make-me-an-offer” seller, I’ve looked at it as an opportunity. The seller, I feel, doesn’t know what the market price is of his property in a changing market. He’s unwilling to put an asking price on it and he’s also unwilling to say something like, “Best offer over \$x.”

I’ve been willing to work up a preliminary idea of its value to me and then run the idea of price in general terms by the seller. That limits my investment in due-diligence, and I’m transparent about the level of analysis I’ve used to suggest a price. Maybe I could go up if additional evidence suggests additional value, but it might also work the other way, I say to the seller.

In a market where price is softening rapidly, sellers tend to price either too low because they are fatalists or too high because they are desperate.

I feel that it’s always up to the buyer to set the first price regardless of whether the seller has come up with an asking price. The buyer’s price must always be based on research that will convince an unbiased observer. If it doesn’t convince the biased seller to negotiate, the buyer needs to tell the seller that he is moving on to the next opportunity...and then do so.