



INTERIOR BOARD OF INDIAN APPEALS

Wapato Orchard Partnership v. Portland Area Director, Bureau of Indian Affairs

18 IBIA 254 (04/24/1990)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

## WAPATO ORCHARD PARTNERSHIP

v.

## PORTLAND AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 90-24-A

Decided April 24, 1990

Appeal from a decision of the Portland Area Director adjusting the rental rate for an orchard lease.

Affirmed.

1. Appraisals--Indians: Lands: Fair Rental Value--Indians: Leases and Permits: Rental Rates

The role of the Board of Indian Appeals in reviewing a Bureau of Indian Affairs determination of fair rental value is to determine whether the decision is reasonable; that is, whether it is supported by law and substantial evidence.

APPEARANCES: Robert A. Motycka, pro se; Colleen Kelley, Esq., Office of the Solicitor, U.S. Department of the Interior, Portland, Oregon, for appellee.

### OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

Appellant Wapato Orchard Partnership seeks review of an October 6, 1989, decision of the Portland Area Director, Bureau of Indian Affairs (BIA; appellee), adjusting the rental rate for farming (orchard) lease 1-0138, Yakima allotment 706 1/2. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

#### Background

Lease No. 1-0138 was entered into on February 17, 1978, with Calhoun Fruit & Produce, Inc. The lease covered 79 acres, more or less, in the E $\frac{1}{2}$  NW $\frac{1}{4}$ , sec. 17, T. 11 N., R. 19 E., Willamette Meridian, Yakima County, Washington. The term of the lease was 25 years, with rental of \$4,680 for the first 6 years, increasing to \$6,840, subject to rental review and adjustment, for the remainder of the lease term. The lessee was required to plant the property to orchard. The lease provided:

#### RENTAL REVIEW

It is understood and agreed this lease, at not less than 5-year intervals, shall be subject to review of the equities involved. Such review shall give consideration to the economic conditions at the time, exclusive of improvements or developments

required by the contract or the contribution value of such improvements.

However, first review will be during the 6th year of the lease which means the rent will be subject to adjustment for payment due 12/1/84 for crop year 1985. Thereafter the rental reviews will be at not less than 5-year intervals.

The lease was assigned to appellant on September 3, 1985.

An appraisal of lease 1-0138 was conducted in May and June 1989 for the purpose of determining whether the rental rate should be adjusted. The appraisal used direct comparisons of rental rates paid for three similar properties. The comparable properties had rental rates ranging from \$133 to \$159 per acre. The appraisal concluded that a rental rate of \$150 per acre for lease 1-0138 was reasonable.

Accordingly, on August 4, 1989, the Superintendent, Yakima Agency, BIA, notified appellant that a rental rate review had been conducted on lease 1-0138. The Superintendent indicated that a review of similar leases supported a rental rate increase of \$2,380, for a total rental of \$10,950, effective for crop year 1990, and payable December 1, 1989.

Appellant timely appealed this rental adjustment to appellee. Appellant indicated his belief that the 27.77 percent increase in rental was excessive, and that the economic conditions in the Yakima Valley did not support any rental increase.

By letter dated October 6, 1989, appellee affirmed the rental rate adjustment. Appellee, noting that the appraisal was reviewed in the Area Office before he issued his decision, stated:

We agree that price levels of open cropland have decreased since the early 1980's. However, the studies made by our appraisers indicate that sale price trends of open cropland do not necessarily correlate with the rental values of these properties. Direct comparison with other lands leased for orchard purposes is the best way to determine current market rent.

The Board received appellant's notice of appeal from this decision on November 9, 1989. Both appellant and appellee filed briefs on appeal.

#### Discussion and Conclusions

[1] The Board has previously ruled that its "role in [rental rate appeals] is to determine whether the adjustment [made by BIA] is reasonable; that is, whether it is supported in law and by substantial evidence. If it is reasonable, the Board will not substitute its judgment for BIA's. It will overturn an adjustment only if it is unreasonable." Navajo Nation v. Acting Deputy Assistant Secretary - Indian Affairs (Operations), 15 IBIA 179, 184, 94 I.D. 172, 175 (1987), and cases cited therein. The Board has also held that the appellant bears the burden of proving that BIA's

adjustment was unreasonable, Fort Berthold Land & Livestock Association v. Aberdeen Area Director, 8 IBIA 230, 246-47, 88 I.D. 315, 324 (1981), and that the analysis of comparable rental values is a reasonable method of determining the fair rental rate, Kelly Oil Co. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 15 IBIA 249 (1987).

Appellant argues that the comparables BIA used are not appropriate because two of them reflect rentals entered into in 1986. There is no requirement that transactions used as comparables in an appraisal must have been entered into within a specific period of time. The Board has previously upheld the use of comparables when the transaction affecting the comparable property was entered into several years before the rental rate adjustment under consideration. See, e.g., Wooding v. Portland Area Director, 9 IBIA 158, 161 (1982). When appropriate, such earlier transactions should be adjusted for time. Cf. Wooding, *supra* (no adjustment for time made), with Kelly Oil Co., *supra* (time adjustment made). BIA's determination that no time adjustment was necessary in this case is supported by the fact that the 1989 comparable used had the highest rental rate.

Appellant also argues that the cost of producing and marketing the crop is a better indication of the actual rental value of its lease. Appellant contends that when the cost of producing and marketing the apples produced from this lease is compared with the price received for the crop, it is apparent that no increase in the rental is justified. <sup>1/</sup> Although appellant might prefer that a methodology other than the one chosen by BIA be used to determine its rent, its task in this appeal is to show that BIA's methodology produced an unreasonable result. It has not done so. Nor has it shown error in BIA's determination that "[d]irect comparison with other lands leased for orchard purposes is the best way to determine current market rent." It has therefore failed to meet its burden of proving that BIA's adjustment was unreasonable.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Portland Area Director's October 6, 1989, decision is affirmed.

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//original signed  
Kathryn A. Lynn  
Chief Administrative Judge

I concur:

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//original signed  
Anita Vogt  
Administrative Judge

<sup>1/</sup> In its notice of appeal, appellant offered to pay an increased rental of \$1,190. This offer was not repeated in either appellant's opening or reply brief, and the Board assumes appellant has withdrawn it.