

THOMAS L. SAWYER

IBLA 88-528

Decided April 18, 1990

Appeal from a decision of the Battle Mountain District Office, Bureau of Land Management, establishing rental for land-use permit N-47831.

Set aside and remanded.

1. Estoppel--Notice: Generally--Regulations: Generally

One who deals with the Government is presumed to know the applicable laws and regulations, and the United States cannot be bound or estopped by an act of its officers or agents if to estop the Government would undermine the correct enforcement of a particular statute or regulation.

2. Appraisals--Federal Land Policy and Management Act of 1976: Permits

An appraisal of fair market rental value will be affirmed unless an appellant either demonstrates error in the appraisal method or presents convincing evidence that the charges are excessive. Generally, it is proper to use the comparable lease appraisal method for determining fair market rental value of nonlinear land use. However, a comparable lease appraisal may be set aside and the case remanded if it appears from the record that the use of the lands designated as comparable significantly differs from the intended use of the subject site.

APPEARANCES: Thomas L. Sawyer, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Thomas L. Sawyer has appealed from a May 4, 1988, decision of the Battle Mountain, Nevada, District Office, Bureau of Land Management (BLM), setting \$100 as the fair market value rental amount for land-use permit N-47831, which was issued pursuant to section 302(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1732(b) (1982), and 43 CFR Subpart 2920.

On October 2, 1987, Sawyer, a research assistant at the University of Nevada, Reno, filed a Notice of Intent with BLM, proposing to investigate geologic structures on Federal land in the NE¼ NW¼, sec. 36, T. 2 S., R. 34 E., Mount Diablo Meridian, Esmeralda County, Nevada. Sawyer sought permission to dig a 10 to 15 meters long and 2 to 2-1/2 meters deep trench on the above-described land with a backhoe to expose fault structures. He outlined his plans to enclose the excavation with a barbed wire fence during the period of examination, and to back-fill and completely reclaim the disturbed area within about 2 months after project approval. In a December 18, 1987, land-use application, Sawyer gave further elaboration, explaining that the exploratory trench would cross a fault zone and indicating that his documentation of the exposed geologic structures would be used in the State of Nevada's evaluation of the proposed high level nuclear waste repository site at Yucca Mountain.

BLM prepared a land report, dated January 15, 1988, to evaluate the suitability of the subject lands for the proposed project. The report recommended that a land-use permit 1/ be granted for a 1-year, nonrenewable term, subject to certain stipulations. 2/ The author also suggested that rental to be charged for the permit be determined by an appraisal, 3/ and noted that 43 CFR 2920.6(b) precluded BLM from seeking reimbursement of costs or charging a monitoring fee. On February 4, 1988, the Tonopah Resource Area Manager issued a record of decision and finding of no significant impact, approving the recommendations contained in the land report as BLM's decision in the matter.

On February 5, 1988, BLM sent Sawyer two original but unsigned copies of land-use permit N-47831 authorizing the requested land use. In its cover letter BLM noted that the permit was subject to the stated terms and conditions, and informed Sawyer that he would be billed for rental as soon as an appraisal had been completed. The cover letter also advised Sawyer to read the permit carefully and, if he agreed with the stipulations, terms, and conditions, to sign and return both originals to BLM. Sawyer signed

1/ The Recommendations section of the land report erroneously characterizes the permit as a right-of-way which would be issued pursuant to Title V of FLPMA, 43 U.S.C. §§ 1761-1771 (1982).

2/ The stipulations called for: (1) adherence to the plan set out in the Notice of Intent (i.e., to fence the open trench and to back-fill it when his research was completed); (2) conducting the proposed operations in a manner which would not interfere with the operation of a Federal Power Commission waterline; (3) protecting the waterline by mounding at least one foot of dirt over it before moving a backhoe or other heavy equipment over it; (4) submittal of a copy of the research results to the Tonopah Resource Area, BLM, Mining Engineer; and (5) notifying the Authorized Officer when his need for the permit ended so that the area could be inspected and the case closed.

3/ The record contains a request for real estate appraisal, dated Jan. 14, 1988, setting out the dimensions of the trench as 50 feet long, 6 feet wide, and up to 9 feet deep, and indicating that the total acreage to be appraised was 0.01 acre. On this basis, the rental equates to \$10,000 per acre per year.

and returned the originals, and BLM issued permit N-47831 with a stated term running from February 17, 1988, to February 16, 1989.

The Battle Mountain District Realty Specialist determined that the fair market rental for the permit was \$100 per year and set out that determination in an appraisal report dated March 30, 1988. The Realty Specialist based her finding on the following analysis:

Data searches in 1984 and 1985 by the Winnemucca BLM District disclosed a total of seven billboard sign leases along Interstate 80, with rentals ranging from \$600 per year to \$150 per year. In addition, the Bureau leases sites near Lovelock and Mill City to private parties; two sites along Interstate 80 rent for \$250 per year. In 1986, the Carson City District leased a billboard site in a more remote area for \$100 per year. Of the above-mentioned sites, only the one renting for \$600 per year is served by electrical power.

The subject permit is in a very remote area, away from paved highways, and public view. Therefore, it is my opinion considering the remote location of the subject, that the Fair Market Rental is \$100 per year as of February 17, 1988, the date of lease issuance.

The Chief, Branch of Appraisal, concurred with this determination. 4/

By decision dated May 4, 1988, the District Manager found the fair market rental value of land-use permit N-47831 to be \$100. Sawyer has appealed from this decision.

In his statement of reasons for appeal, Sawyer raises three issues. First, he argues that, although he had numerous telephone conversations with BLM personnel about the requested land-use permit, he was never told that he would be charged rental for use of the permit area. Next, he states that he was not charged rental for three separate land-use permits he obtained from BLM's Ridgecrest, California, Resource Area Office, noting that the three permits were issued for exactly the same purpose as the subject permit. He stated that the word "exempt" had been typed on the California permits in the blank space in condition 9 used for setting out the rental amount. Sawyer questions BLM's failure to exempt a Nevada State agency, *i.e.*, the University of Nevada, Reno, from BLM rental charges when the BLM makes the exemption in California. He asserts that "the exempt status specified by the BLM in California, sets a precedent which the BLM in Nevada should follow."

4/ The record contains an Apr. 8, 1988, memorandum from the Nevada State Director to the Battle Mountain District Manager concerning three permits, including Sawyer's. The State Director indicated that the \$100 rental per permit was "reasonable for the amount of acreage to be used for drilling purposes. A minimum rental of \$100 helps to cover the administrative cost for issuance of a permit."

Finally, Sawyer argues that the rental assessed by BLM is excessive and does not represent fair market rental value. Sawyer estimates that the total dimensions of the area disturbed by the trench and excavated material would be no larger than 5 meters by 25 meters or 125 square meters. He contends that a \$100 rental charge for 125 square meters extrapolates to an annual per acre rental of \$31,500. ^{5/} Sawyer concludes that \$100 is not fair market rental for the land when the purpose of the permit is considered.

Section 302(b) of FLPMA, 43 U.S.C. § 1732(b) (1982), and its implementing regulations, 43 CFR Subpart 2920, authorize issuance of land-use permits for "[a]ny use not specifically authorized under other laws or regulations and not specifically forbidden by law." 43 CFR 2920.1-1. Section 102(a)(9) of FLPMA, 43 U.S.C. § 1701(a)(9) (1982), establishes the policy of the United States to "receive fair market value of the use of the public lands and their resources unless otherwise provided for by statute." The regulations in 43 CFR Subpart 2920 provide that land-use authorizations granted pursuant to that subpart will be issued only at fair market value and only for uses that conform with BLM plans, policy, objectives, and resource management programs. 43 CFR 2920.0-6. The regulations also state:

Holders of a land use authorization shall pay annually or otherwise as determined by the authorized officer, in advance, a rental as determined by the authorized officer. The rental shall be based either upon the fair market value of the rights authorized in the land use authorization or as determined by competitive bidding. In no case shall the rental be less than fair market value.

43 CFR 2920.8(a)(1).

[1] Sawyer argues that no one in the Battle Mountain District Office, BLM, told him that a rental would be charged for the land-use permit now under review, and implies that BLM's failure to notify him of the rental requirement should preclude BLM from assessing rental charges. He further asserts that, because the Ridgecrest Resource Area BLM office considered him exempt from rental payment when it issued similar land-use permits, the Ridgecrest Resource Area determination should be binding here. Both arguments (which are essentially estoppel arguments) are without merit.

Estoppel is applicable only when the party asserting the estoppel was ignorant of the true facts. See Stephen G. Moore, 111 IBLA 326, 330 (1989); Terra Resources, Inc., 107 IBLA 10, 13 (1989), and cases cited therein. Although Sawyer claims he had no knowledge that rental would be charged, there are two reasons for rejecting this claim. First, section 102(a)(9) of FLPMA, 43 U.S.C. § 1701(a)(9) (1982), and 43 CFR 2920.0-6 and

^{5/} He bases this figure on his calculation that 125 square meters equals 1/315th of an acre. Because an acre contains 4,840 square yards, 125 square meters actually is closer to 0.031 acre, and, therefore, the per acre rental value according to his calculations is closer to \$3,250.

2920.8(a)(1) call for assessing a charge equal to the fair market rental value for the use of public lands. Parties such as Sawyer, who deal with the Government, are presumed to have knowledge of relevant statutes and duly promulgated regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Stephen G. Moore, supra; Terra Resources, Inc., supra; Venlease I, 99 IBLA 387 (1987); Ward Petroleum Corp., 93 IBLA 267 (1986). Because of this imputed knowledge, Sawyer cannot successfully claim ignorance of material facts. Stephen G. Moore, supra; Terra Resources, Inc., supra; Marion E. Banks, 88 IBLA 341 (1985).

The second reason is that knowledge need not be imputed in this case. Sawyer had actual knowledge that rental would be charged. Condition 9 of the permit required payment of rental "as appraised." In addition, BLM's February 5, 1988, cover letter for the copies of the permit sent to Sawyer for signature specifically stated that Sawyer would "be billed for rental fees once an appraisal has been completed." Thus, Sawyer can hardly argue that he was ignorant of the fact that a rental would be charged when he executed the permits.

Sawyer's argument that the exempt determination made by the Ridge-crest Resource Area BLM office establishes controlling precedent also fails. Even if all the essential elements of estoppel were present, the United States would not be bound or estopped by the acts of its officers or agents if estopping the Government would undermine the correct enforcement of a particular law or regulation. Emery Mining Corp. v. Secretary of Labor, 744 F.2d 1411, 1416 (10th Cir. 1984); Stephen G. Moore, supra; Jeffery Ranches, Inc., 102 IBLA 379 (1988). Section 102(a)(9) of FLPMA, 43 U.S.C. § 1701(a)(9) (1982), mandates payment of fair market rental unless otherwise provided by statute. Section 302(b) of FLPMA, 43 U.S.C. § 1732(b) (1982), does not provide for any waiver of the rental requirement, and no exemptions from the rental obligation are found in the implementing regulations. ^{6/} Thus, the law clearly requires the payment of fair market rental value for the land-use permit at issue here. Even if Sawyer had established the necessary elements of estoppel, BLM would not be bound by the earlier determinations. BLM properly required Sawyer to pay fair market rental value for permit N-47831 when it issued that permit pursuant to section 302(b) of FLPMA, 43 U.S.C. § 1732(b) (1982).

[2] Our focus now shifts to the question of whether BLM properly determined the fair market rental value for the permit. An appraisal of fair market rental value will be affirmed unless an appellant can either

^{6/} The regulations do authorize an exemption from the reimbursement of costs, including monitoring costs, if the total rental is less than \$250. See 43 CFR 2920.6(b). Title V of FLPMA specifically provides for waiver or reduction of rental for rights-of-way and permits issued under that section. Qualifying Federal, State, and local governments, and agencies and instrumentalities thereof may obtain Title V rights-of-way or permits free of charge. See, e.g., section 504(g) of FLPMA, 43 U.S.C. § 1764(g) (1982), and 43 CFR 2803.1-2(b). However, these provisions do not apply to land-use permits issued pursuant to section 302(b) of FLPMA, 43 U.S.C. § 1732(b) (1982).

demonstrate error in the appraisal method or present convincing evidence that the rental amount is excessive. Lone Pine Television, Inc., 113 IBLA 264 (1990); Gerald L. & Ruby A. Overstreet, 112 IBLA 211, 214 (1989); Lawrence Dupuis, 99 IBLA 174, 176 (1987); Clinton Impson, 83 IBLA 72, 73 (1984). Generally, the comparable lease appraisal method is a proper appraisal method for determining fair market rental value for nonlinear land-use authorizations. Cf. Communications Enterprises, Inc., 105 IBLA 132, 134 (1988); Mallon Oil Co., 104 IBLA 145, 151 (1988); American Telephone & Telegraph Co., 77 IBLA 110 (1983). However, the proposed use of the site is of paramount importance when comparing other transactions to the proposed land use. Mountain States Telephone & Telegraph, 79 IBLA 5, 8-9 (1984); American Telephone & Telegraph, *supra* at 114-15. Therefore, an appraisal based on the comparable lease method may be set aside and the case remanded if it appears from the record that the use of sites designated as comparable differs significantly from the intended use of the subject site. Cf. Communications Enterprises, Inc., *supra* at 135; Clinton Impson, *supra* at 73.

In the March 30, 1988, report, the appraiser used rentals for bill-board sites along an interstate highway as a basis for the fair market rental value of a permit to dig an exploratory trench for documenting geologic structures. After finding that rentals for billboard sites ranged from \$100 to \$600, the appraiser concluded that rental for the subject permit should only be \$100 because it is located in a very remote area, away from paved highways, and public view. However, the appraisal report provides no explanation for its underlying determination that billboard sites are comparable to research sites such as the one at issue here. There are obvious, significant differences between the use of land as a billboard site, with the expectation that investment in the site will result in a profit directly related to the potential for public view, and the use of land to conduct scientific research with absolutely no consideration being given to whether the land is or is not viewed by the public. Having no rational justification for considering these two uses comparable, we find that the differences between the proposed use and the "comparable" use raise considerable doubt about whether BLM's appraisal correctly determined the fair market rental value for the permit. We, therefore, set aside the appraisal and remand the case to BLM for further determination of the fair market rental for permit N-47831.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside, and the case is remanded for action consistent with this opinion.

R. W. Mullen
Administrative Judge

I concur:

James L. Byrnes
Administrative Judge