

Appeal of a decision of the District Manager, Idaho Falls District, Bureau of Land Management, reappraising the annual rental for communication site right-of-way I-20491.

Set aside and remanded.

1. Appraisals--Communication Sites--Federal Land Policy and Management Act of 1976: Rights-of-Way--Rights-of-Way: Appraisals

Under the relevant regulation, the comparable lease method of appraisal is the preferred method for determining the fair market value of a nonlinear right-of-way such as a communication site. Under this method the rentals charged for similar sites in the area are reviewed and adjustments are made for variations in the features of the sites and the rights obtained under the leases. An appraisal based simply on application of the consumer price index to a prior appraisal without any analysis of comparable leases is properly remanded as inconsistent with the regulatory standard.

APPEARANCES: Ron Johnson, General Manager, Pocatello, Idaho.

#### OPINION BY ADMINISTRATIVE JUDGE GRANT

Ron Johnson, General Manager of KSEI, Inc., Pocatello, Idaho, has appealed a May 8, 1989, decision of the District Manager, Idaho Falls District, Bureau of Land Management (BLM), reappraising the annual rental for communication site right-of-way I-20491 at \$1,750 per year. The site is a tract of approximately 10 acres on Howard Mountain, within the SW $\frac{1}{4}$  SW $\frac{1}{4}$ , sec. 29, T. 6 S., R. 34 E., Boise Meridian. The right-of-way was issued on July 9, 1984, to the Pacific Northwest Broadcasting Corporation 1/ for a period of 10 years with an initial annual rental of \$1,500 subject to adjustment based on an appraisal of fair market value.

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1/ It appears from the application for the right-of-way and attachments that KSEI Broadcasters, Inc., was issued a permit by the Federal Communications Commission for construction of an FM radio broadcast station and that Pacific Northwest Broadcasting Corporation owns and operates radio station KSEI.

The notice of appeal was in the form of a letter dated May 22, 1989, directed to the district manager. The letter raised a number of questions about the propriety of the appraisal when contrasted with the annual rental assessed for certain other communication sites. By letter dated May 30, 1989, the district manager responded to appellant's questions and placed a copy of the response in the case file. Prior to addressing the questions, the district manager properly informed Johnson that his letter had initiated an appeal, that the district office no longer had jurisdiction over the case, and that the case file would be forwarded to the Board.

[1] Section 504(g) of the Federal Land Policy and Management Act of 1976 (FLPMA) requires the holder of a right-of-way to pay annually "the fair market value thereof as determined by the Secretary." 43 U.S.C. § 1764(g) (1988). The relevant regulations provide that the rental for nonlinear right-of-way grants such as communication sites is to "be based on either a market survey of comparable rentals, or on a value determination for specific parcels or groups of parcels." 43 CFR 2803.1-2(c)(3)(i).

The market survey of comparable rentals called for by the regulation is similar to the comparable lease method of appraisal which the Board has consistently held to be the preferred method for determining the fair market value of a nonlinear right-of-way, including communication sites. Colorado Interstate Gas Co., 110 IBLA 171, 175-76 (1989); Mountain States Telephone & Telegraph Co., 109 IBLA 142, 145 (1989). Under the comparable lease method, the rentals charged for similar sites in the area are reviewed and adjustments are made for variations in the features of the sites and the rights obtained under the leases. Colorado Interstate Gas Co., *supra* at 176; Mountain States Telephone & Telegraph Co., *supra* at 145; High Country Communications, 105 IBLA 14, 16 (1988). Where BLM has appraised the fair market value of a right-of-way, we have consistently held that such appraisal will not be overturned on appeal unless there is demonstrated error in the appraisal method used or convincing evidence establishes that the appraised value is excessive. An appellant is normally required to submit another appraisal in order to present sufficiently convincing evidence that the rental charges are excessive. High Country Communications, *supra* at 16.

The appraisal report, dated April 26, 1989, on which BLM based its decision to increase the rental for appellant's right-of-way states in relevant part:

Analysis and Conclusions: The subject communication site right-of-way was last appraised as of July 19, 1984. The appraised rental valuation was \$1,500/annum. The site was reinspected on July 10, 1988. The physical condition of the subject site, and the highest and best use of the property, have not changed since the last appraisal. The new rental valuation for the subject communication site right-of-way will be made by applying the Consumer Price Index to the appraised rental of 1984.

The Consumer Price Index is compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics.

Technical notes from the C.P.I. detailed report, February 1984 edition, will be included in the addenda. The publication indicates the steps in calculating the index changes. The July 1988 index is the latest published and will be used in the calculations.

The old rental based on the last appraisal was \* \* \* \$1,500/annum. The new rental based upon the current Consumer Price Index is calculated as follows: The C.P.I. for January 1989 is 121.1. The C.P.I. for July 1984 is 104.1.  $121.1 - 104.1 = 17.00 - 100 = 17\% \times \$1500 = \$255.00 + \$1500 = \$1,750.00$  (Rounded). [2/]

As quoted above, the regulations require the use of a market survey of comparable rentals or a value determination of the specific parcel or group of parcels to establish the fair market rental value of a nonlinear right-of-way. The case file contains BLM's initial appraisal of the site, dated September 14, 1984, which established the fair market rental value of the right-of-way at \$1,500, by examining comparable leases. When the right-of-way was reappraised in 1989, the appraiser did not undertake an additional review of comparable leases but simply applied the CPI to the rental established by the prior appraisal. Implicit in this procedure was an assumption that the fair market rental value of the right-of-way had increased at the same rate as the CPI. We find no evidence in the record to support this assumption.

As stated in the technical notes included with the reappraisal, the CPI "is the measure of the average change in prices over time in a fixed market basket of goods and services." It measures the increase (or decline) in the price of the goods and services surveyed. The fact that the price of those goods and services has changed does not necessarily mean that the price of other goods and services has also changed or has changed by the same percentage as the CPI. Nor does a change in the CPI necessarily mean that the fair market value of a communication site has changed. It is not

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2/ There is no explanation in the record as to why the appraisal states that the July 1988 index was the latest published and would be used in the calculations, but the calculations themselves use a figure for January 1989. We also note that BLM apparently applied the change in the Consumer Price Index (CPI) incorrectly. The technical notes referred to in the reappraisal state: "Movements of the indexes from one month to another are usually expressed as percent changes rather than changes in index points because index point changes are affected by the level of the index in relation to its base period while percent changes are not." The example which appears shows that the percentage change in the CPI is calculated by dividing the amount of the point change in the CPI over the relevant interval of time by the numerical value of the index at the beginning of the interval and multiplying the result by 100 to derive the percent change. Using the numbers in the BLM reappraisal, the correct calculation would be  $121.1 - 104.1 = 17.00$  divided by  $104.1 = .1633 \times 100 = 16.33\%$ .

unlikely that the fair market rental value of appellant's site increased between 1984 and 1989, but whether it did and whether it increased by the same percentage as the CPI is not controlled by the CPI. A survey of comparable leases, as called for by the regulation, might show that communication site rental rates increased at a rate which correlates with the CPI, but the present record contains nothing establishing that such is the case.

Indeed, the technical notes to the CPI suggest that a direct relation between the CPI and the fair market rental value of communication sites might not exist. As its name suggests, the CPI is designed to measure increases in the prices of consumer goods and services. It "is based on prices of food, clothing, shelter, and fuels, transportation fares, charges for doctors' and dentists' services, and other goods and services that people buy for day-to-day living." In contrast, a communication site right-of-way permit would be more appropriately described as a commercial real estate lease. In addition, the CPI is based on information collected in 85 urban areas and represents "a U.S. city average," while most BLM communication site rights-of-way are located in less populated areas of the West. Furthermore, in apparent recognition of variations in price increases in different areas of the country, "[s]eparate indexes are also published by size of city, by region of the country, for cross-classifications of regions and population-size classes, and for 28 local areas."

We do not reject the CPI as irrelevant to a determination of the fair market rental value. FLPMA grants the Secretary broad authority to establish the method for determining the fair market value of rights-of-way. This authority would arguably allow BLM to adopt the CPI as a standard just as it has adopted the Gross National Product Implicit Price Deflator Index for adjustments to rentals for linear rights-of-way. See 43 CFR 2803.1-2(c)(1)(ii). <sup>3/</sup> Further, the CPI has been properly utilized in applying the comparable lease method of appraisal. In Mountain States Telephone & Telegraph Co., 107 IBLA 82, 90 (1989), we upheld use of the CPI to adjust for the elapsed time between the date of the comparable lease transactions and the date of the valuation as part of an appraisal because the evidence in that case supported use of the index. The record before the Board in the present case, however, fails to show a relation between the CPI and the fair market rental value for communication sites which would support application of the CPI to the previously appraised rental rate as a part of the comparable lease method of appraisal. See Joyce Communications, Inc., 111 IBLA 255, 258 (1989); Mountain States Telephone & Telegraph Co., 107 IBLA at 90.

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<sup>3/</sup> The CPI was one of the two alternatives initially proposed by BLM for use in making annual adjustments to the rental rates for linear rights-of-way. 50 FR 2697, 2701 (Jan. 18, 1985). It was rejected prior to issuing proposed rules. 51 FR 31886, 31889 (Sept. 5, 1986); 52 FR 25811, 25814 (July 8, 1987).

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 further action consistent with this decision.

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C. Randall Grant, Jr.  
Administrative Judge

I concur:

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Gail M. Frazier  
Administrative Judge