



INTERIOR BOARD OF INDIAN APPEALS

Thomas R. Kamb v. Acting Northwest Regional Director, Bureau of Indian Affairs;
Linda Clingan and Michael Templeton v. Northwest Regional Director,
Bureau of Indian Affairs

52 IBIA 74 (09/17/2010)

Related Board Case:
60 IBIA 289



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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THOMAS R. KAMB)	Order Vacating Decisions and
Appellant,)	Remanding
)	
v.)	
)	
ACTING NORTHWEST REGIONAL)	
DIRECTOR, BUREAU OF)	
INDIAN AFFAIRS,)	
Appellee.)	
)	
LINDA CLINGAN AND MICHAEL)	Docket Nos. IBIA 08-87-A
TEMPLETON,)	IBIA 08-126-A
Appellants,)	
)	
v.)	
)	
NORTHWEST REGIONAL)	
DIRECTOR, BUREAU OF)	
INDIAN AFFAIRS,)	
Appellee.)	September 17, 2010

Appellant Thomas R. Kamb appeals from a March 21, 2008, decision of the Acting Northwest Regional Director, Bureau of Indian Affairs (BIA);¹ Appellants Linda Clingan and Michael Templeton appeal from a June 30, 2008, decision of the Northwest Regional Director.² Both decisions affirm underlying decisions by the Superintendent of BIA's Puget Sound Agency to adjust the rent on Appellants' respective leaseholds, both of which are located in the Pull and Be Damned area of the Swinomish Reservation in Washington State. Appellants' properties are similar in size and amenities, and the rent on both properties was

¹ Kamb's appeal was initiated by his predecessor-in-interest, Jennifer Bouwens.

² We will refer to both the Acting Northwest Regional Director and the Northwest Regional Director as Regional Director.

increased to the same amount based on the same appraisal. Therefore, the Board consolidates these appeals for the purpose of our decision. We conclude that the Regional Director's decisions must be vacated and remanded for BIA to address an argument raised by Kamb and his predecessor-in-interest concerning unequal rental adjustments in the Pull and Be Damned area and, pursuant to the Regional Director's request, to adjust the effective date of any increase in rent for Kamb and for Clingan and Templeton.

Background

Kamb Lease

On June 1, 2002, Kamb's predecessor-in-interest entered into a 25-year lease, Lease No. 8620 02-27, including an option to renew for an additional 25 years, for Lot 2 of the Dr. Joe Waterfront Tracts, Division I, consisting of 0.15-0.17 acre.³ The property is located in the Pull and Be Damned area on the Swinomish Reservation in Washington State. The lease is a ground lease, i.e., exclusive of improvements, and the initial annual rent was set at \$6,200 plus additional tidelands and administrative fees. The property "has frontage on Saratoga Passage, a portion of Puget Sound, and on the tidelands [with] an expansive and relatively unobstructed marine view to the west." Appraisal Report (AR I, Tab 3, Page 22). The terms of the lease provide that the rental amount

shall be subject to review and adjustment . . . at not less than five-year intervals in accordance with the regulations in 25 CFR 162. Such review shall give consideration to the economic conditions at the time, exclusive of improvements or development required by contract or the contribution value of such improvements.

Lease No. 8620 02-27 at ¶ 7 (AR I, Tab 1, Page 3). Pursuant to the above provision, the rental amount was subject to its first review and adjustment on or after June 1, 2007.

³ Lot 2 is located in Section 3, Township 33 North, Range 2 East, Willamette Meridian, in Skagit County, Washington.

The lease states that the size of the leasehold is 0.15 acre. The appraisal review by the Office of the Special Trustee for American Indians (OST) and the underlying appraisal both show the leasehold to be 7,405 square feet or 0.17 acre. Administrative Record for Docket No. IBIA 08-87-A (AR I), Tab 3, Pages 1, 13, 22. Appellant does not allege that the appraisal is erroneous based on this discrepancy for which reason we do not address it further.

Clingan-Templeton Lease

On December 1, 1997, the predecessor-in-interest of Appellants Clingan and Templeton entered into a 50-year lease, Lease No. 8512, for Lot 53 of the Cobahud Waterfront Tracts,⁴ consisting of 0.15 acre.⁵ The property is also part of the Pull and Be Damned area of the Swinomish Reservation. Like Kamb's lease, it is a ground lease only, and also "has frontage on Saratoga Passage, a portion of the Puget Sound, and on the tidelands [with] an expansive and relatively unobstructed marine view to the west." Appraisal Report at 9 (Administrative Record for Docket No. IBIA 08-126-A (AR II), Tab 10). The annual rent was set at \$5,145 in 1997. In 2006, Clingan and Templeton succeeded to the interest of their predecessor in the subject lease. The terms of their lease provide that on the tenth anniversary of the effective date of the lease, i.e., on December 1, 2007, "[t]he rental shall be adjusted to be equal to the fair market rental value of the leased property, as approved by [BIA]." Lease No. 8512 at 3 (AR II, Tab 11). The lease also provides that the tenth anniversary rent adjustment shall be based on an appraisal provided by BIA or by the lessees, and that an appraisal submitted by the lessees is to be reviewed by BIA.

Facts Common to Both Leases

BIA apparently requested the preparation of appraisals for both leases through OST.⁶ OST contracted with GPA Valuation (GPA) to perform the appraisals, which were both submitted to OST by GPA on or about September 8, 2006. GPA estimated the annual market rent of both leaseholds to be \$12,600. GPA performed an on-site inspection of the leaseholds on August 23, 2006, which is also the effective date of the appraisals. The appraisals appear to be identical for the two properties except for their location. The appraisals state that they were prepared in accordance with the standards and reporting requirements of the Uniform Standards of Professional Appraisal Practice.

⁴ Lot 53 is located in Section 34, Township 34 North, Range 2 East, Willamette Meridian, in Skagit County, Washington.

⁵ The appraisal submitted to the Board by Appellants Clingan and Templeton states the size of their leasehold to be approximately 0.29 acre. *See* Parson Appraisal at 1, 21 (Exhibit E to Appellants' Opening Brief).

⁶ The records received by the Board did not contain a copy of the document(s) requesting the appraisals. The appraisal reports themselves refer to a request from OST for an estimate of market rent for the properties.

Because GPA determined that there were no comparable rentals in the properties' market area, GPA utilized a two-step method for determining the annual market rental value for the leased lands: First, GPA estimated the value of each parcel, if sold as fee simple, unimproved land, using the Sales Comparison Approach.⁷ Using this method, GPA located six comparable properties and, after making adjustments to account for differences in such factors as view amenity and property rights, estimated the fee simple value of Appellants' unimproved leased lands to be \$210,000 each. Next, GPA applied a rate of return to the value of the parcels.⁸ GPA chose a 6% rate of return, which was a lower rate than typically used in establishing rents for industrial lands (GPA found no rates of return for unimproved residential properties). The resulting amount, \$12,600, was the estimated annual market rental value recommended by GPA for each of Appellants' leases.

GPA submitted its appraisals to OST, where an internal review was conducted by an OST appraiser. OST searched the market, and found ten additional comparable properties that sold between November 2003 and June 2006. These properties had "a similar range of value" to the comparables cited in the appraisal report. Appraisal Review Reports at 3 (AR I, Tab 3; AR II, Tab 10). OST compared the sales data from the comparable properties to the subject property using a "qualitative analysis," and determined that the value of the subject properties would be "at or near the low end of the range or \$200,000." *Id.* OST then considered the subject properties' "much smaller size, 50-foot width, and limited access along a narrow one-way road with limited parking." *Id.* OST's reports observed that "[k]nowledgeable real estate professionals interviewed indicated that home sites similar to the subject are purchased for the view quality regardless of site size, shape and amenities." *Id.* Nevertheless, OST concluded that a small 5-10% adjustment range would be appropriate for the market value of the subject properties, and applied a 10% downward adjustment to account for the smaller site size, lot width, and inferior amenities to arrive at a market value of \$180,000 each for the subject properties.

⁷ The Sales Comparison Approach "is based on the principle of substitution, which assumes that a potential purchaser will pay no more for a property than would be expended in acquiring an existing property offering similar amenities and utility." GPA Appraisal Reports (AR I, Tab 3, Page 28; AR II, Tab 10, Page 15).

⁸ The "rate of return" is defined as "[t]he ratio of income or yield to the original investment; the ratio of the current annual net income generated from the operation of an enterprise to the capital investment, the net yield over the duration of the investment." GPA Appraisal Reports (AR I, Tab 3, Page 46; AR II, Tab 10, Page 33).

Turning to the rate of return, OST applied a 5% rate instead of the 6% rate applied by GPA. According to OST, the U.S. Forest Service utilized a 5% rate of return at that time (2007) to establish the rental value for its long-term (20-year) ground leases, which OST believed to be comparable to the subject ground leases.⁹ OST then applied the 5% rate of return to the \$180,000 estimated market value of the subject properties to determine that the appropriate market rental value should be \$9,000 per year, rather than the \$12,600 recommended by GPA. OST forwarded its reviews along with the GPA appraisals to BIA.¹⁰

On December 14, 2007, the Superintendent issued a notice of rent adjustment to Kamb's predecessor-in-interest, informing her that the annual rent would be increased on her leasehold to \$9,000, retroactive to June 1, 2007, and that her bond must be increased accordingly. The notice did not indicate that the increased rent was based on an appraisal. On December 18, 2007, the Superintendent issued a notice of rent adjustment to Clingan and Templeton, informing them that, based on a fair annual rent appraisal, their annual rent would increase to \$9,000, retroactive to December 1, 2007, and advising that their bond must also be increased.

Appeals to the Regional Director

Kamb's predecessor-in-interest and Clingan and Templeton appealed their rent adjustments to the Regional Director. Kamb's predecessor challenged the amount of the increase and also argued that it was impermissible to impose the rental increase retroactively. She further contended that appropriate comparables would be other rental

⁹ OST did not provide the source of its determination that the Forest Service utilizes a 5% rate of return. We presume that the rate derives from 16 U.S.C. § 6206(a).

¹⁰ Apart from the appraisals by GPA, there was no documentation in the record supporting OST's reviews. For example, there was no information concerning the ten additional properties on which the OST appraiser relied nor did OST's "qualitative analysis" appear in the record. OST did not define "qualitative analysis," or explain how it was applied or conducted or calculated. OST states that interviews were conducted of unidentified real estate professionals but the administrative records contain no interview notes. Because we vacate and remand on other grounds, we do not consider this issue further except to note that without at least some supporting documentation, it would be difficult in this case to determine whether it was reasonable for the Regional Director to rely on OST's recommendation, which appears to have been a wholly new appraisal and not just a "review" of GPA's appraisal.

properties in the Pull and Be Damned area and in the nearby community of Shelter Bay. In particular, Kamb's predecessor averred that the property adjacent to hers, leased by P. Person, received a rental adjustment at the same time as she did but to a lesser amount than hers even though both lots are the same size with the same waterfront view. She claimed that her rent had been higher every year for the past 10 years than her similarly situated neighbor. Kamb's predecessor offered to pay a 20% increase in rent or \$7,500 per year.

On March 21, 2008, the Regional Director affirmed the Superintendent's decision to adjust the rent on Kamb's leasehold, effective as of the fifth anniversary of the lease (June 1, 2007). He explained that the rent adjustment is determined by a formal appraisal "based on the application of an appropriate rate of return to the market value of the land (excluding the value of the house or improvements), as of the date of the appraisal." Regional Director's Decision at 5 (AR I, Tab 8). The Regional Director rejected the assertion that the rent adjustment was out of line compared to neighboring properties but did not explain why, except to state that the annual rent for each property in the Pull and Be Damned area "is determined on a case by case basis based on the specific terms of the lease and the unique characteristics of each parcel." Regional Director's Decision at 6 (AR I, Tab 8). He explained that discrepancies in rental amounts can occur because rental adjustments occur no more frequently than every 5 years and because properties are not always on the same 5-year cycle. The Regional Director did not specifically address the Person lease. He rejected the offer of a 20% increase in rent, stating that the "lease provides no option to negotiate or offer alternate amounts of rents." *Id.*

Clingan and Templeton, who had obtained a copy of the GPA appraisal from BIA, argued to the Regional Director that (1) GPA expressly noted that "fee simple property and leased property are not true comparables and that [GPA] is making no representation about the actual value of the leased property," (2) the rate of return (5%) is unrealistic at a time when bank interest rates and 10-year treasury bills are earning 3.5-3.8%, and the "[y]ield on land is often pegged at 2.5%," and (3) the increased rental amount fails to give consideration to the present economic conditions. Statement of Reasons at 3 (AR II, Tab 4).

On June 30, 2008, the Regional Director affirmed the Superintendent's decision to adjust the rent on Clingan's and Templeton's leasehold. He explained that the appraisal was performed by a private, contracted appraisal service and reviewed by the Office of Appraisal Services within OST. He also stated that a limited market exists for sales of trust lands and the characteristics of such sales are not comparable to Appellants' leasehold. He explained that the comparables relied on by GPA and OST were similar in characteristics and that OST relied upon "a low value of comparables" after taking into consideration the

characteristics of the leasehold. Regional Director's Decision at 3 (AR II, Tab 3). With respect to the rate of return, he explained that OST relied on the rate utilized by the Forest Service for its recreational sites.

These appeals to the Board followed. Kamb's predecessor-in-interest submitted an opening brief, after which the parties entered into settlement negotiations. While the parties were negotiating, Kamb purchased his predecessor's interest and succeeded her as the real party in interest in the appeal before the Board.¹¹ After the parties were unable to reach a resolution of the appeal, they completed their briefing.

Clingan and Templeton also engaged in settlement negotiations that were unsuccessful. After negotiations broke down, they filed an opening brief with supporting documentation. The Regional Director filed an answer brief. No reply brief was submitted.

Discussion

We vacate and remand the Regional Director's decisions in both appeals (1) for adjustment of the effective date of any increase in Kamb's as well as Clingan and Templeton's annual rent, and (2) for consideration of Kamb's argument that the Person leasehold is a comparable rental for which the annual rent was adjusted at or about the same time as Appellants' but for a lesser amount. We vacate and remand both appeals on the first ground at the Regional Director's request. As to the second ground, we vacate and remand both appeals because the Regional Director declined to address the merits of Kamb's argument concerning the Person lease, which, given the alleged similarities between all three properties, creates an appearance of arbitrariness and capriciousness in BIA's rent setting procedures. Given our decision to vacate and remand the decision in Kamb's appeal, we also refer Kamb's arguments concerning the appraisal to the Regional Director for his consideration in the first instance.

Our review of the Regional Director's decisions in residential rent adjustment matters is well established. We will not substitute our judgment in place of BIA's, but we will review the Regional Director's decisions to determine whether they are in accordance with applicable law, are supported by the record, and are not arbitrary or capricious. *Strain v. Portland Area Director*, 23 IBIA 114, 118 (1992). The burden of proving that a rental adjustment fails to comport with this standard rests with Appellants. *Id.*

¹¹ The Regional Director's motion to supplement the record to add documents relating to the assignment of the lease is unopposed, and is granted.

With certain exceptions not relevant here, the rental amount for properties leased through BIA shall be the fair market rental value, 25 C.F.R. § 162.604(b), taking into consideration the economic conditions at the time of any rent adjustment, *id.* § 162.607. “Fair annual rental” is defined as “the amount of rental income that a leased tract of Indian land would most probably command in an open and competitive market.” *Id.* § 162.101. The determination of fair market rental value “should be made in accordance with generally accepted appraisal principles.” *Strain*, 23 IBIA at 118 (citing *Navajo Nation v. Acting Deputy Assistant Secretary - Indian Affairs (Operations)*, 15 IBIA 179, 194 (1987)). However, “the determination of ‘fair annual rental’ requires the exercise of judgment and . . . reasonable people may differ in their calculation of ‘fair annual rental.’” *Strain*, 23 IBIA at 117-18.

Both sets of appellants challenge the amount of their rent increases, including the method used to determine fair market rent, and the retroactive effective date. In reliance upon our decision in *Mize v. Northwest Regional Director*, 50 IBIA 61, 65-67 (2009), the Regional Director concedes that the increases in Appellants’ rent should not be retroactive or implemented until Appellants have received notice of the increase. Because the Regional Director concedes this issue, we do not address it further.

We turn now to Appellants’ challenges to their respective rent adjustments. Kamb and his predecessor-in-interest claim that there are several comparable rental properties in the Pull and Be Damned area for which the rent was established or adjusted close in time to Appellants’ rent adjustment but to a lower amount. In particular, Kamb’s predecessor asserted that an adjacent property on Dr. Joe Road, leased to P. Person, “is virtually the same as mine, same size, water access, street access, and grade of lot.” Notice of Appeal; *see also* Statement of Reasons at 3 (AR I, Tab 7) (“our lots are about the same size, both waterfront, and her rent has been considerably lower than mine”). She further asserts that Person’s rent was adjusted at the same time, and that Person’s new rental rate was \$1,000 less than the increase for her leasehold. Letter from Bouwens to the Board, Apr. 28, 2008.¹²

¹² Kamb and his predecessor also mentioned other properties in the Pull and Be Damned area that they claim are “comparable” to their property and for which the rent was set or adjusted at the same time but for much less than their rent. Although Kamb identified two additional properties, one by address and one by the lessee’s name, neither he nor his predecessor provided any details from which we might conclude that the properties are even arguably comparable. Kamb’s predecessor also argued generally that leases in nearby

(continued...)

The Regional Director’s terse, conclusory response to the argument by Kamb’s predecessor was, “[t]he terms of other leases in the neighborhood are irrelevant to the issue here before the Board — whether the . . . Regional Director’s decision adjusting the annual rent to \$9,000 was reasonable.” Answer Brief at 8. This response by the Regional Director misses the point. If an appellant identifies specific properties and shows the properties to be comparable to his property in material respects — e.g., in lot size, topography, community, and view amenity — and if the fair market rent is adjusted or established by BIA at approximately the same time, then the information *is* relevant to the appellant’s rent adjustment. That is, whether the Regional Director is being “reasonable” in his adjustment of rents necessarily includes whether he is consistent — and therefore fair and not arbitrary or capricious — in his assessment of specifically identified, described, and similarly situated properties whose annual rents are under review at the same or nearly the same time.¹³ In this regard, we note that both Kamb’s and Clingan and Templeton’s leaseholds appear to be nearly identical and were treated as such by BIA: They are both located in the Pull and Be Damned area, both are waterfront properties with the same or similar views, and both are the same or nearly the same size. And, Appellants also received the same appraisal, the same review by OST, and ultimately the same rental adjustment within a few months of each other.

Based on the foregoing error, we vacate the Regional Director’s decisions in both appeals and remand them to him for further action consistent herewith. Although Clingan and Templeton did not draw any comparison between their leasehold and rent adjustment and Person’s, we nevertheless remand the Regional Director’s decision in their appeal as well as Kamb’s for consideration of this issue.

¹²(...continued)

Shelter Bay, also on the Swinomish Reservation, are comparable. But, she did not identify or describe any specific leases, and there are “unique circumstances surrounding [the Shelter Bay] development” that may render its leases inappropriate for use as comparables. *See Snellman v. Acting Portland Area Director*, 34 IBIA 79, 80 (1999); *see also Swinomish Tribal Community v. Portland Area Director*, 30 IBIA 13, 14, *recon. denied*, 30 IBIA 89 (1996) (The Swinomish Tribe leased several hundred acres to the Shelter Bay Company; the lessee then developed the property, including a marina, golf course, other amenities, and 866 residential lots that are subleased).

¹³ Of course, if the properties are not comparable — because the property characteristics are demonstrably different — or if the rents were adjusted or established at different points in time, the Regional Director need only explain and document the differing circumstances between the properties.

Ordinarily, the Board does not take notice of the arguments made by one appellant in a separate appeal by another appellant; appellants bear the burden of asserting their own arguments on appeal before the Board. However, the Board has the authority to prevent manifest error or injustice in appropriate circumstances, 43 C.F.R. § 4.318; *Estate of Levi Junnile Smith*, 49 IBIA 275, 280 (2009), and we find the unusual circumstances here warrant our exercise of this authority. BIA has declined to respond to one party's factual contentions (Kamb's) in a rent adjustment appeal that, if true or undisputed, could demonstrate that BIA has been arbitrary and capricious in adjusting the rent at or about the same time for a comparable property. And where, as here, the Board has pending before it a second appeal of a rent adjustment matter (Clingan and Templeton's) that BIA has treated as identical in all material respects to the property in the first appeal (Kamb's), the Board cannot disregard (in its review of the second appeal) the allegations of arbitrariness and capriciousness raised in the first appeal where the Regional Director has declined to respond to them. Therefore, for purposes of the appeal by Clingan and Templeton, the Board takes official notice of Kamb's arguments concerning the Person appeal, *see* 43 C.F.R. § 4.24(b), and we vacate the Regional Director's June 30, 2008, decision and remand this matter for further consideration to prevent manifest injustice.

On remand, the Regional Director should also address Kamb's arguments concerning the appraisal and its review. We recognize that these arguments were not first raised before the Regional Director, but neither the lease nor the Superintendent's decision put Kamb's predecessor on notice that the rent adjustment was based on a professional appraisal. Kamb is entitled therefore to challenge the appraisal, and the Regional Director should consider Kamb's arguments in the first instance, rather than the Board. In remanding these matters, we express no opinion on how the Regional Director should decide these issues.

Although we find reason to vacate the Regional Director's decisions and remand, we nevertheless address Appellants' remaining arguments. First, Appellants each raise new arguments on appeal that could have been but were not first raised on appeal to the Regional Director. Kamb's predecessor-in-interest argued in her opening brief before the Board that BIA has negotiated three different types of leases in the Pull and Be Damned area, which she claims is arbitrary and capricious. Kamb argues for the first time that BIA owes a fiduciary responsibility to the lessees as well as to the Indian landowners in rent adjustment matters. Clingan and Templeton, who knew at the time of their appeal to the Regional Director that their rent increase was based on an appraisal, raise wholly new challenges to the appraisal that they did not raise before the Regional Director. For example, Clingan and Templeton now claim that GPA's appraisal impermissibly relied on tenant improvements, that certain assumptions provided to GPA by BIA were inappropriate, and that GPA relied on leasehold sales of comparable properties in the

Shelter Bay community but ignored leasehold sales of comparable properties in the Pull and Be Damned area. Clingan and Templeton also offer new evidence for the first time on appeal, a professional appraisal of the market value of their leasehold, and argue that a different appraisal method should be used that applies the rate of return to the appraised leasehold value to establish the annual fair market rental value of their lot.

Unless manifest error or injustice is evident, it is well settled that the Board is limited in its appellate review “to those issues that were before . . . the BIA official on review.” 43 C.F.R. § 4.318; see *Iron Eyes v. Acting Great Plains Regional Director*, 49 IBIA 64, 69 (2009), and cases cited therein. The purpose of requiring exhaustion before the BIA official is to “to enable the parties to develop a complete record, including the resolution of any factual disputes.” *Weinberger v. Rocky Mountain Regional Director*, 46 IBIA 167, 173 (2008). Thus, we ordinarily decline to consider new issues on appeal, *id.*, and we see no reason to depart from that rule here. Appellants could and should have raised these new arguments before the Regional Director but did not.

The only remaining argument that is properly before the Board is an argument made by Clingan and Templeton concerning the rate of return applied by OST. However, as the Regional Director points out, Appellants now concede before the Board that the 5% rate of return applied by BIA was “the highest appropriate rate of return in December 2007 for a ground lease.” Clingan and Templeton Opening Brief at 11. Clingan and Templeton argue that “[i]n today’s economy, [the] 5% [rate of return applied by OST] would be excessive,” seemingly suggesting that the rate of return should be revisited and revised. *Id.* But Appellants’ lease calls for adjustment on the 10th anniversary, not the 11th or the 12th anniversary, for which reason the rate applicable in “today’s economy” is irrelevant. Because Appellant’s rent adjustment was established as of December 2007 and given Clingan and Templeton’s concession that a 5% rate of return was appropriate at that time, Clingan and Templeton have not shown that the Regional Director erred in relying on OST’s use of a 5% rate of return.

Conclusion

We vacate and remand the Regional Director’s decisions in Appellants’ rent adjustment disputes (1) for consideration of Kamb’s assertion that his next door neighbor’s leasehold is comparable in material respects but her rent was adjusted at or about the same time by BIA to a lower amount than Kamb’s and (2) for adjustment of the effective dates of any increase in Appellants’ rents. We also refer Kamb’s challenges to GPA’s appraisal and OST’s review of that appraisal to the Regional Director to address in the first instance.

As to Appellants’ remaining arguments, they have been considered and are rejected.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board vacates the Regional Director's decisions of March 21, 2008, and June 30, 2008, and remands these two matters for further consideration consistent with our decision.

I concur:

// original signed
Debora G. Luther
Administrative Judge

// original signed
Sara B. Greenberg
Administrative Judge*

*Interior Board of Land Appeals, sitting by designation.