

HAROLD WRIGHT
B. H. MILNER

IBLA 70-98

Decided February 22, 1971

Public Sales: Generally -- Public Sales: Preference Rights

The consummation of a public sale at which a contiguous landowner offered three times the appraised value of the land, which offer was lower than the high bid at the sale, will depend upon whether the contiguous land owner's bid is equal to the fair market value of the land on the date of sale.

1 IBLA 285

IBLA 70-98 : Colorado 8737, 8743
HAROLD WRIGHT : Public sales vacated
B. H. MILNER : Reversed and remanded

DECISION

Harold Wright and B. H. Milner have separately appealed to the Secretary of the Interior from part of a decision dated October 8, 1969, whereby the Office of Appeals and Hearings, Bureau of Land Management, affirmed decisions of the Colorado land office dismissing their respective protests against cancellation of the public sale of land for which they submitted preference-right applications.

According to the record, 29 widely-scattered tracts in Ts. 6 to 12 N., Rs. 69 to 71 W., 6th P.M., Larimer County, Colorado, were offered at public sale on April 30, 1969, pursuant to Rev. Stat. § 2455, as amended, 43 U.S.C. § 1171 (1964). After bidding was completed, the land office canceled the sale as to five tracts for which the owners of adjacent lands had submitted preference-right offers in the amount of three times the appraised value of the lands. ^{1/} The cancellations were predicated upon a finding that, in each instance, the high bid was substantially above the preference-right offer and the sale of the land to the preference-right claimant would not bring the fair market value of the land. The affected preference-right claimants, the appraised values of the respective tracts sought, and the amounts of

^{1/} The statute provides in part:

". . . That for a period of not less than thirty days after the highest bid has been received, any owner or owners of contiguous land shall have a preference right to buy the offered lands at . . . [the] highest bid price, . . . but in no case shall the adjacent land owner or owners be required to pay more than three times the appraised price. . . ." 43 U.S.C. § 1171 (1964).

the high bids and preference-right offers were as follows:

<u>Claimant</u>	<u>Colorado Serial No.</u>	<u>Parcel No.</u>	<u>Appraised Value</u>	<u>High Bid</u>	<u>Preference-right Offer</u>
North Poudre Irrigation Co.	8730	5	\$ 280.00	\$ 1060.00	\$ 840.00
Harold Wright	8737	12	500.00	2260.00	1500.00
Arnold Friend	8739	14	240.00	1045.00	720.00
Bernice McBlair	8740	15	300.00	2150.00	900.00
B. H. Milner	8743	18	400.00	3000.00	1200.00

Each claimant protested the cancellation and the protests were individually dismissed by the land office. Each party thereafter appealed to the Director, Bureau of Land Management.

In the decision of October 8, 1969, the Office of Appeals and Hearings affirmed the action of the land office with respect to the protests of Wright, Milner and Bernice McBlair, 2/ while reversing as to North Poudre Irrigation Company and Arnold Friend. The Office of Appeals and Hearings stated it did not assume in any case that the high bid represented the actual fair market value. Moreover, it acknowledged the possibility that the outcome of the sale may have been influenced by factors unrelated to the value of the lands. Nevertheless, it found the determination by the land office that neither Wright's nor Milner's offer reflected the fair market value of the land to be supported by the evidence.

In Wright's case, Colorado 8737, the high bid of \$ 2260.00 exceeded the appraisal by \$ 1760.00, the preference-right offer by \$ 760.00, and thirteen bids were made, of which seven exceeded the preference-right bid of \$ 1500.00. In Milner's case, Colorado 8743, the high bid of \$ 3000.00 was seven and one-half times appraised value, two and one-half times the preference-right offer of \$ 1200.00, and 38 of 46 bids exceeded \$ 1200.00.

2/ Bernice McBlair did not appeal from the Bureau's decision, and the decision has become final as to her.

In contrast, the Office of Appeals and Hearings found that in Friend's case, Colorado 8739, the difference between the high bid and preference-right offer was much closer than in the other cases even though it was a substantial percentage of the appraisal. The Office of Appeals and Hearings observed that Congress had obviously foreseen there would be occasions in which the high bid would exceed three times the appraised value of land. In the absence of other evidence, the decision stated, the high bid at a public sale could not be said to represent the fair market value of land and it would be error to cancel every sale in which the high bid exceeded three times appraised value. The decision below found it was impossible to determine from the record whether or not the cancellation in Friend's case was proper, and therefore, the case was remanded for reappraisal of the land as of the date of the sale.

In the case of the North Poudre Irrigation Company, Colorado 8730, the Office of Appeals and Hearings found the difference between the preference-right offer and the high bid was relatively small. The difference, it found, was partially attributable to the fact that the company had unwisely participated in the upper-range bidding at the sale, having made the high bid of \$ 1060.00 notwithstanding its preference-right to purchase the land for three times its appraised value, or \$ 840.00. It found no evidence that a sale to the company at the lower figure would deprive the United States of the fair market value of the land, and remanded the case for further action consistent with said finding.

Appellants do not appear to question the propriety of the cancellation of a public sale upon determination that the amount offered for a tract of land is less than its fair market value. What they do question is the soundness of the Bureau's determination that the evidence warrants a finding that the amounts of their preference-right offers were less than the fair market value of the lands they sought. It is within the discretion of the authorized Bureau officer to determine at any time prior to the issuance of patent that a particular sale should not be consummated, that the lands offered should not be sold, or that any or all bids submitted should be rejected. 43 CFR 2711.6, 35 F.R. 9616 (formerly 43 CFR 2243.1-5(b)). Thus, a sale is properly canceled whenever it is determined that the amount bid or offered by the successful applicant at a public sale is not equal, at least, to the fair market value of the land sought on the date of the sale. See, e.g., Stanley C. Soho, A-28135 (Supp.) (July 17, 1961), aff'd in Ferry v. Udall, 336 F.2d 706 (9th Cir. 1964), cert. denied, 381 U.S. 904 (1965);

Autrice C. Copeland, 69 I.D. 1 (1962), aff'd in Freeman v. Udall, 336 F.2d 706 (9th Cir. 1964); Bernard E. Loper, Jr. et al., A-28730 (September 24, 1962); Leland M. Lucas, A-29228 (December 10, 1962), appeal dismissed per stipulation, Lucas v. Udall, Civil No. 5007 Phx., (D.C. Ariz., October 10, 1967); Phoenix Title and Trust Company et al., A-28771 (June 21, 1963); Perley M. Lewis and Mildred C. Lewis, A-28707 (December 30, 1963), aff'd in Lewis v. Udall, 374 F.2d 180 (9th Cir. 1967); Albert Meeks and Helen Louise Meeks, A-29366 (January 9, 1964).

Wright contends that the Bureau was inconsistent in sustaining the dismissal of his protest while remanding Friend's case for a reappraisal. Although the difference between the high bid and the preference-right offer in his own case (\$ 760.00) was slightly more than twice the difference in Friend's case (\$ 325.00), he argues that the ratios are almost identical in the two cases. It would appear only reasonable, he asserts, that he should receive the same treatment as Friend. He has offered no probative evidence that his preference-right offer was equal to the fair market value of the land on the date of the sale, and we do not find the action of the land office in his case to have been unreasonable in light of the available evidence. However, the remanding of Friend's case, Colorado 8739, has altered the situation. We agree with Wright that, in principle, his case is virtually indistinguishable from that of Friend. In each case the high bid was more than four times appraised value. The only apparent distinction between them is that the land applied for by Wright (Parcel 12) was appraised at \$ 12.50 per acre in comparison with the \$ 6.00-per-acre appraisal in Friend's case (Parcel 14). Essentially the same relationship is reflected in the high bids for the two tracts of \$ 56.00 and \$ 26.00 per acre, respectively.

In view of the Bureau's treatment of Friend's appeal and the similarity of the facts in Wright's case, we believe that equity would best be served if Wright's case were remanded for reappraisal to determine whether or not his preference-right bid was equal to the fair market value of Parcel 12 on April 30, 1969.

Milner's appeal rests upon somewhat different grounds. He asserts that the land which he seeks is wholly unsuited for any purpose except minimal grazing on about three or four acres, and that

. . . Milner is the only adjoining land owner who has any interest in the property and it has been fenced in with his property for many years. It is merely a rock pile barren of grass and without water. The persons bidding for this property, in at least one instance had never seen the land and knew nothing of the nature of it and so stated to Milner during the bidding. There is no public road access to the property and no legitimate basis for a fair market value in excess of the appraised value

If, as Milner contends, there is no basis for assigning the land a higher fair market value than the \$ 2.50-per-acre appraisal price, his eagerness to purchase it at three times that price (\$ 1200.00 for 160 acres or \$ 7.50 per acre) is not readily understandable. Milner asserts that the tax on the land will be more than the land would be worth and that his only purpose in bidding was "to avoid the nuisance and trespass over his property which would result." Seemingly, the cancellation of the sale which he opposes would relieve him of a burden which he is reluctant to assume. Regardless of these facts, we find the evidence before us too inconclusive to warrant any conclusion with respect to the fair market value of Parcel 18.

The record discloses a number of unusual facts relating to the sale of the lands in question, the significance of which is not fully revealed. The 29 tracts offered for sale on April 30, 1969, were appraised by the Bureau of Land Management in December 1968 and were found to be useful primarily for the grazing of domestic livestock. As grazing lands, the various tracts were appraised at values ranging from \$ 2.50 to \$ 26.00 per acre. At least one bid in the amount of, or greater than, the appraisal price was submitted for each tract, the bids ranging from \$ 12.90 to \$ 67.50 per acre. As the Office of Appeals and Hearings noted in its decision, 14 tracts received bids of three or more times the appraised value, including three which drew bids in excess of seven times the appraised value.

Apart from the fact that the bids generally were far in excess of Bureau appraisals, little relationship is apparent between appraisals and bids. Parcel 8, for example, which according to the Bureau's appraiser had the highest value per acre of any tract offered for sale (\$ 1050.00 for 40 acres or \$ 26.25 per acre), attracted a single bid in the amount of the appraisal. Parcel 15, which at \$ 7.50 per acre was among the least valuable tracts in the judgment of the Bureau's appraiser, received a high bid of \$ 53.75 per acre, third highest of the sale. Six

tracts appraised at \$ 12.50 per acre drew bids ranging from \$ 12.90 to \$ 56.00 per acre, while in other instances equal value was accorded by bidders to tracts appraised by the Bureau at \$ 26.00 per acre (Parcel 22) and \$ 6.00 per acre (Parcel 14). About all that can reasonably be concluded from this is that (1) most of the high bidders were not seeking grazing lands and (2) most of the lands offered apparently have value for purposes other than grazing.

The Bureau did not view the high bid for any tract of land as conclusive evidence of the fair market value of the particular tract. Yet the only evidence that Parcel 18 is worth more than \$ 7.50 per acre is the bidding which took place at the sale, evidence which is contradicted by the testimony of persons familiar with the area, including the Bureau's appraiser, that the value of the land is far less than what was bid.

We cannot ascertain from the record whether the high bid of \$ 3000.00 (\$ 18.75 per acre) was based on fair market considerations or whether it was purely speculative. ^{3/} In cases of comparable uncertainty, the Department has remanded the matter for reappraisal as of the date of sale to determine whether or not a particular sale should be consummated. See Maria T. A. Ruthling et al., A-28538 (March 15, 1962); William E. Davis, A-28747 (April 25, 1962); Rupert A. Chisholm, Herbert E. Counihan, A-28713 (July 31, 1962); James Howard Waterhouse, A-28646 (September 24, 1962); Bernard E. Loper, Jr., et al., supra. We hold that such action in this case would be in the best interest of both the Government and the preference-right applicant.

^{3/} "'Fair market value' assumes agreement between owner willing but not obliged to sell for cash and buyer desirous but not compelled to purchase. . . . It means neither panic value, auction value, speculative value, nor a value fixed by depressed or inflated prices. . . . It resides in estimate and determination of what is fair, economic, just and equitable value under normal conditions. . . ." Black's Law Dictionary 716 (4th ed. 1951).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is reversed insofar as it affects appellants, and the cases are remanded to the Bureau of Land Management for further action consistent with this decision.

Francis E. Mayhue, Member

We concur:

Martin Ritvo, Member

Anne Poindexter Lewis, Member

