

MRS. HAZEL INGERSOLL HALL

IBLA 71-143

Decided December 23, 1971

Public Sales: Generally -- Public Sales: Cancellation

Where review of an appeal as to the award of the land offered at public sale reveals that the bidders were not notified of the requirement to compensate persons who had erected improvements on the land, the sale will be vacated.

Administrative Practice

The Board of Land Appeals is not limited in its consideration of an appeal to the particular questions raised in that appeal, and may exercise, by virtue of the delegation to it by the Secretary, all the authority of the Secretary with respect to the case on appeal.

Public Sales: Appraisals -- Public Sales: Award of Lands -- Public Sale: Cancellation

A public sale may be canceled under 43 CFR 2711.6 where it is not clearly established that the high bid (or appraisal) reflects the fair market value of the land on the date of the sale, or where, at any time up to the issuance of the patent, it appears that the fair market value of the land and the high bid may be grossly disparate.

IBLA 71-143 : W 12685

MRS. HAZEL INGERSOLL HALL : Public sale preference
: right bid rejected

: Sale vacated

DECISION

Mrs. Hazel Ingersoll Hall has appealed to the Board of Land Appeals from a decision dated November 18, 1970, whereby the Wyoming land office, Bureau of Land Management, rejected her preference right bid on public sale W 12685, because that bid was not timely submitted, and awarded the lands in issue, lots 8, 9, section 30, T. 51 N., R. 82 W., 6th P.M., Wyoming, to the high bidder, Tommy E. Gordon.

Because of overriding considerations reflected in the case record discussed infra, the factual background of and issues involved in the appeal need not be reflected.

The Board of Land Appeals is not limited in its consideration of an appeal to the particular questions raised by that appeal. See Barney R. Colson, 70 I.D. 409 (1963), dismissed with prejudice, 278 F. Supp. 826 (D.C.M.D. Fla. 1968), aff'd, 428 F.2d 1046 (5th Cir. 1970), cert. denied, 400 U.S. 947 (1970). The Board by virtue of the delegation to it by the Secretary may exercise all the authority of the Secretary with respect to the case. See Knight v. United States Land Association, 142 U.S. 161, 178 (1891).

The record shows that there are improvements on the lands in issue, including a fence and a ditch constructed by a trespasser. The Department has had a uniform practice for many years that where land is to be disposed of, the person acquiring the land is to be required to reimburse the trespasser for the reasonable value of all permanent improvements which are left on the land and which are of value to the person acquiring the land. Lee Kisner et al., A-27189 (November 7, 1955); Keith Specking et al., A-26190 (July 24, 1951); Maynard M. Stutzman, A-25844 (May 17, 1950).

No such requirement was made in this case. Notice of such requirement should have been included in the publication of the sale since such requirement could have affected the bidding. Cf. 41 Comp. Gen. 76 (1961).

In a public offering the terms and conditions should be sufficiently definite and explicit to all persons interested in the bidding to enable them to prepare their bids intelligently on a common basis. United States v. Gibbons, 109 U.S. 200 (1883). After bids have been made on the basis of an offering by public authorities and given out to all interested bidders, no material or substantial change in any of the terms are allowable without a new advertisement giving all bidders opportunity to bid under the new terms. 43 Am. Jur., Public Works and Contracts § 46 (1963).

In the circumstances, it is proper to cancel the sale. See 43 CFR 2711.6 (1971). Cf. Erie Coal and Coke Corp. v. United States, 266 U.S. 518 (1925); Ferry v. Udall, 336 F.2d 706 (9th Cir. 1964), cert. denied, 381 U.S. 904 (1965); Lewis v. Udall, 374 F.2d 180 (9th Cir. 1967); Annot. 31 ALR 2d 489 (1953).

Apart from the consideration discussed above, there are other factors which militate against the disposal of the lands at this time.

The record shows that the appraisal report was made on March 18, 1970, and was approved by the Bureau of Land Management state reviewing appraiser on June 8, 1970. The sale was held on October 8, 1970. Thus about 18 months have passed since the appraisal was made, raising the question whether the high bid (at \$25 more than the appraised price of \$3,900) reflects the current fair market value of the property, and if not, whether the disparity is of such a magnitude as to warrant cancellation of the sale. See 43 CFR 2711.6 (1971). Cf. Phoenix Title and Trust Company et al., A-28771 (June 21, 1963); Paul T. Walton, A-28669 (September 24, 1962); Bernard E. Loper, Jr., A-28730 (September 24, 1962). Indeed, the appraisal in the case at bar does not convince us that it reflects the fair market value of the property as of the date of the sale. Cf. Harvey M. Jacobs and Jean E. Jacobs, A-28775 (November 5, 1962). It would be appropriate, therefore, to have a new appraisal made, should it be decided that the land again is to be offered for sale. Our concern that the Government obtain fair market value is in part due to the Congressional mandate, embodied in 31 U.S.C. 483a (1970), that the Government obtain fair market value for benefits or other things of value granted to a private party.

In classifying the lands for disposal, the Bureau of Land Management apparently relied, insofar as wildlife potential is concerned, upon a report from a State official to the effect that "retention of this tract, in public ownership, is not essential to wildlife." The field report gives short shrift to consideration of

wildlife habitat. While it may be true that the lands have limited wildlife potential, a careful reexamination of this aspect would be appropriate in considering whether the land should again be offered for sale.

Accordingly, 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 sale is vacated and the case is remanded to the Bureau of Land Management for further appropriate consideration in the light of this decision.

Frederick Fishman, Member

We concur:

Newton Frishberg, Chairman

Anne Poindexter Lewis, Member

