

RALPH S. HOERNING

IBLA 72-487

Decided April 2, 1973

Appeal from letter decision of the Colorado State Office, Bureau of Land Management, granting appellant a nonrenewable Small Tract Lease.

Affirmed.

Small Tract Act: Generally -- Small Tract Act: Renewal of Lease

An applicant under the Small Tract Act for renewal of a preferential right lease acquires no right or interest by the filing of his application other than the right to have his application considered and the renewal may be upon such terms as the facts as that time warrant.

Small Tract Act: Renewal of Lease

Where the Land Office properly determines that land is best used as a recreational site open to the public, it may limit a renewal of a preference right lease to a nonrenewable five-year term.

APPEARANCES: Ralph S. Hoerning, pro se.

OPINION BY MR. RITVO

Ralph S. Hoerning has appealed from the decision, dated May 19, 1972, of the Colorado State Office, Bureau of Land Management, which granted him a nonrenewable five-year lease effective from the date of termination of his previous lease, September 30, 1968, on a 4.38 acre tract. The tract, which borders on the Colorado River, is located 1/2 mile east of Burns, Colorado. The decision also fixed Hoerning's rental at \$100 for the period September 30, 1968, through March 31, 1972, and \$445 from March 31, 1972, to September 30, 1973. The previous ten-year lease had been at a total cost of \$156. Hoerning objects to the rental and term of the lease and emphasizes his desire to purchase the tract.

This tract, along with three others, was classified by Small Tract Classification No. 24, June 19, 1957, 22 F.R. 4481, as amended, for disposition by lease only. At a public drawing for a lease of public land under the Small Tract Act, 43 U.S.C. § 682(a) (1970), one Joe Byrd was the successful bidder. Byrd immediately assigned or sold his right to the lease to Hoerning. <sup>1/</sup> Hoerning and his family have occupied the tract, on which there is a three-room cabin, continually since 1958 during the summer months as a residence. Hoerning claims permanent back injury has forced him to live entirely from Workmen's Compensation. He and his family spend winters in small rented trailers, houses, or furnished apartments.

Hoerning continued to occupy the tract after the expiration of the original ten-year lease in 1968. He made several visits to the District and State Bureau Offices both before and after the expiration date in an attempt to prod officials into permitting his purchase of the tract or renewal of the lease.

The Area Manager, as early as August 21, 1968, had recommended that after an additional five-year lease the land be withdrawn from private use because of its "high recreational value." In a letter of May 11, 1971, the District Manager informed Hoerning that his lease would be renewed only until October 1, 1973, and that a reappraisal of the land value would be undertaken. The Manager explained that lateness in reappraising the land was due to lack of funds for this low priority item. He suggested that Hoerning file an application for lease under the Small Tract Act.

Hoerning, on May 18, 1971, submitted his application for lease on Standard Form 4-776. Subsequently an appraisal report of February 24, 1972, by the Bureau recognized the increased value of the land; it stated a "fair annual rental" would be \$ 295. Acting upon Hoerning's application and the information furnished him, the Land Office issued its decision of May 19, 1972. From this decision, Hoerning filed a Notice of Appeal on June 15, 1972. His statement of reasons was dated July 11, 1972.

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<sup>1/</sup> Although appellant's lease under the Small Tract Act began October 1, 1958, he claims to have purchased "title" to the claim and surrounding 65 acres in 1954 through purchase of a mining claim. The placer claim was declared invalid in 1958 by the Bureau. As a result of this action, apparently, appellant filed for a Small Tract Lease.

Summarized, reasons given for Hoerning's appeal are: (1) there is not enough suitable ground, adequate water supply, or roads available for a campground; (2) the Bureau's contention that the area has high recreational value is not borne out by fact; and (3) due to economic hardship, he should be permitted to buy or lease the land including his home.

Taking the last point first, we note that classification order 24 opened the tract to disposition by lease only for residence sites. Item 5 of the order provides:

\* \* \* Leases will be renewable at the end of such ten-year lease period at the discretion of the Bureau of Land Management, and the renewal will be subject to such terms and conditions as are necessary in light of the circumstances existing at the time of renewal.

Accordingly, there is no authority under the lease terms and present classification to dispose of the land by sale. 2/

Appellant's other arguments go primarily to the "equity" of his situation, and the unsuitability of the land for recreational purposes.

First, as the conditions of the classification order, which were made a part of the lease, made clear, any renewal of Hoerning's lease was within the discretion of the Bureau of Land Management in light of the circumstances existing at the expiration of a lease period.

The interest acquired by a Small Tract applicant was set out in Cecil W. Hinshaw, A-30006 (July 23, 1964):

A small tract applicant acquires no right or interest by the filing of his application other than the right to have his application considered, nor can he acquire any right because of a delay in the processing of his application.

The Assistant Solicitor in Hinshaw went on to state:

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2/ Hoerning may, of course, petition for a change in the classification of the land. 43 CFR Subpart 2450.

The classification of land as suitable for disposition under the Small Tract Act does not preclude a subsequent cancellation of that classification when a different classification is found to be in the public interest.

See also, J. L. and Muriel L. Groves, A-29859 (July 23, 1964).

Thus, if the circumstances warrant it, the Land Office has authority to issue a lease for a shorter term without a preferential right to renewal. Similarly, although the appellant has a preference right to a small tract lease if one is to be issued to anyone, he has no rights which would prevent the termination of his lease and its use for other more public purposes. So too, absent an unreasonable and arbitrary decision of the Bureau, his use and occupation of the land under a lease does not create equities which will overrule the public interest in other uses when the lease ends.

Next, the Bureau must consider the recreational use of the land. In discussing the Small Tract Act of June 1, 1938, 43 U.S.C. §§ 682a-682(e) (1970) the pertinent regulation states that its purpose is:

\* \* \* to promote the beneficial utilization of the public lands subject to the terms thereof, and at the same time to safeguard the interest in the lands \* \* \* small tract sites will be considered in the light of their effect upon the conservation of natural resources and upon the communities or area involved \* \* \*. Lands will not be leased or sold, for example, which would lead to private ownership or control of scenic attractions, or water resources, or other areas that should be kept open to the public. 43 CFR § 2730.0-2.

We cannot agree with appellant's contention that the areas would not be useful as a campsite or other recreational purposes. Certainly a tract abutting the Colorado River situated in a mountainous or semi-mountainous region may have valuable use as a recreational area. The Area Manager said, "This tract has a high potential recreational value. It is located on the Colorado River. The area has a scattering of Douglas fir on it and these trees make the area very secluded and ideal for a small recreation site. This area is the only access to the Colorado River for about two miles in an easterly direction."

Therefore, in view of the recreational potential of the tract, the Land Office's determination was not unreasonable or arbitrary and will not be disturbed.

Finally, appellant contends that the upward rental adjustment was unfair and unreasonable. While it is certainly true that the adjustment of rental resulted in a substantial increase, we do not believe a rental of \$ 445 for use of 4.38 acre riverfront tract over a 1 1/2 year period (or slightly less than \$25 per month) is excessive. It is based upon the value of the land as determined by an appraisal made in accordance with accepted standards. The appellant does not point out why he considers the increased rental to be too high.

Therefore, 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 affirmed.

Martin Ritvo, Member

We concur:

Joseph W. Goss, Member

Anne Poindexter Lewis, Member.

