

LEIF N. JOHNSON ET UX.

IBLA 72-450

Decided May 4, 1973

Appeal from a decision of the District and Land Office of the Bureau of Land Management, Riverside, California, rejecting application under the Mining Claims Occupancy Act, and offering a lease under the Small Tract Act.

Affirmed as modified.

Small Tract Act: Generally

Where a lessee-applicant requests changes in the terms of a proposed small tract lease, the lease terms may be modified to the extent the changes have no adverse effects upon the interests of the United States. In granting the request for changes, however, no further rights can be construed to be created in favor of the lessee beyond those enumerated in the lease.

APPEARANCES: Timothy L. Orr, Esq., of Beudet and Orr, Lancaster, California, for appellants.

OPINION BY MR. FISHMAN

Lief Johnson and his wife, Verna Johnson, have appealed to this Board from a decision of the District and Land Office of the Bureau of Land Management, Riverside, California (hereinafter called the "Land Office"), dated May 15, 1972, which rejected his application for a conveyance under the Mining Claims Occupancy Act of October 23, 1962, 30 U.S.C. §§ 701 et seq. (1970). The application was denied on the basis that Lief Johnson was not a "qualified applicant" under section 2 of the Act, 30 U.S.C. § 702 (1970). Appellants have not challenged this determination on appeal.

Although the Land Office rejected the application filed under the Mining Claims Occupancy Act, it considered the equities of appellants and offered a five-year lease to them under the Small Tract Act of June 1, 1938, as amended, 43 U.S.C. §§ 682a-682e (1970). Under the terms of the proposed lease, appellants were permitted to use the land for residential purposes only, and the lease was renewable

only at the option of the Land Office if the land was not needed for a federal purpose.

Appellants have indicated that they would accept the lease if certain assurances which were apparently conveyed to them by the Land Office were reduced to writing.

It has been the practice of the Department, in considering requests for changes relating to proposed terms of small tract leases, to grant or deny such requests depending upon the particular circumstances of each case. For example, in Virgil C. and Lucy M. Boudreau, A-30961 (November 13, 1968), proposed lease terms prohibited additional construction on the premises in question. Nevertheless, on appeal, permission was granted to construct an additional improvement where such construction did not adversely affect the interests of the United States. In Walter Tampson, A-30938 (November 13, 1968), a lessee's request for an extension of his lease term was granted where consent was obtained from a municipality which originally requested a shorter term. In Roscoe C. Zink, A-31076 (December 30, 1968), a lessee's request on appeal for a lease term longer than five years was denied because the land was located in a planning unit.

In the case at bar, the first change requested by appellants related to lease term No. 5 which provides:

Authorized representatives of the Department of the Interior shall have the right at any time to enter the leased premises for the purpose of inspection, and Federal agents and game wardens shall have the right at all times to enter the leased area on official business.

In our view, the right of inspection on the part of the Government is a necessary incident to proper management; however, we are of the opinion that any inspection conducted by officials of the Bureau or employees of the Government must only be conducted at reasonable hours and under normal circumstances. While it is not within the purview of this decision to set forth all the facts and circumstances under which an inspection might be made, the lease term quoted above need not be changed since it must be considered in the context of appellants' right of privacy, and any inspection which might be made must be conducted within the parameters of reasonableness as enunciated by the Supreme Court of the United States. See Wyman v. James, 400 U.S. 309 (1971); Camara v. Municipal Court, 387 U.S. 523 (1967); See v. City of Seattle, 387 U.S. 541 (1967).

The second issue raised by appellants relates to the further construction of improvements on the land in question. Appellants have planned to add two general purpose rooms to the structure which presently exists on the land. Section 2(a) of the proposed lease provides "[e]xcept for maintenance and repair of the existing facilities, no other improvements, buildings, or structures shall be made or placed or constructed on the leased land."

We perceive no reason to prohibit the appellants from making the additional improvements they request. Section 2(a) of the lease should accordingly be stricken. We note, however, that appellants are still bound to comply with the remaining terms of the lease, and by granting their request to add additional improvements on the land, appellants cannot increase their tenure on the premises beyond the time provided in the lease, and appellants may be required to remove the requested additions as well as the existing structures in the event the lease terminates or is canceled pursuant to its terms.

Appellants have also requested an increase in the size of the property to be leased, and assurance that renewal of the lease will be granted every five years so as to permit them to live out their remaining years.

These requests must be considered in the context of the objectives of the Small Tract Act which are set forth in the implementing regulation, 43 CFR 2730.0-2(a). The regulation provides in pertinent part:

It is the program in the administration of the act of June 1, 1938, as amended, to promote the beneficial utilization of the public lands subject to the terms thereof, and at the same time to safeguard the public interest in the lands. To this end small tract activity shall be coordinated with interested local governmental agencies, and 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 and in the light of availability of schools, utilities, and other facilities.

These two requests made by appellants cannot be granted. A large block of public domain, of which the subject land in issue is a part, has been classified for multiple use management, with open space and recreation recognized as the primary value. A land report in the case file indicates that these public lands have been

recognized in the Kern County Planning Commission as primarily valuable for outdoor recreation and open space. In addition, the report indicates that the site of the Bakersfield Desert College is about two miles from the land in question, and that an important consideration in locating the college was the surrounding block of unspoiled desert land available for study and enjoyment. Finally, the field report in the case file indicates that Lief Johnson owns 240 acres of land near Rosemond which has as good a potential for homesites as the land in issue. The requests for an increase in acreage and assurances of five-year renewals of the lease do not warrant favorable consideration.

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 as modified.

Frederick Fishman, Member

We concur:

Joseph W. Goss, Member

Anne Poindexter Lewis, Member.

