

Editor's note: Reconsideration denied by order dated Aug. 16, 1974

RIVERSIDE LIVESTOCK COMPANY

IBLA 74-68

Decided March 27, 1974

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting a preference right bid for a parcel of land offered at public sale W-14307.

Set aside and remanded.

Administrative Practice

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

Public Sales: Generally--Public Sales: Cancellation--Public Sales: Sales Under Special Statutes

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

Public Sales: Appraisals--Public Sales: Award of Lands--Public Sales: 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 patent, it appears that the fair market value of the land and the high bid may be grossly disparate.

APPEARANCES: Harold Jones, partner, Riverside Livestock Company, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

The Riverside Livestock Company, a partnership, has appealed from a decision of July 17, 1973, whereby the Wyoming State Office, Bureau of Land Management, rejected its preference right bid in public sale W-14307 for Parcel No. 1, embracing 20 acres of certain lands in sec. 7, T. 25 N., R. 112 W., 6th P.M., Wyoming, because its proof of ownership of contiguous lands was not timely filed. The State Office awarded the land to the high bidder, Curtis Michel.

Appellant asserts that the decision of the State Office is incorrect in that the value of Riverside's improvements on the parcel was not discussed and it feels that its improvements have a value for which the partnership should be compensated. It also urges the value of those improvements should be deducted from the appraised value of the parcel, if the parcel is purchased by the partnership.

Because of the overriding considerations discussed hereinafter, the factual background of and issues involved in the decision below need not be set forth.

The Board of Land Appeals is not limited in its consideration of an appeal to the particular issues raised in the decision below. United States v. Grediagin, 7 IBLA 1, 4 (1972), also see 43 CFR 4.1 (1973).

The Unintentional Trespass Act of September 26, 1968, 43 U.S.C. §§ 1431-35 (1970), 1/ pursuant to which the subject public sale was initiated, authorizes the Secretary of the Interior to dispose of certain tracts of land, not exceeding 120 acres, where such lands are not needed for public purposes and on which there has been an unintentional trespass on or before September 26, 1968. The purpose of the Act was to provide a method for disposition of public lands not covered by other statutes. H.R. Rep. No. 1791, 90th Cong., 2nd Sess., 3 U.S. Cong. & Admin. News (1968) 3612. Under the Act, if the Secretary determines that the lands are not needed for a public purpose they will be sold at a public auction to the highest bidder. 43 U.S.C. § 1431 (1970). One section of the Act guarantees the preference right of contiguous land owners to buy the tract at the highest

1/ The Act expired on September 26, 1971, except that sales for which application had been made prior to that date may be completed after that date. 43 U.S.C. § 1435 (1970).

bid price. 43 U.S.C. § 1432. Another section of the Act, 43 U.S.C. § 1433, provides that:

If a person who has a preference right under section 1432 of this title is the purchaser of land sold pursuant to this subchapter, he shall not be required to pay for any values he or his predecessors in interest have added to the land. * * *

On July 9, 1970, Riverside submitted its application for the sale of several parcels of land, which included the lands in Parcel No. 1. In item 2e of the application it stated that improvements consist of fences and ditches on the upper outside edges of the parcels, having a total value of about \$4,000. Although the notice of public sale states that the successful bidder, if other than Riverside Livestock Company, would have to compensate Riverside for an existing fence on Parcel No. 4, the notice is silent as to any compensable values added on Parcel No. 1, the parcel on appeal before this Board.

The record indicates that values have been added to the parcel of land in issue, including irrigation ditches and fences constructed by the 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. Hazel Ingersoll Hall, 4 IBLA 177 (1971) and cases cited therein.

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. ^{2/} As this case is "on all fours" with Hazel Ingersoll Hall, supra, in accord with that case, we find it proper to cancel the sale herein.

The record shows that the appraisal report was made on October 17, 1972, and was approved by the Bureau of Land Management chief state appraiser on October 26, 1972. Thus about 16 months has elapsed since the appraisal was made raising the question whether the appraised price reflects the current fair market value of Parcel No. 1. It would be appropriate, therefore, to have a new appraisal made.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the sale of Parcel No. 1 is vacated and the case is remanded to the Wyoming

^{2/} Even assuming the requirement that the value of the improvements be paid to the improver rather than to the Government, a reference to the improvements in the notice might have caused the Government to receive a higher price for the land.

State Office, Bureau of Land Management, for further appropriate consideration consistent with this opinion.

Anne Poindexter Lewis
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Joseph W. Goss
Administrative Judge

