

**Editor's note: Appealed -- stipulated order of dismissal, Civ. No. 77-380-WPC (D.Ariz. Nov. 20, 1979)**

DONALD J. LAUGHLIN  
d/b/a RIVERSIDE RESORT & CASINO  
(ON RECONSIDERATION)

IBLA 76-419

Decided August 2, 1976

Petition for reconsideration of the decision of the Board of Land Appeals in Donald J. Laughlin, d/b/a Riverside Resort & Casino, 25 IBLA 41 (1976).

Petition granted; prior decision reaffirmed.

1. Public Lands: Special Use Permits -- Special Use Permits

A petition for reconsideration of a decision of the Board of Land Appeals which affirmed the rejection of a special land use permit application will not result in the modification of the earlier decision where that rejection is based upon rational grounds and is consistent with the objectives of the Bureau of Land Management and programs for public use of the land.

APPEARANCES: Donald L. Wood, Esq., Morris & Wood, Las Vegas, Nevada, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Donald J. Laughlin, d/b/a Riverside Resort & Casino, has petitioned 1/ the Board of Land Appeals for reconsideration of the decision dated May 12, 1976, titled Donald J. Laughlin, d/b/a

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1/ By letter dated May 26, 1976, petitioner "appealed" our decision of May 12, 1976, to the Secretary. By letter dated June 9, 1976, petitioner was informed that Departmental procedures make no provisions for appeals to the Secretary, but that the Board of Land Appeals may consider the appeal to the Secretary as a petition for reconsideration.

Riverside Resort & Casino, 25 IBLA 41 (1976). The Board's decision affirmed the decision of the Yuma, Arizona, District Office, Bureau of Land Management (BLM), dated November 13, 1975, rejecting special land use application Y-0165 for the stated reason that the Bureau does not want to develop the area subject to the application until an activity plan is completed.

The Board previously noted that Riverside Resort & Casino is one of several gambling establishments on the Nevada shore of the Colorado River north of Bullhead City, Arizona. Petitioner seeks to build a parking lot and a dock on the Arizona shore opposite his club and to provide a ferry service to make it more convenient for Arizona residents to patronize his establishment. One of petitioner's competitors, the Nevada Club, is located almost a mile downstream from appellant at a point across the river from the northern edge of the developed area of Bullhead City. In his appeal from the District Office's decision, petitioner asserted that in 1972 the Nevada Club graveled and lighted an area on the Arizona shore for a parking lot and boat dock with no authority at all, and that the Nevada Club was later issued a special land use permit by BLM. Petitioner was able to purchase rights to establish a parking lot and boat dock about a mile downstream from his casino, but he reiterates his contention that he suffers a competitive disadvantage because he cannot develop facilities on the Arizona shore opposite his casino. He feels that it is unfair for the Nevada Club to enjoy a competitive advantage which he contends is derived from the club's initial trespass on public land.

Petitioner charges that in rejecting his application we "apparently believe that a special land use permit vests a property right in the permittee which is neither temporary or revocable," and then states that such a view is not correct. (Petition for Reconsideration, p. 5). Nothing in our earlier decision suggests that we hold such a view as that ascribed to us by petitioner, and we recognize that the revocable nature of a special land use permit is defined by regulation. 43 CFR 2920.3.

[1] We adhere to our holding in our earlier decision. The issuance of special land use permits is not authorized by any specific statutory provision. However, under the general authority of the Secretary of the Interior to administer the public lands, a permit may be issued for purposes not specifically provided for by existing law. 43 CFR 2920.0-2(a); 43 CFR 2920.0-3; Wyoming Highway Department, 14 IBLA 258, 260 (1974); Allen M. Boyden, 2 IBLA 128, 131 (1971). Furthermore, issuance of special land use permits is discretionary, and the BLM may reject an application for such a permit if the use for which the application is made is inconsistent with the Bureau's objectives and programs for public use of the land. Wyoming Highway Department, *supra*;

Desert Outdoor Advertising, Inc., 2 IBLA 344, 349 (1971); Allen M. Boyden, *supra*.

Petitioner asserts that "either the BLM was without authority to issue the special land use permit for a parking lot for appellant's competitor, or if it had such authority, it was a clear abuse of discretion not to issue a permit to appellant to engage in the same activity." (Petition for Reconsideration, p. 5). <sup>2/</sup> Petitioner's argument is based on his opinion that the parcel he seeks to use is no different from the land presently used by the Nevada Club. We believe that the following paragraph from our earlier decision shows the difference between the parcels:

The maps and photographs in the record indicate that the characteristics of the land opposite appellant's club differ from those of the land opposite the Nevada Club. Although the parking lot and dock for the Nevada Club's ferry is on the northern edge of the developed area of Bullhead City, almost 1 mile of undeveloped shoreline separates the Nevada Club's dock from appellant's proposed site. However, while the area of appellant's site is more remote, we note that it is just across State Route 95 from the Bullhead City Airport.

Donald J. Laughlin, *supra* at 42.

Apart from that consideration, the Bureau's endeavor to keep the lands in the area unencumbered until it formulates a land use plan is a rational approach to its management of the area. While petitioner contends that the only difference between the parcels is that one is a parking lot and the other remains undeveloped, that fact alone provides a sufficient basis for rejection of petitioner's application. This follows in view of the Bureau's determination that the area should undergo no further development

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<sup>2/</sup> As authority for this proposition, petitioner cites Wilderness Society v. Morton, 479 F.2d 842 (D.C. Cir., 1973), but nothing in that decision mandates the issuance of a special land use permit where the Department's decision to reject a permit application has a rational basis.

In reference to the propriety of the issuance of a permit to the Nevada Club, we wish to note that this had not been at issue in this case. No appeal has been taken from any decision relating to the issuance or continuation of the Nevada Club's permit. But assuming, *arguendo*, that the issuance of the permit to the Nevada Club was improper, it would not serve as a valid predicate for granting petitioner a similarly unauthorized interest in the public land. *Cf. Mary Nan Spear*, 25 IBLA 34 (1976).

until its activity plans for the area are completed and the Bureau's belief that petitioner's proposed use of the site would probably be inconsistent with the plans as they are developing. Under petitioner's theory, any person owning a business on the Nevada shore should be able to have a parking lot and boat dock on the Arizona shore. The possibility of a string of parking lots on the Arizona shore is precisely the result that the Bureau seeks to avoid and the policy of issuing no more individual permits thus has a rational basis. The Bureau's proposal of a joint-use arrangement represented a reasonable attempt to accommodate the competing private interests while allowing the Bureau to continue to develop plans for the use of the land in a manner consistent with the public interest. We noted in our earlier decision that the petitioner chose to seek an individual permit rather than pursue any further the possibility of a joint-use arrangement. 3/

We recognize that petitioner's inability to obtain a permit to build a lot across the river from his club leaves him at a competitive disadvantage vis-a-vis the Nevada Club. Nevertheless, we are not persuaded that the District Office's decision is in error in holding that the public interest would not be served by granting appellant an individual permit prior to the completion of the studies for the area.

The record adequately sets forth the position of petitioner. His request for an opportunity to make a personal presentation is therefore denied. 4/ 43 CFR 4.25; 43 CFR 4.415.

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3/ Petitioner states that the Navigation and Permit Section of the Los Angeles District Office of the Corps of Engineers had refused to allow him to use his competitor's dock. (Petition for Reconsideration, p. 3). There is no indication, however, that this decision was final, nor is there any indication that joint use was not subject to further consideration by the Corps of Engineers at the time petitioner indicated his preference for an individual permit by a letter from his attorney dated October 27, 1975.

4/ Petitioner charges that it was an abuse of discretion to deny him an opportunity to make a personal presentation "in view of the fact that matters outside the record he brought forth were considered" -- i.e., the October 27 letter from his attorney to BLM. (See note 3, supra.) Petitioner is apparently under the mistaken impression that the record on appeal consists only of the documents tendered by him, but our review of the decision of the District Office necessarily entails a review of the case file. Thus, our decision was not based on any information outside of the administrative record.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the petition for reconsideration is granted and the decision of the Board in Donald J. Laughlin, d/b/a Riverside Resort & Casino, 25 IBLA 41 (1976), is reaffirmed. We take this action without prejudice to further consideration of a joint parking arrangement.

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Frederick Fishman  
Administrative Judge

We concur:

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Joan B. Thompson  
Administrative Judge

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Edward W. Stuebing  
Administrative Judge

26 IBLA 158

**Editor's note: There is no page 159 in volume 26.**

