

JUNCTION OIL COMPANY, INC.

IBLA 76-480      Decided December 6, 1976

Appeal from decision of Wyoming State Office, Bureau of Land Management, increasing rental for small tract lease W-0310786.

Affirmed.

1. Appraisals—Small Tract Act: Appraisals

Where the current fair rental value of a small tract lease has been determined in accordance with accepted appraisal procedures, and the lessee contends that the rental is excessive, the burden is upon the lessee to prove by positive, substantial evidence that the appraisal is in error. Where the lessee fails to do so, the appraisal will stand.

APPEARANCES: Timothy J. Kirven, Esq., Kirven and Hill, Buffalo, Wyoming.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Junction Oil Company, Inc., has appealed from a decision of the Wyoming State Office, Bureau of Land Management, dated January 20, 1976, revising the rental fees for small tract lease W-0310786 to \$2,600 per annum commencing March 1, 1975, or a lump sum 5-year rental fee of \$11,404.12. The rental had been \$1,860 per annum.

The annual rental for W-0310786 was increased to \$2,700 by BLM decision dated December 9, 1974. Junction Oil appealed such decision to this Board and on June 25, 1975, a decision, Junction Oil Company, Inc., 21 IBLA 78 (1975), was issued setting aside the BLM decision and remanding the case for another appraisal. The basis for the Board's decision was that "insufficient consideration was given to the difference in location between the property in issue

and the sales of land with which it is compared." Id. at 79. The appraiser had chosen "comparable" lands from only one area. The Board stated:

The prime factor in valuing land is its location. Where the sales upon which an appraisal is based relate to tracts in a substantially dissimilar economic situation and location, the appraisal cannot be sustained.

Id. at 80.

Following the reappraisal, BLM issued the January 20, 1976, decision from which Junction Oil has taken this appeal.

The land at issue is lots 6 and 7, Section 30, T. 40 N., R. 78 W., 6th P.M., Wyoming, containing 4.735 acres, excluding two highway rights-of-way. The land is located at the junction of U.S. Highway 87 and Wyoming State Highway 387 in Midwest, Wyoming. The site is improved with a truck stop service station and café; however, the site was considered vacant for the purposes of the appraisal.

The BLM appraiser visited the subject property on August 27, 1975, and completed his appraisal report on December 5, 1975. He selected for comparison with the subject site seven separate sales, three in Edgerton and one each in Gillette, Douglas, Buffalo and Kaycee. He attempted to find sales of similar size tracts with generally comparable highway advantages. The appraiser calculated the value per acre of the tract to be \$6,000 per acre and the total to be:

$$4.735 \text{ acres} \times \$6,000/\text{acre} = \$28,410$$

Rounded to \$28,000

He then made the following calculations to arrive at the fair rental value:

The rental is calculated using the \$6,000 per acre value and the 10% rate of return as follows:

$$\$6,000 \times 10\% = \$600 \text{ per acre, payable at the end of the year}$$

\* \* \* \* \*

$$4.735 \text{ acres at } \$600 \text{ per acre} = \$2,841 \text{ per year}$$

Rounded to \$2,800 per year (EOY)      One year's rental in advance is: \$2,800 = \$2,610.72,  
1.0725 say \$2,600

The present worth of the lump sum rental for 5 years, if paid in advance, is estimated using the factor for 7.25% compound interest rate.

$$2,800 \times 4.0729 = \$11,404.12$$

Appellant attacks the reappraisal stating that the "freeway influence factor" necessitates a major downward adjustment in both the fair market value and the fair market rental value. Appellant pursues this argument because of the planned construction of Interstate Highway 25 which will bypass the subject site and, appellant asserts, contribute to a significant drop in the vehicular traffic passing the subject site. Appellant argues that this factor was not weighed appropriately in the appraisal report.

The appraisal report indicates that the appraiser was aware of the construction on Interstate 25, and he stated that opening of the freeway to bypass Midwest and the subject site is "estimated to be about five years from the date of this appraisal." However, he reported that the effect of completion of Interstate 25 on the Midwest area could not be accurately forecast, although Casper-Gillette traffic would continue to pass through the Midwest-Edgerton community.

Appellant also complains that the appraisal report fails to adequately specify and delineate the nature and the extent of the "size factor" adjustments, thereby contributing to the inaccurate determination of fair market value. Appellant claims that one-third of the tract is not utilized in the operation of the truck stop facility, and that since the entire 4.735-acre tract is not an economically feasible unit for the "highest and best use" as a truck stop facility, the fair market rental should be adjusted downward accordingly.

Appellant's argument fails to take cognizance of the fact that for the purposes of the appraisal the tract was considered to be a single parcel of vacant land. The fact that appellant does not utilize the entire tract is irrelevant; it has the right to develop all the usable portions of the tract. An analogous situation might be one who leases a two-story office building seeking a reduction in rental because he only utilizes the first floor of the building. The lessee is entitled to use the entire building and his decision to use only half the leased space cannot serve to minimize his rental obligation.

[1] While appellant has complained that the rental set by BLM is excessive, it has the burden to prove by substantial and positive evidence that the appraisal is in error. See Henry O. Woodruff, 24 IBLA 190 (1976); Harold Kyllonen, 16 IBLA 86, 81 I.D. 364 (1974). Appellant has not met his burden. The appraisal was conducted in

accordance with accepted BLM standards. Appellant produced no independent appraisal to rebut the BLM appraisal, therefore, the BLM appraisal must stand. Although appellant deprecates BLM's appraisal, it has not submitted any appraisal establishing a current lower fee value and rental.

However, since the impact of the Interstate 25 bypass on the value of the tract cannot be definitively determined at this time, BLM should be prepared to reevaluate the site following the completion of the bypass at the end of a 5-year period fixed in the lease for rental adjustments and make any necessary adjustment in the fair market value and the fair market rental value.

Accordingly, 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.

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Frederick Fishman  
Administrative Judge

We concur:

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Joseph W. Goss  
Administrative Judge

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Martin Ritvo  
Administrative Judge

