

ARNOLD E. HEDELL

IBLA 78-30 Decided September 12, 1978

Appeal from the decision of the Craig, Colorado, District Office, Bureau of Land Management, denying Special Land Use Application S-05010-75-10.

Affirmed.

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

The issuance of a use permit is discretionary, and BLM may reject an application for such a permit where Bureau studies indicate that the uses proposed are inconsistent with the agency's objectives for the lands involved.

2. Federal Land Policy and Management Act of 1976: Generally--Public Lands:
Special Use Permits--Rights-of-Way: Generally--Rights-of-Way: Applications

Applications for rights-of-way on public lands pending on Oct. 21, 1976, are to be considered as filed under the Federal Land Policy and Management Act of 1976.

APPEARANCES: Arnold E. Hedell, pro se.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Arnold E. Hedell appeals from the September 7, 1977, decision of the Craig, Colorado, District Office, Bureau of Land Management (BLM), denying his special land use application to construct an access road, a septic tank, and a leach field on public lands in Summit County, Colorado. The application, filed June 12, 1975, requested the use of two public land lots adjoining appellant's lot in the Ptarmigan Small Tract Area.

BLM denied the application for the following reasons:

1. Inspection showed that access alternatives were available on a nearby public easement reservation.
2. Appellant's property appeared to have sufficient area for the septic tank and leach field.
3. Encumbering other lots with appellant's uses would be inconsistent with BLM objectives.
4. A special land use permit application is no longer the appropriate avenue for a right-of-way application. Such applications are now covered by the Federal Land Policy and Management Act of 1976 (FLPMA). 43 U.S.C.A. §§ 1701 et seq. (Supp. 1978).

In support of his application, appellant maintains that existing access is too steep, and that there is insufficient room on his own lot to construct the leach field and septic tank. In addition, appellant objects to the long delay in processing his application and questions the applicability of FLPMA. Appellant has also indicated a desire to purchase the two lots. The lands are under application by the State of Colorado.

[1] As to the septic tank and leach field, special land use permits have traditionally been issued to authorize uses of the public lands not specifically provided for by existing law. 43 CFR 2920.0-2. Section 302(b) of FLPMA, 43 U.S.C.A. § 1732(b) (Supp. 1978) authorizes the Secretary to regulate the use of public lands "through easements, permits, leases, licenses, published rules, or other instruments" as he deems appropriate. According to Organic Act Directive No. 76-15 (December 14, 1976), special land use permit authority under 43 CFR 2920 is no longer applicable. Instead, until regulations are issued, the procedures formerly applicable to special land use permits will be used for temporary use permits (TUPS). Such TUPS may be granted under section 504(a) of FLPMA, 43 U.S.C.A. § 1764 (Supp. 1978), for any temporary land uses associated with rights-of-way and under section 302(b) of FLPMA for land uses not associated with rights-of-way. See Baja Motor Sports, 32 IBLA 142, n.1 (1977). BLM has the discretion to reject such applications where they do not comport with the Bureau's objectives and programs for the use of the lands involved. Baja Motor Sports, *supra*. The Bureau's studies of the area indicate that appellant's proposed septic tank and leach field are not consistent with the agency's public use objectives and with the applied for transfer to the State of Colorado. Appellant has not shown wherein it is unreasonable for BLM to hold that the lands should remain unencumbered, nor has appellant supported his statement that under Summit County rules, there is insufficient room for the septic field on appellant's property. BLM's rejection of the permit as to these uses should be affirmed.

[2] While under 43 U.S.C.A. § 1770(a) (Supp. 1978) a pending application for a right-of-way properly may be considered an application under FLPMA, the granting of such application remains discretionary. Rights-of-way applications are properly rejected where a proposed access road would be neither in the public interest nor facilitate land management policy. Edwin L. Rumph, Jr., 31 IBLA 367 (1977). Under 43 U.S.C.A. § 1763 (Supp. 1978), the proliferation of rights-of-way is to be avoided. Appellant has not shown wherein the decision appealed is in error.

Appellant complains of the delay in this matter. However, appellant has not shown wherein he has been prejudiced thereby. Appellant's application is subject to the law and regulations in effect when the application is adjudicated. Continental Telephone of California, 34 IBLA 374 (1978).

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.

Joseph W. Goss
Administrative Judge

We concur.

Edward W. Stuebing
Administrative Judge

Frederick Fishman
Administrative Judge

