

HYATT LAKE HOMEOWNERS ASSOCIATION

IBLA 80-61

Decided June 9, 1980

Appeal from decisions of the Oregon State Office, Bureau of Land Management, establishing new rentals for cabin sites. ORE 05111 etc.

Affirmed.

1. Administrative Procedure: Burden of Proof -- Appraisals
-- Evidence: Burden of Proof -- Federal Land Policy and
Management Act of 1976: Leases -- Rules of Practice:
Appeals: Burden of Proof -- Small Tract Act: Appraisals
-- Small Tract Act: Renewal of Lease

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.

APPEARANCES: Clifford S. Fixsen, Mark Sheldon, Larry R. Edwards, Molly Swagerty, and Vann B. Smith, for appellant; Robert H. Memovich, Esq., U.S. Department of the Interior, Portland, Oregon, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

The Hyatt Lake Homeowners Association has appealed on behalf of its 17 members, each of whom held a recreational homesite lease under the Small Tract Act, 43 U.S.C. § 682a (1976) (repealed by section 702 of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2789), for a tract of land at Hyatt Lake in sec. 11, T. 39 S., R. 3 E., Willamette meridian, Oregon. 1/ The leases were

1/ The names of the individual leaseholders appear in the Appendix to this decision.

originally issued in 1959 and 1960 and each had been renewed for a term expiring in 1979 or 1980. At the time of expiration of 14 leases in 1979, BLM offered to each lessee the opportunity to receive a new 5-year lease under section 302, FLPMA, 43 U.S.C. § 1732 (1976), provided increased annual rentals of \$693 were paid and new special stipulations were accepted. Each of the 14 lessees did pay the increased rental for the first lease year under protest and did accept the new stipulations. The three lessees whose small tract leases will expire on November 30, 1980, also joined in the appeal in anticipation of a similar rental increase for each of their leases.

The documents filed by the Association were more in the nature of a protest against the rental increase, rather than an appeal from an action required by BLM, especially as each lessee had complied with the requests by BLM for additional rental and acceptance of special stipulations. When the statement of reasons in support of the appeal was filed with this Board, the State Director transmitted the case files for the Board's action on the "appeal."

The Office of the Solicitor, responding on behalf of the State Director, agreed that the matter was properly a protest, but noted that nothing other than delay would be gained by dismissal of the appeal and remand to BLM for action on the protest, especially as BLM considers the rental amounts to be proper and reasonable. The Solicitor therefore requested this Board to consider the matter as ripe for adjudication on the merits of the case. Accordingly, the Board will consider the appeal only as it relates to the 14 leases which terminated in 1979. The leases expiring November 30, 1980, may be subject to further consideration after BLM acts on the requests for renewals of those leases if there is further protest at that time to the new conditions imposed.

The parcels in question are located on the northeast shoreline of Hyatt Lake Reservoir. The lots do not actually front on the lake, but are set back approximately 50 to 150 feet from the high water mark. This setback area is open to public use and access. The shoreline slopes away very gradually and late in the summer, after the reservoir is drawn down for irrigation, a wide muddy flat develops, and access to the lake is more difficult. Trees were not cleared from the reservoir site during construction, and many snags protrude from the surface of the water. As a result, fishing is reported to be excellent, but a 10 m.p.h. speed limit exists on the lake.

A good cover of mature timber is present on the lots. Access to the area can be gained by a county road on the west side of the lake and by a paved BLM road on the east side behind the parcels in question. In order to secure access to the parcels in the winter months, during which snowfall may reach 3-6 feet, the lessees must pay the county to plow BLM's road.

Electric power and telephone service are available. Water for domestic use is available from nine wells which have been drilled in the area. Nine lots have septic tank systems for sewage disposal, and the remaining lots have outdoor type toilets.

The size of the lots range in area from .47 acres to .88 acres. With the exception of two lots, 2/ the parcels have frontage of 150 feet facing the lake and are approximately 200 feet deep.

The parcels were appraised in July 1979 by BLM in anticipation of the expiration of the then existing leases. Each parcel was appraised at \$9,000 fair market value 3/ using the comparable sales approach set forth in Uniform Appraisal Standards for Federal Land Acquisitions, (1973), established by the Interagency Land Acquisition Conference. Where the value to be determined is a rental value, but no comparable rental properties are available for comparison, comparable sales may be used as a basis for calculating comparable rental values. The result is a hybrid between the comparative approach and the income approach. See Uniform Standards at 13, BLM Manual 9311.23.F (1977). In such a case, the sales price of the property is treated as if it were the capitalization of an investment from which the income (i.e., rental value) may be calculated by applying a reasonable rate of return. Four States Television, Inc., 32 IBLA 205 (1977); Junction Oil Company, Inc., 28 IBLA 183 (1976).

BLM arrived at the \$9,000 figure by comparing the subject parcels with seven other properties which had been sold within the prior 2-year period. The sales prices of these seven properties were then adjusted upward to reflect the rate of appreciation of real property in the area of the sale.

Rent was calculated by multiplying this \$9,000 figure by 9-5/8 percent and reducing this product by 20 percent to compensate for certain leasehold deficiencies. The result of these calculations was an annual rent of \$693 per year, substantially higher than the \$62 annual rent paid by a number of the leaseholders on the preexisting small tract leases issued in 1959.

2/ Lot 1, tract A, has 152 feet of frontage; lot 12, tract B, has 100 feet of frontage.

3/ The term "fair market value" is defined as the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would be sold by a knowledgeable owner willing but not obligated to sell to a knowledgeable purchaser who desired but is not obligated to buy. Uniform Standards, p. 3, supra. In arriving at a fair market value of \$9,000, BLM did not include the value of improvements added to the lands by appellants. The highest and best use for the parcels in question was found to be for recreational homesites.

The 9-5/8 percent rate was based on Organic Act Directive No. 78-33, Change 1, which in turn relied upon an announcement from the Department of the Treasury to the Water Resources Council. 43 FR 50276 (Oct. 27, 1978). This announcement set the average yield on certain interest bearing marketable securities of the United States at 7-5/8 percent. ^{4/} BLM added 2 percent to this figure for risk, lack of liquidity, and management responsibilities.

[1] Appellant argues that BLM's valuation of the subject parcels at \$9,000 is too high. In support of this argument, appellant points to appraisals of four Hyatt Lake properties by Jackson County officials which, appellant claims, would indicate a valuation of \$7,875 for the subject lots. The reason for this apparent discrepancy is suggested by counsel for BLM in response to appellant's statement of reasons. The valuations which appellant points to are actually valuations of a leasehold interest, rather than a fee interest. In determining the rent on the subject parcels, BLM properly used the value of the fee interest in its calculations. Ralph S. Hoerning, 10 IBLA 203 (1973). Inasmuch as the improvements on the subject lands belong to appellant's members, BLM properly excluded the value of improvements on the subject lands and the value of improvements on the seven sales used in its comparative sales approach.

Appellant also argues that BLM did not support in its appraisal the rate of appreciation which it used in adjusting earlier sales prices to a current figure. Counsel for BLM, relying upon figures submitted by the Chief, Division of Technical Services, has provided sufficient data in its answer to justify a rate of appreciation consistent with the appraisals in question. In any event, it is well settled that 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. Junction Oil Company, Inc., supra. Appellant has not proffered such evidence. We reach a similar conclusion in answer to appellant's argument that BLM violated anti-inflationary guidelines in setting the present rents.

In an effort to show that BLM's appraisal was too high, appellant points out a number of drawbacks to living at Hyatt Lake: road distance to nearest community services is 27 miles (Ashland); police and fire protection are available on a limited basis only; school bus, waste collection, and mail services are not available; algae and other vegetation seriously limit swimming, boating, and fishing after mid-July; a foul odor is produced after mid-August from decaying organic

^{4/} In a more recent announcement to the Water Resources Council on October 18, 1979, the Department of the Treasury set the average yield on similar securities at 8-1/4 percent. 44 FR 62116 (Oct. 29, 1979). This higher interest rate does not affect the appraisals at issue here.

matter in the shoreline area; open range cattle eat flowers, grass, shrubs, and leave fecal deposits; and the Bureau of Reclamation limits the number of private boat landing permits.

Counsel for BLM contends that similar drawbacks also apply to the comparable sales at Agency Lake and Copco Lake which BLM used in arriving at its \$9,000 valuation figure. If these deficiencies do, in fact, exist at Agency Lake and Copco Lake, and appellant has not disputed counsel's contention, then such deficiencies are reflected in the sales prices for the seven parcels used by BLM in arriving at its \$9,000 figure. No adjustment to BLM's calculations is in order on the basis of the aforementioned drawbacks.

In arriving at an annual rental of \$693, BLM reduced the product of the fee value of \$9,000 and 9-5/8 percent by 20 percent to allow for various deficiencies in the subject parcels which would not be applicable to the seven sales considered in arriving at a fee value. Appellant cites three deficiencies which it feels entitle it to a 40 percent to 50 percent reduction. These are: the short term (5 years) of the lease causes apprehension about possible non-renewal and increased rents; lease stipulation No. 18 provides for cancellation of the lease if any improvement, or portion thereof, be rendered uninhabitable due to damage for any reason; and banks will not lend money to a potential buyer of the improvements on the subject parcels. BLM's appraisal report specifically discusses the first two of these deficiencies, inter alia, in arriving at a 20 percent reduction figure.

While the shortcomings listed by appellant are considerable, we cannot say that appellant has shown by substantial and positive evidence that BLM has erred in either its method or facts in arriving at this 20 percent reduction figure. Michael S. Deering, 33 IBLA 142 (1977), at 145.

As set forth above, BLM used Organic Act Directive (OAD) No. 78-33, Change 1, to determine the rate of return (9-5/8 percent) on the subject parcels. Of this figure, 2 percent was included for risk, lack of liquidity, and management costs. The appraisals at issue, however, contain the statement that a 9 percent rate is reported locally for unimproved commercial land. Appellant maintains that the 9-5/8 percent return is unreasonable "when it is considered that commercial land is expected to yield a profit to the investor, whereas government land, owned by the people, when leased to those same people for recreational purposes, would be expected to return no more than a break even sum, if indeed that much."

Appellant is incorrect in this contention. In section 102(a)(9), FLPMA, 43 U.S.C. § 1701(a)(9) (1976), Congress declared it to be the policy of the United States that the United States receive the fair market value of the use of the public lands and their resources unless

otherwise provided by statute. ^{5/} This policy has been acknowledged by this Board in Michael S. Deering, *supra*, citing 43 CFR 1725.2-1(a) to the same effect. A similar provision specifying that a rental be equal to the fair market rental of the lands is found in the regulations at 43 CFR 2913.1.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions of the State Office are affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Joan B. Thompson
Administrative Judge

^{5/} Section 102(b) of FLPMA contains the following statement:

"The policies of this Act shall become effective only as specific statutory authority for their implementation is enacted by this Act or by subsequent legislation and shall then be construed as supplemental to and not in derogation of the purposes for which public lands are administered under other provisions of law."

APPENDIX

TRACT A

ORE 05170	1.	Howard R. Lockwood	.57 acre
ORE 010693	2.	Harry M. Thomas, Francis M. Thomas	.76
ORE 010694	3.	Mr. and Mrs. Larry Edwards, Mr. and Mrs. Alfred Griffith	.71
ORE 010695	4.	William A. Townes	.88
ORE 05142	5.	Ben Edward Rackley	.68
ORE 05115	6.	Paul Culbertson, Mamie Culbertson, Dwayne Culbertson	.47

TRACT B

ORE 010617	1.	Donald I. Penwell, Elva A. Penwell	.74
ORE 010618	2.	Harry Arnold, Evelyn Y. Arnold	.52
ORE 06754	3.	Melbourne V. B. Williams, Monty G. Williams	.79
ORE 05141	4.	Edward M. McAlvage	.52
ORE 05147	5.	Mark William Sheldon	.48
	6.	Lot No. 6 never leased	
ORE 05135	7.	H. L. "Bud" Plankenhorn	.73
ORE 05111	8.	Clifford S. Fixsen, Patricia M. Fixsen	.76
ORE 010696	9.	Joseph Angel	.77
ORE 05154	10.	Robert W. Swagerty	.66
ORE 010675	11.	Richard M. Colvard, Christine Colvard	.75
ORE 010697	12.	Vann B. Smith	.79