

Appeal from decision of the Idaho State Office, Bureau of Land Management, setting increased rental charges for communications site right-of-way I-603.

Affirmed.

1. Appraisals -- Communication Sites -- Rights-of-Way: Generally

Appraisals of rights-of-way for communication sites will be upheld if there is no error in the appraisal methods used by the Bureau of Land Management and the appellant fails to show convincing evidence that the charges are excessive.

APPEARANCES: Donald R. Clark, pro se.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Donald R. Clark has appealed the decision of the Idaho State Office, Bureau of Land Management (BLM), dated June 15, 1982, setting increased rental charges for communications site right-of-way I-603 following reappraisal to determine current fair market value.

Communications site I-603 is described as lot 5, located within the S 1/2 NE 1/4 sec. 14, T. 2 N., R. 32 E., Boise meridian, Idaho. The right-of-way was originally granted effective July 12, 1967, for a term of 5 years pursuant to the Act of March 4, 1911, 43 U.S.C. § 961 (1970). <sup>1/</sup> At the time of the grant, the fair market value of the site was determined to be \$460 for the 5-year period and appellant made a lump sum payment of the rental in advance.

The right-of-way grant was renewed pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976), for a term of 15 years (July 12, 1972, to July 11, 1987). The annual rental was set

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<sup>1/</sup> This Act was repealed by section 706, Federal Land Policy and Management Act of 1976, 90 Stat. 2793.

at \$105 per year subject to review and reappraisal in accordance with 43 CFR 2803.1-2(d) (43 CFR 2802.1-7(e) (1979) at the time of the renewal). 2/

By decision dated March 19, 1982, BLM informed appellant that his communications site had been reappraised and a fair market value of \$750 per year established for the period beginning July 12, 1982. Appellant was allowed 30 days to protest the new rental. He filed objections stating that the increase was "extreme and unwarranted" and would cause harm to his business. He suggested that a 15 percent increase would be more reasonable. BLM responded by explaining its appraisal method and indicated that appellant could request a hearing where he would be able to examine the Government appraisers and present his own evidence that the appraisal was in error to the Chief, Division of Operations, BLM.

A hearing was held on May 10, 1982. The Chief, Branch of Appraisals, reviewed the appraisal method for appellant. He explained that, at the time of the 1967 appraisal, the annual rental was estimated by comparing the site with sales of comparable sites but that thereafter it was determined that a knowledgeable owner preferred to lease such sites and the appraisal method was changed to a comparison of comparable leases because this presented a better estimate of fair market value (Tr. 4-5). Then the BLM appraiser who had reappraised appellant's communication site reviewed the details of the appraisal at issue (Tr. 6-7). Appellant asked some questions and offered his views that the rental was too high and that he would prefer to buy the land outright. He did not substantiate his claims with direct evidence showing error in the appraisal. See generally Tr. 8-16, 18, 20-22.

Following the hearing, on June 15, 1982, BLM issued the decision now on appeal reaffirming its rental determination of \$750 per year.

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2/ Following appellant's August 1972 request that right-of-way I-603 be renewed, BLM reappraised the site to establish the then current fair market value of the site. By decision dated Oct. 20, 1975, BLM determined that the fair market rental for the site was \$650 based on a comparison of the site with other communications sites in the State of Idaho, but that since the site was used concurrently by two other users, appellant's prorated annual share of the rental was \$217.67. Since the term of the lease was to be July 12, 1972, to Dec. 31, 1980, 8.48 years, BLM requested a lump sum payment of \$1,800, including interest, as a condition of renewal. Appellant appealed that assessment to this Board. By decision styled Donald R. Clark, 39 IBLA 182 (1979), the Board set aside BLM's decision and remanded the case for reconsideration of the rental, holding in part that increased charges may not be imposed retroactively, but may only be imposed after reasonable notice and opportunity for hearing, beginning with the next charge year. Thereafter, BLM notified appellant that his rental for the period July 12, 1972, to July 12, 1979, would be \$105 per year, based on its 1967 appraisal, plus interest, and requested payment of \$980 back rental as a condition of renewal. After repeated requests from BLM, appellant paid the back rental plus \$105 advance rental for the 1979/1980 rental year in installments over the course of several months. The right-of-way was then renewed.

In his notice of appeal and statement of reasons, appellant argues, in effect, that the charge is excessive because BLM can lease the general area to many users who, like himself, need to use the hill and BLM did not do anything to develop the hill. He asserts that he should not be required to "buy" the site every year and that if the excessive charges persist, some of the users will have to give up their rights-of-way.

Review of the record reveals that BLM used the comparable lease method of appraisal for which this Board has stated a preference for appraisals of communication sites, where sufficient data is available. See Full Circle Inc., 35 IBLA 325, 85 I.D. 207 (1978). A comparison was made between appellant's right-of-way site and four comparable communication sites in Idaho with respect to seven specific factors: Time, coverage, Government regulation, location, access, physical character, and electric power. An assessment was made as to whether the site in issue was superior, inferior, or comparable to the sample leases for each factor and then an overall comparison was made considering the relative importance of the individual factors. The sample lease rentals ranged from \$440 to \$1,200 per year. BLM found lease 3, with a rental of \$760, to be the most comparable to appellant's site. See February 16, 1982, Appraisal Report for Donald R. Clark Communication Site Right-of-Way I 603, Idaho Falls District, BLM.

[1] The general standard for reviewing rights-of-way appraisals is to uphold the appraisal if there is no error in the appraisal methods used by BLM and the appellant fails to show by convincing evidence that the charges are excessive. Francis H. Gifford, 62 IBLA 393 (1982); Dwight L. Zundel, 55 IBLA 218 (1981); B & M Service, Inc., 48 IBLA 233 (1980). In the absence of compelling evidence that a BLM appraisal is erroneous, such an appraisal may only be rebutted by another appraisal. Dwight L. Zundel, supra at 222. Upon review of the record including the appraisal report and hearing transcript, we find that appellant has not made the necessary showing.

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

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Will A. Irwin  
Administrative Judge

We concur:

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Edward W. Stuebing  
Administrative Judge

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Gail M. Frazier  
Administrative Judge

