

CLINTON IMPSON

IBLA 84-285

Decided September 28, 1984

Appeal from decision of the Montrose District Office, Bureau of Land Management, increasing rent due for residential occupancy permit C 26636.

Vacated and remanded.

1. Appraisals -- Federal Land Policy and Management Act of 1976:
Permits

Where sufficient doubt is raised about the method of an appraisal of fair market rental value for a residential occupancy permit, the case may be remanded for the Bureau of Land Management to conduct a further appraisal or adjust the appraised value.

APPEARANCES: Clinton Impson, pro se.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Clinton Impson has appealed a decision of the Montrose District Office, Bureau of Land Management (BLM), dated January 6, 1984, which announced the completion of an appraisal and an increase in the rental due for residential occupancy permit C-26636.

On April 28, 1978, appellant and his brother, Charlie Impson, and BLM agreed to this residential occupancy permit. The agreements ended a long-standing dispute over the Impsons' occupancy of public lands in the S 1/2 sec. 26, T. 44 N., R. 11 W., New Mexico Principal Meridian in Leopard Creek Canyon near Placerville, Colorado. Previously, the brothers occupied the area as the Shirley and Lucky Strike unpatented mining claims and some surrounding land. The record indicates that although their predecessors had actively mined these claims, the brothers have not shipped ore. Instead, during about 40 years occupancy, they and other relatives and lessees conducted various operations, including a sawmill, garage and gas station, general store, and liquor store. By the time BLM moved to assert control over these lands in 1973, trash, junked cars, old lumber, and deteriorating equipment had accumulated on and spilled outside the claims. The Impsons did not move to legitimize their occupancy pursuant to the Mining Claims Occupancy Act (MCOA) of October 23, 1962, as amended, 30 U.S.C. § 701 (1982). 1/

1/ Although appellant indicated that he had been aware of the MCOA, he did not file an application pursuant to it. Section 1 of the MCOA provided in part for conveyance of an interest in the area within an unpatented mining

The permit was executed after prolonged negotiations between the parties and contemporaneous conveyance of the brothers' interest in the claims involved by quitclaim deed executed by the three Impson brothers. The permit granted nontransferable residential occupancy for Clinton Impson and his immediate family. The permit required, among other things, payment of \$300 per year for the 1.46 acres, cleanup of accumulated trash, a bond (which was not posted), and periodic reappraisals as follows:

Rental for the permit site shall be paid annually on a date to be determined by the Authorized Officer, Bureau of Land Management. Failure to submit any required payment in a timely manner results in summary termination of the permit without an administrative proceeding. The Bureau of Land Management reserves the right to review the fair market value determination at reasonable intervals, generally every 5 years, and to adjust it in accordance with regulations and procedures in effect at that time, if necessary, to insure the payment of full fair market rental value of the permit site to the United States.

The rental remained at \$300 per year until the BLM decision issued on January 6, 1984, informing appellant of the completion of a fair market rental determination of \$2,416 per year beginning with the rental year April 28, 1984, through April 27, 1985. Impson appealed.

Appellant states on appeal that the sudden 800-percent increase is unconscionable and that the increase should be connected to the Consumer Price Index over the term of the lease. He states that he has improved the land by installing a well and underground piping, for which he is not compensated. He also states that the proposed rental exceeds the purchase price of the same amount of land.

[1] Our general rule is that an appraisal will be affirmed if there is no error in the appraisal method used by BLM or appellant fails to show by convincing evidence that the charge is excessive. Lone Star Steel Co., 79 IBLA 345 (1984). Where, however, sufficient doubt is raised about the method employed in an appraisal, BLM's reconsidering whether a further appraisal or an adjustment in appraised value should be made is warranted. Full Circle, Inc., 35 IBLA 325, 336-37, 85 I.D. 207, 213 (1978). This is such a case. Presumably, since fair market value was required for use of the public lands when the original permit was issued in 1978, 43 U.S.C. § 1701(a)(9) (1982), the \$200-per acre per-year rental established then was considered fair market value for the rights granted the Impsons by the permit. 2/ An 800 percent increase in the value of these rights in 5 years

fn. 1 (continued)

claim to a resident occupant who owned valuable improvements for at least 7 years prior to July 23, 1962. The deadline for MCOA applications was June 30, 1971. No new application may now be filed. 30 U.S.C. § 701 (1982); Robert T. Brott, 63 IBLA 279 (1982); John Paul Hinds, 18 IBLA 385 (1975). 2/ As noted above, permit special provision "h" provides that BLM "reserves the right to review the fair market value determination." It is, of course, possible that this rental took into account an unstated offset for the value of the Impsons' quitclaim deed to the Government of the portion of their mining claims covered in the permit.

raises a question about the appraisal upon which the increase was based, especially where the appraisal report indicates that residential land values increased approximately 30 percent over the 4-1/2-year period covered in the report. 3/

An examination of the June 3, 1983, appraisal report indicates that the "value of the rights conveyed by the residential occupancy permit * * * is estimated at 75 percent of the fee recognizing the restrictive permit development stipulations." The report analyzes sales of four parcels in the neighborhood for comparability to the Impson site "as if unimproved" and concludes that the fair market value of their site if sold as a rural homesite is \$28,000. The appraisal concludes that "the value of the permit in perpetuity is \$28,000 x .75 or \$21,000" and then calculates annual rental based on a standard formula. 4/

The difficulty with the appraisal is its assumption that the basis for determining the rental for the Impsons' permit should be 75 percent of the worth of the land in fee. Although the 25 percent reduction in that estimated worth was based on a recognition of "the restrictive permit development stipulations," that reduction appears to understate the degree of the restrictions, that is, the difference between the full bundle of rights in a lease of the fee and the limited rights granted by the Impson permit. The term of the permit is 10 years, renewable at most for three 5-year periods, unless the two permittees die beforehand. It grants "the right and privilege of residential occupancy only." (Emphasis in original.) The permit terminates for noncompliance with any of 19 "restrictions on land use" and "special provisions," although BLM has not enforced the requirement that the

3/ The report states:

"Market trends over time reflect appreciation in value of approximately 12%/annum or 1%/month from 1/79 thru 6/81. With national economic recession, high mortgage rates and unemployment, the market leveled reflecting little or no appreciation since July 1981. Therefore, a 1% month adjustment to sale price is made from sale date thru 6/81 for sales prior to that date. No upward time adjustment is made for sales occurring [sic] between 6/81 and the 6/83 date of appraisal." We note that applying this approach would result in an increase in annual rental to \$433.50 (\$300 per year x 12 percent per annum compounded monthly for the 37 months from issuance of the permit on Apr. 28, 1978, through June 1981).

4/ "Annual Rental

"The lease requires advance annual rental payment which is calculated according to the following formula: $A = \frac{V}{1+Y}$

Where:

A = Annual payment
 V = Value of lease in perpetuity
 Y = Present worth of one/annum for 100 yrs. § 13 pct. interest return Hence: A =
21,000 or \$2,416.01 say \$2,416.00
 1 + 7.692

"Fair market rental is estimated at \$2416.00 per year in advance."

permittees post a bond that would assure "that the permittees perform" all these conditions. The Impsons may not assign their rights nor may these rights be inherited. Only Clinton Impson and his spouse and nonmarried, dependent children may reside on the land full time and if they cease to do so for more than 6 months the permit terminates. No new structures, commercial facilities, or "advertising of any kind of nature [sic]" may be located on the premises. The permittees must request BLM's permission to terminate the permit and either they or their heirs must remove the improvements from the land within 6 months from termination or the improvements will become the property of the United States.

It is apparent from this recitation of the limitations on the Impsons' use of the land covered by the permit that their rights are equivalent to considerably less than 75 percent of those that would be theirs if they had obtained a long-term lease of the fee without restrictive conditions. We must conclude that either the original annual rental value reflecting the limited rights granted in the permit or the appraisal upon which the revised rental was based is erroneous, or perhaps that both are. Since the record does not enable us to determine, we remand to BLM for a determination of the fair market value of the annual rental of the land based on an adjustment of the appraised value of the rights granted by the permit or a demonstration of the error in the calculation of the original rental amount.

Therefore, 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 Montrose District Office is vacated and the matter is remanded for action consistent with this opinion.

Will A. Irwin
Administrative Judge

We concur:

R. W. Mullen
Administrative Judge

Franklin D. Arness
Administrative Judge