

CITY OF EAGLE, ALASKA

IBLA 85-154

Decided June 26, 1985

Appeal from the decision of the Fairbanks District Office, Bureau of Land Management, proposing to issue patent to a cemetery site under the Recreation and Public Purposes Act, but requiring payment of half the appraised fair market value of the land. F-69812.

Affirmed.

1. Recreation and Public Purposes Act

Where a cemetery site is to be conveyed to a city, an appropriate purchase price must be paid in consideration. Although once a military cemetery, the site may not be conveyed without monetary consideration as an historic monument where the military dead have been removed and the city intends to continue to utilize it as it has been used for decades; as a typical civilian community cemetery for the benefit of residents.

APPEARANCES: Louise Flynn, Mayor, City of Eagle; James R. Mothershead, Esq., Office of the Regional Solicitor, Alaska Region, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

The City of Eagle, Alaska (City), appeals from a decision of the Fairbanks District Office, Bureau of Land Management (BLM), dated October 24, 1984, approving the City's application, F-69812, to purchase certain lands filed under the Recreation and Public Purposes Act of June 14, 1926, as amended, 43 U.S.C. §§ 869 through 869-4 (1982), and requiring the City to submit a purchase price of \$ 3,125. BLM held that the City's lease with BLM for these lands shall terminate upon issuance of a patent.

The land in issue, lots 1 and 2, U.S. Survey 4076, is located in secs. 25 and 36, T. 1 S., R. 32 E, Fairbanks Meridian, and contains 0.96 acres. The land is situated near the townsite of Eagle. The property is within the Eagle Historic District which is on the National Register of Historic Places. The land was used as a cemetery by the U.S. Army at the Fort Egbert military reservation with civilians being interred as well. Prior to World War II, the Army abandoned Fort Egbert and removed the military dead from the cemetery. Since that time, the citizens of the City have maintained the cemetery

and have continued to inter their dead there. The land is known as the "Old Post Cemetery."

On July 17, 1980, the City filed an application to purchase the land for use as a cemetery. The City stated that it has maintained the cemetery since the military removed its bodies; that it plans to use the land as a cemetery; and that it will maintain the land by cleaning it and keeping the fence in repair.

On December 2, 1982, BLM informed the City that it (BLM) recommended that the cemetery be conveyed to the City. However, BLM explained that due to current program priorities, the staff would not be able to finalize the patent for the cemetery for perhaps 12 to 18 months. BLM stated that meanwhile it would issue an interim lease. On March 31, 1983, BLM leased the land to the City for a period of 20 years.

In the appraisal report for the land dated August 29, 1984, BLM's appraiser estimated the fair market value of the 0.96 acres to be \$ 6,250.

In a memorandum dated May 31, 1984, the District Manager, Fairbanks, informed the State Director that no cultural resources are considered to be within the scope of the proposed transfer and it recommended a determination of no effect inasmuch as the action will not have any impact on the National Register qualities of the Eagle Historic District. By letter of July 30, 1984, the State Historic Preservation Officer concurred with BLM's determination.

In its decision approving the application to purchase, BLM explained that the sale is within the regular pricing program described in BLM Manual 2741.71:D as follows:

D. Regular Pricing Program. For programs or projects * * * such as for cemeteries the lands are to be sold at the appraised fair market value of the property, excluding merchantable timber and mineral rights, less 50 percent except that the deduction will be only 10 percent if the use will be restricted to members of a particular limited group * * *.

BLM calculated the purchase price at \$ 3,125 which is the appraised fair market value of \$ 6,250, less 50 percent. BLM allowed appellant 90 days from receipt of the decision to submit the purchase price.

In its statement of reasons the City explains that it has attempted to obtain title to the property for about 50 years, unaware that the property must be purchased; the City feels that since the property will be used exclusively as a cemetery, it should not be required to purchase it; that it is impossible to pay the purchase price within 90 days because its budget has not provided for such purchase, and that the City has maintained the property for about 70 years without charge to the federal government.

The City notes that Eagle has been declared an historic district and has retained its historic flavor. The City states that it has a tradition

of not charging for burial which will end if the City has to purchase the cemetery.

In its response, BLM contends that since the recreation and public purposes conveyance under application is not for an historic-monument purchase, the City is required to pay the appraised purchase price determined by BLM. BLM states that the statutory requirement for payment of purchase price for a recreation and public purposes conveyance cannot be waived.

Section 2 of the Recreation and Public Purposes Act, as amended, 43 U.S.C. § 869-1 (1982), provides in pertinent part:

The Secretary of the Interior may * * * sell such land * * * to a nearby municipal corporation in the same State for the purpose for which the land has been classified, and conveyances of such land for historic-monument purposes under this section shall be made without monetary consideration, while conveyances for any other purpose under this section shall be made at a price to be fixed by the Secretary of the Interior through appraisal or otherwise, after taking into consideration the purpose for which the lands are to be used * * *.

The applicable regulation, 43 CFR 2741.7, reads as follows:

(a) Conveyances for recreational or historic-monument purposes to a State, county, or other State or Federal instrumentality or political subdivision shall be issued without monetary consideration.

(b) All other conveyances shall be made at prices established by the Secretary of the Interior through appraisal or otherwise, taking into consideration the purpose for which the land is to be used.

(c) Patents shall be issued only after payment of the full purchase price by a patent applicant.

The City requests that the property be transferred to it without monetary consideration. 43 CFR 2741 requires that a non-monetary conveyance be for an historic-monument purpose.

The proposed conveyance has been reviewed pursuant to section 106 of the National Historic Preservation Act of 1966, 16 U.S.C. § 470(f) (1982). BLM determined that although the site includes the Old Fort Egbert cemetery, the proposed cemetery use by the City will merely extend the present cemetery and there will be "no effect" on the qualities which qualified the Eagle Historic District for inclusion in the National Register for historic places. The State Historic Preservation Officer concurred with BLM's opinion.

Nor can the site qualify of its own accord as an historic-monument. The criteria for historic places which qualify for the National Register is set forth in 36 CFR 60.4 which reads in part as follows:

Criteria considerations. Ordinarily cemeteries, birthplaces, or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have achieved significance within the past 50 years shall not be considered eligible for the National Register. However, such properties will qualify if they are integral parts of districts that do meet the criteria or if they fall within the following categories:

* * * * *

(d) A cemetery which derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events; or * * *.

Under this regulation the general rule is that cemeteries will not be considered eligible for the National Register. The cemetery in question cannot qualify as an historic place under the exemption in 36 CFR 60.4 because the bodies of the deceased military personnel at Fort Egbert were removed from the cemetery years ago and the cemetery has been used by the City for burial of its citizens for many years. It is a typical civilian community cemetery for the benefit of the residents. Since the site cannot qualify as an historic place for the National Register, it cannot be considered an historic-monument within the meaning of 43 CFR 2741.7(a). Therefore, the conveyance of this site is not exempt from the general requirement for monetary consideration under the Recreation and Public Purposes Act and the City must pay an appropriate purchase price.

The Recreation and Public Purposes Act authorizes the Secretary in his discretion to sell or lease national resource lands. Town of Kremling, 46 IBLA 213, 215 (1980). However, the Act provides that one of the conditions for conveyance is payment "at a price to be fixed by the Secretary of the Interior through appraisal or otherwise, after taking into consideration the purposes for which the lands are to be used." 43 U.S.C. § 869-1 (1982). This requirement cannot be waived. The Department is bound to follow strictly the dictates of the statute. See Kidd v. U.S. Department of the Interior, Bureau of Land Management, 756 F.2d 1410-11 (9th Cir. 1985). The Department is also bound by 43 CFR 2741.7(c) which provides that "patents shall be issued only after payment of the full purchase price by a patent applicant."

The City has not challenged the appraisal price or appraisal procedures. Cf. City of Wall, South Dakota, A-28367 (Jan. 19, 1961). Rather, the City maintains that it is impossible to pay the purchase price within 90 days because its budget had not provided for this purchase. BLM states that it is amenable to such extension of time as would encompass the next annual budgeting process in which the payment can be considered by the City.

We note that BLM Manual 2741.15(a) provides an alternative to a lump sum payment:

15a. If large sums are involved, installment payments may be allowed (with final certificate being withheld until all payments have been made), if the following conditions exist:

- An interim lease with option to purchase is in effect during the installment period.
- Applicants agree to pay interest at a rate based upon an analysis of current interest rates in the marketplace.

Since there is an interim lease in effect, BLM may wish to consider the possibility of installment payments.

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.

Edward W. Stuebing
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

R. W. Mullen
Administrative Judge

