

SUZANNE WALSH

IBLA 85-381 Decided March 17, 1986

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting the high bid for competitive oil and gas lease NM A 56285 (OK).

Affirmed.

1. Oil and Gas Leases: Competitive Leases -- Oil and Gas Leases: Discretion to Lease

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale. A BLM decision rejecting a high bid as inadequate will be affirmed if appellant fails to overcome the Government's prima facie showing of correctness of its estimated minimum acceptable fair market value for the parcel and establish that appellant's bid reasonably reflects fair market value.

APPEARANCES: Suzanne Walsh, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

By decision styled Suzanne Walsh, 75 IBLA 247, dated August 24, 1983, this Board set aside a decision of the New Mexico State Office, Bureau of Land Management (BLM), and remanded the case to BLM. In that appeal Suzanne Walsh (Walsh) had appealed a March 21, 1983, BLM decision rejecting her high bid for parcel 77 in the February 15, 1983, competitive oil and gas lease sale. 1/ The reason for the rejection was that the high bid was deemed by BLM to be inadequate, based on the presale evaluation.

The Board decision in Suzanne Walsh, supra, noted that BLM had submitted two memoranda which evaluated the parcel. One memorandum, dated April 13, 1983, specifically responded to appellant's statement of reasons. A second memorandum, dated May 5, 1983, corrected errors made in the first memorandum, stated additional generalized information regarding the tract, and discussed generally the discounted cash flow estimates for the tract.

1/ Parcel 77 is a 40-acre tract in sec. 12, T. 15 N., R. 23 W., Indian Meridian, Roger Mills County, Oklahoma.

The Board has determined that, for high bid rejection cases, the estimated fair market value must be among the facts provided. Edward L. Johnson, 73 IBLA 253 (1983); Amoco Production Co., 71 IBLA 241 (1983); Petrovest, Inc., 70 IBLA 250 (1983). Although BLM provided a brief summary of some of the facts used in making its determination, it did not provide its estimate of the fair market value of the tract. Instead, BLM merely made reference to the Monte Carlo discounted cash flow simulation and the input data, without information about application of the program to the bids received, other than a conclusory statement that the bid was too low. On remand, BLM was directed to reconsider its decision and, if again rejected, the necessary information was to be made a part of its decision.

By decision dated January 9, 1985, BLM again rejected bid NM A 56285 (OK). However, this time a copy of a report prepared by BLM's Office of Economic Evaluation, which was the basis for the second rejection, was attached to the decision. 2/ The report reads as follows:

This parcel is a 40.00 acre tract located in Roger Mills County, Oklahoma; being the southeast quarter of the northwest quarter of Section 12; T15N; R23W; Indian Meridian. The known geological structure is unnamed, but locally the area is known as the "Southeast Roll Field" which is one of many producing areas within the "Anadarko Basin" of Oklahoma. As of 2/14/83 the "Lovett #A-1" (see plat) gas well in the center of the southwest quarter of the subject section has produced over 160,000 Mcf of gas (8 months production) and was maintaining a bottom hole pressure of 4,000 lbs/sq. in. This well was completed 6/82 in the "Des Moines" formation at a depth of 12,000' (perforated from 11,982' to 12,046'; 64' section). The Tulsa District Office indicates that there is no communitization agreement or pooling order in effect yet; however, the subject Parcel #77 will share in the production from "Lovett #A-1" (640 acre spacing unit). It is too soon to estimate total production, but this appears to be an excellent well.

Since the "Lovett #A-1" has not reached "payout," this parcel is being appraised by comparable leases. The following sales are indicative of the current fair market value for bonus:

- A. Section 32, T16N, R23E, 10/82, \$ 1,825.99 per acre.
- B. Section 33, T16N, R23E, 4/82, \$ 1,952.38 per acre.

The above sales indicate a minimum value for bonus for Parcel #77 as of 2/14/83 to be \$ 1,000.00 per acre, or \$ 40,000.00 total.

2/ We have not failed to note that, after remand because insufficient information was submitted to support a decision based on a Monte Carlo discount cash flow analysis, the second rejection was based upon a comparative tract value analysis. At the time of review of the initial Walsh case, this Board had been receiving a number of high bid rejection appeals where the basis for rejection almost appeared to be a form letter explanation of the Monte Carlo simulation.

Appellant also sets forth her own calculations as a basis for her conclusion that the evaluation team erred in appraising parcel 77. Appellant's arguments are as follows:

I believe that the Evaluation Team erred in appraising tract #77 because of several key factors, the main and most important one being the comparable sales approach. The two parcels cited in their memorandum cannot be considered similar properties because after June 1982 tract #77 has a producing well. The properties cited do not. This translates to what the well will be worth by projecting data received from testing and actual production and market demand. The well on tract #77 is not a good well as shown from records in Exhibit "A". The two properties compared to tract #77 leave open the possibility that a good well might be discovered.

Let us now examine their second faulty appraisal. The comparison of a 40A tract with a 160A tract cannot be considered similar properties because of the returns an investor would enjoy even tho investing in a well that wasn't that good. Let us compare Exhibit "D" with "E" where the larger tract of 160A is compared with the smaller U.S. tract of 40A. Payout of the 160A tract would be near whereas the payout for the 40A government would still be 1-1/2 to 3 years off if ever especially with the rate of decline that is experienced in the area.

At the time of the sale there was a dry hole to the East and a plugged hole to the South (the Wickham mentioned in Exhibit "D" 2b). Apparently the two units mentioned were not considered even tho they were less than a mile whereas the Evaluation Team considered properties over three miles away.

Conclusion:

At my bid the U.S. would receive at least or about \$ 10,000.00 royalties plus whatever might be recovered in subsequent years. If this appeal where [sic] further rejected and eventually be submitted for sale (who would bid? because of the economic figures cited above), the U.S. would stand to lose all money since it can only recover thru a leasee [sic].

[1] The Secretary of the Interior has discretionary authority to reject a high bid for a competitive oil and gas lease as inadequate. 30 U.S.C. § 226(b) (1982), as amended, 43 CFR 3120.5. This Board has consistently upheld that authority if there is a rational basis for the conclusion that the highest bid does not represent a fair market value for the parcel. Read & Stevens, Inc., 72 IBLA 390 (1982); Harold R. Leeds, 60 IBLA 383 (1981); William C. Welch, 60 IBLA 248 (1981); Harry Ptasynski, 48 IBLA 246 (1980); B. D. Price, 40 IBLA 85 (1979). Departmental policy in the administration of its competitive leasing program is to seek the return of fair market value for the grant of leases. The Secretary reserves the right to reject a bid which will not provide a fair market value. Coquina Oil Corp., 29 IBLA 310, 311 (1977). See Exxon Co., U.S.A., 15 IBLA 345, 357-58 (1974).

The Secretary or his delegate need not prove the bids are inadequate in order to support rejection decisions. A rejection is an exercise of his discretion, and deference is given to such action if, in the public interest, the Secretary determines a bid to be less than the estimated fair market value. The record need only be sufficient to establish a basis for the determination that the decision was not arbitrary, capricious, or in error. Harvey E. Yates Co., 71 IBLA 134 (1983); Kerr-McGee Corp., 6 IBLA 108 (1972), aff'd, Kerr-McGee Corp. v. Morton, 527 F.2d 838 (D.C. Cir. 1975).

When considering whether a decision is arbitrary or capricious, we recognize the Department is entitled to rely on the reasoned analysis by technical experts in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases. Dan Nelson, 85 IBLA 156 (1985); L. B. Blake, 67 IBLA 103 (1982). Where a decision to reject a bid has been made in a careful and systematic manner utilizing the advice of such experts, that decision will not be reversed, even though there may be reasonable differences of opinion. See Kerr-McGee Corp. v. Watt, 517 F. Supp. 1209, 1213-14 (D.D.C. 1981).

After considering the record, we find BLM made a sufficient showing to establish a prima facie case that its estimate was correct. The BLM decision now on appeal was based on the proximity of producing wells, comparable lease data, and its presale evaluation of the value of the parcel. Therefore, appellant has an affirmative obligation to demonstrate her bid represents the fair market value and that the Government estimate was inaccurate. The Westlands Co., 83 IBLA 43 (1984). Appellant's bid of \$ 290 or \$ 7.25 per acre is substantially below \$ 40,000 or \$ 1,000 per acre, the fair market value set by BLM. Thus, appellant has a heavy burden of demonstrating by a preponderance of the evidence that there were gross inaccuracies in the BLM evaluation. Appellant has failed to do so.

Appellant's conclusion that "the U.S. would receive at least or about \$ 10,000 royalties plus whatever might be recovered in subsequent years" is not sufficient to warrant the overturning of BLM's decision that the bid was inadequate. ^{3/} It is not enough to show there is some room for dispute, or even that by rejecting a bid the Government may lose some royalty income. ^{4/} Appellant must demonstrate, by a preponderance of the evidence that the Department's determination was in error and that the bid amount tendered by appellant represents fair market value. J. W. McTiernan, 87 IBLA 76 (1985). We find appellant has not made these showings.

^{3/} In fact, we believe that there are discernible errors in appellant's calculations. For example, in exhibits to her statement of reasons appellant compares the relative value of a 40-acre tract and a 160 acre-tract. When determining the "acceptable" high bid value, she uses \$ 40,000 for both. However, BLM's value determination was a per acre value. Thus, the 160-acre value used for comparison would be \$ 160,000, not \$ 40,000.

^{4/} it would seem that the income would be deferred to a later date rather than lost. Unless drained by an adjoining well, the oil and gas would remain in the tract for later development. If the adjoining tract is a Federal lease, the royalty would be paid.

Accordingly, 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.

R. W. Mullen
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Franklin D. Arness
Administrative Judge

