

DENVER & RIO GRANDE WESTERN RAILROAD CO.

IBLA 86-359 Decided February 29, 1988

Appeal from a decision by the Canon City District Office, Bureau of Land Management, setting rental rate for communication site right-of-way C 003928.

Affirmed.

1. Appraisals--Communication Sites--Federal Land Policy and Management Act of 1976: Rights-of-way--Rights-of-way: Generally

An appraisal of fair market value for a communication site right-of-way will not be set aside on appeal if an appellant fails to show the rental rate is excessive. Absent a showing that appraisal methods used to set the rental rate are incorrect, a BLM appraisal may, in general, only be rebutted by another appraisal.

APPEARANCES: H. A. Phillips, Director, Land and Contract Department, Denver Rio Grande Western Railroad Co., Denver, Colorado.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

The Denver and Rio Grande Western Railroad Company (Denver) has appealed from a January 15, 1986, reappraisal decision by the Canon City District Office, Bureau of Land Management (BLM), increasing the rental rate for a communications site by right-of-way. The January 15, 1986, decision provided for a rental rate increase for Denver's Twin Mountain site from \$500 annually to \$2,500 annually, effective September 26, 1986. On appeal to this Board, Denver complains that the reappraisal upon which the rental rate increase was based is flawed in two particulars. First, Denver argues that the BLM appraisal, which is based upon the comparable-sales approach, used three sites which are not comparable to the Denver site, which is located on Twin Mountain near Canon City. Denver states:

Of the three sites near Ft. Collins two have a \$2,000.00 annual rate and the other a \$2,400.00 annual rate. Comparables in areas away from the front range indicate annual rates from \$500.00 to

\$1,600.00. * * * BLM's revised rental for the Railroad's Twin Mountain site is \$2,500.00 per annum (\$100.00 higher than the highest rental rate on the Ft. Collins Sites), with no adjustments considered for the difference in location.

Second, Denver argues that the reappraisal does not consider the fact that Denver is a second user, restricted to 36 square feet at the Twin Mountain site. For these reasons, Denver contends that the 500-percent increase in rental rate since 1983 is excessive. Denver has not furnished an appraisal to show the present fair-market value of the Twin Mountain site, and does not offer an alternative to the rental rate set by BLM.

Denver assumes that the Ft. Collins sites are not comparable to the Twin Mountain site, based on an apparent difference in population density in the immediate vicinity of the site. This factor is recognized to be a limiting factor by BLM's appraisal; however it is only a single factor, among others, which the BLM appraiser states was considered by him in making his appraisal. Thus, he explains:

Location is an important factor affecting rental prices for communication sites. Site rentals reflect both demographic and geographic location considerations. Sites used to serve large population areas tend to command higher rentals, reflecting the greater demand for communication industry services and competition for desirable sites. However, geographic location in relation to other sites within a network can become a significant factor for sites within a communication system or network. [Emphasis in original.]

(BLM appraisal at 4). It appears, therefore, that location was a factor considered in the appraisal for this site. The appraisal also does specifically compare each of the comparable sites (including the Ft. Collins site) to the Twin Mountain location, subject to the above-quoted limiting consideration.

Insofar as concerns the question raised by Denver of the size and shared usage of the site, the appraisal comments that:

Size of a communication site is measured in terms of acreage or fraction of an acre. Size is not a critical factor for many small installations, but becomes a major factor in the rent paid for large installations with electronic equipment that requires frequent maintenance or daily operation. [Emphasis in original.]

(Appraisal at 6). Further elaborating on the importance of the physical character of the site, the appraisal observes that:

Type of Communication Use appears to contribute little, if any, to the variation in rental prices for communication sites. This may reflect some competition in the market place between various types of communication users for use of a site, or may result

from the typical landowner viewing communication site uses collectively. The highly technical and rapidly changing communications technology is not well understood by many lessors. Some have referred to a site lease as "the right to holler from the mountain", with little consideration given to the actual type of communication use. This may also result from the tendency of a landowner to "look across the fence" at site rental paid a neighbor with little to no consideration given to the specific type of communication use. Although exceptions can be found, the market evidence indicates that site rentals within a complex or tower farm, or within close proximity, tend to merge irrespective of the specific type of communication use. [Emphasis in original.]

(Appraisal at 4). It therefore appears that the matters Denver complains were overlooked or erroneously considered by BLM were, in fact, either considered in another context or were rejected as factors to be considered by the BLM appraisal. It is apparent, however, that location, size, and physical character were all considered by the BLM appraisal, resulting in the conclusion that Denver's rental rate should be increased.

[1] Denver has not shown that the approach taken by BLM's appraisal was in error or that it overlooked factors necessary to a reappraisal of the site. Under 43 U.S.C. § 1764(g) (1982), the holder of a right-of-way is required to pay rental annually in advance for the fair market value of the right-of-way when this value is established by an appraisal, although BLM may allow use of a right-of-way prior to a formal appraisal. Jancur, Inc., 93 IBLA 310 (1986); Glover Communications, Inc., 89 IBLA 276 (1985); see also Southern California Gas Co., 81 IBLA 358 (1984); Mountain States Telephone & Telegraph Co., 79 IBLA 5 (1984). An appraisal of fair market value for a communications site right-of-way will not be set aside on appeal if the appellant fails to show error in the appraisal methods used by BLM or fails to show by convincing evidence that the charges are excessive. Jancur, Inc., *supra*; Glover Communications, Inc., *supra*; see Donald R. Clark, 70 IBLA 39 (1983); Francis H. Gifford, 62 IBLA 393 (1982); Dwight L. Zundel, 55 IBLA 218 (1981); B & M Services, Inc., 48 IBLA 233 (1980). In the absence of a preponderance of evidence that a BLM appraisal is erroneous, such an appraisal generally may be rebutted only by another appraisal. Jancur, Inc., *supra* at 312.

The comparable-lease method of appraisal, used by BLM in this case to determine the fair-market value, is the preferred method for appraising the fair market value of communication sites where there is sufficient comparable rental data. See Southern California Gas Co., *supra*; Mountain States Telephone & Telegraph Co., *supra*. The BLM appraiser considered five communication-site leases in the general vicinity of appellant's right-of-way. After consideration of the differences and similarities between those leases and appellant's right-of-way, the fair-market rental value for appellant's right-of-way was determined to be \$2,500 per year. Appellant has shown no error in the appraisal methods used by BLM, nor has it provided an independent appraisal or other evidence to show that the charges are excessive.

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

Franklin D. Arness
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Gail M. Frazier
Administrative Judge

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