

GERALD L. AND RUBY A. OVERSTREET

IBLA 88-106

Decided December 19, 1989

Appeal from a decision of the Canon City District Office, Bureau of Land Management, offering a non-mineral occupancy lease and requiring fair market rental C-40730.

Affirmed.

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

An appraisal of fair market rental value for a non-mineral lease site will not be set aside on appeal if an appellant fails to show error in the appraisal methods used or fails to show by convincing evidence that the charge is excessive. In the absence of a preponderance of evidence that a BLM appraisal is erroneous, such an appraisal may be rebutted only by another appraisal.

APPEARANCES: Gerald L. Overstreet and Ruby A. Overstreet, pro sese.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Gerald L. and Ruby A. Overstreet have appealed from an October 27, 1987, decision of the Canon City, Colorado, District Office, Bureau of Land Management (BLM), which offered them a non-mineral occupancy lease pursuant to section 302(b), Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1732 (1982); 43 CFR 2920. BLM offered appellants a lease for two parcels of land located near Mount Pisgah in the SE¼, sec. 10, and the SW¼, sec. 11, T. 15 S., R. 70 W., sixth principal meridian, Cripple Creek Mining District, Teller County, Colorado, and totalling approximately 0.937 acre.

BLM originally offered the Overstreets a lease for these same two parcels in December 1985 at a fair market rental value of \$440 per year. The rental value for the tract was based on a BLM appraisal report prepared and approved in November 1985. That report concluded that the highest and best use of the land is for commercial use and relied on four comparable sales of land outside the Town of Victor which resulted in a sale value for the tract in question of \$4,900. The rental of \$440 was calculated at 10 percent of the value per year on the basis that only 90 percent of the rights were being leased in view of the BLM determination that 10 percent of the rights were restricted by lease stipulations.

The Overstreets appealed this rental determination to the Board, contending that this appraisal was in error in that the land around Mount Pisgah, where these parcels were located, had historically been sold for \$1,000, or less, per acre. The Overstreets argued that the sales used by BLM were not comparable to the subject tract, citing other sales in the immediate vicinity which indicated far less value.

After reviewing the appraisal record, the Board found that appellants had raised sufficient doubts as to the validity of the BLM appraisal. By order of June 8, 1987, IBLA 86-267, the Board found the BLM appraisal inadequate stating, "We are not persuaded that the report is based on the 'best information available' about comparable sales, given the information submitted by appellant." We vacated the BLM decision and remanded the case to BLM with instructions to consider a reappraisal or an adjustment of the November 1985 appraisal.

Upon remand to BLM, these two parcels were re-examined and reappraised by a BLM staff appraiser on October 9, 1987. The new appraisal resulted in a reduced fair rental value of \$190. The appraiser described the property and its intended uses as follows:

The subject property consists of two triangular parcels totalling .937 acre located one mile west of Cripple Creek at the base of Mt. Pisgah at an elevation of 9,460 feet. The subject parcels are adjacent to an existing gift shop and campground located near the entrance to the Mt. Pisgah scenic drive. \* \* \*

The applicant intends to expand the existing gift shop which is situated ten feet north of Parcel B. Parcel A is situated at the western edge of the campground area and would be used for additional camping units.

Teller County Road 1 provides access to the existing facility. Neither parcel fronts the county road, however. There are no trees or shrubs on either parcel. Ground cover is comprised of native grasses and rocks. The subject parcels are generally flat to slightly rolling.

According to Teller County Planner Kip Peterson, the subject parcels are zoned A-1 (Agricultural), and the proposed expansion would require a conditional use permit from the county planning commission.

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The rights under appraisement are the right to occupy the surface of approximately 0.937 acre of public land for the purpose of expansion and modernization of an existing gift shop and campground for a period of ten years with the right to renew the lease. The lessee would be authorized to construct, maintain and operate two structures on Parcel B; an addition to the existing gift shop and a bathhouse located southwest of the gift shop. A

buried water pipeline would lead from the water well on adjacent private property to the bathhouse and gift shop. Camping units would be allowed on both parcels. Picnic tables, parking areas, fireplaces, and electrical hook-ups may be provided at the camping units.

(Appraisal at 4-5).

The property was appraised using the market data approach. Although the appraiser noted that the most reliable indicator for value would be leases between private parties for the same or similar purposes, the search revealed no lease data in this area. After noting that there were no sales of small acreage for commercial sites, the appraiser considered 21 sales of patented mining claims, purchased largely for rural residential/recreational cabin site use. The appraiser then selected the four most recent sales to establish a value range for the property. All of the sales were zoned A-1 (agricultural). However, the appraiser used the following comparison factors relevant to authorized use for evaluation of the subject tract: terms to cash, time, location, utility, power, access, physical characteristics, configuration, size, and overall comparison. See Appendix. After making a sales analysis and comparison of the subject tract with the four sales and making some adjustments because the subject tract was considered to be inferior to all the sales in some respect, the appraiser valued the property at \$2,100 (Appraisal at 7-12).

The annual rental was determined by the appraiser by applying the current rate of return of 10 percent to the fair market value. The appraisal allowed for limitations on the lease, *i.e.*, only 90 percent of the rights in the property were conveyed with the lease. Using these figures, the appraiser calculated the annual rental at \$190 per year. This rental value was reviewed and affirmed by the Colorado State Chief Appraiser in a memorandum of November 6, 1987, <sup>1/</sup> in which he stated:

The appraiser has done a proper job of developing the contributory value of plottage to the existing gift store facility. The use of alternative investments as a basis of developing a proper return rate is appropriate given no direct rental evidence. The estimate of 90 percent of the rights seems reasonable given the scope of the lease. Overall, the report meets agency standards and is herewith approved.

In their statement of reasons (SOR), appellants restate the same arguments made to BLM and to the Board when this case was first considered, *i.e.*, this land has been overvalued by BLM. They contend the \$2,100 is more than double the value of the land immediately adjacent to the property. Gerald Overstreet reiterates that he is a licensed real estate broker in Colorado, that he is very familiar with all four comparable sales used by BLM, and contends none are similar to the subject property because

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<sup>1/</sup> Memorandum of Nov. 6, 1987, from the Chief State Appraiser to the District Manager, Canon City.

they are all treed mountain property with excellent cabin sites, adjacent to established hunting areas, and the type of mountain property which bring a premium price. The subject property has absolutely no trees, no mountains or streams, no wildlife (except field mice), and both of the two small subject parcels are within 50 yards of the former city dump.

(SOR at 1).

Appellants criticize the BLM appraisal report pointing out that the report at page 5 refers to the county's appraised land value of their own 8-acre parcel, the Sure Thing Mining Claim, as \$16,875. They enclose the County tax assessment bill for 1987, stating the bill shows "an assessed value of \$1,160, or as 29% of the actual value, the market value would be \$4,000 not \$16,875." Id.

Appellants further argue that since their original appeal there have been no sales within the immediate vicinity of the subject property, although they assert that they have been offered other adjacent tracts for far less, but they declined to buy. They contend this sales inactivity is a further indication of the low market value of tracts in the area.

Appellants also criticize the BLM appraiser's use of the extrapolation method of removing excess land from larger acreage sales to provide a more correct comparison of per-acre prices for the smaller tract. Appellants contend the BLM statements are contradictory and should not be used to support the general theory that small acreages have a higher unit value than have larger acreages.

BLM filed a response to the Overstreet appeal December 28, 1987, in which the BLM staff appraiser indicates that she obtained the figure of \$16,875 for appellants' 8-acre parcel from the Teller County Appraiser who has also indicated to BLM that the improvements on the tract are valued at \$13,105.

As to appellants' assertion of low values of tracts in the vicinity the appraiser notes that the highest and best use of the tract is "commercial plottage as determined by the lease." She indicates that she is aware of grazing land values in the neighborhood, but such values are not consistent with the type of use under appraisal here.

BLM responds that the use of extrapolation of excess land from the larger acreage sales to get a more comparable size tract for comparison is proper in this case. The appraiser notes that when the excess land is extrapolated, the general rule that small acreages have a higher unit value than have large acreages, "can be appropriately applied as we are valuing the subject .937 acre property against the excess land."

[1] Generally, appraisals will not be set aside on appeal unless an appellant is able to show error in the appraisal method used by BLM or demonstrate by convincing evidence that charges are excessive. Lawrence Dupuis, 99 IBLA 174 (1987), Blue Mesa Road Association, 89 IBLA 120 (1985).

In the absence of a preponderance of evidence that a BLM appraisal is erroneous, such an appraisal may be rebutted only by another appraisal. Big Sky Communications, Inc., 110 IBLA 213 (1989); Chalfont Communications, 108 IBLA 195, 196 (1989); Denver & Rio Grande Western Railroad Co., 101 IBLA 252, 254 (1988).

In this instance appellants have applied to lease this non-mineral site and have been offered a lease by BLM at a fair market rental. The rental value has been determined by BLM, only after a detailed analysis has been undertaken in its reappraisal of this site. From our review we find that appellants have not shown that there was error in the appraisal method used by BLM or that the appraised annual rental charge of \$190 per year is excessive.

BLM originally valued the site at \$4,900. Upon re-examination in response to this Board's direction, BLM has taken another look at this market area and reduced the value of this site over 50 percent. The record contains a complete appraisal report with a detailed analysis of four recent comparable sales in the area. The record also shows that BLM's appraisal considered these sales at length and made an effort to address both the differences and the similarities of these tracts with the subject lease site in arriving at the fair market value. The appraiser made a reasonable comparison of many factors affecting the value of these tracts and how these same factors applied to the valuation of the lease site.

Appellants argue that this parcel is far less valuable than the sale tracts BLM has used for comparison. However, BLM has recognized the lack of desirability of this tract for a recreation or cabin site and has taken that into account in its analysis. It is clear that the appraiser determined that the subject lease tract was inferior to the sale tracts in most categories. (See chart in Appendix.) Accordingly, adjustments were necessarily made to reflect the lesser qualities of the subject tract. The net result of BLM's further examination is that there is adequate support and a rational basis in the record to substantiate the determination of rental value for this tract at \$190.

Appellants criticize BLM's appraisal, finding error in the asserted county valuation of \$16,875 for their own 8-acre parcel adjacent to the subject site. There does appear to be some confusion as to what the true current value is for their own property as shown by the assessment records in conflict with what the county appraiser has apparently told BLM. However, it does not appear that this value was relied upon in the BLM appraisal to establish the value of the subject tract. Therefore, this conflict does not invalidate the entire appraisal.

Moreover, although appellants assert that a proper value for this tract would be no more than \$1,000, there is no indication that they have relied on another appraisal in arriving at that figure. Although appellant Gerald Overstreet claims to have many years experience in real estate, he does not show that he is a certified appraiser nor can he claim that his own market analysis of this tract is an objective valuation. Thus, appellant has failed to rebut the BLM appraisal with another appraisal.

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.

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John H. Kelly  
Administrative Judge

I concur:

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James L. Byrnes  
Administrative Judge

## APPENDIX

This information was included in the "Summary Comparison Table" in the appraisal report:

SALESSUBJECT COMPARED TO SALES

Sale	Sale	Cash	Equiv.	Price/			Phys.		Overall			
<u>No.</u>	<u>Date</u>	<u>Acres</u>	<u>Price</u>	<u>Sales Price</u>	<u>Site</u>	<u>Utility</u>	<u>Power</u>	<u>Access</u>	<u>Char.</u>	<u>Config.</u>	<u>Size</u>	<u>Comparison</u>
47-42	6/24/86	5.16	9,900	8,910	8,910	-	+	+	-	0	-	-
47-41	8/9/83	9.025	18,000	16,200	8,100	-	+	+	-	-	-	-
47-39	6/17/86	2.1689	7,700	7,000	7,000	-	+	-	-	-	-	-
47-40	3/27/87	3.546	6,700	6,700	6,700	-	0	0	-	0	-	-

0 Indicates subject equal to sale.

+ Indicates subject superior to sale.

- Indicates subject inferior to sale.