

DAVID M. STANTON

IBLA 2003-231

Decided July 28, 2005

Appeal from a decision of the Milwaukee Field Office, Bureau of Land Management, determining the fair market value rental for the use of public lands. MNES 050222.

Affirmed as modified.

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

In the absence of a showing by a preponderance of the evidence that a BLM appraisal is erroneous, such an appraisal may be rebutted only by another appraisal.

APPEARANCES: David M. Stanton, Cook, Minnesota, pro se.

OPINION BY ADMINISTRATIVE JUDGE HEMMER

David M. Stanton appeals the March 26, 2003, decision of the Milwaukee Field Office, Bureau of Land Management (BLM), which established the fair market value rental of public land that Stanton wished to lease at \$1,300 per year. BLM based this determination on an appraisal of the land, considering comparable sales.

The subject land is located in Tract 37, T. 62 N., R. 17 W., 4th Principal Meridian, St. Louis County, Minnesota. The land is an island measuring 264 feet long and 132 feet wide and comprised of 0.18 acres, located on Lake Vermilion. The island is largely tree-covered, but has improvements including a cabin (24' by 16' wood frame), woodshed, storage shed, and boat dock for residential purposes.

Lake Vermilion is located 90 miles from Duluth, Minnesota, and borders and forms the southern portions of the Superior National Forest and the Boundary Waters Canoe Area. Lake Vermilion offers many public recreational opportunities, including fishing year-round, power boating, water skiing, windsurfing, sailing, and winter

snowmobiling. (Appraisal Report, Feb. 6, 2003, at 4.) The fishing is noted to be especially good. Id. The Superior National Forest also provides cross-country skiing, camping, snowshoeing, skating, sledding, dogsledding, horseback riding, kayaking, rock hunting, hiking, nature study, bird watching, and outdoor photography. Id. The nearby towns of Cook and Tower also provide many additional recreational activities including a championship golf course, beaches, resorts, shops, and restaurants. Id.

The island was first settled when Stanton's grandmother, Ida Nylund, began squatting on the island in 1920. Over the years, she and her family made improvements to the island. In 1955, Nylund purported to conveyed the land to Stanton. On three different occasions between 1955 and 1960, Stanton attempted to purchase the island from St. Louis County, but was told each time that the island did not exist or that St. Louis County could not sell it. In 1975, Stanton learned that the land was Federally owned. In 1992, Stanton filed an application under the Color-of-Title Act, as amended, 43 U.S.C. §§ 1068-1068b (2000), but his application was rejected on November 3, 1993, because the lands had not been held in good faith for 20 years. Eventually, Stanton and BLM entered into an agreement for Stanton to lease the island on a life tenure basis. See generally David Stanton, 143 IBLA 198A (1998).

On December 30, 1998, Stanton filed an application for a non-transferable lease of the land in question, along with a signed statement that a bond for \$7,000 would be posted. On October 26, 2000, BLM completed a Decision Record and Finding of No Significant Impact (DR/FONSI), which recommended that the lease be issued to Stanton, with the rental value to be determined by appraisal. The Chief Appraiser of the BLM Wyoming State Office approved an appraisal to determine the fair market value rental on March 3, 2003. (Approved Appraisal Report, MNES 050222, David Stanton (Appraisal).)

In determining the fair market value rental, the appraiser considered the highest and best use of the land, its location and size, similar sales, changes in the market, rates of return, and the rights surrendered by the government. The appraiser determined that the highest and best use of the land was for recreation; the island was too small to meet the current legal acreage requirements to build a home. (Appraisal at 10.)

Next, the appraiser investigated comparable sales. Id. at 12. The appraiser identified three such sales for "unbuildable" islands in Lake Vermilion ranging from 1985-1993. Since those sales had taken place at least 10 years prior to the appraisal, the appraiser adjusted the sales price for market increases. The appraiser used what is known as the "paired sales" method, which compares current sales with transactions for similar land occurring in an earlier time. Id. at 13. One of the properties identified for comparison had been sold twice, providing the appraiser a

good indication of market value increases. Id. Comparing the price of sale and re-sale of that property (\$5,500 in 1983 and \$15,000 in 1993), the appraiser determined that the value of an “unbuildable” island in Lake Vermilion increased by 0.8% per month. Id.

The appraiser then compared the characteristics of the three comparable sale properties. The appraiser determined that Sale #2 best matched the island in question, because the islands were both located on Lake Vermilion and very similar in size.^{1/} Id. at 17. The time adjusted value of Sale #2 was \$22,173. Id. Since the subject island is slightly larger, the appraiser concluded that its value would be slightly greater than the adjusted value of Sale #2. The appraiser thus concluded that the overall value of the land in question was \$22,500. This was lower in adjusted value than Sales #1 and #3, which the appraiser identified as superior quality properties. Id. at 20.

Finally, the appraiser took into consideration the rate of return and the rights surrendered by the government during the course of the lease.^{2/} Id. This resulted in a fair market value rental of \$1,282.50 per year, rounded up to \$1,300 per year. Id. at 21.

BLM issued its decision assessing rental on March 23, 2003. Stanton filed a timely notice of appeal on April 18, 2003, and filed a Statement of Reasons (SOR) on May 12, 2003. Stanton asserts two bases for appeal. First, he disagrees with the rental rate chosen on the basis of comparable sales. He claims that he investigated lease rates for “278 lakeshore leases on approximately 30 lakes” in St. Louis County, and that these leases rented for a maximum of \$795 per year. (SOR at 1.) Conceding that Lake Vermilion is a “premiere lake in the region,” he asserts that one Lake Vermilion lot was rented at \$661 per year, and proposes a range of \$650-750 as a “reasonable” annual rate for rental of the island. Id. He also objects to the appraiser’s analysis of comparable sales to determine rental. Conceding a sale of an island for \$15,000 in 1994, he objects to use of the sales by stating only that “a diminished ‘rights’ percentage would tend to offset price inflation.” Id.

Second, Stanton disputes the notion that the government gives up all rights save the right of reversion. He claims that the government “gives up very little on

^{1/} The property in Sale #2 was 0.16 acre and the subject land is 0.18 acre.

^{2/} The rate of return is what a person could expect if he or she invested the money. (Appraisal at 20.) The property is land, considered a “safe” investment, so the appraiser assessed the rate at 6%. The appraiser determined that the only right the government retained during the lease was the right of reversion which the appraiser calculated to be 5%. The appraiser thus concluded that Stanton was obtaining 95% of the value of the island during his life tenure.

this island in the longer run and the short run is very short as this is a life estate in favor of a middle-aged man.” He argues that his rental rate should be reduced accordingly. Id.

[1] Section 302(b) of the Federal Land Policy and Management Act, 43 U.S.C. § 1732(b) (2000), authorizes the Secretary to issue permits for various uses of the public lands including residential uses. 43 CFR 2920.1-1. Yukon River Tours, 151 IBLA 1, 8 (2001) (and citations therein).

Holders of a land use authorization shall pay annually or otherwise as determined by the authorized officer, in advance, a rental as determined by the authorized officer. The rental shall be based either upon the fair market value of the rights authorized in the land use authorization or as determined by competitive bidding. In no case shall the rental be less than fair market value.

43 CFR 2920.8(a).

To challenge an appraisal employed to determine fair market value or fair market value rental, an appellant must either submit another appraisal showing that the rental charges are excessive or demonstrate error in the appraisal methods. See Wesfrac, Inc., 153 IBLA 164, 167-68 (2000); see also Amoco Corp., 139 IBLA 96, 99 (1997); Rock Creek Joint Venture, 138 IBLA 6, 13 (1997). In the absence of a preponderance of the evidence that a BLM appraisal is erroneous, such an appraisal normally may be rebutted only by another appraisal. Yukon River Tours, 151 IBLA at 8, citing, inter alia, Regina B. Perry, 142 IBLA 278, 281 (1998).

Though Stanton alleges that the rental rate of \$1,300 per year was excessive, he does not provide an appraisal of his own to demonstrate this. Stanton claims to have undertaken an examination of the lease rates of lakeshore leases in St. Louis County. Assuming this is true, Stanton presents no information that would support his inference that the prices he cites have relevance to the island in question. The appraiser noted, and Stanton agrees, that Lake Vermilion is a premiere lake, with numerous recreational activities. Lease rates on inferior lakes are not probative of the lease rates on Lake Vermilion without showing how those prices should be adjusted. Further, Stanton provides no details about any of the alleged 278 leases; terms of the alleged leases, or other factors that might weigh on the rental rates. Without further details and authentication, the numbers cited by Stanton have no persuasive value in discounting the BLM appraisal. While Stanton may be perceived as having attempted to submit an alternative appraisal, Wesfrac, Inc., 153 IBLA at 168, Stanton’s commentary does not rise to that level. Nor has he preponderated on his claim that the appraisal is in error.

Stanton argues that the government retains more than the right of reversion and the 95% used in calculating the lease rate was incorrect. However, Stanton has not identified any other rights allegedly reserved by the government which would alter the normal distribution of rights in a leasehold estate. Nor has Stanton cited any authority or explanation for his contention that he is receiving less than 95% of the property.

When a tract of land is leased, the lessor retains the right to receive rent over the lease period and the right to repossess the property upon termination of the lease. See J.D. Eaton, *Real Estate Valuation in Litigation*, 383. The lessee has the right to use and occupy the land for the term of the lease. Id. That the government has a right of reversion has little significance to the value of the land to the lessee during the lease term, in the absence of any showing by Stanton that his rights during the lease period are minimized in any way by the lease itself.

Stanton must show that the valuation used by the appraiser was in fact incorrect. Stanton has not shown any reason to believe that the figure used by the appraiser was in error. Nor has Stanton undermined or questioned the comparable sales used by the appraisal. Accordingly, Stanton has not demonstrated error in the appraisal or its methods.

We modify the decision in one respect. BLM's appraisal "rounded up" the fair market value rental from \$1,282.50 to \$1,300. While the appraisal fully supports the lower rental value, it provides no explanation of any value to Stanton for BLM's administrative convenience in rounding up. Accordingly, we modify the decision to reflect that the fair market value rental is \$1,282.50.

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 as modified.

Lisa Hemmer
Administrative Judge

I concur:

Christina S. Kalavritinos
Administrative Judge