

INTERIOR BOARD OF LAND APPEALS

Confidential Communications Co.

126 IBLA 349 (June 25, 1993)

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CONFIDENTIAL COMMUNICATIONS CO.

IBLA 91-468

Decided June 25, 1993

Appeal from a decision of the Stateline Resource Area Office, Bureau of Land Management, Las Vegas, Nevada, determining annual rental for right-of-way N-43318.

Vacated and remanded.

1. Appraisals--Federal Land Policy and Management Act of 1976:
Rights-of-Way--Rights-of-Way: Generally

A BLM increase in the annual rental charge for a communications site right-of-way will be vacated where the record fails to demonstrate any relationship between the right-of-way subject to appraisal and a BLM master appraisal determining the market value of a "typical" BLM right-of-way, and where there is no indication that the communications site at issue matched the comparable factors in BLM's appraisal for a "typical" right-of-way.

APPEARANCES: David W. Klein, Confidential Communications Co., for appellant.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Confidential Communications Co. (CCC) has appealed from an August 19, 1991, decision of the Stateline Resource Area Office, Las Vegas, Nevada, Bureau of Land Management (BLM), determining the annual rental for communications site right-of-way N-43318.

Right-of-way N-43318 was granted to CCC on August 5, 1986, pursuant to Title V of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1761-1771 (1988). The grant embraces 0.23 acres and is located on Christmas Tree Pass, which is an approved communications site containing 19 users.

Under the terms of the grant, CCC initially paid \$25 annually and agreed to pay fair market rental as determined by the authorized officer after appraisal. On December 1, 1989, BLM completed and approved a master appraisal for commercial communications facilities in Nevada. Pursuant to that appraisal, BLM set the fair market rental value "of the typical BLM

rural telecommunications site in the State of Nevada used for Commercial Communications facilities [at] \$3,000 per annum" (Appraisal at 27).

In the decision on appeal, appellant was billed \$14,874, representing the adjusted total rental for the period from August 1, 1986, through December 31, 1991, at a rate of \$3,000 per annum. BLM declared that its master appraisal "provides the fair market rental that will be charged for all such facilities in rural Nevada." No effort was made in the decision to compare CCC's right-of-way to the "typical" site appraised in the Master Appraisal.

The only material in the record dealing with the comparability of CCC's right-of-way and the "typical site" is a memorandum to the file by a BLM Land Law Examiner, stating in toto:

The Applicant or the Grantee is the holder of record of a telecommunications site grant on public lands in the State of Nevada. It has been determined that the applicant is a chargeable primary user.

I have examined the case file and/or site and in my opinion the above use meets the criteria defined in the Master Appraisal Report dated and approved December 1989, for the facility use specified above. The site described is located in a rural area serving local communities that are generally small and dispersed. Development costs for access and power are not unreasonable and these costs can be amortized within a fairly short period, usually the first [five] years of the grant. The applicant is not under a shared space arrangement as outlined in the Supplement to the Master Appraisal Report.

Based on the Master Appraisal discussed in the [preceding] paragraph, the annual fair market rent is determined to be \$3,000 per year.

Apart from this conclusory statement, no analysis of the characteristics of the site that affect rental value is included in the record.

BLM's decision advised that in the event an appeal was taken, appellant was required to either pay the requested rental under protest or request from it a Secretarial waiver. BLM specifically advised appellant that nonpayment of rental during appeal would be considered noncompliance with the terms of the grant and might be cause for termination.

In its notice of appeal and subsequent correspondence appellant repeatedly requested from BLM a copy of the appraisal in order to prepare its appeal. By order of January 21, 1992, this Board ruled that BLM lacked authority to grant a stay of the effect of its decision, holding that that authority resides with the Board of Land Appeals. Upon review of the record, we stayed the effect of BLM's decision pending consideration of the

appeal on condition that CCC post a bond covering the rental due for the site plus accrued interest. The Board also directed BLM to provide a copy of the master appraisal report to CCC. ^{1/}

[1] The preferred method for appraising fair market value of non-linear rights-of-way, including communications sites, is the comparable lease method where there is sufficient comparable data and appropriate adjustments are made for the differences between the subject site and other leased sites. Oregon Broadcasting Co., 119 IBLA 241, 243 (1991), and cases cited.

In appraisal cases where BLM attempts to implement the comparable use method by using a master appraisal, the Board review seeks to determine whether the right-of-way subject to appraisal actually conforms to the typical right-of-way. Union Pacific Railroad Co., 114 IBLA 399, 403 (1990). It is not proper for BLM to apply a master appraisal across the board without making a thorough comparison of various factors considered for the "typical" site. As we observed in that case, to enable the Board or an appellant to verify the comparability between private leases with either the typical BLM right-of-way or the particular right-of-way subject to appraisal, it was important that the record contain the necessary information. At a minimum, the case record must demonstrate that BLM related the typical BLM right-of-way to the subject right-of-way. The subject right-of-way should match the typical BLM right-of-way with respect to all the factors determinative of rental value, in order to bring the appraisal within the ambit of the comparable lease method of appraisal. Id. at 404-05. To the extent that it does not match that site, adjustments should be made in the amount of rental due. In the absence of such, BLM's appraisal cannot be affirmed.

In this case we find very little evidence that the appraiser considered the appellant's communications site to determine whether it fits within the profile of BLM's "typical" Nevada rural communications site on which the \$3,000 annual rental is based. See High Country Communications, Inc., 105 IBLA 14, 17 (1988). Since neither the record nor BLM's appraisal demonstrates how right-of-way N-43318 corresponds to BLM's criteria for a typical Nevada rural communications site, BLM's decision setting rental based on that appraisal must be vacated. On remand, BLM should undertake the type of analysis required by Union Pacific Railroad Co., supra.

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

^{1/} We also noted that BLM had improperly taken action on the appeal after the filing of CCC's notice of appeal, and that it had improperly threatened to withhold approval of CCC's pending applications for improvement of its site if an appeal were filed. Following issuance of our order, BLM properly proceeded to adjudicate those pending requests.

from is vacated and the case is remanded for further consideration consistent with this opinion.

David L. Hughes
Administrative Judge

I concur:

James L. Byrnes
Chief Administrative Judge