

INTERIOR BOARD OF LAND APPEALS

Lamina Animal Association Club

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LAMINA ANIMAL ASSOCIATION CLUB

IBLA 2000-87

Decided August 11, 2000

Appeal from a decision of the Field Manager, Lake Havasu Field Office (Arizona), Bureau of Land Management, rejecting Recreation and Public Purposes Application. AZA-30386.

Affirmed.

1. Recreation and Public Purposes Act

The Bureau of Land Management has discretion under the Recreation and Public Purposes Act, 43 U.S.C. § 869-1 (1994), to reject an application to lease public lands if it determines that the public interest is best served by that rejection. Mere differences of opinion provide no basis for reversal and the Board will affirm a decision exercising this authority if the decision is reasonable and supported by the record.

APPEARANCES: Ace Collier, President, Lamina Animal Association Club, Bouse, Arizona; Richard R. Greenfield, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Phoenix, Arizona, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE TERRY

The Lamina Animal Association Club (Lamina) has appealed the November 19, 1999, decision of the Field Manager, Lake Havasu Field Office (Arizona), Bureau of Land Management (BLM), rejecting Recreation and Public Purposes (R&PP) application (AZA 30386) for a proposed park. BLM rejected the application because it concluded that there was no need for an additional park near the community of Bouse, Arizona.

BLM explained it was rejecting the R&PP application because the proposal did not provide a benefit to a Federal, State, or local government program that was not already being provided in the area, that under the R&PP Act BLM was not required to approve the proposed use, and that alternate sites were available. In particular, the decision stated that BLM already provided and encouraged camping and other recreational uses, similar to those proposed in Lamina's application, and that there were

many open areas in the vicinity of Bouse for use by the recreating public. BLM noted that on March 1, 1994, it had issued an R&PP lease for 80 acres located only 3 miles from the land sought to La Paz County for a park which provided for camping, picnics, hiking, equestrian trail, and horse corrals. (Decision at 2.) BLM also stated that the land in the application was already available for the uses proposed in the application and would continue to be available to the public unless otherwise appropriated.

Lamina is a nonprofit corporation. On September 19, 1997, it submitted an Application for Land for Recreation or Public Purposes for a proposed Green Stone Park comprising 40 acres in NE1/4SW1/4, sec. 24, T. 7 N., R. 17 W., Gila and Salt River Meridian, Arizona. The proposed uses were camping, picnicking, hiking, horseback riding, and later swimming in a proposed lake. The camping would be "dry camping," which meant no hookups or facilities. The application stated that there was no existing or proposed public outdoor recreation facility within 10 miles of Bouse, Arizona, except for a small city park in Bouse. It also asserted that the region was subject to intense recreational pressures from winter visitors and that the town was growing, so the proposed park was needed for visitors. The application was amended on February 12, 1999, to request an additional 20 acres in sec. 24 to allow ample room for horses, but at the time of the appeal the application was again for 40 acres.

In its Statement of Reasons (SOR), Lamina contends that under 43 C.F.R. § 2430.4(a) the property is suitable for public purposes and that, in accordance with 43 C.F.R. § 2430.4(c), the park would embrace nonprofit activities. <sup>1/</sup> In its notice of appeal, Lamina asserted that the proposed park is different from the existing Bouse community park which has electricity and a cooking canopy, as well as apparatus for children to play on, and that the Bouse community park is near a school and highway. In another submission dated January 28, 2000, Lamina states that its proposed park is to be a rural campground.

In its answer, BLM notes that the application was submitted under the authority of the R&PP Act, 43 U.S.C. § 869 (1994), and that, under the authority of that Act, the Secretary of the Interior may, at his discretion, lease land to a nonprofit corporation or nonprofit association. 43 U.S.C. § 869-1(d) (1994). BLM avers that the R&PP Act limits conveyances either by patent or lease to specified uses and that the use limitation in 43 U.S.C. § 869-1 is contained in the application regulations. In particular, BLM cites 43 C.F.R. § 2740.0-5(d), which provides that:

(d) Public purpose means for the purpose of providing facilities or services for the benefit of the public in connection with, but not limited to, public health, safety or welfare. Use of lands or facilities for habitation, cultivation, trade or manufacturing is permissible only where necessary for and integral to, i.e. an essential part of, the public purpose.

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<sup>1/</sup> With its notice of appeal, Lamina requested a stay of the decision. That request is denied as moot.

BLM asserts that additional guidelines for issuance of R&PP leases are found in 43 C.F.R. § 2741.5 which states that public lands shall be "leased only for an established or definitely proposed project for which there is a reasonable timetable of development and satisfactory development management plans." The regulation specifies that:

Public lands may be determined to be suitable for lease or sale under the act by the authorized officer on his own motion as a result of demonstrated public need for public lands for recreational or public purposes during the planning process described in section 202 of the Federal Land Policy and Management Act.

43 C.F.R. § 2741.5(f).

BLM admits that the concept of "recreational and public purposes" is expansive and that it includes a "public park" made available to the use and enjoyment of the public. However, it contends that merely because an R&PP application is made for a park does not mean that it should or must be approved. (Answer at 8.) BLM notes that the BLM Manual defines "public purpose" and "recreation" as:

Public purpose: that which provides facilities or services for the benefit of the public-at-large in connection with, but not limited to, public administration, safety, historic preservation, health or welfare, and wildlife improvements such as the installation of structures and improvements for habitat other than vegetative manipulation and/or fencing. Use of lands or facilities for habitation, cultivation, trade or manufacturing is permissible only when necessary for and integral to, i.e. an essential part of, the ultimate public purpose use. \* \* \*

Recreation: includes expansion for existing parks and the establishment of new parks and recreation areas, campgrounds, picnic area, \* \* \*; and a wide range of both indoor and outdoor activities. \* \* \* Less intensive recreation uses of lands such as " \* \* \* to provide a nature or wilderness experience \* \* \*" including sightseeing or hiking, ordinarily are not a basis for consideration under the R&PP Act unless for use in connection with a recognized educational program, or substantial financial investments in facilities are proposed, or a compelling need for a proximate tract has been shown to compliment an existing program.

(BLM Manual Part 2740, Glossary.) BLM also avers that the BLM Manual provides guidance on the approval of such application. This guidance states:

D. \* \* \* Approval of leases \* \* \* shall not be made unless the public lands are to be used for an established or definitely

proposed project. Written commitment by the lessee(s) \* \* \* to a plan of physical development, management and use of the lands shall be required before a lease or conveyance is approved.

(BLM Manual 2740.06.D.)

BLM maintains that it determined that rejection of the application was in the public interest and Lamina has failed to show that that rationale was in error. BLM asserts that Lamina's contention that the proposed park would somehow offer an unspecified "positive" recreational experience and therefore should be approved does not show that there is a need for an additional park near the community.

Initially, we note that BLM contends that Lamina has failed to offer any substantive response to the merits of its decision, but merely asserts that the existing park does not meet the needs of the community as described in appellant's application. (Reply at 12.) Therefore, BLM requests that the appeal be dismissed for failure to point out error in the decision.

While we agree that the SOR is lacking in detail, we believe that there is sufficient information in the notice of appeal, the SOR, and the subsequent filing of January 31, 2000, to understand Lamina's argument. Therefore, BLM's motion to dismiss is denied.

[1] The R&PP Act authorizes the Secretary, in his discretion, to sell or lease tracts of national resource lands. 43 U.S.C. § 869-1 (1994); The Town of Chico, 119 IBLA 136, 138 (1991); State of Utah, 83 IBLA 298, 300 (1984); Town of Kremmling, 46 IBLA 213, 215 (1980); Board of County Commissioners, Ouray County, Colorado, 22 IBLA 182, 189 (1975). Thus, the Secretary or his duly authorized representative may reject an application without abusing his discretion if he determines that the public interest is best served by that rejection. Mere differences of opinion provide no basis for reversal if the decision is reasonable and supported by the record. Coalition for the High Rock/Black Rock Emigrant Trail National Conservation Area, 147 IBLA 92, 95 (1998); Haines Borough Assembly, 145 IBLA 14, 18 (1998).

In its decision, BLM stated that Lamina's proposal did not provide a benefit that was not already being provided in the area and that, in fact, there were many open areas in the vicinity of Bouse for uses similar to those proposed in the application. The decision also identified an R&PP lease issued to the county in 1994 for the same type of recreation identified in Lamina's application.

In a letter to the Field Solicitor on January 28, 2000, Ace Collier, President of Lamina states: "Everything you've said about my dry camp I can say about the Bouse community park." This would support BLM's conclusion that the camp provides nothing that is not already present in the area. Moreover, with the exception of swimming in the proposed lake, the

R&PP lease issued for the La Paz county park provided for the same activities identified in Lamina's application. There is nothing in the application or in the file providing any information about a proposed lake, either as to its size or how it would come into existence. In a September 19, 1997, submission to BLM, Lamina set forth a 5-year plan that included surveying for trails and camp spots, followed by construction. It did not provide any further information as to the general location of trails or camp spots or the numbers involved. However, the amended application states the camp spots would be for self-contained motor homes. 2/

Lamina's argument appears to be that its proposed park would be different from the Bouse community park in that it would remain essentially undeveloped as compared to the community park. However, Lamina has not rebutted BLM's determination that the public land in the application was already available for use by the public and would continue to be available for the uses proposed by Lamina, nor has it demonstrated that there is a public need for its proposed park.

BLM made a reasoned decision supported by the record that the park as proposed did not offer anything that is not already present in the area, and its decision is properly affirmed.

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

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James P. Terry  
Administrative Judge

I concur:

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James L. Burski  
Administrative Judge

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2/ A Jan. 14, 2000, submission to this Board explains that the park would be set up with 1/4 acre for each camper. That information does not appear to have been in the case record before BLM. While the information would permit a calculation as to how many camp sites there would be, it would not appear to be the type of information that would have any effect on BLM's decision to reject the application.