

INTERIOR BOARD OF LAND APPEALS

Yukon River Tours

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YUKON RIVER TOURS

IBLA 99-178

Decided November 6, 2001

Appeal from a decision of the Northern (Alaska) Field Office Manager, Bureau of Land Management, consolidating land use permits and adjusting the rental for the consolidated permit. F-88080.

Affirmed as modified.

1. Appraisals—Federal Land Policy and Management Act of 1976: Permits

An appraisal of fair market value for a land use permit issued pursuant to sec. 302(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1732(b) (1994), will be affirmed unless an appellant either demonstrates error in the appraisal method or presents convincing evidence that the charge is excessive. In the absence of a preponderance of the evidence that a BLM appraisal is erroneous, such an appraisal may be rebutted only by another appraisal.

2. Appraisals—Federal Land Policy and Management Act of 1976: Permits

The Board may set aside a rental decision where an appellant has not proven that the fair market rental value is excessive, but has raised sufficient doubt regarding the method of appraising the value of permits to justify setting aside the decision and remanding for further appraisal. The Board will not set aside and remand a decision based on an appraisal where an independent review answers doubts raised by an appellant.

3. Appraisals—Federal Land Policy and Management Act of 1976: Permits

Where BLM consolidates two land use permits with different effective dates under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1732 (1994), and adjusts the rental for the consolidated permit effective at the beginning of the 1998 calendar year despite the fact that one

of the previous permits did not expire until September 30, 1998, BLM may subsequently appraise the land included within the permit where the permit specified and BLM advised that the rental may be changed based on fair market appraisal. The rental charges imposed from the date of the permit will not be considered retroactive in these circumstances.

APPEARANCES: Dave Lacey, Yukon River Tours, Fairbanks, Alaska, pro se.

OPINION BY ADMINISTRATIVE JUDGE HEMMER

Yukon River Tours (YRT) has appealed a December 16, 1998, decision of the Northern (Alaska) Field Office Manager, Bureau of Land Management (BLM), which combined two existing land use permits (F-88080 and F-91462) and approved the consolidated permit (designated F-88080) for the period January 1, 1998, through December 31, 2000. YRT does not dispute consolidation of the permits but appeals that part of the decision which adjusted the annual rental rate from a total of \$200 (\$100 per permit) to \$1300 for the consolidated permit, based on an appraisal approved on November 18, 1998. The decision also advised YRT that the balance due for calendar year 1998 was \$1100 and that advance rental of \$1300 was due for calendar year 1999.

YRT timely appealed and petitioned for a stay, in a letter dated January 20, 1999. By order dated March 15, 1999 (Stay Order), the Board granted YRT's motion to stay implementation of BLM's decision with respect to calendar year 1998 but denied the motion with respect to future years. On March 8, 1999, YRT filed a Statement of Reasons (SOR), raising six specific challenges to the appraisal on which BLM based the rental increase. BLM did not respond to the SOR.

Statement of Background

On December 5, 1991, YRT, a subsidiary of the Dinyee Village Corporation of Stevens Village, filed a land use permit application with BLM pursuant to section 302(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1732(b) (1988). The application requested the use of public land for an office and other facilities to support YRT's summer boat tour operation on the Yukon River. The application sought land use at a location called Yukon Crossing at milepost 56 of the Dalton Highway, built in 1974 for access to the Trans-Alaska pipeline, where the road crosses the Yukon River. Several commercial establishments exist at the crossing, including at least three on federal lands.

On July 1, 1992, BLM issued land use permit F-88080 to YRT, authorizing the use of 0.10 acres of land within what is now the NE $\frac{1}{4}$ SW $\frac{1}{4}$ sec. 17, T. 12 N., R. 10 W., Fairbanks Meridian, Alaska. The permit was issued for the purpose of "a staging area to support a Yukon River Boat Tour operation at Yukon Crossing." The term of the permit was from January 1, 1992, to December 31, 1992, for a lump sum rental payment of \$100 "or such other

sum as may be required if a rental adjustment is made." On November 16, 1992, YRT sought renewal of the permit, identifying the use as a "small office for Yukon River Tours." BLM renewed the permit on February 23, 1993, for the period January 1, 1993, to December 31, 1993, with the same rental term.

BLM renewed permit F-88080, at YRT's request, for a three-year term of January 1, 1994, through December 31, 1996, for the payment of "\$100, annually, as rental or such other sum as may be required if a rental adjustment is made" for the use of the 0.10 acre site. On February 19, 1997, BLM renewed the permit for the term January 1, 1997, through December 31, 1997, for a lump sum rental of \$100, under the same term.

On November 25, 1997, YRT applied for a renewal of land use permit F-88080 for a 2-year term. On December 17, 1997, BLM transmitted copies of a proposed renewed permit; in the cover letter, BLM advised YRT that "[e]stimated minimum annual rental of \$100.00 will be required prior to issuance of the permit and actual rental will be established upon completion of a fair market value appraisal." BLM issued the renewed permit on January 8, 1998, for the two-year period January 1, 1998, to December 31, 1999, describing the purpose of the permit as "continued use of a small office for tour sales, storage and information. The building is approximately 10 ft. by 10 ft." The permit set the rental for the ".1" acre at \$100 annually "or such other sum as may be required if a rental adjustment is made."

On June 23, 1995, YRT applied for a different but related land use permit under section 302(b) of FLPMA, 43 U.S.C. § 1732(b) (1994), seeking the use of public land for the storage of its boat trailer for use in the boat operations from July of 1995 and "indefinitely" through the summer season. After requesting and receiving additional information, BLM issued land use permit F-91462 to YRT, authorizing the use of approximately .001 acres of land in the NE¹/₄SW¹/₄ sec. 7, T. 12 N., R. 10 W., Fairbanks Meridian, for the "[s]torage of a 44' by 10' six axle trailer on the barge landing site at Yukon Crossing." The term of the permit was from June 1, 1996, to September 30, 1996, and the rental was set at a lump sum of \$100 under the same payment term described above. The boat storage location was across a boat ramp from the building site use authorized in permit F-88080. YRT sought renewal of permit F-91462, and on January 7, 1997, BLM renewed the permit for the one-year period October 1, 1996, to September 30, 1997, with actual occupancy of the site allowed only from May 1, 1997, through September 30, 1997. The renewed permit listed the acreage included as .01 acres, instead of .001 acres, and set the rental at \$100 annually, "or such other sum as may be required if a rental adjustment is made, based on fair market appraisal." The emphasized words were typed onto the standard form. On October 15, 1997, YRT again requested that permit F-91462 be renewed, and on December 1, 1997, BLM renewed the permit for the period October 1, 1997, to September 30, 1998, with actual occupancy limited to May 1, 1998, through September 30, 1998. The acreage included and the rental provisions for the permit for occupancy during the 1998 calendar year were identical to the permit effective the previous year, with the typed-in language.

On August 24, 1998, YRT applied for a 2-year renewal of permit F-91462. On October 5, 1998, BLM renewed permit F-91462 for the period October 1, 1998, to September 30, 2000. The renewed permit identified the purpose of the permit as "parking two boat trailers. One 22' by 6' trailer for a 20' commuting boat and one custom built 44' by 10' custom built [sic] six axle trailer for the River Tour Boat," and limited actual occupancy of the site to May 1 through September 30, with no occupancy from October 1 through April 30. The permit appeared to have copied the terms from the permit for the first 1996 usage year. It identified the permitted acreage as .001 acres, and specified that rental was set at \$100 annually "or such other sum as may be required if a rental adjustment is made." This permit did not include the typed language "based on fair market value appraisal" as included in the permit for the 1997 year.

However, the September 23, 1998, BLM letter transmitting the proposed renewed permit informed YRT that

[m]inimum rental for the permit is \$100.00, pending receipt of a fair market value appraisal, and must be submitted along with the signed permits to this office. The appraisal examination took place during the 1997 field season, and a report has been submitted for review. Should the fair market value appraisal establish the rental to be in excess of \$100.00, an appealable decision will be issued requesting the balance due.

The June 2, 1998, appraisal report referenced in the letter was approved on review on November 18, 1998. The report was prepared for the purpose of estimating the market rental of four parcels of federal lands rented for various commercial uses within sec. 7, T. 12 N., R. 10 W., Fairbanks Meridian, at the Yukon crossing. The four parcels are described as follows:

(1) Permit F-79402, a 25.52-acre site leased to Yukon Ventures Alaska (Yukon Ventures) "for a truck stop facility including food, lodging, mechanical services, and fuel. It is a major facility with its own power plant and wastewater treatment plant. It is the flagship operation for the cluster of uses at the Yukon River Crossing. It has been serving an increasing number of tourists * * *." The permit is apparently issued for year-round operation, though it has closed due to winter weather for as much as five months (in 1997). According to the appraisal, Yukon Ventures uses approximately 9-10 acres out of the 25.52 acre permitted site.

(Appraisal at 5, 9.)

(2) Permit F-87765, a 0.1-acre site permitted "to Northern Alaska Tour Company for a picnic area * * * used in the summer months as a lunch and rest stop for tour buses traveling between Fairbanks" and points north.

Id. at 5.

(3 and 4) YRT permits F-88080 and F-91462 which the appraiser considered jointly as one site. The appraiser noted, consistent with the permits as described above, that the use under the permits is for "a parking area for boat trailers and vehicles; the site on the west side has a small cabin . . . [serving as] headquarters for [YRT]."

Id.

The appraiser determined the fair market rental of the sites, as if unimproved, as of August 8, 1997, utilizing the market approach to valuation. Id. at 1, 6. After first ascertaining that the highest and best use of the properties was the "commercial uses associated with travel," the appraiser determined that "location, access, physical characteristics, and size" were the valuation factors most relevant to the value of the permit sites. Id. at 6-7. The appraiser found that "time" was not a factor in that no land values had changed significantly "over the past several years." Id. at 7.

The appraiser identified and described five comparable sales ranging in sales price from \$900 to \$109,036 per acre and compared these sales in various ways to the permit sites to assess their market values. Id. at 7-10. Considering that the majority portion of the 25.52-acre Yukon Ventures site not in use by the permittee had little value compared to the 9-10 acres used, he concluded that the site value was \$85,000. Id. at 9-10. Considering that the values of the smaller Northern Alaska Tour Company and YRT sites were related to location near Yukon Crossing and not to size, he concluded that the value of each was \$27,000. Id. at 9-10. ^{1/} The appraiser found that the lease issued to Yukon Ventures granted 90 percent of the rights to the parcel, but that the smaller permits transferred only about 60 percent of the properties' rights, with "most of the value" centered in the four summer months. Id. at 10. Utilizing an 8 percent rate of return, the appraiser estimated annual market rental for the parcels to be \$6,120 for the Yukon Ventures permit F-79402, \$1,300 for the Northern Alaska Tour Company permit F-87765, and a total value of \$1,300 for YRT's permits F-88080 and F-91462 (\$27,000 market value x 60% of rights (\$16,200) x 8% rate of return = \$1,296, rounded to \$1,300). Id. at 10-11. The appraiser noted that, although he had considered F-88080 and F-91462 as one site, the rental could be "billed \$650 for each permit for billing purposes only. If one site is dropped, rental for the remaining site will be \$1,300." Id. at 11.

In his December 16, 1998, decision, the Northern Field Office Manager administratively combined permit F-88080 and permit F-91462 into the single permit file F-88080. As noted above, the former permit F-88080

^{1/} For reasons that are unclear, on page 11 the appraiser identified the value of the tract on which permit F-87765 is located as \$28,000.

had been renewed on January 8, 1998, for the period January 1, 1998, through December 31, 1999, while permit F-91462 had been renewed for the period October 1, 1998, through September 30, 2000. Combining the two permits, the decision extended the new permit F-88080 to an expiration date of December 31, 2000.

The decision noted that when each proposed permit had been offered, YRT had been advised that the minimum rent of \$100 per year was due prior to issuance and that actual rental would be established upon receipt of a fair market appraisal. The decision also cited the regulations at 43 CFR 2920.8 which require holders of land use authorizations to pay rental at no less than fair market value. (Decision at 1.) On this basis, the Northern Field Office Manager advised YRT that the approved appraisal report had established the rent as of August 8, 1997, at \$1,300 per year for the two permits considered jointly as one site. He assessed YRT \$1,300 rental for the continued single lease for the 1998 calendar year, and the same amount for 1999. With respect to the 1998 obligation, he credited \$100 advance rental submitted for permit F-91462, in addition to the \$100 advance rental paid for permit F-88080, and found that a total of \$1,100 remained due. (Decision at 2.) The Northern Field Office Manager attached a copy of the proposed consolidated permit to his decision for YRT's signature. The record contains no evidence as to whether this permit was signed.

YRT filed a Notice of Appeal and Petition for Stay (NOA/PS) challenging the appraisal and the six-fold increase in rent, stating:

YRT has the use of a small 10' by 12' office and parks two boat trailers on .11 acres for a little over three months there at the Yukon Crossing. It is our understanding that Yukon Ventures with the use of over 20 acres will pay \$6100 for rent [for] seven months a year. We can not see the logic of this.

Based on the language of the Notice of Appeal, this Board denied a stay of the rental increase. (March 15, 1999, Order in IBLA 99-178.) Citing relevant case law regarding the burden of proof on a permittee challenging an appraisal, which we discuss below, the Board concluded that the rental increase for the 1999 year would not be stayed because "we do not believe the foregoing arguments [quoting entirely the NOA/PS] offer a sufficient predicate to justify issuance of a stay." Id. at 2. The Board did, however, stay the decision to increase rental for the 1998 calendar year considering that the rental for F-91462 had been retroactively increased for a permit that had expired. Id. at 3-4.

In its Statement of Reasons (SOR), YRT briefly elaborates on the arguments presented in the NOA/PS. Specifically, YRT raises the following six challenges:

1. The acreage involved is not even .1 acre. It is more like .020 of an acre.

2. The assumption that the property is available for development to its highest and best use [is] false. BLM has refused [YRT] the use of the property to store fuel on it causing YRT to have to purchase very expensive fuel from Yukon Ventures at inflated prices much higher than what are charged at Coldfoot some 120 miles north on the Dalton Highway.

3. YRT's use of the property is approximately 100 days annually compared to Yukon Ventures' use of over 200 days annually.

4. On page 5 [of the appraisal] in the first paragraph are the statements referring to Yukon Ventures as "the flagship operation for the cluster of uses at the Yukon River Crossing. It has been serving an increasing number of tourists since the Dalton Highway was opened all the way to Prudhoe Bay." We disagree with those statements.

5. On page 9 in the last full paragraph is a reference to what the market can support at the Crossing. In effect the market is supporting two truck stop operations at the Yukon Crossing as the Hot Spot Café five miles north offers many of the truck stop amenities except for gas, oil, and tire repair. It should be considered part of the Yukon Crossing area. Everyone who uses the road regularly considers it to be such.

6. YRT had to pay a full acre price for the property across the river even though we will not be using the full 5 acres. [2/] It is erroneous to state that the value of 25.52 acres across the river with the same locational and developable values as our site is worth only \$85,000. The real world market does not care about what the site value of a location is but how much acreage is involved. YRT paid fair market value for its site.

YRT concludes with a challenge to the assumptions in the appraisal and notes that the

inherent disparity between the appraised value of the YRT lease and the Yukon Ventures lease can not be overlooked no matter what method of appraisal is used. The appraised rent of the Yukon Venture[s] lease is only four times what the appraised rent is for the YRT lease yet we are talking about an area in size occupied and impacted by Yukon Ventures of over a thousand times greater than that of YRT. Something is wrong here.

(SOR.)

2/ This paragraph refers to comparable sale number 3, considered in the appraisal, of 5 acres purchased by the Dinyee Corporation, for a "restaurant tourist facility overlooking the river," for a total price of \$50,000. (Appraisal at 9.)

Analysis

[1] Section 302(b) of FLPMA, 43 U.S.C. § 1732(b) (1994), authorizes the Secretary to issue permits for various uses of the public lands. Authorized uses encompass "[a]ny use not specifically authorized by other laws or regulations and not specifically forbidden by law" and include "residential, agricultural, industrial, and commercial" uses. 43 CFR 2920.1-1. See Regina B. Perry, 142 IBLA 278, 280-81 (1998); C Bar C Ranch Partnership, 132 IBLA 261, 267 (1995); Sierra Production Service, 118 IBLA 259, 262 (1991). The regulations require that land use authorizations be issued only at fair market value and only for uses that conform with BLM plans, policy, objectives, and resource management programs. 43 CFR 2920.0-6(a). Under 43 CFR 2920.8(a)(1),

[h]olders 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.

See also 43 U.S.C. § 1701(a)(9) (1994) (declaring Congressional policy that "the United States receive fair market value of the use of the public lands and their resources unless otherwise provided by statute").

Fair market value rental reflects the amount "for which in all probability the right to use the site would be granted by a knowledgeable owner willing but not obligated to grant to a knowledgeable user who desires but is not so obligated to use." Qwestar Services Corp., 119 IBLA 65, 67 (1991), citing American Telephone & Telegraph Co., 25 IBLA 341, 349-50 (1976); see also Wesfrac, Inc., 153 IBLA 164, 167 (2000). The appraisal defines the term similarly as the "amount in cash * * * for which in all probability the property would be sold by a knowledgeable owner, willing but not obligated to sell to a knowledgeable purchaser who desires but is not obligated to buy." (Appraisal at 3, citing Uniform Appraisal Standards for Federal Land Acquisition, 1992, (Uniform Appraisal Standards) at 3; see also Uniform Appraisal Standards, 2000, at § B-2.)
3/

YRT does not challenge the ability of BLM to charge fair market value rental or to raise rental for YRT's permit. Rather, its challenge is to the conclusion in the appraisal report. Generally, an appraisal will be affirmed on appeal unless the appellant either demonstrates error in the appraisal method used by BLM or presents convincing evidence that the charge is excessive. 4-H Partnership, 149 IBLA 161, 166 (1999),

3/ While this Board has accepted the Uniform Appraisal Standards' definition of "fair market value," the Board has also noted complications in using the Standards, which were established for the purposes of ascertaining value of lands in Federal land acquisitions, for other purposes such as rental determinations. E.g., Northwest Pipeline Company, 84 IBLA 204, 214 (1984) (Burski, J., concurring).

citing Regina B. Perry, 142 IBLA at 281; Thousand Peaks Ranches, 129 IBLA 397, 399 (1994); Coy Brown, 115 IBLA 347, 357 (1990); Thomas L. Sawyer, 114 IBLA 135, 140 (1990). 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. Regina B. Perry, 142 IBLA at 281; Michael D. Dahmer, 132 IBLA 17, 25 (1995).

By failing to directly challenge the appraisal with evidence to support its position, and instead raising points of disagreement, YRT has not met its burden of proof. YRT has failed to show by a "preponderance of the evidence" that the appraisal is erroneous, or to present another appraisal in rebuttal.

[2] However, YRT's six allegations present questions about the appraisal that were not answered by BLM. Thus, to respond to YRT's expressed concerns, we turn to the appraisal to ensure that relevant questions raised by YRT are resolved within it. "[T]he case file must contain the facts and an analysis sufficient to allow the Board to conclude that the fair market value determination is supported by the record." Regina B. Perry, 142 IBLA at 281, citing Communications Enterprises, Inc., 105 IBLA 132, 135 (1988); Full Circle, Inc., 35 IBLA 325, 336-37, 85 I.D. 207 (1978). In Communications Enterprises, Inc., 105 IBLA at 135, this Board set aside a rental decision where, "[a]lthough appellant has not proven that the fair market rental value is excessive, it has raised sufficient doubt regarding the method of analysis of the comparable leases to justify setting aside the decision and remanding for further appraisal." See also Full Circle, Inc., 35 IBLA 325, 336-37.

The thrust of YRT's charges is that it is inconceivable that its permit could justify a quarter of the rental charged to the permit covering the much larger Yukon Ventures site. YRT objects to being assessed \$1,300 annually for the use of two parcels, which, according to the terms of the permit, aggregate just .11 acre, while Yukon Ventures is being charged only \$6,100 annually for use of an area greater than 25 acres in size.

In effect, YRT contends that there should be some direct correlation between the size of the parcel and the rental assessed for its use. We addressed this issue in our Stay Order:

As the Board has noted in the context of the appraisal of communications sites, "there is simply no direct mathematical correlation between size of a communication site and fair market rental, particularly where the size is in the subcategory." American Telephone & Telegraph Co., 77 IBLA 110, 122 (1983). See also B & M Service, Inc., 48 IBLA 233, 237 (1980). In this case, we note that the appraiser specifically found that "the value of the smaller sites are disproportionate to the acreage involved," and that the real value related not to the relative size of the permitted area but its position at the Yukon Crossing with access to the Dalton Highway. Appraisal at 10.

(Stay Order at 3.) See also Michael D. Dahmer, 132 IBLA at 27, and cases cited.

While this case law has focused on the value of telecommunications sites, YRT submits nothing to cause us to reevaluate the issue of whether it is inappropriate for the YRT site to be valued disproportionately from the larger Yukon Ventures site. We are in no position to remark on the appraisal's conclusions with respect to the Yukon Ventures permit. However, in reaching values for the sites disproportionate to size, the appraisal identified an intrinsic value to the location at the Yukon Crossing that permits business there. It states:

The smaller subjects enjoy many of the benefits of the largest subject in terms of location and physical characteristics and have access to the Dalton Highway. A large component of their value is simply the right to have a site at Yukon Crossing, regardless of the acreage involved. The value of the smaller sites are disproportionate to the acreage involved.

(Appraisal at 10.) The disparate values between the YRT sites and the Yukon Ventures site thus derive from the fact that the YRT sites provide commercial opportunity unrelated to actual size. Id. at 10. YRT submits nothing to contest this conclusion or prove that we must reverse it. We therefore reaffirm the appraisal's conclusion regarding the fact that it does not adopt a per acre value for all sites at Yukon Crossing.

However, YRT also complains that the appraisal's consideration of its site usage is inaccurate. (SOR pt. 1.) Likewise, YRT complains of the use of comparable sales. (SOR pt. 6.)

In general, the appraisal correctly focuses only on the value of the unimproved land covered by the four permits examined, and considers a rate of return (8%) for all properties as if the land was unimproved. (Appraisal at 3, 10.) It concludes that the "highest and best use" of all of the land under permit is "the current commercial uses associated with travel." Id. at 6. Thus, it appears from this that the appraiser has concluded that the highest and best use of each permitted area is the one to which it is being put.^{4/} YRT claims that the appraisal's conclusion is incorrect because YRT is not permitted to "store fuel" on its permit site. (SOR pt. 2.) The highest and best use analysis does not depend on factors which would alter costs to the permittee, but rather the use of an unimproved site. YRT's complaint appears to be directed to what it claims

^{4/} The highest and best use of a site is defined as [t]he reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value." (Appraisal at 6, quoting The Appraisal of Real Estate, 9th ed., at 269.) See also Regina B. Perry, 142 IBLA at 281.

are Yukon Ventures' inflated prices rather than to the highest and best use analysis. Id. 5/

Turning to the appraisal and the five comparable sales, we find little to doubt in the appraiser's ultimate logic. 6/ The appraiser considered five comparable sales of land ranging in size from .275 acres to 40 acres, and ranging in value from \$900 to \$109,036 per acre. (Appraisal at 7-9.) The smallest acreage corresponds to the largest value, and vice versa. Id. at 9. Considering the largest Yukon Ventures permit, the appraiser concluded that "[w]hen size is considered, the subject is bracketed by Sale Nos. 4 and 5, indicating a value between \$5,967 and \$900 an acre. This is a very broad range of values which requires size adjustments at both ends of the range. This range of values indicates a subject value between \$152,278 and \$22,968." Id. at 9. 7/

The appraiser goes on to compare the size of the permitted acreage actually used by Yukon Ventures to comparable sale numbers 2 and 3 based on their similarity in size (8.95 acres and 5 acres, respectively):

The uniqueness and size of the largest subject raises the issue of site value. The theory of site value is that buyers are buying a site, not acreage, and will not pay for more acreage than needed for the site. The amount paid per acre for acreage in excess of the needs of the site will be considerably less than that paid for the site itself. This is particularly applicable to the largest subject, since 25.52 acres seems to be more than needed for the current use. The acreage actually used is about 9 acres, roughly the size of Sale No. 2 (a sale of 8.95 acres for \$90,000). Sale No. 3 across the river indicates a five acre site at the intersection of Dalton Highway and Yukon River has a market value of \$50,000; the market value of the subject should be at least that amount. Sale No. 2 at

5/ Similarly, in asserting that the Hot Spot Café five miles away should be considered a part of Yukon Crossing, id. at pt. 5, YRT does not clarify how it believes such a conclusion would affect the value of the Yukon Ventures site. YRT's logic that a restaurant miles away, with no "gas, oil, and tire repair," must be considered as a part of the truck stop at Yukon Crossing is both unpersuasive and unconnected to any element of proof in challenging the appraisal of its site.

6/ The appraisal contains numerical errors. It states that it considered "four parcels aggregating 27.73 acres." (Appraisal at 1, 4, 5.) The permit acreages considered actually total 25.73 acres. Id. at 5, 9. The larger number must be considered a typographical error that was repeated. The appraiser also states that permits F-88080 and F-91462 "are two 0.01 acres sites." Nonetheless, the attachments and the analysis indicate that the appraiser accurately considered a total of .11 acres for the sites. 7/ Mathematical calculations show that the appraiser reached this range of values based upon the Yukon Ventures site. ($\$900 \times 25.52 = \$22,968$.)

\$90,000 is superior to the subject, indicating a subject site value of less than \$90,000. Applying the site value concept narrows the range of values to between \$50,000 and \$90,000. Since area used in the largest subject is almost twice the size of Sale No. 2, and there is excess acreage, the subject is closer in site value to sale No. 2.

(Appraisal at 9.) The end result was that the value of the Yukon Ventures site, per acre, was approximately \$3330, which is consistent with the appraiser's bracketing of the subject to between the comparable sales 4 and 5. He calculated the value of the Yukon Ventures site at \$85,000, with an annual rental of \$6100.

With respect to the YRT sites, the appraiser considered the value of these sites to be disconnected from size, but rather to be related more to location and use. See Appraisal at 10 (value of "location," "rights to have site at Yukon crossing"). He contrasted them to the sale which was closest in size and related to the highest and best use of the permits.

Sale No. 1 was purchased by a highly motivated buyer as a direct substitution for a boat landing at Yukon Crossing. This sale is within a village with utilities, which introduces other valuation factors; it is also 23 miles further from Fairbanks than the subject, and at the end of the Steese Highway. It is not a stopping point on the way somewhere else. The 33 mile long road between Central and Circle is one and a half lanes wide and very twisty. As a boat launching site for tourism it is inferior overall to the smaller subjects; however, a premium price was paid by a highly motivated buyer, indicating a site value less than \$30,000.

Considering the sales data, the market value of the smaller subjects is estimated to be slightly more than half the site value of sale No. 3 and slightly less than Sale No. 1, for a site value of \$27,000 each.

(Appraisal at 10.)

We find logic in the appraisal's consideration of sale no. 1. As described by the appraiser, this sale may have represented an inflated value. The appraiser described sale no. 1 for a "tourist boating operation similar to FF-88080," as follows:

Sale number 1 is an 11,985 square foot lot for \$30,000, or \$109,036 per acre. The sale is of a lot in the village of Circle on the Yukon River. * * * The buyer was the applicant for a fifth site (lease application F-91500) at Yukon Crossing; his plans were for a tourist boating operation similar to FF-88080/FF-91462. He became frustrated after dealing with BLM for three years and went to Circle looking for a substitute site; he happened to meet the seller while looking over the property. It is perfect for his planned use; he offered

\$30,000 on the spot and it was accepted. The buyer was highly motivated to buy Yukon River frontage; the seller was not actively seeking to sell the property. The transaction seems to be arm's length, although the price may be high because the buyer was highly motivated. This sale is comparable to the subject in all aspects except size, in which it is clearly superior, indicating a subject value of less than \$109,036.

(Appraisal at 7 (emphasis added).) 8/

A superficial look would suggest that the appraiser merely applied the closest comparable sale to determine the value. On the other hand, the discussion appropriately took into account the fact that the price of sale no. 1 contained a premium, and that its location makes it inferior to sites at Yukon Crossing. In considering fair market value for the purpose of government acquisitions, the Uniform Appraisal Standards suggest that the appraiser must take into consideration such factors. "It is imperative that sales be verified as to amounts and to ascertain whether terms and conditions of sales were conventional and under open competitive market conditions." (Uniform Appraisal Standards at 9.) Moreover, basic elements to be considered include "motivation of sale transactions." (*Id.*) In the 2000 Uniform Appraisal Standards these "basic elements" include "conditions of sale" and "non-realty components of value included in the sale property." (Uniform Appraisal Standards at § B-4.)

The appraisal expressly acknowledges that the buyer paid a premium to avoid dealing with BLM and, to take account of this fact in comparing the sites, he states that the YRT sites must be lesser in value than sale no. 1. On the other hand, the appraisal cites several factors indicating a greater value to a site at Yukon Crossing. As noted above,

[Sale No. 1] is also 23 miles further from Fairbanks than the subject, and at the end of the Steese Highway. It is not a stopping point on the way somewhere else. The 33 mile long road between Central and Circle is one and a half lanes wide and very twisty. As a boat launching site for tourism it is inferior overall to the smaller subjects * *

(Appraisal at 10.) Considering that these factors would enhance the value of the Yukon Crossing sites, the reduction in \$3,000 from the comparable sales price for sale no. 1 to account for the premium paid appears to appropriately consider all factors. Further, the result is consistent with

8/ The last emphasized language demonstrates that the appraiser was considering this sale as a comparable with respect to the YRT site and the other picnic site of .1 acre, as the Yukon Ventures site was clearly superior in size to sale no. 1.

the facts of sale no. 1 which include the purchaser's frustration at being unable to obtain a permit at Yukon Crossing. ^{9/}

Finally, YRT challenges the fact that "YRT's use of the property is approximately 100 days annually compared to Yukon Ventures' use of over 200 days annually." (SOR at pt. 3.) However, the appraisal considered the value of the Yukon Ventures' site to contain 90% of the full rights to the land, not because of the fact that weather may prohibit its use for part of the year, but because "the United States retains some use rights to the property." (Appraisal at 10.) The appraiser's estimation that 60 percent of the property rights were conveyed in YRT's permit, in comparison to the 90 percent of those rights granted to Yukon Ventures, demonstrates an appropriate consideration of YRT's shorter period of annual use. Id.

For the foregoing reasons we find that YRT has not proven that the fair market rental value is excessive. Nor has it raised sufficient doubt regarding the method of analysis of the comparable leases to justify setting aside the decision and remanding for further appraisal. Communications Enterprises, Inc., 105 IBLA at 135. Accordingly, we affirm the appraisal and the decision to increase rental value.

[3] Our affirmance of BLM's appraised rent does not end our inquiry. The Board's order stayed the Northern Field Office Manager's decision to the extent it retroactively increased the rental for calendar year 1998 because "[w]e perceive major problems in retroactively raising the rentals on permits which have already expired by their terms." (Stay Order at 4.) The order noted that BLM may retroactively increase rentals in those situations where BLM has advised the permittee that the advance rental payment is an estimate subject to adjustment upon completion of an appraisal, as it did with both permits here, citing Oroville-Wyandotte Irrigation District, 131 IBLA 379, 382-83 (1995); Jancur, Inc., 93 IBLA 310, 312-13 (1986); and Lone Star Steel Co., 79 IBLA 345, 348 (1984). The problem in this case stemmed from the fact that,

as implemented by the District Office, the rental for F-91462 has been retroactively increased prior to the commencement date of the present permit. In other words, the most recent renewal date of F-91462 was October 5, 1998, and that renewal was to run from October 1, 1998, to September 30, 2000. The decision under appeal raised the rental for this permit

^{9/} The appraiser's statement that the value of \$27,000 is "slightly more than half the site value of Sale No. 3" appears as a non sequitur. (Appraisal at 10.) Nonetheless, YRT's comments appear to validate the logic of the appraisal. YRT complains that the Dinyee Corporation "had to pay a full acre price for the property across the river even though we will not be using the full 5 acres." (Appraisal at pt. 6.) The Corporation paid \$50,000 for the 5 acres; the market apparently supported the purchase. The appraisal's conclusion that the value of the YRT sites was \$27,000 places a value, \$11,818/acre, on the YRT site similar to the value Dinyee Corporation placed on acquiring the five acres.

commencing on January 1, 1998, nine months prior to the effective date of the instant permit. While [YRT] was utilizing the land at that time, it was under a previous permit which expired on September 30, 1998.

(Stay Order at 3-4.)

Considering the precedent cited in the stay order, and the facts of this case, however, we conclude that no unfairness exists to an application of the increased rental for the 1998 usage year. The cited cases articulate the principle that a use permit rental may be altered for a prior period if adequate notice has been provided that an appraisal may alter the value. In Jancur, Inc., 93 IBLA at 312-13, the Board held: "Because this provision for retroactive rental adjustment was specifically set forth in the right-of-way grant, appellant was aware of the possibility of a rental increase when the right-of-way was granted." Similarly, in Lone Star Steel Co., 79 IBLA at 348, the Board held that "[a]ppellant was on notice at the time the right-of-way was granted as to the procedure being used by BLM for imposing the rental charges."

In this case, BLM adequately informed YRT that the lease rental may change subject to appraisal. With respect to permit F-91462, the permits for the 1997 and 1998 usage years expressly stated that rental would be \$100 "or such other sum as may be required if a rental adjustment is made, based on fair market appraisal." The language was typed onto the form, distinguishing it from permits issued in previous years. Further, in this case, the appraiser considered the two permits as a single unit and explicitly specified that "[i]f one site is dropped, rental for the remaining site will be \$1,300." (Appraisal at 11.) With respect to permit F-88080, on December 17, 1997, BLM expressly notified YRT that "[e]stimated minimum annual rental of \$100.00 will be required prior to issuance of the permit and actual rental will be established upon completion of a fair market value appraisal." Therefore, in these particular circumstances, in accordance with the appraisal, the terms of permit F-91462 for the 1998 use period, and the letter with respect to permit F-88080, adequately provided notification that an appraisal may change the rental for permit F-88080, whether under a separate or a consolidated permit.

We conclude, however, that BLM did not adequately credit YRT's payment for the 1998 year. The decision credits the "advance payment for permit F-91462" to the \$1,300 payment due for the calendar year 1998. The advance payment made in 1998 was that for the permit for the period October 1, 1998, to September 30, 2000, for occupancy in 1999 and 2000. The annual "advance payment" to which BLM refers is a payment made for actual use from May 1 to September 30, 1999. In addition to crediting this \$100 advance rental, BLM must also subtract the \$100 annual rental YRT paid for the permit term that expired on September 30, 1998, attributable to the nine-month period January 1, 1998, through September 30, 1998, i.e., \$75 (9/12 x \$100), from the 1998 calendar year rental due for the consolidated permit F-88080. Accordingly, we modify the Northern Field Office Manager's decision to reflect that additional \$75 deduction which

leaves a balance of \$1025 rental due for calendar year 1998. 10/ In all other respects, the decision is affirmed.

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 by this decision.

Lisa Hemmer
Administrative Judge

I concur:

Will A. Irwin
Administrative Judge

10/ Conversely, the \$100 payment made by YRT for permit F-91462 for the Oct. 1, 1998 permit could be considered a payment for 1999 and appropriately deducted from that year's rental. In any case, the \$75 payment for the annual permit F-91462 for the period ending Sept. 30, 1998, must be credited to YRT.