

Litigation Profile

United States of America v. 400 Acres of Land



AREA 51

How much is land worth inside this secret military base?

Case Background

On October 17, 1984 Congress enacted Public Law 98-485 (“1984 Withdrawal”), which authorized the withdrawal of 89,600 acres of federal land in Lincoln County, Nevada. However, the withdrawal was subject to valid existing rights, and the Groom Mine property that had patented and unpatented mining claims was not within the scope of withdrawal.

The United States condemned the Groom Mine on September 10, 2015 (date of value). To hear and rule on the case the Court assembled a Commission in early 2020 consisting of two retired judges and one retired State Supreme Court justice. At issue was the fair compensation for the 87.49 acres of patented mining claims, which is essentially treated as fee simple ownership.

The property is located approximately six to seven miles across a dry lakebed with a view of the buildings and airstrip (known as the Area 51 base). The landowners argued that the highest and best use of the Groom Mine was tourist commercial catering to alien enthusiasts.

The landowners’ MAI appraiser determined that the fair market value of the property was \$49,870,000 . The value was based on a hypothetical business model of 250 visitors per day (91,250 annually) at an entry price of \$400 per person.

To achieve this revenue, tour buses would pick up patrons in Las Vegas and drive 2 ½ hours to the property (five hours round trip). Visitors would get to stand on the property for one to two hours and observe the buildings and airstrip across the lakebed. In advance of the trip, tourists would be subject to a formal background check including the disclosure of social security numbers. No electronics, cameras or videos are allowed on the base.

Based on the 91,250 visitors, the property would produce annual revenue for the owner of \$41,062,500 (tickets and concessions).

Moeder’s Testimony

For this case, Moeder was tasked with reviewing the data, assumptions and methodologies used by the Landowners’ experts. In a comprehensive report and subsequent oral testimony, he demonstrated to the Court that there was no basis for either demand or pricing. Observing pop culture general interest via website hits and previously failed events such as “Storm Area 51” is not justification, or proof, that 91,250 people will buy a \$400 tour year after year in perpetuity. Moeder explained that establishing a sustainable, permanent demand is what creates value. If the demand falls off or pricing is reduced, then the value of the investment plummets.

Moeder explained that demand and price is an elastic relationship which are tied together: the more expensive the ticket price is, the smaller your market. None of this was addressed by the Landowners' experts.

In addition, there was no basis for 91,250 visitors annually. At most, there were approximately 2,000 people that currently take an Area 51 tour from Las Vegas each year (Adventure Photo Tours). This tour visits various points of interest (Indian petroglyphs, black mailbox, lunch at Little A'Le'Inn, etc.). The price of this tour is \$200. This is not "empirical evidence" that would achieve a comfort level for developers, investors and lenders to commit nearly \$50 million for the purchase of the property. Based on this data set of 2,000 people paying \$200, there is no justification to project that 91,250 people would pay \$400 just to access and stand on the property.

There are also other development issues and risks that affect value. According to the historical agreement between the Air Force and the family, the Air Force would shut down its operations and classified missions when people were at the family's property (which occur several weekends throughout the year).

Understanding this agreement is one of the first steps a purchaser of the property would take in the due diligence process:

- Would the Air Force be amenable to having 250 people on the property 365 days a year?
- Is the agreement transferable from the family who owned the property for decades to a new owner?
- What if the Air Force cannot operate the base at all for the entire year, then what happens?
- On the days it has to shut down, what if the Air Force decides to compete by opening up a location closer to the facilities and allow the public on for an access fee similar to a national park?

Each of these are all critical questions that would need to be answered before an acquirer pays nearly \$50 million for the property.

Another question was: would a developer be able to get approval from Lincoln County if the Air Force objected to people on the property every day of the year? As Lincoln County Planning Commissioner Mr. Lytle explained, the Air Force is not only a major employer, but also pays a significant sum to the County each year in lieu of taxes. Lytle also testified that the Planning Commission would have entertained any objections from the Air Force if a large-scale tourism project was pursued.

As Moeder explained for the court, developers are not in the business of taking on unnecessary risk. They are in the business of mitigating and minimizing risk and financial exposure. Therefore, a purchaser of the property would want written assurances that it has the right to operate its business with 250 people on the property every day. Without assurances, any proffered business plan elevates to the highest degree of speculation.

Finally, the Groom Mine has been owned for decades. Pop culture interest in Area 51 began in the 1980s, reaching its apex in the 1990s. Why has it not previously been developed or approached for acquisition?

Court Decision

The court determined that there was no basis for the nearly \$50 million valuation put forth by the Landowners' expert. Moreover, the business plan of 91,250 people annually did not provide any evidence for such sustained demand. As stated in the findings, "while of course [the appraiser's] calculation of demand for Landowners' proposed large-scale tourism use will necessarily be subjective on some level, [the appraiser] pulled his demand estimate out of thin air."

In addition, the court pointed out that "as a matter of common sense, the Air Force might object if Landowners began bringing 250 people on the property every day for the foreseeable future. That is very different from the occasional long weekends Landowners used the property for from the 1950s until the date of the taking."

The court adopted the commission's report and determined that the amount of just compensation for the taking of the property is \$1,100,000 (plus \$104,000 for mineral rights as agreed to separately by the parties).