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DECISION THE COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-190607 DATE: February 9, 1978

MATTER OF: William C. Sloane - Pro rata reimbursement of real estate expenses

DIGEST: Employee claims real estate expenses for cost of selling 4.9591 acre plot adjacent to residence which was situated on 2.1852 acre plot. After applying guidelines set forth in 54 Comp. Gen. 597 (1975) agency determined adjacent plot does not reasonably relate to residence as required by FTR para. 2-6.1f. GAO will not disturb agency finding unless clearly erroneous, arbitrary, or capricious. Agency determination is proper since it is supported by opinion from Farmers Home Administration concerning residential sites in the area.

This action concerns the request of H. Larry Jordan, authorized certifying officer, Department of Agriculture, for a decision whether he may certify for payment the reclaim of William C. Sloane for real estate expenses incurred incident to his transfer from Washington, D.C., to Lawrence, Kansas.

Mr. Sloane sold his residence, which was situated on a plot consisting of 2.1852 acres in the vicinity of his old duty station, and settlement was made on June 16, 1976. He also sold to the same purchaser an adjoining 4.9591 acre plot of land and settlement was made on June 18, 1976. Mr. Sloane claimed real estate expenses incurred incident to both transactions. However, the Department of Agriculture disallowed all amounts relating to the additional 4.9591 acre plot. The disallowance was based on our decision 54 Comp. Gen. 597 (1975), concerning the method of determining entitlement when it appeared that an employee had sold excess land in connection with the sale of his residence. The proper agency official should take into account such factors as zoning requirements in the area, or absent any zoning requirements, factors such as the past, present, or potential use of the land, including possible subdivision, local health department requirements, the location of the land, including accessability, road frontage, water supply, easements, etc. It was suggested that aid in determining the above factors could be obtained from the Farmers Home Administration or local real estate experts. In complying with the above requirements, Mr. Jordan reports the following findings:

"Farmers Home Administration stated that the adjoining acreage was in excess. They normally considered an adequate building site as one on which a dwelling, well, and septic tank can be situated without crossing property lines. An acre or less is considered by them to be adequate.

"We also requested any zoning laws which would apply to the area and if the property would be divisible for building sites. Farmers Home Administration advised that as far as they knew, no specific zoning laws exist where the property is located and since the additional acreage has considerable road frontage, it would be ideal for division.

"A copy of the property plat was sent to the county Health Department in Manassas, Virginia. We asked them to advise us if the septic tank or drainage extended onto the 4.9 acres. They informed us that according to their records, it would appear that the sewage system for the residence is located behind the dwelling and within the property lines."

The applicable regulatory provision is found at Federal Travel Regulations FTR (FPMR 101-7) para. 2-6.1f (May 1973), which provides, in pertinent part:

"The employee shall also be limited to pro rata reimbursement when he sells or purchases land in excess of that which reasonably relates to the residence site."

In 54 Comp. Gen. 597, supra, we stated that the primary authority to make determinations with regard to how much land reasonably relates to a residence site for the purpose of FTR para. 2-6.1f lies with the particular agency involved. Where the agency has made the required determination, this Office will not disturb the agency determination unless it is clearly erroneous, arbitrary, or capricious. See Matter of Jesse A. Burks, 55 Comp. Gen. 1107, 1110 (1976).

In this case, the agency has applied the guidelines set forth in 54 Comp. Gen. 597, supra, in a thorough manner, and we find no basis to challenge the propriety of the Department of Agriculture's determination. Also, the agency determination is in agreement with decisions of this Office regarding excess land determinations involving the purchase or sale of more than one parcel of land. See B-186527, February 9, 1977.

Accordingly, the voucher may not be certified for payment.

Deputy Comptroller General
of the United States