

KENAI POWER CORPORATION

IBLA 70-34 Decided March 12, 1971

Alaska: Trade and Manufacturing Sites

An application by a corporation to purchase a trade and manufacturing site is properly rejected where the applicant indicates only that a small plywood building is used for the company's office and a portion of the land has been cleared and used for storage without showing that the company was actually engaged in a trade, manufacture, or other productive industry, and that the land has been possessed and occupied and is needed for such an enterprise; that the corporate name suggests that it is in the power industry is not sufficient to establish such a showing.

IBLA 70-34: Anchorage 057101

KENAI POWER CORPORATION

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: Trade and manufacturing site
: purchase application rejected
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: Affirmed

DECISION

The Kenai Power Corporation has appealed to the Secretary of the Interior from a decision by the Chief, Branch of Land Appeals, Office of Appeals and Hearings, Bureau of Land Management, dated February 14, 1969, affirming a decision by the Bureau's Alaska State Office of October 29, 1968, rejecting its application to purchase a 40-acre tract as a trade and manufacturing site and cancelling the settlement claim for the site. The rejection was on the grounds that there were not the required improvements on the site and also that the applicant had failed to show that the land was being used for a going business enterprise.

Appellant's application and claim were made under section 10 of the act of May 14, 1898, as amended, 48 U.S.C. §§ 461, 462 (1958), which permits the purchase of not more than 80 acres by one:

... in possession of and occupying public lands in ... Alaska in good faith for the purpose of trade, manufacture, or other productive industry ... upon submission of proof that said area embraces improvements of the claimant and is needed in the prosecution of such trade, manufacture, or other productive industry ...

As amended further by section 5 of the act of April 29, 1950, 48 U.S.C. § 461a (1958), notice of occupancy is required to be filed in a land office within 90 days from initiation of occupancy for the claimant to receive credit for such occupancy, and an application to purchase the claim along with the required proof or showing must be filed within five years after the filing of the notice of claim.

The appellant's notice of location of occupancy was filed in the land office at Anchorage on May 1, 1962, indicating that occupancy was made on May 1, 1962, and that the claim is maintained or desired for an "Operations area - warehousing and storage." The claim was acknowledged by the land office on October 11, 1962, pointing out that the "operations and warehousing and storage must be an actual business to qualify for purchase of the land." On April 28, 1967, appellant filed its application to purchase the tract stating that the nature of the trade, business or productive industry is "Office and Storage," and it has occupied the tract since May 1963. As to improvements, the application stated "Clearing for storage, and office building," with an estimated value of \$18,000. Supplemental information about the corporation was filed July 3, 1967.

Appellant contends the Bureau erred concerning the extent of land cleared on the tract and in its conclusion that a small, boarded-up, plywood building on skids, without electricity and sanitary facilities, was not a permanent improvement. Appellant asserts the tract has been used for the "business of storage" and for the location of its office building.

Even if we assume appellant's contentions are true as to the extent of the land cleared, no change in the conclusion reached below would be warranted since the mere clearing of land is not sufficient to constitute the necessary improvement of the tract. Kenneth Brown Laughlin, A-25468 (August 5, 1949). Furthermore, a mere statement, on appeal, by appellant and an operator of a building materials business in Kenai that he conducted business with appellant at the storage yard and office building by purchasing and removing power poles is not adequate to show appellant occupied the tract for the purpose of trade, manufacture, or other productive industry and needs the tract for such purposes, where there is no other support for that conclusion in the record.

Although appellant alleges the building is used as its office, nothing in the record shows the nature of appellant's business operations except as might be surmised from the corporate name and corporate powers. Though the corporate name suggests appellant may be in the power industry, the name alone is not acceptable proof that appellant has actually been engaged in such an industry or that all or any of the land is needed by it for that purpose. Similarly,

appellant's statement that it is in the "business of storage" does not show that appellant stores property for others on the land at a price, nor does it show the nature of its own business enterprise if appellant means only that its own property has been stored.

If it were necessary in this case to rely on facts inconsistent with appellant's purchase application or contrary to its assertions on appeal, appellant would be afforded the opportunity to present evidence at a hearing to substantiate its claims as to the extent of improvement and use of the land and its need for it in connection with a commercial enterprise. Clayton E. Racca, 72 I.D. 239 (1965). However, appellant's basic difficulty is its failure to show in its application to purchase that it was actually engaged in a trade, manufacture or other productive industry and that the land has been possessed and occupied and is needed in connection with such an enterprise. This defect is not cured by its statements on appeal that the land is used for storage and an office without showing the relationship of the improvements and asserted use to some commercial enterprise. Because appellant has failed to demonstrate the existence of an actual business on the land, a showing essential to establishing the right to purchase the land as a trade and manufacturing site, the application to purchase was properly rejected for this reason and the claim was properly cancelled without the necessity for any hearing. Cf. Carl A. Bracale, Jr., A-31149 (April 20, 1970).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is affirmed for the above-stated reason.

Joan B. Thompson, Alternate Member

We concur.

Martin Ritvo, Member

Francis E. Mayhue, Member.

