

FRONTIER ROCK & SAND, INC.

IBLA 71-226

Decided November 14, 1972

Appeal from a decision by the Bureau of Land Management's Alaska State Office rejecting an application (F-034743) to purchase a trade and manufacturing site.

Set aside and remanded.

Alaska: Trade and Manufacturing Site--Hearing

Where a factual dispute exists on appeal from rejection of a trade and manufacturing site application, the case will be remanded for a hearing to resolve disputed issues and determine if the applicant has occupied the site for the purposes of trade, manufacture, or other productive industry and has established on the land improvements needed in the prosecution of such activities.

APPEARANCES: Ralph G. Crews, Esq., for appellant.

OPINION BY MR. RITVO

Frontier Rock & Sand, Inc., has appealed from a decision by the Alaska State Office dated February 9, 1971, rejecting its application, F-034743, to purchase a trade and manufacturing site on the grounds that occupancy of the land was not properly shown by the appellant.

On August 12, 1965, the Land Office in Fairbanks, Alaska, received a "Notice of Location of Settlement or Occupancy Claim" from Frontier Rock & Sand, Inc. for unsurveyed land located in T. 1 S., R. 14 E., Umiat Meridian, Alaska. The date of occupancy was given as June 4, 1965, and the improvements were listed as the grading and leveling of the land. The site was to be used by the company as a heavy equipment maintenance depot in conjunction with its oil field supply business. The company filed an application to purchase 20 acres of the above land on June 23, 1970, under section 10 of the Act of May 14, 1898, as amended, 43 U.S.C. § 687a(1970), which authorizes sale of Alaska lands for purposes of trade, manufacture, or other productive industry.

The company met the procedural requirements of 43 CFR 2562.3(c) that the application to purchase be filed within 5 years of the entry and a complete description of the land be included. However, the application was rejected for failure to comply with the requirements of section 10, supra, and the pertinent regulation, 43 CFR 2562.3(d)(1), that at the time the application for purchase is filed the land must be in actual use and be occupied for the purpose of the trade under which the original entry was made. In the company's application for purchase, the list of improvements to the land included leveling and grading for depot purposes at a cost of \$10,000 and construction of a 10-by 14-foot metal shed at a cost of \$7,500. On an inspection made on December 31, 1970, the field representative found that there were no structural improvements on the site, that only a portion had been cleared of sedge hummocks, and that there was no sign of activity in the area or indications of recent use.

In an affidavit attached to Frontier's appeal, its President, John C. Miller, attempted to explain the inactivity on the site at the time of the inspection. He said that, due to the fluctuations in the oil field supply business, there are times during the year when the storage depot would be virtually empty, but that at other times it is teeming with activity. Regarding the metal shed, Miller stated that the building which normally was on the site had been moved temporarily to the Sagwan Airstrip to be used as an anchor for the Interior Airways antenna. Finally, climatic conditions often made the area unusable during certain times of the year.

While the usage made of the tract by Frontier may meet the requirements of section 10, the issue should in the first instance be examined by the Land Office. If upon reexamination it is not satisfied that a sufficient necessary business was conducted on the premises, a contest should be initiated. Where the appellant submits information which, if proven, would satisfy the statutory requirements of occupancy and usage disputed by the Land Office, the issue should be resolved at a hearing before a departmental administrative law judge. David A. Burns, 6 IBLA 171 (June 15, 1972).

In remanding this case to the State Office for a hearing, this Board wishes to include additional instructions regarding the disposition of Frontier's application to purchase. Currently a conflicting trade and manufacturing site claim for a large portion of the land included within Frontier's trade and manufacturing site is the subject of another hearing ordered by this Board. Don E. Jonz, 5 IBLA 204 (March 20, 1972). Since the application in Jonz involves a prior entry to the same land, the administrative judge's disposition in that case may render Frontier's claims virtually moot. The Frontier case should be withheld pending the resolution of the Jonz case and then acted upon in a manner consistent with that opinion.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision rejecting the application to purchase and cancelling the claim is set aside and the case is remanded for further proceedings consistent herewith.

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Martin Ritvo, Member

We concur:

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Newton Frishberg, Chairman

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Joseph Goss, Member

