

GOLDEN VALLEY ELECTRIC ASSOCIATION

IBLA 72-227

Decided December 19, 1972

Appeal by the Golden Valley Electric Association from a December 3, 1971, decision (F-033462) of the Alaska State Office, Bureau of Land Management, approving in part and rejecting in part an application to purchase a trade and manufacturing site.

Affirmed.

Alaska: Trade and Manufacturing Sites

Where there is no dispute as to the facts, the rejection of an application to purchase a trade and manufacturing site will be affirmed insofar as it describes land which has not been used for the purpose of trade, manufacture or other productive industry.

APPEARANCES: R. L. Huffman, General Manager, Golden Valley Electric Association.

^OPINION BY MR. RITVO

Golden Valley Electric Association has appealed to the Secretary of the Interior from a decision of the Alaska State Office, Bureau of Land Management, rejecting in part its application to purchase a trade and manufacturing site on grounds that there is no evidence of past or current use and occupancy of a portion of the land for the purpose of trade, manufacture, or other productive industry.

Golden Valley Electric Association originally filed a notice of occupancy for a trade and manufacturing site on October 28, 1964. The notice described the lands for occupancy as being located in the N 1/2 SW 1/4 sec. 21, T. 12 S., R. 7 W., Fairbanks Meridian. The type of industry use proposed was given as power plant site, coal storage area, service shops and buildings, railroad sidings and storage, cooling ponds, and maintenance storage. The total acreage included in the notice of occupancy was approximately 80 acres.

The application to purchase was filed on July 16, 1969, pursuant to section 10 of the Act of May 14, 1898, as amended, 43 U.S.C.

§ 687a (1970), which authorizes sale of public lands in Alaska for purposes of trade, manufacture, or other productive industry. The improvements on the land include an electrical substation valued at \$ 800,000 plus grading and leveling costs. Golden Valley stated in the application that approximately 80 acres were covered by the improvements. A sketch accompanying the application, however, shows all the improvements to be on only a portion of the tract.

On October 6, 1969, the Land Office submitted a request for a field examination. The report was prepared by a realty specialist, Allen R. Cronk, and filed on November 5, 1971. Cronk described the improvements on the land as follows:

Golden Valley Electric Association has constructed a coal fire steam generating plant, together with the necessary substation and transmission facilities. In addition, a coal storage area, ash dump, pole yard and equipment storage yard have been constructed. All of these facilities are located on the W 1/2 E 1/2 NW 1/4 SW 1/4 and the W 1/2 NW 1/4 SW 1/4- (a total of thirty (30) acres) or on the S 1/2 SW 1/4, Sec. 21, (South of the entry).

Cronk found no evidence of any use by Golden Valley of the remaining 50 acres. He stated that he requested data from Golden Valley's R/W (right-of-way) agent in March 1971, regarding the company's proposed use of the remaining 50-acre portion of the entry. On the date Cronk filed his report, he had received no reply to his inquiry. Cronk concluded his report by recommending that Golden Valley be allowed to purchase the W 1/2 E 1/2 NW 1/4 SW 1/4 and the W 1/2 NW 1/4 SW 1/4 (30 acres) and the Golden Valley's application be rejected for the remaining 50 acres (the E 1/2 E 1/2 NW 1/4 SW 1/4 and the NE 1/4 SW 1/4) for nonuse under the provisions of 43 CFR 2562.

The State Office adopted Cronk's recommendations and approved Golden Valley's purchase of the W 1/2 E 1/2 NW 1/4 SW 1/4 and the W 1/2 NW 1/4 SW 1/4 (30 acres) while rejecting the proposed purchase of the remaining 50 acres. The decision cited the fact that the ground on the E 1/2 E 1/2 NW 1/4 SW 1/4 and the NE 1/4 SW 1/4 is steep (60 degrees to 70 degrees slope) and has an elevation rise of 700 feet above the plant site. The State Office could not foresee any use of this 50 acres in the current operation of the plant. Since no evidence existed of past 1/ or current use of the 50 acres for the

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1/ Although the State Office's decision refers several times to "past" use, to be eligible for purchase, land must be currently in use for one of the purposes set out in Section 10 of the Act, supra. Carl A. Bracale, Jr., A-31149 (April 20, 1970).

purpose of trade, manufacture, or other productive industry, Golden Valley's application to purchase was rejected for the 50 acres delineated above.

Golden Valley filed notice of appeal on December 22, 1971, and submitted a statement of reasons on January 31, 1972. Appellant did not controvert the State Office's conclusions as to the 50 rejected acres. 2/ Instead it enclosed two copies of a detailed map showing the proposed utilization of these 50 acres. Golden Valley planned to lay a pipeline between the plant and a pondage area where water would be stored during the "off peak" periods. The pipeline would run 1.5 miles and cost an estimated \$ 3 million. The proposed route of the pipeline would cross through the northerly portion of the rejected 50-acre tract.

The Act of May 14, 1898, supra, provides that purchase may be made "\* \* \* 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 \* \* \*." The correlative departmental regulation, 43 CFR 2562.3(d)(1), explicates the statute by requiring that the application to purchase must show "[t]hat the land is actually used and occupied for the purpose of trade, manufacture or other productive industry \* \* \*." (Emphasis added.)

Previous departmental decisions make it clear that the right to purchase land under the Trade and Manufacturing Law should be limited to land actually occupied and used for an established business. Gunnar Navjord, A-30637 (December 28, 1966); Wilbur J. Erskine, 51 L.D. 194 (1925). Golden Valley did not make any use of the 50 acres in question during the past five-year statutory life of its entry. It also failed to respond to Cronk's inquiry of March 1971, regarding intended future use of the tract. Not until Golden Valley filed its statement of reasons did it come to the attention of the Department of the Interior that the appellant proposed to construct a pipeline over a portion of the 50-acre tract rejected in its purchase application. a prospective future use does not meet the requirements of section 10, supra. 43 CFR 2562.3(d)(1).

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2/ Since Golden Valley does not deny the facts upon which the partial rejection of its application is based, the facts may be relied upon without a hearing, although a hearing would be necessary if Golden Valley controverted them. Martha J. Jillson, 6 IBLA 150 (1972). The Jillson case discusses the procedure which should be followed where the application is proper on its face.

Thus, the State Office acted properly in rejecting Golden Valley's purchase application for the 50-acre tract.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Office is affirmed.

Martin Ritvo, Member

We concur:

Anne Poindexter Lewis, Member

Joan B. Thompson, Member.

