

JOHN V. VOGT

IBLA 74-254

Decided September 5, 1974

Appeal from decision of Fairbanks District Office, Bureau of Land Management, rejecting appellant's application to purchase and canceling headquarters site claim F-034757.

Set aside and remanded.

Alaska: Headquarters Sites

A headquarters site application based upon use of the land for cabin rental and as a base for trapping and fishing parties is properly rejected when the land was only commercially used for one season after the claim was initiated and the gross receipts from the operation amounted to \$ 210. Where a headquarters site claimant submits a final proof which fails to show that he used the site in connection with a productive industry as required by law, action rejecting final proof and canceling the claim may be suspended to permit the entryman to apply to purchase not more than five acres under the Homesite Act of May 26, 1934, failing which, the proof will be finally rejected and the claim canceled.

APPEARANCES: John V. Vogt, pro se.

OPINION BY ADMINISTRATIVE JUDGE RITVO

John V. Vogt has appealed from a decision of the Fairbanks District Office, Bureau of Land Management, dated March 14, 1974, rejecting his purchase application F-034757 for land to be used as a headquarters site.

The relevant facts were succinctly stated in the District Office decision as follows:

On June 24, 1970, Mr. John V. Vogt filed an application to purchase [a] Headquarters Site. The land involved is described as follows:

From a point on river bank directly in front of cabin, approximate longitude 146 degrees 31'30" West, latitude 64 degrees 31'30" North, following river bank 350 feet to the right which is up river from cabin, then inland approximately 90 degrees turn 600 feet to a marked post, then 90 degrees turn to right 350 feet to river bank then 350 feet to right to starting point. Containing approximately 5 acres.

Mr. Vogt filed a notice of location of settlement or occupancy on August 23, 1965, and in the notice of location, he stated that the list of improvements were, 1-18'x20' log cabin on concrete blocks, 1 outhouse, 1-8'x8' garbage pit, and one cache 12' above ground. On October 5, 1965, Mr. Vogt was notified that his claim was recorded.

On June 24, 1970, Mr. Vogt submitted his application to purchase, stating that the nature of his business being conducted on his Headquarters Site was, "cabin rental." Previous to submitting his application to purchase, Mr. Vogt had stated in his notice of location of settlement or occupancy claim, that the kind of trade, manufacturing or other industry for which the claim is maintained or desired was for "trapping fur bearing animals and fishing parties." On February 19, 1974, a notice was sent, and received by Mr. Vogt, requesting that he submit additional evidence in support of his claim. Mr. Vogt submitted with his application to purchase, a receipt for payment of taxes (Business License) and nine (9) receipts for cabin rental from June 25, 1968 to July 20, 1968 totaling only \$ 210.00. Also Mr. Vogt submitted his additional evidence on March 6, 1974, which is vague and void of details as to his "trapping of fur bearing animals" or "fishing parties."

Mr. Vogt has failed to show any business license or receipts for cabin rental for the years 1969 and 1970. Evidence submitted March 6, 1974, also failed to show conclusively that he had established a trapping trade or sold any fur pelts.

Based on the above findings, the District Office concluded that appellant had failed to show that he used the site in connection with a productive industry as required by law.

43 U.S.C. § 687(a) (1970), states that a citizen of the United States who is engaged in trade, manufacture, or other productive industry may purchase one claim, not exceeding five acres, of unreserved public lands as a headquarters site under the rules and regulations prescribed by the Secretary of the Interior. 43 CFR 2563.1-1 states, among other requirements, that the applicant must show the actual use of the land for which he is applying and the nature of the trade, business, or productive industry.

The burden is on appellant, as the applicant for patent to land, to present evidence which shows compliance with the law and the regulations. Lee S. Gardner, A-30586 (September 26, 1966). The final proof submitted by appellant does not demonstrate that he was engaged in a productive industry when his application was filed. The term "productive industry" cannot be construed so broadly as to include within its meaning an enterprise of such short duration with such meager gross receipts as appellant's operation. Lynn E. Erickson, 10 IBLA 11, 80 I.D. 215 (1973); Hershell E. Crutchfield, A-30876 (September 30, 1968); Lee S. Gardner, supra. Accordingly, the decision below to reject appellant's application and cancel the claim was not improper.

Nevertheless, appellant alleges facts, which, if verified, would constitute compliance with the Homesite Act of May 26, 1934, 43 U.S.C. § 687a-1 (1970). 1/ The Notice of Location of Settlement or Occupancy Claim - Alaska, filed by appellant at the initiation of his settlement of the land, is the same form used to give notice of settlement under the homesite law, and may be treated as notice of settlement of the land for the purposes of that law. Lon Philpott, 13 IBLA 332, 336 (1973). 2/

In order to avoid the severe hardship which might result from an unqualified affirmation of the decision below, appellant will be afforded an opportunity to file an application to purchase a homesite of not more than five acres embracing his principal improvements. Lon Philpott, supra; Donald M. Fell, A-30862 (February 21,

---

1/ Appellant has alleged that he has resided on the land for periods of time and has expended substantial time and money on such improvements as his home, a road, a bridge, a bunkhouse, etc. The homesite law requires that the applicant have a habitable house on the land and that he reside there for not less than 5 months each year for three years. In contrast to the headquarters site law, qualification under the homesite law involves no commercial activity.

2/ Remanded (on another point) 16 IBLA 285 (1974).

1968), fn. 3. The Fairbanks District Office will fix a date certain by which appellant must take the appropriate action, and will so notify the appellant. Action rejecting the headquarters site final proof will be suspended in the interim. See Robert W. Blondeau, 1 IBLA 8 (1970). Appellant is urged to consult the proper Bureau officers for a clear understanding of what must be done within the allotted time to avoid final cancellation of the claim.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case is remanded for further action consistent with this decision.

---

Martin Ritvo  
Administrative Judge

We concur:

---

Edward W. Stuebing  
Administrative Judge

---

Joan B. Thompson  
Administrative Judge

