

LAVINA JO KING

IBLA 74-296

Decided October 7, 1974

Appeal from a decision of the Alaska State Office, Bureau of Land Management, rejecting in part trade and manufacturing site application AA-720.

Set aside in part and remanded.

1. Alaska: Trade and Manufacturing Sites--Hearings--Rules of Practice: Hearings

Where a factual dispute exists, a report of a field examination cannot serve alone as the basis for a final action of cancellation of a trade and manufacturing site application, in whole or in part, in the absence of a hearing being afforded. If a purchase application for the site shows prima facie compliance with the law and a factual dispute exists on appeal as to the area of entitlement, the applicant must be given an opportunity for a hearing before his application can be rejected.

APPEARANCES: LaVina Jo King, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

On December 14, 1971, LaVina Jo King filed an application to purchase a trade and manufacturing site in T. 6 S., R. 12 E., Copper River Meridian, Alaska. 1/ On April 3, 1974, the Alaska

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1/ The land applied for was described in the application as follows:  
"Beginning at a point lying 660 feet west of WCMC

State Office, Bureau of Land Management (BLM) approved the application in part, 1/ and rejected the application in part. The portion of the application that BLM rejected was excluded on the basis of a field examination report that it was not used and occupied for the purposes of trade, manufacture or productive industry as required by section 10 of the Act of May 4, 1898, 30 Stat. 413, as amended, 43 U.S.C. § 687a (1970), and 43 CFR 2562.3(d)(1).

Appellant King asserts that the decision improperly excludes portions of the land in her purchase application which have been used in connection with her business (as a heliport, a source of firewood, existing trails and a garbage dump), and areas which have not been used, but use of which will be necessary for the successful operation of the business (as a parking area, storage and utility building, corral, guide office, caretaker's quarters, store, service station and highway access).

Section 10 of the Act of May 14, 1898, as amended, 43 U.S.C. § 687a (1970), states:

Any citizen \* \* \* in the possession of and occupying public lands in Alaska in good faith for the purposes of trade, manufacture, or other productive industry, may each purchase one claim only not exceeding eighty acres of such land \* \* \* 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 \* \* \*.

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fn. 1 (Cont.)

section 1, T. 6 S., R. 11 E. and section 6, T. 6 S., R. 12 E., CRM, an iron post which is corner No. 1; thence north 802 feet to an iron pipe, corner No. 2; thence west 660 feet to an iron pipe, corner No. 3; thence south 660 feet to an iron pipe, corner No. 4; thence west 660 feet to a blazed spruce tree, corner No. 5; thence south 850 feet to an iron pipe, corner No. 6; thence easterly along the shore of Long Lake to the point of beginning, being portions of surveyed lots 1 and 3 section 1, T. 6 S., R. 11 E., Copper River Meridian."

She had filed a notice of settlement in February 1967.

2/ The portion of the application approved by BLM was limited to the following area:

"Beginning at a point lying 660 feet west of WCMC

[1] "A report of a field examination \* \* \* [cannot] serve alone as the evidentiary basis for a final action of cancellation [of a trade and manufacturing site application] in the absence of a hearing being afforded." Martha J. Jillson, 6 IBLA 150, 151 (1972). If a purchase application for the site, see 43 CFR 2562.3, shows prima facie compliance with the law, and a factual dispute exists on appeal, the applicant must be given an opportunity for a hearing before his application can be rejected in whole or in part. Martha J. Jillson, supra at 151; Lance H. Minnis, 6 IBLA 94, 98 (1972).

Appellant's application alleges sufficient use of the site to constitute prima facie compliance with 43 U.S.C. § 687a (1970) and 43 CFR 2562.3. The improvements listed in the application include four cabins, a picnic area, docks, a heliport, four improved drinking springs, two chemical toilets, an access road, a garbage burial area and trails between the cabins. The field report says:

Use is not being made of all the described land. The access trail is occasionally used by the applicant but is not necessary for the operation of her business. The applicant had intended for her description to encompass the trail, but it failed to do so. The dump area is considered essential to the operation, but there is an excess of unimproved acreage that would be required in order to include the present dump site.

The BLM's decision rejecting the purchase application was based on the field report. Because the facts on which the decision was based are disputed by the applicant, insofar as it rejects the purchase application, the decision appealed from must be set aside and remanded to the BLM for further consideration. 3/ Frederick P. Dunder, 17 IBLA 101, 103 (1974); Martha J. Jillson, supra;

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fn. 2 (Cont.)

section 1, T. 6 S., R. 11 E., and section 6, T. 6 S., R. 12 E., Copper River Meridian, an iron post which is corner No. 1; thence north approximately 300 feet to corner No. 2; thence west 1,260 feet to corner No. 3; thence south 850 feet to an iron pipe which is corner No. 4; thence easterly along the lake shore to the point of beginning, being portions of lots 1 and 3, section 1, T. 6 S., R. 11 E., Copper River Meridian, containing approximately 11.5 acres."

3/ Some of the asserted uses do not satisfy the requirements of the regulations and the Act. For example, utilizing public land

Lance H. Minnis, supra. If appellant and the BLM cannot agree what portion of the area meets the requirements of the law, BLM should order a hearing to resolve the disputed questions of fact. If a hearing is held, the appellant would have the burden of showing by a preponderance of the evidence that the requirements of law have been met. Frederick P. Dunder, supra; Lance H. Minnis, supra.

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 in part and remanded.

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Joan B. Thompson  
Administrative Judge

I concur:

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Anne Poindexter Lewis  
Administrative Judge

I concur in the result:

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Frederick Fishman  
Administrative Judge

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fn. 3 (Cont.)  
as a source of firewood is not a conforming use. See Omar Stratman, 16 IBLA 222, 224 (1974); Monte L. Lyons, 74 I.D. 11, 13-15 (1967) (agricultural or horticultural uses are not within the scope of the Act).

