

STEPHEN P. SORENSEN

IBLA 75-652

Decided October 24, 1975

Appeal from the decision of the Alaska State Office, Bureau of Land Management, declaring headquarters site notice of location AA-8797 to be unacceptable for recordation and the claim canceled.

Affirmed as modified.

1. Alaska: Headquarters Sites -- Applications and Entries: Valid Existing Rights

The mere filing of a notice of location for a headquarters site under 43 U.S.C. § 687a (1970) does not establish rights to land. If a claimant cannot also demonstrate the necessary use and occupancy of the site prior to the effective date of a withdrawal and establish a right of purchase, he does not have a "valid existing right" excepted from the withdrawal, and the withdrawal attaches to the land in the site.

APPEARANCES: Stephen P. Sorensen, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

On February 20, 1974, Stephen Sorensen filed notice of location AA-8797 for a headquarters site under 43 U.S.C. § 687a (1970). The Alaska State Office, Bureau of Land Management, in a decision dated May 13, 1975, declared this notice unacceptable for recordation and canceled appellant's claim because the land had been withdrawn from all appropriation under the public land laws as of March 28, 1974, by Public Land Order (P.L.O.) 5418, 39 F.R. 11547 (1974). Appellant appeals from that decision.

In his notice of location, appellant stated that he had occupied the site since February 17, 1974, and that there were no improvements on it. He further stated that he is a professional artist and would use the site for art studios.

The field report stated that three examinations of appellant's site were conducted. The first, by helicopter at treetop level on June 6, 1974, found no evidence of clearing or improvements. The second, an "examination of the prints in stereoscope" following low-level aerial photography on July 28, 1974, resulted in the same finding. Finally, a ground examination was conducted on February 10, 1975. The field examiners could find no evidence of use, occupancy or improvements other than corner posts. The report recommended that appellant's notice of location be declared unacceptable for recordation.

In a letter filed with the State Office on March 17, 1975, appellant explained that construction had been planned for the fall of 1974 but was delayed because weather conditions hampered work on his adjacent homesite. He stated that construction materials had been purchased or prepared and that some were stored on the site during early 1975.

In its decision, the State Office informed appellant that the mere filing of a notice of location does not by itself create any rights in the land but that "occupation, actual possession and placing of improvements upon the land is a prerequisite to the assertion of a valid right." The State Office then determined that because appellant had not fulfilled this prerequisite as of March 28, 1974, the effective date of P.L.O. 5418, he had not established a "valid existing right" prior to the withdrawal. They therefore declared his notice unacceptable for recordation and canceled his claim.

On appeal, appellant argues that preparatory study and work began in December 1974 and actual construction of improvements started on May 7, 1975. However, the issue is not whether appellant now has improvements on the site but whether he met the requirements on March 28, 1974, the date the land was withdrawn.

[1] The Department of the Interior has consistently held that merely filing a notice of location with the intent to establish a business in the future does not give a claimant under 43 U.S.C. § 687a (1970) any rights in the land. There must be some evidence of actual use and occupancy. E.g., Peter Pan Seafoods, Inc. v. William Shimmel, 72 I.D. 242 (1965). P.L.O. 5418 exempted from its provisions only "valid existing rights" as of its effective date.

Appellant listed no improvements in his notice of location and admits not beginning construction until May 7, 1975. Even assuming that appellant had posted the corners of his headquarters site by March 28, 1974, this does not constitute the requisite occupation or possession. Allan D. Hodge, 22 IBLA 150, 151 (1975); Donald Richard Glittenberg, 15 IBLA 165, 168 (1974). Unless a claimant can demonstrate the necessary use and occupancy prior to the effective date of a withdrawal, and establish the right of purchase, his notice of location does not prevent the withdrawal from attaching to the land. Allan D. Hodge, *supra* at 151; Donald Richard Glittenberg, *supra* at 169. Appellant has not done so and therefore the land within his claim is subject to the withdrawal.

For the above reasons, we affirm the State Office decision declaring appellant's claim canceled. Because the effective date of P.L.O. 5418 was subsequent to the filing date of appellant's notice of location, that withdrawal cannot be used as a basis for declaring the notice to be unacceptable for recordation. Rather, assuming the land was otherwise open to location on the filing date, the validity of the claim as of the effective date of the withdrawal is the proper determination and was, in practical effect, the inquiry made by the State Office here. Elden L. Reese, 21 IBLA 251, 252 (1975); David G. Marks, A-31082 (January 27, 1970). Further, the status plat as of March 21, 1974, depicts appellant's notice of location by number and location, so that the purposes of recordation were served. Allan D. Hodge, *supra* at 151-52.

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 affirmed as modified.

Joan B. Thompson
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Frederick Fishman
Administrative Judge

