

Appeal from decision of the Alaska State Office, Bureau of Land Management, declaring notice of location for headquarters site AA-8358 unacceptable for recordation, and cancelling claim.

Affirmed as modified.

1. Alaska: Headquarters Sites -- Settlements on Public Lands -- Withdrawals and Reservations: Effect of

A notice of location filed under the Alaska settlement law, 43 U.S.C. § 687a (1970), regular on its face, for land which is open to such settlement and location, is acceptable for recordation. If a withdrawal follows the filing of a notice of location, the proper inquiry is into the validity of the claim, i.e., whether the locator has by acts of settlement and improvement established a valid existing right protected from the effect of the withdrawal.

2. Alaska: Headquarters Sites -- Rules of Practice: Appeals: Hearings

When an appellant from a decision cancelling a headquarters site claim does not assert facts which, taken as true, would constitute the initiation of a claim protected from the effect of a withdrawal, the appellant is not entitled to notice and a hearing on the factual issues pertaining to the establishment of a valid existing right.

## 3. Alaska: Headquarters Sites

An asserted headquarters site claim is not protected from the effect of a withdrawal by assertion of improvements: which are not directed toward the establishment of a headquarters on the site; which are made under a prior location on the same land; and for which it appears credit cannot be given because the notice of location was not filed within 90 days of the initiation of such improvements (43 U.S.C. § 687a-1 (1970)).

APPEARANCES: Mary C. Polen, pro se.

## OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Mary C. Polen has appealed from the decision of the Alaska State Office, Bureau of Land Management (BLM), dated July 28, 1975, which held her notice of location for headquarters site AA-8358 unacceptable for recordation and closed the case.

On April 19, 1973, appellant filed a notice of location under the Act of March 3, 1927, 43 U.S.C. § 687a (1970), for 2 and 1/2 acres described as the NE 1/4 SW 1/4 SW 1/4 SE 1/4 section 20, T. 20 N., R. 9 E., S.M., Alaska. By notice dated December 14, 1973, the BLM declared the notice unacceptable for recordation because the subdivision was embraced in trade and manufacturing site AA-880. On February 13, 1974, appellant filed a "corrected notice of location" embracing the NW 1/4 SW 1/4 SW 1/4 SE 1/4 section 20.

On July 28, 1975, after field examination and field report, the BLM declared appellant's notice of location unacceptable for recordation, and closed the case, on the grounds: (1) that appellant had not established a valid right to the land by occupation and improvement prior to its withdrawal by Public Land Order (P.L.O.) No. 5418, 39 F.R. 11547 (1974), on March 29, 1974; (2) that a portion of the land was segregated from use and improvement prior to appellant's claimed initiation of occupancy by P.L.O. 1613, 23 F.R. 2376 (1958), which reserved a 150-foot easement on each side of the center line of the Glenn Highway; and (3) appellant failed to submit the required \$ 10 filing fee when she filed her corrected notice of location.

In her appeal, Mrs. Polen disputes each of the BLM's findings. She argues: (1) that money and effort were put into clearing a road and campsite prior to P.L.O. 5418; (2) that there "is usable land in the northwest and southeast corners [of the parcel] that are not on the 150 foot easement;" and (3) that she was assured at the time she filed her corrected notice of location in the BLM office that no filing fee was necessary.

[1] As an initial matter, we note that part of the land described in appellant's notice of location was open to settlement under the Act of March 3, 1927, 43 U.S.C. § 687a (1970), at the time she filed her notice of location, whether that be taken as April 19, 1973, or February 13, 1974. The Board has held that a notice of location, regular on its face, filed for land subject to disposal under the law asserted in the notice, is properly acceptable for recordation. Stephen P. Sorensen, 22 IBLA 258, 260 (1975); Donald J. Thomas, 22 IBLA 210, 211 (1975); Allen D. Hodge, 22 IBLA 150, 152 (1975). Cf. Edward P. Dooley, 22 IBLA 338 (1975). As AA-8358 was posted on the master title plat, the purposes of recordation were served in this case, and the State Office's proper inquiry was, in effect, whether or not appellant had established a valid existing right protected from the withdrawal. Stephen P. Remme, 24 IBLA 23 (1976).

[2] The filing of a notice of location does not establish any rights in the locator to the land; rather, it is acts of improvement and occupancy in compliance with the law which may establish a right to the land. Peter Pan Seafoods, Inc. v. Shimmel, 72 I.D. 242, 245 (1965); Loran John Whittington, A-28823 (August 18, 1961).

The Board has held that an appellant who asserts the initiation of improvement and use, *i.e.*, facts sufficient to establish a valid existing right if corroborated, and whose assertions are contradicted in the field examination, is entitled to notice and a hearing before the claim can be canceled. Stephen P. Remme, *supra*; Donald J. Thomas, *supra*. Conversely, such notice and hearing is unnecessary when the material of record in the claimant's favor, taken as true, is insufficient to establish a valid existing right. Stephen P. Sorenson, *supra*; Elden L. Reese, 21 IBLA 251 (1975). On this record, we hold that the facts asserted are insufficient to demonstrate the initiation of improvement and use of a headquarters site that would establish a valid existing right.

[3] The only "improvements" on the land at the time of the withdrawal, according to appellant, were a road and campsite bulldozed on the north side of the Glenn Highway, and the "Glacier View Lodge" sign on the north side of the highway. Appellant indicates that the road and campsite, shown in photographs submitted with the appeal, were put in "as part of [her husband's

adjacent] T&M site." She also indicates that the land was originally part of her husband's trade and manufacturing site, and that money and work went into this parcel prior to her filing on it. Acts of use and improvement under a prior location cannot be asserted in support of a subsequent location; the claim must be validated by use and improvement in furtherance of the claim itself, not a prior claim.

Furthermore, by the terms of the Act of April 29, 1950, 43 U.S.C. § 687a-1 (1970), a claimant cannot be given credit for use, occupancy and improvement prior to the filing of a notice of location unless the notice of location was filed within 90 days of the initiation of the claim. See James Milton Cann, 16 IBLA 374 (1974). Under these circumstances, only use of the road and campsite subsequent to the filing of the notice of location and prior to the withdrawal could be credited toward the establishment of a valid existing right. The record is silent on this point.

The crucial deficiency in appellant's assertions of improvement, however, is that the road and campsite are used, if at all, in the trade and business (Glacier View Lodge) itself, not as a headquarters. A headquarters site connotes a tract of land used as a site in conjunction with a business. These improvements were not directed toward establishing the claim as "the usual place of business, principal office, or administrative center." Vernon L. Nash, 17 IBLA 332, 336 (1974); Cf. Allen D. Hodge, supra; Elden L. Reese, supra.

The Glacier View Lodge sign does not constitute a sufficient improvement to establish a valid existing right to the land. See Donald Richard Glittenberg, 15 IBLA 165 (1974). <sup>1/</sup>

At the time of her appeal, a trailer was on the southeast corner of the claim. The field examiner did not see it during his examination, and appellant has not asserted that it was there prior to the withdrawal. Even assuming a trailer could be considered as a permanent improvement, it does not help here. Improvements subsequent to the withdrawal, while they may corroborate a locator's good faith in initiating development (Stephen P. Remme, supra), cannot establish the initiation of the claim in compliance with the law. The same is true of the contract to clear a road to the

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<sup>1/</sup> This holding moots the alternative ground cited in the State Office decision, namely, that use and occupancy of the greater portion of the claim is prohibited by section 6 of P.L.O. 1613, 23 F.R. 2376 (1958), which created a 150-foot wide easement on each side of the center line of the Glenn Highway. The map appellant submitted with her appeal indicated these asserted improvements were outside the easement, while the field examiner's map showed them to be within the easement.

southeast corner of the claim. On this record the withdrawal attached, and the claim was properly declared invalid. 2/

Appellant's other assertions pertain to water wells drilled on and around trade and manufacturing site AA-880, which is not before us.

Accordingly, 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.

Frederick Fishman  
Administrative Judge

We concur:

Joan B. Thompson  
Administrative Judge

Anne Poindexter Lewis  
Administrative Judge

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2/ It is thus unnecessary to treat appellant's argument against the third holding of the State Office decision, namely, that the notice was unacceptable for recordation because appellant failed to pay the \$ 10 filing fee required by 43 CFR 1821.6-2(b). Mrs. Polen asserts she was told in the land office that no filing fee was required to amend her notice of location. We note only that appellant did not, by relying on this asserted misinformation, gain any right unauthorized by law or which she might not otherwise have acquired. See Allied Chemical Corp., 23 IBLA 214 (1976). Cf. 43 CFR 1810.3(c).

