

RUTH B. SANDVIK

IBLA 76-391

Decided July 19, 1976

Appeal from decision of the Alaska Townsite Trustee, Bureau of Land Management, rejecting townsite trustee deed applications for lots in the Kiana Townsite Addition, U.S. Survey No. 4269.

Reversed and remanded.

1. Alaska: Possessory Rights -- Alaska: Townsites

An Alaska Native townsite lot applicant is not precluded from settling on and improving a townsite lot until the date of approval of final subdivisional survey except by prior adverse settlement and occupancy; a city does not initiate such an adverse claim by posting lots with "city property" signs without otherwise using or improving the lots.

APPEARANCES: Ruth B. Sandvik, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Ruth B. Sandvik has appealed from a decision of the Alaska Townsite Trustee, Bureau of Land Management, dated November 24, 1975, which rejected in part her three applications for various lots in the Kiana Townsite Addition. The trustee rejected the applications because the City of Kiana had assertedly posted "city property" signs on the lots prior to the construction of appellant's improvements. In the case of some lots, the Trustee's rationale was that the boats, vans and oil drums appellant placed on these lots prior to the city's posting did not constitute an improvement of the lots.

In her statement of reasons, appellant asserts that: 1) the city posted the lots in 1974, not 1972, after her improvements were well under construction; 2) the city gained no rights by its posting the lots which she was using; 3) vans, which she uses as warehouses,

have been considered sufficient improvement by the trustee on other lots in Kiana; and 4) the Bureau harassed her by resurveying the proposed 12 lot subdivision of the area at issue into 24 lots in 1973, for the sole purpose of precluding her from acquiring all of the original 12 lots.

Kiana is an Alaska Native townsite created under the authority of the provisions of section 11 of the Act of March 3, 1891, 26 Stat. 1099, 43 U.S.C. § 732 (1970), and the Act of May 25, 1926, 44 Stat. 629, 43 U.S.C. §§ 733-736 (1970). A townsite petition was received in the Nome Land Office in 1951, the trustee applied for townsite entry in 1967, and patent issued to him in 1968. Subdivision of the area in issue is reflected on the plat of survey approved on June 26, 1975, U.S. Survey No. 4269, Townsite of Kiana, Alaska.

[1] The Alaska townsite regulations, 43 CFR 2565.3(c), provide in relevant part:

\* \* \* Only those who were occupants of lots or entitled to such occupancy at the date of the approval of final subdivisional town site survey \* \* \* are entitled to the allotments herein provided.

This Board held in City of Klawock v. Andrew, 24 IBLA 85, 90-93, 83 I.D. 47, 51-53 (1976), that the non-Native townsite regulations for Alaska apply to Native townsites as well, unless there is an explicit Native townsite regulation applicable, or to do so would violate the provisions or purposes of the Native townsite law. In City of Klawock we explicitly held that the provision quoted above governs Native townsites as well as non-Native, i.e., the date of approval of the final subdivisional survey is the date determinative of rights to Native townsite lots. Id.

In response to an inquiry from this Board, the Townsite Trustee asserted 43 CFR 2565.5(b) 1/ as his authority for recognizing the

1/ Regulation 43 CFR 2565.5(b) provides in relevant part:

"(1) Any lot or tract in the townsite which is subject to sale to the highest bidder by the trustee pursuant to this section may in lieu of disposition at public sale be sold by the trustee at a fair value to be fixed by him \* \* \* to any local governmental agency or instrumentality of the State for use for public purposes." [Emphasis added.]

"(3) Conveyances under this section for lands within any incorporated city, town, village, or municipality may be made only after the proposed conveyance has received the approval of the city,

City of Kiana's claim to the lots as superior to appellant's. This regulation provides for the sale to any state or local agency or governmental body of lots unclaimed at the time of approval of the final subdivisional survey. The cited provision does not support the Trustee's action here.

Under the regulation establishing that occupants' rights are determined as of the date of final subdivisional survey, 43 CFR 2565.3(c), the Board has held that the prior and superior claim to a townsite lot is established by settlement and improvement, or the initiation thereof, on the lot. City of Klawock v. Andrew, *supra* at 95-96, 83 I.D. at 55-56. In City of Klawock, the Board applied the rule set out in Sawyer v. Van Hook, 1 Alaska 108, 110 (1900). In Sawyer, the Court held that title to an Alaska townsite lot could only be established by settlement and occupancy, and stated:

[Occupancy] includes such an improvement of the lot by the erection of buildings or fences, or by actual residence thereon, or by such other acts of possession and improvement, as clearly and unmistakably show that it is bona fide the intention of the settler to take and hold possession of the lot, and that his possession and improvement is intended to be permanent, and for himself.

Until the date of approval of the final subdivisional survey, Alaska townsite lots remain open to settlement and occupancy. This right cannot be cut off except by prior acts of settlement and occupancy by a rival claimant. The staking of the corners and enclosure of a lot with the intent to occupy might constitute the initiation of rights, if followed by acts of improvement and occupancy. However, we reject the proposition that posting alone can establish a right that would preclude subsequent settlement and improvement by a bona fide settler.

The townsite regulations do not treat a municipality differently from an individual insofar as rights prior to approval of final subdivisional survey are concerned. <sup>2/</sup> To hold to the contrary, then,

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fn. 1 (continued)

town, or village council, or of the local official designated by such council. Such conveyances for lands within any unincorporated city, town, village or municipality may be made only after notice of the proposed conveyance, together with the opportunity to be heard, has been given by the proposed grantee to the residents or occupants thereof in accordance with the requirements for such notice in the case of the public sale of unclaimed lots in a trustee townsite. \* \* \*

<sup>2/</sup> This is true for all townsite land subdivided into blocks and lots in the course of survey, like the land at issue here. This

would allow municipalities or even individuals to preclude subsequent settlement and improvement by posting alone, even though the poster had neither the intent nor the means to settle, improve and occupy the lots so posted. We cannot so derogate the purpose of the townsite laws that townsite lots are open to be settled on and improved until final subdivisional survey, and that rights to the lots can only be so acquired. City of Klawock v. Andrew, *supra* at 95-96, 83 I.D. at 55-56. The City of Kiana did not preclude appellant's use and improvement of the lots at issue by posting the lots as "city property."

Because of this holding it is unnecessary to resolve the factual dispute about the date on which the city posted the lots in question. A 1972 posting would be no more effective than a 1974 posting in cutting off subsequent settlement rights. Had the posting been followed by acts of use and improvement by the City of Kiana the date of posting might be relevant to determining when the City initiated any rights to the lots so improved. On this record, however, the date of posting is not relevant to our result.

In his decision, the Trustee held that, "The placing of boats, vans, and oil drums on a lot does not constitute an improvement." Appellant argues that she should be accorded the same treatment as other lot applicants whose applications, she alleges, have been approved without any more substantial improvements than her vans. We note that the discretion granted the Trustee under the townsite law, 43 CFR 2564.0-4(b), does not authorize arbitrary action; it contemplates even-handed treatment of similarly-situated applicants. We also note that the Department has recognized storage of property including oil drums in connection with a business conducted on adjacent lands as a sufficient use of land in the proper circumstances. Mary M. Tweet, A-28417 (November 16, 1960); *see* Ethel Vogen, A-28835 (May 10, 1962).

Because of our disposition of the case, however, it is unnecessary on the present record to rule on the sufficiency of appellant's improvements on the lots at issue. On remand the Trustee shall rule on the adequacy of appellant's (or any conflicting claimant's) use and improvement of the lots as of the date of approval of final subdivisional survey. 43 CFR 2565.3.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR

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fn. 2 (continued)

case does not involve land surveyed as a "municipal public reservation." 43 CFR 2565.3(a); *see also* 43 CFR 2565.1(b) and 2565.7, dealing with municipal public reserves. Compare 43 CFR 2565.3(c) with 43 CFR 2565.5(b) and 43 CFR 2565.7.

4.1, the decision appealed from is reversed and the case is remanded for further proceedings consistent with this opinion.

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Frederick Fishman  
Administrative Judge

We concur:

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Douglas E. Henriques  
Administrative Judge

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Joseph W. Goss  
Administrative Judge

