

Editor's note: Reconsideration granted; decision affirmed by order dated July 5, 1977 -- See 27 IBLA 32A th D below.

B.G.R., INC.

IBLA 75-101

Decided September 17, 1976

Appeal from Alaska State Office, Bureau of Land Management, decision holding trade and manufacturing site application A-056802 for rejection pending filing of amended description.

Affirmed.

1. Alaska: Trade and Manufacturing Sites

Section 10 of the Act of May 14, 1898, 30 Stat. 413, 43 U.S.C. § 687a (1970), limits the number of trade and manufacturing sites which any individual or corporation may acquire to one, and actions taken pursuant to advice of Bureau of Land Management employees which consolidate a number of applications into one application, thereby possibly avoiding the proscriptions of section 10, do not estop the Government from enforcing the limitation of 80-rods of shoreline on navigable waters to the single application.

APPEARANCES: E. G. Burton, Esq., Anchorage, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

B.G.R., Inc., an Alaska Corporation, has appealed from the decision of the Alaska State Office, Bureau of Land Management, dated July 24, 1974, which held for rejection, pending submission of an amended description, its application A-056802 for a trade and manufacturing site. The reason given by the State Office was that the description in the application violated the 80-rod shoreline limitation on navigable waters imposed by section 10 of the Act of May 14, 1898, 30 Stat. 413, as amended, 43 U.S.C. § 687a-2, (1970), formerly 48 U.S.C. § 461 (1958), on trade and manufacturing site claims. The State Office's decision included a recommended amended

description 1/ which had been submitted by the Division of Cadastral Survey under guidelines recommended by the Regional Solicitor's Office.

Originally, there were three discrete claims embracing the lands herein, consisting of T & M Site A-055380 filed by one Russell Roberts, aggregating approximately 2 acres, T & M Site A-055259 filed by C.B.R., Inc. (apparently the predecessor of B.G.R., Inc.), aggregating approximately 6 acres, and Headquarters Site A-055258 filed by one Bernard Blanchard. Roberts and Blanchard were former officers of B.G.R., Inc.

By letter of January 2, 1962, the State Office advised claimants that the applications should be combined. Acting on this advice B.G.R., Inc., filed notice of location A-056802 on March 23, 1962.

The site claimed is located on a peninsula dividing the Tikchik and Nuyakuk Lakes at approximate latitude 59 degrees 57'20" N., longitude 158 degrees 27'40" W. This area is virtually uninhabited. The two lakes are part of a series of oval shaped lakes extending north of Dillingham, Alaska. The area in question is approximately 60 miles north of Dillingham and 300-350 miles southwest of Anchorage. There are no other permanent residents on the lakes. The site claimed in the application consists of most of the narrow peninsula.

1/ B.G.R., Inc., in its application described the land as follows:

"Located on the peninsula between Tikchik and Nuyakuk Lakes at approximately latitude 59 degrees 57'20" N., longitude 158 degrees 27'40" W., the point of beginning being the most southerly point of the peninsula, thence along the southeast shore of the peninsula and the shore of Tikchik Lake approximately 2700 feet to a point, thence approximately N. 90 degrees W. about 1,100 feet across the high ground above the peninsula to a point due North of the shore of Nuyakuk Lake; thence South approximately 300 feet to the shore of Nuyakuk Lake; thence southwesterly along the shore of the peninsula approximately 2,800 feet to the point of beginning."

The recommended description as set out in the State Office decision of July 25, 1974 is as follows:

"Located on the peninsula between Tikchik and Nuyakuk Lakes at approximate latitude 59 degrees 57'20" N., longitude 158 degrees 27'40" W., the point of beginning being the most southerly point of the peninsula, thence along the southeast shore of the peninsula approximately 1,850 feet to a point, thence, approximately N. 31 degrees W. about 450 feet across the peninsula to a point on the northwest shore of the peninsula, thence southwesterly approximately 3,355 feet along the shore to the point of beginning, containing approximately 10 acres.

The site was claimed for a sports and recreation facility. A lodge, three cabins and generator shed, radio antenna and boat and aircraft ramps had been built on the peninsular tip, at a cost of about \$ 10,000. On the northern part of the claim, further up the peninsula, two rough 10'x12' log cabins were built in 1966 at a cost of less than \$ 1,000. The entire peninsula area is covered with scrub brush, and some small spruce or other pine trees. The estimated size of the claimed area is 16.33 acres. 2/

The lakes are apparently excellent sport fishing grounds. There is no access to the lakes other than by foot or seaplane, or by a long and difficult route, including portages, up the Nushagak and Nuyakuk Rivers by small water craft. There is no indication of commerce of any kind on the lake other than that of applicant. There are two patented Headquarters Sites in the area.

An application to purchase trade and manufacturing site filed by Gayle W. Curtis, dated February 24, 1967, states that she and her husband, Robert Curtis, had occupied the place of business commencing in July 1962. At the time of application Gayle Curtis was sole stockholder of B.G.R., Inc. The application further stated that the site had been used each year since 1964 for sport fishing. The corporation planned to continue to use and expand use of the property and facilities. Robert Curtis manages the property. He is a pilot, guide and sportsman, familiar with this part of Alaska.

The delay in adjudication of the application resulted from problems attendant in applying the 80-rod limitation relating to the shores of navigable waters, mandated by section 10 of the Act of May 14, 1898, supra, which provides: "No entry shall be allowed under this Act on lands abutting on navigable water of more than eighty rods." Regulations issued pursuant thereto are found in 43 CFR Subpart 2094. These regulations prescribe the methods to be used in applying the limitation to lands abutting navigable waters. Regulation 43 CFR 2094.1(a) provides that the shore line is not meandered, but rather a straight-line measurement is taken between the shore corners along lines parallel to the boundaries of the subdivision. The regulations further provide that "[t]he same method of measuring shore space will be used in the case of special surveys, where legal subdivisions of the public lands are not involved." 43 CFR 2094.1(b).

In a memorandum to the Alaska State Director, dated April 18, 1972, the Assistant Regional Solicitor, Anchorage, pointed out that

2/ The 16.33 acres estimate is taken from the original location notice of B.G.R., Inc., filed January 2, 1962. A subsequent filing of Application to Purchase by Gayle W. Curtis, President of B.G.R. on February 24, 1967, estimated the same claimed area at 21 acres.

it was difficult to see how the regulation could be applied in cases of special surveys since there would be no subdivisional boundaries to use as the reference lines which are necessary to establish a straight-line measurement. Noting that it might be impossible as a matter of fact to implement the regulation as it relates to special surveys, the Assistant Regional Solicitor suggested that the State Office consider the option of applying the old regulatory rule, *i.e.*, meander the shore frontage, or, in the alternative, apply a method of cardinal measurements. In examining the alternative, the Assistant Regional Solicitor observed:

In those instances where the homestead or T&M site claims on unsurveyed lands are in rectangular form with cardinal boundaries, the method of measuring shore line frontage in a cardinal direction can be applied by determining the longest cardinal straight-line distance between consecutive shore corners at the intersection of the claim boundaries with the shore line, using such boundaries rather [than] subdivisional boundaries as reference lines. In those instances where the homestead and T&M sites on unsurveyed land are irregular or not in rectangular form, the method of cardinal measurements can be applied in much the same way, using intersecting lines running in cardinal directions through the shore corners as lines of reference along which the longest straight-line distance between consecutive shore corners is measured and determined. The difficulty in applying this method in some instances is determining where the shore corners should be located when there are no generally well-defined segments or stretches of shore line whose termini can naturally serve as shore corners. This could be true for example in the case of a rather round island whose coastline is punctuated with many small bays and inlets which, individually, could be subject to detailed cardinal measurements. As the shore line segments to be measured become shorter and more detailed, the shore line limitation tends to become more quickly exhausted with a corresponding diminution of acreage in the abutting claim. Where there is difficulty in determining shore corners, one possible way of resolving such difficulty would be to select as shore corners the most extreme points of the shore line extending in each cardinal direction, and using intersecting lines running in cardinal directions through such corners as lines of reference along which the longest straight-line distance between any two consecutive corners is measured and determined. However, we would hesitate to conclude that this application of the method of cardinal measurements should be used uniformly (rather than on an ad hoc basis) or in preference to

one utilizing some other reference lines (e.g., protracted survey lines?). * * *

Based on this memorandum, as well as subsequent memoranda relating to the application of this Board's decision in David W. Henley, 7 IBLA 233 (1972), the State Office rejected appellant's application to purchase on the grounds that the claim was considerably in excess of the 80-rod limitation. The decision also contained a recommended description computed by the Division of Cadastral Survey pursuant to the Regional Solicitor's guidelines, containing approximately 10 acres. While the amended description embraced appellant's major improvements located at the peninsular tip, it did not include the two 10'x12' log cabins located near the base of the peninsula.

We agree with the views expressed by the Assistant Regional Solicitor and the actions taken by the State Office pursuant to his suggestion as it related to the measurement of shore space on lands fronting navigable waters where no subdivisional boundaries exist which could serve as reference lines for application of the straight-line measurement method of computation.

[1] B.G.R., Inc., has appealed primarily on the ground that it could have obtained all of the lands within its application had it pursued its original course of filing three separate claims, and that it was only on the advice of BLM that it consolidated the claims into one T & M Site.

The State Office decision noted that appellant could obtain no rights not authorized by law through reliance upon the erroneous information or unauthorized acts of BLM employees, citing Gilbert v. Oliphant, 70 I.D. 128 (1963). Appellant's contention, however, is slightly different in that it argues that the law authorized acquisition of the entire peninsula so long as it made separate application for portions thereof, and that it was reliance upon the advice of the Acting Anchorage Land Office Manager which deprived it of the rights which were lawfully available.

Appellant's argument fails in that it assumes that if it had merely made separate applications, as originally envisaged, it would have obtained all of the land which it sought. Section 10 of the Act of May 14, 1898, 43 U.S.C. § 687a (1970), provides, in part, that "[a]ny citizen of the United States * * * in 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 * * *." [Emphasis supplied.]

Thus, had B.G.R., Inc., acquired the rights of the original applicants, it would have violated that prohibition. Had B.G.R., Inc., in the alternative, acquired the rights to only one site,

and Gayle and Robert Curtis individually acquired the rights to the other two sites, past Departmental precedent clearly indicates that such action would still be in violation of the statute. In Yakutat and Southern Railway Co., 53 I.D. 58 (1929), the Department held that the purpose of the restriction "is violated by the exercise of the right as an individual and another exercise of the right by a corporation of which the individual is a member," but recognized that the doctrine of de minimis non curat lex would apply in some circumstances. Id. at 63. The Department has authority to go beyond corporate artifices to assure that provisions of the law are complied with. Yakutat and Southern Railway Co. (On Rehearing) 53 I.D. 65 (1930). We do not mean to infer that appellant herein would have engaged in any such device. We merely wish to show, however, that there was no method by which appellant could have successfully sought more than one T & M Site.

Furthermore, had appellant proceeded under three separate applications each one would have had to independently qualify under the applicable regulations. We note that as regards the area excluded from the recommended description, the field examiner stated that "[i]nformation from field investigations leads me to conclude that the applicant has not used the above cabins on the north portion of the tract in a manner that would qualify for approval and patent to the entire claim." Appellant has really not shown any detriment flowing from its reliance on the advice of BLM employees.

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.

Douglas E. Henriques
Administrative Judge

We concur:

Newton Frishberg
Chief Administrative Judge

Anne Poindexter Lewis
Administrative Judge

July 5, 1977

IBLA 75-101	:	A-056802
	:	
B.G.K., INC.	:	Trade and Manufacturing Site
	:	Application
	:	
	:	Petition for Reconsideration

Granted; Dec ~~Order~~ Affirmed

B.G.R., Inc., has petitioned this board to reconsider its decision in the above-styled case, reported at 27 IBLA 27 (1976). In its decision the Board ruled that appellant's trade and manufacturing site application, A-056802, was properly held for rejection pending the filing of an amended description. Rather than repeat the factual and legal basis which led to our conclusion therein we will merely address ourselves to the issues raised in the petition for reconsideration.

Initially, B.G.R., Inc., contends that the Board decision is in error because its factual assumptions were erroneous. Thus, the Board decision stated that C.B.R., Inc., which filed T & M Site application A-055259, was "apparently the predecessor of B.G.R., Inc." 27 IBLA at 28. This statement is vigorously opposed by counsel for the appellant who states that there was no predecessor of B.G.R., Inc., it having been originally organized in 1959 as PorLage house, Inc., by Bernard Blanchard. The name was changed in 1962 to B.G.R., Inc. In 1962, appellant, B.G.R., Inc., authorized the filing of a T & M Site application, and appellant's attorney notes that the minutes of the authorization meeting indicate that one Lawrence Glickman "on account of his equal interest in the original three applications' obtained a 1/3 interest in B.G.R., Inc., which suggests to appellant's attorney that "the mysterious C.B.R., Inc., was owned by Mr. Glickman, not Mr. Roberts, nor Mr. Blanchard, each of whom had his separate initial claim." Pet. for Recon. at 2.

Because of these contentions this board requested transmittal of the original T & M Site application file, A-055259, as well as the original files for T & M Site application A-055380, filed by Russell E. Roberts, and Headquarters Site application A-055258,

filed by Bernard S. Blanchard. Our review of these files shows that the original decision did contain two factual errors, but that the correctness of the original conclusion is actually strengthened by those files.

We note initially that all parties involved in this appeal (the Alaska State Office, Bureau of Land Management (BLM), the appellant and this Board) had assumed that T & M Site application A-055259 had been filed by a corporation known as C.B.R., Inc. This is not the case. Application A-055259 was filed not by C.B.R., Inc., but by G.B.R., Inc. Moreover, contrary to appellant's supposition, Mr. Blanchard was clearly involved in G.B.R., inasmuch as he signed the application as President of the company. 1/

An examination of T & M Site application A-055380, filed by Roberts, shows that Roberts gave G.B.R., Inc., as his mailing address, used a map originally prepared for use by a company known as G.B.L., 2/ whose president was Bernard S. Blanchard, and stated that his intended use was as a "Bush airstrip in connection with operations of adjoining claims." We also note that the application is completed in a different handwriting from that with which Roberts signed the application. Indeed, the appearance of the word "None" in response to question 9 of the form in the Roberts application is strikingly similar to the appearance of the word "None" in response to question 9 of the form in the Blanchard application.

When one reads the three application files together it is clear beyond any doubt that the three claims were not only interrelated, but, were clearly intended to be operated as a single unit. Thus, this Board's discussion of the applicability of Yakutat and Southern Railway Co., 53 I.D. 58 (1929), Lo the question of estoppel in its original decision was clearly correct.

Appellant's second objection relates to the Board's estimate of the value of the improvements as \$10,000. The attorney states "at the time the estimate of \$10,000 was submitted as the value of the property improvements, the lodge had not yet. been constructed." Pet. for Recon. at 2-3. The figure of \$10,000 was taken from the estimate given by the appellant in its application to purchase

1/ Permitting ourselves a surmise, the presence of the letters "B," "G," and "R." in both G.B.R., Inc., and B.G.R., Inc., is probably explained by the fact that in both instances they stood for Blanchard, Glickman and Roberts.

2/ An analysis of the map found in the G.B.R., Inc. file, A-055259, also shows that the name had originally been printed as G.B.L., but that the "L" was overwritten and made into an "R".

filed on February 27, 1967. Section 5 of the Act of April 29, 1950, 43 U.S.C. § 687a-I (1970), provides, inter alia, that "applications to purchase claims, along with the required proof or showing must be filed within 5 years after the filing of the notice of the claim." The notice of location of the T & M site application was filed on March 23, 1962, almost exactly 5 years prior to the date of filing of the application to purchase. Inasmuch as the Department has no authority to extend the time in which to improve and develop a T & M Site beyond the 5-year statutory period, see Bythel J. Compton, 18 IBLA 148 (1974), improvements made a to the 5-year period may not be considered in determining whether the requirements of the statute have been met. Don E. Jonz, 5 IBLA 204 (1972). Thus, the original decision of the Board properly limited its consideration to the expenditure made within the 5-year time frame. 3/

Next, appellant basically argues that but for the advice of the State Office contained in the letter of January 2, 1962, the individual claims would not have been relinquished. This estoppel argument is expanded upon at considerable length in appellant's supplemental memorandum in support of the petition for reconsideration. This Board indicated in its previous decision that the rationale of estoppel was inapplicable in that it was essentially premised on an assumption that the individual applications would have been allowed, which assumption was rejected by the Board therein. We have discussed above the information disclosed by the individual application files which clearly shows that our original holding on this matter was correct. Appellant's other arguments have been substantially answered above.

Therefore, inasmuch as the views expressed in our decision reported at 27 IBLA 27 were ultimately correct, we hereby sustain that decision.

Accordingly, pursuant to the authority delegated to the Interior Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.11 the

3/ We note that all three of the individual applications alleged occupancy from July 20, 1961. Thus, insofar as those applications would have been concerned, the only relevant expenditures would have been those made prior to July 21, 1966.

petition for reconsideration of the Board decision styled B.G.R., Inc., 27 IBLA 27 (1976), is hereby granted and the decision is sustained.

Douglas E. Henriques

Administrative Judge

We concur:

Newton Frishberg
Chief Administrative Judge

Anne Poindexter Lewis
Administrative Judge

27 IBLA 32D

