

JOHN B. COGHILL

IBLA 76-598

Decided March 18, 1977

Appeal from a decision of the Fairbanks, Alaska, District Office, Bureau of Land Management (BLM), rejecting application to purchase trade and manufacturing site F-031714.

Set aside and remanded.

1. Alaska: Trade and Manufacturing Sites

A trade and manufacturing site applicant, who alleges that the activities on his trade and manufacturing site were undertaken in conjunction with his primary business which is headquartered at another location, bears the burden of establishing a direct and economic purpose for his trade and manufacturing site in connection with his entire business operation.

2. Alaska: Trade and Manufacturing Sites--Rules of Practice: Evidence--Contests and Protests: Generally

A field examination report of a trade and manufacturing site claim is not evidence on which the final action of cancellation may be taken, until such time as the pertinent facts are admitted by the applicant or the report is admitted into evidence at a hearing initiated by a contest complaint.

APPEARANCES: David H. Call, Esq., Call, Haycraft, and Fenton, Fairbanks, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

John B. Coghill filed a trade and manufacturing (T & M) site notice of location, F-031714, in the Fairbanks District Office,

Bureau of Land Management (BLM), on December 11, 1963. The notice encompassed lots 8 and 9, sec. 10, T. 4 S., R. 8 W., F.M. He claimed the land for boat dock facilities, storage yard, warehouse area, barrel cleaning plant, marine ways, and business pertinent to river traffic and oil distribution.

On December 9, 1968, Coghill filed an application to purchase the T & M site. As a business he claimed "river landing, storage area, marine ways, shops and fill area." He listed as improvements "Clearing 12 acres Shop Building Tank Storage approx Cost \$ 35,000." He also claimed 69 acres as needed in the prosecution of his business. 1/

A field examination report for the T & M site was completed on October 28, 1969. The report recommended rejection of the application except to the extent of a 10-acre parcel surrounding a log mill operation which had been established on the site. Coghill had apparently leased that portion of the site to one George Clayton who had initiated the log milling business on the site in September 1969. 2/

On April 23, 1971, BLM issued a decision approving the 10-acre tract described in the report and rejecting the remainder of the lands under application. Coghill appealed. In addition, Alaska Legal Services Corporation filed an appeal on behalf of two Native allotment applicants whose allotments were allegedly in conflict with the T & M site. Subsequently on July 28, 1971, BLM vacated the April 23 decision stating that "it was determined that there was a necessity to develop more definite information * * *"

A supplemental land report was requested in July 1971. Thereafter, in August 1975 Coghill was requested to provide more definite evidence of his use of the site.

On September 2, 1975, the site was examined by a BLM Realty Specialist. His report was dated March 9, 1976. He recommended that the application be rejected in its entirety because Coghill failed to establish a bona fide business on the T & M site during the life of the claim -- December 11, 1963, to December 9, 1968.

1/ In response to a question on the application relating to other claims to the land, Coghill responded:
 "Alaska State Highway Dept took about 1/3 of the 69 acres applied for."

2/ The field examination report was clearly erroneous in recommending patent for the 10-acre tract upon which a lessee of the applicant had initiated a business subsequent to the statutory life of the claim. See 43 U.S.C. 687a-1 (1970).

On April 2, 1976, BLM rejected T & M site application F-031714. BLM concluded that Coghill failed to establish a bona fide business on the site and that "all use and occupancy of the land was by persons other than the applicant."

Appellant's application to purchase was filed pursuant to Section 10 of the Act of May 14, 1898, as amended, 43 U.S.C. § 687a (1970), which provides for the sale of not more than 80 acres of land in Alaska to:

Any citizen of the United States * * * in the possession of and occupying public lands * * * in good faith for the purposes of trade, manufacture, or other productive industry * * * 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. * * *

Applications to purchase T & M site claims, along with the required proof, must be filed within 5 years after the filing of the notice of location. 43 U.S.C. § 687a-1 (1970).

The issue for resolution is whether appellant made a prima facie showing that during the statutory life of his claim he was engaged in a trade, business, or other productive industry so as to satisfy the requirements of the T & M site law.

Appellant alleges for the first time on appeal that the T & M site was never used as the location for a business conducted independently of his fuel supply business in Nenana. He asserts that the land was used in conjunction with his fuel supply business -- for loading and offloading freight during the summer months. He states that the land in question is the only land in the immediate area of Nenana which is not owned by the Alaska Railroad and is susceptible to use by a private river barge operator for loading and offloading freight without payment of wharfage and tonnage fees.

[1] The Board has held in David A. Burns, 6 IBLA 171 (1972), that mere physical separation of the T & M site from the primary place of business does not take an applicant outside the purposes of the T & M site law. More specifically the Board stated at 174:

An applicant whose business is headquartered in one location but who carries on essential aspects of it in a separate claimed area should not have his application to purchase rejected solely for that reason. It is not necessary that all functions or facets of the enterprise

be carried on at the time claimed or that it be directly profitable. Such purposes as demonstration and testing of products though not directly profitable in themselves, may be carried out in such a manner as to further the enterprise within the meaning of the statute.

We do not wish to imply that a casual connection between the use of a site not contiguous to the primary business property may bring the site within the criteria of the statute. To the contrary, the burden is upon the claimant to show a direct and necessary economic purpose in furthering his enterprise. [Emphasis added.]

The BLM decision of April 2, 1976, states that, "Mr. Coghill does have an oil business in Nenana which is a short distance from the subject land, but this business has never been conducted on the applied for land." Burns does not require that an applicant establish his entire enterprise on a claimed site, but only that the site be used in connection with a trade, business, or productive industry and that the applicant show a direct and necessary economic purpose for his T & M site in connection with his entire business operation.

Counsel for appellant also alleges on appeal that appellant improved the T & M site in the following manner:

* * * in 1964-65 he constructed a gravel pad at a cost of \$ 17,000.00; in 1965 he erected on the land a 50'x150' Butler building at a cost of \$ 40,000.00; he has also cleared the land, at a cost of \$ 5,600.00, and installed a water well, at a cost of \$ 2,500.00.

In addition, appellant only claims 20 acres of the T & M site. In the statement of reasons it is stated:

The land to which the applicant desires patent is the ten-acre parcel on which the Butler building is placed (in accordance with the recommendation of the examiner prepared on November 7, 1969), together with five acres to the north and five acres to the south of that parcel, for a total of twenty acres. He claims no other land within the 69.21 acres for which application to purchase was originally made. There are no Native claims to any of the land presently claimed. The two fish camps are on the land outside the twenty acres.

[2] This case is governed by Don E. Jonz, 5 IBLA 204 (1972), wherein we held that a trade and manufacturing site claim cannot be

anceled for defects not appearing on the face of the record without giving the claimant an opportunity to be heard. The field examination report is not evidence upon which final cancellation action may be taken until such time as the pertinent facts are admitted by the applicant or the report is admitted as evidence at a hearing initiated by a contest complaint. A field examination report is a proper basis for charges, notice, and a hearing. Id. at 207.

BLM should initiate a contest of this T & M site. 3/ At the hearing appellant will have the burden of presenting evidence to show that he has complied with the requirements of the T & M site law. Because he has asserted that the T & M site was used in conjunction with this fuel supply business, he has the burden of showing that the T & M site serves a direct and economic purpose in the total operation of his business. Appellant will be required to substantiate specifically the activities performed and the improvements made on the site. The only relevant evidence is that relating to what took place on the site during the statutory life of the claim. 4/ Failure of appellant to meet the burden will result in rejection of his application. Fredrick P. Dunder, 17 IBLA 101 (1974); Lance H. Minnis, 6 IBLA 94 (1972); Don E. Jonz, supra.

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 set aside and remanded for initiation of a contest.

Frederick Fishman

Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Douglas E. Henriques
Administrative Judge

3/ While appellant asserts that there are no Native claims to the 20 acres he now desires, BLM should notify counsel for the Native allotment applicants (F-14228, F-14229, and F-17139) whose allotments are allegedly in conflict with the original 69 acres in the T & M site of any contest initiated against T & M site F-031714 and the Natives and/or their counsel should be allowed to participate in the hearing. 4/ However, abandonment or non-use prior to issuance of patent will disqualify a claimant. Carl A. Bracale, A-31149 (April 20, 1970).

