

STU MACH

IBLA 79-397

Decided October 17, 1979

Appeal from decision of the Alaska Townsite Trustee, Bureau of Land Management, that no settlement rights under the Alaska townsite laws can be commenced since the enactment of the Federal Land Policy and Management Act of 1976.

Affirmed.

1. Alaska: Townsites -- Federal Land Policy and Management Act of 1976: Repealers -- Townsites

The Alaska townsite laws, 43 U.S.C. §§ 732-736(1970), were repealed by the Federal Land Policy and Management Act of 1976, sec. 703(a), 90 Stat. 2789, so that no rights under the townsite laws could be derived from occupancy commenced after Oct. 21, 1976.

APPEARANCES: Stu Mach, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Stu Mach appeals from the letter decision dated April 26, 1979, wherein the Alaska Townsite Trustee, Bureau of Land Management, informed him that no rights under the Alaska townsite laws, 43 U.S.C. §§ 732-736 (1970), could be initiated after October 21, 1976, the date on which the townsite laws were repealed by section 703, Federal Land Policy and Management of 1976 (FLPMA), 90 Stat. 2789-2790, and that his occupancy and improvement of unsubdivided and unoccupied land within the townsite of Kake, United States Survey 3852, cannot mature into a deed.

Appellant states that he commenced his occupation of the land in block 11, townsite of Kake, late in 1977, and that, following the established procedures given by the Townsite Trustee, he had staked

his site, commenced clearing the land, and made initial preparation for construction of a building. He asks that favorable consideration be given his cause as he has acted wholly in accordance with the established Departmental procedures for native townsites.

It appears to be uncontroverted that appellant was following the general instructions from the Townsite Trustee, and that the Trustee had not considered the implication of the repeal of the townsite laws by FLPMA, supra.

In a memorandum dated February 20, 1979, the Regional Solicitor, Anchorage, Alaska, advised the Townsite Trustee that FLPMA had repealed the townsite laws, and that no rights to lots or other land within a townsite could be earned by occupancy commenced after October 21, 1976. We agree.

Unless appellant can demonstrate that his occupancy of the land in block 11, townsite of Kake, commenced prior to October 21, 1976, he cannot qualify for a deed under the townsite laws which were repealed on that date by FLPMA.

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.

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Douglas B. Henriques  
Administrative Judge

I concur:

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Anne Poindexter Lewis  
Administrative Judge

ADMINISTRATIVE JUDGE GOSS CONCURRING:

I concur herein, but would rule on appellant's position with specific reference to the doctrine of estoppel. Unfortunately, the equities of this doctrine are not available where there has been a repeal of statute under which an appellant claims, unless the claim is protected under the statute as an existing right. 1/

In his statement of reasons, appellant sets forth that he did not begin his initial investigation of the land until late 1977. According to the notice of appeal, the staking was done at some time after the October 21, 1976, repeal of the statute, and home construction was initiated during the year previous to May 5, 1979. Appellant has therefore indicated that he has no right which predates the statute.

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Joseph W. Goss  
Administrative Judge

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1/ See Suzanne A. Halliday 34 IBLA 219 (1978).

