MARLIN L. VIRG-IN
CITY OF ST. MARY'S

IBLA 89-583 Decided January 16, 1991

Appeals from a decision of the Townsite Trustee, Alaska State Office, Bureau of Land Management, rejecting in part and approving in part applications for trustee deeds to townsite lots. AA US Survey 5507 (Andreafsky Townsite).

Set aside and remanded.

1. Alaska: Townsites--Townsites--Withdrawals and Reservations: Authority to Make

Because the Alaska Townsite Trustee has no authority to withdraw land from settlement under the townsite laws in favor of a joint venture composed of two Native village corporations, such an attempted withdrawal does not preclude the timely initiation and occupancy of townsite claims by other individuals.

2. Alaska: Townsites--Townsites

Where a townsite claimant stakes a claim and moves a house onto the claim and occupies it prior to revocation of the townsite laws by the Federal Land Policy and Management Act of 1976, and the record shows the claimant's expressed intent to occupy the entire claim, he has established an entitlement to that claim.

APPEARANCES: Marlin L. Virg-In, pro se; Timothy E. Troll, Esq., Anchorage, Alaska, for the City of St. Mary's.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Marlin L. Virg-In and the City of St. Mary's (City) each appeal from different aspects of a June 23, 1989, decision of the Townsite Trustee, Alaska State Office, Bureau of Land Management (BLM), rejecting in part and approving in part their separate applications for trustee deeds to various townsite lots located in Tract B, U.S. Survey 5507, Andreafsky Townsite, Alaska. Virg-In objects to the limitation of his approved claim to one lot (i.e., Lot 1, Block 14), instead of the 1-acre parcel he
requested; the City challenges BLM's denial of its application for Lot 1, Block 14, and the decision to deed that lot to Virg-In.

The case record provides the following background. In December 1975, Virg-In staked a 1-acre parcel in Tract B. This parcel apparently had been staked over an area originally staked by Mike Hageland in June 1975, and in early January 1976, Virg-In bought all of Hageland's rights to the staked area. On June 20, 1976, Virg-In had a house on skids moved onto the parcel.

Also, in 1975, the St. Mary's Native Corporation (SMNC) informed the former Townsite Trustee of its interest in obtaining title to parts of unsubdivided Tract B to expand its newly acquired retail store operation (Paragraph 2, Affidavit of Paul Dixon, the general manager for SMNC (Dixon Affidavit)). In November 1975, in order to facilitate passage of title, SMNC, the Nerklimute Native Corporation, the village corporation for the Natives of Andrefsky, and the Andrefsky Townsite Village Council signed a Memorandum of Agreement in which the Native corporations agreed to form a joint venture (later formalized as the Quqaqliq Joint Venture (Joint Venture)) for the purpose of surveying and developing Tract B for their mutual benefit and the benefit of the local residents.

By letter dated April 19, 1976, the Joint Venture advised the Townsite Trustee that it had begun occupancy and use of Tract B; it would recognize all valid existing rights as of that date; and it expected its statement of occupancy to establish its right to title as of that date. On April 22, 1976, the Townsite Trustee informed the Joint Venture that, upon approval of the plat of survey and his receipt of patent, he would issue to it a trustee deed conveying title to all of Tract B in fee simple. The Trustee also sent a letter dated May 24, 1976, to Virg-In, informing him that Tract B had been "effectively withdrawn" from any settlement by the Joint Venture agreement approved on March 10, 1976.

The field work for the Joint Venture's survey of Tract B began during the spring of 1976 and was completed in August 1976. Both the surveyor's sketch, dated August 9, 1976, and the preliminary plat sketch show Virg-In's lot as originally staked, as well as the location of his house. See Exhibits F and G, attached to Virg-In's July 23, 1987, letter to the Townsite Trustee.

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1/ The Dixon Affidavit was attached as Exhibit 1 to the City's Oct. 10, 1987, letter to the Townsite Trustee, a copy of which was also enclosed with the City's statement of reasons for appeal.

2/ Apparently, the Joint Venture was formally organized as the Quqaqliq Joint Venture and the partnership agreement signed on Mar. 10, 1976. A copy of the agreement was sent to the Trustee on Apr. 19, 1976. See Paragraph 5 and Exh. B, Dixon Affidavit.

3/ By letters dated June 22 and July 2, 1976, the Joint Venture informed Virg-In that the placement of his house on Tract B and the staking of his lot constituted trespass because the land in Tract B was under its jurisdiction and control. See Exhs. G and H, Dixon Affidavit. Apparently,
In June 1977, the Joint Venture filed an application for conveyance of all of Tract B (Paragraph 10, Dixon Affidavit). However, on January 6, 1978, the Townsite Trustee notified the Joint Venture that he had received a letter from the Village Council withdrawing its approval of any further development on Tract B, and that any further action on deeding that tract would be suspended.

The City annexed Andreafsky Townsite, including Tract B, in 1980. By letter dated September 28, 1982, the Townsite Trustee informed the City of two pending lawsuits regarding Tract B, and that no surveys and no field examinations of claims to determine their validity would be made pending the outcome of the lawsuits. He explained:

If the suits are unsuccessful, then anyone who had occupied a portion of Tract B before October 21, 1976, the date of the Federal Land Policy and Management Act [(FLPMA)], is entitled to a survey of his lot; and upon approval of the plat, will receive a deed from the Trustee. The land he is entitled to is the land he had occupied and improved before October 21, 1976. The claimant does not have the right to expand beyond his improvements as they existed on October 21, 1976. The balance of Tract B will be deeded to the city.

(City's Statement of Reasons for Appeal and Statement in Opposition to Virg-In's Appeal (SOR), Exh. 3).

On September 11, 1985, the City adopted the Joint Venture's 1976 plat subdividing Tract B as the official plat for the City, and the plat was recorded as Plat No. 85-16 on November 18, 1985. The plat, as adopted, did not contain any information regarding Virg-In's claim, although the claim had been delineated on the preliminary sketch of the plat.

fn. 3 (continued)

the Joint Venture subsequently accepted Virg-In's claim as valid because by letter dated Nov. 28, 1977, it expressly stated that it would convey a land interest to him in connection with his house upon its receipt of title from the Townsite Trustee (Exh. I, Dixon Affidavit). In addition, by letter dated Feb. 6, 1978, it repeated that it did not oppose his claim to the property on which his house was located, and it informed him that the most expeditious way to receive patent would be to avoid the necessity for a resubdivisional survey of Tract B and allow the Joint Venture to obtain a patent to the entire tract and then have the Joint Venture convey his claim to him (Exh. I attached to Virg-In's July 23, 1987, letter).

In a letter dated Apr. 4, 1978, Virg-In informed the Townsite Trustee that he did not want the Joint Venture to represent his interests, and he asked that a survey resubdividing Tract B be performed (Exh. J attached to Virg-In's July 23, 1987, letter). The Townsite Trustee responded on Apr. 12, 1978, stating: "I have placed the subdivision of Tract 'B' high on my priority list of required townsite surveys" (Exh. L attached to Virg-In's July 23, 1987, letter).
By letter dated July 1, 1987, BLM informed Virg-In that the City had annexed Andreafsky Townsite and that, "[u]nder the Townsite Trustee's policy to accept private subdivisonal surveys of unsubdivided tracts, the City of St. Mary's accepted the subdivisional survey performed by St. Mary's Native Corporation as the official survey of Tract B" (Virg-In's SOR, Exh. 4). 4/ The letter indicated that the townsite records revealed that he might have a claim to Lot 1, Block 14, Tract B, if he had built improvements and occupied the lot prior to October 21, 1976. BLM enclosed a townlot deed application for him to complete.

Virg-In filed that application with the Townsite Trustee on July 29, 1987, along with a cover letter, dated July 23, 1987, and supporting documentation. Virg-In did not designate the lot or block numbers of his claim on the application. Instead, he explained the history of his staking and occupancy of the 1-acre lot. He asserted that his staked claim actually embraced portions of Lots 1, 2, and 3, Block 14, part of the Sipary Street right-of-way, and portions of Lots 1, 4, and 5, Block 15, and emphasized that he was requesting a deed for his entire claim as originally staked. He complained that the plat adopted by the City failed to show his claim, noting that in 1978 he had requested an official BLM survey of his lot.

Virg-In indicated that after he had moved his house onto the land, the former Townsite Trustee advised him not to place any additional, immovable improvements on the lot until the controversy surrounding Tract B had been resolved. Virg-In noted that the skids had already been removed and his house permanently attached to the land by that time, but he agreed to wait before further developing the lot. He emphasized his intention to fully develop the lot following resolution of the controversy.

The City filed two townlot deed applications dated June 1, 1987, with BLM seeking lands within Tract B, U.S. Survey 5507, described as Lots 1 through 8 and all of Tract A, Block 15, and as Lots 2, 3, and 4 and all of Tract A, Block 14, respectively. The City also submitted an application dated October 9, 1987, seeking a deed to Lot 1, Block 14.

In a letter dated October 9, 1987, the City discussed the legal and factual basis for its claims. After outlining the history of the development of Tract B, the City stated its position that Virg-In was entitled to only those lots in Tract B, as designated by its approved survey, that he had used and occupied prior to April 22, 1976, the date the former Townsite Trustee withdrew Tract B from any further occupancy in favor of the Joint Venture. Because Virg-In's use and occupancy of the land commenced when he placed his house on the lot in June 1976, the City believed that he had no right to the property, especially since Virg-In had been given notice of the Joint Venture's interest in and survey of the land before he moved his house onto the lot.

4/ BLM apparently meant the survey conducted on behalf of the Joint Venture (see paragraph 6, Dixon Affidavit).
The City stated that even though the Andreafsky Townsite Village Council withdrew its consent to the Joint Venture's development of the tract in 1978, at that time FLPMA's repeal of the townsite laws precluded Virg-In from obtaining any rights to the land. The City concluded that its rights, as the successor-in-interest to the rights of the Andreafsky Townsite Village Council, mandated the conveyance of the lots to it.

On June 23, 1989, the Townsite Trustee issued the decision from which the present appeals have been taken. She rejected the City's assertion that Virg-In's claim was invalid because it did not predate April 22, 1976, the date the former Townsite Trustee purportedly withdrew Tract B from further settlement in favor of the Joint Venture. She noted that unsubdivided townsite tracts had historically been held for further expansion of the town, and concluded that the former Townsite Trustee had no authority to withdraw tracts which individuals were legally entitled to settle.

The Townsite Trustee found that Virg-In had occupied land within the townsite on June 22, 1976, and had, therefore, established a valid claim prior to the enactment of FLPMA. But she limited Virg-In's claim to Lot 1, Block 14, instead of the 1-acre parcel he originally staked. She provided the following rationale for her determination:

The townsite laws and regulations applicable to Alaska are silent on the appropriate size of a townsite lot. The size of lots in townsites platted by or for occupants in other states (R.S. 2382), are set at 4,200 square feet per lot. While this is not the controlling factor in establishing townlot size in Alaska, it clearly shows that townlots were much smaller than one acre as claimed by Mr. Virg-In. The size of a townlot is determined by the location of an individual's improvements. The rule of thumb used by the Trustee over the years to determine lot size is the amount of land which is actually improved, not to exceed one acre more or less. The average size of other lots in the town are also taken into consideration.

A field examination conducted by the Trustee's office and a cadastral surveyor on June 6, 1989 revealed that the 14 [foot] by 26 [foot] cabin was located primarily in the Sipary Street right-of-way with a portion of the cabin overlapping into Lot 1, Block 14, Tract B. (See Field Report dated June 22, 1989).

5/ The record indicates that the Townsite Trustee attempted to resolve the controversy surrounding these conflicting claims informally through a compromise agreement. Those efforts proved unsuccessful.

6/ A copy of the field report, including an explanation of how the location of the house in relation to the Joint Venture's subdivisional survey was determined, was attached to the decision.
The cabin was on skids and appeared to be connected to power, telephone and cable television but without water service. As the cabin is already on skids and partly located on Lot 1, Block 14, the structure could easily be moved onto the lot. Lot 1[,] Block 14, contains 10,290 square feet and is the same size as the majority of other lots within Tract B. Mr. Virg-In's cabin would be adequately accommodated by the lot. There were no other improvements which would entitle him to additional land.

(Decision at 3). 7/

Accordingly, the Townsite Trustee approved Virg-In's application for a deed for Lot 1, Block 14, but rejected his request for deeds to Lots 2 and 3, Block 14, and Lots 1, 4, and 5, Block 15, Tract B. She also determined that the City was entitled to deeds to Lots 2 and 3, Block 14, and Lots 1, 4, and 5, Block 15, but denied its application for a deed to Lot 1, Block 14, Tract B. 8/

In his initial appeal submission, Virg-In challenges the Townsite Trustee's decision to limit his claim to one lot. He emphasizes that he originally staked a 1-acre parcel, and that he is entitled to the acreage so staked. 9/ He argues that it has always been his intention to build his family's residence on the land, as well as locate his woodshop, net house, boat storage facilities, and a sauna on the property. He explains that he was advised by the former Townsite Trustee not to further improve the land until title had been secured, and that he agreed since the advice seemed prudent in light of the vigorous opposition to his claim. He contends that he should not now be penalized for following the former Townsite Trustee's advice.

Virg-In also objects to the Townsite Trustee's conclusion that his house is on skids and, therefore, easily movable. He states that the house was removed from skids shortly after it was placed on the property, and that the logs now under the house are part of the permanent foundation. He notes that a porch, with a permanent foundation attached to the house's foundation, was added to the house after its placement on the lot. Thus, he asserts, requiring him to move the house would be costly and would result in extensive damage.

The City first argues that it, not Virg-In, should be granted a deed for Lot 1, Block 14, Tract B. It asserts that the Townsite Trustee

7/ The Townsite Trustee rejected the City's allegation that Virg-In might not own the cabin.
8/ Because there had been no conflicting claims to Tract A, it had been deeded to the City on June 16, 1988.
9/ Virg-In notes that he had agreed to accept the Townsite Trustee's offer of five lots instead of his 1-acre parcel in an attempt to settle his claim, providing the City agreed not to contest his claim. The City, however, was unwilling to accept the compromise proposed by the Townsite Trustee (see note 5, supra).
erroneously concluded that the former Townsite Trustee was not authorized to withdraw Tract B from further occupancy in favor of the Joint Venture and that such withdrawal precluded Virg-In from gaining any rights to the land prior in time to its rights.

The City continues to question Virg-In's ownership of the house placed on the land and objects to the Townsite Trustee's failure to require him to document his ownership of the structure. The City claims that Virg-In's house is still on skids, and that bona fide occupancy requires permanent improvements, not improvements which can be moved. Thus, the City asserts, Virg-In is not entitled to a deed to Lot 1, Block 14, and it should receive title to that lot.

The City also opposes Virg-In's contention that he should receive title to the entire 1-acre parcel he originally staked. It argues that, to the extent Virg-In has established a claim to land in Tract B, his claim must be limited to the land he physically occupied on October 21, 1976, and that the law prohibits the Townsite Trustee from deeding to him land in excess of that required to accommodate his improvements as of that date. The City contends that a June 30, 1977, aerial photograph demonstrates that Virg-In did not occupy an acre of land at that time, nor did he reasonably need land in addition to Lot 1, Block 14. It further asserts that Virg-In's alleged reliance on the former and current Townsite Trustees' representations concerning the advisability of adding improvements to the land and the amount of land he might receive, respectively, was not well founded.

The City contends that lot sizes in Tract B as surveyed are consistent with lot sizes throughout the City, noting that very few City lots exceed 1 acre and that most of those that do are located in Tract D of U.S. Survey 5507 where piped water and sewer service are not practicable. According to the City, an acre of land is not needed for on-site waste disposal systems; the City's soils are not suitable for such waste disposal; and most of the community is served by a community sewer system.

The City speculates that Virg-In bases his 1-acre claim on the former Townsite Trustee's informal policy of limiting claimants in unsubdivided areas to no more than 1 acre, noting that this policy established a maximum, not a minimum, entitlement. Since the Trustee could only recognize actual occupancy at the time of survey or enactment of FLPMA, the City contends that if the claimant had not actually settled 1 acre, he or she could only receive title to the land reasonably necessary to accommodate the needs of the improvements made before the survey or FLPMA's enactment.

In his response to the City's submission, Virg-In asserts that, if the City claims that the Joint Venture's staking and surveying of Tract B in the spring and summer of 1976 established its occupancy, then

10/ Three lots larger than 1 acre can also be found in Tract A, U.S. Survey 5507, including one which encompasses a commercial enterprise and another which accommodates a resident who relinquished a Native allotment claim in favor of the townsite.
his December 1975 staking constitutes a valid claim superior to that of
the Joint Venture. Additionally, he notes that the Joint Venture is now defunct and has no present interest
in the tract, and argues that the April 22, 1976, date has nothing to do with the City since the City had
no interest in the land prior to its annexation in 1980. He contends
that the Joint Venture survey was conducted in trespass over his land;
he was not notified when the survey was being performed; and his input was never sought. He claims that
the portions of the survey which encroach on his 1-acre parcel were in 1976, and are still today, in trespass.
He also asserts that he was not informed or consulted prior to the City's annexation of Tract B or its adoption
of the survey.

Virg-In supports the Townsite Trustee's conclusion that the former Trustee lacked the authority
to withdraw Tract B in favor of the Joint Venture, noting that although the Joint Venture consisted of two
village corporations, it essentially was a private enterprise. As such, he asserts, it had no more rights to
unoccupied land than did any private individual, and certainly had no right to obtain a withdrawal of the tract.

Virg-In submits a bill of sale dated May 28, 1976, to prove his ownership of the house placed on
the land. He repeats that his house is not on skids and has been permanently attached to the tract, and that
power, telephone, and cable services attest to the permanency of the structure. He explains that, although
he has requested water and sewer service on numerous occasions since 1976, such service has been denied
for a variety of reasons, including the controversy surrounding his claim.

Virg-In argues that the size of his lot should not be limited to a
size which will only accommodate his cabin as it now exists, noting that this cabin is inadequate to house
his family of six and that he never intended for the cabin to remain at its present size. He asserts that
the majority of Lot 1, Block 14, is unusable due to a 20-foot easement running the length of the lot, and a
2- to 3-foot dropoff followed by a severe slope covering the back 70 feet of the lot. He contends that this
lot, which measures 84 by 130 feet on paper, only has 64 by 60 feet, or 3,840 square feet of usable space,
even less than the 4,200 square foot minimum in other states. Virg-In also notes that in rural Alaska, home-
sites often far exceed the minimum found elsewhere.

As added justification for his 1-acre claim, Virg-In argues that life in rural Alaska requires
additional space to accommodate necessary transportation equipment and storage facilities. He asserts that
he elected to stake out an acre in order to eliminate the problems inherent in attempting to confine a large
family to a small lot. He further notes that since he does not have water and sewer services and has been
unsuccessful in obtaining them from the City, he will have to provide his own site disposal system, adding
that, in some cases, such systems have been successfully installed in the City. He also contends that an
examination of property records reveals that there are many 1-acre lots located in the City. Thus, Virg-In
requests that he be awarded a deed to his originally staked 1-acre lot.

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Both Virg-In and the City sought the requested lots pursuant to section 11 of the Act of March 3, 1891, 43 U.S.C. § 732 (1970) (repealed by section 703(a) of FLPMA, P.L. 94-579, 90 Stat. 2790 (1976), effective October 21, 1976, subject to valid existing rights), section 3 of the Act of May 25, 1926, 43 U.S.C. § 735 (1970) (also repealed by section 703(a) of FLPMA), and the regulations promulgated thereunder. Section 11 of the Act of March 3, 1891, provides for the entry of lands in Alaska "for town-site purposes, for the several use and benefit of the occupants of such town sites" by a trustee appointed by the Secretary of the Interior and that, upon entry, the Secretary "shall provide by regulation for the proper execution of the trust in favor of the inhabitants of the town site, including the survey of the land into lots." Section 3 of the Act of May 25, 1926, extended the provisions of section 11 of the Act of March 3, 1891, to Native townsites, subject to the same limitations and restrictions. See Aleknagik Natives, Ltd. v. United States, 635 F. Supp. 1477, 1497 (D. Alaska 1985), aff'd, 806 F.2d 924 (9th Cir. 1986); Bristol Bay Housing Authority, 95 IBLA 20, 22 (1986). See also Native Village of Circle, 114 IBLA 377, 378-79 (1990). 43 CFR Subparts 2564 and 2565 contain the regulations promulgated by the Secretary to implement these Acts.

In both Native and non-Native townsites, the trustee properly deeds lots to those inhabitants who are occupants of such lots or are entitled to such occupancy at the date of the final subdivisinal townsite survey. 43 CFR 2565.3(c); Native Village of Circle, supra at 379; City of Klawock v. Andrew, 24 IBLA 85, 83 I.D. 47 (1976), aff'd, City of Klawock v. Gustafson, No. K-74-2 (D. Alaska Nov. 11, 1979) (upholding applicability of the regulation to Native townsites). See Aleknagik Natives, Ltd. v. United States, supra at 1481. FLPMA's repeal of the Alaska townsite laws, however, ended the authority under which townsite lots could be entered and occupied, and no rights under those laws could be derived from occupancy initiated after October 21, 1976. Aleknagik Natives, Ltd., supra at 1497-98; Royal Harris, 45 IBLA 87, 89 (1980); Stu Mach., 43 IBLA 306, 307 (1979). Thus, if no final subdivisional townsite survey had been approved by that time, occupancy as of October 21, 1976, determined entitlement to townsite lots.

With respect to lands not occupied as of the date of approval of the final subdivisional survey (or FLPMA's repeal of the townsite laws), 43 CFR 2565.7 provides in relevant part that "[a]fter the public sale and upon proof of incorporation of the town, all lots then remaining unsold will be deeded to the municipality." See Native Village of Circle, supra. The City claims that Lot 1, Block 14, approved for conveyance to Virg-In, is actually part of the residual townsite land to which it is entitled because he did not occupy that land prior to the former Townsite Trustee's April 22, 1976, withdrawal of Tract B from further occupancy in favor of the Joint Venture. Thus, the first issue before us is whether the former Townsite Trustee had the authority to "effectively withdraw" Tract B prior to a final subdivisional survey or the enactment of FLPMA. We find that he had no such authority.
Withdrawal of public lands is not an action taken by BLM or its employees, but is one which is committed to the discretion of the Secretary of the Interior. Under the terms of Executive Order (EO) No. 10355, 17 FR 4831 (May 26, 1952), the President delegated his authority to withdraw or reserve public lands for public purposes to the Secretary and provided that all such orders issued under this authority would be designated as public land orders and published in the Federal Register. Section 3 of EO No. 10355 limited the Secretary's redelegation authority to the Under Secretary and the Assistant Secretaries of the Interior. See City of Kotzebue, 26 IBLA 264, 267, 83 I.D. 313, 314-15 (1976). Clearly, the former Townsite Trustee was not authorized to exercise the Secretary's withdrawal authority, and his attempt to withdraw Tract B from further settlement in favor of the Joint Venture could not prohibit further occupancy of that tract.

Although the City asserts that the Joint Venture represented the interests of the Native community, and that the trustee had a primary, fiduciary obligation to the municipality and to the Native residents of the community, it is clear that the Townsite Trustee is not required to administer townsite lands exclusively for the benefit of the Natives. See Aleknagik Natives, Ltd. v. United States, 806 F.2d 924, 927 (9th Cir. 1986). Rather, once the trustee obtains patent to a townsite, that patent is held in trust for all the occupants of the townsite, not the municipality or only the Native residents, and a person is considered an occupant if he or she initiated a timely claim. Stephen Kenyon, 51 IBLA 368, 372 (1980), vacated in part, 65 IBLA 44 (1982). The Joint Venture's planned development would have prevented individuals from establishing timely claims, and the former Townsite Trustee's action supporting this effort was unauthorized.

The townsite laws provided that townsite lots were open to be settled and improved until final subdivisonal survey, and that rights to lots could only be so acquired. Until the date of approval of the final subdivisonal survey or the enactment of FLPMA, the right to settle and occupy a townsite lot could not be cut off except by prior acts of settlement or occupancy by a rival claimant. Ruth B. Sandvik, 26 IBLA 97, 99-100 (1976); City of Klawock v. Andrew, supra at 95-96, 83 I.D. at 55-56. Furthermore, "[t]he townsite regulations do not treat a municipality differently from an individual insofar as rights prior to approval of final subdivisonal survey are concerned." Ruth B. Sandvik, supra at 99 (emphasis in original). Therefore, even assuming that the Village Council's approval of the Joint Venture's planned development of Tract B transferred the council's rights and interests in the tract to the Joint Venture, the Joint Venture still

Section 704(a) of FLPMA repealed both the implied and the statutory withdrawal authority of the President, effective Oct. 21, 1976. FLPMA granted the Secretary explicit withdrawal authority and limited delegations of that authority to "individuals in the Office of the Secretary who have been appointed by the President, by and with the advice and consent of the Senate." 43 U.S.C. § 1714(a) (1988). See Resource Associates of Alaska, 114 IBLA 216, 219-20 (1990), and cases cited therein.

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could not have defeated a claim which had been settled and improved prior to its occupancy and improvement of the land.

Although the City asserts that the Joint Venture surveyed and staked Tract B before Virg-In moved his house onto the tract, posting alone does not establish a right which would preclude subsequent settlement and improvement by a bona fide settler. Ruth B. Sandvik, supra. The City has never claimed that the Joint Venture improved the land in Tract B sought by Virg-In before he moved his house onto the land which he claims. Therefore, the Joint Venture did not establish any prior right to the tract which would defeat Virg-In's claim to the land.

Because Virg-In moved a house onto the land and occupied it prior to the repeal of the townsite laws by FLPMA, he has established his entitlement to a townsite deed for the land so occupied and improved. Thus, we reject the City's contention that Virg-In has no right to any townsite land.

[2] We are now faced with deciding how much land should be conveyed to Virg-In. An occupant is entitled to an award encompassing the land occupied at the date of the approval of the final subdivisional survey (43 CFR 2565.3(c)), or, in this case, the date of FLPMA's repeal of the townsite laws. As of that date, Virg-In had staked a 1-acre lot and had occupied the land by moving his house onto the lot. 12/ Virg-In argues that he made no further improvements on the land based on the advice of the former Townsite Trustee, but that he always intended to improve and occupy the entire 1-acre parcel. The City asserts that the Townsite Trustee properly limited Virg-In's claim to the one lot partially occupied by his house and contends that his failure to further improve the land should preclude the granting of any lands beyond that lot.

We find Virg-In's explanation for his failure to continue to develop his lot reasonable in light of the circumstances surrounding this case. We further note that the townsite laws were repealed only 4 months after Virg-In moved his house onto the land. Given this short time span, the extent of Virg-In's occupancy of his lot as of October 21, 1976, was consistent with his expressed intent to occupy the entire lot claimed. See Sawyer v. Van Hook, 1 Alaska 108, 110 (1900). The general rule of the Department has been that, except where separate parties simultaneously occupy different parts of the same lot, occupancy of a portion of a townsite lot constitutes occupancy of the whole lot. City of Klawock v. Andrew, supra at 95, 83 I.D. at 55; Mary M. Tweet, A-28417 (Nov. 16, 1960).

Although the Townsite Trustee attempted to justify the limitation of Virg-In's claim to Lot 1, Block 14, by comparing his claim to townlot sizes 12/ Although the City contends that Virg-In may not own the house, the bill of sale submitted by Virg-In effectively demonstrates that he is the owner of the house. Also, regardless of whether the house actually was on skids on the critical date (Oct. 21, 1976), the record clearly reflects Virg-In's intent to occupy the land.
in other states, Virg-In has amply demonstrated that land needs in Alaska are vastly different from those in other states. Additionally, comparisons between the size of his lot and other lots in the area fail to consider that Virg-In has been unable to obtain water and sewer services from the City, and, therefore, needs additional land to permit on-site waste disposal. 13/ We are not persuaded that granting him the 1-acre parcel which he staked in 1975 would be excessive, and we set aside the Townsite Trustee's decision limiting him to Lot 1, Block 14, Tract B.

When Virg-In began use and occupancy of his lot, Tract B had not been subdivided into townlots with specific boundaries. Part of the problem in this case stems from the fact that BLM did not conduct a subdivisional survey which recognized the boundaries of the lot staked by Virg-In, although he requested such a survey in 1978. The Joint Venture survey, which was approved by the City, inexplicably failed to indicate the location of Virg-In's claim, even though the preliminary sketches made by the surveyor did note its location. Difficulties have arisen as a result of the Townsite Trustee's attempt to fit Virg-In's claimed lot within the confines of lots designated on the Joint Venture's survey.

The townsite regulations expressly provide that "[a]fter the entry is made, the townsite will be subdivided by the United States into blocks, lots, streets, alleys, and municipal public reservations." (Emphasis added.) 43 CFR 2565.3(a). In addition, 43 CFR 2565.3(c) provides that award and disposition of lots will take place "[o]n the acceptance of the [subdivisional survey] by the Bureau of Land Management." In this case, there was no survey conducted by the United States. 14/ Although a July 1, 1987, letter to Virg-In from BLM indicated that it was the policy of the Townsite Trustee to accept private subdivisional surveys of unsubdivided tracts, that letter did not indicate that the Trustee had, in fact, accepted such survey; rather, the letter stated that the City had accepted the SMNC survey as the official survey of Tract B. Thus, there is no evidence in the present record of BLM's acceptance of any subdivisional survey for Tract B, and the Trustee is not bound to conform the location of Virg-In's claim to the Joint Venture's subdivisional survey. On remand, the Townsite Trustee should determine the proper location of Virg-In's 1-acre claim.

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

13/ In its reply to Virg-In's response to its SOR, the City states that, although preliminary plans have been developed for extending the community water and sewer systems to Tract B, these improvements will not likely be made for several more years (Reply at 3).
14/ We note that only surveys performed by or on behalf of BLM are official surveys. Wilogene Simpson, 110 IBLA 271, 275 (1989).
from is set aside and remanded for further action consistent with this decision. 15/

Bruce R. Harris
Administrative Judge

I concur:

Franklin D. Arness
Administrative Judge

15/ Should the Trustee determine that acceptance of the Joint Venture's survey is appropriate, she may negotiate with Virg-In concerning the extent of the land to be transferred to him, and he may determine that acceptance of certain of the lots identified in that survey will satisfy his claim. In that regard, we note that Virg-In had agreed, prior to opposition from the City, to accept the Townsite Trustee's offer of five lots. In no case, however, will he be entitled to more acreage than was embraced by his original claim.