GEORGE T. BECK

IBLA 77-337 Decided July 28, 1977

Appeal from decision of Fairbanks District Office, Bureau of Land Management, which declared a homesite notice of location (F-21004) unacceptable for recordation.

Affirmed as modified.

1. Alaska: Homesite--Withdrawals and Reservations: Generally

   It is improper for a District Office to find a notice of location for a homesite unacceptable for recordation when the location notice is regular on its face and the land was open to location at the time the notice was filed.

2. Alaska: Homesites--Withdrawals and Reservations: Generally

   The filing of a notice of location for a homesite does not create any rights in the land, and the filing of a notice will not prevent a withdrawal from attaching to the land if, prior to the effective date of the withdrawal, the locator fails to perform the requisite acts of use, occupancy and development necessary to establish a valid existing right in the claim. Marking of boundaries of the claim does not constitute use and development.

APPEARANCES: George T. Beck, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

George T. Beck appeals from a decision of the Fairbanks District Office, Bureau of Land Management (BLM), dated April 19, 1977, which

held his notice of location for homesite F-21004 unacceptable for recordation and closed the case.

Beck filed his notice of location on March 14, 1974, for a homesite under the Act of May 26, 1934, 48 Stat. 809, 43 U.S.C. § 687a 1970. The site is situated within protracted section 9, T. 22 N., R 9 E., Kateel River Meridian, Alaska. On March 28, 1974, Public Land Order (PLO) 5418, 39 FR 11547 (1974), withdrew all unreserved public lands in Alaska from location and settlement under the public land laws, subject to valid existing rights. On April 26, 1974, the Fairbanks District Office accepted the notice of location for recordation. Interim fly-over examinations of the site were conducted by fixed wing and helicopter aircraft in March and July 1974 and on May 27, 1976. Also, a report of examination completed on August 5, 1976, describes the examiner's access "by foot." No evidence of use other than the corner markers was reported.

In his decision, the Fairbanks District Manager held that the applicant was not qualified to purchase a homesite under 43 U.S.C. § 687a, supra, because he had not shown that he used and occupied the land before its withdrawal on March 28, 1974, the effective date of PLO 5418. The District Manager concluded that Beck's notice of location was unacceptable for recordation.

In his statement of reasons, appellant presents the following issues:

> 1. The Fairbanks district manager's decision should be reversed summarily because the notice of location had been accepted for recordation. See notice of April 26, 1974.
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> 2. The Act of May 26, 1934, 48 USCA 461, allows the entryman 5 years from the date he files an acceptable notice of location to perform the acts necessary to establish rights in the land. Land so claimed must be reserved until the claim is settled either by the entryman's default or by the Bureau's approval of an application to purchase. The Bureau's actions in this case between March 14, 1974 and March 14, 1977, support this interpretation of the law. The decision to attach withdrawal to homesite F-21004 at this late date upsets the precedent which the Bureau's actions had established in this case during the preceding 3 years. Therefore the decision should be reversed since it is totally arbitrary, capricious and erroneous.

In elaborating on the second point, appellant makes a distinction between"unoccupied" and "unreserved" lands. He contends that the District Manager asserted that staking a claim creates no rights in the land and that all unoccupied land was withdrawn by PLO 5418 while the actual wording of PLO 5418 withdraws unreserved land subject to

valid existing rights. Since the Bureau accepted his notice of location, appellant believes that the land was reserved to him.

Appellant stresses that the law does not state that occupancy must have begun at the time of the filing of the notice of location or at any specified time thereafter. He notes that the law only specifies the time allowed after filing a notice to complete the requisite acts establishing rights in the land.

[1] At the outset, we find that the District Office was correct in accepting appellant's notice of location for recordation on April 26, 1974. Since the location notice was regular on its face and the land was open to location at the time the notice was filed, it was proper for the District Office to accept the notice when offered and to record it as provided by 43 U.S.C. § 687a-1 (1970) and 43 CFR 2562.1. Sandra L. Lough, 25 IBLA 96, 99, 103 (1976); Eldon L. Reese, 21 IBLA 251, 252 (1975). For this reason, the District Manager erred in his decision when he held that the notice of location was unacceptable for filing. 1/ Since the effective date of PLO 5418 was subsequent to the filing date of appellant's notice of location, the notice could be denied recordation if it were defective on its face, Edward P. Dooley, 22 IBLA 338 (1975), but the subsequent withdrawal cannot be used as a basis for declaring the notice unacceptable for recordation. Steven P. Remme, 24 IBLA 23, 25 (1976). See 43 CFR 2091-1.

The proper inquiry for the District Office in this case was whether or not appellant had established a valid existing right protected from the withdrawal. Mary C. Polen, 24 IBLA 100 (1976); Steven P. Remme, supra. The District Manager held that appellant had not established such a right. We agree.

[2] It is well-settled that the mere filing of a notice of location does not of itself create any rights in the land, and the filing of the notice "will not prevent a withdrawal from attaching to the land if, prior to the effective date of the withdrawal, the locator of the homesite fails to perform the requisite acts of use, occupancy and development necessary to establish a valid existing right in the claim." Steven P. Remme, supra, as cited in Sandra L. Lough, supra, at 104-105. In his statement of reasons, appellant admits that he has no improvements and has done no more than stake his claim. The Board has held that the marking of the boundary lines and the posting

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1/ BLM's treatment of the notice was self-contradicting, in that the Fairbanks District Office on April 26, 1974, issued a notice captioned "Claim Recorded," while on April 19, 1977, the same office issued a decision captioned "Notice of Location Unacceptable for Recordation." However, regardless of recordation, the claim is being adjudicated strictly on its merits.

of the corners of the tract does not constitute occupation or possession. Sandra L. Lough, supra at 105; Donald J. Thomas, 22 IBLA 210, 212 (1975); Donald Richard Glittenberg, 15 IBLA 165 (1974). Therefore, although appellant's notice of location should not have been held unacceptable for recordation, appellant has not shown that he established a valid existing right prior to the withdrawal.

It is true that the law allows an applicant 5 years from the filing of his notice of location to perform the acts necessary to establish valid rights to the site, but the Homesite Act, supra, only authorizes the sale of unreserved public lands in Alaska. PLO 5418 became effective on March 28, 1974, withdrawing the land in question subject to "valid existing rights." The filing of a notice of location without substantial compliance with the law does not create any property interest in the land or "valid existing right" which may be exempted from the withdrawal. Peter Pan Seafoods, Inc. v. Shimmel, 72 I.D. 242 (1965); Edward P. Dooley, supra; Eldon L. Reese, supra. Since appellant had not established a valid existing right, the land in issue was subject to the withdrawal and was no longer "unreserved" land within the meaning of the homesite law. Therefore, the District Manager did not arbitrarily decide to attach the withdrawal as appellant contends, but the land became subject to the withdrawal on the effective date of PLO 5418 because appellant had not established a valid existing right in the land.

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 as modified.

Edward W. Steubing

Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge