

INTERIOR BOARD OF LAND APPEALS

John C. Phariss

134 IBLA 46 (October 4, 1995)

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JOHN C. PHARISS

IBLA 93-625

Decided October 4, 1995

Appeal from a decision of the Alaska State Office, Bureau of Land Management, rejecting application to purchase headquarters site AA-59676.

Affirmed.

1. Alaska: Headquarters Sites

A headquarters site application which states that the site is used as a trapper headquarters is properly rejected when, despite the fact that the applicant constructed a cabin on the site, he fails to submit any evidence that he engaged in a productive trapping industry there during the statutory life of the claim.

APPEARANCES: Kathy Atkinson, Esq., Anchorage, Alaska, for appellant; Carlene Faithful, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, for the Bureau of Land Management.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

John C. Phariss has appealed a July 14, 1993, decision of the Alaska State Office, Bureau of Land Management (BLM), rejecting his application to purchase headquarters site AA-59676, situated on public lands in sec. 25, T. 11 N., R. 8 E., Copper River Meridian, Alaska.

Appellant filed a notice of location for the headquarters site on October 1, 1986. In response to the question on the notice of what kind of trade, manufacturing, or other industry or use the site was going to be put to, appellant stated: "cabin for clients and survival." On June 8, 1988, appellant filed his application to purchase the headquarters site, stating thereon that he had occupied the site as a trapper headquarters since April 2, 1987, and that there was a cabin on the site. In response to the question on the application whether proof or showing in support of use was attached, appellant indicated "REC AVIL ON REQUEST," presumably meaning that records regarding trapping activities were available on request. The case file shows that by notice dated March 27, 1989, BLM requested the filing of evidence of use. BLM did not receive the requested evidence. On March 20, 1991, it sent a second notice again asking appellant to submit the information. Appellant did not respond.

In its July 14, 1993, decision, BLM rejected appellant's application to purchase the headquarters site for the reason that appellant had failed to provide evidence of use or occupancy. Appellant filed a timely appeal, requesting a stay of BLM's decision. He also filed a motion to remand.

By order dated September 28, 1993, the Board denied the motion for remand, but granted the request for stay in order to provide appellant "with one last opportunity to file evidence in support of his application to purchase." The Board directed appellant "to file * * * the information requested by BLM in its March 27, 1989, and March 20, 1991, notices, [and] all additional evidence upon which he is relying to support his application to purchase the land in question" (Order at 3).

The Act of March 3, 1927, c. 323, 44 Stat. 1364, amended the original Trade and Manufacturing (T & M) Site Act of May 14, 1898, 43 U.S.C. § 687a (1988) (repealed effective October 21, 1986, subject to valid existing rights, by section 703(a) of the Federal Land Policy and Management Act of 1976, P.L. 94-579, 90 Stat. 2790 (1976)), to allow persons engaged in a trade, manufacture, or other productive industry to purchase one claim, not exceeding 5 acres, as a homestead or headquarters site.

In Vernon L. Nash, 17 IBLA 332, 335 (1974), the Board stated as follows:

The reason for the amendment was explained in a letter dated December 1, 1925, from the First Assistant Secretary of the Interior to the Board of Appeals of the Department, which reads in pertinent part as follows:

The Department of Agriculture advises me that there are many individuals * * * who are located on public or national forest lands in Alaska, and who are either employed in canneries, sawmills and other corporate enterprises, or who are themselves engaged in the fishing, mining, or other industries as individuals. These people would like to be able to acquire patents to small tracts of land for their homes and headquarters * * *

See also Solicitor's Opinion, M-36187 (November 12, 1953). The term "headquarters" appears to be given its usual meaning, in this instance the principal site used in connection with a trade, manufacture or other productive industry. However, there is no requirement that the trade or other occupation be carried on at the headquarters site. Id.

In addition to filing the application for a headquarters site, appellant has also applied for a homesite (AA-59675) and a T & M site (AA-54189) all within approximately 3 miles of each other in a rural area near Slana,

Alaska. 1/ In support of his headquarters, he has submitted with his statement of reasons (SOR) various documents. Exhibit A consists of copies of certifications of State of Alaska business license records showing that licenses had issued to appellant for the years 1984 through 1987, December 1, 1989 through 1990, and March 6, 1992, through December 31, 1993, in the business name of "John Barn or Johns Barn." 2/ That business, as explained by appellant, derived income from various sources—trapping on his 30-mile trapline, which, he asserts, originates at his headquarters site, cabin rentals on his T & M site, and "selling scrap, out of the building located on his homesite, like scrap lumber, aluminum and copper, and used items, like old machine parts" (SOR at 4). 3/

Submitted as Exhibit C are copies of appellant's income tax forms for the years 1986 through 1988. On the Schedule C ("Profit or (Loss) From Business or Profession") for each of those tax years, appellant shows the business of John's Barn as "Scrap Sales and Trapping." The schedules list gross business income of \$4,209, \$2,150, and \$300 for the years 1986, 1987, and 1988, respectively, and a net business loss for each year.

Exhibit D is a statement from Mike Roscovius, who worked for the Alaska State Troopers as a game warden in the Slana area from June 1986 until his retirement in June 1993. He stated that he met appellant in the late summer of 1986 and that he had "many contacts with him from that time on." He describes appellant as an active trapper during the winter months, but he states that he has no knowledge of "how successful John has been at trapping." He does relate that he "had to cite John for using poison to take wolves in January of 1988."

Exhibit E is an undated letter from an individual on letter-head stationary from the Alaska Fur Exchange (AFE) stating that AFE had "been doing business with John Phariss for the past several years and I can confirm that he has sold us fur and given us fur to tan for him." Attached

1/ Concurrently pending before the Board in IBLA 93-624 is John C. Phariss' appeal of a BLM decision rejecting his application to purchase the T & M site.

2/ Appellant explained in his SOR at page 4 that he built a two-story combination house and garage on his homesite and that it had a roof shaped like a barn and his friends referred to it as "John's barn." When he applied for a business license, he asserts, he called his business "John's Barn."

3/ The certifications each contain a "Standard Industrial Classification" (S.I.C.) number, which had been assigned to the licenses. For the years 1984 through 1987, the S.I.C. code is 5930, and for the other two licenses the code is 6519 with the parenthetical phrase "Lessors of real property, Nec. [not elsewhere classified]." Appellant explains in the SOR at page 5 that the State discontinued use of the S.I.C. code 5930, which represented "used merchandise," "second-hand goods," and "miscellaneous" or "not elsewhere classified."

to that letter are copies of two computer list sales orders from AFE, one bearing a date of April 2, 1993, the other April 6, 1992, apparently representing tanning and fleshing work AFE had performed for appellant and assigning a value to the furs.

Appellant has submitted a copy of his hunting, trapping, and sport fishing license issued May 11, 1990 (Exh. F), to show that he was legally authorized to trap and hunt on the land. Counsel for appellant states that Exhibit F is actually a "replacement for the license that was issued to Mr. Phariss in 1986, sometime after he turned sixty years old in July of that year" (SOR at 10). She asserts that any Alaskan resident who is at least 60 years old is eligible for a free permanent combination hunting-trapping-sport fishing license. Finally, appellant has submitted a form indicating his monthly social security benefit (Exh. G).

Appellant contends that the additional information submitted on appeal constitutes an evidentiary showing sufficient to merit a field investigation. Appellant renews his motion for remand and asks that a field examination be ordered.

BLM answers that appellant's submissions fail to support his claim for a headquarters site and do not merit a field examination. BLM asserts that appellant's tax returns (also submitted in IBLA 93-624) do not allow a determination as to the source of the revenues reported. BLM does not dispute that appellant made improvements on the site or that he engaged in trapping. Rather, BLM asserts that appellant failed to provide concrete evidence of any revenues from the trapping business at the time he filed his application to purchase or during the statutory life of the claim.

[1] In order to qualify for a headquarters site, an applicant must submit evidence from which it can be concluded that he was engaged in an actual business operation from which he reasonably hoped to derive a profit and that the land claimed was used in connection with that operation. Receipt of a few dollars over a period of years does not satisfy these criteria. United States v. McLean, 50 IBLA 290, 300 (1980). An applicant must present evidence of a potentially productive industry such as customer trade or gross receipts. United States v. Ehmman, 50 IBLA 69, 72 (1980) (Burski, A.J., concurring). The Board has stated that in order to establish a right to land under the public land laws, the applicant is required to support his assertions with evidence which is within his sole control. United States v. Beaird, 31 IBLA 203, 209 (1977), *aff'd*, Beaird v. Andrus, No. F-77-31 (D. Alaska June 19, 1979). A headquarters site application is properly rejected where the appellant fails to produce any probative evidence that the land claimed as a headquarters site was used in connection with a productive industry. Gustav O. Wiegner, 26 IBLA 123, 126 (1976).

Thus, distinct requirements must be met in order for an applicant to qualify for a headquarters site. Even though appellant has submitted additional information with his appeal, he fails to meet these requirements. BLM does not dispute appellant's assertion that a cabin has been built on the land. Appellant has presented photographs of his improvements (Exh. A). Although those photographs are undated, appellant asserts in his SOR that the improvements were constructed "[b]y the winter of 1986" (SOR at 1) and that "sometimes he lives in the cabin throughout the trapping season - roughly November, December, and January" (SOR at 3). Nevertheless, in his application, filed in June 1988, he stated that he had occupied the site since "4-2, 1987." Thus, at the time he filed his application, he may have lived on the site for 2 months in 1987, and 1 month in 1988.

The certified copies of State of Alaska records showing that appellant held business licenses for various years (Exh. B) does not establish use of the land in question as a headquarters site. Appellant admits that the business, John's Barn, consisted of a number of activities. The copies of tax returns (Exh. C) submitted by appellant show that appellant derived income from one or more business activities during the years 1986, 1987, and 1988. Unfortunately, those returns do not identify the source of the revenue reported. Nor does appellant attempt to do so by some independent statement. Instead, appellant falls back on the fact that "[t]he 'John's Barn' building burned to the ground in 1990, and since this was his home, all his personal belongings and all the receipts and paperwork relating to his income burned with it" (SOR at 4). While appellant's personal tragedy is unfortunate, he clearly was aware, prior to the fire, of the necessity to provide evidence of his use of the site. He must now bear the risk of inadequate proof.

The Roscovius statement supports a finding that appellant was active as a trapper, but Roscovius admits that he has "no record of how successful John has been at trapping" (Exh. D). Moreover, most importantly, the Roscovius statement provides no support for appellant's assertion that he used the site in question as his headquarters for trapping.

The AFE statement and attachments (Exh. E) do not support appellant's claim either. That information had been included in the file when the Board issued its September 28, 1993, order. In that order at footnote 1, we stated:

Appellant filed his application to purchase on June 8, 1988. Thus, it is arguable that his evidence in support of his claim showing the nature and extent of his activities on the claim must date from on or before June 8, 1988. However, for purposes of this order we do not take a position as to the cut off date for such evidence, except to rule that it can be no later than five years from October 1, 1986. Therefore, the letter in the record from Alaska Fur Exchange and the attached sales orders relating

to work performed in 1992 and 1993 are not relevant to consideration of whether appellant complied with the headquarters site law.

Appellant asserts that the sales order dated April 6, 1992, and the statement from AFE that it had done business with appellant for the "past several years" is relevant because the statutory period for his claim is "Oct. 1, 1986 to Oct. 1, 1992" (SOR at 9). First, assuming, without deciding, that appellant is entitled to the statutory 5-year period from the date of filing the notice of location, the expiration of the period would be in October 1991, not 1992, as asserted by appellant. Therefore, presumably fleshings and tannings by AFE which were billed to appellant in April 1992 would have been for the 1991-92 trapping season (November 1991, December 1991, and January 1992), which was after the expiration of the 5-year period.^{4/} The AFE information provides no support for appellant's contention that he utilized the site in question as a headquarters for trapping.

Finally, appellant's last two items of evidence (Exhs. G and H) shed no light on his activities on the site in question during the period in question.

In Jack Kim, 103 IBLA 104, 106-07 (1988), we held that trapping is not a qualifying use of land under the T & M site law, but that it is a use appropriate to acquisition of a headquarters site. In this case, appellant has shown that he built a cabin on the land in question and that he pursued trapping activities. However, he has not in any way related his trapping activities to the site in question at the time he filed his application to purchase or at any time during the 5-year period from the date he filed his notice of location. In fact, at the time he filed his application, it is not clear that his intent was to pursue use of the site as a headquarters for trapping. In his notice of location, he stated that he desired the land as a site for a "cabin for clients and for survival;" there is no mention of trapping.

In our September 28, 1993, order we stated at footnote 2: "Depending on what evidence appellant can provide for the period in question [5 years from October 1, 1986] a field examination might be relevant." BLM has acknowledged the existence of appellant's improvements and that he engaged in trapping. On the state of the record nothing would be gained by a field examination, and appellant's renewed request for remand for that purpose is denied. Moreover, given the number of opportunities appellant has been granted to provide evidence in support of his claim over the years and the paucity of relevant evidence presented, we find no necessity for referring this case to the Hearings Division for a hearing on whether the requirements of the headquarters site law have been satisfied.

^{4/} The trapping season, according to appellant, is "roughly - November, December, and January" (SOR at 3).

Therefore, 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.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur.

Gail M. Frazier
Administrative Judge