

Villages lose round in court on townsite land

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An attempt by nine village organizations to bar non-Natives from staking out lots on unsubdivided land in the village townsites was rebuffed by a federal district court judge in Anchorage August 15.

The village groups sought an order prohibiting further entry by non-Natives into the townsite land, and also wanted non-Natives who have staked out lots since passage of the Alaska Native Claims Settlement Act to be ejected.

But Federal District Court Judge James Fitzgerald ruled that the village organizations had failed to exhaust avenues of appeal with the federal administration, and he dismissed the case.

James F. Vollintine, representing village councils, city councils, and village corporations for the towns of Aleknagik, Ekwok and Nondalton, said he would take the case to the Ninth Circuit Court of Appeals.

The villages each asked for townsite status some 10 years before the Alaska Native Claims Settlement Act was passed, and patents were eventually issued to

occupants of the townsites who were there at the time subdivision surveys were approved.

The village organizations contended that during the three-year period in which village corporation lands were to be chosen under the settlement act, the Secretary of the Interior and the government-appointed townsite trustee advised the corporations that townsite lands could not be selected.

They say neither the Interior secretary nor the trustee explained to villages that they could withdraw parts or all of their townsite petitions, and that the village corporations could choose townsite lands.

The villages were not told that unsubdivided land within townsites would be open to anyone who wanted to settle on them, the village groups said.

In a court document, Vollintine said villages learned after they had already completed their settlement act selections that the Interior secretary and the homesite trustee were "both recognizing and encouraging" non-Native claims to land within Native-village townsites.

Since last summer, perhaps as many as 80 lots have been staked out within village towns, and three residences being built in Nondalton on unsubdivided land within the townsite.

Since the official position of the Interior secretary is that Congress must pass a law in order to close Native townsites to further entry by the non-Native public, Vollintine contended that further appeals through administrative agencies would be

futile.

But Judge Fitzgerald said in his decision that clearly neither the Interior Department Board of Land Appeals or the Alaska Native Claims Appeal Board had "passed on the precise legal and factual questions presented here for the first time."

The judge indicated the case could be brought again once administrative appeals were completed.

Another court case, the City of Klawock versus Gustafson, has already established the legality of issuing townsite deeds to non-Natives within the townsites.

But the villages arguing the current case say the effect of the claims act withdrawals on Native townsites was not brought to the court's attention in the Klawock case.