



INTERIOR BOARD OF INDIAN APPEALS

Diane McCormack, et al. v. Acting Phoenix Area Director, Bureau of Indian Affairs

31 IBIA 118 (09/03/1997)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

DIANE McCORMACK, et al.,	:	Order Docketing and Dismissing
Appellants	:	Appeal
	:	
v.	:	
	:	Docket No. IBIA 97-156-A
ACTING PHOENIX AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	September 3, 1997

On July 23, 1997, the Board of Indian Appeals received a letter from Diane McCormack, Brian McCormack, and Gordon and Linda Callahan, apparently objecting to a June 25, 1997, decision of the Acting Phoenix Area Director, Bureau of Indian Affairs, which approved preliminarily the trust acquisition of a 1.1 acre tract in Washoe County, Nevada, for the Reno-Sparks Indian Colony. Although the letter was not clearly identified as a notice of appeal, the Board gave Appellants the benefit of the doubt and treated it as one.

Appellants' letter/notice of appeal did not show service on the Area Director or on the Reno-Sparks Indian Colony. Further, although it made a number of general objections to the trust acquisition, it failed to state how Appellants themselves would be affected by the acquisition.

On July 24, 1997, the Board issued an order stating:

On or before August 18, 1997, McCormack et al. shall mail copies of their letter to the Area Director and the Reno-Sparks Indian Colony, at the addresses shown on the attached distribution list, and shall send the Board a certificate of service showing that they have done so.

* * * * *

Prior to requesting the administrative record, the Board will give McCormack et al. an opportunity to show that they have standing here. On or before August 29, 1997, McCormack et al. shall file a statement with the Board showing that they have standing to bring this appeal. They shall send copies of their statement to the Area Director, the Phoenix Field Solicitor, and the Reno-Sparks Indian Colony and shall certify to the Board that they have done so.

Failure to respond to this order by the dates shown will result in dismissal of this appeal for failure to prosecute.

Appellants filed a response stating how they believed they would be affected by the trust acquisition. Because it finds that this appeal must be dismissed for other reasons, the Board reaches no conclusion here as to whether they have stated an interest sufficient to give them standing to bring the appeal.

Appellants did not file a certificate of service showing that they had sent copies of their original letter/notice of appeal to the Area Director and the Reno-Sparks Indian Colony. Nor did they certify to the Board that they had sent the parties copies of their response to the Board's July 24, 1997, order. Service of both documents, and the filing of certificates of service with the Board, was explicitly required by the July 24, 1997, order.

Therefore, in accordance with the July 24, 1997, order, and pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal is docketed but is dismissed for failure to prosecute.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge