



INTERIOR BOARD OF INDIAN APPEALS

City of Eagle Butte, South Dakota v. Aberdeen Area Director,
Bureau of Indian Affairs

33 IBIA 246 (04/12/1999)



United States Department of the Interior

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

CITY OF EAGLE BUTTE, SOUTH DAKOTA, Appellant	:	Order Dismissing Docket No. IBIA 99-19-A and Vacating and Remanding Remaining Decisions
	:	
	:	Docket Nos. IBIA 99-13-A
	:	IBIA 99-15-A
v.	:	IBIA 99-16-A
	:	IBIA 99-17-A
	:	IBIA 99-18-A
ABERDEEN AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	:	IBIA 99-19-A
	:	April 12, 1999

Appellant City of Eagle Butte, South Dakota, seeks review of five decisions issued by the Aberdeen Area Director, Bureau of Indian Affairs (Area Director; BIA), on September 30, 1998. Each of the decisions concerned taking a different tract of land into trust for the Cheyenne River Sioux Tribe. For the reasons discussed below, the Board of Indian Appeals (Board) dismisses Docket No. IBIA 99-19-A and vacates and remands the remaining decisions.

Docket No. IBIA 99-13-A relates to Lots 1, 2, 11, and 12, Block 17, Milwaukee Land Company's First Addition to the City of Eagle Butte, Black Hills Meridian, Dewey County, South Dakota.

Docket No. IBIA 99-15-A relates to Lot 14, Block 7, in the City of Eagle Butte, Black Hills Meridian, Dewey County, South Dakota.

Docket No. IBIA 99-16-A relates to Lots 2, 3, and 4, Block 16, in the City of Eagle Butte, Black Hills Meridian, Dewey County, South Dakota.

Docket No. IBIA 99-17-A relates to Lots 9, 10, and 11, Block 5, in the City of Eagle Butte, Black Hills Meridian, Dewey County, South Dakota.

Docket No. IBIA 99-18-A relates to Tract 2 of Lot S-1 in Outlet C, Wittenburg's Addition to the City of Eagle Butte, located in the S¹/₂ S¹/₂ SW¹/₄, sec. 17, T. 12 N., R. 24 E., Black Hills Meridian, Dewey County, South Dakota.

Docket No. IBIA 99-19-A relates to Lots 9, 10, and 11, Block 5, in the City of Eagle Butte, Black Hills Meridian, Dewey County, South Dakota. Appellant did not respond to the

Board's request to inform it whether this appeal was a duplicate of the appeal docketed as Docket No. IBIA 99-17-A. The Board finds that it is a duplication. Docket No. IBIA 99-19-A is therefore dismissed as a duplicate appeal.

The Tribe requested that BIA take each of the above described tracts into trust. The Superintendent, Cheyenne River Agency, BIA (Superintendent), notified the Governor of the State of South Dakota; Dewey County, South Dakota; and Appellant of the trust acquisition requests by letters dated June 25, 1998. Appellant and Dewey County responded. The Superintendent notified Appellant, among others, of his intent to take the tracts into trust in July and August 1998.

Appellant appealed to the Area Director. On September 30, 1998, the Area Director affirmed the Superintendent's decisions.

Appellant appealed to the Board. Although advised of its right to do so, Appellant did not file a brief in any of these appeals. Therefore its arguments are only those presented in its notices of appeal. Each notice of appeal contains the same primary paragraph. That paragraph is the only argument raised in Docket Nos. IBIA 99-16-A, IBIA 99-17-A, and IBIA 99-18-A. The paragraph states:

The City of Eagle Butte Council wishes to state that it is their intention to appeal this decision as the City of Eagle Butte must continue to supply services (inclusive of street repair and maintenance as well as other services) for the individuals who reside within the boundaries of the City of Eagle Butte. Only those individuals who pay taxes actually pay for said services. The City relies upon revenue generated via property taxes to assist with the general fund. As these properties are placed in trust, the City Council is faced with continuous cutbacks as well as is forced to seek alternative forms of funding inclusive of enterprise funds which are meant to build retained earning so that these earning [sic] may be available for capital improvements and equipment repair and maintenance within said funds. By transferring enterprise funds to general fund to replace lost taxes, the enterprise funds are being depleted. Those individuals residing within the City of Eagle Butte have been the recipient of many new streets in the City as well as other improvements and should have to pay their fair share for these improvements.

The Board interprets Appellant's primary argument to be that BIA did not properly consider these trust acquisition requests under 25 C.F.R. § 151.10(e), which requires that, before it takes land into trust, BIA consider "the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls."

The Area Director does not discuss subsection 151.10(e) in any of her decisions. Instead she relies on the analysis set forth in the Superintendent's decisions. The Superintendent's

decisions contain identical discussions of this issue except for differing tax assessments on each tract. The Superintendent stated:

When title to the land is acquired in trust for the Cheyenne River Sioux Tribe, there would be no jurisdiction to collect real property taxes. The impact would be the removal of the tax assessment in the amount of * * *. We believe the impact by the removal of tax assessment will be minimal as the tax levy will be off-set by the BIA and/or tribe now providing those services that may have been provided by Dewey County. Local school district receives some federal entitlement for lands where title is held by the United States, which will also aid to minimize the impact.

The Superintendent stated that the amount of the tax assessment was \$370.92 in Docket No. IBIA 99-13-A; \$303.34 in Docket No. IBIA 99-15-A; \$278.18 in Docket No. IBIA 99-16-A; \$465.84 in Docket No. IBIA 99-17-A; and \$170.80 in Docket No. IBIA 99-18-A.

The administrative records for these appeals show that Appellant and Dewey County, South Dakota, reported the same amount as the tax assessment against each property. Nothing before the Board shows whether Appellant and Dewey County each have taxing authority. Therefore, it is not clear whether each jurisdiction imposed taxes which totalled the amount of the tax assessment reported; whether each jurisdiction imposed the same amount of taxes, so that the actual tax assessment would be double the amounts shown above; or whether one jurisdiction reported taxes imposed by the other, so that the taxes shown were the total amount imposed by only one of the jurisdictions.

In its comments on the proposed acquisitions, Appellant stated that it provided services to each property, including street maintenance, street lights, and water/sewer. Dewey County reported providing services such as some fire and police protection and road maintenance. After listing the amount of tax assessment, each of the Superintendent's decisions stated that the reduction in tax revenue would be offset by BIA and/or the Tribe providing services which had been provided by Dewey County. None of the Superintendent's decisions mentioned services provided by Appellant. The Area Director's decisions also do not discuss this issue.

The Board concludes that BIA has not shown that it considered the impact on Appellant of removing these tracts from the tax rolls, as is required by 25 C.F.R. § 151.10(e). Therefore, it vacates each of these decisions and remands the cases to BIA for further consideration. In order to show consideration under 25 C.F.R. § 151.10(e) with respect to Appellant, BIA must, at a minimum, discuss whether Appellant has taxing authority; what, if any, taxes were assessed by Appellant in regard to these properties, or what, if any, taxes were received by Appellant in regard to each property; and the impact, if any, on Appellant of the removal of the tracts from the tax rolls.

At page 1 of its notice of appeal for Docket No. IBIA 99-13-A, Appellant states: "The aforesaid property is being utilized by the Cheyenne River Community College and is primarily

used for business purposes.” The Board is unable to determine whether this sentence is merely a statement or whether it was intended as an argument. If it is an argument, the Board is further unable to determine how Appellant believes this use of the property shows error in the Area Director’s decision. Therefore, the Board finds that Appellant has not shown any error in the Area Director’s decision through this statement.

At page 2 of its notice of appeal for Docket No. IBIA 99-15-A, Appellant contends: “The aforesaid property is located on Main Street in an area which is zoned by [Appellant] as commercial/business and may not be utilized for housing/residential. There is a commercial building located on this property which is being rented by the [Tribe] to an individual who operates a second-hand store at this location.”

The Board interprets this contention to be that BIA failed to consider the factors listed in 25 C.F.R. §§ 151.10(c) and/or (f). Subsection (c) requires BIA to consider “[t]he purposes for which the land will be used,” while subsection (f) requires BIA to consider “[j]urisdictional problems and potential conflicts of land use which may arise.”

In regard to the tract under review in Docket No. IBIA 99-15-A, the Superintendent’s decision stated at pages 1-2:

c) The land will be used to build a residential low income housing site to better tribal members living environment on the reservation.

* * * * *

e) We do not anticipate jurisdictional problems as the tract is located within the established exterior boundaries of the Cheyenne River Sioux reservation. For the purpose of civil and criminal jurisdiction, the tract will be identical to any other tract of land held in trust for the tribe and members of the tribe within the boundaries of the reservation.

No other discussion of potential land use conflicts appears in either the Superintendent’s or the Area Director’s decision.

The Board reviewed the administrative record in Docket No. IBIA 99-15-A in order to determine whether there was any further discussion of this issue which was not incorporated into a decision. It found that, in its comments on the proposed acquisition, Appellant informed BIA that the tract was zoned business/commercial. However, it found no other discussion of this issue.

The Board concludes that BIA has not shown that it considered the question of potential land use conflicts (as distinct from jurisdictional problems) arising from the location of low-income housing within an area zoned business/commercial. Therefore, BIA shall also address this issue on remand of Docket No. IBIA 99-15-A.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, Docket No. IBIA 99-19-A is dismissed as duplicative, and the remaining appeals are vacated and remanded for further consideration consistent with this decision.

//original signed

Kathryn A. Lynn
Chief Administrative Judge

//original signed

Anita Vogt
Administrative Judge