



INTERIOR BOARD OF INDIAN APPEALS

Lake Montezuma Property Owners Association, Inc. ;
and Yavapai County, Arizona, and Yavapai County Board of Commissioners
v. Phoenix Area Director, Bureau of Indian Affairs

34 IBIA 235 (02/08/2000)



United States Department of the Interior

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

LAKE MONTEZUMA PROPERTY OWNERS ASSOCIATION, INC., Appellant	:	Order Affirming Decision
	:	
and	:	
	:	
YAVAPAI COUNTY, ARIZONA, and YAVAPAI COUNTY BOARD OF SUPERVISORS, Appellants	:	Docket Nos. IBIA 98-98-A IBIA 98-110-A
	:	
v.	:	
	:	
PHOENIX AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	:	February 8, 2000

Appellants Lake Montezuma Property Owners Association, Inc. (Association; Docket No. IBIA 98-98-A) and Yavapai County, Arizona, and the Yavapai County Board of Supervisors (County; Docket No. IBIA 98-110-A) (collectively, Appellants) seek review of a May 4, 1998, decision of the Phoenix Area Director, Bureau of Indian Affairs (Area Director; BIA), concerning taking certain lands into trust status for the Yavapai-Apache Nation (Nation). For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

The land at issue here is described as Parcel 405-01-307, Lot 282, Subdivision #872, Lake Montezuma Hills, as recorded in Book 12, Page 95, of Maps and Plats in the Office of the Yavapai County Recorder, Arizona, containing .35 acres, more or less (Lot 282). Lot 282 is contiguous to a 3.75-acre, landlocked portion of the Nation's land base known as the Rimrock Reservation. The Nation acquired fee title to Lot 282 through a May 6, 1996, corrected warranty deed from Dwight and Julie Reeves.

It does not appear that anyone presently lives on Lot 282, but a road which crosses the lot provides access to the Rimrock Reservation for the small number of tribal members who reside there. In addition, tribal members Everett Randall, Jr., and his wife own and operate a smoke shop on land on the Rimrock Reservation which they lease from the Nation.

The Nation first applied to have Lot 282 taken into trust in early 1996. At that time, BIA determined that the application was not adequately supported. The Nation subsequently filed a second application, dated March 25, 1997. The 1997 application is the one under consideration in this appeal.

In an April 13, 1998, memorandum (Memorandum), the Area Director concluded that trust acquisition of Lot 282 was necessary “to ensure permanent, undisturbed access to the Rimrock Reservation through the historic access road running across the Rimrock Lot property.” Memorandum at 3. He notified interested parties of this decision in letters dated May 4, 1998. Because it was not clear from either the record or the filings in this case whether Appellants had each received a copy of the Memorandum, the Board requested this information from the Area Director in accordance with its decision in Town of Ignacio, Colorado v. Albuquerque Area Director, 34 IBIA 37 (1999). The Area Director responded that he had sent a copy of the Memorandum to the County, but not to the Association. He provided a copy of the Memorandum to the Association. The Association subsequently informed the Board that it did not wish to make any changes to its filings in response to the Memorandum.

The Board first repeats its standard of review. Decisions as to whether or not to take land into trust are committed to BIA’s discretion. In reviewing BIA discretionary decisions, the Board does not substitute its judgment for BIA’s. Instead, it reviews the decisions “to determine whether BIA gave proper consideration to all legal prerequisites to the exercise of its discretionary authority, including any limitations on its discretion established in regulations.” City of Eagle Butte, South Dakota v. Aberdeen Area Director, 17 IBIA 192, 196, 96 I.D. 328, 330 (1989). See also McAlpine v. United States, 112 F.3d 1429 (10th Cir. 1997); City of Lincoln City, Oregon v. Portland Area Director, 33 IBIA 102, 103-04 (1999), and cases cited therein.

Appellants devote much of their discussion on appeal to litigation brought by the County against the Reeves and Randalls over the use of Lot 282. The subject of that litigation was the location of the Randalls’ smoke shop (*i.e.*, whether the shop was actually located on a portion of Lot 282 rather than completely on the Rimrock Reservation) and the use of the lot for purposes ancillary to the operation of the smoke shop, such as deliveries and parking for customers. Although the history of this litigation between the County and private parties is informative as to the relationships between them, it is not determinative of whether or not the lot should be taken into trust for the Nation. Neither is it proof of how the Nation will use and control the lot if it is in trust status.

Appellants first object to the Area Director’s determination as to the need for this trust acquisition under 25 C.F.R. § 151.10(b). They contend that the Area Director erred in concluding that the lot should be held in trust because the Nation already owns the lot in fee and the use of the lot for access to the Rimrock Reservation has not been challenged.

While it appears to be true that the use of the road across Lot 282 for residential access to the Rimrock Reservation was not at issue in the prior litigation, Appellants do not go so far here as to commit themselves not to challenge such use in the future or not to challenge the use of the road for purposes of access to any commercial establishments that may now or in the future be located on the Rimrock Reservation. Considering the history of litigation concerning the use of Lot 282, the Board cannot find that it was unreasonable for the Area Director to conclude either that taking Lot 282 into trust status would ensure permanent access to the Rimrock Reservation for both residential and commercial uses, or that continuing with the status quo might not ensure such access. Nothing in Appellants' filings on appeal persuades the Board otherwise.

Appellants also argue that the Area Director's decision does not discuss the fact that the access road to the Rimrock Reservation crosses Lot 281 as well as Lot 282. They contend that holding Lot 282 in trust does not ensure that the entire length of the road will be preserved for access to the Rimrock Reservation because "true undisturbed and permanent access is in fact dependent on acquisition, and ownership, of another adjacent, residential lot." County's Opening Brief at 8.

This argument overlooks the fact that Lot 282 abuts both a road through the subdivision and the Rimrock Reservation. As the Area Director notes in his answer brief, if Lot 282 is held in trust, the Nation can, if necessary, relocate the access road to cross only Lot 282, thereby ensuring continued access to the Rimrock Reservation even if there are future problems about the use of the present access road.

The Association contends that there is access to the Rimrock Reservation via Indian Drive, "a paved road provided by the original developers of this area." Association's Opening Brief at 1. However, the County has conceded that Indian Drive was never developed. See County's Sept. 9, 1996, Letter to Counsel for the Nation. At page 3 of his Memorandum, the Area Director specifically considered whether there was access to the Rimrock Reservation via Indian Drive, and concluded that there was not. The Association has not shown otherwise.

The Board finds that the Area Director did not act unreasonably in concluding that trust acquisition of Lot 282 was necessary to ensure permanent access to the Rimrock Reservation.

In an argument addressed to the factors listed in both 25 C.F.R. §§ 151.10(b) and (c), Appellants contend that the record "strongly suggests that the real purpose of the acquisition is not access, but is for protected trust status that will eliminate county zoning scrutiny, private deed restrictions, and recognition and enforcement of county, state and private interests in regulating development on Lot 282 consistent with the residential zoning applicable to the area." County's Opening Brief at 9.

There is no question that, if Lot 282 is acquired in trust status, state and county law will no longer apply to it. However, the record shows that the Nation made several offers to enter into an intergovernmental agreement with the County restricting the use of Lot 282, but that the County was unwilling to enter into such an agreement, apparently based on a belief that it might not be enforceable once the lot was held in trust. Thus, the evidence before both the Area Director and the Board is that the Nation intends to use Lot 282 to ensure access to the Rimrock Reservation and to the business(es) located there. Appellants' speculations do not carry its burden of proof that another use of the lot is actually intended. Cf. Town of Ignacio, supra (no evidence presented indicating that tribe intended any other use of the property than that which was stated), with Village of Ruidoso, New Mexico v. Albuquerque Area Director, 32 IBIA 130 (1998) (evidence in the record indicated that the tribe might actually intend a use of the property other than the one articulated).

Appellants argue that the Area Director did not fully consider potential jurisdictional problems and land use conflicts as required by 25 C.F.R. § 151.10(f). They apparently contend that the history of past problems with the use of Lot 282 by private parties shows that the Nation will, after trust acquisition, use the lot in violation of county zoning ordinances. Again, such speculation, especially in light of the Nation's expressed willingness to enter into a restrictive use intergovernmental agreement, does not carry Appellants' burden of proof.

The County argues that the Association has shown that the use of Lot 282 in violation of county zoning ordinances "ha[s] impaired and will adversely affect private property rights by releasing the restrictive covenants adhering to all lots in the Lake Montezuma subdivision." County's Opening Brief at 10. Neither the County nor the Association provide any legal support for this assertion in their filings on appeal. Neither did the Board find any support for it in the administrative record. In the absence of any legal support for this argument, the Board declines to consider it further.

The Association objects to the trust acquisition under 25 C.F.R. § 151.10(e). The Association contends that "[i]t is important to our membership that the admittedly small income produced by taxes on this parcel of land be blended with our taxes to support our Ambulance, Fire and Sheriffs patrol services that are supplied by Yavapai County and many volunteers from within our area." Association's Opening Brief at 1.

The Area Director discussed the impacts of the loss of tax revenue at pages 3-4 of his Memorandum, concluding that the impact would be minimal. As the Association admits, the services it mentions are provided by the County. In its opening brief, the County conceded that the loss of tax revenue would be nominal, and specifically did not object to trust acquisition based on its loss of tax revenue. The Board concludes that the Association has not shown that the Area Director failed to consider the loss of tax revenue as required by 25 C.F.R. § 151.10(e).

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Phoenix Area Director's May 4, 1998, decision is affirmed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge