



INTERIOR BOARD OF INDIAN APPEALS

Ziebach County, South Dakota v. Acting Great Plains Regional Director,
Bureau of Indian Affairs

38 IBIA 227 (12/02/2002)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

ZIEBACH COUNTY, SOUTH DAKOTA, Appellant	:	Order Vacating Decision and Remanding Case
	:	
v.	:	
	:	Docket No. IBIA 02-114-A
ACTING GREAT PLAINS REGIONAL DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	:	
	:	December 2, 2002

Appellant Ziebach County, South Dakota, seeks review of an April 16, 2002, decision of the Acting Great Plains Regional Director, Bureau of Indian Affairs (Regional Director; BIA), to take a tract of land within the Cheyenne River Sioux Reservation into trust for Jamie Bird Necklace, a member of the Cheyenne River Sioux Tribe. The tract at issue is described as Lot 4, Block 37, original townsite of Dupree, Ziebach County, South Dakota. For the reasons discussed below, the Board vacates the Regional Director's decision and remands this matter to her for further consideration.

Bird Necklace applied for trust acquisition of the tract on May 29, 2001. Her application stated that she would use the tract as a homesite and that she intended to build a new house on it, to replace the existing house. The application also stated that Appellant owned no land in trust. By letter dated July 31, 2001, the Superintendent, Cheyenne River Agency, BIA (Superintendent), notified State and local officials of the trust acquisition application and sought their comments, as well as certain information concerning taxes and governmental services. Appellant's Auditor responded by letter dated August 9, 2001. She stated that the property was subject to 2000 property taxes in the amount of \$162.46; that it was not subject to any special assessments or zoning; and that Appellant provided law enforcement, water, sewer, garbage, and road maintenance services to the property. She further stated that Appellant opposed trust acquisition because it would deplete the tax base.

By letter of October 10, 2001, the Superintendent notified Appellant and other interested parties that he intended to acquire the land in trust. His letter included a discussion of the criteria in 25 C.F.R. § 151.10 (a) through (g).

Appellant appealed to the Regional Director, contending that the Superintendent had abused his discretion in several respects in his analysis under 25 C.F.R. § 151.10.

On April 16, 2002, the Regional Director affirmed the Superintendent's decision. She addressed the arguments made by Appellant. Further, although the Superintendent had not addressed 25 C.F.R. § 151.10(h) in his decision, the Regional Director addressed that subsection in her decision.

On appeal to the Board, Appellant makes arguments similar to those it made before the Regional Director, now contending that both the Superintendent and the Regional Director abused their discretion. Before the Board, Appellant bases its arguments on the withdrawn version of 25 C.F.R. Part 151 which was erroneously published in the 2001 edition of 25 C.F.R. 1/

Appellant's reliance on the withdrawn version of Part 151 is understandable, given its publication in the Code of Federal Regulations. However, that version never went into effect. Appellant's arguments will be considered to the extent they also relate to the criteria in the effective version of Part 151.

Appellant contends that BIA gave inadequate consideration to the criteria for trust acquisition in Part 151. Appellant's arguments, however, show that it has a mistaken view of the nature of these criteria in that it apparently believes that the regulations require BIA to reach particular conclusions before it can approve a trust acquisition request. For example, Appellant contends that "25 CFR Section 151.9[(d)](3) requires that the applicant for trust status must be determined to need assistance in handling real estate affairs." Appellant's Brief at unnumbered 3. 2/

Although Appellant cites only to the withdrawn regulations, the Board considers its argument in relation to present subsection 151.10(d), which requires BIA to consider "the

1/ A revision of Part 151 was published as a final rule on Jan. 16, 2001. The preamble to the final rule stated that it would become effective on Feb. 15, 2001. 66 Fed. Reg. 3452 (Jan. 16, 2001). The effective date was extended on several occasions. On Nov. 9, 2001, the rule was withdrawn without having become effective. 66 Fed. Reg. 56608 (Nov. 9, 2001). In the meantime, however, the rule had been published in the 2001 edition of 25 C.F.R. The 2002 edition of 25 C.F.R. corrects the error of the 2001 edition and includes the version of Part 151 which was in effect during all times relevant here.

2/ Appellant cites to subsection 151.9(d)(3) of the withdrawn regulations, which would have required an individual applicant to provide an explanation of "[w]hether the applicant needs assistance in handling real estate affairs." 66 Fed. Reg. at 3461.

degree to which [an individual applicant] needs assistance in handling his affairs.” This provision does not require that BIA make a finding that an individual needs such assistance before it can approve a trust acquisition. Rather, it simply requires that BIA take the criterion into consideration. In this case, the Superintendent’s decision shows that he considered that criterion and concluded that Bird Necklace did not need assistance in handling her affairs.

As the Board has previously stated, the regulations in 25 C.F.R. Part 151 do not require that BIA reach any particular conclusion with respect to any of the criteria in section 151.10; do not specify the weight to be given to any of the criteria; and do not require any particular balancing of interests. E.g., Village of Ruidoso, New Mexico v. Albuquerque Area Director, 31 IBIA 143, 152-53 (1997), and cases cited therein. Rather, the regulations simply require that BIA consider all the criteria listed.

The Board rejects Appellant’s contention that BIA was required to determine that Bird Necklace needs assistance in handling her affairs before it could approve her trust acquisition application.

Appellant contends that BIA had inadequate evidence to support a conclusion that Bird Necklace intends to use the property for a homesite. Bird Necklace stated her intent in her application and already lived on the property. Nothing in the record suggests that BIA had any reason to question her statement. Nor has Appellant identified any such reason. In the absence of any evidence casting doubt on Bird Necklace’s statement, BIA was not required to look behind her statement. See Lake Montezuma Property Owners Ass’n, Inc. v. Phoenix Area Director, 34 IBIA 235, 238 (2000). See also Rio Arriba County, New Mexico, Board of County Commissioners v. Acting Southwest Regional Director, 38 IBIA 18, 23-24 (2002).

The Board rejects Appellant’s contention that BIA was required to require additional evidence of Bird Necklace’s intent to use the property for a homesite.

Appellant objects to a statement made by the Superintendent that there would be no jurisdiction to collect real property taxes if the land is taken in trust. Appellant cites County of Yakima v. Confederated Bands and Tribes of the Yakima Indian Nation, 502 U.S. 251 (1992), to support its objection. In County of Yakima, the Supreme Court held that a county may impose an ad valorem tax on Indian-owned fee lands within an Indian reservation. It did not hold that a county may impose such a tax on trust lands.

Appellant’s argument on this point is difficult to understand. Appellant clearly recognizes that it will no longer be able to collect real property taxes from Bird Necklace’s property if this trust acquisition is completed. In fact, Appellant objects to the acquisition for that reason.

The Superintendent’s statement was correct. The Board rejects Appellant’s objection.

Appellant contends that BIA failed to consider the impact of the loss of real property taxes on Appellant, the City of Dupree, and the Dupree School District.

Both the Superintendent and the Regional Director discussed this issue. Accordingly, the Board rejects the broad contention made by Appellant. The Board also rejects Appellant's apparent argument that BIA was required to consider the cumulative impact on Appellant of all existing trust land within Ziebach County. The Board has previously rejected a similar contention, noting that an analysis of cumulative impact is not required by the language of 25 C.F.R. § 151.10(e). County of Mille Lacs, Minnesota v. Midwest Regional Director, 37 IBIA 169, 172 (2002).

Appellant also contends, however, that the Regional Director "abused her discretion when she made the wholly inaccurate statement that '[t]he county receives other impact aid to offset taxes for all federally owned lands, including Indian trust and tribally owned lands, within the county.'" Appellant's Brief at unnumbered 5. Appellant submits an August 21, 2002, affidavit from its Auditor, which states: "My official records show that in 2002 [Appellant] received only \$3,395.00 from the Federal government for PILT [(payments in lieu of taxes)] or other impact aid for federally owned lands, but received no money for individual tribal member or tribally owned trust lands."

On the subject of Federal payments, the Regional Director's decision states:

The United States provides Federal Impact Aid (Public Law 874), Title IV, Johnson O'Malley and Title II Monies to the school district for the purpose of educating Indian students. The county receives other impact aid to offset taxes for all federally owned lands, including Indian trust and tribally owned lands, within the county.

Regional Director's Decision at 2. The Superintendent's decision mentioned only education-related Federal payments. Therefore, it was not until the Regional Director issued her decision that BIA made the statement that Appellant receives other Federal payments for Indian trust lands. As noted, Appellant disputes this statement and produces evidence in the form of the Auditor's affidavit. The Regional Director did not file a brief in this appeal and so has not responded to Appellant's contention.

Under these circumstances the Board finds that this matter must be remanded to the Regional Director so that she may further review the Federal payments made to Appellant for Indian trust lands. If she finds that the statement she made in her April 16, 2002, decision

was incorrect, she shall determine whether she would reach the same conclusion concerning this trust acquisition, using the correct information. 3/

Appellant disagrees with BIA's analysis under 25 C.F.R. § 151.10(f), which requires that BIA consider "[j]urisdictional problems and potential conflicts of land use which may arise." The Superintendent stated that BIA does not anticipate jurisdictional problems because the land is within the Cheyenne River Reservation and will share the jurisdictional status of all other trust land within the reservation. The Regional Director concurred. Appellant asserts that there will be adverse effects on environmental regulation, water and natural resources regulation, hunting and fishing regulation, zoning, and criminal jurisdiction.

There is already a substantial amount of trust land within the reservation, for which a jurisdictional pattern has been established. Appellant's bare assertions concerning jurisdictional problems are insufficient to show that trust acquisition of this land would alter that pattern or worsen any existing problems with the pattern.

Appellant contends that BIA abused its discretion by failing to address the criterion in 25 C.F.R. § 151.10(h), concerning the extent to which the applicant has furnished information that would allow BIA to comply with certain environmental requirements. The Superintendent did not address this criterion. However, the Regional Director did so. She stated that the legal description of the property furnished by Bird Necklace was sufficient to permit BIA to comply with those requirements. Appellant argues that this statement is inadequate.

While it may well be that the legal description was the only information BIA needed from Bird Necklace, there is no evidence in the record that BIA followed through and took the steps necessary to comply with the environmental requirements in subsection 151.10(h). Therefore if, upon reconsideration of her decision, as required above, the Regional Director again decides to approve this trust acquisition, she shall ensure that BIA completes these steps and shall include evidence that it has done so in the record for her decision.

Finally, Appellant contends that the Regional Director "abused her discretion by failing to document that a title search or title insurance has been successfully completed or obtained prior to her decision to affirm the Superintendent." Appellant's Brief at unnumbered 7.

3/ In Rio Arriba County, supra, the Board rejected the County's contention that BIA could not consider various Federal payments because those payments would continue to be made regardless of whether the land at issue was taken into trust. The Board found that BIA reasonably considered the Federal payments as part of the County's total revenues, when BIA examined those revenues in relation to the tax loss resulting from the trust acquisition, in order to assess the overall revenue impact of the acquisition. 38 IBIA at 25-26.

Appellant evidently bases this argument on the withdrawn version of Part 151 which would have required an applicant to submit title evidence at the time a trust acquisition application is submitted. See subsection 151.9(e) of the withdrawn version, 66 Fed. Reg. at 3461. In the effective version of Part 151, title information is not required until after BIA makes a favorable decision on the trust acquisition request. See 25 C.F.R. § 151.13. Accordingly, BIA did not abuse its discretion in this regard.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Regional Director's April 16, 2002, decision is vacated, and this matter is remanded to her for review of the Federal payments matter; reconsideration under 25 C.F.R. § 151.10(e); and completion of the requirements in 25 C.F.R. § 151.10(h) if, upon reconsideration, the Regional Director again decides to approve Bird Necklace's trust acquisition application. The Regional Director is not required to reconsider this acquisition with respect to any of the criteria in 25 C.F.R. § 151.10 other than subsections (e) and (h).

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge