



INTERIOR BOARD OF INDIAN APPEALS

U&I Redevelopment LLC and Lantana Real Estate v.
Acting Northwest Regional Director, Bureau of Indian Affairs

44 IBIA 240 (04/16/2007)

Related Board cases:

49 IBIA 256

51 IBIA 284



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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U&I REDEVELOPMENT LLC and	:	Order Dismissing Appeal and
LANTANA REAL ESTATE,	:	Remanding Matter to the
Appellants,	:	Regional Director
	:	
v.	:	
	:	Docket No. IBIA 07-53-A
ACTING NORTHWEST REGIONAL	:	
DIRECTOR, BUREAU OF	:	
INDIAN AFFAIRS,	:	
Appellee.	:	April 16, 2007

U&I Redevelopment LLC and Lantana Real Estate (Appellants), 1/ through representative Marlene Dawson, seek review of a letter dated October 27, 2006, in which the Acting Northwest Regional Director, Bureau of Indian Affairs (Regional Director; BIA), responded to an August 10, 2006 letter from Dawson regarding a “water lien” on Appellants’ property. The property apparently is non-trust land located within the Wapato Irrigation Project (WIP) on the Yakama Indian Reservation in the State of Washington. We dismiss this appeal because we conclude that it is not ripe for review by the Board of Indian Appeals (Board). However, we also remand the matter to the Regional Director for further consideration and action, because while we understand that the Regional Director did not construe Dawson’s letter as a request for a decision and therefore responded without intending to issue a decision, Dawson’s request may fairly be construed as a request for relief from BIA.

Background

Dawson’s letter to the Regional Director began by stating, “I believe you may have the authority to lift an unjustified \$12,000 * * * water lien that was placed on [Appellants’] property as it was being sold.” Aug. 10, 2006 Letter from Dawson to Regional Director at 1. The letter stated that a title company was holding the money in escrow until the

1/ Appellants’ notice of appeal identifies U&I Redevelopment LLC as including Rich and Marlene Dawson and Darrel and Pia Bornstein, and Lantana Real Estate as composed of Errol and Laurie Hanson.

“problem” is resolved. Id. Dawson then provided what she described as “background information.” Id. Dawson stated that Appellants had owned the property for over 10 years and had “never received a billing of any kind related to water” until receiving a bill for \$200 earlier in the year, which Appellants paid. Id. Dawson also stated that the property had never been served by WIP and is not capable of being served by WIP. In addition, Dawson expressed the view that “[the Department of the] Interior [(Department)] and tribal actions to extract funds are occurring because State and local governments have failed to address ‘jurisdiction’ of water resources and the unwillingness of the State to get embroiled in this issue has emboldened those associated [with] Interior and tribes.” Id. The letter includes additional complaints about the Department and tribes and states that “[Appellants] take the position that even though we may maintain some kind of federal reserved right to the ‘surface’ water, that we are not a stakeholder until we put the river waters to productive irrigation uses, which in our case is never going to happen with this piece of property.” Id. at 2. Dawson’s letter concluded: “Please advise us as to where we need to go from here. Thank you in advance for your quick attention to this matter.” Id.

The Regional Director responded by stating that the property has been part of WIP since 1919, and that BIA’s records indicated that U&I Redevelopment LLC became the owner of the property in 2003. The Regional Director stated that it was the responsibility of landowners to notify BIA of changes in ownership, and that if BIA’s ownership records were in error, Dawson should contact WIP so that accurate bills can be issued. The Regional Director then noted that WIP had issued operation and maintenance (O&M) bills totaling \$11,566.24 for prior years for the property, and that the bills must be paid to finalize changes in ownership. 2/ He also noted that the “\$200 bill” referred to in Dawson’s letter was most likely a bill for \$211.04, for which Appellants’ payment had been credited to the bill for Appellants’ property. 3/ The Regional Director recommended that Dawson contact the WIP billing staff to get a current accounting of the amount owed. He then addressed what he understood to be confusion reflected in Dawson’s letter about the O&M assessments. As explained by the Regional Director, the O&M obligation arises because the land is located within the WIP boundaries, and is not based on the use of irrigation water.

2/ O&M charges are assessed pursuant to 25 U.S.C. § 385 and 25 C.F.R. Part 171. See Edwards v. Portland Area Director, 34 IBIA 215, 216 (2000).

3/ The bill for \$211.04 apparently was for property not owned by Appellants, and was sent to them by mistake. BIA then apparently credited Appellants’ payment toward the amounts shown as due for the property that is owned by Appellants.

Appellants then filed this appeal with the Board. 4/

On receipt of the appeal, the Board requested additional information and briefing from the parties to address whether the Regional Director's letter was an appealable decision, and whether the issues that Appellants seek to raise are ripe for Board review. Specifically, the Board noted that the Regional Director's letter did not appear to be deciding an appeal by Appellants from a WIP-issued bill or an appeal from a WIP decision placing a lien on their property.

In response to the Board's order, Appellants recount conversations and contacts that Dawson has had with the Regional Director and with the Officer-in-Charge (OIC) of WIP. Appellants contend that both of these BIA officials told them that it was necessary for Appellants to put in writing any request for a change of action, or corrective action regarding a lien, or an appeal. Enclosed with Appellants' response is a copy of a Commitment for Title Insurance issued by a title company, which excludes from coverage liability for unpaid assessments for WIP, as well as the title company's estimated settlement statement, which identifies \$12,500 as a "Seller Charge" being held in escrow by the title company for WIP. Appellant also enclosed two pages from an O&M bill issued on March 9, 2005 to "Holly Associates LLC" and "Lantana Real Estate LLC" for \$211.04, with Dawson's handwritten notation that no procedures were included for an appeal.

The Regional Director responded to the Board's order by contending that his October 27, 2006 letter is not an appealable decision, but was intended only to provide information and an explanation to Dawson in response to her August 10, 2006 letter. The Regional Director contends that the only adverse action that has been taken against Appellants is the imposition of an escrow fund by the title company for unpaid O&M assessments. Information provided by the Regional Director indicates that BIA's ownership information shows that the property was acquired in 2002 by Lantana Real Estate and Holly Associates, and that in 2003 Holly Associates conveyed its 50% interest by quitclaim deed to U&I Redevelopment. 5/ BIA's records apparently reflect that O&M assessments due for the period 2002 - 2006 for the property total \$11,566.24 (\$11,441.09 in principal, plus interest and fees). Attached to a declaration of an accounting technician for WIP are

4/ Appellants addressed their appeal to the (former) Interior Board of Contract Appeals, which transmitted it to this Board.

5/ A copy of a quit claim deed from Holly Associates, LLC conveying the property to U&I Redevelopment LLC shows Darrell K. Bornstein, Jr. and Richard E. Dawson as members/managers of Holly Associates, LLC.

O&M bills issued to Lantana Real Estate and Holly Associates on May 16, 2006 for the years 2002 - 2006. 6/

Discussion

With the explanations and additional information provided by the parties, we conclude that Dawson's August 10, 2006 letter to the Regional Director can fairly be characterized as a request for the Regional Director to take action, but we also conclude that this matter is not ripe for Board review.

Dawson apparently intended to request action by the Regional Director to "lift" the "lien" on the property that is reflected in title encumbrances and in the \$12,500 settlement escrow requirements, by removing the unpaid WIP O&M charges, which Dawson contends were improperly assessed against Appellants' property. 7/ Considering the nature of the complaints expressed in Dawson's letter and considering the absence of any specific demand for action — e.g., "Please advise us as to where we need to go from here" — we do not fault the Regional Director for construing the letter as a general complaint about O&M charges and for responding accordingly. The Regional Director provided Dawson with certain information from BIA's records relating to Appellants' property, solicited corrections, gave

6/ It appears that an inquiry from the title company led BIA to review and update its ownership records for Appellants' property, which then led BIA to issue bills in 2006 to the newly-recorded owners for unpaid O&M assessments. Declarations from BIA officials that were submitted by the Regional Director in this appeal indicate that several errors occurred in BIA's record-keeping regarding this property. Although the declarants provide explanations concerning errors that were made and reportedly corrected, the fact that BIA reissued bills for this property in 2006, and the fact that Appellants' present appeal to the Board does not arise from an appeal from one or more of those bills, reinforce our conclusion that this matter is not ripe for Board review.

7/ Although not entirely clear from the record before the Board, it appears that the only action BIA has taken with respect to O&M assessments for Appellants' property is the issuance of bills for the O&M charges. Appellants' use of the word "lien" appears intended to refer to both the outstanding O&M charges and the resulting actions by the title company in the context of Appellants' transaction to transfer the property. In addition, although it appears that Appellants contend that their property is not subject to O&M charges as a matter of law, it is unclear whether Appellants disagree with BIA's calculation of the amount of O&M charges, if otherwise valid.

