



INTERIOR BOARD OF INDIAN APPEALS

City of Eagle Butte, South Dakota v. Acting Great Plains Regional Director,
Bureau of Indian Affairs

49 IBIA 75 (04/10/2009)

Related Board case:
38 IBIA 139



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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CITY OF EAGLE BUTTE, SOUTH)	Order Affirming Decision
DAKOTA,)	
Appellant)	
)	
v.)	Docket No. IBIA 07-94-A
)	
ACTING GREAT PLAINS REGIONAL)	
DIRECTOR, BUREAU OF INDIAN)	
AFFAIRS,)	
Appellee)	April 10, 2009

The City of Eagle Butte, South Dakota (City), has appealed the February 21, 2007, decision of the Acting Great Plains Regional Director (Regional Director), Bureau of Indian Affairs (BIA), approving the acquisition of land into trust for the benefit of Margaret Eagle Staff (Eagle Staff), a member of the Cheyenne River Sioux Tribe (CRST or Tribe). The land approved for trust acquisition is described as Lots 5 and 6, Block 8, City of Eagle Butte, South Dakota, comprising 0.32 acres in sec. 17, T. 12 N., R. 24 E., Black Hills Meridian, Dewey County, South Dakota, within the external boundaries of the Cheyenne River Sioux Reservation. The Regional Director issued his decision in response to the Board's October 18, 2002, order vacating and remanding the January 23, 2002, decision addressing Eagle Staff's fee-to-trust application because the Regional Director had included only a cursory analysis under 25 C.F.R. § 151.10 and had failed to address either the second part of subsection 151.10(d) or subsection 151.10(h). *City of Eagle Butte v. Great Plains Regional Director*, 38 IBIA 139 (2002).

The City primarily objects to the trust acquisition on the grounds that the tax revenue losses generated by the removal of this parcel and all other trust parcels from the City's tax base, coupled with the City's continuing obligation to provide services to trust land without payment for those services, have severe financial consequences for the City. Because the City has not shown that the Regional Director failed to properly exercise his discretion, that the decision is in error, or that the decision is not supported by substantial evidence, we affirm the Regional Director's decision.

Statutory and Regulatory Background

Section 5 of the Indian Reorganization Act (IRA), 25 U.S.C. § 465, authorizes the Secretary of the Interior (Secretary) to acquire land for Indians in his discretion. The regulations governing acquisitions of trust land permit the acquisition of land in trust for individual Indians “[w]hen the land is located within the exterior boundaries of an Indian reservation, or adjacent thereto.” 25 C.F.R. § 151.3(b)(1). In evaluating requests to acquire land located within or contiguous to an Indian reservation, BIA must consider the criteria set forth in 25 C.F.R. § 151.10(a)-(h). These criteria are:

- (a) The existence of statutory authority for the acquisition and any limitations contained in such authority;
- (b) The need of the individual Indian or the tribe for additional land;
- (c) The purposes for which the land will be used;
- (d) If the land is to be acquired for an individual Indian, the amount of trust or restricted land already owned by or for that individual and the degree to which he needs assistance in handling his affairs;
- (e) If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls;
- (f) Jurisdictional problems and potential conflicts of land use which may arise; and
- (g) If the land to be acquired is in fee status, whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status.
- (h) The extent to which the applicant has provided information that allows the Secretary to comply with 516 DM 6, appendix 4, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations.

Factual and Procedural Background

On January 29, 2001, Eagle Staff, a widow who was then 75 years old and had an annual income of \$15,000, submitted her request to accept the land in trust status on her behalf. In her application, she stated that she needed the land in trust to improve her lots and to better her living environment. She also indicated that, as a tribal member, she supported the sovereignty of the tribal government and its commitment to self-determination, which could not be done without the title to the land being held in trust by the United States. She further averred that trust status was necessary for the Tribe to exercise self-governance and jurisdiction over its own lands and the lands of its members.

Upon receipt of the application, the Cheyenne River Agency Superintendent (Superintendent), BIA, notified various State and local officials, including the City, of the application and sought their comments, as required by 25 C.F.R. § 151.10. The City responded, stating that the amount of annual property taxes currently levied on the property was \$157.72; that the City provided street lighting, street snow removal, and street cleaning services to the property; and that the property was zoned for residential use.

In a July 31, 2001, letter to the City, the Superintendent stated his intent to acquire the land in trust for Eagle Staff. He briefly addressed each of the factors listed in 25 C.F.R. § 151.10, finding that the acquisition was authorized by the IRA (subsection 151.10(a)); that the need for the land was to benefit Eagle Staff, who would use the land to improve her lots for future expansion (subsections 151.10(b) and (c)); that she did not own any other trust lands (subsection 151.10(d)); that the loss of \$157.72 in taxes would be minimal because the Tribe and/or BIA would assume those services currently being provided by Dewey County and because local school districts receive some Federal aid for lands held by the United States (subsection 151.10(e)); that no jurisdictional problems would occur because the land is located within the established boundaries of the Cheyenne River Sioux Reservation, and criminal and civil jurisdiction for the tract would be identical to other tracts of land held in trust for the Tribe and its members within the boundaries of the Reservation (subsection 151.10(f)); and that BIA was equipped to assume the additional responsibilities and duties resulting from the trust acquisition (subsection 151.10(g)). The Superintendent did not address either the second component of subsection 151.10(d), concerning the applicant's need for assistance in handling her affairs, or subsection 151.10(h), pertaining to hazardous substances and National Environmental Policy Act (NEPA) compliance.

The City appealed the Superintendent's decision to the Regional Director. The City asserted that the continuous placement of lands into trust and the concomitant loss of

property taxes created a severe hardship for the City, which was still expected to provide necessary services for the trust property, e.g., snow removal, street sweeping, street lights, street repair and maintenance, without contribution for those services. While not disputing that the loss of tax revenue for one or two lots might be minimal, the City nevertheless contended that the cumulative tax loss created by the constant placement of land in trust created an overwhelming burden on the City.

In her January 23, 2002, decision, the Regional Director briefly noted that the IRA authorized the acquisition, that Eagle Staff's intention to improve the lots to better her living conditions was consistent and compatible with the Federal policy of providing acquisitions for Indian housing, and that the loss of property taxes would be minimal. She therefore concluded that the requirements of 25 C.F.R. § 151.10 had been met and upheld the Superintendent's decision.

The City appealed the Regional Director's decision to the Board, conceding that neither the authority for the trust acquisition nor the reasons for the placement of the lands into trust was in question. Rather, the City reiterated that it would still be expected to provide services to the properties in trust even though no taxes would be paid for the property, suggested that the United States itself should consider paying the City for those services, and asked that it be informed if there were any funds available to cities in lieu of taxes. The City also stated that Eagle Staff already had excellent living conditions; that if she wanted to change her living conditions from the current double-wide trailer, she could have new Housing and Urban Development (HUD) housing (through the CRST Housing Authority) placed on her property without the land first being taken into trust; and that a BIA refusal to place the land into trust would not deter development of the lots, nor would BIA acceptance of the lands in trust allow development that would otherwise be precluded. The City further submitted that the requirements of 25 C.F.R. § 151.10 should not be the only conditions and/or requirements considered in a fee-to-trust acquisition decision.

As noted earlier, on October 18, 2002, the Board vacated and remanded the Regional Director's decision because that decision contained only a cursory analysis of the factors in 25 C.F.R. § 151.10 and failed to address the second part of subsection 151.10(d) or subsection 151.10(h). *City of Eagle Butte*, 38 IBIA 139. We further noted that the Regional Director had not responded to any of the objections raised by the City. Accordingly, the Board directed the Regional Director to further consider the matter.

On remand, the Regional Director requested and received additional information from the Superintendent relating to the issues raised in the remand order. The additional information included (1) a January 2006 Phase 1 Environmental Site Assessment; (2) a checklist for BIA categorical exclusions under the National Environmental Policy Act; (3) a

commitment for title insurance; (4) a draft warranty deed; and (5) a preliminary title opinion issued by the Field Solicitor's Office. Eagle Staff also submitted a letter, dated September 12, 2006, stating that she still wanted her land brought into trust, and that her greatest concern was that, because she lives on a fixed income, if her land is not put into trust soon, she might lose her land to back taxes as she becomes more elderly and dependent upon BIA for assistance.

The Regional Director issued his decision on February 21, 2007, indicating his intent to acquire the land in trust for Eagle Staff. Mindful of the shortcomings identified in the Board's remand order, the Regional Director addressed each of the criteria listed in 25 C.F.R. § 151.10. He found that the IRA authorized the acquisition of this land in trust (subsection 151.10(a)); that the need for the land was for a homesite for Eagle Staff, noting that Eagle Staff was then 80 years old, living on a fixed income, and could easily lose her land to taxation, either by not being able to afford the taxes or by having common health problems which could cause her to forget to pay her taxes, and adding that, as she advances in age, her need for assistance in managing her affairs would only grow (subsection 151.10(b)); that the land would be used for a homesite (subsection 151.10(c)); and that Eagle Staff did not own any other trust land and that, due to her elderly status and low income, she needed assistance in handling her affairs, a need that would increase as she advances in age (subsection 151.10(d)).

Addressing subsection 151.10(e), the impact of removal of the property from the tax rolls, the Regional Director acknowledged that \$157.72 would be lost annually when the land is brought into trust, but considered the impact of the removal of that amount to be minimal. He also indicated that the tax levy would be mitigated by BIA's Office of Justice Services providing services for trust lands within the City; by the Eagle Butte Volunteer Fire Department's handling of fire services on a cost-reimbursable basis if the landowner has insurance; by the deployment of Indian Health Services in response to any 911 emergency calls to Eagle Staff's property; and by the local school district's entitlement to Impact Aid, should any school age children reside on the property in the future. In response to the City's request for information about Payment in Lieu of Taxes (PILT) funds, the Regional Director stated that the Department had distributed \$2.5 million to the counties within South Dakota in 2004 to replace monies lost to tax-exempt Federal lands administered by various Departmental agencies and the U.S. Forest Service, with the money to be used for any governmental services.

The Regional Director also considered the remaining criteria listed in 25 C.F.R. § 151.10. He stated that he did not anticipate any jurisdictional problems since the tract was located within the exterior boundaries of the Tribe's Reservation and that, for civil and criminal jurisdiction purposes, the tract would be identical to any other tract held in trust

for the Tribe and its members, with no County or City ordinances applying to the trust land (subsection 151.10(f)); that BIA was equipped to assume the additional responsibilities created by the acquisition of the land into trust status (subsection 151.10(g)); and that BIA had completed the Phase I Environmental Site Assessment of the property and the NEPA categorical exclusion document (subsection 151.10(h)). Based on his consideration of the factors found at 25 C.F.R. § 151.10, the Regional Director stated his intent to take the land into trust for Eagle Staff, thus reaffirming the Superintendent's decision to bring the property into trust status.

The City filed a timely notice of appeal, in which it set out its objections to the Regional Director's decision, and an opening brief that adopted the arguments in the notice of appeal. The Regional Director filed an answer brief. Briefing is complete and the appeal is ready for review.

Standard of Review

The standard of review in trust acquisition cases is well established. Decisions of BIA officials on requests to take land into trust are discretionary, and the Board does not substitute its judgment for BIA's judgment in discretionary decisions. *Arizona State Land Department v. Western Regional Director*, 43 IBIA 158, 159-60 (2006); *Cass County v. Midwest Regional Director*, 42 IBIA 243, 246 (2006). Instead, the Board reviews discretionary decisions to determine whether BIA gave proper consideration to all legal prerequisites to the exercise of BIA's discretionary authority, including any limitations on its discretion established in regulations. *Arizona State Land Department*, 43 IBIA at 160. Thus, proof that the Regional Director considered the factors set forth in 25 C.F.R. § 151.10 must appear in the record, but there is no requirement that BIA reach a particular conclusion with respect to each factor. *See id.*; *Eades v. Muskogee Area Director*, 17 IBIA 198, 202 (1989). Nor must the factors be weighed or balanced in a particular way or exhaustively analyzed. *Jackson County v. Southern Plains Regional Director*, 47 IBIA 222, 231 (2008); *Aitkin County v. Acting Midwest Regional Director*, 47 IBIA 99, 104 (2008); *County of Sauk v. Midwest Regional Director*, 45 IBIA 201, 206-07 (2007), *aff'd sub nom. Sauk County v. U.S. Department of the Interior*, No. 07 C 0543 S (W.D. Wis. May 29, 2008). Moreover, an appellant bears the burden of proving that BIA did not properly exercise its discretion. *Aitkin County*, 47 IBIA at 104; *Arizona State Land Department*, 43 IBIA at 160; *Cass County*, 42 IBIA at 246; *South Dakota v. Acting Great Plains Regional Director*, 39 IBIA 283, 291 (2004), *aff'd sub nom. South Dakota v. U.S. Dep't. of the Interior*, 401 F. Supp.2d 1000 (D. S.D. 2005), *aff'd*, 487 F.3d 548 (8th Cir. 2007). Simple disagreement with, or bare assertions concerning, BIA's decision are insufficient to carry

this burden of proof. *Aitkin County*, 47 IBIA at 104; *Arizona State Land Department*, 43 IBIA at 160; *Cass County*, 42 IBIA at 246-47.

In contrast to the Board's limited review of BIA discretionary decisions, the Board has full authority to review any legal issues raised in a trust acquisition case, except those challenging the constitutionality of laws or regulations which the Board lacks authority to adjudicate. *Jackson County*, 47 IBIA at 227-28; *Arizona State Land Department*, 43 IBIA at 160; *Cass County*, 42 IBIA at 247. Appellant, however, bears the burden of proving that BIA's decision was in error or not supported by substantial evidence. *Arizona State Land Department*, 43 IBIA at 160; *Cass County*, 42 IBIA at 247.

Discussion

On appeal, the City concedes that BIA has the authority to take land into trust and does not question the reasons relied on by BIA for placing the lots in question into trust. The City does not argue that the Regional Director failed to properly follow section 151.10(e) in considering the impact of the tax loss caused by taking this parcel into trust. Instead, the City's arguments express strong objection to the Regional Director's decision. The City argues that the requirements of 25 C.F.R. § 151.10 should not be the only conditions or requirements considered in a decision to acquire land into trust. The City insists, however, that even if the loss of tax payments for one parcel is minimal, the cumulative impact of the loss of tax revenue from all lands placed into trust is significant and must be evaluated before additional land is placed into trust status. The burden of the loss of tax revenue is especially heavy, the City maintains, because counties and cities must continue to provide services to properties placed into trust — including paved streets, curbs and gutters, storm sewers, street lighting, street maintenance, snow removal, abandoned vehicle removal, county roads, semi-annual property cleanups, and fire protection — even though the trust property owners, who will still expect and use these services, will not have to pay for them through tax payments. The City further notes that South Dakota has imposed a property tax freeze, which reinforces the importance of every tax payment. The City avers that if BIA is going to proceed to place lands into trust, it should consider paying for these services through the U.S. government, adding that, regardless of the PILT payments referred to in the Regional Director's decision, it has never received any Federal money to replace lost tax revenue and would like information on how to access any such money available to cities.

Under 25 C.F.R. § 151.10(e), BIA is directed to consider the impact on the affected jurisdictions of "removal of *the* land from the tax rolls" (emphasis added). Relying on the plain language of this subsection, the Board has consistently rejected the argument that

analysis of the cumulative effects of all tax loss on all lands within an appellant's jurisdictional boundaries is required. *Shawano County, Wisconsin, Board of Supervisors v. Midwest Regional Director*, 40 IBIA 241, 249 (2005); *South Dakota*, 39 IBIA at 294-95; *Ziebach County, South Dakota v. Acting Great Plains Regional Director*, 38 IBIA 227, 230 (2002); *County of Mille Lacs, Minnesota v. Midwest Regional Director*, 37 IBIA 169, 172 (2002). The City does not challenge that interpretation of subsection 151.10(e), and we are not convinced that our consistent interpretation is wrong or that our precedent should be revisited. The City thus has failed to meet its burden of showing that the Regional Director improperly exercised his discretion in only considering the tax loss from this particular fee-to-trust acquisition request.

The City also raises a several additional objections to the Regional Director's decision. First, it asserts that, while Eagle Staff may need the land to be placed into trust to protect her from the loss of her property due to her inability or failure to pay taxes, circumstances might change and she could dispose of the property to someone younger who might not need that protection but would still reap the benefits of receiving City services without payment. The Regional Director, however, has no obligation to consider the City's speculation about what might happen in the future. *See Rio Arriba, New Mexico, Board of County Commissioners v. Acting Southwest Regional Director*, 38 IBIA 18, 22 (2002).

Second, the City disputes the implication in the Regional Director's 2002 decision that trust status is necessary in order for Eagle Staff to be able to improve her lots to enhance her living conditions. It asserts that not only were Eagle Staff's living conditions excellent when she filed the fee-to-trust acquisition application, but that she has since bettered those conditions by replacing her double-wide trailer with a new home and made other improvements, all without the land being in trust. The City further notes that if she abandons, sells, or otherwise changes her living conditions, she could have HUD/CRST Housing Authority housing placed on the property, which does not require trust status. Thus, the City avers that the lots may be, and in fact have been, developed regardless of their trust status. This argument, at most, simply reiterates one of the City's original disagreements with the 2002 decision, which was vacated by the Board in *City of Eagle Butte*, 38 IBIA at 140, but it fails to articulate any error in the decision now before us. Simple disagreement with BIA's decision is insufficient to carry the City's burden of proof.

Finally, the City avers that the tax breaks available to elderly residents who meet income guidelines and fill out appropriate forms preclude any need to take the property into trust to prevent Eagle Staff from losing her home due to inability to pay the property taxes. The City concedes, however, that Eagle Staff has never availed herself of this option and speculates that she either does not meet income requirements or has failed to submit the

required paperwork that has been provided to her. The fact that options to reduce the amount of property taxes might exist, however, does not establish that the Regional Director did not properly exercise his discretion in approving the fee-to-trust application, especially since it is entirely speculative whether Eagle Staff even qualifies for the tax breaks or whether those breaks would completely eliminate her obligation to pay taxes.

Since the City has failed to meet its burden of showing that the Regional Director did not properly exercise his discretion in approving Eagle Staff's fee-to-trust acquisition application, we affirm the Regional Director's decision.

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 Board affirms the Regional Director's decision.

I concur:

// original signed
Sara B. Greenberg
Administrative Judge*

// original signed
Steven K. Linscheid
Chief Administrative Judge

*Interior Board of Land Appeals, sitting by designation.