INTERIOR BOARD OF INDIAN APPEALS

Sandy Point Improvement Co. v. Northwest Regional Director,
Bureau of Indian Affairs

52 IBIA 11 (07/06/2010)

Denying Reconsideration of:
51 IBIA 277

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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SANDY POINT IMPROVEMENT CO., Appellant,	)	Order Denying Reconsideration
v.	)	Docket No. IBIA 10-090-1
NORTHWEST REGIONAL DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee.	)	July 6, 2010

On May 27, 2010, the Board dismissed an appeal filed by Sandy Point Improvement Co. (Appellant) in which Appellant challenged the failure of the Northwest Regional Director (Regional Director), Bureau of Indian Affairs (BIA), to respond to Appellant's January 29, 2010, request for action. 51 IBIA 277. In its January 29 request, Appellant asked BIA to send a letter to the governing body of the Lummi Nation (Nation) "directing them to [eliminate] their inappropriate constitution and its associated regulations and codes and acquire organizational papers securing their place under Washington State law." Letter from Ron Jepson to Regional Director, Jan. 29, 2010. We construed the appeal as one brought to obtain relief under 25 C.F.R. § 2.8, and we dismissed the appeal because (1) Appellant's request to the Regional Director to "eliminate" the Nation's constitution presented no plausible grounds for the Regional Director to consider Appellant's request on the merits, and (2) even if that were not the case, Appellant expressly rejected a remand to the Regional Director as relief, which is the only form of relief that is available under section 2.8.

Appellant now seeks reconsideration of our dismissal, arguing that its appeal had identified two parcels of trust land, which it now contends were improperly processed by BIA. In addition, Appellant identifies a third parcel about to be taken into trust status.[1]

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[1] The first parcel is located at 4826 Haxton Way, Ferndale, Washington, and was conveyed to the United States of America in trust for the Lummi Indian Tribe by Marshal's deed dated on March 15, 1991. The second parcel, located in Whatcom County, Washington,

(continued...)

Appellant seeks acknowledgment from the Board that the Department of the Interior is operating outside of its discretion in accepting the parcels into trust and that the form of title on the parcels is "improper." Appellant contends that its "prior effort to vacate [the Tribe's] constitution . . . is not necessary to achieve Appellant[']s goal [of] address[ing the Tribe's] abuse of authority." Motion for Reconsideration at 2. Appellant continues to seek review of the Tribe's constitution to support Appellant's argument that the Tribe lacks authority to impose taxes.

Reconsideration of a Board decision will be granted only in extraordinary circumstances. 43 C.F.R. § 4.315(a); *Gardner v. Acting Western Regional Director*, 46 IBIA 105 (2007); *Jacobs v. Great Plains Regional Director*, 43 IBIA 272 (2006). Appellant has not shown the requisite extraordinary circumstances warranting reconsideration, and we deny its request for reconsideration. Appellant does not disagree with the Board's underlying decision but seeks instead to modify and expand its appeal, apparently to change the focus — while still pursuing its original challenge to the Tribe's authority — to a challenge to parcels accepted into trust for the Tribe. Appellant maintains that, in changing the character of its appeal, it has removed the obstacles to the Board's consideration of the merits.

Appellant misunderstands the nature of seeking reconsideration. Reconsideration is limited to the scope of the underlying decision and exists to correct material errors of law or material findings of fact in that underlying decision. *See, e.g., Mize v. Northwest Regional Director*, 51 IBIA 298 (2010) (granting reconsideration based on a material erroneous factual finding, and vacating the Board's underlying dismissal of Appellant's appeal). Reconsideration does not exist as a vehicle for raising issues that were not raised before the Regional Director or before the Board in the matter for which reconsideration is sought. *See, e.g., Crooks v. Minneapolis Area Director*, 14 IBIA 271, 272 (1986) (the Board "will not consider an issue in a petition for reconsideration which has not been timely raised and considered below").[2]

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[1](...continued)
was conveyed by the Estate of Gerald E. Cruea to the United States in trust for the Lummi Indian Tribe by deed executed on June 13, 1979. The third parcel consists of 36.86 acres in Whatcom County to be accepted into trust by the United States for the Lummi Nation on or after July 2, 2010.

[2] It is true that Appellant identified two trust parcels in exhibits to its notice of appeal, but did not complain about the Regional Director's failure to respond to issues regarding the acceptance of these parcels into trust. In fact, Appellant stated that "[w]ith the exception of a fee to trust issue," the Regional Director had failed to address Appellant's complaints about the Nation's "abuse of authority." Notice of Appeal at 2.

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 denies reconsideration of 51 IBIA 277.

I concur:

// original signed
Debora G. Luther
Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge