



INTERIOR BOARD OF INDIAN APPEALS

City of Timber Lake, South Dakota v. Great Plains Regional Director,
Bureau of Indian Affairs

36 IBIA 188 (06/21/2001)



United States Department of the Interior

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

CITY OF TIMBER LAKE, SOUTH DAKOTA, : Order Affirming Decisions
Appellant :
 :
v. : Docket Nos. IBIA 01-104-A
 : IBIA 01-105-A
GREAT PLAINS REGIONAL DIRECTOR, :
BUREAU OF INDIAN AFFAIRS, :
Appellee : June 21, 2001

Appellant City of Timber Lake, South Dakota, seeks review of two decisions issued on March 6, 2001, by the Great Plains Regional Director, Bureau of Indian Affairs (Regional Director; BIA), concerning trust acquisition of land within the Cheyenne River Indian Reservation. In Docket No. IBIA 01-104-A, Appellant seeks review of a decision to take Lots 4, 5, and 6, Block 11, Section 17; Lot 4 and N½ of Lot 5, Block 29, Section 20; Lots 16, 17, and 18, Block 16, Section 17; and Lots 1 and 2, Block 16, Section 17, all in T. 17 N., R. 25 E., Black Hills Meridian, Dewey County, South Dakota, into trust for the benefit of Cheyenne River Sioux tribal member Faye D. Kraft. In Docket No. IBIA 01-105-A, Appellant seeks review of a decision to take Lots 2 and 3, Block 29, City of Timber Lake, Dewey County, South Dakota, into trust for Cheyenne River Sioux tribal member Ray Springer. For the reason discussed below, the Board of Indian Appeals (Board) affirms both decisions.

The administrative record in Docket No. IBIA 01-104-A shows that BIA notified Appellant and other State and local officials of the proposed trust acquisition by letter dated March 28, 2000. Among other things, the letter requested information relating to property taxes and special assessments against the property and governmental services provided to the property.

Appellant responded on April 12, 2000. It did not provide any information concerning the amount of any assessments against the property. Instead, it made a generalized argument that trust acquisition would remove the property from the tax rolls. The Dewey County Commissioners, who also responded to BIA's request for information, stated that the property was subject to property taxes in the amount of \$2,309.37 for 1999, payable in 2000, and that the County provided ambulance, roads, police, and fire services to the property.

The Superintendent, Cheyenne River Agency, BIA (Superintendent), notified interested parties by letter dated June 14, 2000, that he proposed to acquire the land in trust status. As relevant to Appellant's argument, the decision stated:

e) When title to the land is acquired in trust for the individual, there would be no jurisdiction to collect real property taxes. The impact would be the removal of the tax assessment in the amount of \$2,309.37. We believe the impact by the removal of the tax assessment will be minimal, as the tax levy will be offset by the BIA and/or Tribe now providing those services that may have been provided by Dewey County. Local School district receives some federal entitlement for lands where title is held by the United States, which will also aid to minimize the impact.

June 14, 2000, Decision at 2.

Appellant appealed to the Regional Director. Its notice of appeal contained the same generalized argument as Appellant made in its April 12, 2000, response to the request for information concerning the proposed trust acquisition. The Regional Director affirmed the Superintendent's decision on March 6, 2001. Appellant appealed to the Board.

A similar scenario is shown by the administrative record in regard to the property at issue in Docket No. IBIA 01-105-A. The BIA letter requesting information from local governmental entities was dated April 5, 2000. On May 2, 2000, Appellant objected to trust acquisition because it would remove the property from the tax rolls. The Dewey County Commissioners also responded to the information request. In his May 30, 2000, decision, the Superintendent made the same observation concerning the impact of removing the property from the tax rolls as was quoted above, except he found that this property was subject to a tax assessment in the amount of \$126.56. See May 30, 2000, Decision at 2.

Appellant appealed to the Regional Director on June 12, 2000. The Regional Director affirmed the Superintendent's decision on March 6, 2001. Appellant appealed to the Board.

Although advised of its right to do so, Appellant did not file an opening brief in either of these appeals. In both notices of appeal, Appellant merely repeated the argument it had made before both the Superintendent and the Regional Director. Specifically, Appellant argued:

[T]he City of Timber Lake must continue to supply services (inclusive of street repair and maintenance as well as fire protection and police protection) for the individuals who reside within the boundaries of the City of Timber Lake. Only those individuals who pay taxes actually pay for said services. The City relies upon revenue generated via property taxes to assist with the general fund. As these properties are placed in trust, the City Council is faced with continuous

cutbacks. Those individuals residing within the City of Timber Lake have been the recipient of many improved streets in the City as well as other improvements and should have to pay their fair share for these improvements.

Both Notices of Appeal at 1. As to the property at issue in Docket No. IBIA 01-104-A, Appellant continued:

Some of this property was patented in 1913, some in 1919, 1920, and 1921, and has been on the tax rolls ever since. This real estate involves not only residential, but also commercial land, which would amount to a substantial loss in taxes, therefore, it is the desire of the City of Timber Lake to have it remain on the tax rolls, as more and more land within the City of Timber Lake is being acquired in trust.

In regard to the property at issue in Docket No. IBIA 01-105-A, Appellant stated:

This property has been on the tax rolls since March 7, 1922 and held in non trust ever since by non tribal members, and it is the desire of the City of Timber Lake to have it remain as such, as more and more land within the City of Timber Lake is being acquired in trust.

The Board summarized the standard of review and burden of proof in trust acquisition cases in Town of Ignacio, Colorado v. Albuquerque Area Director, 34 IBIA 37, 38-9 (1999):

Decisions as to whether to acquire land in trust are discretionary. In reviewing BIA discretionary decisions, the Board does not substitute its judgment for BIA's. Instead, it reviews such 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. In regard to BIA discretionary decisions, the appellant bears the burden of proving that the Area Director did not properly exercise his discretion. Lincoln City, 33 IBIA at 104, and cases cited therein.

Appellant's argument in these cases amounts to a challenge to the proposed trust acquisitions based on 25 C.F.R. § 151.10(e). This regulation requires BIA to consider "the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls."

The administrative record in each of these cases shows that BIA considered the impact that removing these properties from the tax rolls would have on local governmental entities, as is required by 25 C.F.R. § 151.10(e). Appellant clearly disagrees with BIA's conclusion to acquire these properties in trust even though trust acquisition will remove them from the tax rolls. However, Appellant has made no attempt to prove that the Regional Director did not properly exercise her discretion in regard to these proposed trust acquisitions.

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 Regional Director's March 6, 2001, decisions are affirmed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge