INTERIOR BOARD OF INDIAN APPEALS

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

36 IBIA 201 (07/03/2001)

United States Department of the Interior

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

ZIEBACH COUNTY, SOUTH DAKOTA, Appellant	:	Order Vacating Decision and Remanding Case
v.	:	Docket No. IBIA 01-53-A
GREAT PLAINS REGIONAL DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	:	July 3, 2001

Appellant Ziebach County, South Dakota, seeks review of a December 2, 2000, decision issued by the Great Plains Regional Director, Bureau of Indian Affairs (Regional Director; BIA), concerning the proposed trust acquisition of the NE¼, sec. 24, T. 14 N., R. 17 E., Black Hills Meridian, Ziebach County, South Dakota, containing 160 acres, more or less. The land at issue is located on the Cheyenne River Indian Reservation. The Regional Director proposed to acquire this land in trust for Carson G. Williams, a member of the Cheyenne River Sioux Tribe. For the reasons discussed below, the Board of Indian Appeals (Board) vacates the decision and remands this matter to the Regional Director for further consideration.

Williams requested the trust acquisition of this land on June 29, 2000. His application stated that he would use the land for livestock grazing and that he owned no land in trust. By letter dated July 24, 2000, the Superintendent, Cheyenne River Agency, BIA (Superintendent), notified State and local officials of the trust acquisition request and sought their comments. Specifically, the Superintendent's letter inquired about property taxes and special assessments against the property, governmental services provided to the property, and zoning restrictions. Appellant's Auditor responded by letter dated August 7, 2000. She stated that the property was subject to 1999 property taxes in the amount of $153.04, there were no special assessments against the property, and Appellant provided law enforcement 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 August 29, 2000, the Superintendent notified Appellant and other interested parties that he intended to acquire the land in trust. The Superintendent's letter stated in part:

> In evaluating the request for acquisition by Carson Williams, we considered the factors set forth in the Code of Federal Regulations (25 CFR) 151.10, and our evaluation is as follows:

* * * * * *

b) The need for this acquisition is to benefit the welfare of the individual, as he will use the land for grazing purposes.

c) The land will be used for grazing of livestock as he is expanding his cattle operation.

d) The individual does not own any trust land on the Cheyenne River Reservation.

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 $153.04. We believe the impact by the removal of the tax assessment will be minimal, as the tax levy will be offset by BIA and/or Tribe now providing those services that may have been provided by Ziebach 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.

f) We do not anticipate jurisdictional problems, as the tract is located within the established exterior boundaries of the Cheyenne River Sioux reservation. For the purpose of civil and criminal jurisdiction, the tract will be identical to any other tract of land held in trust for the tribe and members of the tribe within the boundaries of the reservation.

g) The Bureau of Indian Affairs is equipped to assume the additional responsibilities and duties resulting from the acquisition of the land into trust status.

Superintendent's Aug. 29, 2000, Letter at 1-2.

Appellant appealed to the Regional Director. Appellant argued that the Superintendent had abused his discretion in deciding to acquire this land in trust because he had not properly addressed Williams' need for this land as is required by 25 C.F.R. § 151.10(b); that the Superintendent's determination that there would be no jurisdiction to collect taxes when the land was in trust status is contrary to the holding in County of Yakima v. Confederated Bands and Tribes of the Yakima Indian Nation, 502 U.S. 251 (1992); that the Superintendent erred in concluding under 25 C.F.R. § 151.10(e) that the impact of removing this land from the tax rolls would be minimal; that the Superintendent erred in concluding that the school district received funds

for lands held in trust for individual tribal members; that the Superintendent abused his discretion under 25 C.F.R. § 151.10(f) in concluding that there would not be jurisdictional problems if this land were acquired in trust; and that the Superintendent abused his discretion under 25 C.F.R. § 151.10(h) in determining to acquire the land in trust without verifying if Williams had provided information allowing BIA to comply with 516 Departmental Manual (DM) 6, Appendix 4, National Environmental Policy Act Revised Implementing Procedure, and 602 DM 2, Land Acquisition: Hazardous Substances Determination.

The Regional Director issued the decision under review here on December 2, 2000. The decision states:

> The respective land is located within the boundaries of the Cheyenne River Sioux Reservation, * * *. It is also adjacent to other trust lands.
>
> The Cheyenne River Sioux Tribe adopted the provisions of the * * * Indian Reorganization Act [IRA], which clearly authorizes acquisitions of land by the United States to be held in trust for the tribe and its members. The purpose of the [IRA] is for tribes and tribal members to acquire lands to re-establish the reservations for lands lost by allotment and homestead acts.
>
> Carson G. Williams supports the sovereignty of the Cheyenne River Sioux tribal government and its commitment to self-determination by choosing to acquire this land in trust. The land will come under the jurisdiction of the United States as well as the government of the Cheyenne River Sioux Tribe.
>
> The loss of property taxes by the county will be minimal. The loss will be offset by the Bureau of Indian Affairs and/or tribe providing the services, which are now provided by the county. The land was formerly Cheyenne River Tribal land and is located adjacent to existing trust property.
>
> The decision of the Cheyenne River Agency Superintendent was not an abuse of discretion. The requirements of 25 CFR have been met. Therefore, we are upholding his decision to acquire the above-described land to the United States in trust for Carson G. Williams, a member of the Cheyenne River Sioux Tribe.

Dec. 2, 2000, Decision at 1-2.

Appellant appealed this decision to the Board. In its opening brief, Appellant raised the same arguments that it raised in its appeal to the Regional Director. The Regional Director did not respond to Appellant's opening brief.

The Superintendent's decision to acquire this land in trust contained mostly conclusory statements about the criteria listed in 25 C.F.R. § 151.10. Further, it failed to address either the second part of subsection 151.10(d) or subsection 151.10(h). Although Appellant raised specific legal, factual, and abuse of discretion challenges to the Superintendent's decision, the Regional Director did not address any of those arguments in her decision. The administrative record does not contain any further analysis of either the criteria in 25 C.F.R. § 151.10 or the arguments which Appellant raised. Because the Regional Director did not participate in this appeal, she has also not provided any such analysis here.

The Board has held that BIA's analysis of the criteria listed in 25 C.F.R. § 151.10 must appear in the decision and/or the administrative record. When the Board has found that a decision is not supported by the administrative record, it has vacated the decision and remanded the matter for further consideration, including the development of an adequate administrative record. See, e.g., Day County, South Dakota v. Aberdeen Area Director, 17 IBIA 204 (1989). Cf. Colby v. Acting Eastern Oklahoma Regional Director, 35 IBIA 139 (2000) (Regional Director vacated Superintendent's decision and remanded case when the administrative record did not support the Superintendent's trust acquisition decision).

Under the circumstances of this case, the Board finds that the Regional Director's decision is not supported by the administrative record. It therefore concludes that the decision must be vacated and this matter remanded to the Regional Director for the development of an administrative record which supports the decision by showing full consideration of the requirements of 25 C.F.R. § 151.10 and which addresses the arguments Appellant raised to the Regional Director. 1/

The Board suggests that the Regional Director seek assistance from the Office of the Solicitor in addressing this matter on remand.

1/ The fact that Appellant made specific arguments concerning the adequacy of BIA's analysis of this trust acquisition request before both the Regional Director and the Board distinguishes this case from other appeals in which the appellant either has failed in its initial responsibility even to allege error in BIA's decision or has failed to carry its burden of proof by only raising generalized arguments. See, e.g., City of Timber Lake, South Dakota v. Great Plains Regional Director, 36 IBIA 188 (2001); Dewey County, South Dakota v. Great Plains Regional Direc-tor, 36 IBIA 107 (2001), and cases cited there; Thurston County Board of Supervisors v. Aberdeen Area Director, 34 IBIA 249 (2000), and cases cited there.

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 December 2, 2000, decision is vacated and this matter is remanded to her for further consideration in accordance with this opinion.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge