



INTERIOR BOARD OF INDIAN APPEALS

Deer Lodge Park LLC, Al Federico, and Ed Mahoney v. Acting Western Regional
Director, Bureau of Indian Affairs

48 IBIA 129 (11/24/2008)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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DEER LODGE PARK LLC, AL)	Order Docketing and Dismissing Appeal
FEDERICO, and ED MAHONEY,)	
Appellants,)	
)	
v.)	
)	Docket No. IBIA 09-18-A
ACTING WESTERN REGIONAL)	
DIRECTOR, BUREAU OF)	
INDIAN AFFAIRS,)	
Appellee.)	November 24, 2008

On November 20, 2008, the Board of Indian Appeals (Board) received a notice of appeal from Al Federico, on his own behalf and on behalf of Deer Lodge Park LLC and Ed Mahoney (collectively, Appellants). Appellants appeal from an October 8, 2008, decision (Decision) of the Acting Western Regional Director, Bureau of Indian Affairs (Regional Director; BIA). The Regional Director determined that Lease No. B-232, between Appellant Deer Lodge Park, LLC (lessees) and Alfred C. Granados (lessor) for Parcels C and E of Public Domain Allotment CC-183 is null and void based on Appellants' failure to prepare an Environmental Assessment report in compliance with the National Environmental Protection Act.¹ We docket this appeal, but dismiss it for lack of jurisdiction because it is untimely.

Appellants' notice of appeal is postmarked November 18, 2008, and consists of a copy of a one-page letter addressed to the Regional Director in which Appellant Federico "request[s] to formally appeal" the October 8 decision, "which was constructively received on October 17, 2008." Notice of Appeal.² Enclosed with the letter was a copy of the

¹ Parcels C and E consist of an approximate total of 16.23 acres and fall under the supervision of BIA's Western Nevada Agency.

² The October 8 Decision indicated on its face that it was sent to Appellants by certified mail. Board's legal assistant received confirmation from BIA that the certified mail receipt card was returned to BIA indicating that the decision was received by Appellants on October 17, 2008.

challenged decision, which correctly advised Appellants that a notice of appeal “must be mailed [to the Board] within 30 days of the date you receive this decision,” Decision at 2, provided Appellant with the Board’s correct address, and advised that “[n]o extension of time may be granted for filing [the] notice of appeal,” *id.* at 3.

A notice of appeal from a decision of a BIA Regional Director must be filed with the Board within 30 days after receipt by the appellant of the decision from which the appeal is taken. 43 C.F.R. § 4.332(a). The effective date for filing a notice of appeal with the Board is the date of mailing or the date of personal delivery, if not mailed. *Id.* § 4.310(a)(1). The 30-day deadline for filing a notice of appeal is jurisdictional. *Id.* § 4.332(a); *Wick v. Midwest Regional Director*, 44 IBIA 20 (2006); *Claymore v. Great Plains Regional Director*, 43 IBIA 274 (2006). Untimely appeals must be dismissed. *Claymore*, 43 IBIA 274; *Saguaro Chevrolet, Inc. v. Western Regional Director*, 43 IBIA 85 (2006).

Appellants concede that they received the Regional Director’s decision on October 17, 2008. Therefore and pursuant to 43 C.F.R. §§ 4.310(c) and 4.332(a), Appellants had until November 17, 2008, to postmark their notice of appeal.³ Appellants’ notice of appeal was not filed with the Board until November 18, 2008, as shown by the postmark on the envelope in which it was mailed. Because Appellant’s appeal was not filed within the jurisdictional 30-day appeal period, we must dismiss this appeal.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal from the Regional Director’s October 8, 2008, decision is docketed but dismissed as untimely.

I concur:

// original signed
Debora G. Luther
Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge

³ Appellants gained an extra day to submit their appeal inasmuch as the 30th day after Appellants’ receipt of the Decision fell on a Sunday, November 16. Pursuant to 43 C.F.R. § 4.310(c), where the last day for filing falls on a nonbusiness day (Saturday, Sunday, or Federal holiday), the filing date is extended to the next business day. *See Wasson v. Acting Western Area Director*, 39 IBIA 174, 176 (2003). Therefore, the deadline for Appellants’ appeal was extended to Monday, November 17.