



INTERIOR BOARD OF INDIAN APPEALS

Carroll County, Mississippi, Board of Supervisors v. Acting Eastern Regional Director,
Bureau of Indian Affairs

56 IBIA 194 (02/15/2013)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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CARROLL COUNTY, MISSISSIPPI,)	Order Affirming Decision
BOARD OF SUPERVISORS,)	
Appellant,)	
)	
v.)	Docket No. IBIA 11-064
)	
ACTING EASTERN REGIONAL)	
DIRECTOR, BUREAU OF INDIAN)	
AFFAIRS,)	
Appellee.)	February 15, 2013

The Carroll County, Mississippi, Board of Supervisors (County) seeks review by the Board of Indian Appeals (Board) of a December 23, 2010, decision (Decision) by the Acting Eastern Regional Director (Regional Director), Bureau of Indian Affairs (BIA). The Regional Director’s Decision is to approve acquisition by the United States in trust of 876.90 acres, more or less, located in Carroll County, Mississippi, for the Mississippi Band of Choctaw Indians (MBCI).¹

In this appeal, the County identifies no specific errors in the Decision; the County generally alleges that the Regional Director did not “properly” evaluate the request of the MBCI to acquire the Property in trust in accordance with BIA’s regulations concerning acquisitions of off-reservation land, 25 C.F.R. § 151.11. We disagree that the Regional Director inadequately considered the factors set forth in § 151.11. Therefore, we affirm the Regional Director’s Decision.

Background

On June 16, 2008, the MBCI requested BIA to acquire title to the Property, owned in fee by the MBCI since 2001, in trust for the MBCI pursuant to Section 5 of the Indian Reorganization Act of 1934 (IRA), 25 U.S.C. § 465, and BIA’s regulations for off-

¹ The land was formerly referred to as the “Belmont Shook/Malmaison Property” (Property) and its legal description is contained in Exhibit A to the Regional Director’s Decision. *See also* Warranty Deed (Letter from the MBCI to BIA (Application), June 16, 2008, Ex. C) (Administrative Record (AR) Tab 1).

reservation acquisitions, 25 C.F.R. § 151.11. Application (AR Tab 1). The IRA authorizes the Secretary of the Interior, “in his discretion,” to acquire lands located “within or without existing reservations” in trust “for Indians,” and provides that such lands “shall be exempt from State and local taxation.” 25 U.S.C. § 465.

The reservation of the MBCI comprises approximately 30,000 acres of scattered tracts of trust land encompassing eight MBCI communities spread across several Mississippi counties. Decision at 2; *see also* 72 Fed. Reg. 15899, 15899-15901 (Apr. 3, 2007). The Property is situated approximately 53 miles from the nearest MBCI reservation land, which is located in Attala County. Decision at 5.

In support of its application for the Property, the MBCI asserted that, along with growth in tribal enrollment, its need for “community and economic development” had increased, but that much of its existing trust land was unsuitable for the use it intended for the Property, or for development. Application, Ex. A at 1 (unnumbered). The MBCI stated that its past and present uses of the Property were for recreation and historic preservation, and that once placed into trust the Property would support “self-determination” and would be “made available to tribal members for cultural and recreational purposes until such time as the Tribal Council decides that it would benefit the Tribe to develop the property.” *Id.*²

I. The County’s Comments to the Regional Director Objecting to the Application

While BIA was considering the application, on November 18, 2008, the Regional Director issued notices of the application to the County and the Governor of Mississippi. *See* Notices (AR Tabs 3 & 4). In accordance with 25 C.F.R. § 151.11(d), the notices invited comments on the application and requested the following information: the amount of property taxes levied on the Property; any special assessments against the Property; any governmental services provided to the Property; and the Property’s zoning. *See id.*³

² Apparently, the request for the Property was part of a group of fee-to-trust applications that the MBCI submitted to BIA, and none of the other applications were for land in Carroll County. Although the Decision only considers the application for the Property, the record shows that BIA made a single determination that acquiring the Property as well as six other properties in trust for the MBCI fell within a BIA categorical exclusion under the National Environmental Policy Act for transfers of interests in land where no change of land use is planned. *See* Categorical Exclusion Checklist, Jan. 7, 2009 (AR Tab 2).

³ BIA received no comments from the Governor’s Office on the application. Decision at 2.

The County replied that the annual County property tax on the Property was \$4617 in 2008, and that the County maintains a public road to the Property, which was used only for hunting by the MBCI's members. Letter from the County to BIA (County's Comments), Dec. 16, 2008, at 2 (AR Tab 7); *see also* Tax Receipts (Application, Ex. I). The County did not mention special assessments or zoning. The County objected to BIA's acquisition of the Property in trust on the basis that the MBCI already held fee title and "[i]t appears the sole purpose of the acquisition is to render the property tax exempt." County's Comments at 1. The County asserted that such loss of tax revenue would be significant because Carroll County is rural and has limited total tax revenue, with its main tax collections being ad valorem taxes on lands within its borders. *Id.* The County did not supply tax data to support this assertion, for example, what the loss of \$4617 in tax revenue from the Property would represent as a percentage of the total property taxes collected in the County in 2008. *See id.* The County also alleged that acquiring the Property in trust would be an act of "discriminat[ion]" against non-Indian landowners and would afford the MBCI an "unfair advantage" in the use of the Property, including its "possible economic development." *Id.* The County did not allege in its comments that the MBCI actually had a development plan for the Property. *See id.*

II. The MBCI's Response to the County's Comments

BIA invited the MBCI to respond to the County's comments, but the MBCI initially did not reply. Letter from BIA to the MBCI, Jan. 26, 2009 (AR Tab 8). BIA then specifically requested the MBCI to respond to the County's objection to its loss of property tax revenue and "the County's concerns over the tribe's plans for economic development of the property." Email from BIA to the MBCI, Sept. 3, 2010 (AR Tab 12). The MBCI replied that, according to the Mississippi State Tax Commission, the assessed valuation in 2009 for Carroll County was over \$76 million and the County's property tax collections totaled \$7.6 million. Letter from the MBCI to BIA, Oct. 18, 2010, at 1 (AR Tab 19). The MBCI contended that, compared to the County's total tax collections, the MBCI's 2009 tax payment of \$4401 on the Property was "miniscule." *Id.* The MBCI also asserted that the County road was built and maintained before the MBCI took ownership of the Property, the MBCI makes no demands for County services, and the trust acquisition of the Property would reduce law enforcement demands on state fish and game officers to patrol the Property. *Id.* The MBCI reiterated that "[t]here are no current plans to develop this tract of land," and that it was primarily being used for hunting, fishing, and growing pine timber. *Id.*

III. The Regional Director's Decision

On December 23, 2010, the Regional Director issued the Decision from which the County appeals. Before we summarize the Regional Director's conclusions, however, we

observe that the County's notice of appeal generally identifies this reason for appeal: "The said decision . . . fails to properly consider or evaluate the fee-to-trust acquisition request in accordance with the requirements contained in Title 25 of the Code of Federal Regulations § 151.11 pertaining to Off-reservation acquisitions." Notice of Appeal at 1. Now, we briefly summarize the Regional Director's consideration of the MBCI's application in light of the off-reservation fee-to-trust criteria.

Section 151.11 incorporates by reference most of the factors applicable to on-reservation acquisitions:⁴ the existence of statutory authority, and any limitations, for the acquisition, § 151.10(a); the need of the tribe for additional land, § 151.10(b); the purposes for which the land will be used, § 151.10(c); if the land to be acquired is in unrestricted fee status, the impact on the state and its political subdivisions resulting from removal of the land from the tax rolls, § 151.10(e); jurisdictional problems and potential conflicts of land use which may arise, § 151.10(f); if the land to be acquired is in fee status, whether BIA is equipped to discharge the additional responsibilities from the acquisition of the land in trust status, § 151.10(g); and the extent to which the applicant has provided information that allows BIA to comply with other environmental review requirements, § 151.10(h). *See* 25 C.F.R. § 151.11(a).⁵

The Regional Director considered and reached conclusions about each of these factors. As to § 151.10(a), he found authority for the acquisition in the IRA, 25 U.S.C. § 465. Decision at 1.⁶ Concerning § 151.10(b), he determined that the MBCI and its approximately 9000 members need this additional land, specifically finding that the MBCI uses its existing trust lands for housing, governance, and education; that it has an increasing need for lands to support "the Band's culture and tradition"; and that acquisition of the Property in trust would promote the MBCI's self-determination by providing "an additional

⁴ Section 151.11 does not incorporate § 151.10(d), which concerns acquisitions for individual Indians. *See* 25 C.F.R. § 151.11(a).

⁵ As discussed previously, BIA must notify the state and local governments that they may provide written comments on the acquisition's potential impacts on real property taxes, special assessments, and regulatory jurisdiction, which is for BIA's consideration of the factors in § 151.10(e) and (f). *See* 25 C.F.R. § 151.11(d). The Regional Director issued the requisite notices. *See* Notices; Decision at 5-6.

⁶ The Regional Director also cited Section 203 of the Indian Land Consolidation Act (ILCA) (96 Stat. 2517, codified at 25 U.S.C. § 2202). Because the MBCI voted to accept the IRA, *see United States v. John*, 437 U.S. 634, 645-46 (1978); *Ten Years of Tribal Government under I.R.A.*, United States Indian Service, 1947, at 17 (copy added to record), we do not need to consider ILCA as additional authority for the acquisition.

area for members to practice such culturally significant activities as hunting, fishing, and gathering.” *Id.* at 2. Under § 151.10(c), the Regional Director determined that the MBCI was proposing no change in the “rural nature” of the land, and that the MBCI intended to use it for cultural and recreational purposes, as was stated in the application. *Id.*

In his lengthiest analysis of a factor, § 151.10(e), the Regional Director recited the County’s comments and the MBCI’s responses to those comments. *Id.* at 2-3. Based on the tax data furnished by the MBCI and the absence of specific comments by the County regarding impacts from removal of the Property from tax rolls, the Regional Director concluded that the loss of 0.058% of County property tax revenues (which represents the MBCI’s tax payment in 2009 (\$4401) as a percentage of the total County tax collections the same year (\$7.6 million)) would not have a significant impact on the County. *Id.* at 3. He also noted that the cost of some public services currently provided to the Property would be offset by changes resulting from the land being held in trust, such as the MBCI’s assumption of law enforcement responsibility and access to road maintenance funding. *Id.*

The MBCI provides law enforcement services on all of its trust lands through Indian Self-Determination Act (Public Law 93-638) contracting with BIA. Application, Ex. A at 2 (unnumbered). The Regional Director determined that this service, combined with an absence of zoning on the Property and compatibility between the MBCI’s proposed use of the Property and the current land use of the surrounding area, all supported a finding, under § 151.10(f), of “no outstanding [jurisdictional] problems or potential conflicts of land use resulting from the proposed use of the property.” Decision at 4. Also relevant to this factor, he found that, although the MBCI had no trust lands in Carroll County, the MBCI had a track record of working with other local governments to mitigate jurisdictional and land use problems when they have arisen. *Id.*

As for BIA’s capacity to assume additional trust responsibilities, under § 151.10(g), the Regional Director determined that BIA (through its Choctaw Agency in Philadelphia, Mississippi, and its Eastern Regional Office in Nashville, Tennessee) was capable of assuming the minor additional responsibilities attendant to acquiring the Property in trust. *Id.* at 4-5. Moreover, concerning § 151.10(h), he concluded that an environmental site assessment of the Property was conducted pursuant to 602 DM 2 and revealed no contamination, and that, because the MBCI proposed no change in land use, the proposed trust acquisition satisfied a BIA categorical exclusion, 516 DM 10.5.I, under the National Environmental Policy Act. *See* Decision at 5; Categorical Exclusion Checklist at 1; Environmental Site Assessment, June 29, 2010 (AR Tab 17); Regional Director’s Answer Brief at 4.

In addition to the foregoing considerations applicable to an on-reservation acquisition, the fee-to-trust regulations also require, for off-reservation acquisitions,

consideration of “[t]he location of the land relative to state boundaries, and its distance from the boundaries of the tribe’s reservation.” 25 C.F.R. § 151.11(b). Also, if the land is being acquired for “business purposes,” the tribe must provide “a plan which specifies the anticipated economic benefits associated with the proposed use.” *Id.* § 151.11(c). Under § 151.11(b), the Regional Director found that the Property is located 72 miles east of the Mississippi border with Arkansas, and 53 miles from the nearest reservation land in Attala County. Decision at 5. He also concluded that the Property is within the MBCI’s traditional and ancestral lands, and is readily accessible to the MBCI and its members. *Id.* With respect to § 151.11(c), the Regional Director again concluded that the Property was not being acquired for business purposes. *Id.* Based on all of the foregoing factors and findings, the Regional Director approved acquisition of the Property in trust for the MBCI.

This appeal followed. In lieu of filing an opening brief, the County informed the Board that it intended to rely on its general allegations of error contained in its notice of appeal, “coupled with other matters of record before the Board of Indian Appeals.” Letter from the County to the Board, Apr. 14, 2011. The Regional Director and the MBCI each submitted an answer brief. The Board received no reply brief from the County.

Discussion

I. Standard of Review

In *Thurston County v. Acting Great Plains Regional Director*, 56 IBIA 62, 65-66 (2012), we set forth our well-established standard of review in trust acquisition cases:

Decisions of BIA officials to take land into trust are discretionary, and the Board does not substitute its judgment in place of BIA’s judgment in discretionary decisions. 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. Thus, proof that the Regional Director considered the factors set forth in [25 C.F.R. § 151.11, which incorporates many of the factors found 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. Nor must the factors be weighed or balanced in a particular way or exhaustively analyzed. Moreover, an appellant bears the burden of proving that BIA did not properly exercise its discretion. Simple disagreement with or bare assertions concerning BIA’s decision are insufficient to carry this burden of proof.

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. An appellant, however, bears the burden of proving that BIA's decision was in error or not supported by substantial evidence.

(Citations omitted.)

II. Analysis

The County has not met its burden to demonstrate that the Regional Director inadequately considered the factors in § 151.11. As noted above, the Regional Director expressly addressed each applicable factor of § 151.11 in the Decision; the County's conclusory assertion that the Regional Director did not "properly" consider the factors, Notice of Appeal at 1, is insufficient to satisfy the County's burden of proof, *see, e.g.*, 43 C.F.R. § 4.322(a) ("Each appeal must contain a written statement of the errors of fact and law upon which the appeal is based."); *Thurston County*, 56 IBIA at 66 ("Simple disagreement with or bare assertions concerning BIA's decision are insufficient to carry this burden of proof."); *Jackson County v. Southern Plains Regional Director*, 47 IBIA 222, 227-28 (2008) (same); *Aitkin County v. Acting Midwest Regional Director*, 47 IBIA 99, 104 (2008) (same); *Arizona State Land Department v. Western Regional Director*, 43 IBIA 158, 160 (2006) (same); *Cass County v. Midwest Regional Director*, 42 IBIA 243, 246-47 (2006) (same). We also reject the County's reliance on other unspecified "matters of record before the Board." Letter from the County to the Board, Apr. 14, 2011. Because the burden is on an appellant to identify for the Board all of the reasons for which a trust acquisition decision should be overturned, the Board will not scour the record to identify arguments on the appellant's behalf. *See, e.g.*, 43 C.F.R. § 4.318 (unless manifest error or injustice is evident, the Board is limited in its review to those issues raised before the Regional Director); *Thurston County*, 56 IBIA at 66 (same); *Shawano County, Wisconsin v. Acting Midwest Regional Director*, 53 IBIA 62, 82 (2011) ("[T]he responsibility . . . to comb through the record to determine what arguments the County has made and should continue to make . . . lies exclusively with Appellant.").

Even if the County intended to carry over to this appeal all of its prior objections to the Regional Director, we find that the County has not shown that the Decision was erroneous or reflected an improper exercise of discretion. First, the County contended that the "sole purpose" of the acquisition is to gain tax exemption for the Property, but the County provided no evidence for that contention. The trust acquisition was expressly requested and approved on the ground that it would promote tribal self-determination. Moreover, even if the purpose of the acquisition was to gain tax exemption, the County

cited no authority to show that elimination of taxes is an impermissible objective of a tribal government.

Second, the County asserted to the Regional Director that a loss of \$4617 in tax revenue from the Property would be significant in light of the rural nature of Carroll County, however, the County provided no evidence to support that assertion. The MBCI furnished data showing that the County's loss would amount to 0.058% of the total County property tax revenue, and the Regional Director concluded that such loss would not have a significant impact on the County. The County did not dispute the data provided by the MBCI or otherwise show that the Regional Director acted unreasonably.

Third, the County provided no evidence to the Regional Director that the MBCI had a plan to develop the Property. Without a showing that the Regional Director failed to consider countervailing evidence, we accept the Regional Director's finding that there is no current plan by the MBCI to develop the Property.

Finally, we would have no authority to consider an argument that acquiring the Property in trust constituted impermissible discrimination per se against non-Indians—in effect a challenge to the trust acquisition laws and regulations. *See, e.g., Thurston County*, 56 IBIA at 66 (the Board lacks authority to adjudicate challenges to the constitutionality of laws or regulations).

Conclusion

Because the Regional Director considered the relevant criteria in § 151.11 and reasonably exercised his discretion, we affirm his 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 December 23, 2010, decision to acquire 876.90 acres, more or less, formerly referred to as the "Belmont Shook/Malmaison Property," in trust for the Mississippi Band of Choctaw Indians.

I concur:

// original signed
Thomas A. Blaser
Administrative Judge

//original signed
Steven K. Linscheid
Chief Administrative Judge