



INTERIOR BOARD OF INDIAN APPEALS

Pine View Estates Homeowners Association v. Western Regional Director,
Bureau of Indian Affairs

64 IBIA 1 (10/07/2016)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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PINE VIEW ESTATES)	Order Docketing and Dismissing
HOMEOWNERS ASSOCIATION,)	Appeal
Appellant,)	
)	
v.)	Docket No. IBIA 17-002
)	
WESTERN REGIONAL DIRECTOR,)	
BUREAU OF INDIAN AFFAIRS,)	
Appellee.)	October 7, 2016

On September 16, 2016, the Board of Indian Appeals (Board) received a notice of appeal from Pine View Estates Homeowners Association (PVHOA or Appellant), through Francis C. Flaherty, Esq., of Dyer, Lawrence, Flaherty, Donaldson & Prunty. Appellant appeals from the alleged failure of the Western Regional Director (Regional Director), Bureau of Indian Affairs (BIA), to respond within 60 days to a May 18, 2016, appeal filed by Appellant from the alleged inaction of BIA’s Western Nevada Agency Superintendent (Superintendent), concerning Appellant’s request for BIA to replace an existing, failed wastewater treatment system located within Pine View Estates. Appellant’s appeal to the Board is filed pursuant to 25 C.F.R. § 2.8 (Appeal from inaction of official). We summarily dismiss this appeal as premature.

Appellant’s appeal to the Board includes as exhibits a number of documents related to its requests for BIA action concerning the replacement of the wastewater treatment plant. Notice of Appeal, Sept. 12, 2016 (NOA). An April 2016 letter addressed to the Superintendent advised that if the Superintendent did not take action on its original request within 10 days or establish a date by which BIA would take action, PVHOA would file an appeal pursuant to 25 C.F.R. § 2.8. *Id.*, Exhibit (Ex.) 1, Letter from Appellant to Superintendent, Apr. 14, 2016. In a subsequent letter addressed to the Superintendent and identified in its subject line as a notice of appeal from inaction, Appellant explained that it was appealing because it had received no response from the Superintendent. *Id.*, Ex. 2, Letter from Appellant to Superintendent, May 18, 2016. The notice included a statement certifying that a copy was sent to the Regional Director. Appellant next filed a statement of reasons, which was also addressed to the Superintendent and copied to the Regional Director. *Id.*, Ex. 3, Letter from Appellant to Superintendent, June 17, 2016. In its appeal before the Board, Appellant contends that the Regional Director “has failed to acknowledge or otherwise respond to PVHOA’s appeal of [the Superintendent’s] inaction.” NOA at 1.

BIA’s appeal regulations, found in 25 C.F.R. Part 2, provide that when an appeal is taken to the Regional Director from action (or inaction, as made ripe for appeal pursuant to 25 C.F.R. § 2.8) of a Superintendent, an interested party (including the Superintendent) has 30 days from receipt of the statement of reasons to file an answer with the Regional Director. 25 C.F.R. § 2.11(a) & (c). Thus, assuming that Appellant’s statement of reasons, which was mailed Friday, June 17, 2016, was received by the Superintendent as early as Monday, June 20, 2016, the Superintendent (and other interested parties) would have had until July 20, 2016, to file an answer. Unless briefing was extended or further briefing allowed, it would appear that the time for pleadings thus expired at the earliest on July 20, 2016.

The applicable appeal regulations require that the Regional Director render a written decision “within 60 days after all time for pleadings (including all extensions granted) has expired.” 25 C.F.R. § 2.19(a); *see Castillo v. Pacific Regional Director*, 41 IBIA 190 (2005). As applied to this case, based on the information contained in the notice of appeal filed with the Board, the Regional Director would have had at least until September 19, 2016, to issue a written decision on Appellant’s appeal from the Superintendent’s alleged inaction. *See* 25 C.F.R. § 2.15 (Computation of time). Thus, Appellant’s appeal to the Board from the alleged inaction of the Regional Director, which was filed September 12, 2016, is premature. *See Quapaw Tribe of Oklahoma v. Acting Eastern Oklahoma Regional Director*, 61 IBIA 118, 120 n.4 (2015) (citing *Steward v. Pacific Regional Director*, 61 IBIA 70, 72 (2015) (“An appellant cannot use § 2.8 to shorten the normal regulatory timelines for a BIA official to decide an 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, the Board docketed but dismisses this appeal.

I concur:

// original signed
Robert E. Hall
Administrative Judge

//original signed
Thomas A. Blaser
Chief Administrative Judge