



INTERIOR BOARD OF INDIAN APPEALS

City of Minnewaukan, North Dakota v. Great Plains Regional Director,
Bureau of Indian Affairs

54 IBIA 34 (08/30/2011)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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| CITY OF MINNEWAUKAN, |) | Order Vacating Decision |
| NORTH DAKOTA, |) | and Remanding |
| Appellant, |) | |
| |) | |
| v. |) | |
| |) | Docket No. IBIA 11-104 |
| GREAT PLAINS REGIONAL |) | |
| DIRECTOR, BUREAU OF |) | |
| INDIAN AFFAIRS, |) | |
| Appellee. |) | August 30, 2011 |

The City of Minnewaukan, North Dakota (City), appealed to the Board of Indian Appeals (Board) from a March 18, 2011, decision of the Great Plains Regional Director (Regional Director), Bureau of Indian Affairs (BIA), to approve the acceptance into trust of approximately 0.15 acres of land (the “Little Flower Freedom Center”) located within the City, by the United States for the Spirit Lake Tribe of North Dakota (formerly the Devils Lake Sioux Tribe).

On August 1, 2011, the Board received from the Regional Director a motion to have this matter remanded to him for further consideration. The City filed a response in opposition to the motion, arguing that the administrative record for this matter has been established by the Regional Director and that this appeal should be continued based on that record. In addition, the City objects that the Regional Director failed to provide an explanation or justification for requesting a remand.

A party opposing a motion from BIA for a voluntary remand has the burden to provide compelling reasons why the Board should not grant the motion. *See Roberts County, South Dakota v. Acting Great Plains Regional Director*, 48 IBIA 304, 306 (2009) (“if BIA wishes to give additional consideration to a decision, we think that the burden is on a party opposing a remand to demonstrate why a remand should *not* be granted by the Board”); *United Keetoowah Band of Cherokee Indians in Oklahoma v. Eastern Oklahoma Regional Director*, 47 IBIA 87, 89 (2008) (when BIA requests a remand, the burden is on a party opposing the request to demonstrate compelling reasons why the request should not be granted); *see also Birdbear v. Acting Great Plains Regional Director*, 51 IBIA 273, 273

(2010) (“As a general rule, the Board will grant a Regional Director’s motion for a voluntary remand.”) (citations omitted). The City has not satisfied that burden in opposing the Regional Director’s motion.

The City suggests that the appeal should be required to proceed based upon the administrative record in its current form. But as the Board recently noted in *Village of Hobart, Wisconsin v. Acting Midwest Regional Director*, 53 IBIA 269, 270 (2011), “it is a hallmark of administrative law that, in the course of governmental decision making, agencies and officials should be able, without penalty, to revisit their decisions . . . if the deciding official concludes that it is appropriate and prudent to do so.” (citations omitted). Thus, the Regional Director may give further consideration to the proposed trust acquisition and the administrative record may be supplemented accordingly. *See id.* at 271 (administrative record may be supplemented on remand). On remand, of course, the record developed during this appeal becomes part of the Regional Director’s record, and therefore he must consider the issues and arguments raised by the City in this appeal.

Contrary to the City’s contention, Regional Director’s failure to include with his motion an explanation or justification for seeking a remand does not provide a basis for the Board to deny the motion. *See id.*; *see also Froelich v. Acting Great Plains Regional Director*, 51 IBIA 173, 173 (2010) (“BIA need not justify a remand request”) (citations omitted). As noted earlier, the burden lies with a party opposing a voluntary remand to show why BIA’s motion should *not* be granted.

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 vacates the Regional Director’s March 18, 2011, decision, and remands the matter to the Regional Director for further consideration and issuance of a new decision.

I concur:

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Steven K. Linscheid
Chief Administrative Judge

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Debora G. Luther
Administrative Judge