



INTERIOR BOARD OF INDIAN APPEALS

Shawano County Concerned Property Taxpayers Association and Scott Seaborne
v. Midwest Regional Director, Bureau of Indian Affairs

38 IBIA 156 (10/24/2002)

Related Board cases:

38 IBIA 72
39 IBIA 215
40 IBIA 241



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

SHAWANO COUNTY CONCERNED	:	Order Affirming Decision as to
PROPERTY TAXPAYERS ASSOCIATION,	:	Lack of Standing
Appellant	:	
	:	
and	:	
	:	
SCOTT SEABORNE,	:	Docket Nos. IBIA 02-130-A
Appellant	:	IBIA 02-131-A
	:	
v.	:	
	:	
MIDWEST REGIONAL DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	October 24, 2002

Shawano County Concerned Property Taxpayers Association (Association) and Scott Seaborne (collectively, Appellants) sought review of a June 3, 2002, decision of the Midwest Regional Director, Bureau of Indian Affairs (Regional Director; BIA), concerning taking approximately 278 acres of land located in Shawano County, Wisconsin, into trust for the Stockbridge-Munsee Indian Community (Community). ^{1/} For the reasons discussed below, the Board of Indian Appeals (Board) affirms the Regional Director's holding that Appellants lacked standing to appeal to him from the October 12, 2001, decision of the Superintendent, Great Lakes Agency, BIA, to take the land in trust.

^{1/} The Board has received other appeals from this decision. One appeal was dismissed for lack of prosecution. Lensby v. Midwest Regional Director, 38 IBIA 72 (2002). Three other appeals are still pending. Shawano County, Wisconsin, Board of Supervisors v. Midwest Regional Director, Docket No. IBIA 02-127-A; Town of Red Springs, Wisconsin v. Midwest Regional Director, Docket No. IBIA 02-129-A; and Governor of Wisconsin v. Midwest Regional Director, Docket No. IBIA 02-133-A. The decision here does not affect the status of any other pending appeal.

As to Appellants and others similarly situated, the Regional Director's decision states:

We have carefully reviewed the appeals filed by all of the individual addressees and by [the Association]. The basis for all of those appeals are the same as those interests represented by the State [of Wisconsin] and local units of governments. None of the appeals cite any specific individual interest which would be adversely affected by this decision. The appeals allege no injury in fact. The individual appellants and [the Association] raise concerns about the loss of taxes, the boundary issue, compliance with acquisition regulations, jurisdictional issues and other matters which are general governmental concerns. "Interested party" is defined at 25 C.F.R. § 2.2 as "any person whose interests could be adversely affected by a decision in an appeal." None of the individual appellants have articulated an interest sufficient to give them standing to appeal this decision and therefore their appeals are denied for lack of standing, in addition to all of the substantive reasons outlined herein above.

June 3, 2002, Decision at 8.

Appellants were advised in a July 11, 2002, order from the Board that they would be required to show their standing in this matter. Appellants discussed their standing in a joint opening brief which the Board received on September 30, 2002. Appellants contend that they have standing as private citizens.

The Board has not previously addressed the question of standing to challenge a trust acquisition decision before a BIA Regional Director. It has, however, addressed the question of standing to challenge a trust acquisition decision before the Board. There is no apparent reason why, under the present regulations in 25 C.F.R. Parts 2 and 151, the principles of standing discussed in the Board's decisions should not apply, not only to trust acquisition appeals to the Board, but also to trust acquisition appeals to BIA Regional Directors from decisions issued by BIA Superintendents.

Although recognizing that it is not bound by the case-or-controversy restrictions in Article III of the United States Constitution, the Board has relied on the Supreme Court's decision in Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992), in addressing the standing of private individuals and associations challenging trust acquisition decisions. In Lujan, the Supreme Court stated:

[T]he irreducible constitutional minimum of standing contains three elements. First, the plaintiff must have suffered an "injury in fact"--an invasion of a legally protected interest which is (a) concrete and particularized, * * * and (b) "actual or imminent, not 'conjectural' or 'hypothetical'" * * *. Second, there must be a causal connection between the injury and the conduct complained of--the injury

has to be “fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court.” * * * Third, it must be “likely,” as opposed to merely “speculative,” that the injury will be “redressed by a favorable decision.” [Citations and footnote omitted.]

504 U.S. at 560-61.

In Friends of East Willits Valley v. Acting Pacific Regional Director, 37 IBIA 213 (2002), the appellant association based its claim to standing before the Board upon its right under California law to bring suit in California courts as a “private attorney general.” The Board found that the appellant had not described any concrete injury that affected it in a personal and individual way. The Board therefore found that the appellant had failed to show that it satisfied the first of the three elements of standing described by the Supreme Court in Lujan. The Regional Director’s analysis in this case is, in essence, an analysis under the first element in Lujan.

In Evitt v. Acting Pacific Regional Director, 38 IBIA 77 (2002), the Board found that individual appellants had not met the second or third elements of standing in Lujan because they had not shown that there was a causal connection between any of the injuries they alleged and the trust acquisition decision, or that a decision on appeal not to take the land into trust would redress the alleged injuries. In large part, this finding was related to the fact that the tribe could carry out all of the proposed uses of the property (tribal housing, a recreational vehicle park, equestrian and walking trails, an archery park and shooting range, and preservation of tribal cultural sites) whether or not the property was taken into trust. Cf. TOMAC v. Norton, 193 F.Supp.2d 182 (D.D.C. 2002) (holding that the second and third standing elements set out in Lujan were shown when the proposed use of the property could not be carried out unless the land was in trust).

As in Friends of East Willits Valley, Appellants here have failed to articulate any concrete injury that affects them in a personal and individual way. Rather, their allegations are common to all taxpayers and are represented by the State governmental units which have filed their own appeals from this decision. Thus, Appellants have failed to show that they meet the first element of standing which the Supreme Court articulated in Lujan. The Regional Director’s holding may be affirmed on this basis alone.

However, Appellants have also failed to show a causal connection between the trust acquisition decision and any personal injury to them (even had they shown such an injury). As in Evitt, the Community’s proposed use of the property--construction of tribal housing and development of a forest management program, including a tribal nursery and open areas--can be carried out whether or not the land is in trust. Therefore, Appellants have failed to show that they meet either the second or third element of standing set out in Lujan.

Not having shown that they meet any of the elements of standing set out in Lujan, Appellants have failed to carry their burden of proving that the Regional Director erred in his holding that they lacked standing.

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 Regional Director's holding that these Appellants lacked standing is affirmed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge