



# 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

VILLAGE OF HOBART, WISCONSIN, )  
Appellant, )  
v. )  
ACTING MIDWEST REGIONAL )  
DIRECTOR, BUREAU OF INDIAN )  
AFFAIRS, )  
Appellee. )

Order Granting Motion to Consolidate in  
Part and Denying in Part; and Order  
Modifying Briefing Schedules in  
Docket Nos. IBIA 10-091,  
IBIA 10-092, and IBIA 10-107

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VILLAGE OF HOBART, WISCONSIN, )  
Appellant, )  
v. )  
MIDWEST REGIONAL DIRECTOR, )  
BUREAU OF INDIAN AFFAIRS, )  
Appellee. )

Docket Nos. IBIA 10-091 }  
IBIA 10-092 } consolidated  
IBIA 10-107 }

IBIA 10-131

August 31, 2010

The Village of Hobart, Wisconsin (Village), seeks review from the Board of Indian Appeals (Board) of three decisions (Docket Nos. IBIA 10-091, IBIA 10-092, and IBIA 10-107) by the Midwest Regional Director and one decision (Docket No. IBIA 10-131) by the Acting Midwest Regional Director<sup>1</sup>, Bureau of Indian Affairs (BIA), in which the Regional Director agreed to take four parcels — known as the Boyea, Cornish, Gerber, and Buck properties — into trust status for the Oneida Tribe of Indians of Wisconsin (Tribe).<sup>2</sup>

<sup>1</sup> The Board refers herein to the Midwest Regional Director and the Acting Midwest Regional Director as “Regional Director.”

<sup>2</sup> The appeal from the decision concerning the Boyea property is docketed as No. IBIA 10-091; the appeal from the decision concerning the Cornish property is docketed as No. IBIA 10-092. On May 19, 2010, the Board issued an order that *inter alia* consolidated these two appeals. The decision concerning the Gerber property is the subject of Docket No. IBIA

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The appeal challenging the Regional Director's July 8, 2010, decision to take the Buck property into trust has been assigned docket number IBIA 10-131. Please refer to this docket number in all future correspondence or inquiries regarding this matter.<sup>3</sup>

On August 26, 2010, the Board received a Motion for Consolidation from the Regional Director in which she requests that the appeals of her two decisions concerning the Gerber and Buck properties be consolidated with the previously consolidated appeals of her decisions concerning the Boyea and Cornish properties. On August 30, 2010, the Board received an amended consolidation motion from the Regional Director.<sup>4</sup> In support

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<sup>2</sup>(...continued)

10-107, and the decision concerning the Buck property is now the subject of Docket No. IBIA 10-131.

<sup>3</sup> Counsel for the Regional Director avers in both the motion to consolidate and the amended motion to consolidate that she was not served with a copy of the Village's notice of appeal in Docket No. IBIA 10-131, thus seemingly suggesting that she is required to be served with the notice of appeal. It is BIA's responsibility, as the client agency, to inform its counsel of appeals filed with the Board, and counsel's obligation thereafter to file a notice of appearance to ensure that she is served with pleadings. *See generally* 43 C.F.R. § 4.333(a) (requirements of service of a notice of appeal); *see also* 25 C.F.R. § 2.2 (definition of "interested party," incorporated by reference into the Board's regulations, 43 C.F.R. § 4.330(a)).

<sup>4</sup> The Regional Director provided the Board with one copy of her August 26 Motion to Consolidate, which was filed in accordance with counsel's cover letter in Docket No. IBIA 10-107. The Board's legal assistant spoke with counsel for the Regional Director and explained that two additional originals should be submitted for filing with Docket No. IBIA 10-131 and the previously consolidated appeals in Docket Nos. IBIA 10-091 and IBIA 10-092. On August 30, 2010, the Board received two original documents entitled "Motion to Consolidate," which have been filed in Docket Nos. IBIA 10-091/10-092 (consolidated) and in Docket No. IBIA 10-131. The latter motion is an amended version of the motion received by the Board on August 26 and filed in Docket No. IBIA 10-107.

On August 26, 2010, the Board also received one Notice of Appearance of counsel for the Regional Director. This document has been filed in accordance with counsel's cover letter in Docket No. IBIA 10-107.

The parties are advised that until the Board consolidates two or more appeals, the Board maintains separate appeal files and separate dockets for each appeal filed with the Board.

Therefore, until the Board issues an order of consolidation, the parties should submit a

(continued...)

of her motion to consolidate, the Regional Director observes that each of the four appeals raises a “threshold issue” of whether the Supreme Court’s decision in *Carciere v. Salazar*, 555 U.S. \_\_\_, 129 S. Ct. 1058 (2009), precludes BIA from accepting land into trust on behalf of the Tribe. The Regional Director represents that the Tribe and the Village concur in the motion to consolidate.<sup>5</sup>

On August 27, 2010, the Board received a letter from the Village in which the Village confirms that it has no objection to the consolidation of its appeal concerning the Gerber property (IBIA 10-107) with its earlier, consolidated appeals (IBIA 10-091 and IBIA 10-092), but objects to consolidating these three appeals with the Village’s latest appeal concerning the Buck property (IBIA 10-131). The Village objects because the latter appeal has not yet been docketed and, therefore, any extension would therefore “be uncertain and unnecessarily extensive.” Letter from Village to Board, Aug. 26, 2010.<sup>6</sup>

Given the common issues raised in the detailed notices of appeal concerning BIA’s authority to accept the parcels into trust and BIA’s consideration of the required factors found in 25 C.F.R. Part 151, and upon review of the administrative records received thus far by the Board, good cause is found to consolidate Docket No. IBIA 10-107 (Gerber property) with the previously consolidated appeals in Docket Nos. IBIA 10-091 and IBIA 10-092 (Boyea and Cornish properties). Thus, the Regional Director’s motion is GRANTED in part to consolidate Docket No. 10-107 with Docket Nos. IBIA 10-091/10-092 (consolidated). As to consolidating Docket No. IBIA 10-131 with the former three appeals, the Board ordinarily reviews the record before consolidating appeals. Therefore,

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<sup>4</sup>(...continued)

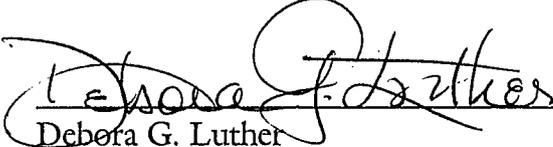
separate original document for each appeal even though the documents may be identical. Once the Board issues an order consolidating two or more appeals, the parties need only submit one original thereafter for those appeals that have been consolidated.

<sup>5</sup> In her amended motion, the Regional Director acknowledges that the Village objects to consolidating its first three appeals with the Village’s fourth appeal in Docket No. IBIA 10-131.

<sup>6</sup> The Village also suggests that the Regional Director should avoid deciding requests to accept additional parcels into trust on behalf of the Tribe pending the Board’s decision on the threshold issue under *Carciere*. To the extent that the Village seeks an order from the Board instructing the Regional Director to refrain from entering such decisions, the Board lacks such authority. See *Sanders v. Eastern Oklahoma Regional Director*, 50 IBIA 307, 308 n.2 (2009) (“the Board does not manage or oversee the day-to-day operations of BIA”).

the motion is DENIED without prejudice insofar as it seeks to consolidate Docket No. IBIA 10-131 with the Village's three pending appeals.

The briefing schedules in Docket Nos. IBIA 10-091/IBIA 10-092, and in IBIA 10-107 are hereby MODIFIED. The Regional Director and any opposing parties, including the Tribe, may file a single answer brief for these three consolidated appeals (Nos. IBIA 10-091, IBIA 10-092, and IBIA 10-107) within 30 days of receipt of the Village's opening brief or statement in Docket No. IBIA 10-107.<sup>7</sup> If no opening brief or statement is filed in Docket No. IBIA 10-107, opposing parties may file a brief within 30 days from the date the Village's opening brief or statement was due. The Village shall have 15 days from receipt of any answer brief in which to file a reply brief.

  
Debora G. Luther  
Administrative Judge

Enclosure

Distribution: See attached list.

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<sup>7</sup> Pursuant to the Board's July 15, 2010, Notice of Docketing and Order Setting Briefing Schedule in Docket No. IBIA 10-107, the Village's opening brief was due on or before August 26, 2010.

**Distribution: IBIA 10-091, -092, -107, & 10-131**

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