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BEFORE THE STATE BOARD OF LAND COMMISSIONERS

SHARLIE-GROUSE NEIGHBORHOOD)	
ASSOCIATION, INC.)	
)	
Petitioner,)	RESPONDENT'S RESPONSE IN
)	OPPOSITION TO PETITIONER'S
vs.)	MOTION TO COMPEL
)	DISCOVERY
)	
IDAHO STATE BOARD OF LAND)	
COMMISSIONERS,)	
)	
Respondent.)	

The Idaho State Board of Land Commissioners (“Respondent”), by and through the Office of the Attorney General, its counsel of record, submits this Response in Opposition to Petitioner’s Motion to Compel Discovery. For the following reasons, and based upon the statutory and

regulatory framework and the judicial precedent discussed herein, Respondent respectfully requests that the Hearing Officer deny the Motion to Compel Discovery in its entirety.

I. ARGUMENT

A. **The Discovery Power Petitioner Seeks is Unwarranted Given the Limited Statutory Purpose of This Declaratory Ruling Matter.**

Petitioner Sharlie-Grouse Neighborhood Association, Inc. (“Petitioner”) initiated this contested case and seeks declaratory relief pursuant to Idaho Code §§ 67-5232 and 67-5255, and IDAPA 20.01.01.400. (Pet. for Decl. Ruling ¶ 25.) The statutory provisions allow a person to request a “declaratory ruling as to the *applicability* of any statutory provision or of any rule administered by the agency,” I.C. § 67-5232 (emphasis added), or to receive a “declaratory ruling as to the *applicability* of any order issued by the agency,” I.C. § 67-5255 (emphasis added).¹ Similarly, the Rules of Practice and Procedure before the State Board of Land Commissioners (“Rules”) allow any person to petition for “a declaratory ruling on the *applicability* of a statute, rule or order administered by the agency” IDAPA 20.01.01.400 (emphasis added). While this tribunal has authority to interpret whether statutes may be applied to or by Respondent, there is “no procedural mechanism in ... the Administrative Procedures Act which permits [a Commission or Board] to issue a declaratory ruling on a legal issue.” *Shobe v. Board of Com’rs of Ada County*, 126 Idaho 654, 655, 889 P.2d 88, 90 (1995).

“A statute is to be construed pursuant to its plain, obvious, and rational meaning.” *Harris v. State, Dept. of Health & Welfare*, 123 Idaho 295, 300, 847 P.2d 1156, 1161 (1992) (citations omitted). The court “reviews the provision’s language as a whole, considering the meaning of

1. Respondent contests, and does not concede through any argument proffered in this Response, whether I.C. §§ 67-5232 or 67-5255 are applicable to this matter, whether subject matter jurisdiction exists in this tribunal, and whether Petitioner has standing to bring this matter. (Answer to Pet. for Decl. Ruling ¶¶ 16, 17, 19, 20, 22).

each word, so as to not render any word superfluous or redundant.” *Wasden v. State Bd. of Land Com’rs*, 153 Idaho 190, 196, 280 P.3d 693, 699 (2012) (citation omitted). The court also “applies the rules of statutory construction to construe constitutional provisions.” *Wasden*, 153 Idaho at 196, 280 P.3d at 699 (citation omitted). Here, the word “applicability” is a prominent and common term that guides the scope of this proceeding. “Applicability” is a noun derived from the adjective “applicable,” which means “capable or suitable for being applied.” Merriam-Webster’s Collegiate Dictionary 56 (10th ed. 1993).

The laws identified by Petitioner as being applicable to its Petition are Article IX, Section 8 of the Idaho Constitution, and Sections 58-313 and 58-322 of the Idaho Code. (Pet. for Decl. Ruling ¶¶ 14, 17, 18.) No administrative rule or order of Respondent appears to be at issue in this matter. (Pet. for Decl. Ruling ¶¶ 20, 21; Answer to Pet. for Decl. Ruling ¶¶ 16, 17.) In presenting the Motion to Compel Discovery, Petitioner asserts that: “In addition to important legal questions, the issues presented in the Petition address an extensive history and potentially complex factual information, as well as expert analyses relating to property valuation, among other matters.” (Mot. to Compel 2.) However, Petitioner does not explain what, or assert why such “potentially complex factual information” or “expert analysis” is relevant factual information related to the applicability of Article IX, Section 8 of the Idaho Constitution and Idaho Code §§ 58-313 and 58-322 to Respondent’s execution of State Deed No. SD13867 (“Deed”) and the subsequent Amended Quitclaim Deed (“Amended Deed”). (Pet. for Decl. Ruling ¶¶ 2, 3, 17, 18).

Petitioner is not *entitled* to engage in discovery. IDAPA 20.01.01.521. Parties may only conduct discovery if the Hearing Officer issues an order directing the discovery, or upon agreement of all parties. IDAPA 20.01.01.521. Petitioner did not attempt to confer with Respondent regarding possible discovery prior to filing its Motion. Regardless, discovery should not be

allowed in the absence of Petitioner showing that certain factual information is believed to exist (and is not already in its possession) that will assist the Hearing Officer in determining the applicability of the constitutional provision and two statutes to Respondent's issuance of the Deed and Amended Deed. As submitted by Petitioner, no such proof is in the record. See IDAPA 20.01.01.260.02.a (requiring motions to "fully state the facts upon [which] they are based"). Therefore, Respondent respectfully requests that the Motion to Compel Discovery be denied on that basis.

B. An Order Compelling Discovery is Discretionary with the Hearing Officer and, If Issued, Should be Limited in Scope.

Petitioner seeks leave to conduct all forms of discovery listed in Rule 20.01.01.520.01 of the Rules. (Mot. to Compel 2.) The forms of discovery listed in Rule 520.01 are as follows:

- a. Depositions;
- b. Production requests or written interrogatories;
- c. Requests for admission;
- d. Subpoenas; and
- e. Statutory inspection, examination (including physical or mental examination), investigations, etc.

IDAPA 20.01.01.520.01. Without explanation of its actual need to utilize all modes of discovery, Petitioner requests blanket authority to utilize the full spectrum of discovery techniques. The request for such extensive discovery is too broad.

Whether to order discovery in this contested case is a matter of discretion for the Hearing Officer. "The presiding officer *may* by order authorize or compel *necessary discovery* authorized by statute or rule." IDAPA 20.01.01.522 (emphasis added). "Courts review discretionary decisions of hearing officers for an abuse of discretion." *Bell v. Idaho Trasp. Dept.*, 151 Idaho

659, 666, 262 P.3d 1020, 1037 (2011). The decisions to grant or deny discovery requests, including for issuance of subpoenas, the number of subpoenas, the time frame for discovery, the relevance of requested discovery, and the irrelevance of purported evidence are all discretionary determinations for the Hearing Officer. *Bell*, 151 Idaho at 666-670, 262 P.3d at 1037-1041. As the requesting party, Petitioner must demonstrate which methods of discovery are most appropriate to receive necessary information that is relevant to a determination of the applicability of the specified laws to Respondent's execution of the Deed and Amended Deed. I.C. § 67-5232. If Petitioner cannot demonstrate such relevance, denying the Motion to Compel Discovery would be well within the Hearing Officer's discretion. *Id.*, 151 Idaho at 668-669, 262 P.3d at 1039-1040.

Petitioner has not identified any necessary discovery. IDAPA 20.01.01.522. Petitioner does not propose the timeframe of information it will conduct discovery through. Petitioner does not identify what non-party entities or persons it will subpoena for documents or depositions. Petitioner does not even indicate how many depositions it intends to take and of who. As presented, Petitioner could theoretically subpoena the depositions of the five elected officials, past and present, who have composed the State Board of Land Commissioners over decades. Such carte blanche, unfettered discovery would be onerous and unduly burdensome on Respondent, would likely seek to impede upon but ultimately be protected by the attorney-client privilege, and is not necessary given the very limited scope of this declaratory ruling matter. *Supra* § I.A.

If Petitioner is able to provide the specific categories of information that are believed to be in the custody of certain government bodies, entities or people, the Hearing Officer has the discretion to issue an order compelling and scheduling discovery. IDAPA 20.01.01.521. However, as submitted, and in the absence of Petitioner be able or willing to describe its need for

such extensive discovery against all parties and unlimited non-parties, Respondent requests that the Motion be denied.

II. CONCLUSION

For the foregoing reasons, Respondent State Board of Land Commissioners respectfully requests that Petitioner Sharlie-Grouse Neighborhood Association, Inc.'s Motion to Compel Discovery be denied in its entirety.

DATED this 25th day of October, 2018.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of October, 2018, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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