

DEPT. OF LANDS

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BOISE, IDAHO

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**BEFORE THE STATE BOARD OF LAND COMMISSIONERS**

SHARLIE-GROUSE NEIGHBORHOOD )  
 ASSOCIATION, INC., )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 IDAHO STATE BOARD OF LAND )  
 COMMISSIONERS, )  
 )  
 Respondent. )

**REPLY TO RESPONDENTS' RESPONSE  
IN OPPOSITION TO PETITIONER'S  
MOTION TO COMPEL DISCOVERY**

The Petitioner Sharlie-Grouse Neighborhood Association, Inc., by and through undersigned counsel of record, hereby submits a reply brief in support of its motion to compel discovery.

## I. ARGUMENT

### A. The Existing Record Reveals the Necessity of Factual Discovery and Development in Order to Appropriately Present this Matter to the Board.

The record already before the hearing officer in this case illustrates the necessity of discovery. The State's Answer to Petition for Declaratory Ruling contains numerous denials of factual allegations by the Association. *See* Petition for Declaratory Ruling, ¶¶ 5-12; Answer to Petition for Declaratory Ruling, ¶¶ 6-12. Of particular note is the State's denial of the allegation that the real property that is the subject of this proceeding has financial value. *See* Petition at ¶ 9; Answer to Petition at ¶ 9. While there are several legal questions that must ultimately be answered, such legal questions turn in many respects on whether or not the real property in question has financial value.

Indeed, that factual question, as-yet unanswered by the Board, is at the very heart of this proceeding. At a minimum, the Association seeks (i) the information the State or the intervenors had or presently have about the value of the land in question; (ii) the analysis, if any, conducted by the State or the intervenors relating to the value of the land before or after the State conveyed such land; and (iii) the financial value, if any, the State received, or the intervenors paid, for the land in question. The Association also seeks to understand the administrative procedures actually employed by the Board in the disposition of the land in question, as well as the role of the intervenors in that process. The Association should be afforded the opportunity to conduct discovery to address such issues.

The State asserts that this matter is about the "applicability" of a statute, apparently in order to suggest that factual discovery is unnecessary. That assertion fails to acknowledge that evidence and facts are to be presented to the Board so that it can make the findings, and

thereafter draw the appropriate legal conclusions based on the statutes and Constitutional provisions it is charged with administering.

The State cites *Shobe* for the proposition that the Administrative Procedures Act does not permit the Board to issue a declaratory ruling on a pure legal issue. *Shobe* specifically states:

[W]e find no procedural mechanism in either the indigency statutes or the Administrative Procedures Act which permits the Commissioners to issue a declaratory ruling on a legal issue. By submitting only the legal question the parties were requesting an advisory opinion from the Commissioners on matters which were largely factual. Although the Commissioners have the authority to interpret statutes under the rule making provisions of I.C. § 67-5203 to -5208, they clearly were not undertaking that function in the present case.

*Shobe v. Board of Com'rs of Ada County*, 126 Idaho 654, 655, 889 P.2d 88, 90 (1995).

Unlike the parties in *Shobe*, the Association seeks a declaration relating to the application of specific facts to the statutes and laws the Board is responsible to administer. As addressed in the Petition itself, the Association is not aware that the Board has engaged in any rule making interpreting the applicable laws to authorize the conveyance in question outside of the public auction process, and thus was bound to apply the applicable laws, as articulated by the legislature and interpreted by the courts of this state, to the facts before it. The Association may develop, through discovery, and then present, factual evidence of value to support a finding or findings of value,<sup>1</sup> which in turn informs the legal conclusion relating to the validity of the deeds in question under the applicable statutes and, in this case, Constitutional provisions.

As the above description of potential discovery topics illustrates, a factual evaluation of the value of specific state lands necessarily informs the declaratory ruling sought by the Association. Discovery is appropriate, and the hearing officer should authorize it in this case.

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<sup>1</sup> The Association is unaware of whether the Board ever made any determination or finding that the land in question had, or did not have, financial value. That is among the reasons discovery is appropriate.

**B. The State is Not Entitled to a Preemptive Protective Order.**

As described *supra*, discovery is appropriate in this matter. However, the State also takes issue with the Association seeking the availability of the “full spectrum of discovery techniques.” It appears to assert that the Association must know, before engaging in discovery at all, exactly what discovery will be necessary to resolve the factual questions that this proceeding presents. Ultimately, the State has filed a preemptive motion for protective order. It suggests that the Association seeks “carte blanche, unfettered discovery [that] 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.” *See* Response at 5. The Association does not seek any of that. And as the State is aware, “the scope of discovery . . . is governed by the Idaho Rules of Civil Procedure.” IDAPA 20.01.01.520.02. That means that if discovery is indeed authorized, and a dispute arises among the parties concerning the nature, scope or propriety of a given discovery-related matter, the parties may abide by the civil discovery rules, meet and confer, and if necessary, seek a protective order from the hearing officer.

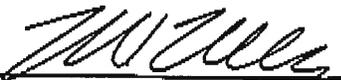
To address the exemplar “theoretical” discovery abuse identified by the State, the Association has no intention of subpoenaing decades of Commissioners for depositions. The issue of undue burden is not ripe because the Association has not propounded discovery. And, because the civil rules apply, if the Association propounds discovery the State believes to be “unduly burdensome” or “onerous,” the State will have the ability to argue as much to the hearing officer in the event the parties cannot agree after efforts to meet and confer. The State’s undue burden arguments are premature, and should be reserved for an actual controversy.

## II. CONCLUSION

For the foregoing reasons, the Associations respectfully renews its request for an order authorizing discovery in the above-captioned proceeding.

DATED this 1st day of November 2018.

SPINK BUTLER, LLP

By:   
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### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of November 2018, I caused a true and correct copy of the above to be served upon the following individuals in the manner indicated below:

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