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Attorneys for Intervenor/Respondents,
 Payette Lakes Cottage Sites Owners Association, Inc.
 and Wagon Wheel Bay Dock Association, Inc.

BEFORE THE STATE BOARD OF LAND COMMISSIONERS

SHARLIE-GROUSE)	
NEIGHBORHOOD ASSOCIATION,	)	MOTION TO STRIKE
INC.,	)	DECLARATIONS OF MARK
	)	RICHEY, CHRISTOPHER A.
Petitioners,	)	MOTHORPE, PH.D., AND
	)	ZEPHANIAH JOHNSON, FILED IN
vs.	)	SUPPORT OF SGNA'S MOTION
	)	FOR SUMMARY JUDGMENT
IDAHO STATE BOARD OF LAND)	
COMMISSIONERS,	)	(Intervenor/Respondents, Payette
	)	Lakes Cottage Sites Owners
Respondent,	)	Association, Inc. and Wagon Wheel
	)	Bay Dock Association, Inc.)
and)	
)	
PAYETTE LAKES COTTAGE SITES)	
OWNERS ASSOCIATION, INC., an)	
Idaho non-profit corporation, and)	
WAGON WHEEL BAY DOCK)	
ASSOCIATION, INC., an Idaho non-)	
profit corporation,)	
)	
Intervenor/Respondents.)	
)	

COME NOW, Intervenor/Respondents, Payette Lakes Cottage Sites Owners Association, Inc. (“PLCSOA”) and Wagon Wheel Bay Dock Association, Inc. (“WWBDA”), by and through their attorneys, Mark D. Perison, P.A., and file this Motion to Strike the Declarations of Mark Richey, Christopher A. Mothorpe, Ph.D., and Zephaniah Johnson, filed in support of SGNA’s Motion for Summary Judgment.

I.

MOTION

SGNA has offered the Declarations of Mark Richey, Christopher A. Mothorpe, Ph.D., and Zephaniah Johnson in support of its argument that SGNA members have been “injured” by the conveyance of common areas and roads to PLCSOA. However, these Declarations do not actually discuss any supposed injury based on the conveyance of the common areas and roads. Rather, the Declarations solely address the impact of WWBDA’s community dock on SGNA members’ property values.

As stated more comprehensively in PLCSOA and WWBDA’s Response to SGNA’s Motion for Summary Judgment, an “injury” is required in order for a party to be conferred standing to seek relief. Because these Declarations do not support the contention that SGNA members have been injured by the actual conveyance, they are not relevant and should be stricken.

A. Declaration of Mr. Richey.

SGNA's Motion for Summary Judgment ostensibly alleges that the conveyance of Community Beach via quitclaim deeds ("Deeds") from the Idaho State Board of Land Commissioners ("Land Board") to PLCSOA violated the Idaho Constitution because it was not done through a public auction. However, Mr. Richey's Declaration does not speak to the issue of the conveyance of the common areas and roads. Rather, Mr. Richey opines exclusively as to the impact of WWBDA's dock. Therefore, his Declaration is irrelevant to the issues it is purportedly offered to support.

Attached to the Declaration of Mark Richey as Exhibit "A," is a prior Declaration of Mr. Richey's, filed on March 2, 2018, in *Johnson v. Payette Lakes Cottage Sites Owners Association, Inc.*, Valley County Case No. CV-2017-204-C. This Declaration was stricken by Judge Jason D. Scott in that case, as not relevant to show standing in a related context, *i.e.* whether the SGNA members had standing to seek a declaratory judgment that Community Beach was "dedicated to the public." Soper Aff., Exh. "D," Judge Scott's Memorandum Decision and Order, pp. 15-16.

Mr. Richey's Declaration at that time was purportedly offered to demonstrate that the SGNA members had been "injured" because their property values had declined.

Tellingly, Judge Scott stated:

Specifically, Richey attributes the supposed decline in property values to events that won't be reversed or stopped even if Plaintiffs succeed on their existing claims.

Id. at p. 16.

Similarly, regardless of whether the Deeds are deemed void here, WWBDA still has an encroachment permit from IDL and its dock will remain on Community Beach. Affidavit of Kevin Hanigan, ¶¶ 7-8. Therefore, as in the previous case before Judge Scott, SGNA's complaints about WWBDA's dock simply cannot be redressed in this context. Without redressability, there is no standing. Exhibit "A" of Mr. Richey's Declaration should be stricken once again as irrelevant to support SGNA's standing in this forum.

Exhibit "B" to Mr. Richey's Declaration is his report dated October 1, 2018, setting forth his updated opinion regarding the supposed decline in property value of SGNA member, Zephaniah Johnson's lakefront property. Proving the point that even SGNA's own experts¹ attribute any such decline in property values to the dock rather than the conveyance of the common areas and roads to PLCSOA, Mr. Richey's first paragraph states:

This report summarizes my conclusions regarding the impact to your property value caused by the Payette Lakes Cottage Sites Ownership Association (PLCSOA) development of a multi-slip dock on a parcel of land formerly noted on the State Subdivision-Southwest Payette Lake Cottage Sites plat as Community Beach. *The PLCSOA's development of a multi-slip dock effectually created a land use change* that has impacted lake front property views, created additional noise, and adversely impacted the local neighborhood enjoyment of their properties.

¹ Use of the term "expert" should not imply that WWBDA or PLCSOA waive their right to contest Mr. Richey or Dr. Mothorpe's qualifications should SGNA's Petition survive summary judgment, and WWBDA and PLCSOA expressly reserve this right.

Richey Decl., Exh. "B," p. 1 (emphasis added). Mr. Richey goes on to recite the nine (9) factors that he believes affect Mr. Johnson's property values:

Some of the initial change that affects the subject property includes:

1. the PLCSOA granted Littoral Rights to the WWBDA,
2. trees were cleared without oversight or governmental approval to accommodate the construction of the dock,
3. the WWBDA constructed a private dock with 8-slips for sole use of its members,
4. the private dock extending from the site noted as Community Beach was constructed within the view shed of the subject property,
5. since this dock is designed for multiple users, it is larger than many docks used in support of a single residence, or one shared by adjacent owners,
6. the private dock is used extensively by the eight members, including their families and guests,
7. without an adjacent dwelling, the members of the WWBDA remain on the dock throughout the day,
8. pedestrian and automobile traffic have increased,
9. restroom facilities were not constructed to accommodate the change of use[.]

Id. at p. 4.

Mr. Richey's Declaration and Exhibits "A" and "B" attached thereto prove conclusively that the "injury" complained of by SGNA members is the installation of the community dock, rather than the conveyance of the common areas and roads to PLCSOA. Without an injury, there is no standing. Mr. Richey's reports attached as Exhibits "A" and "B" to his Declaration should be stricken in their entirety as not relevant to the issue of standing, which his Declaration was offered to support.

B. Declaration of Christopher A. Mothorpe, Ph.D.

Dr. Mothorpe's Declaration suffers from a similar deficiency: his analysis revolves wholly around the supposed impacts from the installation of WWBDA's dock, not the actual conveyance of the common areas and roads to PLCSOA. This is evident from both his Declaration and his attached report.

For instance, in paragraph 2 of his Declaration, Dr. Mothorpe states:

On or about July 30, 2018, I was contacted and engaged by Zeke Johnson, a member of the Sharlie-Grouse Neighborhood Association, to conduct an evaluation of impacts to that lakefront neighborhood stemming from the installation of a dock.

Mothorpe Decl., ¶ 2. The introductory paragraph to his report states:

The construction of the dock in the Sharlie-Grouse community's common beach area negatively affects property owners through three channels: 1) an increase in noise pollution; 2) diminished views of Lake Payette; and 3) a reduction in open space benefits.

Mothorpe Decl., Exh. "B," p. 1. And in his conclusion, Dr. Mothorpe states:

The construction of the dock in the Sharlie-Grouse community's common beach area negatively impacts the property owners through three channels: 1) an increase in noise pollution; 2) diminished views of the lake and surrounding countryside; and 3) a reduction in open space and the associated benefits.

Id. p.6.

Dr. Mothorpe's report goes on to state the opinion that the property values of SGNA members have declined to the tune of several million dollars due to the existence of the WWBDA dock. Keep in mind that Dr. Mothorpe's opinions are based solely on studies and empirical evidence, rather than an actual market study of the Valley County

properties. Setting that aside, Dr. Mothorpe's opinions are utterly irrelevant to demonstrate that SGNA members have been "injured" by the Land Board's conveyance of common areas and roads, such that SGNA would now have standing to complain of such action which occurred in 2013. Nowhere in Dr. Mothorpe's report is there any discussion of how the conveyance itself has injured SGNA members in any way.

Because his opinions do not support the premise for which they are ostensibly offered to support (*i.e.* that SGNA members have been injured by the conveyance), Dr. Mothorpe's report, attached as Exhibit "B" to his Declaration, should be stricken in its entirety.

C. Declaration of Zephaniah Johnson.

Mr. Johnson's Declaration offers testimony that is either irrelevant or which is based solely on hearsay. For instance, in paragraph 8, Mr. Johnson attempts to convey a purported conversation Mr. Johnson had with an unnamed "hospital director" of State Hospital South. Mr. Johnson's recitation of this conversation is hearsay and should be stricken.

In paragraphs 9 through 13, Mr. Johnson sets forth his opinion regarding the impact of WWBDA's community dock on the neighboring properties and on his property values. Similar to Mr. Richey's and Dr. Mothorpe's Declarations, Mr. Johnson's purported injury is solely connected to impacts from WWBDA's dock, rather than the conveyance of the common areas and roads to PLCSOA.

Paragraphs 8 through 13 of Mr. Johnson's Declaration should be stricken as irrelevant or based solely on hearsay.

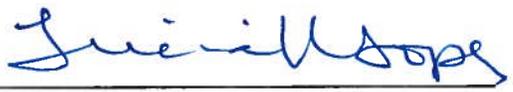
II.

CONCLUSION

For all of the foregoing reasons, the Declarations of Mr. Richey and Dr. Mothorpe should be stricken in their entirety, and paragraphs 8 through 13 of Mr. Johnson's Declaration should be stricken in their entirety.

MARK D. PERISON, P.A.

DATED: June 14, 2019.

By: 
Tricia K. Soper – Of the Firm
Attorneys for Intervenor/ Respondents,
PLCSOA and WWBDA

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of June, 2019, I caused to be served a true and correct copy of the foregoing, by the method indicated, and addressed to the following:

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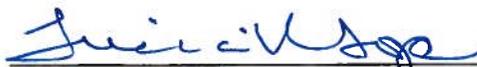
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