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DEPT. OF LANDS
JUN 25 2019
BOISE, IDAHO

BEFORE THE STATE BOARD OF LAND COMMISSIONERS

SHARLIE-GROUSE NEIGHBORHOOD
ASSOCIATION, INC.,

Petitioner,

v.

IDAHO STATE BOARD OF LAND
COMMISSIONERS,

Respondent,

and

PAYETTE LAKES COTTAGE SITES
OWNERS ASSOCIATION, INC., and
WAGON WHEEL BAY DOCK
ASSOCIATION, INC.,

Intervenors.

**SGNA'S RESPONSE TO INTERVENORS'
MOTION TO STRIKE**

INTRODUCTION

This is Sharlie-Grouse Neighborhood Association, Inc.'s ("SGNA") response in opposition to the *Motion to Strike Declarations of Mark Richey, Christopher A. Mothorpe, Ph.D., and Zephania Johnson, Filed in Support of SGNA's Motion for Summary Judgment* ("*Strike Response*") filed by Intervenors Payette Lakes Cottage Sites Owners Association, Inc. ("PLCSOA") and Wagon Wheel Bay Dock Association ("WWBDA") (collectively, "Intervenors") on June 14, 2019.

This response employs the same shorthand definitions employed by SGNA in its prior briefing.

ARGUMENT

Intervenors' motion unnecessarily clutters the record. It is no more than an excuse to repeat the arguments made in *Intervenors' Response Brief*.

Intervenors urge that SGNA's declarations be stricken "as irrelevant or based solely on hearsay." *Strike Response* at 8.

"[T]he Idaho Rules of Evidence do not apply to contested case proceedings before the agency." IDAPA 20.01.01.052. Furthermore, "[e]vidence should be taken by the agency to assist the parties' development of a record, not excluded to frustrate that development." IDAPA 20.01.01.600. SGNA acknowledges that the evidence the Intervenors seek to strike relates to its "standing" to pursue declaratory relief. While SGNA questions whether its "standing" before the agency should really be at issue before the Hearing Officer, the Intervenors have nonetheless raised lack of standing as a defense to the grant of a requested declaratory ruling. SGNA is entitled to address such defense with evidence, and the hearing officer should accept and consider such evidence, consistent with the Board's rules.

SGNA's declarations describe, among other things, the decline in property values suffered by its members as a result of (1) the destruction of the natural values of Community Beach and its conversion to a parking lot and party zone and (2) the associated dock. SGNA has explained in its briefing that these events would not have occurred absent the illegal conveyance of Community Beach to PLCSOA.

At the end of the day, the Hearing Officer, and ultimately the Land Board, will decide whether SGNA even needs to demonstrate standing and, if so, whether the causal connection it has described is sufficient to show injury. If the Hearing Officer finds it necessary to resolve the question of whether SGNA has standing, the record relating to that issue should include the information Intervenors seek to strike. Regardless, the presence of these declarations in the record does not prejudice Intervenors or impair the tribunal in making a ruling on the threshold question of SGNA's standing.¹

It is apparent from the motion, that Intervenors wish they could re-live the prior litigation *Johnson v. Payette Lakes Cottage Sites Owners Ass'n, Inc.*, 4th Jud. Dist., Idaho, Case No. CV-2017-204. That litigation, crafted by counsel not involved in the current *Petition*, pressed theories and arguments that are not embraced by SGNA in this proceeding. Accordingly, any action taken by the court in the prior litigation is irrelevant here.

CONCLUSION

For these reasons, SGNA asks that Intervenors' Motion to Strike be denied.

¹ For the same reason, SGNA has not cluttered the record with motions to strike the declarations and affidavits of Auction Opponents.

Respectfully submitted this 25th day of June, 2019.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of June, 2019, the foregoing was filed, served, and copied as follows:

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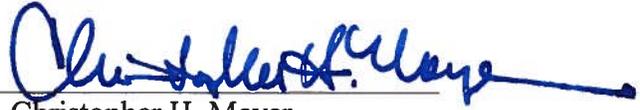
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