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**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.

**RECOMMENDED DECISION AND  
ORDER ON PETITION FOR  
DECLARATORY RULING**

The Petitioner in this matter seeks a declaratory ruling which would invalidate an agency action whereby the Respondent relinquished the State's interest in a parcel of real property located on Payette Lake in Valley County, Idaho.

**BACKGROUND**

In 1924, the Idaho State Board of Land Commissioners (Land Board) created and platted the Southwest Payette Cottage Sites Subdivision (Subdivision), located along Payette Lake in

Valley County. In addition to laying out subdivision lots, the 1924 plat donated and dedicated “the streets, roads, alleys, commons and public grounds shown on the plat to the use of the public forever.” An amended 1932 plat reiterated the donation and dedication. The dedicated common areas included a 1.01-acre parcel designated on the plats as “Community Beach.”

Starting in 1986, the Land Board decided to convey the roads and common areas to the lot owners as a whole. From then on, all deeds issued by the Idaho Department of Lands for Subdivision lots contained language vesting “in common” in all lot holders “the right to use and enjoyment” of the previously dedicated roads and common areas. The vesting of such rights was to occur, simultaneously with the divestment of any interest of the State of Idaho, “[u]pon conveyance of the last state-owned lot in fee simple” in the Subdivision.

At a meeting held on May 17, 2011, the Land Board voted to move forward with a plan for the eventual sale of all lots in the Subdivision. Over the next two years, the Land Department staff developed a plan to carry out the Land Board’s plan. It included the preparation of an amended plat, which provided that common areas and roads would be quitclaim deeded to an association of lot owners and lessees. A Declaration of Covenants, Conditions and Restrictions (CC&Rs) was prepared, which provided for members of an incorporated nonprofit association, known as “Payette Lakes Cottage Sites Owners Association, Inc.” (PLCSOA), to operate and maintain the roads and common areas. Final action was taken on the plan at a Land Board meeting held on October 15, 2013. All parties to this proceeding were represented by legal counsel at such meeting. None of the parties sought judicial review of the Land Board action. The amended plat and CC&Rs were then recorded. A quitclaim deed, which transferred to PLCSOA any interest of the State of Idaho in and to the Subdivision roads and common areas, was recorded on April 25, 2014. An amended quitclaim deed with the same effect was recorded on January 30, 2015.

## **PROCEDURAL POSTURE**

Sharlie-Grouse Neighborhood Association, Inc. (SGNA), an association consisting of lot owners in the northern part of the Subdivision, filed a Petition for Declaratory Ruling with the Idaho Department of Lands on May 29, 2018, initiating this proceeding. SGNA sought a declaratory ruling that the two quitclaim deeds were issued in violation of various constitutional provisions and statutes, that the deeds were invalid to convey title to the roads and common areas to PLCSOA, and that the Land Board continues to hold title to the roads and common areas. The Land Board answered the Petition, raising a variety of affirmative defenses. On October 3, 2018, the Director of the Idaho Department of Lands appointed the undersigned as Hearing Officer “to decide all procedural and pre-hearing matters,” and “submit a recommended order to the State Board of Land Commissioners.”

Two additional groups of lot owners in the Subdivision, PLCSOA and Wagon Wheel Bay Dock Association, Inc., (Intervenors), subsequently sought and were granted intervention in this proceeding. The Intervenors have generally supported the position of Respondent in this matter. Following various procedural motions and orders, the parties were requested to file a stipulation regarding discovery, scheduling, and the manner of handling dispositive motions. The parties agreed upon and submitted such a stipulation, which was approved by order of the Hearing Officer. Dispositive motions with supporting memoranda, declarations, and affidavits were submitted by all parties pursuant to the stipulation and the same were scheduled for oral argument before the Hearing Officer on August 27, 2019. All parties characterized their dispositive motions as motions for summary judgment.

All of the parties were represented by counsel at the dispositive motion hearing. Prior to the hearing, Intervenors had submitted a motion to strike the declarations of Mark Richey,

Christopher A. Mothorpe, and Zephaniah Johnson, all of which had been filed by SNGA along with its moving papers. Having considered written arguments previously submitted by the parties in support and opposition, the Hearing Officer ruled from the bench before the submission of oral argument. The declarations of Richey and Mothorpe were stricken on grounds of relevance. The motion to strike the Johnson declaration was denied. The parties then submitted oral argument on all pending dispositive motions and the Hearing Officer took the matter under advisement.

### ANALYSIS

Before launching into an analysis of the declaratory ruling issue, it is necessary to consider what actions of the Land Board are being challenged in this proceeding. In its summary judgment reply brief, SGNA specifically states that “it seeks no relief with respect to the roads.” Indeed, SGNA’s oral and written argument specifically focuses on the Land Board’s disposition of Community Beach, which SGNA claims was violative of controlling constitutional and statutory provisions. Thus, the analysis here will focus exclusively upon Community Beach.

SGNA contends that the Land Board violated its constitutional and statutory duties by acting to dispose of Community Beach, by recording CC&Rs relating to the disposal and by issuing the two quitclaim deeds. However, the alleged violations all stem from the Land Board’s action on October 15, 2013, which approved the Land Department staff’s plan for disposition of the Subdivision’s roads and common areas. That Land Board action authorized the recording of the amended plat, the CC&Rs and the quitclaim deeds. The execution and recording of those documents were simply ministerial acts to carry out the action taken by the Land Board on October 15, 2013. That action is the focus of this proceeding.

The next question is what occurred on October 15? That is, was it an “agency action” or an “order” or a “contested case” or something else? This is an important question because the answer dictates when and how the propriety of the Land Board’s may be subjected to challenge.

None of the parties assert that the October 15 action was the culmination of a contested case. Even though SGNA had participated in Land Board proceedings leading up to the October 15 meeting and was aware the Land Board would likely decide upon the disposition of the Subdivision streets and common areas at the meeting, the proceedings did not fit the statutory definition of a contested case. Idaho Code section 67-5201(6) defines a contested case as a proceeding “which results in the issuance of an order.” The action taken by the Land Board at that meeting does not fit the definition of “order” in Idaho Code section 67-5201(12). The Land Board’s action does, however, fit the definition of an “agency action” set out in Idaho Code section 67-5201(3)(c)— “[An] agency’s performance of, or failure to perform, any duty placed on it by law.” SGNA contends that in deciding how to dispose of Community Beach, the Land Board failed to perform its lawful duties.

The Land Board contends that SGNA’s sole mechanism for challenging the October 15 agency action was to file a timely petition for judicial review. Idaho Code section 67-5270(2) provides that a “person aggrieved by a final agency action other than an order in a contested case is entitled to judicial review.” Idaho Code section 67-5273 (3) specifies that a petition for judicial review “must be” filed within twenty-eight (28) days of the agency action. That did not occur here.

SGNA did not seek to challenge the October 15 agency action until four and one-half years later. Whether this challenge is called a request for judicial review or a petition for declaratory ruling, it is untimely. In *Cobbley v. City of Challis*, 143 Idaho 130, 139 P.3d 732 (2006), the Idaho Supreme Court stated:

Judicial review of an administrative decision is wholly statutory; there is no right of judicial review absent the statutory grant. ... Thus, a party's failure to physically file a petition for judicial review with the district court within the time limits prescribed by statute and the Rules of Civil Procedure is jurisdictional and results in a dismissal of the appeal.

*Id.* at 133, 139 P.3d at 735. The Court went on to say, "one cannot challenge in a separate civil suit the action of a board where that board has acted on matters within its jurisdiction." *Id.* at 134, 139 P.3d at 736. It almost goes without saying that a party may not challenge an agency action in a separate administrative proceeding where the party failed to file a timely petition for judicial review of that action.

SGNA creatively seeks to avoid the bar interposed by its failure to timely petition for judicial review by characterizing its Petition for Declaratory Ruling as the initiation of a contested case. There are two provisions of the Idaho Administrative Procedure Act pertaining to declaratory rulings. Idaho Code section 67-5255(1) allows any person to petition an agency for a declaratory ruling as to the applicability of any order issued by the agency. Because an "order" is not the subject of SGNA's petition, this provision does not apply.

Idaho Code section 67-5232(1) allows for a declaratory ruling as to the applicability of any statutory provision or rule administered by an agency. Subsection (2) goes on to provide that a petition for declaratory ruling does not preclude an agency from initiating a contested case in the matter. SGNA contends that the Notice of Appointment of Hearing Officer makes reference to Idaho Code section 58-122, which outlines certain procedures for contested cases. Section 58-122 authorizes the Director of the Land Department to appoint hearing officers for contested cases. However, it contains an important proviso pertaining to cases where the Land Board "is exercising its duties and authorities concerning the direction, control or disposition of the public lands of the state pursuant to sections 7 and 8 article IX," of the Idaho Constitution. Those actions "shall not

be considered to be contested cases ... unless the board, in its discretion, determines that a contested case hearing would be of assistance to the board in the exercise of its duties and authorities.”

While the Land Board decided to appoint a hearing officer at its meeting on July 17, 2018, there is no indication that it made a discretionary determination to initiate a contested case. At most, it gave the Director of the Land Department the authority to appoint a hearing officer to conduct a hearing on the petition and submit a recommended order. Where the hearing officer is appointed under the proviso, there should be a clear statement by the Land Board that it intends to have the hearing officer conduct a contested case hearing, along with a delineation of the scope of the contested case.

It should be noted that SGNA did not request the initiation of a contested case in its Petition for Declaratory Ruling. It filed the petition “pursuant to Idaho Code Sections 67-5232 and 67-5255” and the Land Board’s procedural rules. Although SGNA claimed the Land Board had violated its constitutional duties, the cited rules would allow it, at most, to obtain a ruling “as to the applicability of any statutory provision or of any rule administered by the agency.”

There are simply no administrative avenues of relief for SNGA to pursue in its quest to undo the actions taken by the Land Board at its meeting on October 15, 2013. It failed to seek judicial review of this agency action. Had it availed itself of this statutory remedy, most of the issues it seeks to raise here could have been presented to a district judge for determination. SNGA’s failure to seek judicial review resulted in the recording of the amended plat, the CC&Rs and the quitclaim deeds. Each of those actions has seriously complicated the possibility of undoing the Land Board’s action. Other lot owners in the Subdivision have accumulated certain rights under those documents, as well as previous deeds and plats, that cannot be taken away by any agency

action. Only a court of law could void those documents. SGNA claims that it only seeks relief with respect to Community Beach, but it has repeatedly claimed that both quitclaim deeds must be voided, which would affect all roads and common areas in the entire Subdivision.

The parties have devoted substantial briefing to the question of whether a declaratory ruling is an appropriate mechanism to obtain the relief SGNA seeks. Idaho Code section 67-5232(1) provides for a declaratory ruling “as to the applicability of any statutory provision.” SGNA is correct when it argues that the requirements of Idaho Code section 58-313 apply to the sale of State endowment lands, such as the Subdivision property. However, the Land Board is correct in pointing out the application of Idaho Code section 58-317, which authorizes the Land Board to lay out State lands in subdivisions when it determines that the property “will sell at a better price than when undivided.” This section also provides for the Land Board to file subdivision plats, which necessarily includes the dedication or designation of roads and common areas for the benefit of lot owners or the public. It appears that both statutes apply, which seems to be the extent of any determination under Section 67-5232.

Having failed to pursue judicial review of the Land Board’s action, there is no separate administrative avenue for SGNA to pursue for the relief it has requested. Indeed, the relief sought would only be a possibility in a regular civil action in the court system. Only a court of law could invalidate the quitclaim deeds that SGNA claims to be violative of constitutional and statutory provisions. Substantial legal and factual questions are presented that could only be dealt with in a court of law. Those questions would be outside the purview of a declaratory action in the court system, let alone an administrative proceeding.

Decisions of the Idaho Supreme Court under Idaho Code section 10-1201, the Declaratory Judgment Act provide guidance on the limits of declaratory relief. In *Farmers Ins. Exchange v.*

*Tucker*, 42 Idaho 191, 125 P.3d 1067 (2005), the Court had before it a case in which the principal question was the amount of damages payable under an insurance policy. The Court first noted, citing Idaho Code section 10-1209, that where a proceeding under the Act involved the determination of an issue of fact, such issue may be tried and determined as in other actions at law. *Id.* at 194, 125 P.3d at 1070. However, the Court stated further, citing *Country Ins. Co. v. Agricultural Development, Inc.*, 107 Idaho 961, 972, 695 P.2d 346, 357 (1984), “the Declaratory Judgment Act is not a freeway open for the litigation of factual disputes.” *Id.* The Court went on to say that in *Country Ins. Co.* it had “held that a declaratory judgment should not be allowed ‘where the issues presented should be the subject of judicial investigation in a regular action.’” *Id.*

In addition to presenting constitutional issues beyond the scope of an administrative action, this case would require resolution of substantial factual disputes which are inappropriate for determination in a declaratory proceeding. The principal issue in this matter is whether the Land Board received full market value for the roads and common areas that it dedicated and/or deeded to lot owners between 1924 and October 15, 2013. The Land Board contends the dedicated/deeded roads and common areas increased the prices it was able to charge for rental or sale of the lots. SGNA contends there was substantial residual value of the Land Board’s ownership interest in Community Beach as of October 15, 2013, that should have been realized upon its disposal. The valuation issue depends on a determination of the property rights held by the Land Board as of the October 15 meeting. While it still held the underlying fee to Community Beach, all of the lot owners in the Subdivision had vested rights in and to the “in common” use and enjoyment of all of the common areas, including Community Beach. This type of encumbrance would likely have a substantial impact on the market value of the Community Beach property. Resolution of such

factual issues would be well beyond the scope of either an administrative or judicial declaratory proceeding.

### **RECOMMENDED DECISION AND ORDER**

The parties have raised interesting issues in their substantial briefing, but SGNA has been unable to demonstrate an available administrative avenue to pursue the relief it desires. It could have sought judicial review of the Land Board's October 15, 2013 decision but it failed to do so. There is no other available administrative remedy. A declaratory ruling would only result in a determination that a certain statute or rule might apply, but would not result in a determination of the outcome that the statute or rule would dictate. SGNA did not seek the initiation of a contested case and the Land Board did not authorize such a proceeding. A contested administrative proceeding seeking to undo the Land Board's action of October 15, 2013, would, in essence, constitute an impermissible collateral attack on that action.

The parties have styled their dispositive motions as motions for summary judgment and, therefore, a summary judgment standard will be applied here. This Hearing Officer can find no genuine issue as to any material fact regarding SGNA's ability to attack the Land Board's action of October 15, 2013, which approved the disposal of the State's interest in and to the roads and common areas of Southwest Payette Cottage Sites Subdivision, including Community Beach. SGNA failed to file a timely petition for judicial review of that agency action and may not collaterally attack the action in the present proceeding. Therefore, the Petition for Declaratory Ruling should be dismissed on summary judgment as a matter of law.

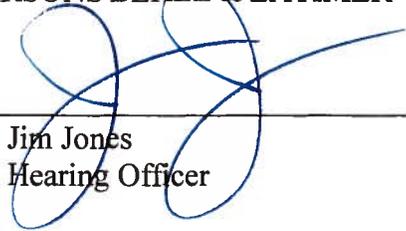
The Hearing Officer recommends that the Idaho State Board of Land Commissioners approve and adopt the foregoing decision and issue the recommended order served concurrent herewith, dismissing the Petition for Declaratory Ruling.

DATED this 12th day of November 2019.

PARSONS BEHLE & LATIMER

By \_\_\_\_\_

Jim Jones  
Hearing Officer



CERTIFICATE OF SERVICE

I hereby certify that on November 12, 2019, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

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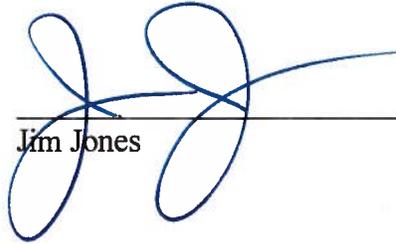
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