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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,

and

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

Intervenor-Respondents

RESPONDENT’S RESPONSE IN
OPPOSITION TO SGNA’S PETITION
FOR RECONSIDERATION

Petitioners have moved for reconsideration. The apparent basis for their *Petition for Reconsideration* (“Petition”) is that the hearing officer reached the wrong conclusion — not on a single issue, nor on two issues, but on eleven different legal and factual issues.

“A motion for reconsideration is a motion which allows the court—when new law is applied to previously presented facts, when new facts are applied to previously presented law, or any combination thereof—to reconsider the correctness of an interlocutory order.” *Johnson v. N. Idaho Coll.*, 153 Idaho 58, 62, 278 P.3d 928, 932 (2012).

Here, Petitioners present no new law or evidence justifying their Petition. Of the eight cases cited, five were discussed at length in prior briefing.¹ The three “new” cases are cited for non-substantive purposes that have no bearing on the issue of whether the hearing officer made an error of law justifying reconsideration.² The one new authority offered by Petitioners is Richard Seamon’s article, *Administrative Law: A Primer for Students and Practitioners*, 51 Idaho L. Rev. 421 (2015). Petitioners incorrectly cite it for the proposition that judicial review is limited to “ministerial actions” of state agencies. When correctly used, the cited portion of the Seamon article discusses the availability of judicial review when an agency *fails* to perform a mandatory duty. The article does not suggest that discretionary agency decisions are immune from review. Indeed, Idaho case law is replete with examples of judicial review of discretionary agency decisions. *See, e.g., Pan Am. Assur. Co. v. Dep’t of Ins.*, 121 Idaho 884, 886, 828 P.2d 913, 915 (Ct. App. 1992) (“[a] discretionary decision made by an administrative agency may be set aside where substantial rights of the appellant have been prejudiced because the decision is

¹ *Cobbley v. City of Challis*, 143 Idaho 130, 139 P.3d 732 (2006); *Greater Boise Auditorium Dist. v. Frazier (“GBAD”)*, 159 Idaho 266, 360 P.3d 275 (2015); *Idaho Retired Fire Fighters Ass’n v. Public Employee Retirement Bd. (“Firefighters I”)*, 2017 WL 6949778 (Idaho Ind. Comm’n Dec. 29, 2017); *Idaho Retired Firefighters Ass’n v. Public Employee Retirement Bd. (“Firefighters II”)*, 165 Idaho 193, 443 P.3d 207 (2019).

² *See Laughy v. ITD*, 149 Idaho 867, 243 P.3d 1055 (2010) (cited as example of a judicially reviewable non-discretionary action); *Podsaid v. Outfitters and Guides Licensing Bd.*, 159 Idaho 70, 356 P.3d 363 (2015) (cited as example of judicially reviewable non-discretionary action); *Rangen, Inc. v. IDWR*, 160 Idaho 119, 129, 369 P.3d 897, 907 (2016) (cited for unremarkable proposition that an agency may enforce constitutional provisions).

characterized by abuse of discretion or clearly unwarranted exercise of discretion”); *Hauser Lake Rod & Gun Club, Inc. v. City of Hauser*, 162 Idaho 260, 264, 396 P.3d 689, 693 (2017) (“we may set aside an agency's decision if it abused its discretion and prejudiced a party's substantial rights”).

In parallel with their failure to identify new law justifying reconsideration, the Petitioners also fail to identify any new facts in support of their Petition. Rather, they rely on the existing record and simply assert that the hearing officer “misidentified” the materiality of the facts presented to him. (Pet’r Mem. in Supp. 13.) Petitioners’ mere disagreement with the hearing officer’s assessment of the materiality of previously-presented facts is not an adequate grounds for reconsideration. *See, e.g., In re Pangburn*, 154 Idaho 233, 241, 296 P.3d 1080, 1088 (2013) (upholding denial of motion to alter or amend asserting that Hearing Committee of the Professional Conduct Board failed to properly consider the mitigating factors, the Court held that: “Merely because Pangburn disagrees with the Committee does not mean the Committee did not fully consider all of the mitigating factors”).

Finally, Petitioners fail to identify any clear legal errors justifying reconsideration, but merely rehash arguments previously made to, and rejected by, the hearing officer. Compare Petition § II.A and SGNA Resp. Br. 8-15; § II.B. and SGNA Resp. Br. 9-12; § II.C. and SGNA Reply Br. 24-27; § II.D. with SGNA Resp. Br. 13-14; § II.E. and SGNA Resp. Br. 6-14; § II. F and SGNA Opening Br. 39-42; § II. G. and SGNA Opening Br. 21-22, SGNA Resp. Br. 6-8; § II.H and SGNA Resp. Br. 6-8; § II.I and SGNA Resp. Br. 6; § II.J. and SGNA Reply Br. 8, 29-30; § II.K and SGNA Resp. Br. 15-17, SGNA Reply Br. 22-24. Any response by the Land Board would similarly rehash its prior arguments. To

the extent necessary, those arguments are hereby adopted by reference and incorporated in support of the Land Board's submission that reconsideration is not justified. If, however, the hearing officer is inclined to order hearing on one or more of the eleven issues raised in the Petition for Reconsideration, the Land Board requests that a briefing schedule be established so that the Land Board can address any specific issues identified by the hearing officer for reconsideration.

In the event a hearing and attendant briefing are scheduled, and the *Petition for Reconsideration* is denied, the Land Board requests an award of its attorney's fees and reasonable expenses incurred in further responding to and arguing the same issues of fact and law that have already been presented to and decided by the hearing officer. Idaho Code § 12-117(1). As discussed, above, Petitioners present no new basis or legal authority in support of the Petition. It is simply a rehash of arguments already considered and rejected by the hearing officer; and therefore, without a reasonable basis in fact or law.

DATED this 11th day of December, 2019.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of December, 2019, 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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