

DEC 17 2019

BOISE, IDAHO

Jim Jones, ISB No. 1136
PARSONS BEHLE & LATIMER
800 W. Main Street, Suite 1300
Boise, ID 83702
Telephone: (208) 562-4900
Facsimile: (208) 562-4901
Email: jimjjust27@gmail.com

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.

**DECISION ON PETITION FOR
RECONSIDERATION**

The Petitioner, Sharlie-Grouse Neighborhood Association, Inc. (SGNA), has filed a Petition for Reconsideration of the Recommended Order proposed in this matter by the undersigned hearing officer. Having considered the arguments raised and authorities cited in SGNA's supporting memorandum, it does not appear that SGNA has shown sufficient grounds for reconsidering the Recommended Order. The Petition for Reconsideration is therefore denied for the reasons set forth below.

SGNA contends that the action taken by the Idaho State Board of Land Commissioners (Land Board) on October 15, 2013, did not constitute an “agency action” within the meaning of Idaho Code section 67-5201(3)(c). That provision defines an “agency action” as “[An] agency’s performance of, or failure to perform, any duty placed on it by law.”

At its October 15 meeting, the Land Board voted to approve a plan to dispose of any interest the State retained in and to the roads and common areas of Southwest Payette Cottage Sites Subdivision (Subdivision). The Land Board’s action approved: (1) the filing of an amended plat for the Subdivision; (2) a Declaration of Covenants, Conditions and Restrictions (CC&Rs) for an incorporated nonprofit association, “Payette Lakes Cottage Sites Owners Association, Inc.” (PLCSOA), to operate and maintain the roads and common areas of the Subdivision; and (3) the execution and recording of a quitclaim deed, relinquishing to PLCSOA any interest of the State of Idaho in and to the Subdivision roads and common areas. Such a quitclaim deed was recorded with the Valley County Recorder on April 25, 2014, and an amended quitclaim deed was recorded on January 30, 2015.

SGNA did not seek judicial review of any action taken by the Land Board on October 15, 2013, or of any of the ministerial acts authorized to be taken by the Land Board’s action on that date – the recording of the amended plat, the execution and recording of the CC&Rs, or the execution and recording of the two quitclaim deeds.

It is without doubt that the Land Board has the constitutional responsibility of holding, managing, and disposing of State endowment lands, such as the lands encompassed within the Subdivision, and that it is charged with the responsibility of doing so in accordance with constitutional and statutory law. In its Petition for Declaratory Ruling, SGNA claimed that the Land Board’s disposal of the State’s interest in the roads and common areas of the Subdivision

violated several duties placed on the Land Board by Idaho law. SGNA alleged that the Land Board's actions violated "its Constitutional and Statutory Duties," specifying Article IX, section 8 of the Idaho Constitution and the provisions of Idaho Code section 58-313. The claim was that the Land Board failed to conduct the disposal of the property interests in accordance with the duties placed upon it by these provisions of Idaho law. The Land Board's action on October 15 was clearly a discretionary agency action, which was subject to judicial review under Idaho Code section 67-5270(2).

SGNA argues that only ministerial acts can be characterized as agency actions subject to judicial review. The recording of the CC&Rs and quit claim deeds were obviously ministerial acts required pursuant to the Land Board's action of October 15, 2013. The problem for SGNA is that it did not seek judicial review of those ministerial acts. Indeed, even if the Land Board were to have second thoughts about the propriety of its action taken on October 15, whatever remedial action it might try to take would likely not qualify for judicial review under SGNA's concept of agency action. That is, any remedial action taken by the Land Board would not be in the form of a ministerial act and would not, in SGNA's view, be subject to judicial review by any party. Discretionary actions of an agency are without a doubt subject to judicial review. See, Idaho Code section 67-5279(2)(d).

SGNA next argues that it has a right to seek a declaratory ruling under Idaho Code section 67-5232(1) to determine the propriety of the Land Board's action in disposing of the Subdivision's roads and common areas. That provision allows for a declaratory ruling as to the applicability of any statutory provision or rule administered by an agency. It does not authorize declaratory rulings involving constitutional provisions. SGNA seeks a ruling that: (1) the advertisement and auction requirements in Idaho Code section 58-313 apply to the Land Board's actions and (2) the Land

Board's actions violated the provisions of that code section. The latter request certainly seems to exceed the scope of the statutory provision. It also overlooks the fact that SGNA did not seek judicial review of any actions taken by the Land Board between October 15, 2013, and January 30, 2015, when the amended quitclaim deed was filed with Valley County. None of those actions were the subject of a petition for judicial review within the 28-day time limitation in Idaho Code section 67-5273(3). Where a party has failed to avail itself of an available remedy, Idaho Code section 67-5232 does not provide an alternate avenue for attacking an agency action. If that were the case, an aggrieved party could use the declaratory ruling provision to launch serial attacks against a disappointing decision without having to observe any time limit.

Additionally, it is not clear that a declaratory ruling would produce the type of result SGNA wishes. The Subdivision consisted of endowment property and clearly was subject to being disposed of pursuant to applicable Land Board statutes and rules. The lots would obviously have to be disposed of in accordance with the provisions of Idaho Code section 58-313 regarding the advertisement and sale of lands or Idaho Code section 58-138 regarding equal-value exchanges.

However, the Land Board points out that the roads and common areas were platted and disposed of pursuant to 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." It contends that Subdivision was developed to take advantage of this better price option and that lot owners have paid a higher price for their individual lots over the years because of the access roads and common areas that came along with the deal.

Nevertheless, SGNA claims that the State's underlying fee interest in Community Beach had a residual value that should have been advertised and auctioned instead of being deeded to PLCSOA. In its opening brief SGNA states: "When SGNA members learned that the Land Board

was considering conveying Community Beach, they urged that it be conveyed to SGNA, so they could maintain it in its natural state for community and public use.” The Land Board chose, instead, to proceed with its plan to transfer its remaining interest in the dedicated property to PLCSOA for future maintenance and management.

The dispute appears to be more of a management controversy than a question of fee ownership. Because of the dedication of all of the common areas to the use and enjoyment of all lot owners in the Subdivision, and perhaps the public, there is not much the owner of the underlying fee could do with the property other than manage it for the benefit of those to whom the dedication was made. A brief look at the dedication history is instructive.

When the Subdivision plat was filed in 1924, “the streets, roads, alleys, commons and public grounds shown on the plat,” were donated and dedicated to the use of the public forever. An amended 1932 plat reiterated the donation and dedication. Starting in 1986, all deeds issued for Subdivision lots contained language vesting “in common” in all Subdivision lot holders “the right to use and enjoyment” of the previously dedicated roads and common areas. The vesting was to occur “upon conveyance of the last state-owned lot in fee simple.” It is not entirely clear from the record when the last lot was sold but appears that the sale must have been the event that triggered the Land Board’s action on October 15, 2013. The roads and common areas of the Subdivision have been donated and dedicated to the use and benefit of either the public, as stated in the plats, or the lot owners, as stated in documents recorded in and after 1986.

In its memorandum, SGNA notes that lot owners have had “the full benefit of use of the roads and Community Beach for many decades” by virtue of the “common law dedication in 1924 and/or 1932.” It recognizes that the State’s residual interest in the roads was valueless, that the conveyance of the roads to PLCSOA was a “housekeeping matter that facilitated management of

the roads” and that the State’s quitclaim of any interest in the roads to PLCSOA did not need to comply with the auction requirement of Idaho Code section 58-313. The same observation can be made with regard to the ten common areas, including Community Beach, that were quitclaimed to PLCSOA by the two deeds.

Each and every lot owner in the Subdivision has a vested, perpetual right to the use and enjoyment of Community Beach and the nine other common areas. This is an amenity that factored, to some degree, into the price they paid for their lot. There is no way short of judicial intervention that any lot owner in any part of the Subdivision can be deprived of the right to the “in common” use of all of the common areas. The Land Board appears to have made the determination that one management entity for all common areas would be more workable than having separate management entities for each common area, where all Subdivision lot owners had a vested interest in and to all of the ten common areas.

It appears that all SGNA lot owners are either members of, or eligible for membership in, PLCSOA, where they could have a voice in management decisions. There are certainly imperfections in the manner common area management entities operate at times, as evidenced by the number of HOA lawsuits that make their way through the court system. However, those who have concerns about the manner in which such entities operate have available recourse through the court system, not through Land Board administrative proceedings. If PLCSOA takes action that infringes on the rights of SGNA members to the “in common” use and enjoyment of Community Beach or other Subdivision common areas, the courts provide a forum for potential relief.

Because of the perpetual dedication of Community Beach to the use and enjoyment of all Subdivision lot owners, and perhaps the public, no use can be made of the land that would be inconsistent with such purpose. That fact would certainly have an impact upon the market value

of the land. SGNA argues that the Land Board's quitclaim deeds transferred significant value to PLCSOA because the Bagley family and its entities paid estimated rentals in excess of \$100,000 to the State for a .216-acre encroachment into Community Beach over a period of 29 years. That does not necessarily mean that a willing buyer would pay that sum for the fee underlying the dedicated property. The Bagley family had no right to encroach on the land and, by rights, should have been required to remove the encroaching improvements for the benefit of those having the in common right to use and enjoy that property. Payment of the rental may have been easier than going to the trouble of removing the improvements. The payment amounts are not necessarily indicative of what a willing buyer may have been willing to pay for the property at any point in time.

One might question the Land Board's decision to enter into a lease granting one lot owner the exclusive right to occupy a portion of a common area that had been dedicated to the use of all Subdivision lot owners, but that is beyond the scope of this proceeding. What is more relevant is that the Land Board did not quitclaim its interest in the roads and common areas to a stranger to the Subdivision. Rather, the quitclaim deeds transferred the State's property interests to an entity that encompassed the entire Subdivision, making each lot-owning member of PLCSOA an equity owner of a proportionate share of those quitclaimed interests.

SGNA recognizes that the Land Board does not have the power to void all or part of the quitclaim deeds, but suggests that it could make a non-binding declaratory ruling to the effect that it had "violated requirements respecting public auctions." That would, in essence, be an advisory opinion. Courts decline to issue advisory opinions in declaratory proceedings. *Wylie v. State, Idaho Transp. Bd.*, 151 Idaho 26, 31, 253 P 3d 700, 705 (2011). They are no more appropriate in administrative proceedings.

SGNA reiterates that it sought and the Land Board granted a contested case hearing. The Recommended Decision and Order (Decision) considered those contentions and disagreed. They are no more persuasive the second time around. As noted in the Decision, SGNA specifically initiated its request for declaratory relief under IDAPA 20.01.01.400, which provides for a “declaratory ruling on the applicability of any statute, rule, or order administered by the agency.” Such a proceeding is not a contested case. Both types of proceedings, however, are decided by an order. See, IDAPA 20.01.01.400 and IDAPA 20.01.01.005.07.

The Director of the Department of Lands used his delegated authority under Idaho Code section 58-122 to appoint a hearing officer to conduct a hearing in this matter. That section does not automatically make every appointment of a hearing officer a contested case proceeding, particularly where the matter involves the Land Board’s duties under Article IX, sections 7 and 8 of the Idaho Constitution. The statute does not authorize the Director to initiate a contested case in those matters. In those cases, the Land Board may, in its discretion, initiate a contested case. There is no evidence that the Land Board exercised its discretion to initiate a contested case here. This hearing officer does not have the authority to initiate a contested case on his own. It must be initiated by action of the Land Board, not the Director. If SGNA continues to disagree on this issue, the matter may be raised directly with the Land Board in an exception under IDAPA 20.01.01.720.02.b.

In any event, it is likely that the outcome of this proceeding would be the same whether it was characterized as a declaratory proceeding or a contested case. The parties stipulated to the filing of dispositive motions and all parties submitted such motions, along with supporting briefs, affidavits and declarations. The hearing officer determined that there was no genuine issue as to any material fact regarding SGNA’s ability to attack the Land Board’s disposal of the State’s

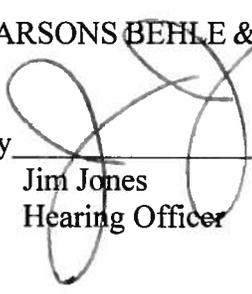
interest in and to Community Beach. It is likely that the same result would obtain whether the proceeding was labeled as a declaratory case or a contested case.

The undersigned hearing officer appreciates the diligent and inventive advocacy of SGNA's counsel, but can find no reason to reconsider the Recommended Order previously entered in this matter. An order will be entered, denying SGNA's Petition for Reconsideration and request for oral argument.

DATED this 16th day of December 2019.

PARSONS BEHLE & LATIMER

By



Jim Jones
Hearing Officer

CERTIFICATE OF SERVICE

I hereby certify that on December 16, 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:

T. Hethe Clark U.S. Mail
Matthew J. McGee Hand Delivered
SPINK BUTLER, LLP Facsimile
251 E. Front Street, Suite 200 Email
P.O. Box 639
Boise, ID 83701
*Attorneys for Petitioner Sharlie-Grouse
Neighborhood Association, Inc.*

Christopher H. Meyer U.S. Mail
GIVENS PURSLEY, LLP Hand Delivered
601 W. Bannock Street Facsimile
P.O. Box 2720 Email
Boise, ID 83701
*Attorneys for Petitioner Sharlie-Grouse
Neighborhood Association, Inc.*

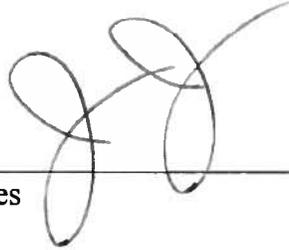
Angela Schaer Kaufmann U.S. Mail
Joy M. Vega Hand Delivered
Deputy Attorneys General Facsimile
700 W. State Street, 2nd Floor Email
P.O. Box 83720
Boise, ID 83702-0010
*Attorneys for Respondent Idaho State Board of
Land Commissioners*

Mark D. Perison U.S. Mail
Tricia K. Soper Hand Delivered
MARK D. PERISON, P.A. Facsimile
314 S. 9th Street, Suite 300 Email
P.O. Box 6575
Boise, ID 83707-6575
*Attorneys for Intervenors Payette Lakes
Cottage Sites Owners Association, Inc. and
Wagon Wheel Bay Dock Association, Inc.*

Idaho Department Lands
c/o Renee Miller
300 North 6th Street, Suite 103
P.O. Box 83720
Boise, ID 83720-0050

- U.S. Mail
- Hand Delivered
- Facsimile
- Email

Jim Jones

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