



Negotiated Rulemaking Meeting for IDAPA 20.03.13
Administration of Cottage Site Leases on State Lands
Docket No. 20-0313-2401
March 27, 2024, 1:00 p.m.
Boise, Idaho

Meeting Minutes

IDAPA 20.03.13: Administration of Cottage Site Leases on State Lands

Attendees:

Kemp Smith (Department of Lands, Commercial and Residential Leasing Programs Manager)
Jason Laney (Department of Lands, Leasing Section Manager)
Tammy Armstrong (Department of Lands, Real Estate Program Specialist)
Bruce Smith (Interested Party)
Allison Olson (Deputy Attorney General for the Department of Lands) attended by Zoom
Roger Hall (Real Estate Bureau Chief) attended by Zoom
Randy Fox (Idaho Conservation League) attended by Zoom
Anna Maria Mancini (Department of Lands, Rules Coordinator) attended by Zoom

Introductions, Overview of Process and Timeline:

- Brief overview of negotiated rulemaking. The Department of Lands (IDL) is proposing minimal updates to the existing rule on cottage site leases. The goal is to comply with Executive Order 2020-01 on zero-based regulation (making rules more concise and efficient).
- Overview of key dates, including but not limited to:
 - Public comment period on the initial draft rule is open until April 17, 2024. Written comments can be submitted to a specific email address.
 - The next public meeting is scheduled for April 8, 2024.
 - Pending rule will be reviewed by Land Board in August; and, eventually, the legislature in 2025.

Key Points of Discussion:

Bruce Smith:

- Questions why the definition of "lessee" was removed from the proposed rule.

Response: IDL believes the definition is unnecessary because "lessee" is a commonly understood term.

- Raises concerns about changing "State Board of Land Commissioners or its authorized representative" to "its designee" in the rule. Believes it's a significant change and the Land Board's role should be clearly defined. Mr. Smith pointed out that the term "designee" lacks clarity, which, in his view, may result in confusion regarding the authorized representative empowered to act on behalf of the Land Board.

Response: *IDL and its legal counsel responded that "designee" and "authorized representative" mean the same thing and that this reference is commonly found, or this change is being made, across many of IDL's applicable rules.*

- Discussion as to whether a retrospective analysis of the existing rule was conducted as required by the Executive Order.

Response: *IDL believes their prospective analysis also covers the retrospective analysis because IDL's initial analysis of the rule considered how the current rule is (and has been) applied.*

- Inquiries about the Legislature's role in regulating endowment lands, considering recent legislation.
- Importance of referencing the Land Board's constitutional obligation to maximize long-term financial return for beneficiaries.
- Consideration of including language on handling exchanges for cottage sites.
- Transparency in the appraisal process to avoid conflicts of interest.
- Addressing disposition of improvements on cottage sites at auction.

Response: *IDL noted there are currently 48 cottage sites under its direction (18 at Payette Lake and 30 at Priest Lake). IDL has a plan to auction off the remaining cottage sites in the future.*

Roger Hall (Real Estate Bureau Chief):

- The Land Board retains sole discretion over appraisals and cannot delegate this authority to lessees.
- Importance of maintaining flexibility in land disposition policies.
- Cottage site rules covering leasing is not the appropriate place to address broader land disposal policies.

Allison Olson (Deputy Attorney General):

- Explains that removing the definition of "lessee" is because it's a common term with a well-understood meaning.
- Clarifies that "designee" and "authorized representative" have the same meaning in this context. The Land Board would still authorize IDL to act on its behalf.

- Offers to discuss the raised concerns about the rulemaking process with IDL's legal counsel.

Bruce Smith (interested party):

- Stated his concerns about several aspects of the proposed rule changes, including in his estimation:
 - Lack of clear separation between land value and improvement value during appraisals.
 - Inability for potential bidders to negotiate directly with improvement owners.
 - Absence of timelines for processing applications for cottage sites.
 - IDL's refusal to consider conflict auctions.
 - Limited role for public comments in the rulemaking process.
 - Potential impact of local government regulations on endowment land development.
 - Lack of clarity on how IDL handles situations where statutes appear to contradict the Constitution.
- Stated that the proposed rule changes, which primarily focus on reducing redundancy, do not adequately address these practical issues faced by interested parties.

Jason Laney (Leasing Section Manager):

- Acknowledged the concerns raised by Bruce Smith and explained IDL's perspective on each issue. He clarified that they:
 - Rely on professional appraisers to determine land and improvement values.
 - Cannot deviate from the appraisal process due to statutory requirements.
 - Follow existing procedures for application processing and auctions.
 - Adhere to the Constitution and relevant statutes when making decisions.

Anna Maria Mancini (the IDL - Rules Coordinator):

- Confirmed that all meetings and comments are recorded and will be published on the website.

Action Items:

- IDL will:
 - Consider adding a definition for "Department of Lands" to the rule.
 - Consider concerns about the "designee" vs. "authorized representative" wording with legal counsel.
 - Consider concern regarding a retrospective analysis of the rule.
 - Consider the possibility of separate appraisers for land and improvements.
- IDL to consider comments made prior to, or at, deadline.
- Interested parties will submit written comments by April 17, 2024.

Next Steps:

- The second public meeting is scheduled for April 8, 2024.
- The public comment period closes on April 17, 2024. Interested parties must submit written comments based on the current discussion, or any revised rule proposal as applicable.
- IDL will decide whether to revise the draft rule based on the feedback received.

- If a revised draft rule is developed in the meantime, it will be distributed to interested parties before the next meeting on April 8th.

Meeting adjourned.