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IN THE DISTRICT COURT FOR THE FIRST JUDICIAL DIST

COUNTY OF LARAMIE, STATE OF WYOMING

STATE OF WYOMING, BOARD OF LAND COMMISSIONERS Plaintiff, v. TETON COUNTY BOARD OF COUNTY COMMISSIONERS Defendant.	)	Docket No. _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

The State of Wyoming, Board of Land Commissioners, (Board), through the Office of the Wyoming Attorney General, brings this action for declaratory judgment under Wyo. Stat. Ann. §§ 1-37-101 through -115 and Rule 57 of the Wyoming Rules of Civil Procedure, and for injunctive relief under Wyo. Stat. Ann. §§ 1-28-101 through -111 and Rule 65 of the Wyoming Rules of Civil Procedure. The Board seeks a declaration from this Court that the Board and its permittees on state trust land are not subject to county land use/development regulations. The Board also seeks preliminary and permanent injunctive relief to enjoin the Teton County Board of County Commissioners (County Board) from enforcing its land use/development regulations

against the Board or its permittees on state trust land, including through abatement proceedings. In support of this complaint, the Board states and alleges as follows:

INTRODUCTION

1. When Wyoming was admitted to the Union in 1890, the State accepted land granted from the federal government for the express purpose of supporting the common schools. 26 Stat. 222, ch. 664, § 5. Since that time, state trust lands have been integral in generating revenue to support of the State's public schools and other State institutions.

2. The Board is the constitutionally-created entity that is tasked with the "direction, control, leasing, and disposal of lands of the state granted, or which may be hereafter granted for the support and benefit of public schools . . ." Wyo. Const. Art. 18, § 3; Wyo. Stat. Ann. § 36-2-101. The Office of State Lands and Investments (OSLI), under the direction of the Director, is the administrative arm for the Board. Wyo. Stat. Ann. §§ 36-3-101 through -102.

3. The Board manages state trust land in all twenty-three (23) counties in the State, for the benefit of all of the public schools in the State. Revenue generated from a particular parcel of state trust land benefits the State as a whole, not just the specific county in which the land is located.

4. To generate revenue for the benefit of the public schools, the Board authorizes various activities on state trust land in exchange for monetary compensation. Those proceeds are held in trust for the benefit of the trust beneficiaries. Activities authorized on state trust land often include commercial development.

5. This matter arises out of the County Board's attempt enforce its Land Development Regulations (LDRs) against the Board and its permittees on state trust land located in Teton County.

6. The central issue in this dispute is whether the counties have authority to enforce their land use/development regulations on state trust lands. This question affects development on all state trust land, regardless of the location of specific trust lands.

7. If counties are able to direct and impede revenue-generating activities on state trust lands through land use/development regulations, the Board's ability to carry out its fiduciary duties to the trust beneficiaries, and ultimately its ability to fund public schools, may be in jeopardy.

8. The Board brings this action seeking a declaration that sovereign immunity bars a county from seeking to enforce its land use/development regulations against the Board or its permittees on state trust land. As the sovereign, the Board is not subject to counties' general authority to enforce land use/development regulations on state trust land. Because sovereign immunity is a bar to suit, subjecting the Board or its permittees to county enforcement actions, including abatement proceedings, directly harms the State.

9. As a result of the harm, the Board also seeks preliminary and permanent injunctive relief prohibiting the County Board from enforcing its LDRs against the Board or its permittees.

PARTIES

10. Pursuant to Wyo. Stat. Ann. § 36-9-117, Plaintiff in this action is the State of Wyoming, Board of Land Commissioners. The Board is an agency of the State of Wyoming, created by Article 18, Section 3 of the Wyoming Constitution. The Board is tasked with the "direction, control, leasing and disposal of lands of the state granted, or which may be hereafter granted for the support and benefit of public schools." Wyo. Const. Art 18, § 3.

11. The Teton County Board of County Commissioners is a political subdivision of the State of Wyoming, with the authority as provided for in Title 18 of the Wyoming Statutes.

JURISDICTION AND VENUE

12. This Court has jurisdiction over the Board's claims pursuant to Wyo. Stat. Ann. § 1-37-103 because the Board is an entity whose rights, status, and legal relations of the parties are affected by a determination of whether sovereign immunity prohibits a county from enforcing its land use/development regulations on state trust land and because the relief sought is a declaration that will have the force and effect of a final judgment.

13. This Court also has jurisdiction to issue the injunctive relief requested by the Board under Wyo. Stat. Ann. §§ 1-28-101 through -111.

14. The First Judicial District Court in Laramie County is the proper venue for this action under Wyo. Stat. Ann. § 1-5-102. The determination of this question affects all state trust lands. The Board manages state trust lands in all counties in the State and any declaration would affect state trust land in all counties, including Laramie County.

FACTUAL ALLEGATIONS

A. State Trust Land

15. On behalf of the State of Wyoming, the Board manages approximately 3.5 million surface acres and 3.9 million mineral acres of land in the State, including surface acres and mineral acres in each county. Approximately, 86% of the surface acres and 86% of the mineral acres are managed for the benefit of the public schools. The Board also manages other land for various State agencies that benefit specific State institutions and the public.

16. The Board manages Section 36 in Township 42 North, Range 117 West, 6th P.M. located in Teton County (the Parcel). For management purposes, the Board has divided a portion of the Parcel into nine (9) separate tracts of land and has issued Temporary Use Permits (TUPs) on the tracts to various entities for short-term commercial use. TUPs are authorized under Chapter

14 of the Board's administrative rules and regulations, which are separate from long-term commercial leases authorized by Wyo. Stat. Ann. § 36-5-114. *Rules*, Board of Land Commissioners, Ch. 14. (Nov. 2001).

17. Each TUP authorizes the permittee to temporarily use the subject land for the specific period of time and the specific purpose authorized by the TUP. TUPs are not subject to renewal, and the maximum term is five (5) years. *Rules*, Board of Land Commissioners, Ch. 14, § 4 (Nov. 2001). When the Board approves a TUP, it expressly authorizes the specified use in the permit to occur on the parcel.

18. On June 2, 2022, OSLI issued Basecamp Hospitality, LLC (Basecamp) TUP-03345. TUP-03345 authorizes Basecamp to utilize Tract 9 of the Parcel, consisting of approximately 4.76 acres of land, for 11 low-impact accommodations for single and multi-night vacation rental.

19. On June 2, 2022, OSLI issued Wilson Investments, LLC (Wilson Investments) TUP-03342. TUP-03342 authorizes Wilson Investments to utilize tracts 2, 3, and 5 of the Parcel, consisting of approximately 9.7 acres, for a storage unit facility and a landscape construction yard.

20. OSLI and other state agencies have continually worked with Basecamp and Wilson Investments to ensure compliance with health and safety standards.

B. County Abatement Action

21. On November 28, 2022, the Teton County Planning and Building Services Department Director sent Basecamp and OSLI, on behalf of the Board, a Notice to Abate. The Notice to Abate asserted that the development occurring on state trust land was subject to Teton County's LDRs and alleged violations of seven (7) separate LDRs. The Notice to Abate provided that "[f]ailure to comply with this Notice to Abate within ten (10) days, will result in the scheduling

of a Hearing to Abate before the Teton County Board of County Commissioners, and may also result in the County pursuing a remedy in court for these violations of the LDRs, as provided in Wyo. Stat. § 18-5-204." Under Teton County's LDRs, the owner of the property that is subject of an abatement action "may be held responsible for the violation and be subject to the remedies and penalties set forth in this Section." *Land Development Regulations*, Teton County, § 8.9.2(C) (Jan. 2021).

22. On November 28, 2022, the Teton County Planning and Building Services Department Director also sent a substantially similar Notice to Abate to Wilson Investments and OSLI.

23. On December 20, 2022, the Board, through the Wyoming Attorney General's Office, responded via letter to the Teton County Planning and Building Services Department Director, objecting to the Notices to Abate because the State retained its sovereign immunity.

CLAIMS FOR RELIEF

First Cause of Action

Declaratory Judgment pursuant to Wyo. Stat. Ann. §§ 1-37-101 through -115 and Rule 57 of the Wyoming Rules of Civil Procedure.

24. The Board incorporates paragraphs 1-22 as if fully set forth herein.

25. The Board is an entity whose rights, status, or other legal relations are affected by the relevant Wyoming statutes that grant counties the general authority to create and enforce their land use/development regulations.

26. Wyoming recognizes the doctrine of sovereign immunity, which provides that a sovereign is not subject to suit without its express consent. *See* Wyo. Const. Art. 1 § 8; *Wyo. State Hosp. v. Romine*, 2021 WY 47, ¶ 14, 483 P.3d 840, 846 (Wyo. 2021).

27. Counties are creatures of the State and have "no sovereignty independent from that of the state, and the only power available to them is the power that has been delegated to them by the state." *Seherr-Thoss v. Teton. Cnty. Bd. of Cnty. Comm'rs*, 2014 WY 82, ¶ 24, 329 P.3d 936, 946 (Wyo. 2014) (quoting *Ahearn v. Town of Wheatland*, 2002 WY 12, ¶ 14, 39 P.3d 409, 415 (Wyo. 2002)).

28. "Zoning is the process that a community employs to legally control the ***use*** which may be made of property and the physical configuration of development upon the tracts of land located within its jurisdiction." *Bd. of Cnty. Comm'rs of Teton Cnty. v. Mackay Investments, LLC*, 2018 WY 34, ¶ 10, 413 P.3d 1120, 1123 (Wyo. 2018) (quoting *Ford v. Bd. of Cnty. Comm'rs*, 924 P.2d 91, 94 (Wyo. 1996) (emphasis in original)).

29. The Wyoming Legislature granted counties general authority to create zoning regulations in Wyo. Stat. Ann. § 18-5-201, which provides:

> To promote the public health, safety, morals and general welfare of the county, each board of county commissioners may regulate and restrict . . . the use, condition of use or occupancy of lands for residence, recreation, agriculture, industry, commerce, public use or other purposes in the unincorporated areas of the county.

30. The Wyoming Legislature also granted counties general authority to enforce their land development regulations through injunction, mandamus, or abatement. Wyo. Stat. Ann. § 18-5-205.

31. "[A] county's authority 'to adopt a zoning ordinance is limited by state statute, and the general grant of power to [counties] to adopt zoning laws in the interest of public welfare does not permit the local governing bodies to override the state law and policies supporting it.'" *Seherr-Thoss*, ¶ 25, 329 P.3d at 946 (quoting *Ahearn*, ¶ 14, 39 P.3d at 415).

32. The Wyoming Legislature has not expressly waived the State's sovereign immunity by granting counties the general power to create land use/development regulations in Wyo. Stat. Ann. § 18-5-201 or to enforce those regulations in Wyo. Stat. Ann. § 18-5-205. "[S]tatutes that waive sovereign immunity must be strictly construed." *State, Dep't of Corrs. v. Watts*, 2008 WY 19, ¶ 18, 177 P.3d 793, 198 (Wyo. 2008) ("[T]he history of sovereign immunity and the practical necessity of unfettered freedom for government from crippling interferences require a restriction of suability to the terms of the consent, as to the persons, courts and procedure."). The general grants of authority are insufficient to waive the State's sovereign immunity.

33. The Board is entitled to a declaration by this Court that the Board and its permittees on state trust land are not subject to counties' land use/development regulations and that sovereign immunity bars a county from enforcing its land use/development regulations against the Board or its permittees on state trust land.

Second Cause of Action

Permanent Injunction pursuant to Wyo. Stat. Ann. §§ 1-28-101 through -111 and Rule 65 of the Wyoming Rules of Civil Procedure.

34. The Board incorporates paragraphs 1-32 as if fully set forth herein.

35. Under Rule 65 of the Wyoming Rules of Civil Procedure and Wyo. Stat. Ann. §§ 1-28-101 through -111, the Board will suffer irreparable harm, the equities balance in their favor, and it is in the public interest for this Court to enjoin the County Board from seeking to enforce its land use/developmental regulations against the Board or its permittees, because the State has not consented to suit.

36. The Board is entitled to preliminary and permanent injunctive relief, enjoining the County Board from seeking to subject the State of Wyoming, through the Board, to its county abatement proceedings.

37. As the County Board will suffer no injury, security should be waived.

PRAYER FOR RELIEF

WHEREFORE, the Board prays for the following relief:

38. A declaratory judgment that the Board or permittees are not subject to counties' land use/development regulations.

39. A declaratory judgment that the counties lack authority to enforce land use/development regulations against the Board or its permittees on state trust land.

40. Preliminary and permanent injunctive relief under Wyo. Stat. Ann. §§ 1-28-101 through -111 and Rule 65 of the Wyoming Rules of Civil Procedure prohibiting counties from enforcing land use/development regulations against the Board or its permittees on state trust land.

41. Waive any security requirement for any injunction issued under Rule 65 of the Wyoming Rules of Civil Procedure.

42. Any other relief that this Court deems just and appropriate.

DATED this 21st day of December, 2022.

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