

Minutes of the Town of Marble
Regular Meeting of the Board of Trustees
February 6th, 2020

A. Call to order & roll call of the Regular Meeting of the Board of Trustees – Mayor Ryan Vinciguerra called the meeting to order at 6:40 p.m. Present: Ryan Vinciguerra, Charlie Manus, Larry Good, Emma Bielski. Absent: Tim Hunter. Also present: Ron Leach, Town Administrator and Terry Langley, minutes. Attending by phone: Kendall Burgemeister, town attorney.

B. Executive session pursuant to CRS 24-6-402(4)(b) to receive legal advice regarding process and review standards for OWTS variance and appeal. – Larry Good made a motion to go into executive session. Charlie Manus seconded and the motion passed unanimously. Citizens were asked to step out. The trustees went in to executive session at 6:41 p.m. The executive session ended at 7:50 p.m. Attorney Kendall Burgemeister certified the executive session was comprised of attorney client privileged communication. The regular meeting resumed at 7:55 p.m.

C. Approve previous minutes – Larry Good made a motion to approve the minutes of January 16, 2020. Emma Bielski seconded and the motion passed unanimously.

D. Mayor's comments – Ryan reminded everyone to be respectful and that only one person should speak at a time.

E. Continue Public Hearing Lawrence OWTS variance application appeal of denial, Tim Whitsett – Tim spoke representing Chris & Rick Lawrence. He spoke to the board as the public health agency as follows: The residence is a pre-existing non-conforming residence with two septic systems which are failing. They were legal at the time the structure was built and when it was annexed into the town. The lot is non-conforming due to the size of the lot and is also nonconforming due to a failing, non-permissible septic system. By bringing the septic system up to code, it reduces one of the non-conforming aspects. Because the OWTS will fit within the limitations of the lot, the system does not need a variance. The only variance that might be necessary is due to the lot size. It is impossible to increase the size of the lot because they are surrounded by public right of ways and other developed properties. This is not a density issue because the structure is already there. He does not feel that granting a variance will set a binding precedent. There are currently about 43 developed non-conforming lots within the town, but the Lawrence lot is the only one they know of without a developed septic system and that they should be allowed to have a septic system like these other lots have. There are about 40 undeveloped non-conforming lots that are too small and would each require separate variances granted to build. The OWTS regulations do not allow for a new or improved privy and the gray water system is also inadequate. There is an existing vault which would require pumping and which would then be susceptible to spillage and overflow and would result in increased traffic. The OWTS requires a vault or a composting toilet be backed up by an OWTS system. The OWTS system that has been designed is the best alternative for protecting the health and environment.

Ryan asked for comments and questions from the board. Larry Good asked if the building has always been a residence and was it winterized. Rick Lawrence reported that it has electric heat, a stove and kitchen sink but did not know about previous history. Tommy Russell reported that he has lived

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next door for 22 years without anyone living there. Ryan said it is classified as a residence. He asked if they had connected to the Marble Water Company and Rick said that they have a contract with the MWC with a tap. Mr. Whitsett said that this is simply a different source of water and not an extension of service. Charlie Manus said that he has no doubt an OWTS can be designed but there is an issue of precedent and density. He feels that granting a variance will mean many others seeking to build on a smaller lot. The property is not unique. Marble does not have the infrastructure for higher density. The property has never been used as a full-time residence, but only as a hunting cabin. Both the buyers and sellers are in the real estate business and knew the issues surrounding the non-conforming lot and decided to purchase and began making improvements before seeking a variance. He said that false statements were made in their letter dated 1/9/2020. Buying the property and then trying to get a variance was a bad decision and the Lawrences have done everything backwards.

Ryan asked for public comment. Mike Yellico asked for clarification regarding who Paul Rutledge works for – the town or the Lawrences. Ryan explained that for the purpose of this request, he works for the Lawrences. If there is a need they will contract with another engineer. The board will check to see if his contracting with people in Marble presents a conflict of interest. Tommy Russell said that they have made other improvements, including a new outhouse. He said that the leach field does not meet the setbacks necessary for the ditch and for existing wells on neighboring properties. Ryan said that they would not look at that unless a variance is granted and that the OWTS permit would then be examined. Josh Vogt asked the board to focus on consistency with any permits and variances made in the past and how they would maintain that consistency in the future. He spoke to the due diligence that should have been followed in the purchase of the property. Linda Adams spoke to the fact that there are other developed properties that were denied septic permits due to the size of the lots. Ryan pointed out that there is a difference between empty lots and lots with existing structures. Amber McMahill said that others had passed on the property due to the lack of water, septic and lot size. Ryan emphasized that each request is decided individually on a case-by-case basis and does not bind the town. Ryan asked Kendall if there was any problem with tapping into the Marble water before getting a variance for a septic system. Kendall said he would have to look at plumbing codes but since there is no plumbed toilet, he does not think that is an issue. Charlie asked those members of the public objecting to the variance if they would have a problem if the system does, in fact, meet the setbacks and other requirements. Tommy feels that this would set a dangerous precedent because they do not meet the requirements for lot size. Ryan asked if Tommy would want to be able to upgrade or replace a system. Tommy spoke to the difference between an inhabited property with an existing system and one that has been empty for years. Ryan said that the town wants residents to be able to improve systems when needed. Mike feels that realtors try to take advantage of the system. Josh said that if they can meet the setbacks and the town approved the variance and system, he would live with it. He spoke to the precedent and alternative options.

Larry spoke to the council needing to look at precedents in both future and past. Larry Good made a motion to deny the variance based on the lot size deficiency, failure to show a legitimate hardship and incomplete due diligence prior to coming to the council. Charlie Manus seconded and the motion passed 3-0. Mr. Whitsett asked if this was the denial of the appeal and Ryan said that it is.

F. Consider approval of Ordinance #1-2020 Approving Fire House lease, Carbondale & Rural Fire Protection District, Ron explained that the actual lease was approved at the last meeting. The meets and bounds had to be changed because the southern line of the lease encroached on the existing

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parking area. The fire district moved the boundary north. Kendall explained that the town still has a say in the design of the building improvements. Emma Bielski made a motion to approve the ordinance. Larry seconded. The motion passed unanimously.

G. Administrator Report

a. Current bills payable January 6, 2020, Ron – this month's bills are on page 19 of the packet. Four bills have been received since the packet was prepared. They include a new laptop from Avalanche Computer to replace an eight-year old laptop and \$11,000 to Daly property for snow plowing. Larry Good made a motion to pay the bills. Charlie Manus seconded and the motion passed unanimously.

b. Consider Resolution # 2-2020 cancelling April 7, 2020 municipal election – Ron explained that there were fewer candidates than there are open seats. Larry Good made a motion to approve the resolution. Emma asked how the fourth seat would be filled and Ryan said a fourth board member would be appointed in April. Kendall asked about the four-year term. Ron explained that there are some options – have the election, draw straws, or just agree on who will get the four-year term. Larry said that he did not want the four-year term and it was reported that Tim Hunter had said he did not either. Emma agreed to serve the four-year term. Larry amended his motion to approve the resolution cancelling the election and certifying Emma having the four-year term and Tim Hunter and Larry Good having the two-year terms. Emma Bielski seconded and the motion passed unanimously.

c. Other – Ron reported that Tom Akers was here to renew his business license for the Inn at Raspberry Ridge. (Larry Good had to leave and Kendall Burgemeister signed off as well). Tom is asking for a license to serve breakfast and lunch to the public in the dining room. They will make sure the septic system can handle this. He has met fire protection requirements and all other codes. Emma Bielski made a motion to approve the business license. Charlie Manus seconded and the motion passed unanimously.

H. Old Business

a. Park committee Report, Amber asked people who had expressed an interest to submit information on their interest and background. Ryan asked that Amber touch base with Tim regarding the membership on the committee. This would be a planning and advisory committee and decisions would be made by the town board.

I. New Business

a. Marble Museum Open House, Alex – Five speakers begin at 1 p.m.

b. Other

i. Sunlight Marble ski day is scheduled for Feb. 13. The students from the school will be going and there are discount lift tickets and ski rental offered.

ii. Safe account made 500 in interest last month!!!

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iii. Ron – expressed how hard the decisions are that the board has to make. He stated his appreciation for the board's serviced to the community and thanked the board for their service.

J. Adjourn – Charlie Manus made a motion to adjourn. Emma Bielski seconded and the motion passed unanimously. The meeting was adjourned at 9:25 p.m.

Respectfully submitted,

Terry Langley