

Town of Marble Special Meeting of the Board of Trustees

July 15th, 2019 8:30 A.M.

8:30 A.M.

A. Call to order & roll call of the Special Meeting of the Board of Trustees – The meeting was called to order at 8:32 a.m. by Mayor Ryan Vinciguerra. Present: Tim Hunter, Charlie Manus, Emma Bielski and Larry Good. Also present: Ron Leach, Town Administrator and Terry Langley, minutes. Attending by phone: Kendall Burgemeister, Town Attorney.

B. Discussion of personnel matter – Ryan explained that this meeting was called to discuss some personnel issues.

a. Possible Executive Session pursuant to C.R.S. 24-6-402(4)(f)(I) to discuss a personnel matter. Ryan made a motion to go into Executive Session. Jim Aarts requested that this be an open meeting and that this also be placed on next month's agenda. Kendall advised that this made the meeting open to the public. The motion died.

Ryan said that this was to discuss some actions of the town employee, Jim Aarts. Ryan said that the incident has been blown up, as is typical in Marble, to the extent that it has been labeled by Jim and others as an abuse of power by the board. Tim Hunter asked that he be allowed to chair the meeting as Mayor Pro Temp and that Ryan recuse himself. Ryan agreed and recused himself.

Tim explained the procedure they would follow. Because Ryan asked for the special meeting, he will be allowed to speak first. Jim will be able to respond. The public will not be allowed to comment as they were not witnesses to the incident.

Ryan said his concerns arose from the incident of Jim placing dog poop on top of the hostess stand at Slow Groovin' where there were menus and supplies present. He felt that this was careless and a violation of safety. Placing it on the menus presented a health and safety issue. When he confronted Jim at the Hub, a conflict arose and Jim tried to kick Ryan out of the Hub. Ryan stated that he felt that this was insubordination and a discourteous action toward a co-worker and guest at the Hub. Jim was an employee on the clock. He scheduled the meeting to hear the opinions of the board in regard to these actions.

Jim Aarts said that there were no menus or utensils on the stand. He placed the poop on a napkin with a signed note stating where it came from. No one was around so he left it with the note. Ryan brought it back into the Hub, a public place, waved it over the counter and threatened to put it in Jim's cereal. He feels that this was a similar thing to what Ryan is complaining about. Jim said he was not on the clock, but was working as a volunteer at the Hub. Ryan was not acting as mayor/employer but as a dog and restaurant owner. During the ensuing argument, Ryan used his position as mayor to threaten Jim's job. This relationship is coincidental as the issue was between two citizens and was not job related. This is why Jim feels Ryan's actions are an abuse of power. Jim said this was not the first time the dog has done this and he has brought it to Nial O'Connor's attention in the past. He tried to settle the issue on Sunday

by coming to Ryan face to face. He explained that, in the original incident, he asked Ryan to leave the Hub when Ryan threatened Jim's job. He said that in Sunday's conversation, Ryan threatened Jim's job twice. Jim feels that this all rose from other issues, including Jim supporting Martha Roberts in her dog issues and calling Ryan out on his responsibilities as a dog owner. He said they shook hands and agreed they both should let this go but then Ryan said that he could not guarantee that the dog wouldn't come and do this again. Jim said that he had tried being nice and talking to both Ryan and Nial about the dog and this time he tried to make a strong statement. He knows that this might be an overreaction. He feels that Ryan is not taking responsibility for his dog and is ignoring town policies, is abusing his power and that this incident should just be between the two of them.

Ryan said that they are both town employees/representatives. He admitted taking the poop back to and into the Hub. He never placed it anywhere on any surface, he carried it back out. He feels that it is a distinction that makes a difference in their two actions. He said that Jim had not talked to him about the dog previously. Because Jim is on salary and does not punch in and punch out and that he conducts business in the Hub and because Ryan is mayor 24 hours a day it is an employee and town issue. He said that Jim does not have the right to throw him out of the Hub. As mayor, he has the right to warn Jim about his job. It is not true that Jim has never had any complaints, but that is not the current issue. He feels that town employees and the board need to hold themselves to a certain standard. Ryan would like the board to look at the actions and responses and determine if they are proper and good for the town.

Tim stated that as members of the Board of Trustees, they render opinions and develop policies that the Town Manager carries out. Because Jim has asked that this be placed on the agenda for the next Board meeting and that the current meeting followed so closely after the incident, he would like to continue this to the next regular meeting. He said that the board could speak at that time and then Ron will be asked to develop a response.

Emma Bielski asked who Jim's direct supervisor is and was told that it is the Town Manager. She asked Jim if he had ever received any warnings, either formally or informally concerning his behavior. Jim said he had not. She feels that public apologies need to be made. Jim said that he felt he had gone too far and he apologizes. Emma asked if Jim felt that an employee's behaviors could threaten his job. Jim answered in the affirmative. She asked how Jim might have handled this differently. Jim said that a note without the dog poop would have been better. Emma said that it was hard to take this isolated incident and not include things that have been said about Jim's actions regarding other dogs. Tim said that because this would be continued to the next meeting, he will not personally render an opinion but that this discussion was only for the incident. He said it is up to Ron to take action as he deems necessary.

Larry said that there should be some ground rules set for what the issue does and does not involve. For the next meeting, it should not become a public forum for general dog issues. This may bring some guidelines for future complaints concerning town employees and how they should be handled. Larry asked Ryan what he was looking for. Ryan responded that: 1. For it to be done with. 2. This was not designed to be a court trial. He asked for the meeting to simply decide how an issue with a town employee should be handled. He does not feel like it needs to become part of the next town meeting. Larry agreed that nothing good would come out of having this at the next meeting. It would not be good for the restaurant or the council and town dignity. Larry asked the same of Jim. Jim agreed he

would like it be over with, depending on how it ends today. He would like he and Ryan to both take responsibility and apologize. He thought they had done that Sunday and the current meeting was unnecessary. Ryan said that there were other issues (including privacy of the board in regard to communication, developing a job tree showing who reports to who, and developing an employee action form) that he would like to discuss in executive session.

Charlie stated that he felt that what Jim did was impetuous and foolish. He feels that this is a civil and personal issue and that going so far as to letting Jim go over this would open the town to a lawsuit. He feels that Jim is doing a good job at the campground.

Tim said that this had gotten blown up out of proportion. Because it has been made a town issue, the board has to follow due process. He said that Jim, as a town employee, needs to reflect a positive image to the town and that he did not do that in this case. There were many other options he could have taken. Due process will be followed in response to the action. Tim would like the board to develop a process to address complaints concerning employees.

Emma asked if the board could move ahead to set an executive session to discuss some of these items. Tim asked Kendall Burgemeister, town attorney, for an opinion regarding further action on next month's agenda. Kendall said there is not a problem with putting it on the next agenda, but if the decision today is to instruct the Town Administrator to review the matter and make a recommendation to the board as to the action to be taken, there is not really a reason to put it on the agenda. Tim asked if they were required to take it to a closed, executive session to direct Ron to take any appropriate action. Kendall said that the board can give direction today in open session for Ron to review and take action. If the board wants to consider action themselves, it would need to go on a future agenda so that Jim would have an opportunity to prepare a defense.

Larry Good moved to direct the Town Manager to deal with the employee situation. Charlie asked if Jim wanted to pursue this in an open meeting. Jim said he asked to have this on the next agenda that to have an opportunity for further discussion if needed, but he does not feel it is still necessary.

Larry said that the other issues (privacy, job tree, action form) do need to be discussed and that needs to be done in an open session.

Ryan would like to hear from the board members on what they feel are what the consequences of Jim's actions need to be. He would suggest a suspension. An additional benefit to this would be that the board would learn more about the operations at the campground. He would like to board to consider what employee actions would result in termination. There should be consequences to Jim's actions.

Emma would like the board to consider the toll termination would take on the Hub. She would suggest a formal warning with an employee evaluation at the end of the season.

Tim said that no one had given the Town Manager a clear directive on how to deal with this. Kendall says that they could simply direct Ron to review and take the action he deals appropriate.

Emma seconded Larry Good's motion.

Further discussion followed:

Charlie feels that this is a civil matter between Jim and Ryan and that termination would be grounds for a lawsuit. His first reaction was that Jim needed to go, but that on further reflection, it should be left up to the attorney to guide the board.

Larry feels that Ron has more experience in employee supervision and that Jim and Ryan cannot shy away from confrontation when necessary in their positions but that this is between two citizens. He agrees with Emma's suggestion for a warning and evaluation.

Amber asked to speak but Tim said that he would not accept comments from the public.

Tim said that, as a private employer, if Jim had done this as Tim's employee, he would have terminated him on the spot. As a representative for the town, he is extremely disappointed in Jim's action. But with the need for due process, it is Ron's job as Jim's supervisor to determine any consequences. His recommendation is termination.

Emma stated that she was swayed by Jim's willingness to work with the town to resolve this matter today rather than pushing the matter a month out.

Tim called for a vote. The motion passed unanimously with Ryan recused.

Emma asked if they could now call an executive session to discuss town personnel/employee policy and the other issues raised. Kendall explained what can be considered in executive session. This would not qualify for an executive session. Ryan asked if a posted agenda had to include the name of the employee to be discussed and Kendall said they did not. Ron suggested that the board schedule a retreat or hold a meeting with no public comment for this purpose but it has to be open to the public.

Ron explained that he heard about the issue 72 hours ago. He would like to have been involved at that point as Jim's supervisor. He also pointed out that he is the Town Administrator and that has different duties/responsibilities by statute than Town Manager. He will review the issue and will treat this as a personnel issue and it will be completely confidential.

A date for the retreat was discussed and it was decided to meet at the Redstone Inn on Thursday, July 25 at 7:00 p.m. Ron will reserve the Osgood room.

Tim reiterated that they have agreed to have Ron deal with the incident and the board will respect his decision.

C. Adjourn - Emma Bielski made a motion to adjourn. Charlie Manus seconded and the motion passed unanimously. The meeting was adjourned at 10:47 a.m.