

RECORD OF PROCEEDINGS

REGULAR MEETING
TOWN OF GRAND LAKE BOARD OF TRUSTEES
MONDAY, OCTOBER 8, 2012 7:00 P.M.

CALL TO ORDER: The regular meeting of the Board of Trustees was called to order by Mayor Judy Burke at 7:11 p.m. at the Town Hall, 1026 Park Avenue.

ROLL CALL

PRESENT: Mayor Burke; Trustees Gasner, Lanzi, Ludwig, Peterson, and Weydert; Town Manager Hook, Town Clerk Kolinske, and Town Planner Biller.

ABSENT: Mayor Burke announced that Trustee Weydert was absent from the afternoon workshop due to work obligations and that Trustee Lewis was absent this afternoon and this evening due to personal illness. Trustee Peterson moved to excuse Trustee Weydert's and Trustee Lewis's absences. Trustee Gasner seconded the motion and all Trustees voted aye.

APPROVAL OF MINUTES

August 27, 2012: Trustee Weydert moved to approve the minutes of the August 27, 2012 regular meeting as written, seconded by Trustee Peterson. All Trustees voted aye except Trustee Weydert, who abstained.

September 24, 2012: Trustee Gasner moved to approve the minutes of the September 24, 2012 regular meeting as written. Trustee Peterson seconded the motion and all Trustees voted aye.

ANNOUNCEMENTS:

Mayor Burke announced that it would be appreciated if cell phones were turned off during the meeting.

Mayor Burke announced that a Flu Shot Clinic will be held on Tuesday, October 9 in the Board Room at Town Hall from 8:30 – 10:00 a.m. Shots are \$20.00 for adults and \$14.00 for children.

Mayor Burke announced that all excavators and contractors in the Grand Lake area are reminded that the deadline for right-of-way permits is October 15. No road cuts or right-of-way permits will be permitted after this date.

Town Clerk Kolinske then announced that Tuesday, October 9 is the last day to register to vote in the Nov. 6 election.

CONFLICTS OF INTEREST:

Mayor Burke stated that if there are any Trustees wishing to announce a conflict of interest with any items on this evening's agenda, they should do so at this time.

No Trustees had a conflict of interest with any items on the agenda.

LOCAL LIQUOR LICENSING AUTHORITY: None.

OLD BUSINESS: None.

NEW BUSINESS: **CONSIDERATION TO SET A PUBLIC HEARING FOR THE 2013 BUDGET FOR THE TOWN OF GRAND LAKE** – Mayor Burke asked Town Manager Hook to present this matter to the Board. Hook explained that pursuant to §29-1-105, C.R.S., the proposed 2013 budget was submitted to the Board of Trustees for its consideration on September 17, 2012. Staff recommends that the Board set the 2013 Budget for public hearing (pursuant to §29-1-106(1), C.R.S.) on Monday, November 12, 2012, with notice of the public hearing to be published in the Middle Park Times on Thursday, October 18, 2012. Although further budget discussions are necessary, particularly with respect to the compensation portion of the budget, the only budget activity at this time is setting the public hearing. New budget binders with all the changes discussed at and after the budget workshop on September 17, 2012, will be provided prior to the next scheduled budget discussion. Staff recommends the Board move to set the 2013 Budget for the Town of Grand Lake for public hearing on Monday, November 12, 2012 at 7:30 p.m., with notice of the public hearing to be published in the Middle Park Times on Thursday, October 18, 2012.

Trustee Peterson moved to set the 2013 Budget for the Town of Grand Lake for public hearing on Monday, November 12, 2012 at 7:30 p.m. Trustee Weydert seconded the motion and all Trustees voted aye.

ACCOUNTS PAYABLE
September, 2012:

Trustee Peterson moved to examine the Accounts Payable and Prepaid for all Funds for the Town of Grand Lake. Trustee Weydert seconded the motion and all Trustees voted aye. Trustee Peterson then moved to approve the Accounts Payable and Prepaid for all Funds for the Town of Grand Lake. Trustee Weydert seconded the motion and all Trustees voted aye.

At 7:16 p.m. Mayor Burke called for a recess and at 7:39 the meeting reconvened.

NEW BUSINESS: **PUBLIC HEARING – QUASI-JUDICIAL - CONSIDERATION OF A VARIANCE REQUEST TO THE TOWN OF GRAND LAKE DRIVEWAY DESIGN STANDARDS LOCATED AT LOT 10, BLOCK 17, TOWN OF GRAND LAKE; MORE COMMONLY REFERRED TO AS 703 PARK AVENUE** – Mayor Burke opened the Public Hearing and asked Town Planner Biller to present this matter to the Board. Biller explained that the Town received a variance request to the driveway standards. The applicant is proposing two variance requests:

1. To allow a maximum driveway grade of 20%.
2. To allow a maximum driveway grade of 20% within the first 25’.

Variations shall be reviewed by the Planning Commission and should make a recommendation to Board of Trustees who will make the final determination at a Public Hearing. The Planning Commission has forwarded a favorable recommendation in the form of Resolution 10-2012. The Municipal Code 11-2-F-3i Residential Driveways requires:

- f. An access shall not exceed a 4.0% grade for the first 25', measured from the edge of the nearest drive lane. (See figure 9)

Figure 9 restricts the maximum grade of driveways after the first 25' to 10%, unless heated then a 12% driveway grade is allowed.

The Municipal Code 11-2 does require the following:

3. HARSHIPS FOR CONSIDERATION

- i. Variance requests will only be granted if the applicant can demonstrate all of the following:
 - a. That by reason of exceptional shape, size or topography of lot, or other exceptional situation or condition of the building or land, practical difficulty or unnecessary hardship would result to the owners of said property from a strict enforcement of these Regulations;
 - b. That literal interpretation of the provisions of these Regulations would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of these Regulations.
 - c. That the special conditions and circumstances do not result from the actions of the applicant;
 - d. That granting the variance request will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same district;
 - e. That the granting of the variance does not pose a detriment to the public good and does not substantially impair the intent and purpose of the Zone Plan and these Regulations.

Staff has contacted all property owners within 200' of the above address and caused legal notice to be published in the newspaper as required by the Municipal Code. Staff received three surrounding property owners' responses via email regarding the variance request.

Keith and Diane Jenkins – 716 Mountain Ave.
Larry and Barb Fullerton – 717 Park Ave.
Brian Howard – 629 Park Ave.

All had supportive responses to the request.

The property owner has been coordinating with her neighbor to the west, Mr. Howard on construction activities. Staff does not anticipate a conflict between construction activities. Staff does believe all 5 hardship conditions

required for granting a variance are met. Staff recommends that the roadside ditch be maintained by a drainage swale or culvert and be installed per the Town Public Works Department. Since the existing house is located on Lot 9 and the driveway is proposed to be located on Lot 10 the property owner submitted an executed Lot Line Agreement to the Town. Staff recommends the Board approve the resolution as drafted and thereby grant both variances as requested. The Board should discuss the variances requested and whether the hardships defined by the municipal code have been satisfied. The Board has several options to consider including:

1. Approve resolution XX-2012, thus granting both variances requested.
2. Deny one or both of the variances requested.

Biller noted that the owner/applicant, Ms. Karen Rugen, and her contractor were present.

Karen Rugen, 703 Park Avenue, was recognized from the audience. She said that Park Avenue is a very narrow street and due to the fact that she has construction going on to the west of her she has no easy place to park without blocking her neighbors. She then asked the Board if they would agree with staff's recommendation to adopt the draft resolution.

Having no other comments, Mayor Burke closed the Public Hearing and turned the matter over to the Board of Trustees.

Trustee Peterson moved to adopt Resolution No. 23-2012, a Resolution Granting of Two (2) Variances to the Driveway Standards Located at Lot 10, Block 17, Town of Grand Lake; More Commonly Referred to as 703 Park Avenue. Trustee Lanzi seconded the motion and all Trustees voted aye.

NEW BUSINESS:

PUBLIC HEARING – CONSIDERATION OF ORDINANCE NO. XX-2012, AN ORDINANCE ESTABLISHING A MORATORIUM ON ISSUANCE OF PERMITS FOR BOATHOUSES AND BOAT DOCKS - Mayor Burke opened the Public Hearing and asked Town Planner Biller to present this matter to the Board. Biller explained that staff has drafted an ordinance establishing a moratorium on the issuance of permits for boathouses and boat docks. The Town held a public meeting with the shoreline owners of Grand Lake on August 13, 2012. At that meeting the Town Attorney suggested a moratorium be placed for new construction permits. The Grand County BOCC held a public hearing on September 4, 2012 considering a “no action” as it pertains to boathouses on Grand Lake. Staff attended this meeting and the BOCC did not take any action to change boathouse regulations. The Board discussed the draft moratorium at its regularly scheduled workshop on September 10, 2012. Staff caused legal notice of this Public Hearing to be published in the newspaper for three (3) consecutive weeks prior to this meeting. Staff mailed letters in regards to this Public Hearing to all surrounding properties owners of Grand Lake and

to persons who provided contact information at the initial shoreline owners meeting. The Town received a total of eighteen (18) written objection letters to the proposed moratorium.

- 14 letters were from individuals with shoreline property within the Town limits.
- 3 letters were from individuals with shoreline property within Grand County.
- 1 letter was from the Three Lakes Watershed Association.
- 11 letters were from properties owners within the Sunnyside Addition.

The overall consensus of these objections is:

- This moratorium is unnecessary with the current Town regulations and if a property owners indemnification agreement were required.
- Possible decrease in property values.
- Maintenance concerns of existing structures.
- The Town should continue its historical practices in permit issuance and ignore the ownership issues.

Additionally, the Town has received correspondence containing the Grand County Surveyor's opinion on the Grand Lake shoreline. Staff has consulted with the Town Attorney in regards to the necessity of the ordinance. In staff's opinion, there is a need for the ordinance in order to protect the Town when issuing permits to shoreline properties. The term "moratorium" at first glance is frightening, but upon further inspection the ordinance does address the concerns of the shoreline property owners by allowing the following:

- Part 1 does allow for the issuance of permits for maintenance of existing structures if the owner is willing to sign an indemnification agreement.
- Part 3 does allow for the issuance of permits for new structures if ownership can be demonstrated by the applicant on which the structure is to be built.
- The ordinance is only valid for 6 months as indicated in Part 1. At that time, the Board may consider a number of possible actions, including extending the moratorium. The best case scenario is that the ownership issues of Grand Lake will have been addressed by the Town Attorney and the moratorium is no longer required.

Lastly, the Board should recall the main issue that caused staff to consider a proposed moratorium is the Town's risk in issuing permits for structures that are located over or on property not clearly owned by the permit applicant. There are two areas of property ownership discrepancy:

- 1) The lakebed of Grand Lake; and
- 2) The possibility that a strip public land exists between the water's edge of Grand Lake and the platted lots of the Sunnyside Addition to the Town of Grand Lake.

The Board should discuss establishing a moratorium on the issuance of permits.

The Board has many options including:

- Adopt the ordinance; or
- Adopt the ordinance with conditions; or
- Not adopt the proposed ordinance; and/or
- Direct staff at its discretion

Ben Blair, 731 Grand Lake Lane, was the first to be recognized by the Chair. He said that he was there speaking on behalf of himself, James Lynch and Bernie Dvorak. He then read a statement in opposition to the moratorium (see attached Exhibit A).

Will O'Donnell, 380 Jericho Road, stated that he agrees with what Ben Blair said. Before we hear from too many more people about who owns Grand Lake and before the Town weighs in on the matter, he reminded everyone that this is not about ownership of the land, it is about jurisdiction of the Town. He said, "The Town cannot decide what owners can or cannot build outside of the Town boundary. Wouldn't the Town be liable for any harm suffered due to the Town standing in the way of construction outside of its boundary?" He then presented a copy of a map of Grand Lake as well as a copy of a letter from Warren Ward, Grand County Surveyor to the County Attorney. (See attached Exhibit B for his statement and attachments). He said that according to the map, the Town's boundary stops at the edge of the subdivided lots. Beyond that edge is in the County. The Town may be liable for issuing or prohibit issuing permits on land that is in the County. The Town has no liability for issuing a building permit to build within the Town boundary because that is on someone's property. The County is now worried about liability for building in the County. They are not weighing in on ownership. It is a very dangerous topic. He suggested taking the ownership issue out of it and the Town stay within its boundary. Doing anything outside of its boundary is a liability to us all.

Richard McQueary, 536 Cairns Avenue, stated that his concern with this dilemma is that assumptions have been made without having any evidence that those assumptions are based on fact. He said that he does not know what navigable water is. He then asked if anyone had a legal definition of what navigable water is. We've heard, if it's navigable water then the State owns it but he said that the County Attorney told him after the last meeting they have to designate navigable water at the time of statehood so that it's part of the interstate commerce system which seems to be a legal definition. It isn't whether or not one can paddle a kayak across it; it's got a legal definition. "Are we assuming it's navigable when we don't know that it meets that definition and then everything we're doing after that flows from that assumption. I think that we are opening a can of worms that can't have

any good results for anybody. If in fact it is navigable then does the wharfing out doctrine apply? There is a doctrine that says if you boarder navigable waters, you have the right to build a wharf out to the depth of water that you can navigate." He said that where he is at the water is three feet deep which means he could have a sixty foot wharf so that he can get to the deep water to float his boat. "Assuming that it is navigable water is not a wise thing until we know what the definition is and then if it meets that definition do we want to buy into the State owning it, therefore the wharfing out doctrine applies." He then suggested waiting to see if the State does anything before stampeding into a lot of regulations that would upset people and create lawsuits. He concluded by asking the Board to consider not adopting the ordinance that is being considered.

Tom McWilliams, 2348 W. Portal Road, who has property in the County, expressed his opinion that the Board should not adopt this ordinance primarily because he does not see any benefit to anyone. If the State chooses to enforce their ownership and maybe eventually eliminate the boathouses on the lake, the devaluing of the properties results in less tax money to the Town and the County.

Joe Gruber, 556 Jericho Road, said that he also owns a house in the Lake Kove Subdivision, having one within the Town limits and the other in the County. He stated that there is a special charm about Grand Lake, he has been coming up here all of his life. The charm is the boathouses. There is no place like it in the entire State. The Town has done a fantastic job of making sure the lake is cleaned up. When Heckendorf's boathouse was falling apart, the Town got them to clean it up. If you look around the lake right now the boathouses are in very good shape. They are beautiful. If you eliminate that control and don't allow people to make improvements they will go to hell in a hand basket fast. His concluding statement was, "Please don't eliminate the charm."

Tom Blickensderfer, 301 Pine Street, said that he and Stoddard White went to Attorney General, Ken Salazar, in 1999 and asked him to make a determination of lake ownership. He said that he really didn't know why they were so eager at that time to get an answer. For a lot of reasons status quo is generally working just fine. He explained that it was very political and that the Attorney General just sat on it. At that time Blickensderfer was in the State Senate representing a district in suburban Denver. He said that Salazar waited until he left office then by request of the succeeding leadership of the Senate; he quashed or eliminated the request by senatorial direction. Over time it has become very clear to him that the Attorney General was very wise in not making any determination or forcing a determination on the request because it gets into a number of issues related to water law, right to float, etc. With regard to the moratorium, he said that there is not a great amount of benefit for the Town or for those who are shoreline owners. He said that he wished that Town Attorney Krob were

present to engage in a discussion about that. Attorneys generally advise their clients to watch their backside for any amount of liability the Town may incur for any permits that are issued while the current Attorney General is making some determinations on this question. However, that liability extends both forward and backward and any permit holder prior to this time that the Town is awaiting a decision from the Attorney General's office is really on equal footing with anyone in the future who may be seeking to obtain a permit here in the next six months. He said that six months is wishful thinking. Attorney General Salazar sat on this for two years. He said that he believes that this would not benefit the current Attorney General, John Suthers or the State of Colorado to stir up a hornets' nest by making some kind of a determination. Again, he said that it is going to take a long time and in six months he sees the Board considering extension of the moratorium.

Robb Rankin, 502 W. Garnet Avenue, Granby, said that he is a Commissioner candidate for District 2. He has been attending County Commissioner meetings for the past three months on a regular basis and at the meeting held today there was discussion regarding this matter. He was previously Superintendent for the East Grand School District for twelve years and said that many times he had to receive advice from the attorney for the school district. There are times that the attorney is going to look out for your interest but there were times when the School Board would have to say, "Thank you very much but we are going to proceed in a different direction taking that risk or chance." He said what is interesting to him from the outside is that Mr. Krob has advised the Town to go one direction and Mr. DiCola has advised the County to go another leaving things as is. As with most legal issues, there are two opinions and two different points of view. This is obviously not a clean legal issue. Mr. DiCola's estimate is that if this were to play out in the legal system it would probably end up going to the U. S. Supreme Court somewhere in the ten year timeline.

Ray Sample, 500 Jericho Road, said that his property is in the County but values the Town and the County and what there is to offer. He said that last he knew the Town did not have a windfall of money to pay for your attorney. "If you're looking for suggestions on ways to spend money other than legal expenses, I can come up a whole list." He said that he thinks the Town should give it back to its attorney and ask him to look at governmental immunity and what protections the Town has. The Town is not acting reckless, willful or wanton by taking no action. He encouraged the Board to take the comments that have been made and support the decision not to move forward with the moratorium.

John Raney, 834 Lake Avenue, was the last to speak from the audience. He stated that he is an attorney and has studied water law most of his life. He said that he was appalled that the Town's Attorney, Scott Krob was not present for this meeting to listen to these comments. Raney said that he

backed Stoddard White in the letter that was sent in 1999 to have the Attorney General make a decision on Grand Lake and the Attorney General, as everyone has heard, decided to take absolutely no action. In 2001 and 2002 he said that he and his wife wanted to build a boathouse. They spent a considerable amount of money getting architectural drawings and at that point the Town put a moratorium on boathouses on Grand Lake. They estimated that two years later when the Town approved their permit to build a boathouse it cost them an extra \$20,000 in materials, fees and labor costs while they sat for two years with no action and now the Town is considering another moratorium? "I find that unconscionable."

Having no other comments Mayor Burke closed the Public Hearing and turned the matter over to the Board of Trustees.

Trustee Peterson made the comment that the reason this came up is there is question as to who owns the strip of land between the lake and the lots in Sunnyside Addition. This matter was brought to the attention of the Town's attorney for determination. Peterson said that he is not convinced that the draft ordinance will be productive. He has been on the Board for fifteen years and has heard about the State and the lake for that long and nothing has happened and he doesn't see anything happening in the near future. He concluded by saying that he is not leaning toward adopting the ordinance.

Trustee Lanzi then asked Town Planner Biller how many building permits does the Town currently have pending for boathouses.

Biller responded by saying that the Town doesn't have any for boathouses. He said that he has issued one repair permit for an existing boat dock and that an indemnification agreement was signed upon the issuance. He reminded the Board that the draft ordinance does allow for the issuance of permits for maintenance of existing structures if the owner is willing to sign an indemnification agreement and allow for the issuance of permits for new structures if the applicant can demonstrate ownership of the land on which the structure is to be built.

Trustee Weydert stated that he understands the concern by the mere definition of moratorium. He suggested revising the ordinance by not using the term moratorium and omit the reference to moratorium. The remainder of the ordinance has a lot of merit. There is reasonable concern for the legality of ownership, particularly that strip adjacent to Sunnyside Addition. There are portions of the Town where there is no question of ownership to the waterline. If we have an Indemnification Agreement then the Town is possibly covered. He then asked the other Board Members what their thoughts are on amending or revising the ordinance.

RECORD OF PROCEEDINGS

Trustee Gasner said that if the Town is concerned with the ownership of that strip of land adjacent to Sunnyside Addition, then why not make the ordinance pertain to just that portion of Sunnyside and issue permits to the rest of the property owners within the Town.

Trustee Weydert responded by saying that the Board does not know whether or not there are others.

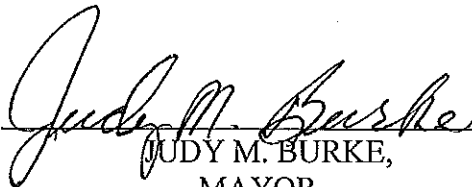
Trustee Lanzi agreed with Trustee Weydert and said that he would be agreeable to dropping all reference to a moratorium and require an Indemnification Agreement for all permits issued and continue to work on the ownership of the lake.

Mayor Burke expressed her feeling by saying that the Board needs to seriously consider dropping the moratorium and implement a system much like the County is currently using with the Indemnification Agreement.

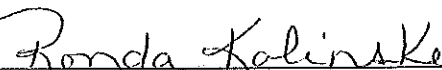
Following discussion, Trustee Peterson moved to continue the Public Hearing and directed staff to redraft the ordinance without the moratorium language and with a focus on a process similar to that of Grand County when issuing boathouse or boat dock permits, which may include an Indemnification Agreement, and bring it back to the Board for consideration after Town staff has consulted with County staff. Trustee Gasner seconded the motion and all Trustees voted aye.

CITIZEN PARTICIPATION: None.

ADJOURNMENT: Trustee Peterson moved to adjourn, seconded by Trustee Weydert. All Trustees voted aye, and the meeting was adjourned at 8:43 p.m., October 8, 2012.



JUDY M. BURKE,
MAYOR

ATTEST: 

RONDA KOLINSKE, CMC,
TOWN CLERK

October 8, 2012

To the Mayor and Trustees of the Town of Grand Lake, Colorado:

The issue of who owns Grand Lake and the resulting proposed moratorium on the Town of Grand Lake issuing boat dock or boat house building permits is challenging for the Board of Trustees. The Grand County Board of Commissioners decided to continue issuing permits after considering the same questions facing the Trustees and should be a compelling factor in your decision.

The undersigned owners of property on Grand Lake and within the Town of Grand Lake boundaries are opposed to the moratorium.

The Trustees of the Town of Grand Lake have the responsibility to consider all sides of an issue and do what is most practical while considering the welfare of the Town citizens. This includes the responsibility to preserve the economic viability of the community.

Establishing a moratorium for the reasons set out in the proposed ordinance is an unnecessary step. For as long as the Town has existed, the right to approve boat docks and boat house construction has not been questioned. The process has been an important one, helping to insure that what is built on the shoreline is both aesthetic and safe.

There are always unforeseen consequences of any ordinance. In this case the imposition places a burden on property owners who wish to improve the value and usefulness of their property in a manner which has been a traditional right for over 100 years. It is a right that has not been questioned by the Town, the State of Colorado, Grand County or any federal entities. In fact all of those institutions either explicitly or by inaction have always denied involvement in the ownership and regulation of Grand Lake, with the exception of planning and zoning rights of the County and Town.

It is clear that the attorney representing the Town has recommended the ordinance. It is the responsibility of the Trustees to consider the advice of counsel, but they do not have to take that advice. Attorneys have a natural tendency to recommend the 'safe' solution and often that is one with a negative impact on the community.

The moratorium decreases the value of water front properties by injecting uncertainty. A property owner wishing to sell his property is faced with a lower selling price because the purchaser is informed of the prospect that he or she may not be able build a boat dock or boat house. To the extent that every sale and every construction project that happens within the Town has positive economic advantages to the entire community, all citizens suffer. That is not the kind of result that makes sense or is helpful to the general welfare of the community.

There is precedent and tradition in issuing these permits. What reason is there for not continuing the procedure? Should the State at some time in the future decide they wish to claim lake ownership and impose their will, then so be it. But that is not the case here. The State has denied ownership; just because the Attorney General's office says they will review the matter does not change the situation. The Attorney General has no power to tell the Town to stop issuing permits, at least not until it is established that the State has acknowledged and decided to claim ownership of the lake rather than deny it. Grand County, with advice of its attorney, has reached the conclusion that no action be taken. They are correct.

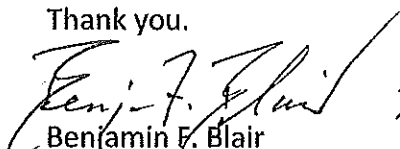
The proposed moratorium is for six months to give the State time to consider whether it owns Grand Lake. It is ludicrous to think that the State will make such a decision within such a short period of time. It could take many years. And if the State should decide to take on the responsibilities of ownership who is to say that a legal challenge will not delay the process for years longer. Once this moratorium is in place it will be difficult for the Trustees to withdraw it; instead, it will likely be extended for one short period after another. All of this negatively affects the Grand Lake economy for no good reason. We should not forget that it also limits what the Town, the owner of more docks and boat house space than anyone, can do with its own facilities.

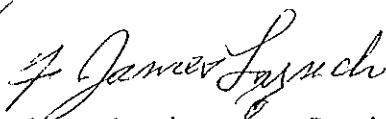
The only real result of the moratorium is that it places yet another roadblock to progress in our community. It tramples on the traditional rights of property owners; it reduces the potential fees to the Town; it negatively impacts sales and property tax revenues; it makes the Town look foolish, impotent and unprogressive. In short, the Town is 'worrying too soon.' The proposed ordinance is untimely, unnecessary and just another threat to our economy in very perilous economic times.

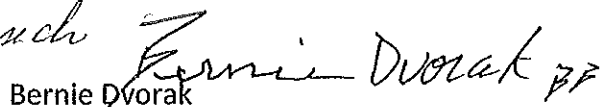
Let's move on to a positive agenda that helps to further the development of our community. Why get bogged down in a matter that has no urgency or progressive prospects. Don't allow an empty request from the Attorney General's office determine your right to manage a situation. Don't allow inconsequential advice from the city attorney to result in poor policy and hardship on Grand Lake citizens.

For the sake of our community, please vote to defeat the ordinance containing the moratorium.

Thank you.


Benjamin F. Blair
731 Grand
Lake Lane
Grand Lake


James Lynch
727 Shadow Mt.
Grand Lake


Bernie Dvorak
729 Shadow Mt.
Grand Lake

This is not about Ownership of the land below the improvements; it is simply about Jurisdiction.

The Town cannot decide what owners can or cannot build outside of the Town boundary. Wouldn't the Town be liable for any harm suffered due to The Town standing in the way of construction outside of its boundary?

To: County Attorney

Re: Shoreline Property Ownership

Date: 09-11-12

I have received inquiries about the ownership lines along large bodies of water, specifically Grand Lake.

- In general, unless otherwise specified, private ownership along Grand Lake goes to the shoreline, which is beyond the government-surveyed "meander line". Thus the line delineating the government ownership of Grand Lake and private ownership upland from the Lake is defined by the shoreline – where the water ends. The following is a brief summary supporting my opinion:

As the U.S. expanded west, the G.L.O. (now the B.L.M.), lead by President Thomas Jefferson, invented a means to depose of lands to private landowners, while keeping ownership of "navigable" bodies of water. The Public Lands Survey System started in 1795, and is still in use today as the basis for all title. To inventory and approximate the size of all larger bodies of water, the US "meandered" around the lakes.

The U.S. did not want, nor did they intend to "keep" any of the dry lands around the lakes. The concepts of U.S. Forests and National Parks came much later than the PLSS.

There were two problems that the US had to solve in order to "keep" large bodies of water while depositing dry lands to the private sector: First, there were no surveying tools available that made it possible to survey irregular bodies of water with high precision, and second, all bodies of water were in a constant state of change anyway. The system of "meander lines" around the lakes was invented to allow landowners ownership to the waterline, while allowing the US to map and "keep" the large bodies of water.

Case law developed alongside the surveying of the PLSS, which established the doctrine in use today that all natural bodies of water are in a constant state of change, and that private landowners own dry property to the water line, or mean highwater line, and their property boundaries change with the waterline.

In contrast, a meanderline is a permanent line that merely approximates the area of a large body of water, but does not define actual private property ownership along the shoreline.

In 1887, government surveyors laid out the PLSS system throughout the Grand Lake area, and also laid out the Grand Lake Townsite.

In 1903, the Town of Grand Lake was platted into Blocks and Streets. The surveyors at the time fully understood the doctrine of private ownership to the shoreline/waterline. They clearly designated the shoreline of Grand Lake to be within a public area, but did not define the exact location of the shoreline. However, they did lay out the blocks and streets of Grand Lake with a high degree of precision. This is because the intention was for private land ownership to reach the ever-changing shoreline if and where it adjoined the lake.

Grand Lake is even more interesting because in 1950 it became a part of a federally operated reservoir system. Since 1950, the shoreline of Grand Lake has NOT moved naturally with the seasons, but has been fixed in place by man-made means at an exact elevation.

This occurrence results in a mean high-water line that has not moved and does not change. Interestingly, most of the subdivisions around the lake were platted before 1950, utilizing the doctrine that the meanderline was merely a reference to the PLSS system, but that private ownership of all new lots went to the shoreline according to established case law.

The U.S. has at no time, prior to 1950, nor after, designated any strip of land lying between the old meanderline and the shoreline as being owned by any other than private ownership. The whole intent of the meanderline system was to allow private ownership, while the U.S. "kept" the navigable bodies of water.

To my knowledge, two court rulings related to Grand Lake have confirmed my opinion.

Signed,

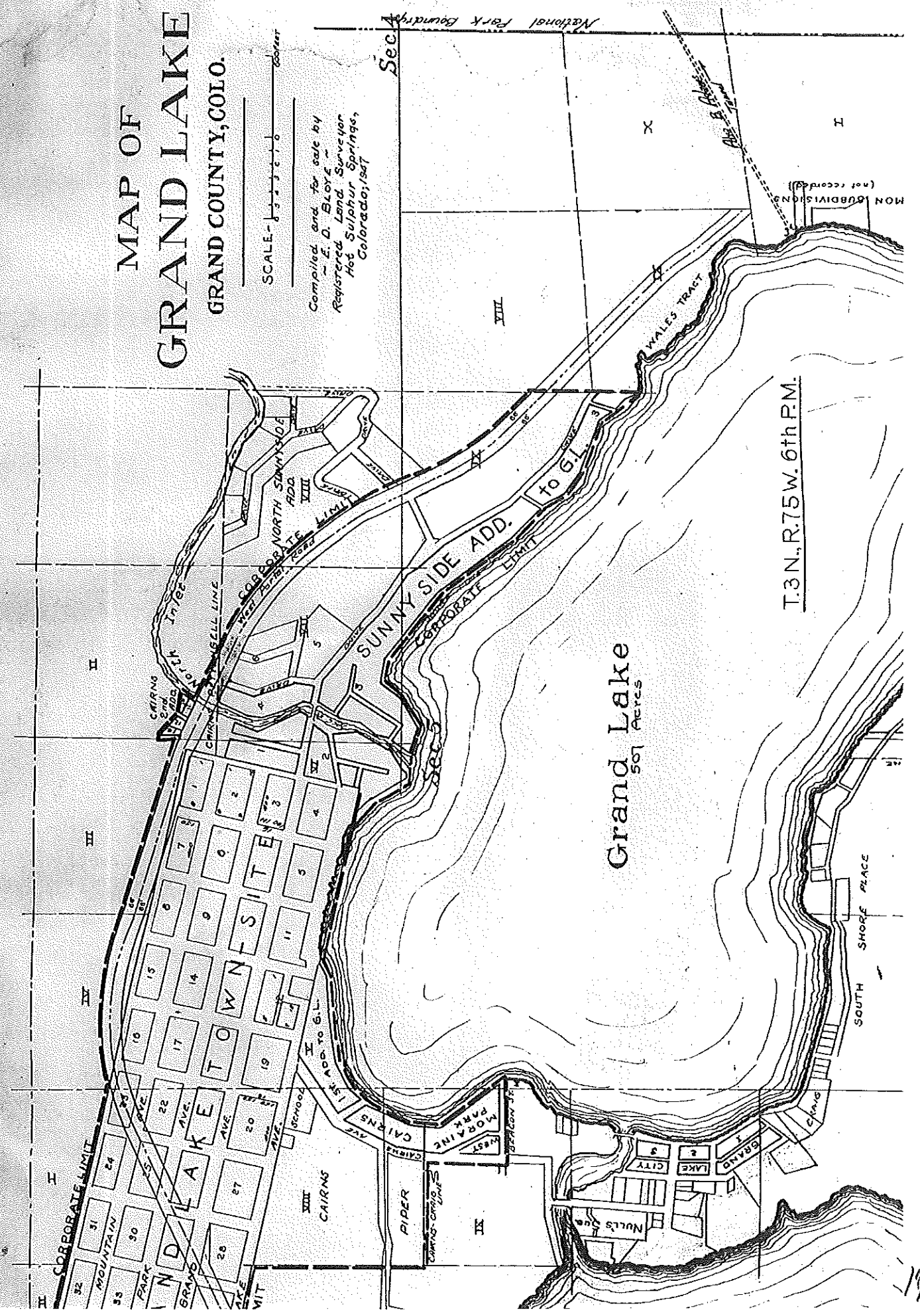
Warren D. Ward

Grand County Surveyor

MAP OF GRAND LAKE GRAND COUNTY, COLO.

SCALE - 1" = 200 FEET

Compiled and for sale by
- E. D. BLOYE -
Registered Land Surveyor
Hot Sulphur Springs,
Colorado, 1947



T.3 N., R.75 W. 6th P.M.