

AD
a
2

FILED
IN SUPERIOR COURT
STEVENS COUNTY
2020 OCT -5 AM 10:19

JULIE C. JAMES
COUNTY CLERK

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
STEVENS COUNTY SUPERIOR COURT

STATE OF WASHINGTON,

Plaintiff,

v.

MARBLE COMMUNITY
LANDOWNERS ASSOCIATION,
BARRY BYRD, and BERNARD
CURRIGAN,

Defendants.

20 2 00258 33

ASSURANCE OF
DISCONTINUANCE

20-2-00258-33
DR
Order
9005159



ASSURANCE OF
DISCONTINUANCE

ATTORNEY GENERAL OF WASHINGTON
Civil Rights Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7744

1 I. INTRODUCTION

2 1.1 The State of Washington, by and through its attorneys, Robert W. Ferguson,
3 Attorney General, and Neal Luna and Brian J. Sutherland, Assistant Attorneys General, accepts
4 this Assurance of Discontinuance following its investigation of the Marble Community
5 Landowners Association, Pastor Barry Byrd, and Bernard Currigan, D.O pursuant to the
6 Washington Law Against Discrimination (WLAD), RCW 49.60.030(1), .220, .222, .2235, and
7 .224, and the Washington Consumer Protection Act (CPA), RCW 19.86.020. The following are
8 the allegations based on The Attorney General's investigation:

9 1.2 Marble, Washington is a community just south of Northport, Washington, and
10 consists of approximately 49 subdivided, privately owned parcels of real property. These parcels
11 are described in the attached Exhibit A.

12 1.3 For many years, Marble operated without a homeowners' association. Marble
13 handled matters related to utility service and infrastructure through a small, informal group of
14 community members, called the Marble Utility District, and occasional community meetings.

15 1.4 The Marble Community Landowners' Association (MCLA), a homeowners'
16 association, was registered as a nonprofit corporation in 2007.

17 1.5 During the MCLA's formation, Pastor Byrd advocated for the MCLA and its
18 Bylaws to have an expressly religious purpose and religious policies. As a result, the MCLA
19 adopted Bylaws that contain religious preferences and limit MCLA membership and perpetual
20 water access rights to landowners who record the religious preference against their land. MCLA
21 Bylaws Art. 1; Art. 3, Secs. 11, 14, and 15.

22 1.6 The MCLA founders intended "to bring forth in this place an Intentional Biblical
23 Christian Covenant Community, a Holy Commonwealth, for the benefit of Ourselves and our
24 Posterity . . ." MCLA Bylaws, Preamble.

25 1.7 In furtherance of this objective, the MCLA's express purpose is to organize its
26 members "in such a way as to exercise godly dominion over their common resources and to

1 regulate themselves and their property in a manner that establishes liberty and justice and
2 maintains a spirit of Christian unity within her gates.” MCLA Bylaws, Art. 1. The Bylaws
3 expressly give the MCLA the power to own, lease, or maintain the water system that serves the
4 Marble community and to determine “on a case by case basis,” which lots may access it and the
5 conditions of such access. MCLA Bylaws, Art. 3, Section 5.

6 1.8 Other provisions of the Bylaws provide additional means by which the MCLA
7 seeks to establish an “Intentional Biblical Christian Community.” For example, to be eligible to
8 serve as a director on the MCLA board, an MCLA member “shall have . . . evidence of mature
9 Christian character.” MCLA Bylaws, Art. 5, Sec. 3. The Bylaws further grant the Marble
10 Commonwealth Trust, which owns Marble Community Fellowship church property in Marble,
11 the power in perpetuity to appoint one MCLA board member, a permanent seat on the MCLA
12 board that is not available to any other Marble landowner. MCLA Bylaws, Art. 5, Sec. 2. Key
13 terms in the Bylaws, such as “Community Spirit,” “Covenant,” and “Intentional Biblical
14 Christian Covenant Community,” are defined by reference to the Christian Bible and Christian
15 religious teachings. MCLA Bylaws, Art. 3, Secs. 4, 6, and 10. These religious covenants in the
16 Bylaws violate RCW 49.60.222(1)(b), .222(1)(g); and RCW 49.60.224(1), (2).

17 1.9 The MCLA, Pastor Byrd, and Dr. Currigan have implemented and/or enforced
18 policies that treat Marble landowners differently with respect to MCLA participation, utility
19 access, infrastructure services, and real estate transactions, based on whether landowners are
20 willing to record the Bylaws against their properties. Such conduct discriminates based on
21 religion, which is unlawful under the WLAD. RCW 49.60.030(1)(c), .030(1)(d), .220,
22 .222(1)(b), .2235, and .224.

23 1.10 Dr. Currigan’s interference with real estate transactions on behalf of the MCLA
24 also constitute unfair or deceptive acts or practices occurring within commerce in violation of
25 the CPA. RCW 19.86.020.

26

1 1.11 This AOD shall not be considered an admission of a violation of the WLAD or
2 RCW 49.60.030(1)(c), .030(1)(d), .220, .222(1)(b), .2235, and .224 for any purpose. Further, the
3 MCLA, Dr. Currigan and Pastor Byrd do not admit to these allegations nor agree with the
4 statements of the investigation below and specifically are not in agreement with 1.5, 1.9 and 1.10
5 as stated. However they are willing to execute and be bound by this Assurance of Discontinuance
6 in order to resolve this matter without the need for litigation.

7 II. INVESTIGATION

8 2.1 In 2019, certain Marble landowners reported to the State that they declined to
9 record the MCLA Bylaws against their properties because they did not wish to encumber their
10 properties with religious covenants, restrict the use of their properties, or limit the types of
11 persons to whom they can sell, lease, or rent.

12 2.2 As a result of declining to record the MCLA Bylaws, the MCLA excluded these
13 landowners from MCLA membership. The non-MCLA landowners could not attend MCLA
14 meetings, vote on community issues addressed by the MCLA, inspect or exercise any control
15 over how monthly water and maintenance fees were spent, or have a right that runs with their
16 properties to access the community water system.

17 2.3 Additionally, the non-MCLA landowners report that Dr. Currigan, the current
18 MCLA president, enforced the Bylaws in a discriminatory manner. Dr. Currigan intervened in
19 non-MCLA homeowners' property refinance or purchase and sale transactions in attempts to
20 coerce non-MCLA members to record the Bylaws, and their religious covenants, against their
21 properties.

22 2.4 The State and the MCLA, Pastor Byrd, and Dr. Currigan agree to resolve the
23 claims against the MCLA, Pastor Byrd, and Dr. Currigan without the necessity of litigation or a
24 trial on the merits. Filed pursuant to RCW 19.86.100, this Assurance of Discontinuance is a
25 settlement of a disputed matter.
26

1 2.5 All communications related to this Assurance of Discontinuance may be directed
2 to: Civil Rights Division, Office of the Attorney General, 800 Fifth Avenue, Suite 2000, Seattle,
3 Washington, 98104.

4 III. ASSURANCE OF DISCONTINUANCE

5 A. Standards of Practice

6 3.1 The following are unfair practices with respect to real estate transactions in
7 violation of the WLAD and the CPA:

8 3.1.1 To discriminate against a person in real estate or credit transactions, on
9 the basis of religion, RCW 49.60.030(1)(c), (d);

10 3.1.2 To discriminate against a person in the terms, condition, or privileges of
11 a real estate transaction or in the furnishing of facilities or services, on the basis of
12 religion, RCW 49.60.222(1)(b);

13 3.1.3 To coerce, intimidate, threaten, or interfere with a person's right to be free
14 from discrimination on the basis of religion in a credit transaction, real estate transaction,
15 or in the provision of services or facilities in connection with a real estate transaction,
16 RCW 49.60.2235.

17 3.1.4 To insert a provision in a written instrument relating to real property that
18 purports to forbid or restrict the conveyance, encumbrance, occupancy, or lease thereof
19 to individuals of a specified creed, RCW 49.60.224(1), (2).

20 3.1.5 To make, print, circulate, post, or mail, or cause to be so made or
21 published a statement, advertisement, or sign, or to use a form of application for a real
22 estate transaction, or to make a record or inquiry in connection with a prospective real
23 estate transaction, which indicates, directly or indirectly, an intent to make a limitation,
24 specification, or discrimination on the basis of religion with respect thereto, RCW
25 49.60.222(1)(g);
26

1 3.1.6 To aid, abet, encourage, or incite the commission of any of the above-
2 described practices, or to attempt to obstruct or prevent any other person from complying
3 with the provisions of the Washington Law Against Discrimination, RCW 49.60.220;
4 and

5 3.1.7 To commit an unfair or deceptive act or practice in the conduct of trade
6 or commerce, RCW 19.86.020.

7 3.2 Accordingly, the MCLA, Pastor Byrd and Dr. Currigan agree not to engage in the
8 practices alleged in ¶¶ 1.5-1.10, 2.2, and 2.3, or to otherwise discriminate against or express a
9 preference for Marble landowners or residents based on religion. This provision shall apply to
10 the MCLA and to any homeowners' association created, organized, or led by Pastor Byrd or Dr.
11 Currigan or their agents to provide water, road, or any other facilities, services, or governance
12 of any kind for the parcels that are now or may be included in the Marble community or which
13 are dependent upon the MCLA for the provision of any facilities or services.

14 **B. Revision of the MCLA Bylaws and Master Water and Road Services Agreement**

15 3.3 The MCLA agreed to amend its Bylaws and did in fact amend and adopt its
16 Amended Bylaws by vote of the Board of Directors to eliminate all language indicating a
17 religious or spiritual preference and to clarify that it shall conduct its business in accordance with
18 federal and state anti-discrimination law. The MCLA amended its Bylaws by:

19 3.3.1 Removing the Preamble;

20 3.3.2 Revising "Article 1 Purpose" to exclude any mention of a religious or
21 spiritual preference of any kind;

22 3.3.3 Removing "Section 4 - Community Spirit," "Section 6 - Covenant," and
23 "Section 10 - Intentional Biblical Christian Covenant Community" of "Article 3
24 Definitions";

25 3.3.4 Revising "Section 2 - Number" and "Section 5 - Removal" of "Article 5
26 Board of Directors; Selection; Term of Office" to require every MCLA Board member

1 to stand and secure election, or otherwise be replaced, on equal terms free from any
2 religious preference or discrimination. In particular, these revisions include removing
3 provisions providing that one member of the MCLA Board shall be appointed by and
4 represent the Marble Commonwealth Trust;

5 3.3.5 Revising “Section 3 – Qualifications” of Article 5 to permit any owner of
6 real property included in the Marble community now or in the future to be eligible to be
7 a candidate and to serve as a member of the MCLA Board, regardless of religious
8 affiliation or non-affiliation. In particular, these revisions include removing the
9 provisions requiring all candidates for, and members of, the MCLA board of directors to
10 show “evidence of mature Christian character,” and to have “demonstrated by both word
11 and deed their ongoing commitment to advance the vision of the community as expressed
12 in the Preamble and Purpose of these Bylaws;”

13 3.3.6 Clarifying the provision of “Section 1 – Regular Meetings” of “Article 7
14 Meetings of Directors” that while the MCLA Board may publish rules and regulations
15 governing “the personal conduct of the Members and their guests” and to “establish
16 penalties for the infraction thereof,” such rules and regulations shall comply with federal
17 and state anti-discrimination laws;

18 3.3.7 Clarifying “Article 13 Assessments” that the MCLA shall administer and
19 provide water and road service, levy any related assessment, and enforce any assessment,
20 in compliance with federal and state anti-discrimination laws, and shall not discriminate
21 between MCLA members and non-MCLA members whose properties receive water or
22 road service administered and provided by the MCLA;

23 3.4 The Board of the MCLA shall provide the Attorney General’s Office with a copy
24 of the resolution adopting the Amended Bylaws, and put the adopted and Amended Bylaws
25 described above at paragraph 3 and subparagraphs 3.3.1 through 3.3.7 to a vote for ratification
26 by the membership of the MCLA on or before December 16, 2020.

1 3.5 Additionally, the MCLA will provide in a separate Revised Master Water and
2 Road Services Agreement and a related Consent to Revised Master Water and Road Services
3 Agreement for the use and enjoyment by non-MCLA members who own real property listed on
4 Exhibit A, of all water, road, or any other facilities, services, or governance of any kind provided
5 by the MCLA on the same financial and access terms that the MCLA provides to members.

6 3.6 The MCLA shall put to vote for ratification of the Members by December 16,
7 2020, the Amended Bylaws, the Revised Master Water and Road Services Agreement and the
8 Consent to Revised Master Water Service and Road Maintenance Agreement that are in
9 compliance with the requirements set forth in this section.

10 3.7 In the event that the MCLA membership votes against the new Amended Bylaws
11 containing the changes described above at paragraphs 3.3.1 through 3.3.7 and therefore do not
12 ratify them on or before December 16, 2020, the Board of the MCLA shall, on or before
13 December 25, 2020, exercise its authority pursuant to RCW 64.38.028(1) to record, without vote
14 or approval of the Members of MCLA, RCW 64.38.028(5), the Amendments to the Bylaws,
15 including the removals of:

16 3.7.1 The preamble;

17 3.7.2 Sections 4, 6, and 10 of Article 3;

18 3.7.3 The third and fourth sentences of Article 5, Section 2, which reads "One
19 director shall, in perpetuity, be appointed by the Trustees of The Marble Commonwealth
20 Trust, or its successors and assigns, as a representative of the Trust. Such Director shall
21 be subject to all other terms of this Article."

22 3.7.4 The phrase "church Officer" from subsection c. of Article 5, Section 3,
23 and the second clause of that subsection, which reads "and evidence of mature Christian
24 character."

25 3.7.5 Subsection d. of Article 5, Section 3.
26

1 3.8 In the event that the Board of the MCLA must record the Amendments to the
2 Bylaws in accordance with paragraph 3.7 above, the Board shall record the Amendments to the
3 Bylaws (or the Amended Bylaws) along with the statement required by RCW 64.30.028(4)
4 against each property in the MCLA against which a Notice of Interest in Real Estate relating to
5 the previous version of the Bylaws is recorded.

6 3.9 In the event that the MCLA membership votes against ratification of the new
7 Amended Bylaws and the Board of the MCLA must amend the Bylaws as provided in paragraph
8 3.7 above subparagraphs 3.7.1 through 3.7.5, this AOD shall not constitute an admission by the
9 State of Washington or evidence that other provisions not changed thereby are in compliance
10 with the Washington Law Against Discrimination or other Washington law.

11 3.10 The Board of the MCLA having adopted new Bylaws as described in paragraph
12 3.3 above, which removed and revised discriminatory provisions, the MCLA shall, as of the
13 effective date of this AOD, comply with those provisions so revised, including with respect to
14 the nomination and election of Board members.

15 **C. Non-Discrimination Policy and Notice to Landowners**

16 3.11 The MCLA shall adopt by November 20, 2020, a policy of non-discrimination on
17 the basis of religion.

18 3.12 Upon entry of this Assurance of Discontinuance, the MCLA agrees also to within
19 fourteen (14) days of adoption of a policy of non-discrimination to send the notice of the non-
20 discrimination policy to every owner of real property in the MCLA or Marble community as
21 defined by the previous version of the Bylaws, and every owner of a parcel of real property that
22 receives any water, road, or any other facilities, services, or governance of any kind provided by
23 the MCLA.

24 **D. Compliance Monitoring and Reporting**

25 3.13 The Attorney General may monitor the compliance by the MCLA, Pastor Byrd,
26 and Dr. Currigan with this Assurance of Discontinuance. Such monitoring may include, but will

1 not be limited to, requesting copies of the documents and notices required to be created and sent
2 or posted by this Assurance of Discontinuance, conducting interviews with members of the
3 MCLA or owners of real property in the Marble community or which receive water, road, or any
4 other facilities, services, or governance of any kind provided by the MCLA. Such monitoring is
5 intended to be limited to ensuring that that the MCLA, Pastor Byrd, and Dr. Currigan do not
6 violate the WLAD in any way that impacts any Marble property as defined by the MCLA Bylaws
7 or resident or guest of such property.

8 3.14 The MCLA agrees to, no later than fourteen (14) days after occurrence, provide
9 to the Attorney General notification and documentation of the following events:

10 3.14.1 The affirmance of the revised MCLA Bylaws, Master Water and Road
11 Services Agreement, and a related Consent to Master Water and Road Services
12 Agreement, as provided for by ¶¶ 3.3, 3.4, and 3.5 above, or, in the event that the Board
13 of the MCLA must exercise its authority to amend the Bylaws in accordance with
14 RCW 64.38.028 as provided in paragraph 3.7 above, the amendment of the Bylaws and
15 recordation of the amendments as required by RCW 64.38.028(4); and

16 3.14.2 The sending of the non-discrimination policy to current Marble
17 landowners required by ¶ 3.12 above, by emailing to neal.luna@atg.wa.gov and
18 brian.sutherland@atg.wa.gov copies of the correspondence sent to each landowner, or
19 by mailing the same to the address provided in ¶ 2.5, above.

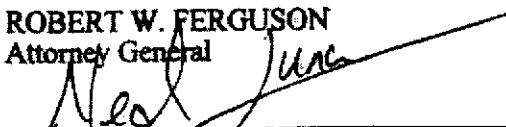
20 IV. ENTRY AND DURATION

21 4.1 The MCLA agrees to maintain all the provisions of non-discrimination on the
22 basis of religion in its Bylaws in perpetuity. Other provisions of this Assurance of
23 Discontinuance shall remain in effect for a period of five (5) years from the date of its entry. The
24 Court shall retain jurisdiction for the duration of this Assurance of Discontinuance to enforce its
25 terms.

1 Presented by:


2 **STATE OF WASHINGTON**

3 **ROBERT W. FERGUSON**
4 Attorney General

5 
6 **NEAL LUNA, WSBA No. 34085**
7 **BRIAN SUTHERLAND, WSBA No. 37969**
8 Assistant Attorneys General
9 Wing Luke Civil Rights Division
10 Office of the Washington State Attorney General
11 800 Fifth Avenue, Suite 2000
12 Seattle, WA 98104-3188
13 Phone: (206) 464-7744
14 neal.luna@atg.wa.gov
15 brian.sutherland@atg.wa.gov

12 Agreed to and approved for entry by:

13 **MARBLE COMMUNITY**
14 **LANDOWNERS' ASSOCIATION**

15 
16 By: Joshua P. Grewe, WSBA No. 53653
17 Gore & Grewe, PS
18 103 E. Indiana Ave. Suite A
19 Spokane, WA 99207

19 **BARRY BYRD**

20 
21
22 **BERNARD CURRIGAN**

23 
24
25
26

Exhibit A

MCLA - Properties

2020

LOWER BENCH - NAME	See legend	Lot Number	Tax Parcel #	Address
Tim Davis	RW	1	<u>618801</u>	3383 Hwy 25 N. lot #1 Northport, WA 99157
Eric Stark	R	2	<u>618802</u>	3383 Hwy 25 N. lot#2, Northport, WA 99157
E& S Johnston	RW	3	<u>618803</u>	3383 Hwy 25 N. lot #3 Northport, WA 99157
Sauvola	RW	4	<u>618804</u>	3383 Hwy 25 N. lot #4 Northport, WA 99157
Chapman	RW	5	<u>618805</u>	3383 Hwy 25 N lot #5 Northport, WA 99157
Steve Harrington	RW	6	<u>618806</u>	3383 Hwy 25 N. lot # 6 Northport, WA 99157
Steve Harrington	U	7	<u>618808</u>	3383 Hwy 25 N. lot #7 Northport, WA 99157
Simmons	U	8	<u>618810</u>	DEANN M SIMMONS 432 SEYLER VALLEY RD INCHELIUM, WA 99138
Morris	RW	9	<u>618815</u>	JUDY ANN FISHER-MORRIS 15381 W SUNMEADOW ROAD WORLEY, ID 83876
Davies (Lodge)	RW	10	<u>618820</u>	P.O. BOX 80067 BAKERSFIELD, CA 93013-0067
Logsdon	RW	11	<u>618855</u>	3383 hwy 25 N, lot 11 Northport, WA 99157
SALT	U	12	<u>618860</u>	3383 Hwy 25 N # 73C Northport, WA 99157
Marble Flats	U	13	<u>618800</u>	PO Box 117. Northport, WA 99157
Marble Commonwealth	RW	14	<u>618898</u>	3383 Hwy 25 N Lot #358 Northport WA 99157
Trent Smith	RW	15	<u>618901</u>	1297 W FM 476 Poteet, TX 78065-3520
Sauvola	RW	16	<u>618909</u>	3383 Hwy 25 N # 16 Northport, WA 99157
Tim Davis	RW	17	<u>618911</u>	3383 hwy 25 N Lot 17
Karren Palmer	RW	18	<u>618899</u>	2604 Island Dr. NW Olympia, WA 98502-9710
Davies (Well)	U	19	<u>618905</u>	P.O. BOX 80067 BAKERSFIELD, CA 93013-0067
Travis Lisenbee	RW	20	<u>618902</u>	3383 Hwy 25 N # 20 Northport, WA 99157
Doolittle, Kay	R	21	<u>618912</u>	3383 Hwy 25 N # 21 Northport, WA 99157
Warren/Hopkins	RW	23	<u>618913</u>	3383 HIGHWAY 25 N LOT 23 NORTHPORT, WA 99157-9732
Steve Ramanauskas	RW	24	<u>618915</u>	3383 Hwy 25 N # 5 Northport, WA 99157
Smith(Shop)	RW	25	<u>618916</u>	3383 Hwy 25 N # 25 Northport, WA 99157
Paul Tipich	RW	26	<u>618920</u>	3114 Elvido Dr. Los Angeles, CA 90049
Rock Higgins	S	27	<u>618922</u>	3383 Hwy 25 N #27 Northport, WA 99157
Craig Cazenavette	RW	28	<u>618924</u>	3383 Hwy 25 N #28 Northport, WA 99157
Fowler	RW	95	<u>619510</u>	3383 hwy 25 N lot #95 Northport, WA 99157
Davies (Hwy)	U	94	<u>619500</u>	P.O. BOX 80067 BAKERSFIELD, CA 93013-0067

MCLA - Properties

RHC #4 Johnson	RW	72&73	<u>619160</u>	PO Box 117. Northport, WA 99157
RHC #5 Grampa	RW	72&73	<u>619162</u>	PO Box 117. Northport, WA 99157
Gunnells #6	RW	72&73	<u>619164</u>	GUNNELLS TRUST PO BOX 156 NOVATO, CA 94948-0156
RHC #7 Trust	U	72&73	<u>619166</u>	PO Box 117. Northport, WA 99157
Eric Johnston	RW	74	<u>619148</u>	3383 Hwy 25 N #74 Northport, WA 99157
Angus/Thompson	W	75	<u>619149</u>	3361 Hwy 25 N Northport, WA 99157
Creach	U	76	<u>619171</u>	CREACH FAMILY TRUST 3383 HIGHWAY 25 N LOT 25 NORTHPORT, WA 99157
RHC Trust	U	77	<u>619175</u>	PO Box 117. Northport, WA 99157
UPPER BENCH - NAME		Parcel #		
Steve Parker	W	1	<u>2383563</u>	3391 Hwy 25 N #1 Hwy 25 N Northport 99157
Ross	W	2	<u>2383565</u>	3391 Hwy 25 N # 2 Northport 99157
Wills	W	6	<u>2383557</u>	3391 hwy 25. N #6 Northport, WA 99157
Currihan Family Trust	W	7	<u>2383559</u>	3391 hwy 25. N #7 Northport, WA 99157
Rodden	W	8D	<u>2383571</u>	3391 hwy 25. N #8A Northport, WA 99157
Jim Buck	W	8C	<u>2383570</u>	3391 hwy 25. N #8B Northport, WA 99157
Alfsen/Gorskikh	U	8B	<u>2383569</u>	BENJAMIN GORSKIKH 864 16TH ST NE SALEM, OR 97301
Currihan Family Trust	U	8A	<u>2383568</u>	3391 hwy 25. N #7 Northport, WA 99157
Marble Flats, LLC	U	9A	<u>2383574</u>	PO Box 117. Northport, WA 99157
Kirsten Merilo Trust	U	9B	<u>2383582</u>	23542 Vale Ct Valencia CA 91354
Marble Flats, LLC	U	9C	<u>2383578</u>	PO Box 117. Northport, WA 99157
Marble Flats, LLC	U	9D	<u>2383580</u>	PO Box 117. Northport, WA 99157
TOTAL		49		

LEGEND

RW	Roads and Water	24
W	Water only	7
R	Roads only	2
S	Special	1

MCLA - Properties

U Unimproved

15

