



Town of Nederland Board of Zoning Adjustment

AGENDA

Thursday, January 13, 2011 ~ 7:00 pm
Nederland Community Center
750 Highway 72 North

- 1) Call to Order**
- 2) Roll Call**
- 3) Approval of minutes from November 8, 2010**
- 4) Scheduled Business**
 - a. Review of Findings & Decision re: Appeal – Building Permits
#10NED-00011 and #10NED-00012 (259 and 261 West Fourth St.)
- 5) Other business**
- 6) Adjournment**



Town of Nederland Board of Zoning Adjustment

MINUTES

Monday, November 8, 2010 ~ 7:30 pm
Nederland Community Center
750 Highway 72 North

1) Call to Order

Chairman Stringfellow called the meeting to order at 7:40 pm.

2) Roll Call

Present: Chairman Mark Stringfellow; Board Members Debbie Davenport, Ken MacFerrin, Mark Moll; Alternate Board Member Bill Martin.

Also present: Town Administrator Alisha Reis, Deputy Clerk Kristen Edwards, Town Attorney Chris Price, Building Official Eric Pendley, Former Interim Town Administrator Cheri Andersen.

Absent: Board Member Steven Taylor, Trustee Liaison Marci Wheelock.

3) Approval of minutes from February 11, 2010

A motion to approve the minutes was made by Board Member Moll, seconded by Board Member MacFerrin and approved unanimously by a roll call vote, with Board Member Davenport recusing herself from approving minutes related to Business Item A (Application for a Setback Variance at 235 E. 5th Street), but approving the rest of the minutes, and Board Member Martin abstaining.

4) Scheduled Business

- a. Appeal – Building Permits #10NED-00011 and #10NED-00012 (259 and 261 West Fourth St.)

Chairman Stringfellow introduced the item by reading a prepared statement delineating the dynamics of the appeal process. In

accordance with Nederland Municipal Code, the BZA hears and decides appeals of decisions made by the Zoning Administrator. The hearing is open to the public but is not a public hearing at which the public has the right to present evidence and testimony. Although the Board is acting as a judge in the case, strict rules of evidence do not apply. At the conclusion of the hearing, the Board will deliberate. When a decision is reached, the Board will direct the Town Attorney to prepare written findings. The Board is required to render decision in writing, and will meet again to review the draft written decision and approve it when deemed accurate.

The order of the hearing is as follows:

- 1) Town Staff will summarize the decision of the Zoning Administrator.
- 2) The property owner or his representative will present the basis for his appeal. He may introduce witnesses, and both Staff and the Board may pose questions to the witnesses.
- 3) Town Staff may present evidence or testimony in response to the property owner.
- 4) The property owner has the final opportunity to respond to Town Staff and make his final argument as to why the decision should be overturned.

After all testimony is concluded, the Board will begin deliberations. If a decision can be reached tonight, the Board will make a motion to that end.

Chairman Stringfellow admitted into public record the initial building permit applications for 259 W. Fourth Street [Exhibit #1] and 261 W. Fourth Street [Exhibit #2].

Former Interim Town Administrator Cheri Andersen presented the summary of the Town's decision. Much had occurred before her arrival as Interim Town Administrator; given the chaotic circumstances of her arrival, it took her a while to process the documents and arrive at her decision. Andersen issued a letter on July 13, 2010, summarizing her findings based on the material submitted to the Town. Both properties in question are non-conforming lots that require a replat to combine the lots to create a legal sized lot in order to build upon the properties. It appeared to her that the necessary replat never occurred. Property owner Paul Rewinkel needed to apply for a variance for non-conforming lots in order to move forward with the building process, but she was

unable to find any record of such an application. Her decision to deny the application for the building permits was therefore based on the fact that there were two non-conforming lots, and the municipal code restrictions against any development that would result in an expansion of usable square footage on non-conforming lots.

Andersen submitted the paperwork on which she based her decision [Exhibit #3].

Board Member Moll suggested that things seem to have happened “out of order” – that there should have been a replat and a zoning variance, then the building permit application. Andersen agreed and said that the former owner, Cherry Creek Mortgage Company, applied for a replat in 2008 and was told that per Nederland Municipal Code, zoning regulations and subdivision regulations, they needed to apply for a variance in order to move forward with the project. From what she could tell, they did not do so and instead sold the property at that time.

Board Member MacFerrin confirmed that a variance is needed because the properties are zoned Medium Density Residential where lots need to be a minimum of 8,000 square feet. Andersen said that is correct; even if the proposed replat had occurred, the resulting properties still would have been smaller than 8,000 square feet. Doing so would have created a non-conforming lot, a process that is prohibited under Nederland Municipal Code, so a variance would have been necessary.

Eric Pendley, Nederland Building Official, summarized his position. Upon receiving the application in April, he wrote to the property owner’s attorney, Mark Cohen, saying he had received the packet but informing Cohen that the Town was in a time of transition vis-à-vis the new Zoning Administrator. When Andersen got up to speed on the situation, she denied the permit based on zoning.

Board Member Martin asked for clarification as to the extent of the improvements requested in the permit applications. Pendley stated that both applications basically proposed brand-new structures.

This concluded Part 1 of the proceedings.

Rewinkel stated that he would be represented in the proceedings by attorney Mark Cohen.

Cohen stated that it is the applicant's position that appeals of this nature should be heard by the Board of Trustees and not by the BZA, and that their presentation tonight does not waive their right to that argument. He submitted for the record a 215-page, bound packet of relevant documents [Exhibit #4] and the accompanying chronology of events [Exhibit #5].

Cohen spoke for over an hour, going step-by-step through the detailed chronology and the supporting documents. Please see Exhibit #5 (attached) for what was presented during this time.

Cohen then gave his legal arguments for why he believes Andersen's decision is not valid. Rewinkel relied on conversations he had with former Town Administrator Jim Stevens and decisions the Town made and moved forward in good faith. It is wrong for the Town to reverse those positions later and raise issues that were not brought up in initial conversations, he said. As for an issue Stevens raised regarding access to the site, Stevens said Rewinkel could create an easement through one property to the other, but Andersen said he could not. Cohen also disagreed with Andersen's application of the 75% valuation rule (N.M.C. Section 16-185) to the situation, as the applicant does not believe the properties had been "damaged or destroyed," a trigger identified in code Section 16-185.

Board Member Martin said that the 75% valuation rule applies to any significant improvements on non-conforming structures, not only structures damaged by acts of God or something similar. Cohen disagreed with that interpretation.

Chairman Stringfellow asked if the applicant believes the two properties are non-conforming lots with non-conforming structures on them. Cohen replied that the lots are non-conforming but does not believe the structures are non-conforming.

Cohen introduced the witness Phil Teigen. Mr. Teigen was for 10 years the Chief Legal Officer of Cherry Creek Mortgage Company (CCMC). He called the trouble with these properties one of the worst cases he saw during his tenure. When CCMC purchased the property in 2004, his underwriting department missed the major encroachments that each property had on the other. Teigen explained that CCMC was able to sell the property to Countrywide, but when former owner of the property Dorothy Musil initiated an adverse possession lawsuit, Countrywide realized that the property

title was defective and demanded that CCMC take the property back. CCMC was forced to do so and worked with Musil to come to an agreement. The result was a court order that put in a new east-west boundary, dividing the properties in a way that made the encroachments disappear. The Boulder County Assessor's Office began using the new lot configurations for tax purposes. When Teigen submitted the new configurations to the Town, asking that the new boundaries be acknowledged and requesting variances, former Town Attorney Deborah Kalish sent a letter explaining why the Town was unable to do so. In this letter, Kalish recommended that the applicants combine the two properties to make one conforming lot but also discussed alternatives to that plan. Teigen interpreted Kalish's letter to mean that they could proceed as they had hoped but without the Town's approval.

Board Member Martin asked about the dynamics around the initial permit application in October 2008. Rewinkel explained that he applied for the permit hoping to remodel the property on 259 W. 4th Street. He said he submitted the application along with a check assuming there would be a timely and professional process, but that was not the case. Rewinkel said that after a number of unreturned calls, he went to Town Hall in April of 2009, when his check and permit application was returned to him by former Town Receptionist Mary MacWilliams. Rewinkel said he was very frustrated that during that extended time, nothing had been done or processed and no one had communicated with him. He said he had subsequently had multiple meetings with Stevens, Teigen and Pendley. Rewinkel said Stevens told him that the foundation permits he had applied for were the only thing the Town would consider in terms of property improvements at that time. Rewinkel applied for and was granted a foundation permit and moved forward with an engineer to design plans for the complete project.

Chairman Stringfellow asked what was happening at that time with the replat application. Teigen said it seemed clear that they could not move forward with the Town, but since they had recorded the court-defined replat with the County and the Assessor was using the new boundaries for tax purposes, they thought they were OK.

Board Member MacFerrin asked if Rewinkel was aware of the replat issues at the time of purchase. He replied that he knew the replat had been filed with the County but not recognized by the Town. He said he interpreted the fact that the Town issued the

foundation permit for 259 W. 4th Street as an indication that the replat was no longer a problem. He said his main issue with the whole situation is that the subdivision (replat) issue was not brought up at that time or during meetings with Stevens and he did not hear about the subdivision (replat) issue until Cheri's letter. Chairman Stringfellow pointed out that it is permissible by Town code to make improvements to the foundation of a non-conforming structure on a non-conforming lot.

Board Member MacFerrin asked about the zoning piece of the issue. Teigen explained that he thought he had convinced Kalish and Stevens that they were OK to move forward under Section 16-186, which covers maintaining structures on non-conforming lots and removes the 75% of valuation limitation.

This concluded Part 2 of the proceedings.

Pendley explained that the foundation permit was issued under the assumption that everyone was clear about the 75% valuation limitation. The first permit submitted included plumbing and electrical and was denied on the basis that it exceeded the 75% limit. Pendley said he had many good discussions with Rewinkel and explained that no matter what, he would need to improve the foundation before he could consider any other work, as the house was basically uninhabitable. The foundation permit came to \$3,500.

Pendley also explained that if someone wants to question how the building code is being applied, that is when the appeal would go in front of the Board of Trustees. But, Pendley said, in the International Residential Code adopted by the Town, it says that the validity of a building permit or a zoning ordinance should be addressed by the Zoning Board.

Pendley recounted his surprise when he went to do the inspection for the foundation permit and found that much of the structure was gone and only the roof remained. He inspected the foundation and found that it had been expanded by 6 inches beyond the original footprint, which Rewinkel remedied quickly thereafter. Pendley said that in a subsequent meeting between himself, Stevens, Rewinkel, Cohen and Kalish regarding a 'Phase 2' after the foundation work, the plans went well beyond maintenance and were in excess of what would be allowed, so Stevens clearly directed Rewinkel to go to the BZA to get a variance. Stevens' focus was on

not expanding the footprint, Pendley said. Pendley was not aware of any of the subdivision/replat issues (and never heard Stevens mention them) but as his focus is on the building side not the zoning side, that is not a surprise.

Andersen stated that when she began to review the permit applications submitted in April 2010, she was told by Town Staff that there was a lot of “history.” She said she did not want to be bogged down in that history, so she reviewed the background material, but did not want to try to read minds or interpret the actions of past Staff. She looked at the applications, looked at the plot plan, looked at the easement (which was not recorded), and applied her knowledge of the zoning and the rest of the municipal code. She said, in her experience, district courts cannot subdivide properties within municipal boundaries. So she was faced with non-conforming structures on non-conforming lots, Andersen said, and as the applicants had not applied for a variance, she denied the permits.

Chairman Stringfellow asked if Town Attorney Chris Price knew of any cases where the district court could decide a replat. Price talked about how things might have been different if the Town had been made party to the quiet title action; the Town would have been able to assert its rights in the district court. Price said he has no knowledge of any case that recognizes a district court decision replatting a property.

Board Member MacFerrin asked Teigen why he bothered to submit a replat application if it was not required by the district court. Teigen replied that he had some doubts about the process and also wanted Cherry Creek Mortgage to be a good corporate citizen and have a good relationship with the Town of Nederland.

This concluded Part 3 of the proceedings.

Cohen asked Rewinkel about what happened after he submitted the original permit in 2008. Rewinkel replied that he applied based on what Stevens said he would allow, confining the improvements to the 75% of valuation limitations, although he believes Stevens used an incorrect and smaller valuation number for the property. Rewinkel said he expected to hear back about the permit in a timely fashion. He said he called and stopped by Town Hall numerous times over the next few months but received no response. In April, Rewinkel went in again, when he said MacWilliams

returned his check and application and said they had never processed the application. He said he was unable to see Stevens as quickly as he wanted to, but a few weeks later was able to meet with him. Rewinkel expressed his dissatisfaction that Town staff had waited so long just to reject his application and they had a moderately heated exchange. Rewinkel said he felt the Town was being less than professional and disingenuous, and asked Teigen to join him in a meeting to weigh in on some of the legal issues. Rewinkel said it was his understanding at the end of that meeting that he could apply for a foundation permit immediately and a second permit for the rest of his proposed improvements at a later date. He said he moved quickly on the foundation permit and subsequent work.

As for the meeting in December 2009 between Rewinkel, Pendley, Stevens, Cohen and Town Attorney Carmen Beery, Rewinkel said the group identified the main issues to be resolved (namely a proposed bay window and increased roof height).

Cohen summarized his arguments as to why the appeal should be overturned, re-emphasizing that the Town regularly changed its position on issues and that the applicants believe that the application of the 75% valuation limitation is inaccurate.

Chairman Stringfellow closed the hearing so the Board could begin deliberations.

The Board deliberated the dynamics of the situation. It was agreed that much of the history was not directly related to the question at hand of the 2010 building permit applications and that the Board should focus on whether or not the denial of the permits was the right decision. Board Member Martin said that from his assessment during a walk through the properties that day, it would be impossible to classify the improvements at 259 W. 4th Street as anything but a full remodel. He said it seems clear to him that the applicant was directed to go to the BZA for a variance numerous times, beginning in 2008, and he thinks it is problematic that they ignored that advice.

Board Member MacFerrin said it seemed clear that the Town was not recognizing the district court's replat and that CCMC made an "end run" by setting that aside and moving forward with the County anyway. MacFerrin said the crux of the issue is what was known by Rewinkel when -- at what point was Rewinkel aware of

the situation and a knowledgeable participant in that process? In the letter from CCMC to the Town accompanying the replat application, they ask very clearly for an expedited effort to approve the replat, as their contract with Rewinkel to purchase the properties is contingent upon obtaining the replat and variance from the Town. MacFerrin acknowledges that the Town should have caught the issue and raised it with Rewinkel prior to issuing the foundation permit. But, MacFerrin said, he is still deliberating as to whether the Town is truly at fault there or if it is more of a “buyer beware” situation.

Board Member Martin said he is very sorry about the previous Town Staff’s lack of clear and timely communication. That said, he feels the Town and the Town’s Attorney clearly and consistently communicated from 2008 on that a variance was required in order to make improvements on the property, and he continues to come back to that. He said he feels that there were numerous red flags related to the property that should have been heeded.

Board Member MacFerrin read another section from the CCMC replat application wherein it stated that they were requesting a variance on both properties and the replat in order to conform with the order and decree quieting title and that the sale of the properties was contingent upon obtaining the replat. MacFerrin said he again wondered whether or not Rewinkel went into the situation believing that CCMC had settled all of the issues and that the foundation permit really did mean everything was in the clear, or if he knew about the issues early on and was consciously part of an “end run.”

Chairman Stringfellow said that the foundation-only permit should have been a red flag, emphasizing that there were still zoning and conformance issues; otherwise there is no reason a full building permit could not have been issued. The Board agreed that even putting aside the replat issue, the lots are still non-conforming due to size. Chairman Stringfellow re-emphasized that the standard process would be 1) get a replat; 2) go before the BZA to get a variance; 3) apply for the building permit.

A motion to affirm the Zoning Administrator’s decision to deny the building permit applications was made by Board Member Martin, seconded by Chairman Stringfellow and approved unanimously by a roll call vote of the Board.

Chairman Stringfellow acknowledged that the applicants were not always treated well, but emphasized that the applicants should have followed the standard application process.

Board Member Moll proposed a second motion to waive further permit application fees for Rewinkel in connection with these properties. It was clarified that the BZA does not have the power to make that decision, but a recommendation could be made to the Board of Trustees to do so. Further discussion resulted in the clarification that the intent is to waive any fees related to the denial of the application, including future replat or variance fees as well as building permit fees. Pendley interjected that Safebuilt would be willing to waive any building permit fees to date, but would be unable to waive fees on future permit applications.

A motion to recommend to the Board of Trustees to consider reduction in any and all future fees related to the development of the two properties was made by Board Member Moll and seconded by Board Member Davenport. The motion passed 3-2, with Board Member MacFerrin affirming and Board Member Martin and Chairman Stringfellow in dissent.

b. Discussion of future BZA meeting schedule

Chairman Stringfellow introduced the item. Town Administrator Reis has recommended a quarterly meeting schedule. After some discussion on what days best accommodate schedules, the Board agreed to meet the second Thursday of each quarter. Meetings may be scheduled between the quarterly meetings as needed.

In 2011, the scheduled meeting dates would be as follows:

- January 13
- April 14
- July 14
- October 13

A motion to adopt the proposed meeting schedule was made by Chairman Stringfellow, seconded by Board Member Davenport and approved unanimously by a roll call vote.

5) Other business

None

6) Adjournment

A motion to adjourn was made by Board Member MacFerrin, seconded by Board Member Davenport and approved unanimously by a roll call vote at 11:03 p.m.

TOWN OF NEDERLAND

Mark Stringfellow, Chairman

ATTEST:

Kristen Edwards, Deputy Town Clerk



**AGENDA INFORMATION
MEMORANDUM
TOWN OF NEDERLAND
BOARD OF ZONING ADJUSTMENT**

Meeting Date: January 13, 2011

Initiated By: /s/ Alisha Reis
Dept: Planning & Zoning
Action Discussion

AGENDA ITEM:

Findings and Decision re: the Appeal of Building Permits #10NED-00011 and #10NED-00012 (259 and 261 West Fourth St.)

SUMMARY:

At its November 8, 2010 meeting, the Board of Zoning Adjustment upheld the decision of the Town Zoning Administrator to deny building permits for the above-named properties. Per Nederland's Municipal Code, the Town Attorney has drafted a written findings and decision summarizing the hearing. The Board must now review said findings and decision and decide if it accurately reflects their position.

ALTERNATIVES:

1. The Board may adopt the findings and decision as the official written account of the hearing.
2. The Board may request modifications to the findings and decision.

ATTACHMENTS:

- Draft findings and decision

BOARD OF ZONING ADJUSTMENT, Town of Nederland, Colorado

Re: Appeal from Zoning Administrator denial of building permit applications #10NED-00011 concerning the property addressed as 261 West 4th Street and #10NED-00012 concerning the property addressed as 259 West 4th Street

FINDINGS AND DECISION

THIS MATTER COMES BEFORE THE BOARD OF ZONING ADJUSTMENT of the Town of Nederland, Colorado (the "Board") upon the appeal of Paul Rewinkel of the July 13, 2010 decision of the Nederland Zoning Administrator, to deny his Town of Nederland Permit Applications #10NED-00011 concerning the property addressed as 261 West 4th Street and #10NED-00012 concerning the property addressed as 259 West 4th Street (the "Applications").

The Board, having conducted the required hearing and being fully advised in the matter, enters the following findings and decision.

FINDINGS

1. The Applications were submitted on April 27, 2010, on behalf of Paul Rewinkel, the owner of the two parcels at issue, seeking a building permit for each of his properties pursuant to the Nederland Municipal Code (the "Code").

2. On the Applications, Mr. Rewinkel proposed to remodel, refinish, repair and replace, as necessary, an existing structure on each property.

3. Under Town of Nederland procedure and Code Sections 16-271(b), 18-1 and 18-5, each Application required review and approval from zoning and planning, the building department, the fire department and public works. Pursuant to Code Section 16-271(b), applications for building permits require the approval of both the Zoning Administrator and the Building Official.

4. After reviewing the Applications and evidence in the Town's files concerning the properties at issue, the Zoning Administrator, with the concurrence of the Building Official, denied the Applications on July 13, 2010. Reasons for the denial were outlined in a letter of the same date, addressed to Mr. Rewinkel's attorney. The reasons stated for the denial included:

- The property as shown on the plot plan layout included with the Applications had not been properly replatted (subdivided) pursuant to

Chapter 17 of the Code and, therefore, until a replat had been obtained the Applications were pre-mature;

- The Applications proposed remodeling work on non-conforming lots in violation of Code Section 16-186 prohibiting such work;
- The Applications proposed work on non-conforming structures in excess of the 75% of the actual building valuation limitation in violation of Code Section 16-185(a)(1); and
- The Applications proposed work that would require the non-conforming structures to be destroyed and rebuilt in violation of Code Section 16-185(a)(3).

5. Mr. Rewinkel submitted a timely request to appeal the decision pursuant to Code Section 16-233(1). Mr. Rewinkel requested that his appeal be heard by the Town Board of Trustees pursuant to the International Residential Code, as adopted by the Town in Code Section 18-1(b). The Applications were neither processed nor denied pursuant to the International Residential Code.

6. The Applications were considered and denied by the Zoning Administrator and Building Official pursuant to their authority under Code Section 16-271. Pursuant to Code Section 16-232(a), the Board "shall hear and decide appeals from and review any order, requirement, decision or determination made by any administrative official charged with the enforcement of this Chapter." The Town therefore scheduled this appeal hearing before the Board

7. The Board finds that this appeal is properly before the Board pursuant to Code Section 16-232(a) because it is an appeal of the decision of Town officials charged with enforcing the zoning laws of the Town through the review and issuance of building permits. The Board further finds that the Board of Trustees has no authority to consider this appeal because the decision at issue was not based on the provisions of the International Residential Code

8. This appeal requires the Board to determine whether the July 13, 2010 decision of the Zoning Administrator and Building Official to deny the Applications was proper.

9. November 8, 2010 was set as the date of the hearing. Notice of the hearing was sent to Mr. Rewinkel and his attorney on October 15, 2010 by certified mail.

10. The Board conducted a hearing on the appeal on November 8, 2010. Members of the Board in attendance were Ken MacFerrin, Debbie Davenport, Bill Martin, Mark Moll and Chairperson Mark Stringfellow. The quorum was satisfied.

11. At the outset of the hearing, Chairperson Stringfellow instructed the Board and those present on the hearing procedure. No person disputed the procedures.

12. The following exhibits were accepted into and made a part of the record of the hearing:

- The Applications. (Marked as Exhibits 1 and 2)
- A packet of material submitted by the Zoning Administrator at the hearing as part of the basis of the decision. (Marked as Exhibit 3)
- A packet of material submitted by Mr. Rewinkel in support of his arguments that the permits should be granted. (Marked as Exhibit 4)
- A "Case Map Facts Report" submitted by Mr. Rewinkel in support of his arguments that the permits should be granted. (Marked as Exhibit 5)
- The packet of materials transmitted to the Board by the Zoning Administrator pursuant to Code Section 16-233(1) in preparation for this hearing.
- Provisions from Chapter 16 of the Code.

13. The following persons provided testimony at the hearing:

- A. Mr. Rewinkel. His testimony included that he was the owner of 259 W. 4th Street and 261 W. 4th Street and that he had purchased the properties from Cherry Creek Mortgage Company ("CCMC") and had several interactions and meetings with the Town. He stated that he submitted a building permit application to the Town in 2008 which was returned with his fee since it was not processed. He stated that he obtained a foundation-only permit in 2009 to repair issues with the foundation of the 259 W. 4th Street property. He added that he had had multiple interactions with the former Town Administrator, Jim Stevens, and the Building Official, Eric Pendley. He testified that the Town did not discuss the subdivision issue at a December 2009 meeting between himself, Mr. Cohen, the Town Attorney and Mr. Stevens, the former Town Administrator.
- B. Mr. Rewinkel's attorney, Mark Cohen. His testimony included explaining the documents that he submitted to the Board as Exhibits 4 and 5. He led the Board through Exhibit 4 which included historical documents concerning the property and communications that he and Mr. Rewinkel had had with the Town over the course of two years. He identified the previous owners of both parcels as the Musil Trust and Donald Brown and stated that the Musil Trust sought to quiet title in Boulder County District Court concerning the boundaries between the two parcels. He noted that the Town was not a party to that quiet title action but that Mr. Brown's mortgage holder, CCMC, intervened in the quiet title action. He stated that he and Mr. Rewinkel had several meetings and interactions with Town officials concerning the Applications and that those officials never advised them that they had to properly subdivide the property. Mr. Cohen also argued that the zoning requirements set forth in the July 13, 2010 letter did not apply. He then argued that the Town should be estopped from requiring Mr. Rewinkel to obtain a replat of his property because the Town had not made that a condition for obtaining the building permits prior to the Applications being submitted. He also argued that the Town cannot deny the Applications under Code Section 16-186

because the building footprints would not be expanded. He agreed that Mr. Rewinkel intended to increase the height of the buildings but that the usable square footage of the structures would not increase since the increased height would not be used except for the placement of furnaces.

- C. Phillip Teigen. Mr. Teigen's testimony included that he was the Chief Legal Officer for CCMC, the entity that previously owned and sold the two properties at issue to Mr. Rewinkel. He explained that CCMC originally held the mortgage on the property addressed as 261 W. 4th Street, owned by Donald Brown. Eventually CCMC foreclosed and took ownership of that property. He admitted that the layout and use of the two parcels was troubling and that the original title investigation should have been more thorough because each structure encroached on the other parcel. He testified that CCMC participated in the quiet title action and eventually purchased 259 W. 4th Street from the Musil Trust. He stated that CCMC sought a replat of the two parcels from the Town as a matter of course not because of any court-ordered obligation. He stated that the subdivision/replat with the Town was never completed.
- D. Cheri Andersen (Town Zoning Administrator). Ms. Andersen's testimony concerned the reasoning and support for her decision. She submitted a packet of materials to the Board that was marked as Exhibit 3. She testified that she relied upon this information to make her decision and that she had no prior history with Mr. Rewinkel or the properties at issue before reviewing the Applications. She stated that upon her receipt of the Applications, she also reviewed a box of material concerning the properties. She testified that, during that review, she did not locate any information showing that CCMC, or any other party, had properly subdivided the properties as they were shown on the Applications. Ms. Andersen further testified that the plot plan layout accompanying the Applications reflected a lot layout that would require a replat process. She also testified that the lots, as shown on the plot plan layout, were non-conforming.
- E. Eric Pendley (Town Building Official). Mr. Pendley's testimony included information concerning the non-conforming nature of the buildings and how the building at 261 W. 4th Street came to exist as it does today. He testified that Mr. Rewinkel had been issued a Town permit to perform maintenance only on the foundation of the structure at the 261 W. 4th Street property in 2009. Mr. Pendley testified that, in violation of the scope of that permit, Mr. Rewinkel removed the walls to the four corner studs. Mr. Pendley further testified that reconstructing that building in the manner proposed by the Applications would cost significantly more than seventy-five percent (75%) of the building's actual valuation before Mr. Rewinkel removed the walls. Code Section 16-185 prohibits the repair of any non-conforming structure if such repair would cost more than 75% of the building's actual valuation when either: (a) the damage was caused by an intentional act of the owner, or (b) the restoration would increase the structure's

original height. Mr. Pendley added that the reasons for denying the Applications had nothing to do with the requirements of the International Residential Code.

14. The following facts were included within the exhibits offered into evidence at the hearing:

- A. The Musil Trust owned 261 W. 4th Street in the Town.
- B. Donald Brown owned 259 W. 4th Street in the Town.
- C. The Musil Trust sought to quiet title between their two properties by filing an action in Boulder County District Court in 2005.
- D. CCMC intervened in that action.
- E. The Boulder District Court issued a decree quieting title in the two properties in 2007.
- F. CCMC obtained title to both properties and submitted a preliminary replat application and variance application to the Town in 2008.
- G. Pursuant to a March 20, 2008 letter from Phil Teigen to Jim Stevens, CCMC had a contract for sale of the two properties to a single purchaser that was contingent on CCMC obtaining a replat of the properties from the Town.
- H. By letter dated May 5, 2008, the Town was unable to support CCMC's replat request.
- I. The lots are located in the Town's MDR zone district.
- J. The minimum lot size in the MDR district is 8,000 square feet.
- K. As shown on the lot layouts submitted with the Applications, the parcel addressed as 259 W. 4th Street is 4,800 square feet and the property addressed as 261 W. 4th Street is 3,202 square feet.
- L. The parcels as shown on the lot layouts are non-conforming lots.
- M. The setback requirements in the MDR district are 25 feet from a street and 25 feet front yard setback for all uses.
- N. The structure at the 261 W. 4th Street address is located within 17 feet of the street and is therefore a non-conforming structure.
- O. The structure at the 259 W. 4th Street address is located within 11 feet of the front property line and is therefore a non-conforming structure.
- P. The Boulder County Assessor's office identifies the actual building valuation for each of the properties as \$34,000.

15. After closing the hearing, the Board began its deliberations. The Board's discussion included the following:

- A. It was noted that the parcels as shown on the lot layouts submitted with the Applications are non-conforming and that the structures, as they exist, are also non-conforming.
- B. The Board was concerned that the replat had not occurred pursuant to Chapter 17 of the Code. The Board noted that the replat requirement had been communicated to the owner of the parcels since 2008.
- C. Board member MacFerrin noted that Mr. Teigen admitted that CCMC was required to obtain a replat of the property as a condition of a purchase and sale contract by his letter to the Town of March 20, 2008.