



**TOWN OF NEDERLAND  
BOARD OF ZONING ADJUSTMENT  
REGULAR BUSINESS MEETING**

**NEDERLAND COMMUNITY CENTER  
750 Hwy 72 Nederland, CO 80466**

**October 10, 2013 7:00 P.M.**

**AGENDA**

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**A. CALL TO ORDER**

**B. ROLL CALL**

**C. APPROVAL OF MINUTES FROM August 8, 2013**

**D. PUBLIC COMMENT**

**E. DISCUSSION ITEMS**

**F. ACTION ITEMS**

1. Approval of Findings of Fact related to Variance Application for fences/vision clearance area for 8 Blue Spruce
2. Approval of Findings of Fact related to Variance Application for setbacks for 71 Doe Trail.

**G. OTHER BUSINESS**

**H. ADJOURNMENT**



## Town of Nederland Board of Zoning Adjustment

### MINUTES

Thursday, August 8, 2013 ~ 7:00 pm  
Nederland Community Center  
750 Highway 72 North

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#### 1) Call to Order

Chairman Stringfellow called the meeting to order at 7:07 p.m.

#### 2) Roll Call

Present: Chairman Mark Stringfellow, Board members Ken MacFerrin, Leonard Kottenstette, Debbie Davenport, Mark Moll and Trustee Annette Croughwell.

Also present: Deputy Town Clerk Cynthia Bakke.

Absent: Alternate-Board member Roger Cornell

#### 3) Approval of minutes from January 10, 2013

A motion to approve the January 10, 2013 minutes was made by Kottenstette, seconded by MacFerrin and approved unanimously, with Croughwell abstaining as she did not join the Board of Zoning Adjustment until July 2013. Chairman Stringfellow welcomed Croughwell to the Board.

#### 4) Public Comment

There was no public comment.

#### 5) Action Items

1. Consideration of a Zoning Variance Application from Sec. 16-89 Fences for a proposed reconstruction of a pre-existing fence by Jessica Prince and Khurram Ansari at 8 Blue Spruce Drive.

Chairman Stringfellow asked Prince and Ansari to summarize their variance request to rebuild a fence. Prince explained that the fence was pre-existing, but in disrepair with rotten wood and two panels missing, having fallen in spring 2013. She said her contractor was

replacing this fence when he was issued stop work order from Public Works.

Prince reported that they spoke with neighbors about the fence, with no objections noted. In fact, she reported approval from neighbors in terms of the potential aesthetic enhancement. Prince said that their priority is the safety of their neighbors and themselves, as they must back out onto the intersection. She said as the fence hasn't been a problem for last 30 years, they seek to replace the rest of fence.

MacFerrin asked if the proposed fence would be erected along the previous fence line. Prince affirmed, however said there will be ½-inch spaces between the slats to allow passage of wind. She estimated that this would keep the fence panels from being blown down, as well as increasing visibility. MacFerrin inquired whether the applicants would follow Public Works' recommendation about the fence being angled at the corner. Prince said they measured twelve feet from property line, stating that the farthest they could go would be thirteen feet before the land slopes down.

Moll asked if the proposed fence would be the same height. Prince affirmed that the fence would be rebuilt to the previous height of six feet. Croughwell said that she understood the previous fence to be nonconforming, stating that the Town does not want to continue this nonconformity.

Stringfellow spoke about (NMC) Sec. 16-89 (e), which states "it is unlawful to construct or erect any fence exceeding three feet in height within 100 feet of the center of any intersection of two or more streets or roads". He talked about potential safety aspects if a nonconforming fence is rebuilt due to hazards with snowplowing. The applicants were asked if the fence can be rebuilt as conforming. Prince responded that if reconstructed to Code, this would necessitate cutting halfway into their driveway.

Reis discussed how nonconforming structures are required to come into conformance if deconstructed and rebuilt, if this is possible. She said that Public Works has underscored the sight distance issue to the applicants and within the attached memo. She suggested that the

applicants angle the fence diagonally at the corner for proper vision clearance to avoid danger to the public and snowplow drivers.

Stringfellow inquired as to the purpose of the fence. The applicants responded that are on an exposed corner and would like to mitigate the wind, snow, and dust as they get in and out of vehicles. Ansari said they feel like continued mending of the fence is a larger safety issue as it has been dilapidated for many years.

Reis acknowledged that code enforcement had not been an active priority in town in the past, allowing for nonconforming structures or situations to exist. She noted that Public Works told the contractor that this fence created an ongoing safety issue. Prince testified that Public Works has never communicated this issue to them personally. Reis said that she understood that the crew had cited the vision clearance issue with the applicants.

Davenport inquired if translucent material can be used to increase visibility. Board members also discussed whether just the corner portion could be rebuilt to four feet for the same purpose. Croughwell asked if this material or height difference is desired by the applicants. Prince responded that they desire to maintain the appearance of the neighborhood. She also noted that a shorter fence would reach the level of snowdrifts that build up along the edge due to height of road.

Discussion ensued about the amount of variance that the Board would be willing to grant, and if the application met all five elements of criteria. Public Works had asked for no more than a six-foot variance; however, the applicants are requesting an eighteen-foot variance.

MacFerrin asked about the proposed angle for the corner and if the remainder of the fence is nonconforming. Reis responded that the vision clearance requirement is from the corner, and the placement of the rest of the fence is a non-issue. She stated that the maximum sight variance requires eighteen-feet; however, the Board can agree to provide a lesser sight variance.

Reis read the five conditions that must be met by applicants to secure a variance. She asked Board members if they feel that the applicants

have met the criteria. MacFerrin said that Reis mentioned that the elevation of roadways and the topography of the streets themselves are more a problem than the property itself.

MacFerrin motioned to grant a vision clearance variance of fifteen feet for the applicants, based upon the forthcoming Findings of Fact that they meet all five elements of criteria, Moll seconded, 4 in favor, with Stringellow and Kottenstette voting against this variance request.

Reis told the applicants that she would need to see a site map from the fence builder to ensure proper measurement prior to construction.

2. Consideration of a Zoning Variance Application for a 20-foot front setback variance for a proposed alteration to an existing open deck by Lawrence Pope at 71 Doe Trail.

Lawrence Pope spoke about his house and the existing deck, which is roughly eleven feet from the property line. He noted that various county maps reveal that no house on that road is adhering to the setback requirements. He said that the telephone junction box extends fourteen feet into the road, and his driveway projects from that point. He also noted that almost every house is under an acre, which also conflicts with code specifications for lot size.

Pope said he would like to enclose the existing deck to create an airlock to allow easier access for him and his wife. He said his wife has two metal hips and will soon have two knee replacements, thus they desire to unload from a higher level, above the snowdrifts.

Pope said he would replace the 6”x6” posts to full height for the airlock, to match the roof of the house, thus maintaining the architectural style. He admitted that the hardship was created by the builder; however, his wife’s medical issues could be addressed by this proposed deck enclosure.

Pope also noted that he will need to repair or replace the current retaining wall; however, Reis clarified that this is not part of the variance consideration.

Reis mentioned that in earlier years, homeowners on nonconforming lots were prohibited from any new construction. She referenced Ordinance 709, adopted in June 2012, which amended Sec. 16-182, stating that a nonconforming use may be changed only to a conforming use. She also noted that the physical condition of occupants is not considered as part of the five elements of variance criteria. As the home is not a commercially accessible building, there is no obligation to comply with ADA requirements.

Croughwell noted that a variance granted would allow for the nonconforming status to continue. The Board evaluated the application to see if it fulfills the essential variance criteria. The house was built a foot beyond the allowance, with measurement established from the overhang. MacFerrin inquired if the variance had been granted by Boulder County, would it then be allowed to come before this Board. Reis replied that it would generally be excluded from consideration for a future variance.

Stringfellow asked Reis if Town Attorney Carmen Beery foresaw issues with approving a variance for this application. Reis responded that despite many people wanting to age in place, the Board is not able to take physical condition into consideration.

Reis responded to a query of whether granting this variance would set precedent by increasing the present nonconformity. She said that variances are always reviewed on a case-by-case basis, dependent on that specific property; therefore it would not set a precedent. MacFerrin said that granting this request will increase volume and overhang, but he doesn't see this as exacerbating the nonconformity. Reis replied that it will maintain the nonconformance.

Pope used the survey and attached pictures to indicate that he lacks an option of building this airlock in another location to meet his need. MacFerrin said he feels the applicant is making a reasonable request, without any safety issues impacting consideration of the proposal.

Reis said that zoning setbacks were adopted by Nederland in 1981, this structure was built in 1999; however, there is no reason that it should have been built as a nonconforming structure. She clarified that any attached deck or patio is considered a structure, but the

overhang is not included. MacFerrin noted that the proposed enclosure is not crucial for maintenance of the structure, but a matter of convenience. He inquired if a fraction was reduced from the edge, would this constitute an increase in compliance. Reis acknowledged that development within the setback would still require a variance.

Davenport said that she was informed previously by Beery in a BZA training session that the Board has done due diligence if they ascertain that a sound argument is made for each of five conditions. The Board continued discussion of whether the application has fulfilled the five elements of criteria required to grant the requested variance.

Davenport motioned to allow a twenty-foot variance from the front setback, on the basis that it has met required criteria, seconded by Moll, 5 in favor, with Stringfellow voting against the request. Stringfellow advised the applicant against any further encroachment into this setback.

Reis reported that she and Beery will draft the Findings of Fact on these two applications, which will have to be approved at the October meeting. A Certificate of Variance will attest to the decision, presented to the applicants and filed with Boulder County.

Reis clarified that lot size is often the reason why most properties are nonconforming. She noted that the Big Springs subdivision has specifically seen nonconformities due to build-out and topography.

Discussion among Board members continued after the hearings concluded regarding code compliance. Croughwell said she is happy to join the Board of Zoning Adjustment, and would like to know what members need to know from the Board of Trustees' standpoint.

## **6) Discussion Items**

There were no discussion items.

## **7) Other business**

The next meeting is scheduled for October 10, 2013 to approve Findings of Fact for these respective properties.

\*\*\*DRAFT – Not yet approved by Board of Zoning Adjustment\*\*\*

**8) Adjournment**

Croughwell motioned to adjourn, seconded by Kottenstette, with all in favor at 8:50 p.m.

Approved by the Town of Nederland, Board of Zoning Adjustment,

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Mark Stringfellow, Chairman

ATTEST:

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Cynthia Bakke, Deputy Town Clerk

In Re: Application of Jessica Prince and Khurram Ansari, 8 Blue Spruce, for a vision clearance variance

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### FINDINGS AND DECISION

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THIS MATTER COMES before the Town of Nederland Board of Zoning Adjustment (the “Board”) upon the application of Jessica Prince and Khurram Ansari (the “Applicants”) for a vision clearance area variance in the Mountain Residential (MR) zone district located at 8 Blue Spruce Drive in Nederland, Colorado (the “Property”). The Board, having conducted the required public hearing and being fully advised in the matter, enters the following Findings and Decision.

#### FINDINGS

1. Nederland Municipal Code (“Code) Section 16-80(b) establishes the vision clearance street setback area applicable to the Property as thirty feet. The Applicants have requested a full variance from this setback requirement to permit the demolition and reconstruction of an existing fence on the west-northwest corner of the Property.
2. On July 17, 2013, the Applicants submitted a variance application, including all maps, plats and exhibits thereto (the “Application”).
3. The Application proposes to reduce the Vision Clearance Area to 0 feet for the purpose stated in # 1 above.
4. Code Section 16-233 requires the Board to conduct a public hearing on any variance application. After due and proper notice, the Board conducted a public hearing on the Application on August 8, 2013.
5. At the hearing, the Application was received into evidence.
6. Code Section 16-80(a) and (b) provide:  
**Sec. 16-80. Vision clearance areas.**
  - (a) A vision clearance area shall contain no plantings, walls, structures or temporary or permanent obstructions exceeding two and one-half (2½) feet in height, measured from the top of the curb or existing grade unless said structure or obstructions are more than eighty percent (80%) open.
  - (b) The minimum distance establishing the size of the vision clearance area shall be thirty (30) feet, except that at intersections including an alley, the minimum distance shall be fifteen (15) feet.

7. The Application proposes the reconstruction of a fence that is less than 80% open within the required 30 foot vision clearance setback area.

8. The Application states that the reconstruction of the fence in its preexisting location is necessary because the fence provides a vital dust/wind/snow break at this exposed corner of the Property. The existing fence had portions blown down and in disrepair. The Application further states that other areas of the Property are unsuitable for rebuilding the fence because the sloping nature of the lot would mean that the top of the fence would reach road level and thus be non-functional as a wind and snow break. To meet setback requirements in this area would necessitate that the rebuilt fence cut diagonally across a parking space and a portion of the driveway, making vehicular access to the Property more difficult.

9. The Applicants testified before the Board. They testified that they wish to improve an existing fence that was in disrepair with two panels that blew down in spring 2013. The Applicants testified that they desire this fence to be rebuilt to help reduce wind and blowing snow in winter, as well as dust in summer.

10. The Applicants testified that they purchased their home with an existing fence, but after two panels were blown down after intense spring windstorms, they discussed rebuilding the fence. They said they desire to increase the value of their home while maintaining their quality of life, as well as enhancing the appearance of the neighborhood. They testified that they were unaware that deconstruction of the existing fence would disallow erection of a new fence.

11. The Applicants acknowledged that 3 feet of the front corner of their lot exceeds the Vision Clearance Area. They further acknowledged that the fence could be angled diagonally to increase vision at the corner without rendering the fence ineffective for dust/wind/snow alleviation.

12. The Applicants testified that they understood that they would be required to certify that the measurements are correct as per Public Works' approval.

13. The Applicants testified that the hardship was created prior to their ownership of the Property. The Applicants testified that the house was built in 1980, with the fence being erected during the same period, and that they purchased the Property in 2012.

14. Town Administrator Reis testified that any nonconforming structure that is demolished must then come into conformance when rebuilt. She also said that Public Works noted within the attached memorandum that a new fence erected in the footprint of the old fence line would maintain the ongoing safety issue with regard to vision clearance at the corner.

15. No members of the public appeared to testify on the Application.

16. The Board accepted into evidence the Improvement Location Certificate (ILC), dated December 22, 2006, signed by John B. Guyton, PLS.

17. The Board closed the Public Hearing and began its deliberations.

18. The Board suggested the fence be angled diagonally at the corner to allow greater vision clearance where it is presently obscured.

19. Code Section 16-232(a)(1) authorizes the Board to approve a variance from the strict application of the provisions of Chapter 16 of the Code (the Town's zoning regulations) when the Board finds that all of the following criteria are satisfied:

- a. That there are unique physical circumstances or conditions, such as irregularity, narrowness, shallowness or size of the lot, or exceptional topographical or other physical conditions peculiar to the affected property;
- b. That, because of such physical circumstances or conditions, the property cannot reasonably be developed in conformity with the provisions of [Chapter 16];
- c. That such unnecessary hardship has not been created by the applicant;
- d. That the variance, if granted, will not alter the essential character of the neighborhood or district in which the property is located nor substantially or permanently impair the appropriate use or development of the property; and
- e. That the variance, if granted, is the minimum variance that will afford relief and is the least modification possible of [Chapter 16's] provisions which are in question.

20. Based upon the testimony and evidence received at the hearing, the Board makes the following findings with respect to the Application's compliance with Code Section 16-232(a) (1):

- a. There are unique physical circumstances and conditions peculiar to the Property, such as the elevation of roadways and topography of streets which abut the Property.
- b. Because of the unique physical conditions of the Property, a reconstructed fence that met the setback requirements of the Code (2 ½ feet in height or 80% open) would be practically ineffective as a snow/wind/dust barrier. Locating a fence taller than 2 ½ feet a full 30 feet back upon the Property could also render such fence ineffective as a snow/wind/dust barrier because of the sloping angles of the Property and the elevation of the adjacent roadways. Despite all of this, the Property could reasonably be developed in conformity with Chapter 16 of the Code even without the fence in the location preferred by the Applicants. Some fence, however, or other wind barrier could be reasonably necessary to the use of the Property.
- c. The Applicant did not create the hardship presented by the unique physical condition of the Property.
- d. The proposed fence would not alter the essential character of the neighborhood, as there are other fences on the same street, nor will it impair the appropriate use or development of the Property; and

e. The requested variance exceeds the minimum needed to afford relief for the Applicants. The Board finds that a six foot fence constructed on the west-northwest corner of the Property with a fifteen foot (15') vision clearance area is the minimum needed to afford relief to the Applicants. Such location of a fence would afford the Applicants some relief from wind, snow and dust, while maintaining some vision clearance area at the corner of the Property as required by Chapter 16 of the Code.

### DECISION

Based upon the foregoing findings and its review of the entirety of the evidence and testimony presented at the public hearing, the Board hereby APPROVES the Application from Jessica Prince and Khurram Ansari for a variance from the vision clearance area requirement of Code Section 16-80, in the MR district, at 8 Blue Spruce, Nederland, Colorado. This approval is for a reduction of the vision clearance area from 30 to 15 feet, as such 15 feet reduction is the minimum variance that will afford relief and is the least modification possible of the provisions of Chapter 16 which are in question. The Board agrees that the fence is to be angled diagonally at corner to increase visibility.

APPROVED AND ADOPTED by the Nederland Board of Zoning Adjustment this 10<sup>th</sup> day of October, 2013.

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Mark Stringfellow, Chairman

ATTEST:

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Cynthia Bakke, Deputy Town Clerk

### CERTIFICATE OF MAILING

I certify that on October \_\_\_\_\_, 2013, a true and correct copy of the foregoing **FINDINGS AND DECISION** was placed in the United States mail, postage prepaid, and addressed to:

Ms. Jessica Prince and Mr. Khurram Ansari  
8 Blue Spruce Drive  
P.O. Box 1670  
Nederland, CO 80466

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Cynthia Bakke, Deputy Town Clerk

In Re: Application of Lawrence Pope, 71 Doe Trail for a street setback variance

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### **FINDINGS AND DECISION**

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THIS MATTER COMES before the Town of Nederland Board of Zoning Adjustment (the “Board”) upon the application of Lawrence Pope (the “Applicant”) for a street setback variance in the Mountain Residential (MR) zone district located at 71 Doe Trail in Nederland, Colorado (the “Property”). The Board, having conducted the required public hearing and being fully advised in the matter, enters the following Findings and Decision.

#### **FINDINGS**

1. The Yard and Bulk Requirements (Nederland Municipal Code (“Code”) Sec. 16-33) for street setback applicable to the Property is 30 feet. The Applicant has requested a 20-foot variance from this setback requirement to permit the enclosure of an existing deck on the east side of the single-family residence on the Property.
2. On July 22, 2013, the Applicant submitted a variance application, including all maps, plats and exhibits thereto (the “Application”).
3. The Application proposes to reduce the street setback from the required 30 feet to 10 feet (a reduction of 20 feet) for the purpose stated in # 1 above.
4. Nederland Municipal Code (the “Code”) Section 16-233 requires the Board to conduct a public hearing on any variance application. After due and proper notice, the Board conducted a public hearing on the Application on August 8, 2013.
5. At the hearing, the Application was received into evidence.
6. The Application states that other areas of the Property are unsuitable for an airlock as this existing deck sits on a higher level on the eastern side of the house, which is blocked from the western winds, thus establishing easier access. To meet setback requirements in this area would require the home to be moved further back onto the Property, as both the house and deck were permitted by Boulder County despite lack of proper setbacks.
7. The Applicant testified before the Board. The Applicant testified that he desires to enclose an existing deck on the southeast side of his house to create an airlock. The Applicant said the proposed enclosure will allow easier access for he and his wife in winter

8. The Applicant testified that he purchased his home unaware of the existing nonconformity. He said his wife has had major joint replacements limiting her mobility, and that loading/unloading from the car at the current lower level is a challenge due to accumulation of snow. He desires to maintain their quality of life and create easier access for them as they age.

9. The Applicant acknowledged that 10 feet of the house exceeds the street setback. The Applicant testified that the enclosure of the pre-existing deck will not change the footprint of the house.

10. The Applicant said that he understands that he may not encroach any further into the setback if variance is granted.

11. The Applicant testified that the hardship was created prior to his ownership. The applicant said that the house was built circa 1999-2000, with the deck being built during 2001. The applicant purchased the home in 2013.

12. Town Administrator Reis testified that any nonconforming use may be changed only to a conforming use and that enclosing the existing deck would maintain, but not increase, the nonconformity. She also testified that per variance criteria and Town Attorney, the physical abilities and capacities of the occupants is not a consideration for approval of a request for variance.

13. No members of the public appeared to testify on the Application.

14. The Board accepted into evidence the Improvement Location Certificate (ILC), dated December 11, 2011, and stamped by M. Douglas Hoos, and approved Boulder County Building Permits for house and deck, dated December 6, 1999 and March 16, 2001, respectively. The Board noted that both permits were approved; however, there was no sign-off ensuring zoning setbacks on the Inspection Record, despite other dated sign-offs.

15. The Board advised the Applicant that, if a variance were granted, no further encroachment is allowed beyond the granted variance.

16. The Board closed the Public Hearing and began its deliberations.

17. Code Section 16-232(a)(1) authorizes the Board to approve a variance from the strict application of the provisions of Chapter 16 of the Code (the Town's zoning regulations) when the Board finds that all of the following criteria are satisfied:

a. That there are unique physical circumstances or conditions, such as irregularity, narrowness, shallowness or size of the lot, or exceptional topographical or other physical conditions peculiar to the affected property;

- b. That, because of such physical circumstances or conditions, the property cannot reasonably be developed in conformity with the provisions of [Chapter 16];
- c. That such unnecessary hardship has not been created by the applicant;
- d. That the variance, if granted, will not alter the essential character of the neighborhood or district in which the property is located nor substantially or permanently impair the appropriate use or development of the property; and
- e. That the variance, if granted, is the minimum variance that will afford relief and is the least modification possible of [Chapter 16's] provisions which are in question.

18. Based upon the testimony and evidence received at the hearing, the Board makes the following findings with respect to the Application's compliance with Code Section 16-232(a) (1):

- a. There are unique physical circumstances and conditions peculiar to the Property, such as the proximity of the house and deck to the road, despite the larger rear setback.
- b. To meet the setback requirements of the Code, with the existing unique physical condition, the proposed airlock could not be built in another location for more convenient access in winter to establish an upper entry for avoidance of ice and snowdrifts at the lower level.
- c. The Applicant did not create the hardship presented by the unique physical condition of the Property; he did not locate the house and/or deck in such close proximity to the road.
- d. The proposed deck enclosure would not alter the essential character of the neighborhood, as the Applicant will build the airlock to match the roof of the house, maintaining the current architectural style, nor will it impair the appropriate use or development of the Property; and
- e. The variance is the minimum needed to afford relief for the applicants; the Applicant does not propose to extend or alter the existing footprint of the house or the deck.

**DECISION**

Based upon the foregoing findings and its review of the entirety of the evidence and testimony presented at the public hearing, the Board hereby APPROVES the Application from Lawrence Pope for a 20-foot variance from the street setback in the MR district, located at 71 Doe Trail, in Nederland, Colorado, as presented in the Application.

APPROVED AND ADOPTED by the Nederland Board of Zoning Adjustment this 10<sup>th</sup> day of October, 2013.

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Mark Stringfellow, Chairman

ATTEST:

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Cynthia Bakke, Deputy Town Clerk

CERTIFICATE OF MAILING

I certify that on October \_\_\_\_\_, 2013, a true and correct copy of the foregoing **FINDINGS AND DECISION** was placed in the United States mail, postage prepaid, and addressed to:

Mr. Lawrence Pope  
71 Doe Trail  
P.O. Box 3292  
Nederland, CO 80466

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Cynthia Bakke, Deputy Town Clerk