Land Use
Courthouse Annex • 2045 13th Street • Boulder, Colorado 80302 • Tel: 303.441.3930 • Fax: 303.441.4856
Mailing Address: P.O. Box 471 • Boulder, Colorado 80306 • **www.bouldercounty.org**

PUBLIC HEARING
BOULDER COUNTY, COLORADO
BOARD OF REVIEW

DATE:	June 18, 2015
TIME:	3:00pm
PLACE:	Caribou Room - Land Use Department 2nd Floor of the Courthouse Annex 2045 13th Street, Downtown Boulder

Notice is hereby given that a public hearing will be held by the Boulder County Board of Review at the time and place specified above. All persons in the following item are requested to attend such hearing and aid the Board of Review members in their decision. Public testimony will be taken at this hearing.

PUBLIC HEARING

Docket BORA-15-0001: Farmers Reservoir and Irrigation Company ("FRICO") Appeal of Decision of Building Official

An appeal of the decision of the building official by Farmers Reservoir and Irrigation Company ("FRICO") regarding the active status of building permit BP-13-0283 for the construction of a single-family dwelling to be located at 3360 Eldorado Springs Drive by Virginia Gurley and Charles Durfee. The appeal relates to Section 105.5 of the Boulder County Building Code ("BCBO"), "Expiration," Section 113.1 of the BCBO, "Appeals," and all other portions of the BCBO as may relate to the specific circumstances.

Interested persons may review information concerning this public hearing at the Boulder County Building Safety and Inspections Services Division, 1st floor, Boulder County Courthouse Annex, 2045 13th Street (southwest corner of 13th and Spruce Streets), Boulder Colorado, or may call (303) 441-3926, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, or via email to: ggoodell@bouldercounty.org

Free Parking in the City of Boulder CAGID lots is available for Board of Review meeting participants. See the staff at the lobby desk for city parking vouchers.

Persons needing special services provided under the Americans with Disabilities Act, please contact Julia Yager, ADA Coordinator, or the Boulder County Human Resources Office at 303-441-3508 at least 48 hours before the scheduled hearing.

PUBLIC MEETING

Gary Goodell will introduce the code update processing schedule for the proposed update to and adoption of the 2015 editions of the International Codes, with these codes tentatively proposed to be effective for all building permit applications received after January 1, 2016 for new construction in the unincorporated area of Boulder County.

BOULDER COUNTY BOARD OF REVIEW

BY: Gary R. Goodell**, SECRETARY**

Published: Longmont Daily Times Call

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Boulder County

Land Use

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Building Safety & Inspection Services Team

BOULDER COUNTY BOARD OF REVIEW
A G E N D A

Thursday, June 18, 2015
Afternoon Session – 3:00 P.M.

Caribou Room, 2nd Floor, Land Use Department, Courthouse Annex,

2045 13th St., Boulder, CO 80302

PUBLIC HEARING

1. Call to order by the Chair.

2. Role call of board members present by Gary Goodell, Secretary to the Board of Review.

3. Approval of minutes/miscellaneous business
   - Review of minutes for ***July 10, 2013*** Board of Review hearing
   - Election of Chair and Vice-Chair for 2015
   - Designation of five (5) voting members

4. **Docket BORA-15-0001: Farmers Reservoir and Irrigation Company ("FRICO") Appeal of Decision of Building Official**

   - Presentation of staff recommendation by Gary Goodell of staff
   - Presentation by the applicants for the appeal, FRICO
   - Open public hearing for testimony from the public
   - Close public hearing after all members of the public desiring to present testimony have been heard
   - Questions and discussion by the Board of Review
   - Motion, discussion and action by the Board of Review

PUBLIC MEETING

1. Gary Goodell to introduce the code update processing schedule for the proposed update to and adoption of the 2015 editions of the International Codes.

2. Other business.

3. Adjourn

Detailed information regarding these items is available for public examination on the Boulder County Land Use website at http://www.bouldercounty.org/lu/agendas/index.htm or at our office located at 2045 13th Street, Boulder, Colorado 80302.

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Building Safety and Inspection Services Division (303) 441-3925

Boulder County
Board of Review

Minutes

Wednesday, July 10, 2013
3:00 PM
Caribou Room, Second Floor
Land Use Department, Courthouse Annex, 2045 13th St, Boulder

On July 10, 2013 the Boulder County Board of Review met for a Work Session to discuss Scope of Duties and Limitations, General Rules of Conduct for Meetings/Hearings, Summarize the Boulder County Commissioners Action on BORC-12-0001, 2012 International Codes Adoption & Amendments and Proposed "Cleanup" of the Amendments.

The meeting convened at 3:05pm.

Board Members Present: Paul Bradley (Chair), Henry Lopez, Douglas Greenspan, Henry Zurbrugg, Vernon Seieroe, John Mathews and Gary Price.

Staff Present: Gary Goodell (Chief Building Official), Ben Doyle (Assistant Boulder County Attorney), Leslie Cline (Permit Specialist).

Interested Others: No citizens.

1. Call to Order

Paul Bradley called the meeting to order. Gary Goodell conducted roll call of board members present.

2. Approval of Minutes

Approval of Board of Review Minutes from September 4, 2012.

Motion: Henry Lopez moved to approve the minutes.
Second: Vernon Seiroe
Approved: Motion passed.

3. Nominations of Board Chair and Vice Chair

Motion to nominate Chairperson for 2013

Motion: Henry Lopez nominates Paul Bradley for Chairperson.
Second: Vern Seieroe
Approved: Motion passed.

Motion to nominate Vice Chairperson for 2013

Motion: Vern Seieroe nominates Henry Lopez for Vice Chairperson.
Second: Doug Greenspan
Approved: Passed.

4. Public Testimony

No citizens present.

5. Scope of Duties & Authority and General Rules of Conduct for the Board of Review; Summary of the Boulder County Commissioners action on BORC-12-0001; Proposed "cleanup" of BOCO Amendments

As requested by the Board of County Commissioners, Gary Goodell provided a summary of the Board of Review's duties and authorities. Gary covered scope of duties and limitations of authority, general rules of conduct for meetings and hearings, the appeals process and the building codes adoption process. The Boulder County Commissioners adoption of the 2012 International Codes was covered including a brief summary of the public's comments and the major changes in the adopted codes. Gary also informed the Board of some upcoming "cleanup" of the Boulder County Amendments. See printed presentation for details.

6. Other Business

No other business.

Adjourned

Motion: Henry Lopez moved to adjourn.
Second: Doug Greenspan

The meeting was adjourned at 4:10pm.

The official record of this meeting is on compact disc (CD). Detailed information regarding the docket items, including maps and legal descriptions are available for public use at the Land Use Department, 13th and Spruce, Boulder, CO. 303-441-3930.

Boulder County

Land Use

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Building Safety & Inspection Services Team

BOULDER COUNTY BOARD OF REVIEW
PUBLIC HEARING
DOCKET #BORA-15-0001
Farmer's Irrigation & Reservoir Company ("FRICO")
BP-13-0283, 3360 ELDORADO SPRINGS DRIVE
Thursday, June 18, 2015 – 3:00 P.M.
Boulder County Land Use Department
Caribou Conference Room, 2nd Floor, Courthouse Annex
2045 13th St., Boulder, CO 80302

Staff: Gary Goodell, Chief Building Official, Secretary to the Board of Review

Appeal: The applicants, The Farmer's Irrigation & Reservoir Company ("FRICO"), are appealing the decision of the building official that building permit #BP-13-0283 remains active and valid under the provisions of Section 105.5 of the Boulder County Building Code ("BCBO"). The applicants maintain that the building permit has expired. The applicants' letters dated March 31, 2015 and April 23, 2015, respectively, are attached to this memo.

Section 105.5, BCBO. Section 105.5 of the Boulder County Building Code reads as follows:

> **"105.5 Expiration.** Every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within 180 days after its issuance or if the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced. The building official is authorized to grant in writing, one or more extensions of time for periods not more than 180 days each. The extension shall be requested in writing and justifiable cause demonstrated."

History:

- **Site Plan Review ("SPR").** The property in question, at 3360 Eldorado Springs Drive, is owned by Virginia Gurley and Charles Durfee ("the owners"). The owners applied for site plan review approval on December 23, 2011. Their application was issued a determination letter for approval on February 7, 2011 and the determination became final on February 21, 2011, after the standard 14-day waiting period for a potential call-up for a Board of County Commissioners hearing. The approval is for a new single-family dwelling, including a 1,306-sq.-ft basement, a 1,636-sq.-ft. 1st story and a 550-sq.-ft. detached garage.
- **Building Permits.** The owners have been issued a total of five (5) permits in accordance with the approval of the SPR, and these are listed as follows:

- BP-12-2002, for grading for the future garage and for forming the compressed earth blocks ("CEBs") that are to be used to construct the dwelling, issued January 22, 2013.
- BP-13-0283, for the new single-family dwelling, issued August 1, 2013
- BP-13-0292, to connect to the central sewer system in the Eldorado Springs area, issued March 12, 2013
- BP-14-0719, to deconstruct an old granary building, issued July 15, 2014
- BP-14-0724, to deconstruct a former store building, issued July 15, 2014

Proof of work and continued validity of permit. Under the provisions of Section 105.5, the owners had 180 days to commence work on the project. Based upon the building permit issuance date of August 1, 2013, this was until on or about February 1, 2014. The owners had already had a sub-contractor, Windriver Timberframes, working off site on the custom timber framing members for the dwelling even before the issuance of the building permit in 2013.

During the time period of about September 12 -15, 2013, most of Boulder County, including the Eldorado Springs area, was hit by what has come to be called the "September 2013 Extreme Rain and Flooding Event." Depending on the specific area in the county, this has been determined to be anywhere between a 100-year and a 1,000-year event. Staff considers it to be "justifiable cause' for a delay in construction on the site in question.

Information from the owners states that, despite the rain and flooding that impacted the site, work on site continued into November of 2013 and was planned to resume in May of 2014. The construction is somewhat unusual, as opposed to more conventional wood framing, as it is to be constructed using compressed earth block ("CEB") walls and heavy timber framing. The latest entry in our automated permitting system, including the determination that the building permit remains valid, reads as follows:

"This per(mit) is still active- Per owner - they have been making blocks with a machine on-site and have run test blocks for the engineer. The engineer has approved the block per the test, but wants one more test before they start making them for real. They also decommissioned one of the barns on the property, and saved the material for use in the house.

Update - 4.16.2015 additional info from owner; Building activity since 6/1/14: 6/1/14 and 6/8/14: Initial compressed earth blocks (CEB) made for stabilizer type comparison and stabilizer ratios testing. Began 30-day curing process, required before testing can be done.
7/11/14: CEB 4-hour soak tests conducted; all blocks failed - not enough compression.
7/19/14: Further CEB test block fabrication with higher compression settings. Began 30-day cure needed before testing.
8/10/14: 4-hour soak test conducted; improved results but stabilizer: water rations still not optimal.
8/10/14: Additional CEB test blocks made with higher stabilizer and water ratios. Began 30-day curing before testing.
9/15/14: Good 4-hour soak test results. More blocks needed for structural engineer to conduct MOR and compression testing, but not enough frost-free days available for 30-day cure.
9/30/14 - 11/1/14: Deconstructed barn (demolition permit BP-14-0724) for 40-2x6x10' studs, 2 large beams and barn wood siding, all to be repurposed in our wall framing and interior finishes.

11/1/14 - 12/1/14: Remounted pre-existing electrical service panel (had been attached to the deconstructed barn) on steel frame set in concrete.
1/14/15: Temporary service panel installed.
~2/1/15: Temporary service panel blown down. Needed to wait for ground to thaw before re-installing
4/9/15: Temporary service panel re-installed.
Concurrent activity
6/1/14 - 11/1/14: Revised arch plans to clarify construction details and to reduce floor area ~283 sq ft."

Reason for Hearing. The staff's initial reaction to the appeal application that was submitted on April 23, 2015 is that the administrative provisions of the code are contained in Chapter 1 of the BCBO and that, in accordance with BCBO Section 113.3, the appeal should not be accepted.

BCBO Section 113.3, which has been contained within the BCBO exactly as it currently reads since at least December 31, 1991, reads as follows:

> "**113.3 Limitations of Authority.** The Board of Review shall have no authority relative to interpretation of the administrative provisions of this code nor shall the Board be empowered to waive requirements of this code."

After consulting with the County Attorney's Office, it was concluded that, in the interest of transparency and due process and perhaps due to the broad language contained in the second sentence of BCBO Section 113.1, "Any person, officer or department, board or bureau may appeal to the Board of Review from the decision of any enforcement of the provisions of the Building Code," the application should be accepted and this hearing should be scheduled.

Even after accepting and agreeing to process the appeal, the staff is not convinced that the Board of Review has jurisdiction over what is clearly an administrative matter. To the best knowledge of the staff, an appeal based upon the administrative provisions of the BCBO has not been accepted or processed by the staff or considered or acted on by the Board of Review at least since 1983, if not further back in time.

The Boulder County Board of Review is a technical review board, and not one that is charged with considering, evaluating and rendering decisions on the merits or equities involved in disputes between individuals or parties. This is evidenced by Board of County Commissioners Resolution #98-164, which provides that "All BOR members shall be experienced in building construction," and "To the extent possible…that one member is a Colorado-licensed architect, one member is a Colorado-licensed mechanical engineer, one member is a Colorado-licensed civil engineer, one member is an engineering geologist, and one member is a general contractor."

"…suspended or abandoned…" In light of these words contained in BCBO Section 105.5, common definitions and examples of uses of the terms "suspend" and "abandon" are as follows:

- Suspend: to defer or postpone, as to "to suspend sentence on a convicted person," or, to cause to cease or bring to a stop or stay, usually for a time, as in "to suspend payment."
- Abandon: to leave completely and finally; forsake utterly; desert, as in "to abandon one's farm; to abandon a child; to abandon a sinking ship," or to give up; discontinue; withdraw from, as in "to abandon a research project; to abandon hopes for a stage career."

In light of the information provided by the applicants and the history of the project, the staff does not feel that the project has been suspended or abandoned by the owners for 180 days or more as claimed by the applicants.

Building Permit Extensions or Progress Reports. As noted in BCBO Section 105.5, the building official is authorized to grant extensions. Often a formal extension is not necessary so much as the owner or contractor providing acceptable evidence that the project has not been "suspended or abandoned for a period of 180 days after the time the work is commenced." This can be done by scheduling and receiving in progress inspections, providing inspection or observation reports from an architect, engineer or other professional or submitting photographs, receipts or other evidence that work has been done. It is quite common for the building official or the staff designated by the building official to grant extensions or verify that a permit remains valid. Theoretically, a construction project could go on "forever" as long as there is evidence that work has been done at least every 180 days.

In some cases, construction proceeds slowly because of a lack of funds, or at least not an overabundance of funds, or due to weather or other unanticipated setbacks. It has been our policy that we would rather have the owner spend their available funds toward the successful completion of the project than to consider their building permit and possibly also their SPR approval expired and require them to pay these fees for a second time.

Current Building Code. One of the reasons for having certain time limits on building permits so that they might, in some cases, expire, is that building codes are typically updated every three years. Thus, a project that takes inordinately long to complete might have been issued under and remain subject to the provisions of an outdated building code. In this case, building permit BP-13-0283 was issued under the county's currently adopted code, the amended version of the 2012 edition of the International Residential Code ("IRC"), so an outdated code is not an issue.

STAFF RECOMMENDATION: Staff recommends that the Boulder County Board of Review DENY Docket #BORA-15-0001, the appeal by FRICO regarding the expiration of Building Permit BP-13-0283, based upon the discussion above, the information attached and the following:

1. The project authorized by the issuance of building permit BP-13-0283 has not been suspended or abandoned for a period of 180 days and the building permit remains a valid, active permit.
2. The Board of Review, as stated in Section 113.3 of the Boulder County Building Code, has no authority relative to interpretation of the administrative provisions of the code.

GRG:grg

Attachments: Letter dated March 31, 2015 from Fairfield & Woods, P.C., representing the applicant, the Farmers' Reservoir and Irrigation Company ("FRICO")

Letter dated April 23, 2015 from Fairfield & Woods, P.C., representing the applicant, the Farmers' Reservoir and Irrigation Company ("FRICO")

Letter dated June 10, 2015 from Robinson Hungate, P.C., representing the owners of the property at 3360 Eldorado Springs Drive, Virginia Gurley and Charles Durfee

BP-13-0283

FAIRFIELD AND WOODS P.C.

Todd G. Messenger
(303) 894-4469
tmessenger@fwlaw.com

April 23, 2015

Sent via Personal Delivery

RECEIVED
APR 23 2015
BOULDER COUNTY
BUILDING SAFETY

Secretary of the Board of Review
c/o Boulder County
2045 13th Street
Boulder, CO 80302

Re: Appeal of Decision of Building Official

Dear Secretary of the Board of Review:

Our firm represents the Farmers Reservoir and Irrigation Company ("FRICO"). By this letter, FRICO is appealing the April 10, 2015 decision of the building official with respect to the revocation of a building permit at 3360 Eldorado Springs Drive. The decision of the Building Official to decline FRICO's request to enforce the building code at 3360 Eldorado Springs Drive is appealable under Section 113.1 of the 2012 Amendments to the Boulder County Building Code, which provides in pertinent part:

> Any person . . . may appeal to the Board of Review from the decision of any enforcement of the provisions of the Building Code. Such appeals must be made within fourteen (14) days from the date of . . . administrative decision. Such appeals shall be in writing directed to the Secretary of the Board of Review and shall state the basis for the appeal.

Please find enclosed a check for $278, payable to Boulder County Treasurer, as payment of the fee for an appeal to the Board of Review.

BACKGROUND

By letter dated March 31, 2015 to Michelle Huebner ("REQUEST LETTER"), FRICO requested that the County terminate the building permit for 3360 Eldorado Springs Drive pursuant to Section 105.5, Expiration, 2012 Amendments to Boulder County Building Code. The Request Letter is attached and summarizes all of the pertinent facts.

On April 10, Ms. Huebner left me a voicemail, in which she stated:

> [The owner] did indicate that they still are working on the project and it's still active. They've been building their own blocks and having them tested by their engineer. That's why it's taking them so long, and they've also done and installed their own temp electric, um, so that's the other thing they've done on site . . . . they have not abandoned this project and they are still working on it.

FAIRFIELD AND WOODS P.C.

Based on Ms. Huebner's voicemail, we assume that the Building Official has decided not to revoke the permit. The voicemail was not followed by a written response.

BASIS FOR THE APPEAL

FRICO respectfully submits that the Building Code is clear as to the requirement that the building permit be revoked, and there is no discretion not to do so. The off-site work that Ms. Huebner referred to is not a factor in evaluating FRICO's request under the Building Code. The *temporary* electric service, even if present, is not sufficient to show commencement of work authorized by the permit.

Section 105.5 of the Building Code states:

> Every permit issued shall become invalid unless the work **on the site** authorized by such permit is commenced within 180 days after its issuance **or** if the work authorized **on the site** by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced. The building official is authorized to grant in writing, one or more extensions of time for periods not more than 180 days each. The extension shall be requested in writing and justifiable cause demonstrated.

By the unequivocal standard of Section 105.5, the building permit expired on its own terms on December 6, 2014. FRICO photographed the site on March 30, 2015 (see Request Letter, attached), and it is clear that no work on the site has commenced.

Consequently, FRICO respectfully submits that the building permit must be revoked.

Please contact me at (303) 894-4469 or tmessenger@fwlaw.com with respect to the schedule for FRICO's hearing on this appeal. Thank you for your assistance in this matter.

Sincerely,

Todd Messenger
Fairfield and Woods, P.C.

TM:ds
Attachment

FAIRFIELD AND WOODS P.C.

Todd G. Messenger
(303) 894-4469
tmessenger@fwlaw.com

March 31, 2015

Sent via E-Mail to mhuebner@bouldercounty.org

Michelle B. Huebner
Boulder County Land Use Department
PO Box 471
Boulder, Colorado 80306

Re: 3360 Eldorado Springs Drive

Dear Ms. Huebner:

Our firm represents the Farmers' Reservoir and Irrigation Company ("FRICO"), the owners of the Community Ditch (which runs through Eldorado Canyon) and its related facilities and appurtenances. As we understand it, the owners of the above-referenced property obtained a building permit to construct a new residence close to the Community Ditch on August 1, 2013, and the permit was extended on June 9, 2014.

According to Section 105.5, *Expiration*, 2012 Amendments to Boulder County Building Code:

> Every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within 180 days after its issuance or if the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced. The building official is authorized to grant in writing, one or more extensions of time for periods not more than 180 days each. The extension shall be requested in writing and justifiable cause demonstrated.

As the attached photographs--taken yesterday--show, there have been no construction activities on the site. As such, under Section 105.5, the building permit expired on its own terms on December 6, 2014.

The site plan shows that the residence and its associated garage are located fairly close to the Eastern property line, which is the location of a FRICO easement to drain water from the Community Ditch into Boulder Creek. If the owners seek a re-issued building permit, FRICO respectfully requests the opportunity to review the permit application, even if it is the same or substantially similar to the permit that expired.

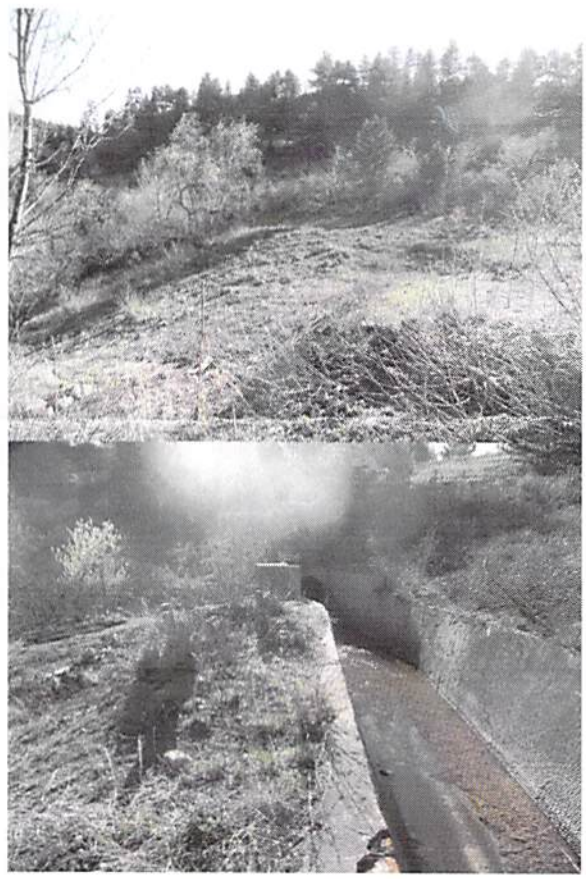
FAIRFIELD AND WOODS P.C.

Please confirm that the County will annotate the file that the permit is expired and will refer future permit applications to FRICO for review. If you have any questions or need further information, feel free to contact me at (303) 894-4469.

Sincerely,
FAIRFIELD AND WOODS, P.C.

Todd Messenger

TM:ds



ROBINSON · HUNGATE
We Know the Territory

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4999 Pearl East Circle, Suite 201
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Telephone: 303.939.9794
Fax: 303.939.9795
Website: www.rt-law.com

Meghan C. Hungate
Meghan@rt-law.com

June 10, 2015

VIA ELECTRONIC MAIL
Mr. Gary Goodell, Chief Building Official
c/o Ben Doyle, Esq.
Boulder County Attorney's Office
P.O. Box 471
Boulder, CO 80306
Email: bdoyle@bouldercounty.org

RE: Appeal before the Board of Review regarding 3360 Eldorado Springs Drive
BP-13-0283

Dear Mr. Goodell:

This office represents Virginia Gurley and Charles Durfee ("Owners"), the owners of the real property located at 3360 Eldorado Springs Drive, Eldorado Springs, CO 80025 ("the Property). This letter is directed to you as Chief Building Official and Secretary of the Board of Review, to which an appeal dated April 23, 2015, regarding the Property has been initiated by the Farmers' Reservoir and Irrigation Company ("FRICO").

The Owners' position is that FRICO's appeal is not only without merit substantively, but also procedurally improper, because the Board lacks jurisdiction to hear the requested appeal. FRICO's attempt to insinuate itself into the Owners' dealings with the County regarding their building permit renders the posture of this proceeding improper, and in the Owners' view, sets a dangerous precedent for the ability of a third-party to interfere with a property owners' building permit. The legal and factual bases in support of their position are set forth herein, as follows.

Factual Background

The Owners purchased the Property in March of 2012, after approval of their Site Plan Review Application by Boulder County for redevelopment of the Property.[1] FRICO's ditch runs adjacent to, but does not cross, the boundaries of the Property. As a result, FRICO participated in the Site Plan Review, and the impact of and setback from FRICO's Community Ditch was expressly addressed in the application. The Plan was approved by the County on February 7, 2012.

Since that approval, the Owners have obtained a series of permits to deconstruct existing structures, to construct a new house, and to conduct necessary grading and drainage work on the

[1] Site Plan approval was a condition precedent of the Owners' purchase and sale agreement for the Property.

Property. Central to the Owners' building plans are environmental considerations including energy efficiency and reuse of as many building materials on site as possible, including the use of compressed earth blocks ("CEB") made from dirt excavated from the Property itself. Although the Owners obtained a building permit in Summer 2013, the floods that occurred in September of 2013 severely impacted the Property, and the Owners were unable to begin construction when and how they originally planned.

As a result of the delays caused by the flood, and on the advice of Boulder County staff, the Owners sought an extension for permit BP-13-0283 on June 9, 2014, which was granted. Since that time, various work has been conducted at the Property, including the following:

1) Preparing, fabricating, and testing the CEB blocks on site, the cure process for which is time-intensive;
2) deconstructing a barn to salvage the wood to repurpose for the new house;
3) deconstructing a store on the Property to salvage the siding and other materials for reuse (continuing);
4) upgrading the electrical meter panel and installing temporary service panels; and,
5) conducting site grading and clearing of dead brush and trees.

Construction of the timber framing materials for the home has and continues to occur off-site. As a result of this work and other activities which the Owners communicated to Boulder County, the County determined on April 10, 2015 that BP-13-0283 was "still active." *See attached*, Exhibit A. To date, construction activities continue at the Property, including continued materials fabrication and implementation of the next phase of the construction, the excavation of the building site, which has already begun. Given the sensitivity and location of the building site, and the difficult weather conditions that have occurred recently, the building season is short and the Owners intend to take advantage of the summer season to make significant progress on their home.

FRICO'S Appeal

For reasons that remain unknown, and without any communication with the Owners, on March 31, 2015, FRICO, through counsel, requested that the County revoke the Owners' building permit. FRICO's letter stated summarily that "there have been no construction activities on the site," and that the building permit expired pursuant to Section 105.5 of the Boulder County Building Code, attaching photos which do not fairly depict the condition of the Property.

Having received a voicemail message to FRICO counsel from Ms. Huebner on April 10, 2015, indicating that there was evidence to the contrary and that activities onsite were continuing, FRICO initiated this appeal on April 23, 2015, arguing unequivocally that the Owners' "building permit must be revoked" pursuant to Section 105.5 of the Building Code.

Although FRICO participated in the Site Plan Review process initiated by the Owners in 2011, it appears that FRICO is really seeking "the opportunity to review the [Owners' new]

permit application, even if it is the same or substantially similar to the permit that has expired." *See* FRICO's letter dated March 31, 2015, p. 1. In other words, it appears that FRICO may be seeking to re-open matters that were already decided in the Site Plan Review process (when it had an appropriate role for comment and input), and to insert itself into the Owners' dealings with the County during the building permit phase (where there is no such role for third-parties).

Neither the Amendments to Boulder County Building Code ("Building Code"), nor basic principles of fairness support FRICO's position here. As a result, the Board should reject FRICO's appeal on both procedural and substantive grounds.

Argument

1. Applicable Provisions of the Building Code

Sections 113 and 117 of Chapter 1 of the Building Code address the parameters of the Board of Review's authority and the decisions of the Building Official that may be appealed, as follows.

> **113.1 Appeals**. Appeals to the Board of Review may be taken by a person aggrieved by his inability to obtain a building permit or by an officer or department, board, or bureau of the County affected by the grant or refusal of the building permit because of non-compliance with the Boulder County Building Code. Any person, officer or department, board or bureau may appeal to the Board of Review from the decision of any enforcement of the provisions of the Building Code. Such appeals must be made within fourteen (14) days from the date of grant or refusal of the building permit or administrative decision. Such appeals shall be in writing directed to the Secretary of the Board of Review and shall state the basis for appeal.
>
> **113.2 Interpretations, Alternate Materials and Methods of Construction and Modifications**. The Board of Review, in appropriate cases and subject to appropriate principles, standards, rules, conditions, and safeguards set forth in the building code may make interpretations of the terms of the building code in harmony with their general purpose and intent. The Board of Review may also approve of alternate materials or methods of construction or modifications provided the Board finds that the alternate material or method of construction or modification meets the standards found under Sections 104.11 of this code.
>
> **113.3 Limitations of Authority**. The Board of Review shall have no authority relative to interpretation of the administrative provisions of this code nor shall the Board be empowered to waive requirements of this code.

117.14 Appeals from decision of the Building Official.

A. Appeals to the Board of Review ("BOR") may be made by any person aggrieved by the following final decisions made by the Building Official in the course of administering this Chapter:

1. Denial of a license application.
2. Suspension or revocation of a license.
3. Issuance of a stop work/suspension order or revocation of a building permit.
4. Written determination that a person is a building contractor required to obtain a license or a certain class of license under this Chapter.

2. FRICO's Appeal is improper, as it is not based on a final decision by the Building Official, nor does the Board of Review have authority to interpret the administrative section of the Code.

Sections 117.14 and 113 of the Building Code prescribe which decisions of the Building Official may be appealed to the Board of Review. Because FRICO's appeal does not fit within those clear limits, the Board of Review is without jurisdiction to hear this matter and should dismiss it without considering the merits.

First, Section 117.14 makes clear that only "final" decisions of the Building Official are appealable to the Board of Review, which include, notably, a *revocation* of a building permit, but not an *extension* of a building permit. *See* Building Code, Section 117.14 (A)(3). Thus, FRICO's "appeal" is not one that may be appealed to the Board of Review, and the Board is without jurisdiction to hear it.

Second, the Board of Review is without jurisdiction to interpret the administrative provisions of the Building Code. *See* Building Code, Section 113.3. FRICO's Appeal is based entirely on Section 105.5, which is an administrative provision within Chapter 1. Thus, the Board of Review is without authority to interpret, or second guess the Chief Building Official's interpretation of, Section 105.5 as applied to the Owners' building permit.

Third, Section 113.1 must be read in conjunction with Section 117.14 in order to reconcile any potential conflict between the two and give fair reading to the intent of the Code. Although Section 113.1 states that "any person" may appeal "the decision of any enforcement of the provisions of the Building Code," this clause must be read in conjunction with the limitations imposed by Section 117.14. Failure to do so would cause the absurd result that this case presents: a third-party, not aggrieved or otherwise affected in any way by the decision, manufacturing a non-final "decision" in order to appeal it.

The posture that FRICO attempts to create here could cripple future building permit processes. For example, such claims could empower other third-parties to request that a neighbor's building permit (or a passed inspection) be revoked for whatever reason, and when

that request is denied, force the owners to incur the time and expense of an administrative appeal, in order to move forward with the project. Here, not only is FRICO unaffected by the Owners' building permit, and thus, not "aggrieved" by any decision made by the Building Official on the permit (as required by Section 113.1), but the decision it is appealing is not a final decision appropriate for appeal (as required by Section 117.14). In fact, it is not even a decision at all within the meaning and intent of Chapter 1 of the Building Code.

A consistent reading of the applicable Code provisions regarding an appeal to the Board of Review illustrates the fallacy of the posture of the matter, and the Board should decline to hear it in the first instance.

3. The Chief Building Official acted well within his discretion in rejecting FRICO's March 31, 2015 request to revoke the Owners' building permit.

To the extent the Board is inclined to consider the merits of FRICO's appeal, the Board's review is limited as set forth in Section 113.3. Notwithstanding this limited and necessarily deferential review, there are ample factual bases upon which to affirm the Building Official's actions here.

Section 105.5 of the Boulder County Building Code provides in full,

> **Expiration.** Every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within 180 days after its issuance or if the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced. The building official is authorized to grant in writing, one or more extensions of time for periods not more than 180 days each. The extension shall be requested in writing and justifiable cause demonstrated.

The evidence of the Owners' various onsite activities simply belies FRICO's conclusory assertion that there was no activity, and it is clear that the Building Official properly concluded that the permit was not "abandoned" under Section 105.5. *See* Exhibit A.

Moreover, notwithstanding FRICO's statement to the contrary, Section 105.5 expressly gives the Building Official discretion to grant "one or more extensions of time" to retain the validity of a permit under Building Code. This is so, likely to address situations like these, where through no fault of the owners, extenuating circumstances delay a construction project. The Owners are anxious and ready to complete their project, a goal which the County, no doubt, shares. Materials preparation is ongoing, and excavation has begun. The Owners have already expended over $100,000 in design, fabrication, and construction costs to date, and anticipate making significant progress during this current building season. Revoking the building permit is not only unsupported by the Code given the facts here, but it would cause additional and unnecessary delays in completion of the Owners' project. FRICO's position, while

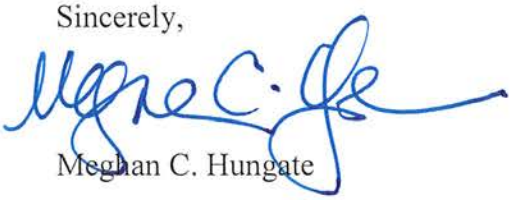
maybe convenient for its own agenda, is in conflict with the facts here, the parameters set by the Building Code, and public policy generally.

Conclusion

FRICO's insinuation of itself into the Owners' building permit process is improper, and as set forth herein, its appeal is procedurally impermissible. Although the site plan review process involves interested third-parties, the building code does not provide for similar involvement. This matter is a good example of why that is the case. The Board should decline to set a precedent that allows a third-party to interfere with the building permit process in this way. Nevertheless, if the Board is inclined to consider the merits, the facts simply do not support FRICO's argument, which the Board should reject and affirm the actions of the Building Official and the validity of the Owners' permit, BP-13-0283.

The Owners participate in this appeal under protest for the reasons stated herein, and they reserve all rights and expressly do not waive any rights. The Owners request and look forward to the opportunity to speak at the hearing currently scheduled for June 18 at 3:00. Thank you for your consideration.

Sincerely,



Meghan C. Hungate

Attachments
Cc: Virginia Gurley and Chip Durfee (via email)

BUILDING INSPECTION RECORD

Land Use Department Building Safety and Inspection Division
Courthouse Annex - 2045 13th St. - 13th & Spruce Streets
P.O. Box 471 Boulder Colorado 80306-0471
www.bouldercounty.org

Permit Number
BP-13-0283

PROJECT LOCATION

Project Address	Unit	City	General Neighborhood
3360 ELDORADO SPRINGS DRIVE		ELDORADO SPRINGS	

Parcel Number	Subdivision Name	Section	Township	Range	Jurisdiction
157730300008		30	1S	70	Unincorporated

WORK DESCRIPTION

New Single Family Dwelling / No Garage (SPR-11-0101)
FIRE SPRINKLER REQUIRED

APPLICATION DETAILS

Application Type	Zoning District	GIS Property Area (Acres)	Project Valuation
New Residence	Agricultural	23.03	$375,000.00

Construction Type	Snow Load (PSF)	Wind Speed (MPH)	Wildfire Hazard
101 - Single family dwelling, including modular	30	131	High

OWNER

Owner Name & Address	Phone
GURLEY VIRGINIA F & CHARLES G DURFEE III	
700 AURORA AVE	720-876-8976
BOULDER, CO 80302	

CONTRACTOR/AGENT

Contractor Name & Address	Phone 1
Owner Virginia Hurley	
700 aurora Ave	720-876-8976
BOULDER, CO 80302	Phone 2

INSPECTIONS

Inspection	Date	Inspector	Result
	Comments		
Status Update	6/9/2014	Daniel Mastin	Approved
	Building permit extension of 180 days granted to expire 12/7/2014.		

EXHIBIT
A

Inspection	Date	Inspector	Result
	Comments		
Status Update	4/10/2015	Michelle Huebner	Approved

This per is still active- Per owner - they have been making blocks with a machine onsite and have run test blocks for the engineer. The engineer has approved the block per the test, but wants one more test before they start making them for real. They also decommissioned one of the barns on the property, and saved the material for use in the house.

Update - 4.16.2015 additional info from owner;
Building activity since 6/1/14
6/1/14 and 6/8/14: Initial compressed earth blocks (CEB) made for stabilizer type comparison and stabilizer ratios testing. Began 30-day curing process, required before testing can be done.
7/11/14: CEB 4-hour soak tests conducted; all blocks failed - not enough compression.
7/19/14: Further CEB test block fabrication with higher compression settings. Began 30-day cure needed before testing.
8/10/14: 4-hour soak test conducted; improved results but stabilizer:water rations still not optimal.
8/10/14: Additional CEB test blocks made with higher stabilizer and water ratios. Began 30-day curing before testing.
9/15/14: Good 4-hour soak test results. More blocks needed for structural engineer to conduct MOR and compression testing, but not enough frost-free days available for 30-day cure.
9/30/14 - 11/1/14: Deconstructed barn (demolition permit BP-14-0724) for 40-2x6x10' studs, 2 large beams and barn wood siding, all to be repurposed in our wall framing and interior finishes.
11/1/14 - 12/1/14: Remounted pre-existing electrical service panel (had been attached to the deconstructed barn) on steel frame set in concrete.
1/14/15: Temporary service panel installed.
~2/1/15: Temporary service panel blown down. Needed to wait for ground to thaw before re-installing
4/9/15: Temporary service panel re-installed.

Concurrent activity
6/1/14 - 11/1/14: Revised arch plans to clarify construction details and to reduce floor area ~283 sq ft.

On a related note, I told Jonathan last spring that we were not going to be working with Leaf Running-rabbit as our GC, but apparently Leaf is still getting calls about the project. We have not quite finalized a construction agreement with the GC we hope to be working. So until we have that finalized, how can I get the project contact info changed from Leaf Running-rabbit to me?

Please let me know if you have any questions about the activity summary or any other part of the project.

Thank you for your time Michelle.

Sincerely,
Virginia

720-876-8976

Note - Inspection Record reprinted.

Report Date: 6/8/2015 1:59:29 PM

ACA_InspectionList_LU_v1