



Date: Wednesday, November 12, 2025
Time: 8:00 AM
Location: Jewell Lake Conference Room, 200 West Oak St., 4th floor, Fort Collins, CO 80521

BOARD OF APPEALS MINUTES 25-011

Call to Order

Board Chair Paul Higman and Board Members Greg Fisher and Clint Hanna attended in person. Board Member Wyatt Knutson attended remote as a panelist due to technical issues with Zoom. Board Member Steve Steinbicker was absent. Community Development Director Rebecca Everitt, Code Compliance Officer Tony Brooks, Interim Board Liaison Alan Kee and Board Liaison Katie James were present in person. Three board members being present, a quorum for transacting business was reached.

Personal Appearances

Members of the public attended the meeting: appellant Bruce Willett: neighbors Ross Bowen, Terese McGee, Herb Greenwood: defending property owner Frank & Cindy Hruby; additional guests Nancy Greenwood, Jeff Renier, Rex Harris and Chuck Bentz

Approval of Minutes

Question from Board Member Fisher about the September decision by the Board of County Commissioners on the exemption of the wildfire resiliency requirements for 35 acre parcels? What was the decision? Interim Board Liaison Kee answered that the wildfire resiliency requirements will apply to all properties in Larimer County, there are no exemptions. Board Chair Higman moved to approve the minutes of the previous meeting as corrected. Board Member Fisher seconded the motion. The motion passed 4-0.

Tabled Items – There are no tabled items

Hearing Items –

Board Chair Higman instructed the applicant and neighbors of the time limitation for this hearing is 9:30 AM. We can either reschedule this hearing to the December 10 meeting or extend the meeting to December 10. It was agreed that the hearing today would conclude by 9:30AM.

Board Liaison Kee discussed the staff report which stated the Building Department and Engineering Department determined that the activity taking place at 7554 Bison Bluff Street, Loveland, Colorado, was not a retaining wall. Dirt and rocks placed on property do not fall under the scope of the International Residential Code. The work includes grading and landscaping. A neighbor and concerned member of the Homeowners Association is the applicant who appealed the determination by the Building Official at the time, Eric Fried.

Questions arose about the dates of the site visits, other than visits from Code Officer Brooks. The dates of the site visits were after the photos dated September 11, 2025, that Mr. Willett provided in his appeal packet. Code Officer Brooks has photos after that date in his code file. Mr. Willett believes that the construction activity goes beyond 4' high and is substantially higher. He believes the wall exceeds 10', and the slope exceeds code for rip rap wall.

Former County Building Official Fried wrote in his determination that a sloped rock wall does not require a permit. But Mr. Willett feels the threshold in any codes (IBC, IRC, UBC) all say a retaining wall is any material

(rock, concrete, wood, whatever) that retains a load of fill dirt, and that any retaining wall above 4' requires engineering and permitting. The rip rap is installed to prevent water seeping through causing failure of a wall. This particular wall exceeds the slope and height for a non-engineered wall. Mr. Willett believes that it will support a driveway around the wall. Rip rap, rock, concrete, wood, fill all becomes a retaining wall.

Mr. Willett raised facts about the height being above the 4' threshold. It is over and obstructs the 11' drainage easement. It is beyond the building envelope. There wasn't a drainage plan created to direct water properly.

Board Chair Higman mentioned that Mr. Willett is not directly adjacent to the property in question. Mr. Willett is not here as an HOA member and believes it presents health and safety issues for the neighbors.

Supporting documents from Mr. Willett: IRC 4.04.4 Retaining wall purpose to retain fill (a couple thousand yards of fill dirt which was not compacted.) It began as a couple hundred yards of fill dirt.

Mrs. Ruby asked a question about drainage. Mr. Willett said it was not designed with drainage plans.

Board Chair Higman asked if there was anyone else who wished to speak.

Frank and Cindy Hruby are the owners of the property 7554 Bison Bluff Street in the Buckhorn Glade Subdivision. Immediate next door neighbors Chuck and Nancy Greenwood and Chuck Bentz are here in support of Frank and Cindy Hruby, not attacking what has been done. Mr. Hruby is a retired attorney and advises his corporate client, Anheuser-Busch, on real estate, engineering, construction and environmental law for 20 years prior to his retirement.

Mr. Ruby shared an overhead photo of his property with staff and shared it on the Zoom meeting screen.

Before commencing work on the hillside property, Mr. Hruby consulted with Larimer County as to whether any permits would be required to use dirt and rock fill to create a level area below my home for the purpose of building the outbuilding which my HOA requires me to build. He was told that extensive landscaping work would not require a permit. He proceeded without a permit.

The first sentence of the complainant's argument contains a falsehood he repeats throughout his 93 page argument. He asserts that I hired a contractor to construct a riprap retaining wall. That is false. This false characterization is the linchpin of his entire thesis that there was constructed a wall.

Mr. Hruby does have 3 laid rock walls built closer to the home that are parallel to each other that step down in 4-foot intervals, actually the first one is less than 4 feet high, and then about 5 feet beyond that, there's another wall, and then about 12 feet beyond that's the third wall. And finally, we're going to have a berm extending all the way around that will bring it up to the level of the dirt of that third – fourth berm, up to the level of the third walls foot. There is a driveway serving the garage apron. The driveway is built on a 25-foot berm constructed (without a permit) when the home was built (in 2017). Mr. Hruby's contractor suggests building a rock face instead of weeds as it is easy to fall there when weed whacking.

The complainant's argument ignores the concept of an embankment and focuses on what I have done as a rip rap wall. An embankment is suitable for supporting a railroad as they last longer than retaining walls. To prevent slope degradation, we have an embankment. A rip rap wall is not a retaining wall.

Mr. Harris built the embankment on Mr. Hruby's property. Mr. Harris mixed a lot of the native soil with the fill and watered and compacted the soil. As Mr. Hruby understands it, Larimer County views it as landscaping work. No permit was required. The 25-foot embankment has never settled at all. The dirt embankment was old, and new embankment is mostly rock.

The compaction of the rock was also performed by Mr. Harris. There are numerous unpermitted embankments in the County. Code Officer Brooks visited the site and pointed out that the existing driveway is on an embankment that wasn't permitted. At the recommendation of Code Officer Brooks, who inspected the work in progress and found it in compliance, Mr. Hruby hired both a hydrological engineer and a soils engineer. They have inspected the work, and we have incorporated their recommendations. Neither have expressed concern about the embankment. It will reduce or eliminate the stormwater flow to the neighbors to the south and west. If you would like to see the Professional Engineers' opinion on how our earthwork will control stormwater flow, I would need to request a continuance of this hearing so that his written opinion can be secured. Since a permit

was not required Mr. Hruby did not request his engineer to address these issues in writing. The compaction tests passed in excess of the 95% compaction requirement.

If this board feels that embankments should only be allowed through a controlled permitting process, then Mr. Hruby would suggest the proper course would be recommending an legislative amendment of the county's building code, not, as the complainant argues, retroactively imposing requirements on work now completed under the long-standing interpretation of Larimer County's existing code. Thank you for your time and attention.

Mr. Willett provided a rebuttal. He states there were no details given to the county as far as the extent of the work that would be done, the amount of material that would be employed in the production of the wall to retain, what turned into thousands of yards of fill, as opposed to, in his original statements, both to the HOA and, even other meetings where Mr. Hruby was only anticipating needing 700 yards of fill. Certainly, if it were presented to the county that there was only going to be that kind of volume, they might look at it as dirt and rocks and not a big deal. That 700 yards of fill has turned into thousands of yards, and rocks, and so forth, and there is no indication of how high the...the wall would be at that point, for them to decide whether it was... would fall into a permit application or requirement because if there is no indication that it will be above 4 feet, there would be very few red flags. In this case it went to over 10 feet in height. Mr. Willett watched the construction and found the contractor placing courses of rock and back filling behind it, and more courses of rock and backfilling behind it, in a process of stacking or building the retaining structure. The angle of dirt, if it were not retained by the rock, would not hold itself at that angle. As he said, 50 degree angle is considerably steeper than the recommended angle for something there. The codes and IRC on the retaining wall, whether it be riprap or any other, talks about 2 horizontal to 1 vertical. In his case, he's not even close to that. He has considerably more. It is not even a 1:1 ratio of vertical to horizontal. The county did not understand the scope of the work.

Board Chair Higman asked if there were any more comments.

Mr. Hruby, looking at the overhead slide, showed that the run to rise is more than 1:1. The prior owners of Scott (Weiss's) property (to the southwest of Frank Hruby's property) put furrows in due to sheet flow coming all the way downhill this way. There is a stormwater easement right there. The easement is high ground discharges to low ground. There are no control systems or culverts. He showed high and low points along the tree line. The point is the rock is higher and slopes up, so it is a stormwater catchment. Improving stormwater control, not worsening it.

Board Chair Higman appreciates that a letter from an Engineer could be written and asked if Code Officer Brooks wishes to say anything. Code Officer Brooks would like to go on record to correct that he was out at the site on August 4th after complaints came in. He drove through the neighborhood just to get a couple of photos and then went back on September 11th and met with and walked the property with the owners. Those are my photos in there.

Mr. Willett had one other point and said the County's decision to say that they didn't have the mechanism to regulate this, they had said that in their communications with Mr. Willett and he believes even Rebecca Everett mentioned to him that they would not consider the permitting requirement or engineering requirement because it wasn't associated with (the construction of) a building. Mr. Willett said as a retaining wall of this magnitude, it is a standalone wall, it requires both engineering and permitting. It exceeds the 4' threshold; it functions as a retaining of the massive fill pad and surcharge.

Board Member Fisher indicated that drainage and erosion are important but this board deals only with building code issues. Other departments and agencies would be more involved in those issues. He visited the site on his own on a Saturday in November to see things firsthand as photographs make it difficult to understand the size of the project. Ultimately, Board Member Fisher consulted building code section R401.1 "the provisions of this chapter shall control the design and construction of the foundation and foundation spaces for buildings." The opinion of Board Member Fisher is that it is a building pad with a rock embankment holding the building pad, but the point is moot because this section basically says it's only dealing with foundations of buildings. Mr. Willett makes a valid point about R404.4 and retaining walls, and also the interesting point about the

amendments to the Larimer County Code that indicate how retaining walls are to be built if they are to be exempt from building code and engineering. They are valid points, but they are superseded by Section 1. It says this only applies to building foundations. R404.4 doesn't mention freestanding retaining walls, it just says retaining walls. The first section, the application section, supersedes that this is only pertaining to building walls.

Board member Fisher will not support the appeal. He is sympathetic to the cause and there are issues outside of the building code with regards to the appeal. As an architect, Board Member Fisher believes the aesthetics could be handled better and an HOA or other department could handle it better as they are more related to them.

Board Chair Higman requested 404.4 to be shared on the screen again.

R404.4 Retaining walls

Retaining walls that are not laterally supported at the top and that retain in excess of 48 inches (1219 mm) of unbalanced fill, or retaining walls exceeding 24 inches (610 mm) in height that resist lateral loads in addition to soil, shall be designed in accordance with accepted engineering practice to ensure stability against overturning, sliding, excessive foundation pressure and water uplift. Retaining walls shall be designed for a safety factor of 1.5 against lateral sliding and overturning. This section shall not apply to foundation walls supporting buildings.

It says it does not pertain to foundations and that is the interesting wording of this section (404) in the IRC. This code section says when using a retaining wall as a soil amendment to the foundation, this does not take place of the foundation analysis. It still needs to have full foundation engineering even though the retaining wall was used. The way that is worded seems a bit odd, but it could be that is what the intent was, that when a retaining wall is used as a soil abatement to the foundation part, that is where that applies. You can't use that analysis for the foundation.

Board Member Fisher agrees, and adds that with a typical walkout basement, and the grade is coming around the perimeter of the basement, transitioning from high at the top of the wall and low at the bottom where the walkout is. Oftentimes we might have a perpendicular wall to that perimeter wall. It could be retained, or have railroad ties, rocks, concrete, and it's holding the soil as it goes around the building and transitions from top to bottom. It's attached to the foundation but not really holding the building, it's just holding the soil. The building pad would come into question at the time the building was being permitted. This appears to be more of a Land Use issue with regards to drainage and erosion. Board member Hanna agrees that this is a landscaping issue, that it was not necessary to build the house.

Board chair Higman shared the wording as follows: I don't know if it's the argument, or the retaining, or the excavation work that was done on the property is not purview under the building code, so it does not fall under the IRC or the IBC, and therefore it's out of the jurisdiction of this board.

Motion was seconded by Board Member Fisher.

All in favor - Hanna, Paul, Fisher. We have no objections or abstain.

Our board is not understating the seriousness of your question, or of what you want. It is a determination that this appeal does not fall under the purview of the building code, that it goes back to Engineering and Land Use, I believe. Your concerns are legitimate; they're just not under this board's jurisdiction.

Adjournment

Board Chair Higman moved to adjourn the meeting. Board Member Fisher and Board Member Hanna seconded the motion. The motion passed 3-0.

CONSIDERATION OF TODAY'S AGENDA AND MINUTES OF BOARD OF APPEALS

Paul Higman, Chair

Alan Kee, Interim Staff Liaison

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