Red House Farm Complaint

As Boulder Town Ordinance Enforcement Officer I received on June 24, 2013 a formal complaint about activities at the Red House Farm. (see attached). I have reviewed the Boulder Town General Plan and Ordinances as well as making inquiries to the Utah State Agricultural Department and having conversations with individuals who have specific knowledge about licensing &/or certification issues.

My findings are as follows:

Red House Farm is located in a LDR zone.

Activities – The activities being held at the Red House Farm are generally well known to include educational programs, music events, a summer movie series, and various other events that are announced to the general public without fees, but occasional requests for donations. The Red House Farm also makes public announcement of produce, eggs and baked goods for sale at the house.

Complaint #1: “Running a retail store”

Reference: Ordinance #59 Sec. 603 – Table of Uses:

“Retail Sales and Services” is listed on the table of uses and limited to commercial zones.

Reference: Sec. 604 – Use Definitions:

There is no definition of “retail” in the ordinance. The definition of “retail” in Webster’s New World Dictionary is, “the sale of goods or articles individually or in small quantities directly to the consumer.”

Discussion:

I contacted the appropriate individuals at the Utah State Agricultural Department about the sale of produce from farms. I was told that direct sale of unprocessed vegetables & eggs are not regulated by the state, but if the vegetables are cut this is considered processing and is regulated. Any food item, including baked goods, comes under state regulation and requires the seller to obtain appropriate certification &/or licensing.

The issue of having a business license is separate from issues of zoning. Reference: Ordinance #28C Sec. 1.7:

No business license required.

b) Business is solely agricultural production. No license shall be required for any person in the business of producing crops or raising livestock either for use or sale.

Note: This does not include processed items, such as baked goods.

c) Business of an incidental nature. No license shall be required for any person who provides a service on a limited basis, does not have a regular place of business, does not meet the requirements of a “home occupation” as defined in this ordinance, does not earn more than $1000.00 per year from such activity and is determined by the Town Council to qualify under this section.

Reference: Sec. 604 Use Definitions

”Home Occupation: An activity carried out for gain by a resident and conducted entirely within the resident’s home and/or a separate building of no more than 750 square feet and is clearly incidental and accessory to the residential use of the dwelling or property and provided that the home occupation does not change the residential character of the residence and does not result in noise, vibration, light, odor, dust, smoke, or other air pollution noticeable at or beyond the property line, does not include any outside storage of goods, materials, or equipment, has no signage, complies with all required Federal and State licensing requirements, complies with all required Local licensing requirements.”

Complaint #2 “Running a recreational facility”

Reference: Ordinance #59 Sec. 603 – Table of Uses:

“Recreational Facility” is listed on the Table of Uses and is limited to a Greenbelt – Multiple Use District (GMU) or Commercial District.

Reference: Sec. 604 – Use Definitions

“Recreational Facility: A place, either indoor or outdoor, designed and equipped for the conduct of sports and leisure-time activities.”

Discussion:

Red House Farm has spent time and effort, and I assume some money, to modify the barn and other structures on the property for the purpose of having publicly announced events, such as movies, music, lectures and theatrical performances which would fall under the definition of “leisure time activities”.

Complaint #3 Parking

Reference: Ordinance #59 Sec. 606 – Off Street Parking Requirements

Table of Required Off-Street Parking: There is no designation for “off-street parking” associated with the present uses described for the Red House Farm.

Discussion**:** Under situations where an activity is to be initiated that would require a conditional use permit, if parking requirements are not already established for the use, the Planning Commission might set parking requirements as one of the conditions.

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Additional Information:

Chapter 10 - General And Supplemental Development Standards

Ordinance #59 Sec. 1001 – Establishment of Development Standards

“The purpose of the general and supplementary property standards is to protect the general health, safety, and welfare of the citizens and property owners of Boulder Town and to implement the Boulder Town General Plan. Compliance with all general and supplementary standards as well as other requirements of this Ordinance and all other applicable requirements of other Town Ordinances shall be required for issuance of any required development approval, license, or permit.”

Sec.1002 – General Requirements

1. All Uses, Building, Structures to Comply with Zoning District Requirements.

“Every building or structure hereafter erected, reconstructed, structurally altered, enlarged or moved, and every building, structure, premises or land used, rearranged, designed or intended for any use shall be built or used only as allowed by the zoning district in which such building, structure, land or use is located.”

1. Allowed Uses.

“All uses allowed within the Town, either as permitted, conditional, or temporary use, are identified in the Table of Uses (Table1).”

1. Prohibited Uses.

“All uses of land and other activities not specifically allowed as permitted, conditional or temporary use as identified in the Table of Uses are prohibited uses and are not allowed in Boulder Town.”

1. Allowed Minimum Use of Legal Lots.

“Nothing in this Ordinance shall be construed to prevent the use of one (1) single family dwelling on any legally created lot or parcel of land, provided that such lot or parcel of land is located in a Zoning District which permits single family dwellings, and was a legal lot at the time of adoption of this Ordinance and provided further that all proposed construction can qualify for the issuance of a building permit as required by the International Building Code (IBC).”

Sec. 604 - Use Definitions

“Single –Family Dwelling: A building arranged or designed to be used for and containing one dwelling unit.”

Ordinance #59 Chapter 16 Enforcement

I recommend a review of the section on enforcement as part of the consideration of this complaint.

I have reviewed the Boulder Town General Plan and have included below some sections that may apply to the present complaint. I would encourage other parties involved in this complaint or responsible for review the complaint to review the Boulder Town General Plan as it might apply. The General Plan proposes the principles upon which our Ordinances are based.

# Chapter 5. General Community Goals

## 5-1 Vision Statement

The primary objectives of the community are (l) to preserve the ranching and agricultural lifestyle and heritage of the area and the rural spirit of Boulder; (2) to preserve the open space, clean air, dark skies, and quiet country-style atmosphere that our residents have enjoyed for over 100 years and (3) to promote a balance of conserving resources and development/growth. In addition to these primary objectives, Boulder wants to remain economically sound by promoting appropriate commercial and cottage industry growth on a small scale.

## 5-2 General Community Goals

The following list expresses the primary goals of the citizens of Boulder:

1. To preserve Boulder’s rural agricultural atmosphere and cultural resources.
2. To promote farming, ranching, and the conservation of open lands to support agricultural endeavors.
3. To preserve the natural beauty, open space, clean air and water, and quiet atmosphere.
4. To keep agricultural fields open, watered, and productive.
5. To encourage pride in the town’s appearance and maintenance of our community.
6. To promote strong community involvement in planning for the town’s orderly and controlled growth.
7. To provide facilities for education, recreation, and cultural activities.
8. To provide for improved traffic flow and maintenance of our town roads.
9. To foster economic viability of the community by promoting small community and cottage industry compatible with the above goals.
10. To maintain diverse community structure by creating housing opportunities for seasonal workers and low to moderate income individuals.
11. To control and limit noise.
12. To protect the dark skies and natural nighttime visual environment.
13. To promote local food production.

## 7-3 Key Land Use Issues

A. Land Use Compatibility -- The development of the Land Use Patterns reduces the potential for incompatible land uses within the land use zone or adjacent to one another. The goals, objectives, and implementation strategies of the Plan provide additional guidance for ensuring compatibility between dissimilar land uses. (See Land Use Patterns following, and Land Use Map)

B. Preservation of Natural Environment and Open Space -- The preservation of the natural environment and open space is one of the overriding concerns of Boulder’s citizens. The Plan recognizes the importance of the natural environment and the numerous benefits of preserving Boulder’s open space from development; maintaining the viability of productive land; maintaining scenic value and viewsheds, protecting the quality of culinary and irrigation water; managing storm water , protecting biodiversity, and encouraging “smart” growth (as opposed to just growth). The Plan also recognizes the many undisturbed, unpolluted landscapes and viewsheds in Boulder that residents want preserved, as the 2004 Town Survey clearly demonstrated.

(Note: This should be referenced to appropriate section in survey. Additional thoughts included viability of open space, mesas, pastures, visible view sheds. incorporate these goals and objectives into each element of the Plan and into regulations for each land use category and the total implementation structure of all ordinances.)

C. Distinctive Community Character -- The Land Use chapter recognizes that there will be a variety of residential densities and land uses within the town. The Plan as a whole creates a long-range vision of the patterns of future developments intended to fulfill the needs of Boulder citizens while protecting the essential character of the landscape. The Plan also recognizes that future residents will want to choose between distinctive residential densities for reasons of affordability and lifestyle. This Plan allows for growth and flexibility while retaining the character of the community. The Plan focuses most of the growth around the existing town center area (Boulder Town site), preserving the character of the more agricultural surrounding areas with lower density patterns and productive land/open space.

D. Agricultural Protection -- Include “Right to Farm” provisions in the Land Use Element that will protect the rights of farmers and ranchers to operate their facilities in agricultural zones without infringement on traditional land and irrigation access and uses, or complaints regarding noise, odors, or length of work hours, but recognizing applicable town regulations such as the lighting ordinance, and the dark sky issue (see Item E). The provisions should protect the property rights and safety of residents and livestock by providing buffers and/or screening as necessary.

E. Dark Sky -- The absence of light pollution in the night sky in and around Boulder makes it ideal for night sky viewing. Boulder is situated in one of the least light-polluted areas of the country. Boulder Town wishes to preserve the naturally dark sky by stopping the adverse effects of light pollution on dark skies. Boulder Town recognizes the adverse effects of light pollution which include energy waste and the air and water pollution caused by energy waste, harm to human health, harm to nocturnal wildlife and ecosystems, reduced safety and security, reduced visibility at night, and poor nighttime ambience. Boulder Town wishes to raise awareness about light pollution, its adverse effects, and its solutions as well as educating residents about the values of quality outdoor lighting.

F. Clustering Development, Perimeter Development and Site-Sensitive Design – The Plan recognizes the need to offer property owners an option for clustering development that will reduce infrastructure and service costs, minimize the visual impact of development to the community, reduce the need for new roads and driveways as well as access points onto existing roads, and preserve agriculture and open space. In exchange, a property owner can receive an increase in the number of lots otherwise allowed. The density bonus is intended as an incentive to a property owner in exchange for the above public benefits. This option is intended to promote a pattern of development that is most likely to be consistent with the underlying community values and to encourage the preservation of productive agricultural lands and open space.

G. Affordable Housing -- The Affordable Housing Plan was adopted by resolution in 2002. In that document strategies were suggested for implementation in the Zoning Ordinance. This Plan recognizes the need to promote the development of affordable housing policies to cater to the needs of low income residents and seasonal workers.

## 7-4 Land Use Goals and Policies

Goal 1: Types and Mix of Land Uses to be designated -- To achieve the development of a well-balanced, financially sound, and functional mix of agricultural, residential, commercial, open space, recreational, institutional and educational land uses, without denigration of the rural character and heritage of the Town.

Policies:

Allow the development of home-based service and cottage industry activities. These uses must be compatible with surrounding agricultural and residential land uses.

G1-1 Provide for the reservation of adequate land to meet projected institutional and infrastructure needs. The Town Park, which is in the planning and development stage, should address the needs of residents.

G1-2 Promote the retention and expansion of existing agricultural businesses and a variety of productive land uses under the general description of “agriculture.”

Goal 2: Maintenance of Rural Heritage and Character -- To ensure that development in town is consistent with the overall community character and that it contributes in a positive way toward Boulder’s image.

##### Policies:

G2-1 Maintain and enhance the desirable rural qualities found in the existing neighborhoods.

G2-.2 Identify and encourage development of efficient land use patterns.

G2-3 Require a master plan for subdivisions; a concept plan should address the entire developable areas of a proposed subdivision.

G2-4 Enforce building and safety codes and regulations concerning the upgrade, rehabilitation, or removal of deteriorated and dilapidated buildings, structures and sites, with the exception of designated historic and cultural properties. Encourage land owners with incentives to rebuild or renovate existing houG2-5

2.5 Recognize historical sites and buildings. Encourage preservation of historical sites and buildings through incentives, grants, or other assistance.

Goal 3: Preservation of Natural Resources -- To provide protection of natural open space, environmental setting, habitat, and wildlife through the location of land uses and the use of site-sensitive design templates.

##### Policies:

G3-1 Encourage development, grading, and landscaping to be in harmony with the natural topography and major land forms in the planning area.

G3-2 Enable clustering and provide density credits or other incentives for developers to preserve a maximum amount of private or publicly useable open space, with special emphasis on encouraging use of open space for agricultural purposes. Such open space should be permanently preserved by deed restrictions or conservation easements with a local or town approved land trust.

G3-3 Promote the retention of open space to preserve significant sensitive lands, to provide land use buffers, and to provide for public safety. Steep hillsides and ridge lines should be protected as view areas or vistas and not be developed.

G3-4 Encourage protection of wildlife corridors from undue encroachment and disruption.

G3-5 Promote appropriate design and landscaping of the town park, town grounds, Town Hall, and other municipal open space to meet the needs of the community.

G3-6 Encourage clustering, perimeter development, and site-sensitive design to preserve agricultural land and contiguous open space.

G3-7 Promote soil conservation on agricultural lands through mapping, grant funding, and informational literature.

Goal 4: Responsible Growth Management-- To preserve the character of Boulder through orderly development practices and the provision of private and public capital improvements, facilities, and services.

##### Policies:

G4-1 Ensure facilities and services do not exceed the ability to provide and maintain such services; necessary improvements should precede or be coordinated with future development.

G4-2 Establish and implement necessary safety measures and standards to ensure development is appropriately restricted in areas such as flood plains and wetlands or where natural hazards (seismic, geologic, flooding, fires, etc.) are present, unless such hazards can be mitigated.

G4-33 Consider capacity and effects on Boulder’s school, parks, community centers, etc. when evaluating development proposals under the land use plan.

G4-4 Consider adopting an annexation policy regarding the potential annexation of certain portions of private properties that are now congruent with the existing town, but are not currently within the legal limits of the incorporated area.

G4-5 Consider a requirement for a site analysis on soils and environmental conditions to ensure development is appropriate for given ground conditions, archeological sensitivities, etc.

## 7-5 Land Use Zoning Categories and Patterns

### A. Public Lands -- State and Federal

A substantial portion of the land within the Boulder Town limits is comprised of public lands owned and administered by the Department of Agriculture (U.S. Forest Service), the Bureau of Land Management, and the State of Utah.

Public Lands should have a separate zoning category that accounts for the potential impacts upon the Town’s General Plan were they to be sold, traded or their future uses changed.

Any Land Use Plan and Zoning Ordinance passed by the Town of Boulder needs to acknowledge the presence of these lands to be able to effectively plan for the future.

All Public Lands within the Boulder Town limits should be mapped and given a special zoning category titled “Open Space - Not for Development.”

The purpose of this zone is to maintain the maximum level of control and influence over these lands in the event that they are sold into private ownership or intended to be used by the Agencies in a manner that is inconsistent with the Town General Plan.

Although jurisdictional questions may arise, in many, if not all, instances a contemplated change of use from non-developable to commercial or residential would require an application for a zone change and vest some discretion with the Town. This would enhance the Town’s ability to negotiate, change, or even deny application, based upon the compatibility with the Ordinances and General Plan.

### B. Municipal, Educational, Utility and Other Public Uses

This zoning category should be established separately and includes all lands owned and administered by public or community- based organizations for use by the public, or to benefit a substantial portion of the public on a nondiscriminatory basis.

Municipal -- the Town Hall, Fire Department, Post Office, Town Park, and other similar uses.

Educational -- the Elementary School, Anasazi State Park, and any other similar uses.

Utility – Garkane Energy, South Central Communications, and any similar entity providing utility services to the residents of the Town

Other Public Uses -- religious, charitable, and quasi-public uses such at the LDS Church, Boulder Irrigation Company, and Boulder Farmstead Water Company.

### C. Critical/Sensitive/Agricultural Lands

The Town currently has such an ordinance, and it should be expanded and refined .

* Slopes over 30 percent. Wetlands, Mesa tops and other vulnerable view properties should be analyzed in terms of stability, suitability, view sheds, and impacts. These taken together with any other legitimate public purposes should be analyzed, zoned, and subjected to appropriate restrictions.
* Agriculture lands capable of production -- All of these lands are also in the Low Density Residential, 5-acre minimum zone, and nothing herein is intended to change that status. However, they retain special status and importance in defining the rural heritage and maintaining the character of the Town and should be given some additional benefits and consideration.

These lands should be eligible for density credits and other benefits if the owner is willing, on a voluntary basis, to follow design and development templates (clustering, perimeter, corridor and other templates) that keep productive fields open and reduce the visual impact of development.

Note: The term “Greenbelt” in Utah is most often applied to land that meets the statutory requirements for special property tax treatment. To avoid confusion, the term should not be used for purposes other than defining this tax status in the Zoning Ordinances.

### D. Commercial

The commercial properties that presently exist are the only commercial zones within the Town. The Town should continue with its past process whereby future commercial uses are established by the conditional use application and hearing on a case by case basis only. The burden should remain on the applicant to demonstrate that the location and type of commercial application is fitting within the overall General Plan and goals of the Town.

All commercial applications that arise out of franchise or large corporate environments should be discouraged and locally owned and operated businesses encouraged.

### E. Residential

#### Minor Subdivisions

This should not be a separate zone, rather an overlay on Low Density Residential and a special category in the Subdivision Ordinance that allows any land owner willing to subdivide into two or more parcels, each parcel being 20 acres or more, special treatment under the subdivision ordinance.

This treatment would reduce infrastructure costs thereby providing incentives to the applicant, while reducing density and keeping land open and in production, thereby providing benefits to the goals of the General Plan.

#### Low Density Residential

This should be maintained at the present five-acre minimum lot size and allow single family use only.

This is the largest zone in Town and should remain as such. All land not otherwise zoned by Ordinance and clearly shown on the Zoning Map should fall into this category.

#### Medium Density Residential (Village Center Zone)

There exists within the Boulder Town limits a Boulder Townsite area established over 50 years ago in and around the Town Hall. This area has developed into a Village Center. When this Townsite area was established, there were lots ranging from one to four acres. These are all lots of record and can be sold or transferred as such without any further application or subdivision process through the Town. There were also streets platted that have never been used. The platted streets should be used as part of this Village Center zone Master Plan, and those that are not useful in the zone should be vacated.

This is the best area to establish a separate zone for lots ranging from one acre minimum upward ; water and septic issues make lot sizes smaller than one acre problematic.

The agricultural character and heritage is least impacted in this Village Center area: The Town Hall, Post Office, Park and other facilities for public use already exist in the middle of this proposed zone and comprise the Center. Establishing a Village Center consolidates the homes and public venues, encourages less use of automobiles and more walking, and enhances a sense of community.

This Village Center zone would contain a mixed use of residential, commercial, and public uses. Special considerations are:

* Strip development along Highway 12 should be avoided by maintaining the mix of uses.
* Residential lot sizes and uses fronting Highway 12 should account for view shed, character, topography, and other considerations for the long-term benefit of residents and visitors viewing Boulder from the highway corridor.

#### High Density Residential

Additional high density residential zones, beyond those previously established by the Town, should be considered pursuant to a conditional use application. High density residential zoning would allow more than one dwelling per acre under limited circumstances:

* It fills a demonstrated need such as affordable housing, seasonal rentals, or similar necessities.
* It should be considered within or near the Village Center zone where it is desirable to concentrate future development.
* It should be buffered from the Highway and other development by pinyon and juniper cover or other topographical features.
* It should have a community-based water source and not a well. It should have sufficient land and area to accommodate a common septic and waste water area.
* It should be granted strictly as an exception.

Non-conforming lots of record should be considered on a case-by-case basis for further development.

# Chapter 9. Economic Goals

While Boulder is a small rural community, the value of a strong and viable local economy cannot be over-emphasized.

Goal 1: To promote the development of small home-based businesses, sustainable agricultural, and non-polluting cottage-type businesses that have minimal impact on town services or activities, i.e., traffic, noise, parking, etc.

Policies:

G1-1 Make small home businesses that require minimal off-street parking, signs or audible characteristics a conditional use in all residential and agricultural zones.

G1-2 All commercial development on major streets in the town should reflect and promote Boulder’s identity and character.

G1-3 Encourage the placement of all utilities underground in commercial areas.

G1-4 Establish and regularly update site planning standards for all new commercial areas.

G1-5 Encourage growth of small businesses, particularly service businesses, by being receptive to innovative ideas that reflect the town’s values and provide employment opportunities to area residents.