

2000

Julian Dean Hatch and Lynn Mitchell v. The
Boulder Town Council, Town of Boulder Planning
Commission and/or Board of Adjustment, the
Boulder Excavating Company, Sam Stout, and
Rhea Thompson : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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IN THE UTAH COURT OF APPEALS

**JULIAN DEAN HATCH and,
LYNN MITCHELL**

Petitioners and Appellants,

VS.

THE BOULDER TOWN COUNCIL,
TOWN OF BOULDER PLANNING
COMMISSION and/or BOARD OF
ADJUSTMENT, THE BOULDER
EXCAVATING COMPANY, SAM
STOUT AND RHEA THOMPSON

Respondents and Appellees.

APPELLANTS' ADDENDUM

Appellate Case No. 20000189 -CA
Trial Court No. 990600022

Priority of Argument: 29(b)(15)

APPELLANTS' ADDENDUM

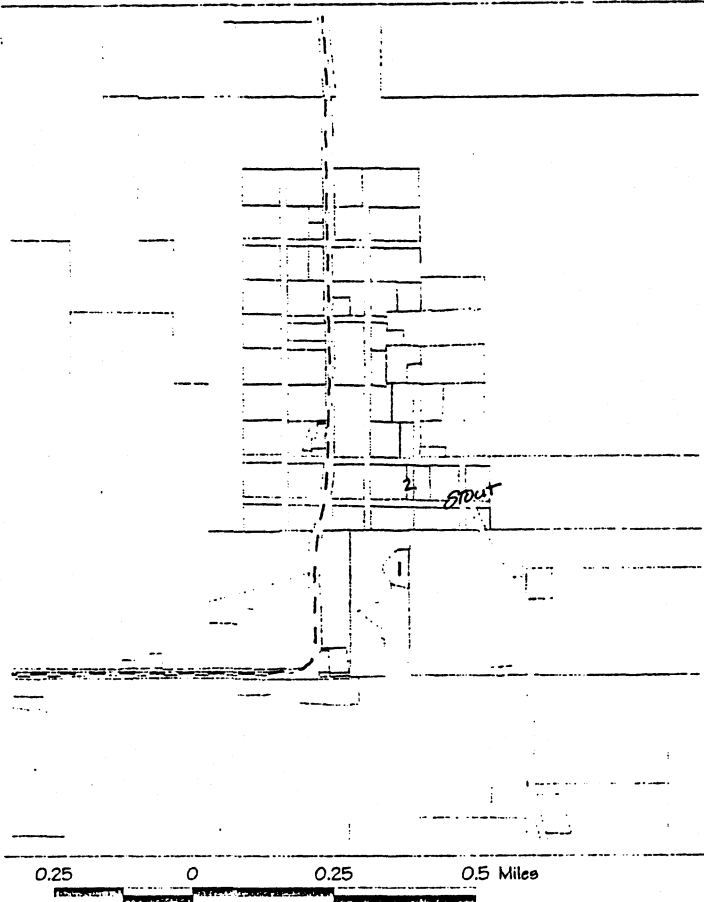
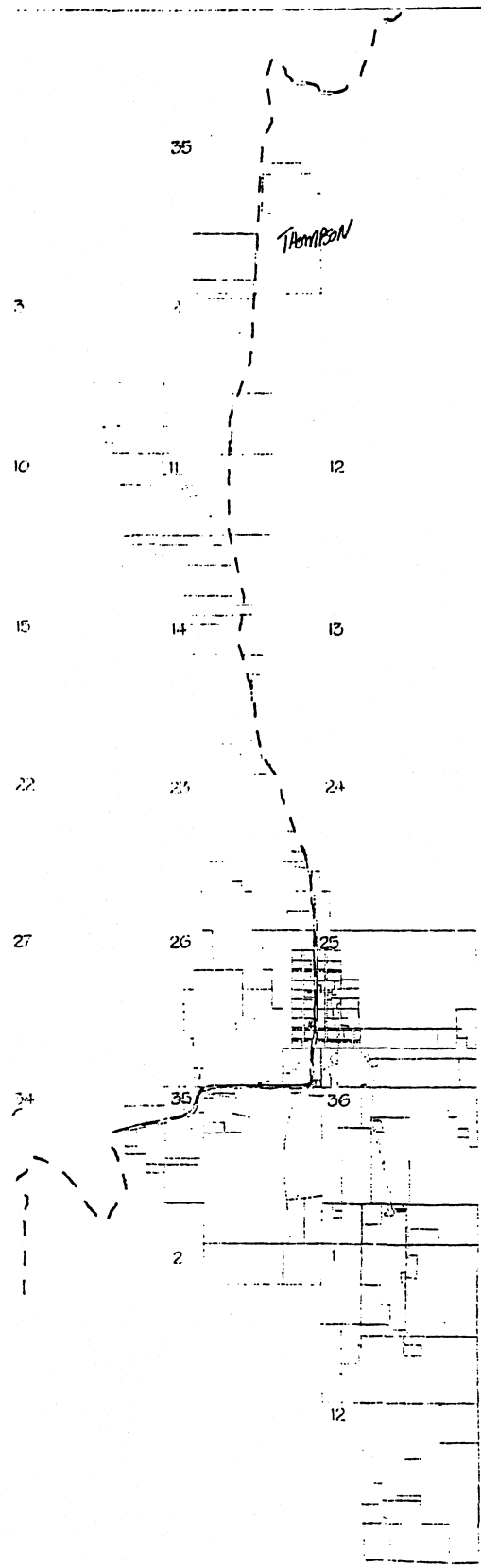
- A. The Existing Land Use Map, as of 1/27/99.
(Not official map, Hearing Tr. p. 43).
- B. Boulder Town Ordinance No. 39, including amendments
as adopted in Ordinance No. 39A. (Trial Ex. "3").
- C. Letter of January 27, 1999, from Hatch and Mitchell
for Public Hearing on conditional use permits.
(Trial Ex. "8").
- D. Notice of Appeal of Conditional Use Permit, and letter,
dated March 5, 1999, attached. (Trial Ex. "5").
- E. Town Minutes of May 29, 1998. (Trial Ex. "14").
- F. Town Minutes of June 17, 1999. (Trial Ex. "10")
and June 17, 1999 letter. (Trial Ex. 9").
- G. Planning Commission Minutes September 28, 1998,
and proposed changes. (Trial Exs. "11" and "12").
- H. Findings of Fact and Conclusions of Law. (Record 317-326).
- I. Findings, Conclusions, and Order on Motion for
Attorney Fees. (Record 358-364).

Tab A

Boulder Town

Existing Land Use Map

COPY



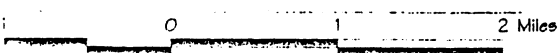
Legend

- Town Boundary
- State Route 12

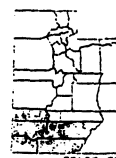
Existing Land Use

- Low Density Residential
- Medium Density Residential
- High Density Residential
- Green Belt/Multiple Use
- Municipal/Park/School
- Commercial

All mile sections are found within Range 4 West and Townships 32, 33, & 34 South of GLB&M respectively.



FCAOG uses information & data from many different sources, which may be of differing accuracy and which have been integrated to provide a planning context. These products should be used only for the purpose they were intended. For specific data source information, please contact FCAOG GIS.



FCAOG GIS
Map Created 01/27/99
Curt Hutchings
FCAOG GIS

Tab B

COPY

BOULDER TOWN ORDINANCE NO. 39
Including Amendments as Adopted in Ordinance No. 39A

AN ORDINANCE REGULATING LAND USE IN BOULDER TOWN, UTAH

Passed
May 30, 1998

Amended
January 12, 1999

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ORDINANCE NO. 39

AN ORDINANCE REGULATING LAND USE IN BOULDER TOWN, UTAH

WHEREAS, Boulder Town desires to preserve its rural town atmosphere

PART I.

A: PURPOSE

This ordinance is designed and enacted to implement the goals and objectives of the Boulder Town 1997 General Plan. In keeping with the General Plan the following goals and objectives define the major purposes of this ordinance:

1. To preserve the quiet rural/agricultural quality of life enjoyed by the residents of Boulder Town.
2. To promote farming, ranching, and the development of compatible commercial and home occupations.
3. To preserve the natural beauty, open space, clean air and water; to preserve important natural resources; to prevent overcrowding of the land and to minimize congestion on the streets.
4. To encourage and facilitate the orderly growth and development of the community.
5. To encourage pride in the Town's appearance and maintenance of our community.
6. To provide facilities for education, recreation, and cultural activities.
7. To enable the Town to efficiently provide adequate public services.

This ordinance is intended to allow development in a manner that encourages the preservation of scenic values, and the unique agricultural setting of Boulder Town. The ordinance seeks to prevent development that influences existing geologic hazards, erosion, flooding, or other conditions that create potential dangers to life and safety in the community or developments that detract from the rural quality of life in the community.

B: AMENDMENTS

1. The land use map and use restrictions may be amended by the Town Council from time to time, but any amendment shall be first submitted to the Planning Commission for its review and comment.
2. No proposed amendment affecting the number, shape, boundary, or land use classification of any area shall be adopted unless the proposed land use ordinance amendment complies with the following criteria:
 - a. The proposed amendment will place all property similarly situated into complementary land-use classifications; and

- b. That all uses permitted under the proposed land use amendment are in the general public interest and not merely in the interest of an individual or small group, and
- c. All uses permitted under the proposed land use amendment will be appropriate in the area to be included in the proposed land use amendment; and
- d. The character of the neighborhood will not be adversely affected by any use permitted in the proposed land use amendment; and
- e. The proposed land use amendment is consistent with the town's General Plan.

3. Before adopting any amendment to the land-use ordinance, the Town Council shall hold a public hearing. Notice of the time and place of the hearing shall be given by at least one (1) publication in a newspaper, authorized for publication for the town, at least fourteen (14) days before the hearing. The cost of publication shall be paid by the applicant for the land-use change.

4. On any property requesting a change in land-use classification, (except changes initiated by the town to implement general planning objectives) the applicant shall be required to post the property in question with a notification that a request has been made for a land use change which states the changes being requested and the time and place of the public hearing. The signs shall be obtained from the town and be posted at 500 foot intervals around the property and on all corners at least fourteen (14) days prior to the public hearing.

PART II. LOTS, YARDS, AND BUILDINGS

A. LOTS AND YARDS.

1. Minimum Density

The minimum density in acres required for any development shall be as shown on Table 1 in the General Plan.

2. Lots in Separate Ownership--Reduced Yards.

The requirements of this chapter as to minimum lot area or lot width shall not prevent the use for a single-family dwelling on any lot or parcel of land in the event that the lot or parcel of land was held in separate ownership at the time such parcel became non-conforming as to area or width.

3. Every Dwelling to be on a "Lot".

Every dwelling shall be located and maintained on a "lot" as defined in this Code.

4. Sale or Lease of Required Space.

No space needed to meet the area or other requirements of this chapter for minimum lot or building requirements may be sold or leased away from such lot or building, except that agricultural leasing shall be permitted.

5. Creation of Lots Below Minimum Space Requirements.

No parcel of land which has less than the minimum area requirement for the area in which it is located may be separated from a larger parcel of land for the purpose, whether immediate or future, of building or development as a lot.

6. Setback Requirements

- a. Residential buildings and commercial developments shall have minimum front, rear, and side yards of thirty (30) feet from property line or road.
- b. Accessory buildings shall have minimum front and rear yards of thirty (30) feet and minimum side yards of fifteen (15) feet.
- c. Buildings shall be placed in such a manner that emergency vehicles can access the back yard.

B. BUILDINGS

1. Detached Single Family Dwellings

Any detached single family dwelling must meet the Uniform Building Code and may not exceed two-and-one-half (2 1/2) stories or 30 feet in height or, if it is a manufactured home, it must be certified under the National Manufactured Housing Construction and Safety Standard Act of 1974, and must have been issued an insignia and approved by the following standards in addition to any others required by law.

The dwelling must be taxed as real property. If the dwelling is a manufactured home, an affidavit must be filed with the State Tax Commission pursuant to Utah Code Annotated 59-2-602.

The dwelling must be permanently connected to and approved for all required utilities.

The dwelling must be attached to a site built permanent perimeter foundation which meets the Uniform Building Code or if the dwelling is a Manufactured Home, the installation must meet the ICBO Guidelines for Manufactured Housing Installations.

Mobile Homes will be permitted as long as they are sitting on a permanent foundation that meets all requirements of this ordinance, and with full skirting. See Mobile Home

Ordinance #14.

Any mobile home shall comply with and conform to all other land-use laws, rules, regulations and building, plumbing, electrical, fire prevention and all other codes and requirements applicable to a structure or building erected within the town.

PART III CONDITIONAL USES

A. PURPOSE OF CONDITIONAL USE PROVISIONS

Certain uses which may be harmonious under special conditions and specific locations within a district, but be improper under general conditions and in other locations, are classed as conditional uses within the various districts and require conditional use permits for approval.

B. PERMIT REQUIRED

A conditional use permit is required for all uses listed as conditional uses in the district regulations or elsewhere in this ordinance. No building permit or other permit or license shall be issued for a conditional use without first being reviewed and approved by the Town Planning Commission, or on appeal, by the Town Council. A conditional use permit may be revoked upon failure to comply with the conditions of that permit.

C. APPLICATION

An application for a conditional use permit shall be made to the Town Clerk at least 14 days prior to the next scheduled meeting.

D. FEE

The application for a conditional use permit shall be assessed a fee that is determined by the Town Council.

E. PUBLIC HEARING REQUIRED

The Planning Commission shall require a public hearing for each proposed conditional use, as any conditional use is controversial in nature and the best interests of the neighborhood or community are served by broad public exposure to the proposed use.

F. SITE DEVELOPMENT PLAN REQUIREMENTS

Applicant for a conditional use permit shall include a site development plan to include but not limited to the following:

1. Name, address, and phone number of applicant; and,

- 2 Location and dimension of the property and of any buildings or other structures on the property, and,
- 3 Location and dimension of any proposed structures, parking facilities, etc that are associated with the proposed use, and,
- 4 Location of roads and utilities that are now serving or will be required to serve the property, and,
- 5 Percentages that existing and proposed structures (to include roads, parking, etc.) will cover said parcel, and
- 6 A topographical map at 2 ft contours showing existing drainage patterns as well as other environmentally sensitive areas; and,
- 7 A drainage map that reflects drainage patterns after the use is applied to the property; and,
- 8 A landscape plan overlaying all areas of the property not covered by existing or proposed structures. Landscape is herein defined to include, naturally occurring or human created existing features such as water courses, rivers, irrigation works, wetlands, historic sites, critical meadow lands, important vistas, and other irreplaceable assets shall be preserved All significant trees shall be preserved where possible and where necessary shall be welled and protected against change of grade,
- 9 Written explanation of the proposed use, detailing how and when the use requested will be implemented. List of all permits necessary for the proposed use
- 10 Assessment and resolution of impacts generated by the proposed use shall be addressed in writing, and may include but is not limited to
 - a. Culinary and waste water systems
 - b. Traffic volume, noise and access
 - c. Visual impacts
 - d Others deemed prudent by the Planning Commission
 - e Professional evaluation will require a fee
- 11 All signs must conform to the Boulder Sign Ordinance An application for all signs needs to be included with the development plan

Assessments are to include impacts to adjacent properties, to the neighborhood, and/or to the community at large Professional analysis of complex issues may be required, if in the opinion of the Planning Commission or their designee, such expertise is necessary for clear and comprehensive understanding of potential impacts that may arise from the proposed use

Planning Commission can waive any or all of the site plan requirements upon appeal and justification

G DETERMINATION

The Planning Commission may permit a conditional use to be located within any district in which a particular conditional use is permitted by this ordinance. In authorizing any conditional use the Planning Commission shall impose such requirements and conditions as are necessary for the protection of adjacent properties and the public welfare. The Planning Commission shall not authorize a conditional use permit unless evidence presented is such to establish:

1. That such use will not, under the circumstances of the particular case, be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity, and that the proposed use of the particular location is necessary or desirable and that provides a service or facility which will contribute to the general well being of the neighborhood and the town.
2. That the proposed use will comply with regulations and conditions specified in this ordinance for such use.
3. The Planning Commission shall itemize, describe, or justify, then have recorded and filed in writing the conditions imposed on the use.

H. APPEALS OF DECISION

Any person shall have the right to appeal the decision of the Planning Commission to the Town Council.

I. PERMIT REVOCATION

The Planning Commission shall revoke a conditional use permit if there is a violation of the conditions placed on the permit. The commission shall give notice to the permit holder prior to revocation and the right to a hearing before the Planning Commission.

PART IV. ESTABLISHMENTS OF DISTRICTS

A. DISTRICTS For the purpose of this ordinance, the territory of the town is divided into districts as follows:

See pages 13-30 and Table 1.

B. OFFICIAL MAP ADOPTED The official base map is hereby adopted and made part of this ordinance, and districts shall exist and be established on the official base map as adopted and amended from time to time.

C. RULES FOR LOCATING BOUNDARIES

Where uncertainty exists as to the boundary of any district, the following rules shall apply:

1. Wherever the district boundary is indicated as being approximately upon the center line of a street, alley, or block, or along a property line, then unless otherwise definitely indicated on the map, the center line of such street, alley or block of such property line, shall be construed to be the boundary of such district.
2. Whenever such boundary line of such district is indicated as being approximately at the line of any river, irrigation canal, or other waterway or railroad right of way, the boundary line of such public land or such section line shall be deemed to be the boundary of such district.
3. Where such district boundary lines cannot be determined by the above rules, their location may be found by the use of scale appearing upon the map.
4. Where the application of the above rules does not clarify the district boundary location, the Town Council shall interpret the map.

D. USE REGULATIONS

No building, structure or land shall be used, and no building or structure shall be hereafter erected structurally or substantially altered or enlarged except as allowed in the districts shown as “allowed uses” or as “conditional uses.” Uses not listed are not allowed.

E. CONSTRUCTION

All building must meet the Uniform Building Code.

PART V. MASTER PLAN DEVELOPMENT/ PLANNED UNIT DEVELOPMENT

This type of planned development offers more flexibility in the placement of buildings (ex. clustering) and emphasizes the preservation of open space, to help maintain the existing character of Boulder Town as described in the General Plan.

A. PURPOSE

To strengthen the agriculture and rural development pattern, lifestyle, amenities and qualities of the agricultural areas in Boulder Town while allowing the opportunity to develop agricultural parcels with expanded options for density bonuses. To provide an incentive for keeping viable agricultural operations as a resource and lifestyle choice in Boulder Town.

B. QUALIFICATIONS

1. All eligible parcels must be at least 40 acres in size.
2. A minimum of 2/3 of the entire parcel must be designated and remain as agriculture

- open space.
3. Permitted development can increase to 25 percent over the allowed density. Eight single family residences per 40 acres would increase to 10 per 40 acres.
 4. All residential development shall be single family development with a minimum lot size of one acre.
 5. The agricultural area of the subdivision shall remain as agricultural land and include as a minimum a note on the plat stating:
“This agricultural parcel was subdivided and developed under the qualifications allowed in the Boulder Town Land Use Ordinance Master Plan Development section which allows an increase in density for the development of residential lot from 8 to 10. These numbers include all the bonus options permitted by Boulder Town.
 6. Adequate water must be deeded to maintain irrigated agricultural land.

C. BONUS CRITERIA

An additional unit will be allowed if all of the following criteria are met:

1. A minimum of 50% of agricultural land will remain undeveloped.
2. There will be two access roads to the highway or town road.
3. Buildings shall be located and landscaped so as not to be readily visible from the road.
4. Development is designed to blend into the landscape and follows closely the guidelines in this ordinance.
5. Landscaping should be with native plants in character with the natural environment and historic character of Boulder.

D. MEANS OF ESTABLISHMENT OF OPEN SPACE

Preservation, maintenance and ownership of required open spaces within the development shall be accomplished by one or more of the following:

1. Relinquishing, within the deed, developmental rights to the remaining open space by the land owner.
2. Selling the land to an approved Land Conservancy Organization
3. Complying with the provisions of the Condominium Ownership Act of 1963, Title 57, Chapter 8, Utah Code Annotated, 1953, as amended which provides for the payment of common expenses for the upkeep of the common areas and facilities.

E. GUIDELINES AND REQUIREMENTS

1. Harmony of Design Guidelines
2. Setbacks as described in Part II.

F. APPLICATION REQUIREMENTS

1. Application form
2. Statement of intent: A statement of intent shall be submitted with each master plan application. The statement will include but not be limited to:
 - a. Time plan for development
 - b. List of amenities proposed
 - c. Agreements of any kind required by the seller or the buyers

G. REVIEW BY PLANNING COMMISSION

In order that it may approve a Planned Unit Development, the Planning Commission shall have authority to require that the following conditions (among others it deems appropriate) be met by the applicant:

1. That the proponents of the Planned Unit Development have demonstrated to the satisfaction of the Planning Commission that they are financially able to carry out the proposed project.
2. That the proponents intend to start construction within one (1) year of the approval of the project and any necessary zoning district change, and intend to complete said construction, or approved stages thereof, within four (4) years from the date construction begins.
3. That application for Planned Unit Development in planned districts meet the requirements of such districts, including the requirements of the General Plan.
4. That the development is planned as one (1) complex land use rather than as an aggregation of individual and unrelated buildings and uses.
5. That the development as planned will accomplish the purpose outlined in Part II, A.

G. SCOPE OF PLANNING COMMISSION ACTION

In carrying out the intent of this Chapter, the Planning Commission shall consider the following principles:

1. The Planning Commission may approve or disapprove an application for a Planned Unit Development. In an approval, the Planning Commission may attach such conditions as it may deem necessary to secure compliance with the purposes set forth in Part II, A of this chapter. The denial of an application for a Planned Unit Development by the Planning Commission may be appealed to the Town Council.

H. CONSTRUCTION LIMITATIONS

1. Upon approval of a Planned Unit Development, construction shall proceed only in accordance with the plans and specifications approved by the Planning Commission, and in conformity with any conditions attached by the Planning Commission to its approval.
2. Amendments to approved plans and specifications for a Planned Unit Development shall be obtained only by following the procedures here outlined for first approval.
3. The Building Inspector shall not issue any permit for any proposed building, structure or use within the project unless such building, structure, or use is in accordance with the approved development plan and with any conditions imposed in conjunction with its approval.

PART VI. CRITICAL/SENSITIVE LANDS (DISTRICT 1: OVERLAY)

A. PURPOSE

To eliminate or lessen the impact of development in areas defined as sensitive lands.

B. EVALUATION STUDY

Prior to the preparation of a sensitive Lands Overlay Map for Boulder Town, the developer of any land containing any area(s) of sensitive lands shall be required to undertake a study and analysis of each of the elements listed below, and as designated by the Planning Commission. The study shall provide enough information to the Town to be able to reasonably designate the sensitive lands areas as well as providing adequate treatment and mitigation alternatives for dealing with the development impacts.

C. SENSITIVE AREAS ANALYSIS AND DETERMINATION

Any applicant for any development approval must produce a sensitive areas analysis performed by qualified professionals as approved by the Town that identifies and delineates all the following features and conditions:

1. Slope/Topographic map

A slope/topographic map which shall be prepared and based on a certified boundary survey and depict contours at an interval of five (5) feet or less. Additionally, the map shall highlight areas of high geologic hazard, areas subject to landsliding, and all significant steep slopes in the following categories:

- a. greater than fifteen (15) percent but less than or equal to thirty (30) percent;

- b. greater than thirty (30) percent but less than or equal to forty (40) percent;
- c. over forty (40) percent.

Steep slopes shall be defined as all areas within a parcel with a slope of greater than fifteen (15) percent. Very steep slopes shall be defined as all areas within a parcel with a slope of greater than thirty (30) percent.

2. Ridgeline areas and mesa tops

Ridgelines and mesa tops shall be denoted and include all crests of hills or steep slopes.

3. Vegetative cover

Vegetative cover shall be denoted generally by type and density of vegetation, including:

- 1. Deciduous trees, 2. coniferous trees, 3. Gambel oak or high shrub, and 4. Sage, grassland, and 5. Agricultural crops. The town shall have the discretion to require a more detailed tree/vegetation survey if the site has significant or unusual vegetation, stands of trees, or wooded areas.

4. Wetlands

Wetlands as established by using the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, dated January 10, 1989 or more recent, whichever is stricter. Although the Federal Manual may change in the future, the Town will use this reference manual as a basis for wetlands determination.

5. Stream Corridors

Stream corridors as defined by their high-water mark.

D. ADDITIONAL INFORMATION AND STUDY REQUIREMENTS

In addition to the analysis required by the preceding subsection, the Planning Commission or Staff may require the applicant to undertake the following studies and submit the following information and assessments to ensure that the Town has adequate information to comprehensively assess all development proposals in or containing sensitive lands. Such information and studies may include, but are not limited to:

1. Visual Assessment

Visual Assessments of the subject property from relevant designated vantage points as directed by the Planning Commission or Staff, depicting conditions before and after the proposed development, including the proposed location, size, design, landscaping, and

other visual features of the project to assist in analyzing the potential aesthetic impact and most advantageous location of structures and other improvements to reduce any adverse impact. The visual assessment shall be conducted using techniques as approved by the Planning Commission or Staff, including but not limited to sketches, models, drawings, renderings, hand-enhanced photographs, and computerized images. Selection of the appropriate technique will depend on the size of the development and the visual sensitivity of the proposed development site.

2. Soil Investigation Report

Soil investigation report, including but not limited to shrink-swell potential, elevation of water table, general soil classification and suitability for development, erosion potential, hazardous material analysis, and potential frost action.

3. Geotechnical Report

Geotechnical report, including but not limited to location of major geographic and geologic features, depth and types of bedrock, structural features (folds, fractures, faults, etc.), and historic and potential landslide and other high-hazard areas such as mine shafts/tunnels, quarries and known snow avalanche paths.

4. Additional Slope Information

Additional slope information. If the size of the proposed development and visual sensitivity of the site dictate, the Planning Commission or Staff may require the submission of a slope/topographic map depicting contours at an interval of two (2) feet.

5. Fire Protection Report

Fire protection report, including but not limited to identification of potential fire hazards, mitigation measures, access for fire protection equipment, existing and proposed fire flow capability.

6. Hydrologic Report

Hydrologic report, including but not limited to information on groundwater levels, natural and agricultural irrigation and drainage channels and systems, and base elevations in floodplains and washes.

7. Agricultural Analysis

An agricultural analysis may be required to determine the impacts on important

agricultural areas within or adjoining the area(s). This analysis must address the effects of changing land uses on vegetation, irrigation systems, range land quality, weed control, agricultural accesses and rights-of-way and fire concerns to name a few

PART VI-A HILLSIDE AND RIDGELINE PROTECTION OVERLAY DISTRICT

A PURPOSE AND INTENT

The purpose of the Hillside and Ridgeline Protection Overlay District is to protect the health, safety, and general welfare of the residence of Boulder Town and to protect the unique visual and environmental character of all designated hillside and ridgeline areas within the Town by establishing procedures for the development of sensitive hillsides and ridgelines within the town. The standards set forth herein are intended to 1. minimize adverse soils and slope instability, 2. decrease potential erosion, and 3. reduce the adverse affects of grading, cut and fill operations. These procedures are also intended to preserve the natural character of hillsides and encourage development which is in harmony with the aesthetics and character of the Town. Significant ridgeline areas should be retained in a natural state, and development should be sighted in such a manner so as not to create a silhouette against the skyline or mountain backdrop. These standards shall apply to all districts listed in this ordinance and not as a separate district. These standards shall especially apply to development along ridgelines, development of land locations having sloping terrain of 20 percent or more, and shall also apply where slopes are less than 20 percent if, in the opinion of the Boulder Town Planning Commission, it is warranted. There shall be no development on land having a slope of 30 percent or more.

The provisions herein are intended to achieve the following:

1. To preserve the most visually significant slope banks and ridge lines in their natural state by clustering development into meaningful neighborhood units;
2. To encourage the location, design and development of building sites which provide maximum safety and human enjoyment, while adapting the development to the natural terrain,
3. To minimize the effects of grading and ensure that the natural character of the hillside is retained. Also, to minimize the scarring and erosion effects of cutting, filling and other development activities on hillsides,
4. To preserve visually significant rock out-crops, native plant materials, natural hydrology, and areas of historical or visual significance,
5. To encourage development which is designed to include the natural landscape as a major part of the site, thereby achieving a feeling of continuity throughout the project area,

6. To preserve views of significant visual features as viewed both within the hillside community as well as outside the hillside community;
7. To discourage mass grading of large pads, excessive terracing, and the use of stilts and cantilevers; and
8. To prohibit activities and uses which would result in the degradation of fragile soils and steep slopes.

B. MINIMUM SETBACK

No building, roof, or other appurtenant device shall encroach upon the ridgeline areas. Additionally, no roof or other appurtenant device, including mechanical equipment, on any building may visually intrude on the ridgeline areas.

C. OVERLAY DISTRICTS

The Hillside and Ridgeline Protection Overlay District established by this Section shall overlay the existing land use districts listed in this ordinance. In cases of conflict between the provisions of this section, other land use districts, the Uniform Building Code, or any other ordinances, the most restrictive provisions shall apply.

D. APPLICATION PROCEDURE

All application procedures described in this ordinance and all other applicable Boulder Town ordinances shall be adhered to as described in the underlaying land use district.

In addition, any application for a use in the Hillside Protection Overlay District shall include a conceptual plan of the proposed development which shall include the following:

1. The type and nature of the development;
2. The goals and objectives of the developer;
3. The development's relation to and compatibility with the Boulder Town General Plan; and
4. The required reports as described in section D below.

The conceptual plan shall be reviewed by the officer or body charged with the approval of the requested use. Such officer or body may determine the extent of required plans necessary to meet the intent of this chapter. Such officer or body may also establish conditions of the approval based on the finding of such reports. These conditions shall become a part of the record and be

considered binding upon the applicant as part of the approved plan.

E. REQUIRED REPORTS

The following described reports may be required by the officer or body charged with the approval of a land use in Boulder Town. The extent of such reports shall be determined by such officer or body after consideration of the purpose and intent of this chapter in relation to the proposed development.

1. General Information

- a. Name, address and telephone number of applicant;
- b. Names, addresses, and telephone numbers of the person(s) responsible for the preparation for any required reports;
- c. Date of application;
- d. A vicinity map showing the location of the site in relationship to the surrounding area's watercourse, hillsides, prominent geographic features, roads, and other significant structures;
- e. Boundary lines of the site and development to be made thereon; and
- f. Signatures of the owners of the site or of an authorized representative.

2. Technical Reports

- a. Grading Plan . The grading plan shall show the existing and proposed contours and cross-sections. Two-foot contours showing the topography of the existing ground extending at least one hundred (100) feet outside all boundary lines of the site, or significant to show on- and off-site drainage, shall also be included.
- b. Drainage Plan. The drainage plan shall show all surface and subsurface drainage systems and facilities, walls, curbing or other erosion protections devices to be constructed in connection with, or as part of the proposed work, together with a map showing the drainage area and estimated run-off of the area to be served by any drainage systems or facilities.
- c. Facilities Map. This map shall show any existing and proposed buildings or structures, easements and drainage channels on the property where the work is to be performed. Also, the locations of any buildings or structures on adjacent property which may be affected by grading operations shall be shown.

d. Soils Report. The soils report shall be prepared by an engineering geologist and/or geo-technical engineer. The report shall include at least the following:

1. Slope stability analysis: Conclusions and recommendations concerning the effects of material removal, introduction of water, ground shaking, and erosion on slope stability;
2. Foundation Investigation: Conclusions and recommendations concerning the effects of soil conditions on foundation and structural stability, including bearing capacity, shear strength, and shrink-swell potential of soils on the site;
3. The location and yield of springs and seeps on the site, evaluation of soil permeability for septic systems if proposed for use;
4. Conclusions and recommendations regarding means to increase safety during and after construction and means to minimize adverse effects to property.

e. Geology Report. The geology report shall be prepared by a qualified geologist or geo-technical engineer and shall contain at least the following:

1. Location and size of the subject area and its general setting, noting any aquifers, shale units, and poorly consolidated materials;
2. Structural features including any geological limitations;
3. Existence of surface hazards including potential for rock falls and toppling failures in cliffs, slopes and overhangs above the subject property; and;
4. Conclusions and recommendations regarding the effect of geologic conditions on the proposed development, recommendations identifying the means proposed to minimize any hazard to life or property, or any adverse impact on the natural environment.

f. Vegetation Report. A vegetation plan and report shall be prepared by a qualified landscape architect who, by training and experience, has expert knowledge of the subject. The report shall include a plan of any proposed re-vegetation of the site or modifications to existing vegetation, and a plan for the preservation of existing vegetation during construction activities.

g. Other Reports. Other reports deemed necessary by the officer or body charged

with the approval of a requested use to assure the health, safety and welfare of the project residents or general public may be requested from the applicant by written specification. Such reports shall be submitted with other applications materials.

F. APPROVAL REQUIRED BEFORE EXCAVATION

It shall be unlawful to excavate or grade any area within the Hillside and Ridgeline Protection Overlay Districts prior to final approval of the conceptual plan by the approving officer or body. In addition to the penalties outlined in this ordinance, Boulder Town may enter legal proceedings to require any person who violates this section to return a site to the condition prior to any disturbance.

G. BONDING

The approving officer or body will require the applicant to post a suitable bond to ensure project completion according to approved plans and completion of re-vegetation projects, the stabilization of a grading site, cuts and fills, the construction of storm water drainage facilities, or other hazard mitigation measures required in the approval of an application. The developer must provide performance and payment bonds in the amount of 100% of the development costs, and 10% will be held 12 months after the completion of the development.

H. APPEALS

In the event of a disagreement with the requirements imposed by an officer of Boulder Town in connection with this chapter, an applicant may appeal the matter to the Planning Commission by filing a notice of appeal at the Town Office within ten (10) working days of the decision of the city officer. Such appeal shall be scheduled for review at the next regular Planning Commission meeting.

I. DEVELOPMENT OF RECORD

The requirements of this chapter shall not apply to developments which were approved prior to the enactment of this chapter. Projects which have received preliminary plan approval from the Planning Commission shall be considered for the purposes of this chapter.

PART VII GREENBELT\MULTIPLE USE LANDS (DISTRICT 2)

A. PURPOSE

To provide areas for agricultural development protected from encroachment by commercial and industrial uses and to promote and preserve conditions favorable to large family farms. The keeping of large numbers of farm animals shall remain, even in the presence of growth and change.

B. ALLOWED USES

1. Agriculture
 - a. Raising crops, Horticulture, Gardening
 - b. Animals, including pigs and fowl, for recreation or for family food production for the primary use of persons residing on the premises or for commercial production and sale, but not including commercial feed lots, stockyards, pig farms, or poultry farms (over 100 fowl).
2. Single family dwellings
3. Household pets
4. Stabling livestock and using roadways for purposes of herding and moving animals.
5. Agricultural uses and accessory uses and buildings customarily incidental to agricultural uses. No building or conditional use permit will be required for agricultural barns and accessory buildings that do not have plumbing and/or electrical connections included.
6. Planned Unit Development/Master Plan Development
7. Home Occupations

C. CONDITIONAL USES

1. Churches.
2. Publicly funded schools (Nursery, primary and secondary schools)
3. Parks and public buildings.
4. Public utilities.
5. Living quarters for hired hands, seasonal laborers, or others receiving compensation for work performed on site.
6. Bed and Breakfast Establishments
7. Riding academies, schools and accompanying stables

8. Dude/guest ranch

9. Commercial

PART VIII PUBLIC LANDS (DISTRICT 3)

A. PURPOSE

The purpose of the public lands district is to regulate any public land that transfers to private ownership.

B. PERMITTED USES

1. Agriculture
2. Livestock grazing
3. Single-family dwellings--1 dwelling per 40 acres
4. Crop production

C. CONDITIONAL USES

1. Cemeteries
2. Parks
3. Public riding stables
4. Public utilities

PART IX MUNICIPAL/ PARK/ SCHOOL LANDS (DISTRICT 4)

A. PURPOSE

To allow civic and school development for the community.

PART X LOW DENSITY RESIDENTIAL (DISTRICT 5)

A. PURPOSE

To promote and preserve conditions favorable to large-lot family life, the keeping of limited number of animals and fowl and commercial on a limited basis when conditions permit. This

district is intended to be primarily residential in character.

B. ALLOWED USES

1. Horticulture and gardening
2. Single-family dwellings
3. Accessory buildings and uses customarily incidental to the permitted use.
4. Household pets
5. Agricultural uses and accessory uses and buildings customarily incidental to agricultural uses. No building or conditional use permit will be required for agricultural barns and accessory buildings that do not have plumbing and/or electrical connections included.
6. Home Occupation

C. CONDITIONAL USES

1. Cemetery
2. Church
3. Publicly funded school
4. Child day care or nursery
5. Park or playground
6. Planned unit development
7. Public utilities, essential services
8. Public buildings
9. Bed and Breakfast establishments
10. Commercial

D. HEIGHT REGULATIONS

As described in Part II. B. 1, page 6.

E. SETBACK REGULATIONS

As described in Part II. A. 6, page 6.

PART XI MEDIUM DENSITY RESIDENTIAL (DISTRICT 6)

A. PURPOSE

To provide and protect areas for medium density, single-family neighborhoods, while permitting the limited establishment of public and quasi-public uses which serve the requirements of families.

B. ALLOWED USES

1. Horticulture and gardening for personal use
2. Single family dwellings
3. Household pets
4. Accessory buildings and uses incidental to the permitted use
5. Agricultural uses and accessory uses and buildings customarily incidental to agricultural uses. No building or conditional use permit will be required for agricultural barns and accessory buildings that do not have plumbing and/or electrical connections included.
6. Home Occupations

C. CONDITIONAL USES

1. Child day care or nursery
2. Park or playground
3. Public utilities, essential services
4. Public buildings
5. Commercial

D. HEIGHT REGULATIONS

As described in Part II B. 1, page 6.

E. SETBACK REGULATIONS

As described in Part II. A. 6, page 6.

PART XII HIGH DENSITY RESIDENTIAL (DISTRICT 7)

A. PURPOSE

To provide and protect areas for high density, single-family neighborhoods, while permitting the limited establishment of public and quasi-public uses which serve the requirements of families.

B. ALLOWED USES

1. Horticulture and gardening for personal use
2. Single family dwellings
3. Household pets
4. Accessory buildings and uses incidental to the permitted use.

C. CONDITIONAL USES

1. Child day care or nursery
2. Public utilities, essential services
3. Public buildings

D. HEIGHT REGULATIONS

As described in Part II. B. 1, page 6.

E. SETBACK REGULATIONS

As described in Part II. A. 6, page 6.

PART XIII SPECIAL RESIDENTIAL (DISTRICT 8)

A. PURPOSE

To provide and protect areas for high density, four (4) units per acre to provide for affordable housing, permitting limited establishment of the public and quasi-public uses which serve the requirements of the neighborhood.

B. ALLOWED USES

1. Horticulture and gardening for personal use
2. Single family dwelling
3. Two-family dwelling
4. Household pets
5. Accessory buildings and uses customarily incidental to permitted uses.

C. CONDITIONAL USES

1. Dwellings
 - a. Three-family dwellings
 - b. Four-family dwellings
 - c. Multi-family dwellings
2. Home occupation
3. Church
4. Publicly funded school
5. Child day care or nursery
6. Public utilities, essential services
7. Accessory uses and building customarily incidental to conditional uses

D. HEIGHT REGULATIONS

As described in Part II. B. 1., page 6.

E. SETBACK REGULATIONS

As described in Part II. A. 6, page 6.

PART XIV COMMERCIAL (DISTRICT 9)

A. PURPOSE

To provide areas for neighborhood commercial development.

B. ALLOWED USES

All commercial business and construction require a conditional use permit. All construction must meet the Uniform Building Code. Adequate off-street parking with driveways provided for ingress and egress is required. Allowed commercial development shall be as follows:

- Transient lodging
- Public utilities
- Building materials, hardware
- General merchandise
- Food-retail
- Automotive
- Apparel and accessories
- Furniture and home furnishings equipment
- Eating places
- Other retail
- Finance, insurance and real estate
- Laundry and dry cleaning
- Photographic services
- Beauty and Barber
- Funeral parlors
- Apparel repairs
- Repair, auto
- Professional
- Hospital services
- Rest homes and convalescent
- Contract construction
- Government offices
- Educational: nursery/day care
 - Grades K-8
 - Grades 9-12
- Museums
- Outfitters
- Churches

Clinics as defined
Light manufacturing

Uses not listed are not allowed.

C. COMMERCIAL DESIGN CRITERIA

Boulder Town has determined that various aspects of architectural design have a significant impact on the character and value of Boulder's rural agricultural neighborhoods and businesses and that preserving and enhancing this character requires the existence of a certain harmony and compatibility in these aspects from one building to the next and throughout the particular neighborhood or district. They have also determined that preserving and enhancing the visual character of the town and areas of unique historical and/or architectural significance furthers the economic and cultural well-being of the community.

The intent of these standards is to identify a range of design options which will encourage development compatible with the existing character of Boulder and which will discourage introduction of incompatible features. The following design criteria will be applied in the evaluation of commercial projects:

1. Buildings, parking areas, road access, sidewalks, etc., can not cover more than the following percentage of developable space: 1-2 ½ acre lot--50% coverage. 2 ½-5 acre lot--40% coverage. Lots larger than 5 acres--25% coverage.
2. An open space design plan detailing topographical features, water ways, large trees etc. as well as any agriculture is required with any new commercial use. Open space is defined as that area not covered by buildings, parking areas, access roads, sidewalks, etc. and should include but is not limited to the following: Environmentally sensitive areas, distinctive cultural and natural features, and existing agricultural lands.
3. All set-backs shall be at least (30 ft.) from the edge of the public right-of-way. Parking areas should not be located within any set-back. Parking areas are to be located on the side or at the rear of any proposed structures.
4. There shall be at least two access points or roads to the proposed commercial use(s). Access from any public road should be a minimum width of 24 ft. But no larger than 32 ft.
5. Curb and gutter are not encouraged and may be used only when necessary.
6. Parking requirements for all commercial uses are as shown on Parking Table.
7. Surface water shall be controlled on site. Surface flows from the property onto any

public street or onto any adjacent property shall not exceed what has historically flowed from the property before the commercial use was established.

8. The open space of each development shall have a detailed landscape plan that shows type of plants and materials to be used, arrangement of those materials and plants, and how the particular type of landscape design selected will be maintained, i.e. how the landscape will be watered. Natural landscaping is encouraged so that the commercial project "fits in" to the established character of the community.

9. Structural design of commercial facades shall conform with the natural and/or historical designs currently in use within the community. The Planning Commission is responsible to determine what designs meet this requirement and shall, if necessary, request the developer to provide an analysis of how a particular design "fits" an existing or historical design pattern of the community. The use of unusual shapes, color, and other characteristics, such as size, that cause new buildings to call excessive attention to themselves and create a jarring disharmony shall be avoided.

10. Culinary and irrigation water sources shall be adequate to meet State of Utah health and safety requirements, and shall be adequate to accomplish the intent of landscape plans.

11. Waste water systems shall be designed to satisfy all State of Utah requirements and to have the least impact on any adjacent culinary wells.

12. Drive-up windows on commercial buildings shall not be allowed.

13. Existing features which add natural value or historical amenities to the community shall be retained. Buildings shall be sited in such a manner that preserves scenic views. Existing vegetation should also be retained as much as possible. Vegetation protection shall be required during construction so that disturbance is limited. Existing features such as water courses, rivers, irrigations works, wetlands, historic sites, critical meadow lands, important vistas, and other irreplaceable assets shall be preserved. All significant trees shall be preserved where possible and where necessary should be welled and protected against change of grade.

14. In order to protect the Town from the financial burdens resulting from damage to or increased maintenance cost for Town facilities and infrastructure that may occur as a result of incomplete or inadequate site improvements on private construction projects or off-site improvements performed by the developer as required by the Town, it is the policy of the Town to require that developers either complete all required on- or off-site improvements prior to occupancy, or if that is not possible, that adequate financial security for that completion, together with right of entry to the property to complete that work be granted to the town. It is specifically the intention of the Town to require that storm drainage work, paving, water and sewer facilities, soil retention structure, and landscaping

as needed to control erosion be completed according to standards adopted by the Town.

15. Motels and other places of transient lodging shall be no larger than thirty (30) units.

16. Any commercial building must meet the Uniform Building Code and may not exceed two-and-one-half (2 1/2) stories or 30 feet in height.

D. REGULATION OF FOOD SERVICE ESTABLISHMENTS

Boulder Town has determined that certain food service establishments, i.e. drive-in, formula or fast food establishments providing formula menus and services, are not in keeping with Boulder's rural town character in that they offer rushed, ready-made meals from formula menus that can be purchased in other parts of the United States and are not unique to Boulder.

No conditional use permit application shall be accepted, processed or considered for a service establishment having ALL of the following characteristics:

1. It specializes in short order or quick service food services;
2. It serves food primarily in paper, plastic or other disposable containers;
3. It delivers food or beverage products in such a manner that customers may remove such food or beverage products from the food service establishment for consumption;
4. It is a formula food service establishment required by contractual or other arrangements to operate with standardized menus, ingredients, architecture, decor, uniforms or similar standardized features.

PART XV SUPPLEMENTARY REGULATIONS

A. RIGHT TO FARM PROVISIONS

Since Boulder places a high value on the protection and preservation of agricultural land uses, it will be required that:

All Subdivisions and Master Planned Developments that; (a) border an agricultural area, or; (b) will contain an agricultural open space or preserves, shall be required to provide an analysis to be reviewed and implemented as part of the Conditional Use Permit process, Master Planned Development review process or subdivision process. This analysis shall be used to determine the impact(s) on associated farming and/or livestock operations affected by the development, and implement remediation and protection designs in the development to alleviate conflicts with the affected agricultural operations.

The developer is responsible for the performance of the analysis with input and review by the Town. The Planning Commission and developer shall use the following review guidelines in determining the impact on farming operations of the development, and will apply appropriate conditions during the approval process to insure that the farm or ranch affected is assured a right to farm without undue burden of residential or commercial growth and complaints by neighbors. All rights to farm are preserved to the best ability of the Town, taking into consideration practical land use applications and private property rights and concerns.

The following factors shall be used as guidelines or issues in the preparation and review of the agricultural impact analysis. Impact solutions may be developed as permit conditions, restrictive covenants or agreements:

1. Protection of irrigation access and maintenance of ditches and canals
2. Safety and protection of the public from ditches, canals, ponds, and drainage systems
3. Livestock movement corridor protections and safety concerns. Livestock, including strays, will have the right to use public roadways.
4. Fencing safety (i.e. electrical, barbwire) and design
5. Private property protection issues
6. Hunting protection, access and livestock safety concerns
7. Protection of farm equipment ingress and egress
8. Erosion and soil protection and conservation concerns
9. Drainage of the subdivision and designs to minimize the discharge or impact on agricultural lands and soils
10. Noxious weeds, pests and pet (dog) controls in the subdivision
11. Provisions, acknowledgments and understandings by new property owners (including hold harmless agreements if necessary) that farm work hours run late and begin early and that farm operations may contribute to noises and odors objectionable to some subdivision residents.
12. Screening provisions and landscaping designs to reduce noise or visual impacts on surrounding or conflicting land uses
13. Any other provisions or concerns that the Planning commission deems necessary to

protect the right to farm on adjoining or appurtenant properties.

B. HOME OCCUPATIONS

A home occupation in an agricultural or residential area is a lawful and permitted use if it complies with the definitions and guidelines outlined in this section. If it does not meet these guidelines, it shall be a conditional use.

The Home Occupation must be conducted and carried on entirely within a dwelling by persons residing in the dwelling or by those persons at sites away from the dwelling, which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character thereof. A home occupation shall not include the sale of goods or merchandise directly from the home, except those which are produced on the premises and shall not involve the use of any yard space or activity outside of the buildings not normally associated with residential use.

The use of mechanical equipment shall be limited to small tools whose use shall not generate noise, smoke, or odors perceptible beyond the premises of the dwelling. Home occupations would not allow a resident, professional or otherwise, to use the dwelling for his general practice when that practice is normally associated with some other district. Home occupations will, however, allow the use of the dwelling by a physician, dentist, lawyer, architect, engineer or the like for consultation or emergency treatment. Consultation shall include the use of a dwelling to receive mail and maintain a telephone, fax or automatic answering device and computer related to the home occupation, but shall not allow frequent or constant visitation to the residence by clients to transact business. Tele-commuting in a home satellite office, away from a main office is permitted.

Home occupation shall include the care of fewer than six children other than members of the family residing in the dwelling or as prescribed by State codes or regulations. In all cases, there shall be no advertising of said home occupations by window displays or signs, and no one outside of the immediate family may be employed within the home. In the event covenants applicable to the property preclude this use, the covenants shall control. A home occupation as described by this section would be a permitted use in any residential or agricultural zone and would require compliance with Town business licensing regulation in effect at the time of use.

All home occupations outside of the guidelines of the permitted use as described in this section shall be conditional use, and must be applied for as such. Agricultural businesses that comply with this code in an agricultural area are permitted use.

C. BED AND BREAKFAST INNS

Bed and Breakfast establishments may be allowed in any residential or agricultural district as a conditional use with the following conditions attached:

1. Shall have no more than five guest rooms.
2. One (1) off-street parking space shall be provided per employee plus one (1) space per guest room. Parking is not allowed on main roads. Parking must be provided around Bed and Breakfast enclosure. No parking shall back directly onto any street.
3. Meals may be served to residents, employees, overnight lodgers, and guests of overnight lodgers only. No cooking facilities shall be allowed in guest rooms.
4. Such use shall conform to all applicable health, safety, and building codes and must be capable of such use without structural or site alteration which changes the residential character of the structure and yards.
5. No alcoholic beverages shall be sold on the premises.
6. No receptions, banquets, or catering shall be permitted other than for registered lodgers.
7. Any commercial use shall be incidental to the Bed and Breakfast use i.e., gift shop, etc. and shall be limited to 5% of the total square foot area of the main floor of the building.

D. SPECIAL EVENT

The following regulations are provided to accommodate those uses of land or buildings which are temporary in nature and are not, therefore, sited as regular permitted or conditional uses in any district of the Town. The character of these uses shall be consistent with the General Plan and be such that proper conditions are required to protect adjacent properties and the general health, safety, and welfare of the citizens of Boulder Town. Private or family gatherings shall be permitted and shall not require a permit.

1. The following Special events are allowed subject to the issuance of a Special Event Permit and the regulations established herein:
 - a. Non-profit Fund-raising Activities. Any and all offerings of products and services conducted as fund-raising activities by a recognized non-profit organization subject to the following limitations:
 - I. On the basis of renewal and at the Town's discretion, one event of up to seven (7) consecutive days in duration per quarter if the products or services are offered for sale in a temporary site.
 - b. Organized Events. Educational, historic, religious and patriotic displays or exhibits, concerts, athletic or recreational even, festivals, street fairs, arts and

crafts fairs and other organized events, subject to the following limitations:

- ii. Only one (1) event may be sponsored by the same individual, business or organization per quarter.
- iii. No single event shall exceed seven (7) consecutive days.

C. Town Sponsored Events Special events sponsored by the Town do not require a Special Event Permit

E. OUTDOOR LIGHTING

1. Buildings and grounds in the Town of Boulder may be illuminated by such lighting fixtures as the owner of the property may determine, provided that the lighting fixtures are equipped with proper shields, shrouds, lenses, or other devices that concentrate the illumination only upon the building and grounds of the owner and to prevent bright or direct illumination from being directly visible from other properties in the Town of Boulder.
2. Indoor lighting shall not be constructed or used in such a fashion as to circumvent the restrictions on outdoor lighting set forth herein.
3. Insect control devices that use visible light shall also comply with the outdoor lighting restrictions set forth herein.
4. Owners of existing outdoor lighting are not required but encouraged to bring their lighting fixtures into compliance with this ordinance.

F. EXOTIC/DANGEROUS ANIMALS

Exotic and dangerous animals (see definition) shall not be permitted in any district.

PART XVI REGULATORY PROVISIONS

A. ENFORCEMENT

1. The Building Official is the officer charged with the enforcement of this title, but from time to time, by resolution or ordinance, the Town Council may delegate the enforcement, in whole or in part, to any other employee of the town without amendment to this title. The Building Official may not waive any provisions of this title. The Building Official shall not issue any permit unless the plans of the proposed erection, construction, reconstruction, alteration and use fully conform to all land use development regulations then in effect.

2. It shall be the duty of the Building Official to inspect or cause to be inspected all buildings and improvements in course of construction or repair.

3. No construction, alteration, repair, or removal of any building or structure or any part thereof, or change of use of any land or building as provided or as regulated in this title is allowed, without a written permit issued by the Building Official. The intent is to cover only buildings or land regulated by this ordinance.

B. APPLICATION AND REVIEW

1. All applications for permits shall be made to the Town Clerk. All applications for permits except for single family dwellings and their accessory buildings shall be submitted also to the Planning Commission for design review to assure conformity with the intent of the General Plan and compliance with all applicable ordinances and regulations. The design submissions shall include architectural and site development plans to scale, which shall show building locations, landscaping, prominent existing trees, ground cover treatment, fences, off-street parking and circulation, location and size of adjacent streets, north arrow and property lines, existing grades and proposed new grades, copy of water source and permit, copy of sewer (septic system) permit, and locations of all freestanding signs.

2. Design review for buildings and uses covered by conditional use permits shall be incorporated within such conditional use permit and need not be a separate applications, provided the requirements of this ordinance are met.

C. PLANNING COMMISSION APPROVAL

The Planning Commission, or the Building Official when authorized by the Planning commission, shall determine whether proposed architectural and site development plans submitted are consistent with the general objectives of this title, and shall give or withhold approval accordingly. Denial of approval by the Building Official may be appealed to the Planning Commission, and denial by the Planning Commission may be appealed to the Board of Adjustment, as provided for in this ordinance.

D. NUISANCE AND ABATEMENT

Any building or structure erected, constructed, altered, enlarged, converted, moved or maintained contrary to provisions of town ordinances, and any use of land, building, or premise established, conducted or maintained contrary to provisions of and town ordinance shall be; and the same hereby is, declared to be unlawful and a public nuisance; and the Town Attorney shall, upon request of the Town Council, commence action for abatement thereof in a manner provided by law, and restrain or enjoin any person, firm, or corporation from

erecting, building, maintaining, or using the building or structure or property contrary to the provisions of Town Ordinance. The remedies provided for herein shall be cumulative and not exclusive.

E. LICENSING

All departments, officials and public employees of the town which are vested with the duty or authority to issue permits or licenses shall conform to the provisions of this ordinance and shall issue no permit or license for uses, building or purposes where the same would be in conflict with there provisions of this ordinance and any such permit or license, if issued in conflict with the provisions of this ordinance shall be null and void. Appeals will go to the Board of Adjustments.

F. FEES

Fees may be charged applicants for building, occupancy, and conditional use permits, design review and planned unit development approval, Planning Commission and Board of Adjustment hearings, and such other services as are required by this ordinance to be performed by public officer or agencies. Such fees shall be established by the governing body and be amounts reasonable needed to defray cost to the public.

G. PENALTY FOR VIOLATION

Whoever shall violate any of the provisions of this title shall be guilty of a class B misdemeanor for each and every day such violation shall occur or continue and upon conviction of any such violation, shall be punishable by a fine of not more than the maximum as allowed by that State of Utah or by imprisonment for not more than six months, or by both such fine and imprisonment.

H. EFFECT ON PREVIOUS ORDINANCES AND MAPS

The existing ordinances covering land use and development regulations, in their entirety and including the maps and standard drawings heretofore adopted and made a part of said ordinances, are hereby superseded and amended to read as set forth herein; provided, however, that this ordinance, including its accompanying maps and standard drawings, shall be deemed continuation of previous ordinances and not a new enactment, insofar as the substance of revisions of previous ordinances are included in this ordinance, whether in the same or in different language; and this ordinance shall be so interpreted upon all questions of construction relating to tenure of officers and boards established by previous ordinances and to questions of conforming or non-conforming dates upon which such uses, buildings, or structures became conforming or non-conforming.

I. INTERPRETATION

In interpreting and applying the provisions of this title, the requirements contained herein are declared to be the minimum requirements for the purpose set forth.

J. CONFLICT

1. This title shall not nullify the more restrictive provisions of covenants, agreements, other ordinances or laws, but shall prevail notwithstanding such provisions which are less restrictive.
2. If any provisions of this title or its supplication to any persons or circumstance is for any reason, held invalid, the remaining portion and/or portions of this title or the application of the provision to other persons or circumstance shall not be affected.

PART XVII DEFINITIONS:

Unless the context requires otherwise, the following definitions shall be used in the interpretation and construction of this ordinance. Words used in the present tense include the future; the singular number shall include the plural, and the plural the singular; the word "building" shall include "structure"; the words "used" or "occupied" shall include arranged, designed, constructed, altered, converted, rented, leased, or intended to be used or occupied. The word "shall" is mandatory and not directory, and the word "may" is permissive; the word "person" includes a firm, association, organization, partnership, trust, company, or corporation, as well as an individual; the word "lot" includes the word plot, or parcel. Words used in this ordinance but not defined herein shall have the meaning as defined in any other ordinance adopted by the local jurisdiction.

1. **ACCESSORY USE OR BUILDING** A use or building on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or building.
2. **AGRICULTURE** The tilling of the soil, the raising of crops, horticulture and gardening; breeding, grazing and keeping or raising of animals as well as domestic animals and fowl, but not including industry or business such as fruit packing plants, fur farms, hog farms, animal hospitals or similar uses.
3. **ANIMALS** Animals shall include the following: horses, cows, sheep, goats, and pigs, excluding wild and exotic animals.
4. **AVERAGE PERCENT OF SLOPE** An expression of rise or fall in elevation along a line perpendicular to the contours of the land, connecting the highest point of land to the lowest point of land within an area or within a lot. A vertical rise of one hundred (100) feet between two points one hundred (100) feet apart, measured on a horizontal plane is a one hundred (100) percent slope.
5. **BED AND BREAKFAST** An establishment which provides overnight accommodations and a breakfast meal for consideration for the accommodation of guests.

6. BEGINNING OF CONSTRUCTION The clearing or grading of the land.
7. BODY AND FENDER SHOP A facility for major automobile, truck, mobile home, recreational coach or recreation vehicle repairs to body, frame or fenders and including rebuilding.
8. BUILDABLE AREA The portion of a lot remaining after required yards have been provided, except that land which is considered sensitive land or that has an average grade exceeding fifteen (15) percent shall not be considered buildable area unless it is approved by conditional use permit for construction after study by a geologist, soils engineer, or sanitarian as required by the Planning Commission.
9. BUILDING Any structure used or intended to be used for the shelter, or enclosure of persons, animals, or property.
10. BUILDING, HEIGHT OF The vertical distance from the average finished grade surface to the highest point of the building roof or coping.
11. BUILDING INSPECTOR
12. CARPORT A private garage not completely enclosed by walls or doors. For the purposes of this ordinance, a carport shall be subject to all the regulations prescribed for a private garage.
13. CHILD CARE OR NURSERY A duly licensed establishment for the care and/or the instruction of six (6) or more children, for compensation, other than for members of the family residing on the premises, but not including a public school.
14. CHURCH A building, together with its accessory buildings and uses, maintained and controlled by a duly-recognized religious organization where persons regularly assemble for worship.
15. CLINIC, DENTAL OR MEDICAL A building in which a dentist or physician and allied professional assistants are associated for the conduct of their professions. The clinic may include a dental and/or a medical laboratory and an apothecary, but it shall not include in-patient care or operating rooms for major surgery.
16. CLINIC, VETERINARY A building in which a veterinary physician uses to conduct his profession.
17. CONDITIONAL USE A use of land that, because of its unique characteristics or potential impact on the town, surrounding neighbors, or adjacent land uses, may not be

compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts; a use of land for which a conditional use permit is required, pursuant to this ordinance.

18. CORRAL A space, other than a building used for the confinement of animals or fowl.
19. COVERAGE, BUILDING The percent of the total site area covered by buildings.
20. DRIVEWAY A private roadway, the use of which is limited to persons residing, employed, or otherwise using or visiting the parcel on which the driveway is located.
21. DWELLING Any building or portion thereof designed or used as the more or less permanent residence or sleeping place of one or more persons, but not including a tent, recreational coach, hotel, motel, hospital or nursing home.
22. DWELLING, SINGLE-FAMILY A building arranged or designed to be occupied by one (1) family, the structure having only one (1) dwelling unit.
23. DWELLING, TWO-FAMILY A building arranged or designed to be occupied by two (2) families, the structure having only two (2) dwelling units.
24. DWELLING, THREE-FAMILY A building arranged or designed to be occupied by three (3) families, the structure having only four (3) dwelling units.
25. DWELLING, FOUR-FAMILY A building arranged or designed to be occupied by four (4) families, and having more than four (4) dwelling units.
26. DWELLING, MULTI-FAMILY A building arranged or designed to be occupied by more than four (4) families and having more than four (4) dwelling units.
27. EASEMENT That portion of a lot or lots reserved for present or future use by a person or agency other than the legal owner(s) of said property(ies). The easement may be for use under, on, or above said lot or lots.
28. ESSENTIAL FACILITIES Utilities or sanitary and public safety facilities. All proposed residential or commercial building or use shall be connected to an approved individual septic system.
29. EXOTIC/DANGEROUS ANIMALS Animals that pose a threat to the safety or well-being of the community including livestock and crops. Ex-- tigers, lions, large snakes etc.
30. FAMILY An individual, or two (2) or more persons related by blood, marriage, or adoption, or a group of not more than our (4) persons (excluding servants) who are not

related living in a dwelling unit as a single housekeeping unit and using common cooking facilities.

31. **FAST FOOD RESTAURANT** An establishment for the sale of on-premise food or drink, if providing in-car service, window service, drive-through service or service at two or more take-away stations within the building, or if there is sale in any other way of food or drink packaged for takeout except incidental to a conventional restaurant or subordinate to this primary use. (Such as a convenience store.)
32. **FLOOD HAZARD** A hazard to land or improvements due to inundation or overflow water having sufficient velocity to transport or deposit debris, scour the surface soil, dislodge or damage buildings, or erode the banks of water courses.
33. **FLOOR AREA** Area included within surrounding walls of a building or portion thereof, exclusive of vents, shafts, and courts.
34. **FRONTAGE, BLOCK** All property fronting on one (1) side of the street between intersecting or intercepting streets, or between a street and a right-of-way, waterway, end of dead-end street, or political subdivision boundary, measured along the street line. An intercepting street shall determine only the boundary of the frontage on the side of the street which it intercepts.
35. **GARAGE, PRIVATE** A detached accessory building, or a portion of a main building, used or intended to be used for the storage of motor vehicles, recreational coaches, boats or other recreational vehicles.
36. **GARAGE REPAIR** A structure or portion thereof other than a private garage uses for the repair of self-propelled vehicles, trailers or boats, including general repair, rebuilding or reconditioning of engines, motor vehicles, recreational coaches and minor collision service but not including major body, frame or fender repairs or overall automobile or truck painting.
37. **GEOLOGIC HAZARD** A hazard inherent in the crust of the earth, or artificially created, which is dangerous or potentially dangerous to life, property, or improvements, due to the movement, failure, or shifting of the earth.
38. **GOVERNING BODY** The elected legislative body of the Town of Boulder
39. **HOME OCCUPATIONS** Any use conducted entirely within a dwelling and carried on by persons residing in the dwelling unit, occupying no more than twenty five (25) percent of the dwelling unit which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character thereof.

40. **HOUSEHOLD PETS** Animals or fowl ordinarily permitted in the house and kept for company or pleasure, such as dogs, cats, and canaries, but not including a sufficient number of dogs as to constitute a kennel. Household pets shall not include the keeping of dangerous animals.
41. **JUNKYARD** The use of any lot, portion of a lot, or tract of land for the storage, keeping or abandonment of junk, including scrap metals or other scrap material, or for dismantling, demolition or abandonment of automobiles, or other vehicles, or machinery or parts thereof; provided that this definition shall be deemed not to include such uses which are clearly accessory and incidental to any agricultural use permitted in the district.
42. **KENNEL** Any premises where three or more dogs older than four months are kept for commercial boarding, breeding, or sale.
43. **LIGHT MANUFACTURING** Agricultural processing, the assembly, fabrication or processing of goods and materials using processes that ordinarily do not create noise, smoke, fumes, odors, glare, or health or safety hazards outside of the building or lot where such assembly, fabrication or processing takes place, where such processes are housed entirely within a building, or where the area occupied by outdoor storage of goods and materials used in such processes does not exceed twenty-five percent of the floor area of all buildings on the property. Light manufacturing generally includes processing and fabrication of finished products, predominantly from previously prepared materials, and includes processes which do not require extensive floor areas or land areas.
44. **LOCAL JURISDICTION** The Town of Boulder
45. **LOT** A parcel of land or unit of land described by metes and bounds and held or intended to be held in separate lease or ownership, or a parcel or unit of land shown as a lot or parcel on a recorded subdivision map, or shown on a plat used in the lease or sale or offer of lease or sale of land resulting from the division of a larger tract into three (3) or more smaller units.
46. **LOT, DEPTH** The horizontal distance between the front and the rear lot lines measured in the main direction of the side lot lines.
47. **LOT LINES** The property lines bounding the lot.
48. **LOT LINES, FRONT** For an interior lot, the lot line adjoining the street; for a corner lot or through lot, the lot line adjoining either street, as elected by the owner.
49. **LOT LINES, REAR** Ordinarily, that line of a lot which is opposite and most distant from the front line of the lot. In the case of a triangular or gore-shaped lot, a line ten (10) feet in length within the parcel parallel to and at a maximum distance from the front lot line. In

cases where these definitions are not applicable, the Town of Boulder Building Inspector shall designate the rear lot line.

- 50. **LOT LINE, SIDE** Any lot boundary line not a front or rear lot line. A side lot line separating a lot from another lot or lots in an interior side lot line; a side lot line separating a lot from a street is a street side lot line.
- 51. **LOT, RIGHT OF WAY** A strip of land connecting a lot to a street for use as private access to that lot.
- 52. **MASTER PLAN DEVELOPMENT OR PLANNED UNIT DEVELOPMENT** A development option designed and reviewed under the Master Planned Development or Planned Unit Development process described in this code.
- 53. **MOBILE HOME** A detached, single-family dwelling unit designed for long-term occupancy, and to be transported on its own wheels or on flatbed or other trailers or detachable wheels; containing a flush toilet, sleeping accommodations, a tub or shower bath, kitchen facilities, and plumbing and electrical connections provided for attachment to appropriate external systems, and ready for occupancy except for connections to utilities and other minor work, placed on a permanent foundation, and with full skirting.
- 54. **MODULAR HOME** A permanent dwelling structure built in pre-fabricated units, which are assembled and erected on the site, or at another location and brought as a unit to the site; said modular home is classed as a mobile home until it is placed on a permanent foundation and complies with all governing building codes.
- 55. **MOTEL** A building or group of buildings for the drive-in accommodation of transient guests, comprising individual sleeping or living units, and designed and located to serve the motoring public.
- 56. **NON-CONFORMING BUILDING OR STRUCTURE** A building or a structure which does not conform to the regulations for height, coverage, or yards of the district in which it is situated, but which was in conformity with applicable regulations, if any at the time of its erection.
- 57. **NON-CONFORMING USE** The use of a building or structure or land which does not conform to use regulations for the district in which it is situated, but which was in conformity with applicable regulations, if any, at the time of its establishment.
- 58. **OFFICIAL MAP** A map which has been adopted as the official map of the Town of Boulder, showing existing public streets, streets on plats of subdivisions which have been approved by the Town of Boulder Planning Commission, and/or other street extensions, widening, or variations which have been accurately surveyed and definitely located.

59. **OFF-STREET PARKING SPACE** The space required to park one (1) passenger vehicle, which space shall meet the requirements of this ordinance.
60. **OPEN SPACE** Open Space shall be defined as different separate types dependent upon occupancy, use, and control. All types of open space are referred to collectively as “open space” in this ordinance. Any of these types of open space could be public or private open space. They shall include:
- a. **Agricultural Open Space:** open lands left undisturbed or dedicated primarily as usable agricultural lands for farming and ranching purposes.
 - b. **Natural Open Space:** natural undisturbed areas with little or no improvements or irrigation.
 - c. **Landscaped Open Space:** Landscaped areas free of building, parking lots and driveways.
 - d. **Recreational Open Space:** Parks and areas of active recreation use. To include trails and all uncovered recreational facilities.
61. **OUTFITTERS** A group, association, corporation, individual, or organization that provides equipment, supplies, and/or trained guides for recreational services.
62. **PARKING LOT** An open area, other than a street, used for the parking of more than four (4) automobiles and available for public use, whether free, for compensation, or accommodation for clients or customers.
63. **PLANNED UNIT DEVELOPMENT (PUD)** Concept of allowing flexibility in planning and development such as clustering or density considerations and other creative site development.
64. **PLOT PLAN** A plat of a lot, drawn to scale, showing its actual measurements, the size and location of any existing buildings or buildings to be erected, the location of the lot in relation to abutting streets, and such other information as may be required by the Town of Boulder Planning Commission.
65. **PROPOSED (FUTURE) LAND USE MAP** A map designed to show, as nearly as possible, the acceptable or anticipated change of land use within the near future (approx. five years) with an overlay for anticipated changes within ten (10) years.
66. **RIGHT OF WAY (LOT)** A strip of land not less than sixteen (16) feet in width connecting a lot to a street for use as private access to that lot.
67. **SENSITIVE LANDS** Geological hazardous areas, areas of high erosion potential, wet

lands, high water table areas and flood plains, wooded river bottoms, unsuitable building soils, hillsides with slopes greater than 30%, critical wildlife habitat, high vegetation/fire danger, water shed protection, and other sensitive lands or issues.

- 68. **SIGNS** All signs are regulated by Town of Boulder sign ordinance #21 A.
- 69. **SITE PLAN** A plan required by, and providing the information required by this ordinance.
- 70. **SLOPE** The level of inclination of land from the horizontal determined by dividing the horizontal run of the slope into the vertical rise of the same slope and converting the resulting figure into a percentage value. For purposes of regulation and measurement, slopes must cover at least twenty five (25) feet vertically and fifty (50) feet horizontally.
- 71. **STORY, HALF** A partial story under a gable, hip, or gambrel roof, the wall plates of which on at least two (2) opposite exterior walls do not extend more than four (4) feet above the floor of such story, and the ceiling area of which does not exceed two-thirds (2/3) of the floor area of the same half story.
- 72. **STRUCTURE** Anything constructed, the use of which requires fixed location on the ground, or attachment to something having a fixed location upon the ground; includes “building.”
- 73. **YARD, FRONT** A space on the same lot with a building, between the front line of the building and the front lot line, and extending across the full width of the lot. The “depth” of the front yard is the minimum distance between the front lot line and the front line of the building.

TABLE NO. 1
DENSITY AND POLICY INTENT BY LAND USE CATEGORY

#	DISTRICT	DENSITY	POLICY INTENT
	ENVIRONMENTAL/MULTIPLE USE		
1	Critical/Sensitive Lands*		Limited development in areas in areas with environmental constraints
2	Greenbelt/Multiple Use Lands	1 unit/5 acres	Development on agricultural lands
3	Public Lands		Discourage all development on public lands
4	Municipal/Park/School Lands		Civic and school development for the community
	RESIDENTIAL		
5	Low Density Residential	1 unit/5 acres	Single family residential
6	Medium Density Residential	1 unit/2.5 acres	Single family residential
7	High Density Residential	1 unit/1 acre	Single family residential
8	Special Residential	4 units/1 acre	Provision for affordable housing
	COMMERCIAL		
9	Commercial		Conditional commercial uses

*Note: District 1 is an “overlay” relating to all other districts.

TABLE 2
MINIMUM CAR PARKING REQUIREMENTS

Category	# spaces	Per Unit Description
Household Units	2	per each unit up to four (4) plexes
Group quarters	1	per sleeping room, except SLU code 1241
Retirement homes/centers	1	per two (2) beds
Bed and Breakfasts	1	per sleeping room (plus parking for accessory uses)
Mobile home parks	2	per each unit plus 1 guest parking space per 3 units
Transient lodging	1	per unit plus parking for accessory uses
Communications	1.5	per employee at highest employment shift
Electricity regulating station	1	per employee at highest employment shift
Water treatment plant	1	per employee at highest employment shift
Scwage treatment plant	1	per employee at highest employment shift
Building materials, hardware	3	per 1000 square feet of floor area
General merchandise	5	per 1000 square feet of floor area
Food-retail	5.5	per 1000 square feet of floor area
Automotive	5	base, plus 1 per employee
Apparel and accessories	5	per 1000 square feet of floor area
Furniture and home furn. equip.	1	Per 600 square feet of floor area
Eating places	1	per (2) employees, plus one (1) per (4) seats
Other retail	5	per 1000 square feet of floor area
Finance, insurance and real estate	1	per 250 square feet of floor area
Laundry and dry cleaning	1.5	per employee, plus 3 additional
Photographic services	1	per 200 square feet of floor area
Beauty and barber	2	per employee at highest employment shift
Funeral parlors	12	per 250 square feet of floor area
Apparel repairs	1	per 200 square feet of floor area
Repair	1	per 250 square feet of floor area
Repair, auto	6	per 1000 square feet of floor area
Professional	1	per 300 square feet of floor area
Hospital services	1	per bed, or per 1000 square feet, whichever is more
Rest homes and convalescent	1	per 2 beds, or per 1000 square feet, whichever is more
Contract construction	1	per employee at highest employment shift

Category	# spaces	Per Unit Description
Government offices	1	per 250 square feet of floor area
Educational: nursery/day care	1	per employee
Grades K-8	2	per teaching station
Grades 9-12	3	per teaching station
Museums	10	per 1000 square feet of floor area
Outfitters	4	per staff member
Churches	1	per (4) seats or (4) person seating capacity
Cultural and amusement	1	per (3.5) seats or (3.5) person seating capacity, based on a maximum use of all facilities at the same time.

PART XVIII GENERAL REPEALER

Any prior ordinance, policy, or resolution which is in conflict with this ordinance is hereby expressly repealed.

PART XIX SEVERABILITY

If any section, subsection, sentence, clause, phrase, or portion of this ordinance, including but not limited to any exemption, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

PART XX EFFECTIVE DATE

This ordinance shall become effective on the date of its first posting.

PASSED, APPROVED, ADOPTED AND ORDERED POSTED this 30 day of May, 1998.

Signed:

Attest:

Mayor

Town Clerk

Tab C

COF

Public Hearing for Boulder Excavation Co. January 27, 1999.

Re: Written Document to Boulder Town for denial of Conditional use permits(s)
 From: Julian D. Hatch PO Box 1365 165 East Burr Trail Rd. Boulder, Utah 84716
 And Lynne Mitchell PO Box 1355 210 East 180 North Boulder, Utah 84716

Any conditional use permit is controversial in nature but due to the inappropriate licensing and procedural history of this particular company during the past six months issuance now is even more complicated and controversial. We are placing our Hearing input in writing so Planning Commission members can consider it over the next few weeks prior to a zoning decision about the Boulder Excavation Co. (B.E.C.). The fact that the Planning Commission continues to pursue this licensing and Conditional Use Permit in violation of Town Ordinances concerns us deeply and we are putting all concerned parties on Notice that we will file litigation in this matter if necessary. The Town Clerk was fully informed of problems with B.E.C. after we first noticed and complained about their construction activities in September of 1998. We both live in the vicinity of the Stout residence located at 195 North 300 East within the Medium Density Residential area in central Boulder Town. Mayor Gailey was fully informed of the problems by December 2, 1998 and the Building Official, Tina Karlsson as well as the Planning Chair, Donna Wilson by mid December. Actions to redress our documented and well founded concerns ought to have been taken prior to the Winter Solstice holidays but Town Officials rebuffed us. Government Records Requests (GRAMA) were made to uncover the truth about B.E.C. from October through January because Boulder Town refuses to provide a business office for citizens to access information. These GRAMA letters show the various attempts of officials to cover-up calculated actions to work around the ordinances. Ignorance of the law is never a reasonable excuse for government officials and in this case we believe we can show that these officials were aware that their actions were in violation of town ordinances. The question now is whether or not Planning Commission members want to continue Boulder Town's subterfuge or will faithfully execute their duties.

On January 12, 1999 a statement of various problems was delivered to the Boulder Town Council which included a request that the 1998 Business License issued to B.E.C. be considered "null and void" and revoked. The Town was asked to not allow personal sparring and comments from the audience concerning the verbal reading of the statement. Mayor Gailey then allowed Rhea Thompson of B.E.C. to make abusive statements to the effect that Julian Hatch is a liar and a lunatic. Mr. Gailey then made the following statement on behalf of the Council: " I think that any businessman should be given an opportunity to correct any deficiencies there may be to come into compliance. I don't think that we as a Town Board have the desire to stop anybody from doing business as long as they are willing to comply. We are not trying to run anybody out of town as long as they are desirable businesses and desirable people." Given the license denials and other problems we have had to endure with the town about our business activities we wonder if we are considered undesirable people? Since the town refuses to revoke the illegally issued license of B.E.C. the town must consider them to be desirable. I would like the Planning Commission and Town Board to please delineate exactly how it is determined what businesses and people are desirable in Boulder Town. Perhaps the

PLAINTIFF'S EXHIBIT
SIT NO. <u>8</u>
NO. _____
REC'D _____
DENCE _____

General Plan, Land-use, and Business Ordinances can be of help. I wonder if town officials have copies of these ordinances and if so, do they read and understand them? I wonder if a business with friends in high places which attempts to subvert the laws of the town would be considered undesirable? Hopefully, Planning Commission Hearings will not be conducted in the same kind of arbitrary and capricious manner that the Town Board operates. If you have questions about the fact that B.E.C. does not have a legal business license from Boulder Town I suggest you get the official complaint delivered to the Council two weeks ago. Tina Karlsson is the Building Official/Councilwoman who also sits as a member of the Planning Commission. She is responsible for enforcement of the Land-use Ordinance so she understands what it states under "Licensing" and can explain to you why this license is "null and void". The "new business" application submitted by B.E.C. dated August 12, 1998 and issued on November 10, 1998 with all of its irregularities is available from the Town Clerk/Postmistress. On-going problems with B.E.C. current signage are listed clearly under 4.8 and 6.1 of ord. 21B.

As we understand it, tonight's Hearing is for public comment about the applications of B.E.C. delivered to the Town Clerk on January 12, 1999 and no other documents or presentations by the applicant will be allowed or considered tonight because the public would have no time to analyze the new data and comment materially about them. Applications supposedly submitted by applicants on Dec. 3, 1998 were improper and will not be addressed by us and we trust the Commission will not consider them. These questionable applications confuse the process and conflict materially with the ones titled "Supplemental" which were correctly submitted. So it appears that B.E.C. has now asked for two separate Conditional Use Permits at two separate locations for their business activities. One is located at the Thompson Ranch (4270 N. Highway 12) within the Greenbelt area and the other is at the Stout Family Home (195 North 300 East) within a Medium Density Residential area. We request the Planning Com. members, as a group, walk the properties in question to discuss and view the existing natural conditions and sensitive areas before any decision is made. We welcome the opportunity to accompany you and add our comments. The General Plan states that it is the overriding concern of Boulder Residents that preservation of the Natural Environment and Open Space be maintained. We believe there are concerns about wetlands and source protection on the Stout property. The Thompson Ranch should continue to be agricultural since it is the highest and greatest value according to the General Plan. The General Plan adopted about a year ago forms the basis of the Land-use Ordinance and clearly shows on Table No.1 that in the Greenbelt area "Residential Development on Agricultural Lands" is all that is allowed. Within Residential areas the Table states only "Single Family Residential" use is allowed on 2.5 acre properties and conditional commercial use permits are required for all uses specifically allowed within the Commercial Zone. The requests of B.E.C. conflict with the intent of the Boulder General Plan and should not be considered at this time.

Another common problem of both applications is that B.E.C. claims that their activities are permitted conditional uses in Greenbelt and Residential areas under the Land-use Ordinance. The applicants do not seem to understand that Allowed Uses as well as Conditional Uses must be specifically stated in the ordinance to be allowed. Under "Determination" the Ord. states "The Planning Commission may permit a

conditional use to be located within any district in which a particular conditional use is permitted by this ordinance." "Commercial" is not a particular permitted use, is not defined in the ordinance, and is merely a minor error in the ordinance. The applicants should be informed that their requests can not be considered because they can not be permitted in either area. The Determination section also states that evidence must be presented to establish that any conditional use will not be detrimental to others in the vicinity and the general well being of the neighborhood and town. We believe that such evidence has not been presented in either location and we declare that we work and reside in the vicinity of the Stout home and neighborhood which will be affected adversely. Both applications conflict with regulations and conditions specified in Ord. 39 and are dangerous to the entire town. If the Planning Com. decides to go along with this travesty we request itemized justifications for their interpretations be included in the Permit which will help for better understanding by all parties during Appeals and in litigation. Perhaps the Board of Adjustment and professional planners should be consulted with the costs passed along to B.E.C. as provided in the ordinance. This is a serious business activity which will have major implications that threaten our environment and town.

Most of the Site Development Plan Requirements in Ord. 39 have not been met in either application. Locations and dimensions of present buildings, parking facilities, and utilities required to serve present and future needs have not been provided for in either application. Such planning can not be dismissed with the applicants' claim of "no proposed changes" because like sign permit problems, the town needs to establish exactly what is now present at the Thompson Ranch and Stout sites. Present uses at either property are not currently commercial and conversion requires fire and building inspections as well as identification of all areas to be given conditional uses. Will restrooms be used at the general office and is the wastewater system approved? Is the water at Thompson ranch approved for commercial use? Has the Boulder Farmstead Water Co. approved the proposed commercial uses of their culinary water hook-ups at the Stout properties? Are we to believe that restroom and washing facilities will not be placed in the new commercial garage? No electrical utilities or access for them has been shown or described. If other existing structures are to be converted for these commercial uses then it has to be documented. Where are the present approved wastewater septic systems located on the Stout lands? We believe the Stout's old mobile home is, in fact, located in the 300 East street right of way owned by the town. The town has been told this verbally and in writing for more than five years but Exhibit 2 does not show this. In fact, Stout specifically states that this map is not accurate.

Plans showing drainage patterns as well as sensitive natural areas and wetlands have not been provided. Questions about what will happen with future drainage are not addressed. The planned commercial garage building with its servicing/parking area is not shown and the public streets shown on the maps do not actually exist. Who will bring the streets up to what standards? Since it is presently an undeveloped natural area do we want these streets opened? Developing public streets requires proper approvals, engineering plans, and issuance of excavation permits. Will Stouts be able to open the undeveloped streets owned by the town all the way to Highway 12? Will they ask for more commercial conditional use permits in future years after being granted this one?

How will you be able to refuse other requests after granting this one? Topographical maps of the lands must be made at 2 foot contours no matter what the slope is, and drainage showing present and future patterns must be provided especially since construction equipment maintenance including routine servicing is an oily, filthy mess which can severely affect sensitive areas such as wetlands. The Thompson Ranch is situated at one of the highest elevations in town and drains through much of the town area. The Stout site drains into nearby wetlands. This serious situation must be addressed by the Division of Environmental Quality (DEQ) as well as planning commissioners. The implications to Source Protection Plans in the vicinity are serious as are the impacts to the residential water wells and irrigation ditches nearby. The location of present commercial fuel storage tanks on adjacent property has not been shown or documented and the Stout proposal of a commercial 500 gallon diesel fuel tank needs DEQ approval and is of real concern. We believe this tank is the one B.E.C. already installed without any approval two months ago. All these impacts to water should be addressed and not be brushed off. Boulder has given alot of leeway to agricultural/ranching but just because some of those activities include tractors and farm equipment these commercial activities should not be equated with them. Ranchers have more or less been grandfathered in the land-use ordinances to keep them from selling out to growth development and their special niche must be protected. These B.E.C. proposals and justifications threaten our intent to keep Boulder agricultural.

Traffic along the street passing the Stout site is already dangerous since the road is winding and extremely narrow because it is not placed as planned and platted. A church and a school are located a hundred yards up the street and the new Black Boulder Mesa Subdivision entrance is a few yards down the street. Further added construction equipment traffic will only make a bad situation worse. The town has already ordered other heavy trucks and construction equipment going to the new subdivision to use the road only from the south and not past the school, church, and the Stout site. Recently Stouts complained to the Garfield County Sheriff about a car stereo being allegedly played too loudly in the middle of the day by Julian Hatch because the area has always been very quiet. Obviously, the high level of noise from heavy equipment and servicing will not be tolerable for people in the vicinity. Visual impacts of turning the rural residential area into a construction looking site can not be a good thing for anyone. All of these problems need professional analysis if the applicants continue to pursue their conditional use request at the Stout site. Assurances by the applicants that only some equipment will be located at the Stout site will be almost impossible to enforce so we all must assume the worst case scenario. Such temporary parking of equipment has been going on for the last six months and this is what caused us to make complaints, investigate documentation, and call for revocation of wrongfully issued business licenses.

Parking of construction equipment is not an accepted practice in the Stout residential area and any future parking will be reported to the town building official and town council. The Stout Commercial garage is not within the specifications permitted for a residential garage nor is it complimentary to the neighborhood. The fuel tank is already unsightly and has elicited complaints from their neighbors. Lastly, there is nothing about locating a construction company in a residential area which will "enhance the neighborhood". Thank-you for your time and consideration of these comments.

Tab D

BOULDER TOWN
NOTICE OF APPEAL
CONDITIONAL USE PERMIT

COPY

The undersigned herewith files this notice of appeal and verifies that the statements and information set forth in it are true and correct.

Appellant: Name: JULIAN D. HATCH
Address: POB # 1365 165 EAST BURR TRAIL ROAD
Telephone: NOT ALLOWED TO HAVE ONE

Subject Property: Owner(s): SAM AND DEBBI STOUT
Owner(s) Address: 195 NORTH 300 EAST 84716
Property Address: SAME
Current Use: RESIDENTIAL

Appeal

1. Describe the action or decision appealed:
PLANNING COM. APPROVAL OF "conditional use permit for Boulder Excavating Co"
2. Please state the date of decision being appealed: FEB 10, 1999
3. Please state your specific grounds for this appeal including specific sections of applicable State Statutes and Town Ordinance: (SEE MARCH 5, 1999 letter ATTACHED) (7)
4. Please describe:
(a) The specific relief which you request on appeal: DENY CONDITIONAL USE PERMIT
(b) Your reasons or basis for requesting that relief: DOES NOT CONFORM TO MEDIUM DENSITY RESIDENTIAL DISTRICT OF LAND USE ORD
5. NOTICES OF APPEALS MUST BE FILED WITH THE TOWN CLERK, P.O. BOX 1329, BOULDER, UTAH 84716, WITHIN 30 DAYS OF THE DATE OF THE ACTION BEING APPEALED.
- ⑥ The appellant should attach copies of any documents to be considered on appeal. SEE ~~BE~~ INCLUDED LETTER FOR B.E.C. Cond. use Hearing JAN 27, 1999 FROM ME
7. Appellant may attach additional sheets if needed.

THE UNDERSIGNED VERIFIES THAT THE INFORMATION SET FORTH IN THIS NOTICE OF APPEAL AS WELL AS IN ANY ATTACHED LISTS OR DOCUMENTS IS TRUE AND CORRECT.

Dated this 6th day of MARCH, 1999.

Julian D. Hatch

INTIFF'S EXHIBIT

NO. # 5

).

C'D
NCE

BOULDER TOWN
NOTICE OF APPEAL
CONDITIONAL USE PERMIT

The undersigned herewith files this notice of appeal and verifies that the statements and information set forth in it are true and correct.

Appellant: Name: JULIAN D. HATCH
Address: POB # 1365 165 EAST BURR TRAIL ROAD
Telephone: NOT ALLOWED TO HAVE ONE

Subject Property: Owner(s): RHEA AND WENDY THOMPSON
Owner(s) Address: 4270 NORTH HIGHWAY 12 84716
Property Address: SAME
Current Use: GREENBELT-AGRICULTURAL

Appeal

1. Describe the action or decision appealed:
PLANNING COMMISSION "conditional use permit" for Boulder Excavating Co.
2. Please state the date of decision being appealed: FEB 10, 1999
3. Please state your specific grounds for this appeal including specific sections of applicable State Statutes and Town Ordinance: (SEE LETTER ATTACHED DATED MARCH 5, 1999) (7)
4. Please describe:
(a) The specific relief which you request on appeal: DENY COND. use Permit
(b) Your reasons or basis for requesting that relief: DOES NOT CONFORM TO LAND USE ORDINANCE FOR GREENBELT
5. NOTICES OF APPEALS MUST BE FILED WITH THE TOWN CLERK, P.O. BOX 1329, BOULDER, UTAH 84716, WITHIN 30 DAYS OF THE DATE OF THE ACTION BEING APPEALED.
6. The appellant should attach copies of any documents to be considered on appeal. SEE ENCLOSED LETTER FOR BEC. COND. USE HEARING DATED JAN 27, 1999 FROM ME
7. Appellant may attach additional sheets if needed.

THE UNDERSIGNED VERIFIES THAT THE INFORMATION SET FORTH IN THIS NOTICE OF APPEAL AS WELL AS IN ANY ATTACHED LISTS OR DOCUMENTS IS TRUE AND CORRECT.

Dated this 6th day of March, 1999.

Julian D Hatch

BOULDER TOWN

NOTICE OF APPEAL
CONDITIONAL USE PERMIT

The undersigned herewith files this notice of appeal and verifies that the statements and information set forth in it are true and correct.

Appellant: Name: Lynne Mitchell
Address: PO Box 1355 210 E 180 N Boulder
Telephone: N/A

Subject Property: Owner(s): Sam and Debi Stout
Owner(s) Address: 145 N 300 E
Property Address: as above
Current Use: residential

Appeal

1. Describe the action or decision appealed:
Planning Commission Approval of a conditional use permit for Boulder Excavating Co.
2. Please state the date of decision being appealed: 2/10/99
3. Please state your specific grounds for this appeal including specific sections of applicable State Statutes and Town Ordinance: Letter Attached - 3/5/99
4. Please describe:
(a) The specific relief which you request on appeal: deny Cond. Use Permit
(b) Your reasons or basis for requesting that relief: Does Commercial use in residential area is in conflict with local zoning law.
5. NOTICES OF APPEALS MUST BE FILED WITH THE TOWN CLERK, P.O. BOX 1329, BOULDER, UTAH 84716, WITHIN 30 DAYS OF THE DATE OF THE ACTION BEING APPEALED.
6. The appellant should attach copies of any documents to be considered on appeal.
7. Appellant may attach additional sheets if needed.

THE UNDERSIGNED VERIFIES THAT THE INFORMATION SET FORTH IN THIS NOTICE OF APPEAL AS WELL AS IN ANY ATTACHED LISTS OR DOCUMENTS IS TRUE AND CORRECT.

Dated this 6 day of March 1999.

Lynne Mitchell

BOULDER TOWN
NOTICE OF APPEAL
CONDITIONAL USE PERMIT

The undersigned herewith files this notice of appeal and verifies that the statements and information set forth in it are true and correct.

Appellant: Name: Lynne Mitchell
Address: PO Box 1355 - 210 E 180N Boulder
Telephone: N/A

Subject Property: Owner(s): Rhea Thompson
Owner(s) Address: 4270 N Highway 12
Property Address: as above
Current Use: agricultural

Appeal

1. Describe the action or decision appealed:
ISSUANCE OF Conditional use permit for Boulder Excavating Co by Planning Commis
2. Please state the date of decision being appealed: Feb 10, 1999
3. Please state your specific grounds for this appeal including specific sections of applicable State Statutes and Town Ordinance: See attached letter of 3/5/99
4. Please describe:
(a) The specific relief which you request on appeal: deny Conditional use permit
(b) Your reasons or basis for requesting that relief: ISSUANCE INTERFERES with one land use and general plan
5. NOTICES OF APPEALS MUST BE FILED WITH THE TOWN CLERK, P.O. BOX 1329, BOULDER, UTAH 84716, WITHIN 30 DAYS OF THE DATE OF THE ACTION BEING APPEALED.
6. The appellant should attach copies of any documents to be considered on appeal.
7. Appellant may attach additional sheets if needed.

THE UNDERSIGNED VERIFIES THAT THE INFORMATION SET FORTH IN THIS NOTICE OF APPEAL AS WELL AS IN ANY ATTACHED LISTS OR DOCUMENTS IS TRUE AND CORRECT.

Dated this 6 day of March, 1999.


Lynne Mitchell

Conditional Use Permit Appeal To Boulder Town Council for Boulder Excavating Co.

From: Lynne Mitchell and Julian Hatch, Residents of Boulder Town

Date: March 5, 1999

On February 10, 1999 we attended the Boulder Planning Commission Meeting when the commission approved two conditional use permits for the two separate locations of the Boulder Excavating Company (B.E.C.) which we had asked them not to approve at the Hearing held on January 27, 1999. We are including a copy of our written comments for that B.E.C. Hearing before the Planning Commission as part of our appeal to you.

On February 11, 1999 we delivered a Notice of Appeal for issuance of these conditional use permits to the Town Clerk and asked for copies of the permits. On February 18, 1999 the Clerk sent us a form for a Conditional Use Appeal but with no copy of the permits. On February 22, 1999 we made a Government Records and Management Act (GRAMA) request to the town to get copies of the Conditional Use permits for the B.E.C. and as of this date the town has not provided them to us. We are making this appeal without these documents because we do not want to miss the deadline. We want to make complaint to you about the subterfuge of your Clerk as she continues to hold documents until the ten business day deadline rather than to provide them in a reasonable time. When the deadline comes she sends a letter in the mail telling us to come pick up the documents at the Post Office since the Town does not have an office or hours to conduct Town business. On March 4, 1999 she sent such a letter telling us to pick up the permit documents and pay the charge of \$2.75 instead of mailing the copies and sending a bill. We have paid hundreds of dollars to get copies of documents over the past several years but the town does not trust us with a billing. Of course, the next day (Friday) we tried to get the permits at the Post Office only to find the Clerk was not in town. Apparently the Town is making every effort to stop us from being able to make an appeal about B.E.C. conditional use permits and perhaps you hope we will miss the 30 day deadline.

You must read the minutes of the Planning Commission Meetings for January 13, 27, and February 10, 1999 to see that we attended those meetings and voiced our concerns about the B.E.C. and see what your planners said about B.E.C. permits. You also should refer to the written complaints we presented to you at the January 12, 1999 Town Meeting when you were requested to take corrective actions to put an end to these problems with B.E.C. licensure. Also we ask you to look at Item 3 on page two of the February 8, 1999 letter to the Town Council about B.E.C. and your inaction. Given the Town Council's lack of any action or verbal/written replies to our concerns we expect you will reject our Appeal now and we will be forced to appeal to District Court. We feel that the Town Council and their hand picked appointed officials are so full of hatred for us that you are willing to subvert your own ordinances in order to ruin our neighborhood and drive us out of town. We will stand up to protect our homes and property values but more importantly to not allow you to make a sham out of our town growth planning controls.

PAGE TWO

Our specific grounds for these appeals are based on the Boulder General plan adopted April 6, 1994, amended December 4, 1997 and the Boulder Land Use Ordinance (L.U.O.) #39A adopted May 30, 1998, amended January 13, 1999.

We think you should also consider the Boulder Business License Ordinance presently in effect which clearly shows that a business license was granted illegally to B.E.C. in November 1998 by Town Clerk Davis. Both applications claim that B.E.C. has a Town Business License for 1999 but if they do then the Town Clerk and Mayor have illegally renewed them this year. New Business licenses must first get Conditional Use Permits before issuance and obviously B.E.C. does not have permits or there would be no need for this process now. The L.U.O. points this out under Regulatory Provisions Part XVI, Section E. Licensing. Boulder Town Officials must address this inaccuracy about B.E.C.!!! Original applications for B.E.C. were not made in December 1998 as is claimed by the applicants. The first applications were made in January 1999.

The Planning Commission has failed to properly address the mandatory Section F Site Development Plan Requirements listed under Conditional Uses Part III of the L.U.O. which must be met unless the Planning Com. waives "any or all of the site plan requirements upon appeal and justification." No Appeal or justification was made by B.E.C. and therefore all requirements must be met. Requirements Nos. 2, 3, 4, 5, 6, 7, 8, 10, and 11 have not been met at all or are improperly and inadequately addressed. Present use buildings have not been delineated and mapped (see map for Thompson Ranch location) and where an attempt to provide this at the Stout residence site it is not accurate. What presently exists must be ascertained and commercial changes to the property must be assessed and not dismissed as having no effect by the applicants.. The Assessments and Impacts as well as written explanations of proposed uses are not accurate, inclusive, or legitimate. The failure of the Planning Commission to address these requirements and enforce the L.U.O. means these permits must be overturned by the Town Council on this Appeal. The Planners did not legally waive any of these requirements.

We have residences and small businesses which were established many years ago located in the vicinity and adjoining the B.E.C. Stout residence site. The lack of concern shown by the Planning Commission for our objections bothers us very much. The Applicants claim their Construction company business will not affect us but we have already found this to not be the case--and they have only begun their activities in recent months! The Stout Site is located in the Medium Density Residential District (6) as is the Lynne Mitchell residence and to allow a commercial construction company to be located there is contrary to Town Ordinances as well as being hurtful to us. If the Town wants to Amend the Zoning Districts then that is the proper process they should go through. Allowing this construction company as a "Conditional use" makes a mockery of classifying the town into districts in the first place. The Julian Hatch residence is within a thousand feet of the Stout site and is part of the High Density Residential District (7) in which only single family residential is allowed in the L.U.O. This construction company

PAGE THREE

conflicts with the intent of this district and obviously has an impact on the general welfare of others. In Part III of the L.U.O. under Section G "Determination" "The Planning Commission shall not authorize a conditional use permit unless evidence presented is such to establish..." that the use will not "be detrimental to... the general welfare of persons residing or working in the area" and that the use "will contribute to the general well being of the neighborhood and the town." The Planners have failed to meet these requirements and merely neglect their duties to the town and us.

What is most disconcerting about the work of the Planning Officials is their misunderstanding of the L.U.O. and the intent of The Boulder General Plan. The preservation of the existing conditions in the town is the primary objective of the General Plan and the purpose of the Land Use Ordinance. Orderly growth and equitable consideration of affected citizens must be done through the establishment of Districts to insure the rights of property owners. The General Plan states that "single family residential" is the intent in the Medium Density Residential category and this is further supported in the LUO "Allowed Uses" for this District. Construction Companies are not compatible with residential uses, are not allowed in this district and can not be permitted as conditional uses. The General Plan states that "Residential development on agricultural land and large lots" is the intent for Greenbelt/Multiple use lands category. The LUO supports this intent as it states "To provide areas for agricultural development protected from encroachment by commercial and industrial uses" for the Greenbelt/Multiple Use Lands District 2. The "Allowed Uses" for Greenbelt all encourage large family farms and this includes some commercial uses such as Bed and Breakfasts, Dude Ranches, and Horse Stables but not industrial contractor construction. The location of Boulder Excavating Company should not be allowed in either of these districts. Such a business is only allowed in the Commercial district (9) and only with a conditional use permit there. Application to the Town for a change in zoning should be made if B.E.C. wants to locate the business in these districts. Bypassing this rezoning by providing conditional use permits is not legal or proper. This illegal action of the Planning Commission in issuing conditional use permits for B.E.C must be corrected by the Town Council by overturning this decision. If not, we will appeal to District Court and wish to be informed of the procedure to do so. Please provide justification of how you think B.E.C. can be allowed as a conditional use for us and the courts to understand if you choose to continue to deny our appeals. Thank you for your thoughtful consideration of our concerns and please let us know as soon as possible about the Appeal.

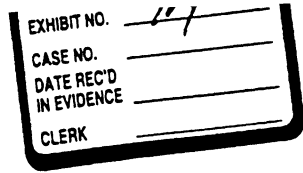
Sincerely,

Lynne Mitchell
Box 1355
Boulder, Utah
84716

and Julian Hatch
Box 1365
Boulder, Utah
84716

Handwritten:
Completed
11/1/84
J. Mitchell

Tab E



COPY

May 29, 1998

Meeting began at 8:05 p.m.

Present: Keith Gailey, Leo Gardner, Tina Karlsson, Gladys LeFevre, Judi Davis, Stacy Davis, Donna Jean Wilson, Robert Hugie, Larry and Kay Ripplinger, Ray and Jeanne Harshman, Peter Benson, Fritz Abel, Mark Nelson, John Veranth, Dorothy Lyman, Lynne Mitchell, Connie Reid, Rod and Darwin Peterson, LeFair Hall, visitor, Mike Ryan, Dell LeFevre, Mark Austin, Ray and Caroline Gardner.

Pledge of allegiance

This is a public hearing held for the purpose of receiving public input on the proposed land-use ordinance. Summaries of the comments follow. Responses or clarifications are in parentheses.

Lynne: acknowledges that we need a public hearing. Opposes having a meeting following the hearing to pass the ordinance for fear it will not provide sufficient opportunity to respond to public input. Reminded the Board that she requested a color change on the general plan map to show that her property is commercial. Feels p. 7 is too restrictive. Pp. 16-17 on stream corridors shouldn't be restricted to high water. P. 30 commercial uses - wants bookstore (could fall under retail), and a veterinary clinic (could fall under professional.) P. 39e licensing - who is the deciding body? (When the ordinance is questioned it goes to the Board of Adjustments.) P. 40 - what is an exotic animal? See p. 42. Excess definitions can help clarify possible problems.

Jeanne: P. 40 animals - thought it would be clearer to add llamas, ostriches, etc. Include a definition for the Board of Adjustments and a clarification of their duties as the appellate board. Commercial uses: wants RV parks. Thinks a nice one would be beneficial. Commended the Planning Commission for their work on the project.

Ray Harshman: P. 32 no. 12 - does this mean there can be no banks with drive-up windows? (Correct.) P. 38 enforcement, no. 3 - are permits required to do your own minor repairs? (only as regulated by this ordinance.)

Larry: Are Chris Robinson and Brock LeBaron planning to build on the slope? (No - on the ridge.)

John Veranth: His nine acres are almost all hillside. In general likes the ordinance. Main concern is with the hillside portion. Is familiar with hillside protection. Thinks we have mesas, not hills. Thinks the wording is not appropriate to our situation. Thinks we need

to talk about sight lines. Measure parallel to existing slope. Uses allowed in commercial: should include campground and RV park. Could allow light manufacturing, such as pottery, musical instruments, sewing, etc. Should allow multi-unit employee housing. P. 31 criteria regarding percentage of developable space: recommends a percentage of total lot area instead. P. 31, no. 3 - clarify setback of 30 feet from pavement or right-of-way. Likes intent of lighting, but not the wording. Just allow for security, safety, but prohibit lighting of cliffs, hillsides, natural features. P. 5 - posting of property - recommends also notification by mail. P. 6, no. 4 - allow leasing of open space on larger lots. Consider access to open space - subdivided land should allow access to public lands otherwise land-locked.

Kay: Agrees with John Veranth's comments. Also wants RV park to prevent people pulling off anywhere.

Larry: Thinks we need signs posted advertising no services available on the Burr Trail.

Leo: If we are promoting agriculture, we should allow an animal processing business.

Mark Nelson: Overall thinks the ordinance is pretty good. Proposed during the drafting of the ordinance but not included was a size restriction on commercial buildings so as to avoid huge developments. Planned unit development and clustering are good proposals. Doesn't know if there is enough incentive in the ordinance to encourage people to choose it. Thinks it is a good idea. RV parks - doesn't like them but is afraid we have to add them. Be very careful as to where they are allowed to be. Don't need a drive-through window - suggests we are in a hurry and lazy. We need to slow down. Thinks it is a good start.

Mark Austin: Thinks the Planning Commission has done an excellent job. Lighting: key element for character of Boulder - future of street lights should require screening. Would the Planning Commission have the latitude to determine hillside building on a case-to-case basis? Also consider height restrictions on hillside buildings. Could be done as a conditional use.

Dell: Agrees with Leo. P. 23, no. 1b - wants a commercial feed lot. Can be nice RV parks - could it be required to be nice?

Rod: Where do they stand on putting a home on top of Thompson Ledge? They don't want to build on the edge, but where can they build?

Darwin: P. 46 - 200 feet is too restrictive. Can't there be ways to build on the ledge that it is not visible from town without a 200-foot clearance? (It needs to be reworded to

Meeting of May 29, 1998

Page 3

allow for realistic building. Might use "sightline" [from where?] in regards to ridgelines.)

Mark Austin: Distance and color of the building should enter the equation.

Mark Nelson: Consider it a non-conforming use so the Planning Commission can consider it on an individual basis.

Robert: Eliminate "200 feet" from the definition.

John: Use mesa tops instead of ridgelines and use visual assessments for mesa tops.

Jeanne: P. 39 - appeals go to the Board of Adjustments for land-use and licensing issues.

Mike Ryan: Temporary dwelling - who determines what is temporary? (Intent is to allow for campers, trailers, etc., while building a permanent dwelling.)

Mark Austin: If RV parks are allowed, require screening by landscaping.

Larry: Asked Robert for clarification on Board of Adjustments. (Deals with land-use variances, questions on ordinance interpretation, interpretation of non-conforming uses, maybe licenses.)

Sidney Fennesbeck will come for a day any time after June 10 to train the Board of Adjustments. Keith will give Larry a list of the Board and he will set up a meeting.

Gladys: P. 33 d - will it hurt Owen's and Pole's Place? (No. It is here to protect them from large franchises.) P. 35 - wants bed and breakfasts to be able to have six rooms. (Five and less are bed and breakfasts; six or more is a motel.) Wants five instead of four.

Mark Austin: Wondered if fast food prevention concept could be extended to other kinds of businesses. (They tried, but couldn't come up with anything legal.)

Keith: This is a starting point and can be changed. We need to do something now to protect the town, but can change it at any time. The County is amending their general plan to deal with the monument. We may decide to adopt some of their ideas.

Tim Clarke submitted written comments that will be part of the public hearing record.

All of the comments made tonight will be taken into consideration. If it is passed tonight with minor changes, we can have another hearing on an amended ordinance.

Meeting of May 29, 1998

Page 4

The public hearing adjourned at 9:30 p.m. Town Board meeting began at 9:30.

Keith met with David Church yesterday and discussed, among other things, the General Plan and land-use ordinance. David's opinion was that we need to re-think the clustering idea and the benefits. He thought in Boulder that it may not be as effective as in other places. Some places have been disenchanted with the idea because eight houses in a cluster ruin the feeling of openness. There can be a problem of who will take care of the land after it is sold but before it is built on. Might we end up with weed patches?

Tina feels it could be a way to sell land and continue farming. If there is no opportunity to farm, there will be many weed patches. She feels clustering is an encouragement to farm. Clustering would prevent multiple wells.

We need to be sure to know in whose name open land would remain so that down the line the old owner couldn't try to rezone it. An organization to control the land should be in place before it is passed. A land association would be the best to administer it.

Leo made a motion that we accept the land-use ordinance subject to the amendments made tonight. Tina seconded the motion. The vote was unanimous. There were cheers from the audience.

The next Town Board meeting will be June 11 at 8:00. There will be a public hearing on the budget at the beginning of the meeting.

Bill Cox talked to Keith about the Town taking over the cemetery. The Church is not interested in keeping it any longer. David recommended we take it over. He will help us set up a cemetery district. We would have to arrange to open new graves and keep strict records.

The subdivision moratorium cannot legally be extended but can be rewritten. David is rewriting it and we will introduce it at the next meeting.

There are two applications for custodian. Gladys made a motion we hire Caroline Gardner as custodian. Tina seconded the motion. Voting in favor were Gladys, Tina, and Keith. Abstaining was Leo.

Gladys made a motion the meeting adjourn. Leo seconded the motion. The vote was unanimous. The meeting adjourned at 10:35 p.m.

Judith Davis
Minutes prepared by Judith Davis, Town Clerk

Tab F

COPY

PLAINTIFF'S EXHIBIT	
EXHIBIT NO.	18
CASE NO.	
DATE REC'D IN EVIDENCE	
CLERK	

June 17, 1999

Meeting began at 8:05 p.m.

Present: Keith Gailey, Mayor; Farlan Behunin, Gladys LeFevre, Tina Karlsson, Leo Gardner, Council Members; Judi Davis, Clerk; Marvin Bagley, Attorney; Connie Reid, Sam and Debi Stout, Lynne Mitchell, Julian Hatch, Larry Davis, Tim Clarke, Elaine Roundy, LeFair Hall, Colleen Thompson, Joe Parker.

Tina made a motion we approve the minutes of the meeting of June 2 as presented. Gladys seconded the motion. The vote was unanimous.

A public hearing was held on the 1999-2000 budget:

Keith feels \$3,000 for the Planning Commission is more than they need. The Planning Commission should have pre-approval from the Town Board before sending anyone to a conference. We should add funds to the EMT budget. We will add existing funds to the Planning Commission and Community and Economic Development expenditure budgets. We need to budget \$5,000 to the Enterprise Fund. We need to budget for the operation of the cemetery. The revenues and expenditures for the liquor fund were added to the proposed budget.

Gladys made a motion we adopt Resolution 1999-1, Adoption of the 1999-2000 Budget. Leo seconded the motion. The vote was unanimous. At the end of June, the clerk will update the current year figures. This will not affect next year's budget figures. Mr. Hatch asked about the expenditure of road funds.

Adjustments were made to last year's budget. The grant for the fire truck will not go through our books. The approximately \$6,000 that is our share will be spent this year. Gladys made a motion we accept the changes to the 1998-99 budget as proposed. Tina seconded the motion. The vote was unanimous.

The regular meeting began at this time.

The appeals made by Lynne and Julian to the conditional-use permits issued to Boulder Excavating Company were discussed. There was a lengthy discussion at the last meeting, but they were not in attendance. Lynne read a statement, a copy of which she provided for the record.

Julian asked for an official copy of the Land-use Ordinance and a copy of the map and for answers to his concerns. We do not have copies of the map. Marvin said the appeals do

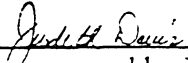
not address the issue of boundaries. There is no dispute over the actual boundaries of districts or of which districts the conditional-use permits were issued for. Five Counties is preparing a reproducible map, but it is not yet ready and there is not a timetable for producing it.

Marvin said we are within legal bounds to approve the conditional-use permits. We can also reject them on a public policy basis. Tina will be abstaining from voting since she already voted as a member of the Planning Commission. Gladys' understanding of adopting the Land-use Ordinance was that we did not intend to stop anyone from starting a business. Under the ordinance, this type of business is allowed in the districts in which they are located. The map of districts is of use that was current at the time it was adopted. Commercial uses at that time that were not mapped are being corrected. Commercial is an allowed use in both districts in question.

Julian asked why the ordinance set a commercial district. Tina replied that existing businesses at the time of passage were shown on the map. Conditional use means that the Planning Commission can put conditions on a new business. Tim clarified that "commercial" can apply to any district. We didn't want to be told we can have businesses only in certain places. Voting in favor of upholding the Planning Commission issuance of conditional-use permits for Boulder Excavating Company were Farlan, Gladys, and Leo. Abstaining from voting was Tina. Sam thanked the Board for their affirmative vote. Julian can consult with his attorney to see what his recourse is.

Fourth of July plans were discussed. Jeanne and Ray Harshman joined the meeting at this point. The parade entrants will gather at 10:00, and the parade will begin at about 10:30. Tina and Keith will pick up the food. The program will follow the parade and will last a half hour. Tina is arranging the program and will have a flag-raising ceremony. The program will be followed by games. The dinner will be at 1:00 and the dance at 8:30. The town will furnish game prizes and participation rewards for the parade. The Hospital Auxiliary will be allowed to have a booth selling pop during the day. People for the USA asked if they can have a booth with music, information, and a quilt to raffle. We would discourage commercial enterprises and want people who want to set up other booths to let us know first so we can coordinate locations. LeFair will mow the weeds around the building and playground, and Gladys will talk to Karla Roundy about maintaining the lawns.

Gladys made a motion the meeting adjourn. Farlan seconded the motion. The vote was unanimous. The meeting adjourned at 9:30 p.m.


Minutes prepared by Judith Davis, Town Clerk

certified correct
JD

COPY

To Boulder Town Council June 17, 1999

Appeal of Conditional Use for Boulder Excavating Company

From Lynne Mitchell and Julian Hatch, residents of Boulder Town, Utah 84716

I am reading this written statement which I will give you a copy of so that my words can not be challenged, denied, or incorrectly related in the town meeting minutes. Apparently tonight is merely a formality for you to pretend we have been given due process but we take this very seriously and feel the town has not tried to be reasonable, fair, timely, or sensible in this process and your actions concerning interpretation of the Land Use Ordinance.

The Town provided the owners of Boulder Excavating Company (BEC) with Business Licenses on November 11, 1998 and January 7, 1999 without inspections or first obtaining Conditional Use Permits in violation of the Town Business License Ordinance and the Land Use Ordinance (LUO). The licenses were given without a conditional use process because the LUO does not allow for the placement of businesses such as this construction company in the Greenbelt or Residential districts. After we confronted the town Council of the illegal issuance of the licenses in December 1998 and early January 1999 the BEC and town began this conditional use process. On February 10, 1999 the Planning Commission gave BEC conditional use permits for both locations and we appealed the decision the next day by delivering a hand written notice to the town Clerk.

We heard nothing further about the town council deciding on our appeals until we returned to Boulder on June 4, 1999 after a four day absence. We found letters from the town to each of us dated June 2nd inviting us to attend a town meeting on June 3rd for a decision on the appeals. After waiting nearly 110 days we had been given 24 hour notice -if we had been in town to get the mail. There were also postal notices dated June 4, 1999 to each of us to sign for certified letters from the town. We hoped these would be notification that the town had decided to not continue this process since it had been over three months since our appeals were filed but when we got the letters the next day the town "encouraged" us to attend this meeting. A few days ago the minutes of the June 3, 1999 meeting were posted and we were shocked to find the Council had allowed BEC and their attorney to present a defense of our appeals. We filed the appeals and should have been able to be present. BEC did not file any appeal. Any discussion or clarification of our appeals should have been with us.

PLAINTIFF'S EXHIBIT

EXHIBIT NO. 9

FILE NO. _____

REC'D _____

We have nothing to go on now except the unapproved minutes of the town clerk which amounts to hearsay.

For nearly six months we have been attending meetings, delivering written complaints, speaking and delivering specific allegations at hearings about these problems. Evidently no one is listening or town authorities are ignoring us and our objections while pitting us against BEC supporters and defaming us with the citizens of the town. We have spoken in Town meetings about this you have laughed at us, lied to us, and not taken our concerns seriously. We have been abused and put upon for no real reason except to hurt us personally, destroy our business interests, lower our property values, and drive us out of town and possibly the state of Utah.

Since 1984 we have lived near the proposed Stout BEC site and are directly affected. The intent of the General Plan and the LUO is to preserve and protect our quiet rural lifestyle. The town seems to think it is fine to locate a construction yard next to us in a "Medium Density Residential" district and if their interpretation of the LUO is correct then almost every district in the town could have similar changes occur without any way to stop them. Once this precedent is made there will be no way for a Planning Commission to say no to future requests. Our appeals are not based on any bad feelings between us and BEC or their attorneys Jim Bradshaw and David Bird of Deer Creek and should not be construed as such. This is about Planning and growth control for our hometown. We are tired of being treated like "outsiders" by town officials. After nearly twenty years of living here we deserve more than abuse of process, willful misinterpretation, and being forced to file expensive litigation to stop officials from political preference and favoritism for their friends. Councilwoman Karlsson is a member of the Planning com. and has been for many years and Mayor Gailey was the Planning Chairperson who along with Karlsson created and adopted this Land Use Ordinance so they know clearly that it is not being interpreted correctly. Upholding the Conditional Use permits for BEC tonight against our concerns would be a capricious, willful, arbitray, and malicious act. Worse, is the damage to our town by setting such a precedent.

We request you provide us tonight with a legal copy of the Land Use Ordinance with a map so we can deliver them to an attorney to be submitted to the District Court.

Tab G

Planning Commission Minutes
9/28/98

COPY

meeting began at 8:05 pm.

present: Donna Jean Wilson, Tina Karlsson, Connie Reid, Stacy Davis, Robert Owen, Robert Hugie.

Gibbs' new plats were reviewed. He doesn't want the parking to be in the rear of his trading post. He will have the parking to the west of the trading post. His pond will be three feet deep. A motion was made by Tina to approve the revised plan which is a conditional use. Robert O. seconded it. The voting was unanimous.

Mike Ryan's site plan for a bath house was reviewed. Setbacks, slope, and size are OK. Robert O. made a motion to approve his site plan. Stacy seconded it. Voting was unanimous.

Tina and Robert O. want to change Ordinance #31. They want "Exemption approved by Town Council" to be taken out and setbacks, height, and slope restrictions added. Tina will write up the wording before we vote on it.

A letter needs to be sent to the county recorder explaining the subdivision ordinance. We should send a copy of the Land Use and Subdivision Ordinances.

Sydney Fannesbeck says that we should add "written in accordance with State Zoning 10-9" to the Land Use Ordinance.

Changes to the Land Use Ordinance need to be typed before Oct. 7.

Robert Hugie and Sydney want to bring Jim Davis to Boulder on the evening of October 15. He will talk about land trusts.

Robert Owen will talk to someone about a conditional use definition for our sign ordinance. Gary Uresk of Woods Cross may be able to help us.

The meeting was adjourned at 9:50. The next meeting will be held Oct. 15 at 8:00 pm.

PLAINTIFF'S EXHIBIT	
EXHIBIT NO.	11
CASE NO.	
DATE REC'D IN EVIDENCE	
CLERK	

COPY

Land Use Ordinance Changes 9/8/98

p. 3 #2a "the same land use classification or in" was taken out.

p. 3 Part III was taken out.

p. 11 #10 "e. Professional evaluation will require a fee." was added.

p. 11 #11 "Signs" was added.

p. 22 #2a two-foot contours were added

p. 23 bonding--"the developer must bond for 110% of the cost of development and 10% will be held 12 months after the completion of the development." was added.

In all allowed use and conditional use sections "all¹ other uses similar to these uses..." was taken out.

p. 25 #9 "Commercial" was taken out of conditional use.

p. 26 A. Purpose--"and protected from encroachment by commercial and industrial uses." taken out. *LO. 2000 U. APPRO*

p. 41 #6 definition changed to "the clearing or grading of the land."

PLAINTIFF'S EXHIBIT	
EXHIBIT NO.	<u>12</u>
CASE NO.	_____
DATE REC'D IN EVIDENCE	_____
CLERK	_____

Tab H

COPY

MARVIN D. BAGLEY (Bar No. 4529)
Attorney for Boulder Town
180 North 100 East, Suite F
Richfield, Utah 84701
Telephone: (435) 896-9090

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
IN AND FOR GARFIELD COUNTY, STATE OF UTAH**

**JULIAN DEAN HATCH and
LYNNE MITCHELL,**

Petitioners,

vs.

**THE BOULDER TOWN COUNCIL;
THE TOWN OF BOULDER PLANNING
COMMISSION and/or BOARD OF
ADJUSTMENT; THE BOULDER
EXCAVATING COMPANY,
SAM STOUT and RHEA THOMPSON,**

Respondents.

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

Civil No. 99060022

JUDGE DAVID L. MOWER

Hearing on Petitioners' Motion for Preliminary Injunction was held in this action on August 31, 1999, before the Honorable David L. Mower. Petitioners Julian Dean Hatch and Lynne Mitchell appeared by and through their counsel of record Budge W. Call, Esq. Respondents the Boulder Town Council and the Town of Boulder Planning Commission appeared by and through their counsel of record Marvin D. Bagley, Esq. Respondent Boulder Excavating Company appeared by and through its attorney of record David J. Bird, Esq. Respondents Sam

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Hatch v. Boulder Town et al.

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Stout and Rhea Thompson were never served and so have not been made parties to this action. The Petitioners presented evidence including the testimony of the Petitioners' witnesses and the documents and other evidence introduced during Petitioners' case in chief. After Petitioners rested, Respondents moved pursuant to Rule 41(b) of the Utah Rules of Civil Procedure for judgment of dismissal of the petition. The parties presented argument and the Court, being fully advised and good cause appearing, and having determined to consolidate the hearing of the Petitioners' Motion for Preliminary Injunction with the trial on the merits pursuant to the motion made by Respondents in accordance with Rule 65A(a)(2) Utah Rules of Civil Procedure, now enters the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Plaintiffs are individuals, landowners and residents of Boulder Town, Garfield County, State of Utah.
2. Respondents the Boulder Town Council and the Town of Boulder Planning Commission are entities consisting of elected or/and appointed officials of the Town of Boulder, Garfield County, which is a political subdivision of the State of Utah.
3. Respondent Boulder Excavating Company, L.L.C. (hereinafter "Boulder Excavating") is a Utah limited liability company with its primary place of business in the Town of Boulder, Utah. Two of its members are Rhea Thompson and Sam Stout.
4. On May 30, 1998, the Boulder Town Council enacted Boulder Town Ordinance No. 39 (hereinafter "the Land Use Ordinance"), which zones land use within the Town of Boulder. The Land Use Ordinance was amended on January 12, 1999. The Land Use

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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Ordinance establishes nine (9) districts with specified allowed uses and conditional uses in each district. Part IV B of the Land Use Ordinance adopts an official base map as part of the Ordinance, which maps and defines the location of different districts within Boulder Town. The parties agreed regarding the location of the districts within which the properties subject to the Conditional Use Permits were located. No copy of the official base map was introduced. However, the evidence sufficiently establishes that such map exists.

5. The Land Use Ordinance originated as a recommendation from the Boulder Town Planning Commission and was submitted to the Boulder Town Council for adoption. Prior to the adoption of the Land Use Ordinance, various meetings open to the public were held in which provisions of the Ordinance were considered. Petitioners appeared at several of the meetings and exercised their opportunity to participate in the hearings regarding the Land Use Ordinance.

6. In December, 1998, Boulder Excavating filed applications for Conditional Use Permits. Prior to issuance of the two Conditional Use Permits to Boulder Excavating, the Boulder Planning Commission held a public hearing to obtain public input regarding and to consider issuance of the permits.

7. Petitioners appeared at the public hearing and presented and read written objections to issuance of the permits.

8. At that hearing, in accordance with the Land Use Ordinance, the Boulder Planning Commission voted to grant the applications of Boulder Excavating for two (2) Conditional Use Permits, subject to conditions stated in the Conditional Use Permits, and those

permits were thereafter issued. The Conditional Use Permits allowed Boulder Excavating to use two (2) parcels of property within the town limits of Boulder in connection with Boulder Excavating's construction business.

9. One of the Conditional Use Permits was issued for property located at 195 North 300 East, Boulder, Utah (the "Stout residence property"), which property is designated by the Land Use Ordinance as "District 6" and "medium density residential". That permit allowed Boulder Excavating to construct a garage for its backhoe, to park the backhoe and a limited amount of additional equipment on the property, and to temporarily store construction materials on that property.

10. The other Conditional Use Permit was issued for property located at 4270 North Highway 12, Boulder, Utah (the "Thompson Ranch property"), which property is designated by the Land Use Ordinance as "District 2" and "green belt/multiple use lands". That permit allows Boulder Excavating to park equipment near the agricultural equipment used at the ranch and to store construction materials, and to utilize existing improvements for an office for Boulder Excavating.

11. On March 6, 1999, Petitioners appealed to the Boulder Town Council the decision of the Planning Commission issuing the Conditional Use Permits to Boulder Excavating.

12. The appeals were placed on the agenda of the Town Council and discussed at two Town Council meetings. Petitioners were sent notice of both meetings but, because they were out of town, did not receive notice of the first meeting and did not appear at that meeting.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Hatch v. Boulder Town et al

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13. Respondent Boulder Excavating appeared at one meeting and stated its reasons why the decision of the Planning Commission should be affirmed.

14. Petitioners appeared at the second Town Council meeting on June 17, 1999, and read to the Council written statements of objections to issuance of the permits.

15. On June 17, 1999, the Town Council affirmed issuance of the Conditional Use Permits to Boulder Excavating.

16. On or about July 12, 1999, Petitioners filed the Petition for Judicial Review that is the subject of this action.

17. Respondent Boulder Excavating was served a Summons, a copy of the Petition, a Motion for Preliminary Injunction and a Notice of Hearing on August 24, 1999. The hearing on Petitioners' Motion for Preliminary Injunction was set seven (7) days thereafter, on August 31, 1999.

18. After the Boulder Town Council affirmed issuance of the Conditional Use Permits to Boulder Excavating and prior to the hearing on Petitioners' Motion for Preliminary Injunction, Boulder Excavating caused a garage, which was authorized by the Conditional Use Permit for the Stout residence property, to be largely constructed, up to and including a roof and roofing. Installation of siding and some finish work remained. The garage and related landscaping and screening were the only physical improvements authorized or required by the Conditional Use Permits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Hatch v. Boulder Town et al.

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19. The Town of Boulder has historically been and remains a largely agricultural community. There are, operating within the Town of Boulder, many farm implements, including tractors and backhoes.

20. Petitioner Mitchell owns property that is approximately 500 feet away, and Petitioner Hatch owns property that is approximately 500 feet to 600 feet from the Stout residence property. Neither petitioner owns property or resides within five miles of the Thompson Ranch property, ^{nor} and neither petitioner has ever seen or been to the Thompson Ranch property. ^{nor}

21. The Land Use Ordinance by its terms expressly allows “commercial” uses as conditional uses in both District 2 and District 6.

22. The Land Use Ordinance designates District 9 as “commercial”. It requires a Conditional Use Permit for all commercial business and construction and lists among other allowed commercial development “building material, hardware” and “contract construction”.

23. The uses for which the Conditional Use Permits were granted are for operation of a contract construction business.

24. The uses for which the Conditional Use Permits were granted to Boulder Excavating are commercial uses within the meaning of the Land Use Ordinance.

25. The uses for which the Conditional Use Permits were granted are compatible with other uses authorized and existing in the same districts.

26. The designation of “commercial” as conditional uses in the Land Use Ordinance is neither vague nor ambiguous.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Hatch v. Boulder Town et al.

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27. The Land Use Ordinance by its terms authorizes the issuance of the Conditional Use Permits granted to Boulder Excavating by the Planning Commission.

28. At all times relevant hereto all parties understood that the Stout residence property is designated "District 6" and "medium density residential" by the Land Use Ordinance.

29. At all times relevant hereto all parties understood that the Thompson Ranch property is designated "District 2" and "green belt/multiple use lands" by the Land Use Ordinance.

30. Petitioners were well acquainted with the Land Use Ordinance and knew that it listed commercial as a conditional use at the properties involved in the Conditional Use Permits. They also knew that the provisions of the Ordinance allowing commercial as a conditional use had been brought to the attention of the Boulder Town Council after the Land Use Ordinance was originally passed and that the Town Council had decided to make no change to the provisions which allowed commercial as a conditional use. They nonetheless contended at the hearing the inclusion of the broad term "commercial" as a conditional use in the Land Use Ordinance was a mistake.

31. The evidence presented by the Petitioners at the hearing adequately addressed all of the issues raised in their Petition for Review. In the interests of judicial economy, the trial on the merits should be consolidated with the hearing on the Motion for Preliminary Injunction.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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32. To the extent any of the above Findings of Fact are more properly designated Conclusions of Law, they should be so designated.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over this appeal pursuant to Section 10-9-1001(2) and (3), Utah Code Ann., and has personal jurisdiction over the parties hereto and venue is proper in this Court.

2. Pursuant to UCA §10-9-1001, this Court is to presume that land use decisions and regulations are valid and to determine only whether or not the decision subject to a petition for review is arbitrary, capricious, or illegal.

3. The designation of commercial uses as conditional uses in the Land Use ordinance is a valid and legal designation.

4. The designation of commercial uses in the Land Use Ordinance is not ambiguous.

5. The issuance of the Conditional Use Permits by the Boulder Planning Commission and, on appeal, the Boulder Town Council was reasonable under the circumstances relating to their issuance, was allowed under the Land Use Ordinance, and was not arbitrary, capricious, or illegal.

6. Petitioners have failed to make a showing that they were irreparably harmed by the issuance of the Conditional Use Permits to Boulder Excavating, or that any harm could still be avoided by issuance of a Preliminary Injunction.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Hatch v. Boulder Town et al.

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7. Petitioners cannot succeed on the merits of their Petition, and have not shown a right to any relief on their Petition.

8. The decision of the Boulder Town Council upholding issuance of the Conditional Use Permits to Boulder Excavating should be affirmed.

9. The trial on the merits should be consolidated with the hearing on the Motion for Preliminary Injunction.

10. The issue of whether or not Respondents should be entitled to recover their costs and attorney's fees incurred in defending this action should be dealt with separately from the issuance of these Findings of Fact and Conclusions of Law and should be considered by the Court upon the filing of affidavits by the parties hereto in favor of and against the awarding of attorney's fees. The reasons and basis relied upon by both parties in connection with the issue of attorney's fees should be included in the affidavit.

11. To the extent any of the above Conclusions of law are more properly designated Findings of Fact, they should be so designated.

12. Petitioners are not entitled to any injunctive relief against either of the Respondents.

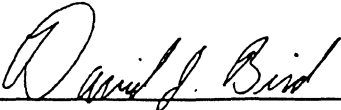
DATED this 10 day of Nov, 1999.

BY THE COURT:



DAVID L. MOWER
Sixth District Court Judge

Receipt of a copy of the foregoing acknowledged
and approved as to form by
RICHARDS, BIRD & KUMP, a P.C.

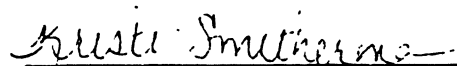


David J. Bird
Attorneys for Boulder Excavating Company

CERTIFICATE OF SERVICE

I hereby certify that the foregoing proposed **FINDINGS OF FACT AND CONCLUSIONS OF LAW** were served on this 28th day of October, 1999, by mailing a true and correct copy thereof via United States Mail with postage prepaid thereon to the following:

Budge W. Call, Esq.
SMITH & HANNA, P.C.
Attorneys for Petitioners
311 South State, Suite 450
Salt Lake City, Utah 84111-5210



Tab I

COPY

GARFIELD COUNTY
NO. 99060022 FILED

FEB - 8 2000

S. B. Clerk
Deputy

David J. Bird (UT Bar #0334)
RICHARDS, BIRD & KUMP, a P.C.
Attorneys for Respondent
Boulder Excavating Company
333 East Fourth South
Salt Lake City, Utah 84111-2988
Telephone: (801) 328-8987

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT

IN AND FOR GARFIELD COUNTY, STATE OF UTAH

**JULIAN DEAN HATCH and
LYNNE MITCHELL,**

Petitioners,

vs.

**THE BOULDER TOWN COUNCIL;
THE TOWN OF BOULDER PLANNING
COMMISSION and/or BOARD OF
ADJUSTMENT; THE BOULDER
EXCAVATING COMPANY,
SAM STOUT and RHEA THOMPSON,**

Respondents.

**FINDINGS, CONCLUSIONS,
AND ORDER ON MOTIONS
FOR ATTORNEY FEES**

Civil No. 99060022

JUDGE DAVID L. MOWER

LAW OFFICES OF
RICHARDS, BIRD & KUMP
A PROFESSIONAL CORPORATION
333 EAST FOURTH SOUTH
SALT LAKE CITY, UTAH 84111-2988
TELEPHONE (801) 328-8987

Following the hearing of the above-entitled matter held August 30, 1999, the Court granted the Motion of Respondents to dismiss the petition. Boulder Excavating Company and The Town of Boulder each moved for an award of attorneys fees. The Court reserved that issue, and directed the parties to file appropriate motions, affidavits and memoranda with respect to the

attorneys fees issue. Both Boulder Excavating Company and the Town of Boulder filed timely motions for an award of attorneys fees pursuant to Utah Code Annotated §78-27-56 and submitted memoranda and affidavits in support of their motions. The Petitioners filed memoranda in opposition to the motions. Based on the pleadings in the file, on the evidence adduced at the hearing on this matter, on the affidavits submitted in support of the motions, and on the arguments made in support of the motions, the Court enters the following:

FINDINGS OF FACT

1. As to factual findings related to the substance of Petitioner's petition, the Findings of Fact dated November 10, 1999 are incorporated herein.
2. Petitioners sought review of Boulder Town's decision to affirm the granting of Conditional Use Permits to Boulder Excavating Company.
3. Petitioners testified that they knew the Boulder Town Land Use Ordinance contained provisions which allowed "commercial" uses as a conditional use. They also testified that they knew that these provisions had been brought to the attention of the Town Council after the Ordinance was passed, and that the Town Council determined not to revise those provisions. Yet Petitioners still claimed that the inclusion of "commercial" use as a conditional use was a mistake which should be ignored by the Court.
4. Petitioners also argued that the term "commercial" has no meaning and therefore that any decision allowing a commercial use is arbitrary. However, Petitioners ignored the provisions of the Ordinance governing a commercial district, which includes a list of commercial uses and includes in that list "contract construction."

5. Boulder Excavating Company's proposed use was a commercial use for contract construction. Both Petitioners testified that they had never been to or seen the Thompson Ranch property dealt with in one of the Conditional Use Permits.

6. Petitioners made a claim that no official map was attached or adopted with the Land Use Ordinance.

7. Petitioners presented a weak factual basis and legal position in their attempt to meet the heavy burden of establishing that Boulder Town's actions were arbitrary, capricious, or illegal.

8. Although they filed their Petition on July 12, Petitioners failed to serve Boulder Excavating Company until August 24, at which time they served a Summons, the Petition, the Motion for Preliminary Injunction, and a Notice of Hearing on the Motion for Preliminary Injunction setting the hearing for seven (7) days after service, August 31, 1999. Petitioners waited forty-three (43) days after filing their Petition to serve Boulder Excavating Company, choosing to give Boulder Excavating Company only seven days to prepare to meet their Motion for Preliminary Injunction. In addition, while they failed to prosecute their Petition or to seek a prompt hearing on their Motion for Preliminary Injunction, Boulder Excavating Company almost completed construction on the only improvement authorized by the Conditional Use Permits, the garage on the Stout residence property. By the time of the hearing on the Motion for Preliminary Injunction, the only tangible and permanent harm which could have been avoided by an injunction had already occurred. Yet Petitioners joined Boulder Excavating Company in this action by claiming a right to a preliminary injunction nonetheless.

9. Boulder Excavating Company's reasonable attorney's fees and costs are \$5,276.70.

10. The Town of Boulder's reasonable attorney's fees and costs are \$4,400.00.

CONCLUSIONS OF LAW

1. Under the applicable statute, UCA §10-9-1001, the court presumes that land use decisions and regulations are valid and determines on review only whether the decision of the town is arbitrary, capricious, or illegal.

2. Well-recognized principles of statutory construction require that the Ordinance be interpreted as a whole. District 9 is a commercial district under the Land Use Ordinance, and contains a list of commercial uses which include the uses sought for approval in this case as among commercial uses. Those examples of commercial uses in District 9 clearly add substantive meaning to the term "commercial" when used with respect to other Districts, too. "Commercial" has a known meaning, in any event, as being an enterprise engaged in for profit. There is nothing vague or ambiguous in allowing a commercial use as a conditional use in a zoning district. Petitioners' arguments about the interpretation and meaning of commercial uses as conditional uses was without merit.

3. If the Petitioners were correct that there was no map, then there was no zoning to be enforced, and therefore no Conditional Use Permits could be required for the land uses intended by Boulder Excavating Company. The lack of a map could not provide a basis for challenging the Conditional Use Permits issued pursuant to the zoning ordinance.

4. Petitioners presented no evidence of whether or not there was compliance with site plan requirements found in the zoning ordinance. They failed to introduce the Conditional Use Permits in evidence. They failed to introduce any evidence of whether the site plan requirements had been addressed, met or properly waived, as is allowed by the Ordinance.

5. Petitioners' actions show that they intended to take unconscionable advantage of Boulder Excavating Company and the Town of Boulder and that they acted with the intent to hinder and delay Boulder Excavating Company and the Town of Boulder by putting them to the expense of defending a Complaint and Motion for Injunction as to which Petitioners had no basis for joining Boulder Excavating Company at the time it was finally served, and no good faith basis for their claims against the Town of Boulder, its Town Council and Planning Commission.

6. The claims raised by Petitioners in this action were without merit. They were of little weight or importance having no basis in law or fact.

7. The Petitioners' conduct in bringing this action was lacking in good faith, without an honest belief that it was appropriate and with the intent to hinder, delay, and/or take advantage of the Respondents, Boulder Excavating Company and the Town of Boulder, its Town Council and Planning Commission.

8. The Town of Boulder, which defended this action on behalf of its Planning Commission and Town Council acting as the Board of Adjustment, is entitled to recover its attorneys fees in the amount of \$4,400.00 from Petitioners pursuant to Utah Code Annotated § 78-27-56.

9. Boulder Excavating Company is entitled to recover its attorneys fees in the amount of \$5,276.70 from Petitioners pursuant to Utah Code Annotated § 78-27-56.

ORDER

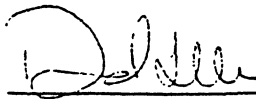
Based on the foregoing Findings of Fact and Conclusions of Law, and good cause appearing therefore, it is hereby **ORDERED**

1. The Town of Boulder is granted judgment against Petitioners Julian Dean Hatch and Lynne Mitchell, jointly and severally, in the amount of \$4,400.00.

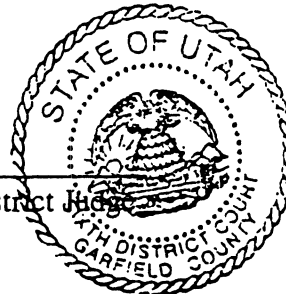
2. Boulder Excavating Company is granted judgment against Petitioners Julian Dean Hatch and Lynne Mitchell, jointly and severally, in the amount of \$5,276.70.

DATED this 3 day of Feb, 2000.

BY THE COURT



David L. Mower, District Judge

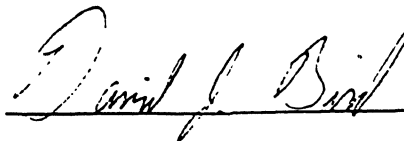


CERTIFICATE OF SERVICE

I hereby certify that the foregoing **FINDINGS, CONCLUSIONS, AND ORDER ON MOTIONS FOR ATTORNEY FEES** was served on this 3rd day of January, 2000 by mailing a true and correct copy thereof via United States Mail with postage prepaid thereon to the following:

Budge W. Call, Esq.
SMITH & HANNA, P.C.
 Attorneys for Petitioners
 311 South State, Suite 450
 Salt Lake City, Utah 84111-5210

Marvin D. Bagley, Esq.
 Boulder Town Attorney
 180 North 100 East, Suite F
 Richfield, Utah 84701-2162



CERTIFICATE OF SERVICE

On February 8th, 2000 a copy of the above **FINDINGS, CONCLUSIONS, AND ORDER ON MOTIONS FOR ATTORNEY FEES** was sent to each of the following by the method indicated:

Addressee

Method (Mail, Person, Fax)

Addressee

Method (Mail, Person, Fax)

BUDGE W. CALL
ATTORNEY FOR PETITIONERS
311 SOUTH STATE, SUITE 450
SALT LAKE CITY, UT 84111-5210

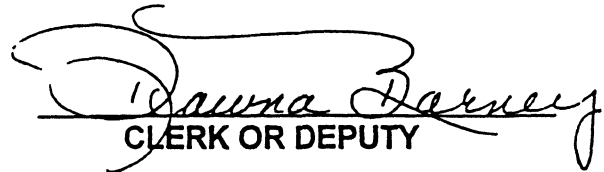
mn

MARVIN D. BAGLEY
BOULDER TOWN ATTORNEY
180 NORTH 100 EAST, SUITE F
RICHFIELD, UT 84701-2162

mn

DAVID J. BIRD
ATTORNEY FOR BOULDER
EXCAVATING COMPANY
333 EAST FOURTH SOUTH
SALT LAKE CITY, UT 84111-2988

m


CLERK OR DEPUTY

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Hatch v. Boulder Town et al.

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27. The Land Use Ordinance by its terms authorizes the issuance of the Conditional Use Permits granted to Boulder Excavating by the Planning Commission.

28. At all times relevant hereto all parties understood that the Stout residence property is designated "District 6" and "medium density residential" by the Land Use Ordinance.

29. At all times relevant hereto all parties understood that the Thompson Ranch property is designated "District 2" and "green belt/multiple use lands" by the Land Use Ordinance.

30. Petitioners were well acquainted with the Land Use Ordinance and knew that it listed commercial as a conditional use at the properties involved in the Conditional Use Permits. They also knew that the provisions of the Ordinance allowing commercial as a conditional use had been brought to the attention of the Boulder Town Council after the Land Use Ordinance was originally passed and that the Town Council had decided to make no change to the provisions which allowed commercial as a conditional use. They nonetheless contended at the hearing the inclusion of the broad term "commercial" as a conditional use in the Land Use Ordinance was a mistake.

31. The evidence presented by the Petitioners at the hearing adequately addressed all of the issues raised in their Petition for Review. In the interests of judicial economy, the trial on the merits should be consolidated with the hearing on the Motion for Preliminary Injunction.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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32. To the extent any of the above Findings of Fact are more properly designated Conclusions of Law, they should be so designated.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over this appeal pursuant to Section 10-9-1001(2) and (3), Utah Code Ann., and has personal jurisdiction over the parties hereto and venue is proper in this Court.

2. Pursuant to UCA §10-9-1001, this Court is to presume that land use decisions and regulations are valid and to determine only whether or not the decision subject to a petition for review is arbitrary, capricious, or illegal.

3. The designation of commercial uses as conditional uses in the Land Use ordinance is a valid and legal designation.

4. The designation of commercial uses in the Land Use Ordinance is not ambiguous.

5. The issuance of the Conditional Use Permits by the Boulder Planning Commission and, on appeal, the Boulder Town Council was reasonable under the circumstances relating to their issuance, was allowed under the Land Use Ordinance, and was not arbitrary, capricious, or illegal.

6. Petitioners have failed to make a showing that they were irreparably harmed by the issuance of the Conditional Use Permits to Boulder Excavating, or that any harm could still be avoided by issuance of a Preliminary Injunction.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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7. Petitioners cannot succeed on the merits of their Petition, and have not shown a right to any relief on their Petition.

8. The decision of the Boulder Town Council upholding issuance of the Conditional Use Permits to Boulder Excavating should be affirmed.

9. The trial on the merits should be consolidated with the hearing on the Motion for Preliminary Injunction.

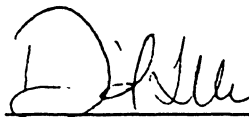
10. The issue of whether or not Respondents should be entitled to recover their costs and attorney's fees incurred in defending this action should be dealt with separately from the issuance of these Findings of Fact and Conclusions of Law and should be considered by the Court upon the filing of affidavits by the parties hereto in favor of and against the awarding of attorney's fees. The reasons and basis relied upon by both parties in connection with the issue of attorney's fees should be included in the affidavit.

11. To the extent any of the above Conclusions of law are more properly designated Findings of Fact, they should be so designated.

12. Petitioners are not entitled to any injunctive relief against either of the Respondents.

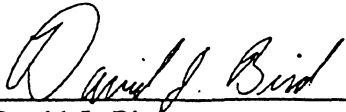
DATED this 10 day of Nov, 1999.

BY THE COURT:



DAVID L. MOWER
Sixth District Court Judge

Receipt of a copy of the foregoing acknowledged
and approved as to form by
RICHARDS, BIRD & KUMP, a P.C.



David J. Bird
Attorneys for Boulder Excavating Company

CERTIFICATE OF SERVICE

I hereby certify that the foregoing proposed **FINDINGS OF FACT AND CONCLUSIONS OF LAW** were served on this 28th day of October, 1999, by mailing a true and correct copy thereof via United States Mail with postage prepaid thereon to the following:

Budge W. Call, Esq.
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