

November 6, 2019

Subject: Detailed response to Boulder County Land Use Violation Notice #ZON-18-0149

We most strenuously object to being issued a Violation Notice – judged guilty with no due process – based solely upon the County “conducting internal investigations,” a few neighbors’ complaints and threats, and website marketing, without the opportunity to dispute these allegations. This letter is a full response to the two **alleged** violations, including detailed responses to the applicable Code section.

Your itemization of the two violations: “Specifically, *it appears* that the property is being used for impermissible short-term dwelling and renovations occurred on the first floor of the residence, referred to as the Hearth Room,” to your resulting laundry list of demands leap from “correcting these violations” to demanding unlimited access to all parts of our private property in a single bound.

BACKGROUND

Our family purchased the property at 5877 Niwot Road in 1963. Formerly a hog farm with cattle and other agricultural and ranch uses, it included a two-bedroom farmhouse dating from the late 1800’s in addition to barns, corrals and other structures. From 1963 to 1966 the family built the golf course and driving range, a small starter shack and updated the farmhouse, using the farm equipment, land and buildings as necessary to start the business. In 1966 the family opened Haystack Mountain Golf Course and Driving Range.

From 1966 through the late 1970’s, the old farmhouse grew and changed to support the needs of the family and businesses. In addition to housing the family over the years, parts of the farmhouse and its additions, particularly the Hearth room and kitchen, have been used as a clubhouse, snack bar, bar, catering/staging and event space for many, if not all, of the events that have taken place in and around the manor since the 1970’s.

In the same way, other areas of the property have seen changes – not to the uses, but to the strategies employed to maintain and grow the customer base. More intensive uses such as a full restaurant and bar were run out of the building that now serves as the clubhouse, food service area and tavern. When golf was popular and not locally overbuilt, the fully lit grass driving range stayed open until midnight to serve late night customers, large golf tournaments were held with associated food and beverage services and a busy youth golf school thrived. Catered dinner events, happy hours and Grill Night Wednesdays - with live bands – were instituted among other golf and event uses over the years. In 2016 administration of the Haystack Living Trust property passed to me as a Trustee at the death of our mother.

Long after Haystack began business operations 53 years ago, Boulder County designated zoning districts for Haystack’s acreage. Rather than zoning the 200-plus acre parcel in keeping with its existing uses, the County zoned it Agricultural and applied **legal non-conforming status for golf**

activities and events (as stated in County letter of Oct. 10, Nonconforming Recreation Use – Golf Course circa 1966 and accessory Community Use – Reception Hall/Community Meeting Facilities for special events such as weddings established in the 1970’s), effectively “grandfathering” the historic uses. “Non-conforming” according to County’s rules, because they chose to zone contrary to the current uses and “legal” because the County cannot force - at least not yet - an existing legitimate business to close just because it isn’t what the County envisions as their preferred use.

The County then codified that non-conforming uses cannot change - not only the uses, but the “intensity” of the uses. At the stroke of a pen, **as the neighbors and County staff attempt to interpret it**, from the moment a regulation is written, a use must remain static. For Haystack that would mean we cannot try to increase our customers or sales: increase golf rounds or driving range buckets sold; beers or drinks sold; events booked. This (inaccurate) interpretation appears to be designed to force us- or any business - out of business regardless of when it began. See Haystack’s answer to each of the actual code requirements within Section 4-1003 Non-Conforming Uses of the Boulder County Land Use Code in **Exhibit A** attached.

Long after Haystack was already in business the County also approved the next-door Brigadoon Subdivision, virtually guaranteeing that at some point homeowners new to the subdivision would resent the uses of the business property next door. Current neighbor complaints are equivalent to making a choice to purchase or build a house next to an airport and then demanding that the type of planes being flown or the number of flights flown never be altered.

Costs to operate, many of those directly attributable to government regulation and expansion, continue to impact the business, including the federal death tax and ever-increasing county property taxes. The County does not hesitate to unilaterally expand its permitting of weekend races and other events on Niwot Road, which has a direct, detrimental effect on Haystack customer and employee access to the business. Neighbor complaints have driven sheriff visits (by the way, no tickets have ever been issued) telling our customers they must leave. After the historic flood of 2013, Haystack had to take out large loans to make repairs to the buildings and land to stay in business while area municipal golf courses received federal money to rebuild at taxpayer expense. Area governments subsidize their golf courses, again at taxpayer expense (see an example in Longmont - <https://www.timescall.com/2019/01/22/longmont-city-council-oks-adding-bond-financed-projects-to-capital-improvements-program/>), while keeping fees charged to golf customers artificially low and operating in the red. Our small family business does not have taxpayer funds nor the power of regulation to help us compete. To be competitive we must keep our fees at the same rate as other courses, but we bear all expenses to operate without taxpayer assistance.

UPDATES SINCE YEAR END 2016

In 2016 Haystack re-branded the events side of the business as Haystack Hearth and began a marketing campaign to promote it. In addition, in early spring of this year, Haystack went

through the permitting process to update the tavern license premises definition to include areas within and north of the clubhouse and within and around the manor – those areas historically most used for food and beverage service for events. The internal manor areas used for Hearth events were clearly marked, as were the private residential area, on the floor plan provided in conjunction with the license application.

As a required step in the licensing process, the County land use and Building divisions reviewed and subsequently approved, the application as consistent with the zoning of the property (documents attached). The county also performed a full walk-through on May 15, 2019 of the clubhouse, manor and surrounding land to inspect and verify that the drawings and floor plans provided were accurate. The updated premises definition was fully approved by both Boulder County and the State.

Once approval was received for the tavern premises, this summer and fall we hung bistro lights from the old cottonwood trees and barn outside the clubhouse, purchased a kegerator and bought some additional wrought iron tables and chairs to create a beer garden atmosphere – and named the area Left Hand Bier Garten in keeping with Left Hand Creek and our German heritage. This is the very beer garden that the neighbors picketed in an attempt to ruin our grand opening and is, in fact, the same area in which we have been doing Wednesday live music grill nights, happy hours and general hang-out and relax space for two decades or more.

The three or four complaining (and picketing) neighbors appear to believe they are entitled to dictate that our 53-year-old business – built decades before they arrived - be administered not as a business but as Boulder County open space for their exclusive benefit and enjoyment – but without the prairie dogs. Neighbors regularly trespass on Haystack property to walk dogs, cross-country ski, take fruit from the fruit trees - all without even requesting permission. The traffic on the road of which they complain, including their property access, is a private road that is fully maintained by Haystack – neither they nor the County contribute a dime.

In early June of this year, a portion of the family's residential use area of the manor was furnished to accommodate one short term rental unit when the family wasn't in residence. The family reviewed the applicable code at the time and believed this was an allowed use for the residence, requiring a report at the end of the year if 45 days of rental use was exceeded. Since the March 2019 version of the Land Use Code is no longer available online and since the County, in their correspondence on this matter on October 24, provided a link to the *proposed updates* not the current code, it is difficult to determine without further research, what the regulations were at the time the rental became available.

In a demonstration of good faith and until such time as we can research the matter further, we have ceased operation of the short-term rental business although this one unit clearly has no impact on any neighboring property.

SUMMARY

In summary and in response to the County's demands for corrective action:

1. **Our current golf and event uses are fully compliant with our legal non-conforming status for golf and events.** The beer garden applied a name to the fully licensed liquor service area outside of the clubhouse that has been used for decades for music, food and drink service and relaxation while enjoying the views.
2. **Here is the detailed summary of renovation work:** we have not expanded or enlarged any structure nor completed other work on the premise requiring permitting except for fence and roof replacement required by windstorm damage, which was fully permitted, during the complaint period. The County received complete access to and floor plans for both the clubhouse and manor, including the Hearth room, during its inspection on May 15, 2019.

The Hearth room has not been “renovated” for decades except to replace the carpet with hardwood flooring two years ago, paint the walls and re-stain the historic woodwork, none of which requires permitting. Hearsay by the neighbors and marketing choice of words does not constitute a valid reason for demanding duplicate access to private property within a four-month period of time. However we will allow the County access to the Hearth room when you provide us with a floor plan of the Hearth room as of 2016 when administration of Haystack passed from the previous owner to the trustee, you specify where you believe the “renovation” occurred, and you tell us how you intend to prove that any renovation happened since July 2018 when the complaints began. This will allow a fair basis of comparison rather than neighbor conjecture.

As the Hearth room and other areas of the manor have always been used for events or in support of golf or event uses in and around the manor, the residence is part of our legal non-conforming uses. It has never been solely a single-family residential dwelling so cannot be “returned” to such. In your email of October 24, County staff acknowledged that the residence is an accessory use to the principal nonconforming use (and in explanation for the denial of our right to offer short term rentals):

“In the case of 5877 Niwot Rd, the current principal use of the property is a nonconforming Recreation Use – Golf Course with events as a use accessory to the principal use. The residence is also accessory to this nonconforming use.”

We will call prior to the holidays to schedule a meeting to discuss any remaining issues.

3. **We ceased operation of the short-term rentals and notified the County as such on October 30, 2019.** Updating the furnishings and routine repairs were the only changes made to facilitate the short-term rental offering.

The County has not provided any substantive proof that any activity, use (with the possible exception of the short-term rental based on vague/confusing code interpretation,) or

modification has been conducted in violation of Boulder County land use code. Marketing materials, web pages and neighbor conjecture don't constitute enough evidence to unilaterally say any violation has occurred.

We have always hoped that Haystack was a wonderful way to give everyone in the community the opportunity to enjoy the unobstructed mountain views, the cozy manor house and amazing gardens, and the relaxed, homey feel for which we are known, whether for golf or a special event. When we began, our 200-plus acres surrounded by open land was the perfect place to build this dream and we didn't have to worry about whether the cows on the adjacent property didn't like the music. Since then, decisions made, not by us but by the county, and complaints and threats from neighbors moving in, have created misunderstanding and contention and may make it impossible for us to continue to remain solvent.

We hope it is not the intention of Boulder County and its Land Use Code to strip us of the beneficial use of our property; but that may be the result if this constant harassment continues. Unless the County is trying to force out our family owned and operated small business, we suggest that you re-evaluate the relative weights that should be applied to the complaints and threats of the few, NIMBY neighbors versus the legitimate operations of one of Boulder County's oldest and most beloved businesses.

Julia Pirnack
Trustee, Haystack Living Trust

cc: Boulder County Commissioners

EXHIBIT A

Following is a detailed response to each of the requirements in the code section referred to in the violation notice, Boulder County Land Use Code Section 4-1003.H. Responses are based upon administration by the Trustee during the period from July 2018 to present which represent the neighbor complaint period referred to in County letter of October 10, 2019 of “multiple group events and gatherings” and “new complaints regarding building without a permit.” Haystack responses are in red.

4-1003 Nonconforming Uses

A . A nonconforming use is any existing use which does not conform to the use regulations of this Code for the zoning district in which such nonconforming use is located, as a result of either

- 1 . the adoption or amendment of this Code, **this is the case for Haystack**
- 2 . a final administrative or judicial decision precluding the County from enforcing this Code specific to a use on the basis of estoppel, laches, or waiver.
 - a . Uses are not considered nonconforming due to inadequate parking.
 - b . Uses which fall within Section 4-1003.A .2., above shall not be eligible to apply for a special use permit for a Use of Community Significance Section 4-504.

B . Except as otherwise provided in this Section, **a nonconforming use may be continued and normal or routine maintenance of a structure containing a nonconforming use shall be permitted. Normal or routine maintenance shall include any maintenance or repair which does not impermissibly enlarge or alter the structure containing a nonconforming use under Section 4-1003.C., below.** **We have performed normal and routine maintenance of the structures used by the non-conforming uses including Golf and Events. We have not enlarged or altered any structure as defined below.**

C . Enlargement or Alteration of a Nonconforming Use

1 . The right to continue a nonconforming use terminates immediately when the nonconforming use is enlarged, expanded, extended, or altered in any of the following ways, and the property owner does not successfully pursue any of the options specified in Section 4-1003 .H. within 30 calendar days after the Director provides written notification of an alleged illegal enlargement or alteration to the owner. **Notice of alleged violations was postmarked on October 10, 2019 and received by the property Trustee on October 17, 2019.**

- a . Addition of a new structure containing or accessory to the nonconforming use; **We have not added any structures**
- b . Enlargement or alteration of a structure containing or accessory to the nonconforming use, including but not necessarily limited to an increase in floor area, an

increase in height, or any other alteration or improvement in excess of normal or routine maintenance of the structure; We have not enlarged or altered any structure, including an increase to floor area or height, in excess of normal or routine maintenance. Boulder County staff received a floor plan and premises diagram and did a full site inspection in May 2019 confirming that the plans were accurate. Boulder County was invited to compare these floor plans to those on file at the County and let Haystack know of any questions. Allegations and conjecture by the neighbors of renovation without permits and County staff use of marketing materials and web site to “prove” expansion does not constitute evidence.

c . Enlargement or alteration in the land area occupied by the nonconforming use, unless the basic nature of the use, at the time it became nonconforming, clearly indicated or contemplated such an increase or alteration; The basic nature of business demands, and we clearly intended, to make every beneficial use we could of our private property at the time it was purchased. This is evidenced by the varied and many different types of both golf and event uses to which the property has been placed over the years. Businesses must **always** contemplate adapting and increasing their business to keep up with increasing costs or they don't survive. That being said, since the whole property is dedicated to golf, event and agricultural uses, we have not enlarged or altered the land area occupied by the use; all of the land at 5877 Niwot Road has been used for agriculture-, golf- and/or event-related activities since 1966.

d . Any other enlargement or alteration of the nonconforming use which has the effect or threatened effect of creating a hazard or nuisance on or off the property, of adversely affecting the character of the neighborhood, or of intensifying the use of the land or its need for services; With the exception of the approved (by State and County) expansion of the licensed premises for alcohol service, we have not enlarged or altered the use nor increased the intensity of the use of the land or need for services – in fact, in many ways the intensity of the uses from former golf activities or events conducted over the years has decreased.

Although we have not yet reached pre-flood levels of golf play frequency, we hope to soon. With respect to events, when compared to many other events we have hosted over the years, each event's music, whether live band or deejay, is now monitored to prohibit exceeding an average 60 Decibels (conversation level – less than the 90Db for a lawn mower) at the East and South property line where any neighbor could be impacted, caterers are expected to use washable or compostable dishware and/or recycle, outdoor event use around the manor must terminate at 10PM. Using the indoor areas of the manor historically leveraged to support events also has the effect of decreasing intensity since activity levels are further screened both visually and audibly.

We used to hand deliver a schedule of events to neighbors each year, including an invitation to attend a Grill Night for four on us. We did this until a couple of the

neighbors started running lawnmowers (90Db) and used other means to make as much noise as possible during 15-20 minute wedding ceremonies; which, while it didn't impact our business, is very sad for the young couples wishing for a joyful, natural ceremony.

*Note that in its October 10 correspondence, the County expands the intent of the code and misquotes: "If the intensity level has increased over time (i.e. number/type of events and/or frequency of events..." The code actually only refers to intensity. **Intensity** is not the same as **frequency**. There is no prohibition in the code of an increase in frequency of the use – these are two very different measures, whether light, sound or use. Intensity refers to the force or impact of the activity while frequency is the number of such activities over time.

e. Removal or replacement of any structural member in a use for which the County is precluded from enforcing this Code specific to use on the basis of estoppel, laches, or waiver. **We have not removed or replaced any structural member.**

2 . An impermissible enlargement or alteration shall **not** include the following:

a . a change of ownership of the property;

b . an alteration or expansion which the Building Official determines is necessary to rectify a hazardous health or safety situation or to comply with the public health or safety requirements of another governmental entity having lawful jurisdiction over the structure;

c . an extension of the nonconforming use within the structure containing the use, provided that such extension is not accompanied by an alteration of the structure falling within category (b), above; **as noted in the narrative above, we have historically used the Hearth, bathroom, kitchen and dining rooms as required for events or in conjunction with events held outside the manor. Great to have it confirmed we can use other rooms in support of our uses if not structurally altered.**

d . the addition of a solar energy system to a structure containing a nonconforming use provided it meets the specifications in Articles 4-514 or 4-516; or

e . any replacement or upgrading of outmoded or worn equipment or supplies, provided that such activity does not fall within category Section 4-1003 .C.1.d above .

3 . Owners of legal building lots containing agricultural uses which have become nonconforming as a result of adoption or amendment of this Code, may restore, modify, and maintain existing conforming structures, and may construct new conforming structures, provided such structures are directly related to the agricultural use, and provided the use is not enlarged or altered in any other way. **N/A**

D . Change of a Nonconforming Use **N/A**

1 . A nonconforming use may be changed only to a use which is conforming in the zoning district in which the use is located.

2 . Any change of a nonconforming use to any other use shall operate immediately to terminate the right to continue the nonconforming use. Thereafter, the property shall be used only in conformity with the use provisions of its zoning district. **We have not changed to any other use.**

E . Destruction of a Structure Containing a Nonconforming Use **N/A**

1 . A structure containing a nonconforming use shall be deemed destroyed when either greater than 50 percent of its floor area, or greater than 50 percent of its actual value (as determined by the Boulder County Assessor) is destroyed.

2 . The right to continue a nonconforming use terminates immediately when the structure containing that use is destroyed by an intentional act of the property or structure owner or their agent.

3 . In all other cases, when a structure containing a nonconforming use is destroyed, the structure may be restored, and the nonconforming use may be reestablished.

a . Restoration of the structure must be commenced within six months after the date on which the nonconforming structure was destroyed and completed within one year after the date on which the restoration was commenced.

b . These times may be extended for a reasonable period, if approved by the County Commissioners at a public hearing upon a showing of extraordinary circumstances by the property owner or their agent.

4 . The provisions of this Section 4-1003.E. shall not apply to Substantial Improvements to structures in the Floodplain Overlay District as provided for in Section 4-400.

F . Damage to a Structure Containing a Nonconforming Use

1 . The right to continue a nonconforming use terminates immediately when the structure containing that use is damaged by an intentional act of the property or structure owner or their agent.

2 . In all other cases, when a structure containing a nonconforming use is damaged, the structure may be restored, and the nonconforming use may be reestablished.

a . Restoration of the structure must be commenced within six months after the date on which the nonconforming structure was damaged and completed within one year after the date on which the restoration was commenced. **Cleanup and restoration of damage to the clubhouse basement from the flood commenced within 6 months of the flood and was completed within one year.**

b . These times may be extended for a reasonable period, if approved by the Board of County Commissioners

3 . The provisions of this Section 4-1004 .F. shall not apply to Substantial Improvements to structures in the Floodplain Overlay District as provided for in Section 4-400.

4 . Restoration meeting the requirements of this provision are not required to undergo a Site Plan Review . (See Article 4-802 .B .3 .

G . Abandonment of a Nonconforming Use **N/A**

1 . The right to continue a nonconforming use terminates as soon as the use is abandoned through the discontinuance of the use for an uninterrupted period of six months or more, as a result of causes within the control of the property owner or their agent.

a . Discontinuance of the use shall be a complete cessation of all activity on the property related to the use as determined in relationship to the nature and history of the nonconforming use, based upon available public information on the use.

b . If the nonconforming use is a seasonal use, the use shall be terminated if it is discontinued for an entire single season based upon the history and nature of the use.

2 . Any nonconforming use may be abandoned in less than six months or a season, as applicable, if the property owner expressly states an intent to abandon the use, or engages in action which unambiguously expresses an intent to abandon .

H . Notice of Termination in the Event of Unlawful Enlargement or Alteration of a Nonconforming Use, Change of Use, Abandonment of a Nonconforming Use, or Destruction or Damage to a Structure Containing a Nonconforming Use

1 . In the event that the Director receives information upon which a determination is made that the right to continue a nonconforming use has been or may have been terminated by operation of Section 4-1003, the Director shall provide a written notification of this determination by first class mail to the property owner, and to the parcel address, all as shown on the records of the Boulder County Assessor . The property owner shall have 30 calendar days after the date of the notification within which to provide evidence satisfactory to the Director to show that the determination is in error, to abate the illegal enlargement or alteration, to apply for approval of a special use or other applicable approval under this Code, or to file an appeal of the Director's determination to the Board of County Commissioners . In any appeal, the property owner shall have the burden to show that the right to continue the nonconforming use was not terminated according to the applicable provisions of this Article, when judged in light of the history and nature of the use and the circumstances of the alleged termination .

2 . Nothing in this Section shall alter or diminish the Director's right to take enforcement action against the unlawful continuation of a nonconforming use terminated by operation of Section 4-1003 hereof, as set forth in 30-28-124, C .R .S ., as amended, and Article 17 of this code .

Moreover, except in the case of an illegal enlargement or alteration for which the owner shall be provided with a 30 day opportunity to abate, any failure by the Director to provide a notification of a determination of termination as provided for in this Section shall in no way entitle the property owner to continue or resume a nonconforming use terminated by operation of this Section 4-1003(H)