

# Mountain Boy sledworks

SILVERTON, COLORADO

November 5, 2009

Adam Sickmiller  
Planning Director  
Town of Silverton, Colorado

Re: Appeal of Administrative Decision

Under Town Code section 7-2-2-D and 7-1-8, Mountain Boy Sledworks, Inc. appeals the administrative decision made by Keith Thompson, Code Enforcement Officer, Town of Silverton, on October 15, 2009. In that decision (attached), Thompson determined that Mountain Boy's operations at 1314 Greene Street constituted "manufacturing" and under Town Code were not allowed in the B-P zone, as detailed in Town Code section 7-2-10.

The relief we are seeking is the ability to continue to use the craft shop at 1314 Greene Street as detailed below, and we would encourage the Board of Adjustment to use any and all means to make this possible.

The grounds and justification for our appeal are as follows. *See attached Site Plan.*

I would like to invite each member of the Board of Adjustment to visit the Mountain Boy craft shop prior to or during the scheduled meeting of the Board. Please contact me for an appointment.

Regards,



Brice Hoskin  
President

## **I. BACKGROUND**

### **A. Corporate History**

- a. Mountain Boy Sledworks has been making hand-crafted artisan sleds in Silverton, CO since it was founded in 2002.*

Mountain Boy Sledworks was started in 2002 by Brice Hoskin, in a small shed on Blair Street. In early 2003, we incorporated and moved to a former garage and welding shop at 1810 Cement Street. The company's first product was a handmade kicksled, made from American ash wood with a hand-peeled willow handle. In its first season (2002-03), Mountain Boy sold 30 handmade kicksleds.

In the fall of 2003, Mountain Boy created and introduced a new product, the Ultimate Flyer. This was a handmade wooden sled designed to out-perform the venerable Flexible Flyer. It had a complex structure and so was both difficult and expensive to build. The company sold about 10 Ultimate Flyer sleds that season, and about 50 handmade kicksleds.

By spring 2004, Mountain Boy was ready to fold. Costs were high, sales were low, and consumers complained that the sleds were too expensive. A friend in Grand Junction offered to vacuum-form a plastic bottom for the Ultimate Flyer, greatly reducing the complexity of the sled and making it more durable at the same time. Hoskin introduced the re-designed sled at a trade show, and demand for the sled was immediately more than the company could produce in Silverton.

- b. All manufacturing for Mountain Boy Sledworks is done outside of Silverton.*

Through another friend, Hoskin found a manufacturer in China who offered to produce the sleds. The price of a completed sled made in China was far lower than the cost of producing one in Silverton, so Hoskin invested in a container-load of about 800 sleds. He traveled to eastern China in July of 2004 to inspect the sleds, and to refresh the Mandarin that he had learned in college.

By the 2008-09 season, Mountain Boy was importing 10 containers of sleds from China, totaling just under 8,000 sleds. One container went directly to a big customer, another went to a third-party warehouse in Canada, and a smaller shipment went to a distributor in Europe. The remaining sleds were warehoused in Silverton and then shipped across the country to small retailers and individual consumers. Because no single facility in Silverton was big enough, Mountain Boy rented an office space, a warehouse space, a shop, and an overflow shop/warehouse space at 1314 Greene, the property that is the subject of this appeal.

- c. Mountain Boy Sledworks hand-crafted artisan sleds are individually numbered and signed, each as unique as a snowflake.*

In the 2004-05 season, Mountain Boy not only sold all of the sleds it had ordered from China, but also sold just under 70 Silverton-handmade kicksleds and several dozen of a Silverton-handmade limited-edition version of the Ultimate Flyer, called the Elegant Flyer.

Hoskin applied for a patent for the design of the Ultimate Flyer in 2005; it was received in 2008.

Over the next several years, the necessity of a substantial Silverton craft shop became clear. Hoskin designed four new sleds, two wagons, a toddler push cart, and a line of Christmas ornaments, and received patents for two of them. Mountain Boy's production increased, both in China and in Silverton.

In the 2008-09 season, Mountain Boy's Silverton sled-crafters had more demand than ever. With two people often working seven days a week, Mountain Boy produced about 150 handmade kicksleds and 40 other handmade specialty sleds by March 2009. Because this was more demand than the company had ever seen for Silverton-made sleds, the company began using its overflow shop/warehouse space for part of the sledmaking process.

#### **B. Mountain Boy Sledworks history at the subject location, 1314 Greene Street.**

Mountain Boy rented the space at 1314 Greene Street from October 1, 2008 through January 31, 2009.

In September 2009, the landlord of Mountain Boy's shop at 1810 Cement Street informed Hoskin that they would have to leave. After renewing its lease with Paul and Sharon Zimmerman, owners of the building at 1314 Greene Street, Mountain Boy vacated its shop space and moved all of its shop equipment into the space that formerly was its overflow shop/warehouse space.

##### *a. Description of activities at Mountain Boy's shop at 1314 Greene Street:*

- 1) Designing new sleds, wagons, ornaments and building prototypes.
- 2) Crafting our signature one-of-a-kind sleds. These include the Royal Flyer, Elegant Flyer, Bambino Superior, Silverton Kicksled, and Double Kicksled. All are hand-made from fine figured woods. Each is signed and numbered. We make less than 200 total sleds each year here in Silverton.
- 3) We only work with wood in our Silverton shop. The metal and plastic parts for our sleds are made by subcontractors outside of Silverton.
- 4) Repairing our sleds and wagons.

*b. All potential impacts from Mountain Boy's activities are mitigated as follows:*

- 1) We use only non-toxic, non-flammable glues and finishes. The room where we do our finishing is vented to the outside, but any odors are undetectable past the lot line.
- 2) Our equipment noise does not have impact past the lot line.
- 3) We use a dust-collection system to remove dust from each machine as it is created. This dust is bagged and taken to the dump.

## **II. BUILDING CODE RELATED ACTIONS**

On October 1, 2009, Building Official Amos "Dec" Jaramillo came to the rear of the building at 1314 Greene Street, accompanied by Sheriff's Deputy Christine Burns, and stapled two notices to the building (attached). This was the first formal communication between Jaramillo and either Zimmerman or Mountain Boy. One of the notices was a Stop Work Order, and the other a Notice.

### **A. The Stop Work Order was incorrectly issued.**

Mountain Boy built an L-shaped false wall within the shop space to create a dust-free area. All building construction was complete prior to issuance of the Stop Work Order. No building construction has taken place since October 1. In accordance with Silverton building code requirements, the materials and labor for the false walls cost less than \$500, and therefore no building permit was required.

### **B. The Change of Use Notice was incorrectly issued.**

The addition at 1314 Greene Street, housing the Mountain Boy shop, was built in 1996 and issued a building permit (*attached*) in accordance with 1984 Uniform Building Code (UBC). The building inspector at that time, Ken Safranski, gave the addition an occupancy rating of B2/R1. According to Safranski, the stairway in the addition provides an emergency exit to an adjacent residential portion of the adjoining building, and so is classified R1. The remainder of the addition is B2. The B2 occupancy classification included:

"...printing plants, ...factories and workshops using material not highly flammable or combustible, storage and sales rooms for combustible goods..."

Under the UBC, there would be no change of use from "printing plants" to "factories and workshops."

Alfred Klinke, former occupant of the space at 1314 Greene Street, characterized his operations in a letter (*attached*), as follows:

"We operated a print shop at 1314 Greene Street from 1980 through September 2008. This use was continuous and also utilized space in the addition we built to Smedleys in 1996 at the same address. In October 1996 through September 2008, we used the same space for the activities of NA Graphics, which included manufacturing of various items for the printing industry. Both

floors of the addition were utilized by NA Graphics for storage and warehouse space, office, shipping, and manufacturing operations.

We also used these spaces for Klinke & Lew Contractors during this same period for various operations including wood working, repair and maintenance, manufacturing of plaster ornamental items, prototype fabrication of building components, office space, storage of working materials.”

Silverton has since adopted the International Building Code (IBC). Jaramillo stated that the addition at 1314 Greene Street needs to have the occupancy classification F-1 under the IBC for Mountain Boy to operate its craft shop at that location. However, there is nothing in the town records, least of all a plat, showing the subject property’s occupancy classification under the IBC. Accordingly, the only plat on this property is the UBC plat designating it as B2/R1. It appears that the IBC adoption process is incomplete, and the controlling document is the UBC. Further evidence that the IBC adoption process is incomplete can be found in the Town Code section 7-B-2-c, where the UBC and not the IBC is referenced.

However, under the IBC, if an F-1 designation were appropriate, the classification would include:

“Printing or publishing, ... Woodworking (cabinet)”

Similarly, under the IBC, there would be no change of use from “printing or publishing ” to “woodworking.”

### **C. No Architect is required for alterations made to this building.**

12-25-303 C.R.S provides that an architect is not required for commercial buildings when:

“(d) Nonstructural alterations of any nature to any building if such alterations do not affect the life safety of the occupants of the building.”

Because any and all alterations made to the building were nonstructural and did not affect the life safety of the occupants of the building, an architect is not required in this case.

### **III. ZONING-RELATED ACTIONS**

Hoskin and Zimmerman met with Jaramillo and Safranski on October 5 to clarify the Notice and Stop Work Order. Jaramillo did not issue citations or request further information from either Hoskin or Zimmerman at that time.

On October 15, Code Enforcement Officer Keith Thompson sent a letter to Hoskin (*attached*) stating that the Mountain Boy shop at 1314 Greene Street was not allowed under Town Code.

On October 19, Planning Director Adam Sickmiller informed Hoskin that the Town has adopted no formal definitions of the zoning classifications “Arts and Crafts Studio or Shop” or

“Manufacturing, Fabrication and Assembly.” According to Town Code, an Arts and Crafts Studio or Shop is a permissible use in this zone, whereas Manufacturing, Fabrication and Assembly are not permissible. Therefore, the definitions of these terms, as applied to the activities performed by Mountain Boy Sledworks in their 1314 Greene Street shop, is decisive to the outcome of this appeal.

**A. The activities of Mountain Boy Sledworks in their shop at 1314 Greene Street should clearly be considered an Arts and Crafts Studio or Shop.**

Silverton has not defined the subject terms, therefore common definitions of these terms are relevant.

Definitions for the subject terms are as follows:

- a) Art. “Skill; its display or application. ... Skill displaying itself in perfection of workmanship.” *Oxford English Dictionary, Second Edition*.  
“The use of skill and imagination in the creation of aesthetic objects, environments, or experiences that can be shared with others.” *Brittanica Online*.
- b) Craft. “An occupation, trade or pursuit requiring manual dexterity or the application of artistic skill.” *Webster’s Third New International Dictionary*.  
“To make or produce with care, skill, or ingenuity.” *Merriam Webster’s Collegiate Dictionary, Tenth Edition*.  
“Skill, skillfulness, art; ability in planning or performing, ingenuity in constructing.” *Oxford English Dictionary, Second Edition*.
- c) Arts and Crafts. “A movement in European and American design during the late 19<sup>th</sup> and early 20<sup>th</sup> centuries promoting handcraftsmanship over industrial mass production.” *Merriam Webster Online Dictionary*.
- d) Studio. “The work-room of a sculptor or painter; also that of a photographer.” *Oxford English Dictionary, Second Edition*.
- e) Shop. “A house or building where goods are made or prepared for sale and sold.” *Oxford English Dictionary, Second Edition*.  
“A handicraft establishment: ATELIER.” Atelier is further defined as “1: an artist’s or designer’s studio or workroom; 2: workshop.” *Merriam Webster Online*.

**B. Although Silverton does not define the relevant terms, many other municipalities in Colorado do define these terms, under which Mountain Boy Sledworks activities at 1314 Greene Street would be considered an Arts and Crafts Studio or Shop.**

- a) Telluride: Shop craft industry; means any establishment producing a one-of-a-kind object, the display or sale of which contributes to and enhances the cultural climate peculiar to the area.”

- b) **Englewood: *Work of Art***: All forms of original creations of visual art, including but not limited to: (1) sculpture, in any material or combination of materials, whether in the round, bas-relief, high relief, mobile, fountain, kinetic, or electronic; or (2) painting, whether portable or permanently fixed, as in the case of murals; or (3) mosaics; or (4) photographs; or (5) crafts made from clay, fiber and textiles, wood, glass, metal, plastics, or any other material, or any combination thereof; or (6) calligraphy; or (7) mixed media composed of any combination of forms or media; or (8) unique architectural stylings or embellishments, including architectural crafts; or (9) environmental landscaping; or (10) restoration or renovation of existing works of art of historical significance.
- c) **Denver: *Artist studio***: A place where works of art are created or similar activities occur as listed below, including a dwelling unit for the artist, designer or teacher; such unit shall have but one (1) kitchen and shall be occupied by no more than four (4) unrelated people or by any number of persons immediately related by blood, marriage or adoption:
- a. Fine arts gallery in which are created, displayed and sold individual works of fine art; or
  - b. Craftwork studio or shop in which individual pieces are created, displayed and sold, consisting of one (1) or more of the following: ceramics/pottery, fabrics, inlays, needlework, knitting, weaving, leather work, woodwork, metal work or glass work.

Denver: ***Craftswork***: Individual pieces not mass produced consisting of one (1) or more of the following: ceramics, inlays, needlework, knitting, weaving, leather work, woodwork, metal work or glass work.

**C. Based on both common definitions, as well as the definitions of these terms from other municipalities in Colorado, Mountain Boy's products and operations are clearly an Arts and Crafts Studio or Shop.**

Mountain Boy's products are art because designing and making our sleds requires *skill*, the *perfection of workmanship*, and *imagination*. The patents received for our sleds point to the *imagination* in their design.

Mountain Boy's products are crafts because sledmaking requires *manual dexterity*, *care*, *ingenuity*, and *the application of artistic skill*. In our Silverton workshop, we handmake *one-of-a-kind objects*.

Mountain Boy's products are arts and crafts because we prize and promote *handcraftsmanship over industrial mass production*.

Mountain Boy operates a studio because 1314 Greene Street is a *designer's studio*, where *works of art are created*, and *craftwork, not mass produced*, is conducted.

Mountain Boy operates a shop because our workshop is a *building where goods are made, a handicraft establishment*.

**D. Activities performed by Mountain Boy Sledworks in their 1314 Greene Street shop are clearly not Manufacturing, Fabrication or Assembly.**

- a) Manufacturing. “Engaged or concerned in manufacture.” Manufacture is defined as “The action or process of making articles or material (in modern use, on a large scale) by the application of physical labor or mechanical power.” *Oxford English Dictionary, Second Edition*.  
“1.a. To make or process (a raw material) into a finished product, especially by means of a large-scale industrial operation. b. To make or process (a product), especially with the use of industrial machines. 2. To create, produce, or turn out in a mechanical manner: “His books seem to have been manufactured rather than composed” (Dwight Macdonald).” *American Heritage Dictionary, Fourth Edition*.
- b) Fabrication. Fabricate is defined as “Construct, manufacture, specifically: to construct from diverse and usually standardized parts.” *Merriam-Webster Online*.
- c) Assembly. “The action or method of assembling a machine or composite article; the parts so assembled.” A related definition is “assembly line”: “a group of machines and workers concerned with the progressive assembly of some product.” – Oxford English Dictionary, Second Edition.

Mountain Boy’s products and operations are not manufacturing, because we do not use *physical labor or mechanical power* to make articles *on a large scale* or in a *mechanical manner*.

Mountain Boy’s products and operations are not fabrication, because we do not use *standardized parts*. Each handmade sled is made to highlight the unique character of the individual pieces of wood used in its construction. For example, a handmade Royal Flyer might have a birdseye maple center panel, with bookmatched curly maple side panels, and each handmade kicksled has a willow handle that is unlike any other.

Mountain Boy’s products and operations are not assembly, because we do not *assemble a composite article* or use an *assembly line*. In our workshop, one person is responsible for the creation of each handmade sled from start to finish. In contrast, in an assembly operation, separate individuals manufacture distinct and identical parts which are then assembled into a finished product.

**E. Although Silverton has not specifically defined the terms in question, it has given these terms an implied definition based on treatment of other businesses and facilities.**

- a) Silverton has allowed several operations in the B-P Zone to continue for years without challenge, and has thereby implied that their use has defined "Arts and Crafts Studio or Shop."
  - 1) Woodworking. At least three other woodworking operations currently exist on Greene Street in the B-P zone: a) Klinke & Lew operates a woodworking shop at 1345 Greene Street; b) Tim Black makes violins in the Benson Building at 1200 Greene Street; 3) Clark Damron makes guitars at 1340 Greene Street.
  - 2) Metalworking. At the former Triangle vehicle repair shop at 9<sup>th</sup> and Greene, an artist conducted metal cutting and welding during the summer of 2009.

By allowing these operations to continue without challenge, the Town of Silverton has accepted that their use is allowed under Town Code. In reviewing the Uses Permitted by Right in the B-P zone, the only use category these operations could plausibly be considered under is "Arts and Crafts Studio or Shop." Therefore, the Town has implied that the definition of "Arts and Crafts Studio or Shop" is broad enough to include these operations.

- b) Silverton changed the zoning of one property in the B-P zone to allow manufacturing. In 2003, Silverton changed the zoning of the building at 951 Greene Street, in the B-P zone, to E-D-L, Limited Economic Development District. "This is to allow for ski manufacturing," according to the minutes of the Town Board (attached).

Former ScottyBob Marketing Director Brian Scranton provided the following details about their operation (attached):

"ScottyBob Skis is a ski manufacturing company based in Silverton, Colorado. The company opened its doors in the old TNT Market on Greene Street in the summer of 2004 and produced hundreds of pairs per year of skis for its customers. Though the entire process can be accomplished with one or two people, typically there was a person responsible for each step of the process. The process involved but was not limited to: 1) the binding of edges to the base material with clamps and quick lock glue, 2) the cutting of fiberglass and top sheet material, 3) the use of epoxy resin, 4) the combination of epoxy resin, a wood core, the base/edge assembly, rubber strips, and top sheet material, 5) the ski being pressed for a certain period of time at a certain temperature in a pneumatic press, 6) the cutting out of the skis with a band saw, 7) the sanding of the skis with a belt sander, and finally 7), the tuning of the bases and edges with grinders and tuning belts. Skis were manufactured, mounted with bindings, shrink wrapped, boxed up, and shipped out of the facility on Greene Street."

The operations of ScottyBob Skis follow closely the definition of manufacturing discussed in section A above. They processed *raw materials* into a finished product *on a large scale* using *industrial machines*. Their process made use of an *assembly line*.

**F. Silverton artists and craftspeople believe Mountain Boy's shop at 1314 Greene Street classifies as an "Arts and Crafts Studio or Shop."**

- a) Judy Graham, painter and Master of Fine Arts, provided a letter (attached) stating: "Mountain Boy Sleds is in the business of creating unique, highly refined, and one-of-a-kind objects. These beautifully crafted pieces which are hand-made in small quantities, are in numbered editions and certainly fall into the category of 'arts and crafts.'"
- b) Ruth Ann Caitland, owner of Silverton Artworks, and Patricia McKay, owner of the Sunhouse Gallery, presented a letter to the editor of the Silverton Standard and the Board of Adjustment (attached), noting "From our experience these sleds would be accepted at any juried Arts and Crafts Festival in the United States. Since the town code allows Arts and Crafts in the Business/Pedestrian District, it seems unreasonable to exclude Mountain Boy Sled Works from this district."
- c) Mountain Boy has been featured in two editions of the Silverton Gallery Guide (attached), in the company of an exclusive group of Silverton artists and craftspeople.

**G. Neighbors of Mountain Boy's shop at 1314 Greene Street agree that the operations there have no adverse impact.**

In a notice signed by the neighbors of 1314 Greene Street (attached), adjoining and neighboring property owners and proprietors agreed that "We have found that Mountain Boy Sledworks' shop at 1314 Greene Street has no adverse impact on us, the neighbors. We also believe that Mountain Boy's shop constitutes an 'Arts and Crafts Studio or Shop.'"

**H. Town Staff have not taken an approach that encourages economic growth and recognizes the geographic and economic realities of Silverton.**

- a) The Silverton and San Juan County Planning Commission recently approved portions of the Master Plan, which is hereby incorporated by reference. Applicable excerpts include:

"Goal EV-1. In order to encourage economic growth and investment, the Town land use regulations, standards and procedures for businesses and organizations are clearly explained and documented at the outset of an application process and reflect local geographic and economic realities."

"Silverton has viable options for developing and expanding diverse businesses. Mixed commercial and residential land uses and aesthetic enhancements contribute to a compact and appealing downtown that people use. Existing buildings in downtown are feasible options for improving or expanding existing businesses or starting new businesses."

- b) Silverton's economic development organization recommends a "creative partnership" and "collaborative approach" in a letter to the Board of Adjustment (attached).
- c) Mountain Boy Sledworks has very few options if forced to move its workshop. Suitable buildings within the town of Silverton – in all zoning districts – that are available for rent are extremely limited.

#### **IV. RELIEF REQUESTED**

The relief we are seeking is the ability to continue to use the workshop at 1314 Greene Street as detailed above, and we would encourage the Board of Adjustment to use any and all means to make this possible.

#### **List of Attachments:**

- 1) Letter from Keith Thompson, 10/15/09
- 2) Site Plan
- 3) Stop Work Order
- 4) Notice from Office of Building Inspection
- 5) Building Permit issued for Addition at 1314 Greene Street
- 6) Letter from Alfred Klinke, 10/1/09
- 7) Letter from Judy Graham
- 8) Letter from Ruth Ann Caitland and Patricia McKay
- 9) Silverton Gallery Guides
- 10) Minutes of Silverton Town Board meeting re: ScottyBob Skis rezoning
- 11) Letter from Brian Scranton about ScottyBob Skis
- 12) Notice signed by neighbors
- 13) Letter from San Juan Development Association Board of Directors