

Diane H. Mauriello, P.C.

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September 20, 2016

**Via Electronic and Regular Mail**

Town of Gypsum  
Planning Department  
Attn: Lana Gallegos, Planning Director  
50 Lundgren Boulevard  
Gypsum, CO 81637  
Via email: [Lana@townofgypsum.com](mailto:Lana@townofgypsum.com)

RE: Amendment to July 20, 2016 Application for Subdivision and Zoning /  
Clearwater Ventures LLC

Dear Ms. Gallegos:

On behalf of Clearwater Ventures, LLC (“**Applicant**”), we are pleased to submit the following amended and supplemental subdivision and zoning applications (“**Amended Applications**”).

**1. Introduction**

A submittal dated July 20, 2016 for Subdivision and Zoning (“**Original Applications**”) was provided to the Town of Gypsum (“**Town**”) on behalf of the Applicant. The Original Applications sought an amendment to the final subdivision plat and a corresponding change of zoning in relation to that portion of the Applicant’s property legally described as Lot 2, Amended Final Plat, Eagle Valley Industrial Park Subdivision, a Resubdivision of Lots 1 & 2, recorded March 29, 2016 as Reception No. 201604273 (“**Existing Lot 2**”). That application proposed to:

- (i) subdivide Existing Lot 2 to create a new Lot 3, and
- (ii) establish zoning for the to be created Lot 3, and
- (iii) re-zone Lot 2 from Developing Resource District to an Agricultural zoning designation.

The Applicant has received the Town’s correspondence dated August 31, 2016 setting forth the Town’s comments on the Original Applications and I appreciated the opportunity to speak with you and Kathryn Winn, of Collins, Cockrel & Cole, concerning possible alternatives to the

Original Applications in an effort to achieve a positive outcome for all concerned. The Applicant now seeks to amend and supplement the Original Applications as follows:

(i) adjust the lot line of Lot 1 of the Amended Final Plat, Eagle Valley Industrial Park Subdivision, a Resubdivision of Lots 1 & 2, recorded March 29, 2016 as Reception No. 201604273 (“**Lot 1**”) by the addition of 8.393 acres (“**Adjusted Lot 1**”), and

(ii) extend the existing Light Industrial zoning on Lot 1 to Adjusted Lot 1, and

(iii) consistent with the Original Applications, we respectfully request to rezone Lot 2 to an Agricultural zoning designation.

The remainder of this correspondence will supplement and amend the Original Applications to address requirements set forth in the Gypsum Municipal Code (“**GMC**”) and matters identified in your letter of August 31, 2016.

## **2. Treatment of Application for Plat Amendment**

As a preliminary matter, we understand that the Town anticipates treating the application for a lot line adjustment of Lot 1 as a major plat amendment pursuant to GMC §17.20.070(a)(2). We respectfully request that that Town reconsider its position and instead process this request as a minor plat amendment pursuant GMC § 17.20.070(a)(1). GMC § 17.20.070(a)(1) states “Minor plat amendments include minor changes in configuration of elements of a subdivision, such as consolidation of two or more lots into a single lot in a previously recorded subdivision plat and lot line adjustments to one or more lots within a single subdivision which do not *significantly change* the layout or size of the lot or the number of lots, and do not significantly change road configurations.” (*emphasis added*). GMC §17.20.070(a)(1)b.4 further states “[t]he changes proposed shall not increase the total number of dwelling sites of the subdivision, shall have no significant impact on adjoining property or the town as a whole, and shall not require any changes in infrastructure (i.e., road, utilities, etc.) unless paid for by the subdivider.”

The present Amended Application to adjust the boundary of Lot 1 fits within the requirements for a minor plat amendment as set forth in the GMC. The current request does not “significantly change” the layout or size of either Lot 1 or Lot 2. This is simply a modification of the boundary of Lot 1 to bring an additional 8.393 acres into Lot 1. While 8.393 acres is likely more land than a typical lot adjustment, when one considers the requested change in the context of the size of Lot 2 the change represents a shift of only 6.18%. This minor adjustment is not a “significant change”. The request will not change the number of lots, will not change the configuration of any roads, will have no significant impact on adjoining property or the town as a whole, and the request does not support a change in infrastructure.

We recognize that the Original Application referred to a possible maintenance facility to support the bioenergy facility and its related activities on Lot 1 and that the request to create a new Lot 3 may have suggested or signaled that an immediate development plan was in the works. While it is the Applicant’s view that the GMC does not require a formal development plan as a

prerequisite to modifying the boundary of a lot through a minor plat amendment process, we understand the Town prefers to have more information. To that end, the Amended Applications more clearly set forth the current, known, proposed plans for Adjusted Lot 1. We are hopeful that the information set forth herein will be helpful to you.

As we have discussed, there are no current plans to construct a structure. There are no construction drawings, prepared plans, or identified water or infrastructure needs associated with a maintenance or other type facility for Adjusted Lot 1. The Applicant desires to create Adjusted Lot 1 so that additional land may be utilized for parking associated with the bioenergy facility, container storage, operation and maintenance of vehicles and incidental storage. The uses fall squarely within the definition of light industrial set forth in GMC § 18.02.445 which says in part, "Light industrial means uses engaged in the manufacturing, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales or distribution of products. Light industrial shall also mean uses such as the manufacture of electronic instruments; preparation of food products; the operation, parking and maintenance of vehicles... and transport terminals (truck terminals, public works yard, container storage)." A structure for storage or maintenance is not contemplated at this time. Please be assured that the Applicant understands that if it were to seek to develop a maintenance or storage facility in the future, the Town would require plans, payment of applicable impact fees and potentially water and sewer or extension of a water main to serve a hydrant depending upon the nature of the structure to be constructed. This is no different than if the Applicant were to seek to construct a maintenance or other facility on existing Lot 1 today.

In light of the foregoing, we again respectfully request that the Town treat the current request as a Minor Plat Amendment. If, notwithstanding the foregoing, the Town processes this request as a Major Plat Amendment, we have addressed the corresponding criteria from the GMC. The following information is intended to supplement the information provided to the Town with the Original Applications.

### **3. Submittal Requirements and Criteria for Major Plat Amendment - §17.20.070**

A. The Applicant has previously submitted with the Original Applications the necessary fee and related deposit.

B. A further revised plat is being prepared and will be provided to the Town as soon as the same is available. The Applicant will, upon approval, provide a mylar to the Town as set forth in GMC.

C. As for the requirements set forth in §17.20.070(a)(2)b:

1. **Tax Certificate.** A tax certificate from the county treasurer indicating all taxes and assessments on the property are paid and current was submitted with the Original Applications as Exhibit D.

2. **Title Commitment.** A current title report from a licensed Colorado title company shall be provided showing the names of all surface owners, lien holder, mineral owners, and lessees of the mineral rights in the platted area as they appear upon records in the county clerk and recorder's office. We understand that the Town has requested an updated title commitment and we have requested the same and will provide it to the Town as soon as the same is available.

Your letter of August 31, 2016 correctly states that title commitment previously provided to you identifies the statement of lien recorded by Wellons, Inc. Rather than providing the lien certificate identified in GMC §17.20.020(2)(k)(6), the Applicant proposes to rely on the existing security held by the Town from its recent minor plat amendment resulting in the Amended Final Plat, Eagle Valley Industrial Park Subdivision, a Resubdivision of Lots 1 & 2, recorded March 29, 2016 as Reception No. 201604273. The current Applications, if approved by the Town, will not result in any permanent structure being located on Adjusted Lot 1 or damage to the land, and therefore, the current security is sufficient. If the Town would like to discuss this in more detail, we are happy to do so.

3. **Utility Easements.** As indicated above, a revised plat is currently being prepared to reflect the approvals being sought through the Amended Applications. The revised plat will address the items identified in the Town's letter of August 31, 2016, including a 20' public utility easement as required by GMC § 17.24.030(a). In addition, a notation concerning "Approximate location of 100-year floodplain" and reference to "See general note 8" will be added to the proposed amended final plat.

4. **Violations of Zoning.** The changes proposed will not violate the existing zoning of the area. The Applicant now seeks to create Adjusted Lot 1 and to extend the Light Industrial zoning which presently exists on Lot 1 to the 8.393 acres to be added to Lot 1 by the creation of Adjusted Lot 1. An amended zoning map to reflect Adjusted Lot 1 and Light Industrial thereon is being prepared and will be provided to the Town as soon as the same is completed.

5. **Mitigation of Impacts.** It is the Applicant's position that use of Adjusted Lot 1 for parking, container storage, operation and maintenance of vehicles and incidental storage does not create any immediate impacts requiring mitigation. As indicated above, the Applicant understands that in the event of future development of other uses permitted within the Light Industrial district applicable emergency service fees, applicable water dedication and tap fees, and sewer fees may be required by the Town.

6. **Infrastructure.** No improvements are currently planned as part of this effort to create Adjusted Lot 1. This is one of the reasons the Applicant feels strongly that a minor plat amendment process is more appropriate. Because no improvements are currently planned, there is no need for related infrastructure at this time. Water and sewer currently serve Lot 1 and again, those services do not need to be expanded at this time.

7. **Property Owner Information.** This information was supplied as part of the Original Applications.

The Town has also requested that we address the need for security as set forth in GMC §17.020.070(b). That section states: “Except where ***required improvements*** are existing prior to consideration of the amended plat application by the town council and/or planning commission and are approved by the town council and/or planning commission as being sufficient, no amended plat shall be considered fully approved nor shall it be recorded until the completion of the required improvements is assured by the posting of security, consisting of an irrevocable letter of credit, escrow, bond, cash or other financial security that is easily convertible into cash in a form and amount acceptable to the Town of Gypsum. No construction of required improvements shall commence until security has been approved and the amended plat has been recorded.” (*emphasis added*)

GMC § 17.020.040(b) and the Annexation Agreement and Vested Rights Development Agreement between the Town of Gypsum and Eagle Valley Clean Energy, LLC each generally identify ***required improvements*** as streets with accompanying structures, drainage systems and signs, domestic water systems, fire hydrants, survey monuments, sanitary sewer system, perimeter fencing (if applicable), electricity, natural gas, cable and other necessary utility extensions. No new streets are necessary to serve Adjusted Lot 1 or Lot 2. The existing infrastructure is sufficient, making the need for the posting of security unnecessary. The Amended Applications do not create any new impacts requiring the installation of additional “required improvements”.

The Town in its letter of August 31, 2016 seeks a good faith estimate of water and sewer uses for the purpose of identifying tap fees, necessary line extensions and water rights dedication. It is our understanding that this request is appropriate when there is a need or purpose for water. No additional water is being sought from the Town as the Amended Applications do not seek to create any new impacts requiring water, sewer, or the installation thereof.

D. The Applicant addressed the criteria for processing of a final plat in its Original Application at Section 6. Please accept the following amendments and revisions to Original Application Section 6.

6 D. ***Utility services in remote areas.*** Applicant’s response is amended to read as follows:

Utilities currently serve Lot 1. The request to amend the final plat to create an Adjusted Lot 1 for parking, container storage, operation and maintenance of vehicles, and incidental storage do not currently create a need for additional infrastructure or water and sewer service to Adjusted Lot 1. Public utility easements around the perimeter of Lot 2 currently exist.

6 E. ***Preserving and creating scenic views.*** Applicant’s response is amended to read as follows:

Lot 2 and the request for Agricultural zoning thereon is an effort by the Applicant to preserve the scenic landscape along the Eagle River. With respect to Adjusted Lot 1, the 8.393 acres to be incorporated into Adjusted Lot 1 lies some 20-30 feet lower than the closest adjacent properties to the south not owned by the Applicant (including the Union Pacific Rail Road, American Gypsum Company, Colorado Department of Transportation, Highway 6, a private residence, and businesses to the south of Highway 6), with the lower lying elevation serving to substantially mitigate any visual impact on third parties. Furthermore, Adjusted Lot 1 gradually descends (dropping in elevation) in a south-to-north direction leading away from roads, residences and businesses in the Town.

6 F. ***Promoting compatibility with existing neighborhood uses and goals.*** References to “proposed Lot 3” shall be amended to instead refer to “Adjusted Lot 1.”

6 H. ***Compatibility with Town’s master plan.*** References to “proposed Lot 3” shall be amended to instead refer to “Adjusted Lot 1.”

6 I. ***The arrangement of streets in relation to other existing or planned streets.*** Applicant’s response is amended to read as follows:

The request for an Adjusted Lot 1 will have no material impact on other streets.

6 N. ***New burdens on the Town’s existing public facilities and services.*** Applicant’s Response is amended to read as follows:

The requested final plat amendment will not have a material impact on existing public facilities and services. No public roadways or gutters are projected to be necessary in connection with the Applications. Further, no development is currently planned for the 8.393 acres to be brought into Lot 1 to create Adjusted Lot 1.

#### **4. Submittal Requirements and Criteria for Zoning Amendment.**

A. The Applicant has previously submitted with the Original Applications the necessary fee and related deposit.

B. A revised Amended Zoning Map is being prepared and will be submitted to you for inclusion in the Amended Applications as soon as it is available. As set forth above, Applicant seeks to amend the plat to reflect an Adjusted Lot 1 and contemporaneously seeks to amend the zoning map to reflect light industrial over Adjusted Lot 1. In addition, Applicant seeks to further amend the zoning map to reflect a change from the Developing Resource zone district to Agricultural for the amended Lot 2.

C. The Applicant submitted its written statement supporting application for zoning amendment § GMC 18.15.040(2)(e) in Section 8 of its Original Application. References

throughout Section 8 to the “proposed Lot 3” shall be amended to instead refer to “Adjusted Lot 1.”

D. Section 8 B. of the Original Application- Criteria for Amendments to Official Zoning District Map refers to a possible maintenance facility. There are no current construction plans for such a facility. In the meantime, the bioenergy plant does require additional land. As currently proposed, the 8.393 acres to be included in Lot 1 would be used for parking, container storage, operation and maintenance of vehicles and incidental storage.

#### **5. Additional Considerations regarding Developing Resource Zone District.**

Thank you for providing the recent clarification on uses permitted within the Developing Resource Zone District on Lot 2. We understand the Town’s position is that the GMC allows only the continuation of uses that existed on the date the property was zoned Developing Resource District and from the Town’s perspective the permitted uses are gravel mining and seasonal grazing.

The GMC § 18.04.140 states “The developing resource district is intended to provide for the annexation of those properties that are currently used for agricultural or other nonurban uses and for which there are no specific or immediate plans for development. These areas are designated on the master plan as potentially suitable for urban development, but not in the immediate future because of lack of utilities, other services or other uses. *The only permitted use in the developing resource district is the one that existed on the date the property was placed in this district.*” (emphasis added).

I expect it will not be a surprise to the Town that the Applicant respectfully disagrees with the Town’s interpretation. The final sentence of GMC § 18.04.140 refers to “permitted use” and the permitted use at the time of annexation was industrial. While the Applicant disagrees with the Town’s interpretation, it provides a clear example of why approval of the Amended Applications are important and necessary. Approval of the Amended Applications helps to solve this conflict concerning the use of Lot 2 for both the Town and Applicant.

You asked that we consider the criteria set forth GMC §18.15.050 Criteria for amendments to the official zoning district map. While the criteria in the section were addressed in the Original Applications, I wish to emphasize two criteria. The first is GMC §18.15.050 (2). The official zoning district map is not to be amended except (2) to “rezone an area or extend the boundary of an existing district because of changed or changing conditions in a particular area or in the town generally.” As to Adjusted Lot 1, the proposed boundary change and request to zone the additional land being brought into Lot 1 as Light Industrial for the purpose of parking, container storage, operation and maintenance of vehicles, and incidental storage fits within this GMC section. Second, GMC §18.15.050 (5) provides the map may be amended “when the area requested for rezoning has changed or is changing to such a degree that it is in the public interest to encourage development or redevelopment of the area.”

The Applicant desires to work cooperatively with the Town and is seeking to rezone Lot 2 as Agricultural. This request represents a change from the developing resource district to agricultural and is aligned with the Town's goal of creating a buffer area with less intense use. Further, rezoning, eliminates the ongoing disputes concerning what uses are permitted, and provides both the Town and Applicant with certainty.

Finally, we respectfully request that the Town consider and vote separately on the (i) the lot line adjustment (plat amendment) and simultaneous extension of Light Industrial across Adjusted Lot 1; and (ii) modification of zoning from Developing Resource to Agricultural for amended Lot 2. If the Town intends to consider the requests in the same motion or ordinance, please let us know in advance.

I appreciate your consideration of the Amended Applications and look forward to working with you to address any questions or concerns the Town might have. Do not hesitate to contact me or Sarah Baker for further information. As you know, I will be out of the office from September 21, 2016 through October 5, 2016. During my absence, please copy Sarah Baker on all communications. The Applicant will also work to finalize the revised plat and zoning map for your consideration. In the event there is a delay in providing these items to you, we understand that the Town will table the applications to a future meeting to allow the Applicant to provide information and work through any open items. We appreciate your working with us in this regard and your consideration of the Amended Applications.

Yours very truly,

Diane H. Mauriello, P.C.  
of Counsel to Sarah J. Baker PC



Diane H. Mauriello

cc: Clearwater Ventures, LLC  
Sarah J. Baker  
Kathryn Winn