



# PLANET BLUEGRASS

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**To:** Board of Trustees for the Town of Lyons

**From:** Planet Bluegrass Farm, LLC

**Item:** Legal Requirements for Water Dedication in Connection with Amendments to Annexation Agreement

Dear Board of Trustees,

As you know, Planet Bluegrass Farm, LLC (“**Planet Bluegrass**”) is the owner of the Planet Bluegrass Farm property (the “**Farm Property**”) which was annexed to the Town of Lyons (the “**Town**”) pursuant to Ordinance 1015 under an Annexation Agreement dated June 8, 2017 (the “**Annexation Agreement**”). Planet Bluegrass has proposed amending the current Site Plan, Keynotes, and Annexation Agreement with respect to its Ranch Property and Farm Property, which amendments are currently under consideration for approval by the Board of Trustees (the “**Board**”) at its February 23, 2022 session.

Section 19 of the Annexation Agreement addresses water dedication requirements for the Property, and provides that these requirements are to be calculated “in accordance with Sections 17-14-10 and 17-14-20” of the Lyons Municipal Code (“**LMC**”). At the time of the annexation, the water rights dedication was postponed until future subdivision of the Property or amendment of the Conceptual Plan. The current proposed amendments to the Site Plan, Key Notes, and Annexation Agreement for the Farm Property are considered an amendment to the Conceptual Plan, and therefore may trigger the LMC water dedication requirements. The purpose of this letter is to explain Planet Bluegrass’s view of the best way to address these requirements consistent with the Annexation Agreement, the LMC, and common sense.

The Annexation Agreement itself does not specify any terms for the water dedication requirement. Instead, it only states that the requirements of the LMC must be met. These

requirements are found in LMC Section 17-14-10.<sup>1</sup> This Section includes formulas for water dedication, but it also directs the Board of Trustees to increase, decrease, or waive those requirements as appropriate given the circumstances.

Per LMC Section 17-14-10(d), “**the Board of Trustees may, for good cause shown, increase, reduce or waive the amount of water rights required to be dedicated to the Town as a result of annexation.**” The Board is also directed in Section 17-14-10(a) to consider “**the type of land use proposed, the potential amount of water to be consumed and the area of land to be annexed**” in determining whether to require a water dedication and if so, how much to require. Further, Section 17-14-10(b) requires the Board to exempt “parcels, tracts or portion of tracts that are not considered by the Town to be suitable for development because of ...unstable geological conditions, waterways or other environmental concerns” from the water dedication requirements.

Based on these LMC provision, Planet Bluegrass respectfully submits that the amendments to the Conceptual Plan it is currently seeking should not reasonably trigger a requirement for additional water rights dedication. Planet Bluegrass therefore requests that the Board exercise its authority per LMC Sections 17-14-10(d), 17-14-10(a) and 17-14(b) to postpone any such requirement to such later time as the Farm Property is subdivided or the Conceptual Plan otherwise amended in a manner that would be likely to increase its water use beyond what is currently permitted. As good cause in support of this request, Planet Bluegrass notes the following:

- The currently proposed additional uses for the Farm Property do not involve uses that would result in water needs beyond what can be serviced by the existing  $\frac{3}{4}$ ” water tap on the Property. The attached report outlines anticipated annual water use of additional structures on the Farm Property. The proposed bathhouse is likely to be the largest user of water, but its use is limited to use during events on the Farm, which will only occur for a few months in the summer. Based on existing and planned potential use, the maximum water quantity needed would be 248,000 gallons per year, which is well within the Farm Property’s present tap capacity. There is no reason to require additional water dedication when the additional uses will not exceed the amount of water already allocated to the Farm Property.
- The Property is not being subdivided and will not put any additional burdens on the Town’s utilities. The provisions of the LMC regarding additional dedications of water in connection with annexation clearly contemplate situations where the annexation would result in subdivision, business industrial, or other uses that increase water usage, which is not the present situation.
- A portion of the Farm Property (the southwest area near the river) is a wetlands area that cannot be developed or irrigated. Independent of any other considerations, this area should not be included in any water dedication calculations.

If the Board concurs that an additional dedication of water rights is not necessary or appropriate at this time, further amendment to the Annexation Agreement is thankfully not necessary. The Annexation Agreement merely provides that the water dedication requirements found in the

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<sup>1</sup> Section 17-14-20 provides requirements if the Property is being subdivided. That is not presently the case; no subdivision is currently proposed, and given the approved uses, any subdivision of the Property would require major changes and a full amendment process. Section 17-14-20 is therefore not relevant to the current question.

LMC must be followed, and the LMC in Section 17-14-10 allows for the determination that no water dedication may be required. The LMC does not specify any particular procedural requirements for this determination; therefore, this action appears to require only a standard resolution of the Board for approval. Planet Bluegrass suggests the following conditions for inclusion in such a resolution:

- a. Planet Bluegrass will provide a full water use report to the Town with any building permit application for proposed structures on the Property; and
- b. Any additional structures or subdivision of the Property, and any further amendments to the Conceptual Plan, will be subject to further consideration and possible reinstatement of the water dedication requirement per LMC Section 17-14-10.

If you have any questions prior to Wednesday's session, please feel free to reach out to me and I will be happy to assist.

Sincerely,



Zach Tucker, Authorized Representative of  
Planet Bluegrass Farm, LLC