

RESOLUTION

RE: GRANT CHANGE OF ZONE, COZ20-0004, FROM THE A (AGRICULTURAL) ZONE DISTRICT TO THE I-3 (HEAVY INDUSTRIAL) ZONE DISTRICT – GERRARD INVESTMENTS, LLC, C/O ROCK AND RAIL, LLC

WHEREAS, the Board of County Commissioners of Weld County, Colorado, pursuant to Colorado statute and the Weld County Home Rule Charter, is vested with the authority of administering the affairs of Weld County, Colorado, and

WHEREAS, a public hearing was held on the 22nd day of July, 2020, at 10:00 a.m., in the Chambers of the Board for the purpose of hearing the application of Gerrard Investments, LLC, 27154 CR 13, Johnstown, Colorado 80534, c/o Rock and Rail, LLC, 1627 Cole Blvd., Suite 200, Lakewood, Colorado 80401, requesting a Change of Zone, COZ20-0004, from the A (Agricultural) Zone District to the I-3 (Heavy Industrial) Zone District for a parcel of land located on the following described real estate, to-wit:

Lot B of Recorded Exemption, RE-2803; being part of the SW1/4 and SE1/4, and a tract being part of the SW1/4, all in Section 18, Township 5 North, Range 67 West of the 6th P.M., Weld County, Colorado

WHEREAS, the applicant was present and represented by Brian Connolly, Otten, Johnson, Robinson, Neff and Ragonetti, PC, 950 17th Suite #1600 Denver, CO 80202, and

WHEREAS, Section 23-2-40 of the Weld County Code provides standards for review of such a Change of Zone, and

WHEREAS, the Board of County Commissioners heard all the testimony and statements of those present, studied the request of the applicant and the minutes of the Weld County Planning Commission hearing, which resulted in a tie vote and lack of recommendation, and, having been fully informed, finds that this request shall be approved for the following reasons:

1. The applicant has complied with all the application requirements listed in Section 23-2-50 of the Weld County Code.
2. The applicant has demonstrated that the request is in conformance with Section 23-2-40.B of the Weld County Code as follows:
 - A. Section 23-2-40.B.1 – *“The proposal is consistent with the policies of Chapter 22 of this Code; if not, then that the zoning of the property under consideration is faulty, or that changing conditions in the area warrant a Change of Zone.”*
 - 1) Section 22-2-80.A (I.Goal 1) states: *“Promote the location of industrial uses within municipalities, County Urban Growth Boundary areas, Intergovernmental Agreement urban growth areas, growth management areas as defined in municipalities’*

CC: PL (AS/TP), PW (MK/DK), EH (LL)
CA (BC), APPL, APPL REP
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comprehensive plans, the Regional Urbanization Areas, Urban Development Nodes, along railroad infrastructure or where adequate services are currently available or reasonably obtainable.”

The location of the site is appropriate for industrial development, and adequate services are available. The site is located within the Growth Management Area (GMA) of the Town of Johnstown and within the following Coordinated Planning Agreement (CPA) areas: Johnstown, Milliken, and Windsor. The proposed Change of Zone is also located within Greeley’s three (3) mile referral area. The subject site is adjacent to railroad infrastructure, an arterial road listed on the County Functional Classification Map, and, is within 0.5 miles of U.S. Highway 34. Potable water is provided to the site by the Little Thompson Water District.

- 2) Section 22-2-80.B (I.Goal 2) states: *“Encourage appropriate industrial development to annex into a municipality if the new or expanding industrial development is adjacent to the municipality’s corporate limits.”*

The site is not located adjacent to any municipality’s corporate limits. The site is located within the three (3) mile referral area and Coordinated Planning Agreement (CPA) area of the Town of Johnstown. The applicant was encouraged to consider annexation to the Town of Johnstown through the preapplication process, in accordance with the Weld County – Johnstown Coordinated Planning Agreement located in Weld County Code, Chapter 19, Article XXI. The Town of Johnstown, in their Notice of Inquiry response dated March 2, 2020, indicated the applicant was approached by the municipality on February 5, 2020, in pursuit of a potential annexation. According to Section 19-21-50, of the Weld County Code, the municipality has 21 days from the pre-application meeting to discuss the opportunity for annexation. The property owner was not interested in annexation at the time, as stated in a letter submitted via email dated May 26, 2020. The Change of Zone application was accepted by the County on April 13, 2020, 42 days after the initial contact with the municipality. Though the property is within the three (3) mile referral area of the City of Greeley and the CPA areas of the towns of Windsor and Milliken, the property is not within any identified growth areas of those municipalities. Notice of Inquiry responses were received from the Towns of Milliken and Windsor on February 7, 2020. Neither town indicated an interest in annexing the property.

- 3) Section 22-2-80.C (I.Goal 3) states: *“Consider how transportation infrastructure is affected by the impacts of new or expanding industrial developments.”*

Both adjacent rail and vehicle transportation infrastructure are capable of handling industrial development. County Road 13 has been upgraded with multiple auxiliary lanes and railroad crossings. The Intersection of County Road 13 and U.S. Highway 34 has been upgraded and signalized. The site is adjacent, and has direct access, to a railroad line. These improvements constitute changing conditions in the area which further support the Change of Zone.

- 4) Section 22-2-80.D (I.Goal 4) states: *“All new industrial development should pay its own way.”*

The infrastructure in this area has already been brought up to an industrial level of service as a result of recorded Improvements Agreement, #2016-3738, Reception Number 4335536, with Weld County.

- 5) Section 22-2-80.E (I.Goal 5) states: *“New industrial uses or expansion of existing industrial uses should meet existing federal, state and local policies and legislation.”*

The site is expected to be used as a rail spur for transloading and other similar/related uses. The operator is subject to the Surface Transportation Board regulations. Any future uses will be subject to a Site Plan Review or Use by Special Review, which will require local, state, and federal regulation compliance.

- 6) Section 22-2-80.F (I.Goal 6) states: *“Minimize the incompatibilities that occur between industrial uses and surrounding properties.”*

Potential incompatibilities between industrial uses on the site and surrounding properties will be minimized by requirements provided on the Change of Zone plat, as well as by requirements in the Weld County Code. The Department of Planning Services, the Department of Public Works, and the Department of Public Health and Environment have each provided Plat notes which will mitigate adverse impacts of industrial development on the site and will provide detailed mitigation requirements through the Site Plan Review and Building Permit processes. For example, Section 22-2-80.F.2 describes visual and sound barriers between industrial and residential properties in order to minimize incompatibilities through the Site Plan Review or Use by Special Review process. The site is located within the three (3) mile area of the Town of Windsor as defined by Section 19-6-40 and C.R.S. §31-12-105(1)(e).

Therefore, in accordance with the Cooperative Planning Agreement with the Town of Windsor, found in Chapter 19, Article VI, Section 19-6-90 of the Weld County Code outlines Common development standards that apply to the site.

- 7) Section 22-2-80.G (I.Goal 7) states: *“Recognize the importance of railroad infrastructure to some industrial uses.”*

Northern Colorado continues to experience significant growth. Building and road construction require a dedicated and easily accessible supply of goods and materials produced by industrial businesses to meet the demand. There is a current need for industrially zoned property which is necessary for healthy economic growth. Fostering the agglomeration of industrial businesses along established rail lines and major transportation networks encourages the use of rail for transport of goods, thereby reducing truck-related traffic, emissions and road damage. Zoning property for industrial uses along rail lines in close proximity to major highways and restricting the permitting of industrial uses in remote areas protects rural property from the encroachment of incompatible uses.

- B. Section 23-2-40.B.2 – *“The uses which will be allowed on the subject property by granting the Change of Zone will be compatible with the surrounding land uses.”*

Industrial uses on the site will be compatible with surrounding land uses, based upon existing and expected future uses and zoning of surrounding properties, and on the mitigation measures required by the Change of Zone plat notes and the Weld County Code. The site is already partially developed with a fully constructed rail spur.

County Road 13 and the area around the subject site are encumbered by three (3) rail lines within one (1) mile and, therefore, is an unlikely location for residential development. The land immediately to the north of the site is designated on the Johnstown Comprehensive Plan for “Commercial Mixed Use” and “Employment”. Much of the incorporated land directly to the west of County Road 13 is being used for industrial, rail-oriented uses and is zoned “Mixed Use.” It is logical that the actual expansion of industrial uses will follow the rail corridor across and remain within 0.5 miles of County Road 13. Lands to the south of the site are split by two (2) regional rail lines and are a mix of industrial and agricultural uses.

The County requires haul routes to be defined as part of the application for a Site Plan Review or Use by Special Review, which will help address concerns regarding heavy truck traffic. The County does not have the ability to regulate railway traffic but will encourage future applicants to address suggestions or concerns provided during the Site Plan Review process.

Two (2) irrigation ditches are adjacent to the site, the Hill and Brush Ditch Company, and the Reorganized Farmers Ditch Company. Tetra Tech, the engineering firm responsible for the drainage design onsite, outlined the mitigation measures already constructed to control water contamination. The Board finds that these measures will adequately mitigate any potential water contamination.

Northeast of the site is an Urban-Scale Residential Subdivision, known as Indianhead, which is zoned A (Agricultural). To the east there is a reservoir and a handful of agricultural operations with residences. One (1) property to the east is permitted as an event center via USR15-0028.

Some surrounding property owners and other members of the public expressed concerns about train noise, dust, and health concerns. It is likely that the Indianhead Subdivision to the northeast of the site may be eventually surrounded by non-residential uses, so rather than prohibiting commercial or industrial development in this area, the applicant utilized various mitigation tools on the site, including earthen berms, landscaping, building designed to look agricultural, and technological advancements in the operation itself. The main operations of the site are buffered from the Indianhead Subdivision using a landscaped berm.

The site is already operating as a railroad spur under authority of the Surface Transportation Board. Noise from vehicle traffic on the highway can be much more pronounced than that coming from the train on the site, when measured from the Indianhead development. A smaller berm separates the property activity from the neighbors to the south and southeast. A response received from a resident of the closest home to the site, 6433 County Road 56, mentioned that the horns and noise from trains traveling through the area on the Union Pacific and Great Western tracks to the south and transloading operations west of County Road 13 were much louder than the slow moving train and batching activity on the subject property.

Dust suppression technology and a sophisticated drainage design also help to mitigate impacts at this site.

Referrals without concerns were received from the following agencies: The Colorado Geologic Survey, Little Thompson Water District, Front Range Fire Rescue, Weld County Sheriff's Office, and Colorado Parks and Wildlife. Any future industrial uses will have to be approved through a Site Plan Review or Use by Special Review process. Site Plan Review and Use by Special Review applications are also sent to referral agencies for comments. The Conditions of Approval to both this Change of Zone and any future Site Plan Reviews will adequately address and mitigate potential impacts. Due to the proximity of multiple rail lines and major transportation

networks, the presence of other industrial operations in the vicinity, and the mitigation methods already incorporated into the site, a Change of Zone to I-3 (Heavy Industrial) is compatible with the surrounding land uses.

- C. Section 23-2-40.B.3 – *“Adequate water and sewer service can be made available to the site.”*

The site is currently served by domestic water from the Little Thompson Water District via three (3) tap accounts: #3902, #825001, and #832801. The site uses septic systems for sewage disposal with the following permits: #SE-0000094, #SP-0701064, #SP-1000036, and #SP-1600224. No concerns regarding water or sewer service were expressed by the Department of Public Health and Environment, in the May 11, 2020, referral response or by the Little Thompson Water District, in the April 30, 2020, referral response.

- D. Section 23-2-40.B.4 – *“Street/road or highway facilities providing access to the property are adequate in size to meet the requirements of the proposed zone district.”*

Section 23-3-330.A – Intent, states, in part: *“Properties zoned I-3 should be located near transportation infrastructure such as highways, railroads, or airports.”*

The property accesses onto County Road 13 (Colorado Boulevard), which is classified as an arterial road on the Weld County Functional Classification Map. Traffic utilizing the site then travels north to U.S. Highway 34. All required improvements were made to both County Road 13 and the intersection of U.S. Highway 34 and County Road 13 and all affected rail crossings by the applicant pursuant to an approved and recorded Improvements Agreement, #2016-3738, Reception Number 4335536, with the County. The Improvements Agreement may be reviewed annually and updated as appropriate. The existing street and highway facilities are adequate to meet the requirements of the heavy Industrial Zone District.

- E. Section 23-2-40.B.5 – *“In those instances where the following characteristics are applicable to the rezoning request, the applicant has demonstrated compliance with the applicable standards:”*

- 1) Section 23-2-40.B.5.a – *“If the proposed Change of Zone is located within any Overlay Zoning District identified by maps officially adopted by the County, that the applicant has demonstrated compliance with the County regulations concerning Overlay Districts. Compliance may be demonstrated in a previous public hearing or in the hearing concerning the rezoning application.”*

The site is not located within any overlay district officially adopted by the County, including airport, geologic, historic, MS4, or floodplain, as shown on the official maps of the Weld County Property Portal.

- 2) Section 23-2-40.B.5.b – *“The proposed rezoning will not permit the use of any area known to contain a commercial mineral deposit in a manner which would interfere with the present or future extraction of such deposit by an extractor to any greater extent than under the present zoning of the property.”*

The Geology Report, dated December 4, 2019, submitted with the application indicates that the site is not located within an area recognized as having economically recoverable sand and gravel or other metallic resources.

- 3) Section 23-2-40.B.5.c – *“If soil conditions on the site are such that they present moderate or severe limitations to the construction of structures or facilities proposed for the site, that such limitations will be addressed by the applicant and/or the applicant’s successors or assigns prior to the development of the property.”*

The Natural Resources Conservation Services (NRCS) Soil Survey, dated November 20, 2019, submitted with the application indicates that most of the property consists of soils listed as “somewhat limited” due to “shrink-swell.” The Geology Report, dated December 4, 2019, submitted with the application indicates that near surface soils could be used to support lightly to moderately loaded structures and that deep foundation systems could be employed for heavy foundation loads. The operator will be able to accommodate these soil limitations with appropriate construction methods.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Weld County, Colorado, that the application of Gerrard Investments, LLC, c/o Rock and Rail, LLC, for a Change of Zone, COZ20-0004, from the A (Agricultural) Zone District to the I-3 (Heavy Industrial) Zone District on the above referenced parcel of land be, and hereby is, granted subject to the following conditions:

1. Prior to recording the plat:
 - A. The plat shall be amended to delineate the following:
 - 1) All pages of the plat shall be labeled COZ20-0004.

- 2) The plat shall adhere to Section 23-2-50.D of the Weld County Code.
 - 3) All recorded easements and rights-of-way shall be shown and dimensioned on the Change of Zone plat.
 - 4) County Road 13 is a paved road and is designated on the Weld County Functional Classification Map (Code Ordinance #2017-01) as an arterial road, which requires 140 feet of right-of-way at full buildout. The applicant shall delineate and label the future and existing right-of-way (along with the documents creating the existing right-of-way) and the physical location of the road on the plat. If the existing right-of-way cannot be verified, it shall be dedicated or reserved, per Weld County Code. The applicant shall also delineate the physical location of the roadway. Pursuant to the definition of setback in the Weld County Code Section 23-1-90, the required setback is measured from the future right-of-way line. This road is maintained by Weld County.
 - 5) County Road 56 is a gravel road and is designated on the Weld County Functional Classification Map (Code Ordinance #2017-01) as a local road, which requires 60 feet of right-of-way at full buildout. The applicant shall delineate and label the future and existing right-of-way (along with the documents creating the existing right-of-way) and the physical location of the road on the plat. If the existing right-of-way cannot be verified, it shall be dedicated or reserved, per Weld County Code. The applicant shall also delineate the physical location of the roadway. Pursuant to the definition of setback in the Weld County Code Section 23-1-90, the required setback is measured from the future right-of-way line. This road is maintained by Weld County.
 - 6) The applicant shall show and label the existing access points and the usage types (Agriculture, Residential, Commercial/Industrial, or Oil and Gas). Public Works will review access locations as a part of the plat submittal.
2. The following notes shall be delineated on the Change of Zone plat:
- A. The Change of Zone, COZ20-0004, allows for I-3 (Heavy Industrial) uses, which shall comply with the I-3 (Heavy Industrial) Zone District requirements, as set forth in Chapter 23, Article III, Division 4 of the Weld County Code, as amended.
 - B. The operation shall comply with all applicable rules and regulations of state and federal agencies and the Weld County Code.

- C. Any future structures or uses onsite must obtain the appropriate Zoning and Building Permits.
- D. Industrial development may require buffering and screening from residential properties through the permitting process.
- E. Building Permits may be required, for any new construction or set up manufactured structure, per Section 29-3-10 of the Weld County Code. A Building Permit application must be completed and submitted. Buildings and structures shall conform to the requirements of the various codes adopted at the time of permit application. Currently, the following have been adopted by Weld County: 2018 International Building Codes, 2006 International Energy Code, 2017 National Electrical Code, and Chapter 29 of the Weld County Code. A plan review shall be approved, and a permit must be issued prior to the start of construction.
- F. Building Permits issued on the proposed lots will be required to adhere to the fee structure of the County-Wide Road Fee, County Facility Fee, and Drainage Impact Fee Programs.
- G. The property owner or operator shall be responsible for controlling noxious weeds on the site, pursuant to Chapter 15, Articles I and II, of the Weld County Code.
- H. Weld County will not replace overlapping easements located within existing right-of-way or pay to relocate existing utilities within the existing County right-of-way.
- I. All access and utility easements are dedicated for the benefit of all owners of lots depicted on this plat, including owners of future lots created therefrom, regardless of lot configuration or number of users, and without limitation of the use or intensity of the use of such easements. No lot owner may install a gate or otherwise impede the use of such easements without the approval of all persons with rights of use of such easements.
- J. Access on the site shall be maintained to mitigate any impacts to the public road, including damages and/or off-site tracking.
- K. The Improvements and Road Maintenance Agreement (#2016-3738), adopted December 28, 2016, for this site shall be reviewed for any needed updates and/or revisions. Hereafter, the Agreement may be reviewed on an annual basis, including a site visit and possible updates.
- L. Any work that may occupy and/or encroach upon any County rights-of-way or easement shall acquire an approved Right-of-Way Use Permit prior to commencement.

- M. The historical flow patterns and runoff amounts will be maintained on the site.
- N. Water service may be obtained from the Little Thompson Water District.
- O. The parcel is currently not served by a municipal sanitary sewer system. Sewage disposal may be by septic systems designed in accordance with the regulations of the Colorado Department of Public Health and Environment, Water Quality Control Division and the Weld County Code in effect at the time of construction, repair, replacement, or modification of the system.
- P. Activity or use on the surface of the ground over any part of the On-Site Wastewater Treatment Systems (OWTS) must be restricted to that which shall allow the system to function as designed and which shall not contribute to compaction of the soil or to structural loading detrimental to the structural integrity or capability of the component to function as designed.
- Q. During development of the site, all land disturbances shall be conducted so that nuisance conditions are not created. If dust emissions create nuisance conditions, at the request of Weld County Environmental Health Services, a Fugitive Dust Control Plan must be submitted.
- R. Necessary personnel from the Weld County Departments of Planning Services, Public Works, and Public Health and Environment shall be granted access onto the property at any reasonable time in order to ensure the activities carried out on the property comply with the Conditions of Approval stated herein, and all applicable Weld County regulations.
- S. RIGHT TO EXTRACT MINERAL RESOURCES STATEMENT: Weld County has some of the most abundant mineral resources, including, but not limited to, sand and gravel, oil, natural gas, and coal. Under Title 34, of the Colorado Revised Statutes, minerals are vital resources because (a) the state's commercial mineral deposits are essential to the state's economy; (b) the populous counties of the state face a critical shortage of such deposits; and (c) such deposits should be extracted according to a rational plan, calculated to avoid waste of such deposits and cause the least practicable disruption of the ecology and quality of life of the citizens of the populous counties of the state. Mineral resource locations are widespread throughout the County and persons moving into these areas must recognize the various impacts associated with this development. Oftentimes, mineral resource sites are fixed to their geographical and geophysical locations. Moreover, these resources are protected property rights and mineral owners should be afforded the opportunity to extract the mineral resource.

- T. The Weld County Right to Farm Statement, as it appears in Section 22-2-20.J.2 of the Weld County Code, shall be placed on the map and recognized at all times.
- 3. Upon completion of Conditions of Approval #1 and #2 above, the applicant shall submit one (1) electronic copy (.pdf) of the plat for preliminary approval to the Weld County Department of Planning Services. The plat shall be prepared in accordance with the requirements of Section 23-2-50.D of the Weld County Code.
- 4. Upon approval of the plat, Condition of Approval #3 above, the applicant shall submit to the Department of Planning Services a Mylar plat along with all other documentation required, as Conditions of Approval. The Mylar plat shall be recorded in the office of the Weld County Clerk and Recorder by Department of Planning Services Staff. The Mylar plat and additional requirements shall be submitted within 120 days from the date of the Board of County Commissioners resolution. The applicant shall be responsible for paying the recording fee.
 - A. Any approved amendments to the Official Zoning Map shall be effective immediately upon approval by the Board of County Commissioners unless otherwise specified by the approving Resolution of the Board of County Commissioners. However, no Building Permit shall be issued, and no Use shall commence on the property until the plat is recorded.
 - B. If a plat has not been recorded within 120 days of the date of the approval of the Change of Zone (COZ), or within a date specified by the Board of County Commissioners, the Board may require the landowner to appear before it and present evidence substantiating that the COZ has not been abandoned and that the applicant possesses the willingness and ability to record the plat. The Board of County Commissioners may extend the date for recording the plat. If the Board determines that conditions supporting the original approval of the COZ cannot be met, the Board may, after a public hearing, revoke the COZ.
 - C. In accordance with Weld County Code Ordinance #2012-3, approved April 30, 2012, should the plat not be recorded within the required 120 days from the date of the Board of County Commissioners Resolution, a \$50.00 recording continuance charge shall be added for each additional three (3) month period.

The above and foregoing Resolution was, on motion duly made and seconded, adopted by the following vote on the 22nd day of July, A.D., 2020.

BOARD OF COUNTY COMMISSIONERS
WELD COUNTY, COLORADO

ATTEST: *Asther G. Meick*
Weld County Clerk to the Board

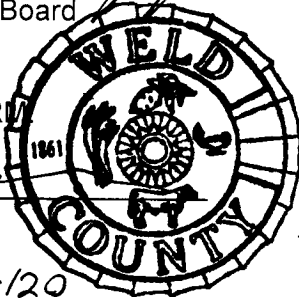
Mike Freeman
Mike Freeman, Chair

BY: *Mark N. Huggins*
Deputy Clerk to the Board

Steve Moreno
Steve Moreno, Pro-Tem

[Signature]
Scott K. James

APPROVED AS TO FORM
[Signature]
County Attorney



EXCUSED
[Signature]
Barbara Kirkmeyer

Date of signature: 09/14/20

[Signature]
Kevin D. Ross