

Board of Trustees
BOT Agenda Cover Sheet
Agenda Item No: X. 1.
Meeting Date: November 4, 2024

TO: Mayor Rogin and Members of the Board of Trustees

FROM: Andrew Bowen, Senior Planner

DATE: 10/29/2024

ITEM: 2nd Reading – Ordinance 1167 – an Ordinance of the Town of Lyons, Colorado, Approving the TEBO Annexation Application for 4545 Ute Highway and 4602 Highland Drive (Continued)

Note: Proposed to be continued to a date certain of December 2nd, 2024.

☒ ORDINANCE
☐ MOTION / RESOLUTION
☐ INFORMATION

- I. **REQUEST OR ISSUE:** Staff are requesting that the BOT postpone this item until a date certain of December 2nd, 2024, to allow the Applicant further time to review and provide comment on staff's proposed Annexation Agreement. Staff have been in contact with the applicant and progress has not yet been made to review the proposed agreement. The last correspondence from James Dixon stated the following:

*"Hey Andrew,
Thanks for checking in and sorry about the delay! Its been on my desk and I am to blame 😞 just a bit too much going on over here, but I will shuffle it up my desk and do a review so we can get this back to you. I know this is important for all parties!"*

*James Dixon | CEO
Tebo Properties*

On December 2nd, 2024, staff requests that the BOT host a public hearing and consider approving this ordinance on second reading for a petition for annexation and zoning designation as submitted for two parcels (4545 UTE HWY (Front Parcel) and 4602 HIGHLAND DR (Rear Parcel)).

No Development Plan and/or Agreement are to be considered at this time, but the Applicant has submitted a preliminary sketch plan to provide context. The staff and the Town Attorney have declared the application packet complete. Copies of both Submittal

Checklists and submittal documents are attached to this packet.

Property Information

The legal descriptions for both parcels are as follows:

(Front Parcel) TRACT 2267-A LESS A-1 & A-2 & A-3 & LESS PT TO HWY TOTAL 1.20 ACS M/L PER LS-09-0123R0054471 & R0054728 & R0054550 & R0127169 COMB HERE 2017 PER DEED # 1429342 5/20/94 & SUBSEQUENT SALE PER REC # 1447002 7/18/94

(Rear Parcel) TRS 2267A1 & 2267A3 1955 COM 8X4554542 - SEE R0054572 FOR LAND

- II. **PROJECT HISTORY:** Both parcels have been within the Town's planning area for several years and have been used commercially. Town staff and the Applicant have met several times within the last four months to discuss annexation and the highest and best use for both parcels. While no formal development plans were submitted, in conversations with the Applicant, the proposed development patterns for the site are commercial on the front parcel (CEC), with high-density housing (R3) on the rear parcel. This request is reflected within the application packet.

On July 15th, the BOT unanimously approved Resolution 2024-55, which declared that the application packet was in "Substantial Compliance" and initiated annexation proceedings.

As required by Sec. 15-1-220, Step 12, the PCDC met on August 14th to consider the annexation application and held a public hearing regarding the zoning request. As noted, the proposed zone districts for the subject property are Commercial Eastern Corridor (CEC) on the front parcel and high-density housing (R3) on the rear parcel. The PCDC unanimously recommended the approval of this petition for annexation and zoning designation.

Note: A full staff report has been provided and attached to the packet.

On October 22nd, 2024, staff met with neighboring property owners to discuss the proposal and gather initial input. At that meeting, the Highland Drive neighborhood expressed in consensus that more dense housing was not an issue, as long as it was developed in a manner to avoid large apartment complexes. Further, it was stated that the development of small homes and cottages would be most appropriate for matching the existing community's residential bulk and scale characteristics.

Sec. 15-1-310. - Annexation review criteria.

It shall be the general policy of the Board of Trustees with respect to annexations and the consideration of annexation petitions that:

- 1) *"Annexation is a discretionary act. With the exception of an initiated petition for the annexation of an enclave, the Board of Trustees shall exercise its sole discretion in the annexation of territory to the Town.*
- 2) *The property is eligible for annexation if:*
 - a. *Not less than one-sixth ($\frac{1}{6}$) of the perimeter of the area proposed to be annexed is contiguous with the Town. Contiguity is not affected by the existence of streets, alleys, rights-of-way, public lands (except County-owned open space) or water bodies between the Town and the land proposed to be annexed. The one-sixth contiguity of the perimeter may be achieved by the annexation of one (1) or more parcels in a series, which can be considered simultaneously for the purpose of the public hearing.*

- b. A community of interest exists between the territory proposed to be annexed and the Town.*
 - c. The territory proposed to be annexed is urban or will be urbanized in the near future and is integrated or is capable of being integrated with the Town.*

Existence of Subparagraph a. above is a basis for a finding of Subparagraphs b. and c., unless the Board of Trustees at a public hearing finds that at least two (2) of the following exist:

 - i. Less than fifty percent (50%) of the adult residents of the area proposed to be annexed use any of the recreational, civic, social, religious, industrial or commercial facilities of the Town and less than twenty-five percent (25%) of these adult residents are employed in the annexing Town;*
 - ii. At least one-half (½) of the land proposed to be annexed is agricultural, and landowners constituting at least one-half (½) of the total area express, under oath, an intention to devote the land to such agricultural use for at least five (5) years; and*
 - iii. It is physically impractical to extend to the proposed area those urban services the Town provides to all its citizens and upon the same conditions. This standard does not apply to the extent that any portion of an area proposed to be annexed is provided with, or will within the reasonably near future be provided with, service by a quasi-municipal corporation (such as a special district).*
- 3) No land held in identical ownership may be divided into separate parcels for annexation without written consent of the landowner unless the parcels are separated by a dedicated street, road or other public way. (This applies even when the federal government owns the land, although federal and state public lands may be ignored for purposes of contiguity.)*
 - 4) No land in identical ownership that comprises at least twenty (20) acres and that has improvements with an assessed value in excess of two hundred thousand dollars (\$200,000.00) for ad valorem tax purposes may be included in the annexation without written consent of the owner unless the parcel is located entirely within the outer boundaries of the Town as they exist at the time of annexation.*
 - 5) No annexation resolution pursuant to [Section 15-1-330](#) of this Chapter and no annexation petition or petition for an annexation election is valid when annexation proceedings have been initiated for the annexation of part of such territory by another Town. In that case, other provisions apply. See Section 31-12-114, C.R.S.*
 - 6) If an annexation will result in the detachment of area from a school district and its removal to another school district, the annexation petition or petition for annexation election must be accompanied by a resolution of the board of directors of the school district to which such area will be attached, approving the annexation.*
 - 7) The parcel annexed must not have the effect of extending the Town's boundary more than three (3) miles in any direction in any one (1) year. This three-mile limit may be exceeded if the limit would have the effect of dividing a parcel of property held in identical ownership if at least fifty percent (50%) of the property is within the three-mile limit. In such event, the entire property held in identical ownership may be annexed in any one (1) year without regard to such mileage limitation. Such three-mile limit may also be exceeded for the annexation of an enterprise zone.*

- 8) *Prior to completion of any annexation within the three-mile area, the Town shall have in place a plan for that area that generally describes the proposed location, character and extent of streets, subways, bridges, waterways, waterfronts, parkways, playgrounds, squares, parks, aviation fields, other public ways, grounds, open spaces, public utilities and terminals for water, light, sanitation, transportation and power to be provided by the Town and the proposed land uses for the area. Such plan shall be updated at least once annually.*
- 9) *If a portion of a platted street or alley is to be annexed, the entire width of the street or alley must be included within the area annexed.*
- 10) *The Town may not deny reasonable access to landowners or owners of easements or franchises adjoining a platted street or alley that the Town has annexed but that is bounded on one (1) or both sides by unincorporated property.*
- 11) *Annexed areas will not divide tracts of land to prevent further annexation of adjoining parcels (for example, leaving a "gap" or a "strip" of land between property to be annexed and the adjoining property).*
- 12) *The land to be annexed and the uses proposed for the land shall contribute to the orderly growth of the Town and shall generally conform to the goals and policies of the Comprehensive Plan.*
- 13) *Certain public facilities and amenities are necessary and must be constructed as part of any territory annexed to the Town in order that the public needs may be served by such facilities. These facilities include, but not by way of limitation, arterial streets, bridges, public parks and recreation areas, school sites, fire and police station sites and storm drainage facilities. The annexation of lands to the Town shall be shown not to create any additional cost or burden on the then-existing residents of the Town to provide such public facilities in any newly annexed area.*
- 14) *The petitioner for annexation shall be responsible for paying the Town's full cost for processing the annexation petition, from initial discussion with the Planning Commission before submittal of the petition, through the approval and recording of the final annexation documents, unless otherwise approved by the Board of Trustees."*

III. RELATIONSHIP WITH OTHER PLANS: Both parcels are annexable per the LMC's applicable State Statutes and code sections. The subject parcels are also identified as annexable in the Lyon's Thrive Comprehensive Plan, Future Land Use Plan, and the 2012 IGA.

IV. RECOMMENDED ACTION / NEXT STEPS: Staff recommend that the BOT postpone this item until **December 2nd, 2024**, to allow the Applicant time to review and provide comment on staff's proposed Annexation Agreement.

V. FISCAL IMPACTS: All fiscal impacts were considered during the review process of this application. The Applicant has submitted an analysis/Impact Report, and an Annexation Agreement is being drafted.

VI. LEGAL ISSUES: All legal analyses were reviewed and considered during this application's review process, and an Annexation Agreement has been drafted.

VII. CONFLICTS OR ENVIRONMENTAL ISSUES: All referral agencies reviewed the environmental analyses during this application's review process.

Note: Not all referrals have been received as of this posting. If additional comments are returned, they will be provided to the BOT.

- VIII. **SUMMARY AND ALTERNATIVES:** The BOT could decide not to approve this application for annexation and zoning designation, make amendments, or continue for further discussion.

Proposed Motion: “I move to postpone this item to a date certain of **December 2nd, 2024.**”