



AGENDA MEMORANDUM

To: Mayor Sullivan and Members of Board of Trustees

Cc: Bob Joseph; Deb Anthony

From: Marcus McAskin

Re: Resolution 2017-29: A RESOLUTION ACCEPTING AN ANNEXATION PETITION, MAKING CERTAIN FINDINGS OF FACT, FINDING SUBSTANTIAL COMPLIANCE FOR SUCH PETITION, AND SETTING A PUBLIC HEARING FOR PROPERTY KNOWN AS THE PLANET BLUEGRASS FARM ANNEXATION

Date: March 14, 2017

1. Statement of Issue:

The purpose of this memorandum is to summarize for the Board of Trustees (“BOT”) whether the petition for annexation (“Petition”) submitted to the Town of Lyons for certain property generally referred to as the “Planet Bluegrass Farm Annexation” property and described with particularity in the Petition and the annexation map submitted therewith, are in substantial compliance with the requirements of the Municipal Annexation Act of 1965, C.R.S §§ 31-12-101 *et seq.*, as amended (the “Act”).

The Petition was officially filed of record with the Town Clerk on or before February 28, 2017. Copies of the Petition and annexation map accompanying the Petition will be available at the Town Clerk’s office for review, and copies of the same will be circulated to the BOT prior to the March 20, 2017 regular meeting.

Action on Resolution 17-29 does not annex the Property nor does it signify the BOT’s approval or disapproval of this annexation. The finding of substantial compliance contained within the proposed Resolution is an administrative step required by the Act in order to formally initiate annexation proceedings. The Resolution also establishes the date, time and place at which a public hearing on the eligibility of the Property for annexation will be conducted (the “Eligibility Hearing”). The proposed date on which the Eligibility Hearing will be conducted is set forth within Resolution 17-29, and is scheduled for Monday, May 1, 2017 at 7:00 p.m. at Town Hall.

2. Discussion:

The Property

The Property (also referred to as the Planet Bluegrass Farm Annexation) is generally located south and west of St. Vrain Drive (Highway 36) and north of Apple Valley Road. The Property is more particularly shown and described in the annexation map accompanying the Petition, which is on file with the Town Clerk. The Property also includes certain rights-of-way, including portions of St. Vrain Drive (aka Highway 36 & 66), as more particularly described in the Petition and shown in the annexation map.

Annexation Process

There are three major procedural steps required for a voluntary annexation under the Act. The first two steps, Substantial Compliance and the Eligibility Hearing, are procedural in that BOT's role is to determine whether or not an annexation request meets requirements of the Act and the applicable requirements of Chapter 15 of the Lyons Municipal Code. The third step is a legislative determination of the BOT as to whether it wishes to annex the Property. The following is a summary of the three steps:

1. **Substantial Compliance** – The BOT must determine if the Petition meets the requirements set forth in C.R.S. § 31-12-107(1). As set forth later in this memorandum, as part of the Substantial Compliance determination, the BOT is required to set the date and time of the Eligibility Hearing.
2. **Eligibility** – After public notice in accordance with the requirements of the Act, the BOT must determine if the requested annexation meets the applicable provisions of the Act and the Colorado Constitution, and is therefore eligible for annexation into the Town. The Eligibility Hearing must occur between thirty (30) and sixty (60) days after the effective date of Resolution 17-29 (if the Substantial Compliance resolution, Resolution 17-29 is approved, the Eligibility Hearing will be scheduled for Monday, May 1, 2017, which falls within the time period required by the Act).
3. **Annexation and Zoning** – Once the Property has been deemed eligible for annexation, the BOT may proceed with the annexation and zoning hearings. The first two steps determine whether the Property *may* be annexed; this step determines whether the Property *should* be annexed. Currently, it is anticipated that the BOT will take action on this third step on Monday, May 15, 2017 (scheduled date on which the second reading and public hearing of the annexation ordinance will occur).

In addition to the three major procedural steps required for a voluntary annexation under the Act, the Town of Lyons has a fourth major procedural step given that this annexation proposes the annexation of more than five (5) acres.

4. **Special Mail Ballot Election** (Town requirement) – Specifically, Section 15-1-340(a) of the Lyons Municipal Code states that “[n]o ordinance annexing property into the Town shall be effective unless and until the ordinance is referred to the registered electors of the Town at a regular or special election and such ordinance is approved by a majority of the registered electors voting thereon.”

Sec. 15-1-340(c) of the Code requires the applicant/petitioner to:

“ . . . pay the reasonable costs and expenses incurred by the Town in the calling, preparation and conduct of the election. At the time of submission of a petition for an annexation that is subject to an election in accordance with this Section, the applicant shall deliver to the Town an adequate monetary deposit, in an amount determined by the Town Clerk, to secure the applicant's full payment of the Town's costs and expenses associated with the election. Where the ballot includes other ballot issues or questions, the applicant for annexation shall pay a share of the election costs proportionate to the number of ballot issues or questions. In the event that funds deposited by the applicant exceed the Town's actual costs and expenses of the election, the Town shall promptly refund any remaining deposited funds to the applicant following a final accounting by the Town Clerk of the costs and expenses of the election.”

In this case, the Town Clerk has targeted **Tuesday, July 11, 2017** as the date on which a special mail ballot election will be held (assuming that the BOT approves the annexation of the Property and the ordinance annexing the Property is referred to Town voters).

The applicant/petitioner has paid a deposit of \$6,500.00 to pay the election costs. In accordance with Sec. 15-1-340(c) of the Code, any funds remaining on deposit with the Town following a final accounting of the costs by the Town Clerk will be refunded to the applicant/petitioner.

This memorandum and the attached Resolution are intended to comply with **step one** of the annexation process set forth above (Substantial Compliance). Staff is asking the BOT to determine that the Petition substantially complies with the requirements of the Act; specifically C.R.S. § 31-12-107(1), given that:

1. The Petition has been signed by more than fifty percent (50%) of the landowners owning more than fifty percent (50%) of the Property.
2. The signatures on the Petition are dated within one hundred and eighty (180) days of the date on which the Petition was filed with the Town Clerk, satisfying the requirement of C.R.S. § 31-12-107(1)(e).
3. The Petition contains:
 - a. An allegation that it is desirable and necessary that the Property described in the Petition be annexed.
 - b. An allegation that the requirements of C.R.S. § 31-12-104 and § 31-12-105 exist or are met.
 - c. An allegation that the signer of the Petition, together with owner(s) submitting other valid petitions for annexation to the Town, comprise more than fifty (50%) percent of the landowners of the area proposed to be annexed and own more than fifty (50%) of the area proposed to be annexed, exclusive of public streets and alleys and any land owned by the Town of Lyons.
 - d. A request that the Town of Lyons approve the annexation of the Property.
 - e. The signature of the landowner that executed the petition.
 - f. The mailing address of the landowner.

- g. The legal description of the land owned by the landowner that executed the petition.
- h. The date that the landowner executed the petition.
- i. The affidavit of the petition circulator; stating that the signature of the landowner therein is the signature of the person whose name it purports to be.

5. That four (4) copies of the annexation map corresponding to the Property have been submitted to the Town with the Petition, and that the annexation map contains the following information:

- (a) A written legal description of the boundaries of the Property proposed to be annexed.
- (b) A map showing the boundary of the Property proposed to be annexed.
- (c) Within the map, the boundaries and the plat numbers of plots or of lots and blocks.
- (d) Next to the boundary of the Property proposed to be annexed is drawn the contiguous boundary of the Town of Lyons.

3. Recommendations:

Town Staff recommends that the Board of Trustees find that the Petition is in substantial compliance with applicable provisions of the Act, specifically C.R.S. § 31-12-107(1), and approve Resolution 2017-29 in the form submitted.

4. Alternatives:

As the Petition complies with the requirements set forth in C.R.S. § 31-12-107(1), the BOT must find the petition in Substantial Compliance. The BOT will have an opportunity to consider whether the Property *should* be annexed following the conclusion of the Eligibility Hearing on the proposed annexation, which is currently scheduled for Monday, May 1, 2017. Specifically, the BOT may consider whether the Property should be annexed in taking action on the annexation ordinance.

5. Fiscal Impact:

Approving Resolution 2017-29 will not have any direct fiscal impact on the Town as it only states that the Petition meets statutory content requirements for an annexation petition and sets the date for the Eligibility Hearing.

6. Next Steps:

Staff will complete all necessary public notification regarding the proposed annexation. If the BOT approves Resolution 2017-29, a Public Hearing will be scheduled before PCDC on Monday, April 24, 2017, at which time the PCDC will consider the proposed annexation of the Property and the proposed initial zoning for the Property, and will make a recommendation to the BOT on both topics. The First Reading of ordinances related to the proposed annexation and establishment of initial zoning will be scheduled before the BOT on Monday, May 1, 2017. Second Reading of the ordinances will be scheduled on Monday, May 15, 2017, which is the first regular meeting following the conclusion of the scheduled Eligibility Hearing (May 1, 2017).

7. Previous Actions:

There have been no previous actions by the Board of Trustees on this subject. Town Staff determined that the annexation application was complete on February 28, 2017.

8. Suggested Motions:

I MOVE TO APPROVE RESOLUTION 2017-29: A RESOLUTION ACCEPTING AN ANNEXATION PETITION, MAKING CERTAIN FINDINGS OF FACT, FINDING SUBSTANTIAL COMPLIANCE FOR SUCH PETITION, AND SETTING A PUBLIC HEARING FOR PROPERTY KNOWN AS THE PLANET BLUEGRASS FARM ANNEXATION

Alternative Motion:

I MOVE TO DENY RESOLUTION 2017-29: A RESOLUTION ACCEPTING AN ANNEXATION PETITION, MAKING CERTAIN FINDINGS OF FACT, FINDING SUBSTANTIAL COMPLIANCE FOR SUCH PETITION, AND SETTING A PUBLIC HEARING FOR PROPERTY KNOWN AS THE PLANET BLUEGRASS FARM ANNEXATION BASED ON: _____

[Board member making motion to supply specific reasons why the requirements of section 30 of Article II of the Colorado Constitution or C.R.S. § 31-12-104 or -105 have not been met].

Attachment:

Attachment 1 – Resolution 2017-29