

**Town of Lyons, Colorado
Board of Trustees
BOT Agenda Cover Sheet
Agenda Item No: X-1, XI-1, 2 & 3
Meeting Date: May 1, 2017**

TO: Mayor Sullivan and Members of Board of Trustees
FROM: Marcus McAskin
DATE: April 25, 2017
ITEM: RESOLUTION NO. 2017-49; ORDINANCE NOS. 1014, 1015, 1016

ORDINANCE(S)
 MOTION / RESOLUTION
 INFORMATION

I. REQUEST OR ISSUE:

The Planet Bluegrass Farm Annexation proposes the annexation of approximately 24.6 acres (the "Subject Property"), to the Town of Lyons, together with certain rights-of-way ("ROW") as described in the Petition for Annexation and Annexation Map. Overall, including associated ROW, the annexation parcel is approximately 28.29 acres.

The annexation was initiated by the sole owner of the Subject Property, Planet Bluegrass Annex, LLC (the "Petitioner"). The petition (referred to herein as the "Petition") and Annexation Map are on file with the Town Clerk.

Before the Board of Trustees (the "BOT") may proceed to consider the annexation of the Subject Property, the Town is required to hold a public hearing to determine whether or not the Subject Property meets certain statutory requirements set forth in the Municipal Annexation Act of 1965, C.R.S. §§ 31-12-101 et seq. (the "Act") and state constitutional requirements, and is "eligible" for annexation into the Town of Lyons. By approving Resolution No. 2017-49, the BOT will confirm Staff's findings, as detailed in this report, that the Subject Property is eligible for annexation into the Town.

Once the BOT confirms Staff's findings, it must schedule a consolidated public hearing to consider whether the BOT desires to annex the Subject Property, consider the proposed Annexation Agreement with the Petitioner, and to determine what the initial zoning of the Subject Property should be. The public hearing on these items is scheduled to be held and conducted on Monday, May 15, 2017.

If the annexation is approved by the BOT, the Lyons Municipal Code ("LMC") requires that the annexation be referred to the registered electors of the Town for approval at a special election held for that purpose.

Currently, Town Staff is anticipating that the special mail ballot election on the question of annexation will be conducted on Tuesday, July 11, 2017.

Ordinance No. 1014 (“Annexation Ordinance”) approves the annexation, subject to voter approval of the annexation.

Ordinance No. 1015 (“Agreement Ordinance”) approves the Annexation Agreement between the Town and Petitioner. The Agreement Ordinance will only be effective if Town voters approve the annexation.

Ordinance No. 1016 (the “Initial Zoning Ordinance”) establishes the initial zoning for the Subject Property, as further detailed in this report. The Initial Zoning Ordinance will only be effective if Town voters approve the annexation.

The Annexation Ordinance, Agreement Ordinance, and Initial Zoning Ordinance are all scheduled for first reading at the May 1, 2017 meeting.

THE BOT WILL NOT BE APPROVING THE ANNEXATION OR DISCUSSING THE PROPOSED INITIAL ZONING AT THE MAY 1ST MEETING. THE BOT WILL BE CONDUCTING THE PUBLIC HEARING ON THE NARROW ISSUE OF WHETHER THE SUBJECT PROPERTY IS ELIGIBLE FOR ANNEXATION TO THE TOWN.

Staff is recommending: (1) approval of Resolution No. 2017-49; and (2) approval of Ordinance Nos. 1014, 1015, and 1016 on first reading. Second reading and public hearing on Ordinance Nos. 1014, 1015, and 1016 is currently scheduled for Monday, May 15th.

II. BACKGROUND:

Annexation Process

There are four major procedural steps required for voluntary annexation. The first two steps, commonly referred to as “Substantial Compliance” and “Eligibility”, are procedural in that BOT’s role is to determine only whether or not an annexation request meets requirements set forth in the Act. The third step involves a legislative determination of the BOT as to whether it desires to annex the Subject Property into the boundaries of the Town. The fourth step includes establishing initial zoning of the Subject Property. The following is a summary of the four steps:

- 1. Substantial Compliance** – The BOT determines if the Petition for Annexation meets the requirements set forth in § 31-12-107(1), C.R.S., which outlines the requirements of an annexation petition. Pursuant to the Act, in making a determination of substantial compliance, the BOT is required to set a date for the eligibility public hearing. The BOT adopted Resolution 2017-29 on March 20, 2017, finding that the Petition was in substantial compliance with state law requirements and scheduled the eligibility hearing for Monday, May 1, 2017.
- 2. Eligibility** – Following public notice given in accordance with the applicable requirements of the Act, the BOT determines if the Subject Property meets the applicable provisions of the Act and the Colorado Constitution, as more fully explained in the *Analysis* section of this Staff Report set forth below. The

determination of whether the Subject Property is eligible for annexation into the Town of Lyons is made following a public hearing (Resolution No. 2017-49).

3. **Annexation** – Once the Subject Property has been deemed “eligible” for annexation, the BOT may proceed with consideration of an annexation ordinance. The first two steps determine whether the Subject Property *may* be annexed; this third step determines whether the Subject Property *should*, as a legislative matter, be annexed. This step will occur immediately following action on the eligibility of the Subject Property for annexation to the Town of Lyons (via Ordinance No. 1014).
4. **Zoning** – If the BOT annexes the Subject Property, the Act requires that initial zoning of the Subject Property be established within ninety (90) days of the effective date of the annexation. In this case, the initial zoning of the Subject Property is scheduled to be considered by the BOT at the May 15, 2017 regular meeting/public hearing.

Additional Town Process

In addition to the four major procedural steps outlined above, Sec. 15-1-340(a) of the LMC requires that any annexation of property exceeding five acres in size be referred to the Town’s registered electors. This is not a requirement of the Act or State law.

5. **Election** – Before the annexation of the Subject Property may become effective, the BOT must refer the question of whether to approve the annexation of the Subject Property to the Town’s registered electors. In addition to approving the annexation of the Subject Property, the Annexation Ordinance (Ordinance No. 1014) also requires Town Staff to conduct a special mail ballot election on the question of whether to annex the Subject Property as soon as practicable and suspends the effective date of the Annexation Ordinance until the annexation has been approved by a majority of the Town’s registered electors. If the annexation is not approved by voters, the Subject Property will not be annexed.

III. STAFF RECOMMENDATIONS AND NEXT STEPS:

1. Eligibility (Resolution 2017-49)

Any person may appear at the May 1, 2017 eligibility hearing and present evidence to the BOT as to whether the Subject Property meets the eligibility requirements for annexation set forth in the Act. Following the conclusion of the eligibility hearing, § 31-12-110, C.R.S., requires the BOT to set forth its findings of fact and conclusion on eligibility.

Staff recommends making the following findings to adopt Resolution 2017-49 and determine that the Subject Property is eligible for annexation under state law:

- The Subject Property meets the requirements of Section 30(1)(b) of Article II of the Colorado Constitution and C.R.S. §§ 31-12-104 and 31-12-105, and is eligible for annexation to the Town of Lyons because of the following facts:

- **Criteria:** Not less than one sixth (1/6) of the perimeter of the area proposed to be annexed is contiguous with the existing boundaries of the Town of Lyons. § 31-12-104(1)(a), C.R.S.
 - **Finding:** As shown in the Annexation Map, the Subject Property meets the contiguity requirement.
 - **Finding:** The Colorado licensed professional land surveyor that prepared the annexation map (Flatirons, Inc.) has certified that greater than one-sixth (1/6) of the boundary constituting the entirety of the Subject Property is contiguous to the present boundary of the Town of Lyons.
- **Criteria:** A community of interest exists between the area proposed to be annexed and the Town of Lyons; the proposed area to be annexed is urban or will be urbanized in the near future and the area to be annexed is integrated with or is capable of being integrated with the Town of Lyons. § 31-12-104(1)(b), C.R.S.
 - **Finding:** The Subject Property is currently located in urbanized unincorporated Boulder County, and, following the effective date of the annexation of the Subject Property, the Town will provide certain municipal services to the Subject Property including municipal law enforcement, code enforcement, and other municipal services it currently provides to other properties within the Town (collectively, "Town Services"). In addition, the fact that the minimum one-sixth contiguity has been established, the community of interest requirement is deemed satisfied under the Act.
- **Criteria:** An election is not required under the applicable requirements of Section 30(1)(a) of Article II of the Colorado Constitution and C.R.S. § 31-12-107(2); and
 - **Finding:** No additional terms or conditions are imposed which would require an election under C.R.S. § 31-12-112(1). Specifically, the Board of Trustees finds that there are no additional terms and conditions imposed on the proposed annexation of the Subject Property to the Town.
- **Criteria:** In establishing the boundaries of the territory to be annexed, no land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate, has been divided into separate parts or parcels without the written consent of the landowner(s) thereof unless such tracts or parcels are separated by a dedicated street, road or other public way. § 31-12-105(1)(a), C.R.S.
 - **Finding:** The Petition has been executed by the single landowner of the Subject Property, exclusive of public rights-of-way. The annexation will not separate or subdivide any portion of the existing parcels.

- **Criteria:** In establishing the boundaries of the territory to be annexed, no land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate, comprising 20 acres or more (together with buildings and improvements has a value for assessment in excess of \$200,000.00 for ad valorem tax purposes for the year preceding the annexation) is included in the proposed annexation area and is included without the written consent of the landowners. § 31-12-105(1)(b), C.R.S.
 - **Finding:** The Petition has been executed by the single landowner of the Subject Property, exclusive of public rights-of-way.
- **Criteria:** No annexation proceedings have been commenced by another municipality for any portion of the Subject Property. § 31-12-105(1)(c), C.R.S.
 - **Finding:** There have been no annexation proceedings commenced by another municipality for any portion of the Subject Property.
- **Criteria:** The area proposed for annexation will not result in the detachment of area from any school district or the attachment of the same to another school district. § 31-12-105(1)(d), C.R.S.
 - **Finding:** The Subject Property will remain in the St. Vrain Valley School District, and no current students will be impacted by the annexation.
- **Criteria:** The annexation of the Subject Property will not have the effect of extending the municipal boundary of the Town of Lyons more than three miles in any direction from any point of such municipal boundary within one year. § 31-12-105(1)(e), C.R.S.
 - **Finding:** The proposed annexation of the Subject Property will not extend the Town's boundaries more than three miles in any direction.
- **Criteria:** The Petitioner, which comprises more than fifty percent (50%) of all of the landowners of the area proposed for annexation and own more than fifty percent (50%) of the area proposed to be annexed, exclusive of streets and alleys, have signed the annexation petition and no election is required.
 - **Finding:** In reviewing the Boulder County Assessor's records and current title work for the Subject Property, this is an accurate statement.
- **Criteria:** The BOT must determine whether additional terms or conditions are to be imposed.

- **Finding:** There are no additional terms or conditions that are proposed to be imposed with this annexation, other than the terms and conditions set forth in the proposed Annexation Agreement.

2. Annexation (Ordinance No. 1014)

The Annexation Ordinance confirms the findings set forth in Resolution 2017-49, which are required findings for the approval of an annexation under both state law and the LMC, and approves the annexation of the Subject Property subject to referral of the annexation to the Town's registered electors at a special mail ballot election.

Staff recommends adopting Ordinance No. 1014 on first reading.

3. Annexation Agreement (Ordinance No. 1015)

Chapter 15 of the LMC contemplates the Town and the Petitioner entering into an annexation agreement setting forth the terms and conditions of the annexation and the responsibilities of the Petitioner.

Ordinance No. 1015 finds it is in the best interests of the Town to enter into the Annexation Agreement between the Town and the owner of the Subject Property and provides for the recording of the Annexation Agreement in the real property records of Boulder County if and only if the annexation of the Subject Property is approved by the Town's voters.

Staff recommends adopting Ordinance No. 1015 on first reading.

4. Initial Zoning (Ordinance No. 1016)

State law requires that initial zoning of property annexed to the Town be established within 90 days of the effective date of the annexation. The Subject Property is currently zoned "Boulder County Rural Residential" within unincorporated Boulder County.

The Petitioner is requesting that the Subject Property be initially zoned as CE-1 "Commercial Entertainment District" in accordance with Chapter 16 of the Municipal Code. As set forth in Section 16-3-220 of the Municipal Code, the CE-1 District has been created "... to provide for a wide variety of for-profit and/or not-for-profit entertainment activities and uses, including but not limited to:

- (1) Passive entertainment, such as concert and state performances.
- (2) Education, training and research related to the entertainment-based function of the site.
- (3) Hand production and assembly of entertainment products and instruments as an activity related to the entertainment-based function of the site.
- (4) The sale of food or beverages as an activity related to the approved uses of the site.
- (5) On-site residence, business and office space for staff, tenants and/or owners as related to the site.
- (6) Retail and mail order sales of products produced on site and other arts,

crafts and gift items related to approved on-site functions.”

The Planning and Community Development Commission (PCDC) reviewed both the proposed annexation and the proposed initial CE-1 zoning at a public hearing conducted on Monday, April 24, 2017. Following public comment and deliberation, the PCDC recommended that the BOT proceed to approve the proposed annexation and approve the CE-1 zoning for the subject property, subject to the following modifications and/or conditions:

1. That the Board of Trustees (BOT) consider restrictions on noise amplification and time limits or curfews on music, similar to restrictions in place on the Riverbend property;
2. That Town Staff work with the Owner and the BOT to insert better language in the Keynotes to Conceptual Plan for Planet Bluegrass Farm Annexation (“Keynotes”) and Amendable Letter of Understanding (PBG Farm Property) (“Amendable Letter”) to clarify that “major events” on the Farm property will be limited to the same dates at which “major events” are conducted on the Planet Bluegrass (Festival) property, and that there will be no standalone major events conducted on the Farm property;
3. That Town Staff work with the Owner and the BOT to amend the Keynotes and Amendable Letter, as necessary, to: (a) cap the number of “minor events” at sixteen (16) annually; (b) limit all minor events to a maximum capacity of 250 people or less; and (c) clarify that no camping is allowed at minor events¹.

The CE-1 Zone District is a unique zone district that requires an Amendable Letter of Understanding (“Amendable Letter”) between the Town and the Petitioner. The draft Amendable Letter is included as an exhibit to the Annexation Agreement.

Town Staff will present additional background information regarding the proposed zoning at the May 15, 2017 public hearing.

Staff recommends adopting Ordinance No. 1016 on first reading.

IV. FISCAL IMPACTS:

Approving Resolution No. 2017-49 will not have any direct fiscal impact on the Town as it states only that the Subject Property is eligible for annexation.

¹ The PCDC’s recommendation is set forth in PCDC Resolution 2017-PCDC-02, titled “A RESOLUTION OF THE PLANNING AND COMMUNITY DEVELOPMENT COMMISSION OF THE TOWN OF LYONS, COLORADO, RECOMMENDING APPROVAL OF THE PETITION FOR ANNEXATION SUBMITTED TO THE TOWN BY PLANET BLUEGRASS ANNEX, LLC, AND FURTHER RECOMMENDING THAT THE BOARD OF TRUSTEES ESTABLISH THE INITIAL ZONING OF THE SUBJECT PROPERTY AS COMMERCIAL ENTERTAINMENT (CE-1), SUBJECT TO CERTAIN CONDITIONS”.

Ordinances 1014, 1015, and 1016 will not have any direct impact on the Town as each will be approved on first reading only and do not yet approve the annexation. In addition, the Annexation Ordinance is subject to approval of the annexation by a majority of the Town's registered electors in an election. The three ordinances (Annexation Ordinance, Agreement Ordinance, and Initial Zoning Ordinance) will only become effective if the Town electors ultimately approve the annexation of the Subject Property at a special election held for that purpose.

V. **LEGAL ISSUES:** None

VI. **CONFLICTS OR ENVIRONMENTAL ISSUES:** N/A

VII. **PROPOSED MOTIONS:**

Eligibility (Resolution No. 2017-49)

I MOVE TO APPROVE RESOLUTION NO. 2017-49, A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF LYONS, COLORADO SETTING FORTH CERTAIN FINDINGS OF FACT AND CONCLUSIONS AS TO THE ANNEXATION OF CERTAIN PROPERTY KNOWN AS THE PLANET BLUEGRASS FARM ANNEXATION BASED ON A FINDING THAT THE PROPERTY IS ELIGIBLE FOR ANNEXATION TO THE TOWN OF LYONS AS SUMMARIZED IN THE STAFF REPORT DATED APRIL 25, 2017.

Annexation Ordinance (Ordinance No. 1014)

I MOVE TO APPROVE ORDINANCE NO. 1014, AN ORDINANCE OF THE BOARD OF TRUSTEES OF THE TOWN OF LYONS, COLORADO ANNEXING CERTAIN TERRITORY TO THE TOWN KNOWN AS THE PLANET BLUEGRASS FARM ANNEXATION ON FIRST READING, AND FURTHER MOVE THAT SECOND READING AND PUBLIC HEARING ON THE ORDINANCE BE SCHEDULED FOR MONDAY, MAY 15, 2017, AT 7:00 PM TO BE HELD AT TOWN HALL.

Agreement Ordinance (Ordinance No. 1015)

I MOVE TO APPROVE ORDINANCE NO. 1015, AN ORDINANCE OF THE BOARD OF TRUSTEES OF THE TOWN OF LYONS, COLORADO APPROVING AN ANNEXATION AGREEMENT WITH PLANET BLUEGRASS ANNEX, LLC ON FIRST READING, AND FURTHER MOVE THAT SECOND READING AND PUBLIC HEARING ON THE ORDINANCE BE SCHEDULED FOR MONDAY, MAY 15, 2017, AT 7:00 PM TO BE HELD AT TOWN HALL.

Initial Zoning Ordinance (Ordinance No. 1016)

I MOVE TO APPROVE ORDINANCE NO. 1016, AN ORDINANCE OF THE BOARD OF TRUSTEES OF THE TOWN OF LYONS, COLORADO, APPROVING INITIAL ZONING OF PROPERTY KNOWN AS THE PLANET BLUEGRASS FARM ANNEXATION FROM BOULDER COUNTY RURAL RESIDENTIAL TO TOWN OF LYONS COMMERCIAL ENTERTAINMENT (CE-1), SUBJECT TO THE TERMS AND CONDITIONS OF THE

ANNEXATION AGREEMENT BY AND BETWEEN THE TOWN AND PLANET BLUEGRASS ANNEX, LLC, AND AMENDING THE OFFICIAL ZONING MAP OF THE TOWN OF LYONS ON FIRST READING, AND FURTHER MOVE THAT SECOND READING AND PUBLIC HEARING ON THE ORDINANCE BE SCHEDULED FOR MONDAY, MAY 15, 2017, AT 7:00 PM TO BE HELD AT TOWN HALL.

VIII. MOTIONS FOR DENIAL:

Eligibility (Resolution No. 2017-49)

I MOVE TO DENY RESOLUTION NO. 2017-49, A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF LYONS, COLORADO SETTING FORTH CERTAIN FINDINGS OF FACT AND CONCLUSIONS AS TO THE ANNEXATION OF CERTAIN PROPERTY KNOWN AS THE PLANET BLUEGRASS FARM ANNEXATION BASED ON A FINDING THAT THE PROPERTY IS NOT ELIGIBLE FOR ANNEXATION TO THE TOWN OF LYONS for the following reasons:
_____ (Board member making motion to insert specific factual allegations pertaining to the subject property's eligibility for annexation to the Town of Lyons)**

**Staff recommends that the Board of Trustees confer with the Town Attorney prior to making a motion to deny Resolution No. 2017-49.

Attachments:

- Attachment 1: Resolution No 2017-49 (Eligibility Resolution)
- Attachment 2: Ordinance No. 1014 (Annexation Ordinance)
- Attachment 3: Ordinance No. 1015 (Annexation Agreement Ordinance)
- Attachment 4: Ordinance No. 1016 (Initial Zoning Ordinance)