



Commerce City

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Council Communication

File Number: Z-964-21

Agenda Date: 10/4/2021

Version: 1

Status: Public Hearing

In Control: City Council

File Type: Zoning Ordinances

AN ORDINANCE AMENDING THE ZONING ORDINANCE AND ZONING MAP OF THE CITY OF COMMERCE CITY, COLORADO, BY ZONING THE PROPERTY ANNEXED AS THE CANAM ANNEXATION FROM ADCO (UNINCORPORATED ADAMS COUNTY) TO A PUD ZONE DISTRICT AND APPROVING A PUD ZONE DOCUMENT

Note: Because the related annexation ordinance cannot be considered at this time, this zoning ordinance cannot be considered on first reading. Although the public hearing may be conducted, a continuance of this ordinance and a re-opening of this hearing is recommended.

The applicant has requested that Council continue the hearing related to the CanAm annexation and zoning to November 15 (see attached October 1 Letter). A continuance is recommended to ensure compliance with the Municipal Annexation Act and requirements of the Land Development Code. The Council may open the hearings and hear some testimony or may continue the hearings without hearing any testimony.

Summary and Background Information:

The proposed CanAm community is an approximately 36.7 acre multi-family and commercial development envisioned to bring new uses to northwestern Commerce City. The site is currently used for agriculture and is located in unincorporated Adams County. The property is located at 9940 E. 112th Avenue, by the intersection of E. 112th Avenue and U.S. Highway 85. This portion of U.S. Highway 85 route is part of the Canadian American Highway from which the community derives its name. This highway establishes the eastern edge of the site. To the north of the site, across East 112th Avenue, is Dunes Park, a residential community of single family detached and condominium homes. To the west of the site, across Belle Creek Boulevard, is a water retention area belonging to the City and County of Denver. The Belle Creek residential community of single-family homes is located to the south of the site.

Comprehensive Plan: This property is designated in the Comprehensive Plan as Residential - High, with Local Commercial Center. The Residential - High designation allows residential uses at a density of 8 - 40 dwelling units per acre, as well as small commercial centers of up to 40,000 square feet of building space. Local Commercial Centers “provide opportunities for convenience shopping and service needs of a small trade area, within, or directly adjacent to, a neighborhood” according to the plan.

Concept Plan and Proposed PUD Zoning: In 2020, the applicant submitted a Concept Plan for this property which would include an annexation to Commerce City, and a mix of commercial and residential zone districts. Through that review process, the applicant chose to move forward with PUD zoning in order to allow flexibility in the mix of uses. A number of commercial uses were originally planned, including a fueling plaza for passenger vehicles and large trucks on the northeast corner of the property, adjacent to the E. 112th Ave. and US 85 intersection.

The proposed CanAm PUD Zone Document (Exhibit A to the ordinance) created four planning areas which have varying degrees of uses allowed. The most and highest intensity uses were located along U.S. Highway 85, with the fueling plaza on the northeast corner. All planning areas allow apartments, single-family attached (townhomes or duplexes), and patio homes, as well as commercial and public uses. The intent is to transition from the commercial uses and higher density residential along E. 112th, to less dense residential patio home products toward the south, bordering the existing single-family neighborhood known as Belle Creek.

Development Review Team Recommendation: On August 31, 2021, all Development Review Team comments were confirmed to be addressed, and a recommendation of approval of the requested PUD zoning based on its compatibility with the comprehensive plan was forwarded along to the Planning Commission.

Planning Commission Recommendation and Applicant Revision: The Planning Commission held a public hearing on the proposed annexation zoning on September 7, 2021. At the conclusion of the hearing, the Planning Commission voted to forward the zoning application to the City Council with a recommendation of denial by a vote of 3-2. As findings for its recommendation of denial, the Planning Commission determined that the proposed project does not meet the Land Development Code and is not what the Comprehensive Plan intended.

Since the Planning Commission's recommendation of denial, and with additional public comment received,, the applicant proposed an alternate zoning that would amend the table of allowed uses that would instead make "diesel sales for large trucks" a conditional use, instead of a use-by-right (as provided in the zoning application reviewed by the Development Review Team and Planning Commission). This conditional use would require a public hearing and approval with City Council in the future. In the related PUD application under administrative review, the applicant has now proposed to remove the truck fueling canopy and preserve the southern half of that property for another commercial use, based on the proposed changes to the land use table. If the applicant wishes to pursue any truck fueling use in the future, they would have to go through the public hearing process again under a Conditional Use Permit application. **The alternate proposal has not been reviewed by the Development Review Team or the Planning Commission.** The PUD zoning application reviewed by Planning Commission and the applicant's proposed modification are included in the agenda materials.

Additional record materials may be found in the Planning file for Case #Z-964-21.

Please see attached draft Planning Commission minutes and the Planning Commission staff report for detailed background and discussion.

Notice Information: Public notice was properly given, including by publication on August 24, 2021, and September 22, 2021, in the Denver Post, a legal newspaper of general circulation in the City of Commerce City, mailing on August 28, 2021 and September 17, 2021 through the United States Postal Service in the manner required by the Land Development Code, and posting placards on the property on August 27 and September 24, 2021 in the manner and duration required by the Land Development Code.

Applicable Decision Criteria for Annexation Zoning: Council will hear evidence and testimony the application for annexation zoning in a public hearing consolidated with the hearing on eligibility for annexation. Council will consider the zoning ordinance after the determination on the resolution determining eligibility for annexation and first reading of an annexation ordinance. Annexed land must be zoned, pursuant to state law, within 90 days of annexation. C.R.S. 31-12-115.

Unlike zoning of land already annexed to the City, the zoning of newly annexed land is governed by LDC 21-3350(2) (as well as Chapter 11 of the City Charter). Per LDC 21-3350(2), Council shall give newly annexed land the zoning classification that is:

- (a) Most compatible with the city's comprehensive plan designation of the property;
- (b) Most comparable to the county zoning classification existing on the subject property at the time of acceptance by the city of the annexation petition for the subject property;
- or
- (c) Most comparable to the present use(s) of the property.

Staff Responsible (Department Head): Jason Rogers, Deputy City Manager

Staff Member Presenting: Andrew Baker, City Planner

Financial Impact: N/A

Funding Source: N/A

Suggested Motions: I move to continue Ordinance Z-964-20-21 to November 15, 2021 (or identify no date) and to re-open the public hearing at that time.

Alternate Motions:

- To return the new proposed zoning to the Planning Commission: I move to return Case Z-964-21 to the Planning Commission for a review and recommendation of the applicant's proposed alternate zoning.

Future Motions:

- To accept the Planning Commission's recommendation and findings (does not adopt the findings or recommendation): I move to accept without adopting the Planning

Commission's findings and recommendations in case Z-964-21. [Requires simple majority.]

- To approve the zoning reviewed by DRT/Planning Commission (first reading): I move to introduce and approve Ordinance Z-964-21 on first reading by Council as seated. [Requires a majority of the members of council in office to override the Planning Commission (i.e., 5 affirmative votes).]

- To finally approve the zoning reviewed by DRT/Planning Commission (second reading): I move to approve Ordinance AN-259-21 on second and final reading by Council as seated. [Requires a majority of the members of council in office to pass an ordinance on final reading or to override the Planning Commission (i.e., 5 affirmative votes).]

Future Alternate Motions:

- To approve the alternate proposed zoning (first reading): I move to introduce and approve Ordinance Z-964-21 on first reading by Council as seated with the replacement of Exhibit A by the alternate PUD Zone Document provided by the applicant. [Requires a majority of the members of council in office to override the Planning Commission (i.e., 5 affirmative votes).]
- To deny the requested zoning: I move to deny the zoning application in Case Z-964-21 [To fail, this motion would require 5 no votes to override the recommendation of the Planning Commission.]