



Commerce City

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Council Communication File Number: Res 2021-61

Agenda Date: 10/4/2021

Version: 1

Status: Public Hearing

In Control: City Council

File Type: Resolution

A RESOLUTION DETERMINING THE ELIGIBILITY OF CERTAIN UNINCORPORATED TERRITORY KNOWN AS THE CANAM ANNEXATION, GENERALLY LOCATED AT 9940 EAST 112TH AVENUE FOR ANNEXATION TO THE CITY OF COMMERCE CITY, COLORADO

Summary and Background Information:

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.

By petition dated August 10, 2021, QuikTrip Corporation has petitioned the City of Commerce City, Colorado, for annexation the City of the property in located at 9940 East 112th Avenue (PIN: 0172110109002), as more specifically described in the petition. On August 16, 2021, by Resolution 2021-60, the City Council determined that the petition for annexation substantially complied with the requirements of the Colorado Constitution and the Municipal Annexation Act and scheduled a public hearing for October 4, 2021, pursuant to C.R.S. 31-12-108(1).

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 designation “provide opportunities for convenience shopping and service needs of a small trade area, within, or directly adjacent to, a neighborhood” according to the plan.

Proposed PUD Zoning: The applicant proposes an initial PUD zoning. The initial proposal was reviewed by the Development Review Team and the Planning Commission. The proposed PUD 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.

Since the Planning Commission’s recommendation of denial on the annexation zoning application, the applicant has proposed an alternate zoning that would amend the table of allowed uses to 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 applicant's proposed change 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 for Zoning Ordinance Z-964-21.

Additional record materials may be found in the Planning file for Case #AN-259-21 and the related zoning case.

Please see the draft Planning Commission minutes, Planning Commission staff report, and additional materials contained in the agenda for Zoning Ordinance Z-964-21 for detailed background and discussion of the annexation, the proposed annexation zoning, and related pending development approvals.

Purpose of Resolution and Legal Standard: This resolution formally determines the eligibility for annexation and makes the findings required by C.R.S. 31-12-110. After approval of this resolution, the City Council may annex and zone the property by ordinance (including approval of an Annexation Agreements establishing additional terms of annexation). Determining the eligibility of the property for annexation does not result in annexation or zoning. The criteria for annexation are detailed in the findings of fact and conclusions listed in the proposed resolution and will be supported during the annexation

hearing.

Annexation Agreement: No additional terms or conditions are proposed to be imposed, except as voluntarily agreed to between the applicant and the City in the Annexation Agreement to be approved with the annexation ordinance. **Final terms of an Annexation Agreement had not been reached as of the date of agenda submittal.** Information on the draft Annexation Agreement can be found in the agenda materials for the annexation ordinance, Ordinance AN-259-61.

County Impact Report: The Municipal Annexation Act requires that an impact report for the annexation be prepared at least 25 days before the date of this hearing and that such report be provided five (5) days later to the Board of County Commissioners for Adams County. C.R.S. 31-12-108.5. In this case, the impact report required by C.R.S. 31-12-108.5 was not created or provided to the Board of County Commissioners until September 29, 2021. **To provide the Board of County Commissioners with the opportunity to respond formally to the impact report, the hearing could be continued as provided below (at least 25 days from the date the impact report was created and provided, or through at least October 25).**

Hearing: The hearing on this matter will be consolidated with the hearing on the annexation ordinance and annexation zoning of the property.

Notice: The Planning Division's records reflect that notice of the hearing was published and provided to and/or received by all entities as required by law.

Hearing Continuance: Pursuant to C.R.S. 31-12-108(3), the public hearing on this resolution may be continued to another date by the City Council in two circumstances: (1) by republishing notices required by law once per week for four (4) weeks, with the first publication being thirty (30) days before the hearing; or (2) without additional notice if at least one (1) hour of testimony is presented and the evidence is too voluminous to be heard.

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

Staff Member Presenting: Andrew Baker, City Planner

Financial Impact: N/A

Funding Source: N/A

Staff Recommendation: Continuance, with approval at a later date.

Suggested Continuance Motion: I move to continue Resolution 2021-61 to _____, 2021 (or no date) and to re-open the public hearing on that date.

Alternate Motions:

- For an executive session to receive legal advice: I move to enter into executive

session pursuant to CRS 24-6-402(4)(b) to receive legal advice on legal questions related to the petition and eligibility for annexation.

- To find that the property is not eligible for annexation: I move to enter a finding that the area proposed for annexation in case AN-259-21 does not comply with the applicable provisions of section 30 of article II of the state constitution and 31-12-105.