



Staff Report

File #: 21-149
Version: 1

Date: 4/26/2021
Item #: 4.a.

TO: Mayor and City Council
THROUGH: Steve Powers, City Manager
FROM: Norman Wright, Community Development Director

SUBJECT:

Petitioner-Initiated Annexation of Territory Located at 2527 and 2547 Robins Lane SE - 97306
(Annexation Case No. C-730)

Ward(s): 4
Councilor(s): Leung
Neighborhood(s): SGNA
Result Area(s): Good Governance; Safe Community; Safe, Reliable and Efficient Infrastructure

ISSUE:

Shall the City Council:

1. Find that the Petitioners have signed a valid triple majority petition for annexation of the Territory, in conformance with Oregon Revised Statutes (ORS) Chapter 222;
2. Determine that the Petition satisfies the criteria of Salem Revised Code (SRC) 260.060(c) and adopt Order No. 2021-1 ANX (Attachments 2 through 5);
3. Apply the City of Salem RA (Residential Agriculture) zone to the Territory from Marion County UT-5 (Urban Transition 5 Acres) and UT-10 (Urban Transition 10 Acres);
4. Withdraw the Territory from Salem Suburban Rural Fire Protection District and Turner Fire District; and
5. Approve the annexation subject to the following conditions:

(a) Any future development of the Subject Property shall require compliance with SRC 808.050 tree planting requirements; however, the minimum diameter of the trees to be planted shall be increased from a 1.5-inch caliper to a 2-inch caliper standard and replacement tree diversity shall be increased by planting not less than five species authorized in the City's Tree and Vegetation Technical Manual; and

(b) Prior to recordation of a final plat for any partition, subdivision, or planned unit development, or occupancy of a commercial development, the applicant shall grant \$15,000 to the Salem City Tree Fund; and

(c) Prior to submittal of any application for a land use approval, limited land use approval, or permit for developing the Subject Property, Applicant shall enter into an agreement with the City of Salem acknowledging and agreeing that the City of Salem will not record a final plat for any partition, subdivision, or planned unit development on or before July 1, 2023?

RECOMMENDATION:

1. Find that the Petitioners have signed a valid triple majority petition for annexation of the Territory, in conformance with Oregon Revised Statutes (ORS) Chapter 222;
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SUMMARY:

This is a petitioner-initiated annexation of a 47.23-acre territory located at 2527 and 2547 Robins

Lane SE (Marion County Assessor Map and Tax Lot 083W1300201, 083W24B02200, and 083W24B02300). A vicinity map is included as Attachment 1.

FACTS AND FINDINGS:

1. The Petitioner has met the annexation, petition, application, information submission, fee, waiver, and all other requirements for petitioner-initiated annexations including, but not limited to, those found in ORS Chapter 222, SRC Chapter 260, SRC 260.030, SRC 260.035, and SRC 260.040.

The property owner filed the application and petition for annexation of the subject property of 41.76 acres located at 2527 and 2547 Robins Lane SE (Marion County Assessor Map and Tax Lot 083W1300201, 083W24B02200, and 083W24B02300). With adjacent right-of-way, the Territory is 47.23 acres (Attachment 4).

The owner has requested annexation and submitted a valid triple majority annexation petition (Attachment 3).

The triple majority requirements of ORS 222.170(1) are satisfied because the owner of the petitioned property represents 100 percent of the owners of the land to be annexed and owns 100 percent of the land to be annexed, which is 100 percent of the assessed value of the territory.

State law (ORS 222.111 to 222.180) was amended in 2016 through Senate Bill 1573 to prohibit cities that have voter approved annexation from submitting an annexation decision to the voters if all of the owners of the property proposed to be annexed have submitted the annexation petition. The law further specifies that in order for the voter approval prohibition to apply, the territory proposed for annexation must be included within an urban growth boundary, be subject to an acknowledged comprehensive plan upon annexation, be contiguous to the city limits, and the proposal shall comply with all other requirements of the city's ordinances.

This annexation is subject to SB 1573 because all the owners of the property have applied for annexation.

The law prohibits a city only from referring the question of annexation to voters, but does not mandate a city to annex a property simply because a petition has been received. The City Council, as the governing body, retains ultimate authority of whether to annex a property.

2. The territory consists of three parcels. A single-family dwelling and accessory structures exist at 2547 Robins Lane SE. The other parcels are vacant. The largest parcel, Tax Lot 083W13000201, is identified by the Marion County Assessor as a specially assessed account and farm zoned.

3. The territory is contiguous to the city limits on the west to properties that are zoned City of Salem RS (Single Family Residential) and on the south to property zoned City of Salem RA (Residential Agriculture). Adjacent properties to the north are zoned Marion County UT-10 (Urban Transition 10 Acres), and adjacent properties to the south and east are zoned Marion County UT-5 (Urban Transition 5 Acres). The territory has frontage on Robins Lane SE to the south and Brentwood Drive SE to the east. The Brentwood Drive SE right-of-way is within the Interstate 5 right-of-way. The annexation territory would extend to the east side of the Interstate 5 right-of-way.
4. Under SRC 260.045, territory annexed into the City is automatically given the Salem Area Comprehensive Plan and zoning designations that are equivalent to the applicable county zoning designations, unless the petitioner or City Council propose a new Comprehensive Plan/zone designation.

The property owners of the territory have not proposed a new Comprehensive Plan or zone designation, and unless the City Council proposes a different designation, the City equivalent Comprehensive Plan designation of Developing Residential and RA (Residential Agriculture) zone will be applied to the territory.

5. Public and Private Facilities and Services Comments
 - A. The Parks Section of the Public Works Department has reviewed the proposal and submitted a memorandum regarding parks (Attachment 6). A neighborhood park would be required within the territory with future development.
 - B. The territory will be withdrawn from Salem Suburban Rural Fire Protection District and Turner Fire District upon annexation. The Salem Fire Department submitted comments indicating that the response time to this location is approximately six minutes and eight seconds from receipt of call. Primary fire protection and EMS service would be provided from Fire Station No. 9 located at 5080 Battlecreek Road SE (Attachment 7).
 - C. The Salem Police Department received notice of the proposal and submitted no comments.
 - D. The Development Services Section of the Public Works Department submitted comments (Attachment 8) stating that the territory is located inside the Urban Service Area (USA) but adequate facilities are not available. An Urban Grown Area Development Permit is required if the applicant proposes to develop the property as defined in SRC Chapter 200.005.
 - E. The Finance Division submitted comments regarding property tax limits, rates and other information related to the financial impacts of annexation (Attachment 9).

F. Salem-Keizer School District received notice of the proposal and has not submitted comments.

6. Site History

The western portion of the site (Marion County Assessor Map and Tax Lot 083W1300201) was logged with a permit and through the requirements of Marion County between April 2018 and June 2018. Timber harvests are permitted on properties both inside and outside of the City limits. However, the City's tree preservation ordinances require a 5-year delay on future development after a timber harvest in order to ensure sites aren't clear cut right before development is proposed.

The Salem Revised Code 808.030(a)(2)(i) states:

"Properties from which trees have been harvested under the Oregon Forest Practices Act may not be partitioned, subdivided, developed as a planned unit development, or developed for commercial uses or activities for a period of five years following the completion of the timber harvest."

The end of the five-year period would be July 1, 2023.

7. Applicant's Request

The applicant has requested that Council approve the annexation but delay approval of any land division final plat until the end of the five-year period on July 1, 2023 (Attachment 10). The applicant understands that the City would require the applicant to enter into an agreement that would make it clear that the applicant agrees to delay the plat until the end of the five-year period and state that they would not later raise a needed housing issue and object to the delay. With approval of the annexation, the applicant would be able to apply for necessary land use approvals and complete site work and public construction prior to the end of the five-year period. **However, the actual subdividing of the land (the final plat) would not take place until the end of the five year period.**

Additionally, the applicant has proposed two mitigation measures, extra tree planting and a donation to the City's tree fund. They state that the subject property has the potential to be developed with about 190 to 200 single-family lots; under the City's planting requirements for new homes they will be required to plant between two to six trees per lot depending on the size of each lot (SRC 800.050). The applicant is proposing to plant larger trees than required; they propose that new trees will be a minimum of two inches in caliper, which exceeds the minimum requirement of 1.5 inches. Additionally, they will commit to planting a variety of five different tree types from the City's approved tree list. City regulations do not speak to planting a variety of tree types in new subdivisions, so this proposal also exceeds code requirements. The applicant also states that street trees will be provided as required. The applicant proposes that the tree planting condition would run with the land and be required at the time of final

inspection for new homes.

The applicant has also offered to contribute \$15,000 to the Salem City Tree Fund. This fund is used to pay for City tree planting efforts and is used to plant trees in the public right-of-way and in public parks. The funds will be used to provide for additional City trees in the vicinity of the subject property.

The applicant's proposed mitigation measures are recommended conditions of approval.

8. Neighborhood Association and Citizen Comments

The City notified the South Gateway Neighborhood Association (SGNA) of the proposed annexation.

At the time this staff report was prepared,

- No comments had been submitted by the Neighborhood Association.
- Eight citizens had submitted comments in support of the annexation, stating that the annexation will provide development of new residential lots needed with the current housing shortage, create work, add to City revenue, strengthen the local economy, and support small businesses (Attachment 11).
- Two citizens had submitted comments objecting to development of the property prior to the expiration of a five-year period after a commercial timber harvest, stating that the applicant's proposal to provide trees two inches in diameter rather than 1.5 inches in diameter on future subdivision lots is inadequate, requesting that the City require the builder to provide a parkway or similar mitigation commensurate with the bonus of a one and a half year acceleration of the development if the developer is allowed to break the moratorium, stating that the pandemic has prevented nearby property owners from having adequate time to decide whether to sell their property, and supporting development using the established rules and guidelines but not at the expense of others already living in the City (Attachment 12).

9. Annexation of the proposed territory would create an enclave of property located at 2447 Robins Lane SE (Marion County Assessor Map and Tax Lot 083W23A00100).

10. Salem Revised Code (SRC) 260.060(c) requires the Council to determine whether or not the proposed annexation meets the following criteria:

- (1) The proposed land use designations are consistent with the Salem Area Comprehensive Plan and applicable Statewide Planning Goals;
- (2) The annexation will result in a boundary in which services can be provided in an

orderly, efficient, and timely manner;

- (3) The uses and density that will be allowed can be served through the orderly, efficient and timely extension of key urban facilities and services;
- (4) The public interest would be furthered by the referral of the annexation to the voters.

Attachment 5 contains findings demonstrating compliance with these criteria. In regard to the "public interest" criterion, because the annexation will not be referred to the voters, this criterion is not directly applicable. However, staff's proposed findings under this criterion conclude that the annexation itself is consistent with the Comprehensive Plan and would further the public interest.

11. As demonstrated by the Facts and Findings and the findings found in Attachment 5, the proposed annexation and service district withdrawal conform to State law requirements and the criteria found in SRC 260.060(c). Staff finds that the annexation and application of City zoning of the Territory are consistent with the public interest.

Salem Revised Code 808.030(a)(2)(i) states, "Properties from which trees have been harvested under the Oregon Forest Practices Act may not be partitioned, subdivided, developed as a planned unit development, or developed for commercial uses or activities for a period of five years following the completion of the timber harvest." This restriction does not prohibit annexation within five years of the timber harvest that occurred through June 2018.

Because staff finds that the proposed annexation and application of City zoning meet the applicable criteria, staff recommends approving the annexation application. Due to the five-year restriction on partitions, subdivisions, planned unit development, and development for commercial uses or activities, staff recommends imposing conditions requiring mitigation of the tree removal and an agreement to delay recording of a final plat for a partition, subdivision, planned unit development, or commercial development until July 1, 2023. These conditions would allow construction of housing to begin as soon as possible after the expiration of the five-year period but would also provide mitigation for the timber harvest.

For these reasons, staff recommends that the City Council:

1. Find that the Petitioners have signed a valid triple majority petition for annexation of the Territory, in conformance with Oregon Revised Statutes (ORS) Chapter 222;
2. Determine that Annexation Case No. ANXC-730 satisfies the criteria of Salem Revised Code (SRC) 260.060(c) and adopt Order No. 2021-1 ANX (Attachment 2);
3. Apply the City of Salem RA (Residential Agriculture) zone to the territory from Marion County UT-5 (Urban Transition 5 Acres) and UT-10 (Urban Transition 10 Acres);

4. Withdraw the Territory from Salem Suburban Rural Fire Protection District and Turner Fire District; and
5. Approve the annexation subject to the following conditions:
 - (a) Any future development of the Subject Property shall require compliance with SRC 808.050 tree planting requirements; however, the minimum diameter of the trees to be planted shall be increased from a 1.5-inch caliper to a 2-inch caliper standard and replacement tree diversity shall be increased by planting not less than five species authorized in the City's Tree and Vegetation Technical Manual; and
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 - (c) Prior to submittal of any application for a land use approval, limited land use approval, or permit for developing the Subject Property, Applicant shall enter into an agreement with the City of Salem acknowledging and agreeing that the City of Salem will not record a final plat for any partition, subdivision, or planned unit development on or before July 1, 2023.

ALTERNATIVE:

Council may approve the annexation **without** the recommended conditions and delay the effective date until the end of the five-year period after the timber harvest. With this alternative, the applicant would not be required to provide trees larger than the minimum caliper or contribute to the City's tree fund.

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3. Apply the City of Salem RA (Residential Agriculture) zone to the territory from Marion County UT-5 (Urban Transition 5 Acres) and UT-10 (Urban Transition 10 Acres).
4. Withdraw the Territory from Salem Suburban Rural Fire Protection District and Turner Fire District.
5. Delay the effective date of the annexation to July 1, 2023.

BACKGROUND:

On October 16, 2018, Brandie Dalton of Multi-Tech Engineering submitted an annexation application and valid triple-majority annexation petition on behalf of the petitioner and property owners, BC Salem Property LLC (Kelley D. Hamilton, Chris Jundt, and Anthony R. Kreitzberg, Managers) and paid the filing fee.

This petition has been scheduled for a public hearing before the City Council for April 26, 2021. Notice of the public hearing was duly mailed to those entitled to notice at least 10 days before the hearing in accordance with SRC 260.060(b) and published once a week for two successive weeks prior to the day of the hearing and posted in four public places for a like period in accordance with ORS Chapter 222.

Pamela Cole
Planner II

Attachments:

1. Vicinity Map
2. Order No. 2021-1 ANX Adopting the Final Decision and Findings of Compliance
3. Exhibit A - Petition
4. Exhibit B - Territory Legal Description and Map
5. Exhibit C - Findings for Order No. 2021-1 ANX
6. Public Works Department Parks Comments
7. Fire Department Comments
8. Public Works Department Comments
9. Finance Department Comments
10. Applicant's Mitigation Proposal
11. Public Comments in Support
12. Public Comments in Opposition