



## Staff Report

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**File #:** 21-511

**Version:** 1

**Date:** 11/22/2021

**Item #:** 4.b.

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**TO:** Mayor and City Council

**THROUGH:** Steve Powers, City Manager

**FROM:** Norman Wright, Community Development Director

### **SUBJECT:**

Petitioner-Initiated Annexation of Territory Located at 4120 Fisher Road NE and Adjacent Lands - 97305 (Annexation Case No. C-740)

Ward(s): 5

Councilor(s): Gonzalez

Neighborhood(s): Northgate

Result Area(s): Good Governance; Safe Community; Safe, Reliable and Efficient Infrastructure

### **SUMMARY:**

This is a petitioner-initiated, voter-exempt annexation of a 4.35-acre territory located at 4120 Fisher Road NE and Adjacent Lands - 97305 (Marion County Assessor Map and Tax Lot Numbers 072W07BC01100 and 072W07BC01001) for the purpose of future development. The annexation would include a concurrent change in zoning to City RM-I (Multiple Family Residential-I). A vicinity map is included as Attachment 1.

### **ISSUE:**

Shall City Council adopt Order No. 2021-5 ANX determining that the proposal meets the applicable criteria, changing the zoning for the territory, and approving withdrawal of the territory from the East Salem Sewer and Drainage District and Marion County Fire District #1?

### **RECOMMENDATION:**

Adopt Order No. 2021-5 ANX determining that the proposal meets the applicable criteria, changing the zoning for the territory, and approving withdrawal of the territory from the East Salem Sewer and Drainage District and Marion County Fire District #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.

Order No. 2021-5 ANX is included as Attachment 2. Its Exhibits include Exhibit A - Petition (Attachment 3), Exhibit B - Territory Legal Description and Map (Attachment 4), and Exhibit C - Findings (Attachment 5).

On November 27, 2019, Josh Wells of Westech Engineering, Inc., filed an application for an annexation with concurrent zone change and submitted a valid triple majority petition on behalf of applicant and petitioner Kahala Development LLC (Trong (Tony) Truong, Melissa Truong, and the T&L Family Limited Partnership), owner of a 3.98-acre property located at 4120 Fisher Road NE - 97305 (Marion County Assessor Map and Tax Lot Numbers 072W07BC01100 and 072W07BC01001). On December 2, 2019, the applicant paid the filing fee.

The owners of all of the parcels in the territory have 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 (Attachment 4) consists of two parcels with a single-family dwelling and accessory structures. Including adjacent right-of-way of Fisher Road NE, the Territory is 4.35 acres. The city geographic information systems indicate a waterway, riparian corridor, hydric soils and/or linear wetland areas, floodplain, and landslide hazard areas on the subject property.
3. The territory is inside the Urban Growth Boundary (UGB) and contiguous on the north to city limits and property zoned City of Salem RM-II (Multiple Family Residential II). The territory has frontage on Fisher Road NE, a collector street, and Peter Lane NE, a private street within the Fisher Gardens Townhomes Planned Unit Development.
4. The SACP Map designates the Territory as "Multi-Family Residential."

The SACP designations for the surrounding area are:

North: "Multi-Family Residential"

South: "Multi-Family Residential" and "Single-Family Residential"

East: "Multi-Family Residential"

West: Across Fisher Road NE, "Multi-Family Residential"

The Territory is currently zoned Marion County UD (Urban Development). The petitioner is requesting that the zoning be changed to RM-I (Multiple Family Residential I) upon annexation.

Surrounding properties are zoned as follows:

North: RM-II (Multiple Family Residential II)

South: Marion County RL (Limited Multiple-Family Residential) and Marion County RS (Single Family Residential)

East: Marion County RM (Multiple Family Residential)

West: Across Fisher Road NE, RM-II (Multiple Family Residential II) and Marion County UD (Urban Development)

5. 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 in Table 260-1, unless the petitioner or City Council proposes a new Comprehensive Plan/zone designation.

In Table 260-1, the designations equivalent to the Marion County zoning of UD would be "Developing Residential" in the Salem Area Comprehensive Plan Map (SACP) with RA

(Residential Agriculture) or RS (Single Family Residential) zoning or "Single-Family Residential" in the SACP with RS (Single Family Residential) zoning. The comprehensive plan and zoning designations consistent with the Marion County zoning would be inconsistent with the "Multi-Family Residential" SACP map designation of the subject property.

Therefore, the applicant is requesting a zone change to RM-I (Multiple Family Residential I), which is consistent with the "Multifamily Residential" Salem Area Comprehensive Plan map designation of the property.

For annexations that propose a change in the comprehensive plan designation or a zoning designation that is different from the equivalent zoning designation set forth in Table 260-1, SRC 260.045(b) provides that the Planning Commission shall hold a public hearing to review the proposed designations, and shall make recommendation to the Council whether to adopt the proposed designation, the equivalent designation, or a different designation. The Planning Commission's review shall determine whether the proposal meets the following criteria:

- A. The comprehensive plan and zone designation provides for the logical urbanization of land;
- B. The comprehensive plan and zone designation is compatible with development patterns in the nearby vicinity;
- C. Social, economic, or demographic patterns of the nearby vicinity have so altered that the current designations are no longer appropriate; and
- D. It is in the public interest that the proposed change be made.

The Planning Commission held a public hearing to review the proposed designations on October 19, 2021, received testimony, held deliberations, and voted to recommend that the City Council adopt the petitioner-initiated zone change to be applied upon annexation of the property.

The Planning Commission recommendation and findings of compliance with the applicable criteria are set forth in Attachment 6.

- 6. Annexation of the territory would create an enclave consisting of two tax lots west of the territory at 4115 Fisher Road NE (Marion County Assessor Map and Tax Lots 073W12AD00600 and 073W12AD00701). Pursuant to SRC 260.060(b)(1), staff mailed notice of the proposed annexation hearing to the owners of those properties including a description of the proposed annexation, the city and state laws and regulations applicable to enclaved territory, and notice of the potential of their properties to become an enclave.
- 7. Public and Private Facilities and Services Comments
  - A. The Parks Division of the Public Works Department submitted comments regarding parks (Attachment 7).

- B. The territory will be withdrawn from Marion County Fire District #1 upon annexation. The Salem Fire Department estimates response times to be approximately four minutes from receipt of call. Primary fire protection and emergency medical services would be from Fire Station #8, located at 4000 Lancaster Drive NE (Attachment 8).
- 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 9) stating that the territory is located inside the Urban Service Area (USA). No Urban Growth Area Preliminary Declaration would be required if the applicant proposes to develop the property as defined in SRC Chapter 200.005.
- E. The Finance Department submitted comments regarding property tax limits, rates and other information related to the financial impacts of annexation (Attachment 10).
- F. Salem-Keizer Public Schools received notice of the proposal and commented that development of the territory would contribute approximately 16 students to existing schools (Attachment 11).

8. Neighborhood Association and Citizen Comments

The property is not subject to a homeowner's association.

The Territory is within the Northgate Neighborhood Association boundary.

The City notified Northgate of the proposed annexation. Northgate commented that the proposal was approved at their meeting Thursday, October 21, 2021.

Staff has not received any citizen comments regarding the annexation hearing prior to the deadline for this staff report.

9. Salem Revised Code (SRC) 260.060(c) requires the Council to determine whether the proposed annexation meets the following criteria:

- A. The proposed land use designations are consistent with the Salem Area Comprehensive Plan and applicable Statewide Planning Goals;
- B. The annexation will result in a boundary in which services can be provided in an orderly, efficient, and timely manner;
- C. The uses and density that will be allowed can be served through the orderly,

efficient and timely extension of key urban facilities and services;

D. The public interest would be furthered by the referral of the annexation to the voters.

E. For annexations that propose a change in the comprehensive plan designation or a zoning designation that is different from the equivalent zoning designation set forth in Table 260-1, that

- (1) The comprehensive plan and zone designation provides for the logical urbanization of land;
- (2) The comprehensive plan and zone designation is compatible with development patterns in the nearby vicinity;
- (3) Social, economic, or demographic patterns of the nearby vicinity have so altered that the current designations are no longer appropriate; and
- (4) It is in the public interest that the proposed change be made.

Attachment 5 (Exhibit C - Findings for Order No. 2021-5 ANX) contains findings that demonstrate compliance with these criteria. Regarding 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.

10. As demonstrated by the Facts and Findings and the findings found in Attachment 5 (Exhibit C - Findings for Order No. 2021-5 ANX), the proposed annexation and service district withdrawal conform to State law requirements and the criteria found in SRC 260.060(c). The annexation and proposed land use designations of the Territory are consistent with the public interest.

## **BACKGROUND:**

On November 27, 2019, Josh Wells of Westech Engineering, Inc., filed an application for an annexation with concurrent zone change and submitted a valid triple majority petition on behalf of applicant and petitioner Kahala Development LLC (Trong (Tony) Truong, Melissa Truong, and the T&L Family Limited Partnership). On December 2, 2019, the applicant paid the filing fee.

This petition has been scheduled for a public hearing before the City Council for November 22, 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

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Planner II

Attachments:

1. Vicinity Map
2. Order No. 2021-5 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. 2021-5 ANX
6. Planning Commission Recommendation on Land Use Designations
7. Public Works Department Parks Comments
8. Fire Department Comments
9. Public Works Department Development Services Section Comments
10. Finance Department Comments
11. Salem-Keizer School District Comments