

# CITY COUNCIL COMMUNICATION



**MEETING DATE:** December 14, 2021

**ITEM NUMBER:** 9.A

**SECOND READING:** January 11, 2022

{{customfields.ResoOrdNumber}}

**TYPE OF ITEM:** Consent

**PRESENTED BY:**

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**SUBJECT/AGENDA TITLE:**

**A Bill For An Ordinance Conditionally Approving The Rivertown Annexation (Generally Located North of Boston Avenue and West Of Sunset Street at 21 S. Sunset Street), And Zoning The Property MU-E (Mixed-Use Employment)**

**EXECUTIVE SUMMARY:**

An annexation petition has been filed for an approximately 21-acre property at 21 S. Sunset Street (west side of Sunset Street, north of Boston Avenue), immediately south of the St. Vrain Creek. The property is zoned General Industrial in unincorporated Boulder County. The applicant proposes to zone the property consistent with its Envision Longmont land use designation of Mixed-Use Employment. The accompanying concept plan for the property envisions a future mixed-use development with a mix of commercial and multifamily buildings.

Planning and Zoning Commission held a public hearing on the matter on August 18, 2021, and recommended conditional approval of the annexation on a 6-1 vote. The condition was that the applicant edit the concept plan so that the proposed density in the plan matched the proposed density in the traffic study. The applicant has revised the concept plan density to be in alignment with the traffic study.

This item was initiated by the customer but the purpose of the annexation, which is to provide a mixed-use development, falls into alignment with Council Work Plan Objective B3.6: Enhance economic vitality along the St. Vrain corridor in an environmentally sustainable and sensitive manner. By annexing this property into City of Longmont jurisdiction, this allows the City greater control in managing land use development at this location.

City Council approved the 1<sup>st</sup> Resolution of Statutory Compliance at its November 30, 2021 meeting, finding that the statutory requirements for annexation have been met. Below is the annexation schedule:



## **Annexation Review Schedule:**

|  |                   |
|--|-------------------|
| 1 <sup>st</sup> Resolution on statutory compliance                     | November 30, 2021 |
| 1 <sup>st</sup> Reading of the annexation ordinance                    | December 14, 2021 |
| 2 <sup>nd</sup> Resolution and public hearing on statutory compliance  | January 11, 2021  |
| 2 <sup>nd</sup> Reading and public hearing on the annexation ordinance | January 11, 2022  |

On December 14, 2021, the City Council will consider the first reading of the annexation ordinance (Attachment 1) which, if approved on second reading on January 11, 2022, would approve the attached annexation agreement (Attachment 2).

On January 11, 2022, the City Council will hold a public hearing on the Second Resolution of Statutory Compliance. This public hearing is only to determine if the statutory requirements for annexation have been met. Approval of the resolution does not annex the property but only establishes that the Council has made a finding that the eligibility requirements of the statutes pertaining to annexation have been met – which is determining that 1/6 of the property's boundary is contiguous with City limits.

## **COUNCIL OPTIONS:**

1. Approve the annexation and zoning ordinance, finding the application complies with the city's review criteria and/or state statutes regarding compliance.
2. Approve the annexation and zoning ordinance, with conditions or modifications, if necessary, to bring the application into compliance with the city's review criteria and/or state statutes regarding compliance.
3. Do not approve the ordinance, finding the annexation and zoning does not comply with the city's review criteria and/or state statutes.

**RECOMMENDED OPTIONS:** Annexation is a discretionary act and the decision to annex the property into the City of Longmont is a policy decision. The Planning and Zoning Commission reviewed the annexation and zoning on August 18, 2021, and voted 6-1 to recommend conditional approval. The applicant has satisfied the condition by providing an updated concept plan. Option #1 is recommended for City Council action.

**FISCAL IMPACT & FUND SOURCE FOR RECOMMENDED ACTION:** N/A

**BACKGROUND AND ISSUE ANALYSIS:** In June 2018, City Council approved an annexation referral for the Rivertown property, an approximately 21-acre, General Industrial-zoned parcel at 21 S. Sunset Street (northwest of the corner of Boston Avenue and Sunset Street) in unincorporated Boulder County. A formal annexation application was filed in December of 2020 after a neighborhood meeting was held.



The property is designated on the Envision Longmont Comprehensive Plan as Mixed-Use Employment. A wide range of employment-related land uses are permitted in this land use designation, including small-scale manufacturing, processing, wholesaling, storage, office, flex space and commercial services. Allowable secondary uses in this zone include high density residential, live/work units, hotels, supporting retail shops, cultural facilities and civic/government uses. The proposed zoning of the property (Mixed-Use Employment) aligns with the property's comprehensive plan land use designation.

The proposed Concept Plan proposed future mixed-use development on the property with 20,000 square-feet of commercial development and 334 high-density residential units. Another half-acre of land adjacent to the St. Vrain Creek is designated as a public amenity space, though a specific use is not proposed at this time. If the property is annexed by City Council, the applicant would be required to submit a detailed Site Plan which would have the level of detail expected of a development project, including details about layout of building footprints, landscaping, architectural design, drainage, etc.

Planning and Zoning Commission held a public hearing on the matter on August 18, 2021, and recommended conditional approval of the annexation on a 6-1 vote. The condition was that the applicant edit the concept plan so that the proposed density in the plan matched the proposed density in the traffic study. The applicant has revised the concept plan density to be in alignment with the traffic study. A copy of the hearing packet as well as the resolution and minutes from that meeting are attached.

A 1<sup>st</sup> Resolution of Statutory Compliance was passed by Council on November 30, 2021, finding the annexation petition in compliance with Colorado Revised Statutes annexation procedures. The annexation meets state statute and City code requirements regarding contiguity with existing City limits.

## **CRITERIA EVALUATION**

In order to recommend approval for an Annexation, City Council must find the application meets the following core review criteria in Land Development Code Section 15.02.055:

**A. The application is consistent with the comprehensive plan and the purpose of the code and zoning district; conforms to any previously approved concept plan, preliminary plat, or PUD overall development plan; and complies with all applicable statutes, codes, ordinances and regulations.**

The requested annexation and concept plan is consistent with the following goals, policies and strategies in the Envision Longmont Comprehensive Plan:

- Goal 1.1: Embrace a compact and efficient pattern of growth.
- Policy 1.1A: Prioritize the development of sites located within the Municipal Service Area, where infrastructure and services can be readily provided.
- Policy 1.1B: Support the adaptive reuse or redevelopment of underutilized sites and buildings and encourage higher density infill and redevelopment in centers and mixed-use corridors, and other areas of change where development can easily be accessed on foot, by bike, or using public transit.
- Goal 1.2: Promote a sustainable mix of land uses.
- Policy 1.2A: Strive for a balanced mix of residential, employment, retail, commercial, recreational, and other uses that allow residents to live, work, play, learn, and conduct much of their daily business within the City and increase the self-sufficiency of the community.
- Policy 1.8C: Continue to work towards completing the greenway system, developing and maintaining a system that includes both primary and secondary greenways; and encompasses habitat corridors, waterways, utility corridors, or any other natural or man-made open space corridors within the City that can accommodate trail-oriented recreation while connecting residential areas to the community's pedestrian and bike network, parks, schools, and other activity centers.
- Goal 6.1: Recruit, support and incentivize quality businesses to provide a comprehensive range of job opportunities and promote economic diversity.
- Policy 6.3B: Prioritize employment uses within Mixed-Use Employment areas-such as the St. Vrain Creek Corridor and Sugar Mill- while supporting their diversification and enhancing their economic vitality by encouraging a range of secondary uses that benefit employees, but do not hamper the ability of existing businesses to operate-such as public gathering spaces, parks, trails, and recreation facilities, retail and restaurants, and multifamily housing.... And supporting the incorporation of multifamily housing and live/work opportunities to increase the number of households located near employment and transit corridors.



The site does not have any previously-approved concept plans, plats or PUD development plans. The annexation map appears to comply with state statute for annexation in that it meets the minimum 1/6 contiguity.

- B. The application complies with applicable city standards, including for street and utility design and layout, and adequate utilities are available or will be provided for appropriate urban-level services.**

The concept plan submitted by the applicant only provides a schematic layout of proposed future development, however, the notes acknowledge that at time of development, the property may be required to dedicate right-of-way on Sunset Street dependent on the recommendations of the final traffic study in addition to property dedication for the city's St. Vrain Greenway and the Resilient St. Vrain flood control project. Public Works acknowledges that there are sufficient utilities available to provide appropriate urban-level services. In addition, if access to the property is planned from the two access easements off of Boston Avenue, a note is added to the Concept Plan that the applicant will need to provide written permission from the adjacent property owners.

- C. The application proposes development compatible with surrounding properties in terms of land use, site and building layout and design, and access.**

The proposed annexation map and MU-E (mixed-use employment) zoning is consistent with the property's land use designation in Envision Longmont as Mixed-Use Employment. Allowable uses in this zone include a variety of employment-related uses such as small-scale manufacturing, processing, wholesaling, storage, office, flex space and commercial services. Allowable secondary uses in this zone include high density residential, live/work units, hotels, supporting retail shops, cultural facilities and civic/government uses. Taken as an aggregate with the adjacent properties that are zoned Mixed- Use Employment in this area, the proposed residential and commercial uses are considered allowable secondary uses. The residential portion would be a compatible neighbor to the St. Vrain Creek on the north and Rogers Grove Nature Area to the west as these nature areas would provide a quiet and peaceful setting for the residential buildings. The proposed commercial building appropriately faces Sunset Street and abuts the existing gas station and would provide an adequate transitional buffer from the street to the apartments.

- D. The application will not adversely affect surrounding properties, the natural environment, existing or planned city transportation, or utility services or facilities, or the adverse impacts of the use will be mitigated to the maximum extent feasible.**

The proposed annexation and concept plan does not adversely affect surrounding properties for the reasons noted above. The proposed annexation and concept plan does not show any encroachment to the natural environment. The applicant was informed that due to the proximity to St. Vrain Creek, the city will require a land dedication at time of development for the City greenway as well as the Resilient St. Vrain Project channel widening and this language has been added to their annexation agreement. Any proposed drainage features (detention/water quality) must remain outside of the proposed greenway and any land dedicated for the Resilient St. Vrain project. The applicant was also informed that at time of development, there is a 150-foot building setback from St. Vrain Creek riparian vegetation, and potentially 100-feet from any identified Rogers Grove riparian areas, and any variance requests would be subject to review under the new Sustainability Evaluation System.

The entire site is designated as a floodway as defined by the Preliminary FIRMs dated September 20, 2019. As per Longmont's Land Development Code, the entire site must be removed from the floodway before development can occur. This will require an approved Conditional Letter of Map Revision from FEMA before development can be permitted, including site grading.

A Species and Habitat Assessment was prepared for this property in March 2021. The report concluded that the property does not provide habitat for any federally or state-listed threatened, endangered or candidate plants or wildlife species. The report notes that the adjacent section of the St. Vrain Creek riparian corridor does not provide habitat for these species. The only migratory bird with habitat in the area listed by US Fish & Wildlife is the bald eagle. The eagles are located along the St. Vrain Creek and the adjacent ponds to the west. The City's Natural Resources staff have reviewed the report and have no disputes with the assessment. They would like to remind the property owner that weeds need to be controlled in compliance with City regulations and they have requested that the applicant, at time of development application, design the project to limit the amount of disturbance to the riparian area through sensitive building and lighting design, and to survey for the Northern Leopard Frog in the wetlands area prior to land disturbance. As noted above, due to the adjacency of the St. Vrain Creek, there is a 150-foot setback in the Land Development Code where development would not be permitted. Development of this property would provide an opportunity to improve habitat conditions adjacent to the riparian corridor. The City is currently working on a flood-control project in this area called the Resilient St. Vrain which aims to widen the creek bed. The 150-foot setback will be taken from the riparian vegetation or ordinary high water mark if vegetation is not present. At this time City staff do not have this segment of creek widening funded or scheduled. Additionally, if the property is annexed and a development application is submitted, a

100-foot setback may be required adjacent to Rogers Grove if riparian habitat is identified on its eastern side.

The applicant's conservation plan identified 0.18 acres of wetlands and 0.45 acres of aquatic habitats on this property. The U.S. Army Corps of Engineers has evaluated the wetlands delineation report for this property and has issued an Approved Jurisdictional Determination, finding that the small ponds and associated wetlands on the property were associated with the previous gravel mining use on the property and are not jurisdictional.

The applicant's conservation plan also recommends a nesting survey be conducted prior to any development activities or removal of trees associated with proposed development to determine if there are any active raptor or migratory bird nests. If this property is annexed and a development application is submitted, staff will require the nesting survey as part of any associated development application.

The proposed annexation and concept plan does not adversely affect streets or utilities. Public Works acknowledges that there are sufficient utilities available to provide appropriate urban-level services. The traffic study provided by the applicant's consultant and accepted by City traffic engineering concludes that based on a potential of 320 apartment units, 14 duplex units, 5,000 square-feet of retail and 15,000 square-feet of office, approximately 3,404 weekday trips are expected at full buildout. The morning and afternoon peak hour level of service (LOS) at Boston and Sunset is currently at LOS "B" and the traffic study concludes that it will move to LOS "C" by 2040, with or without this development.

There are two platted access easements to this property from Boston Avenue – one adjacent to the Shell gas station on the east side of this property and one adjacent to the commercial property on the west side of this property. Both intersections are currently operating at LOS "B" and are expected to remain at this level of service through 2040. Staff has required the applicant to add a note to the concept plan indicating that if the property is annexed and a development application is submitted, that the applicant provide written agreements from the adjacent property owners to allow full vehicular access in and out of this property from those private properties.

The traffic study concludes that the potential trip generation to the property could be mitigated with a left-turn lane on northbound Sunset Street approaching any proposed site access intersection. This would effectively widen Sunset from two to three lanes. The study also recommends a stop-sign at the intersection where Sunset Street meets the property entrance. The study also concluded that due to the low speed



volumes along Sunset Street, there is no need for a right-turn deceleration lane for southbound traffic entering the site.

- E. The application, where required, complies with the sustainability evaluation system requirements to mitigate impacts of development within the City’s riparian areas, and as applicable to other projects as determined by separate agreement.**

The concept plan does not provide a specific site plan for development, so it is unclear at this annexation stage whether future development will comply with the sustainability evaluation system requirements. If the property is annexed and a development application is submitted, the city will determine whether the submittal complies with SES.

- F. The application includes an appropriate transportation plan, including multi-modal transportation access, and is integrated and connected, where appropriate, with adjacent development through street connections, sidewalks, trails and similar features.**

The proposed annexation concept plan provides an appropriate multi-modal transportation plan. Access to the site is currently from one driveway entrance on Sunset Street. The concept plan proposes two additional access points from Boston Avenue via adjacent properties on the south that contain access easements to this property. The concept plan provides a note indicating that if annexed and a development application is submitted, that the applicant obtain written permission from the adjacent property owners for use of these access easements to any future development on this property.

**In addition, the following additional review criteria are specifically required for Annexations (Land Development Code section 15.02.060.A.2):**

All annexations shall be reviewed for compliance with the following additional criteria. However, annexation is a discretionary, legislative act. The city shall never be compelled to annex, unless otherwise required by state law, even if all these review criteria have been satisfied.

- A. The annexation complies with the Municipal Annexation Act of 1965, as amended (C.R.S. § 31-12-101 et seq.).**

The proposed annexation complies with the Municipal Annexation Act of 1965, as the property has demonstrated that it has at least 1/6<sup>th</sup> contiguity with City of Longmont.



The required contiguity for this property is 976.53 linear feet and the property has 4,960.24 linear feet that is contiguous with City of Longmont.

- B. The property is within the municipal service area (MSA) or the Longmont Planning Area (LPA) as stated in the comprehensive plan. No property outside of the MSA or LPA shall be considered for annexation unless the city council finds that, consistent with the comprehensive plan, the best interests of the city would be served by annexation of such property, and a land use plan for the area proposed to be annexed is submitted together with the annexation application.**

The property is within the municipal service area (MSA) of the Longmont Planning Area as shown on the Envision Longmont land use map.

- C. The proposed zoning is appropriate, based upon consideration of the following factors:**
- i. The proposed zoning is consistent with the comprehensive plan designation of the property; and**
  - ii. The proposed land uses are consistent with the purpose and intent of the proposed zoning district.**

The proposed zoning of Mixed-Use Employment is appropriate, given that the property is designated as Mixed-Use Employment on the Envision Longmont comprehensive plan, and high density residential and commercial uses, such as that proposed on the concept plan, are consistent with the allowable secondary land uses in these land use category. Taken as an aggregate with the adjacent properties that are zoned Mixed-Use Employment in this area, the proposed residential and commercial uses are considered allowable secondary uses. The residential portion would be a compatible neighbor to the St. Vrain Creek on the north and Rogers Grove Nature Area to the west as these nature areas would provide a quiet and peaceful setting for the residential buildings. The proposed commercial building appropriately faces Sunset Street and abuts the existing gas station and would provide an adequate transitional buffer from the street to the apartments.

- D. The annexation will not limit the ability to integrate surrounding land into the city or cause variances or exceptions to be granted if the adjacent land is annexed or developed.**

The annexation will not limit the ability to integrate surrounding land into the City or cause variances if adjacent land is annexed or developed. The properties to the south, north and west are all annexed into the City of Longmont; only the property to the east

is not annexed, however, annexation of this property would not create obstacles for that property to annex.

**E. Unless otherwise agreed to by the city, the landowner has waived in writing any preexisting vested property rights as a condition of such annexation.**

There are no identified pre-existing vested property rights on this property, nor have any mineral rights been identified in the title commitment.

**F. The property to be annexed meets the environmental requirements of section 15.02.140.**

A Phase One Environmental Site Assessment was prepared for this property in November 2020. The report noted that the property had historically been used as a gravel mine and concrete batch plant. The property is currently developed with four buildings: an 11,000 square-foot office building; a 3,000 square-foot recycling shop building (former welding shop) built in 1965 that sorts recyclable materials and sends them offsite for processing; a 9,861 square-foot multi-tenant shop building (former maintenance shop for the concrete plant) built in 1993 that is used by multiple tenants for storage of construction materials; and an electrical control shed building.

The west side of this property contains the remnants of the former gravel mine, including stockpiled concrete waste. The report finds no evidence of recognized environmental conditions (RECs), with the exception of poor housekeeping associated with the multi-tenant construction storage building, which contained leakage stains from hazardous materials stored on site, including potential hazardous substances and/or petroleum products. The adjacent gas station at the southeast corner of the property was a historic REC due to previous petroleum releases and soil contamination but the issue was remediated and the case was closed. The report recommends treatment for dewatering in the event contaminants are in the groundwater. The Phase One report also recommended that additional soils testing be completed in a Phase Two Environmental Site Assessment to confirm if any contaminants have impacted the soil and also to confirm that there are no other items other than concrete waste on the west side of the property. A Phase Two report was completed in January 2021 which concluded, after soils and groundwater testing, that there were no impacts from the leakages in the multi-tenant construction storage building or from any historic petroleum releases from the adjacent gas station.

Fire Department staff reviewed both reports and found them acceptable and do not recommend any further mitigation measures.



**G. City-initiated annexations shall conform to C.R.S. § 31-12-106 and the annexation ordinance shall include an annexation map meeting the requirements of C.R.S. § 31-12-107(1)(d).**

This is not a city-initiated annexation.

**ATTACHMENTS:**

1. Ordinance
2. Annexation Agreement
3. Planning & Zoning Commission Resolution
4. Planning & Zoning Commission Minutes from 8-18-2021
5. Planning & Zoning Commission Packet from 8-18-2021 meeting
6. Vicinity Map
7. Annexation Map
8. Concept Plan