



## Legislation Text

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### *Department of Community Development*

Reference: Magpie Property Annexation

**To:** Mayor Gregory Mills and Members of City Council

**Through:** Michael Martinez, City Manager

Marv Falconburg, AICP, Deputy City Manager

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**Date Prepared:** July 26, 2022

### **PURPOSE**

In order to proceed with annexation of the Magpie Property (the "Property"), the Council must conduct a public hearing, approve a resolution for annexation eligibility, and complete the first reading of the annexation ordinance. Annexation is regulated by the *Colorado Revised Statutes* and is a four step process with the steps as follows:

- 1.) Petition for annexation accepted by City Council in a substantial compliance resolution;
- 2.) City Council issues findings of fact in an annexation eligibility resolution;
- 3.) First reading of an annexation ordinance with a public hearing; and
- 4.) Second reading of an annexation ordinance (an annexation agreement may be approved by resolution at this time).

A Petition for Annexation (the "Petition") was accepted by the City Council at a regular meeting held on July 5, 2022, and the City Council found that the Petition was in substantial compliance with the applicable laws of the State of Colorado. See the attached City Council Resolution 2022-78 for further information. In Resolution 2022-78, City Council set the public hearing for this annexation for August 16, 2022.

City Council must now hold a public hearing and make a determination on a resolution for annexation eligibility and on the first reading of an annexation ordinance.

### **STRATEGIC FOCUS AREAS**

Recognizable and Well-Planned Community

### **BACKGROUND**

The Property is approximately 95.105 acres and is generally located to the north of East 152<sup>nd</sup> Avenue and east of Burlington Northern Santa Fe Railroad right-of-way. It is owned by Connie Surabian, Lazarus Surabian, Ryan Steel, Stacey Wenzel Steel, and Betty Mathis (the "Owners,"). Madison Jones with Lovett Industrial is the applicant (the "Applicant") acting on behalf of the Owners.

The Property is currently zoned A-3 (Agriculture 3) through Adams County and the Applicant has submitted for a zoning map amendment with the City. The Property is 22.8% contiguous with the existing Brighton city limits. The City of Brighton's Comprehensive Plan, designates the Property as Agriculture and Natural Resource Conservation. If this property is to be annexed, and eventually zoned, the Future Land Use map of the Comprehensive Plan will be amended to include the property.

Annexation is the first step in the land development process with the City (*Annexation > Rezoning > Platting > Site Plan Review > Permits*). A separate application to rezone the Property to a City zone district is also before the City Council. At the next scheduled meeting after approval on first reading, if granted, an annexation agreement will be brought before the City Council, along with the second reading of the annexation ordinance. In the future, a subdivision plat and development agreement will be brought before the City Council before development can occur.

**Surrounding Land Use(s):**

<i>Surrounding Direction</i>	<i>Land Use(s)</i>	<i>Zoning</i>	<i>Annexation Status</i>
North	Agriculture	<i>Adams County A-3</i>	<i>County</i>
South	Agriculture	<i>Adams County A-1 and A-3</i>	<i>County</i>
East	Agriculture	<i>Adams County A-3</i>	<i>County</i>
West	Industrial	Bromley Park PUD 1 <sup>st</sup> and 15 <sup>th</sup> Amendments	City

**CRITERIA BY WHICH COUNCIL MUST CONSIDER THE ITEM****COMPREHENSIVE PLAN**

As an ever-evolving document, the Comprehensive Plan is subject to review and change. From time to time, unforeseen opportunities arise requiring a more in depth look at the possibilities of those opportunities, and how certain requests further the goals and objectives of the City of Brighton. Within the city limits of Brighton, and specifically in the southern portion of the City, there is high developer interest to develop vacant land (ex. Adams Crossings and Prairie Center). This land is situated in areas of existing, or future, residential, commercial, and mixed use zone districts and designations. The City is seeing a high demand to rezone these areas to allow for industrial uses, such as warehousing and distribution centers. As described in more detail below, the Comprehensive Plan pursues goals and objectives that aspire for more industrial and job producing development, but situates them in a more appropriate location.

The future land use portion of Be Brighton, the Comprehensive Plan, has designated the Property as appropriate for 'Agriculture' and 'Natural Resource Conservation' land uses (see attached map for area designations). As mentioned, the Applicant is requesting to annex the Property for industrial land use purposes. Industrial uses are not supported in the 'Agriculture' and 'Natural Resource Conservation' designations. It is important to note that the Future Land Use Map and designations are only a portion of the Comprehensive Plan.

The portion of the site that is designated as "Natural Resource Conservation" in the Comprehensive Plan is due to the existence of a FEMA Regulatory Floodplain. This portion of the site is also shown in the Zoning Map to be covered by the Floodplain Control District. The Floodplain Control District is an "overlay" zone district. The new zoning designation of the site will not remove the overlay Floodplain Control District zone. The process for altering the FEMA Regulatory Floodplain boundary is known as the Letter of Map Revision (LOMR) and the process for demonstrating that a property is outside of a Regulatory Floodplain is called a Letter of Map Change (LOMC). The applicant would submit an application for a (LOMR) or (LOMC) to FEMA along with a study of the area showing that the site in question is no longer encumbered by a 100-year floodplain due to changes in the elevation of the property or the hydrology and/or hydraulics of the natural waterway. An application for a LOMR or LOMC requires that the applicant also demonstrate compliance with the Federal Endangered Species Act. FEMA and the local jurisdiction (City of Brighton if the property annexation is approved) would be required to approve any revisions/changes to the Regulatory Floodplain. The City will work with the applicant, FEMA the Colorado Water Conservation Board and Mile High Flood District to ensure all regulations are followed related to floodplains. Once a Map Revision/Change is approved, the City would then modify the Flood Control District overlay boundary, allowing development to occur on the property according to the approved zoning designation. It is important to note that, if there were any jurisdictional wetlands located on the subject property, a Clean Water Act Section 404 Permit would be required to regulate the potential destruction of said wetlands.

Pursuant to *Chapter 3: Future Land Use Plan and Opportunity Areas, 9. Retain and Expand the Bromley Interstate Business Park*, this request will concentrate high-quality industrial development adjacent to existing industrial developments along the I-76 corridor. Any associated vehicle access and traffic will be concentrated along these major transportation routes along commercial and industrial corridors, and not within or adjacent to residential or mixed use areas. Additionally, prospective clients will benefit from direct access to the rail line and other nearby major transportation routes, such as I-76 and E-470.

Pursuant to *Chapter 2: Current Context and Values, Workforce & Opportunities*, the Property is in close proximity to the area referred to as the Bromley Interstate Business Park, an area that anticipates a significant share of industrial development. As employment demands from new households continue to increase, this anticipated industrial development will continue to allow Brighton's industrial employment sector to continue to grow and be competitive in the Metro Area. Within the same chapter under *Development Pattern*, the locating of industrial development supports the sustainability value to "channel non-residential development to nodes and corridors near highways, arterials, and transit."

Pursuant to *Chapter 4: Citywide Principles, Policies and Strategies, Managing Growth Policy 1.1*, zoning this Property for industrial uses will prevent the fragmentation in growth and industrial development, or "leapfrogging". As there are industrial developments and utilities to the west of the Property, zoning and developing this land for industrial land uses will create a cohesive and continuous built environment. This will create an appealing pattern of development and will be much more cost effective to maintain. Pursuant to *Managing Growth Policy 1.3* any development of the land will pay its own way via extension of utilities, expansion of roads, and will be required to dedicate water to the City. This annexation request pursues *The Freestanding City Principle, Policy 2.1* as the annexation will facilitate industrial development in close proximity to existing industrial development and major transportation routes. Of the same Principle, this request for annexation pursues *Policy 2.2* and *Policy 2.4* as the developer will be responsible to expand, extend, and construct adequate capital facilities, such as utilities and roadway expansions, and said extensions will be done in an efficient manner. Additionally, annexation of the Property will facilitate urban development that is concentrated in an already existing urban area. Lastly, if both the annexation and zoning are approved, the area designation will be amended within the Comprehensive Plan at a later date.

Per the analysis above, the Comprehensive Plan targets areas of high transportation volumes and existing non-residential areas as appropriate for industrial zoning designations and uses. Additionally, if the land is not annexed and zoned, the property can develop under the jurisdiction of Adams County. That being said, the development would not be under the site planning and architectural standards of the City of Brighton for regulations such as building design, signage, and landscaping. This would also mean that the City of Brighton would not absorb any associated property and sales taxes, impact fees, or control over the timing and design of public improvements, such as expansion of East Bromley Lane.

## LAND USE AND DEVELOPMENT CODE

The below criteria shall be used to review the proposed Annexation. After each listed sub-section, staff provides analysis.

1.) *The annexation complies with the Municipal Annexation Act of 1965, Section 31-12-101 et. seq., CRS.*

The proposed annexation is in compliance with the Municipal Annexation Act of 1965, Section 31-12-101 of the C.R.S.

2.) *The annexation is in accordance with the Comprehensive Plan and any other plans or policies created under the guidance of that plan.*

As stated above, the Property's annexation will help support a number of policies and principles of the Comprehensive Plan, despite the proposed zoning not aligning with the future land use designations.

3.) *The property is capable of being integrated into the City and developed according with all applicable provisions of the Brighton Municipal Code and these regulations.*

As stated above, the Property can be integrated into the City and adequately served by City utilities. If annexed, the Property is required to be zoned within 90 days of the approval. Future development on the site will follow all standards and procedures of the City of Brighton Municipal Code and Land Use and Development Code.

- 4.) *Municipal and governmental services and facilities will be extended to these areas in a timely and fiscally responsible manner, considering initial costs, ongoing maintenance costs, and potential replacement costs with respect to the expected values of proposed development.*

At the time of the development, municipal and governmental services and facilities will be extended to the Property by the developer. As mentioned above, development of the land will pay its own way as this will be reflected in future plats and agreements.

- 5.) *At the time any development is completed in the area to be annexed, there will be adequate capacity to serve the residents or occupants of the area with the necessary utilities and facilities.*

It has been determined that there is adequate capacity to serve this Property with the necessary City utilities and facilities. At the time of development, the developer will be required to submit technical engineering studies to ensure the appropriate amount of infrastructure is or will be present.

- 6.) *The annexation will encourage well-ordered development of the City, particularly with regard to the long-range transportation patterns, development patterns, open space systems, and coordination with any specific plans accompanying the proposal.*

As mentioned above, the Property is located along major transportation and distribution routes. The Property will be zoned with the most appropriate zone district in relation to the surrounding incorporated and unincorporated lands. Development upon the land will only be allowed ensuring it fits in with the surrounding land uses, building designs and transportation corridors.

#### **COLORADO REVISED STATUTES**

The City Council must determine whether the Annexation complies with the following statutory requirements set forth in the *Colorado Revised Statutes*.

##### **Section 31-12-104**

The following statutory limitations apply for eligibility for annexation:

- a. Not less than 1/6<sup>th</sup> of the perimeter of the area to be annexed is contiguous with the City of Brighton;
- b. A “community of interest” exists between the municipality;
- c. The area to be annexed is urban or is to be urbanized;
- d. The area is integrated or capable of integration within the municipality.
- e. If the contiguity requirement is met, the “community of interest” requirement is presumed unless two of the following exist:
  - i. Less than 50% of the adult residents use facilities of the municipality (recreation, social, church, commercial, etc.), and less than 25% of the adults are employed in the municipality; or
  - ii. One-half or more of land is agricultural and the owners say it will stay agricultural for at least five years; or
  - iii. It is not physically practicable to extend to the area proposed to be annexed those urban services which the annexing municipality provides in common to all of its citizens on the same terms and conditions as such services are made available to such citizens.

##### **Section 31-12-105**

The following statutory limitations apply to the proposed annexation:

- a. Cannot separate property held in identical ownership;
- b. Cannot annex property more than 20 acres and more than \$200,000 in assessed value without the written consent of the owners, unless entirely within the municipality;
- c. No resolution or petition is valid if annexation proceedings have commenced for another municipality;
- d. Cannot extend municipal boundaries more than three miles in one year;
- e. There must be a plan in place regarding services and land uses;
- f. If annexation includes a portion of a street or an alley, all of the street or alley must be annexed; and
- g. Cannot deny reasonable access to adjoining landowners as a result of proposed annexation.

#### Section 31-12-108

The following statutory requirements regarding notice are applicable to annexations:

- a. Publication of the date, time, and place of the public hearing must be published once a week for four successive weeks;
- b. The first publication must be at least thirty days before the hearing;
- c. Copy of the notice, resolution, and petition must be sent by registered mail to the County Commissioners, County Attorney, special districts, and the school district at least twenty-five days before the hearing.

#### Section 31-12-108.5

The statutes relating to annexations require an Annexation Impact Report for areas in excess of 10 acres to include the following:

- a. The municipality must prepare the Impact Report;
- b. A map showing present and proposed boundaries, utility infrastructure, streets, and land uses;
- c. Addresses, the provision of municipal services, the method of financing, effect on school districts, etc.;
- d. It must be filed twenty-five days before the hearing;
- e. One copy of the Annexation Impact Report must be filed with the County Commissioners within five days;
- f. Not required for annexation of ten acres or less, or if the County Commissioners agree to waive the report.

#### Section 31-12-109

The annexation statutes provide the following provisions regarding the public hearing on the annexation:

- a. Any person may appear and present evidence;
- b. All proceedings must be recorded.

#### Section 31-12-110

After the hearing, the governing body must set forth findings of fact and conclusion in a resolution regarding:

- a. Whether Sections 31-12-104 and 105 C.R.S have been met;
- b. Whether an election is required;
- c. Whether additional terms and conditions are to be imposed;
- d. A finding that the proposed annexation does not comply with Sections 31-12-104 and 105 shall terminate the proceedings.

### **STAFF ANALYSIS**

The Magpie Property Annexation complies with the C.R.S. §31-12-104 through 110. The Property is 22.80% contiguous with the City of Brighton city limits, so the "Community of Interest" provision is presumed. The Property may be urbanized and is capable of integration within the City of Brighton as utility lines are adjacent to the Property. Additionally, the annexation request complies with all the applicable criteria as outlined in the LUDC.

### **PUBLIC NOTICE AND INQUIRY**

Publication of the public hearing and notification of the public hearing, have been provided to all applicable entities as required by C.R.S. §31-12-108.5. The notice of public hearing was published in the Denver Post on July 14, 21, 28 of 2022 and August 4, of 2022. A copy of the published notice, resolution of substantial compliance and petition as filed were sent via registered mail to the Board of County Commissioners of Adams County, the County Attorney, School District 27J, the Central Colorado Ground Water Sub-district and Conservatory, Fire District 6 Greater Brighton, Rangeview Library District, Regional Transportation District, Urban Drainage South Platte and Flood Control District. Notice was mailed to all property owners within 1,000' of the Property on July 29, 2022. Two (2) signs were posted on the property on July 28, 2022. As of the date of this report, the City Council has not received any formal comments regarding the proposed annexation.

### **STAFF RECOMMENDATION**

City staff finds that the request for annexation complies with the requirements of the Municipal Annexation Act, C.R.S. §31-12-101 et seq. and that the request for annexation generally complies with the goals and policies as outlined in the Comprehensive Plan.

### **OPTIONS FOR COUNCIL CONSIDERATION**

The City Council has the following two items before it, each with four options:

#### **Resolution of Annexation Eligibility**

City Council may:

- 1.) Approve the Resolution as drafted;
- 2.) Approve a modified Resolution;
- 3.) Deny the Resolution with specific findings to justify the denial; or
- 4.) Continue the item to be heard at a later, specified date if the Council feels it needs additional information to ensure compliance with the approval criteria.

#### **Annexation Ordinance**

If the Resolution of Annexation Eligibility is approved, City Council may:

- 1.) Approve the Annexation via ordinance as drafted;
- 2.) Approve the Annexation via a modified ordinance;
- 3.) Deny the Annexation via ordinance with specific findings to justify the denial; or
- 4.) Continue the item to be heard at a later, specified date if the Council feels it needs additional information to ensure compliance with the approval criteria.

*Note: A second reading of the ordinance, if approved, will be required at a future meeting.*

### **ATTACHMENTS**

- Draft Resolution of Annexation Eligibility
- Aerial Map by City Staff
- Annexation Map by Applicant
- Newspaper Proof of Publication
- Resolution 2022-78 (Substantial Compliance)
- Draft City Staff Presentation