

CITY COUNCIL COMMUNICATION FORM

FROM: Dan Foote, City Attorney
Gary Suiter, City Manager

THROUGH: N/A

DATE: October 17, 2023

ITEM: SECOND READING OF ORDINANCE: An Ordinance Approving the Annexation to the City of Steamboat Springs of Approximately Four Hundred Twenty Acres of Real Property Known as Brown Ranch and Referring the Annexation to the Registered Electors of the City of Steamboat Springs at a Special Election on June 25, 2024, PL20230222.

_____ DIRECTION
_____ INFORMATION
 _____ ORDINANCE
_____ MOTION
_____ RESOLUTION
_____ PROCLAMATION

I. REQUEST/ISSUE & BACKGROUND INFORMATION:

The City on October 18, 2022 received a petition for the annexation of four hundred-twenty acres of real property owned by the Yampa Valley Housing Authority and known as the Brown Ranch. Three separate bodies of law govern the annexation of real property to the City: Article II, Section 30 of the Colorado Constitution, the Municipal Annexation Act ("MAA"), which is a statute adopted by the state legislature, and the City's Community Development Code. The constitutional requirements have been incorporated into the MAA.

Annexation is a legislative act that Council may approve or deny in its sole discretion. The previous Council approvals of the Substantial Compliance Resolution on January 3, 2023, the Eligibility Resolution on April 4, 2023, and approval of the Annexation Agreement by the City and YVHA give Council the power to annex Brown Ranch. However, Council is not obligated to annex.

The City Council on October 10, 2023 approved the proposed ordinance on first reading with directions to staff to amend the ordinance to refer it to the voters at a special election to be held on June 25, 2024 and to provide that the ordinance would not take effect if not approved by the voters. The proposed ordinance has been revised to implement this direction. Revisions are shown in redline.

Annexation Agreement

The City and YVHA have negotiated an Annexation Agreement. It was approved by the City Council on September 19, 2023 and was approved by the YVHA Board on October 5, 2023.

Since those approvals, YVHA representatives have identified a potential ambiguity in the nature of the City's vesting commitment. Section 2.A of the Annexation Agreement provides that YVHA may construct up to 2,264 residential units. Subsection 13.C of the Annexation Agreement provides that the Framework Regulating Plan to be approved through the City's CDC process will be treated as a vested right as to the densities and uses approved in the plan. YVHA proposes to clarify the reference to "densities" to mean a minimum of 2,264 units by amending the Subsection 13.C language with the addition of the parenthetical clause highlighted below in red:

"C. Site-Specific Development Plans. YVHA and the City agree that the Framework Regulating Plan constitutes an approved "site specific development plan" as defined in the Vested Property Rights Statute, and that pursuant thereto, YVHA and its successors and assigns shall have vested rights to undertake and complete the development and use of the Property as to the minimum densities (i.e, the development of up to 2,264 residential units) and uses approved by the Framework Regulating Plan and with the exactions and real property dedications described herein during the vesting term established in Paragraph (b) above. The vesting term shall be memorialized in a Development Agreement in connection with the approval of the Framework Regulating Plan ("Framework Regulating Plan Development Agreement")."

Staff does not object to this revision. It could be implemented by resolution.

The City also proposes add an additional disclosure relating to the avigation easements required by the annexation agreement. The YVHA does not object to this addition. This revision could also be implemented by resolution.

Elections

Annexations may be subject to two types of elections.

Election in Area to be Annexed.

The first type of election, referenced above, is an election of the registered electors (if any) and owners of property in the area to be annexed. This type of election is held when there is not unanimous consent to the annexation, or to any conditions relating to the annexation, on the part of the owners of the property to be annexed.

Brown Ranch consists of a single property with a single owner, YVHA, and no residents or registered electors. YVHA consents to the annexation and the conditions imposed via the annexation agreement. Therefore, there is no requirement for an election of the residents/registered electors/owners of the area to be annexed.

The ordinance recitals and Section 3 include findings that no election is required by the Colorado Constitution or the MAA. It is important to note that these findings relate only to the potential for an election of the Brown Ranch property owners and registered electors. This finding does not prevent Council from referring the ordinance to the voters or the submission of a referendum petition as described below.

City Election – Referendum or Referred Measure

The second type of election is an election of the citizens of the annexing municipality, which in the case of the proposed Brown Ranch annexation would be the voters of the City of Steamboat Springs. This type of election could be called in one of two ways. The City Council could include a provision in the annexation ordinance referring the annexation to the voters at a special election and providing that the annexation ordinance would not take effect until and unless it is approved by the voters. In this situation, the timing of the special election would be entirely up to the City Council: the election could be scheduled at any time, including at the general election in November 2024.

Council's discretion as to the timing of an election is subject to the practical realities of planning an election. If Council were to elect to refer the annexation ordinance to the electorate, staff would recommend a minimum of three months' lead time to prepare for and run an election.

If Council elects not to refer the ordinance to a special election, the annexation ordinance would be subject to the referendum provisions of the City Charter. The Charter provides that a group of five electors may form a petitioners' committee and gather signatures on a petition to force a vote on the annexation

ordinance. The petition would have to be filed within thirty (30) days of Council's approval of the annexation ordinance and would have to contain eleven hundred twenty-five (1,125) signatures of registered voters (i.e. 10% of the number of registered voters at the last regular City election).

Once a petition is submitted, it is reviewed by the City Clerk and the Council to determine whether it is "sufficient", i.e. that it satisfies the requirements of Article 8 of the City's Charter. This review period includes an opportunity for the petitioners' committee to cure certain defects in the petition. The review period could take between two to six weeks. If Council determines that the petition is sufficient, Council would be required either i) to repeal the annexation ordinance or ii) to schedule a special election on a date between thirty (30) and ninety (90) days from the date of the determination that the petition is sufficient.

If a regular election is scheduled during the thirty (30) to ninety (90) day election window, the referendum would be held with the regular election. Otherwise, the Council would schedule a special election. Because the next regular City election will not occur until November, 2025, a referendum election would almost certainly require Council to call a special election.

As noted above, the practical realities of preparing to hold a special election would mean that the election would need to be scheduled very near to the end of the thirty (30) to ninety (90) day election window. This means that if there were to be a successful referendum petition, the special election would be held somewhere between one hundred thirty-five (135) and one hundred sixty-five (165) days after the date the annexation ordinance is adopted.

Cost

The City's Election Code provides for City elections to be governed by the Uniform Election Code ("UEC"). However, the City could elect to use the Municipal Election Code ("MEC") for a special election. MEC procedures are less rigorous than UEC procedures and an MEC election would be less expensive to run.

The City's most recent special election was conducted in 2019 pursuant to the MEC and cost approximately \$32,000, exclusive of personnel costs. Personnel costs for the 2010 Steamboat 700 special election were \$17,000. These costs have almost certainly increased substantially. The 2024 budget includes a provisional figure of \$60,000 for a 2024 special election.

Englewood and Littleton conducted special elections in 2023 that cost \$138,00 and \$165,000, respectively. Those communities have populations that are 3-4

times the size of the City's so those numbers would likely represent an upper limit for the cost of special election in Steamboat Springs.

The most cost-effective way of conducting an election is to participate in a coordinated election run by the County Clerk. Staff has confirmed with the County Clerk that there is an opportunity to coordinate a municipal special election with the June 25, 2024 state primary election. It is not possible to coordinate a municipal special election with the presidential primary election scheduled on March 5, 2024.

Adequacy of Water Supply

Both the City's Municipal Code and state law require the City to confirm the adequacy of the City's water supply to serve new development prior to approving development. Although these regulations do not require this determination to be made at time of annexation, the parties have negotiated the annexation agreement on the assumption that the City does not intend to annex property if it cannot provide water service.

The water demand analysis prepared by the applicant's engineers, and reviewed by City staff, concludes that the City has adequate raw water rights on the Elk River to supply Brown Ranch at full build out. The Annexation Agreement addresses this by providing a schedule and funding source for the development of the Elk River Water Treatment Plant and related distribution facilities. The annexation agreement also limits the development of Brown Ranch to 800 EQRs until the Elk River Water Treatment Plant is on line.

II. SUMMARY AND ALTERNATIVES:

Council on October 10, 2023 approved the ordinance on first reading with direction to staff to modify the ordinance by referring it to the voters at a special election to be held on June 25, 2024. This decision is subject to revision by City Council on second reading. Council's retains the same options available to it on October 10:

- approve the proposed ordinance as drafted (i.e. with a referral to the voters);
- approve the proposed ordinance with modifications or with directions to staff to seek modification of the Annexation Agreement;
- delay consideration of the proposed ordinance;
- approve the ordinance without referring to the voters; or
- reject the proposed ordinance.

The chief issue of concern is fiscal impact to the City of the capital costs associated with the development of Brown Ranch. The terms of the Annexation

Agreement address this issue in that they contemplate the development of the entire Brown Ranch parcel, which in turn drives the overall fiscal impact analysis. The Annexation Agreement provides the City with some control over the sequence and timing of the development of Brown Ranch via the City's authority to decline to issue land use approvals if the City is unable to fund its share of US Hwy 40 improvements necessary to serve the development of Brown Ranch.

Modification of the Annexation Agreement to address the capital funding issue would require a substantial re-write of the Annexation Agreement, likely by reducing the scope of the project through breaking it up into phases. This task cannot be accomplished on the current schedule for adoption of the annexation ordinance.

Delaying adoption of the annexation ordinance would have pros and cons.

Pros would include:

- Delay would have the advantage of allowing the parties time to evaluate options to address the capital funding issue, either by revising the Annexation Agreement or by identifying City revenue sources and/or reductions to existing services to fund the City's capital responsibilities.
- Delay would also allow City Council to evaluate the proposed annexation in the context of the election results on the ballot question allocating Short-Term Rental tax revenues to YVHA for the development of Brown Ranch infrastructure and housing.

Cons would include:

- The October 10 staff memo referenced one disadvantage of delaying a decision being the corresponding delay in YVHA's commencing development of Brown Ranch. However, given Council's current direction to refer the ordinance to a special election on June 25, 2024, delaying approval of the ordinance on second reading would not necessarily delay progress on the development of Brown Ranch.

III. STAFF RECOMMENDATION:

Staff does not recommend the option of approving the ordinance with direction to make any substantial changes to the Annexation Agreement. There is not sufficient time for the parties to undertake any kind of substantial re-negotiations prior to the currently scheduled second reading on October 17.

If Council wishes to have a fuller understanding of its options to fund the City's share of Brown Ranch capital infrastructure prior to adopting the annexation

ordinance, staff would recommend delaying approval of the ordinance and scheduling a work session to discuss new taxes, fees, or other revenue sources and/or reduction in existing City services.

IV. FISCAL IMPACT:

The fiscal impacts to the City's general fund and capital fund are outlined in Attachments 1 and 2, which are, respectively, the RCLCO evaluation of City operations and the Finance Department assessment of the City's share of capital expenditures and related revenues. YVHA on October 6, 2023 provided an additional assessment of Brown Ranch economic impacts prepared by RCLCO. This document is attached as Attachment 4.

In addition, the proposed annexation will commit 75% of City Short-Term Rental tax revenues through 2042, subject to certain contingencies relating to YVHA's delivery of housing units and identifying funding for YVHA's share of required infrastructure. This commitment is estimated at approximately \$200,000,000. Whether this commitment will be subject to annual appropriation will be determined by the result of the ballot question referred to the voters at the November 7, 2023 regular City election.

V. LEGAL ISSUES:

None. The proposed annexation complies with all constitutional, statutory, and CDC requirements.

VI. CONFLICTS OR ENVIRONMENTAL ISSUES:

City's Share of Capital Infrastructure

The principal issue remaining for discussion relates to the City's share of costs of constructing capital infrastructure necessary to the development of Brown Ranch. The current analysis shows a deficit net of revenues attributable to or allocated to Brown Ranch (i.e. Building Use Tax, Excise Tax, 50% of City share of STR Tax) of approximately \$52,000,000 over the life of the project. A copy of this document is attached along with the final fiscal impact analysis for operating expenses prepared by YVHA's consultant RCLCO.

The projected deficit is for the most part related to the costs of constructing Community Parks and improvements to US Hwy 40. The City's share of the public safety facility is included in these costs, but the City's share of this project is relatively small.

The capital infrastructure analysis also includes substantial costs in the Utility Fund relating to the Elk River Water Treatment Plant. These costs are less of

a concern because staff believes they will be mostly or entirely funded by Utility Fund revenues and/or debt that can be repaid from utility user fees.

It is important to note that the City's share of capital costs does not represent any kind of legal obligation on the general fund. The Annexation Agreement provides that the City's obligations to provide capital funding for Brown Ranch infrastructure is dependent on the annual appropriation of funds for this purpose by the City Council. The City cannot be forced to fund its share of Brown Ranch infrastructure and this obligation cannot affect the solvency of the City or cause bankruptcy.

Approximately \$46,000,000 of the total costs are attributed to the construction of the Community Parks. It is important to note that under the current interpretation of the purpose of the Short-Term Rental tax that the \$32,500,000 in Short-Term Rental tax revenues can only be used for construction of the Community Parks. These funds cannot be used for the City share of US Hwy 40 improvements or the public safety facility because the City share is directly related to impacts and demand for services that are not created by the development of Brown Ranch.

As a result, if the capital costs were to be considered without including the costs of constructing the Community Parks, the Short-Term Rental tax revenues would also need to be excluded, which would result in a net reduction in the deficit of approximately \$13,500,000, i.e. the difference between the \$46,000,000 in parks construction costs and the \$32,500,000 in Short-Term Rental tax revenues.

This means that there is a deficit of approximately \$38,000,000 (without consideration of Community Parks) to \$52,000,000 (if Community Parks costs are included). Staff would anticipate that some amount of grant funds would become available during the life of the project to defray some of these costs. However, staff is skeptical that grant funding will be sufficient to cover all or even most of the deficit.

As noted above, there is no legal obligation for the City to fund its share of Brown Ranch infrastructure. And the City may decline to approve land use applications if City funding is not available for necessary infrastructure and the Council finds that existing infrastructure is inadequate to support development at Brown Ranch. These provisions give the Council tools necessary to protect the general fund and to ensure that development does not occur without the construction of necessary infrastructure.

However, denying development applications would stall development of affordable and attainable housing at Brown Ranch. It would also extend the unit delivery deadlines established in the Annexation Agreement with respect

to the allocation of Short-Term Rental tax revenues to YVHA. As a result, Brown Ranch would produce no affordable or attainable housing in these circumstances, but the Short-Term Rental tax revenues allocated to YVHA would be idle and unavailable for use by either the City or YVHA for housing purposes.

For the foregoing reasons, staff continues to have serious concerns about proceeding with annexation based on the current understanding of the City's share of capital infrastructure costs and available revenues.

Parks

Staff continues to have concerns about the adequacy of the Parks, Open Space, and Trails Plan. These concerns would be exacerbated if the City were unable to fund the construction of the Community Parks included in the Brown Ranch Community Development Plan.

VII. CONSISTENCY WITH COUNCIL GOALS AND POLICIES:

This item directly addresses City Council's adopted goal of pursuing affordable and attainable housing by partnering with the Yampa Valley Housing Authority to annex Brown Ranch as quickly as possible to include a robust public outreach process.

ATTACHMENTS:

- ATTACHMENT 1: RCLCO Fiscal Impact Analysis
- ATTACHMENT 2: Brown Ranch Capital Infrastructure Cost and Revenue Projections
- ATTACHMENT 3: Planning Commission Packet
- ATTACHMENT 4: RCLCO October 3, 2023 Final Economic Impact Study