



Staff Report **Draft**

To: Planning Commission

Through: Chris Kerr, AICP, Community Development Director *CK*

From: Colin Cortes, AICP, CNU-A, Senior Planner

Meeting Date: June 13, 2024 (Prepared June 6, 2024)

Item: “Brown Street Annexation” (ANX 24-01)

Tax Lot(s): 051W18C001200 (1025 Brown St)

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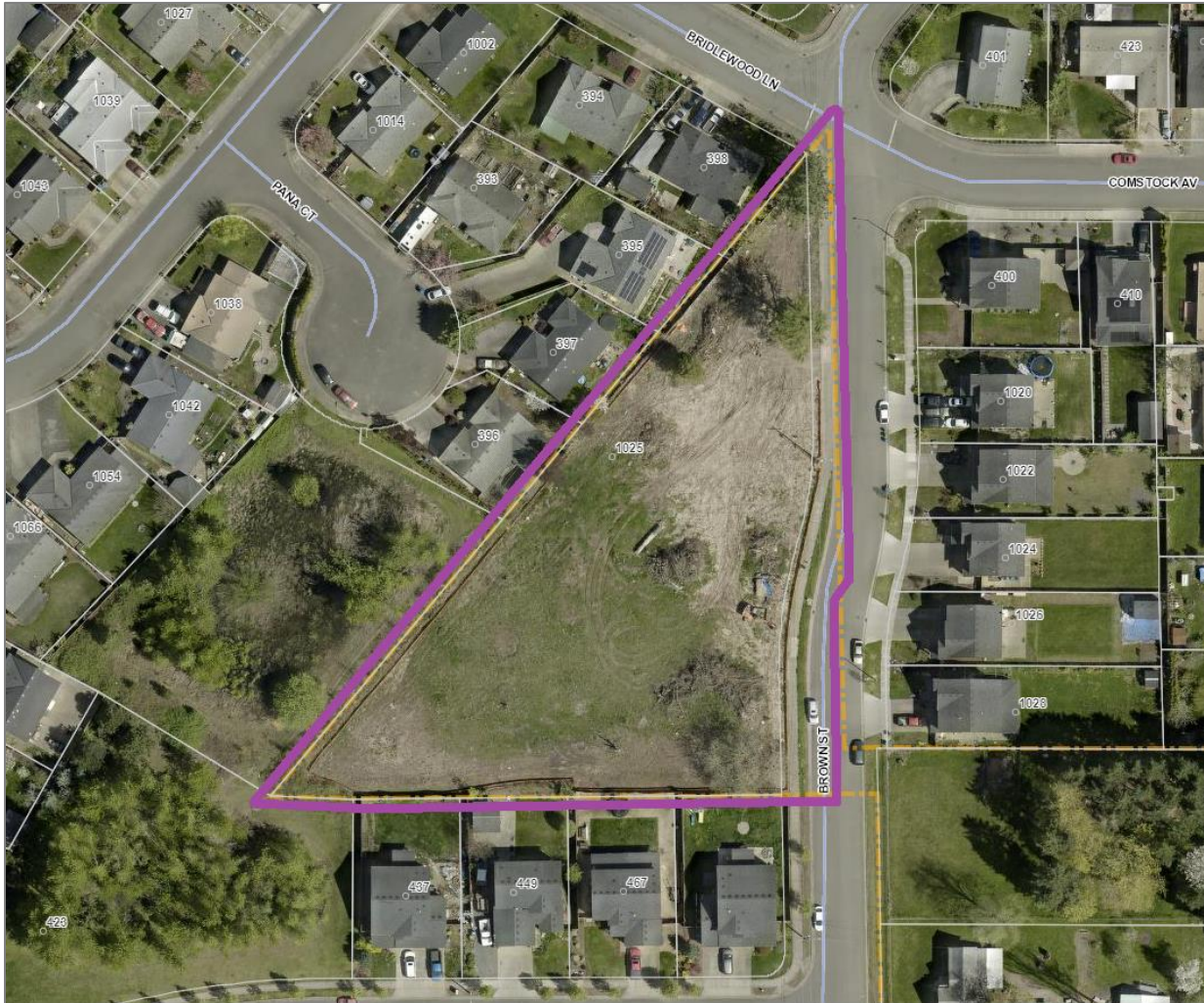
Issue before the Planning Commission

Annexation ANX 24-01 (Type IV) of territory at 1025 Brown Street: Commission is to hold a public hearing and make a recommendation to the City Council.

Executive Summary

Location

The proposal is annexation of territory into city limits of approximately 1.43 gross acres composed of Tax Lot 051W18C001200 and adjacent right-of-way (ROW) of Brown Street.



Vicinity of subject property; subject property outlined in purple

Annexation & Zoning Designation

Because the Comprehensive Plan land use map designates the territory Low Density Residential per Comprehensive Plan Policy Table 1, the default corresponding zoning district is Residential Single Family (RS). Along with an annexation ordinance, in response to the application for zone change (also termed rezoning or re-zoning), the Council would by separate ordinance designate the annexed territory as the RS base zoning district.

The Public Works Department, Woodburn Fire District, and Woodburn School District gave the applicant annexation service provider letters (SPLs; Attachment 103A).

Because of City concern that the legislature in 2025 or later appears more likely to pre-empt local governments from requiring the usual public improvements for developments of either housing generally or “middle housing” as both ORS 197.758(1)(b) and OAR 660-046-0020(12) define, staff applies an annexation condition. The applicant took initiative to submit a draft agreement, which the applicant and staff revised leading up to this Commission staff report.

It requires the applicant to enter into an annexation agreement for the annexation to become effective, and the applicant had tentatively agreed to such conditioning during a November 20, 2023 with the Community Development Director and Senior Planner.

In short, an annexation agreement would list and describe the dedications, grants, and public improvements necessary to conform with the Woodburn Development Ordinance (WDO) and establish provisions for the effect on the agreement when changes in statute or administrative rules render compliance with agreement provisions impossible or unlawful, with the provisoes that (a) a prime objective of the agreement shall be and remain to secure public improvements despite such changes by the state, and (b) changes by the state reasonably interpreted to relieve developers generally of some or all burden of public improvements in and of themselves do not necessarily void the agreement in part or wholly.

In short, through an annexation agreement, despite any future changes in state law that exempt housing developments, especially “middle housing”, from public improvements, when this property develops, whatever the development, any developer of it will still construct or pay fees in-lieu for public improvements (surface half-street improvements) per City ordinances.

This is in keeping with the WDO 1.02 definition of “development”, for which WDO 3.01.01D requires street improvements, and a section of the purpose statement that opens WDO 3.01:

“An objective is to have developers construct or fund street improvements, and other proportional share of improvements for the public, to lessen the cost of land development to the City in order to lessen taxpayer burden for landowners in the context of Oregon Ballot Measures 5 (1990) and 50 (1997).”

Staff finds that the proposal meets applicable Woodburn Development Ordinance (WDO) provisions per the analyses and findings (Attachment 102) and with the recommended condition(s) of approval.

Recommendation

Approval with condition(s): Staff recommends that the Planning Commission consider the staff report and attachments and recommend approval to the City Council application with the recommended condition(s) included with this report.

Condition(s) of Approval

The conditions are copied from towards the end of the analyses and findings (Attachment 102):



Annexation 24-01

ANX-1. The applicant shall enter into an annexation agreement (the Agreement), made concurrent with and a part of any written decision by the Woodburn City Council that approves the annexation of the subject territory. The Agreement shall be subject to Council acceptance and have provisions addressing the following:

- a. The Agreement shall be contractually binding on the applicant, heirs, successors, and assigns and:
 - (1) Cite applicable details, provisions, requirements, rules, specifications, and standards from the Woodburn Development Ordinance (WDO) and other applicable ordinances relating to public improvements that following annexation would be applicable to the subject property at 1025 Brown Street upon development;
 - (2) List and describe the dedications, grants, and public improvements necessary to conform, addressing at least:
 - (a) Right-of-way (ROW) dedication,
 - (b) Streetside public utility easement (PUE) grant,
 - (c) Half-street improvements including surface improvements: roadway, curbing, landscape strip, street trees, and sidewalk,
 - (d) Removal of electric power pole(s) and burial of overhead lines, and

- (e) Any fair share or proportionate share costs for identified right-of-way improvements to increase traffic safety adequately at the intersection of Brown Street & Bridlewood Lane / Comstock Avenue;
 - (3) Specify that development shall come with such public improvements that a developer constructs or pays fees in lieu of as ordinances allow, with option to add administrative provisions for fees in-lieu not found in ordinances such as explicit due dates;
 - (4) Specify that the Agreement provisions are severable;
 - (5) Establish provisions for the effect on the Agreement when changes in statute or administrative rules render compliance with Agreement provisions impossible or unlawful, with the provisoes that (a) a prime objective of the Agreement shall be and remain to secure public improvements despite such changes by the state, and (b) changes by the state reasonably interpreted to relieve developers generally of some or all burden of public improvements in and of themselves do not necessarily void the Agreement in part or wholly; and
 - (6) Establish provisions for modification, which may also include setting Agreement expiration or sunset.
- b. Recordation: It is the intention of the City that the terms and obligations of the Agreement are necessary for the annexation and future development of the subject property and as such will run with the land and be construed to be both a benefit and burden upon the property. The applicant shall record a duly executed copy of the Agreement in the real property records of Marion County and give the City copies.
- c. Effective date:
- (1) Option 1: The City Council adopts the annexation ordinance for ANX 23-03 and accepts the Agreement with the effective date the same as the annexation ordinance effective date.
 - (2) Option 2: The City Council adopts the annexation ordinance for ANX 23-03 with the effective date conditioned to be the date that the City Administrator signs the Agreement that the applicant had signed. Until this happens, the City holds in abeyance agency notices of ordinance adoption.

Note A: The applicant may request that City staff draft and format an agreement.

Actions

The Planning Commission may instead act on the land use application to recommend to:

1. Approve with modified condition(s), or
2. Deny, based on WDO criteria or other City provisions.

If the Planning Commission were to act upon the recommendation, staff would proceed to a City Council hearing with the Commission recommendation. (Were the Council to approve the consolidated application package, it would do so by adopting two ordinances, one for annexation and one for zoning, and authorizing a final decision document for the applications besides the annexation. The Council would also accept an annexation agreement that the applicant and staff prepared.)

Attachment List

- 101. Marked Tax Map
- 102. Analyses & Findings
- 102A. Public Works comments (June 4, 2024)
- 103. Annexation Exhibits A2 & B2 maps of property and right-of-way legal descriptions (May 1, 2024)
- 103A. Annexation Service Provider Letters (SPLs; 4 pages)
- 104. Annexation Agreement Draft as reference (May 31, 2024; 7 pages)
- 105. TSP Fig. 2 “Functional Roadway Classification”