City Council Communication

Department: Community Development CASE #AN-25-001 Applicants: City of Council Bluffs 209 Pearl Street Council Bluffs, Iowa BNSF Railway Company P.O. Box 961051 Fort Worth, TX 76161 Cattlemen's Heritage Beef Company 666 Walnut Street, Suite 203 Des Moines, IA 50309 QRS Investments, LLC P.O. Box 336 Council Bluffs, IA 51502 Oak Valley, LLC 1673 200th Street Red Oak, IA 51566	Resolution No. _____	City Council: 4/7/2025 Planning Commission: 3/11/2025

Subject/Title

Request: Public hearing on the request of Oak Valley LLC, Cattleman Heritage Beef Co. LLC, BNSF Railroad, QRS Investments, LLC, and the City of Council Bluffs for voluntarily annexation with owners in opposition of approximately 473 acres (m/l) of land, legally described as being part of Sections 29-74-43 and 32-74-43, Pottawattamie County, Iowa and part of Sections 5-73-43 and 6-73-43, Mills County, Iowa and being more particularly described in Attachment 'B' of the case staff report.

Background

The Community Development Department has received requests from Oak Valley, LLC, Cattleman Heritage Beef Co. LLC, BNSF Railroad, and QRS Investments, LLC for voluntarily annexation of approximately 473 acres (m/l) of land, lying south of the existing Council Bluffs municipal boundary, as shown on Attachment 'A' and legally described on Attachment 'B'. The purpose of this annexation is to provide City utilities and services for new industrial developments on parcels identified as 7, 7A, 7B, 7C and 10, 10A, 10B, and 10C, as shown on Attachment 'A'. Included with this request is the involuntary annexation of seven parcels, identified as #1, #2, #5, #6, #11, #11A, and #12 on Attachment 'A'. These parcels were included in the request so the City of Council Bluffs maintains a relatively uniform-shaped boundary and to not create an "island" of unincorporated area that is surrounded by property located within the City of Council Bluffs. The combined total acreage of these seven parcels is less than 20% of the land area proposed to be voluntarily annexed into the City, which complies with the regulations stated in Chapter 368.7, *Voluntary Annexation of Territory*, of the Iowa Code.

The table below summarizes all properties included the request and notates whether they are being voluntarily or involuntarily annexed into the City of Council Bluffs.

Property Owner	Acres	County	Parcel Id #	Current Land Use	County Zoning Designation	Voluntarily Annexed	Involuntarily Annexed
Scott Glen	12.15	Pottawattamie	744329300011	Farming operation (cattle)	A-3		X
Kinze Melvin Williams	8	Pottawattamie	744329300008	Residential	A-3		X
BNSF Railroad	23.54	Pottawattamie	N/A	Railroad right-of-Way	A-3 & I-2	X	
City of Council Bluffs	54.86	Pottawattamie	744332300007	Firing range	I-2	X	
Jimmie David Leggett	7	Pottawattamie	744332300003	Residential w/farming operation	I-2		X
Lyman-Richey Corporation	4.89	Pottawattamie	744332300008	Concrete manufacturing	I-1		X
Oak Valley, LLC	121.34	Mills	34220010000000, 34220020000000, 34330000000000, and 34340000000000	Undeveloped	Industrial	X	
QRS Investments, LLC	38.39	Mills	34350010100000	Distribution/warehousing	Industrial	X	
State of Iowa*	57.38	Mills	N/A	Interstate 29 right-of-way	Industrial	N/A	N/A
Cattleman's Hertiage Beef Company, LLC	131.99	Mills	35710000000000, 35720000000000, 35700010000000, and 35690000000000	Undeveloped	Industrial	X	
Beverly Realty, LLC	4	Mills	35720010000000 and 35730040000000	Adult Entertainment (Romantix)	Industrial		X
BNSF Railroad	8.92	Mills	N/A	Railroad right-of-Way	Industrial	x	
Kinze Melvin Williams	1	Mills	35730040000000	Retail (K&B Saddlery)	Industrial		X
Totals	473.46					379.04	37.04

*State of Iowa right-of-way was not used to determine numbers of acres to be involuntarily annexed

Chapter 368.7, *Voluntary Annexation of Territory*, of the Iowa Code allows cities to involuntarily annex up to 20% of the total area being voluntarily annex for the purpose of providing a uniform boundary and to eliminate the creation of an "island" of territory that is surrounded by city jurisdiction. The total amount of land to be annexed into the City of Council is 473.66 acres, of which, 379.04 acres are being voluntarily annexed and 37.04 are being involuntarily annexed. When applying the 80/20 annexation rule to this request, the City of Council Bluffs is eligible to annex up to 75.80 acres of land. City staff reviewed all properties in the immediate area of the annexation and determined 37.04 acres for involuntary annexation were sufficient, as the selected properties either provided a linkage to the City's existing municipal boundary or assisted with creating a uniform boundary. An additional 38.76 acres of land were eligible for involuntary annexation but the City chose not to pursue it because the other eligible properties were too large in size and would have led to partial annexations with inconsistent zoning jurisdictions between the City of Council Bluffs and Mills/Pottawattamie Counties.

It should be noted the annexation area includes portions of Interstate 29 rights-of-way. This land was included so that the City of Council Bluffs maintains a relatively uniform shaped boundary once the annexation is finalized, and to allow annexed properties on both sides of the interstate access to City services and utilities, if needed. The City did not use the interstate rights-of-way acreage for calculating the number of acres that can be involuntarily annexed, as that would have required pre-approval from the Iowa Attorney General Office.

<u>Zoning and Land Use</u>

The properties being annexed are zoned a mixture of industrial and/or agricultural, as per Pottawattamie and Mills County GIS databases (see Attachment G). Existing land uses within the annexation area include: undeveloped land, distribution/warehousing, residential dwellings, farming operations, concrete manufacturing, firing range, retail commercial, and an adult entertainment establishment. Section 15.27.030 *Annexed Territory* of the Council Bluffs Municipal Code (Zoning Ordinance) states *"annexed land shall retain the same zoning classification after annexation that it had prior to annexation. Those*

regulations shall remain in place until the City completes the legislative action to rezone the property". Once the annexation process is finalized, the City of Council Bluffs will initiate discussions with each annexed property owner to determine their future land use classification and an appropriate zoning designation. Amendments to the City's future land use plan and zoning map will occur once those discussions are completed.

All properties included in the annexation are located within the City of Council Bluffs' two-mile extraterritorial jurisdiction and are subject to the Joint City-County Land Use Plan (JLUS) Policies that were adopted between the City and Pottawattamie County (August 28, 2023, Resolution No. 23-234) and Mills County (September 23, 2024, Resolution No. 24-267). Per the adopted JLUS, the annexation area is designated as a City Growth Area 1B (see Attachment H) and is described on Page 70 of the JLUS as *"land located within the three-mile study area that is a priority for growth in an urban development pattern. The land is identified as an area having access, or planned access, for services including water, sanitary sewer, storm sewer, emergency services, power, natural gas, communications, and roadways. Areas should be developed to City standards. The area is projected to have access to a roadway network. In many cases this area can be serviced from existing infrastructure with extensions and does not require installation of new main service trunk lines. Areas will be annexed and reclassified into the appropriate City zoning district as subdivision or development of individual sites occur".* Furthermore, the future land use plan in JLUS designates the annexation area as mostly industrial, with the Bunge Avenue/Interstate 29 Interchange classified as commercial. Therefore, the purpose and intent of the proposed annexation is generally consistent with the City's adopted future land use and growth area plans.

Annexation Procedure

Chapter 368 of the Iowa Code sets out the procedure for municipal annexation of territory and the required notifications needed before City Council takes any action on the annexation. The public hearing is scheduled for the April 7, 2025 City Council meeting.

1. A consultation hearing with the Pottawattamie County Board of Supervisors, Mills County Board of Supervisors, and Trustees of Lewis Township, Oak Township, and St. Mary's Township was held on February 19, 2025 at 10:00 a.m. in Meeting Room 'B' of the Council Bluffs Public Library. The following people attended the consultation hearing:

    a. Jeff Jorgenson, Pottawattamie County Board of Supervisors
    b. Susan Miller, Pottawattamie County Board of Supervisors
    c. John Rasmussen, Engineer, Pottawattamie County
    d. Jack Sayers, Mills County Board of Supervisors
    e. Jacob Ferro, Engineer, Mills County
    f. Mark Norman, Mills County Economic Development Foundation
    g. Paula Hazelwood, Advance Southwest Iowa Corporation
    h. Keith Johnson, Oak Township Trustee
    i. Mark Schoening, Oak Township Trustee
    j. Paul Thieschafer, St. Mary's Township Trustee
    k. Sharyn Poore, St. Mary's Township Trustee
    l. Matthew and Laura Schultz, residents of Mills County
    m. Mike Jaussen, Southwest Iowa Renewable Energy (SIRE)
    n. Jonathan Bladt, Representative of Senator Grassley's office
    o. Courtney Harter, City of Council Bluffs, Director of Community Development
    p. Christopher Gibbons, City of Council Bluffs, Planning and Code Compliance Manager

Comments and questions related to the following topics were received from the meeting participants: extension and serviceability of utilities; inclusion of additional land along South 192nd Street and Bunge Avenue in the annexation; maintenance of S. 192nd Street and Bunge Avenue (within and adjacent to the annexation area); and timeframe for completing the annexation. Written recommendations for modification to the annexation are required by Iowa Code to be submitted to the City no later than seven days after the consultation. The City received written comments from the following individuals following the consultation hearing:

A. Scott Belt, Chair of the Pottawattamie County Board of Supervisors (see Attachment I)
B. Lonnie Mayberry, Richard Crouch, and Jack Sayers, Mills County Board of Supervisors (see Attachment J); and
C. Lori Green, St. Mary's Township Trustee (see Attachment K).

All letters are included with this staff report and will be forwarded to the Council Bluffs City Council for consideration.

2. No later than 30-days after the consultation hearing, the board of supervisors of each county that contains all or a portion of the territory to be annexed shall, by resolution, state whether or not it supports the application or whether it takes no position in support of or against the application, as per Chapter 368 of the Iowa Code. Failure of a board of supervisors to adopt a resolution shall not delay the proceedings of annexation application nor shall such failure be considered a deficiency either in the application or in the annexing city's proceedings. On March 18, 2025, the Mills County Board of Supervisors approved Resolution No. 25-07, which opposed the annexation request. A copy of said resolution is included with this report as Attachment 'O'. On March 18, 2025, the Pottawattamie County Board of Supervisors approved Resolution No. 12-2025, which supported the annexation request. A copy of said resolution is included with this report as Attachment 'P'.
3. At least 14 business days before the April 7, 2025 City Council public hearing, notice will be published in the Daily Nonpareil (Pottawattamie County) and the Opinion Tribune (Mills County) newspapers. A copy of said notice will also be mailed to the Chair of the Mills County and Pottawattamie County Board of Supervisors, all effected utilities and each adjoining property owner not already inside the City. Additionally, a copy of said notice will be mailed to the Iowa Attorney General since the annexation includes portions of Interstate 29 right-of-way.
4. On February 20, 2025, the Council Bluffs Community Development Department mailed notifications to all property owners included in the annexation area; all property owners that abut the proposed annexation area; and all City Departments and local utility providers of the Council Bluffs City Planning Commission hearing to be held on March 11, 2025 and the City Council public hearing to be held on April 7, 2025.
5. On March 17, 2025, the Council Bluffs Community Development Department sent a copy of the annexation request (i.e., legal description, map, and City Council public hearing date) via certified mail to the following: all nonconsenting property owners in the annexation area; the Chair of the Mills County and Pottawattamie County Board of Supervisors; Mills County Attorney; Pottawattamie County Attorney; the Attorney General for the State of Iowa; District 4 Engineer – Iowa Department of Transportation; all known public and private utilities serving the annexation area.
6. Voluntary annexation with owners in opposition is not complete without approval of four-fifths of the members of the City Development Board. This group is a state board appointed by the Governor to consider annexation proposals. Upon notification by the City of its action on the voluntary annexation, the City Development Board will schedule their public hearing.

Comments

1. The purpose of this annexation is to provide City utilities and services for new industrial developments that are proposed to locate on parcels identified as 7, 7A, 7B, 7C and 10, 10A, 10B, and 10C, as shown

on Attachment 'A'. Both developments will require an industrial zoning designation and development plan submittals, which will be reviewed by the City prior to the commencement of any construction.

2. The annexation boundary aligns with the legal descriptions of all properties involved. On the east side of Interstate 29, the proposed annexation includes portions of South 192nd Street, which is gravel roadway. On the west side of Interstate 29, the proposed annexation includes portions of 189th Street, which is a seal-coat/asphalt roadway. Neither of these streets meet current Council Bluffs roadway standards and their design will be evaluated in coordination with development review for proposed two new industrial developments. The annexation does not include Bunge Avenue. The City recognizes Bunge Avenue is not built to City current standards and that further evaluation of the roadway must occur as part of the development review for the two proposed industrial projects. The City has made the developer of each industrial project aware that a traffic study is required and the recommendations from said studies will help determine what improvements to Bunge Avenue, South 192nd Street, and 189th Street are needed. The City will then coordinate with the developers, Iowa Department of Transportation, Mills County, and Pottawattamie County on any necessary road improvements and possible cost-sharing.
3. All property owners abutting the annexation territory were notified of the proposed request. No public comments have been received as of the date of this report.
4. All landowners who are being involuntarily annexed were notified of the request. The City received comments in opposition of the annexation from Scott Glenn, owner of 11225 192nd Street, due to concerns associated with increased taxes caused by being part of the City of Council Bluffs and land use incompatibility due to their existing farming operation. Additionally, Mr. Glen sent an email to the City (see Attachment L) stating the annexation of their property is unnecessary since other large tracts of land adjacent to the annexation area and his property are being omitted. The City responded to Mr. Glenn's email and clarified his taxes should not increase as a result of the annexation as his land is assessed at an agricultural levy rate (District 49, Mills County). Additionally, the City explained his property had to be included in the annexation to provide a uniform-shaped boundary for the City and to avoid a possible "island" of unincorporated area, since his property it will be surrounded on three sides by City jurisdiction, if the annexation is approved.

   The City also received a phone call from Mr. Robert DePiano, who is the attorney for Beverly Realty, LLC, which own the adult entertainment establishment (Romantix) at 50662 189th Street. Mr. DePiano stated the estate is indifferent to the annexation at this time but wanted to confirm the proposed annexation will not negatively impact his client's adult entertainment establishment. The City acknowledged the existing adult entertainment establishment and clarified the property is being annexed "as-is" and that we will work with his client to on appropriate zoning designation for their use.

   The City also received a letter of opposition from Mr. Sam Irwin (Council Bluffs resident) regarding the proposed annexation (see Attachment M).

   Kinze M. Williams, owner of properties at 11003 192nd Street, Council Bluffs, Iowa and 18818 Bunge Avenue, Council Bluffs, Iowa, contacted the Community Development Department to discuss the annexation. Mr. Williams asked questions about utilities and property taxes.

5. The City received a letter for support from Omaha-Council Bluffs Metropolitan Area Planning Agency (MAPA) for the proposed annexation (see Attachment N).
6. All City Departments and local utilities were notified of the proposed annexation. No adverse comments have been received from any City Department or local utility provider regarding the proposed annexation request.
7. The City of Council Bluffs has a sanitary sewer treatment facility at 18452 Applewood Road, which is

north of the annexation area. Sanitary sewer service could be extended to serve the annexation area when development occurs to justify the expense.

8. Council Bluffs Water Works has an existing water line main near the Council Bluffs sewer pump station on S. 192nd Street, located north of the annexation area. Upon annexation, Council Bluffs Water Works could extend their services to this area when development occurs to justify the expense.
9. Council Bluffs Police and Fire Departments will provide emergency services to the annexation area, upon completion of the annexation process.
10. MidAmerican Energy and Black Hills Energy have existing utilities to service the annexation territory.
11. All non-residential uses within the annexation area will have to privately contract for trash removal services, as the City of Council Bluffs only provides trash removal services for residential dwellings. Properties at 11003 S. 192nd Street and 10265 S. 192nd Street are existing residential dwellings and will be provided with trash removal services from the City of Council Bluffs upon annexation.
12. All properties within the annexation area will be subject to a City tax levy upon being annexed. The annexation area includes properties that are assessed as agricultural, residential, and commercial/industrial. These designations will not change upon annexation and City taxes shall be applied appropriately.

Recommendation

The Community Development Department recommends approval of the request for voluntary annexation of the property as shown in Attachment 'A' and legally described in Attachment 'B' and finds the following:

1. This annexation is consistent with the voluntary annexation procedure set forth in the Chapter 368 of the Iowa Code.
2. The area proposed for annexation adjoins the City's corporate boundary.
3. The proposed annexation will not create an island of County land surrounded by the City or restrict potential future annexation in any direction.
4. The proposed annexation creates a uniform boundary.
5. City services will not be adversely affected if the land is annexed. Utilities, including sanitary sewer and water, can be extended to serve the annexation area when development occurs to justify the expense.
6. The proposed annexation is consistent with the future land use map of the *Joint City Council Land Use Plan.*
7. The proposed annexation is in the best interest of the City.

Public Hearing

Speakers in favor:

1. Christopher Gibbons, AICP, Planning and Code Compliance Manager, Council Bluffs Community Development Department, 209 Pearl Street, Council Bluffs, Iowa 51501.

Speakers against:

1. Scott Glen, 11225 192nd Street, Council Bluffs, Iowa 51503
2. Terry Oswald, 1517 Chestnut Drive, Council Bluffs, Iowa 51503
3. Ruth Schroeder, 51750 196th Street, Council Bluffs, Iowa 51501
4. Laura Schultz, 51791 196th Street, Council Bluffs, Iowa 51503
5. Natalie Leggett, 10265 192nd Street, Council Bluffs, Iowa 51503
6. Del Husz, 50411 Ashton Road, Glenwood, Iowa 51534

Planning Commission Recommendation

The Planning Commission concurs with the findings of the Community Development Department and recommends approval of the voluntary annexation of the property as shown in Attachment 'A' and legally described in Attachment 'B' of the case staff report and finds the following:

1. This annexation is consistent with the voluntary annexation procedure set forth in the Chapter 368 of the Iowa Code.
2. The area proposed for annexation adjoins the City's corporate boundary.
3. The proposed annexation will not create an island of County land surrounded by the City or restrict potential future annexation in any direction.
4. The proposed annexation creates a uniform boundary.
5. City services will not be adversely affected if the land is annexed. Utilities, including sanitary sewer and water, can be extended to serve the annexation area when development occurs to justify the expense.
6. The proposed annexation is consistent with the future land use map of the *Joint City Council Land Use Plan.*
7. The proposed annexation is in the best interest of the City.

VOTE: AYE – Freund, Hutcheson, Knauss, Rater, Stroebele and VanHouten. NAY – Watson. ABSTAIN – Rew. ABSENT – None. VACANT - Three Motion: Carried.

Attachments

Attachment A: Annexation boundary map and property owners list
Attachment B: Annexation legal description
Attachment C: Letter from BNSF requesting voluntary annexation
Attachment D: Letter from Cattleman's Heritage Beef Company requesting voluntary annexation
Attachment E: Letter from Oak Valley, LLC requesting voluntary annexation
Attachment F: Letter from QRS Investments, LLC requesting voluntary annexation
Attachment G: Mills and Pottawattamie County Zoning Map (Annexation Areas)
Attachment H: City Growth Area Map
Attachment I: Scott Belt, Chair of the Pottawattamie County Board of Supervisors
Attachment J: Lonnie Mayberry, Richard Crouch, and Jack Sayers, Mills County Board of Supervisors
Attachment K: Lori Green, St. Mary's Township Trustee
Attachment L: Letter of opposition from Scott Glenn
Attachment M: Letter of opposition from Sam Irwin
Attachment N: Letter of support from MAPA
Attachment O: Resolution opposing the voluntary annexation from Mills County BoS
Attachment P: Resolution supporting the voluntary annexation from Pottawattamie County Board of BoS

Prepared by: Christopher N. Gibbons, AICP, Planning and Code Compliance Manager