



Meeting Date: October 19, 2021

## **AGENDA MEMORANDUM**

**To:** Honorable Mayor and Members of Town Council

**Through:** David L. Corliss, Town Manager

**From:** Tara Vargish, PE, Director, Development Services  
Brad Boland, AICP Planner II, Development Services Department

**Title:** **A RESOLUTION FINDING THAT CERTAIN PROPERTY, WHICH IS THE SUBJECT OF A PETITION FOR ANNEXATION SUBMITTED BY 455 ALEXANDER, LLC, AND TIERRA INVESTORS, LLC, IS IN SUBSTANTIAL COMPLIANCE WITH ARTICLE II, SECTION 30 OF THE COLORADO CONSTITUTION AND SECTION 31-12-107(1), C.R.S.; AND SETTING A DATE, TIME, AND PLACE FOR A HEARING TO DETERMINE IF THE SUBJECT PROPERTY IS ELIGIBLE FOR ANNEXATION UNDER ARTICLE II, SECTION 30 OF THE COLORADO CONSTITUTION AND SECTIONS 31-12-104 AND 31-12-105, C.R.S. (Alexander Way Annexation)**

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### **Executive Summary**

The purpose and intent of this staff report is to demonstrate to Town Council that the Alexander Way Annexation Petition is in Substantial Compliance with the State requirements under the Municipal Annexation Act of 1965 (Act), and to set the date for the Eligibility hearing as Tuesday, December 7, 2021 (Attachment A).

### **Discussion**

#### **The Property**

The Alexander Way Annexation property is located east of the Silver Heights subdivision in unincorporated Douglas County, north of Alexander Place, and west of the Diamond Ridge Estates neighborhood. It is generally located northeast of Home Depot. The 73.76-acre property is zoned A1 – Agricultural One in unincorporated Douglas County and is undeveloped.

## Annexation Process

Annexation is a three-step process. During the first two steps, Substantial Compliance and Eligibility, Town Council determines whether an annexation request meets the statutory requirements for annexation established in the Colorado Revised Statutes, specifically the Municipal Annexation Act of 1965 (Act). The third step is when Town Council determines whether an annexation request complies with the Town's guiding documents and the Municipal Code, and if the property should be annexed to the Town. The following is a summary of the three steps required for annexation.

1. **Substantial Compliance.** Town Council determines if the annexation petition is in the prescribed form and contains the necessary statutory criteria. For example, in order to be compliant with the statutes, a finding must be made that the petitioners constitute more than 50% of all landowners and that the petitioners own more than 50% of the total area of the property, excluding certain public ownership. Town Council must also set a date, time and place for an Eligibility Hearing.
2. **Eligibility.** After four consecutive weeks of public notice in a newspaper of general circulation, Town Council will determine if the statements (referred to as "allegations" in the statute) in the annexation petition are supportable and that the property is eligible for annexation under the Act. The Eligibility Hearing must occur between 30 and 60 days after the Substantial Compliance Hearing. If the Substantial Compliance resolution is approved, the Eligibility Hearing for the Alexander Way Annexation will be scheduled for Tuesday, December 7, 2021.
3. **Annexation and Zoning.** Once an annexation petition has been found to be both substantially compliant and eligible for annexation, Town Council may proceed with the Annexation and Zoning Hearings at Planning Commission and Town Council. Substantial Compliance and Eligibility determine whether the parcel can be annexed; this final step determines whether a parcel should be annexed.

## Substantial Compliance Criteria and Analysis

Staff finds that the Alexander Way Annexation Petition complies with the requirements of the first step in the annexation process, as established in Section 30 of Article II of the Colorado Constitution and with the Colorado Revised Statutes § 31-12-107(1) given that (Attachment B):

1. The Annexation Petition has been signed by more than 50% of the landowners, owning more than 50% of the land, excluding right-of-way and property owned by the Town of Castle Rock (Attachment C);
2. The petition was filed with the Town Clerk on September 16, 2021;
3. The petition contains:

- a. An allegation that it is desirable and necessary that such territory be annexed to the Town;
  - b. An allegation that the requirements of §§ 31-12-104 and 31-12-105 C.R.S. exist or have been met;
  - c. An allegation that the signers of the petition comprise the landowners of more than fifty (50%) of the territory included in the area proposed to be annexed, exclusive of streets and alleys;
  - d. A request that the municipality approve the annexation;
  - e. The signatures of the land owners;
  - f. The mailing address of each signer;
  - g. The legal description of the land owned by such signer;
  - h. The date of signing of each signature; and
  - i. The affidavit of each circulator of such petition, whether consisting of one or more sheets, that each signature therein is the signature of the person whose name it purports to be.
4. The annexation plat/map was filed with the Town Clerk on September 16, 2021 and contains (Attachment D):
  - a. A written legal description;
  - b. A map showing the boundary of the area proposed for annexation;
  - c. An indication of ownership tracts; and
  - d. A depiction of the contiguous boundary of the property with any municipality.
5. No signatures on the petition are dated more than 180 days prior to the date of filing with the Town Clerk.

Staff recommends that the Alexander Way Annexation Petition meets the statutory requirements and it should be deemed sufficient.

### **Budget Impact**

The process of determining Substantial Compliance has no impact to the Town budget.

### **Recommendation**

The Alexander Way Annexation Petition substantially complies with the State requirements and staff recommends setting an Eligibility Hearing date of Tuesday, December 7, 2021.

### **Proposed Motion**

*"I move to approve the Resolution, as introduced by title."*

### **Alternate Motion**

If Town Council desires to make a different motion than the staff recommendation, the following alternative motion has been provided. Per Section 31-12-107(1)(g), C.R.S., states as follows: "If the petition is found to be in substantial compliance with this subsection (1), the procedure outlined in sections 31-12-108 to 31-12-110 shall then be followed. If it is not in substantial compliance, no further action shall be taken." If Town Council chooses this motion, or crafts a different one, then additional information will be needed to specify which code or statute sections are not being met. If Council is choosing this alternate motion, it would be recommended that they have clear discussion on the record concerning the code or statute provision that is not being met, and possibly continuing the hearing so the wording for the specific sections can be finalized through the Town Attorney's office, and brought back for final action at a date certain.

Alternative Motion: Denial

*"I move to **deny** the Resolution, as introduced by title, based on this application not meeting the following requirements of the first step in the annexation process, as established in Section 30 of Article II of the Colorado Constitution and with the Colorado Revised Statutes § 31-12-107(1):*

**(call out the specific requirement that is not met from the following list):**

1. *The Annexation Petition has **(not)** been signed by more than 50% of the landowners, owning more than 50% of the land, excluding right-of-way and property owned by the Town of Castle Rock (Attachment C);*
2. *The petition was **(not)** filed with the Town Clerk;*
3. *The petition **(does not)** contain:*
  - a. *An allegation that it is desirable and necessary that such territory be annexed to the Town;*
  - b. *An allegation that the requirements of §§ 31-12-104 and 31-12-105 C.R.S. exist or have been met;*
  - c. *An allegation that the signers of the petition comprise the landowners of more than fifty (50%) of the territory included in the area proposed to be annexed, exclusive of streets and alleys;*
  - d. *A request that the municipality approve the annexation;*
  - e. *The signatures of the land owners;*
  - f. *The mailing address of each signer;*
  - g. *The legal description of the land owned by such signer;*
  - h. *The date of signing of each signature; and*
  - i. *The affidavit of each circulator of such petition, whether consisting of one or more sheets, that each signature therein is the signature of the person whose name it purports to be.*
4. *The annexation plat/map **(does not)** contain:*
  - a. *A written legal description;*
  - b. *A map showing the boundary of the area proposed for annexation;*

- c. An indication of ownership tracts; and*
  - d. A depiction of the contiguous boundary of the property with any municipality.*
5. *Signatures on the petition are not **(are)** dated more than 180 days prior to the date of filing with the Town Clerk.”*

### **Attachments**

- Attachment A: Resolution (contains Legal Description)
- Attachment B: C.R.S. Section 31-12-107
- Attachment C: Annexation Petition
- Attachment D: Annexation Plat/Map