

Memorandum

Date: October 9, 2018

To: Mayor and City Council

Subject: City Services to Annexed Area

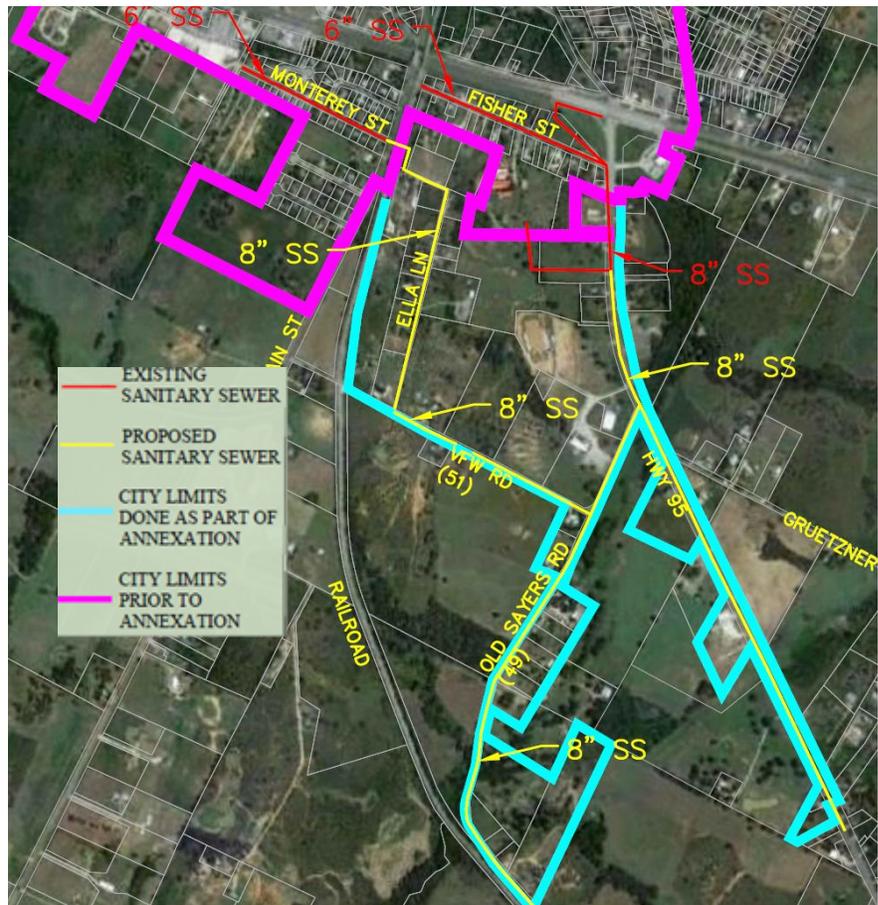


In December of 2015, the City completed an annexation of certain real property into the city limits that is located on the southeast side of town. The total of all such property annexed at that time was 131 acres that contained a variety of existing land uses, including the Texas Lost Pines Riding Club Arena and the Elgin Veterans of Foreign Wars Post 6115.

At that time, there were a variety of issues that supported this annexation effort that was led by the Mayor and City Manager who were in office at that time. It appears that one, if not the, primary objective of the annexation then was to prevent further expansion of the City of Bastrop's jurisdiction. Aggressive annexation by other cities in the area was also common at that time; and it was also thought at the time that significant growth and development was imminent for that area.

This annexed area is generally bordered by the railroad tracks to the west, HWY95 to the east, the previous city limits to the north, and just beyond old Sayers Road to the south (although the annexation did not include all property in this area).

The annexation was completed in compliance with state law; which means that the City is required to complete the extension of all city services to this area within five (5) years. City services have already provided to the area since the annexation including law enforcement, trash/recycling collection, street maintenance, planning, code enforcement and other basic services. As the area is wholly located within the Aqua Water Supply Corporation (WSC) Certificate of Convenience and Necessity (CCN), potable water services are provided by AWSC. Wastewater/sewer services, however, have not been extended to the area; and the required effort to do so will be costly and time-consuming.



Although the City's approval of this annexation included a commitment to extend all services, no plans - or funding - have ever been developed to fulfill this final obligation. The City is now, however, facing a deadline to develop a definitive plan as to if, how, and when all city services will be extended to this area as requested by property owners there.

Extension of Wastewater Services

Based on the staff's most recent assessment, the City would need to expand and upgrade its wastewater collection system to serve approximately forty-seven (47) adjoining and adjacent land tracts that are part of the one hundred thirty-one (131) acres of annexed property. Currently, the area in question has fewer than fifty (50) single family residences that would require services.

Specifically, the City Engineer would recommend the installation of an estimated 5,050 linear feet of sewer main line within the HWY95 right of way, 2,140 linear feet of sewer main line adjacent to VFW Road, 4,735 linear feet of sewer main adjacent to Old Sayers Road, and 2,670 linear feet of sewer main adjacent to Ella Lane. These improvements would tie into existing infrastructure at two points; a 6-inch sewer line at Monterrey Street and an 8 inch of sewer line at Hwy 95. The ultimate discharge point of the proposed wastewater system is the existing wastewater treatment plant.

The preliminary/conceptual level cost estimate to design and construct the project as described above is **\$2,750,000**.

The City Engineer also notes that even at the maximum rate of residential development, the City is not likely to recoup these costs over time through Sewer Impact Fees: "Assuming the entirety of the property develops into single family residential areas with a minimum lot size of 6,000 square feet, and accounting for infrastructure and other items, there is only a possibility of six hundred sixty-seven (667) single family lots. The total impact fees for those lots would be \$1,067,200."

Code Enforcement

While serving the annexed area will have a definite impact on all city services, it is anticipated that it will pose a particular challenge as it relates to Code Enforcement. All existing properties and/or residents within this area have previously been subject to county/rural standards; and the City has admittedly not been overly aggressive with Code Enforcement efforts there to this point in time. It has become clear, however, that some of the residents expect these efforts to be at least equal to those Code Enforcement standards maintained by city staff in all parts of the City.

Currently, there is one property in particular that is anticipated to present a major challenge for the City – including potentially significant legal and/or abatement costs. While there is general agreement about the need to effectively address this particular property, establishing the standard will clearly impact many other properties within the annexed area. Just through casual observations, the staff assessment is that it appears that many (if not most) other properties there may be in violation of city code right now.

Land Development

All properties within the annexed area have also been developed and constructed under county standards which, as a general rule, are typically less stringent than cities – and we have found that to absolutely be the case with City of Elgin/Bastrop County regulations. As is the clear intention of the law, cities are intended to be vehicles for dense residential development and, as such, have higher expectations for same. Essentially all development standards (platting, subdividing, setbacks, road construction, stormwater drainage, mandatory ROW donation, etc.) are higher for projects within the city. In the opinion of some property owners and developers, this translates into "more complicated" and "more expensive".

It is important to note that this situation will not only impact major development projects, as it will also apply to - and impact - smaller landowners who “only want to subdivide their property”.

These issues won’t necessarily carry a direct cost impact for the City, but they will likely impact small development projects in the future; and the staff certainly anticipates a definite “learning curve” for all affected property owners in that area.

Development Agreements

At the time of this annexation, state law prohibited the City from annexing land covered by an agricultural or wildlife exemption unless it first offered the landowner a *Development Agreement*. In response, city staff reached out to every property owner in the area, offering such an agreement that would include the following primary elements:

- The property would not be annexed by the City so long as (1) said property continued to receive an agricultural exemption, and (2) no action was taken by the owner “to file a subdivision plat or any related development document regarding the property.”; and,
- The owner agreed to enforcement of “all regulations and planning authority of the City, except for any regulations which interfere with use . . . for agricultural purposes”; and,
- The owner agreed to abide by single-family residential use requirements and that the property would only be used for single-family residential zoning uses; and,

The *Agreement* further stipulated that any violation of any these conditions would “constitute a petition for voluntary annexation by the owner”.

For all practical purposes, the *Development Agreements* essentially amount to a commitment by the City to not forcibly annex property, in return for the property owner agreeing that if said property ever developed beyond the single-family/agricultural use, such property would be voluntarily annexed into the city limits without objection from the owner.

Within this area, the City has executed *Development Agreements* as described with thirteen (13) different property owners of a combined/total three hundred three (303) acres of land.

It is important to note (as with all land eligible for annexation), that any property subject to a *Development Agreement* as described herein must be located within the city’s extraterritorial jurisdiction (ETJ) and be contiguous with the existing city limits or contiguous with other property that is contiguous with the city limits.

The preceding is an important element related to this particular annexation, inasmuch as the required contiguity as described above was achieved through a combination of annexation and associated *Development Agreements*. The *Agreements* would not have been valid without the annexation of property that occurred.

Financing

Although unfunded, the project to extend wastewater services to the newly annexed area has been identified in the City’s *Five-Year Capital Improvement Plan* since the 5YRCP was first developed two years ago. A partial offset of the initial capital costs for this project could come from Sewer Impact Fees. If all current residents/properties immediately connect to the system, the City could recover as much as \$80,000 (\$1,600 per service). Significant grant funding for this particular project seems unlikely. It is the staff assessment that the only viable option for the necessary \$2.8M would be the issuance of additional debt.

There is no existing funding currently available; nor has a financing plan been approved for any costs associated with this project.

Conclusion

Given the timing of the annexation that is the subject matter of this report, the City is now faced with a variety of issues related to achieving substantial compliance with applicable law by the end of calendar year 2020. Primarily, staff will need direction from Council as to funding and timing of the construction project to extend wastewater services - which will likely take at least a full year or more to design and construct.

It should be noted that one (maybe the only) alternative available to the City would be the possible dis-annexation of the area, returning it to Bastrop County's jurisdiction. Such an action would eliminate any concerns about capital costs or operational impacts. However, disannexation includes its own set of challenges and impacts – and would not be a simple task. If the Council were interested in considering this option, it should first be fully vetted with the City Attorney.

It is not unusual for circumstances connected to an annexation to change over time. Even though it has been a relatively brief period since this annexation was approved, the City now has a new Mayor, new Councilmembers, a new City Manager, and many new staff – as well as new issues/demands related to growth. Many of the details provided herein, including anticipated direct costs for the extension of sewer services, were also not made available at the time of the annexation.

With all of this in mind, there does not now appear to be crystal-clear consensus – among current staff - as to the reason for and/or current value of this annexation. Accordingly, a full review and discussion by the City Council of this annexation and the items described herein is recommended in order to provide clear direction to staff on how to proceed.

Please let me know if you have any questions or would like to request additional information in this regard.



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City Manager

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