Staff Report
March 26, 2024

To:	City of Banks Planning Commission
From:	Katie Vickers, AICP, City Planner
Through:	Jolynn Becker, City Manager
Re:	Request for an Annexation
Applicant:	David Duncan Robert Duncan, Property Owner
Applicant's Representative:	David Phillips Vial Fotheringham LLP
Location:	Tax Lots 2N4250002300 and 2N331BB05600
Address:	42585 NW Cedar Canyon Road Banks, OR 97106
Zoning:	Future Development 10-Acre District (FD-10) (Washington County)

Exhibits

- Exhibit A: Washington County and Notices Civil Violations
- Exhibit B: Hearings Officer Decision 2018
- Exhibit C: 2021 Request for Enforcement Action
- Exhibit D: Annexation Application Submittal
- Exhibit E: 2023 Incompleteness Letter
- Exhibit F: Applicant's Incompleteness Response
- Exhibit G: Letter Recommending Denial
- Exhibit H: Service Provider Letters

Applicable Banks Municipal Code Sections

- Section 30.00 Annexation Policies and Procedures

- Section 151.025 Residential Zoning Regulations
- Section 151.234 Type IV (Legislative Decisions)

Figures

- Figure 1. Location and Zoning Map

Summary Recommendation

Based on the findings of fact, City planning staff recommends **denial** of the proposed Type IV Annexation.

Report Sections:

I. Background

II. Municipal Code Standards

III. Recommendation

I. Background

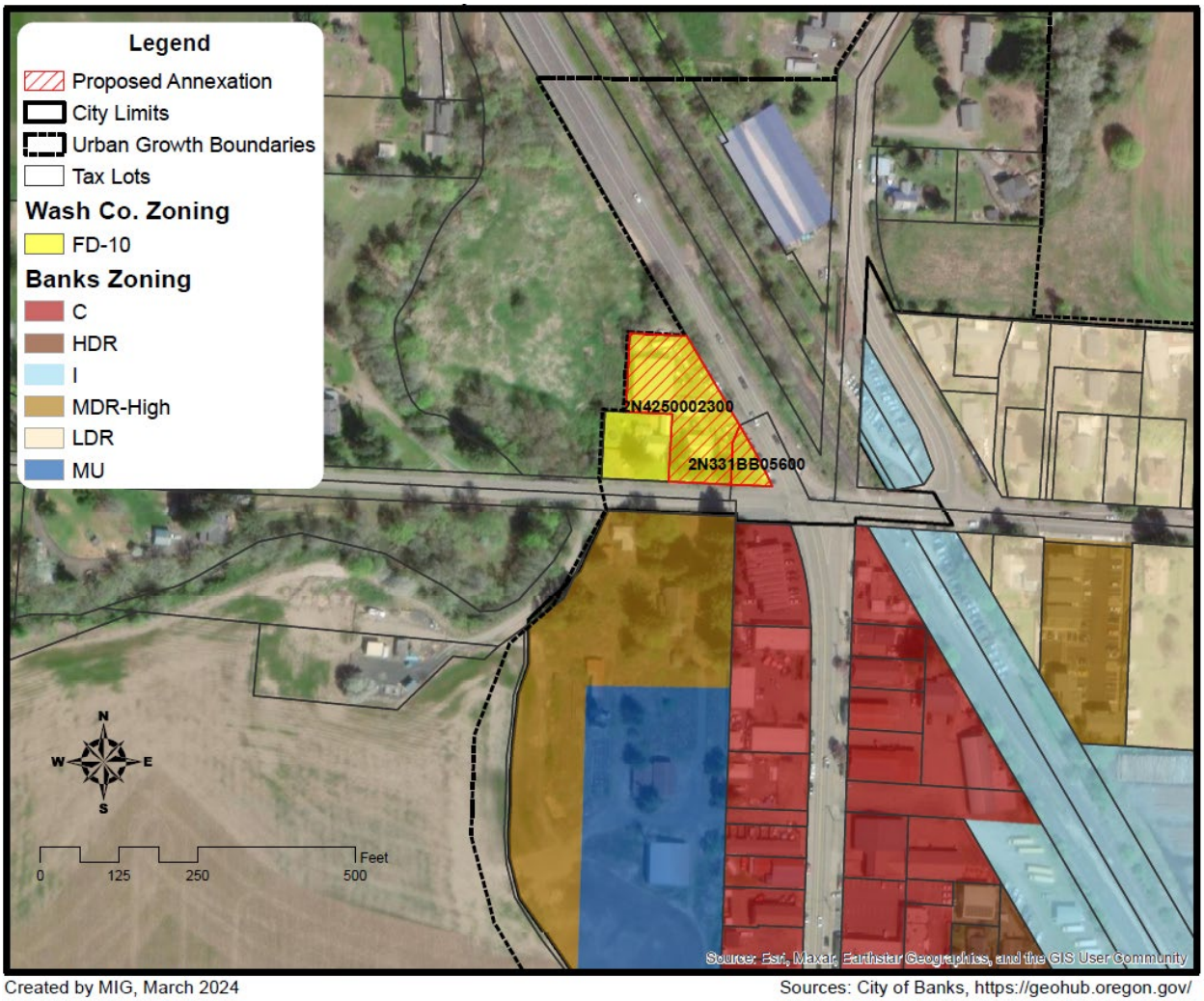
The applicant has proposed annexation of the properties located at 42585 NW Cedar Canyon Road (2N4250002300 and 2N331BB05600), at the northwest corner of NW Main Street and NW Cedar Canyon Road (see Figure 1. Location and Zoning Map). The tax lots are located inside the City of Banks Urban Growth Boundary (UGB), adjacent to the city limits. As the property is still within Washington County's jurisdiction, it retains the Future Development 10-acre district (FD-10) designation. FD-10 is a land use district that allows limited agricultural, forest, or residential use.

Per the application submittal, the property is currently being used for automotive repair. The City's Comprehensive Plan Map shows the property's zoning, should it be annexed, would be Mixed-Use (MU). Automotive repair is not permitted in the MU or any other residential zone within the city. The continuance of such a use would require a Comprehensive Plan Amendment and Zoning Map Amendment (to a City Comprehensive Plan designation and a City zoning designation that permit such uses), as well as a valid use permit from Washington County. Under the Washington County Community Development Code Section 309-5.1, because automotive repair is not listed as a permitted use under Section 308, it is prohibited. Due to the multiple documented zoning and other violations on the property and the absence of any plan or proposal from the applicant for rendering the currently unlawful use lawful under City zoning, City planning staff cannot recommend approval for this annexation.

Automotive repair is also not a permitted use in the County's FD-10 zone. In June of 2017, Washington County's Code Compliance Officer sent the first notice for an alleged land use violation to the property owners (UV17-0088, see Exhibit A). The second notice was sent on

July 28, 2017, and the final notice on September 20, 2017. On February 5, 2018, the property owner was served with the required notices for alleged land use violations and, following due course, two Notices of Civil Violations were issued (NCV numbers 00132 and 00135, see Exhibit A). NCV 00132 dealt with the unpermitted automotive use in the FD-10 zone and NCV 00136 was related to unpermitted fill activity in a floodplain.

Figure 1. Location and Zoning Map



Created by MIG, March 2024

Sources: City of Banks, https://geohub.oregon.gov/

Both violations were considered in a public hearing overseen by the Washington County Code Compliance Hearings Officer on March 15, 2018. As documented by the Hearings Officer decision of May 9, 2018 (Exhibit B), the automotive use on-site was shown to not be a legally nonconforming use. Specifically, the Hearings Officer found "that Respondent's use of the Property for commercial auto repair is a violation of [Washington County's] CDC 309-5.1. Respondent failed to demonstrate that the use is allowed as a legal nonconforming use." Additionally, the Hearings Officer stated that, "[t]here is no dispute that Respondent placed fill (asphalt chips) on the Property without obtaining a floodplain permit." The applicant was given an opportunity to resolve the two violations instead of paying fines. It is the City's understanding that while fines were paid, the issues were not resolved.

In February of 2021, Daniel Kearns, the City's attorney, filed a request for Washington County to take enforcement action (Exhibit C) but no action was taken, and the violations presumably remain. While the zoning violation could be resolved through an annexation that includes a Comprehensive Plan Amendment and Zone Map Amendment, the fill violation could not be addressed by these amendments and must be resolved with Washington County prior to annexation of this land into the City of Banks. The City does not have the necessary procedures or processes to assess or resolve floodplain violations and will not annex any property with known/documented violations, especially with no plan articulated by the applicant for resolving those violations and making the property and its current use legal.

Current Application

The current application for annexation was submitted on Mary 25, 2023 (Exhibit D). In July 2023, an incompleteness letter (Exhibit E) was sent to the applicant detailing the items that would be needed to complete the proposed annexation application. The applicant was also advised that the current use of the site was not permitted in the City zoning planned for the site (the MU zone) and the parcels would also require a Comprehensive Plan Amendment application, a Zone Map Amendment application, and a valid use permit.

The applicant's representative, David Phillips, responded with two Service Provider Letters and a request that the application be deemed complete (Exhibit F). On January 24, 2024, the applicant was advised, via letter (Exhibit G), that City planning staff would recommend denial of the annexation and that a public hearing was tentatively scheduled for February 27, 2024. The hearing date was later postponed until April 2, 2024, at Mr. Phillips' request.

Without the additional information, applications, required permits or at least a cogent and feasible plan for rendering the multiple documented code violations lawful under the City's code, there is no way to conclude that the application can meet the standards of the City

of Banks Municipal Code, Titles III: Administration and XV: Land Usage. Therefore, City planning staff recommends **denial** as detailed in the following sections of this Staff Report.

II. Municipal Code Standards

30.02 Review Criteria

(A) Eligibility criteria. The Council must determine that property is eligible for annexation based on the following criteria:

(1) The property is contiguous to the existing city limits;

(2) The property is located within Banks Urban Growth Boundary; and

(3) Any other prerequisite requirement that may be applicable under the Oregon Revised Statutes.

Findings: The parcels proposed for annexation are contiguous to the existing city limits and are within the Banks UGB. Per ORS 222, specifically 222.120, .125 and .170, the applicant has provided the necessary consent for annexation (see Exhibit D). This standard has been met.

(B) Timeliness criteria. The Council must determine that it is timely to annex property based on the following criteria.

(1) An adequate level of urban services and infrastructure is available or will be made available in a timely manner.

*(a) **ADEQUATE LEVEL** means conforms to adopted plans and ordinances, or as may be determined by the agency that provides the service or infrastructure.*

Finding: The applicant did not provide specific responses detailing if the proposed annexation conforms or could conform to adopted plans (e.g. Banks Comprehensive Plan, Transportation System, Banks Water System Master Plan, etc.). The submitted narrative states that "adequate infrastructure including sanitary, sewer, water, and storm drainage exist to serve the Property." However, no supporting information has been provided to show that these services are available and will continue to meet the future need of the property. Furthermore, other than a brief mention of an auto repair business in the original submittal (Exhibit D) the existing operations and use have not been fully and completely described in narrative form or through an existing conditions site plan. Therefore, Staff is unable to determine if the standard has been met.

*(b) **URBAN SERVICES** means police; fire; school facilities; parks and recreation facilities; greenways and open spaces and other city-provided services.*

Finding: The applicant provided service provider letters as part of their completeness response from both the Washington County Sheriff's Office and the Banks Fire Department. An additional service provider letter, from the City of Banks Engineer, was submitted via email on February 7, 2024. All submitted service provider letters have been

provided here as Exhibit H. Written documentation from Clean Water Services, Oregon Department of Transportation and the Banks Traffic Engineer indicating whether adequate infrastructure and capacity exist to serve the proposed annexation site as required by Banks Zoning Code Section 30.03(H) have not been submitted. This documentation was requested in the 2023 Incompleteness Letter (Exhibit E). Therefore, this criterion has not been met.

*(c) I**NFRASTRUCTURE** means sanitary sewer, water, storm drainage, and streets.*

Finding: As noted above in the response to Subsection (a), no detailed information in the form of plans or supporting documentation has been provided to show that the property proposed for annexation is adequately served by existing infrastructure. The burden of proof is upon the applicant and the proof has not been provided. For example, the City traffic engineer cannot assess what might be needed because a description of the use, number of employees, hours of operations, any other site uses, or other such information has not been provided. Therefore, Staff is unable to determine if the standard has been met.

*(d) **BE MADE AVAILABLE IN A TIMELY MANNER** means that improvements needed for an adequate level of urban services and infrastructures will be provided in a logical, economical, and efficient manner and are made available in accordance with the development agreement or other funding mechanism at the time of approval. Improvements for the needed infrastructure and urban services must be secured by a development agreement or other funding mechanism that places the primary economic burden on the annexed property and not on the city.*

Finding: As noted in the responses above, the applicant has not provided the detailed information necessary to determine if an adequate level of urban services and infrastructure is available or will be made available in a timely manner. Therefore, Staff is unable to determine if the standard has been met.

(2) Sufficient planning and engineering data must be provided, and all necessary studies and reviews must be completed in such a manner that there are no unresolved issues regarding development of the annexation property. It may not be timely to annex property if the appropriateness of the proposed use could be altered by plans or studies that are underway, or are needed, to update, clarify, or provide additional specificity to the property use. Examples of needed studies may include, but are not limited to, public infrastructure plans, buildable lands inventories, area refinement plans, park study, or any related planning study pertaining to growth management.

Finding: The applicant has not provided the necessary planning and engineering data to know if there are any unresolved issues regarding development of the proposed annexation property. Additionally, the applicant states that the use of the property will not change but

does not acknowledge that the use is not allowed within the existing County zone or planned City zone. Therefore, the above standard has not been met.

> *(3) The Council may consider, at its discretion, any other factors that affect the timeliness or wisdom of any particular annexation petition*.

Findings: As detailed in the Background section of this application, the property has several outstanding land use violations in Washington County. City planning staff recommends that the Planning Commission consider whether and how this property can be brought into compliance with all City regulations; resolution of the multiple violations that are currently documented for the property; and the applicant's payment of all past-due fees to the City.

> *(4) The burden for providing the findings and cost thereof for this section and § 30.03 is placed upon the applicant*.

Finding: The applicant has not provided the necessary information for Staff to determine if this standard has been met.

> *30.03 Application Requirements*.
>
> *An application for annexation must be made on forms provided by the Commission and must include the following material:*
>
> *(A) Written consent to the annexation signed by the requisite number of affected property owners, electors, or both within the area to be annexed, as provided by state law;*
>
> *(B) A metes and bounds legal description or acceptable alternative legal description of the territory to be annexed as certified by the Washington County Assessor's office;*
>
> *(C) The County Assessor's quarter section map(s) showing the proposed annexed area and adjacent city territory;*
>
> *(D) General land use plan indicating types and intensities of proposed development, transportation corridors, watercourses, significant natural features, open space, freeways and adjoining development;*
>
> *(E) A detailed statement of overall development concept and methods by which physical and related social environment of the site, surrounding area, and community will be enhanced;*

(F) A detailed statement of additional facilities required to meet any increased demand and a plan for the phasing in of any such facilities in accordance with the projected demand;

(G) A detailed statement outlining method and source of financing required will be made available in a timely manner to the hearing body to show how the applicant plans to provide any required additional facilities;

(H) A detailed statement of availability, capacity, and status of existing water, sewer, drainage, transportation, park and school facilities;

(I) Comprehensive narrative of potential negative physical, aesthetic, and related social effects of the proposed development on the community as a whole and on the smaller subcommunity or neighborhood that it will become a part of; and proposed actions to mitigate the effects;

(J) Narrative demonstrating need for the urban development proposed for the annexation area; need should be demonstrated based upon a factual analysis of the following factors:

(1) Availability within the current city limits of undeveloped land designated for proposed urban development;

(2) Analysis of immediate, short-term (1 to 5 years) demand for proposed urban development; and

(3) Probable phasing of proposed urban development consistent with projected demand for the period that the annexation area is expected to be developed.

(K) List of property owners (printed on self-adhesive labels) within 300 feet of the exterior boundary of the annexation property; the list shall be based on the latest tax assessment records at the Washington County Department of Assessment and Taxation and legible scale drawing of the site.

Finding: As detailed in the 2023 Incompleteness Letter (Exhibit E) and subsequent communications (Exhibit D and F) the applicant did not submit the full list of Applications Requirement noted above.

III. Recommendation

Based on the above findings, City planning staff finds the proposed annexation does not meet the applicable standards of the Banks Municipal Code. City planning staff recommends the Planning Commission **deny** this Type IV Annexation.