

Town of Haxtun
June 20, 2022
HEARING/SPECIAL MEETING
MINUTES

A public hearing was held to finalize the West Plains Properties, LLC Annexation at 7:00pm. There was no public comment regarding the annexation. Hearing was closed by Mayor Brandon Bieseemeier.

The Haxtun Town Council met for a special meeting following the close of the public hearing at 7:05pm. The meeting was opened by Mayor Brandon Bieseemeier at the Haxtun Community Center. Roll call was taken with the following council members present: Lori Lundgren, Bob Cionek, Tana Pope, Ryan Horton, and Mike Ensminger. Council member Rob Martinez was absent. Mayor Bieseemeier led the group in the Pledge of Allegiance.

Staff members present were Ron Carpenter, Town Superintendent and Kelsey Harms Town Clerk/Treasurer

A motion was made by L. Lundgren and seconded by B. Cionek to approve Resolution 2022-5 concerning a petition for the annexation of property to the Town of Haxtun, Colorado, known as the West Plains Properties, LLC Annexation to the Town of Haxtun, and finding the area proposed to be annexed eligible for annexation. All present voted in favor and the motion passed.

RESOLUTION NO. 2022-5

A RESOLUTION CONCERNING A PETITION FOR THE ANNEXATION OF PROPERTY TO THE TOWN OF HAXTUN, COLORADO, KNOWN AS THE WEST PLAINS PROPERTIES, LLC ANNEXATION TO THE TOWN OF HAXTUN, AND FINDING THE AREA PROPOSED TO BE ANNEXED ELIGIBLE FOR ANNEXATION

WHEREAS, a petition for annexation of property described in Exhibit A attached hereto has been filed with the Town Council of the Town of Haxtun; and

WHEREAS, pursuant to state law, the Town Council has held a hearing and desires to adopt by Resolution its findings in regard to the petition and eligibility for annexation.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF HAXTUN, COLORADO:

Section 1. The Town Council finds and concludes that:

1. It is desirable and necessary that the territory described in Exhibit A attached hereto and incorporated herein be annexed to the Town of Haxtun.

2. The applicable requirements of Sections 31-12-104 and 31-12-105, C.R.S., as amended, exist or have been met, including without limitation:
 - a. Not less than one-sixth of the perimeter of the area proposed to be annexed is contiguous with the Town of Haxtun; in accordance with Section 31-12-104(1)(a), C.R.S., contiguity may be established by the annexation of two or more parcels in a series.
 - b. A community of interest exists between the area proposed to be annexed and the Town of Haxtun.
 - c. The area proposed to be annexed is urban or will be urbanized in the near future.
 - d. The area proposed to be annexed is integrated with or is capable of being integrated with the Town of Haxtun.
 - e. No land within the boundary of the territory proposed to be annexed which is held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate, has been divided into separate parts or parcels without the written consent of the landowner or landowners thereof, unless such tracts or parcels were separated by a dedicated street, road, or other public way.
 - f. No land within the boundary of the area proposed to be annexed which is held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate, comprising twenty acres or more, and which, together with the buildings and improvements situated thereon, has an assessed value in excess of two hundred thousand dollars (\$200,000.00) for ad valorem tax purposes for the year next preceding the annexation, has been included within the area proposed to be annexed without the written consent of the landowners.
 - g. No annexation proceedings have been commenced for any portion of the territory proposed to be annexed for the annexation of such territory to another municipality.
 - h. The annexation of the territory proposed to be annexed will not result in the detachment of area from any school district.
 - i. The annexation of the territory proposed to be annexed will not have the effect of extending the boundary of the Town of Haxtun more than three miles in any direction from any point of the boundary of the Town of Haxtun in any one year.

- j. The territory proposed to be annexed is 4.53 acres, more or less.
 - k. The Comprehensive Plan adopted by the Planning Commission and approved by the Town Council of the Town of Haxtun, as amended, shall serve as the plan for the area proposed to be annexed, in accordance with Section 31-12-105(1)(e), C.R.S.
 - l. Any portion of a platted street or alley to be annexed will result in the entire width of the street or alley having been included within and made a part of the Town of Haxtun and reasonable access will not be denied to any landowners, owners of any easement, or the owners of any franchise adjoining any platted street or alley which is to be annexed to the Town of Haxtun but is not bounded on both sides by the Town of Haxtun.
3. Four copies of an annexation map of the area proposed to be annexed have been submitted to the Town Council and are on file with the Town.
 4. Upon the annexation ordinance becoming effective, all land within the area proposed to be annexed will become subject to all ordinances, resolutions, rules, and regulations of the Town of Haxtun, except that general property taxes of the Town of Haxtun, if applicable, shall become effective as of the January 1 next ensuing.
 5. No election for annexation of the area proposed to be annexed has been held in the preceding twelve months, and no election is required under Sections 31-12-107(2) or -112, C.R.S.
 6. No additional terms and conditions are to be imposed other than those set forth in the annexation petition or otherwise agreed to by all owners, which are not to be considered additional terms and conditions within the meaning of Sections 31-12-107(1)(g), -110(2) or 112, C.R.S.
 7. The landowners of one hundred percent (100%) of the area proposed to be annexed signed the petition requesting annexation, in compliance with Article II, Section 30 of the Colorado Constitution and Section 31-12-107(1), C.R.S.

Section 2. The Town Council concludes that all statutory requirements have been met, that the proposed annexation is proper under the laws of the State of Colorado and the area proposed to be annexed is eligible for annexation to the Town. The Town Council, acting in its legislative capacity and pursuant to authority granted to it by state law, may adopt one or more ordinances annexing the subject property to the Town of Haxtun.

INTRODUCED, READ, and ADOPTED this 20th day of June, 2022.

Brandon Bieseimeier, Mayor

ATTEST:

Kelsey Harms, Town Clerk

EXHIBIT A - LEGAL DESCRIPTION

A tract of and located in the E ½ of the NW ¼ of Section 29, T. 8 N., R. 47 W. of the 6th P.M., Phillips County, Colorado, being more particularly described as follows:

Commencing at the N ¼ Corner of Section 29, T.8 N., R. 47 W. of the 6th P.M., Phillips County, Colorado; thence S 01°38'43" E on the east line of the NW ¼ of said Section, 949.50 feet to a point on the south line of Highway #6 Right-of-Way, also being the Point of Beginning; thence S 01°38'43" E on said east line, 382.16 feet to a point on the north line of Joe Ave. of Wheatland Heights Addition; thence N 89°59'25" W on the north line of said Joe Ave, 29.79 feet to a point on the west line of said Joe Ave; thence N 01°38'05" W on said west line of Joe Ave, 29.17 feet to the NE corner of Ensminger Subdivision; thence S 88°21'52" W on the north line of said Ensminger Subdivision, 359.95 feet to the NW corner of said Ensminger Subdivision; thence N 01°38'05" W parallel to the west line of said Ensminger Subdivision, 631.89 feet to a point on said south Highway #6 Right-of-Way line to the beginning of a non-tangent 1909.86 foot radius curve concave Southwesterly; thence Southeasterly on the arc of said curve 480.95 feet (chord bearing S 55°57'30" E with a chord length of 479.68 feet) to the Point of Beginning containing 4.53 +/- acres, more or less.

A motion was made by M. Ensminger and seconded by T. Pope to approve the pre-annexation agreement between West Plains Properties, LLC and the Town of Haxtun. All members present voted and motion passed.

PRE-ANNEXATION AGREEMENT

THIS AGREEMENT is made and entered into this 20th day of June, 2022, by and between WEST PLAINS PROPERTIES, LLC, hereinafter referred to as "Owner," and the TOWN OF HAXTUN, a municipal corporation of the State of Colorado, hereinafter referred to as "Haxtun" or "Town".

WITNESSETH:

WHEREAS, Owner is the owner of certain real property located in Phillips County, Colorado, which property is legally described in Exhibit "A" attached hereto and incorporated herein by reference (such property is hereinafter referred to as "the Property"); and

WHEREAS, with Owner's consent, which consent is subject to and conditioned upon execution of this Agreement, a request shall also be made to zone the property as B-A.

WHEREAS, the parties by this Agreement desire to set forth their understanding with respect to annexation of the Property to the Town and related matters; and

WHEREAS, it is to the mutual benefit of the parties hereto to enter into the following Agreement.

NOW, THEREFORE, IN CONSIDERATION OF THE ABOVE PREMISES AND THE COVENANTS AS HEREINAFTER SET FORTH, IT IS AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. Incorporation of Recitals. The parties confirm and incorporate the foregoing recitals into this Agreement.
2. Purpose. The purpose of this Agreement is to set forth certain terms and conditions with respect to annexation of the Property to the Town. Except as expressly provided for herein to the contrary, all terms and conditions herein are in addition to any and all requirements concerning annexation and development contained in the Town of Haxtun Municipal Code and applicable regulations, the Town's Master Plan, and the Municipal Annexation Act of 1965, as amended, C.R.S. § 31-12-101 et seq. This Agreement shall not be construed to preclude further agreements concerning annexation of the Property to the Town.
3. Zoning. Upon annexation, Owner shall process a zoning application for initial Town zoning of the Property.
4. Annexation Documents. For purposes of Annexation pursuant to the terms of this Agreement, Owner shall provide at its expense a legal description, annexation petition, annexation maps, surveys, newspaper publications, and other reports and documents reasonably determined by the Town to be necessary to accomplish the annexation of the Property to the Town and if required by Town's ordinances or state statute at the time of annexation. The Town shall prepare the annexation impact report if one is required by the Municipal Annexation Act.
5. Legislative Discretion. Owner acknowledges that annexation of the Property is subject to the legislative discretion of the Town Council of the Town of Haxtun. Nothing in this Agreement is intended or shall be construed to require the Town to annex the Property or to initiate any annexation proceedings relating to the Property.
6. No Other Annexation. Under no circumstances shall the Property be annexed to another municipality without the prior written permission of the Town Council, which may be granted or denied in the sole and absolute discretion of the Town.
7. Covenants to Run with Land/Binding Effect. This Agreement and all covenants herein touch and concern the real property described in Exhibit A and shall be covenants running with the land. This Agreement shall be binding upon and inure to the benefit of Owner and the Town, and their respective successors, transferees and assigns. This Agreement shall be recorded by the Town with the County Clerk and Recorder of Phillips County, Colorado.
8. No Repeal of Laws. Nothing contained in this Agreement shall constitute or be interpreted as a repeal of the Town's ordinances or resolutions, or as a waiver of the Town's legislative, governmental, or police powers to promote and protect the health, safety, and welfare of the Town and its inhabitants.
9. Severability. The parties agree that if any part, term, portion, or provision of this Agreement is held by a court of competent jurisdiction to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining parts, terms, portions, or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, portion, or provision held to be invalid.

10. Future Cooperation. The parties agree that they will cooperate with one another in accomplishing the terms, conditions, and provisions of the Agreement, and will execute such additional documents as necessary to effectuate the same.

11. Amendment. This Agreement may be amended only by mutual agreement of the parties affected by such amendment. Such amendments shall be in writing, shall be recorded with the County Clerk of Phillips County, Colorado, shall be covenants running with the land, and shall be binding upon all persons or entities having an interest in the Property subject to the amendment unless otherwise specified in the amendment.

12. Entire Agreement. This Agreement embodies the entire agreement between the parties hereto with regard to annexation of the Property. There are no promises, terms, or obligations other than those contained herein, and this Agreement supersedes all previous communications, representations, or agreements, either verbal or written, between the parties.

13. Amendments to Law. As used in this Agreement, unless otherwise specifically provided herein, any reference to any provision of any Town ordinance, resolution, regulation, or policy is intended to refer to any subsequent amendments or revisions to such Town ordinance, resolution, regulation, or policy, and the parties agree such amendments or revisions shall be binding upon Vaquero to the extent not inconsistent with the express terms of this Agreement.

14. Notice. All notices required under this Agreement shall be in writing and shall be hand-delivered or sent by facsimile transmission or registered or certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth. All notices by hand delivery shall be effective upon receipt. All facsimile transmissions shall be effective upon transmission receipt. All notices by mail shall be considered effective seventy-two (72) hours after deposit in the United States mail with the proper address as set forth below. Either party by notice so given may change the address to which future notices shall be sent.

Notice to Town:

Town of Haxtun

Attn: Town Superintendent

145 S. Colorado Ave.

Box 205

Haxtun, CO 80731

With copy to:

Kelly PC

999 18th Street, Suite 1450S

Denver, CO 80202

Notice to Owner:

West Plains Properties, LLC

Attn: Ryan John Kurtzer, Member

24463 CR 11

Haxtun, CO 80731

With copy to:

15. Governing Law. The laws of the State of Colorado shall govern the validity, performance, and enforcement of this Agreement. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that the venue of such suit or action shall be in Phillips County, Colorado.

16. Headings. The paragraph headings in this Agreement shall not be used in the construction or interpretation hereof as they have no substantive effect and are for convenience only.

17. No Third-Party Rights. This Agreement is made solely for the benefit of the parties hereto, and is not intended to nor shall it be deemed to confer rights to any persons or entities not named as parties hereto.

18. Counterparts and Authority to Execute. This Agreement may be executed in one or more counterparts, and when all counterparts are so signed, the sum of them shall be considered the original, and shall be deemed to have been signed as one integrated document. Each party, by its signature below, represents that the person signing on behalf of such party has full power and lawful authority to enter into this Agreement, and that such person is the lawful agent of the principal in that regard.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

TOWN OF HAXTUN

Brandon Bieseimeier, Mayor

ATTEST:

Kelsey Harms, Town Clerk

OWNER:

WEST PLAINS PROPERTIES, LLC

By: _____

Ryan John Kurtzer, Member

ACKNOWLEDGEMENT

STATE OF COLORADO)

) ss

COUNTY OF PHILLIPS)

The above and foregoing signature of Ryan John Kurtzer was subscribed and sworn to before me this _____ day of _____, 2022.

Witness my hand and official seal.

My commission expires on: _____.

(SEAL)

Notary

EXHIBIT A
Legal Description

A tract of and located in the E ½ of the NW ¼ of Section 29, T. 8 N., R. 47 W. of the 6th P.M., Phillips County, Colorado, being more particularly described as follows:

Commencing at the N ¼ Corner of Section 29, T.8 N., R. 47 W. of the 6th P.M., Phillips County, Colorado; thence S 01°38'43" E on the east line of the NW ¼ of said Section, 949.50 feet to a point on the south line of Highway #6 Right-of-Way, also being the Point of Beginning; thence S 01°38'43" E on said east line, 382.16 feet to a point on the north line of Joe Ave. of Wheatland Heights Addition; thence N 89°59'25" W on the north line of said Joe Ave, 29.79 feet to a point on the west line of said Joe Ave; thence N 01°38'05" W on said west line of Joe Ave, 29.17 feet to the NE corner of Ensminger Subdivision; thence S 88°21'52" W on the north line of said Ensminger Subdivision, 359.95 feet to the NW corner of said Ensminger Subdivision; thence N 01°38'05" W parallel to the west line of said Ensminger Subdivision, 631.89 feet to a point on said south Highway #6 Right-of-Way line to the beginning of a non-tangent 1909.86 foot radius curve concave Southwesterly; thence Southeasterly on the arc of said curve 480.95 feet (chord bearing S 55°57'30" E with a chord length of 479.68 feet) to the Point of Beginning containing 4.53 +/- acres, more or less.

A motion was made by T. Pope and seconded by R. Horton to approve Ordinance 2022-4 approval of Annexation known as West Plains Properties, LLC. All present voted, motion passed.

ORDINANCE NO. 2022-4

AN ORDINANCE APPROVING AN ANNEXATION KNOWN AS THE WEST PLAINS PROPERTIES, LLC ANNEXATION TO THE TOWN OF HAXTUN, COLORADO

WHEREAS, a petition for annexation of certain unincorporated property, to be known as the West Plains Properties, LLC Annexation, and described in Exhibit A attached hereto, has been filed with the Town Council of the Town of Haxtun; and

WHEREAS, pursuant to C.R.S. §§ 31-12-108 to -110, the Town Council on June 20, 2022 held a duly-noticed public hearing to consider the proposed annexation; and

WHEREAS, notice of the hearing was published on May 11, 18, 25 and June 1, 2022, in the Haxtun-Fleming Herald; and

WHEREAS, the Town Council, by resolution, has determined that the petition is in substantial compliance with the applicable laws of the State of Colorado, that the area proposed to be annexed is eligible for annexation, and

further has determined that an election is not required, and further found that no additional terms and conditions are to be imposed upon said annexation except any provided for in said petition.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF HAXTUN, COLORADO:

Section 1. The annexation to the Town of Haxtun of the property described in Exhibit A, attached hereto and incorporated herein by this reference, and known as the West Plains Properties, LLC Annexation, is hereby approved and such property is made a part of and annexed to the Town of Haxtun.

Section 2. The annexation of said territory is subject to the conditions provided for in the petition for annexation of said property filed with the Town of Haxtun.

INTRODUCED, READ, ADOPTED, APPROVED BY THE TOWN COUNCIL, AND ORDERED PUBLISHED this 20th day of June, 2022.

Brandon Bieseemeier, Mayor

ATTEST:

Kelsey Harms, Town Clerk

EXHIBIT A – LEGAL DESCRIPTION

A tract of and located in the E ½ of the NW ¼ of Section 29, T. 8 N., R. 47 W. of the 6th P.M., Phillips County, Colorado, being more particularly described as follows:

Commencing at the N ¼ Corner of Section 29, T.8 N., R. 47 W. of the 6th P.M., Phillips County, Colorado; thence S 01°38'43" E on the east line of the NW ¼ of said Section, 949.50 feet to a point on the south line of Highway #6 Right-of-Way, also being the Point of Beginning; thence S 01°38'43" E on said east line, 382.16 feet to a point on the north line of Joe Ave. of Wheatland Heights Addition; thence N 89°59'25" W on the north line of said Joe Ave, 29.79 feet to a point on the west line of said Joe Ave; thence N 01°38'05" W on said west line of Joe Ave, 29.17 feet to the NE corner of Ensminger Subdivision; thence S 88°21'52" W on the north line of said Ensminger Subdivision, 359.95 feet to the NW corner of said Ensminger Subdivision; thence N 01°38'05" W parallel to the west line of said Ensminger Subdivision, 631.89 feet to a point on said south Highway #6 Right-of-Way line to the beginning of a non-tangent 1909.86 foot radius curve concave Southwesterly; thence Southeasterly on the arc of said curve 480.95 feet (chord bearing S 55°57'30" E with a chord length of 479.68 feet) to the Point of Beginning containing 4.53 +/- acres, more or less.

A motion was made by R. Horton and seconded by M. Ensminger to approve Ordinance 2022-5 Zoning Property Annexed to the Town of Haxtun known as West Plains Properties, LLC Annexation. After some discussion all present voted and motion passed.

ORDINANCE NO. 2022-5

AN ORDINANCE ZONING PROPERTY ANNEXED TO THE TOWN OF HAXTUN AND KNOWN AS THE WEST PLAINS PROPERTIES, LLC ANNEXATION

WHEREAS, a petition for annexation of certain property, known as the West Plains Properties, LLC Annexation, was filed with the Town Council of the Town of Haxtun; and

WHEREAS, the property was annexed to the Town by ordinance; and

WHEREAS, the Town Council must provide for the zoning of the property; and

WHEREAS, the Town Council provided notice of the public hearing on said zoning by publication as provided by law; and

WHEREAS, no protests were received by the Town pursuant to C.R.S. § 31-23-305; and

WHEREAS, the landowner of the property requested the property set forth in Exhibit A be zoned B-A Business District; and

WHEREAS, the B-A Business District zoning classification as requested is consistent with the Town's plan for the area encompassed by the West Plains Properties, LLC Annexation; and

WHEREAS, the Haxtun Planning and Zoning Commission has held a public hearing on the landowner's zoning request and forwarded its recommendation to the Town Council, and the Town Council has duly considered that recommendation.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF HAXTUN, COLORADO:

Section 1. That certain property contained within the West Plains Properties, LLC Annexation to the Town of Haxtun, the legal description of which is set forth in Exhibit A attached hereto and made a part hereof, is hereby zoned B-A Business District pursuant to the zoning ordinances of the Town, and the Town zoning map shall be amended accordingly.

INTRODUCED, READ, ADOPTED, APPROVED, AND ORDERED PUBLISHED this 20th day of June, 2022.

TOWN OF HAXTUN, COLORADO

Brandon Bieseemeier, Mayor

ATTEST:

Kelsey Harms, Town Clerk

EXHIBIT A – LEGAL DESCRIPTION

A tract of and located in the E ½ of the NW ¼ of Section 29, T. 8 N., R. 47 W. of the 6th P.M., Phillips County, Colorado, being more particularly described as follows:

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A motion was made by L. Lundgren and seconded by B. Cionek to approve Resolution 2022-6 approving final plat for the West Plains Properties, LLC. All present voted and motion passed.

RESOLUTION NO. 2022-6

A RESOLUTION APPROVING A FINAL PLAT FOR THE WEST PLAINS PROPERTIES, LLC

WHEREAS, there has been submitted to the Town Council of the Town of Haxtun a request for approval of a Final Plat for the West Plains Properties, LLC Subdivision; and

WHEREAS, all materials related to the proposed Final Plat have been reviewed by Town staff and found to be in compliance with Colorado subdivision statutes; and

WHEREAS, after a noticed public hearing, at which evidence and testimony were entered into the record, the Town Council finds that the proposed Final Plat should be approved.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF HAXTUN, COLORADO:

Section 1. The Town Council hereby approves the proposed Final Plat for the West Plains Properties, LLC Subdivision.

PASSED AND ADOPTED this 20th day of June, 2022.

Brandon Bieseimer, Mayor

ATTEST:

Kelsey Harms, Town Clerk

A motion was made by R. Horton and seconded by M. Ensminger to adjourn. The meeting adjourned at 7:09 pm subject to the call of the Mayor.

Kelsey Harms
Deputy Town Clerk