

**CITY OF BOULDER  
PLANNING BOARD ACTION MINUTES  
December 20, 2018  
1777 Broadway, Council Chambers**

A permanent set of these minutes and a tape recording (maintained for a period of seven years) are retained in Central Records (telephone: 303-441-3043). Minutes and streaming audio are also available on the web at: <http://www.bouldercolorado.gov/>.

**PLANNING BOARD MEMBERS PRESENT:**

Liz Payton, Chair  
Bryan Bowen, Vice Chair  
David Ensign  
John Gerstle  
Crystal Gray  
Peter Vitale  
Harmon Zuckerman

**PLANNING BOARD MEMBERS ABSENT:**

N/A

**STAFF PRESENT:**

Charles Ferro, Development Review Manager, Planning Department  
Hella Pannewig, Assistant City Attorney  
Cindy Spence, Administrative Specialist III  
Carolyn Fahey, Planner I  
Sloane Walbert, Senior Planner  
Edward Stafford, Development Review Manager, Public Works  
Jim Robertson, Comprehensive Planning Manager, Planning Department  
Beth Roberts, Housing Planner

**1. CALL TO ORDER**

Chair, **L. Payton**, declared a quorum at 6:03 p.m. and the following business was conducted.

**2. APPROVAL OF MINUTES**

On a motion by **B. Bowen** and seconded by **H. Zuckerman** the Planning Board voted 6-0 (**C. Gray** abstained) to approve the November 15, 2018 minutes as amended.

**3. PUBLIC PARTICIPATION**

No one spoke.

**4. DISCUSSION OF DISPOSITIONS, PLANNING BOARD CALL-UPS / CONTINUATIONS**

- A. CALL UP ITEM:** Approval of a Minor Amendment to Approved Site Review for a new 960 square foot community center located on the southeast corner of the property at 333 Pearl Street. Included in the approval are new covered front porches for each ground level unit, and new

façade updates. The approval includes updated landscaping, new playground, six (6) raised planters, a long-term bike parking structure with fourteen (14) biking parking spaces, an additional accessible parking space, and new trash enclosures. The project site is zoned Residential - Mixed 1 (RMX-1). Case No. LUR2018-00053. **The call up expires on December 21, 2018.**

- B. CALL UP ITEM:** Standard Wetland Permit (WET2018-00009); Southern Water Supply Project II (SWSP II) pipeline project which includes waterway crossings from Carter Lake south to Boulder Reservoir. The SWSP II pipeline will provide water to the City of Berthoud, Longs Peak Water District, and the City of Boulder. **This decision may be called up before Planning Board on or before December 28, 2018.**
- C. CALL UP ITEM:** Site Review Amendment to modify the approved Planned Unit Development (PUD) and construct a ground-based, 8-megawatt, 13-kilowatt solar array on the undeveloped parcel southwest of Monarch Road and 71st Street on the IBM campus. The project consists of a single-axis tracking system (solar array) and a generation-tie distribution line (gen-tie line). The gen-tie line will follow the existing IBM Loop Road from the solar array to the existing Public Service Company of Colorado (Xcel Energy) Gunbarrel Substation located on the IBM campus. **The call up period expires on December 27, 2018.**

None of the items were called up.

## **5. PUBLIC HEARING ITEMS**

- A. AGENDA TITLE:** Public hearing and Planning Board recommendation on a request for annexation of the approximately 2-acre property at 5469 South Boulder Road with an initial zoning of Residential - Low 2 (RL-2). The annexation is also proposed to include adjacent South Boulder Road right-of-way and an approximately 70-ft strip of city-owned open space land, to be zoned Public (P). Case no. LUR2017 00096.

***Board members were asked to reveal any ex-parte contacts they may have had on this item.***

- **D. Ensign, C. Gray, L. Payton, and H. Zuckerman** declared that they sat on Planning Board during the Hogan Pancost hearings. **B. Bowen, C. Gray and J. Gerstle** stated they had conducted site visits. **P. Vitale** had no ex-parte contacts to reveal.

### **Staff Presentation:**

**C. Ferro** introduced the item.

**S. Walbert** presented the item to the board.

### **Board Questions:**

**S. Walbert** answered questions from the board.

### **Applicant Presentation:**

**Richard Lopez**, with Lopez Law Office, and **Shelia Albertson**, the owner, presented the item to the board.

### Board Questions:

**Richard Lopez**, the applicant, answered questions from the board.

### Public Hearing:

- 1) **Rudy Fettig** spoke in support to the project, however had concerns with flooding and drainage. He stated the existing detention pond does not work in mitigating any flood waters and runoff ends up in the housing development downhill from the site. He said any development would be an opportunity to resolve the flooding and drainage issues and urged that something be implemented into the annexation agreement. He supports the RL-2 zoning, but single-family homes would be consistent with the existing character of the neighborhood, not duplexes and townhomes as proposed.

### Board Comments:

**Key Issues:** Does the annexation petition comply with applicable state annexation statutes? Is the proposal consistent with city's annexation and other Boulder Valley Comprehensive Plan (BVCP) policies? Is the initial zoning of Residential - Low 2 (RL-2) appropriate for the subject property?

- **L. Payton** said it appears that this property is still well connected to the floodplain. Substantial fill would need to be done to this property due to existing ponding. She said the petition does not meet the state statutes annexation criteria regarding "Community Interest". She would not advise putting affordable housing at that site due to potential flooding. If this site were annexed, the new buildings would be subject to current building codes, however the codes have not been updated to embrace climate change, therefore they may not be adequate. She had concerns regarding an annexation before adequate regulations were in place. She suggested imposing standards within the annexation agreement or not building within the floodplain like the City of Fort Collins.
- **B. Bowen** clarified that a developer could still build within the floodplain within the City of Boulder, however buildings must be elevated two feet above the floodplain, which takes the property out of the floodplain.
- **H. Zuckerman** proposed that stronger language be imposed in the annexation agreement. He suggested a condition that no new development can raise the base flood elevation.
- **P. Vitale** said there should be a method to build around the floodplain or build safely to obtain affordable housing rather than dismissing development altogether. He would like to pursue that possibility to address the housing crisis.
- **D. Ensign** agreed with **P. Vitale**. There would be good conditions for affordability, the corridor would be ideal and there would be open space nearby. He said he understands the floodplain issues at hand which give him pause.
- **J. Gerstle** said the future of Dry Creek Ditch #2 could be important to this proposal due to the city's ownership of it. It serves in a drainage and irrigation capacity, however in the future the drainage function could predominate and carry water which may impact the floodplain at this site. In addition, he said this site is adjacent to open space however it is not intended for public access. Therefore, the open space may not be appropriate to serve the neighborhood.
- **B. Bowen** clarified that there are no official trails in that area and the Transportation Master Plan does not indicate any future connection plans. Regarding floodplain, need to understand fully any other community's flood standards fully before we attempt to adopt them.
- **C. Gray** said that along with affordability issue, the community is asking for small single-family or tiny homes. She would like to see that opportunity possible in the agreement. If the zoning

were to remain RL-2, she would prefer to see duplexes, triplexes, fourplexes, townhomes and single-family homes listed.

- **B. Bowen** said a benefit to disallowing single-family homes in the RL-2 zone would be the ability for the owner to subdivide the property. If single-family homes are prohibited, it would help avoid that outcome.
- **P. Vitale** said that even small homes could end up being very expensive. In terms of permeability, pavers and systems could be required.
- **C. Gray** said she would like the door left open for creative housing ideas.
- **L. Payton** said it would be wise planning to preserve the floodplain. It would not make sense to put the most vulnerable residents and place them at risk. She will not support the annexation.
- **H. Zuckerman** said the petition does comply with applicable state annexation statutes and recommended requirements within the annexation agreement. He gave two examples of recommendations. The first was that no development would increase the base flood elevation. The second was that with any new construction, the flood protection level for this project would have to be three feet rather than two feet. Finally, he said the initial zoning of RL-2 is appropriate. Multi-family development would provide a buffer from the existing high-speed traffic along South Boulder Road. A tiny house village would not be appropriate.
- **P. Vitale** agreed with **H. Zuckerman**.
- **D. Ensign** agreed with **H. Zuckerman** that the petition does comply with state annexation statutes. In the BVCP, specifically preserving floodplains, he understands **L. Payton's** concerns. He agreed that recommendations could be added to the annexation agreement. He said that the RL-2 zoning would be good approach as well as a mix of housing types. He was hopeful that language could be created to show that they are being proactive regarding development in the floodplain.
- **B. Bowen** agreed with **H. Zuckerman** regarding the key issues. Regarding the floodplain, the regulations are taken seriously within the city and he did not believe that this annexation would be irresponsible. He observed that this area would not be contributing to the flood capacity of the South Boulder Creek system. It would be a spillover from the ditch. He would be comfortable creating stronger language to protect floodplains. He approves of the annexation and the proposed mix of housing.
- **C. Gray** said the annexation petition is consistent with state statutes. She said she would like to know what properties are slated for acquisition along South Boulder Creek for development.
- **J. Gerstle** said the annexation does comply with applicable state statutes, however he asked the board to keep in mind the guidelines just put in place with the CU South annexation. One guideline included no permanent building construction within the 100-year floodplain. He stated that this annexation would be inconsistent with that consideration. He questioned encouraging construction of affordable housing in the 100-year floodplain. He said it would not be within Boulder's interest to encourage construction in the 100-year floodplain when damage has already been witnessed. If drainage could be improved, then perhaps the project could move forward. He said he did not agree with having the least expensive housing or multi-family buildings along the busiest roads.
- **B. Bowen** countered by saying that increased housing density is preferred on major roads due to the transit opportunities that exist for people who may not have access to cars.
- **H. Zuckerman** added that multi-family housing can have more bulk and mass in a varying way and provides a better visual along large roads than single-family homes.
- **D. Ensign** said natural occurrences will inevitably happen. The city's floodplain regulations are

in place to ensure that whatever has been developed will be resilient and we will have good measures to assist people from experiencing real problems. This project is different from CU South. There is an existing neighborhood even though it is a floodplain. We should not punish one group from being annexed when we have been historically allowing others to develop there. He said the annexation should be pursued.

**Motion:**

On a motion by **B. Bowen** seconded by **H. Zuckerman** the Planning Board voted 4-3 (**C. Gray, J. Gerstle, and L. Payton** opposed) to recommend to City Council approval of the proposed annexation with initial zoning of Residential-Low 2 (RL-2) for 5469 South Boulder Road and of Public (P) for the strip of city-owned land pertaining to case number LUR2017-00096, incorporating this staff memorandum as findings of fact, subject to the recommended conditions of approval for the annexation as provided for in the annexation agreement in Attachment C.

**C. Gray** suggested an amendment to change the initial zoning to RL-1 and in the staff's memorandum, Attachment C, Sub-paragraph 18-L, add "single-family" designation, but retain the other three designations. There was no second. Withdrawn

**J. Gerstle** made an amendment that no new structures intended for human occupancy be constructed in the 100-year floodplain. **C. Gray** seconded. Withdrawn

- **C. Gray** said she may have voted for the item if small houses had been added as a condition.
- **J. Gerstle** said, given the CU South annexation and guiding principles, the Hogan Pancost property, and the Cherryvale property flood mitigating issues, it would be inconsistent to move ahead and allow construction in this 100-year floodplain. Therefore, he opposed the annexation.
- **D. Ensign** explained that the term "tiny homes" may not be defined in the code. If it had been, perhaps the board could have added it to the list of allowable structures.

**6. MATTERS FROM THE PLANNING BOARD, PLANNING DIRECTOR, AND CITY ATTORNEY**

A. AGENDA TITLE: Review Letter to Council

**Board Comments:**

- The board reviewed their writing assignments and finalized the Letter to Council.

**7. DEBRIEF MEETING/CALENDAR CHECK**

## 8. ADJOURNMENT

The Planning Board adjourned the meeting at 8:46 p.m.

APPROVED BY

---

Board Chair

---

DATE

DRAFT