



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: February 19, 2019

AGENDA TITLE:

Second reading and consideration of a motion to adopt Ordinance 8311 to annex 2.9 acres of land, including a 1.91-acre property at 5469 South Boulder Road with an initial zoning designation of Residential - Low 2 (RL-2), a 70-ft strip of city-owned open space land at 66 South Cherryvale Road with an initial zoning designation of Public (P), and adjacent South Boulder Road right-of-way (LUR2017-00096).

Applicant: Richard Lopez, Lopez Law Office

Owner: DKR Living Revocable Trust

PRESENTER/S

Jane S. Brautigam, City Manager

Chris Meschuk, Assistant City Manager / Interim Director of Planning

Charles Ferro, Development Review Manager, Planning

Edward Stafford, Development Review Manager, Public Works

Sloane Walbert, Senior Planner

EXECUTIVE SUMMARY

This item is related to a request to annex a 1.91-acre residential property at 5469 S. Boulder Rd. into the City of Boulder with an initial zoning designation of Residential-Low 2 (RL-2), consistent with the Boulder Valley Comprehensive Plan (BVCP). The site is in Area II and is eligible for annexation. The applicant has requested annexation in order to connect to city water and sewer services. Future development potential exists for the property.

The section of South Boulder Road adjacent to the site (both directions) is proposed be annexed to the city. In addition, an approximately 70-foot wide strip of open space land adjacent to South Boulder Road is proposed to be annexed, with a zoning designation of Public (P). The proposed annexation will ensure that the full width of right-of-way is included and bring city open space adjacent to the site into the city boundaries. Refer to **Attachment A** for the annexation map and **Attachment B** for the draft ordinance and zoning map.

On Jan. 15, 2019, council adopted Resolution 1250 finding the annexation petition in compliance with state statutes and establishing Feb. 19, 2019 as the date for a public hearing and second reading of the annexation ordinance. Council also considered the first reading of the ordinance on Jan. 15, 2019 to annex and initially zone the property.

Planning Board reviewed the proposed annexation and initial zoning on Dec. 20, 2018. The Board voted 4-3 (C. Gray, J. Gerstle, and L. Payton opposed) to recommend to Council approval of the request, subject to conditions of approval. A summary of the board's discussion and recommendation on the annexation can be found below under 'Board and Commission Feedback'.

Annexations which comply with state annexation statutes and BVCP policies may be approved by City Council through two readings of an annexation ordinance. The ordinance to annex the property is provided for second reading in **Attachment B**.

STAFF RECOMMENDATION

Suggested Motion Language:

Staff requests council consideration of this matter and action in the form of the following motion:

Motion to adopt Ordinance 8311 annexing 2.9 acres of land generally located at 5469 South Boulder Road and 66 South Cherryvale Road with initial zoning designations of Residential - Low 2 (RL-2) and Public (P), respectively.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- **Economic** - It is in the interest of the city to annex contiguous properties in the county. Additional residential units add to the tax base of the community. The property is in an area where adequate public services and facilities presently exist, reducing the need for additional public investment.
- **Environmental** - There are environmental benefits of having properties connected to city water and sewer systems, specifically, the avoidance of the potential impacts of independent well and septic system failure. Additionally, the property lies partially within the 100-year floodplain and once annexed, would be subject to the city's floodplain development standards.
- **Social** - The annexation will improve quality of life by providing the critical public health benefit of safe and quality drinking water and reducing the public health threat that can occur from failing drinking water and septic systems. Development of the site could add up to seven units of permanently affordable housing to the city's inventory, serving middle income households. Restrictions on unit size and form will ensure that market rate units constructed remain reasonably affordable.

OTHER IMPACTS

- Fiscal - City services are existing and available to this site. All development will be subject to city development fees including payment of Plant Investment Fees (PIFs) and water and wastewater assessments.
- Staff time - Processing of the annexation application is within normal staff work plans.

BOARD AND COMMISSION FEEDBACK

Boulder County: Annexations are subject to county referral and city Planning Board recommendation prior to City Council action. The county has reviewed the request and has not objected to the proposal.

Planning Board: On Dec. 20, 2018, the Planning Board reviewed the proposed annexation and initial zoning requests. The Board discussed the key issues as identified by staff and ultimately voted 4-3 on a motion by B. Bowen, seconded by H. Zuckerman (C. Gray, J. Gerstle, and L. Payton opposed), to recommend approval of the annexation to City Council. The primary concern of those who dissented to the annexation was that allowing development in the 100-year floodplain did not meet city's annexation and BVCP policies. Additional restrictions on building new structures in the floodplain were discussed as part of annexation, including a condition to prohibit development in the 100-year floodplain. Several members stated that they supported the proposed affordable housing and that they would rather see housing built safely within the floodplain. Limiting development within the floodplain would severely limit, if not prohibit, any development of the site since a majority of the site is located in the 100-year floodplain and a drainage and flood control easement is being required along the west property line. At the hearing staff indicated that under current regulations, the applicant could add fill to the site to remove it from the regulatory floodplain, thus avoiding restrictions applied to the floodplain.

One member opposed to the motion for approval was interested in an allowance for detached single-family homes on the residential property so that a small home community could be built. The Board agreed on an initial zoning of Residential – Low 2 for the residential property and Public (P) for the open space lands and that the proposed annexation meets state statutes. The specific motion language is below:

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.

It should be noted that staff does not recommend any additional restrictions on development within the 100-year floodplain as conditions of this annexation. Such restrictions would not be consistent with current policy and previous practice, and conflict with current city floodplain regulations. In addition, such a condition would not prohibit the owner from adding additional fill and completing a map change to remove the property from the floodplain, which would then negate the condition. If Council desires additional regulatory and policy changes regarding the

building of habitable structures in the 100-year floodplain staff recommends that occur as part of a city-wide policy analysis, and which would then apply to all properties in the floodplain uniformly.

Refer to **Attachment E** for the meeting minutes from the hearing.

PUBLIC FEEDBACK

Required public notice was given in the form of written notification mailed to all property owners within 600 feet of the subject site and a sign posted on the property for at least 10 days. Thus, all notice requirements of Section 9-4-3, B.R.C. 1981 have been met. Public comments received regarding the project can be found in Attachment E of the [Planning Board memorandum](#). At the public hearing on Dec. 20, 2018 one member of the public addressed the Board. Refer to **Attachment E** for a summary of public comment made at the hearing.

BACKGROUND

Process

Land may be considered for annexation to the City, if the annexation would comply with state annexation statutes and the policies of Boulder Valley Comprehensive Plan (BVCP). It is anticipated in the Comprehensive Plan that Area II shall be annexed to the city of Boulder within three years, consistent with the phased expansion of the city's capacity to provide adequate urban facilities and services. If a property is annexed, zoning will be established according to land use designation in the Land Use Map of the Boulder Valley. The city's annexation policies are located within Policy 1.16 of the BVCP. An annexation agreement is required, to establish the terms and conditions of the annexation. Standard terms and conditions, such as right-of-way dedication requirements, affordable housing contributions, and fees, are established through city codes and policies. Annexations involve at least two public hearings. The first is conducted by the Planning Board, who will make a recommendation to the City Council whether or not the annexation should be approved, and the terms, conditions and zoning that should be applied. The City Council then holds a second public hearing before making their determination.

Note, the property is not required to complete a Concept Plan Review or Site Review because the site does not meet the thresholds of the low-density residential zone districts, including Residential - Low 2 (RL-2). The thresholds for required review are projects over 3 acres or 18 dwelling units. However, a voluntary site review could be requested by the applicant since five or more units would be permitted on the property.

Existing Site / Site Context

The annexation area is located north of and adjacent to South Boulder Road, east of Manhattan Drive, in the Keewaydin East neighborhood (refer to **Figure 1**). If annexed, the property would be located in the Southeast Boulder Subcommunity of the BVCP. There is no adopted Area Plan for the Southeast Boulder Subcommunity. South Boulder Road is classified as a principal arterial road adjacent to the site.

The property is developed with a one-story brick ranch style single family home (built ca. 1957) and cattle shed (built ca. 1955), with access to South Boulder Road (refer to **Figure 2**). Upon annexation, the cattle shed would be considered nonstandard to the RL-2 minimum rear yard

setback for an accessory building. A minimum of 3 feet is required for accessory structures per Section 9-7-1, “Schedule of Form and Bulk Standards,” B.R.C. 1981, unless a maintenance easement is granted by the adjacent property owners. The shed shown straddling the west property line on the survey has been removed.

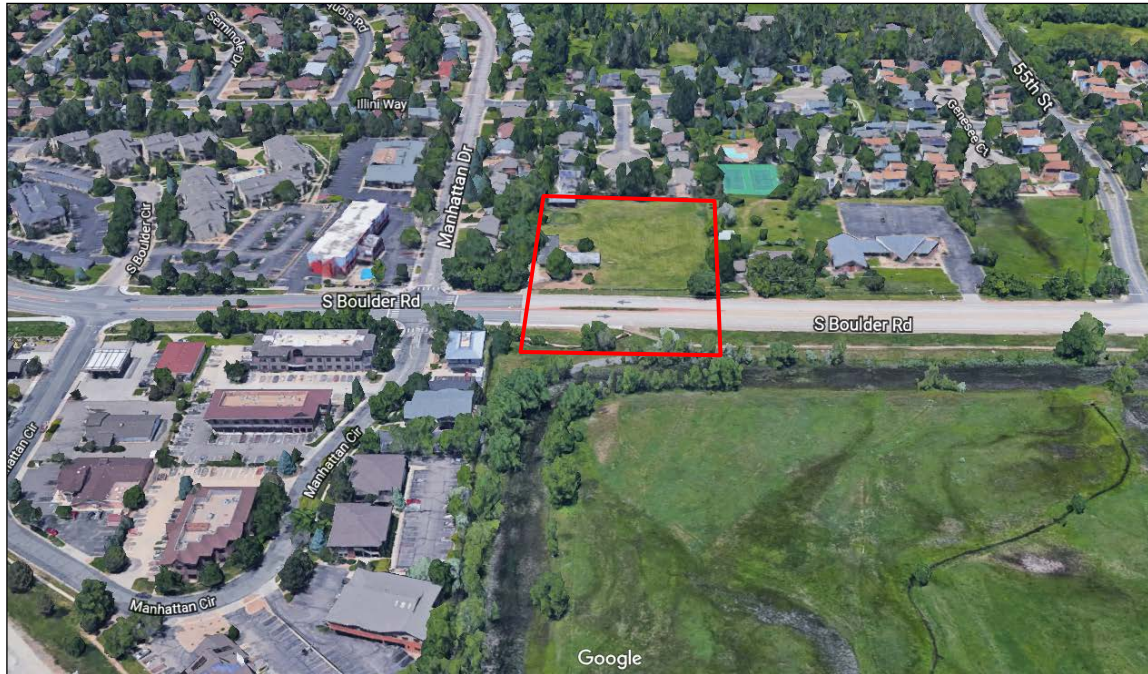


Figure 1: Bird's Eye View of Annexation Area



Figure 2: Existing Home at 5469 S. Boulder Rd.

The home is on well water and septic systems. The property is unplatted. Per a letter dated Jan. 9, 2017 to Danna Hinz from Robert Haigh, Planner I at Boulder County, the parcel is not eligible for designation as a building lot under the Boulder County Land Use Code because the property does not meet the minimum lot size. Thus, at this time the County cannot issue building permits on the parcel for structures and uses that require a legal building lot. A portion of the lot was transferred via a deed in 1989 to the developer of the residential development directly to the north, which resulted in a nonstandard lot that does not meet the requirements of the Suburban Residential (SR) zone district.

Established single-family residential neighborhoods are located to the north (Greenbelt Meadows South), northeast (Greenbelt Meadows), and northwest (Keewaydin Meadows). Surrounding properties include single-family detached homes on all sides. The South Boulder Bible Church is located on South Boulder Road to the east. City of Boulder open space (Van Vleet – North Open Space) is located to the south, across South Boulder Road (refer to **Figure 3**). Commercial, lodging, and multi-family residential uses are located to the west, across Manhattan Drive, and to the southwest, across South Boulder Road.



Figure 3: Open Space at 66 S. Cherryvale Rd.

The property is bordered by the city limits on the north and west. The area directly to the north (Greenbelt Meadows South) annexed in 1988 and the area to the west (Keewaydin Meadows) annexed in 1963. The property is located in Area II in the Boulder Valley Comprehensive Plan (BVCP), which is the “*area now under county jurisdiction where annexation to the city can be considered consistent with policies - 1.07 Adapting to Limits on Physical Expansion, 1.09 Growth Requirements and 1.16 Annexation. New urban development may only occur coincident with the availability of adequate facilities and services. Master plans project the provision of services to this area within the planning period.*” The location and characteristics of this land make it potentially suitable for new urban development, based on the apparent lack of sensitive environmental areas, hazard areas, and significant agricultural lands, the feasibility of efficient urban service extension, and contiguity to the existing Service Area, which maintains a compact community. Refer to **Figure 4** on the following page.

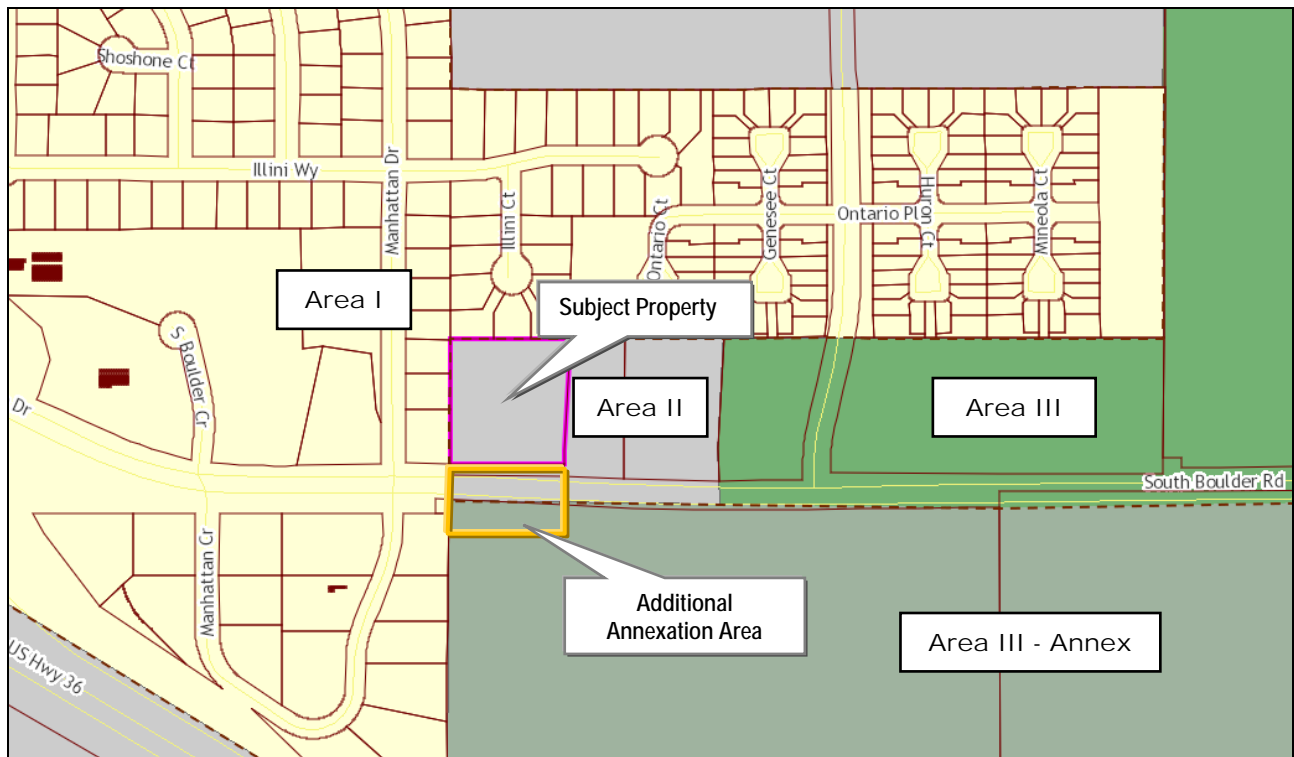


Figure 4: BVCP Planning Areas

As shown in **Figure 5** on the following page, the property at 5469 S. Boulder Rd. is designated as Low Density Residential under the BVCP Land Use Map with a planned density of two to six dwelling units per acre. The designation is described in the BVCP as follows:

<p>Low Density Residential (LR)</p>	<p>Characteristics and Locations: LR is the most prevalent land use designation in the city, covering the primarily single-family home neighborhoods, including the historic neighborhoods and Post-WWII neighborhoods.</p> <p>Uses: Consists predominantly of single-family detached units.</p> <p>BVCP Density/Intensity: 2 to 6 dwelling units per acre</p>
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The open space land at 66 S. Cherryvale Rd. is designated as Open Space, Acquired (OS-A) on the BVCP Land Use Map, which is described in the BVCP as follows:

<p>Open Space, Acquired (OS-A)</p>	<p>This applies to land already acquired by the city or Boulder County for open space purposes.</p>
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All surrounding residential properties share the LR, Low Density Residential land use designation. There is also Open Space, Acquired (OS-A), Medium Density Residential (MR), and Transitional Business (TB) land uses in the vicinity.

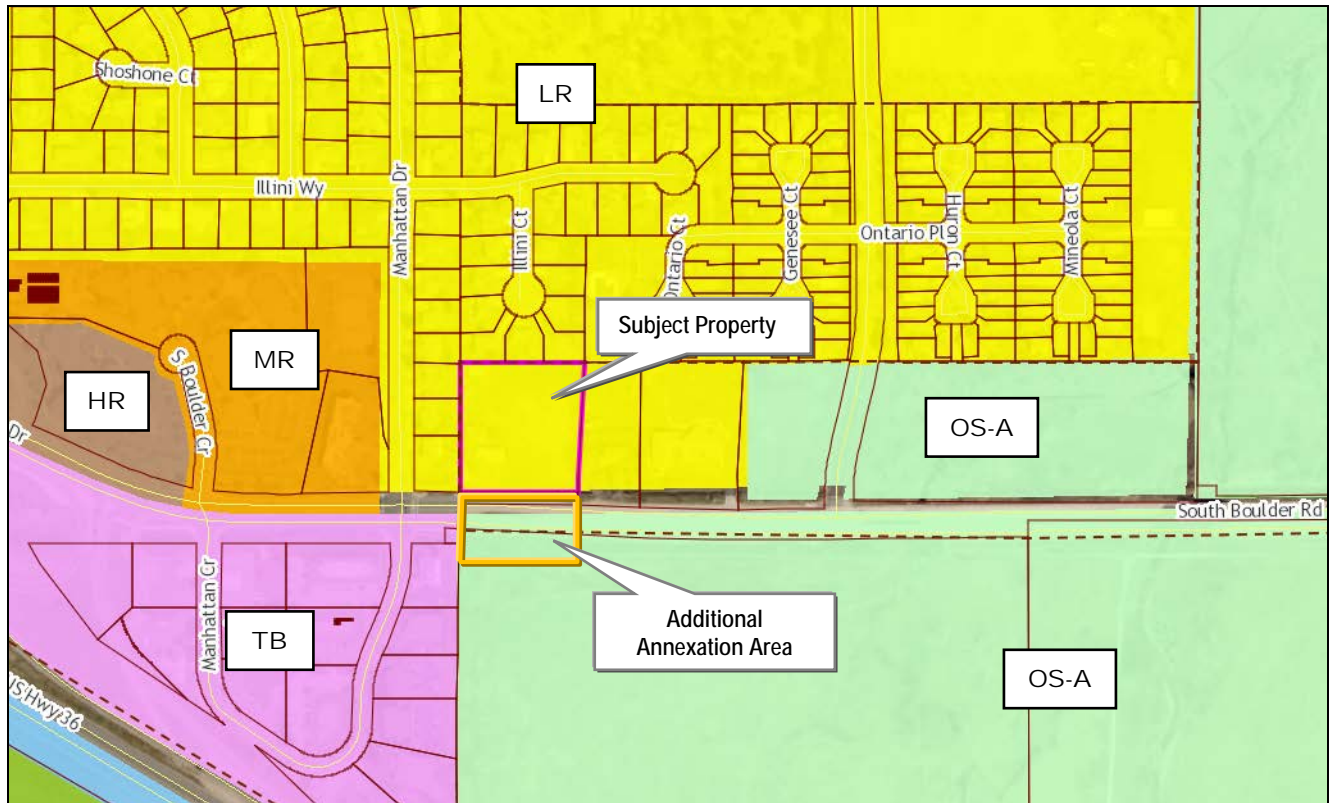


Figure 5: BVCP Land Use

The property is located in unincorporated Boulder County with a county zoning of SR – Suburban Residential, which is defined as “*low density suburban residential areas*” (Article 4-105, Boulder County Land Use Code). The applicant has proposed a city zoning designation of Residential - Low 2 (RL-2), which is defined as: “*Medium density residential areas primarily used for small-lot residential development, including without limitation, duplexes, triplexes, or townhouses, where each unit generally has direct access at ground level*” (Section 9-5-2(c)(1)(B), B.R.C. 1981). **Figure 6** on the following page shows the surrounding city zoning districts. Residential properties to the north are zoned RL-2 within Greenbelt Meadows and Greenbelt Meadows South developments. Residential properties to the northwest are zoned Residential - Low 1 (RL-1), within the Keawaydin Meadows development.

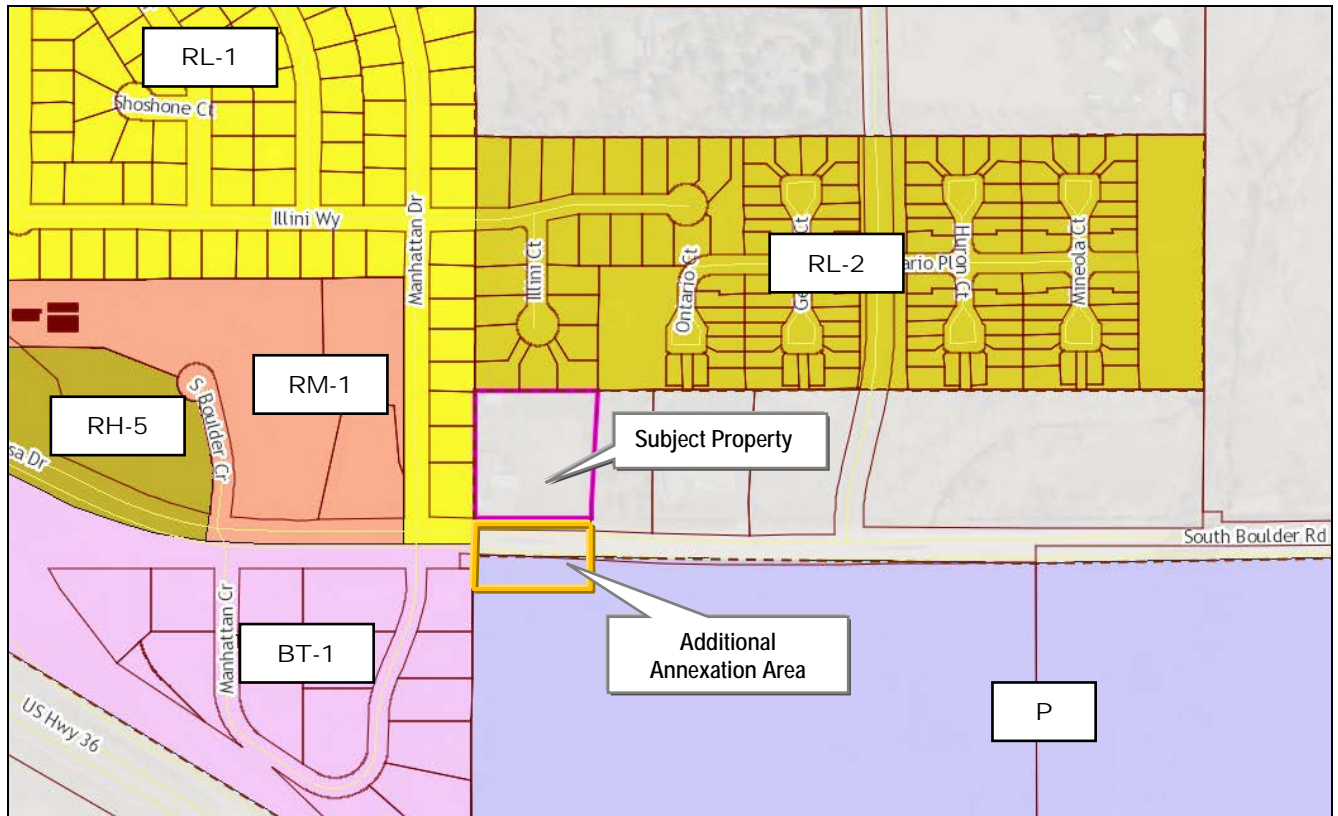


Figure 6: Surrounding City Zoning Districts

The property is essentially flat with a gentle slope to the northeast. The site is impacted by the 100- and 500-year flood plains of South Boulder Creek. However, there is a strip of high hazard zone along the west property line, in the location of the Dry Creek No. 2 Ditch. Refer to **Figure 7** on the following page. If annexed, any development within the 100-year floodplain would be subject to the city's floodplain regulations and would require the approval of a floodplain development permit. All new residential structures would need to be elevated at or above the flood protection elevation (two feet above the 100-year base flood elevation), which prohibits basements within in the 100-year floodplain. The applicant has signed a grant of easement form for a flood control and drainage easement over the western 50 feet of the property. A portion of the house and the barn are located within the proposed flood control easement. The draft annexation agreement is written to allow for the structures to remain, with conditions, in the flood control easement. Refer to **Attachment C** for the draft annexation agreement.

The property is in an area of the city where high levels of groundwater have been encountered by other properties. The city is not aware of any particular issues with groundwater on this specific site.



Figure 7: Flood Plains on 5469 S. Boulder Rd.



Figure 8: Extents of 2013 Flood Event at 5469 S. Boulder Rd.

NOTE: The 2013 urban flood extent data was developed using field surveys completed by City of Boulder staff and consultants, Digitalglobe Worldview-2 satellite imagery (9/13/13), Boulder County October 2013 Pictometry imagery, public input from the Boulder Crowd Sourcing online map, public input in community meetings, online flood survey data, and input from discussions with affected property owners. Only drainages with a FEMA mapped floodplain were surveyed. Other areas of Open Space and Mountain parks land without a regulatory floodplain were not included.

The 2013 urban flood extent data does not supersede the Special Flood Hazard Area Designation (SFHA), or 100 yr floodplain, used by FEMA for Digital Flood Insurance Rate Maps or the proposed floodplain delineations from ongoing flood studies. This data is provided as graphical representation only. The City of Boulder provides no warranty, expressed or implied, as to the accuracy and/or completeness of the information contained hereon.

The site is located in an area which can have high mosquito activity depending on exact location and which changes year-to-year. The city has a mosquito management program in the area. More information about the city's Mosquito Control Program can be found [here](#).

PROPOSAL

Project Description

The applicant is requesting annexation into the City of Boulder with Residential - Low 2 (RL-2) zoning. Allowable density and intensity in the RL-2 zone district is determined by the provision of usable open space. Residential uses in the RL-2 zone district are required to provide 6,000 square feet of usable open space per dwelling unit, meeting the requirements of Section 9-9-11, B.R.C. 1981. After dedication of 10 feet of right-of-way for South Boulder Road, the developable area of the property will be 80,501 square feet. The applicant states that there is no additional development proposed at this time and there is no site development plan. Refer to **Attachment F** for the applicant's written statements. However, additional development potential exists under the proposed zoning and the annexation agreement is written to anticipate any future development of the property. Staff estimates approximately 11 to 14 units could be provided on the site. Since allowable intensity is determined by open space the potential number of units ultimately depends upon the proposed site design for the redevelopment of the property.

The section of South Boulder Road adjacent to the site (both directions) is proposed be annexed to the city. In addition, an approximately 70-foot wide strip of open space land adjacent to South Boulder Road is proposed to be annexed. Refer to **Attachment A** for the annexation map. In reviewing the proposed annexation map staff discovered that there was a gap between the proposed annexation boundary and the Open Space boundary of approximately 65 ft on the western corner and approximately 75 ft on the eastern corner. The Van Vleet Ranch Property was acquired by the city for open space purposes in 1978 and annexed in 1995. When the Van Vleet property was annexed the boundary was determined by a fence line, not the property line. The applicant was asked to revise the annexation map so that the south edge of the proposed annexation and the boundary of open space are coincidental. The proposed annexation will ensure that the full width of right-of-way is included and bring city open space adjacent to the site into the city boundaries. The open space land would be zoned Public (P), consistent with the BVCP land use designation and adjacent open space lands.

Proposed Improvements at Redevelopment

The annexation agreement has been drafted to require the following site improvements at time of redevelopment. "Redevelopment" is defined as at the time of subdivision of the Property to create any new lot(s) or issuance of a building permit for a new or replacement dwelling unit, a new structure, an increase in floor area on the Property, or addition of three or more plumbing fixtures.

1. Constructing the cross-sectional elements for a principal arterial roadway along the entire southern boundary of the property adjacent to South Boulder Road, including an 8-foot wide buffered concrete on-street bike lane, 2-foot wide curb-and-gutter, 8-foot wide landscape area, and 8-foot wide detached sidewalk;
2. Extending the existing culverts and reconstructing the existing headwalls to remove the need for the guardrail and to accommodate the cross-sectional elements described

above, pursuant to the standards and guidelines of the AASHTO Roadside Design Guide; and

3. Removal of the existing access point from South Boulder Road and construction of a new access point from South Boulder Road that is located at least seventy-five feet from the western property line and is designed as a right-in/right-out access point. The Property shall have no more than one access point from South Boulder Road.

Refer to **Attachment C** for the annexation agreement.

Community Benefit

Proposed annexations with additional development potential need to demonstrate community benefit consistent with Boulder Valley Comprehensive Plan (BVCP) policies to offset the negative impacts of additional development in the Boulder Valley. Refer to Section III, “Annexation Policies and Statutory Requirements” below. For proposed residential development, emphasis is given to the provision of permanently affordable housing. The proposed annexation agreement requires the following:

- Fifty percent of new units constructed on the site must be permanently affordable.
- For each new market rate unit constructed the property owner or developer must pay cash-in-lieu in the amount of 25% of the cash-in-lieu amount required to be paid for a market unit under Chapter 9-13, “Inclusionary Housing,” B.R.C. 1981.
- The first two permanently affordable units constructed shall be priced to be affordable to middle income households earning no more than 100 percent of the Area Median Income (AMI). Any additional permanently affordable units shall be priced to be affordable to middle income households earning no more than 120 percent of the AMI.
- No new dwelling unit constructed shall have a floor area that exceeds 2,200 square feet. The floor area determination shall exclude up to five hundred square feet of floor area in attached garages that are primarily used for personal storage or for the parking of automobiles. The floor area of the permanently affordable units shall be equal to that of the market rate units or 1,800 square feet, whichever is smaller.
- Any new dwelling units on the property shall be constructed as duplex, triplex or fourplex buildings. No new dwelling unit may be a detached single-family home.
- Dedication of 10-foot wide portion of property for South Boulder Rd. right-of-way.
- Dedication of a 50-foot flood control and ditch easement along the western property line.

The petitioners have agreed to these conditions of annexation as part of the Annexation Agreement. Refer to the annexation agreement (**Attachment C**) for details on the affordable housing requirements.

ANALYSIS

Staff has found the petition and proposal consistent with State annexation laws in C.R.S. 31-12-101 et seq., and the city’s regulations, policies, and guidelines. A discussion of staff’s analysis follows:

1. Compliance with State Annexation Statutes

Staff has reviewed the annexation petition (**Attachment D**) for compliance with Sections 31-12-104, 31-12-105, and 31-12-107, C.R.S. and finds that the application is consistent with the statutory requirements, as affirmed by the criteria below:

- An annexation petition was filed meeting the requirements of Section 31-12-107, C.R.S.
- Landowners of more than 50 percent of the area who comprise more than 50 percent of the landowners in the area have petitioned to annex, excluding any public streets and alleys and any land owned by the annexing municipality.
- The annexation petition has been filed with the City Clerk of the City of Boulder.
- There is a community interest between the property proposed for annexation and the city of Boulder, the property borders City of Boulder residential developments, is developed with a single-family dwelling unit, and is capable of being integrated into the City of Boulder. As more than one-sixth of the perimeter of the area proposed to be annexed is contiguous with the annexing municipality, a community of interest is presumed under state law.
- The subject property does not include any area included in another annexation proceeding involving a municipality other than the city of Boulder.
- The annexation would not remove the property from one school district and add it to another.
- The property has more than one-sixth contiguity with the City of Boulder. The existing contiguity is 578 feet or 50% and is consistent with the standards of C.R.S section 31-12-104.
- The annexation would not have the effect of extending the City of Boulder's boundaries any further than three miles from any point of the existing City boundaries in any one year.

Refer to **Attachment G** for staff's analysis of the state annexation statutes.

2. Compliance with City Policies

The property at 5469 South Boulder Road may be considered for annexation due to its designation as an Area II property (Policy 1.12 Definition of Comprehensive Planning Areas I, II, and III). The Area II designation of this property refers to the planning area now under county jurisdiction where annexation to the city can be considered consistent with BVCP policies 1.07 Adapting to Limits on Physical Expansion, 1.09 Growth Requirements, and 1.16 Annexation. New urban development may only occur coincident with the availability of adequate facilities and services. The two properties to the east are also Area II properties within unincorporated Boulder County and are eligible for annexation.

Policies 1.09 and 1.16 emphasize the city's requirement for annexations and urban growth to provide significant community benefits, achieve sustainability goals for urban form, and maintain or improve environmental quality. Specifically, Policy 1.16(d) emphasizes that

annexation of Area II land with significant redevelopment potential must provide a “special opportunity or benefit to the city” through such provisions as the creation of permanently affordable housing. Staff finds that the proposed affordable housing provided at time of redevelopment of the property satisfies this requirement. Refer to a description of the proposed community benefit in Section II above. In addition, the annexation will allow connection to the city’s water system and will provide a critical public health benefit by providing safe and quality drinking water and reducing the public health threat that can occur from failing septic systems.

The city owned open space land to be annexed is located In Area III but is eligible for annexation since it is publicly owned property and as open space land does not require the full range of urban services (BVCP Annexation Policy 1.16(g). Refer to **Attachment G** for staff’s analysis of the annexation proposal with city policies.

3. Land Use Designation and Initial Zoning

Initial zoning must be consistent with the BVCP and Section 9-2-18, “Zoning of Annexed Land”, B.R.C. 1981. If a property is annexed, zoning will be established according to land use designation in the Land Use Map of the Boulder Valley. The proposed zoning (RL-2) is defined as: *“Medium density residential areas primarily used for small-lot residential development, including without limitation, duplexes, triplexes, or townhouses, where each unit generally has direct access at ground level”* (Section 9-5-2(c)(1)(B), B.R.C. 1981). As described above the property is designated as Low Density Residential on the BVCP land use map, which typically has a range of two to six units per acre.

The only applicable zoning districts in this density range are RL-1 (Residential Low- 1) and RL-2 (Residential Low – 2), which are both found in the vicinity of the project, as represented on the zoning map in Figure 7. The primary difference between RL-1 and RL-2 zoning is that intensity of development in the RL-1 zone is controlled by a minimum lot size of 7,000 square feet and in the RL-2 zone by a minimum open space requirement of 6,000 square feet per dwelling unit. The RL-2 zone permits both attached and detached housing types, whereas the RL-1 zone only permits detached units.

The table below is a summary comparing the applicable zoning districts. This chart assumes the dedication of necessary right-of-way.

TABLE 1 – ZONING ANALYSIS			
	Density/Intensity	Estimated # of Units	Possible Uses
RL-2	Determined by open space (6,000 square feet per dwelling unit)	Up to 14 (dependent on proposed site design and open space)	Detached dwelling units, duplexes, attached dwellings, townhomes
RL-1	Determined by minimum lot area (7,000 square feet per dwelling unit), number of dwelling units per acre (6.2 maximum)	Up to 9 (dependent on proposed site design)	Detached dwelling units

RL-1 neighborhoods typically pre-date 1970 and generally include larger lot sizes to match the 7,000 square feet required, whereas RL-2 zoned areas typically have developed after 1970, when open space determined density. It is more common in RL-2 areas to see Planned Unit Development (PUD) or Site Review approvals for lots that do not have 6,000 square feet individually, but rather include aggregated open space areas. Setback modifications are also common in such areas, as opposed to RL-1 properties that were developed by-right without PUDs or Site Review. Areas zoned RL-2 are generally along the eastern and southern boundary of city, as well as pockets in North Boulder and Gunbarrel.

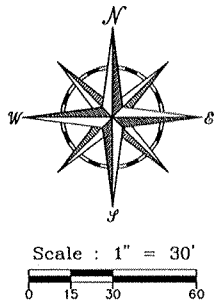
The subject property is along the eastern boundary of the city, adjacent to city open space, and could be within the two to six dwelling unit per acre range with an RL-2 designation. This demonstrates compatibility of an RL-2 designation with this property and the neighborhoods to the north and west. Staff finds Residential Low – 2 zoning for the property at 5469 S. Boulder Rd. consistent with the BVCP and Section 9-2-18, B.R.C. 1981.

The open space land to be annexed at 66 S. Cherryvale Rd. is proposed to be zoned Public (P), consistent with the BVCP land use designation and adjacent open space lands. The proposed zoning (P) is defined as: *“Public areas in which public and semi-public facilities and uses are located, including without limitation, governmental and educational uses”* (Section 9-5-2(c)(5), B.R.C. 1981).

ATTACHMENTS

- A. Annexation Map
- B. Ordinance 8311
- C. Annexation Agreement
- D. Annexation Petition
- E. Planning Board Minutes
- F. Applicant’s Written Statements
- G. Staff Analysis of State Statutes and BVCP Policies

The Rose Annexation
to the City of Boulder, Colorado
located in the southeast 1/4 of Section 4
and the northeast 1/4 of Section 9
Township 1 South, Range 70 West of the 6th P.M.
Boulder County, Colorado
ANNEXATION AREA = 2.9 ACRES

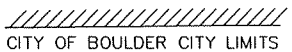


Flagstaff Surveying Inc. -

TABLE MESA SHOPPING CENTER
637 SOUTH BROADWAY, SUITE C
BOULDER, COLORADO 80305
303.499.9737

17418b-3.dwg, 6 December 2018

Legend -



RECEPTION NUMBER . . RN

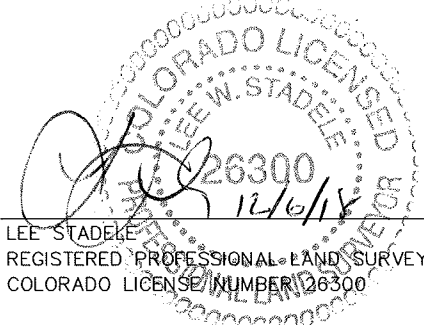
Line Table -

L1 - SOUTH 00-35-00 EAST / 103.88 FEET
L2 - NORTH 01-04-01 WEST / 98.43 FEET

DEGREES-MINUTES-SECONDS / DECIMAL FEET

Surveyor's Statement -

I, LEE STADELE, DO HEREBY STATE THAT THE PROPERTY DESCRIPTION SHOWN HEREON ACCURATELY DESCRIBES THE AREA PROPOSED FOR ANNEXATION AS GRAPHICALLY DEPICTED ON THIS ANNEXATION MAP TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.



Property Description -

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 4 AND THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 1 SOUTH, RANGE 70 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 4;

THENCE NORTH 00°35'00" WEST, ALONG THE WEST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 4 AND ALONG THE EAST LINE OF BLOCK 3, A RESUBDIVISION OF BLOCKS 1, 2, 3, 4, 5 AND PART OF BLOCK 6, KEEWAYDIN MEADOWS, A SUBDIVISION IN THE CITY OF BOULDER, A DISTANCE OF 356.85 FEET, TO THE SOUTHWEST CORNER OF LOT 6, GREENBELT MEADOWS SOUTH, A SUBDIVISION IN THE CITY OF BOULDER;

THENCE NORTH 88°25'11" EAST, ALONG THE SOUTH LINE OF LOTS 6, 5 AND 4, GREENBELT MEADOWS SOUTH, A DISTANCE OF 276.0 FEET TO THE NORTHEAST CORNER OF ASSESSOR'S TRACT 2819, AS SURVEYED;

THENCE SOUTH 00°35'00" EAST, ALONG THE EAST LINE OF ASSESSOR'S TRACT 2819 AND THE WEST LINE OF ASSESSOR'S TRACT 2818, AND SAID TRACTS EXTENDED SOUTHERLY, A DISTANCE OF 356.59 FEET TO THE SOUTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 4;

THENCE CONTINUING SOUTH 00°35'00" EAST, A DISTANCE OF 103.88 FEET TO A POINT ON THE NORTH LINE OF THAT TRACT OF LAND ANNEXED TO THE CITY OF BOULDER BY ORDINANCE NUMBER 5700 AND AS RECORDED ON FILM 2051 AT RECEPTION NO. 01516617, BOULDER COUNTY RECORDS;

THENCE SOUTH 89°23'37" WEST, ALONG THE NORTH LINE OF SAID TRACT OF LAND ANNEXED TO THE CITY OF BOULDER BY ORDINANCE NO. 5700, A DISTANCE OF 115.14 FEET;

THENCE SOUTH 89°34'30" WEST, ALONG THE NORTH LINE OF SAID TRACT OF LAND ANNEXED TO THE CITY OF BOULDER BY ORDINANCE NO. 5700, A DISTANCE OF 159.99 FEET TO A POINT ON THE WEST LINE OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 9;

THENCE NORTH 01°04'01" WEST, ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 9, A DISTANCE OF 98.43 FEET TO THE POINT OF BEGINNING.

THE ANNEXATION PARCEL CONTAINS 2.9 ACRES.

Notes -

- SEE THE DEPOSITED SURVEY PLAT FOR MORE DETAILED SURVEY INFORMATION.
- ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS MAP WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT MAY ANY ACTION BASED UPON ANY DEFECT IN THIS MAP BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON.
- THE ANNEXED AREA CONTAINS 2.9 ACRES.
- TRACT NUMBERS SHOWN AND REFERRED TO ARE THOSE SHOWN ON THE BOULDER COUNTY ASSESSOR'S MAP OF THE SOUTHEAST 1/4 OF SECTION 4, TOWNSHIP 1 SOUTH, RANGE 70 WEST, MAP NO. 1577044.

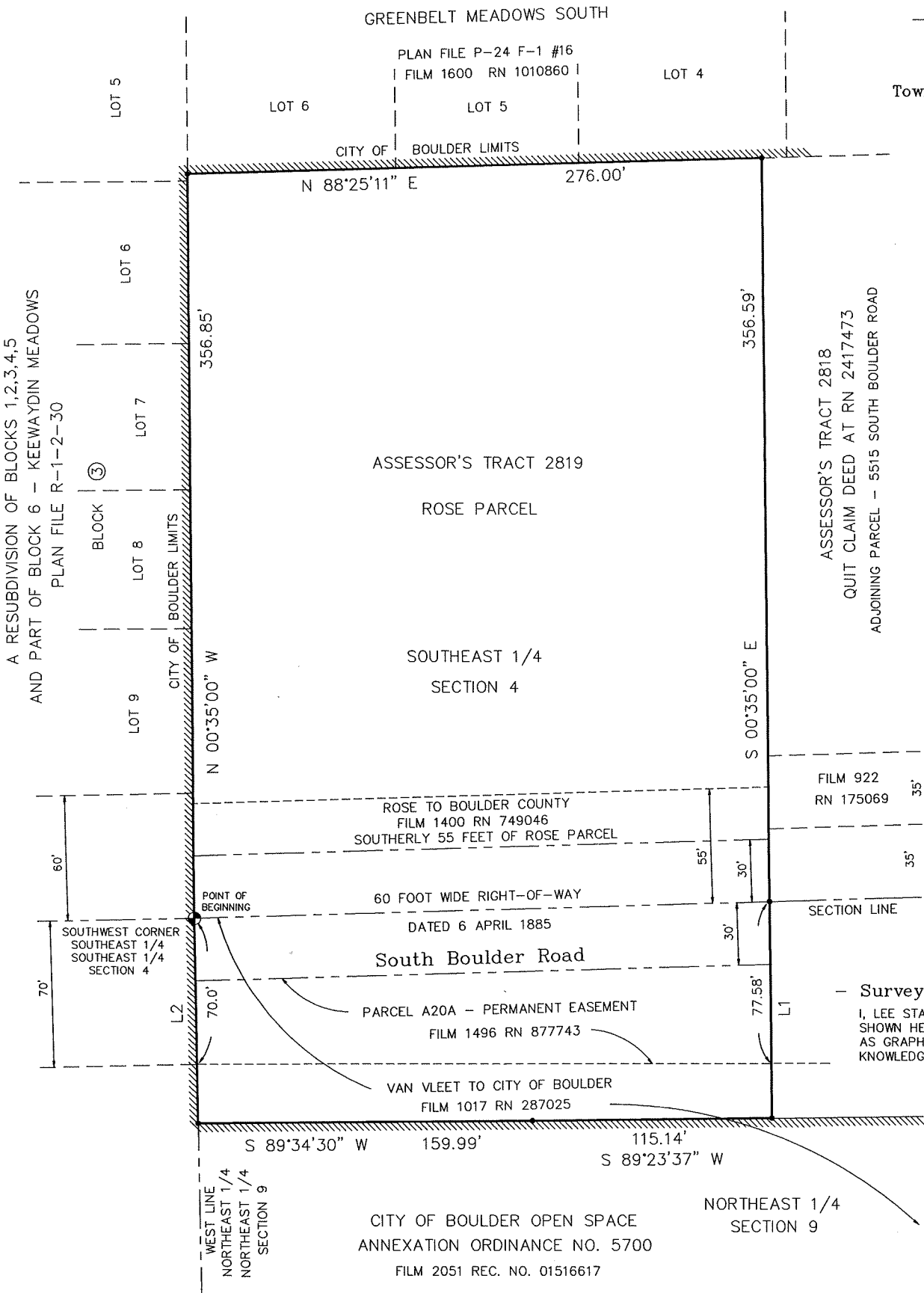
Perimeter Summary -

TOTAL PERIMETER : 1466.88 LINEAR FEET

PERIMETER CONTIGUOUS TO EXISTING CITY LIMITS : 1006.41 LINEAR FEET

REQUIRED CONTIGUITY (1/6 TOTAL PERIMETER) : 244.48 LINEAR FEET

CONTIGUITY CALCULATION : 1006.41 LINEAR FEET > 244.48 LINEAR FEET



CITY OF BOULDER OPEN SPACE
ANNEXATION ORDINANCE NO. 5700
FILM 2051 REC. NO. 01516617

ORDINANCE 8311

AN ORDINANCE ANNEXING TO THE CITY OF BOULDER APPROXIMATELY 2.9 ACRES OF LAND GENERALLY LOCATED AT 5469 SOUTH BOULDER ROAD AND A PORTION OF 66 SOUTH CHERRYVALE ROAD AND ADJACENT ROAD RIGHT-OF-WAY WITH AN INITIAL ZONING CLASSIFICATION OF RESIDENTIAL - LOW 2 (RL-2) AND PUBLIC (P) AS DESCRIBED IN CHAPTER 9-5, "MODULAR ZONE SYSTEM," B.R.C. 1981, AMENDING THE ZONING DISTRICT MAP FORMING A PART OF SAID CHAPTER TO INCLUDE THE PROPERTY IN THE ABOVE-MENTIONED ZONING DISTRICTS AND SETTING FORTH RELATED DETAILS.

THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO FINDS:

A. DKR Living Revocable Trust dated May 2, 2016, the County of Boulder, and the City of Boulder are the owners of the parcels which comprise the real property more particularly described in Exhibit A attached hereto (the "Property").

B. The owners of 100% of the area proposed for annexation, excluding streets and alleys and land owned by the annexing municipality, have petitioned for annexation of the Property with an initial zoning of Residential – Low 2 (RL -2) and Public for the Property; the Property is not embraced within any city, city and county, or incorporated town; and the Property abuts, and is contiguous to, the City of Boulder by at least one-sixth of its perimeter.

C. A community of interest exists between the Property proposed for annexation and the City of Boulder, the Property is urban or will be urbanized in the near future, and the Property is capable of being integrated into the City of Boulder.

D. The Property does not include any area included in another annexation proceeding involving a city other than the City of Boulder.

1 E. This annexation will not result in the detachment of the area from one school
2 district and the attachment of same to another school district.

3 F. This annexation will not have the effect of extending the City of Boulder's
4 boundaries any further than three miles from any point of the existing city boundaries.
5

6 G. The Property does not include any area which is the same or substantially the
7 same area in which an election for the annexation to the City of Boulder was held within twelve
8 months preceding the filing of the above petition.

9 H. The Planning Board duly proposed that the Property be annexed to the City of
10 Boulder and that the zoning district map adopted by the City Council be amended to zone and
11 include portions of the Property in the Residential – Low 2 (RL -2) and Public (P) zoning
12 districts, as provided in Chapter 9-5, "Modular Zone System," B.R.C. 1981.
13

14 I. A public hearing on the proposed annexation and initial zoning of the Property
15 annexed and zoned hereby was duly held before the City Council on February 19, 2019.
16

17 J. The initial zoning designation of Residential – Low 2 (RL -2) and Public (P) for
18 the Property is consistent with the Boulder Valley Comprehensive Plan and bears a substantial
19 relation to and will enhance the general welfare of the Property and of the residents of the City of
20 Boulder.
21

22 K. The City Council has jurisdiction and the legal authority to annex and zone the
23 Property.
24
25

1 BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER,
2 COLORADO:

3 Section 1. The territory more particularly described in Exhibit A is hereby annexed to
4 and included within the corporate boundaries of the City of Boulder.
5

6 Section 2. Chapter 9-5, "Modular Zone System," B.R.C. 1981, and the zoning district
7 map forming a part thereof, be, and the same hereby are, amended to include the area of land
8 described within the Residential – Low 2 (RL -2) and Public (P) zoning districts as shown on
9 Exhibit B attached hereto.
10

11 Section 3. The City Council adopts the recitals in this ordinance and incorporates them
12 herein by this reference.
13

14 Section 4. The City Council approves any variations or modifications to the Boulder
15 Revised Code or other City ordinances that are in the agreement associated with this annexation.

16 Section 5. The City Council authorizes the city manager to implement the terms of the
17 agreement associated with this annexation.
18

19 Section 6. The annexation and zoning of the Property is necessary for the protection of
20 the public health, safety, and welfare.

21 Section 7. The City Council deems it appropriate that this ordinance be published by title
22 only and orders that copies of this ordinance be made available in the office of the city clerk for
23 public inspection and acquisition.
24
25

1 INTRODUCTION, READ ON FIRST READING, AND ORDERED PUBLISHED BY
2 TITLE ONLY this 15th day of January, 2019.

3
4 _____
Suzanne Jones
Mayor

5
6 Attest:

7
8 _____
Lynnette Beck
City Clerk

9
10 READ ON SECOND READING, ADOPTED AND ORDERED PUBLISHED BY
11 TITLE ONLY this 19th day of February, 2019.

12
13 _____
Suzanne Jones
Mayor

14
15
16 Attest:

17
18 _____
Lynnette Beck
City Clerk

EXHIBIT A

– Property Description –

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 4 AND THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 1 SOUTH, RANGE 70 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 4;

THENCE NORTH 00°35'00" WEST, ALONG THE WEST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 4 AND ALONG THE EAST LINE OF BLOCK 3, A RESUBDIVISION OF BLOCKS 1, 2, 3, 4, 5 AND PART OF BLOCK 6, KEEWAYDIN MEADOWS, A SUBDIVISION IN THE CITY OF BOULDER, A DISTANCE OF 356.85 FEET, TO THE SOUTHWEST CORNER OF LOT 6, GREENBELT MEADOWS SOUTH, A SUBDIVISION IN THE CITY OF BOULDER;

THENCE NORTH 88°25'11" EAST, ALONG THE SOUTH LINE OF LOTS 6, 5 AND 4, GREENBELT MEADOWS SOUTH, A DISTANCE OF 276.0 FEET TO THE NORTHEAST CORNER OF ASSESSOR'S TRACT 2819, AS SURVEYED;

THENCE SOUTH 00°35'00" EAST, ALONG THE EAST LINE OF ASSESSOR'S TRACT 2819 AND THE WEST LINE OF ASSESSOR'S TRACT 2818, AND SAID TRACTS EXTENDED SOUTHERLY, A DISTANCE OF 356.59 FEET TO THE SOUTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 4;

THENCE CONTINUING SOUTH 00°35'00" EAST, A DISTANCE OF 103.88 FEET TO A POINT ON THE NORTH LINE OF THAT TRACT OF LAND ANNEXED TO THE CITY OF BOULDER BY ORDINANCE NUMBER 5700 AND AS RECORDED ON FILM 2051 AT RECEPTION NO. 01516617, BOULDER COUNTY RECORDS;

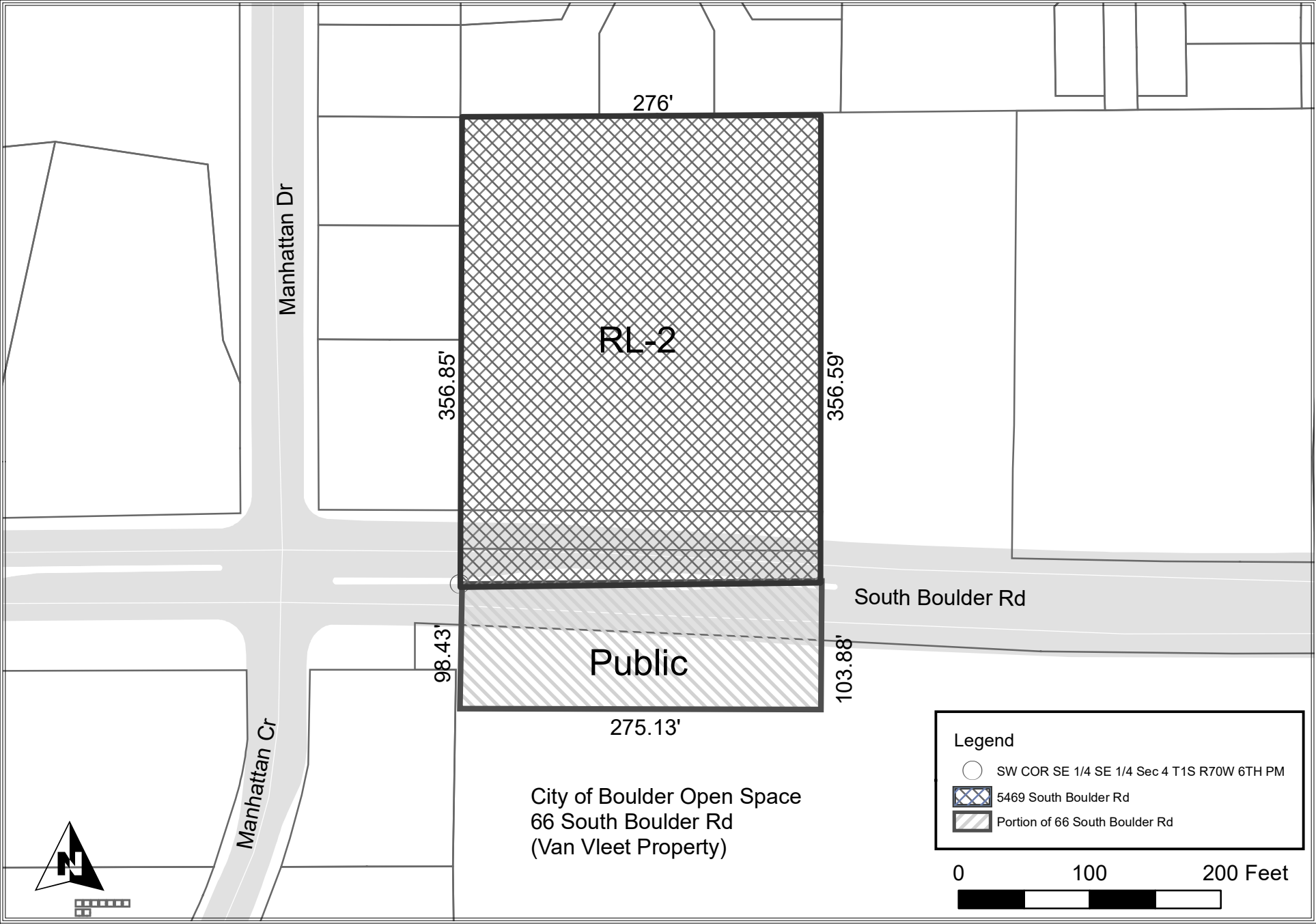
THENCE SOUTH 89°23'37" WEST, ALONG THE NORTH LINE OF SAID TRACT OF LAND ANNEXED TO THE CITY OF BOULDER BY ORDINANCE NO. 5700, A DISTANCE OF 115.14 FEET;

THENCE SOUTH 89°34'30" WEST, ALONG THE NORTH LINE OF SAID TRACT OF LAND ANNEXED TO THE CITY OF BOULDER BY ORDINANCE NO. 5700, A DISTANCE OF 159.99 FEET TO A POINT ON THE WEST LINE OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 9;

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THE ANNEXATION PARCEL CONTAINS 2.9 ACRES.

Exhibit B



For Administrative Use Only

Grantor: City of Boulder and DKR Living Revocable Trust

Grantee: DKR Living Revocable Trust and City of Boulder

Case No. LUR2017-00096

ANNEXATION AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 2018, by and between the City of Boulder, a Colorado home rule city, hereinafter referred to as "City," and the DKR Living Revocable Trust dated May 2, 2016, hereinafter referred to as "Applicant." The City and Applicant may hereafter collectively be referred to as the "Parties."

RECITALS

- A. The Applicant is the owner of the real property generally described as 5469 South Boulder Road and more particularly described on **Exhibit A** attached hereto and incorporated herein (the "Property").
- B. The Applicant is interested in obtaining approval from the City of a request for the annexation of the Property with an initial zoning designation of Residential Low – 2 (RL-2).
- C. The City is interested in insuring that certain terms and conditions of annexation be met by the Applicant in order to protect the public health, safety and welfare and prevent the placement of an unreasonable burden on the physical, social, economic, or environmental resources of the City.

NOW, THEREFORE, in consideration of the recitals, promises and covenants herein set forth and other good and valuable consideration herein receipted for, the parties agree as follows:

COVENANTS

1. Definitions

"AMI" means Area Median Income.

"Area Median Income" is that income whereby half of all households earn more and half earn less than the median income as defined by the United States Department of Housing and Urban Development, or HUD, annually for the Primary Metropolitan Statistical Area, or PMSA, that includes the City of Boulder, Colorado.

"Permanently Affordable Units" means dwelling units secured through a deed restricting covenant as permanently affordable.

"Market Units" means dwelling units not subject to a deed restricting covenant that are intended to be sold at a price determined by the Applicant based on market conditions and demand.

"Redevelopment" means at the time of subdivision of the Property to create any new lot(s) or issuance of a building permit for a new or replacement dwelling unit, a new structure, an increase in floor area on the Property, or addition of three or more plumbing fixtures.

2. **Requirements Prior to First Reading.** Prior to the first reading of the annexation ordinance before City Council, the Applicant shall:

- a. Sign this Agreement.
- b. Provide to the City an updated title commitment current within 30 days of the date of the first reading of the annexation ordinance.
- c. Pay the following to the City:

- i) **Plant Investment Fees (PIF's)**
 - Stormwater \$2.26/square foot of impervious area
 - Existing Impervious Area: 7,820 sf
 - \$17,673.60

Total Due Prior to First Reading \$17,673.60

- d. Execute the following documents, at no cost to the City, the final forms of which are subject to approval of the City Manager:
 - i) A deed of dedication substantially in the form attached hereto and incorporated herein as **Exhibit B** conveying to the City, in fee, as right-of way a 10-foot wide portion of property along South Boulder Road.
 - ii) A flood control and ditch easement substantially in the form attached hereto and incorporated herein as **Exhibit C** ("Flood Control Easement").
 - iii) A right of first refusal to purchase water and ditch rights used on or appurtenant to the Property represented by 1.141 shares of stock in The Dry Creek No. 2, Ditch Company substantially in the form shown on **Exhibit D** attached hereto and incorporated herein.
- e. Sign and file petitions for inclusion in the Northern Colorado Water Conservancy District and Municipal Subdistrict thereof and pay all applicable fees on land and improvements for inclusion in such districts.

- f. Provide proof of removal or relocation of the shed straddling the west property line, which does not conform to setback standards or the building code.
- 3. Water and Wastewater Connection Requirements. Within 180 days of the effective date of the annexation ordinance, any existing structures on the Property required to be connected to the water and wastewater utilities under the Boulder Revised Code or this Agreement shall be connected to the City's water and wastewater utilities or be demolished. If the Applicant connects any existing structures on the Property, then the Applicant agrees to perform the following:
 - a. Submit applications that meet the requirements of Chapter 11-1, "Water Utility," B.R.C. 1981, and Chapter 11-2, "Wastewater Utility," B.R.C., 1981, and obtain City approval to connect to the City's water and wastewater utilities.
 - b. Pay all applicable fees and charges associated with service line connections to the City's water and wastewater utilities, including, but not limited to, the following:
 - i) Pay the then applicable Water Plant Investment fee.
 - ii) Pay the then applicable Wastewater Plant Investment fee.
 - iii) Pay all applicable water and wastewater utility connection and inspection fees.
 - c. Construct the individual service lines to the Property and connect the existing structures to the City's water and wastewater utilities.
- 4. Transportation Requirements. At or prior to Redevelopment of the Property, the Applicant shall comply with the following:
 - a. Construct an 8-foot wide buffered concrete on-street bike lane; 2-foot wide curb-and-gutter; 8-foot wide landscape area, and 8-foot wide detached sidewalk along the entire southern boundary of the Property, improving South Boulder Road;
 - b. Construct new features and reconstruct any existing features of South Boulder Road along the Property necessary to eliminate the requirement for a guardrail pursuant to the standards and guidelines of the AASHTO Roadside Design Guide and remove the guardrail; and
 - c. Remove the existing access point to the Property from South Boulder Road and construct a new access point from South Boulder Road that is located at least seventy-five feet from the western property line and is

designed as a right-in/right-out access point. The Property shall have no more than one access point from South Boulder Road.

5. Existing Wells. The City agrees that it will not prohibit the Applicant from using existing wells for irrigation purposes, even if served by the City water utility. Under no circumstances may existing wells be used for domestic water purposes once the Applicant has connected to city water utility. No person shall make any cross connections to the City's municipal water supply system from any well on the Property.
6. Historic Drainage. The Applicant agrees to convey drainage from the Property in an historic manner that does not materially and adversely affect abutting properties.
7. Ditch Company Approval. If the Property is abutting or crossed by an existing irrigation ditch or lateral, the Applicant agrees not to relocate, modify, or alter the ditch or lateral until and unless written approval is received from the appropriate ditch company.
8. Existing Nonstandard Buildings and/or Nonconforming Uses. There are no recognized nonconforming uses on the Property. The only nonstandard buildings or structures on the Property that will be recognized by the City and allowed to continue to exist is the structure included as **Exhibit F** attached hereto and incorporated herein. Section 9-10-3, "Changes to Nonstandard Buildings, Structures, and Lots and Nonconforming Uses," B.R.C. 1981, applies to changes to nonstandard buildings.
9. New Construction. All new construction commenced on the Property after annexation shall comply with all City of Boulder laws, taxes, and fees, except as modified by this Agreement.
10. Waiver of Vested Rights. The Applicant waives any vested property rights that may have arisen under Boulder County jurisdiction. This Agreement shall replace any such rights that may have arisen under Boulder County jurisdiction. The Applicant acknowledges that nothing contained herein may be construed as a waiver of the City's police powers or the power to zone and regulate land uses for the benefit of the general public.
11. Dedications. The Applicant acknowledges that any dedications and public improvements required herein with this annexation are rationally related and reasonably proportionate to the impact of the development of the Property as set forth in this Agreement.

12. Original Instruments. Prior to the first reading of the annexation ordinance, the Applicant shall provide an original of this Agreement signed by the Applicant, along with any instruments required in this Agreement. The City agrees to hold such documents until after final legislative action on the annexation of this Property has occurred. Final legislative action by the City Council shall constitute acceptance of such documents by the City. In the event that the City does not annex the Property, the City agrees that it will return all such original documents and fees paid by the Applicant pursuant to this Agreement to the Applicant. The Applicant agrees that it will not encumber or in any way take any action that compromises the quality of such documents while they are being held by the City.
13. No Encumbrances. The Applicant agrees that between the time of signing this Agreement and the time when final legislative action on the annexation of this Property has occurred, the Applicant shall neither convey ownership nor further encumber the Applicant's Property, without the express approval from the City. Prior to the recording of this Agreement with the Boulder County Clerk and Recorder, Applicant agrees not to execute transactional documents encumbering the Property or otherwise affecting title to the Property without first notifying the City and submitting revised title work within five (5) working days of any such transaction.
14. Breach of Agreement. In the event that the Applicant breaches or fails to perform any required action under or fails to pay any fee specified under this Agreement, the Applicant acknowledges that the City may take all reasonable actions to cure the breach, including but not limited to, the filing of an action for specific performance of the obligations herein described. In the event the Applicant fails to pay any monies due under this Agreement or fails to perform any affirmative obligation hereunder, the Applicant agrees that the City may collect the monies due in the manner provided for in Section 2-2-12, B.R.C. 1981, as amended, as if the said monies were due and owing pursuant to a duly adopted ordinance of the City or the City may perform the obligation on behalf of the Applicant, and collect its costs in the manner herein provided. The Applicant agrees to waive any rights it may have under Section 31-20-105, C.R.S., based on the City's lack of an enabling ordinance authorizing the collection of this specific debt, or acknowledges that the adopting of the annexation ordinance is such enabling ordinance.
15. Failure to Annex. This Agreement and any document executed pursuant hereto shall be null and void and of no consequence in the event that the Property is not annexed to the City.
16. Future Interests. This Agreement and the covenants set forth herein shall run with the land and be binding upon the Applicant, the Applicant's successors and assigns and all persons who may hereafter acquire an interest in the Property, or any part thereof. If it shall be determined that this Agreement contains an interest in land,

that interest shall vest, if at all, within the lives of the undersigned plus 20 years and 364 days.

17. Right to Withdraw. The Applicant retains the right to withdraw from this Agreement up until the time that final legislative action has been taken on the ordinance that will cause the Property to be annexed into the City. The final legislative action will be the vote of the City Council after the final reading of the annexation ordinance. The Applicant's right to withdraw shall terminate upon the City Council's final legislative action approving the annexation. In the event that the Applicant withdraws from this Agreement in the manner described above, this Agreement shall be null and void and shall have no effect regarding the Applicant. The City agrees, within 30 days of a request by the Applicant after a withdrawal, to return all previously submitted fees, application, and easement and/or rights of way dedication documents which the Applicant submitted pursuant to this Agreement to the City.

18. Affordable Housing. The Parties agree that this Agreement, including this Paragraph 18, is a voluntary agreement between the City and the Applicant that deed restricts dwelling units on the Property to ensure that they are constructed and maintained as for-sale permanently affordable housing units. At least 50 percent of the total number of new dwelling units constructed on the Property shall be Permanently Affordable Units. Currently, one dwelling unit exists on the Property. In addition, the Applicant agrees to pay for each new Market Unit constructed on the Property cash-in-lieu in the amount of 25% of the cash-in-lieu amount required to be paid for a market unit under Chapter 9-13, "Inclusionary Housing," B.R.C. 1981.
 - a. Rounding. Any percent referenced in this Paragraph 18 that results in a fraction is subject to standard rounding (0.5 and above rounds up).
 - b. For-Sale. All Permanently Affordable Units on the Property shall be for-sale; units that are owned by individual home owners.
 - c. Pricing. The first two Permanently Affordable Units constructed shall be priced to be affordable to middle income households earning no more than 100 percent of the AMI. Any additional Permanently Affordable Units shall be priced to be affordable to middle income households earning no more than 120 percent of the AMI. Initial sale prices shall be based on the affordable pricing sheet established by the city manager and in place when the affordable deed restricting covenant is signed.
 - d. Covenants. Prior to a building permit application for a building containing a Permanently Affordable Unit or any Market Units required to be constructed concurrently pursuant to this Agreement, the Applicant and City shall execute and record with the Boulder County Clerk and Recorder permanently affordable deed restricting land covenants and related required documents, including a promissory note and deed of

trust, consistent with this Agreement to permanently secure the affordability of the Permanently Affordable Units.

- e. Affordable Agreement. Prior to any building permit application for any new dwelling unit on the Property, the Applicant shall execute an agreement with the City that specifies, without limitation, the following requirements (the "Affordable Agreement"):
 - i) Permanently Affordable Unit type, size, location and distribution;
 - ii) Level of affordability for Permanently Affordable Units;
 - iii) Required documentation, including deed restricting covenants;
 - iv) Parking for the Permanently Affordable Units, which must be equivalent to the parking provided for Market Units;
 - v) City Manager review of and requirements for Condominium Declaration and Homeowner Association documents;
 - vi) Requirements for inspections of Permanently Affordable Units to ensure quality materials, construction techniques and workmanship and compliance with City affordable housing program requirements. All costs for the time of an inspector and any costs incurred in relation to the inspection shall be borne by the Applicant;
 - vii) Livability standards for Permanently Affordable Units; and
 - viii) Required marketing procedures.
- f. Modification of Affordable Housing. In the Affordable Agreement, the Applicant and the City Manager, or her delegate, may modify the requirements set forth in this Paragraph 18 provided that the City Manager finds the proposed development would provide an affordable housing benefit that provides a community benefit equivalent to the housing benefit provided by the Permanently Affordable Units and cash-in-lieu payments required herein.
- g. Floor Plan and Finish Approvals. Prior to signing the Covenants and no later than a building permit application for any Permanently Affordable Unit, the Applicant shall submit and obtain approval from the City Manager of documentation, including but not limited to architectural plans, floor plans and finish specifications demonstrating that the Permanently Affordable Units meet the requirements of this Agreement, the Affordable Agreement, Chapter 9-13, "Inclusionary Housing," B.R.C. 1981, and the City's Livability Standards for Permanently Affordable Housing. No building permit may be issued for a Permanently Affordable Unit until the location, size, type, fixtures,

finishes and building design are accepted by the City Manager.

- h. Design Quality. The Permanently Affordable Units shall be of comparable quality in design, construction, workmanship and materials to the Market Units. An administrative level Affordable Housing Design Review is applicable to any affordable housing provided on-site with greater than twenty five percent (25 percent) affordable units that does not complete a site review.
- i. Consistency with Chapter 9-13, "Inclusionary Housing," B.R.C. 1981, and related Administrative Regulations. Except as specifically modified by this Agreement, implementation of the affordable housing requirements under this Agreement will be consistent with Chapter 9-13, "Inclusionary Housing," B.R.C. 1981, and related Inclusionary Housing Administrative Regulations of the City of Boulder.
- j. Concurrency. The Applicant shall develop Permanently Affordable Units concurrently with Market Units. New dwelling units shall be constructed on a one-to-one basis: at least one Permanently Affordable Unit will be developed concurrently with each Market Unit. A Market Unit will not receive a certificate of occupancy until the concurrently constructed Permanently Affordable Unit receives a certificate of occupancy. If the maximum density possible on the Property, as determined by the City Manager, is an odd number of dwelling units, two Permanently Affordable Units must be constructed concurrently with the first new Market Unit. For example, if the Property may have up to 7 dwelling units, 3.5 or half must be Permanently Affordable Units. This would be rounded up to 4 Permanently Affordable Units and 3 Market Units. The first Market Unit and two Permanently Affordable Units shall be constructed at the same time; the second Market Unit and third Permanently Affordable Unit shall be constructed at the same time, and the third Market Unit and fourth Permanently Affordable Unit may be constructed concurrently.
- k. Dwelling Unit Size. No new dwelling unit constructed on the Property shall have a floor area that exceeds 2,200 square feet as determined based on the definition of "floor area for attached dwelling units" in Section 9-16-1, "General Definitions," B.R.C. 1981, as relating to Inclusionary Housing, and as it may be amended. The floor area determination shall exclude up to five hundred square feet of floor area in attached garages that are primarily used for personal storage or for the parking of automobiles. The floor area of the Permanently Affordable Units shall be equal to that of the Market Units or 1,800 sq. ft. whichever is smaller.

- l. Dwelling Unit Type. All dwelling units, other than the existing dwelling unit structure, on the Property shall be provided in duplex, triplex, or fourplex type buildings. All dwelling units shall have no fewer than two bedrooms. The Permanently Affordable Units shall have an equal number of bedrooms and bathrooms as the Market Units. No new dwelling unit developed on the Property shall be a detached single-family home.
 - m. Amenities. Access to any amenities provided to the Market Units owners, including but not limited to open space, parks, clubhouses, fitness centers, shall equally be provided to the Permanently Affordable Unit owners.
 - n. Agreement to Abide by Restrictions. The Applicant agrees to construct, restrict, and sell the Permanently Affordable Units as described and required by this Agreement. The Applicant agrees that no new dwelling units shall be established unless the requirements of this Paragraph 18 have been met. The Applicant further agrees that the City may withhold any approval affecting the Property, including without limitation a building permit, administrative review, use review, site review, and subdivision, until the requirements of this Paragraph 18, capable of being completed at the time of such approval, have been satisfied.
19. Zoning. The Property shall be annexed to the City with a Residential-Low 2 (RL-2) zoning classification, and except as set forth herein, shall be subject to all of the rights and restrictions associated with that zoning.
20. Flood Control Easement Conditions. The Applicant agrees that:
 - a. The City will allow the existing structures identified on **Exhibit E** ("Existing Structure(s)") to remain within the Flood Control Easement area until removed, destroyed, demolished, or relocated.
 - b. The City can require the Applicant to remove any Existing Structure if removal of such structure is required to implement a specific flood mitigation project.
 - c. The Applicant shall neither construct any new structures nor rebuild, substantially improve or modify, or reconstruct the Existing Structures within the Flood Control Easement area.

21. Property Impacted by Floodplain. The Property is impacted by the 100-year floodplain and 500-year floodplain of South Boulder Creek. Any development of the Property must comply with Sections 9-3-2 through 9-3-8 of the Boulder Revised Code, 1981.

EXECUTED on the day and year first above written.

DKR Living Revocable Trust
dated May 2, 2016

By: Sheila M. Albertson
Sheila M. Albertson, Trustee

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

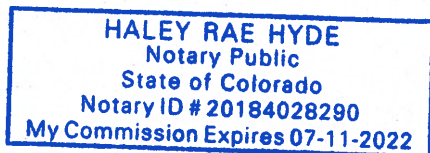
The foregoing instrument was acknowledged before me this 21 day of December 2018, by Sheila M. Albertson as Trustee of DKR Living Revocable Trust dated May 2, 2016.

Witness my hand and official seal.

My commission expires: 07/11/22

[Seal]

Haley Rae Hyde
Notary Public



CITY OF BOULDER, COLORADO

By: _____
Jane S. Brautigam, City Manager

Attest:

City Clerk

Approved as to form:

City Attorney's Office

Date: _____

EXHIBITS

- | | |
|-----------|---|
| Exhibit A | Legal Description of Property |
| Exhibit B | Deed of Dedication for South Boulder Road |
| Exhibit C | Grant of Flood Control and Ditch Easement |
| Exhibit D | Grant of Right of First Refusal |
| Exhibit E | Existing Structures in Flood Control Easement |
| Exhibit F | Existing Nonstandard Structure |

EXHIBIT A TO ANNEXATION AGREEMENT

LEGAL DESCRIPTION (5469 South Boulder Road)

THAT PORTION OF THE SOUTHWEST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER OF SECTION 4, TOWNSHIP 1 SOUTH, RANGE 70 WEST OF THE 6TH P.M. DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHWEST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER OF SECTION 4, TOWNSHIP 1 SOUTH, RANGE 70 WEST OF THE 6TH P.M., THENCE ALONG THE SOUTH BOUNDARY OF SAID QUARTER-QUARTER OF SAID SECTION, NORTH 88 DEGREES 22 MINUTES EAST A DISTANCE OF 1326.20 FEET TO THE POINT OF TRUE BEGINNING, WHICH IS THE SW CORNER OF THE SOUTHEAST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER OF SAID SECTION 4, TOWNSHIP 1 SOUTH, RANGE 70 WEST; THENCE NORTH 88 DEGREES 22 MINUTES EAST, A DISTANCE OF 287.87 FEET; THENCE NORTH 0 DEGREES 35 MINUTES WEST, A DISTANCE OF 656.0 FEET; THENCE SOUTH 88 DEGREES 22 MINUTES WEST, A DISTANCE OF 287.87 FEET; THENCE SOUTH 0 DEGREES 35 MINUTES EAST, A DISTANCE OF 656.0 FEET, MORE OR LESS, TO THE TRUE POINT OF BEGINNING.

COUNTY OF BOULDER,
STATE OF COLORADO.

LESS THOSE PORTIONS CONVEYED BY DEED RECORDED MARCH 26, 1986 UNDER RECEPTION NO. 749046 AND DEED RECORDED MARCH 28, 1989, UNDER RECEPTION NO. 974323,

AND AS SAID PARCEL IS AFFECTED BY INSTRUMENTS RECORDED APRIL 18, 1986 UNDER RECEPTION NOS. 753838 AND 753839.

EXHIBIT B TO ANNEXATION AGREEMENT

For Administrative Purposes Only
Grantor: DKR Living Revocable Trust
Grantee: City of Boulder
Property Address: 5469 S. Boulder Rd.
Case#: LUR2017-00096

**DEED OF DEDICATION
(Public Street)**

DKR LIVING REVOCABLE TRUST dated March 2, 2016, Grantor, whose legal address is 480 W. Sutton Circle, Lafayette, Colorado 80026, for good and valuable consideration of LESS THAN FIVE HUNDRED DOLLARS, the receipt of which is hereby acknowledged, does hereby dedicate, transfer, grant, sell and convey to the CITY OF BOULDER, a Colorado home rule city, Grantee, whose legal address is 1777 Broadway, Boulder, Colorado 80302, for public use forever, as a public street right-of-way, that certain real property situated in Boulder County, Colorado described on Exhibit A attached hereto and incorporated herein by reference, together with all use, rights and privileges as are necessary and incidental to the reasonable and proper use of same.

Grantor, for itself and its successors and assigns, does hereby covenant and agree that public use of such right-of-way shall not be obstructed or interfered with.

Grantor warrants its ability to grant and convey the subject real property.

The terms of this Deed of Dedication shall be binding upon Grantor and its successors and assigns, and all other successors to themselves in interest and shall continue as a servitude running in perpetuity with the property described above.

IN WITNESS WHEREOF, the Grantor has executed this Deed of Dedication as of this ____ day of _____, 20____.

GRANTOR:
DKR LIVING REVOCABLE TRUST dated March 2, 2016

By: _____
Sheila M. Albertson, Trustee

EXHIBIT B TO ANNEXATION AGREEMENT

[NOTARY BLOCK FOLLOWS]

STATE OF COLORADO)
)ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me on this _____ day of _____, 201____, by Sheila M. Albertson as Trustee of the DKR Living Revocable Trust dated March 2, 2016.

Witness my hand and official seal.

My commission expires:_____

Notary Public

EXHIBIT B TO ANNEXATION AGREEMENT

LENDER'S CONSENT AND SUBORDINATION

The undersigned, a beneficiary under a certain deed of trust encumbering the property, hereby expressly consents to and joins in the execution and recording of this grant of public right of way and makes the deed of trust subordinate hereto. The undersigned represents that he or she has full power and authority to execute this Lender's Consent and Subordination on behalf of the below-stated lender.

BLUE FEDERAL CREDIT UNION

By: _____
Printed Name: _____
Title: _____

ACKNOWLEDGMENT

State of _____)
County of _____) ss.

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____ as _____ of Blue Federal Credit Union.

Witness my Hand and Seal.

My Commission Expires: _____

[Seal]

Notary Public

EXHIBIT A TO DEED OF DEDICATION

Property Description – 10 foot wide right-of-way dedication

A strip of land 10 feet wide located in the southeast quarter of Section 4, Township 1 South, Range 70 West of the 6th Principal Meridian, in the County of Boulder, State of Colorado, more particularly described as follows:

Commencing at the southwest corner of the southeast quarter of the southeast quarter of said Section 4;

Thence North 00 degrees 35'00" West, along the west line of the southeast quarter of the southeast quarter of said Section 4, a distance of 55.0 feet to the northwest corner of that parcel of land conveyed to Boulder County on Film 1400 at Reception Number 749046, said point being the **Point of Beginning**;

Thence North 88 degrees 22'00" East, along a line that is parallel with and 55.0 feet from the south line of the southeast quarter of the southeast quarter of said Section 4 and along the north line of that tract of land conveyed to the County of Boulder on Film 1400 at Reception No. 749046, a distance of 276.0 feet to the southeast corner of Assessor's Tract 2819 (Rose Parcel) as surveyed;

Thence North 00 degrees 35'00" West, along the east line of said Tract 2819, a distance of 10.0 feet;

Thence South 88 degrees 22'00" West, along a line that is a parallel with and 65.0 feet from the south line of the southeast quarter of the southeast quarter of said Section 4, a distance of 276.0 feet to a point on the west line of the southeast quarter of the southeast quarter of said Section 4, said point also being on the east line of Lot 9, A RESUBDIVISION OF BLOCKS 1, 2, 3, 4, 5 AND PART OF BLOCK 6, KEEWAYDIN MEADOWS, a subdivision in the City of Boulder;

Thence South 00 degrees 35'00" East, along the west line of the southeast quarter of the southeast quarter of said Section 4, a distance of 10.0 feet to the **Point of Beginning**.

This parcel contains 2760 square feet.

Prepared by Lee Stadele
Colorado PLS 26300
word file - 17418d1.doc



Flagstaff Surveying Inc.
637 South Broadway – Suite C – Table Mesa Shopping Center
Boulder . Colorado . 80305
303.499.9737 – LeeStadel@FlagstaffSurveying.com

EXHIBIT A TO DEED OF DEDICATION

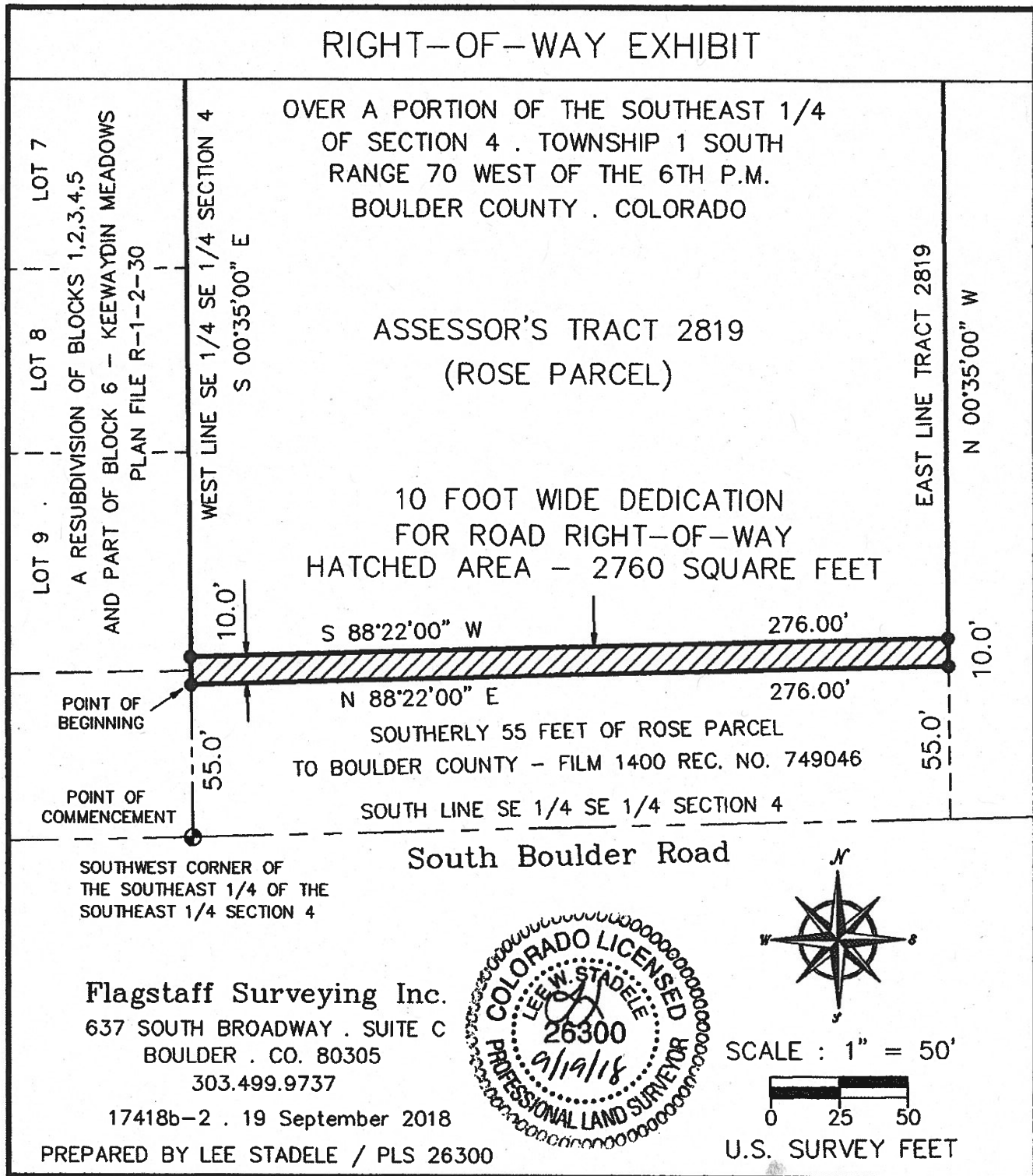


EXHIBIT C TO ANNEXATION AGREEMENT

For Administrative Purposes Only

Grantor: DKR Living Revocable Trust

Grantee: City of Boulder, Colorado

Property Address: 5469 S. Boulder Rd.

Case#: LUR2017-00096

GRANT OF FLOOD CONTROL AND DITCH EASEMENTS

DKR LIVING REVOCABLE TRUST dated March 2, 2016 ("Grantor"), whose address is 480 W. Sutton Circle, Lafayette, Colorado 80026, for \$1.00 and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey to the CITY OF BOULDER, a Colorado home rule city ("Grantee"), whose address is 1777 Broadway, Boulder, Colorado 80302, a flood control and ditch easement for the purpose of drainage conveyance and control of flood waters and installation and maintenance of improvements necessary to ensure conveyance as determined by the Grantee and for the purpose of installation, construction, repair, maintenance and reconstruction of a drainage ditch or lateral and channel improvements and appurtenances thereto, together with all rights and privileges as are necessary or incidental to the reasonable and proper use of such easement in and to, over, under and across the following real property, situated in Boulder County, Colorado, to-wit:

See Exhibit A attached

Grantor, for itself and for its successors, agents, lessees, and assigns, does hereby covenant and agree that no permanent structure or improvement shall be placed on said easement by itself or its successors or assigns, and that said use of such easement shall not otherwise be obstructed or interfered with.

Grantor warrants its ability to grant and convey this easement.

The terms of this easement shall run with the land and shall be binding upon and inure to the benefit of the Grantor, its agents, lessees and assigns, and all other successors to it in interest and shall continue as a servitude running in perpetuity with the property described above.

IN WITNESS WHEREOF, Grantor has caused this instrument to be duly executed as of this ____ day of _____, 201__.

GRANTOR:

DKR Living Revocable Trust dated March 2, 2016

By: _____
Sheila M. Albertson, Trustee

[NOTARY BLOCK FOLLOWS]

EXHIBIT C TO ANNEXATION AGREEMENT

STATE OF COLORADO)
)ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this _____ day of _____, 201__, by Sheila M. Albertson as Trustee of the DKR Living Revocable Trust dated March 2, 2016.

Witness my hand and official seal.

My commission expires: _____

Notary Public

EXHIBIT C TO ANNEXATION AGREEMENT

LENDER'S CONSENT AND SUBORDINATION

The undersigned, a beneficiary under a certain deed of trust encumbering the property, hereby expressly consents to and joins in the execution and recording of this grant of easement and makes the deed of trust subordinate hereto. The undersigned represents that he or she has full power and authority to execute this Lender's Consent and Subordination on behalf of the below-stated lender.

BLUE FEDERAL CREDIT UNION

By: _____
Printed Name: _____
Title: _____

ACKNOWLEDGMENT

State of _____)
County of _____) ss.

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____ as _____ of Blue Federal Credit Union.

Witness my Hand and Seal.

My Commission Expires: _____

[Seal]

Notary Public

EXHIBIT A TO EASEMENT

Property Description – 50 foot wide flood control easement

A strip of land 50 feet wide located in the southeast quarter of Section 4, Township 1 South, Range 70 West of the 6th Principal Meridian, in the County of Boulder, State of Colorado, more particularly described as follows:

Commencing at the southwest corner of the southeast quarter of the southeast quarter of said Section 4;

Thence North 00 degrees 35'00" West, along the west line of the southeast quarter of the southeast quarter of said Section 4, a distance of 65.0 feet to a point 10 feet north of the northwest corner of that parcel of land conveyed to Boulder County on Film 1400 at Reception Number 749046, said point being the **Point of Beginning**;

Thence continuing North 00 degrees 35'00" West, along the west line of the southeast quarter of the southeast quarter of said Section 4, a distance of 291.85 feet to the northwest corner of Assessor's Tract 2819, said point being on the south line of Lot 6, GREENBELT MEADOWS SOUTH, a subdivision in the City of Boulder;

Thence North 88 degrees 25'11" East, along the south line of said Lot 6, GREENBELT MEADOWS SOUTH, a distance of 50.0 feet;

Thence South 00 degrees 35'00" East, along a line that is parallel with and 50 feet from the west line of the southeast quarter of the southeast quarter of said Section 4, a distance of 291.8 feet to a point that is 10 feet north of the south line of said Tract 2819;

Thence South 88 degrees 22'00" West, along a line that is parallel with and 65.0 feet from the south line of the southeast quarter of the southeast quarter of said Section 4, a distance of 50.0 feet to the **Point of Beginning**.

This parcel contains 14,589 square feet.

Prepared by Lee Stadele
Colorado PLS 26300
word file - 17418f2.doc

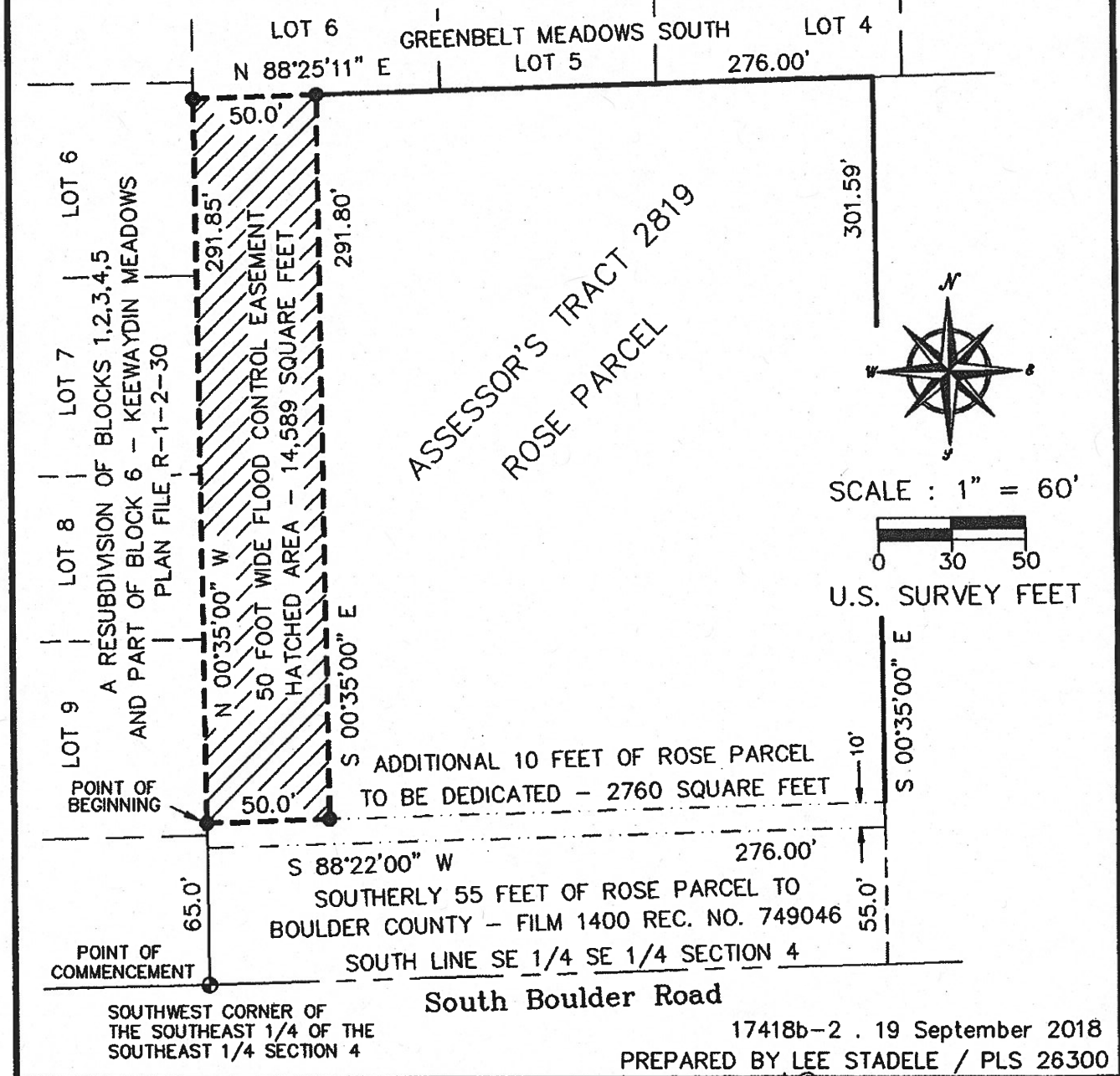


Flagstaff Surveying Inc.
637 South Broadway – Suite C – Table Mesa Shopping Center
Boulder . Colorado . 80305
303.499.9737 – LeeStadel@FlagstaffSurveying.com

EXHIBIT A TO EASEMENT

FLOOD CONTROL EASEMENT EXHIBIT

OVER A PORTION OF THE SOUTHEAST 1/4 OF SECTION 4
OF SECTION 4 . TOWNSHIP 1 SOUTH . RANGE 70 WEST OF THE 6TH P.M.
BOULDER COUNTY . COLORADO



17418b-2 . 19 September 2018
PREPARED BY LEE STADELE / PLS 26300

Lee Stadle 9/19/18

EXHIBIT D TO ANNEXATION AGREEMENT

GRANT OF RIGHT OF FIRST REFUSAL TO PURCHASE CERTAIN WATER AND DITCH RIGHTS

THIS AGREEMENT is by and between DKR Living Revocable Trust dated March 2, 2016 whose address is 480 W. Sutton Circle, Lafayette, Colorado 80026 ("Grantor"), and the City of Boulder, a Colorado home rule city, whose address is 1777 Broadway, P.O. Box 791, Boulder, Colorado 80306-0791 ("City").

RECITALS

- A. Grantor is the owner of property generally located at 5469 South Boulder Road and more particularly described on Exhibit A ("Property"). The Property is required to be connected to the City municipal water supply system as a condition of annexation. Grantor is also the owner of water and ditch rights used on or appurtenant to such Property.
- B. The Grantor has petitioned to annex said Property and has entered into an annexation agreement with City. As a condition of that annexation, the Grantor has agreed to offer to the City on a form provided by the city manager the right of first refusal on all water and ditch rights used on or appurtenant to the Property at fair market value.
- C. City desires that such water and ditch rights continue to be available for use by Grantor on said Property that has City water utility service and desires that the timing of Grantor's offer to sell such water and ditch rights to City be delayed until such time as Grantor no longer will use such water and ditch rights on the Property.
- D. Grantor is willing to encumber any and all ditch company share certificates associated with the water and ditch rights with the obligations contained herein.

AGREEMENT

1. Grantor is the owner of property commonly known as 5469 South Boulder Road, Boulder, Colorado and more particularly described on Exhibit A attached and incorporated herein by reference ("Property").
2. The "Water Rights" owned by Grantor are described as follows:

all water, water rights, ditches, ditch rights, wells, well rights, reservoirs and reservoir rights appurtenant to or used in connection with any of the Property, including particularly, but not by way of limitation, all of Grantor's interest in the water and water

EXHIBIT D TO ANNEXATION AGREEMENT

rights, ditches and ditch rights, and reservoirs and reservoir rights represented by 1.141 shares of stock in The Dry Creek No. 2, Ditch Company ("Ditch Company") represented by Ditch Company Share Certificate No. 492; together with any and all lateral ditches, easements, rights of way and entitlements appurtenant to or used in connection with the Water Rights.

3. In consideration for, and pursuant to City's annexation of the Property, Grantor does hereby grant to the City the right of first refusal to purchase the Water Rights, or any part thereof, as described in this Agreement.
4. Grantor shall provide written notice and offer to sell the Water Rights to the City at least 60 days in advance of any of the following occurrences:
 - a. Grant, lease, sale, transfer, exchange, or other conveyance of an interest in the Water Rights by Grantor to a bona fide third-party purchaser; or
 - b. Grant, lease, sale, transfer, exchange, or other conveyance of an interest in the Property by Grantor to bona fide third-party purchaser.

The written notice to be provided by Grantor as required herein shall include the details and terms of any such proposed grant, sale, lease, transfer, exchange or other conveyance.

5. The offer to sell the Water Rights to the City shall be for the fair market value of the Water Rights as determined by the City Manager and the Grantor at the time of the offer to sell. If the City desires to exercise its right to purchase the Water Rights, the City shall provide notice thereof to Grantor within 30 days of receiving the notice and offer to sell and the parties shall execute the Agreement to Buy and Sell Water Rights, substantially as shown on Exhibit B attached hereto and incorporated herein by reference.
6. If the City does not exercise its right to purchase the Water Rights within 30 days of receiving written notice from the Grantor as described in paragraph 5 above, Grantor is free to convey the Water Rights to the same bona fide third-party purchaser; however, Grantor shall not convey the Water Rights to the same bona fide third-party purchaser for an amount less or terms different than those contained in the written notice provided to the City. If the proposed transfer to the same bona fide third-party purchaser is not consummated, the City's right of first refusal herein set forth shall not be deemed waived or cancelled but shall remain in full force and effect.
7. The parties hereto agree that a transfer of the Water Rights, or any portion thereof, shall be made only after compliance with all of the provisions of this Agreement, except that the following transfers shall not trigger the City's right of first refusal and shall be exempt from the terms and conditions of this Agreement to the extent herein provided and subject to all other terms and conditions of this Agreement:
 - a. A contemporaneous transfer of the Water Rights together with the Property to the same owner; and

EXHIBIT D TO ANNEXATION AGREEMENT

- b. A lease of the Water Rights together with the Property for no more than three years in duration.
8. Any conveyance of the Water Rights in violation of this Agreement shall be null and void. In addition to all other remedies available to the City at law or in equity, this Agreement may be enforced by specific performance.
9. Grantor shall notify Ditch Company in writing with a copy to the City within 30 days of the execution of this Agreement that the Water Rights owned by the Grantor are encumbered by the provisions of this Agreement.
10. Upon issuance of the permit for new or expanded water service referenced above, the City will reduce the outdoor allocation component of the municipal water budget for the Property by an amount equal to the amount of water available under the Water Rights that duplicates municipal water available to the Property or a portion thereof due to an allocation from the municipal water budget. The water budget reduction shall be documented on a form to be provided by the City and signed by Grantor. The City may also reduce the amount due under Section 4-20-26, "Water Plant Investment Fees," B.R.C. 1981, for the outdoor allocation based on the reduced water budget needed for outdoor irrigation for the Property. Grantor shall pay any incremental Water Plant Investment Fee in the future upon Grantor's request for a full (non-reduced) water budget following sale of the Water Rights.
11. The terms of this Agreement shall be binding on Grantor, Grantor's heirs, agents, lessees, assigns, and all other successors to Grantor in interest. This Agreement shall be recorded in the records of the Boulder County Clerk and Recorder as an encumbrance on the Property. If this Agreement shall be deemed to create an interest in land, such interest shall vest, if at all, during the lives of the undersigned plus twenty (20) years and three hundred and sixty-four (364) days.
12. Any notice required or desired to be given under this Agreement shall be provided by first class United States mail, postage prepaid to the persons and addresses identified in this section. Either party may change its address for delivery of notice by providing a change of address notice in accordance with the terms of this section. Any periods of time within which action is to be taken hereunder shall commence on the date notice thereof is received.

If to the Grantor: DKR Living Revocable Trust dated March 2, 2016
Attn: Sheila M. Albertson, Trustee
480 W. Sutton Circle
Lafayette, CO 80026

with a copy to: Lopez Law Office
Attn: Richard V. Lopez
4450 Arapahoe Road
Boulder, CO 80303

EXHIBIT D TO ANNEXATION AGREEMENT

If to the City: Director of Public Works for Utilities
City of Boulder
P.O. Box 791
Boulder, CO 80306

with a copy to: City Attorney's Office
City of Boulder
P.O. Box 791
Boulder, CO 80306

13. Grantor represents and warrants that Grantor has the full power and authority to execute and deliver this Agreement and to perform all obligations arising under this Agreement.

IN WITNESS WHEREOF, Grantor has caused this instrument to be duly executed as
of this _____ day of _____, 2018.

GRANTOR
DKR Living Revocable Trust dated March 2, 2016

By: _____
Sheila M. Albertson, Trustee

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The above and foregoing instrument was subscribed and sworn to before me
this _____ day of _____, 2018 by Sheila M. Albertson as Trustee of DKR Living
Revocable Trust dated March 2, 2016.

Witness my hand and official seal.

My commission expires: _____

Notary Public

EXHIBIT D TO ANNEXATION AGREEMENT

CITY OF BOULDER

By: _____
Jane S. Brautigam, City Manager

ATTEST:

By: _____
City Clerk

Approved as to Form:

By: _____
City Attorney

EXHIBITS

Exhibit A: Legal Description of Property

Exhibit B: Agreement to Buy and Sell Water Rights

**EXHIBIT A TO GRANT OF RIGHT OF FIRST REFUSAL
TO PURCHASE CERTAIN WATER AND DITCH RIGHTS**

**LEGAL DESCRIPTION
(5469 South Boulder Road)**

THAT PORTION OF THE SOUTHWEST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER OF SECTION 4, TOWNSHIP 1 SOUTH, RANGE 70 WEST OF THE 6TH P.M. DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHWEST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER OF SECTION 4, TOWNSHIP 1 SOUTH, RANGE 70 WEST OF THE 6TH P.M., THENCE ALONG THE SOUTH BOUNDARY OF SAID QUARTER-QUARTER OF SAID SECTION, NORTH 88 DEGREES 22 MINUTES EAST A DISTANCE OF 1326.20 FEET TO THE POINT OF TRUE BEGINNING, WHICH IS THE SW CORNER OF THE SOUTHEAST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER OF SAID SECTION 4, TOWNSHIP 1 SOUTH, RANGE 70 WEST; THENCE NORTH 88 DEGREES 22 MINUTES EAST, A DISTANCE OF 287.87 FEET; THENCE NORTH 0 DEGREES 35 MINUTES WEST, A DISTANCE OF 656.0 FEET; THENCE SOUTH 88 DEGREES 22 MINUTES WEST, A DISTANCE OF 287.87 FEET; THENCE SOUTH 0 DEGREES 35 MINUTES EAST, A DISTANCE OF 656.0 FEET, MORE OR LESS, TO THE TRUE POINT OF BEGINNING.

COUNTY OF BOULDER,
STATE OF COLORADO.

LESS THOSE PORTIONS CONVEYED BY DEED RECORDED MARCH 26, 1986 UNDER RECEPTION NO. 749046 AND DEED RECORDED MARCH 28, 1989, UNDER RECEPTION NO. 974323,

AND AS SAID PARCEL IS AFFECTED BY INSTRUMENTS RECORDED APRIL 18, 1986 UNDER RECEPTION NOS. 753838 AND 753839.

EXHIBIT B TO GRANT OF RIGHT OF FIRST REFUSAL
TO PURCHASE CERTAIN WATER AND DITCH RIGHTS

AGREEMENT TO BUY AND SELL
WATER RIGHTS

*THIS IS A LEGAL INSTRUMENT; IF NOT UNDERSTOOD, LEGAL, TAX, OR OTHER
COUNSEL SHOULD BE CONSULTED BEFORE SIGNING.*

This AGREEMENT TO BUY AND SELL WATER RIGHTS (the "Agreement") is by and between the City of Boulder, a Colorado home rule city (the "Purchaser") and DKR Living Revocable Trust dated March 2, 2016, 480 W. Sutton Circle, Lafayette, Colorado 80026 (the "Seller").

1. Water Rights Conveyed

- a. The Seller hereby acknowledges having received from the Purchaser the sum of _____ in the form of a check as earnest money and part payment for the following described water rights, to wit:

1.141 shares of capital stock of The Dry Creek No. 2, Ditch Company ("Ditch Company") as evidenced by original Certificate No. 492 and all water and water rights represented thereby hereinafter called the "Water Rights".

- b. Subject to the provisions of this Agreement, Purchaser hereby agrees to buy the Water Rights, and the Seller hereby agrees to sell the Water Rights upon the terms and conditions stated herein.

2. Price

The purchase price shall be _____, payable as follows:
_____ hereby receipted for; _____ by Purchaser's check at closing, said purchase price having been freely agreed to by both Seller and Purchaser as the fair market value of the Water Rights.

3. Title

- a. Title to the Water Rights shall be merchantable in Seller, except as stated in subparagraph 3.c. Subject to payment or tender as above provided and compliance by Purchaser with the other terms and provisions hereof, Seller shall execute and deliver a good and sufficient quit claim deed and the original stock certificate issued by Dry Creek No. 2, Ditch Company for the Water Rights on December 4, 2018, or by mutual agreement, at an earlier date, conveying the Water Rights free and clear of all taxes, liens, encumbrances, assessments, and leases. Seller shall execute all such stock transfers or other documents as may be required by The Dry Creek No. 2, Ditch Company to effectuate the transfer of water shares in such company from Seller to Purchaser in accordance with this Agreement. Seller shall pay the current year's assessment and any past due assessments.

EXHIBIT B TO GRANT OF RIGHT OF FIRST REFUSAL
TO PURCHASE CERTAIN WATER AND DITCH RIGHTS

- b. Except as stated in subparagraph 3.c., if title to the Water Rights is not merchantable and written notice of defect(s) is given by Purchaser or Purchaser's agent to Seller on or before date of closing, Seller shall, at his/her sole expense, use reasonable efforts to correct said defect(s) prior to date of closing. If Seller is unable to correct said defect(s) on or before date of closing, at Seller's option and upon written notice to Purchaser or Purchaser's agent on or before date of closing, the date of closing shall be extended 30 days for the purpose of correcting said defect(s). If title is not rendered merchantable as provided in this subparagraph, at either party's option, this Agreement may be declared to be void and of no effect, and each party hereto shall be released from all obligations hereunder, and all payments and things of value received hereunder shall be returned to Purchaser.
- c. Any taxes, liens, encumbrances, or assessments required to be paid shall be paid at or before the time of settlement from the proceeds of this transaction or from any other source.

4. Water Court Proceedings

- a. If Purchaser desires to file an application with a court of competent jurisdiction for the change of use of the Water Rights or regarding future use of the Water Rights, Seller covenants that it will cooperate with Purchaser, its agents, representatives and assigns, for no additional consideration, in establishing information relevant to the historical use of the subject Water Rights, including the execution of appropriate affidavits and/or the furnishing of testimony in appropriate administrative or judicial proceedings with respect to said Water Rights. However, Purchaser agrees to reimburse Seller for any out-of-pocket expenses incurred in obtaining or giving such testimony or other information. Seller further covenants and agrees that it will neither challenge nor oppose any such water court application filed by or on behalf of Purchaser for the above-described change of Water Rights.
- b. Purchaser shall bear all expenses of water court or other proceedings, if necessary, to obtain permission for Purchaser to make use of the Water Rights. Purchaser agrees to pay any stock transfer fee to transfer any certificate which is the subject of this Agreement or any recording fees for this instrument or any other instrument necessary pursuant to this Agreement.

5. Default

Time is of the essence hereof. If any note or check received as earnest money hereunder or any other payment due hereunder is not paid, honored, or tendered when due, or if any other obligation hereunder is not performed as herein provided, there shall be the following remedies:

EXHIBIT B TO GRANT OF RIGHT OF FIRST REFUSAL
TO PURCHASE CERTAIN WATER AND DITCH RIGHTS

- a. IF PURCHASER IS IN DEFAULT, then all payments and things of value received hereunder shall be forfeited by Purchaser and retained on behalf of Seller, and both parties shall thereafter be released from all obligations hereunder. It is agreed that such payments and things of value are LIQUIDATED DAMAGES and are, except as provided in subparagraph 5.c., SELLER'S SOLE AND ONLY REMEDY for Purchaser's failure to perform the obligations of this Agreement. Seller expressly waives the remedies of specific performance and additional damages.
- b. IF SELLER IS IN DEFAULT, (1) Purchaser may elect to treat this Agreement as terminated, in which case all payments and things of value received hereunder shall be returned to Purchaser, and Purchaser may recover such damages as may be proper; or (2) Purchaser may elect to treat this Agreement as being in full force and effect, and Purchaser shall have the right to an action for specific performance or damages, or both.
- c. Anything to the contrary herein notwithstanding, in the event of any litigation arising out of this Agreement, the court may award to the prevailing party all reasonable costs and expenses, including attorney's fees.

6. Representations and Warranties

By signing this Agreement, Seller warrants, and, at the closing, Seller shall again warrant to Purchaser as follows:

- a. This Agreement and the documents required to be delivered by Seller hereunder ("Seller's Documents") do not and will not contravene any provision of any currently applicable law or regulation. This conveyance of the Water Rights and the delivery of this Agreement and Documents will not result in a breach of, constitute a default under, or require consent pursuant to any credit agreement, lease, indenture, mortgage, deed of trust, purchase agreement, guarantee, or other instrument to which Seller is presently a party or by which Seller or his/her assets are presently bound or affected.
- b. Except as hereinafter set forth, there are no actual or, to the best of Seller's knowledge, threatened or contemplated suits, actions, or proceedings with respect to all or part of the Water Rights (1) for condemnation, (2) alleging any violation of any currently applicable law or regulation, or (3) which could result in a lien or lis pendens affecting all or any part of the Water Rights.
- c. Seller is the sole owner of all the Water Rights and will not, prior to closing, assign, pledge, transfer, lease, or in any way encumber his/her interest therein.
- d. Seller has full power and authority to execute and deliver this Agreement and Seller's Documents and to perform all obligations arising under this Agreement and under Seller's Documents.

EXHIBIT B TO GRANT OF RIGHT OF FIRST REFUSAL
TO PURCHASE CERTAIN WATER AND DITCH RIGHTS

- e. During Seller's ownership of the Water Rights, no person has claimed any right to any part of the Water Rights adverse to Seller.

7. Expenses

Except as otherwise expressly provided, each party shall pay their own costs and expenses in connection with the negotiation, execution, and delivery of this Agreement and of Seller's Documents.

8. Broker's Fee

Purchaser shall not be obligated to pay any broker's commission or fee which may be claimed pursuant to this Agreement, and Seller shall indemnify, defend and hold harmless Purchaser from and against all loss, expense, damage, and liability from any services claimed to have been rendered in connection with the transaction contemplated in this Agreement.

9. Entire Agreement

This Agreement supersedes all prior agreements and contains the complete and entire agreement between the parties respecting negotiations, agreements, representations, and understandings, if any, between the parties concerning the Water Rights.

10. Modifications

This Agreement may not be modified, discharged, or changed in any respect whatsoever, except by a further agreement in writing duly executed by Purchaser and Seller. However, any consent, waiver, approval, or authorization shall be effective if signed by the party granting or making such consent, waiver, approval or authorization.

11. Notices

All notices under this Agreement shall be given by registered or certified mail, postage prepaid, directed as follows, and shall be deemed given on the date of mailing.

If to Seller: DKR Living Revocable Trust dated March 2, 2016
Attn: Sheila M. Albertson, Trustee
480 W. Sutton Circle
Lafayette, CO 80026

with copy to: Lopez Law Office
Attn: Richard V. Lopez
4450 Arapahoe Avenue
Boulder, CO 80303

EXHIBIT B TO GRANT OF RIGHT OF FIRST REFUSAL
TO PURCHASE CERTAIN WATER AND DITCH RIGHTS

If to Purchaser: City of Boulder
Utilities Division
Attn: Director of Public Works for Utilities
P. O. Box 791
Boulder, CO 80306

with copy to: City Attorney's Office
City of Boulder
P.O. Box 791
Boulder, CO 80306

12. Successors and Assigns

The agreements herein contained shall bind and inure to the benefit of the respective successors and assigns of the parties hereto.

13. Additional Documents or Action

The parties agree to execute or obtain any additional documents or take any additional action that is necessary to carry out this Agreement.

14. Survival of Closing

The representations, covenants and warranties provided in this Agreement and the rights and obligations of the parties hereunder shall survive the closing and shall not merge in the instruments delivered at closing.

15. Dry-Up Covenant

The Water Rights have historically been used to irrigate land consisting of approximately 1.9 acres located at 5469 South Boulder Road. Seller, for itself, its successors and assigns, hereby does covenant and agree with Purchaser that the historically irrigated lands described above shall not be irrigated with water from the Dry Creek No. 2 Ditch or any other untreated non-municipal water source after the Water Rights have been conveyed by Seller to Purchaser except as may be specifically provided for in any future lease of use of the Water Rights or other untreated water supplies entered into between the Purchaser and Seller or any future owner of the historically irrigated property. Seller, for itself, its successors and assigns, further covenants and agrees with Purchaser that the burden imposed by the right and interest in the historically irrigated lands herein created and granted to Purchaser shall be binding upon and run with the historically irrigated lands forever and shall be forever enforceable against the owners of the historically irrigated lands, its successors and assigns, for the benefit of Purchaser, its successors and assigns.

EXHIBIT B TO GRANT OF RIGHT OF FIRST REFUSAL
TO PURCHASE CERTAIN WATER AND DITCH RIGHTS

DATED this _____ day of _____, 20____.

Seller:

DKR Living Revocable Trust dated March 2, 2016

By: _____
Sheila M. Albertson, Trustee

Purchaser:

City of Boulder

By: _____
Jane S. Brautigam
City Manager

Attest:

City Clerk

Approved as to form:

City Attorney's Office

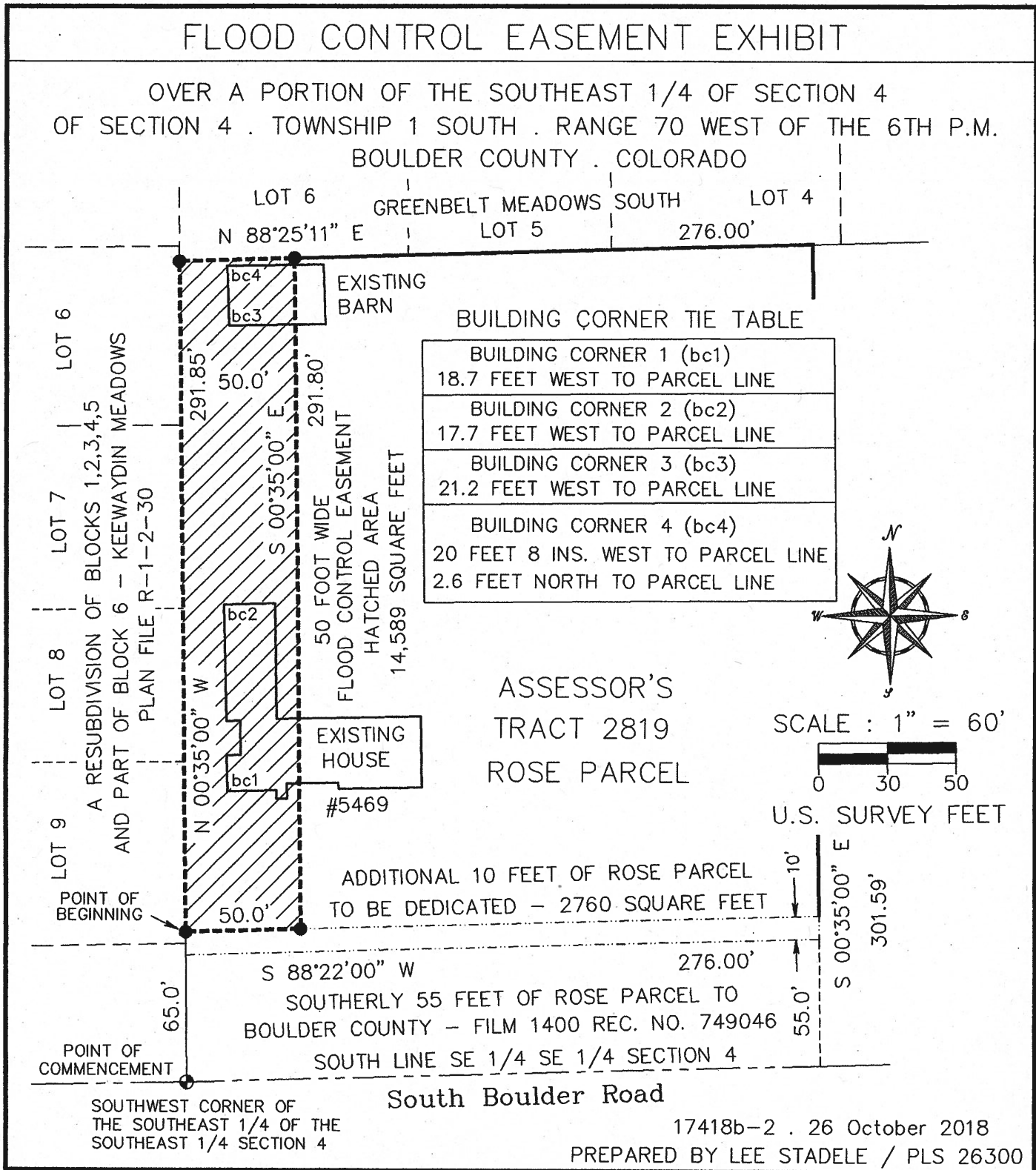
EXHIBIT E TO ANNEXATION AGREEMENT

EXHIBIT F TO ANNEXATION AGREEMENT

Existing Nonstandard Structure



Box above approximates the property boundaries of 5469 S. Boulder Rd.

Circle indicates non-standard building:

26' x 42' Barn

Existing 26' x 42' barn is located at a 2.6-foot rear yard setback, where a minimum 3-foot setback is required pursuant to RL-2 zoning.

2018 OCT 19 PM 12: 03

Location of property to be annexed: 5469 South Boulder Road

Legal Description: SEE ATTACHED LEGAL DESCRIPTION

Size of property: 1.91 acres Requested Zoning: RL-2

If the area proposed for annexation is more than ten acres in size, an annexation impact report as required by state law (31-12-105.5, C.R.S.) must be submitted to the Planning Department prior to the first reading of the ordinance annexing the subject property by City Council. The Board of County Commissioners may waive this requirement. If so, a letter from the Board must be submitted to the Planning Department.

Please check those districts in which the property proposed for annexation is included:

<u> </u> x Boulder Valley School District	<u> </u> Left Hand Water District
<u> </u> St. Vrain School District	<u> </u> Other (list)
<u> </u> Boulder Rural fire District	
<u> </u> Cherryvale Fire District	

List below all owners or lienholders of the property proposed for annexation (please print):

1. DKR Living Revocable Trust
2. Blue Federal Credit Union
- 3.
- 4.

ANNEXATION PETITION

Signature of petitioners requesting
annexation of property to the city of
Boulder, Colorado

Date of
signature
of each
petitioner

Mailing address of
each petitioner

Description of property included within the area proposed for
annexation owned by each person signing this petition. (Attach
separate sheet, if necessary).

Stacy M. Albertson 9/27/18

Trustee, The DKR Living Revocable Trust , 480 W. Sutton Circle, Lafayette, CO 80026

See attached maps and legal description

Submit with your application.

TO THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO, GREETINGS:

The undersigned hereby petition(s) the city of Boulder to annex to the city of Boulder the territory shown on the map(s) attached hereto and described on the attachment hereto:

This Petition is signed by landowners qualified to sign. It is intended that this Petition be a one hundred percent (100%) petition for annexation as described in C.R.S. 1973, Section 31-12-107(l)(g), (as amended).

In support of this petition, the undersigned state(s) and allege(s) as follows, to wit:

1. That it is desirable and necessary that the above described territory be annexed to the city of Boulder.
2. That petitioners are landowners of one hundred percent (100%) of the territory, excluding streets and alleys, herein proposed for annexation to the city of Boulder.
3. That no less than one-sixth of the aggregate external boundaries of the above described territory hereby petitioned to the city of Boulder is contiguous to the city limits of the city of Boulder.
4. That a community of interest exists between the above described territory and the city of Boulder, And that the same is urban, or will be urbanized in the near future, and further that the said territory is integrated or is capable of being integrated in the city of Boulder.
5. That in establishing the boundaries of the above described territory, no land 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, except and unless such tracts or parcels are already separated by a dedicated street, road or other public way.
6. That in establishing the boundaries of the above described territory, no land 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 which, together with the buildings and improvements situate thereon, have an assessed valuation in excess of \$200,000 for ad valorem tax purposes for the year next preceding the filing of the within petition for annexation, has been included within the above.
7. That the above described territory does not include any area which is the same or substantially the same area in which an election for an annexation to the city of Boulder was held within the twelve months preceding the filing of this petition.
8. That the above described territory does not include any area included in another annexation proceeding involving a city other than the city of Boulder.

9. That at least four copies of an annexation map setting forth with reasonable certainty a written legal description of the boundaries of the area proposed to be annexed, a delineation of the outer boundaries of the above described territory, and the location of each ownership, tract and/or the boundaries and the plat numbers of plats and lots and blocks, the portion of the boundary contiguous with the existing city limits of the city of Boulder, and the dimensions of said contiguous boundary, all upon a material and of a size suitable for recording or filing with the City Clerk of the city of Boulder, and the dimensions of said contiguous boundary, all upon a material and of a size suitable for recording or filing with the City Clerk of the city of Boulder, accompany, have been attached hereto and hereby constitute a part of this petition.
10. That the above described territory is not presently a part of any incorporated city, city and county, or town.
11. That the above area described will (not) result in the detachment of area from any school district and the attachment of the same to another school district (and the resolution of school board of the district to which the area will be attached approving this annexation request).

— Property Description —

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 4, TOWNSHIP 1 SOUTH, RANGE 70 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER SAID SECTION 4;

THENCE NORTH 00°35'00" WEST, ALONG THE WEST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 4 AND ALONG THE EAST LINE OF BLOCK 3, A RESUBDIVISION OF BLOCKS 1, 2, 3, 4, 5 AND PART OF BLOCK 6, KEEWAYDIN MEADOWS, A SUBDIVISION IN THE CITY OF BOULDER, A DISTANCE OF 356.85 FEET TO THE SOUTHWEST CORNER OF LOT 6, GREENBELT MEADOWS SOUTH, A SUBDIVISION IN THE CITY OF BOULDER;

THENCE NORTH 88°25'11" EAST, ALONG THE SOUTH LINE OF LOTS 6, 5 AND 4, GREENBELT MEADOWS SOUTH, A DISTANCE OF 276.0 FEET TO THE NORTHEAST CORNER OF ASSESSOR'S TRACT 2819, AS SURVEYED;

THENCE SOUTH 00°35'00" EAST, ALONG THE EAST LINE OF ASSESSOR'S TRACT 2819 AND THE WEST LINE OF ASSESSOR'S TRACT 2818, AND SAID TRACTS EXTENDED SOUTHERLY, A DISTANCE OF 356.59 FEET TO THE SOUTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 4;

THENCE SOUTH 88°22'00" WEST, ALONG THE SOUTH LINE OF THE THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 4, A DISTANCE OF 276.0 FEET TO THE POINT OF BEGINNING.

THE ANNEXATION PARCEL CONTAINS 2.26 ACRES, AS SURVEYED.



**CIRCULATOR'S AFFIDAVIT
CIRCULATOR'S AFFIDAVIT**

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

Sheila M. Albertson,

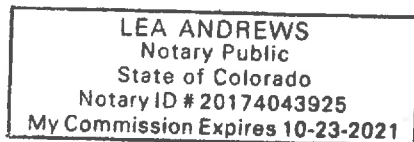
being first duly sworn, upon oath deposes and says that she/he was the circulator of the above and foregoing petition and that the signatures on said petition are the signatures of the persons whose names they purport to be.

Sheila M. Albertson

Circulator

Subscribed and sworn to before me this 6th day of August, A.D. 20 18.

Witness my hand and official seal. My commission expires: 10-23-2021.



Lea Andrews

Notary Public

CIRCULATOR'S AFFIDAVIT

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

Sheila M. Albertson

being first duly sworn, upon oath deposes and says that she/he was the circulator of the above and foregoing petition and that the signatures on said petition are the signatures of the persons whose names they purport to be.

Circulator

Subscribed and sworn to before me this _____ day of _____, A.D. 20_____.

Witness my hand and official seal. My commission expires: _____.

**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, Planner I

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 that his property abuts the subject property and that water pools on the subject property and ends up in the basements of the housing development uphill 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 there 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

LOPEZ LAW OFFICE

RICHARD V. LOPEZ
ATTORNEY AT LAW
4450 Arapahoe Avenue
Boulder, Colorado 80303

(303) 415-2585
FAX (303) 415-0932
e-mail lopezlawofficeco@ynail.com

January 29, 2019

Mayor Jones and Members of the City Council

RE: Rose Annexation

Dear Mayor and Members of the City Council:

The 5 members of Rose family (DKR Trust) have applied for annexation, in part, because this 1.9-acre lot does not meet the minimum lot size under County land use regulations, it's not 35 acres. See January 9, 2017 Building Lot Determination letter.

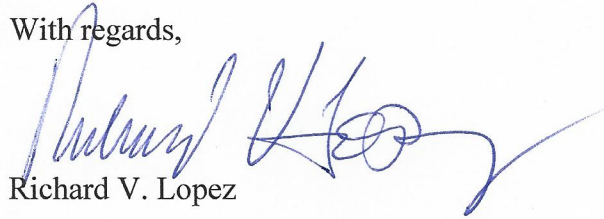
The Rose family members all lived on the property. In fact, their mother was living on the property during the 2013 during the flood. The property was not damaged, in part, because there is no basement. There were pools of rainwater in the yard like most yards in Boulder County.

The Rose family first sought a determination that annexation was feasible. On October 20, 2017, the City staff determine that annexation was feasible, and the property would need to meet the City's annexation policies. This application for annexation meets those legal requirements and annexation policies including:

1. Payment of \$17,000.00 in plant investment fees.
2. Petitioning for inclusion in the Northern Colorado Water Conservancy District and Municipal Sub District.
3. Community Benefit:
 - a. Agreeing that 50% of new units constructed would be permanently affordable.
 - b. Agreeing that no single family detached units will be constructed and no units shall be greater than 2,200 square feet.
 - c. Dedication of a 10-foot wide portion of the property for South Boulder Road right of way.
 - d. Dedication of a 50-foot flood control and ditch easement along the West property line.
 - e. The shed has been removed as directed by staff.

If Council annexes the Rose property, 80,501 square feet of developable property could see 11 to 14 dwelling units, 50% of which would be permanently affordable. Should the City decline to annex the Rose family property, we will return to Boulder County to seek a subdivision exemption to create a buildable lot. We asked the County to conduct a "Preliminary Size Analysis" and learned that one 4,501 square foot house could be build. The Rose family respectfully requests that the property be annexed to the City of Boulder.

With regards,

A handwritten signature in blue ink, appearing to read 'Richard V. Lopez', with a stylized flourish at the end.

Richard V. Lopez

RVL/mt

cc Rose Family

Attachment Boulder County PSA

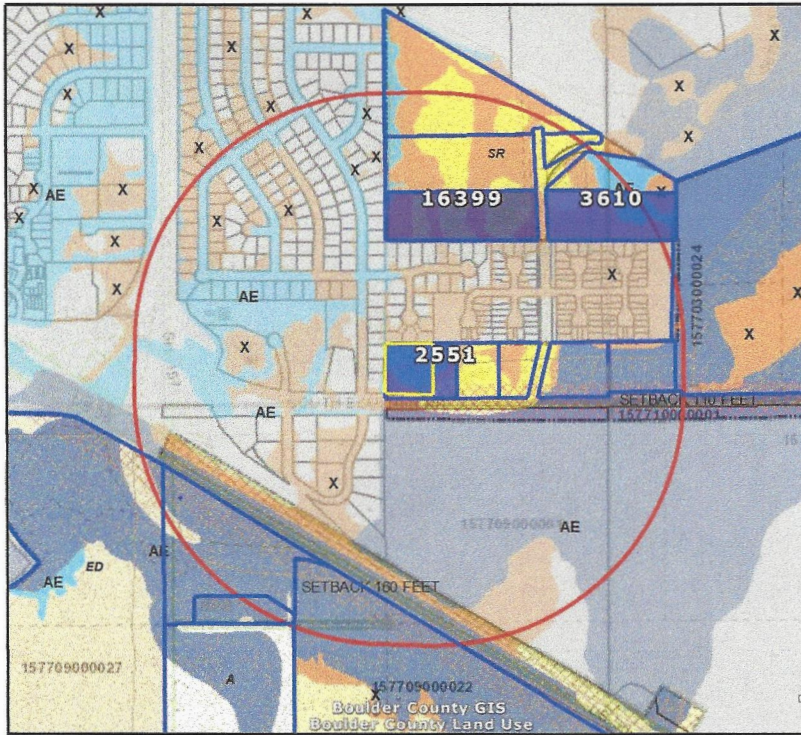


Preliminary Size Analysis

5469 SOUTH BOULDER RD UNINCORPORATED 80303 (157704400009)

DKR LIVING REVOCABLE TRUST

This report is not an indication of the developability of any parcel as other factors including legal building lot status, service availability, and access impact the development potential of property. Please note that this information is preliminary. The information for the residential floor area comes from Assessor records and may not be entirely inclusive of the residential floor area on site. Outbuildings may have changed their function or modifications may have been made. Please contact the Land Use Department at 303-441-3930 or planner@bouldercounty.org if you have questions.



125% of Neighborhood Median: 4501 sq. ft.

The Presumptive Size Maximum is 2,500 sq.ft. (1,500 in townsite) or 125% of the Neighborhood Median, whichever is greater.

	Below Grade	Above Grade	Total sq. ft.
Minimum sq. ft.	2729	2551	2551
Median sq. ft.	2729	3601	3601
Maximum sq. ft.	2729	13670	16399

Sq. Ft. Changes since 9/8/98: no changes

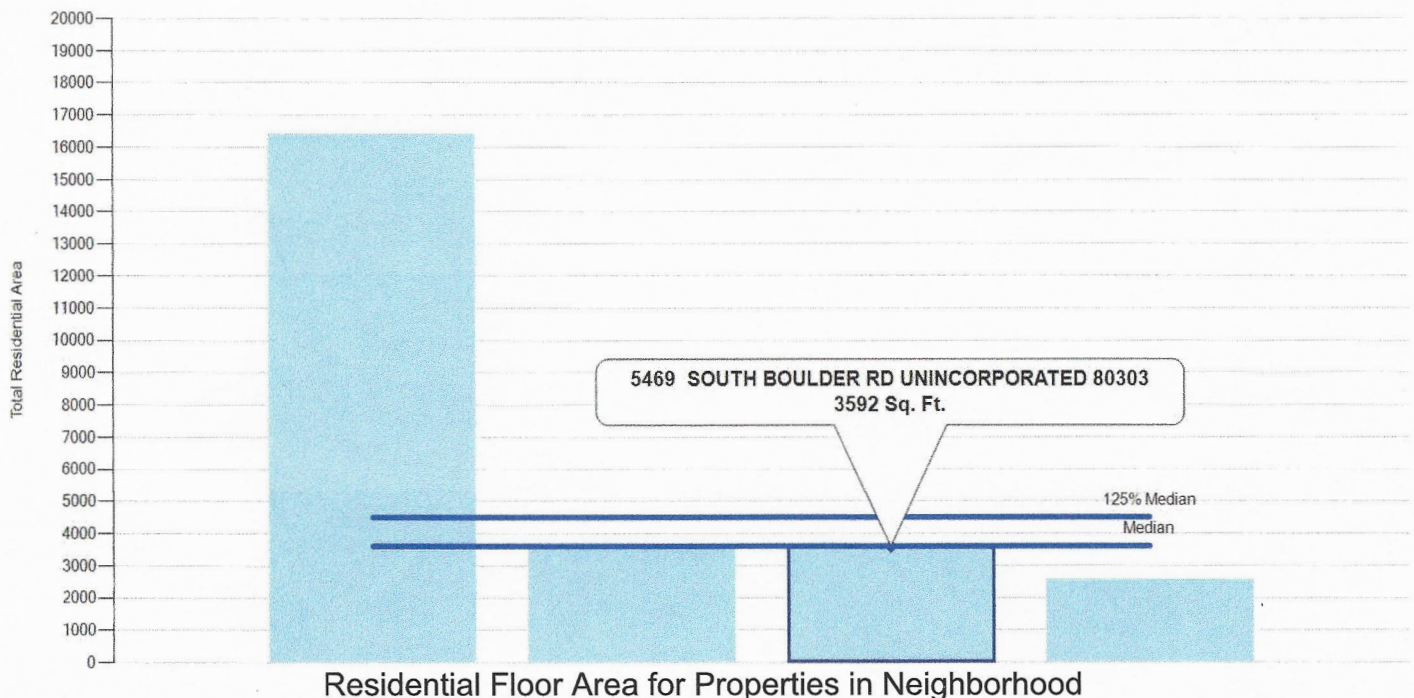
Building Lot Determination

BLD-16-0168 BLOTNOT

The following areas may affect the Site Plan Review:

- Floodplain

Type of Neighborhood: Buffer



Residential Floor Area for Properties in Neighborhood

Parcel (Account No)	Address	Owner	Below	Above	Total
157704400004 (R0035215)	5695 SOUTH BOULDER	BODAM CARL DAVID & JOY...	2729	13670	16399
157704400005 (R0035890)	5691 SOUTH BOULDER	KENT MARY BETH FAMILY ...		3610	3610
157704400009 (R0036319)	5469 SOUTH BOULDER	DKR LIVING REVOCABLE T...		3592	3592
157704400010 (R0036606)	5515 SOUTH BOULDER	VENCEL JOSEPH BRIAN		2551	2551

Building Permits since 9/8/1998 for 5469 SOUTH BOULDER RD UNINCORPORATED 80303 that added or modified Sq. Ft.

Date	Permit	Description	Sq Ft	Status
		157704400009: No permits that modified Sq.Ft.		

ROSE ANNEXATION
5469 SOUTH BOULDER ROAD
WRITTEN STATEMENT

The DKR Living Revocable Trust ("Trust") herein petitions for annexation and initial zoning to the City of Boulder. The beneficiaries of the trust are five adult children of Mr. and Mrs. Rose, deceased (Sheila M. Albertson, Mary D. Vidallo, David Dean Rose, Patricia Agnes Stern and Maureen Ann Rose). On January 9, 2017, Boulder County determined that the property is not a legal building lot under the County's land use code. Therefore, the Trust has decided to annex to the City of Boulder. Currently, there are no development plans for the property.

Annexation is required before adequate facilities and services are furnished. The property is located adjacent to existing city limits and is in Area II. Residential development exists to the West and North of the subject parcel. These are within the city limits. The residence to the East remains in the County. While not legally an enclave, there is no other city that could annex this parcel.

Although a residence exists on the property, it requires both City water and sewer services. The cost of providing these services to one older residence is uneconomical. Thus, the Trust seeks to annex the property and then decide whether to sell the property or seek development under City regulations at a later date.

This parcel may have development potential depending on possible conditions of approval including, but not limited to, permanently affordable housing commitments, floodplain requirements, wetlands and transportation requirements. These concerns were described in the Annexation Feasibility Study that was completed by the City on October 20, 2017 LUR2017-00071.

The City Requirements set forth in the Land Use Review may become conditional of approval of the annexation. These include access and circulation requirements, PIF's, flood control. The Trust has prepared and submitted easements for flood control as part of this petition. The Trust is following the "next steps" set forth on page 5 of the Feasibility Study.

LOPEZ LAW OFFICE

RICHARD V. LOPEZ
ATTORNEY AT LAW
4450 Arapahoe Avenue
Boulder, Colorado 80303

(303) 415-2585
FAX (303) 415-0932
e-mail lopezlawofficeco@ynail.com

September 30, 2018

Sloane Walbert
City of Boulder
Planning and Development Services
1739 Broadway, Third Floor
Boulder, CO 80306-0791

RE: Rose Annexation

Dear Sloan:

In responses to the September 7, 2018 Land Use comments and Next Steps, you will find four hard copies and a digital copy of the revised plans:

1. A revised flood control easement on southern boundary (9/7/19 page 1, #1)
2. Flood control Easement Exhibit (9/7/18, page 1, #2).
3. New petition containing "**see attached legal description**" and legal description (9/7/18, page 2 #1) and signature page signed as: "**Sheila M. Albertson, Trustee, the DKR Living Revocable Trust.**"
4. Revised Annexation Map, (9/7/18, page 2, #2).
5. Revised right-of-way dedication exhibit. (9/7/18, page 2, #1)
6. Revised Rose Annexation Map. (9/7/18, page 2, #2).

With regards,


Richard V. Lopez

RVL/mt

Cc DVK Living Revocable Trust c/o Sheila Albertson

LOPEZ LAW OFFICE

RICHARD V. LOPEZ
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August 5, 2018

City of Boulder
Planning and Development Services
1739 Broadway, Third Floor
Boulder, CO 80306-0791

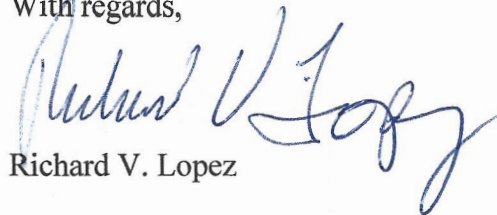
RE: Attorney Memorandum

To City of Boulder:

Attached you will find:

1. A 50-foot-wide flood control easement as required in the Annexation Feasibility Study Comments, page 4, number 1.
2. A 10-foot-wide right-of-way dedication

With regards,

A handwritten signature in blue ink, appearing to read "Richard V. Lopez", is written over the typed name.

Richard V. Lopez

RVL/mt

Cc DVK Living Revocable Trust c/o Sheila Albertson

- Property Description -

QUIT CLAIM DEED AT RN 03504999

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 4, TOWNSHIP 1 SOUTH, RANGE 70 WEST OF THE 6TH P.M.;

THENCE ALONG THE SOUTH BOUNDARY OF SAID QUARTER SECTION NORTH 88°22' EAST, A DISTANCE OF 1326.2 FEET TO THE POINT OF TRUE BEGINNING, WHICH IS THE SOUTHWEST CORNER OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 4, TOWNSHIP 1 SOUTH, RANGE 70 WEST;

THENCE NORTH 88°22' EAST, A DISTANCE OF 287.87 FEET;

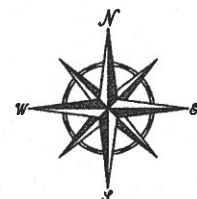
THENCE NORTH 00°35' WEST, A DISTANCE OF 656.0 FEET;

THENCE SOUTH 88°22' WEST, A DISTANCE OF 287.87 FEET;

THENCE SOUTH 00°35' EAST, A DISTANCE OF 656.0 FEET, MORE OR LESS, TO THE TRUE POINT OF BEGINNING.

LESS THOSE PORTIONS CONVEYED BY DEED DATED MARCH 23, 1989, RECEPTION NO. 00974323,

AND DEED DATED MARCH 25M 1986, RECORDED MARCH 26, 1986, RECEPTION NO. 00749046.



Scale: 1" = 20'

U.S. SURVEY FEET

- Flagstaff Surveying Inc. -

Table Mesa Shopping Center
637 South Broadway, Suite C
Boulder, Colorado 80305
303.499.9737

17418a-1.dwg . 14 August 2017

- Legend -

SET #5 REBAR WITH 2 INCH ALLOY CAP MARKED LEE STADELE LS 26300

SET 1 1/4 INCH DIAMETER BRASS PLUG MARKED STADELE LS 26300 IN CONCRETE

RECORD OF PLATTED DIMENSION . . (R)

AS MEASURED OR CALCULATED . . (M)

BY THIS SURVEY PLAT

RECEPTION NUMBER . . RN

SPOT SHOT ELEVATION . . x 42.4

OVERHEAD UTILITY LINES . . ol

TELEPHONE PEDESTAL . . te

ELECTRIC METER . . em

WATER METER . . wm

UTILITY POLE . . up

CENTERLINE . . cl

GAS METER . . gm

FLAGSTONE . . fs

COVERED . . cov

CLEAN OUT . . co

DRY STACK WALL . . ds

UTILITY VAULT . . uv

DECIDUOUS TREE WITH TRUNK DIAMETER SHOWN

- Building Corner Tie Table -

BUILDING CORNER NO. 1 (bc1) 18 FEET 8 INCHES WEST TO LOT LINE	BUILDING CORNER NO. 5 (bc5) 21.2 FEET WEST TO PARCEL / LOT LINE
BUILDING CORNER NO. 2 (bc2) 17 FEET 9 INCHES WEST TO LOT LINE	BUILDING CORNER NO. 6 (bc6) 20 FEET 8 INCHES WEST TO PARCEL LINE
BUILDING CORNER NO. 3 (bc3) 70 FEET SOUTH TO PARCEL LINE	BUILDING CORNER NO. 7 (bc7) 3.2 FEET NORTH TO PARCEL LINE
BUILDING CORNER NO. 4 (bc4) 66 FEET 10 INCHES SOUTH TO PARCEL LINE	

ALL TIES ARE PERPENDICULAR TO LOT LINES - DECIMAL FEET OR FEET + INCHES

Manhole Table

MANHOLE #1 (mh1) rim=5343.23'
MANHOLE #2 (mh2) rim=5344.53'

South Boulder Road

N 88°22' E 422.44' (M)
N 88°22' E 431.16' (R)

SECTION CORNER TO WEST EDGE
OF BAPTIST CHURCH PARCEL

- Line Table -

L1 - NORTH 88-22-00 EAST / 276.0 FEET (M)
NORTH 88-22-00 EAST / 287.87 FEET (R)
L2 - NORTH 00-35-00 WEST / 301.59 FEET (M)
NORTH 00-35-00 WEST / 302 FEET (R)
L3 - SOUTH 88-25-11 WEST / 276.0 FEET (M)
SOUTH 88-22-00 WEST / 287.87 FEET (R)
L4 - SOUTH 00-35-00 EAST / 301.85 FEET (M)
SOUTH 00-35-00 EAST / 302 FEET (R)

DEGREES-MINUTES-SECONDS / DECIMAL FEET

- Improvement Survey Plat -

#5469 South Boulder Road . Boulder

located in the southeast quarter of Section 4

Township 1 South . Range 70 West of the 6th P.M.

Boulder County . Colorado

SHEET 1 OF 1 - AREA = 83,261 SQUARE FEET OR 1.91 ACRES

- Notes -

- 1) A CURRENT TITLE COMMITMENT WOULD BE REQUIRED TO CHECK FOR EASEMENTS OF RECORD.
- 2) ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON.
- 3) BASIS OF BEARINGS - ASSUMED TO MATCH DEEDS. I HELD THE BEARING NORTH 88°22' EAST, ALONG THE SOUTH LINE OF THE SOUTHEAST 1/4 OF SECTION 4, AS SHOWN HEREON.
- 4) ALL UNDERGROUND UTILITIES SHOULD BE FIELD LOCATED BY THE APPROPRIATE AGENCY PRIOR TO ANY CONSTRUCTION OR DIGGING ON OR ADJACENT TO THE SUBJECT PROPERTY.
- 5) THE SUBJECT PARCEL CONTAINS 83,261 SQUARE FEET.
- 6) BENCHMARK INFORMATION - THE ELEVATIONS SHOWN ON THIS SURVEY ARE BASED UPON CITY OF BOULDER BENCHMARK ID# "NOS 2-113 1984"; A BRASS CAP SET VERTICALLY IN THE WEST PILLAR OF THE FOOTHILLS PARKWAY BRIDGE OVER TABLE MESA DRIVE. ELEVATION = 5346.22 FEET, NAVD 88 DATUM.
- 7) THE SUBJECT PARCEL (TRACT 2818) IS LOCATED IN ZONE AE, IN THE 100 YEAR FLOODPLAIN AND IN UNSHADED ZONE X, IN THE 500 YEAR FLOODPLAIN, ACCORDING TO THE FEMA FLOOD INSURANCE RATE MAP; MAP NO. 08013C0576 J, DATED 18 DECEMBER 2012.
- 8) VISIBLE UTILITIES ARE SHOWN. UNDERGROUND UTILITY INFORMATION WAS TAKEN FROM MAPS PROVIDED BY THE CITY OF BOULDER AND PUBLIC SERVICE COMPANY OF COLORADO (XCEL ENERGY).
- 9) PAROL EVIDENCE WAS COLLECTED BY EARL HENDERSON (SEE LS-13-0035) AND BY ME ON 4 AUGUST 2017. BOTH FAYE AND JOSEPH VENCIL INDICATED THAT THE FENCES BETWEEN THE PROPERTIES ARE ALL ALONG THE HISTORIC AND ACQUIRED TO PROPERTY LINES. THE VENCILS HAVE OWNED THE ADJOINING PARCEL TO THE EAST (TRACT 2818) FOR OVER 50 YEARS.

Vencil Parcel

TRACT 2818

ADJOINING PARCEL

#5515 SOUTH BOULDER ROAD

QUIT CLAIM DEED AT RN 2417473

SURVEY PLAT

LS-13-0035

Baptist
Church Parcel

TO THE CITY OF BOULDER

FILM 922 RN 175069

FOUND #5 REBAR WITH 2 INCH DIAMETER ALLOY CAP MARKED "ZLS PLS 34993" (TYPICAL)

FOUND PK NAIL WITH 1.5" WASHER STAMPED "ZLS PLS 34993 W.C."

8 inch diameter cast iron water pipeline

SE CORNER SECTION 4
#6 REBAR WITH 3 INCH DIAMETER BRASS CAP IN MONUMENT BOX

- Surveyor's Statement -

I, LEE STADELE, A DULY REGISTERED LAND SURVEYOR, LICENSED IN THE STATE OF COLORADO, HEREBY STATE FOR AND ON BEHALF OF FLAGSTAFF SURVEYING, INC., THAT A SURVEY OF THE ABOVE DESCRIBED PREMISES WAS CONDUCTED BY ME AND UNDER MY DIRECT SUPERVISION, RESPONSIBILITY AND CHECKING DURING AUGUST 2017; THAT SAID SURVEY AND THE ATTACHED PRINT HEREON WERE MADE IN SUBSTANTIAL ACCORDANCE WITH C.R.S. 38-1-102 (9) "IMPROVEMENT SURVEY PLAT". I FURTHER STATE THE SPOT SHOT ELEVATIONS AND CONTOUR INFORMATION SHOWN IS ACCURATE TO THE BEST OF MY KNOWLEDGE.

LEE STADELE
REGISTERED PROFESSIONAL LAND SURVEYOR
COLORADO LICENSE NUMBER 26300



CITY CODE CRITERIA CHECKLIST

BOULDER VALLEY COMPREHENSIVE PLAN POLICIES

Planning Area II is the area now under county jurisdiction where annexation to the city can be considered consistent with policies - 1.07 Adapting to Limits on Physical Expansion, 1.09 Growth Requirements and 1.16 Annexation.

1.07 Adapting to Limits on Physical Expansion

As the community expands to its planned physical boundaries, the city and county will increasingly emphasize preservation and enhancement of the physical, social and economic assets of the community. Cooperative efforts and resources will be focused on maintaining and improving the quality of life within defined physical boundaries, with only limited expansion of the city.

The annexation agreement has been written to enhance the physical, social, and economic assets of the community. As written, the annexation would ensure for-sale permanently affordable housing units, multi-model connections along S. Boulder Rd. and protect areas prone to flooding.

1.09 Growth Requirements

The overall effect of urban growth must add significant value to the community, improving quality of life. The city will require development and redevelopment to provide significant community benefits, achieve sustainability goals for urban form and to maintain or improve environmental quality as a precondition for further housing and community growth.

The annexation would provide significant community benefits, primarily in the form of for-sale permanently affordable housing. The draft agreement requires that fifty percent of new units constructed on the site must be permanently affordable, priced to be affordable to middle income households. For each new market rate unit constructed the property owner or developer must pay cash-in-lieu in the amount of 25% of the cash-in-lieu amount required to be paid for a market unit. All units will be size restricted and constructed as attached housing to ensure affordability.

1.16 Annexation

The policies in regard to annexation to be pursued by the city are:

- a. Annexation will be required before adequate facilities and services are furnished.

City services will be available to the property with annexation. The purpose of the annexation is to connect to city water and sewer services.

- b. The city will actively pursue annexation of county enclaves, substantially developed properties along the western boundary below the Blue Line and other substantially developed Area II properties. County enclave means an unincorporated area of land entirely contained within the outer boundary of the city. Terms of annexation will be based on the amount of development potential as described in (c), (d) and (e) of this policy. Applications made to the county for development of enclaves and Area II lands in lieu of annexation will be referred to the city for review and comment. The county will attach great weight to the city's response and may require that the landowner conform to one or more of the city's development standards so that any future annexation into the city will be consistent and compatible with the city's requirements.

Not applicable; the property is not a county enclave or a substantially developed property.

- c. Annexation of existing substantially developed areas will be offered in a manner and on terms and conditions that respect existing lifestyles and densities. The city will expect these areas to be brought to city standards only where necessary to protect the health and safety of the residents of the subject area or of the city. The city, in developing annexation plans of reasonable cost, may phase new facilities and services. The county, which now has jurisdiction over these areas, will be a supportive partner with the city in annexation efforts to the extent the county supports the terms and conditions being proposed.

Additional development potential exists for the property under all low-density residential zone districts, including RL-2. The applicant will be responsible for bringing the property to city standards with regards to facilities and services after annexation. The annexation will allow connection to the city's water system and

will provide a critical public health benefit by providing safe and quality drinking water and reducing the public health threat that can occur from failing septic systems.

The subject property is on an arterial road along the eastern boundary of the city, adjacent to city open space, and could be within the two to six dwelling unit per acre range with an RL-2 designation. This demonstrates compatibility of the annexation and RL-2 designation with the neighborhoods to the north and west. Staff finds that the annexation respects existing lifestyles and densities and provides an appropriate transition between higher intensity uses along S. Boulder Rd. and residential neighborhoods to the north.

- d. In order to reduce the negative impacts of new development in the Boulder Valley, the city will annex Area II land with significant development or redevelopment potential only if the annexation provides a special opportunity or benefit to the city. For annexation consideration, emphasis will be given to the benefits achieved from the creation of permanently affordable housing. Provision of the following may also be considered a special opportunity or benefit: receiving sites for transferable development rights (TDRs), reduction of future employment projections, land and/or facilities for public purposes over and above that required by the city's land use regulations, environmental preservation or other amenities determined by the city to be a special opportunity or benefit. Parcels that are proposed for annexation that are already developed and which are seeking no greater density or building size would not be required to assume and provide that same level of community benefit as vacant parcels unless and until such time as an application for greater development is submitted.

The site is located within Area II and has development potential. The annexation provides community benefit to offset the negative impacts of additional development in the Boulder Valley, primarily in the form of for-sale permanently affordable housing. The draft agreement requires that fifty percent of new units constructed on the site must be permanently affordable, priced to be affordable to middle income households. For each new market rate unit constructed the property owner or developer must pay cash-in-lieu in the amount of 25% of the cash-in-lieu amount required to be paid for a market unit. All units will be size restricted and constructed as attached housing to ensure affordability. Provided housing choices are suitable for families and multiple generations. The petitioner would also dedicate right-of-way for S. Boulder Rd. and a flood control easement. Staff believes that these characteristics of the development provide sufficient community benefit and will help the city to provide diverse housing choices.

Additionally, the annexation of the area of city owned open space to the south of the site presents a special opportunity or benefit to the city by closing the existing gap between the proposed annexation and the existing city limits.

- e. Annexation of substantially developed properties that allow for some additional residential units or commercial square footage will be required to demonstrate community benefit commensurate with their impacts. Further, annexations that resolve an issue of public health without creating additional development impacts should be encouraged.

Not applicable, the property is not a substantially developed property.

- f. There will be no annexation of areas outside the boundaries of the Boulder Valley Planning Area, with the possible exception of annexation of acquired open space.

The area to be annexed south of S. Boulder Rd. is located within Area III and is city-owned open space. The property north of S. Boulder Rd. is not within Area III.

- g. Publicly owned property located in Area III, and intended to remain in Area III, may be annexed to the city if the property requires less than a full range of urban services or requires inclusion under city jurisdiction for health, welfare and safety reasons.

The area to be annexed south of S. Boulder Rd. is publicly owned property. It is open space land that does not require the full range of urban services. The property north of S. Boulder Rd. is not within Area III.

- h. The Gunbarrel Subcommunity is unique because the majority of residents live in the unincorporated area and because of the shared jurisdiction for planning and service provision among the county, city, Gunbarrel Public Improvement District and other special districts. Although interest in voluntary annexation has been limited, the

city and county continue to support the eventual annexation of Gunbarrel. If resident interest in annexation does occur in the future, the city and county will negotiate new terms of annexation with the residents.

Not applicable, site is not within the Gunbarrel Subcommunity.

SECTION 9-2-17, "ANNEXATION REQUIREMENTS," BOULDER REVISED CODE 1981

- (a) Compliance with State Statutes and Boulder Valley Comprehensive Plan: All annexations to the city shall meet the requirements of 31-12-101 et seq., C.R.S., and shall be consistent with the Boulder Valley Comprehensive Plan and other ordinances of the city.

See checklists above and below.

- (b) Conditions: No annexation of land to the city shall create an unreasonable burden on the physical, social, economic, or environmental resources of the city. The city may condition the annexation of land upon such terms and conditions as are reasonably necessary to ensure that this requirement is met. Such terms and conditions may include, without limitation, installation of public facilities or improvements, dedication of land for public improvements, payment of fees incidental to annexation, or covenants governing future land uses. In annexations of hillside areas, the city council may impose conditions designed to mitigate the effects of development on lands containing slopes of fifteen percent or greater. In annexations of more than ten acres, the applicant shall provide the information necessary to enable the city to prepare an annexation impact report when required by section 31-12-108.5, C.R.S.

The terms and conditions of the annexation request are described in the draft annexation agreement. Conditions have been placed to ensure that the annexation will not create an unreasonable burden on the city. The petitioner will dedicate land for S. Boulder Rd. and dedicate a flood control easement. Covenants are proposed to ensure permanently affordable housing if the property is redeveloped.

- (c) Annexation Agreement: Owners of land petitioning the city for annexation of their property shall enter into an annexation agreement with the city stating any terms and conditions imposed on said property, prior to the first reading of the annexation ordinance. Upon annexation, such agreements shall be recorded to provide notice to future purchasers of said property. Where the annexation agreement provides that the city may install public improvements and that the owners of the annexed property will pay for such improvements, the costs of such improvements constitute an assessment against the annexed property as they accrue. If, after notice, any such assessment is not paid when due, the city manager shall certify the amount of the principal, interest, and penalties due and unpaid, together with ten percent of the delinquent amount for costs of collection to the county treasurer to be assessed and collected in the same manner as general taxes are assessed and collected as provided by section 2-2-12, "City Manager May Certify Taxes, Charges, and Assessments to County Treasurer for Collection," B.R.C. 1981.

See proposed annexation agreement.

SECTION 9-2-18, "ZONING OF ANNEXED LAND", BOULDER REVISED CODE 1981

- (a) Generally: Zoning of annexed land or land in the process of annexation shall be considered an initial zoning and shall be consistent with the goals and land use designations of the Boulder Valley Comprehensive Plan.

The project site has a land use designation of Low Density Residential, which is defined as residential development with densities ranging from two to six dwelling units per acre. The site is along the eastern boundary of the city, adjacent to city open space, and could be within the two to six dwelling unit per acre range with an RL-2 designation. This demonstrates compatibility of an RL-2 designation with this property and the neighborhoods to the north and west. 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)

- (b) Public Notification: When zoning of land is proposed in the process of annexation, the city manager will provide notice pursuant to section 9-4-3, "Public Notice Requirements," B.R.C. 1981.

A public notice has been sent to property owners within 600 feet and a notice has been posted on the property.

- (c) Sequence of Events: An ordinance proposing zoning of land to be annexed shall not be finally adopted by the city council before the date of final adoption of the annexation ordinance, but the annexation ordinance may include the zoning ordinance for the annexed property.
- (d) Placement on Zoning Map: Any land annexed shall be zoned and placed upon the zoning map within ninety days after the effective date of the annexation ordinance, notwithstanding any judicial appeal of the annexation. The city shall not issue any building or occupancy permit until the annexed property becomes a part of the zoning map.
- (e) Nonconformance: A lot annexed and zoned that does not meet the minimum lot area or open space per dwelling unit requirements of section 9-7-1, "Schedule of Form and Bulk Standards," B.R.C. 1981, may be used notwithstanding such requirements in accordance with this code or any ordinance of the city, if such lot was a buildable lot under Boulder County jurisdiction prior to annexation.

The project site, 1.91 acres and meets the minimum open space requirements in the RL-2 zone district. The property is not considered a buildable lot under Boulder County jurisdiction. There are no nonconforming uses on the property. The only nonstandard element of the property is a barn that does not meet rear yard setbacks.

- (f) Slopes: Notwithstanding the provisions of subsection (a) of this section, any land proposed for annexation that contains slopes at or exceeding fifteen percent shall not be zoned into a classification which would allow development inconsistent with policies 4.13, 4.16, and 4.17 of the Boulder Valley Comprehensive Plan.

Not applicable; the slope of the property is less than 15 percent.



COLORADO MUNICIPAL ANNEXATION ACT OF 1965

Colorado State Statutes Title 31, Article 12

§ 31-12-104. Eligibility for annexation

- (1) No unincorporated area may be annexed to a municipality unless one of the conditions set forth in section 30 (1) of article II of the state constitution first has been met. An area is eligible for annexation if the provisions of section 30 of article II of the state constitution have been complied with and the governing body, at a hearing as provided in section 31-12-109, finds and determines:
 - (a) That not less than one-sixth of the perimeter of the area proposed to be annexed is contiguous with the annexing municipality. Contiguity shall not be affected by the existence of a platted street or alley, a public or private right-of-way, a public or private transportation right-of-way or area, public lands, whether owned by the state, the United States, or an agency thereof, except county-owned open space, or a lake, reservoir, stream, or other natural or artificial waterway between the annexing municipality and the land proposed to be annexed. Subject to the requirements imposed by section 31-12-105 (1) (e), contiguity may be established by the annexation of one or more parcels in a series, which annexations may be completed simultaneously and considered together for the

purposes of the public hearing required by sections 31-12-108 and 31-12-109 and the annexation impact report required by section 31-12-108.5.

The property has more than one-sixth contiguity with the City of Boulder. The existing contiguity is 578 feet or 50%.

- (b) That a community of interest exists between the area proposed to be annexed and the annexing municipality; that said area is urban or will be urbanized in the near future; and that said area is integrated with or is capable of being integrated with the annexing municipality. The fact that the area proposed to be annexed has the contiguity with the annexing municipality required by paragraph (a) of this subsection (1) shall be a basis for a finding of compliance with these requirements unless the governing body, upon the basis of competent evidence presented at the hearing provided for in section 31-12-109, finds that at least two of the following are shown to exist:

The property is located within Area II of the BVCP planning area and is said to be urban in nature. The area is integrated with the city. The property is contiguous with the city limits, as described above.

- I. Less than fifty percent of the adult residents of the area proposed to be annexed make use of part or all of the following types of facilities of the annexing municipality: Recreational, civic, social, religious, industrial, or commercial; and less than twenty-five percent of said area's adult residents are employed in the annexing municipality. If there are no adult residents at the time of the hearing, this standard shall not apply.
 - II. One-half or more of the land in the area proposed to be annexed (including streets) is agricultural, and the landowners of such agricultural land, under oath, express an intention to devote the land to such agricultural use for a period of not less than five years.
 - III. It is not physically practicable to extend to the area proposed to be annexed those urban services which the annexing municipality provides in common to all of its citizens on the same terms and conditions as such services are made available to such citizens. This standard shall not apply to the extent that any portion of an area proposed to be annexed is provided or will within the reasonably near future be provided with any service by or through a quasi-municipal corporation.
- (2) (a) The contiguity required by paragraph (a) of subsection (1) of this section may not be established by use of any boundary of an area which was previously annexed to the annexing municipality if the area, at the time of its annexation, was not contiguous at any point with the boundary of the annexing municipality, was not otherwise in compliance with paragraph (a) of subsection (1) of this section, and was located more than three miles from the nearest boundary of the annexing municipality, nor may such contiguity be established by use of any boundary of territory which is subsequently annexed directly to, or which is indirectly connected through subsequent annexations to, such an area.

Not applicable; the area previously annexed that establishes contiguity does not meet the description above.

- (b) Because the creation or expansion of disconnected municipal satellites, which are sought to be prohibited by this subsection (2), violates both the purposes of this article as expressed in section 31-12-102 and the limitations of this article, any annexation which uses any boundary in violation of this subsection (2) may be declared by a court of competent jurisdiction to be void ab initio in addition to other remedies which may be provided. The provisions of section 31-12-116 (2) and (4) and section 31-12-117 shall not apply to such an annexation. Judicial review of such an annexation may be sought by any municipality having a plan in place pursuant to section 31-12-105 (1) (e) directly affected by such annexation, in addition to those described in section 31-12-116 (1). Such review may be, but need not be, instituted prior to the effective date of the annexing ordinance and may include injunctive relief. Such review shall be brought no later than sixty days after the effective date of the annexing ordinance or shall forever be barred.

Not applicable; the site is not considered a municipal satellite.

- (c) Contiguity is hereby declared to be a fundamental element in any annexation, and this subsection (2) shall not in any way be construed as having the effect of legitimizing in any way any noncontiguous annexation.

Not applicable.

§ 31-12-105. Limitations

- (1) Notwithstanding any provisions of this part 1 to the contrary, the following limitations shall apply to all annexations:
- (a) In establishing the boundaries of any territory to be annexed, no land 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, shall be divided into

separate parts or parcels without the written consent of the landowners thereof unless such tracts or parcels are separated by a dedicated street, road, or other public way.

Not applicable.

- (b) In establishing the boundaries of any area proposed to be annexed, no land 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 (which, together with the buildings and improvements situated thereon has a valuation for assessment in excess of two hundred thousand dollars for ad valorem tax purposes for the year next preceding the annexation) shall be included under this part 1 without the written consent of the landowners unless such tract of land is situated entirely within the outer boundaries of the annexing municipality as they exist at the time of annexation. In the application of this paragraph (b), contiguity shall not be affected by a dedicated street, road, or other public way.

Not applicable.

- (c) No annexation pursuant to section 31-12-106 and no annexation petition or petition for an annexation election pursuant to section 31-12-107 shall be valid when annexation proceedings have been commenced for the annexation of part or all of such territory to another municipality, except in accordance with the provisions of section 31-12-114. For the purpose of this section, proceedings are commenced when the petition is filed with the clerk of the annexing municipality or when the resolution of intent is adopted by the governing body of the annexing municipality if action on the acceptance of such petition or on the resolution of intent by the setting of the hearing in accordance with section 31-12-108 is taken within ninety days after the said filings if an annexation procedure initiated by petition for annexation is then completed within the one hundred fifty days next following the effective date of the resolution accepting the petition and setting the hearing date and if an annexation procedure initiated by resolution of intent or by petition for an annexation election is prosecuted without unreasonable delay after the effective date of the resolution setting the hearing date.

Not applicable.

- (d) As to any annexation which will result in the detachment of area from any school district and the attachment of the same to another school district, no annexation pursuant to section 31-12-106 or annexation petition or petition for an annexation election pursuant to section 31-12-107 is valid unless accompanied by a resolution of the board of directors of the school district to which such area will be attached approving such annexation.

The annexation will not result in the detachment of the area from any school district.

- (e) (I) Except as otherwise provided in this paragraph (e), no annexation may take place that would have the effect of extending a municipal boundary more than three miles in any direction from any point of such municipal boundary in any one year. Within said three-mile area, the contiguity required by section 31-12-104 (1) (a) may be achieved by annexing a platted street or alley, a public or private right-of-way, a public or private transportation right-of-way or area, or a lake, reservoir, stream, or other natural or artificial waterway. Prior to completion of any annexation within the three-mile area, the municipality shall have in place a plan for that area that generally describes the proposed location, character, and extent of streets, subways, bridges, waterways, waterfronts, parkways, playgrounds, squares, parks, aviation fields, other public ways, grounds, open spaces, public utilities, and terminals for water, light, sanitation, transportation, and power to be provided by the municipality and the proposed land uses for the area. Such plan shall be updated at least once annually. Such three-mile limit may be exceeded if such limit would have the effect of dividing a parcel of property held in identical ownership if at least fifty percent of the property is within the three-mile limit. In such event, the entire property held in identical ownership may be annexed in any one year without regard to such mileage limitation. Such three-mile limit may also be exceeded for the annexation of an enterprise zone.

The annexation would not have the effect of extending the municipal boundary more than 3 miles in the past year.

(II) Prior to completion of an annexation in which the contiguity required by section 31-12-104 (1) (a) is achieved pursuant to subparagraph (I) of this paragraph (e), the municipality shall annex any of the following parcels that abut a platted street or alley, a public or private right-of-way, a public or private transportation right-of-way or area, or a lake, reservoir, stream, or other natural or artificial waterway, where the parcel satisfies all of the eligibility requirements pursuant to section 31-12-104 and for which an annexation petition has been received by the municipality no later than forty-five days prior to the date of the hearing set pursuant to section 31-12-108 (1):

The city has received a petition meeting all requirements of the state statutes.

(A) Any parcel of property that has an individual schedule number for county tax filing purposes upon the petition of the owner of such parcel;

(B) Any subdivision that consists of only one subdivision filing upon the petition of the requisite number of property

owners within the subdivision as determined pursuant to section 31-12-107; and

(C) Any subdivision filing within a subdivision that consists of more than one subdivision filing upon the petition of the requisite number of property owners within the subdivision filing as determined pursuant to section 31-12-107.

(e.1) The parcels described in subparagraph (II) of paragraph (e) of this subsection (1) shall be annexed under the same or substantially similar terms and conditions and considered at the same hearing and in the same impact report as the initial annexation in which the contiguity required by section 31-12-104 (1) (a) is achieved by annexing a platted street or alley, a public or private right-of-way, a public or private transportation right-of-way or area, or a lake, reservoir, stream, or other natural or artificial waterway. Impacts of the annexation upon the parcels described in subparagraph (II) of paragraph (e) of this subsection (1) that abut such platted street or alley, public or private right-of-way, public or private transportation right-of-way or area, or lake, reservoir, stream, or other natural or artificial waterway shall be considered in the impact report required by section 31-12-108.5. As part of the same hearing, the municipality shall consider and decide upon any petition for annexation of any parcel of property having an individual schedule number for county tax filing purposes, which petition was received not later than forty-five days prior to the hearing date, where the parcel abuts any parcel described in subparagraph (II) of paragraph (e) of this subsection (1) and where the parcel otherwise satisfies all of the eligibility requirements of section 31-12-104.

(e.3) In connection with any annexation in which the contiguity required by section 31-12-104 (1) (a) is achieved by annexing a platted street or alley, a public or private right-of-way, a public or private transportation right-of-way or area, or a lake, reservoir, stream, or other natural or artificial waterway, upon the latter of ninety days prior to the date of the hearing set pursuant to section 31-12-108 or upon the filing of the annexation petition, the municipality shall provide, by regular mail to the owner of any abutting parcel as reflected in the records of the county assessor, written notice of the annexation and of the landowner's right to petition for annexation pursuant to section 31-12-107. Inadvertent failure to provide such notice shall neither create a cause of action in favor of any landowner nor invalidate any annexation proceeding.

- (f) In establishing the boundaries of any area proposed to be annexed, if a portion of a platted street or alley is annexed, the entire width of said street or alley shall be included within the area annexed.

The entire width of S. Boulder Rd. adjacent to the property is proposed to be annexed.

- (g) Notwithstanding the provisions of paragraph (f) of this subsection (1), a municipality shall not deny reasonable access to landowners, owner of an easement, or the owner of a franchise adjoining a platted street or alley which has been annexed by the municipality but is not bounded on both sides by the municipality.

The city will meet this condition.

- (h) The execution by any municipality of a power of attorney for real estate located within an unincorporated area shall not be construed to comply with the election provisions of this article for purposes of annexing such unincorporated area. Such annexation shall be valid only upon compliance with the procedures set forth in this article.

Not applicable.

§ 31-12-107. Petitions for annexation and for annexation elections

- (1) Petition for annexation in accordance with section 30 (1) (b) of article II of the state constitution:

(a) Persons comprising more than fifty percent of the landowners in the area and owning more than fifty percent of the area, excluding public streets and alleys and any land owned by the annexing municipality, meeting the requirements of sections 31-12-104 and 31-12-105 may petition the governing body of any municipality for the annexation of such territory.

The city has received a petition by persons comprising more than fifty percent of the landowners in the area to be annexed.

- (b) The petition shall be filed with the clerk.

The petition has been filed.

- (c) The petition shall contain the following:

The petition meets the following requirements.

- (I) An allegation that it is desirable and necessary that such area be annexed to the municipality;
- (II) An allegation that the requirements of sections 31-12-104 and 31-12-105 exist or have been met;
- (III) An allegation that the signers of the petition comprise more than fifty percent of the landowners in the area and

own more than fifty percent of the area proposed to be annexed, excluding public streets and alleys and any land owned by the annexing municipality;

(IV) A request that the annexing municipality approve the annexation of the area proposed to be annexed;

(V) The signatures of such landowners;

(VI) The mailing address of each such signer;

(VII) The legal description of the land owned by such signer;

(VIII) The date of signing of each signature; and

(IX) 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.

(d) Accompanying the petition shall be four copies of an annexation map containing the following information:

An annexation map has been received that contains this information.

(I) A written legal description of the boundaries of the area proposed to be annexed;

(II) A map showing the boundary of the area proposed to be annexed;

(III) Within the annexation boundary map, a showing of the location of each ownership tract in unplatted land and, if part or all of the area is platted, the boundaries and the plat numbers of plots or of lots and blocks;

(IV) Next to the boundary of the area proposed to be annexed, a drawing of the contiguous boundary of the annexing municipality and the contiguous boundary of any other municipality abutting the area proposed to be annexed.

(e) No signature on the petition is valid if it is dated more than one hundred eighty days prior to the date of filing the petition for annexation with the clerk. All petitions which substantially comply with the requirements set forth in paragraphs (b) to (d) of this subsection (1) shall be deemed sufficient. No person signing a petition for annexation shall be permitted to withdraw his signature from the petition after the petition has been filed with the clerk, except as such right of withdrawal is otherwise set forth in the petition.

The petition meets this limitation.

(f) The clerk shall refer the petition to the governing body as a communication. The governing body, without undue delay, shall then take appropriate steps to determine if the petition so filed is substantially in compliance with this subsection (1).

The city manager has determined that the petition is in compliance with this section.

(g) 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.

(2) Petition for annexation election in accordance with section 30 (1) (a) of article II of the state constitution:

Not applicable; the petition was not for an annexation by election.