CU South Annexation – What's Wrong
By Steve Pomerance

Context:

Flood control is inadequate: **The detention pond will fill up and overrun, creating a shorter but equally damaging flood if flood exceeds 100 year size, which it will given global warming and climate change.** And if land is developed, the opportunity to expand it will realistically be gone.

Flood control financing is inequitable: **Other creeks sustained equal damage on a per unit basis. And the total is similar or more. No comparative analyses were done to see if So Bo Creek should gain such high priority.** Funding the rest will take over 100 years, per the staff, at current levels.

Alternatives were not explored: **Trading for land in the Planning Reserve should have been analyzed. The 150 acres along N 26th St would have taken a few months at most to analyze service delivery, and has much better transportation access.** The BVCP changes could be done in an evening if the County Commissioners were amenable, which they almost certainly would be. And there are essentially no neighbors.

Condemnation should have been tried or at least kept on the table: **The case law supports one governmental entity condemning another's land if the first entity has a pressing need and the current owner has not immediate need.** Boulder challenged CU over the East Campus' original plan and didn't damage relationships. **So condemnation should have been researched and threatened if the City didn't get enough land to do a 500-year detention pond.** This was what it said it absolutely needed in 2018, only to back down when CU played hardball. *(Reminder – the high water table prohibits digging deeper for more capacity.)*

The process was likely illegal under the Charter: **Every bit of evidence points to Sam Weaver and Rachel Friend being heavily involved in the design of the Annexation Agreement, yet none of their meetings with staff and possibly CU have ever been noticed or open to the public as required by Charter Sec. 9.**

The Annexation Agreement was substantially changed at the last minute: **That included a radical change in the amount and location of fill (and no one has seen the detailed plans for and so cannot analyze) and increasing the amount of non-residential development by 50%, from 500,000 sq. ft. to 750,000 sq. ft. (which completely changed the jobs/housing balance.)**

Open Space won't dispose of the land without proper information and results: **The OSBT has made it very clear with their resolution that they have both informational and substantive requirements before they will "dispose" of the**

land required for the flood control facilities. The City has not dealt with this at all.

Annexation Agreement Language:

The Annexation Agreement has numerous very significant flaws and improperly written terms.

The Jobs/Housing Balance is way out of whack: The AA allows 1,100 or more housing units and 750,000 ft2 of non-residential development. Assuming it will be sold to a private developer, this will allow at least 750,000/150 = 5,000 jobs. Given the requirement for at least a 2:1 ratio of residential ft2 to non-res ft2, that means something like 1,100 units of 1,500 ft2 per unit, which would reasonably allow 3 persons per unit, or 4,500 persons in total. **Even assuming that all of these occupants are workers, which is highly unlikely, that's more jobs than people. And if the office occupancy is 100 ft2 per worker, which is occurring more and more, that's 7,500 workers or a jobs/pop ratio of 7500/4500 = 1.67.**

CU has not agreed to limit student growth on the Boulder campus: **This means that any housing on the site will be overwhelmed as CU continues to expand, and so will make little to no difference.**

The ROFR terms prevent the City from ever acquiring the property:

(1) **The Right of First Refusal terms would force the City to pay at least (and almost certainly above) market value for the property.** The "above" would occur because CU can accept tax deductible donations, so the sale would include a donation, which a private developer can deduct from their income. **So the developer would pay the same net amount after tax benefits, but CU would end up getting more cash in the end.** And that's why CU would likely to this deal shortly away after the AA is in place and the tax benefits are still in place.

(2) **Because the only reasonable purpose for the City to re-acquire the land would be to significantly limit development, that means that no bank would loan the City the money based on the property as security.** Remember the property may be worth $30-40M now in the County, but probably would be worth 5 times that once annexed and developable. **So the City would have to go to the citizens for TABOR approval. Given the tight timing in the ROFR sections, this means that CU could prevent the City from having a TABOR vote in November as the state constitution requires within the time allowed by the ROFR terms.** And Certificates of Participation likely won't work as security since the City doesn't have enough property to use for security for this gigantic size of deal.

The 2:1 ratio of residential to non-residential development is unenforceable: **The way the AA is written, CU, or more likely a private owner/developer, only has**

to do a small amount of housing (150 units) before it builds out its non-residential development. And what can the City do then? How exactly can it force CU or a third party owner/developer to actually build hundreds of thousands of square feet of residential development?

Little affordable housing will occur and CU will not do any: **The only affordable housing in all this development will be on the 5 acres CU will allow someone to do with 100-110 units of affordable housing.** If the land is at zero cost, then there will be perhaps a few more PA units than normal, if CU requires it, which they have not agreed to do. But, no surprise, none of CU's own housing will be guaranteed to be permanently affordable. **So that would be maybe 30-40 units of PA housing. And that's out of something like 1,200 units in total.** Pathetic!

The traffic mitigation stuff is a disaster from all angles:

(1) **There is no evaluation of the effect of adding 5,500 more trips per day to the roads in South Boulder on the Levels of Service.** And based on observation, it would probably come close to grid-locking some of the roads and make the others very unpleasant to use.

(2) The lengthy and very unclear and uncertain terms around how the traffic is to be counted and the vague and complicated sampling process are just ridiculous. They guarantee disputes and, in the end, don't make any sense. **It is trivially easy to ensure that ALL the traffic is counted accurately; there are plenty of inexpensive devices that could be put in place permanently at the few entrances to count every car. For example, look at https://diamondtraffic.com**

(3) The enforcement is ridiculously weak. **All CU is required to do is expend the cost of an RTD regional ticket per trip over the limit.** Note that this is not for all trips, but just the overage number. But that is VERY unlikely to eliminate all the over-trips, and probably will make very little difference. ***(This limit on what CU or another owner would be required to spend was NOT even noted or discussed by staff during the public engagement session staff discussion.)***

(4) It is also very unclear as to how many trips need to be eliminated, given the weak and poorly laid out sampling process. **For example, does an over-count on three of four quarters mean CU (or the private owner) has to eliminate 160 trips (approx. the school year in days)**, 250 trips per year (standard working days), or 365 trips per year? The language provides no answers.

(5) **The $5 per over-trip minimum expenditure will become meaningless, as inflation continues.** 10 years of inflation at 2.5% will reduce it to less than $4, and 20 years will make it worth about $3. Etc.

(6) **The simple solution has been completely ignored – just put electric gates on all the entrances and exits and have them close when the daily count is exceeded.** And only allow them to be opened by emergency vehicles.

Duration of Agreement: **There are three different statements about the term, and they all contradict each other.** And the grammar in one is appallingly bad and makes the meaning very uncertain.

Sec. 52. Extension of the Three-Year Anniversary. This Agreement will automatically extend for up to two successive terms of one year in the absence of either Party giving notice of 30 intent to not extend. Notice of the intent to not extend will be given at least 30 days prior to the Three-Year Anniversary date or the Four-Year Anniversary date if previously extended.

It says "This Agreement will automatically extend...". That's saying that the whole 30 pages plus 50 pages of attachments has a finite and relatively short existence of 3 years unless extended. And this language, for it to mean anything, means that the Agreement lasts no more than 5 years at a maximum.

The 3 year anniversary is defined in the Agreement's definitions as below. (Exactly what the "including…" phrase means is unclear, as is the language "date of the third year after…", but none of that changes the basics that this is no more than 5 years at most.)

"Three-Year Anniversary" means the date of the third year after the effective date of the ordinance annexing the Property into the City including any extensions provided under Section 52. (These extensions are for at most 2 years total.)

But then there is the language in Sec. 47 that says this Agreement runs with the land and so is semi-perpetual:

Sec. 47. Term and Future Interests. This Agreement and the covenants set forth herein will run with the land and be binding upon the University, the University's successors and assigns and all persons who may hereafter acquire an interest in the Remaining Land Interest, or any part thereof.

And then there is the language in Sec. 38 that says that the Agreement has a "term", which implies it is relatively finite, maybe related to the Three Year Anniversary limit, but maybe not:

Sec. 38. Transfer of Property Interest by the University. This Agreement will remain in effect and continue to apply to a Transfer of the Property, or any portion thereof, by the University to a person or subsequent owners otherwise subject to the City's ordinances and regulations; and the respective obligations, rights, benefits, and duties of the City and the University under this Agreement will continue to apply during the term of this Agreement to the use and development of property Transferred by the University. I

So there is a conflict that creates huge uncertainty — either 52 or 47 or 38 is determinative, but all of them cannot be.

Inaccurate information on the Initiative:
I watched the briefing session on CU South and the Annexation Agreement. A question was asked about what would happen if the Annexation Agreement is signed and then the initiative requiring a citizen vote on the Agreement passes in the November election.

What was said was that the initiative was null and void(i.e. of no legal power) or words to that effect. It was clear that the staff person had not read the Initiative.

The Initiative states if the property is annexed, then no city services may be provided except for the flood control facilities, unless the Annexation Agreement has been approved by the voters. The City needs to deal in facts, not biased suppositions.