

To: Boulder City Council

From: Margaret D. LeCompte and Harlin Savage on behalf of Save South Boulder

Date: April 15, 2019

Subject: Uncounted Costs of Annexation and Acceding to CU's Demands for Development: An Introduction

Note: Contrary to city staff statements, the annexation issues that Save South Boulder and many Boulder residents are most concerned about were not identified in the April 14, 2019 *Daily Camera* article, "City responds to annexation application."

We submit that this document better represents residents' concerns, and again, we insist that the city provide ample opportunity for citizens to engage fully and in a timely manner in discussions about annexation.

Save South Boulder is a coalition of residents in South Boulder neighborhoods. We fully support public safety initiatives leading to flood mitigation in South Boulder. However, we hold that there is no real benefit to the City of Boulder for allowing CU to construct a new campus on CU-South.

All the community benefits cited by CU boil down to the value of having a Tier One University in town, which we already have, and CU's assertion that it will house some of its students and faculty on the site instead of in town. The rest are benefits to CU recast erroneously as benefits to the City, or simply glittering generalities. In fact, the only real benefit of annexation, which comes at great cost to the City, is to CU itself.

Below we demonstrate that all the COSTS to the City and its residents have not yet been identified or factored into the discussion. The one exception is for the City's staff and engineering consultant's preliminary estimate that flood mitigation, which includes a dam, may cost as much as \$45 million - \$65 million, simply for Phase I of the project, the goal of which is to protect Hwy 36 and the West Valley (Frasier Meadows) from flooding.

CU's development aspirations have already constrained the ability of the City's engineering consultants to design a potentially safer, more cost effective, and less

environmentally destructive flood mitigation plan, leaving the City with more expensive and more complicated options.

In addition to paying all construction, operation, and maintenance costs for flood mitigation, which also benefit the university, CU's non-negotiable conditions for annexation would require the City to assume all risks and liabilities for flood mitigation in perpetuity without knowing exactly what CU intends to build and exactly where on the site it intends to build it.

Further, CU requires the City to assume liability in perpetuity and in all flooding conditions for any damage to jurisdictional wetlands and sensitive habitats owned by OSMP or the City. These requirements are imposed in exchange for 80 acres of CU's 308 acres to use for flood mitigation. We are not even certain whether the 80 acres offered, given the other stipulations demanded by CU, will be adequate to protect against catastrophic floods. Further, the City is being asked to agree to a long list of actual, potential, and unknown costs before CU completes its housing, transportation, and campus master plans in 2020, which would provide more of the details needed to make reasonable estimates of costs and impacts.

We summarize the issues that concern us most below, and we attach as Exhibits A and B a detailed summary and analysis of the type of costs which CU proposes to impose on the City, though not with actual dollar estimates, which cannot be provided without more information. We also explain below why dollar estimates cannot be made at this time.

Getting Flood Mitigation Right at Reasonable Cost

Until the City has a detailed engineering design for flood mitigation, which may not be available until next year, there is no way to be certain whether the 80 acres of land that CU has offered the City will be sufficient for best-practice flood mitigation in the area or if more land will be required at the City's expense. Getting flood mitigation right—that is, protecting lives, safety, the environment and property—without bursting the City's budget comes first. CU's aspirations are secondary.

CU's petition would make the City of Boulder responsible for all these costs, risks and liabilities. It also demands that the City alone compensate CU if it needs to use for flood mitigation any of the land designated "public" within the 129 acres CU wants for development or the 30 acres designated "parks, urban, and other" that CU wants for playing fields. CU has insisted that the per-acre value of these

lands is far above what is reasonable market value for land that cannot be developed. CU also wants the City to pay the costs of any needed infrastructure on CU's property, such roads, as well as restoration, rehabilitation or replacement of open space or protected habitat affected by construction or a reduction of CU's desired acreage. And many other things. See Exhibit A and B.

No Annexation without a Site Plan

CU's annexation petition specifically states that the City will not require a site plan as a condition of annexation. However, without a site plan from CU—an omission that the City has never allowed for previous developments—there is no way to estimate costs and impacts that CU requires the City to assume, such as:

- possible infrastructure costs, including access to and egress from the property, additional roads and pathways to access recreational facilities or buildings, and parking
- damages to CU's property because of construction of flood mitigation infrastructure
- possible future damages and liabilities to the City that may emerge because of future flooding, which indeed, WILL occur
- impacts from non-compliance with the City's codes and environmental regulations
- And a long laundry list of other costs, risks, and liabilities

Basically, CU demands that the City of Boulder assume all the costs and risks of both annexation and flood mitigation, and as well, the costs of making the area attractive and usable for CU's purposes, even during heavy rains and floods, and doing so in perpetuity.

We urge City officials to exercise due diligence in calculating, to the greatest extent possible, what these costs (detailed below in Exhibit A and B) might be. We believe that the costs of CU's proposal are extraordinary and will impose an unacceptable fiscal, health and safety burden on taxpayers and residents.

Further, not requiring CU to submit a site plan with the annexation petition renders CU's proposal dead on arrival. It is too dangerous to give CU, a sovereign entity, *carte blanche* to develop its floodplain property as it sees fit. CU has not proven itself to be a good steward of the environment in the past, nor has it been willing to conform to codes and zoning regulations regarding where buildings are sited, preservation of the environment, height restrictions, building in the known 500-

year floodplain, and so on. In fact, CU has specifically stated that its common practice is to build within the 500-year floodplain and it is well known that CU has already built housing within the 100-year floodplain in other parts of the City.

Therefore, we call on the City not to enter into an annexation agreement before it has a site plan, without which the full costs to the City cannot be determined. No site plan, no annexation.

We also call on the City not to abandon the 500-year flood standard, regardless of its impact on CU's property. Health, life, safety and cost considerations come first. CU's aspirations are secondary.

Finally, we believe that it could be far cheaper, and certainly more aesthetically and environmentally desirable for the City to:

- a) purchase CU's 308 acres for use in flood mitigation (but not at the outrageously inflated values attributed to it by CU)
- b) undertake a land swap so that CU can, in fact, have the playing fields, residences and academic buildings it wants—but not at CU-South
- c) exercise its authority to protect the lives and safety of its residents through eminent domain to use the entire property, if needed, for flood mitigation, in which case a land swap could still be implemented

These options would satisfy CU while preserving the quality of life, health, safety and property in South Boulder and the Gateway to the City of Boulder. As well, it would avoid harm to the irreplaceable riparian and wet tallgrass prairie habitats of South Boulder Creek and its tributaries.

DRAFT: April 15, 2019

Margaret LeCompte and Harlin Savage

Exhibit A: Summary of Uncounted and Unstudied Costs

Given that no engineering design plan for flood mitigation yet exists, it is impossible to estimate the costs of even a Phase I plan addressing flooding issues south and west of Hwy 36 and into the West Valley. However, we can assume that they will exceed the initial estimates of Alternative D and its variants 1 and 2, 100- and 500-year standards. This is because

- a) **Those estimates did not consider the costs of dealing with Viele Channel and Dry Creek Ditch on both sides of the highway, as well as other possible engineering problems.**
- b) **CU’s annexation proposal requires the City of Boulder to assume many costs, risks and liabilities associated with any flood mitigation project (as yet not designed), both in the near-term during construction and in perpetuity.**
- c) **CU states “The city will not require site plan submission for annexation.” Without such a plan, this requirement imposes a “cost-plus,” open-ended burden on the City. It is a pig in a poke.**

In Exhibit A, we summarize the principle issues in CU’s proposals, addressing in addition some of the unknowns faced in calculating costs. In Exhibit B, we quote directly from the University’s own proposal to provide details.

SUMMARY

Direct Cash Costs to the City

- As-yet uncalculated cost to the City of Boulder for extending sewer and water services to CU’s anticipated developments
- Construction of access and egress roadways into the CU-South property
- Cost of purchases of any land necessary to compensate CU for loss of property needed to implement flood mitigation project
- Construction of the flood mitigation infrastructure (dam, siphons, etc)
- Construction of modifications to ditches, tributaries and channels on or downstream of CU’s property
- Compensation to CU for any damage done to its property or facilities attributable to construction of flood mitigation project
- Cost to City for damages to CU property and infrastructure when CU property does, in fact, flood, which is inevitable
- Cost of purchases of any land necessary to replace protected OSMP or CU property needed to implement flood mitigation project

Environmental Costs

- Loss of irreplaceable habitat, esp. extremely rare wet meadows, other wetlands and mesic tall grass prairie.
- Threats to endangered, threatened, or rare species.

- Loss of habitat for dozens of bird species – bald eagles, barn owls, red-tailed hawks, Cooper’s and sharp-shinned hawks as well as habitat for other native wildlife.
- Pollution of South Boulder Creek and watershed by increased runoff attendant to decreased permeability associated with development and paving-over of site.
- Ill-considered suggestion by City staff to locate Firehouse #4 on CU-South’s irreplaceable riparian habitat, given that fire retardant and other chemicals used in firefighting are known and very dangerous water pollutants to watersheds and aquifers.
- Irrevocable loss of land in the South Boulder Creek watershed, which both City and Boulder County sought to purchase for open space and protected habitat.
- Loss of a potentially significant opportunity to reduce the City’s carbon footprint by applying compost instead of pavement to the land to boost carbon sequestration. This would help the City meet its climate change goals.

Health and Safety Costs of Annexation

- Increased traffic and heavy truck routes passing through a residential area as well as crossings for Summit Middle School and the Bixby School and Morningstar Memory Care Facility, as well as through a densely populated neighborhood of apartments, condos and smaller houses.
- Increased noise, light pollution, and air pollution, and air-borne particulates because of increased traffic and congestion
- Loss of recreational assets for residents and visitors seeking healthful exercise and passive activities, including photography, bird and animal watching. Thousands of people use the area on a regular basis for running, hiking, biking, skiing, and of course, dog walking.

Unknowns:

Land Needs for Flood Mitigation Project:

- There is no way of determining at this time if 80 acres of land will be sufficient for best-practice flood mitigation in the area, or if more land will be required.

Engineering Design and Cost Issues

- We do not yet know how much it will cost to address needed infrastructure and “fixes” for Viele Channel and other drainages.
- We do not know the cost of two reinforcing bridges over Viele Channel, as well as culverts channeling its water toward South Boulder Creek.
- No consideration has been given to disposition of water flow from Anderson Ditch, which flows east along Table Mesa Drive, and ends in the low spot at the NW corner of the Table Mesa/Hwy 367 intersection north of the bridge.

Infrastructure Costs to the City and County:

- As-yet unstudied need to strengthen existing ingress-egress points to CU property, whose only access points are currently a residential road with an unpaved spur to the property and a partially paved road to a trailhead, neither of which is built for large trucks and construction or major traffic.
- As-yet unstudied traffic and congestion impacts to the Table Mesa/Hwy 36/South Boulder Road/ Foothills Parkway intersection, because of greatly increased traffic to the CU site when/if development proceeds.

Exhibit B:

DETAILS OF Non-Negotiables in CU’S Annexation Proposal (direct quotes and minor paraphrases from CU’s proposal)

CU’s Land Demands—Direct Costs:

- At the time of annexation and the final construction and completion of the flood mitigation project, CU Boulder must retain for its use and development 129 acres, equivalent to what currently is designated as “Public” within the 2015 BVCP.
- Any land use designation changes required to meet the acreage above must be done simultaneously with the annexation agreement. If those changes cannot be made and the university is left with fewer than the developable acres in the “Public” area in the 2015 BVCP, the city agrees to provide alternative acreage acceptable to the university either on the property by changing land use designation or by purchasing equivalent acreage at another location acceptable to the university.
- Upon completion of the construction of the flood mitigation dam and related retention areas, CU Boulder must have no less than 30 appropriately graded

acres available for construction of recreational/athletics fields within the Park- Urban/Other land use areas as designated within the 2015 BVCP.

- The City must pay for any additional land requested of CU by the city or city-related entity for open space or other uses, at a price established by CU as a market value cost.

Additional Costs of Annexation

- Savage and LeCompte assume the following means that the City will be responsible for any costs of installing, maintaining and servicing water and wastewater infrastructure on CU-South, in perpetuity: “CU Boulder South shall be deemed to be part of the Main Campus of the university and be subject to the Water and Wastewater Service Agreement of January 1997 between the parties.”

CU’s Demands Regarding Costs of Flood Mitigation Project:

- All direct, indirect, and consequential costs of developing and constructing flood mitigation on CU Boulder South (exclusive of the value of the land conveyed to the city) shall be borne by the city, including, but not limited to:
- The City shall pay for modification, realignment and/or reconstruction of existing access road(s) on the property, if CU Boulder determines that the design of the city’s flood mitigation project necessitates such changes.
- The City will pay for any claims or damages [to houses and other structures and infrastructure] resulting from the failure of the performance and safety of the dam and related structures in the future.
- If the university agrees, the city may, at its sole cost, realign Dry Creek Ditch #2.
- If the university agrees, the city may acquire or lease the university’s water rights in Dry Creek Ditch #2.

CU’s Levee:

- CU would allow removal of the CU Boulder berm/levee, under these conditions:
 - The City will be responsible for securing all federal, state, and other governmental approvals to remove the berm/levee
 - The city will ensure, at its sole expense, that construction and/or operation of the flood mitigation dam and related structures and removal of the berm/levee shall not increase the FEMA 100-year or

500-year floodplain on any of the CU Boulder South property, now or in the future.

- CU Boulder will be provided the first option to use or sell the berm/levee material if the berm/levee is removed
- The City will pay for any claims or damages resulting from the failure of the performance and safety of the dam and related structures in the future.

CU's Playing Fields, Tennis Courts and Constraints on Detention

- CU wants to design field placement as well as placement of potential bleachers on the slopes of the retention walls. Both the recreation/athletic fields and the bleachers would be built at the university's sole cost. Note: These structures may impede flood drainage and limit detention.
- The city must ensure that the flood detention area used for recreational/athletics field development will be engineered to sufficiently drain within a reasonable time period to ensure that the fields can remain functional after a flood.
- The city will ensure that recreational/athletics fields do not have ongoing water ponding issues not related to a flood event.
- Project design will provide for ingress and egress to those fields. (Savage and LeCompte assume this means the flood project, and that City would be required to pay for this; see above re: roads)
- The City must pay for moving the tennis courts out of the affected area and provide equivalent acreage to be developed elsewhere on the CU Boulder South site, should the city's flood mitigation project final design create a dam or detention area that encompasses the CU tennis courts/facilities, or materially adversely affects CU Boulder's tennis court operation as a NCAA Division 1 playing facility, as reasonably determined by the university.

Cost to the City re Wetlands, Open-Space-Other

- The City will secure any applicable wetland permits If any jurisdictional wetlands are damaged or displaced as a result of the flood mitigation needs of the City.
- The City will mitigate the loss of the any wetlands with wetland bank credits or land the city otherwise owns.
- The City will bear the costs of restoration of ecological benefits of any Open Space-Other land (as designated under the BVCP) owned by CU Boulder desired by the city or related entity.

