**C I T Y O F B O U L D E R**
**PLANNING BOARD AGENDA ITEM**
**MEETING DATE: August 6, 2015**

**AGENDA TITLE:** Public hearing and Planning Board recommendation on **Annexation and Initial Zoning (case no. LUR2015-00029) for the property located at 236 Pearl Street and a portion of the property at 250 Pearl Street.** The proposal includes a request for annexation with an initial zoning of Residential Mixed - 1 (RMX-1) and Business-Transitional 2 (BT-2), respectively.

Property Owners: William L. and Carole F. Cassio (236 Pearl) and GKN Family LLP (250 Pearl)
Applicant: Stephen Sparn

**REQUESTING DEPARTMENT:**
**Community Planning and Sustainability:**
David Driskell, Executive Director
Susan Richstone, Deputy Director
Charles Ferro, Land Use Review Manager
Elaine McLaughlin, Senior Planner

**OBJECTIVE:**
Define the steps for Planning Board consideration of this request:

1. Hear applicant and staff presentations
2. Hold public hearing
3. Planning Board discussion
4. Planning Board recommendations to City Council on the Annexation and Initial Zoning of Residential Mixed – 1 (RMX-1) for 236 Pearl St. and Business Transition – 2 (BT-2) for 250 Pearl St.

**SUMMARY:**
The applicant is requesting Annexation and Initial Zoning of Residential Mixed – 1 (RMX-1) and Business-Transitional 2 (BT-2), consistent with the Boulder Valley Comprehensive Plan for the property located at 236 and 250 Pearl respectively. The annexation request will follow the annexation procedures in the Municipal Annexation Act of 1965 (Section 31-12-101 *et seq.,* C.R.S.).

| | |
|---|---|
| Project Name: | 236 Pearl and a portion of 250 Pearl Street Annexation and Initial Zoning Request |
| Location: | 236 Pearl and a portion of 250 Pearl Street. |
| Size of Tract: | 15,282 sq. ft. (0.35 acres) combined |
| Zoning: | Boulder County Enclave (E) and proposed city zoning designation of Residential Mixed – 1 (RMX-1) and Business-Transitional 2 (BT-2) |
| Comprehensive Plan: | Mixed Density Residential (MXR) and Transitional Business (TB) |

**KEY ISSUES:**
Staff has identified the following key issues regarding the annexation petition and has provided responses below in the "Analysis" section of this memo.

**Key Issue 1**: Is the proposed annexation consistent with State statutes and city policy pertaining to the annexation of a property into the City of Boulder?

**Key Issue 2**: Is the proposed annexation consistent with the Boulder Valley Comprehensive Plan (BVCP)?

**Key Issue 3**: Is the initial zoning of Residential Mixed – 1 (RMX-1) and Business Transition – 2 (BT-2) respectively, consistent with the BVCP Land Use Designations?

**Key Issue 4**: Are the requests for a reduced setback on the front and interior side lots proposed for 236 Pearl consistent with the BVCP Land Use and surrounding context?

**BACKGROUND:**

The site of the proposed annexation is an enclave located in west Boulder, roughly mid-block between 2nd and 3rd streets fronting on Pearl Street and consists of two separate properties and property ownership groups. The majority of the property located at 250 Pearl Street was annexed during the pre-World War II era, with the exception of a small triangular portion at the northwestern corner of the property shown in Figure 1. The request for annexation of the property at 236 Pearl adjacent to the triangular portion of 250 Pearl prompted the discussion to also annex the small portion to avoid an unusual enclave condition.

The area contained within the triangular portion of 250 Pearl Street is virtually entirely encompassed by Sunshine Creek and the High Hazard Flood Zone which is the area of the floodplain with the fastest, deepest flows shown in purple shading Figure 2. A portion of 236 Pearl Street also has this condition on the southeast corner of the property. Per section 9-3-5 B.R.C. 1981, no new human occupied structures and no new parking areas for motor vehicles can be located in the high hazard zone. There are also regulatory wetlands coincident with the purple shaded area in Figure 2. These wetlands are classified as low functioning and have a 25' buffer regulatory area (purple line) surrounding them. New structures are prohibited in the wetlands but are allowed within the buffer area if the proper wetlands permits are obtained per section 9-3-9 B.R.C. 1981. The Floodplain and Wetland Map is presented in Figure 2.

**Figure 1: Location of Subject Enclave Properties**

**Figure 2: Floodplain and Wetland Map**

As the applicant noted in their written statement, the site is located on the far west end of Pearl Street in a location that is fairly quiet with low traffic volumes. It's located in close proximity to Settler's Park (at the terminus of Pearl Street and the Boulder Creek Bike Path, and there is an existing RTD bus stop located

adjacent to the site. The site 236 Pearl Site is occupied by a one story structure and the current owner operates a realty business with eight free-standing sheds that house items associated with the realty business. Two of the buildings were constructed in 1963 and have been altered over time and because of that the buildings were not found to hold historic significance. There are no structures within the triangular portion of 250 Pearl Street. The owner of 236 Pearl Street intends to remove the existing structures, subdivide the property into two lots and construct a duplex straddling the property. The property owners will live in one side of the duplex, and their caregivers will reside in the other side of the duplex.

Two of the existing structures on the 236 Pearl St. site: small frame sheds, upon annexation, would be considered nonstandard as they do not meet minimum setback requirements for the rear yard setback pursuant to Section 9-7, "*Form and Bulk Standards*," B.R.C. 1981; one is approximately 10 feet from the rear property line and the other is approximately 12 feet; where a 25 foot rear yard setback is required. Refer to Figure 3, which illustrates an Improvement Survey of the property illustrating the existing buildings on the site. Demolition of the non-standard structures would be required upon annexation and prior to building permit application for the new structures and final plat for the subdivision.

**Annexation of Enclaves.** Colorado State Statutes and the Boulder Valley Comprehensive Plan Policy 1.24 (b) provide policies for annexation of enclaves. Key Issue 1, found later in the document, provides an analysis of the proposed annexation with the state and local policies. As stated in BVCP policy 1.24(b):

> *"The city will actively pursue annexation of county enclaves, Area II properties along the western boundary, and other fully developed Area II properties. County enclave means an unincorporated area of land entirely contained within the outer boundary of the city."*

In addition, the Guidelines for Annexation Agreements were endorsed by City Council and Planning Board in 2002 and provide policy guidelines for specific development parameters and community benefit practices that are applicable to properties requesting annexation. Refer to **Attachment A**.

**Land Use and Zoning.** The existing BVCP Land Use Designation for the 236 Pearl Street property is Mixed Density Residential; and for the 250 Pearl triangular portion is Transitional Business. The BVCP Land Use Map is presented in Figure 3. The proposed initial zoning would be consistent with the land use map of Residential Mixed -1(RMX-1) and Business Transition – 2 (BT-2) respectively. The existing zoning map is presented in Figure 4. Refer to Key Issue 3, found later in the document, for consistency of the proposed initial zoning with the BVCP Land Uses.

**Figure 3: BVCP Land Use**

**Figure 4: Existing Surrounding Zoning**

The properties became enclaves over time as the majority of the property at 250 Pearl Street was annexed pre-World War II and the properties to the west and south of 236 Pearl were annexed in the 1970s. The property directly west was redeveloped as a Planned Unit Development (PUD). The properties to the north were annexed during the 1980s and were also redeveloped through a PUD process. Figure 5 illustrates the annexations over time surrounding the property.

**Figure 5: Surrounding Annexations over Time**

**ANNEXATION REQUEST**

The applicant is requesting annexation into the City of Boulder with an initial zoning of RMX-1 for 236 Pearl and BT-2 for 250 Pearl Street as shown in Figure 6, Proposed Zoning. There are no plans to redevelop the small triangular parcel on 250 Pearl Street as that portion of the property is encompassed by Sunshine Creek and high hazard flood boundaries. As a part of the Annexation Agreement, staff is requiring a Flood Control Easement over the entire Flood Boundary. On 236 Pearl Street, upon annexation and initial zoning approval, the applicant intends to subdivide the 13,849 square foot property into two lots and construct a duplex that would straddle the property line as shown in Figure 7 on the following page. The property owners anticipate living within one side of the duplex, with their caregivers residing in the other side of the duplex.

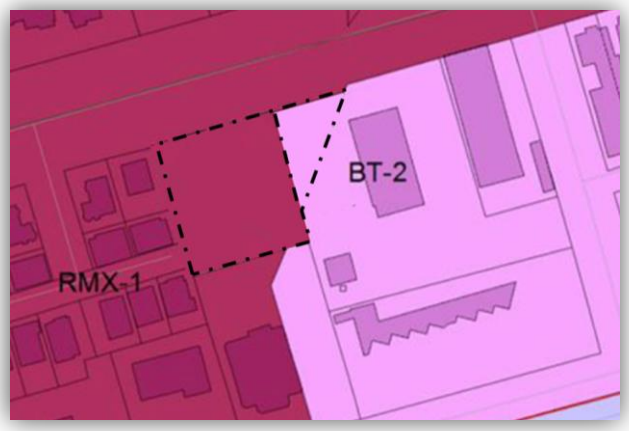



**Figure 6: Proposed Initial Zoning**

Because the size of the property is not eligible for Site Review, through annexation the applicant is requesting a 2.5 foot front yard setback reduction from 15 feet to 12.5 feet and a zero lot line interior side yard setback to construct the duplex and create a separate lot area for each side of the duplex.

The applicant has illustrated their proposed subdivision (under separate review) with requests to modify certain setbacks as shown in Figure 7 on the following page. Note that the only modifications to the land use code are the zero lot line and the 12.5 foot setback for the front yard, shown with the numbered call outs highlighted in orange. The applicant is also requesting a five foot side yard setback on the eastern

sideyard of the eastern lot and a 10 foot side yard setback on the western side yard of the western lot with a zero setback on the interior lot line. The code requires a minimum combined side yard setback of 15 feet. The code does not allow for the proposed combined side yard setbacks; however, would the applicant choose to not subdivide the parcel and build the same two attached units on the parcel, the proposed side yard setbacks would meet code requirements for side yard setbacks.

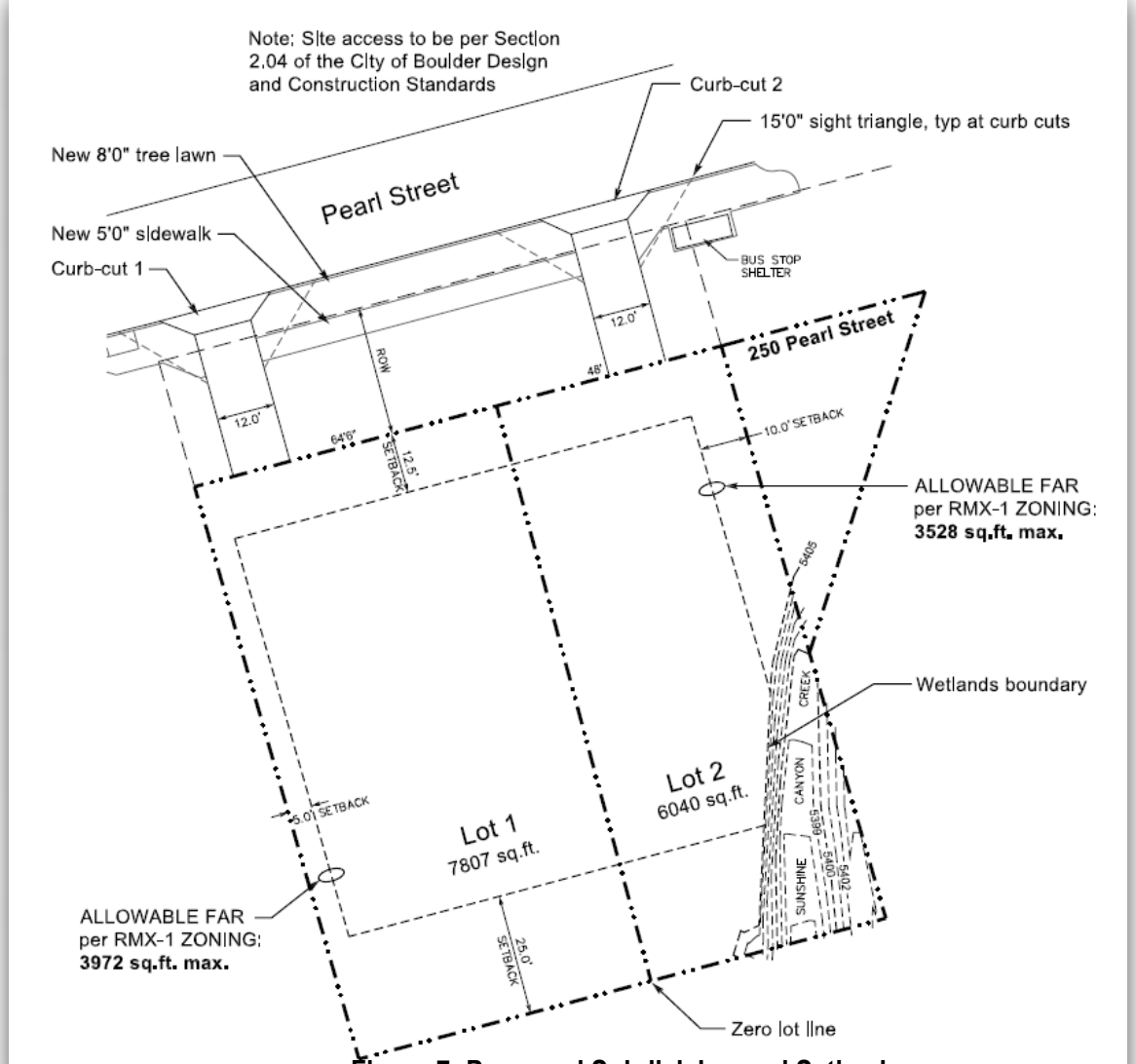
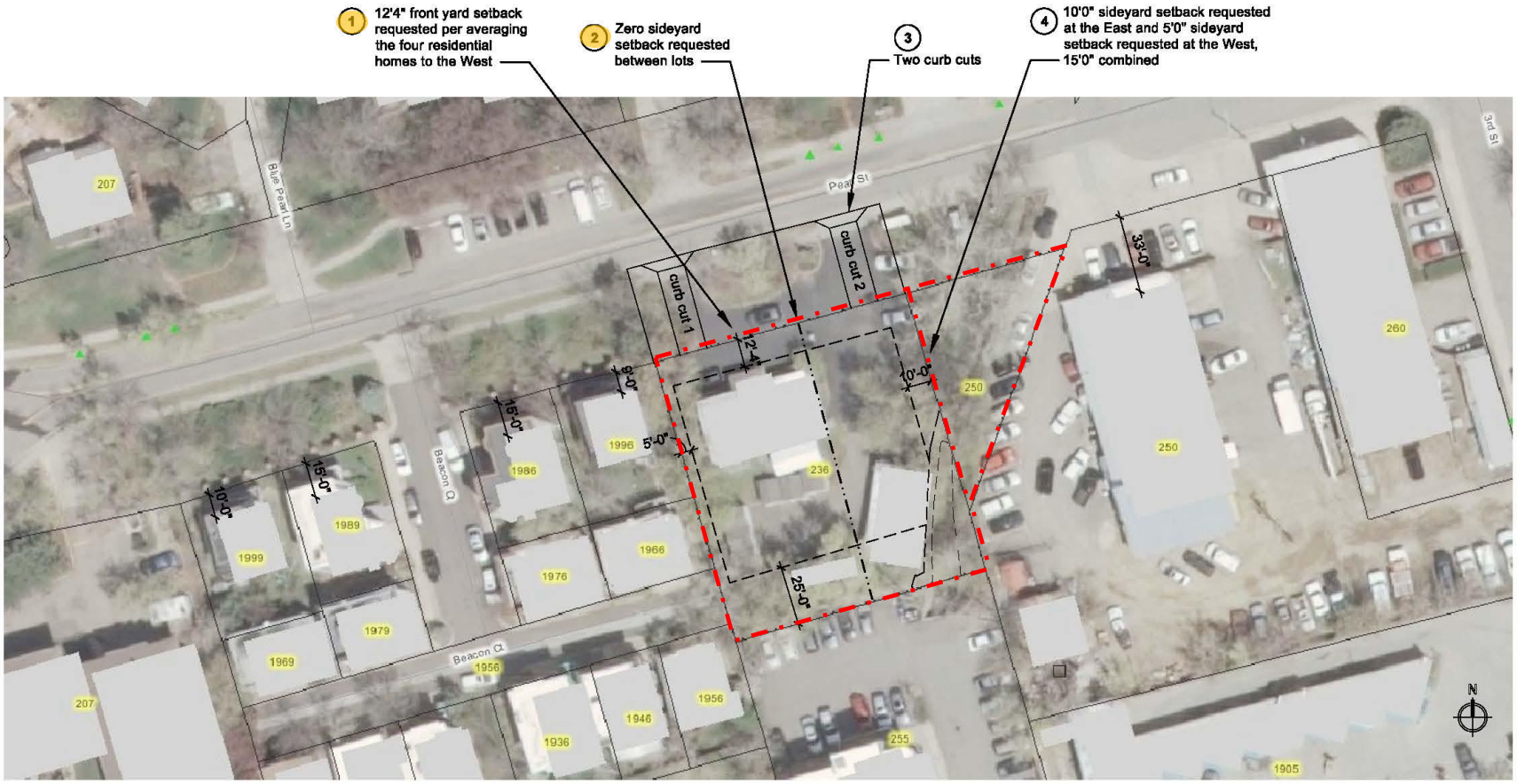


**Figure 7: Proposed Subdivision and Setbacks**

The RMX-1 zoning permits duplexes by-right but does not permit a zero lot line for the interior side yard setback. The desire to have a duplex with a separate yard and on its own lot for each unit requires the request for a modification to the side yard setback. The applicant has also requested front yard setback averaging to reduce the front yard setback from 15 feet to 12.5 feet as is consistent with the other residential units on Pearl Street to the west of the site, established through Site Review. This is illustrated in Figure 8 on the following page. The minimum side yard setback in the RMX-1 zoning is five feet as the applicant is proposing. Refer to the analysis of these requests under Key Issue 2, found later in the document.

**236 Pearl Street** | Annexation Phase | 236 Pearl Street, Boulder CO 80302

## REQUESTED VARIATIONS FROM LAND USE REGULATIONS TO BE INCLUDED IN ANNEXATION




## Contextual Site Image

Not to Scale

June 9, 2015

SOPHERSPARN ARCHITECTS LLC

1731 15th Street | Suite 250 | Boulder, CO 80302 | 303.442.4422 | www.sophersparn.com

**Figure 8: Requested Setback Modifications in Context**

## ANALYSIS:

**1. Is the proposed annexation consistent with State statutes and City of Boulder policy pertaining to the annexation of a property into the City of Boulder?**

The proposed annexation complies with applicable state annexation requirements regarding the annexation of an enclave. The Municipal Annexation Act provides that a municipality may annex an enclave if the area has been entirely contained within the outer boundaries of the municipality for a period of three or more years per §31-12-106(1), C.R.S. This area became an enclave when the city annexed the residential areas west and south of the site in the 1970s and the area north in the 1980s and the area east in the pre-World War II era, see Figure 5 above. No part of the municipal boundary surrounding the enclave consists of public rights-of-ways that has no municipal territory immediately adjacent to the right-of-way opposite to the enclave. All municipal territory surrounding the enclave that was annexed since December 19, 1990, was annexed in compliance with section 30 of article II Colorado constitution. Therefore, this area meets the statutory requirements and is eligible for annexation as an enclave.

The agreements signed under this approach to the annexation constitute a "memorandum of agreement or escrow arrangements voluntarily made by and between the municipality and owner or more land owners." under Section 31-12-112(2), C.R.S. These agreements allow the city and signing property owners to be assured of the contractual arrangements associated with the annexation without constituting additional "terms and conditions," which would otherwise require an annexation election. This type of agreement is authorized for unilateral annexations by Section 31-12-106(4), C.R.S.

**State Statutes for Annexation**

Following is an analysis of the requirements for annexation with State Annexation Law (31-12-101 et seq., C.R.S.).

**(1) Minimum Required Contiguity: At least one-sixth of the perimeter of the area to be annexed shall be contiguous to the city limits.**

*The properties are considered an enclave, surrounded by the city jurisdiction.*

**(2) Annexation by Petition: A petition must be presented by more than half of the landowners owning more than fifty percent of the area to be annexed. For enclaves and municipally owned property, the City may take the initiative without petition.**

*Petitions were submitted by the applicant.*

**(3) Annexation by Election: Under certain conditions, an election may be held by the property owners and registered electors within the area to be annexed.**

*Not applicable.*

An analysis of the proposed annexation under the requirements for unilateral annexation under State Annexation Law (31-12-106.1, C.R.S.) is as follows:

**1) Annexation of enclaves. When any unincorporated area is entirely contained within the**

**boundaries of a municipality, the governing body may by ordinance annex such territory to the municipality in accordance with section 30 (1) (c) of article II of the state constitution, but without complying with section 31-12-104, 31-12-105, 31-12-108, or 31-12-109, if said area has been so surrounded for a period of not less than three years; except that notice of the proposed annexation ordinance shall be given by publication as provided by section 31-12-108 (2) for notices of annexation petitions, and resolutions initiating annexation proceedings, but no public hearing on the proposed annexation ordinance shall be required, and the first publication of notice shall be at least thirty days prior to the adoption of the ordinance.**

*The unincorporated properties of 236 and a portion of 250 Pearl are fully contained within the boundaries of the City of Boulder and have been so surrounded for a period of not less than three years. The site became an enclave with the annexation of the properties to the north in the 1980s. Refer to Figure 5 above.*

**(1.1) Exception to annexation of enclaves.**

**(a) No enclave may be annexed pursuant to subsection (1) of this section if:**

**(I) Any part of the municipal boundary or territory surrounding such enclave consists at the time of the annexation of the enclave of public rights-of-way, including streets and alleys, that are not immediately adjacent to the municipality on the side of the right-of-way opposite to the enclave; or**

*Not applicable; the site is immediate adjacent to the municipality*

**(II) Any part of the territory surrounding the enclave was annexed to the municipality since December 19, 1980, without compliance with section 30 of article II of the state constitution.**

*Not applicable.*

**(b) In the case of an enclave the population of which exceeds one hundred persons according to the most recent United States census and that contains more than fifty acres, the enclave shall not be annexed pursuant to subsection (1) of this section unless the governing body of the annexing municipality has:**

**(I) Created an annexation transition committee composed of nine members, five of whom shall reside, operate a business, or own real property within the enclave, two of whom shall represent the annexing municipality, and two of whom shall represent one or more counties in which the enclave is situated; and**

*Not applicable.*

**(II) Published notice of the creation and existence of the committee, together with its regular mail, electronic mail, or telephonic contact information, in the same manner as provided by section 31-12-108 (2) for notices of annexation petitions and resolutions initiating annexation proceedings.**

*Not applicable.*

**(c) The duties of the annexation transition committee required by paragraph (b) of this subsection (1.1) shall be to:**

**(I) Serve as a means of communication between or among the annexing municipality, one or more counties within which the enclave is situated, and the persons who reside, operate a business, or own real property within the enclave regarding any public meetings on the proposed annexation; and**

*Not applicable.*

**(II) Provide a mechanism by which persons who reside, operate a business, or own real property within the enclave may communicate, whether by electronic mail, telephonic communication, regular mail, or public meetings, with the annexing municipality or any counties within which the enclave is situated regarding the proposed annexation.**

*Not applicable.*

**(2) (Deleted by amendment, L. 97, p. 995, § 2, effective May 27, 1997.)**

**(3) Annexation of unincorporated municipally owned land. When the municipality is the sole owner of the area that it desires to annex, which area is eligible for annexation in accordance with section 30 (1) (c) of article II of the state constitution and sections 31-12-104 (1) (a) and 31-12-105, the governing body may by ordinance annex said area to the municipality without notice and hearing as provided in sections 31-12-108 and 31-12-109. The annexing ordinance shall state that the area proposed to be annexed is owned by the annexing municipality and is not solely a public street or right-of-way.**

*Not applicable.*

**(4) Additional terms and conditions on the annexation. Additional terms or conditions may be imposed by the governing body in accordance with section 31-12-112.**

*Terms of annexation are enumerated in the Draft Annexation Agreements, found in **Attachment E**, which constitutes memorandum of agreement voluntarily made between the City and the applicants consistent with section 31-12-112, C.R.S.*

**City of Boulder Annexation Policy**

The Annexation of land must be consistent with the BVCP Policy 1.24 shown in ***bold italic***, with consistency of the proposed annexation following:

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

The property is currently served with a domestic water service. As a condition of annexation, any existing structures requiring the use of a waste disposal system shall be connected to the city's wastewater system in accordance with section 11-2-8, B.R.C. 1981 within 180 days of the second reading of the annexation ordinance or the existing structures must be demolished.

***b) The city will actively pursue annexation of county enclaves, Area II properties along the western***

***boundary, and other fully 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.***

The properties are considered to be an enclave (unincorporated area of land entirely contained within the outer boundary of the city) and have been an enclave for over three years. As such, annexation of the properties at 236 and 250 Pearl will follow the proceedings under state statute §31-12-106.1

***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.***

The property at 236 Pearl Street is substantially developed and allows for some additional residential units. The small triangular portion of the property located at 250 Pearl Street that is not yet annexed has no additional development potential. It is encumbered by Sunshine Canyon Creek and flood zones that prohibit any development on that triangular parcel.

***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 considerations, 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.***

Not applicable, the site doesn't have significant development or redevelopment potential. The existing county zoning is Transitional that permits up to nine dwelling units per acre. Development on the property at 236 Pearl Street under existing county zoning would equate to two units; and under annexation and initial zoning of RMX-1, a minimum lot area of 6,000 square feet per dwelling unit equates to a maximum of two units on the property. Therefore, the site is not considered to have significant development potential

***e) Annexation of substantially developed properties that allows 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.***

Annexation of substantially developed properties with some additional residential units, as is the case with the

annexation of 236 Pearl St., 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.

For proposed residential development, emphasis is given to the provision of permanently affordable housing. The policy for western edge properties with limited development potential is that each new dwelling unit contribute two times the cash-in-lieu required by the city's Inclusionary Housing Ordinance. Based on 2015 cash-in-lieu amounts, if the two units are attached each unit would be required to contribute an estimated $37,323 (2 x $18,661) based on 2015 cash-in-lieu amounts at the time of building permit issuance. Cash-in-lieu amounts in place when the building permit is issued will apply.

***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.***

n/a: site is an enclave and within the boundaries of the Boulder Valley Planning Area.

***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.***

Not applicable, site is within Planning Area II defined as: are now under county jurisdiction, where annexation to the city can be considered consistent with policies 1.16; 1.18 & 1.24.

***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, the city, the 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 Gunbarrel Subcommunity.

## 3. Is the proposed initial zoning of Residential Mixed – 1 (RMX-1) and Business-Transitional 2 (BT-2)?

The request for an initial zoning of RMX-1 intended for *"a variety of single-family, duplexes and multi-family units*" per the Land Use Code section 9-5-2(c)(1)(D), B.R.C. 1981 is considered consistent with the BVCP Land Use designation of Mixed Density Residential defined on page 66 of the BVCP as follows,

> *Additionally, in older downtown neighborhoods that were developed with single family homes but for a time were zoned for higher densities, a variety of housing types and densities are found within a single block. The city's goal is to preserve current neighborhood character and mix of housing types, and not exacerbate traffic and parking problems. Some new housing units may be added. The average density in the downtown neighborhoods designated mixed density is in the medium density range (six to 14 units per acre)."*

The proposed duplex unit on the 236 Pearl St. site is in keeping with the definition of the Mixed Density Residential of the BVCP. The proposed duplex is well under the permitted maximum density of six to 14 units per acre and equates to just under two dwelling units per acre.

The initial BT-2 zoning intended for the small triangular (and unannexed) portion of the adjacent property at 250 Pearl Street is also consistent with the Business Transition land use defined in the BVCP on page 67 as, *"These are areas usually zoned for less intensive business uses than in the General Business areas, and often provide a transition to residential areas."*

While this small portion of the adjacent property can't be utilized for development, the zoning of the site as BT-2 would be consistent with the rest of the property that is already annexed and zoned BT-2. That property has been operating as a business since 1953.

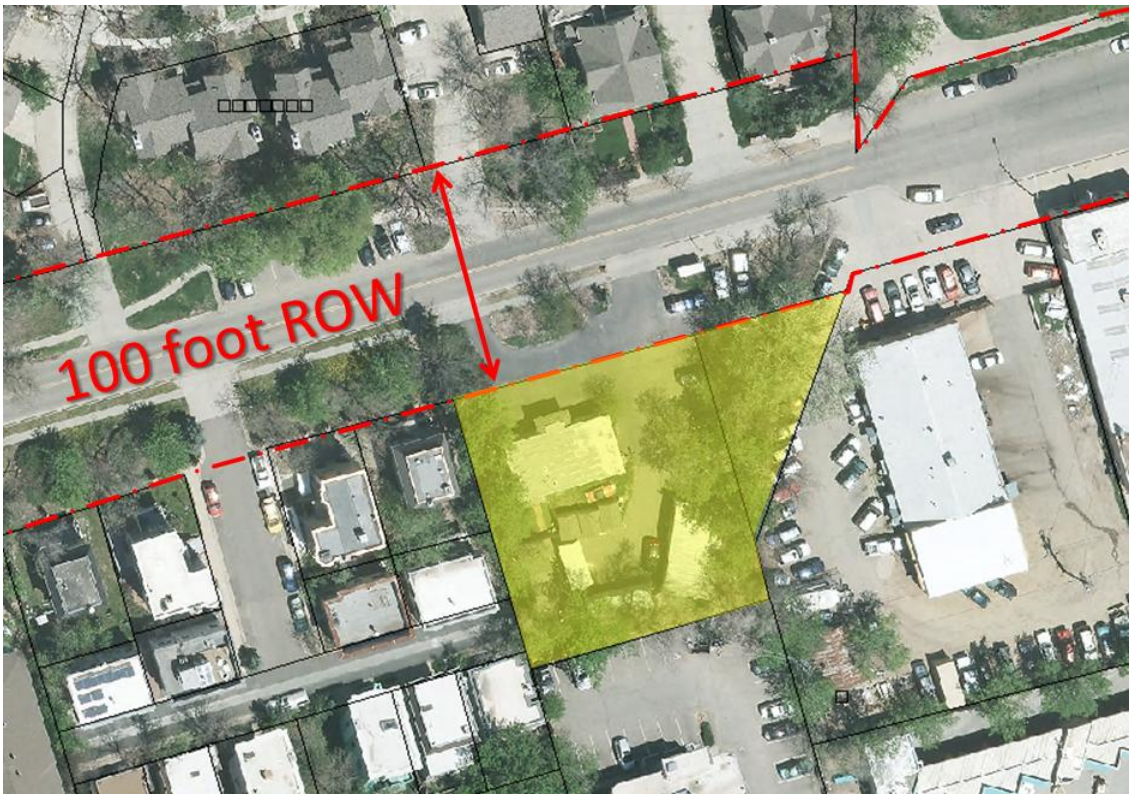
As can be understood from Figure 9 on the following page, the block in which the subject site is located has a varied built character owing to the Residential Mixed – 1 (RMX-1) zoning that surrounds the site. As can be seen, there are a variety of residential units including single family, duplex, and multi-family developments that has been constructed as larger site Planned Unit Developments in years past, along with office buildings that occur along both Pearl Street and Canyon Boulevard in proximity to the site. Adding to the diversity of the built character is the adjacent Business Transition – 2 (BT-2) zoning to the east of 236 Pearl that include an auto repair business, a heating and cooling service, and a self service car wash. Given the varied context and the intent to construct a duplex on the 236 Pearl site staff finds the proposed initial zoning would be consistent with the zoning and built context.

**4. Are the requests for a reduced setback on the front and interior side lots proposed for 236 Pearl consistent with the BVCP Land Use and surrounding context?**

Regarding the request for setback modifications thorough annexation, staff finds the proposed modifications to be consistent with the context as well. As can be seen in Figures 10 and 11, there is an existing anomaly with the very broad roadway right-of-way on Pearl Street in front of the site. The right of way is 100 feet, and while there's no clear understanding of why it developed with this broad width in this location and not further to the east, in comparison to other areas of town that are also zoned RMX-1 the typical roadway width with similar development character is 50 feet. The request to modify the front yard setback from 15 feet to 12.5 feet, based on the applicant's assessment of the average setback along this broad right of way is a logical request consistent with the BVCP policies. Not only has the existing broad right of way of 100 feet inherently set back development well behind the curb and walkway along this section of Pearl Street, a number of the surrounding residential developments have reduced setbacks through Site Review or PUD processes, as can be seen in Figure 12, found later in the document. Therefore, the reduced front yard setback would not be an anomaly or be out of character for the specific context.

With regard to the request for a zero interior lot line, the request to do so is based upon the applicant's desire to construct a duplex on the 236 Pearl Street site with each unit sitting on its own lot. This too is not atypical for the mixed residential context and is in keeping with the RMX-1 zoning intent for a "variety of single family, duplex and multi-family units.

**Figure 9: Surrounding Built Context**



**Figures 10 (above) and 11 (below):**
**Comparison of 100 foot Right of Way in front of Site versus typical 50 foot right of way of the RMX-1 zoning district relative to a request for a reduced setback**

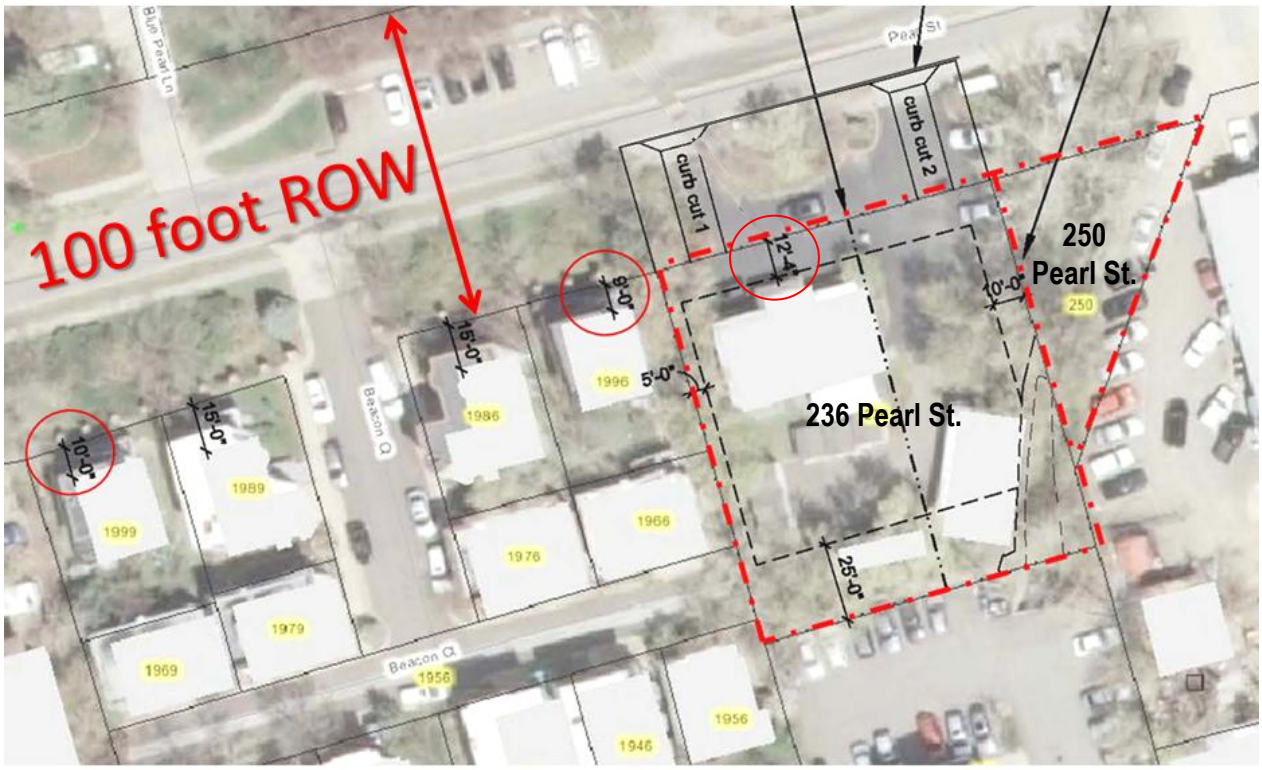



**Figure 12: Requested Setback Modifications in Context**

**PUBLIC COMMENT AND PROCESS:**
Required public notice was provided in the form of written notification mailed to all property owners within 600 feet of the subject property, after reinitiation of the proposed annexation application, and a sign posted on the property for at least 10 days. No public comment was received in response to the public notice. However, for the Annexation Feasibility Study, submitted prior to this application, staff received a number of emails that articulated concern about the location of Sunshine Canyon Creek within the properties under consideration for annexation. In the letters, attached herein as **Attachment D**, neighbors indicated that the creek flooded significantly during the September 2013 floods. They asked that migrations be made as a part of this annexation. While no single property owner has the ability to control regional flooding on their property, upon redevelopment of the property the owners will need to demonstrate that historic flows generated on site will not impact adjacent property owners and that their development meets city engineering regulations that include stormwater management. Further, as a part of the annexation, the applicants will be required to dedicate flood control easements over that portion of the two properties encompassed within the conveyance zone, which will allow the city to be able to work within the drainage way in the future to provide flood mitigation and/or flood repairs.

**STAFF FINDINGS AND RECOMMENDATION:**

1. Staff finds the proposed annexation to be consistent with State statutes and city policy.

2. Staff finds the proposed annexation to be consistent with the BVCP.

3. Staff finds the application for initial zoning of 236 Pearl Street to Residential Mixed -1 (RMX-1); and that portion of 250 Pearl Street that is currently unannexed to an initial zoning of Business Transition – 2 (BT-2) are consistent with the Boulder Valley Comprehensive Plan land use designations of Mixed Density Residential and Transitional Business respectively and are compatible with surrounding properties.

4. Staff finds the requests for reduced setbacks on the front and interior side lots proposed for 236 Pearl consistent with the BVCP Land Use and surrounding context.

Therefore, staff recommends that Planning Board adopt the following Motion:

> *Motion to recommend to City Council approval of the proposed annexation with initial zoning of Residential Mixed – 1 (RMX-1) and Business-Transitional – 2 (BT-2) pertaining to request No. LUR2015-00029, incorporating this staff memorandum as findings of fact, subject to the recommended conditions of approval for these annexations as provided for in the draft annexation agreements in* ***Attachment E****.*

Approved By:

David Driskell, Executive Director
Department of Community Planning and Sustainability

**ATTACHMENTS:**

Attachment A: City of Boulder Guidelines for Annexation Agreements
Attachment B: Annexation Map
Attachment C: Applicant's Annexation Petitions
Attachment D: Correspondence Received During the Annexation Feasibility Application Review
Attachment E: Draft Annexation Agreements

# Guidelines for Annexation Agreements

-Individual Annexations of Mostly Developed Residential Properties in Area II-

*June 25, 2002*

## I. Background:

The purpose of these guidelines is to provide general direction for negotiating annexation agreements with individual landowners of mostly developed residential properties in Area II. They are intended to clarify city expectations in individual annexations. These guidelines have been endorsed by Planning Board and City Council and are a reference for city staff, landowners, Planning Board and City Council in future individual annexation negotiations.

The Boulder Valley Comprehensive Plan provides a framework for annexation and urban service provision. With the 2001 update to the BVCP, Annexation Policy 1.25 was amended to provide more clarity about annexations. The amendments to the policy included the following:

- Direction for the city to actively pursue annexation of county enclaves, Area II properties along the western boundary, and other mostly developed Area II properties;
- Direction to the county to attach great weight to the city's input on development in enclaves and developed Area II lands and to place emphasis on conforming to the city's standards in these areas; and
- A policy that developed parcels proposed for annexation that are seeking no greater density or building size should not be required to provide the same level of community benefit as vacant parcels until more development of the parcel is applied for.

In order to reduce the negative impacts of new development in the Boulder Valley, the BVCP states that the city shall annex Area II land with significant development or redevelopment potential only on a very limited basis. Such annexations will be supported only if the annexation provides a special opportunity to the city or community benefit.

These guidelines apply primarily to mostly developed residential properties in Area II. In most of these cases, the city would not request a community benefit with the annexation. However, a few of the properties that are currently developed in the county may have further development potential once annexed into the city. These guidelines further refine the BVCP Policy 1.25 by specifically outlining which properties will be asked to provide community benefit upon annexation and what form of community benefit may be requested by the city.

## II. General Principles of Individual Annexations of Mostly Developed Residential Properties:

A. In terms of the city's interests, the benefits of annexing mostly developed residential properties in Area II outweigh the costs.

B. The city has a strong desire to annex many of the residential properties in Area II because of the potential environmental and health issues associated with well and septic systems.

C. The basic fees associated with annexation (plant investment and impact fees) should not be reduced for individual property owners seeking annexation (although financing and payback may be negotiated).

D. The city has a legal obligation under state law to annex enclaves at the request of the property owner without terms and conditions beyond those required through existing ordinances.

E. The city may apply additional terms and conditions to enclaves only through negotiation with the property owner. (Use caution when applying community benefit).

## III. Principles of Applying City Community Benefit Policy:

A. Community benefit should only be applied to properties with additional development potential.

B. For the purposes of these guidelines, additional development potential includes the ability to subdivide the property and/or build at least one additional unit on the property. Additional development potential **does not** include the ability to add on to an existing house or to replace an old house with a new one (scrape-offs).

C. Although emphasis is placed on affordable housing, community benefit is not restricted to housing. An affordable housing benefit should be balanced with other benefits such as land or property dedications (landmarking, flood and open space easements) or other restrictions that help meet BVCP goals.

D. The city should strive for consistency in applying the affordable housing requirement to properties with additional development potential. In areas where new affordable units are appropriate (Crestview East), restrictions should be placed on the affordability of the new units. In areas where new affordable units are not appropriate or feasible, (Gould Subdivision, 55th St. enclaves), the applicant should be requested to pay two times the cash contribution in-lieu of providing on-site affordable housing.

## IV. Framework for Basic Annexation Conditions for All Properties:

A. Inclusion in the Boulder Municipal Subdistrict and the Northern Colorado Water Conservancy District.

B. Assessment for waterline and sanitary sewer along street frontage (either existing or to be constructed).
C. Development Excise Tax (DET).
D. Storm Water and Flood Management Utility Plant Investment fees.
E. Water and Wastewater Utility Plant Investment Fee.
F. Dedication to the city of right-of-way for streets, alleys, water mains, and/or fire hydrants.
G. Agreement to participate in their pro rata share of any future right-of-way improvements (paving, roadbase, curb, gutter, landscaping, sidewalks, bicycle and pedestrian path connections).
H. Properties with Silver Lake Ditch rights: The city would ask the property owner to sell all interests in the ditch company to the city.
I. Properties with other ditch rights: The city would ask for the "first Right of Refusal" for any ditch rights associated with the property.

## V. Application of Community Benefit

### A. Guidelines for properties within the flood conveyance zone or with an open space or natural ecosystem land use designations.

1. The city would request dedication of an open space conservation easement for any portion of the site with a BVCP Open Space or Natural Ecosystem land use designation.
2. The city would request dedication to the city of a stormwater and floodplain easement for any portion of the site located within the flood conveyance zone.

### B. Guidelines for properties with additional development potential.

The guidelines below are based on the definition of development potential as the potential for a property to be subdivided or for additional units to be built on the property. Although the terms of the community benefit requirement may be negotiated on a case-by-case basis, the following are the general guidelines for requesting community benefit:

1. A community benefit requirement in the form of two times the cash-in-lieu contribution as set forth in the city's inclusionary zoning ordinance to the Housing Trust Fund would be negotiated with property owners in ER and RR zones.
2. For properties in LR and MR zones, a condition would be negotiated that a certain percentage of any new dwelling units be made permanently affordable to various income groups (see specific guidelines for each property group below).

3. For enclaves, the affordable housing request should be consistent with similar annexations in the area (see specific guidelines for each property group below).
4. For edge properties, the cash-in-lieu requested would be two times that required under the inclusionary zoning ordinance.

**C. Guidelines for specific property areas.**

**1. Enclave – Crestview East**

a. All properties:
- Request that the applicant demonstrate compliance with the North Boulder Subcommunity Plan Design Guidelines upon redevelopment or other applicable developed zoning district standards.

b. Properties along Fourmile Canyon Creek:
- Attempt to secure through negotiation, dedication of conservation, trail, and floodplain and drainage utility easements to the city to meet the objectives of the Greenways Master Plan and the Stormwater and Flood Management Utility.

c. Properties with subdivision potential – split MR/LR zoning:
- 50% of any newly constructed units should be permanently affordable to low and middle income households.

d. Properties with subdivision potential – split LR/ER zones:
- 25% of any newly constructed units should be permanently affordable to middle income households; and
- Market rate units permitted on site should pay twice the applicable cash-in-lieu amount required by inclusionary zoning provisions.

e. Properties with subdivision potential – ER zones:
- Payment of two times the cash contribution in-lieu of providing on-site affordable housing set forth in the city's inclusionary zoning ordinance for each new dwelling unit (prior to building permit).

**2. Enclave – Githens Acres and other miscellaneous North Boulder enclave properties.**

a. All properties:
- Request that the applicant demonstrates compliance with the North Boulder Subcommunity Plan Design Guidelines upon

redevelopment or other applicable developed zoning district standards.

b. Properties along Fourmile Canyon Creek:
- Attempt to secure through negotiation, dedication of conservation, trail, and floodplain and drainage utility easements to the city to meet the objectives of the Greenways Master Plan.

**3. Enclave – Pennsylvania Ave.**

a. Three properties along the Wellman Canal (5255, 5303, and 5101):
- Attempt to secure through negotiation, dedication of a trail easement to the city to meet the objectives of the city's Transportation Master Plan.

b. For all properties:
- Request payment for share of sidewalk improvements along Pennsylvania Ave.

**4. Enclave – 55th St.**

a. Property with an MR land use designation (1415 55th St.):
If zoned LR-D,
- Payment of two times the cash contribution in-lieu of providing on-site affordable housing set forth in the city's inclusionary zoning ordinance for each new dwelling unit. (at the time of building permit) or;
- Any newly constructed units must be permanently affordable to middle income households.

If zoned MR-D,
- 50% of any newly constructed units must be permanently affordable to low and middle income households.

b. Properties with an LR land use designation and further development potential (994, 836, 830 55th St. and 5495 Baseline Rd.):
- Payment of two times the cash contribution in-lieu of providing on-site affordable housing set forth in the city's inclusionary zoning ordinance for each new dwelling unit (at the time of building permit).

**5. Gould Subdivision**

a. Three properties with additional development potential (2840 Jay Rd., 2818 Jay Rd., 4040 28th St.):

- Payment of two times the cash contribution in-lieu of providing on-site affordable housing set forth in the city's inclusionary zoning ordinance for each new dwelling unit.

**6. Western Edge**

a. Two properties with a VLR land use designation and development potential (0 Linden Dr., and 3650 4th St.):

- Payment of two times the cash contribution in-lieu of providing on-site affordable housing set forth in the city's inclusionary zoning ordinance for each new dwelling unit. (at the time of subdivision).

b. Properties at 3365 4th St., 3047 3rd St., 2975 3rd St., and 2835 3rd St.:

- An open space conservation easement, for the portion of the property that is west of the "Blue Line," should be dedicated to the city.

**7. Old Tale Rd./Cherryvale Rd.**

a. Properties along South Boulder Creek:

- Attempt to secure through negotiation, dedication of conservation, trail, and floodplain and drainage utility easements to the city to meet the objectives of the Greenways Master Plan and the Stormwater and Flood Management Utility.

# ANNEXATION MAP

*A PARCEL OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 1 NORTH, RANGE 71 WEST OF THE 6TH P.M., COUNTY OF BOULDER, STATE OF COLORADO*

SHEET 1 OF 1

*TOTAL AREA = 15,282 SQ FT, OR 0.35 ACRES, MORE OR LESS*

## Parcel Description

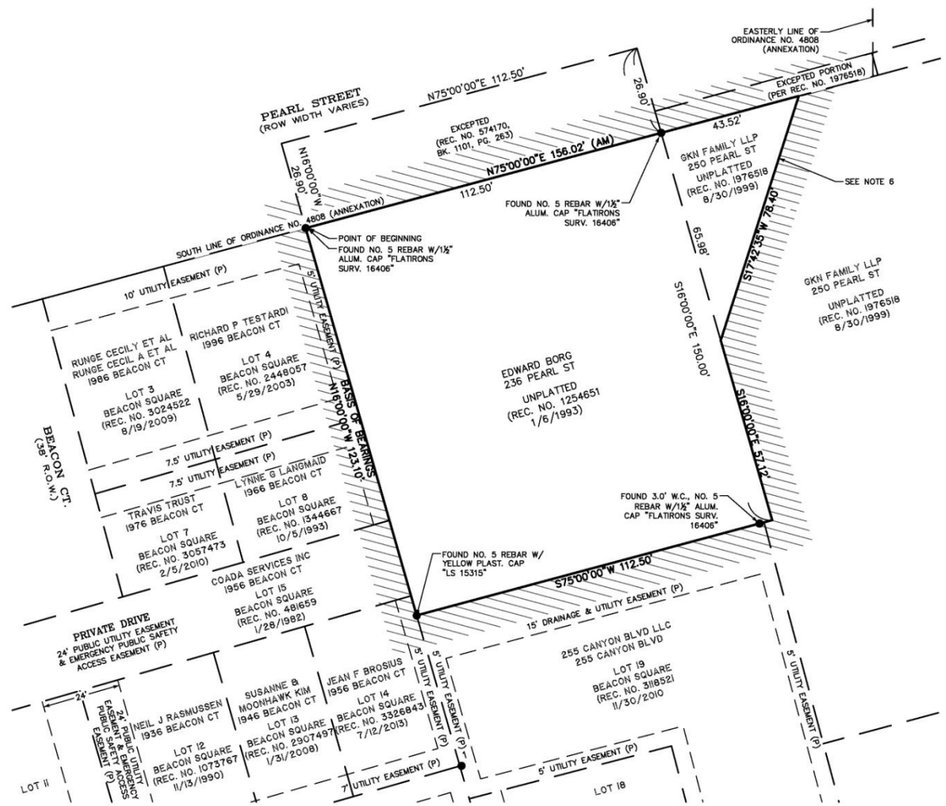
(PREPARED BY FLATIRONS, INC. FOR THE PURPOSE OF THIS ANNEXATION)

PORTIONS OF TRACTS OF LAND LOCATED IN THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 25, TOWNSHIP 1 NORTH, RANGE 71 WEST OF THE 6TH P.M., COMPRISED OF A PORTION OF A PARCEL AS DESCRIBED IN RECEPTION NO. 1254651, DATED JANUARY 6, 1993, AND A PORTION OF THAT PARCEL DESCRIBED IN RECEPTION NO. 1976518, DATED AUGUST 30, 1999, COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF LOT 4, BEACON SQUARE, RECORDED IN BOULDER COUNTY AT RECEPTION NO. 324339, DATED FEBRUARY 23, 1979; THENCE N75°00'00"E, ALONG THE SOUTH RIGHT OF WAY LINE OF PEARL STREET, SAID POINT ALSO BEING THE SOUTH LINE OF ORDINANCE NO. 4808 DATED FEBRUARY 17, 1984, A DISTANCE OF 156.02 FEET TO THE CENTERLINE OF SUNSHINE CANYON CREEK; THENCE S17°42'35"W, ALONG SAID CENTERLINE, A DISTANCE OF 78.28 FEET TO A POINT ON THE EASTERLY LINE OF SAID RECEPTION NO. 1254651; THENCE S16°00'00"E, ALONG SAID EASTERLY LINE, A DISTANCE OF 57.12 TO THE SOUTHEAST CORNER THEREOF; THENCE S75°00'00"W, ALONG THE SOUTHERLY LINE OF SAID RECEPTION NO. 1254651, A DISTANCE OF 112.50 FEET TO THE SOUTHWEST CORNER THEREOF AND A POINT ON THE EAST LINE OF BEACON SQUARE; THENCE N16°00'00"W, ALONG THE EASTERLY LINE OF SAID BEACON SQUARE, A DISTANCE OF 123.10 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINING 15,282 SQ.FT. OR 0.35 ACRES, MORE OR LESS.

**Vicinity Map**
SCALE: 1" = 300'




## Legend

CURRENT LIMITS OF THE CITY OF BOULDER

(P) PER BEACON SQUARE SUBDIVISION

GRAPHIC SCALE

20 0 10 20 40

( IN FEET )
1 inch = 20 ft.

## Notes

1. HERITAGE TITLE COMPANY COMMITMENT NO. 451-H0420331-043-DF2, DATED DECEMBER 18, 2014 WAS RELIED UPON FOR RECORDING INFORMATION REGARDING DESCRIPTION OF SUBJECT PARCEL.
2. 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 SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON.
3. THE PURPOSE OF THIS MAP IS TO GRAPHICALLY PORTRAY THE RELATIONSHIP OF THE LAND PROPOSED FOR ANNEXATION TO THE CURRENT CITY OF BOULDER LIMITS.
4. ANY PERSON WHO KNOWINGLY REMOVES, ALTERS OR DEFACES ANY PUBLIC LAND SURVEY MONUMENT AND/OR BOUNDARY MONUMENT OR ACCESSORY, COMMITS A CLASS TWO (2) MISDEMEANOR PURSUANT TO STATE STATUTE C.R.S. SEC 18-4-508.
5. THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.
6. THE CONTIGUOUS LIMITS TO THE CITY OF BOULDER ARE BASED ON THE RECORDED DESCRIPTION AND THE FIELD LOCATED CENTERLINE OF SUNSHINE CANYON CREEK. THE CENTERLINE OF SUNSHINE CANYON CREEK APPEARS TO BE THE INTENDED LIMITS OF ADJOINING ANNEXATION BASED ON HISTORICAL RECORD.

## Contiguity

TOTAL PERIMETER.....527.14'
1/6TH PERIMETER.....87.86'
CONTIGUOUS TO CITY LIMITS.....527.14'

## Surveyor's Certificate

I, JOHN B. GUYTON, A DULY REGISTERED LAND SURVEYOR, LICENSED IN THE STATE OF COLORADO, HEREBY STATE FOR AND ON BEHALF OF FLATIRONS, INC., THAT THIS ANNEXATION MAP OF THE ABOVE DESCRIBED LAND WAS PREPARED BY ME OR UNDER MY RESPONSIBLE CHARGE ON APRIL 30, 2015 AND THAT AT LEAST 1/6TH OF THE TOTAL PERIMETER OF THAT LAND TO BE ANNEXED IS CONTIGUOUS TO THE EXISTING CITY OF BOULDER LIMITS.

JOHN B. GUYTON
COLORADO P.L.S. #16406
CHAIRMAN/CEO, FLATIRONS, INC.

| REVISION | DATE |
|---|---|
| 1 REVISED PER CLIENT REQUEST | 4/27/15 TD |
| 2 | |
| 3 | |
| 4 | |
| 5 | |
| 6 | |
| 7 | |
| 8 | |
| 9 | |

ANNEXATION MAP
*PREPARED FOR*
CITY OF BOULDER

COPYRIGHT 2015 FLATIRONS, INC.

**Flatirons, Inc.**
*Surveying, Engineering & Geomatics*
www.FlatironsInc.com
655 FOURTH AVE. LONGMONT, CO 80501 PH: (303) 776-1733 FAX: (303) 776-4355
3825 IRIS AVE. STE. 395 BOULDER, CO 80301 PH: (303) 447-0700
3660 DOWNING ST UNIT C DENVER, CO 80205 PH: (303) 936-6997

COLORADO LICENSED PROFESSIONAL LAND SURVEYOR 16406 5/11/15 SEAL

| | |
|---|---|
| JOB NUMBER: | 15-64,927 |
| DATE: | 3-11-2015 |
| DRAWN BY: | E. DAVIS |
| CHECKED BY: | ETB/JZG/SB/JK |

SHEET 1 OF 1

BY:EDAVIS FILE:64927-ANNEX (C15).DWG DATE:5/1/2015 8:28 AM

CITY OF BOULDER
CITY ATTORNEY'S OFFICE
CENTRAL RECORDS
2015 JUN 10 AM 8:44

**ANNEXATION PETITION**
**Submit with your application.**

**Annexation Information**

Location of property to be annexed: 236 Pearl Street

Legal Description: Tract 23A D 25 IN 7E Book 101 Page 269 BCR

Size of property: 13,949 SF / 0.32 acres Requested Zoning: RMX-1

**Impact Report**

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.

**Districts**

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

✓ Boulder Valley School District

____ St. Vrain School District

____ Boulder Rural fire District

____ Cherryvale Fire District

____ Left Hand Water District

____ Other (list)

**Property Owners**

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

1. Ed Bong
2. 
3. 
4. 

**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).

## 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). |
|---|---|---|---|
| EDWARD BORG | JANUARY 26, 2015 | ED BORG<br>236 PEARL ST.<br>BOULDER, CO 80302 | |
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**CIRCULATOR'S AFFIDAVIT**

STATE OF COLORADO )
) ss.
COUNTY OF BOULDER )

STEPHEN SPARN,
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.

STEPHEN SPARN
Circulator

Subscribed and sworn to before me this 3RD day of June, A.D. 2015.

Witness my hand and official seal. My commission expires: 3-30-18.

VIDA J CLIFTON NOTARY PUBLIC STATE OF COLORADO

Vida J Clifton
Notary Public

**CIRCULATOR'S AFFIDAVIT**

STATE OF COLORADO )
) ss.
COUNTY OF BOULDER )

_____,
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:_____.

_____
Notary Public

CITY OF BOULDER
CITY ATTORNEY'S OFFICE
CENTRAL RECORDS
2015 JUN 10 AM 8:44

**ANNEXATION PETITION**
**Submit with your application.**

**Annexation Information**

Location of property to be annexed: 250 Pearl St.

Legal Description: Attached

Size of property: 15,282 ~~A~~ or 0.35 acres Requested Zoning: BT-2

**Impact Report**

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.

**Districts**

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

| | |
|---|---|
| X Boulder Valley School District | _____ Left Hand Water District |
| _____ St. Vrain School District | _____ Other (list) |
| _____ Boulder Rural fire District | _____ |
| _____ Cherryvale Fire District | _____ |

**Property Owners**

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

1. GKN Family LLP, Nancy L. Vinson, Partner
2. GKN Family LLP, Karen S. Klenzendorf, Partner
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). |
|---|---|---|---|
| Nancy L. Vinson | 6/2/15 | 1305 Drexel St. Boulder, CO 80305 | |
| Nancy L. Vinson, Partner, GKN Family LLP | | | |

**CIRCULATOR'S AFFIDAVIT**

STATE OF COLORADO )
) ss.
COUNTY OF BOULDER )

Nancy L. Vinson,
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.

Nancy L. Vinson, Partner GKN Family LLP
Nancy L. Vinson, Partner GKN Family LLP
Circulator

Subscribed and sworn to before me this 2nd day of June, A.D. 20 15.

Witness my hand and official seal. My commission expires: Oct 19, 2016.

HUGO MANRIQUEZ
Notary Public
State of Colorado
Notary ID 20124068023
My Commission Expires Oct 19, 2016

Notary Public

**CIRCULATOR'S AFFIDAVIT**

STATE OF COLORADO )
) ss.
COUNTY OF BOULDER )

_____,
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:_____.

_____
Notary Public

**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). |
|---|---|---|---|
| Karen S. Klenzendorf | 6/2/15 | 1302 Crest Dr., Colleyville, TX 76034 | |
| Karen S. Klenzendorf, Partner, GKN Family LLP | | | |

**CIRCULATOR'S AFFIDAVIT**

STATE OF ~~COLORADO~~ Texas BB
) ss.
COUNTY OF ~~BOULDER~~ Tarrant BB )

Karen S. Klenzendorf,
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.

Karen S Klenzendorf
Karen S. Klenzendorf, Partner
Circulator GKN Family LLP

Subscribed and sworn to before me this 2 day of June, A.D. 20 15.

Witness my hand and official seal. My commission expires: 5/20/18.

BRETT WILLIAM BOUDREAUX
My Commission Expires
May 20, 2018

Brett Boudreaux
Notary Public

**CIRCULATOR'S AFFIDAVIT**

STATE OF COLORADO )
) ss.
COUNTY OF BOULDER )

_____,
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:_____.

_____
Notary Public

For Administrative Use Only
Development Name: 236 Pearl
Owners: William L. and Carole F. Cassio
Case No.: LUR2015-00029

# ANNEXATION AGREEMENT

This Annexation Agreement ("Agreement"), made this _____ day of _____, 2015, by and between the City of Boulder, a Colorado home rule city, hereinafter referred to as "City," and William L. and Carole F. Cassio hereinafter referred to as "Applicants." The City and the Applicant are referred to as the "Parties."

## RECITALS

WHEREAS, the Parties recite the following facts related to the annexation of the property described in this Agreement to the City of Boulder:

A. The Applicant is the owner of the real property generally described as 236 Pearl and more particularly described on Exhibit A, which real property shall hereinafter be referred to as the "Property."

B. The Applicant is interested in obtaining approval from the City of the annexation of the Property in order to provide adequate urban services to the Property.

C. The Parties anticipate that annexation with an initial zoning designation of "Residential Mixed - 1 (RMX-1)" is consistent with the Boulder Valley Comprehensive Plan.

D. The City is interested in ensuring 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.

## COVENANTS

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:

1. Requirements Prior to First Reading of the Annexation Ordinance. Prior to first reading of the annexation ordinance before City Council, the Applicant shall do the following:

   a. Annexation Agreement. The Applicant will sign this Agreement.

   b. Title Work. The Applicant will provide the City with title work current to within 30 days of signing this agreement.

c. Written Descriptions. The Applicants shall provide a written description of any nonconforming uses and/or nonstandard buildings existing on the Property, if any.

d. Payment of Fees. Pay the following fees:

| | |
|---|---|
| Storm Water and Flood Management PIF | $15,515.00 |
| Housing Excise Tax | $ 632.40 |
| Total | $16,147.40 |

e. Northern Colorado Water Conservancy District ("NCWCD"). Sign and file an application, and pay the applicable fees, for inclusion in the Boulder Municipal Subdistrict of the Northern Colorado Water Conservancy District.

f. Easement Dedication. To the extent the Property is located within 20 feet from the centerline of Sunshine Canyon Creek, the Applicants shall dedicate to the City, at no cost, a flood control easement from 20 feet on either side of the centerline of Sunshine Canyon Creek in the form generally as shown on the attached Exhibit B.

2. Sewer Connection Requirement. Within 180 days of the effective date of the annexation ordinance, any existing structure on the Property that requires the use of a waste disposal system shall be demolished or connected with the wastewater utility of the City. The City Manager may, in her discretion, approve a different time for demolition of said structures or connection to the wastewater utility provided the Applicant demonstrates reasonable diligence to comply with the 180-day deadline and good cause for the extension. Prior to connection to the City's wastewater utility, the Applicant shall perform the following:

a. Submit an application that meets the requirements of Chapter 11-2, "Wastewater Utility" B.R.C. 1981 and obtain City approval to connect to the City's wastewater utility main:

b. Pay applicable fees and charges associated with a service line connection to the wastewater utility main, including fees associated with right of way and wastewater permits, inspection fees, installation fees, tap fees, and the wastewater plant investment fees associated with the Property.

c. Construct the individual service line and connect any existing structures requiring a waste disposal system to the City's wastewater utility main.

d. Upon connection to the City's wastewater utility or demolition of existing structures requiring a waste disposal system, the Applicant shall abandon the existing septic system in accordance with Boulder County Health Department and State of Colorado regulations.

Any new structures requiring a waste disposal system and any dwelling units constructed on the Property shall be connected to the City's waste water utility.

3. Requirements Prior to Building Permit:

a. Prior to an application for any building permit, other than a demolition permit, the Applicant shall do the following if the Property is all one parcel:

i. Remove the multiple curb-cuts serving the Property and construct a new single (shared) curb-cut meeting the access design, spacing and driveway requirements found in Section 2.04 of the City of Boulder Design and Construction Standards and subject to approval by the City Manager.

ii. Remove the existing curb-and-gutter and attached sidewalk along Pearl Street and construct new curb-and-gutter and a 5- foot wide detached sidewalk with an 8-foot wide landscape strip along Pearl Street.

b. Prior to an application for any building permit, other than a demolition permit, the Applicant shall do the following if the Property has been subdivided into two lots:

i. Remove the multiple curb-cuts serving the Property and construct a new curb-cut for each lot meeting the access design, spacing and driveway requirements found in Section 2.04 of the City of Boulder Design and Construction Standards and subject to approval by the City Manager.

ii. Remove the existing curb-and-gutter and detached sidewalk along Pearl Street and construct new curb-and-gutter and a 5- foot wide detached sidewalk with an 8-foot wide landscape strip along Pearl Street.

4. Existing Nonstandard Buildings and/or Nonconforming Uses. Existing, nonstandard buildings and/or nonconforming uses will be allowed to continue to be occupied and operated in the City of Boulder. Only those nonstandard buildings and/or nonconforming uses for which the Applicants have provided a written description that is received by the City in accordance with Paragraph 1.C above will be considered legal. The Applicants and the City agree that this section shall not be construed to permit the Property to constitute a nuisance or to cause a hazard under the City's life safety codes.

5. Ditch Company Approval. If the Property is abutting 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.

6. New Construction. All new construction commenced on the Property after annexation will comply with all City of Boulder laws, taxes, and fees, except as modified by this Agreement.

7. Setback Modifications. If the Applicant subdivides the Property into two lots, then the Parties agree, subject to the terms of the Subdivision Agreement, to allow development of the Property consistent with the following standards:

   a. Construction of two attached dwelling units across the shared lot line of the two lots on the Property, each unit being located on its own lotwith a zero side yard setback to the interior lot line that is shared with the lot of the adjoining unit provided that each unit is separated from the adjoining unit by a wall extending from the foundation through the roof which is structurally independent of the corresponding wall of the adjoining unit. This Agreement does not waive any requirements of Title 10, Structures, B.R.C. 1981;

   b. A minimum five-foot side yard setback from the western lot line of the most-western of the two lots;

   c. A minimum ten-foot side yard setback from the eastern lot line of the most-eastern of the two lot; and

   d. A minimum 12.5-foot front yard landscaped setback.

8. Historic Drainage. The Applicant agrees to convey drainage from the Property in an historic manner that does not materially and adversely affect abutting properties.

9. Waiver of Vested Rights. The Applicant waives any statutory vested rights that may have accrued under County jurisdiction. The Applicant acknowledges that nothing contained in this Agreement may be construed as a waiver of the City's powers to zone and regulate land uses for the benefit of the citizens and residents of Boulder.

10. Zoning. The Property shall be annexed to the City with an initial zoning classification of Residential Mixed - 1 (RMX-1), and, except as set forth herein, shall be subject to all of the rights and restrictions associated with that zoning.

11. Cash-in-lieu of Providing Permanently Affordable Housing. At the time of annexation, no dwelling unit exists on the Property. For each dwelling unit developed on the Property that is not deed-restricted as a permanently affordable residence consistent with the requirements of Chapter 9-13, B.R.C., 1981, an amount equal to twice the applicable cash-in-lieu amount per Chapter 9-13, B.R.C., 1981 shall be paid to the City. This amount is payable prior to application for a building permit for the new dwelling unit.

12. Breach of Agreement. In the event that the Applicant breaches or fails to perform any required action or fails to pay any fee specified under this Agreement or

under any document that may also be required to be executed pursuant to 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 under any document that may also be required to be executed pursuant to this Agreement or fails to perform any affirmative obligation hereunder or under any document that may also be required to be executed pursuant to this Agreement, 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 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 he 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.

13. 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 with the initial zoning of Residential Mixed -1 (RMX-1).

14. Future Interests. The Agreement and covenants as set forth herein shall run with the land and be binding upon the Applicant, the Applicant's heirs, successors, representatives 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 creates an interest in land, that interest shall vest, if at all, within the lives of the undersigned plus 20 years and 364 days.

EXECUTED on the day and year first above written.

Applicant:

By:_____
William L. Cassio

And

By:_____
Carole F. Cassio

STATE OF COLORADO )
) ss.
COUNTY OF BOULDER )

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by William L. and Carole F.Cassio.

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

[SEAL]

_____
Notary Public

CITY OF BOULDER, COLORADO

By:_____
Jane M. Brautigam, City Manager

ATTEST:

_____
City Clerk

Approved as to form:

_____
City Attorney's Office

Date: _____

EXHIBITS

| | |
|---|---|
| Exhibit A | Legal Description |
| Exhibit B | Flood Control Easement |

**EXHIBIT A**
**TO ANNEXATION AGREEMENT**

Legal Description

A tract of land located in the Southeast ¼ of the Southwest ¼ of Section 25, Township 1 North, Range 71 West of the 6th P.M., County of Boulder, State of Colorado, described as follows:

Beginning at a point North 15º West, 20.00 feet and South 75º West, 278.00 feet from the Northwest corner of Lot 6 in Block 58 in West Boulder, now a part of the City of Boulder; thence South 75º West 112.5 feet; thence South 16º East 150.00 feet; thence North 75º East 112.5 feet; thence North 16º West 150.00 feet to the POINT OF BEGINNING.

**EXHIBIT B**
**TO ANNEXATION AGREEMENT**

For Administrative Purposes Only
Property Address: 236 Pearl Street
Grantor: Willam L. and Carole F. Cassio
Grantee: City of Boulder, Colorado
Case#: LUR2015-00029

## GRANT OF FLOOD CONTROL EASEMENT

WILLIAM L. AND CAROLE F. CASSIO ("Grantor"), whose address is 236 Pearl Street, Boulder, CO, 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 (the "City"), whose address is 1777 Broadway, Boulder, Colorado 80302, a flood control 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, 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 himself and for his heirs, successors, agents, lessees, and assigns, does hereby covenant and agree that no permanent structure or improvement shall be placed on said easement by himself or his heirs, successors or assigns, and that said use of such easement shall not otherwise be obstructed or interfered with.

Grantor warrants his 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, his heirs, agents, lessees and assigns, and all other successors to him 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 _____, 2015.

GRANTOR:

By:_____
William L. Cassio

By:_____
Carole F. Cassio

[*NOTARY BLOCK FOLLOWS*]

STATE OF COLORADO )
)ss.
COUNTY OF BOULDER )

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by William L. and Carole F. Cassio.

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

_____
Notary Public

## EXHIBIT A TO FLOOD CONTROL EASEMENT

Legal Description

# EXHIBIT "A"

A PORTION OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 1 NORTH, RANGE 71 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO

SHEET 1 OF 2

AN EASEMENT FOR FLOOD CONTROL PURPOSES OVER AND ACROSS A PORTION OF LAND, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 1 NORTH, RANGE 71 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

CONSIDERING THE SOUTH LINE OF AN EXCEPTED PORTION OF LAND AS DESCRIBED IN THE RECORDS OF BOULDER COUNTY AT RECEPTION NO. 574170 ON MAY 3, 1956 TO BEAR N75°00'00"E, A DISTANCE OF 112.50 FEET BETWEEN FOUND NO. 5 REBARS WITH 1 1/2" ALUMINUM CAPS, MARKED "FLATIRONS SURV, 16406", WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO.

COMMENCING AT THE SOUTHEAST CORNER OF SAID EXCEPTED PORTION, SAID POINT ALSO BEING ON THE EASTERLY LINE OF A PARCEL OF LAND AS DESCRIBED IN THE RECORDS OF BOULDER COUNTY AT RECEPTION NO. 1254651 ON JANUARY 6, 1993; THENCE S16°00'00"E, ALONG SAID EASTERLY LINE, A DISTANCE OF 31.26 FEET TO THE POINT OF BEGINNING; THENCE S16°00'00"E, CONTINUING ALONG SAID EASTERLY LINE, A DISTANCE OF 91.84 FEET TO THE SOUTHEAST CORNER OF SAID PARCEL; THENCE S75°00'00"W, ALONG THE SOUTHERLY LINE OF SAID PARCEL, A DISTANCE OF 37.86 FEET; THENCE N04°08'48"W, A DISTANCE OF 15.76 FEET; THENCE N03°59'44"E, A DISTANCE OF 18.10 FEET; THENCE N19°09'55"E, A DISTANCE OF 33.62 FEET TO THE POINT OF BEGINNING.

SAID EASEMENT CONTAINING 2,172 SQ.FT. OR 0.05 ACRES, MORE OR LESS.

I, JOHN B. GUYTON, A LAND SURVEYOR LICENSED IN THE STATE OF COLORADO, DO HEREBY STATE FOR AND ON BEHALF OF FLATIRONS, INC., THAT THIS PARCEL DESCRIPTION AND ATTACHED EXHIBIT, BEING MADE A PART THEREOF, WERE PREPARED BY ME OR UNDER MY RESPONSIBLE CHARGE AT THE REQUEST OF THE CLIENT AND IS NOT INTENDED TO REPRESENT A MONUMENTED LAND [illegible] OR SUBDIVIDE LAND IN VIOLATION OF STATE STATUTE.

COLORADO LICENSED 16406 PROFESSIONAL LAND SURVEYOR 7/6/15

JOHN B. GUYTON
COLORADO P.L.S. #16406 FSI JOB NO. 15-65,959
CHAIRMAN/CEO, FLATIRONS, INC.

JOB NUMBER: 15-65,959
DRAWN BY: E. DAVIS
DATE: JULY 2, 2015

THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.

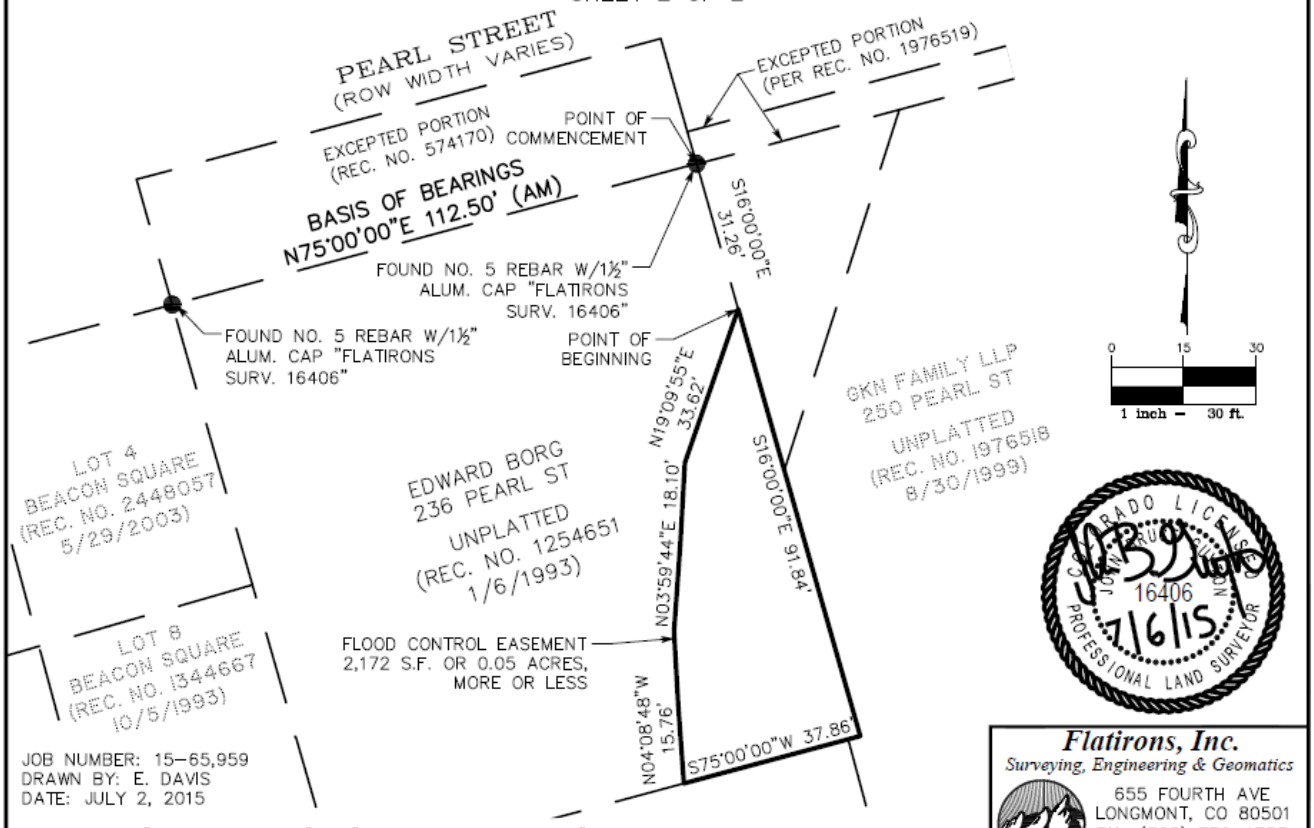
**Flatirons, Inc.**
*Surveying, Engineering & Geomatics*
655 FOURTH AVE
LONGMONT, CO 80501
PH: (303) 776-1733
FAX: (303) 776-4355
www.FlatironsInc.com

BY:EDAVIS FILE:65959-EASEMENT (C15).DWG DATE:7/6/2015 1:44 PM

# EXHIBIT "A"

A PORTION OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 1 NORTH, RANGE 71 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO

SHEET 2 OF 2




THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.

BY:EDAVIS FILE:65959-EASEMENT (C15).DWG DATE:7/6/2015 1:44 PM

For Administrative Use Only
Development Name: 250 Pearl
Owners: GKN Family LLP
Case No.: LUR2015-00029

# ANNEXATION AGREEMENT

This Agreement, made this _____ day of _____, 2015, by and between the City of Boulder, a Colorado home rule city, hereinafter referred to as "City," and GKN Family LLP, a Colorado limited liability partnership, hereinafter referred to as "Applicant." The City and the Applicant are referred to as the "Parties."

## RECITALS

WHEREAS, the Parties recite the following facts related to the annexation of the property described in this Agreement to the City of Boulder:

A. The Applicant is the owner of the real property generally described as 250 Pearl Street and more particularly described on Exhibit A, which real property shall hereinafter be referred to as the "Property."

B. The Applicant is interested in obtaining approval from the City of a request for the annexation of the Property in order to provide adequate urban services, particularly City water and sewer.

C. The parties anticipate that annexation with an initial zoning designation of "Business - Transitional 2" is consistent with the Boulder Valley Comprehensive Plan.

D. The City is interested in ensuring 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.

## COVENANTS

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:

15. Requirements. Prior to first reading of the annexation ordinance before City Council, the Applicant shall:

    a. Annexation Agreement. The Applicant will sign this Agreement.

    b. Title Work. The Applicant will provide the City with title work current to within 30 days of signing this agreement.

c. Northern Colorado Water Conservancy District ("NCWCD"). The Applicant will sign and file an application for inclusion in the Boulder Municipal Subdistrict of the Northern Colorado Water Conservancy District for the Property described on Exhibit B.

d. Easement Dedication. The Applicant shall dedicate to the City, at no cost, a flood control easement over the Property in the form generally as shown on the attached Exhibit C.

16. Ditch Company Approval. If the Property is abutting 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.

17. Historic Drainage. The Applicant agrees to convey drainage from the Property in an historic manner that does not materially and adversely affect abutting properties.

18. Waiver of Vested Rights. The Applicant waives any statutory vested rights that may have accrued under County jurisdiction. The Applicant acknowledges that nothing contained in this Agreement may be construed as a waiver of the City's powers to zone and regulate land uses for the benefit of the citizens and residents of Boulder.

19. Zoning. The Property shall be annexed to the City with an initial zoning classification of Business - Transitional 2 (BT-2), and, except as set forth herein, shall be subject to all of the rights and restrictions associated with that zoning.

20. Breach of Agreement. In the event that the Applicant breaches or fails to perform any required action or fails to pay any fee specified under this Agreement or under any document that may also be required to be executed pursuant to 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 under any document that may also be required to be executed pursuant to this Agreement or fails to perform any affirmative obligation hereunder or under any document that may also be required to be executed pursuant to this Agreement, 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 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 he 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.

21. 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 with the initial zoning of Business – Transitional 2 (BT-2).

22. Future Interests. The Agreement and covenants as set forth herein shall run with the land and be binding upon the Applicant, the Applicant's heirs, successors, representatives 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 creates an interest in land, that interest shall vest, if at all, within the lives of the undersigned plus 20 years and 364 days.

EXECUTED on the day and year first above written.

Owner/Applicant:
GKN Family LLP,
a Colorado limited liability partnership

By:_____

Nancy L. Vinson, Partner

STATE OF COLORADO )
) ss.
COUNTY OF BOULDER )

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, Nancy L. Vinson, Partner of GKN Family LLP.

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

[SEAL]

_____
Notary Public

By:_____

Karen S. Klenzendorf, Partner

STATE OF _____)
) ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____,2015, Karen S. Klenzendorf, Partner of GKN Family LLP.

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

[SEAL]

_____
Notary Public
CITY OF BOULDER, COLORADO

By:

_____
Jane M. Brautigam, City Manager

ATTEST:

_____
City Clerk

Approved as to form:

_____
City Attorney's Office

Date: _____

EXHIBITS

| | |
|---|---|
| Exhibit A | Legal Description of Property to be annexed |
| Exhibit B | Legal Description of entire property known as 250 Pearl |
| Exhibit C | Flood Control Easement |

## EXHIBIT A TO ANNEXATION AGREEMENT

Legal Description (Tract 237 – Northwest Portion of 250 Pearl)

Beginning at the northwest corner of said parcel recorded as Reception No. 1976518; thence S. 16º East, a distance of 65.85 feet; thence North 17º 42’35” East, 78.28 feet; thence South 74º 57’30” West, 43.43 feet to the point of beginning,

County of Boulder,
State of Colorado

**EXHIBIT B TO ANNEXATION AGREEMENT**

Legal Description (250 Pearl)

Beginning at the Northwest corner of Lot six (6), Block fifty-eight (58) West Boulder, now a part of the City of Boulder, according to the recorded plat thereof; thence South 75° West a distance of 117.05 feet to the True Point of Beginning; thence South 75° West a distance of 160.95 feet; thence South 15° East a distance of 200 feet; thence North 75° East a distance of 228 feet; thence North 15° West a distance of 50 feet; thence South 75° West a distance of 67.05 feet; thence North 15° West a distance of 150 feet to the True Point of Beginning; EXCEPT the following described tract; Beginning at a point from which the Northwest corner of Block fifty-eight (58) of West Boulder, an addition to the City of Boulder, according to the recorded plat thereof, bears North 74°57’30" East a distance of 278.0 feet; thence South 15°02’30" East a distance of 7.0 feet; thence North 74°57’30" East a distance of 69.0 feet; thence North 15°02’30" West a distance of 7.0 feet; thence South 74°57’30" East a distance of 69.0 feet, more or less, to the point of beginning, County of Boulder, State of Colorado,

**EXHIBIT C**

For Administrative Purposes Only
Property Address: 250 Pearl Street
Grantor: GKN Family Partnership LLP
Grantee: City of Boulder, Colorado
Case#: LRU2015-00029

## GRANT OF FLOOD CONTROL EASEMENT

GKN FAMILY PARTNERSHIP LLP, a Colorado limited liability partnership, a/k/a GKN FAMILY LLP, a Colorado limite liability partnership ("Grantor"), whose address is 1305 Drexel St, Boulder, CO, 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 (the "City"), whose address is 1777 Broadway, Boulder, Colorado 80302, a flood control 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, 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 _____, 2015.

GRANTOR:
GKN FAMILY PARTNERSHIP LLP, a Colorado limited liability partnership,
a/k/a GKN FAMILY LLP, a Colorado limited liability partnership

By:_____
Nancy L. Vinson, Partner

STATE OF COLORADO )

)ss.
COUNTY OF BOULDER )

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by Nancy L. Vinson, Partner, GKN Family Partnership LLP.

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

_____
Notary Public

By:_____
Karen S. Klenzendof, Partner

STATE OF _____)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by Karen S. Klenzendorf, Partner, GKN Family Partnership LLP.

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

_____
Notary Public

## EXHIBIT A TO FLOOD CONTROL EASEMENT

# EXHIBIT "A"

A PORTION OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 1 NORTH, RANGE 71 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO

SHEET 1 OF 2

AN EASEMENT FOR FLOOD CONTROL PURPOSES OVER AND ACROSS A PORTION OF LAND, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 1 NORTH, RANGE 71 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

CONSIDERING THE SOUTH LINE OF AN EXCEPTED PORTION OF LAND AS DESCRIBED IN THE RECORDS OF BOULDER COUNTY AT RECEPTION NO. 574170 ON MAY 3, 1956 TO BEAR N75°00'00"E, A DISTANCE OF 112.50 FEET BETWEEN FOUND NO. 5 REBARS WITH 1 1/2" ALUMINUM CAPS, MARKED "FLATIRONS SURV, 16406", WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO.

BEGINNING AT THE SOUTHWEST CORNER OF AN EXCEPTED PORTION OF LAND AS DESCRIBED IN THE RECORDS OF BOULDER COUNTY AT RECEPTION NO. 1976519 ON AUGUST 30, 1999; THENCE N75°00'00"E, ALONG SOUTH LINE OF SAID RECEPTION NO. 1976519, A DISTANCE OF 43.45 FEET, MORE OR LESS TO THE CENTERLINE OF SUNSHINE CANYON CREEK; THENCE S17°42'35"W, ALONG SAID CENTERLINE, A DISTANCE OF 78.28 FEET TO A POINT ON THE EASTERLY LINE OF A PARCEL OF LAND AS DESCRIBED IN THE RECORDS OF BOULDER COUNTY AT RECEPTION NO. 1254651 ON JANUARY 6, 1993; THENCE N16°00'00"W, ALONG SAID EASTERLY LINE, A DISTANCE OF 65.88 FEET TO THE POINT OF BEGINNING.

SAID EASEMENT CONTAINING 1,431 SQ.FT. OR 0.03 ACRES, MORE OR LESS.

I, JOHN B. GUYTON, A LAND SURVEYOR LICENSED IN THE STATE OF COLORADO, DO HEREBY STATE FOR AND ON BEHALF OF FLATIRONS, INC., THAT THIS PARCEL DESCRIPTION AND ATTACHED EXHIBIT, BEING MADE A PART THEREOF, WERE PREPARED BY ME OR UNDER MY RESPONSIBLE CHARGE AT THE REQUEST OF THE CLIENT AND IS NOT INTENDED TO REPRESENT A MONUMENTED LAND SURVEY OR SUBDIVIDE LAND IN VIOLATION OF STATE STATUTE.

COLORADO LICENSED PROFESSIONAL LAND SURVEYOR JOHN B. GUYTON 16406 7/6/15

JOHN B. GUYTON
COLORADO P.L.S. #16406 SI JOB NO. 15-65,960
CHAIRMAN/CEO, FLATIRONS, INC.

JOB NUMBER: 15-65,960
DRAWN BY: E. DAVIS
DATE: JULY 2, 2015

THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.

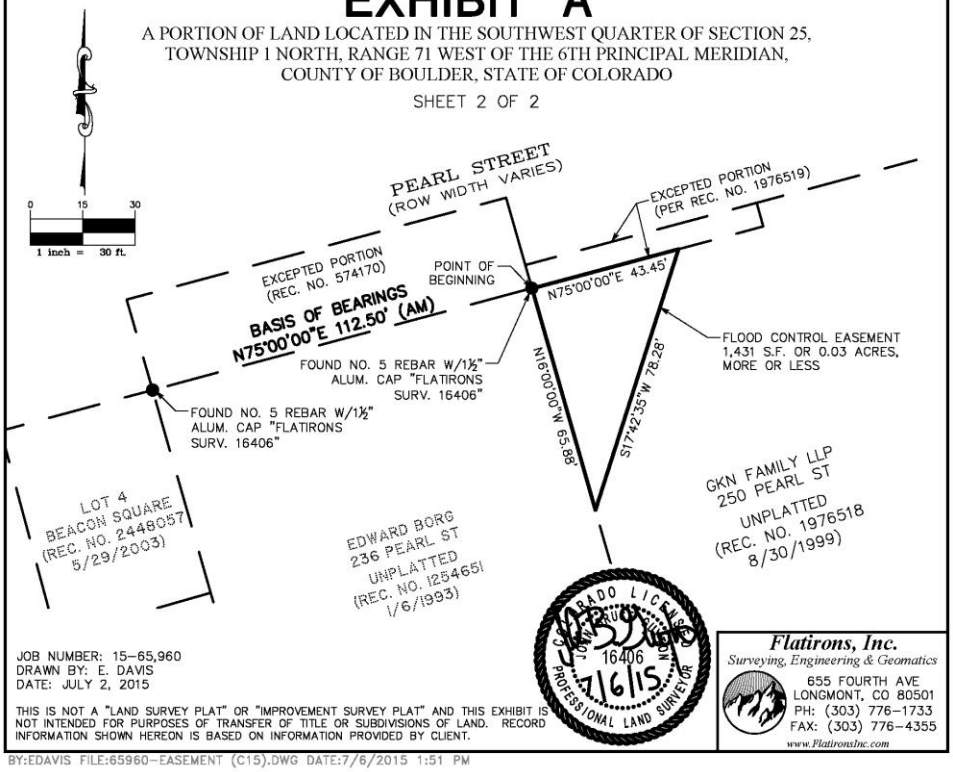
**Flatirons, Inc.**
*Surveying, Engineering & Geomatics*
655 FOURTH AVE
LONGMONT, CO 80501
PH: (303) 776-1733
FAX: (303) 776-4355
www.FlatironsInc.com

BY:EDAVIS FILE:65960-EASEMENT (C15).DWG DATE:7/6/2015 1:51 PM

# EXHIBIT "A"

A PORTION OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 25,
TOWNSHIP 1 NORTH, RANGE 71 WEST OF THE 6TH PRINCIPAL MERIDIAN,
COUNTY OF BOULDER, STATE OF COLORADO

SHEET 2 OF 2




JOB NUMBER: 15-65,960
DRAWN BY: E. DAVIS
DATE: JULY 2, 2015

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BY:EDAVIS FILE:65960-EASEMENT (C15).DWG DATE:7/6/2015 1:51 PM

**From:** [redacted]
**Sent:** Tuesday, March 10, 2015 5:10 AM
**To:** McLaughlin, Elaine
**Subject:** Redevelopment of 236 Pearl

Hi Elaine,

I hope you are well. I know that Neil Rassmussen, who is the HOA president at Beacon Square, recently discussed with you his concerns regarding water management and flood issues arising from the drainiage ditch that borders the east side of the proposed redevelopment site at 236 Pearl. I am the owner of 1999 Beacon Court, and I want to also weigh in that I am concerned about this issue, as are others in our community.

I have personally experienced elsewhere how new development can alter storm water flows to the severe detriment of those in adjacent properties. I would like to not only be assured that the developer's plan for 236 Pearl would not exacerbate an already tenuous situation with respect to the storm water management there, but would appreciate it if their storm water management plan might also include some mitigation efforts to alleviate an troublesome issue that already exists.

Simply stated, storm water should not be permitted to pass across their property onto ours. Thanks for your attention to this concern.

Regards,
Dave
Dave Terzian
1999 Beacon Ct
301-325-8777

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**From:** Rich Testardi at home [[redacted]]
**Sent:** Monday, March 09, 2015 9:12 PM
**To:** McLaughlin, Elaine
**Subject:** Re: 236 Pearl St. and the flood...

(somehow the first line of the e-mail seems to have been made blank initially, sorry, here it is again.)

Neil Rasmussen suggested I contact you with another perspective on the property at 236 Pearl St and the flood, and how many houses on Beacon Ct narrowly escaped significant damage from runoff. Hopefully with the new development plans we can do something to mitigate the possibility of something like this happening in the future.

Basically, the ditch to the east of 236 Pearl St (shown in green, see image below) ***breached the culvert under Pearl St*** (red/blue star) and ***came over the road instead***. This brought much of the water on Pearl St itself, ***west of the ditch***, directly into the parking lot of 236 Pearl St (red/blue arrows). From there it ***continued west*** in the parking lot, over the

property line of Beacon Square, and ***entered into the east end of Beacon Ct itself***, where it quickly overwhelmed our small storm drain (green/blue circle), and within an hour, brought Beacon Ct to a depth of 2 feet of runoff, and still rising, just at the entrances to most garages and lower levels.

Note that before the runoff from 236 Pearl St began to enter Beacon Ct, our small storm drain was doing just fine keeping up with water coming down the "T" of Beacon Ct, and falling on the property itself.
As Beacon Ct succumbed to the runoff, a number of folks were able to quickly divert the water ***back into the ditch*** from the northern part of the parking lot of 236 Pearl St, and then the 2 feet of water in Beacon Ct immediately started receding. Had folks not been so quick, I expect many of the houses in Beacon Ct would have experienced significant damage.

Given the nature of the small storm drain in Beacon Ct, it seems prudent to have either a retaining wall between 236 Pearl St and Beacon Ct, or some kind of retaining wall to catch water that comes over the road when the culvert under Pearl St is breached (though as the red/blue arrows show, this was significantly west of the ditch, due to the slope of Pearl St in the area, so this water might be hard to catch). In addition, it would be ideal if the city could keep the culvert under Pearl St free from overgrowth and clear of debris, to aid in routing water under the road, rather than above it.

Thank you.
Rich Testardi
1996 Beacon Ct

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**From :** [redacted] Mon, Mar 02, 2015 07:23 AM
**Subject :** 236 Pearl
**To :** Elaine McLaughlin <mclaughlin@bouldercolorado.gov>

Elaine McLaughlin,

My wife, Karen Cassidy and I live at 293 Pearl Street where the Eastern property line is the Sunshine Creek.

Is the Eastern property line of Project Name 236 Pearl as shown on the "City of Boulder Vicinity Map", been verified by a survey to create a property line associated with Sunshine Creek as it is today (2014/15)?

Our concern is that the owner of the property protects Sunshine Creek by not encroaching into the creek with new construction.

Some thoughts relative to the creek:

There was major flood damage to 4 homes in the Blue Pearl Lane across from 236 Pearl Street.

We are aware, at times the water gate is opened to Sunshine Creek to allow a small flow of water in the creek. Maybe the water gate was opened during the "Boulder Flood". Water flowed over the culvert which goes under Pearl Street. The culvert, in the past has been used as a "living place" by the "street people". They left items in the culvert that blocked the flow of water. The flood deposited "earth" into the culvert similar to the earth deposited in the Knollwood tennis courts.

The City of Boulder encourages citizens call 911 to report anything that may cause a major restriction to the flow of water.
The city responded immediately to remove a mattress just North of the culvert.

Also, we do have an interest in the height of the buildings which will be address later.

Gerald A. Gayer
Karen J. Cassidy
293 Pearl Street
Boulder, CO 80301
[redacted]
303-247-9177

**From:** Bruce Schwartz [mailto:[redacted]]
**Sent:** Monday, March 09, 2015 6:44 PM
**To:** McLaughlin, Elaine; Bruce Schwartz
**Subject:** Annexation and Redevelopment of 236 Pearl

Hi Elaine, I'd like to echo my neighbor Neil's concerns. I have a house at 1939 Beacon Court next door to Neil. Water from that ditch did come into my garage.
b

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**From:** Ernest Mark [mailto:[redacted]]
**Sent:** Monday, March 09, 2015 5:43 PM
**To:** McLaughlin, Elaine
**Subject:** Flood mitigation for Annexation Feasibility Study re 236 Pearl St

Ms. McLaughlin,
I would like to second the request that Neil Rasmussen described for the 236 Pearl Street property. Some sort of flood control re-grading would probably be required for the proposed structures anyway, but that work should be designed to also fix the overflow to Beacon Court properties.
Thanks for your consideration.

Ernest Mark
1929 Beacon Ct

**From:** Neil Rasmussen [mailto[redacted]]
**Sent:** Monday, March 09, 2015 11:26 AM
**To:** McLaughlin, Elaine
**Subject:** 236 Pearl St

Hi Elaine,
thanks for the brief chat this morning about the Annexation Feasibility Study re 236 Pearl St
as we discussed, that property is adjacent and due east of a group of 14 homes on Beacon Court that includes my home and those of my neighbors

i'd like to put forth some comments related to the potential redevelopment of that property in the context of the flood event we had here back in Sept 2013
there's a drainage ditch just to the east of 236 Pearl that overflowed badly onto that property, and the lay of the land there is such that it slopes downward to the west and spilled massive amounts of water onto Beacon Ct

in addition to the water falling from the sky, and the water that flowed down our street from Pearl St itself, the additional massive flow of water from that drainage ditch (that is adjacent to and maybe part of 236 Pearl) totally overwhelmed our single drain on Beacon Ct, such that our street was inundated with almost two feet of water
in my case, and some of my neighbors, the water crept up my driveway and into my garage, and fortunately stopped about a foot short of the entry door into my house (at the back of the garage) - very lucky !

in the event of a recurrence of that type of rainfall, doubtful as it may seem, i'd like to ask if some steps toward mitigation might be undertaken by the developers of 236 Pearl, specifically either 1)

building a 3 foot high cement retaining wall on the west and south boundaries of 236 Pearl so that water would not flow into our street and overwhelm the capacity of our drainage sewer, or 2) building a retaining wall on the west side of the drainage ditch, which would be on the east side of 236 Pearl, thus preventing water from the ditch from flowing onto 236 Pearl, and subsequently into Beacon Ct

i look forward to discussing this in more detail and even "walking" the property with you to better explain the situation here
thank you,

Neil Rasmussen
1936 Beacon Ct

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**From:** robg4527@gmail.com [mailto[redacted]]
**Sent:** Wednesday, February 25, 2015 8:27 AM
**To:** McLaughlin, Elaine **Cc:** boulderplanningboard
**Subject:** Re: 236 Pearl Street

Elaine, thank you for your reply and info. If the City is intent on annexing this commercial site now in the County, the City should not develop the site but turn it into a pocket park for green/open space. It could be a park venue for artists, neighbors, office workers, anyone wanting to enjoy the outdoors.
Gail and Rob Gordon

**From:** Elaine McLaughlin
**Sent:** PM **To:** [redacted]
Dear Rob and Gail-

Thanks very much for the email you sent in response to the Public Notification about an Annexation Feasibility Study application that was submitted on 236 Pearl Street. The application indicates that they are interested in removing the existing commercial buildings on the site, which is a county enclave (shown in white below), and constructing two residential units once annexed to the city. Because an enclave is a site that is under county jurisdiction but surrounded by land in the city's jurisdiction, the Boulder Valley Comprehensive Plan policy 1.24b encourages annexation of such properties,

*"b) The city will actively pursue annexation of county enclaves, Area II properties along the western boundary, and other fully developed Area II properties. County enclave means an unincorporated area of land entirely contained within the outer boundary of the city."*

Please feel free to call or email me for any additional information, clarification or comments.
Kind regards-
Elaine

**Elaine McLaughlin, Senior Planner**
Department of Community Planning + Sustainability
City of Boulder
1739 Broadway, 3rd Floor
Boulder, CO 80306-0791

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**From:** robg4527@gmail.com [mailto:robg4527@gmail.com]
**Sent:** Tuesday, February 24, 2015 2:39 PM
**To:** McLaughlin, Elaine
**Cc:** boulderplanningboard
**Subject:** 236 Pearl Street

As residents of Boulder for 28 years, we are against the annexation and development of 236 Pearl Street. We feel this area should stay in the County and remain undeveloped for a wildlife corridor. That area is also prone to wildfires at the edge of the City with westerly winds. Boulder is being overdeveloped. We need more open/green space.

We encourage developers to convert existing commercial space into residential housing inside the City. We need more pocket parks inside the City. Eben G. Fine park is overused. We do not support new commercial development of any kind.

Rob and Gail Gordon
377 West Arapahoe Lane
Boulder CO 80302-5858
home phone: 303-938-1216