

The Board of Governors of the
Colorado State University System
Meeting Date: October 9, 2020
Action Item

Approved

MATTER FOR ACTION:

The Board of Governors of the Colorado State University System (the “Board”) approval of the public purposes, goals, uses, and site plan for the Hughes Property and exercising the Board’s full legal authority to adopt Board law that establishes and implements those public purposes, goals, uses, and the site plan for the Hughes Property.

RECOMMENDED ACTION:

WHEREAS, the Board owns 161 acres of real property located at 2011 South Overland Trail in Fort Collins, Colorado (the “Property” or the “Hughes Property”). The Property was the former site of Hughes Stadium, and that structure has been demolished and removed in order to use the Property for different Board public purposes, objectives, and goals.

WHEREAS, the Board reaffirms its previously stated objectives with respect to the future use and development of the Property, including the following public purposes:

- Serving the collective interests of CSU, Larimer County, and the City of Fort Collins;
- Providing opportunities for open space and environmentally conscious development;
- Including public access to adjacent trails and open spaces;
- Maintaining strong connections to existing off-site trail systems;
- Providing connections to bike trails and transit systems;
- Offering opportunities for affordable, attainable, and workforce housing;
- Meeting broader university and community needs, such as neighborhood retail, senior and childcare services, health care facilities, and community facilities; and
- Satisfying the Board’s fiduciary duty to generate a financial return from the Property, with such revenues from the use of the Property supporting operations of the CSU System and Colorado State University, in order to the benefit CSU employees, faculty, and students, as well as the citizens of Fort Collins, Larimer County, and the State of Colorado.

WHEREAS, the Board specifically desires to use the Property for the public purposes and benefits of creating attainable and affordable housing for lower income CSU employees, decreasing the carbon footprint for Colorado State University, as well as adding additional services that might benefit the community in the course of training CSU students. The Board recognizes that attainable and affordable housing opportunities are important elements in recruiting and retaining

Colorado State University employees, and our valuable employees play a critical role in the university's success and the success of our students.

WHEREAS, the Board acknowledges the importance of environmental sustainability and responsibility, and the Property is favorably located such that it can integrate into the public transit system and reduce our carbon footprint. Also, the Property can integrate into the bike and pedestrian trail systems and add open space and buffers where appropriate. Accordingly, future uses of the Property will be consistent with the Board's goal and the specific public purpose to add environmental value while balancing financial returns in accordance with the Board's fiduciary duties.

WHEREAS, the Property can be used to develop learning opportunities for CSU students by providing locations for medical facilities, child care facilities, or other facilities that would benefit the surrounding community, and future uses of the Property will be consistent with these Board goals and these specific public purposes.

WHEREAS, the City of Fort Collins approved its City Plan on April 16, 2019 (the "City Plan"). The City of Fort Collins describes the City Plan, as follows:

"The City Plan is the comprehensive and transportation master plan for Fort Collins. It articulates our community's vision and core values; guides how the community will grow and travel in the future; and provides high-level policy direction used by the City organization, local and regional partners, and the community at large to achieve our vision and priorities. The City Plan takes the long view, identifying goals and actions the community should take over the next ten to twenty years."

WHEREAS, the City Plan identifies the City's "Core Values" and "Outcome Areas" including livability, sustainability, and community, and these Core Values and Outcome Areas align with the Board's goals, public purposes, and uses for the Property.

WHEREAS, the City Plan includes the Structure Plan map, which is used in conjunction with the principles and policies stated in the City Plan to guide where and how growth occurs. The April 2019 Structure Plan map was developed following the City's "evaluation of issues and opportunities pertaining to five focus areas":

- Making the most of the land we have left;
- Taking steps to support a healthy and resilient economy;

- Encouraging more housing options;
- Expanding transportation and mobility options; and
- Maintaining our focus on climate action.

The Structure Plan map references the Property and contemplates that the Property would be developed for “suburban neighborhood” and “mixed neighborhood” uses.

WHEREAS, the conceptual site plan for the Property that is attached to this Action Item (the “Site Plan”) incorporates the Board’s goals, uses, and public purposes for the Property that are set forth in this Action Item. In addition, this Site Plan is consistent with the City Plan, including the Structure Plan map and its “five focus areas.”

WHEREAS, the Board, the CSU System, and Colorado State University, have attempted to work with the City of Fort Collins for many years in order to achieve the Board’s goals, uses, and public purposes for the Property and to simultaneously achieve the City’s Core Values and Outcome Areas as identified in the City Plan and the Structure Plan map. Unfortunately, CSU’s collaborative efforts have not been successful, as the City has failed to support and follow its own City Plan and Structure Plan map in light of City Council’s failure to support its own staff recommendation regarding the Property. The City has essentially disregarded the April 2019 City Plan and Structure Plan map, thus frustrating the Board’s goals, public purposes, and uses for the Property. Accordingly, the Board is exercising its legal authority to implement its goals, public purposes, and uses for the Property as identified in this Action Item, which are consistent with the City Plan and Structure Plan map.

WHEREAS, under the Colorado law, specifically Article VIII, Section 5 of the Colorado Constitution and C.R.S. § 23-31-103, the Board has a significant measure of autonomy and the authority to determine how the Board uses its land, including the Property. Specifically, Colorado law provides that the Board “has the general control and supervision of the Colorado state university and lands and the use thereof” and the Board “has plenary power to adopt all such ordinances, bylaws, and regulations, not in conflict with the law, as they may deem necessary to secure the successful operation of the university and promote the designed objects.”

WHEREAS, Colorado law, specifically C.R.S. § 31-23-209, further contemplates that a state actor, such as the Board, has the authority to overrule a local governmental entity, such as the City of Fort Collins, and Section 2.16 of the City’s Land Use Code sets forth the City’s Site Plan Advisory Review (“SPAR”) process, which acknowledges the City’s review over the Board’s uses for the Property is merely advisory and the Board has the authority to overrule any denial of the Board’s application. Accordingly, the Colorado Constitution, Colorado statutory law, and the

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City of Fort Collins Land Use Code clearly evidence a legislative intent at all levels that the Board has plenary authority over its property, including the Hughes Property.

It is MOVED that the Board exercises its legal authority under Colorado law to determine the present and future uses of the Property in accordance with the specific public purposes, goals, objectives, and benefits referenced in this Action Item, and this exercise of authority through this Action Item has the full force and effect of law.

It is FURTHER MOVED that the Board approves the Site Plan for the Property and this approval represents the full force of the Board's legal authority to adopt law, ordinance, and regulation for the Property.

It is FURTHER MOVED that the Chancellor is authorized to move forward with any and all necessary actions to implement development and other activities to accomplish the uses illustrated in the Site Plan and those public purposes, goals, and uses identified in this Action Item.

It is FURTHER MOVED that the Chancellor is authorized to submit an application with the City of Fort Collins that is consistent with the Board's goals, uses, and public purposes for the Property, as identified in this Action Item. This application may be submitted in accordance with Colorado law, specifically C.R.S. § 31-23-209, in order to give the City an opportunity to have an advisory review of that application. The City uses its SPAR process for such an advisory review, and the Chancellor is authorized to submit an application as part of the SPAR process. The Board expressly reserves any and all authority under state law to override the City's disapproval of that application. Further, to the extent the SPAR process purports to require the Board to take steps or actions that are beyond the process set forth in C.R.S. § 31-23-209, the Chancellor is not required to follow any such extraneous process.

It is FURTHER MOVED that the Chancellor is authorized to execute any agreement, lease agreement, or grant or retain any related easement or restriction in order to implement the Board's public purposes, goals, and uses as described in this Action Item and in the Site Plan, in consultation with General Counsel.

EXPLANATION PRESENTED BY: Dr. Tony Frank, Chancellor, Colorado State University System, and Jason L. Johnson, General Counsel, Colorado State University System

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In addition to the self-explanatory provisions of this Action Item, the Chancellor and General Counsel will provide any additional details.

Approved

Denied

Dean Singleton, Board Secretary

Date