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FILED IN THE
SUPREME COURT
OF THE STATE OF COLORADO
MAR 4 1977
Florence Walsh

IN THE SUPREME COURT

OF THE STATE OF COLORADO

No. 27465

CITY OF NORTHGLENN, a municipal corporation, Plaintiff-Appellant, v. CITY OF THORNTON, a municipal corporation; NORTHWEST UTILITIES COMPANY, a Colorado corporation; WESTERN HILLS UTILITY COMPANY, a Colorado corporation; GENERAL WATERWORKS CORPORATION, a Delaware corporation; TOL-WIN CORPORATION, a Colorado corporation; TRANS-WESTERN INVESTMENT COMPANY, a Colorado corporation; PERL-MACK HOMES, INC., a Colorado corporation; JORDAN PERLMUTTER; SAMUEL PRIMACK; WILLIAM J. MORRISON; and BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ADAMS, STATE OF COLORADO, a body politic and corporate, Defendants-Appellees.	Appeal from the District Court of the County of Adams, State of Colorado Civil Action No. 21370 Date of Final Judgment: June 19, 1975 The Honorable Oyer T. Leary, Judge

REPLY BRIEF OF PLAINTIFF-APPELLANT

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REPLY BRIEF OF PLAINTIFF-APPELLANT

INTRODUCTION

It is certainly true that any reply brief should simply reply to the arguments contained in the answer brief, supplementing the opening brief to that extent. Counsel for the plaintiff-appellant, City of Northglenn, has had occasion to read (and, perhaps even to write) reply briefs which have exceeded their proper scope and have restated the argument contained in the answer brief in some detail. The present

case has already produced some 300 pages of briefs on this appeal, and at this point it would seem that brevity should be regarded as next to cleanliness. Therefore, this reply brief will, in fact, be simply a reply brief and will do nothing other than respond to the answer brief which has been filed by defendant City of Thornton. It is believed that the positions of the respective parties have been sufficiently detailed in the previous briefs that they need not, and should not, be repeated.

The parties will be referred to, and references will be made to the record and to the exhibits in this brief in the same manner as these were referred to in plaintiff's opening brief.

STATEMENT OF THE CASE

There has already been one statement of facts included at pages 1-9 of plaintiff's opening brief. A separate, and quite different, statement is set out at pages 1-26 of Thornton's answer brief.

It would seem somewhat unusual that this case could generate such vastly different factual statements, since it was submitted for decision upon a stipulation concerning most of the relevant facts. For the convenience of the Court, a copy of that stipulation, including folio numbers, is included as an appendix to this reply brief. It is hoped that this approach will clarify the facts involved to some degree.

Beyond this, there are some very severe distortions

of the facts included in Thornton's answer brief which would seem to require a direct response in order for the actual state of facts to be made clear.

The first six pages of Thornton's so-called "statement of the case" is an extremely argumentative, highly biased, and rather unprofessional diatribe. Most of this material will not be dignified with a response.

A few of Thornton's distortions are so severe, though, that a brief clarification is nearly mandatory.

First, plaintiff has never claimed, and does not now claim, that it should be given anything "for free." All of the facilities constituting the Northglenn systems are facilities which have been paid for, are being paid for, and will be paid for in the future by the residents of Northglenn. Additionally, the required future payments will continue regardless of the legal title to the systems. This point was made repeatedly in plaintiff's opening brief, and it will be emphasized throughout this reply brief. It is inconceivable that defendant Thornton has been unable to grasp this simple concept.

Next, it hardly seems appropriate to "state the case" by alleging that the adverse party has approached its legal argument by ignoring Colorado authority and misciting cases from other jurisdictions, as Thornton has done at page 2 of its answer brief. Rather than commenting further on this point, plaintiff would simply invite the Court to thoroughly review all of its authorities both in its opening brief and in this brief. It is believed that such a thorough review

will show that the relevant law is exactly as it has been discussed by plaintiff.

A "statement of the case" hardly seems the proper forum for doomsday predictions relating to the effect on public policy which would result from the application of the law to the facts of this case. Nevertheless, this has also been done in Thornton's opening brief. Suffice it to say in response that the Anglo-American jurisprudence will continue even if the law is applied as it should be in this case; and that no matter how this case is decided, Colorado will not follow California in sliding into the sea.

One further point made by Thornton in "stating the case" calls for some response before turning to a direct discussion of the facts. In a footnote at page 4 of its answer brief, Thornton makes the unsupportable, unprofessional, and most objectionable suggestion that this entire process of litigation has been set in motion and continued for more than six years (so far) merely to "harass" the City of Thornton. To avoid any remarks which might be considered vindictive, it will simply be stated here that it would be hoped that some apology to Northglenn would be tendered at some point.

What is purported to be the actual "statement of facts" included in Thornton's brief continues the previously mentioned propensity to be highly argumentative and distorted. For example, pages 9-12 of the answer brief are devoted to stating as a fact the legal conclusion that the utility extension contracts (Exs. 1-18; 195-210) were the first documents

in the chain of title to the Northglenn systems. Besides being argumentative, this statement is simply not true, for those contracts are no part of the chain of title to the Northglenn systems. See Northglenn's opening brief at 122-124.

The next serious misstatement of the facts is also found on page 12 of Thornton's answer brief, where it is stated that prior to April 1, 1963, Northwest Utilities continuously paid property taxes on the water and sewer facilities constituting the Northglenn systems. This is simply not true. It has been stipulated that after the recording of the plats (Exs. 22-80) no property taxes were ever paid on that land in which the facilities were placed (f. 3791). It is also stipulated that Mr. Aman Hall, the witness who would, as State Tax Commissioner, testify concerning the payment of taxes by Northwest Utilities Company is unable to state "whether any specific water and sewer lines, such as those which were located in the area later to become City of Northglenn, were included "in the facilities which were taxed" (f. 3750). This same misstatement of the facts is repeated by Thornton at the bottom of page 16 of its brief.

On page 16 Thornton also states that it has been stipulated that Adams County did not at any time intend to accept any dedication of water and sewer facilities, including the Northglenn systems. Again, this is not true. Actually, it was stipulated that there is testimony by certain individuals that they did not believe it to be the intention of Adams County to accept such dedications (ff. 3762-3765). There is also

contrary testimony. See, e.g., ff. 5540-5542. This is a point of little importance anyway, since no person's actual intent can alter the expressed scope of a dedication. City of Denver v. Clements, 3 Colo. 472, 484 (1877).

At pages 19-20 of its brief, defendant Thornton indulges in further legal argument concerning the law of dedication. Plaintiff does not feel that this is properly included in a "statement of facts," but has thoroughly discussed these issues in the section of its briefs which contain legal argument. Yet, there is even one misstatement in this section which should be corrected. Despite the assertion in Thornton's brief that dedications were made to Adams County, or Northglenn, or to other governmental bodies, the language of every plat states that the dedication is made to the public.

This is another very basic point which Thornton has shown some difficulty in understanding--all dedications are dedications to the public, and not to a city or town or county.

In addressing the next point in Thornton's "statement of facts" which would seem to require some discussion, plaintiff would readily admit that it is also stepping outside the area of strictly stating facts and indulging in some argument. However, this is done only in response to Thornton's so-called "statement of facts." Throughout its brief, Thornton argues, as it begins at page 24, that it is contrary to all law, accounting, and capitalist economics to believe that a customer would acquire an ownership interest in the capital equipment which produces the goods or services purchased by such customer.

Yet, it must be recognized that the present situation is totally different from saying that the purchaser of an automobile has also acquired an equitable interest in General Motors, or that the buyer of a washing machine has become an equitable owner of Kenmore.

The present case differs from those hypothetical examples in many important respects: (1) Those sales do not involve any representation that the consumer has acquired an interest in anything other than the tangible good which has been purchased; while the sales of homes in the present case were attended by express representations that the purchasers were acquiring an interest in the systems serving their homes (Exs. 147-150A). (2) When a consumer acquires an ownership interest in an automobile or a washing machine, he is, in effect, transferring an interest previously held by the manufacturer or seller in the form of inventory to his own use; while in the present case the interest acquired is an interest in the Northglenn systems, themselves. (3) While the Northglenn water and sewer systems were installed solely to make the homes in Northglenn usable for residential purposes, no similar statement can be made concerning a typical consumer sale. (4) While the manufacturer of the washing machine or automobile is a private entity in the business of making profit, the City of Thornton is a municipal corporation which holds all of its property only as a public trustee. See Northglenn's opening brief at 94-98. (5) Neither the washing machine nor the automobile may be considered an appurtenance or hereditament

of the manufacturing companies, as are the Northglenn systems to the lots to which they are connected.

Many other distinctions could be noted and discussed, but too much time and space has already been spent on this issue which is only indirectly related to the real issues of ownership which are before the Court.

Only one additional point will be made concerning Thornton's "statement of facts." The statement at page 25 of the answer brief that "while Northwest Utilities owned the facilities it was precluded by the P.U.C. from passing the rebate costs on to its customers in the form of higher rates" is something which has not even been considered at any point in the record.

SUMMARY OF ARGUMENT

In replying to Thornton's legal arguments, plaintiff has tried to limit its remarks to a discussion of the law, rather than being drawn into the "mud-slinging" contest which Thornton, to judge by its brief, would like to engage in.

There is no absolute right under Colorado law for any utility to locate its lines under public streets. In making its aspersions that such right does exist, Thornton has ignored the large body of law which shows that such lines may be placed in the streets only through condemnation or eminent domain proceedings.

Similarly, Thornton is mistaken when it argues that it has acquired easements to locate its lines beneath the streets of Northglenn. No such easements exist.

There is nothing in Thornton's brief which contradicts Northglenn's position that the dedication of the streets also constitutes a dedication of all that is located within the streets. Neither does anything in Thornton's answer brief detract from the discussion of the law of trusts which is included in Northglenn's opening brief.

Stated simply, the residents of the City of Northglenn are the beneficial owners of the water and sewer systems which serve their homes, and the City of Northglenn is the only entity which is presently empowered to hold the legal title to those systems.

None of Thornton's affirmative defenses is in any way valid. Although each of those defenses is discussed both in this brief and in the opening brief, there is no reason to engage in any kind of detailed discussion of any of them.

In sum, virtually everything which has been stated in Thornton's answer brief has been addressed thoroughly in Northglenn's opening brief. This reply brief merely serves to confirm what was stated in that opening brief by showing the inadequacies of the arguments contained in the answer brief.

ARGUMENT

I. Introduction.

Before responding to some of the specific points of law which have been raised in the answer brief filed by defendant City of Thornton, several of the arguments which are advanced in that brief may be dispensed with in a rather summary manner.

It has been the rather disquieting propensity of defendant Thornton throughout its brief--and, indeed, throughout this litigation--to resort to "name-calling" and "mud-slinging" and to invoke spectres pointing to the decay of American society and the downfall of the judicial system when it has been unable or unwilling to respond to the legal arguments which have been advanced by plaintiff.

The City of Northglenn most certainly does not intend to take up any time or space with arguments of that nature. It is believed that even to respond to such polemic would detract from the real purpose of this appeal and very nearly insulting to the dignity of this Court. Rather, Northglenn would simply clarify a few of the more heinous misconceptions contained in Thornton's answer brief, and would then address the more specific legal arguments advanced by Thornton which have not been fully considered in plaintiff's opening brief.

First, it must be stated very clearly that Northglenn does not want to take any water system, any sewer system, or any property of any value from anyone for free. The residents of the City of Northglenn have paid, are paying and will continue to pay for all of the water and sewer facilities. It has always been acknowledged by Northglenn that the payments required to repay the water and sewer bonds will have to be continued by it, to the extent that it has become the possessor of the improvements which have been financed by those bonds.

Neither is the City of Northglenn asking that Thornton be deprived of any property interest, without

compensation or otherwise. Thornton has no title of any kind to the vast majority of the property which is here at issue.

Similarly, Northglenn is not asking that any bonds or contracts be abrogated or remade. This action is neither intended to, nor can it, affect those agreements in any way.

This brief discussion has not been intended to respond to all of the totally irrelevant arguments which have been made in Thornton's brief. It is hoped, however, that these statements will clarify some of the more gross misrepresentations of the case which have been made so that the remainder of this brief may consider some of those legal arguments which do touch upon relevant issues.

II. Dedication.

A. There is no constitutional or statutory reservation of easements for utility lines to be placed under public streets.

Contrary to the assertion on page 49 of Thornton's brief, there are "less than two constitutional provisions and two statutes that give private utilities like Northwest Utilities and home rule cities like Thornton the automatic right to locate their utility lines under public streets." There are no such statutory or constitutional provisions.

Neither Article XVI, Section 7 nor Article XX of the Colorado Constitution have ever been interpreted to give any entity any rights regarding the laying of utility lines beyond the simple right to institute eminent domain proceedings to condemn the space necessary for such lines. This limitation

is clearly and expressly recognized in each of the cases cited in Thornton's brief.

In Town of Lyons v. City of Longmont, 54 Colo. 112, 129 P. 198 (1912), the only question which was before the Court was whether "Longmont has the right to condemn a right of way for its pipe line through the streets and alleys of the town of Lyons (emphasis added)." It was held that such right does exist and that eminent domain proceedings were therefore proper.

Town of Glendale v. City and County of Denver, 137 Colo. 188, 322 P.2d 1053 (1958), again concerned the propriety of an eminent domain proceeding. It was held that Denver did possess eminent domain powers, but went no further than that since it was determined that the order of the trial court could not be reviewed since it was not a final judgment.

Similarly, § 38-5-101, C.R.S. 1973, which is referred to on page 50 of Thornton's brief confers nothing more than an eminent domain right of pipeline companies, since payment of reasonable compensation to the owners of the property over which pipelines are constructed is required by §§ 38-5-102, 38-5-104, and 38-5-105, C.R.S. 1973.

The other statute relied upon by Thornton, § 38-4-102, C.R.S. 1973, which is discussed at page 51 of its answer brief, must also be regarded as a statute dealing with the right to commence eminent domain proceedings. This fact is clearly shown by § 38-4-107, which provides:

> "Any such [pipeline] corporation shall make due and just compensation for such right-of-way to the owners of the property through which it is proposed to construct, operate, and maintain such...pipeline... . When the parties cannot agree upon such right-of-way and the amount of compensation to be paid the owner of such property, the same shall be determined in the manner provided by law for the exercise of the right of eminent domain."

It is not contended in any way by Thornton that there has been any condemnation of rights-of-way for any of the systems which are the subject of this action. Therefore, title to such systems may not be derived from any of the statutes of constitutional provisions which Thornton would invoke.

B. Neither Northwest Utilities or Thornton has received any easement for the location of water or sewer lines beneath the streets of Northglenn.

At pages 51-54 of its answer brief, defendant Thornton discusses what are contended to be several sources of express or implied easements for Northwest Utilities or Thornton to place utility lines beneath the streets of Northglenn. None of these sources, however, have ever granted such easements in any manner.

First, Thornton would have the Court believe that the certificates of convenience and necessity which were issued by the Public Utilities Commission must be read as the granting of implied easements. No authority whatever is given to support this contention--and, indeed, none could possibly be given. The Public Utilities Commission has never been empowered to

grant easements and has never pretended to have such power.

Next, it is said that the existence of easements may be implied from the fact that:

> "[T]he Adams County Commissioners were informed and informally acquiesced that the water and sewer facilities remained the property of Northwest Utilities (or later Thornton)." (f. 3763)

Again, there is no authority cited for the proposition that mere informal acquiescence constitutes the granting of an easement; and, again, no such authority could be cited. An easement could arise from such acquiescence only if the circumstances of the acquiescence were such as would amount to adverse possession. Allen v. First Nat'l Bank of Arvada, 120 Colo. 275, 208 P.2d 935 (1949). Such circumstances have not been alleged, have not been shown by the evidence, and do not exist.

The third source stated by Thornton for its implied easement theory is that the street cut permits issued by the City of Northglenn amounted to the granting of an easement. Once again, there is no citation of authority which is attempted by Thornton or which would be possible. A municipality simply does not grant an easement to the use of the area beneath its streets by exercising control over the use of the surface. It would have to be conceded that an easement could possibly arise by adverse possession if such circumstances were to continue, but there has certainly been no adverse possession shown under the facts of the present case.

In discussing the actions of Northglenn, the City of Thornton goes even further, and beyond the limits of credibility,

by contending that the letter written by Northglenn approving

> "The operation and maintenance of water facilities and sewerage facilities for the use of the public and private customers and users by the City of Thornton within the territorial boundaries of the City of Northglenn for the calendar year 1971." (Exs. 167, 377).

Clearly, the rights acquired by Thornton under this letter must be seen as a mere license, and not an easement.

Still, even if it were possible to construe the letter as granting any kind of easement, the "easement" granted is unquestionably one which, by its express terms, expired at the end of "the calendar year 1971."

Thornton next contends that easements were granted to Northwest Utilities, and later to Thornton, through the so-called utility extension policy contracts which were executed by various developers in the Northglenn area. The fallacy in this argument is shown in the express terms of § 38-35-109, C.R.S. 1973:

> "All deeds, powers of attorney, agreements, or other instruments in writing conveying, encumbering, or affecting title to real property, certificates and certified copies of orders, judgments, and decrees of courts of record may be recorded in the office of the county clerk and recorder of the county where such real property is situated and no such instrument or document shall be valid as against any class of persons with any kind of rights, except between the parties thereto and such as have notice thereof, until the same is deposited with such county clerk and recorder."

Here, the utility extension policy contracts (Exs.

1-18, 195-210) remained unrecorded and wholly executory until virtually all of the relevant plats (Exs. 22-80) had been properly recorded. The unrestricted language of dedication on those plats cannot be altered in any way by the unrecorded contracts upon which Thornton would rely. This fact is plainly shown by the decision of the Colorado Court of Appeals in Perlmutter Associates v. Northglenn, 35 Colo. App. 355, 534 P.2d 349 (1975), which held that instruments which are not recorded may not be invoked to alter a recorded plat:

> "To hold otherwise would be to require title examiners to look behind every recorded plat and would do violence to the presumption of notice which is the basis of the law relative to the recordation of documents. [Citations omitted.]" 35 Colo. App. 358, 534 P.2d at 351.

The next alleged basis for the finding of an easement--which, once again, is supported by no citation of authority whatever--is that the residents of Northglenn have granted easements to Thornton by signing water user contracts with the City of Thornton. This must be seen as totally ludicrous. The mere purchase of water may not be seen as conferring an easement in the streets to the entity controlling the water system unless that entity can show that a prescriptive easement has been acquired through adverse possession. This has not been done.

Finally, Thornton has claimed that the "custom and practice" within the State of Colorado for utility lines to be placed within public streets is sufficient to constitute an

easement for the use of Northglenn's streets by Thornton.

It has already been shown in this brief that one installing water lines or sewer lines in Colorado does have the right to condemn the property in which such lines are placed. However, since neither Northwest Utilities nor Thornton has elected to utilize its condemnation powers, there has been no easement of any kind acquired in that area underlying Northglenn's streets.

C. <u>The streets within the City of Northglenn, and everything within those streets, have been dedicated to the public</u>.

The discussion which is set forth at pages 17-62 of Northglenn's opening brief set forth the principles of law which compel the conclusion that the streets within the City of Northglenn, and everything which lies within those streets, have been dedicated to the public. As a result, the Northglenn water and sewer systems, which are the subject of the present action, have also been dedicated.

This same subject matter is discussed at pages 30-49 of Thornton's answer brief. Virtually every principle which is discussed by Thornton has already been addressed in Northglenn's opening brief, and so will not be repeated in this reply brief.

There are, however, two points raised by Thornton which would require some additional elaboration. The first of these is the discussion of <u>Town of Manitou v. International</u>

Trust Company, 30 Colo. 467, 70 P. 757 (1902), which is found at page 33 of Thornton's brief.

Thornton would have the Court believe that the cited case held that when there was a mere contract to lease land, such land could not thereafter be dedicated. However, that was not the issue before the Court, nor was it the decision of the Court. Instead, there had been an actual executed lease of the property in controversy to the Manitou Mineral Water Company prior to the recording of the plat containing the language of dedication; such land was later conveyed to that company; and the company at all times had paid all real property taxes upon the subject property.

In the present case, by contrast, all of the utility extension policy contracts (Exs. 1-18, 195-210) remained wholly executory until virtually all of the plats (Exs. 22-80) had been recorded. Of equal importance is the stipulated fact that after the filing of the plats containing the language of dedication, neither Northwest Utilities Company nor the City of Thornton nor any of the developers nor any other person or entity ever paid any property taxes on the land constituting the streets of Northglenn nor on any area beneath the surface of those streets (f. 3791). Therefore, it may easily be seen that Town of Manitou v. International Trust Company, supra, was concerned with an entirely different factual situation, and cannot be controlling of the present controversy.

The second area to require some further discussion is the chart set forth on pages 42-44 of Thornton's brief

which supposedly sets out the factual differences existing between the case which is now before the Court and Trentman v. City and County of Denver, 129 F. Supp. 624 (D. Colo. 1955), aff'd. 236 F.2d 951 (10th Cir.), cert. denied 352 U.S. 943 (1956), which has been the only case which has attempted to apply Colorado law to a controversy involving a dedication theory similar to that advanced by the City of Northglenn in this action. In contrast to Thornton's chart, there is discussion at pages 58-60 of Northglenn's opening brief which show the similarities between the two cases.

While it must be admitted that factual differences always exist between any two cases, it should be apparent that the basic operative facts of Trentman are virtually indistinguishable from those in the case at bar. Since the chart contained in Thornton's brief does contain certain distortions which must be corrected, it would seem most efficient to briefly discuss each of the factual elements presented on that chart in the same order that they have been presented in the answer brief:

1. In both instances, the developers possessed full authority to dedicate the area in which the lines were placed. See pages 143-145 of Northglenn's opening brief.
2. In both cases, the developers engaged in clear acts of dedication. See Exs. 22-80 (plats).

3. In both cases, the dedications were accepted. See stipulated facts, ff. 3770 et seq., and Northglenn's Resolution No. 73-4, Series of 1973 (Ex. 85). See also pages 30-32 of Northglenn's opening brief.

4. In both instances, the homebuyers were charged for the facilities serving their homes, and it was specifically represented to them that they were being so charged. See Exs. 148, 149, 150, 150A, 166. See also pages 69-84 of Northglenn's opening brief.

5. It is true that Trentman did not speak to the effect of any homeowners' user fees.

6. Although the developers in the present case may not be actually seeking a double recovery, the effect on the Northglenn homeowners is that they have paid for a water and sewer system and were then told that they had not bought that which they had paid for. See Exs. 148, 149, 150, 150A, 166. See also pages 69-84 of Northglenn's opening brief.

7. In neither case were there intervening bona fide purchasers. See pages 124-126 of Northglenn's opening brief.

8. It is true that Trentman involved a privately-owned utility and a municipally-owned utility, while Northwest Utilities Company was an investor-owned utility, but this does not alter the general principles of law which are involved.

9. In both cases the systems involved were installed to serve the homes which were being built in the area. See stipulated facts, ff. 3740-3745.

10. It is true that Northglenn has never actually billed its residents for their water and sewer services, but this fact should have no legal relevance.

11. In neither case was any evidence of private ownership of the lines and other facilities a part of the systems' chain of title. See Exs. 22-80. See also § 38-35-109, C.R.S. 1973. See also pages 143-145 of Northglenn's opening brief.

12. It is true that the Northglenn systems have never been repaired or maintained by the City of Northglenn.

13. It is true that Thornton has not abandoned the Northglenn systems. Since it never legally owned those systems,

there could be no abandonment. The concept of abandonment was not an important basis for the Trentman decision.

14. The discussion of "windfall profit" constitutes some of the polemic which it has been promised that this brief will avoid.

15. In neither case was the claim of dedication barred by estoppel. See pages 134-135 of Northglenn's opening brief.

16. Clearly the parties are in different positions and so the burden of proving the dedication differs between the two cases, but it is believed that Northglenn has met its burden in the present case.

17. In each case the systems were installed to make the houses and lots salable and usable by the public.

The only other discussion necessary concerning this aspect of the case arises from some of the gross misrepresentations of many of the cases which are discussed in Thornton's answer brief.

First, Thornton discusses Cheltenham & Abington Sewerage Co. v. Public Service Commission, 107 Pa. Super. 225,

162 A. 469 (1932), and acknowledges that the Pennsylvania court did find that there had been a dedication of the storm sewer system involved in that case. Thornton then states, however, that the same case also involved "a sanitary sewer system, and the Pennsylvania court ruled that the sanitary sewer system had not been dedicated because the developer had sold it to a private utility (emphasis omitted)."

It is difficult to believe that anyone could make such a blatantly untrue statement if he had bothered to read the case. The title to the sanitary sewer system was not even at issue before the Pennsylvania court. In its opening remarks, the court stated that the Public Service Commission had ruled that (1) the Sewerage Company's sanitary sewer rates should be reduced, and (2) the Sewerage Company had not proved ownership of the storm sewers. Only the second part of that decision was appealed, and only the issue of the title to the storm sewers was considered by the court:

> "By a stipulation filed, the scope of the appeal was confined to the legality of the commission's action 'in so far as it undertook to find and determine that the storm sewer systems were not the property of the sewerage company.'" 162 A. at 470.

Next, Thornton incorrectly asserts that plaintiff has cited Versailles Tp. Authority v. City of McKeesport, 171 Pa. Super. 377, 90 A.2d 581 (1952), "as 'direct authority' from Pennsylvania." Such language was never used in Northglenn's opening brief. Thornton then compounds its inaccuracy by alleging that the holding in Versailles is contrary to

Northglenn's claim. This is not true. The case was cited specifically for the proposition that if the area in which the water or sewer lines are placed has been dedicated to the public use, the lines themselves are dedicated whether they were installed before or after the dedication. This is stated expressly in the Versailles opinion:

> "Whether the streets were dedicated before or after the mains were laid and whether the parties who dedicated the streets also laid the mains does not appear, and is probably immaterial. There was, in fact, a dedication of the streets, and, under the Cheltenham case, the dedication carried with it a dedication of the mains for public use." 90 A.2d at 585.

Thornton then carries its erroneous analysis a step further by implying that both the Cheltenham and Versailles decisions were overruled in Township of Millcreek v. A Piece of Land, 181 Pa. Super. 214, 124 A.2d 448 (1956). The latter case, however, is totally inapplicable since it was decided upon a peculiar principle of Pennsylvania law--under which the selling of lots with reference to a plat grants the public a mere way of necessity in the public areas shown upon the plat, with all of the impediments which attend such an estate. A more thorough discussion of this position may be found in Schwab v. Gerkes, 21 Lehigh L. J. 147 (Pa. C.P. 1944). In Colorado, on the other hand, such a sale would result in title passing to the public in all of the area usable for street purposes, if not the entire fee. Bothwell v. Denver Union Stockyard Co., 39 Colo. 221, 90 P. 1127 (1907); City of Denver

v. Clements, 3 Colo. 472, 484 (1877).

The next glaring inaccuracy in Thornton's brief is its assertion that Galeb v. Cerpertino Sanitation District of Santa Clara County, 227 Cal. App. 2d 294, 38 Cal. Rptr. 580 (1964), is contrary to Northglenn's position. Again, it seems difficult to believe that the case was read before that statement was made. As may be seen in the following language, the Galeb case is rather direct authority for the proposition that a dedication of streets is also a dedication of the lines contained within those streets:

> "The second issue presented is whether the dedication of streets to public use includes the sewers underneath. In other jurisdictions the well settled rule is that by the dedication of land for a public street, the municipality acquires not only the easement of passage but also the right to grade and improve the surface of the street and to lay sewers, drains, and pipes for various utilities beneath the surface [citations omitted].
>
> "We think the rule is the same in this state. ...
>
> . . . . .
>
> "Respondents argue that the authorities from other jurisdictions are not relevant here as they apply only to the right to lay new sewers but cannot be applied to the taking of existing sewers. This distinction finds no support in either reason or law. In Versailles Tp. Authority v. City of McKeesport, supra, a developer had laid water mains and dedicated to the city the streets for which they were laid. In a quiet title action, the court held that the dedication of the street included the dedication of the mains for public use, and that it was immaterial whether the mains were laid

> before or after the dedication, thus recognizing that the dedication of a street is not limited to the surface but encompasses the subsurface including the use of any pipes that might be there, as well as the right to lay pipes in the future." 38 Cal. Rptr. at 586-587.

That holding was expressly followed in Mancino v. Santa Clara County Flood Control and Water Dist., 272 Cal. App. 2d 678, 77 Cal. Rptr. 679 (1969); and, contrary to the statements at 56-57 of Thornton's brief, it has in no way been altered by Maywood Mutual Water Co. v. City of Maywood, 23 Cal. App. 3d 266, 100 Cal. Rptr. 174 (1972). The Maywood case was an action to determine who should bear the burden of relocating certain portions of a water distribution system. There had been an actual conveyance of that system on April 6, 1920. All of the parties agreed that the parts of the system which had been installed prior to that date had been dedicated as part of the street. Streets which were dedicated subsequent to April 6, 1920 were held not to include the water system as a part of the dedication because of the express conveyance. It is important to note that the court did not even question the validity of the earlier holdings in Galeb or Mancino, both supra. It is also important that the California court recognized the rule that an unrecorded easement could not prevail against bona fide purchasers (e.g., the homeowners in Northglenn) since "a physical inspection of the dedicated portion of the subdivision would not have revealed the easement."

The discussion of the Oklahoma cases of City of Shawnee v. Thompson, 275 P.2d 323 (Okla. 1954), and Selected Investments Corporation v. City of Lawton, 304 P.2d 967 (Okla. 1956), at page 57 of Thornton's brief, may be dealt with rather simply. As it is pointed out in the Selected Investments case, in Oklahoma the fee of a dedicated street remains in the dedicator. Colorado law is exactly contrary, in that the dedicator retains no interest in a dedicated street. Buell v. Redding Miller, Inc., 163 Colo. 286, 430 P.2d 471 (1967).

It is important, though, that even under this very restrictive view of dedication, Oklahoma law does recognize the possibility of dedicating water and sewer systems to the public. City of Shawnee v. Thompson, supra.

Rather than using additional space to discuss Stegall v. City of Jackson, 244 Miss. 169, 141 So.2d 236 (1962), which Thornton seeks to distinguish at page 58 of its brief, the Court is simply referred to pages 41 and 42 of Northglenn's opening brief.

However, it does seem rather strange that defendant Thornton would even discuss City of Jackson v. Creston Hills, Inc., 252 Miss. 564, 172 So.2d 215 (1965), as contrary to Northglenn's position or as a modification of Stegall v. City of Jackson, supra. Not only did the Creston Hills case expressly distinguish the holding in Jackson, the Creston Hills decision was also based expressly upon the "grandfather clause" of the Mississippi Public Utility Act and upon

Mississippi case law which is directly contrary to cases such as People ex rel. P.U.C. v. City of Loveland, 76 Colo. 188, 230 P. 399 (1924), holding that in Mississippi the municipal operation of a public utility is a position inferior to the operation of a similar utility by a privately owned company operating under a certificate of public convenience and necessity. Obviously, this decision has no relevance whatever to the present litigation.

Thornton's brief next discusses City of Snyder v. Bass, 360 S.W.2d 426 (Tex. Civ. App. 1962); Hightower v. City of Tyler, 134 S.W.2d 404 (Tex. Civ. App. 1939); Davis v. State, 298 S.W.2d 219 (Tex. Civ. App. 1956); and City of Houston v. Lakewood Estates, Inc., 429 S.W.2d 938 (Tex. Civ. App.). That discussion, though, does not even attempt to face the issues for which the Texas cases are cited at pages 36-39 of plaintiff's opening brief. Therefore no further discussion will be undertaken in this reply brief.

Finally, at pages 59-60 of its answer brief Thornton discusses several cases which it concludes are not relevant since those cases involved small sums of money while the present case is concerned with large sums of money. It is submitted that if the principle of law to be applied must turn on the amount of money involved, the American legal system is in serious trouble.

After copiously attempting to distinguish some of the many cases which have specifically held that the dedication of a street is also a dedication of the utility lines within

the street, the City of Thornton then spends 4 pages and cites cases from 8 jurisdictions in support of the rather preposterous proposition that "the nearly universal law is that a street dedication does not also dedicate utility lines in the street." That this position is untenable is shown by the fact that several of the jurisdictions chosen to support the allegedly universal law also have cases holding that utility lines may be dedicated as a part of a dedicated street. Compare Oak Cliff Sewerage Co. v. Marsalis, 30 Tex. Civ. App. 42, 69 S.W. 176 (1902) (at 62 of Thornton's brief), with City of Snyder v. Bass, 360 S.W.2d 426 (Tex. Civ. App. 1962). Compare Jackson v. City of Gastonia, 246 N.C. 404, 98 S.E.2d 444 (1957) (at 63-64 of Thornton's brief), with Spaugh v. City of Winston-Salem, 234 N.C. 708, 68 S.E.2d 838 (1952), and Charlotte Construction Co. v. City of Charlotte, 208 N.C. 309, 180 S.E. 573 (1935).

Jackson v. City of Gastonia, 246 N.C. 404, 98 S.E.2d 444 (1957), is also an excellent example of the differing policies of the state which can result such disparate results in this area of the law. For at least the last 120 years, North Carolina courts have held that a dedication transfers no rights of any kind in any property, but merely precludes the property owner from putting the property to any use which is inconsistent with the dedication. Rives v. Dudley, 56 N.C. (3 Jones Eq.) 126 (1856). In Colorado, the law is directly contrary, and the dedicator is divested of all property rights in the dedicated land. Buell v. Redding Miller, Inc., 163 Colo. 286, 430 P.2d 471 (1967).

With such vastly different approaches to the law of dedication from state to state, it is certainly not surprising that many courts--including some of those relied upon by Thornton in its statement of the universal law--have expressly recognized the clear split of authority on the question of the effect of the dedication of a street. See, e.g. Zimring-McKenzie Construction Co. v. City of Pinellas Park, 237 So.2d 576 (Fla. App. 1970).

Plaintiff would also admit that there is a split of authority in this area, but for the reasons set forth in its opening brief would urge that the view of dedication followed in the State of Colorado requires the conclusion that the dedication of a street in this state includes the dedication of all of that area beneath the street in which water or sewer lines may be placed.

The only additional case which is cited by Thornton in this portion of its brief which would seem to require any specific response is Village of Lakeville v. Conneaut, 144 N.E.2d 144 (Ohio C.P. 1956), which Thornton states to be "factually very close to our case" (at 63 of Thornton's brief). In that case the Ohio court did not consider the possibility of the dedication of the water lines at issue. It did not consider the dedication of the streets. Additionally, it does not appear from the reported decision that there was even an allegation that the residents of the Village had paid for the system operated by the City--which is the second prong of Northglenn's legal theory in the present case.

Rather than addressing any of these issues which are now before this Court, the Village simply claimed that the fact that a small portion of the City's water system was located within the boundaries of the Village was sufficient to give the Village title to that part of the system. However, since the pipes were under the control and in the possession of the City, the Court held against the Village for the following reason:

> "Even naked possession, which is the lowest and most imperfect degree of title, is good against anyone not having a better title." 144 N.E.2d at 149.

It should also be noted that that case did not even purport to alter the earlier Ohio decisions of Suburban Real Estate Co. v. Incorporated Village of Silverton, 31 Ohio App. 452, 167 N.E. 474 (1929), and Ford Realty and Construction Co. v. City of Cleveland, 30 Ohio App. 1, 164 N.E. 62 (1928), which are discussed at 87-88 and at 91, respectively, of plaintiff's opening brief. In these cases, in situations much closer factually to the present case, it was held that the public had acquired title to the water systems which were being considered by virtue of the fact that it had paid for them.

D. No further response is required to the remainder of Thornton's discussion of the law of statutory dedication.

Pages 65-74 of Thornton's answer brief constitute that defendant's discussion of Colorado's dedication statutes. The first paragraph of that discussion indicates that it is the belief of its writer that it is included only because of some external pressure.

Having been written in that vein, it is perhaps not surprising that nothing is raised in that discussion which has not already been thoroughly considered at pages 18-45 of plaintiff's opening brief. Accordingly, it would seem unnecessary to devote any additional space to this aspect of the case, save to correct some of the more glaring misstatements which are contained in Thornton's brief.

First, at 67-68 of Thornton's brief, it is asserted that Town of Lyons v. City of Longmont, 54 Colo. 112, 129 P. 198 (1912); City of Englewood v. City and County of Denver, 123 Colo. 290, 229 P.2d 667 (1951); and Valley Water District v. City of Littleton, 32 Colo. App. 286, 512 P.2d 644 (1973) may be read for the proposition that a municipality in Colorado is given only a non-exclusive right to the use of the subsurface portions of its streets and roads. This is not true. All that those cases even purport to hold is that a city's streets--like all other property within the State of Colorado--is subject to the condemnation power which exists pursuant to the provisions of Article XVI, Section 7 and Article XX of the Colorado Constitution, and pursuant to §§ 38-5-101, 38-5-102, 38-5-104, 38-5-105, 38-4-102, and 38-4-107, C.R.S. 1973. The relevant legal authorities have already been discussed in section II.A. of the argument section of this reply brief, supra.

The next serious misstatement contained in Thornton's discussion is its assertion that it has been stipulated that

there has been no acceptance of any of the purported dedications by Adams County. In reality, each of the plats which have been introduced in evidence (Exs. 22-80) expressly show acceptance of all dedications by the proper authorities. The testimony of certain individuals, which has been stipulated at ff. 3762-3764, that they were not aware that the accepted dedications would also include utility lines cannot in any way alter the unqualified acceptance which is shown on each of the plats:

> "If there exists an actual intent to reserve any portion of the land so platted into streets, otherwise than by express reservation on the plat, certainly it should be made manifest in some manner not only of equal certainty, but of equal publicity as the plat, otherwise an actual intent cannot be permitted to avail against an intent on which the law will and must insist as being shown by unequivocal acts upon which the public had a right to rely." City of Denver v. Clements, 3 Colo. 472, 484 at 486 (1877) (emphasis by the Court).

To comment very briefly on the discussion in section I.E. at 74-76 of Thornton's answer brief, nowhere in plaintiff's opening brief is it contended that there are specific "estoppel cases" which control the outcome of the present case. Instead, it has simply been stated that the principle of estoppel may be seen as a thread which runs through many of the areas of law which have been discussed. When viewed in that context, there is no need to respond to the estoppel arguments raised at 74-76 of Thornton's brief.

E. The utility extension policy contracts could affect no one other than the parties to those contracts until they were recorded.

Time and again, Thornton has sought to obviate the dedications which are clearly expressed on each of the recorded plats (Exs. 22-80) by pointing out that in many cases there existed unrecorded, executory, utility extension policy contracts (Exs. 1-18; 195-210) which purportedly limited the developers' right to dedicate the subsurface portions of the streets shown on the plats. Such unrecorded contracts, though, may not affect the property rights acquired by the public through dedication. This is made quite explicit by the language of § 38-35-109, C.R.S. 1973:

> "All deeds, powers of attorney, agreements, or other instruments in writing conveying, encumbering or affecting title to real property, certificates and certified copies of orders, judgments, and decrees of courts of record may be recorded in the office of the county clerk and recorder of the county where such real property is situated and no such instrument or document shall be valid as against any class of persons with any kind of rights, except between the parties thereto and such as have notice thereof, until the same is deposited with such county clerk and recorder." (Emphasis added.)

See also Perlmutter Associates v. Northglenn, 35 Colo. App. 355, 534 P.2d 349 (1975).

This rule is not altered by Town of Manitou v. International Trust Co., 30 Colo. 467, 70 P. 757 (1902), or by

City of Denver v. Mullen, 7 Colo. 345, 3 P. 693 (1884). In the Manitou case, there was an existing, executed lease at the time the plat was filed. In the Denver v. Mullen case, the ditch under consideration had acquired its right of way prior to the filing of any plats which dedicated streets intersecting that right of way, and was actually existing before most of the plats were filed.

In each case, then the existing rights which were said to take precedence over the dedications were clearly that--actual, valid, existing rights. None of the Colorado cases cited in Thornton's brief may be read to even intimate that wholly executory rights under an unrecorded contract can ever be permitted to prevail over a clear, unrestricted dedication upon which the public has the right to rely. Particularly irrelevant is the citation to Dickson v. Dick, 59 Colo. 583, 151 P. 441 (1915), at page 79 of Thornton's brief, since that case holds only that, as between the parties, a contract to convey real property which had been fully performed by the purchasers gave such purchasers in rem rights to that property.

The only case which has been found which would even come close to supporting Thornton's position is Maywood Mutual Water Company v. City of Maywood, 23 Cal. App. 3d 266, 100 Cal. Rptr. 174 (1972). The Maywood case, though, is directly contrary to the law of Colorado, as that law is articulated in cases such as City of Denver v. Clements, 3 Colo. 472, 484 (1877), and Perlmutter Associates, Inc. v. Northglenn, 35 Colo. App. 355, 534 P.2d 349 (1975).

Thornton seeks to circumvent this fatal defect in its position by invoking the aid of § 31-1-410, C.R.S. 1973, which provides:

> "For the purpose of this part 4, any person having a legal or equitable interest in any lands shall be deemed an owner and proprietor. Nothing in this part 4 shall be construed to affect the rights of anyone other than those acknowledging such plat."

However, that statutory provision is completely irrelevant to any discussion of the present case since the only portion of the said "part 4" which deals with dedication is § 31-4-401, C.R.S. 1973, which sets forth a permissive procedure for replatting which was not followed by any entity at any time relevant to this case.

In summary, the utility extension policy contracts (Exs. 1-18, 195-210), being wholly executory and unrecorded (as required by statute), may not be read to diminish the dedications which are made in very plain language on each of the recorded plats (Exs. 22-80). If the developers had intended to except or reserve the subsurface areas of the streets from the dedications shown on the plats, they could easily have done so through use of the appropriate language on those plats. Since there were no such exceptions or reservations the public must be permitted to rely upon the plats as they are recorded.

III. Trust Theory.

A. Introduction.

The reply to defendant Thornton's discussion of plaintiff's trust theory can be accomplished in the same

manner as the reply to the dedication discussion which is set forth in section II of this argument, supra. Virtually all of the legal arguments contained in the answer brief have already been fully met by the arguments and authorities set out at pages 62-106 of Northglenn's opening brief. It is not felt that Thornton's continued charges of evil emanating from the City of Northglenn should be dignified with any response whatever.

Thus, the portion of this reply brief which deals with the trust theory will simply attempt to correct some of the more gross misstatements which are contained in Thornton's answer brief.

B. All of the relevant law supports the trust theory, as set out in plaintiff's opening brief.

Thornton's answer brief first agrees with plaintiff's statements that there are no appellate cases from the State of Colorado which have ever considered the validity of a trust theory such as that urged by the City of Northglenn in the present action. The answer brief then purports to discuss cases from other jurisdictions which have considered the issue. (This is done at pages 83-85 of the answer brief.)

The major fallacy with the approach of the answer brief in this regard is that none of the cases which have been cited by defendant Thornton have considered the issue of a trust in any way. Every one of the cases relied upon by that defendant are cases dealing solely with the issue of dedication

and which have previously been discussed, at pages 57-64 of the answer brief as dedication cases. Therefore, these cases have no application whatever to any consideration of the law of trusts.

One thing which Thornton does seem to have understood from Northglenn's opening brief is that the only case which has attempted to apply Colorado law to a trust theory such as that at issue in the present case is Trentman v. City and County of Denver, 129 F.Supp. 624 (D. Colo. 1955), aff'd, 236 F.2d 951 (10th Cir.), cert. denied, 352 U.S. 943 (1956).

In a very cursory treatment of the Trentman case, Thornton's answer brief has stated that Trentman was also solely a dedication case and has no application to a consideration of the law of trusts. This position is completely refuted by the extensive analysis of the Trentman decisions which is set forth at pages 63-70 of Northglenn's opening brief, and it need not be reconsidered at this time.

Thornton next states that even if Trentman were to be considered for its discussion of the law of trusts, it must remain unpersuasive to the issues of the present case since it dealt with a distinguishable fact situation. However, the discussion in Northglenn's opening brief and at pages 19, 20, 21 and 22 of this reply brief have already shown the remarkable degree of similarity existing between the facts of the present case and those of Trentman; and, again, it would seem merely redundant to belabor this point.

Therefore, plaintiff's discussion would turn now to some further consideration of some of the cases included in its opening brief as authority for its position on the law of trusts, and to the strained attempt of Thornton's answer brief to distinguish those cases.

First, Thornton discusses Suburban Real Estate Company v. Incorporated Village of Silverton, 31 Ohio App. 452, 167 N.E. 474 (1929) (at 86-87 of answer brief). Contrary to Thornton's statements concerning that case, no one was seeking to remove the water mains, and there was no issue as to the right to remove the mains. The only issue presented was whether the water mains serving an annexed area were owned by the developer of that area or by the public. In its analysis, the Ohio court did note that if the developer actually had title to the water mains, incident to its title would be the right to remove such mains with no consideration of the homeowners, and it concluded that the developer quite obviously did not have such a right. Similarly, in the present case, it would seem that the Northglenn water and sewer systems must be owned by the public, for they would certainly have legal remedies if the City of Thornton or anyone else would attempt to remove those systems.

Thornton's answer brief also contains a complete misstatement of Ford Realty & Construction Co. v. City of Cleveland, 30 Ohio App. 1, 164 N.E. 62 (1928). Contrary to what is said at page 87 of that answer brief, the case did not turn "upon an express contract between the developer and the city whereby the developer agreed to let the city use his lines

for free (emphasis omitted)." The only agreement which was involved was one made between the developer and a village council prior to the annexation of the land by the City of Cleveland. The city was not considered by anyone to be a party to that agreement or a beneficiary under it. Upon the annexation of the subject land by the City of Cleveland, it was held that the water mains were the property of the public since "undoubtedly, the enhanced value of the lots was charged against the property owners who purchased lots in this allotment, who probably would not have purchased them but for the installation of the water." 164 N.E. at 63.

Village of Lakeville v. City of Conneaut, 144 N.E.2d 144 (Ohio C.P. 1956), which is cited in support of Thornton's position, has already been discussed in this reply brief at pages 30 and 31, supra. It is shown there that none of the issues which are now before the Court were even raised in that case. Further, that case in no way purported to alter the effect of the Suburban Real Estate or Ford Realty & Construction Co. cases, both supra, both of which were decided by higher Ohio courts.

Thornton's answer brief next discusses City of Danville v. Forest Hill Development Corp., 165 Va. 425, 182 S.E. 548 (1935), and infers that that decision is the result of a peculiar Virginia statute. It then cites Leonard v. Town of Waynesboro, 169 Va. 376, 193 S.E. 503 (1937), to show that even the Commonwealth of Virginia would not accept a trust approach to the ownership of water or sewer systems were it not for that statute.

In reality, the Virginia statute was mentioned in Danville only as an alternative to the court's primary holding that where certain facilities, including water and sewer mains were installed by developers for the benefit of those persons who were or would become owners of the developed lots, the developers retained no property rights whatever in those facilities.

In Leonard, the Virginia court once again expressly recognized its principal holding in the Danville decision, stating:

> "...[W]e reversed the judgment of the lower court, holding that the development company was not entitled to be paid by the city for the improvements, first, because the improvements were made for the benefit of those who were and would be lot owners, whose lots were then outside the city limits and the cost of the improvements had been absorbed in the enhanced sale value of the lots... ." 193 S.E. at 505.

The Leonard decision was not discussed in plaintiff's opening brief for the extremely simple reason that it has absolutely nothing to do with any of the issues presented in the present case. All that was held in Leonard was that where a landowner had been required to pay for her own water transportation system only because the municipality had erroneously believed that her property was located outside the city limits, she should be reimbursed for that cost when it was determined that her property was actually inside the town.

Thornton does not dispute any of the discussion in

plaintiff's opening brief regarding Country Club District Service Co. v. Village of Edina, 214 Minn. 26, 8 N.W.2d 321 (1943), but claims only that that case should not apply to present fact situation. The discussion at pages 89-90 of plaintiff's opening brief, however, shows the case to be extremely relevant. No further discussion would seem necessary at this time.

Another case claimed by Thornton to lack relevance to the present case is Crownhill Homes, Inc. v. City of San Antonio, 433 S.W.2d 448 (Tex. Civ. App. 1968). However, the quotation from that decision which is set out on page 92 of Northglenn's opening brief plainly shows its application to our case.

Finally, Thornton discusses United States v. Certain Parcels of Land, 101 F.Supp. 172 (E. D. Va. 1951), aff'd, 196 F.2d 657 (4th Cir. 1952), rev'd, 345 U.S. 344 (1953). There is no doubt that the United States Supreme Court ultimately held that the landowners involved were not "owners" of a sewer system, within the meaning of the Lanham Act. Yet, this present case has absolutely nothing to do with the Lanham Act, and the ultimate holding is therefore of little importance. What is important to our present situation is that all three of the federal courts considering United States v. Certain Parcels of Land found that the landowners had acquired some property right--which was determined to be an easement--in the sewer system serving their homes through the purchase of their homes.

Next, Thornton spends pages 90-98 of its answer brief

advancing the proposition that under the facts of the present controversy there is no trust under which the Northglenn water and sewer systems are held for the benefit of the residents of the City of Northglenn. At pages 67-87 of its opening brief, Northglenn has thoroughly discussed the ways in which the facts do establish the existence of such a trust.

From these facts, it is apparent that one of the parties must be mistaken in its conclusion--and it is now suggested that the mistake arises in the analysis of the facts which is presented in Thornton's answer brief.

Thornton's primary criticism to the facts as presented in detail in Northglenn's opening brief is presented as an unfortunate, almost personal, attack upon the testimony of Mr. Archie Albaugh, a certified public accountant, and upon Ex. 166 which was prepared by Mr. Albaugh. This attack begins on page 92 of Thornton's brief, where the transfer of water shares and other water rights is said to have been discussed by Mr. Albaugh without any factual basis for the figures which are contained in Ex. 166 and reproduced at various places between pages 76 and 82 of plaintiff's opening brief.

These figures are entirely supported, however, by the express terms of the utility extension policy contracts (Exs. 1-18, 195-210)--upon which Thornton has relied many times to assert its title to the Northglenn systems--and by the records of the City of Thornton (ff. 5796-5809).

Then, on page 94 of Thornton's answer brief it is asserted that both of the accountants who testified at the trial

agreed that Mr. Albaugh's work was "contrary to 'generally accepted accounting principles.'" This is simply not true. Mr. Albaugh actually testified that under generally accepted accounting principles a tabulation of an equity in a property could include whatever was necessary to fit the specific requirements of the situation (ff. 5857-5859), but that the body of generally accepted accounting principles makes no attempt to determine the legal ownership of property interests (ff. 5853-5854).

Thornton then seeks to discredit those facts supporting Northglenn's trust theory which were presented in Ex. 166 and in Mr. Albaugh's testimony by alleging that such facts are based upon several "critical and false assumptions." Most of those so-called "assumptions" may be dealt with in very short order.

First it was never assumed that all of the rebate obligations were charged only to Northglenn residents or that the percentage of Northglenn to non-Northglenn users of the systems operated by Thornton (which include the Northglenn systems) will remain constant through the year 2003. Rather, the percentages derived by Mr. Albaugh are important only in that they were utilized to determine payments derived from Northglenn users, which payments would remain rather constant regardless of the percentage they may comprise at sometime in the future--and the rebate payments contributed by Northglenn users were determined on such a percentage basis (ff. 6056-6082).

Thornton also questions the use of original cost

figures for the valuation of the Northglenn systems and claims that future payments should be discounted to present worth. Now, it seems obvious that if the object of an exercise is to find out whether something has been paid for, you are going to have to consider how much that thing cost--i.e. its original cost (ff. 6666-6670). It is also quite obvious that payments which are going to be made in the future should not be discounted to present worth (ff. 6053, 6059-6070).

The so-called "assumptions" concerning the division of the systems operated by Thornton and the use of the unspent bond proceeds have absolutely no relevance to the legal effect of the payments which unquestionably are being made by Northglenn residents, and need not be discussed.

Finally, it is notable that Thornton says that one of Mr. Albaugh's unsupported "assumptions" is that the residents of Northglenn have acquired an "equity" in the Northglenn systems serving them. It is not believed that anyone representing Thornton in any sense in this action would be surprised if he or she were told that that is the precise issue which is now before this Court and that many pages of both this brief and plaintiff's opening brief have been spent supporting that "assumption."

Moving on to some more meaningful discussion of the facts presented in this case, those points raised at pages 95-98 of Thornton's answer brief require no actual response, but are worthy of a few comments.

First, although no specific, identifiable dollars

paid to Thornton by the residents of Northglenn can be traced to any specific outlay of funds by Thornton, the percentage of the total revenues of the systems operated by Thornton which were received from Northglenn users may readily be calculated, and based upon such calculations, the amounts of Thornton's expenditures which should be attributed to the Northglenn users may also be ascertained. This is all that was done in the tables presented in Ex. 166; and all of Thornton's protestations to the contrary must be viewed simply as attempts to "muddy the waters" surrounding the real issue to be decided: whether the residents of Northglenn have acquired any legal interest in the water and sewer systems which have been installed to serve their homes and for which they have paid.

The one final comment that would be made on this aspect of the case is that there is absolutely nothing in the record to support Thornton's statement that:

> "...during the many years that Northwest Utilities owned the system, the P.U.C. did not permit Northwest Utilities to add the rebate payments into the rate schedule at all." Thornton's answer brief at 96.

Accordingly, that comment should be disregarded.

C. Northglenn must be seen as a successor trustee of the Northglenn systems for the benefit of its residents.

One point is raised in Thornton's answer brief with regard to the "successor trustee" concept, which is discussed at pages 94-103 of Northglenn's opening brief, which would require some further consideration.

The discussion at 99-101 of Thornton's brief would lead one to believe that the first entity to supply utility services to a given area is forever granted the exclusive right to provide such services. It is fortunate that the law is not to this effect, otherwise it must be assumed that there would be some sort of "rush" by the various utilities to supply any previously unsupplied territory to the exclusion of its competitors.

Garden Home Sanitation District v. City and County of Denver, 116 Colo. 1, 177 P.2d 546 (1947), has already been discussed at page 99 of plaintiff's opening brief. That case plainly holds that an annexed area becomes a part of the annexing municipality for all urban purposes, and must be governed under the powers of the municipal corporation in the same manner as the municipality was governed prior to the annexation, including the supplying of municipal utility services to that area. It is true that in that case, as Thornton has stated, Denver was prepared to provide sewer services to the area prior to the supplying of such services by the sanitation district; but that was not the primary basis for the Court's opinion.

The proper rule of law to be applied may be found from a review of Anderson v. Town of Westminster, 125 Colo. 408, 244 P.2d 371 (1952), and City of Aurora v. Aurora Sanitation District, 112 Colo. 406, 149 P.2d 662 (1944), as the Aurora case is discussed in Anderson:

> "In [Aurora v. Aurora Sanitation District] we affirmed the judgment of the trial court which upheld the validity of the Aurora Sanitation District... . The Aurora Sanitation District had been created within the boundaries of the Town of Aurora; the sole purpose of the creation of this district was to supply a system of sewage to the inhabitants of the district which up to that time had not been provided either by the town government or by any other agency. We held that, in the absence of constitutional restrictions, no objection exists to the power of the legislature to authorize the formation of two municipal corporations in the same territory at the same time for different purposes; that under such circumstances the identity of the territorial limits of overlapping public corporations is immaterial; that the sanitation districts under Colorado statutes are quasi-municipal corporations; and as such, they are not true municipal corporations but merely public agencies endowed with such municipal attributes as may be necessary for the performance of their limited objectives." 125 Colo. 412, 244 P.2d at 373.

Thus, in the Garden Home, Anderson, and Aurora cases, both a true municipal corporation and a quasi-municipal special district were permitted to exist within the same area simply because they were different types of entities. None of these cases involved two true municipal corporations with co-extension jurisdiction over some given area.

Indeed, there could be no situation permitted under law where one area is subject to the jurisdiction of two separate municipal corporations simply because municipal boundaries may not overlap. Only one city or town can control any particular area for the reasons which are set forth quite plainly in plaintiff's opening brief.

Therefore, upon the incorporation of the City of Northglenn, it became the only municipality empowered to provide municipal services, including water and sewer services, for its residents. Although a special quasi-municipal district could be established to provide some of these services as a public agency, no other municipal corporation could interfere with Northglenn's sovereignty by providing such services to the exclusion of Northglenn's right to provide such services to its residents.

This principle of separate sovereignties is made more explicit when considering the provision of water and sewer services by the provision of § 31-35-402(1)(b), C.R.S. 1973, that:

> "[N]o water service or sewerage service, or combination of them shall be furnished in any other municipality unless the approval of such other municipality shall be obtained..." [Emphasis added.]

There is no similar statute which applies to the provision of water or sewer service by a quasi-public special district within "another municipality" because there is no problem of conflicting sovereignties in such a case.

In fact, § 31-35-402(1)(b), C.R.S. 1973, and all of the other law discussed in this section may be seen as simply corollaries to the basic premise upon which Northglenn has asserted its right to control the Northglenn systems: upon the incorporation or annexation of an area to which an adjoining municipality has previously furnished utility service, the right to continue furnishing such service is immediately terminated.

Thus, even accepting the fact that the City of Thornton was the proper trustee of the Northglenn water and sewer systems prior to the incorporation of the City of Northglenn, as soon as Northglenn did come into being it succeeded the right of Thornton to act as trustee for the benefit of its residents.

Everything else which is discussed in Thornton's answer brief regarding this "successor trustee" concept has already been fully discussed in plaintiff's opening brief, and it is therefore unnecessary to repeat those arguments in this reply brief.

IV. Thornton's Affirmative Defenses.

A. Introduction.

As it has been noted several times in the various briefs which have been filed in this appeal, the trial court also upheld several of the affirmative defenses which were alleged by defendant Thornton. In its brief, Thornton seems to be somewhat surprised that Northglenn's opening brief did not treat these affirmative defenses as issues of major importance to this appeal. It is the position of Northglenn, however, that none of the defenses raised by Thornton have any validity whatever in the context of the present case.

It would seem that the trial court began ruling in favor of Thornton on the principal issues which must be considered to decide this case, and was unable to reverse that momentum when it came to a consideration of Thornton's affirmative defenses. Therefore, in a case which has generated

literally hundreds of pages more legal argument than should really be absolutely necessary, plaintiff feels it only proper that those issues which may be treated in a more summary fashion should not be overly emphasized. Thus, the discussion of Thornton's affirmative defenses which is contained in this reply brief will again be rather short and to the point.

B. Estoppel, laches, and acquiescence.

Initially, it should be pointed out that the Colorado cases such as Bennett's, Inc. v. Carpenter, 110 Colo. 63, 137 P.2d 780 (1943); Van Gilder v. City and County of Denver, 104 Colo. 76, 89 P.2d 529 (1939); and Edwards v. Gunther, 106 Colo. 209, 103 P.2d 6 (1940), have quite clearly held that the doctrine of estoppel may not be invoked against a Colorado municipality with regard to a governmental function. Here, Northglenn is seeking to provide water and sewer service for its residents, which is, beyond any doubt, a governmental function. City of Englewood v. City and County of Denver, 123 Colo. 290, 229 P.2d 667 (1951). Hence, the doctrine of estoppel is not applicable.

Further, even if the doctrine of estoppel could be applied to Northglenn, under the present fact situation there is absolutely no evidence of any estoppel, acquiescence, or laches. The City of Northglenn had existed for only two years prior to the beginning of this action (f. 3766). During that period it had granted Thornton permission to continue temporarily to supply water and sewer services, as was its absolute right under what is now § 31-35-402(1)(b), C.R.S. 1973 (Ex. 167).

The remainder of the argument in Thornton's answer brief consists of a series of misstatements which are probably deserving of some comment, if only to correct the more major errors.

First, Thornton's contentions much of the expansion of the water and sewer systems which it operates were necessary only to serve the Northglenn residents is absurd and totally unsupported by the record. It has been stipulated that virtually all of the service lines within Northglenn were installed by the developers working in the area (ff. 3744-3748). Next, the majority of the area which now constitutes the City of Northglenn was fully developed and was supplied with water and sewer service prior to any purported purchase of the water and sewer facilities by the City of Thornton (ff. 3743, 3751, 3758-3760). Thus, although the facilities serving the Northglenn residents were undoubtedly included in Thornton's purported purchase, and although many parts of Northglenn are now served by water or sewer facilities which have been constructed since 1963, no expansion of the system was required solely to serve the Northglenn residents.

Conversely, it is also probably true that if Thornton had actually purchased all of the facilities which it attempted to purchase from Northwest Utilities Company in 1963 (Exs. 20, 175), and had not had the obligation of serving the Northglenn residents, it could have expanded thereafter at less expense than was required to serve both the Northglenn residents and

its new customers. However, the Northglenn residents are actually the owners, or the beneficial owners, of the systems serving their homes, and Thornton did not and could not refuse to supply them with water and sewer services.

Thornton's brief also erroneously states that Northwest Utilities at all relevant times paid taxes on all of the utility property being used to serve the Northglenn residents. This is untrue, first, because it is stipulated that "none of the defendants and no developer paid property taxes on the streets of Northglenn after recordation of the plats" (Exs. 22-80), and virtually all of the water and sewer lines are located within the streets (f. 3791). It is also untrue because the stipulation states further that Mr. Hall, who would testify concerning the payment of taxes, "cannot recall whether any specific water and sewer lines, such as those which were located within the area later to become the City of Northglenn, were included" in the facilities which were taxed (f. 3750).

Finally, and perhaps most importantly, no authority has been presented, and it is probable that none can be found, to support the proposition that a valid and completed dedication may be defeated due to estoppel or to laches. Similarly, these doctrines could have no application whatever when it is recognized that prior to the incorporation of the City of Northglenn, the City of Thornton was the holder of the legal titles to the Northglenn systems for the benefit of the real owners, the residents of Northglenn.

C. Bona fide purchasers.

The primary error in finding that either Northwest Utilities or Thornton, or both, were bona fide purchasers of the Northglenn systems, for value and without notice of any adverse claims is that all parties involved had to have been on notice of the dedications involved in this case, for those dedications were set forth on plats (Exs. 22-80) which were, at all relevant times, filed with the Adams County Clerk and Recorder, as is shown on the face of the plats themselves.

The City of Thornton must also be charged with notice that, as a matter of law, it would have no power to provide municipal services within an unincorporated area previously served by it if such area were to later become part of a separate municipality, Garden Home Sanitation v. City and County of Denver, 116 Colo. 1, 177 P.2d 546 (1947).

The City of Thornton is also charged with notice that, as a municipality, it must hold its property in trust for the beneficial owners--in this case for the users of the Northglenn systems. McQuillan, 10 Municipal Corporations (3d ed., 1966 rev. vol.), § 28.38; 63 C.J.S., "Municipal Corporations," § 950.

Due to the fact that there was at least constructive notice of all of the bases for the claims asserted by the City of Northglenn in the present action, there could have been no bona fide purchaser of the Northglenn systems at any time after the filing of the plats (Exs. 22-80) which are in evidence in this case.

D. Unconstitutional confiscation of property and impairment of contractual rights.

Northglenn would readily admit that both the Colorado Constitution and the United States Constitution prohibit the taking of private property without just compensation, and that both prohibit the impairment of contractual rights. Northglenn, though, seeks to do neither of these prohibited acts through this action.

Clearly, it cannot be a taking of anothers' property to establish ones' own title to that property, and that is all that is sought in this action.

Additionally, despite the constant protestations of Thornton to the contrary, Northglenn is not seeking to acquire any property "for free." Many of the items of property which Northglenn has rightfully claimed have been fully paid for by its residents. See pages 70-84 of Northglenn's opening brief. There are other items which have not actually been fully paid for by anyone, and which are subject to some bonded indebtedness. Northglenn's title to those items, under its trust theory, would be subject to that indebtedness.

It is really and firmly the hope of plaintiff that at some point in this litigation the City of Thornton will realize that Northglenn has never been trying to take any property from any person for free.

Similarly, there could be no impairment of any of

Thornton's contractual rights if Northglenn were granted the relief which it seeks since, as a successor trustee, it would succeed to those rights, for the benefit of the same equitable owners.

Both of these points are so basic and so simple that no further elaboration upon them should be necessary.

E. Statutes of Limitations.

Thornton's statutes of limitation defense can also be dealt with in a rather summary fashion. Prior to Northglenn's incorporation on April 18, 1969, there was no entity which was or which could act for the City of Northglenn prior to that date. No cause of action could have arisen in favor of the City of Northglenn prior to its existence. The present action was commenced barely two years after Northglenn's incorporation.

Even if all of the other elements necessary for the application of § 13-80-114, C.R.S. 1973 had been shown to exist in the present case, that statute requires that an action be commenced "within five years after the cause thereof accrues."

Similarly, the limitation established by § 38-41-108, C.R.S. 1973, is "seven successive years."

The two year period between the incorporation of Northglenn and the beginning of this action is less than the period set out in either statute.

Other reasons for finding these statutes inapplicable are given at pages 135-138 of plaintiff's opening brief.

F. Res judicata and stare decisis.

The inapplicability of the doctrines of res judicata or stare decisis has been discussed at pages 138-139 of Northglenn's opening brief. However, since Thornton has found it necessary to engage in a protracted discussion of these principles, it would seem judicious to make some reply in this brief.

The cases which Thornton would find to be conclusive on the present litigation are City of Thornton v. Public Utilities Commission, 157 Colo. 188, 402 P.2d 194 (1965), and Durnford v. City of Thornton, 29 Colo. App. 349, 483 P.2d 977 (1971). Neither of these cases, though, even purported to rule on the title to the Northglenn systems, which is the only ultimate issue presented in the present case. The Durnford case concerned only whether Thornton could impose hydrant fees, assuming that it was legitimately operating the systems; and City of Thornton v. Public Utilities Commission presented only the issue of whether the purported sale of the water and sewer facilities to Thornton by Northwest Utilities Company was subject to Public Utilities Commission regulation.

The City of Northglenn was not a party to either of those actions, nor was any other person or entity who could be considered in privity with Northglenn as regards any of the issues presented in the case at bar a party to either.

Despite what Thornton asserts in its brief, even a cursory reading of either of those cases would show that neither presumed to try title to the Northglenn systems and neither can be interpreted as "an in rem adjudication of title in Thornton."

Stated simply, none of the elements necessary for a finding of res judicata or stare decisis exist as between the present controversy and those cases relied upon by Thornton. Thus the trial court committed patent error in upholding these defenses which were alleged by Thornton.

G. Indispensable parties.

Thornton's discussion of its indispensable parties defense may perhaps be best characterized through the use of a rather trite metaphor, similar to those interspersed throughout the answer brief: Thornton would like to "have its cake and eat it, too." While alleging that the trial court did not err in upholding its indispensable parties defense, Thornton states at page 131 of its answer brief that "as the trial proceeded, it became clear that the absent parties may have been only necessary parties."

Perhaps this is a confession of error. If not, the discussion at pages 129-133 of Northglenn's opening brief clearly shows that the ruling of the trial court on this issue was erroneous.

V. Other Errors.

A. The rulings by the trial court on the relevance of certain portions of the stipulated facts constitute reversible error.

The discussion which is continued at 106-112 has already shown that the rulings of the trial court on various parts of the stipulated facts were clearly erroneous and should

require a reversal of the trial court's decision. Nothing which is included in Thornton's answer brief would alter this argument, so a further discussion is not necessary.

One statement which is contained in Thornton's discussion of the stipulation of facts does, however, seem to be extremely instructive and worthy of some additional consideration. The following sentence is found near the top of page 133 of the answer brief:

> "The [trial] court did not exclude that evidence as irrelevant until it had considered all of the evidence and had already reached its judgment at the end of the trial (ff. 4850, 6748)."

This statement is fairly amazing, and so very important, simply because it states exactly what was done by the trial court. The trial court reached its ultimate conclusion on the merits of the case and then shaped each of its findings of facts and rulings upon the law to conform to that final decision.

It is submitted that this is not the proper method for deciding any legal controversy. Rather than making the law fit the conclusion that the trial court would like to reach, a court must apply the law fairly and decide the case based upon that application of the law.

That was not the approach taken by the trial court in this case, and the result has been this extremely voluminous set of briefs and time-consuming appeal.

B. All of the other issues considered in Thornton's answer brief have been fully considered in Northglenn's opening brief.

Thornton's answer brief concludes with very brief discussions of whether the utility extension policy contracts may properly be regarded as a part of the chain of title to the Northglenn systems (at pages 139-142); whether Thornton's municipal utility system is held in a proprietary or governmental capacity (at pages 142-143); whether the Northglenn water and sewer lines constitute real or personal property (at pages 143-145); and whether the trial court erred in denying Northglenn's motion for discovery (at pages 145-147). Each of these issues has been fully discussed in Northglenn's opening brief, and may be dealt with here in very brief fashion.

Regarding the chain of title to the Northglenn systems § 38-35-109, C.R.S. 1973, describes what documents must be filed in the office of the county clerk and recorder in order to be within the chain of title to any real property and grant any rights in that property. That statute does not provide for filing with the Public Utilities Commission. Since virtually all of the plats (Exs. 22-80) were recorded prior to the recording of any of the utility extension policy contracts (Exs. 1-18, 195-210), anyone inspecting the records would not be given notice of the existence of such contracts because the record would have previously indicated that the

streets and everything within them had been dedicated to the public. See Northglenn's opening brief at 122-124.

Regarding the question of whether a municipal water or sewer system is held by a city in a proprietary or a governmental capacity, see Northglenn's opening brief at 139-141.

In its discussion of the classification of the Northglenn systems as either real or personal property, Thornton is once again seeking to "have it both ways." It states that the trial court was right in finding that these systems were the personal property of the City of Thornton, and that the trial court correctly held these systems to be real property which was appurtenant to the entire water and sewer system operated by Thornton. Obviously, both of these statements cannot be correct--and in this case both are incorrect. In fact, the Northglenn systems should be regarded as fixtures which are an integral part of the streets and which have been dedicated to the public as real property. See Northglenn's opening brief at 54-57.

Finally, it was prejudicial error for the trial court to deny Northglenn's motion to compel discovery, and this point is fully discussed at 145-146 of Northglenn's opening brief.

CONCLUSION

Based upon the arguments and authorities which are contained both in this reply brief and in Northglenn's opening brief, the City of Northglenn respectfully requests

this Court to reverse the judgment of the trial court and to rule that the residents of the City of Northglenn have acquired the equitable title to the water and sewer systems serving them, and that the City of Northglenn, as a municipal corporation, holds the legal title to those systems.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the attached Reply Brief of Plaintiff-Appellant and Addendum of Stipulated Facts has been duly served on all parties of interest by depositing true copies of same in the United States mail postage prepaid this 4th day of March, 1977, correctly addressed to the following:

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APPENDIX

IN THE DISTRICT COURT

FOR THE COUNTY OF ADAMS

STATE OF COLORADO

Civil Action No. 21370 - Div. C.

CITY OF NORTHGLENN, a municipal corporation, Plaintiff, vs. CITY OF THORNTON, a municipal corporation; NORTHWEST UTILITIES COMPANY, a Colorado corporation; WESTERN HILLS UTILITY COMPANY, a Colorado corporation; GENERAL WATERWORKS CORPORATION, a Delaware corporation; TOL-WIN CORPORATION, a Colorado corporation; TRANSWESTERN INVESTMENT COMPANY, a Colorado corporation; PERL-MACK HOMES, INC., a Colorado corporation; JORDAN PERLMUTTER; SAMUEL PRIMACK; WILLIAM J. MORRISON; and BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ADAMS, STATE OF COLORADO, a body politic and corporate, Defendants.	STIPULATED FACTS

740 This case is an action to try the title to the water system and the sewer system that now serves the residents and other users within the boundaries of the City of Northglenn and the title to shares of stock in water, reservoir, and ditch companies and other water rights. The system claimed by Northglenn is described in exhibit 174, which exhibit is, by stipulation, admitted into evidence [hereinafter "system claimed by Northglenn"]. Defendants deny that Northglenn has any interest whatever in any of the assets listed in exhibit 174 or any other part of the Thornton system.

The original developer of the system claimed by Northglenn was Northwest Utilities Company, an investor-owned public utility corporation incorporated on March 26, 1953,

under the Colorado corporate laws as a for-profit corporation. Northwest Utilities was not at any time owned or controlled by Perl-Mack, Trans-Western, Tol-Win or any of the other developers of Northglenn. The Northwest Utilities Articles of Incorporation, marked as exhibit 401, are admit-
3741 ted into evidence by stipulation of the parties. The Public Utilities Commission regulated Northwest Utilities Company as an investor-owned public utility and approved its Rates, Rules and Regulations, which Rates, Rules and Regulations were kept publicly posted at the main business office of Northwest Utilities and at the P.U.C. at all times. Northwest Utilities Rules and Regulations, marked as exhibits 402 and 403, are admitted into evidence by stipulation of the parties. [See also Rules and Regulations of the P.U.C., marked as exhibits 399 and 400 and admitted into evidence by stipulation of the parties.] Northwest Utilities each year filed its Annual Report with the P.U.C. showing a private
3742 profit each year, which reports are and were available to the public. The Annual Reports are marked as exhibits 400-412 and admitted into evidence by stipulation of the parties.

On December 8, 1953, as approved by the Public Utilities Commission, Northwest Utilities Company began providing water and sewer service in Section 23, Township 2 South, Range 68 West, County of Adams, State of Colorado (an area now within Thornton). From time to time, Northwest Utilities Company expanded its service area by means of agreements known as "utility extension policy contracts," and the utility extension agreements of Tol-Win, Trans-
3743 western and Perl-Mack were approved by the P.U.C. following a public hearing at which time the P.U.C. staff represented the interests of the customers and the public and which contracts are recorded with the Adams County Clerk and Recorder. Commencing in 1956, Northwest Utilities first began to serve territory later to be located within Northglenn. The following utility extension policy contracts of Perl-Mack, Tol-Win, Trans-Western, Robert Land, Berg & Rollins, and Hart authorizing expansion into the area later to become Northglenn, exhibits 1-18 and 195-210, (and certain P.U.C. decisions approving the Perl-Mack, Tol-Win and Trans-Western Utility Extension Contracts with Northwest Utilities), marked as exhibits 393, 395 and 396, are admitted into evidence by stipulation of the parties.

3744 These Utility Extension Contracts provided that Perl-Mack, Tol-Win, Trans-Western, Robert Land, Berg & Rollins and others were to construct or cause to be constructed certain water and sewer facilities for Northwest Utilities (and later Thornton), and then to deed said facilities over to Northwest Utilities (and later Thornton). Northwest Utilities (and later Thornton) in turn undertook an obligation to pay rebates to Perl-Mack, Tol-Win, Trans-Western for a period of years (usually 15 years) in accordance with the terms of said Utility Extension Contracts.

1745 Each of these Utility Extension Contracts was signed, delivered, filed, (and those of Perl-Mack, Tol-Win and Transwestern were approved by the P.U.C.) before any pipeline was laid in any street within the contract area and before any plat was submitted or accepted covering any of the contract area. Pursuant to these utility extension policy contracts, Perl-Mack, Tol-Win, and Transwestern and others constructed utility pipelines under the supervision of Northwest Utilities, utilizing General Waterworks' national purchase contracts to acquire the pipeline, meters, etc. at lower prices,
1746 and then conveyed and deeded the water and sewer lines and all appurtenances thereto over to Northwest Utilities or Thornton as soon as they were constructed. Said warranty deeds and easements to Northwest Utilities or Thornton covering the system claimed by Northglenn and the recording dates shown thereon are admitted into evidence by stipulation of the parties as follows: exhibits 87-146, 176-184, 213-228, 230-232, 234-247, 249-253, 265-273, 275, 282-283.

The utility extension policy contracts also required the developers to convey and they did convey to Northwest Utilities or Thornton certain water stock. J. Groothuis, Assistant Utility Director for the City of Thornton, testifies that the following shares of stock in water,
1747 reservoir, and ditch companies were so transferred: 61.34 shares of Farmer's Highline Canal and Reservoir Co. and 99.19 shares of Farmer's Reservoir and Irrigation Co.

General Waterworks Corporation, an investor-owned Delaware company whose business was essentially to invest in utility companies, purchased all the outstanding stock of Northwest Utilities and thereafter General Waterworks invested additional money or made loans or gave guarantees to Northwest Utilities to enable it further to build and expand its water and sewer systems. [See P.U.C. Decisions and
1748 Northwest Utilities' Annual Reports, supra.] In 1958, General Waterworks purchased all of the stock of Western Hills Utility Corporation, an investor-owned public utility operating generally to the south and west of Thornton and unrelated to Northwest Utilities. On January 11, 1963, General Waterworks caused Western Hills Utility Corporation to merge into Northwest Utilities Company. This merger was approved by the P.U.C., and hereinafter the combined company is referred to as Northwest Utilities. The P.U.C. Decision approving this merger is listed as exhibit 397 and introduced pursuant to stipulation of the parties.

Northwest Utilities continuously paid property
1749 taxes on its water and sewer facilities and other assets each year it owned the system, and until April 1, 1963, at which time the facilities were removed from the tax rolls because they were transferred to Thornton, a tax-exempt municipal corporation. Northwest Utilities paid the following property taxes for the following years: 1963 $15,456;

1962 $39,274; 1961 $27,918; 1960 $21,865; 1959 $19,655; 1958 $18,532; 1957 $16,481; 1956 $18,932; 1955 $9,189. Mr. Aman Hall, State Tax Commissioner during the relevant time period testifies that these taxes were computed upon a formula utilizing (1) all the revenues of Northwest Utilities each year and (2) generally utilizing all the assets of Northwest Utilities listed in the balance sheets, but he cannot recall
3750 whether any specific water and sewer lines, such as those which were located within the area later to become City of Northglenn, were included. These taxes were assessed by the State of Colorado and allocated back to Adams County for the benefit, in part, of the residents currently residing within the boundaries of Northglenn. Tax records to be received into evidence are marked as exhibit 413, and admitted into evidence by agreement of the parties.

On September 1, 1956, the City of Thornton, Colorado, became a municipal corporation. On December 9, 1957,
3751 the City of Thornton ordained its Ordinance No. 55 granting a franchise to Northwest Utilities Company and providing an option for the City of Thornton to purchase all the assets of the company, both within and outside the Thornton city limits (including the system claimed by Northglenn, as such system then existed) for a price to be set at "fair market value." A copy of this ordinance, marked as exhibits 19 and 311, is admitted into evidence by stipulation of the parties. On February 4, 1963, the City of Thornton and Northwest Utilities Company entered into a contract whereby the City of Thornton agreed to pay $5,965,500 in cash and to assume
3752 $1,500,048 of Northwest Utilities liabilities for the assets comprising the entire water system (including water rights) and to pay $1,384,943 in cash and to assume $642,878 of Northwest Utilities liabilities for the assets comprising the entire sewer system (including the water and sewer assets claimed by Northglenn, as such system then existed): a total of $9,493,369 ($7,350,443 in cash plus $2,142,926 in assumed liabilities). A copy of this February 4, 1963, contract, marked as exhibits 20 and 175, is admitted into evidence by stipulation of the parties. Following a publicized election whereby the citizens of Thornton by vote authorized the purchase of the entire water and sewer system and authorized the issuance by Thornton of general obligation and revenue bonds totaling $7,870,000 to be used partly
3753 to purchase the water and sewer systems and partly to upgrade and improve the systems after acquisition, a closing was held on April 1, 1963. At the closing Northwest Utilities Company and General Waterworks executed and delivered warranty and quitclaim deeds, bills of sale, and assignments purporting to convey the entire water and sewer system and all their interests thereto (including water rights) to the City of Thornton. The following deeds, bills of sale, and closing papers and the recording dates shown thereon, marked as exhibits 20, 87, 175-194, 266-273, are admitted into
3754 evidence by stipulation of the parties.

Thornton believed that it was purchasing, and Northwest Utilities believed that it was selling, the entire water and sewer system free and clear of any claims or encumbrances other than the developer rebate claims, and neither Thornton nor Northwest Utilities were aware of any adverse claims to title or ownership of the system at the time of the sale. No one objected to that sale until after it had been consummated on April 1, 1963, and the purchase bonds sold. At no time did Northglenn file with the Clerk and Recorder's office any of the claims to ownership now being asserted by it.

1755 On June 5, 1963, the Public Utilities Commission first asserted jurisdiction to regulate Thornton's purchase of Northwest Utilities Company's entire water and sewer assets, including those now claimed by Northglenn, at which time the staff represented the interest of the customers of the Thornton water and sewer system who resided outside the Thornton city limits and the public. This P.U.C. Decision 63596, marked as exhibits 21 and 398, is admitted into evidence by stipulation of the parties. The Northglenn Metropolitan Recreation District was a party to that action. 2,095 people who resided outside Thornton (some of whom resided in the area now comprising Northglenn) filed petitions with the P.U.C. requesting that the P.U.C. retain jurisdiction over the system notwithstanding its sale to
1756 Thornton. These petitions are marked as exhibit 426 and admitted into evidence by stipulation of the parties. The Northglenn Metropolitan Recreation District was later dissolved and merged into the City of Northglenn (except that the Northglenn Metropolitan Recreation District remained in existence to service existing bonded indebtedness). The Merger Agreement and Order of Dissolution are marked as exhibits 383 and 384 and admitted into evidence by stipulation of the parties.

1757 The City of Thornton appealed from this P.U.C. decision; and in City of Thornton v. Public Utilities Commission, 157 Colo. 188, 402 P.2d 194 (1965), the Supreme Court of Colorado, sitting en banc, reversed the P.U.C. and upheld the sale. The Supreme Court decision is marked as exhibit 418 and is admitted by stipulation of the parties.

In April, 1959, the defendants Jordan Perlmutter, Samuel Primack, William J. Morrison, and Perl-Mack Homes, Inc., then doing business as Perl-Mack Construction Company, a partnership, began building houses in an unincorporated
1758 part of Adams County that now is within the boundaries of the City of Northglenn. These defendants ultimately built approximately 80-90% of the houses now within the boundaries of the City of Northglenn and virtually all of the commercial and apartment buildings now within the boundaries of the City of Northglenn. These defendants still own almost

all the commercial and apartment properties located within the City of Northglenn. These defendants executed and filed the following plats, which are marked as exhibits 22-52 and admitted into evidence by stipulation of the parties.

Others also subdivided land in unincorporated Adams County that later became the City of Northglenn. The defendant Tol-Win Corporation, a Colorado corporation now succeeded by Melbro Associates, a partnership, executed and
3759 filed the following plat, marked as exhibit 53 and admitted into evidence by stipulation of the parties.

The defendant Trans-Western Investment Company, a Colorado corporation, executed subdivision plats on behalf of contract purchasers--developers of land that is now within the boundaries of the City of Northglenn, and executed and filed the following plats, marked as exhibits 54-57 and admitted into evidence by stipulation of the parties.

Other individuals, partnerships, and corporations not parties to this action subdivided or developed other parts of the area now within the boundaries of the City of
3760 Northglenn. (See Northglenn's answer to Thornton's Interrogatory 14.) These plats, marked as exhibits 58-80, and 284-286, are admitted into evidence by stipulation of the parties.

Construction of homes in the area now comprising Northglenn began in approximately 1956. Most of the development occurred in the years 1959-1967.

At the time the plats were approved or accepted and filed, there were no water and sewer lines in existence under the streets described in the plats. The following
3761 people hereby testify that Perl-Mack, Tol-Win, Trans-Western, Northwest Utilities and Thornton did not, at any time, have any intent to dedicate, sell, or convey to Adams County, to Northglenn, to any customers, homebuyers, homeowners of Northglenn, or to the public any of the water and sewer facilities or water rights now claimed by Northglenn: Jordan Perlmutter, Sam Primack, and William Morrison, individually and as the principals in Perl-Mack Homes, Inc.; James Larsh, engineer for Messrs. Perlmutter, Primack and Morrison and/or Perl-Mack Homes, Inc. who prepared each of the twenty-six Northglenn plats; Samuel J. Joseph, the General Manager of Northwest Utilities from 1954 until it was sold to Thornton on April 1, 1963 and thereafter for several years manager of the system for Thornton; Leon
3762 DuCharme, one of the principals of Trans-Western throughout; Marvin Stone, accountant for Tol-Win and Melbro Associates throughout; Jim Castrodale, Utility Director for Thornton from October 1970 to date; Jim Carpenter, head of Thornton Utility Committee to acquire the water and sewer services

and long time councilman for Thornton during 1969 and thereafter. The following people hereby testify that Adams County did not intend, at any time, to accept any dedication of the water and sewer facilities and assets now being claimed by Northglenn, and would not have accepted the water and sewer lines even if dedication had been tendered because
63 the county did not want to own or operate water and sewer facilities. Rather, the Adams County Commissioners were informed and informally acquiesced that the water and sewer facilities remained the property of Northwest Utilities (or later Thornton): Del Cimyott, County Commissioner for Adams County from 1948-1968 and chairman of the Adams County Board of Commissioners during much of that time; Robert Sandquist, Adams County Engineer 1965 through 1973. Mr. Cimyott further testifies he has served as an officer of a regional county commissioners association for many years, and privately owned utility lines in this region (and in Adams County)
64 typically were located in the public streets and the county did not assume it acquired lines merely by that fact. Mr. Sandquist further testifies that the utility had the responsibility over the ground surrounding its lines and up to one foot above its lines in the streets. (Northglenn objects to the admission of Mr. Cimyott's testimony to the extent that such testimony purports to state the intent of the county, as opposed rather to his own intent as one commissioner, and Northglenn moves that such testimony be limited to Mr. Cimyott's intent as one commissioner.) On January 9, 1964, the Adams County Commissioners vacated a utility easement in the Northglenn Fifth Filing after reciting the approval of Thornton "in its capacity as the proprietor of the water and sewer facilities that may be affected by the vacation of the
65 utility easement. . . ." This instrument, marked as exhibit 229, is admitted into evidence by stipulation of the parties. On November 3, 1969, the Board of County Commissioners of Adams County vacated 112th Avenue West of Washington Street but reserved "rights-of-way or easements for the continued use of existing sewer, gas, water or similar pipelines. . . ." This instrument, marked as exhibits 86 and 233, is admitted into evidence by stipulation of the parties.

On October 13, 1964, the people voted to incorporate the City of North Glenn but that vote subsequently
66 was challenged in extensive litigation. On April 18, 1969, the City of North Glenn became a statutory municipal corporation. On March 11, 1970, the City of North Glenn changed its name to City of Northglenn.

On May 17, 1968, a lawsuit was filed by Gerald J. Durnford*, Keith E. Gehrke, Robert R. Lovelace, Elmer Riechers, Larry A. Eirich*, Lyle Giegling*, Robert S. Felt, Jr.*, LeRoy J. Weingardt, Jane E. Bieler, Mrs. Dennis A. Hughey, Robert A. Vos*, Richard W. Green*, Mrs. Robert A. Vos*, Marloy Green*, Henry B. Heckart*, Margaret Miller,

Jock Larrington, Lyle J. Braher, Elmer T. Miller, Paul A. Rairden, John Middleton*, Tad Marumoto*, Morris E. Lucas, Mary E. Lucas, Leland H. Ayers*, Elaine R. Ayers*, Kenneth
3767 W. Rediess, Avis V. Yakel, Albert R. Pankow, Jr.*, Virginia M. Pankow*, and Hugh Danahy*, in Adams County to hold a 50¢ per month hydrant fee charged by the City of Thornton to be invalid. The fire hydrants for which the 50¢ per month charge was made were served by the same water mains, pumps, storage tanks, water rights and other water facilities that service all the water users within Northglenn and which are the subject of this suit. Some of those plaintiffs resided at the time of the suit in the area now constituting the area of Northglenn and those plaintiffs whose names are marked with an asterisk and possible other plaintiffs whose
3768 names are not so marked still reside in the area that is now within the boundaries of the City of Northglenn. On April 18, 1969, one of these plaintiffs, Hugh Danahy, became the mayor of the City of Northglenn, and at the present time he is a member of the council of the City of Northglenn. Hugh Danahy testifies that he intended to be a plaintiff in the aforesaid case of Durnford v. Thornton only in his individual capacity and not representing the city or people in Northglenn. See also Northglenn Resolution 72-58. The District Court for the County of Adams granted the City of Thornton's motion for summary judgment, and the Court of Appeals upheld the trial court in Durnford v. Thornton, 483 P.2d 194 (Colo. App. 1971). This opinion, marked as exhibit 417, is admit-
3769 ted into evidence by stipulation of the parties.

The following assets, now claimed by Northglenn, have also been the subject of storage rights water decrees: Kalcevic Lake, Badding Lake, Croke Lake and Carlson Lake.

Commencing one year subsequent to the date of approval of each of the plats, respectively, the County of Adams and, after April 18, 1969, the City of Northglenn maintained and repaired the streets [except when a street cut was made to repair a utility line under the street, in
3770 which instances the person making the cut was required to repair the street]. At all relevant times the County of Adams, and City of Northglenn (after April 18, 1969) regulated vehicular and pedestrian traffic on the streets, cleaned them, and removed snow from them, and the streets were used by both vehicles and pedestrians. The City of Northglenn ordained ordinances regulating excavations and backfillings in the streets. On December 14, 1970, the City of Northglenn ordained Ordinance No. 80, Series of 1970, pertaining to street cuts. On May 10, 1971, the City of Northglenn ordained Ordinance No. 100, Series of 1971, also pertaining to street cuts, and amending Ordinance No. 80, Series of 1970. On May 21, 1971, the City of Northglenn ordained Ordinance No. 102, Series of 1971, further pertain-
3771 ing to street cuts and amending Ordinance No. 90, Series of

1970. On October 30, 1971, Northglenn ordained Ordinance No. 119, setting forth terms and conditions under which the City Engineer could issue permits to install water and sewer lines. On June 5, 1969, the City of Northglenn ordained Ordinance No. 2, Series of 1969, granting the Public Service Company of Colorado a 20-year franchise to use the streets of the City of Northglenn. These ordinances, marked as exhibits 81-84, 373 and 375, are admitted into evidence by stipulation of the parties. Northglenn regularly gave permits to Thornton or Thornton's contractors for the in-
372 stallation or repair of water and sewer lines in the streets. Representative samples of these street cut permits, marked as exhibit 380, are admitted into evidence by stipulation of the parties.

Adams County and Northglenn have not operated or maintained the water and sewer facilities or water rights now claimed by Northglenn; these facilities have, at all times, been operated and maintained by Northwest Utilities and later Thornton. Northglenn and its residents assumed and treated Thornton as the full owner of the water and
373 sewer system and water rights now being claimed by North-glenn until shortly before this suit was filed in September 1971. The Northglenn residents have continued to treat Thornton as the owner of this system. On July 15, 1971, Northglenn delivered to Thornton a letter stating as follows "I am pleased to inform you that, pursuant to Section 139-42-2(3) of the Colorado Revised Statutes of 1963, the City Council of the City of Northglenn has approved the operation and maintenance of water facilities and sewerage facilities for the use of public and private consumers and users by the City of Thornton within the territorial boundaries of the City of Northglenn for the calendar year 1971. This approval, however, does not extend to any territory in which such services are not being rendered." The letter of July 15,
374 1971, from Northglenn to Thornton and minutes of Northglenn council meeting July 12, 1971, unanimously authorizing such a letter are marked as exhibits 167 and 377 and admitted into evidence by stipulation of the parties. During this time Northglenn considered purchasing or condemning that portion of the Thornton water and sewer system located within Northglenn. Northglenn ultimately concluded it could not successfully maintain such a condemnation action because it was not authorized by Colorado law. Although no one knew what condemnation would cost, there was some concern that it
375 might be expensive. From April 18, 1969, the date of North-glenn's incorporation, to date, Northglenn has contracted with Thornton to purchase water and sewer service from Thornton and Northglenn has received and paid for water and sewer services from Thornton.

On January 22, 1973, the City of Northglenn adopted Resolution No. 73-4, Series of 1973, purporting to expressly accept all dedications then outstanding. This

resolution, marked as exhibit 85, is admitted into evidence by stipulation of the parties.

176 The following facilities and water rights now claimed by Northglenn do not lie within or under any city streets of Northglenn: (a) all the water and well rights; (b) all the treatment plants; (c) all the booster or pump stations; (d) all the water storage tanks, reservoirs, and other storage areas for raw or potable water; (e) the main sewer outfall line; (f) the water transmission lines carrying the water from the storage and treatment facilities up to the city limits of Northglenn; and certain of the water and sewer lines internally located in Northglenn which are across private property pursuant to private easement running to the benefit of Thornton or Northwest Utilities. Maps of the water and sewer system are marked as exhibits 151, 152(a)-(g) and 301 and introduced by stipulation of the parties.

177 The Denver Water Board maintains and asserts ownership to a water line under certain of the streets of Northglenn and Northglenn has never asserted to Denver a claim to ownership of such line, but Northglenn does claim ownership of such line, and it has never granted an easement or license to Denver to place such lines in its streets.

Pursuant to the Utility Extension Contracts introduced previously, Northwest Utilities and Thornton have paid to (1) Jordan Perlmutter, Samuel Primack, William J. Morrison, and Perl-Mack Homes, Inc., (2) Tol-Win Corporation and Melbro Associates, and (3) Trans-Western Investment Company,
178 rebates in payment for the utility lines hereinbefore sold and deeded to Northwest Utilities or Thornton of between $1,106,415 and $1,116,434.

Larry Scripter, accountant for Thornton, testifies that the sewer and water rebates paid to December 31, 1973 on lines located within Northglenn is $1,106,415.61 and Archie Albaugh, accountant for Northglenn, testifies that the rebates paid to December 31, 1973 on water and sewer lines within Northglenn is $1,116,434. These rebates paid
179 to date by Thornton, or previously paid by Northwest Utilities, were paid from the operating revenue of the entire water and sewer system but are calculated on the basis of water and sewer usage within the Utility Extension Contract areas in the City of Northglenn.

The City of Thornton has sold the following bond issues to finance its purported acquisition of the Northwest Utilities Company's water and sewer system and to expand and improve the entire water and sewer system, as shown by the following schedule:

Water bonds (acquisition and new construction)	April 1, 1963	$6,120,000
Water bonds (refund and new construction)	September 1, 1965	8,115,000
Water bonds (new construction)	April 1, 1971	2,600,000
Water bonds (refunding)	March 1, 1972	2,460,000
Water bonds (new construction)	February 1, 1973	10,000,000
Water bonds (improvements)	September 1, 1973	10,000,000
Water bonds (refunding)	March 1, 1974	9,660,000
Water bonds (refunding)	July 1, 1974	15,500,000
Sewer bonds	April 1, 1963	1,750,000
Sewer bonds	April 1, 1963	800,000

The sewer bonds are revenue bonds. The water bonds are general obligation bonds and, in addition, the water bonds dated February 1, 1973, September 1, 1973, March 1, 1974 and July 1, 1974, are also pledge all the revenue bonds. These bonds and the Thornton ordinances authorizing them are marked as exhibits 342, 344, 347, 349, 350, 352, 353, 355, 356, 358, 359, 362, 363, 365-368 and 370 and admitted into evidence by stipulation of the parties.

To date there is an unpaid principal bonded indebtedness on the entire water and sewer system of $29,415,000. Since April 1, 1963, $2,230,000 of principal bonded indebtedness has been paid off.

According to Larry Scripter, Thornton's accountant, from 1963 to date, Thornton has expended $5,167,408 [original cost new] in purchase and construction of water and sewer facilities located within Northglenn [not including rebate payments] and $6,804,055 [original cost new] in purchase and in construction of water and sewer facilities located outside of the Northglenn city limits but utilized in serving Northglenn residents and herein claimed by Northglenn (pro rata. cost to reflect that portion of such facilities serving customers in Northglenn) [again excluding rebate payments].

The only assets upon which rebates were paid were those assets listed in the Utility Extension Contracts.

The treatment facilities, storage and pressure tanks, storage lakes (except Carlson) and the well field were not acquired from developers. Deeds and Decrees to Thornton or Northwest Utilities on such assets include exhibits 254-264, 274, 276-281 and are admitted into evidence.

First Northwest Utilities and then Thornton constructed, expanded and improved its water and sewer system with no demarcation between the Northglenn area and the area outside Northglenn. Some of the facilities within

Northglenn and serving Northglenn also serve and support the rest of the system as well. System maps are marked as exhibits 151, 152(a)-(g) and 301 and introduced into evidence by agreement of the parties.

Builders building in the Northglenn area have paid to the City of Thornton $96,450 according to Archie Albaugh and $160,530 according to Larry Scripter in tap fees for tap connections within the current boundaries of the City of Northglenn. Thornton challenges relevancy of this information. No tap fees, however, were paid or are payable on most of the development that occurred within the Perl-Mack, Trans-Western,
784 and Tol-Win Utility Extension Contract areas in the City of Northglenn as defined by the Utility Extension Contracts hereinbefore introduced into evidence.

In advertising its homes in the Northglenn area, Perl-Mack caused the following ads and brochures to be printed and distributed. These advertisements and brochures, marked as exhibits 147-150A and 414-416, are admitted into evidence by stipulation of the parties.

Substantially all homeowners in the area now comprising Northglenn have continuously from the time they became residents of the area now comprising Northglenn
785 received and paid for water and sewer services, first from Northwest Utilities and later from Thornton pursuant to the terms, conditions and rates set forth by Northwest Utilities and Thornton for such water and sewer services. [All such contracts are to be received into evidence, but for convenience to the Court, the following representative sample contracts of all such user contracts signed by substantially all homeowners in the Northglenn area are marked as exhibit 371 and admitted into evidence.]

The average Northglenn home has had 2.5 different owners. There are approximately 7,141 homes inside the Northglenn city limits and there have been approximately 18,240 separate owners altogether of said 7,141 homes.
786 Every residence in Northglenn is covered by a user contract similar in form to those herein marked. When a homeowner sells his home he does not attempt to recapture the utilities bills that he has paid during the time he lived in his home.

With the exception of a few homeowners in the Berg & Rollins and Robert Land contract areas, all water and sewer customers of Northwest Utilities and later of Thornton [regardless of whether such customers lived in Northglenn, Thornton or elsewhere] paid uniform and nondiscriminatory water and sewer user rates. Hydrant fees were calculated in a different manner depending on whether the customer resided
787 within or without Thornton. See Durnford v. Thornton, supra. Most other municipally owned water and sewer systems

in the Metropolitan Denver area charge higher water and sewer rates to users located outside the city limits of the municipality that owns the water and sewer system.

It is difficult and expensive to secure new or additional water rights.

Denver's current policy is that it would not serve Northglenn with water. However, according to Denver's current schedule of charges, if it were to serve Northglenn
3788 it would charge approximately $9.5 million as a front-end cost for capital development and tap fees to hook up to Northglenn and supply it with water even if Northglenn owned all the water and sewer facilities within its city limits free and clear.

The water rights obtained by Northwest Utilities and Thornton from Perl-Mack, Trans-Western, Tol-Win and Berg & Rollins pursuant to their Utility Extension Contracts hereinbefore introduced is substantially less than the amount of water being used by water users in the Northglenn area.

Northglenn has never held an election to see whether its residents would authorize it to acquire, operate or own the water and sewer system it now claims. See minutes of Northglenn City Council dated March 26, 1973, and
3789 City Administrator's Report # 102.

At all times from 1953 to date, a substantial part of the Thornton water and sewer system was and is outside the area now comprising Northglenn and it has and does serve non-Northglenn residents, including residents in an area in unincorporated Adams County.

Whenever an ordinance or other exhibit shows on its face that it was published, such fact of publication as shown is admitted. All ordinances of Northglenn and Thornton are further deemed to be public records. The following
3790 newspapers are generally circulated and read within Adams County and particularly within the area now comprising the City of Northglenn: Dispatch Sentinel, North Valley World Sentinel, Adams County Dispatch, Free Dispatch, Rocky Mountain News, Westminster Journal, Denver Post.

The dedications of all streets within the present boundaries of the City of Northglenn by the defendants and others are valid dedications of such streets.

The defendants Jordan Perlmutter, Samuel Primack, William J. Morrison, Perl-Mack Homes, Inc., Tol-Win Corpora-
3791 tion (Melbro Associates), Trans-Western Investment Company, and other developers who sold lots, homes or tracts in Northglenn conveyed such homes, tracts or lots to the grantees

by reference to the plats admitted into evidence in this case.

None of the defendants and no developer paid property taxes on the streets of Northglenn after recordation of the plats. See pages 3 and 4 for taxes paid in utility property.

The purchasers of houses in the area now within the boundaries of the City of Northglenn believed when they purchased their homes that water service and sewer service were available to them from Northwest Utilities or Thornton.

The value of a typical lot (and generally including typical lots in Northglenn during the years and in the areas covered by the plats admitted into evidence in this case) was generally greater after such lot was improved by
792 making sewer and water services available to such lot.

Perl-Mack generally sold its homes in the Northglenn area for less than comparable homes located elsewhere in the suburban Denver areas.

Some, but not all, of the shares of water stock in Farmers Highline Canal and Reservoir and in Farmers Reservoir & Irrigation Co. purportedly conveyed to Northwest Utilities Company and to the City of Thornton as provided by the utility policy extension agreements admitted into evi-
793 dence in this case were acquired along with land acquisitions by Jordan Perlmutter, Samuel Primack, and William J. Morrison. As to such shares acquired by Jordan Perlmutter, Samuel Primack and William Morrison in this fashion, they testify that they paid no consideration for such shares beyond the land purchase price which was, in most instances, agreed upon before they knew of the existence of such water.

Jordan Perlmutter, Samuel Primack, William J. Morrison (occasionally also with Abe Perlmutter, Bernard Bernstein and Albert Rudofsky), Perl-Mack Homes, Inc., Tol-Win
794 Corporation (Melbro Associates), and Trans-Western Investment Company, before the recordation of the plats admitted into evidence in this case, were the owners in fee simple absolute of the land described in such plats and to which they asserted such ownership in such plats.

Jordan Perlmutter, Samuel Primack, William J. Morrison, Perl-Mack Homes, Inc., Tol-Win and Transwestern treated land acquisition costs as expenses, either to be expensed or capitalized.

Most of the deeds whereby Jordan Perlmutter, Samuel Primack, William J. Morrison and Perl-Mack Homes, Inc., conveyed lots in Northglenn to purchasers thereof included within their grant the following language, "Together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining. . . ."

Each party reserves the right to call any witnesses listed.

3795 Each party reserves the right to object to the relevancy of any stipulation or exhibit.

To the extent that this stipulation contains blanks, the parties here are currently unable to agree upon the figures or data to be inserted.

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