5-6-1976

Cimarron Corp. v. Board of County Com'rs of El Paso County

NO. 27183

IN THE

SUPREME COURT

OF THE

STATE OF COLORADO

CIMARRON CORPORATION, a Colorado Corporation for and on behalf of itself and all others similarly situated; and HOMEBUILDERS ASSOCIATION OF METROPOLITAN COLORADO SPRINGS, a Non-profit Colorado corporation, for and on behalf of the members of that association,

Plaintiffs-Appellants,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF EL PASO; et al.,

Defendants-Appellees,

THE STATE OF COLORADO,

Intervenor-Appellee.

Appeal from the
District Court
of El Paso County

Civil Action No. 73823

Honorable
WILLIAM M. CALVERT
Judge

BRIEF OF INTERVENOR-APPELLEE

J. D. MacFARLANE
Attorney General

JEAN E. DUBOFSKY
Deputy Attorney General

EDWARD G. DONOVAN
Solicitor General

JAMES L. KURTZ-PHELAN
Assistant Attorney General
Natural Resources Section

Attorneys for Intervenor-Appellee

104 State Capitol
Denver, Colorado 80203
Telephone: 892-2778

May 1976

I N D E X

CASES

I N D E X

Page

CASES (Cont'd)

I N D E X

NO. 27183

IN THE

SUPREME COURT

OF THE

STATE OF COLORADO

CIMARRON CORPORATION, a Colorado Corporation for and on behalf of itself and all others similarly situated; and HOMEBUILDERS ASSOCIATION OF METROPOLITAN COLORADO SPRINGS, a Non-profit Colorado corporation, for and on behalf of the members of that association, Plaintiffs-Appellants, vs. THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF EL PASO; et al., Defendants-Appellees, THE STATE OF COLORADO, Intervenor-Appellee.	Appeal from the District Court of El Paso County Civil Action No. 73823 Honorable WILLIAM M. CALVERT Judge

---

BRIEF OF INTERVENOR-APPELLEE

STATEMENT OF FACTS

The State of Colorado, as intervenor-appellee, wishes to bring to the attention of the court some additional facts regarding subdivision development in the state.

The State of Colorado intervened in this action on August 29, 1973, under the provisions of C.R.S. 1973, 13-51-115,

and Colo. R. Civ. P. 57(j), because the plaintiffs were seeking a declaratory judgment regarding the constitutionality of a portion of the state's subdivision statute. The state's participation in this action has been essential because of the possible ramifications the court's decision will have on the ability of the 63 counties and over 200 municipalities in Colorado to adequately meet the demand for public services generated by the substantial subdivision development activity occurring in the state. Since 1972, when Senate bill 35, which contained the portion of the statute under attack, was passed by the legislature, at least 1000 subdivisions encompassing about 60,000 parcels and 85,000 acres of land have been approved by counties in the state, according to data compiled by the Colorado Land Use Commission. See Report on LUC Growth Monitoring Responsibilities (under S.B. 35) (1975), the relevant part of which is attached as an appendix to this brief. The inhabitants of these subdivisions, who unquestionably number in the thousands, create a tremendous demand for public services, such as water, sewer, parks, and schools.[1] According to a study by the Real Estate Research Corporation, capital costs for parks and schools alone amount to over $3,800,000 for a new subdivision of one thousand units. See The Costs of Sprawl: Detailed Cost Analysis prepared for the Council on Environmental Quality; Office of Policy Development and Research, Department of Housing and Urban Development; and

---

[1]For further discussion of this aspect of subdivision development, see Anderson, The American Law of Zoning, §§19.39-19.42 (1968); The Costs of Sprawl, supra, passim. Heyman and Gilhool, "The Constitutionality of Imposing Increased Community Costs on New Suburban Residents Through Subdivision Exactions," 73 Yale L.J. 1119 (1964).

the Office of Planning and Management, Environmental Protection Agency at 54-56 (April, 1974). If local governments were restricted in their ability to meet such demand through the dedication of land for the necessary facilities or the payment of money in lieu of land, the recourse for local government would be not to provide the services, to provide inadequate services, or to impose substantial tax increases amounting to millions of dollars which would be borne by all inhabitants of the county as well as the new residents who created the need for the services. These alternatives, none of which serve the public welfare of the state, can be avoided through dedication or in lieu payment requirements, whereby new residents, through the purchase price of their homes, pay their fair share of the costs of services which they require. This rational, reasonable approach to a serious problem in regulating land development is threatened by the position argued for by the appellants in this case. This brief will show that the Colorado legislature has enacted statutory provisions which reasonably regulate these substantial inpacts of subdivision development without breaching any constitutional limitations on the state's police power.

STATEMENT OF ISSUES

The appellants have argued that part of Colorado's subdivision statute is an invalid exercise of the police power for two reasons:

1. "it does not restrict the use of land or monies acquired by the county to those who inhabit the subdivisions from which the land or money was taken." (Appellants' Brief at 4);

2. "the statute is unconstitutionally broad and indefinite in articulating the standards by which the counties are to exercise a delegated legislative power." (Appellants' Brief at 4).

As this brief shows, appellants' argument falls short. The statute is a reasonable exercise of the state's police power and contains adequate standards to guide counties' exercise of delegated authority.

ARGUMENT

I.

C.R.S. 1973, 30-28-133(4) IS A REASONABLE EXERCISE OF THE POLICE POWER.

Initially, it should be noted that in attacking the constitutional validity of C.R.S. 1973, 30-28-133(4) appellants bear a heavy burden:

> To begin the discussion, we advert to some basic principles of constitutional law which must be considered here. In the first place, courts do not seek reasons to find statutes unconstitutional. Rather, it is our duty to presume that the statute involved is constitutional. Furthermore, in order to prevail, one attacking the constitutionality of the statute must prove its invalidity beyond a reasonable doubt.

People v. Sneed, 183 Colo. 96, 99, 514 P.2d 776 (1973). Accord, Harris v. Heckers, 185 Colo. 39, 521 P.2d 766 (1974).

This court has applied the same burden in cases challenging the constitutionality of zoning statutes. See Board of County Commissioners v. Simmons, 177 Colo. 347, 351, 494 P.2d 85 (1972); Baum v. Denver, 147 Colo. 104, 363 P.2d 688 (1961).

Like zoning, the subdivision statute is based upon the police power of the state.[2] As one commentator stated:

> Subdivision controls were upheld at an early date, and their general validity has been consistently reaffirmed . . . . The imposition of subdivision controls is an exercise of the police power, and it seeks to accomplish the orthodox ends of the police power by serving the health, safety, morals, and general welfare of the community.

Anderson, The American Law of Zoning, §19.04, p. 392 (1968).

Court decisions from other jurisdictions uniformly have followed this reasoning and upheld the constitutionality of subdivision controls. See, e.g., Mansfield & Swett v. Town of West Orange, 198 A. 225, 232 (N.J. 1938); Blevens v. City of Manchester, 170 A.2d 121, 122 (N.H. 1961); State v. Clark, 399 P.2d 955, 961 (Idaho 1965); City of Pittsburg v. McNeil, 151 A.2d 596, 598 (Pa. 1959); Village of Lynnbrook v. Cadoo, 252 N.Y. 308, 169 N.E. 394 (J. Pound) (1929); Brous v. Smith, 304 N.Y. 164, 106 N.E. 2d 503 (1952); Stewart v. Stone, 130 So.2d 577 (Fla. 1961).

Appellants obviously recognize the futility of waging a broad-scale constitutional attack on the state's subdivision statute, first adopted in 1959 and substantially amended in 1972. Instead, they narrow their challenge to one subsection of the statute, C.R.S. 1973, 30-28-133(4)(a) which provides that:

---

[2]This court already has recognized this fact implicitly in Board of Commissioners of Lake County v. Hinton et al., C-634 (Slip Opinion March 22, 1976), and Board of County Commissioners of Pitkin County v. Friedl Pfeifer and Capitol Improvement Corp., C-652 (Slip Opinion February 23, 1976), where the court found that counties could enforce subdivision requirements under provisions of the zoning enabling act.

> (4) Subdivision regulations adopted by the board of county commissioners pursuant to this section shall also include, as a minimum, provisions governing the following matters:
> (a) Sites and land areas for schools and parks when such are reasonably necessary to serve the proposed subdivision and the future residents thereof. Such provisions may include:
> (I) Reservation of such sites and land areas, for acquisition by the county;
> (II) Dedication of such sites and land areas to the county or the public or, in lieu thereof, payment of a sum of money not exceeding the full market value of such sites and land areas. Any such sums, when required, shall be held by the board of county commissioners for the acquisition of said sites and land areas.
> (III)Dedication of such sites and land areas for the use and benefit of the owners and future owners in the proposed subdivision.

The constitutionality of this section of the subdivision statute is as firmly grounded as that of the statute as a whole.

As the language of the statute clearly indicates, the reservation or dedication of land for parks and schools, and the payment of money in lieu of such dedication or reservation, are for the express purpose of serving the "proposed subdivision and the future residents thereof." Appellants cannot point to a single court decision which has struck down similar statutory language on constitutional grounds.

Cases addressing statutory provisions for dedication of land or in lieu payments for parks and schools have upheld similar provisions. See Associated Home Builders, Inc. v. City of Walnut Creek, 4 Cal. 3d 633, 94 Cal. Rptr. 630, 484 P.2d 606 (1971); Jordan v. Menomonee Falls, 28 Wis. 2d 608, 137 N.W.2d 442 (1965), app. dismd. 358 U.S. 4 (1966); Billings Properties, Inc., v. Yellowstone County, 144 Mont. 25, 394

P.2d 182 (1964); Jenad, Inc. v. Scarsdale, 18 N.Y.2d 78, 218 N.E.2d 673 (1966); see generally 43 A.L.R.3d 862. Furthermore, the better-reasoned decisions have indicated that statutory provisions, as well as local regulations, need not absolutely limit park and school land dedications or payments to the specific subdivision in order to be a reasonable exercise of the police power. For example, in Ayres v. City Council of Los Angeles, 34 Cal. 2d 31, 207 P.2d 1, at 7 (1949), the California Supreme Court found that reasonable dedication requirements could "benefit the city as a whole" and be based on "future as well as more immediate needs." The court's decision was based on the following rationale:

> It is the petitioner who is seeking to acquire the advantages of lot subdivision and upon him rests the duty of compliance with reasonable conditions for design, dedication, improvement and restrictive use of the land so as to conform to the safety and general welfare of the lot owners in the subdivision and of the public.

207 P.2d at 7. The California Supreme Court applied similar reasoning to park land dedications twenty-two years later in Associated Home Builders, Inc. v. City of Walnut Creek, supra. In an unanimous opinion, the court found constitutional the California statute requiring dedication of park lands or payments of money in lieu of dedication.[3] In its analysis of the statute, which required that local regulations contain, inter alia, provisions that the land or fees "are to be used only for the purpose of providing park or

---

[3] §11546 of the California Business and Professions Code states, inter alia: "The governing body of a city or county may by ordinance require the dedication of land, the payment of fees in lieu thereof, or a combination of both, for park or recreational purposes as a condition to the approval of a final subdivision map, ..."

recreational facilities to serve the subdivision," the California Supreme Court found that parks must be in close proximity to, but not necessarily within the land area of a particular subdivision:

> Thus subdividers, providing land or its monetary equivalent, afford the means for the community to acquire a parcel of sufficient size and appropriate character, located near each subdivision which makes a contribution, to serve the general recreational needs of the new residents.

484 P.2d at 609. The court found such a dedication requirement to be a reasonable exercise of police power under the same reasoning as in Ayres.[4]

Appellants in this case have resorted to a rather tortured interpretation of the Colorado statute in a futile attempt to prove that it does not meet the constitutional standards set out in decisions such as Associated Home Builders, supra. (See Appellants' Brief at 7-8.)

---

[4]The California court reasoned at 615: "The rationale of the cases affirming constitutionality indicate the dedication statutes are valid under the state's police power. They reason that the subdivider realizes a profit from governmental approval of a subdivision since his land is rendered more valuable by the fact of subdivision, and in return for this benefit the city may require him to dedicate a portion of his land for park purposes whenever the influx of new residents will increase the need for park and recreational facilities."

The Colorado Supreme Court followed similar reasoning in City of Colorado Springs v. Kitty Hawk Development Co., 154 Colo. 535, 392 P.2d 467 (1964), when, in the context of an annexation, it upheld provisions of the city's subdivision ordinance requiring dedication of land or payment of money in lieu of dedication for parks and schools. While not reaching any constitutional issues, the well-reasoned opinion of Mr. Chief Justice Pringle provides an appropriate approach to subdivision dedications generally: The subdivision of land, like annexation to a municipality, is a privilege granted by the state and local government which provides numerous benefits to the landowner seeking subdivision approval or annexation. In return for such benefits, the state or local government can require a reasonable dedication of land or payment of money for parks, schools and other necessary public services from the developer.

The prefatory language to (I), (II) and (III) states that subdivision regulations shall include, as a minimum, provisions governing:

> (a) Sites and land areas for schools and parks when such are reasonably necessary to serve the proposed subdivision and the future residents thereof. Such provisions may include:

(emphasis added). It logically follows then that (I), (II) and (III), which are subparts of subsection (4)(a), are all subject to this limitation. As this court has stated, it is an axiom of statutory construction that statutes must be construed as a whole, and that the several parts of a statute reflect light upon each other. People ex rel. Dunbar v. Gym of America, Inc., 177 Colo. 97, 108, 493 P.2d 660 (1972). The phrase "for the use and benefit of the owners and future owners in the proposed subdivision" was probably added to (III) to clarify that the provisions authorized a dedication to a semi-private entity such as a home-owners association, whereas (I) and (II) are directed strictly to public bodies. Regardless, the legislative intent is clear: the section of the statute in its entirety is directed to obtaining land areas for schools and parks "when such are reasonably necessary to serve the proposed subdivision and the future residents thereof."

Assuming the correctness of appellants' argument that the language of the statute does not restrict the lands dedicated or acquired with fees obtained from a subdivider to the sole use of the persons who will live in the subdivision, the statute would still be a reasonable exercise of the police power. Courts from other jurisdictions have considered appellants' argument and in well-reasoned opinions

have rejected it. In Associated Home Builders, Inc. v. City of Walnut Creek, supra, the California Supreme Court stated:

> We see no persuasive reason in the face of these urgent needs caused by present and anticipated future population growth on the one hand and the disappearance of open land on the other to hold that a statute requiring the dedication of land by a subdivider may be justified only upon the ground that the particular subdivider upon whom an exaction has been imposed will, solely by the development of his subdivision, increase the need for recreational facilities to such an extent that additional land for such facilities will be required.

484 P.2d at 611. See also, Ayres v. City Council of City of Los Angeles, supra at 6-7.

Furthermore, the cases cited by plaintiffs do not stand for the proposition that the constitution requires that park and school dedications or payments be limited for the sole use and benefit of the particular subdivision. Haugen v. Gleason, 226 Or. 99, 359 P.2d 108, 109 (Or. 1961), held that the Oregon statute did not authorize any dedication requirements. Similarly, in Rosen v. Village of Downers Grove, 19 Ill. 2d 448, 167 N.E.2d 230, 234 (1960), the Illinois Supreme Court found the ordinance to be outside statutory authority.[5]

---

[5] One year later, the Illinois Supreme Court expressed the constitutional test it would apply to subdivision dedication requirements in Pioneer Trust & Savings Bank v. Village of Mount Prospect, 22 Ill. 2d 375, 176 N.E. 2d 799, at 802 (1961). In striking down the ordinance, but not the Illinois statute, the Illinois court indicated that such dedication requirements would be considered a "reasonable exercise of the police power unless the need for the dedication for parks and schools" stems from the total activity of the community and is not "required by the activity within the subdivision." The constitutional test for dedication requirements in Illinois is whether the costs for parks and schools allocated to a particular developer are properly attributable to the subdivision. While the Illinois court based this reasoning on its reading of Ayres v. City Council of Los Angeles, supra, in 1971 the California Supreme Court expressly stated that

Even appellants' analysis of Stroud v. City of Aspen, ___ Colo. ___, 532 P.2d 720 (1975) misses the point. The opinion of Mr. Justice Day found that off-street parking requirements, which are not unlike park and school land dedications or other zoning requirements, are not an unconstitutional exercise of the police power. The language quoted at the top of page seven of Appellants' Brief was not articulated by Mr. Justice Day as a constitutional limitation on dedication requirements. Rather, the language was an example of the consequences that flowed from the absence in the Aspen ordinance of adequate controls on the city manager's discretion. The Stroud decision found that, because the off-street parking fee was "imposed but unfulfilled," the Aspen ordinance had unconstitutionally applied a statutory provision which "presupposes the obligation to construct and operate the services contracted for." 532 P.2d at 723. Thus, Stroud does not establish a constitutional test that requires county regulations to restrict the use of land dedicated or acquired with fees to those people who will inhabit the subdivision.

The only case that apparently comes close to supporting appellants' constitutional arguments is Aunt Hack Ridge Estates, Inc. v. Planning Commission of Danbury, 27 Conn. Sup. 74, 230 A.2d 45 (1967), a decision by the Superior

---

(Continued)

the Illinois court had misconstrued its decision in Ayres. See Associated Home Builders, Inc. v. City of Walnut Creek, supra, at 613 (fn. 7). The California court also stated at 610: "We do not find in Ayres support for the principle urged by Associated that a dedication requirement may be upheld only if the particular subdivision creates the need for dedication."

Court of Fairfield County, Connecticut. Even in this lower court Connecticut decision, the statute was held to be a constitutional exercise of the police power. The court concluded that a municipal provision permitting purchase of park land "anywhere for the use of residents" of the city amounted to an unconstitutional tax.

Thus, there is virtually no support in decisions from Colorado or other states for appellants' argument that constitutional provisions require that dedicated lands or in lieu payments from a subdivision be used exclusively or even primarily by residents of that subdivision. What is required by the Colorado subdivision statute is that the land or monies be used for parks and schools, part of the need for which is attributable to the future inhabitants of the subdivision. This conclusion is reached not only from the langugage of the Colorado statute, but also from the rationale underlying the constitutional analysis in various court decisions. It would be a logical contradiction to conclude that, on the one hand, subdivision regulations are based upon the state's police power and, therefore, must be reasonably related to the health, safety, morals, and welfare of the general public, but that, on the other hand, subdivision dedication requirements must be limited in their application and purpose to the needs of only the residents of the subdivision. Thus, the constitution does not require this court to interpret section 30-28-133(4)(a) of the Colorado subdivision statute as limiting the use of lands dedicated or acquired by in lieu payments from a subdivider either exclusively or primarily to those people who inhabit the subdivision.

However, even if this court were to adopt a restrictive view of constitutional limitations on the statute's dedication requirements, the statute should be interpreted as authorizing regulations which provide for the dedication or reservation of land or in lieu payments when the need for parks or schools is created by or when such facilities are necessary to serve the future residents of the subdivision. This court has always preferred an interpretation of a statute that renders it constitutional to one that violates constitutional requirements.

II.

THE DELEGATION OF POWER TO THE BOARDS OF COUNTY COMMISSIONERS CONTAINS A CONSTITUTIONALLY SUFFICIENT STANDARD.

Section 30-28-133(4)(a), C.R.S. 1973, requires that county subdivision regulations include provisions governing:

> Sites and land areas for schools and parks when such are reasonably necessary to serve the proposed subdivision and the future residents thereof . . .

Appellants object to the phrase "when such are reasonably necessary" and suggest that this is insufficiently specific. The law is to the contrary.

This court has set forth the rationale for upholding liberal grants of discretion in delegations of authority:

> The legislature does not abdicate its function when it describes what job must be done, who must do it, and the scope of his authority. In our complex economy, that indeed is frequently the only way in which the legislative process can go forward.
>
> * * *
>
> It is not necessary that the legislature supply a specific formula for the

> guidance of the administrative agency in a field where flexibility and adaptation of the legislative policy to infinitely variable conditions constitutes the essence of the program. The modern tendency is to permit liberal grants of discretion to administrative agencies in order to facilitate the administration of laws dealing with involved economic and governmental conditions. In other words, the necessities of modern legislation dealing with complex economic and social problems have led to judicial approval of broad standards for administrative action, especially in regulatory enactments under the police power. With respect to such types of legislation, detailed standards in precise and unvarying form would be unrealistic and more arbitrary than a general indefinite standard.

(emphasis added). Swisher v. Brown, 157 Colo. 378, 402 P.2d 621 (1965).

The standard of "reasonable" was specifically upheld in Asphalt Paving Co. v. Board of County Commrs., Jefferson County, 162 Colo. 254, 262, 425 P.2d 289 (1967):

> Thus, we hold that the term 'reasonable' in the instant case, even though it might be deemed by some to be an indefinite, and thus unconstitutional, standard is a further sufficient legislatively created guide to enable the Board to exercise the authority delegated to control through traffic.

Similarly, in Fry Roofing Co. v. State Dept. of Health, 179 Colo. 223, 230, 499 P.2d 1176 (1972), the court declared:

> In cases dealing with other areas of legitimate legislative activity where precision was determined to be impossible for the same or similar reasons noted in Swisher v. Brown, supra, such broad standards as "reasonable" and "necessary" have been found sufficient as standards, although incapable of precise definition.

The General Assembly's use of the standard "when such are reasonably necessary" is sufficient and is particularly appropriate in this instance. This court often has

recognized the need to grant local governments broad legislative discretion in achieving the objectives of land use regulations. See Stroud v. City of Aspen, supra, at 722; Nopro v. Cherry Hills Village, 180 Colo. 217, 504 P.2d 344 (1972). Historically, land use regulation has been a local matter and local authorities are in the best position to determine the necessity of land dedication or reservation or in lieu fees for schools and parks. See Anderson, American Law of Zoning, §19.18 (1968). It would be unwise as well as an unwarranted burden to force the legislature to create a precise, rigid standard in this matter where local conditions may vary considerably. In Asphalt Paving, supra, the court quoted with approval from the Maryland Supreme Court:

> . . . where the discretion to be exercised relates to police regulations for the protection of public morals, health, safety, or general welfare, and it is impracticable to fix standards without destroying the flexibility necessary to enable the administrative officials to carry out the legislative will, legislation delegating such discretion without such restrictions may be valid. (Citing cases) It is recognized that it would not always be possible for Legislature or City Council to deal directly with the multitude of details in the complex situations upon which it operates. (Citing case) The modern tendency of the courts is toward greater liberality in permitting grants of discretion to administrative officials in order to facilitate the administration of the laws as the complexity of governmental and economic conditions increases.

162 Colo. at 263-264.

Here, the General Assembly has made the law, established the broad policy, and simply delegated to the counties the discretion to determine the facts and apply the law in an area in which they historically have had responsibility and expertise and in which they have shown their ability to make

reasonable determinations. Appellants' mere suggestion that this standard is insufficient does not begin to satisfy the heavy burden of proving a statute to be unconstitutional beyond a reasonable doubt.

CONCLUSION

For the above reasons, the intervenor-appellee, State of Colorado, respectfully requests this court to hold the statutory provisions in question to be a reasonable exercise of the police power and to be constitutionally proper and sufficient.

FOR THE ATTORNEY GENERAL

JAMES L. KURTZ-PHELAN, 2135
Assistant Attorney General
Natural Resources Section

Attorneys for Intervenor-
Appellee

104 State Capitol
Denver, Colorado 80203
Telephone: 892-2778

CERTIFICATE OF SERVICE

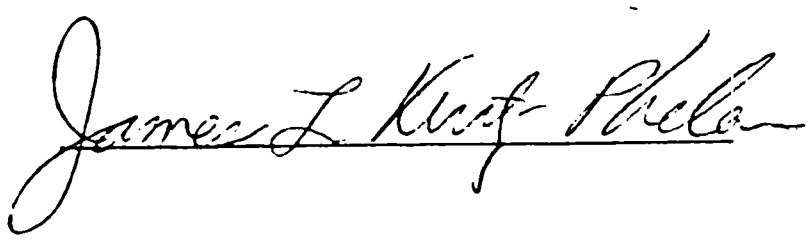
This is to certify that I have duly served the within Brief of Intervenor-Appellee upon all parties herein by depositing copies of same in the United States mail, postage prepaid, at Denver, Colorado, this 6th day of May, 1976, addressed as follows:

Robert Dunlap, Esq.
Attorney for Plaintiff-Appellants
228 North Cascale Avenue, Suite 307
Colorado Springs, Colorado 80903

Robert E. Anderson, Esq.
Horn, Anderson & Johnson
501 Mining Exchange Building
Colorado Springs, Colorado 80903

Clark A. Floyd, Esq.
220 Western Federal Savings Building
Colorado Springs, Colorado 80903

William R. Tiedt, Esq.
300 West Lake
Woodland Park, Colorado 80863



APPENDIX

REPORT ON LUC GROWTH MONITORING RESPONSIBILITIES

(Under S.B. 35)
1975

COLORADO LAND USE COMMISSION

Prepared by

Gary Fisher
Colorado Land Use Commission

December 17, 1975

REPORT ON LUC GROWTH MONITORING RESPONSIBILITIES

(Under Senate Bill 35)

Description

Pursuant to 30-28-126 (4) C.R.S. 1973, counties are required to transmit to the LUC copies of the notice of filing and a summary of information of each subdivision preliminary plan and plat submitted to them together with a report of each exemption granted by the Board of County Commissioners.

In addition, municipalities are required pursuant to 31-23-125, C.R.S. 1973 to report to the LUC any subdivision, commercial or industrial activity proposed which will cover five or more acres. Such notice shall be in a standard form and contain such information as prescribed by the Land Use Commission.

In response to this charge, the LUC developed a growth monitoring process to record and maintain records of subdivision information received from the counties and major activity information received from municipalities. The LUC sent model summary forms to each county for their use.

Each summary form, exemption report and major activity notice received by the LUC is filed by county or city in chronological order. Information on the form is recorded on master lists organized in the same manner.

As a matter of professional courtesy, the Division of Water Resources and the Colorado Geological Survey (CGS) transmit to the LUC copies of each letter they send to counties in response to county subdivision review referrals. The CGS also sends copies of review letters sent to municipalities in response to the major activity notice reporting requirement. However, such reporting to the CGS or the LUC is negligible.

Subdivision Activity Reported to LUC from Counties

General

From 1972 to November of 1975, the LUC received information on 942 subdivisions throughout the State. 59,951 parcels or interests were reported totaling approximately 84,778 acres.

Table 1.

Summary Information
(6/7 - 11/75)

	1972	1973	1974	1975	Total
Number of Subdivisions	88	493	233	128	942
acres	4,208	42,442	29,806	8,322	84,778
parcels or interests	4,682	32,704	15,504	7,061	59,951

Since 1972, no subdivision activity was reported to the LUC in 25 counties. 28 counties reported less than 25 subdivisions; 8 counties reported between 25 and 100 subdivisions; and two counties (Larimer and Jefferson) reported more than 100 subdivisions.

Table 2.

Frequency of Reporting Subdivisions
to the LUC 6/72 - 9/75

No Subdivision Activity Reported

Alamosa
Baca
Cheyenne
Costilla
Crowley
Custer
Delta
Dolores
Gilpin
Huerfano
Kiowa
Kit Carson
Lincoln
Logan
Mineral
Otero
Phillips
Pueblo
Rio Blanco
Rio Grande
Saguache
San Juan
Sedgwick
Washington
Yuma

Less than 25 Subdivisions Reported

Archuleta	Fremont	Moffat
Bent	Garfield	Montezuma
Boulder	Grand	Morgan
Chaffee	Gunnison	Ouray
Clear Creek	Hinsdale	Park
Conejos	Jackson	Pitkin
Denver	Lake	Prowers
Eagle	La Plata	San Miguel
Elbert	Las Animas	Teller
		Weld

Between 25 and 100 Reported

Adams	El Paso	Routt
Arapahoe	Mesa	Summit
Douglas	Montrose	

More than 100 Reported

Jefferson
Larimer

Compliance with Reporting Subdivisions to the LUC

Since the passage of S.B. 35, counties have been required to submit all preliminary plans to the Colorado Geological Survey for review and comment. As a result, the Colorado Geological Survey has the most complete records on subdivision activity in the counties, of any state agency. In order for the LUC to check whether a county is complying with the reporting requirement in SB. 35, our records were checked against those of the Colorado Geological Survey, with the following results:

(1) 65 percent or 41 counties have not consistently complied with the requirement in S.B. 35 to report to the LUC.

(2) Eight counties have reported more frequently to the LUC than to the Colorado Geological Survey. This discrepancy is currently being investigated by the two staffs.

(3) 14 counties have had no reported activity since June of 1972.

(Caveat: CGS data may be duplicative of itself resulting in some of the discrepencies between CGS and LUC data.)

SUBDIVISION ACTIVITY IN COUNTIES

	Number of Subdivisions Reported					Number of Exemptions Reported				
	1972	1973	1974	1975	TOTAL	1972	1973	1974	1975	TOTAL
	10	56	2	6	74	0	2	2	14	18
A	0	0		0	0	0	1	0	0	1
OE	0	36	22	7	65	0	4	11	7	22
ETA	0	1	0	0	1	0	0	0	0	0
	0	0	0	0	0	0	0	0	0	0
	0	0	1	0	1	3	8	1	0	12
R	4	9	2	8	23	19	49	24	3	95
E	3	8	0	3	14	0	0	0	6	6
NE	0	0	0	0	0	0	0	0	0	0
CREEK	0	1	0	0	1	0	0	0	0	0
S	0	1	0	0	1	0	0	0	0	0
A	0	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	1	1
	0	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	17	79	0	0	96
	0	2	0	0	(report ^{2} B.P.	0	0	0	0	0
	0	0	0	0	0	0	3	1	6	10
	2	24	19	2	47	0	0	0	0	0
	0	0	0	1	1	0	0	0	14	14
	0	5	2	0	7	0	0	0	0	0
	5	47	21	2	75	0	3	0	0	3
	0	0	6	1	7	6	28	31	32	97
D	0	0	1	0	1	9	36	0	0	45
	0	0	0	0	0	0	0	0	0	0
	1	1	0	0	2	0	0	0	0	0
N	0	14	2	0	16	0	4	0	0	4

COUNTY SUBDIVISION ACTIVITY

	Number of Subdivisions Reported					Number of Exemptions Reported				
	1972	1973	1974	1975	TOTAL	1972	1973	1974	1975	TOTAL
:DALE	1	0	0	0	1	0	0	0	0	0
EANO	0	0	0	0	0	0	0	0	0	0
ISON	0	1	1	0	2	4	0	0	0	4
ERSON	9	65	48	28	150	20	44	43	36	143
A	0	0	0	0	0	0	0	0	0	0
CARSON	0	0	0	1	1	0	0	0	1	1
E	0	1	0	0	1	0	0	1	3	4
LATA	0	6	0	0	6	0	0	0	0	0
NER	25	72	53	26	176	8	107	120	94	329
ANIMAS	0	3	2	0	5	0	1	1	0	2
OLN	0	0	0	0	0	0	0	0	0	0
M	0	0	0	0	0	1	18	2	0	21
A	1	11	22	21	55	0	167	239	153	559
ERAL	0	0	0	0	0	0	0	0	0	0
FAT	0	1	0	1	2	2	11	11	2	26
TEZUMA	0	1	1	0	2	37	30	40	39	146
TROSE	21	37	15	11	84	8	38	26	32	104
AN	0	5	5	2	12	0	1	0	38	39
O	0	0	0	0	0	0	0	0	0	0
NY	1	4	0	0	5	1	3	0	0	4
K	0	1	1	0	2	0	0	0	0	0
LLIPS	0	0	0	0	0	0	5	14	1	20
KIN	0	1	0	0	1	2	5	17	6	30
ERS	0	0	0	1	1	0	0	0	3	3
LO	0	0	0	0	0	0	0	0	0	0
BLANCO	0	0	0	0	0	0	0	0	0	0
GRANDE	0	0	0	0	0	0	3	0	0	3
IT	2	35	1	0	38	7	17	6	0	30
LACHE	0	0	0	0	0	0	0	0	0	0
JUAN	0	0	0	0	0	1	0	0	0	1
MIGUEL	3	2	5	5	15	2	3	5	4	14
WICK	0	0	0	0	0	0	0	0	0	0
MIT	0	34	0	0	34	0	0	0	0	0
LER	0	0	0	2	2	0	0	0	0	0
HINGTON	0	0	0	0	0	0	0	0	0	0
D	0	8	1	0	9	23	81	37	0	141
A	0	0	0	0	0	0	5	4	3	12
	88	493	233	128	942	170	756	636	498	2060

	Total Number of Parcels or Interests in Subdivisions Reported to the LUC					Total Number of Parcels or Interests in Exemptions Reported to the LUC				
	1972	1973	1974	1975	Total	1972	1973	1974	1975	Total
MS	30	400	0	33	463	0	0	0	0	0
MOSA	0	0	0	0	0	0	0	0	0	0
PAHOE	0	3638	905	269	4812	0	1	1	0	2
EULETA	0	329	0	0	329	0	0	0	0	0
a	0	0	0	0	0	0	0	0	0	0
'	0	0	0	0	0	3	8	0	2	13
LDER	624	664	61	251	1600	82	126	45	4	257
FFEE	41	481	46	9	577	0	0	0	4	4
MESNE	0	0	0	0	0	0	0	0	0	0
AR CREEK	0	34	0	0	34	0	0	0	0	0
EJOS	0	100	0	0	100	0	0	0	0	0
HILLA	0	0	0	0	0	0	0	0	0	0
LEY	0	0	0	0	0	0	0	0	1	1
ER	0	0	0	0	0	0	0	0	0	0
A	0	0	0	0	0	32	170	0	0	202
ER	0	564	0	0	564	0	0	0	0	0
RES	0	0	0	0	0	0	4	0	1	5
LAS	131	2089	2929	32	5181	0	0	0	0	0
E	0	0	0	158	158	0	0	0	157	157
NT	0	270	394	0	664	0	0	0	0	0
ASO	239	5729	1049	50	7067	0	0	0	0	0
ONT	0	0	173	66	239	6	33	31	12	82
IELD	0	0	290	0	290	5	24	0	0	29
IN	0	0	0	0	0	0	0	0	0	0
)	46	660	0	0	706	0	0	0	0	0
ISON	0	1241	269	0	1510	0	1	0	0	1
	1,111	16,199	6,116	868	24,294	128	366	77	181	752

	Total Number of Parcels or Interests in Subdivisions Reported to the LUC					Total Number of Parcels or Interests in Exemptions Reported to the LUC				
	1972	1973	1974	1975	Total	1972	1973	1974	1975	Total
ISDALE	20	0	0	0	20	0	0	0	0	0
ERFANO	0	0	0	0	0	0	0	0	0	0
KSON	0	0	0	0	0	0	0	0	0	0
FFERSON	1725	6045	4709	3282	15761	2	146	65	18	231
WA	0	0	0	0	0	0	0	0	0	0
I CARSON	0	0	0	10	10	0	0	0	1	1
E	0	68	0	0	68	0	0	0	2	2
PLATA	0	1221	0	0	1221	0	0	0	0	0
MER	995	2639	3492	1260	8386	25	217	287	190	719
ANIMAS	0	219	10	0	229	0	1	0	0	1
COLN	0	0	0	0	0	0	0	0	0	0
AN	0	0	0	0	0	1	19	2	0	22
A	41	484	538	757	1820	0	0	0	0	0
ERAL	0	0	0	0	0	0	0	0	0	0
AT	0	16	0	70	86	3	4	11	3	21
EZUMA	0	66	34	0	100	257	30	43	35	365
ROSE	115	330	110	67	622	7	72	20	35	134
AN	0	297	282	350	929	0	1	0	29	30
O	0	0	0	0	0	0	0	0	0	0
Y	5	124	0	0	129	1	6	0	0	7
	0	4	0	0	4	0	0	0	0	0
LIPS	0	0	0	0	0	0	4	7	0	11
N	0	0	0	0	0	1	1	12	2	16
RS	0	0	0	12	12	0	0	0	2	2
O	0	0	0	0	0	0	0	0	0	0
LANCO	0	0	0	0	0	0	0	0	0	0
	2,901	11,513	9,175	5,808	29,397	347	501	447	317	1,562

	Total Number of Parcels or Interests in Subdivisions Reported to the LUC					Total Number of Parcels or Interests in Exemptions Reported to the LUC				
	1972	1973	1974	1975	Total	1972	1973	1974	1975	Total
O GRANDE	0	0	0	0	0	0	2	0	0	2
UTT	441	3879	5	0	4325	7	178	6	0	191
GUACHE	0	0	0	0	0	0	0	0	0	0
N JUAN	0	0	0	0	0	21	0	0	0	21
N MIGUEL	229	34	199	99	561	2	2	5	4	13
DGWICK	0	0	0	0	0	0	0	0	0	0
MIT	0	899	0	0	899	0	0	0	0	0
LER	0	0	0	97	97	0	0	0	0	0
SHINGTON	0	0	0	0	0	0	0	0	0	0
LD	0	180	9	189	378	40	152	53	0	245
A	0	0	0	0	0	0	3	4	1	8
	670	4,992	213	385	6,260	495	1,205	592	503	2,795

LUMN TOTALS:	1972	1973	1974	1975	GT
arcels or Interests- ubdivisions)	4,682	32,704	15,504	7,061	59,951

LUMN TOTALS:	1972	1973	1974	1975	GT
rcels or Interests- xemptions)	495	1,205	592	503	2,795

	Total Acreage of Subdivisions Reported to the LUC					Total Acreage of Approved Exemptions Reported to the LUC				
	1972	1973	1974	1975	Total	1972	1973	1974	1975	Total
AMS	77	676	0	146	899	0	0	0	0	0
AMOSA	0	0	0	0	0	0	0	0	0	0
APAHOE	0	1346	861	51	2258	0	0	8	2	10
CHULETA	0	1990	0	0	1990	0	0	0	0	0
CA	0	0	0	0	0	0	0	0	0	0
ST	0	0	0	0	0	3	4	1200	247	1454
LDER	143	692	127	203	1165	676	3645	1551	57	5929
FFEE	142	642	153	174	1111	0	0	0	24	24
EYENNE	0	0	0	0	0	0	0	0	0	0
AR CREEK	0	130	0	0	130	0	0	0	0	0
EJOS	0	110	0	0	110	0	0	0	0	0
STILLA	0	0	0	0	0	0	0	0	0	0
WLEY	0	0	0	0	0	0	0	0	5	5
STER	0	0	0	0	0	0	0	0	0	0
LTA	0	0	0	0	0	759	5406	0	0	6165
VER	0	74	0	0	74	0	0	0	0	0
LORES	0	0	0	0	0	0	56	0	4	60
GLAS	201	4299	3080	175	7755	0	0	0	0	0
LE	0	0	0	29	29	0	0	0	51	51
ERT	0	2258	394	0	2652	0	0	0	0	0
PASO	103	4981	5448	263	10795	0	5	0	0	5
MONT	0	0	1135	58	1193	359	1787	275	1124	3545
FIELD	0	0	63	0	63	79	410	0	0	489
IPIN	0	0	0	0	0	0	0	0	0	0
AND	0	488	0	0	488	0	0	0	0	0
NSON	0	2141	687	0	2828	0	672	0	0	672
	666	19,827	11,948	1,099	33,540	1,876	11,985	3,034	1,514	18,409

	Total Acreage of Subdivisions Reported to the LUC					Total Acreage of Exemptions Reported to the LUC				
	1972	1973	1974	1975	Total	1972	1973	1974	1975	Total
HINSDALE	40	0	0	0	40	0	0	0	0	0
HUERFANO	0	0	0	0	0	0	0	0	0	0
JACKSON	0	13	0	0	13	0	0	0	0	0
JEFFERSON	628	8122	12537	2142	23429	10	2592	702	836	4140
KIOWA	0	0	0	0	0	0	0	0	0	0
KIT CARSON	0	0	0	94	94	0	0	0	0	0
LAKE	0	31	0	0	31	0	0	0	5	5
LA PLATA	0	1802	0	0	1802	0	0	0	0	0
LARIMER	1703	5461	3026	1919	12109	81	5575	4508	3049	13213
LAS ANIMAS	0	1377	124	0	1501	0	15	378	0	393
LINCOLN	0	0	0	0	0	0	0	0	0	0
LOGAN	0	0	0	0	0	11	1500	503	0	2014
MESA	20	190	350	375	935	0	0	0	0	0
MINERAL	0	0	0	0	0	0	0	0	0	0
MOFFAT	0	84	0	26	110	6	42	97	14	159
MONTEZUMA	0	233	122	0	355	2999	731	724	335	4789
MONTROSE	552	1152	270	213	2187	197	1149	324	269	1939
MORGAN	0	54	97	47	198	0	150	0	3112	3262
OTERO	0	0	0	0	0	0	0	0	0	0
OURAY	31	235	0	0	266	5	4238	0	0	4243
PARK	0	40	0	1292	1332	0	0	0	0	0
PHILLIPS	0	0	0	0	0	0	20	142	1	163
PITKIN	0	0	0	0	0	73	240	200	28	541
PROWERS	0	0	0	18	18	0	0	0	5	5
PUEBLO	0	0	0	C	0	0	0	0	0	0
RIO BLANCO	0	0	0	0	0	0	0	0	0	0
	2,974	18,794	16,526	6,126	44,420	3,382	16,252	7,578	7,649	34,861

	Total Acreage of Subdivisions Reported to the LUC					Total Acreage of Approved Exemptions Reported to the LUC				
	1972	1973	1974	1975	Total	1972	1973	1974	1975	Total
RIO GRANDE	0	0	0	0	0	0	12	0	0	12
ROUTT	174	3220	31	0	3425	293	2408	93	0	2794
SAGUACHE	0	0	0	0	0	0	0	0	0	0
SAN JUAN	0	0	0	0	0	5	0	0	0	5
SAN MIGUEL	394	151	965	373	1883	3	145	45	73	266
SEDGWICK	0	0	0	0	0	0	0	0	0	0
SUMMIT	0	192	0	0	192	0	0	0	0	0
TELLER	0	0	0	724	724	0	0	0	0	0
WASHINGTON	0	0	0	0	0	0	0	0	0	0
WELD	0	258	336	0	594	1615	42677	1469	0	45761
YUMA	0	0	0	0	0	0	26	59	0	85
	568	3,821	1,332	1,097	6,818	1,916	45,268	1,666	73	48,923

COLUMN TOTALS (Subdivision Acreage)	1972	1973	1974	1975	GT
	4,208	42,442	29,806	8,322	84,778

COLUMN TOTALS (Exemption Acreage)	1972	1973	1974	1975	GT
	7,174	73,505	12,278	9,236	102,193