Memorandum

TO: Mayor & Town Board
FROM: Joe Knopinski, Town Administrator J.K
DATE: September 24, 1984
SUBJ: Policy on School Land Dedication and School Development Fees

Resolution 84-20 is drafted for your consideration to establish a policy previously delineated by the Board with respect to school land dedication and school development fees. The resolution as drafted is general to indicate publicly the Board's policy with respect to these issues, understanding that the particulars of such policy should be included in an intergovernmental agreement between the school district and the Town.

In summary, the resolution indicates that the Town will grant land or cash-in-lieu of land to the school district for every development which places a demand on the district. If that demand can be reduced by joint use, the total land or cash-in-lieu shall also be reduced. Also delineated is the Board policy that a development fee or other financing mechanism will be instituted Town wide, when all other general purpose governments within the school district's boundaries have adopted, or are planning to adopt, such a financing mechanism.

These positions reflect my understanding of recent Board decisions on this issue and are embodied in Resolution 84-20.

RESOLUTION 84-~~20~~ 23

A RESOLUTION ESTABLISHING TOWN OF CASTLE ROCK POLICY WITH RESPECT TO SCHOOL LAND DEDICATION AND SCHOOL DEVELOPMENT FEES

WHEREAS, The Board of Trustees of the Town of Castle Rock is cognizant of the critical pressures which growth places on the Douglas County School District RE-1 ("The District"); and

WHEREAS, the Board of Trustees of the Town of Castle Rock is committed to an adequately financed system of public schools; and

WHEREAS the Board of Trustees strongly supports equitable solutions to the problems that growth places on the District.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF CASTLE ROCK, COLORADO, as follows:

1. The Board commits to providing land or cash-in-lieu of land to the School District from every development which places an impact upon the District. That impact will be measured by the formula utilized by the District for determining the number of students generated from projects and the requirements that those students will place on the District with respect to land for school facilities. Such dedication of property or cash-in-lieu may be reduced if through joint use of land the total school requirements for such land are reduced.

2. The Town of Castle Rock supports the imposition of a district wide fee to assist in financing the construction of school facilities. Such fee would be calculated based on students generated considering historical data supplied by the District. At such time as the District provides evidence to the Town of the imposition or pending approval of

such a fee district wide, the Town covenants to impose a comparable fee on all new residential construction within the Town.

3. The Town will work with the District, the other general purpose governments, and the development community, to diligently pursue the enactment of State enabling legislation to permit the imposition of a County-wide impact fee or, in the absence of such authorization, to pursue other options to equitably address the issue.

PASSED AND RESOLVED by the Board of Trustees of the Town of Castle Rock, Colorado, this ____ day of September, 1984, by a vote of ____ for and ____ against.

_____
George J. Kennedy, Mayor

ATTEST:

_____
Town Clerk

Information from joint
Town Board/School Board
Meeting on June 28, 1984

DEVELOPMENT PROCESS

School District Input

Comparison of County Jurisdiction

1. CASTLE ROCK: Development plan and staff report submitted to district for review, usually prior to the sketch plat. Annexation contracts and petitions acquired in the informational packet prior to Town Board meetings. School district hasn't been asked to formally respond regarding impact. In most cases, formal response is asked for after annexation is approved.

2. DOUGLAS COUNTY: Rezoning request corresponds to Town's process of annexation and zoning. County refers all rezonings to the school district for the evaluation of project impact and request for land or cash. The subsequent referral letter is submitted prior to any formal action by either the Planning Commission or County Commissioners.

3. PARKER: Annexation and rezoning process is the same as Castle Rock, with these two actions taking place at the same time. Parker refers the annexation documents and rezoning plat to the district for review and comment. Impacts are addressed prior to any formal action by the Planning Commission or Town Board. Annexation contract ties down provisions for schools in land or fees.

4. LARKSPUR: No ongoing rezoning or annexation activity.

RECOMMENDATION: The school district would suggest that the Town require a formal referral to all impacted agencies prior to sketch plan review by the Planning Commission and Town Board. In this manner, all concerns and problems would be resolved prior to annexation and zoning.

PROVISIONS FOR SCHOOLS

CASTLE ROCK: Present policy permits the district to request land or cash-in-lieu. The Town will provide land or cash-in-lieu, after prioritization of all community needs. The prioritization process is to include all entities requesting land or cash. There is no guarantee that the school district will receive land or cash from each project. School development fees are not collected from new annexations.

DOUGLAS COUNTY: The County accepts and uses the District's standard impact formula. Land computed as a result is set aside at zoning for schools. If the parcel is too small or not needed, the district receives cash-in-lieu of the land. The district is quaranteed land or cash-in-lieu of land to mitigate the impacts detailed by the district. Development fees cannot be collected because of present statutory limitations.

PARKER: Parker accepts and uses the district standard impact formula. Land is set aside at zoning for schools. Any cash-in-lieu settlement is incorporated into the development fee. A separate school development fee is computed and made part of the annexation agreement. Monies collected are to be used for facility construction in the attendance areas of each development.

LARKSPUR: No development activity at present.

RECOMMENDATION: The school district supports the common usage of an "impact formula," whereby land needs and/or cash-in-lieu of lands are provided to the district. The dedication is based upon the potential number of students that a proposal may generate to our schools. Further, a "school development fee", payable at certificate of occupancy, would provide valuable funds for school facility construction. The fee mechanism would be a binding part of a development annexation contract.

tabled to 1/3/84

RESOLUTION 83-6

A RESOLUTION CONCERNING SCHOOL FINANCING

WHEREAS, the Board of Trustees of the Town of Castle Rock is aware of the fiscal problem currently facing Douglas County School District RE-1 (the "District"); and

WHEREAS, the Board of Trustees has conducted joint meetings with the District to inquire into the causes and possible solutions to such problem; and

WHEREAS, the Board of Douglas County School District RE-1 and certain area real estate developers (the "development community") have pledged their cooperation in an effort to identify and implement solutions to the problem; and

WHEREAS, the Board of Trustees of the Town of Castle Rock, the Board of Douglas County School District RE-1 and the development community are all committed to an adequately financed system of public schools.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF CASTLE ROCK as follows:

That the Town staff is hereby directed to cooperate fully with representatives of the District, the County of Douglas, all other municipalities within the school district and the development community in the exploration of possible solutions to the fiscal problem currently facing Douglas County School District RE-1.

That the Town staff is hereby directed to open discussions with all members of the development community as to renegotiation of existing agreements with the Town with the goal of incorporating within such agreements provisions addressing such fiscal problems.

That the Town staff is hereby directed to study and prepare recommendations for the Board of Trustees concerning the incorporation of provisions within the ordinances, regulations and policies of the Town of Castle Rock dealing with annexations and development which address such fiscal problems.

That the Town staff, following study and consultation with all interested parties and groups, is hereby directed to prepare and submit a report to the Board of Trustees detailing possible solutions to such fiscal problem specifically to include, but not to be limited to, recommendations as to what fees, charges, taxes or other financing methods might be utilized; the duration of such measures; the control and distribution of any funds accumulated; general restrictions as to the use of such funds; geographic restrictions as to the use of such funds; any exemptions from or credits against any fees or charges to be assessed; the time at which any fee or charge contemplated shall be due; and the method of determining the amount so due.

That the Town staff is directed to submit such recommendations to the Board of Trustees on or before January 1, 1984, for review of the Board of Trustees.

That in the interim before a final resolution of the school financing problem is achieved, the Town shall impose a fee in all subsequent annexation agreements to mitigate that development's impact on the schools. Such fee shall be equal to $800.00 per student generated, based on historical data supplied by the school district and shall be payable at time of issuance of the certificate of occupancy for each dwelling unit. Particulars regarding the use of monies generated by this fee shall be established in an intergovernmental agreement between the Town and the District. Any such fee or agreement shall be temporary

and shall be terminated following adoption of a comprehensive equitable solution to the problem of financing school construction.

That the Town will work with the District, the other general purpose governments and the development community to diligently pursue the enactment of State enabling legislation to permit the imposition of a county-wide resolution of the fiscal problem, or, in the absence of such authorization, to pursue other options to equitably address the problem.

PASSED AND RESOLVED by the Board of Trustees of the Town of Castle Rock this ____ day of _____, 1983, by a vote of ____ for and ____ against.

_____
Timothy L. White, Mayor
Town of Castle Rock

ATTEST:

_____
Florence Bush, Town Clerk

DOUGLAS COUNTY SCHOOL DISTRICT Re. 1

131 Wilcox Street | Castle Rock, Colorado 80104 | (303) 688-3195

Dr. Richard O'Connell
Superintendent

November 14, 1983

Mr. Joe Knopinski, Administrator
Town of Castle Rock
318 4th Street
Castle Rock, CO 80104

RE: School/Town Policy - School Land Dedication

Dear Joe:

The District has a few concerns that we would like to bring to your attention regarding the school land dedication policy adopted in June. First, we have not been receiving formal referrals on many of the development applications as required by Policy #1. As such, we feel that we have not been able to make appropriate and timely comment regarding school impacts.

Secondly, with regard to Policy #5, the District and Town have not had meetings with developers regarding site locations or cash-in-lieu. We recognize that very few potential annexation/rezoning applications have been brought to the Town of late, but in the future we wish to be involved in front of sketch plan review by Planning Commission or Town Council as in the case of Castle Highlands.

Lastly, and not specifically policy related, there appears to be much activity involving Castle Rock that we are unaware of. Rumors have been circulating as to new annexations of 6,000 to 10,000 acres of land by next April. Obviously, this magnitude of change would pose serious questions and concerns for us that we need to address well in advance of Town review. Could you please provide us with an update as to new annexation possibilities i.e., Sanford Homes, Bob Metzler's property and, CDR Tech Track and any others?

In summary, we would ask that our combined lines of communication be strengthened. Further, it is important to us to maintain the school land dedication policy wherever possible. Your assistnace with these items is appreciated.

Yours very truly,

Bill

William P. Reimer
Director of Auxiliary Services

cc - Mike Vermillion
Paul Mannino

Memorandum

TO: Mayor and Town Board
FROM: Joe Knopinski, Town Administrator J.K.
DATE: November 18, 1983
SUBJ: School Financing Resolution

Resolution 83-6 has been revised to reflect changes requested by Mayor White. The specific changes include the direction to Town staff to negotiate with all members of the development community to attempt to include school development fees in their annexation and/or development agreements.

Another change is that the Town will work with the District and other general purpose governments and the development community to pursue State legislation to permit across-the-board school development fees to be levied.

These two changes were requested by the school district and are included in the revised draft.

The other substantive change in the resolution is the inclusion of language stating that the Town shall impose a school development fee in all annexation agreements approved prior to a full resolution of the school financing problem. The fee is stipulated to equal $800 per student generated, which is approximately $800 per single family detached residence, decreasing to a fee of $240 on condos and apartments. The particulars regarding distribution and use of such monies raised from the fee is left to a proposed intergovernmental agreement between the School District and the Town.

The remainder of the resolution is unchanged from the original draft.

Memorandum

TO: Mayor and Town Board
FROM: Joe Knopinski, Town Administrator JK.
DATE: October 28, 1983
SUBJ: School Financing Resolution

The resolution attached is the original resolution drafted with respect to school financing. Tim and I have not yet had a chance to sit down and make revisions to this resolution to his satisfaction, but we will do so prior to Tuesday night's meeting and will bring a revised draft of this resolution to the Board.

Comments by the school district are attached hereto and will be considered in the redoing of this resolution.

Attach.

DOUGLAS COUNTY SCHOOL DISTRICT Re. 1

131 Wilcox Street Castle Rock, Colorado 80104 [303] 688-3195

Dr. Richard O'Connell
Superintendent

October 10, 1983

Mayor Timothy White
44 Oak Ridge Drive
Castle Rock, Colorado 80104

A RESOLUTION CONCERNING SCHOOL FINANCING

In general, we agree with the position taken by the Town Council in their resolution addressing school finance and development fees. However, in our opinion, there are points that may require clarification or stronger language. These points are as follows:

(1) Paragraph 7, Page 1 The District would like to see the Town staff directed to open discussions with all members of the development community instead of just interested members. Discussion should ensue with all developers even though successful negotiations may not result.

(2) Paragraph 4, Page 2 The District has continued to pursue enabling school development fee legislation. We need help from developers as well as county and municipal officials to mount an effective lobby with the legislature. Therefore, the language should be broader to include all parties.

(3) New annexations are not mentioned. These developers should be a party to discussions that will ultimately affect them.

Tim, I'd be interested in your opinion of these suggestions.

Mike

J. Michael Vermillion
Assistant Superintendent

lh

RESOLUTION 83-6

A RESOLUTION CONCERNING SCHOOL FINANCING

WHEREAS, the Board of Trustees of the Town of Castle Rock is aware of the fiscal problem currently facing Douglas County School District RE-1 (the "District"); and

WHEREAS, the Board of Trustees has conducted joint meetings with the District to inquire into the causes and possible solutions to such problem; and

WHEREAS, the Board of Douglas County School District RE-1 and certain area real estate developers (the "development community") have pledged their cooperation in an effort to identify and implement solutions to the problem; and

WHEREAS, the Board of Trustees of the Town of Castle Rock, the Board of Douglas County School District RE-1 and the development community are all committed to an adequately financed system of public schools.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF CASTLE ROCK as follows:

That the Town staff is hereby directed to cooperate fully with representatives of the District, the County of Douglas, all other municipalities within the school district and the development community in the exploration of all possible solutions to the fiscal problem currently facing Douglas County School District RE-1.

That the Town staff is hereby directed to open discussions with interested members of the development community as to renegotiation of existing agreements with the Town with the goal of incorporating within such agreements provisions addressing such fiscal problems.

That the Town staff is hereby directed to study and prepare recommendations for the Board of Trustees concerning the incorporation of provisions within the ordinances, regulations and policies of the Town of Castle Rock dealing with annexations which address such fiscal problems.

That the Town staff, following study and consultation with all interested parties and groups, is hereby directed to prepare and submit a report to the Board of Trustees detailing all possible solutions to such fiscal problem specifically to include, but not to be limited to, recommendations as to what fees, charges, taxes or other financing methods might be utilized; the duration of such measures; the control and distribution of any funds accumulated; general restrictions as to the use of such funds; geographic restrictions as to the use of such funds; any exemptions from or credits against any fees or charges to be assessed; the time at which any fee or charge contemplated shall be due; and the method of determining the amount so due.

That the Town staff is directed to submit such recommendations to the Board of Trustees on or before January 1, 1984, for review of the Board of Trustees.

That the District is requested to diligently pursue the enactment of State enabling legislation to permit the imposition of a county-wide resolution of the fiscal problem, or, in the absence of such authorization, to pursue other options to equitably address the problem.

PASSED AND RESOLVED by the Board of Trustees of the Town of Castle Rock this 4th day of October, 1983, by a vote of ____ for and ____ against.

Timothy L. White, Mayor
Town of Castle Rock

ATTEST:

Florence Bush, Town Clerk

MEMORANDUM TO COUNCIL FROM TOWN ATTORNEY
September 16, 1983

METHODS OF ASSESSING SCHOOL FEES

A. Flat fee based upon density of residential area wherein unit is located; ie..

density 0 - 3.5 .....$600/unit
3.5 - 6.5 .....$500/unit
6.5 - 10.0.....$425/unit

etc. etc. etc.

Pros: This appears to relate to school district's analysis of where the child generation is located.
The administrative determination, calculation and collection of this fee would be relatively easy.

Cons: If the basis of the fee is to collect funds from deferred taxes, this basis is inequitable; ie, a $60,000 residence next to a $100,000 residence pay the same fee, whereas the taxes would be substantially different.
The fee is generally applied rather than specifically which precludes analysis of individual units.

B. Flat fee based upon number of bedrooms in a unit; ie:

1 bedroom.....$300
each additional bedroom.....$150

Pros: Still relatively easy to calculate & collect.
Number of bedrooms may be a closer indication of potential child generation.

Cons: Bedrooms may be disguised on plans as offices, dens, family rooms, etc., or even deleted to be added on later. Some maintain 3 - 4 children per bedroom and others only 1 child per bedroom. Administrative guidelines would be necessary for unfinished areas and obvious dual-use rooms.

C. Fee based upon square footage of unit; ie:

35 cents per square foot, or, $350 per 1,000 square feet

Pros: Generally, both family size and tax assessment bear some ratio to area of living space and this method may strike the happy medium.

Cons: The calculation becomes more difficult and guidelines need to be implemented to determine includible and non-includible space.
This method bears no direct ratio to child generation or taxes.

D. Fee based upon sales price; ie: $ .75 per $100.00

Pros: Exact same basis as taxes; therefore, amount bears direct ratio to lost tax revenues.
Relatively easy to administratively determine and collect.

Cons: Density and child generation issues have no validity in the calculation on this basis. Perpetuates inequities in tax structure if there are any.

MEMORANDUM TO COUNCIL FROM TOWN ATTORNEY
September 16, 1983

METHODS OF ASSESSING SCHOOL FEES

A. Flat fee based upon density of residential area wherein unit is located; ie..

density 0 - 3.5 .....$600/unit
3.5 - 6.5 .....$500/unit
6.5 - 10.0.....$425/unit

etc. etc. etc.

Pros: This appears to relate to school district's analysis of where the child generation is located.
The administrative determination, calculation and collection of this fee would be relatively easy.

Cons: If the basis of the fee is to collect funds from deferred taxes, this basis is inequitable; ie, a $60,000 residence next to a $100,000 residence pay the same fee, whereas the taxes would be substantially different.
The fee is generally applied rather than specifically which precludes analysis of individual units.

B. Flat fee based upon number of bedrooms in a unit; ie:

1 bedroom.....$300
each additional bedroom.....$150

Pros: Still relatively easy to calculate & collect.
Number of bedrooms may be a closer indication of potential child generation.

Cons: Bedrooms may be disguised on plans as offices, dens, family rooms, etc., or even deleted to be added on later. Some maintain 3 - 4 children per bedroom and others only 1 child per bedroom.
Administrative guidelines would be necessary for unfinished areas and obvious dual-use rooms.

C. Fee based upon square footage of unit; ie:

35 cents per square foot, or, $350 per 1,000 square feet

Pros: Generally, both family size and tax assessment bear some ratio to area of living space and this method may strike the happy medium.

Cons: The calculation becomes more difficult and guidelines need to be implemented to determine includible and non-includible space.
This method bears no direct ratio to child generation or taxes.

D. Fee based upon sales price; ie: $ .75 per $100.00

Pros: Exact same basis as taxes; therefore, amount bears direct ratio to lost tax revenues.
Relatively easy to administratively determine and collect.

Cons: Density and child generation issues have no validity in the calculation on this basis. Perpetuates inequities in tax structure if there are any.

STUDENT GENERATION PROJECTIONS FOR YOUNG/AMERICAN PUD

DATE: July 21, 1983

Density by (DU/AC)	No. of DUs	GRADES K-6 Student Generation Rate	K-6 No. of Students	7-9 Student Generation Rate	7-9 No. of Students	10-12 Student Generation Rate	10-12 No. of Students	Total No. of Students Generated per Household	Total No. of Students
Residential A	96	.52	50	.24	23	.24	23	1.0	96
" B	443	.47	208	.22	97	.21	93	,9	399
" C	33	.26	10	.12	4	.12	4	.5	17
" D	304	.13	40	.06	18	.06	18	.25	76
" E	109	.05	5	.02	3	.02	3	.10	11
" F	212	.03	6	.01	2	.01	3	.05	11
Total DUs	1,197								
Total Students		17	319	7	147	7	144		610
Total Schools									
Average No. of Students Generated per Household									.51

FACILITIES REQUIREMENT PROJECTION

_____ Elementary Students Generated ÷ 600 Students per Building = _____ Schools
_____ J.H.S. " " ÷ 1200 " " " = _____ "
_____ S.H.S. " " ÷ 1500 " " " = _____ "

LAND REQUIREMENT PROJECTION

319 Elementary Students Generated x .017 Acres per Student = 5.42 Acres
147 J.H.S. " " x .021 " " " = 3.09 "
144 S.H.S. " " x .027 " " " = 3.89 "

Total 12.40

DOUGLAS COUNTY SCHOOLS
PLANNING & FACILITIES

BOND REDEMPTION FUND
Financial Impact of Developments

Year	Estimated Assessed Valuation	Projected Mill Levy	Revenues			Expenditures - Principal and Interest		
			Property Tax	Other 1/	Total	Present Debt	New Debt 2/	Total
1984	202,404,500	14.00	2,833,663	468,610	3,302,273	3,302,273	--	3,302,273
1985	215,118,864	17.00	3,657,020	413,128	4,070,148	2,990,148	1,080,000	4,070,148
1986	229,633,316	17.50	4,018,583	413,565	4,432,148	2,992,148	1,440,000	4,432,148
1987	245,946,098	18.23	4,483,192	525,656	5,008,848	2,993,848	2,015,000	5,008,848
1988	263,493,833	18.33	4,829,842	962,256	5,792,098	2,988,348	2,803,750	5,792,098
1989	282,975,695	21.45	6,070,424	364,164	6,434,588	3,088,588	3,346,000	6,434,588
1990	303,283,737	21.32	6,466,375	325,000	6,791,375	3,370,275	3,421,100	6,791,375
1991	323,650,944	20.22	6,544,925	325,000	6,869,925	3,370,425	3,499,500	6,869,925
1992	345,810,907	18.94	6,550,780	325,000	6,875,780	3,380,930	3,494,850	6,875,780
1993	369,678,753	17.74	6,556,523	325,000	6,881,523	3,378,073	3,503,450	6,881,523

1/ Includes Specific Ownership, Interest Income and Balances on Hand

2/ New Debt Issued

1984	$ 12,000,000
1985	4,000,000
1986	5,000,000
1987	5,000,000
1988	5,000,000
	$ 31,000,000

9/13/83
JMV

DOUGLAS COUNTY SCHOOL DISTRICT Re. 1

PROPOSED DWELLING UNITS CONSTRUCTED

ATTENDANCE CENTER SUBDIVISION	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	
Acres Green Elem.	-	-	-	-	-	-	-	-	-	-	-	
Lone Tree	510	320	300	293	155	-	-	-	-	-	-	
Park Meadows	100	100	100	100	-	-	-	-	-	-	-	
Castle Rock Elem.	46	46	-	-	-	-	-	-	-	-	-	
Castle Pines	72	72	72	72	72	144	144	144	288	426	426	
Units on H.S. Road	96	-	-	-	-	-	-	-	-	-	-	
Cherry Valley Elem.	4	4	4	4	4	4	4	4	4	4	4	
Franktown Elem.	35	35	35	35	35	35	35	35	35	35	35	
Larkspur Elem.	40	40	40	40	40	40	40	40	40	40	40	
Northeast-Mountain View (Pinery included)	100	100	100	100	100	100	100	100	100	100	100	
Stroh Ranch	-	330	330	350	490	510	430	590	510	800	570	
Northridge Elem. (Highlands Ranch)	271	383	642	790	1055	1057	1029	1037	1170	1038	1038	
Pine Lane Elem.	50	50	50	50	50	50	50	50	-	-	-	
Cottonwood	210	255	337	271	93	165	-	-	-	-	-	
Stonegate	-	260	243	239	285	304	295	296	296	282	-	
Plum Creek Elem.	30	30	30	30	30	30	30	30	30	30	30	
Sedalia Elem.	15	15	15	15	15	15	15	15	15	15	15	
South St. Elem.	25	25	25	25	25	25	25	25	25	25	25	
Plum Creek	-	70	70	140	140	140	275	275	275	410	410	
Castle Creek Commons, B.W. Squared and Sellars Landing	264	-	-	-	-	-	-	-	-	-	-	
TOTAL	1868	2135	2392	2554	2589	2619	2472	2641	2788	3205	2693	= 27,956
50% of Total	934	1068	1197	1277	1295	1310	1236	1321	1394	1603	1347	= 13,982

SCHOOL FACILITIES REQUIREMENT FORECAST
(50% Developers' Projections)
DOUGLAS COUNTY SCHOOLS Re. 1

Year	Elem. Schools Required	Projected Cost of Facilities	Jr. High Schools Required	Projected Cost of Facilities	Sr. High Schools Required	Projected Cost of Facilities	Annual Cost	Cumulative Additional Debt (Prin. only)	*Legal Debt Margin	Difference Debt Margin Greater(less) than Cumulative Debt
1984									26,276,125	26,276,125
1985			1	**12,130,560			12,130,560	12,130,560	30,479,716	18,349,156
1986	1	**4,408,992					4,408,992	16,539,552	34,908,329	18,368,777
1987	1	4,761,712					4,761,712	21,301,264	39,856,525	18,555,261
1988	1	5,142,649					5,142,649	26,443,913	45,193,458	18,749,545
1989	1	5,554,061					5,554,061	31,997,974	51,093,924	19,095,950
1990	1	5,998,386	1	17,823,772	1	**28,380,930	52,203,088	84,201,062	57,395,934	(26,805,128)
1991	1	6,478,257					6,478,257	90,679,319	64,107,736	(26,571,583)
1992	1	6,996,518					6,996,518	97,675,837	71,417,726	(26,258,111)
1993	1	7,556,239	1	22,452,820			30,009,059	127,684,896	79,329,688	(48,355,208)

* Legal Debt Margin = 25% of Assessed Valuation minus Current Outstanding Debt

** Assumption - 8% annual inflation rate

The following developments are in the conceptual stage and are not included in the projections for additional facilities:

Development	Total Number of Units
Douglas Park	3,545
Hughes Ranch	1,223
Rampart Range	9,575
Sterling Ranch	3,450
Villages of Castle Rock	19,258
Scott Ranch	1,569
Rampart Station	1,197
Young/American	1,197
TOTAL	41,014

Current Building Costs

Elementary	-	$ 3,500,000
Junior High	-	10,400,000
Senior High	-	16,560,000

JMV
9/12/83

Art IX

1. Area of statewide concern – therefor statutes preclude local ordinances

Flormon v School Dist No 11 40 P 469 (1895)

2. School District is subdivision of state

Haglet v. Gaunt 250 P 2d 188 (1952)

3. School funds or land can't be given to municipality

4. Art X, Sec 3. tax to be uniform throughout district levying the ~~tax~~.

5 CRS 31-20-101 et seq in part CRS 31-20-402

consider constitutional issues

Margaret Maker
Legislative Drafting

Lone Pine Corp v Ft. Lupton, 653 P2d 405

June 7, 1983

DRAFT POLICY

SCHOOL LAND DEDICATION

GOAL: The Mayor and Town Board of Trustees recognize the supreme importance of educational systems in a developing community. This recognition is manifested in a committment to provide for necessary and sufficient land or equivalent cash for school and other related educational purposes at all levels; primary, secondary and higher education.

POLICIES:

1. The Town will provide the District with ample opportunity to review development proposals and make requests to mitigate the District's needs generated by those developments. The Town will consider prioritized alternative requests if the District desires.

2. The Town will provide land or cash-in-lieu for school purposes based on prioritization of community needs for dedicated land. Town will allow the District and all other entities requesting land or cash-in-lieu to participate in the prioritization process.

3. In those developments in which the land provided is not sufficient to produce a minimum size school site or if the generation of students (utilizing District figures) is not sufficient to warrant a school site, then the Town will pass through cash-in-lieu of land to the District.

   Cash-in-lieu will be based on equivalent land needed (district calculations) from the development. Value will be determined by the Town based on the undeveloped municipally zoned value of the average acreage within the development. In no event will the cash-in-lieu amount transferred to the District exceed the total granted to the Town by the developer.

4. The Town will enact a school development fee, to be paid at time of issuance of C.O., in the approximate amount of $400-$500 per single family detached residence with a decreasing scale for other types of dwelling units based on student generation rates supplied by the District. This fee will apply to all dwelling units not yet under construction

(excluding any commercial or industrial) and monies collected will be turned over to the District for any capital outlay use within the attendance area of any school serving students from the Town of Castle Rock.

5. The Town of Castle Rock shall coordinate negotiations between the District and developers for school site locations, alternatively, cash-in-lieu or other alternate requests.

6. Title to property or cash-in-lieu designated for school purposes shall be held by the Town until a specific project is proposed. At that time, title or cash-in-lieu will be turned over to the school district.

7. The Town supports the concept of a public/private supported State Institute of Technology as envisioned by the Governor and the General Assembly. The Town enthusiastically urges the State to consider Castle Rock as a location for the Institute and committs its resources to work with area developers and other interested parties to secure an appropriate site and other considerations for the Institute.

8. This policy shall be in effect until and unless modified by Board of Trustees action.

DOUGLAS COUNTY SCHOOL DISTRICT Re. 1

131 Wilcox Street Castle Rock, Colorado 80104 [303] 688-3195

Dr. Richard O'Connell
Superintendent

June 10, 1983

Bruce Lassman
25 South Wilcox
Castle Rock, Colorado 80104

MATERIALS FOR YOUR REVIEW

Bruce, attached are copies of the materials Dick Bump asked that I get to you.

J. Michael Vermillion
Assistant Superintendent

JMV/lh

Attachment

GERALD A. CAPLAN
G. LANE EARNEST
LYNN KUYKENDALL
RICHARD E. BUMP
ALEXANDER HALPERN
LYNN DAVID BIRD
WILLIAM J. KOWALSKI
JOSEPH J. BARNOSKY

CAPLAN AND EARNEST
ATTORNEYS AT LAW
SUITE 300, COURT SQUARE BUILDING
1301 SPRUCE STREET
BOULDER, COLORADO 80302

TELEPHONE
(303) 443-8010

MEMORANDUM

TO: Members of the Committee to Study the Effects of County Growth on Schools

FROM: Dick Bump

DATE: April 20, 1983

RE: Existing Statutes Affecting the Provision of School Lands and Facilities

Set forth below is a general outline of school district and county statutes specifically affecting those entities' power and authority to provide school sites and structures. Also listed are concepts which can be utilized by municipalities to assist in offsetting the impact of development on schools. Many of the sections have been assembled into the attached Appendix 1 for your reference. All citations are to sections within the Colorado Revised Statutes, 1973 as amended.

A. SCHOOL DISTRICT STATUTES.

1. Section 22-32-109(1)(n). The board of education has a duty to establish the length of time during which its schools shall be in session each year. This shall be a minimum of 172 days. However, the board has the power to establish pilot or alternative year programs modifying the traditional year in order, for example, to increase the utilization of school facilities or to conserve energy. See also, Section 22-50-103(2).

2. Section 22-32-110(1). This section of the statutes lists many of the board of education's specific powers. With respect to providing school facilities, the board has the authority to (a) take and hold real property both within and outside the district boundaries; (b) purchase, lease or rent real property for school purposes; (e) sell or convey school property not needed within the foreseeable future; (f) rent or lease district property for

terms not exceeding 3 years; (l) determine which schools within the district will be operated; (m) fix each school's attendance boundaries; and (y) accept gifts, donations and grants.

3. Section 22-32-111. The school district has the power to take by eminent domain so much real property as the board may deem necessary for school purposes.

4. Section 22-32-112. The board of education has the power to lease any real property of the district or any interest therein for oil and gas exploration, development and production.

5. Section 22-32-118. The board of education may provide for summer school, continuation and evening programs.

6. Section 22-32-122(1). A school district may contract with other entities for any service or undertaking which the district itself could perform. This includes the "purchase (outright or by installment sale) or renting or leasing, with or without an option to purchase, of necessary building facilities...."

7. Section 22-32-124(1). The board of education may determine the location of school facilities within the district and erect necessary structures without a permit or fee, notwithstanding any authority of a city, county or town. However, the board must first consult with the applicable planning commission in order that the proposed facility shall conform to the adopted plan of the community insofar as is feasible.

8. Section 22-32-127. A school district may enter into installment purchase agreements or leases with an option to purchase for terms exceeding 1 year. However, such agreements shall constitute a general indebtedness of the district and require advance approval by the voters unless the obligation to make payments thereunder is expressly subject to the making of annual appropriations in accordance with law.

9. Section 22-41-109. The public school fund consists of the proceeds of the sale or leasing of such lands as have been granted to the state by the federal government and others for educational purposes. Only the interest on the fund may be distributed to the school districts throughout the state. The state board of land commissioners is authorized to contract with a school district to guarantee the district's payment of its school bonds.

10. Sections 22-42-101 et seq. The school district is authorized to issue general obligation bonds up to a total limit of bonded indebtedness of 20% of the latest valuation for assessment of the taxable property in the district. Section 22-42-104(1)(a).

11. Sections 22-43-101 et seq. A school district is authorized to issue negotiable coupon refunding bonds for the purpose of refunding any of the bonded indebtedness of the district. If the net effective interest rate and net interest cost of the issue of refunding bonds shall not exceed the net effective interest rate and the net interest cost of the outstanding bonds to be refunded, then no election is required. Section 22-43-103(1).

12. Section 22-45-103. There are three major funds created for school districts the moneys of which may only be expended for purposes specified by statute. These are the general fund, bond redemption fund and capital reserve fund. Money from all three funds may be used for school facilities, with certain limitations. Portions of the capital reserve fund can be committed for up to 5 years for specific contracts, provided the voters approve of such a term. Proceeds from the sale of school district assets must be credited to either the bond redemption or capital reserve fund. Section 22-45-112.

B. COUNTY STATUTES.

1. Section 30-28-133. Counties are authorized to adopt subdivision regulations which provide for, among other things, the dedication of land for school sites or, in lieu

thereof, the "payment of a sum of money not exceeding the full market value of such sites and land areas."

2. Section 30-28-136. Counties may require that all proposed subdivisions be referred to each entity potentially affected by the development, including school districts. School districts are required to respond to such referrals with recommendations as to the adequacy of school sites and structures.

3. Sections 29-20-101 et seq. Broad authority for intergovernmental cooperation in land use matters is granted by the "Local Government Land Use Control Enabling Act of 1974."

C. MUNICIPALITIES.

Municipalities in Colorado, and in particular home rule cities, have broad discretion in matters of annexation and can impose requirements of many types upon developers, including provisions for mitigating impact on schools. See, e.g., Lone Pine Corp. v. City of Fort Lupton, ____ Colo. App. ____, 653 P.2d 405 (1982).

Cities can adopt ordinances which establish a system for the payment of development fees, to include school and park sites. See, e.g., P-W Investments Inc. v. City of Westminster, Vol. VI, The Brief Times Reporter (Decided December 20, 1982).

Cities may also enact an ordinance authorizing the assessment of a transfer tax upon the sale of real property. See, e.g., Sections 3.48.010 et seq., VAIL MUNICIPAL CODE.

APPENDIX 1

4/20/83
Bump Memo

22-32-109. Board of education - specific duties. (1) (n) To determine, prior to the end of a school year, the length of time during which the schools of the district shall be in session during the next following school year, but in no event shall said schools be in session for less than one hundred seventy-two days during such following school year or for a specified number of days in a pilot or established alternative year program which has been approved by the state board of education under section 22-50-103 (2); except that a school or schools may be in session for less than one hundred seventy-two days if the state board of education, at the request of a local board of education, finds a lesser number of days to be necessary due to energy problems and that the rescheduling of lost days is impractical.

22-50-103. District eligibility. (1) A district to be eligible for state equalization program support under the provisions of this article for any budget year shall have elected to accept and become subject to the terms and conditions of this article, shall maintain a full twelve-grade program, and shall have scheduled one hundred eighty actual days of school during the regular school year, or the specified number of days in an established alternative year or pilot program which has been approved by the state board under subsection (2) of this section.

(2) The state board may approve pilot programs which are designed to evaluate the advantages and disadvantages of modifications in the traditional school calendar through increased use of school facilities or for energy conservation and which the state board finds to offer educational opportunities equivalent to those offered in a one hundred eighty-day school program. Any district which has a program previously approved by the state board as a pilot program for an alternative school year and which has successfully implemented such program for a period of three years may apply to the state board to have such program permanently established as an alternative school year program. Any district which operates or proposes to operate a pilot or established alternative year program shall specify in the application the minimum number of days of school and the comparable instructional time for which a pupil must be enrolled during any twelve-month period and, upon approval thereof by the state board, shall then be eligible for full state equalization support under the provisions of this article. The state board shall prescribe rules and regulations for the submission of proposals for pilot programs, the evaluation of such proposals, and other matters necessary for the administration of this subsection (2). Any school district implementing such an alternative school year program for the purpose of energy conservation shall submit to the department of education an annual evaluation of the program's energy savings and impacts on the educational process in accordance with the rules and regulations prescribed by the state board.

22-32-110. Board of education - specific powers. (1) (a) To take and hold in the name of the district so much real and personal property located within or outside the territorial limits of the district as may be reasonably necessary for any purpose authorized by law;

(b) To purchase on such terms, including but not limited to installment purchase plans, as the board sees fit and necessary or to lease or rent, with or without an option to purchase, undeveloped or improved real property located within or outside the territorial limits of the district on such terms as the board sees fit for use as school sites, buildings, or structures, or for any school purpose authorized by law; to determine the location of each school site, building, or structure; and to construct, erect; repair, alter, and remodel buildings and structures;

(e) To sell and convey district property which may not be needed within the foreseeable future for any purpose authorized by law, upon such terms and conditions as it may approve; and to lease any such property, pending sale thereof, under an agreement of lease, with or without an option to purchase the same. No finding that the property may not be needed within the foreseeable future shall be necessary if the property is sold and conveyed to a state agency or political subdivision of this state.

(f) To rent or lease district property not immediately needed for its purposes for terms not exceeding three years, and to permit the use of district property by community organizations upon such terms and conditions as it may approve;

(l) To determine which schools of the district shall be operated and maintained;

(m) To fix the attendance boundaries of each school in the district;

(y) To accept gifts, donations, or grants of any kind made to the district, and to expend or use said gifts, donations, or grants in accordance with the conditions prescribed by the donor; but no gift, donation, or grant shall be accepted by the board if subject to any condition contrary to law;

22-32-118. Summer schools - continuation and evening programs. (1) During that period of the calendar year not embraced within the regular school term, a board of education may provide and conduct courses in subject matters normally included in the regular school program or in demand by the pupils of the district, may fix and collect a charge for attendance at such courses in an amount not to exceed the per capita cost of the operation thereof, and may give regular school credit for satisfactory completion by students of such courses, in the discretion of the board. Such courses or programs not conducted during the regular school term shall not for any purpose, other than school credit, be considered part of the regular school program.

(2) (a) A board of education may establish and maintain continuation programs, part-time programs, evening programs, vocational programs, programs for aliens, and other opportunity programs and may pay for such programs out of the moneys of the school district or charge a fee or tuition. A board may also establish and maintain open-air schools, playgrounds, and museums and may pay for the same out of moneys of the school district.

(b) In addition to the authority granted to a board of education in paragraph (a) of this subsection (2), a board may establish and maintain community education programs in cooperation with any unit of local government, quasi-governmental agency, institution of higher education, or civic organization and may pay for such programs by a fee or tuition charged or out of moneys of the school district. Attendance in community education programs shall not be considered in computing attendance entitlement under article 50 of this title and articles 8 and 60 of title 23, C.R.S. 1973.

(c) For the purposes of this subsection (2), a "community education program" may be defined as a program which, while not interfering with the regular school program, may offer a composite of services to the citizens of its service area, including, but not limited to, year-round use of the facilities and personnel of the school for off-hours educational, cultural, recreational, and social enrichment activities for children, youth, and adults; family education and counseling, civic affairs meetings, and discussions; counseling for teenagers; community organization activities; senior citizen activities; cooperation with other social agencies and groups in improving community life; and other similar activities which provide educational, social, cultural, and recreational programs for children, youth, and adults. As used in this paragraph (c):

(I) "Senior citizen" means a person sixty years of age or older and includes the spouse of a senior citizen;

(II) "Senior citizen activity" includes, but is not limited to:

(A) Provision for the serving to senior citizens of the meals regularly served to students at regular mealtimes and at a price not to exceed the adult cost of the meal as determined by the board of education of the school district;

(B) Senior citizen volunteer programs in which senior citizens may assist in any or all aspects of school operation;

(C) Utilization of school facilities for senior citizens' social, educational, cultural, and recreational purposes.

(d) As a part of a community education program established pursuant to paragraphs (b) and (c) of this subsection (2), a board of education of a school district may establish and maintain preschool programs in connection with the schools of its district for the instruction of young children not yet eligible for kindergarten and may prescribe the educational activities and rules and regulations governing such programs. Said preschool programs shall provide opportunities for voluntary parental participation. Said preschool programs shall be a part of the public school system, and, notwithstanding the provisions of section 22-32-117 (2), the cost of establishing and maintaining them may be paid from tuitions or gifts, or from the general school fund, or from state or federal moneys available to school districts for qualifying preschool programs; but such preschool programs shall not be eligible for state equalization program support under article 50 of this title.

22-32-122. Contract services, equipment, and supplies. (1) Any school district has the power to contract with another district or with the governing body of a state college or university, with the tribal corporation of any Indian tribe or nation, with any federal agency or officer or any county, city, or city and county, or with any natural person, body corporate, or association for the performance of any service, activity, or undertaking which any school may be authorized by law to perform or undertake. Such contract shall set forth fully the purposes, powers, rights, obligations, and responsibilities, financial or otherwise, of the parties so contracting and shall provide that the service, activity, or undertaking be of comparable quality and meet the same requirements and standards as would be necessary if performed by the school district; but nothing in this subsection (1) shall apply to adult education programs or programs for the mentally retarded and for the seriously handicapped. A contract executed pursuant to this section may include, among other things, the purchase (outright or by installment sale) or renting or leasing, with or without an option to purchase, of necessary building facilities, equipment, supplies, and employee services. Any state or federal financial assistance which shall accrue to a contracting school district, if said district were to perform such service, activity, or undertaking individually, shall, if the state board finds the service, activity, or undertaking is of comparable quality and meets the same requirements and standards as would be necessary if performed by a school district, be apportioned by the state board of education on the basis of the contractual obligations and paid separately to each contracting school district in the manner prescribed by law; such finding of comparable quality and of meeting the same requirements and standards shall not be required in the case of adult education programs or programs for the mentally retarded and for the seriously handicapped.

(2) Nothing in this section shall be construed in a manner to authorize a school district to expend proceeds from the sale of general obligation or revenue bonds issued by said school district to procure or erect a school or other building beyond the territorial limits of the district except in accordance with the provisions of section 22-32-109 (1) (v).

22-32-124. Building codes - zoning - planning. (1) Notwithstanding any authority delegated to a county, town, city, or city and county, or a planning commission, the board of education of a school district may determine the location of public schools within the district and erect necessary buildings and structures without a permit or fee or compliance with a local building code; but prior to the acquisition of land for school building sites or the construction of buildings thereon, the board of education shall consult with the planning commission which has jurisdiction over the territory in which the site, building, or structure is proposed to be located relative to the location of such site, building, or structure in order that the proposed site, building, or structure shall conform to the adopted plan of the community insofar as is feasible. All buildings and structures shall be erected in conformity with the standards of the industrial commission of Colorado. A board shall advise the planning commission which has jurisdiction over the territory in which a site, building, or structure is proposed to be located, in writing, relative to the location of such site, building, or structure prior to the awarding of a contract for the purchase or the construction thereof.

22-32-127. Leases or installment purchases for periods exceeding one year. (1) (a) Whenever the term of an installment purchase agreement or a lease agreement with an option to purchase under which a school district becomes entitled to the use of undeveloped or improved real property for a school site, building, or structure is greater than one year, the obligation to make payments under the agreement shall constitute an indebtedness of the district.

(b) Under any installment purchase agreement or under any lease or rental agreement, with or without the option to purchase, or similar agreement pursuant to which the subject property is used by the school district for school district purposes, title shall be considered to have passed to the school district at the time of execution of the agreement for purposes of determining liability for or exemption from property taxation.

(2) No board of education shall enter into an installment purchase agreement of the type which constitutes an indebtedness unless such agreement shall be first approved as provided in this section by a majority of the registered qualified electors of the district voting at an election held pursuant to this section. The board of education may submit to the registered qualified electors of the district the question of entering into such an agreement at any general election, regular biennial school election, or special election called for the purpose. The secretary of the board of education shall give notice of an election to be held pursuant to this section in essentially the same manner and for the same length of time as is required by law for a notice of election of school directors. Such notice shall contain, to the extent applicable, the information required for a notice of election of school directors and in addition shall contain a statement of the maximum term of the proposed agreement, the maximum and periodic amounts of payments for which the district would be obligated, and the purpose of the agreement.

(3) The manner and place of conducting elections held pursuant to this section, and all other election procedures relating thereto, shall be as provided by law for the approval of contracting a bonded indebtedness of the district.

(4) The amount of any indebtedness incurred by a school district by means of installment purchase agreements having terms of more than one year shall be subject to the limitation imposed by law on the amount of bonded indebtedness which may be incurred by a school district.

(5) The question of entering into an agreement of the type which constitutes an indebtedness of the district beyond a term of one year may be submitted or resubmitted after the same or any other such question has previously been rejected at an election held pursuant to this section; but no such question shall be submitted or resubmitted at any election held less than one hundred twenty days after a previous submission of such question, and the board of education of any school district shall not submit any question of entering into such an agreement at more than two elections within any twelve-month period.

(6) The provisions of this section shall have no application to any installment purchase agreement, even though the term thereof may be greater than one year, where the school district's obligation to make payments under such installment purchase agreement is expressly subject to the making of annual appropriations therefor in accordance with law.

(7) The provisions of this section shall have no application to any installment purchase agreement or lease agreement with an option to purchase in which such payments are made from the capital reserve fund following approval in an election as provided for in section 22-45-103 (1) (c).

22-41-109. Bond guarantee loans. (1) The general assembly hereby finds that the school districts of this state are experiencing great need for improved school facilities; that although the issuance of school bonds can pave the way for improved facilities, such bonds must be marketable and their interest rate must be competitive in order to benefit the district; that if the risk assumed by school bond purchasers were diminished, interest rates would generally be reduced; and that the use of permanent school funds to guarantee payments of principal and interest, with appropriate safeguards for the public school fund, is consistent with the purpose for which the fund was created.

(2) The state board of land commissioners is authorized to contract with school districts in this state for the guarantee of payments of principal and interest on the district's bonds as such payments become due. A guarantee contract authorized by this section shall provide that the state board of land commissioners, when the school district is unable to make principal and interest payments on its bonds as such payments become due, shall loan public school permanent funds to the district in an amount necessary to meet such payments. A separate guarantee contract shall be made for each issue of bonds, and the term of the contract shall be the period during which any bond in such issue is outstanding.

(3) A guarantee contract made pursuant to this section shall provide for loans to the school district in the event that all of the following conditions exist:

(a) The school district is unable to make payments of principal and interest on its bonds as such payments become due from available revenues.

(b) A levy which meets the requirements of section 22-42-118 was made for the current fiscal year.

(c) The state board of education has found that the loan is necessary to provide the school district with sufficient classrooms or to rectify important facility deficiencies, and that the loan will not significantly inhibit future desirable consolidation of school districts.

(4) The board of education of a school district desiring to enter into a guarantee contract authorized by this section shall include, in the resolution submitting the question of issuing bonds to the registered qualified electors of the district, a statement that the school district intends to contract with the state board of land commissioners for the guarantee of principal and interest payments to the holders of such bonds. The resolution shall set forth, and any resulting guarantee contract shall provide, that the district will repay any loan of public school permanent funds, with interest as provided in subsection (5) of this section, within the fiscal year next following the fiscal year in which the loan was made, out of any available funds of the district or out of the proceeds of a levy on the taxable property of the district at a rate sufficient to produce the amount required to repay the loan. No guarantee contract shall be executed pursuant to this section unless the registered qualified electors of the school district have approved such provisions for the contract by their vote approving the issuance of bonds.

(5) Any guarantee contract authorized by this section shall include a provision requiring the payment of interest on loans made pursuant to the contract at the prevailing rate of interest being earned by investments of other public school permanent funds on the date the loan is made.

(6) In the event that any public school permanent funds are lost by reason of the failure of any school district to repay a loan made pursuant to this section, the general assembly shall restore such permanent funds by an appropriation in the amount of such loss from the general fund of the state.

22-42-104. Limit of bonded indebtedness. (1) (a) Each school district shall have a limit of bonded indebtedness of twenty percent of the latest valuation for assessment of the taxable property in such district, as certified by the assessor to the board of county commissioners. The indebtedness of the former districts or parts of districts, constituting any new district, shall not be considered in fixing the limit of such twenty percent; but, if any school district shall assume the bonded indebtedness of any district or districts, or a proportionate share thereof, existing at the time of inclusion in the assuming school district, pursuant to law, such bonded indebtedness shall be included in the twenty percent limitation.

22-43-103. Question of issuing refunding bonds. (1) Whenever the board of education of any school district deems it expedient to issue refunding bonds under the provisions of this article and the net effective interest rate and the net interest cost of said issue of refunding bonds shall not exceed the net effective interest rate and the net interest cost of the outstanding bonds to be refunded, such refunding bonds may be issued without the submission of the question of issuing the same at an election held in accordance with article 42 of this title. If two or more issues of outstanding bonds of a school district are to be refunded by the issuance of a single issue of refunding bonds, as provided in section 22-43-102 (5), the net interest cost and net effective interest rate on the bonds to be refunded shall be computed as if all of said bonds had originally been combined as a single issue aggregating the total of the smaller issues, and the results of this computation shall be compared with the net interest cost and net effective interest rate on the whole of the single refunding issue for purposes of determining the necessity of submitting the question of issuing such refunding bonds at an election held in accordance with article 42 of this title.

22-45-103. Funds. (1) The following funds are created for each school district for purposes specified in this article:

(a) General fund. All revenues except that revenue attributable to the bond redemption fund, the capital reserve fund, and any other fund authorized by the state board of education, as provided in subsection (2) of this section, shall be accounted for in the general fund. Any lawful expenditure of the school district, including any expenditure of a nature which could be made from any fund, may be made from the general fund. All expenditures from the general fund shall be recorded therein.

(b) (I) Bond redemption fund. The revenues from a tax levy for the purpose of satisfying bonded indebtedness obligations, both principal and interest, shall be recorded in the bond redemption fund. The bond redemption fund may include more than one subsidiary account for which a separate tax levy is made to satisfy the obligations of bonded indebtedness, including a separate tax levy to satisfy the obligations of bonded indebtedness incurred by a former school district. The revenues from each separate tax levy shall be held in trust for the purpose of satisfying the obligations of the bonded indebtedness for which the tax levy was made; except that revenues, if any, remaining to the credit of a separate subsidiary account after satisfaction of all such obligations of that subsidiary account may be transferred to another subsidiary account in the same fund.

(II) The revenues from a tax levy for the purpose of making payments for which the district is obligated under an installment purchase agreement or under a lease or rental agreement having a term of more than one year and for the purpose of obtaining the use of real property for school sites, buildings, or structures or for any school purpose authorized by law shall also be recorded in the bond redemption fund. Subsidiary accounts may be established if separate tax levies are made for different installment purchase agreements, or for different lease or rental agreements and the revenues in such accounts may be expended and treated in the same manner as revenues from a tax levy to satisfy bonded indebtedness obligations.

(c) (I) Capital reserve fund. The revenues from a tax levy for capital outlay purposes shall be recorded in the capital reserve fund. Such revenues may be supplemented by gifts, donations, and tuition receipts. Expenditures from the fund shall be limited to long-range future programs and shall be made only for the following purposes:

(A) Acquisition of land and construction of structures thereon, or acquisition of land with existing structures thereon and equipment and furnishings therein;

(B) Construction of additions to existing structures;

(C) Procurement of equipment for new buildings and additions to existing buildings and installation thereof;

(D) Alterations and improvements to existing structures where the total estimated cost of such projects for labor and materials is in excess of five thousand dollars;

(E) Acquisition of school buses or other equipment, the estimated unit cost of which, including any necessary installation, is in excess of twenty-five hundred dollars.

(F) Installment purchase agreements or lease agreements with an option to purchase for a period not to exceed five years under which a school district becomes entitled to the use of real property and related equipment for a school site, building, or structure.

(II) Expenditures from the fund, other than for installment purchase agreements with an option to purchase, as provided for in subparagraph (II.5) of this paragraph (c), shall be authorized by a resolution adopted by the board of education of a school district at any regular or special meeting of the board. The resolution shall specifically set forth the purpose of the expenditure, the estimated total cost of the project, the location of the structure to be constructed, added to, altered, or repaired, a description of any school buses or equipment to be purchased, and where such equipment will be installed.

(II.5) A board of education may enter into an installment purchase agreement or lease agreement with option to purchase for a period exceeding one year and not to exceed five years for expenditures from the fund if such agreement is first approved by a majority of the registered qualified electors of the district voting on the question at an election held pursuant to this subparagraph (II.5). The board of education may submit to the registered qualified electors of the district the question of whether to enter into such an agreement at any general election, regular biennial school election, or special election called for such purpose. The secretary of the board of education shall give notice of an election to be held pursuant to this subparagraph (II.5) in essentially the same manner and for the same length of time as is required by law for a notice of election of school directors. Such notice shall contain, to the extent applicable, the information required for a notice of election of school directors and, in addition, shall contain a statement of the maximum term of the proposed agreement, the maximum and periodic amounts of payments for which the district would be obligated, any options, and the purpose of the agreement. The manner and place of conducting such election and all other election procedures relating thereto shall be as provided by law for the approval of contracting a bonded indebtedness of the district. The amount of any expenditure from the fund for payments under an installment purchase agreement or lease agreement with option to purchase shall be included in and subject to the mill levy limitation imposed by law on the capital reserve fund pursuant to section 22-40-102. The question of whether to enter into an installment agreement or lease agreement with option to purchase may be submitted or resubmitted after the same, or after any other such question, has previously been rejected at an election held pursuant to this subparagraph (II.5), but no such question shall be submitted or resubmitted at any election held less than one hundred twenty days after a previous submission of such question, and the board of education of any school district shall not submit any question of entering into such an agreement at more than two elections within any twelve-month period. The board of education of a school district may enter into an installment purchase agreement or lease agreement with option to purchase for a term not to exceed five years for the purposes provided for in sub-subparagraph (F) of subparagraph (I) of this paragraph (c). Such an agreement when authorized by the election as provided in this subparagraph (II.5) shall be valid, binding, and enforceable between the parties to the agreement.

(III) Any balance remaining upon the completion of any authorized project may be encumbered for future projects which are authorized as provided in this paragraph (c).

(2) The state board of education may authorize by regulation additional funds not provided for in this section, together with proper accounting procedures for the same.

Section 30-28-133

(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;

(4) (a) (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. If such sites and land areas are dedicated to the county or the public, the board of county commissioners may, at the request of the affected entity, sell the land. Any such sums, when required, or moneys paid to the board of county commissioners from the sale of such dedicated sites and land areas shall be held by the board of county commissioners for the acquisition of reasonably necessary sites and land areas, for other capital outlay purposes, or for the development of said sites and land areas for park purposes.

(III) Dedication of such sites and land areas for the use and benefit of the owners and future owners in the proposed subdivision.

30-28-136. Referral and review requirements. (2). The agencies named in this section shall make recommendations within thirty-five days after the mailing by the county or its authorized representative of such plans unless a necessary extension of not more than thirty days has been consented to by the subdivider and the board of county commissioners of the county in which the subdivision area is located. The failure of any agency to respond within thirty-five days or within the period of an extension shall, for the purpose of the hearing on the plan, be deemed an approval of such plan; except that, where such plan involves twenty or more dwelling units, a school district shall be required to submit within said time limit specific recommendations with respect to the adequacy of school sites and the adequacy of school structures.

29-20-102. Legislative declaration. The general assembly hereby finds and declares that in order to provide for planned and orderly development within Colorado and a balancing of basic human needs of a changing population with legitimate environmental concerns, the policy of this state is to clarify and provide broad authority to local governments to plan for and regulate the use of land within their respective jurisdictions. Nothing in this article shall serve to diminish the planning functions of the state or the duties of the division of planning.

29-20-105. Intergovernmental cooperation. Without limiting or superseding any power or authority presently exercised or previously granted, local governments are authorized and encouraged to cooperate or contract with other units of government pursuant to part 2 of article 1 of this title for the purposes of planning or regulating the development of land, including but not limited to the joint exercise of planning, zoning, subdivision, building, and related regulations.

4/20/82
Bar
file. Douglas County

Revenue contains a copy of the "Findings, Conclusions, and Final Decision" of the Manager of Revenue by Milo E. Scram, Deputy Treasurer, "entered this 26th day of November, 1979...." However, the certification of the record in this case contains Milo Scram's affidavit, dated January 14, 1980, in which he avers that the "Findings, Conclusions, and Final Decision" of the Manager of Revenue were dated November 28, 1979. A determination of whether the final decision was rendered on November 26 or 28 is crucial to a determination of whether Sky Chefs' December 28 filing met the 30-day limitation for seeking review under C.R.C.P. 106(b). Because the record contains a conflict on this point, we remand the case to the district court for a determination of the date upon which the final decision of the Department of Revenue was made. If it was November 28, 1979, the district court has jurisdiction to consider Sky Chefs' petition.

Judgment reversed and case remanded to the district court with directions.

LEE and QUINN, JJ., do not participate.

LONE PINE CORPORATION, a Colorado corporation, Delbert L. Fast and Dieter Robert Kominski, Plaintiffs-Appellants,

v.

CITY OF FORT LUPTON, a Colorado municipal corporation, and Weld County School District Re-8, Defendants-Appellees.

No. 81CA0643.

Colorado Court of Appeals, Division III.

March 18, 1982.

Rehearing Denied April 15, 1982.

Certiorari Denied Nov. 1, 1982.

Land developers brought suit to declare void certain contractual provisions with a city under which the developers had agreed to pay the local school district to offset the impact of increased student enrollment from their real estate development. The District Court, Weld County, Robert Behrman, J., denied relief and developers appealed. The Court of Appeals, Sternberg, J., held that where real estate developers contracted with city that, in exchange for requested annexation and zoning actions, developers would make certain payments to school district to offset increased school enrollment, and school district relied upon those agreements and developers accepted benefits of city's actions, developers were estopped from asserting that contracts were ultra vires and waived their right to contest imposition of conditions contained in contracts.

Affirmed.

1. Estoppel ⇐78(1)

Estoppel is applicable where one party to contract changes its position in justifiable reliance on words or conduct of another.

2. Estoppel ⇐52.10(2)

Waiver is relinquishment of known right.

3. Estoppel ⇐78(6)

Where real estate developers contracted with city that, in exchange for requested annexation and zoning actions, developers would make certain payments to school district to offset increased school enrollment, and school district relied upon those agreements and developers accepted benefits of city's actions, developers were estopped from asserting that contracts were ultra vires and waived their right to contest imposition of conditions contained in contracts.

Shade, Doyle, Klein, Otis, Shaha & Frey, Richard N. Doyle, Greeley, for plaintiffs-appellants.

Daniel, McCain & Brown, Leonard H. McCain, Brighton, for defendant-appellee City of Ft. Lupton.

Gaunt, Dirrim & Coover, Lysle R. Dirrim, Brighton, for defendant-appellee Weld County School Dist. RE–8.

STERNBERG, Judge.

This appeal involves a suit by two land developers seeking to declare void contractual provisions with the defendant City of Fort Lupton by which they agreed to make payments to the defendant School District to offset the impact of increased school enrollments. The trial court denied relief, and we affirm.

In both instances the provision relating to payments was incorporated in the city's utility extension agreement with each developer. The first contract related to land located in the city and owned by plaintiff Lone Pine Corporation. In order to receive zoning and platting approval allowing for an increase of population densities, Lone Pine contracted to pay $20,000 to the school district.

The second contract related to land located outside of the city limits, owned by plaintiffs Fast and Kominski. In order to procure the city's annexation and zoning approval, these developers contracted to pay the school district $75 per lot, payable upon sale.

The record reflects that the city complied with all requirements contained in the utility extension agreement, but when the plaintiffs refused to pay the school district, the city refused to issue building permits. This suit followed.

The developers contend that the payment provisions were *ultra vires*, and created an illegal condition precedent to subdivision approval, zoning, and annexation of land. We do not reach this contention. Contrary to the developers' argument, both estoppel and waiver apply under the facts of this case.

[1, 2] Estoppel is applicable where one party to a contract changes its position in justifiable reliance on the words or conduct of another. *City of Colorado Springs v. Kitty Hawk Development Co.*, 154 Colo. 535, 392 P.2d 467 (1964); *City of Sheridan v. Keen*, 34 Colo.App. 228, 524 P.2d 1390 (1974). Waiver is the relinquishment of a known right. *Millage v. Spahn*, 115 Colo. 444, 175 P.2d 982 (1946); *Gulf Insurance Co. v. Colorado*, 43 Colo.App. 360, 607 P.2d 1016 (1979). And, in *Kitty Hawk, supra*, in commenting on the application of these doctrines notwithstanding a claim that the actions were *ultra vires*, the court stated:

> "Plaintiff asserts that the agreement between it and the City was *ultra vires*. Assuming, arguendo, that this is so, this is no help to the plaintiff since it is estopped to assert such fact, having received and retained the benefits conferred thereunder, and the contract being fully executed on the part of all parties."

[3] Here, the agreements between Lone Pine, Fast, Kominski, and the district were made in return for the district's promise to forego contesting the increase in population density. Because the district relied on the agreements, the developers are estopped to deny them. And, by assenting to the agreements and by accepting the benefits of the city's actions, the developers are estopped from asserting the contracts are *ultra vires*, and they have waived their right to contest the imposition of the conditions contained in the contracts.

Contrary to Lone Pine's contention, we see no reason not to apply the rationale of *Kitty Hawk, supra*, to a situation where the subject property is within the city limits and the property owners' promise to pay is given in return for zoning and platting approval. In *Kitty Hawk, supra*, the court noted that, "the equities do not lie with the plaintiff" in an annexation situation; similarly, the equities are not with plaintiff Lone Pine here. *See also Schlarb v. North Suburban Sanitation District*, 144 Colo. 590, 357 P.2d 647 (1960).

The judgment is affirmed.

KIRSHBAUM and TURSI, JJ., concur.

File: Douglas County

Revenue contains a copy of the "Findings, Conclusions, and Final Decision" of the Manager of Revenue by Milo E. Scram, Deputy Treasurer, "entered this 26th day of November, 1979...." However, the certification of the record in this case contains Milo Scram's affidavit, dated January 14, 1980, in which he avers that the "Findings, Conclusions, and Final Decision" of the Manager of Revenue were dated November 28, 1979. A determination of whether the final decision was rendered on November 26 or 28 is crucial to a determination of whether Sky Chefs' December 28 filing met the 30-day limitation for seeking review under C.R.C.P. 106(b). Because the record contains a conflict on this point, we remand the case to the district court for a determination of the date upon which the final decision of the Department of Revenue was made. If it was November 28, 1979, the district court has jurisdiction to consider Sky Chefs' petition.

Judgment reversed and case remanded to the district court with directions.

LEE and QUINN, JJ., do not participate.

WEST KEY NUMBER SYSTEM

LONE PINE CORPORATION, a Colorado corporation, Delbert L. Fast and Dieter Robert Kominski, Plaintiffs-Appellants,

v.

CITY OF FORT LUPTON, a Colorado municipal corporation, and Weld County School District Re-8, Defendants-Appellees.

No. 81CA0643.

Colorado Court of Appeals, Division III.

March 18, 1982.

Rehearing Denied April 15, 1982.

Certiorari Denied Nov. 1, 1982.

Land developers brought suit to declare void certain contractual provisions with a city under which the developers had agreed to pay the local school district to offset the impact of increased student enrollment from their real estate development. The District Court, Weld County, Robert Behrman, J., denied relief and developers appealed. The Court of Appeals, Sternberg, J., held that where real estate developers contracted with city that, in exchange for requested annexation and zoning actions, developers would make certain payments to school district to offset increased school enrollment, and school district relied upon those agreements and developers accepted benefits of city's actions, developers were estopped from asserting that contracts were ultra vires and waived their right to contest imposition of conditions contained in contracts.

Affirmed.

1. Estoppel ⇐78(1)

Estoppel is applicable where one party to contract changes its position in justifiable reliance on words or conduct of another.

2. Estoppel ⇐52.10(2)

Waiver is relinquishment of known right.

3. Estoppel ⇐78(6)

Where real estate developers contracted with city that, in exchange for requested annexation and zoning actions, developers would make certain payments to school district to offset increased school enrollment, and school district relied upon those agreements and developers accepted benefits of city's actions, developers were estopped from asserting that contracts were ultra vires and waived their right to contest imposition of conditions contained in contracts.

Shade, Doyle, Klein, Otis, Shaha & Frey, Richard N. Doyle, Greeley, for plaintiffs-appellants.

Daniel, McCain & Brown, Leonard H. McCain, Brighton, for defendant-appellee City of Ft. Lupton.

Gaunt, Dirrim & Coover, Lysle R. Dirrim, Brighton, for defendant-appellee Weld County School Dist. RE–8.

STERNBERG, Judge.

This appeal involves a suit by two land developers seeking to declare void contractual provisions with the defendant City of Fort Lupton by which they agreed to make payments to the defendant School District to offset the impact of increased school enrollments. The trial court denied relief, and we affirm.

In both instances the provision relating to payments was incorporated in the city's utility extension agreement with each developer. The first contract related to land located in the city and owned by plaintiff Lone Pine Corporation. In order to receive zoning and platting approval allowing for an increase of population densities, Lone Pine contracted to pay $20,000 to the school district.

The second contract related to land located outside of the city limits, owned by plaintiffs Fast and Kominski. In order to procure the city's annexation and zoning approval, these developers contracted to pay the school district $75 per lot, payable upon sale.

The record reflects that the city complied with all requirements contained in the utility extension agreement, but when the plaintiffs refused to pay the school district, the city refused to issue building permits. This suit followed.

The developers contend that the payment provisions were *ultra vires*, and created an illegal condition precedent to subdivision approval, zoning, and annexation of land. We do not reach this contention. Contrary to the developers' argument, both estoppel and waiver apply under the facts of this case.

[1, 2] Estoppel is applicable where one party to a contract changes its position in justifiable reliance on the words or conduct of another. *City of Colorado Springs v. Kitty Hawk Development Co.*, 154 Colo. 535, 392 P.2d 467 (1964); *City of Sheridan v. Keen*, 34 Colo.App. 228, 524 P.2d 1390 (1974). Waiver is the relinquishment of a known right. *Millage v. Spahn*, 115 Colo. 444, 175 P.2d 982 (1946); *Gulf Insurance Co. v. Colorado*, 43 Colo.App. 360, 607 P.2d 1016 (1979). And, in *Kitty Hawk, supra*, in commenting on the application of these doctrines notwithstanding a claim that the actions were *ultra vires*, the court stated:

> "Plaintiff asserts that the agreement between it and the City was *ultra vires*. Assuming, arguendo, that this is so, this is no help to the plaintiff since it is estopped to assert such fact, having received and retained the benefits conferred thereunder, and the contract being fully executed on the part of all parties."

[3] Here, the agreements between Lone Pine, Fast, Kominski, and the district were made in return for the district's promise to forego contesting the increase in population density. Because the district relied on the agreements, the developers are estopped to deny them. And, by assenting to the agreements and by accepting the benefits of the city's actions, the developers are estopped from asserting the contracts are *ultra vires*, and they have waived their right to contest the imposition of the conditions contained in the contracts.

Contrary to Lone Pine's contention, we see no reason not to apply the rationale of *Kitty Hawk, supra*, to a situation where the subject property is within the city limits and the property owners' promise to pay is given in return for zoning and platting approval. In *Kitty Hawk, supra*, the court noted that, "the equities do not lie with the plaintiff" in an annexation situation; similarly, the equities are not with plaintiff Lone Pine here. *See also Schlarb v. North Suburban Sanitation District*, 144 Colo. 590, 357 P.2d 647 (1960).

The judgment is affirmed.

KIRSHBAUM and TURSI, JJ., concur.

GERALD A. CAPLAN
G. LANE EARNEST
LYNN KUYKENDALL
RICHARD E. BUMP
ALEXANDER HALPERN
LYNN DAVID BIRD
WILLIAM J. KOWALSKI
JOSEPH J. BARNOSKY

CAPLAN AND EARNEST
ATTORNEYS AT LAW
SUITE 300, COURT SQUARE BUILDING
1301 SPRUCE STREET
BOULDER, COLORADO 80302

TELEPHONE
(303) 443-8010

February 8, 1983

Dr. Richard O'Connell, Superintendent
Douglas County School District Re-1
131 Wilcox Street
Castle Rock, Colorado 80104

Re: Use of Development Fees to
Help Defray Costs of Schools

Dear Rick:

This is in response to your request for information concerning the appropriateness and legitimacy of imposing development fees to help mitigate the cost of school facilities necessitated by new subdivisions. Based upon our review of the law in Colorado, it is my opinion that such use of development fees can be imposed for these purposes by municipalities but not counties. The key difference in authority here is based upon the former's powers of annexation.

A developer does not have a constitutional right to have his property annexed to a city. Nor does he have a right to the prospective profits or benefits he expects to be derived from his land if it is annexed and allowed to be developed. The Colorado Constitution and the general laws of this state have delegated the power to municipalities to provide for the public health, safety and welfare of their citizens. Accordingly, cities can decide, for example, what land use will be allowed through zoning regulations, building codes, ordinances and other measures which are reasonably directed at furthering legitimate governmental purposes.

The potential impact which a sizeable development would have upon the public health, safety and welfare of the residents of a city is axiomatic. Equally self-evident is the power which a city has in imposing reasonable conditions to help obviate that impact. In this regard, the law is well settled that a city can require, for example, pursuant to an annexation agreement or ordinance, that the developer

either dedicate a suitable amount of land for public use and purposes or pay to the city or other public entity sufficient monies to provide a fund by which a commensurate amount of land may be purchased by the affected political subdivision. This power has likewise been delegated to counties pursuant to the statutes related to the subdivision of land. See, COLO. REV. STAT. §30-28-133(4)(a)(I) (1973 as amended).

Apart from the dedication of land or the payment of a fee in lieu thereof, the question remains to what extent can a municipality impose the payment of a fee as a condition to annexation. A developer's arguments against such conditions are typically based upon the Fifth and Fourteenth Amendments to the United States Constitution and Article II, Section 15 of the Colorado Constitution, that private property shall not be taken for public use without just compensation. However, this argument has been discounted in several cases. In City of Colorado Springs v. Kitty Hawk Development Co., 392 P.2d 467, 154 Colo. 555 (1964), the Colorado Supreme Court considered a provision that required a developer who chose to annex to make payment to the city of a sum equivalent to eight percent of the appraised value of the subdivision. The court did not consider the constitutionality of the ordinance per se, but in dicta gave much insight into the appropriateness of the city's requirements. The court indicated that the developer had no constitutional or statutory right to receive water and sewer services from the city. At page 472 it further noted:

> We find nothing in the general law of this state or in the Constitution prohibiting the imposition of conditions by a municipality upon one seeking annexation. A municipality is under no legal obligation in the first instance to annex contiguous territory, and may reject a petition for annexation for no reason at all. It follows then that if the municipality elects to accept such territory solely as a matter of its discretion, it may impose such conditions by way of agreement as it sees fit. If the party seeking annexation does not wish to annex

> under the conditions imposed, he is free to withdraw his petition to annex and remain without the city. Annexation can take place only when the minds of the city and the owners of the land contiguous to the city agree that the property shall be annexed and upon the terms upon which such annexation can be accomplished.

Another case, City of Aurora v. Andrew Land Company, 490 P.2d 67, 176 Colo. 246 (1971), considered the validity of the City of Aurora's action in imposing a requirement on the developer that it pay an annexation and water development fee as a condition to being annexed. The court specifically ruled that

> It was clearly within the power of the city to require the payment of the annexation fees as a condition to annexation.
>
> * * *
>
> The city council under its general powers could enact an ordinance which itself fixed the fees to be charged in a particular annexation proceeding. 490 P.2d at 70.

In addition, the court rejected the developer's claim for recovery of approximately $24,000.00 in water development fees, noting that the municipality did have the authority to impose that fee as well.

The court in Andrew Land, however, did affirm the recovery by the plaintiff on its claim for refund of storm drainage fees which had been imposed by ordinance on land already within the city. Its authority was a previous case on the identical issue in City of Aurora v. Bogue, 489 P.2d 1295, 176 Colo. 198 (1971). That case concerned the imposition by the city of a per homesite "storm drainage fee" of $150.00 on permits issued for the construction of new homes on land which was already within the city. The court ruled that the monies paid should be refunded since the city had

failed to perform by not constructing the improvements for eight years after the ordinance had been passed and the sums collected. Additionally, the court noted that there was no relationship to the size of the site nor the value of the proposed improvements and if treated as a tax, its application only to new home construction on land already within the city was not uniform in its operation.

In my opinion, the rule of the Bogue case extends only to the failure of a city to perform as agreed. There is a lesson to be learned from the decision, however. First, if fees are assessed for a particular purpose, it is critical that they be used in that manner. Second, there should be some reasonable relationship between the fee imposed and the expected cost of new improvements to be necessitated by the development. The School District's current formula, applied to the estimated cost of school buildings would qualify under this standard. Finally, the fee should be applied in a uniform manner, for example, to all newly approved annexations. This criteria, however, does not mean that a differentiation in fees could not be made based upon the type of dwelling unit involved. There is a reasonable and rational basis to expect that more school-aged children will be living in one type of unit than another.

In the very recent case of P-W Investments, Inc. v. City of Westminster, Vol. VI, The Brief Times Reporter (decided December 20, 1982), the Colorado Supreme Court specifically upheld the imposition of a "park development fee" on developers, which was to be in addition to "any land contribution requirement." The fees were linked to the issuance of building permits and were upheld in this case even when applied to platted but undeveloped land that was annexed to the city before the fee structure was adopted and after the developer had already dedicated a park site as part of its Official Development Plan. The Court was persuaded by the "alarming situation" caused by the rapid growth Westminster sustained in the 1970's, creating new expenses which "the city could rationally decide to impose upon new builders."

Cases from many other jurisdictions have also upheld the valdity of fee payment or dedication requirements

in conjunction with the approval of new subdivisions. A leading case in this area is Associated Home Builders, Inc. v. Walnut Creek, 4 Cal.3d 633, 484 P.2d 606 (1971), which validated a municipality's requirement for the dedication of land for parks or the payment of a fee in lieu thereof. Because the case addressed so many arguments against such a provision, I have enclosed a copy for your review.

The following cases are equally significant: Jenad, Inc. v. Scarsdale, 271 N.Y.S.2d 955 (1966) (Court upheld fee of $250.00 per subdivided lot in lieu of dedication of park and recreational land); Nelson Cooney and Son, Inc. v. Township of South Harrison, 273 A.2d 33 (N.J. 1971) (Court ruled that a municipal license fee on mobile home park based upon the number of spaces occupied did bear a reasonable relation to the value of the local governmental services furnished to the inhabitants); and Morris Community H.S. Dist. No. 101 v. Morris Dev. Co., 24 Ill. App.3d 208, 320 N.E.2d 37 (1974) (Court concluded that municipal ordinance that required the dedication of land for schools, the payment of a fee in lieu or a combination of both was valid. The Court also gave the school district standing to challenge the adequacy of the dedication/payment and compliance by the developer).

In Jordan v. Menomonee Falls, 137 N.W.2d 442 (1965), the Court approved a municipal ordinance that required the dedication of land for school purposes or the payment of a fee of $200.00 per lot in lieu of such land dedication. The basis for upholding these requirements as reasonable exercises of a city's police power was succinctly stated as follows:

> The municipality by approval of a proposed subdivision plat enables the subdivider to profit financially by selling the subdivision lots as home building sites and thus realizing a greater price than could have been obtained if he had sold his property as unplatted lands. In return for this benefit the municipality may require him to dedicate part of his platted land to meet a demand to which the municipality would not have been put

> but for the influx of people into the community to occupy the subdivision lots. Id., at 448.

See also, Dept. of Public Works and Buildings v. Exchange National Bank, 31 Ill. App.3d 88, 334 N.E.2d 810 (1975) (Developer rather than municipality may be properly required to assume burdens or costs which are specifically attributable to addition of subdivision).

While the Colorado decisions have generally considered only fees exacted to provide more or less "traditional" city services such as water development, sewer, storm drainage and parks, there are persuasive arguments, in addition to the above cases, which may be posited in defense of a city development fee for the benefit of the School District. First, the Municipal Annexation Act of 1965, COLO. REV. STAT. ANN. §§31-12-101 et seq. (1973 as amended), declares among its purposes, the following, which "shall be liberally construed":

> §31-12-102(1)(b) To distribute fairly and equitably the costs of municipal services among those persons who benefit therefrom;
>
> (f) To reduce friction among contiguous or neighboring municipalities; and
>
> (g) To increase the ability of municipalities in urban areas to provide their citizens with the services they require.

The Act further authorizes the municipality to determine whether or not additional terms and conditions are to be imposed. §31-12-107(1)(g) and (4) and 31-12-112(1) (1973 as amended).

Secondly, generally speaking a home rule city can adopt ordinances and impose conditions upon developers as it desires within the limitations that (a) the action must be a reasonable exercise of its police powers, (b) the action

must not be in conflict with any provision of or deprive any rights guaranteed by the United States and Colorado Constitutions, and (c) the action must not be in conflict with any general law of the state or intrude into any area which the state has deemed solely of "statewide" concern. See, generally, Colorado Constitution, Article XX, Section 1 et seq.

Thirdly, the General Assembly through numerous enactments has expressed its intention in encouraging cooperation and promoting assistance among political subdivisions and governmental units to provide for necessary public facilities and services, and has given authority to these units to accomplish these matters. For example, COLO. REV. STAT. §§30-28-101 et seq. (1973 as amended) ("Senate Bill 35"), provides for counties to adopt subdivision regulations, which shall include provision for the dedication of school sites or the payment of a sum of money in lieu thereof. §30-28-133(4) (1973 as amended).

Of particular importance is the "Local Government Land Use Control Enabling Act of 1974," COLO. REV. STAT. §§29-20-101 et seq. (1974 Supp.). This Act delegates broad powers such as those within S.B. 35 to local governmental units, §29-20-104, within the declared "policy of the state...to clarify and provide broad authority to local governments to plan for and regulate the use of land within their respective jurisdictions." §29-20-102. Arguably, the specific powers of this Act in conjunction with its declared purpose would provide ample authority for a city's enactment of a development fee structure to aid schools.

The foregoing Act and the Colorado Constitution speak directly to the notion of intergovernmental cooperation, substantiating such action further. At §29-20-105, the following language appears:

> Without limiting or superseding any power or authority presently exercised or previously granted, local governments are authorized and encouraged to cooperate or contract with other units of government pursuant to part 2 of Article 1 of this title, for the purpose of planning or

> regulating the development of land, including but not limited to the joint exercise of planning, zoning, subdivision, building, and related regulations.

And the Colorado Constitution, Article XI, Section 7 provides:

> State and political subdivisions may give assistance to any political subdivision. No provision of this constitution shall be construed to prevent the state or any political subdivision from giving direct or indirect financial support to any political subdivision as may be authorized by general statute.

In summary, there is ample statutory and case law support in defense of a city's requirement that a developer pay a per dwelling fee to aid in the construction of school facilities necessitated by the development. Because a developer has no constitutional right to be annexed and must contract with the city before being allowed to develop, the situation is similar to any other bargain where the parties each decide how much it is worth to them and upon what terms they are willing to consummate the transaction.

There are certain guidelines that should be followed in the creation and implementation of such a program:

1. There should be some reasonable relationship between the fee imposed and the expected cost of new improvements to be necessitated by the development;

2. Any fee should be applied in a uniform manner taking into consideration the potential impact caused by the particular type of dwelling unit involved;

3. When fees are assessed for a particular purpose, it is important that they be used for that same purpose within a reasonable time period;

4. Fees assessed should be used in such a way as to directly benefit the proposed inhabitants of the subdivision and not the public at large (high school attendance area boundaries would qualify);

5. The fee should be incorporated into an annexation agreement and recorded as a covenant to run with the land;

6. The annexation agreement should expressly designate the School District as an intended, third-party beneficiary; and

7. For convenience, the fee should probably be linked to the issuance of building permits.

Very truly yours,

CAPLAN AND EARNEST

Richard E. Bump

REB:mjj
Enclosure
cc: Mr. Mike Vermillion

94 Cal.Rptr. 630

ASSOCIATED HOME BUILDERS OF the GREATER EAST BAY, INCORPORATED, Plaintiff and Appellant,

v.

CITY OF WALNUT CREEK et al., Defendants and Respondents.

S. F. 22787.

Supreme Court of California, In Bank.

April 26, 1971.

Appeal from judgment of the Superior Court, Contra Costa County, Richard E. Arnason, J., sustaining constitutionality of statute authorizing cities and counties to require dedication of land or payment of fees as condition to approval of subdivision map, and of city ordinance and resolutions thereunder. The Supreme Court, Mosk, J., held that the statute is constitutional, despite contentions, inter alia, that it violates equal protection and due process in that it deprives subdivider of his property without just compensation, and that ordinance and resolutions were also valid, despite contentions, inter alia, that they contained indefinite and arbitrary standards.

Affirmed.

Opinion, 11 Cal.App.3d 1129, 90 Cal. Rptr. 663, vacated.

1. Constitutional Law ⇐211, 278(1)
Municipal Corporations ⇐43

In face of constitutional challenge on due process and equal protection grounds, statutory requirement that subdivider dedicate land or pay fees in lieu thereof for park or recreational purposes as condition of approval of subdivision map can be justified on basis of general public need for recreational facilities caused by present and future subdivisions; it need not be shown that the need for additional park and recreational facilities is attributable to the increase in population stimulated by the new subdivision alone. West's Ann.Bus. & Prof.Code, § 11546; West's Ann.Const. art. 28, § 1 et seq.

2. Municipal Corporations ⇐43

Statute providing that land or fees exacted as condition to approval of subdivision map are to be used only for the purpose of providing park or recreational facilities to serve the subdivision does not require that such facilities may be used only by the residents of the subdivision, but only that any such fees may not be diverted to any purpose other than for park or recreational facilities which will be available for use by those residents. West's Ann.Bus. & Prof.Code, § 11546(c).

3. Municipal Corporations ⇐43

Constitutionality of requirement that subdivider dedicate land or pay fees for park or recreational purposes as condition to approval of subdivision map is not dependent upon exclusive use of facilities by those who will occupy the subdivision. West's Ann.Bus. & Prof.Code, § 11546.

4. Municipal Corporations ⇐43

Unique problem with development of subdivision in that it reduces the supply of open land while increasing the demand therefor, as well as special benefits to the residents of the subdivision, warrant distinction between park and recreational facilities, as to which subdivider may be required to make contribution of land or fees, and other governmental services necessitated by the entry of new residents. West's Ann.Bus. & Prof.Code, § 11546.

5. Taxation ⇐47(1)

Impermissible double taxation occurs only when two taxes of the same character are imposed on the same property, for the same purpose, by the same taxing authority, within the same jurisdiction during the same taxing period.

6. Taxation ⇐47(1)

Requirement that subdivider dedicate land or pay fees for park and recreational purposes is not double taxation on theory that residents of subdivision not only pay initial cost of park but also assume property taxes to be used for its development and maintenance.

7. Municipal Corporations ⇐43

Relatively small land use in apartment construction warrants distinction between subdivider, who is required to contribute land or fees for park and recreational purposes, and apartment builder who is not, though both developments may generate the same population.

8. Constitutional Law ⇐63(1), 211, 278(1)
Municipal Corporations ⇐43

Within statute requiring subdivider to dedicate land or pay fees for park and recreational purposes, subdivision providing that city or county must specify when development of the facilities will begin is not unconstitutional on theory that it is arbitrary delegation of power to local governmental body and denial of due process and equal protection. West's Ann.Bus. & Prof. Code, § 11546(f).

Constitutional Law ⇐208(3)
Municipal Corporations ⇐43

Within statute requiring subdivider to dedicate land or pay fees for park and recreational purposes, subdivision providing that only payment of fees may be required for subdivision containing 50 parcels or less does not unconstitutionally discriminate against owners who subdivide into more than 50 parcels, since value of land taken or amount of fee exacted are fixed in accordance with the same population density formula. West's Ann.Bus. & Prof.Code, § 11546(g).

10. Constitutional Law ⇐211, 278(1)
Municipal Corporations ⇐43

Statute authorizing cities and counties to require dedication of land or payment of fees in lieu thereof for park or recreational purposes as condition to approval of subdivision maps is constitutional, notwithstanding contentions, inter alia, that it violates equal protection and due process in that it deprives subdivider of his property without just compensation and that parks and recreational facilities are not so directly related to health and safety as to warrant dedication requirement. West's Ann. Bus. & Prof.Code, § 11546.

11. Municipal Corporations ⇐43

Ordinance requiring subdivider to dedicate land or pay fee in lieu thereof for park or recreational purposes was not unconstitutionally arbitrary in the imposition of fees on population basis, though results might be that developer of valuable high-density land would be required to pay higher fee, since persons occupying housing in high-density area may be expected to make more use of public recreational facilities than persons with larger private yards.

12. Municipal Corporations ⇐111(1)

Ordinance requiring subdivider to dedicate land or pay fees in lieu thereof for park or recreational purposes was not unconstitutionally indefinite in setting fees on basis of fair market value of land which would otherwise be dedicated.

13. Municipal Corporations ⇐43

With respect to ordinance requiring subdividers to dedicate land or pay fees in lieu thereof for park or recreational purposes, resolution providing that dedication would be required if park designated on master plan is incorporated within subdivision and if slope, topography and geology of the site as well as its surroundings are suitable for intended use of park provided constitutionally sufficient criteria for determining whether dedication or fee should be required.

14. Municipal Corporations ⇐43

Under statute authorizing cities and counties to require subdivider to dedicate land or pay fees in lieu thereof for park or recreational purposes as condition to approval of subdivision map, absence of requirement that city reduce dedication or fee requirement in event that subdivider has voluntarily provided recreational areas is valid in light of policy of encouraging adoption of long-range master plans for recreational needs of the community. West's Ann.Bus. & Prof.Code, § 11546(d).

15. Municipal Corporations ⇐111(1)

Ordinance providing subdivider who is required to dedicate land or pay fee for park or recreational purposes shall be giv-

en credit for voluntarily provided recreational areas if such facilities satisfy the principles and standards in the master plan set forth sufficiently defined standard.

16. Municipal Corporations ⇐43

Under statute authorizing city or county to require subdivider to dedicate land or pay fees in lieu thereof, fees may be used for improvement of the land itself, as well as for acquisition of land, but not for other purposes. West's Ann.Bus. & Prof.Code, § 11546.

17. Municipal Corporations ⇐43

City's general plan indicating location of various types of parks and recreational facilities and setting forth general principles under which land is acquired and developed, amount of land required for city's population and different types of parks, minimum areas, and various facilities which each type of park should contain satisfied statutory requirement for adoption of general plan as prerequisite to requiring subdividers to dedicate land or pay fees for park or recreational purposes. West's Ann.Bus. & Prof.Code, § 11546(d).

18. Municipal Corporations ⇐43

Within statute authorizing cities and counties to require dedication of land or payment of fees for park or recreational purposes as condition to approval of subdivision map, requirement that "ordinance" include definite standards for determining proportion of subdivision to be dedicated or amount of fee was satisfied by resolution containing such standards, in absence of proof that resolution was not passed in the same manner and with the statutory formality required in the enactment of an ordinance. West's Ann.Bus. & Prof.Code, § 11546(b).

Ring, Turner & Ring, and Harold H. Turner, Walnut Creek, for plaintiff and appellant.

Daniel J. Curtin, Jr., City Atty., for defendants and respondents.

Evelle J. Younger, Atty. Gen., Sanford N. Gruskin, Asst. Atty. Gen., Denis D. Smaage, Deputy Atty. Gen., William A. Hirst, City Atty., of Pleasanton, John A. Lewis, City Atty. of Livermore, Miller, Groezinger, Pettit & Evers, San Francisco, and Robert A. Thompson as amici curiae on behalf of defendants and respondents.

MOSK, Justice.

Section 11546 of the Business and Professions Code authorizes the governing body of a city or county to require that a subdivider must, as a condition to the approval of a subdivision map, dedicate land or pay fees in lieu thereof for park or recreational purposes. In this class action for declaratory and injunctive relief, Associated Home Builders of the Greater East Bay, Incorporated (hereinafter called Associated) [1] challenges the constitutionality of section 11546 as well as legislation passed by the City of Walnut Creek to implement the section. It is also asserted that the city's enactments do not comply with the requirements set forth in the section. The trial court found in favor of the city, and Associated appeals from the ensuing judgment.

Section 11546 of the Business and Professions Code provides:

"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, provided that:

"(a) The ordinance has been in effect for a period of 30 days prior to the filing of the tenatative map of the subdivision.

"(b) The ordinance includes definite standards for determining the proportion

1. Associated is a nonprofit corporation organized for the purpose of promoting the home building industry. Some of the members own Walnut Creek land which they intend to subdivide into four or more lots under the Subdivision Map Act. (Bus. & Prof.Code, § 11500 et seq.)

of a subdivision to be dedicated and the amount of any fee to be paid in lieu thereof.

"(c) The land, fees, or combination thereof are to be used only for the purpose of providing park or recreational facilities to serve the subdivision.

"(d) The legislative body has adopted a general plan containing a recreational element, and the park and recreation facilities are in accordance with definite principles and standards contained therein.

"(e) The amount and location of land to be dedicated or the fees to be paid shall bear a reasonable relationship to the use of the park and recreational facilities by the future inhabitants of the subdivision.

"(f) The city or county must specify when development of the park or recreational facilities will begin.

"(g) Only the payment of fees may be required in subdivisions containing fifty (50) parcels or less.

"The provisions of this section do not apply to industrial subdivisions."

Section 10–1.516 of the Walnut Creek Municipal Code, which will be discussed *infra*, refers to a general park and recreational plan adopted by the city. It provides that if a park or recreational facility indicated on the general plan falls within a proposed subdivision the land must be dedicated for park use by the subdivider in a ratio (set forth in a resolution) determined by the type of residence built and the number of future occupants. Pursuant to the ratio, two and one-half acres of park or recreation land must be provided for each 1,000 new residents. If, however, no park is designated on the master plan and the subdivision is within three-fourths of a mile radius of a park or a proposed park,[2] or the dedication of land is not feasible, the subdivider must pay a fee equal to the value of the land which he would have been required to dedicate under the formula.[3]

Section 11546 and the city's ordinance are designed to maintain and preserve open space for the recreational use of the residents of new subdivisions. The adoption of a general plan (subd. (d)) avoids the pitfall of compelling exactions from subdividers of land which may be inadequate in size or unsuitable in location or topography for the facilities necessary to serve the new residents. Under the legislative scheme, the park must be in sufficient proximity to the subdivision which contributes land to serve the future residents. 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.

If a subdivision does not contain land designated on the master plan as a recreation area, the subdivider pays a fee which is to be used for providing park or recreational facilities to serve the subdivision. One purpose of requiring payment of a fee in lieu of dedication is to avoid penalizing the subdivider who owns land containing an area designated as park land on the master plan. It would, of course, be patently unfair and perhaps discriminatory to require such a property owner to dedicate

2. Associated contends that the city is not limited in expending the in-lieu fee to purchase or improve a park within three-fourths of a mile radius from the subdivision which provides the fee. However, the ordinance so provides. The city's standard for a long-range park plan does indicate that a community park (which serves a larger area than a neighborhood park) should be within a radius of one and a half miles from the homes served. But this is a general standard for all residences, and has no reference to the expenditures of fees provided by subdividers in lieu of dedication. As to the latter subject, section 10–1.516 governs.

3. The requirement of dedication is qualified as to subdivisions containing 50 parcels or less. In order to comply with subdivision (g) of section 11546 only the payment of fees may be required in subdivisions of such size.

land, while exacting no contribution from a subdivider in precisely the same position except for the fortuitous circumstance that his land does not contain an area which has been designated as park land on the plan.

Constitutionality of Section 11546

Associated's primary contention is that section 11546 violates the equal protection and due process clauses of the federal and state Constitutions in that it deprives a subdivider of his property without just compensation. It is asserted that the state is avoiding the obligation of compensation by the device of requiring the subdivider to dedicate land or pay a fee for park or recreational purposes, that such contributions are used to pay for public facilities enjoyed by all citizens of the city and only incidentally by subdivision residents, and that all taxpayers should share in the cost of these public facilities. Thus, it is asserted, the future residents of the subdivision, who will ultimately bear the burden imposed on the subdivider, will be required to pay for recreational facilities the need for which stems not from the development of any one subdivision but from the needs of the community as a whole.

[1] In order to avoid these constitutional pitfalls, claims Associated, a dedication requirement is justified only if it can be shown that the need for additional park and recreational facilities is attributable to the increase in population stimulated by the new subdivision alone and the validity of the section may not be upheld upon the theory that all subdivisions to be built in the future will create the need for such facilities.

In Ayres v. City Council of City of Los Angeles (1949) 34 Cal.2d 31, 207 P.2d 1, we rejected similar arguments. In that case, a city imposed upon a subdivider certain conditions for the development of a residential tract, including a requirement that he dedicate a strip of land abutting a major thoroughfare bordering one side of the subdivision but from which there was no access into the subdivision. The subdivider insisted that he could be compelled to dedicate land only for streets within the subdivision to expedite the traffic flow therein and that no dedication could be required for additions to existing streets and highways. Moreover, he asserted, the city had been contemplating condemning the property for the purposes indicated in any event, the benefit to the lot owners in the tract would be relatively small compared to the benefit to the city at large, and the dedication requirement amounted, therefore, to the exercise of the power of eminent domain under the guise of subdivision map proceedings.

We held that the city was not acting in eminent domain but, rather, that a subdivider who was seeking to acquire the advantages of subdivision had the duty to comply with reasonable conditions for dedication so as to conform to the welfare of the lot owners and the general public. We held, further, that the conditions were not improper because their fulfillment would incidentally benefit the city as a whole or because future as well as immediate needs were taken into consideration and that potential as well as present population factors affecting the neighborhood could be considered in formulating the conditions imposed upon the subdivider. 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.

Even if it were not for the authority of *Ayres* we would have no doubt that section 11546 can be justified on the basis of a general public need for recreational facilities caused by present and future subdivisions. The elimination of open space in California is a melancholy aspect of the unprecedented population increase which has characterized our state in the last few decades. Manifestly governmental entities have the responsibility to provide park and recreation land to accommodate this human expansion despite the inexorable decrease of open space available to fulfill such need.

These factors have been recognized by the recent adoption of art. XXVIII of the Constitution, which provides that it is in the best interests of the state to maintain and preserve open space lands to assure the enjoyment of natural resources and scenic beauty for the economic and social well-being of the state and its citizens. Statutes which further the underlying policy expressed in the constitutional section must be upheld whenever possible in order to effectuate its salutary purposes.

The legislative committee which recommended the enactment of section 11546 emphasized that land pressure due to increasing population has intensified the need for open space, that parks are essential for a full community life, and that local officials have been besieged by demands for more park space. (21 Assembly Interim Com. Report, Municipal and County Government (1963–1965) pp. 33–34.) The urgency of the problem in California is vividly described in other portions of the report set forth in the margin.[4]

These problems are not confined to contemporary California. It has been estimated that by the year 2000 the metropolitan population of the United States will increase by 110 to 145 million, that 57 to 75 million of the increase will occur in areas which are now unincorporated open land encircling metropolitan centers, and that the demand for outdoor recreation will increase tenfold over the 1956 requirement. (See Zilavy, Comment, 1961 Wis.L.Rev. 310, fns. 1 and 2.) Walnut Creek is a typical growth community. Located minutes' distance by motor vehicle from the metropolitan environs of Oakland and East Bay communities, the city population rose from 9,903 in 1960 to 36,606 in 1970, an increase of more than 365 percent in a decade.

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.

[2, 3] Associated next contends that even if it be conceded that no showing of a direct relationship between a particular subdivision and an increase in the community's recreational needs is required, nevertheless the subdivider cannot be compelled to dedicate land for such needs, or pay a fee, unless his contribution will necessarily

4. The report states, "Concern is being expressed statewide in California that we may be in danger of '* * * building ourselves into a cement-lumber jungle.' Land pressures have been building steadily and the rising market price of each available scrap of urban land has made land the focus of competitive interests and * * * values. Recreation experts, planning commissions and conservationists have long insisted that the provision of recreation areas in subdivisions is a necessity. They argue that healthful, productive community life depends in part on the availability of recreation and park space.

"Population congestion magnifies the need for urban open space. It is perhaps the visual impact of thousands upon thousands of houses built row on row without relief of open space which has been most responsible for stimulating burgeoning citizen interest in the problem of providing for recreation areas in subdivision developments. * * *

"Neighborhood parks are a necessary component of community life. The committee has not encountered one local official who would deny the value of the neighborhood park. Elected officials, particularly, have found themselves besieged by demands for more park space. Families who have moved to suburbia in the hope of finding escape from urban congestion have found instead that their children may there too be forced into the streets in their natural pursuit of recreation space. These people turn to the community as a whole for aid in providing the desired parks." (Fns. omitted.) (Assembly Interim Com. on Municipal and County Government, *op. cit. supra*, pp. 33–34.)

and primarily benefit the particular subdivision. Whether or not such a direct connection is required by constitutional considerations, section 11546 provides the nexus which concerns Associated. The act requires that the land dedicated or the fees paid are to be used only for the purpose of providing park or recreational facilities to serve the subdivision (subd. (c)) [5] and (subd. (e)) that the amount and location of land or fees shall bear a reasonable relationship to the use of the facilities by the future inhabitants of the subdivision.[6]

Another assertion by Associated is that the only exactions imposed upon subdividers which may be valid are those directly related to the health and safety of the subdivision residents and necessary to the use and habitation of the subdivision, such as sewers, streets and drainage facilities. While it is true that such improvements are categories directly required by the health and safety of subdivision residents, it cannot be said that recreational facilities are not also related to these salutary purposes. So far as we are aware, no case has held a dedication condition invalid on the ground that, unlike sewers or streets, recreational facilities are not sufficiently related to the health and welfare of subdivision residents to justify the requirement of dedication. As shall appear hereinafter, several other jurisdictions have upheld exactions similar to those imposed by section 11546 on the ground that the influx of new

5. We do not deem subdivision (c) to mean that the facilities purchased with a particular contribution may only be used by the residents of the subdivision which made the contribution; rather, that the fees may not be diverted to any purpose other than for park or recreational facilities which will be available for use by those residents. Clearly, the constitutionality of the exaction is not dependent upon exclusive use of the facilities by those who will occupy the subdivision. *Ayres* teaches that the fact the public will also benefit from the use made of the land dedicated is not a ground for holding an exaction invalid.

6. Amicus curiae Sierra Club urges that the requirement of dedication or the payment of a fee may be justified under the state's police power even if the recreational facilities provided by the subdivider's contribution are not used for the specific benefit of the future residents of the subdivision but are employed for facilities used by the general public. Ordinarily if land within the subdivision is dedicated for a park it may be assumed that those who will reside in the subdivision will make primary use of the park. The problem of connecting the facilities with the use made of them by the subdivision residents arises when a fee in lieu of dedication is required. In view of the provisions of section 11546, we need not decide in the present case whether a subdivider may be compelled to make a contribution to a park which is, for example, not conveniently located to the subdivision. Parenthetically, however, we perceive merit in the position of amicus curiae. It is difficult to see why, in the light of the need for recreational facilities described above and the increasing mobility of our population, a subdivider's fee in lieu of dedication may not be used to purchase or develop land some distance from the subdivision but which would also be available for use by subdivision residents. If, for example, the governing body of a city has determined, as has the city in the present case, that a specific amount of park land is required for a stated number of inhabitants, if this determination is reasonable, and there is a park already developed close to the subdivision to meet the needs of its residents, it seems reasonable to employ the fee to purchase land in another area of the city for park purposes to maintain the proper balance between the number of persons in the community and the amount of park land available. The subdivider who deliberately or fortuitously develops land close to an already completed park diminishes the supply of open land and adds residents who require park space within the city as a whole. A similar rationale was employed in Southern Pac. Co. v. City of Los Angeles (1966) 242 Cal.App.2d 38, 51 Cal.Rptr. 197, to uphold an ordinance requiring dedication of property for street widening as a condition of obtaining a building permit. (See also Bringle v. Board of Supervisors (1960) 54 Cal.2d 86, 4 Cal.Rptr. 493, 351 P.2d 765; Jenad, Inc. v. Village of Scarsdale (1966), 18 N.Y.2d 78, 271 N.Y.S.2d 955, 957–958, 218 N.E.2d 673.)

residents increases the need for park and recreational facilities.[7]

[4] Associated next poses as an eventuality that, if the requirements of section 11546 are upheld as a valid exercise of the police power on the theory that new residents of the subdivision must pay the cost of park land needs engendered by their entry into the community, a city or county could also require contributions from a subdivider for such services as added costs of fire and police protection, the construction of a new city hall, or even a general contribution to defray the additional cost of all types of governmental services necessitated by the entry of the new residents.

This proposition overlooks the unique problem involved in utilization of raw land. Undeveloped land in a community is a limited resource which is difficult to conserve in a period of increased population pressure. The development of a new subdivision in and of itself has the counterproductive effect of consuming a substantial supply of this precious commodity, while at the same time increasing the need for park and recreational land. In terms of economics, subdivisions diminish supply and increase demand. Another answer to Associated's assertion is found in the provisions of section 11546 itself. As we have seen, the section requires that land dedicated or in-lieu fees are to be used for the recreational needs of the subdivision which renders the exaction. Since the increase in residents creates the need for additional park land and the land or fees are used for facilities for the new residents, although not to the exclusion of others, the circumstances may be distinguished from a more general or diffuse need created for such areawide services as fire and police protection.[8]

[5, 6] Associated claims that section 11546 constitutes a special burden upon the future inhabitants of the subdivision since the amount the subdivider must contribute will ultimately be reflected in the increased cost of homes to the future residents. It is asserted that a double tax will be imposed on the new residents because they must not only pay for the initial cost of the park but will also be required to assume property taxes which will be used for its development and maintenance.[9] Double taxation occurs only when "two taxes of the same character are imposed on the same property, for the same purpose, by the same taxing authority within the same jurisdiction during the same taxing period." (Rhyne, Municipal Law, p. 673.) Obviously the dedication or fee required of the subdivider and the property taxes paid by the la-

7. The only case cited by Associated which declared a statute similar to section 11546 to be unconstitutional recognized the need for recreational facilities caused by the influx of new residents but held that the need for such facilities must be "specifically and uniquely attributable" to the subdivider's activities and that the record did not indicate that this requirement had been met. (Pioneer Trust & Sav. Bank v. Village of Mount Prospect (1961), 22 Ill. 2d 375, 176 N.E.2d 709, 802.) We have rejected this rationale in our previous discussion.

8. We do not imply that only those exactions from a subdivider are valid which present the special considerations set forth with regard to section 11546 but hold only that the exactions required by the section are justified by special factors not applicable to such matters as the increased cost of governmental services. In this connection we note that the Attorney General has filed an amicus curiae brief expressing concern that our holding regarding the validity of section 11546 may reflect upon the constitutionality of two recently enacted statutes requiring subdividers to provide public access to coastlines and to inland waters owned by a public agency. (Bus. & Prof.Code, §§ 11610.5, 11610.7.) Those sections are not involved in this proceeding and nothing we have said here is intended to reflect upon their validity.

9. If Associated does not actually pay the exaction but merely passes the cost on to the consumer, a question arises as to its standing in this proceeding since it suffers no detriment and is not authorized to represent the consumers who it asserts will be taxed. Rather than relying upon that proposition, however, we prefer to decide the matter on the merits.

ter residents of the subdivision do not meet this definition. If Associated's claim were valid the prior residents of a community could also claim double taxation since their tax dollars were utilized to purchase and maintain public facilities which will be used by the newcomers who did not contribute to their acquisition.[10]

[7] Another contention by Associated is that section 11546 arbitrarily imposes its requirements only upon subdividers whereas those who do not subdivide are free from its exactions. The example is suggested of an apartment house build on land which is not subdivided. The future occupants may live the same distance from a public park and have the same right to use the recreational facilities as the residents of a nearby subdivision, yet the builder of the apartment house is not required to contribute to park facilities because he has constructed his apartment without subdividing. This point has some arguable merit in the sense that the apartment builder, by increasing the population of an area, may add to the need for public recreational facilities to the same extent as the subdivider. However, the apartment is generally vertical, while the subdivision is horizontal. The Legislature could reasonably have assumed that an apartment house is thus ordinarily constructed upon land considerably smaller in dimension than most subdivisions and the erection of the apartments is, therefore, not decreasing the limited supply of open space to the same extent as the formation of a subdivision. This significant distinction justifies legislatively treating the builder of an apartment house who does not subdivide differently than the creator of a subdivision.

[8, 9] Finally, Associated attacks the constitutionality of subdivision (f) of section 11546, which specifies that a city or county must state when development of park or recreational facilities will begin. It is claimed that the city could in one case postpone development for 10 years and in another begin development within a year, and that this discretion amounts to an arbitrary delegation of power to the local governmental body and a denial of due process and equal protection of the laws. Obviously, the need for park and recreational facilities will vary from one community to another and from one neighborhood to another within the same community. The city's resolution 2225 provides that improvements to the parks shall be made as the subdivision area develops and park facilities become necessary. Constitutional considerations do not require a more precise standard; the courts are available to redress any unreasonable delay in development.[11]

10. A related contention is advanced that the exaction constitutes a special assessment against the future owners of property in the subdivision who have no right to a hearing or to protest. Similar arguments were rejected in Jordan v. Village of Menomonee Falls (1965) 28 Wis.2d 608, 137 N.W.2d 442, 450, and Jenad, Inc. v. Village of Scarsdale, supra, 18 N.Y.2d 78, 271 N.Y.S.2d 955, 958, 218 N.E.2d 673. (But see Reps and Smith, Control of Urban Land Subdivision (1963) 14 Syracuse L.Rev. 405, 407 et seq.)

11. An additional argument of Associated is that subdivision (g) is unconstitutional in that it provides only the payment of fees as opposed to dedication of land may be required for subdivisions containing 50 parcels or less. The basis of this claim appears to be that it discriminates against owners who subdivide into more than 50 parcels. It is true that the size of a parcel is not defined in section 11546 so that one subdivider may be required to dedicate land for a park because he divides his land into more than 50 parcels whereas another subdivider with the same total acreage but who subdivides into less than 50 parcels may only be required to pay a fee in lieu of dedication. However, we cannot see how this difference discriminates against the first subdivider since the value of the land taken from him and the amount of the fee exacted from the second subdivider are fixed in accordance with the same population-density formula except that the fee to be paid by a subdivider with less than 50 parcels is calculated not by the value of the land he would have been

Many of the issues raised by Associated have been discussed in the cases and law reviews.[12] The clear weight of authority upholds the constitutionality of statutes similar to section 11546. While Illinois has held an ordinance requiring a subdivider to dedicate land for park purposes to be unconstitutional (Pioneer Trust & Savings Bank v. Village of Mount Prospect, supra, 22 Ill.2d 375, 176 N.E.2d 799, 801–802),[13] Montana has reached a contrary conclusion (Billings Properties, Inc. v. Yellowstone County (1964), 144 Mont. 25, 394 P.2d 182). New York and Wisconsin have affirmed the validity of statutes requiring either dedication or a fee in lieu thereof (Jenad, Inc. v. Village of Scarsdale, supra, 18 N.Y.2d 78, 271 N.Y.S.2d 955, 218 N.E. 2d 673; Jordan v. Village of Menomonee Falls (Wis.1965), supra, 28 Wis.2d 608, 137 N.W.2d 442). In Connecticut the dedication requirement has been upheld but the requirement that a fee be paid in lieu of dedication was struck down on the ground that its use was not confined for the benefit of the subdivision but to the contrary the fees could be utilized to purchase park land for the residents of the entire town (Aunt Hack Ridge Estates, Inc. v. Planning Commission of Danbury (1967), 27 Conn.Sup. 74, 230 A.2d 45, 47).

[10] 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. (Jordan v. Village of Menomonee Falls, supra, 28 Wis.2d 608, 137 N.W.2d 442, 448; Billings Properties, Inc. v. Yellowstone County, supra, 144 Mont. 25, 394 P.2d 182, 187.) Such exactions have been compared to admittedly valid zoning regulations such as minimum lot size and setback requirements. (Jenad, Inc. v. Village of Scarsdale, supra, 18 N.Y.2d 78, 271 N.Y.S.2d 955, 958, 218 N.E.2d 673.)

Constitutionality of Section 10–1.516 of the Walnut Creek Municipal Code

Turning from the state statute to the Municipal Code, Associated argues that the fees the subdivider must pay in lieu of dedicating land are, under the city's ordinance, determined arbitrarily and without a reasonable relationship to principles of equality. It is claimed, for example, that a subdivider who develops high-density land may be required to pay a higher fee in lieu of dedication than one who develops low-

required to dedicate within his subdivision but by the value of the land in the portion of the local park required to serve the needs of the subdivision. The fact that in one case the payment is made in land whereas in another it is made in money does not appear to be significant or discriminatory.

12. See, e. g., Zilavy, Comment, supra, 1961 Wis.L.Rev. 310; Cutler, Controlling Community Growth, 1961 Wis.L.Rev. 370, 387–391; Johnston, Subdivision Control Exactions, 52 Cornell L.Q. 871; Heyman and Gilhool, Increased Community Costs, 73 Yale L.J. 1121; Reps and Smith, Control of Urban Land Subdivision, supra, 14 Syracuse L.Rev. 405; Cunningham, Subdivision Control, 60 Mich.L.Rev. 1, 28; Taylor, Subdivision Control, 13 Hastings L.J. 344, 350.

13. *Pioneer Trust* relied upon *Ayres*, interpreting it as holding that a developer may be compelled to provide the streets which are required by the activity within the subdivision but cannot be required to provide a major thoroughfare, the need for which stems from the total activity of the community. The court in *Pioneer Trust* goes on to state that in the light of this principle a dedication requirement may be upheld only if the burden cast upon the subdivider is specifically and uniquely attributable to his activity and that no such showing was made. The *Ayres* case cannot be interpreted in this manner. One commentator has written that *Pioneer Trust* completely misunderstood the holding of *Ayres*. (See Johnston, Subdivision Control Exactions, supra, 52 Cornell L.Q. 871, 907–908.)

density land even though both builders may be responsible for bringing the same number of new residents into the community. This may be true because the higher-density land is frequently more valuable and the fee is measured by the amount of land required by the number of persons in the subdivision.[14]

[11] While the owner of more valuable land which will support a greater number of living units may be required to pay a higher fee for each new resident than the owner of less valuable land with a lower density, it does not follow that there is no reasonable relationship between the use of the facilities by future residents and the fee charged the subdivider. It is a proper assumption that persons occupying housing in a high-density area will use the public recreational facilities more consistently than those residents in single family homes who have private yards and more open space readily at their individual disposal.

[12, 13] Another series of contentions made by Associated relates to assertedly indefinite and arbitrary standards and procedures set forth in the ordinance. It is urged (1) that the concept of the fair market value is too indefinite and that a subdivider would hesitate to incur the delay and expense of testing value in the courts, and (2) that the city has absolute discretion to determine that the dedication of land is not feasible and that a fee should be charged in lieu thereof. These contentions are without merit. The question of fair market value is litigated frequently in the courts and no authority cited requires a more precise definition. A subdivider need not delay his development because of a dispute over this issue. Nor can it be said, for the reasons pointed out in the margin below, that there are insufficient criteria for determining when a fee should be required in lieu of dedication.[15]

The ordinance and resolution also provide that if the subdivider designates open space for recreational areas and facilities, this reduces the demand for local recreational needs and if the subdivider gives guarantees that the land will be permanently maintained for such use the city may give credit to the subdivider, reducing the exactions required of him. Associated complains that this provision may result in unequal treatment of subdividers in that there are no reasonable standards for determining when the city will afford credit to one subdivider and deny it to another.

[14] We note that section 11546 contains no requirement that a city reduce the dedication or fee requirement in the event a subdivider has voluntarily provided recreational areas. There is a sound basis for such omission. The Legislature has expressed a policy of encouraging cities and counties to adopt long-range master plans for the recreational needs of the community. Such a plan takes into account the overall requirements of the city's residents, present and future, including the local needs of subdivision residents. If a legislative body were required to give credit for private recreational areas furnished by a

14. Associated poses as an example a subdivider who owns 25 acres of land valued at $20,000 an acre, who divides his land into 100 lots for single family residences and one who owns 50 acres worth $10,000 each, which he divides into 100 lots, two to an acre. The city assumes four occupants to each single family home. Each subdivider brings 400 persons into the community and each must contribute one acre or its cash equivalent for park purposes under the city's formula. Therefore, the first subdivider contributes $20,000 while the second is required to contribute only $10,000 although both increase the community's population by the same number of new residents.

15. Resolution 2225 provides that land dedication will be required if park land designated on the master plan is incorporated within the subdivision and if the slope, topography and geology of the site as well as its surroundings are suitable for the intended use of the park. However, if dedication is impossible, impractical, or undesirable, a fee will be required. The impracticality of dedication occurs whenever the physical characteristics of the land or its surroundings render the land within the subdivision unsuitable for park or recreational purposes.

subdivider in his proposed subdivision, the viability of the master plan would be destroyed and the subdivider would be substituted for the city as the arbiter of the community's park needs. It is just this type of haphazard response to the community's recreational requirements that subdivision (d) of section 11546 was intended to allay.

[15] While the city is not required to give credit for recreational facilities contributed by the subdivider, if it chooses to do so it must be given broad discretion to assure that the proposed facilities are in keeping with the master plan. Section 10–1.516, which provides that credit shall be given if the facilities designated by the subdivider "satisfy the * * * principles and standards" in the master plan, sets forth a sufficiently defined standard.

[16] The parties are in disagreement as to whether fees in lieu of dedication may be used only for the purchase of land or whether they may also be employed under the provisions of section 11546 to improve land already owned by the city which serves the needs of the subdivision.[16] Section 11546 provides that the fees may be used for "park or recreational purposes" or "park and recreational facilities."

The word "purposes" may be somewhat broader then "facilities" but we must look to the underlying object of the legislation in interpreting its scope. It is clear from what has been said above that the Legislature was concerned largely with the maintenance of open space for recreational use. We conclude that it is consistent with this purpose for fees to be utilized either for the purchase of park or recreational land or, if the city deems that there is sufficient land available for the subdivision's use, for improvement of the land itself as, for example, for drainage or landscaping,[17] but not for purposes unrelated to the acquisition and improvement of land.

The City's Ordinances and Resolutions Comply with Section 11546

[17] On this topic a few additional matters require brief elaboration. Associated argues that the city has enacted no definite principles for park and recreational facilities, as required by subdivision (d) of section 11546. The city's general plan indicates the location of various types of parks and recreational facilities and there is a sufficiently detailed set of principles and standards for the development of these facilities to satisfy the requirements of the section.[18]

16. The parties have stipulated that if a subdivision is located within three-fourths of a mile from elementary school grounds or a neighborhood or community park, the city uses the fees provided by the subdivider for improving such recreation areas rather than for the purchase of additional park land. The children in the school as well as other residents of the area use such facilities. In the city's principles and standards for park land it is declared that park facilities and school sites can be more efficiently built and operated when several facilities are grouped and that a neighborhood park should be integrated with an elementary school to provide space for indoor and outdoor activities. Neighborhood parks should contain a neighborhood center building, park area, playground, etc., and the design should be balanced to meet the needs of the school and the neighborhood.

17. Associated makes the untenable argument that because the Legislature failed to adopt a proposed amendment to section 11511 of the Business and Professions Code, it manifested its intention to permit the use of in-lieu fees only for purchase of land. Proposed model legislation, which was not adopted, provided that the fee in lieu of dedication could be used in the purchase and improvement of park and open space facilities and the amendment of section 11511 merely defined improvement as including work to be done by the subdivider on land which he had dedicated.

18. The standards set forth various general principles under which park and recreation land is acquired and developed, the amount of park land required for the city's population and for different types of parks, the minimum areas therein, and the various facilities which each type of park should contain.

[18] Associated complains that although subdivision (b) of section 11546 requires that a city's *ordinance* set forth the standard for determining the amount of land to be dedicated or fee to be paid by a subdivider, ordinance 10–1.516 contains no such standard. It provides instead that the standards shall be set forth by resolution; it is resolution 2225 rather than the ordinance which specifies these matters. There is no showing in the record as to the circumstances under which the resolution was adopted.

It has been held that even where a statute requires the municipality to act by ordinance if a resolution is passed in the manner and with the statutory formality required in the enactment of an ordinance, it will be binding and effective as an ordinance. (Central Manufacturing District, Inc. v. Board of Supervisors (1960) 176 Cal.App.2d 850, 860, 1 Cal.Rptr. 733.) Since there is no showing in the record as to the circumstances under which the resolution was adopted, we presume its validity.

It may come to pass, as Associated states, that subdividers will transfer the cost of the land dedicated or the in-lieu fee to the consumers who ultimately purchase homes in the subdivision, thereby to some extent increasing the price of houses to newcomers. While we recognize the ominous possibility that the contributions required by a city can be deliberately set unreasonably high in order to prevent the influx of economically depressed persons into the community, a circumstance which would present serious social and legal problems, there is nothing to indicate that the enactments of Walnut Creek in the present case raise such a spectre. The desirability of encouraging subdividers to build low-cost housing cannot be denied and unreasonable exactions could defeat this object, but these considerations must be balanced against the phenomenon of the appallingly rapid disappearance of open areas in and around our cities. We believe section 11546 constitutes a valiant attempt to solve this urgent problem, and we cannot say that its provisions or the city's enactments pursuant to the section are constitutionally deficient.

The judgment is affirmed.

WRIGHT, C. J., and McCOMB, PETERS, TOBRINER, BURKE and SULLIVAN, JJ., concur.

2/8/83
Bump Items

MEMORANDUM

RE: Review of Statutes from Arizona, California, Florida, New Mexico and Texas (High Growth States) As To Alternate Means for Financing the Construction of Public Schools

General Summary: (By State)

Arizona: The regulation relating to subdivisions is similar to that in Colorado in that authority is given to the municipality to require, by ordinance, that land areas be reserved for school sites (as well as parks, recreation facilities, etc.). There is a one-year time limit within which the public agency (school district) must enter into an agreement to acquire the reserved land. The following formula is established for determining the purchase price:

> ...shall be the fair market value thereof at the time of the filing of the preliminary subdivision plat plus the taxes against such reserved area from the date of the reservation and any other costs incurred by the subdivider in the maintenance of such reserved area, including interest cost incurred on any loan covering such reserved area.

ARIZ. REV. STAT. §9-463.01E. There is no reference to "dedication" as related to schools, but rather only the use of the above method for school site acquisition.

Authority is given to the counties to lease or sublease its land to a school district. ARIZ. REV. STAT. §11-256.01. Furthermore, there is a provision whereby the governing body of any town, city, county, school district may exchange with each other any land which is owned by them. This could be helpful as far as location of school sites is concerned, but would not provide any additional revenue for building construction. ARIZ. REV. STAT. §37-601.

There is a reference in the statutes to "Development Fees," giving a municipality the authority to assess such fees "to offset costs to the municipality associated with providing necessary public services to a development." ARIZ. REV. STAT. §9-463.05A. It is emphasized that the fees result in a beneficial use to the development and that they

be reasonably imposed. The statute and annotations fail to define "necessary public services" and there is no reference to schools; however, an argument could be made that such a relationship is implied. This statutory provision was added July 24, 1982, so it is understandable that no annotations/ explanations exist as yet, but it certainly should be one to watch.

California: The California legislature has enacted more than twenty "laws" relating to school construction, school building aid, school construction bonds, school building lease-purchase and new schools relief since 1957. Attached is a copy of the "State Project Area School Construction Law," CAL. EDUC. CODE §15500 et seq. (West). This law declared that the state should bear a proportionate share of the construction costs of school buildings and created the State School Construction Fund for such purpose. Apportionments are made to the district on the basis of an eligibility formula (§15524). The sites that are purchased and the buildings constructed are declared to be the property of the state until the required amounts are paid by the district to the state. Then the property is conveyed to the district.

In 1977, the California legislature enacted the School Facilities section of the Government Code (§65970 et seq.) in response to concerns about overcrowding that results from new housing developments. The legislature declared that "new and improved methods of financing for interim school facilities necessitated by new development are needed in California." (§65970(e)). If the governing body of the school district finds by clear and convincing evidence that overcrowding exists and efforts to mitigate the overcrowding have failed, it will contact the city council. If the city finds that overcrowding does in fact exist, it will not approve a rezoning ordinance or tentative subdivision map unless an interim method of providing facilities exists. §§65972 and 65974.

The interim plan outlined in §65974 requires dedication of land, payment of fees in lieu of dedication or a combination of both as a condition to the approval of a residential development. There are various requirements relating to the amount and use of the fees, the location and amount of land to be dedicated. It is important to note, however, that this section only applies to interim facilities, defined in §65980, as temporary classrooms, temporary classroom toilet facilities and reasonable site preparation and installment.

There is a provision in the Government Code which gives a county board of education the authority to request that a city or county adopt an ordinance requiring a subdivider to dedicate to the school district land necessary for the construction of elementary schools in order to "assure the residents of the subdivision adequate public school service." §66478. The payment for dedication to the subdivider is calculated by taking the original cost of the dedicated land, plus the cost of any improvements since acquisition, plus the taxes assessed from school district's offer to enter into the binding agreement to accept dedication, plus any other costs incurred by subdivider in maintenance of the dedicated land. §66478(a)-(c). This provision is limited, however, to elementary schools.

In 1979, the California legislature enacted the New * Schools Relief Act of 1979 as a response to the necessity for creating new revenues for the construction of school facilities because of the limits on the ability of school districts to levy and collect property taxes, §39050 et seq. This Act is intended "to facilitate innovative financing and other techniques for growth impacted districts to help meet new school construction needs." §39052. §39054 gives the school district authority to lease land and facilities from a private developer with funds provided by one or more of the following sources:

> (a) Funds provided by the state for the purposes of school construction (1) in the Budget Act, (2) in separate legislation, (3) from the sale of bonds, the issuance of which was approved by the voters of the state prior to January 1, 1980, provided that the purposes for which the issuance of such bonds was approved encompassed the purposes of this section; or (4) from the sale of bonds, the issuance of which may be approved on or after January 1, 1980, by the voters of the state for the purposes of school construction, among other purposes.
>
> (b) Funds the district has borrowed from the state and which such district is in the process of repaying, provided that nothing in this section shall be construed as terminating, delaying, or otherwise interrupting such district's schedule of repayments for such funds.

(c) Available capital reserves from the district's general fund or special funds of the district, provided the purposes of this section do not conflict with the purposes for which such funds may be used.

(d) Proceeds from the sale or lease of unneeded facilities, provided that nothing in this section shall be construed (1) to terminate, delay, or otherwise interrupt the schedule of regular repayments for the district's obligations to the state; (2) to relieve the district from any obligation to the state, except to the degree that such district may retain that portion of the proceeds from the sale or lease of unneeded facilities necessary to lease land and facilities pursuant to this section; or (3) to permit the district to retain any proceeds otherwise owing to the state from the lease or sale of unneeded facilities in excess of the amount necessary to lease land and facilities pursuant to this section. (Added by Stats. 1979, c. 1187, p. 4637, §1.)

In addition, §39055 gives the school district authority to construct school facilities with funds from available capital reserves from the district's general fund or special funds and from the proceeds from the sale or lease of unneeded facilities.

New Mexico: Providing for school construction seems to be totally separate from the regulations relating to subdivisions. There is reference to Dedication for Public Use in both the municipality (N.M. STAT. ANN. §3-20-11) and the county (§47-6-5) statutes, but the delineation of public uses encompasses streets, roads, public utilities, water, liquid waste, with no mention of school sites. There are provisions for dedication for parks, libraries, streets and highways, but none for school buildings.

§22-20-1 explains the procedures for proposing and obtaining approval of school construction and emphasizes that approval by the chief director of public school finance will only be given when the school district shows that it is financially able to pay for the construction.

The local school boards are given the authority to borrow money to finance the construction of school buildings pursuant to the School Revenue Bond Act. §22-19-1 et seq.

Otherwise, there seems to be no other provisions for school building construction.

Texas: Texas is in a unique situation with regard to land for public schools. Article 7, §2 of the Texas Constitution provided for a Perpetual School Fund by setting aside vast tracts of land in the late 1800's to establish a permanent source of revenue for the educational system. As that land was sold, the monies were put into a fund for distribution to counties. Eventually, the original fund was divided into a Permanent School Fund and an Available School Fund, the distinctions explained in Article 7, §5 of the Texas Constitution.

The Permanent School Fund includes the principal from all bonds and other funds and the principal from the sale of the lands set aside in §2. The Available School Fund is made up of the interest derived from the proceeds of the sale of land set apart for the permanent school fund as well as other sources:

> (1) the interest and dividends arising from any securities or funds belonging to the permanent school fund;
>
> (2) all interest derivable from the proceeds of the sale of land set apart for the permanent school fund;
>
> (3) all money derived from the lease of land belonging to the permanent school fund;
>
> (4) all revenue collected by the state from an annual state ad valorem tax of an amount not to exceed 35 cents on the $100 valuation, exclusive of delinquencies and cost of collection;
>
> (5) one-fourth of all revenue derived from all state occupation taxes, exclusive of delinquencies and cost of collection;
>
> (6) one-fourth of revenue derived from state gasoline and special fuels excise taxes as provided by law; and
>
> (7) all other appropriations to the available school fund as made or may be made by the legislature for public free school purposes.

TEX. EDUC. CODE ANN. §15.01 (Vernon). Furthermore, there is statutory authority for the investment of the permanent school fund in various securities, bonds, stocks, debentures and obligations. §15.02.

The Available School Fund is applied annually to the "support of the public free schools" and is "distributed to the several counties according to their scholastic population." Article 7, §5. Scholastic population is defined as:

> all pupils within scholastic age enrolled in average daily attendance the next preceding scholastic year in the public elementary and high school grades of school districts within or under the jurisdiction of a county of this state.

TEX. CODE ANN. §15.01(c).

In 1981, the legislature enacted §16.106 for the purpose of "providing state aid to local school districts which experience unusually rapid growth in student enrollment from one year to the next so as to assist those districts in sustaining an adequate educational program for all students." The provision provides a detailed formula for determining the amount of state aid for each eligible school district, but fails to explain what, if any, limitations are put on the money so allotted.

Furthermore, §20.48 enacted in 1979 gives all independent school districts with more than a 150,000 population, or covering at least 170 square miles of territory, having $850 million or more assessed value of taxable property, and having a growth in student average daily attendance of 11% or more for each of the past five years, the power to issue and deliver:

> notes of the school district, negotiable or non-negotiable in form, representing all or part of the purchase price or cost to the school district of the land and/or building so purchased or built, and to secure such notes by a vendor's lien and/or deed of trust lien against such land and/or building, and,...to set aside and appropriate as a trust fund...for the payment of the principal of and interest on such notes such part and portion of the local school funds, levied and collected by the school district....

TEX. CODE ANN. §20.48(d).

Florida: Florida, like some of the other states surveyed, separates the subdivision regulations from the school building construction provisions. The references to dedication involve streets, alleys, i.e. PUBLIC USE. Although there is no clarification as to the meaning of "public use," there is no reference to schools in the dedication process. (FLA. STAT. ANN. §177.081). There is, however, an emphasis on cooperation by public bodies, especially when dealing with comprehensive planning (§163.400).

In 1981, the Florida legislature enacted the Educational Facilities Act of 1981 (FLA. STAT. ANN. §235.001 et seq.), one of the purposes of which was to "utilize...financing mechanisms in building educational facilities for the purpose of reducing costs...." (§235.002(2)). Furthermore, there is an emphasis on

> providing a systematic plan for educational construction whereby sites may be acquired, educational requirements formulated, and architectural plans and specifications developed so as to proceed immediately with construction of educational facilities when funds are made available. §235.002(4).

Florida has a Public Education Capital Outlay and Debt Service Trust Fund (§235.42) which is administered by the commissioner in the Office of Educational Facilities of the Department of Education. Disbursements are made to meet the encumbrance authorizations relating to the planning, construction and equipment of facilities which have been approved by the State Board of Education. The Public Education Capital Outlay and Debt Service Trust Fund is comprised of the following sources:

> 1. Proceeds, premiums, and accrued interest from the sale of public education bonds and that portion of the revenues accruing from the gross receipts tax as provided by s. 9(a)(2), Art. XII of the State Constitution, as amended, interest on investments, and federal interest subsidies.
>
> 2. All student billing fees and capital improvement fees collected, or to be collected, by the Board of Regents, except that portion that may be required for debt service and reserve requirements. Funds for such fees not required to pay

prior lien amounts at each university for debt service administration pursuant to previous bond resolutions shall be deposited in the Public Education Capital Outlay and Debt Service Trust Fund within 30 days after collection.

3. That portion of federal revenue sharing funds appropriated for educational facilities construction.

4. Any other funds for educational facilities construction, including all federal grants and donations.

5. All capital outlay funds previously appropriated and certified forward pursuant to s. 216.301.

In addition to the above Trust, there is authority for the establishment of a separate account to be known as the Special Facility Construction Account, to be used to "provide necessary construction funds to school districts which have urgent construction needs...but which lack sufficient resources at present, and cannot reasonably anticipate sufficient resources within the period of the next three years, for these pruposes from currently authorized sources of revenue." FLA. STAT. ANN. §235.435(4)(a).

The following criteria are considered by the Special Facility Construction Committee (made up of two reps. of Department of Education; one rep. from Governor's office; one rep. selected annually by the school boards; and one rep. selected annually by the superintendents):

1. The project must be recommended in the most recent survey or surveys by the district under the rules of the State Board of Education.

2. The district must not have sufficient funds available in total from all capital outlay sources that within the next 3 fiscal years would allow the district to raise the total estimated cost of the project by itself.

3. There must be a certification from the Office of Educational Facilities of the inability of the district to pay for the project within 3 years from the total amount available from all

capital outlay sources and that the project is recommended by survey.

4. There must be a certification from the Office of Educational Facilities that the plans for the project are completed and approved.

5. There must be an agreement signed by the district board stating that it will advertise for bids within 30 days of receipt of its encumbrance authorization from the office.

If a contract has not been signed 90 days after the advertising of bids, the funding for the specific project shall revert to the Special Facility Construction Account to be reallocated to other projects on the list. However, an additional 30 days may be granted by the commissioner.

The Committee reviews the requests and ranks them in order of priority. The priority list is then submitted to the legislature in the legislative budget request.

DOUGLAS COUNTY SCHOOL DISTRICT Re. 1

GENERAL ANALYSIS: YOUNG/AMERICAN PUD

Facility Assessment

Facility Needs	Proportional Cost To Serve
.5317 (K-6)	$1,860,810
.1225 (7-9)	$1,274,000
.096 (10-12)	$1,589,760
TOTAL:	$4,724,570 (1983 dollars)

Assumptions

1. Facility costs of $4,724,570. (1983 dollars - no financing cost)
2. Project build out is 6 years.
3. Market value of project: $72,400,000.
4. Assessed value of project: $15,200,000.
5. 15 mills levied toward debt retirement as an estimate of revenues raised to "build" facilities.
6. Fee structure developed as follows:

RA	$988.21	Average/unit: $503.28
RB	$886.81	
RC	$529.90	
RD	$247.05	
RE	$102.77	
RF	$ 51.46	

7. Constant dollar (1983) costs and revenues.

Findings

1. Mill levy raises $3,656,050 toward debt retirement (principal only over 20 years).

2. Fees raise $605,190.

3. Total revenues (1983 dollar constant) $4,261,240.

4. 1983 construction cost $4,724,592.

5. Payback with fees: 23 years
   without fees: 25 years

Advantages of Fee

1. Monies available for capital improvements in the same time frame as impacts. Ability to plan for accommodating impacts.

2. Not an unreasonable fee ($500 is less than 1% of value of a $60,000 dwelling.)

3. Used in facilities that serve Castle Rock.

4. Still relies primarily on the basic funding method available to school district; i.e., bond authorization, sale and use of sale proceeds for construction.

5. Fees save taxpayers of town and county the equivalent of $1,200,000 during project construction period, given interest costs associated with the sale of bonds.

Disadvantages of Fee

1. Fair and equitable to apply only to newly annexed projects?

2. Use of fixed 1983 dollars -- is it reasonable?

3. Influences market for housing.

4. Growth control mechanism?

5. No need for funds. Really don't amount to much.

SCHOOL FACILITIES REQUIREMENT FORECAST
(100% Developers' Projections)
Douglas County School District Re. 1

YEAR	Elem. Schools Required	Projected Cost of Facilities	Jr. High Schools Required	Projected Cost of Facilities	Sr. High Schools Required	Projected Cost of Facilities	Annual Cost	Cumulative Additional Debt (Prin. only)
1983								
1984			1	* 11,232,000			11,232,000	11,232,000
1985	2	* 8,164,800					8,164,800	19,396,800
1986	1	4,408,992	1	13,101,005	1	* 20,860,831	38,370,828	57,767,628
1987	2	9,523,424					9,523,424	67,291,052
1988	2	10,285,298					10,285,298	77,576,350
1989	2	11,108,122	1	16,503,493			27,611,615	105,187,965
1990	2	11,996,772			1	28,380,930	40,377,702	145,565,667
1991	2	12,956,514	1	19,249,674			32,206,188	177,771,855
1992	2	13,993,036					13,993,036	191,764,891
1993	2	15,112,478	1	22,452,820	1	35,751,797	73,317,095	265,081,986

* Assumption - 8% annual inflation rate

The following developments are not included in the projections for additional facilities:

Douglas Park	3,545 units
Hughes Ranch	1,223
Rampart Range	9,575
Sterling Ranch	3,450
Villages of Castle Rock	19,258
Scott Ranch	1,569
Rampart Station	1,197
Young/American	1,197
TOTAL	41,014

Current Building Costs

Elementary	-	$ 3,500,000
Junior High	-	10,400,000
Senior High	-	16,560,000

RO 2/28/83

SCHOOL FACILITIES REQUIREMENT FORECAST
(50% Developers' Projections)
Douglas County School District Re. 1

YEAR	Elem. Schools Required	Projected Cost of Facilities	Jr. High Schools Required	Projected Cost of Facilities	Sr. High Schools Required	Projected Cost of Facilities	Annual Cost	Cumulative Additional Debt (Prin. only
1983								
1984								
1985			1	* 12,130,560			12,130,560	12,130,560
1986	1	* 4,408,992					4,408,992	16,539,552
1987	1	4,761,712					4,761,712	21,301,264
1988	1	5,142,649					5,142,649	26,443,913
1989	1	5,554,061					5,554,061	31,997,974
1990	1	5,998,386	1	17,823,772	1	* 28,380,930	52,203,088	84,201,062
1991	1	6,478,257					6,478,257	90,679,319
1992	1	6,996,518					6,996,518	97,675,837
1993	1	7,556,239	1	22,452,820			30,009,059	127,684,896

* Assumption - 8% annual inflation rate

The following developments are not included in the projections for additional facilities:

Douglas Park	3,545 units
Hughes Ranch	1,223
Rampart Range	9,575
Sterling Ranch	3,450
Villages of Castle Rock	19,258
Scott Ranch	1,569
Rampart Station	1,197
Young/American	1,197
TOTAL	41,014

Current Building Costs

Elementary	-	$ 3,500,000
Junior High	-	10,400,000
Senior High	-	16,560,000

RO 2/28/83

PROJECT INFORMATION AND STAFF RECOMMENDATION

PROJECT NAME:	Douglas County School District - Castle Rock Site I
REQUEST:	Minor Plat and Rezoning
DATE:	January 6, 1983 (Planning Commission Hearing)
APPLICANT:	RE-1 School District 317 Gilbert Street Castle Rock 688-9510
REPRESENTATIVE:	Duane Knox
LOCATION:	East of Oakwood Drive and also east of Castle North Filing #6, between Gigi Street and Canyon Drive.
SITE DATA:	The site contains 15.423 acres to be used as an elementary school facility. The topography is gently rolling and is covered in scrub oak and native grasses. A 100 year floodplain (Hangman's Gulch) traverses the northeast corner of the site. Canyon Drive will be extended by the school district along the southern border of the proposal.
ACCESS:	Access to the property will be from the extension of Canyon Drive and access to the school will be from the extended Canyon Drive.
EXISTING ZONING:	Residential (County)
PROPOSED ZONING:	R-1
SURROUNDING ZONING:	North, east and south zoned residential (County) West - R-1 (Castle North)

RELATIONSHIP TO COMPREHENSIVE PLAN:

Goal:

Develop a community education program that provides learning opportunities for all interests and ages in the Town.

Policy:

1. Neighborhoods - Locate and size elementary schools to be within walking distance for a maximum number of elementary school children as the focus of residential neighborhoods.
2. Planning - School facilities should be designed using a process that provides the Town adequate opportunity to review and make input into plans to make certain schools fit the existing site conditions, relate to community pedestrian and transportation systems and are consistent within the scale and image of the surrounding community.

Staff Comments:

This property was annexed into the Town on December 21, 1982. It was not final platted and zoned simultaneously due to the time constraint imposed as it related to the school being able to let their bids for construction. All of the concerns and issues have been resolved within the Annexation Agreement.

Staff Recommendation:

1. Approval of the rezoning to R-1.

2. Approval of the Minor Plat.

SCANNING INFORMATION SHEET

This represents an oversized document that was NOT scanned into the Document Management System.

Box 4

TITLE: Douglas County School District

Type of document: Site Map

SCANNING INFORMATION SHEET

This represents an oversized document that was NOT scanned into the Document Management System.

Box 4

TITLE: Douglas County School District

Type of document: Sketch Plan Map

DEVELOPMENT PROCESS

School District Input

Comparison of County Jurisdiction

1. Castle Rock: Development plan and staff report submitted to district for review, usually prior to the sketch plat. Annexation contracts and petitions acquired in the informational packet prior to Town Board meetings. School district hasn't been asked to formally respond regarding impact. In most cases, formal response is asked for after annexation is approved.

2. Douglas County: Rezoning request corresponds to Town's process of annexation and zoning. County refers all rezonings to the school district for the evaluation of project impact and request for land or cash. The subsequent referral letter is submitted prior to any formal action by either the Planning Commission or County Commissioners.

3. Parker: Annexation and rezoning process is the same as Castle Rock, with these two actions taking place at the same time. Parker refers the annexation documents and rezoning plat to the district for review and comment. Impacts are addressed prior to any formal action by the Planning Commission or Town Board. Annexation contract ties down provisions for schools in land or fees.

4. Larkspur: No ongoing rezoning or annexation activity.

PROVISIONS FOR SCHOOLS

CASTLE ROCK: Present policy permits the district to request land or cash-in-lieu. The Town will provide land or cash-in-lieu, after prioritization of all community needs. The prioritization process is to include all entities requesting land or cash. There is no guarantee that the school district will receive land or cash from each project. School development fees are not collected from new annexations.

DOUGLAS COUNTY: The County accepts and uses the District's standard impact formula. Land computed as a result is set aside at zoning for schools. If the parcel is too small or not needed, the district receives cash-in-lieu of the land. The district is guaranteed land or cash-in-lieu of land to mitigate the impacts detailed by the district. Development fees cannot be collected because of present statutory limitations.

PARKER: Parker accepts and uses the district standard impact formula. Land is set aside at zoning for schools. Any cash-in-lieu settlement is incorporated into the development fee. A separate school development fee is computed and made part of the annexation agreement. Monies collected are to be used for facility construction in the attendance areas of each development.

LARKSPUR: No development activity at present.

PROJECT INFORMATION AND STAFF RECOMMENDATION

PROJECT NAME:	Douglas County School District - Castle Rock Site I
REQUEST:	Sketch Plan for consideration of: 1. Annexation 2. Rezoning 3. Platting
APPLICANT:	RE-1 School District 317 Gilbert Street Castle Rock 688-9510
REPRESENTATIVE:	Duane Knox
LOCATION:	East of Oakwood Drive and also east of Castle North Filing #6, between Gigi Street and Canyon Drive.
SITE DATA:	The site contains 15.423 acres to be used as an elementary school facility. The topography is gently rolling and is covered in scrub oak and native grasses. A 100 year floodplain (Hangman's Gulch) traverses the northeast corner of the site. Canyon Drive will be extended by the school district along the southern border of the proposal.
ACCESS:	Access to the property will be from the extension of Canyon Drive and access to the school will be from the extended Canyon Drive.
EXISTING ZONING:	Residential (County)
PROPOSED ZONING:	R-1
SURROUNDING ZONING:	North, east and south zoned residential (County) West - R-1 (Castle North)

RELATIONSHIP TO COMPREHENSIVE PLAN:

Goal:

Develop a community education program that provides learning opportunities for all interests and ages in the Town.

Policy:

1. Neighborhoods - Locate and size elementary schools to be within walking distance for a maximum number of elementary school children as the focus of residential neighborhoods.
2. Villages - Where possible locate and size junior high schools as part of the village centers and within walking distance for a maximum number of junior high students.

Concerns and Issues:

The developer of Castle North Filing #6 left a steep embankment between the rear of their residential lots and the west boundary of the school property. This oversight is creating an 8% slope situation on the extension of Canyon Drive and steep embankments which will have to be addressed.

Staff Comments and Recommendations:

The extension of Canyon Drive is suggested in the Town's Transportation Study. Although this is only a small segment of this road, it is extremely important in that this leg is necessary to penetrate into the Scott Ranch property and continue into the Villages. Joe Porter has indicated to the Town that both of these parcels are currently being designed by his company, Design Workshop, for Park Funding. It is critical that the School District get this property annexed and platted so that they may proceed with their bidding process if they are to break ground this construction season.

Staff recommends approval of the sketch plan as submitted.

ANNEXATION AGREEMENT

DOUGLAS COUNTY SCHOOL DISTRICT Re. 1 ANNEXATION

THIS AGREEMENT made this _____ day of _____, 1982, by and between THE TOWN OF CASTLE ROCK, STATE OF COLORADO, a Colorado municipal corporation, hereinafter referred to as "Town", and Douglas County School District Re. 1, a School District, hereinafter referred to as "School District".

WITNESSETH:

WHEREAS, School District desires to annex certain lands to the Town of Castle Rock, more particularly described in Exhibit "A", attached hereto and made a part hereof; and

WHEREAS, the parties hereto desire to set forth the respective duties and responsibilities of each with respect to the development of said land; and

WHEREAS, during the course of the discussions by and between the representatives of the Town and the representatives of the School District leading to the signing of this instrument, it has become evident that commitments to certain goals are shared by each, principally including but not limited to:

Environmentally sensitive and innovative design leading to construction of high quality;

Conservation of natural resources, principally energy and water, through design which encourages use of alternative energy sources as well as water conservation, and;

WHEREAS, Town and School District desire to cooperate in the pursuance of these desired goals,

NOW THEREFORE, IN CONSIDERATION of the mutual promises herein contained, the parties agree as follows:

SECTION I

GENERAL RESPONSIBILITIES OF TOWN

A. To permit School District to connect with the Town's water mains and sewer lines at locations adjacent to approved by Town's Engineer, and/or Superintendent of Public Works.

B. To furnish water and sewer service to users of such services within said annexed area and charge such rates and connection charges as are then applicable by Town Ordinance.

C. To accept for continual maintenance dedicated water mains, sewer mains, manholes, fire hydrants and all appurtenant structures, as soon as these are completed to Town's specifications, subject to a one-year warranty by School District against defective materials and/or workmanship which year shall commence as set forth in Section I, Paragraph G., below.

D. To accept for continual maintenance all dedicated streets, bikepaths, culverts, drainage structures, and all appurtenant structures, as soon as the same are completed to Town's specifications, subject to a one-year warranty by School District against defective materials and/or workmanship which year shall commence as set forth in Section I, Paragraph G., below.

E. To accept for continual maintenance all dedicated curbs, gutters, sidewalks, and all appurtenant structures, as soon as they are completed to Town's specifications subject to a one-year warranty by School District against defective materials and/or workmanship which year shall commence as set forth in Section I, Paragraph G., below.

F. To install meter pits and water meters.

G. School District's one-year warranty, as set forth in Section I, Paragraph C., D., and E., above, shall commence upon acceptance of the warranted installation by Town. Town's acceptance shall be evidenced by a letter

executed by the Town's Building/Construction Inspector or other official subsequently designated by Town. Said warranty, with regard to the installations therein described, shall expire on the first anniversary date of said letter. Said letter, or a letter specifically enumerating and describing those defects which preclude Town's acceptance of said installations shall be sent to the School District within thirty (30) working days following the School District's written request for inspection and acceptance. Failure of Town to respond to the School District's request for inspection and acceptance within said thirty (30) day period shall constitute acceptance of the installations described in said letter and the one-year warranty shall commence on the thirty-first (31st) day working day following the date of said letter for the installations described therein.

H. School District shall have no responsibility to erect additional public improvements or to maintain public improvements within any project area in which public improvements have been dedicated to and accepted by Town, from and after the date of acceptance, subject to the one-year warranty as set forth above unless the property is included in a special improvement district in the future.

SECTION II

GENERAL RESPONSIBILITIES OF SCHOOL DISTRICT

A. To engineer, furnish material for, and install at School District's expense, and according to Town specifications, water mains and service lines running from the existing main in Canyon Drive to the most southerly point on the south boundary line of the property to be annexed prior to paving. School District shall have the responsibility to construct any such mains up to and including 12 inches in diameter, at its expense, when so required by Town. Nothing contained herein shall be

including 12 inches in diameter, at its expense, when so required by Town. Nothing contained herein shall be construed to prevent School District from receiving recoupment for its expenses, pursuant to Town Ordinance 8.08.

B. To engineer, furnish material for, and install at School District's expense, sewer lines to Town specifications connecting to existing facilities, with manholes and lift stations as required to be installed in accordance with Town specifications and to install all service sewer lines running from the main in Canyon Drive to the most southerly point on the south boundary line of the property to be annexed, prior to paving. School District shall have the responsibility to construct any such lines up to and including 12 inches in diameter at its expense. Nothing contained herein shall be construed to prevent School District from receiving recoupment for its expenses, pursuant to Town Ordinance 8.08.

C. To engineer, furnish material for, and install at School District's expense, curb, gutter, and sidewalk, where required, in accordance with applicable Town specifications on one side of the street known as Canyon Drive abutting the property to be annexed or a mutually agreeable substitute therefor, which would not require greater expense on the part of the School District.

D. To engineer, furnish materials for, and install at School District's expense, all streets on the property to be annexed, according to all applicable Town specifications.

E. To present a plat to the Town for approval showing all property lines, easements, rights-of-way, and dedications in accordance with the final plat requirements of the Town subdivision regulations. The plat shall be signed by all required Town officials and recorded within twenty (20) days of approval by the Town provided said plat has been executed by all other required parties.

and drainage structures, to the Town for approval and to present "as builts" to the Town within 30 days of completion of the improvements described thereon, and to pay all reasonable inspection costs associated with such improvements.

G. To convey all public sewer lines and water mains installed to the Town and to dedicate all public streets, roads and easements. The same shall be accomplished by dedication on the plat or with consent of Town by Deed.

H. To install fire hydrants according to applicable Town specifications.

I. To install non-electric on-site traffic and street signs, and street lighting, as the same may reasonably be required by Town.

J. The parties agree that all of the above obligations of School District shall be at such School District's expense and shall be at no expense to the Town, and that the Town shall not be liable for installation of any necessary utilities and/or connections thereto, except to dig meter pits and install water meters for the fee provided therefor.

K. School District shall pay to the Town such tap and development fees as are established by Ordinances of the Town.

SECTION III

PUBLIC IMPROVEMENTS

A. "Public improvements" as used in this Section III shall include and be limited to public streets, including curb, gutter, and sidewalks appurtenant thereto, water and sewer mains, manholes, drainage structures, fire hydrants, street striping and street lighting and necessary appurtenant structures.

B. School District agrees to complete such facilities as are now required by proper authority and dedicate the same to the Town prior to any certificates of occupancy being issued for any structures on the property.

SECTION IV

DRAINAGE AND EROSION CONTROL

Drainage and erosion control measures deemed necessary for the property to be annexed shall be accomplished by School District according to Town specifications. The School District shall have the option to attach to existing drainage structures installed by Cardon Homes, Inc., in Canyon Drive. School District desires to exercise said option it shall pay $5,064.00 to Cardon Homes prior to attaching to those drainage structures.

SECTION V

WATER RIGHTS

The School District agrees to give its consent to permit the Town to withdraw the quantity of water in aquifers underlying the property to be annexed, both tributary and non-tributary.

SECTION VI

REVIEW BY TOWN OF CASTLE ROCK

The Planning Commission shall have the opportunity to review and make recommendations to the Board of Trustees who shall have the opportunity to review the site plan developed by the School District.

SECTION VII

APPROVAL OF BOARD OF TRUSTEES

This Agreement was considered by the Board of Trustees of the Town of Castle Rock, Colorado, at their regular public meeting held on _____, 1982, and approved by a vote of _____ for and _____ against.

SECTION VIII

BINDING EFFECT

This Agreement shall be binding upon and inure to the

benefit of the successors and assigns of the parties hereto.

IN WITNESS WHEREOF the parties have executed this Agreement the day first above written.

Douglas County School District
Re. 1

By: _____
President

(S E A L)

ATTEST:

_____
Secretary

Town of Castle Rock

By: _____
Mayor

(S E A L)

ATTEST:

_____
Town Clerk

EXHIBIT A

A tract of land situated in the Southwest 1/4 of the Northwest 1/4 and in the Northwest 1/4 of the Southwest 1/4 of Section 1, Township 8 South, Range 67 West of the 6th Principal Meridian, Town of Castle Rock, Douglas County, Colorado, more particularly described as follows: Beginning at the Southwest corner of the Southwest 1/4 of the Northwest 1/4 of said Section 1 and considering the West line of said Southwest 1/4 of the Northwest 1/4 to bear N3°51'27" E with all bearings contained herein relative thereto; Thence N3°51'27"E along said West line a distance of 214.48 feet; Thence S86°08'33"E a distance of 603.50 feet; Thence S2°48'46"W a distance of 872.67 feet; Thence S 46°16'27"W a distance of 514.52 feet to a point on a curve; Thence Northwesterly along the arc of the curve to the right a distance of 14.57 feet, said curve has a radius of 430.00 feet, a central angle of 1°56'29" and a center point that bears N52°22'24"E to a point of reverse curve; Thence Northwesterly along the arc of the curve to the left a distance of 240.02 feet, said curve has a radius of 270.00 feet and a central angle of 50°56'00" to a point of tangent; Thence N88°33'36"W along said tangent a distance of 27.62 feet to a point on the West line of the Northwest 1/4 of the Southwest 1/4 of said Section 1; Thence N2°33'27"E along said West line a distance of 937.64 feet to the point of beginning; Containing 15.423 acres, more or less.

ANNEXATION AGREEMENT

DOUGLAS COUNTY SCHOOL DISTRICT Re. 1 ANNEXATION

THIS AGREEMENT made this _____ day of _____, 1982, by and between THE TOWN OF CASTLE ROCK, STATE OF COLORADO, a Colorado municipal corporation, hereinafter referred to as "Town", and Douglas County School District Re. 1, a School District, hereinafter referred to as "School District".

WITNESSETH:

WHEREAS, School District desires to annex certain lands to the Town of Castle Rock, more particularly described in Exhibit "A", attached hereto and made a part hereof; and

WHEREAS, the parties hereto desire to set forth the respective duties and responsibilities of each with respect to the development of said land; and

WHEREAS, during the course of the discussions by and between the representatives of the Town and the representatives of the School District leading to the signing of this instrument, it has become evident that commitments to certain goals are shared by each, principally including but not limited to:

Environmentally sensitive and innovative design leading to construction of high quality;

Conservation of natural resources, principally energy and water, through design which encourages use of alternative energy sources as well as water conservation, and;

WHEREAS, Town and School District desire to cooperate in the pursuance of these desired goals,

NOW THEREFORE, IN CONSIDERATION of the mutual promises herein contained, the parties agree as follows:

SECTION I

GENERAL RESPONSIBILITIES OF TOWN

A. To permit School District to connect with the Town's water mains and sewer lines at locations adjacent to approved by Town's Engineer, and/or Superintendent of Public Works.

B. To furnish water and sewer service to users of such services within said annexed area and charge such rates and connection charges as are then applicable by Town Ordinance.

C. To accept for continual maintenance dedicated water mains, sewer mains, manholes, fire hydrants and all appurtenant structures, as soon as these are completed to Town's specifications, subject to a one-year warranty by School District against defective materials and/or workmanship which year shall commence as set forth in Section I, Paragraph G., below.

D. To accept for continual maintenance all dedicated streets, bikepaths, culverts, drainage structures, and all appurtenant structures, as soon as the same are completed to Town's specifications, subject to a one-year warranty by School District against defective materials and/or workmanship which year shall commence as set forth in Section I, Paragraph G., below.

E. To accept for continual maintenance all dedicated curbs, gutters, sidewalks, and all appurtenant structures, as soon as they are completed to Town's specifications subject to a one-year warranty by School District against defective materials and/or workmanship which year shall commence as set forth in Section I, Paragraph G., below.

F. To install meter pits and water meters.

G. School District's one-year warranty, as set forth in Section I, Paragraph C., D., and E., above, shall commence upon acceptance of the warranted installation by Town. Town's acceptance shall be evidenced by a letter

executed by the Town's Building/Construction Inspector or other official subsequently designated by Town. Said warranty, with regard to the installations therein described, shall expire on the first anniversary date of said letter. Said letter, or a letter specifically enumerating and describing those defects which preclude Town's acceptance of said installations shall be sent to the School District within thirty (30) working days following the School District's written request for inspection and acceptance. Failure of Town to respond to the School District's request for inspection and acceptance within said thirty (30) day period shall constitute acceptance of the installations described in said letter and the one-year warranty shall commence on the thirty-first (31st) day working day following the date of said letter for the installations described therein.

H. School District shall have no responsibility to erect additional public improvements or to maintain public improvements within any project area in which public improvements have been dedicated to and accepted by Town, from and after the date of acceptance, subject to the one-year warranty as set forth above unless the property is included in a special improvement district in the future.

SECTION II

GENERAL RESPONSIBILITIES OF SCHOOL DISTRICT

A. To engineer, furnish material for, and install at School District's expense, and according to Town specifications, water mains and service lines running from the existing main in Canyon Drive to the most southerly point on the south boundary line of the property to be annexed prior to paving. School District shall have the responsibility to construct any such mains up to and including 12 inches in diameter, at its expense, when so required by Town. Nothing contained herein shall be

including 12 inches in diameter, at its expense, when so required by Town. Nothing contained herein shall be construed to prevent School District from receiving recoupment for its expenses, pursuant to Town Ordinance 8.08.

B. To engineer, furnish material for, and install at School District's expense, sewer lines to Town specifications connecting to existing facilities, with manholes and lift stations as required to be installed in accordance with Town specifications and to install all service sewer lines running from the main in Canyon Drive to the most southerly point on the south boundary line of the property to be annexed, prior to paving. School District shall have the responsibility to construct any such lines up to and including 12 inches in diameter at its expense. Nothing contained herein shall be construed to prevent School District from receiving recoupment for its expenses, pursuant to Town Ordinance 8.08.

C. To engineer, furnish material for, and install at School District's expense, curb, gutter, and sidewalk, where required, in accordance with applicable Town specifications on one side of the street known as Canyon Drive abutting the property to be annexed or a mutually agreeable substitute therefor, which would not require greater expense on the part of the School District.

D. To engineer, furnish materials for, and install at School District's expense, all streets on the property to be annexed, according to all applicable Town specifications.

E. To present a plat to the Town for approval showing all property lines, easements, rights-of-way, and dedicationsin accordance with the final plat requirements of the Town subdivision regulations. The plat shall be signed by all required Town officials and recorded within twenty (20) days of approval by the Town provided said plat has been executed by all other required parties.

and drainage structures, to the Town for approval and to present "as builts" to the Town within 30 days of completion of the improvements described thereon, and to pay all reasonable inspection costs associated with such improvements.

G. To convey all public sewer lines and water mains installed to the Town and to dedicate all public streets, roads and easements. The same shall be accomplished by dedication on the plat or with consent of Town by Deed.

H. To install fire hydrants according to applicable Town specifications.

I. To install non-electric on-site traffic and street signs, and street lighting, as the same may reasonably be required by Town.

J. The parties agree that all of the above obligations of School District shall be at such School District's expense and shall be at no expense to the Town, and that the Town shall not be liable for installation of any necessary utilities and/or connections thereto, except to dig meter pits and install water meters for the fee provided therefor.

K. School District shall pay to the Town such tap and development fees as are established by Ordinances of the Town.

SECTION III

PUBLIC IMPROVEMENTS

A. "Public improvements" as used in this Section III shall include and be limited to public streets, including curb, gutter, and sidewalks appurtenant thereto, water and sewer mains, manholes, drainage structures, fire hydrants, street striping and street lighting and necessary appurtenant structures.

B. School District agrees to complete such facilities as are now required by proper authority and dedicate the same to the Town prior to any certificates of occupancy being issued for any structures on the property.

SECTION IV

DRAINAGE AND EROSION CONTROL

Drainage and erosion control measures deemed necessary for the property to be annexed shall be accomplished by School District according to Town specifications. The School District shall have the option to attach to existing drainage structures installed by Cardon Homes, Inc., in Canyon Drive. School District desires to exercise said option it shall pay $5,064.00 to Cardon Homes prior to attaching to those drainage structures.

SECTION V

WATER RIGHTS

The School District agrees to give its consent to permit the Town to withdraw the quantity of water in aquifers underlying the property to be annexed, both tributary and non-tributary.

SECTION VI

REVIEW BY TOWN OF CASTLE ROCK

The Planning Commission shall have the opportunity to review and make recommendations to the Board of Trustees who shall have the opportunity to review the site plan developed by the School District.

SECTION VII

APPROVAL OF BOARD OF TRUSTEES

This Agreement was considered by the Board of Trustees of the Town of Castle Rock, Colorado, at their regular public meeting held on _____, 1982, and approved by a vote of _____ for and _____ against.

SECTION VIII

BINDING EFFECT

This Agreement shall be binding upon and inure to the

benefit of the successors and assigns of the parties hereto.

IN WITNESS WHEREOF the parties have executed this Agreement the day first above written.

Douglas County School District Re. 1

By: _____
President

(S E A L)

ATTEST:

_____
Secretary

Town of Castle Rock

By: _____
Mayor

(S E A L)

ATTEST:

_____
Town Clerk

EXHIBIT A

A tract of land situated in the Southwest 1/4 of the Northwest 1/4 and in the Northwest 1/4 of the Southwest 1/4 of Section 1, Township 8 South, Range 67 West of the 6th Principal Meridian, Town of Castle Rock, Douglas County, Colorado, more particularly described as follows: Beginning at the Southwest corner of the Southwest 1/4 of the Northwest 1/4 of said Section 1 and considering the West line of said Southwest 1/4 of the Northwest 1/4 to bear N3°51'27" E with all bearings contained herein relative thereto; Thence N3°51'27"E along said West line a distance of 214.48 feet; Thence S86°08'33"E a distance of 603.50 feet; Thence S2°48'46"W a distance of 872.67 feet; Thence S 46°16'27"W a distance of 514.52 feet to a point on a curve; Thence Northwesterly along the arc of the curve to the right a distance of 14.57 feet, said curve has a radius of 430.00 feet, a central angle of 1°56'29" and a center point that bears N52°22'24"E to a point of reverse curve; Thence Northwesterly along the arc of the curve to the left a distance of 240.02 feet, said curve has a radius of 270.00 feet and a central angle of 50°56'00" to a point of tangent; Thence N88°33'36"W along said tangent a distance of 27.62 feet to a point on the West line of the Northwest 1/4 of the Southwest 1/4 of said Section 1; Thence N2°33'27"E along said West line a distance of 937.64 feet to the point of beginning; Containing 15.423 acres, more or less.

Bruce

ANNEXATION AGREEMENT

DOUGLAS COUNTY SCHOOL DISTRICT Re. 1 ANNEXATION

THIS AGREEMENT made this _____ day of _____, 1982, by and between THE TOWN OF CASTLE ROCK, STATE OF COLORADO, a Colorado municipal corporation, hereinafter referred to as "Town", and Douglas County School District Re. 1, a School District, hereinafter referred to as "School District".

WITNESSETH:

WHEREAS, School District desires to annex certain lands to the Town of Castle Rock, more particularly described in Exhibit "A", attached hereto and made a part hereof; and

WHEREAS, the parties hereto desire to set forth the respective duties and responsibilities of each with respect to the development of said land; and

WHEREAS, during the course of the discussions by and between the representatives of the Town and the representatives of the School District leading to the signing of this instrument, it has become evident that commitments to certain goals are shared by each, principally including but not limited to:

Environmentally sensitive and innovative design leading to construction of high quality;

Conservation of natural resources, principally energy and water, through design which encourages use of alternative energy sources as well as water conservation, and;

WHEREAS, Town and School District desire to cooperate in the pursuance of these desired goals,

NOW THEREFORE, IN CONSIDERATION of the mutual promises herein contained, the parties agree as follows:

SECTION I

GENERAL RESPONSIBILITIES OF TOWN

A. To permit School District to connect with the Town's water mains and sewer lines at locations adjacent to approved by Town's Engineer, and/or Superintendent of Public Works.

B. To furnish water and sewer service to users of such services within said annexed area and charge such rates and connection charges as are then applicable by Town Ordinance.

C. To accept for continual maintenance dedicated water mains, sewer mains, manholes, fire hydrants and all appurtenant structures, as soon as these are completed to Town's specifications, subject to a one-year warranty by School District against defective materials and/or workmanship which year shall commence as set forth in Section I, Paragraph G., below.

D. To accept for continual maintenance all dedicated streets, bikepaths, culverts, drainage structures, and all appurtenant structures, as soon as the same are completed to Town's specifications, subject to a one-year warranty by School District against defective materials and/or workmanship which year shall commence as set forth in Section I, Paragraph G., below.

E. To accept for continual maintenance all dedicated curbs, gutters, sidewalks, and all appurtenant structures, as soon as they are completed to Town's specifications subject to a one-year warranty by School District against defective materials and/or workmanship which year shall commence as set forth in Section I, Paragraph G., below.

F. To install meter pits and water meters.

G. School District's one-year warranty, as set forth in Section I, Paragraph C., D., and E., above, shall commence upon acceptance of the warranted installation by Town. Town's acceptance shall be evidenced by a letter

executed by the Town's Building Construction Inspector or other official subsequently designated by Town. Said warranty, with regard to the installations therein described, shall expire on the first anniversary date of said letter. Said letter, or a letter specifically enumerating and describing those defects which preclude Town's acceptance of said installations shall be sent to the School District within thirty (30) working days following the School District's written request for inspection and acceptance. Failure of Town to respond to the School District's request for inspection and acceptance within said thirty (30) day period shall constitute acceptance of the installations described in said letter and the one-year warranty shall commence on the thirty-first (31st) day working day following the date of said letter for the installations described therein.

H. School District shall have no responsibility to erect additional public improvements or to maintain public improvements within any project area in which public improvements have been dedicated to and accepted by Town, from and after the date of acceptance, subject to the one-year warranty as set forth above.

SECTION II

GENERAL RESPONSIBILITIES OF SCHOOL DISTRICT

A. To engineer, furnish material for, and install at School District's expense, and according to Town specifications, water mains and service lines running from the existing main in Canyon Drive to the most southerly point on the south boundary line of the property to be annexed. School District shall have the responsibility to construct any such mains up to and including 12 inches in diameter, at its expense, when so required by Town. Nothing contained herein shall be construed to prevent School District from receiving recoupment for its expenses,

pursuant to Town Ordinance 8.08.

B. To engineer, furnish material for, and install at School District's expense, sewer lines to Town specifications connecting to existing facilities, with manholes and lift stations as required to be installed in accordance with Town specifications and to install all service sewer lines running from the main in Canyon Drive to the most southerly point on the south boundary line of the property to be annexed, prior to paving. School District shall have the responsibility to construct any such lines up to and including 12 inches in diameter at its expense. Nothing contained herein shall be construed to prevent School District from receiving recoupment for its expenses, pursuant to Town Ordinance 8.08.

C. To engineer, furnish material for, and install at School District's expense, curb, gutter, and sidewalk, where required, in accordance with applicable Town specifications on one side of the street known as Canyon Drive abutting the property to be annexed.

D. To engineer, furnish materials for, and install at School District's expense, all streets on the property to be annexed, according to all applicable Town specifications.

E. To present a plat to the Town for approval showing all property lines, easements, rights-of-way, and dedications. The plat shall be signed by all required Town officials and recorded within twenty (20) days of approval by the Town provided said plat has been executed by all other required parties.

F. To present sewer, water, and drainage plans showing the location and depth of lines, mains, and laterals and drainage structures, to the Town for approval and to present "as builts" to the Town within 30 days of completion of the improvements described thereon, and to pay all rea-, sonable inspection costs associated with such improvements.

G. To convey all public sewer lines and water mains

installed to the Town and to dedicate and public streets, roads and easements. The same shall be accomplished by dedication on the plat or with consent of Town by Deed.

H. To install fire hydrants according to applicable Town specifications.

I. To install non-electric on-site traffic and street signs, and street lighting, as the same may reasonably by required by Town.

J. The parties agree that all of the above obligations of School District shall be at such School District's expense and shall be at no expense to the Town, and that the Town shall not be liable for installation of any necessary utilities and/or connections thereto, except to dig meter pits and install water meters for the fee provided therefor.

K. School District shall pay to the Town such tap and development fees as are established by Ordinances of the Town.

SECTION III

PUBLIC IMPROVEMENTS

A. "Public improvements" as used in this Section III shall include and be limited to public streets, including curb, gutter, and sidewalks appurtenant thereto, water and sewer mains, manholes, drainage structures, fire hydrants, and necessary appurtenant structures.

B. School District agrees to complete such facilities and dedicate the same to the Town prior to any certificates of occupancy being issued for any structures on the property.

SECTION IV

DRAINAGE AND EROSION CONTROL

Drainage and erosion control measures deemed necessary for the property to be annexed shall be accomplished by School District according to Town specifications. If the

School District desires to attach to existing drainagle structures installed by Cardon Homes, Inc., in Canyon Drive, School District agrees to pay $5,064.00 to Cardon Homes prior to attaching to those drainage structures.

SECTION V

WATER RIGHTS

The School District agrees to give its consent to permit the Town to withdraw the quantity of water in aquifers underlying the property to be annexed, both tributary and non-tributary.

SECTION VI

REVIEW BY BOARD OF TRUSTEES

The Board of Trustees shall have the opportunity to review and approve the site plan developed by the School District.

SECTION VII

APPROVAL OF BOARD OF TRUSTEES

This Agreement was considered by the Board of Trustees of the Town of Castle Rock, Colorado, at their regular public meeting held on _____, 1982, and approved by a vote of _____ for and _____ against.

SECTION VIII

BINDING EFFECT

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

IN WITNESS WHEREOF the parties have executed this Agreement the day first above written.

Douglas County School District
Re. 1

By: _____
President

(S E A L)

ATTEST:

_____
Secretary

Town of Castle Rock

By: _____
Mayor

(S E A L)

ATTEST:

_____
Town Clerk

EXHIBIT A

A tract of land situated in the Southwest 1/4 of the Northwest 1/4 and in the Northwest 1/4 of the Southwest 1/4 of Section 1, Township 8 South, Range 67 West of the 6th Principal Meridian, Town of Castle Rock, Douglas County, Colorado, more particularly described as follows: Beginning at the Southwest corner of the Southwest 1/4 of the Northwest 1/4 of said Section 1 and considering the West line of said Southwest 1/4 of the Northwest 1/4 to bear N3°51'27" E with all bearings contained herein relative thereto; Thence N3°51'27"E along said West line a distance of 214.48 feet; Thence S86°08'33"E a distance of 603.50 feet; Thence S2°48'46"W a distance of 872.67 feet; Thence S 46°16'27"W a distance of 514.52 feet to a point on a curve; Thence Northwesterly along the arc of the curve to the right a distance of 14.57 feet, said curve has a radius of 430.00 feet, a central angle of 1°56'29" and a center point that bears N52°22'24"E to a point of reverse curve; Thence Northwesterly along the arc of the curve to the left a distance of 240.02 feet, said curve has a radius of 270.00 feet and a central angle of 50°56'00" to a point of tangent; Thence N88°33'36"W along said tangent a distance of 27.62 feet to a point on the West line of the Northwest 1/4 of the Southwest 1/4 of said Section 1; Thence N2°33'27"E along said West line a distance of 937.64 feet to the point of beginning; Containing 15.423 acres, more or less.

Bruce

PETITION FOR ANNEXATION

TO: BOARD OF TRUSTEES OF THE TOWN OF CASTLE ROCK, COLORADO

The undersigned landowner, in accordance with the provisions of Colorado Revised Statutes 1973, Title 31, Article 12, Part 1, as amended, known as the Municipal Annexation Act of 1965, and the Constitution of the State of Colorado, Article II, Section 30, hereby petitions the Mayor and Board of Trustees of the Town of Castle Rock, Colorado, for annexation to the Town of Castle Rock of the unincorporated territory situate and being in the County of Douglas and State of Colorado, described on Exhibit "A" attached hereto and made a part hereof.

Petitioner further states to the Mayor and Board of Trustees of Castle Rock, Colorado, as follows:

1. That it is desirable and necessary that such territory be annexed to the Town of Castle Rock, Colorado.

2. That the requirements of C.R.S. 1973, 31-12-104 and 31-12-105 exist or have been met, in that:

   a. Not less than one sixth (1/6) of the perimeter of the area proposed to be annexed is contiguous with the existing boundaries of the Town of Castle Rock, Colorado.

   b. A community of interest exists between the territory proposed to be annexed and the Town of Castle Rock, Colorado.

   c. That the territory proposed to be annexed is urban or will be urbanized in the near future and that the territory to be annexed is integrated or is

capable of being integrated with the Town of Castle Rock, Colorado.

d. That no land in the territory sought to be annexed which is held in identical ownership and consisting of either a single tract or parcel, or two or more contiguous tracts or parcels has been divided or a portion thereof excluded from the area to be annexed without the written consent of the owners thereof.

e. That no land in the territory sought to be annexed which is held in identical ownership and comprises twenty (20) or more acres, having an assessed valuation for ad valorem tax purposes in excess of $200,000.00 has been included in the area to be annexed without the written consent of the landowner.

f. That the annexation herein requested will not result in the detachment of the area from the school district in which it is located.

9. That no proceedings have been commenced for the annexation of all or a part of the territory proposed to be annexed to another municipality.

3. That the signer of this petition comprises more than fifty percent (50%) of the landowners in the area proposed to be annexed and owns more than fifty percent (50%) of the area proposed to be annexed, excluding public streets and alleys and any land owned by the Town of Castle Rock, in accordance with the Constitution of the State of Colorado, Article II, Section 30.

4. That attached hereto and incorporated herein by reference are four (4) prints of the annexation map containing a written legal description of the boundaries of the area proposed to be annexed and showing the boundaries of the area proposed to be annexed; the location of each ownership tract within said area (which area is unplatted land); and a drawing of the contiguous boundaries of the existing Town limits and the dimensions thereof. There is no other municipality abutting the area proposed to be annexed.

5. That, upon the annexation ordinance becoming effective, all lands within the area sought to be annexed shall become subject to the Municipal Laws of the State of Colorado pertaining to towns and to all ordinances, resolutions, rules and regulations of the Town of Castle Rock, except for general property taxes of the Town of Castle Rock which shall become effective on January 1 of the next succeeding year following passage of the annexation ordinance.

6. That your petitioner represents one hundred percent (100%) of the landowners of the territory sought to be annexed and, thus, neither notice and hearing nor election is required, pursuant to C.R.S. 1973, 31-12-107(1)(g).

Therefore, your petitioner respectfully requests that the Mayor and Board of Trustees of the Town of Castle Rock, Colorado, approve the annexation of the area described herein.

Dated this _____ day of _____, 1982.

Douglas County School District
Re. 1, a Colorado School Dis-
trict

By: _____
President

ATTEST

_____
Secretary

Whose mailing address is 131 Wilcox Street, Castle Rock, Colorado 80104.

Owner of 100% of the land described above.

STATE OF COLORADO)
) ss:
County of Douglas)

The foregoing instrument was acknowledged before me this day of _____, 1982, by _____ as President and _____ as Secretary of Douglas County School District Re. 1, a Colorado School District.

Witness my hand and official seal.

My Commission expires: _____

_____
Notary Pubic

Business/residence address of Notary Public

_____

_____

(S E A L)

SECTION IV

DRAINAGE AND EROSION CONTROL

Drainage and erosion control measures deemed necessary for the property to be annexed shall be accomplished by School District according to Town specifications. The School District shall have the option to attach to existing drainage structures installed by Gordon Homes, Inc., in Canyon Drive. School District desires to exercise said option it shall pay $5,064.00 to Gordon Homes prior to attaching to those drainage structures.

SECTION V

WATER RIGHTS

The School District agrees to dedicate the Town the right to withdraw the quantity of water in aquifers underlying the property to be annexed, both tributary and non-tributary.

SECTION VI

REVIEW BY TOWN OF CASTLE ROCK

The Planning Commission shall have the opportunity to review and make recommendations to the Board of Trustees who shall have the opportunity to review the site plan developed by the School District.

SECTION VII

APPROVAL OF BOARD OF TRUSTEES

This Agreement was considered by the Board of Trustees of the Town of Castle Rock, Colorado, at their regular public meeting held on _____, 1982, and approved by a vote of _____ for and _____ against.

SECTION VIII

BINDING EFFECT

This Agreement shall be binding upon and inure to the

ORDINANCE NO. _____

AN ORDINANCE RELATIVE TO THE ACCEPTANCE OF AN ANNEXATION PETITION SIGNED BY THE OWNERS OF 100% OF THE PROPERTY PROPOSED TO BE ANNEXED AND ANNEXING THE PROPERTY HEREINAFTER DESCRIBED TO THE TOWN OF CASTLE ROCK, COLORADO

WHEREAS, on the _____ day of _____, 19 ____, an Annexation Petition was filed with the Town Clerk praying for the annexation of certain unincorporated territory located in the County of Douglas and State of Colordo to the Town of Castle Rock, Colorado, as described in Exhibit A attached hereto; and,

WHEREAS, said petition was forwarded by the Town Clerk to the Board of Trustees;

NOW THEREFORE BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF CASTLE ROCK, COLORADO, as follows:

SECTION I

The form and contents of the above described petition comply with the requiements of Colorado Revised Statutes 1973, Chapter 31, Article 12, Part 1, (also known as the Municipal Annexation Act of 1965, hereinafter referred to as "the Act"), and the Constitution of the State of Colorado, Article II, Section 30.

SECTION II

The requirements of the Act and the Constitution are met by the petition in that:

2.1 Not less than one-sixth of the perimeter of the area proposed to be annexed is contiguous to the Town of Castle Rock; and,

2.2 A community of interest exists between the territory proposed to be annexed and the Town of Castle Rock; and

2.3 It is desirable and necessary that such territory be annexed to the Town of Castle Rock; and

2.4 The territory to be annexed is urban or will be urbanized in the near future; and,

2.5 The territory to be annexed is integrated or capable of being integrated with the Town of Castle Rock.

ordinance, annex the territory to the municipality without notice of hearing as provided in the Act, and without election as provided in the Act.

SECTION VII

Considering all of the foregoing, and based on the conviction that annexation of this property to the Town of Castle Rock will serve the best interests of the Town of Castle Rock and the owners of the territory to be annexed, the real property described in Exhibit A attached hereto and made a part hereof which is unincorporated territory situate in the County of Douglas, State of Colorado, is hereby annexed to the Town of Castle Rock, Colorado.

SECTION VIII

This annexation shall become effective upon the effective date of this Ordinance and at that time all lands within the annexed area shall become subject to the municipal laws of the State of Colorado pertaining to Towns and to all ordinances, resolutions, rules and regulations of the Town of Castle Rock, except for general property taxes of the Town of Castle Rock which shall become effective on January 1st of the next succeeding year following passage of this Annexation Ordinance.

SECTION IX

The Town Clerk shall file, for recording, one certified copy of the Annexation Ordinance and one copy of the Annexation Map with the Clerk and Recorder of the County of Douglas, State of Colorado.

SECTION X

An Annexation Map showing the boundaries of the newly annexed territory, as described in Exhibit A, shall be kept on file in the office of the Clerk and Recorder.

SECTION XI

The Town Clerk shall file one certified copy of the Annexation Ordinance and one copy of the Annexation Map with the Secretary of State.

Passed and adopted this _____ day of _____,
19 ____, by a vote of the Board of Trustees of the Town of
Castle Rock, Colorado, _____ for and _____ against.

_____
Timothy L. White, Mayor
Town of Castle Rock

ATTEST:

_____
Town Clerk

EXHIBIT A

A tract of land situated in the Southwest 1/4 of the Northwest 1/4 and in the Northwest 1/4 of the Southwest 1/4 of Section 1, Township 8 South, Range 67 West of the 6th Principal Meridian, Town of Castle Rock, Douglas County, Colorado, more particularly described as follows: Beginning at the Southwest corner of the Southwest 1/4 of the Northwest 1/4 of said Section 1 and considering the West line of said Southwest 1/4 of the Northwest 1/4 to bear N3°51'27" E with all bearings contained herein relative thereto; Thence N3°51'27"E along said West line a distance of 214.48 feet; Thence S86°08'33"E a distance of 603.50 feet; Thence S2°48'46"W a distance of 872.67 feet; Thence S 46°16'27"W a distance of 514.52 feet to a point on a curve; Thence Northwesterly along the arc of the curve to the right a distance of 14.57 feet, said curve has a radius of 430.00 feet, a central angle of 1°56'29" and a center point that bears N52°22'24"E to a point of reverse curve; Thence Northwesterly along the arc of the curve to the left a distance of 240.02 feet, said curve has a radius of 270.00 feet and a central angle of 50°56'00" to a point of tangent; Thence N88°33'36"W along said tangent a distance of 27.62 feet to a point on the West line of the Northwest 1/4 of the Southwest 1/4 of said Section 1; Thence N2°33'27"E along said West line a distance of 937.64 feet to the point of beginning; Containing 15.423 acres, more or less.

PETITION FOR ANNEXATION

TO: BOARD OF TRUSTEES OF THE TOWN OF CASTLE ROCK, COLORADO

The undersigned landowner, in accordance with the provisions of Colorado Revised Statutes 1973, Title 31, Article 12, Part 1, as amended, known as the Municipal Annexation Act of 1965, and the Constitution of the State of Colorado, Article II, Section 30, hereby petitions the Mayor and Board of Trustees of the Town of Castle Rock, Colorado, for annexation to the Town of Castle Rock of the unincorporated territory situate and being in the County of Douglas and State of Colorado, described on Exhibit "A" attached hereto and made a part hereof.

Petitioner further states to the Mayor and Board of Trustees of Castle Rock, Colorado, as follows:

1. That it is desirable and necessary that such territory be annexed to the Town of Castle Rock, Colorado.

2. That the requirements of C.R.S. 1973, 31-12-104 and 31-12-105 exist or have been met, in that:

   a. Not less than one sixth (1/6) of the perimeter of the area proposed to be annexed is contiguous with the existing boundaries of the Town of Castle Rock, Colorado.

   b. A community of interest exists between the territory proposed to be annexed and the Town of Castle Rock, Colorado.

   c. That the territory proposed to be annexed is urban or will be urbanized in the near future and that the territory to be annexed is integrated or is

capable of being integrated with the Town of Castle Rock, Colorado.

d. That no land in the territory sought to be annexed which is held in identical ownership and consisting of either a single tract or parcel, or two or more contiguous tracts or parcels has been divided or a portion thereof excluded from the area to be annexed without the written consent of the owners thereof.

e. That no land in the territory sought to be annexed which is held in identical ownership and comprises twenty (20) or more acres, having an assessed valuation for ad valorem tax purposes in excess of $200,000.00 has been included in the area to be annexed without the written consent of the landowner.

f. That the annexation herein requested will not result in the detachment of the area from the school district in which it is located.

g. That no proceedings have been commenced for the annexation of all or a part of the territory proposed to be annexed to another municipality.

3. That the signer of this petition comprises more than fifty percent (50%) of the landowners in the area proposed to be annexed and owns more than fifty percent (50%) of the area proposed to be annexed, excluding public streets and alleys and any land owned by the Town of Castle Rock, in accordance with the Constitution of the State of Colorado, Article II, Section 30.

4. That attached hereto and incorporated herein by reference are four (4) prints of the annexation map containing a written legal description of the boundaries of the area proposed to be annexed and showing the boundaries of the area proposed to be annexed; the location of each ownership tract within said area (which area is unplatted land); and a drawing of the contiguous boundaries of the existing Town limits and the dimensions thereof. There is no other municipality abutting the area proposed to be annexed.

5. That, upon the annexation ordinance becoming effective, all lands within the area sought to be annexed shall become subject to the Municipal Laws of the State of Colorado pertaining to towns and to all ordinances, resolutions, rules and regulations of the Town of Castle Rock, except for general property taxes of the Town of Castle Rock which shall become effective on January 1 of the next succeeding year following passage of the annexation ordinance.

6. That your petitioner represents one hundred percent (100%) of the landowners of the territory sought to be annexed and, thus, neither notice and hearing nor election is required, pursuant to C.R.S. 1973, 31-12-107(1)(g).

Therefore, your petitioner respectfully requests that the Mayor and Board of Trustees of the Town of Castle Rock, Colorado, approve the annexation of the area described herein.

Dated this 7th day of September, 1982.

Douglas County School District Re. 1, a Colorado School District

By: _____
President

ATTEST

_____
Asst. Secretary

Whose mailing address is 131 Wilcox Street, Castle Rock, Colorado 80104.

Owner of 100% of the land described above.

STATE OF COLORADO)
) ss:
County of Douglas)

The foregoing instrument was acknowledged before me this 7th day of September, 1982, by William Callahan as President and Harriet Stokke as Asst. Secretary of Douglas County School District Re. 1, a Colorado School District.

Witness my hand and official seal.

My Commission expires: September 20, 1984

_____
Notary Pubic

Business/residence address of Notary Public

131 Wilcox Street

Castle Rock, CO 80104

(S E A L)

DOUGLAS COUNTY SCHOOL DISTRICT Re. 1

INTEREST RATE ELECTION
INFORMATION SHEET
February 23, 1982

BACKGROUND

In October, 1978, the voters of Douglas County approved a $25.5 million bond issue to complete a five-year building program to accommodate the rapid student growth rate. The five-year plan was established by a citizens' committee which made its recommendation to the Board of Education earlier that year.

Colorado law requires that the maximum interest rate of the bond sale must be included on the ballot. Since the municipal bond rate in 1978 was 5¼ percent, the maximum rate was established at 7 percent.

FIVE-YEAR BUILDING PROGRAM

The five-year building program planned in 1978 called for the construction of four elementary schools and one high school, as well as additions and remodeling programs to several other schools in the county. As of this date, the following projects have been completed or are under construction:

a) Franktown Elementary - completed Spring 1980
b) Mountain View Elementary - completed Spring 1980
c) Pine Lane Primary building - completed Spring 1980
d) Parker Junior High School addition - completed Fall 1980
e) Acres Green Elementary addition - completed Winter 1979-80
f) Plum Creek Elementary remodeling project - completed Fall 1981
g) Purchase of new Castle Rock Elementary site - May 1980
h) Ponderosa High School - under construction

All of these projects were supported through the sale of $22.5 million of the authorized bonds by 1981 at a rate below 7 percent. The only project which was part of the original program and not completed or under construction is the new elementary school in Castle Rock. The state of the economy and the high interest rate has prohibited the sale of the remaining $3 million in bonds.

PURPOSE OF THE ELECTION

Since the reorganization of the school district in 1958, the Douglas County Board of Education has a history of fulfilling all of its building commitments for the five bond issues which were approved by the voters. The construction of the new Castle Rock elementary is needed because of growth and the inadequate condition of both the Cantril and Wilcox buildings in town. Therefore, the Board intends to fulfill its obligations. The purpose of the election of February 23 is to raise the maximum interest rate on the remaining $3 million of the authorized bonds. Since the current municipal bond

rate is now in excess of 11 percent, the Board has established a maximum for this special election of 15.75 percent. The bonds will actually be sold at the lowest possible rate.

THE NEW CASTLE ROCK ELEMENTARY SCHOOL

In May, 1980, the school district purchased a 15-acre site east of the Castle North subdivision for the new elementary school. The architectural firm of Lamar Kelsey Associates, Inc. was contracted to develop preliminary plans with the assistance of a committee of citizens and staff members. Preparations for the new school continued until the beginning of 1981 when they were suspended because of the substantial increase in the interest rate. The delay in construction and the rate of inflation has caused the original estimate of the project to increase 10 percent annually. Since it is unlikely that the interest rate will decline, the school district and the taxpayers cannot afford to wait any longer. If the interest rate election is passed, the school can be ready by the fall of 1983.

COST TO THE TAXPAYER

This election is only to increase the authorized interest rate since the bonds have already been approved. The additional cost to the taxpayer will be minimal. A vote to change the interest rate could increase the mill levy up to one-half of one mill.

SUMMARY

The growth of Douglas County School District is inevitable. The main question facing the district is managing this growth in an effective and cost efficient manner. Through the long range planning process, the 1978 Bond Issue has accomplished that task with one exception - the construction of the new Castle Rock elementary building.

The completion of this project would mean that all of the committments that were made to the voters who approved the 1978 Bond Issue would be fulfilled.

PROJECT ANALYSIS

June 1983 - June 1984

CASTLE ROCK

Project	Units	School Formula Required Dedication	Actual School Dedication: Land	Actual School Dedication: Cash	Actual School Dedication: Fees
Aspen Meadows	48	.35	None	None	None
B. W. Squared	112	.72	None	None	None
Scott Ranch	1930	22.21	5-8 acres	None	None
Young-American	1197	12.40	None	None	None
Total	3287	35.68	5-8 acres	None	None

DOUGLAS COUNTY

Project	Units	School Formula Required Dedication	Actual School Dedication: Land	Actual School Dedication: Cash	Actual School Dedication: Fees
Castle Pines	2885	51.37	51.37	N/A	None
Centennial Ridge	320	3.51	N/A	$70,000 *	None
Misty Pines	60	1.16	N/A	10,000	None
Omoto Estates	3	.062	N/A	310	None
Total	3268	56.102	51.37	$80,310	None

PARKER

Project	Units	School Formula Required Dedication	Actual School Dedication: Land	Actual School Dedication: Cash	Fees/Unit
Country Meadows	200	3.64	N/A	In Fee	$874.32
Parkglen	12	.22	N/A	In Fee	870.00
Rampart Station	1,197	14.57	N/A	In Fee	532.97
Stroh Ranch	8,350	105.0	105	N/A	345.99
Villages at Parker	4,728	58.43	58.5	N/A	361.90
Willow Pointe	742	13.46	N/A	In Fee	870.16
Total	15,229	195.32	163.5	-	$398.52

Total Fees: $6,069,008 **Avg:** $398.52

* Negotiations not completed.

3 1 2 1 0 5
BOOK 490 PAGE 942
RECORDER
$30.00 pd
SEP 19 9 43 AM '83

DEVELOPMENT CONTRACT

RAMPART STATION

THIS AGREEMENT is made by and between the Town of Parker, Colorado (hereinafter called Town), and Oneita K, Williamson and Bernard R. Selvy (hereinafter called Developer).

WHEREAS, Developer desires to annex certain lands to Town of Parker described in Exhibit "A" which is attached hereto and made a part hereof, and

WHEREAS, the parties hereto desire to set forth respective duties and responsibilities of the parties hereto with respect to development of said land.

NOW THEREFORE, the parties agree as follows:

1. In conjunction with the annexation of the property described in Exhibit "A" which is attached hereto and made a part hereof, said property shall obtain a PD (Planned Development) zoning which is subject to the approved development guide and map dated August 15, 1983.
2. That Developer will dedicate to the Town the equivalent of ten percent (10%) of the property being annexed, or in the alternative, the cash equivalent of such land, or in the alternative, a combination of cash and land. The parties agree that the sum of Twenty thousand dollars ($20,000.00) is an acceptable fair market value figure from which to base a cash in lieu of payment and the parties, their heirs, successors, and assigns shall be bound by this figure. Land dedication or cash in lieu thereof will be determined at the time of any final plats for the development. The Town shall, in its sole discretion, determine which it shall receive.

purpose of which is to improve said road from the commercial area east to Hilltop Road.

7. Developers will have prepared and will submit to the Parker Planning Dept. an erosion control plan for the total property described in Exhibit "A". The plan will be in a form acceptable to the Town and will be submitted prior to acceptance of any preliminary plat for any subdivision of the property described in Exhibit "A".

8. Douglas County School District has indicated that they do not foresee a need for land dedication for schools in the property described in Exhibit "A". Therefore, pursuant to the formula which is attached hereto as Exhibit "B" Developer will, at the time any Certificate of Occupancy is requested for any residential building in any part of said property, pay to the Town of Parker the sum required based on said formula. The Town of Parker shall hold all such sums in trust for the benefit of the Douglas County School District and shall disburse such sums to the Douglas County School District upon written request from the District verifying that all such sums shall be directly utilized in the education of Town of Parker school children.

9. This Agreement shall be binding upon and shall inure to the benefit of the heirs, assigns, successors and personal representatives of the parties hereto. This Agreement is binding upon and runs with the land.

Exhibit "B"

DOUGLAS COUNTY SCHOOL DISTRICT Re. 1

DEVELOPMENT FEE PROGRAM

ASSUMPTIONS

1. Land fees will be computed as part of the development fee formula only when school land dedications are not necessary or totally fulfilled by any project.

2. School district standards for household yields, land needs and facility requirements are acceptable and will be maintained to reflect current situations.

3. Cost for land within the formula is set at $20,000.00 per acre.

4. Facility costs are 1983 dollar valued and will be subject to annual adjustment for inflation.

COMPUTATION OF FEES

Land (Use of this portion of the formula occurs only when an applicant does not provide land for schools or when the amount of land dedicated does not fulfill the need outlined. When land is dedicated in any amount, that amount receives a credit in the computation.)

Calculation performed by unit type.

1. Student generation rate x no. of units = estimated no. of students

   (K-6)
   (7-9) (School district will provide these numbers.)
   (10-12)

2. Estimated no. of students x .017 acres (K-6) students
   .021 (7-9) students = Total Land Need
   .027 (10-12) students
   (School district will also provide these numbers.)

3. Land need x $20,000.00 per acre - cash-in-lieu fee

   (Land needs adjusted at this time when dedicated land provided by the developer.)

4. LAND FEE = CASH-IN-LIEU FEE/NUMBER OF UNITS

COMPUTATION OF FEES - continued

Capital Improvements (Facilities, Mobile Classrooms, Additions, etc.)

Calculation performed by unit type.

1. Student generation rate x no. of units = no. of students

   (K-6)
   (7-9) (School district will provide these numbers.)
   (10-12)

2. Estimated no. of students ÷ 600 students per bldg. (K-6)
   Estimated no. of students ÷ 1200 students per bldg. (7-9) = Total Facility Need
   Estimated no. of students ÷ 1500 students per bldg. (10-12)

3. Facility need x average cost per building* = Total Facility Cost

	K-6	is	$ 3,500,000
1983	7-9	is	7,500,000
	10-12	is	12,000,000

*Costs are adjustable annually.

4. Total Facility Cost ÷ 20 years = Annual Facility Cost

5. (ANNUAL COST x 1.5 YEARS) ÷ NO. OF UNITS = CAPITAL IMPROVEMENT FEE

Note: 1.5 years estimates average length of time for property to be fully assessed for tax purpose.

TOTAL FEE = CASH-IN-LIEU FEE (Land Item #4) + CAPITAL IMPROVEMENT FEE (Capital Improvement Item #5)

William P. Reimer
Executive Director of Auxiliary Services
7-29-83

DOUGLAS COUNTY SCHOOL DISTRICT Re. 1

RAMPART STATION FEE SCHEDULE

Example: Low and Medium Density Single Family (400 units)

Land

1. .48 x 400 = 192 (K-6)
   .22 x 400 = 88 (7-9)
   .20 x 400 = 80 (10-12)
   Total - 360 children

2. 192 x .017 = 3.26 acres
   88 x .021 = 1.85 acres
   80 x .027 = 2.16 acres
   Total - 7.27 acres

3. 7.27 x $20,000 = $145,400 fee

4. $145,400 ÷ 400 = $363.50 CASH-IN-LIEU FEE/UNIT

Capital Improvements

1. As in #1 above - 192 (K-6)
   88 (7-9)
   80 (10-12)

2. 192/600 = .32 K-6 facilities
   88/1200 = .073 7-9 facilities
   80/1500 = .05 10-12 facilities

3. .32 x $ 3,500,000 = $1,120,000
   .073 x 7,500,000 = 547,000
   .05 x 12,000,000 = 636,000
   Total - $2,303,500

4. $2,303,500/20 = $115,175 per year

5. $115,175 x 1.5/400 = $431.91 CAPITAL IMPROVEMENT FEE

TOTAL FEE: $795.41 - Year #1

FEE SCHEDULE: RAMPART STATION

	Year #1
Estate Single Family	$ 873.03
Low/Med Single Family	795.41
Cluster Single Family	663.57
Townhome	264.69
Multiple Family	176.46

Average Fee: $532.97

RV: 1/6/84

BOOK 505 PAGE 481

$21.00 pd

JAN 11 2 11 PM '84

DEVELOPMENT CONTRACT
COUNTRY MEADOWS

THIS AGREEMENT is made by and between the Town of Parker, Colorado (hereinafter called Town), and Dennis Trescott & Company, a Colorado corporation (hereinafter called Developer).

WHEREAS, Developer desires to annex certain lands to the Town of Parker described in Exhibit "A" which is attached hereto and made a part hereof, and

WHEREAS, the parties desire to set forth respective duties and responsibilities of the parties hereto with respect to development of the land;

NOW THEREFORE, the parties agree as follows:

1. In conjunction with the annexation of the property described in Exhibit "A", which is attached hereto and made a part hereof, said property shall obtain a PD (Planned Development) zoning which is subject to the approved development guide and map dated November 7, 1983.

2. That Developer will deed to the Town the property described in Exhibit "C" for public purposes, on or before March 31, 1984. Developer hereby binds themselves, their successors, assigns and/or heirs to this obligation.

3. Developer will comply with any requirements of the Parker Water and Sanitation District for the connection of such property to the facilities of the District, including but not limited to dedication of water and water rights, payment of taps, provisions of material for and installation of water mains and sewer lines as may be required to serve this development, and conveyance of mains and lines to the District upon District's acceptance of the quality of materials and workmanship of said sewer and water installations.

   Developer hereby binds themselves, their successors, assigns and/or heirs to submit a hydrology study to the Parker Water and Sanitation District to be done by a qualifed professional hydrologist as to the availability of water and corresponding water rights that may be attached and/or adjudicated to such property, prior to acceptance of any preliminary plattings of site plans associated with the first filing for such property.

   No building permits in any given filing shall be issued without dedication of proven municipal water rights sufficient to serve such property as determined by the District Hydrologist and Water Attorney.

4. The Town of Parker, as managing agent for the Parker Water and Sanitation District, agrees to sell, and the Developer agrees to buy, 100 sewer and water taps within 30 days of the date of execution of this development contract for the project described in Exhibit "A". It is mutually understood that by purchasing said taps the District will have reserved 100 taps for the Developer for use in the project, and the Developer will use the taps only on this project or may return them to the District for a full refund. This agreement to sell and buy is made prior to the Developer having proven or having dedicated water rights to the District. The Developer, nonetheless, covenants to provide a study to the District in accordance with paragraph 3, to negotiate in good faith to reach a settlement regarding required water, to purchase excess water if required, and to dedicate water rights to the District as required.

5. Developer hereby binds themselves, their successors, assigns and/or heirs to participate in and approve of any special improvement district, any special assessment district or any other equitable means, as determined by the Town of Parker, the purpose of which is to improve the length of Peppy Blue Dot Ranch Road which is adjacent to the property

described in Exhibit "A" to a four (4) lane arterial street with curb, gutter, and sidewalk. All improvements will be to Town specifications. Town understands that the Developer seeks to gain VA and FHA approval of any residential subdivision on the property, and that in formulating a special improvement district, or other equitable means the Town will do nothing to conflict with VA or FHA requirements.

6. Developer agrees to provide hiker/biker trails within compatible areas of this development so as to integrate with and connect to existing and proposed hiker/biker trails. Said trails shall be constructed in phases such that they are completed at the same time as the other public improvements within a filing. All trails shall be built to Town specifications and are not included in the land dedication requirement.

7. Douglas County School District has indicated that they do not foresee a need for land dedication for schools in the property described in Exhibit "A". Therefore, pursuant to the formula which is attached hereto as Exhibit "B" Developer will, at the time any Certificate of Occupancy is requested for any residential building in any part of said property, pay to the Town of Parker the sum required based on said formula. The Town of Parker shall hold all sums in trust for the benefit of the Douglas County School District and shall disburse such sums to the Douglas County School District upon written request from the District verifying that all such sums shall be utilized in the education of Town of Parker school children.

8. This agreement shall be binding upon and shall inure to the benefit of the heirs, assigns, successors and personal representatives of the parties hereto. This agreement is binding upon and runs with the land.

Approved at a public hearing, duly advertised, held on November 7, 1983.

Dean Salisbury

Dean Salisbury, Mayor

Dennis Trescott & Company,
a Colorado Corporation

Dennis Trescott

By: Dennis Trescott, President

The Cherokee Corporation,
a Colorado corporation

B.J. Davis

By: B.J. Davis, President

Carol Baumgartner

Carol Baumgartner, Town Clerk

BOOK 505 PAGE 464

DOUGLAS COUNTY SCHOOL DISTRICT Re. 1

EXHIBIT D

SCHOOL DEVELOPMENT FEE*

PROJECT NAME: Country Meadows

Computation by Dwelling Type (One Exhibit per Unit Type)

PART I. LAND FEE

A. Total land required (School district provides by referral) 3.554 acres

B. Amount of land dedicated: -0-

C. Total due district (developer credit): A-B 3.554 acres

D. Part C x $20,000 per acre = cash requirement (credit) $71,080

E. Part D ÷ number of units = land fee per unit $364.51

PART II. IMPROVEMENT FEE

A. Total facility need (school district provides by referral)

1. K-6: .157
2. 7-9: .036
3. 10-12: .026

B. Total facility cost (1983 cost)

1. K-6: A_1 x $ 3,500,000 = $ 549,500
2. 7-9: A_2 x 10,000,000 = 360,000
3. 10-12: A_3 x 16,000,000 = 416,000
4. Total (B_1 + B_2 + B_3) = 1,325,500

C. B_4 ÷ 20 years - ANNUAL COST $66,275

D. C x 1.5 years = PAYMENT IN LIEU OF TAX $99,412.50

E. D ÷ number of units = IMPROVEMENT FEE $509.81

PART III. TOTAL SCHOOL FEE

A. IE + IIE: $874.32

*The School Development Fee will be adjusted annually based on the inflation

DATE:

Density by (DU/AC)	No. of DUs	GRADES K-6 Student Generation Rate	K-6 No. of Students	7-9 Student Generation Rate	7-9 No. of Students	10-12 Student Generation Rate	10-12 No. of Students	Total No. of Students Generated per Household	Total No. of Students
Single Family (4.3 u/a)	195	.48	94	.22	43	.20	39	.9	176
Total DUs	195								
Total Students			94		43		39		176
Total Schools									
Average No. of Students Generated per Household								.9	

FACILITIES REQUIREMENT PROJECTION

94	Elementary Students Generated	÷	600	Students per Building	=	.157	Schools
43	J.H.S. " "	÷	1200	" " "	=	.036	"
39	S.H.S. " "	÷	1500	" " "	=	.026	"

LAND REQUIREMENT PROJECTION

94	Elementary Students Generated	x	.017	Acres per Student	=	1.598	Acres
43	J.H.S. " "	x	.021	" " "	=	.903	"
39	S.H.S. " "	x	.027	" " "	=	1.503	"

TOTAL 3.554 acres

DOUGLAS COUNTY SCHOOLS
PLANNING & FACILITIES

AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of January, 1984, by and between THE TOWN OF PARKER, COLORADO, a municipal corporation of the State of Colorado (hereinafter called "Town"), and PARKER PROPERTIES JOINT VENTURE, a Colorado joint venture (hereinafter called "Owner").

WITNESSETH:

WHEREAS, the Town, in order to assure the continued growth and development of its industrial, commercial and residential areas desires to annex to the Town certain unincorporated land situate in Douglas County, State of Colorado, described in nine separate annexation petitions by metes and bounds, collectively referred to as Exhibit A, which is attached hereto and by reference made a part hereof; and

WHEREAS, Owner desires that said lands be annexed by the Town and concurrently with said annexations desires that the Town zone the various portions thereof, as indicated on the Sketch Plan of General Land Use and Circulation, hereinafter referred to as "Sketch Plan" and "Development Guide", both of which are marked as Exhibit B, attached hereto and by reference made a part hereof; and

WHEREAS, the parties hereto desire to enter into an agreement with regard to certain public facilities to be constructed on the lands of Owner to be annexed by the Town in this proceeding in order that the public needs may be served by such facilities; and

WHEREAS, Owner desires to enter into an agreement with the Town regarding public donations of lands of Owner, the payment of certain impact and tap fees and other matters as are more fully provided herein; and

WHEREAS, the land to be annexed to the Town is within the boundaries of the Parker Water and Sanitation District (hereinafter "District"), which District has executed a Service Agreement with the Town appointing the Town as attorney-in-fact and agent for the District and to act for the District in the operation, maintenance, capital expenditure, collection of fees and all other matters of the District for a period of twenty (20) years.

NOW, THEREFORE, in consideration of the premises, it is mutually agreed by and between the parties hereto as follows:

ARTICLE I

Annexation and Zoning

Owner shall petition the Town in accordance with the State statutes in such cases made and provided to annex the land described in Exhibit A, which Exhibit is attached hereto and made a part hereof by reference.

Owner shall also petition the Town to initiate zoning, concurrently with said annexations, of the various portions of said land as indicated on the Master Plan and Development Guide collectively referred to as Exhibit B which is attached hereto and made a part hereof by reference.

The Town agrees, subject to the provisions of applicable annexation law, to annex the lands described in Exhibit A and zone the lands described therein as provided in the Sketch Plan and adopt the Development Guide all in accordance with Exhibit B; PROVIDED, however, that if the Town is unable to accomplish said annexation or said zoning by a final effective ordinance, including the Development Guide as requested by Owner, then the Town agrees, and it shall, upon the request of Owner, dismiss the aforesaid Petition for Annexation and Zoning, and in such event this Agreement shall be null and void and of no effect.

ARTICLE II

Public Donations

Owner agrees to donate by quit claim deed to the Town approximately 268.8 acres of land to be used for public purposes. All of the deeds conveying land will contain a reversion provision wherein title will revert to Owner if the property is used for a purpose other than the public purpose of school, park, open space or equestrian center and park.

It is understood and agreed that the land to be so donated shall be the 268.8 acres of land as shown on attached Exhibit B, shown as school, park site, open space and the equestrian center and park that the deeds of conveyance of said acres of land to the Town to be delivered by Owner, or by its successors and assigns,

will contain a provision in all deeds of conveyance reserving in the grantor all mineral rights, including oil and gas together with an easement to extract the same. The deeds conveying school sites will also reserve water rights. The deeds conveying the equestrian center and park sites will reserve the water rights from those parcels to the Owner with Owner's agreement to provide the water needed for use on park sites and equestrian center at the appropriate time. The deed conveying the 65.9 acre equestrian center and park will contain provisions requiring the Town or District to maintain the equestrian center and associated park and recreational facilities in a reasonable condition for the use as an equestrian center and park. The deeds conveying school sites shall name "Town as Trustee for the Douglas County School District" and will provide that if the School District has not prior to January 1, 1990, executed a contract for the construction of a school building on that site, legal title to the site will, upon resolution of the Town Board, revert to the Town subject to all other conditions of the conveyance.

It is specifically understood and agreed to by the Town that Owner has and will continue to expend substantial sums of moneys and has agreed to the land donations in reliance upon the land use zoning as set out in Exhibit B and upon the terms and conditions of this Agreement. The Owner affirmatively asserts it would be unfair and unjust for the Owner to receive the benefits of this Agreement and annexation and then judicially question the authority of the Town to so act or allege for any reason that the Owner should have received benefits greater than those set out herein. The Town affirmatively asserts that it would be unfair and unjust for the Town to receive the benefits of this Agreement and annexation, including the increased tax base, with newly constructed public facilities requiring less maintenance, and all of the other benefits as set out herein, and hereafter use the Town legislative power to substantially change the provisions of this Agreement, including the Exhibits attached hereto. Therefore the parties agree that should the District Court of Douglas County, Colorado affirm a change to this Agreement or the attachments hereto, made

by the Town without the consent of the Owner or persons Owner has specifically assigned rights under this provision which change occurred prior to the earlier of January 1, 1999 or the issuance of over 3,500 residential building permits for the area within Exhibit A, then the 65.9 acre equestrian center and park with all improvements thereon shall revert to Owner or such specific assign and further Owner shall be entitled to all additional relief, including damages and attorneys' fees as may be proper under the circumstances.

It is further understood and agreed that each parcel of public lands will be donated and conveyed to Town or to the Town for the school district within sixty (60) days after date of final execution and recording of the subdivision plats containing the parcel to be donated. The 65.9 acre parcel shall be donated within thirty days (30) of request by Town.

ARTICLE III

Streets, Bridges, Utility Easements, Storm Drains

(a) Upon annexation and in the course of development of the annexed lands of Owner, Owner Agrees to dedicate a right-of-way for street purposes to the Town where Owner owns land on both sides of said street and, on all exterior boundary streets as shown on Exhibit B, to dedicate a right-of-way for street purposes to the Town for one-half of the width thereof in accordance with the street standards applicable to the categories of streets established by the Town. Town agrees to grant Owner four easements at locations on the median strips to be determined by Owner and the Town by mutual agreement for sign locations.

(b) The Town does hereby approve the size and approximate locations of those streets shown on Exhibit B. Other streets, particularly local streets, shall be located as needed and platted. Basic street standards agreed upon by the Owner and the Town shall conform to those standards as set forth in the "Parker Standard Construction Specification for Public Works" for the following street classifications:

1. Local Street - Detached Housing Area.
2. Local Street - Attached housing Area.

paid for directly. It is further understood the parties may desire to credit Water Resource Development Fees rather than tax fees.

3) That the ability of the Town to agree to a method of establishing tap fees is expressly limited to the authority of the Town under the Service Agreement referred to on page 2 of this Agreement.

ARTICLE IX

Improvement of Dedicated Lands

(a) Town and Owner agree that they may enter into agreements whereby Owner agrees to improve dedicated lands for Town in exchange for reconveyance of other dedicated lands, prepayment of fees or credit against fees.

ARTICLE X

Schools

The dedication of land for school sites hereunder by the Owner is in lieu of present or future School Impact Fee. If the Owner and the School District are unable to agree on the location of the high school site, then the Town agrees that any School Impact Fee imposed by the Town against any of the property described in Exhibit A will provide that such a fee must be used for construction of School Buildings within the Town of Parker within seven years of collection. The Town may in its discretion extend said period or the Town shall use said fees for park and recreation facilities in the parks within the area described in Exhibit A.

ARTICLE XI

Disconnection

If the Town fails to approve this Agreement, the Sketch Plan, and the Development Guide by appropriate ordinance or if a petition for initiative of referendum is filed at any time which amends or alters said ordinance, the Town irrevocably covenants that it will not object to the Owner or assigns disconnecting that portion or all of the property described in Exhibit A or the 65.9 acres equestrian center and park from the Town under any applicable provisions of Colorado Law.