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Subdivision Regulations and Compulsory Dedications

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SUBDIVISION REGULATIONS AND COMPULSORY DEDICATIONS

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I. INTRODUCTION

The growth of our American cities during the post-war years has been achieved, to a great extent, by subdivision development on the urban fringe. A typical subdivision is on an impressive scale, with a minimum of fifty lots and a marked increase in the appurtenances of urbanization. Incident to this growth there has been increased sensitivity by our public-minded citizens to the fact that planned and regulated urban expansion would not only promote the aesthetic pleasures of future city habitation but avoid the many difficulties created by sporadic, unregulated expansion of former years. Municipal control of urban development has moved beyond mere zoning regulations and is now promoting orderly growth by subtle, yet more penetrating, requirements imposed upon promoter-subdividers as conditions for official approval of their plats and the development and sale of their land.[1]

These newer post-war planning controls are denoted "compulsory dedications." Such dedications will be the focus of this article. For these purposes, compulsory dedications must be distinguished from zoning regulations. Typical zoning regulations determine whether the land is to be used for residential, industrial, or trade purposes, or control the size of the proposed lots or of the house footage, or establish the degree of set-back of a proposed structure from the street.[2] Compulsory dedications, by comparison, typically involve the following relinquishments of the subdivided land to public ownership:

a. Inner-subdivision streets: streets which primarily serve the subdivision's inhabitants as access-ways to the city's major arteries.[3]
b. Major municipal streets: streets which primarily serve the entire municipal populace, or at least a larger segment of the entire populace than the inhabitants of the subdivision itself.[4]
c. Rights-of-way for inner-subdivision utilities: easements for basic public utilities (water, sewer, electricity, telephone) needed for the new inhabitants.[5]

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1 Most planning ordinances provide that a subdivision plat shall not be "recorded" until the conditions are met, thus implying that a subdivision may be completed regardless of such conditions if the developer is willing to forego recordation. However, the promotional advantages, indeed the necessities of recordation, make such inhibition an effective sanction. In many states, recordation is the only lawful way to set up a new subdivision. See Carter, J., in dissent in Ayres v. City Council of Los Angeles, 34 Cal.2d 31, 207 P.2d 1 (1949).

2 E.g., Denver, Colo., Rev. Municipal Code §610-649 (1958).

3 See Ayres v. City Council of Los Angeles, *supra* note 1, where one of the dedications under attack was a requirement that the subdivider relinquish eighty, rather than the proposed sixty feet for a subdivision street which ran into a major city artery. See also Brous v. Smith, 304 N.Y. 164, 106 N.E.2d 503 (Ct. of App. 1952), where access roads to the proposed lots were required.

4 See Ayres v. City Council of Los Angeles, *supra* note 1, involving a dedication of twenty extra feet for future expansion of a major city thoroughfare. See also Krieger v. Planning Commission of Howard County, 224 Md. 320, 167 A.2d 885 (1961), where petitioner resisted a required dedication of fifty feet from the center of a "major street."

5 See footnote 6 *infra*.

d. Rights-of-way for future expansion of public utility systems: easements for utilities which will provide not only for the subdivision's inhabitants but for other neighboring subdivisions.[6]

e. Inner-subdivision public spaces: portions of the subdivision area deeded to the municipality for public recreational and educational facilities, designed primarily to provide for the needs of the new inhabitants.[7]

f. Community-wide public spaces: portions of the subdivision area deeded to the municipality for general municipal recreational and educational enjoyment, beyond the needs of the new inhabitants.[8]

g. Cash in lieu of public facilities: required payment of funds to a public fund in place of actual dedication of land to public ownership.[9]

Since *Village of Euclid v. Ambler*,[10] the first zoning case to reach the United States Supreme Court, the typical zoning regulations mentioned above have been considered acceptable modes of municipal control over private land use. Under the police power of each state, such zoning laws have been deemed consonant with the "public health, safety and general welfare."[11] Zoning is typically a restriction on *use*. It may well depreciate the value of one's property, but does not open up that property to public use. It is difficult, therefore, to envision the effect of such zoning regulations as an unconstitutional "taking" of private property without just compensation. Zoning laws have been deemed "unreasonable" only in the instances in which they actually negative all practical use or undermine all actual value of the zoned land.[12]

It is less difficult to envision a "taking" for public use in tracing the effects of compulsory dedications. In each of the six enumerated typical dedications above, the subdivider is actually required to deed his property to the corporate public body. Unlike the zoning laws, these compulsory dedications more directly highlight the conflict between the police power and the eminent domain provisions

6 In Kelber v. City of Upland, 155 Cal.2d 631, 318 P.2d 561 (1958), the subdivider was required to pay $99.07 per acre for a city "Subdivision Drainage Fund" as a condition for plat approval. In Lake Intervale Homes v. Township of Parsippany-Troy Hills, 28 N.J. 423, 147 A.2d 28 (1958), the subdivider was compelled to install such water mains, sewers, etc. "as may be required by the governing body."

7 In Pioneer Trust and Savings Bank v. Village of Mount Prospect, 22 Ill.2d 375, 176 N.E.2d 799 (1961), an ordinance required the dedication of land in each new subdivision to "public grounds." In Rosen v. Village of Downers Grove, 19 Ill.2d 448, 167 N.E.2d 230 (1960), the city ordinance required the subdivider to dedicate land to "facilitate the establishment of school facilities convenient to any proposed subdivision . . . as may be deemed necessary by the Planning Commission . . . . " In Miller v. City of Beaver Falls, 368 Pa. 189, 82 A.2d 34 (1951), the statute provided for reservation for future appropriation of four and one-half acres of the subdivider's land, pursuant to a "general plan for parks." In Fortson Investment Co. v. Oklahoma City, 179 Okla. 473, 66 P.2d 96 (1937), the planning board required dedication of five per cent of each subdivision before approval of submitted plat was given. In Kelber v. City of Upland, *supra* note 6, $30 per lot was required to be contributed to a "Park and School Site Fund." See also *In re* Lake Secor Development Co., 141 Misc. 918, 252 N.Y.S. 809 (1931), and Coronado Development Co. v. City of McPherson, 189 Kan. 174, 368 P.2d 51 (1962).

8 See footnote 7 *supra*.

9 Kelber v. City of Upland, *supra* notes 6 and 7. In Coronado Development Co. v. City of McPherson, *supra* note 7, an ordinance provided that if ten per cent of a subdivision was not designated on the city master plan for park dedication, then subdivider must pay ten per cent of his land's value in lieu thereof.

10 Village of Euclid, Ohio v. Ambler Realty Co., 272 U.S. 365, 47 Sup.Ct. 114, 71 L.Ed. 303 (1926).

11 See, *e.g.*, Fischer v. Bedminister Tp., 11 N.J. 194, 93 A.2d 378 (1952) per Vanderbilt, J. See also Cutler, *Legal and Illegal Methods for Controlling Community Growth on the Urban Fringe*, 1961 Wis. L. Rev. 370 (1961).

12 See *e.g.*, Denver v. Denver Buick, 141 Colo. 121, 347 P.2d 919 (1959); Appeal of Medinger, 377 Pa. 217, 104 A.2d 118 (1954); Ritenour v. Dearborn Tp., 326 Mich. 242, 40 N.W.2d 137 (1949).

of our state and federal constitutions. Compulsory dedications, as the zoning laws, find their constitutional justification in the state police power.[13] Unfortunately, there has been considerable confusion in the courts over the divergent characteristics of compulsory dedications and of zoning laws and over their respective constitutional bases.[14] A semantical conflict has arisen over whether the police power concept should be used to "promote" the public needs, rather than simply "protect" it.[15] Some courts view the police power as an expansive tool, fit to justify non-compensable public action when the exigencies of the community overshadow private speculation. Other courts argue that the police power must not be allowed to become a doctrine of gargantuan statism, negativing any meaningful efficacy to the constitutional eminent domain provisions. In short, it is presently unclear at what point noncompensable compulsory dedications overflow into unconstitutional confiscations for public use. The state judicial temper, no doubt, has a great deal to do with the decisional result.[16]

A second constitutional problem is the due process concern over improper delegations of legislative power. This is a general administrative law problem. Its significance in this particular area is as yet unexplored.[17] Generally, there must be enabling statutes which provide for the planning regulations employed.[18] Such statutes must set forth sufficient guidelines so that planning commission approval of subdivision plats will not be subject to ad hoc, discriminatory conditions.[19] Although as a matter of practice, the planning authorities may be acting in a manner comporting with "fair play," the standards for administrative control are often so vague that subdividers may be subject to the arbitrary whims of planning authority personnel. This is less than due process. Moreover, it is not always clear that the scope of control is justified under an appropriate enabling statute.

In general, any subdivision control program must be sustained as a reasonable exercise of the police power and be circumscribed by clear guidelines in the enabling legislation.

13 See Ayres v. City Council of Los Angeles, *supra* note 1; Pioneer Trust and Savings Bank v. Village of Mount Prospect, *supra* note 7.
14 *E.g.*, Krieger v. Planning Commission of Howard County, *supra* note 4; Newton v. American Security Co., 201 Ark. 943, 148 S.W.2d 311 (1941).
15 See Frantz, J., concurring in Denver v. Denver Buick, *supra* note 12 at 143.
16 See Cutler, *supra* note 11.
17 See Reps, *Control of Land Subdivision by Municipal Planning Boards*, 40 Cornell L.Q. 258 (1955).
18 Denver v. Denver Buick, *supra* note 12 at 131-38.
19 Prouty v. Heron, 127 Colo. 168, 255 P.2d 755 (1953).

II. THE POLICE POWER AND EMINENT DOMAIN

Ayres v. City Council of Los Angeles,[20] was a landmark case involving the constitutionality of compulsory dedications. The city council imposed four conditions for plat approval upon the petitioner-subdivider: (1) dedication of a ten-foot strip for future widening of a major city thoroughfare running along the subdivision's boundary; (2) an additional dedication of ten feet adjoining the major thoroughfare for trees and shrubs to prevent access from the adjoining lots onto the busy highway; (3) dedication of the eighty-foot street rather than the proposed sixty-foot street, to run vertically into the major thoroughfare; and (4) dedication of an isolated triangle strip to street use. In a sweeping, latitudinarian opinion, the California Supreme Court upheld the "findings" of the trial court whereby these four requirements were "reasonably related to the protection of the public health, safety and general welfare."[21] In answer to the petitioner's contention that his property had been taken for public use without compensation, the court reasoned that the dedication was "voluntary, at least in theory."[22] The *Ayres* majority suggests that it is irrelevant that the benefits of the first requirement would primarily be received by the general public, not the subdivision's inhabitants, for in its view the police power justified the "promoting" of public goals.

The *Ayres* viewpoint has not been universally embraced. Indeed, the Illinois and Pennsylvania courts have taken a much more restrictive attitude. In *Pioneer Trust and Savings Bank v. Village of Mount Prospect*,[23] the Illinois Supreme Court reasoned that "the developer may be required to assume those costs which are specifically and uniquely attributable to his activity and which would otherwise be cast upon the public," but "the subdivider should not be obliged to pay the total cost of remedying" the community's educational and recreational problems, for such "would amount to an exercise of the power of eminent domain without compensation."[24] In reconciling the conflict between eminent domain and the

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20 *Supra* note 1.

21 Ayres v. City Council of Los Angeles, *supra* note 1. *Accord*, Krieger v. Planning Commission of Howard County, *supra* note 4; Brous v. Smith, 304 N.Y. 164, 106 N.E.2d 503 (Ct. of App., 1952). See dicta in Caledonia v. Racine Limestone Co., 266 Wis. 475, 63 N.W.2d 697 at 699 (1954). See also, Headley v. City of Rochester, 272 N.Y. 197, 5 N.E.2d 198 (1936); Newton v. American Security Co., *supra* note 14.

22 Ayres v. City Council of Los Angeles, 34 Cal.2d 31, 207 P.2d 1, 7 (1949). See also Ridgefield Land Co. v. City of Detroit, 241 Mich. 468, 217 N.W. 58 (1928). Compare the dissent in Ayres by Carter, J., which rejects this reasoning as pure sophistry. Carter, J., points out that in actuality, regardless of "in theory," the advantages of plat recordation are so great as to make the sanction of non-recordation an effective inhibition to resistance. *Cf.*, Mansfield and Swett v. Town of West Orange, 120 N.J.L. 145, 198 A.2d 225 (1938).

23 22 Ill.2d 375, 176 N.E.2d 799 (1961).

24 *Id.* at 801-02. See also the dicta in Rosen v. Village of Downers Grove, 167 N.E.2d 230 at 233-234 (Ill., 1960). *Accord*, Miller v. City of Beaver Falls, 368 Pa. 189, 82 A.2d 34 (1951). It is interesting to note that the California Court seems to have shifted its position in Kelber v. City of Upland, 155 Cal.2d 631, 318 P.2d 561 (1957), holding that "The purpose and intent of the Subdivision Map Act [the California enabling act] is to provide for the regulation and control of the design and improvement of a subdivision with a proper consideration of its relation to adjoining areas, and not to provide funds for the benefit of an entire city . . . . " In so holding, the California court skirted the constitutional issue faced in the *Ayres* case but by this statutory interpretation, the court has effectively narrowed the latitudian view of the *Ayres* majority. Of course, the *Kelber* holding does not constitutionally forbid the California legislature from passing an enabling act to provide for funds in lieu of actual dedications. Nevertheless, the majority's language indicates a more restrictive view of the constituttional issues would now be taken by the California Supreme Court. It is of interest that the three dissenters in *Kelber* were in the majority in *Ayres* while the *Kelber* majority was made up of new members of the California bench. In Fortson Investment Co. v. Oklahoma City, 179 Okla. 473, 66 P.2d 96 (1937), the Oklahoma court did not pass upon the issue of whether a required dedication of five per cent of every subdivision for public open spaces was a non-compensated taking for public use, holding that the trial court had correctly found that the dedication was "voluntary;" the implication of the court's language, however, is that a "compulsory" dedication would be forbidden. *In re* Lake Secor Development Co., 141 Misc. 918, 252 N.Y.S. 809 (1931) could be squared with these cases.

police power, these more conservative courts have enunciated the general proposition that the scope of the permissible compulsory dedication must be equitably related to the needs of the new community.[25] It is unreasonable to condition the use of private land upon a toll for the general community benefit. It is submitted that the Colorado Supreme Court would be receptive to this general proposition. In the recent *Denver Buick* case,[26] the court discussed the scope of the state police power in holding that a zoning ordinance requiring off-street parking upon petitioners' property was an unconstitutional confiscation for public ends:

> The legal effect of the argument of the City is that it has a problem of concentration of traffic in the street and that accordingly there is a right, under the zoning ordinance, to appropriate for off-street parking substantial portions of property of citizens desiring to use that property for a legitimate purpose . . . . No such power exists in the City thus to take private property for a public purpose without compensation to the owner for the taking.[27]

Not only does the *Denver Buick* language reflect a watchful solicitude for the efficacy of the eminent domain provisions, there is indeed little difference between this off-street parking zoning law and many compulsory dedication requirements, such as b, d, and f, enumerated above.

Assuming that the *Pioneer Trust* proposition would be adopted by the Colorado Supreme Court in judging the constitutionality of the compulsory dedications imposed by our various Colorado municipal planning bodies, the following decisional results would be reached with regard to the six typical dedications enumerated:

a. Inner-subdivision streets: being related primarily to the subdivision's needs, such dedications should not be envisioned as "takings" for public use, for the purport of the requirement is private.[28]

b. Major municipal streets: such dedications must be compensated unless the municipality can show that the new inhabitants will appreciably increase the artery's traffic, in which case the subdeveloper should donate an appropriate portion to compensate for the additional burden upon the public fisc.[29]

c. Inner-subdivision utilities' easements: these would be upheld under the same logic as in "a".[30]

d. Utility easements for future community expansion: unless the developer is compensated for a pro rata portion of such dedications designed to provide for other than his subdivi-

25 See especially Pioneer Trust and Savings Bank v. Village of Mount Prospect, *supra* note 23.
26 141 Colo. 121, 347 P.2d 919 (1959).
27 *Id.* at 131.
28 *E.g.*, Regulations of the Denver Planning Office, as adopted on September 26, 1956 [hereafter called "1956 Reg.'s"], Sec. V, C, (4) (dealing with alignment of subdivision streets with other existing streets), (9)-(10) (dealing with width of streets). Compare proposed Regulations of the Denver Planning Office [hereinafter called "1962 Reg.'s"], Section B, 2, (a). Regulations of Arvada Planning Commission (non-home rule city), as adopted on April 16, 1962 [hereinafter called "Arvada Reg.'s"], Section 5, C, (1), (2), (a), (b) and (d).
29 *E.g.*, "1956 Reg.'s" Sec. V, C, (1) (9) (10) (dealing with primary streets of one hundred feet width). Compare "1962 Reg.'s" Sec. B, 2, (c). "Arvada Reg.'s," Section 5, C, (2) (c).
30 *E.g.*, "1956 Reg.'s," Sec. V, C, (8), providing for easements for storm sewers, sanitary sewers and water mains to serve the new inhabitants. Compare "1962 Reg.'s," Sec. B, 2, (f). "Arvada Reg.'s," Section 5, E, (1) and (3).

sion's inhabitants, such would be an unconstitutional confiscation.[31]

e. Inner-subdivision public spaces: again, these would be upheld under the "a" logic.[32]

f. Community-wide public spaces: again, a formula reflecting the recreational needs of the new inhabitants and of the entire community must be achieved, the subdivider being compensated for that portion given primarily for use of the entire municipality.[33]

g. Cash in lieu of public facilities: if the payment required was equitably in substitute for the dedication not so required, and such payment were related to the subdivision's activities, it should be upheld. However, the courts seem reluctant to take this step. In *Kelber v. City of Upland* (California)[34] and *Coronado Development Co. v. City of McPherson* (Kansas),[35] the courts held that the enabling statute did not provide for cash in place of actual dedication. No cases, however, have squarely faced the constitutional issue.

III. THE DUE PROCESS DELEGATION PROBLEM

Dedication requirements must be authorized by appropriate enabling legislation.[36] Colo. Rev. Stat. §139-59-2 (1953) provides for the creation of city planning commissions. Colo. Rev. Stat. §139-59-6 (1953) empowers these planning commissions to make a master plan for their cities, locating streets, parks, public utilities, etc. This enabling act is sufficiently broad to authorize the compulsory dedications delineated above.[37] However, this act "applies to home rule charter cities [only] so far as constitutionally per-

31 *E.g.*, "1956 Reg.'s," Sec. V, C, (8), providing for easements for "the extension of main sewers and similar utilities." Compare "1962 Reg.'s," Sec. B, 2, (f). Note also "1956 Reg.'s," Sec. V, C, (6), requiring the dedication of easements along all streams "for drainage, parkway or recreational use." "Arvada Reg.'s," Section 5, E, (1), and Section 5, G.

32 *E.g.*, "1956 Reg.'s," Sec. V, B, requiring dedication for public open spaces "a reasonable size for neighborhood playground, park and public uses." "Arvada Reg.'s," Section 5, H.

33 *E.g.*, "1962 Reg.'s," Sec. B, 2, (e), providing that "Areas designated on the Comprehensive Plan as parks, playgrounds, schools or other public uses should be dedicated or an option to purchase given to the City for a period of 5 years."

34 155 Cal.2d 631, 318 P.2d 661 (1958).

35 189 Kan. 174, 368 P.2d 51 (1962).

36 Denver v. Denver Buick, *supra* note 12; Kelber v. City of Upland, *supra* note 24; Coronado Development Co. v. City of McPherson, *supra* note 35; Beach v. Zoning Commission of the Town of Milford, 141 Conn. 79, 103 A.2d 814, 817 (1954).

37 See, e.g., Arvada Ordinance No. 333, Nov. 25, 1957.

missible and so far as limits placed upon its application within the boundaries of home rule charter cities by the charter of each home rule charter city individually."[38] Article XX of the Colorado Constitution states that "The statutes of the state of Colorado, so far as applicable, shall continue to apply to such [home rule] cities and towns, except in so far as superseded by the charters . . . or by ordinances passed pursuant to such charters."[39]

Section 651 of the Denver Ordinances provides for a "Subdivision Control Ordinance" whereby the Denver City Council must approve or disapprove of each subdivision plat before it can be recorded. The submitted plat is to be reviewed and approved by various city departments, such as the Department of Public Works, and a city Planning Office is authorized to set up regulations and rules for its recommendations to the city council regarding the propriety of the proposed subdivision. Basically, plat approval in Denver consists of action by the Denver City Council, under recommendations from its Planning Office and other city departments.

The enabling legislation for Denver's "Subdivision Control Ordinance," pursuant to Article XX of the Colorado Constitution, must be found in the Denver Charter. If the Charter does not authorize the ordinance, the state statutes must provide enablement. The Denver Charter does not specifically authorize plat approvals by the city council. However, Chapter B, Article I, Section B 1.12-1, of the Denver Charter, provides that "The council shall have power to enact and provide for the enforcement of all ordinances to protect life, health and property; . . . and to preserve and enforce good government, general welfare, order and security . . . ." Moreover, the "Zoning" provisions of the Denver Charter may provide sufficient authorization. Chapter B, Article I, Section B 1.13, grants the city council power "to regulate and restrict the height, number of stories and size of buildings . . . , the size of yards, courts and other open spaces . . . and the location and use of buildings, structures and land for trade, industry, residence and other purposes." This "zoning" provision, however, points to typical zoning regulations, not to compulsory dedications as such. Authorization might be sought in Chapter A, Article II, setting up the Department of Public Works. Section A 2.3-1 of that article provides that "no rights-of-way for streets . . . or other thoroughfares shall be established . . . and no site for any public purpose shall be accepted until first approved by ordinance." However, in its plat-by-plat approval of subdivision plats pursuant to the "Subdivision Control Ordinance," the city council is acting more as an administrative body than as a legislative body "by ordinance."

The inquiry as to whether a Denver ordinance has specific authorization under the Denver Charter is brought forth because of language found in the *Denver v. Denver Buick* case.[40] There, the Colorado Supreme Court held that the Denver Charter did not provide for certain zoning ordinances, thus, such ordinances could not be legally sustained. Therefore, the court viewed the Denver home rule Charter as a grant of power to the city council, rather

38 Colo. Rev. Stat. §139-59-1 (1953).
39 Colo. Const. art. XX, §6 (h).
40 141 Colo. 121, at 133-138 (1959).

than a limitation upon the council's hegemony over local and municipal affairs. Of course, to the extent that a home rule ordinance is not enabled by the home rule charter, the Colorado Constitution, Article XX, allows the state statutes to apply. There may be difficulty, however, in squaring such planning ordinances with either the city charter or the state statutes. Such is the case with the Denver "Subdivision Control Ordinance." If Denver's Ordinance does not find authorization under the Charter, it also does not set up a special planning commission with the powers and duties as set forth in Colo. Rev. Stat. §139-59 *et seq.* Pursuant to the Denver Ordinance, the City's Planning Office has only recommendatory powers.

An equally significant problem arises from the due process requirement that administrative bodies shall act pursuant to sufficiently discernible guidelines, set forth in the legislative enabling act.[41] The standards set forth in the Denver "Subdivision Control Ordinance" are both sweeping and vague. The ordinance provides that subdivisions should be "regulated and restricted in order to insure an orderly growth and development of the City and County of Denver.[42] The City Council shall impose "any reasonable conditions" to achieve that end.[43] In *Prouty v. Heron*, the Colorado Supreme Court held that: "Without standards fixed by the law [setting forth distinctions between various listing types of engineering, of which an applicant could be registered to practice only in the type for which he qualified], the discretion to declare what the law is, is delegated to the board [State Board of Engineer Examiners]. This cannot legally be done."[44] It is arguable that the Denver control ordinance does not meet this due process qualification. However, the *non*-home rule city enabling statutes, especially Colo. Rev. Stat. §139-59-14 (1953), are less susceptible to due process criticism. Not only are the policy goals set out more specifically in those sections than in the Denver control ordinance, no subdivision control can be undertaken until the commission adopts a comprehensive plan and sets up official regulations.[45] The Denver "Comprehensive Plan" was repealed as an ordinance, formerly Section 660 of the Denver Ordinances, in 1958.[46] The control ordinance does not bind the city council's approval of plats to any of the regulations set up by its own Planning Office, whose approval or disapproval of a submitted plat is purely recommendatory.[47] Thus, any unconstitutional vagueness of the Denver control ordinance would not be clarified under those cases which hold that a lack of sufficient guidelines is cured by the adoption of binding administrative regulations, either formally or by administrative practice.[48]

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41 Prouty v. Heron, 127 Colo. 168, 255 P.2d 755 (1953); Smith v. City of Brookfield, 272 Wis. 1, 74 N.W.2d 770 (1956); Caledonia v. Racine Limestone Co., 266 Wis. 475, 63 N.W.2d 97 (1954); Lake Intervale Homes v. Township of Parsippany-Troy Hills, 28 N.J. 423, 147 A.2d 28, 38-40 (1958); Mansfield and Swett v. Town of West Orange, 120 N.J.L. 145, 198 A.2d 225 (1938).

42 Denver, Colo., Rev. Municipal Code §651.1 (1958).

43 *Id.* at §651.9.

44 127 Colo. 168 at 176. See Lake Intervale, *supra* note 40. Beach v. Zoning Commission of Town of Milford, 141 Conn. 79, 103 A.2d 814, 817 (1954); Borough of Oakland v. Roth, 28 N.J. Super. 321, 100 A.2d 698, 701-2 (1953).

45 Colo. Rev. Stat. §139-59-14 (1953).

46 Repealed by Sec. 2 (d), Ordinance 218, Series 1958.

47 Denver, Colo., Rev. Municipal Code §651.9-.10 (1958). See the introduction to *The Law and Rules* in the proposed 1962 Planning Office Regulations.

48 *E.g.*, Osious v. City of St. Clair Shores, 344 Mich. 693, 698, 75 N.W.2d 25, 27 (1956).

IV. CONCLUSION

Urban planning should be encouraged. Its benefits are many, both now and in the future. In achieving our public goals, we must take note of the paths which our constitutional framework requires us to take. As has been discussed, the law is not settled as to the rights and obligations of the public planning bodies in this area of subdivision dedications. This article has attempted to prognosticate the direction in which Colorado law will move with respect to this important matter.