

I.

EXECUTIVE SUMMARY

A CITIZENS' VIEW OF LAND USE IN COLORADO

A Report to the Governor and People of Colorado - 1976

A. INTRODUCTION

This report was prepared by the Colorado Land Use Commission to inform the Governor and the people of Colorado of major land use problems challenging the state. This summary includes excerpts representing major themes extracted from the full report.

*The laws and regulations governing the use of land in Colorado present our residents and elected officials with a confusing and contradictory set of demands and expectations. The serious extent to which these laws and regulations are vague, uncoordinated and misunderstood mandates that order must be brought to the system before one can deal effectively with the physical use of land. (Introduction, P. 1)*

On June 7, 1976, Governor Richard D. Lamm directed the Colorado Land Use Commission to prepare a package of land use legislation for presentation to the 1977 Session of the Colorado General Assembly. His assignment emphasized the importance of broad-based public participation in the process.

*I am desirous of having the Land Use Commission assume the lead role in preparing this legislative package. In this regard, the responsibilities of the LUC would include obtaining broad citizen input through both public hearings as well as structured advisory committees, soliciting and consolidating input from other departments of State government, as well as providing the actual drafting of the package. (Letter to Fred Sondermann, Chairman of the Colorado Land Use Commission, from Richard D. Lamm, Governor, June 7, 1976.)*

In July, 1976, the LUC initiated a process to identify the most pressing land use problems challenging Colorado, including recommendations for their resolution. First, to obtain maximum public participation in the process, the Commission traveled to a total of thirty-nine cities and towns throughout the state. It held public hearings in ten different communities within ten counties. Attendance records indicate that more than six hundred persons attended the ten hearings and a total of one hundred and sixty-five citizens testified.

In addition, the Commission held forty-five community meetings during the evenings prior to the public hearings. Attendance records indicate that more than six hundred persons attended those meetings. In all, over one thousand two hundred citizens were recorded as attending either a public hearing or community meeting. Second, state and local officials and representatives from special interest groups were interviewed. LUC publications, reports, and land use case files, as well as a host of reports and publications of other state agencies and private organizations, were reviewed for supportive documentation.

An analysis of the public hearing testimony, LUC experience, and interviews resulted in the identification of "primary," "secondary" and "other" issues. Primary issues reflect a high level of concern by the public, state agencies, local government, interest groups, and the LUC. Secondary and other issues were emphasized less frequently. Recommendations for problem resolution will be offered only for primary issues.

## B. PRIMARY ISSUES

The following statements were extracted from the text of the full report to illustrate the major thoughts presented in the analysis of issues. For quotes from public testimony refer to the full report.

The first eight issues concern procedural matters such as the levels of government at which land use decisions are to be made, the responsibilities of each level of government, and the compatibility of existing law. The remaining five issues refer to more substantive matters such as specific land use tools, policies related to water and agricultural resources, and the economic impacts of land use controls.

1. What is the most acceptable level of government for making the majority of land use decisions?

*...land use law passed by the Colorado legislature delegates to local government most of the authority to plan for and regulate the use of land. (Primary Issue No. 1, Description, P. 9)*

2. How can state government best assist local government in fulfilling its land use responsibilities?

*Most local governments rely on technical and financial assistance from the state to deal with land use related matters. (Primary Issue No. 2, Description, P. 10)*

*Local governments feel that they are not receiving the amount and quality of assistance from the state that is needed to fulfill their land use responsibilities. (Primary Issue No. 2, Conclusion, P. 15)*

3. Is the existing organization of state government adequate to fulfill the state's responsibilities in land use matters?

*Within state government there are at least 20 agencies scattered among five major departments and the Governor's office which provide some land use related service. For the most part, these agencies operate independently of one another and in the absence of policy guidance. (Primary Issue No. 3, Description, P. 15)*

*The existing organization of state government hinders the delivery of services. It has presented a problem for several years. That problem still exists. (Primary Issue No. 3, Conclusion, P. 19)*

4. Are state regulatory functions relating to land use and natural resources properly interrelated?

*The regulatory functions within state government are fragmented. The following problems result:*

*i. State regulatory decisions are made without full knowledge or consideration of all interrelated environmental and land use factors;*

*ii. Due to the uncoordinated state regulatory decision-making process, the LUC is frequently brought into the process at the "eleventh hour" to review potential problems not previously considered;*

*iii. Developers are subjected to unnecessary procedural delays and uncertainties about the "ground rules". Resulting additional costs are passed along to the consumer. (Primary Issue No. 4, Conclusion, P. 22)*

5. Is there an adequate mechanism for resolving interjurisdictional land use disputes?

*No adequate institutional method of dealing with interjurisdictional disputes exists in Colorado. Yet, many land use disputes develop in which some type of resolution mechanism was sought and/or used. As a result, under the current system, mechanisms for resolving disputes are limited to voluntary negotiation, ad hoc mediation, intervention by outside parties such as the LUC, or litigation through the courts. (Primary Issue No. 5, Conclusion, P. 25)*

6. Are local, state and federal land use decisions properly interrelated?

*Decision-making among the various levels of government is not interrelated. Unilateral decisions are made by one level or unit of government which significantly affect other levels and units of government. This problem is not new in Colorado, but has become increasingly acute as demands on Colorado's resources have increased. (Primary Issue No. 6, Conclusion, P. 30)*

7. Do land use changes in municipal fringe areas affect inter-jurisdictional relationships and local land use programs?

*Developments on the municipal fringe in the unincorporated areas of the county result in the following problems:*

- i. strained relationships between county and city;*
  - ii. developer playing county against municipality;*
  - iii. confusion and complication in providing services;*
  - iv. complication of capital improvement planning of municipalities;*
  - v. competition for land through accelerated annexation;*
  - vi. creation of urban sprawl, leap frog development, agricultural land conversion, open space loss;*
  - vii. proliferation of special districts.*
- (Primary Issue No. 7, Conclusion, P. 32-33)*

8. Is existing land use enabling law comprehensible, and are the various laws compatible?

*The body of Colorado land use enabling law is a product of the incremental decision-making process. Individual statutes have been added to the body of law for over 50 years with little thought as to how they relate to existing law. (Primary Issue No. 8, Description, P. 33)*

*....with the addition of new legislation since 1971, the complexity of the statutes has grown. This situation is considered by many to be a major obstacle to informed land use decision-making. (Primary Issue No. 8, Conclusion, P. 36)*

9. Does the conversion of land from agriculture to other uses result in environmental, social, and economic problems?

*This issue is considered by many to be a major concern. Documentation of environmental, economic and social impacts is in most cases site specific and incomplete. It is not possible to derive general conclusions from it. Further documentation of the nature of the problem is needed to suggest solutions. (Primary Issue No. 9, Conclusion, P. 42)*

10. Are current water policies in Colorado coordinated with land use policies?

*The most frequently discussed dimensions of this issue are transmountain diversions, diversions of water from agricultural uses to other uses, and the need for a state water plan. (Primary Issue No. 10, Description, P. 42)*

*The long term growth and development of Colorado is dependent upon efficient use and allocation of water. It is clear that Colorado water policy is not coordinated or integrated with state and local growth policies. (Primary Issue No. 10, Conclusion, P. 46)*

11. Is S.B. 35 working?

*State and local governments have developed considerable experience in the administration of the county subdivision control enabling statute, S.B. 35. In general, the law has been found by those who administer it to be a very useful and successful land use tool. In spite of its success, numerous weaknesses have been identified as a result of considerable state and local experience. Those problems are as follows:*

- i. the 35-acre automatic exemption;*
- ii. absence of a specific statutory provision concerning bona fide intra-family transfers of land;*
- iii. absence of a specific statutory provision concerning bona fide transfers of land for agricultural uses;*
- iv. absence of a specific statutory provision authorizing counties to require financial disclosure of developers;*
- v. lack of effective penalties for violations of subdivision regulations;*

- vi. lack of statutory authority allowing counties to remove previously platted but undeveloped subdivisions;*
- vii. lack of authority for counties to develop a short subdivision procedure for small subdivisions;*
- viii. lack of mechanisms to penalize counties which do not report subdivision referrals to required state agencies or otherwise comply with the statute;*
- ix. lack of explicit authorization for counties to charge fees for the processing and review of subdivision proposals;*
- x. 24-day state agency review period places burdens on state agencies. (Primary Issue No. 11, Conclusion, P. 59-60)*

12. Is H.B. 1041 working?

*Generally, H.B. 1041 has provided the impetus to local government to improve land use planning and regulatory programs. It has also stimulated improved relationships between state and local government. Many feel that it is beginning to work and deserves further support in order to give it a chance to be more successful. However, many specific problems have been identified which hinder its effectiveness. The following problems, among others, have been identified:*

- i. It is unnecessarily complex procedurally, substantively and administratively;*
- ii. Funding appropriations are inequitably distributed among local governments;*
- iii. Certain matters of state concern now included in H.B. 1041 should be excluded;*
- iv. Other matters of state interest not now included in the statute should be regulated under H.B. 1041. (Primary Issue No. 12, Conclusion, P. 65)*

13. Have negative economic impacts resulted from existing land use controls?

*Land use regulations increase the costs of housing. A small percentage of such increases results from complex and overlapping statutory provisions and inefficient governmental decision-making. Other costs are reflected in certain benefits such as the provision of adequate sewage facilities, streets, curbs and gutter, parks, adequate water supplies, minimized environmental impact, safe physical conditions for development, and many others. Factors contributing the most to higher housing costs are increased cost of materials, labor, and resource availability, none of which is related directly to land use controls. (Primary Issue No. 13, Conclusion, P. 68)*

C. SECONDARY ISSUES

1. Do transferable development rights provide a useful method of controlling land use with compensation?

*The paucity of public testimony on TDR's discourages further analysis of the subject at this time. It remains to be examined whether TDR's are acceptable or workable in Colorado. (Secondary Issue No. 1, P. 69)*

2. Is there a need for further development of open space programs in Colorado?

*While it is recognized that current open space programs are probably inadequate, especially in urban areas, there was relatively little public testimony directly or solely on this issue. However, this concern is reflected in primary issues No. 7 and 9. (Secondary Issue, No. 2, P. 70)*

3. Do state policies and laws take account of economic, social, cultural and environmental diversity within the State?

*In certain instances unrealistic requirements are imposed on local governments where those requirements are not applicable and areas of the state which need special programs are neglected. (Secondary Issue No. 3, P. 72)*

4. Are regional planning organizations viewed as necessary for improved land use management?

*....it is unclear what role regions perform in land use management. (Secondary Issue No. 4, P. 73)*

Testimony relating to these topics was infrequent. Therefore, detailed analyses to identify problems or make recommendations is inappropriate, at this time.

D. OTHER ISSUES

This section of the full report includes a list of concerns expressed during public hearings which were not classified as primary or secondary issues, but which deserve recognition as public input.