

HB

445

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Assembly

COMMITTEE REPORT

January 21, 1974

JUDICIARY

HOUSE

Mr. Speaker:

Date 2-25-74

The Committee on Community and Regional Affairs has had H.B. No. 649

under consideration. A Majority of the members of the Committee

() recommends it DO PASS

() recommends it DO NOT PASS

(X) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

() recommends it BE REPLACED WITH CS FOR _____ AND THAT

CS FOR _____ DO PASS

() "and" recommends it BE REFERRED TO THE _____

COMMITTEE

() reports it back WITHOUT RECOMMENDATION

() "other"

Members signing the Majority report:

[Handwritten signatures]

Members NOT concurring in the Majority report:

_____ recommends:
_____ recommends:
_____ recommends:
_____ recommends:
_____ recommends:

[Handwritten signature] Chairman

A M E N D M E N T

OFFERED IN THE HOUSE:

BY: House Community and Regional
Affairs Committee

To: _____ HOUSE BILL No. 445 _____

SENATE BILL No. _____

PAGE: 1 _____

LINE: 21 _____

(1) After sub-section (1), add a new subsection--Sub-section

The land, fees, or combination thereof shall be used
only for the purpose of providing park, recreational, or
other public facilities.

MEMORANDUM

Alaska House of Representatives



POUCH V
JUNEAU
99801

P. O. BOX 9
KENAI
99811

HUGH MALONE

TO: Honorable Milo Fritz
Committee on Community & Regional
Affairs

DATE: January 28, 1974

FROM: Representative Hugh Malone

RE: HB 445, Platting Powers

The evident purpose is to allow municipalities to require developers to provide land for parks and open spaces. This is a bona-fide public purpose. It costs a great deal to acquire this land after development - and the developer is the prime beneficiary, since he is assured that the development will have, if the overall plan is carried out, adequate open area for recreation and related activities.

The bill does not in any way restrict local government - it broadens their powers. It does not restrict developers unless unfairly administered by a municipality.

One other point to consider is that a municipality might possibly be faced with a suit on the grounds a person would be deprived of private property for a public use without fair compensation. (References - U.S. and Alaska Constitutions; 5th Amendment, U.S. Constitution; Art. 1, Sec. 18, Alaska Constitution.)

I would argue against this on the following basis:

1. A developer is already required to provide adequate street rights-of-way and utilities easements as a condition of approval of the development. HB 445 is merely an extension of the types of public areas deemed necessary for development.
2. Land use is already limited in most urban areas to that specified in the overall zoning. Park or greenspace zoning is probably within the scope of zoning power of a municipality.

It should be noted that a local government could only use this power as part of an overall parks plan. Also, while some savings would occur, the costs of providing parks in a quickly growing area would only be slightly mitigated in most cases. But this does not detract from the value of the bill.

I would be glad to testify on HB 445 at your convenience. I respectfully suggest you invite comments and testimony from Mr. Robert Pavitt, Director of Planning and Research, Office of the Governor. Mr. Pavitt is an expert in this field.

H. M.

cc: Robert Pavitt

Legal Issues

There are two major legal issues regarding mandatory dedication of land or fees-in-lieu of land for schools and parks as a prerequisite to subdivision plat approval: (1) whether the conceived purpose of the regulation comes within the constitutional limits of the police power--the protection of health, safety and morals, or the general welfare. And, (2) whether the specific requirements are "reasonable," that is, whether they exceed the limitations on the exercise of regulatory power.³

The Constitutionality of Subdivision Exactions

Subdivision regulations requiring the mandatory dedication of land or fees-in-lieu of land as a precedent to plat approval must generally be authorized by state legislation. Several states have passed dedication and fees-in-lieu provisions statutes.⁴ One indication of the increasing interest in such legislation is the ACIR State Legislative Program for 1970⁵ in which a bill (reproduced in Appendix A) is proposed for mandatory dedication of park and school sites. In its introduction to the model draft bill, ACIR states that it is now generally recognized that land for open space, park and recreation areas, and school sites is a vital feature of sound subdivision design. Providing land is as necessary as is providing common physical facilities, such as streets and sewers.

California has one of the finest examples of state enabling legislation in the Quimby Act (AB 1150 of Chapter 1809). This section reads as follows:

Section 1. Section 11510 of the Business and Professions Code is amended to read:

11510. "Design." Refers to street alignment, grades and widths, alignments and widths of easements and rights-of-way for drain-

³Ibid., p. 1122.

⁴Arkansas -- Ark. Stat. Ann. 19-2829 (Supp. 1959); Washington -- Wash. Rev. Code 58. 16.120 (1951); Minnesota -- Minn. Stat. Secs. 462. 351-462.363 (1965); California -- Business and Professions Code section 11546, Ab 1150, chapter 1809 (1965); New York -- Section 277, Town Law, Section 179-1, Village Law, Section 33, General City Law; Hawaii (proposed) S.B. No. 282 (1966). ASPO did not survey states concerning enabling legislation for subdivision dedication and/or fees-in-lieu requirements and does not contend that this list is complete.

⁵Advisory Commission on Intergovernmental Relations, ACIR State Legislative Program: New Proposals for 1970. (Washington, D.C.: Advisory Commission on Intergovernmental Relations, 1969) p. 31-37-00,1.

sideration variations in the relative desirability and market value of the land that may be included within the area of any particular, proposed subdivision.¹

Section []. Payment in Lieu of Dedication. When the [governing body] adopts regulations requiring a subdivider to dedicate school, park and playground sites, as authorized by section [the preceding section], it may also adopt, as part of the [municipality's, county's] subdivision control regulations, provisions requiring a subdivider, in lieu of dedicating the sites, to pay to the [municipality, county] a sum of money equal to the value of land that would otherwise be required to be dedicated for school, park and playground purposes, whenever the department or agency charged with administering the dedication provisions determines that it would not be in the public interest to accept the dedication in connection with a particular proposed subdivision.² The provisions shall enumerate the standards to be applied in determining when it is not in the public interest to accept the dedication and shall provide for the manner of making payment. [All funds so received shall be held by the [municipality, county], or a designated department or agency thereof, in a special account, and shall be applied and used by the [municipality, county] to acquire school, park and playground sites for the benefit of the residents of the subdivision for which the payment was made.] Provisions may be adopted establishing standards for the application and use of the funds in accordance with the foregoing limitation. The provisions may also provide that the payment in lieu of dedication shall be a condition precedent to the approval of any subdivision

¹The legislature may wish to spell out the procedure for adjusting the area of land dedicated to the varying value of property throughout the subdivision. Following is one suggestion:

Such consideration shall be in the form of provisions that adjust the total amount of land that may be required to be dedicated in accordance with the value of the particular land area or areas selected for dedication as opposed to the average per acre or other unit value of all land within the proposed subdivision, in accordance with the following formula:

Average value (per acre or other unit) of all land within subdivision

"x"

Average value (per acre or other unit) of the land selected for dedication.

Number of acres (or other units of land) required to be dedicated under standards relating to number and type of dwelling units or structures

where "x" equals the total amount of land that may be required to be dedicated.

²The legislature may consider it desirable to specify the procedure for determining the amount of the in-lieu payment. Following is a possible approach: (Footnote continued)

age and sanitary sewers and minimum lot area and width. "Design" also includes land to be dedicated for park or recreational purposes.

Section 2. Section 11546 is added to said code, to read:

11546. 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 tentative map of the subdivision.

(b) The ordinance includes definite standards for determining the proportion 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.⁶

⁶A recent appellate court in California has generally validated the ordinance for the city of Walnut Creek which was basically patterned after the suggested ordinance prepared by the League of California Cities based on the state enabling legislation. The court in this decision (Associated Home Builders of the Greater East Bay, Inc. v. City of Walnut Creek, filed on October 13, 1970) commented negatively on certain aspects of the Walnut Creek ordinance and determined that subsection (g) of section 1154b was ambiguous in that the use of the term "parcel" was not subject to definition. Aside from this, it does appear that the appellate court sustained the California law in this field.

plat, or may provide that the payment be deferred or made in installments following approval of a subdivision plat, or may provide that the payment be deferred or made in installments following approval of a subdivision plat upon the subdivider's posting of a good and sufficient surety bond guaranteeing the payment.

[Section []]. Certification of Standards by School and Park Districts. When the boundaries of the [municipality, county] do not coincide with those of the [school district] [park district] responsible for administering the school and park programs, the governing body of the [municipality] [county] shall refer the standards required by [the preceding two sections] to the [school district] [park district] in which the proposed subdivision is located. The standards shall not be effective until the [school district] [park district] certifies, pursuant to procedures set forth in an interlocal agreement, that they are the same as those prevailing throughout the jurisdiction of the [school district] [park district].]

Section 2. Separability. [Insert separability clause.]

Section 3. Effective Date. [Insert effective date.]

(Footnote continued.)

Where a fee is required to be paid in lieu of land dedication, the amount of such fee shall be based on the average price per acre which the [school board] and the [park authority] would be required to pay for an amount of land equivalent to that which the subdivider or developer would otherwise be required to dedicate, pursuant to section [] hereof. The average price per acre used to calculate the fee shall be established annually by the [school board] and the [park authority], subject to [governing body's] approval, based on their best knowledge of trends in site costs, and such price shall be applied [municipal-, county-] wide. The average price per acre used to establish the fee for the current calendar year shall be that for land to be purchased in the following calendar year. An appropriate schedule of fees shall be published in the [planning agency], subject to the approval by the [governing body], and shall become effective January 1. This schedule of fees shall be reviewed annually and revised as necessary.

Appendix A

ACIR SUGGESTED STATE LEGISLATION

[Title should conform to state requirements. The following is a suggestion: "Amendment to state legislation authorizing counties and municipalities to exercise subdivision regulation powers."]

(Be it enacted, etc.)

Section 1. [Appropriate citation to existing subdivision regulation law] is hereby amended by adding the following new sections at the end thereof:

Section []. Dedication of School, Park and Playground Sites. For those portions of [municipalities, counties] for which plans for future sites for schools and parks and playgrounds have been adopted and published pursuant to [cite local planning enabling statute], the [governing body] may be resolution or ordinance include, as a part of the [municipality's, county's] subdivision control regulations, requirements that a subdivider of land dedicate such land areas, sites and locations for school, park and playground purposes as are reasonably necessary to service the proposed subdivision and the future residents thereof, but in no case more than [] percent of the gross area of the proposed subdivision. The regulations may provide that the dedication shall be a condition precedent to the approval of any subdivision plat. They shall set forth the standards to be applied in determining the amount of land that is required to be dedicated. These standards shall be based upon the number and type of dwelling units or structures to be included in each subdivision. These standards shall also be based upon studies and surveys conducted by the [municipality, county] in order to determine the need, if any, for school, park and playground sites generated by existing subdivisions within the [municipality, county] containing various types of dwelling units or structures.

The regulations may also provide that the [municipality, county], or a designated department or agency thereof, shall have the authority to select the location of land areas to be dedicated for school, park and playground purposes. If such authority is exercised, the dedication provision shall take into con-

The suggested state legislation cited in this appendix is taken from Advisory Commission on Intergovernmental Relations, ACIR State Legislative Program: New Proposals for 1970 (Washington, D.C.: 1969), Sec. 31-37-00, p. 2.

Minutes
House Community and Regional Affairs Committee
February 20, 1974
8:30 a.m.

Present

Chairman Carrol
V. Chairman Hackney
Rep. Laktonen
Rep. Gardiner

Excused

Rep. Guy
Rep. Fritz
Rep. Petersen

Guests

Don Berry-Alaska Municipal League
James Wiedeman-Office of the Governor, Division of Planning and
Research
Lawrence Kimball-Dept. of Community and Regional Affairs, Div-
ision of Research and Planning

The Committee considered HB 445.

Mr. Berry-AML requested Rep. Fischer to introduce the bill. It is an attempt by the Municipal League to guarantee recreational and open lands in any subdivision to be developed from now on. It provides that a certain proportion of land must be dedicated to open space in a development.

Rep. Gardiner-Did any of the smaller communities feel that this type of legislation was going to pose problems for them?

Mr. Berry-Not in the communities I talked with.

Chairman Carrol-Will there be any problems with public parking because of this?

Mr. Berry-There shouldn't be, because most builders are required to provide for public parking in their plans, if the area is to be used by the public.

Rep. Gardiner-What is this Sec. B, the exemption for industrial zoned land?

Mr. Berry-There seems to be trouble in zoning an area of a community strictly for industry, and this bill gives a plan for planning both industrial and recreational areas.

V. Chairman Hackney-How about the provision in Line 11?

Mr. Berry-Why give the developer the right to pay a money fee instead of dedicating open land?

Mr. Wiedeman-Usually the payment of fees is for areas where a subdivision goes in adjacent to an existing park, in which case, the fees paid by the developer might be used to either help maintain the existing park or to purchase recreational land in another location.

Rep. Gardiner-Would there be any problem with these fees being used for anything other than their originally intended purpose?

Chairman Carrol-Rep. Malone has provided us a copy of his reaction to this bill.

The memo was read by the secretary to the Committee. It was addressed to Rep. Fritz, from Rep. Malone.

Mr. Kimball-The Dept. of CRA is in favor of the bill. Other states have passed the same type of legislation and its constitutionality has been upheld in these states, provided the standards set by the municipalities are reasonable. The idea of leaving the standards to the discretion of the local governments is a good one, because it will allow the different Alaskan communities to design around their own topographical problems.

V. Chairman Hackney-Do you see restrictions on developers making their own plans, and having these plans not be accepted by the local government?

Mr. Kimball-Not really, because the developer would already have had to consult with the proper local authorities before going ahead anyway.

V. Chairman Hackney-How many boroughs would have a parks and recreation plan at this time, to implement this legislation?

Mr. Kimball-Probably Anchorage, maybe Fairbanks. The main object in all this is to simply locate the recreational areas near the residential sections.

V. Chairman Hackney-Hawaii has this type of plan, including the idea of industrial parks. They also have a green strip policy, in which there are certain areas in an industrial section where no buildings may be built.

Mr. Kimball-Yes, Connecticut also has this policy.

V. Chairman Hackney-Is this bill really necessary?

Mr. Kimball-This type of planning ordinance usually requires state legislation to be effective on a local level.

V. Chairman Hackney-Is there any virtue in requiring the boroughs to have this type of comprehensive plan?

Mr. Wiedeman-It gets very complicated at the local level. There almost has to be a pre-existing plan in an area for this type of ordinance to be effective. The bill is enabling legislation.

The municipalities have to do certain things first:

1) There has to be some sort of parks plan to relate the new ordinance to.

2) There has to be a set of standards or conditions as to where

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the ordinance shall apply. It would be unreasonable, in most cases, for the city to ask a developer who was subdividing only 20 lots to dedicate 5 to open space. But the passage of this type of legislation may get the different localities to look at the idea of planning.

Chairman Carrol-Do you think the bill needs more specific language concerning this point?

Mr. Kimball-These standards are usually developed at the local level.

V. Chairman Hackney-Is there no danger of municipalities using this bill as a rip-off on the subdividers?

Mr. Kimball-Usually representatives of the developer work with the local governments in these cases, so there should be no problem.

V. Chairman Hackney-There needs to be something in the bill to specify that the fees acquired in lieu of open space property should be earmarked for the purpose of recreation.

Mr. Berry-It all goes into a general fund from which the parks and recreation monies are drawn anyway, so what difference can it make?

V. Chairman Hackney-There is the possibility of the money going elsewhere.

Mr. Berry-If it makes Rep. Hackney feel better, language can be inserted to specify that the funds must be used for this purpose only.

Chairman Carrol-I disagree. When funds are earmarked, they are sometimes spent needlessly. The local governments need the latitude to decide what to do with the funds, to use them where they are needed.

Mr. Berry-So much is spent by the municipalities on parks and recreation in comparison to what might be received from any fees a developer might pay, that there really seems little point in specifying.

V. Chairman Hackney-If the city is going to pick someone's pocket for a specific purpose, let the money be earmarked for that specific purpose.

Mr. Wiedeman-Seldom, in my experience, is the land commuted to a fee payment anyway.

Chairman Carrol-What would be an example of such a case?

Mr. Wiedeman-The case I mentioned before, where an already existing park makes more open land unnecessary. Surplus park property can be detrimental to a community, and payment of a fee can be substituted in this case.

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Mr. Kimball-Or, in the case of a large development owned by several holders, the fees may be taken to develop one larger area for recreation.

Because of the lateness of the hour, Chairman Carrol adjourned the meeting at 9:30, to be continued tomorrow at 8:30 a.m.

Minutes

House Community and Regional Affairs Committee

Febraary 21, 1974

8:30 am

Present

Excused

Chairman Carrol
V. Chairman Hackney
Rep. Fritz
Rep. Gardiner
Rep. Petersen

Rep. Guy

Guests

Billy Berrier--City Attorney, Juneau City and Borough
Don Berry--AML
Dorie Clark--Parks and Recreation, Greater Anchorage Area Borough
Rep. Helen Fischer--sponsor of HB 445
Karen Hedley--League of Women Voters, Anchorage
Lawrence Kimball--Dept. CRA, Division of Research and Planning
Gary Thurlow--Greater Anchorage Area Borough, City Attorney

Continuing hearings on HB 445.

Mrs. Hedley: The subdivider should bear the burden of seeing that there is a minimum amount of open land in the development. The in lieu fee should be up to the local government, as should be the required minimum amount of land to be dedicated. The League of Women Voters is urging a speedy do pass recommendation.

Rep. Fritz: Have you had problems with the developers over this type of thing?

Mrs. Hedlen: Not unless the requirements are too stringent.

Rep. Fritz: There have been no complaints from anyone on your committee?

Mrs. Hedlen: There were some minor disputes.

Rep. Hackney: Did you have contact with real estate people?

Mrs. Hedlen: Most could see the advantage of the program.

Chairman Carrol: What about the claim that the tenant pays for the park anyway in a bigger markup?

Mrs. Hedlen: The price is passed on to the consumer, so he pays for the parks anyway, but I would rather do it.

Rep. Gardiner: A community as it grows will want parks, and they're more expensive later; it's just a question of when you pay, and how much.

Rep. Hackney: Where several small developers own a general area, they would have to decide who gives up the park land.

Mrs. Hedlen: Most of the land we are talking about is owned by two or three people, so that problem really isn't what concerns us directly in Anchorage.

Mrs. Clark: Each community in Alaska is unique and has its own needs and the formula in HB 445 is flexible and workable.

There is a real estate representative on the Greater Anchorage Area Park Board and he favors this legislation.

The opposition to this kind of thing is usually to the unknown. The developers don't know what formula will be adopted at the local level.

HB 445 will not provide all the parkland needed by the communities, but the land it does set aside will be acquired at its least expensive. We urge passage of this bill.

Rep. Hackney: What do you do for Anchorage, Mrs. Clark?

Mrs. Clark: I am the manager of the Parks and Recreation Dept.

Rep. Fritz: We only have one chance at parks. I urge passage.

Rep. Hackney: Would you have any objection to requiring fees in lieu of dedication to be especially earmarked for parks and recreation.

Mrs. Clark: No, I would have assumed they would be used for this purpose anyway.

Mr. Van Doren: How about the following amendment: The land, fees, or combination thereof shall be used only for the purpose of providing park, recreational, or open space facilities to serve the subdivision.

Rep. Fischer--I was going to ask for this type of amendment.

Rep. Gardiner--Is the phrase, "to serve the subdivision" too restrictive?

Mr. Van Doren: Perhaps the fees could be used for the upkeep of an adjacent area, so the subdivider can see a benefit to his area through the fees he has paid.

Mr. Kimball: In California courts, it is felt that the subdivider should provide certain services in return for land pressures, but they are not held responsible for programs normally supported by the community.

Mrs. Clark: Some subdivisions might have a park nearby in various stages of development. In this case, couldn't the fee be used in a different area?

Mr. Bellier: The phrase, "to serve the subdivision" ties it down

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unnecessarily.

Mr. Thurlow: It wouldn't create a problem in Calif., but it might here.

Rep. Hackney: I just don't want the borough ripping off the developers.

Rep. Gardiner: There have to be certain stipulations on the local level. If the cities were ripping off the subdividers, it would never hold up in court.

Mr. Thurlow: I represented a developer in Calif. Their ordinance works well and protects the responsible developer. If there is no statute covering this, the parks situation, especially in Anchorage, will be irretrievable.

Rep. Carrol: How do you see Fairbanks?

Mr. Thurlow: Fairbanks needs small community parks.

Rep. Carrol: This would seem to be a timely bill for Alaska.

The meeting was adjourned at 9:30 because of the lateness of the hour. Further consideration to be held at the meeting Monday, Feb. 25.

Minutes
House Community and Regional Affairs Committee
February 25, 1974
8:30 a.m.

Present

Chairman Carrol
V. Chairman Hackney
Rep. Fritz
Rep. Gardiner
Rep. Laktonen
Rep. Petersen

Excused

Rep. Guy

Guests

Rep. J. Miller
Mr. Don Berry--AML
Mr. Billy Berrier--City Atty., Juneau

The Committee continued to deliberate on HB 445.

Rep. J. Miller testified on the bill.

The bill was passed out of committee with a unanimous vote,
amendment attached.

There being no further business, the meeting was adjourned at
9:30 a.m.

Selwin Carrol, Chairman
Community and Regional Affairs Committee
Pouch V
Juneau, Alaska

February 18, 1974

Dear Mr. Carrol:

I am writing to urge the Community and Regional Affairs Committee recommend passage of House Bill 445, "An act relating to the platting powers of municipalities".

I live near Musk Ox Subdivision and enjoy easy access to the Skarland Memorial Ski Trail. I consider this easy access a prime factor in my choice to live here, and I would be considerably upset if future residential development in the area resulted in loss of this trail. Enclosed is a map detailing how this loss could occur and how a recreational easement could prevent this.

I use the trail for recreational skiing, for visiting my friends who live along it, and for commuting to work when I worked at the University of Alaska. I use it primarily for skiing, but in the summer I also use it for running.

I would like to dispell a common belief that trail-based recreation is used by only children and youth. I am 35 years old, and I have made an earnest attempt to run at least a mile every day for the past 8 years. When I was 32, I ran in the Equinox Marathon and came in 4th in the Women's Division. While I'm not sure I'd like to do that to my body again, I was considerably pleased with how well I did--especially as the women who placed ahead of me were all at least 10 years younger than I. I can easily understand how there will always be Fairbanks residents of all ages in the future who will want to have the opportunity to test the results of their personal physical fitness programs in events like the Skiathon and Equinox Marathon.

I consider trail systems on recreational easements superior to those beside road right-of-ways for practical as well as aesthetic reasons. As a runner, I have found that paved roads and graveled shoulders do funny things to my knees and ankles, and on busy highways automobile exhaust and dust are irritating. As a skier, I have found trails beside roads are repeatedly covered by blocks of hard-packed snow from snow plows during the winter, and in the spring, gravel left behind as this snow melts makes these trails unusable much sooner than trails in the woods.

I wish to encourage the creation of additional trail systems like the Skarland Memorial Ski Trail. This would not only allow residents of other neighborhoods the opportunity to enjoy skiing at their very doorstep as I do in my neighborhood,

but it would remove the burden now placed on the Skarland Memorial Ski Trail of providing cross-country ski recreation for the entire Fairbanks area.

Accordingly I would welcome the passage of HB 445 as a first step toward establishing an area-wide trail system in the North Star Borough through recreational easements.

Sincerely,

Joanne E. Groves

Joanne E. Groves

Box 81199

College, Alaska 99701