

TABLE OF CONTENTS

INTRODUCTION.....	1
CHAPTER 1: PLANNING.....	21
§ 1.1 Introduction.....	22
§ 1.2 Statutory Municipalities.....	23
§ 1.2.1—General Planning Provisions	23
§ 1.2.2—Regulation Of Public Improvements And Public Utilities	26
§ 1.3 Statutory Counties.....	27
§ 1.3.1—General Planning Provisions	27
§ 1.3.2—Regulation Of Public Improvements And Public Utilities	30
§ 1.4 Intergovernmental Cooperation	31
§ 1.4.1—General Statewide Policy	31
§ 1.4.2—Regional Planning Commissions	32
§ 1.4.3—Regional Service Authorities	36
§ 1.4.4—Metropolitan Planning Organizations	37
§ 1.4.5—Cooperation With State Government	38
§ 1.5 State-Level Planning	39
§ 1.5.1—Division Of Planning	39
§ 1.5.2—Colorado State Land Board.....	40
§ 1.5.3—Areas And Activities Of Statewide Interest	41
§ 1.5.4—Local Governmental Land Use Control	44
§ 1.6 Land Planning And The Environment	45
CHAPTER 2: ZONING.....	47
§ 2.1 Introduction.....	48
§ 2.2 Historical Development Of Zoning.....	49
§ 2.3 Purpose Of Zoning	50
§ 2.4 The Nature Of Zoning.....	51
§ 2.5 The Authority To Zone	52
§ 2.5.1—Statutory Municipalities	52
§ 2.5.2—Statutory Counties.....	54
§ 2.6 Limitations On Zoning Powers	57
§ 2.6.1—Preemption	57
§ 2.6.2—Reasonableness And Nexus	65
§ 2.6.3—Definiteness Of Standards To Guide Enforcement	66
§ 2.6.4—Conformance With Comprehensive Plan/Spot Zoning.....	67
§ 2.6.5—Free Speech And The First Amendment	69
§ 2.6.6—Religion And The First Amendment.....	71

§ 2.6.7—Land Owned By Governments	75
§ 2.6.8—Adopted Local Procedures.....	76
§ 2.6.9—Intergovernmental Agreements	76
§ 2.6.10—Development Agreements	77
§ 2.6.11—Medicinal And Recreational Marijuana.....	77
§ 2.7 Nonconforming Uses, Structures, And Lots.....	79
§ 2.7.1—Nonconforming Uses.....	79
§ 2.7.2—Nonconforming Structures And Signs.....	82
§ 2.7.3—Nonconforming Lots.....	83
§ 2.8 Solutions To Specific Zoning Problems.....	83
§ 2.8.1—Rezoning/Amendment	83
§ 2.8.2—Conditional And Special Uses.....	85
§ 2.8.3—Variances	86
§ 2.9 Review Of Zoning Decisions	87
§ 2.9.1—Administrative Review	87
§ 2.9.2—Judicial Review.....	88
§ 2.10 Initiative/Referendum.....	88
§ 2.11 Enforcement	89
§ 2.11.1—Statutory Counties	89
§ 2.11.2—Statutory Municipalities	90
CHAPTER 3: PLANNED UNIT DEVELOPMENTS.....	91
§ 3.1 Introduction	92
§ 3.2 Authority For Planned Unit Developments	94
§ 3.2.1—Planned Unit Development Before State Authorization.....	94
§ 3.2.2—State Legislation	94
§ 3.3 Statutory Requirements Of A PUD Enabling Ordinance	96
§ 3.4 Additional Requirements Permitted In A PUD Enabling Ordinance	97
§ 3.4.1—Establishment Of Additional Requirements For PUD Approval.....	97
§ 3.4.2—Relationship Of Additional Requirements With Subdivision Regulations	98
§ 3.4.3—Adequacy Of A Local Government’s Additional Requirements.....	98
§ 3.5 Sufficiency Of Local Government’s Ordinance Or Resolution.....	100
§ 3.6 Common Open Space	101
§ 3.6.1—Ownership And Maintenance Of Common Open Space	101
§ 3.6.2—Failure To Maintain Common Open Space	101
§ 3.7 Procedure For Approval Of A PUD Plan	102
§ 3.7.1—Application	102
§ 3.7.2—Review And Consideration Of Application.....	103
§ 3.8 Recording Of PUD Not Required.....	104

Table of Contents

§ 3.9	Modifications And Amendments To PUDs	105
§ 3.9.1—Modification By Local Government	105	
§ 3.9.2—Modification By Residents And Owners	106	
§ 3.10	Enforcement Of PUD Plans	106
§ 3.10.1—Enforcement By County Or Municipality	106	
§ 3.10.2—Enforcement By Residents, Occupants, And Owners	106	
§ 3.10.3—Enforcement Under Ordinances Not Subject To PUD Act	107	
§ 3.11	Challenge To PUD Enabling Ordinance	107
§ 3.12	Challenges To Individual PUD Rezoning Ordinances	107
§ 3.12.1—Adjacent Property Owners	108	
§ 3.12.2—Adjacent Home Rule Municipality	108	
CHAPTER 4: SUBDIVISIONS, STREETS, AND ACCESS		109
§ 4.1	Introduction	110
§ 4.2	Subdivisions In Colorado: Short History, Purposes, And Legal Context	112
§ 4.2.1—Short History Of The Subdivision Plat	112	
§ 4.2.2—Purposes	112	
§ 4.2.3—Legal Context	113	
§ 4.3	Subdivision As A Regulatory Tool	114
§ 4.3.1—Subdivision Review Process	114	
§ 4.3.2—Substantive Requirements	117	
§ 4.3.3—Technical Plat Requirements	119	
§ 4.4	Subdivision Exemptions	119
§ 4.4.1—Exclusions From The Statute	119	
§ 4.4.2—Correction Of Pre-Existing Problems	121	
§ 4.4.3—Merger Of Subdivided Lots	122	
§ 4.5	Power To Regulate Sale Of Subdivision Lots	123
§ 4.6	Dedication Requirements	123
§ 4.6.1—In General	123	
§ 4.6.2—Forms Of Dedication	124	
§ 4.6.3—Intent To Dedicate	125	
§ 4.6.4—Acceptance Of Offer To Dedicate	126	
§ 4.6.5—Withdrawal Of Offer To Dedicate	126	
§ 4.6.6—Interest Conveyed By Dedication	127	
§ 4.6.7—Abandonment And Vacation	128	
§ 4.7	Defective Plats, Notice And Intention	128
§ 4.7.1—Acknowledgments	128	
§ 4.7.2—Recording	129	
§ 4.8	Plat Amendment	129
§ 4.9	Designation Of Public Streets And Roads	129

§ 4.9.1—Dedication.....	129
§ 4.9.2—Purchase And Eminent Domain	130
§ 4.9.3—Prescription.....	130
§ 4.9.4—Deed Reservations And Exceptions.....	131
§ 4.10 Highways Over Public Lands	132
§ 4.10.1—R.S. 2477	132
§ 4.10.2—Petition.....	133
§ 4.10.3—Proclamation.....	133
§ 4.11 Vacation And Abandonment	133
§ 4.12 Access Controls	134
§ 4.12.1—Local Controls	134
§ 4.12.2—State Controls	134
CHAPTER 5: EXACTIONS, DEDICATIONS, IMPACT FEES, AND REGULATORY TAKINGS	
§ 5.1 Introduction	138
§ 5.2 The Basic Exaction Tools.....	139
§ 5.3 Authority For Exactions And Impact Fees	140
§ 5.3.1—Legislative Adoption Required.....	142
§ 5.3.2—Relation Between Impact Fees And The Proposed Development	142
§ 5.3.3—Capital Facilities Defined	142
§ 5.3.4—Use For Existing And Future Capital Improvements	142
§ 5.3.5—The “No Double Dipping” Clause.....	143
§ 5.3.6—Pre-Existing Impact Fee Programs	143
§ 5.3.7—New Impact Fees Apply Prospectively.....	143
§ 5.3.8—Challenging The Imposition Of An Impact Fee	144
§ 5.3.9—Accounting For Impact Fee Revenues.....	144
§ 5.3.10—Waiver Of Impact Fees For Affordable/Employee Housing	144
§ 5.4 Calculation Of Land Dedications And Impact Fees	144
§ 5.4.1—Exactions	145
§ 5.4.2—Impact Fees.....	145
§ 5.5 Management Of Collected Impact Fees	146
§ 5.6 Case Law On Exactions And Impact Fees	147
§ 5.6.1—The Police Power And The Nexus Requirement For Exactions	147
§ 5.6.2—The Police Power And The Reasonably Related Standard For Impact Fees	149
§ 5.6.3—The Police Power And The Requirement Of Adequate Standards	150
§ 5.6.4—The “Tax” Challenge	152
§ 5.7 Regulatory Takings	154
§ 5.7.1—A Final Determination	156

Table of Contents

§ 5.7.2—Test Elements	158
§ 5.7.3—Type Of Challenge	163
§ 5.7.4—Definition Of Property	164
§ 5.7.5—Relief.....	164
§ 5.7.6—Remedies	165
CHAPTER 6: VESTED RIGHTS	167
§ 6.1 Introduction.....	167
§ 6.2 Types Of Vested Rights	168
§ 6.3 Common Law Vested Rights	169
§ 6.3.1—Legal Theories.....	169
§ 6.3.2—Who Has Common Law Vested Rights?	172
§ 6.3.3—When Do Common Law Vested Rights Vest?.....	172
§ 6.3.4—Actions That May Trigger Common Law Vested Rights Claims	175
§ 6.3.5—Actions That May Defeat Vested Rights	176
§ 6.4 Statutory Vested Rights	177
§ 6.4.1—Site Specific Development Plan.....	178
§ 6.4.2—Establishing A Vested Right	178
§ 6.4.3—Effect Of Creation Of A Statutory Vested Right	179
§ 6.4.4—Term.....	179
§ 6.4.5—Exceptions To Statutory Vested Rights	180
§ 6.4.6—Annexation	180
§ 6.4.7—Local Initiative And Referendum.....	180
§ 6.4.8—Available Remedies When Vested Rights Are Infringed.....	181
§ 6.4.9—Relationship To Common Law Vested Rights.....	181
§ 6.4.10—Pending Ordinance Doctrine	181
CHAPTER 7: ANNEXATION.....	183
§ 7.1 Introduction.....	184
§ 7.2 Sources Of Colorado Annexation Law	185
§ 7.2.1—Municipal Annexation Act Of 1965.....	185
§ 7.2.2—Poundstone I.....	185
§ 7.2.3—Poundstone II	186
§ 7.3 Municipal Annexation Act Of 1965.....	186
§ 7.3.1—Legislative Declaration	186
§ 7.3.2—Definitions.....	187
§ 7.3.3—Eligibility For Annexation: Contiguity	187
§ 7.3.4—Limitations	190
§ 7.3.5—Series/Simultaneous Annexations	193

§ 7.3.6—Annexation Of Enclaves, Partly Surrounded Land, And Municipally Owned Land.....	194
§ 7.3.7—Petitions For Annexation And Annexation Elections.....	195
§ 7.3.8—Setting A Hearing Date — Notice Given	197
§ 7.3.9—Annexation Impact Report.....	198
§ 7.3.10—Hearing	199
§ 7.3.11—Findings	199
§ 7.3.12—Annexation Without Election	199
§ 7.3.13—Annexation Pursuant To Election	200
§ 7.3.14—Effective Date Of Annexation — Required Filings	200
§ 7.3.15—Conflicting Annexation Claims Of Two Or More Municipalities.....	201
§ 7.3.16—Zoning Of Land While Annexation Is Under Way; Zoning Of Newly Annexed Land; Subdivision Of Land While Annexation Is Under Way.....	203
§ 7.3.17—Review	206
§ 7.3.18—Effect Of Review And Voiding Of Annexation Ordinance By Court Order	207
§ 7.3.19—Priority Of Annexation Proceedings.....	207
§ 7.3.20—Disconnection Of Territory Because Of Failure To Serve	207
§ 7.3.21—Court Approval Required For Certain Annexations	208
§ 7.4 Other Statutory Procedures.....	208
§ 7.5 Special Annexation Considerations	209
§ 7.5.1—Annexation Agreements	209
§ 7.5.2—Extraterritorial Service Agreements	211
§ 7.5.3—Intergovernmental Agreements	211
CHAPTER 8: SPECIAL DISTRICTS, IMPROVEMENT DISTRICTS, INTERGOVERNMENTAL AUTHORITIES, AND PUBLIC IMPROVEMENT CORPORATIONS	215
§ 8.1 Introduction	216
§ 8.2 Common Types Of Districts And Their Features	217
§ 8.2.1—Operating Districts And Funding Districts	221
§ 8.2.2—Formation Of Districts.....	222
§ 8.2.3—Governance Of Districts	226
§ 8.2.4—Taxes And Mill Levy.....	227
§ 8.2.5—Financial Obligations, Types And Characteristics	228
§ 8.2.6—Financial Issues.....	229
§ 8.2.7—Land Use Control.....	230
§ 8.2.8—Elections	231
§ 8.2.9—State And Local Controls On Special Districts	231
§ 8.2.10—The Division Of Local Government	233

Table of Contents

§ 8.3	Specific Characteristics Of Certain Districts	233
§ 8.4	Intergovernmental Authorities	238
§ 8.5	Public Improvement Corporations Or Public Building Authorities.....	240
§ 8.6	Case Law.....	241
CHAPTER 9: URBAN REDEVELOPMENT AND PUBLIC HOUSING		243
§ 9.1	Urban Renewal Authorities.....	244
§ 9.1.1—Organization.....	244	
§ 9.1.2—Nature.....	245	
§ 9.1.3—Blight.....	246	
§ 9.1.4—Agricultural Lands	247	
§ 9.1.5—Purposes And Powers.....	248	
§ 9.1.6—Urban Renewal Plans; Urban Renewal Areas; Eminent Domain Provisions	248	
§ 9.1.7—Project Financing; Tax Increment Financing	254	
§ 9.1.8—Disposition Of Property	259	
§ 9.1.9—Cooperation With Other Public Bodies.....	260	
§ 9.1.10—Relocation	261	
§ 9.1.11—Significant Cases.....	261	
§ 9.1.12—Standing	263	
§ 9.2	Downtown Development Authorities	263
§ 9.2.1—Organization.....	263	
§ 9.2.2—Powers And Purposes.....	264	
§ 9.2.3—Mill Levy; Tax Increment Financing	265	
§ 9.2.4—Colorado Constitution, Article X, § 20 (Tabor)	268	
§ 9.2.5—Cases	268	
§ 9.3	Rehabilitation Act Of 1945	268
§ 9.4	Relocation Assistance And Land Acquisition Policies	269
§ 9.5	Public Mall Act Of 1970.....	270
§ 9.6	Housing Authorities	271
§ 9.6.1—Municipal Housing Authorities.....	271	
§ 9.6.2—County Housing Authorities	274	
§ 9.6.3—Multi-Jurisdictional Housing Authorities	275	
§ 9.6.4—Public Housing Election.....	276	
§ 9.7	Colorado Housing Act Of 1970	276
§ 9.8	Colorado Housing And Finance Authority	277
CHAPTER 10: HISTORIC PRESERVATION		279
§ 10.1	Introduction.....	280
§ 10.2	National Legislation.....	280

§ 10.3	Colorado Legislation	281
§ 10.3.1—Historical Societies	281	
§ 10.3.2—Tax Credits	281	
§ 10.4	Local Activities	283
§ 10.5	Constitutional Challenges To Historic Preservation Ordinances	284
§ 10.5.1—Challenges As A Taking	284	
§ 10.5.2—Challenges As Being Void For Vagueness Or As Unlawful Delegation Of Power.....	287	
§ 10.5.3—Challenges As Interfering With The Free Exercise Of Religion	288	
§ 10.5.4—Interim Controls.....	292	
§ 10.5.5—Other Relevant Cases.....	292	
§ 10.6	Transferable Development Rights As An Aid To Historic Preservation.....	293
§ 10.7	Methods For Creating facially Valid Historic Preservation Regulations	294
§ 10.8	Other Related Laws And Issues.....	295
§ 10.8.1—Access Laws	295	
§ 10.8.2—Conflicts Between Historic Preservation And Other Development Law	295	
CHAPTER 11: OVERVIEW OF ENVIRONMENTAL PROTECTION ISSUES		297
§ 11.1	Introduction	298
§ 11.2	Air Quality	298
§ 11.2.1—Clean Air Act (Federal)	298	
§ 11.2.2—Regulation Of Greenhouse Gases	299	
§ 11.2.3—Colorado Air Pollution Prevention And Control Act	300	
§ 11.2.4—Colorado’s Climate Action Plan	301	
§ 11.3	Water Quality	301
§ 11.3.1—Clean Water Act (“Federal Water Quality Control Act”).....	301	
§ 11.3.2—Water Pollution Control.....	302	
§ 11.3.3—Epa Regulations For Stormwater.....	303	
§ 11.3.4—Wastewater And Stormwater Discharges	304	
§ 11.3.5—Wetlands	305	
§ 11.4	Endangered Species Act (Federal).....	307
§ 11.5	National Environmental Policy Act	308
§ 11.5.1—Individual Sewage Disposal Systems	309	
§ 11.5.2—Hazardous Waste Sites	309	
§ 11.5.3—Voluntary Clean-up And Redevelopment Act.....	311	
§ 11.5.4—Biosolids	311	
§ 11.5.5—Water Supply And Runoff Considerations	312	
§ 11.5.6—Floodplain Regulation	316	
§ 11.5.7—Small Community Environmental Flexibility Act.....	318	

Table of Contents

§ 11.5.8—Environmental Self-evaluations	318
§ 11.5.9—Conservation And Preservation Of Species And Open Space	319
SUBJECT INDEX.....	321