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MANDATORY DEDICATION OF PARK AND OPEN SPACE LANDS: THE SITUATION IN TEXAS

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Introduction

Dedication is a technique which allows land to be set apart for public use. It is the transfer of a land easement for a public purpose such as streets, utility rights of way or parks, and dedication allows local governments to receive these lands without having to purchase them. In effect, dedication is often interpreted as a cost which a developer incurs for the privilege of conducting business in a particular local jurisdiction.

Some cities affect their planning and growth through certain police powers vested by the state Constitution. Establishing conditions for the approval of subdivision plats is an example of this power. Under this assumption cities can refuse to approve subdivision plats which do not include lands to be dedicated for public purposes. Thus, these cities essentially mandate that private developers dedicate certain lands to provide for the public interest. This process is known as mandatory dedication.[1]

The use of mandatory dedication to determine land use is widespread throughout the country. Many states have adopted statewide statutes specifically providing for this mechanism. While the Texas Legislature has not passed a law dealing directly with mandatory dedication, over 20 Texas communities presently use some form of mandatory dedication as a tool to ensure adequate recreational opportunities for their citizens. A dozen cities have specific ordinances requiring the dedication of land for park and/or open space areas. Six cities within the Standard Metropolitan Statistical Areas (SMSA) of Texas actively enforce mandatory dedication ordinances.

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[1]In Texas, cities can require a landowner to set aside a piece of property for public use only as a condition of the city's approval of that landowner's proposed changes or alterations in the character or nature of the property in question. Where parks and recreation are concerned, some cities require either mandatory dedication of property or a payment of money in lieu of the actual dedication of specific parcels. The payment must be equivalent to the fair market value of the property proposed for dedication.

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Despite the present level of use of mandatory dedication in Texas, there is significant controversy over the ethics, legality and economic impact of the practice. In 1976 a study was conducted to determine the *level of use* and the *perceived effectiveness* of mandatory dedication as a tool for meeting municipal park and open space needs in the state. The study also compared the perceptions of this practice held by (1) city administrators, and (2) residential land developers in selected Texas cities. Questionnaires were sent to 107 municipal administrators and to 369 residential land developers. Fifty-nine responses were received from the municipalities and 120 from developers. This paper explores the critical findings of the survey.

Legal Base in Texas

Although no Texas law requires mandatory dedication, cities have extensive police powers delegated by the State Legislature. Home rule cities have those powers of local self-government prescribed in their charters. Thus, if its charter provides for such power, a Texas city can enact a mandatory dedication ordinance[2,3] without the state having passed such a statute. There appears to be no state constitutional nor state statutory prohibition which limits a Texas city's ability to enact such an ordinance. Where an ordinance exists, there is presumption of validity.[4,5]

While several states have laws authorizing mandatory dedication by local governmental agencies,[6] neither specific enabling legislation nor specific cases exist in Texas. The result is an unclear legal situation.

The indefinite legal status of mandatory dedication may contribute to the growing awareness of the topic in the state. Eight municipalities implemented ordinances between 1970 and 1977. Forty-eight have reviewed or considered the passage of an ordinance. Several court cases have been threatened and a number of suits filed between parties involved in conflicts over mandatory dedication. The legislative sessions of 1975, 1977 and 1979 saw developer-supported bills introduced — bills designed to make unconstitutional the mandatory dedication of land for use as parks or public open space, or mandatory cash donations in lieu of land. While reported out of committee in some cases, the bills were tabled later because of more urgent legislation and were allowed to expire with the adjournment of the legislature.

Those cities which have used mandatory dedication as a park or open space acquisition system apparently have based their presumed authority on Article 974a, Texas Revised Civil Statutes. Section 1 of the Article contains the legal justification for cities using this acquisition technique.

Some opponents of mandatory dedication have expressed concern over the restraints imposed upon land owners who are forced to deed property for public use. This question addresses the substantial relationship-reasonableness test, requiring an elaboration between the need for a statute and the compensation for those things given by the donor as a result of statutory requirements. Resolution of this question has been traced to Lombardo vs. City of Dallas (1934) in which the presiding justice said:

> All property is held subject to the valid exercise of the police power, nor are regulations unconstitutional merely because they operate as a restraint upon private rights of person or property or will result in loss to individuals. The infliction of due process of law, the exertion of the police power upon subject lying within its scope, in a proper and lawful manner, is due process of law (73 Southwestern Law Review 2d 475).

[2]In a recent Florida case, Admiral Development Corporation v. Maitland 267SO2d860, a city ordinance requiring mandatory dedication was determined.

[3]V.A.C.S., Article 1011.

[4]Town of Ascarate v. Villalobos 223rd SW2d945 (1949); City of Weslaco v. Milton 308SW2d18 (1958); City of San Antonio v. Pigeonhole Parking of Texas, Inc., 311SW2d218 (1958).

[5]S974aS1 "Every owner who may divide for purpose of laying out any subdivision of any tract of land or any addition to any town or city, or for laying out suburban lots or building lots, or any lots, and streets, alleys or parks or other portions intended for public use ... shall cause a plat to be made thereof which shall accurately describe... giving the dimensions thereof... of all streets, alleys, squares, parks or other portions of same intended to be dedicated to public use... provided, however, that no plat of any subdivision of any tract of land or any addition to any town shall be recorded unless the same shall accurately describe all of said subdivision."

S974aS4 "If such plan or plat shall conform to the general plan of said city and its street, alleys, parks, playground and public facilities, including those which have been or may be laid out, and to the general plan for the extension of said city and of its roads, streets, and public highways within said city and within five miles of the corporate limits thereof, regard being had for access to and extension of sewer and water mains and the instrumentalities of public utilities, and if same shall conform to such general rules and regulations, if any, governing plats and subdivisions of land falling within its jurisdiction as the governing body of any such city may adopt and promulgate to promote the health, safety, morals or general welfare of the community, and the safe, orderly, and healthful development of said community (which general rules and regulations for said purposes such cities are hereby authorized to adopt and promulgate after public hearing held thereon), then it shall be the duty of said City Planning Commission or of the governing body of such city, as the case may be, to endorse approval upon the plan, plat or replat submitted to it."

[6]For a description of some of these statutes and analysis of cases interpreting them, see 43ALR3rd862.

In *Crownhill Homes, Inc. vs. City of San Antonio* 433SW2d448 (1968), the court stated that "... Article 974a, V.A.C.S., for instance, requires an owner to dedicate land for streets, alleys, parks, playgrounds and public utility facilities as a condition of plat approval ... [and that] this is not a taking of private property for public use without compensation...." Even though this particular case dealt with providing water mains, some lawyers assert that the required dedication of land for park purposes can be justified through similar reasoning.

Another case arrives at an apparent opposite decision. However, it contains a dictum which implies support of mandatory dedication. In *City of Corpus Christi vs. Unitarian Church,* 436SW2d923 (1968), Corpus Christi (defendant) was required to dedicate a strip of land for road construction as a condition for approval of a building permit. In ruling for the Unitarian Church, the court stated, "There is no statute, charter or ordinance which would require the church as a single lot owner to dedicate a portion of its property for streets in order to get plat approval of its plan to obtain a building permit, where the church does not propose to subdivide the lot into smaller lots..." (436 Southwestern Law Review 2d 923). The court went on to say that a home rule city inherits any powers not denied by the constitution or by any statute as long as that city has incorporated those powers in its charter. The court also said, "In subdivision development, a city by statute and charter and/or ordinance is authorized to require the dedication of streets, alleys and utility easements... (and that) in subdivision development, the city is not taking private property for public use without compensation, but is merely regulating the use thereof." One implication in this sequence of reasoning is that the court might have ruled in favor of Corpus Christi had the Unitarian Church been attempting to *subdivide* its lands. Thus, while upholding opposition to the required dedication of certain lands for public use, this case also leaves open the legality of the question by not ruling on mandatory dedication in conjunction with subdividing, a practice common to most land development proposals.

In summary, the legal issues are many and moot. While there appears to be an argument for mandatory dedication, its legality in Texas is not explicit. Meanwhile, mandatory dedication remains a viable technique, sometimes popular and sometimes unpopular, by which certain Texas cities expand their public park and open space lands.

Legal Base in Other States

While no Texas cases deal directly with the issue of mandatory dedication of park and recreation space, numerous cases from other states provide judicial interpretations from state statutes and local ordinances.[7] In general, those opposing mandatory dedication have attacked the procedure as an unconstitutional taking of property without just compensation. Such procedure, it is agreed, violates due process or equal protection requirements, or imposes an illegal tax through in lieu-of-land money payments. In general, courts in other states have held valid a state's right to impose mandatory dedication. Validity stems from the general police power.

One philosophical rationale argues that the urban population growth and the general loss of open space for recreational purposes have created a condition which justifies compulsory planning for and provision of park and recreation space. Where the courts have seen a reasonable relationship between the public purpose to be achieved and the requirements being imposed, they have found that there have been no unequal applications of the law, nor has there been illegal confiscation of land in the dedication process.

State legislation for these purposes generally has been considered valid where it is clear that 1) local ordinances will include definite standards for determining the amount of land required for a dedication prior to approval of a subdivision plat; 2) the city has a general or comprehensive plan for recreation and parks on which the requirements for compulsory dedication are based; and 3) there is a reasonable relationship between the subdivision's future residents' use and enjoyment of the recreational and park facilities and the location and amount of land dedicated.

Associated Home Builders, Inc. v. Walnut Creek 484P2d606 (1971) dealt specifically with the dedication of land for recreation and parks in California.[8] In its decision, the court held that state legislation allowing a municipality to require (as a precondition for approval of a subdivision map) dedicated land or a fee in lieu of the actual dedication was not an unconstitu-

[7]Associated Home Builders, Inc. v. Walnut Creek, 484P2d606 (1971); Coronado Development Co. v. McPherson 368P2d51 (1962); Billings Properties, Inc. v. Yellowstone County 394P2d182 (1964); Jerad, Inc. v. Scarsdale 218NE2d673 (1966); Frank Ansuini, Inc. v. Cranston 264A2d910 (1970); Pioneer Trust & Savings Bank v. Mt. Prospect 176NE2d799 (1961); Aunt Hack Ridge Estates, Inc. v. Planning Commission of Danbury 230A2d45 (1967); Jordan v. Menomonee Falls 137NW2d442 (1965); East Neck Estates, Ltd. v. Luchsinger 305NY52d922 (1969); Admiral Development Corporation v. Maitland 267SO2d860; Krughoff v. Naperville 354NE2d489 (1975); Calls v. Bloomington 246NW2d19 (1976).

[8]California Business and Professions Code, Section 11546.

tional denial of due process or equal protection. The land developer who brought this action contended that the city was trying to avoid paying just compensation for land that would be available for recreational and park purposes to all the residents of the city and not just the future residents of the subdivision. The developer suggested that all taxpayers in the city should contribute equally for parkland that all taxpayers would be able to enjoy. In response, the court pointed out that a subdivider seeking the benefits of subdivision could be required to dedicate lands for the welfare of the lot owners and the general public as well. Even though there has to be a connection between the land dedicated or the fees paid and the subdivision residents' welfare, there does not have to be an exclusive enjoyment by those particular residents, but only a "reasonable relationship." Where the developer challenged the statute and ordinance on the basis that the required dedication was for recreational purposes not directly related to health and safety of the subdivision residents, the court responded by stating, "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 health and welfare of subdivision residents to justify the requirement of dedication." Perhaps the essence of this whole issue lies in the court's response to the developer's contention that if the developer is required to dedicate land for parks as necessitated by new residents entering the community, the subdivider might also be required to pay (in advance) for the increased fire and police protection and other governmental services necessitated by the increase in population. To this issue the court said:

> 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 a counterproduction 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.

Almost all of the courts which have ruled on mandatory dedication have suggested that city ordinances requiring park dedications as a prior condition to subdivision plat or map approval are valid as a general exercise of the police power.[9] However, several of the courts have closely scrutinized the actual provisions of such ordinances and determined that they could not be enforced for other reasons. Arbitrary standards and particular circumstances have been closely reviewed to determine if due process or equal protection provisions were being violated. The courts have carefully reviewed, for instance, whether the mandatory dedication ordinance was based on and was supportive of the municipality's general or comprehensive plans as they relate to the provision of open space, parks and recreation facilities.[10]

The amount of dedicated land required also has been examined carefully. In *Billings Properties, Inc. v. Yellowstone County* 394P2d182 (1964), the court found that the state statute requiring that at least one-ninth of proposed subdivided property be dedicated to the local government was not unreasonable. In the same case, the court also said that the authority vested in the local government to reduce the amount to no less than one-twelfth, upon a showing of good cause, was not an unconstitutional delegation of power reserved to the legislature. However, in another case where a local planning commission regulation stated that at least 7 percent of the proposed subdivision be dedicated, the court stated that the figure was clearly arbitrary on its face.[11] That court found that the planning commission had been unable to show the relationship between the 7 percent figure and the need for recreational land, at least as it might relate to a specific developer's activities. In other words, if there is a state statute that does not specify the amount of dedicated land required, a local unit of government should avoid arbitrarily choosing a fixed percentage. Even a state statute which fixes a percentage or a range of percentages could be successfully challenged if a developer (who would have the burden of proof) demonstrates that there is not a clear relationship between the need and the percentage. The difficulty is that such a fixed percentage rule is likely to create inequities, thus raising the equal protection issue. In *Pioneer Trust and Savings Bank v. Mt. Prospect*, 176NE2d799 (1961) the court suggested that a

[9]Coronado Development Company v. McPherson 368P2d51 (1962); Billings Properties, Inc. v. Yellowstone County 394P2d182 (1964); Frank Ansuini, Inc. v. Cranston 264A2d910 (1970); Jerad, Inc. v. Scarsdale 218NE2d673 (1966); Jordan v. Menomonee Falls 137NW2d442 (1965); Aunt Hack Ridge Estates, Inc. v. Planning Commission of Danbury 230A2d45 (1967); Krughoff v. Naperville 345NE2d489 (1974); Collis v. Bloomington 246NW2d19 (1976).

[10]Jordan v. Menomonee Falls 137NW2d442 (1965).

[11]Frank Ansuini, Inc. v. Cranston 264A2d910 (1970)

subdivider should be required to dedicate only that amount of land needed for public purposes which results "specifically and is uniquely attributable" to the developer's activities.

Standards of due process and reasonableness must always be considered carefully by those municipalities which enact mandatory dedication statutes. The particular circumstances of a mandatory dedication may be reviewed by the courts to determine whether basic fairness is being applied in certain cases. For instance, in *Jerad, Inc. v. Scarsdale,* 218NE2d673 (1966), Scarsdale attempted to require the developer of some ocean front property to dedicate an 80-foot-wide strip (measured from the high water line) of land running the entire length of the proposed subdivision. The developer had paid $208,000 for the property and evidence at the trial showed that dedicating the 80-foot-wide strip would devalue the property by $90,000. The court stated that these circumstances clearly violated concepts of due process and reasonableness.

The courts appear to approve of payments in lieu of dedication. It is generally agreed that payments in lieu be within the authority of a state or municipality in exercise of the police power.[12] In some cases where there are existing or planned parks in relation to a subdivision, or where there are physically limiting features of a subdivision, the required dedication may be impractical. However, there would still be the need for additional park and recreation provisions caused by the additional burdens resulting from the subdivision. In the Associated Home Builders case, the court pointed out that in a high density development, no inequality was imposed on a developer who made a payment (in lieu of dedication) based on acreage in relation to population rather than just the amount of total acreage involved. The court held that individuals who live in a high density development could be assumed to make more extensive use of recreational and park facilities. In this case as in several others, the issue was raised as to whether or not the fee in lieu of dedication was a tax which resulted in double taxation. The court noted that the specific purpose of the fees resulted from the increased park and recreational needs generated by the subdivision, and that these moneys were not of the same character nor for the same purpose as the property taxes that the subdivision residents would ultimately pay. However, in *Aunt Hack Ridge Estates, Inc. v. Planning Commission of Danbury* 230A2d45 (1967), the court found the in-lieu fee to be unconstitutional, in effect a double taxation, because the city regulation provided that the fees would be used for the purpose of acquiring parks "for the use of the residents of the city." The relationship of the funds to the recreational or park requirements of the subdivision residents was not mentioned. Just as the actual dedication must bear a reasonable relationship to the use of the subdivision, so must the ultimate purpose for which the fees are collected.

[12]Associated Home Builders, Inc. v. Walnut Creek 484P2d606 (1971); Jerad, Inc. v. Scarsdale 218NE2d673 (1966); Jordan v. Menomonee Falls 137NW2d442 (1965).

The Land Developers: Profile and Attitudes

Much of the opposition to mandatory dedication has emanated from private residential land developers. A review of litigation in Texas and other states illustrates four basic reasons for these individuals' opposition to the passage of local ordinances. According to developers' perceptions:

1) Generally, there is a lack of specific state enabling legislation. Thus, many developers believe the establishment of mandatory dedication becomes a power assumed by the sponsoring agency.
2) Such ordinances authorize an unconstitutional taking of property without compensation.
3) The laws do not allow for due process.
4) In situations where a cash donation is used in lieu of dedicated land, the donation is often considered an illegal tax.

Data collected from land developers in this study were analyzed in an attempt to discern relationships between developers' backgrounds and experiences, and their attitudes about mandatory dedication. Sixty-nine percent of the 120 developers responding had been involved in residential development for 10 years or more, lending support to the hypothesis that the sample is experienced in its profession. The Texas residential land developer is also well educated with nearly 22 percent having completed three years of college or more. Thirty-three percent have attained a bachelor's degree. An additional 28 percent have taken or completed graduate work or professional course work after completing an undergraduate program. Thus,

over 61 percent of these individuals have completed a bachelor's degree or higher (see Table 1). Many have additional education involving advanced programs ranging from military experience to short courses or seminars.

Table 1. Highest Level of Formal Education Attained by Developer Respondents

	Number	Percent
No Formal Education	0	0.0
1-8 Grade	1	0.8
Junior High School Graduate	0	0.0
9-12 Grade	0	0.0
High School Graduate	11	9.2
College (1-2 Years)	12	10.0
Junior College Graduate	1	0.8
College 3-5 Years	21	17.5
Bachelor's Degree	40	33.3
Graduate School	5	4.2
Master's Degree	16	13.3
Ph.D.	0	0.0
Professional School	2	1.7
Professional Degree (LL.D.)	2	1.7
Non-respondents	9	7.5
Total	120	100.0

The study showed that Texas developers have experience in their field and have achieved high levels of formal education. Most of them are involved primarily in residential development, but many participate in other development practices. Fifty-six percent draw 66 percent or more of their income from residential development. In terms of actual dollars, 21 percent have an average annual gross income of $499,999 or less as derived from residential development. Those making between $500,000 and $999,999 in annual gross income from residential development total 13.3 percent, and those making between $1,000,000 and $9,999,999 total 31.7 percent. Thus, 66 percent, or two-thirds of the developers in Texas gross $10,000,000 or less per year from residential land development.

In terms of longevity or experience, Texas residential developers reflect recent growth trends of the state. Most of them (68 percent) have been in business less than 15 years.

Mandatory Dedication and Municipalities

The implementation of a mandatory dedication ordinance had been discussed in 48 of the communities surveyed, but an ordinance had been proposed in only 19 cities. Of that number, 12 had implemented ordinances. In those cities which had discussed but not introduced an ordinance, many of them (32 percent) cited political implications or developer objections as the basis for non-introduction. Other reasons cited included the question of legality of such an ordinance in Texas, and the uncertain outcome of a potential court case (see Table 2).

Table 2. Reasons Cited by Park and Open Space Administrators for Not Making Formal Presentation of Mandatory Dedication Ordinances to Municipality Legislative Bodies

Reasons for Non-presentation	Number	Percent
Politically infeasible/developer objections	7	31.8
Question of legal validity	5	22.7
City council unable to agree on requirements and/or take action	3	13.6
Money not available for compensation of developers and/or development of area	2	9.1
Small area developers cannot donate tracts which are large enough for recreation	2	9.1
Municipal administrators are afraid dedication requirement may slow down or halt growth	1	4.5
Only small area of city left undeveloped	1	4.5
Need to get more input from developers	1	4.5
Total	22	99.8

Among those cities which had passed ordinances, municipal administrators were asked if the ordinance was fulfilling its purpose. Seventy-five percent responded affirmatively. Eighty-four percent indicated that there were no problems in administering the ordinance, yet only 58 percent said that municipal park and open space systems had improved as a result of ordinance passage.

Among the primary communities within the state's 25 SMSA's, San Benito, College Station, Corpus Christi, Laredo, Lubbock, McAllen and Temple had implemented ordinances. At the time of the study, Abilene had in effect a purchase agreement with developers; Tyler had a negotiate-and-purchase agreement. El Paso was studying the possibility of implementing an ordinance, and Midland had administered one formerly but had repealed it (see Table 3).

Some cities had ordinances but had not utilized them. In 13 other cities, developers had been required to dedicate land for public parks and open space, yet these communities had no mandatory dedication ordinances in effect. In total, 15 municipalities and 4 counties had required such dedication of land in Texas without specific local statutory authority (see Table 4).

Major Texas cities which had required the dedication of parkland (including those without statutory authority) included Austin, Amarillo, Dallas, Corpus Christi, Houston, Lubbock, San Antonio, and Wichita Falls. Athens, Seguin, Brownfield and Cedar Park represented the smaller Texas communities which had required the dedication of public parkland, and the intermediate-size cities utilizing the practice included Plano, Temple and Carrollton.

Table 3. Mandatory Dedication in Primary Cities of All Standard Metropolitan Statistical Areas in Texas

Standard Metropolitan Statistical Area	Response	
Abilene		No (Purchase agreement in effect)
Austin		No
Amarillo		No
Brownsville-		No
Harlingen-		No
San Benito	Yes	
Beaumont-		No
Port Arthur-		No
Orange		No
Bryan-		No
College Station	Yes	
Corpus Christi	Yes	
El Paso		No
Galveston-		No
Texas City		No
Dallas		No
Fort Worth		No
Houston		No
Laredo	Yes	
Lubbock	Yes	
McAllen	Yes	
Edinburgh-		No
Pharr		No
Midland		No (Was in effect but repealed)
Odessa		No
San Angelo		No
San Antonio		No
Sherman-		No
Denison		No
Killeen-		No
Temple	Yes	
Tyler		No (Negotiate and purchase)
Texarkana		No
Waco		No
Wichita Falls		No
Total	Yes Respondents - 7 (20 percent) No Respondents - 28 (80 percent) Total 35	

Table 4. Communities in which Residential Developers Have Been Required to Make Dedications of Land for Public Park and/or Open Space Areas

Community	Number of Respondents	Does An Ordinance Exist?*
Austin	7	No
Corpus Christi	7	Yes
Houston	3	No
Wichita Falls	3	No
Lubbock	2	Yes
Plano	2	No
San Antonio	2	No
Temple	1	Yes
Carrollton	1	Yes
Brownfield	1	No
Cedar Park	1	Yes
Dallas	1	No
Amarillo	1	No
Athens	1	No
Seguin	1	Yes
Universal City	1	No
Travis County	1	No
Tarrant County	1	No
Harris County	1	No

*Based on municipal response analysis and telephone followup.

Table 5. Developer Perception of the Impact of Park and/or Open Space Areas upon Project Marketability vs. Presence of Park and/or Open Space Areas in Developers' Residential Developments

	Yes		No		Sometimes		No Response		Total	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Does the presence of parks and/or open space areas aid new residential development marketability?	52	43.3	13	10.8	50	41.7	5	4.2	120	100.0
Do developers normally make provision for park and/or open space areas in new residential areas?	41	34.2	32	26.7	45	37.5	2	1.6	120	100.0

Ordinance Formation and Effects: Some Perceptions

Developers were asked if the presence of park or open space lands enhanced the marketability of new residential development (see Table 5). Forty-three percent agreed that it did, while 42 percent said sometimes. When asked if they normally provided for park or open space land in new residential developments, 34 percent answered affirmatively, 27 percent said "no" and 38 percent said "sometimes." Thus, it may be reasonable to assume that approximately two-thirds of the state's residential developers had doubt about the enhanced marketability of new residential areas when public park or open space lands were considered as part of the sale package.

Developers and municipal administrators were queried about their involvement in the formation of ordinances in their municipalities (see Tables 6, 7). Nineteen percent of the developers from communities with mandatory dedication or similar ordinances indicated they had

been involved in ordinance formation, while 78 percent said they had not. However, 75 percent of the municipal administrators said that the developers had been involved in ordinance formation. Regarding the perceived fairness or equitability of these ordinances, 92 percent of the developers believed the practice of mandatory dedication was unfair, while a majority (81 percent) of the municipal administrators agreed that mandatory dedication was a fair and equitable practice (see Table 8).

Table 6. Developer and Municipal Administrators' Perceptions of the Extent of Developer Participation in Ordinance Formation

	Yes		No		No Response		Total	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Developer Response: Have developers been involved in ordinance formation?	23	19.2	94	78.3	3	2.5	120	100.0
Municipal Administrators Response: Were local developers consulted in the formulation of the mandatory dedication ordinance?	9	75.0	3	25.0	0	0.0	12	100.0

Table 7. Developer Perception of Impact Upon Ordinance Formation

	Yes		No		No Response		Total	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Did developer feel that his input was well received by those who were preparing the ordinance?	15	65.2	5	21.7	3	13.1	23	100.0
Did developer feel that his input had an impact upon ordinance formation?	16	69.6	7	30.4	0	0.0	23	100.0
Was the ordinance passed?	12	52.2	0	43.5	1	4.3	23	100.0

Table 8. Comparison of Attitudes of Residential Developers and City Officials on the Equitability of Mandatory Dedication

Sample Population	Equitable		Not Equitable		Total	
	Number	Percent	Number	Percent	Number	Percent
Residential Developers	9	8.0	111	92.0	120	100.0
Municipal Administrators	48	81.0	11	19.0	59	100.0

Some Implications of the Findings

The obvious disparity between residential developers and public administrators concerning the perceived benefits of a mandatory dedication ordinance identifies a point for beginning discussion in communities considering an ordinance. Each community must decide, independently, whether mandatory dedication is justified. The characteristics and collective attitude of a community generally will dictate whether coercive authority is a desirable tool for acquisition. Some cities perceive a need for a mandatory dedication ordinance while others do not. L. B. Houston, former director of parks and recreation in Dallas, once stated that his city had not needed such authority because of the charitable, cooperative nature of developers and interested citizens in providing the city with ample park land.[13]

Some municipal administrators believe that mandatory dedication is fair because it requires developers to provide a service called for in the home rule clause of the Texas Constitution. This argument finds support in the privilege theory of jurisprudence, which says that the granting by municipalities of the privilege to subdivide land for economic enhancement carries to the developer the responsibility of providing certain essentials necessary to protect the health, safety and general welfare of the community. This argument implies or suggests the need for court cases which would articulate the nature of recreation opportunity as an essential aspect of daily life.

Developers may argue that the need to pass on to buyers the costs of park or open space lands distorts the pricing of new homes in the market place, thus adversely affecting the developer's ability to price competitively. Municipal administrators may respond that since it is primarily neighborhood or local parks which result from mandatory dedication, the costs are borne by those homeowners who would be the primary users of the facilities, thus preventing the dispersal of a site-specific cost to the entire body of municipal taxpayers. Conversely, limiting the cost only to homeowners in the neighborhood without restricting use of the facility to those who pay may be viewed as an inequity.

Nearly two-thirds of the developers in the study felt that the availability of nearby park or open space had no or only occasional positive effect on the marketability of new homes. However, one must consider the potential bias in this response. Respondents had been answering questions about a practice which most of them opposed, and a different (though not necessarily significant) response might result from a similar question in a less topical or more general questionnaire.

This study also showed that several state courts have consistently struck down statutes which use a percentage to determine the amount of money or land to be dedicated. While this question has not been ruled upon by Texas courts, it appears that such statutes are more likely to be upheld when other characteristics such as the presence of unique resources, fair market pricing, or clear and explicit formulas showing open space needs per capita are involved.

As noted earlier, one-third of the municipal administrators stated that the passage of an ordinance had not resulted in any positive improvements to their park and open space system. A partial explanation could be the inability of some local governments to adequately develop and maintain the open space lands once acquired. Support for such an ordinance and for a park system in general is weakened if citizens are consistently faced with park land dedicated but undeveloped because of lack of money. Burden of proof that the community is fiscally ready for a mandatory dedication ordinance remains with municipal administrators, including park and recreation professionals.

Because of the localized benefits of mandatory dedication, and because of the lack of consensus regarding its merit and legal base, it is apparent that the practice should be viewed as only one of several tools available to municipalities for the acquisition of public open space. Because its use or lack of use is partially a reflection of the state of growth and maturity of a community, decisions regarding its use should be made, if possible, at the local level. Statewide enforcement or prohibition of this acquisition technique would indicate a uniformity in consciousness and deed among all Texas cities, a condition which rarely exists among communities. In effect, some communities are capable, ready and desirous of administering a mandatory dedication ordinance, while others are not. Home rule government recognizes the right of communities to respond to their perceptions of readiness and responsibility in the provision of public purpose, including adequate facilities for parks and recreation.

[13]L. B. Houston, personal comments presented at panel discussion, "Mandatory Dedication in Texas," Southwest Parks and Recreation Training Institute, Kingston, Oklahoma, February 1977.

This publication is not to advise you of the validity of mandatory dedication as a legal procedure. The purpose is to provide educational information. Specific legal questions should always be directed to an attorney of law.

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