

## ARTICLE 14 - Dedication and Fee Requirements

### Sec. 17-14-10. - Water rights dedication requirements for annexation.

- (a) General Provisions: Before any land is annexed to the Town, there shall be conveyed, transferred or assigned to the Town a water right or quantity of water that will yield annually to the Town, in the judgment of the Board of Trustees after review and recommendation by the Town's Water Attorney, an amount of water as herein required based upon the type of land use proposed, the potential amount of water to be consumed and the area of the land to be annexed. The water to be transferred shall be subject to the following general provisions:
- (1) Such rights shall be represented by stock in a duly recognized and existing ditch company, stock in a duly recognized and existing reservoir company, by ownership of units of Northern Colorado Conservancy District water, or by ownership of such direct flow contract rights as may be attached to the land and recognized by the courts through a valid adjudication of an existing water right that, in the opinion of the Town, are capable of being transferred and used by the Town. The Town may place conditions on acceptance of water rights in order to meet economic or housing goals. For example, stock in the Lake McIntosh Reservoir Company may be accepted by the Town provided that all approvals that are necessary for Town to use water available from such shares has been obtained and that the shares are dedicated for the purposes of "Affordable Housing," "Commercial Development," or "Economic Development Opportunities" as those terms are defined in the Intergovernmental Agreement Between the Town of Lyons and the City of Longmont IGA, as may be amended from time to time, and as shall be determined by the Town in its sole discretion.
  - (2) The quantity of water received from the water right furnished to the Town, if such right is a direct flow right, shall be computed from records contained in the office of the State Engineer. The amount of all direct flow water received from the water rights furnished to the Town, if said water is represented by shares of stock in an irrigation company, shall be computed on the basis of producing a dependable annual yield calculated as the average of the lowest three (3) consecutive years of utilization of that water right and based on not less than twenty (20) consecutive years of use. In computing the quantity of water received from all direct flow water rights, the conversion of direct flow to acre-feet shall be based on a flow of one (1) cubic foot per second of time being equal to a volume of two (2) acre-feet of water in a twenty-four-hour period.
  - (3) For the purpose of computing satisfaction of the water rights required by this Section, one (1) unit or share of "Big T" Big Thompson, "CBT," or more particularly known as Northern Colorado Water Conservancy District Water, shall be deemed to be equal to seven-tenths (.70) acre-foot of water.
  - (4) In lieu of said water and at the discretion of the Board of Trustees, a monetary equivalent of such water may be paid to the Town in an amount that is determined by the Board of Trustees to be equal in value to the water rights required.
  - (5) The landowner shall pay all expenses incurred in the process of transferring to the Town the water rights required by this Section.

- (6) At the time land is annexed to the Town, the owner shall, by good and sufficient conveyance, grant, assign or decree, transfer to the Town all water rights appurtenant to the land being annexed; provided, however, that in no event shall the owner be required to transfer water rights in excess of the requirements imposed upon annexation. In the event that additional water rights are available with the land, the Town shall have the first option to purchase additional water rights. The option period shall extend for a period of ninety (90) days from the final action on the ordinance annexing the property or from the date the required water rights are transferred to the Town, whichever shall occur last. The option price shall be that price, in existence at the time that the option is exercised, that the Town has accepted for cash in lieu of transfer of water rights, if such a price has been established and set. If no price has been established, the option price shall be the price agreed upon between the parties. If no agreement is reached within fifteen (15) days, the price shall be the fair market value of the water rights and shall be determined by an independent appraisal of the water right performed at the Town's expense.
- (b) Exclusions: Water may not be required for those parcels, tracts or portions of tracts that are not considered by the Town to be suitable for development because of excessive slopes, unstable geological conditions, waterways or other environmental constraints, provided that such areas are not to be irrigated from domestic water sources. Sites with excessive slopes shall be those areas with slopes greater than twenty-five (25) percent. The Board of Trustees shall make the final determination as to what areas, if any, are to be excluded from the water rights requirement. In the event that such exempt areas are later considered suitable for development, no developmental approval or building permit shall be issued until water rights are transferred in accordance with the provisions of this Section or any subsequent modifications of this Section. All areas designated as not suitable for development shall be identified on the annexation map or subdivision plat with a notation on the map that no building permits will be issued until water rights requirements are satisfied as per this Section.
- (c) Leaseback Option: The Town may, at its option, lease the water rights back to the landowner if the Town does not require use of water at the time of annexation if the landowner desires to maintain all or a portion of the site in agricultural use. The Town shall reserve the right to terminate all such leases at a specified interval of time within thirty (30) days prior notice.
- (d) Notwithstanding any of the foregoing or the provisions of Subsections (b) and (c) hereof, the Board of Trustees may, for good cause shown, increase, reduce or waive the amount of water rights required to be dedicated to the Town as a result of annexation.
- (e) Requirements for Residential Development: The water rights dedication requirements for residential areas shall be as follows:
- (1) In the A Agriculture District, the E Estate District, the EC Estate Countryside District and the R-1 Low Density Residential District, the water rights requirement shall be three (3) acre-feet per acre of land to be annexed.
  - (2) In the R-2 Medium Density Residential District, the water rights dedication shall be four (4) acre-feet per acre of land to be annexed.
  - (3) In the R-3 High Density Residential District, the water rights dedication shall be five (5) acre-feet per acre of land to be annexed.

The above water rights shall be provided prior to final approval by the Board of Trustees of the annexation application. However, the Board of Trustees may, at its discretion, agree to accept water at the time the property is subdivided. In addition, the Town shall have first right of refusal in purchasing all other water rights appurtenant to the land. In the event portions of the property tract or parcel are to be excluded from the calculation of the water rights requirement in accordance with this Section as stated above, this exclusion shall be noted on the annexation map or subdivision plan.

(f) Requirements for Business, Commercial or Industrial Development: All areas to be developed and zoned for business, commercial and industrial development shall dedicate and transfer one (1) acre-foot of water per acre of land annexed to the Town prior to final approval by the Board of Trustees of the annex ordinance. However, the Board of Trustees may, at its discretion, agree to accept the water at the time the property is subdivided. In addition, additional rights shall be required to be transferred to the Town prior to the issuance of a building permit based upon the type of use to be developed, tap size required and the potential consumption of water. The amount of additional water rights shall be based upon the ratio of the flow rate to the cross-sectional area of the tap as listed in the following schedule:

**Additional Water Rights Required**

| <i>Tap Size Required for Specific Use<sup>1</sup></i> | <i>Additional Water Rights</i>         |                           |
|---|--|---------------------------|
|   | <i>Acre Maximum Metered Use (Feet)</i> | <i>Per Year (Gallons)</i> |
| ¾-inch  | 1                                      | 270,000                   |
| 1-inch  | 2                                      | 540,000                   |
| 1½-inch   | 4                                      | 1,080,000                 |
| 2-inch  | 7                                      | 1,890,000                 |
| 3-inch  | 16                                     | 4,320,000                 |
| 4-inch  | 28                                     | 7,560,000                 |

<sup>1</sup> For tap sizes that are not listed above, the amount of additional water rights shall be established by the Town Administrator subject to the approval of the Board of Trustees.

(g) The Town shall have no responsibility to provide water in excess of the maximum gallons for the tap size. In the event the maximum number of gallons is exceeded, water service to the property shall be subject to termination unless additional shares are transferred to the Town. Water uses that require more than the maximum number of gallons of water per year as indicated on the schedule above shall be assessed an additional water

service charge of two dollars and seventy-five cents (\$2.75) per one thousand (1,000) gallons in excess of the base amount. This shall be in addition to the normal monthly service charges.

- (h) Whenever water use through a meter totals less than the annual maximums of gallons for the respective tap size, the difference between actual use and the maximum may be credited to any other meter on the same property and under the same ownership, subject to approval by the Board of Trustees. If approved, all water furnished through separate meters in the property may be combined for billing purposes and for determination of excess water use.
- (i) The water required for fire protection shall not be included in the above maximum gallons of metered use. Taps for fire protection purpose for business, commercial or industrial uses may, at the discretion of the Board of Trustees, be permitted to bypass the meter. In such cases, the applicant shall make a written request to the Board of Trustees for permission. The application shall include detail plans showing the location of the proposed tap and the design of the fire protection system. If the tap is approved, the applicant shall be required to pay a tap fee in accordance with rates charged by the Town.
- (j) Water rights transferred to the Town in excess of the required amounts, if accepted by the Town, shall be credited to the maximum annual use in the amount of one (1) acre-foot being equivalent to a use of two hundred seventy thousand (270,000) gallons.
- (k) If a tap is increased to a larger size, the amount of additional water rights shall be the difference between the right required for the larger tap and the previously paid amount. For changes in the use of property that require a smaller tap, the Town shall not be required to refund water rights previously transferred to the Town. However, uses that require substantially less water than the maximum meter use may receive the credits allowed in Paragraph (a)(6) above.

(Prior code 10-16-1; Ord. 956 § 1, 2014)

( Ord. No. 1072, § 2, 1-21-2020. )

#### Sec. 17-14-20. - Water rights dedication for subdivisions.

The requirements of Section 17-14-10 above shall apply to any final plat for a major subdivision pursuant to Article 4 of this Chapter, any minor plat for a minor subdivision pursuant to Article 3 of this Chapter, and any Planned Unit Development under Chapter 16, Article 4 of this Code filed on or after the effective date of this Section, except: (1) where the application of Section 17-14-10 would conflict with provisions of any subdivision improvements agreement or other development agreement; or (2) where the Board of Trustees, in its sole discretion, determines that the subdivision or PUD application in question will not negatively impact the Town's water supply in such a way as to require the dedication of water rights. When applied to an approved major or minor subdivision or an approved PUD not reviewed in connection with an annexation, the dedication to the Town of water rights required by Section 17-14-10 shall be made prior to the issuance of the first building permit for the approved development.

(Prior code 10-16-2; Ord. 956 § 1, 2014)

Sec. 17-14-30. - Public sites, reservations and dedications.

- (a) Dedications: Dedication of rights-of-way for public streets, utility easements and maintenance and other easements, water supply, water rights dedication, pump and sewer lift stations and other public interests required under the provisions of these Subdivision Regulations shall be made by the subdivider on the final plat unless otherwise directed by the Board of Trustees.
- (b) Park and Open Space Land Dedication:
  - (1) In addition to any dedications or reservations required by and other applicable provisions of this Code or as determined by the Board of Trustees to be necessary for school sites or other public facilities and utilities, all properties to be divided by a major subdivision process shall dedicate land area for parks, recreational facilities and open space which will serve future residents.
  - (2) The dedication requirement for park and open space in all major subdivisions shall be fifteen (15) percent of the total land area of the subdivision. Commercial and industrial subdivisions and the commercial or industrial portion of mixed-use subdivisions shall be exempt from this land dedication provision.
  - (3) The land to be dedicated to the Town shall be free of all liens and other encumbrances, and it shall be dedicated to the Town at the time the final plat of the subdivision is approved by the Board of Trustees. If a final plat of a subdivision is approved in phases, upon approval of each phase, the land or cash or combination thereof required by this Section shall be dedicated only for that phase or filing approved, except as otherwise agreed to by the applicant and the Board of Trustees and as recorded in the minutes of the Board of Trustees.
  - (4) The Board of Trustees may, at its discretion and after consideration of any recommendations it elects to seek, elect not to accept for dedication to the Town such open space or parklands as it deems unsuitable for the Town's present and future needs. The Board of Trustees may instead require that said lands or a portion thereof be deeded to a homeowners' association or other organization to be used only for parks, recreational facilities or open space, with maintenance responsibility and all other liability remaining with that association, other organization or party approved by the Board of Trustees. Such arrangements shall be specified within the subdivision improvements agreement and affixed upon the final plat as a plat notation. These arrangements shall limit the purposes to which a homeowners' association or other organization can use or develop the lands to parks, recreational facilities or open space uses.
  - (5) The Board of Trustees may, at its discretion and after consideration of any recommendations it elects to seek, require the payment to the Town of cash in lieu of a proposed or required land dedication or portion thereof if, in the opinion of the Board of Trustees, one (1) or more of the following conditions are met:
    - a. The proposed subdivision is of such a size or configuration not to require a new public facility;
    - b. The proposed park, recreational facility, open space or other dedication is not of an appropriate size, configuration or location;
    - c. The proposed park, recreational facility, open space or other dedication is not deemed to be an appropriate use for the proposed subdivision and/or for the other Town areas; or

d. The proposed park, recreation facility, open space or other dedication does not make sufficient provision for active recreational activities. Monies collected as cash in lieu of land shall be used to expand or upgrade existing parks or recreation facilities or create new facilities, or be held by the Town pending expansion or creation of new facilities at such locations as the Board of Trustees deems appropriate.

- (6) The park and/or open space cash in lieu of land dedication shall be in addition to park dedication fees required in Chapter 18 of this Code.
- (7) The amount of cash in lieu of land shall be based upon the estimated value of land in the area near the proposed subdivision, with the value not to exceed the current market value of the land that would otherwise have been dedicated to the Town. Current market value of the land shall be determined mutually by the subdivider and the Board of Trustees. Upon a failure to reach a satisfactory agreement between the Town and the subdividers, the current market value shall be determined by the subdivider obtaining an appraisal of the land by a qualified appraiser of his or her choice and at his or her expense and the Board of Trustees obtaining an appraisal of the same property by a qualified appraiser of its choice and at its expense. The average of these two (2) appraisals shall be deemed to be the current market value of the land in question.
- (8) The following suitability factors and criteria shall be considered by all participating Town commissions, staff departments and the Board of Trustees in evaluating what lands shall be accepted for dedication for park, recreation facility or open space use, what, if any, facilities shall be constructed upon those lands, and when cash in lieu of dedicated lands shall be required:
- a. The compatibility of the proposed open space and/or parks and their intended uses with the policies, goals and objectives contained within the Comprehensive Plan and/or any Parks and Recreation Commission Plan adopted by the Board of Trustees.
  - b. The suitability of the natural and man-made features of the land for the proposed uses of the open space and/or parks;
  - c. The relative need within the subdivision and elsewhere in the Town for passive open space, active open space, open parklands and the physical facilities to provide for active recreational activities, including but not limited to ball and other playing fields, trails, picnic areas, playgrounds and related activities to serve the future residents of the subdivision or other Town residents;
  - d. The location of the proposed open space and/or parks relative to areas where present and anticipated population patterns dictate the need for such facilities and their proposed uses;
  - e. The potential for open space, walkways and trails that may link the development with other developments or activity areas so as to promote throughout the Town a rational, accessible and needs-oriented pattern of parks and open space; and
  - f. The cost and convenience of municipal maintenance, tax base loss and liability for such open space, recreational facilities and/or parks as are proposed for dedication to the Town.

(Prior code 10-16-3; Ord. 956 § 1, 2014)