



# First American Title Company

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MKA

Jim S.

John S.

*file name*

*5/6/83*

June 18, 1984

Mr. Gerald J. Ashby, City Attorney  
250 North 5th Street  
Grand Junction, Colorado 81501

Re: Powers of Attorney for Subdivisions

Dear Jerry:

After our meeting with representatives of the City Council, the City Administration and yourself a couple of weeks ago, we met with our Board of Directors to reach a consensus of viewpoint on the issue of monies to be escrowed and powers of attorney, in connection with street improvements to be made abutting new subdivisions.

Obviously, the ideal arrangement would be for a developer to pay for, and install, the improvements as soon as the Plat for a subdivision is approved. However, as you know, there are some practical reasons why this is often not desirable and certainly there can be some economic reasons to forstall the immediate placement of such improvements.

Some broad questions came to us when reviewing this issue which we ask below. We realize that our suggestions about how a certain condition should be handled is subject to discussion. Let me summarize the questions raised.

1. If funds have been escrowed and the developer never sells a lot and requests a vacation of the plat, will he receive back the escrow amount; and if so, will it include the accrued interest? We believe the developer should receive back the escrowed amount with interest. Since the funds will apparently be placed in the general fund and pooled with other monies for investment purposes, it would seem the best a developer could ask for would be a return equal to the minimum return on invested funds made by the City.

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If the developer has not asked for the vacation of the plat, it would seem reasonable that the developer seek the return of his investment by virtue of the price he is asking for the unsold property. There remains an intermediate question involving a developer who has sold a portion of property fronting such a road and then asks for a vacation (and a pro rata share return of escrowed funds) of the balance of the subdivision. We believe this type of question lies solely within the purview of administrative decisions of the City and no attempt should be made to provide a policy for such a situation.

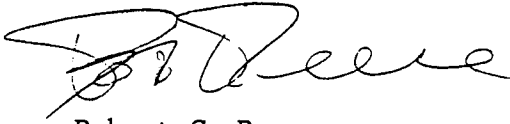
2. To what extent will the City complete the engineering necessary to coordinate the improvements made for a road abutting a new subdivision and City roads in either direction of the subdivision? This situation occurs with some frequency when a developer is required to upgrade the abutting road to his subdivision, but the road in one or both directions from his subdivision has not been upgraded and perhaps will not be upgraded for some time. We feel that it is improper for a road to be improved as a requirement for a new subdivision, and to be reconstructed, in part or in whole, at a later date because the road does not match other sections of the same road. We believe any escrowed funds, later used to make such road improvements, should be used with attention to compatibility with other sections of the road.
3. When will the money be escrowed? Often the cost for such road improvements are to be paid out of a development loan which is not secured at the time of plat approval by the City. For this reason, plat approval is not a desirable time for the money to be placed into escrow. Also, the use of a building permit as a "trigger" for the escrow of funds is undesirable since the purpose of a building permit will be diluted by such an ancillary matter. We believe a building permit should be used only for its original purpose. Perhaps the best answer is to require the escrow of funds at the time of recording the plat, but not upon the approval of the plat. This may eventuate in a measurable amount of time between plat approval and its recordation. Anything we can do to require the funding of the escrow at the latest possible time will help keep the carrying charges, and therefore, the consumer's overall housing cost, more affordable.
4. Will there be a continuing use of the Power of Attorney, for the sake of road improvements, in the City of Grand Junction? We suggest a discontinuance of the use of the Power of Attorney. Once the lots in a subdivision are sold, the developer no longer has the responsibility, under the Power of Attorney, to install the road improvements or to pay for the pro rata share of the improvements.

Homeowners then become responsible for the payment of such improvements. Since the typical homeowner does not save a substantial amount of his earnings, it becomes a financial burden for the homeowner to be required to pay for, or finance, future street improvements, the cost of which can be as large as 5%-10% of the total value of the home itself. The Power of Attorney may have had some merit in the past, but it simply passes on a financial obligation to the consumer with an unknown timetable. As we have experienced, constructive notice certainly has not been effective for disclosure and we doubt if any kind of actual notice would help. We believe a continued use of the Power of Attorney will create more second-rate streets.

We appreciate the interest that the administration and the Council of the City of Grand Junction have in this matter and we look forward to your reply to the above.

Yours truly,

HOME BUILDERS ASSOCIATION OF NORTHWESTERN COLORADO

A handwritten signature in cursive script, appearing to read "R. C. Reece".

Robert C. Reece  
Director

RCR/mb