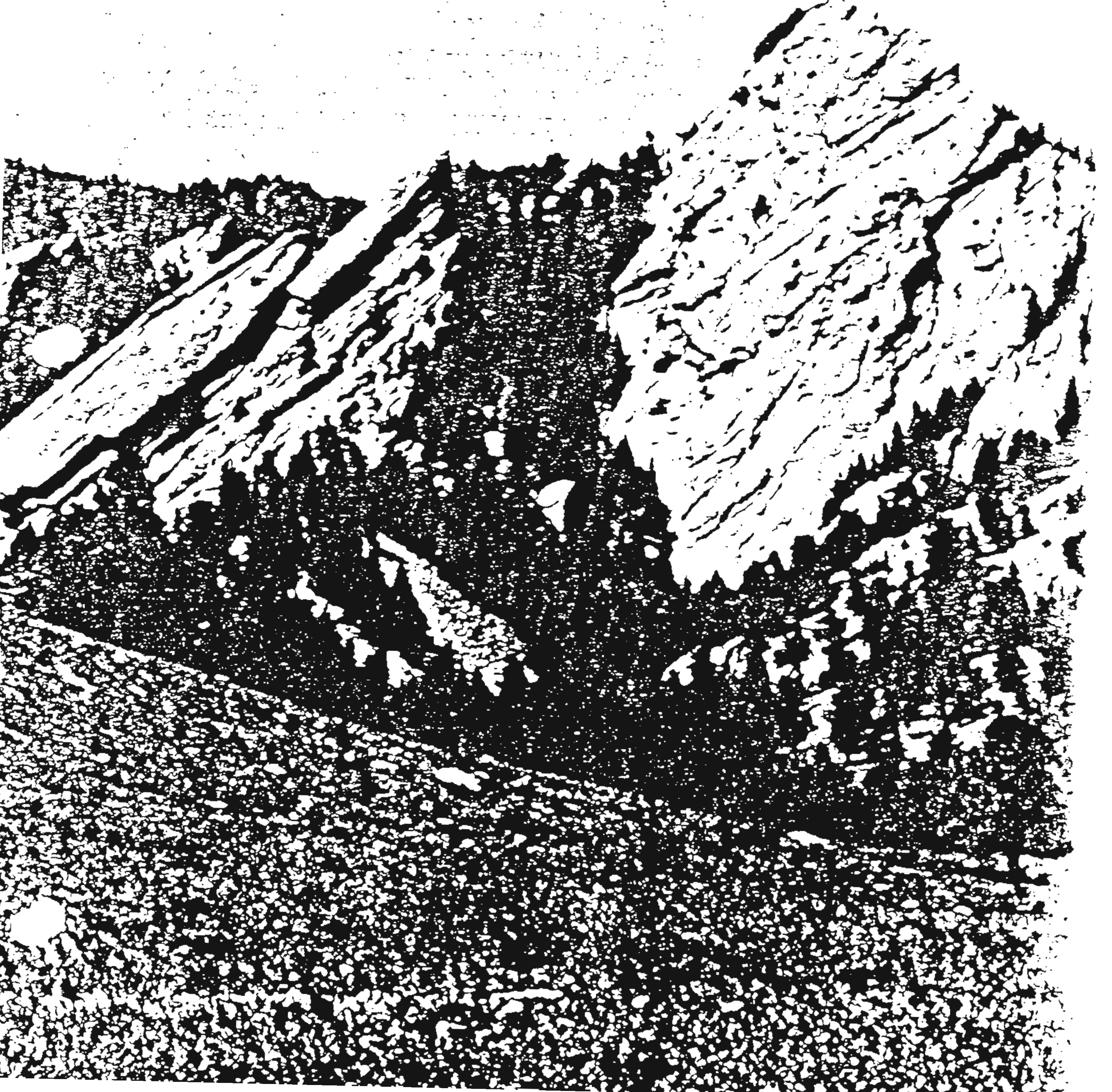
# BOULDER PRESERVES OPEN SPACE



Donald V. H. Walker

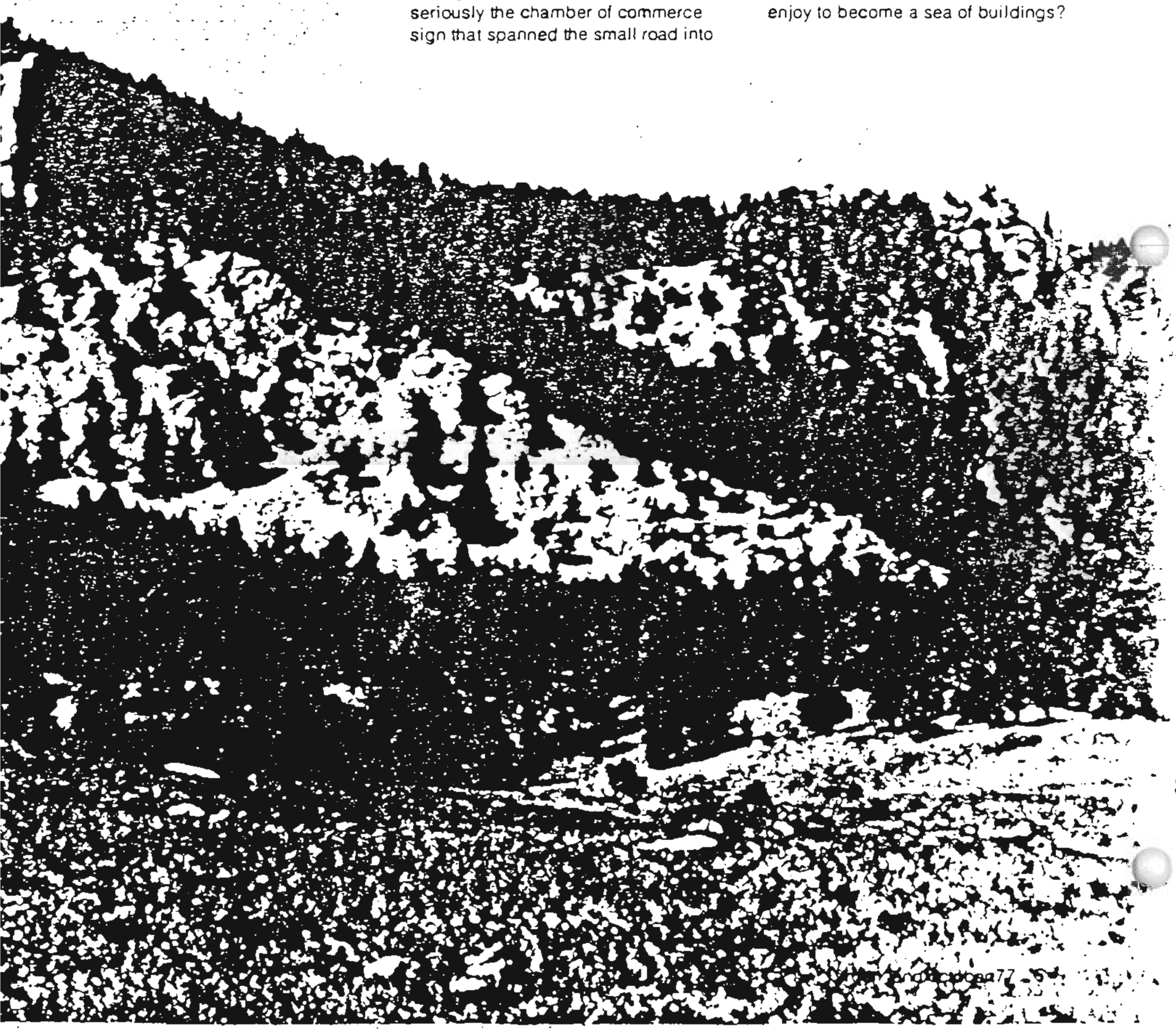
Most everybody thought it should be done; some thought it could be done. Ideas for preserving Boulder's scenic beauty and pine-covered mountain backdrop were expressed as early as 1910. Frederic Law Olmsted, Jr. presented a plan that envisioned the preservation of the mountains and streams as open green space.

Boulder, Colorado is situated at the base of the Front Range of the Rocky Mountains at the western edge of the Great Plains. The immediate environs include a low mesa framing the valley on the east and the majestic Rockies rising to over 14,000 feet on the west. Mountain streams meander through the valley. Boulder Creek bisects a city of 85,000 people.

Olmsted's plan was farsighted, but like so many, no action to implement it was ever taken. Among the townspeople there was an almost euphoric feeling of well-being. They had no great concern that the natural beauty surrounding the city would ever be disturbed. They assumed their precious mountains would always remain natural; the pasture lands on the north, south, and east would remain open forever. It was taken for granted that these lands already belonged to everyone. Nature was there, only 5 minutes from downtown, for all who wanted to behold the views or hike through the trees. These lands were claimed by all Boulder's citizens as "theirs" personally.

Change was inevitable. Visitors took seriously the chamber of commerce sign that spanned the small road into town: "Stay Awhile, Play Awhile. Boulder Welcomes You." This small college town was going to grow.

Growth and change came slowly at first. The University of Colorado, established in 1860, formed the core of business activity. It was not until 1950, when the population had grown to 20,000, that the first signs of accelerated growth in Boulder were evidenced. The city was almost doubled in size by 1960, the population reaching 37,718. By 1970, the figure was 66,870 and approximately 80,000 by 1975. Open pasture land was disappearing. Developments were planned for the mountains. The small state university had grown to over 20,000 students. Was this very special setting that all had come to enjoy to become a sea of buildings?



# BOULDER

By 1958, the citizens of Boulder had become concerned about the potential loss of "their" mountains. They went to the polls and passed a charter amendment establishing the "blue line," an elevation above which the city would not supply water. Growth continued. More action was going to be necessary if this growth was to be checked and the mountains preserved.

Nine years after the blue line was established and after an extensive educational campaign was waged, Boulder's citizens, supported by the city council, voted to tax themselves an additional one cent sales tax, 40 percent of which was to be earmarked for the acquisition and protection of open space lands. The mountain backdrop was a first priority. Boulder's open space program was set in motion with the initial annual revenue estimated to be approximately $400,000.

In 1970, a comprehensive plan was adopted that encompassed the entire 58 square-mile valley. This plan designated, while not being specific to properties, large expanses of open space. No zoning was implied by the green ink; it illustrated only what was desired. The open space designations included about 28 percent of the Boulder Valley, 16 square miles. With the continued pressure of growth, however, it soon became apparent that the designations probably would see the same fate that Olmsted's ideas saw some 60 years earlier. The sales tax revenues would not be enough.

In 1971, another charter amendment was placed on the ballot "to allow the city council, without approval by [further] vote of the qualified electors of the city, to create and incur indebtedness of the city, and to issue bonds to evidence the same, payable from and pledging funds and revenues earmarked and committed to purposes of acquisition of open space real property or interests therein."

With sales tax revenues approaching $1,000,000 annually, the city council, in 1973, passed an ordinance establishing the Open Space Board of Trustees, a citizens' board consisting of five members appointed for 5-year terms. In 1974, the board recommended and the city council passed Boulder's unique Open Space Plan.

The authors of most open space plans often succumb to the temptation to include requirements and details that constrict and limit acquisitions. The enormity of a project to purchase over 10,000 acres of land, all in small ownerships, many times causes one to define precisely when and where a certain property should be purchased. These myriad details often doom the preservation of open space to remaining just another idea that is never implemented. Boulder's plan establishes "a flexible program that will achieve the maximum benefit . . . by establishing the boundaries of the 'discipline', thus giving the concept a direction."

The Open Space Plan does not attempt to define open space. The plan specifically "recognizes the difficulty and danger of attempting to define the concept of Open Space." It states: "Inherent in an explicit definition are limiting and controlling elements that would restrict the program. Definition and implementation of this Open Space program can best be served by determining the Purpose, Function and Use of the lands or interests to be acquired." Some examples are:

- Preservation of natural areas characterized by: unusual terrain, unusual flora or fauna native or unique to the area; unique geologic formations; water resources; scenic areas or vistas; wildlife habitat or fragile ecosystems.
- Preservation of open space for passive recreational uses such as hiking, bicycling, horseback riding, nature studies.
- Preservation of areas for agricultural uses
- Utilization of open space lands for shaping the development of the city, limiting urban sprawl, and disciplining growth.

While the Boulder Valley Comprehensive Plan provided guidelines for open space locations and the general sizes desired, the board and the administration felt the additional need for establishing priority ratings for the areas designated. These priority ratings would do nothing more than indicate areas of emphasis.

Properties in the area given a first priority rating would receive aggressive action from the administration. Second and third priority areas would receive attention only in response to a direct need—for example, if they are threatened by development or if the landowner is actively attempting to sell. A priority rating does not automatically indicate that any particular property will be acquired. Should a property not be recommended for purchase, the landowner is able to sell or develop his property as if there had been no open space designation indicated. Again, the plan states that the priority designation was structured "to allow the administration sufficient flexibility and to avoid putting the city at a serious disadvantage in the real estate market."

The need for maximum flexibility in competing in the marketplace cannot be overstressed. The city must be able to compete in the real estate market with the flexibility of a private purchaser. It must have the freedom to suspend negotiations on one particular property and consider another To

Boulder's natural setting at the base of the snow-capped Rocky Mountains. Open meadows form the doorstep to the city as viewed from the mesa on the eastern perimeter of the valley. The Denver-Boulder Turnpike is seen as it enters from the east.

create a need for a particular property is to create an unsatisfactory atmosphere for negotiations. A property owner might not want to sell his land at all, and to force a sale could result in terms unsatisfactory to both buyer and seller. The city might then have to use the power of eminent domain and the seller would end up with all cash. While the seller would have certain reinvestment opportunities to defer federal income tax liability as a result of this involuntary transfer, the problems created can be manifold. The situation is even more unfortunate when it is considered that the seller may have had no immediate interest other than continuing the same use as desired by the city. Add the need for cash, thus impacting the available funds for other purchases, and it becomes obvious that "need to have now" attitudes can be costly for all. I hasten to add, however, that while Boulder has had to use its right of eminent domain in only four instances, it must still be thought of as a tool that can be used, although only after serious consideration.

The open space designation has now been expanded to include approximately 38 percent of the Boulder Valley. Over 14,000 acres are designated for purchase. Today, rights to over 8,000 acres of land have been acquired at a contracted purchase price of approximately $13,000,000. Actual cash expended is approximately $9,500,000. Since 1968, the city has collected $6,773,000 in sales tax revenues and has sold $4,000,000 in open space bonds. Sales tax revenues for 1977 are projected to be $1,150,000.

Important to the success of this program is sound financial planning and management. Tables A, B, and C are reproductions of a computer printout developed for projecting revenues and expenses over the next 10 years. This printout can be run at any time changing the input to reflect any update or variable desired. It has proved to be a valuable tool in negotiating terms that are consistent with the program's overall objectives. With fixed revenues and limited bond capability, the purchases must be designed and structured so that any single transaction does not severely impact the fund

Table A shows the projected revenues and fixed expenses. The "Begin Balance" line reflects the monies carried forward from the previous year(s). Note that this particular projection contemplates no monies carried forward into 1978, demonstrating the impact on the fund if all cash monies on hand were expended in 1977. "Sales Tax" projections are based on historical data and, while not shown on this printout, are projected to 20 years. This 20-year projection is necessary to predict the principal amount of bonds that could be sold in any year. The principal amount of bond capability is limited by the charter amendment to 50 percent of the projected revenue for the next 10 years.

Table B shows that the individual and total option payments amount to $537,673.

Table C summarizes A and B adding the bonding element. The "Bond Balance Available" line indicates that $5,181,526 is available as the total amount of bonds that could be sold, bringing the "Total Funds Available" to $6,376,463. However, with no bond sales contemplated, the "Net Available Year" reflects $1,194, 937 available for expenditure in 1977. Should the entire amount be expended in 1977, $421,291 would be available in 1978, without any bond sale.

These illustrations of the financial resources and the amount of land to be acquired make quite clear the need for negotiating flexibility. The printout also demonstrates the impact a large cash expenditure would have on the overall funding.

Many different purchase methods have been used, such as purchase of scenic easements and development rights. A majority of the purchases have been negotiated using variations of rolling-option agreements. By this method, the city agrees to purchase and receives a deed for a portion of the property in the first year, thereby obtaining the option to acquire another portion the following year, and so on. Usually, in the year the agreement is reached, a substantial option payment is made. This option money is not taxable income until the options are exercised. Throughout the contract-option period, a portion of the option money is allocated to the number of acres acquired at each option date. The city also obtains a lease on the entire property under option. Many times the property is then leased back to the property owner.

While it may seem that I overstress flexibility, the following example should demonstrate its value. In 1975, we negotiated a lease and option agreement on a parcel of land containing approximately 1,300 acres. The total option price was $1,575,000. It was advisable for the city to stay in a strong cash position and yet not sell bonds. Table B illustrates the final option payment schedule negotiated. The payments made in the first years were $48,700 in 1976 and $72,800 in 1977. This was beneficial to the city, considering the negotiations that were and are underway on other sizeable parcels.

Regarding purchase methods, I think a brief description of some of the concepts that are being followed is in order. It is my opinion that we have an obligation to investigate and structure every acquisition to achieve the most desirable net result for the seller while being responsible to the public at the same time. Once the market value of a property has been determined, and we are in a position of not having to buy now, negotiations can proceed in an atmosphere conducive to determining the best possible terms for both seller and buyer. Tax considerations are paramount, and the advantages that are available to both the city and the seller are substantial. Some possibilities follow:

- The use of a long-term obligation contract bearing interest is advantageous to particular sellers. This deferred-payment installment contract would carry interest, to be paid by the city. The interest would be exempt from federal income tax. This type of purchase can benefit the city and the seller. Some of the benefits that are enjoyed by the seller can be shared with the city by discounting the purchase price.
- A landowner may make gifts of all or part of appreciated real estate to the city and take a deduction on his federal income tax equal to the fair market value of the donated property. The deduction, however, may not exceed 30 percent of the landowner's annual adjusted gross income. Any excess contribution may be carried forward 5 years, the 30 percent limitation applying to the carry-forward years. A seller with substantial other income could benefit greatly from this method, and the city could acquire property at a reduced cost.

The implications of this method to both the city and seller should be worked out in detail. A hypothetical computation should be developed showing the tax consequences and the after-tax flow position of a sale to a non-tax-exempt buyer in a fully taxable transaction. Contrast this to an illustration of how the same after-tax cash flow can be realized in the transaction with the city, at a lower purchase price, with the gift element involved. Obviously, when the taxpayer has no other substantial income, the potential benefits decrease.

The "bargain sale" and use of tax-exempt interest methods could be combined compounding the benefits to

Table A

| | 1976 $ | 1977 $ | 1978 $ | 1979 $ | 1980 $ | 1981 $ | 1982 $ | 1983 $ | 1984 $ | 1985 $ | 1986 $ |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **Revenues** | | | | | | | | | | | |
| Begin Balance | 1,405,331 | 935,290 | | | | | | | | | |
| Bonds Sold | | | | | | | | | | | |
| Sales Tax | 1,091,165 | 1,152,197 | 1,237,417 | 1,394,158 | 1,533,574 | 1,686,932 | 1,855,625 | 2,041,187 | 2,245,306 | 2,469,837 | 2,716,820 |
| Interest Earned | 38,640 | | | | | | | | | | |
| Program Income | 30,000 | 35,090 | 38,599 | 42,459 | 46,705 | 51,375 | 56,513 | 62,164 | 68,380 | 75,219 | 82,741 |
| Grants | | | | | | | | | | | |
| Contrib./Misc. | 3,000 | 3,000 | 3,000 | 3,000 | 3,000 | 3,000 | 3,000 | 3,000 | 3,000 | 3,000 | 3,000 |
| Total Revenues | 2,568,146 | 2,125,577 | 1,309,016 | 1,439,617 | 1,583,279 | 1,741,307 | 1,915,138 | 2,106,351 | 2,316,686 | 2,548,056 | 2,802,561 |
| Expenses | | | | | | | | | | | |
| Debt Service | 322,777 | 322,777 | 322,777 | 322,777 | 322,777 | 322,777 | 322,777 | 322,777 | 322,777 | 322,777 | 322,777 |
| Maintenance | 42,900 | 47,190 | 51,909 | 57,100 | 62,810 | 69,091 | 76,000 | 83,600 | 91,960 | 101,156 | 111,272 |
| Property Taxes | 2,000 | 3,000 | 4,000 | 5,000 | 6,000 | 6,000 | 6,000 | 6,000 | 6,000 | 6,000 | 6,000 |
| Leases | | | | | | | | | | | |
| Purch. Expense | 20,000 | 20,000 | 20,000 | 20,000 | 20,000 | 20,000 | 20,000 | 20,000 | 20,000 | 20,000 | 20,000 |
| Total Expenses | 387,677 | 392,967 | 398,686 | 404,877 | 411,587 | 417,868 | 424,777 | 432,377 | 440,737 | 449,933 | 460,049 |

Table B

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| Options Payable | | | | | | | | | | |
| Gallucci | 10,000 | 2,000 | | | | | | | | |
| Dunn | 60,500 | 60,500 | 55,000 | | | | | | | |
| Culberson | 34,500 | 34,500 | | | | | | | | |
| Frasier | 26,500 | 26,500 | | | | | | | | |
| Anderson-Debacker | 33,570 | 33,570 | | | | | | | | |
| Boulder Land | 64,395 | 61,757 | 60,595 | 58,754 | 56,945 | 55,174 | 54,003 | 51,483 | 46,823 | 47,890 |
| Gebhard | 28,000 | 28,000 | 28,000 | 36,400 | | | | | | |
| Mann | 56,448 | 30,202 | | | | | | | | |
| Hedgecock | 53,000 | | | | | | | | | |
| McKenzie | 208,443 | | | | | | | | | |
| Cunningham | 26,919 | | | | | | | | | |
| Schneider | 14,000 | 8,400 | | | | | | | | |
| McCann | 27,778 | 27,778 | 27,778 | 27,778 | 27,778 | 27,778 | 27,778 | | | |
| Burke | 60,000 | 60,000 | 60,000 | 60,000 | 60,000 | | | | | |
| Kaufman | 84,260 | | | | | | | | | |
| Wittemyer | 91,666 | 91,666 | 91,666 | 91,666 | 91,666 | 91,666 | 91,666 | | | |
| Rudd Et Al. | 48,700 | 72,800 | 166,000 | 168,800 | 168,800 | 168,800 | 168,800 | 168,800 | 227,614 | 216,657 |
| Total Options | 928,679 | 537,673 | 489,039 | 443,398 | 405,189 | 251,752 | 250,581 | 220,283 | 274,437 | 264,547 |
| Cash Purchases | 316,500 | | | | | | | | | |

Table C

| Summary | 1976 $ | 1977 $ | 1978 $ | 1979 $ | 1980 $ | 1981 $ | 1982 $ | 1983 $ | 1984 $ | 1985 $ | 1986 $ |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Total Revenues | 2,568.146 | 2.125.577 | 1,309.016 | 1,439.617 | 1,583,279 | 1,741,307 | 1,915,138 | 2,106.351 | 2,316,686 | 2.548 056 | 2.802.561 |
| Total Expense | 387.677 | 392.967 | 398.686 | 404.877 | 411.587 | 417.868 | 424,777 | 432.377 | 440.737 | 449.933 | 460.049 |
| Total Options | 928,679 | 537.673 | 489,039 | 443.398 | 405,189 | 251,752 | 250,581 | 220.283 | 274.437 | 264,547 | |
| Cash Purchases | 316,500 | | | | | | | | | | |
| Net Available | 935,290 | 1,194,937 | 421,291 | 591.342 | 766,503 | 1,071,687 | 1,239,780 | 1,453,691 | 1,601,512 | 1,833,576 | 2.342.512 |
| Bond Capability | 8,368.699 | 9,181,526 | 10,099.679 | 11,109,647 | 12,220,612 | 13,442.673 | 14,786,940 | 16,265,634 | 17,892.198 | 19,681,418 | 21.649.559 |
| Bonds Used | 4,000,000 | | | | | | | | | | |
| Bond Sale (Yr) | | | | | | | | | | | |
| Debt Service-Yr | | | | | | | | | | | |
| Bond Bal Avail. | 4,368,699 | 5,181,526 | 6,099,679 | 7,109,647 | 8,220,612 | 9,442,673 | 10,786,940 | 12,265,634 | 13,892,198 | 15,681,418 | 17.649.559 |
| Total Funds Available | 5,303,989 | 6,376,463 | 6,540,970 | 7,700,989 | 8,987,115 | 10,514,360 | 12,926,729 | 13,719,325 | 15,493,710 | 17,514,994 | 19,992,071 |
| Debt Serv /Bond Bal | 396.481 | 470,249 | 553,576 | 645.236 | 746,062 | 856,970 | 978,969 | 1,113,168 | 1,260,786 | 1,423,167 | 1.601.786 |
| Net $ Avail. | 4,907,508 | 5,906,214 | 5,967,394 | 7,055,753 | 8,241,053 | 9,657,390 | 1,104,775 | 12,606,157 | 14,232,924 | 16,091,827 | 18,390,285 |
| Net Avail.-Yr | 935,290 | 1,194,937 | 421,291 | 591,342 | 766,503 | 1,071,687 | 1,239,780 | 1,453,691 | 1,601,512 | 1,833,576 | 2,342,512 |

the seller and the city. In one proposal it was demonstrated that a purchase price of $2,200 per acre, paid by a tax-exempt purchaser, resulted in a better net-after-tax cash position to the seller than a $3,500 per acre cash sale to a non-tax-exempt purchaser. These methods can be used when a less than fee interest is to be acquired.

The preceding discussion illustrates that use of acquisition dollars can and must be maximized if success is to be achieved. The degree of success can be equated to the amount of flexibility present. Imaginative and creative solutions are possible whereby the goals and objectives of both public and private interests are reached.

Today in Boulder virtually the entire mountain backdrop has been preserved through city acquisition. Emphasis is now on the agriculturally productive lands in the valley. With this new emphasis proper farm and range management has become critical. We have developed a comprehensive farm management program. This program of range land management and leasing is consistent with the goals stated for the open space program. The income generated is returned to the open space fund.

On each property a detailed analysis is undertaken to determine the vegetation, wildlife habitat, and animal support capacity. The land, in most cases, is leased to tenant farmers on a sharecrop basis or at an established animal unit rental. Income from these leases is now approaching the total cost of the maintenance and protection of the lands. It is our objective that these productive lands generate sufficient income to maintain the entire open space land ownership.

With Boulder's open space program 60 percent completed, over 12.5 square miles controlled, many positive factors are evident. Growth has been directed to areas close to the core city. Sprawl has been stopped. The natural setting and scenic quality have been preserved. The core city is vibrant. Construction is complete on a $2,000,000 downtown mall, and millions of dollars of private investment in redevelopment have been committed.

Perhaps most important of all, there is a sense of pride and community satisfaction in the knowledge that the scenic views and open spaces are now really "ours."

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Donald V. H. Walker is the director of Real Estate Services/Open Space for the City of Boulder, Colorado. He was a past president of the Boulder Board of Realtors, and was Realtor of the Year in 1969. He is the author of *Boulder's Open Space Plan* and the Special Use Permit for South Boulder Creek Project.