Updates

In a dispute over a traffic impact fee imposed on a residential building permit by El Dorado County, the U.S. Supreme Court unanimously rejected the long-standing position of California and other state courts that the Takings Clause of the U.S. Constitution applies differently when permit conditions are imposed legislatively rather than administratively. *Sheetz v. County of El Dorado*, No. 22-1074 (U.S. Supreme Court, Apr. 12, 2024).

The County's General Plan establishes a system to ensure new development pays its share of required roadway improvements by imposing a traffic impact fee as a condition of receiving a building permit. The fee amount is not calculated individually by project but is determined by a rate schedule that accounts for the type of development and its location within the County.

Based on this schedule, the County required George Sheetz to pay a $23,420 traffic impact fee as a condition to a building permit for a small, prefabricated house to be built on his property. Sheetz challenged the fee, claiming it constituted an unlawful exaction of money in violation of the Constitution's Takings Clause.

Under Supreme Court decisions in *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), and *Dolan v. City of Tigard*, 512 U.S. 374 (1994), permit conditions must have both an "essential nexus" to the government's land use interest and "rough proportionality" to the development's impact on that interest. The Court subsequently held that this two-part test applies to development fees as well as to the property dedications considered in *Nollan* and *Dolan*. The California Supreme Court later held that the "essential nexus" and "rough proportionality" requirements apply only to fees imposed on an *ad hoc* basis, not to fees imposed on a broad class of property owners through legislative action. The California Court of Appeal relied on that precedent in upholding El Dorado County's fee, and the California Supreme Court denied review.

The U.S. Supreme Court rejected the California court's distinction, holding that *Nollan* and *Dolan* apply to any conditions imposed on a permit, whether adopted by legislative or administrative action. The Supreme Court concluded that nothing in the text of the Constitution, relevant history, or the Court's precedent supports treating legislatures more deferentially than administrators.

The Court did not, however, strike down the County's traffic impact fee. Instead, the Court expressly left unresolved the question of "whether a permit condition imposed on a class of properties must be tailored with the same degree of specificity as a permit condition that targets a particular development." The Court remanded the case to the California courts to consider this question and other disputes between Sheetz and the County.

Two of the three concurring opinions commented on the unresolved question. Justice Brett Kavanaugh's concurring opinion, in which Justice Elena Kagan and Justice Ketanji Brown Jackson joined, underscores that "today's decision does not address or prohibit the common government practice of imposing permit conditions, such as impact fees, on new developments through reasonable formulas or schedules that assess the impact of classes of development rather than the impact of specific parcels of property." Justice Neil Gorsuch's concurring opinion takes the position that the Takings Clause cannot operate differently when a challenged condition affects "a large class of properties or a single tract or something in between."

The Court's ruling in *Sheetz* is relatively narrow, as it remains unresolved how closely tailored the courts now will require permit conditions to be when imposed on a class of properties. California and other state courts use a "reasonable relationship" standard when evaluating legislation imposing fees on a class of properties proposed for development. In the wake of *Sheetz*, agencies are likely to revisit their legislatively enacted fees to increase the likelihood such fees survive the inevitable next wave of litigation over how the *Nollan/Dolan* precedent applies to impact fees imposed on broad classes of development.

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