

TYPES NOT MAPPED YET February 12, 2024 | TTR not mapped yet | Halpin J. Burke, Chad M. Burchard

Sheetz v. County of El Dorado, California Could be Game Changer for Development Impact Fees

In January, the Supreme Court heard oral arguments for a case many landowners and developers are watching closely: *Sheetz v. County of El Dorado, California*. The case involves the takings clause of the Fifth Amendment to the U.S. Constitution, and its outcome could dramatically affect the real estate development impact fees state and local governments charge.

In 2004, the County of El Dorado, California, adopted a general development plan. In an effort to limit the impact of new development on roads, the plan was amended in 2006 to include a traffic impact mitigation (TIM) fee program, authorizing the county to condition issuance of building permits on the payment of TIM fees. Those fees would then be used to fund the construction of new roads and the widening of existing ones. The county calculates the fee using a formula, but it does not make any determination as to the specific traffic impact of a particular development project.

In 2016, George Sheetz applied for a permit to build a manufactured home on land he owned in El Dorado County. The county agreed to issue the permit to Sheetz on the condition that he pay a TIM fee of \$23,420. Sheetz paid the fee and was issued the permit, but he subsequently filed suit against El Dorado County, alleging the TIM fee to be an unconstitutional taking.

Sheetz has argued that the TIM fee violates the U.S. Supreme Court's holdings in *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), *Dolan v. City of Tigard*, 512 U.S. 374 (1994), and *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595 (2013).

In *Nollan*, the California Coastal Commission granted a permit to landowners to build a house on their beachfront property subject to the condition that they dedicate a public easement over a portion of their property. The Court held this to be an unconstitutional taking because there was no "essential nexus" between the condition and a "legitimate state interest."

In *Dolan*, a city granted a building permit to a landowner subject to the condition that she dedicate a portion of her land to the city for flood control and a bicycle/pedestrian pathway. While the Court agreed that there was an "essential nexus" between the condition and a "legitimate public purpose," it held that there must also be a "rough proportionality" regarding the "degree of connection between the exactions and the projected impact of the proposed development." The city failed to meet this second test. "No precise mathematical calculation is required," according to the Court, "but the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development."

In *Koontz*, a water management district refused to issue a land use permit to a landowner unless he agreed to pay for flood mitigation work on public land. The Court held that a "monetary exaction" of this kind must satisfy the "essential nexus" and "rough proportionality" test *Nollan* and *Dolan* established.

While the Supreme Court's *Nollan/Dolan* test applies to development fees that are imposed by officials on a discretionary basis, courts have reached different results in determining whether *Nollan/Dolan* applies to a fee like the TIM fee, i.e., a fee authorized by legislation and non-discretionary as to its imposition.

Some courts, such as the Supreme Court of North Carolina in *Anderson Creek Partners, L.P. v. County of Harnett*, 876 S.E.2d 476, have adopted the position that *Nollan/Dolan* applies to "generally applicable" fees "enacted by a legislative body." Others, such as the Supreme Court of California, have held that it does not.



In the present case, the trial court dismissed Sheetz's *Nollan/Dolan* claim, and the California Court of Appeals affirmed. The Court of Appeals cited California case law and observed that *Nollan/Dolan* does not apply to legislatively authorized "development fees that are generally applicable to a broad class of property owners" but only "to ad hoc monetary exactions imposed as a condition of approving a development project by individual property owners." It held that the TIM fee was lawful and that the *Nollan/Dolan* test did not apply.

The Supreme Court of California denied review of the decision of the Court of Appeals. However, on September 29, 2023, the U.S. Supreme Court granted Sheetz's petition for a writ of certiorari.

As stated in the petitioner's brief, the Court is being asked to "confirm that *Nollan/Dolan* review applies, not just to so-called *ad hoc* or discretionary conditions, but to legislatively mandated exactions as well, such as the fee that El Dorado imposed on Mr. Sheetz."

Much hinges on the Court's decision in this case. As counsel for El Dorado County noted during oral arguments in January, "countless local governments across the country" charge fees like the TIM fee to real estate "developers to address the impacts of new development."

Others, such as the Bay Area Council and the California Building Industry Association, both of which filed amicus briefs in support of Sheetz, argue that these fees add substantially to the cost of purchasing a home and that the lack of judicial oversight has caused them to multiply.

The Court's decision is expected in June.

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