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Authors:

[Yazan S. Ashrawi](#)

[Thaddeus M. Boggs](#)

[Anthony R. Severyn](#)

Are Your Traffic-Impact Fees Tied to Your Land-Use Interests and Roughly Proportional to the Development's Impact on Those Interests? If Not, They Should Be

Developers often bemoan the costs they incur before breaking ground on new residential projects. But the developer isn't the only party that experiences costs. New residential developments require new (or stress existing) municipal services, like water and sewer systems, roads, schools, libraries, parks, and recreation facilities.

To address these costs, municipalities commonly assess reasonable impact fees (sometimes called "exactions") on developments. Some fees are assessed on an *ad hoc* basis by administrators after an individualized review of the development. Others are assessed by legislation through impact schedules.

On April 12, 2024, the U.S. Supreme Court addressed a question about development impact-fee schedules that most municipal officials probably hadn't ever asked themselves: Does the so-called *Nollan/Dolan* exactions test—which applies to *ad hoc* permit conditions—apply also to permit conditions imposed by legislation? See [Sheetz v. County of El Dorado, California](#), 144 S.Ct. 893 (2024) (slip op.).

The Supreme Court held unanimously that it does. Thus, all permit conditions that constitute compensable takings—whether enacted by legislation or adopted by administrators—must have: (1) an "essential nexus" to the government's land-use interest; and (2) "rough proportionality" to the development's impact on the land-use interest, *i.e.*, they must not require a landowner to give up (or pay) more than is necessary to mitigate harms resulting from the new development. See *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987); *Dolan v. City of Tigard*, 512 U.S. 374 (1994).

If the permit does not satisfy these *Nollan/Dolan* elements, then it might be an unconstitutional taking. Why only might? Because the controlling opinion answered only the narrow question stated above. The Supreme Court did not address whether the permit fee at issue was a compensable taking that triggered the *Nollan/Dolan* test in the first place or whether legislative permit conditions must be tailored with the same degree of specificity as a permit condition that targets a particular development. It left these questions for the lower courts, and each affects the takings analysis.

Despite its limited scope, the Supreme Court's *Sheetz* opinion isn't feckless. Rather, it puts on notice municipal officials that impose permit conditions—such as impact fees—on new developments through legislation. It signals that municipalities should carefully consider whether their legislative permit conditions have an essential nexus to their land-use interests and are roughly proportional to the development's impact on those interests. If they are not, then municipal officials would be wise to devise permit conditions that do satisfy those elements.

We will provide additional guidance on this issue in the near future and are available to assist municipalities in analyzing and revising (if necessary) their legislative permit conditions. If you have questions, please contact the authors or any attorney with the firm's [Government Services Practice Group](#).

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