Supreme Court Holds That Constitutional Limits on Permit Conditions Apply to Both Legislative and Administrative Actions

Sep 26, 2024

Categories:

Publications
SCOTUS Collection

Authors:

Darren A. Craig

Sheetz v. County. of El Dorado, California, 144 S. Ct. 893 (Apr. 12, 2024)

In *Sheetz v. County of El Dorado*, the U.S. Supreme Court held that conditions imposed on obtaining land-use permits can violate the Takings Clause of the Fifth Amendment, even if the permits are imposed by legislative rather than administrative action.

The Board of Supervisors for El Dorado County, California, adopted a "General Plan" to address issues relating to the county's rapid growth. The General Plan covers a wide range of topics, such as wastewater collection and land-use restrictions. The issue before the Supreme Court stemmed from a schedule of traffic impact fees developers must pay to obtain building permits. George Sheetz applied for a permit to build a residential home. As a condition of receiving the permit, the county required him to pay a traffic impact fee of $23,420.

Sheetz challenged the fee, claiming it violated the Takings Clause by imposing an unconstitutional exaction on his obtaining a building permit in violation of the Supreme Court's precedents in *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), and *Dolan v. City of Tigard*, 512 U.S. 374 (1994). The trial court rejected Sheetz's claim, and the California Court of Appeal affirmed, holding that *Nollan* and *Dolan* apply only to conditions imposed by administrators, not to conditions applied by legislative action. The California Supreme Court denied further review.

The U.S. Supreme Court vacated the appellate court's decision and remanded for further proceedings. Writing for a unanimous Supreme Court, Justice Barrett noted that "[t]he Takings Clause does not distinguish between legislative and administrative permit

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

FBT Gibbons

conditions." Thus, permit conditions—whether imposed by administrative or legislative authority—must: (1) have an essential nexus to the government's land-use interest; and (2) have a rough proportionality to the development's impact on the land-use interest.

The Supreme Court did not address, however, whether the county's permit conditions violated the two-part test, instead leaving the application of the test to the California courts on remand. The Court also declined to address whether a permit condition imposed on a class of properties must be tailored with the same degree of exactness to the governmental interest as a permit condition applied only to a particular development.

In a concurring opinion, Justice Kavanaugh, joined by Justices Sotomayor and Jackson, expressly noted that the issue remains open under the Supreme Court's precedents. Justice Gorsuch, however, filed a concurring opinion noting that nothing in the *Nollan/Dolan* two-part test depends on whether the condition applies to many properties, few properties, or only one. In yet another concurring opinion, Justice Sotomayor, joined by Justice Jackson, noted that the court's decision did not resolve whether impact fees are subject to the *Nollan/Dolan* test if imposed outside the permitting context.

Key Takeaways

- Conditions on permits are subject to scrutiny under the Takings Clause, whether imposed by legislation or by administrative action.
- Permit conditions must have (1) an essential nexus to the government's land-use interest and (2) a rough proportionality to the development's impact on the land-use interest.
- Open questions remain about the government's authority to impose impact fees outside the permitting context.

Frost Brown Todd's appellate advocates have a proven track record of success in appeals involving questions of first impression, bet-the-company judgments, and decisions that shape the rules under

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

which our clients will operate well into the future. For more information, please contact the author or any attorney with the firm's Appellate Practice Group.

Want more U.S. Supreme Court coverage?

Explore our full wrap-up and analysis of the most consequential rulings for businesses and industries during the 2023-24 U.S. Supreme Court term.

SCOTUS Collection | GO>>

© 2026 FBT Gibbons LLP. May be considered attorney advertising in some jurisdictions.

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

FBT Gibbons