Rough Proportionality: Where to Draw the Line?

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Overview of Takings Claims



There are three basic categories of takings claims recognized by the U.S. Supreme Court:

- 1. Physical occupations;
- 2. Compelled dedications or exactions; and
- 3. Regulatory takings.

Compelled Dedications - Exactions

- The second category of takings claims is found where an exaction, such as a required dedication of land, is made a condition of development approval.
- · Non-categorical rules.
- Involves measurements of means and ends, *i.e.*, "essential nexus" and "rough proportionality."

Nollan/Dolan Exactions

- Two United States Supreme Court cases articulate the current tests for determining whether conditions constitute a taking under the Fifth Amendment.
- The first, Nollan v. California Coastal Comm'n, 483 U.S. 825 (1987), requires a court to evaluate the nexus between (1) what the municipality seeks to exact from the developer by way of imposing a condition that takes land and (2) the projected impact of the proposed development.

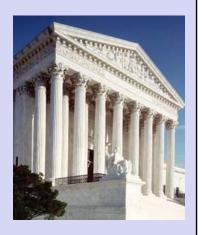


Nollan/Dolan Exactions

• The second case, Dolan v. City of Tigard, 512 U.S. 374 (1994), clarified Nollan by adopting the "rough proportionality" test as the means for determining the degree of nexus required between property a real exaction imposed by a municipality and the projected impact of a proposed development.

Flower Mound v. Stafford

- First reported Texas appellate decision to apply Nollan and Dolan.
- Supreme Court held that the Town's plat approval condition (that Stafford reconstruct and improve an abutting substandard street from which the subdivision development would take access) was a taking under Dolan.







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