

Rough Proportionality: Where to Draw the Line?

Robert F. Brown
Brown & Hofmeister, L.L.P.

James B. Griffin
Brown & Ortiz, P. C.

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 a real property 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*.



Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Rough Proportionality: Where to Draw the Line?

First appeared as part of the conference materials for the
21st Annual Land Use Conference session
"Rough Proportionality"