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Unpacking Recent Supreme Court Case and the Implications for Development Impact Fees

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Development impact fees, a common tool used by local governments to fund public infrastructure and services, play a crucial role in the process of urban and suburban growth. These fees are levied on developers in conjunction with new construction or revitalization projects to offset the costs associated with increased demand for roads, schools, utilities and other amenities necessitated by development. In other words, they are used to soften the “impact” that the new development is going to bring to the infrastructure already in place.

While development impact fees may sometimes lead to debates between developers and local governments, there is an argument that they can pose entry barriers for smaller developers and contribute to challenges in maintaining the affordability of housing and commercial properties in expanding areas. Conversely, proponents of development impact fees contend that they are instrumental in promoting fair cost-sharing and ensuring that communities can support new growth in a sustainable manner.

A recent US Supreme Court decision, Sheetz v. County of El Dorado, California (2024), has brought development impact fees to the forefront of discussion by answering the question of whether the “*Nolan/Dolan*” test (based on US Supreme Court precedent) used to evaluate the potential abuse of the permitting process, also extends to monetary fees imposed by legislative action.

The case arose from a dispute between a real estate developer, Sheetz, and the County of El Dorado, when the County required Sheetz to pay a “traffic impact fee” amounting to $23,420 as a condition to receiving a residential building permit. This fee formed part of a broader “General Plan” established by the County’s Board of Supervisors to address escalating demands for public services spurred by new developments. However, the fee’s calculation did not directly correspond to the costs of traffic impacts specifically linked to Sheetz’s project. Instead, it was determined based on a rate schedule that considered the type of development and its location within the County.

The US Supreme Court held unanimously that the *Nolan/Dolan* test applies uniformly to all impact fees and permits, regardless of whether they were being imposed on a discretionary basis or due to legislative action. Which means that in order for a development impact fee to be constitutional, such fee must have: (i) an “essential nexus” to the government’s land use interest and (ii) a “rough proportionality” between the project’s actual impact and the fees being imposed.

The Sheetz decision has far-reaching implications for both developers and local governments involved in development and revitalization work. Developers now have a clearer framework for challenging arguably excessive or unjustified impact fees, while governments must ensure that their fee structures are defensible and backed by thorough analysis tied to the actual work request. The case is now remanded for the courts to carry out the *Nolan/Dolan* test. Developers and local governments should consider seeking legal counsel to ensure that their impact fees align with the principles established in the Sheetz ruling and comply with relevant legal standards.

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