Overview

- Exactions, conditions based on Infrastructure Inadequacy
- Impact Fees (or ducks)
- Taxes preferred over fees?
Authority v. Taking?

**Authority**
- Statutory
- Constitutional
- Is it a Tax?
  - Benefit/Need
  - Regulatory
  - Proportionality
- Is it an Impact Fee?

**Taking**
- Nollan
- Dolan
- Conditional v. Voluntary
Nollan v. CCC (1987)

Psychological Barrier

Big House

EASEMENT

Beach

Pacific Ocean
Nollan v. CCC (1987)

No “essential nexus”

= 

a Taking

(and extortion)
Dolan v. Tigard (1994)

No “rough proportionality”

= a Taking
Trial Court found a taking under *Nollan* and *Dolan*

- WMD issued permit
- Trial Court awarded Koontz $376K for temporary taking

St. Johns River WMD v. Koontz (77 So. 3d 1220)
St. Johns River WMD v. Koontz (77 So. 3d 1220)

**WMD**: “there was no taking by exaction, because:

– the exaction was rejected before denial
– no *land* was exacted”
St. Johns River WMD v. Koontz 
(77 So. 3d 1220)

- Nollan/Dolan applies only to exactions involving:
  - interest in real property
  - in exchange for permit approval
  - where approval is given.
If you find this acceptable, please proceed with the revisions to the Plans.
Penn Central (1978)

- **Taking Formula:**
  - *Economic impact*
  - *Distinct, Investment-backed expectations*
  - *Character of the governmental action*
67 P. 3d 56 (Idaho 2003)

- **Pre-application Conference:** District requested Road Construction

- **Application:** Developer “agreed” to Construct Road and amended plans accordingly

- **District:** Approved with Condition of Road Construction

- **Supreme Court:** Developer “volunteered” the Road
B.A.M. III
(2012 UT 26, May 2012)

• **BAM I** – *Dolan’s “rough proportionality” applies*

• **BAM II** – *Dolan applied incorrectly*

• **BAM III** – *You got it!*
B.A.M. II – The *Dolan* Formula

- Gov’t’s Cost to alleviate the Impact
- Cost of the Exaction to B.A.M.
B.A.M. II – The *Dolan* Formula

**Gov’t’s Cost**

$337\, K$

$>\$

**Cost to B.A.M.**

$84\, K$
B.A.M. III – The *Dolan* Formula

**Highway Dedications**

- *Salt Lake Co*
- *Utah DOT* (incl. state & Fed. funding)

$\Rightarrow$

**Cost to B.A.M.**

$\$84\,K$
Overview

- To Trigger *Nollan/Dolan*:
  - Approval
  - Dedication of Real Property *(not just money)*
  - Not “voluntarily” accepted or proffered by owner
HBA of Dayton v. Beavercreek (OH 2000)

“… Home Rule Amendment gives municipalities the authority to impose exactions, provided the municipality is not statutorily forbidden from doing so, and the exactions meet constitutional standards.”

§ 3, Art. XVIII, Ohio Constitution
“Constitutional Standard” is:

“...whether the fee is in proportion to the developer's share of the city's costs to construct and maintain roadways that will be used by the general public.”
Impact fee Methodology:

- Inventory Existing Facilities, confirming LOS
- Estimate Costs to serve New Growth
- Identify Fee Districts
- Identify the needs in those Districts
- Give Revenue Credits
- Account for Background Traffic
- Provide for Regular Updates
Majority Opinion:
- Upholds, applies Dual Rational Nexus

Dissent (J. Pfeifer):
- Fee v. tax, this is a tax
- Strictly-and-Uniquely attributable
- No guaranteed Benefit or City contribution
- City matching funds are required
Authority v. Taking?

**Authority**
- Statutory
- Constitutional
- Is it a Tax?
  - Benefit/Need
  - Regulatory
  - Proportionality
- Is it an Impact Fee?

**Taking**
- Nollan
- Dolan
- Conditional v. Voluntary
Hamilton Township

- **Adopted Fees for Roads, Fire, Police, Parks in unincorporated areas**
- **Limited Home Rule Township**
  - all powers unless in conflict with general law
  - Except, only expressly authorized taxes

Ohio Supreme Ct in 2012
Ordinance

- Imposes fees by land use
- Creates and requires deposits into 4 Segregated Accounts
- Restricts expenditures by facility type
- No “sub-districts”
- Requires expenditures in 3 years
- Requires Developer Contribution Credits

Ohio Supreme Ct in 2012
Home Rule for Limited Home Rule Townships

“[e]xercise all powers of local self-government ... other than powers that are in conflict with general laws ... and shall enact no taxes other than those authorized by general law.”

R.C. 504.04(A)(1)
Trial & Appellate Courts – Uphold Fees

- Under (statutory) police power
- Fees not inconsistent with statutes
- “sufficiently narrowly tailored to provide services to the class of fee payers in exchange for the fees”
- No mention of Beavercreek
Ohio Supreme Court

- Underground Storage Tank Assistance Fund (*Withrow*)
  - In furtherance of regulatory measures
  - Segregated funds
  - In return for government provided services
  - Fees tied to need (liabilities)
Overview on Authority in Ohio

- (All) impact fees are taxes?
- Impact fees are constitutional, but not authorized?
- What does a legal impact fee look like?
Overview on Authority ... in North Carolina
Pick-up Sticks, Anyone?

- Too many standards to choose from:
  - impact fee cases
  - Tax Injunction Act
- Cases where one impact fee is overruled = all impact fees overruled
Case Study

Georgetown County, South Carolina
2009: Impact Fees Adopted

South Carolina GDP ($B)

South Carolina GDP ($B)
2010: Fees Reduced & Refunded

- $26K in comm. fees
- $455,500 in res. fees
- $226K spent
- $1600/res. permit refunded
2012: Impact Fees Repealed?

~ $400K/year in Impact Fees

V

~ $5.5 Million a year in Sales Tax Revenue

Georgetown County, SC

Georgetown Times, June 17, 2011
Outlook: Optimistic!