

Can Impact Fees or Dedications of Private Land to the Public Be Required as a Condition of a Local Government's Approval of a Proposed Development?

Land dedications and impact fees, oftentimes collectively referred to as exactions, are commonly imposed by local governments as a way to lessen the impacts of increased population or demand on services by a proposed development. Examples of exactions include traffic mitigation fees, infrastructure improvement fees, fees for improving sewer and water systems, park and open space land dedications, and street dedications. Local governments are increasingly turning to developers through exactions to finance and assist in new development projects for a number of reasons, including increased growth and deficits in municipal infrastructure funds.

In Wisconsin, a municipality generally has the right to impose impact fees on developers, so long as such fees bear a reasonable relationship to the municipality's power to regulate land use. A land dedication, on the other hand, is subject to a stricter test so as not to result in a "taking" of private land without just compensation as required by the United States Constitution. The United States Supreme Court established the legal standards for determining when land dedications become takings in *Nollan v. California Coastal Comm'n* and *Dolan v. City of Tigard*.

These cases require municipalities to apply the following standard in imposing land dedications as part of a proposed development: (i) the purpose of the land dedication must have a nexus or reasonable relationship to the burden the development will cause; and (ii) rough proportionality must exist between the land dedication and the impacts attributable to the proposed development. By way of example, in *Dolan v. City of Tigard*, the United States Supreme Court deemed it unconstitutional when a municipality conditioned a permit to expand a store and pave a parking lot on the dedication of land for a public greenway and a bike and pedestrian pathway, holding that the evidence was insufficient to show rough proportionality between the land dedication and the impacts of the store expansion. An exception to this rule is the dedication of land for public use as part of a land division approval process.

In such cases, a municipality may require a dedication of land as a condition for

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approval if the municipality can establish a reasonable need for such land as a result of demand caused by the land division. As local governments are increasingly imposing new and creative exactions on developers as a condition for approval of development projects, it is even more important to understand the legality of such conditions. The Reinhart [real estate attorneys](#) stand by to assist you with any of your land development needs. Please feel free to contact us at any time.

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