

# Appendix 3 *Significant Court Case Decisions Affecting Developments and Access Control*

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## Compilation of Development Impact Cases January 2003 (not all inclusive)

**Note:** In reviewing these case synopses, remember that WSDOT imposes Traffic Mitigation Payments, Land Donations/Dedications, and Highway Improvement Exactions based upon SEPA (RCW 43.21.C.060), not based upon RCW 82.02, and the following cases *mostly* rely on RCW 82.02 et seq for their authority to charge impact fees. In addition, these case holdings are good only as of January 2003, and the courts may review, change or reverse decisions after this date, and there could be Legislative action, as well.

1. Must Have Nexus Between Exaction and Development Impact.

In *Nollan*, the California Coastal Commission required, as a condition of a permit for a beach house, that the property owners provide an easement for beach travelers to cross the lot from one public beach to another. The U.S. Supreme Court held that the development condition (exacting the easement) violated the Takings Clause of the U.S. Constitution because it did not further the legitimate state interest of protecting the ocean view of passers by. There was no *Nexus* between the condition and the problem that the government sought to solve. *Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825 (1987).

2. Must Have Proportionality Between Exaction and Development Impact.

In *Dolan*, the City of Tigard, Oregon, conditioned approval of a store expansion on dedication of land to provide a public greenway to combat flooding and to provide a pedestrian and bicycle path. The U.S. Supreme Court did find the necessary *Nexus* between the condition and the public problem, but it held that the government must also show that the condition required is *Roughly Proportional* to the development's impact on the problem that forms the government's legitimate interest. *Dolan v. City of Tigard*, 512 U.S. 374 (1994).

3. Nexus and Proportionality are Required Whether the Exaction is Money or Land.

The City conditioned the development permit on the developer making half-street improvements to a street adjoining the project; however, the City failed to show that the condition was *Proportional* to the development's impact on the street. Thus, the court invalidated the requirement. *Benchmark v. Battle Ground*, 103 Wn. App. 721 (2000).

4. Proportionality and Traffic Mitigation of Direct Impacts.

The City of Brier determined that its general street grid needed to be upgraded because of the collective impact of new subdivisions. It proportionally assessed each developer according to the number of lots in the project for a global street project. However, it did not look at each project's direct impact to the street network. *Castle Homes* appealed a \$3,000/lot assessment. 75 % of the traffic from the development would directly exit into Mountlake Terrace and at most 25% of the traffic would enter Brier's street system, with only 8 percent staying in Brier for more than two blocks.

### **Significant Court Case Decisions Affecting Developments and Access Control**

The court reversed the assessments and remanded the case to the City to recalculate its assessments based upon the development's direct traffic impacts. *Castle Homes v. Brier*, 76 Wn. App. 95 (1994).

5. Transportation Impact Fees (TIFs).

TIFs must be calculated when the development is to occur, meaning at the time of the building permits and not at the time the development application is made. *New Castle Investments v. City of LaCenter*, 98 Wn. App. 224, 237 (1999).

6. Cannot Collect "Reimbursement" Costs.

The court ordered the City to pay back to apartment building developer the proportionate costs to construct sidewalks adjoining the development because the improvements were constructed *before* the developer acquired the property and were not installed with regard to the proposed development impacts. The City had conditioned the building permit upon payment of the reimbursement costs which was disallowed by the court. *View Ridge Park v. Mountlake Terrace*, 67 Wn. App. 588 (1992).

7. Payment In Lieu of Dedication.

The court upheld a voluntary payment *in lieu* of a dedication of land. *View Ridge Park v. Mountlake Terrace*, 67 Wn. App. 588, 599 (1992).

8. Payment In Lieu of Dedication Must be Based on Land Value.

Bothell charged a subdivision \$400/lot in lieu of a dedication of land for park purposes (not an impact mitigation fee). The court found that if a fee were to be imposed in lieu of a dedication of land, the only rational, nonarbitrary way of determining the amount of the fee is to relate it to the value of the land which Bothell could require the developer to dedicate. The burden is on the city to demonstrate that the fee is related to the value of the land. Thus, Bothell was required to refund the \$400/lot fee. *Vintage Constr. Co. v. Bothell*, 83 Wn. App. 605 (1996), affirmed 135 Wn. 2d 835 (1998).

9. May Require Actual Construction In Lieu of Fees:

The court upheld the City of Lacey's requirement that the developer actually make the street improvements, rather than enter into a voluntary agreement for the developer to pay impact fees. However, the economic value of the construction must equate to the what fees would have been assessed. *Southwick, Inc. v. Lacey*, 58 Wn. App. 886 (1990).

10. Substantial Evidence Standard.

The City required the developer to improve North Parkway, which borders the development but does not provide direct access to the development. The state court applied the United States Supreme Court's test that an exaction (whether money or land) must be based upon (1) a *nexus* between the exaction and the development and (2) the exaction must be roughly *proportional* to the impact. In addition, the court required the City to produce *substantial evidence* to support its permit requirements. However, the court found no substantial evidence to support the City's position since North Parkway did not meet the City's road standards even before the development was proposed and that the required expenditure for the street improvements was not directly related to the traffic generated by the development. *The Benchmark Land Company v. City of Battle Ground*, 146 Wn. 2d 685 (2002).

11. Cannot Charge Fees Outside Jurisdiction.

City did not have statutory authority to impose impact fees on projects outside of its borders. In *Nolte*, Olympia and Thurston County adopted a comprehensive plan that called for the City, not the County, to fund parks and roads in the unincorporated Urban Growth Area (UGA). To cover the cost, the City was to “collect impact fees” from new developments in the UGA, and the City passed an ordinance to this effect. The court found that an impact fee can only be imposed as a condition of development approval; necessarily then, an impact fee must be imposed by the entity with authority to approve or disapprove a change in the use of land on which the project will be built. In *Nolte*, it was the County that held the building permit authority, not the City. *Nolte v. City of Olympia*, 96 Wn. App. 944 (1999).

12. Can Require Road Improvements Outside Jurisdiction (Qualified).

Developer submitted a plat to develop 144 multifamily units. The EIS projected an additional 778 vehicle trips per weekday on adjacent roads, resulting in a 22% increase in traffic on Golf Course Road and a 360% increase on Melody Lane. Port Angeles conditioned approval of the plat, in part, on the developer (1) improving Melody Lane to 28 feet with curb, gutter and sidewalk on the north side and storm drainage (the applicability of this condition was subject to either the county road’s annexation by the City or Clallam County road improvement approval); and (2) pay certain costs of the improvement of Golf Course Road, based upon the estimated cost of the street project and the ADTs generated by the development; in addition, each dwelling unit was assessed \$416 (both monetary calculations and charges for Golf Course Road were upheld by the court). Both plat conditions were upheld by the court. The court found that since the City was required by RCW 58.17.110 (Boundaries & Plats) to consider adequate access to and within a proposed subdivision. Therefore, the court held that the City was authorized to require the improvement of Melody Lane outside its territorial jurisdiction if it conditioned it upon the requirement that it be either annexed by the City or receive County approval. [This case can be distinguished from the *Nolte* case, above, because Port Angeles had the plat approval authority where in *Nolte*, Olympia did not. *Miller v. Port Angeles*, 38 Wn. App. 904 (1984).

13. Fees Cannot be Imposed Without Statutory Authority.

Impact fees cannot be imposed without statutory authority. *Nolte v. City of Olympia*, 96 Wn. App. 944, 950 (1999), citing *San Telmo Assocs. V. Seattle*, 108 Wn. 2d 20, 23 (1987).

14. Fees May Only be Spent on Identified Improvements.

Bothell charged a flat \$400/lot park fee. However, the court found that the City had not complied with the provisions of RCW 82.02.020(1) [which does not apply to WSDOT] that states that impact fees “may only be expended to fund a capital improvement agreed upon by the parties to mitigate the identified, direct impact.” Bothell had failed to (1) identify the direct impacts caused by the developments on the City park system. It also failed to (2) consult with the developers prior to spending the funds collected; (3) failed to spend the fees on capital improvements designed to mitigate an identified, direct impact of the developments; and (4) improperly spent some of the park fees collected on items other than on capital improvements. Bothell was required to return \$106,000 in fees plus pay prejudgment interest at 12%. *Henderson Homes v. Bothell*, 124 Wn. 2d 240 (1994).

15. Specific Agreement to Fund a Particular Improvement.

King County's fee in lieu of land dedication was upheld by the court because the County required the fees to be used within the development's park service area. Although there was not a specific agreement between the developer and the County as to what particular capital improvement would be made with the fees, the developer was not precluded from recommending or seeking a particular improvement within the park service area. *Trimen Development v. King County*, 124 Wn. 2d 261 (1994).

16. "Voluntary" Agreement.

Developer complained that he did not enter into a "voluntary" impact mitigation agreement because the agreement was a condition of his plat approval. The court disagreed. Under RCW 82.02.020, the word "voluntary" means that the developer had a choice of either (1) paying for those reasonably necessary costs which are directly attributable to the project or (2) losing preliminary plat approval. The court noted that just because the developer's choices may not be between perfect options does not mean that the agreement was "involuntary" under the statute. The developer could agree to the fees, get his plat approval, and afterwards contest the fee amounts exacted. *Cobb v. Snohomish County*, 64 Wn. App. 451 (1991); *Cobb v. Snohomish County*, 86 Wn. App. 223 (1997).

17. Level of Service (LOS) Exactions.

Snohomish County argued that a developer must pay its proportionate share of an *entire* intersection improvement, although the project would directly impact only one leg of the intersection of 234<sup>th</sup> St. SW and Highway 99 (LOS C/D). The court found that the project contributed some traffic to LOS C traffic lanes, but none whatsoever to the LOS D traffic lanes. Since by County ordinance and its "Highway Capacity Manual's" definitions, relating to traffic design, flow and operation did not require improvements to be made to LOS C traffic lanes, the developer owed zero dollars in mitigation. *Cobb v. Snohomish County*, 64 Wn. App. 451 (1991).

18. Late Comer Fees.

RCW 35.72 et seq., allows a City or County (not WSDOT) to assess latecomer costs for street improvement. However, there are many hoops through which a City or County must jump before such provision will be upheld by the courts. see *Woodcreek Partnerships v. Puyallup*, 69 Wn. App. 1 (1993).