Exactions: Shakedown or Bargain?

The Nollans (left) and their original beach home
• Nollans sought a permit to replace their beachfront bungalow with a new home
• CCC denied the permit, unless the Nollans would agree to grant a lateral easement to the public to cross the “dry-sand” portion of the parcel
• Nollans appealed denial, arguing condition violated 5th Amendment (as incorporated into 14th)

• Could CCC legally have denied the Nollans a permit to build or enlarge their home because it would have blocked views of the beach/ocean? Would that have required CCC to compensate them?
• Could CA have legislated that the public had a right to cross the “dry sand” portion of all beachfront owners? Would that require compensation?
• Why did the CCC argue that there had been no taking?
  —“If we can prohibit building altogether, we should be able to grant the Nollans a choice (either grant easement and build, or don’t and keep your old house)”

• Are the Nollans better off with or w/out a choice? Is anyone worse off?

• Problem: CCC’s exaction (a lateral easement) has nothing to do, i.e., no “essential nexus,” with the justification for the exaction (loss of beach view)
  —Thus, it is an unconstitutional condition
  —Scalia: otherwise, municipality has untrammeled ability to extort unrelated benefits as a condition of awarding the permit
Could CCC Legitimately Have Demanded a Beach Access Easement?

• CCC could have conditioned approval of the permit on the Nollans agreeing to grant an access easement along the edge of their parcel (perpendicular to the beach)?
  — Court assumes this would be permissible [pp. 302-303], as it would make it easier for neighbors and/or passers-by to see and/or reach the beach.
The Nollan Parcel (today)

Nollan house today (Ventura, CA)
Dolan’s original electrical/plumbing supply store

The Dolan Parcel Today
New building (no longer open)
Fanno Creek runs next to store, parallel to Fanno Creek

Dolan v. City of Tigard
• Dolan seeks site plan approval to replace existing store with two-building center. As condition of approval, City required Dolan to dedicate to City
  – Title to 15-foot strip for walking/biking path
  – Easement over land within 100-year flood plain
• Dolan challenged exaction as unconstitutional
Does the Exaction Satisfy *Nollan’s “Essential Nexus”* Test?

- Yes; it responds directly to the burdens created by the Dolan’s proposed development plan, which would:
  - Take away green space (which must be maintained at 15%, by City Code)
  - Increase water runoff & risk of flooding
  - Increase traffic on city streets

Court holds that the exaction was disproportionate to the harms posed by Dolan’s development

“We think a term like ‘rough proportionality’ best encapsulates what we hold to be the requirement of the Fifth Amendment.... [T]he city must make some sort of *individualized determination* that the required dedication is related both in **nature** and **extent** to the impact of the proposed development.” [p. 313]
Exactions

• Must be an “essential nexus” between the condition imposed and the public purpose to be achieved by the condition (*Nollan*)
• Public benefits obtained by the condition must be “roughly proportional” to adverse impacts of the development (*Dolan*)

Greenway Easement

• Dedication of an easement was not strictly needed to address the water/runoff issues
• Court: it would have been just as effective for the city to require the Dolans to leave this area as open green space (no development); didn’t need to compel them to grant a public easement, too
• Could city show “rough proportionality” between bike path dedication and extra street traffic (435 extra car trips per day)?
• What evidence would City need to show on remand?

• Developer seeks subdivision approval
• City conditions approval on dedication of 4 acres of land for a public park
• Developer challenges the condition as a violation of *Nollan* and *Dolan*
• Can the City defend this challenge? If so, on what basis?
Impact Fees & “In Lieu” Payments

• Instead of requiring dedication of 4 acres for park, suppose City imposes a fee of $500/lot for a “park acquisition” fund

• Why might City prefer impact fee rather than having developers dedicate land for parks?

Nollan and Dolan tests apply not just to required dedications of real property interests, but also to exactions of money payments where those are tied to real property ownership [Koontz v. St. John’s River Water Management District, p. 318]

• Does it make sense to apply the Nollan and Dolan rules to impact fees?