Supreme Court collection

Nollan v. California Coastal Commission (No. 86-133) 177 Cal.App.3d 719, 223 Cal.Rptr. 28, reversed.

Syllabus	Opinion [Scalia]	Dissent [Brennan]	Dissent [Blackmun]	Dissent [Stevens]
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Syllabus

SUPREME COURT OF THE UNITED STATES

483 U.S. 825

Nollan v. California Coastal Commission

APPEAL FROM THE COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT

No. 86-133 Argued: March 30, 1987 --- Decided: June 26, 1987

The California Coastal Commission granted a permit to appellants to replace a small bungalow on their beachfront lot with a larger house upon the condition that they allow the public an easement to pass across their beach, which was located between two public beaches. The County Superior Court granted appellants a writ of administrative mandamus and directed that the permit condition be struck. However, the State Court of Appeal reversed, ruling that imposition of the condition did not violate the Takings Clause of the Fifth Amendment, as incorporated against the States by the Fourteenth Amendment.

Held:

1. Although the outright taking of an uncompensated, permanent, public access easement would violate the Takings Clause, conditioning appellants' rebuilding permit on their granting such an easement would be lawful land use regulation

if it substantially furthered governmental purposes that would justify denial of the permit. The government's power to forbid particular land uses in order to advance some legitimate police power purpose includes the power to condition such use upon some concession by the owner, even a concession of property rights, so long as the condition furthers the same governmental purpose advanced as justification for prohibiting the use. Pp. 831-837.

2. Here, the Commission's imposition of the access easement condition cannot be treated as an exercise of land use regulation power, since the condition does not serve public purposes related to the permit requirement. Of those put forth to justify it -- protecting the public's ability to see the beach, assisting the public in overcoming a perceived "psychological" barrier to using the beach, and preventing beach congestion -- none is plausible. Moreover, the Commission's justification for the access requirement unrelated to land use regulation -- that it is part of a comprehensive program to provide beach access arising from prior coastal permit decisions -- is simply an expression of the belief that the public interest will be served by a continuous strip of publicly accessible beach. Although the State is free to advance its "comprehensive program" by exercising its eminent domain power and paying for access easements, it [p826] cannot compel coastal residents alone to contribute to the realization of that goal. Pp. 838-842.

SCALIA, J., delivered the opinion of the Court, in which REHNQUIST, C.J., and WHITE, POWELL, and O'CONNOR, JJ., joined. BRENNAN, J., filed a dissenting opinion, in which MARSHALL, J., joined, *post* p. 842. BLACKMUN, J., filed a dissenting opinion, *post* p. 865. STEVENS, J., filed a dissenting opinion, in which BLACKMUN, J., joined, *post* p. 866. [p827]

Supreme Court collection

Dolan v. City of Tigard (93-518), 512 U.S. 687 (1994).

Opinion [Rehnquist]	Syllabus	Dissent [Stevens]	Dissent [Souter]
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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Lumber Co., 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

DOLAN *v.* CITY OF TIGARD

CERTIORARI TO THE SUPREME COURT OF OREGON

No. 93-518. Argued March 23, 1994 -- Decided June 24, 1994

The City Planning Commission conditioned approval of petitioner Dolan's application to expand her store and pave her parking lot upon her compliance with dedication of land (1) for a public greenway along Fanno Creek to minimize flooding that would be exacerbated by the increases in impervious surfaces associated with her development and (2) for a pedestrian/bicycle pathway intended to relieve traffic congestion in the City's Central Business District. She appealed the Commission's denial of her request for variances from these standards to the Land Use Board of Appeals (LUBA), alleging that the land dedication requirements were not related to the proposed development and therefore constituted an uncompensated taking of her property under the Fifth Amendment. LUBA found a reasonable relationship between (1) the development and the requirement to dedicate land for a greenway, since the larger building and paved lot would increase the impervious surfaces and thus the runoff into the creek, and (2) alleviating the impact of increased traffic from the development and facilitating the provision of a pathway as an alternative means of transportation. Both the State Court of Appeals and the

State Supreme Court affirmed.

Held: The city's dedication requirements constitute an uncompensated taking of property. Pp. 8-20.

(a) Under the well settled doctrine of "unconstitutional conditions," the government may not require a person to give up a constitutional right in exchange for a discretionary benefit conferred by the government where the property sought has little or no relationship to the benefit. In evaluating Dolan's claim, it must be determined whether an "essential nexus" exists between a legitimate state interest and the permit condition. *Nollan* v.*California Coastal Comm'n,* 483 U.S. 825, 837. If one does, then it must be decided whether the degree of the exactions demanded by the permit conditions bears the required relationship to the projected impact of the proposed development. *Id.*, at 834. Pp. 8-10.

(b) Preventing flooding along Fanno Creek and reducing traffic congestion in the District are legitimate public purposes; and a nexus exists between the first purpose and limiting development within the creek's floodplain and between the second purpose and providing for alternative means of transportation. Pp. 11-12.

(c) In deciding the second question--whether the city's findings are constitutionally sufficient to justify the conditions imposed on Dolan's permit--the necessary connection required by the Fifth Amendment is "rough proportionality." No precise mathematical calculation is required, but the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the proposed development's impact. This is essentially the "reasonable relationship" test adopted by the majority of the state courts. Pp. 12-16.

(d) The findings upon which the city relies do not show the required reasonable relationship between the floodplain easement and Dolan's proposed building. The Community Development Code already required that Dolan leave 15% of her property as open space, and the undeveloped floodplain would have nearly satisfied that requirement. However, the city has never said why a public, as opposed to a private, greenway is required in the interest of flood control. The difference to Dolan is the loss of her ability to exclude others from her property, yet the city has not attempted to make any individualized determination to support this part of its request. The city has also not met its burden of demonstrating that the additional number of vehicle and bicycle trips generated by Dolan's development reasonably relates to the city's requirement for a dedication of the pathway easement. The city must quantify its finding beyond a conclusory statement that the dedication could offset some of the traffic demand generated by the development. Pp. 16-19.

317 Ore. 110, 854 P. 2d 437, reversed and remanded.

Rehnquist, C. J., delivered the opinion of the Court, in which O'Connor, Scalia, Kennedy, and Thomas, JJ., joined. Stevens, J., filed a dissenting opinion, in which Blackmun and Ginsburg, JJ., joined. Souter, J., filed a dissenting opinion.