



To: Planning Director
From: Melissa Ashburn, MTAS Legal Consultant
Re: Subdivision regulations requiring land for road development and 2022 Public Chapter 1128
Date: July 2022

Request from municipality:

You have asked if new legislation limiting authority to require dedication for plat approval prevents subdivision regulations requiring land for road development. This is the new statutory language you ask about:

- (1) In exercising the powers granted to it by § 13–3–402, a regional planning commission shall not require an owner of private property to dedicate real property to the public, or pay money to a public entity in an amount that is determined on an individual and discretionary basis, **unless there is an essential nexus between the dedication or payment and a legitimate local governmental interest and the dedication or payment is roughly proportional both in nature and extent to the impact of the proposed use or development of the property.** An owner of private property required to make a dedication or pay money in violation of this subdivision () (1) may seek relief through a common law writ of certiorari in chancery court.
- (2) Regulations adopted by regional planning commissions pursuant to this section must include the provisions in subdivision () (1).
- (3) This subsection () does not apply to an assessment, fee, or charge that is imposed on a broad class of property owners by a local governmental entity.

TN LEGIS 1128 (2022), 2022 Tennessee Laws Pub. Ch. 1128 (S.B. 2849) (emphasis added)

The regional planning commission subdivision regulations attached to your email require that residential streets be 50 feet wide, and dedication of property for streets is required for approval.

The new statutory language comes from this US Supreme Court opinion:

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 ****2312 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, 107 S.Ct. 3141, 3148, 97 L.Ed.2d 677. 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.

Dolan v. City of Tigard, 512 U.S. 374, 114 S. Ct. 2309, 2311–12, 129 L. Ed. 2d 304 (1994) (emphasis added)

Accordingly, the question is whether there exists “an essential nexus between the dedication...and a legitimate local government interest and the dedication....is roughly proportional.” The 50 foot requirement for streets is based on this law applying to our state roads:

Wherever the state proposes to improve a section of an existing two lane undivided public road, the width of the right-of-way of which cannot be ascertained totally or partially by instruments of conveyance, court orders or otherwise, there shall be a presumption that the unascertained width is twenty-five feet (25') on either side of the centerline of the traveled portion of the road. This presumption is rebuttable only and if necessary in the judgment of the commissioner of transportation to effect the intent of this part, the state shall acquire the adjoining property by negotiation or by eminent domain. Fences in place for the prescriptive period shall be considered ownership.

Tenn. Code Ann. § 54-22-101 (West)

Response from MTAS:

In my opinion, that helps the city to establish a local government interest generally, when supported by years of consistently requiring such road widths and dedication. But such a general requirement alone is insufficient. In Dolan, the general requirement for dedication due to flooding concerns was insufficient to support the exaction.

The new language added to the law means the planning commission should consider each application and engage in an “individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development.” Dolan v. City of Tigard, 512 U.S. 374, 391, 114 S. Ct. 2309, 2320, 129 L. Ed. 2d 304 (1994). The minutes of the planning commission meeting should show the discussion and deliberation on the matter to comply with the new statutory language.

In my opinion the new statutory language will not prevent planning commissions from requiring dedication of property for roads to serve subdivisions, but the commission will have to determine that such dedication is warranted for each development, finding that the “essential nexus” exists between the dedication and the projected impact of the development to support the decision. I encourage you to discuss this with the City Attorney and confirm they agree.