

A company wanted to expand the size of the building it owned that housed the company's supermarket by adding space for a coffeehouse. The company's building was located in the center of five acres of land owned by the company and wholly devoted to parking for its supermarket customers.

City officials refused to grant a required building permit for the coffeehouse addition unless the company established in its store a childcare center that would take up space at least equal to the size of the proposed coffeehouse addition, which was to be 20% of the existing building. The city officials' action was authorized by provisions of the applicable zoning ordinance.

In a suit filed in state court against the appropriate city officials, the company challenged this childcare-center requirement solely on constitutional grounds. The lower court upheld the requirement even though the city officials presented no evidence and made no findings to justify it other than a general assertion that there was a shortage of childcare facilities in the city. The company appealed.

How should the appellate court rule on the constitutionality of the requirement imposed by the city on the issuance of this building permit?

- A. The requirement is constitutional, because the burden was on the company to demonstrate that there was no rational relationship between this requirement and a legitimate governmental interest, and the company could not do so because the requirement is reasonably related to improving the lives of families and children residing in the city.
- B. The requirement is constitutional, because the burden was on the company to demonstrate that this requirement was not necessary to vindicate a compelling governmental interest, and the company could not do so on these facts.
- C. The requirement is unconstitutional, because the burden was on the city to demonstrate a rough proportionality between this requirement and the impact of the company's proposed action on the community, and the city failed to do so.
- D. The requirement is unconstitutional, because the burden was on the city to demonstrate that this requirement was necessary to vindicate a compelling governmental interest, and the city failed to meet its burden under that standard.

Explanation:

Fifth Amendment takings

Type	Attributes
Physical	<ul style="list-style-type: none">• Possession or permanent physical invasion of property
Regulatory	<ul style="list-style-type: none">• Deprivation of all economically beneficial uses• Restricts use under totality of circumstances:<ul style="list-style-type: none">– character of government action– economic impact– reasonable investment-back expectations
Exaction	<ul style="list-style-type: none">• Condition to obtain building/development permit
Destruction	<ul style="list-style-type: none">• Destruction of property or property interest (eg, easements, liens)

An **exaction** occurs when a local government conditions the issuance of a building or development permit on a landowner's promise to dedicate part of the property for public use. And an exaction amounts to a **Fifth Amendment taking** requiring just compensation **unless the government establishes:**

- an **essential nexus** – the imposed condition **substantially advances** a **legitimate government interest** *and*
- **rough proportionality** – individualized and quantifiable findings show that the **proposed development's impact** on the community is roughly proportional to the **imposed condition's impact** on the landowner.

Here, the city conditioned the grant of a building permit on the company's promise to establish a childcare center in its store without just compensation. This condition substantially advances its legitimate interest in alleviating the shortage of childcare facilities. But the city failed to present any evidence to establish a rough proportionality between that condition and the impact of the company's proposed action on the community. Therefore, the appellate court should rule that this exaction amounts to an unconstitutional taking.

(Choice A) The *city* had the burden to demonstrate that the imposed condition *substantially advances* the city's legitimate interest in expanding childcare facilities.

(Choices B & D) Neither the company nor the city had the burden to demonstrate that the childcare-center requirement was necessary to vindicate a compelling government interest.

Educational objective:

An exaction is a Fifth Amendment taking unless the government shows: (1) an essential nexus between the imposed condition and a legitimate government interest and (2) a rough proportionality between the condition's impact on the landowner and the proposed development's impact on the community.

References

- Nollan v. Cal. Coastal Comm'n., 483 U.S. 825, 837 (1987) (explaining the essential nexus requirement).
- Dolan v. City of Tigard, 512 U.S. 374, 391 (1994) (requiring the government to provide individualized findings to show a rough proportionality between the exaction and the projected impact of the development).

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