

A multi-building apartment complex in a city residential neighborhood has a swimming pool, the use of which is restricted to tenants of the complex. The owner of the complex has applied to the city for a permit to construct an additional apartment building on the site. The city has told the owner that it will approve the permit only if the owner makes the swimming pool available to all residents of the neighborhood. The purpose of the condition is to compensate neighborhood residents for the increased street traffic that will result from the tenants of the new building.

Is the permit condition constitutional?

- A. No, because requiring the owner to open the pool to all neighborhood residents violates the freedom of association of the current tenants of the complex.
- B. No, because there is no logical nexus between the permit condition and the city's concern with increased street traffic.
- C. Yes, because it does not undermine the owner's reasonable investment-backed expectations.
- D. Yes, because it substantially advances the city's legitimate interest in reducing street traffic in the residential neighborhood.

Incorrect

Correct answer B

Collecting Statistics

51 secsTime Spent

2023Version

Explanation:

Fifth Amendment takings

Type	Attributes
Physical	Possession or permanent physical invasion of property
Regulatory	Deprivation of all economically beneficial uses Restricts use under totality of circumstances: character of government action economic impact reasonable investment-back expectations
Exaction	Condition to obtain building/development permit
Destruction	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 (ie, logical) nexus** – the imposed condition **substantially advances** a **legitimate government interest** *and*

rough proportionality – individualized and quantifiable findings show that the **proposed building's or 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 construction permit on the owner's promise to open the complex's pool to all neighborhood residents without just compensation. The city has a legitimate interest in reducing the increased traffic in the neighborhood that will result from the new apartment building's tenants. But this condition would not substantially advance that interest by reducing traffic **(Choice D)**. And since there is no logical nexus between the permit condition and the city's concern with increased street traffic, the permit condition is unconstitutional.

(Choice A) The First Amendment **freedom of association** generally protects individuals' right to form or participate in any group or organization that advances free expression. But the current tenants of the complex are not engaged in expression by merely using their pool, so requiring the owner to open the pool to all neighborhood residents would not violate the current tenants' freedom of association.

(Choice C) Whether the owner's reasonable investment-backed expectations have been undermined is a factor the court considers when determining if a *regulatory taking* has occurred. But here, the court is considering whether an *exaction* has occurred, so this factor is irrelevant.

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 building's or 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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