POLITICS

Builders may challenge California's development 'impact fees,' Supreme Court rules

The Supreme Court (Associated Press)

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WASHINGTON — The Supreme Court ruled Friday that developers and home builders in California may challenge the fees commonly imposed by cities and counties to pay for new roads, schools, sewers and other public improvements.

The justices said these “impact fees” may be unconstitutional if builders and developers are forced to pay an unfair share of the cost of public projects.

Developers contended that limiting California’s high fees for new construction would lead to the construction of more affordable new housing.

California state courts had blocked such claims when they arose from “a development impact fee imposed pursuant to a legislatively authorized fee program” that applies to new development in a city or county.

But the 9-0 Supreme Court decision opened the door for such challenges. The justices revived a constitutional claim brought by an El Dorado County man who put a manufactured home on a small lot and was told he would have to pay a “traffic mitigation fee” of $23,420.

The decision could have wide impact in California, since local governments have increasingly relied on impact fees rather than property taxes to pay for new projects.

But the justices did not set a rule for deciding when these fees become unfair and unconstitutional.

Justices Sonia Sotomayor and Ketanji Brown Jackson said they joined the court’s opinion in Sheetz vs. El Dorado County because it was limited to allowing such challenges.

In a separate opinion, Justice Brett M. Kavanaugh said he saw merit to the “common government practice of imposing permit conditions, such as impact fees, on new development through reasonable formulas or schedules that assess the impact of classes of development rather than the impact of specific parcels of property.”

State and county attorneys made just that argument. They said it was fairer to impose a development fee on all the lots in an area.

But the justices nonetheless ruled that homeowners or developers may sue to challenge these fees as an unconstitutional taking of their private property.

The Pacific Legal Foundation in Sacramento hailed the ruling as a significant victory for property rights.

“Holding building permits hostage in exchange for excessive development fees is obviously extortion,” said attorney Paul Beard, who represented the El Dorado County homeowner. “We are thrilled that the court agreed and put a stop to a blatant attempt to skirt the 5th Amendment’s prohibition against taking private property without just compensation.”

The case will now go back to the California courts. Beard said the “fee must be set aside as an unconstitutional taking, because the county has failed to show — and cannot show — that the fee is sufficiently related and proportionate to the traffic impacts of Mr. Sheetz’s modest home.”

In decades past, the Supreme Court often turned its attention to California property disputes and limited the power of government officials to demand concessions from a property owner in exchange for a building permit.

In 1987, the justices ruled for the owner of a beach bungalow in Ventura who was told he could not obtain a permit to expand his home unless he agreed to allow the public access to the beachfront. The conservative majority described this demand as akin to “extortion” and said it violated the 5th Amendment’s clause that forbids the taking of “private property … for public use without just compensation.”

In a follow-up decision involving a store owner who was forced to allow a bike path on her property, the court said the government may not impose such special conditions on property owners unless it can show the new development would cause a direct harm to the community.

But in all the time since then, it has been unclear whether this property right also applies to development fees and in situations where the fees are set by legislation, rather than being imposed on a single owner seeking a permit.

Writing for the court, Justice Amy Coney Barrett said, “there is no basis for affording property rights less protection in the hands of legislators than administrators. The Takings Clause applies equally to both — which means that it prohibits legislatures and agencies alike from imposing unconstitutional conditions on land-use permits.”

The case arose when property owner George Sheetz sought a permit to put a manufactured home on a lot he owned in Placerville near Sacramento. El Dorado County said he must pay a “traffic impact mitigation” fee to obtain the permit. Some of the funds would pay for upgrades to Highway 50 which runs through the area but most of the money would pay for new or expanded roads in the county.

Sheetz paid the fee and obtained his permit, and then sued to challenge the fee as unconstitutional. He argued that the taxpayers of the county, not the new owner of a small home, should be required to pay for the road building in the county.

He lost in the California courts, but the Supreme Court agreed to hear his appeal.

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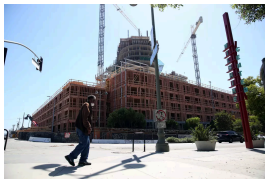

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