The Supreme Court of Ohio
FILED: JUN 14 2000

Home Builders Association. of Dayton Case and the Miami Valley et al., Appellees, v.

City of Beavercreek, Appellant. COURT OF APPEAL

JUDGMENT ENTRY

No. 98-2572

This cause, here on appeal from the Court of Appeals for Greene County, was considered in, the manner prescribed by law. On consideration thereof, the judgment of the court of appeals is reversed and the judgment of the trial court is reinstated, consistent with the opinion rendered herein.

It is further ordered that the appellant recover from the appellees its costs herein expended; and that a mandate be sent to the Court of Common Pleas for Greene County to carry this judgment into execution; and that a copy of this entry be certified to the Clerk of the Court of Appeals for Greene County for entry.

COSTS:
Docket Fee, $40.00, paid by Calfee, Halter Griswold L.L.P. Greene County Court of Appeals• No• 97CA113 and 97CA115) THOMAS J. MOYER Chief Justice

00 Ohio St.3d HOME BUILDERS ASSN. w. BEAVERCREEK Statement of the Case

HOME BUILDERS ASSOCIATION OF DAYTON AND THE MIAMI VALLEY

ET APPELLEES, v. CITY OF BEAVERCREEK APPELLANT.
[Cite as Home Builders Assn, of Dayton & the Miami Valley v Beavercreek (2000), • Ohio St.3d .]

Municipal corporations••Streets highway-- Impact fee adopted by ordinance that partially funds new roadway projects is constitutional when.

An exaction fee adopted by ordinance that partially funds new road way projects is constitutional if it bears a reasonable relationship between the city's interest in constructing new roadways and the increase in traffic generated by new developments, and if a reasonable relationship exists, it must then be demonstrated that there is a reasonable relationship between the impact fee imposed on a developer and the benefits accruing to the developer from the construction of new roadways. (No• 98.257•Submitted November 2, 1999•Decided June 14 , 2000)

Appeal from the Court of Appeals for Greene County,

Nos. 97•CA••0113 and 97•CA•0115.

In November 1993, appellant, city of Beavercreek enacted Ordinance 93•62, which imposes an impact fee on developers of real estate. The ordinance was amended in December 1995 to ;increase the impact fee district area. See Beavercreek Ordinance 95•66. The trial court found that the ordinance was adopted to enable Beavercreek to recover the costs of constructing new roadways made necessary by new developments within an impact fee district. This function bad, historically, been met by requiring developers to make improve-ments to the public roadways immediately adjacent to them property• The payment of the impact fee is intended to eliminate the requirement that the fee payer make actual off site road improvements• The ordinance is intended to assure that new development beats a proportionate share of the cost of capital expenditures necessary to provide roadways and related traffic facilities in the impact•fee district.

Beavercreek• estimated the total •cost improvements necessitate by a one hundred percent development of the impact fee district Based on the Beaver- creek Land Use Plan, an estimate was prepared of residential, office', and commercial development that is projected to occur within the impact fee district An estimate was also prepared projecting the number of automobile trips each type of development would generate in the impact fee district Beavercreek then subtracted a percentage for pass•through traffic not generated by new development, and in the 1995 amendment, for pass•by traffic for commercial development. Beavercreek further subtracted another $6.6 million, which it determined would be raised 'from other funding sources. The remainder Was the amount to be financed through the collection of impact fees from the developers of the impact fee district. After the

impact fee is collected, it is deposited into a separate trust fund established by the city. Section 10(A), Beavercreek Ordinance 93•G2. The fee payer may appeal the amount of the fee, or any determination related to the impact fee to the Impact Fee Appeal Board. Section 17(B), Beavercreek Ordinance 93•62.

The ordinance defines a list of projects that are exempt from payment of the impact fee. The list includes construction of accessory buildings that will not produce additional traffic, replacement of a destroyed building with one of similar size and use, expansion of a single•family dwelling unit,. expansion of any building where the area of expansion. is less than 1,500 square feet, and any governmental property. Section 18(A), Beavercreek Ordnance 93•62.

The ordinance also creates a system of credits against the payment of impact Fee. The credits are designated as mandatory or permissive credits. Under the ordinance, all required right•of•way dedications and/or roadway – improvements made by the developer, except for site- related improvements, shall be credited against the impact fee. The developer may also obtain credits by offering non site•related Right•of•Way dedications and/or to construct no site related roadway improvements if the developer follows the correct procedure; as indicated in the Ordinance. Section 14(B), Beavercreek Ordinance –93-62.

The Beavercreek ordinance further provides that the funds generated from the impact fees are to be used for capital improvements to and expansion of roadways, administrative costs, and expenses related to the impact fee district, and to pay obligations on debt instruments that were issued for the advanced provision of capital improvements, if the impact fee could have been used for the particular project that was financed by the debt instrument. The impact fees may be used outside the impact fee district if the capital improvement is deemed beneficial to the impact fee district and is contiguous to the impact fee district The finds' are not to be used, however, for periodic or routine maintenance. Sections 11(A) though (D), Beavercreek Ordinances 93-62.

After the enactment of the ordinance, appellees) Home Builders Association of Dayton and the Miami Valley ("HBA"), The Beerman Coon, Midwest Realty Management Company, and Barbara B. Weprin T Trustee (the latter three will be collectively referred to as "Beerman"), filed complaints against the city of Beavercreek/ alleging that the impact fee ordinance is invalid under several

constitutional provisions. Beavercreek and HBA filed ns or summary judgment• The trial court granted partial summary judgment to Beavercreek.

The case proceeded to trial on two issues: (1) whether the ordinance violates substantive due process and equal protection rights, and"(2)'whether the ordinance constitutes an illegal taking without just compensation under the United States and Ohio Constitutions• After a bench trial, the trial judge ruled that the ordinance is constitutional on all grounds• On appeal,. the Second District Court of Appeals reversed the trial court's summary judgment decision, concluding that the ordinance is constitutionally invalid because it • does not contain a matching funds provision• although the court of appeals indicated' that the lack of a matching funds provision disposed of the issue, the court defined the test That should be used to evaluate a regulatory takings challenge •to the ordinance. The case is now before this court pursuant to the allowance of a discretionary appeal O'Diam, McNamee &. Hill L.P.A. Michael P_ Mcnamee and Cynthia P.McNamee, for appellee Home Builders Association of Dayton. and the Miami Valley Taft Stettinius & Hollister, L.L.P. Thomas A Schuck and Robert B. Craig, for appellee Barbara B_ Weprin, Trustee, The Beerman Corporation and Midwest Realty Management Company.

Calfee Halter & Grinswold, L•LP, Mark. I. Wallach and Julie A. Harris; David L. Eubank for appellant .

Christofer Senior, pro hac vice, urging affiramance for amici curiae, National Association of Home Builders and International Council of Shipping Centers.

Patricia S. Eshman urging affirmance for amicus curiae, Ohio Homebuilders Association.

Kelley, McCann & Livingston. L.L. P. Thomas J. Lee and Renee B. Weis urging reversal for amicus curiae Cuyahoga County. Law Directors' Association.

Barry M_ Byron and Stephen L. Byron urging reversal for amicius curia Ohio Municipal Leagues.

Moyer , C.J. The issue presented by. .this apes,. tether Beavercreek Ordinance 93•62, as amended, which establishes a system of impact fees payable by developers of real estate to aid in the cost of new roadway projects, is

constitutional. For the following reasons, we hold that the ordinance is constitutional.

It is well established that "municipalities shall have authority to exercise all powers of local self government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, ,as are not in conflict with general laws•" Section 3, Article XVIII, Ohio Constitution; see, also, Cleveland v Shaker Hts. (1987), 30 Ohio St3d 49, 51., 30 OBR 156,158, 507 N.E2d 323, 325. This court has consistently held that Section $ of Article XVIII oar the Home Rule Amendment, gives municipalities the authority to impose exactions; provid-ed that, the municipality is not statutory forbidden from doing so, and the exactions meet constitutional standards. See, eg., Cincinnati v. Cincinnati Bell Tel. Co. (1998), 81 Ohio St.3d 699, 693 NE2d 212, syllabus. The focus here is whether the impact fee ordinance enacted try the city of Beavercreek violates either the United States or Ohio Constitution.

In its decision, the court of appeals engaged in a comprehensive analysis relating to the question of whether Beavercreek. Ordinance 93•62 operates as an impact fee or a tax. While the ordinance dearly adopted an impact fee, its classification as an impact fee or a tax is not. determinative for purposes of our constitutional inquiry Prior uses of this court that address the constitutionality of impact fee ordinances did not find the label, placed an exaction in response to new development to be dispositive See Towne Properties Inc v. Fairfield (1977), 50 Ohio St.2d 356, 4 0.0.3d 488, 864 N•E2d 289; Slate ex rel. Waterbury Dev Co. v Witten (1978), 54 Ohio St2d 432, 8 0.0.34 410, 37'l N.E.2d 505. Rather, the important factor in determining the constitutionality of an ordinance is whether the ordinance• is unduly burdensome in application and not its label as a tax or an impact fee.

In determining whether Beavercreek .Ordinance 93•62 is constitutional it is necessary first address the discussion by "the court of appeals regarding the lack of a matching fails. provision in the Beavercreek ordinance.• A snatching funds provision would require a city to contribute public funds to ' roadway projects in an amount that beats some proportion to the fees collected from developers. The court of appeals disposed of all issues before it by holding that Ordinance 93•82 is unconstitutional because it does not require Beavercreek to contribute public funds to the projects for which the impact fee is exacted. In support of this proposition, the court of appeals cites our decisions in Towne P State ex rel Waterbury Dev Co., and the decision in Building Industry Assn. of Cleveland & Suburban Ctys v

Westlake (X995), 103 Ohio App.3d 546, 660 N•E24 501,_ as authority. Upon an analysis of Towne Properties and Waterbury, we conclude that there is no requirement that an ordinance imposing an impact fee on developers of real estate must contain a matching funds provision to be deemed constitutional.

In Towne Properties we were asked to determine the constitutionality of a city ordinance that required anyone obtaining a building permit, registering a mobile home pad, or installing manufactured residential units not requiring a building fee. The ordinance was enacted to expand the city's permit to pay a fifty dollar existing facilities in response to its growing population. . The revenue collected through the fee, plus an additional amount of public funds, was, placed in a special recreational fund created by the ordinance: .In upholding the 'ordinance, we observed that the ordinance was written so that developers paid the pr6portion-ate share of the cost of the city's expansion projects, and that the city contributes an equal amount to the fund., Tozme Properties, 50 Ohio St•2d at 360, 4 0.0.3d at 491, 364 N.E.2d at 292 We did not hold that the matching funds provision was the sole means by which the constitutionality of such an ordinance was to be determined.

Likewise, in Waterbury we invalidated an ordinance that imposed a water tap charge and a park fee on new developments. The ordinance at issue did not contain a matching funds provision• We, however, based our decisions not on the ..'sack of • a matching funds provision; but on the fad that the fee imposed was higher than the actual costs of connecting to a water line and the cost of park development Waterbury 64 Ohio St.2,d at 414•415, 8 0.0.3d at 41.2, 877 N.E.2d at 506•507. Contrary to the. opinion of the court of appeals, the .lack of a matching ;funds provision in the Beavercreek ordinance is not constitutionally fatal. That is not to say, however, that the presence or absence of a matching funds provision au=y not be considered when determining the constitutionality. of an impact fee• The appropriate test is one that • mines whether the fee is in proportion to. The developer's share of the city's costs to construct arid maintain roadways that will be used by the general public. See, e-g, Amherst Builders Assn. v. Amherst (1980), 61 Ohio St2d 34,6, 347, 15 0.03d 432, 433, 402 N.E.2d 1181, 1183_ A matching funds provision is one factor that a court may take into account in determining this balance.

When examining the Beavercreek ordinance, both the trial court and the court of appeals addressed the plaintiffs' assertion that the ordinance produced an illegal

taking of property without just compensation violates of the United States and Ohio Constitutions. Each court, however, applied a different test to determine wheth-er the ordinance is constitutional.

The trial court used the dual rational nexus test, which is based on two United States Supreme Court decisions Nollan v California Costal Comm (7:9873, 483 US. 825, 107 S.Ct. 3141, 97 L.Ed.2d 677, and Dolan v. City of Tigard (1994), 612 US• 374,114 S.Ct, 2309,129 L.Ed2d• 304, and a Florida case, Hollywood Inc v Broward Cty_ (Fla App•1983). 431 So2d 606. The dual rational nexus test requires a court to determine (1) whether there is a reasonable connection between the need for additional capital facilities and the growth in population generated by the subdivision; and (2) if a reasonable connection masts, whether there is a reasonable connection between the expenditure of the funds collected through the imposition of an impact fee . and the benefits accruing to the subdivision Hollywood Inc, 431So.2d at 611 612.

The court of appeals analyzed the Beavercreek ordinance using a test based upon our decisions in Gerija Inc. v., Fairfield (1994), 70 . Ohio . St3d 223, 638 N.E2d 533, and Goldberg Cos.,Inc. .v. Richmond Hts. City Council (1998), 81 Ohio StSd 207, 690 N_E2d 510. The test used by the court of appeals states that an impact fee ordinance will be unconstitutional if it is clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare, or if no reasonable connection exists between the fee and the needs created by development The issue of which test to apply in evaluating a Takings Clause challenge to an , impact fee ordinance is an issue of first impression, in this: court It follows that we. must define the rule to be applied in determining whether a developer is paging its proportionate share: of a city's costs for malting improvements necessitated by the development of real estate. The tests applied by the trial and appellate courts derived from ordinances that did not impose impact fees The underlying bases of the "dual rational nexus"test, the Nollan and Dolan cases, for instance, dealt with land use exactions that forced property owners to dedicate a certain portion of their land to public use See Dolan 512 U.S• at 377•W8, 114. S.Ct at 2313, 129 L.Ed2d at 312; . Nollan 483 US. at.828,107 S.Ct. at 3143•3144; 97,L.Ed2d at 683, The Gerijo test was a response to ordinances that reclassified the zoning of land. See Gerijo, 70 Ohio ST.3d at 224, 688 N.E.2d at 535.

Although impact fees do not threaten property rights to the same degree land use exactions or zoning jaws,. there are similarities: • dust. as •forced,, ease-ments or zoning reclassifications can inhibit the desired use of property, an unreasonable impact fee may affect the manner in which a parcel of land is developed. Further, impart fees are closer in form to land use exactions than to zoning laws. Both forced easements and impact fees, while imposing a condition on the use of land, do not necessarily deny a landowner his or her intended use of the land. Zoning laws, to the contrary, may alter the classification of the land and, therefore, could deny the owner's intended economic use of the property-.

As discussed in the trial court's comprehensive opinion, courts have formulated several tests that can be applied in evaluating a Takings Clause challenge • to an impact fee ordinance• These tests vary in the level of scrutiny with which the ordinance will be viewed. It is our opinion that the appropriate test is one that balances the interests of the city and developers of real estate without unduly restricting local government In developing the appropriate test, we have reviewed the most compelling methodologies.

In some states, an impact fee ordinance will be held constitutional if there is a reasonable relationship between the exaction and the proposed development See, e•g_, Associated Home Builders of Greater East Bay, Inc. v. City of Walnut Creek (1971), 4 Cal•3d 633, 94 CaLRptr. 630,' 484 • P2d •606_ This reasonable relationship test allows local governments to act with almost unfettered discre-tion. While. impact fees are a common means of financing public construction proje. associated with clew development, local governments should be subject to a higher degree of scrutiny than that afforded by the reasonable relationship test.

Other states hold that an impact fee ordinance is constitutional if the exaction is specifically and uniquely attributable to the needs of the development. See, eg., Pioneer Trust & Sav. Bank v. Village of Mt. Prospect (1961), 22 Ill2d 375, 176 N. E.2d 799. Under this tests the local government must demonstrate that its exaction is directly attributable to the specifically created need. Id at 379•380,176 N.E.2d at 801•802 Otherwise it 'is a confiscation of private property exercised under the shield of the police power. . Id This test affords property owners the greatest level of protection, but it leaves local governments with little discretion to enact legislation.

A third test, the dual rational nexus test, is based on the Nollan and Dolan cases, and Hollywood Inc This test applies a middle level • of scrutiny. That balances the prospective needs of the community against the property rights of the developer. Municipalities must be given the ability ' to reasonably address problems that are not subject to precise measurement without being subject to unduly strict review. Banberry Dev. Core. v. South Jordan City (Utah X981), 631P.2d 899. It is our opinion that the dual rational nexus test balances both the interests of local governments and real estate developers without unnecessary restrictions. The trial court applied this test, and ' it is also. the test we adopt for evaluating the constitutionality of an impact fee ordinance when a Takings Clause challenge is raised the dual rational nexus test places the burden on•the city of Beavercreek• In determining the constitutionality of Beavercreek Ordinance 93•62, therefore, the city must first demonstrate that there is a reasonable relationship between the city's interest in constructing new roadways and the increase in traffic generated by new developments. Cf. Dolan,512 U.S•at 386,114 S, Ct. at 2317, 129 L.Ed.2d at 317. If a reasonable relationship exists, it must then be demonstrated that there is a reasonable relationship between the impact fee imposed by Beavercreek and the benefits accruing to the developer from the construction of new roadways. Cf. Dolan 57.2 U.S. at 391, 114 S.Ct. at 2313•M20, 129 L.Ed2d at320. We. believe this test will adequately balance the interests of local govern-ments with those of property owners. The first prong of the test decide whether the ordinance is an appropriate method to address the city's stated interests, and the second prong assures that the city and developers are paying their proportionate share of the cost of new construction. See Amherst 61 Ohio St2d at 346•349' 15. 0.03d at 432-435, 402 N.E2d at 1182.•1184.

In analyzing the Beavercreek ordinance, we conclude that the test is satisfied- As an initial matter, the• city of Beavercreek has a legitimate •governmental interest in constructing a new transportation infrastructure, in the impact fee district to meet increased traffic needs, an interest that neither party challenged• In order to satisfy the first prong of the test, Beavercreek must show that there as a need for roadway improvements by demonstrating a reasonable relationship between the burden created by the development and the need for the new roadway improvements. To prove heat a reasonable relationship exists, Beaver-creek must demonstrate that the methodology used to determine the need for roadway improvement funded by .the impact fee is based on generally accepted •traffic engineering practices. See, e.g.., Northern Illinois Home Builders Assoc. v DuPage

cty (1. 251 D•APp•3d 4K 190 Ill. Dec &59, 621 N.E.2d 7.012.

The trial court received testimony and other evidence from numerous witnesses in support of the plaintiff's and the defendant that described the methodology used by the city of Beavercreek in enacting the impact fee ordinance. The witnesses generally agreed that the methodology used to develop a proportionate and reasonable impact fee should consist of •several steps• • First, the city should develop a comprehensive plan for creating impact fee districts and addressing the needs within those districts.: 'As: part of this comprehensive plan; •an impact fee ordinance should contain a provision that provides for a review cad update of its terms on a regular bags to accommodate changes in; inter alia, traffic engineer-mg standards, changes in the need for roadway developments, and receipt of additional revenues by the city.

Second, the city should establish an inventory of existing roadway facilities to determine whether these facilities meet the standards set forth by the ordinance for addressing traffic needs. Third, the municipality must determine the cost of new facilities needed to accommodate new development. Finally, the municipality should reduce the cost to be paid by impact fees by the amount of credits the municipality will receive, and by roadway use not associated with clew development.

The trial court, in weighing the evidence determined that the methodology was reasonable, and that a reasonable relationship existed between the city's need to construct new roadways and the traffic generated by new development. The court of appeals, to the contrary, held that when reviewing the evidence. The trial court placed too much weight on some factors, and not enough weight on other factors. In the opinion of the court of appeals, the trial court's factual determina-tion of reasonableness was erroneous, and a better methodology could be envisioned by the appellate court.

The role of a court in reviewing the constitutionality of an impact fee ordinance is not to decide Which methodology. provides, the best .results: Given.• that impact fee ordinances are. not subject to precise mathematical• formulation, choosing the best methodology is a difficult, task that the .legislature, not the•courts, is better able to accomplish. Rather, a court must only determine whether the methodology used is. reasonable based on the evidence presented. When reaching a factual determination, the trial court is in the best position to evaluate the testimony of

witnesses and the evidence presented,• See State v. Hawkins (1993), 66 Ohio St.3d 339, 844, 612 N.E2d 1227, 1231; In re Lieberman (19567, 163 Ohio St. 85, 3S, 66 0.0. 23, 24, 12.5 N_E2d 328, 330. Further, a reviewing court will not disturb, factual Andings of the trial court unless those findings are against the manifest weight of the evidence. State ex.. rel. Shady Acres Nursing Home v. Rhodes (1983), 7 Ohio St.3d 7, 7 OBR 818, 456 N.E.2d 489• Based .on this record, we find that there is competent, credible evidence to support the judgment of the fuel. court, and its factual conclusions should not have been disturbed by the court of appeals. See Seasons Coal Co v_ Cleveland (1984),10 Ohio St.3d 77, 80,10 OBR 408, 411, 461 N.E2d.1273,1276_ Once a reasonable relationship is found to exist between the city's need to construct new roadways and • the traffic generated by new development, the second prong of the test requires Beavercreek to demonstrate a .reasonable relationship between the fee imposed on a developer and the benefits• accruing to the developer• This portion of •the test addresses whether the developer and the city are paying their proportionate shares•of the costs necessary to construct new roadways. When evaluating this prong, a court should consider the actual costs of constructing new roadways, the formula used to determine the fee, the fee paid by a particular, developer, the city's contribution road improvements made directly by developers, the length of time between the payment of the fee and new roadway construction projects, whether the .roadway projects are site specific to the new development, and any other criterion that bears on the reasonableness of the fee.

As previously mentioned, a matching funds provision may be used to measure a city's contribution in determining whether the fee imposed on a developer of real estate is proportional to••the city's cost A matching funds provision, however, is not the only permissible way in which a city can make a contribution to a roadway development project. For instance, the Beavercreek ordinance, establishes a system of mandatory and permissive credits against the payment of impact fees. Under the ordinance, a developer shall receive a credit for all required right•of•way dedications or improvements made directly by the developer• Section 14(B), Beavercreek Ordinance 932.. The developer may also obtain credits by offering non related right•cf•way dedications or improvements. Section 14(C), Beavercreek Ordinance 93•62. In effect, Beavercreek makes a contribution by transferring a portion of the cost, to construct new roadway. projects, which, otherwise would have been paid by, the developer through . a higher impact fee, back to the city through a system of credits•.

With regard to the system of credits, the plaintiff argue that the Beavercreek ordinance is constitutionally flawed because the city has no obligation to apply credits within a specific period of time and, therefore, developers will pay a disproportionate share of the costs of new roadway projects• The lack of a specific time limit for the application of credits due under the ordinance is not facially unconstitutional. Further, as noted by the trial court, the appellees have not presented any evidence that the ordinance $s applied to any particular developer is unconstitutional That is not t•0 say, however, that an as•applied challenge to the ordinance for failure to issue credits within a reasonable time would not be sustained. Much as the presence of a matching funds provision is one factor in determining the reasonableness of an, impact fee ordinance, so the manner in which a municipality applies credits owed to developers The trial court reviewed volumes of evidence relating to the methodology and functioning of the Beavercreek ordinance. The trial court, in reviewing this evidence, found that the fees were reasonable , and that a reasonable relationship, existed between the fee paid. and the benefits accruing to developers: We. Find this conclusion to be supported by .competent, credible evidence. contained in the record, and these factual conclusions should trot have been disturbed by the court of appeals. See Seasons Coal Co., supra •10 Ohio St.d 80; 10 OBR at 411, 4611 N.E.2d at 1.276.

We conclude that Beavercreek Ordinance 93•s2, as•amended, is not constitu-tionally flawed due to its lack of a matching funds provision We further hold that the Beavercreek ordinance does not constitute an illegal taking of the plaintiffs' property without just compensation in violation, of the United States and Ohio Constitutions. Accordingly, the judgment of the court of appeals is reversed, and the judgment of the trial court is reinstated.

Judgment reversed
Douglas F.E. Sweeney LUNDBERG STRATTON, JJ., concur Resnick, Pfeifer JJ, dissent Cook J., dissents.
Pfeifer J., dissenting. The majority states that the ordinance's "classifica-tion as an impact fee or a tax is not determinative for purposes of our constitutional inquiry." I beg to differ. According to Section 2, Article XII of the Ohio Constitution,. . "Land . and improvements thereon. shall be taxed by . uniform rule according to value.". See. State ex rel. Park. Invest Co. v. Bd. of Tax Appeals (1964), 175 Ohio St. 410,25 O.O.2d 48Z 195 N_E2d 9053 State ex rel Park Invest Co• v Bd of Tax Appeals (1972); 32, Ohio St,2d 28, 29, 61 0.02d 238, 238, 289 N_E2d 579, 680_

Most of the existing infrastructure in Beavercreek and other cities and towns was paid for by the city or town. Here, however, Beavercreek is attempting to force developers to pay for improvements or additions to infrastructure as a quid pro quo for developing a site, even when the improvements or additions occur beyond the property lines of the development This strikes the as a tax, and, since it is not applied uniformly, as an unconstitutional tax.

Alternatively; if it is necessary to formulate a test to evaluate a Takings Clause challenge to an impact fee ordinance, I would favor a stricter test than that put forth by the majority I Would hold that "an impact fee ordinance is constitutional if the exaction is specifically and. uniquely attributable to the needs of the development"

Finally, the ordinance at issue does not meet the second part of the inglorious dual rational nexus test, which requires that there be a reasonable relationship between the impact fee imposed and the benefits accruing to the developer. Even though this is an incredibly light standard, it is not clear that developers will receive any benefit After all, Beavercreek its not obligated to contribute any of•its own money and the impact fee money alone is orient to pay, for the entire cost of the roadway improvements How can there be a reasonable relationship between certain impact fees and uncertain benefits I would hold that the dual rational nexus test formulated by the majority is not met.

I would affirm the judgment of the court of appeals. Resnick J, concurs in the foregoing dissenting opinion. Cook J, dissenting• I respectfully dissent. I would affirm the judgment of the court of appeals by adopting the reasoning from Part II of its opinion.