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Developers advised to stand up

When it comes to seizing land from developers and other private citizens, Manatee County is one of the more aggressive counties in the state, says Bill Moore, a well-known Sarasota eminent domain attorney.

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In its effort to save taxpayers' money, the county regularly requires developers to forfeit land as part of the permitting process, Moore said.

The problem is that Manatee County occasionally asks developers to give up more than they need to, Moore thinks.

"If a development creates more demand on a road or a sewer system, it is legitimate for the county to exact land or money from the developer so

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the public is not burdened," said Moore, a partner with Brigham Moore in Sarasota. "But some local governments -- Manatee included -- ask developers to take care of problems they did not cause."

"They can't do that," Moore said. "They cannot take property from a developer to solve a problem the developer did not create."

Armed with two Supreme Court decisions -- one from 1987 and another from 1994 -- Moore maintains that Manatee County defends its takings with laws that are unconstitutional.

The Manatee Land Development Code states that developers must transfer land to the county for future road needs with no compensation to the owner, even if the county's future needs have nothing to do with the impact of the developer's project, Moore said.

"That's simply unlawful."

The U.S. Supreme Court's 1987 decision -- *Nollan vs. California Coast Commission* -- states that governments cannot take property from a developer without proving a direct connection between the taking and the government's needs.

The Supreme Court's 1994 decision -- *Dolan vs. City of Tigard* -- goes one step further by requiring governments to show proportionality between their needs and what they take from a developer.

Unless there's a direct and proportional connection between the government's taking and the impact of a development, the taking is illegal, Moore said.

Rodney Wade, a Manatee County assistant attorney, said the definition of "connection" and "proportionality" are terms he fights about with attorneys like Moore all the time.

Moore "thinks everything is unconstitutional," Wade said, adding that Manatee County cannot be blamed for using its laws to save taxpayers money.

"There's nothing wrong with the laws," Wade said. "If you are a developer and impact a road as a result of your development, our planning department will make a determination about how much impact your development has caused and the developer will be responsible for compensating for that impact."

Wade said Manatee's land development code is based on Florida law, and far from being hard on developers, Wade said Manatee County often compensates developers for taking land by giving them impact fee credits, which enables them to save money when they start bringing houses out of the ground.

The whole issue of whether takings are fair or not comes down to how the facts are interpreted by county planners and the court system, Wade said.

"If developers don't like a decision made by planning, they have an opportunity to appeal," Wade said. "If that doesn't work, they can go across the street to the court."

Moore could not agree more.

In the past, however, he said developers have been timid about using the courts to challenge the county.

"The result is that a lot of people are losing land and no one is challenging it," Moore said. "Developers give in to county demands because they don't want to lose their permit or fight it out in court for two years."

But those are not the only alternatives, Moore said.

"On a case by case basis, when the county is confronted with case law, it might back off."

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