

#65

11/29/71

Memorandum 71-96

Subject: Study 65 - Inverse Condemnation (Compulsory Dedications)

The attached letter from a Municipal Court judge expresses concern about the increasingly common practice of local public entities to require dedications for public use as a condition of approving subdivision plans. My reply (also attached) notes that the Commission has decided not to attempt to draft legislation to deal with this problem at this time.

The staff recommends no change in the prior Commission decision. We did, however, want to bring this letter to your attention.

Respectfully submitted,

John H. DeMouilly  
Executive Secretary

**SAN BERNARDINO COUNTY MUNICIPAL COURT DISTRICT  
CENTRAL DIVISION**

CHAMBERS OF  
J. B. LAWRENCE  
JUDGE OF THE MUNICIPAL COURT

November 15, 1971

SECOND FLOOR, COUNTY COURTHOUSE  
SAN BERNARDINO, CALIFORNIA

Mr. John De Mouilly  
California Law Review Commission  
School of Law  
Stanford, CA 94305

Dear Sir:

A somewhat stale news item has brought to my attention a statement that your commission is studying the question whether a land developer may be required to contribute a school site for the benefit of the public as the price of receiving a building permit. When I was in the office of the County Counsel here, I developed some strong feelings on this point, and apologize for expressing them in this letter without doing the necessary legal research.

It is my recollection that the leading case in this field was the Ayres Case, which involved the requirement that a subdivider dedicate certain land for streets in his subdivision. Using this as a tool, this county, and I suppose other counties, took the position that any time anyone came in for a permit, he could be blackmailed into giving the county anything the county might want at the time.

The principal problem was not schools but the widening of streets. If the master plan showed a certain street to be destined for greater width, then any adjacent property owner seeking a building permit was required to donate a strip of land along his frontage. This was attempted even in a case where the building permit was only requested by a grocer who wished to enlarge his walk-in refrigerator.

The minimal rule which I evolved was that this practice was unlawful unless the proposed improvement would contribute substantially to an increased use of the street.

Even such a minimal rule leads to the undesirable result that when the street is ultimately widened, the land speculators and slum lords (who spend nothing on improvements) will be compensated for the frontage taken from them, while those who have developed their property during recent years will have been forced to make a donation. For this reason, I would suggest a rule that if an improvement will lead to an overloading of a street or a school, the improvement should simply be denied. If it will not, then the improver should be charged the same fee as is charged to anyone else, and nothing else of value should be required of him.

Very truly yours,

  
J. B. LAWRENCE  
Judge of the Municipal Court

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November 29, 1971

Honorable J. B. Lawrence  
Judge of the Municipal Court  
Central Division  
Municipal Court District  
County Courthouse, 2nd Floor  
San Bernardino, California 92401

Dear Judge Lawrence:

Your letter concerning the problem involved in compulsory contributions required of land developers in exchange for the necessary approvals for subdivisions concerns a matter that the Commission has discussed on a number of occasions. However, because of the legislative and judicial activity in this field, a majority of the Commissioners has decided not to attempt to draft legislation dealing with this problem. We did, however, recently publish a background study which discusses the cases and problems involved. See Van Alstyne, California Inverse Condemnation Law 350-375, 401 (June 1971). This publication is not being generally distributed. It was published in cooperation with the California Continuing Education of the Bar and is being sold for \$7.50 by that organization; this amount will recoup the publication costs advanced by the Continuing Education of the Bar.

I will bring your letter to the attention of the Commission, and I will advise you if the Commission decides to undertake a study of the problem at this time.

Sincerely,

John H. DeMouilly  
Executive Secretary

JHD:km