



TACIR

The Tennessee Advisory Commission
on Intergovernmental Relations



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MEMORANDUM

TO: Commission Members

FROM: Cliff Lippard 
Executive Director

DATE: 15 June 2022

SUBJECT: House Bill 366/Senate Bill 1604 (Right-of-Way Dedications)—Final Report
for Approval

The attached Commission report is submitted for your approval. It was prepared in response to a letter sent by the Lieutenant Governor and House Speaker requesting that the Commission study Senate Bill 1604 by Senator Bailey and House Bill 366 by Representative Williams. Dedication occurs when property owners give land or the right to use that land to the local government for public use—for example, road widening. Senate Bill 1604 and House Bill 366 would have prohibited local governments from requiring a property owner to dedicate land along an existing public right-of-way as a condition of approving any application made to develop the property. It would require local governments to pay for land that they might have otherwise acquired through dedications without compensating property owners. The US Supreme Court has ruled that dedications that are required as a condition of local government permit approval are constitutional if they pass a two-prong test developed in two cases, *Nollan v. California Coastal Commission* and *Dolan v. City of Tigard*.

Because courts have found dedications that meet the *Nollan/Dolan* test are a constitutional means for governments to regulate land use, because new developments can and often do add to a community's infrastructure needs and costs, because dedications can help offset those costs so that they don't fall solely on community taxpayers, and because of Tennessee's long-standing tradition of local control regarding land use regulation, **the Commission does not recommend the proposed legislation.**

Some states have laws to protect property owners' rights while maintaining local authority to require dedications. Five states—Arizona, Colorado, Florida, Minnesota,

and Utah—have incorporated the language of the *Nollan/Dolan* test into state statute, which provides guidance to local governments to help ensure that the dedications they require meet the *Nollan/Dolan* test. Based on the actions taken by these other states to protect property owners’ rights while maintaining local authority to require dedications and to provide guidance to local governments, the draft version of this report that was presented to the Commission at its January 2022 meeting recommended that **the General Assembly should codify in state law the *Nollan/Dolan* test, the constitutionally-based standard that has been established and applied by the US Supreme Court for dedications.**

This year in response to the draft recommendation Senator Bailey and Representative Williams introduced and the General Assembly passed Senate Bill 2849 and House Bill 2274 to incorporate language from the *Nollan/Dolan* test into Tennessee’s statutes. It prohibits regional and municipal planning commissions, in exercising their platting power, from requiring an owner of private property to dedicate real property to the public, or pay money to a public entity in an amount that is determined on an individual and discretionary basis, unless there is an essential nexus between the dedication or payment and a legitimate local government interest and the dedication or payment is roughly proportional both in nature and extent to the impact of the proposed use or development of the property.