



TACIR INSIGHT

TENNESSEE ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

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DEDICATIONS ALONG EXISTING PUBLIC RIGHTS-OF-WAY, BALANCING PROPERTY RIGHTS WITH LOCAL AUTHORITY OVER LAND USE REGULATION

Background

Dedication occurs when property owners give land or the right to use that land to the local government for public use. Local governments commonly condition subdivision approval on these dedications and typically do not pay for them. The Tennessee Association of Professional Surveyors (TAPS) has said that requiring owners to dedicate land along existing public rights-of-way without compensation is unconstitutional. TAPS also questions why local governments don't pay for dedications like the Tennessee Department of Transportation, which pays for rights-of-way that it acquires through purchase or eminent domain. And they argue the land is often not used by local governments for many years after being dedicated. In response to these concerns, Senate Bill 1604 by Senator Bailey and House Bill 366 by Representative Williams was introduced in the 112th General Assembly and 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. At the request of the bill sponsors, the Lieutenant Governor and House Speaker sent a letter to the Commission requesting a study of the bill.

Findings and Recommendations

Because courts have found dedications 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.**

Five states have incorporated the language of the US Supreme Court's *Nollan/Dolan* test into state statute, which provides guidance to local governments to help ensure that the dedications are constitutional. Based on these other states' actions to protect property owners' rights while maintaining local authority to require dedications and to provide guidance to local governments, staff presented to the Commission at its January 20, 2022, meeting a draft recommendation 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.** Acting on this draft recommendation, the General Assembly passed Public Chapter 1128, Acts of 2022, to incorporate language from the *Nollan/Dolan* test into Tennessee's statutes.

See TACIR's full report at the following link for additional information:
<https://www.tn.gov/tacir/tacir-publications/publications-by-date.html>.