Bond Case Briefs

Municipal Finance Law Since 1971

U.S. Supreme Court: Takings Clause Applies to Impact Fees on New Development - Brownstein

The *Sheetz v. County of El Dorado* decision will create uncertainty in California, Arizona, Nevada, Colorado and many other states as cities, counties, developers and property owners reexamine whether existing impact fee programs could result in an unconstitutional taking.

Many states fund the construction of roads, schools, sewers, libraries and other essential infrastructure by collecting impact fees on new development. The amount of the impact fee may be calculated based on the type of development and its location. This municipal financing structure, however, has been premised on an understanding that the Takings Clause of the U.S. Constitution does not apply to impact fees established by legislative action and applied generally to all classes of development.

On April 12, 2024, the Supreme Court of the United States issued a unanimous opinion in *Sheetz v. County of El Dorado, California*, 601 U.S. ___ (2024) (*Sheetz*), clarifying that the Takings Clause does apply to legislatively established land-use permit conditions, like development impact fees. The Supreme Court's decision resolves a split in how state courts viewed this question but stops short of providing a definitive answer on "whether a permit condition imposed on a class of properties must be tailored with the same degree of specificity as a permit condition that targets a particular development."

Continue reading.

Brownstein Hyatt Farber Schreck

April 18, 2024