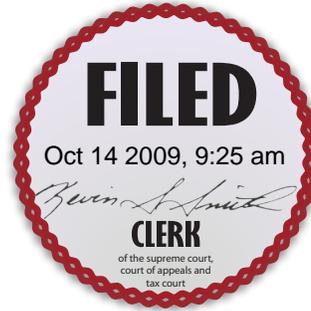


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

GREENVILLE CONCERNED)
CITIZENS, INC., JOANNA DANZL,)
DAN DANZL, BETTY CAIRNS AND)
TOM CAIRNS,)

Appellants-Plaintiffs,)

vs.)

FLOYD COUNTY PLAN COMMISSION,)
FLOYD COUNTY, INDIANA AND)
ROBERT LYNN CO., INC.,)

Appellees-Defendants.)

ROBERT LYNN CO., INC.)

No. 22A01-0902-CV-92

Cross-Appellant,)
)
 vs.)
)
 FLOYD COUNTY, INDIANA AND)
 FLOYD COUNTY PLAN COMMISSION,)
)
 Cross-Appellees.)

APPEAL FROM THE FLOYD CIRCUIT COURT
 The Honorable J. Terrence Cody, Judge
 Cause No. 22C01-0610-MI-524

October 14, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issues

After the Floyd County Plan Commission (the “Commission”) approved the primary plat of Lafayette Ridge Subdivision as sought to be developed by Robert Lynn Company, Inc. (“Lynn”), Greenville Concerned Citizens, Inc., Joanna Danzl, Dan Danzl, Betty Cairns, and Tom Cairns¹ (collectively, “GCC”) petitioned the trial court to review and set aside the Commission’s decision. GCC appeals the trial court’s denial of its second petition, raising three issues which we consolidate and restate as: (1) whether the Commission properly interpreted and applied lot frontage requirements of the Floyd County Subdivision Control Ordinance (“SCO”) and the Floyd County Zoning Ordinance (“ZO”); and (2) whether the Commission properly concluded Lynn established compliance with the SCO’s traffic control

¹ The record is ambiguous as to whether “Cairns” or “Carins” is the proper spelling. We use the former, as does the notice of appeal filed in this court.

standards. Lynn cross-appeals, raising two issues which we restate as: (1) whether the SCO's traffic control standards, as applied to Lynn, are void as exceeding the Commission's statutory authority; and (2) whether the traffic control standards, as applied, constitute an unconstitutional exaction.

We conclude the Commission properly interpreted and applied the frontage requirements and traffic control standards, and accordingly the Commission did not err in granting Lynn primary approval. We also conclude the traffic control standards, as applied to Lynn, did not exceed the Commission's authority or constitute an unconstitutional exaction. We therefore affirm the trial court's judgment.

Facts and Procedural History

Lynn is a professional real estate developer that has planned and developed several subdivisions in and around Floyd County. In 2005, Lynn's retained engineer prepared the preliminary plat of the proposed Lafayette Ridge subdivision, comprising 227 residential lots on 128.74 acres of land in Lafayette Township, Floyd County. The plat has several streets with cul-de-sacs and sixteen pie-shaped lots abutting the cul-de-sacs. The pie-shaped lots are at least eighty feet wide at the front setback or building line but less than 80 feet wide along the front lot line abutting the curved cul-de-sac. Evidence before the trial court was undisputed that similar cul-de-sac lots are part of seven subdivisions previously approved in Floyd County, at least six of which have cul-de-sac lots less than eighty feet wide at the front lot line. All of the proposed Lafayette Ridge lots have an area of at least 12,000 square feet.

The SCO provides that lot dimensions of Major Subdivisions “shall comply with the minimum standards of the Zoning Ordinance” Appellant’s Appendix at 84. The ZO has the following “lot specifications”: “Frontage: The minimum public road frontage for any lot in Floyd County shall be eighty (80) feet if the lot uses [a] sanitary sewer system”; “Size: . . . For lots which utilize a sanitary sewer system, the minimum lot size shall be 12,000 square feet” Id. at 121. The parties agree that Lafayette Ridge is to be served by a sanitary sewer system. The ZO includes a series of definitions but does not define “public road frontage.” The ZO defines “lot width” as “the distance between side lot lines as measured at and along the front setback line.” Id. at 117. The SCO has an identical definition of “lot width,” and the SCO further defines “lot frontage” as “the linear distance of a lot measured at and along the front lot line where the lot abuts a street or other approved access.” Id. at 74.

The SCO also defines standards relating to traffic control. Article IV, Section 3(A) of the SCO states:

Each proposed major subdivision shall be served by one or more existing public streets or roads, each of which shall . . . be capable of accommodating the traffic resulting from the proposed development. For purposes of this ordinance, an existing street or road is not capable of “accommodating the traffic” if the commission finds that the level of service at one or more of the nearest control point(s) to the proposed subdivision has a pre-development (existing) rating of D, E, or F, or if it finds that the traffic generated by the subdivision and/or that resulting from “expected development” shall reduce the existing level to D, E, or F.

Id. at 85. The definition of “Traffic Impact Study” defines “nearest [c]ontrol point(s)” as “the intersection of the service roadway with another existing street . . . which is controlled by a stop sign or signal, and which is located within one-half mile of the point of access of

the proposed subdivision.” Id. at 78. “Level of service” is defined as “a quantitative measure describing operational conditions within a traffic stream,” scaled A (best) through F (worst), of traffic “speed and travel time, freedom to maneuver, traffic interruptions, and comfort and convenience.” Id. at 73.

The SCO requires developers of a proposed major subdivision to submit a traffic impact study. The traffic study must calculate pre- and post-development levels of service at “each access that the development has to an existing roadway” and “the first control point beyond those access points.” Appendix of Appellee at 10. If the proposed subdivision is a “large scale development,” Appendix E to the SCO provides “the area of study may be enlarged as determined by the Plat Review Committee.” Id.

On November 15, 2005, Lynn submitted to the Commission its application for primary approval of Lafayette Ridge as a Major Subdivision. Lynn also submitted a traffic study that concluded level of service was acceptable “for the full build out scenario of the proposed development.” Id. at 9. The Commission subsequently requested that Lynn expand its traffic study to include the intersections of (i) St. Mary’s Church Road and Scottsville Road (the “Scottsville Road intersection”) and (ii) Stiller Road and U.S. Highway 150 (the “Highway 150 intersection”). Both intersections are more than two miles from the Lafayette Ridge property. Lynn agreed to the expanded traffic study but argued that because its initial traffic study demonstrated compliance at the nearest control points, “any analysis or findings regarding the additional intersections . . . cannot in any reasonable manner serve as a basis for denying primary plat approval.” Id. at 49 (emphasis in original).

On July 17, 2006, the Commission held a public meeting on Lynn's application. The Commission and Lynn were unable to agree whether the application should be evaluated based on the initial or the expanded traffic study; Lynn argued that the Scottsville Road intersection was not a proper control point. Attempting to resolve the impasse, Lynn offered to "write the county a check . . . for twenty thousand dollars, to be used at your discretion" for road improvements, as a condition of the Commission granting primary approval. Appellant's App. at 223. The Commission proceeded to grant Lynn primary approval for the Lafayette Ridge plat, subject to conditions including that "[t]raffic control issues be resolved by legal counsel." App. of Appellee at 41.

On August 17, 2006, GCC filed a verified petition for writ of certiorari alleging the Commission's approval of Lafayette Ridge violated numerous legal requirements, including lot frontage and traffic control standards under the SCO and ZO, and improperly delegated approval of Lynn's traffic study to the Commission's legal counsel. The trial court granted Lynn's motion to intervene. On February 12, 2008, the trial court issued its order denying GCC's petition in all respects except the traffic study issues, which it remanded to the Commission for specific findings.

On May 18, 2008, the Commission again held a public meeting on Lynn's application, at which Lynn and the Commission further disputed whether the intersections studied in the expanded traffic study were subject to the SCO's traffic control standards. Lynn stated its "offer of contributing eighteen thousand eight hundred and sixty-two plus twenty-five percent of the right of way costs" for road improvements, if the Commission were to grant primary

approval. Appellant's App. at 289. Lynn further stated that if approval was granted, "we're willing to concede . . . that an intersection four to five miles away from our property is a control point that would give you authority to mandate this contribution and not appeal that what so ever." Id. at 320. The Commission found Lynn's initial traffic study did not demonstrate compliance with the traffic standards of the SCO, Lynn's expanded traffic study also showed deficiencies, and Lynn would be granted primary approval subject to conditions. Specifically, the Commission noted "the following deficiencies found and shall be corrected as follows:"

1. The intersection of Scottsville Road with St. Mary's Church Road and Brush College Road is failing Ordinance Standards, as well as does the intersection of Stiller Road and Highway 150. The latter intersection is outside our purview and cannot be addressed by this Board. The first intersection correction will be at the agreed discretion of the County Highway Engineer, County Planner and/or County Commissioners to correct the deficiencies. Some of these mitigation methods could include a signal light or some other method that could be least intrusive as possible to the residents near this intersection.

2. [Lynn] is to contribute 25% of money deemed appropriate to the extent of correcting this deficiency.

App. of Appellee at 68. On July 23, 2008, the Commission certified these findings to the trial court.

On August 6, 2008, GCC filed a second verified petition for certiorari, arguing the Commission unlawfully granted Lynn primary approval given its findings that two intersections were failing the SCO traffic standards. On January 20, 2009, the trial court issued its order denying GCC's second petition and also denied GCC's motion to correct error. This appeal followed.

Discussion and Decision

I. Standard of Review

When reviewing the decision of a plan commission, we are bound by the same standard of review as the trial court. Hoosier Outdoor Adver. Corp. v. RBL Mgmt., Inc., 844 N.E.2d 157, 162 (Ind. Ct. App. 2006), trans. denied. The scope of judicial review is established by Indiana Code section 4-21.5-5-14(d), which permits a court to set aside agency action that is: (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; or (5) unsupported by substantial evidence. The party asserting the invalidity of agency action bears the burden of proof. Ind. Code § 4-21.5-5-14(a).

Our standard of review is one of “great deference” to a commission’s findings of fact and its application of facts to the law. Markland v. Jasper County Planning & Dev. Dep’t, 829 N.E.2d 92, 96 (Ind. Ct. App. 2005). A claimed error of law will generally be reviewed de novo. Robert Lynn Co., Inc. v. Town of Clarksville Bd. of Zoning Appeals, 867 N.E.2d 660, 670 (Ind. Ct. App. 2007), trans. denied. “However, an agency’s construction of its own ordinance is entitled to deference.” Hoosier Outdoor Adver. Corp., 844 N.E.2d at 163.

When an ordinance is subject to different interpretations, the interpretation chosen by the administrative agency charged with the duty of enforcing the ordinance is entitled to great weight, unless that interpretation is inconsistent with the ordinance itself. If a court is faced with two reasonable interpretations of an ordinance, one of which is supplied by an administrative

agency charged with enforcing the ordinance, the court should defer to the agency.

Id. (citations omitted).

II. GCC's Appeal

A. Minimum Frontage

GCC argues the Commission erred in interpreting the ZO's frontage requirement as allowing the minimum eighty feet to be measured at the front setback line rather than the front lot line in the case of cul-de-sac lots. This issue involves the Commission's interpretation of ordinances it is charged with enforcing. See Ind. Code § 36-7-4-702(a) (plan commission "shall determine if the [proposed] plat or subdivision qualifies . . . under the standards prescribed by the subdivision control ordinance"); Ind. Code § 36-7-4-702(c) (subdivision control ordinance standards must be consistent with zoning ordinance). Therefore, we consider the express language of the ZO and SCO and whether the Commission's interpretation is consistent with the express language or, in other words, whether the Commission's interpretation is reasonable. See Hoosier Outdoor Adver. Corp., 844 N.E.2d at 163. If the Commission's interpretation is reasonable, it is entitled to deference. Id.

The ZO is the touchstone of our analysis because the SCO may not be inconsistent with it, see Ind. Code § 36-7-4-702(c), and only it contains the actual lot dimension requirements. The ZO's relevant requirements are two: "public road frontage" must be no less than eighty feet, and total lot area must be at least 12,000 square feet. Appellant's App.

at 121. There is no separate lot width requirement in either the ZO or the SCO. Neither the ZO nor the SCO defines “public road frontage.”

The trial court found the Commission has consistently interpreted “public road frontage” in the ZO as measurable at the front setback line in the case of irregularly shaped lots, and that the “Commission’s interpretation has been consistently applied . . . in no less than eight (8) subdivisions over the past several years.” Id. at 39. GCC does not challenge this finding. Accordingly, the Commission’s approval of the Lafayette Ridge plat based on its historic interpretation and application of the SCO is not an attempt to grant Lynn a variance, which would exceed the Commission’s statutory authority, see Robert Lynn Co., Inc., 867 N.E.2d at 674 (plan commissions lack authority to grant variances from subdivision control ordinances).

The Commission’s interpretation of “public road frontage” as synonymous with “lot width” in the case of cul-de-sac lots is consistent with the text of the ordinances insofar as they lack either a definition of “public road frontage” or a requirement of lot width that is separate and distinct from the frontage requirement. The Commission’s interpretation does not render the frontage requirement meaningless or superfluous, because cul-de-sac lots still must be eighty feet wide along a line that, although set back from the street, will not be the line of greatest width. When, as here, the overall lot size requirement of 12,000 square feet is concededly met, the Commission’s interpretation is not inconsistent with any other provision of the ZO.

GCC argues the Commission’s interpretation is inconsistent with the SCO’s definition of lot frontage as measurable along the front lot line where the lot abuts a street. This argument amounts to a contention that the meaning of public road frontage in the ZO is controlled by the definition of lot frontage in the SCO. However, we are not persuaded that is the case. “Lot frontage” is not the same term as “public road frontage.” Neither does the definition of lot frontage refer, by its own terms, to the ZO. Nothing else in the ordinances indicates the SCO’s lot frontage definition precludes the Commission’s interpretation of public road frontage as identical to lot width in the case of cul-de-sac lots.

GCC has failed to persuade us that the Commission’s interpretation, which has been consistently applied, is unreasonable. Assuming for the sake of argument that GCC’s alternative interpretation is also reasonable, we do not reach a different conclusion, because we are not empowered to “substitute [our] own judgment for that of the agency.” Hoosier Outdoor Adver. Corp., 844 N.E.2d at 163. In other words, once we determine the Commission’s interpretation is reasonable, we must “end [our] analysis and not address the reasonableness of the other party’s interpretation.” Id. Accordingly, the trial court properly denied GCC’s petition for writ of certiorari insofar as GCC challenges the Commission’s interpretation and application of the ZO’s frontage requirement.

B. Traffic Control Standards

GCC further argues the Commission erred in granting primary approval for Lafayette Ridge because Lynn’s original and expanded traffic studies failed to demonstrate compliance with the SCO traffic control standards. Pointing out the Commission found the Scottsville

Road intersection and the Highway 150 intersection had levels of service graded D or lower according to the expanded traffic study, GCC argues the Commission could not properly approve Lafayette Ridge unless it mandated specific solutions to bring both intersections up to a passing grade. We disagree.

Article IV, Section 3(A) of the SCO provides:

For purposes of this ordinance, an existing street or road is not capable of “accommodating the traffic” if the commission finds that the level of service at one or more of the nearest control point(s) to the proposed subdivision has a pre-development (existing) rating of D, E, or F, or if it finds that the traffic generated by the subdivision and/or that resulting from “expected development” shall reduce the existing level to D, E, or F.

Appellant’s App. at 85 (emphasis added). The SCO defines “nearest control point(s)” as “the intersection of the service roadway with another existing street . . . which is controlled by a stop sign or signal, and which is located within one-half mile of the point of access of the proposed subdivision.” Id. at 78. Read together, these definitions mean the SCO’s traffic standards are satisfied if all existing intersections within one-half mile of the subdivision’s point of access have grades of C or higher. Although Appendix E allows the Commission to require an expanded traffic study beyond the nearest control points, it does not add to the traffic standards of SCO Article IV or otherwise require the Commission to deny plat approval on the basis that other intersections studied have a failing grade. The only intersections the SCO requires to have existing and future levels of service graded C or higher are those within one-half mile of the subdivision.

Here, both the Scottsville Road intersection and the Highway 150 intersection are more than two miles from the Lafayette Ridge property. Therefore, these intersections are

not “nearest control points” under the SCO, and the fact they are graded D or lower does not require the Commission to deny primary plat approval. GCC does not argue that any intersections within one-half mile of the Lafayette Ridge property are failing under the SCO’s standard.

Because the Scottsville Road intersection and the Highway 150 intersection are not required by the SCO to have any particular level of service as a condition of Lafayette Ridge’s primary approval, we need not address the Commission’s findings regarding mitigation measures for these intersections. GCC has not demonstrated error in the Commission’s ultimate finding the Lafayette Ridge plat met the SCO’s traffic control standards. Therefore, the trial court properly denied GCC’s petition for writ of certiorari.

III. Lynn’s Cross-Appeal

On cross-appeal, Lynn argues the SCO’s traffic study requirements as applied by the Commission, including as a condition of approval that Lynn contribute an uncapped quarter share of the costs of intersection improvements, are void as exceeding the Commission’s statutory authority or as an unconstitutional exaction. The Commission argues Lynn has waived these issues because it never challenged the validity of the SCO before the Commission or the trial court. If Lynn had initiated judicial review proceedings as a petitioner, it would be precluded from raising issues for the first time on appeal. However, because Lynn intervened as a respondent to GCC’s petition, it is held to a lower standard for preserving issues. Accordingly, we reach the merits of Lynn’s cross-appeal.

A. Statutory Claim

Lynn argues that the SCO's traffic study requirements, specifically those under Appendix E allowing the Commission to require an expanded study based on "remote" alternate control points, exceed the Commission's statutory authority and are "tantamount to ceding the [Commission] unfettered, standardless discretion in reviewing subdivision plats."

Brief of Appellee at 25. We disagree.

The scope of a subdivision control ordinance is established by Indiana Code section 36-7-4-702(b), which provides:

The subdivision control ordinance must specify the standards by which the commission determines whether a plat qualifies for primary approval. The ordinance must include standards for:

- (1) minimum width, depth, and area of lots in the subdivision;
- (2) public way widths, grades, curves, and the coordination of subdivision public ways with current and planned public ways; and
- (3) the extension of water, sewer, and other municipal services.

The ordinance may also include standards for the allocation of areas to be used as public ways, parks, schools, public and semipublic buildings, homes, businesses, and utilities, and any other standards related to the purposes of this chapter.

(Emphasis added.) The emphasized language permits a SCO to mandate "any other standards" related to the purposes of Indiana Code chapter 36-7-4. These purposes include "that highway systems be carefully planned" and "that new communities grow only with adequate public way . . . facilities." Ind. Code §§ 36-7-4-201(b)(1), -(2). Even though traffic control is not enumerated as a required standard under Indiana Code section 36-7-4-702(b), traffic control standards reasonably relate to the statutory purposes of planning highway

systems and ensuring adequate public ways. Therefore, there is adequate statutory authority for the SCO to include traffic control standards.

Moreover, the requirement Lynn conduct an expanded traffic study is not outside the Commission's statutory purview. Indiana Code section 36-7-4-702(d) provides:

As a condition of primary approval of a plat, the commission may specify:

- (1) the manner in which public ways shall be laid out, graded, and improved;
- (2) a provision for water, sewage, and other utility services;
- (3) a provision for lot size, number, and location;
- (4) a provision for drainage design; and
- (5) a provision for other services as specified in the subdivision control ordinance.

(Emphasis added.) The emphasized language allowing a plan commission to condition primary approval on the developer's provision of "other services as specified in the subdivision control ordinance" appears to encompass a traffic study that is reasonably related to ensuring appropriate infrastructure for the development.

Lynn cites Indiana Code section 36-7-4-506, which authorizes a plan commission to include a thoroughfare plan in its comprehensive plan. "After a thoroughfare plan has been included in the comprehensive plan, thoroughfares may be located, changed, widened, straightened, or vacated only in the manner indicated by the comprehensive plan." Ind. Code § 36-7-4-506(c). Lynn asserts the Commission violated this statutory directive by requiring Lynn to fund road improvements in a manner not indicated by the thoroughfare plan as incorporated in Floyd County's comprehensive plan. However, no thoroughfare plan or comprehensive plan has been made part of the record in this case. Lynn has not provided any

evidence or authority that the traffic study provisions of the SCO, as applied here, are inconsistent with the thoroughfare plan.

Lynn further argues the Commission's use of the expanded traffic study to exact Lynn's financial contribution to road infrastructure improvement violates statutory restrictions on development impact fees. Under these statutes, a local legislative body "may adopt an ordinance imposing an impact fee on new development," Ind. Code § 36-7-4-1311(a),² and "[a]n ordinance adopted under this section is the exclusive means for a unit to impose an impact fee," Ind. Code § 36-7-4-1311(d). However, excluded from the definition of impact fees are "fees, charges, and assessments agreed upon under a contractual agreement, if the fees, charges, and assessments are treated as impact deductions under section 1321(d) of this chapter if an impact fee ordinance is in effect." Ind. Code § 36-7-4-1311(e)(2). Here, Lynn voluntarily agreed to pay an uncapped quarter share of the costs of improving the Scottsville Road intersection. Lynn offers no argument that this contribution is not a contractual agreement or that the Commission has failed to treat it as an impact deduction. Therefore, Lynn's contribution was not an impact fee and the Commission's imposition of it was not unlawful.

Finally, Lynn argues the SCO's traffic study requirements are impermissibly vague as applied to Lynn, citing Hendricks County Bd. of Comm'rs v. Rieth-Riley Constr. Co., Inc., 868 N.E.2d 844 (Ind. Ct. App. 2007). In Rieth-Riley we affirmed the trial court's

² "Impact fee" is defined as "a monetary charge imposed on new development . . . to defray or mitigate the capital costs of infrastructure that is required by, . . . or needed to serve the new development." Ind. Code § 36-7-4-1305(a).

invalidation of terms of a zoning ordinance that referred in sweeping terms to “the intent and purpose of this Ordinance,” “the general welfare of the community and the neighborhood,” and “the interrelationship with the land uses in the surrounding area” as bases for denying approval of a development plan. Id. at 852. Such broad criteria, we concluded, were insufficiently specific to give the developer fair warning of what the commission would consider in formulating its decision and provided no objective standards to limit the commission’s discretion. Id. at 853.

Here, the SCO provides standards for the sufficiency of a traffic study that are both specific and objective: the traffic study must measure existing and future levels of service at designated control points, and a quantitative grade of “C” is sufficient. Although the language of Appendix E appears to allow the Commission considerable discretion to select control points for an expanded traffic study, Lynn does not challenge Appendix E on its face but rather as applied. Lynn has not shown the selection of the Scottsville Road intersection and the Highway 150 intersection for the expanded traffic study was arbitrary or that Lynn lacked fair warning the Commission would ultimately settle on these intersections. The SCO’s traffic study requirements as applied to Lynn are not impermissibly vague, and Lynn has not persuaded us they violate any Indiana statute.

B. Constitutional Claim

Lynn argues alternatively that the Commission’s approval of Lafayette Ridge subject to the condition Lynn contribute an uncapped quarter share of improvement costs for the Scottsville Road intersection amounts to an unconstitutional exaction. “Exactions are land-

use decisions conditioning approval of development on the dedication of property to public use.” Jacobsville Developers East, LLC v. Warrick County, 905 N.E.2d 1034, 1039 (Ind. Ct. App. 2009) (internal quotation and citation omitted), trans. denied. A two-part test determines whether an exaction is constitutional under the Takings Clause of the Fifth Amendment to the United States Constitution.³ First, there must be an “essential nexus” between the property dedication and a legitimate government purpose. Dolan v. City of Tigard, 512 U.S. 374, 386 (1994). Second, there must be “rough proportionality” between the property dedication and the impact of the proposed development. Id. at 391; see Jacobsville Developers, 905 N.E.2d at 1039-40 (citing this test with approval). However, our precedents do not indicate whether the Dolan test applies to land-use decisions, such as the one here, that do not require a physical dedication of land but merely a monetary contribution. Cf. McClung v. City of Sumner, 548 F.3d 1219, 1228 (9th Cir. 2008) (stating Dolan does not apply to purely monetary exactions), cert. denied, 129 S. Ct. 2765 (2009).

We need not resolve this issue, however, because even if Dolan applies to monetary exactions, the requirement Lynn contribute twenty-five percent to improving the Scottsville Road intersection does not constitute an unconstitutional exaction. Lynn voluntarily agreed to the exaction, stating at the May 18, 2008, Commission meeting that it would “offer” to contribute \$18,846.25 “plus twenty-five percent of the right of way costs” toward improving the Scottsville Road intersection. Appellant’s App. at 289. Lynn reiterated it was “willing to contribute . . . the eighteen thousand eight forty six figure to be held by the county [and] if

³ Lynn does not make a separate argument under the Indiana Constitution.

during the next five years the county decides to put a light in we'll be obligated to increase that to come up with the twenty-five percent of the total cost” Id. at 340-41. At no point in the proceedings did Lynn indicate this offer was made under duress or protest.

Moreover, aside from the fact Lynn agreed to the twenty-five percent contribution, it bears a substantial nexus to the government purpose served by the SCO's development restrictions and is roughly proportional to the impact of Lafayette Ridge. The SCO's traffic control standards limit development to areas with roads capable of accommodating increased traffic. Requiring a developer to contribute toward road infrastructure serving proposed development bears a substantial connection to this purpose. Moreover, Lynn's twenty-five percent contribution is roughly proportional to the impact of Lafayette Ridge, as Lynn's expanded traffic study acknowledged Lafayette Ridge would result in measurably lower levels of service at the Scottsville Road intersection. Lynn relies on Land/Vest Props., Inc. v. Town of Plainfield, 379 A.2d 200 (N.H. 1977), but aside from resting on state constitutional grounds that do not apply here, that case involved a requirement the developer fund the full cost of off-site road improvements, id. at 205, and therefore is not instructive as to the proportionality of Lynn's twenty-five percent contribution.

Conclusion

The Commission properly interpreted and applied the frontage requirements and traffic control standards of the ZO and SCO and accordingly did not err in granting Lynn primary approval. The Commission's application of the traffic control standards, including Lynn's agreement to contribute twenty-five percent of future road improvement costs, did not

exceed the Commission's authority or constitute an unconstitutional exaction. Therefore, we affirm the trial court's judgment denying GCC's petition for writ of certiorari.

Affirmed.

DARDEN, J., and MATHIAS, J., concur.