

North Carolina Changing Waterfronts Forum

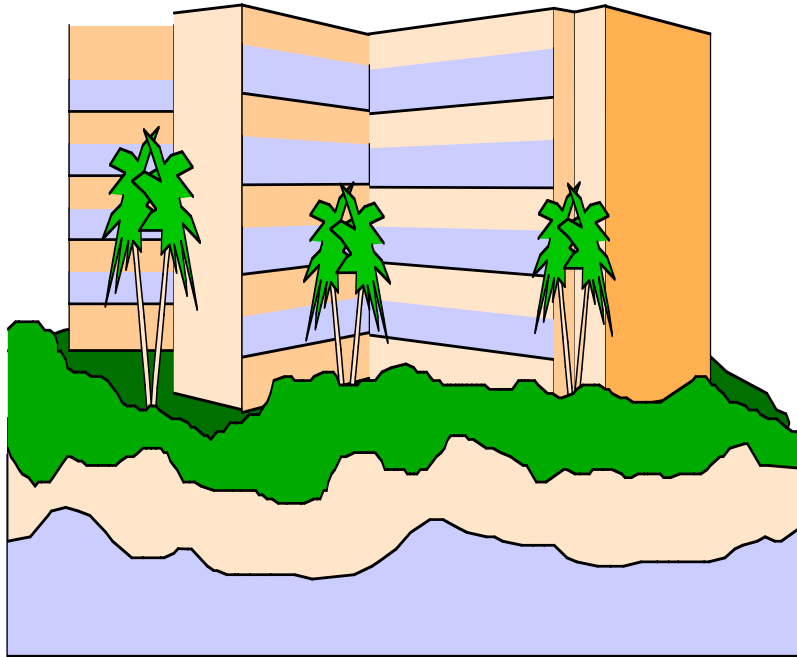
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Coastal Access: Using Developer Exactions

Developer Exaction

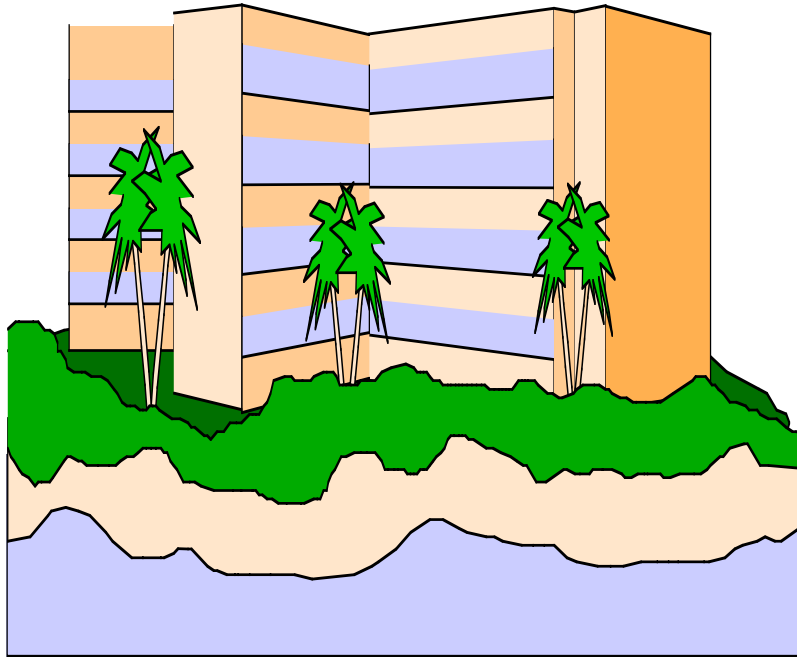
- A condition of development approval that requires a public facility to be provided at the developer's expense. Examples:
 - Dedications of land
 - Land improvements
 - Fees in lieu of dedication
 - Impact fees (not generally authorized in NC for streets and recreation areas)

Developer Exactions



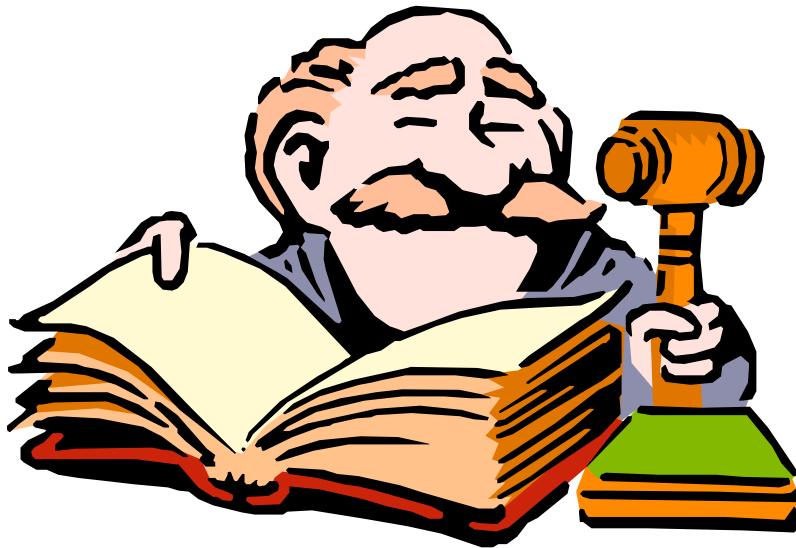
- Exactions *MAY* be linked to local government:
 - Subdivision plat approval
 - Zoning special-use or conditional-use permit
 - Rezoning to a conditional zoning district

Developer Exactions



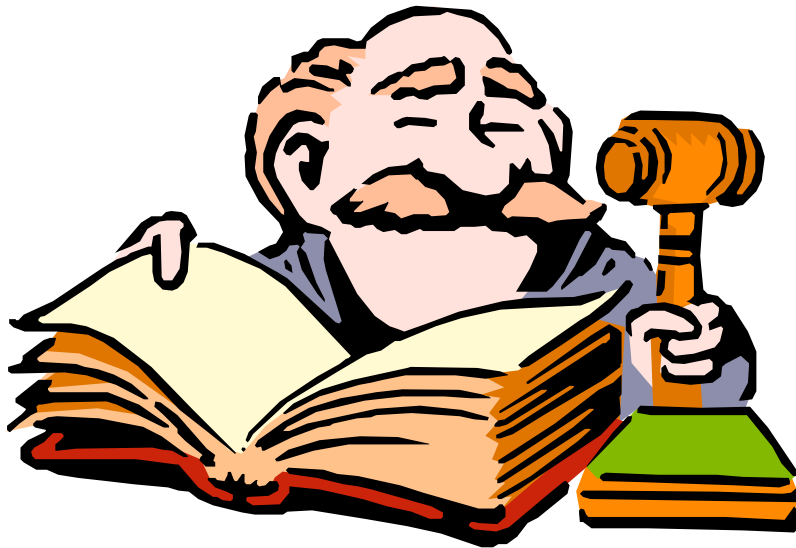
- Exactions MAY NOT be linked to local government:
 - Ordinary zoning permit
 - Ordinary site plan approval
 - Rezoning to an ordinary zoning district

Exactions: The Constitutional Issue



- 4th Amendment: private property may not be taken for public use except upon payment of just compensation
- Can exactions amount to a "regulatory taking" without compensation?

Exactions: The Constitutional Issue



- Exaction permissible if:
 - Development creates **need** for public facility
 - Extent, type, and nature of exaction is **proportional** to impact generated by the project
 - Exaction reflects an **individualized** determination
 - Burden on **government** to justify

Beach Access

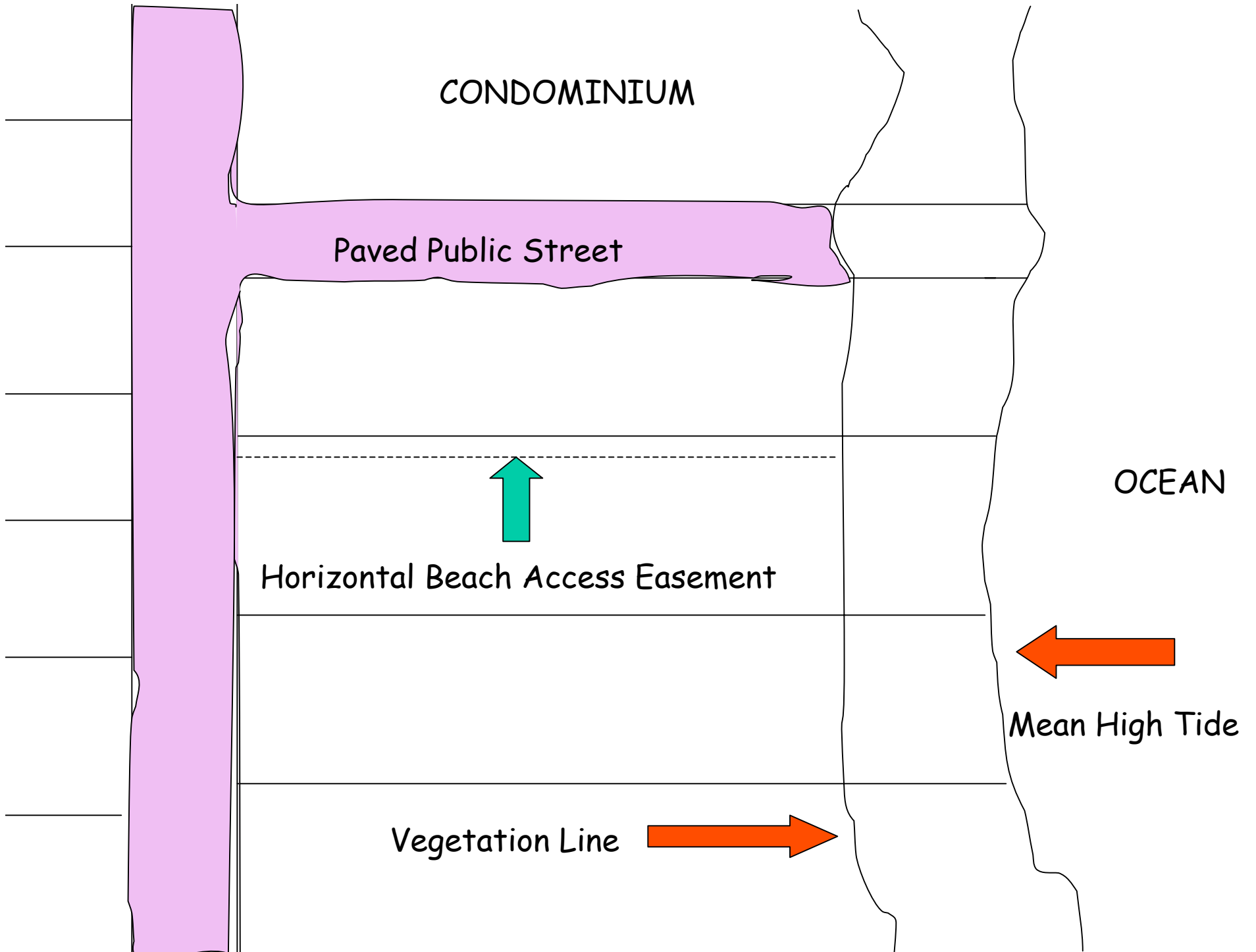


- Local government may require beach access:
 - If certain type of development approval needed, AND
 - If scale of development sufficiently large

Beach Access



- If exaction is justifiable, it is no defense that private access will adequately serve demand



Boat Access



- Little N.C. experience with using exactions for boat access, whether for recreational or commercial purposes