



## PLANNING AND DEVELOPMENT

400 LA CROSSE STREET | LA CROSSE, WI 54601 | P: (608) 789-7512 | F: (608) 789-7318

November 30, 2015

### Memo

To: City of La Crosse Common Council  
From: Jason Gilman, Director of Planning and Development  
RE: PILOTs

Dear Council Persons:

The purpose of this memo is to clarify the use of Payment in Lieu of Taxes (PILOT's) as they are being applied to two different petitions you are reviewing this evening.

This PILOT requirement originates from the Conditional Use Permit section of the zoning ordinance:

- *Sec. 115-356. - Demolition permits for green space.*

*(a)Purpose. The purpose of this section is to prevent avoiding the provisions of [section 115-354](#), pertaining to parking lots, and because of the reasons for such section. It is the intent of the City Council to provide for compatible neighborhoods that enhance the welfare of the City, including maintaining the City's tax base.*

According to the City Attorney, City's may impose conditions upon the approval of a conditional use permit applications when the following is met:

“Conditions must be reasonable and relate to a legitimate regulatory purpose, such as public health, safety or welfare. Conditions are generally legal and acceptable provided they meet the following tests:

- Essential Nexus Test. The limitation must be designed to remedy a harm to public interests or to address a need for public services likely to result from the proposed development. [The [Nollan](#) test]
- Rough Proportionality Test. The limitation must be commensurate with the extent of the resulting harm or need for services. [the [Dolan](#) test].”

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The question of whether or not a payment in lieu of taxes meets the Nollan and Dolan tests referenced above is really one of a legal nature, however, from the standpoint of planning practice, this requirement makes sense in responding to the basic health, safety and welfare needs of the City, particularly in our city's ability to remain fiscally sustainable.

Considering infrastructure, service contracts and other municipal service investments are decided upon and contracted based upon anticipated needs and development investment within the same geography, the loss of tax base years after the public has made its investment, can render the fiscal responsibilities of the City unsustainable.

The rational nexus test strives to assure the public that any exaction, impact or development fee or dedication has a clear relationship with the benefit being provided. Although a vacant lot, may no longer require the same type of police or fire services a house may, the City's tax levy pays for much more than a certain level or type of police and fire protection, including the plowing of streets, collection of refuse and yard waste, the repair of streets and many other functions not directly tied to inhabitable structures. A certain portion of police and fire calls occur on vacant property each year as well. While services like this may decline for a vacant lot, other services may increase, such as yard waste removal or zoning inspection.

The rough proportionality test strives to assure the public the amount charged or dedicated is proportionate to the direct benefit received by the payer. Again, one could argue that a vacant parcel is not demanding the same type of service that an occupied home is, however, the same may be said for a home occupied by a single individual over one of the same value being occupied by ten people. The same infrastructure maintenance needs are still present as is the snow plowing and street oriented services that must pass by property, regardless of its occupancy.

The use of a PILOT is not intended as a profit center for the city, but rather to assure a level of funding expected as the city made historic investments in order to sustain expected levels of service and infrastructure.

It is important to note it has been the City's practice to defer this fee if the owner is planning an equal or greater investment on the parcel in question, or waive the fee if the owner has replaced the improvements on an adjacent site.