

IN THE SUPREME COURT OF THE STATE OF NEVADA

TIMOTHY J. KEPPEL, AN  
INDIVIDUAL; AND CAMILLE L.  
ROBERTS-KEPPEL, AN INDIVIDUAL,  
Appellants,  
vs.  
CITY OF SPARKS, A MUNICIPAL  
ENTITY,  
Respondent.

No. 89187

**FILED**

**JUN 24 2025**

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a district court order granting a motion for summary judgment in an inverse condemnation and negligence case. Second Judicial District Court, Washoe County; Scott N. Freeman, Judge.

Appellants Timothy Keppel and Camille Roberts-Keppel own property in Sparks. The parcel is at the end of a cul-de-sac and backs up to undeveloped land along one edge and a dirt roadway along the other. A large ditch runs along that back side of the property and directs stormwater toward the undeveloped land. The Keppels wanted to fill in the ditch and build a pool and spa. They applied for a permit from the City of Sparks to install a 12-inch PVC drainage pipe with an inlet protection grate and then fill the ditch. Based on their engineer's report, the Keppels believed that the pipe would adequately convey any stormwater and that a fitted grate would prevent the line from clogging. But the City was concerned that an enclosed water conveyance system would become blocked or backed up, and that clearing debris in the 140-foot pipe to protect the surrounding lands from flooding would require specialized equipment and access to the pipe. The City accordingly conditioned the permit's approval on the Keppels granting the City a temporary access easement to the pipe.

Eventually, the Keppels and the City executed a temporary drainage “easement to perpetuate existing stormwater drainage patterns that currently run along the . . . property.” The City’s access was limited to activities associated with the pipe, and the easement would terminate when the City constructed a road with curb and gutter infrastructure along the property’s eastern edge. After executing the easement, the Keppels sued the City, asserting negligence, inverse condemnation, and other claims related to the easement condition. The City moved for summary judgment, which the district court granted.

On appeal, the Keppels argue the district court erred in granting summary judgment on the inverse condemnation and negligence claims. They contend the City did not prove that the easement served a public use and that the condition is therefore unlawful, and, in turn, that the City has not shown facts to support a lawful taking. They further argue the district court improperly applied the public duty and discretionary function immunity doctrines to bar the negligence claim.

The Nevada Constitution prevents the State from taking private property for public use without just compensation. Nev. Const. art. 1, § 8(3). An inverse condemnation suit seeks to recover the value of property that the State has taken without the formal exercise of eminent domain. *State, Dep’t of Transp. v. Cowan*, 120 Nev. 851, 854, 103 P.3d 1, 3 (2004).

The State’s police power allows it to regulate land use—to a point—before triggering the landowner’s right to compensation, and therefore not every policy that diminishes property values constitutes a taking. *See Sheetz v. County of El Dorado*, 601 U.S. 267, 274 (2024); *State v. Eighth Jud. Dist. Ct.*, 101 Nev. 658, 663, 708 P.2d 1022, 1025 (1985)

(recognizing that the State can exercise its police power to promote the public health, safety and welfare). And, because the government may deny a building permit for a legitimate police power purpose, it may impose conditions on that permit to serve that same purpose without triggering the landowner's right to compensation. *Sheetz*, 601 U.S. at 274. In such cases, the landowner must choose whether to accept the permit with the condition or abandon the project. *Id.* at 275. The government, however, cannot use a permit condition to extort the applicant. *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 606 (2013). Addressing the constitutionality of permit conditions in *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), and *Dolan v. City of Tigard*, 512 U.S. 374 (1994), the United States Supreme Court explained that the State may place conditions on a permit so long as there is (1) an essential nexus between a legitimate state interest and the permit condition, and (2) rough proportionality between the condition and the project's projected impact on the public welfare. *Sheetz*, 601 U.S. at 275-76; *Koontz*, 570 U.S. at 605-06.

The permit condition the City imposed satisfies both requirements. First, there is a nexus between a legitimate state interest and the permit condition. The property had an existing stormwater ditch, and maintaining stormwater conveyances is a public use. *See, e.g.*, NRS 37.010(1)(c). The City has a clear interest in preserving the status quo through maintaining the proposed pipe so that it properly conveys stormwater and does not flood the surrounding properties. To achieve this legitimate interest, the City demanded an easement to access that pipe, which the Keppels' planned changes to the property required. The City Engineers provided detailed affidavits explaining the increased danger for water-conveyance problems that arise from converting an open-air ditch to

an enclosed pipe, and they explained the easement's necessity to timely and adequately address any clogs or pipe failures. *See Sheetz*, 601 U.S. at 275 (explaining an essential nexus exists where the condition furthers the government's stated purpose and is not just an effort to coerce the landowner into forfeiting property rights).

Second, there is proportionality between the permit condition and the project's public impact. The easement is limited in scope to allow only City personnel access to maintain and fix the pipe, and the easement will automatically terminate once the dirt road to the side of the property is developed with curb and gutter infrastructure. *See id.* at 276 (explaining that rough proportionality is satisfied where the landowner is not forced to give up, or pay for, more than is necessary to mitigate the harm resulting from the project). We conclude that the district court therefore properly granted summary judgment on the inverse condemnation claim. *See City of Las Vegas v. 180 Land Co., LLC*, 140 Nev., Adv. Op. 29, 546 P.3d 1239, 1248 (2024) (reviewing inverse condemnation de novo).

As to the Keppels' negligence claim, NRS 41.032(2) provides state agencies, officials, and employees with immunity for any claim "[b]ased upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of the State . . . whether or not the discretion involved is abused." In analyzing discretionary function immunity, courts consider whether the act "(1) involve[d] an element of individual judgment or choice and (2) [was] based on considerations of social, economic, or political policy." *Paulos v. FCH1, LLC*, 136 Nev. 18, 25-26, 456 P.3d 589, 595 (2020) (internal quotation marks omitted). A "decision need not actually be grounded in policy considerations so long as it is, by its nature, susceptible to a policy analysis." *Id.* at 26, 456

P.3d at 595 (internal quotation marks omitted). The City's decision involved their engineers' judgment on whether replacing the ditch with a pipe presents a heightened risk of flooding and how to address that heightened risk, and thus involved an element of individual choice, meeting prong one. Next, the decision to demand an easement to ensure the City could timely reach the pipe in the event of any failure or backup is grounded in social and economic policy considerations and is thus subject to a policy analysis, meeting prong two. We conclude that the district court therefore did not err by granting summary judgment on the negligence claim. *See id.* at 23, 456 P.3d at 593 (noting the grant of summary judgment is reviewed de novo).

Given that no taking occurred and that discretionary function immunity applies, we need not address the remaining arguments, and accordingly we

ORDER the judgment of the district court AFFIRMED.

Pickering, J.  
Pickering

Cadish, J.  
Cadish

Lee, J.  
Lee

cc: Hon. Scott N. Freeman, District Judge  
David Wasick, Settlement Judge  
Jeffrey A. Dickerson  
Sparks City Attorney  
Washoe District Court Clerk