

**45.2 Conditions of Approval – Authority to Impose.** That a county’s amended Transportation System Plan (TSP) includes language recommending that the county acquire property to develop a transportation facility does not mean that whatever land use permits are required to actually construct the facility under the local code or state law are thereby waived. The county could choose to approve whatever land use permits are required under law at the same time it approves an amendment to its TSP, but the latter is not a substitute for the former, or vice versa. *VanDyke v. Yamhill County*, 78 Or LUBA 530 (2018).

**45.2 Conditions of Approval – Authority to Impose.** A project applicant is not required to file and win a quiet title action in circuit court as a condition precedent to filing the application simply because another party disputes the applicant’s title to the property on which the proposed development is to occur. When a party disputes the applicant’s title under a legal theory that can only be resolved in circuit court, neither the county nor LUBA is in a position to resolve the legal dispute over whether the applicant/deed owner’s title is good. For that reason, the county is also not obligated to adopt findings resolving the title dispute. In circumstances where consent or lack of ownership has a bearing on an approval criteria, we have held that the decision maker may be required to impose conditions to ensure that the required consent is obtained prior to construction. However, where ownership of the subject property is not an approval criterion, we have never held that the applicant has the obligation to quiet title in the subject property where some doubt is raised during the proceedings below as to the legality of that title, or that the decision maker is obliged to adopt findings addressing the likelihood that the applicant will prevail in a quiet title action. *VanDyke v. Yamhill County*, 78 Or LUBA 530 (2018).

**45.2 Conditions of Approval – Authority to Impose.** Where a city council has clear authority under a development code to impose conditions of approval to address potential land use conflicts and traffic congestion, and the city council appears to fail to impose conditions requested by project opponents because it was advised by county staff that it lacked authority to impose such conditions of approval, remand is required to the city council to consider imposition of any conditions of approval that it finds are warranted to mitigate any such potential land use conflicts or traffic congestion. *Hagan v. City of Grants Pass*, 76 Or LUBA 196 (2017).

**45.2 Conditions of Approval – Authority to Impose.** Where the local code allows the local government to impose conditions of approval to ensure that a proposal conforms to applicable development standards, and nothing cited by the petitioner prohibits the local government from approving an application for development subject to conditions of approval or relying on those conditions to find that the proposal, as conditioned, complies with applicable development standards, the petitioner’s arguments that the city should not have imposed conditions of approval provide no basis for reversal or remand of the decision. *Von Clemm v. City of Portland*, 66 Or LUBA 379 (2012).

**45.2 Conditions of Approval – Authority to Impose.** Where the applicant appeals a hearing officer’s decision, challenging a condition of approval under a local appeal standard that limits the planning commission’s review to the issues raised in the appeal, the planning commission’s authority to impose new conditions is limited to conditions necessary to ensure that the application, with the challenged condition eliminated, continues to comply with applicable approval criteria. *Treadmill Joint Venture v. City of Eugene*, 65 Or LUBA 213 (2012).

**45.2 Conditions of Approval – Authority to Impose.** Where the applicant appeals a hearing officer’s decision challenging a condition of approval limiting building height, under a local appeal standard that limits the planning commission’s review to the issues raised in the appeal, the planning commission errs in imposing a new condition requiring additional setbacks, where the condition requiring additional setback is unrelated to the building height condition. *Treadmill Joint Venture v. City of Eugene*, 65 Or LUBA 213 (2012).

**45.2 Conditions of Approval – Authority to Impose.** When the applicable local code provision allows a hearing officer to impose buffering and screening requirements as determined by the “review authority,” that grant of discretion is very broad, and a hearing officer is permitted to impose buffering and screening conditions that apply in analogous situations. *King v. Washington County*, 60 Or LUBA 253 (2009).

**45.2 Conditions of Approval – Authority to Impose.** When a distance buffer and sight-obscuring fence already exist to buffer and screen an industrial use from nearby residential uses, the stated rationale to reduce noise and visual impacts on the residential uses is insufficient to justify a condition of approval requiring a second sight-obscuring fence. *King v. Washington County*, 60 Or LUBA 253 (2009).

**45.2 Conditions of Approval – Authority to Impose.** A condition of approval requiring a fence to prevent a use from expanding into the area on the other side of the required fence and reduce noise impacts does not further a legitimate planning objective when the decision already precludes expanding the use beyond the area of the proposed fence, and there is no evidence in the record of noise impacts. *King v. Washington County*, 60 Or LUBA 253 (2009).

**45.2 Conditions of Approval – Authority to Impose.** ORS 227.175(4) allows a city to condition its approval of an application for a zone change consistent with ORS 227.215 or any city legislation. *Willamette Oaks, LLC v. City of Eugene*, 59 Or LUBA 60 (2009).

**45.2 Conditions of Approval – Authority to Impose.** Where LUBA reverses a denial under ORS 197.835(10)(a) and orders the local government to approve the “application,” the application includes any (1) applicant-proposed conditions of approval and (2) conditions imposed in an initial decision that the applicant has not objected to or attempted to appeal to the final decision maker. However, the “application” does not include conditions of approval that the applicant objected to or attempted to appeal to the final decision maker. *Stewart v. City of Salem*, 58 Or LUBA 605 (2009).

**45.2 Conditions of Approval – Authority to Impose.** Absent some basis in the city code, a city does not have the authority to approve or deny a broadcast tower application based on the terms of the current lease agreement between the tower owner and the property owner. *Curl v. City of Bend*, 56 Or LUBA 746 (2008).

**45.2 Conditions of Approval – Authority to Impose.** A federal statute prohibiting local governments from prohibiting the provision of wireless telephone service does not authorize local governments to condition approval of a broadcast tower to require filters to reduce radio frequency

interference with nearby wireless facilities. Even if a local code provision authorized such a condition, federal law would preempt the local government from applying it. *Curl v. City of Bend*, 56 Or LUBA 746 (2008).

**45.2 Conditions of Approval – Authority to Impose.** Where an application to remove a Planned Development Overlay meets all of the applicable criteria, a local government errs in requiring the applicant's property to be rezoned as a condition of approval in approving the application. *7th Street Station LLC v. City of Corvallis*, 55 Or LUBA 321 (2007).

**45.2 Conditions of Approval – Authority to Impose.** A hearings officer's failure to address arguments that the applicant should improve transportation facilities affected by a proposed destination resort provides no basis for reversal or remand, where a prior development agreement and two earlier development approvals conclusively established the type and extent of transportation improvements the applicant is obligated to make in developing the resort, and the petitioners cite no authority for the hearings officer to require different improvements in approving a subdivision within that resort. *Broken Top Community Assoc. v. Deschutes County*, 54 Or LUBA 84 (2007).

**45.2 Conditions of Approval – Authority to Impose.** A county code provision that authorizes a county to impose conditions designed to address the adverse impacts of the proposed use or development does not authorize a county to impose conditions to remediate zoning violations on the property that are unrelated to the proposed use or development. *Applebee v. Washington County*, 54 Or LUBA 364 (2007).

**45.2 Conditions of Approval – Authority to Impose.** Under ORS 197.522 and similarly worded local law requirements, a city is obligated to consider and impose any conditions of approval proposed by the permit application if such conditions would allow the city to approve a conditional use permit application that would otherwise not meet approval criteria. However, under those authorities the city is not obligated to take the initiative to develop such conditions on its own or develop the evidentiary record that might be needed to impose such conditions. *Caster v. City of Silverton*, 54 Or LUBA 441 (2007).

**45.2 Conditions of Approval – Authority to Impose.** Where a local government's only claimed basis for imposing an exaction that requires off-site road improvements is that a subdivision would otherwise violate a code standard regarding street system impacts, and LUBA finds that the local government has not established that the subdivision would violate the code standard, there is also no basis to impose the exaction. *PacWest II, Inc. v. City of Madras*, 53 Or LUBA 241 (2007).

**45.2 Conditions of Approval – Authority to Impose.** Where a city's code does not expressly authorize a city to impose a condition requiring annexation on its decision approving an application to partition unincorporated land, but the code only authorizes the city to approve partitions of unincorporated lands that are subject to an annexation agreement and the city's only other option would be to deny the partition application, the city correctly interprets its code to approve the application with the annexation agreement condition. *Wickham v. City of Grants Pass*, 53 Or LUBA 261 (2007).

**45.2 Conditions of Approval – Authority to Impose.** Federal law preempts local zoning conditions of approval that are imposed to regulate radio frequency interference. *Save Our Skyline v. City of Bend*, 48 Or LUBA 192 (2004).

**45.2 Conditions of Approval – Authority to Impose.** It does not matter whether conditions that are imposed to regulate radio frequency interference are imposed under general zoning conditional use criteria or local regulations that were adopted to regulate radio frequency interference directly. It is the purpose for imposing the condition that is important, and if the condition is imposed to regulate radio frequency interference, it is preempted by federal law. *Save Our Skyline v. City of Bend*, 48 Or LUBA 192 (2004).

**45.2 Conditions of Approval – Authority to Impose.** Federal law does not preempt local laws that regulate the visual and aesthetic impact of radio towers and the antennas placed on those towers. *Save Our Skyline v. City of Bend*, 48 Or LUBA 192 (2004).

**45.2 Conditions of Approval – Authority to Impose.** A condition of approval requiring an applicant to acquire adjacent property either by sale or eminent domain does not violate a code provision requiring the signatures of all property owners on an application where the application did not propose use of adjacent property. *Kurahashi Partners v. City of Beaverton*, 46 Or LUBA 791 (2004).

**45.2 Conditions of Approval – Authority to Impose.** Even if ORS 197.522 can be read to apply to a city decision to approve a partition and can be read to limit the types of conditions that may be imposed to “reasonable conditions,” ORS 197.522 does not place a burden on a local government to demonstrate that its conditions are reasonably necessary to address particular circumstances presented in the proposed partition. *Martin v. City of Dunes City*, 45 Or LUBA 458 (2003).

**45.2 Conditions of Approval – Authority to Impose.** Even if ORS 197.522 is applicable to a decision to approve a minor partition, ORS 197.522 does not require a city to modify its minimum right-of-way requirements to respond to arguments that the right-of-way requirements are excessive in a particular case. *Martin v. City of Dunes City*, 45 Or LUBA 458 (2003).

**45.2 Conditions of Approval – Authority to Impose.** A condition of approval limiting sales of nonfarm-related items in a farm feed store to 10 percent of total sales, rather than the 10 to 20 percent of total sales that the applicant proposed, does not make such a significant change in the permit application that a new application must be required. *Barge v. Clackamas County*, 39 Or LUBA 183 (2000).

**45.2 Conditions of Approval – Authority to Impose.** Conditions of approval requiring Tri-Met to install restrooms and drinking fountains for the westside corridor project are not “reasonable and necessary” within the meaning of Oregon Laws 1991, chapter 3, section 7(1)(b), because those improvements are not required by the final environmental impact statement, and the project can be completed and operate without the required improvements. *Tri-County Metro Trans. Dist. v. City of Beaverton*, 31 Or LUBA 214 (1996).

**45.2 Conditions of Approval – Authority to Impose.** Conditions of approval requiring Tri-Met to install an enhanced trackway and esplanade for the westside corridor project are not “reasonable and necessary” within the meaning of Oregon Laws 1991, chapter 3, section 7(1)(b), because the project can be completed and operate without the required improvements. *Tri-County Metro Trans. Dist. v. City of Beaverton*, 31 Or LUBA 214 (1996).

**45.2 Conditions of Approval – Authority to Impose.** Whether or not a local government has authority to design and construct a road owned by another jurisdiction has no bearing on whether the local government can condition development approval upon a finding that the road be able to accommodate a proposed development. *Clark v. City of Albany*, 29 Or LUBA 325 (1995).

**45.2 Conditions of Approval – Authority to Impose.** Assignments of error that contend disputed conditions of approval either exceed a local government’s authority under, or improperly construe, applicable law, if sustained, provide a basis for reversal or remand of a challenged decision, regardless of whether the challenged decision is a land use decision or limited land use decision. *Tri-County Metro. Trans. Dist. v. City of Beaverton*, 28 Or LUBA 78 (1994).

**45.2 Conditions of Approval – Authority to Impose.** If a condition is *necessary* for consistency with a final order approving a light rail transit (LRT) facility, under Oregon Laws 1991, chapter 3, section 7(1)(b), a local government is *required* to impose such a condition in approving a local permit for the LRT facility, and the limitations in the second sentence of that section do not apply. *Tri-County Metro. Trans. Dist. v. City of Beaverton*, 28 Or LUBA 78 (1994).

**45.2 Conditions of Approval – Authority to Impose.** Because the second sentence of Oregon Laws 1991, chapter 3, section 7(1)(b), imposes limitations on a local government’s authority to impose conditions on a local permit for a light rail transit facility, the local government has the burden of demonstrating that any conditions which are not required by Tri-Met’s “final order” comply with these limitations. *Tri-County Metro. Trans. Dist. v. City of Beaverton*, 28 Or LUBA 78 (1994).

**45.2 Conditions of Approval – Authority to Impose.** Under Oregon Laws 1991, chapter 3, section 7(1)(b), a “necessary” condition is a condition required for a light rail transit project to meet applicable permit criteria in a local government’s comprehensive plan or code. However, such a condition cannot be imposed if by itself, or together with other conditions, it would prevent implementation of the approved light rail transit project. *Tri-County Metro. Trans. Dist. v. City of Beaverton*, 28 Or LUBA 78 (1994).

**45.2 Conditions of Approval – Authority to Impose.** Even if a condition of land use approval is not an “exaction” subject to the “rough proportionality” requirement of *Dolan v. City of Tigard*, conditions of land use approval must support some legitimate planning purpose and must be authorized by the local government’s comprehensive plan or land use regulations. *Davis v. City of Bandon*, 28 Or LUBA 38 (1994).

**45.2 Conditions of Approval – Authority to Impose.** A code section authorizing conditions “requiring design features which minimize environmental impacts \* \* \*” is sufficient authority to impose a condition that an identified wetland be crossed by a bridge rather than a road placed on

fill. Where the record includes testimony expressing concern about placing fill in the wetland, the record is sufficient to show such a condition furthers a valid planning purpose. *Davis v. City of Bandon*, 28 Or LUBA 38 (1994).