

45.3 Conditions of Approval – Exactions. Under *Schultz v. City of Grants Pass*, 131 Or App 220, 884 P2d 569 (1994), where property can be physically developed without further land use review, i.e., with uses that are allowed outright, then some level of exactions could be appropriate at the partition stage, even if physical development is not part of the partition application; however, where nothing in the local code or elsewhere requires the local government to impose exactions at the partition stage, the local government’s decision not to exact provides no basis for remand. *Dressel v. City of Tigard*, 81 Or LUBA 208 (2020).

45.3 Conditions of Approval – Exactions. The *Dolan* rough proportionality requirement operates as a *limit* or ceiling on a city’s authority to impose exactions. If a proposed exaction is less than the exaction that could be imposed under the *Dolan* rough proportionality limit, *Dolan* does not require that the exaction be increased so that it is roughly proportional. *Rosenzweig v. City of McMinnville*, 66 Or LUBA 164 (2012).

45.3 Conditions of Approval – Exactions. Where the “rough proportionality” test in *Dolan v. City of Tigard*, 512 US 374, 114 S Ct 2309, 129 L Ed 2d (1994), applies, it can function as a kind of variance, providing a basis under which a local government may choose not to exact property as a condition of development approval that it would otherwise be entitled to exact under its land use regulations, as an alternative to compensating the landowner for the taking. *Columbia Riverkeeper v. Clatsop County*, 58 Or LUBA 235 (2009).

45.3 Conditions of Approval – Exactions. An agreement by a property owner to establish a walkway from a vacated street west of the property to an existing street east of the property, in order to provide pedestrian access to a building on the property, does not necessarily constitute a voluntary agreement to deed a public easement for a sidewalk connecting the vacated street with the existing street. *Hallmark Inns v. City of Lake Oswego*, 43 Or LUBA 62 (2002).

45.3 Conditions of Approval – Exactions. Where a city requires that a property owner grant an easement across its property to provide pedestrian access between a vacated street and an existing street as a condition of development approval, and determines that the easement will satisfy city requirements for connectivity, the city has established a nexus between the exaction and the city’s legitimate governmental interest in ensuring adequate transportation connectivity. *Hallmark Inns v. City of Lake Oswego*, 43 Or LUBA 62 (2002).

45.3 Conditions of Approval – Exactions. In requiring an easement for a pedestrian walkway as a condition of development approval, a city may consider the impacts that reasonably flow from the approval granted, including the possible use of the walkway by employees of the development to access adjoining streets and by residents of neighboring properties to access the development on foot or by bicycle. *Hallmark Inns v. City of Lake Oswego*, 43 Or LUBA 62 (2002).

45.3 Conditions of Approval – Exactions. A city adequately quantifies the impact of a proposed development on the area’s bicycle and pedestrian transportation system and establishes that an exaction for a pedestrian walkway across the subject property is roughly proportional to the impact of the development where the city: (1) considers the types of uses in the vicinity and concludes that the walkway is necessary to allow access to a transit stop and other neighborhood amenities; (2) explains that persons working at or patronizing the development would be impeded from

accessing a neighborhood attraction to the west of the subject property without the walkway; and (3) explains that the subject property could be developed as six individual lots, with sidewalks required for each, and the decision to combine the lots into one development has impacts on the city's transportation system that the required easement ameliorates. *Hallmark Inns v. City of Lake Oswego*, 43 Or LUBA 62 (2002).

45.3 Conditions of Approval – Exactions. Incremental impacts on a transportation facility attributable to a proposed development may support an exaction. *McClure v. City of Springfield*, 39 Or LUBA 329 (2001).

45.3 Conditions of Approval – Exactions. LUBA will uphold an exaction requiring the dedication of right-of-way where the city's findings demonstrate that the exaction is roughly proportional to the impacts caused by the development, including any benefits the development receives by virtue of the exaction. *McClure v. City of Springfield*, 39 Or LUBA 329 (2001).

45.3 Conditions of Approval – Exactions. Where a city fails to establish a relationship between vehicular and nonvehicular impacts of a proposed development and a required dedication for sidewalks, the exaction is not supportable under *Dolan v. City of Tigard*, 512 US 374, 114 S Ct 2309, 129 L Ed 2d 304 (1994). *McClure v. City of Springfield*, 39 Or LUBA 329 (2001).

45.3 Conditions of Approval – Exactions. A waiver of remonstrance to the formation of a local improvement district is not subject to the analysis required by *Dolan v. City of Tigard*, 512 US 374, 114 S Ct 2309, 129 L Ed 2d 304 (1994), because it, by itself, does not result in the loss of property. *McClure v. City of Springfield*, 39 Or LUBA 329 (2001).

45.3 Conditions of Approval – Exactions. Only those impacts that reasonably flow from the approval granted may be considered when imposing exactions to ameliorate those impacts. *McClure v. City of Springfield*, 37 Or LUBA 759 (2000).

45.3 Conditions of Approval – Exactions. During its review of a proposed partition, a city may consider the impact that future dwellings may have on public infrastructure, where the partition approval is the last land use decision necessary to establish dwellings on the resulting parcels. *McClure v. City of Springfield*, 37 Or LUBA 759 (2000).

45.3 Conditions of Approval – Exactions. It is appropriate to include some consideration of the benefits to the parcels created by a partition, as well as the impacts from the new parcels, in the rough proportionality analysis required by *Dolan v. City of Tigard*, 512 US 374, 114 S Ct 2309, 129 L Ed 2d 304 (1994). *McClure v. City of Springfield*, 37 Or LUBA 759 (2000).

45.3 Conditions of Approval – Exactions. In reviewing findings adopted to support the imposition of exactions, LUBA first determines if any identified impacts or benefits are not relevant for the purposes of the rough proportionality analysis required by *Dolan v. City of Tigard*, 512 US 374, 114 S Ct 2309, 129 L Ed 2d 304 (1994). LUBA then looks at whether the remaining findings adequately quantify the benefits to the development or the impacts of the development on public facilities, and whether those findings suffice to demonstrate that the city's exactions are

“roughly proportional” to those benefits and impacts. *McClure v. City of Springfield*, 37 Or LUBA 759 (2000).

45.3 Conditions of Approval – Exactions. The fact that an exaction is required by city ordinance is irrelevant to whether an exaction imposed pursuant to that ordinance is in fact roughly proportional to the impacts of development. *McClure v. City of Springfield*, 37 Or LUBA 759 (2000).

45.3 Conditions of Approval – Exactions. The fact that a portion of the property subject to dedication for transportation improvements will be used for transportation access whether it is privately or publicly owned is not relevant under *Dolan v. City of Tigard*, 512 US 374, 114 S Ct 2309, 129 L Ed 2d 304 (1994), because that consideration is neither a benefit to the property owner nor an impact of development on the public infrastructure. *McClure v. City of Springfield*, 37 Or LUBA 759 (2000).

45.3 Conditions of Approval – Exactions. Benefits to the larger community resulting from the imposition of exactions, as opposed to specific benefits to the subject property, are not appropriate considerations under *Dolan v. City of Tigard*, 512 US 374, 114 S Ct 2309, 129 L Ed 2d 304 (1994). *McClure v. City of Springfield*, 37 Or LUBA 759 (2000).

45.3 Conditions of Approval – Exactions. In some cases, the impacts resulting from the development may be so great, and the exactions imposed so small, that it is readily apparent without additional explanation that the exactions are roughly proportional to the expected impact. *McClure v. City of Springfield*, 37 Or LUBA 759 (2000).

45.3 Conditions of Approval – Exactions. The impacts resulting from the approval of two residential parcels are not so great as to make it self-evident that the imposition of a 20-foot dedication of right-of-way requirement is roughly proportional to the impacts of the proposed development. *McClure v. City of Springfield*, 37 Or LUBA 759 (2000).

45.3 Conditions of Approval – Exactions. Unless a local government makes some effort to quantify the benefits accruing to a particular development, those benefits will be of limited assistance in applying the rough proportionality analysis required by *Dolan v. City of Tigard*, 512 US 374, 114 S Ct 2309, 129 L Ed 2d 304 (1994). *McClure v. City of Springfield*, 37 Or LUBA 759 (2000).

45.3 Conditions of Approval – Exactions. If the extent of safety impacts caused by a proposed partition justifies some or all of the city’s exactions, the local government may impose those additional conditions that are roughly proportional to the safety impacts caused by the approval. *McClure v. City of Springfield*, 37 Or LUBA 759 (2000).

45.3 Conditions of Approval – Exactions. To the extent *Dolan v. City of Tigard*, 512 US 374, 114 S Ct 2309, 129 L Ed 2d 304 (1994), is applicable to a facial takings challenge to legislative adoption of a local ordinance, petitioner must establish from the face of the challenged ordinance that no set of circumstances exist under which the ordinance can be applied in a constitutional manner. *Lincoln City Ch. of Comm. v. City of Lincoln City*, 36 Or LUBA 399 (1999).

45.3 Conditions of Approval – Exactions. The requirement in *Dolan v. City of Tigard*, 512 US 374, 114 S Ct 2309, 129 L Ed 2d 304 (1994), that the local government establish “rough proportionality” between a proposed exaction and the impacts of development does not mean that the local government must assume the burden of producing the evidence on which the rough proportionality determination is based. *Lincoln City Ch. of Comm. v. City of Lincoln City*, 36 Or LUBA 399 (1999).

45.3 Conditions of Approval – Exactions. Depending on the facts of the case, a local government’s demonstration of rough proportionality required by *Dolan v. City of Tigard*, 512 US 374, 114 S Ct 2309, 129 L Ed 2d 304 (1994), may require up to three distinct sets of analyses: (1) the extent to which the proposed exaction will benefit the development; (2) the extent to which the proposed exaction will mitigate the development’s impacts on the public infrastructure; and (3) whether the benefits and impacts analyzed in (1) and (2), considered together, demonstrate that the proposed exaction is roughly proportional to the impacts of development. *Lincoln City Ch. of Comm. v. City of Lincoln City*, 36 Or LUBA 399 (1999).

45.3 Conditions of Approval – Exactions. Even assuming *Dolan v. City of Tigard*, 512 US 374, 114 S Ct 2309, 129 L Ed 2d 304 (1994), addresses whether the local government must originate the analysis used to demonstrate rough proportionality between a proposed exaction and the impacts of development, an ordinance requiring that an applicant submit a “rough proportionality report” is not facially unconstitutional, where nothing on the face of the ordinance requires the local government to adopt or use in whole or part the conclusions contained therein. *Lincoln City Ch. of Comm. v. City of Lincoln City*, 36 Or LUBA 399 (1999).

45.3 Conditions of Approval – Exactions. A condition requiring an applicant for site plan approval for a fast-food restaurant to design street improvements for hundreds of feet beyond the subject property boundaries does not meet the “rough proportionality” test established in *Dolan v. City of Tigard*, 512 US 374, 114 S Ct 2309, 129 L Ed 2d 304 (1994). *Clark v. City of Albany*, 29 Or LUBA 325 (1995).

45.3 Conditions of Approval – Exactions. Under *Dolan v. City of Tigard*, 512 US 374, 114 S Ct 2309, 129 L Ed 2d 304 (1994), and *J.C. Reeves Corp. v. Clackamas County*, 131 Or App 615, 887 P2d 360 (1994), findings in support of a condition requiring an applicant for site plan approval for a fast-food restaurant to construct certain street and frontage improvements must compare traffic and other effects of development to required improvements. *Clark v. City of Albany*, 29 Or LUBA 325 (1995).

45.3 Conditions of Approval – Exactions. When an applicant’s own site plan for a fast-food restaurant provides for a nondriving area, the local government’s imposition of a condition requiring the nondriving area be retained is not an exaction. *Clark v. City of Albany*, 29 Or LUBA 325 (1995).

45.3 Conditions of Approval – Exactions. A condition requiring an applicant to provide a plan for satisfying the local government’s storm drainage requirements prior to issuance of a land use permit is not an exaction. *Clark v. City of Albany*, 29 Or LUBA 325 (1995).

45.3 Conditions of Approval – Exactions. Advisory statements labeled as “conditions” are not exactions. *Clark v. City of Albany*, 29 Or LUBA 325 (1995).

45.3 Conditions of Approval – Exactions. If a local government approves a proposed partition with conditions requiring exactions, the local government must ensure that the requirement of *Dolan v. City of Tigard*, 512 US 374, 114 S Ct 2309, 2319-20, 129 L Ed2d 304 (1994), for “individualized determination[s] that the required dedication is related both in nature and extent to the impact of the proposed development” is satisfied. *Neuman v. Benton County*, 29 Or LUBA 172 (1995).

45.3 Conditions of Approval – Exactions. Conditions of land use approval requiring uncompensated dedication of land constitute “exactions.” Where a condition of land use approval imposes an exaction, the local government must make an individualized determination that the exaction is roughly proportional in nature and extent to the impact of the proposed development. *Davis v. City of Bandon*, 28 Or LUBA 38 (1994).

45.3 Conditions of Approval – Exactions. Even if a local code provision requiring that six percent of the gross area of a proposed subdivision be dedicated for open space is properly interpreted as a minimum rather than a maximum requirement, a decision requiring dedication of much more than six percent of the gross area of a proposed subdivision must be remanded so that the local government may adopt findings explaining that interpretation and showing the “rough proportionality” requirement of *Dolan v. City of Tigard* is satisfied. *Davis v. City of Bandon*, 28 Or LUBA 38 (1994).