

**45.5 Conditions of Approval – Waivers of Remonstrance.** Where a city code provides that a property owner must, as a condition of permit or partition approval, either provide the improvements or pay into an improvement fund if a street adjoining property without direct access to the street does not have standard full-width improvements, and petitioner argues that the code provision is not applicable to his proposed property partition, LUBA will sustain, in part, petitioner’s challenge upon remand from the Court of Appeals, where the arguments on appeal have evolved and it is apparent that remand is necessary for the hearings officer to adopt findings regarding LUBA’s underlying conclusion that the hearings officer was correct in concluding that the condition requiring a waiver of remonstrance against a street or stormwater facility improvement was justified under *Clark v. City of Albany*, 31 Or LUBA 375, 380, *aff’d*, 144 Or App 192, 924 P2d 877 (1966), and did not constitute a takings. *Hill v. City of Portland*, 78 Or LUBA 334 (2018).

**45.5 Conditions of Approval – Waivers of Remonstrance.** A waiver of remonstrance to the formation of a local improvement district (LID) is not subject to the constitutional exaction analysis because it, by itself, does not result in a loss of petitioner’s property. Conditions of approval, such as a waiver of remonstrance, may be applied by a local government to ensure that a development proposal conforms to the applicable approval criteria or to ensure the enforcement of other local government regulations. *Hill v. City of Portland*, 77 Or LUBA 317 (2018).

**45.5 Conditions of Approval – Waivers of Remonstrance.** Where there is substantial evidence in the record to justify a city’s finding that there is a need for a local improvement district and that petitioner’s development will both contribute to the need for those improvements and be benefited by them, the city may require petitioner to sign a waiver of remonstrance for future street improvements. *Clark v. City of Albany*, 31 Or LUBA 375 (1996).