

1 Briggs, Board Member.

2 This matter is on remand from the Court of Appeals. *Hallmark Inns & Resorts v. City*
3 *of Lake Oswego*, 186 Or 710, 65 P3d 300 (2003). We set out the following facts from our
4 earlier opinion in this appeal:

5 “Petitioner is a corporation that owns and operates hotels and resorts.
6 Petitioner developed its corporate headquarters in 1993-1994 in the
7 Mercantile Village area of Lake Oswego. The subject property is comprised
8 of six lots, including a vacated portion of Collins Way that used to bisect the
9 property. This portion of Collins Way was vacated before petitioner bought
10 the property. Before it was vacated, Collins Way connected the Waluga
11 residential neighborhood to the west with what is now Hallmark Drive, a
12 north-south street that runs along the eastern edge of the subject property, and
13 the Mercantile Village commercial area located across Hallmark Drive to the
14 east. As part of the 1993 development approval of petitioner’s headquarters, a
15 sidewalk along the south-facing front of petitioner’s corporate headquarters
16 was approved in the approximate location of the vacated Collins Way right-
17 of-way. * * *

18 “The 1993 approval imposed a condition [(Condition B(2))] that required
19 easements for public walkways, sidewalks, and public utilities.¹ Petitioner
20 provided an easement for the sidewalk that bordered the east side of its
21 property, but petitioner did not provide an easement for the sidewalk that runs
22 along the front of its corporate headquarters between Collins Way and
23 Hallmark Drive (the disputed walkway). Although vehicular access to the
24 parking lot for petitioner’s corporate headquarters is exclusively from
25 Hallmark Drive, the main entrance of the building is located west of Hallmark
26 Drive, and the disputed walkway provides access to that main entrance.

27 “The disputed walkway was open to the public from early 1994 to mid-1996.
28 Petitioner constructed a fence at the western edge of the subject property
29 where the walkway connected to Collins Way in mid-1996 due to increasing
30 vandalism that petitioner attributed to the public use of the walkway. The
31 fence had the effect of cutting off access to petitioner’s property from the
32 west. After petitioner erected its fence, the city cited petitioner for failing to
33 comply with the above-described condition of development approval.
34 Petitioner challenged the citation, and the parties agreed to hold the citation in

¹ Condition B(2) requires that petitioner

“[P]rovide easements for all public walkways/sidewalks and public utilities, including storm water detention and water quality facilities, to the satisfaction of [the] City Engineer.” Record 230.

1 abeyance in order to obtain a judicial resolution of the matter. Petitioner then
2 filed suit in Clackamas County Circuit Court seeking a declaratory judgment
3 that it was not required to provide an easement for the disputed walkway or,
4 alternatively, for an award of compensation for a taking of private property.
5 The circuit court abated its proceedings until a final decision on the present
6 application to modify the condition of approval. The city design review
7 commission denied petitioner’s request for a modification. Petitioner appealed
8 the design review commission’s decision to the City Council, which affirmed
9 the design review commission’s decision. This appeal followed.” *Hallmark*
10 *Inns v. City of Lake Oswego*, 43 Or LUBA 62, 63-65 (2002) (footnote
11 added).²

12 We affirmed the city’s decision, concluding that the city did not err in denying
13 petitioner’s modification request, and that the requirement to provide an access easement to
14 the city for the disputed walkway was not an unconstitutional exaction. We did not address
15 arguments petitioner made that challenged whether the disputed condition of approval even
16 applied to the disputed walkway, saying

17 “* * * [P]etitioner does not assign error to the city council decision that
18 Condition B(2) requires that petitioner provide an easement to the disputed
19 walkway to ensure public access. Instead, petitioner’s assignments of error
20 appear to take as given that Condition B(2) applies to the disputed walkway
21 and requires that petitioner provide an easement to the city for the disputed
22 walkway. Therefore, we do not address this seemingly critical threshold issue,
23 even though resolution of that question in petitioner’s favor could make the
24 remainder of petitioner’s assignments of error moot.” *Id.* at 66-67.

25 Petitioner appealed our decision to the Court of Appeals, arguing in part that,
26 contrary to LUBA’s conclusion, the petition for review *did* include a challenge to the city’s
27 determination that Condition B(2) applied to the disputed walkway. The Court agreed with
28 petitioner, reversing our decision and remanding the decision to us to consider the parties’
29 arguments pertaining to the applicability of Condition B(2) to the disputed walkway.
30 *Hallmark Inns and Resorts v. City of Lake Oswego*, 186 Or App at 718. We again affirm.

² Our earlier opinion included a map depicting the subject property and its relevant features. We do not reproduce that map here.

1 Lake Oswego Development Standards (LODS) 20.020(2) concerns “walkways” and
2 provides:

3 “Walkways shall connect at least one public entrance of each building
4 accessible to the public to the nearest public walkway or other walkways
5 leading to a public walkway. Walkways shall also connect to other areas of
6 the site, such as parking lots and outdoor activity areas, to other building
7 entrances, to adjacent streets and nearby transit stops.”³

8 LODS 20.015(2) defines a “walkway” as:

9 “A surfaced strip of land, *legally accessible to the public*, improved to
10 accommodate pedestrian traffic, including persons in wheelchairs.” (Emphasis
11 added.)

12 Petitioner argues that the city erred in interpreting Condition B(2) to include the
13 disputed walkway. Petitioner contends that “walkways” are meant to provide a connection
14 between the development and nearby sidewalks and transit stops, and are not meant to
15 provide a shortcut for pedestrians and other non-motorized traffic from one public right-of-
16 way to another. Petitioner apparently concedes that the section of the sidewalk leading from
17 the entrance to petitioner’s building to Hallmark Drive is a “walkway” within the meaning of
18 the city’s definition of that term. However, petitioner disputes that the entire sidewalk, from
19 Hallmark Drive to Collins Way, is a walkway that petitioner was required to construct and
20 provide an easement to the public for access for purposes unrelated to access to petitioner’s
21 building itself.⁴ Petitioner argues that it intended to allow access to Collins Way only as a
22 good neighbor, and never understood the 1994 design review decision to impose an
23 obligation to retain that access regardless of the adverse impact it might have on petitioner’s
24 property. Petitioner argues that from the beginning, it understood that the walkway

³ The city has recodified its ordinance since the challenged decision was made. We refer to the code numbers in place at the time the city’s decision was rendered.

⁴ Petitioner also argues that the city improperly construed its ordinance to impose requirements pertaining to accessways to the disputed walkway. We need not address that allegation because, as we explain, we conclude that the city did not err in interpreting Condition B(2) to require that the entire walkway be included in an easement dedicated to the public for access.

1 connection to Collins Way was at most a revocable license, and that petitioner had the
2 authority to revoke that license at any time.

3 The city council concluded that there was substantial evidence in the record
4 “establishing that Condition B(2) * * * was designed and should be
5 interpreted to require a public easement over the [entire disputed walkway]
6 from Hallmark Drive to Collins Way. Even if conveyance of an easement had
7 not been a specific condition of approval, the approval of [the 1993 design
8 review] clearly included a requirement for public pedestrian and bicycle
9 access across the Hallmark property in the location of the subject walkway.”
10 Record 14.

11 The city argues that this view of Condition B(2) is consistent with LODS 20.020(2)
12 and 20.015(2). First, the city argues that, contrary to petitioner’s assertions, “walkways” are
13 not intended to be limited to providing pedestrian access to the development itself. The city
14 points to findings that the city council endorsed that explain that LODS 20.020(2) was part of
15 a package of amendments adopted to implement the Transportation Planning Rule which
16 requires that local governments adopt development standards to

17 “accommodate safe and convenient pedestrian and bicycle access from within
18 new * * * commercial districts to adjacent residential areas and transit stops,
19 and to neighborhood activity centers within one-half mile of the
20 development.” OAR 660-012-0045(3)(b).

21 The city contends that walkways, are intended to connect to “adjacent residential
22 areas and transit stops” within the meaning of OAR 660-012-0045(3)(b) and LODS
23 20.020(2). The city argues that LODS 20.020(2) plainly contemplates that in some cases
24 walkways will provide a through route for pedestrians and bicyclists that did not exist prior
25 to the development and is unrelated to the development itself. In this case, the city argues
26 that when the section of Collins Way that now comprises part of the subject property was
27 vacated, the city anticipated that some sort of public easement would be necessary to retain
28 access between the residential areas to the west and the commercial areas to the east and that
29 appropriate access would be obtained in the course of reviewing and approving a particular

1 development on the property. The city contends that nothing prevents the city from obtaining
2 access in that manner.

3 We agree with the city that petitioner has not demonstrated that the city erred in
4 interpreting its 1993 decision to subject the disputed walkway to Condition B(2), *i.e.*, to
5 require that petitioner deed an easement for the walkway to the city. It may be that petitioner
6 believed that its agreement to provide an access between Collins Way and Hallmark Drive
7 was only a goodwill gesture that could be revoked at any time. However, the record supports
8 the city's interpretation of Condition B(2). The city could, and by imposing Condition B(2)
9 did, require that the entire walkway between Collins Way and Hallmark Drive be available to
10 provide public access, and that petitioner provide an easement to the walkway to the city.
11 Petitioner has not demonstrated that viewing Condition B(2) in that manner is inconsistent
12 with LODS 20.020(2) or 20.015(2), or any other provision of law cited to us.

13 Petitioner's allegations provide no basis for reversal or remand. Therefore, the city's
14 decision is affirmed.