

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON
3

4 JEFFERSON WESTSIDE NEIGHBORS,
5 PAUL CONTE and CHARLES SNYDER,
6 *Petitioners,*
7

8 vs.
9

10 CITY OF EUGENE,
11 *Respondent,*
12

13 and
14

15 THOMAS D. AULD,
16 *Intervenor-Respondent.*
17

18 LUBA No. 2008-045
19

20 FINAL OPINION
21 AND ORDER
22

23 Appeal from the City of Eugene.
24

25 William Hugh Sherlock, Paul Conte, and Charles Snyder, Eugene, filed the petition
26 for review. William Hugh Sherlock argued on behalf of petitioner Jefferson Westside
27 Neighbors. Paul Conte and Charles Snyder represented themselves. With them on the brief
28 was Hutchinson, Cox, Coons, DuPriest, Orr & Sherlock, P.C.
29

30 Emily N. Jerome, Eugene, filed a response brief and argued on behalf of respondent.
31 With her on the brief was Harrang Long Gary Rudnick P.C.
32

33 Micheal M. Reeder, Eugene, filed a response brief and argued on behalf of
34 intervenor-respondent. With him on the brief was Arnold Gallagher Saydack Percell Roberts
35 & Potter, PC.
36

37 BASSHAM, Board Member; RYAN, Board Chair; HOLSTUN, Board Member,
38 participated in the decision.
39

40 AFFIRMED

09/12/2008

41
42 You are entitled to judicial review of this Order. Judicial review is governed by the
43 provisions of ORS 197.850.

NATURE OF THE DECISION

Petitioners appeal a decision approving a minor partition.

FACTS

The subject property is a 10,715-square foot lot zoned Medium Density Residential (R-2), developed with a single-family dwelling and a detached garage. The front boundary borders on West 13th Avenue, a minor arterial, for approximately 67 feet. The rear of the property abuts West 12th Alley, which has a 14-foot right of way and an unimproved surface. The existing garage takes access from West 12th Alley. The surrounding residential block was originally platted with 10,000-square foot lots like the subject property, but much of the block has been divided into smaller lots and redeveloped with a mix of single family and multi-family dwellings.

The R-2 zone allows single and multi-family dwellings, with a potential density on the subject property of up to seven dwelling units. Intervenor proposes to partition the subject property into two parcels. Parcel 2 is a 3,226-square foot parcel that includes the existing dwelling. Parcel 1 is a flag-shaped, 7,490-square foot parcel with a large buildable portion in the rear of the subject property, abutting on West 12th Alley. Parcel 1 is connected to West 13th Avenue by a “flagpole” that is 20 feet wide where it abuts West 13th Avenue, but narrows to 13.9 feet as it passes the existing dwelling. The application proposes that Parcel 1 take vehicular access from West 12th Alley; the purpose of the “pole” is apparently to satisfy code requirements for minimum frontage on a minor arterial. Although it is not part of the partition application, there is no dispute that intervenor intends to develop the rear parcel with a residential fourplex.¹

¹ The city planning director approved an earlier application that proposed an identical partition and development of the rear parcel into a fourplex. However, the city hearings officer ultimately denied the application in part because the planning director had failed to evaluate the proposed fourplex against applicable refinement plan policies. In response, intervenor submitted a revised partition application that does not propose

1 The city planning director approved the proposed partition. Petitioners appealed the
2 decision to the hearings officer, who upheld the planning director’s decision. This appeal
3 followed.

4 **FIRST ASSIGNMENT OF ERROR**

5 The city’s code requires that the proposed partition be consistent with adopted
6 comprehensive plan policies listed at Eugene Code (EC) 9.9500 *et seq.* EC 9.9680 includes
7 several policies from the Westside Neighborhood Plan, a refinement plan, that the hearings
8 officer found to be applicable to the proposed partition, including EC 9.9680(1)(a): “Prevent
9 erosion of the neighborhood’s residential character.”

10 Petitioners argue that the proposed lot configuration, with the flag-shaped Parcel 1
11 and constricted flagpole width is “highly irregular,” and that no other lots in the surrounding
12 neighborhood have a lot configuration similar to that proposed. According to petitioners, the
13 predominant lot configuration pattern in the neighborhood is a “grid-patterned” layout with
14 rectangular lots and street/alley access. Petitioners argue that the city failed to adequately
15 evaluate whether the irregular lot configuration of Parcel 1 would erode the “neighborhood’s
16 residential character.”

17 The hearings officer interpreted the policy in EC 9.9680(1)(a) to prevent erosion of
18 the neighborhood’s residential character to be directed at preventing conversion of residential
19 land within the Westside neighborhood to commercial or non-residential uses, and not
20 directed at partitions to allow a residential lot be developed with residential uses permitted in
21 the R-2 zone.²

any particular development of Parcel 1. Nonetheless, there is no dispute that intervenor intends to develop Parcel 1 with a fourplex.

² The hearings officer found, in relevant part:

“* * * Viewed in context with other polices set out in the *Westside Neighborhood Plan*, the phrase ‘prevent erosion of the neighborhood’s residential character’ is intended to preserve the area for residential uses, rather than easily permit residential units to be converted to commercial uses. Thus, contrary to the appellants’ understanding, the policy is not intended

1 Petitioners disagree with that interpretation, arguing that the text and context of EC
2 9.9680(1)(a) suggest that it is intended to preserve the neighborhood’s existing residential
3 character, which petitioners argue mostly consists of single-family dwellings on rectangular
4 or regularly-shaped lots. Petitioners contend that the hearings officer’s narrow interpretation
5 of EC 9.9680(1)(a) conflates that policy with a different policy, at EC 9.9680(1)(c), to
6 “prevent the conversion of residentially-zoned properties to non-residential zoning districts
7 within the Westside Neighborhood.” In addition, petitioners note that the Westside
8 Neighborhood Plan includes an implementation strategy to “[e]ncourage those engaged in
9 residential development to preserve the existing single-family character through mechanisms
10 such as block planning, alley access parcels, and rehabilitation of existing residential
11 structures.” Supplemental Record 11. According to petitioners, viewed in this context, the
12 hearings officer’s narrow view that EC 9.9680(1)(a) is concerned only with preventing
13 conversion of residential lands to non-residential uses is erroneous. Petitioners contend that
14 EC 9.9680(1)(a) is concerned with preventing the erosion of the residential *character* of the
15 neighborhood, its existing features, including the predominant pattern of single-family
16 dwellings on largely grid-patterned lot layout, not merely preserving residential *uses* as a
17 broad use category.

to retain the kind of residential character that originally defined the Westside Neighborhood. Rather, it is intended to retain the neighborhood as a residential area, preserving and rehabilitating existing residential structures, while allowing for infill consistent with its medium density residential designation. Viewed in that way, the proposed parcel configuration is entirely consistent with the *Westside Neighborhood Plan*, because it preserves an existing structure, and its orientation to the existing street system, while allowing residential infill.

“Further, while it may be true that the proposed parcel configuration is unusual, it is not true to say that development that may occur on Parcel 1 is unusual in that it will allow use of the alley for primary access to a multi-family dwelling unit. As the applicants’ area study indicates, despite their uniform lot configurations, at least some lots within the neighborhood are developed with more than one residential structure, and at least some of those dwelling units have their only frontage on an alley. Therefore, while the likely development of Parcel 1 is not an issue in this application, the evidence supports a finding that a multi-family unit taking access off of an alley is consistent with the existing residential character of the neighborhood.” Record 25 (emphasis original).

1 Intervenor responds that in the context of evaluating a partition of residential land
2 that does not propose any particular residential use, EC 9.9680(1)(a) neither requires the city
3 to adopt findings on the character, nature or features of the residential uses in the
4 neighborhood, *i.e.*, the variety or predominance of dwelling types or features, nor to
5 determine whether the potential residential use of the parcels created will erode the
6 neighborhood’s residential character. We agree with intervenor. Under petitioners’ apparent
7 view of EC 9.9680(1)(a), the city must determine if the potential residential use of Parcel 1
8 will be consistent with the predominant residential dwelling type in the neighborhood, which
9 petitioners assert is detached single-family dwellings, and deny the application if that
10 potential residential use will undermine the single-family “character” of the neighborhood.
11 That view is fundamentally inconsistent with the planning and zoning for the subject
12 property, which allows a variety of residential dwelling types and densities as outright
13 permitted uses. Petitioners’ preferred interpretation would effectively limit new residential
14 development within the neighborhood to detached single family dwellings. Accordingly, we
15 reject petitioners’ view that EC 9.9680(1)(a) requires the city to determine the residential
16 character of the neighborhood based on the predominant dwelling types and density and then
17 determine whether the presumed residential use of the created parcels would erode that
18 “character.”

19 We generally agree with the hearings officer that the intent of EC 9.9680(1)(a), read
20 in context, is to retain the neighborhood as a residential area, while allowing for infill
21 consistent with the neighborhood’s medium density residential designation. As noted, the
22 policy to prevent the erosion of the neighborhood’s residential character cannot possibly
23 mean preserving the existing or predominant types of residential dwellings and density
24 against other residential dwelling types and densities, when the applicable plan and zoning
25 designations specifically allow a variety of dwelling types and densities as outright permitted
26 uses. Given that framework, the most natural reading of EC 9.9680(1)(a) is that it is

1 intended to prevent non-residential forces from eroding the neighborhood’s residential
2 character.

3 Petitioners have not demonstrated that the proposed lot configuration or access
4 presents any malign non-residential influences on the neighborhood’s residential character.
5 Petitioners argue that the proposed Parcel 1 configuration, with its narrow width “flag pole”
6 and orientation toward the rear alley, is unlike any other lot in the surrounding block, and
7 would open the door to similar unusual lot configurations, which in turn would threaten to
8 erode the “grid-patterned” lot layout and street/alley access pattern in the neighborhood.
9 However, as explained, the fact that a residential lot looks different than most of the other
10 residential lots in the neighborhood does not implicate EC 9.9680(1)(a).

11 Even assuming that an unique or unusual residential lot shape could in itself implicate
12 EC 9.9680(1)(a), the hearings officer found that while the proposed lot configuration is
13 “unusual,” other lots in the surrounding block, including the adjacent property, have been
14 divided to allow for additional dwelling units, with lots that take access from and only have
15 frontage on West 12th Alley. *See* n 2. That finding seems more than sufficient to explain
16 why the proposed configuration of Parcel 1 is consistent with EC 9.9680(1)(a), at least with
17 respect to Parcel 1’s orientation toward and access from the rear alley. The hearings officer’s
18 findings did not specifically address the narrow width “flag pole” in the context of
19 EC 9.9680(1)(a). However, petitioners have not explained why the proposed narrow
20 flagpole, even if unique in the neighborhood, threatens to erode the neighborhood’s
21 residential character contrary to EC 9.9680(1)(a).

22 The first assignment of error is denied.

23 **SECOND ASSIGNMENT OF ERROR**

24 Under the second assignment of error, petitioners argue that because it is undisputed
25 that the applicants intend to seek approval of a fourplex on Parcel 1, the city is required to

1 evaluate, for purposes of EC 9.9680(1)(a), whether the ultimate development of Parcel 1 into
2 a fourplex would erode the “neighborhood’s residential character.”

3 In the 2006 decision, the hearings officer denied the application for failure to evaluate
4 whether the fourplex proposed in that application violates EC 9.9680(1)(a), based on EC
5 9.8215(1)(k), which provides that the city must apply “[a]ll other applicable development
6 standards for features explicitly included in the application.” As noted, the applicants
7 resubmitted the application without proposing any particular development for Parcel 1. As
8 already noted, there is no dispute that the applicants ultimately intend to seek approval for a
9 fourplex; but the fourplex is not “explicitly included in the application” that led to the
10 hearings officer’s decision that is before us in this appeal.

11 Petitioners contend that even in circumstances where EC 9.8215(1)(k) does not
12 require evaluation of “features explicitly included in the application,” where it is clear what
13 type of development the applicant will ultimately seek approval for, the city is obligated to
14 evaluate the impacts of that future development on the neighborhood’s residential character.
15 According to petitioners, constructing a fourplex on Parcel 1 is inconsistent with the
16 Westside neighborhood’s residential character, which consists predominantly of single-
17 family dwellings.

18 For the reasons set out above, we disagree with petitioners that EC 9.9680(1)(a) is
19 concerned with preserving the relative predominance of the neighborhood’s single-family
20 dwellings against other dwelling types or densities permitted outright in the R-2 zone. We
21 also disagree with petitioners that, where the applicant does not propose any development on
22 the newly created parcels, and EC 9.8215(1)(k) therefore does not apply, the city is
23 nonetheless obligated to evaluate potential future development as part of the partition
24 application. While the applicants may currently intend to develop Parcel 1 with a fourplex,
25 whether they will ultimately seek approval for a fourplex or another use allowed in the R-2

1 zone is unknown. Nothing cited to us in the city’s code requires the city to undertake such a
2 speculative evaluation.

3 The second assignment of error is denied.

4 **THIRD ASSIGNMENT OF ERROR**

5 EC 9.2760 requires that Parcels 1 and 2 have “lot frontage” on West 13th Avenue of
6 at least 20 feet. The code defines “Lot Frontage” as “[t]hat portion of a single lot abutting
7 the street.” As noted, the flagpole for Parcel 1 is 20 feet wide where it abuts West 13th
8 Avenue. However, for about half of the pole’s length, where it passes the existing dwelling,
9 the pole width narrows to 13.9 feet.

10 Petitioners argue that to satisfy EC 9.2760, Parcel 1’s “lot frontage” must be at least
11 20 feet wide for the entire length of the flagpole, for a sufficient length to reach the buildable
12 portion of Parcel 1. According to petitioners, the 20-foot lot frontage requirement must be
13 understood to refer to a two-dimensional area, not a one-dimensional line abutting the street.
14 Otherwise, petitioners argue, an applicant could satisfy EC 9.2760 by proposing a “lot
15 frontage” that is 20-feet wide and one-inch deep, but then connected to the buildable portion
16 of the lot by a one-inch wide flagpole.

17 The hearings officer explained that Parcel 1 does not qualify as a “flag lot” as the city
18 code defines that term, and therefore nothing in the city’s code requires that the “flagpole” of
19 Parcel 1 be any particular width. According to the hearings officer, petitioners’ concerns
20 regarding the creation of strange lot configurations in the absence of an implied interior
21 width requirement can be addressed by minimum lot sizes, setbacks, and similar standards.³

³ The hearings officer found, in relevant part:

“Parcel 1 is shaped like a flag, with the pole portion of the parcel providing 20 feet of frontage on West 13th Avenue. The pole width narrows to 13 feet, 9 inches along the eastern boundary of the property until it reaches the main portion of the proposed parcel. Despite its flag configuration, Parcel 1 is not a ‘flag lot’ because it does not fall within the city’s definition of a ‘flag lot’ set out in EC 9.0500. Because flag lot standards do not apply, the planning director’s decision defaults to the dimensional standards set out at EC 9.0500 (‘lot

1 Intervenor responds, and we agree, that petitioners have not demonstrated that the
2 hearings officer erred in declining to read an implied minimum interior width standard into
3 the relevant code sections and definitions. As noted, the code defines “Lot Frontage” as
4 “[t]hat portion of a single lot abutting the street” and requires that that portion abutting the
5 street have a minimum width of 20 feet. Nothing in the definition or elsewhere cited to our
6 attention suggests that the minimum lot frontage width abutting the street must be maintained
7 for an indeterminate depth into the interior of the lot, and we see no basis for reading such a
8 requirement into the code.

9 The third assignment of error is denied.

10 **FOURTH ASSIGNMENT OF ERROR**

11 EC 9.6505(3)(b) provides that “[t]he developer shall pave streets and alleys adjacent
12 to the development site to the width specified in EC 9.6870 Street Width * * * provided the
13 City makes findings to demonstrate consistency with constitutional requirements.” SW 12th
14 Alley is currently substandard in width and improved surface. For an alley used for primary
15 access, the city code requires a 20-foot right of way and a pavement width of 20 feet for two-

width’ is ‘[t]he horizontal distance between the midpoints of the side property lines. Where more than one side property line exists along a given side yard, the combined length of the side property line shall be used to determined the mid-point * * *’). In addition, the applicable standards set out at Table 9.2760 require only 20 feet of frontage on a street—there are no standards requiring a minimum flagpole width for newly created flag lots in the R-2 zone.

“* * * * *

“The appellants are correct that the city’s lot width standards could result in a variety of strange lot configurations, some of which leave little developable area on a lot. However, these concerns can generally be addressed through other standards, such as minimum lot sizes and development setbacks. Here, the applicants do not propose to use the pole for access, although it may be used for utilities or for sidewalk connections to West 13th Avenue. Because the pole is not intended for access, it does not have to meet the minimum access width standards. There is no requirement that the pole or the flag be of any minimum width, so long as the horizontal distance at the midpoint of the side property lines meets the minimum width standard, EC 9.8215(1)(a) and EC 9.6870 are satisfied.” Record 19-20 (footnote omitted).

1 way access, or 14 feet for one-way access. SW 12th Alley currently has a 14-foot right of
2 way and a largely unpaved surface.

3 Nonetheless, the city did not require the applicants to dedicate additional right of way
4 and improve the portion of SW 12th Alley adjacent to Parcel 1, as a condition of partition
5 approval. Instead, the hearings officer imposed a condition requiring that the applicants
6 agree to join a petition for improvements, and found that the city may require exactions and
7 improvements as part of building permit approval for any proposed development of Parcel 1,
8 at which time the nature and extent of that development will be known.⁴ The hearings
9 officer cited *Schultz v. City of Grants Pass*, 131 Or App 220, 884 P2d 569 (1994), to support
10 her conclusion that it would be inappropriate to require exactions and alley improvements at
11 the time of partition approval based on potential future development of Parcel 1, and that
12 such exactions and improvements should be considered at the time of development approval.

13 Petitioners argue that the relevant partition and street design code provisions clearly
14 require that as part of partition approval the developer must pave adjacent streets and alleys

⁴ The hearings officer found, in relevant part:

“With respect to the West 12th Avenue Alley, the hearings official agrees with the planning director that requirements for street dedications and improvements should be deferred until a particular development proposal is submitted for the site and that an irrevocable petition for improvements is sufficient to assure that the owners of the property will join in [improvements to] the alley in the future. Until that time, any exactions that might be imposed can only be attributed to the impact of the proposal, which in this case is the creation of two parcels, with the retention of a dwelling on the parcel that does not have access to the alley. *Schultz v. City of Grants Pass*, 131 Or App 220, 884 P2d 569 (1994) (city may not impose exactions based on future development impacts when it approves a partition, if the future development is not approved by the partition). * * * Record 22 (footnote omitted).

In the omitted footnote, the hearings official stated:

“The appellants argue that this application can be distinguished from *Schultz* because there is substantial evidence that Parcel 1 will be developed with a fourplex. However, there is nothing in the application that specifies such a development. If this partition is approved, the applicants can propose any number of building alternatives, including a fourplex. If a fourplex is proposed, the applicants will have to satisfy the development standards set out in EC 9.5500, which would allow the city to impose street improvement exactions that are directly related to the scope of the development.”

1 to the required width, and further that the city may require as a condition of any development
2 proposal dedication of land for streets and alleys. According to petitioners, the requirements
3 to dedicate land for streets and alleys and pave them is part of *partition* approval, and not
4 dependent on the nature of any subsequent development on the created parcels. Petitioners
5 argue that if for any reason West 12th Alley cannot be widened or improved to city standards
6 as part of partition approval, or that if requiring petitioners to do so would violate
7 constitutional limitations,⁵ the consequence is that the partition must be denied, because
8 Parcel 1 will not have safe and adequate primary access.

9 Petitioners do not address the hearings officer’s reliance on *Schultz*, or explain why
10 that case is distinguishable. In *Schultz*, the city approved a partition of a 3.85-acre parcel
11 into two parcels, and as required under its land use ordinance conditioned approval on
12 dedication of right of way for two adjoining city streets. In an attempt to comply with the
13 *Dolan* “rough proportionality” analysis, the city argued that the exaction was proportional to
14 traffic impacts on the city’s streets, assuming that in the future the two parcels were
15 subdivided and developed at the maximum residential density allowed under the city’s code.
16 The Court of Appeals rejected that approach, concluding that *Dolan* requires evaluation of
17 the “nature and extent” of the impact of the proposed development—the partition—not
18 speculative future development.

19 *Schultz* appears to be on point. While the applicable partition approval standards
20 require the applicant to pave adjacent streets and alleys to the required width, and EC 9.6805
21 provides that as a condition of any development the city may require dedication of right of

⁵ Petitioners also argue, unpersuasively, for an interpretation of the city’s code under which the city must require dedication of land and paving improvements as part of partition approval, regardless of constitutional limits imposed under *Dolan v. City of Tigard*, 512 US 374, 114 S Ct 2309, 129 L Ed 304 (1994). We agree with the city that even if the relevant city code provisions could be interpreted to that effect, which petitioners have not demonstrated, the city is bound to comply with *Dolan* with respect to exactions, no matter what its code does or does not say. *Kingsley v. City of Portland*, __ Or LUBA __ (LUBA No. 2007-143, November 8, 2007), slip op 6, *aff’d* 218 Or App 229, __ P3d __ (2008).

1 way for streets and alleys, intervenor's partition application proposed only to divide one
2 parcel into two parcels, one of which already is developed with a dwelling and the other
3 vacant. The city probably could, consistent with *Dolan* and *Schulz*, require *some* level of
4 exactions based solely on that division of land, if roughly proportional to the impacts of the
5 partition itself on public facilities. However, in itself, the proposed partition would appear to
6 actually *decrease* impacts on SW 12th Alley for the time being, because it eliminates the
7 garage and access for the existing dwelling. The application does not propose any
8 development of Parcel 1, the only parcel that will access SW 12th Alley. While intervenor
9 may contemplate seeking approval for a fourplex on Parcel 1, whether intervenor will
10 ultimately seek to develop Parcel 1 with a fourplex or some other use allowed in the R-2
11 zone is not known. If intervenor ultimately develops Parcel 1 with a single family dwelling,
12 then presumably the net impacts on SW 12th Alley would be zero, justifying zero exactions
13 under *Dolan*. Under these circumstances, any exaction the city could attempt to impose
14 would be based entirely on speculation regarding the intensity of residential use intervenor
15 will ultimately seek to build, which seems contrary to *Schulz*.

16 As the hearings officer found, the city's code allows the city to require dedication of
17 right of way and paving improvements, consistent with constitutional requirements, at the
18 time intervenor seeks to develop Parcel 1. We agree with the city that, under such
19 circumstances, where the partition itself appears to have few if any impacts, and it is unclear
20 what intensity of development will ultimately be constructed on the newly created parcel, it
21 is permissible to defer the question of required dedications and improvements to the
22 subsequent permit process that evaluates the actual development of the parcel. Petitioners
23 have not demonstrated that that approach is reversible error under *Schultz*.

24 The fourth assignment of error is denied.

1 **FIFTH ASSIGNMENT OF ERROR**

2 EC 9.6815(2)(b) requires that the proposed development “shall include street
3 connections in the direction of all existing and planned streets within 1/4 mile of the
4 development site[,]” including connections to “any streets that abut, are adjacent to, or
5 terminate at the development site.” The applicants applied for an exception to EC 9.6815(2),
6 arguing that the existing house on the subject property precluded a street connection between
7 Parcel 1 and West 13th Avenue. The hearings officer concluded, however, that no exception
8 is necessary, because EC 9.6815(2) requires new street construction only in areas with an
9 incomplete street system, and does not require new connecting streets in redeveloping land
10 that already has a fully established street grid.⁶

11 Petitioners argue that, because Parcel 1 abuts West 13th Avenue, EC 9.6815(2)
12 requires that Parcel 1 include a street connection to West 13th Avenue. Petitioners also argue
13 that, in the 2006 decision denying the applicants’ earlier partition proposal, the same
14 hearings officer found that the Parcel 1 did not satisfy the EC 9.6815(2) street connectivity
15 standards. Citing *Holland v. City of Cannon Beach*, 154 Or App 450, 962 P2d 701 (1998),
16 petitioners argue that the city is obligated to apply EC 9.6815(2) consistently from one
17 application to another, and the hearings officer’s conclusion that EC 9.6815(2) does not
18 require a new street connection is at odds with her 2006 decision. Finally, petitioners argue
19 that the hearings officer’s conclusion that EC 9.6815(2) is satisfied without a new street

⁶ The hearings officer found:

“Even though the applicants have failed to demonstrate that an exception to the street connectivity standards is warranted, the hearings official concludes that none is required. EC 9.6815 pertains to the ‘dedication, design and location’ of public streets, alleys and other public ways. It is intended to provide a mechanism to establish a street network for areas that have limited development or [have] limited general access. It is not intended to require a street connection where a proposed development already has access via an established street grid. Here, the proposed lot configuration permits access to adjacent public ways, namely West 13th Avenue and the West 12th Alley, either via frontage on those public ways or via a strip of land that can be developed with a driveway. For that reason, EC 9.6815 connectivity standards are satisfied.” Record 24.

1 connection depends in part on a finding that West 12th Alley will provide primary access to
2 Parcel 1. However, petitioners contend that to satisfy EC 9.6815(2) West 12th Alley must be
3 widened and improved, as a condition of approval for the partition, and that widening and
4 improvement cannot be deferred until the building permit application.

5 The city responds, and we agree, that EC 9.6815(2) street connectivity standards do
6 not require that Parcel 1 include a street connection to West 13th Avenue. EC 9.6815(2) is
7 part of a code section providing standards for street and alley design. The purpose and intent
8 of the street connectivity standards are set out in EC 9.6815(1)(a) through (j). None of those
9 purposes suggest that infill development in a developed area with a fully established street
10 grid must create new streets on the property to connect to every possible abutting street.
11 Judging from the purposes set out in EC 9.6815(1) and the other provisions of EC 9.6815(2),
12 the connectivity standard in EC 9.6815(2)(b) is clearly designed to require new street
13 connections in undeveloped or partially developed areas with an incomplete street system. In
14 the present case, applying EC 9.6815(2)(b) would apparently require demolishing the
15 existing house and constructing a mid-block street connecting West 13th Avenue and West
16 12th Alley that would serve no discernible purpose, much less any of the purposes set out in
17 EC 9.6815(1). The hearings officer did not err in interpreting EC 9.6815(2) to not require a
18 new street connection in the present case.

19 Further, we agree with the city that the case petitioners cite, *Holland v. City of*
20 *Cannon Beach*, does not require the hearings officer to continue to interpret EC 9.6815(2) in
21 the present case consistently with the 2006 decision. *Holland* limits a local government's
22 ability to re-interpret which standards are applicable during the course of a single permit
23 proceeding, and thus effectively change the applicable standards, contrary to the "goal-post"
24 statutes at ORS 215.427(3) and ORS 227.173(1). *Holland* does not limit a local
25 government's ability to interpret the meaning of an approval criterion differently than it has

1 interpreted the criterion in a different permit proceeding. Here, the application leading to the
2 2006 decision and the present application are different permit proceedings.

3 Finally, for the same reasons set out under the fourth assignment of error, we reject
4 petitioners' argument that exactions and improvements to West 12th Alley must be imposed
5 as part of the partition decision.

6 The fifth assignment of error is denied.

7 The city's decision is affirmed.