

BEFORE THE LAND USE BOARD OF APPEALS  
OF THE STATE OF OREGON

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THE FRIENDS OF CLEAN LIVING, an )  
Oregon non-profit organization, )  
 )  
Petitioner, )  
 )  
vs. )  
 )  
POLK COUNTY, )  
 )  
Respondent, )  
 )  
and )  
 )  
CITY OF DALLAS, )  
 )  
Intervenor-Respondent. )

LUBA Nos. 98-150,  
98-162, and 98-177

ORDER ON  
COSTS

Petitioner, the prevailing party in LUBA No. 98-177, filed a cost bill requesting award of its filing fee, in the amount of \$175. Petitioner also argues that it should be viewed as the prevailing party in LUBA Nos. 98-150 and 98-162 and awarded its filing fee in those appeals as well.

Under OAR 661-010-0075(1)(b)(A), petitioner may recover its filing fee, "[i]f the petitioner is the prevailing party \* \* \*." LUBA Nos. 98-150 and 98-162 were dismissed. Where LUBA dismisses an appeal, the dismissed party generally is not viewed as the prevailing party. *But see* ORCP 54 A(3) (dismissed party should be considered the prevailing party when an appeal is voluntarily dismissed). However, in this case, LUBA Nos. 98-150 and 98-162 challenged earlier versions of the same decision that petitioner successfully challenged in LUBA No. 98-177. Although LUBA dismissed the earlier appeals as moot, it was almost certainly petitioner's appeals that led to the subsequent decisions that rendered the earlier decisions moot. Those subsequent decisions simply readopted the earlier decisions with additional findings. In that situation, we agree with petitioner that it should be

1 viewed as the prevailing party in all three appeals, for purposes of an award of costs under  
2 OAR 661-010-0075(1)(b)(A).

3 Petitioner is awarded the cost of its filing fees in this consolidated appeal, in the total  
4 amount of \$525, to be paid by respondent.

5 Petitioner also requests return of its \$150 deposit for costs in each of these three  
6 appeals. The Board shall return petitioner's deposits for costs, in the total amount of \$450.

7 Dated this 15th day of October, 1999.

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Michael A. Holstun  
Board Chair