

27.13 LUBA Procedures/Rules – Attorney Fees. Even though petitioners’ argument that a local comprehensive plan policy required broad evaluation of cumulative impacts of a development was rejected, petitioners’ argument was “subject to reasonable, rational, or honest discussion” such that no award of attorneys fees was warranted. *Wolfgram v. Douglas County*, 54 Or LUBA 775 (2007).

27.13 LUBA Procedures/Rules – Attorney Fees. An award of attorney fees is not warranted against a party who, faced with the possibility that a concession agreement that was not appealed would later be immune to challenge in the absence of an appeal to LUBA, appealed the decision and argued that the decision had the effect of authorizing a conditional use. *Dorall v. Coos County*, 53 Or LUBA 622 (2007).

27.13 LUBA Procedures/Rules – Attorney Fees. When a petitioner submits a letter as the petition for review that is so grossly deficient that it is not even recognized as a petition for review, and that letter provides no basis for reversal or remand of the challenged decision, an award of attorney fees under ORS 197.830(15)(b) is warranted. *Gallagher v. City of Myrtle Point*, 50 Or LUBA 769 (2005).

27.13 LUBA Procedures/Rules – Attorney Fees. There is no bright line that separates significant impact land use decisions from those whose impacts are not sufficient to meet the test. Where a petitioner argues that a lot line adjustment constitutes a significant impact land use decision because the decision would violate covenants, conditions, and restrictions for the property that prevent abandonment of a golf course, LUBA will not award attorney fees when a petitioner is unable to link the significant impacts directly to the challenged decision. *Jewett v. City of Bend*, 48 Or LUBA 631 (2004).

27.13 LUBA Procedures/Rules – Attorney Fees. When a case is dismissed on jurisdictional grounds, the arguments presented on that issue determine whether attorney fees will be awarded. When an appeal is decided on the merits, whether attorney fees are awarded is determined by the arguments made in the assignments of error and the responses to those assignments of error. *Cape v. City of Beaverton*, 47 Or LUBA 625 (2004).

27.13 LUBA Procedures/Rules – Attorney Fees. When annexations are specifically listed in the definition of a “minor boundary change” and are not listed in the definition of a “major boundary change,” no reasonable attorney would argue that annexations are a “major boundary change.” *Cape v. City of Beaverton*, 47 Or LUBA 625 (2004).

27.13 LUBA Procedures/Rules – Attorney Fees. When a prior decision specifically rejects a party’s argument made to LUBA, no reasonable attorney would repeat that argument without acknowledging the prior decision, providing some argument as to why the prior decision was wrong or should be overturned, or providing any other explanation or rationale for the argument. *Cape v. City of Beaverton*, 47 Or LUBA 625 (2004).

27.13 LUBA Procedures/Rules – Attorney Fees. An assertion that petitioner resided within the 250-foot notice area is based on factually supported information, where petitioner examined maps and physically measured the distance between her house and the subject property. The fact that more detailed or better-scaled maps not available to petitioner showed the contrary does not demonstrate that petitioner’s factual assertion was not well-founded. *Brinker v. Tillamook County*, 44 Or LUBA 832 (2003).

27.13 LUBA Procedures/Rules – Attorney Fees. A transfer to circuit court is a statutory alternative to dismissal where LUBA concludes that the appealed decision is not a land use decision, and a transfer is therefore properly treated as a dismissal of the appeal for purposes of determining who is the prevailing party. *Maxwell v. City of Happy Valley*, 44 Or LUBA 852 (2003).

27.13 LUBA Procedures/Rules – Attorney Fees. The scope of the exception to LUBA’s jurisdiction for decisions that are “fiscal” in nature is sufficiently ill-defined that LUBA’s transfer of a precautionary appeal of a decision that establishes a reimbursement district to circuit court does not warrant an award of attorney fees against petitioner. *Maxwell v. City of Happy Valley*, 44 Or LUBA 852 (2003).

27.13 LUBA Procedures/Rules – Attorney Fees. Filing a motion for voluntary remand does not “present a position” that may potentially justify an award of attorney fees pursuant to ORS 197.830(15)(b) and OAR 661-010-0075(1)(e). To the extent a motion for voluntary remand may be viewed as a “position,” it is essentially is a concession of error. *Rogers v. City of Eagle Point*, 43 Or LUBA 592 (2002).

27.13 LUBA Procedures/Rules – Attorney Fees. Oregon Rules of Civil Procedure 17, which allows sanctions for frivolous pleadings, is not applicable to proceedings before LUBA. ORS 197.830(15)(b) and OAR 661-010-0075(1)(e) provide the only standards for sanctioning frivolous positions presented to LUBA. Under those provisions, LUBA may not award attorney fees based on allegations that the local government acted in “bad faith” in failing to file a motion for voluntary remand earlier in the LUBA proceeding. *Rogers v. City of Eagle Point*, 43 Or LUBA 592 (2002).

27.13 LUBA Procedures/Rules – Attorney Fees. An award of attorney fees is not warranted against a party whose only “position” was an unsuccessful motion to take evidence under OAR 661-010-0045 filed prior to the parties’ briefs, where LUBA concludes that a reasonable lawyer would have filed the motion, notwithstanding LUBA’s general practice to deny such motions as premature until the parties’ briefs have been filed. *Pynn v. City of West Linn*, 42 Or LUBA 602.

27.13 LUBA Procedures/Rules – Attorney Fees. Where a city zoning map correction procedure permits administrative corrections to current city zoning maps to make them consistent with the originally adopted zoning map or legal description upon which the original zoning was based, a city commits legal error by finding that the existing zoning map may be corrected to be consistent with an intermediate zoning map that is not included in the record before LUBA. An award of attorney fees under OAR

661-010-0075(1)(e)(A) and ORS 197.830(15)(b) is warranted, where the city argues that such findings are adequate and supported by substantial evidence. *6710 LLC v. City of Portland*, 41 Or LUBA 608 (2002).

27.13 LUBA Procedures/Rules – Attorney Fees. Where no attempt is made to justify the hourly rate used in a motion for attorney fees, and the requested hourly rate is significantly higher than the relevant hourly rates shown in an Oregon State Bar Economic Survey for the community for attorneys with the same number of years of experience, LUBA will reduce the requested attorney fees to reflect the hourly rate shown in the Oregon State Bar Economic Survey. *6710 LLC v. City of Portland*, 41 Or LUBA 608 (2002).

27.13 LUBA Procedures/Rules – Attorney Fees. Filing a notice of intent to appeal does not present the position that a challenged decision is a final land use decision, for purposes of an award of attorney fees pursuant to OAR 661-010-0075(1)(e)(A) and ORS 197.830(15)(b), when the appeal is filed for precautionary purposes and the petitioners do not oppose the motion to dismiss. *Harcourt v. Marion County*, 40 Or LUBA 610 (2001).

27.13 LUBA Procedures/Rules – Attorney Fees. LUBA will award attorney fees pursuant to ORS 197.830(15)(b) where petitioner fails to articulate a legal basis for reversal or remand. *Schaffer v. City of Turner*, 37 Or LUBA 1066 (2000).

27.13 LUBA Procedures/Rules – Attorney Fees. LUBA will apply the factors provided in ORS 20.075 for guidance in exercising its discretion to determine whether the amount of attorney fees requested under ORS 197.830(15)(b) is reasonable. *Schaffer v. City of Turner*, 37 Or LUBA 1066 (2000).

27.13 LUBA Procedures/Rules – Attorney Fees. Consistent with the legislative policies for timely resolution of land use disputes, and encouragement of alternative dispute resolution, LUBA will not consider attorney fees incurred in mediation or in pursuit of settlement in determining an award of reasonable attorney fees under ORS 197.830(15)(b). *Schaffer v. City of Turner*, 37 Or LUBA 1066 (2000).

27.13 LUBA Procedures/Rules – Attorney Fees. Where petitioner files nothing more than a notice of intent to appeal, petitioner has not presented a position, for purposes of an award of attorney fees under ORS 197.830(14)(b). *Lois Thompson Housing Project v. Multnomah County*, 37 Or LUBA 580 (2000).

27.13 LUBA Procedures/Rules – Attorney Fees. ORS 197.835(10)(a)(A) mandates that LUBA reverse a land use decision where a “local government decision is outside the range of discretion allowed the local government under its comprehensive plan and implementing ordinances[.]” If a decision is reversed under ORS 197.835(10)(a)(A), ORS 197.835(10)(b) requires that LUBA award attorney fees to the applicant. However, those statutes do not apply to a land use decision that is reversed because it is outside the discretion allowed under an LCDC administrative rule. *Morse Bros., Inc. v. Columbia County*, 37 Or LUBA 85 (1999).

27.13 LUBA Procedures/Rules – Attorney Fees. A local government’s land use decision does not present a “position” to the Board for the purpose of determining whether or not an award of attorney fees against the local government is required under ORS 197.830(14)(b). *Wolverton v. Crook County*, 36 Or LUBA 757 (1999).

27.13 LUBA Procedures/Rules – Attorney Fees. A nonprevailing party that presents arguments for the extension of principles of LUBA case law does not present a position without probable cause to believe the position is well-founded in law. *Abadi v. Washington County*, 36 Or LUBA 748 (1999).

27.13 LUBA Procedures/Rules – Attorney Fees. Respondent’s attempt to distinguish petitioners’ case from well-settled legal principles does not necessarily mean that such approach was void of any rational, reasonable or honest discussion meriting the recovery of attorney fees under OAR 661-010-0075(1)(e)(A) and ORS 197.830(14)(b). *Witzel v. Harney County*, 35 Or LUBA 806 (1998).

27.13 LUBA Procedures/Rules – Attorney Fees. A prevailing party that moves for an award of attorney fees has the responsibility to not only allege any necessary facts to support its motion, but also to establish why, as a legal matter, it is statutorily entitled to relief. *Gutoski v. Lane County*, 35 Or LUBA 803 (1998).

27.13 LUBA Procedures/Rules – Attorney Fees. LUBA will not supply the legal arguments or analysis that establish that no reasonable lawyer could conclude that any of the legal points asserted on appeal possessed legal merit. *Gutoski v. Lane County*, 35 Or LUBA 803 (1998).

27.13 LUBA Procedures/Rules – Attorney Fees. A prevailing party’s bald assertion that any challenge to a local government’s decision reviewed under the "clearly wrong" standard is one that no reasonable lawyer could conclude possessed legal merit is itself clearly wrong. *Gutoski v. Lane County*, 35 Or LUBA 803 (1998).

27.13 LUBA Procedures/Rules – Attorney Fees. A petitioner does not "present a position" in a notice of intent to appeal, within the meaning of ORS 197.830(14)(b), for purposes of an award of attorney fees. *Dornan v. Yamhill County*, 35 Or LUBA 786 (1998).

27.13 LUBA Procedures/Rules – Attorney Fees. Positions presented during the local proceedings that lead to a decision that is later appealed to LUBA are not positions presented to LUBA, for purposes of an award of attorney fees under ORS 197.830(14)(b). *Dornan v. Yamhill County*, 35 Or LUBA 786 (1998).

27.13 LUBA Procedures/Rules – Attorney Fees. Arguments presented in a petition for attorney fees by the prevailing party at LUBA cannot, under ORS 197.830(14)(b), provide a basis for an award of attorney fees to the nonprevailing party in the appeal. *Dornan v. Yamhill County*, 35 Or LUBA 786 (1998).

27.13 LUBA Procedures/Rules – Attorney Fees. A local government that simply files the local record and does not file or join in a brief or other document at LUBA defending its decision does not present a position "as a litigant" and cannot be required to pay attorney fees under ORS 197.830(14)(b). *Hearne v. Baker County*, 35 Or LUBA 768 (1998).

27.13 LUBA Procedures/Rules – Attorney Fees. The city presented a position to LUBA for purposes of ORS 197.830(14)(b), where the city submitted a memorandum on jurisdiction, even though the city did not write a response brief, appear in the appeal, or participate in oral argument. *Lewelling Neighborhood Dist. v. City of Milwaukie*, 35 Or LUBA 764 (1998).

27.13 LUBA Procedures/Rules – Attorney Fees. ORS 197.845(3) authorizes an award of attorney fees when a quasi-judicial decision for which a stay has been granted is affirmed by LUBA. However, the attorney fees recoverable under ORS 197.845(3) are limited to attorney fees related to the stay. *Walton v. Clackamas County*, 34 Or LUBA 829 (1998).

27.13 LUBA Procedures/Rules – Attorney Fees. ORS 197.845(3) authorizes an award of attorney fees when a quasi-judicial decision for which a stay has been granted is affirmed by LUBA. Where LUBA dismisses the appeal, an award of attorney fees is not authorized by ORS 197.845(3). *Walton v. Clackamas County*, 34 Or LUBA 829 (1998).

27.13 LUBA Procedures/Rules – Attorney Fees. Where an appeal is dismissed for failure to exhaust remedies, but involves a complex interaction of the notice provisions of ORS 197.195 (governing notice of limited land use decisions), the tolling provisions of ORS 197.830(4) and the exhaustion requirement of ORS 197.825(2)(a), the question of LUBA's jurisdiction over the appeal was open to doubt and reasonable discussion, and no attorney fees are warranted under ORS 197.830(14)(b). *Walton v. Clackamas County*, 34 Or LUBA 829 (1998).

27.13 LUBA Procedures/Rules – Attorney Fees. Where LUBA dismisses an appeal prior to consideration of the merits of the appeal, LUBA will consider the arguments presented by petitioners in opposition to the motion to dismiss in deciding whether an award of attorney fees is warranted. *Bruce v. City of Hillsboro*, 34 Or LUBA 820 (1998).

27.13 LUBA Procedures/Rules – Attorney Fees. Where LUBA issues an order requiring that the notice of intent to appeal be served on all persons entitled to service of the notice under OAR 661-010-0015 and petitioners fail to do so, arguing instead that they should be able to rely on an erroneous statement by the city concerning the persons entitled to notice, petitioners present a position that is not "open to doubt, or debatable, or subject to rational, reasonable or honest discussion," and an award of attorney fees is warranted. *Bruce v. City of Hillsboro*, 34 Or LUBA 820 (1998).

27.13 LUBA Procedures/Rules – Attorney Fees. An evidentiary hearing to resolve "disputes regarding attorney fees" pursuant to OAR 661-010-0045(1) is not warranted

where the motion for an evidentiary hearing is filed before LUBA has entered its final opinion. *Ackerley Outdoor Advertising v. City of Portland*, 34 Or LUBA 736 (1998).

27.13 LUBA Procedures/Rules – Attorney Fees. The fact that the petitioner was attempting to purchase the property at issue in a LUBA appeal does not compel a conclusion that the appeal was brought without probable cause to believe it was well-founded. *Pfeifer v. City of Silverton*, 33 Or LUBA 869 (1997).

27.13 LUBA Procedures/Rules – Attorney Fees. Under ORCP 54A(3), where petitioner voluntarily dismisses an appeal, and no circumstances indicate otherwise, intervenor-respondent is the prevailing party. *Pfeifer v. City of Silverton*, 33 Or LUBA 869 (1997).

27.13 LUBA Procedures/Rules – Attorney Fees. Attorney fees will not be awarded under ORS 197.830(14)(b) where LUBA's final opinion determined it was not "clear" that previously adopted comprehensive plan amendments rendered a decision to construct a bridge and related improvements the nondiscretionary culmination of the plan amendments. *Knapp v. City of Jacksonville*, 33 Or LUBA 834 (1997).

27.13 LUBA Procedures/Rules – Attorney Fees. A petitioner's failure to prevail on every assignment of error does not preclude an award of attorney fees against a local government that advances a non-meritorious defense to one or more assignments of error. *Spencer Creek Neighbors v. Lane County*, 33 Or LUBA 824 (1997).

27.13 LUBA Procedures/Rules – Attorney Fees. LUBA will award attorney fees where it determines that none of the arguments raised in response to a sustained assignment of error are "open to doubt, or subject to rational, reasonable, or honest discussion." *Spencer Creek Neighbors v. Lane County*, 33 Or LUBA 824 (1997).

27.13 LUBA Procedures/Rules – Attorney Fees. Applying ORS 197.830(14)(b) and *Contreras v. City of Philomath*, 32 Or LUBA 465 (1996), an award of attorney fees is appropriate against a petitioner who does not present any issues that challenge the local government's final decision or the findings supporting that decision. *Young v. City of Sandy*, 33 Or LUBA 817 (1997).

27.13 LUBA Procedures/Rules – Attorney Fees. Although ORS 197.830(14)(b) makes an award of attorney fees mandatory where LUBA finds that an appeal is not supported by probable cause, LUBA is afforded the discretion to determine what amount of attorney fees is "reasonable" under the specific facts of the case. *Young v. City of Sandy*, 33 Or LUBA 817 (1997).

27.13 LUBA Procedures/Rules – Attorney Fees. The probable cause standard stated in ORS 197.830(14)(b) creates a low threshold. *Brown v. City of Ontario*, 33 Or LUBA 803 (1997).

27.13 LUBA Procedures/Rules – Attorney Fees. ORS 197.830(14)(b) will not be applied to punish LUBA appellants who vigorously pursue all reasonable legal arguments just because, when viewed with the benefit of hindsight, those arguments do not entitle them to prevail. *Brown v. City of Ontario*, 33 Or LUBA 803 (1997).

27.13 LUBA Procedures/Rules – Attorney Fees. The context of ORS 197.830(14)(b) indicates that the statute was not intended to require an award of attorney fees where any single assertion set forth in a petition for review is not supported by probable cause. *Fechtig v. City of Albany*, 33 Or LUBA 796 (1997).

27.13 LUBA Procedures/Rules – Attorney Fees. Where LUBA determines that at least one of petitioner's arguments is sufficiently well-founded to avoid an award of attorney fees, the Board will not apply the ORS 197.830(14)(b) standard to all other assignments of error in search of an argument that does not meet that standard. *Fechtig v. City of Albany*, 33 Or LUBA 796 (1997).

27.13 LUBA Procedures/Rules – Attorney Fees. An award of attorney fees is not appropriate where petitioner raised issues that were subject to reasonable discussion, and LUBA cannot say that no reasonable lawyer would find petitioner's arguments were meritless. *Fraley v. Deschutes County*, 33 Or LUBA 790 (1997).

27.13 LUBA Procedures/Rules – Attorney Fees. In determining whether an award of attorney fees is required, LUBA will not consider whether a party is represented by an attorney but only whether there is "no objective legal basis for the appeal," *i.e.*, whether *any* reasonable lawyer would conclude that *any* of the positions taken by the party on appeal possesses legal merit. *Squires v. City of Portland*, 33 Or LUBA 783 (1997).

27.13 LUBA Procedures/Rules – Attorney Fees. In order to recover attorney fees under ORS 197.830(14)(b), the prevailing party must present LUBA with a signed and detailed statement of the amount of attorney fees which minutely itemizes or particularizes the services rendered and the time devoted to the services. *Squires v. City of Portland*, 33 Or LUBA 783 (1997).

27.13 LUBA Procedures/Rules – Attorney Fees. Where a county moves for voluntary remand before it presents any position before LUBA in the form of a response brief or otherwise, there is no basis on which to make a determination under ORS 197.830(14)(b) regarding an award of attorney fees. *Eppich v. Clackamas County*, 33 Or LUBA 774 (1997).

27.13 LUBA Procedures/Rules – Attorney Fees. LUBA's disposition of an appeal by memorandum opinion does not necessarily indicate that a petitioner's position was presented without probable cause to believe it was well founded. *Arnold v. Columbia County*, 33 Or LUBA 766 (1997).

27.13 LUBA Procedures/Rules – Attorney Fees. Petitioner did not have probable cause to believe that a "preannexation agreement" entered into by the city and intervenor was

an appealable final land use decision; accordingly, an award of attorney fees is required under ORS 197.830(14)(b). *Crist v. City of Beaverton*, 32 Or LUBA 495 (1997).

27.13 LUBA Procedures/Rules – Attorney Fees. Under ORS 197.830(14)(b), LUBA must make an award of attorney fees to a prevailing party if it determines that no reasonable lawyer would conclude that any of the legal points asserted on appeal possessed legal merit. In making this determination, LUBA will consider whether any of the issues raised on appeal were open to doubt, or subject to rational, reasonable or honest discussion. *Contreras v. City of Philomath*, 32 Or LUBA 465 (1996).

27.13 LUBA Procedures/Rules – Attorney Fees. An award of attorney fees to intervenor is appropriate under ORS 197.830(14)(b) where petitioners' appeal to LUBA purported to challenge actions by the city that could not even arguably be depicted as land use decisions subject to LUBA jurisdiction. *Contreras v. City of Philomath*, 32 Or LUBA 465 (1996).

27.13 LUBA Procedures/Rules – Attorney Fees. Under ORS 197.830(14)(b), LUBA is required to award reasonable attorney fees to a prevailing party upon a finding that another party presented a position without probable cause to believe the position was well-founded in law or on factually supported information. *Pfeifer v. City of Silverton*, 32 Or LUBA 463 (1996).

27.13 LUBA Procedures/Rules – Attorney Fees. Where petitioner voluntarily dismisses his appeal, intervenors are not entitled to an award of attorney fees because neither party is the "prevailing party" for purposes of ORS 197.830(14)(b). *Pfeifer v. City of Silverton*, 32 Or LUBA 463 (1996). *R&R'd* by 146 Or App 191, 931 P2d 833 (1997). (*unpublished headnote/bad law*)

27.13 LUBA Procedures/Rules – Attorney Fees. If a petition for attorney fees is included in a party's brief, the signed and detailed statement justifying the amount of the fees must be filed after the issuance of LUBA's opinion, and the opposing party may have 10 days to respond. *Cox v. Yamhill County*, 31 Or LUBA 270 (1996).

27.13 LUBA Procedures/Rules – Attorney Fees. Before LUBA will consider a petition for attorney fees, the petition must be supported by a statement of the amount requested, supported by sufficient detail to justify the award. *Cox v. Yamhill County*, 31 Or LUBA 270 (1996).

27.13 LUBA Procedures/Rules – Attorney Fees. Although OAR 661-10-075(1)(a) states that petitions for attorney fees must be filed within 14 days after LUBA's final order is issued, LUBA will allow a petition for attorney fees in the parties' briefs. *Cox v. Yamhill County*, 31 Or LUBA 270 (1996).

27.13 LUBA Procedures/Rules – Attorney Fees. ORS 197.845(3) requires an award of attorney fees and damages when LUBA affirms a quasi-judicial land use decision or

limited land use decision for which a stay was granted. *Save Amazon Coalition v. City of Eugene*, 30 Or LUBA 448 (1995).

27.13 LUBA Procedures/Rules – Attorney Fees. LUBA normally considers several factors in determining whether to accept a late petition for attorney fees and damages: (1) length of delay; (2) validity of the explanation of lateness; and (3) presence or absence of prejudice. *Save Amazon Coalition v. City of Eugene*, 30 Or LUBA 448 (1995).

27.13 LUBA Procedures/Rules – Attorney Fees. Where LUBA's final opinion and order remands the challenged decision for further proceedings, rather than reversing the decision and ordering the local government to approve petitioners' application, LUBA is not authorized to award attorney fees to petitioners under ORS 197.835(8). *Spathas v. City of Portland*, 29 Or LUBA 579 (1995).

27.13 LUBA Procedures/Rules – Attorney Fees. Where petitioner does not allege in its petition for attorney fees that the local government lacked probable cause to believe its positions in an appeal were well-founded or that those positions were presented primarily for a purpose other than to secure appropriate action by LUBA, the petition for attorney fees will be denied. ORS 197.830(15)(b); OAR 661-10-075(1)(d)(A). *Louisiana Pacific v. Umatilla County*, 26 Or LUBA 624 (1994).

27.13 LUBA Procedures/Rules – Attorney Fees. Although positions taken by a party in an appeal before LUBA may be the basis for an award of attorney fees under ORS 197.830(15)(b), positions taken during local proceedings or in the challenged land use decision itself may not be the basis for an award of attorney fees by LUBA. *Hastings Bulb Growers, Inc. v. Curry County*, 25 Or LUBA 558 (1993).

27.13 LUBA Procedures/Rules – Attorney Fees. Where LUBA determines a local government decision is precluded by a prior circuit court judgment, LUBA will not conclude the local government presented argument to the contrary "without probable cause to believe the position was well-founded," where application of the principles of claim preclusion to the challenged decision is somewhat uncertain. In such circumstances LUBA will not award attorney fees pursuant to ORS 197.830(15)(b). *Joines v. Linn County*, 25 Or LUBA 759 (1993).

27.13 LUBA Procedures/Rules – Attorney Fees. In order to award attorney fees under ORS 197.830(15)(b), LUBA must find that the petitioner presented a position (1) without probable cause to believe it was well-founded, *and* (2) primarily for a purpose other than securing appropriate action by LUBA. *City of North Plains v. Washington County*, 24 Or LUBA 623 (1993).

27.13 LUBA Procedures/Rules – Attorney Fees. The presentation of a losing argument before LUBA, of itself, does not satisfy the requirement of ORS 197.830(15)(b) that a party have presented a position "without probable cause to believe the position was well-founded." The fact that a party's attorney may have unsuccessfully presented contrary positions in other cases concerning somewhat related questions is also not enough to

establish that the requirement of ORS 197.830(15)(b) is met. *City of North Plains v. Washington County*, 24 Or LUBA 623 (1993).

27.13 LUBA Procedures/Rules – Attorney Fees. LUBA's rejection of petitioners' arguments that the challenged decision is final, does not mean petitioners' arguments were presented without probable cause to believe they were well-founded. Whether a challenged decision is a "final" decision is, more often than not, far from obvious. *City of North Plains v. Washington County*, 24 Or LUBA 623 (1993).

27.13 LUBA Procedures/Rules – Attorney Fees. Where the prevailing party does not allege or argue that the opposing party "presented a position * * * primarily for a purpose other than to secure appropriate action by [LUBA]," LUBA will deny the prevailing party's petition for award of attorney fees pursuant to ORS 197.830(15)(b). *Miller v. City of Dayton*, 24 Or LUBA 616 (1992).

27.13 LUBA Procedures/Rules – Attorney Fees. ORS 197.835(8) only applies where LUBA reverses a local government's denial of a development application and orders that the development be approved. Where the challenged decision is simply a request for an interpretation of a local government's ordinances, and there is no development application for LUBA to order approved, a petition for attorney fees will be denied. *Harmony House, Inc. v. City of Salem*, 23 Or LUBA 683 (1992).

27.13 LUBA Procedures/Rules – Attorney Fees. An award of attorney fees against a local government pursuant to ORS 197.830(15)(b) is not justified simply because the local government presented a position on appeal which lacked legal foundation, or may have engaged in an improper course of conduct during the proceedings below. *Bradbury v. City of Independence*, 23 Or LUBA 670 (1992).

27.13 LUBA Procedures/Rules – Attorney Fees. Even if the positions presented in petitioner's petition for review were not well-founded, that does not necessarily mean they were presented "primarily for a purpose other than to secure appropriate action by the board," as required for the award of attorney fees under ORS 197.830(15)(b). *Oregon Worsted Company v. City of Portland*, 22 Or LUBA 830 (1992).

27.13 LUBA Procedures/Rules – Attorney Fees. Petitioner's desire to defer pursuing its appeal before LUBA, because of the possibility that the outcome of its action in federal court would make it unnecessary to seek additional remedies through the LUBA appeal, does not indicate the LUBA appeal was brought for an improper purpose, as required for the award of attorney fees under ORS 197.830(15)(b). *Oregon Worsted Company v. City of Portland*, 22 Or LUBA 830 (1992).

27.13 LUBA Procedures/Rules – Attorney Fees. A party's presentation of a losing argument before LUBA, standing alone, does not satisfy the requirement of ORS 197.830(15)(b) that a party have presented a position "without probable cause to believe the position was well-founded." *Schatz v. City of Jacksonville*, 21 Or LUBA 571 (1991).

27.13 LUBA Procedures/Rules – Attorney Fees. In order to award attorney fees under ORS 197.830(15)(b), LUBA must determine that the parties against whom the award is requested presented a position without probable cause to believe it was well-founded, and primarily for a purpose other than securing appropriate action by LUBA. *Knapp v. City of Jacksonville*, 20 Or LUBA 535 (1991).

27.13 LUBA Procedures/Rules – Attorney Fees. Petitioners' request for *reversal* of the appealed decision was presented with probable cause to believe it was well-founded where any of petitioners' challenges to the appealed decision (1) was presented with probable cause to believe it was well-founded, and (2) if upheld, would allow LUBA to *reverse* the appealed decision. *Knapp v. City of Jacksonville*, 20 Or LUBA 535 (1991).

27.13 LUBA Procedures/Rules – Attorney Fees. Where a county adopted additional standards, addressing annual gross farm income and crop density and acreage, for determining whether a proposed dwelling is "in conjunction with farm use," the county's argument to LUBA that its standards eliminate discretion from the determination of whether a dwelling is "in conjunction with farm use," although incorrect, was not presented without probable cause to believe the position was well-founded and, therefore, an award of attorney fees is not warranted. *McKay Creek Valley Assoc. v. Washington County*, 20 Or LUBA 494 (1990).

27.13 LUBA Procedures/Rules – Attorney Fees. Petitioner's challenge to nonessential findings is not sufficient to justify a finding by LUBA pursuant to ORS 197.830(15)(b) that petitioner's "position was presented without probable cause to believe the position was well-founded." *Griffith v. City of Milwaukie*, 19 Or LUBA 614 (1990).

27.13 LUBA Procedures/Rules – Attorney Fees. For attorney fees to be awarded under ORS 197.830(15)(b), LUBA must find both that the losing party lacked probable cause to believe its position was well founded and that its position was presented primarily for a purpose other than to secure appropriate action by LUBA. *Bradbury v. City of Independence*, 19 Or LUBA 584 (1990).