



1 city's good faith, or lack of it, is irrelevant.

2 ATTORNEY'S FEES

3 Petitioners seek attorney's fees under ORS 197.830(13)(b),  
4 which provides:

5 "The board may \* \* \* award reasonable attorney fees  
6 and expenses to the prevailing party against any other  
7 party who the board finds presented a position without  
8 probable cause to believe the position was  
9 well-founded, and primarily for a purpose other than  
10 to secure appropriate action by the board."

11 We remanded the city's decision because the city  
12 misinterpreted the city code definition of the phrase "street  
13 side yard." Wagner v. City of Yachats, \_\_\_ Or \_\_\_ LUBA (LUBA  
14 No. 89-044, August 23, 1989). We disagree with petitioners,  
15 however, that intervenor's defense of the city's incorrect  
16 interpretation of its code was presented "without probable cause  
17 to believe" that position "was well founded" and that it was  
18 advanced for an improper purpose. Our decision regarding  
19 interpretation of the phrase "street side yard" acknowledged  
20 that the city's interpretation made some sense as a matter of  
21 policy. However, we remanded the city's decision because its  
22 interpretation of the phrase "street side yard," and  
23 specifically the term "street," was inconsistent with  
24 unambiguous definitional code language.<sup>1</sup> We conclude that

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25 <sup>1</sup>While we disagreed with intervenors on whether these code provisions  
26 are ambiguous, there is an arguable ambiguity in the city's code because  
the phrase "corner lot" refers to "streets other than an alley."  
Intervenor concluded that this meant that all ways of travel relevant to  
this case were either streets or alleys, notwithstanding the more narrow  
code definition of street.

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intervenor's defense of the city's interpretation of its code, although not well founded, does not justify an award of attorney's fees under ORS 197.830(13)(b).

Accordingly, petitioners are awarded the filing fee in the amount of \$50.00, to be paid by respondent and intervenor. The deposit for costs will be returned to petitioners by the Board.

Petitioners' request for attorney's fees is denied.

Dated this 19th day of October, 1989.

  
Wendie L. Kellington  
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