



1 be what the county has done in the present case.

2 There are two problems with the county's motion. First, we cannot tell that the  
3 application actually has been withdrawn. The county provides only a letter from the  
4 applicant's representative asking that the application be withdrawn. We have no way of  
5 knowing whether the application is in fact withdrawn. Second, and more importantly, we  
6 have repeatedly stated that where the local code does not make clear that withdrawal of an  
7 application has any effect on the local government's final decision, LUBA will deny a  
8 motion to dismiss. *Davis v. City of Bandon*, 28 Or LUBA 38, 44 (1994); *Berg v. Linn*  
9 *County*, 22 Or LUBA 507, 509 (1992); *Gilson v. City of Portland*, 22 Or LUBA 343, 352  
10 (1991); *McKay Creek Valley Assoc. v. Washington County*, 16 Or LUBA 1028, 1029 (1987).

11 In the present case, the county does not explain what effect withdrawal of the  
12 application has on its final decision under its local code. Petitioners argue that the local code  
13 implies that there is no effect. The burden is on the county to demonstrate that the  
14 application has in fact been withdrawn and to explain how withdrawal under the local code  
15 renders the county's decision ineffective. The county has done neither.

16 The motion to dismiss is denied.

17 Petitioners move for order requiring the county to file the record in this appeal. The  
18 county shall either file a renewed motion to dismiss explaining, consistent with this order,  
19 why this appeal is in fact moot, or file the record within 14 days of the date of this order.  
20 The county might also obtain the same objective by moving for a voluntary remand, followed  
21 by withdrawal of the application, as suggested in *Greer*.

22 Dated this 29<sup>th</sup> day of May, 2007.

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Melissa M. Ryan  
Board Member