

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

3
4 RICHARD STRONEGGER,
5 *Petitioner,*

6
7 vs.

8
9 CITY OF DUNES CITY,
10 *Respondent.*

11
12 LUBA No. 2013-116

13 ORDER ON COSTS

14 Pursuant to the parties’ stipulation, the petition for review was due on
15 February 7, 2014. On February 7, 2014, the day the petition for review was
16 due, petitioner filed with LUBA a request to withdraw the appeal. On February
17 12, 2014, LUBA issued a final opinion and order dismissing the appeal.

18 Pursuant to OAR 661-010-0075(1)(c), respondent filed a cost bill
19 requesting award of petitioners’ filing fee and deposit for costs, in the amount
20 of \$400.

21 OAR 661-010-0075(1)(c) (2010) provides:

22 “Forfeit of Filing Fee and Deposit: If a record has been filed and a
23 petition for review is not filed within the time required by these
24 rules, and the governing body files a cost bill pursuant to this
25 section requesting forfeiture of the filing fee and deposit, the filing
26 fee and deposit required by OAR 661-010-0015(4) shall be
27 awarded to the governing body as cost of preparation of the
28 record. See OAR 661-010-0030(1).”

29 In turn, OAR 661-010-0030(1) provides in relevant part:

30 “Failure to file a petition for review within the time required by
31 this section, and any extensions of that time under OAR 661-010-
32 0045(9) or OAR 661-010-0067(2), shall result in dismissal of the

1 appeal and forfeiture of the filing fee and deposit for costs to the
2 governing body. See OAR 661-010-0075(1)(c).”

3 In circumstances where the petitioner voluntarily withdraws an appeal,
4 whether forfeiture of the filing fee and deposit for costs is appropriate under
5 OAR 661-010-0030(1) and 661-010-0075(1)(c) depends on whether the
6 request for withdrawal or dismissal was filed with LUBA before the deadline to
7 file the petition for review expires. *Sommer v. Josephine County*, 52 Or LUBA
8 783, 784-85 (2006). Petitioner’s request to voluntarily dismiss the appeal was
9 filed on February 7, 2014, before the deadline to file the petition for review
10 expired. OAR 661-010-0075(2)(a)(B)(ii) (a document is generally filed with
11 LUBA on the date it is mailed by first class mail). Therefore, the city’s request
12 for forfeiture of the filing fee and deposit for costs is denied.

13 The city is entitled as the prevailing party to recover the cost of copying
14 the record. OAR 661-010-0075(1)(b)(B). The city is awarded the cost of
15 preparing two copies of the 190-page record, at 25 cents per page, for a total of
16 \$95. LUBA will return the remainder of the deposit for costs to petitioner.

17 Dated this 2nd day of April, 2014.
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24 Tod A. Bassham
25 Board Member