

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

3
4 HOLLANDER HOSPITALITY,
5 *Petitioner,*

6
7 vs.

8
9 CITY OF ASTORIA,
10 *Respondent.*

11
12 LUBA No. 2021-061

13 NOTICE OF APPELLATE JUDGMENT
14 AND ORDER ON FEES AND COSTS

15 **NOTICE OF APPELLATE JUDGMENT**

16 The Court of Appeals issued an opinion in *Hollander Hospitality v. City of*
17 *Astoria, CA A177166*, on December 29, 2021. The appellate judgment was filed
18 on February 18, 2022. The appellate court decision in this case requires no change
19 in our final opinion and order dated September 30, 2021.

20 **COSTS**

21 Petitioner, the prevailing party in this appeal, filed a cost bill requesting
22 award of the cost of their filing fee, in the amount of \$200. Petitioner also requests
23 return of their \$200 deposit for costs.

24 Respondent does not object to petitioner’s cost bill.

25 Petitioner is awarded the cost of their filing fee, in the amount of \$200, to
26 be paid by respondent. The Board shall return petitioner’s \$200 deposit for costs.

27 **MOTION FOR ATTORNEY FEES**

28 ORS 197.835(10)(b) provides, “If the board * * * reverse[s] the decision

1 and orders the local government to grant approval of the application, the board
2 shall award attorney fees to the applicant and against the local government.”
3 Petitioner moves for an award of attorney fees in the amount of \$18,940. An
4 award of attorney fees under ORS 197.835(10)(b) is mandatory. If LUBA
5 reverses a local government decision to deny an application and orders the local
6 government to approve the application under ORS 197.835(10)(a), LUBA must
7 award attorney fees to the applicant against the local government.

8 In awarding attorney fees pursuant to ORS 197.835(10)(b), although the
9 award is mandatory, LUBA is afforded the discretion to determine the amount of
10 attorney fees that is reasonable under the specific facts of the case. *Young v. City*
11 *of Sandy*, 33 Or LUBA 817, 819 (1997). The city does not object to petitioner’s
12 motion for attorney fees. The burden is on the party seeking the attorney fees to
13 establish that the requested rates are reasonable, even in the absence of an
14 objection. *6710 LLC v. City of Portland*, 41 Or LUBA 608, 611 (2002). While
15 we independently review attorney fee statements for reasonableness, the failure
16 of an opposing party to contest such statements is at least some indication that
17 the attorney fees sought are reasonable. *Id.* at 611-12; *see also 7th Street Station*
18 *LLC v. City of Corvallis*, 55 Or LUBA 732, 734 (2008). LUBA will look to the
19 factors listed in ORS 20.075(2) for guidance in determining the amount of an
20 attorney fee award. *Schaffer v. City of Turner*, 37 Or LUBA 1066, 1072 (2000).
21 We identify the relevant facts and legal criteria on which we rely in determining
22 what award of attorney fees is reasonable. *McCarthy v. Oregon Freeze Dry, Inc.*,
23 327 Or 84, 96, *on recons*, 327 Or 185, 957 P2d 1200 (1998). In determining the
24 amount of attorney fees in this appeal we consider the time and labor required in

1 the proceeding, the fee customarily charged for similar legal services, and the
2 experience and ability of the attorney performing the services. ORS 20.075(2).

3 **A. Time**

4 Petitioner’s attorney submitted a detailed statement describing the tasks
5 they performed and the time spent on the appeal, which totals 47.5 hours. We
6 agree with petitioner that 47.5 hours is a reasonable amount of time to have spent
7 in pursuing this LUBA appeal. *Stewart v. City of Salem*, 63 Or LUBA 555, 556-
8 57 (2011) (41.3 hours found reasonable); *7th Street Station v. City of Corvallis*,
9 55 Or LUBA 732 (2008) (67 hours found reasonable).

10 **B. Rate**

11 The Oregon State Bar Economic Survey (2017) (the 2017 Survey)
12 describes various billing rates throughout the state based upon years of
13 experience and practice area and is an “accurate indicator of fees customarily
14 charged in a local community.” *6710 LLC*, 41 Or LUBA 608, 612. According to
15 petitioner’s statement of costs, petitioner’s partner hourly rate appears to be \$400,
16 with an associate hourly rate of \$350, and a paralegal hourly rate of \$300. The
17 partner completed the majority of the billed hours, 46.70. The associate and
18 paralegal completed 0.40 hours each. The partner explained that they have
19 practiced law in Oregon for 25 years, with a particular expertise in land use law.
20 The partner’s \$400 hourly rate is below the median rate for attorneys with similar
21 experience in the same legal market based on the 2017 Survey. We conclude that
22 the rate for this appeal is reasonable.

1 Petitioner’s motion for attorney fees is granted. The city is hereby ordered
2 to pay petitioner’s attorney fees in the amount of \$18,940.

3 Dated this 21st day of March 2022.

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Michelle Gates Rudd

10 Board Member