

## **Summary of Attorney Fee Awards**

### **2023-2025**

ORS 197.830(19)(d) requires LUBA to track and report a “list of reviews, and a brief summary of the circumstances in each review, under which the board exercises its discretion to require a losing party to pay the attorney fees of the prevailing party.” Below are summaries of orders awarding attorney fees and a list of orders denying motions for attorney fees that LUBA issued during the calendar years 2023 through 2025.

#### **1. *Landwatch Lane County v. Lane County*, LUBA No 2022-095 (Aug 4, 2023)**

This appeal challenged a county decision approving a legal lot verification for a 10-acre parcel that had been separated from a larger property through a foreclosure process in the mid-1990s. The county concluded that the parcel was lawfully created when it was conveyed by a trustee’s deed following foreclosure of a trust deed that encumbered only part of the original property.

Before LUBA, the petitioner argued that the trust deed itself operated as a deed conveying property and that the parcel therefore had not been lawfully created under state law. LUBA rejected that argument, explaining that established Oregon law clearly distinguishes trust deeds from deeds that convey ownership, and affirmed the county’s decision.

After prevailing on the merits, the intervenors-respondents moved for an award of attorney fees pursuant to ORS 197.830(15)(b), which provides that LUBA “[s]hall award reasonable attorney fees and expenses to the prevailing party against any other party who the board finds presented a position or filed any motion without probable cause to believe the position or motion was well-founded in law or on factually supported information.” LUBA concluded that the petitioner’s legal position—that a trust deed conveyed property ownership—was not supported by Oregon law and was presented without probable cause to believe it was well-founded in law or fact. LUBA explained that agreement by local planning staff did not excuse the petitioner’s obligation to independently assess whether its legal argument had a reasonable legal basis.

LUBA awarded the intervenors-respondents \$15,124 in attorney fees.

**2. *Windlinx Ranch Trust v. Deschutes County*, LUBA No 2023-079 (Feb 27, 2025)**

This appeal arose from a county's approval, on remand from LUBA, of an application for a forest template dwelling. In the original proceedings, the county approved the application after finding that at least seven lawfully created parcels existed within the required template area. In an earlier appeal, LUBA remanded the decision for limited additional findings concerning whether certain parcels were lawfully created. The Court of Appeals affirmed that LUBA remand decision.

On remand to the county, the petitioner did not challenge whether the parcels were lawfully created, but instead raised new arguments asserting that certain parcels were not located within the template and that the application should have been modified. The county rejected those arguments as outside the scope of LUBA's remand and reaffirmed its approval.

In the subsequent appeal to LUBA, the petitioner raised assignments of error based on those same arguments. LUBA concluded that all assignments of error were waived because the petitioner could have raised those issues in the earlier appeal but did not. LUBA relied on well-established waiver principles that bar parties from raising issues in a second appeal that could have been, but were not raised in a first appeal of the same land use decision.

After prevailing on the merits, the intervenors-respondents moved for an award of attorney fees pursuant to ORS 197.830(15)(b), which provides that LUBA "[s]hall award reasonable attorney fees and expenses to the prevailing party against any other party who the board finds presented a position or filed any motion without probable cause to believe the position or motion was well-founded in law or on factually supported information." LUBA concluded that the petitioner failed to present any probable-cause argument addressing one of the independent waiver grounds raised by the intervenors-respondents and that the petitioner's other arguments relied on an inaccurate characterization of LUBA's prior decision. LUBA determined that no reasonable legal basis supported the petitioner's positions in the appeal.

LUBA awarded the intervenors-respondents \$49,752 in attorney fees.

## **Orders Denying Motions for Attorney Fees**

*Nelson v. City of Hillsboro*, LUBA No 2022-035 (Mar 2, 2023)

*Thrive Hood River v. Hood River County*, LUBA No 2022-084 (Feb 28, 2024)

*Friends of Yamhill County v. Yamhill County*, LUBA No 2021-074 (Mar 14, 2024)

*Kennon v. City of Union*, LUBA No 2024-021 (Sept 27, 2024)

*Schulke v. City of Salem*, LUBA No 2024-038 (Feb 27, 2025)

*Saige Timber, LLC v. Linn County*, LUBA No 2023-075 (Aug 5, 2025)

*Leckie v. Lane County*, LUBA No 2024-024 (Aug 15, 2025)

*Juniper Institute, LLC v. Deschutes County*, LUBA No 2024-077 (Sept 24, 2025)