27.12.1 LUBA Procedures/Rules – Costs – Prevailing Party. To be a prevailing party where the local government rescinds its decision on reconsideration after the applicant withdraws the application, the petitioner must demonstrate that the local government adopted a decision on reconsideration in accord with petitioner's position. A petitioner is not a prevailing party under that test where the appealed decision is rescinded because the applicant withdrew its application after filing a different application for the same development, and the petitioner fails to demonstrate that the new application was prompted by perceived vulnerabilities in the first decision. *Oregon Coast Alliance v. Curry County*, 71 Or LUBA 406 (2015).

27.12.1 LUBA Procedures/Rules – Costs – Prevailing Party. LUBA's rules allow for a prevailing local government to recover the cost of providing petitioner and LUBA with copies of the record, but do not provide for a prevailing intervenor-respondent to recover the cost of the copy of the record that the local government provided to intervenor. *Kukaska v. Linn County*, 70 Or LUBA 495 (2014).

27.12.1 LUBA Procedures/Rules – Costs – Prevailing Party. LUBA's administrative rules do not authorize a prevailing party to recover the cost of preparing a transcript of a city council hearing. *Stewart v. City of Salem*, 62 Or LUBA 465 (2010).

27.12.1 LUBA Procedures/Rules – Costs – Prevailing Party. There may be rare circumstances where a sustained cross-assignment of error has such a disproportionate impact upon the remand proceeding that it calls into question whether the petitioner is the prevailing party. When the sustained cross-assignment of error merely serves to clear up alleged errors in the wording of conditions of approval, that does not mean the petitioner is no longer the prevailing party. *Curl v. City of Bend*, 59 Or LUBA 513 (2009).

27.12.1 LUBA Procedures/Rules – Costs – Prevailing Party. Petitioner is considered the prevailing party even though all of his assignments of error were denied, where LUBA sustains one of intervenor-petitioner's assignments of error and remands the local government's decision. *Sommer v. Josephine County*, 50 Or LUBA 721 (2005).

27.12.1 LUBA Procedures/Rules – Costs – Prevailing Party. So long as one of petitioner's assignments of error is sustained in whole or in part and results in reversal or remand of an appealed decision, petitioner is the prevailing party and entitled to recover the filing fee as costs under OAR 661-010-0075(1)(b)(A). *Save Our Skyline v. City of Bend*, 48 Or LUBA 643 (2004).

27.12.1 LUBA Procedures/Rules – Costs – Prevailing Party. A petitioner may be deemed the "prevailing party" for purposes of an award of costs, notwithstanding that the appeal was dismissed, only where petitioner establishes that the appeal played some causative role in the local government action that mooted or otherwise justified dismissal of the appeal. *1000 Friends of Oregon v. Deschutes County,* 44 Or LUBA 1 (2003).

27.12.1 LUBA Procedures/Rules – Costs – Prevailing Party. Where it is not clear that petitioner's appeal prompted repeal of the challenged ordinance, and it is more probable that repeal was prompted by a Supreme Court decision that invalidated the ballot measure the ordinance was intended to implement, petitioner fails to establish the requisite causation between its appeal and

repeal of the ordinance in order to be deemed the "prevailing party" for purposes of obtaining an award of costs. *1000 Friends of Oregon v. Deschutes County*, 44 Or LUBA 1 (2003)..

27.12.1 LUBA Procedures/Rules – Costs – Prevailing Party. Where a party appeals an adverse decision by LUBA, the Court of Appeals overturns LUBA's decision, and the Court of Appeals' decision is not subsequently appealed, that party is the prevailing party for purposes of awarding costs. *Hausam v. City of Salem*, 42 Or LUBA 587 (2002).

27.12.1 LUBA Procedures/Rules – Costs – Prevailing Party. In order for a petitioner to be deemed the prevailing party when a LUBA appeal is dismissed, the petitioner must establish that the petitioner's appeal played some causative role in the local government action that mooted or otherwise justified dismissal of the appeal. *Central Klamath County CAT v. Klamath County*, 41 Or LUBA 600 (2002).

27.12.1 LUBA Procedures/Rules – Costs – Prevailing Party. Where a local government adopts three separate decisions, but the second and third decisions simply readopt the earlier decisions with additional findings and the appeal of the third decision results in remand, petitioner is properly viewed as the prevailing party in all three appeals, notwithstanding that the first two appeals are dismissed as moot. *Friends of Clean Living v. Polk County*, 37 Or LUBA 979 (1999).

27.12.1 LUBA Procedures/Rules – Costs – Prevailing Party. Under ORCP 54A(3), where petitioner voluntarily dismisses an appeal, and no circumstances indicate otherwise, intervenor-respondent is the prevailing party. *Pfeifer v. City of Silverton,* 33 Or LUBA 869 (1997).

27.12.1 LUBA Procedures/Rules – Costs – Prevailing Party. Respondent is not considered the prevailing party when a LUBA appeal is dismissed because the challenged ordinance was rejected by the voters in a referendum election. *Potter v. City of Astoria*, 29 Or LUBA 590 (1995).

27.12.1 LUBA Procedures/Rules – Costs – Prevailing Party. A petitioner need not prevail on all of its assignments of error to be considered the "prevailing party" under OAR 661-10-075(1)(b). LUBA considers a petitioner to be the prevailing party if the challenged decision is reversed or remanded. *Churchill v. Tillamook County*, 29 Or LUBA 572 (1995).

27.12.1 LUBA Procedures/Rules – Costs – Prevailing Party. Where a petitioner moves to dismiss its appeal or withdraws its notice of intent to appeal before the deadline for filing the petition for review has passed, respondent is not entitled to award of petitioner's filing fees and deposits for costs pursuant to ORS 197.830(8) and OAR 661-10-075(1)(c). However, as the prevailing party, respondent may be awarded the costs of copying the record. OAR 661-10-075(1)(b)(B). *Claremont Limited Partnership v. Washington County*, 28 Or LUBA 785 (1995).

27.12.1 LUBA Procedures/Rules – Costs – Prevailing Party. Although respondent is generally viewed as the prevailing party when an appeal at LUBA is dismissed, where the appeal is dismissed after petitioner's appeal results in the local government withdrawing its decision for reconsideration and adopting a new decision, petitioner is the prevailing party. *Sewco Investments, Inc. v. Clackamas County*, 27 Or LUBA 678 (1994).

27.12.1 LUBA Procedures/Rules – Costs – Prevailing Party. Petitioner is the prevailing party for purposes of awarding costs under OAR 661-10-075(1)(b)(A), where petitioner prevails on two of six assignments of error and LUBA remands the challenged decision. *Louisiana Pacific v. Umatilla County*, 26 Or LUBA 624 (1994).

27.12.1 LUBA Procedures/Rules – Costs – Prevailing Party. Where petitioner withdraws his notice of intent to appeal *before* the deadline for filing the petition for review has passed, respondent is not entitled to award of petitioner's filing fees and deposit for costs pursuant to ORS 197.830(8) and OAR 661-10-075(1)(c). However, as the prevailing party, respondent may be awarded the costs of copying the record. OAR 661-10-075(1)(b)(B). *Olson v. Neahkahnie Water District*, 25 Or LUBA 792 (1993).

27.12.1 LUBA Procedures/Rules – Costs – Prevailing Party. OAR 661-10-075(1)(b) authorizes LUBA to award the costs of preparing the local record to a prevailing "governing body," but does not authorize an award costs to a prevailing intervenor-respondent. *City of North Plains v. Washington County*, 24 Or LUBA 623 (1993).

27.12.1 LUBA Procedures/Rules – Costs – Prevailing Party. While LUBA's rules do not expressly provide for return of petitioner's deposit for costs where petitioner is the prevailing party, it is LUBA's practice to return petitioner's deposit for costs under these circumstances. *Tice v. Josephine County*, 21 Or LUBA 596 (1991).