

LAND USE
BOARD OF APPEALS

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

JUL 23 3 04 PM '80

3 GEORGE J. GRAFF and)
4 DWIGHT SIGWORTH,) LUBA NO. 80-037
5)
6 Petitioners,)
7 vs.) FINAL OPINION AND
8) ORDER OF DISMISSAL
9) AND AWARD OF COSTS
10 CITY OF BEAVERTON,)
11 OREGON, a municipal)
12 corporation,)
13 Respondent.)

14 Appeal from City of Beaverton.

15 George Graff Eleanor Baxendale
16 7525 SW Danielle Ave. Legal Counsel
17 Beaverton, OR 97005 4950 SW Hall Blvd.
18 Beaverton, OR 97005
19 Dwight Sigworth Attorney for Respondent
20 7400 SW 136th City of Beaverton
21 Beaverton, OR 97005
22 Petitioners

23 BAGG, Referee; REYNOLDS, Chief Referee; COX, Referee;
24 participated in the decision.

25 Dismissed. 7/23/80

26 You are entitled to judicial review of this Order.
Judicial review is governed by the provisions of Oregon Laws
1979, ch 772, sec 6(a).

1 BAGG, Referee.

2 This matter is before the Board because of a letter from
3 Dwight Sigworth, one of the petitioners, dated June 6 and
4 received by this Board on June 10. The letter recites that the
5 Beaverton City Council took action on June 2 which rendered the
6 appeal to the Land Use Board unnecessary. A letter was sent to
7 petitioners from the Board requesting that all parties verify
8 the end of the case. No further verification was received
9 except that on June 20, the Board received a cost bill claiming
10 \$10.00 in costs for preparation of a transcript, apparently
11 part of the record, and a letter suggesting that the City of
12 Beaverton considered the case closed "if the potential
13 petitioners have notified you they wish to terminate
14 proceedings without filing a petition."

15 The petition in this matter was due June 11. The letter
16 advising the Board that the petitioners did not wish to proceed
17 further was received on June 10. The Board will treat the
18 letter from petitioners as a motion to dismiss. In treating
19 the letter as a motion to dismiss, the request for dismissal
20 was timely and did not result in a forfeiture of the case by
21 petitioners for failure to file a petition within the time
22 provided. The City of Beaverton has asserted that LUBA Rule 7
23 requires that the Board base its dismissal upon failure to file
24 a petition and suggests in the letter, but not in the cost
25 bill, that the Board's award should be made to the city as the
26 case was "forfeited."

1 We agree with the city, however, that the city is entitled
2 to some reimbursement for costs in the preparation of the
3 record. The record was, in fact, received by this Board on May
4 1. As the case has ended without a determination as to the
5 merits, but without a forfeiture, reimbursement of the
6 governing body for costs seems appropriate.

7 Now, therefore, this matter is dismissed, and the amount of
8 \$10.00 shall be paid to the City of Beaverton as reimbursement
9 for costs in this matter and the balance of petitioner's
10 deposit, in the amount of \$140.00, shall be returned to them.