

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3  
4 FRIENDS OF YAMHILL COUNTY and

5 1000 FRIENDS OF OREGON,

6 *Petitioners,*

7  
8 vs.

9  
10 CITY OF McMinnville,

11 *Respondent.*

12  
13 LUBA No. 2000-227

14  
15 FINAL OPINION

16 AND ORDER

17  
18 Appeal from City of McMinnville.

19  
20 Michael K. Collmeyer, Portland, represented petitioner.

21  
22 Candace A. Haines, McMinnville, represented respondent.

23  
24 BASSHAM, Board Chair; HOLSTUN, Board Member; BRIGGS, Board Member,  
25 participated in the decision.

26  
27 DISMISSED

02/11/2003

28  
29 You are entitled to judicial review of this Order. Judicial review is governed by the  
30 provisions of ORS 197.850.

1 Bassham, Board Member.

2 This appeal involved petitioners' challenge to the city's ordinance drafted to  
3 implement Ballot Measure 7 (2000) (the measure). This appeal was stayed while the Oregon  
4 Supreme Court decided the constitutionality of the measure. The court held the measure was  
5 unconstitutional and the measure never took effect. *League of Oregon Cities v. State of*  
6 *Oregon*, 334 Or 645, 56 P3d 892 (2002). The city subsequently repealed its ordinance  
7 implementing the measure, thereby making this appeal moot. Petitioners have now moved to  
8 dismiss the appeal. The motion to dismiss is granted.

9 Petitioner also moves for recovery of its filing fee and deposit for costs as the  
10 prevailing party. The city has not responded. Generally, when a respondent does not contest  
11 a motion for costs, the costs will be awarded as requested. However, we have a  
12 responsibility to review such motions even when there is no response. Because there are  
13 many motions for costs on the identical issue regarding other jurisdictions, we believe the  
14 results should be uniform. For the reasons stated in *1000 Friends of Oregon v. Deschutes*  
15 *County*, \_\_\_ Or LUBA \_\_\_ (LUBA No. 2000-247, February 11, 2003), we do not believe  
16 petitioner is the prevailing party in this appeal. The board will return petitioner's deposit for  
17 costs.

18 This appeal is dismissed.