

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 1000 FRIENDS OF OREGON,

5 *Petitioner,*

6
7 vs.

8
9 MALHEUR COUNTY,

10 *Respondent.*

11
12 LUBA No. 2000-236

13
14 FINAL OPINION

15 AND ORDER

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17 Appeal from City of Malheur County.

18
19 Michael K. Collmeyer, Portland, represented petitioners.

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21 Stephanie J. Williams, County Counsel, Vale, represented respondent.

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

25
26 DISMISSED

02/11/2003

27
28 You are entitled to judicial review of this Order. Judicial review is governed by the
29 provisions of ORS 197.850.

1 Bassham, Board Chair.

2 This appeal involved petitioner's 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 The city subsequently repealed its ordinance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. Petitioner has 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 county has not responded. Generally, when a respondent does not
11 contest 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.