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BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

1000 FRIENDS OF OREGON,
Petitioner,

vs.

CITY OF EUGENE,
Respondent,

LUBA No. 2000-218

FINAL OPINION
AND ORDER

Appeal from City of Eugene.

Michael K. Collmeyer, Portland, represented petitioner.

Glenn Klein, Eugene, represented respondent.

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

DISMISSED 06/18/2003

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

Opinion by Bassham.

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 The city subsequently repealed its ordinance implementing the measure, thereby making this appeal moot.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

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

This appeal is dismissed.