

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 DAVID EDEL, ROD EDEL, FRANK EDEL,
5 NANCY EDEL, SALBASGEON INN ON
6 THE UMPQUA, SALBASGEON, INC.
7 and JEANNE V. CALVERT,
8 *Petitioners,*

9
10 vs.

11
12 DOUGLAS COUNTY,
13 *Respondent,*

14 and

15
16 LTM, INC.,
17 *Intervenor-Respondent.*

18
19 LUBA Nos. 2003-053, 2003-054 and 2003-070

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22 FINAL OPINION
23 AND ORDER

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25 Appeal from Douglas County.

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27 Carrie A. Richter, Portland, represented petitioner.

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29 Paul Meyer, Roseburg, represented respondent.

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31 Steven Schell, Portland, represented intervenor-respondent.

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

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36 DISMISSED

06/25/2003

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

1 Briggs, Board Member.

2 Petitioners move to withdraw their consolidated appeals, and request that those
3 appeals be dismissed. Accordingly, LUBA Nos. 2003-053, 2003-054 and 2003-070 are
4 dismissed.

5 Petitioners also request that their filing fees and deposits for costs be returned to them
6 pursuant to OAR 661-010-0075(1)(b).¹ It is not clear to us that petitioners are the prevailing
7 parties in these appeals. The petitioner is generally viewed as the prevailing party when a
8 challenged decision is reversed or remanded. The respondent is generally viewed as the
9 prevailing party when the challenged decision is affirmed or the appeal is dismissed. *Mackie*
10 *v. Linn County*, 17 Or LUBA 1013, 1014 (1988). Absent some demonstration to the contrary,
11 petitioners are not the prevailing parties in these appeals and are not entitled to an award
12 equaling the amount of their filing fees. *1000 Friends of Oregon v. Deschutes County*, ___
13 Or LUBA ___ (LUBA No. 2000-247, February 11, 2003). However, because the county has
14 not filed a cost bill within the time provided for in our rules, we shall return petitioners'
15 deposits for costs, in the amount of \$450.

¹ OAR 661-010-0075(1) sets out the circumstances where LUBA will award costs to a prevailing party. OAR 661-010-0075(1)(b) provides in relevant part:

“Recoverable Costs: Costs may be recovered only for the items set forth in this subsection.

“(A) If the petitioner is the prevailing party, the petitioner may be awarded the cost of the filing fee.

“(B) If the governing body is the prevailing party, the governing body may be awarded copying costs for the required number of copies of the record, at 20 cents per page, whether or not the governing body actively participated in the review.

“(C) Costs awarded to the governing body pursuant to this section shall be paid from the deposit required by OAR 661-010-0015(4) and shall not exceed the amount of that deposit.”