

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

3
4 CENTRAL CATHOLIC HIGH SCHOOL,
5 *Petitioner,*

6
7 vs.

8
9 CITY OF PORTLAND,
10 *Respondent.*

11
12 LUBA No. 2011-079

13
14 FINAL OPINION
15 AND ORDER

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17 Appeal from City of Portland.

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19 Dana L. Krawczuk, Portland, represented petitioner.

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21 Linda Meng, City Attorney, Portland, represented respondent.

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

25
26 DISMISSED

09/07/2011

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

1 Ryan, Board Chair.

2 On August 22, 2011, petitioner filed a Notice of Intent to Appeal a decision by the
3 city. On August 30, 2011, petitioner filed a “Motion to Withdraw Appeal and Cost Bill.”
4 We treat petitioner’s motion as a motion to dismiss the appeal. Accordingly, this appeal is
5 dismissed.

6 Petitioner requests “return of its filing fee and deposit for costs.” Because no record
7 was transmitted to LUBA, the city is not entitled to recover any costs that might be awarded
8 from petitioner’s deposit for costs. Therefore, the Board will return petitioner’s \$200 deposit
9 for costs. OAR 661-010-0075(1)(d).

10 Petitioner’s request for a return of its filing fee is denied. LUBA does not have
11 authority to return petitioner’s filing fee. *Elkins v. City of McMinnville*, 6 Or LUBA 165
12 (1982). Neither is petitioner entitled to an award of the cost of the filing fee. A petitioner
13 must be the prevailing party to be awarded the cost of its filing fee. OAR 661-010-
14 0075(1)(b)(A). Generally, respondent is the prevailing party when an appeal is dismissed.
15 *Mackie v. Linn County*, 17 Or LUBA 1013, 1014 (1988) unless a petitioner is able to
16 demonstrate that the appeal played some causative role in a governmental action that mooted
17 or otherwise justified dismissal of the appeal. *1000 Friends of Oregon v. Deschutes County*,
18 44 Or LUBA 1, 2-3 (2003).