

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 NICHOLAS SEARS,

5 *Petitioner,*

6
7 vs.

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9 CITY OF CANNON BEACH,

10 *Respondent,*

11
12 and

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14 SURFSANDS RESORT – WAYFARER INC.,

15 *Intervenor-Respondent.*

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17 LUBA No. 2015-050

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19 FINAL OPINION

20 AND ORDER

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22 Appeal from City of Cannon Beach.

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24 William L. Rasmussen, Portland, represented petitioner.

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26 William K. Kabeiseman, Portland, represented respondent.

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28 Craig G. Russillo, Bend, represented intervenor-respondent.

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30 RYAN, Board Member; BASSHAM, Board Chair; HOLSTUN, Board
31 Member, participated in the decision.

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33 DISMISSED

 11/23/2015

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

MOTION TO INTERVENE

Surfsands Resort – Wayfarer, Inc., the applicant below (intervenor-respondent) moves to intervene on the side of the respondent. There is no opposition to the motion and it is allowed.

MOTION TO DISMISS

The challenged decision is the city’s decision approving a patio. On July 24, 2015, the city withdrew the decision challenged in this appeal for reconsideration pursuant to ORS 197.830(13)(b) and OAR 661-010-0021. On October 12, 2015, the city filed a motion to dismiss the appeal. According to the city, after the city withdrew the challenged decision for reconsideration, the city revoked the approval granted by the challenged decision and intervenor-respondent filed a new application. Accordingly, the city argues, the appeal is moot, and LUBA should dismiss it.

Petitioner has not responded to the city’s motion to dismiss. We agree with the city that LUBA’s review of the challenged decision would have no practical effect, and the appeal is moot. *Heiller v. Josephine County*, 25 Or LUBA 555, 556 (1993) (an appeal to LUBA may be moot where some action subsequent to adoption of the challenged decision supplants, revokes or rescinds the decision).

1 The appeal is dismissed.