LUBA NOV 30 2021 AM10:31

1 2	BEFORE THE LAND USE BOARD OF APPEALS OF THE STATE OF OREGON
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4	1000 FRIENDS OF OREGON,
5	Petitioner,
6	
7 8	VS.
8 9	HOOD RIVER COUNTY,
10	Respondent.
11	Respondent
12	LUBA No. 2021-080
13	
14	FINAL OPINION
15	AND ORDER
16	
17	Appeal from Hood River County.
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19	Andrew Mulkey represented petitioner.
20 21	David F. Doughman represented respondent.
22	David I. Doughinan represented respondent.
23	ZAMUDIO, Board Chair; RUDD, Board Member; RYAN, Board
24	Member, participated in the decision.
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26	DISMISSED 11/30/2021
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28	You are entitled to judicial review of this Order. Judicial review is
29	governed by the provisions of ORS 197.850.

Opinion by Zamudio.

2 The county moves to dismiss this appeal. According to the county, after 3 the appeal was filed and the record was received, the applicant withdrew the application that led to the challenged decision. In an email dated September 22, 4 5 2021, the planning director advised the applicant that the challenged decision is 6 "void" and "no longer effective" due to the withdrawal of the application. 7 Amended Motion to Dismiss Ex 1. Therefore, the county argues, the appeal is 8 moot and should be dismissed. Petitioner does not dispute that the appeal is moot 9 and should be dismissed.

10 LUBA will dismiss an appeal as most where a decision on the merits will 11 have no practical effect. Thunderbird Hotels, LLC v. City of Portland, 56 Or 12 LUBA 430, 432 (2008); Gettman v. City of Bay City, 28 Or LUBA 121 (1994). 13 However, an applicant's withdrawal of an application after a local government 14 decision on the application has been rendered and appealed to LUBA does not, 15 by itself, render the LUBA appeal moot, at least in the absence of a county code provision specifying that withdrawal of a land use application has that effect. 16 17 McKay Creek Valley Assoc. v. Washington County, 16 Or LUBA 1028 (1987).

Generally, local governments lack the authority to amend or modify a decision that is on appeal to LUBA. However, local governments retain the authority to issue *a new decision* that rescinds or expressly supersedes the decision on appeal. *Standard Insurance Co. v. Washington County*, 17 Or LUBA 647, 660, *rev'd on other grounds*, 97 Or App 687, 776 P2d 1315 (1989) (once a

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LUBA appeal is perfected, the local government no longer has jurisdiction to 1 modify the appealed land use decision until LUBA resolves the appeal); Heiller 2 v. Josephine County, 25 Or LUBA 555 (1993) (where the applicant withdraws 3 the application and the land use decision on appeal has been rescinded by a 4 separate decision, LUBA will dismiss the appeal as moot). In that event, LUBA 5 typically dismisses the appeal of the original decision as moot. Jacobsen v. 6 Douglas County, 62 Or LUBA 461, 462 (2010). Here, we assume without 7 deciding that the planning director's September 22, 2021 email advising the 8 applicant that the challenged decision is "void" and "no longer effective" is a new 9 county decision that rescinds or expressly supersedes the challenged decision. 10 Accordingly, based on that assumption, we agree with the county that the appeal 11 12 is moot.

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This appeal is dismissed.