

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

3  
4 HOLGER T. SOMMER,  
5 *Petitioner,*

6  
7 and

8  
9 LYNDA SPANGLER, RAYMOND KONOPA,  
10 MICHAEL L. WALKER, WAYNE MCKY  
11 and HAL ANTHONY,  
12 *Intervenor-Petitioners,*

13  
14 vs.

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16 JOSEPHINE COUNTY,  
17 *Respondent,*

18  
19 and

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21 ORVILLE F. MEADE,  
22 *Intervenor-Respondent.*

23  
24 LUBA No. 2004-131

25 ORDER ON COST BILL AND MOTION

26 FOR AN AWARD OF ATTORNEY FEES

27 In an April 5, 2005 final opinion, we sustained one of intervenor-petitioners' assignments of  
28 error and remanded the county's decision. All of intervenor-petitioners' remaining assignments of  
29 error were denied and all of petitioner's assignments of error were denied. Our decision was  
30 appealed to the Court of Appeals and was affirmed. The appellate judgment was effective October  
31 14, 2005.

32 On April 18, 2005, petitioner filed a cost bill and a motion for an award of attorney fees.  
33 On October 7, 2005, shortly before the effective date of the appellate judgment, petitioner filed a  
34 second cost bill, but he did not file a second motion for attorney fees.

1 **COSTS**

2 In both the April 18, 2005 and October 7, 2005 cost bill, petitioner requests award of the  
3 cost of his filing fee, in the amount of \$175, and return of his \$150 deposit for costs.

4 A petitioner need not prevail on all of its assignments of error to be considered the  
5 “prevailing party” under OAR 661-10-075(1)(b). *Save Our Skyline v. City of Bend*, 48 Or  
6 LUBA 643, 645 (2004). If the challenged decision is reversed or remanded, LUBA considers the  
7 petitioner to be the prevailing party. *Churchill v. Tillamook County*, 29 Or LUBA 572 (1995).  
8 As intervenor-respondent correctly notes, all of petitioner’s assignments of error were denied and  
9 only one of intervenor-petitioners’ assignments of error was sustained. However, absent an  
10 agreement by all parties to the contrary, we conclude that it is the reversal or remand of the local  
11 government’s decision that makes petitioner the prevailing party, not the means by which that  
12 reversal or remand is accomplished.<sup>1</sup> *See Mackie v. Linn County*, 17 Or LUBA 1013 (1988)  
13 (petitioner is the prevailing party where the decision is remanded by stipulation of the parties and no  
14 express provision regarding costs is included in the stipulation).

15 Petitioner is awarded the cost of his filing fee, in the amount of \$175. LUBA will return  
16 petitioner’s \$150 deposit for costs.

17 **ATTORNEY FEES**

18 In his April 18, 2005 motion, petitioner sought an award of \$3,015 in attorney fees.  
19 Intervenor-respondent opposed that request, pointing out that petitioner makes no attempt to show  
20 that he is entitled to recover attorney fees under the standard imposed by ORS 197.830(15)(b).  
21 Intervenor-respondent also points out that petitioner is not an attorney and appeared in this appeal

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<sup>1</sup> Under our rules, a petitioner’s recovery of costs is limited to the cost of the filing fee. OAR 661-010-0075(1)(b)(A). An intervenor-petitioner pays no filing fee and is not entitled to recover costs. Similarly, a respondent’s recovery of costs is limited to the cost of preparing the required number of copies of the record or the amount of petitioner’s filing fee, whichever is less. OAR 661-010-0075(b)(B) and (C). A respondent is entitled to recover those costs without regard to whether respondent actively participated in defending its decision on appeal. OAR 661-010-0075(b)(B). Intervenor-respondents are not entitled to recover costs.

1 *pro se*. As noted, when petitioner refiled his cost bill on October 7, 2005, he did not include a  
2 request for an award of attorney fees.

3 It is not entirely clear whether petitioner still requests an award of attorney fees. If he does,  
4 that request is denied, for the reasons stated in intervenor-respondent's opposition to the request.

5 Dated this 20<sup>th</sup> day of October, 2005.  
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12 Michael A. Holstun  
13 Board Member