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

JIM VAN DYKE, JULIE VAN DYKE, BEN VAN DYKE, BEN VAN DYKE FARMS, INC., CASEY VAN DYKE, CORY VAN DYKE, JOHN VAN DYKE, TOM HAMMER, CHRIS MATTSON, GREG MCCARTHY, CELINE MCCARTHY, BRYAN SCHMIDT, RUDIS LAC, LLC, LEE SCHREPEL, FRUITHILL, INC., B.J. MATTHEWS, GORDON DROMGOOLE, ALLEN SITTON, KATHY SITTON, MARYALICE PFEIFFER, and TIM PFEIFFER,
Petitioners,

vs.

YAMHILL COUNTY,
Respondent.

LUBA Nos. 2020-032/033

ORDER

BACKGROUND

Petitioners are the prevailing parties in *Van Dyke v. Yamhill County*, ___ Or LUBA ___ (LUBA Nos 2020-032/033, June 1, 2020) (*Van Dyke IV*). In these consolidated appeals, petitioners appealed a board of county commissioners order (Order 20-25) authorizing the county to enter into an agreement for the construction of a bridge and related approaches on county-owned property zoned exclusive farm use (EFU) entitled "Agreement for Yamhelas Westsider Trail (Phase 2) Project" (Construction Agreement). Petitioners also appealed the Construction Agreement itself. We take some of the relevant background directly from our final opinion and order:

"The Yamhelas Westsider Trail is a county proposal to develop a 12.48-mile section of a recreation trail (Trail) within a former railroad right of way. The 2.82-mile segment of the proposed Trail between the cities of Yamhill and Carlton crosses three drainages that will require construction of three bridges or culverts.

"The Trail has a long history at LUBA. The county's proposal to develop the Trail has been the subject of three prior LUBA decisions: *Van Dyke v. Yamhill County*, 78 Or LUBA 530 (2018)(*Van Dyke I*); *Van Dyke v. Yamhill County*, ___ Or LUBA ___ (LUBA No 2019-047, Oct 11, 2019) (*Van Dyke II*); and *Van Dyke v. Yamhill County*, ___ Or LUBA ___ (LUBA Nos 2019-038/040, Oct 11, 2019) (*Van Dyke III*).

"In *Van Dyke I*, we remanded a 2018 board of county commissioners' decision to adopt Ordinance 904, which amended the county's comprehensive plan to acknowledge county ownership of a 12.48-mile segment of a former railroad right-of-way, and to authorize construction of a 2.82-mile segment of that right-of-way into the Trail. We concluded that constructing the Trail required conditional use permit approval, including application of Yamhill County Zoning Ordinance (YCZO) provisions that implement ORS 215.296, for sections of the Trail within lands zoned EFU.

"The county instituted remand proceedings, and in March 2019 the board of county commissioners approved a conditional use permit for the Trail. Petitioners appealed that decision to LUBA and that decision was the subject of *Van Dyke II*. In October 2019, in *Van Dyke II*, we remanded the county's decision to approve a conditional use permit for the trail for further proceedings.

"In a related set of appeals resolved on the same date in October, 2019, in *Van Dyke III*, we dismissed two appeals of (1) a board of county commissioners order authorizing the county to enter into an agreement for the design and consulting services, and (2) the agreement itself, related to the three proposed bridges along the Trail, including the bridge over Stag Hollow Creek that is the subject of the Construction Agreement (Stag Hollow Creek bridge).We agreed with the county that the * * * agreement for design and

> consulting services was not a land use decision because it did not authorize 'the use or development of land.'" *Van Dyke IV*, ___ Or LUBA at ___ (slip op at 3-6) (footnotes omitted) (quoting *Van Dyke III*, ___ Or LUBA at ___ (slip op at 15)).

In their second assignment of error in *Van Dyke IV*, petitioners argued that the Stag Hollow Creek bridge and related approaches were "transportation facilities," which are conditional uses in the EFU zone under YCZO 402.04(N), and that the county therefore erred by not applying YCZO 1202.02, which provides criteria for conditional uses generally, and YCZO 402.07, which implements ORS 197.296 and provides additional criteria for conditional uses in the EFU zone. In their fifth assignment of error, petitioners argued that Order 20-25 and the Construction Agreement were statutory "permits" under ORS 215.402(4) and that the county failed to provide notice of its decisions on those permits, as required by ORS 215.416(11); and that the county's failure to provide these required notices prejudiced their substantial rights.[1]

The county did not dispute that it did not apply the conditional use criteria or provide the notices. Instead, it moved to dismiss the appeal on the basis that the challenged decisions were not land use decisions because they did not apply or require the county to apply any land use regulations. In its motion to dismiss and in its response brief, the county asserted that the Stag Hollow Creek bridge

[1] Petitioners made three additional assignments of error. However, because we sustained the second and fifth assignments of error and remanded the decisions for the county to correct procedural errors, we did not address the remaining assignments of error.

would be constructed to serve large fire vehicles and would be used as an access bridge for fire control purposes. Because "[f]ire service facilities providing rural fire protection services" are allowed outright in the EFU zone under ORS 215.283(1)(s) and YCZO 402.02(R), the county argued that it was not required to apply any land use regulations, Order 20-25 and the Construction Agreement were not "land use decisions" within the meaning of ORS 197.015(10)(a), and LUBA therefore lacked jurisdiction.

We rejected the county's assertion that the bridge and related approaches constituted "[f]ire service facilities providing rural fire protection services" under ORS 215.283(1)(s), because the only support for the county's position was the county's assertion in its April 14, 2020 response to petitioners' motion for stay that the bridge would be designed to support fire trucks, supported by an attached affidavit from the county's grants and special projects manager that averred that the bridge would be designed to support fire trucks. In turn, we agreed with petitioners that the bridge and related approaches were themselves transportation facilities requiring conditional use approval because Order 20-25 and the Construction Agreement indicated that construction of the bridge and related approaches would be authorized as part of the Yamhelas Westsider Trail, and because we determined in *Van Dyke I* the Trail was a "transportation facility" requiring conditional use approval. We therefore agreed with petitioners that the county should have applied the conditional use criteria at YCZO 1202.02 and 402.07. Because the county should have applied those land use regulations, we

concluded that Order 20-25 and the Construction Agreement were land use decisions and that we therefore had jurisdiction.

On the merits, because we concluded that the Stag Hollow Creek bridge and related approaches were conditional uses, we agreed with petitioners that the county erred by not applying the conditional use criteria at YCZO 1202.02 and 402.07 and that it prejudiced petitioners' substantial rights by not providing the required notice under YCZO 1301.01(B). We also agreed with petitioners that the construction of the bridge and related approaches constituted the "development" of land, that Order 20-25 and the Construction Agreement were therefore "permit" decisions under ORS 215.402(4), and that the county prejudiced petitioners' substantial rights by not providing notice of those decisions, as required by ORS 215.416(11). We therefore sustained petitioners' second and fifth assignments of error, and remanded Order 20-25 and the Construction Agreement.

On June 25, 2020, petitioners filed a cost bill and motion for attorney fees and expenses against the county pursuant to ORS 197.830(15)(b). On June 29, 2020, the county filed its response to petitioners' motion.

ATTORNEY FEES AND EXPENSES

ORS 197.830(15)(b) provides that LUBA "[s]hall award reasonable attorney fees and expenses to the prevailing party against any other party who the board finds presented a position or filed any motion without probable cause to believe the position or motion was well-founded in law or on factually supported

information." In considering a prevailing party's motion for attorney fees and expenses pursuant to ORS 197.830(15)(b), we look, first, to whether the party is entitled to attorney fees and expenses and, second, to the reasonableness of the amount of the requested attorney fees and expenses.

A. Petitioners' Entitlement to Attorney Fees and Expenses

1. The County's Arguments on the Merits

In order to award attorney fees against a non-prevailing party pursuant to ORS 197.830(15)(b), we must determine that "every argument in the entire presentation [that the non-prevailing party made] to LUBA is lacking in probable cause." *Fechtig v. City of Albany*, 150 Or App 10, 14, 946 P2d 280 (1997). A position is presented "without probable cause" for purposes of ORS 197.830(15)(b) where "no reasonable lawyer would conclude that any of the legal points asserted on appeal possessed legal merit." *Contreras v. City of Philomath*, 32 Or LUBA 465, 469 (1996). In applying the probable cause analysis, we "will consider whether any of the issues raised [by the non-prevailing party] were open to doubt, or subject to rational, reasonable, or honest discussion." *Id.* The probable cause standard is a relatively high hurdle, and that hurdle is not cleared by simply showing that LUBA rejected all of a party's arguments on the merits. *Wolfgram v. Douglas County*, 54 Or LUBA 775, 776 (2007) (citing *Brown v. City of Ontario*, 33 Or LUBA 803, 804 (1997)).

Petitioners argue that, in the local proceedings in *Van Dyke II* and before LUBA in *Van Dyke III*, the county made representations that conditional use

approval was required prior to construction of the Stag Hollow Creek bridge. Petitioners assert that we relied on those representations in dismissing the order and design agreement in *Van Dyke III*. Petitioners also assert that the county made representations to various state and federal regulators and funders that the bridge would be constructed only as part of Trail. Petitioners argue that, in the local proceeding leading to Order 20-25 and the Construction Agreement, individual decision makers' statements, county meeting materials, and the order and agreement themselves contained language indicating that the bridge would be part of the Trail, which we concluded in *Van Dyke I* required conditional use approval. For all of these reasons, petitioners argue that no reasonable lawyer could have concluded that Order 20-25 and the Construction Agreement did not require conditional use approval.

The county responds that a reasonable lawyer could have concluded that conditional use approval was not necessary for the board of county commissioners to adopt Order 20-25 and the Construction Agreement so long as the Stag Hollow Creek bridge and related approaches would not be *used* as "transportation facilities" until such approval was later obtained. The county argues that a reasonable lawyer could have concluded that, because the bridge and related approaches would be used for fire control purposes until conditional use approval was obtained, and because "[f]ire service facilities" are allowed outright in the EFU zone, no land use approval was required at all. The county also argues that petitioners mischaracterize its representations and our reasoning

in *Van Dyke II* and *III*, that any representations it may have made to state and federal regulators and funders have no bearing on the reasonableness of its legal position in these appeals, and that, in any event, the county was entitled to change its legal position over time.

We generally agree with the county that its representations to state and federal regulators and funders are irrelevant to the reasonableness of its legal position in these appeals. The county states that

> "[i]f the county is forced to pay the grant funds back because use of the corridor as a trail is foreclosed through the land use process, that is an internal matter for the county, and is not evidence of bad faith on the part of the county in adopting an alternative rationale for bridge construction." Response to Cost Bill and Motion for Attorney Fees and Expenses 18.

We agree. As a general matter, whether the county is required to repay funds that it used to construct something has no bearing on whether it was legally allowed to construct that thing in the first place. We also agree with the county that, in *Van Dyke III*, we did not dismiss the appeals of the order and design agreement because the county made representations that land use approval would be secured before construction. Rather, we dismissed those appeals because the design agreement was just that—a *design* agreement which authorized no development or construction. *Van Dyke III*, ___ Or LUBA at ___ (slip op at 17).

In remanding Order 20-25 and the Construction Agreement, we expressed doubts that, given that a pedestrian bridge is conditionally allowed in the EFU zone as a transportation facility "the legislature intended to authorize as a

permitted use in the EFU zone a pedestrian bridge that can also carry large fire vehicles." *Van Dyke IV*, ___ Or LUBA at ___ (slip op at 14). However, we did not decide as a matter of law that the county was prohibited from constructing *any* kind of bridge for fire control purposes. It is possible that, had the challenged decisions and record reflected such a proposal, the county could have constructed some sort of bridge as a "[f]ire service facilit[y]" without need to process it as a conditional use.

We did not need to decide that question, though, because neither the challenged decisions nor the record supported the county's position that the county in fact approved such a proposal. As we explained in our opinion,

> "other than its affidavit that the bridge has been designed to carry 'all legal loads, including full-size fire trucks, smaller 'brush' style fire trucks, and other common emergency vehicles,' the county's theory is not supported. Rather, the record supports the conclusion that the Stag Hollow Creek bridge is a part of the Trail proposal.
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> "The description of the construction work in the Construction Agreement is 'the project known as Yamhelas Westsider Trail (Phase 2) Project.' The call for bids calls for work that 'will consist of constructing a prestressed slab bridge, trail approaches, and other items detailed in the plans and specifications[.]' The plans and specifications describe the work in part as '[c]onstruct Stag Hollow Creek Bridge No. YWT-1.' Environmental documentation for the project references the Trail and our decision in *Van Dyke I*." *Id.* (citations omitted).

It was not reasonable for the county to argue for the first time in its pleadings before LUBA that the Stag Hollow Creek bridge and related approaches would not necessarily be part of the Trail and would instead be used for purposes which

are not supported by anything in the record or the challenged decisions themselves. The county's response to each assignment of error in these appeals—including those assignments that we did not reach in our opinion—is premised on the same unreasonable, post-hoc argument. We therefore conclude that each of the county's positions was presented "without probable cause to believe that it was well-founded * * * on factually supported information." ORS 197.830(15)(b). Petitioners are entitled to attorney fees and expenses.

2. The County's Arguments in Response to Petitioners' Motion for Stay and Record Objections

In this appeal, petitioners moved for a stay of the challenged decisions. Although we ultimately granted that stay, we disagreed with one of petitioners' arguments in support of doing so, and we determined that another issue was "a reasonably close question." *Van Dyke v. Yamhill County*, ___ Or LUBA ___ (LUBA Nos 2020-032/033, Order, Apr 24, 2020) (slip op at 9-10, 12). Petitioners also filed record objections, which we sustained. *Id.* at ___ (slip op at 18-19).

The county argues that the fact that LUBA rejected one of petitioners' arguments in support of their motion for stay and acknowledged the closeness of one other question demonstrates that the county made meritorious arguments in response to that motion. The county also argues that, while LUBA sustained petitioners' record objections, the county's response to those objections "had a basis in law" and the materials that we required the county to include in a supplemental record "were not referred to by petitioners as support for any of the

arguments made." Response to Cost Bill and Motion for Attorney Fees and Expenses 5. Accordingly, the county argues that petitioners should not be awarded attorney fees that were incurred in connection with the motion for stay and record objections.

As explained above, in order to award attorney fees against a non-prevailing party pursuant to ORS 197.830(15)(b), we must determine that "every argument in the entire presentation [that the non-prevailing party made] to LUBA is lacking in probable cause." *Fechtig*, 150 Or App at 14. The primary purpose of ORS 197.830(15)(b) is to discourage frivolous appeals. *Id.* at 26. However, as we have observed, "its application is not restricted to petitioners who file appeals without probable cause. Rather, the legislature created a statute that would allow an award of fees against any *party* who 'presented a position' without probable cause. The term 'party' includes a local government or an intervenor whose defense of a local land use decision was not supported by probable cause." *Fechtig v. City of Albany*, 33 Or LUBA 795, 798, *aff'd*, 150 Or App 10 (1997) (citing *Contreras*, 32 Or LUBA at 468-69 n 2) (emphasis in original). This case is a rare case where petitioners, the prevailing parties, seek attorney fees against the county, arguing that the county's defense of its decisions is not supported by probable cause.

In *Pynn v. City of West Linn*, 42 Or LUBA 602 (2002), the petitioners voluntarily dismissed the appeal before filing a petition for review. The only arguments that the petitioners presented in the appeal involved a motion to take

evidence, which we denied. The city moved for attorney fees, arguing that the petitioners' motion to take evidence was not supported by probable cause. We ultimately rejected the motion for attorney fees, assuming that attorney fees could not be awarded based solely on the petitioners' arguments presented in the motion to take evidence and concluding that the argued positions were supported by probable cause. In doing so, we observed:

> "Our prior cases considering attorney fees under ORS 197.830(15)(b) have invariably focused on 'positions' parties present regarding the essential elements of an appeal, such as jurisdiction or the merits of whether the challenged decision should be affirmed, reversed or remanded. That is consistent with LUBA's and the Court of Appeals' interpretation of ORS 197.830(15)(b), that the statute is intended to discourage 'frivolous' appeals. *Fechtig*, 150 Or App at 26. We have not had occasion to consider whether positions presented on procedural or ancillary matters, such as record objections or a motion to file a reply brief, are included in the calculus that is required by ORS 197.830(15)(b). One can argue that the intent of the statute is not served if a party whose entire presentation on the merits is patently 'frivolous' can nonetheless avoid an award of attorney fees because the party happened to present a meritorious position with respect to a procedural matter such as a motion to file a reply brief. Similarly, one can argue that a party whose *only* presentation is on an ancillary matter, for example a local government that involves itself in an appeal only by responding to record issues, should not be subject to the possibility of attorney fees under the statute." *Pynn*, 42 Or LUBA at 603 n 1 (emphasis in original).

Here, we do not understand the county to argue that attorney fees incurred in connection with a motion for stay or record objections may not be awarded to petitioners as a general rule. Instead, the county argues that, because its responses

to those motions were meritorious, we should segregate and not award petitioners attorney fees that petitioners incurred in connection with those two procedural matters.[2]

We conclude above that the county's entire responsive presentation on the merits is not supported by probable cause. The county cannot avoid an award of attorney fees because the county happened to present a meritorious position with

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[2] In *Martin v. City of Central Point*, 76 Or LUBA 463 (2017), we denied the prevailing intervenor-respondent's motion against the petitioners for attorney fees incurred in responding to the petitioners' record objections and opposing petitioners' attempt to introduce evidence not in the record. We reasoned that a party's "entire presentation" described in *Fechtig* includes a party's arguments on the merits of an appeal and on jurisdictional issues, but does not include arguments made regarding procedural matters such as record objections. *Martin*, 76 Or LUBA at 466; *see Fechtig*, 150 Or App at 24 ("[T]he legislature intended for attorney fees to be assessable against a party only if every argument in the entire presentation it makes to LUBA is lacking in probable cause (*i.e.*, merit)."). Therefore, even if LUBA found that the petitioners' positions in those motions were not supported by probable cause, those findings would not support an attorney fee award under the prior version of ORS 197.830(15)(b). Extending and transposing the reasoning in *Martin* to the circumstances of this appeal, a meritorious response to petitioners' motion for stay and record objections should not shield the county from an attorney fee award.

In 2019, the legislature amended ORS 197.830(15)(b) and provided an additional basis for an attorney fee award to a prevailing party where "any other party * * * filed any motion without probable cause to believe the * * * motion was well-founded in law or on factually supported information." Or Laws 2019, ch 447, § 1. The county does not argue that that amendment supports its position that it may avoid an otherwise mandatory attorney fee award by presenting a meritorious response to a motion filed by petitioners. Nothing in the language of the 2019 amendments leads us to believe that the legislature intended that result.

respect to petitioners' record objections and motion for stay. That the county may have made meritorious arguments in response to petitioners' motion for stay or record objections has no bearing on petitioners' entitlement to attorney fees and expenses under ORS 197.830(15)(b), as the prevailing parties in the appeals.

Nor is it relevant that we rejected one of petitioners' arguments in support of the stay. ORS 197.830(15)(b) is a compulsory fee statute, not a discretionary one. That statute provides that, where LUBA makes the requisite findings, it "[s]hall" award the prevailing party attorney fees provided those amounts are reasonable. Even if one of petitioners' arguments in their motion for stay was unsuccessful, and even if neither the stay nor the record objections directly contributed to petitioners' eventual success on the merits, that work was nonetheless performed in connection with the appeals in which petitioners were the prevailing parties.[3] Petitioners are therefore entitled to attorney fees incurred in connection with their motion for stay and record objections.

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[3] In discussing ORS 20.096(1), a different compulsory fee statute which applies to contract enforcement proceedings, the Court of Appeals has explained:

> "As a matter of entitlement, and apart from any issues of reasonableness, the prevailing party in a contract action has a right to recoup fees for work performed in connection with the action. It may be that the prevailing party, in bringing or defending the claim, did work that did not contribute to the party's eventual success—*e.g.*, investigated issues or theories that were not pursued or, if pursued, were abandoned before the case was tried, or if not abandoned, were rejected by the finder of fact. Whether and under what circumstances fees should be awarded for such work bears on

The county also argues that there would be a "basic unfairness" in awarding attorney fees in connection with the stay because petitioners waited 84 days after they knew that the construction agreement had been awarded by the county to the contractor to file their motion to stay the decisions, by which time the county had already spent $283,678.60 on construction of the Stag Hollow Creek bridge.

It is not clear to us how any delay on petitioners' part in filing their motion for stay would have unfairly increased the amount of attorney fees for which the county is liable. To the extent that the county is arguing that petitioners should not recover those amounts because, had petitioners contacted the county with their concerns, the county might have stopped construction and thereby saved some of its own funds, we reject that argument. The fact that the county spent public money on construction which we later determined was not consistent with or authorized by the YCZO should not prevent petitioners from recovering the attorney fees to which they are otherwise entitled.

> the reasonableness of the amount requested, not entitlement. * * * The trial court correctly determined that defendants were entitled to fees for work performed in connection with the affirmative defenses to the contract action, even those that were abandoned before trial or were unsuccessful." *Bennett v. Baugh*, 164 Or App 243, 247-48, 990 P2d 917 (1999), *rev den*, 330 Or 252 (2000).

See also Goodsell v. Eagle-Air Homeowners Association, 280 Or App 593, 603-04, 383 P3d 365 (2016), *rev den*, 360 Or 752 (2017) (observing the same "categorical entitlement construct" in cases involving other compulsory fee schemes).

B. The Reasonableness of Petitioners' Request

In awarding attorney fees pursuant to ORS 197.830(15)(b), LUBA is afforded discretion to determine the amount of attorney fees that is reasonable under the specific facts of the case. *Young v. City of Sandy*, 33 Or LUBA 817, 819 (1997). LUBA will look to the factors listed in ORS 20.075 for guidance in determining the amount of an attorney fee award. *Schaffer v. City of Turner*, 37 Or LUBA 1066, 1072 (2000). In determining what award of attorney fees is reasonable, we must briefly identify the relevant facts and legal criteria on which we rely. *See McCarthy v. Oregon Freeze Dry, Inc.*, 327 Or 84, 96, *adh'd to on recons*, 327 Or 185, 957 P2d 1200 (1998) (stating principle).

Petitioners attach to their motion an itemized statement of attorney fees and expenses incurred in the course of these appeals. The statement provides a relatively detailed description for each entry. Petitioners seek recovery of 131.17 attorney hours billed for a total of $44,059.50 in attorney fees, as well as $3,473.93 in expenses, for a total of $47,533.43.[4]

The county argues that petitioners should not be awarded expenses for (1) filing two appeals when, according to the county, one would have sufficed, (2) requesting ODOT records that were not relevant to any issue on appeal, and (3) "exorbitant" amounts incurred for printing. Response to Cost Bill and Motion for Attorney Fees and Expenses 22.

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[4] We note that petitioners' statement indicates that petitioners were not billed for 147.4 attorney hours.

The county does not explain how the factors at ORS 20.075 inform its position, and we do not see that they do. It was not unreasonable for petitioners to file two appeals challenging Order 20-25 and the Construction Agreement. The county does not explain why the requested ODOT records were irrelevant and, given that petitioners relied on the county's representations to ODOT regarding the purpose of the Stag Hollow Creek bridge and its relationship to the Trail in their petition for review, it is not clear to us that they were. Petition for Review 16, 22. The county also does not identify any specific entries in petitioners' statement that are for printing expenses or explain why those amounts are "exorbitant." The county has given us no reason to conclude that these amounts are in fact unreasonable, apart from its bare assertions to that effect. We conclude that petitioners' requested expenses are reasonable.

Finally, the county argues that "a reasonable attorney billing at [petitioners' attorney's] rate could have prosecuted the remainder of the case for half of what [they] have billed [their] clients." Response to Cost Bill and Motion for Attorney Fees and Expenses 22.

One of the factors that we consider in determining whether requested attorney fees are reasonable is "[t]he fee customarily charged in the locality for similar legal services." ORS 20.075(2)(c). We have held that the burden is on the party seeking attorney fees to establish that the requested rates are reasonable. *6710 LLC v. City of Portland*, 41 Or LUBA 608, 611 (2002). Petitioners' attorneys' offices are located in Lake Oswego. Petitioners attach to their motion

a 2017 Oregon State Bar Economic Survey which shows that two of petitioners' attorneys' hourly rates are lower than the mean hourly rates in the Portland area both for attorneys with their years of experience and for attorneys in the real estate, land use, and environmental law subject area. Petitioners' third attorney's hourly rate is below the 95th percentile for attorneys with their years of experience and below the 25th percentile for attorneys in the real estate, land use, and environmental law subject area. Again, the county has given us no reason to conclude that these amounts are in fact unreasonable, apart from its bare assertions to that effect.

The county has similarly not explained why the number of hours that petitioners' attorneys billed is unreasonable. Considering that petitioners filed appeals of two separate decisions, a successful motion for stay, successful record objections, and ultimately prevailed on the merits, and considering that the county filed an unsuccessful motion to dismiss, an unsuccessful motion to reconsider the stay, and multiple responses to petitioners' record objections, all of which compelled responses from petitioners, we agree with petitioners that 131.17 hours is a reasonable amount of time to have spent in pursuing these LUBA appeals. We conclude that petitioners' requested attorney fees are reasonable.

Petitioners' motion for attorney fees and expenses in the amount of $47,533.43 is granted.

COSTS

Petitioners filed a cost bill requesting an award of the cost of their filing fees pursuant to OAR 661-010-0075(1)(b)(A) and the return of their deposits for costs pursuant to OAR 661-010-0075(1)(d). As the prevailing parties, petitioners are awarded the cost of their $400 filing fees, to be paid by the county. The Board will also return petitioners' $400 deposits for costs.

Dated this 1st day of April 2021.

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Melissa M. Ryan
Board Member