

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

DEPARTMENT OF LAND CONSERVATION
AND DEVELOPMENT,
Petitioner,

vs.

JOSEPHINE COUNTY,
Respondent.

LUBA No. 2023-071

FINAL OPINION
AND ORDER

Appeal from Josephine County.

Steven E. Shipsey represented petitioner.

Stephanie Nuttall represented respondent.

ZAMUDIO, Board Member; RYAN, Board Chair; RUDD, Board
Member, participated in the decision.

DISMISSED 01/18/2024

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

Opinion by Zamudio.

On September 29, 2023, petitioner filed a notice of intent to appeal county board of commissioners Order No. 2023-064 (Order), which suspends the application of a local code provision that requires proof of fire protection service or fire protection measures as a condition of development for properties located outside of a fire protection district. The county did not process the Order as a post-acknowledgement plan amendment (PAPA), which requires specific procedures under ORS 197.610 to 197.625.

On October 19, 2023, LUBA received the record. On November 9, 2023, petitioner filed the petition for review. On December 4, 2023, we received the parties' joint stipulated motion for extension of time to file the respondent's brief. On December 8, 2023, we received the county's notice of withdrawal of the challenged decision for reconsideration. ORS 197.830(13)(b); OAR 661-010-0021(1). The notice of withdrawal states that, on December 5, 2023, the board of commissioners rescinded the Order through Order No. 2023-086 (Rescinding Order). The Rescinding Order attached to the notice of withdrawal states that "Order No. 2023-064 is hereby RESCINDED and of no legal force or effect" and that the Order will be "reconsidered as a code amendment."

LUBA must exercise its jurisdiction and review authority consistent with "sound principles governing judicial review." ORS 197.805. LUBA will decline to exercise its jurisdiction under circumstances where our review would have no practical effect on the rights of the parties. In *Heiller v. Josephine County*, 25 Or

1 LUBA 555 (1993), we dismissed the appeal as moot because the county had
2 rescinded the challenged decision in a separate decision. Similarly, here, the
3 Rescinding Order rescinded the decision appealed by petitioner and, thus, it
4 appears to us that this appeal may be moot.

5 As the appealing party, petitioner bears the burden of establishing that
6 LUBA has jurisdiction to review the challenged decision. *Billington v. Polk*
7 *County*, 299 Or 471, 475, 703 P2d 232 (1985). On December 20, 2023, we issued
8 an order allowing 14 days for petitioner to show cause why we should not dismiss
9 this appeal as moot. In that order we explained that failure to respond will result
10 in dismissal of the appeal. Petitioner has not responded to the order or attempted
11 to establish that this appeal is not moot.

12 This appeal is dismissed.