

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3  
4 SOUTHEAST NEIGHBORS,  
5 *Petitioner,*

6  
7 vs.

8  
9 CITY OF EUGENE,  
10 *Respondent,*

11 and

12  
13 MICHAEL REYNOLDS and  
14 DAVID REYNOLDS,  
15 *Intervenors-Respondent.*

16  
17 LUBA No. 2001-123

18  
19 FINAL OPINION  
20 AND ORDER

21  
22 Appeal from City of Eugene.

23  
24 Donna M. Matthews, Eugene, filed the petition for review.

25  
26 Glenn Klein, Emily N. Jerome and Kathryn P. Brotherton, Eugene, filed the response  
27 brief. With them on the brief was Harrang, Long, Gary, Rudnick, PC.

28  
29 Bill Kloos, Eugene, represented intervenor-respondent.

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

33  
34 DISMISSED

35 10/16/2001

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

39

1 Briggs, Board Chair.

2 ORS 197.830(11) requires that a petition for review must be filed within the  
3 deadlines established by Board rule. OAR 661-010-0030(1) provides, in relevant part:

4 “\* \* \* The petition for review together with four copies shall be filed with the  
5 Board within 21 days after the date the record is received or settled by the  
6 Board. \* \* \* Failure to file a petition for review within the time required by  
7 this section, and any extensions of that time under \* \* \* OAR 661-010-  
8 0067(2), shall result in dismissal of the appeal \* \* \*.”

9 OAR 661-010-0067(2) provides that the time limit for filing the petition for review may be  
10 extended only by written consent of all the parties.

11 The petition for review in this appeal was due September 6, 2001. The petition for  
12 review was filed on September 7, 2001, one day late. Petitioner has not obtained the written  
13 consent of all parties to extend the September 6, 2001 deadline. The city and intervenors-  
14 respondent (intervenors) now move to dismiss the appeal because the petition for review was  
15 not timely filed. Petitioner opposes the motion, arguing that the motions to dismiss were filed  
16 more than 10 days after the date the petition for review was filed. According to petitioner, the  
17 motions to dismiss are untimely, as they do not conform to the deadlines for motions  
18 established in OAR 661-010-0065(2).<sup>1</sup>

19 OAR 661-010-0005 provides:

20 “[LUBA’s] rules are intended to promote the speediest practicable review of  
21 land use decisions and limited land use decisions, in accordance with ORS  
22 197.805-197.855, while affording all interested persons reasonable notice and  
23 opportunity to intervene, reasonable time to prepare and submit their cases,  
24 and a full and fair hearing. The rules shall be interpreted to carry out these  
25 objectives and to promote justice. Technical violations not affecting the  
26 substantial rights of parties shall not interfere with the review of a land use  
27 decision or limited land use decision. *Failure to comply with the time limit*

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<sup>1</sup>OAR 661-010-0065(2) provides, in relevant part:

“Time of Filing: A party seeking to challenge the failure of an opposing party to comply with any of the requirements of statutes or Board rules shall make the challenge by motion filed with the Board and served on all parties within 10 days after the moving party obtains knowledge of such alleged failure. \* \* \*”

1           *for filing a notice of intent to appeal under OAR 661-010-0015(1) or a*  
2           *Petition for Review under OAR 661-010-0030(1) is not a technical violation.”*  
3           (Emphasis added.)

4           Filing a document at LUBA after the deadline for filing the document has expired is a  
5           violation of our rules. However, such a failure is generally viewed as a technical violation  
6           and LUBA does not reject the document or dismiss the appeal based on such failures,  
7           provided the appeal will not be delayed by the late filing and the substantial rights of the  
8           parties are not affected in some other way.

9           The late-filed motion to dismiss does not require that the date set for oral argument be  
10          changed and does not affect LUBA’s ability to meet the deadline imposed by ORS  
11          197.830(14) for issuing our final opinion in this matter. We view intervenors’ late filing of  
12          the motion to dismiss as a technical violation of OAR 661-010-0065(2). The late filing of the  
13          motion to dismiss provides no basis for denying the motion.

14          Failure to comply with the deadline for filing the petition for review is a different  
15          matter. As OAR 661-010-0005 makes clear, two deadlines are treated differently from all  
16          others, and those deadlines are strictly enforced. The deadline for filing the petition for  
17          review is one of those strictly enforced deadlines. *Terrace Lakes Homeowners Assoc. v. City*  
18          *of Salem*, 29 Or LUBA 532, *aff’d* 138 Or App 188, 906 P2d 871 (1995); *Bongiovanni v.*  
19          *Klamath County*, 29 Or LUBA 351 (1995).

20          Because a petition for review was not filed within the time required by our rules, and  
21          petitioner did not obtain written consent to extend the time for filing the petition for review  
22          beyond September 6, 2001, as required by OAR-661-010-0067(2), ORS 197.830(11) and  
23          OAR 661-010-0030(1) require that we dismiss this appeal.

24          This appeal is dismissed.