

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

DUANE DAY, and J&D INVESTMENTS,)
)
 Petitioners,)
)
 vs.)
)
 CITY OF ESTACADA,) LUBA No. 91-040
)
 Respondent,) FINAL OPINION
) AND ORDER
 and)
)
 DAVID BAUER, PATRICIA BAUER,)
 WILBUR BAUER, and VIVIAN BAUER,)
)
 Intervenors-Respondent.)

Appeal from City of Estacada.

Ian K. Whitlock and O. Meredith Wilson, Jr., Portland, represented petitioners.

Thomas J. Rastetter, Oregon City, represented respondent.

Steven R. Schell and Stark Ackerman, Portland, represented intervenors-respondent.

SHERTON, Referee; KELLINGTON, Chief Referee; HOLSTUN, Referee, participated in the decision.

DISMISSED 05/29/91

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

Opinion by Sherton.

Petitioners move that this appeal be dismissed and that their \$150.00 deposit for costs be returned to them by the Board.

The parties agree this appeal should be dismissed. The only disagreement between the parties is with regard to disposition of petitioners' deposit for costs. ORS 197.830(10) provides that a petition for review must be filed within the deadlines established by Board rule. ORS 197.830(8) provides that if a petition for review is not filed as required by ORS 197.830(10), the petitioners' filing fee and deposit for costs shall be awarded to the local government as cost of preparation of the record. OAR 661-10-030(1) provides, in relevant part:

"* * * The petition for review shall be filed with the Board within 21 days after the date the record is received by the Board. * * * Failure to file a petition for review within the time required by this section, and any extensions of that time under OAR 661-10-045(7) or OAR 661-10-067(2), shall result in dismissal of the appeal and forfeiture of the filing fee and deposit for costs to the governing body. See OAR 661-10-075(1)(c)."

The Board received the local record in this appeal on April 17, 1991. The petition for review was therefore due on May 8, 1991. Petitioners filed their Motion for Dismissal of Appeal on May 8, 1991. Petitioners have not filed a petition for review as of this date.

Because petitioners neither filed a petition for review within the time required by our rules, nor obtained an

extension of time for filing the petition for review, the above cited statutory provisions and OAR 661-10-030(1) require that we award petitioners' filing fee and deposit for costs to respondent. McCauley v. Jackson County, ___ Or LUBA ___ (LUBA No. 90-110, October 24, 1990); Piquette v. City of Springfield, 16 Or LUBA 47 (1987); Hutmacher v. Marion County, 15 Or LUBA 514 (1987).

This appeal is dismissed.¹ Petitioners' filing fee and deposit for costs are awarded to respondent.

¹On May 2, 1991, the Board issued an order consolidating this appeal with Brown and Cole, Inc. v. City of Estacada, LUBA No. 91-038. Our dismissal of this appeal also bifurcates that consolidated proceeding.