

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

3  
4 WILLIAM HACKETT,                   )  
5    )  
6                   Petitioner,                    )  
7    )  
8                   vs.                                    )  
9    )                   LUBA No. 93-190  
10 MULTNOMAH COUNTY,                    )  
11    )                   FINAL OPINION  
12                   Respondent,                    )                   AND ORDER  
13    )  
14                   and                                    )  
15    )  
16 ARNOLD ROCHLIN,                    )  
17    )  
18                   Intervenor-Respondent.                    )

19  
20  
21                   Appeal from Multnomah County.

22  
23                   David B. Smith and Dorothy S. Cofield, Tigard,  
24 represented petitioner.

25  
26                   John L. DuBay, Chief Deputy County Counsel, Portland,  
27 represented respondent.

28  
29                   Arnold Rochlin, Portland, represented himself.

30  
31                   SHERTON, Referee; HOLSTUN, Referee, participated in the  
32 decision.

33  
34                   DISMISSED                                    02/18/94

35  
36                   You are entitled to judicial review of this Order.  
37 Judicial review is governed by the provisions of ORS  
38 197.850.

1 Opinion by Sherton.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a county decision denying his  
4 application for a conditional use permit and variance for a  
5 nonresource dwelling in the Multiple Use Forest (MUF-19)  
6 zone.

7 **MOTION TO INTERVENE**

8 Arnold Rochlin moves to intervene in this proceeding on  
9 the side of respondent. There is no opposition to the  
10 motion, and it is granted.

11 **MOTION TO DISMISS**

12 Intervenor-respondent moves for dismissal of this  
13 appeal, on the ground that the petition for review was not  
14 filed on or before the due date established by a previous  
15 order of the Board approving the parties' stipulated motion  
16 for an extension of time to file the petition for review.  
17 Intervenor argues that under OAR 661-10-067(2) no further  
18 extension of time for filing the petition for review can be  
19 granted without his consent, which he declines to give.

20 ORS 197.830(10) provides that a petition for review  
21 must be filed within the deadlines established by Board  
22 rule. OAR 661-10-030(1) provides, in relevant part:

23 "\* \* \* The petition for review shall be filed with  
24 the Board within 21 days after the date the record  
25 is received by the Board. \* \* \* Failure to file a  
26 petition for review within the time required by  
27 this section, and any extensions of that time  
28 under \* \* \* OAR 661-10-067(2), shall result in  
29 dismissal of the appeal \* \* \*."

1 OAR 661-10-067(2) provides that the time limit for filing  
2 the petition for review may be extended only with the  
3 written consent of all parties.

4 Under OAR 661-10-030(1), the petition for review in  
5 this appeal was originally due on December 27, 1993. Based  
6 on a stipulation of all parties, the time for filing the  
7 petition for review was extended to January 24, 1994. On  
8 January 21, 1994, petitioner filed a motion to stay this  
9 proceeding while the county considers another development  
10 application that could make this appeal moot.<sup>1</sup> On  
11 January 24, 1994, petitioner filed a motion for an  
12 additional extension of time to file the petition for  
13 review. Although the county subsequently consented in  
14 writing to this motion for an additional extension of time,  
15 intervenor did not. As of this date, no petition for review  
16 has been filed.

17 Petitioner argues that his motion to stay this  
18 proceeding, filed prior to the date the petition for review  
19 was due, tolls the time for filing the petition for review.  
20 Thus, according to petitioner, if this Board denies his  
21 motion to stay, the Board's order may establish a new due  
22 date for the petition for review, notwithstanding  
23 intervenor's refusal to consent to petitioner's second  
24 motion for an extension of time.

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<sup>1</sup>Petitioner's motion to stay is signed only by petitioner. Intervenor states he does not consent to the motion for stay.

1           The only events that suspend the time for filing a  
2 petition for review in a LUBA appeal are the filing of (1) a  
3 motion for an evidentiary hearing (OAR 661-10-045(7)), (2) a  
4 record objection (OAR 661-10-026(5)), or (3) a written  
5 stipulation signed by all parties for an extension of time  
6 to file the petition for review (OAR 661-10-067(2)). Weeks  
7 v. City of Tillamook, 23 Or LUBA 255 (1992); Bloomer v.  
8 Baker County, 19 Or LUBA 90, 92 (1990). A motion to stay  
9 the LUBA proceedings that is not signed by all parties is  
10 not the equivalent of a written stipulation by all parties  
11 for an extension of time to file the petition for review.  
12 Consequently, filing such a motion to stay does not suspend  
13 the time for filing a petition for review.

14           No motion for evidentiary hearing, record objection or  
15 stipulation by all parties for an extension of time has been  
16 filed. Thus, the petition for review was due on January 24,  
17 1994. Because petitioner has not filed a petition for  
18 review within the time required under our rules,  
19 ORS 197.830(10) and OAR 661-10-030(1) require that we  
20 dismiss this appeal. McCauley v. Jackson County, 20 Or LUBA  
21 176 (1990); Piquette v. City of Springfield, 16 Or LUBA 47  
22 (1987); Hutmacher v. Marion County, 15 Or LUBA 514 (1987).

23           This appeal is dismissed.