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BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

LANDWATCH LANE COUNTY,)
FRIENDS OF EUGENE, SIERRA CLUB)
MANY RIVERS GROUP, AND)
MICHAEL MOOSER,)
Petitioners,)
vs.)
LANE COUNTY,)
Respondent,)
and)
JAMES H. WELSH,)
Intervenor-Respondent.)

LUBA No. 98-011
FINAL OPINION
AND ORDER

Appeal from Lane County.
Charles Swindells, Portland, represented petitioner.
Stephen L. Vorhes, Eugene, represented respondent.

Michael Farthing, Eugene, represented intervenor-respondent.

HANNA, Board Member; GUSTAFSON, Board Chair, participated in the decision.

DISMISSED 04/14/98

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

1 Opinion by Hanna.

2 **NATURE OF DECISION**

3 Petitioners appeal the county's decision amending its
4 rural comprehensive plan and changing a zoning designation.

5 **MOTION TO INTERVENE**

6 James Welsh, (intervenor), owner of the subject property,
7 moves to intervene in this proceeding on the side of
8 respondent. There is no objection to the motion, and it is
9 allowed.

10 **FACTS**

11 On January 8, 1998, petitioner filed a notice of intent
12 to appeal. LUBA received the record on February 11, 1998. The
13 petition for review was due 21 days from that date, on March
14 4, 1998.¹ Petitioner filed the petition for review on March
15 5, 1998. Petitioner did not file a stipulated extension of
16 time in which the petition for review could be filed.

17 **MOTION TO DISMISS**

18 On March 12, 1998, intervenor moved to dismiss this
19 appeal on the ground that the petition for review was not
20 timely filed. ORS 197.830(10) requires that a petition for
21 review be filed within the deadlines established by Board
22 rule.

23 OAR 661-10-030(1) provides, in relevant part:

¹LUBA adopted amendments to its administrative rules effective March 1, 1998. Because petitioners notice of intent to appeal was filed before that date, we do not apply the amended rules to this appeal under which the petition for review may have been deemed timely filed.

1 "The petition for review together with four copies
2 shall be filed with the Board within 21 days after
3 the date the record is received by the Board. * * *
4 Failure to file a petition for review within the
5 time required by this section, and any extensions of
6 that time under * * * OAR 661-10-067(2), shall
7 result in dismissal of the appeal * * *."

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

11 On March 23, 1998 petitioners filed an objection to the
12 record with the Board.² Petitioners now defend the late
13 filing of the petition for review by arguing that because the
14 objection to the record has not been resolved, the petition
15 for review is not yet due.³

16 Petitioners are correct that an objection to the record,
17 even when filed late, suspends the deadline for all future
18 proceedings, including filing a petition for review. Cole v.
19 Columbia County, 28 Or LUBA 62 (1994). However, that deadline
20 cannot be suspended if it is already past. A record objection
21 cannot be used as a device to rescue an untimely petition for

²Petitioner objects that the first volume of the record and the appendix to the record do not indicate the local governing body's numerical designation and that the pages of the record are not properly numbered.

³OAR 661-10-026 provides the time lines for filing an objection to the record and states, in relevant part:

"(1) Before filing an objection to the record, a party shall attempt to resolve the matter with the governing body's legal counsel.

"(2) An objection to the record or an objection to an amendment to the record shall be filed with the Board within 10 days following receipt of the record by the person filing the objection. * * *"

1 review. There is no merit to petitioners' argument that they
2 can resurrect a late petition for review by filing a record
3 objection three weeks after the petition for review deadline
4 has passed.

5 The deadline for filing the petition for review is
6 strictly enforced. See Terrace Lakes Homeowners Assn. v. City
7 of Salem, 29 Or LUBA 532, aff'd 138 Or App 188 (1995);
8 Bongiovanni v. Klamath County, 29 Or LUBA 351 (1995). Because
9 a petition for review was not filed within the time required
10 by our rules, and petitioners did not obtain written consent
11 to extend the time for filing the petition for review under
12 OAR-661-10-067(2) beyond March 4 1998, ORS 197.830(10) and
13 OAR 661-10-030(1) require that we dismiss this appeal.

14 This appeal is dismissed.