

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

3
4 BYRON L. ROOT and PEGGY ROOT,
5 *Petitioners,*

6
7 vs.

8
9 CROOK COUNTY,
10 *Respondent,*

11 and

12
13 BRUCE WRIGHT, BECKY WRIGHT,
14 ROBERT SCHINKEL, and BUFFY GARDNER,
15 *Intervenors-Respondent.*

16
17 LUBA No: 99-148

18
19 Appeal from Crook County.

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21 Gregory S. Hathaway, Portland, represented petitioner.

22
23 Peter M. Schannauer, Prineville, represented respondent.

24
25 Bruce Wright and Becky Wright, Powell Butte, represented themselves.

26
27 Robert Schinkel and Buffy Gardner, Powell Butte, represented themselves.

28
29 HOLSTUN, Board Chair; BASSHAM, Board Member; BRIGGS, Board Member,
30 participated in the decision.

31
32 DISMISSED

33 11/24/99

34
35 You are entitled to judicial review of this Order. Judicial review is governed by the
36 provisions of ORS 197.850.

37

1 Holstun, Board Member.

2 **INTERVENTION**

3 On September 29, 1999, Becky Wright and Bruce Wright jointly moved to intervene
4 on the side of respondent in this appeal. On October 1, 1999, Robert Schinkel and Buffy
5 Gardner jointly moved to intervene on the side of respondent.¹ Those motions were filed
6 within 21 days after the notice of intent to appeal was filed, as required by ORS
7 197.830(6)(a) and OAR 661-010-0050(2). No party objects to the motions to intervene, and
8 they are allowed.

9 **MOTION FOR EXTENSION OF TIME**

10 ORS 197.830(10) requires that a petition for review must be filed within the
11 deadlines established by Board rule. OAR 661-010-0030(1) provides, in relevant part:

12 " * * * The petition for review together with four copies shall be filed with the
13 Board within 21 days after the date the record is received by the Board. * * *
14 Failure to file a petition for review within the time required by this section,
15 and any extensions of that time under * * * OAR 661-010-0067(2), shall
16 result in dismissal of the appeal * * *."

17 OAR 661-010-0067(2) provides that the time limit for filing the petition for review may be
18 extended only by "written consent of all parties." The deadline for filing the petition for
19 review is strictly enforced. *Terrace Lakes Homeowners Assn. v. City of Salem*, 29 Or LUBA
20 532, *aff'd* 138 Or App 188 (1995); *Bongiovanni v. Klamath County*, 29 Or LUBA 351
21 (1995).

22 In this appeal, petitioners appeal the county's denial of their request for approval of a
23 personal use airport in an exclusive farm use zone. The petition for review in this appeal was
24 due October 20, 1999. On October 11, 1999, petitioners' first attorney filed a Motion and
25 Order for Continuance, requesting an extension of time until November 15, 1999 to file the

¹Under OAR 661-010-050(1) "[s]tatus as an intervenor is recognized when a motion to intervene is filed, but the Board may deny that status at any time."

1 petition for review. Respondent and intervenors-respondent Wright agreed in writing to the
2 requested extension. Intervenors-respondent Shinkel and Gardner did not agree in writing to
3 the requested extension. Because LUBA never received a written agreement from
4 intervenors-respondent Shinkel and Gardner, LUBA never issued an order granting or
5 denying the motion to extend the deadline for filing the petition for review. *See Ramsey v.*
6 *City of Portland*, 22 Or LUBA 295, 301-02 (1991) (under LUBA's rules, a motion to extend
7 the deadline for filing a petition for review requires the written consent of all parties, and
8 such a motion will be denied in the absence of such written consent). LUBA did not issue an
9 order denying the October 11, 1999 Motion and Order for Continuance, because no party
10 filed a motion to dismiss, and we could not be certain that such a written agreement of all
11 parties had not been secured.

12 On November 16, 1999, petitioners' second attorney filed a notice of Substitution of
13 Attorneys.² On November 18, 1999, petitioners' second attorney filed a "Motion for
14 Extension of Time for Filing Petition for Review and Supporting Brief; [and] Alternative
15 Motion for Relief from Default." In the November 18, 1999 motion, petitioners' second
16 attorney requests that petitioners be allowed 14 days from the date LUBA grants their
17 November 18, 1999 motion to file a petition for review in this matter. As was the case with
18 the October 11, 1999 motion, all parties do not agree in writing to the extension and relief
19 from default requested by the November 18, 1999 motion.

20 In affidavits attached to the November 18, 1999 motion, petitioner Byron L. Root and
21 petitioners' second attorney both claim that petitioners' first attorney believed the October
22 11, 1999 motion had been granted. This belief allegedly was based on a postcard that
23 petitioners' first attorney included with the October 11, 1999 motion. That postcard was date
24 stamped by LUBA on October 14, 1999, and mailed to petitioners' first attorney. A copy of

²An identical copy of that notice of Substitution of Attorneys, signed by petitioners' first attorney, was filed by petitioners' first attorney on November 18, 1999.

1 the postcard is attached to the November 18, 1999 motion.³

2 We do not believe the LUBA date stamp at the bottom of the return post card could
3 reasonably have led petitioners' first attorney to believe that the October 11, 1999 motion
4 had been granted, notwithstanding that no order allowing the requested extension of time was
5 ever issued by LUBA or mailed to the parties. However, even if we did believe the card
6 could reasonably signify anything more than that the October 11, 1999 motion was
7 "received" at LUBA on October 14, 1999, that would not assist petitioners here. The
8 November 18, 1999 motion requesting a further extension of time to file the petition for
9 review was not filed until three days *after* the extension that was requested on October 11,
10 1999 would have expired, even if it had been granted on October 14, 1999.

11 Because a petition for review was not filed within the time required by our rules, and
12 petitioners have not obtained written consent from all parties to extend the time for filing the
13 petition for review under OAR-661-010-0067(2), we are required to dismiss this appeal.
14 ORS 197.830(10); OAR 661-010-0030(1). Petitioners understandably argue that it is unfair
15 that their case will not be considered on the merits due to the failure to file a timely petition
16 for review. However, LUBA has consistently held that the deadline for filing the petition for
17 review is strictly enforced. *Terrace Lakes Homewowners Assn.*, 29 Or LUBA at 535;
18 *Bongiovanni v. Klamath County*, 29 Or LUBA at 353.

19 Petitioners' November 18, 1999 motion is denied.

20 This appeal is dismissed.

³The post card that LUBA returned to petitioners' first attorney is a standard pre-printed postcard that is used to "indicate when [the identified document] was processed." Petitioners' first attorney checked the boxes next to "Date signed" and "Date filed." Although there is space beside both of those checked boxes to indicate the date the document was signed and the date the document was filed, those spaces are blank. Instead, at the bottom of the card across from the portion of the card labeled "Remarks," LUBA staff date stamped the card and returned it to petitioners' first attorney.