

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

3
4 BRIAN TOWEY, KIM KEAN, DENISE MCCRAVEY,
5 JOHN MCGRORY, and JEANIE SENIOR,
6 *Petitioners,*

7
8 and

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10 SUSAN GARRETT CROWLEY,
11 *Intervenor-Petitioner,*

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13 vs.

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15 CITY OF HOOD RIVER,
16 *Respondent,*

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18 and

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20 THRIVE HOOD RIVER,
21 *Intervenor-Respondent.*

22
23 LUBA No. 2021-057

24
25 ORDER

26 **MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR**
27 **REVIEW**

28 OAR 661-010-0067(4) provides, in part, that “[a] motion for extension of
29 time * * * must be filed with the Board within the time required for performance
30 of the act for which an extension of time is requested.” The petitions for review
31 were due on January 11, 2022. On January 11, 2022, petitioner McGrory filed a
32 motion for a three-day extension of time (MOET) to file a petition for review on

1 behalf of all petitioners no later than January 14, 2022. On January 13, 2022,
2 petitioners filed their petition for review. On January 14, 2022, we issued an order
3 identifying deficiencies in the MOET and directing petitioners to file a compliant,
4 corrected MOET within seven days of the date of the order. On January 21, 2022,
5 petitioners filed a corrected MOET. We resolve the corrected MOET below.

6 OAR 661-010-0067(2) provides:

7 “Except as provided in this section, in no event shall the time limit
8 for the filing of the petition for review be extended without the
9 written consent of all parties. Written consent may include facsimile
10 signatures. The Board may, on a motion of a party or its own motion,
11 extend the deadline for filing the petition for review to allow time to
12 rule on a motion to dismiss or a motion to take evidence. Written
13 consent to extend the deadline for filing record objections shall
14 automatically extend the deadline for filing the petition for review
15 for the same number of days granted to extend the deadline for filing
16 record objections, unless the consenting parties expressly provide
17 otherwise.”¹

18 The corrected MOET includes evidence of the written consent of intervenor-
19 petitioner and the city to the requested extension. The corrected MOET includes
20 a copy of an email from intervenor-respondent’s attorney, dated January 20,
21 2022, stating that they would discuss the request with their client.

¹ Petitioner McGrory, in the original MOET, asserted that the city’s attorney orally agreed to the extension but did not address whether intervenor-petitioner or intervenor-respondent consented. The original MOET did not include the written consent of the city, intervenor-petitioner, or intervenor-respondent.

1 Petitioners did not obtain the written consent of intervenor-respondent to
2 the requested extension on or before the January 11, 2022 due date for the petition
3 for review or, in fact, by the time the corrected MOET was filed on January 21,
4 2022. As we discuss below, the city has submitted evidence that intervenor-
5 respondent does not consent to the requested extension.

6 OAR 661-010-0067(2) is clear that, “[e]xcept as provided in this section,
7 in no event shall the time limit for the filing of the petition for review be extended
8 without the written consent of all parties.” Petitioner McGrory, in the original
9 MOET and in a declaration attached to the corrected MOET, explained that they
10 were the principal preparer of the petition for review and that they were unable
11 to complete “the clerical and administrative tasks of completing and filing the
12 Petition” because their spouse had COVID-19 and because they were
13 quarantining and experiencing mild COVID-19 symptoms themselves. In the
14 corrected MOET, petitioners ask that we grant the extension “[u]nder principles
15 of fundamental fairness, to promote justice as required by OAR 661-010-0005,
16 and due to the minimal nature of the delay at issue here, as well as Mr. McGrory’s
17 status in COVID-19 quarantine for the ten (10) days leading up to the filing
18 deadline.” Corrected Motion for Extension of Time 2. While we are sympathetic
19 to petitioners’ circumstances, we do not have discretion to waive the petition for
20 review deadline in the absence of intervenor-respondent’s written consent to an
21 extension.

1 ORS 197.830(11) states that a petition for review shall be filed within the
2 deadlines established by the Board by rule under ORS 197.830(13). OAR 661-
3 010-0030(1) provides:

4 “Unless the Board orders otherwise pursuant to ORS
5 197.830(10)(a), the petition for review together with four copies
6 shall be filed with the Board within 21 days after the date the record
7 is received or settled by the Board. See OAR 661-010-0025(2) and
8 661-010-0026(6). The petition shall also be served on the governing
9 body and any party who has filed a motion to intervene. *Failure to*
10 *file a petition for review within the time required by this section, and*
11 *any extensions of that time under OAR 661-010-0045(9) or 661-*
12 *010-0067(2), shall result in dismissal of the appeal, forfeiture of the*
13 *filing fee to the governing body, and an award of up to \$200 for the*
14 *cost of preparation of the record payable from the petitioner(s) to the*
15 *governing body. See OAR 661-010-0075(1)(c). Co-petitioners who*
16 *file a single Notice of Intent to Appeal shall be limited to a single,*
17 *joint petition for review.” (Emphasis added.)*

18 OAR 661-010-067(2) provides that the time limit for filing the petition for
19 review may be extended only with the written consent of all parties. The deadline
20 for filing the petition for review is strictly enforced. *Terrace Lakes Homeowners*
21 *Assoc. v. City of Salem*, 29 Or LUBA 532, 535, *aff’d*, 138 Or App 188, 906 P2d
22 871 (1995).

23 Petitioners argue that OAR 661-010-0067(2) provides an independent
24 basis for our extending the deadline for filing the petition for review based on
25 petitioners’ motion to take evidence not in the record, which was pending when
26 the deadline for filing the petition for review passed. Petitioners filed a motion to
27 take evidence on December 30, 2021. “Unless the Board orders otherwise, the

1 filing of a motion to take evidence shall not suspend the time limits for all other
2 events in the review proceeding[.]” OAR 661-010-0045(9). “The Board may, on
3 a motion of a party or its own motion, extend the deadline for filing the petition
4 for review to allow time to rule on a motion to dismiss or a motion to take
5 evidence.” OAR 661-010-0067(2). Petitioners’ motion to take evidence did not
6 include a MOET to file the petition for review, and the Board did not suspend the
7 deadline for filing the petition for review on its own motion to allow time to rule
8 on a motion to dismiss or a motion to take evidence. Petitioners argue that we
9 should grant the requested extension to facilitate LUBA’s decision on the
10 pending motion to take evidence. Petitioners’ belated request that we extend the
11 deadline for filing the petition for review based on the pending motion to take
12 evidence does not remedy the late filing of the petition for review.

13 Petitioners’ MOET to file their petition for review is denied, and the Board
14 will not consider their petition for review.

15 **MOTION TO DISMISS AND MOTION FOR EXTENSION OF TIME TO**
16 **FILE RESPONSE BRIEFS**

17 On January 24, 2022, the city filed (1) a motion to dismiss the appeal based
18 on the late filing of petitioners’ petition for review and (2) a MOET to file the
19 response briefs until the motion to dismiss is resolved. The city attaches to its
20 motions a letter from intervenor-respondent, dated January 24, 2022, which
21 states that intervenor-respondent does not consent to petitioners’ requested
22 extension. Although intervenor-petitioner filed their petition for review by the

1 due date, the city moves to dismiss the appeal in its entirety based on petitioners'
2 failure to timely file their petition for review.

3 The response briefs to intervenor-petitioner's petition for review are
4 currently due February 1, 2022. That deadline is suspended. The city's MOET to
5 file the response briefs is granted. Telephonic oral argument, scheduled for
6 February 23, 2022, at 1:45 p.m., is cancelled. All other deadlines in this appeal
7 are suspended pending resolution of the city's motion to dismiss, except that
8 petitioners and intervenor-petitioner shall have the time provided in our rules to
9 respond to the city's motion to dismiss.

10 Dated this 27th day of January 2022.

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Michelle Gates Rudd
Board Member