

27.12.3 LUBA Procedures/Rules – Costs – Petition for Review Not Filed. Where an appeal is voluntarily dismissed on petitioner’s motion, whether that dismissal results in forfeiture of the fee and deposit for costs under OAR 661-010-0075(1)(c) depends on whether the motion to dismiss is filed before or after the deadline for filing the petition for review. *Sommer v. Josephine County*, 52 Or LUBA 783 (2006).

27.12.3 LUBA Procedures/Rules – Costs – Petition for Review Not Filed. Where the petitioner requests voluntary dismissal of the appeal one day after the petition for review is due, LUBA will award the filing fee and deposit for costs to respondent under OAR 661-010-0075(1)(c), notwithstanding that LUBA’s order dismissing the appeal was based on petitioner’s request rather than petitioner’s failure to file the petition for review. *Sommer v. Josephine County*, 52 Or LUBA 783 (2006).

27.12.3 LUBA Procedures/Rules – Costs – Petition for Review Not Filed. OAR 661-010-0075(1)(c) provides for an award of the filing fee where the local record has been filed and an appeal is dismissed because a petitioner fails to file a petition for review on time. It does not apply where the record has been filed but the petition for review has not, and the appeal is dismissed based on the parties’ stipulated dismissal dated one day after the deadline for filing the petition for review. *Younger v. City of Oregon City*, 48 Or LUBA 641 (2004).

27.12.3 LUBA Procedures/Rules – Costs – Petition for Review Not Filed. Where a petitioner moves to withdraw the notice of intent to appeal and LUBA dismisses the appeal before the deadline for filing the petition for review expires, the petitioner does not fail to file a timely petition for review and the prevailing respondent is not entitled to an enhanced award of costs under OAR 660-010-0075(1)(c). *Holtzman v. Jefferson County*, 47 Or LUBA 618 (2004).

27.12.3 LUBA Procedures/Rules – Costs – Petition for Review Not Filed. Where a petitioner moves to dismiss its appeal or withdraws its notice of intent to appeal before the deadline for filing the petition for review has passed, respondent is not entitled to award of petitioner's filing fees and deposits for costs pursuant to ORS 197.830(8) and OAR 661-10-075(1)(c). However, as the prevailing party, respondent may be awarded the costs of copying the record. OAR 661-10-075(1)(b)(B). *Claremont Limited Partnership v. Washington County*, 28 Or LUBA 785 (1995).

27.12.3 LUBA Procedures/Rules – Costs – Petition for Review Not Filed. Where petitioner withdraws his notice of intent to appeal *before* the deadline for filing the petition for review has passed, respondent is not entitled to award of petitioner's filing fees and deposit for costs pursuant to ORS 197.830(8) and OAR 661-10-075(1)(c). However, as the prevailing party, respondent may be awarded the costs of copying the record. OAR 661-10-075(1)(b)(B). *Olson v. Neahkahnie Water District*, 25 Or LUBA 792 (1993).

27.12.3 LUBA Procedures/Rules – Costs – Petition for Review Not Filed. Where the local record has been filed, and petitioner does not file a petition for review within the

time required by LUBA rules, ORS 197.830(8) and OAR 661-10-030(1) and 661-10-075(1)(c) require that LUBA grant respondent's request for award of petitioner's filing fee and deposit for costs. *Ekerson v. City of Milwaukie*, 24 Or LUBA 206 (1992).

27.12.3 LUBA Procedures/Rules – Costs – Petition for Review Not Filed. Where petitioners filed a motion to withdraw their appeal, and the appeal was dismissed, *before* the date the petition for review became due, petitioners did not fail to file their petition for review within the time required by LUBA's rules, and respondent is not entitled to award of petitioners' filing fee and deposit for costs pursuant to ORS 197.830(8) and OAR 661-10-075(1)(c). *Simonson v. Marion County*, 23 Or LUBA 706 (1992).

27.12.3 LUBA Procedures/Rules – Costs – Petition for Review Not Filed. Where a petitioner neither files a petition for review within the time required by LUBA rules, nor obtains an extension of time for filing the petition for review, ORS 197.830(8) and (10) and OAR 661-10-030(1) require that LUBA grant respondent's motion to dismiss and request for award of petitioner's filing fee and deposit for costs. *Keister v. Clackamas County*, 21 Or LUBA 212 (1991).

27.12.3 LUBA Procedures/Rules – Costs – Petition for Review Not Filed. The forfeiture of petitioner's filing fee and deposit for costs required by ORS 197.830(8) and OAR 661-10-075(1)(c) when a petition for review is not filed within the time required by LUBA's rules, does not apply where the parties agree to dismiss an appeal prior to the date the petition for review is due. *Smith v. Yamhill County*, 21 Or LUBA 533 (1991).

27.12.3 LUBA Procedures/Rules – Costs – Petition for Review Not Filed. Under ORS 197.830(10) and OAR 661-10-030(1), in the absence of an agreement between the parties to extend the time for filing the petition for review, the consequence of failing to file a timely petition for review is dismissal of the appeal and award of petitioner's filing fee and deposit for costs to respondent. *Burghardt v. City of Molalla*, 20 Or LUBA 431 (1991).

27.12.3 LUBA Procedures/Rules – Costs – Petition for Review Not Filed. Where a petitioner neither files a petition for review within the time required by LUBA rules, nor obtains an extension of time for filing the petition for review, ORS 197.830(8) and (10) and OAR 661-10-030(1) require that LUBA grant respondent's motion to dismiss and request for award of petitioner's filing fee and deposit for costs. *McCauley v. Jackson County*, Or 20 Or LUBA 176 (1990).