

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 LOGAN RAMSEY, MARGARETTA RAMSEY,)
5 AMANDA L. RAMSEY, MARIE F. RAMSEY,))
6 and MARY S. POPE,)

7)
8 Petitioners,)
9)

10 vs.)

11)
12 CITY OF PORTLAND,)

13)
14 Respondent,)

15)
16 and)

17)
18 ARNOLD ROCHLIN, and FRIENDS OF)
19 FOREST PARK,)

20)
21 Intervenors-Respondent.)

LUBA No. 91-145

FINAL OPINION
AND ORDER

22
23
24 Appeal from City of Portland.

25
26 Logan Ramsey, Portland, represented himself.

27
28 Kathryn Beaumont Imperati, Portland, represented
29 respondent.

30
31 Arnold Rochlin, Portland, represented himself.

32
33 Nancy H. Diamond, Portland, represented intervenor-
34 respondent Friends of Forest Park.

35
36 SHERTON, Referee; HOLSTUN, Chief Referee; KELLINGTON,
37 Referee, participated in the decision.

38
39 DISMISSED 01/13/92

40
41 You are entitled to judicial review of this Order.
42 Judicial review is governed by the provisions of ORS
43 197.850.

1 Opinion by Sherton.

2 **MOTIONS TO INTERVENE**

3 Arnold Rochlin and Friends of Forest Park, a nonprofit
4 Oregon corporation, move to intervene in this appeal on the
5 side of respondent. There is no opposition to the motions,
6 and they are allowed.

7 **FACTS**

8 The notice of intent to appeal was filed with this
9 Board on September 16, 1991. On October 7, 1991, the Board
10 granted respondent's motion to extend the time for
11 transmitting the local record from October 7 to October 14,
12 1991. The Board received the local record on October 15,
13 1991. Under OAR 661-10-030(1), the petition for review was
14 due on November 5, 1991.

15 On November 5, 1991, petitioner Logan Ramsey (hereafter
16 petitioner) filed a motion for an extension of time to file
17 the petition for review. On November 6, 1991, intervenor
18 Rochlin filed an objection to petitioner's motion for
19 extension of time and a motion to dismiss. On November 14,
20 1991, respondent also filed a motion to dismiss.

21 On November 28, 1991, petitioner moved that this Board
22 not take any action on the motions to dismiss until the
23 Court of Appeals acts on his appeal of this Board's decision
24 dismissing his earlier appeal, Ramsey v. City of Portland,
25 ___ Or LUBA ___ (LUBA No. 91-127, November 7, 1991)
26 (Ramsey I). In a telephone conference call on December 9,

1 1991, the parties agreed that the motion for extension of
2 time to file the petition for review and motions to dismiss
3 filed in this appeal present the same questions at issue in
4 Ramsey I. The parties further agreed this appeal should be
5 suspended until a final appellate judgment is entered in
6 Ramsey v. City of Portland, CA A72533. The following day,
7 we issued an order suspending this proceeding until an
8 appellate judgment is entered in Ramsey v. City of Portland,
9 CA A72533. On December 20, 1991, the Court of Appeals
10 issued an Order of Dismissal and Appellate Judgment in
11 Ramsey v. City of Portland, CA A72533.¹

12 **MOTION FOR EXTENSION OF TIME / MOTIONS TO DISMISS**

13 The motion for extension of time to file the petition
14 for review filed by petitioner on November 5, 1991 bears
15 respondent's written consent, but states that intervenors-
16 respondent (intervenors) refused to consent to the extension
17 of time. In the motion, petitioner argues the extension of
18 time is warranted because of the size of the record, the
19 complexity of the constitutional issues involved in this
20 appeal and the fact that petitioner, who is not an attorney,
21 is representing himself.

22 Intervenor Rochlin argues the motion for extension of
23 time must be denied because neither he nor intervenor

¹The appeal was dismissed because petitioner failed to file the opening brief within the time limit established by Oregon Rules of Appellate Procedure (ORAP) 4.66.

1 Friends of Forest Park consents to the extension, as is
2 required by OAR 661-10-067(2). Both intervenor Rochlin and
3 respondent move to dismiss this appeal on the ground that
4 petitioner failed to file a petition for review within the
5 time required by OAR 661-10-030(1).

6 Section (2) of OAR 661-10-067 (Extensions of Time)
7 provides:

8 "In no event shall the time limit for the filing
9 of the petition for review be extended without the
10 written consent of all parties." (Emphasis
11 added.)

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

13 "Filing and Service of Petition: The petition for
14 review shall be filed with the Board within 21
15 days after the date the record is received by the
16 Board. * * * Failure to file a petition for
17 review within the time required by this section,
18 and any extensions of that time under * * * OAR
19 661-10-067(2), shall result in dismissal of the
20 appeal * * *." (Emphasis added.)

21 Finally, OAR 661-10-005 (Purpose) provides in relevant part:

22 "* * * Technical violations not affecting the
23 substantial rights of parties shall not interfere
24 with [the Board's] review of a land use decision.
25 Failure to comply with the time limit for filing
26 * * * a Petition for Review under OAR
27 661-10-030(1) is not a technical violation."
28 (Emphasis added.)

29 As we stated in Ramsey I, supra, slip op at 8, it is
30 clear that under the above quoted rules, if petitioner's
31 motion for extension of time to file the petition for review
32 does not satisfy the requirement of OAR 661-10-067(2) for
33 the written consent of all parties, and the petition for

1 review was not filed within 21 days after the date the Board
2 received the record, this appeal must be dismissed.²
3 Petitioner makes two arguments relevant to these issues
4 which were also made in Ramsey I. Petitioner argues that
5 intervenors were not "parties" at the time petitioner's
6 motion for extension of time was filed, and that
7 OAR 661-10-067(2) exceeds the Board's statutory authority.³
8 We reject these arguments for the reasons stated in
9 Ramsey I, supra, slip op at 8-14.

10 Petitioner makes one additional argument in response to
11 the motions to dismiss which merits comment.⁴ Petitioner

²Petitioner cites opinions of this Board stating that an appeal will not be dismissed because of a technical violation of our rules where no party is prejudiced by the error. Smith v. Baker County, 14 Or LUBA 503 (1985); Publishers Paper Co. v. Benton County, 5 Or LUBA 344 (1982). Petitioner argues that granting his motion for extension of time to file the petition for review will not prejudice respondents' substantial rights.

However, the statements cited by petitioner were not made in reference to failure to file a petition for review within the time required by OAR 661-10-030(1). OAR 661-10-005 and 661-10-030(1) explicitly provide that failure to comply with the time limit for filing a petition for review is not a technical violation, and requires dismissal of the appeal.

³As in Ramsey I, we note petitioner does not contend intervenors' motions to intervene were not served on him, or that for some other valid reason petitioner was unaware that intervenors had filed motions to intervene when petitioner filed his motion for extension of time to file the petition for review.

⁴In his response to the motions to dismiss, petitioner also raises several issues that relate to the merits of his challenge to the appealed city decision. Those issues are not relevant to consideration of the motion for extension of time and motions to dismiss, and we do not address them.

On December 24, 1991, intervenor Rochlin filed a motion to allow respondent and intervenors-respondent to file replies to petitioner's

1 notes that this Board has ruled that an intervenor "did not
2 have a right to keep an appeal alive if the petitioner
3 wanted to drop the appeal." Petitioner's Response to Motion
4 to Dismiss 1. Petitioner argues that conversely, an
5 intervenor should not have the right to cause an appeal to
6 be dismissed where both petitioner and respondent have
7 agreed to an extension of time for filing the petition for
8 review.

9 We understand petitioner to refer to our decisions in
10 Gross v. Washington County, 17 Or LUBA 640 (1989) (where
11 petitioner has withdrawn the notice of intent to appeal, the
12 appeal must be dismissed, notwithstanding the filing of a
13 cross-petition for review by intervenor-respondent), and
14 National Advertising Company v. City of Portland, ___
15 Or LUBA ___ (LUBA Nos. 86-040 and 86-041, October 8, 1990)
16 (petitioner may withdraw its notice of intent to appeal over
17 the objections of intervenors-petitioner, resulting in
18 dismissal of the appeal). These decisions establish that
19 under ORS 197.830(1), the maintenance of a validly filed
20 notice of intent to appeal is required for this Board to
21 have jurisdiction over an appeal. They do not address the
22 requirements of OAR 661-10-030(1) and 661-10-067(2)
23 regarding the filing of petitions for review or the effects

response to the motion to dismiss. Our rules do not provide for replies to responses to motions. See OAR 661-10-065. Furthermore, we do not believe additional argument from respondents is necessary or warranted in this case and, therefore, we deny intervenor Rochlin's motion.

1 of not complying with those provisions and, therefore, are
2 inapposite.

3 Petitioner's motion for extension of time to file the
4 petition for review is denied.

5 The motions to dismiss are granted.

6 This appeal is dismissed.