

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 CHERYL BONGIOVANNI, SUE KOLLMAN,)

5 and DIANA SCRIVNER,)

6)
7 Petitioners,)

8)
9 vs.)

10)
11 KLAMATH COUNTY,) LUBA Nos. 95-062 and 95-067

12)
13 Respondent,)

14)
15 and)

16)
17 RANDY SCOTT and SUE SCOTT,)

18)
19 Intervenors-Respondent.)

20 _____)) FINAL OPINION
21)) AND ORDER

22 DEPARTMENT OF LAND CONSERVATION)

23 AND DEVELOPMENT)

24)
25 Petitioner,)

26)
27 vs.)

28)
29 KLAMATH COUNTY,)

30)
31 Respondent.)

32)
33 and)

34)
35 RANDY SCOTT and SUE SCOTT,)

36)
37 Intervenors-Respondent.)

38
39 Appeal from Klamath County.

40
41 Robert D. Boivin, Klamath Falls, represented
42 petitioners Cheryl Bongiovanni, Sue Kollman and Diana
43 Scrivner.

44
45 Celeste J. Doyle, Assistant Attorney General, Salem,

1 represented petitioner Department of Land Conservation and
2 Development.

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4 Reginald Davis, Klamath County Counsel, Klamath Falls,
5 represented respondent.

1 Michael L. Spencer, Klamath Falls, represented
2 intervenor-respondent.

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4 GUSTAFSON, Referee; SHERTON, Chief Referee; LIVINGSTON
5 Referee, participated in the decision.

6
7 DISMISSED 06/21/95

8
9 You are entitled to judicial review of this Order.
10 Judicial review is governed by the provisions of ORS
11 197.850.

1 Gustafson, Referee.

2 ORS 197.830(10) provides that a petition for review
3 must be filed within the deadlines established by Board
4 rule. OAR 661-10-030(1) provides, in relevant part:

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

12 OAR 661-10-067(2) provides that the time limit for filing
13 the petition for review may be extended only with the
14 written consent of all parties.

15 The petitions for review in this consolidated appeal
16 were due May 12, 1995. Neither petitioner Department of
17 Land Conservation and Development (DLCD) nor petitioners
18 Bongiovanni, Kollman and Scrivner (Bongiovanni) filed a
19 timely petition for review. According to DLCD, all parties
20 orally agreed to an extension of time for filing the
21 petitions for review. That agreement was not reduced to
22 writing. The day before the petitions for review were due,
23 respondent Klamath County (the county) rescinded its
24 agreement to the extension. Consequently, DLCD was unable
25 to meet the filing deadline. Apparently, Bongiovanni did
26 not intend to file a petition for review, but rather
27 intended to rely on DLCD's petition to support her
28 interests.

29 Bongiovanni requests relief from this Board on the

1 basis that she has been substantially prejudiced by DLCD's
2 failure to file a petition for review. DLCD did not,
3 however, represent Bongiovanni. DLCD's failure to file a
4 petition does not excuse Bongiovanni from fulfilling her
5 obligations as a petitioner to file a timely petition for
6 review.

7 It is unfortunate that the county rescinded its
8 agreement to an extension of time on such short notice that
9 neither petitioner could file a timely petition for review.
10 However, because no petitioner filed a petition for review
11 within the time required by our rules, or obtained a written
12 extension of time for filing the petition for review under
13 OAR-661-10-067(2), ORS 197.830(10) and OAR 661-10-030(1)
14 require that we dismiss this appeal. McCauley v. Jackson
15 County, 20 Or LUBA 176 (1990); Piquette v. City of
16 Springfield, 16 Or LUBA 47 (1987); Hutmacher v. Marion
17 County, 15 Or LUBA 514 (1987).

18 This appeal is dismissed.