

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 LINDA BAUER and GALE GILLIAND,
5 *Petitioners,*

6
7 vs.

8
9 CITY OF PORTLAND,
10 *Respondent,*

11 and

12
13 RALSTON INVESTMENTS,
14 *Intervenor-Respondent.*

15
16 LUBA No. 99-168

17
18 FINAL OPINION
19 AND ORDER

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21 Appeal from City of Portland.

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23 Linda Bauer and Gale Gilliland, Portland, represented themselves.

24
25 Adrienne Brockman, Deputy City Attorney, Portland, represented respondent.

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27 Jeff H. Bachrach, Portland, represented intervenor-respondent.

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

32
33 DISMISSED

01/11/2000

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 Opinion by Holstun.

2 **NATURE OF THE DECISION**

3 Petitioners appeal a city decision concerning a planned unit development.

4 **MOTION TO INTERVENE**

5 Ralston Investments (intervenor), the applicant below, moves to intervene on the side
6 of respondent. There is no opposition to the motion, and it is allowed.

7 **MOTION TO DISMISS**

8 **A. Facts**

9 The record in this appeal was received on November 10, 1999. Under
10 OAR 661-010-0030, the petition for review was due December 1, 1999.¹ The city filed a
11 motion to dismiss on November 17, 1999, alleging that petitioners' appeal should be
12 dismissed for failure to exhaust available administrative remedies before the city. Under
13 OAR 661-010-0065(4) the filing of a motion to dismiss does not automatically suspend the
14 deadline for filing the petition for review. OAR 661-010-0067(2) authorizes LUBA to issue
15 an order extending the deadline for filing a petition for review to consider motions to
16 dismiss, if a party request such an extension or LUBA does so on its own motion. No party
17 requested such an extension nor did LUBA issue an order on its own motion extending the
18 deadline for filing the petition for review pending final resolution of the city's motion to
19 dismiss.

¹As relevant, OAR 661-010-0030(1) provides:

“Filing and Service of Petition: The petition for review * * * shall be filed with the Board within 21 days after the date the record is received or settled by the Board. * * * Failure to file a petition for review within the time required by this section, and any extensions of that time under OAR 661-010-0045(9) or OAR 661-010-0067(2), shall result in dismissal of the appeal and forfeiture of the filing fee and deposit for costs to the governing body. See OAR 661-010-0075(1)(c).”

ORS 197.830(8) similarly provides that if a petition for review is not filed in accordance with the deadlines established by LUBA rule, the appeal must be dismissed and the filing fee and deposit for costs must be awarded to the respondent.

1 No petition for review was filed on December 1, 1999. On December 8, 1999,
2 petitioners filed a response to the city's motion to dismiss. On December 9, 1999, intervenor
3 filed a motion to dismiss this appeal, citing petitioners' failure to file a petition for review on
4 or before December 1, 1999. On December 13, 1999, petitioners filed a motion requesting
5 an extension of time in which to file their petition for review. Petitioners represent that the
6 city joins in this motion, but the motion requesting an extension of time to file the petition for
7 review does not include the written consent of either the city or intervenor.

8 On December 23, 1999, intervenor filed a response to petitioners' December 13, 1999
9 motion for an extension of time to file the petition for review. Intervenors state that they do
10 not agree to the requested extension and again request that the appeal be dismissed because
11 petitioners failed to file a timely petition for review.

12 **B. Decision**

13 Under OAR 661-010-0067(2), petitioners' December 13, 1999 motion to extend the
14 December 1, 1999 deadline for filing the petition for review cannot be granted unless all
15 parties, including intervenor, consent to the requested extension. *Ramsey v. City of Portland*,
16 22 Or LUBA 535 (1992); *Ramsey v. City of Portland*, 22 Or LUBA 295 (1991). Intervenor
17 does not consent; and, for that reason, petitioners' motion for an extension of time to file
18 their petition for review is denied.

19 LUBA has explained on numerous occasions that where a petition for review is not
20 filed within the deadlines established by our rules or any stipulated extension, the appeal
21 must be dismissed. *Bongiovanni v. Klamath County*, 29 Or LUBA 351, 353 (1995);
22 *McCauley v. Jackson County*, 20 Or LUBA 176 (1990); *Piquette v. City of Springfield*, 16 Or
23 LUBA 47 (1987).

1 In accordance with ORS 197.830(8) and OAR 661-010-0030(1), this appeal is
2 dismissed and petitioners' filing fee and deposit for costs are awarded to the city.²

²Because we grant intervenor's motion to dismiss, it is not necessary to consider the city's motion to dismiss.