

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3  
4 CLAUD DAVIS and LINDA DAVIS,  
5 *Petitioners,*

6  
7 vs.

8  
9 WASCO COUNTY,  
10 *Respondent.*

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12  
13 LUBA No. 2004-182

14  
15 FINAL OPINION  
16 AND ORDER

17  
18  
19 Appeal from Wasco County.

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21 Claud Davis and Linda Davis, Tygh Valley, represented themselves.

22  
23 Eric J. Nisley, Wasco County District Attorney, The Dalles, represented respondent.

24  
25 HOLSTUN, Board Chair; BASSHAM, Board Member; DAVIES, Board Member,  
26 participated in the decision.

27  
28 DISMISSED

10/25/2005

29  
30 You are entitled to judicial review of this Order. Judicial review is governed by the  
31 provisions of ORS 197.850.

1 Opinion by Holstun.

2 ORS 197.830(11) requires that a petition for review be filed within the deadlines  
3 established by Board rule. OAR 661-010-0030(1) provides, in relevant part:

4 “\* \* \* The petition for review together with four copies shall be filed with the  
5 Board within 21 days after the date the record is received or settled by the  
6 Board. \* \* \* Failure to file a petition for review within the time required by  
7 this section, and any extensions of that time under \* \* \* OAR 661-010-  
8 0067(2), shall result in dismissal of the appeal \* \* \*.”

9 OAR 661-010-0067(2) provides that the time limit for filing the petition for review may be  
10 extended only by written consent of all the parties. The deadline for filing the petition for  
11 review is strictly enforced. *Terrace Lakes Homeowners Assoc. v. City of Salem*, 29 Or  
12 LUBA 532, *aff'd* 138 Or App 188, 906 P2d 871 (1995); *Bongiovanni v. Klamath County*, 29  
13 Or LUBA 351 (1995).

14 On November 16, 2004, the record in this appeal was filed with LUBA. On that date,  
15 LUBA sent a letter to petitioners that included the following paragraph:

16 “The petition for review is due twenty-one days after receipt of the record by  
17 the Board. The respondent’s brief is due forty-two days after receipt of the  
18 record. The record was received by the Board on November 16, 2004.”

19 Twenty-one days from November 16, 2004 is December 7, 2004, and that was the  
20 deadline for filing the petition for review. When no petition for review had been received by  
21 January 5, 2005, petitioners were advised by telephone that under OAR 661-010-0067(2) the  
22 deadline for filing the petition for review may be extended, but such an extension requires the  
23 agreement of all parties to the appeal.

24 On January 12, 2005, petitioners advised LUBA that they are lay people and  
25 misunderstood our November 16, 2004 letter. According to petitioners, they believed that  
26 they would have 21 days after the date the respondent’s brief was due to file their petition for  
27 review. In their January 12, 2005 request for an extension of time to file their petition for  
28 review, petitioners advised LUBA that the county had refused their request to stipulate to the  
29 requested extension.

1           While it is no doubt true that some facets of appealing a land use decision to LUBA  
2 can be difficult for lay people to understand, our November 16, 2004 letter was not  
3 ambiguous, and LUBA's rules make it quite clear that the petition for review is filed before  
4 the response brief. Because a petition for review was not filed within the time required by  
5 our rules, and petitioner is unable to obtain the written consent of all parties to extend the  
6 time for filing the petition for review under OAR-661-010-0067(2) beyond December 7,  
7 2004, ORS 197.830(11) and OAR 661-010-0030(1) require that we dismiss this appeal.

8           This appeal is dismissed.