

NATURE OF THE DECISION

Petitioner Oregon Department of Transportation (ODOT) appeals a city decision approving a zone change to allow commercial development on property in the vicinity of a highway interchange.

MOTION FOR EXTENSION OF TIME

The city filed the record in this appeal on January 13, 2005. We have since granted eight stipulated motions to extend the time to file record objections and the petition for review. The eighth stipulated extension provided, in pertinent part:

“With the 30 day extension, record objections would be due on September 28, 2005. If no record objections are filed, the petition for review would be due October 5, 2005. If a record objection is filed, the petition for review would be due 21 days after the order settling the record.” Eighth Stipulated Motion to Extend Time 1-2.

No record objection was filed by September 28, 2005, and no petition for review was filed by October 5, 2005. On October 14, 2005, petitioner ODOT filed a “Ninth Stipulated Motion to Extend Time,” seeking a 30-day extension “for all subsequent actions in this appeal.” The motion was not agreed to by all of the parties, as intervenors did not stipulate to the motion. Although intervenors indicated they would not stipulate to the extension, they did not file a motion to dismiss. On October 21, 2005, we issued an order requesting supplemental briefing regarding whether the appeal should be dismissed.

OAR 661-010-0030(1) provides:

“Filing and Service of Petition: The petition for review together with four copies shall be filed with the Board within 21 days after the date the record is received or settled by the Board. See OAR 661-010-0025(2) and 661-010-0026(6). * * * 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).”

OAR 661-010-0067(2) provides that the time limit for filing the petition for review may not

1 be extended without the written consent of all parties.¹

2 ODOT argues that the extension should be granted in this case because it is the city's
3 decision being appealed, and the city agrees to the extension. It argues that LUBA should grant the
4 extension "in the interests of encouraging settlement." Memorandum to Support Ninth Stipulated
5 Motion to Extend Time to File Petition for Review 2.²

6 Our rules clearly provide that an extension of time for filing the petition for review must be
7 consented to in writing by all parties. The intervenors in this appeal have not consented to extend
8 the time for filing the petition for review, as required by OAR 661-010-0067(2). The deadline for
9 filing the petition for review is strictly enforced, and failure to comply with that deadline is not a mere
10 technical violation. OAR 661-010-0005; *Terrace Lakes Homeowners Assoc. v. City of Salem*,
11 29 Or LUBA 532, *aff'd* 138 Or App 188, 906 P2d 871 (1995). There is no indication in this
12 case that intervenors consented, either orally or in writing, to the ninth stipulated extension, nor that
13 they had or have any plans to do so.

14 ODOT also argues that OAR 661-010-0067(2) does not prohibit retroactive extensions of
15 time. Memorandum to Support Ninth Stipulated Motion to Extend Time to File Petition for Review
16 2. We have, in limited circumstances, allowed the filing of a *stipulated* motion to extend the time
17 for filing the petition for review after the deadline has expired. *Friends of Cedar Mill v.*
18 *Washington County*, 28 Or LUBA 746, 748 (1994). However, LUBA's rules provide that a
19 motion for extension of time must be filed "within the time required for performance of the act for

¹ OAR 661-010-0067(2) provides:

"Except as provided in this section and OAR 661-010-0045(9), in no event shall the time limit for the filing of the petition for review be extended without the written consent of all parties. Written consent may include facsimile signatures. The Board may, on a motion of a party or its own motion, extend the deadline for filing the petition for review to allow time to rule on a motion to dismiss. Written consent to extend the deadline for filing record objections shall not automatically extend the deadline for filing the petition for review."

² The parties apparently are on the verge of entering an agreement to resolve transportation issues allegedly resulting from the challenged decision.

1 which an extension of time is requested.” OAR 661-010-0067(4).³ Where a motion for extension
2 of time to file the petition for review is not consented to in writing by all parties, and is filed after the
3 deadline for filing the petition for review, the motion for extension must be denied.

4 ODOT’s motion for extension of time to file its petition for review is denied.

5 Because a petition for review was not filed within the time required by our rules, and
6 petitioner did not obtain the written consent *of all parties* to extend the time for filing the petition for
7 review beyond October 5, 2005, ORS 197.830(11) and OAR 661-010-0030(1) require that we
8 dismiss this appeal.

9 This appeal is dismissed.

³ OAR 661-010-0067(4) provides:

“A motion for extension of time shall state the reasons for granting the extension and must be filed with the Board within the time required for performance of the act for which an extension of time is requested.”