

1 BEFORE THE LAND USE BOARD OF APPEALS  
2 OF THE STATE OF OREGON  
3

4 SCOTT E. WALTON and  
5 MONIQUE R. WALTON,  
6 *Petitioners,*  
7

8 vs.  
9

10 CITY OF SALEM,  
11 *Respondent,*  
12 and  
13

14 JOSEPH TALMAGE,  
15 *Intervenor-Respondent.*  
16

17 LUBA No. 2006-220  
18

19 FINAL OPINION  
20 AND ORDER  
21

22 Appeal from City of Salem.  
23

24 Scott E. Walton, and Monique R. Walton, Salem, represented themselves.  
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26 Richard D. Faus, Salem, represented respondent.  
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28 Mark D. Shipman, Salem, represented intervenor-respondent.  
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30 RYAN, Board Member; BASSHAM, Board Chair; HOLSTUN, Board Member,  
31 participated in the decision.  
32

33 DISMISSED

1/19/2007  
34

35 You are entitled to judicial review of this Order. Judicial review is governed by the  
36 provisions of ORS 197.850.

Opinion by Ryan.

The petition for review in this appeal was due January 4, 2007. The petition for review has not been filed, nor has an extension of time to file the petition for review been granted. On January 10, 2007, the City of Salem filed a motion to dismiss this appeal for failure to file the petition for review within the time allowed under OAR 661-010-0030(1).

On January 16, 2007, petitioners filed an “objection to motion to dismiss,” arguing that the city’s motion to dismiss should be denied. Petitioners argue that they thought that an outstanding motion to intervene that had been filed suspended the time for filing the petition for review. Petitioners also argue that under Oregon Rules of Civil Procedure (ORCP) 12, their appeal should not be dismissed.<sup>1</sup>

We reject petitioners’ arguments. First, LUBA’s rules are clear regarding the circumstances under which motions suspend the time limits for events in an appeal. OAR 661-010-0065(4) provides, in relevant part:

“Effect of Filing Motion. Except \* \* \* with regard to objections to the record and \* \* \* with regard to motions to take evidence, \* \* \* the filing of a motion shall not suspend the time limits for other events in the review proceeding.”

We also reject petitioners’ second argument. ORCP 12(B) provides in relevant part:

“The court shall, in every stage of an action, disregard any error or defect in the pleadings or proceedings which does not affect the substantial rights of the adverse party.”<sup>2</sup>

Failure to file the petition for review is neither a pleading defect nor a technical violation.

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<sup>1</sup> Petitioners make other arguments which are not sufficiently developed for us to address here.

<sup>2</sup> ORCP 12(B) is similar to OAR 661-010-0005, which provides in relevant part:

“\* \* \*Technical violations not affecting the substantial rights of parties shall not interfere with the review of a land use decision or a limited land use decision\* \* \*.”

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

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

8 OAR 661-010-0067(2) provides that the time limit for filing the petition for review may be  
9 extended only by written consent of all the parties.

10           The deadline for filing the petition for review is strictly enforced. *Terrace Lakes*  
11 *Homeowners Assoc. v. City of Salem*, 29 Or LUBA 532, 535, *aff'd* 138 Or App 188, 906 P2d  
12 871 (1995); *Hutmacher v. Marion County*, 15 Or LUBA 514, 515 (1987). Because a petition  
13 for review was not filed within the time required by our rules, and petitioners did not obtain  
14 written consent to extend the time for filing the petition for review under  
15 OAR-661-010-0067(2) beyond January 4, 2007, ORS 197.830(11) and OAR  
16 661-010-0030(1) require that we dismiss this appeal.

17           This appeal is dismissed.