

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

3
4 MICHAEL HANSEN,
5 *Petitioner,*

6
7 vs.

8
9 WASHINGTON COUNTY,
10 *Respondent,*

11 and

12
13 WEST HILLS DEVELOPMENT COMPANY,
14 *Intervenor-Respondent.*

15
16 LUBA No. 2007-038

17
18 FINAL OPINION
19 AND ORDER

20
21 Appeal from Washington County.

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23 Michael Hansen, Portland, represented himself.

24
25 Christopher A. Gilmore, Senior Assistant County Counsel, represented respondent.

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27 Seth J. King, and Michael C. Robinson, Portland, represented intervenor-respondent.

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29 BASSHAM, Board Member; HOLSTUN, Board Chair; RYAN, Board Member,
30 participated in the decision.

31
32 DISMISSED

07/26/2007

33
34 You are entitled to judicial review of this Order. Judicial review is governed by the
35 provisions of ORS 197.850.
36

1 Bassham, Board Member.

2 **MOTION TO INTERVENE**

3 West Hills Development Company moves to intervene on the side of respondent.
4 There is no opposition to the motion, and it is allowed.

5 **MOTION TO DISMISS**

6 The petition for review was due in this appeal on July 7, 2007. On July 9, 2007,
7 LUBA received petitioner's motion to dismiss this appeal. The motion is undated, and
8 includes no certificate of service. LUBA staff contacted petitioner and requested that he
9 serve copies of the motion on all parties to the appeal, as OAR 660-010-0075(2)(b)(A)
10 requires. LUBA staff also contacted the other parties and, at their request, faxed copies of
11 the motion to those parties.

12 On July 17, 2007, the county filed a cost bill requesting forfeiture of the filing fee and
13 deposit in the amount of \$325.00, pursuant to OAR 661-010-0075(1)(c), which provides:

14 "Forfeit of Filing Fee and Deposit: If a record has been filed and a petition for
15 review is not filed within the time required by these rules, and the governing
16 body files a cost bill pursuant to this section requesting forfeiture of the filing
17 fee and deposit, the filing fee and deposit required by OAR 661-010-0015(4)
18 shall be awarded to the governing body as cost of preparation of the record.
19 See OAR 661-010-0030(1)."

20 The county argues that forfeiture is appropriate because petitioner failed to file the motion to
21 dismiss within the time required for filing the petition for review, *i.e.*, by July 7, 2007. We
22 understand the county to argue that this appeal should be dismissed based not on petitioner's
23 motion, but rather pursuant to OAR 661-010-0030(1), which provides that "[f]ailure to file a
24 petition for review within the time required by this section * * * shall result in dismissal of
25 the appeal and forfeiture of the filing fee and deposit for costs to the governing body."

26 As noted, the motion to dismiss is undated, and included no certificate of service. It
27 is not clear whether petitioner served the motion to dismiss on the other parties, or whether
28 those service copies were accompanied by a certificate of filing, as OAR 661-010-

1 0075(2)(b)(C) requires, which would have informed the county when petitioner filed the
2 motion with LUBA. The county's cost bill and its inferred position on why this appeal
3 should be dismissed assumes that the motion to dismiss was not filed until after July 7, 2007.

4 As it happens, that assumption is incorrect. LUBA staff retained the envelope in
5 which the motion to dismiss was mailed. The envelope was mailed by first class mail from
6 Boston, Massachusetts, and is post-marked July 5, 2007. OAR 661-010-0075(2)(a)(B)
7 provides, with exceptions not relevant here, that filing a document with the Board may be
8 accomplished by "[m]ailing on or before the date due by first class mail with the United
9 States Postal Service." It appears that petitioner filed the motion to dismiss on July 5, 2007,
10 before the deadline for filing the petition for review. Accordingly, we decline to dismiss this
11 appeal pursuant to OAR 661-010-0030(1), and instead dismiss it based on petitioner's
12 request. It follows that forfeiture of the filing fee and deposit for costs under OAR 661-010-
13 0075(1)(c) is not warranted.

14 **COST BILL**

15 We will treat the county's cost bill as requesting, in the alternative, recovery of costs
16 where the governing body is the prevailing party, under OAR 661-010-0075(1)(b)(B) and
17 (C). Under those provisions, the county is entitled to an award of \$142.00, to be paid from
18 the deposit for costs. LUBA will return the remainder of the deposit for costs to petitioner.

19 This appeal is dismissed.