

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

3
4 VIK ANANTHA,
5 *Petitioner,*

6
7 vs.

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9 CITY OF PORTLAND,
10 *Respondent,*

11 and

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13
14 DONNA BELLADONA,
15 *Intervenor-Respondent.*

16
17 LUBA No. 2007-117

18
19 FINAL OPINION
20 AND ORDER

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22 Appeal from City of Portland.

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24 Vik Anantha, Portland, represented himself.

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26 Kathryn S. Beaumont, Senior Deputy City Attorney, Portland, represented
27 respondent.

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29 Donna Belladona, Portland, represented herself.

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31 RYAN, Board Member; HOLSTUN, Board Chair; participated in the decision.

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33 BASSHAM, Board Member, did not participate in the decision.

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35 DISMISSED

08/30/2007

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

MOTION TO INTERVENE

Donna Belladonna, the applicant below, moves to intervene on the side of respondent. There is no opposition to the motion, and it is allowed.

DECISION

The petition for review in this appeal was due on August 13, 2007. The petition for review has not been filed. ORS 197.830(11) requires that a petition for review be filed within the deadlines established by Board rule. OAR 661-010-0030(1) provides, in relevant part:

“* * * 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. * * * Failure to file a petition for review within the time required by this section, and any extensions of that time under * * * OAR 661-010-0067(2), shall result in dismissal of the appeal * * *.”

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

The city transmitted the record in this appeal to LUBA on July 20, 2007. According to the certificate of service that is included with that record, a copy of the record was served on petitioner by first class mail that same date to the address petitioner provided in his notice of intent to appeal. On July 23, 2007, LUBA sent petitioner a letter notifying him that LUBA had received the record on that date. That letter was mailed to petitioner at the address he provided in the notice of intent to appeal.

On August 22, 2007, the city filed a motion to dismiss the appeal because petitioner failed to file a petition for review on August 13, 2007. On August 27, 2007, fourteen days after the petition for review was due, petitioner filed a motion for extension of time for filing the petition for review. In his motion, petitioner states that he “did not any receive correspondence from [LUBA] mentioning July 23, 2007 as the date that the board received the city’s record.” Motion for Extension of Time 1.

1 The issue of whether petitioner received LUBA’s correspondence is irrelevant.
2 LUBA’s rules do not require that LUBA advise the parties of the date the record is received
3 by LUBA. As we explained in *Cunningham v. Josephine County*, 50 Or LUBA 58, 60
4 (2005), “[t]he critical question is whether petitioner knew or should have known that LUBA
5 received the record [on July 23, 2007].” It is undisputed that a copy of the record was served
6 on petitioner on July 20, 2007 by first class mail, and petitioner does not claim that he did not
7 receive the record. Neither does petitioner claim that he was unaware that the record was
8 transmitted to LUBA on July 20, 2007. Having received that copy of the record, petitioner
9 cannot now reasonably claim that he was unaware that he was obligated to file his petition
10 for review within the deadline established by OAR 661-010-0030(1). *Bleu v. Clackamas*
11 *County*, 52 Or LUBA 606, 609 (2006).

12 The deadline for filing the petition for review is strictly enforced. *Terrace Lakes*
13 *Homeowners Assoc. v. City of Salem*, 29 Or LUBA 532, 535, *aff’d* 138 Or App 188, 906 P2d
14 871 (1995); *Hutmacher v. Marion County*, 15 Or LUBA 514, 515 (1987). Because a petition
15 for review was not filed within the time required by our rules, and petitioner did not obtain
16 written consent to extend the time for filing the petition for review under
17 OAR-661-010-0067(2) beyond August 13, 2007, ORS 197.830(11) and OAR
18 661-010-0030(1) require that we dismiss this appeal. Petitioner’s motion for an extension of
19 time to file the petition for review is denied. The city’s motion to dismiss is granted.

20 The appeal is dismissed.