

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 OREGON DEPARTMENT
5 OF TRANSPORTATION,

6 *Petitioner,*

7
8 vs.

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10 CITY OF NEWPORT,

11 *Respondent,*

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13 and

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15 LANDWAVES, INC.,
16 and EMERY INVESTMENTS, INC.,

17 *Intervenors-Respondent.*

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19 LUBA No. 2007-123

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21 FINAL OPINION
22 AND ORDER

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24 Appeal from City of Newport.

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26 Kathryn A. Lincoln, Assistant Attorney General, Salem, represented petitioner.

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28 Gary F. Firestone, City Attorney, Newport, represented respondent.

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30 Dana L. Krawczuk, Portland, represented intervenors-respondent.

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32 RYAN, Board Member; BASSHAM, Board Member, participated in the decision.

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34 HOLSTUN, Board Chair, did not participate in the decision.

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36 DISMISSED

09/11/2007

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

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MOTION TO INTERVENE

Landwaves, Inc. and Emery Investments, Inc. move to intervene on the side of respondent in the appeal. There is no opposition to the motion, and it is granted.

DECISION

Pursuant to ORS 197.830(13)(b) and OAR 661-010-0021, respondent withdrew the decision challenged in this appeal for reconsideration on July 23, 2007. On August 8, 2007, the Board received the city’s decision on reconsideration. Pursuant to OAR 661-010-0021(5)(a), petitioner had until August 29, 2007 to either refile its original notice of intent to appeal in this matter, or file an amended notice of intent to appeal.

The Board has not received a refiled original notice of intent to appeal or an amended notice of intent to appeal in accordance with OAR 661-010-0021(5)(a). OAR 661-010-0021(5)(e) provides “[i]f no amended notice of intent to appeal is filed or no original notice of intent to appeal is refiled, as provided in [OAR 661-010-0021(5)(a)], the appeal will be dismissed.”

This appeal is dismissed. *Matrix Development v. City of Tigard*, 25 Or LUBA 557 (1993).