

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

4 ROBERT C. BROWN and JOAN L. BROWN,  
5 *Petitioners,*

6  
7 and  
8

9 TERRI D. MAGRUDER  
10 and GLENN R. ARCHAMBAULT,  
11 *Intervenor-Petitioners,*  
12

13 vs.  
14

15 JACKSON COUNTY,  
16 *Respondent.*  
17

18 LUBA No. 2007-146  
19

20 FINAL OPINION  
21 AND ORDER  
22

23 Appeal from Jackson County.  
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25 Daniel O'Connor, Medford, represented petitioners.  
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27 Terri D. Magruder, Glenn R. Archambault, Phoenix, represented themselves.  
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29 Allie O'Connor, Assistant County Counsel, Medford, represented respondent.  
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31 RYAN, Board Member; HOLSTUN, Board Chair; BASSHAM, Board Member,  
32 participated in the decision.  
33

34 DISMISSED

10/09/2007  
35

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

**NATURE OF THE DECISION**

Petitioners appeal a decision by the county approving a dwelling on resource land.

**MOTION TO INTERVENE**

Terri D. Magruder and Glenn R. Archambault (intervenors) move to intervene on the side of petitioners in the appeal. There is no opposition to the motion and it is granted.

**MOTION TO DISMISS**

Petitioners filed a Notice of Intent to Appeal (NITA) in this case. Intervenors moved to intervene on the side of petitioners in the appeal. Intervenors did not file a NITA. Petitioners subsequently moved to withdraw their NITA and dismiss the appeal, and the county filed a separate motion to dismiss the appeal.

Intervenors object to petitioners’ motion to dismiss the appeal. Intervenors request that they be allowed to continue the appeal as intervenors. Intervenors’ argument in support of their motion is that our rules do not specifically state that if a petitioner withdraws an appeal, the appeal must be dismissed.

Our cases establish that if all petitioners withdraw from a LUBA appeal, intervenors may not continue the appeal, and the appeal must be dismissed. *Marylhurst Neighborhood Association v. City of West Linn*, 52 Or LUBA 613, 614 (2006); *Waters v. Marion County*, 33 Or LUBA 751, 754 (1997); *National Advertising Company v. City of Portland*, 20 Or LUBA 79, 85 (1990); *Gross v. Washington County*, 17 Or LUBA 640 (1989). While it is true, as intervenors point out, that our rules do not specifically state that an intervenor may not continue an appeal where a petitioner has withdrawn his or her NITA, under ORS 197.830(1) and OAR 661-010-015(1) the filing of a NITA is a jurisdictional prerequisite to commence a LUBA appeal. *Gross*, 17 Or LUBA at 646. As we explained in *Gross*, “[w]hether the [NITA] is not timely filed or is timely filed and later withdrawn, dismissal is required.” *Id.*

1 For the reasons explained above, this appeal is dismissed.