

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

3  
4                   KURT CHRISTENSEN and DEBI CHRISTENSEN,  
5                                   *Petitioners,*

6  
7                                   vs.

8  
9                                   CITY OF PORTLAND,  
10                                   *Respondent.*

11  
12                                   LUBA No. 2014-044

13  
14                                   FINAL OPINION  
15                                   AND ORDER

16  
17                   Appeal from City of Portland.

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19                   Kurt Christensen and Debi Christensen, Portland, represented  
20 themselves.

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22                   Linly F. Rees, Senior Deputy City Attorney, Portland, represented  
23 respondent.

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25                   HOLSTUN, Board Member; RYAN, Board Chair; BASSHAM, Board  
26 Member, participated in the decision.

27  
28                                   DISMISSED                                   08/06/2014

29  
30                   You are entitled to judicial review of this Order. Judicial review is  
31 governed by the provisions of ORS 197.850.

Opinion by Holstun.

1  
2 Petitioners appeal a city decision that grants subdivision approval. The  
3 applicant for subdivision approval has not intervened in this appeal. The city  
4 moves to dismiss the appeal. For the reasons explained below, we grant the  
5 motion to dismiss.

6 Petitioners' notice of intent to appeal was filed on May 19, 2014. Under  
7 LUBA's rules the deadline for the city to transmit the record to LUBA would  
8 have expired 21 days later, or June 9, 2014. On May 28, 2014, one of the  
9 petitioners contacted the city and advised the city that the petitioners were  
10 attempting to negotiate a settlement with the applicant. Petitioner asked that  
11 the city "hold off on preparing the record for a few days, so we can determine if  
12 a settlement can be reached."<sup>1</sup> Petitioner clarified "I am not asking to drop the  
13 appeal at this point just to hold off for a few days if possible." On May 29,  
14 2014, the city advised petitioner that it was willing to seek an extension of time  
15 to file the record if the parties are working toward a settlement. On June 5,  
16 2014, the city requested an extension of time to transmit the "record from June  
17 9, 2014, to and including, June 16, 2014." The city's request provided the  
18 following explanation for why it requested the extension: "[t]he basis for this  
19 request is that Petitioners are working toward a settlement with the applicant."  
20 LUBA granted the request on June 9, 2014.

21 LUBA received the record on June 16, 2014 and on that date advised the  
22 parties by letter that the record had been received and that the petition for  
23 review was due 21 days after the record was received. The deadline for filing

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<sup>1</sup> Petitioners attach to their response to the city's motion to dismiss an e-mail string of messages between one of the petitioners and a city attorney. We rely in part on those e-mail messages in setting out the facts.

1 the petition for review expired on July 7, 2014. On July 15, 2014, the city  
2 moved to dismiss the appeal, citing petitioners' failure to file a petition for  
3 review on or before July 7, 2014. The city also moved for forfeiture of the  
4 filing fee and deposit for costs, pursuant to OAR 661-010-0075(1)(c).

5 In a response to the motion to dismiss that LUBA received on July 28,  
6 2014, one of the petitioners explains it is taking them longer than anticipated to  
7 reach agreement with the applicant and reduce the agreement to writing.<sup>2</sup>  
8 Petitioner also states: "I was working with the attorney for the City of Portland  
9 \* \* \* to hold off on the appeal, without dropping it, to give us time to get it  
10 drafted and signed." Petitioners contend that since the city filed the motion to  
11 dismiss, they have not heard from the applicant, and that dismissal of this  
12 appeal will make a successful settlement unlikely.

13 After petitioners filed their response to the motion to dismiss, the city  
14 responded to petitioners' response to the motion to dismiss by clarifying that  
15 the city simply agreed with petitioners to ask for a one-week extension to  
16 transmit the record to allow more time for settlement discussions between  
17 petitioners and the applicant and thereafter transmitted the record on the last  
18 day of the extended deadline for transmitting the record. According to the city,  
19 after it filed the request for additional time to transmit the record, it did not  
20 hear from petitioners again until the city filed the motion to dismiss. Finally,  
21 the city clarifies that it was not working with petitioners to suspend the appeal

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<sup>2</sup> Petitioners state that they are concerned about the applicant's plan to remove a fence located along the side of the subdivision that adjoins their property that now restrains their large dog and are concerned about possible damage from subdivision development to large pine trees on their property.

1 while a settlement could be signed and does not join petitioners in seeking an  
2 extension of time for petitioners to file the petition for review.

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

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

12 OAR 661-010-0067(2) provides that the time limit for filing the petition for  
13 review may be extended, but only by written consent of all the parties. The  
14 deadline for filing the petition for review is strictly enforced. *Terrace Lakes*  
15 *Homeowners Assoc. v. City of Salem*, 29 Or LUBA 532, 535, *aff’d* 138 Or App  
16 188, 906 P2d 871 (1995); *Hutmacher v. Marion County*, 15 Or LUBA 514, 515  
17 (1987).

18 Because petitioners did not file a petition for review on or before July 7,  
19 2014 and do not have the city’s written consent to extend the time for filing the  
20 petition for review under OAR-661-010-0067(2) beyond July 7, 2014, ORS  
21 197.830(11) and OAR 661-010-0030(1) require that we dismiss this appeal.

22 This appeal is dismissed. Pursuant to OAR 661-010-0075(1)(c), the city  
23 is awarded petitioners’ filing fee and deposit for costs.