

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

02/11/19 PM 1:28 LUBA

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4                   STEPHEN TO, ANNA RUSSELL,  
5                                   MAREK HILZENRATH,  
6                   ELIZABETH MURLAT, KATELYN OLDHAM,  
7                   EDWARD L. HOLCOMBE, RICK HODGES,  
8                   CHRIS LINDAUER and DEREK JEVNING,  
9                                   *Petitioners,*

10  
11                                   vs.

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13                   WASHINGTON COUNTY,  
14                                   *Respondent.*

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16                                   LUBA No. 2018-147

17  
18                                   FINAL OPINION  
19                                   AND ORDER

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21                   Appeal from Washington County.

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23                   Stephen To, Anna Russell, Marek Hilzenrath, Elizabeth Murlat, Katelyn  
24                   Oldham, Edward L. Holcombe, Rick Hodges, Chris Lindauer, and Derek  
25                   Jevning, Portland, represented themselves.

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27                   Byron Farley, Salem, represented petitioner Gene Duncan.

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29                   Jacquilyn Saito-Moore, Washington County Counsel, Hillsboro,  
30                   represented respondent.

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

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35                                   DISMISSED                                   02/11/2019

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37                   You are entitled to judicial review of this Order. Judicial review is

1 governed by the provisions of ORS 197.850.

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**NATURE OF THE DECISION**

Petitioners appeal a decision by the county hearings officer approving a seven-lot subdivision.

**MOTION TO WITHDRAW**

One of the petitioners, Gene Duncan, moves to withdraw from the appeal. The motion is granted.

**MOTION TO DISMISS**

On January 18, 2019, the county filed a motion to dismiss the appeal. OAR 661-010-0065(2) provides in relevant part that “[a]n opposing party may, within 14 days from the date of service of a motion, file a response.” Petitioners have not responded to the county’s motion.

The county issued its decision in this matter on December 6, 2018, and it was final on that date.<sup>1</sup> Under ORS 197.830(9) and OAR 661-010-0015(1)(a), the notice of intent to appeal (NITA) must be filed with LUBA within 21 days of the date the decision became final. In the present case, the appeal deadline therefore was December 27, 2018. Petitioners mailed the NITA by first class mail, and LUBA received the NITA on December 28, 2018.

OAR 661-010-0015(1)(b) provides:

“The date of filing a notice of intent to appeal is the date the Notice

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<sup>1</sup> The county mailed notice of the decision to some of the petitioners on December 7, 2018. Record 1-2.

1 is received by the Board, or the date the Notice is mailed, provided  
2 it is mailed by registered or certified mail, and the party filing the  
3 Notice has proof from the post office of such mailing date. If the  
4 date of mailing is relied upon as the date of filing, the date of the  
5 receipt stamped by the United States Postal Service showing the date  
6 mailed and the certified or registered number is the date of filing.”

7 Because petitioners did not mail the NITA to LUBA by certified mail, the date  
8 of filing the NITA with LUBA is the date the NITA was received by LUBA —  
9 December 28, 2018. Because the NITA was filed with LUBA more than 21 days  
10 from the date the county’s decision became final, this appeal was untimely filed.  
11 OAR 661-010-0015(1)(a) (“A [NITA] filed [after the deadline] shall not be  
12 timely filed, and the appeal shall be dismissed”); *McKnight v. City of Portland*,  
13 48 Or LUBA 292, 294-95 (2004); *Larner v. City of Portland*, 41 Or LUBA 471,  
14 473 (2002).

15 The appeal is dismissed.