

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

JODY McCAFFREE and
CITIZENS FOR RENEWABLES
Petitioners,

vs.

CITY OF NORTH BEND,
Respondent.

LUBA No. 2019-098

FINAL OPINION
AND ORDER

Appeal from City of North Bend.

Tonio Moro, Medford, represented petitioners.

Michael R. Stebbins, Stebbins & Coffey, North Bend, represented
respondent.

RUDD, Board Member, RYAN, Board Member, participated in the
decision.

ZAMUDIO, Board Chair, did not participate in the decision.

DISMISSED 10/16/2019

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

Opinion by Rudd.

On October 4, 2019, the Board received petitioners' notice of intent to appeal (NITA) the city's decision:

“to affirm its staff decision to charge petitioners \$2,628.80 for ‘planning fees’ in addition to a \$260 filing fee related to an appeal of the city’s planning commission’s decision to approve * * * a conditional use permit to construct a portion of a 232 mile 36” high-pressured natural gas pipeline[.]”NITA 1.

The NITA was not accompanied by the \$200.00 filing fee and \$200.00 deposit for costs required by OAR 661-010-0015(4).

On October 4, 2019, the Board issued an order that explained that the NITA was not accompanied by the required \$200 filing fee and \$200 deposit for costs. Our October 4, 2019 order required petitioners to remit payment by 4:00 p.m. on October 11, 2019, and notified petitioners that if the filing fees and deposit for costs were not received by 4:00 pm on October 11, 2019, the Board would dismiss the appeal.

On October 15, 2019, the Board received petitioners' “Unopposed Motion to Extend Time to File Filing Fee and Deposit for Costs.” Petitioners state in their motion that they “are unclear what the city’s decision is or will be regarding its assessment of approximately \$3,000 in ‘planning fees’” and request “a continuance of the filing fee/cost deposit deadline until after the city council meeting on October 22, 2019, and until the end of that week to allow counsel to further confer with the city regarding jurisdiction issues.” Motion 1, 2.

1 OAR 661-010-0015(1)(c) provides that if a NITA is received without
2 payment of the required fee and deposit, “the petitioner will be given an
3 opportunity to submit the required fee and deposit. *If the filing fee and deposit*
4 *for costs are not received within the time set by the Board, the Board shall dismiss*
5 *the appeal.*” (Emphasis added.) In *Dunzer v. Clatsop County*, 76 Or LUBA 393
6 (2017), LUBA dismissed an appeal that was received without payment of the
7 required fee and deposit and for which the petitioner failed to remit the filing fee
8 and deposit within the time set by the Board in an order. In *Dunzer*, the petitioner
9 submitted the NITA without payment of the filing fee and deposit for costs and
10 with a completed circuit court application form for deferral or waiver of fees
11 under ORS 21.682. LUBA issued an order denying the request for a waiver of
12 fees but allowing the petitioner seven days to remit payment of the filing fee and
13 deposit for costs. On the seventh day, LUBA received a letter from petitioner
14 entitled “Request for Review” that LUBA understood to be a request for review
15 of our previous order denying his request for a waiver under ORS 21.682. LUBA
16 dismissed the appeal for failure to pay the filing fee and deposit for costs within
17 the time set forth in our order.

18 In this appeal, the Board did not receive the filing fee and deposit for costs
19 by 4:00 p.m. on October 11, 2019, the date and time set forth in its October 4,
20 2019 order. Accordingly, OAR 661-010-0015(1)(c) requires that we dismiss the
21 appeal.

22 The appeal is dismissed.