

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

DANIELLE NYE and SANDERS NYE,
Petitioners,

vs.

DESCHUTES COUNTY,
Respondent,

and

SCOTT SMALLWOOD and
CAROL ANN SMALLWOOD,
Intervenors-Respondents.

LUBA No. 2021-021

FINAL OPINION
AND ORDER

Appeal from Deschutes County.

Michael H. McGean represented petitioners.

David Doyle represented respondent.

Laura Craska Cooper represented intervenors-respondents.

ZAMUDIO, Board Member; RUDD, Board Chair; RYAN, Board
Member, participated in the decision.

DISMISSED 05/17/2021

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

1 Zamudio, Board Member.

2 **NATURE OF THE DECISION**

3 Petitioners challenge a board of county commissioners decision approving
4 two property line adjustments and a 10-lot subdivision.

5 **MOTION TO INTERVENE**

6 Scott Smallwood and Carol Ann Smallwood (intervenors) move to
7 intervene on the side of respondent. No party opposes the motion and it is
8 allowed.

9 **MOTION TO DISMISS**

10 Petitioners filed the notice of intent to appeal. Before transmitting the
11 record, the county withdrew its decision for reconsideration pursuant to ORS
12 197.830(13)(b) and OAR 661-010-0021(1). After the county issued its decision
13 on reconsideration, petitioners filed an amended notice of intent to appeal
14 challenging that decision. *See* OAR 661-010-0021(5) (providing procedure for
15 challenging a decision on reconsideration).

16 On April 12, 2021, the Board received the county's record transmittal. No
17 party objected to the record and the deadline for filing the petition for review was
18 May 3, 2021. OAR 661-010-0030(1). Petitioners did not file a petition for review.
19 On May 10, 2021, petitioners mailed LUBA a letter that copied the other parties
20 and stated that the parties had reached a settlement and that the appeal may be
21 dismissed. We treat that letter as petitioners' motion to voluntarily dismiss this
22 appeal for purposes of this decision.

1 That same day, intervenors filed a motion to dismiss the appeal for failure
2 to timely file the petition for review. OAR 661-010-0030(1). In their motion,
3 intervenors dispute petitioners' contention that the parties have settled the matter.

4 Failure to file a petition for review within the time required by OAR 661-
5 010-0030(1) or any extensions of that time under OAR 661-010-0067(2) shall
6 result in dismissal of the appeal. OAR 661-010-0030(1). Petitioners did not file
7 a petition for review. Petitioners' motion to voluntarily dismiss the appeal, which
8 was filed after the deadline for filing the petition for review, is moot. Intervenors'
9 motion to dismiss is granted.

10 The appeal is dismissed.