

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

3  
4                   NORMAN McDOUGAL,  
5                   *Petitioner,*

6  
7                   vs.

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9                   LANE COUNTY,  
10                  *Respondent,*

11  
12                  and

13  
14                  LANDWATCH LANE COUNTY,  
15                  *Intervenor-Respondent.*

16  
17                  LUBA No. 2018-025

18  
19                  ORDER

20   **MOTION TO INTERVENE**

21               Landwatch Lane County (intervenor) moves to intervene on the side of  
22   respondent. No party opposes the motion, and it is granted.

23   **MOTION TO EXTEND THE TIME TO FILE DECISION ON**  
24   **RECONSIDERATION**

25               On March 16, 2018, petitioner filed a Notice of Intent to Appeal (NITA)  
26   and served a copy of the NITA on the county. Pursuant to OAR 661-010-  
27   0025(2)(a), the record of the proceedings under review was due to LUBA by  
28   April 6, 2018. On April 4, 2018, the county filed a document entitled “Notice  
29   of Voluntary Remand,” citing ORS 197.830(13)(b) and OAR 661-010-0021 as  
30   authority. ORS 197.830(13)(b) and OAR 661-010-0021 are the statute and

1 LUBA's rule, respectively, allowing local governments to withdraw for  
2 reconsideration in some circumstances a decision that has been appealed to  
3 LUBA.<sup>1</sup> Because the document the county filed clearly intended to withdraw  
4 the decision for reconsideration pursuant to ORS 197.830(13)(b), on April 10,  
5 2018, LUBA issued a letter to all parties advising them of the Board's receipt  
6 of the county's April 4, 2018 notice of withdrawal of the decision on April 6,

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<sup>1</sup> ORS 197.830(13)(b) provides, in relevant part:

“At any time subsequent to the filing of a [NITA] and prior to the date set for filing the record \* \* \* the local government \* \* \* may withdraw its decision for purposes of reconsideration. If a local government \* \* \* withdraws an order for purposes of reconsideration, it shall, within such time as the board may allow, affirm, modify or reverse its decision.”

OAR 661-010-0021 provides, in relevant part:

“(1) If a local government \* \* \* pursuant to ORS 197.830(13)(b), withdraws a decision for the purposes of reconsideration, it shall file a notice of withdrawal with the Board on or before the date the record is due \* \* \*. A copy of the decision on reconsideration shall be filed with the Board within 90 days after the filing of the notice of withdrawal or within such other time as the Board may allow.

“(2) The filing of a notice of withdrawal under section (1) of this rule shall suspend proceedings on the appeal until a decision on reconsideration is filed with the Board, or the time designated therefor expires, unless otherwise ordered by the Board. If no decision on reconsideration is filed within the time designated therefor, the Board shall issue an order restarting the appeal.”

1 2018. That letter stated that under OAR 661-010-0021(2), the effect of the  
2 notice is to:

3 “[S]uspend[] the LUBA appeal proceeding until a decision on  
4 reconsideration is filed with LUBA by the respondent. Under  
5 OAR 661-010-0021(1), a decision on reconsideration is required  
6 to be filed with LUBA, and served on the parties, within 90 days  
7 after the date of the notice of withdrawal was filed.”

8 The 90-day deadline expired on July 3, 2018. On July 10, 2018, after  
9 confirming that a copy of the decision on reconsideration had not been  
10 received, LUBA issued another letter to the parties indicating that pursuant to  
11 OAR 661-010-0021(2):

12 “[I]f no decision on reconsideration is filed within the time  
13 designated, the Board shall issue an order restarting the appeal.  
14 Therefore, if the Board does not receive the decision on  
15 reconsideration in this appeal, or a stipulation of the parties to  
16 extend the time period for filing the decision on reconsideration  
17 within 14 days of the date of this letter, the Board will issue an  
18 order restarting the appeal.”

19 Thereafter, on July 24, 2018, the county filed a motion to extend the time to  
20 provide a copy of its decision on reconsideration for an additional 90 days from  
21 July 24, 2018.

22 In its motion, the county explains the following. After the decision was  
23 withdrawn, on June 12, 2018, the board of county commissioners considered  
24 the matter, and voted to remand petitioner’s land use application to the “county  
25 hearings official to consider new evidence not available to the applicant at the  
26 time of the county’s initial decision.” County’s Motion to Extend Time 1. Due  
27 to the “significant case load of land use appeals,” the hearing was not

1 scheduled until August 2, 2018. *Id.* Allowing for time for the hearing and time  
2 for any appeal to the board of county commissioners, the county requests an  
3 additional 90 days from the date of its motion to issue its decision on  
4 reconsideration, making a decision on reconsideration due not later than  
5 October 22, 2018.

6 Petitioner, the applicant below, supports the county's request for  
7 additional time. Intervenor opposes the extension, arguing that the county has  
8 not provided adequate justification for its request.

9 ORS 197.830(13)(b) provides in relevant part that “[i]f a local  
10 government \* \* \* withdraws an order for purposes of reconsideration, it shall,  
11 *within such time as the board may allow*, affirm, modify or reverse its  
12 decision.” (Emphasis added.) The statute provides no specific deadline for the  
13 county to take action on a withdrawn decision. Pursuant to ORS 197.820(4),  
14 LUBA has adopted OAR 661-010-0021(1), which provides that “[a] copy of  
15 the decision on reconsideration shall be filed with the Board within 90 days  
16 after the filing of the notice of withdrawal *or within such other time as the*  
17 *Board may allow*.” (Emphasis added.) The rule explicitly contemplates that  
18 LUBA may modify the deadline for the local government to file a copy of the  
19 decision on reconsideration, including allowing the local government a time  
20 period longer than 90 days.

21 In *Columbia Riverkeeper v. Clatsop County*, 267 Or App 578, 594, 341  
22 P3d 790 (2014), the Court of Appeals explained that the statutory scheme

1 “grants LUBA broad authority to manage the proceedings before it \* \* \*. *See*  
2 ORS 197.820(4)(a) (directing LUBA to adopt rules governing ‘[t]he conduct of  
3 review proceedings brought before it under ORS 197.830 to 197.845’).” The  
4 court also explained that:

5 “The provision for withdrawal and reconsideration [at ORS  
6 197.830(13)(b)] opens the opportunity for the local body to  
7 eliminate confusion, clarify findings, change its decision, narrow  
8 disputed issues, or, in some instances, eliminate the need for  
9 appeal, when that can be done before the parties and LUBA have  
10 invested time and resources in the case.” 267 Or App at 594.

11 The county’s explanation for requesting additional time demonstrates  
12 that the county is attempting to achieve one or more of the purposes for  
13 allowing a decision to be withdrawn for reconsideration: “to eliminate  
14 confusion, clarify findings, change its decision, narrow disputed issues, or \* \* \*  
15 eliminate the need for appeal[.]” *Id.* Accordingly, the county’s request for an  
16 extension of time to provide a copy of the decision on reconsideration is  
17 granted. The county shall provide a copy of the decision on reconsideration  
18 pursuant to OAR 661-010-0021(1) not later than October 22, 2018.

19 Dated this 27<sup>th</sup> day of August, 2018.  
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25 Melissa M. Ryan  
Board Chair