

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

3
4 KARON V. JOHNSON, SARA MOSS,
5 SUSI GAYLORD, and JAMES CHRISTO,
6 *Petitioners,*

7
8 vs.

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10 CITY OF BEND,
11 *Respondent,*

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13 and

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15 COLVIN OIL I, LLC,
16 *Intervenor-Respondent.*

17
18 LUBA No. 2023-024

19
20 ORDER

21 **BACKGROUND**

22 The petition for review in this appeal was due on June 7, 2023. On June 7,
23 2023, the Board received an original and two copies of petitioners' "Petition for
24 Review" along with lead petitioner's cover letter (Cover Letter), which were filed
25 and served on June 6, 2023. We refer to that petition for review as the Second
26 Petition for Review.

27 On June 8, 2023, the Board received an original and two copies of
28 petitioners' "Petition for Review" that was filed and served on June 3, 2023, three
29 days before the Second Petition for Review was filed and served. We refer to the

June 3, 2023 petition for review as the Original Petition for Review. The Original Petition for Review was filed and served before the Second Petition for Review.

SECOND PETITION FOR REVIEW IS DISALLOWED

Two of LUBA's rules govern the filing of replacement petitions for review after the petition for review has been filed. OAR 661-010-0030(3) provides:

“If the Board determines that the petition for review fails to conform with the requirements of section (2) of this rule, it shall notify the author, and a brief conforming with the requirements of section (2) shall be filed within three (3) days of notification by the Board. The Board may refuse to consider a brief that does not substantially conform to the requirements of this rule.”

OAR 661-010-0030(6) provides:

“Amended Petition: A petition for review which fails to comply with section (4) of this rule may, with permission of the Board, be amended. The Board shall determine whether to allow an amended petition for review to be filed in accordance with OAR 661-010-0005.”

Our rules make clear that the filing of a replacement petition for review after the petition for review has been filed is allowed only if LUBA grants permission, either because (1) pursuant to OAR 661-010-0030(3), LUBA has determined that a petition for review “fails to conform with the requirements of [OAR 661-010-0030(2)]” and ordered petitioners to file a conforming petition for review, or; (2) a petition for review fails to comply with OAR 661-010-003(4) *and* pursuant to that rule, the Board has granted petitioners' request to file a different petition for review. In either case, the filing of a replacement petition for review is only with the Board's permission. Deadlines for briefing at LUBA are accelerated,

1 consistent with ORS 197.805, which provides in relevant part that “time is of the
2 essence in reaching final decisions in matters involving land use.” Filing serial
3 petitions for review without permission of the Board creates confusion, and
4 places responding parties at a significant disadvantage because the responding
5 parties do not know which petition for review to respond to. For that reason,
6 petitioners at LUBA may file a replacement petition for review only with
7 LUBA’s permission.

8 Petitioners have not filed a motion seeking permission to file an amended
9 petition for review under OAR 661-010-0030(6), and LUBA has not issued an
10 order requiring petitioners to file a petition for review that conforms to OAR 661-
11 010-0030(2). Perhaps more importantly, petitioners also have not identified for
12 LUBA or the other parties the differences between the Original Petition for
13 Review and the Second Petition for Review. The Cover Letter states that lead
14 petitioner Karon Johnson on behalf of the other petitioners “had filed a petition
15 June 3, but found that [they] had made some errors which needed correcting.
16 Kindly dispose of my June 3 petitions.” The Cover Letter does not identify what
17 errors petitioners think the Original Petition for Review contained or why those
18 errors support LUBA allowing petitioners to file the Second Petition for Review.
19 Thus, LUBA and the responding parties are left to guess as to the reason for filing
20 the Second Petition for Review. Accordingly, the Second Petition for Review is
21 disallowed.

1 **ORIGINAL PETITION FOR REVIEW DEFICIENCIES**

2 The Original Petition for Review contains two deficiencies. First, the
3 Original Petition for Review is signed by lead petitioner “on behalf of” petitioner
4 Moss. As we previously explained in a May 17, 2023 order in this appeal:

5 “OAR 661-010-0012(1) provides, in part, ‘An individual shall either
6 appear on their own behalf or be represented by an attorney. A
7 corporation or other organization shall be represented by an
8 attorney. In no event may a party be represented by someone other
9 than an active member of the Oregon State Bar.’ Johnson has not
10 indicated that they are an active member of the Oregon State Bar
11 representing the other petitioners. Accordingly, Johnson's signature
12 on the objection pleading does not serve to object on behalf of the
13 other petitioners.” *Johnson et al v. City of Bend* (Order, LUBA No
14 2023-024, May 17, 2023) (slip op at n 1).

15 We explain, again, that lead petitioner may not represent the other petitioners in
16 this appeal. Accordingly, petitioner Moss has not filed a petition for review in
17 this appeal.

18 Second, the Certificate of Filing states that the Original Petition for Review
19 was filed “by USPS mail.” However, the Original Petition for Review was filed
20 by United Parcel Service as allowed by OAR 661-010-0075(2)(a)(B)(ii). Within
21 seven days of the date of this Order, lead petitioner shall file and serve a corrected
22 Certificate of Filing that accurately indicates the method of filing the Original
23 Petition for Review.

1 **NEW FILING DEADLINE FOR RESPONDENT’S AND INTERVENOR-**
2 **RESPONDENT’S BRIEFS**

3 Because the filing of the Second Petition for Review may have caused
4 confusion or delay for respondent and intervenor-respondent in determining
5 which of the two petitions for review to respond to, and therefore in preparing
6 the respondent’s and intervenor-respondent’s briefs, the deadline for filing the
7 respondent’s and intervenor-respondent’s briefs is extended by an additional
8 seven days so that the respondent’s and intervenor-respondent’s briefs are due to
9 be filed not later than July 5, 2023. OAR 661-010-0075(6) (if a deadline falls on
10 a holiday, the act must be performed on the next working day). The deadline for
11 issuance of the Board’s final opinion and order is also extended by an additional
12 seven days. Petitioners shall not file any additional petition for review unless
13 ordered by the Board.

14 Dated this 8th day of June 2023.
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19 _____
20 Michelle Gates Rudd
Board Member