

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3  
4 DENNIS TYLKA, and JOYCE TYLKA, )

5 )

6 Petitioners, )

7 )

8 vs. )

9 )

10 CLACKAMAS COUNTY, )

11 )

12 Respondent. )

13 )

LUBA No. 99-093

ORDER

14 Before the Board are Robert Hawkins' motion to intervene, petitioners' motion to  
15 deny intervenor status, and petitioners' motion to suspend settlement of the record.

16 **MOTION TO INTERVENE**

17 On May 27, 1999, petitioners filed a notice of intent to appeal the decision at issue in  
18 this appeal. On June 1, 1999, the applicant below, Robert Hawkins, served copies of a  
19 motion to intervene in this appeal on petitioners and the county, but failed to file the original  
20 of that motion with LUBA until August 24, 1999. The certificate of filing accompanying the  
21 motion certifies that on June 1, 1999, the applicant served a true and correct copy of the  
22 motion on petitioners and respondent, but does not certify that the applicant filed the original  
23 of the motion with LUBA. See Exhibit 5 to OAR 661, chapter 10. The motion to intervene  
24 refers to an attached affidavit supporting the motion, but no such affidavit is attached.

25 Petitioners then filed a motion to deny the applicant intervenor status, arguing that the  
26 applicant failed to file his motion with LUBA within 21 days of the date petitioners filed the  
27 notice of intent to appeal, as required by ORS 197.830(6) and OAR 661-010-0050.<sup>1</sup> The  
28 applicant has not responded to petitioners' motion.

<sup>1</sup>ORS 197.830(6) provides:

"(a) Within 21 days after a notice of intent to appeal has been filed with the board under subsection (1) of this section, any person may intervene in and be made a party to the review proceeding upon a showing of compliance with subsection (2) of this section.

1 We agree with petitioners that the applicant has not demonstrated that he filed his  
2 motion to intervene with LUBA within 21 days of the date the notice of intent to appeal was  
3 filed. The applicant has not provided any evidence that he filed the motion to intervene with  
4 LUBA pursuant to OAR 661-010-0075(2)(a) within the period of time mandated by ORS  
5 197.830(6).<sup>2</sup> Consequently, the applicant's motion to intervene is denied, and petitioners'  
6 opposing motion is granted. ORS 197.830(6)(c).

7 **MOTION TO SUSPEND SETTLEMENT OF RECORD**

8 Petitioners filed objections to the record on July 15, 1999, which had the effect of  
9 suspending the briefing schedule until the Board settles the record. OAR 661-010-0026(6).  
10 On August 2, 1999, petitioners advised the Board by letter that "[p]etitioners and Respondent  
11 have agreed to postpone settlement of the record indefinitely." We treat petitioners' August  
12 2, 1999, letter as a motion to suspend settlement of the record indefinitely, i.e. until any party  
13 advises the Board otherwise. In a previous order in this case, we denied a similar motion by  
14 petitioners to suspend the appeal, on the grounds that petitioners had not obtained the  
15 county's consent. Tylka v. Clackamas County, \_\_\_ Or LUBA \_\_\_ (LUBA No. 99-093, Order  
16 on Motion to Suspend Appeal, July 14, 1999). Petitioners' August 2, 1999 letter represents  
17 that the county, the only other party in this appeal, has consented to suspending settlement of  
18 the record indefinitely.

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"\* \* \* \* \*

"(c) Failure to comply with the deadline set forth in paragraph (a) of this subsection shall result in denial of a motion to intervene."

<sup>2</sup>OAR 661-010-0075(2)(a) provides:

"Except as provided in OAR 661-010-0015(1)(b) with regard to the notice of intent to appeal, and as provided in OAR 661-010-0021(5)(b) with regard to a refiled original notice of intent to appeal or an amended notice of intent to appeal, filing a document with the Board is accomplished by:

"(A) Delivery to the Board on or before the date due; or

"(B) Mailing on or before the date due by first class mail with the United States Postal Service."

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Petitioners' motion to suspend settlement of the record is granted.

Dated this 23rd day of September, 1999.

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Tod Bassham  
Board Member