

1 0026(6). * * * Failure to file a petition for review within the time required by
2 this section, and any extensions of that time under OAR 661-010-0045(9) or
3 OAR 661-010-0067(2), shall result in dismissal of the appeal and forfeiture of
4 the filing fee and deposit for costs to the governing body. *See* OAR 661-010-
5 0075(1)(c).

6 OAR 661-010-0075(1)(c) provides:

7 “Forfeit of Filing Fee and Deposit: If a record has been filed and a petition for
8 review is not filed within the time required by these rules, and the governing
9 body files a cost bill pursuant to this section requesting forfeiture of the filing
10 fee and deposit, the filing fee and deposit required by OAR 661-010-0015(4)
11 shall be awarded to the governing body as cost of preparation of the record.
12 *See* OAR 661-010-0030(1).”

13 Our rules do not expressly state whether forfeiture of the filing fee and deposit is
14 required only where the Board dismisses the appeal because the petition for review was not
15 filed, rather than for other reasons.

16 We have declined to award forfeiture of the fee and deposit where the petitioner’s
17 motion or request to dismiss the appeal was filed before the deadline for filing the petition
18 for review. *Claremont Limited Partnership v. Washington County*, 28 Or LUBA 785, 786
19 (1995). However, where the petitioner’s motion to dismiss is filed after the deadline for
20 filing the petition for review—even one day after—we have held that forfeiture of the fee and
21 deposit is warranted. *John’s Landing Owners Assoc. v. City of Portland*, 16 Or LUBA 1019,
22 1020 (1987) (awarding forfeiture of fee and deposit where motion to dismiss appeal is filed
23 one day after petition for review is due). As in the present case, we dismissed the appeal in
24 *John’s Landing Owners Assoc.* based on petitioner’s motion to dismiss, not because the
25 petition for review was not filed. *John’s Landing Owners Assoc. v. City of Portland*, ___ Or
26 LUBA ___ (LUBA No. 87-073, October 22, 1987).

27 Accordingly, the fact that we dismissed this appeal based on petitioner’s motion to
28 dismiss rather than because the petition for review was not timely filed is immaterial. The

1 county is awarded forfeiture of the filing fee and the deposit for costs, in the amount of \$325,
2 pursuant to OAR 661-010-0075(1)(c).

3 Dated this 12th day of September, 2006.

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Tod A. Bassham
Board Chair