1	BEFORE THE LAND USE BOARD OF APPEALS
2	OF THE STATE OF OREGON
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4	HOLGER T. SOMMER,
5 6	Petitioner,
7	VS.
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9	JOSEPHINE COUNTY,
10	Respondent,
11	
12 13	and
13 14	JIM WEAVER,
15	Intervenor-Respondent.
16	mervenor Respondent.
17	LUBA No. 2006-079
18	ORDER ON COSTS
19	The record in this case was received on July 26, 2006. No record objections were
20	filed, and accordingly the petition for review was due 21 days later, on August 16, 2006. Or
21	August 17, 2006, petitioner filed a motion to withdraw the notice of intent to appeal. The
22	Board received that motion on August 21, 2006, and issued a final opinion and order
23	dismissing this appeal the same date. The final opinion and order states simply that
24	"[p]etitioner requests that this appeal be dismissed. Accordingly, this appeal is dismissed."
25	The county thereafter filed a cost bill requesting forfeiture of the filing fee and
26	deposit for costs pursuant to OAR 661-010-075(1)(c), on the grounds that petitioner failed to
27	file the petition for review within the 21 days of the date the record is settled, as required by
28	OAR 661-010-0030(1). Petitioner objects to forfeiture of the filing fee and deposit for costs
29	arguing that LUBA dismissed this appeal at petitioner's voluntary request, not because
30	petitioner failed to file a timely petition for review.
31	OAR 661-010-0030(1) provides, in relevant part:
32 33 34	"Filing and Service of Petition: The petition for review together with four copies shall be filed with the Board within 21 days after the date the record is received or settled by the Board. See OAR 661-010-0025(2) and 661-010-

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

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

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

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

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

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

county is awarded forfeiture of the filing fee and the deposit for costs, in the amount of \$325,

pursuant to OAR 661-010-0075(1)(c).

Dated this 12<sup>th</sup> day of September, 2006.

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Tod A. Bassham

**Board Chair**