

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

3
4 MILLER FAMILY FARM LIMITED PARTNERSHIP,
5 *Petitioner,*

6
7 vs.

8
9 LANE COUNTY,
10 *Respondent,*

11
12 and

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

16
17 LUBA No. 2024-086

18
19 ORDER

20 Petitioner appeals a hearing official's denial of a flood plain verification
21 permit.

22 **MOTION TO INTERVENE**

23 LandWatch Lane County (intervenor) moves to intervene on the side of
24 the county. The motion is unopposed and it is allowed.

25 **MOTIONS TO REACTIVATE**

26 On November 25, 2024, petitioner, the applicant below, filed their notice
27 of intent to appeal. The record was due from the county on December 16, 2024.
28 On December 16, 2024, instead of transmitting the record, the county filed a
29 notice that it was withdrawing the challenged decision for reconsideration
30 pursuant to ORS 197.830(13), which provides, in part:

1 “(b) The local government or state agency may withdraw its
2 decision for purposes of reconsideration at any time:

3 “(A) Subsequent to the filing of a notice of intent; and

4 “(B) Prior to:

5 “(i) The date set for filing the record; or

6 “(ii) On appeal of a decision under ORS 197.610 to 197.625
7 or relating to the development of a residential structure,
8 the filing of the respondent’s brief.

9 “(c) If a local government or state agency withdraws an order for
10 purposes of reconsideration, *it shall, within such time as the board*
11 *may allow, affirm, modify or reverse its decision.* If the petitioner is
12 dissatisfied with the local government or agency action after
13 withdrawal for purposes of reconsideration, the petitioner may refile
14 the notice of intent and the review shall proceed upon the revised
15 order. An amended notice of intent is not required if the local
16 government or state agency, on reconsideration, affirms the order or
17 modifies the order with only minor changes.” (Emphasis added.)

18 LUBA’s rule implementing ORS 197.830(13), OAR 661-010-0021, states, in
19 part:

20 “(1) If a local government or state agency, pursuant to ORS
21 197.830(13)(b), withdraws a decision for the purposes of
22 reconsideration, it shall file a notice of withdrawal with the Board
23 on or before the date the record is due or, on appeal of a decision
24 under ORS 197.610 to 197.625 or relating to the development of a
25 residential structure, the local government shall file a notice of
26 withdrawal prior to the filing of the respondent’s brief. *A copy of the*
27 *decision on reconsideration shall be filed with the Board within 90*
28 *days after the filing of the notice of withdrawal or within such other*
29 *time as the Board may allow.*

30 “(2) The filing of a notice of withdrawal under section (1) of this
31 rule shall suspend proceedings on the appeal until a decision on
32 reconsideration is filed with the Board, *or the time designated*

1 *therefor expires, unless otherwise ordered by the Board. If no*
2 *decision on reconsideration is filed within the time designated*
3 *therefor, the Board shall issue an order restarting the appeal.”*
4 (Emphases added.)

5 The county’s decision on reconsideration was due on March 17, 2025. On
6 March 17, 2025, instead of filing a decision on reconsideration, the county filed
7 a motion requesting that we restart the appeal and set a deadline for the record
8 transmittal. The county explains that it withdrew the decision so that a county
9 hearings official could reconsider the decision and adopt “more defensible
10 findings.” County Motion to Restart Appeal 2. After the county assigned the
11 reconsideration matter to a hearings official, petitioner objected and argued that
12 only the county’s board of commissioners has authority to issue a decision on
13 reconsideration. On March 14, 2025, the hearings official issued an order to
14 reopen the record to allow petitioner to brief that procedural issue, over the
15 county’s and intervenor’s (together, respondents’) objections.

16 On March 17, 2025, the county moved to restart this appeal, essentially
17 abandoning its prior decision to withdraw the decision for reconsideration and
18 asking LUBA to proceed with review of the original hearings official decision
19 denying petitioner’s application for a flood plain verification permit. Because the
20 county did not issue any decision on reconsideration within the 90 days set out in
21 our rules the county asks us to restart the appeal pursuant to OAR 661-010-
22 0021(2). Intervenor similarly urges LUBA to restart the appeal “which should
23 have the effect of rendering moot both [p]etitioner’s procedural objection and the
24 [h]earing [o]fficial’s order.” Intervenor’s Motion to Restart Appeal 2.

1 Petitioner objects to respondents’ motions to restart the appeal and instead
2 requests that we extend the time for the county to make a decision on
3 reconsideration. Petitioner argues that ORS 197.830(13)(c) “requires a decision
4 on the merits” and, while LUBA’s rules include a default 90-day deadline, LUBA
5 “routinely allows more time when the situation warrants[.]” Objection to Motions
6 to Restart Appeal 2 (underscoring omitted). Petitioner argues that ORS
7 197.830(13) “entitles * * * [p]etitioner to a reconsidered decision on the
8 merits[.]” emphasizing that the statute provides that “a local government * * *
9 shall, within such time as the [B]oard may allow, affirm, modify, or reverse its
10 decision.” Objection to Motions to Restart Appeal 4 (quoting ORS
11 197.830(13)(c)). Petitioner argues that ORS 197.830(13) provides petitioner a
12 “statutory right to a new decision on the merits.” Objection to Motions to Restart
13 Appeal 4. Petitioner argues that, once the county has withdrawn its decision, the
14 county must issue a reconsidered decision affirming, modifying, or reversing its
15 original decision. According to petitioner, abandoning the decision on
16 reconsideration and moving to restart the appeal is not an option for the county
17 under ORS 197.830(13).

18 As far as we know, this case presents a novel situation where the local
19 government has withdrawn its decision for reconsideration and subsequently
20 requested that LUBA restart the appeal while the decision is pending
21 reconsideration before a county hearings official.

1 Petitioner cites *McDougal v. Lane County*, 78 Or LUBA 1016 (2018), to
2 support their argument that it is LUBA’s practice to extend time rather than
3 restart an appeal when a local government fails to timely file its decision on
4 reconsideration. *McDougal* is distinguishable. In that case, the county, with the
5 petitioner’s consent, requested an extension of time to file its decision on
6 reconsideration. 78 Or LUBA at 1017-18. The intervenor-respondent opposed
7 the requested extension. We allowed the extension, reasoning that ORS
8 197.830(13) “provides no specific deadline for the county to take action on a
9 withdrawn decision” and that OAR 661-010-0021 “explicitly contemplates that
10 LUBA may modify the deadline for the local government to file a copy of the
11 decision on reconsideration, including allowing the local government a time
12 period longer than 90 days.” *Id.* at 1018; *see also Columbia Riverkeeper v.*
13 *Clatsop County*, 267 Or App 578, 594, 341 P3d 790 (2014) (noting that LUBA
14 has broad authority to manage the proceedings before it). Differently, in this
15 appeal, the county has moved to restart the appeal after the deadline for the county
16 to file a reconsidered decision has passed.

17 We do not agree with petitioner that ORS 197.830(13)(b) provides
18 petitioner a statutory right to obtain a reconsidered decision from the county. We
19 have previously explained that ORS 197.830(13)(b) and OAR 661-010-0021(1)
20 “grant *the county* the unqualified right to timely withdraw the decision for
21 reconsideration without providing any explanation.” *Central Oregon Landwatch*
22 *v. Deschutes County*, LUBA Nos 2018-123/124 (Feb 26, 2019) (slip order at 1);

1 *see also Oregon Pipeline Company, LLC v. Clatsop County*, 69 Or LUBA 403,
2 410, *rev'd and rem'd on other grounds*, 267 Or App 578, 431 P3d 790 (2014)
3 (observing the legislature's "decision in ORS 197.830(13)(b) to allow local
4 governments an unqualified right to withdraw decisions (including permit
5 approval or denial decisions) for reconsideration after they are appealed to
6 LUBA"). The purpose of the 90-day deadline and the mandatory restarting of the
7 appeal are to ensure that an appeal does not remain suspended indefinitely. *See*
8 *State ex rel. Oregon Pipeline Co., LLC v. Clatsop County*, 253 Or App 138, 149,
9 288 P3d 1024 (2012), *rev den*, 353 Or 428 (2013) (explaining that OAR 661-010-
10 0021 "imposes safeguards against indefinite delay or obstruction in the
11 withdrawal and reconsideration process by authorizing LUBA to 'restart[] the
12 appeal' if the local government fails to file a decision on reconsideration within
13 the time limit established by LUBA"). The Court of Appeals has explained that

14 "The immediate purpose to be served from the time limit on
15 withdrawal and reconsideration is apparent in ORS 197.830(13)(b).
16 The provision for withdrawal and reconsideration opens the
17 opportunity for the local body to eliminate confusion, clarify
18 findings, change its decision, narrow disputed issues, or, in some
19 instances, eliminate the need for appeal, when that can be done
20 before the parties and LUBA have invested time and resources in
21 the case." *Columbia Riverkeeper*, 267 Or App at 593-94.

22 The purpose of the specification in ORS 197.830(13)(b) that the local
23 government "affirm, modify, or reverse its decision" is to ensure that the local
24 government reaches a fast and final decision on reconsideration. Again, OAR
25 661-010-0021(2) provides that "[i]f no decision on reconsideration is filed within

1 the time designated therefor, the Board *shall* issue an order restarting the appeal.”
2 (Emphasis added.)

3 In this appeal, the county withdrew the original hearing’s official’s
4 decision for reconsideration and has failed to file a timely decision on
5 reconsideration. Under OAR 661-010-0021(2), we must issue an order restarting
6 the appeal. Petitioner opposes restarting the appeal because petitioner desires that
7 the hearings official resolve petitioner’s procedural objections. Through that
8 process, petitioner aims to obtain from the county board of commissioners a
9 hearing and decision reconsidering the original hearing’s official’s decision.

10 The county asserts that “[r]ather than moving forward with the procedural
11 quagmire that is relatively certain to follow from the process set forth by the
12 Hearings Official, the County prefers to avoid the likely complications and delays
13 by requesting that LUBA restart the appeal.” County Motion to Restart Appeal

14 3. We conclude that the county’s position is consistent with both the requirements
15 of OAR 661-010-0021(2) and the purposes of ORS 197.830(13)(b). The
16 reconsideration process is intended to allow the local government to, in short
17 order, issue a clearer and potentially more defensible decision, or at least to
18 narrow disputed issues for our review. Those aims are not served by extending
19 the deadline for the county to issue a decision on reconsideration in this case.

20 The appeal is reactivated.

1 **RECORD**

2 In their motion to reactivate the appeal, the county states that the record is
3 in the process of being completed and should be able to be transmitted by April
4 10, 2025. County Motion to Restart Appeal 4. The record shall be transmitted to
5 the Board no later than April 24, 2025.

6 Dated this 3rd day of April 2025.

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H. M. Zamudio

11 Board Chair