

LAND USE  
BOARD OF APPEALS

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

DEC 29 11 32 AM '80

3	JOE JOHNSON and MARY JOHNSON,	)	
4	Petitioner,	)	LUBA NO. 80-087
5	vs.	)	FINAL OPINION
6	LINCOLN COUNTY,	)	AND ORDER
7	Respondent.	)	

8 Appeal from Lincoln County.

9 Kurt Carstens  
10 Litchfield, Macpherson,  
Carstens & Gillis  
11 423 North Coast Highway  
Newport, OR 97365

Frederick J. Ronnau  
Legal Counsel for Lincoln County  
Lincoln County Courthouse  
225 West Olive Street  
Newport, OR 97365

12 Bagg, Referee; Reynolds, Chief Referee; Cox, Referee  
13 participated in the decision.

14 Dismissed.

12/29/80

15 You are entitled to judicial review of this Order.  
16 Judicial review is governed by the provisions of Oregon Laws  
1979, ch 772, sec 6(a).

1 BAGG, Referee.

2 This matter is before the Board on motion of Lincoln County  
3 to dismiss the above entitled matter because the petition for  
4 review was not filed in the time allowed by LUBA Rule 7(A) and  
5 LUBA Rule 16(A)(2). A conference call was held to discuss the  
6 matter on December 10, 1980.

7 LUBA Rule 7(A) provides that the petition for review must  
8 be filed with the Board within 20 days after the date the  
9 record is received by the Board. The rule also provides that  
10 failure to file the petition within the time required "will  
11 result in dismissal of the appeal and forfeiture of the filing  
12 fee and deposit for costs to the governing body. The record in  
13 this case was received on August 15, 1980. An extension of  
14 time was made by the parties and granted by the Board giving  
15 petitioners until October 3 within which to file the Petition  
16 for Review. October 3 past and no communication was had with  
17 the parties until November 19 when a motion to dismiss was  
18 filed. On December 2, 1980, a petition for review was filed.

19 Petitioners object to the motion to dismiss on the ground  
20 that an understanding existed between petitioners and  
21 Respondent Lincoln County. The agreement provided respondent  
22 would allow the petitioners to appear before Lincoln County to  
23 propose amendments to the plan and obtain the county's decision  
24 on such amendments before the petition for review would be  
25 required. Petitioners also object on the ground that  
26 respondent has failed to comply with LUBA Rule 14(B) requiring

1 challenges to a failure of a procedural rule by an adverse  
2 party must be made within ten days of the moving party  
3 obtaining knowledge of such failures.

4 Respondent cites this Board to Hayes v. Yamhill County,  
5 LUBA 79-035 wherein the Board ruled a petition for review must  
6 be timely filed in order for the Board to retain jurisdiction  
7 in the case. The Board was also cited to Grant County v.  
8 Oregon Department of Fish and Wildlife, LUBA No. 80-073 wherein  
9 the Board held that the ten day requirement for filing a motion  
10 under Rule 14(B) does not apply to a motion to dismiss for a  
11 lack of jurisdiction. The 10-day requirement under Rule 14(B)  
12 is not applicable in this particular matter, and the Board will  
13 consider the motion as timely filed.

14 Respondent County agrees that an understanding did exist  
15 between the parties as to the time for filing the petition for  
16 review. Lincoln County apparently agreed that it would  
17 stipulate to an extension of time for substantive planning and  
18 zoning matters only. Any extension of time for alleged  
19 procedural irregularities was refused; and an understanding  
20 existed, according to the county, that procedural matters would  
21 not be raised. Upon that understanding the county withheld any  
22 motions to dismiss. We note that the parties apparently did  
23 not define among themselves their own understanding of what  
24 "substantive planning and zoning matters" and "procedural  
25 irregularities" were to mean.

26 / / /

1           What exists here, then, is an admitted agreement to allow  
2 an extension of time within which to file a petition for review  
3 and to forbear the making of any motion to dismiss upon certain  
4 conditions. The conditions were either not completely  
5 understood by the parties or were broken, and the Board is not  
6 in a position to know who broke the conditions. We have  
7 memoranda from the parties and an affidavit reciting facts  
8 which lead us to believe that some vague understanding existed,  
9 but we are not in a position to determine any fault or where  
10 responsibility for breach of the agreement, if one occurred,  
11 should lie. There is, regrettably, no written understanding  
12 between the parties.

13           LUBA Rule 16(A)(2) requires any stipulation consenting to  
14 an extension of time for filing a petition must be in writing  
15 and signed by all parties. With only silence followed by a  
16 motion to dismiss, later followed by assertions and  
17 counter-assertions regarding agreements, this Board cannot  
18 conclude with any certainty that a stipulation for extension of  
19 time existed that the Board could use to deny the motion to  
20 dismiss.

21           This matter is dismissed.  
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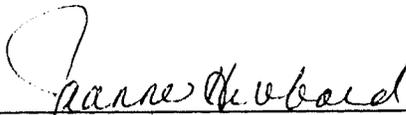
1 CERTIFICATE OF MAILING

2 I hereby certify that I served the foregoing Final Opinion  
3 and Order for LUBA No. 80-087, on December 29, 1980, by mailing  
4 to said parties or their attorney a true copy thereof contained  
in a sealed envelope with postage prepaid addressed to said  
parties or their attorney as follows:

5 Kurt Carstens  
6 Litchfield, Macpherson,  
Carstens & Gillis  
7 423 North Coast Highway  
Newport, OR 97365

Frederick J. Ronnau  
Legal Counsel for Lincoln County  
Lincoln County Courthouse  
225 West Olive Street  
Newport, OR 97365

8 Dated this 29th day of December, 1980.

9  
10   
11 Jeanne Hubbard  
Secretary to the Board