

LAND USE
BOARD OF APPEALS

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

DEC 19 10 04 AM '80

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

ALBERT O. BODDY,)
)
Petitioner,)
)
vs.)
)
DOUGLAS COUNTY,)
)
Respondent,)
)
and)
)
RICHARD H. CASWELL,)
)
Respondent-Applicant.)

LUBA No. 80-135
FINAL OPINION
AND ORDER
(ORDER OF DISMISSAL)

Appeal from Douglas County.

Albert O. Boddy, Tiller, filed the Petition for Review on his own behalf.

Richard H. Caswell, Medford, filed the brief on his own behalf.

COX, Referee; REYNOLDS, Chief Referee; BAGG, Referee; participated in this decision.

Dismissed 12/19/80

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

1 COX, Referee.

2 This matter is before the Board on Respondent's Motion for
3 Order of Default which we treat as a motion for dismissal. The
4 pertinent facts are as follows:

5 (1) The decision being contested appears to have been made
6 on September 10, 1980 by Respondent Douglas County. This Board
7 received what purports to be a Notice of Intent to Appeal on
8 October 8, 1980. That notice was defective and did not comply
9 with the rules of this Board. There was no certificate of
10 service upon people named in the Notice of Intent to Appeal.
11 In addition, the document did not carry a notice to anyone
12 desiring to participate as a party in the case that they needed
13 to file a Statement of Intent to Participate within fifteen
14 days of service of the notice. In addition, the Notice of
15 Intent to Appeal was unsigned.

16 (2) Subsequent to this Board's receipt of the document
17 entitled Notice of Intent to Appeal, we received what purported
18 to be a Petition for Review.

19 (3) On November 4, 1980, this Board sent back the first
20 Petition for Review identifying numerous errors in that
21 document. See Appendix "A."

22 (4) On November 5, 1980, this Board received from
23 Respondent Douglas County a copy of the record.

24 (5) On November 12, 1980, this Board received a letter
25 from the South Umpqua Planning Advisory Committee alleging that
26 it was a party to the proceeding below and had not received any

1 notice of intent to appeal. On November 13, 1980 a similar
2 letter was received from Jane Porter, who was named as an
3 interested party in paragraph II of the Notice of Intent to
4 Appeal, alleging she never received a copy of the notice of
5 intent to appeal.

6 (6) On November 24, 1980 this Board received what purports
7 to be a Petition for Review. The purported Petition for Review
8 was unsigned, and indications are that it was prepared by an
9 individual other than the petitioner. A search of the listings
10 of members of the Oregon State Bar indicates that the purported
11 author of the Petition for Review, one Yvonne Cardemil, is not
12 a member of the Oregon State Bar. In addition, the purported
13 Petition for Review did not contain a copy of the alleged
14 decision being appealed but only contained a copy of a hearings
15 officer's decision of July 29, 1980. According to the record,
16 that decision was appealed by petitioner to the Respondent
17 Douglas County Board of Commissioners, which on September 10,
18 1980 seems to have affirmed the hearings officer's decision.

19 (7) On November 26, 1980 this Board sent out a letter
20 which is attached as Appendix "B." That letter was sent out in
21 an effort to clarify the position of the people who had sent
22 letters and to notify them that some action was going on.

23 (8) On December 4, 1980 this Board received a Motion for
24 Order of Default from the applicant for the contested plan
25 amendment and zone change. That Motion for Order of Default is
26 attached as Appendix "C" of this order. In short, applicant

1 Caswell points out the failure of petitioner to serve the
2 notice of intent to appeal on the applicant; failure of
3 petitioner to follow the rules of this Board, etc.

4 (9) On December 15, 1980 this Board received respondent's
5 brief and renewed Motion for Default setting forth new
6 procedural errors within the petitioner's brief.

7 DECISION

8 Based on the above it is the Board's decision that
9 petitioner's challenge to the September 10, 1980 decision of
10 Respondent Douglas County Board of Commissioners is hereby
11 dismissed. Petitioner has failed to follow the rules of this
12 Board. In so doing, he has substantially harmed the rights of
13 the applicant and other interested parties. It is the policy
14 of this Board to be as flexible as possible with the
15 enforcement of its procedural rules. However, there comes a
16 point when a petitioner has so failed to comply with even the
17 spirit, let alone the letter of this Board's rules and Oregon
18 Laws 1979, ch 772, that dismissal is the only recourse left to
19 the Board. It is important to note that pursuant to ORS ch 9,
20 in order for a person to represent another before this Board
21 that person must be a member of the Oregon State Bar. The
22 material presented to this Board has apparently been prepared
23 by one Yvonne Cardemil who is not, as far as this Board can
24 determine, a member of the Oregon State Bar. The "Petition for
25 Review" is unsigned, and it appears to not have been prepared
26 or presented by petitioner inasmuch as a caption on page 12 of

1 the document entitled Petition for Review states that "The
2 author of this petition for review is: Yvonne Cardemil." Such
3 a document does not have status before this Board unless signed
4 by an attorney or by the petitioner himself, and prepared in
5 accordance with LUBA procedural rules. This Board has not
6 received a satisfactory Petition for Review within the required
7 twenty days from the date of the submission of the record.
8 Oregon Laws 1979, ch 772, sec 4(6).

9 . In addition, the notice of intent to appeal is defective as
10 set forth in item 1 above. As such, there was no sufficient
11 notice of intent to appeal filed with the Board within 30 days
12 of September 10, 1980. Oregon Laws 1979, ch 772, sec 4(4).

13 Dismissed.
14
15
16
17
18
19
20
21
22
23
24
25
26