

LAND USE
BOARD OF APPEALS

BEFORE THE LAND USE BOARD OF APPEALS

APR 10 3 39 PM '81

OF THE STATE OF OREGON

THE PORT OF PORTLAND,
Petitioner,
v.
CITY OF PORTLAND,
Respondent,
and
FIRST NATIONAL BANK OF OREGON
THOMAS J. WHITE and MICHAEL L.
McCUDDY, TRUSTEES OF THE J.
LEE McCUDDY TRUST,
Intervenor-Respondents)

LUBA NO. 81-020
FINAL OPINION
AND ORDER

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BAGG, Referee; REYNOLDS, Referee; COX, Referee;
participated in the decision.

DISMISSED 4/10/81

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 BAGG, Referee.

2 This matter is before the Board on motion of the City of
3 Portland for an order of dismissal. The City of Portland urges
4 the Board to dismiss this case on the ground and for the reason
5 that the Notice of Intent to Appeal was not timely filed. The
6 city says that the land use decision challenged became final on
7 or about October 16, 1980. The Notice of Intent to Appeal was
8 filed on February 18, 1981, clearly more than 30 days beyond
9 the date the decision became final.

10 Petitioner Port of Portland agrees that the matter should
11 be dismissed but on a different ground. The Port draws the
12 Board's attention to facts concerning the city's acts giving
13 rise to this appeal and argues that the acts were not land use
14 decisions within the meaning of Oregon Laws 1979, ch 772, sec
15 3. Petitioners would have the Board dismiss the appeal for
16 lack of subject matter jurisdiction and not for the reason that
17 the Notice of Intent to Appeal was filed late.

18 Intervenors First National Bank of Oregon, Thomas J. White
19 and Michael L. McCuddy, Trustees of the J. Lee McCuddy Trust,
20 urged the Board "for a decision dismissing the appeal on the
21 grounds that LUBA would have had jurisdiction but for the
22 untimely filing of the Notice." Intervenor-Respondent J. Lee
23 McCuddy Trust's Motion to Dismiss, page 5.

24 The Board understands all the parties agree that the Notice
25 of Intent to Appeal was not timely filed. Indeed, the first
26 paragraph of the Notice of Intent to Appeal alleges:

1 "Notice is hereby given that petitioner intends
2 to appeal that decision of respondent entitled 'An
3 Ordinance Granting a Revocable Permit to Lee J.
4 McCuddy Trust to make a temporary sewer connection to
the Gertz Schmeer Sanitary Sewer System, providing for
acceptance of conditions and declaring an emergency',
which became final on or about October 16, 1980."

5 The Land Use Board of Appeals received the above entitled
6 notice for filing on February 18, 1981. It is very clear on
7 the face of the Notice of Intent to Appeal that the notice was
8 not timely filed and must be dismissed.

9 We need not reach the question of whether or not the Notice
10 of Intent to Appeal describes a "land use decision." To
11 discuss that issue here would be to render an advisory
12 opinion. No controversy has been placed before us within the
13 30 day limit imposed in Oregon Laws 1979, ch 772, sec 3. We
14 have no power to render advisory opinions.

15 Now, therefore, the above entitled matter is dismissed.

16 Dismissed.