

APR 7 2 19 PM '87

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

CARL M. HALVORSON and LITTLE)
WHALE COVE HOMEOWNERS')
ASSOCIATION,)
Petitioners,)
vs.)
LINCOLN COUNTY,)
Respondent.)

LUBA No. 86-099
FINAL OPINION
AND ORDER OF DISMISSAL

Appeal from Lincoln County.

Garry P. McMurry, Portland, filed the petition for review and argued on behalf of petitioners.

Robert C. Shoemaker, Portland, filed a response brief and argued on behalf of Respondent Thomas McDonald. With him on the brief were Lindsay, Hart, Neil & Weigler.

No appearance by Lincoln County.

BAGG, Referee; DuBAY, Chief Referee; participated in the decision.

DISMISSED 04/07/87

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

1 Opinion by Bagg.

2 Respondent Lincoln County moves to dismiss this review
3 proceeding claiming the petition for review was filed five days
4 beyond the time provided for in OAR 661-10-030(1). This rule
5 requires the petition for review be filed within 21 days of
6 submittal of the record, and proceeds further that failure to
7 file the petition within that time results in dismissal. The
8 rule implements ORS 197.830(9)(10).

9 Petitioner responds that the intent of our rules is to
10 provide for speedy review of land use decisions. See OAR
11 661-10-005. While petitioner acknowledges the late filing,
12 petitioner claims this failure does not prevent the Board from
13 performing its function within the statutory time limit
14 (ORS.830(12) and causes no prejudice to any party. Petitioner
15 notes that the parties in this case have remained unchanged
16 through several review proceedings about the same property.
17 See Halvorson v. Lincoln County, 14 Or LUBA 26 (1985);
18 Halvorson v. Lincoln County, 82 Or App 302 (1986).

19 Our rule provides that a late filing results in dismissal
20 of the proceeding. The rule provides:

21 "(1) Filing and Service of Petition: The petition for
22 review shall be filed with the Board and served on the
23 governing body and all parties who have filed a Notice
24 of Intent to Participate or intervened within 21 days
25 after the date the record is received by the Board.

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1 Failure to file a petition for review within the time
2 required will result in dismissal of the appeal and
3 forfeiture of the filing fee and deposit for costs to
the governing body."

4 This rule carries out the legislative policy in ORS 197.805
5 that

6 "time is of the essence in reaching final decisions in
7 matters involving land use...."

8 Petitioners and respondents have particular times within
9 which to file their briefs, all based on the submittal of the
10 local government record. Failure to adhere to the schedule can
delay the final order.

11 While the rule may appear harsh, it does further the
12 legislature's purpose and should be followed.

13 This proceeding is dismissed.
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