

LAND USE
BOARD OF APPEALS

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

JUL 8 2 15 PM '88

3	DONALD BECKWITH, DONALD and)	
4	CHU THI VIET RANDLE,)	
)	
5	Petitioners,)	LUBA No. 88-027
)	
6	vs.)	FINAL OPINION
)	AND ORDER OF DISMISSAL
7	CITY OF PORTLAND,)	
)	
8	Respondent.)	

Appeal from City of Portland.

10	Donald Beckwith	Donald & Chu Thi Viet Randle
	P.O. Box 12364	#2 Caddy Court
	Portland, OR 97212	Novato, CA 94947
11	Petitioner	Petitioners

Peter A. Kasting
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 City of Portland
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 Portland, OR 97204

Attorney for Respondent

DISMISSED 07/08/88

HOLSTUN, Referee, BAGG, Chief Referee, SHERTON, Referee.

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

1 Holstun, Referee.

2 On May 19, 1988 LUBA received the record in this appeal.

3 As mandated by ORS 197.830(10), LUBA adopted a rule requiring

4 " * * * [t]he petition for review shall be filed with
5 the Board within 21 days after the date the record is
6 received by the Board * * *. Failure to file a
7 petition for review within the time required by this
8 section, and any extensions of that time under
9 OAR 661-10-045(7) or OAR 661-10-067(2), shall result
10 in dismissal of the appeal and forfeiture of the
11 filing fee and deposit for costs to the governing
12 body. * * * " OAR 661-10-030(1).

9
10 Thus, under OAR 661-10-030(1), the petition for review was
11 required to be filed within 21 days after May 19, 1988, or by
12 June 9, 1988.

13 On June 17, 1988, petitioner Beckwith filed a motion for
14 evidentiary hearing. In addition to complaining of numerous
15 improprieties in the local government proceeding, petitioner
16 Beckwith argues the record filed by the city is inadequate. He
17 further specifies he did not receive the record until May 27,
18 1988,¹ and delayed filing his motion for evidentiary hearing
19 for 21 days while he attempted, unsuccessfully, to resolve
20 record objections with the city attorney.

21 The city moves to dismiss, citing petitioners' failure to
22 file a petition for review within 21 days of the date LUBA
23 received the record, as required by OAR 661-10-030(1).

24 The filing of a timely motion for evidentiary hearing or
25 record objection will suspend the deadline for filing a
26 petition for review under OAR 661-10-030(1).

1 OAR 661-10-045(7); OAR 661-10-026(5). In addition, our rules
2 provide "the time limit for the filing of the petition for
3 review may be extended with the written consent of all
4 parties." OAR 661-10-067(2).

5 In this appeal, the time limit for filing the petition for
6 review was not extended by consent of the parties. Petitioner
7 Beckwith's filing of a motion for an evidentiary hearing and a
8 record objection would have extended the deadline for filing
9 the petition for review, had petitioner's motion and objection
10 been filed on or before June 9, 1988. Petitioner mistakenly
11 measures his time for filing a motion for evidentiary hearing
12 and record objection from the date he received the record.²

13 The legislative policy that underlies review proceedings
14 before LUBA is as follows:

15 "It is the policy of the Legislative Assembly that
16 time is of the essence in reaching final decisions in
17 matters involving land use and that those decisions be
18 made consistently with sound principles governing
19 judicial review. It is the intent of the legislative
20 assembly in enacting ORS 197.805 to 197.855 to
21 accomplish these objectives." OAR 197.805.

19

20 In our view, filing of the notice of intent to appeal and
21 petition for review are particularly crucial steps in complying
22 with the above-quoted legislative policy. The notice of intent
23 to appeal advises those participating in a land use proceeding
24 of the existence of an appeal to LUBA. The petition for review
25 identifies the issues in dispute. LUBA strictly adheres to the
26 time limits for filing notices of intent to appeal and

1 petitions for review. Port of Portland v. Portland, 3 Or LUBA
2 109 (1981) (notice of intent to appeal filed three days late
3 not timely); Johnson v. Clackamas County, 3 Or LUBA 241 (1981)
4 (where petition for review is filed eight days late, there was
5 no written stipulation extending the time for filing the
6 petition for review, and it was not clear whether there had
7 been an oral stipulation to extend the filing deadline, the
8 petition for review is not timely); Hoffman v. City of
9 Portland, 7 Or LUBA 213 (1983) (petition for review left
10 outside LUBA office after regular working hours on the day due
11 is not timely); Schreiner's Gardens v. Marion County, 8 Or
12 LUBA 261 (1983) (petitioner's attempt to file petition for
13 review after working hours on the day petition for review was
14 due not sufficient); Karlin v. City of Portland, 13 Or LUBA 21
15 (1984)(notice of intent to appeal timely filed with General
16 Services Department, but delivered to LUBA one day after
17 deadline, is not timely).

18 In amendments to our administrative rules, effective
19 January 1, 1988, we made it clear that while "technical
20 violations" of our rules may be overlooked under OAR 660-10-005
21 if the substantial rights of the parties are not affected,
22 failure to comply with the time limit for filing a notice of
23 intent to appeal or petition for review is not viewed by LUBA
24 as a "technical violation."

25 Because petitioners failed to file a petition for review
26 within the time required by OAR 661-10-030(1), this appeal is

1 dismissed.³

2 In addition, petitioners' failure to file a timely petition
3 for review results in forfeiture of the filing fee and deposit
4 for costs to the city. ORS 197.830(7); OAR 661-10-075(1)(c).

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FOOTNOTES

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The parties provide no explanation for the delay in receipt of the record by petitioner Beckwith. We note the certificate of service attached to the record states petitioners were served by mail on May 18, 1988. Petitioner Beckwith's address is given in the certificate as "P.O. Box 123464, Portland, Oregon 97212." Apparently petitioner Beckwith's correct address is P.O. Box 12364, Portland, Oregon 97212. LUBA's letter advising all parties that the record was received by LUBA on May 19, 1988 was sent to petitioner Beckwith's correct address on May 19, 1988.

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We note that under OAR 661-10-026(2) record objections must be filed within 10 days after the record is served on the objector. However, even if the 10 day time limit for filing record objections was measured from May 27, 1988 (the date petitioner received the record), rather than May 18, 1988 (the date of service), petitioner's record objection would have to be filed by June 6, 1988. As noted supra, petitioner's motion for evidentiary hearing and record objection were not filed until June 17, 1988.

There is no specific time limit for filing a motion for evidentiary hearing. OAR 661-10-045. However, neither a motion for evidentiary hearing nor a record objection can suspend a time limit that expired before the motion or record objection is filed.

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Because we dismiss this appeal, it is unnecessary to rule on petitioner Beckwith's motion requesting an evidentiary hearing or petitioner's complaints regarding the record.