

LAND USE
BOARD OF APPEALS

BEFORE THE LAND USE BOARD OF APPEALS Dec 5 8 02 AM '88
OF THE STATE OF OREGON

3	ELLA ANDERSON,)	
)	
4	Petitioner,)	
)	LUBA No. 88-086
5	vs.)	
)	FINAL OPINION
6	CITY OF PORTLAND,)	AND ORDER OF DISMISSAL
)	
7	Respondent.)	

Appeal from the City of Portland.

Edward J. Sullivan	Kathryn B. Imperati
Mitchell, Lang & Smith	Legal Counsel
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Portland, OR 97204	Portland, OR 97204

Attorney for Petitioner Attorney for Respondent

SHERTON, Referee; HOLSTUN, Chief Referee.

DISMISSED 12/05/88

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

1 Sheraton, Referee.

2 The petition for review in this case was due on or before
3 November 21, 1988. On November 21, 1988, we received a letter
4 from petitioner's attorney stating that a petition for review
5 would not be filed. The letter also said that petitioner
6 realized that failure to file a petition for review would lead
7 to dismissal of the case, forfeiture of the \$50 filing fee and
8 liability for up to petitioner's entire \$150 deposit as costs
9 for preparation of the record.

10 On November 29, 1988, respondent city filed a motion to
11 dismiss this appeal because petitioner failed to file a
12 petition for review as required by ORS 197.830(9) and (10) and
13 OAR 661-10-030. The motion further states the city seeks to
14 recover only \$36.68 as its cost of preparing the record and
15 does not seek award of the balance of petitioner's filing fee
16 and deposit for costs pursuant to ORS 197.830(7).

17 ORS 197.830(9) and (10) provide that petitions for review
18 shall be filed with the board as required by board rule.
19 OAR 661-10-030(1) states:

20 "The petition for review shall be filed with the Board
21 * * * within 21 days after the date the record is
22 received by the Board. Failure to file a petition for
23 review within the time required will result in
dismissal of the appeal and forfeiture of the filing
fee and deposit for costs to the governing body."

24 The record in this appeal was received by the Board on
25 October 31, 1988. No petition for review was filed with the
26 Board on or before the due date of November 21, 1988. In these

1 circumstances, the case must be dismissed and the provisions of
2 ORS 197.830(7) control our disposition of petitioner's filing
3 fee and deposit. Fisher v. Douglas County, LUBA No. 84-081
4 (Order on Costs, January 25, 1985); John's Landing Owners
5 Assoc. v. City of Portland, LUBA No. 87-057 (Order on Costs,
6 November 25, 1987); Portland Oil Service Co. v. City of
7 Beaverton, ___ Or LUBA ___ (LUBA No. 88-017, May 9, 1988).

8 ORS 197.830(7) provides:

9 "If a petition for review is not filed with the board
10 as required in subsections (8) and (9) of this
11 section, the filing fee and deposit shall be awarded
to the local government, special district or state
agency as cost of preparation of the record."

12 Accordingly, it is ordered that this appeal is dismissed
13 and the deposit for costs and filing fee are awarded to
14 respondent city.