



1 of June. How the counsel's resignation affected the  
2 preparation of the record is not explained in the motion or  
3 other materials before the Board.

4 The notice of intent to appeal was filed with this Board on  
5 May 17, 1983. LUBA Rule 6(B)(1)(a) provides the governing body  
6 shall transmit the record within 20 days after service of the  
7 notice of intent to appeal on the governing body. Oregon Laws  
8 1979, ch 772, sec 4(5), as amended by Oregon Laws 1981, ch 748,  
9 provides

10 "Within 20 days after service of the notice of intent  
11 to appeal, or within such further time as the Board  
12 may allow, a local government or special district  
13 governing body or state agency shall transmit to the  
14 Board the original or a certified copy of the entire  
15 record of the proceeding under review. By stipulation  
16 of all parties to the review proceeding, the record  
17 may be shortened. The Board may require or permit  
18 subsequent corrections to the record."

19 The Board will not summarily reverse the Polk County  
20 decision. The Board's controlling law as quoted above clearly  
21 gives the Board the authority to allow additional time for the  
22 filing of the record. Whether a timely request has been made  
23 for such extension of time is not called for in the law. Any  
24 requirement about extensions of time is contained in LUBA Rule  
25 16A. That rule does require that a motion for extension of  
26 time of any time limit established by Board rule "must be filed  
with the Board within the time required for performance of the  
act for which an extension of time is requested." There is an  
additional rule, however, which requires attention. LUBA Rule  
2 provides that the rules are "intended to provide for the

1 speediest practicable hearing and decision." The rules are to  
2 be interpreted

3 "to effectuate these policies and to promote justice.  
4 Technical violations of these rules which do not  
5 affect substantial rights or interests of parties or  
6 of the public shall not interfere with the review of a  
7 petition."

8 The Board fails to see how the petitioner has been  
9 prejudiced by the late filing. The Board's purpose is to  
10 review land use decisions on the record, and the Board believes  
11 little purpose is served by refusing to conduct such a  
12 proceeding simply because the county is a few days late in  
13 filing the record.

14 The motion to reverse the Polk County decision under review  
15 is denied, and the county's record will be considered by the  
16 Board in the course of this review proceeding.

17 B. Motion to Dismiss

18 As a second motion, petitioner moves to dismiss the notice  
19 of intent to participate filed by Vern Ratzlaff. The Board  
20 understands from the notice of intent to appeal that Mr.  
21 Ratzlaff is the applicant for the conditional use granted by  
22 the Polk County Board of Commissioners and appealed to this  
23 Board. Petitioner makes the motion on the ground that LUBA  
24 Rule 5A provides that a person who is identified in the notice  
25 of intent to appeal and who desires to participate in the  
26 proceeding before the Board must file a statement of intent to  
participate within 15 days of service of the notice of intent  
to appeal. A person so identified in the notice of intent to

1 appeal who does not file the statement may not later  
2 intervene. See LUBA Rule 5A. Petitioner argues the Board's  
3 decision in Brice v. Portland Metropolitan Area Boundary  
4 Commission, 2 Or LUBA 144 (1980) controls in this proceeding.  
5 In the Brice case, the city did not file the statement of  
6 intent to participate within the time allowed, and the city  
7 could not participate in the decision. Petitioner adds that he  
8 will be prejudiced by the participation of Ratzlaff because the  
9 petitioner will be required to respond to an additional brief.

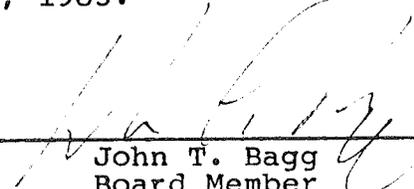
10 Mr. Ratzlaff has filed an affidavit stating that he has  
11 learned that Polk County will not file a brief in the matter  
12 but will leave it to Mr. Ratzlaff to protect his own  
13 interests. Mr. Ratzlaff learned of the county's decision on  
14 June 10, according to his affidavit. On that same date, a  
15 notice of intent to participate was prepared and filed.

16 The Board will not dismiss the notice of intent to  
17 participate filed by Mr. Ratzlaff. Under the circumstances  
18 arising in this case, the Board believes no purpose would be  
19 served in excluding the applicant from the proceeding. The  
20 applicant is the only person or entity actively defending the  
21 decision on review. The Board's rules are adopted to  
22 accomplish the Board's purpose to review land use decisions,  
23 and this purpose would be frustrated by the requested exclusion  
24 of Mr. Ratzlaff.

25 The motion to dismiss Vern Ratzlaff is denied.

26 Dated this 19th day of July, 1983.

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John T. Bagg  
Board Member