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

HILLSIDE NEIGHBORHOOD )  
ASSOCIATION, )  
 )  
Petitioner, )  
 )  
vs. )  
 )  
CITY OF PORTLAND, )  
 )  
Respondent, )  
 )  
and )  
 )  
FRANKLIN G. DRAKE and PRESTON )  
HIEFIELD, )  
 )  
Intervenors-Respondent. )

LUBA No. 91-050  
FINAL OPINION  
AND ORDER

Appeal from City of Portland.

Mark A. Peterson, Portland, filed a petition for review and represented petitioners.

Peter Kasting, Portland, represented respondent.

Stephen T. Janik and Richard Whitman, Portland, represented intervenors-respondent.

KELLINGTON, Chief Referee; HOLSTUN, Referee, SHERTON, Referee, participated in the decision.

DISMISSED 07/24/91

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

1 Kellington, Chief Referee.

2 Petitioner Hillside Neighborhood Association's petition  
3 for review was due on July 5, 1991. On July 9, 1991, the  
4 Board received petitioner's motion for an extension of time  
5 for filing the petition for review. While respondent City  
6 of Portland does not object to the motion, intervenors-  
7 respondent (intervenors) do object.

8 Intervenors request that we dismiss this appeal  
9 proceeding on the basis of OAR 661-10-030(1), which provides  
10 in part:

11 "Failure to file a [timely] petition for review \*  
12 \* \* shall result in dismissal of the appeal and  
13 forfeiture of the filing fee and deposit for costs  
14 to the governing body. \* \* \*"<sup>1</sup>

15 Petitioner argues it should be excused from filing a  
16 timely petition for review on the basis that its attorney  
17 was involved in an automobile collision on May 28, 1991.  
18 Petitioner further states that its attorney's condition  
19 worsened on June 10, 1991, and thereafter, he was involved  
20 in extensive physical therapy which took a great deal of his  
21 time. Finally, petitioner states that because its attorney  
22 was only able to work on a part-time basis on account of his  
23 physical injuries and physical therapy, he was unable to

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<sup>1</sup>The time for filing a petition for review may be extended where the parties timely file a written agreement to extend the time for filing the petition for review. OAR 661-10-067(2). However, intervenors do not consent to such an extension of time and, consequently, no such stipulated agreement for extension of time was filed.

1 complete the petition for review on time.

2       Petitioner does not allege that its attorney was  
3 physically unable to prepare the petition for review.  
4 Rather, petitioner contends that its attorney's injuries  
5 required much of his time to be devoted to physical therapy,  
6 and caused him to tire by the end of the work day.  
7 Petitioner argues that these limitations, coupled with the  
8 press of his other business, made its attorney simply unable  
9 to get the petition for review finished in time.

10       We do not believe petitioner presents adequate  
11 justification for ignoring our rule requiring dismissal of  
12 an appeal for failure to timely file the petition for  
13 review. Nearly an entire month elapsed from the time  
14 petitioner's attorney's condition worsened until the time  
15 the petition for review was due. Further, petitioner's  
16 attorney continued to work on legal matters, albeit on a  
17 part-time basis. We are aware of no reason why petitioner  
18 could not have sought the assistance of other counsel to  
19 ensure that a timely petition for review was filed in this  
20 appeal.

21       Accordingly, this appeal is dismissed. Petitioner's  
22 \$50 filing fee and \$150 deposit for costs are awarded to  
23 respondent.<sup>2</sup>

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<sup>2</sup>This was a consolidated proceeding. Because we dismiss this appeal, we bifurcate The Terraces Condominium Assoc. v. City of Portland, LUBA No. 91-048, from this proceeding.