

BEFORE THE LAND USE BOARD OF APPEALS

AUG 2 10 32 AM '83

OF THE STATE OF OREGON

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2
3 AZUCENA TRYGG,

4 Petitioner,

5 vs.

6 MARION COUNTY BOARD
OF COMMISSIONERS,

7 Respondent.

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)
)
) LUBA No. 83-053
)
) FINAL OPINION
) AND ORDER OF DISMISSAL
)
)
)

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9 Appeal from Marion County.

10 Azucena Trygg
11 5382 Sunnyview Rd. NE
 Salem, OR 97305
 Pro Se

 Robert C. Cannon
 Marion County Courthouse
 Salem, OR 97301
 Attorney for Respondent

12 BAGG, Board Member.

13
14 DISMISSED

08/02/83

15 You are entitled to judicial review of this Order.
16 Judicial review is governed by the provisions of Oregon Laws
 1979, ch 772, sec 6(a), as amended by Oregon Laws 1981, ch 748.

1 BAGG, Board Member.

2 This matter is before the Board on motion of Respondent
3 Marion County for an order dismissing this appeal. Marion
4 County moves for dismissal on the ground that 1979 Or Laws, Ch
5 772, Sec 4(6) provides that the petition for review "shall be
6 filed" within 20 days after the date of transmittal of the
7 record. Marion County states the date for filing the petition
8 has expired and urges the case be dismissed.

9 Petitioner filed a notice of intent to appeal on May 27,
10 1983. The Board advised Respondent Marion County that the
11 notice had been filed and that the record would be due 20 days
12 from the date of service of the notice of intent to appeal on
13 respondent. The record in this matter was received by the
14 Board on June 15, 1983. The file does not show when petitioner
15 received her copy of the record. Because the record was filed
16 on June 15, 1983, the petition for review was due July 5,
17 1983. See LUBA Rule 7(A)(1), OAR 661-10-030(1).

18 On July 5, 1983, a motion for an extension of time was
19 filed by "Gene Richardson, Pro Se, for and on behalf of Susan
20 Trygg, petitioner...." The file shows Gene Richardson to be
21 husband of Azucena Trygg. Mr. Richardson has advised the Board
22 his wife does not speak English well. The motion recites that
23 the petitioner does not have money to hire an attorney, that
24 petitioner's husband had been working on the petition "and had
25 it nearly completed for submission on July 5, 1983." The
26 motion goes on to state that petitioner's husband was required

1 to serve 30 days confinement on July 1, 1983. The motion
2 states that every effort would be made to complete the petition
3 before the end of that 30 day period.

4 On July 26, 1983, a second motion was filed. This motion
5 was made by Azucena Trygg, who signed the motion, "by Gene C.
6 Richard, Pro Se, Husband." The July 26 motion asked for an
7 extension of time to file the petition to August 15, 1983.
8 This motion was made for the reason that the Board had not made
9 a ruling on an earlier motion for waiver of filing fees. The
10 motion recited the maker "is of the opinion that the (20) day
11 requirement for submission for Petition for Review has been in
12 abeyance since May '26, 1983." The motion goes on to state the
13 petition "was virtually completed in rough draft and lacked
14 only some final editing and final typing in smooth form and
15 could have been submitted on July 5, 1983" had petitioner's
16 husband not been incarcerated.

17 Respondent Marion County filed a motion to dismiss on July
18 15, 1983. Marion County has not consented to an extension of
19 time, and the county has stated it will not consent to an
20 extension of time.

21 1979 Or Laws, Ch 772, Sec 4(6), as amended, states the
22 petition for review and the supporting brief "shall be filed"
23 with the Board within 20 days after the date of transmittal of
24 the record. This provision of Oregon Laws is repeated in LUBA
25 Rule 7(A):

26 "The petition for review shall be filed with the Board

1 and served on the governing body and all parties who
2 have filed a Notice of Intent to Participate or
3 intervened within 20 days after the date the record is
4 received by the Board. Failure to file a petition for
5 review within the time required will result in
6 dismissal of the appeal and forfeiture of the filing
7 fee and deposit for costs to the governing body."
8 LUBA Rule 7, OAR 661-10-030(1).

9 Board rules provide for extensions of time for the filing
10 of the petition for review.¹

11 "A motion which seeks to extend the time for filing
12 the petition for review or respondent's brief must be
13 accompanied by a written stipulation signed by all the
14 parties to the appeal consenting to the extension. A
15 written stipulation consenting to an extension of time
16 for filing respondent's brief must also contain a
17 provision consenting to an extension of the time
18 within which the Board is required to issue a final
19 order by an amount of time equal to the extension
20 stipulated by the parties." LUBA Rule 16 (A)(2), OAR
21 661-10-075(1)(b).

22 There is one additional rule which has some bearing on this
23 case. LUBA Rule 2 provides that the rules of the Board

24 "are intended to provide for the speediest practicable
25 hearing and decision in the review of land use
26 decisions while affording all interested persons
reasonable notice and opportunity to participate,
reasonable time to prepare and submit their cases, and
a full and fair hearing. The procedures established
in these rules seek to accomplish these objectives to
the maximum extent consistent with the time
limitations placed upon on the Board in Oregon Laws
1979, ch 772. These rules shall be interpreted to
effectuate these policies and to promote justice.
Technical violations of these rules which do not
affect substantial rights or interests of parties or
of the public shall not interfere with the review of
a petition." LUBA Rule 2, OAR 661-10-005.

27 The Board has consistently held that failure to file a
28 petition for review within the 20 days provided in 1979 Or

1 Laws, Ch 772, as amended, and LUBA Rule 7(A) will result in
2 dismissal of the appeal. Gordon v City of Beaverton, 52 Or
3 App, 937, 630 P2d 366 (1981), aff'd, 292 Or 228, 637 P2d 125
4 (1981); Elliott v Lane County, 6 Or LUBA 423 (1982). There
5 have been circumstances in which petitions for review have been
6 filed after Board working hours, but on the twentieth day.
7 Housing Development Corp of Washington Co v City of Hillsboro,
8 5 Or LUBA 122 (1982). Those circumstances have resulted in the
9 Board's acceptance of the petition for review within the time
10 limit provided in Oregon Laws and Board rule.² It is the
11 Board's view that it may interpret its rules to allow a filing
12 after normal working hours (providing the petitioner is
13 fortunate enough to find someone in Board offices) but still
14 within the 20 day period provided for in Oregon Laws and Board
15 rule. The Board does not believe it may interpret away its
16 rule requiring dismissal of a petition not filed within the 20
17 day period provided in 1979 Or Laws, Ch 772, as amended.³

18 The Board's rules do not account for circumstances which
19 might lead a court with equitable powers to allow for a late
20 filing. The Land Use Board of Appeals is an administrative
21 agency and must work within its enabling legislation and its
22 own rules. Gouge v David, et al, 185 Or 439, 202 P2d 489
23 (1949); Pacific N.W. Bell v Davis, 43 Or App 999, 608 P2d 547
24 (1979).

25 This matter is dismissed.

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FOOTNOTES

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4 After the Court of Appeals' decision in Hoffman v City of
5 Portland, 57 Or App 688, 646 P2d 49 (1982), rev in Hoffman v
6 City of Portland, et al, 294 Or 150 (1982), the Board passed a
7 temporary rule removing any provision for stipulations to
8 extensions of time to file a petition for review. The
9 temporary rule expired 180 days after its passage. The Board
10 rule allowing such extensions upon stipulation is now in force.

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12 The Board's hours are from 8:30 a.m. to 5:00 p.m., Monday
13 through Friday, exclusive of legal holidays. LUBA Rule 16(J),
14 OAR 661-10-075(10).

15 3
16 The exception, as noted earlier, is when the late filing is
17 agreed to by the parties. This agreement is provided for in
18 Rule 16(A)(2), OAR 661-10-075(1)(b).