

FILED
AUG 20 1981
NORMA PAULUS
OF STATE

CERTIFICATE AND ORDER
for
FILING ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of rule(s) adopted by the _____

Land Use Board of Appeals on August, 1981
(Agency) (Date)

to become effective on filing
(Date)

The within matter having come before the Land Use Board of Appeals after
(Agency)

all procedures having been in the required form and conducted in accordance with applicable statutes and rules and being fully advised in the premises:

NOW THEREFORE, IT IS HEREBY ORDERED THAT the following rule(s) be adopted: Perm. or Temp.
(List Rule Number(s) or Rule Title on Appropriate Lines Below)

Adopted:
(New Rules) _____

Amended:
(Existing Rules) Amendment of LUBA Rule 16(A) 10-075 (1) @ 161

Suspended:
(Temporary Only) _____

Repealed:
(Existing Rules) _____

as Administrative Rules of the Land Use Board of Appeals
(Agency)

DATED this 17th day of August, 19 81

By: Michael D. Reynolds
(Authorized Signer)
Title: Chief Hearings Referee

Statutory Authority: Oregon Laws 1979, ch 772, sec 2(a)(4) and Oregon Laws 1979, ch 772, sec 4(6).

Subject Matter: Amendment of Rules of Procedure

Statement of Need Attached: Fiscal Impact Attached:

For Further Information Contact: Michael D. Reynolds Phone: 373-1265

BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

In the Matter of an Amendment)
to Land Use Board of Appeals) STATEMENT OF NEED FOR
of the State of Oregon Rules) EMERGENCY OF LUBA RULE 16(A)
of Procedures No. 16(A))

I. FINDINGS

Existing Board Rule 16(A) provides that the time for filing a petition for review may be extended if accompanied by a written stipulation signed by all parties to the appeal consenting to the extension. The Court of Appeals of the State of Oregon in Wallace E. Gordon and Mary E. Gordon v. City of Beaverton, ____ Or App ____, Slip Opinion of June 29, 1981, implied that the Land Use Board of Appeals is without authority to waive or extend the filing time specified for the petition for review in Oregon Laws 1979, ch 772, sec 4(6). The Board has previously acted upon stipulations calling for an extension of time to file petitions for review, and the Board continues to receive such stipulations. Without immediate action to amend Rule 16(A) to delete all reference to extensions of time for the filing of the petition for review, parties to appeals before the Land Use Board of Appeals may be encouraged to request such stipulations with the full expectation of receiving such stipulations pursuant to past Board practice. As a result, parties relying on former Rule 16(A) may have their petitions dismissed by LUBA or later on appeal by an appellate body in apparent contravention of the existing Rule 16(A). Rule 16(A) must be amended immediately so as to prevent

misleading parties to appeals before the Land Use Board of Appeals.

II. LEGAL AUTHORITY

The Board relies on Oregon Laws 1979, ch 772, sec 4(6), providing for the time in which a petition for review must be filed in adopting this rule. The Board also relies on Oregon Laws 1979, ch 772, sec 2(a)(4) as authority to adopt and amend Rules of Procedure and ORS 183.335(5) for authority to amend a rule of procedure without prior notice or hearing.

III. NEED FOR AMENDMENT

A new Rule 16 is needed to correct the present and apparently unenforceable Rule 16(A). By amending Rule 16(A) to delete all reference to extensions of time for the filing of the Petition for Review, Rule 16(A) will no longer mislead parties to appeals before the Land use Board of Appeals into believing such extensions of time are possible.


IV. PRINCIPLE AUTHORITY RELIED UPON

The principal documents relied upon in this rule amendment are the Rules of Procedures of the Land Use Board of Appeals on file in the offices of the Secretary of State and the Land Use Board of Appeals, and the case of Gordon v. City of Beaverton, ___ Or App ___, Slip Opinion June 29, 1981.

V. FISCAL IMPACT

The amendment of Rule 16(A) will result in no fiscal impact or any person or entity whatsoever.

Dated this 17th day of August, 1981.


Michael D. Reynolds
Chief Hearings Referee

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

In the Matter of an Amendment)
to Land Use Board of Appeals) AMENDMENT OF RULE 16(A)
of the State of Oregon Rules)
of Procedures No. 16(A))

Rule 16(A) of the Land Use Board of Appeals is amended as set forth below with new material underlined and deleted material in brackets:

(A) Extension of Time

(1) Except as provided in subsection (2) of this section, any time deadline established by these rules for the filing of documents with the Board, other than the Notice of Intent to Appeal and the Petition for Review, may be extended by the Board upon motion of the party seeking the extension. The motion shall state the reasons for the granting of the extension and must be filed with the Board within the time required for performance of the act for which an extension of time is requested.

(2) [A motion which seeks to extend the time for filing the petition for review or respondent's brief must be accompanied by a written stipulation signed by all the parties to the appeal consenting to the extension.] A written stipulation consenting to an extension of time for filing respondent's brief must also contain a provision consenting to an extension of the time within which the Board is required to issue a final order by an amount of time equal to the extension stipulated by the parties.

Dated this 17th day of August, 1981.


Michael D. Reynolds
Chief Hearings Referee