

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

3
4 JOANNE HAYES,)
5 Petitioner,)
6 vs.)
7 YAMHILL COUNTY,)
8 Respondents.)

LUBA No. 79-035
OPINION AND ORDER
OF DISMISSAL

9
10 Respondents Yamhill County and James and Doris Sittel have
11 moved the Board for an order dismissing the above captioned appeal
12 for the reason that the Petition for Review was not filed with the
13 Board within twenty days after the date of transmittal of the record
14 as required by Oregon Laws 1979, Chapter 772, Section 4, Subsection 6.

15 The record in this matter reveals that on January 16, 1980, the
16 Board received the record in this appeal from Respondent Yamhill County.
17 The parties were notified by letter dated January 17, 1980, that the
18 record had been received on January 16, 1980, and that the Petition for
19 Review was "due twenty days after receipt of the record." The Petition
20 for Review was received by the Board on February 7, 1980, twenty-two
21 days after the date of transmittal of the record to the Board.

22 Petitioner argues that having deposited the Petition for Review
23 in the mail on the twentieth day, that being February 5, 1980, Petitioner
24 complied with Oregon Laws 1979, Chapter 772, Section 4, Subsection 6
25 which requires:

26 ///// .

1 "Within twenty days after the
2 date of the transmittal of the
3 record, a Petition for Review
4 of the land use decision and
5 supporting brief shall be filed
6 with the Board.***"

7 Alternatively, Petitioner argues that if "filed with the Board" does
8 not mean deposited in the mail then the violation in this case is a
9 technical violation and the Board should invoke Section 2 of its
10 Procedural Rules which provides, in pertinent part, as follows:

11 "***Technical violations of these
12 rules which do not affect sub-
13 stantial rights or interests of
14 parties or of the public shall
15 not interfere with the review of
16 a petition.***"

17 Petitioner is in error in asserting that "filed with the Board"
18 means the same as "deposited in the mail." There is no basis for such
19 a construction of the term "filed with the Board" in the statute or in
20 the Board's Procedural Rules. The Board is bound by the plain and
21 ordinary meaning of words used in statutes. As used in the context
22 of judicial proceedings, the term "file" means "to place among official
23 records as prescribed by law." See Webster's New Collegiate Dictionary,
24 8th Edition, Page 424. The Board has no discretion to deviate from the
25 plain and ordinary meaning of the term.


26 The requirement that the Petition for Review be filed within twenty
27 days of the date the record is transmitted to the Board is contained in
28 Oregon Laws 1979, Chapter 772, Section 4, Subsection 6. In Section 1 of
29 Chapter .772, the Legislature made it clear that time was of the essence

1 in the review of land use decisions. Failure to file a Petition for
2 Review within the time required is not, in light of the language in
3 Section 1 of Chapter 772, a "technical violation" which the Board may
4 ignore under Section 2 of the Board's Procedural Rules. Moreover, the
5 violation is not solely a violation of the Board's Procedural Rules,
6 but is a statutory violation as well. Thus, the Board could not in-
7 voke Section 2 of its Procedural Rules in any event.

8 The requirement that the Petition for Review be filed with the
9 Board within twenty days is jurisdictional. Whereas the Notice of
10 Intent to Appeal must be filed with the Board within thirty days of
11 the date the land use decision became final in order for the Board to
12 first acquire jurisdiction over an appeal, in order for the Board to
13 retain that jurisdiction the Petition for Review must be filed within
14 twenty days of the date the record is transmitted to the Board. Because
15 this was not accomplished in this case, the Board does not have juris-
16 diction over this appeal.

17 For the foregoing reasons, it is hereby ordered that appeal
18 79-035 is hereby dismissed. It is further ordered that Respondent
19 Yamhill County be awarded the filing fee and deposit for costs in
20 the amount of \$200 as provided in Oregon Laws 1979, Chapter 772,
21 Section 4, Subsection 6, and the Board's Procedural Rules, Section 7.

22 Dated this 21st day of February, 1980.

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25 
26 Michael D. Reynolds
Chief Hearings Referee