

LAND USE  
BOARD OF APPEALS

BEFORE THE LAND USE BOARD OF APPEALS ~~DEC 28 10 46 AM '80~~

OF THE STATE OF OREGON

RICHARD STEVENS and DUANE SMITH)

Petitioners, )

vs. )

CITY OF ASHLAND and RICHARD )  
THORNTON and JAMES GREATHOUSE, )

Respondents. )

LUBA No. 80-136

FINAL OPINION  
AND ORDER

Appeal from City of Ashland.

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Bagg, Referee; Reynolds, Chief Referee; Cox, Referee;  
participated in the decision.

Dismissed.

12/29/80

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

1 BAGG, Referee.

2 This matter is before the Board on motion of Richard  
3 Thornton and James Greathouse to dismiss the appeal for the  
4 reason that the petition was not timely filed. The record in  
5 this case was filed on November 7, 1980, and the petition was  
6 due on November 28, 1980. The Board received the petition on  
7 December 1, three days after the due date. LUBA Rule 7A  
8 requires the petition for review to be filed within 20 days  
9 after the date the record is received by the Board. Board Rule  
10 7(A) provides that failure to file the petition within the time  
11 allowed will result in dismissal.

12 The parties submitted memoranda and a conference call was  
13 held on December 12, 1980. Petitioners were represented by  
14 Ronald K. Cue, Respondents Richard Thornton and James  
15 Greathouse by Allen G. Drescher and Respondent City of Ashland  
16 by Mike Jewett.

17 Respondents Thornton and Greathouse point to Board Rules  
18 clearly requiring a timely filing of the petition, and urge the  
19 Board to dismiss the appeal. Petitioners Stevens and Smith  
20 suggest the case should be treated similarly to cases wherein a  
21 party to an appellate proceeding fails to file a brief on  
22 time. Under petitioner's view, the filing of the notice of  
23 intent to appeal is jurisdictional and may not be waived, but  
24 the filing of the petition is not jurisdictional, and the Board  
25 is free to allow a late filing if circumstances warrant. In  
26 this case, there is an extenuating circumstance in that the

1 Board received no mail on November 28. Board offices were  
2 open, but for some unknown reason, the employes of the postal  
3 service did not deliver mail.

4 Respondents say the filing of the petition is unlike the  
5 filing of a brief. Board rules make timely filing of the  
6 petition a requirement and clearly provide that the case will  
7 be dismissed if a timely filing is not made. The only possible  
8 leeway granted to a late petitioner is under Rule 3(I)  
9 providing service shall be considered to have been timely made  
10 where a mailing has occurred three days in advance of the date  
11 service is due. Mailing of the petition in this case occurred  
12 on November 26, two days prior to the date due.

13 Oregon Laws 1979, ch 772, sec 4(6) requires the petition  
14 for review to be filed with the Board within 20 days after the  
15 date of transmittal of the record. The Board has consistently  
16 held that a timely filing of the petition is required for the  
17 Board to retain jurisdiction of the appeal. Hayes v. Yamhill  
18 County, LUBA No. 79-035; Gordon v. Beaverton, LUBA No. 80-078.  
19 Without a mailing under Rule 3(I) or written stipulation of the  
20 parties as required by LUBA Rule 16(A)(2), the Board is without  
21 power to continue the proceeding in the face of a motion to  
22 dismiss.

23 This case is dismissed.  
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