

LAND USE
BOARD OF APPEALS

Jul 22 3 29 PM '81

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

JESSE JOHNSON and CHARLES FOX,)

Petitioners,)

v.)

THE BOARD OF COUNTY)
COMMISSIONERS OF CLACKAMAS)
COUNTY, STATE OF OREGON and)
CAROLE YATES,)

Respondents.)

LUBA NO. 81-061

FINAL OPINION
AND ORDER

Appeal from Clackamas County.

Edward D. Latourette, Oregon City, attorney for petitioners.

Cynthia Phillips, Oregon City, attorney for Clackamas County

Carole Yates, Clackamas, participant pro se.

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

Dismissed.

7/ 22 /81

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 the motion of
3 Participant Carole Yates. Ms. Yates moves to dismiss this
4 appeal on the ground that the petitioners failed to file a
5 petition for review within 20 days of the receipt of the record
6 pursuant to LUBA Rule 7(A).

7 The Board received the county's record on May 22, 1981. On
8 May 26, the Board advised the parties of receipt of the record
9 and indicated that the petition for review "is due 20 days
10 after receipt of the record." The due date for receipt of the
11 Petition for Review is governed by Oregon Laws 1979, ch 772,
12 sec 4(6).

13 "(6) Within 20 days after the date of
14 transmittal of the record, a petition for review of
15 the land use decision and supporting brief shall be
16 filed with the board. The petition shall include a
17 copy of the decision sought to be reviewed and shall
18 state:

19 "(a) The facts that establish that the petitioner has
20 standing.

21 "(b) The date of the decision.

22 "(c) The issues the petitioner seeks to have reviewed."

23 Under these circumstances, the due date for the petition for
24 review was June 11, 1981. The petition for review was not
25 received until June 19, 1981.

26 On June 15, 1981, Scott A. Fulton, an attorney purporting
to represent petitioners, contacted the Board and requested an
extension of time within which to file the petition. Mr.
Fulton was advised that pursuant to LUBA Rule 16(A)(2), the

1 Board may not extend the time for filing the petition for
2 review unless a motion is filed "accompanied by a written
3 stipulation signed by all the parties to the appeal consenting
4 to the extension." Mr. Fulton later advised the Board that he
5 had orally obtained an agreement from all of the parties to
6 extend the time for the filing of the petition for review until
7 Friday, June 19.

8 On June 17, 1981, the Board received a "Motion for Relief"
9 filed by Edward D. Latourette, attorney for petitioners. Mr.
10 Latourette included an affidavit in which he related that Mr.
11 Fulton had resigned from his office and had not performed the
12 work he had been assigned to do by Mr. Latourette on this
13 particular appeal. Mr. Latourette attached the affidavit in
14 support of his motion for relief asking for time, until July 7,
15 1981, to file the petition for review.

16 Because of receipt of that letter, the Board contacted the
17 parties by telephone conference call on June 18 and June 22.
18 At those telephone conference calls, the Board was advised by
19 Ms. Yates that though she did agree to an extension of time for
20 Mr. Fulton to file a petition for review to Friday, June 19,
21 she was unaware that Clackamas County had apparently not
22 clearly given a similar extension of time. Ms. Yates related,
23 in essence, that she was led to believe that Clackamas County
24 had given an extension of time when, as she understood it,
25 Clackamas County had not done so. It was only because of her
26 understanding of Clackamas County's agreement to an extension

1 that she made a similar agreement.

2 Cynthia Phillips, Deputy County Counsel for Clackamas
3 County, advised that the county had taken a neutral position on
4 an extension of time, but the county had not clearly granted an
5 extension or refused to grant one.

6 At the second conference call on June 22, 1981, additional
7 information was received from Stephen Janik, Attorney at Law.
8 Mr. Janik said that he had been contacted by Mr. Fulton asking
9 that Mr. Janik represent Mr. Fulton in asking for an extension
10 of time within which to file the petition for review and for
11 assistance with the petition. Mr. Janik contacted the county
12 counsel's office to request the extension but was unable to
13 reach agreement. Only two commissioners were present and they
14 could not agree on the request. The Commissioner opposing the
15 extension was later convinced by Mr. Janik to not oppose an
16 extension. The result, then, was that the two county
17 commissioners took the position that the county will not oppose
18 an extension of time. Ms. Phillips of the County Counsel's
19 office characterizes the County Commission's position as
20 "neutral."

21 Ms. Yates says that a written stipulation pursuant to Board
22 rules is necessary, and as no such stipulation has been made,
23 the Board lacks jurisdiction to hear the appeal.

24 As the Board understands the facts, the Board must agree
25 with the participant. The Board, through its rules, has made
26 allowance for the parties to agree to extend the Board's

1 jurisdiction, but a written stipulation of the parties is
2 necessary if the Board is to continue to act.¹ As no written
3 stipulation has been made by the parties, the Board lacks
4 jurisdiction to continue with the appeal.² See Stevens v.
5 Ashland, _____ Or LUBA _____ (LUBA No. 80-136, 1980).

6 This appeal is dismissed.

7 Petitioners' deposit for costs and filing fee will be
8 forfeited to Clackamas County.

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FOOTNOTES

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We question the continued validity of this rule in light of
Gordon v. Beaverton, _____ Or LUBA _____ (LUBA No. 80-078,
1980).

2
We add that the facts as we understand them do not clearly
show an oral stipulation to have been made by all the parties.
There is sufficient doubt as to the existence even of an oral
stipulation that the Board does not reach the question of
whether an oral stipulation would satisfy Board rules and the
statute regarding timeliness of the filing of a petition for
review.