

LAND USE  
BOARD OF APPEALS

BEFORE THE LAND USE BOARD OF APPEALS

Jan 25 11 17 AM '83

OF THE STATE OF OREGON

LORI MASTRANTONIO-MEUSER, )

Petitioner, )

v. )

MULTNOMAH COUNTY, )

Respondent. )

and )

RON TONKIN CHEVROLET-HONDA )  
COMPANY, )

Applicant/Participant.)

Appeal from Multnomah County

James Hunt Miller  
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Edward C. Tonkin  
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Cox, Board Member; Bagg, Board Member; participated in the decision.

Dismissed

1/25/83

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), as amended by Oregon Laws 1981, ch 748.

1 COX, Board Member.

2 This matter is before the Board on Applicant/Participant  
3 Ron Tonkin's motion to dismiss for failure to timely file the  
4 petition for review. Applicant/Participant argues that the  
5 record in this case was settled effective December 10, 1982 but  
6 petitioner did not file her petition for review until January  
7 3, 1983, more than 20 days after the date of transmittal of the  
8 record. Citing Oregon Laws 1979, ch 772, Section 4(6), as  
9 amended by Oregon Laws 1981, ch 748, and LUBA Procedural Rule  
10 7(A), Applicant/Participant and Respondent argue that this  
11 Board should dismiss petitioner's petition for review and,  
12 therefore, this case.

13 FACTS

14 Petitioner filed her notice of intent to appeal by and  
15 through her attorney on November 8, 1982. Petitioner then  
16 stipulated to a motion by Chief Assistant County Counsel for  
17 Multnomah County requesting that the deadline for filing the  
18 record in the case be extended from November 25 until December  
19 10, 1982.

20 On December 10, 1982, this Board received the record and  
21 issued a letter indicating such to the parties. In that  
22 letter, it was stated

23 "We are in receipt of the record transmittal for  
24 the above captioned appeal. We will refer to the  
25 Board's Procedural Rules for the calculation of the  
briefing schedule.

26 "The petition for review is due twenty days after  
receipt of the record. The respondent's brief is due

1        forty days after receipt of the record. The record  
2        was received on December 10, 1982."

3        On December 20, we received from the county what it  
4        identified as a "Supplemental Return of the Record." On that  
5        same day, an Administrative Assistant to this Board called the  
6        attorney for petitioner as well as attorney for respondent and  
7        asked whether they understood the supplemental record to have  
8        changed the due date for the petition for review. Notes in  
9        this Board's file indicate that attorney for petitioner  
10       responded that he had not given it much thought, but wouldn't  
11       mind extra time [to submit his petition for review]. Attorney  
12       for Respondent Multnomah County indicated his feeling was the  
13       materials sent on the 20th were merely an addition to the  
14       transcript and not vital to preparation of the petition for  
15       review. He added that he would not mind giving petitioner a  
16       couple of extra days to submit his petition, but could not  
17       speak for Applicant/Participant Ron Tonkin. The Administrative  
18       Assistant to LUBA then again called petitioner's attorney and  
19       told him that unless he got a stipulation from Multnomah County  
20       and Applicant/Participant, that this Board would compute the  
21       petition for review as being due 20 days from the date the  
22       original record was filed with this Board (December 2, 1982).  
23       LUBA records do not reveal that any such stipulation was ever  
24       received by this Board.

25        On January 3, 1982, at 4:27 p.m. the Board received a  
26        document purported to be the petition for review. Attached to

1 that petition for review was a certificate of service  
2 originally indicating that on December 31, 1982, petitioner had  
3 served the documents by personal delivery on attorneys for  
4 respondent and applicant/participant. The date December 31,  
5 1982 had been crossed out and written above was the date  
6 January 3, 1983. Included in the January 3 submittal was a  
7 "Letter of Transmittal." In that letter petitioner states:

8 "On December 10, 1982, LUBA received most of the  
9 record in this case and set that date for the  
10 beginning of the twenty-day limitation for receipt of  
11 Petition of Review. On December 17, 1982, respondent  
12 mailed additional and material portions of the record  
13 to LUBA and petitioner.

14 "Petitioner submits that the twenty-day period should  
15 be measured from a date after December 17, 1982. The  
16 date of record should be the date of transmittal of  
17 all required portions of the record."

#### 18 DECISION

19 Applicant/Participant's motion to dismiss is granted. It  
20 is mandatory that this Board receive the petition for review  
21 within 20 days of the date the record has been received by this  
22 Board. If the record is somehow incomplete or inaccurate so as  
23 to hinder Petitioner's ability to develop her petition for  
24 review or our review of the local land use decision "on the  
25 record," then it is incumbent upon the concerned party to  
26 object to the record or submit a stipulated extension of time  
to submit the petition for review. Neither option was chosen  
by petitioner. Absent such objection or stipulation,  
petitioner was obliged to follow the provisions of Oregon Laws  
1979, ch 772, as amended by Oregon Laws 1981, ch 748, and our

1 Rules of Procedure and file the petition within 20 days of the  
2 filing of the record. Petitioner stipulated to and was aware  
3 of the record receipt date of December 10, 1982. It was not  
4 until January 3, 1983 when petitioner attempted to file her  
5 petition for review that this Board was made aware that  
6 petitioner was not willing to accept the record filing date of  
7 December 10, 1983. By that point, the 20 days had already  
8 run.

9 There are institutional and practical reasons for  
10 dismissing the present appeal and embracing a strict filing  
11 rule mandated by the statutes establishing this Board. Unless  
12 LUBA's filing deadlines are enforced, there will be virtually  
13 no principled way to limit or contain the land use appeal  
14 process. Land use litigation, like all other civil litigation,  
15 must have a definite beginning and end. Rules which structure  
16 judicial review should be fair and they should be fairly  
17 enforced. In the present case there is no justification for  
18 disregarding the filing deadline for the petition. Although a  
19 supplemental return of the record was made by respondent, that  
20 supplemental return was in no way formally contested by  
21 petitioner. Given the time frames this Board and the parties  
22 are required to adhere to, we find that to allow an  
23 unstipulated to late filing of a petition for review would be  
24 inconsistent with the legislature's announced purpose for  
25 establishing LUBA i.e. "time is of the essence in reaching  
26 final decisions in matters involving land use." Oregon Laws

1 1979 ch 772, sec 1(a), as amended by Oregon Laws 1981, ch 748.

2 Hoffman v. City of Portland, 294 Or 150, \_\_\_ P2d \_\_\_ (1982);

3 Gordon v. City of Beaverton, 292 Or 228, 637 P2d 125 (1981).

4 Based on the foregoing, the appeal is dismissed.

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