

1 Opinion by Bagg.

2 This matter is before the Board on motion of the City of
3 Portland. The city asks us to dismiss this review proceeding
4 on the ground that the Notice of Intent to Appeal was not filed
5 within the 21-day period prescribed by ORS 197.830(7) and OAR
6 661-10-015(1).¹

7 The decision on appeal became final on August 27, 1984.
8 The 21st and last day to file a notice of intent to appeal the
9 city council's decision was September 17, 1984. Petitioner
10 mailed the Notice of Intent to Appeal by certified mail return
11 receipt requested on September 14, 1984, and it was received by
12 the State of Oregon, Department of General Services in Salem on
13 September 17, 1984. For some reason, the Notice was not
14 delivered to LUBA offices until September 18, 1984. Petitioner
15 cites Hoffman v. City of Portland, 294 Or 150, 654 P2d 1106
16 (1982); Gordon v. City of Beaverton, 292 Or 228, 637 P2d 125
17 (1981); and Hoffman v. City of Portland, 7 Or LUBA 213, 214
18 (1983) in support of its argument that because the Notice was
19 not delivered to the offices of the Land Use Board of Appeals
20 and filed there on the 21st day after the decision became
21 final, the proceeding must be dismissed.²

22 Petitioner claims the Department of General Services is an
23 agent of the Land Use Board of Appeals because both agencies
24 are part of the state. Petitioner argues

25 "The Land Use Board of Appeals, as part of the State
26 of Oregon, decides which of its agents will receive
its mail. If that person happened to work in the

1 Board's office, no one would question that filing
2 would be complete on delivery. The filing required in
3 ORS 197.830(7) must have been completed by receipt by
4 the General Services Department." Memorandum in
5 Opposition to Motion to Dismiss, p. 2.

6 We understand petitioner to argue that because the General
7 Services Department, and not the United States Postal Service,
8 makes actual delivery of mail to Board offices, that the
9 General Services Department is an agent of this Board.

10 We have held that we do not believe a filing has occurred
11 until the document has been placed in our records.

12 "We don't [sic] believe the matter is filed within the
13 meaning of our enabling statute until such time as it
14 is placed in the official records of the Board. It is
15 not so placed until it is accepted for that purpose by
16 a board member or any employee of the Board."
17 Hoffman, supra, 7 Or LUBA at 217-18.³

18 As respondent notes, there is nothing in our enabling
19 statute or our rules indicating that the General Services
20 Department is considered a member, employee or agent of this
21 Board. Further, we are cited to no other statute or rule
22 creating such a relationship.

23 Also, we reject petitioner's claim that petitioner "can go
24 no further than delivery" to the General Services Department in
25 order to perfect filing. As respondent notes:

26 "A petitioner who wishes to timely file his or her
notice can take those steps necessary to assure the
notice is actually delivered to and received by a
member or employee of the Board prior to expiration of
the 21st day. These steps include mailing the notice
sufficiently in advance to insure it is actually
delivered to and received by the Board within the 21
day time period or personally delivering of the notice

1 to the Board prior to the expiration of the 21st day.
2 Neither step was taken in this case." Reply
Memorandum in Support of Motion to Dismiss, p. 3.

3 Because the Notice of Intent to Appeal was not filed with
4 the Board on or before the 21st day after the city council
5 decision became final, this case must be dismissed.

6 Dismissed.

FOOTNOTES

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3 ¹

ORS 197.830(7) states:

4 "(7) A notice of intent to appeal a land use decision
5 shall be filed not later than 21 days after the
6 date the decision sought to be reviewed becomes
7 final. Copies of the notice shall be served upon
8 the local government, special district or state
9 agency and the applicant of record, if any, in
10 the local government, special district or state
11 agency proceeding. The notice shall be served
12 and filed in the form and manner prescribed by
13 rule of the board and shall be accompanied by a
14 filing fee of \$50 and a deposit for costs to be
15 established by the board. If a petition for
16 review is not filed with the board as required in
17 subsections (8) and (9) of this section, the
18 filing fee and deposit shall be awarded to the
19 local government, special district or state
20 agency as cost of preparation of the record."

OAR 661-10-015(1) states:

14 "Filing of Notice: The Notice must be delivered to
15 and received by the Board for filing on or before the
16 21st day after the date the decision sought to be
17 reviewed becomes final. A Notice received after that
18 day will not be timely filed, and the appeal will be
19 dismissed. The Notice must be served on the governing
20 body, the governing body's legal counsel, and all
21 persons identified in the Notice as required by rule
22 661-10-015(2)(f) within 21 days from the date of the
23 land use decision."

20 ²

21 These cases are about failure to file a petition for review
22 on time. See, Thede v. Polk County, 63 Or App 738, 665 P2d
23 1257 (1983) for a case affirming our dismissal of a review
24 proceeding for failure to file the notice of intent to appeal
25 within the time allowed by statute.

24 ³

25 See also, In Re Wagner's Estate, 182 Or 340, 342, 187 P2d
26 669 (1947).