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

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JOHN T. SARICH,  
Petitioner,  
vs.  
CITY OF FOREST GROVE,  
OREGON PLANNING COMMISSION,  
Respondent.

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LUBA No. 84-075  
FINAL OPINION  
AND ORDER OF DISMISSAL

John T. Sarich  
Route 2, Box 118  
Forest Grove, OR 97116  
Appeared on his  
own behalf

David G. Frost  
451 S. First Avenue  
Hillsboro, OR 97123  
Attorney for  
Respondent City

BAGG, Chief Referee; DuBAY, Referee; KRESSEL, Referee.

DISMISSED 01/18/85

You are entitled to judicial review of this Order.  
Judicial review is governed by the provisions of ORS 197.850.

1 Opinion by Bagg.

2 NATURE OF THE DECISION

3 Petitioner filed a notice of intent to appeal alleging the  
4 City of Forest Grove erred in granting

5 "the new construction of eight (8) condominium units  
6 for the applicant, the Masonic Villa, Inc., a wholly  
owned subsidiary of the Masonic Lodge."

7 The notice recites the decision was made on August 23, 1984.

8 Included in the notice is a statement of why petitioner  
9 disapproves of the approval. Also attached is a form which  
10 appears to be an application for the issuance of a building  
11 permit.

12 The City of Forest Grove moves to dismiss the appeal on the  
13 ground petitioner did not file his notice of intent to appeal  
14 within the 21 days provided for in OAR 661-10-015(1).<sup>1</sup> The  
15 decision appealed from was made on August 23, 1984. The notice  
16 of intent to appeal was filed in LUBA offices on September 14,  
17 1984, 22 days after the August 23 decision was final.

18 Petitioner advises he did not receive notice of the city's  
19 decision, but only became aware of the decision through a  
20 personal visit to the planning department.<sup>2</sup> We are advised  
21 by the city, however, that petitioner was not entitled to  
22 individualized notice of the decision because the decision is  
23 the issuance of a building permit. Neither party cites us to  
24 any provision in the land use ordinances in the City of Forest  
25 Grove controlling notice of the issuance or pendency of  
26 building permits.<sup>3</sup>

1 Without some showing that petitioner was entitled to notice  
2 of the city's decision and was for some reason denied that  
3 notice, we believe we are obliged to follow OAR 660-10-015 and  
4 ORS 197.830(7) requiring that a notice of intent to appeal be  
5 filed within 21 days of the time the City of Forest Grove made  
6 the decision on review.<sup>4</sup> See Bryant v. Clackamas County, 56  
7 Or App 442, 643 P2d 649 (1982) and McCoy v. Marion County, 69  
8 Or App 522, \_\_\_ P2d \_\_\_ (1984).

9 This proceeding is dismissed.

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FOOTNOTES

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4 "(1) Filing of Notice: The Notice must be delivered  
5 to and received by the Board for filing on or before  
6 the 21st day after the date the decision sought to be  
7 reviewed becomes final. A Notice received after that  
8 day will not be timely filed, and the appeal will be  
9 dismissed. The Notice must be served on the governing  
10 body, the governing body's legal counsel, and all  
11 persons identified in the Notice as required by rule  
12 661-10-015(2)(f) within 21 days from the date of the  
13 land use decision." OAR 661-10-015.

14 This rule was made in conformity with ORS 197.830(7):

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

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20 In a later memorandum filed by petitioner, he explains that  
21 in 1982 he was a party to an appeal of a conditional use and  
22 variance proceeding which we understand to be part of this same  
23 development. The application was withdrawn during the course  
24 of the appeal proceeding before the city council. Petitioner  
25 claims he was not aware of what he calls a "renewal of the  
application" until he made a personal visit to the city.  
However, there is nothing in the record before us to show that  
any conditional use or variance application has been filed. It  
is our understanding from material submitted that the only  
action constituting an "approval" of the proposed development  
is the issuance of a building permit.

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The city states the petitioner was not entitled to notice of the decision but would be entitled to a copy of the decision under the provisions of ORS 192.440. ORS 192.440 controls inspection of public records generally.

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Because the notice of intent to appeal was filed beyond the time permitted by statute and our rule, we do not discuss the possible issue of whether a building permit is a "land use decision" subject to our review. See ORS 197.015(10)(11).