

Nov 15 2 56 PM '89

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

3 DARROW ROCKS COMMUNITY                   )  
4 ASSOCIATION, an unincorporated        )  
5 association, GARY KEPPINGER and        )  
6 DAVID GETZENDANNER,                    )

7                   Petitioners,                    )

8                   vs.                                    )

9 POLK COUNTY,                                )

10                   Respondent.                            )

LUBA No. 89-033

FINAL OPINION  
AND ORDER

11                   Appeal from Polk County.

12                   Wallace W. Lien, Salem, represented petitioners.

13                   Robert W. Oliver, Dallas, represented respondent.

14                   SHERTON, Chief Referee; HOLSTUN, Referee; KELLINGTON,  
15 Referee participated in the decision.

16                   DISMISSED

11/15/89

17                   You are entitled to judicial review of this Order.  
18 Judicial review is governed by the provisions of ORS 197.850.  
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1 Opinion by Sherton.

2 This matter is before the Board on a motion to dismiss  
3 filed by respondent Polk County. Respondent states that on  
4 June 6, 1989, the Board issued an order extending the time for  
5 filing objections to the record in this case to October 1, 1989.  
6 Respondent points out that no objection to the record was filed  
7 within the time allowed by the extension. Respondent also  
8 points out OAR 661-10-030(1) requires the petition for review to  
9 be filed within 21 days after the Board has received the record,  
10 and states that failure to file a petition for review within  
11 that time limit, and any extensions granted by the Board, shall  
12 result in dismissal of the appeal and forfeiture of the filing  
13 fee and deposit for costs to the local government. Because no  
14 petition for review was filed in this case, and the period for  
15 filing the petition has expired, respondent argues the appeal  
16 should be dismissed and requests that petitioners' filing fee  
17 and deposit for costs be awarded to respondent under  
18 OAR 661-10-075(1)(c).

19 Respondent's motion to dismiss was filed with the Board and  
20 served on the parties on October 24, 1989.<sup>1</sup> Under our rules,  
21 parties are entitled to 10 days following receipt of a motion to  
22 file a response. OAR 661-10-065(2). No response to the motion

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24 <sup>1</sup>Respondent served copies of the motion on Wallace W. Lien, Walter R.  
25 Gowell and petitioner David Getzendanner. As of October 24, 1989, Wallace  
26 W. Lien was the attorney of record for petitioners. On October 27, 1989,  
the Board received a letter from Lien stating that he no longer represented  
petitioners in this case, and that any response to respondent's motion to  
dismiss would come directly from petitioner Getzendanner.

1 to dismiss has been received by the Board.<sup>2</sup>

2 It has consistently been held that failure to file a  
3 petition for review within the required time limit will result  
4 in dismissal of the appeal. Gordon v. City of Beaverton, 292 Or  
5 228, 637 P2d 125 (1981); Piquette v. City of Springfield, 16  
6 Or LUBA 47 (1987). ORS 197.830(9) provides that a petition for  
7 review must be filed within the deadlines established by Board  
8 rule. OAR 661-10-030(1) provides that a petition for review  
9 must be filed within 21 days after the record is received by the  
10 Board. However, an objection to the record may be filed with  
11 the Board within 10 days after service of the record on the  
12 party filing the objection. OAR 661-10-026(2). If an objection  
13 is filed, the time limits for all further procedures, including  
14 the filing of the petition for review, is suspended.  
15 OAR 661-10-026(5).

16 In this case, the record was received by the Board on  
17 May 3, 1989. The parties filed a stipulation for an extension  
18 of the time for filing an objection to the record on May 11,  
19 1989. A revised stipulation was filed on June 5. On June 6,  
20 based on this stipulation, the Board entered an order extending  
21 the time for filing objections to the record to October 1, 1989.

22 Because our June 6, 1989 order extended the deadline for  
23 filing objections to the record in this case, it also had the  
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26 <sup>2</sup>On November 14, 1989, petitioner Getzendanner informed the Board by  
telephone that he would not file a response to the motion to dismiss.

1 effect of extending the deadline for filing a petition for  
2 review. However, since no objection to the record was filed by  
3 the agreed upon date of October 1, 1989, the record is  
4 considered settled and received by the Board as of that date.  
5 Under OAR 661-10-030(1), the petition for review was required to  
6 be filed by October 24, 1989.

7 Because petitioners neither filed a petition for review  
8 within the time required by OAR 661-10-030(1), nor obtained an  
9 extension of time for the filing of the petition for review  
10 pursuant to OAR 661-10-067(2), respondent's motion to dismiss is  
11 allowed. Under these circumstances, ORS 197.830(7) and  
12 OAR 661-10-075(1)(c) require us to award petitioners' filing fee  
13 and deposit for costs to respondent as cost of preparation of  
14 the record.<sup>3</sup> Portland Oil Service Co. v. City of Beaverton, \_\_\_\_  
15 Or LUBA \_\_\_\_ (LUBA No. 88-017, May 9, 1988).

16 This case is dismissed. Respondent is awarded petitioners'  
17 filing fee and deposit for costs.

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19 <sup>3</sup>ORS 197.830(7) provides in relevant part:

20 " \* \* \* If a petition for review is not filed with the board as  
21 required in subsections (8) and (9) of this section, the filing  
22 fee and deposit shall be awarded to the local government \* \* \*  
as cost of preparation of the record."

23 OAR 661-10-075(1)(c) provides:

24 "Forfeit of Filing Fee and Deposit: If a record has been  
25 filed, and a petition for review is not filed within the time  
26 required by these rules, the appeal shall be dismissed and the  
filing fee and deposit required by OAR 661-10-015(4) shall be  
awarded to the governing body as cost of preparation of the  
record."