

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

DALE L. BURGHARDT,)
)
 Petitioner,)
)
 vs.)
) LUBA No. 90-127
 CITY OF MOLALLA,)
) FINAL OPINION
 Respondent,) AND ORDER
)
 and)
)
 LOREN L. McLEOD,)
)
 Intervenor-Respondent.)

Appeal from City of Molalla.

Walter T. Aho, Molalla, represented petitioner.

Thomas J. Rastetter, Oregon City, represented respondent.

Paul D. Schultz, Oregon City, represented intervenor-respondent.

KELLINGTON, Chief Referee; SHERTON, Referee, participated in the decision.

DISMISSED 02/01/91

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

Opinion by Kellington.

The petition for review in this appeal proceeding was due December 26, 1990. No petition for review was filed on that date, and the parties did not agree to extend the time for filing the petition. OAR 661-10-067(2).¹

Pursuant to ORS 197.830(10) and OAR 661-10-030(1), intervenor-respondent moves to dismiss this appeal proceeding on the basis that no timely petition for review was filed.²

ORS 197.830(10) provides in relevant part:

"A petition for review of the land use decision and supporting brief shall be filed with the board as required by the board under subsection (12) of this section. * * *"

OAR 661-10-030(1) provides:

"Filing and Service of Petition: The petition for reviews shall be filed with the Board within 21 days after the date the record is received by the Board. * * *. Failure to file a petition for review within the time required by this section, and any extension of time under * * * OAR 661-10-067(2), shall result in dismissal of the appeal and forfeiture of the filing fee and deposit for costs to the governing body."

¹OAR 661-10-067(2) provides;

"In no event shall the time limit for the filing of the petition for review be extended without the written consent of all the parties."

²No petition for review has ever been filed in this appeal proceeding. However, on January 17, 1991, petitioner submitted a motion for extension of time to file the petition for review, to which intervenor-respondent objects.

Under these statutory and administrative rule provisions, and the cases interpreting both, it is well established that in the absence of an agreement between the parties to extend the time for filing the petition for review, the consequence of failing to file a timely petition is dismissal of the appeal. Gordon v. City of Beaverton, 292 Or 228, 637 P2d 125 (1981); Bloomer v. Baker County, ___ Or LUBA ___ (LUBA No. 90-008, April 4, 1990); See Housing Development Corp. of Washington County v. City of Hillsboro, 5 Or App 122 (1982).

Additionally, ORS 197.830(8) provides:

"If a petition for review is not filed with the board as required,* * * the filing fee and deposit shall be awarded to the local government * * * as cost of preparation of the record."

Accordingly, this appeal is dismissed, and the \$50 filing fee and the \$150 deposit for costs are awarded to respondent.