

1 BAGG, Referee.

2 This matter is before the Board on motion of Respondent
3 City of Portland and a similar motion by Participant Eric
4 Hoffman for an order dismissing the petition for review. Both
5 the city and the participant move the Board to dismiss the case
6 on the ground that the petition for review was filed in excess
7 of the time allowed in Oregon Laws 1979, ch 772, sec 4(6) and
8 Board Rule 7(A).

9 Oregon Laws 1979, ch 772, sec 4(6) provides that a petition
10 for review is to be filed "[w]ithin 20 days after the date of
11 transmittal of the record * * * *" The file in this case shows
12 the record to have been received on June 10, 1981 and the
13 petition for review to have been filed on July 1.¹ After
14 reviewing these facts, the respondent and participant cite the
15 Board to the above quoted portion of Oregon Laws 1979 and to
16 the Board's own rule 7(A) which provides that failure to file
17 the petition "within the time required will result in a
18 dismissal of the appeal and forfeiture of the filing fee and
19 deposit for costs to the governing body."

20 Petitioner responds that Section 1a of Oregon Laws 1979, ch
21 772 provides that land use decisions are to be made
22 "consistently with sound principles governing judicial
23 review." Petitioner urges it is a principle of judicial review
24 that review will not be barred by late filings "absent culpable
25 neglect of a party." Citing Neppach v. Jones, 28 Or 286, 39 P
26 999, 42 P 519 (1895) and Johnsen v. White, 60 Or 611, 112 P

1 1083 (1911). Petitioner alleges the delay was because of
2 circumstances beyond petitioner's control. Petitioner
3 apparently is referring to the failure of a messenger service
4 to deliver the petition by 5:00 p.m. on June 30, as instructed
5 by petitioner.²

6 Our decision in this matter is governed by Wallace E.
7 Gordon and Mary E. Gordon v. City of Beaverton, ___ Or App ___,
8 ___ P2d ___, Slip Opinion of June 29, 1981. In that case,
9 petitioners sought a review of our order dismissing their
10 appeal. We dismissed the appeal because petitioners "filed
11 their petition for review and supporting brief one day after
12 the statutory period for doing so had elapsed." Gordon v.
13 Beaverton, ___ Or App at ___. Slip Opinion at 1. The court
14 reviewed the legislative history of Oregon Laws 1979, ch 772,
15 sec 4 and concluded that the Land Use Board of Appeals does not
16 have the authority to waive the time for filing the petition
17 and brief.

18 "The absence of a grant of authority to waive or
19 extend the filing time in section 4(6) strongly
20 indicates that the legislature intended no such
21 authority to exist, in light of the express grant of
22 authority to extend the statutory periods for
23 performing other acts under two other subsections of
24 section 4. See World Lit. Crusade v. Insurance Div.,
25 42 Or App 683, 686, 601 P2d 833 (1979)." Gordon v.
26 Beaverton, ___ Or App ___, Slip Opinion at 6.³

23 As the Board does not have authority to accept a petition
24 filed after the date provided in Oregon Laws 1979, ch 772, this
25 case must be dismissed.

26 This case is dismissed. Pursuant to Oregon Laws 1979, ch

1 772, sec 4(4), the \$150 deposit for costs and the \$50 filing
2 fee shall be awarded to the City of Portland.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

FOOTNOTES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1

Board rule 7(A) provides that the petition for review is to be filed 20 days after the record "is received by the Board." Board practice is to advise the parties by letter of the date the record is received so that the parties may then calculate the time to file the petition for review.

2

A affidavit of Elizabeth F. Cosgriff is included in the response to the motion to dismiss. The affidavit explains the circumstances of the delivery of the petition.

3

The "two other subsections of section 4" referred to are the provisions (1) allowing the Board to extend the time for filing the record of the local decision and (2) allowing an extension of time within which the Board must issue its final opinion where the parties so stipulate. See Oregon Laws 1979, ch 772, sec 4(5), (6), (8).