

LAND USE
BOARD OF APPEALS

JUL 9 2 39 PM '87

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

3 GEORGE HUTMACHER,)
4 Petitioner,) LUBA No. 87-035
5 vs.) FINAL OPINION
6 MARION COUNTY,) AND ORDER OF DISMISSAL
7 Respondent.)

8 Appeal from Marion County.

9 George Hutmacher Michael Hansen
10 PO Box 3251 County Counsel
11 Salem, OR 97302 Marion County Courthouse
12 Petitioner 100 High Street, NE
13 Attorney for Salem, OR 97301
14 Respondent

15 DuBAY, Chief Referee; BAGG, Referee; HOLSTUN, Referee;
16 participated in the decision.

17 DISMISSED 07/09/87

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

1 DuBAY, Chief Referee.

2 Respondent Marion County moves for an order dismissing this
3 appeal on the ground that the petition was not filed within the
4 time prescribed by OAR 661-10-030(1). According to this rule,
5 petitions for review must be filed within 21 days after
6 submittal of the record. The rule also provides that failure
7 to file the petition within the prescribed time will result in
8 dismissal. The rule implements ORS 197.830(9)(10).

9 The record in this case was filed with the Board on
10 June 10, 1987. The petition for review was filed on July 7
11 (one day after the motion to dismiss was filed). The petition
12 was therefore filed six days after the time allowed by our
13 rule.

14 The rule carries out the legislative policy in ORS 197.805
15 that

16 "time is of the essence in reaching final decisions in
17 matters involving land use. . . ."

18 Failure to adhere to the time schedule for filing documents
19 necessary for timely appeal decisions can delay the final
20 order. For this reason, and to carry out the legislative
21 policy of expeditious decision making, the rule requiring
22 petitions to be filed within the prescribed time is strictly
23 followed. For example, in Halvorson v. Lincoln County, ___ Or
24 LUBA ___ (LUBA No. 86-099, April 7, 1987) the appeal was
25 dismissed when the petition was filed five days late.
26

1 Respondent's motion also requests an award of the filing
2 fee and deposit for costs. ORS 197.830(8) provides in part:

3 "If a petition for review is not filed with the board
4 as required in subsections (8) and (9) of this
5 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."

6 ORS 197.830(9) requires filing a petition in accordance with
7 rules of the Board.

8 As stated above, the petition was not filed within the time
9 prescribed by the rules. The quoted statute is clear that the
10 deciding body is entitled to recover its expense of record
11 preparation by the award of the fee and deposit in this event.

12 Therefore, this appeal is dismissed, and the filing fee and
13 deposit for costs is awarded to respondent.

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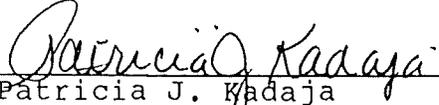
1 CERTIFICATE OF MAILING

2 I hereby certify that I served the foregoing Final Opinion
3 and Order of Dismissal for LUBA No. 87-035, on July 9, 1987, by
4 mailing to said parties or their attorney a true copy thereof
5 contained in a sealed envelope with postage prepaid addressed
6 to said parties or their attorney as follows:

5 George Hutmacher
6 PO Box 3251
7 Salem, OR 97302

5 Michael Hansen
6 County Counsel
7 Marion County Courthouse
8 100 High Street, NE
9 Salem, OR 97301

8 Dated this 9th day of July, 1987.
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11 Patricia J. Kadaja
12 Management Assistant
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