

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

JERRY M. McCAULEY, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 ) LUBA No. 90-110  
 JACKSON COUNTY, )  
 ) FINAL OPINION  
 Respondent, ) AND ORDER  
 )  
 and )  
 )  
 MARK WIEST and BETTY BEWLEY, )  
 )  
 Intervenor-Respondent. )

Appeal from Jackson County.

Dudley C. Walton, Roseburg, represented petitioner.

Armina J. Brown, Medford, represented respondent.

Mark Wiest and Betty Bewley, White City, represented themselves.

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

DISMISSED 10/24/90

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

Opinion by Sherton.

**MOTION TO DISMISS**

Respondent moves that this appeal be dismissed because petitioner has failed to file a petition for review. Respondent points out that the local government record was received by the Board on August 29, 1990, and the petition for review was due on or before September 19, 1990. Respondent argues that under OAR 661-10-030(1), petitioner's failure to file the petition for review within the time required by Board rule requires this Board to dismiss the appeal. Respondent also requests that petitioner's filing fee and deposit for costs be awarded to respondent as the cost of preparation of the record. OAR 661-10-075(1)(c).

Respondent's motion to dismiss was filed with the Board and served on petitioner on October 3, 1990. Under the Board's rules, petitioner has 10 days following receipt of a motion to file a response. OAR 661-10-065(2). As of this date, petitioner has made no response to respondent's motion.

ORS 197.830(10) provides that a petition for review must be filed within the deadlines established by Board rule. ORS 197.830(8) provides that if a petition for review is not filed as required by ORS 197.830(10), the filing fee and deposit for costs shall be awarded to the local government as cost of preparation of the record. OAR 661-10-030(1) provides, in relevant part:

"\* \* \* The petition for review 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 extensions of that time under OAR 661-10-045(7) or 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. See OAR 661-10-075(1)(c)."

The petition for review in this appeal was due on September 19, 1990. No extension of time for filing the petition for review has been requested or granted. As of this date, no petition for review has been filed.

Because petitioner has neither filed a petition for review within the time required by our rules, nor obtained an extension of time for filing the petition for review, the above cited statutory provisions and OAR 661-10-030(1) require that we grant respondent's motion to dismiss and request for award of petitioner's filing fee and deposit for costs. Piquette v. City of Springfield, 16 Or LUBA 47 (1987); Hutmacher v. Marion County, 15 Or LUBA 514 (1987).

This appeal is dismissed. Petitioner's filing fee and deposit for costs are awarded to respondent.