

LAND USE
BOARD OF APPEALS

BEFORE THE LAND USE BOARD OF APPEALS JUL 16 2 13 PM '82

OF THE STATE OF OREGON

3	PHYLLIS E. THEDE, GARY W. DAUM,))	
	JAMES H. FELTZ, HAROLD S. BOYD,))	
4	DOUGLAS E. BENNETT and)	
	KENDALL M. BARNES,)	
5)	
	Petitioners,)	LUBA NO. 82-049
6)	
	v.)	FINAL OPINION
7)	AND ORDER
	POLK COUNTY, COY DeLAMAR)	
8	and TOM DENMAN,)	
)	
9	Respondents.)	

10 Appeal from Polk County.

11	Phyllis E. Thede	Harold S. Boyd
	3560 Bethel Hts. Rd. NW	4800 4th Road NW
12	Salem, OR 97304	Salem OR 97304
13	Douglas E. Bennett	Gary W. Daum
	3700 Bethel Hts. Rd. NW	8801 Wallace Rd. NW
14	Salem, OR 97304	Salem, OR 97304
15	James H. Feltz	Kendall M. Barnes
	3505 SW Bethel Hts. Rd. NW	694 53rd NW
16	Salem, OR 97304	Salem, OR 97304

17 Petitioners, resrepresenting themselves.

18	J. Michael Alexander	Wallace Lien
	1005 Capitol Tower	Legal Counsel
19	Salem, OR 97301	Polk County Courthouse
	Attorney for	Dallas, OR 97338
20	Respondent-Participants	Attorney for Respondent

21 Bagg, Referee; Reynolds, Chief Referee; Cox, Referee
22 participated in the decision.

23 Dismissed. 7/16/82

24 You are entitled to judicial review of this Order.
25 Judicial review is governed by the provisions of Oregon Laws
26 1979, ch 772, sec 6(a).

1 BAGG, Referee.

2 This matter is before the Board on motion of Participants
3 Tom Denman and Coy DeLamar and Respondent Polk County.
4 Participants and the respondents move to dismiss on the ground
5 that the Land Use Board of Appeals lacks jurisdiction to
6 consider the appeal because the order appealed from was made
7 final more than 30 days before the notice of intent to appeal
8 was filed. The notice of intent to appeal states:

9 "Notice is hereby given that petitioners intend
10 to appeal the land use decision of respondent entitled
11 Special Exception 80-10, Denman-DeLamar, which became
12 final on January 28, 1982, and which involves the
13 division of a 35 acre parcel of land located in the
14 exclusive farm use zone into two 17.5 acre parcels."

15 The notice of intent to appeal was filed on June 8, 1982.

16 Petitioners respond that the matter on appeal is a
17 continuation of a prior proceeding, Thede v. Polk County, 3 Or
18 LUBA 335 (1981). In the Thede case, we remanded a partitioning
19 decision of Polk County for further proceedings. Following the
20 remand, Polk County convened another hearing and, according to
21 petitioners, reopened the evidentiary record. Petitioners
22 allege Respondents Denman and DeLamar received notice and
23 participated in the hearing, but petitioners claim to have
24 received no notice of that hearing. Petitioners argue that the
25 time in which to appeal to the Land Use Board of Appeals should
26 not begin to run until the parties entitled to notice of a land
27 use decision are given notice of the land use decision.

28 / /

1 In the alternative, petitioners ask that we advise them as
2 to "which forum would have jurisdiction to declare Polk
3 County's decision on remand a nullity."

4 Oregon Laws 1979, ch 772, as amended by Oregon Laws 1981,
5 ch 748, sec 4(4) provides:

6 "A notice of intent to appeal a land use decision
7 shall be filed not later than 30 days after the date
8 the decision sought to be reviewed becomes final."

9 On the face of the notice of intent to appeal, it is clear that
10 the notice was not filed until long after 30 days from the
11 date the notice states the decision became final.

12 We agree with the respondents that this Board is without
13 jurisdiction to review the decision named in the notice of
14 intent to appeal. The petitioners have not filed a notice
15 within the time required by statute. The time to appeal begins
16 to run from the date the decision was made, not the date
17 petitioners received notice of the decision. Oregon Laws 1979,
18 ch 772, sec 4(4), as amended by Oregon Laws 1981, ch 772. We
19 do not have authority to examine the reasons why petitioners
20 did not timely file their appeal, and we do not have authority
21 to excuse their late filing. If such authority exists, it
22 exists in another forum. Our power to conduct review
23 proceedings is triggered by the timely filing of a notice of
24 intent to appeal.

25 This matter is dismissed.
26