

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

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4                                   MAX LIEBREICH and PAULA LIEBREICH,  
5   *Petitioners,*

6  
7   vs.

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9                                   CITY OF EUGENE,  
10   *Respondent.*

11  
12                                   LUBA No. 2006-027

13  
14   FINAL OPINION  
15   AND ORDER

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17                   Appeal from City of Eugene.

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19                   Daniel J. Stotter, Eugene, represented petitioners.

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21                   Justin Worth and Emily N. Jerome, Eugene, represented respondent.

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23                   HOLSTUN, Board Member; BASSHAM, Board Chair; DAVIES, Board Member,  
24 participated in the decision.

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26                                   DISMISSED

05/02/2006

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

**NATURE OF THE DECISION**

Petitioners appeal a city code interpretation decision.

**FACTS**

Petitioners appealed a Department of Building and Permit Services interpretation that requires petitioners to remove decks from their residence. The hearings official denied petitioners' appeal of that interpretation. This appeal followed.

**MOTION TO DISMISS**

The city moves to dismiss this appeal as untimely filed. Petitioners have not responded to the city's motion to dismiss. As relevant, ORS 197.830(9) provides:

“A notice of intent to appeal a land use decision or limited land use decision shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final. \* \* \* The notice shall be served and filed in the form and manner prescribed by rule of the board and shall be accompanied by a filing fee of \$175 and a deposit for costs to be established by the board. \* \* \*”

Under ORS 197.830(9), the form and manner of filing a notice of intent to appeal is established by LUBA rule. The relevant rule is OAR 661-010-0015(1)(a) which provides as follows:

“(a) The Notice [of Intent to Appeal], together with two copies, and the filing fee and deposit for costs \* \* \* shall be filed with the Board on or before the 21st day after the date the decision sought to be reviewed becomes final or within the time provided by ORS 197.830(3) through (5). \* \* \* *A Notice filed thereafter shall not be deemed timely filed, and the appeal shall be dismissed.*” (Emphasis added.)

The above statutory and rule provisions establish that an appeal will be dismissed if the notice of intent to appeal is not filed within 21 days after the appealed decision becomes final. The facts are undisputed. The challenged decision was reduced to writing and signed by the hearings official on February 3, 2006. The city mailed notice of the decision to petitioners on February 6, 2006. Petitioners sent their notice of intent to appeal by certified mail on February 27, 2006, and the notice of intent to appeal is considered filed on that date.

1 Under our rules, absent circumstances not present here, a decision becomes final on the date  
2 it is reduced to writing and signed by the decision maker, not the date notice of the decision  
3 is mailed.<sup>1</sup> Petitioners therefore had until February 24, 2006 to timely file the notice of  
4 intent to appeal. Because the notice of intent to appeal was not timely filed, this appeal must  
5 be dismissed.

6 This appeal is dismissed.

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<sup>1</sup> OAR 661-010-0010(3) provides:

“‘Final decision’: A decision becomes final when it is reduced to writing and bears the necessary signatures of the decision maker(s), unless a local rule or ordinance specifies that the decision becomes final at a later date, in which case the decision is considered final as provided in the local rule or ordinance.”