

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3 STONE AGE REPUBLIC LLC,
4 *Petitioner,*

5
6 vs.

7
8 CITY OF GRANTS PASS,
9 *Respondent.*

10
11 LUBA No. 2015-072

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13 FINAL OPINION
14 AND ORDER

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16 Appeal from City of Grants Pass.

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18 Ross Day and Matthew Swihart, Portland, represented petitioner.

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20 Mark S. Bartholomew, Medford, represented respondent.

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22 RYAN Board Member; BASSHAM, Board Chair; HOLSTUN, Board
23 Member, participated in the decision.

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25 DISMISSED 12/03/2015

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

NATURE OF THE DECISION

Petitioner appeals a decision denying an application for site plan review for a medical marijuana facility.

JURISDICTION

Petitioner filed its Notice of Intent To Appeal (NITA) by certified mail on October 12, 2015. The city moves to dismiss the appeal as untimely filed. ORS 197.830(9) requires that the “notice of intent to appeal (NITA) 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 city argues that the appealed decision became final on September 16, 2015, the date it was reduced to writing and signed by the decision maker, and thus petitioner should have filed the NITA not later than October 7, 2015. The city concedes that the city’s written notice of the decision that was mailed to petitioner and others stated, incorrectly, that the appeal period to LUBA was 21 days from the date of the mailing of the notice, but argues that its error in the notice of the decision does not toll the statutory 21-day appeal period under ORS 197.830(9).

Under OAR 661-010-0010(3), a decision is final on the date it is reduced to writing and signed by the local decision maker, unless a local ordinance

1 provides that the decision becomes final on a later date. Petitioner cites no
2 local ordinance that provides that the decision becomes final on a later date.
3 We agree with the city that the decision became final on September 16, 2015.

4 We also agree with the city that the error in the notice of the decision did
5 not toll the deadline for filing the NITA. Petitioner's response to the city's
6 motion argues that the city should not be allowed to benefit from its mistakes
7 that misled petitioner as to the deadline for filing the NITA. Petitioner cites *Or.*
8 *Pub. Empl. Ret. Bd. v. Simat, Hellieson & Eichner*, 191 Or App 408, 83 P3d
9 350 (2004), for the principle that petitioner's reliance on the city's
10 representation regarding the deadline in the notice of decision was reasonable,
11 and argues that the deadline for filing the NITA was therefore tolled based on
12 that reasonable reliance.

13 The case that petitioner cites is a case in which the Court of Appeals
14 reiterated the long standing legal principle that in order to secure relief in a
15 civil fraud case, a person must establish a right to rely on representations made
16 by a party. However, more relevant to the land use context is the Supreme
17 Court's decision in *Columbia River Television v. Multnomah County*, 299 Or
18 325, 329, 702 P2d 1065 (1985), which concluded that a clerk's error in
19 responding to a telephone inquiry about an appeal deadline does not excuse a
20 failure to meet a statutory time limit. *See also Friends of Jacksonville v. City of*
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1 *Jacksonville*, 44 Or LUBA 379, 385, *aff'd* 189 Or App 283, 76 P3d 121, *rev*
2 *den* 336 Or 422 (2003) (city's erroneous statement in its notice regarding the
3 LUBA appeal deadline does not have the legal effect of extending the appeal
4 deadline). The case cited by petitioner is inapposite here, where the issue is
5 whether petitioner's NITA was filed within the statutory deadline at ORS
6 197.830(9) and petitioner was not entitled to depend on representations made
7 by the city.

8 Petitioner did not file the NITA within the time provided in ORS
9 197.830(9), and thus LUBA lacks jurisdiction to hear the appeal.

10 The appeal is dismissed.