

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

HOME BUILDERS ASSOCIATION	)	
OF CORVALLIS,	)	
	)	
Petitioner,	)	
	)	LUBA No. 79-002
vs.	)	
	)	ORDER
CITY OF CORVALLIS,	)	
	)	
Respondent.	)	

This matter is before the Board on the motion of Respondent to dismiss the petition for (1) failure of petitioner to file a notice of intent to appeal within the time required by law and rule of this Board and (2) failure of petitioner to serve legal counsel for respondent as required by rule of this Board.

Ch 772, §4, Oregon Laws 1979, provides that notice of intent to appeal must be filed within 30 days after the decision in question becomes final. The law also provides that notice must be served upon the "applicant of record" and the governing body. Land use Board of Appeals rules require notice to be served on counsel to the local governing body.

The file in this case shows a Notice of Intent to Appeal filed with this Board on November 6, 1979. A second Notice was filed on or about November 7, 1979. Both petitioner and respondent plead that the ordinance complained of was final on October 11, 1979. For appeal purposes, 30 days from

that date is November 12 (the 30th day falls on a Saturday). Mr. Scott, City Recorder, did not receive notice of intent to appeal until November 13, 1979. Yet, a postal return shows his office acknowledged receipt of what petitioner alleges is a copy of the first notice on November 7, 1979. Service on an agent of the City Recorder is service upon the Recorder. There is nothing in the record to allege that the Recorder is not the "clerk or secretary" to the City. §9(D) (3) (d), Ch 284, Oregon Laws 1979.

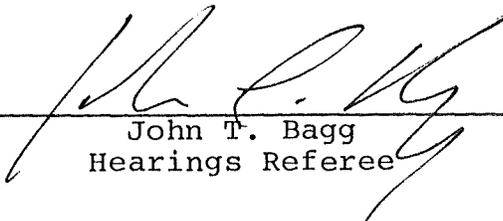
Service on the Recorder is, therefore, service on the City. The method of service of the second notice of appeal has not been challenged except as it may have been filed too late.

The rules of this Board require notice to be in a particular form with particular matters included in the form. The first notice did not comply fully with the rule. However, a member of this Board assured petitioner that his notice would be considered filed November 6 and that the second notice was to assist the Board only. Our file shows the first notice was accompanied by the required filing fee. To the extent that the Rules of the Board require service on persons not named in the statute, the rule may not be used to foreclose an appeal otherwise properly initiated with a notice of intent to appeal. The effective date of the notice is, therefore, November 6, 1979, and the service on the City was timely.

Also, Ch 772, Oregon Laws 1979, did not become effective until November 1, 1979. Ordinances adopted before November 1 were challengeable by appeal to LCDC and by writ of review under ORS chapter 34. The appeal to LCDC and the writ of review statutes provided 60 day time limits in which to file the appeal. The new law, if interpreted literally, may be used to foreshorten that time for appeal for those land use decisions made between September 1 and November 1, 1979. The Board has chosen not to interpret the law in that manner. The Board interprets the new law to allow Board review of land use decisions made between September 1, 1979 and November 1, 1979, when the notice of intent to appeal is filed before November 30, 1979, or 60 days after the land use decision is final, whichever comes first. See, Carter Kerns, et al v. City of Pendleton, LUBA No. 79-001. Under this interpretation, either notice is timely.

The Motion to dismiss is denied.

Dated this 7<sup>th</sup> day of December, 1979.

  
\_\_\_\_\_  
John T. Bagg  
Hearings Referee