

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

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STUART HINSON,)	
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Petitioner,)	LUBA No. 79-003
)	
vs.)	
)	
JACKSON COUNTY,)	ORDER ON RESPONDENT'S
)	MOTION TO DISMISS
Respondent.)	

This matter came before the Board on Respondent Jackson County's Motion to Dismiss for the reasons that (1) petitioner failed to timely file his Notice of Intent to Appeal and (2) LUBA lacks jurisdiction due to petitioner allegedly having filed a writ of review proceeding with Jackson County Circuit Court prior to November 1, 1979 contesting the same subdivision action which is the subject of LUBA 79-003.

Respondent, on motion of its attorney, voluntarily withdrew its second ground for dismissal during a 12/17/79 conference call between Richard Stark, attorney for petitioner, Tom Ownes, attorney for respondent and William Cox, LUBA Hearings Referee. The withdrawal was based on a clarification of filing dates.

As regards respondent's Motion for Dismissal based on petitioner's failure to timely file his Notice of Intent to Appeal, the Motion is denied. Chapter 772, Oregon Laws 1979 became effective on November 1, 1979. Prior to November 1, 1979, Petitioner's right to appeal was governed by writ of

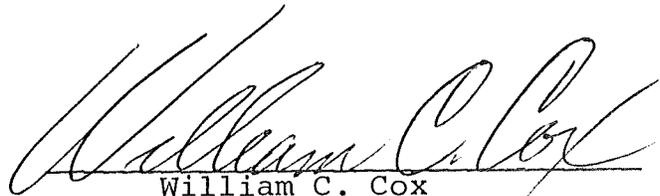
1 review statutes or LCDC rules, all of which allowed 60 days
2 within which to file either a writ or notice of appeal.

3 This Board interprets Chapter 772, Oregon Laws 1979 to
4 allow Board review of land use decisions made between September
5 1, 1979 and November 1, 1979, when the notice of intent to
6 appeal is filed before November 30, 1979 or 60 days after the
7 land use decision is final, whichever occurs first. (See
8 Carter Kerns, et al v. City of Pendleton, LUBA No. 79-001, a
9 copy is attached.)

10 The decision being appealed herein was made, based on
11 statements of both petitioner and respondent, on September 12,
12 1979. Based on our above indicated reasoning, petitioner had
13 until November 12, 1979 to file his notice of intent to appeal.
14 November 12, 1979 fell on a holiday which allowed petitioner
15 until November 13, 1979 to file notice. Our records indicate
16 that on November 13, 1979, this Board accepted service of
17 petitioner's Notice of Intent to Appeal.

18 Therefore, the Motion is denied.

19 Dated this 24 day of December, 1979.

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23 William C. Cox
24 Hearings Referee
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