



1 accept the chronology of events as set forth in the affidavits,  
2 the decision did not become final until December 7 or  
3 thereafter, i.e., the date the order was reduced to writing and  
4 signed by the chairman of the county board of commissioners.  
5 However, Mobilnet argues the date stated on the face of the  
6 order, December 4, 1984, may not be impeached by additional  
7 evidence such as the affidavits presented by petitioner. The  
8 rule to apply, according to Mobilnet, is that public records  
9 required to be in writing may not be contradicted or varied by  
10 parol evidence.<sup>4</sup>

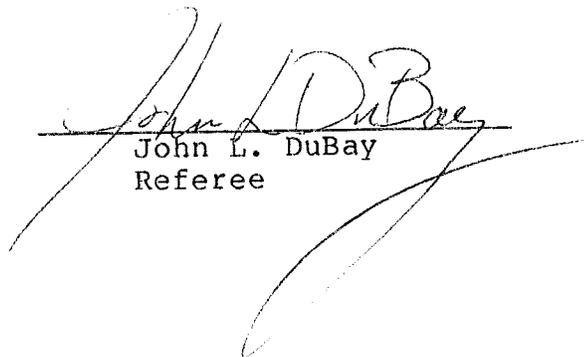
11 Accepting that rule as correct, we nevertheless agree with  
12 petitioners that the additional evidence does not contradict or  
13 vary the public record. The order recites the matter came  
14 before the board at its meeting on December 4, 1984 and  
15 concludes with three paragraphs setting forth the decision.  
16 Following these paragraphs is the date line: "Dated this 4th  
17 day of December, 1984." The date line corresponds to the date  
18 the matter came before the board for decision, but does not  
19 unequivocally state the document was signed that day. The date  
20 line is distinguishable from the wording considered in Peterson  
21 v. Beals, 102 Or 245, 201 P2d 727 (1921) and Hislop v.  
22 Moldenhauer, 24 Or 106, 32 P 1026 (1893). In each of these  
23 cases parol evidence was held not available to establish a date  
24 of a judgment different than the date stated in the official  
25 records. However, in both Peterson and Hislop the official  
26 records stated the judgments were "made and entered" on a

1 certain date. The date line on the Washington County order  
2 does not state the critical fact at issue here: the date the  
3 order was signed.

4 In these circumstances we do not believe the evidence  
5 showing the date the necessary signatures were affixed to the  
6 county's order contradicts or varies the date line on the  
7 order. Accordingly, we accept the uncontroverted evidence that  
8 the order was signed no earlier than December 7. Therefore,  
9 the order did not become final for the purpose of calculating  
10 the 21 day appeal period until December 7 or thereafter.<sup>5</sup>  
11 The notice of intent to appeal was filed within 21 days after  
12 December 7, 1984.

13 The motion to dismiss is denied.

14 Dated this 27th day of March, 1985.

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18 John L. DuBay  
19 Referee  
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FOOTNOTES

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3 <sup>1</sup> ORS 197.830(7) states in part:

4 " (7) A notice of intent to appeal a land use decision  
5 shall be filed not later than 21 days after the  
6 date the decision sought to be reviewed becomes  
7 final."

8 <sup>2</sup>

9 The affidavit by the secretary responsible for presenting  
10 original documents to the chairman of the Washington County  
11 Board of Commissioners indicates the original order was not  
12 presented for signing on December 4 in the normal course. The  
13 secretary's usual practice is to order copies of documents to  
14 be made after they are signed, and her records show she filled  
15 out a print order on December 7. The chairman was not in his  
16 office on December 6, but was there on December 7. The  
17 affidavit of the county's Appeals Secretary for the Department  
18 of Land Use and Transportation indicates she typed the order  
19 and resolution and sent it to the administrator's office on  
20 December 7. Participant presented no evidence contradicting  
21 these affidavits.

22 <sup>3</sup>

23 Although finality of a decision is not defined by statute,  
24 OAR 661-10-010(3) defines a final decision or determination as:

25 " (3) 'Final decision or determination' means a  
26 decision or determination which has been reduced  
to writing and which bears the necessary  
signatures of the governing body."

27 <sup>4</sup>

28 The general rule was articulated in Bays v. Trulson, 25 Or  
29 109, 35 P.26 (1893). For examples of the rule's application  
30 see Peterson v. Beals, 102 Or 245, 201 P2d 727 (1921); Hislop  
31 v. Moldenhauer, 24 Or 106, 32 P 1026 (1893); and McFetridge v.  
32 Wieck, 7 Or App 389, 490 P2d 1044 (1971).

33 <sup>5</sup>

34 Respondent County argues the motion to dismiss should be  
35 denied on grounds the order did not become final until  
36 December 11. This is because the county ordinance states

1 decisions become final on the date notice of the decision is  
2 mailed to the parties. See Article II, Section 211-2,  
3 Washington County Ordinance No. 279. Notice of this proceeding  
4 was given by mail to the parties on December 11. We reject the  
5 county's contention that application of OAR 661-10-010(3)  
6 intrudes upon the county's powers to establish its own  
7 procedures. Whatever meaning or effect given to a decision  
8 defined as final in the county ordinances is not affected by  
9 OAR 661-10-010(3). This rule does not affect county actions  
10 but only defines the characteristics of a decision that start  
11 the clock running to file an appeal to LUBA. Likewise, county  
12 ordinances may not expand or limit LUBA's statutory authority.  
13 See Columbia River Television v. Multnomah County, 70 Or App  
14 448, \_\_\_ P2d \_\_\_ (1984); Lyke v. Lane Co., 70 Or App 82, \_\_\_  
15 P2d \_\_\_ (1984).

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