

1 Opinion by Sherton.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a county decision concerning a
4 conditional use permit for a real estate sales office. The
5 identity and nature of the county decision appealed is
6 critical to the resolution of this case, and is discussed in
7 more detail below.

8 **MOTION TO INTERVENE**

9 Meadowview Corporation, the applicant below, moves to
10 intervene in this appeal proceeding on the side of
11 respondent. There is no objection to the motion, and it is
12 allowed.

13 **FACTS**

14 Intervenor applied for a conditional use permit for a
15 temporary real estate sales office in the Low Density Urban
16 Residential (R-1) zone. On December 21, 1992, the county
17 planning department approved intervenor's application.
18 Petitioner appealed this decision to the county planning
19 commission.

20 Following public hearings, the planning commission
21 denied the appeal and approved the conditional use permit.
22 The planning commission's decision is in the form of a
23 letter to petitioner, dated March 2, 1993. The planning
24 commission decision includes the following statement:

25 "You are hereby notified that this decision may be
26 appealed to the Board of County Commissioners,
27 either by the applicant or by the parties to the

1 proceeding, by submitting the required form,
2 written justification, and fees * * * no later
3 than 5:00 p.m. on March 12, 1993."¹ Record 10.

4 Shortly before 5:00 p.m. on March 12, 1993, at the
5 board of commissioners' office, petitioner submitted an
6 appeal form and \$20 as an appeal fee. Supp. Record 121. On
7 March 15, 1993, the board of commissioners issued a written
8 decision dismissing petitioner's appeal and returning
9 petitioner's \$20. The board of commissioners' decision
10 concludes:

11 "[B]ecause you did not submit all the required
12 fees in a timely way, when you submitted your
13 appeal application, we are unable to process your
14 appeal. Therefore, the Tillamook County Planning
15 Commission's decision * * * is final." Record 4.

16 This appeal followed.

17 **DECISION**

18 Petitioner's notice of intent to appeal was filed on
19 April 5, 1993, and identifies the challenged decision as
20 "'Appeal Application Submittal for AP-CU-92-29(a).'" This
21 is the caption appearing on the board of commissioners'
22 March 15, 1993 decision dismissing petitioner's appeal.
23 Record 3. The notice of intent to appeal also states the

¹Tillamook County Land Use Ordinance (LUO) 10.030 provides, in relevant part:

"An action or ruling of the [Planning] Commission pursuant to this ordinance may be appealed to the Board [of Commissioners] within 10 days after the Department's notification of the Commission's action to the applicant. * * * If [an] appeal is not filed within the 10-day period, the Commission's decision shall be final. * * *"

1 challenged decision "became final on March 15, 1993."
2 Therefore, we conclude the decision challenged by petitioner
3 in this appeal is the board of commissioners' March 15, 1993
4 decision to dismiss his local appeal.

5 Petitioner makes six assignments of error. However,
6 none of petitioner's assignments allege error in the board
7 of commissioners' decision to dismiss his appeal. Rather,
8 they allege error in the substance of the planning
9 commission decision approving the subject conditional use
10 permit. Because petitioner identifies no defect in the
11 board of commissioners' March 15, 1993 decision to dismiss
12 petitioner's local appeal, we affirm the county's decision.²

13 The county's decision is affirmed.³

²Even if petitioner had successfully argued that the board of commissioners erred in dismissing his local appeal, we would not address in this appeal petitioner's arguments concerning the merits of the planning commission decision. Rather, we would remand the board of commissioners' decision for further proceedings on petitioner's local appeal.

³The county moves to dismiss this appeal, on the grounds that petitioner failed to exhaust his administrative remedies. ORS 197.825(2)(a). The county's motion would have merit if petitioner had filed a notice of intent to appeal challenging the planning commission's March 2, 1993 decision approving the subject conditional use permit. However, as we explain in the text, the decision appealed by petitioner is the March 15, 1993 decision by the board of commissioners to dismiss petitioner's local appeal. This decision was made by the highest level local decision maker and, therefore, petitioner did not fail to exhaust administrative remedies. The county's motion to dismiss is denied.