

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38

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

MICHAEL-MARK LTD.,)
)
Petitioner,)
)
vs.)
) LUBA No. 97-032
YAMHILL COUNTY,)
) FINAL OPINION
Respondent,) AND ORDER
)
and)
)
GLEN S. BAKER and DAVID ADELSHEIM,)
)
Intervenors-Respondent.)

Appeal from Yamhill County.

Frank M. Parisi, Portland, represented petitioner.

John C. Pinkstaff, Assistant County Counsel,
McMinnville, represented respondent.

Richard H. Allan, Portland, represented intervenors-
respondent.

HANNA, Chief Referee; GUSTAFSON, Referee; LIVINGSTON,
Referee, participated in the decision.

DISMISSED 08/04/97

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

1 Opinion by Hanna.

2 **NATURE OF THE DECISION**

3 Petitioner appeals the county's denial of its
4 application for a zone change from AF-20 Agriculture Forest
5 Large Holding District to MR-2 Mineral Resource District on
6 a seven-acre parcel.

7 **MOTION TO INTERVENE**

8 Glen S. Baker and David Adelsheim (intervenors), the
9 applicants below, move to intervene in this appeal on the
10 side of the respondent. There is no objection to the
11 motion, and it is allowed.

12 **FACTS**

13 On December 5, 1996, the county planning commission
14 denied petitioner's application for a zone change following
15 a public hearing. Petitioner appealed that decision to the
16 Board of County Commissioners (board), and the board's
17 decision to deny that appeal and affirm the planning
18 commission decision was made final on February 14, 1997.
19 The county mailed notice of that decision to petitioner on
20 February 18, 1997. Petitioner's notice of intent to appeal
21 the county's decision was filed with LUBA on March 10, 1997,
22 which is 21 days after the date the county mailed its notice
23 of decision, and 24 days after the decision became final.

24 **JURISDICTION**

25 Intervenor moves to dismiss this appeal for lack of
26 jurisdiction on the basis that petitioner did not file its

1 notice of intent to appeal within 21 days after the date the
2 county's decision became final as required by ORS
3 197.830(8).

4 Until very recently, the rule established by the Oregon
5 Court of Appeals in League of Women Voters v. Coos County,
6 82 Or App 673, 729 P2d 588 (1986) was that, under most
7 circumstances, the time for appealing a local land use
8 decision or limited land use decision was tolled until the
9 local body provided notice of the decision to the appealing
10 party. However, in Wicks-Snodgrass v. City of Reedsport,
11 148 Or App 217, ___ P2d ___ (1997), the court determined
12 that its earlier reading of ORS 197.830(8) was contrary to
13 the language of the statute, and overruled League of Women
14 Voters. Under the rule announced in Wicks-Snodgrass, the
15 time for a petitioner to appeal a local land use decision to
16 LUBA under ORS 197.830(8) begins to run from the date that
17 the local decision becomes final, and not from the date when
18 the local government provides notice of that decision.
19 Wicks-Snodgrass, 148 Or App at 223-24.

20 Petitioner in this case filed its appeal 24 days after
21 the county's decision became final. Under Wicks-Snodgrass,
22 the county's delay in providing petitioner with notice of
23 its decision does not toll the 21-day appeal period set
24 forth in ORS 197.830(8). Accordingly, petitioner's appeal
25 was not timely filed, and we have no jurisdiction.

26 This appeal is dismissed.