

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

3  
4   LAWRENCE W. DEBATES,                           )  
5    )  
6                    Petitioner,                    )  
7    )  
8            vs.                                    )  
9    )            LUBA No. 97-081  
10   YAMHILL COUNTY,                            )  
11   )            FINAL OPINION  
12                    Respondent,                 )            AND ORDER  
13   )  
14            and                                    )  
15   )  
16   PERRY JOHNSON,                            )  
17   )  
18                    Intervenor-Respondent.                            )

19  
20  
21            Appeal from Yamhill County.

22  
23            Lawrence W. DeBates, Amity, represented himself.

24  
25            John C. Pinkstaff, Assistant County Counsel,  
26   McMinnville, represented respondent.

27  
28            Michael C. Robinson, Portland, represented intervenor-  
29   respondent.

30  
31            LIVINGSTON, Referee; HANNA, Referee; GUSTAFSON, Chief  
32   Referee, participated in the decision.

33  
34            DISMISSED                            09/29/97

35  
36            You are entitled to judicial review of this Order.  
37   Judicial review is governed by the provisions of ORS  
38   197.850.

1 Opinion by Livingston.

2 **NATURE OF THE DECISION**

3 Petitioner appeals the county's approval of a lot-of-  
4 record dwelling on a five-acre parcel zoned for exclusive  
5 farm use. Intervenor moves to dismiss this appeal for lack  
6 of jurisdiction on the basis that petitioner did not file  
7 his notice of intent to appeal within 21 days after the date  
8 the county's decision became final as required by ORS  
9 197.830(8).

10 **MOTION TO INTERVENE**

11 Perry Johnson (intervenor), the applicant below, moves  
12 to intervene in this appeal on the side of the respondent.  
13 There is no objection to the motion, and it is allowed.

14 **JURISDICTION**

15 In DeBates v. Yamhill County, \_\_\_ Or LUBA \_\_\_ (LUBA No.  
16 96-100, January 3, 1997), this Board remanded the county's  
17 decision approving intervenor's application for a lot-of-  
18 record dwelling. On remand, the board of county  
19 commissioners (commissioners) again approved the  
20 application. The decision was reduced to writing and signed  
21 by the commissioners on April 2, 1997. On April 7, 1997,  
22 the decision was filed with the county clerk, and on April  
23 8, 1997, the chairman of the board of commissioners sent a  
24 letter to all interested parties providing notice of the  
25 decision and stating, in relevant part:

26 "At the April 2, 1997 formal session of the Board  
27 of Commissioners, the Board adopted Board Order

1           97-182 approving \* \* \* a request for a lot of  
2           record on Tax Lot 5426-1100. \* \* \* The order was  
3           filed with the County Clerk on April 7, 1997, and  
4           became final on that date." Petitioner's Response  
5           to Motion to Dismiss, Exhibit 1.

6           Petitioner's notice of intent to appeal the county's  
7           decision was filed with LUBA on April 28, 1997, which is 26  
8           days after the decision was signed by the commissioners, 21  
9           days after the decision was filed with the county clerk, and  
10          20 days after the date the county sent notice of its  
11          decision. Intervenor argues that petitioner's appeal was  
12          not timely filed under ORS 197.830(8), and must be  
13          dismissed.

14          The material facts in this case are identical to those  
15          in DeBates v. Yamhill County, \_\_\_ Or LUBA \_\_\_ (LUBA No. 97-  
16          091, September 29, 1997), also decided on this date. For  
17          the reasons expressed in that opinion, petitioner's appeal  
18          was not timely filed, and this Board has no jurisdiction.  
19          ORS 197.830(8); Wicks-Snodgrass v. City of Reedsport, 148 Or  
20          App 217, \_\_\_ P2d \_\_\_ (1997).

21          Petitioner's appeal is dismissed.