

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. 97-091
10 YAMHILL COUNTY,)
11) FINAL OPINION
12 Respondent,) AND ORDER
13)
14 and)
15)
16 DENNIS WALKER,)
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 nonfarm
4 dwelling on a five-acre parcel zoned for exclusive farm use.
5 Intervenor moves to dismiss this appeal for lack of
6 jurisdiction on the basis that petitioner did not file his
7 notice of intent to appeal within 21 days after the date the
8 county's decision became final as required by ORS
9 197.830(8).

10 **MOTION TO INTERVENE**

11 Dennis Walker (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 On February 13, 1997, the county planning director
16 denied intervenor's application for construction of a
17 dwelling not in conjunction with farm use on a five-acre
18 parcel with a zoning designation of EF-40. Intervenor
19 appealed that decision to the board of county commissioners
20 (commissioners), and the commissioners' decision reversing
21 the planning director and approving the application was
22 reduced to writing and signed on April 16, 1997. The
23 decision was filed with the county clerk on April 21, 1997,
24 and on that date the chairman of the board of commissioners
25 sent a letter to all interested parties providing notice of
26 the decision and stating, in relevant part:

1 "At the April 16, 1997 formal session of the Board
2 of Commissioners, the Board adopted Board Order
3 97-233 approving * * * a request for a nonfarm
4 dwelling on Tax Lot 5413-1700. * * * The order was
5 filed with the County Clerk on April 21, 1997, and
6 became final on that date." First Supplemental
7 Record 136.

8 Petitioner's notice of intent to appeal the county's
9 decision was filed with LUBA on May 12, 1997, which is 24
10 days after the decision was signed by the commissioners, and
11 21 days after the decision was filed with the county clerk
12 and the county mailed notice of the decision. Intervenor
13 argues that petitioner's appeal was not timely filed under
14 ORS 197.830(8), and must be dismissed.

15 Until very recently, the rule established by the Oregon
16 Court of Appeals in League of Women Voters v. Coos County,
17 82 Or App 673, 729 P2d 588 (1986) was that, under most
18 circumstances, the time for appealing a local land use
19 decision or limited land use decision was tolled from the
20 time the decision was signed until the local body provided
21 notice of the decision to the appealing party. However, in
22 Wicks-Snodgrass v. City of Reedsport, 148 Or App 217, ___
23 P2d ___ (1997) (petition for review pending), the court
24 concluded that its earlier reading of ORS 197.830(8) was
25 contrary to the language of the statute, and overruled
26 League of Women Voters. Under the rule announced in Wicks-
27 Snodgrass, the time for a petitioner to appeal a local land
28 use decision to LUBA under ORS 197.830(8) begins to run from
29 the date the local decision becomes final, and not from the

1 date when the local government provides notice of that
2 decision. Wicks-Snodgrass, 148 Or App at 223-24.

3 Thus, under Wicks-Snodgrass, the fact that the county
4 did not provide notice of its decision until April 21, 1997
5 is irrelevant. The issue presented in this motion is
6 whether the challenged decision became "final" for purposes
7 of appeal to LUBA on April 16, 1997 or April 21, 1997. This
8 Board's rules define "final decision" as follows:

9 "A decision becomes final when it is reduced to
10 writing and bears the necessary signatures of the
11 decision maker(s), unless a local rule or
12 ordinance specifies that the decision becomes
13 final at a later time, in which case the decision
14 is considered final as provided in the local rule
15 or ordinance." OAR 661-10-010(3).

16 There is no dispute that the county's decision was
17 reduced to writing and signed by the decision makers on
18 April 16, 1997. The Yamhill County Zoning Ordinance (YCZO)
19 does not create a later date for finality of county
20 decisions; however, YCZO 1301.02 provides that a decision
21 becomes "effective" on the date it is recorded:

22 "The effective date of the decision is the date of
23 recording of the final order or, if the decision
24 is such that no order is to be filed, the
25 effective date of the decision is the date of the
26 letter notifying the applicant of the decision."

27 Petitioner argues that, as stated in the county's
28 notice letter, the decision became final when it was filed
29 with the county clerk on April 21, 1997. We disagree. The
30 language of YCZO 1301.02 indicates that a decision must be a

1 "final order" prior to the date upon which it is made
2 effective by recording. Under OAR 661-10-010(3), the
3 county's decision became final on the date it was reduced to
4 writing and signed by the decision makers. The erroneous
5 information provided by the county to petitioner in the
6 notice letter does not change the date upon which the
7 challenged decision became final.

8 Because the challenged decision became final on April
9 16, 1997, petitioner's appeal was not timely filed, and this
10 Board has no jurisdiction. ORS 197.830(8); Wicks-Snodgrass,
11 148 Or App at 223-24..

12 Petitioner's appeal is dismissed.