



1 Gustafson, Administrative Law Judge.

2 Petitioner appeals a decision denying its petition for  
3 annexation. The city moves to dismiss this appeal for lack  
4 of jurisdiction pursuant to ORS 197.830(8), arguing that  
5 petitioner filed the notice of intent to appeal more than 21  
6 days from the date of the final decision.

7 The parties agree on the following facts relevant to  
8 this motion. On July 8, 1997, the city council (council)  
9 voted to deny petitioner's petition to adopt an ordinance  
10 allowing annexation of the subject property. After that  
11 vote, the city attorney directed staff to prepare "the  
12 necessary Findings of Fact" by the next meeting, scheduled  
13 August 12, 1997.<sup>1</sup> Minutes, July 8, 1997. However, the  
14 council did not meet on August 12, 1997. At the next two  
15 meetings, proponents of the annexation requested the council  
16 to reconsider its denial, but the council neither  
17 reconsidered the issue nor adopted any written decision. On  
18 September 16, 1997, the city issued the challenged decision  
19 in this case, entitled "Notice of Land Use Action."  
20 Petitioner received the decision by mail on September 22,  
21 1997. The decision states that the council denied the  
22 application on July 8, 1997, makes nine findings of fact in

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<sup>1</sup>City of Independence Zoning Code (CIZC) section 11.030(E) requires that

"[a]ny decision made by the Planning Commission or City Council on a request for a land-use action shall be supported by findings. Such findings shall indicate the facts and reasons used to make the decision."

1 support of that denial, and states that "[t]his land use  
2 decision can be appealed to the Land Use Board of Appeals in  
3 accordance with ORS 197.830 within 21 days of this  
4 determination notice." However, the decision has no  
5 signature line and is not signed by any person.

6 Petitioner alleges in its notice of intent to appeal  
7 (notice) that the written decision, dated September 16,  
8 1997, became final on that date. Notice 1. Petitioner  
9 filed its notice on October 9, 1997, 23 days after the date  
10 of that decision.

11 In its motion to dismiss, the city incorrectly asserts  
12 that the notice was filed October 7, 1997, which is within  
13 21 days of the date of the decision. Thus, the city's  
14 motion does not recognize the precise jurisdictional  
15 question we raise, and address, here. Rather, the city  
16 argues that we lack jurisdiction because the challenged  
17 decision became "final" on July 8, 1997, when the city  
18 council voted to deny the annexation, rather than on  
19 September 16, 1997, when the city issued the written  
20 decision. In light of our disposition of the motion below  
21 on other grounds, it is unnecessary to address the city's  
22 specific argument for dismissal.

23 In response to the motion to dismiss, petitioner makes  
24 two alternative arguments. The first is that, even if the  
25 decision became final on September 16, 1997, petitioner  
26 timely filed its notice within 21 days of its receipt of the

1 decision on September 22, 1997. That argument is readily  
2 resolved against petitioner by Wicks-Snodgrass v. City of  
3 Reedsport, 148 Or App 217, 939 P2d 625 (1997), which held  
4 that appeals to LUBA must be filed within 21 days of the  
5 date the decision becomes final, not a later date such as  
6 that of mailing or receipt of notice.

7 Alternatively, petitioner argues on two grounds that  
8 the challenged decision did not become final September 16,  
9 1997, in fact has never become final, and thus urges us to  
10 "remand" its appeal back to the city for a final decision.<sup>2</sup>

11 Petitioner argues, first, that the Oregon public  
12 meeting and records statute, ORS 192.610 to 192.690,  
13 requires the city to adopt in open meeting the final written  
14 decision and the findings of fact it contains, and because  
15 the challenged decision was issued without such adoption, it  
16 is merely a draft document without any legal effect.<sup>3</sup>  
17 Petitioner argues that this alleged procedural flaw means  
18 that the city has not yet made an effective decision on the

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<sup>2</sup>Under circumstances in which a final decision has yet to be made, the proper disposition is dismissal, not remand.

<sup>3</sup>Petitioner does not cite what provision of ORS 192.610 to 192.690 it believes contains such a requirement. It relies possibly on ORS 192.630(2) ("No quorum of a governing body shall meet in private for the purpose of deciding or deliberating toward a decision on any matter except as otherwise provided by ORS 192.610 to 192.690") in context with ORS 197.660(4) ("No executive session may be held for the purpose of taking any final action or making any final decision"). However, we note that the exclusive remedy for violations of ORS 192.610 to 192.690 lies with the circuit court. ORS 192.680(2), (6).

1 petition for annexation, and hence its decision is not  
2 "final" for purposes of our review.

3 In Weeks v. City of Tillamook, 113 Or App 285, 832 P2d  
4 1246 (1992), the Court of Appeals held that an oral decision  
5 by the city council, reflected in its minutes, was a final  
6 "land use decision" under the circumstances of that case.  
7 Id. at 289. The court explained that procedural defects in  
8 the decision do not mean that there is no land use decision  
9 subject to LUBA's jurisdiction; rather, such defects simply  
10 mean that "there is a potentially reversible land use  
11 decision, if the defects are assigned as error in the  
12 appeal." Id.

13 In the present case, we see no relevant difference  
14 between the "decision" in Weeks and the decision here. The  
15 council's alleged failure to formally adopt the written  
16 decision and findings of fact is, like the alleged defects  
17 in the written minutes at issue in Weeks, a procedural  
18 defect that does not diminish the fact that the council  
19 unquestionably made a "decision" for purposes of our review.  
20 In the absence of a specific local requirement that the  
21 council adopt the findings before the decision becomes  
22 final, we disagree that failure to adopt the written  
23 decision compels the conclusion that the decision is not  
24 "final."

25 Petitioner argues nonetheless that the council's  
26 decision has not become "final," because the document dated

1 September 16, 1997, is unsigned. Petitioner notes that, as  
2 defined in our rules:

3 "A decision becomes final when it is reduced to  
4 writing and bears the necessary signatures of the  
5 decision maker(s), unless a local rule or  
6 ordinance specifies that the decision becomes  
7 final at a later time, in which case the decision  
8 is considered final as provided in the local rule  
9 or ordinance." OAR 661-10-010(3) (emphasis  
10 added).

1           Petitioner reasons that, under our rule, a decision  
2 cannot be final until it "bears the necessary signatures of  
3 the decision makers," and because the decision bears no  
4 signatures, it is not final. However, petitioner's argument  
5 begs the question of what signatures, if any, are  
6 "necessary." As Weeks demonstrates, a signature is not an  
7 essential element of finality for purposes of OAR 661-10-  
8 010(3). Rather, a signature is an essential element for  
9 finality only if another statute, rule or ordinance provides  
10 that a signature is necessary for that type of decision.  
11 Petitioner notes that, under the city's charter, an  
12 ordinance goes into effect 30 days after the mayor signs  
13 it.<sup>4</sup> Petitioner does not cite any requirement in the  
14 charter or elsewhere that imposes a signature requirement on  
15 denials of petitions to adopt an ordinance, but urges us, in  
16 effect, to imply such a requirement.<sup>5</sup> We decline to do so.  
17           In sum, we conclude that, as defined by OAR 661-10-  
18 010(3), the challenged decision became final on September  
19 16, 1997 for purposes of our review. It follows that  
20 petitioner's notice was filed later than 21 days after the  
21 decision became final, and thus we have no jurisdiction over

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<sup>4</sup>Petitioner also cites to an identical requirement at ORS 221.912, part of the 1893 incorporation act under which the city was organized.

<sup>5</sup>We note that the CIZC 11.045(C) provides in relevant part that "[t]he decision of the City Council regarding any appeal shall be final and shall become effective on the date of the City Council's action on the appeal." CIZC 11.045(C) does not impose a signature requirement.

1 this appeal. ORS 197.830(8).

2 Petitioner's appeal is dismissed.