

NATURE OF THE DECISION

Petitioner appeals a city decision denying various approvals for a new hotel.

JURISDICTION

The city moves to dismiss this appeal on the basis that the notice of intent to appeal (NITA) was not timely filed. ORS 197.830(9) and OAR 661-010-0015(1)(a) provide that, absent certain exceptions that do not apply in the present appeal, a NITA must be filed within 21 days “after the date the decision sought to be reviewed becomes final.”¹ The NITA was filed on July 13, 2009. The city argues that the challenged decision became final when the mayor signed the decision on June 9, 2009, and therefore the NITA was filed more than 21 days after the decision became final. Petitioner responds that the decision did not become final until either June 24, 2009 or July 1, 2009, and that the NITA was therefore timely filed.

There is no factual dispute regarding the challenged decision. At the June 8, 2009 public hearing the city council decided to deny the various approvals. On June 9, 2009, that decision was reduced to writing and signed by the mayor.² The last paragraph of the challenged decision states:

¹ ORS 197.830(9) provides in part:

“A notice of intent to appeal a land use decision or limited land use decision shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final. A notice of intent to appeal plan and land use regulation amendments processed pursuant to ORS 197.610 to 197.625 shall be filed not later than 21 days after notice of the decision sought to be reviewed is mailed or otherwise submitted to parties entitled to notice under ORS 197.615.”

OAR 661-010-0015(1)(a) provides:

“The [NITA], together with two copies, and the filing fee and deposit for costs required by section (4) of this rule, shall be filed with the Board on or before the 21st day after the date the decision sought to be reviewed becomes final * * * A [NITA] filed thereafter shall not be deemed timely filed, and the appeal shall be dismissed.”

² The city mailed petitioner a copy of the signed decision on June 10, 2009.

1 “This decision will become effective 21 days from the date of the mailing of
2 this notice as identified below. Those parties with standing * * * may appeal
3 this decision to [LUBA].” Record 12.

4 Additionally, underneath the mayor’s signature, the last line of the challenged decision
5 states:

6 “Mailed this 10th day of June, 2009. Therefore, this decision becomes final at
7 5 p.m., July 1st, 2009.” Record 13.

8 The only dispute is when the challenged decision became final. If the decision was
9 final when it was signed by the mayor then the NITA was not timely filed and this appeal
10 must be dismissed. If the decision did not become final until June 24, 2009 or later, then the
11 NITA was timely filed, and the motion to dismiss must be denied.

12 The starting point in determining when the challenged decision became final is OAR
13 661-010-0010(3), which defines a “final decision” as:

14 “A decision becomes final when it is reduced to writing and bears the
15 necessary signatures of the decision maker(s), unless a local rule or ordinance
16 specifies that the decision becomes final at a later date, in which case the
17 decision is considered final as provided in the local rule or ordinance.”

18 Under LUBA’s rules, the challenged decision became final when the mayor signed the
19 decision, *unless a local rule or ordinance specifies that the decision becomes final at a later*
20 *date*. Petitioner argues that West Linn Community Development Code (CDC) 99.230, which
21 is titled “The Effective Date of the Decision – Appeal or Review” provides that in West Linn
22 the decision becomes final 14 days after the mailing of the decision. CDC 99.230 provides:

23 “Any decision made under the provisions of this chapter shall become
24 effective at 5:00 P.M. on the 14th day from the date of mailing the notice of
25 the final decision, unless an appeal or review is taken * * *. For example, if a
26 final decision was mailed on July 1, the decision would be final at 5:00 P.M.
27 on July 15.”

28 Petitioner argues that CDC 99.230 is a local rule or ordinance that specifies that the
29 decision becomes final at a later date. The city argues that CDC 99.230 is not such a rule or
30 ordinance and that the decision became final on June 9, 2009. We agree with the city. As

1 the title of CDC 99.230 indicates, that provision concerns when a decision becomes *effective*,
2 rather than when it becomes *final*. Although the last sentence of CDC 99.230 is somewhat
3 misleading, the remainder of the code provision makes it reasonably clear that a decision is
4 final when it is signed, and a decision is effective 14 days later. That the provision was
5 written with this distinction in mind is apparent from the first sentence: “Any decision made
6 under the provisions of this chapter shall become *effective* at 5:00 p.m. on the 14th day from
7 the date of mailing the notice of the *final* decision * * *.” (Emphasis added.) Furthermore,
8 CDC 02.030 specifically defines a “final action, final decision, or final order” as “[a]
9 determination reduced to writing, signed and filed under Section 99.110(F) by the
10 appropriate approval authority.” Finally, as pointed out by the city, the purpose of CDC
11 99.230 is to codify a *local* right of appeal; it states that a *final* decision will become *effective*
12 in 14 days unless an appeal or review is filed with the city.

13 Petitioner also may not rely on the final sentence of the decision stating that the
14 decision “becomes final at 5 p.m., July 1st, 2009.” Record 13. That statement is a
15 misstatement of fact and law, and although it is somewhat misleading in the same way that
16 the last sentence of CDC 99.230 is somewhat misleading, a misstatement of fact and law in a
17 land use decision is not an excuse for petitioner’s failure to comply with a deadline to file a
18 NITA. *Friends of Jacksonville v. City of Jacksonville*, 44 Or LUBA 379, 384-85 (2003)
19 (petitioner could not rely on city’s erroneous statement of the LUBA appeal deadline).

20 Unless a local rule or ordinance provides otherwise, a decision is final when a local
21 government adopts its written decision concerning a land use application, and that entity does
22 not intend to hold further proceedings or take further action to disturb its decision. A local
23 government’s decision becomes effective on the date it becomes legally enforceable. This
24 distinction is apparent in our prior decisions. *See, e.g., Reeves v. City of Wilsonville*, ___ Or
25 LUBA ___ (LUBA No. 2009-022, March 31, 2009), *aff’d* 229 Or App 740, 213 P3d 875
26 (2009) (local law that delayed the date an ordinance took effect did not also delay the date

1 the ordinance became final for purpose of appeal to LUBA); *Citizens Against Annexation v.*
2 *City of Florence*, 55 Or LUBA 407, 419 (2007) (“[T]he date a land use decision becomes
3 effective and the date a land use decision is final for purposes of appeal need not be the
4 same.”); *Club Wholesale v. City of Salem*, 19 Or LUBA 576, 578 (1990) (charter provision
5 delaying the effective date of ordinance does not also delay the date the ordinance became
6 final).

7 In this case, the decision became *final* on June 9, 2009 under both the CDC and
8 LUBA’s rules. Both CDC 02.030 and OAR 661-010-0010(3) require that a final decision be
9 reduced to writing and signed by the necessary approval authority. It is clear that the city
10 council reduced its decision to writing and the mayor signed it on June 9, 2009. Because the
11 CDC does not have a provision that specifies that the decision becomes final at a later date
12 than under OAR 661-010-0010(3), and in fact has a specific provision equivalent to OAR
13 661-010-0010(3), the decision became final on June 9, 2009. Therefore, the NITA was not
14 timely filed and this appeal must be dismissed.

15 Accordingly, this appeal is dismissed.