

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

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

MARY DALTON)
)
Petitioner,)
)
vs.)
)
CITY OF WEST LINN,)
)
Respondent,)
)
and)
)
US WEST WIRELESS, LLC,)
)
Intervenor-Respondent.)

LUBA No. 98-018
FINAL OPINION
AND ORDER

Appeal from City of West Linn.
Mary Dalton, Portland, represented herself.
Pamela J. Beery, Portland represented respondent.
Steven P. Hultberg, Portland, represented intervenor-respondent.
HANNA, Board Member; GUSTAFSON, Board Chair, participated in the decision.

DISMISSED 05/18/98

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 city's approval of a conditional
4 use permit and design review application for a wireless
5 communications transmission facility.

6 **MOTION TO INTERVENE**

7 US West Wireless, LLC (intervenor), the applicant below,
8 moves to intervene in this appeal on the side of the
9 respondent. There is no objection to the motion, and it is
10 allowed.

11 **FACTS**

12 On October 20, 1997, the city planning commission denied
13 intervenor's application for a conditional use permit and
14 design review application for a wireless communications
15 transmission facility. Intervenor appealed that decision to
16 the city council. Following a December 22, 1997 hearing, the
17 city council reversed the planning commission decision and
18 approved the application. The city's decision was signed on
19 December 31, 1997 and mailed on January 2, 1998. Petitioner
20 filed a notice of intent to appeal the county's decision was
21 filed with LUBA on January 22, 1998.

22 **JURISDICTION**

23 Intervenor moves to dismiss this appeal for lack of
24 jurisdiction on the basis that petitioner did not file her
25 notice of intent to appeal within 21 days after the date the

1 city's decision became final as required by ORS 197.830(8).¹

2 Until recently, the rule established by the Oregon Court
3 of Appeals in League of Women Voters v. Coos County, 82 Or App
4 673, 729 P2d 588 (1986) was that, under most circumstances,
5 the 21-day time period for appealing a local land use decision
6 or limited land use decision was tolled until the local body
7 provided notice of the decision to the appealing party.
8 However, in Wicks-Snodgrass v. City of Reedsport, 148 Or App
9 217, ___ P2d ___, rev den 326 Or 59 (1997), the court
10 determined that its earlier reading of ORS 197.830(8) was
11 contrary to the language of the statute, and overruled League
12 of Women Voters. Under the rule announced in Wicks-Snodgrass,
13 the time for a petitioner to appeal a local land use decision
14 to LUBA under ORS 197.830(8) begins to run from the date that
15 the local decision becomes final, and not from the date when
16 the local government provides notice of that decision. Wicks-
17 Snodgrass, 148 Or App at 223-24.

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

¹ Petitioner did not respond to intervenor's motion.

1 jurisdiction.

2 This appeal is dismissed.