



**NATURE OF THE DECISION**

Petitioner appeals a decision by the county board of commissioners determining that petitioner lacks standing to file a local appeal of an administrative decision approving a conditional use permit.

**MOTION TO INTERVENE**

Jerry Davis and Connie Davis (intervenors), the applicants below, move to intervene on the side of the county. There is no opposition to their motion, and it is allowed.

**FACTS**

The subject property is a 15.38-acre parcel zoned rural residential (RR-1). It is presently developed with 11 mobile homes. On December 16, 1999, intervenors applied for a conditional use permit to develop the property as a 50-space, full-service Recreational Vehicle (RV) park and campground. The county planning director processed the application as a permit decision without a hearing pursuant to county procedures implementing ORS 215.416(11). On January 17, 2000, the planning director issued a decision approving the proposed RV park, providing notice of the decision to landowners within 250 feet of the subject property.

Petitioner resides more than two miles from the subject property. He did not receive notice of the decision, nor did he appear before the planning director. On January 27, 2000, petitioner filed an appeal of the planning director's decision with the county board of commissioners, alleging that he was adversely affected by the decision. The commissioners conducted a hearing on March 8, 2000. At that hearing, intervenors challenged petitioner's standing to appeal the planning director's decision. The commissioners limited evidence and argument at the hearing to the question of petitioner's standing to appeal. The hearing was continued to April 19, 2000, at which time the commissioners voted to dismiss the appeal on the grounds that petitioner had not demonstrated that he was adversely affected or otherwise

1 possessed standing to appeal the planning director’s decision under state law and the  
2 county’s code. The commissioners’ decision was reduced to writing and became final on  
3 June 19, 2000.

4 On July 11, 2000, petitioner filed the present appeal.

5 **FIRST AND SECOND ASSIGNMENTS OF ERROR**

6 Both of petitioner’s assignments of error challenge the merits of the planning  
7 director’s decision, and do not challenge the commissioners’ decision that he lacks standing  
8 to appeal. Intervenors argue, and we agree, that the decision before us is the commissioners’  
9 decision denying petitioner’s local appeal, and the only challenge petitioner can bring in this  
10 appeal is to the commissioners’ decision. *Ramsey v. City of Portland*, 28 Or LUBA 763, 768  
11 (1994) (in review of decision rejecting a local appeal, the merits of the underlying decision  
12 are outside the scope of LUBA’s review); *Churchill v. Tillamook County*, 26 Or LUBA 22,  
13 24 (1993) (board of commissioners’ decision denying a local appeal affirmed, where  
14 petitioner’s assignments of error challenge only the underlying hearings officer’s decision).  
15 Because these assignments of error do not challenge the commissioners’ decision, they do  
16 not provide any basis for reversal or remand of that decision.

17 At oral argument, petitioner contended that the notice of intent to appeal filed in this  
18 case is intended to appeal the planning director’s decision, not the commissioners’ decision,  
19 and that petitioner can appeal the planning director’s decision directly to LUBA pursuant to  
20 ORS 197.830(4)(b).<sup>1</sup> The notice of intent to appeal that petitioner filed in this case discusses

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<sup>1</sup>ORS 197.830(4) provides:

“If a local government makes a land use decision without a hearing pursuant to ORS 215.416 (11) or 227.175 (10):

“(a) A person who was not provided mailed notice of the decision as required under ORS 215.416 (11)(c) or 227.175 (10)(c) may appeal the decision to [LUBA] under this section within 21 days of receiving actual notice of the decision.

1 both decisions, and can be read to express an intent to appeal either one or both. However,  
2 even if read to appeal the planning director's decision, that would not avail petitioner. The  
3 only statutory authority petitioner advances to appeal the planning director's decision to  
4 LUBA is ORS 197.830(4)(b). That provision allows a person who is not entitled to notice of  
5 a decision made without a hearing, but who is adversely affected by that decision, to appeal  
6 to LUBA within 21 days after the expiration of the period for filing a local appeal of the  
7 decision established by the county. Even assuming petitioner is adversely affected by the  
8 planning director's decision and otherwise entitled to appeal directly to LUBA under  
9 ORS 197.830(4)(b), petitioner makes no attempt to establish that his appeal filed July 11,  
10 2000, was filed within the period prescribed by ORS 197.830(4)(b).

11 We note that the portion of the petition for review that discusses petitioner's standing  
12 to appeal to *LUBA* addresses the *commissioners'* decision that petitioner was not adversely  
13 affected by the planning director's decision and lacks standing to file a local appeal to  
14 LUBA. However, that portion of the petition for review is not stated as an assignment of  
15 error challenging the commissioners' decision. Even if read generously as an assignment of  
16 error directed at the commissioners' decision, we agree with the county and intervenors that  
17 the commissioners correctly concluded that petitioner was not adversely affected by the  
18 planning director's decision. The commissioners' decision states:

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“(b) A person who is not entitled to notice under ORS 215.416 (11)(c) or 227.175 (10)(c) but who is adversely affected or aggrieved by the decision may appeal the decision to [LUBA] under this section within 21 days after the expiration of the period for filing a local appeal of the decision established by the local government under ORS 215.416 (11)(a) or 227.175 (10)(a).

“(c) A person who receives mailed notice of a decision made without a hearing under ORS 215.416 (11) or 227.175 (10) may appeal the decision to LUBA under this section within 21 days of receiving actual notice of the nature of the decision, if the mailed notice of the decision did not reasonably describe the nature of the decision.

“(d) Except as provided in paragraph (c) of this subsection, a person who receives mailed notice of a decision made without a hearing under ORS 215.416 (11) or 227.175 (10) may not appeal the decision to [LUBA] under this section.”

1           “The [commissioners] conclude that [petitioner] is not adversely affected  
2 within the meaning of ORS 215.416(11). This conclusion is based on the fact  
3 that [petitioner] does not own property within sight and sound of the  
4 campground. The [commissioners] find from the evidence that [petitioner]  
5 has not demonstrated how his property will be specifically and negatively  
6 affected by the decision. There is no evidence that substantial or any portion  
7 of the traffic to and from the development will pass by his property. There is  
8 no evidence that any of the campground activities can be heard or seen from  
9 [petitioner’s] property. Although [petitioner] claims the campground will  
10 adversely impact certain philosophical interests he has regarding land use  
11 matters, these concerns do not physically affect his property.

12           “The [commissioners] further conclude that [petitioner] is not adversely  
13 affected because travel on the Merlin-Galice Road will possibly be more  
14 congested and therefore dangerous to him. Although [petitioner] has reason  
15 to travel the road past the campground, any impacts related to this travel are  
16 indistinguishable from the public at large. The same is true for issues about  
17 urbanization and police protection. \* \* \*

18           “The [commissioners] further conclude that [petitioner] is not aggrieved  
19 within the meaning of ORS 215.416(11) because he did not participate in the  
20 planning director’s record prior to the director’s decision, either orally or in  
21 writing.” Record 6.

22           To the extent petitioner’s discussion of the commissioners’ decision in the standing  
23 section of the petition for review can be read to challenge the above-quoted conclusions, that  
24 discussion is insufficient to demonstrate error in those conclusions. In particular, we  
25 disagree with petitioner that his previous experience in appealing other land use decisions or  
26 his philosophical interest in correct application of the county’s land use regulations renders  
27 him “adversely affected” by the planning director’s decision in this case, within the meaning  
28 of ORS 215.416(11)(a) or 197.830(4)(b). Such experience or interest may be germane to  
29 whether a person who appears before the county can qualify as “aggrieved” by a county land  
30 use decision, *see League of Women Voters v. Coos County*, 76 Or App 705, 712 P2d 111  
31 (1985), but it is not germane to whether that person is adversely affected.

32           The first and second assignments of error are denied.

33           The county’s decision is affirmed.