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2 **NATURE OF THE DECISION**

3 Petitioner appeals a county decision that grants a one-year extension of a conditional
4 use permit.

5 **FACTS**

6 The subject 7.70-acre property is located in the county's Forest-80 (F-80) zone. On
7 March 13, 2001, the county issued a conditional use permit for a forest template dwelling on
8 the property.¹ Under the Clatsop County Land and Water Development and Use Ordinance
9 (LWDUO) and the terms of the March 13, 2001 permit itself, that permit would expire in two
10 years unless there was "substantial construction or action" under the permit or an extension
11 of the two-year deadline was granted.²

12 Petitioner and the applicant for the permit extension (Hess) are in a dispute over
13 whether and how access may be provided across petitioner's property to the subject property.
14 The dwelling authorized by the March 13, 2001 conditional use permit has not been built.
15 On March 10, 2003, three days before the permit was to expire, Hess requested that the
16 county extend the conditional use permit for one year.³ On March 13, 2003, the community

¹ ORS 215.750 authorizes counties to approve what are commonly referred to as forest template dwellings. The Land Conservation and Development Commission (LCDC) has adopted administrative rules that govern approval and siting of forest template dwellings as well. OAR 660-006-0027; 660-006-0029. These statutory and administrative rule standards are not directly at issue in this appeal.

² LWDUO 5.030 sets out the following two-year time limit for conditional use permits:

"Time Limit on Permit for Conditional Use. Authorization of a conditional use shall be void after two years unless substantial construction or action pursuant thereto has taken place (as per Section S2.011). However, the County may, at the discretion of the Planning Director, extend authorization for an additional one year upon request, provided such request is submitted in writing at least 10 days and not more than 30 days prior to expiration of the permit. * * *"

³ In his letter to the county, Hess explains:

"Though I have had the physical property surveyed * * *, a geological survey [conducted], and have met with the water right department for a preliminary inspection of [the proposed] water system location, I have not spent \$15,000 or 10% of construction value. * * *"

1 development director sent Hess a letter in which he approved Hess’s request for a one-year
2 extension. This appeal followed.

3 **THE COUNTY’S GENERAL RESPONSE**

4 As a general response to petitioner’s three assignments of error, the county relies on
5 OAR 660-033-0140(5).⁴ The county concedes that the conditional use permit extension
6 decision that is challenged in this appeal applies the LWDUO and does not apply OAR 660-
7 033-0140. Nevertheless, the county argues that under OAR 660-033-0140(5)(a), the
8 disputed conditional use permit is effective until March 13, 2005. We understand the county
9 to argue that if its understanding of the legal effect of OAR 660-033-0140(5) is correct, the
10 challenged decision to extend the effective date of the permit to March 13, 2004 is irrelevant,
11 without regard to whether it correctly applied the LWDUO to grant the requested one-year
12 extension.

13 OAR 660-033-0140(5) was adopted by LCDC to implement ORS 215.417 and
14 essentially duplicates the statutory language. We turn to the statute. ORS 215.417 provides:

15 “(1) If a permit is approved under ORS 215.416 for a proposed residential
16 development on agricultural or forest land outside of an urban growth
17 boundary under ORS 215.010 to 215.293 or 215.317 to 215.438 or

“I have also been denied access to my property by a locked gate by the neighboring property,
(though both our deeds grant me an easement across his property to access mine). I’m trying
to resolve this without having to involve the courts, but needless to say it’s hard to do
improvements to my property when I can’t get to it.” Record 3.

⁴As relevant, OAR 660-033-0140 provides as follows:

- “(5)(a) If a permit is approved for a proposed residential development on agricultural or forest land outside of an urban growth boundary, the permit shall be valid for four years.
- “(b) An extension of a permit described in subsection (5)(a) of this rule shall be valid for two years.
- “(6) For the purposes of subsection (5) of this rule, ‘residential development’ only includes the dwellings provided for under ORS 215.213(1)(t), (3) and (4), 215.283(1)(s), 215.284, 215.705(1) to (3), 215.720, 215.740, 215.750 and 215.755(1) and (3).”

1 under county legislation or regulation, *the permit shall be valid for*
2 *four years.*

3 “(2) An extension of a permit described in subsection (1) of this section
4 shall be valid for two years.

5 “(3) For the purposes of this section, ‘residential development’ only
6 includes the dwellings provided for under ORS 215.213(1)(t), (3) and
7 (4), 215.283(1)(s), 215.284, 215.317, 215.705(1) to (3), 215.720,
8 215.740, 215.750 and 215.755(1) and (3).” (Emphasis added.)

9 There is no dispute that the March 13, 2001 conditional use permit approves “residential
10 development” on “forest land outside of an urban growth boundary,” as those concepts are
11 used on ORS 215.417.

12 ORS 215.417 (Senate Bill (SB) 724) was adopted by the legislature in 2001. It was
13 adopted in response to legislative concerns that the two-year term for permits for residential
14 development on farm and forest lands, which was required under LCDC rules at that time,
15 was too short. As originally introduced, SB 724 provided that such residential development
16 permits would be effective for eight years and the eight-year term could be extended for an
17 additional four years. As introduced, SB 724 also provided that any such permits that had
18 “expired before the effective date of [SB 724] shall be deemed valid by the issuing authority
19 for a period of eight years from the date of permit approval[.]” After concerns were
20 expressed by the Department of Land Conservation and Development regarding the length of
21 time such permits would remain valid and the application of SB 724 retroactively to revive
22 expired permits, SB 724 was amended to shorten the time such permits would remain valid
23 to four years with a possible extension of two years and to eliminate the section of SB 724
24 that would have revived permits that had already expired.

25 Although the legislative record makes it reasonably clear that the target of SB 724
26 was the OAR 660-033-0140(1) requirement that at that time limited permits on farm and
27 forest lands to two years, there is no reason to believe that the legislature was not equally
28 concerned about two-year time limits that might be imposed on such permits by generally

1 applicable county regulations, such as LWDUO 5.030. If ORS 215.417 applies to the
2 disputed March 13, 2001 conditional use permit, it mandates that the permit be effective until
3 March 13, 2005.

4 SB 724 took effect on January 1, 2002, nine months *after* the March 13, 2001
5 conditional use permit was approved by the county. The text of ORS 215.417 is ambiguous,
6 in that it does not clearly state that it applies to permits issued before January 1, 2002 *that*
7 *have not yet expired*, and it does not clearly state that it does not. As noted above, it is clear
8 from the legislative record that SB 724 was amended so that it would not revive previously
9 issued permits for residential development on farm or forest land that had *expired* before SB
10 724 took effect. However, we have not discovered any legislative history that bears directly
11 on whether the legislature intended SB 724 to apply to permits that had been approved before
12 SB 724 took effect on January 1, 2002 but had not yet expired on that date.

13 The general rule that is applied in cases where a civil statute of limitation is changed
14 “is that a statute that shortens a limitations period applies prospectively if the legislature does
15 not express a contrary intent,” and a statute that extends a civil limitations period is, absent
16 some expression of intent to the contrary, ordinarily given retroactive application. *Boone v.*
17 *Wright*, 314 Or 135, 141, 836 P2d 727 (1992). This general rule is applied because
18 retroactive application of a shortened statute of limitations could impair the vested rights of
19 the class of persons subject to the statute of limitations, whereas an enlargement of the statute
20 of limitations would not. *Id.* The purposes served by civil statutes of limitation and
21 expiration periods for land use permits are sufficiently similar that we believe it is
22 appropriate to apply the principle articulated in *Boone* here. Applying that general principle,
23 we conclude that the requirement of OAR 660-033-0140(5)(a) that permits “shall be valid for
24 four years” applies to Hess’s March 13, 2001 permit.

25 Having concluded that ORS 215.417(1) and OAR 660-033-0140(5)(a) mandate a
26 four-year term for Hess’s March 13, 2001 permit, we next consider the proper disposition of

1 this appeal. Our conclusion regarding ORS 215.417(1) and OAR 660-033-0140(5)(a) does
2 not necessarily mean that the county correctly applied the LWDUO to extend the March 13,
3 2001 permit to March 13, 2004. Petitioner's three assignments of error are directed
4 exclusively at that aspect of the decision. However, the community development director
5 also decided that "no further extensions can be requested and should you not complete the
6 Conditional Use Permit by [March 13, 2004] you will need to reapply * * * and receive
7 approval of the Conditional Use Permit." Record 2. Petitioner understandably does not
8 attack that aspect of the decision, but the county concedes the error. Given this somewhat
9 unusual set of circumstances, we do not consider petitioner's assignments of error, because
10 whether we sustain or deny those assignments of error will have no effect on whether Hess's
11 conditional use permit will remain valid until March 13, 2005. We accept the county's
12 concession, and reverse the county's decision for the reasons explained in this opinion.

13 The county's decision is reversed.