

BEFORE THE LAND USE BOARD OF APPEALS

Nov 8 4 31 PM '83

OF THE STATE OF OREGON

1
2
3 INA McCOY, A. CLARK MOHR,)
and LIZ WRIGHT,)

LUBA NO. 83-042

4 Petitioners,)

FINAL OPINION
AND ORDER

5 v.)

6 MARION COUNTY, KECH-TV,)
7 GREATER WILLAMETTE VISION,)
LTD., WILLAMETTE SUBSCRIPTION)
8 TELEVISION, LTD., and ROGER)
LOE,)

9 Respondents.)

10 Appeal from Marion County.

11 Jossi Davidson, Silverton, filed a petition for review and
12 argued the cause for petitioners.

13 Robert C. Cannon, Salem, filed a brief and argued the cause
for Respondent County.

14 Michael Duane Brown, Salem, filed a brief and argued the
15 cause for Respondents KECH-TV et al.

16 Dismissed. 11/8/83

17 You are entitled to judicial review of this Order.
18 Judicial review is governed by the provisions of Oregon Laws
1983, ch 827.

1 BAGG, Board Member.

2 NATURE OF THE DECISION AND FACTS

3 Petitioners characterize the decision under review as
4 Marion County's refusal to make a land use decision.

5 Petitioners add, however, that

6 "An unknown county employee did make some marks on two
7 forms of 'Building Permit Applications' in June and
8 July 1981."

8 The Board is informed by counsel for the county that
9 initialling of a building permit application by the county
10 building official constitutes issuance of the permit. The
11 Board concludes petitioners seek to overturn building permits
12 issued by the county enabling respondents KECH-TV et al to
13 erect a television transmission tower and associated building.
14 The tower and the building are in an exclusive farm use zone
15 (EFU) in Marion County.

16 On June 17, 1981, an application was filed with Marion
17 County for a utility transmission building in connection with
18 television transmitting facilities. On the following day, the
19 building inspection department of Marion County validated the
20 application as to zoning. That is, the inspection department
21 found the use to be permitted in the EFU zone. On July 10,
22 1981, application was made for a transmission tower, 950 feet
23 tall. On July 15, 1981, the county determined the tower was a
24 permitted use in the EFU zone, and on July 23, 1981, a building
25 permit was issued. According to petitioners, "[s]ome time
26 before Halloween in 1981," the tower was erected. Petition for

1 Review at 4.

2 There was no notice of the issuance of any permit to erect
3 the building or the tower. The notice of intent to appeal in
4 this matter was filed on April 22, 1983.

5 DECISION

6 1979 Or Laws, ch 772, sec 4(4), as amended by 1981 Or Laws,
7 ch 748 provides:

8 "A notice of intent to appeal a land use decision
9 shall be filed not later than 30 days after the date
the decision sought to be reviewed becomes final."

10 Petitioners urge the Board to hold their appeal is timely because
11 Marion County has not made a land use decision. Petitioners
12 claim there must be "some rational administrative factfinding
13 process undertaken before a 1000 foot tower, building, and road
14 are allowed to be built on prime EFU farmland." The Board
15 understands petitioners to argue that written findings must be
16 issued with the building permits. Because no written decision
17 was made, petitioners urge the Board to force Marion County to
18 make a "rational decision" in writing.

19 The Board is cited to nothing in Oregon law or in Marion
20 County's land use plan or its ordinances which require the
21 county to issue written findings of fact and conclusions of law
22 to support a building permit. The record in this case shows
23 the county to have proceeded as though the building and tower
24 were a permitted use within the EFU zone. Whether or not the
25 structures are indeed permitted uses might be the subject of an
26 assignment of error in an appeal of the building permit to this

1 Board. In order to reach the assignment of error, however, the
2 Board must have a proceeding initiated within the time limits
3 provided in 1979 Or Laws, ch 772, as amended. Clearly, the
4 notice of intent to appeal was filed long after 30 days
5 following the issuance of the building permits. Even if the
6 building permits were to have been issued in error, the appeal
7 would nonetheless have to have been timely filed.

8 Conceivably, there may be cases where no notice of a
9 decision is given to the public or petitioners, and petitioners
10 might be excused from acting within 30 days of the time the
11 decision is made. If such relief is legally possible,
12 petitioners would still be obliged to act within 30 days of the
13 date they learn of the issuance of the permits.¹ There is no
14 allegation of when petitioners learned of the issuance of the
15 building permits, and there is no allegation as to when
16 petitioners learned the existence of the tower. Since the
17 parties seem to agree the tower is in plain view, petitioners
18 had actual knowledge of its existence and might have attempted
19 an appeal within 30 days of seeing the tower. Here,
20 petitioners did nothing until more than a year after the tower
21 was erected.

22 The Board concludes that petitioners have failed to file a
23 notice of intent to appeal within the time allowed by law.

24 This review proceeding is dismissed. Port of Portland v.
25 Portland, 3 Or LUBA 109 (1981).

FOOTNOTE

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¹ The Board makes no decision on whether these hypothetical circumstances would result in a holding that a notice of intent to appeal so filed was timely filed.