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

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COLUMBIA RIVER TELEVISION)
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Petitioner,)
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vs.)
)
MULTNOMAH COUNTY,)
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Respondent,)
)
and)
)
GREATER PORTLAND BROADCASTING)
CORPORATION,)
)
Respondent.)

LUBA No. 84-016
FINAL ORDER
(DISMISSAL)

Appeal from Multnomah County.

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DUBAY, Referee; BAGG, Chief Referee.

DISMISSED 06/14/84

You are entitled to judicial review of this Order.
Judicial review is governed by the provisions of ORS 197.850.

1 DuBay, Referee

2 This matter is before the Board on a motion to dismiss
3 filed by Participant Greater Portland Broadcasting Corp. The
4 motion asserts the Notice of Intent to Appeal was filed after
5 the 21-day period for appeal as allowed in ORS 197.830(7).¹
6 The decision on review, a community service designation on a
7 parcel for location of a television tower, was approved by the
8 planning commission and appealed to the county commissioners.
9 The commissioners sustained the appeal and approved the
10 designation at a meeting on February 14, 1984. The order was
11 not signed at the meeting but was signed later in the same day
12 by the appropriate commissioner. The order was delivered that
13 day to the county clerk. The 21 day period after that day
14 ended March 6, 1984. The Notice of Intent to Appeal was filed
15 with this Board on March 9.

16 The Multnomah County Code requires decisions and findings
17 of the commissioners to be filed with the clerk within 5 days
18 following announcement of the decision at the commissioner's
19 meeting. Multnomah County Code (MCC), §11.15.8280(C). At the
20 time the order was signed, the clerk did not routinely place a
21 date on an order showing when filed at the clerk's office. The
22 clerk made no record of the time she received the signed order
23 in this case. On deposition, however, the clerk stated the
24 signed order was personally taken by the clerk to her office
25 for filing on February 14.

26 Sometime after the order was signed petitioner's attorney

1 called the clerk and asked when the order was signed and
2 filed. The clerk told the caller the order was signed on
3 February 17, a date three days after the order was actually
4 signed and filed with the clerk. If the order had been signed
5 and filed on February 17, as the clerk related to petitioner's
6 attorney, the time to appeal would have ended on March 9. The
7 notice of appeal was filed on that date.

8 Petitioner responds in part to the motion to dismiss by
9 contending the decision was not final until 10 days after it
10 was filed with the clerk. A provision of the county code is
11 the basis for this contention:

12 "The board's decision shall be final at the close of
13 business on the 10th day after the decision, findings
14 of fact and conclusions have been filed under
15 subsection (C) above, unless the board on its own
16 motion grants a rehearing under MCC .8285(A)." MCC,
17 §11.15.8280(D).

18 LUBA adopted a rule defining a final decision as a decision
19 which has been reduced to writing and which bears the necessary
20 signatures of the governing body. OAR 661-10-010(3).

21 Petitioner contends the definition says what a final decision
22 is but does not state when a decision becomes final. However,
23 we believe the rule effectively describes when a decision
24 becomes final for appeal to LUBA.

25 When the governing body has taken all actions required by
26 statute or ordinance to make a decision, including the
27 reduction to writing with necessary signatures, and nothing
28 further needs to be done before the decision is effective, we

1 believe the decision is final for the purposes of appeal to
2 this Board. At that point, the governing body has completed
3 its required actions and has nothing further to do. Even
4 though the decision may not affect others until the happening
5 of another event, such as the passage of time or the occurrence
6 of a triggering event, the governing body has performed all
7 that needs to be done. After that point the commissioners
8 could not affect the decision without further formal action to
9 amend or repeal the order. Here, the county commissioners
10 performed all acts required by the county ordinances to adopt
11 the order including filing with the county clerk on February
12 14.

13 Although worded in terms of finality, MCC §11.8280(D) does
14 not describe further acts necessary to adopt the order but
15 establishes who may request reconsideration of the order and
16 establishes the time in which reconsideration may be
17 requested. Although MCC §11.15.8280(D) may satisfy a county
18 purpose in connection with further proceedings in the matter,
19 such purpose is not antagonistic to the commencement of the
20 21-day appeal period, nor does it necessarily conflict with the
21 definition of a final decision in OAR 661-10-010(3). We do not
22 view the commencement of the statutory appeal period by
23 operation of our rule by itself to prohibit reconsideration of
24 a decision by the local governing body.

25 We therefore hold the decision became final for purposes of
26 commencement of the appeal period on February 14, 1984, when

1 the signed decision was filed with the county clerk.

2 Petitioner also urges we consider two other factors which
3 could affect the appeal period. First, petitioner argues the
4 representation by the clerk that the order was signed and filed
5 on February 17 fixes the proper date. Since the clerk kept no
6 written record of the date of filing, the clerk is the public
7 record according to petitioner, and the clerk's statement must
8 be recognized to establish a filing date. We disagree.
9 Although the clerk's statement was in error, the representation
10 is not binding on this Board, nor does the statement affect
11 application of the rules regarding appeal to LUBA.

12 Petitioner also argues the decision cannot be considered
13 final only by consideration of OAR 661-10-010(3), but the
14 availability of the order to the parties must be considered. We
15 are cited to Bryant v. Clackamas County, 56 Or App 442, 643 P2d
16 649 (1982) where the court said "[t]he time for taking an
17 appeal cannot begin to run until written notice is given."
18 Bryant v. Clackamas County, supra at 446.

19 The holding is not precedent in the circumstances now
20 before us. In Bryant the court considered a county ordinance
21 fixing the date of a hearing officer's oral decision as the
22 time from which an appeal to the county commissioner was
23 calculated. In reaching its decision, the court construed ORS
24 215.416(8) which requires written notice of an approval or
25 denial of a permit shall be given to all parties to the
26 proceeding. The several sections of ORS 215.416 set certain

1 minimum procedural standards for counties to follow in granting
2 permits and zone changes. The procedural standards assure an
3 orderly process for granting permits and zone changes at the
4 level of local government action responsible for exercise of
5 those functions. However, an appeal from a decision made at
6 the permit granting level to the county commissioners is
7 subject to the procedural rules adopted by the county pursuant
8 to ORS 215.432. Rules for review by the commissioners of
9 appealed decisions to grant or deny permits and zone changes
10 are not required by statute to include provisions for giving
11 written notice of the reviewed decision. Although ordinances
12 may require the giving of notice of reviewed decisions, there
13 is no statutory mandate to do so.

14 The county's order dated February 14 was in the clerk's
15 office and available to the public on the same day. The Notice
16 of Intent to Appeal filed more than 21 days after the date of
17 the order was not filed within the time prescribed by ORS
18 197.830(7).

19 The motion for dismissal is granted.

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FOOTNOTES

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ORS 197.830(7) states:

"(7) A notice of intent to appeal a land use decision shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final. Copies of the notice shall be served upon the local government, special district or state agency and the applicant of record, if any, in the local government, special district or state agency proceeding. The notice shall be served and filed in the form and manner prescribed by rule of the board and shall be accompanied by a filing fee of \$50 and a deposit for costs to be established by the board. If a petition for review is not filed with the board as required in subsections (8) and (9) of this section, the filing fee and deposit shall be awarded to the local government, special district or state agency as cost of preparation of the record."