

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

LAND USE
BOARD OF APPEALS
FEB 8 10 59 AM '85

STEVEN A. ZAMSKY, General
Partner of the Ponderosa of
Klamath, Ltd.,

Petitioner,

vs.

KLAMATH COUNTY,

Respondent.

LUBA No. 85-008

FINAL OPINION
AND ORDER OF DISMISSAL

Appeal from Klamath County.

Steven A. Zamsky
601 Main, #204
Klamath Falls, OR 97601

Robert D. Boivin
110 North 6th
Klamath Falls, OR 97601

Petitioner

Attorney for
Respondent County

DUBAY, Referee; BAGG, Chief Referee; KRESSEL, Referee.

DISMISSED

02/08/85

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

1 DuBay, Referee.

2 Respondent Klamath County moves to dismiss this proceeding
3 on grounds the Notice of Intent to Appeal was not filed within
4 the time allowed by ORS 197.830(7). That statute requires a
5 Notice of Intent to Appeal to be filed "not later than 21 days
6 after the decision sought to be reviewed becomes final."

7 Petitioner's Notice of Intent to Appeal is directed at
8 Klamath County Ordinance Nos. 44.6 and 45.3. Both ordinances
9 are dated December 18, 1984 and are signed by two county
10 commissioners. Each ordinance includes an emergency clause
11 stating the ordinance "shall be in effect on January 2, 1985."
12 Petitioner does not dispute these facts. However, the Notice
13 of Intent to Appeal was filed with the Board on January 15,
14 1985, a date more than 21 days after the ordinances were signed
15 on December 18, 1984.

16 Petitioner makes two arguments in support of his contention
17 the Notice of intent to appeal was timely filed. For the
18 reasons set forth below, we do not accept either argument.

19 First, petitioner contends January 2, 1985, is the date the
20 clock started to run for measurement of the 21 day within which
21 to file an appeal under ORS 197.830(7). Petitioner claims the
22 ordinance provisions setting an effective date of January 2,
23 1985, establishes when the ordinances become final. However, a
24 "final decision or determination" is defined in OAR
25 661-10-010(3). By this definition, a decision is final when
26 reduced to writing and bears the necessary signatures of the

1 governing body. This Board has interpreted this rule to mean
2 the date a decision is enacted and signed, rather than the date
3 the decision becomes effective, determines when a decision
4 becomes final for the purposes of an appeal. See Hazen
5 Investments, Inc. v. Lane County, 2 Or LUBA 151 (1980).
6 Recently, in Columbia River Television v. Multnomah Co., 70 Or
7 App 448, ___ P2d ___ (1984), the Court of Appeals affirmed
8 LUBA's application of this rule to define when the 21 day
9 appeal period commenced. There, the Court held OAR
10 661-10-010(3) adequately establishes when a decision becomes
11 final for purposes of review by this Board even though a local
12 ordinance provision made all orders final 10 days after
13 adoption. The definition of a final decision in OAR
14 661-10-010(7) states when a decision becomes final for purposes
15 of filing an appeal to LUBA, and contrary provisions of local
16 ordinances are not effective to control the timing of our
17 review jurisdiction. We therefore reject petitioner's first
18 argument that the decision did not become final until its
19 effective date.

20 Petitioner's next argument is founded on petitioner's
21 reliance on statements by the county planning director.
22 Petitioner alleges the planning director told him the time to
23 commence an appeal of both ordinances would not commence until
24 their effective date, i.e., January 2, 1985. Such statements
25 were made to petitioner on December 19, 1984, at the same time
26 that the planning director informed petitioner the ordinances

1 had been signed and filed with the county clerk. Petitioner
2 says he relied on the planning director's statement, and that
3 such reliance should excuse compliance with the statute stating
4 the time for filing appeals to LUBA.

5 For the reasons noted above, the planning director's
6 statements were in error about when the ordinances became final
7 for purposes of appeal to LUBA. Such erroneous statements are
8 not binding on this Board and may not extend the time limit to
9 file a Notice of Intent to Appeal as set forth in ORS
10 197.830(7). Columbia River Television v. Multnomah Co., supra,
11 at 452.

12 Because the Notice of Intent to Appeal was filed with the
13 Board more than 21 days after the ordinances in question became
14 final in accordance with OAR 661-10-010(3), the motion to
15 dismiss is allowed.

16 Dismissed.

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