

LAND USE
BOARD OF APPEALS
MAY 4 2 15 PM '87

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

OREGON STATE HOMEBUILDERS)
ASSOCIATION,)
Petitioner,)
vs.)
CITY OF MEDFORD,)
Respondent.)

LUBA No. 87-009

FINAL OPINION
AND ORDER OF DISMISSAL

Appeal from City of Medford.

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Petitioner

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BAGG, Referee; DuBAY, Chief Referee; participated in the decision.

DISMISSED

05/04/87

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

1 Bagg, Referee

2 NATURE OF THE DECISION

3 Petitioner appeals adoption of a new land development code
4 for the City of Medford. Ordinance No. 5785, adopting a new
5 code, became final on December 19, 1986. Petitioner filed their
6 Notice of Intent to Appeal with this Board on January 23, 1987.

7 DECISION

8 Petitioner's Notice of Intent to Appeal was filed after the
9 21-day period allowed under ORS 197.840 and LUBA rule
10 661-10-015. Because of this late filing, respondent moves to
11 dismiss the appeal.¹

12 Petitioner alleges it is entitled to proceed. Petitioner
13 claims that the notice of intent to appeal

14 "was filed within 21 days following the notice of a
15 decision being given to the Director of the Department
16 of Land Conservation and Development as required by
ORS 197.615(1)."

17 Petitioner's point is not clear. Petitioner may be arguing the
18 21-day filing limit in ORS 197.830(7) is stayed pending
19 notification by the director of DLCD. See Ludwick v. Yamhill
20 County, 72 Or App 224, 696 P2d 536, rev den 299 Or 443 (1985).

21 We do not decide whether or not petitioner's analysis of the
22 effect of the notice requirement in ORS 197.615(1) because
23 petitioner was not entitled to the notice mentioned in the
24 above quote.

25 When a local government amends an acknowledged
26 comprehensive plan or land use regulation or adopts a new land

1 use regulation, it must submit a copy of the adopted text to
2 the Director of the Department of Land Conservation and
3 Development. ORS 197.615(1). Within five working days after
4 the Department receives an amendment, the Director is to notify
5 persons who have requested such notification. ORS 197.615(3).
6 Among other things, the notice is to explain the requirements
7 for appealing the action under ORS 197.830 to 197.845 (the LUBA
8 appeals process) and the list of locations where the amendment
9 may be reviewed.

10 Petitioner alleges it erroneously believed it had submitted
11 such a notification request to the Department of Land
12 Conservation and Development. Petitioner is now aware it was
13 not on the list of those to be notified, however, and was
14 therefore not provided notice of the city's amendment to its
15 code. Petitioner claims, however, that it

16 "filed this appeal in good faith because it believed
17 that it was on the appropriate list and entitled to
such notice."

18 Had petitioner been on the appropriate list, it would have
19 received notice of the adoption of the city's new land use
20 regulations and acted accordingly to appeal the enactment. It
21 appears, however, that petitioner requested that its name be
22 included on the wrong list. Petitioner was on a list of those
23 to be notified regarding proposed amendments or new land use
24 regulations. See ORS 197.610. Petitioner was not on the list
25 of those to be notified of adoption of amendments or the new
26 land use regulations. See ORS 197.615.

1 These circumstances are regrettable from petitioner's
2 perspective, but, we are cited to nothing which would allow us
3 to excuse the oversight and allow a notice of intent to appeal
4 filed beyond the time provided for in statute and our rules.
5 We conclude, therefore, that this appeal must be dismissed.

6 This appeal is dismissed.

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FOOTNOTES

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1 Respondent also claims petitioner lacks standing to appeal the city's decision. Issues of standing are not ripe for our review until petitioner alleges it is entitled to standing. The time to allege entitlement to standing is at the time the petition for review is filed. See ORS 197.830. We therefore do not reach the question of whether petitioner is (or might be) entitled to standing.