

LAND USE
BOARD OF APPEALS

BEFORE THE LAND USE BOARD OF APPEALS

JUL 10 2 36 PM '87

OF THE STATE OF OREGON

CENTRAL PARK NEIGHBORHOOD)
ASSOCIATION OF CORVALLIS,)

Petitioner,)

LUBA No. 87-016

vs.)

FINAL OPINION
AND ORDER

CITY OF CORVALLIS, and)
MILESTONES FOR FAMILY)
RECOVERY, INC.,)

Respondents.)

Appeal from City of Corvallis.

Steven Black, Corvallis, filed the petition for review and argued on behalf of petitioner.

Michael Newman, Corvallis, filed a response brief and argued on behalf of Respondent City.

George Heilig, Corvallis, filed a response brief and argued on behalf of Respondent Milestones for Family Recovery, Inc.

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

DISMISSED

07/10/87

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

1 Opinion by DuBay.

2 NATURE OF THE DECISION

3 The City of Corvallis filed a motion to dismiss this appeal
4 on grounds the decision is not a land use decision subject to
5 review by LUBA and because the appeal was not timely filed.
6 For the reasons set forth below, we agree with respondent on
7 the timeliness claim and dismiss the appeal.

8 Respondent Milestones for Family Recovery, Inc.
9 (Milestones) applied to the city for a building permit to
10 remodel a residence in an RS-20, Medium High Residential,
11 zone. Remodeling was necessary to convert the property for
12 group use to provide residential care for adults and juveniles
13 with drug and alcohol problems. The building permit was
14 issued.

15 Petitioner, an association of neighbors, appealed the
16 issuance of the building permit to the city council. The
17 matter was considered by the council on January 20, 1987 and on
18 the following evening, January 21. At that time, petitioner
19 presented testimony in opposition to the permit. The council
20 voted to deny the appeal and unanimously approved the staff's
21 decision to issue the permit.

22 On February 2, 1987, the attorney for the neighborhood
23 association wrote to the mayor, advising him that the
24 association would not appeal the decision since the association
25 understood Milestones would not provide services to persons not
26 residing at the home. The city's responsive letter dated

1 February 9 advised petitioner that the association's
2 understanding was incorrect and that some out-patient treatment
3 would be permitted on the site.

4 Petitioner filed a Notice of Intent to Appeal with LUBA on
5 February 23, 1987.

6 The city contends the decision became final on January 21
7 when the council voted to affirm issuance of the building
8 permit, and the appeal to LUBA was not filed within 21 days
9 thereafter as required by ORS 197.830(7).

10 Petitioner says the time to appeal was tolled because the
11 city did not send them notice of the decision. They add that
12 if the February 9 letter from the city can be considered notice
13 of the decision, the appeal was filed within 21 days
14 thereafter. Petitioner relies on League of Women Voters v.
15 Coos County, 82 Or App 673, 729 P2d 588 (1986).

16 In the Coos County case, the court held that ORS 215.416(8)
17 requires counties to give written notice to all parties before
18 decisions approving or denying permits may be considered
19 final. Although the statutes considered by the court apply
20 only to counties, similar statutory provisions apply to permits
21 issued by cities. Cities are required to send written notice
22 of approval or denial of permit applications by ORS
23 227.173(3). If this statute is applicable, the period for
24 filing an appeal to LUBA did not begin until respondent gave
25 written notice in compliance with the statute. For the reasons
26 stated below, we find the statute inapplicable, and the time

1 for filing the appeal was not tolled.

2 The requirement for notice in ORS 227.173(3) applies only
3 to approval or denial of permits defined in ORS 227.160(2). A
4 permit is a "discretionary approval of a proposed development
5 of land" under city legislation or regulation. ORS
6 227.160(2). The city argues that the remodeling permit is a
7 non-discretionary permit not subject to the requirements in ORS
8 227.173(3). According to the city, the remodeled residence
9 will be used for a use permitted outright in the RS-20 zone,
10 and no criteria calling for exercise of discretion were
11 applicable.

12 Petitioner relies solely on League of Women Voters v. Coos
13 County, supra, to make their claim they were entitled to
14 notice. League of Women Voters, however, did not involve a
15 building permit for an outright permitted use. The county
16 there failed to send notice of an approval of a conditional use
17 permit for a dwelling in conjunction with forest use. In a
18 footnote, the Court of Appeals noted without elaboration that
19 the county's decision was an approval of a permit to which the
20 notice requirement of ORS 215.416(8) applies. League of Women
21 Voters, supra, 82 Or App at 675. The issue presented here is
22 whether a building permit for a use permitted outright in the
23 city's code is a permit subject to the notice requirements in
24 ORS 227.173(3). League of Women Voters, supra, is not
25 dispositive of this issue.

26 ORS 227.215 authorizes cities to adopt ordinances

1 regulating the development of land. Such ordinances may
2 provide for:

3 "(a) Development for which a permit is granted as of
4 right on compliance with the terms of the ordinance;

5 "(b) Development for which a permit is granted
6 discretionarily in accordance and consistent with the
7 requirements of ORS 227.173; . . ." ORS 227.215(3).

8 The city's Land Development Code provides for two types of
9 development, general and special.

10 "General Development includes those development
11 activities which are permitted outright subject to
12 compliance with the criteria and standards of this
13 Code. Those uses which are listed as "Permitted Uses"
14 in Article II are General Development activities and
15 require staff review upon application for a building
16 permit. Review of building permits shall be
17 accomplished according to administrative procedures
18 for the review of general development." Section
19 106.02, Land Development Code.

20 Special development is described in the code as

21 "development for which approval is granted discretionarily."

22 Section 106.03, Land Development Code. In contrast, the code
23 provisions identify "Permitted Uses" as development for which a
24 permit is granted as of right on compliance with the terms of
25 the ordinance. We construe the building permit issued to
26 Milestones to be in this latter non-discretionary category.
Accordingly, we find the requirements notice in ORS 227.173 did
not apply to the building permit.

We therefore deny petitioner's claim that the time for
appeal to LUBA under ORS 197.830(7) was tolled until the city
gave written notice of the decision to interested parties. The
city's decision constituted a review of an action of the

1 building official and was therefore governed by Ordinance No.
2 74-90. Reviews under this ordinance are not required to
3 culminate in a written order. The decision became final on
4 January 21, 1987, when the city council voted to affirm
5 issuance of the permit. The Notice of Intent to Appeal was
6 filed with LUBA more than 21 days after that date. The appeal
7 is dismissed. Sarich v. City of Forest Grove, 13 Or LUBA 70
8 (1985).¹

FOOTNOTE

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As in Sarich, supra, we need not determine whether this building permit is a land use decision subject to our review. See ORS 197.015(10); Doughton v. Douglas County, 82 Or App 444, 728 P2d 887 (1986).

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CERTIFICATE OF MAILING


I hereby certify that I served the foregoing Final Opinion and Order for LUBA No. 87-016, on July 10, 1987, by mailing to said parties or their attorney a true copy thereof contained in a sealed envelope with postage prepaid addressed to said parties or their attorney as follows:

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Dated this 10th day of July, 1987.


Patricia J. Kadaja
Management Assistant