

LAND USE  
BOARD OF APPEALS

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

MAY 18 3 28 PM '89

KELLOGG LAKE FRIENDS, an Oregon non-  
profit corporation, and ALTON JAGER,

Petitioners,

and

ERNEST GRIFFITH,

Intervenor-Petitioner,

vs.

CLACKAMAS COUNTY,

Respondent,

and

FIRST WESTERN SERVICE  
CORPORATION,

Intervenor-Respondent.

LUBA No. 89-031

FINAL OPINION  
AND ORDER OF DISMISSAL

Appeal from Clackamas County.

Alton Jager  
12350 SE 31st Place  
Milwaukie, OR 97222

Petitioner

Michael Judd  
County Counsel  
906 Main Street  
Oregon City, OR 97045

Attorney for Respondent

SHERTON, Referee; HOLSTUN, Chief Referee; KELLINGTON, Referee.

DISMISSED

Ernest Griffith  
12437 SE Alchar Dr.  
Milwaukie, OR 97222

Intervenor-Petitioner

Mark J. Greenfield  
Mitchell, Lang & Smith  
2000 One Main Place  
101 SW Main Street  
Portland, OR 97204

Attorney for  
Intervenor-Respondent

05/18/89

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

1           Sheraton, Referee.

2           MOTIONS TO INTERVENE

3           Ernest Griffith moves to intervene on the side of  
4 petitioners in this proceeding. First Western Service  
5 Corporation moves to intervene on the side of respondent.  
6 There is no opposition to the motions, and they are granted.

7           FACTS

8           On April 3, 1989, a Notice of Intent to Appeal was filed  
9 with this Board identifying "Kellogg Lake Friends, an Oregon  
10 non-profit corporation," as petitioner, and signed by "Alton  
11 Jaeger, Treasurer, Kellogg Lake Friends." On April 4, 1989, an  
12 Amended Notice of Intent to Appeal was filed with this Board  
13 identifying "Alton Jager" as petitioner, and signed by "Alton  
14 Jager." Both notices identify the decision appealed as follows:

15           "'Findings and Decision of the Hearings Officer,' File  
16 No. 388-87-F, G, D/A, Remand, which became final on  
17 March 13, 1989, and which involved the approval of a  
18 request for a Willamette River Greenway permit in  
19 conjunction with a proposed development of a 157 unit  
multi-family development on property located between  
Kellogg Lake and McLoughlin Boulevard, south of the  
Milwaukie City Limits."

20           MOTIONS TO DISMISS

21           On April 4, 1989, intervenor-respondent (respondent) filed  
22 a motion to dismiss this proceeding on the ground that no  
23 lawful notice of intent to appeal was filed within the time  
24 established by statute for filing a notice of intent to appeal.

25           Respondent points out that ORS 197.830(7) requires a notice  
26 of intent to appeal a land use decision to be filed with the

1 Board "not later than 21 days after the date the decision  
2 sought to be reviewed becomes final." Respondent recognizes  
3 that the original notice of intent to appeal in this case,  
4 identifying Kellogg Lake Friends as petitioner, was filed on  
5 the 21st day after the Clackamas County (county) decision  
6 appealed from became final. However, respondent argues that  
7 Kellogg Lake Friends, as a corporation, may appear in a LUBA  
8 proceeding only through an attorney. Respondent contends that  
9 the filing of a notice of intent to appeal constitutes an  
10 appearance before the Board, and, therefore, the corporation's  
11 treasurer, who is not a member of the Oregon State Bar, cannot  
12 lawfully file a notice of intent to appeal. According to  
13 respondent, because no lawful notice of intent to appeal was  
14 filed with the Board within the time established by  
15 ORS 197.830(7), this case must be dismissed.

16 On April 6, 1989, respondent filed a motion to dismiss this  
17 proceeding on the ground that the amended notice of intent to  
18 appeal was not filed within the time established by  
19 ORS 197.830(7). Respondent argues that the statutory deadline  
20 for appealing the county's March 13, 1989 decision was April 3,  
21 1989. According to respondent, because the amended notice of  
22 intent to appeal was filed one day after the statutory  
23 deadline, this case must be dismissed.

24 Petitioner Alton Jager (petitioner) states that Kellogg  
25 Lake Friends is a non-profit corporation comprised of private  
26 individuals who donate time and funds for the purpose of

1 preserving Kellogg Lake and its environs. Petitioner asserts  
2 members of Kellogg Lake Friends represented the organization in  
3 the proceedings before the county, without aid of legal  
4 counsel. Petitioner argues it is not the intent of ORS 197.830  
5 to deny an organization of this nature the right to defend its  
6 interests without an attorney. Petitioner argues, therefore,  
7 that Kellogg Lake Friends filed a lawful notice of intent to  
8 appeal on April 3, 1989.

9 Petitioner further asserts that on April 4, 1989, the  
10 Board's administrative assistant informed him that an  
11 individual petitioner may appear before the Board on his or her  
12 own behalf, but a corporation must be represented by an  
13 attorney. Petitioner also contends he was told by the  
14 administrative assistant that he should file an amended notice  
15 of intent to appeal as an individual, and if such notice was  
16 received by the Board that day, it would be accepted.  
17 Petitioner argues his filing of the amended notice of intent to  
18 appeal complied with these instructions from the Board's  
19 administrative assistant.

20 In McCrystal v. Polk County, 1 Or LUBA 142, 143 (1980), we  
21 stated:

22 "Land use appeals before the Land Use Board of Appeals  
23 are 'proceedings' within the meaning of ORS 9.320. In  
24 any such proceeding, a party may represent himself or  
25 be represented by an attorney. Persons who are not  
26 members of the Oregon State Bar (attorneys) may not  
represent other persons or associations. \* \* \* See  
McCrystal v. Polk County, 1 Or LUBA 145, 147 (1980);  
35 Op Atty Gen 1088 (1972); 36 Op Atty Gen 960, 989  
(1974); ORS 9.160; ORS 9.320."

1 If a notice of intent to appeal on behalf of an organization  
2 bears the signature of an individual who is not an attorney,  
3 the organization has not made an appearance or perfected an  
4 appeal before LUBA, regardless of whether that individual has  
5 the authority of the organization he seeks to represent. Allen  
6 v. City of Banks, 11 Or LUBA 406, 407 (1984); Curtis v. Oregon  
7 City, 4 Or LUBA 279, 282 (1981). For an appeal to be properly  
8 filed, a notice of intent to appeal bearing the necessary  
9 signatures must be filed with LUBA within the deadline for  
10 filing a notice of intent to appeal established by  
11 ORS 197.830(7).<sup>1</sup> See Curtis v. Oregon City, 4 Or LUBA at  
12 283; Boddy v. Douglas County, 2 Or LUBA 253, 255 (1980).

13 In this case, there is no dispute that the county decision  
14 sought to be appealed became final on March 13, 1989. Thus,  
15 under ORS 197.830(7), a notice of intent to appeal this  
16 decision had to be filed on or before April 3, 1989. The  
17 original petitioner, Kellogg Lake Friends, did not file a  
18 notice of intent to appeal bearing the signature of an attorney  
19 within the time allowed.<sup>2</sup> Based on the above-cited opinions,  
20 we conclude that Kellogg Lake Friends did not file a timely  
21 appeal with this Board.

22 Although petitioner Alton Jager signed the notice of intent  
23 to appeal filed on April 3, 1989, he expressly did so on behalf  
24 of the identified petitioner, Kellogg Lake Friends, not on his  
25 own behalf. The amended notice of intent to appeal identifying  
26 Alton Jager as petitioner was not filed until April 4, 1989. A

1 notice of intent to appeal filed after the 21st day after the  
2 date the decision sought to be reviewed became final is  
3 untimely filed, and the appeal will be dismissed. Karlin v.  
4 City of Portland, 13 Or LUBA 21 (1985); OAR 661-10-015(1). We  
5 have no authority to waive the deadline established by statute  
6 for filing a notice of intent to appeal.<sup>3</sup> See Thede v. Polk  
7 County, 63 Or App 738, 740, 665 P2d 1257 (1983).

8 Respondent's motions to dismiss are granted. This appeal  
9 is dismissed.

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FOOTNOTES

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ORS 197.830(7) provides, in relevant part:

4 "A notice of intent to appeal a land use decision  
5 shall be filed not later than 21 days after the date  
6 the decision sought to be reviewed becomes final."

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7 In fact, as of this date, Kellogg Lake Friends has not  
8 filed a notice of intent to appeal in this proceeding bearing  
9 the signature of an attorney, and has not sought to appear in  
10 this proceeding through an attorney.

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11 We understand petitioner and intervenor-petitioner to  
12 contend that we are estopped from enforcing the statutory  
13 deadline for filing a notice of intent to appeal in this case  
14 because the Board's administrative assistant informed  
15 petitioner that the filing of an amended notice of intent to  
16 appeal on behalf of Alton Jager on April 4, 1989 would be  
17 acceptable. However, regardless of what the Board's  
18 administrative assistant may have told petitioner, estoppel  
19 cannot arise from an action of a Board employee which purports  
20 to waive a mandatory statutory requirement. See Bankus v. City  
21 of Brookings, 252 Or 257, 260, 449 P2d 646 (1969); Clackamas  
22 County v. Emmert, 14 Or App 493, 500, 513 P2d 532 (1973);  
23 Rosenfeld v. City of Lake Oswego, 15 Or LUBA 312, 317 (1987).  
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