

Opinion by Kellington.

NATURE OF THE DECISION

Petitioners appeal a decision of the Baker County Court (county court) denying petitioners' appeal of a decision of the Baker County Planning Commission regarding issuance of a Land Use Compatibility Statement (compatibility statement). The compatibility statement concerns a proposal to burn "tire derived fuel" (TDF) to heat a cement plant kiln.

FACTS

On November 2, 1989, the Baker County Planning Director (planning director) issued a determination that using TDF to heat intervenor-respondent's (intervenor's) cement plant kiln is compatible with the county's acknowledged comprehensive plan and land use regulations. Petitioners appealed the planning director's issuance of the compatibility statement to the Baker County Planning Commission (planning commission). The planning commission denied petitioners' appeal, and on December 22, 1989, the county court denied petitioners' appeal of the planning commissions' decision.¹ This appeal followed.

The record was received by the Board on January 25, 1990. Under ORS 197.830(10) and OAR 661-10-030(1), the petition for review was due on February 15, 1990.

¹A related decision by the county, concerning whether a conditional use permit is required for the disputed facility, is currently before this Board in Bloomer v. Baker County, LUBA No. 89-143.

On March 25, 1990, intervenor filed a motion to dismiss this appeal on the bases that (1) the time for filing the petition for review had passed and no petition for review had been filed, and (2) the decision to issue the compatibility statement was a ministerial decision and, therefore, not a land use decision subject to the jurisdiction of the Board.

On March 28, 1990, petitioners filed a response to intervenor's motion to dismiss and a petition for review.

MOTION TO DISMISS

Intervenor moves for dismissal of this appeal proceeding on the basis of OAR 661-10-030(1), which provides in part:

"The petition for review shall be filed with the Board within 21 days after the date the record is received by the Board. * * * Failure to file a petition for review within the time required by this section * * * shall result in dismissal of the appeal. * * *"

It is undisputed that a petition for review was not filed on or before February 15, 1990, the day the petition for review was due. Petitioners argue that notwithstanding their failure to file a petition for review by that date, this appeal should not be dismissed because of the following statement in the Notice of Intent to Appeal:

"* * * we suggest that [LUBA Nos. 90-008 and 89-143] be consolidated into one." Notice of Intent to Appeal 2.

Petitioners request both that we treat this statement in the

Notice of Intent to Appeal as a motion to consolidate, and that we consolidate this appeal with Bloomer v. Baker County, LUBA No. 89-143. See n 1.

We strictly adhere to the time limits for filing petitions for review.² Hoffman v. City of Portland, 7 Or LUBA 213 (1983) (petition for review left outside LUBA office after regular working hours on the date the petition was due not timely filed); Schreiner's Gardens v. Marion County, 8 Or LUBA 261, aff'd 66 Or App 194 (1983) (petitioner's attempt to file petition for review after working hours on the day the petition for review was due is not sufficient for petition to be considered timely filed); Beckwith v. City of Portland, ___ Or LUBA ___ (LUBA No. 88-027, July 8, 1988) (petition for review is due 21 days from the date the local government record is received by LUBA).

Under the Board's rules, once the Board has received the local government record, there are only three events which will stay the time for filing of the petition for review. They are the filing of (1) a timely record objection (OAR 661-10-026(5)); (2) a timely motion for an evidentiary hearing (OAR 661-10-045(7)); and (3) a written

²We note OAR 661-10-005 provides in relevant part:

"* * * Technical violations not affecting the substantial rights of parties shall not interfere with the review of a land use decision. Failure to comply with the time limit for filing * * * a Petition for Review under OAR 661-10-030(1) is not a technical violation [of the Board's rules]."

agreement of the parties to extend the time limit for filing the petition for review (OAR 661-10-067(2)). None of these documents have been filed in this appeal.

Even if we were to treat the above quoted language in petitioners' notice of intent to appeal as a motion to consolidate this appeal with Bloomer v. Baker County, LUBA No. 89-143, filing a motion to consolidate does not stay the time limit for the filing of the petition for review.

Intervenor's motion to dismiss is granted.³

This appeal is dismissed.

³Intervenor also moves for dismissal of this appeal on the basis that issuance of the compatibility statement does not require discretion and, therefore, is not a land use decision. In view of our dismissal of petitioners' appeal on other grounds, we need not decide whether the county's issuance of the compatibility statement is a land use decision.