

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

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

ELLIS HAMBY,)	
)	
Petitioner,)	LUBA No. 91-075
)	
vs.)	FINAL OPINION
)	AND ORDER
CITY OF JEFFERSON,)	
)	
Respondent.)	

Appeal from City of Jefferson.

Ellis Hamby, Jefferson, filed the petition for review and represented himself.

William G. Paulus, Salem, filed the response brief and represented respondent. With him on the brief was Garrett, Seideman, Hemann, Robertson, Paulus, Jennings & Comstock, P.C.

SHERTON, Referee; KELLINGTON, Chief Referee; HOLSTUN, Referee, participated in the decision.

DISMISSED 09/03/91

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

1 Opinion by Sherton.

2 Respondent filed motions to dismiss this appeal on
3 August 13 and 27, 1991. Respondent also contends in its
4 brief that the final decision of the city council in the
5 matter appealed by petitioner was made on March 21, 1991.
6 Respondent argues that petitioner's notice of intent to
7 appeal is untimely because it was not filed until June 10,
8 1991, 81 days after the final decision. Respondent further
9 contends petitioner knew or should have known of the
10 challenged decision more than 21 days prior to June 10, 1991
11 and, therefore, the notice of intent to appeal was not filed
12 within the time required by law.

13 Petitioner makes no response to respondent's motions to
14 dismiss or to the jurisdictional challenge in respondent's
15 brief. The petition for review contains no statement
16 establishing this Board's jurisdiction, as required by
17 OAR 661-10-030(3)(c).

18 ORS 197.830(8) imposes a jurisdictional requirement
19 that a notice of intent to appeal be filed within 21 days of
20 when the decision sought to be appealed becomes final.
21 However, under ORS 197.830(3), if a local government makes a
22 land use decision without providing a hearing, a person
23 adversely affected by the decision may appeal to this Board:

24 "(a) Within 21 days of actual notice where notice
25 is required; or

26 "(b) Within 21 days of the date a person knew or
27 should have known of the decision where no

1

notice is required."

1 Respondent alleges the final decision in the appealed matter
2 was made on March 21, 1991. Respondent also alleges the
3 notice of intent to appeal was not filed within 21 days of
4 this date or within 21 days of when petitioner had actual
5 notice or knew or should have known of the decision. The
6 alleged facts, if true, are sufficient to warrant dismissal
7 of this appeal.

8 As the party seeking review by LUBA, petitioner has the
9 burden of establishing that LUBA has jurisdiction.
10 Billington v. Polk County, 299 Or 471, 475, 703 P2d 232
11 (1985); Portland Oil Service Co. v. City of Beaverton, 16
12 Or LUBA 255, 260 (1987). In the absence of a response from
13 petitioner disputing the facts alleged by respondent,
14 petitioner fails to carry this burden.¹

15 This appeal is dismissed.

¹We note that petitioner also makes no allegation that he is adversely affected by the challenged decision, which would be necessary to establish that the notice of intent to appeal was timely filed under ORS 197.830(3).