

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 BRUCE J. RYNEARSON and MARCIA)

5 RYNEARSON,)

6)

7 Petitioners,)

8)

9 vs.)

10) LUBA No. 95-183

11 WALLOWA COUNTY,)

12)

13 Respondent,)

FINAL OPINION

AND ORDER

14)

15 and)

16)

17 GLENN MCDONALD and JUDY MCDONALD,)

18)

19 Intervenors-Respondent.)

20
21
22 Appeal from Wallowa County.

23
24 Steven J. Joseph, La Grande, represented petitioners.

25
26 William R. Kirby, Enterprise, represented respondent.

27
28 D. Rahn Hostetter, Enterprise, represented intervenors-
29 respondent.

30
31 GUSTAFSON, Referee; LIVINGSTON, Chief Referee; HANNA,
32 Referee, participated in the decision.

33
34 DISMISSED 11/21/95

35
36 You are entitled to judicial review of this Order.
37 Judicial review is governed by the provisions of ORS
38 197.850.

1 Opinion by Gustafson.

2 **NATURE OF DECISION**

3 Petitioners appeal what they characterize as the
4 county's denial of a "Petition to Rescind Order Vacating
5 Crestview Drive," which petitioners filed on May 9, 1995 and
6 which the county denied on August 7, 1995.

7 **FACTS**

8 As described in the petition for review, on December
9 13, 1989 the county issued an order vacating a portion of
10 Crestview Drive, a county road that terminates at the
11 southern boundary of petitioners' property. However,
12 petitioners did not become aware of the December, 1989
13 vacation proceeding until August, 1994.

14 On August 9, 1994 petitioners requested "relief" from
15 the county in the form of a letter to the Wallowa County
16 Court. In that letter, petitioners alleged the 1989
17 vacation was unlawful in that the vacation petition was not
18 agreed to by 100% of the affected landowners. They also
19 alleged the street vacation left their property landlocked.
20 On October 5, 1994, the county court sent petitioners a
21 letter, responding that the vacation did not leave
22 petitioners' property landlocked, and concluding:

23 "We would recommend that you consider the existing
24 easement as sufficient to serve your access needs.
25 If you choose to seek to re-establish the
26 Crestview Drive easement you should file a
27 petition to do so with the Wallowa County Court."
28 Record 49.

1 Petitioners did not petition to re-establish Crestview
2 Drive. Rather, seven months later, on May 5, 1995,
3 petitioners submitted to the county court a petition to
4 rescind the 1989 vacation. Petitioners appeal following the
5 county's denial of their rescission petition.

6 **MOTION TO DISMISS**

7 Intervenor-Respondents (intervenors) move to dismiss
8 the appeal as untimely filed.

9 ORS 197.835(8) requires that:

10 "[a] notice of intent to appeal a land use
11 decision or limited land use decision shall be
12 filed not later than 21 days after the date the
13 decision sought to be reviewed becomes final."

14 However, when the local governing body fails to provide
15 the required notice of a land use decision, the time for
16 appealing the decision is tolled until the party entitled to
17 notice obtains "actual knowledge" of the decision. ORS
18 197.830(3)(a). In addition, petitioners must exhaust any
19 available local administrative remedies before petitioning
20 LUBA for relief. ORS 197.825.

21 Although the petition for review characterizes the
22 "final decision" under appeal as the denial of the petition
23 to rescind, petitioners sole assignment of error does not
24 address the merits of that denial in any way. Rather,
25 petitioners challenge the 1989 decision vacating the county

1 road.¹

2 Petitioners have not alleged any administrative remedy
3 was available from the county after they learned of the 1989
4 decision in August, 1994. Absent an available
5 administrative remedy, petitioners were required to appeal
6 the 1989 decision to this Board within 21 days of learning
7 of it. Even if, however, petitioners' August 9, 1994 letter
8 to the County Court was an effort to exhaust an available
9 administrative remedy, that remedy was exhausted through the
10 county court's October 5, 1994 response, and petitioners'
11 appeal to this Board was due within 21 days after that
12 response. In either event, petitioners' appeal was not
13 timely filed.

14 The appeal is dismissed.

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¹Petitioners' assignment of error states:

"County's action in 1989 vacating a portion of Crestview Drive was a nullity which the County should have corrected by allowing the Petition to Rescind Order Vacating Crestview Drive."