

1                           BEFORE THE LAND USE BOARD OF APPEALS  
2                           OF THE STATE OF OREGON  
3

4   DARLYN ADAMS,                           )  
5    )  
6                    Petitioner,            )  
7    )  
8            vs.                            )  
9    )  
10   CITY OF ASHLAND,                    )  
11   )  
12                    Respondent,         )  
13   )  
14            and                            )  
15    )  
16   ANNA HASSELL,                        )  
17   )  
18                    Intervenor-Respondent.                            )

LUBA No. 97-085

FINAL OPINION  
AND ORDER

19  
20  
21            Appeal from City of Ashland.

22  
23            Darlyn Adams, Ashland, filed the petition for review  
24   and argued on her own behalf.

25  
26            No appearance by respondent.

27  
28            Daniel L. Harris, Ashland, filed the petition for  
29   review on behalf of intervenor-respondent. With him on the  
30   brief was Davis, Gilstrap, Harris, Hearn & Welty. Anna  
31   Hassell argued on her own behalf.

32  
33            GUSTAFSON, Chief Judge; HANNA, Judge, participated in  
34   the decision.

35  
36                    DISMISSED                            10/07/97

37  
38            You are entitled to judicial review of this Order.  
39   Judicial review is governed by the provisions of ORS  
40   197.850.

1 Opinion by Gustafson.

2 **NATURE OF THE DECISION**

3 Petitioner appeals the city's approval of a  
4 subdivision.

5 **MOTION TO INTERVENE**

6 Anna Hassell, the applicant below, moves to intervene  
7 on the side of respondent. There is no opposition to the  
8 motion, and it is allowed.

9 **JURISDICTION**

10 The mayor signed the challenged decision on April 15,  
11 1997. The city mailed notice of the decision on April 21,  
12 1997. Petitioner filed her notice of intent to appeal  
13 (NITA) the decision on May 7, 1997, 21 days after the city  
14 mailed the decision to her, and 22 days after the decision  
15 was signed.

16 ORS 197.830(8) requires that a notice of intent to  
17 appeal be filed not later than 21 days after the date the  
18 decision sought to be reviewed becomes final. OAR 661-10-  
19 010(3) defines "final" as the date the decision is reduced  
20 to writing and bears the necessary signatures of the  
21 decision maker, unless a local rule or ordinance specifies  
22 that the decision becomes final at a later time.

23 Petitioner argues that the decision became final on  
24 April 21, 1997, the date it was mailed to her. However, the  
25 Ashland Municipal Code (AMC) does not create a date later  
26 than that provided for in OAR 661-10-010(3) for determining

1 the finality of the decision.<sup>1</sup> Because the city's code does  
2 not provide otherwise, the challenged decision became final  
3 on the date it was reduced to writing and signed by the  
4 decision makers. DeBates v. Yamhill County, \_\_\_ Or LUBA \_\_\_  
5 (LUBA No. 97-091, September 29, 1997) (where code specifies  
6 the date upon which a final decision becomes effective, but  
7 not the date it becomes final, OAR 661-10-010(3) requires  
8 that the decision becomes final on the date it is reduced to  
9 writing and signed by the local decision maker.)

10 Petitioner argues that even if the NITA was filed late,  
11 this Board has no authority to dismiss the case on that  
12 basis because no party to the appeal timely challenged our  
13 jurisdiction. Petitioner asserts that under OAR 661-10-  
14 065(2), to challenge the timeliness of the NITA, either  
15 intervenor or respondent were required to submit a motion to  
16 dismiss within 10 days of the filing of the NITA.  
17 Petitioner further argues this Board has no authority to  
18 raise this issue on its own motion. Petitioner is incorrect

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<sup>1</sup>The AMC does not specify a date for finality of county decisions; it specifies only the date the decision becomes "effective." AMC 18.108.070.B.3 provides:

"Type II Planning Actions. The decision of the Commission is the final decision of the City resulting from the Type II Planning Procedure, effective 15 days after the findings adopted by the Commission are signed by the Chair of the Commission and mailed to the parties, unless appealed to the Council as provided in section 18.108.110.A. The decision of the Council shall be the final decision of the City on appeals heard by the Council, effective the day the findings adopted by the Council are signed by the Mayor and Mailed to the parties." (Emphasis added.)

1 in both respects.

2 First, a challenge to LUBA's jurisdiction is not  
3 subject to the ten-day requirement of OAR 661-10-065(2),  
4 which governs motions that challenge an opposing party's  
5 failure to comply with statutes or LUBA's rules. Bowen v.  
6 City of Dunes City, 28 Or LUBA 324 (1994). Secondly, as an  
7 appellate body, this Board is obligated to examine our  
8 jurisdiction sua sponte, regardless of whether the issue is  
9 raised by the parties. Springer v. Gollyhorn, 146 Or App  
10 389, 393, \_\_\_ P2d \_\_\_ (1997); Lyke v. Lane County, 70 Or App  
11 82, 84, 688 P2d 411 (1984).

12 Petitioner filed her notice of intent to appeal the  
13 challenged decision 22 days after it was reduced to writing  
14 and signed by the decision maker. Accordingly, petitioner's  
15 appeal was not timely filed, and this Board has no  
16 jurisdiction. ORS 197.830(8); Wicks-Snodgrass, 148 Or App  
17 217 \_\_ P2d \_\_, rev denied \_\_ Or \_\_ (September 23, 1997).

18 This appeal is dismissed.