

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

3
4 ERIC NELSON and KATHY NELSON,
5 *Petitioners,*

6
7 vs.

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9 KLAMATH COUNTY,
10 *Respondent,*

11 and

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13 PARADISE HILLS, LLC,
14 *Intervenor-Respondent.*

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16 LUBA No. 2000-072

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18 FINAL OPINION
19 AND ORDER

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21 Appeal from Klamath County.

22 Eric Nelson and Kathy Nelson, Klamath Falls, appeared on their own behalf.

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24 No appearance by respondent.

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26 Michael L. Spencer, Klamath Falls, represented intervenor-respondent.

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28 BRIGGS, Board Member; BASSHAM, Board Chair; HOLSTUN, Board Member,
29 participated in the decision.

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31 DISMISSED

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33 07/24/2000

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

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NATURE OF THE DECISION

Petitioners appeal a county decision approving a comprehensive plan amendment and zone change from Non-Resource (NR) to Rural Residential (RR-5).

MOTION TO INTERVENE

Paradise Hills, LLC (intervenor), the applicant below, moves to intervene on the side of respondent. There is no opposition to the motion and it is allowed.

MOTION TO DISMISS

Intervenor moves to dismiss this appeal because petitioners failed to file a timely notice of intent to appeal with LUBA. Petitioners have not responded to intervenor’s motion.

ORS 197.830(9) provides, in relevant part:

“A notice of intent to appeal a land use decision * * * shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final. * * *”

OAR 661-010-0015(1) provides, in relevant part:

“(a) The Notice [of intent to appeal a land use decision] * * * shall be filed with the Board on or before the 21st day after the date the decision sought to be reviewed becomes final * * *. A Notice filed thereafter shall not be deemed timely filed, and the appeal shall be dismissed.

“(b) The date of filing a notice of intent to appeal is the date the Notice is received by the Board, or the date the Notice is mailed, provided it is mailed by registered or certified mail and the party filing the Notice has proof from the post office of such mailing date. If the date of mailing is relied upon as the date of filing, acceptable proof from the post office shall consist of a receipt stamped by the United States Postal Service showing the date mailed and the certified or registered number. * * *”

The challenged decision became final on May 2, 2000. Petitioners’ notice of intent to appeal was mailed by first class mail and was received by the Board on May 24, 2000, 22 days after the challenged decision became final. Because the notice of intent to appeal was not mailed by “registered or certified mail,” it was not filed until it was received by LUBA on May 24, 2000. Petitioners’ notice of intent to appeal was not timely filed.

1 This appeal is dismissed.