

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

3
4 EDWIN A. BARRY,
5 *Petitioner,*

6
7 and

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9 HOLGER T. SOMMER,
10 *Intervenor-Petitioner,*

11
12 vs.

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14 JOSEPHINE COUNTY,
15 *Respondent,*

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17 and

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19 KEN LeGAUX and DAWN LeGAUX,
20 *Intervenor-Respondents.*

21
22 LUBA No. 2005-162

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24 FINAL OPINION
25 AND ORDER

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27 Appeal from Josephine County.

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29 Edwin A. Barry, Selma, represented himself.

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31 Holger T. Sommer, Merlin, represented himself.

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33 Steven E. Rich, County Counsel, Grants Pass, represented respondent.

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35 Michael J. Bird, Grants Pass, represented intervenor-respondents.

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37 HOLSTUN, Board Member; DAVIES, Board Chair; BASSHAM, Board Member,
38 participated in the decision.

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40 DISMISSED 12/21/2005

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

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MOTIONS TO INTERVENE

Holger T. Sommer moves to intervene on the side of petitioner. Ken LeGaux and Dawn LeGaux, the applicants below, move to intervene on the side of respondent. There is no opposition to the motions, and they are allowed.

MOTION TO DISMISS

The county granted intervenor-respondents’ request for approval of a single family dwelling in a forest zone on July 1, 2005. That decision was rendered administratively, without a public hearing. Following notice of that administrative decision, a local appeal was filed. The board of county commissioners held a public hearing on the appeal on September 7, 2005. Both petitioner and intervenor-petitioner appeared at that September 7, 2005 public hearing. The board of commissioners rendered an oral decision to deny the appeal and uphold the administrative approval at the conclusion of the September 7, 2005 public hearing. At a public hearing on October 12, 2005, the board of county commissioners adopted its written decision and findings. On October 19, 2005, the county issued written notice of its October 12, 2005 decision. On November 8, 2005, petitioner filed his notice of intent to appeal. On November 28, 2005, the county moved to dismiss this appeal arguing that the notice of intent to appeal was not timely filed.¹

Most of the above facts are taken from the county’s motion to dismiss, because the local record has not been filed. In a December 6, 2005 order, at the county’s request, we suspended the deadline for filing the record pending resolution of the county’s motion to dismiss. In that December 6, 2005 order, we also allowed petitioners the time provided by OAR 661-010-0065(2) to file a

¹ Under OAR 661-010-0015(1)(a), where a notice of intent to appeal is not timely filed, “the appeal shall be dismissed.”

1 written response to the county's motion to dismiss.² We have not received a response to the
2 motion to dismiss.

3 As previously noted, petitioner's notice of intent to appeal was filed on November 8, 2005.
4 The county argues that the county's decision became final for purposes of appeal to LUBA when it
5 was reduced to writing and signed by the board of county commissioners on October 12, 2005.³
6 The county further argues that the deadline for filing the notice of intent to appeal expired 21 days
7 later, on November 2, 2005.⁴ The county argues that because petitioner's notice of intent to appeal
8 was filed six days late this appeal must be dismissed.

9 As previously noted, neither petitioner nor intervenor-petitioner have responded to the
10 county's motion to dismiss. As far as we can tell, petitioner's notice of intent to appeal was not
11 timely filed. Accordingly, this appeal is dismissed. OAR 661-010-0015(1)(a).

² According to the certificate of service attached to the county's motion to dismiss, the motion to dismiss was served on petitioner and intervenor-petitioner on November 28, 2005. Under OAR 661-010-0065(2), petitioner and intervenor-petitioner had 14 days from the date the motion to dismiss was served on them, or until December 12, 2005, to file their response to the motion to dismiss.

³OAR 661-010-0010(3) provides:

“Final decision’: A decision becomes final when it is reduced to writing and bears the necessary signatures of the decision maker(s), unless a local rule or ordinance specifies that the decision becomes final at a later date, in which case the decision is considered final as provided in the local rule or ordinance.”

⁴ As relevant, ORS 197.830(9) provides:

“A notice of intent to appeal a land use decision or limited land use decision shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final. A notice of intent to appeal plan and land use regulation amendments processed pursuant to ORS 197.610 to 197.625 shall be filed not later than 21 days after notice of the decision sought to be reviewed is mailed or otherwise submitted to parties entitled to notice under ORS 197.615.” (Emphasis added.)

OAR 661-010-0015 includes substantially similar language, but also notes that the 21-day deadline may begin to run at a date after the decision becomes final under ORS 197.830(3) through (5).