

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

3
4 DEADRA HALL,
5 *Petitioner,*

6
7 vs.

8
9 CITY OF PORTLAND,
10 *Respondent.*

11
12 LUBA No. 2007-170

13
14 FINAL OPINION
15 AND ORDER

16
17 Appeal from City of Portland.

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19 Peggy Hennessy, Portland, represented petitioner.

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21 Kathryn S. Beaumont, Senior Deputy City Attorney, Portland, represented
22 respondent.

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24 RYAN, Board Member; HOLSTUN, Board Chair; BASSHAM, Board Member,
25 participated in the decision.

26
27 DISMISSED

11/26/2007

28
29 You are entitled to judicial review of this Order. Judicial review is governed by the
30 provisions of ORS 197.850.

NATURE OF THE DECISION

Petitioner appeals a decision by the city approving a triplex.

MOTION TO DISMISS

Petitioner filed her Notice of Intent To Appeal (NITA) by certified mail on September 1, 2007. The city moves to dismiss the appeal as untimely filed. ORS 197.830(9) requires that the notice of intent to appeal (NITA) 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.”

The city argues that the appealed decision became final on August 2, 2007, the date it was reduced to writing and signed by the decision maker, and thus petitioner should have filed the NITA not later than August 23, 2007. Petitioner’s response to the city’s motion disputes that the decision became final on August 2, 2007, and argues that the decision was not final until August 13, 2007.¹ In support of her argument, Petitioner relies on Portland City Code (PCC) 33.730.020(I)(9), which provides:

“Effective date of decision. The review body’s decision takes effect on the day the notice is mailed.”

Petitioner also points out that the city’s written notice of the decision stated, incorrectly, that the appeal period to LUBA was 21 days from the date of the mailing of the notice.

The city responds that petitioner’s reliance on PCC 33.730.020(I)(9) is misplaced, because that code section addresses the date on which a decision *takes effect*, rather than the date on which a decision becomes *final* for purposes of appeal to LUBA. The city argues that the fact that the decision became effective on a later date than the decision became final does not change the fact that the decision became final on August 2, 2007. The city also

¹ Petitioner’s NITA states that the decision became final on August 2, 2007.

1 responds that its error in the notice of the decision does not toll the statutory 21-day appeal
2 period under ORS 197.830(9).

3 Under OAR 661-010-0010(3), a decision is final on the date it is reduced to writing
4 and signed by the local decision maker, unless a local ordinance provides that the decision
5 becomes final on a later date. We agree with the city that the decision became final on
6 August 2, 2007, and that the date the decision became “effective” under PCC
7 33.730.020(I)(9) has no bearing on when the decision became *final* for purposes of appeal to
8 LUBA. *Friends of Clean Living v. Polk County*, 36 Or LUBA 544, 552 (1999); *Club*
9 *Wholesale v. City of Salem*, 19 Or LUBA 576, 578 (1990); *Hazen Investments, Inc., v. Lane*
10 *County*, 2 Or LUBA 151, 152 (1980). Under OAR 661-010-0010(3), the decision became
11 final when it was reduced to writing and signed by the decision maker, in this case, the chair
12 of the Portland Design Commission. We also agree with the city that the error in the notice
13 of the decision did not toll the deadline for filing the NITA. *Columbia River Television v.*
14 *Multnomah County*, 299 Or 325, 329, 702 P2d 1065 (1985); *Friends of Jacksonville v. City*
15 *of Jacksonville*, 44 Or LUBA 379, 385 (2003); *DeBates v. Yamhill County*, 33 Or LUBA
16 526, 528-29 (1997).

17 Petitioner did not file the NITA within the time provided in ORS 197.830(9), and
18 thus LUBA lacks jurisdiction to hear the appeal. *Barry v. Josephine County*, 50 Or LUBA
19 680, 682 (2005).

20 The appeal is dismissed.