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NATURE OF THE DECISION

Petitioner appeals two city decisions annexing two properties.

MOTION TO DISMISS

The decisions being appealed are the city’s ordinances annexing two properties. The ordinances were each adopted on May 29, 2007. Petitioner filed his original notice of intent to appeal on January 6, 2008.¹ The city moves to dismiss the appeals as being untimely filed. 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. 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. * * *”

OAR 661-010-0015(1)(a) similarly provides:

“(1) Filing of Notice:

“(a) The Notice * * * shall be filed with the Board on or before the 21st day after the date the decision sought to be reviewed becomes final or within the time provided by ORS 197.830(3) through (5). A notice of intent to appeal plan and land use regulation amendments processed pursuant to ORS 197.610 to 197.625 shall be filed with the Board on or before the 21st day after the date the decision sought to be reviewed is mailed to parties entitled to notice under ORS 197.615. A Notice filed thereafter shall not be deemed timely filed, and the appeal shall be dismissed.”²

¹ In a prior order in this appeal we noted that petitioner’s original Notice of Intent to Appeal identified two separate land use decisions and we gave petitioner 7 days to either amend his original NITA or file a separate NITA for each land use decision being appealed. Petitioner filed a second NITA within the time set forth in our order.

² OAR 661-010-0010(3) provides in relevant part that:

“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

1 Petitioner responds that the challenged decisions annexing two properties were “plan
2 and land use regulation amendments processed pursuant to ORS 197.610 to 197.625,” and
3 that therefore petitioner was entitled to but did not receive notices of the challenged
4 decisions under ORS 197.615(2). We understand petitioner to argue that because he never
5 received the notices required under ORS 197.615(2), the time for appealing the decisions had
6 not expired when he filed his NITAs.

7 The city responds that the challenged decisions do not constitute “plan or land use
8 regulation amendments” under OAR 661-010-0015(1)(a). Therefore, the city argues,
9 petitioner’s NITAs were required to be filed not later than 21 days after the date the decisions
10 became final, which no party disputes occurred on May 29, 2007. In the alternative, the city
11 asserts that it did in fact mail notice of the decisions to petitioner and other parties on June 3,
12 2007, and supports this assertion with an affidavit from the city’s planning clerk stating that
13 she mailed notices of the decisions to petitioner and other parties on that date. The Record
14 also includes an affidavit of mailing for the decision appealed in LUBA No. 2008-012 that
15 lists petitioner as a recipient. Record 86.

16 We agree with the city that the challenged decisions annexing the properties are not
17 “plan or land use regulation amendments” under OAR 661-010-0015(1)(a). The challenged
18 decisions do not amend the comprehensive plan or zoning designation for the properties.
19 Record 26-27, 87-88. However, even if the decisions were plan and land use regulation
20 amendments, the city has demonstrated that it mailed notice of the decisions to petitioner on
21 June 3, 2007. Affidavit Supporting Respondent’s Motion to Dismiss; Record 86.
22 Petitioner’s NITAs were therefore filed later than “the 21st day after the date the decision[s]
23 sought to be reviewed [were] mailed to parties entitled to notice under ORS 197.615.” OAR

final at a later date, in which case the decision is considered final as provided in the local rule
or ordinance.”

1 661-010-0015(1)(a). Under either the first or second sentence of OAR 661-010-0015(1)(a),
2 the NITAs were not timely filed. Accordingly, under OAR 661-010-0015(1)(a), the appeals
3 must be dismissed.

4 Petitioner also filed a motion requesting subpoenas or depositions in order to rebut
5 the city planning clerk's statement in the Affidavit Supporting Respondent's Motion to
6 Dismiss that she mailed notices of the decisions to petitioner on June 3, 2007. The affidavit
7 contains her statement under oath, and petitioner offers no basis to question its accuracy. In
8 addition, as noted, the record supports her assertion in the affidavit for at least one of the
9 decisions. Petitioner's motion is denied.

10 The appeals are dismissed.