

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

3
4 JOHN CLARKE,
5 *Petitioner,*

6
7 vs.

8
9 COOS COUNTY,
10 *Respondent.*

11
12 LUBA No. 2013-077

13
14 FINAL OPINION
15 AND ORDER

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17 Appeal from Coos County.

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19 John Clarke, Winston, represented himself.

20
21 Josh Soper, County Counsel, Coquille, represented respondent.

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

25
26 DISMISSED

10/11/2013

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

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NATURE OF THE DECISION

Petitioner appeals a county ordinance that amends the county’s acknowledged comprehensive plan and zoning and land development ordinance.

JURISDICTION

In relevant part, the challenged decision adopts amendments to the text of county’s zoning and land development ordinance (ZLDO) to remove design standards for industrial uses. ORS 197.830(9) provides the deadlines for filing an appeal and provides, in relevant part:

“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. * * *”

ORS 197.615 in turn requires the local government to provide a copy of the decision adopting a post-acknowledgment plan or land use regulation amendment (PAPA) to the Department of Land Conservation and Development (DLCD) and to provide notice of the decision to persons who both participated in the local government proceedings that led to the PAPA *and* requested in writing that the local government give notice of the PAPA:

“(1) When a local government adopts a proposed change to an acknowledged comprehensive plan or a land use regulation, the local government shall submit the decision to the Director of the Department of Land Conservation and Development within 20 days after making the decision.

“ * * * * *

“(4) On the same day the local government submits the decision to the director, the local government shall mail, or otherwise deliver, notice to persons that:

“(a) Participated in the local government proceedings that led to the decision to adopt the change to the acknowledged comprehensive plan or the land use regulation; and

1 “(b) Requested in writing that the local government give notice of
2 the change to the acknowledged comprehensive plan or the
3 land use regulation.”

4 The county moves to dismiss the appeal as untimely filed. The county adopted the
5 ordinance on July 18, 2013. Record 4. According to the record, the county mailed a copy of
6 the decision to the Department of Land Conservation and Development (DLCD) on July 23,
7 2013, five days after the county board of commissioners adopted its decision. Record 2. The
8 deadline for filing the notice of intent to appeal was August 13, 2013. Petitioner filed the
9 notice of intent to appeal on August 23, 2013.

10 Petitioner responds:

11 “I should be treated as a party entitled to notice under ORS 197.615(4),
12 because the County had good reason to know that I would be very concerned
13 about its proposed PAPA, had numerous opportunities to let me know about
14 the proposed PAPA, and deliberately chose not to inform me of the
15 proceedings on the proposed PAPA, and to wait until the very day of
16 respondent’s claimed August 13, 2013 deadline for filing a NITA to mail me a
17 document containing references to the PAPA having been adopted. * * *”
18 Petitioner’s Response to Respondent’s Motion to Dismiss 1.¹

19 In his response, we do not understand petitioner to allege that he is entitled to notice of the
20 decision under ORS 197.615(4) because he “participated in the local government proceedings
21 that led to the decision to adopt” the PAPA, or to allege that he requested in writing that he
22 be given notice of the decision to adopt the PAPA. Accordingly, because petitioner did not
23 file his notice of intent to appeal within 21 days of the date the decision was mailed to DLCD
24 under ORS 197.615(1), petitioner's appeal is not timely. *DeBell v. Douglas County*, 39 Or
25 LUBA 695 (2001).

26 The appeal is dismissed.

¹ As we understand petitioner’s argument, it is that because petitioner appeared before the county hearings officer during the proceedings on an application for site plan review for an industrial use near the North Bend airport, the county planning department should have notified petitioner of the proceedings that led to the county’s adoption of the PAPA that, in relevant part, deletes design review standards for industrial uses.