BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

BORA ARCHITECTS, INC.,
Petitioner,

vs.

TILLAMOOK COUNTY,
Respondent,

and

SEABREEZE ASSOCIATES
LIMITED PARTNERSHIP,
Intervenor-Respondent.

LUBA No. 2017-034

CHARLES ALLGOOD
and ELIZABETH ALLGOOD,
Petitioners,

vs.

TILLAMOOK COUNTY,
Respondent,

and

SEABREEZE ASSOCIATES
LIMITED PARTNERSHIP,
Intervenor-Respondent.

LUBA No. 2017-038

FINAL OPINION
AND ORDER

Appeal from Tillamook County.

William K. Kabeiseman, Portland, filed the petition for review and argued on behalf of petitioner Bora Architects, Inc. With him on the brief was Bateman Seidel Miner Blomgren Chellis & Gram, P.C.

Zack P. Mittge, Eugene, filed the petition for review and argued on behalf of petitioners Allgood. With him on the brief was Hutchinson Cox.

No appearance by Tillamook County.

Damien R. Hall, Portland, filed a response brief and argued on behalf of intervenor-respondent. With him on the brief was Ball Janik LLP.

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

REVERSED 11/21/2017

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

Opinion by Holstun.

NATURE OF THE DECISION

Petitioners appeal a board of county commissioners' decision that upholds a planning commission's decision that granted preliminary subdivision plat approval for Proposal Rock Cove, a proposed nine-lot subdivision in the unincorporated community of Neskowin.

REPLY BRIEFS

Petitioners move for permission to file reply briefs to respond to new matters raised in intervenor-respondent's brief. OAR 661-010-0039. The motion is granted.

FACTS

A. The Neskowin Coastal Hazards Overlay Zone

Seabreeze Associated Limited Partnership (Seabreeze) is the applicant and intervenor-respondent in this appeal. A number of years ago, the county enacted the Neskowin Coastal Hazards (NESK-CH) overlay zone, which severely restricts subdivision and development of lands subject to the NESK-CH overlay zone. Seabreeze's 3.26-acre property was subject to that NESK-CH overlay zone. Seabreeze appealed the enacting ordinance to LUBA. LUBA sustained one of Seabreeze's assignments of error and remanded the enacting ordinance. *Seabreeze Associates Limited Partnership v. Tillamook County*, 71 Or LUBA 218 (2015). Following LUBA's remand, the county adopted the NESK-CH overlay zone for a second time on July 22, 2015,

applying it to properties that include Seabreeze's property, and the NESK-CH overlay zone became effective a second time on that date.

B. The Initial Application

On July 15, 2015, seven days before the NESK-CH overlay zone was enacted for the second time, Seabreeze submitted its subdivision application. That July 15, 2015 application consisted entirely of a one-page form.[1] This application date is significant because under ORS 215.427(3) (commonly referred to as the goal post statute), if certain requirements are satisfied, the county's decision regarding the July 15, 2015 application must "be based upon the standards and criteria that were applicable at the time the application was first submitted." ORS 215.427(3)(a). *See* n 2. As we explain in more detail below, one important requirement for taking advantage of the goal post statute is that the application must be complete when submitted or must be made complete "within 180 days of the date the application was first submitted." If an applicant fails to comply with that 180-day deadline, "the application is void" under ORS 215.427(4), *see* n 2, and the applicant loses the protection of

[1] Three copies of that application form appear at Record 1053-55. The only apparent difference in those three forms is that they are signed by different property owners. Although the date stamp at the top of those forms seems to indicate the form was received on July 16, 2015, the date July 15, 2015 is handwritten on the form at Record 1053. Whether the application was received on July 15, or July 16 does not affect our disposition of this appeal, and we assume it was received on July 15, 2015.

the goal post statute and may be subject to regulations that are enacted and take effect after the application was first submitted.

Seabreeze's application fee apparently did not accompany the July 15, 2015 application. That application fee was received by the county on July 20, 2015. Record 1057. The parties dispute whether "the application was first submitted" on July 15, 2015 (the day the county received the one-page form) or on July 20, 2015 (the day the county received the application fee).

C. The Completeness Letter

As already noted, under ORS 215.427(2), if an application is incomplete, the county has 30 days to "notify the applicant in writing of exactly what information is missing[.]" *See* n 2. In an August 18, 2015 letter, the county advised Seabreeze that its July 15, 2015 application was incomplete. Record 1009-52. That letter is two pages long and includes a one-page acknowledgement for the applicant to return to the county. The August 18, 2015 letter also included a number of sections from the Tillamook County Land Use Ordinance (LUO) and Tillamook County Land Division Ordinance (LDO), a total of 40 pages from the LUO and LDO. Some of those pages of the LUO and LDO are highlighted to indicate the numerous requirements that the county advised Seabreeze it would need to address to have a complete application.

D. The Completed Application

In addition to their disagreement about the date the application was first received, the parties also disagree about the date the application was deemed complete. We turn to petitioners' first assignments of error where that issue is presented.

FIRST ASSIGNMENTS OF ERROR

We consider petitioner Bora Architects Inc.'s (Bora's) and petitioners Allgoods' first assignment of error together. The relevant sections of ORS 215.427 are set out in the margin.[2] Briefly, subsection (1) of ORS 215.427

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[2] As relevant, ORS 215.427 provides:

> "(1) * * * The governing body of a county or its designee shall take final action on * * * applications for a permit, limited land use decision or zone change, including resolution of all appeals under ORS 215.422, within 150 days after the application is deemed complete[.]"
>
> "(2) If an application for a permit, limited land use decision or zone change is incomplete, the governing body or its designee shall notify the applicant in writing of exactly what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing information. The application shall be deemed complete for the purpose of subsection (1) of this section upon receipt by the governing body or its designee of:
>
> "(a) All of the missing information;
>
> "(b) Some of the missing information and written notice from the applicant that no other information will be provided; or

imposes either a 120-day or a 150-day deadline for a local government to take final action on a permit or zone change application—in this case a 150-day deadline. Subsection (2) of ORS 215.427 gives a county 30 days to advise permit applicants who submit incomplete applications what is needed to make the application complete. Subsection (2) also sets out the three ways an application may be deemed complete. As already noted, subsection (3) freezes the approval standards, as of the date the application was first submitted, if the

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> "(c) Written notice from the applicant that none of the missing information will be provided.
>
> "(3)(a) If the application was complete when first submitted or the applicant submits additional information, as described in subsection (2) of this section, within 180 days of the date the application was first submitted and the county has a comprehensive plan and land use regulations acknowledged under ORS 197.251, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted."
>
> "* * * * *
>
> "(4) On the 181st day after first being submitted, the application is void if the applicant has been notified of the missing information as required under subsection (2) of this section and has not submitted:
>
> "(a) All of the missing information;
>
> "(b) Some of the missing information and written notice that no other information will be provided; or
>
> "(c) Written notice that none of the missing information will be provided."

application is complete when submitted or rendered complete "within 180 days of the date the application was first submitted." And finally, subsection (4) renders the application "void" on the 181st day after the application was "first * * * submitted," if the applicant has not by that time complied with one of the submittal requirements set out in that subsection or subsection (2) to make the application complete.

In their first assignments of error, petitioners contend Seabreeze's subdivision application was first submitted on July 15, 2015. Petitioners argue Seabreeze failed to take one of the three actions required under ORS 215.427(4) within 180 days after July 15, 2015 to complete its subdivision application, with the result that the application became "void" 181 days after July 15, 2015, which was January 12, 2016.

A. The Application Was First Submitted on July 15, 2015

The date the application was first submitted is important because under ORS 215.427(3)(a) standards and criteria enacted after that date cannot be applied to the application, if the application is complete when submitted or the information needed to make it complete is submitted in accordance with ORS 215.427(2). The date the application was first submitted is also important for a different reason, because on the 181st day after that date, the application is "void if the applicant has been notified of the missing information as required under [ORS 214.427(2)]" and the applicant has not taken one of the steps set out at ORS 215.427(4)(a) through (c).

There is no dispute that Seabreeze's one-page application form was first received by the county on July 15, 2015. The challenged decision nevertheless takes the position that the application was first submitted on July 20, 2015, the date the county first received the application fee.

> "Based on testimony of the Planning staff, the Board finds that it is the practice of the County to consider the payment of an application fee as the beginning of the 180 day clock for completeness. The Board interprets LUO 10.020(6)(c) to establish the date of payment of an application fee as the date an application is 'first being submitted,' or 'received.' This interpretation is consistent with the prior practices of the County and with the timing of the County in this review of sending the Incomplete Letter within 30 days of receipt of the application fee, but more than 30 days after the initial application materials were provided. Additionally, the County is not obligated to initiate review of a land use application prior to receipt of the appropriate application fee. Accordingly, the Board finds that this application was first submitted and the 180 day clock ran as of July 20, 2015." Record 44-45.

LUO 10.020(6)(c), which is cited by the county, replicates the statutory language at ORS 215.427(2) and (4).[3] Therefore, while the board of

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[3] LUO 10.020(6)(c) provides:

> "Completeness review. Upon receipt of an application, the County shall conduct a completeness review to determine if an application contains all information necessary to continue with the review. If an application is determined to be incomplete, the Director shall notify the applicant in writing of exactly what information is missing within thirty (30) days of receipt of the application and allow the applicant to submit the missing information. The application shall be deemed complete upon receipt by the Director of:

commissioners suggests in its decision that the interpretive question presented in the first assignments of error calls for an interpretation of local law, identifying the date "of receipt of the application" under ORS 215.427(2), and the date the application was "first * * * submitted" under ORS 215.427(4), while partially a question of fact, calls for *statutory* interpretation and therefore the board of commissioners' interpretation is entitled to no special deference. ORS 197.829(1)(d); *Forster v. Polk County*, 115 Or App 475, 478, 839 P2d 241 (1992).[4]

In *Kirpal Light Satsang v. Douglas County*, 18 Or LUBA 651 (1990), we explained that while the relevant statutes do not define the term "application," one of the purposes of ORS 215.428 (now ORS 215.427) is to protect an applicant for land use permit approval from changing approval standards, which as we have noted is a factor in this appeal. We explained what is needed to initiate an application:

> "i. All of the missing information;
>
> "ii. Some of the missing information and written notice from the applicant that no other information will be provided; or
>
> "iii. Written notice from the applicant that none of the missing information will be provided.
>
> "On the 181st day after first being submitted, the application is void if the applicant has been notified of the missing information and has not responded in accordance with (i.-iii.) above."

[4] ORS 197.829(1)(d) provides that LUBA is not required to affirm a local governing body's land use decision if it "[i]s contrary to a state statute[.]"

> "A person initiates the permit approval process by making known to the county, with reasonable certainty, (1) what the person seeks approval for, and (2) that the person requests that the county take action to grant land use approval." *Id.* at 659.

We also explained that "it is reasonable for a county to require a permit applicant to utilize whatever forms and procedures are made available by the county for making it known that a request for land use approval is being initiated * * *." *Id.* But we noted that failure to include the application fee does not "have any significant bearing on whether the submittal is an application within the meaning of ORS 215.428(3)."[5] *Id.*

The July 15, 2015 subdivision application form satisfied all of these requirements, and July 15, 2015 was the date Seabreeze first "submitted" its subdivision application, within the meaning of ORS 215.427(3)(a) and (4), and the date of "receipt of the application," within the meaning of ORS 215.427(2). Although the county is likely correct that it was not obligated to initiate review of the subdivision application until the required application fee was paid, the county confuses what is required for a *complete* application with what is required to *first submit* an application.[6] ORS 215.427 clearly recognizes that when an application is first submitted it may be incomplete. In fact much of the statute is devoted to setting out a fairly elaborate procedure and 180-day

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[5] ORS 215.428 was renumbered as ORS 215.427 in 1999.

[6] LUO 10.020(6)(b)(ii) states that "[p]ayment of applicable review fees" is required for a "complete application."

deadline for making incomplete applications into complete applications. When Seabreeze first submitted its application on July 15, 2015 without the required application fee, and without a large number of other documents that would be required for a complete application, it submitted an incomplete application. But Seabreeze's incomplete subdivision application was first submitted on July 15, 2015, when the county received the county's one-page application form that was filled out and signed by Seabreeze's agents and the property owners. The date the application was submitted was not delayed until July 20, 2015, when the county received the application fee. And although the question is largely one of statutory interpretation, neither the board of county commissioners' decision, nor Seabreeze's brief, cites to anything in the LUO or LDO that suggests that under county regulations an application for subdivision approval is not considered submitted under the LUO or LDO until the required application fee is submitted.

B. The Legal Consequence of the County's Late Completeness Letter

We understand intervenor next to argue, assuming the application was first submitted on July 15, 2015, that ORS 215.427(4) never came into play in this case, and the application could not become void under that statute, because the county did not timely notify Seabreeze of the missing information as required under ORS 215.427(2). Again, ORS 215.427(2) requires that the county "notify the applicant in writing of exactly what information is missing within 30 days of receipt of the application * * *." *See* n 2. Apparently,

because the county believed the application was not submitted until July 20, 2015, the county delayed until August 18, 2015, to advise Seabreeze what it needed to submit to make the application complete. August 18, 2015 was 29 days after July 20, 2015, but 34 days after July 15, 2015, and therefore the letter was not sent within the 30 day period specified by ORS 215.427(2). According to Seabreeze, the legal consequence of the late completeness letter is that the application was deemed complete 30 days after the application was submitted, citing *Simon v. Board of Co. Comm. of Marion Co.*, 84 Or App 311, 733 P2d 901 (1987). We understand Seabreeze to argue that because the application was deemed complete on August 14, 2015, ORS 215.427(4) simply never came into play.

While there is certainly some language in *Simon* that lends some support to Seabreeze's argument, that case dealt with a very different issue. For the reasons explained below, we do not believe the Court of Appeals would rely on the language in that case to conclude that Seabreeze's application was deemed complete on August 14, 2015.

When *Simon* was decided, the legislature had not yet enacted the statutory text that now appears at ORS 215.427(4), which renders an incomplete application void if the incomplete application is not made complete within 180 days. The issue in *Simon* therefore had nothing to do with whether the permit application in that case had become void. Under the statues at issue in *Simon*, the county was required to take final action on the partition

application "within 120 days after the application [was] deemed complete."[7] 84 Or App at 313. Also, under the applicable statutes, if the county failed to take final action "within 120 days after the application is deemed complete, the applicant" was entitled to file "for a writ of mandamus to compel the governing body or its designate to issue the approval." *Id.* In *Simon* the property owners had filed their partition application on November 14, 1985. Measured from that date, the county had until March 14, 1986 to take final action on the application. When the county had not yet rendered a final decision by March 27, 1986 (133 days later), the property owners petitioned the circuit court for a writ of mandamus.

The Court of Appeals provided the following explanation for why the application in that case was not deemed complete until 30 days after the date it was first submitted and why the property owners' petition for writ of mandamus was therefore premature:

> "County contends that an application is 'deemed complete' when the county affirmatively determines that it is complete or, if the applicant is not notified within 30 days that the application is incomplete, then 30 days after the application is filed. Plaintiffs' application was affirmatively determined to be complete on December 17, 33 days after it was filed. County's position is that it was deemed complete on December 14, 30 days after it was filed and only 103 days before plaintiffs petitioned for a writ of mandamus.

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[7] As noted earlier, ORS 215.427(1) imposes a 150-day final action deadline in the circumstances presented in this case.

> "We agree with the trial court that the county has 30 days after an application is filed within which to notify the applicant that more information is required, independently of the time it then has to take final action. If the legislature had intended to give the county only 120 days from the date of filing to process the application, it could have said so. *Accordingly, we hold that, if the county does not notify an applicant within 30 days that the application is incomplete, the application is deemed complete 30 days after it is filed, whether or not it is, in fact, complete. See Cherry Lane, Inc. v. Board of County Comm.*, 84 Or App 196, 733 P2d 488 (1987). If the county does notify the applicant that more information is needed, the applicant has 180 days from the filing date within which to supply the requested information, and the application will be deemed complete on the date that the additional information is submitted.
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> "Under this interpretation, plaintiffs' petition was deemed complete on December 14, 1985. Because they petitioned for a writ of mandamus before the expiration of 120 days from that date, the trial court properly concluded that the petition was filed prematurely and properly dismissed the writ." 84 Or App at 314-15 (footnote omitted; emphasis added).

In *Simon*, the county "affirmatively determined [the application] to be complete * * * 33 days after it was filed," and in that circumstance the Court of Appeals construed the relevant statutes to deem the application complete 30 days after the application was first submitted. 84 Or App at 314. But it is important that in *Simon* there was no dispute that the application was complete when it was submitted. The only issue was whether the application was "deemed complete" for purposes of the statutory 120-day final action deadline and the statutory right to seek a mandamus remedy: (1) on the date the complete application was submitted, (2) thirty days later when the county had not yet advised the applicants that the application was complete, or (3) thirty-

three days later when the county in fact advised the applicants that the application was complete.

Under *Simon*, Seabreeze likely could have insisted that the county take action on its July 15, 2015 application within 150 days after August 14, 2015, and refused to submit the additional materials described in the county's August 18, 2015 letter that the county asserted were necessary for a complete application. And under *Simon*, if 150 days passed after August 14, 2015 without the county rendering a final decision on that application, Seabreeze likely could have filed for a writ of mandamus to compel the county to approve the application.

But as we explain in more detail below, Seabreeze did not take that course of action. Instead it proceeded to attempt to complete its application, in accordance with the county's August 18, 2015 letter. In a September 29, 2015 e-mail message, the applicant advised the county it intended to provide the materials identified in the August 18, 2015 letter:

> "* * * Thank you for the followup Incompleteness letter. Please be assured that we intend to provide the material required to complete the application, as identified in the Incompleteness letter. * * *." Record 318.

There is no mystery why Seabreeze did not insist that its July 15, 2015 application be considered complete on August 14, 2015 and that a decision on that application be rendered within 150 days. That application for preliminary subdivision plat approval did not include anything that addressed the relevant subdivision approval standards. In fact, while it was an application for

preliminary subdivision approval, the application did not include a proposed preliminary subdivision plat, as required. If Seabreeze had insisted that the county take action based on the July 15, 2015 application, there literally would have been no subdivision plat for the county to approve, and the only final action the county could have taken would have been to deny the application.

Seabreeze points out, correctly, the even where an application is complete when first submitted, or a local government determines that an initially incomplete application has been made complete, applicants often are allowed to submit additional evidence later in support of an application. However, there is a material and significant difference between submitting additional evidence after submitting a complete application and refusing to submit material that the city has determined is needed for a complete application and then later submitting that same material after the application has been deemed complete under ORS 215.427(2). Since that question is not presented in this appeal, we need not resolve that question; but it seems highly unlikely that an applicant could (1) refuse to provide documents a county has informed the applicant are needed for a complete application, so that the application is deemed complete under ORS 215.427(2)(c) and the ORS 215.427(1) 150-day period for final action commences, and then (2) later insist that the county accept and consider the same documents it earlier refused to provide.

In this case, Seabreeze never took the position that the July 15, 2015 application was complete when first submitted or was deemed complete on August 14, 2015, because the August 18, 2015 letter was not sent to Seabreeze until 34 days after July 15, 2015. And Seabreeze never took the position that it did not need to submit the documents identified in the county's August 18, 2015 letter to make its application complete. Rather, as we explain next, Seabreeze proceeded to attempt to provide the documents identified in the county's August 18, 2015 letter.

For the reasons explained above, for purposes of ORS 215.427(2) and (4), Seabreeze's application was not deemed complete on August 15, 2015.

C. Actions to Complete Petitioner's Application

The county's August 18, 2015 letter identifying the materials necessary for a complete application is addressed to Seabreeze agent Robert Fultz. There were a number of communications between Mr. Fultz and the county. We will refer to Mr. Fultz in this section of this decision as the applicant. There were also communications between the applicant's attorney and the county. We will refer to the applicant's attorney as the applicant's attorney.

In a December 30, 2015 e-mail message to the applicant, the county advised the applicant that the 180-day deadline for completing the subdivision application was approaching. Record 318. In that e-mail message, the county stated, erroneously, that the 180-day deadline would expire on January 16,

2016. *Id.* Six days later, on January 5, 2016, the applicant's attorney sent the following message to the county:

> "* * * This writing is to request that the * * * Seabreeze application be deemed complete based on the information that the county has received to date. Please confirm that the application is 'complete' and we look forward to working with you throughout the application review process." *Id.*

We set out the text of ORS 215.427(2) earlier in this opinion. *See* n 2. We set out the relevant portion of that statute again below:

> "The application shall be deemed complete for the purpose of subsection (1) of [ORS 215.427] upon receipt by the governing body or its designee of:
>
> "(a) All of the missing information;
>
> "(b) Some of the missing information and written notice from the applicant that no other information will be provided; or
>
> "(c) Written notice from the applicant that none of the missing information will be provided."

Although the applicant's attorney's January 5, 2016 e-mail message was not clearly couched in the terms of ORS 215.427(2)(a), (b) or (c), the e-mail message did make it clear that the applicant's attorney was taking the position that the application should be deemed complete "based on the information that the county" had already received by January 5, 2016.[8] Viewed in isolation, we agree with Seabreeze that the January 5, 2016 e-mail message (sent at 10:04

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[8] Petitioners argue that the only application "information" the county had "received" by January 5, 2016, was the July 15, 2015 one-page application form.

a.m.) would be sufficient to comply with ORS 215.427(2), such that Seabreeze's application would be deemed complete on that date.

However, the applicant's attorney was not the only person communicating with the county about Seabreeze's application. Later in the day on January 5, 2016 (sent at 3:55 p.m.) the applicant sent an e-mail message to the county asking a total of 19 questions about how to go about completing the application. Record 137. One of those questions was "[w]ould you like me to start sending you information now?" *Id.* When the applicant's attorney's and the applicant's January 5, 2016 e-mail messages are viewed together, they take conflicting positions about whether the application should be deemed complete. The county was therefore required to resolve those conflicting positions.

In a January 7, 2016 e-mail message to the applicant (sent at 3:10 p.m.) the county stated: "* * * I just want to confirm with you in writing that you are not ready for me to deem the application complete as we discussed over the telephone yesterday." Record 138. In a January 7, 2016 e-mail message sent a few minutes later (sent at 3:37 p.m.), the applicant advised the county that he had not been able to contact applicant's attorney, and asked the county to "[h]ang on until tomorrow, please." *Id.*

In a January 8, 2016 e-mail message (sent at 11:37 a.m.), the applicant explained that he was gathering additional material to complete the application and stated:

> "[Applicant's attorney] and I had a large misunderstanding about the state of our submission. My fault, actually. So the engineer in me feels like we shouldn't be doing a deem complete until I've at least submitted our initial drop. Let's do that next Friday which is also the deadline anyway." Record 139.

This e-mail message, sent three days before January 11, 2016, when the 180-day deadline would expire, and seven days before January 15, 2016, when the county and the applicant thought the 180-day deadline would expire, makes it clear that the applicant was not yet exercising its rights under ORS 215.427(2)(a) through (c) to deem the application complete. *See Painter v. City of Redmond*, 56 Or LUBA 311, 314-15 (2008) (facsimile indicating that applicant intended to submit additional documents in the future to complete an application is inadequate to constitute a request that application be deemed complete under ORS 227.178(2)(b) or prevent an application from becoming void under ORS 227.178(4)(a) through (c)).[9]

In January 14, 2016 e-mail messages (sent at 2:38, 2:39 and 3:03 p.m.), the county and applicant identify a number of documents that had either been delivered to the county or would shortly be delivered to the county. Record 140. The next day, in a January 15, 2016 e-mail message (sent at 11:31 a.m.) the applicant stated:

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[9] ORS 227.178(2)(b) and ORS 227.178(4)(a) through (c), which apply to cities, are the analogues of ORS 215.427(2)(b) and 215.427(4)(a) through (c), which apply to counties

> "Okay, just sent you the last two items. Please deem complete today. I've also copied [applicant's attorney] on this note.
>
> "You know, I just have this aversion, probably due to a character flaw, of deeming something complete when we haven't submitted what I understand to be all of the materials requested. Now that we have done so, we can deem complete and commence the 'search for the truth'." Record 141.

Ten minutes later (at 11:41 a.m.) the county sent applicant an e-mail message that stated: "[y]our application has been deemed complete." *Id.*

Unfortunately for the applicant in this matter, the county and the applicant were both laboring under the incorrect assumption that the 180-day deadline for completing the incomplete July 15, 2015 application did not begin to run until July 20, 2015, and therefore would not expire until January 15, 2016. In fact the 180-deadline began to run when the application was first submitted on July 15, 2015, and expired on January 11, 2016. Under ORS 215.427(4) the application therefore became void the next day, on January 12, 2016.

Petitioner Bora's and petitioners Allgoods' first assignment of error is sustained. Because the county approved a void application, it either "exceeded its jurisdiction," or violated ORS 215.427(4) and adopted a decision that is "prohibited as a matter of law." OAR 661-010-0071(1) (a) and (c); *Painter*, 56 Or LUBA at 317. We need not and do not consider petitioners' remaining assignments of error, because the county's decision would have to be reversed no matter how those assignments of error were resolved.

The county's decision is reversed.