

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

3
4 LEONARD FORBES
5 *Petitioner,*

11/16/17 AM 10:55 LUBA

6
7 vs.

8
9 LINN COUNTY,
10 *Respondent.*

11
12 LUBA No. 2017-088

13
14 FINAL OPINION
15 AND ORDER

16
17 Appeal from Linn County.

18
19 Leonard Forbes, Corvallis, represented himself.

20
21 Kevan J. McCulloch, Linn County Attorney's Office, Albany,
22 represented respondent.

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

26
27 DISMISSED 11/16/2017

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

NATURE OF THE DECISION

Petitioner appeals an email message from a county commissioner to petitioner.

FACTS

In May 2016, petitioner received county approval of a commercial site plan application for a farm stand to be located on petitioner's property zoned Urban Growth Area – Urban Growth Management Area Five-Acre Minimum (UGA-UGM-5). Petitioner's application for site plan approval for the farm stand stated that "[t]he property will be divided into two separate addresses; one address for the residential mobile home and another address for the gate house sales stand." Record 3. The county's May 2016 decision approving the commercial site plan for the farm stand included the following statement: "Pursuant to LCC 960.700 and 960.800, the subject property has already been assigned a rural address; therefore, a new rural address shall not be issued." Record 1.

The challenged decision is a September 6, 2017 email message from a county commissioner to petitioner, with the subject of the email identified as "2nd Address for a tax lot/home." Notice of Intent to Appeal (NITA), Ex. 1. The email states that it responds to a September 5, 2017 letter from petitioner. That September 5, 2017 letter from petitioner is not included in the record transmitted by the county, and petitioner has not provided a copy of that letter.

1 The email message states that the county commissioner has read petitioner's
2 September 5, 2017 letter, attachments to that letter, past emails, and "prior
3 letters and emails sent to [petitioner and another person] by our staff pertaining
4 to this address issue." The email message concludes that an address for the
5 farm stand located on petitioner's property is not needed, and that the county
6 assigns addresses "in relationship to dwellings." On September 20, 2017,
7 petitioner filed his NITA.

8 **JURISDICTION**

9 LUBA has exclusive jurisdiction to review land use decisions or limited
10 land use decisions. ORS 197.825(1). ORS 197.015(10)(a)(A)(iii) defines the
11 term "[l]and use decision" to include "[a] final decision" "by a local
12 government * * * that concerns the * * * application of" "[a] land use
13 regulation[.]" ORS 197.015(12)(a)(B) defines "limited land use decision" in
14 relevant part as the "approval or denial of an application based on discretionary
15 standards designed to regulate the physical characteristics of a use permitted
16 outright, including but not limited to site review and design review."

17 The county moves to dismiss the appeal on three bases. First, according
18 to the county, the September 6, 2017 email message to petitioner from the
19 county commissioner merely reiterates and affirms the May 2016 county
20 decision that approved the farm stand but declined to issue a new rural address
21 for the farm stand. Accordingly, the county argues, petitioner's NITA was not
22 filed within 21 days of the May 2016 site plan review approval decision and is

1 untimely. ORS 197.830(9). Second, the county argues that petitioner has not
2 established that the challenged decision is a “limited land use decision” as
3 defined in ORS 197.015(12) or a “land use decision” as defined in ORS
4 197.015(10).¹ Third, the county argues that even if the challenged decision is a
5 “limited land use decision” or a “land use decision,” the decision falls with the
6 exception to LUBA’s jurisdiction at ORS 197.015(10)(b)(A) for decisions
7 “made under land use standards that do not require interpretation or the
8 exercise of policy or legal judgment[.]” The county cites Linn County Code
9 (LCC) 960.700 and 960.800, which are entitled “Application for rural address”
10 and “Processing rural addressing applications,” respectively, and argues that
11 neither of those LCC provisions require interpretation or the exercise of policy
12 or legal judgment.

13 In his response to the motion to dismiss, petitioner takes the position that
14 the approval he seeks from the county is “for a secondary mailing address at the
15 subject property based on legitimate business and legal needs.” Response to
16 Motion to Dismiss 1. We understand petitioner to argue that that requested
17 approval is different from the approval he sought in his April 2016 commercial
18 site plan review application for “two separate addresses” for the farm stand and
19 residence located on the property. Petitioner’s arguments are difficult to follow,
20 but we also understand petitioner to take the position that the Linn County

¹ The NITA states that petitioner is appealing the “limited land use decision” of the county. NITA 1.

1 Code provisions that regulate “the assignment of street address numbers [and]
2 second street number addresses” are not “consistent.”² *Id.*

3 It is petitioner’s burden to establish that LUBA has jurisdiction to
4 consider this appeal. *Billington v. Polk County*, 299 Or 471, 475, 703 P2d 232
5 (1985). We conclude that petitioner has not satisfied that burden. First, we
6 tend to agree with the county that the approval petitioner seeks for “a
7 secondary mailing address” at his property is not materially different from the
8 approval that petitioner sought but was denied in his April 2016 application for
9 commercial site plan review for the farm stand, and that the email from the
10 county commissioner to petitioner merely reiterates the county’s decision to
11 reject that request in its May 2016 decision. *Lloyd Dist. Community Ass’n. v.*
12 *City of Portland*, 30 Or LUBA 390, 395, *aff’d* 141 Or App 29, 916 P2d 884
13 (1996). However, we need not and do not decide here whether the county’s
14 2017 decision merely reiterates its 2016 decision, because even if the county
15 made a new decision in the September 6, 2017 email message, petitioner has
16 failed to establish that the county decision was made under “land use standards
17 that [required] interpretation or the exercise of policy or legal judgment[.]”
18 ORS 197.015(10)(b)(A). Petitioner has not attempted to establish that the two
19 LCC provisions cited by the county, LCC 960.700 and 960.800, require

² Petitioner takes the position that “‘secondary mailing addresses’ * * * are widely used in practice” and that “the US Postal Service has published regulations and guidelines.” Response to Motion to Dismiss 1.

1 interpretation or the exercise of policy or legal judgment, or cited any other
2 land use regulation that the county applied or should have applied. We
3 therefore agree with the county that petitioner has failed to establish that
4 LUBA has jurisdiction over this appeal.

5 The appeal is dismissed.