

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

3
4 LONNIE MCFARLAND and BERTHA MCFARLAND,
5 *Petitioners,*

6
7 vs.

8
9 MARION COUNTY,
10 *Respondent.*

11
12 LUBA No. 2018-079

13
14 FINAL OPINION
15 AND ORDER

16
17 Appeal from Marion County.

18
19 Lonnie McFarland and Bertha McFarland, Salem, represented
20 themselves.

21
22 Scott A. Norris, Assistant County Counsel, Salem, represented
23 respondent.

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

27
28 DISMISSED 08/30/2018

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

08/30/18 PM12:24 LUBA

NATURE OF THE DECISION

Petitioners appeal a board of county commissioners' decision approving an adjustment to allow a gravel surface driveway and parking area.

MOTION TO DISMISS

The county moves to dismiss this appeal because the Notice of Intent to Appeal (Notice) was untimely filed. OAR 661-010-0015(1) provides, in relevant part:

“(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)–(5). * * * A Notice filed thereafter shall not be deemed timely filed, and the appeal shall be dismissed.

“(b) The date of filing a notice of intent to appeal is the date the Notice is received by the Board, or the date the Notice is mailed, provided it is mailed by registered or certified mail, and the party filing the Notice has proof from the post office of such mailing date. * * *”

The decision on appeal was dated and signed by the commissioners on June 21, 2018. The county argues that there is no provision in the county code which delays the date that a county land use decision becomes final. Consequently, the county argues, the June 21, 2018 decision became final on the date it was signed.¹ The county argues that, to be timely filed under OAR

¹ See OAR 661-010-0010(3) (defining “Final Decision” to provide 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

1 661-01-0015(1), the Notice must be filed with LUBA no later than 21 days
2 after June 21, 2018, or July 12, 2018. However, the county argues, petitioners
3 filed the Notice with LUBA one day late, on July 13, 2018.

4 Petitioners have not responded to the county's motion to dismiss. The
5 county is correct that the Notice was filed one day late. The Notice was hand-
6 delivered to LUBA on July 13, 2018, and hence received by LUBA on July 13,
7 2018 for purposes of OAR 661-010-0015(1)(a). OAR 661-010-0015(1)(b).
8 July 13, 2018 is more than 21 days after the date the county's decision became
9 final. Accordingly, under OAR 661-010-0015(1)(a), the appeal was untimely
10 filed, and must be dismissed.

11 The appeal is dismissed.

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