

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

09/25/18 PM12:01 LUBA

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4 WILLIAM A. RANDALL, TRUSTEE,  
5 BRENDA M. RANDALL, TRUSTEE,  
6 RANDALL JOINT TRUST,  
7 *Petitioners,*

8  
9 vs.

10  
11 CITY OF EUGENE,  
12 *Respondent.*

13  
14 LUBA No. 2018-105

15  
16 FINAL OPINION  
17 AND ORDER

18  
19 Appeal from City of Eugene.

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21 William A. Randall and Brenda M. Randall, Eugene, represented  
22 themselves.

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24 Emily N. Jerome, Deputy City Attorney, Eugene, represented  
25 respondent.

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27 RYAN, Board Chair; BASSHAM, Board Member; ZAMUDIO, Board  
28 Member, participated in the decision.

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30 DISMISSED 09/25/2018

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

Opinion by Ryan.

On August 31, 2018, petitioners filed a notice of intent to appeal the city's June 13, 2018 decision adopting Ordinance 20594. Ordinance 20594 amends the text of the Eugene Code in various respects. The city mailed notice of the decision to DLCD and other parties on June 15, 2018, as required by ORS 197.615(1).<sup>1</sup> Motion to Dismiss 1.

On September 6, 2018, the city filed a motion to dismiss the appeal, arguing that the appeal was not timely filed.<sup>2</sup> Under ORS 197.830(9), the deadline for filing the notice of intent to appeal is 21 days after the appealed decision became "final."<sup>3</sup> The decision became final on June 15, 2018. As noted, petitioners filed their notice of intent to appeal on August 31, 2018.

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<sup>1</sup> ORS 197.615(1) provides:

"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."

<sup>2</sup> The city served the motion on petitioners on the same date.

<sup>3</sup> ORS 197.830(9) provides, in part:

"A notice of intent to appeal a land use decision or limited 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

1           Petitioners have not responded to the city’s motion to dismiss.<sup>4</sup> We agree  
2 with the city that petitioners’ notice of intent to appeal was not filed within the  
3 time provided in ORS 197.830(9). Under OAR 661-010-0015(1)(a), this appeal  
4 must be dismissed.<sup>5</sup>

5           The appeal is dismissed.

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mailed or otherwise submitted to parties entitled to notice under  
ORS 197.615. \* \* \*

<sup>4</sup> OAR 661-010-0065(2) provides:

“A party seeking to challenge the failure of an opposing party to comply with any of the requirements of statutes or Board rules shall make the challenge by motion filed with the Board and served on all parties within 14 days after the moving party obtains knowledge of such alleged failure. However, motions to dismiss for lack of jurisdiction may be filed at any time. An opposing party may, within 14 days from the date of service of a motion, file a response.”

<sup>5</sup> OAR 661-010-0015(1)(a) provides:

“The Notice [of Intent to Appeal], together with two copies, and the filing fee and deposit for costs required by section (4) of this rule, 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 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.”