

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

JORDAN WINTERS, RACHEL WINTERS,
JUSTIN GREENE, and NICOLE RALSTON,
Petitioners,

vs.

TILLAMOOK COUNTY
Respondent.

LUBA No. 2023-027

CARL COFFMAN,
Petitioner,

vs.

TILLAMOOK COUNTY,
Respondent.

LUBA No. 2023-028

PAUL KOEPKE, CARRIE KOEPKE, and
CASCADIA INVESTMENT PROPERTIES,
Petitioners,

vs.

TILLAMOOK COUNTY,
Respondent.

LUBA No. 2023-029

FINAL OPINION
AND ORDER

1 Appeal from Tillamook County.

2
3 Dean N. Alterman represented petitioners.

4
5 Daniel Kearns represented respondent.

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7 RYAN, Board Chair; RUDD, Board Member; ZAMUDIO, Board
8 Member, participated in the decision.

9
10 DISMISSED 10/02/2023

11
12 You are entitled to judicial review of this Order. Judicial review is
13 governed by the provisions of ORS 197.850.

NATURE OF THE DECISION

In these consolidated appeals, petitioners appeal three separate emails from a county permit technician rejecting three separate applications from the petitioners for new short-term rental permits.

BACKGROUND

We begin with a description of the applicable local law.

A. Ordinance 84 and Order 22-033

In 2017, the board of county commissioners adopted Ordinance 84, the Tillamook County Short Term Rental Ordinance.¹ Ordinance 84 was enacted “pursuant to ORS 203.035.” Ordinance 84, section 2. Among other things, Ordinance 84 (1) adopted definitions for terms used in Ordinance 84, and (2) included standards for short term rental of dwellings, including: (a) quiet hours, (b) identification of a local contact person, (c) parking, (d) garbage, (e) fire safety, (f) emergency exits, (g) occupancy limits, and (h) inspections. Ordinance 84, sections 5-6. Ordinance 84 required owners to acquire and pay for a short term rental permit from the county’s Community Development Department prior to

¹ Prior to 2017, in 2009, the county enacted Ordinance 69, the “Tillamook County Short Term Rental Ordinance.” *See* Petitioner’s Response to Motion to Dismiss 5. Ordinance 69 (2009) required owners of dwellings used for short term rentals to pay a fee and obtain a county short term rental permit in order to operate a short term rental. Ordinance 69, section 7 (2009). Ordinance 69 was amended in 2012 to include additional standards and increase fees, and included a five-year sunset. Ordinance 69 (2012).

1 occupancy of a dwelling for short term rental purposes, and provided for
2 revocation of the permit for non-compliance with Ordinance 84 or with the
3 county's ordinances imposing a Transient Lodging Tax (Ordinance 74 and
4 Ordinance 75). Ordinance 84, section 7. Ordinance 84 was amended in 2019 in
5 ways that are not relevant to this appeal.²

6 On May 25, 2022, the board of county commissioners adopted Board
7 Order 22-033, "In the Matter of Temporarily Suspending the Processing and
8 Issuance of New Short Term Rental Permits in Unincorporated Tillamook
9 County" (Order). As relevant here, the Order suspended from July 1, 2022, to
10 June 30, 2023, the county's Department of Community Development's
11 acceptance and processing of *new* short term rental permits pursuant to Ordinance
12 84, except for (1) applications for renewal or transfer of existing permits; (2)
13 applications filed before July 1, 2022, or (3) applications from owners of real
14 properties that were pending sale and in escrow on that date.

15 **B. The Challenged Decisions**

16 In February 2023, petitioners each applied for new short term rental
17 permits, which the county permit technician then declined to process based on

² All citations to Ordinance 84 are to the version in effect on the date the Order was adopted.

1 the Order.³ Petitioners subsequently appealed each email to LUBA. We
2 consolidated the appeals.

3 **JURISDICTION**

4 LUBA has exclusive jurisdiction to review “land use decision[s].” ORS
5 197.825(1). A “[l]and use decision” includes a final decision that concerns the
6 adoption, amendment, or application of:

7 “(i) The goals;

8 “(ii) A comprehensive plan provision;

9 “(iii) A land use regulation; or

10 “(iv) A new land use regulation[.]” ORS 197.015(10)(a)(A).

11 The county moves to dismiss the appeals, arguing that the three decisions
12 are not land use decisions under ORS 197.015(10)(a) because they do not apply
13 the Tillamook County Land Use Ordinance (LUO) or the Tillamook County
14 Comprehensive Plan (TCCP).⁴ Motion to Dismiss 12-13. Rather, the county
15 argues, the three emails apply the Order. Because the Order is not a land use
16 regulation, the county argues, the three emails are not land use decisions.⁵

³ Petitioners each completed construction of new dwellings in the county in 2022. Response to Motion to Dismiss 14.

⁴ We issued an order suspending all deadlines in the appeal until we ruled on the motion to dismiss.

⁵ In a final opinion and order issued this same date, we dismissed LUBA No. 2023-030, petitioners’ appeal of the Order, concluding that the Order is not a land

1 As the parties seeking LUBA review, the burden is on petitioners to
2 establish that the appealed decision is a land use decision. *Billington v. Polk*
3 *County*, 299 Or 471, 475, 703 P2d 232 (1985). Petitioners filed a response to the
4 motion to dismiss.⁶ In their response, petitioners cite LUO 1.030(2), which
5 provides:

6 “Any application or any decisions based upon any State or local
7 regulation administered by the Director [of the Department], the
8 Department [of Community Development], the [County Planning]
9 Commission, or the Board [of County Commissioners], shall
10 constitute an application or a decision pursuant to this Ordinance.”⁷
11 See Response to Motion to Dismiss 9-10, 37.

12 Petitioners argue that under the plain language of LUO 1.030(2), the county
13 permit technician’s emails that refused to process their applications for short term
14 rental permits are “decisions based upon * * * a local regulation administered by
15 the * * * Department” and thus “constitute * * * a decision pursuant to” the LUO
16 under LUO 1.030(2).

17 We tend to agree with petitioners that LUO 1.030(2) supports a conclusion
18 that the three emails are “a decision pursuant to the LUO.” However, the county

use decision and is not a moratorium. *Winters v. Tillamook County*, ____ Or
LUBA ____ (LUBA No 2023-030, Sept 29, 2023).

⁶ Petitioners filed a single combined response to the county’s motion to
dismiss their appeal of the Order in LUBA No. 2023-030, and their appeal of the
challenged decisions.

⁷ LUO 11.030 defines “Department” to mean “the Tillamook County
Department of Community Development.”

1 also argues that the emails are not “final” decisions as required by ORS
2 197.015(10)(a). By definition, a land use decision must be a *final* decision.
3 Motion to Dismiss 14; ORS 197.015(10)(a)(A). The burden is also on petitioners
4 to demonstrate that the challenged emails are *final* decisions. Petitioners have not
5 responded to the county’s argument that the emails are not “final decision[s]” as
6 required by ORS 197.015(10)(a). Absent any demonstration from petitioners that
7 the emails are “final decisions,” we agree with the county that LUBA lacks
8 jurisdiction over the appeals.

9 The appeals are dismissed.