LUBA
OCT 29 2026 PM01:08

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

RONALD D. SATTLER,
Petitioner,

vs.

CITY OF BEAVERTON,
Respondent,

and

ASHCREEK PARENT COOPERATIVE PLAYSCHOOL,
Intervenor-Respondent.

LUBA No. 2026-046

DOUGLAS GORDON,
Petitioner,

vs.

CITY OF BEAVERTON,
Respondent,

and

ASHCREEK PARENT COOPERATIVE PLAYSCHOOL,
Intervenor-Respondent.

LUBA No. 2026-047

DAVID C. GOLDER,
Petitioner,

vs.

CITY OF BEAVERTON,
Respondent,

and

ASHCREEK PARENT COOPERATIVE PLAYSCHOOL,
Intervenor-Respondent.

LUBA No. 2026-048

FINAL OPINION
AND ORDER

Appeal from City of Beaverton.

Ronald D. Sattler, Douglas Gordon, and David C. Golder represented themselves.

Robin McIntyre represented respondent.

Zoee Lynn Powers represented intervenor-respondent.

BASSHAM, Board Member; WILSON, Board Chair; ZAMUDIO, Board Member, participated in the decision.

DISMISSED 10/29/2026

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

Opinion by Bassham.

NATURE OF THE DECISION

Petitioners appeal an email that they describe as "the City's final determination that [a childcare facility's various conditional use permits], including associated conditions of approval, have no force or effect." Notice of Intent to Appeal 2.[1]

BACKGROUND

A. Related Appeals

These consolidated appeals are the latest in a complex series of interrelated appeals concerning intervenor-respondent Ashcreek Parent Cooperative Preschool's (intervenor's) preschool or childcare facility.

In 1994, the city originally approved a childcare facility as a conditional use, limited to 20 students, within an existing church building that is itself a conditional use in the applicable residential zone. In 2024, intervenor applied to modify the conditional use permit (CUP) to expand the childcare facility to accommodate up to 60 children. In January 2025, the city council approved that modification. Petitioners appealed the CUP modification decision to LUBA, those appeals were consolidated as LUBA Nos. 2025-012/013/014, and then

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[1] All three petitioners filed nearly identical Notices of Intent to Appeal (NITAs), with only incidental differences, primarily that each had the respective petitioner's name and contact information. For simplicity, we cite to petitioners' NITAs in the singular.

suspended for mediation. After mediation proved unsuccessful, LUBA re-started the appeals. The city then moved to dismiss those appeals as moot, arguing that because a subsequent city decision—a February 11, 2026 Zoning Confirmation Letter (ZCL), which was not appealed to LUBA—had determined that intervenor's conditional use permits had been superseded and rendered inoperative by a 2025 city ordinance, and thus were without force or effect. As the city explained in its motion in those appeals, on December 2, 2025, the city council adopted Ordinance No. 4876, which amended the city land use code to classify childcare centers as a permitted use in residential zones, if the facility is collocated with an existing place of worship. Ordinance No. 4876 implements House Bill (HB) 3560 (2025), codified at ORS 197.671. *See* Or Laws 2025, ch 157. We ultimately agreed with the city that the February 11, 2026 ZCL decision and associated legislative enactments had effectively mooted the CUP appeals, and accordingly dismissed the CUP appeals. *Sattler v. City of Beaverton*, LUBA Nos 2025-012/013/014 (July 10, 2026).[2]

Finally, in a related set of appeals, the same petitioners challenged a 2024 city council decision approving intervenor's application for design review to retroactively approve the expansion of an outdoor play area at the church site where intervenor's childcare facility is located. We recently affirmed the city's

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[2] This decision is currently under review at the Court of Appeals. *Sattler v. City of Beaverton*, CA A191627.

design review decision. *Sattler v. City of Beaverton*, LUBA Nos 2025-009/010/011 (Sept 29, 2026).

B. The Challenged June 17, 2026 Email

The present appeals concern an email dated June 17, 2026, from an assistant city attorney to one of the petitioners, responding to an inquiry from that petitioner about the status of intervenor's conditional use permits. The challenged email states:

> "Under the city's current code, [intervenor's] play school is a use that is now allowed outright at its location. It does not need a conditional use. Therefore, the prior conditional use permits have no force or effect. The attached joint motion to dismiss describes the city's position in more detail." Motion to Dismiss Ex A, at 1.

The "joint motion to dismiss" attached to and referenced in the June 17, 2026 email is the same motion to dismiss filed in LUBA Nos. 2025-012/013/014, dated February 24, 2026. The ZCL was attached to that motion to dismiss, and served on petitioners, as parties in LUBA Nos. 2025-012/013/014. As noted, on July 10, 2026, we granted the joint motion to dismiss and dismissed those consolidated appeals, concluding that the unappealed ZCL had determined that intervenor's childcare facility is now a permitted use, and the prior CUP approvals were thus no longer in effect, which mooted the appeals of the 2025 CUP modification.

Petitioners state that sometime prior to March 2, 2026, they received the motion to dismiss filed in LUBA Nos. 2025-012/013/014, with the attached ZCL. On that date, March 2, 2026, they emailed an assistant city attorney, asking

whether the ZCL reflected the city's final, official position regarding the status of the CUPs for the childcare facility and, if so, what appeal processes were available. The assistant city attorney replied by email, declining to answer petitioners' questions because they related to the then-pending appeals in LUBA Nos. 2025-012/013/014, and stating that the city would not respond outside that LUBA process. On March 10, 2026, petitioners submitted a response to the motion to dismiss LUBA Nos. 2025-012/013/014, in which petitioners discussed the ZCL.

On June 17, 2026, petitioner Golder again sent the assistant city attorney an email requesting clarification whether the conditional use permits remained active and enforceable. On the same date, the assistant city attorney replied with the above-quoted email, stating that the "prior conditional use permits have no force or effect," and attaching a copy of the motion to dismiss in LUBA Nos. 2025-012/013/014. As explained above, the motion to dismiss in LUBA Nos. 2025-012/013/014 took the position that, based on city adoption of Ordinance No. 4876 and as determined in the ZCL, the CUPs had been superseded and no longer had force or effect.

On July 3, 2026, petitioners filed separate appeals of the June 17, 2026 email quoted above. As noted, each NITA characterizes the June 17, 2026 email as "the City's final determination that [a childcare facility's various conditional use permits], including associated conditions of approval, have no force or effect." NITA 2. LUBA consolidated these three appeals for review. The city and

intervenor (together, respondents) jointly move to dismiss these appeals for lack of jurisdiction, on the basis that (1) petitioners' NITAs were untimely filed or, alternatively, (2) the June 17, 2026 email is not a "land use decision" as defined at ORS 197.015(10).[3] Petitioners filed a joint response to the motions to dismiss. For the following reasons, we agree with respondents that the June 17, 2026 email is not a "land use decision" subject to our jurisdiction. In addition, to the extent petitioners can be understood to belatedly appeal the February 11, 2026 ZCL, we agree with respondents that petitioners' appeal was untimely filed.

JURISDICTION

LUBA has exclusive jurisdiction to review appeals of "land use decisions." ORS 197.825(1). Respondents argue that the actual "decision sought to be reviewed" in these appeals is not the June 17, 2026 email, but is, instead, the February 11, 2026 ZCL. Joint Motion to Dismiss 5 (quoting OAR 661-010-

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[3] In relevant part, ORS 197.015(10)(a)(A) defines "land use decision" to include:

> "A final decision or determination made by a local government or special district that concerns the adoption, amendment or application of:
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> "(i) The goals;
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> "(ii) A comprehensive plan provision;
>
> "(iii) A land use regulation; or
>
> "(iv) A new land use regulation[.]"

0015(1)(a)). While not conceding that the ZCL constituted a "land use decision" as defined at ORS 197.015(10)(a) that could have been appealed to LUBA, respondents argue nonetheless that the ZCL made final, binding determinations on the status of intervenor's conditional use permits for the childcare facility. Respondents argue that those determinations cannot be challenged in an appeal of the June 17, 2026 email. Respondents argue that the June 17, 2026 email simply references and reiterates the city's arguments in the motion to dismiss LUBA Nos. 2025-012/013/014, which in turn are based on the ZCL and the 2025 legislative enactments. According to respondents, where a local government official issues a document that in relevant part simply reiterates determinations made in an earlier final decision, those earlier final determinations cannot be challenged in the appeal of the reiterating document. *See Lloyd Dist. Community Assoc. v. City of Portland*, 30 Or LUBA 390, 395, *aff'd*, 141 Or App 29, 916 P2d 884, *rev den*, 324 Or 322 (1996) (document that consists entirely of a reiteration of an earlier land use decision is not a separately appealable land use decision under ORS 197.015(10)(a)(A)); *Johntson v. Marion County*, 51 Or LUBA 250, 261-62 (2006) (same).

We agree with respondents. The February 11, 2026 ZCL was issued in response to a request from intervenor specifically to confirm the status of the childcare facility's existing conditional use permits and their associated conditions of approval. In the ZCL the city concluded that intervenor's permits were superseded by Ordinance No. 4786 and were therefore no longer operative

and without legal effect.[4] The ZCL determined that intervenor's childcare facility qualified as a permitted use under the recent code amendments, and therefore that the previous CUP approvals and associated conditions of approval no longer governed the facility. We understand that city staff issued the ZCL without public notice or a hearing. The ZCL was not appealed to LUBA.

Petitioners do not dispute that, in these appeals, they seek to challenge the city's "operative determination that the prior conditional use permits had 'no force or effect.'" Joint Response in Opposition to Motion to Dismiss 8. To the extent that petitioners locate that "operative determination" in the June 17, 2026 email, we agree with respondents that because the email simply reiterates the determinations made in the ZCL, and petitioners identify no independent determinations made in the June 17, 2026 email concerning the application of a comprehensive plan or land use regulation, petitioners fail to establish that the

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[4] The ZCL is a three-page document signed by a city senior planner. It concludes, in relevant part:

> "Regarding the previous Conditional Use approvals for the child care center, specifically CUP 94011 – Murry Hills Montessori School and CU32023-00555 – Ashcreek Playschool, the City of Beaverton finds these approvals, and associated conditions of approval, have been superseded by Ordinance No. 4876, which allows the child care center as a permitted use. Because the child care center use is now permitted by right, the prior conditional use permits for the child care center, including the conditions of approval, are no longer operative and have no force or effect." Joint Motion to Dismiss Ex B, at 3.

June 17, 2026 email is a land use decision subject to our jurisdiction.[5] *Lloyd Dist. Community Assoc.*, 30 Or LUBA at 395; *Johnson*, 51 Or LUBA at 261-62.

To the extent petitioners seek to challenge the February 11, 2026 ZCL itself, in these appeals of the June 17, 2026 email, we agree with respondents that petitioners have not demonstrated that their attempt to directly appeal the ZCL to LUBA, in whatever guise, was timely filed.

Petitioners' apparent theory for why they may appeal the substantive determinations in the ZCL, in these appeals of the June 17, 2026 email, rests on the notion that the email was the first express communication directed *to petitioners* that the city had previously determined, in the ZCL, that the CUPs had no force or effect. Petitioners argue that "the June [17, 2026] Email was the first direct and unequivocal communication to Petitioners of the City's operative determination that the prior conditional use permits had 'no force or effect.'" Joint Response in Opposition to Joint Motion to Dimiss 8. Petitioners do not dispute that they knew of, and had received copies of, the ZCL sometime in early March of 2026. On March 2, 2026, petitioners emailed the city seeking clarification whether the ZCL represented a final determination regarding the status of the CUPs, and whether any local appeals were available. On March 10, 2026, petitioners filed a response to the motion to dismiss in LUBA Nos. 2025-

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[5] Petitioners concede that they "do not contend that the June Email independently reapplied the [city's c]ode or created a new substantive determination." Joint Response In Opposition to Motion to Dismiss 15.

012/013/014 that discusses the ZCL. But petitioners contend that they did not receive written confirmation from the city that the ZCL was a final determination regarding the status of the CUPs, until petitioners received the June 17, 2026 email. Under these circumstances, petitioners argue, they are entitled to appeal the ZCL directly to LUBA, and their appeal of the ZCL was timely, under either ORS 197.830(9)[6] or ORS 197.830(3)(b).[7]

Petitioners' theory is mistaken for a number of reasons, starting with the fact that the decision challenged in the NITAs is clearly the June 17, 2026 email, not the ZCL. Petitioners identify no authority that would allow them to substitute

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[6] ORS 197.830(9) sets out the generally applicable statutory deadline to appeal land use decisions to LUBA, providing in relevant 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."

[7] ORS 197.830(3) sets out a special statutory deadline to appeal certain land use decisions to LUBA in certain circumstances, providing in relevant part:

> "If a local government makes a land use decision without providing a hearing, except as provided under ORS 197A.140(2), 215.416(11) or 227.175(10), * * * a person adversely affected by the decision may appeal the decision to [LUBA] under this section:
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> "(a) Within 21 days of actual notice where notice is required; or
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> "(b) Within 21 days of the date a person knew or should have known of the decision where no notice is required."

a different decision to be challenged at LUBA in place of the decision stated in the NITA.

But even if the NITAs had identified the challenged decision as the ZCL, or the ZCL were somehow substituted for the email, petitioners have not demonstrated that the NITAs were timely filed under any of the applicable appeal deadlines.

Petitioners' arguments on this point are hard to follow. We understand petitioners to argue that the ZCL did not become "final" as to them, for purposes of ORS 197.830(9), until they received clarification in the June 17, 2026 email that the ZCL was the city's final decision. However, the finality of the February 11, 2026 ZCL does not depend upon when petitioners received clarification on its finality. For purpose of appeal to LUBA, a land use decision "becomes final when it is reduced to writing and bears the necessary signatures of the decision maker(s)[.]" OAR 661-010-0010(3). There is no dispute that, when issued on February 11, 2026, the ZCL was a final decision as defined in OAR 661-010-0010(3).

Petitioners also argue that their challenges to the ZCL were timely filed under ORS 197.830(3)(b), because the NITAs were filed within 21 days of the date that they "knew or should have known of the decision." Petitioners contend that, while they knew of the ZCL as early as March 2, 2026, they did not know that the ZCL was the city's final, operative determination regarding the status of the CUPs until so informed in the June 17, 2026 email. Petitioners argue that their

appeals were thus timely filed within 21 days of the date they "knew or should have known of the decision." ORS 197.830(3)(b).

However, petitioners have not established that their appeals were timely filed under ORS 197.830(3)(b). Although we need not definitely characterize the February 11, 2026 ZCL decision, it seems clear that the ZCL decision is a type of land use decision known as a zoning classification or zoning verification decision, that is, a "decision which determines the appropriate zoning classification for a particular use by applying criteria or performance standards defining the uses permitted within the zone[.]" ORS 227.160(2)(b). The ZCL determined that the childcare facility is a permitted use in the applicable zone rather than a conditional use. On its face, it appears to constitute a zoning classification decision, and, as noted, it bears all the indicia of a final decision.

A zoning classification decision is excluded from the statutory definition of "permit," at ORS 227.160(2). As a consequence, in processing an application for a zoning classification decision, the city is not required to provide the notice, hearing, and other procedural steps that are required when issuing a decision on a "permit." *See generally* ORS 227.173 to 227.180. Among other things, that means that the city was not statutorily obligated to provide notice of the application or the decision to petitioners or any other property owner in the neighborhood. Petitioners do not argue that the local code requires the city to provide notice to petitioners.

ORS 227.175(11) provides that a zone classification decision is subject to LUBA's jurisdiction in the same manner as a limited land use decision, with a 21-day appeal period set out in ORS 197.830(5)(b).[8] *Leyden v. City of Eugene*, 79 Or LUBA 151, 156-57 (2019); *Richardi v. City of Eugene*, 78 Or LUBA 299, 305-06 (2018), *aff'd*, 295 Or App 840, 434 P3d 990 (2019). Like ORS 197.830(3)(b), ORS 197.830(5)(b) provides for appeal to LUBA "[w]ithin 21 days of the date the person knew or should have known of the decision." Because both statutes use the same language, LUBA applies them in the same way. *Leyden*, 79 Or LUBA at 157.

Whether ORS 197.830(3)(b) or 197.830(5)(b) applies, petitioners do not dispute that they knew of the ZCL, and possessed a copy of it, sometime in early

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[8] ORS 227.175(11) provides"

"A decision described in ORS 227.160 (2)(b) shall:

"(a) Be entered in a registry available to the public setting forth:

"(A) The street address or other easily understood geographic reference to the subject property;

"(B) The date of the decision; and

"(C) A description of the decision made.

"(b) Be subject to the jurisdiction of the Land Use Board of Appeals in the same manner as a limited land use decision."

"(c) Be subject to the appeal period described in ORS 197.830 (5)(b).

March of 2026. Petitioners claim only that they did not know whether the ZCL was the city's "final" decision. But petitioners' uncertainty on that point does not mean that they did not "know" of the decision for purposes of ORS 197.830(3)(b) or (5)(b). If there is any uncertainty regarding whether a local government has issued a final land use decision that is appealable to LUBA, or whether a local appeal might be available, the prudent course is to timely appeal the decision to LUBA while also pursuing the possibility of local remedies. *Comrie v. City of Pendleton*, 45 Or LUBA 758, 771 n 12 (2003); *Warf v. Coos County*, 42 Or LUBA 84, 102 (2002). Here, petitioners failed to preserve their appeal rights to LUBA; instead they chose only to pursue local remedies that, it turned out, do not exist.[9] That was a fatal choice.

Even if the applicable standard is "should have known," as we explained in *Leyden*, where a petitioner observes activity or otherwise obtains information reasonably suggesting that the local government has rendered a land use decision, the petitioner is placed on "inquiry notice." 79 Or LUBA at 157-58 (citing *Willhoft v. City of Gold Beach*, 38 Or LUBA 375, 390 (2000)). That obligates the petitioner to make timely and diligent inquiries to discover the decision, and effectively "tolls" the 21-day appeal deadlines until the petitioner discovers the decision, typically meaning until the petitioner obtains a copy of the decision. *Id.*

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[9] Petitioners do not identify any city code provisions that would allow local appeal of the ZCL.

at 158. If the petitioner fails to conduct such timely inquiries, the 21-day appeal period to LUBA begins on the date the petitioner was placed on inquiry notice. Here, petitioners discovered the decision and obtained a copy of it sometime in early March of 2026 but nonetheless failed to appeal it to LUBA within 21 days of discovery. The "should have known" element in ORS 197.830(3)(b) or (5)(b) does not assist petitioners.

Petitioners bear the burden to establish LUBA's jurisdiction, including identification of the decision being appealed and the timeliness of that appeal. *Miller v. City of Dayton*, 22 Or LUBA 661, 665, *aff'd*, 113 Or App 300, 833 P2d 299, *rev den*, 314 Or 573 (1992); *Billington v. Polk County*, 299 Or 471, 475, 703 P2d 232 (1985). As explained, petitioners have failed to establish that the June 17, 2026 email is a land use decision subject to LUBA's jurisdiction. The June 17, 2026 email simply reiterates determinations made in the earlier ZCL decision, and makes no independent determinations of its own that would bring it within the ambit of the definition at ORS 197.015(10)(a). To the extent petitioners' NITAs can be understood as an attempt to appeal the ZCL itself, the NITAs were not timely filed.

These appeals are dismissed.