



1 application and local appeal, and is the decision, or part of the decision, that is challenged in  
2 this appeal

3 Petitioner filed his Notice of Intent to Appeal the challenged decision on September  
4 20, 2012. ORS 197.830(9) provides, in relevant part:

5 “A notice of intent to appeal a land use decision or limited land use decision  
6 shall be filed not later than 21 days after the date the decision sought to be  
7 reviewed becomes final. \* \* \* ”

8 Under OAR 661-010-0010(3), a decision is final on the date it is reduced to writing and bears  
9 the necessary signatures of the local decision maker, unless a local ordinance provides that  
10 the decision becomes final on a *later* date.

11 Intervenor moves to dismiss the appeal as untimely filed under the 21-day deadline to  
12 appeal set out in the first sentence of ORS 197.830(9). According to intervenor, the city  
13 decision to approve the application and deny the local appeal became final on August 28,  
14 2012, the same date that the planning commission orally voted to approve the application and  
15 deny the local appeal. According to intervenor, the fact that the city’s planner mailed the  
16 written Notice of Decision to petitioner and others three days later, on August 31, 2012, does  
17 not change the date that the decision became final. Petitioner responds that the decision  
18 became final on August 31, 2012, and attaches to his response an email message from a city  
19 planner to petitioner that states that the deadline for filing an appeal to LUBA is September  
20 20, 2012.

21 As noted, under OAR 661-010-0010(3) a land use decision becomes final only when  
22 “reduced to writing.” There is no document in the record that embodies the planning  
23 commission determination to approve the application and deny the local appeal, other than  
24 the “Notice of Decision.” We do not understand intervenor to dispute that the “Notice of  
25 Decision” is the city’s final decision for purposes of OAR 661-010-0010(3) and our  
26 jurisdiction. We do understand intervenor to argue, however, that the “Notice of Decision”  
27 was “reduced to writing” on August 28, 2012, and therefore petitioner’s appeal was filed

1 more than 21 days from the date the city’s decision became final.

2 We are simply unable to tell from the Notice of Decision itself when the planning  
3 commission’s decision was “reduced to writing,” a prerequisite to the decision becoming  
4 “final” under OAR 661-010-0010(3). The Notice of Decision contains several ambiguities,  
5 including the fact that the notice itself is undated, it identifies the “Date of Decision” as  
6 August 28, 2012, and that it instructs any party who wishes to appeal may file a notice of  
7 intent to appeal to LUBA not later than 21 days after the date of “this report.”<sup>1</sup> Record 1.  
8 However, we can tell from the record that the Tuesday, August 28, 2012 planning  
9 commission meeting commenced at 7:00 p.m., and that the petitioner’s local appeal of the  
10 planning director’s decision was the last item considered by the planning commission at that  
11 meeting. Record 135. The meeting minutes do not include any reference to a written  
12 decision or notice of the decision that was presented to the planning commission at the  
13 meeting or otherwise indicate any direction given by the planning commission to the  
14 planning department to reduce its oral decision to writing by any certain date. Therefore, we  
15 seriously doubt that the planning commission’s decision was “reduced to writing” on August  
16 28, 2012 as intervenor suggests.

17 Given the uncertainty regarding the date that the decision was actually reduced to  
18 writing, the fact that the Notice of Decision is undated, and the fact that the city mailed the  
19 Notice of Decision on August 31, 2012, we conclude that the decision was “reduced to  
20 writing” on August 31, 2012, the date that it was mailed. Therefore, petitioner’s appeal was  
21 timely filed.

22 Intervenor’s motion to dismiss is denied.

---

<sup>1</sup> While the notice is not dated, it was not mailed to the parties until August 31, 2012. No party offers any reason why the city would reduce the decision to writing on August 28, 2012 but wait three days to mail it to the parties. The reference to August 28, 2012 as the date of the decision could be a reference to the oral decision or the written decision or both. We are not sure why the city would refer to its decision, which apparently is only embodied in the notice, as a “report.”

1 **BRIEFING SCHEDULE**

2 While intervenor’s motion to dismiss was pending, the city transmitted the record to  
3 LUBA and the deadline for filing the petition for review commenced. Because petitioner  
4 was, for five days, required to both prepare a response to the motion to dismiss and prepare  
5 his petition for review, additional time for petitioner to file his petition for review is  
6 warranted. OAR 661-010-0067(2).

7 The petition for review shall be due not later than November 7, 2012. The response  
8 briefs shall be due not later than November 28, 2012. The final opinion and order shall be  
9 due not later than January 2, 2012.

10 Dated this 23<sup>rd</sup> day of October, 2012.

11  
12  
13  
14  
15  
16  
17  
18

---

Melissa M. Ryan  
Board Member