

1 15 days *before* the planning commission’s final decision was issued. The planning
2 commission’s decision denied petitioner’s application for a communications tower. Petitioner
3 appealed the planning commission’s decision in LUBA No. 2000-014.

4 **A. LUBA No. 2000-014**

5 Intervenors allege that they appeared before the planning commission in this appeal
6 and that they filed a timely motion to intervene. Petitioner does not object to the motion to
7 intervene in LUBA No. 2000-014 and it is allowed.

8 **B. LUBA No. 2000-011**

9 Petitioner opposes the motion to intervene in LUBA No. 2000-011, arguing that none
10 of the parties appeared orally or in writing before the board of commissioners during the
11 proceedings resulting in the land use decision that is the subject of this appeal. Petitioner
12 contends that while the planning commission’s and board of commissioners’ decisions are
13 closely related, they are not identical. Therefore, petitioner argues, intervenors must
14 demonstrate that they appeared before the board of commissioners before they may be
15 allowed to intervene in LUBA No. 2000-011.

16 The board of commissioners’ decision was made pursuant to ORS 215.422(1) and
17 provisions of the Linn County Ordinance (LCO) implementing that statute. ORS 215.422(1)
18 provides, in relevant part:

19 “(a) A party aggrieved by the action of a hearings officer or other decision-
20 making authority may appeal the action to the * * * county governing
21 body[.] * * * The procedure and type of hearing for such an appeal
22 * * * shall be prescribed by the governing body * * *.

23 “(b) Notwithstanding [ORS 215.422(1)(a)], the governing body may
24 provide that the decision of a hearings officer or other decision-making
25 authority is the final determination of the county.”

26 LCO 921.220(C) provides:

27 “Notwithstanding any provision in this Code to the contrary, if a time
28 limitation is about to expire and a final decision has not been made, or if the
29 Commission has made a decision and a time limit is about to expire, the Board

1 may enter an order affirming the findings and conclusion of the Commission
2 without conducting any further hearings.”

3 According to the board of commissioners’ order, the deadline for making a decision
4 to avoid the mandamus proceedings authorized under *former* ORS 215.428(7) (1997),
5 *renumbered as* ORS 215.429 (1999), was January 11, 2000.² Therefore, the county exercised
6 its right to determine that the planning commission’s decision would be the final decision for
7 the county. The board of commissioners’ order was adopted during a regular board meeting,
8 but was not subject to notice or an opportunity for hearing.

9 We have not had the opportunity to rule on whether participation in a planning
10 commission proceeding provides standing to intervene in an appeal of a board of
11 commissioners’ decision that *precedes* the final land use decision of the local government.
12 As intervenors point out, the Oregon Supreme Court has held that appearance before a
13 planning commission at an earlier phase of a local proceeding satisfies the requirement for an
14 appearance before the local government. *Warren v. Lane County*, 297 Or 290, 297-98, 686
15 P2d 316 (1984). However, in *Warren*, the planning commission’s decision preceded the
16 board of commissioners’ final decision on a plan amendment and zone change. The court
17 relied on the fact that the petitioners had appeared before the planning commission, and that
18 the proceedings of the planning commission were forwarded to the board of commissioners
19 for its review and consideration. According to the court, the conclusion that the petitioners in
20 *Warren* appeared during the course of the local proceedings and therefore had satisfied the
21 appearance requirement for standing before LUBA furthered the legislature’s goal of

²*Former* ORS 215.428(7) (1997) provides, in relevant part:

“* * * [I]f the governing body of the county or its designee does not take final action on an
application for a permit * * * within 120 days after the application is deemed complete:

“* * * * *

“(b) The applicant may apply in the circuit court of the county where the
application was filed for a writ of mandamus to compel the governing body
or its designee to issue the approval. * * *”

1 encouraging participation at the local level, rather than waiting until the local land use
2 decision had been made, and then appealing.

3 We do not have the same consideration here. The decision of the board of
4 commissioners was not dependent on the record of the planning commission. Rather, it was
5 made in response to a pending deadline. Nevertheless, we believe that where proceedings are
6 pending before a lower body, a decision of the governing body to decline review of the lower
7 body's decision in advance of that lower body's decision either (1) is not properly viewed as
8 a separate land use decision, making a separate appearance unnecessary, or (2) is so integral
9 to the permit decision, that appearing before the planning commission satisfies the ORS
10 197.830(6) (1997) appearance requirement.³

11 The motion to intervene in LUBA No. 2000-011 is allowed.

12 Dated this 13th day of March, 2000.

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Anne Corcoran Briggs
Board Member

³We have some question as to whether the board of commissioners' decision is a final land use decision, because it has the effect of making the planning commission decision *the* final decision with respect to petitioner's application. However, that issue is not before us.