

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON
3

4 MULTI/TECH ENGINEERING SERVICES)
5 INC., an Oregon corporation,)
6)
7 Petitioner,)
8)
9 vs.)
10)
11)
12 JOSEPHINE COUNTY,)
13)
14 Respondent,)
15)
16 and)
17)
18 STEVE DOOB, MARTIN SEYBOLD, NANCY)
19 KLAPATCH and MARGARET JORDAN,)
20)
21 Intervenor-Respondent.)
22

LUBA No. 99-049

ORDER ON MOTION
TO DISMISS

23 Intervenor-Respondent Doob moves to dismiss this appeal based on petitioner’s
24 failure to serve a copy of a notice of the intent to appeal on all parties entitled to notice under
25 OAR 661-010-0015(3).¹

¹OAR 661-010-0015 provides:

“(1) Filing of Notice:

“(a) The Notice * * * 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) through (5). * * *

“* * * * *

“(2) Service of Notice: The Notice shall be served on the governing body, the governing body’s legal counsel, and all persons identified in the Notice as required by subsection (3)(f) of this rule on or before the date the notice of intent to appeal is required to be filed.* * * The date of serving such notice shall be the date of mailing.

“(3) Contents of Notice: The Notice * * * shall contain:

“* * * * *

“(f) The name, address and telephone number of each of the following:

1 Petitioner filed a notice of intent to appeal on March 19, 1999. That notice identified
2 intervenor Klapatch as the only person mailed written notice of the land use decision by the
3 county. The certificate of service shows that intervenor Klapatch was sent a copy of the
4 notice of the intent to appeal. Intervenor Doob filed a motion to intervene on April 8, 1999,
5 and intervenors Margaret Jordan, Martin Seybold, and Nancy Klapatch filed motions to
6 intervene on April 9, 1999. The motions to intervene included statements to show that all of
7 the parties named participated in the proceedings before the local government.

8 On May 13, 1999, after the record had been transmitted and the petition for review
9 had been filed, petitioner filed a new certificate of service, certifying that a copy of the notice
10 of intent to appeal had been served on Roger and Susan Phillips, Virginia Phillips, Markley
11 Downey, Ulys Stapleton in his capacity as City Attorney for the City of Grants Pass,
12 Margaret Jordan, Steve Doob and Martin Seybold, on that date. Presumably this notice was
13 intended to cure petitioner's violation of OAR 661-010-0015(3) by providing a copy of the
14 notice of intent to appeal to those persons who received notice of the county's decision.

15 On May 24, 1999, intervenor Doob filed a motion to dismiss this appeal, claiming
16 that the rights of the omitted parties who did not intervene in the appeal had been
17 substantially prejudiced because lack of notice prevented those persons from filing a timely
18 motion to intervene. Further intervenor Doob argues that the omitted parties who did file
19 motions to intervene had been harmed by the inability to call upon the expertise and financial

“* * * * *

“(D) Any other person to whom written notice of the land use decision or limited land use decision was mailed as shown on the governing body's records. * * *

“(g) A statement advising all persons, other than the governing body, that in order to participate in the review proceeding a person must file a motion to intervene pursuant to OAR 661-010-0050.

“* * * * *

“(i) Proof of service upon all persons required to be named in the Notice. * * *”

1 resources of the omitted parties in obtaining counsel for the appeal.

2 The purpose of LUBA's rules is:

3 "to promote the speediest practicable review of land use decisions * * * while
4 affording all interested persons reasonable notice and opportunity to intervene,
5 reasonable time to prepare and submit their cases, and a full and fair hearing.
6 The rules shall be interpreted to carry out these objectives and to promote
7 justice." OAR 661-010-0005.

8 The failure to serve all parties who received a notice of the local government's
9 decision is a technical violation of LUBA's administrative rule. Technical violations of the
10 rules will not interfere with LUBA's review of a land use decision unless the substantial
11 rights of the parties are prejudiced. Winner v. Multnomah County, 30 Or LUBA 420, 424
12 (1996). The parties' substantial rights to which the rules refer are rights to (1) the speediest
13 practicable review; (2) a reasonable opportunity to prepare and submit argument; and (3) a
14 full and fair hearing. Markham v. Coos County, 31 Or LUBA 529, 530 (1996).

15 Failure to serve all persons required to be named in the notice of intent to appeal as
16 required by OAR 661-010-0015(3)(i) may, in some cases, prejudice the substantial rights of
17 those persons. However, it is for those persons who sustained the alleged prejudice to show
18 that it was substantial and warrants dismissal of the appeal. Intervenor may not do it for
19 them. Everts v. Washington County, 15 Or LUBA 614, 615 (1987). Intervenor concedes
20 that he and the other intervenors received actual notice in time for them to be included as
21 parties to the appeal.

22 Intervenor's argument that petitioner's violation of OAR 661-010-0015 prevents
23 other parties from contributing their expertise and financial resources to prepare briefs in
24 support of his position does not demonstrate a substantial violation of his rights. A person
25 may contribute to the preparation of a brief, financially or otherwise, without intervenor
26 status.

27 Finally, intervenor argues that, because he and the other parties entitled to notice do
28 not have the assurance that their participation will result in a successful outcome, the appeal

1 should be dismissed. The substantial rights of the parties do not include the right to a
2 “successful outcome,” whatever that may be.

3 The motion to dismiss is denied.

4 Dated this 3rd day of June, 1999.

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Anne Corcoran Briggs
Board Member