

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3  
4 MOUNTAIN WEST INVESTMENT CORPORATION,  
5 *Petitioner,*

6  
7 and

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9 MILTON ROBINSON,  
10 *Intervenor-Petitioner,*

11  
12 vs.

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14 CITY OF SILVERTON,  
15 *Respondent,*

16  
17 and

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19 NORTH WATER STREET, LLC,  
20 *Intervenor-Respondent.*

21  
22 LUBA No. 2000-093

23 ORDER

24 Before us are North Water Street, LLC's (intervenor's) motion to intervene, motion to  
25 dismiss and motion to extend the time for filing objections to the record.

26 **MOTION TO INTERVENE AND MOTION TO DISMISS**

27 Intervenor moves to dismiss this appeal because petitioner failed to serve intervenor  
28 with a copy of the notice of intent to appeal until August 14, 2000, 53 days after the notice  
29 was filed with LUBA. OAR 661-010-0015(3)(i) requires that copies of the notice of intent to  
30 appeal be served on "all persons required to be named in the [n]otice." OAR 661-010-  
31 0015(3)(f)(C) requires that the applicant or the applicant's attorney be named in the notice of  
32 intent to appeal. Petitioner concedes that it did not serve a copy of the notice on intervenor  
33 until the omission was brought to its attention, but argues that intervenor has not established  
34 that it was substantially prejudiced by the delay.<sup>1</sup>

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<sup>1</sup>We note that neither petitioner nor the city objects to the motion to intervene.

1 LUBA will grant a motion to dismiss based on a failure to provide timely service only  
2 when the delay causes substantial prejudice. *Bright v. City of Yachats*, 16 Or LUBA 161, 164  
3 (1987). Intervenor argues that it is substantially prejudiced because ORS 197.830(7)(c)  
4 requires LUBA to deny a motion to intervene that has been filed more than 21 days after the  
5 notice of intent to appeal has been filed with the Board.<sup>2</sup> Intervenor explains that it filed its  
6 motion to intervene as a precaution; however, it recognizes that the statute might bar its  
7 participation. Intervenor contends that petitioner’s failure to serve a notice of intent to appeal  
8 on a party entitled to such notice causes substantial prejudice and warrants dismissal of the  
9 appeal.

10 Technical violations of LUBA’s rules will not interfere with LUBA’s review of a  
11 land use decision unless the substantial rights of the parties are prejudiced. OAR 661-010-  
12 0005; *Winner v. Multnomah County*, 30 Or LUBA 420, 424 (1996). The parties’ substantial  
13 rights to which the rules refer are rights to (1) the speediest practicable review; (2) a  
14 reasonable opportunity to prepare and submit argument; and (3) a full and fair hearing.  
15 *Markham v. Coos County*, 31 Or LUBA 529, 530 (1996).

16 Intervenor filed its motion to intervene on July 31, 2000, when it became aware that a  
17 notice of intent to appeal had been filed and two weeks before a copy of the notice of intent  
18 to appeal was served on it. In this circumstance, we do not believe ORS 197.830(7) requires  
19 that the motion to intervene be denied. Therefore, we allow the motion to intervene. Because  
20 no other basis to conclude that petitioner’s violation of our rules prejudiced intervenor’s

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<sup>2</sup>ORS 197.830(7) provides in relevant part:

“(a) Within 21 days after a notice of intent to appeal has been filed with the board \* \* \*  
any person may intervene in and be made a party to the review proceeding \* \* \*.

“\* \* \* \* \*

“(c) Failure to comply with the deadline set forth in [ORS 197.830(7)(a)] shall result in  
denial of a motion to intervene.”

1 substantial rights is before us, we deny the motion to dismiss.<sup>3</sup>

2 **MOTION TO EXTEND THE TIME FOR FILING RECORD OBJECTIONS**

3 Intervenor moves that it be allowed an additional 14 days to file objections to the  
4 record. Intervenor explains that on August 21, 2000, it requested a copy of the record from  
5 the city, but as of August 28, 2000, the copy has not been provided. According to intervenor,  
6 it contacted the city on August 28, 2000, requesting a stipulation to extend the time for filing  
7 objections to the record, but was informed that the city attorney would not be available for at  
8 least a week.

9 We treat intervenor’s motion as a precautionary record objection. Intervenor has 14  
10 days from the date of this order to either file an amended objection to the record, specifying  
11 its objections with more particularity, or inform the Board that it is satisfied with the record  
12 as it has been prepared. Accordingly, we suspend the deadline for filing the petition for  
13 review and response briefs until such time as the record is settled.

14 Dated this 31st day of August, 2000.

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Anne Corcoran Briggs  
Board Member

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<sup>3</sup>Intervenor’s rights to a speedy review and an opportunity to prepare and submit argument have not been hampered by petitioner’s delay in service. The record in this appeal was not filed by the city until August 14, 2000. On August 16, 2000, LUBA informed all of the parties, including intervenor, that it had received the record.