

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

3
4 MARILYN ALLEN,
5 *Petitioner,*

6
7 vs.

8
9 GRANT COUNTY,
10 *Respondent,*

11 and

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14 STEVE PARSONS and DOROTHY PARSONS,
15 *Intervenors-Respondent.*

16
17 LUBA No. 2000-133

18 ORDER

19 Before the Board are intervenors-respondent's motion to intervene and the county's
20 motion to dismiss.

21 **MOTION TO INTERVENE**

22 Steve Parsons and Dorothy Parsons (intervenors), the applicants below, move to
23 intervene on the side of the county. There is no opposition to their motion, and it is allowed.

24 **MOTION TO DISMISS**

25 The record in this case was settled on September 11, 2000. The petition for review
26 was accordingly due on or before October 2, 2000. OAR 661-010-0030(1).¹ On September
27 22, 2000, petitioner filed the petition for review with LUBA. Attached to the petition for
28 review is a certificate of service, as required by OAR 661-010-0075(2)(b), that states that on

¹OAR 661-010-0030(1) provides:

“The petition for review together with four copies shall be filed with the Board within 21 days after the date the record is received or settled by the Board. See OAR 661-010-0025(2) and 661-010-0026(6). The petition shall also be served on the governing body and any party who has filed a motion to intervene. Failure to file a petition for review within the time required by this section, and any extensions of that time under OAR 661-010-0045(9) or OAR 661-010-0067(2), shall result in dismissal of the appeal and forfeiture of the filing fee and deposit for costs to the governing body. See OAR 661-010-0075(1)(c).”

1 September 22, 2000, petitioner served the petition for review by first class mail on the
2 attorneys representing the county and intervenors.

3 However, intervenors apparently never received a copy of the petition for review. On
4 October 11, 2000, intervenors made inquiries with LUBA and petitioner, and apparently
5 received a copy of the petition for review from petitioner by fax. Intervenors also requested
6 and received an extension of time in which to file the response brief, to October 23, 2000,
7 and filed their brief on that date.

8 The county did not receive a copy of the petition for review until November 3, 2000.
9 On November 8, 2000, the county filed a motion to dismiss, arguing that petitioner's failure
10 to serve the county as required by OAR 661-010-0030(1) requires that this appeal be
11 dismissed.

12 The county is mistaken. Petitioner filed the petition for review with LUBA within 21
13 days of the date prescribed by OAR 661-010-0030(1). That rule allows LUBA to dismiss an
14 appeal if the petition for review is not filed within the prescribed deadline; it does not require
15 LUBA to dismiss an appeal for defective or untimely service of the petition for review.
16 Failure to serve a party as required by OAR 661-010-0030(1) conceivably could result in
17 dismissal, if that failure prejudices that party's substantial rights. *See* OAR 661-010-0005
18 (technical violations of LUBA's rules not affecting the substantial rights of the parties shall
19 not interfere with the review of a land use decision); *see also Bruce v. City of Hillsboro*, 32
20 Or LUBA 382, 386-87 (1997) (refusal to serve copies of the notice of intent to appeal on
21 persons entitled to service deprives LUBA of jurisdiction over the appeal). However, the

1 county does not argue that its substantial rights have been prejudiced by untimely service of
2 the petition for review.²

3 The county's motion to dismiss is denied.

4 Dated this 15th day of November, 2000.
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Tod A. Bassham
Board Chair

²Oral argument in this case is currently scheduled for November 30, 2000. The county does not indicate whether it intends or ever intended to file a response brief.