

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

3
4 JAMES M. GRIFFIN and
5 SHARRI M. GRIFFIN,
6 *Petitioners,*

7
8 vs.

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10 JACKSON COUNTY,
11 *Respondent,*

12
13 and

14
15 DENNIS R. KANTOR and
16 REBECCA M. KANTOR,
17 *Intervenors-Respondent.*

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19 LUBA No. 2001-098

20 ORDER ON MOTION TO INTERVENE

21 Dennis R. Kantor, Rebecca M. Kantor and A. Robert Karl jointly move to intervene
22 on the side of respondent. Petitioners object to the motion, arguing that the motion was not
23 timely filed, as is required by ORS 197.830(7)(a), nor was it contemporaneously served on
24 petitioners, as is required by OAR 660-010-0050(2)(c).¹

25 The notice of intent to appeal was filed on June 18, 2001. In a letter to LUBA dated
26 June 22, 2001, Dennis R. Kantor and Rebecca M. Kantor (the Kantors) acknowledged receipt
27 of a copy of petitioners' notice of intent to appeal. In that letter, the Kantors also stated:

¹ ORS 197.830(7) provides, in relevant part:

“(a) Within 21 days after a notice of intent to appeal has been filed with [LUBA] * * *
any person may intervene in and be made a party to the review proceeding upon a
showing of compliance with [ORS 197.830(2)].

“* * * * *

“(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 “We received notice of an intent to appeal a land use decision made by
2 Jackson County to deny a request by [petitioners] to excavate and place fill
3 within the 100-year flood plain of Griffin Creek * * *. We are in total support
4 of Jackson County’s decision to deny this application and feel any reversal of
5 this decision would irreparably damage ours and the several other homes that
6 would be impacted by flood waters from Griffin Creek should [petitioners] be
7 allowed to excavate and fill in the designated flood plain area. We would like
8 to file a motion to intervene in the proceeding as required by OAR 661-010-
9 0050 and as instructed in the notification to interested parties. Please either
10 use this letter as our motion to file or send us the appropriate paperwork that
11 would be necessary for us to do so. If there is any further activity we must do
12 in order to participate, please inform us [as] to the procedures necessary.”

13 The Kantors’ June 22, 2001 letter did not conform to all of the specifications of OAR
14 661-010-0050.² On June 26, 2001, LUBA staff sent a letter to the Kantors, explaining that
15 the June 22, 2001 letter did not serve as a motion to intervene. The Kantors and A. Robert
16 Karl subsequently filed their motion to intervene on July 10, 2001, 22 days after the notice of
17 intent to appeal was filed.

18 In his response to petitioners’ argument against allowing the motion to intervene, A.
19 Robert Karl explains:

20 “Mrs. Kantor sent a letter to LUBA in good faith, indicating our intent to be
21 included in the LUBA hearing on this matter, within the stipulated period.

²OAR 661-010-0050 provides:

- “(1) Standing to Intervene: The applicant and any person who appeared before the local government, special district or state agency may intervene in a review proceeding before the Board. Status as an intervenor is recognized when a motion to intervene is filed, but the Board may deny that status at any time.
- “(2) Motion to Intervene: A motion to intervene shall be filed within 21 days of the date the notice of intent to appeal is filed pursuant to OAR 661-010-0015, or the amended notice of intent to appeal is filed or original notice of intent to appeal is refiled pursuant to OAR 661-010-0021. The motion to intervene (see Exhibit 3) shall:
 - “(a) State whether the party is intervening on the side of the petitioner or the respondent;
 - “(b) State the facts which show the party is entitled to intervene, supporting the statement with affidavits or other proof;
 - “(c) Be served upon the Board and all parties.”

1 “Upon receipt of Mrs. Kantor’s letter, you sent her a packet of materials to be
2 submitted as the appropriate form for a Motion to Intervene. However, the
3 Kantors were out of town, and upon their return, Mrs. Kantor and I
4 immediately processed the forms and mailed them.

5 “* * * * *

6 “We believe that our Motion to Intervene met the requirements of fair notice,
7 and that we should be accorded due process of law.” Letter from A. Robert
8 Karl, dated July 24, 2001.

9 The Kantors’ June 22, 2001 letter to LUBA, while technically deficient, is sufficient
10 to serve as the Kantors’ motion to intervene for the purposes of satisfying the deadline
11 provided by ORS 197.830(7)(a). *See* OAR 661-010-0005 (technical violations of LUBA’s
12 rules that do not affect the substantial rights of parties shall not interfere with the review of a
13 land use decision). However, the June 22, 2001 letter is *not* sufficient to serve as A. Robert
14 Karl’s motion to intervene. Prior to the July 11, 2001 motion to intervene, no indication was
15 given to petitioners or to LUBA that Mr. Karl intended to intervene in the appeal. Mr. Karl
16 does not argue, and we do not see, that he was in some way prevented from independently
17 intervening in the appeal within the statutory deadline. Therefore, we agree with petitioner
18 that A. Robert Karl’s motion is time-barred by ORS 197.830(7).

19 The motion to intervene is granted with respect to the Kantors, and is denied with
20 respect to A. Robert Karl.

21 Dated this 10th day of August, 2001.

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Anne Corcoran Briggs
Board Chair