

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

3
4 LOWELL WITKE,
5 *Petitioner,*

6
7 vs.

8
9 CITY OF MILWAUKIE,
10 *Respondent.*

11
12 LUBA No. 2001-193

13 AMENDED ORDER SETTling THE RECORD

14 On December 14, 2001, petitioner filed the notice to intent to appeal in this case on
15 his own behalf. At some point thereafter, petitioner engaged an attorney to represent him in
16 the present appeal. On January 18, 2002, petitioner’s attorney filed record objections on
17 petitioner’s behalf. The signature line of the record objection stated that the signatory was
18 “Attorney for Petitioner,” although neither the record objection nor any other pleading or
19 document has informed the Board that petitioner no longer represents himself.¹ LUBA did
20 not change its database to reflect a change in petitioner’s representation, and our database
21 continued to reflect that petitioner represented himself.

22 On February 7, 2002, the Board issued an order resolving petitioner’s record
23 objections and settling the record. As stated in our order, and pursuant to OAR 661-010-
24 0026(6) and 661-010-0030(1), the deadline for filing the petition for review is 21 days after
25 the date of the order, or February 28, 2002. The February 7, 2002 order was mailed that date
26 to petitioner and to the local government’s attorney. It was not mailed to petitioner’s
27 attorney. On February 22, 2002, petitioner’s attorney informed the Board by telephone that
28 he had not received the February 7, 2002 order, and requested a copy.

¹ LUBA’s rules do not require that parties notify the Board and other parties of changes in counsel or entry of counsel with respect to previously unrepresented parties. However, failure to provide clear notification to the Board and other parties of any changes in representation can create confusion.

1 We believe that the Board has an inherent obligation under its statutes and rules to
2 take reasonable steps to notify the parties of deadlines, particularly critical deadlines such as
3 that for filing the petition for review. Because our rules do not require that parties provide
4 the Board with formal notice of changes in counsel, we believe the Board has some
5 obligation to discern from the pleadings the persons to whom the Board must send notice of
6 pending deadlines. Petitioner’s attorney filed a January 22, 2002 record objection indicating
7 that he was “Attorney for Petitioner.” The Board resolved that record objection, settled the
8 record, and issued an order on February 7, 2002, that established a 21-day deadline for filing
9 the petition for review. However, we did not send that order to the attorney who filed the
10 record objection and who, in all likelihood, would be responsible for filing the petition for
11 review, based on the content of the record as settled. While petitioner’s attorney bears some
12 responsibility for failing to provide more prominent notice of the change in counsel, the
13 Board bears some responsibility as well in our failure to mail a copy of its order to
14 petitioner’s attorney.

15 OAR 661-010-0026(6) provides that:

16 “If an objection to the record is filed, the time limits for all further procedures
17 under these rules shall be suspended. When the objection is resolved, the
18 Board shall issue an order declaring the record settled and setting forth the
19 schedule for subsequent events. *Unless otherwise provided by the Board, the*
20 *date of the Board’s order shall be deemed the date of receipt of the record for*
21 *purposes of computing subsequent time limits.”* (Emphasis added.)

22 Pursuant to the last sentence of OAR 661-010-0026(6), we hereby establish that February 22,
23 2002, the date petitioner’s attorney contacted the Board regarding the February 7, 2002 order,
24 “shall be deemed the date of receipt of the record for purposes of computing subsequent time

1 limits.” Accordingly, the petition for review is due 21 days, and the response brief due 42
2 days, from February 22, 2002.

3 Dated this 26th day of February, 2002.
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11 Tod A. Bassham
Board Member