

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3 MARK BARTLETT
4 and DEBORAH WHITE,
5 *Petitioners,*

6
7 vs.

8
9 CITY OF PORTLAND,
10 *Respondent.*

11
12 LUBA No. 2015-067

13
14 FINAL OPINION
15 AND ORDER

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17 Appeal from City of Portland.

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19 Mark Bartlett and Deborah White, Portland, represented themselves.

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21 Kathryn S. Beaumont, Senior Deputy City Attorney, Portland,
22 represented respondent.

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24 BASSHAM, Board Chair; HOLSTUN, Board Member; RYAN Board
25 Member, participated in the decision.

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27 DISMISSED 11/18/2015

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29 You are entitled to judicial review of this Order. Judicial review is
30 governed by the provisions of ORS 197.850.

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NATURE OF THE DECISION

Petitioners appeal a city council decision approving a proposal to disconnect a city reservoir from the city’s public water system.

MOTION TO DISMISS

The city issued its final decision on August 20, 2015. The city’s notice of final decision correctly advised:

“* * * You may appeal this decision to the Oregon Land Use Board of Appeals (LUBA) by filing a Notice of Intent to Appeal with LUBA within 21 days of the date of decision, as specified in Oregon Revised Statute (ORS) 197.830. * * * LUBA’s address is DSL Building, 775 Summer Street NE, Suite 330, Salem, OR 97301-1282. * * *” Motion to Dismiss, Exhibit 1, 14.

As explained, under OAR 661-010-0015(1)(a), the notice of intent to appeal (NITA) must be filed with LUBA within 21 days of the date the decision became final. In the present case, the appeal deadline was September 11, 2015.

Petitioners mailed the NITA by certified mail on September 8, 2015. LUBA received the NITA on September 17, 2015. Petitioners mailed the

1 NITA to LUBA’s former address at 550 Capitol Street NE, Suite 235, Salem,
2 Oregon, 97301-2552.¹

3 The city moves to dismiss this appeal as untimely filed, arguing that a
4 NITA placed in an envelope that is addressed and mailed certified mail to an
5 address other than LUBA’s address is not “filed” with LUBA within the
6 meaning of OAR 660-010-0015(1)(a). *Ford v. Jackson County*, 50 Or LUBA
7 359, 363 (2005). Accordingly, the city argues that petitioners’ NITA was
8 “filed” with LUBA on the date LUBA received it, September 17, 2015, which
9 is more than 21 days after the city’s decision became final.

10 In *Ford*, the petitioner placed the NITA in an envelope addressed to a
11 third party and mailed the envelope by certified mail. LUBA did not physically
12 receive the NITA until after the 21-day appeal period had expired. We
13 dismissed the appeal, concluding that “our rules contemplate that the envelope
14 that contains the NITA and that is mailed certified mail to LUBA must actually
15 be addressed to LUBA.” *Id.* at 363.

¹ LUBA moved from the Capitol Street address to its current location in
May, 2012.

1 In the present case, we agree with the city that petitioners’ NITA was not
2 “filed” with LUBA until the date LUBA physically received it, on September
3 17, 2015. OAR 661-010-0015(1)(b) provides, in relevant part:

4 “The date of filing a notice of intent to appeal is the date the
5 Notice is received by the Board, or the date the Notice is mailed,
6 provided it is mailed by registered or certified mail, and the party
7 filing the Notice has proof from the post office of such mailing
8 date. * * *”

9 Under OAR 661-010-0015(1)(b), the date of mailing is the date of “filing” the
10 NITA with LUBA only if the NITA is mailed by certified mail to LUBA. As
11 we commented in *Ford*, a NITA is mailed to LUBA only if it is placed in an
12 envelope that is addressed to LUBA at the address set forth in LUBA’s rules
13 and mailed to that address. Since May, 2012, OAR 661-010-0075(9) has
14 provided that LUBA’s address is “775 Summer Street NE, Suite 330, Salem
15 Oregon, 97301-1283.” LUBA’s address is also posted on the agency website.
16 Because petitioners did not mail the NITA to LUBA’s correct address, the
17 NITA was not filed on the date of mailing, but was instead filed on the date
18 LUBA physically received it, on September 17, 2015.

19 Because the NITA was filed with LUBA more than 21 days from the
20 date the city’s decision became final, this appeal was untimely filed.
21 Accordingly, the appeal is dismissed.