

1 September 9, 1981. Said order is not a copy of
2 the proposed findings of fact, conclusions of law
 and order which was entered in this matter on
 February 24, 1982."

3 Benton County notes that written notice of the county's
4 decision was mailed to nine individuals in addition to the
5 Benton County Planning Department. None of these individuals
6 was named by petitioners in the Notice of Intent to Appeal as
7 having been mailed the written notice of the county's decision
8 as required by Rule 4(a)(6)(d).

9 The facts pertinent to this motion are as follows: On
10 March 23, 1982, petitioners filed with the Board a document
11 entitled "Notice of Appeal" bearing the following caption:

12 "In the Matter of the Appeal of Bud and Ramona Slocum
13 from the Planning Commission's decision denying the
14 request to modify and expand an existing
15 non-conforming use by operating an automobile repair
16 and outside storage business and caretaker residence
17 with a larger one and to allow its placement in the
 flood plane agricultural (fpa) zone portion of the
 property located at 1750 S.W. Allen Lane, south of
 Avery Park; (T 12 S, R 5 W, Section 10A, Tax Lot 100)
 in Benton County."

18 Beneath the caption is the title "Notice of Appeal," below
19 which appears the following:

20 "TO: Benton County Commissioners

21 Bud and Ramona Slocum

22 Jack Joyce

23 ROBERT BOEH and NORMA BOEH and ELMER SCANLAN and
24 ESTHER SCANLAN hereby give notice of appeal from the
25 findings of fact conclusions of law and order, entered
 in this matter in Benton County by the Benton County
 Commissioners on the 24th of February, 1982."

1 The "Notice of Appeal" identifies the attorney for the
2 applicant as Jack Joyce and gives his address and telephone
3 number. The Notice also identifies Scott Fewel as the attorney
4 for the appellant and gives his telephone and address. The
5 Notice of Appeal also contains a "designation of record" in
6 which the petitioner identifies the entire record in the
7 proceedings below as the record on appeal and states that
8 "attached is a copy of the order and by this reference is
9 incorporated herein." The order attached to the Notice of
10 Appeal was dated September 9, 1981 and sets forth the rules for
11 conducting further proceedings in cases on remand from the Land
12 Use Board of Appeals. The order attached to the Notice of
13 Appeal does not match the description of the order contained in
14 the caption of petitioners' Notice of Appeal.

15 . Shortly after the filing of respondents' motions to
16 dismiss, petitioners submitted an affidavit of petitioners'
17 counsel in opposition to the motions to dismiss. In the
18 affidavit, petitioners stated that they had inadvertently
19 attached the wrong order to the Notice of Appeal and attached a
20 correct order which they have asked the Board to substitute for
21 the incorrect order attached to the Notice of Appeal.

22 1979 Or Laws, ch 772, sec 4(4), as amended by 1981 Or Laws,
23 ch 748, provides:

24 "A Notice of Intent to Appeal a land use decision
25 shall be filed not later than 30 days after the date
26 the decision sought to be reviewed becomes final.
Copies of the notice shall be served upon the local
government or special district governing body or state

1 agency and the applicant of record, if any, in the
2 local government or special district governing body or
3 state agency proceeding. The notice shall be served
4 and filed in the form and manner prescribed by rule of
the Board and shall be accompanied by a filing fee of
\$50 and a deposit for costs to be established by the
Board.***"

5 LUBA Rule 4(A) prescribes the contents of the Notice of Intent
6 to Appeal as follows:

7 "The Notice shall be substantially in the form
8 set forth in Appendix A and shall contain:

9 "(1) A caption which sets forth the name of the
10 person filing the Notice, identifying that
11 person as a petitioner, and the name of the
12 governing body identifying that governing
13 body as the respondent.

14 "(2) Below the caption the heading "Notice of
15 Intent to Appeal";

16 "(3) The full title of the land use decision as
17 it appears on the final decision.

18 "(4) The date of the land use decision.

19 "(5) A concise description of the land use
20 decision.

21 "(6) The name, address and telephone number of
22 each of the following:

23 "(a) The petitioner, except that if the
24 petitioner is represented by an attorney,
25 then the petitioner's address and telephone
26 number may be deleted and the name, address
and telephone number of the attorney shall
be included;

"(b) The applicant, if any (if other than
the petitioner), except that if the
applicant was represented by an attorney
before the governing body, then the
applicant's address and telephone number may
be deleted and the name, address and
telephone number of the applicant's attorney
of record shall be included;

1 "(c) The governing body and the governing
2 body's legal counsel;

3 "(d) Any other person whom the governing
4 body's records indicate was mailed written
5 notice of the land use decision for which
6 review is sought.

7 "(7) A statement which advises all persons whose
8 name, address and telephone number are
9 required to appear in the notice as provided
10 in sec 4(A)(6) to these rules, other than
11 the governing body, that in order to
12 participate in the review proceeding before
13 the Board a Statement of Intent to
14 Participate in such proceedings as required
15 by Section 5 of these rules must be filed
16 with the Board within 15 days of service of
17 the Notice.

18 "(8) Proof of service upon all persons required
19 to be named in the Notice which conforms to
20 Section 3(1) of these rules."

21 Appendix A to the LUBA Rules of Procedure contains a two
22 page form document with the title "Notice of Intent to
23 Appeal." It is apparent from a review of the form Notice of
24 Intent to Appeal that petitioners' "Notice of Appeal" is not
25 "substantially in the form" of the form Notice of Intent to
26 Appeal contained in Appendix A. Rather, petitioners' Notice of
27 Appeal is in a form substantially similar to that which is used
28 for appeal from a Circuit Court decision to the Court of
29 Appeals. As respondents have indicated in their motions,
30 petitioners' Notice of Appeal does not contain certain
31 information required by Rule 4(A). Petitioners' Notice of
32 Appeal does not contain the address and telephone number of the
33 governing body nor does it contain the name, address and
34 telephone number of the governing body's legal counsel. The

1 Notice of Appeal also does not contain the names, addresses and
2 telephone numbers for all persons who were mailed written
3 notice of the county's decision. The Notice of Appeal does not
4 contain a statement that such persons, in order to participate
5 in the appeal of the county's decision, must file a Statement
6 of Intent to Participate with the Board within 15 days of
7 service of the notice. We do note, however, that while not in
8 the form suggested by Appendix A of the Board's Rules of
9 Procedure, the Notice of Appeal does contain the names of the
10 petitioners, the name of the governing body, the full title of
11 the land use decision as it appears on the county's final
12 decision, the date of the land use decision and a concise
13 description of the land use decision being appealed. The issue
14 which we must address is whether the absence of the information
15 identified above which the Board's Rules of Procedure require
16 be contained in the Notice of Intent to Appeal is grounds for
17 dismissal of the appeal.

18 In City of Pendleton v Land Use Board, 51 Or App 539, ___
19 2Pd ___ (1981), the Court of Appeals made the following
20 statement concerning the effect of noncompliance with LUBA's
21 Rules of Procedure and who may raise the issue of
22 non-compliance.

23 "A party raising the issue of a violation of LUBA
24 rules must have been injured by the alleged
25 violation. Pacific Northwest Bell would be a proper
26 party to allege a violation of a LUBA rule for want of
service upon it of the Notice of Intent to Appeal and
to claim that LUBA lacked personal jurisdiction over
it.⁵ Petitioner Hill is not. There is no merit,

1 therefore, to petitioner Hill's contention that a
2 violation of LUBA's temporary rules of procedure
3 deprives LUBA of subject matter jurisdiction."
4 (Footnote omitted).

5 Given the Court of Appeals' statement quoted above, we
6 believe we have no authority to dismiss this appeal. No
7 assertion has been made by the respondents that the defects in
8 the Notice of Appeal have prejudiced them in any way. The most
9 grievous omission in the Notice of Appeal filed by petitioners
10 is the failure to name persons who were mailed written notice
11 of the county's decision. However, none of these persons has
12 appeared before this Board and complained of this omission.
13 The respondents are not proper parties to complain about
14 petitioners' failure to set forth in the Notice of Appeal the
15 names of persons who were mailed written notice of the county's
16 decision.

17 Respondents' motions to dismiss are denied.

18 Dated this 5th day of May, 1982.

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20 Michael D. Reynolds
21 Chief Hearings Referee
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