

1 is noted that the applicant in the proceedings before the city
2 is Heritage Enterprises whose address is 202 NW 6th Street,
3 Corvallis, Oregon 97330. As indicated by Exhibit A to the
4 notice of intent to appeal, a copy of the notice of intent was
5 mailed to Heritage Enterprises on April 14, 1983. While the
6 notice of intent to appeal does not identify Heritage
7 Enterprises as the applicant, there is nothing in this Board's
8 rules requiring it to do so. While it would be preferable for
9 a petitioner to identify the applicant as such, the fact is
10 that the applicant's address does appear in Appendix A. The
11 City of Corvallis does not indicate how it was prejudiced by
12 such an alleged violation and as we have held before, it is the
13 type of issue that must be raised by the alleged aggrieved.
14 party, which in this case would be Heritage Enterprises. It
15 should be noted that Heritage Enterprises raises the same
16 issue. However, like the City of Corvallis, Heritage
17 Enterprises does not indicate how it was prejudiced by what
18 amounts to an error in format. As we have held in numerous
19 similar situations, this Board will only dismiss a proceeding
20 before it if prejudice has been shown. See Boeh v. Benton
21 County, 5 Or LUBA 334 (1982); Hallberg Homes, Inc. v Gresham, 6
22 Or LUBA 459 (1982) and LUBA Procedural Rule 2.

23 In reference to the City of Corvallis' second ground for
24 dismissal (i.e. neither it nor its attorney was served with the
25 notice of intent to appeal within 30 days), we, consistent with
26 numerous prior holdings of the Board, refuse to accept its

1 argument as a grounds for dismissal. As we stated in our order
2 on a motion to dismiss in Atwood v. Portland, 1 Or LUBA 355,
3 356 (1980):

4 "The requirement for service of a notice of intent to
5 appeal on the City and Applicants within 30 days is a
6 creation of Board rule only. It is this Board's
7 belief as we held in the case of Tillamook Citizens
8 for Responsible Development vs. City of Tillamook,
9 Or LUBA _____ (1980), LUBA No. 80-041, that service of
10 the Notice of Intent to Appeal on the Applicant as
11 well as the City is jurisdictional. As we held in
12 Tillamook, supra, however, it is the Board's view that
13 the time of that service is not jurisdictional. Our
14 opinion is based on a reading of Oregon Laws 1979, ch
15 772, sec 4(4) which provides:

16 "'A notice of intent to appeal a land use
17 decision shall be filed not later than 30 days
18 after the date the decision sought to be reviewed
19 becomes final. Copies of the notice shall be
20 served upon the city, county or special district
21 governing body or state agency and the applicant
22 of record, if any, in the city, county or special
23 district governing body or state agency
24 proceeding.'

25 "The 30-day time limit specified in the first
26 sentence for filing of the Notice of Intent to Appeal
does not appear in the second sentence. Had the
legislature intended service of the notice within 30
days to be jurisdictional, language such as that
appearing in ORS 19.0330 or ORS 46.253 would have been
chosen in place of what appears in the LUBA statute.
Absent a clear legislative intent to require service
on Applicant and City within 30 days, the Board will
not dismiss the appeal unless the error or omission
has resulted in serious harm or prejudice. See
Opinion and Order on Motion to Dismiss in B & L
Holdings v. City of Corvallis, ___ Or LUBA ___ (1980),
(LUBA No. 80-004); Porman v. Clackamas County
Commission, 272 Or 39, 538 P2d 70 (1975)."

27 We believe our discussion of the issue in Atwood is still
28 good law, and we shall continue to follow it. Therefore, the
29 motion to dismiss as filed by the City of Corvallis is denied.

1 PARTICIPANT, HERITAGE ENTERPRISES

2 Heritage Enterprises moves that the notice of intent to
3 appeal should be dismissed for failure to serve the City of
4 Corvallis or the City Attorney for the City of Corvallis within
5 30 days from the date of the land use decision named in the
6 notice. Participant cites Oregon Laws 1979, ch 772, sec 4(4),
7 as amended by Oregon Laws 1981, ch 748, and LUBA Rule 4(C).¹
8 In addition, Participant Heritage Enterprises complains that
9 the notice of intent to appeal fails to specify the name and
10 address of the applicant in one of the decisions listed
11 therein. Namely, participant points to the alleged failure by
12 petitioner to specify the name and address of the applicant in
13 the city decision CPA 83-1. Citing Section 4(4) supra and LUBA
14 Rule 4(A)(6)(b).²

15 Further, Heritage Enterprises argues that petitioner has
16 not filed and served a "notice of intent to appeal a land use
17 decision" as to any of the decisions listed in the notice.
18 Finally, participant argues the notice of intent to appeal was
19 not "accompanied" by a fee or deposit for costs for any one of
20 the three decisions listed in the notice.

21 The first two bases for Participant Heritage Enterprises'
22 motion to dismiss are disposed of by this Board's order
23 regarding the same two grounds put forth by the City of
24 Corvallis. See above. Heritage Enterprises' third and fourth
25 grounds for dismissal are in essence the same. Basically,
26 participant argues that the law requires the commencement of

1 separate proceedings for each land use decision, leaving it up
2 to the Land Use Board of Appeals to consolidate at a later date
3 if such consolidation is appropriate. Participant claims "it
4 leaves no room for group discounts or deferred payment plans."
5 Participant points out that only one notice was filed and there
6 were three land use decisions, only one filing fee was paid to
7 cover three land use decisions, one deposit for costs was
8 tendered and finally the notice lists not one but three land
9 use decisions all contrary to Section 4(4) of the LUBA organic
10 act and contrary to LUBA's Rules 4(A) and 4(B). Participant
11 then argues that it can not tell whether the petitioner will
12 decide to pursue all three appeals if allowed to do so.
13 Therefore, it claims it must pay attorneys to prepare for a
14 battle on all three ordinances.

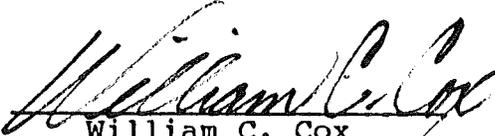
15 In the petitioner's notice of intent to appeal, it states:

16 "Notice is hereby given that Petitioner intends to
17 appeal those land use decisions of Respondent entitled
18 CPA-83-1 and CPA-83-2, LDT-83-1 which became final on
19 March 22, 1983. Such decisions involved an Amendment
20 to the City of Corvallis Comprehensive Plan Map from
Light Industrial to Shopping Area or Regional Shopping
Center, and Comprehensive Plan and Land Development
Code Text Amendment relating to a regional shopping
center."

21 This issue has been before the Board previously. We rely
22 on our holdings in Osborne v. Lane County, 4 Or LUBA 368 (1981)
23 and Seneca Sawmill Co. v. Lane County, 6 Or LUBA 454 (1982) in
24 denying Heritage Enterprises' motion to dismiss. Petitioner
25 has, as in Osborne and Seneca submitted additional filing fees
26 and deposits for costs to cover two more appeals. We accept

1 those additional fees and costs consistent with our holdings in
2 Osborne and Seneca Sawmill, supra. In addition, we hereby
3 consolidate the three land use decisions under one appeal and
4 give that appeal the number which is above identified, i.e.
5 83-040.

6 Dated this 18 day of May, 1983.

7
8
9 
10 William C. Cox
Board Member

1 FOOTNOTES

2
3 1
4 Oregon Laws 1979, ch 772, sec 4(4), as amended by Oregon
Laws 1981, ch 748 states:

5 "A notice of intent to appeal a land use decision
6 shall be filed not later than 30 days after the date
7 the decision sought to be reviewed becomes final.
8 Copies of the notice shall be served upon the local
9 government or special district governing body or state
10 agency and the applicant of record, if any, in the
11 local government or special district governing body or
12 state agency proceeding. The notice shall be served
13 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. In the event a petition for review is not
filed with the board as required in subsection (6) of
this section, then the filing fee and deposit shall be
awarded to the local government, special district or
state agency as cost of preparation of the record."

14 LUBA Rule 4(C) states:

15 "The notice must be filed with the Board and served on
16 the governing body, the governing body's legal
17 counsel, and all persons identified in the Notice as
required by Section 4(A)(6) of these rules within 30
days from the date of the land use decision."

18 2

19 LUBA Rule 4(A)(6)(b) states:

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

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

23 * * *

24 "The applicant, if any (if other than the
25 petitioner), except that if the applicant was
26 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;"