

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

3 ROBERT RANDALL, KATHRYN            )  
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1 intervene should be denied as untimely. Petitioners also  
2 advised the Board they would not be serving a copy of the  
3 petition for review on Mr. Rystadt "pending advice by LUBA as  
4 to the necessity of service." Objection to Intervention 2.

5 OAR 661-10-050 provides in part:

6 "(1) Standing to Intervene: The applicant and any  
7 person who appeared before the local government,  
8 special district or state agency may intervene in  
9 a review proceeding before the Board. Status as  
10 an intervenor is recognized when a motion to  
11 intervene is filed, but the Board may deny that  
12 status at any time prior to issuance of its final  
13 order.

14 "(2) Motion to Intervene: In the interests of  
15 promoting timely resolution of appeals, a motion  
16 to intervene shall be filed as soon as is  
17 practicable after after the Notice of Intent to  
18 Appeal is filed. \* \* \*

19 "\*\* \* \* \* \*" (Emphasis added).

20 There is no dispute that Mr. Rystadt was the applicant  
21 below. Petitioners do not attempt to explain how they were  
22 prejudiced by Mr. Rystadt's delay until May 6, 1989 in filing  
23 his motion to intervene. The motion to intervene was received  
24 by petitioners two days before their petition for review was  
25 filed with the Board. We have no basis for determining why  
26 Mr. Rystadt waited until May 6, 1989 to file his motion to  
27 intervene or whether that delay was reasonable. Neither  
28 petitioners nor intervenor attempt to explain why that delay  
29 was or was not reasonable.

30 Even if we assume Mr. Rystadt's delay in filing his motion  
31 to intervene constitutes a technical violation of our rule

1 requiring that the motion to intervene be filed "as soon as is  
2 practicable after the Notice of Intent to Appeal is filed," we  
3 see no prejudice resulting from the delay. The purpose of our  
4 rule is to assure that appeal proceedings are not delayed  
5 because a motion to intervene is filed with the Board late in  
6 our review proceedings. Had the petition for review been  
7 served on Mr. Rystadt at the same time it was filed with the  
8 Board, there would have been no delay in this proceeding. In  
9 these circumstances we will allow the motion to intervene.

10 There remains the matter of petitioners' failure to serve a  
11 copy of the petition for review on intervenor-respondent. As  
12 our rule clearly states "status as an intervenor is recognized  
13 when the motion to intervene is filed \* \* \*."  
14 OAR 661-10-050(1). Although petitioners are entitled to object  
15 to the motion to intervene, Mr. Rystadt was accorded the status  
16 of intervenor-respondent upon filing the motion to intervene.  
17 Petitioners should have served a copy of the petition for  
18 review on intervenor-respondent.

19 Petitioners' failure to serve a copy of the petition for  
20 review on intervenor-respondent at the time they filed the  
21 petition for review means that the time provided in OAR  
22 661-10-035(1) and OAR 661-10-050(3)(b) for  
23 intervenor-respondent to file his brief is running prior to  
24 service of the petition for review. Petitioners shall serve a  
25 copy of the petition for review on intervenor-respondent and at  
26 the same time provide the Board a certificate of service

1 showing the date the petition for review was served on  
2 intervenor-respondent in accordance with OAR 661-10-075(2)(c).  
3 Intervenor-respondent and respondent county shall have 21 days  
4 from the date of service of the petition for review in which to  
5 file their respondent's briefs, and the deadline for issuing  
6 the Board's opinion shall be extended accordingly.

7 The motion to intervene is allowed.

8 Dated this 10th day of May, 1989.

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13 Michael A. Holstun  
14 Chief Referee  
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FOOTNOTES

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ORS 197.830(5)(b) provides in part:

"\* \* \* persons who may intervene in and be made a party to the review proceedings \* \* \* are:

"(A) The applicant who initiated the action before the local government, special district or state agency; \* \* \*

"\* \* \* \* \*"