

DECISION

The petition for review in this matter was due Friday, November 22, 2002. Petitioner encountered printer problems on November 22, 2002, and production of the petition for review was delayed while petitioner had the petition for review printed from a floppy disk by a printing service in Grants Pass. Petitioner planned to file the petition for review by first class mail, but the post office closed before petitioner arrived on November 22, 2002. Petitioner ultimately elected to deliver the petition for review to Mail Boxes Etc., on November 22, 2002, for delivery to LUBA via United Parcel Service (UPS), second day delivery. Service copies of the petition for review were left with Mail Boxes Etc. for mailing to the respondent and intervenor respondent by first class mail.

UPS delivered the petition for review to LUBA on Monday, November 25, 2002. Intervenor respondent Leonhart apparently received his copy of the petition for review on Tuesday, November 26, 2002.¹ Respondent moves to dismiss this appeal, alleging that the petition for review was not filed on or before the November 22, 2002 deadline.

With two exceptions, failure to file a document with LUBA on or before the deadlines specified in our rules is treated as a technical violation of our rules. Technical violations of our rules do not provide a basis for dismissing an appeal, unless such violations prejudice the substantial rights of one or more parties. OAR 661-010-0005 provides:

“These rules are intended to promote the speediest practicable review of land use decisions and limited land use decisions, in accordance with ORS 197.805-197.855, while affording all interested persons reasonable notice and opportunity to intervene, reasonable time to prepare and submit

¹ The United States Postal Service postmark on the service copy of the petition for review that was received by intervenor-respondent Leonhart was dated Saturday, November 23, 2002. Under OAR 661-010-0075(2)(b)(B), “[s]ervice may be in person or by first-class mail,” and “[s]ervice is complete on deposit in the mail.” We do not know when the service copies were actually deposited with the United States Postal Service. Because we decide the motion to dismiss based on the issue of whether the petition for review was timely filed with LUBA, we need not and do not decide whether the petition for review was timely served on respondent and intervenors.

1 their cases, and a full and fair hearing. The rules shall be interpreted to carry
2 out these objectives and to promote justice. Technical violations not affecting
3 the substantial rights of parties shall not interfere with the review of a land use
4 decision or limited land use decision. *Failure to comply with the time limit*
5 *for filing a notice of intent to appeal under OAR 661-010-0015(1) or a*
6 *petition for review under OAR 661-010-0030(1) is not a technical violation.”*

7 As the above-emphasized language makes clear, failure to file a petition for review
8 within the deadline established by OAR 661-010-0030(1) is not a mere technical violation of
9 our rules. As relevant, OAR 661-010-0030(1) provides:

10 The petition for review together with four copies shall be filed with the Board
11 within 21 days after the date the record is received or settled by the Board.
12 * * * Failure to file a petition for review within the time required by this
13 section, and any extensions of that time under OAR 661-010-0045(9) or OAR
14 661-010-0067(2), shall result in dismissal of the appeal and forfeiture of the
15 filing fee and deposit for costs to the governing body. See OAR 661-010-
16 0075(1)(c).

17 Under OAR 661-010-0030(1), the dispositive question is whether petitioner “filed”
18 the petition for review with LUBA on November 22, 2002, when he delivered the petition for
19 review to Mail Boxes Etc., which in turn delivered the petition for review on that date to the
20 United Parcel Service for delivery to LUBA. For the answer to that question we turn to OAR
21 661-010-0075(2)(a), which provides in relevant part:

22 “[F]iling a document with the Board is accomplished by:

23 “(A) Delivery to the Board on or before the date due; or

24 “(B) Mailing on or before the date due by first class mail with the United
25 States Postal Service[.]”

26 As OAR 661-010-0075(2)(a) makes clear, the petition for review was not filed at
27 LUBA when it was delivered to Mail Boxes Etc. and UPS on November 22, 2002. The
28 petition for review was filed with LUBA when it was delivered to LUBA by UPS on
29 November 25, 2002.

30 The printing problem that petitioner encountered is regrettable, and petitioner made a
31 significant effort to ensure speedy delivery of the petition for review to LUBA. Petitioner is

1 undoubtedly correct that the petition for review would not have gotten to LUBA any sooner
2 had petitioner actually mailed the petition for review by first class mail at the end of the day
3 on Friday, November 22, 2002. However, OAR 661-010-0030(1) makes “filing” of the
4 petition for review on or before the deadline mandatory and specifies dismissal as the
5 consequence for failure to timely file the petition for review. It is “filing,” as described in
6 our rules, that must be timely. Under OAR 661-010-0075(2)(a)(A), the date of filing is the
7 date the petition for review is actually delivered to LUBA. Under OAR 661-010-0075(2)(B),
8 if the petition for review is sent by “first class mail with the United States Postal Service,”
9 the date of filing is the date of mailing rather than the date the petition for review is actually
10 delivered to LUBA by the United States Postal Service. If the petition for review is filed
11 with LUBA in any way other than by “first class mail with the United States Postal Service,”
12 OAR 661-010-0075(a)(A) applies and the date the petition for review is actually delivered to
13 LUBA is the date of filing.

14 Because petitioner’s petition for review was due on November 22, 2002, and it was
15 not filed until November 25, 2002 when UPS delivered the petition for review to LUBA, this
16 appeal must be dismissed.