



1 Davies, Board Member.

2 **MOTION TO INTERVENE**

3 Pacific Western Homes, Inc., the applicant below, moves to intervene on the side of  
4 respondent City of Portland. There is no opposition to the motion, and it is allowed.

5 **MOTION TO DISMISS**

6 Intervenor-respondent Pacific Western Homes, Inc. (intervenor) moves to dismiss this  
7 appeal because the Notice of Intent to Appeal (NITA) was not timely filed. As we have  
8 stated on numerous occasions, we strictly adhere to the deadlines for filing NITAs and  
9 petitions for review. *See Bauer v. City of Portland*, 37 Or LUBA 489, 491 (2000) (failure to  
10 timely file petition for review and failure to obtain intervenor's consent to extension); *Oak*  
11 *Lodge Water District v. Clackamas County*, 18 Or LUBA 643, 644 (1990) (untimely notice  
12 of intent to appeal); *Beckwith v. City of Portland*, 16 Or LUBA 792, 794 (1988) (citing cases  
13 dismissing appeals for failure to comply with these deadlines).

14 OAR 661-010-0015(1) provides, in pertinent part:

15 “(1) Filing of [NITA]:

16 “(a) The [NITA], together with two copies, and the filing fee and  
17 deposit for costs required by section (4) of this rule, shall be  
18 filed with the Board on or before the 21st day after the date the  
19 decision sought to be reviewed becomes final or within the  
20 time provided by ORS 197.830(3) through (5). \* \* \* A [NITA]  
21 filed thereafter shall not be deemed timely filed, and the appeal  
22 shall be dismissed.

23 “(b) *The date of filing a [NITA] is the date the [NITA] is received*  
24 *by the Board, or the date the [NITA] is mailed, provided it is*  
25 *mailed by registered or certified mail and the party filing the*  
26 *[NITA] has proof from the post office of such mailing date. If*  
27 *the date of mailing is relied upon as the date of filing,*  
28 *acceptable proof from the post office shall consist of a receipt*  
29 *stamped by the United States Postal Service showing the date*  
30 *mailed and the certified or registered number. \* \* \*.”*  
31 (Emphasis added).

1 Intervenor alleges that the challenged decision became final on September 10, 2004, the date  
2 the city mailed the decision, and that the deadline for filing the NITA expired twenty-one  
3 days later, on October 1, 2004.<sup>1</sup> Intervenor asserts that petitioner mailed the NITA on  
4 October 1, 2004 via regular first-class mail, and LUBA received the NITA on October 4,  
5 2004. Because petitioner did not mail the NITA by registered or certified mail, intervenor  
6 argues, the date of filing was the date LUBA received the NITA, which was 24 days after the  
7 city’s decision became final, three days late. Failure to comply with the deadline for filing a  
8 NITA is not a mere technical violation, and intervenor requests that this appeal be dismissed.  
9 OAR 661-010-0005 ([f]ailure to comply with the time limit for filing a notice of intent to  
10 appeal \* \* \* is not a technical violation”).

11 Petitioner responds, attaching copies of her receipts from the post office and a copy of  
12 the “Certificate of Mailing,” which shows the NITA was mailed to LUBA on October 1,  
13 2004. She contends that the NITA was sent certified mail on October 1, 2004, and that the  
14 NITA was timely filed on that date.

15 As intervenor correctly points out, a “certificate of mailing” is not the same as  
16 “certified or registered mail.” The materials from the United States Postal Service web site  
17 indicate that “certificate of mailing” and “certified mail” are two different services.  
18 Intervenor’s Reply in Support of Motion to Dismiss App-1. Certified mail provides proof of  
19 a certified number, as required by our rules. *See* OAR 661-010-0015(1)(b). The “certificate  
20 of mailing” does not.

21 While petitioner may have believed that she was mailing her NITA by certified mail,  
22 the NITA was, in fact, mailed by first-class mail, with a certificate of mailing.<sup>2</sup> Accordingly,

---

<sup>1</sup> Portland Zoning Code (PZC) 33.730.020.I.9 provides that, in a city “Type II” proceeding, the local decision becomes final on the date notice of the final decision is mailed.

<sup>2</sup> We understand that choosing among the services provided by the United States Postal Service can be confusing. However, we do not see that any confusion regarding those services can alter “[t]he date of filing” under OAR 661-010-0015(1).

1 under OAR 661-010-0015(1)(b), the NITA was filed on the date it was received by LUBA,  
2 October 4, 2004. *See Larner v. City of Portland*, 41 Or LUBA 471, 473 (2002) (where  
3 petitioners filed NITA by first-class mail, date of filing pursuant to OAR 661-010-0015(1)(b)  
4 is date NITA was actually received by LUBA). The NITA in this appeal was filed on  
5 October 4, 2004, more than 21 days after the challenged decision became final and, therefore,  
6 was not timely.

7 This appeal is dismissed.