

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

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4                   MICHAEL A. HAWK, DENNIS GUNTER,  
5                   ANNE GUNTER, ORVILLE CLAY, ANNE CLAY,  
6                   SUSAN PERHAM, ETHAN FELCHER,  
7                   RANDY LACKEY, BECKY LACKEY,  
8                   TERRI HARRISON, WELLINGTON EWEN,  
9                   CRAIG GOSTNELL, JEANNE GOSTNELL,  
10                  STEVE WILLIAMS, KERI REIN,  
11                  JAMES JUNGWIRTH, OSHANA CATRINIDES,  
12                  JEFF HILDRETH, MELINDA MANTHEY,  
13                  BONNIE REGAN, MICHAEL JAKUBCIN,  
14                  KEIRA HARRISON, SHEMA SPANN,  
15                  BONDON SPANN, KIM CHIGNELL,  
16                  JOAN ERICKSON and MICHELE BOUVIER,  
17   *Petitioners,*

18  
19   vs.

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21                                   JOSEPHINE COUNTY,  
22   *Respondent,*

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24   and

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26                   SHERRIE LeBAT and HOWLING ACRES  
27                   WOLF SANCTUARY,  
28                   *Intervenors-Respondent.*

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30   LUBA No. 2005-025

31  
32   FINAL OPINION  
33   AND ORDER

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35                   Appeal from Josephine County.

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37                   Michael A. Hawk, Dennis Gunter, Anne Gunter, Orville Clay, Anne Clay, Susan Perham,  
38                   Ethan Felcher, Randy Lackey, Becky Lackey, Terri Harrison, Wellington Ewen, Craig Gostnell,  
39                   Jeanne Gostnell, Steve Williams, Keri Rein, James Jungwirth, Jeff Hildreth, Melinda Manthey,  
40                   Michael Jakubcin, Keira Harrison, Shema Spann, Bondon Spann, Kim Chignell, Joan Erickson,  
41                   Michele Bouvier, Williams, Oshana Catrinides, Ashland, and Bonnie Regan, Grants Pass,  
42                   represented themselves.  
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1 Steven E. Rich, Grants Pass, represented respondent.

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3 Duane WM. Schultz, Grants Pass, represented intervenor-respondent.

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5 HOLSTUN, Board Chair; BASSHAM, Board Member; DAVIES, Board Member,

6 participated in the decision.

7

8 DISMISSED

05/25/2005

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10 You are entitled to judicial review of this Order. Judicial review is governed by the

11 provisions of ORS 197.850.

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**MOTION TO INTERVENE**

Sherrie LeBat and Howling Acres Wolf Sanctuary move to intervene on the side of respondent. There is no opposition to the motion, and it is allowed.

**DECISION**

The notice of intent to appeal in this matter was filed on January 24, 2005. That notice of intent to appeal names petitioner Michael A. Hawk as lead petitioner, pursuant to OAR 660-010-0015(3)(f)(A). The notice of intent to appeal gives lead petitioner’s mailing address as “PO Box 205, Williams, Oregon 97544.” Notice of Intent to Appeal 2.

On March 3, 2005, the city filed a motion requesting that it be given an extension of time until March 31, 2005 to file the record in this appeal. On April 11, 2005, LUBA received the record in this appeal. In accordance with OAR 661-010-0075(2)(B)(A), the county served a copy of the record on lead petitioner. The certificate of service that accompanied the county’s record to LUBA indicates that a copy of the record was served by first class mail on lead petitioner Hawk at the above-noted Williams, Oregon address, on April 7, 2005. On April 11, 2005, LUBA sent a letter advising the parties in this appeal that LUBA had received the record on that date. LUBA’s April 11, 2005 letter was sent to lead petitioner Hawk at the above-noted Williams, Oregon address.

OAR 661-010-0030(1) provides, in relevant part:

“\* \* \* The petition for review together with four copies shall be filed with the Board within 21 days after the date the record is received or settled by the Board. \* \* \* Failure to file a petition for review within the time required by this section, and any extensions of that time under \* \* \* OAR 661-010-0067(2), shall result in dismissal of the appeal \* \* \*.”

OAR 661-010-0067(2) provides that the time limit for filing the petition for review may be extended only by written consent of all the parties. No objections were filed to the record and no extension of the deadline for filing the petition for review has been requested by all parties.

1 Therefore, under OAR 661-010-0030, the petition for review was due on May 2, 2005, 21 days  
2 after the record was received.

3 On May 6, 2005, intervenor-respondents moved to dismiss this appeal for failure to timely  
4 file the petition for review. The certificate of service attached to that May 6, 2005 motion to dismiss  
5 states that a copy of the motion was served on lead petitioner by first class mail at the above-noted  
6 Williams, Oregon address, on May 6, 2005.

7 On May 23, 2005, LUBA received a letter from lead petitioner Hawk, dated May 17,  
8 2005 (hereafter the May 17, 2005 letter).<sup>1</sup> In that May 17, 2005 letter, lead petitioner  
9 acknowledges that he received the May 6, 2005 motion to dismiss. Lead petitioner also explains  
10 that he was aware that the county had requested additional time, but that he was unaware that the  
11 county had filed the record. The May 17, 2005 letter also includes the following request and  
12 explanation:

13 “I therefore humbly request a 30-day extension of time to receive and review this  
14 document [presumably the record] and prepare the Petition for Review.

15 “It would be a shame for years of legal proceedings and bitter unrest between  
16 neighbors to be tossed aside for a technicality.

17 “Although I have received other forwarded notices from LUBA and Respondent, it  
18 would be expeditious to have any further documents sent to my weekday address:

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20 “13413 Skyline Blvd.  
21 “Woodside, CA 94062

22 “My primary residence is 487 Davidson Road Box 205 Williams, OR 97544, but  
23 my wife and I work in San Francisco during the week and our mail is forwarded to  
24 the Skyline Blvd address which creates delay.” May 17, 2005 Letter.

25 As far as we can tell, lead petitioner Hawk does not dispute that the record was sent to him  
26 on April 7, 2005 via first class mail addressed to the Williams, Oregon address that he specified in

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<sup>1</sup> There is nothing in that letter that indicates it was served on the other parties in this appeal. Given our disposition of this appeal, we will include a copy of that letter with our final opinion and order rather than require that lead petitioner serve a copy of that letter on the parties.

1 the notice of intent to appeal. We do not understand lead petitioner Hawk to dispute that the  
2 record was received at that address sometime shortly after April 7, 2005 or that he received  
3 LUBA's April 11, 2005 letter regarding the record. Presumably for some or all of the reasons  
4 specified in the May 17, 2005 letter, lead petitioner did not review the record and none of the  
5 petitioners in this appeal filed a timely petition for review. Instead, 15 days after the petition for  
6 review was due, lead petitioner seeks an additional 30 days to prepare and file the petition for  
7 review. Based on the May 6, 2005 motion to dismiss, we understand intervenor to oppose that  
8 request.

9           Given the short timelines in a LUBA appeal, and the necessity to have mail forwarded to  
10 lead petitioner Hawk's California address, it was probably unwise for petitioner Hawk to be  
11 designated lead petitioner. Nevertheless, he was designated lead petitioner and all documents in this  
12 appeal were mailed by first class mail to the address he specified. Because a petition for review  
13 was not filed within the time required by our rules, and petitioner did not obtain written consent to  
14 extend the time for filing the petition for review under OAR 661-010-0067(2) beyond May 2,  
15 2005, ORS 197.830(11) and OAR 661-010-0030(1) require that we dismiss this appeal.

16           This appeal is dismissed.