

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

3  
4                                   BRUCE CUNNINGHAM,  
5   *Petitioner,*

6  
7   vs.

8  
9                                   JOSEPHINE COUNTY,  
10   *Respondent.*

11  
12   LUBA No. 2005-056

13  
14   FINAL OPINION  
15   AND ORDER

16  
17                   Appeal from Josephine County.

18  
19                   Bruce Cunningham, Grants Pass, represented himself.

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21                   Steven E. Rich, County Counsel, Grants Pass, represented respondent.

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23                   HOLSTUN, Board Member; DAVIES, Board Chair; BASSHAM, Board Member,  
24 participated in the decision.

25  
26                                   DISMISSED                                   08/15/2005

27  
28                   You are entitled to judicial review of this Order. Judicial review is governed by the  
29 provisions of ORS 197.850.

1 Holstun, Board Member.

2 The county transmitted the record in this appeal to LUBA on June 9, 2005. According to  
3 the certificate of service that is included with that record, a copy of the record was served on  
4 petitioner by first class mail that same date. Forty days later, on July 19, 2005, respondent moved  
5 to dismiss this appeal because petitioner had not filed his petition for review. In that motion to  
6 dismiss, respondent contends that LUBA sent a letter to the parties on June 13, 2005. That letter  
7 advised the parties that the record was received by LUBA on June 13, 2005 and advised the  
8 parties that the petition for review was due 21 days after that date. A record objection would have  
9 suspended the deadline for filing the petition for review, but petitioner did not object to the record.  
10 Therefore, according to the county, under OAR 661-010-0030(1) the deadline for filing the petition  
11 for review was July 5, 2005.<sup>1</sup> Because the county has not agreed to any extension of that July 5,  
12 2005 deadline, and petitioner has not filed a petition for review, respondent contends that this  
13 appeal must be dismissed.

14 On July 29, 2005, petitioner filed a response to the county's motion to dismiss. In that  
15 response petitioner contends that he did not receive LUBA's June 13, 2005 letter. Petitioner asks  
16 that he now be allowed 14 days to file his petition for review. Petitioner argues:

17 "After the County had submitted the record June 9, 2005 the next communication  
18 to me in this case was the County's Motion to Dismiss, dated July 19, 2005 which I  
19 found in my mail box upon my return from a family meeting July 26, 2005."

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<sup>1</sup> OAR 661-010-0030(1) provides:

"Filing and Service of Petition: 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. See OAR 661-010-0025(2) and 661-010-0026(6). The petition shall also be served on the governing body and any party who has filed a motion to intervene. Failure to file a petition for review within the time required by this section, and any extensions of that time under OAR 661-010-0045(9) or OAR 661-010-0067(2), shall result in dismissal of the appeal and forfeiture of the filing fee and deposit for costs to the governing body. See OAR 661-010-0075(1)(c)."

1           Petitioner’s Response to Respondent’s Motion to Dismiss and Request for  
2           Extension of Time to Submit Petitioner’s Request for Review, Exhibit A.<sup>2</sup>

3           Because the deadline for filing the petition for review begins to run on the date LUBA  
4 receives the record, it is perhaps understandable that the parties’ arguments focus on LUBA’s June  
5 13, 2005 letter. However, we believe that focus is misplaced. LUBA’s rules do not require that  
6 LUBA advise the parties of the date the record is received by LUBA. LUBA does that as a  
7 courtesy so that petitioners do not have to call LUBA after the record is served on them to  
8 determine when LUBA received the record.

9           The critical question is whether petitioner knew or should have known that LUBA received  
10 the record on June 13, 2005. It is undisputed that a copy of the record was served on petitioner on  
11 June 9, 2005 by first class mail, and petitioner does not claim that he did not receive the record.  
12 Neither does petitioner claim that he was unaware that the record was transmitted to LUBA on  
13 June 9, 2005. Therefore, the question becomes whether petitioner had an obligation after the  
14 record was mailed to him on June 9, 2005, and presumably received by petitioner shortly thereafter,  
15 to (1) contact LUBA to confirm that the record was received by LUBA on June 13, 2005 and (2)  
16 file a timely petition for review on or before July 5, 2005. We conclude that he had such an  
17 obligation. *See Bybee v. City of Salem*, 40 Or LUBA 187, 190 (2001) (deadline for filing petition  
18 for review is not affected where LUBA letter advising petitioner that record had been received  
19 failed to specify the date the record was received).

20           The deadline for filing a petition for review expired on July 5, 2005. Petitioner did not file a  
21 petition for review on or before July 5, 2005. Petitioner’s request that he now be allowed an  
22 additional 14 days to prepare and file his petition for review is denied. The county’s motion to  
23 dismiss is granted.

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<sup>2</sup> LUBA’s June 13, 2005 letter is addressed to petitioner at the address specified in the notice of intent to appeal. Petitioner offers no explanation for why other documents sent to that address apparently were received, but the June 13, 2005 letter was not received. Nevertheless, for purposes of this final opinion and order, we assume that petitioner did not receive LUBA’s June 13, 2005 letter.

1            This appeal is dismissed.