

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

3
4 WALUGA NEIGHBORHOOD ASSOCIATION,
5 *Petitioner,*

6
7 vs.

8
9 CITY OF LAKE OSWEGO,
10 *Respondent,*

11 and

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13 NORTHWEST HOUSING ALTERNATIVES, INC.,
14 *Intervenor-Respondent.*

15
16 LUBA No. 2009-059

17
18 FINAL OPINION
19 AND ORDER

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21 Appeal from City of Lake Oswego.

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23 Dean J. Gibbons, Portland, represented petitioner.

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25 Evan P. Boone and David D. Powell, Lake Oswego, represented respondent.

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27 Edward J. Sullivan and Carrie Richter, Portland, represented intervenor-respondent.

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29 RYAN, Board Member; HOLSTUN, Board Member, participated in the decision.

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31 BASSHAM, Board Chair, did not participate in the decision.

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33 DISMISSED

34 08/11/2009

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36 You are entitled to judicial review of this Order. Judicial review is governed by the
37 provisions of ORS 197.850.

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NATURE OF THE DECISION

Petitioner appeals a city decision approving a congregate care housing facility.

MOTION TO INTERVENE

Northwest Housing Alternatives, Inc. (intervenor) moves to intervene on the side of the city. There is no opposition to the motion, and it is granted.

MOTION TO DISMISS

Intervenor moves to dismiss this appeal on the basis that petitioner failed to comply with OAR 661-010-0075(6), which provides:

“Appearances Before the Board: An individual shall either appear on his or her own behalf or be represented by an attorney. *A corporation or other organization shall be represented by an attorney.* In no event may a party be represented by someone other than an active member of the Oregon State Bar. In the event someone other than an active member of the Oregon State Bar files a notice of intent to appeal on behalf of a corporation, other organization, or another individual, the individual filing the notice of intent to appeal will be given an opportunity to provide an amended notice of intent to appeal that conforms with this section. *If an amended notice of intent to appeal is not filed within the time set by the Board, the Board will dismiss the appeal.*” (Emphases added.)

Petitioner, a neighborhood association, filed a notice of intent to appeal (NITA) stating that it “represents themselves: Lead Contact Gail Stuart-Bowles” (Bowles). The NITA is signed by Bowles. It is undisputed that Bowles is not an active member of the Oregon State Bar. Petitioner is a “corporation or other organization” and therefore must be represented by an attorney at LUBA. Pursuant to OAR 661-010-0075(6), LUBA sent Bowles a letter on May 13, 2009 stating:

“Because you are not a member of the Oregon State Bar, you may not represent the Waluga Neighborhood Association in this appeal. An amended notice of intent to appeal must be filed to comply with OAR 661-010-0075(6). Unless the amended notice of intent to appeal is filed within 7 days of the date of this letter, this appeal will be dismissed.”

1 On May 21, 2009, LUBA received a letter from petitioner’s “secretary/treasurer”
2 stating petitioner “will be represented by Dean J. Gibbons,” who is an attorney licensed to
3 practice in Oregon. The letter does not satisfy the requirements for a NITA under OAR 661-
4 010-0015(1), was not served on other parties, is not signed by an attorney, and therefore is
5 not an amended NITA. Petitioner to this date has not filed an amended NITA.¹ OAR 661-
6 010-0075(6) and the May 13, 2009 letter from LUBA allowing petitioner seven days to file
7 an amended NITA that complies with our rules both specifically require that an amended
8 NITA be filed and specifically state that the consequence of not doing so is that the appeal
9 will be dismissed.

10 Petitioner first argues that it was unable to timely retrieve its file from its previous
11 attorney who represented petitioner during an earlier LUBA appeal.² Even if petitioner
12 needed its previous file in order to allow another attorney to file an amended NITA, which
13 we do not see that it did, petitioner provides no authority for how that may excuse its failure
14 to comply with our rules. Petitioner also argues that it contacted LUBA’s administrative
15 staff and was informed it could write a letter stating who would represent petitioner in the
16 appeal. Even if this is true, the rule and the May 13, 2009 letter sent to petitioner’s
17 representative are clear that an amended NITA must be filed. Petitioner may seek advice
18 from LUBA administrative staff if it wishes, but petitioner is ultimately responsible for
19 complying with the LUBA deadlines. *North Park Annex v. City of Independence*, 35 Or
20 LUBA 512, 514 (1999). Finally, petitioner argues that the failure to comply with OAR 661-
21 010-0075(6) is merely a technical error that has not prejudiced any parties’ substantial rights,
22 and LUBA should overlook the error pursuant to OAR 661-010-0005.³ OAR 661-010-0005

¹ Petitioner’s attorney filed a response to the motion to dismiss.

² The challenged decision is the city’s decision on remand from our decision in *Waluga Neighborhood Assoc. v. City of Lake Oswego*, ___ Or LUBA ___ (LUBA No. 2008-035, October 1, 2008).

³ OAR 661-010-0005 provides:

1 states that failure to comply with the deadline for filing the NITA is not a technical error.
2 Petitioner failed to file an amended NITA “within the time set by the Board,” and OAR 661-
3 010-0075(6) requires that this appeal be dismissed. *Ziemer v. City of Florence*, 43 Or LUBA
4 1, 2 (2002) (failure to file an amended NITA within the time allowed by the Board under
5 OAR 661-010-0075(6) requires dismissal); *Qwest Wireless, L.L.C. v. City of Medford*, 42 Or
6 LUBA 174, 175 (2002) (same).

7 The appeal is dismissed.

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