

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

3
4 PATRICIA E. MANN,
5 *Petitioner,*

6
7 vs.

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9 MARION COUNTY,
10 *Respondent,*

11 and

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14 ALFRED BEYEL and HEATHER BEYEL,
15 *Intervenors-Respondents.*

16
17 LUBA No. 2016-064

18
19 FINAL OPINION
20 AND ORDER

21
22 Appeal from Marion County.

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24 Patricia E. Mann, Jefferson, represented herself.

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26 Scott A. Norris, Assistant County Counsel, Salem, represented
27 respondent.

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29 J. Kevin Shuba, Salem, represented intervenors-respondents.

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31 HOLSTUN, Board Chair; BASSHAM, Board Member; RYAN, Board
32 Member, participated in the decision.

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34 DISMISSED 07/25/2016

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

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MOTION TO INTERVENE

Alfred Beyel and Heather Beyel, the applicants below, move to intervene on the side of respondent. No party opposes the motion, and it is granted.

MOTION TO DISMISS

The notice of intent to appeal in this appeal was filed on June 1, 2016. OAR 661-010-0015(2) provides, in part, that “[t]he Notice shall be served on the governing body, the governing body’s legal counsel, and all persons identified in the Notice as required by subsection (3)(f) of this rule on or before the date the notice of intent to appeal is required to be filed.” The certificate of service attached to the notice of intent to appeal does not appear to certify that petitioner served a copy of the notice of intent to appeal on the county. On June 14, 2016, the county and intervenors both moved to dismiss, arguing petitioner failed to serve a copy of the notice of intent to appeal on the county.

LUBA issued an order on June 16, 2016, which stated that “[i]f petitioner has not served a copy of the notice of intent to appeal on the county’s governing body or legal counsel, she must do so immediately.” That order also advised petitioner she had the time provided by OAR 661-010-0065(2) to file a written response to the * * * motion[s] to dismiss.”

Petitioner has not filed a certificate of service to certify that she has served the county with a copy of the notice of intent to appeal in accordance with our June 16, 2016 Order. Neither has petitioner advised LUBA that she

1 served the county with a copy of the notice of intent to appeal when she
2 originally filed the notice of intent to appeal, on June 1, 2016. Finally,
3 petitioner has not filed a written response to the motions to dismiss.

4 As we explained in *Bruce v. City of Hillsboro*, 32 Or LUBA 382, 386-87
5 (1997), *aff'd* 159 Or App 495, 977 P2d 435 (1999):

6 “* * * It is well established that the 21-day deadline for filing a
7 notice of intent to appeal is jurisdictional. *Ray v. Douglas County*,
8 140 Or App 24, 27-28, 914 P2d 26 (1996); *Winner v. Multnomah*
9 *County*, 30 Or LUBA 420, 423 (1996). In addition, service of
10 copies of the notice required under OAR 661-10-015(2) is also
11 jurisdictional. *Bright v. City of Yachats*, 16 Or LUBA 161, 164
12 (1987); *see also Broetje-McLaughlin v. Clackamas County*, 21 Or
13 LUBA 606, 609 (1991). However, the 21-day deadline for service
14 of the notice is not jurisdictional, and late service of the notice is a
15 technical violation that will not result in dismissal, unless the
16 substantial rights of parties are prejudiced. *Williams v. City of*
17 *Philomath*, 29 Or LUBA 563 (1995).

18 In *Bruce*, we ultimately dismissed the appeal because petitioner refused to
19 serve all persons who were entitled to service of a copy of the notice of intent
20 to appeal under our rules.

21 In this appeal, petitioner has now had over five weeks to advise LUBA
22 that she served a copy of the notice of intent to appeal on the county. Her
23 failure to do so means we do not have jurisdiction to proceed with this appeal.

24 This appeal is dismissed.