

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

3
4 VICKI SHEPHERD, JOYCE DAMMAN,
5 and FRIENDS OF YAMHILL COUNTY,
6 *Petitioners,*

7
8 vs.

9
10 YAMHILL COUNTY,
11 *Respondent,*

12
13 and

14
15 CHRISTIAN DeBENEDETTI,
16 *Intervenor-Respondent.*

17
18 LUBA No. 2017-037

19
20 FINAL OPINION
21 AND ORDER

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23 Appeal from Yamhill County.

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25 Tim Fitchett, Portland, represented petitioners.

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27 Timothy S. Sadlo, Assistant County Counsel, McMinnville, represented
28 respondent.

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30 Christian DeBenedetti, Newberg, represented himself.

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

34
35 DISMISSED 05/17/2017

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

MOTION TO INTERVENE

Christian DeBenedetti, the applicant below, moves to intervene on the side of respondent. No party opposes the motion, and it is granted.

NATURE OF THE DECISION

Petitioners appeal a county permit decision that authorizes “up to 17 Agritourism/Commercial Events per Calendar Year on Property” owned by intervenor.

DECISION

The decision that is the subject of this appeal became final and subject to appeal to LUBA on March 9, 2017. Under ORS 197.830(9) and OAR 661-010-0015(1)(a), the deadline to file an appeal of that decision with LUBA was 21 days later, or March 30, 2017. As relevant, OAR 661-010-0015(1)(a) provides:

“The Notice [of Intent to Appeal], together with two copies, and the filing fee and deposit for costs required by section (4) of this rule, shall be filed with the Board on or before the 21st day after the date the decision sought to be reviewed becomes final[.] A Notice [of Intent to Appeal] filed thereafter *shall not be deemed timely filed, and the appeal shall be dismissed.*” (Emphasis added.)

Under OAR 661-010-0005, failure to comply with the deadline for filing a notice of intent to appeal “is not a technical violation” that LUBA may overlook, even if overlooking the failure would not prejudice any other party’s substantial rights.

1 Petitioners attempted to file a notice of intent to appeal by certified mail
2 on March 29, 2017.¹ However, the envelope containing the notice of intent to
3 appeal was mailed to LUBA’s former address at 550 Capitol Street NE, Suite
4 235, Salem, Oregon, 97301-2552. LUBA moved from the Capitol Street
5 address to its current location in May, 2013. LUBA adopted a temporary rule
6 to reflect the changed address in 2013, and since January, 2014 LUBA’s
7 permanent rules have listed LUBA’s current address as 775 Summer Street NE,
8 Suite 330, Salem Oregon 97301-1283. LUBA’ website also lists LUBA’s
9 current Summer Street address.

10 When the post office returned the envelope that was mailed to LUBA’s
11 old address to petitioners, petitioners mailed the notice of intent to appeal to
12 LUBA at the correct address, by certified mail, on April 13, 2017. LUBA
13 received that notice of intent to appeal on April 17, 2017.

14 The county moves to dismiss this appeal, on the basis that it was not
15 timely filed. In *Bartlett v. City of Portland*, 72 Or LUBA 408 (2015), *aff’d* 276
16 Or App 919, 370 P3d 565 (2016) LUBA explained that a notice of intent to
17 appeal is only considered filed on the date it mailed by certified mail to LUBA,
18 “if it is placed in an envelope that is addressed to LUBA at the address set forth
19 in LUBA’s rules and mailed to that address.” 72 Or LUBA at 410. Since May,

¹ Under OAR 661-010-0015(1)(b), a notice of intent to appeal is considered filed as of the date it is mailed, so long as it is mailed by “registered or certified mail.”

1 2013, OAR 661-010-0075(9) has provided that LUBA's address is "775
2 Summer Street NE, Suite 330, Salem, Oregon, 97301-1283." Because
3 petitioners did not mail the notice of intent to appeal to LUBA's correct
4 address on March 29, 2017, the notice of intent to appeal was not filed on that
5 date. Rather, the notice of intent to appeal was filed on April 13, 2017, when
6 petitioners first mailed the notice of intent to appeal to LUBA's correct address
7 by certified mail. Petitioners' notice of intent to appeal was filed 14 days after
8 the filing deadline expired on March 30, 2017.

9 Because the notice of intent to appeal was filed with LUBA more than 21
10 days after the date the county's decision became final, this appeal was not
11 timely filed. Accordingly, the county's motion to dismiss is granted, and this
12 appeal is dismissed.