

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

08/21/19 AM11:13 LUBA

3
4 JEFFREY R. LAMB,
5 *Petitioner,*

6
7 and

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9 CATHERINE BISCOE,
10 *Intervenor-Petitioner,*

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12 vs.

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14 CITY OF PHILOMATH,
15 *Respondent,*

16
17 and

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19 LEVI BEELART,
20 *Intervenor-Respondent.*

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22 LUBA No. 2019-008

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24 FINAL OPINION
25 AND ORDER

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27 Appeal from City of Philomath.

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29 Jeffrey R. Lamb, Philomath, represented himself.

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31 Catherine Biscoe, Philomath, represented herself.

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33 James K. Brewer, Corvallis, represented respondent.

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35 George B. Heilig, Corvallis, represented intervenor-respondent.

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37 RYAN, Board Chair; RUDD, Board Member; ZAMUDIO, Board

1 Member, participated in the decision.

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DISMISSED

03/21/2019

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You are entitled to judicial review of this Order. Judicial review is

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governed by the provisions of ORS 197.850.

Opinion by Ryan.

NATURE OF THE DECISION

Petitioner and intervenor-petitioner appeal an ordinance adopted by the city council that approves an application to annex 19.68 acres into the city.

MOTION TO INTERVENE

Catherine Biscoe moves to intervene on the side of petitioner. No party opposes the motion, and it is granted.

JURISDICTION

Intervenor-respondent Levi Beelart (intervenor) moves to dismiss this appeal as untimely filed. The city council issued its decision in this matter on December 19, 2018. On December 20, 2018, the city mailed notice of the final decision to petitioner (and intervenor-petitioner) to the address listed on a form that petitioner completed at the November 13, 2018 city council hearing. Motion to Dismiss, Exhibit B. According to petitioner, on December 31, 2018, the city emailed him a copy of the decision. Petitioner filed the NITA by certified mail on January 19, 2019.¹

Intervenor argues that because the NITA was not filed before the deadline in ORS 197.830(9), the appeal must be dismissed. In response to the motion to dismiss, we understand petitioner to argue that his appeal is timely filed because he did not receive notice of the decision “until December 31, 201[8] [sic] via

¹ On January 22, 2019, petitioner filed an “Amended NITA” that sought to add a second petitioner.

1 email.” Amended Motion to Not Dismiss 1. However, we understand petitioner
2 to argue that the deadline for filing the appeal is 21 days from the date that
3 petitioner received emailed notice of the decision from the city.

4 Under ORS 197.830(9) and OAR 661-010-0015(1)(a), the notice of intent
5 to appeal (NITA) must be filed with LUBA within 21 days of the date the decision
6 becomes final, and a notice of intent to appeal plan and land use regulation
7 amendments processed pursuant to ORS 197.610 to 197.625 must be filed on or
8 before the 21st day after the decision sought to be reviewed is mailed to parties
9 entitled to notice under ORS 197.615(4). Petitioner does not argue that the
10 decision was not final on December 19, 2018, or otherwise argue that the deadline
11 for filing the appeal has not run. Accordingly, for purposes of this appeal, we
12 assume that the appeal deadline was January 9, 2019. Because the NITA was
13 filed with LUBA more than 21 days from the date the city’s decision became
14 final, this appeal was untimely filed. OAR 661-010-0015(1)(a) (“A [NITA] filed
15 [after the deadline] shall not be deemed timely filed, and the appeal shall be
16 dismissed”); *Hatley v. Umatilla County*, 66 Or LUBA 433, 439-40 (2012).

17 The appeal is dismissed.