

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

3  
4                   DARWIN SCHABER,  
5                   *Petitioner,*

6  
7                   vs.

8  
9                   MARION COUNTY,  
10                  *Respondent.*

11  
12                 LUBA No. 2020-087

13  
14                 FINAL OPINION  
15                 AND ORDER

16  
17                 Appeal from Marion County.

18  
19                 Frank Walker filed the notice of appeal.

20  
21                 No appearance by Marion County.

22  
23                 RUDD, Board Chair; RYAN, Board Member; ZAMUDIO, Board  
24                 Member, participated in the decision.

25  
26                 DISMISSED                   09/22/2020

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

Opinion by Rudd.

1  
2       The challenged decision is a board of county commissioners decision  
3 denying petitioner’s appeal of a hearings officer’s decision denying his  
4 application for a replacement dwelling. The Notice of Intent to Appeal was  
5 received on August 19, 2020 (Original Notice). The Original Notice listed the  
6 name, address and phone number of a member of the Oregon State Bar as  
7 petitioner’s attorney, but it was not signed by that attorney. Rather, the Original  
8 Notice was signed by “Frank Walker, Authorized Agent for Darwin Schaber.”  
9 Because Frank Walker is not a member of the Oregon State Bar, OAR 661-010-  
10 0075(6) prohibits Walker from representing petitioner at LUBA.<sup>1</sup> The Original  
11 Notice does not include an address, phone number or any other contact  
12 information for either petitioner or Walker.<sup>2</sup>

---

<sup>1</sup> OAR 661-010-0075(6) provides:

“An individual shall either appeal 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.”

<sup>2</sup> Although no address or phone number for either petitioner or Walker was included in the Original Notice, LUBA obtained through the county’s website a

1           The Original Notice was deficient in several respects and, on August 21,  
2 2020, the Board issued an order identifying those deficiencies and giving  
3 petitioner 10 days, until August 31, 2020, to (1) file a corrected Notice of Intent  
4 to Appeal (Corrected Notice) signed by either petitioner or an active member of  
5 the Oregon State Bar, in accordance with OAR 661-010-0075(6), that complies  
6 with all of the requirements in OAR 661-010-0015; and (2) serve the Corrected  
7 Notice on all persons required to be so served. The order stated, “If the corrected  
8 NITA is not filed with LUBA by August 31, 2020, the Board will dismiss the  
9 appeal.”

10           LUBA mailed the August 21, 2020 order to the law firm of the attorney  
11 that was identified in the Original Notice. On September 2, 2020, LUBA received  
12 a letter from another attorney with the law firm, stating that the attorney identified  
13 in the Original Notice does not and has never represented petitioner. On  
14 September 9, 2020, LUBA received a letter from Frank Walker confirming that  
15 the attorney identified in the Original Notice was not retained to represent  
16 petitioner. As of the date of this final opinion and order, the Board has not  
17 received a Corrected Notice from petitioner.

---

copy of the hearings officer’s decision that was appealed to the board of county  
commissioners.           *Recent Cases*, Marion County,  
<https://www.co.marion.or.us/PW/Planning/Pages/Recent%20Cases.aspx>,  
(accessed Sept 15, 2020). As a courtesy, LUBA mailed a copy of this final  
opinion and order to the address listed for petitioner in the hearings officer’s  
decision, and the address listed for Walker in his September 9, 2020 letter.

1 In accordance with our August 21, 2020 order, the appeal is dismissed.