

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

TIM KOHLER,  
*Petitioner,*

vs.

JACKSON COUNTY,  
*Respondent,*

and

WACONDA, LLC,  
*Intervenor-Respondent.*

LUBA No. 2020-097

FINAL OPINION  
AND ORDER

Appeal from Jackson County.

Mark S. Bartholomew, Medford, represented petitioner.

No appearance by Jackson County.

Garrett K. West, Medford, represented intervenor-respondent.

RUDD, Board Chair; ZAMUDIO, Board Member, participated in the decision.

RYAN, Board Member, did not participate in the decision.

DISMISSED

10/20/2020

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

**NATURE OF THE DECISION**

Petitioner appeals a county hearings officer decision approving a forest template dwelling.

**MOTION TO INTERVENE**

Waconda, LLC (intervenor), moves to intervene on the side of respondent. The motion is unopposed and is granted.

**MOTION TO ALLOW LATE FILING OF NOTICE OF INTENT TO APPEAL**

On August 20, 2020, the hearings officer issued the county’s final decision approving intervenor’s application for a forest template dwelling. On September 25, 2020, petitioner filed his Notice of Intent to Appeal (NITA) and a Motion to Permit Late Filing of the Notice of Intent to Appeal. On October 2, 2020, intervenor filed a response opposing the motion.

ORS 197.830(9) provides, “A notice of intent to appeal a land use decision or limited land use decision shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final.” Petitioner acknowledges that the NITA was due on September 10, 2020, but asks LUBA to excuse the filing of the NITA two weeks later. Petitioner explains that, following the eruption of the Alameda fire on September 8, 2020, petitioner had to evacuate his home and, as a result, failed to instruct his attorney to file the NITA before September 10, 2020. Petitioner argues that excusing this error will not prejudice intervenor’s

1 substantial interests because intervenor’s corporate members are the same as the  
2 members of a different corporation that has moved to intervene in petitioner’s  
3 appeal of another, related forest template dwelling approval, designated *Kohler*  
4 *v. Jackson County*, LUBA No. 2020-091. Petitioner argues that these appeals  
5 involve identical legal issues, and that he will move to consolidate them if his  
6 motion is granted. Petitioner also argues that a third forest template dwelling  
7 application, involving an applicant with the same corporate members, is in  
8 process at the county.

9 As a creature of statute, LUBA can exercise review authority only as  
10 granted by the legislature. As noted, ORS 197.830(9) requires that a NITA be  
11 filed within 21 days after the decision becomes final.<sup>1</sup> Timely filing of a NITA is  
12 jurisdictional, and an untimely filed NITA mandates dismissal of the appeal.  
13 *Winner v. Multnomah County*, 30 Or LUBA 420, 423 (1996). OAR 661-010-  
14 0015(1)(a) provides, in part:

15 “The [NITA], along with two copies, and the filing fee and deposit  
16 for costs required by section (4) of this rule, shall be filed with the  
17 Board on or before the 21st day after the date the decision sought to  
18 be reviewed becomes final \* \* \*. \* \* \* A [NITA] filed thereafter  
19 shall not be deemed timely filed, and the appeal shall be dismissed.”

---

<sup>1</sup> Although ORS 197.830 allows tolling of the 21-day NITA filing deadline under certain circumstances, petitioner has not asserted that any of those circumstances apply to this appeal.

1 Whether intervenor is prejudiced is not material to whether we have jurisdiction.  
2 “In no event shall the time limit for the filing of the [NITA] be extended.” OAR  
3 661-010-0067(1). The motion is therefore denied.

4 Because the NITA was not filed within 21 days of the date the appealed  
5 decision became final, it did not satisfy the filing deadline in ORS 197.830(9)  
6 and OAR 661-10-015(1).

7 The appeal is dismissed.