

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

3
4 MICHELE L. SANDLIN,
5 *Petitioner,*

6
7 vs.

8
9 CITY OF WILSONVILLE,
10 *Respondent,*

11 and

12
13 COSTA PACIFIC COMMUNITIES,
14 *Intervenor-Respondent.*

15
16 LUBA No. 2021-119

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18 FINAL OPINION
19 AND ORDER

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22 Appeal from City of Wilsonville.

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24 Michelle L. Sandlin represented themselves.

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26 Barbara A. Jacobson represented respondent.

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28 Garrett H. Stephenson represented intervenor-respondent.

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

32 DISMISSED 02/15/2022

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

NATURE OF THE DECISION

Petitioner appeals a decision by the city council affirming a development review board decision.

MOTION TO DISMISS

The city issued its decision in this matter on November 15, 2021, and the decision was final on that date. Under ORS 197.830(9) and OAR 661-010-0015(1)(a), the notice of intent to appeal (NITA) must be filed with LUBA within 21 days of the date the decision became final. In the present case, the appeal deadline was therefore December 6, 2021. Petitioner mailed the NITA by first-class mail on December 6, 2021, and LUBA received the NITA on December 13, 2021. On December 17, 2021, the city and intervenor filed a joint motion to dismiss the appeal as not timely filed in accordance with ORS 197.830(9).

OAR 661-010-0015(1)(b) provides:

“The date of filing a notice of intent to appeal is the date the Notice is received by the Board, or the date the Notice is mailed, provided it is mailed by registered or certified mail, and the party filing the Notice has proof from the post office of such mailing date. If the date of mailing is relied upon as the date of filing, the date of the receipt stamped by the United States Postal Service showing the date mailed and the certified or registered number is the date of filing.”

In their response to the motion to dismiss, petitioner acknowledges that the NITA was untimely filed but requests that the Board overlook the untimely filing “due to extenuating circumstances beyond Petitioner’s control.” Response to Motion to Dismiss 2. Petitioner explains that they arrived at LUBA’s offices at

1 approximately 10:00 a.m. on December 6, 2021, intending to file their NITA, but
2 found the building in which LUBA's offices are located closed to the public.¹ *Id.*
3 According to petitioner, at some unspecified time that same day, they spoke on
4 the telephone with an employee of LUBA, who advised them that filing
5 documents by mail was allowed under LUBA's rules of procedure but that they
6 could not advise petitioner regarding any particular method of mail filing.² *Id.*
7 The certificate of service that was attached to the NITA states that petitioner
8 mailed the NITA by first-class mail on December 6, 2021. Notice of Intent to
9 Appeal Ex D.

10 LUBA can exercise review authority only as granted by the legislature. As
11 noted, ORS 197.830(9) requires that a NITA be filed within 21 days after the
12 decision becomes final. Timely filing of a NITA is jurisdictional, and an untimely
13 filed NITA mandates dismissal of the appeal. *Winner v. Multnomah County*, 30
14 Or LUBA 420, 423 (1996). Because petitioner did not mail the NITA to LUBA
15 by certified or registered mail, the date of filing the NITA with LUBA is the date
16 the NITA was received by LUBA—December 13, 2021. OAR 661-010-

¹ On that date, the building in which LUBA's offices are located, at 775 Summer Street NE, Salem, Oregon 97301, was closed to the public due to the COVID-19 pandemic and pursuant to Executive Order 20-12, which was issued on March 24, 2020. LUBA's employees were available to serve the public during business hours by telephone and email and by appointment.

² Petitioner's response is not supported by a declaration or affidavit, but we assume for purposes of this opinion that petitioner's statements are true and accurate.

1 0015(1)(b). Because the NITA was filed with LUBA more than 21 days from the
2 date the city’s decision became final, this appeal was untimely filed. OAR 661-
3 010-0015(1)(a) (“A [NITA] filed [after the deadline] shall not be deemed timely
4 filed, and the appeal shall be dismissed.”); *McKnight v. City of Portland*, 48 Or
5 LUBA 292, 294-95 (2004); *Larner v. City of Portland*, 41 Or LUBA 471, 473-
6 74 (2002).

7 The appeal is dismissed.