

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

3  
4                   ANGELINE ARMSTRONG and MARY HOKE,  
5                   *Petitioners,*

6  
7                   vs.

8  
9                   JACKSON COUNTY,  
10                  *Respondent.*

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12  
13                  LUBA No. 2020-045

14  
15                  ORDER

16                OAR 661-010-0015(3)(f)(A) requires the notice of intent to appeal (NITA)  
17   contain the name, address, and telephone number of the petitioner. “If an attorney  
18   represents the petitioner, the attorney’s name, address and telephone number shall  
19   be substituted for that of the petitioner.” *Id.* The petitioners in this appeal are  
20   represented by an attorney. The NITA in this appeal provides that petitioners are  
21   represented by:

22                Ross Day, Esq.  
23                DAY LAW, PC  
24                149455 SW Sequoia Parkway, Suite 150  
25                Portland, Oregon 97224

26                On May 1, 2020, LUBA staff mailed a letter acknowledging receipt of the  
27   NITA to the mailing address that petitioners’ attorney provided in the NITA. On  
28   May 6, 2020, that mailing was returned to LUBA with a notice that the letter was  
29   “not deliverable as addressed, unable to forward.” On May 20, 2020, LUBA

1 received the record transmittal in this appeal and LUBA staff mailed a letter  
2 acknowledging receipt of the record transmittal to the mailing address that  
3 petitioners' attorney provided in the NITA. On May 26, 2020, that mailing was  
4 also returned as undeliverable and unable to forward. On May 27, 2020, as a  
5 courtesy, LUBA staff mailed a letter to the petitioners' attorney, at the address  
6 petitioners' attorney provided in the NITA, explaining that LUBA had received  
7 returned mail for the NITA acknowledgment and record acknowledgement  
8 letters.

9 Petitioners' petition for review was due on June 10, 2020. "Failure to file  
10 a petition for review within the time required by this section, and any extensions  
11 of that time under OAR 661-010-0045(9) or 661-010-0067(2), shall result in  
12 dismissal of the appeal and forfeiture of the filing fee and deposit for costs to the  
13 governing body." OAR 661-010-0030(1). On June 10, 2020, petitioners' attorney  
14 filed a motion for extension of time (MOET) to file the petition for review. In the  
15 MOET, petitioners' attorney asserts that petitioners were "unaware" of the filing  
16 deadline for the petition for review because petitioners did not receive from  
17 LUBA a letter acknowledging receipt of the record. *See* OAR 661-010-0030(1)  
18 ("[T]he petition for review \* \* \* shall be filed with the Board within 21 days after  
19 the date the record is received or settled by the Board."). Petitioners' attorney  
20 states:

21 "It appears as though the Board has been mailing information to the  
22 wrong address for Petitioners' counsel, even though Petitioners'  
23 counsel sent a notice to the Board on June 7th, 2019 informing the

1 Board of Petitioners’ counsel’s new mailing address. It appears as  
2 though the Board failed to update the address on file that the Board  
3 had for Petitioners’ counsel.” MOET 2.

4 Petitioner’s attorney misunderstands LUBA procedures and processes and  
5 his responsibility in representing a party in a pending appeal. LUBA does not  
6 maintain a current mailing list for all attorneys who have appeared before LUBA.  
7 Instead, LUBA processes each appeal independently. A party is responsible, in  
8 each appeal, for providing LUBA and other parties a current mailing address, as  
9 is required by LUBA’s rules. LUBA is not responsible for investigating and  
10 confirming that a mailing addresses provided by a party is current and correct  
11 and that mail may be delivered to that address. Instead, each party is responsible  
12 for maintaining a current mailing address for each active appeal. In practice, this  
13 means filing a correct address in the initiating document, such as the NITA or  
14 motion to intervene.<sup>1</sup> If a party’s address changes during the course of a pending  
15 appeal, a party should file and serve a written notice of address change. LUBA  
16 will use the mailing address provided in the initial pleading unless and until the  
17 party files a written notice of address change in the proceeding. A statement that  
18 petitioners’ attorney had previously provided LUBA a notice of address  
19 change—presumably in a separate appeal that was pending in June 2019—does

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<sup>1</sup> LUBA presumes that a party provides correct and current contact information in the body of the initiating pleading. LUBA generally will not investigate apparent inconsistencies that appear on envelopes, letterhead, or pleading paper.

1 not excuse petitioners' attorney from his obligation to maintain current contact  
2 information as petitioners' representative in *this* pending appeal.

3 On June 10, 2020, petitioners' attorney filed a notice of current mailing  
4 address, which is different from the address listed in the NITA.

5 Petitioners' MOET to file the petition for review was filed on June 10,  
6 2020, the same date that the petition for review was due to be filed. Accordingly,  
7 the MOET was timely filed. *See* OAR 661-010-0067(4) ("A motion for extension  
8 of time shall state the reasons for granting the extension and must be filed with  
9 the Board within the time required for performance of the act for which an  
10 extension of time is requested."). All parties consented in writing to petitioners'  
11 MOET, as required by OAR 661-010-0067(2). Petitioners' MOET to file the  
12 petition for review is granted pursuant to OAR 661-010-0067(2).

### 13 **BRIEFING SCHEDULE**

14 The petition for review shall be due July 1, 2020. The response brief shall  
15 be due July 22, 2020. The final opinion and order in this appeal shall be due  
16 August 26, 2020.

17 Dated this 17th day of June 2020.  
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23 H. M. Zamudio  
Board Member