

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

LIA ANDERSON,
Petitioner,

vs.

CITY OF LAKE OSWEGO,
Respondent.

LUBA No. 2026-020

ORDER

Petitioner appeals Ordinance 2971, a city council decision approving a post-acknowledgement plan amendment (PAPA) changing the comprehensive plan designation for a 12.67-acre parcel from office campus/residential high-density (OC/R-3) to office campus/residential high-density (OC/R-0) and changing the zoning from OC to R-0.

MOTION TO DISMISS

The city moves to dismiss the appeal for lack of jurisdiction on the basis that the notice of intent to appeal (NITA) was untimely filed. A city must provide notice of a PAPA to the Department of Land Conservation and Development (DLCD) and persons who participated in the local government proceedings and requested in writing notice of the decision. ORS 197.615(1), (4). ORS 197.615(5) provides:

“The notice required by subsection (4) of this section must state how and where the materials described in subsection (2) of this section may be obtained and must:

1 “(a) Include a statement by the individual delivering the notice
2 that identifies the date on which the notice was delivered and
3 the individual delivering the notice;

4 “(b) List the locations and times at which the public may review
5 the decision and findings; and

6 “(c) Explain the requirements for appealing the land use decision
7 under ORS 197.830 to 197.845.”

8 On February 17, 2026, the city adopted the challenged PAPA. On February
9 19, 2026, the city mailed notice of the decision. The notice concluded with the
10 following paragraph:

11 **“RIGHT TO APPEAL:**

12 “This decision may be appealed by filing a written Notice of Intent
13 to appeal with the State of Oregon Land Use Board of Appeals
14 (LUBA) within 21 days of the date of the decision, by 5:00 p.m. on
15 March 10, 2026. For more information, contact LUBA at:

16
17 “Land Use Board of Appeals
18 775 Summer Street NE, Suite 336
19 Salem, OR 97301-1265
20 (503)-373-1265”
21

22 Petitioner’s Response to Motion to Dismiss Ex P-1, at 1.

23 A LUBA appeal of a PAPA is perfected by filing a NITA with LUBA in
24 the manner prescribed by LUBA’s rules within 21 days after notice of the
25 decision is mailed. ORS 197.830(9).¹ An untimely filed NITA will be dismissed.

¹ ORS 197.830(9) provides, in part:

1 OAR 661-010-0015(1).² Failure to comply with the NITA filing deadline “is not
2 a technical violation” that LUBA may overlook, even if overlooking the failure
3 would not prejudice any other party’s substantial rights. OAR 661-010-0005.

“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. A notice of intent to appeal plan and land use regulation amendments processed pursuant to ORS 197.610 to 197.625 shall be filed not later than 21 days after notice of the decision sought to be reviewed is mailed or otherwise submitted to parties entitled to notice under ORS 197.615. * * * The notice shall be served and filed in the form and manner prescribed by rule of the [B]oard and shall be accompanied by a filing fee of \$350.”

² OAR 661-010-0015(1) provides, in part:

“(1) Filing of Notice:

“(a) The [NITA], together with one copy, and the filing fee required by section (4) of this rule, shall be filed with the Board on or before the 21st day after the date the decision sought to be reviewed becomes final or within the time provided by ORS 197.830(3)–(5). A notice of intent to appeal plan and land use regulation amendments processed pursuant to ORS 197.610 to 197.625 shall be filed with the Board on or before the 21st day after the date the decision sought to be reviewed is mailed or otherwise delivered to parties entitled to notice under ORS 197.615. A [NITA] filed thereafter shall not be deemed timely filed, and the appeal shall be dismissed.

“(b) Filing a [NITA] shall be in compliance with OAR 661-010-0014(1).”

1 Filing a document with LUBA is accomplished by mail or commercial
2 delivery. OAR 661-010-0014(1).³ A NITA is considered filed on the date it is

³ OAR 661-010-0014(1) provides, in part:

“(1) Filing:

“(a) Filing a document with the Board is accomplished by mail or commercial delivery.

“(b) Documents shall be filed with the Board by delivery to the address listed in subsection (6) of this rule and shall contain a statement certified by the person who made the filing of the date and manner of document delivery. See Exhibit 5.

“(c) The date of filing is:

“(A) The date that the document is time and date stamped by the Board; or

“(B) The date of filing may relate back to the date of mailing, deposit, or dispatch for delivery, if the document is:

“(i) Mailed by any class of mail with the United States Postal Service and the party filing has proof from the United States Postal Service of the mailing date. Proof of the mailing date includes a postmark affixed by the United States Postal Service, or a receipt from the United States Postal Service that shows the date of deposit and includes a parcel tracking number, or a record from the United States Postal Service’s online tracking service showing the parcel tracking number and the date of deposit or dispatch for delivery[.]”

1 mailed by certified mail to LUBA, “if it is placed in an envelope that is addressed
2 to LUBA at the address set forth in LUBA’s rules and mailed to that address.”
3 *Bartlett v. City of Portland*, 72 Or LUBA 408, 410 (2015), *aff’d*, 276 Or App
4 919, 370 P3d 565 (2016); OAR 661-010-0014(1)(b), (c).

5 Since November 2024, and at all relevant times for this appeal, LUBA’s
6 mailing address for receiving filings has been 201 High Street SE, Suite 600,
7 Salem, Oregon. *See* OAR 661-010-0014(6) (setting out the Board’s address).
8 Prior to November 1, 2024, LUBA’s mailing address for receiving filings was
9 775 Summer Street NE, Suite 330, Salem, Oregon 97301-1283. *See Conte v. City*
10 *of Eugene*, LUBA No 2024-096 (Mar 19, 2025) (dismissing appeal for failure to
11 timely file the petition for review when the petitioner initially mailed the petition
12 for review to LUBA’s former address).

13 The challenged decision is a PAPA; thus, the 21-day deadline for filing a
14 NITA commences on the date that the city mailed or otherwise delivered the
15 decision to parties entitled to notice under ORS 197.615. ORS 197.830(9); OAR
16 661-010-0015(1). The city’s notice of PAPA adoption states that it was mailed
17 on February 19, 2026. Thus, the NITA filing deadline would be March 12, 2026,
18 if the city’s notice of decision complied with ORS 197.615. The city’s notice and
19 the parties misstate the appeal deadline as March 10, 2026. That two-day NITA
20 deadline difference does not affect our analysis or disposition of the city’s motion
21 to dismiss.

1 On March 26, 2026, LUBA received petitioner's NITA. The NITA and its
2 certificate of service are dated March 4, 2026. In a letter enclosed with the NITA,
3 petitioner explains that, on March 4, 2026, petitioner mailed a NITA via certified
4 mail to LUBA's former address at 775 Summer Street NE, Suite 330, and that
5 parcel was returned to petitioner on March 13, 2026. On March 27, 2026, we
6 issued a Notice of Noncompliance, noting several instances where petitioner's
7 NITA did not comply with OAR 661-010-0015 and instructing petitioner to file
8 a Corrected NITA. On April 2, 2026, LUBA received petitioner's Corrected
9 NITA. On April 3, 2026, the city moved to dismiss this appeal for lack of
10 jurisdiction, arguing that petitioner failed to timely file their NITA as required by
11 ORS 197.830(9) and OAR 661-010-0015(1).

12 Petitioner responds that they timely mailed their NITA by certified mail to
13 the outdated LUBA address that was set out in the city's notice of decision that
14 was required by ORS 197.615. Response to Motion to Dismiss 1, 4. Petitioner
15 argues that "the City had an affirmative statutory duty under ORS 197.615 to
16 provide accurate appeal instructions in its Notice of Decision." Response to
17 Motion to Dismiss 4. Petitioner argues that the city's explanation of the
18 requirements for appealing a PAPA to LUBA, required by ORS 197.615(5)(c),
19 must include accurate information which includes, as relevant here, LUBA's
20 mailing address for filing purposes, and, at a minimum, the city cannot obtain

1 dismissal of the appeal when the city's notice of PAPA adoption misled
2 petitioner into a LUBA filing error.⁴

3 The city replies:

4 "The City was *not required* to (and did not) provide precise
5 instructions on the address for or method of filing. While the City's
6 Notice of Decision also stated, '[f]or more information, contact
7 LUBA at' and including LUBA's current phone number, and,
8 inadvertently, LUBA's outdated address, the City did not direct
9 Petitioner to *file* at the outdated address. Petitioner was 'not entitled
10 to depend' on the City's provided address. * * * Instead, Petitioner
11 was bound to mail the petition by 'certified mail to LUBA' in an
12 envelope that was 'actually * * * addressed to LUBA.'" City's
13 Reply 5 (emphases in original; quoting *Stone Age Republic, LLC v.*
14 *City of Grants Pass*, 72 Or LUBA 420, 421 (2015); *Bartlett*, 72 Or
15 LUBA at 409).

16 The city argues that ORS 197.615(5)(c) requires the city to provide general
17 notice that the decision is appealable to LUBA, and does not require the city to
18 provide LUBA's mailing address for NITA filing purposes. The city argues that
19 ORS 197.615(5)(c) does not excuse petitioner from ascertaining the LUBA
20 appeal filing deadline and process for perfecting an appeal under LUBA's rules,
21 independent from the information that the city provided in its notice of decision.
22 The city contends that ORS 197.830(9) provides a hard deadline for filing a NITA
23 and does not allow for exceptions or extensions of that deadline where the city

⁴ Petitioner also argues that the city should be estopped from moving to dismiss this appeal because petitioner reasonably relied on the LUBA address that the city provided in its notice. We limit our analysis and resolution to ORS 197.615, and do not address or resolve petitioner's estoppel argument.

1 provides inaccurate information in the notice of decision required by ORS
2 197.615. The city contends that the NITA was untimely filed because it was not
3 correctly mailed to LUBA and that errors in the city's notice of decision do not
4 excuse petitioner from correctly and timely filing their NITA. City Reply 3-5.

5 The city cites cases in which we have consistently held that a NITA is
6 considered filed on the date it is mailed to LUBA "only if it is placed in an
7 envelope that is addressed to LUBA at the address set forth in LUBA's rules and
8 mailed to that address." *Bartlett*, 72 Or LUBA at 410; *see also Shepherd v.*
9 *Yamhill County*, 75 Or LUBA 361 (2017). The city also points to cases in which
10 we have consistently held that filing a NITA to perfect a LUBA appeal is
11 governed by LUBA's rules and misstatements in the local government notice of
12 decision do not toll the 21-day filing deadline in ORS 197.830(9). *Stone Age*
13 *Republic, LLC*, 72 Or LUBA 420; *Friends of Jacksonville v. City of Jacksonville*,
14 44 Or LUBA 379, 384-85, *aff'd*, 189 Or App 283, 76 P3d 121, *rev den*, 336 Or
15 422 (2003). However, none of those cases that the city cites concerned a PAPA
16 adoption notice under ORS 197.615.

17 The city's motion to dismiss requires us to interpret the notice requirement
18 in ORS 197.615(5)(c) and decide whether the city's misstatement of LUBA's
19 address in the notice of decision renders the ORS 197.615 notice defective, and
20 whether such a defect operates to toll the LUBA appeal deadline set out in ORS
21 197.830(9). For the reasons explained below we conclude that the city's ORS
22 197.615 notice is defective and petitioner's appeal is timely.

1 **A. Statutory Construction of ORS 197.615(5)(c)**⁵

2 We are independently obligated to correctly construe ORS 197.615(5)(c)
3 and ORS 197.830(9). *See* ORS 197.805 (providing the legislative directive that
4 LUBA “decisions be made consistently with sound principles governing judicial
5 review”); *Gunderson, LLC v. City of Portland*, 352 Or 648, 662, 290 P3d 803
6 (2012) (“In construing statutes and administrative rules, we are obliged to
7 determine the correct interpretation, regardless of the nature of the parties’
8 arguments or the quality of the information that they supply to the court.” (Citing
9 *Dept. of Human Services v. J. R. F.*, 351 Or 570, 579, 273 P3d 87 (2012); *Stull v.*
10 *Hoke*, 326 Or 72, 77, 948 P2d 722 (1997))). In interpreting statutes, we examine
11 the statutory text, context, and legislative history with the goal of discerning the
12 enacting legislature’s intent. *State v. Gaines*, 346 Or 160, 171-72, 206 P3d 1042
13 (2009); *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-12, 859 P2d
14 1143 (1993).

15 The statutory PAPA review procedure, including notice required by ORS
16 197.615(5) and LUBA review under ORS 197.830, are intended to ensure that
17 PAPAs “receive appropriate scrutiny to ensure that the acknowledged
18 comprehensive plan and land use regulations are not amended in ways that violate

⁵ This provision requiring local governments to “explain the requirements” for appealing PAPAs to LUBA was adopted in 1983 at ORS 197.615(2)(b)(D). Or Laws 1983, ch 827, § 9. ORS 197.615(2)(b)(D) was renumbered in 1999 to ORS 197.615(2)(b)(E) and then subsequently amended and renumbered in 2011 to ORS 197.615(5)(c). Or Laws 1999, ch 255, § 1; Or Laws 2011, ch 280, § 2.

1 the statewide planning goals.” *OCAPA v. City of Mosier*, 44 Or LUBA 452, 471
2 (2003). Violation of the statutory PAPA hearing and notice procedures can
3 constitute a substantive, rather than a procedural, error. *Oregon City Leasing, Inc.*
4 *v. Columbia County*, 121 Or App 173, 177, 854 P2d 495 (1993).

5 ORS 197.615(5)(c) requires the city’s notice of a PAPA decision to
6 “[e]xplain the requirements for appealing the land use decision under ORS
7 197.830 to 197.845.” The Land Conservation and Development Commission
8 (LCDC) has promulgated rules prescribing the form and content of the required
9 notice of an adopted PAPA under ORS 197.615. OAR 660-018-0050(2) provides
10 that such notice must:

11 “(a) Clearly describe the decision;

12 “(b) State the date of the decision;

13 “(c) Indicate how and where the materials described in OAR 660-
14 018-0040(3) may be obtained;

15 “(d) Include a statement by the individual delivering the notice
16 that identifies the date on which the notice was delivered and
17 the individual delivering the notice;

18 “(e) List the locations and times at which the public may review
19 the decision and findings; and

20 “(f) Explain the requirements for appealing the land use decision
21 under ORS 197.830 to 197.845.”

22 **1. Text**

23 The operative terms “explain” and “requirements” are not defined for
24 purposes of ORS 197.615, and so we refer to the plain meanings of those terms.

1 *See State v. Kimble*, 236 Or App 613, 618, 237 P3d 871 (2010) (“When the
2 legislature has not provided an express definition for a particular term, we
3 generally look to the term’s plain and ordinary meaning.”); *Pete’s Mountain*
4 *Homeowners v. Ore. Water Resources*, 236 Or App 507, 516-17, 238 P3d 395
5 (2010) (“The usual source for determining the ordinary meaning of statutory
6 terms is a dictionary of common usage.”).

7 “Explain” means “**1 a** : to make manifest : present in detail **b** : make plain
8 or understandable : clear of complexities or obscurity : INTERPRET, CLARIFY
9 **c** : to give the meaning or significance of : provide an understanding of.”
10 *Webster’s Third New Int’l Dictionary* 801 (unabridged ed 2002).

11 “Requirement” means “**b** : something called for or demanded : a requisite
12 or essential condition.” *Webster’s* at 1929.

13 The plain meaning of those terms supports petitioner’s position that the
14 city’s explanation under ORS 197.615(5)(c) must provide accurate instructions
15 for filing a LUBA appeal under ORS 197.830 to ORS 197.845 and, at a
16 minimum, the city notice of decision should not mislead petitioner.

17 **2. Context**

18 **a. Other Notice Statutes**

19 Context includes other statutes on the same general subject. *Simpson v.*
20 *Dept. of Fish and Wildlife*, 242 Or App 287, 298, 255 P3d 565 (2011). Other
21 statutes governing notice of land use or administrative decisions do not require

1 the decision maker to “explain the requirements” for an appeal and provide
2 context that supports petitioner’s position.

3 **i. ORS 227.173 and ORS 215.416 – Notice of**
4 **Discretionary Land Use Permit Decision**

5 ORS 227.173 governs city procedures and requires notice of a city decision
6 approving or denying discretionary land use permit applications. That statute
7 provides, in part:

8 “(3) Approval or denial of a permit application must be based upon
9 and accompanied by a brief statement that explains the criteria and
10 standards considered relevant to the decision, states the facts relied
11 upon in rendering the decision and explains the justification for the
12 decision based on the criteria, standards and facts set forth.

13 “(4) Written notice of the approval or denial must be given to all
14 parties to the proceeding.” *See also* ORS 215.416(9), (10)
15 (providing the same requirements for county notices of permit
16 decisions).

17 ORS 227.173(4) does not require the city to “explain the requirements” for
18 a LUBA appeal. That difference indicates that the legislature intended the city to
19 provide a more thorough notice when adopting a PAPA, including an explanation
20 of the requirements for a LUBA appeal beyond a bare statement that such an
21 appeal is available.

22 **ii. ORS 197A.140 – Notice of Expedited Land**
23 **Division Decision**

24 ORS 197A.140 governs expedited land divisions. ORS 197A.140(2)(c)
25 provides that a local government:

1 “Shall issue a written determination of compliance or
2 noncompliance with applicable land use regulations that includes a
3 summary statement explaining the determination. The summary
4 statement may be in any form reasonably intended to communicate
5 the local government’s basis for the determination. The
6 determination must include *an explanation of the applicant’s right*
7 *to appeal* the determination under ORS 197.830 to 197.855.”
8 (Emphasis added.)

9 ORS 197A.140(2)(c) does not require the city to “explain the
10 requirements” for a LUBA appeal. That difference indicates that the legislature
11 intended the city to provide a more thorough notice when adopting a PAPA.

12 **iii. ORS 183.470(4) – Notice of Orders in**
13 **Contested Cases**

14 ORS 183.470 is part of the Oregon Administrative Procedures Act and
15 governs orders in contested cases. ORS 183.470(4) provides that “[e]very final
16 order shall include a citation of the statutes under which the order may be
17 appealed.” That provision was adopted in 1979. Or Laws 1979, ch 593, § 22. The
18 difference between the notice required by ORS 183.470(4) and ORS
19 197.615(5)(c) indicates that the legislature intended local governments to provide
20 some explanation about the requirements for a LUBA appeal beyond a bare
21 citation to the statutes governing a LUBA appeal, ORS 197.830 to 197.845. *See*
22 *State v. Newell*, 238 Or App 385, 392, 242 P3d 709 (2010) (“If the legislature
23 uses different terms in statutes, we generally will assume ‘that the legislature
24 intends different meanings’ for those terms.” (quoting *Dept. of Transportation v.*
25 *Stallcup*, 341 Or 93, 101, 138 P3d 9 (2006))). That difference supports petitioner’s
26 position.

1 **b. ORS 197.830(9)**⁶

2 A statute's context includes related statutes. *State v. Klein*, 352 Or 302,
3 309, 283 P3d 350 (2012). Again, ORS 197.830(9) provides, in part:

4 “A notice of intent to appeal a land use decision or limited land use
5 decision shall be filed not later than 21 days after the date the
6 decision sought to be reviewed becomes final. A notice of intent to
7 appeal plan and land use regulation amendments processed pursuant
8 to ORS 197.610 to 197.625 shall be filed not later than 21 days after
9 notice of the decision sought to be reviewed is mailed or otherwise
10 submitted to parties entitled to notice under ORS 197.615. Failure
11 to include a statement identifying when, how and to whom notice
12 was provided under ORS 197.615 does not render the notice
13 defective. * * *”

14 The 21-day deadline for appealing a PAPA under the second sentence of
15 ORS 197.830(9) is measured from the date the local government mails notice of
16 the decision to those entitled to notice under ORS 197.615. *ODOT v. City of*
17 *Oregon City*, 153 Or App 705, 708, 959 P2d 615 (1998). That second sentence
18 was enacted in 1987. Or Laws 1987, ch 729, § 16. The city argues that we must
19 read ORS 197.830(9) together with ORS 197.615(5)(c) and find that petitioner's

6 This provision, concerning the statutory NITA filing deadline, was adopted in 1983 at ORS 197.830(7). Or Laws 1983, ch 827, § 31. It has subsequently been renumbered twice—to ORS 197.830(8) in 1989 and then to ORS 197.830(9) in 1999. Or Laws 1989, ch 761, § 12; Or Laws 1999, ch 621, § 3. This provision has also been amended several times since 1983. *See* Or Laws 1987, ch 729, § 16; Or Laws 1997, ch 452, § 1; Or Laws 1999, ch 255, § 2; Or Laws 1999, ch 348, § 17; Or Laws 2011, ch 280, § 9; Or Laws 2021, ch 61, § 1; Or Laws 2025, ch 173, § 1.

1 late-filed NITA cannot be excused by the inaccurate LUBA address in the city's
2 notice of decision.

3 The Court of Appeals has observed that the legislature adopted the post-
4 adoption PAPA notice requirement by the same act through which the legislature
5 adopted the LUBA appeal filing deadline. *Ludwick v. Yamhill County*, 72 Or App
6 224, 229-30, 696 P2d 536, *rev den*, 299 Or 443 (1985) (citing Or Laws 1983, ch
7 827, §§ 9 and 31). The court concluded that the legislature intended to make the
8 NITA deadline for a PAPA adoption “contingent on the giving of notice to an
9 appealing party who is entitled to notice under ORS 197.615([5]).” *Ludwick*, 72
10 Or App at 230.

11 We agree with the city that the general rule under ORS 197.830(9) is that
12 a petitioner is responsible for operating within the legal framework in which they
13 undertake their appeals, including review of relevant local code, LUBA rules,
14 and statutes governing LUBA review. However, the city's position does not
15 comport with the mandate in ORS 197.615(5)(c) that the city “[e]xplain the
16 requirements for appealing the land use decision[,]” which is something more
17 than general notice that the decision is appealable to LUBA.

18 We also agree with the city that ORS 197.615(5)(c) does not require the
19 city to provide LUBA's mailing address for filing an appeal. We need not and do
20 not construe ORS 197.615(5)(c) as requiring the city to provide an exact LUBA
21 appeal deadline date and LUBA filing address. This case does not require us to
22 determine what information ORS 197.615(5)(c) requires the city to provide in its

1 notice of PAPA adoption. We construe the mandate to “explain the requirements”
2 to mean that the city may not provide inaccurate LUBA appeal information and
3 then obtain dismissal, removing the PAPA from LUBA review, because
4 petitioner relied on the city’s inaccurate explanation of the requirements for a
5 LUBA appeal. We reject the city’s argument that the city’s notice did not provide
6 inaccurate information because the city did not expressly direct petitioner to file
7 the NITA at LUBA’s outdated address. We conclude that the misinformation in
8 the city’s notice renders the ORS 197.615 notice defective in this case.

9 **B. Effect of Defective ORS 197.615 Notice**

10 We have previously held that the deadline for filing a LUBA appeal of a
11 PAPA adoption does not begin until the local government provides the notice
12 required by ORS 197.615. The issue of whether a PAPA adoption notice is
13 defective is unique and is controlled by ORS 197.615.

14 In *Hummel v. City of Brookings*, the city adopted a PAPA by ordinance
15 dated April 10, 1984, and signed on April 11, 1984. 11 Or LUBA 435 (1984). On
16 April 12, 1984, the petitioner requested notice of the decision pursuant to ORS
17 197.615. The city responded to the request by letter dated April 16, 1984, which
18 stated that the ordinance was adopted April 10, 1984, but would not be effective
19 for 30 days. Petitioner received the copy of the ordinance on May 10, 1984.
20 Petitioner filed a NITA on May 30, 1984.

21 The city moved to dismiss the NITA, arguing that *former* ORS 197.830(7)
22 (1983) required a NITA to be filed within 21 days after the challenged decision

1 became final. The city argued that the ordinance became final on the date that it
2 was signed, April 11, 1984. We denied the motion to dismiss after concluding
3 that the city never provided the petitioner the notice required by ORS 197.615.
4 The city provided the petitioner a copy of the ordinance and the city's letter stated
5 the date of adoption of the ordinance. However, the city's letter did not describe
6 the action taken by the ordinance, state where and when the decision could be
7 reviewed, or "explain the requirements" for a LUBA appeal. We reasoned that
8 the deadline for appealing the PAPA did not start to run because the city never
9 provided the petitioner the notice required by ORS 197.615. *Hummel*, 11 Or
10 LUBA at 437. Therefore, the NITA was timely filed.

11 In *Club Wholesale v. City of Salem*, we explained that the PAPA adoption
12 notice requirement in ORS 197.615 is remedial and indicates a legislative intent
13 "that potential appellants, who may not be familiar with the statutes governing
14 appeals of land use decisions, are to be given timely notice that an appealable
15 decision has been adopted and basic information about how to go about appealing
16 that decision." 19 Or LUBA 576, 581 (1990). On March 26, 1990, the city
17 adopted the PAPA by ordinance. On March 28, 1990, the city mailed the
18 petitioner a copy of the ordinance and a letter explaining that, under the city code,
19 the ordinance would take effect 15 days after its passage. However, the city did
20 not provide the petitioner the notice required by ORS 197.615. Petitioner filed its
21 NITA on April 23, 1990.

1 The city and the intervenor-respondent moved to dismiss the appeal,
2 arguing that the NITA was untimely filed after the 21-day deadline. The
3 petitioner responded that the city never gave the petitioner the PAPA adoption
4 notice required by ORS 197.615, and the city's failure to provide the required
5 notice tolled the time for filing the NITA.

6 We considered whether the letter and copy of the ordinance satisfied the
7 ORS 197.615 notice requirement. The letter did not state the date of the city's
8 final decision or explain the requirements for appealing the ordinance to LUBA.
9 We denied the motion to dismiss because the city did not provide the petitioner
10 the PAPA adoption notice required by ORS 197.615. *Club Wholesale*, 19 Or
11 LUBA at 582-83.

12 In *Barton v. City of Lincoln City*, the city's notice of PAPA adoption
13 concluded with the following paragraph:

14 "Please be advised that such decisions of the city council in the
15 adoption of ordinance(s) do not become effective until 30 days
16 following the date of enactment; thereafter such decision may be
17 appealed on the record to the Land Use Board of Appeals (LUBA)
18 by a party to the hearing within twenty-one (21) calendar days of the
19 effective date of the ordinance enactment decision of the council."
20 29 Or LUBA 612, 612-13 (1995).

21 The petitioners filed their NITA within 21 days after the "effective date"
22 described in the city's notice, but more than 21 days after the decision was
23 mailed. Thus, the NITA was untimely filed under *former* ORS 197.830(8) (1995).
24 The intervenor-respondent moved to dismiss the LUBA appeal as untimely filed

1 and argued, as the city does in this appeal, that the petitioners' reliance on the
2 misinformation in the city's notice did not excuse their late NITA at LUBA. The
3 petitioners argued that the city's misstatement of the LUBA appeal filing
4 deadline date rendered the city's PAPA adoption notice ineffective under ORS
5 197.615. We agreed and denied the motion to dismiss. We reasoned:

6 "The incorrect statement in the city's notice renders the notice
7 inadequate under [former] ORS 197.615(2)(b)(D) [(1995)]. In *Club*
8 *Wholesale* * * *, we determined that, *until the requirements of*
9 *[former] ORS 197.615(2)(b)(B) and (D) [(1995)] are satisfied, the*
10 *time for appeal does not begin to run.* Accordingly, we concluded
11 there that, because the petitioner did not get the notice to which it
12 was statutorily entitled, its otherwise late filing of a notice of intent
13 to appeal was nonetheless timely. *Id.* at 583[.]

14 "The city in this case has not provided the notice required under
15 [former] ORS 197.615(2)(b)(D) [(1995)] because it did not
16 accurately state the deadline for filing a notice of intent to appeal of
17 a comprehensive plan amendment as mandated by [former] ORS
18 197.830(8) [(1995)]. Because petitioners did not receive the notice
19 of the city's decision to which they were entitled, their notice of
20 intent to appeal filed June 13, 1995 is timely." *Barton*, 29 Or LUBA
21 at 615 (emphasis added; citations omitted).

22 Similarly, here, we conclude that the city's misstatement of LUBA's
23 address in the notice of decision renders the ORS 197.615(5)(c) notice defective,
24 and, thus, the city's notice did not commence the NITA filing deadline.
25 Petitioner's Corrected NITA was timely filed. Accordingly, the city's motion to
26 dismiss is denied.

1 **RECORD TRANSMITTAL**

2 We suspended this appeal pending our resolution of the city's motion to
3 dismiss, prior to the city transmitting the record. The city shall transmit the record
4 to the Board and serve petitioner a copy of the record within 21 days of the date
5 of this order.

6 Dated this 12th day of June 2026.

7

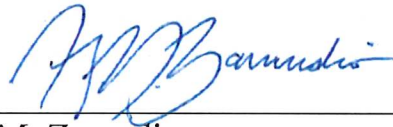
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H. M. Zamudio

Board Chair