

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

3
4 KAREN MILLER,
5 *Petitioner,*

6
7 vs.

8
9 CITY OF MAUPIN,
10 *Respondent.*

11
12 LUBA No. 2025-027

13
14 ORDER

15 Petitioner appeals a city council decision approving a floodplain
16 development permit. The city has not yet transmitted the record.

17 **MOTION TO DISMISS**

18 The city moves to dismiss the appeal for lack of jurisdiction on the basis
19 that the notice of intent to appeal (NITA) was untimely filed. The city issued the
20 challenged decision on March 10, 2025, and it is not disputed that it was final on
21 that date. A NITA “shall be filed no later than 21 days after the date the decision
22 is sought to be reviewed becomes final.” ORS 197.830(9).

23 The legislature did not specify the manner of filing a NITA or prescribe
24 how LUBA should determine the date of filing. ORS 197.830. The legislature
25 authorized LUBA to adopt rules governing LUBA appeals. ORS 197.820(4).

26 OAR 661-010-0015(1)(b) provides that the date of filing a NITA is:

27 “(A) The date the Notice is received by the Board;

28 “(B) The date the Notice is mailed, provided it is mailed by

1 registered or certified mail, and the party filing the Notice has proof
2 from the post office of such mailing date. If the date of mailing is
3 relied upon as the date of filing, the date of the receipt stamped by
4 the United States Postal Service showing the date mailed and the
5 certified or registered number is the date of filing; or

6 “(C) The date the Notice is deposited with or dispatched for delivery
7 by a commercial delivery service, provided the party filing the
8 Notice has proof from the commercial delivery service of such
9 deposit or dispatch date. Proof of such deposit or dispatch date
10 includes a receipt from the commercial delivery service showing the
11 date the Notice is deposited with the commercial delivery service or
12 a receipt from the commercial delivery service’s online tracking
13 service showing the date the Notice is dispatched for delivery by the
14 commercial delivery service.”

15 If a NITA is filed after the 21-day deadline then “the appeal shall be dismissed.”

16 OAR 661-010-0015(1)(a).

17 OAR 661-010-0005 provides that LUBA’s procedural rules

18 “are intended to promote the speediest practicable review of land
19 use decisions and limited land use decisions, in accordance with
20 ORS 197.805 - 197.855, while affording all interested persons
21 reasonable notice and opportunity to intervene, reasonable time to
22 prepare and submit their cases, and a full and fair hearing. The rules
23 shall be interpreted to carry out these objectives and to promote
24 justice. Technical violations not affecting the substantial rights of
25 parties shall not interfere with the review of a land use decision or
26 limited land use decision. Failure to comply with the time limit for
27 filing a notice of intent to appeal under OAR 661-010-0015(1) or a
28 petition for review under OAR 661-010-0030(1) is not a technical
29 violation.”

30 While OAR 661-010-0005 provides that failure to timely file a NITA is not a
31 technical violation, it does not prescribe the manner of filing or how the filing
32 date is calculated.

1 The NITA filing deadline in this appeal was March 31, 2025. Petitioner
2 mailed the NITA on March 31, 2025. The certificate of filing attached to the
3 NITA states that petitioner mailed the NITA by Priority Mail Express. We
4 received the NITA on April 2, 2025. The city argues that, because the NITA was
5 not “mailed by registered or certified mail,” the date of filing is the date that the
6 NITA was received, April 2, 2025, which is two days late. Memorandum in
7 Support of Corrected Motion to Dismiss 3-4; OAR 661-010-0015(1)(b)(A).
8 Thus, the city argues, the appeal should be dismissed.

9 Petitioner responds and requests that we not dismiss this appeal. Attached
10 to petitioner’s response is a receipt from their postal transaction, with the tracking
11 number of the Priority Mail Express envelope and the estimated date of delivery,
12 as well as a printout of the tracking information for the NITA parcel. We
13 understand petitioner to argue that OAR 661-010-0015(1)(b)(B) is substantively
14 satisfied because they have provided proof from the post office of the mailing
15 date, a “receipt stamped by the United States Postal Service showing the date
16 mailed” which also contains a tracking number for the NITA parcel. We
17 understand petitioner to assert that their method of dispatch by Priority Mail
18 Express meets the substantive requirements of our rules because it bears the same
19 substantive characteristics of proof of dispatch via registered or certified mail or
20 commercial delivery service, which are (1) objective proof of the date of deposit
21 with the parcel delivery service provider and (2) a parcel tracking number
22 identifying the parcel containing the NITA.

1 We have historically strictly enforced the specific wording of the NITA
2 filing rules. *See Chapman and Chapman LLC v. Coos County*, 73 Or LUBA 123
3 (2016) (dismissing the appeal where the petitioner sent the NITA via commercial
4 delivery and LUBA did not receive the NITA before the filing deadline); *Canfield*
5 *v. Lane County*, 59 Or LUBA 505 (2009) (same); *Sandlin v. City of Wilsonville*,
6 LUBA No 2021-119 (Feb 15, 2022) (dismissing the appeal where the petitioner
7 mailed the NITA via first-class mail and LUBA did not receive the NITA before
8 the filing deadline).

9 In late 2022, we adopted OAR 661-010-0015(1)(b)(C), which provides
10 that a NITA will be deemed filed on the date of dispatch or deposit with a
11 commercial delivery service. Permanent Administrative Order 3-2022 (Aug 1,
12 2022). This rule expanded the manners in which a NITA may be deemed filed
13 prior to actual delivery. The 2022 rule amendments expanded NITA filing
14 methods to allow NITA filing by means other than certified or registered mail to
15 relate back to the deposit or dispatch date, so long the petitioner obtains objective
16 proof of the NITA parcel deposit or dispatch date. That proof includes a receipt
17 showing the date of deposit or online tracking showing the date of dispatch.

18 As explained above, the NITA filing deadline is strictly enforced and
19 failure to timely file a NITA is not a technical violation. OAR 661-010-
20 0015(1)(a); OAR 661-010-0005. Our rules require that, in order for the petitioner
21 to rely on the deposit or dispatch date instead of the delivery date, petitioner must
22 have objective proof that the NITA parcel was deposited or dispatched before the

1 NITA deadline passed. We agree with petitioner that their objective proof of the
2 NITA parcel deposit date, including a receipt showing the deposit date, tracking
3 information showing the dispatch date, and scheduled delivery date, meets the
4 substance of the NITA filing rule. Petitioner obtained objective proof of mailing
5 before the NITA filing deadline and provided that proof in response to the city's
6 motion to dismiss. Therefore, we conclude that petitioner's NITA was timely
7 filed on March 31, 2025. The fact that petitioner's United States Postal Service
8 mailing method is not specified in our rules is a technical violation.

9 The city's motion to dismiss is denied.

10 **THE RECORD**

11 The city shall transmit and serve the record by August 26, 2025.

12 Dated this 5th day of August 2025.
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H. M. Zamudio
18 Board Chair