

IN THE COURT OF APPEALS OF THE STATE OF OREGON

BEVERLY RUSHING, PATRICK SCHWAB, and ROBERT JOHNSON,
Petitioners,

and

SUSAN SCHWAB, JOHN DASHNEY, CLAUDIA L. HOWELLS, CARLENE BENSON,
CURT FISHER, and JOHN CHRISTIANSON,
Intervenors-Petitioners below,

v.

CITY OF SALEM and SALEM HOSPITAL,
Respondents.

Land Use Board of Appeals no. 2014079

Court of Appeals No. A158538

ORDER OF DISMISSAL

Respondents, respectively, have moved to dismiss this judicial review on the ground that petitioners failed timely to serve each of the respondents with a copy of the petition for judicial review. Petitioners acknowledge that they hand-delivered a copy of the petition for judicial review on each of the respondents on the 22nd day after the date of the Land Use Board of Appeals (LUBA) decision.

Petitioners argue that because they are proceeding without counsel, none of them has legal training and it is difficult to prepare a petition for judicial review, and two of the petitioners are blind, the court should excuse the untimely filing. They also suggest that the court may be obligated to accommodate the sight-impairment of two of the petitioners (presumably referring to the Americans With Disability Act) by allowing the judicial review to proceed notwithstanding the untimely service.

ORS 197.850(3)(a) provides that a petition for judicial review of a LUBA decision must be served by first class, registered, or certified mail within 21 days of the date of the LUBA decision. Here, petitioners did not serve respondents by first class, registered, or certified mail, nor did they serve respondents within 21 days of the date of the LUBA decision. ORS 197.850(3)(b) provides that timely service on persons identified in the petition for judicial review as adverse parties on judicial review is jurisdictional and that the court may not extend the time nor excuse untimely service.¹ *Wal-Mart Stores, Inc. v. City of Central Point*, 341 Or 393, 144 P3d 914 (2006) (upholding provisions of ORS 197.850(3)).

¹ The petition for judicial review identifies the City of Salem and the Salem Hospital as adverse parties on judicial review.

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Although the court is sympathetic to the difficulties self-represented persons encounter attempting to comply with the legal requirements for filing and serving a petition for judicial review, and especially sympathetic to persons who labor under a disability, the court simply lacks authority to excuse untimely service. Nor is the court persuaded that any law requires the court to ignore a service requirement imposed by, and made jurisdictional by, the legislature as an accommodation to disabled persons.

The motions to dismiss are granted.

Judicial review dismissed.

 1/23/2015 11:59:07 AM
JAMES W. NASS
APPELLATE COMMISSIONER

DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Prevailing party: Respondent

Costs: No costs allowed

c: Daniel B Atchison
Keith J Bauer
Beverly Rushing
Patrick Schwab
Robert Johnson

ej

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