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**2. Response to First Assignment of Error (Lovinger)**

**The City did not err in failing to provide Intervenor-Petitioner with written notice informing her of her right to participate**

Intervenor-Petitioner argues that the City erred in first providing notice of the remand hearing indicating that only Trautman and the applicant would be entitled to provide testimony, and then subsequently, without sending additional notice, accepting evidence from other individuals. Intervenor-Petitioner asserts that she was not aware that she could participate because the notice limited participation only to Trautman and the applicant. She alleges that her substantial rights were prejudiced because,

1 had she known that she was entitled to testify, she would have provided  
2 testimony.

3 In an abundance of caution, the City mailed notice not only to  
4 Trautman and the applicant, but to all of the participants at any level of the  
5 initial local proceedings. The City was not required to send notice that  
6 widely, and was not required to send notice to Intervenor-Petitioner. First,  
7 she participated only at the hearings official level in the initial proceedings.  
8 She did not participate before the Planning Commission in the initial local  
9 appeal, and she did not appeal or intervene at LUBA, even though her sworn  
10 statement indicates that she was interested and did follow the procedures  
11 through the local process, LUBA, and the Court of Appeals. She did not  
12 attend the public hearing on remand. Second, Intervenor-Petitioner never  
13 provided the City with her mailing address. Her one-page testimony  
14 presented to the Hearings Official was submitted via e-mail and did not  
15 include a mailing address. Rec. I 1219. A local government cannot be  
16 required to provide notice to the correct address if the correct address has not  
17 been provided. *See Norway Development v. Clackamas County*, 40 Or  
18 LUBA 276, 280-81 (2001). Presumably, when the City mailed Intervenor-  
19 Petitioner the notice of the remand hearing, Rec. II 718, it was after doing  
20 some time-consuming research to locate her mailing address so that notice  
21 could be sent to her.

22 The fact that the City accepted testimony from some individuals does  
23 not mean that it was obligated to provide notice to Intervenor-Petitioner  
24 alerting her to the fact that she could testify. The City reopened the record  
25 in a "previously announced or noticed continuation of an evidentiary  
26 proceeding" and then accepted the letters of some individuals, not including

1 Intervenor-Petitioner, who sought the opportunity. *Gardener v. Marion*  
2 *County*, 56 Or LUBA 583, 588-89 (2008). Under *Gardener*, that is all that  
3 was required.

4 To the extent the City erred in the remand proceeding, such error was  
5 in accepting evidence from Conte and individuals other than Trautman when  
6 the notice clearly stated that participation would be limited to Trautman and  
7 the applicant. Even if the City's choice to accept testimony from Conte and  
8 others was an error, Intervenor-Petitioner's substantial rights were not  
9 prejudiced by any such error. Finally, to the extent anyone's substantial  
10 rights were prejudiced by that possible procedural error, it was the  
11 applicant's. However, the applicant has not asserted any error or prejudice  
12 resulting from any such alleged error.

13 Accordingly, Intervenor-Petitioner's assignment of error should be  
14 denied.