1	BEFORE THE LAND USE BOARD OF APPEALS
2	OF THE STATE OF OREGON
3 4 5 6 7	BOB RICE, JANINE RICE, JASON BROWN, MAJUDDIN JAFFER, PAT JAFFER, JACK SLOAN and JEAN ASTRINSKY, Petitioners,
8 9	vs.
10	
11 12	CITY OF MONMOUTH,
13	Respondent,
14	and
15	
16	BENSON SAINSBURY,
17 18	Intervenor-Respondent.
19	LUBA No. 2006-137
20	ORDER
21	MOTION TO INTERVENE
22	Benson Sainsbury, the applicant below, moves to intervene on the side of respondent
23	There is no opposition to the motion, and it is allowed.
24	MOTION TO DISMISS
25	In Jaffer v. City of Monmouth, 51 Or LUBA 633 (2006), we remanded a city decision
26	that granted comprehensive plan map and zoning map amendments for two tax lots. On
27	remand, the city allowed petitioner Brown to submit comments regarding intervenor's
28	transportation impact analysis, which was submitted in support of the disputed
29	comprehensive plan and zoning map amendments. The city also allowed intervenor to
30	submit written comments to rebut petitioner Brown's comments. The city did not allow any
31	other petitioner to submit written comments or rebuttal. Following receipt of petitioner
32	Brown's comments and intervenor's rebuttal comments, the city again approved the disputed
33	comprehensive plan and zoning map amendments. This appeal of the city's decision on
34	remand followed.

On August 3, 2006, intervenor moved to dismiss all petitioners in this appeal, with the exception of petitioner Brown. According to intervenor, only petitioner Brown appeared during the local proceedings on remand and therefore only petitioner Brown satisfies the ORS 197.830(2) requirement that a petitioner at LUBA must have appeared during the local proceedings that led to the appealed decision.<sup>1</sup>

Intervenor's motion to dismiss is denied. While we need not and do not determine here whether the city erred by refusing to allow petitioners other than petitioner Brown to appear below, that refusal obviates the ORS 197.830(2) appearance requirement for those petitioners who the city prevented from making an appearance. *See Hugo v. Columbia County*, 34 Or LUBA 577, 582, *aff'd* 157 Or App 1, 967 P2d 895 (1998) ("the appearance requirement is obviated where the local government fails to abide by the statutorily mandated procedures in a way that precludes petitioner's ability to appear"). In addition, the city's proceedings on remand that led to the challenged decision are a continuation of the city proceedings that led to the city's first decision that we remanded in *Jaffer*. Petitioners' appearance in the local proceedings that led to our decision in *Jaffer*, also constitute an appearance in this continuation of those local proceedings. *DLCD v. Klamath County*, 25 Or LUBA 355, 357-61 (1993). Intervenor's argument that petitioners other than petitioner Brown did not make the appearance that is required to participate as a petitioner in this appeal is without merit.

The motion to dismiss is denied.

<sup>&</sup>lt;sup>1</sup> As relevant, ORS 197.830(2) provides:

<sup>&</sup>quot;[A] person may petition [LUBA] for review of a land use decision or limited land use decision if the person:

<sup>&</sup>quot;(a) Filed a notice of intent to appeal the decision as provided in subsection (1) of this section; and

<sup>&</sup>quot;(b) Appeared before the local government, special district or state agency orally or in writing."

## BRIEFING SCHEDULE

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2	In accordance with OAR 661-010-0067, the deadline for filing the petition(s) for
3	review in this appeal is extended from September 8, 2006 to September 19, 2006. The
4	deadline for filing respondent's and intervenor-respondent's briefs is extended to October 10,
5	2006. The deadline for LUBA to issue its final opinion and order is extended to November
6	14, 2006.
7 8 9 10 11 12	Dated this 29 <sup>th</sup> day of August, 2006.
4	Michael A. Holstun
5	Board Member