

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3 CENTURY PROPERTIES, LLC,

4 *Petitioner,*

5 vs.

6 CITY OF CORVALLIS,

7 *Respondent.*

8 LUBA Nos. 2005-004, 2005-005, 2005-006,

9 2005-007, 2005-008, 2005-009, 2005-010,

10 2005-011, 2005-012, 2005-013, 2005-014,

11 2005-015, 2005-016 and 2005-017

12 FINAL OPINION

13 AND ORDER

14 Appeal from City of Corvallis.

15 Bill Kloos, Eugene, represented petitioner.

16 James K. Brewer, Deputy City Attorney, Corvallis, represented respondent.

17 HOLSTUN, Board Member; DAVIES, Board Chair; BASSHAM, Board Member,
18 participated in the decision.

19 DISMISSED

20 04/07/2006

21 You are entitled to judicial review of this Order. Judicial review is governed by the
22 provisions of ORS 197.850.

INTRODUCTION

This consolidated appeal concerns 14 city ordinances that were adopted by the city to comply with Land Conservation and Development Commission (LCDC) periodic review work tasks pursuant to ORS 197.633. The city earlier moved to dismiss this appeal, arguing that all but one of the decisions were not final and that LCDC had exclusive jurisdiction to review the other ordinance under ORS 197.644(2). In an August 3, 2005 order, we denied that motion to dismiss. *Century Properties, LLC v. City of Corvallis*, 50 Or LUBA 691 (2005). After LCDC completed its periodic review of the disputed ordinances, the city filed a consolidated record. After record objections were resolved, the record was settled on November 22, 2005. On December 7, 2005, the city moved to dismiss this appeal for a second time, alleging that petitioner does not have standing to bring these appeals. The parties also moved to suspend the briefing schedule until petitioner had time to respond to the motion to dismiss and the Board resolved the motion to dismiss. We do so now.

MOTION TO DISMISS

A. ORS 197.620(1) and 197.830(2)

The city’s motion to dismiss relies on ORS 197.620(1) and 197.830(2), which establish differently worded requirements for standing to appeal land use decisions to LUBA. Those statutes are set out below:

“Notwithstanding the requirements of ORS 197.830(2), persons who participated either orally or in writing in the local government proceedings leading to the adoption of an amendment to an acknowledged comprehensive plan or land use regulation or a new land use regulation may appeal the decision to [LUBA] under ORS 197.830 to 197.845. A decision to not adopt a legislative amendment or a new land use regulation is not appealable except where the amendment is necessary to address the requirements of a new or amended goal, rule or statute.” ORS 197.620(1) (emphases added).¹

¹ Although not directly applicable in this appeal, ORS 197.620(2) waives the standing requirements of ORS 197.830(2) in cases where the enacting body’s notice does not reasonably describe its final action:

1 “*Except as provided in ORS 197.620 (1) and (2), a person may petition*
2 *[LUBA] for review of a land use decision or limited land use decision if the*
3 *person:*

4 “(a) Filed a notice of intent to appeal the decision as provided in subsection
5 (1) of this section; and

6 “(b) *Appeared* before the local government, special district or state agency
7 orally or in writing.” ORS 197.830(2) (emphases added).

8 Simply stated, a person wishing to appeal to LUBA under ORS 197.620(1) generally must
9 have “participated” in the local proceedings; a person wishing to appeal to LUBA under ORS
10 197.820(2) generally must have “appeared” during the local proceedings.²

11 During the local proceedings, petitioner submitted a one-page letter, dated November
12 4, 2004. The substance of that letter is set out in two sentences:

13 “Please accept this letter as an appearance by my client, Century Properties
14 LLC, in each of these proceedings, including the proceeding related to any
15 ordinance or order that emerges from these proceedings.

16 “I would also like to be put on the notice list for any notice of adoption of any
17 ordinance, resolution or order that results from these proceedings, as well as
18 any individual notices of further related proceedings that may be sent by the
19 City.” Record 917.

20 Petitioner submitted no additional written or oral testimony, beyond the November 4, 2004
21 letter quoted above.

22 The decisions that are the subject of these appeals adopt “amendment[s] to an
23 acknowledged comprehensive plan or land use regulation or a new land use regulation”, and
24 therefore ORS 197.620(1) applies, and ORS 197.830(2) does not apply. According to the

“Notwithstanding the requirements of ORS 197.830 (2), the Director of the Department of Land Conservation and Development or any other person may file an appeal of the local government’s decision under ORS 197.830 to 197.845, if an amendment to an acknowledged comprehensive plan or land use regulation or a new land use regulation differs from the proposal submitted under ORS 197.610 to such a degree that the notice under ORS 197.610 did not reasonably describe the nature of the local government final action.”

² We say “generally,” because there are exceptions to both the participation and appearance requirements. See n 1 and ORS 197.830(3) and (4).

1 city, to have standing to bring this appeal it is not enough that petitioner may have
2 “[a]ppeared before the [city],” as ORS 197.830(2) requires. The city argues that petitioner
3 must have “participated either orally or in writing in the local government proceedings” that
4 led to the disputed decisions, as ORS 197.620(1) requires. We understand the city to
5 concede that petitioners “appeared” during the local proceedings through the November 4,
6 2004 letter. However, the city argues that *appearance* was not sufficient to establish that
7 petitioner “participated,” as ORS 197.620(1) requires.

8 **B. Prior LUBA Decisions**

9 LUBA decisions have recognized some clear differences between ORS 197.620(1)
10 and ORS 197.830(2). *ODOT v. Klamath County*, 25 Or LUBA 761, 763-64 (1993) (a
11 decision not to adopt a legislative amendment or a new land use regulation is generally not
12 appealable under ORS 197.620(1)); *Flowers v. Klamath County*, 17 Or LUBA 761, 777 n 15,
13 *rev’d* 98 Or App 384, 780 P2d 227 (1989) (ORS 197.620(2) allows LUBA appeal
14 notwithstanding a party’s failure to participate in certain circumstances). *See* n 1. However,
15 LUBA has not previously identified any difference between the meaning of the word
16 “participated” in ORS 197.620(1) and the word “appeared” in ORS 197.830(2). In fact,
17 some of our decisions seem to use the terms interchangeably. *Northwest Aggregates Co. v.*
18 *City of Scappoose*, 38 Or LUBA 291, 306 (2000) (“ORS 197.620(2) allows DLCD or any
19 other person to appeal the local government’s decision to LUBA, notwithstanding lack of
20 appearance before the local government, if the adopted amendment ‘differs from the proposal
21 submitted under ORS 197.610 to such a degree that the notice under ORS 197.610 did not
22 reasonably describe the nature of the local government final action.’”); *OTCNA v. City of*
23 *Cornelius*, 38 Or LUBA 921, 926-27 n 8 (2000) (“As the city notes, both ORS 197.830(2)(b)
24 and ORS 197.620(1) impose appearance requirements. * * * ORS 197.830(2) and ORS
25 197.620(1) cross-reference each other, and purport to allow standing to appeal to persons
26 who participate in the proceedings below * * *.”); *DLCD v. Coos County*, 24 Or LUBA 137,

1 138 (1992) (“ORS 197.620 authorizes any ‘person’ who appeared during the proceedings
2 below to seek this Board’s review of a land use decision.”).

3 As petitioner recognizes, because the meaning of the terms “participated” and
4 “appeared” was not at issue in any of our prior decisions that have used the terms
5 interchangeably, those cases provide little support for petitioner’s view that the words have
6 the same meaning.

7 **C. Text and Context**

8 Whether the word “participated” in ORS 197.620(1) and the word “appeared” in ORS
9 197.830(2) have different meanings is a matter of statutory construction. Accordingly, we
10 examine the text of the statute in context and, if necessary, other aids to construction to
11 determine the meaning that the legislature most likely intended for those words. *PGE v.*
12 *Bureau of Labor and Industries*, 317 Or 606, 610-12, 859 P2d 1143 (1993).

13 **1. Use of Different Terms**

14 The legislature’s use of different words in related statutes to describe the activity or
15 actions that are required to achieve standing is at least some indication that the legislature
16 intended to impose different standing requirements. *See State v. Guzek*, 322 Or 245, 265,
17 906 P2d 272 (1995) (where the legislature uses different terms in related statutes, the court
18 infers that it intended different meanings). However, determining what those different
19 meanings might be is problematic because the legislature did not provide definitions of
20 “participated” or “appeared.” Neither has LCDC adopted rules that distinguish between
21 those terms.

22 **2. Dictionary Definitions**

23 The commonly understood meanings of the words “participated” and “appeared”
24 suggest that more activity is required to participate than to appear:

25 “appear * * * 2: to come formally before an authoritative body * * * to
26 present oneself formally as plaintiff, defendant, or counsel[.]” Webster’s
27 Third New Intern’l Dictionary, 103 (unabridged ed 1981)

1 “participate * * * 1: PARTAKE * * * 2a: to take part in something (as an
2 enterprise or activity) usu. in common with others[.]” Webster’s Third New
3 Intern’l Dictionary, 1646 (unabridged ed 1981).

4 However, neither definition provides much assistance in understanding what more, if
5 anything, a person must do beyond “present[ing] oneself formally” to a land use decision
6 making body to also “partake or take part” in a local land use proceeding. Stated differently,
7 under the above quoted definitions, what is required to “partake” or “take part” that is absent
8 when one merely “present[s] oneself” to a decision maker in a plan or land use regulation
9 adoption or amendment proceeding? To answer that question, we turn to the statutory
10 history of ORS 197.620(1) and ORS 197.830(2).

11 **3. Oregon Laws 1979, chapter 772, section 4(2) and (3)**

12 The language now codified at ORS 197.830(2) can be traced back to the legislation
13 that created the Land Use Board of Appeals. Or Laws 1979, ch 772. Oregon Laws 1979,
14 chapter 772, section 4 set out separate standing requirements for appealing legislative and
15 quasi-judicial land use decisions to LUBA.³ To have standing to appeal a *legislative* land
16 use decision to LUBA under Oregon Laws 1979, chapter 772, section 4(2), a person was
17 required to (1) have filed a timely notice of intent to appeal and (2) be “adversely affected”

³ As relevant, Oregon Laws 1979, chapter 772, section 4 provided:

“(2) Except as provided in subsection (3) of this section, any person whose interests are adversely affected or who is aggrieved by a land use decision and who has filed a notice of intent to appeal * * * may petition the board for review of that decision or may, within a reasonable time after a petition for review of that decision has been filed with the board, intervene and be made a party to any review proceeding pending before the board.

“(3) Any person who has filed a notice of intent to appeal * * * may petition the board for review of a quasi-judicial land use decision if the person:

“(a) Appeared before the city, county or special district governing body or state agency orally or in writing; and

“(b) Was a person entitled as of right to notice and hearing prior to the decision to be reviewed or was a person whose interests are adversely affected or who was aggrieved by the decision.”

1 or “aggrieved” by the legislative land use decision. To have standing to appeal a *quasi-*
2 *judicial* land use decision to LUBA under Oregon Laws 1979, chapter 772, section 4(3), a
3 person was required to (1) have filed a timely notice of intent to appeal, (2) have “appeared”
4 before the decision maker, and (3) be legally entitled to “notice and hearing” or be
5 “adversely affected” or be “aggrieved” by the quasi-judicial land use decision.

6 The terms “appeared,” “aggrieved,” and “adversely affected” were not defined by
7 Oregon Laws 1979, chapter 772. Clarification regarding the distinction between the
8 “aggrieved” and “adversely affected” standing criteria would come later in *Jefferson Landfill*
9 *Comm. v. Marion Co.*, 297 Or 280, 686 P2d 310 (1984) and *Benton County v. Friends of*
10 *Benton County*, 294 Or 79, 653 P2d 1249 (1982). For present purposes it suffices to note
11 that, unlike ORS 197.830(2) today, which only requires that a petitioner at LUBA have
12 “appeared” during the local proceedings, Oregon Laws 1979, chapter 772, section 4(2) and
13 (3) required that a petitioner be “aggrieved,” or “adversely affected,” or, in the case of a
14 quasi-judicial decision, that the petitioner was entitled by right to notice of the decision.

15 **4. Oregon Laws 1981, chapter 748, section 5a**

16 The language now codified at ORS 197.620(1) was first enacted in 1981. Oregon
17 Laws 1981, chapter 748, sections 3-6, set out the first post-acknowledgment statutory
18 procedures for amending acknowledged comprehensive plans and land use regulations or
19 adopting new land use regulations (PAPAs), and procedures for appealing such decisions.⁴
20 That adoption and appeal procedure worked somewhat differently than the adoption and
21 appeal procedures for PAPAs set out in ORS 197.610 to 197.625 today. The most significant
22 difference in the original procedure was that following notice of a proposed PAPA, and a
23 final local decision on a PAPA, appeals of such decisions based on statewide planning goal

⁴ This 1981 legislation also adopted amendments to the Oregon Laws 1979, chapter 772, section 4(2) and (3) standing requirements for appealing to LUBA, but those changes have no bearing on the question presented in this appeal.

1 issues were to the Director of the Department of Land Conservation and Development
2 (DLCD) and the Land Conservation and Development Commission (LCDC) while an appeal
3 of such PAPA decisions based on non-goal issues was to LUBA. Oregon Laws 1981,
4 chapter 748, section 5a set out the standing requirements to appeal PAPA decisions based on
5 allegations that the PAPA was not consistent with statewide planning goals.⁵

⁵ As relevant, Oregon Laws 1981, chapter 748, section 5a provided:

“(1)(a) Persons who participated either orally or in writing in the local government proceedings leading to the adoption of [a PAPA] may mail or otherwise submit written objections to the director and the local government not later than 30 days after the date of the final decision by the local government.

“(b) The director may permit persons to mail or otherwise submit written objections on grounds that the director raised in the local government proceedings leading to the adoption of [a PAPA]. The objections must be mailed or otherwise submitted to the director and the local government not later than 30 days after the date of the final decision by the local government. However, the director shall not allow a filing under this paragraph unless the director finds that the person filing the objection:

“(A) Was adversely affected or aggrieved by the final decision; and

“(B) Has demonstrated good cause why that person did not participate either orally or in writing in the local government proceedings leading to the final adoption.

“* * * * *

“(2) Not later than 30 days after the final decision by the local government to adopt [a PAPA], the director may file an appeal of the [PAPA] with the commission if the department participated either orally or in writing in the local government proceedings leading to the final decision.

“(3) The director may file an appeal of the local government’s decision with the commission and any person may file an objection to that decision with the director if [a PAPA] differs from the proposal submitted under section 4 of this 1981 Act to such a degree that the notice under section 4 of this 1981 Act did not reasonably describe the nature of the local government final action.

“(4)(a) Except as provided in subsection (3) of this section, neither the director nor a person appealing by filing an objection may appeal on grounds which that party did not raise in the local government proceedings leading to the final adoption.

“(b) An objection under subsection 1 of this section or an appeal under subsection (2) of this section shall specify the alleged grounds of noncompliance of the [PAPA] with the goals.”

1 Summarizing Oregon Laws 1981, chapter 748, section 5a, subsection 1(a) states a
2 general rule that persons who wish to file objections to a PAPA with the director of DLCD
3 must have “participated” in the local proceedings. Subsection 1(b) states an exception to that
4 general rule, which allows a person who did not participate to file an objection, but only if
5 the person (1) was “adversely affected” or “aggrieved” by the decision and (2) had good
6 cause for not participating. In that circumstance, subsection 1(b) allowed the person to
7 object on the same grounds that were asserted locally by the director of DLCD. Subsection
8 (2) states a second general rule that the director may appeal a PAPA to the commission, but
9 only if the director “participated” during local proceedings.⁶ Subsection 3 states an
10 exception to the general participation rules in subsection (1)(a) and (2). Under the subsection
11 (3) exception, the requirement that persons or the director must have participated was
12 waived, if the local government’s notice of the proposed PAPA did not reasonably describe
13 the decision. Finally, except as provided in subsection (3), subsection (4) requires that the
14 grounds for filing objections with the director and filing appeals of PAPAs to LCDC must
15 have been raised during the local proceedings.

16 When those subsections of Oregon Laws 1981, chapter 748, section 5a are viewed
17 together, it is reasonably clear that the requirement in subsection 1(a) of Oregon Laws 1981,
18 chapter 748, section 5a that a person must have “participated” during the local proceedings
19 required that the person do more than make a bare, neutral appearance. To participate, a

⁶ Subsection (2) of Oregon Laws 1981, chapter 748, section 4 specified what DLCD must do to participate in local government proceedings:

“When [DLCD] participates in a local government proceeding, at least 15 days before the final hearing on the proposed [PAPA], it shall notify the local government of:

“(a) Any concerns it has concerning the proposal; and

“(b) Advisory recommendations on actions it considers necessary to address the concerns, including, but not limited to, suggesting corrections to achieve compliance with the goals.”

1 person was required to allege “grounds of noncompliance with the goal.” If the local
2 government does not adequately respond to the alleged grounds of noncompliance, that
3 failure by the local government would provide a basis for an objection under subsection (1)
4 or an appeal to LCDC under subsection (4). In other words, a person who took a position on
5 the merits concerning whether a proposed PAPA complied with the statewide planning goals
6 thereby “participated” in the local proceedings, within the meaning of subsection (1)(a) of
7 Oregon Laws 1981, chapter 748, section 5a. Conversely, a person who made a written or
8 oral appearance before the local government in a PAPA proceedings without taking a
9 position on the merits, would not have “participated” in the local proceedings, within the
10 meaning of subsection (1)(a) of Oregon Laws 1981, chapter 748, section 5a. A bare neutral
11 appearance, which suffices for standing to appeal to LUBA today under ORS 197.830(2),
12 would not have been sufficient to constitute “participat[ion]” under subsection (1)(a) of
13 Oregon Laws 1981, chapter 748, section 5a. The critical question that we must resolve in
14 this appeal is whether there is any reason to believe the term “participated” in ORS
15 197.620(1) means something different today than it did when that standing requirement was
16 first adopted in 1981. To answer that question, we consider subsequent legislative
17 amendments to ORS 197.620(1) and the legislative changes that have led to ORS 197.830(2).

18 **5 Oregon Laws 1983, chapter 827**

19 In 1983, ORS 197.620(1) was amended to provide persons with a right of direct
20 appeal to LUBA to challenge PAPA decisions. Or Laws 1983, ch 827, § 8. The initial
21 procedure in Oregon Laws 1981, chapter 748, section 5a that provided a right to file
22 objections with the director of DLCD concerning proposed PAPAs was eliminated. *Id.*
23 However, while LUBA replaced the director and LCDC as the appellate forum for appeals of
24 PAPAs, the ORS 197.620(1) standing requirement that a person filing such an appeal must
25 have “participated” during the local proceedings was retained. Thus, while the forum for
26 persons to appeal PAPAs changed from DLCD and LCDC to the Land Use Board of

1 Appeals, the previously existing standing requirement that an appellant must have
2 “participated” locally was retained in place of the differently worded LUBA standing
3 requirements that would otherwise have applied.

4 Oregon Laws 1983, chapter 827 also adopted, with immaterial revisions, the LUBA
5 standing requirements that were first adopted by Oregon Laws 1979, chapter 772, section 4.
6 Or Laws 1983, ch 827, § 31. It was this 1983 version of LUBA’s general standing
7 requirements that was first codified at ORS 197.830.⁷

⁷ The relevant language of sections 8 and 31 of Oregon Laws 1983, chapter 827 is set out below. The bold language was added by Oregon Laws 1983, chapter 827; the bracketed and italicized language was deleted.

“**SECTION 8.** ORS 197.620 is amended to read:

“197.620. (1)[*a*] **Notwithstanding the requirements of subsections (2) and (3) of section 31 of this 1983 Act**, persons who participated either orally or in writing in the local government proceedings leading to the adoption of an amendment to an acknowledged comprehensive plan or land use regulation or a new land use regulation may [*mail or otherwise submit written objections to the director and the local government not later than 30 days after the date of the final decision by the local government*] **appeal the decision to the Land Use Board of Appeals under sections 31 to 34 of this 1983 Act. A decision not to adopt a legislative amendment or a new land use regulation is not appealable.**”

“**SECTION 31.** (1) Review of land use decisions under sections 31 to 34 of this 1983 Act shall be commenced by filing a notice of intent to appeal with the Land Use Board of Appeals.

“(2) Except as provided in ORS 197.620(1), a person may petition the board for review of a legislative land use decision if the person:

“(a) Filed a notice of intent to appeal the decision as provided in subsection (1) of this section; and

“(b) Is aggrieved or has interests adversely affected by the decision.

“(3) Except as provided in ORS 197.620(1), a person may petition the board for review of a quasi-judicial land use decision if the person:

“(a) Filed a notice of intent to appeal the decision as provided in subsection (1) of this section;

“(b) Appeared before the local government, special district or state agency orally or in writing; and

“(c) Meets one of the following criteria:

1 We see nothing in this 1983 legislation that suggests the legislature intended to
2 change the original 1981 standing requirement that a person wishing to challenge a PAPA
3 must have “participated.” All that the 1983 legislation did was change the forum for such
4 appeals.

5 **6. Oregon Laws 1989, chapter 761, section 12**

6 The “participated” standing requirement for appealing PAPAs to LUBA and the
7 separate, general standing requirements for appealing other legislative and quasi-judicial land
8 use decisions to LUBA remained in place without material change until 1989. In that year,
9 the different standing requirements for “legislative” land use decisions and “quasi-judicial”
10 land use decisions were replaced with a single standing requirement. Under the 1989
11 amendment, a person seeking to appeal a legislative land use decision no longer was required
12 to demonstrate aggrievement or adverse affect. Under the 1989 amendment, a person
13 seeking to appeal a quasi-judicial land use decision no longer had to demonstrate
14 aggrievement, adverse affect or entitlement to notice. Those prior standing requirements
15 were replaced with a single requirement that the person must have “appeared” during the
16 local proceedings. Or Laws 1989, ch 761, § 12.⁸ ORS 197.620(1) and 197.830(2) have not

“(A) Was entitled as of right to notice and hearing prior to the decision
to be reviewed; or

“(B) Is aggrieved or has interests adversely affected by the decision.”

⁸ Oregon Laws 1989, chapter 761, section 12 is set out below; the bold language was added to ORS 197.830 and the bracketed and italicized language was deleted:

“**SECTION 12.** ORS 197.830 is amended to read:

“ORS 197.830. (1) Review of land use decisions under ORS 197.830 to 197.845 shall be commenced by filing a notice of intent to appeal with the Land Use Board of Appeals.

“(2) Except as provided in ORS 197.620(1), **and (2)**, and a person may petition the board for review of a [*legislative*] land use decision if the person:

“(a) Filed a notice of intent to appeal the decision as provided in subsection (1) of this section; and

1 been amended since 1989. We set out the current versions of those statutes earlier in this
2 opinion and we set them out again below.

3 “*Notwithstanding the requirements of ORS 197.830(2), persons who*
4 *participated* either orally or in writing in the local government proceedings
5 leading to the adoption of an amendment to an acknowledged comprehensive
6 plan or land use regulation or a new land use regulation may appeal the
7 decision to [LUBA] under ORS 197.830 to 197.845. A decision to not adopt
8 a legislative amendment or a new land use regulation is not appealable except
9 where the amendment is necessary to address the requirements of a new or
10 amended goal, rule or statute.” ORS 197.620(1) (emphases added).

11 “*Except as provided in ORS 197.620 (1) and (2), a person may petition*
12 *[LUBA] for review of a land use decision or limited land use decision if the*
13 *person:*

14 “(a) Filed a notice of intent to appeal the decision as provided in subsection
15 (1) of this section; and

16 “(b) *Appeared* before the local government, special district or state agency
17 orally or in writing.” ORS 197.830(2) (emphases added).

18 Significantly, when the legislature amended ORS 197.830 in 1989 to impose a simple
19 “appearance” standing requirement, it did not extend that new standing requirement to
20 appeals of PAPA decisions. To the contrary, the retained cross-reference to ORS 197.620(1)
21 in ORS 197.830(2) and the retained cross-reference to ORS 197.830(2) in ORS 197.620(1)

“[(b) *Is aggrieved or has interests adversely affected by the decision.]*”

“[(3) *Except as provided in ORS 197.620(1), a person may petition the board for review of a quasi-judicial land use decision if the person:]*”

“[(a) *Filed a notice of intent to appeal the decision as provided in subsection (1) of this section;]*”

“(b) *Appeared* before the local government, special district or state agency orally or in writing. [*; and]*”

“[(c) *Meets one of the following criteria:]*”

“[(A) *Was entitled as of right to notice and hearing prior to the decision to be reviewed; or]*”

“[(B) *Is aggrieved or has interests adversely affected by the decision.]*”

1 makes it reasonably clear that while the legislature adopted a new, lower standing
2 requirement for appealing land use decisions to LUBA under ORS 197.830(2), the standing
3 requirement that a petitioner seeking to appeal a PAPA to LUBA must have “participated”
4 was retained.

5 **D. Conclusion**

6 Based on our review of the text, context and statutory history of ORS 197.620(1) and
7 ORS 197.830(2), we reject petitioner’s contention that the ORS 197.620(1) requirement that
8 a person must have “participated” is the same as the ORS 197.830(2) requirement that a
9 petitioner must have “appeared.” As we have already noted, the legislature’s choice of the
10 different words “participated” and “appeared” is at least some indication that the
11 requirements are not identical. When those terms are viewed in context and against the
12 statutory history of ORS 197.620(1) and 197.830(2) it is clear that the legislature did not
13 intend identical meanings. An oral or written statement of almost any kind will satisfy the
14 statutory requirement for an appearance. Petitioner’s November 4, 2004 letter is adequate to
15 constitute an appearance. However, for the reasons explained above, the ORS 197.620(1)
16 requirement that a petitioner at LUBA must have “participated” requires more than a mere
17 neutral appearance. Specifically, that appearance must include an assertion of a position on
18 the merits. Because petitioner’s November 4, 2004 letter does not include such an assertion
19 of a position on the merits, it is not sufficient to satisfy the ORS 197.620(1) requirement that
20 petitioner must have “participated” during the local proceedings to have standing to appeal to
21 LUBA. Because petitioner does not have standing to appeal under ORS 197.620(1), the
22 city’s motion to dismiss must be granted.

23 This appeal is dismissed.