

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

SIMON TRAUTMAN,  
*Petitioner,*

and

NENA LOVINGER,  
*Intervenor-Petitioner,*

vs.

CITY OF EUGENE,  
*Respondent,*

and

OAKLEIGH MEADOW  
CO-HOUSING, LLC,  
*Intervenor-Respondent.*

LUBA No. 2015-076

PAUL CONTE,  
*Petitioner,*

vs.

CITY OF EUGENE,  
*Respondent,*

and

OAKLEIGH MEADOW  
CO-HOUSING, LLC,  
*Intervenor-Respondent.*

2  
3 FINAL OPINION  
4 AND ORDER  
5

6 Appeal on remand from the Court of Appeals.  
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8 William K. Kabeiseman, Portland, represented petitioner Simon  
9 Trautman.  
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11 Paul Conte, Eugene, represented himself.  
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13 Nena Lovinger, Fall Creek, represented herself.  
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15 Anne C. Davies, Assistant City Attorney, Eugene, represented  
16 respondent.  
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18 Zack P. Mittge, Eugene, represented intervenor-respondent.  
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20 RYAN, Board Member; HOLSTUN, Board Chair; BASSHAM, Board  
21 Member, participated in the decision.  
22

23 REMANDED 01/31/2017  
24

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

1 Opinion by Ryan.

2 This matter is on remand from the Court of Appeals. *Trautman v. City of*  
3 *Eugene*, 280 Or App 752, 383 P3d 420 (2016). The challenged decision is a  
4 city decision approving a tentative planned unit development application for  
5 property located on Oakleigh Lane.

6 Intervenor-petitioner Lovinger's (Lovinger) first assignment of error to  
7 LUBA argued that the city committed a procedural error in failing to provide  
8 notice to Lovinger of a planning commission decision, made during an appeal  
9 hearing on an appeal of a hearings officer's decision, to reopen the evidentiary  
10 record and accept limited evidence and testimony on the issue of the width and  
11 safety of Oakleigh Lane.

12 We denied the assignment of error, and the Court of Appeals reversed  
13 that aspect of our decision. The court held:

14 "[T]he city failed to follow the procedure prescribed by EC  
15 9.7665(2) and ORS 197.763(3) and (7) to have notified Lovinger  
16 of the nature of the hearing that occurred and the opportunity  
17 available to her. \* \* \* Without notice of that opportunity, Lovinger  
18 suffered prejudice to her substantial right to participate.  
19 Accordingly, we reverse and remand in order that LUBA may  
20 instruct the city to provide notice of the opportunity of 'any  
21 person' to address the added evidence or testimony on the access  
22 safety issue for which the record was reopened." 280 Or App at  
23 765 (citations omitted).

24 In accordance with the Court of Appeals' decision, the city's decision is  
25 remanded in order for "the city to provide notice of the opportunity of 'any

- 1 person' to address the added evidence or testimony on the access safety issue
- 2 for which the record was reopened.”