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

CHARLES WOODS, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 GRANT COUNTY, )  
 )  
 Respondent. )

LUBA No. 98-197  
  
FINAL OPINION  
AND ORDER

Appeal from Grant County.

Charles Woods, John Day, filed the petition for review. Mark D. Shipman argued on behalf of petitioner.

Mark Tipperman, La Grande, filed the response brief and argued on behalf of respondent.

HOLSTUN, Board Chair; BASSHAM, Board Member, BRIGGS, Board Member participated in the decision.

AFFIRMED 07/27/99

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

1 Opinion by Holstun.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a county decision that revokes a zoning permit for a guest house.

4 **FACTS**

5 Petitioner owns two adjacent tax lots in Grant County—tax lot 211 and tax lot 216.<sup>1</sup>  
6 Petitioner's property is zoned Multiple Use Range Zone (MUR-160(320)) (hereafter MUR).  
7 Guesthouses are allowed in the MUR zone as accessory uses.<sup>2</sup> On September 18, 1997, the  
8 county approved petitioner's request for a zoning permit to site a guest house on tax lot 211.  
9 Record 39-40, 43-44. The zoning permit includes several conditions. As relevant, those  
10 conditions require that (1) the floor plan be amended to show a single bathroom, (2) the  
11 applicant obtain a positive site evaluation from the Department of Environmental Quality for  
12 a septic system, and (3) that the applicant obtain building, plumbing, and electrical permits  
13 from the "State Building Codes Division." Record 44. The record includes an amended site  
14 plan that shows a 984-square foot structure with a single bathroom and a wet bar. Record 48.

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<sup>1</sup>The record is unclear regarding the precise size and location of tax lots 211 and 216. It is also unclear to us whether tax lots 211 and 216 constitute a single parcel or are separate parcels. In one of petitioner's applications, tax lot 211 is described as containing 72 acres. Record 39. In another application tax lots 211 and 216 are described as containing 71 acres. Record 53. However, for purposes of this opinion, the precise size and location of tax lots 211 and 216, and whether those tax lots are separate parcels or a single parcel, does not matter.

<sup>2</sup>Grant County Land Development Code (GCLDC) 11.030(8) defines "Accessory Structure or Use" as follows:

"A structure or use that is incidental, consistent with, and subordinate to the primary structure or use on the same unit of land."

GCLDC 11.030(141) defines "Guest House" as follows:

"An accessory structure, site constructed and built to the following specifications: no plumbing for a sink except for a bathroom and a wetbar; no 220 wiring or natural gas pipes to an outlet other than a water heater, furnace, or heating system; no kitchen facilities, or laundry facilities; and limited to a maximum of 1,000 square feet. There may be only one guest house in addition to the main residence per legal lot. A floor plan shall accompany the application for a Guest House. \* \* \*"

1           The floor plan that petitioner later submitted to the Building Codes Division with his  
2 application for a building permit shows a much larger structure with three bedrooms and a  
3 kitchen. Record 47. Although petitioner's application for the building permit is not included  
4 in the record, it apparently sought approval to locate the dwelling on tax lot 216 rather than  
5 tax lot 211. The record includes documents related to petitioner's requests for approval for  
6 an on-site sewage disposal system. Record 34-36. These documents identify the property as  
7 tax lot 216 rather than tax lot 211.<sup>3</sup>

8           On July 29, 1998, the county planning director requested that the Building Codes  
9 Division confirm that the plans submitted with petitioner's building permit application are  
10 consistent with the plans approved by the county zoning permit. The Building Codes  
11 Division discovered that the structure under construction does not match either the plans  
12 approved by the zoning permit or the plans submitted with the building permit application.  
13 Record 37, 46. The dwelling being constructed on tax lot 216 apparently includes  
14 approximately 2,000 square feet.<sup>4</sup>

15           In a letter dated August 14, 1998, the planning director advised petitioner that the  
16 planning commission would hold a hearing on September 10, 1998, to consider violations  
17 regarding the structure that was being constructed on tax lot 216.<sup>5</sup> At the September 10,

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<sup>3</sup>The record also includes petitioner's application to the Building Codes Division for an electrical permit, but that application does not identify the property by tax lot number. Record 49.

<sup>4</sup>Petitioner's electrical permit application estimates that the structure includes 2,000 square feet.

<sup>5</sup>The text of the letter is as follows:

"The Grant County Planning Commission has directed me to notify you that a Public Hearing will be held September 10, 1998, at 3:00 p.m. to address possible violations of the County's Land Development Code relative to the structure being built on your property. It is identified as tax lot 216, located at T14S, R32S, Section 1 W.M. The hearing will be held in the Grant County School District Boardroom at 401 North Canyon Blvd., John Day, Oregon 97845.

"You are further notified that any further construction or development will be entirely at your own risk. If you have any questions, you may call the Planning Department \* \* \*." Record 50.

1 1998 hearing, petitioner maintained the zoning permit approval for the guest house on tax lot  
2 211 had been a mistake and that he had always intended to construct the dwelling on tax lot  
3 216. Petitioner conceded that the structure that was actually constructed on tax lot 216 was  
4 significantly larger than the guest house structure approved for tax lot 211. Petitioner's  
5 suggested solution was to reduce the size of his previously existing dwelling on tax lot 211  
6 and allow the newer, larger dwelling on tax lot 216 to remain as a "replacement dwelling."<sup>6</sup>  
7 The planning commission voted to revoke petitioner's zoning permit because the "conditions  
8 of approval have not been complied with." Record 25. The planning commission's decision  
9 was appealed to the Grant County Court, which affirmed the planning commission's decision  
10 in a written order dated October 28, 1998. According to respondent, the county has also filed  
11 an action in Grant County Circuit Court concerning the structure constructed on tax lot 216.

12 Summarizing, the critical facts for purposes of this appeal are as follows. The county  
13 issued petitioner a zoning permit, which authorized a 984-square foot guest house as an  
14 accessory use on tax lot 211, which is already improved with a residence. Based on this  
15 zoning permit approval, petitioner constructed a 2,000-square foot primary residence on  
16 adjoining tax lot 216. Following notice to petitioner, the county conducted a hearing and  
17 thereafter revoked the zoning permit. Petitioner appeals that permit revocation.

## 18 **JURISDICTION**

19 The initial zoning permit decision was rendered ministerially as a "Type I" decision,  
20 and both parties take the position that such ministerial decisions are not land use decisions.<sup>7</sup>

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<sup>6</sup>In fact, on August 17, 1998, petitioner submitted an application for approval for a replacement dwelling on tax lots 216 and 211. That application was returned to petitioner on the same day, with an explanation that the application could not be accepted until the planning commission resolved the "current issues involving this property[.]" Record 52.

<sup>7</sup>As defined by ORS 197.015(10)(a), land use decisions include decisions that apply "[a] land use regulation." ORS 197.015(10)(b)(A) excludes from the statutory definition of land use decisions those decisions "[w]hich [are] made under land use standards which do not require interpretation or the exercise of policy or legal judgment." GCLDC 22.030(C) provides that Type I decisions do "not require the exercise of judgment" and are "not considered [to be] a land use decision."

1 However, petitioner and respondent contend that the county's decision to revoke petitioner's  
2 zoning permit was a land use decision subject to our review.

3 Because the challenged decision applies the GCLDC, a land use regulation, it is a  
4 land use decision unless the exception provided by ORS 197.015(10)(b)(A) applies. See n 7.  
5 Both petitioner and respondent contend that the challenged decision involves the exercise of  
6 sufficient interpretation and judgment to make the exception provided by ORS  
7 197.015(10)(b)(A) inapplicable in this case. We agree.

## 8 **INTRODUCTION**

9 As explained more fully below, the primary difficulty presented in our review in this  
10 matter is the lack of clarity under the GCLDC concerning whether the county is authorized  
11 by the GCLDC to revoke zoning permits that are issued pursuant to Type I decisions and, if  
12 so, whether the notice of hearing and permit revocation procedures set out in the GCLDC  
13 apply. Petitioner's fourth assignment of error raises the first question—does the GCLDC  
14 authorize revocation of zoning permits that are issued as Type I decisions? We turn to that  
15 question first, before considering petitioner's arguments concerning the adequacy of the  
16 notice given and procedures followed by the county in this matter.

## 17 **FOURTH ASSIGNMENT OF ERROR**

18 In revoking petitioner's zoning permit, the planning commission and county court  
19 followed GCLDC 43.070.<sup>8</sup> Petitioner argues, and we agree, that GCLDC 43.070 is expressly

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<sup>8</sup>GCLDC 43.070 provides:

"Any permit granted pursuant to [GCLDC] 43.020 shall be subject to denial or revocation by the Planning Director or Hearings Officer if it is determined that the application includes or included any false or misleading information, or if the conditions of approval have not been complied with or are not being maintained.

"A. In order to consider revocation of an Administrative Permit the Planning Director or Hearings Officer shall hold a public hearing in order for the permit holder to show cause why the permit should not be revoked. No hearing may be convened without a minimum of 24 hours notice to the permit holder.

1 limited to permits "granted pursuant to [GCLDC] 43.020."<sup>9</sup> All parties agree that the zoning  
2 permit that was revoked by the decision challenged in this proceeding was issued through a  
3 ministerial Type I Review Procedure, not a Type II Review Procedure, which requires notice  
4 and an opportunity for appeal. Therefore, we agree with petitioner that the subject zoning  
5 permit is not a permit "granted pursuant to [GCLDC] 43.020" and, therefore, the process  
6 described in GCLDC 43.070 does not apply.

7 However, this does not necessarily mean that the county lacks authority to revoke the  
8 disputed zoning permit.<sup>10</sup> Respondent argues in its brief that the county has inherent  
9 authority to revoke ministerial permits, if the terms of such permits are violated.  
10 Respondent's Brief 12 (citing 51 Am Jur 2d, Licenses and Permits, § 58 (1970) and 83 Am  
11 Jur 2d, Zoning and Planning, §§ 821, 823, 826 (1992)); see also Eugene McQuillin, 9  
12 Municipal Corporations § 26.84 (3d ed 1995) ("[G]rounds for revocation [include]  
13 substantial violations of the terms and conditions on which a license or permit is issued[.]").

14 Although respondent may be correct that the county has inherent authority to revoke  
15 zoning permits for cause, we do not reach the issue because we believe the county has  
16 expressly reserved authority to revoke zoning permits. GCLDC 12.100(C) provides, in part:

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"B. If the Planning Director or Hearings Officer finds that the conditions of permit approval have not been complied with or are not being maintained, the Hearings Officer may grant a reasonable time for rectification, and if corrections are not made within that time, revocation of the permit shall become effective immediately after the time specified.

"C. All Administrative Permits shall be conducted in full compliance with any other County Ordinance, Code or requirement of State Law. Failure to conform to other applicable laws shall be grounds for revocation of the permit." (Emphasis added.)

<sup>9</sup>GCLDC 43.020 provides:

"An application for an Administrative Permit shall be processed as a Type II Review Procedure under Article 22, subject to the notice and appeal requirements of Articles 32 and 33."

<sup>10</sup>As explained in our discussion of the third, fifth and sixth assignments of error, it also does not mean the county erred by following the procedures set out in GCLDC 43.070, even if the county was not required to follow those procedures.

1 "In case a building or other structure is \* \* \* constructed \* \* \* in violation of  
2 [the GCLDC], \* \* \* the County may utilize all legal remedies available to it  
3 for enforcing [the GCLDC], and as an alternative to other remedies that are  
4 legally available for enforcing [the GCLDC], may institute injunction,  
5 mandamus, abatement, or other appropriate proceedings to prevent, enjoin  
6 \* \* \* abate or remove the unlawful location, construction, maintenance,  
7 repair, alteration or use." (Emphasis added.)

8 The challenged decision revoked petitioner's zoning permit because petitioner used that  
9 permit to construct a structure that violates conditions of approval that were included in the  
10 permit to ensure that the structure complied with GCLDC limitations on guest houses. We  
11 believe the county's decision to revoke petitioner's zoning permit is within the authority  
12 granted by GCLDC 12.100(C) to address violations of the GCLDC through "other  
13 appropriate proceedings."

14 We note that the language in GCLDC 12.100(C) is nearly identical to the language at  
15 issue in ODOT v. City of Mosier, 161 Or App 252, \_\_\_ P2d \_\_\_ (1999). In that case the  
16 Court of Appeals concluded that "other appropriate proceedings" language included in the  
17 City of Mosier's land use regulations authorized the city to initiate a quasi-judicial  
18 proceeding to consider whether an existing use qualified as a nonconforming use. The city's  
19 interpretation of its code language in ODOT v. City of Mosier was reviewed under the highly  
20 deferential standard required by ORS 197.829(1)(a)-(c), and Clark v. Jackson County, 313  
21 Or 508, 836 P2d 710 (1992). However, even without a city interpretation subject to that  
22 deferential standard of review, we believe a permit revocation proceeding is clearly within  
23 the express language of GCLDC 12.100(C) authorizing "other appropriate proceedings" to  
24 "prevent \* \* \* or remove [an] unlawful \* \* \* use."

25 The fourth assignment of error is denied. We next consider whether the county  
26 committed procedural errors in revoking petitioner's zoning permit which require reversal or  
27 remand of the challenged decision.

1 **THIRD, FIFTH AND SIXTH ASSIGNMENTS OF ERROR**

2 As we have already explained, the county relied on GCLDC 43.070 in revoking  
3 petitioner's zoning permit. Under these assignments of error, petitioner argues that the  
4 county failed to follow certain procedures required by GCLDC 43.070. Because we have  
5 already concluded that GCLDC 43.070 does not apply in this case, we have some question  
6 whether violations of GCLDC 43.070 could provide a basis for reversal or remand. In any  
7 event, for the reasons explained below, we agree with the county that petitioner's arguments  
8 that the county violated GCLDC 43.070 are without merit.

9 **A. Twenty-four Hour Notice (Third Assignment of Error)**

10 GCLDC 43.070(A) requires that a public hearing must be held before a permit may  
11 be revoked and that the permit holder must receive "a minimum of 24 hours notice" of that  
12 hearing. See n 8. In this case petitioner was sent written notice of the September 10, 1998  
13 planning commission hearing on August 14, 1998, and he received that written notice on  
14 August 15, 1998. As respondent correctly notes, petitioner received more than the required  
15 24 hours notice.

16 We reject petitioner's suggestion under this assignment of error that the August 14,  
17 1998 notice was not effective to comply with the GCLDC 43.070(A) requirement for "a  
18 minimum of 24 hours notice" until he was specifically told on September 10, 1998, that  
19 revocation of his permit was a possibility. We consider below petitioner's separate argument  
20 under the first and second assignments of error that the county failed to include all of the  
21 information required by GCLDC 32.040 in the August 14, 1998 notice and that the county's  
22 failure to do so denied him an adequate opportunity to prepare for the September 10, 1998  
23 hearing.

24 The third assignment of error is denied.

1           **B.       Planning Commission as Decision Maker (Fifth Assignment of Error)**

2           GCLDC 43.070 only references the planning director and hearings officer as decision  
3 makers in permit revocation provisions. Petitioner argues the challenged decision should  
4 have been made by the planning director and that the planning commission erred in making  
5 the decision.

6           As respondent correctly notes, while only the planning director and hearings officer  
7 are specifically mentioned in GCLDC 43.070, that code section does not state that only the  
8 planning director and hearings officer may revoke a permit. Moreover, GCLDC 12.090(E)  
9 and 31.020(A) provide adequate authority for the planning director to refer questions  
10 concerning petitioner's zoning permit to the planning commission for hearing, if such  
11 authority is required.<sup>11</sup>

12           The fifth assignment of error is denied.

13           **C.       Refusal of Time to Rectify (Sixth Assignment of Error)**

14           GCLDC 43.070(B) provides in part that "the Hearings Officer may grant a reasonable  
15 time for rectification, and if corrections are not made within that time, revocation of the  
16 permit shall become effective immediately after the time specified." Petitioner argues he  
17 offered to reduce the size of the house on tax lot 211 to 980 square feet; and, because  
18 \$61,000 has been spent constructing the house on tax lot 216, "reasonable time to rectify the  
19 permit prior to revocation may not be arbitrarily denied." Petition for Review 7.

20           It is not clear to us how reducing the size of the existing dwelling on tax lot 211  
21 would address the planning commission's point that an oversize accessory guest house has  
22 been constructed on a different tax lot, in violation of the disputed zoning permit. See n 2.

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<sup>11</sup>Under GCLDC 12.090(E) "[t]he Planning Director may refer any application to \* \* \* the Planning Commission \* \* \*." Such referrals to the Planning Commission may be made "[a]t the discretion of the Director." GCLDC 31.020(A) provides that "[t]he Planning Director may process any question or decision regarding the administration of this Code by a special hearing before the Planning Commission \* \* \* if the issue: is complex; will have a substantial impact on the area; [or] raises questions of a substantive nature. \* \* \*"

1 Be that as it may, and without deciding whether any of the solutions proposed by petitioner  
2 to the county are sufficient to comply with the GCLDC, the provision in GCLDC 43.070(B)  
3 simply provides the county "may grant a reasonable time for rectification." It does not  
4 require that the county delay permit revocation to allow time to correct a violation of the  
5 GCLDC.

6 The sixth assignment of error is denied.

7 **FIRST AND SECOND ASSIGNMENTS OF ERROR**

8 The remaining assignments of error concern whether the notice given by the planning  
9 commission prior to its September 10, 1998 hearing included the information required by  
10 GCLDC 32.040.<sup>12</sup> Respondent does not dispute that GCLDC 32.040 applies, and for

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<sup>12</sup>GCLDC 32.040(A) provides, as relevant:

"Notice of the review date for the application or an evidentiary hearing before the Review or Hearing Body shall contain the following information, as appropriate:

"\* \* \* \* \*

"2. Nature of the application and the proposed use or uses which could be authorized;

"3. A list of the applicable criteria from the Comprehensive Plan, Land Development Code, and State Goals by reference only. A statement shall be included indicating where the criteria can be viewed or copies purchased;

"4. A description of the subject property, reasonably calculated to give notice of its actual location;

"\* \* \* \* \*

"7. Statement that a copy of the application, all documents and evidence relied upon by the applicant and applicable criteria are available for inspection at no cost and copies will be provided at a reasonable cost;

"8. Statement that a copy of the staff report will be available for inspection at not cost at least seven days prior to the hearing and copies will be provided at a reasonable cost;

"9. A general explanation of the requirements for submission of testimony and the procedure for the conduct of hearings."

1 purposes of this opinion we assume that it does.<sup>13</sup> We consider below petitioner's arguments  
2 that the county failed to include in its notice the particular items of information that are  
3 required by GCLDC 32.040.

4 **A. Description of the Property**

5 In his first assignment of error and his third subassignment of error under the second  
6 assignment of error, petitioner contends the notice of hearing identified only tax lot 216.  
7 Petitioner contends that because the notice only identified tax lot 216, he could not have  
8 known that the zoning permit for tax lot 211 would be at issue and the notice was inadequate  
9 to comply with the requirement of GCLDC 32.040(A)(4).

10 We address later in this opinion the question of the adequacy of the disputed notice to  
11 advise petitioner of the possibility that the planning commission would revoke the zoning  
12 permit for tax lot 211. That issue aside, we reject petitioner's suggestion that the reference to  
13 tax lot 216 in the August 14, 1998 notice created any confusion about whether the subject  
14 matter of the September 10, 1998 hearing would be limited to tax lot 216. The record makes  
15 it abundantly clear that any confusion traceable to the fact that petitioner owns two tax lots is  
16 of petitioner's making. Although the planning director's August 14, 1998 letter does not  
17 specifically refer to tax lot 211 or the zoning permit, it was adequate to comply with GCLDC  
18 32.040(A)(4), which only requires that the "subject property" be described in a way that is  
19 "reasonably calculated to give notice of its actual location."

20 **B. Notice that Evidence and the Staff Report Would be Available**

21 In his fourth and fifth subassignments of error under the second assignment of error,  
22 petitioner contends the county failed to comply with GCLDC 32.040(A)(7) and (8) because  
23 "[t]here was no statement that all evidence would be available for review; [and] [t]here was

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<sup>13</sup>We note that GCLDC 32.040 provides that the information required by that section is to be included in notices of "evidentiary hearing[s] before the Review or Hearing Body[.]" We do not understand any party to dispute that the hearing before the planning commission was an evidentiary hearing.

1 no statement that the staff report would be available seven days prior to the hearing[.]"  
2 Petition for Review 5.

3 Because GCLDC 32.040(A)(7) refers to evidence "relied upon by the applicant," we  
4 agree with the county that it simply does not apply in this matter where there was no  
5 applicant. However, the planning director did provide the planning commission with a staff  
6 report, and petitioner is correct that the August 14, 1998 notice does not state that the staff  
7 report will be available at least seven days before the September 10, 1998 hearing and for  
8 that reason does not comply with GCLDC 32.040(A)(8).

9 As this Board has explained on numerous occasions, for this Board to reverse or  
10 remand a local government decision under ORS 197.835(9)(a)(B), based on a failure to  
11 follow prescribed procedures, petitioner must do more than simply demonstrate the existence  
12 of a procedural error:

13 "[O]ne who complains of procedural error at the local level must not only  
14 demonstrate the existence of error but must also show: (1) that a timely  
15 objection was made so that corrective measures might be taken; and (2) the  
16 error was prejudicial to petitioner's substantial rights." Mason v. Linn  
17 County, 13 Or LUBA 1, 4 (1984), aff'd in part, rev'd in part on other grounds  
18 73 Or App 334, 698 P2d 529 (1985).

19 Simmons v. Marion County, 22 Or LUBA 759, 773-74 (1992); Torgeson v. City of Canby,  
20 19 Or LUBA 511, 519 (1990); Miller v. City of Ashland, 17 Or LUBA 147, 153 (1988). The  
21 substantial rights referred to by ORS 197.835(9)(a)(B) include "the rights to an adequate  
22 opportunity to prepare and submit [a party's] case and a full and fair hearing." Torgeson, 19  
23 Or LUBA at 520 (1990), quoting Muller v. Polk County, 16 Or LUBA 771, 775 (1988).

24 Petitioner does not argue that he raised an objection concerning the adequacy of the  
25 notice with regard to GCLDC 32.040(A)(8) before the planning commission. Petitioner does  
26 not claim that he was surprised by anything included in the staff report provided to the

1 planning commission on September 10, 1998.<sup>14</sup> Petitioner has not explained how his  
2 substantial rights were prejudiced by the alleged failures of the county's notice to comply  
3 with GCLDC 32.040(A)(8).

4 Petitioner's fourth and fifth subassignments of error under the second assignment of  
5 error are denied.

6 **C. Notice that the Zoning Permit Might Be Revoked**

7 Petitioner's first, second and sixth subassignments of error under the second  
8 assignment of error contend that the notice of hearing failed to comply with GCLDC  
9 32.040(A)(2), (3), and (9). See n 12. We agree with the county that GCLDC 32.040(A)(2)  
10 does not apply to hearings such as the one conducted by the planning commission in this  
11 matter, because there was no "application" and there were no "proposed \* \* \* uses."  
12 However, the county's failure to specify the GCLDC criteria that would be considered at the  
13 planning commission hearing and the failure to give a general explanation of the procedure  
14 that would be followed at the hearing, if true, constitute procedural errors, because that  
15 information is required by GCLDC 32.040(A)(3) and (9).

16 Petitioner is correct that the notice fails to explain the procedure that the planning  
17 commission proposed to follow at the September 10, 1998 hearing, as required by GCLDC  
18 32.040(A)(9).<sup>15</sup> The subassignment of error directed at GCLDC 32.040(A)(3), which faults  
19 the county's notice for failing to list the applicable criteria, only specifically mentions the  
20 notice's failure to list applicable criteria from the "Comprehensive Plan." In its response  
21 brief, the county correctly replies that the challenged decision applies no comprehensive plan

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<sup>14</sup>We do not understand petitioner to dispute any of the facts stated in the staff report. The staff report does not recommend that the zoning permit be revoked.

<sup>15</sup>The petitioner was given notice of the planning commission hearing by the planning director's August 14, 1998 letter. See n 5. The county also published notice of the planning commission hearing. Record 33. Neither notice identified the criteria that would be applied or the procedures that the planning commission would follow.

1 criteria. However, GCLDC 32.040(A)(3) also requires that the notice list criteria from the  
2 GCLDC, and the criteria the county relied on to revoke the zoning permit are included in the  
3 GCLDC. We treat petitioner's subassignment as challenging the county's failure to specify  
4 the criteria that would be considered by the planning commission, from whatever source. In  
5 summary, we agree with petitioner that the planning commission's notice of hearing fails to  
6 comply with GCLDC 32.040(A)(3) and (9).

7         However, as we have already explained, petitioner must do more than show the  
8 planning commission's notice of hearing failed to include the information required by  
9 GCLDC 32.040(A)(3) and (9). Petitioner must show that (1) he made a timely objection and  
10 (2) his substantial rights were prejudiced by the county's procedural error. Petitioner did not  
11 object during the September 10, 1998 hearing that the notice failed to advise him of the  
12 procedure the planning commission would follow at the hearing. Neither does he argue the  
13 procedures followed by the planning commission violated any of his substantial rights. For  
14 those reasons we reject petitioner's arguments concerning GCLDC 32.040(A)(9).

15         It also does not appear that petitioner objected before the planning commission that  
16 the notice failed to specify the applicable criteria, as required by GCLDC 32.040(A)(3), or  
17 that the planning commission intended to consider permit revocation as an option. However,  
18 it is not clear to us, based on the minutes of the planning commission hearing included in the  
19 record, that petitioner could have known that the planning commission contemplated  
20 revoking the zoning permit based on GCLDC 43.070 until a motion to that effect was made  
21 at the conclusion of the planning commission hearing. We therefore conclude that petitioner  
22 did not waive his right to argue the challenged decision should be remanded based on the  
23 notice's failure to comply with GCLDC 32.040(A)(3), by failing to specifically raise an  
24 objection concerning GCLDC 32.040(A)(3) before the planning commission. See Horizon  
25 Const., Inc. v. City of Newberg, 114 Or App 249, 252-53, 834 P2d 523 (1992) (preservation  
26 requirements are less formal in land use proceedings than in judicial proceedings).

1 Notwithstanding the planning commission's failure to notify petitioner prior to the  
2 September 10, 1998 hearing that it might apply the criteria in GCLDC 43.070 to revoke his  
3 zoning permit, as respondent points out, it is difficult to see how petitioner's substantial  
4 rights were prejudiced by this defect in the notice. We emphasize that we have no reason to  
5 question petitioner's claim that he was surprised that the planning commission applied  
6 GCLDC 43.070 at the September 10, 1998 hearing to revoke the zoning permit for tax lot  
7 211, rather than take some other action to address the situation on his property.<sup>16</sup> Had the  
8 local proceeding concluded at the planning commission level, we likely would agree that  
9 petitioner's substantial rights were prejudiced by the notice's failure to identify the applicable  
10 criteria.<sup>17</sup> But the planning commission was not the final decision maker in this matter;  
11 petitioner appealed the planning commission's decision to the county court. In that appeal,  
12 petitioner specifically identified the planning commission's application of GCLDC 43.070 to  
13 revoke the permit as one of his bases for appeal. Record 21. Petitioner was provided an  
14 opportunity before the county court to contest the planning commission's decision to apply  
15 GCLDC 43.070 to revoke the zoning permit. Petitioner makes no attempt to explain why  
16 that opportunity to challenge the permit revocation was insufficient to correct any prejudice  
17 to his substantial rights might have resulted from the alleged defects in the planning  
18 commission notice of hearing.<sup>18</sup>

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<sup>16</sup>This is because nothing in the notices told petitioner specifically what action the planning commission might take or what criteria the planning commission might apply to decide on its course of action.

<sup>17</sup>Although the planning commission voted to revoke the zoning permit for tax lot 211, it also voted to continue the September 10, 1998 hearing to continue discussing alternatives regarding the structure being constructed on tax lot 216. However those continued discussions were independent of the planning commission's decision to revoke the zoning permit for tax lot 211.

<sup>18</sup>We note that appeals of planning commission decisions to the county court are generally reviewed on the record before the planning commission. GCLDC 33.080(D). However, petitioner makes no attempt to argue that his ability to contest the planning commission's decision to revoke the zoning permit before the county court was hampered by the fact that the county court proceeding was limited to the record before the planning commission. There is no indication that petitioner requested that the county court conduct an evidentiary hearing, as provided in GCLDC 33.080(E). Indeed the relevant facts in this case do not appear to be in dispute.

1           Because petitioner fails to explain why the appeal of the planning commission's  
2 decision to the county court was inadequate to avoid any prejudice to his substantial rights  
3 that could be attributed to the failure of the planning commission notice of hearing to comply  
4 with GCLDC 32.040(3), we reject petitioner's argument that the challenged decision should  
5 be remanded based on that failure. ORS 197.835(9)(a)(B); Mason, 13 Or LUBA at 4. The  
6 second and sixth subassignments of error under the second assignment of error are denied.

7           The first and second assignments of error are denied.

8           The county's decision is affirmed.