BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

RICHARD SIEGERT and LINDA SIEGERT,
Petitioners,

vs.

CROOK COUNTY,
Respondent.

LUBA No. 2010-110

FINAL OPINION
AND ORDER

Appeal from Crook County.

William A. Van Vactor, Prineville, filed the petition for review and argued on behalf of petitioners. With him on the brief was Miller Nash LLP.

Eric Blaine, Assistant County Counsel, Prineville, filed the response brief and argued on behalf of respondent. With him on the brief were David M. Gordon and Heidi T.D. Bauer.

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

AFFIRMED 06/02/2011

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

Opinion by Ryan.

NATURE OF THE DECISION

Petitioners appeal a decision by the county verifying a dog breeding kennel as a non-conforming use.

REPLY BRIEF

Petitioners move for permission to file a reply brief to respond to new matters raised in the response brief. The reply brief is allowed.

FACTS

A fifty-dog breeding kennel has operated on the subject 59.25-acre parcel since 1977. In February, 2010, the property's owner applied for verification of the kennel as a nonconforming use. At the time the kennel began operating in 1977, the property was zoned Rural Residential – Mobile – (RRM-2). The property is currently zoned Recreational Residential Mobile (RRM 5) under the Crook County Code (CCC). Neither the RRM-2 zone nor the RRM 5 zone has ever listed kennels as an outright or conditional use that is allowed in those zones. The kennel currently breeds and sells toy and mini-Australian shepherds, and previously bred and sold Rhodesian Ridgebacks.

The planning department approved the application, and petitioners appealed the decision to the planning commission. The planning commission held hearings on the appeal, and at its July 28, 2010 hearing, deliberated on the appeal and voted to approve the application. Petitioners appealed that decision to the county court, which held a hearing on the appeal and voted to affirm the planning commission's decision. This appeal followed.

FIRST, SECOND, AND FOURTH ASSIGNMENTS OF ERROR

A. Introduction

"A nonconforming use is one which lawfully existed prior to the enactment of a zoning ordinance and which may" therefore continue although it does not comply with the new zoning ordinance. *Clackamas County v. Holmes*, 265 Or 193, 196-97, 508 P2d 190

(1973). ORS 215.130(5) applies to counties and provides in relevant part that "[t]he lawful use of any building, structure, or land at the time of the enactment or amendment of any zoning ordinance or regulation may be continued. * * *." A use is "lawful" in the sense ORS 215.130(5) uses that word, if it predated zoning or it complied with applicable zoning on the date zoning was amended to make the use noncomplying, *i.e*. nonconforming. Accordingly, if the kennel complied with the applicable zoning and other land use regulations at the time it began operating on the subject property in 1977, it is entitled to continue to operate as a nonconforming use, even though the RRM 5 zone does not allow kennels as either an outright or conditional use.

The version of the Crook County Code (CCC) that applied at the time the kennel began operating in 1977 was the 1973 version of the code (CCC 1973). Under CCC 1973, "kennel" was defined as "[a] lot or building in which four or more dogs, cats or animals at least four months of age are kept commercially for board, propagation, training, or sale." CCC 1973 1.030(33); Record 157. As noted, at the time the kennel began operating in 1977 the property was zoned RRM-2. Under CCC 1973 3.170, kennels were not listed as permitted or conditional uses in the RRM-2 zone. Record 195.

However, CCC 1973 1.060 exempted a number of agricultural and farm practices and uses from regulation under CCC 1973, including, as relevant here, "animal husbandry." CCC 1973 1.060 provided in relevant part:

> "Agriculture, grazing, horticulture and commercial uses shall be exempt from the provisions of this ordinance, also farm dwellings and other farm buildings. * * * Other farm uses included in this section are beekeeping, dairying, swine raising, ranching of furbearing animals, *animal husbandry*, and similar farming operations in the primary preparation and storage of farm products grown on the premises." Record 163 (emphasis added.)

This language was apparently based on the then current statutory definition of "farm use" at ORS 215.203.

B. The County's Decision

The county relied on the express language of CCC 1973 1.060 to conclude that it provided a broad exemption for "farm uses" from the provisions of CCC 1973 3.170 that otherwise restricted the uses allowed in the RRM-2 zone to the permitted and conditional uses listed in that section. The county concluded that the breeding kennel operation qualified as "animal husbandry" under CCC 1973 1.060. CCC 1973 did not define "animal husbandry," but the county interpreted the phrase "animal husbandry" as used in CCC 1973 1.060 to include a dog breeding kennel, relying on *Linn County v. Hickey*, 98 Or App 100, 778 P2d 509 (1989) (dog kennel operations constitute "animal husbandry" as that term is used in the EFU zoning statute). *Hickey* interpreted the pre-1985 version of ORS chapter 215.203. In 1985, ORS chapter 215 was amended to specifically list "dog kennels" as a conditional use in the EFU zone. *See* ORS 215.213(2)(k); 215.283(2)(n) (2009). The parties appear to agree that this statutory change effectively removed dog kennels from the category of "animal husbandry" or any other type of "farm use" as those terms are used in the EFU statutes. Further, the parties appear to agree that that statutory change, as implemented in the county's zoning scheme, was the zoning change that potentially made existing dog kennels in some county zones nonconforming uses.

The county also identified two other bases to conclude that the subject kennel operation was "lawful" at the time contrary zoning was first applied. First, the county concluded that a dog breeding kennel operation was allowed as "farming" under CCC 1973 3.170(1)(b), which was specifically allowed in the RRM-2 zone "farming subject to the restrictions on animals in subsection 3." The county reasoned that a dog breeding kennel, as opposed to a boarding or training kennel, qualified as farming under CCC 1973 3.170(1)(b). Second, the county found that the subject kennel operation was lawful as an "accessory use" to the principal use of the property for "farming" under CCC 1973 3.170(1)(b) and CCC 1973 4.090.

Finally, the county also cited and relied on "the personal knowledge of the purpose and intent of the 1973 zoning ordinance provided by [planning] Commissioner Weberg, (the longest serving Planning Commissioner in the State of Oregon since 1971) * * *" in support of its interpretation of CCC 1973 1.060 and the other provisions of CCC 1973 cited by petitioners. Record 18. We discuss that reliance below.

C. Assignments of Error

1. First and Second Assignments of Error

ORS 197.829(1) provides:

> "[LUBA] shall affirm a local government's interpretation of its comprehensive plan and land use regulations, unless the board determines that the local government's interpretation:
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> "(a) Is inconsistent with the express language of the comprehensive plan or land use regulation;
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> "(b) Is inconsistent with the purpose for the comprehensive plan or land use regulation;
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> "(c) Is inconsistent with the underlying policy that provides the basis for the comprehensive plan or land use regulation[.]"

In their first and second assignments of error, petitioners first argue that ORS 197.829(1)(a) – (c) do not apply to the county's decision because the county's decision is an interpretation of ORS 215.130(5), quoted above, and local government interpretations of state statutes are not entitled to deference. We disagree. The county's determination of whether the kennel is a nonconforming use is dependent in this case entirely on its interpretation of CCC 1973 1.060 and other relevant CCC 1973 provisions that applied at the time the kennel began operating, or became nonconforming. Petitioners do not cite to any state law that governs that determination, and we are aware of none. Accordingly, LUBA is required to affirm the county's interpretation of CCC 1973 1.060 and other relevant provisions of CCC 1973 unless that interpretation is inconsistent with the express language of CCC 1973 1.060 or the

purpose or underlying policy that provides the basis for CCC 1973 1.060. *Siporen v. City of Medford*, 349 Or 247, 259, 243 P3d 776 (2010).

In their first assignment of error, petitioners maintain that the county's interpretation of CCC 1973 as allowing the breeding kennel operation as "animal husbandry" cannot be affirmed under ORS 197.829(1)(a) because it is inconsistent with express language of other sections of CCC 1973, specifically CCC 1973 3.170(1) and CCC 1973 10.10. First, petitioners point out that "kennels" were listed as permitted or conditional uses in six of the county's zoning districts, but that CCC 1973 3.170(1) and (2), which specified the uses permitted in the RRM-2 zone, did not list "kennels" as permitted or conditional uses. According to petitioners, the fact that kennels were listed as permitted or conditional uses in six other county zones meant that the county affirmatively chose to prohibit kennels in the RRM-2 zone. Specifically, petitioners point to the county's General Agriculture (AG-2) zone that under CCC 1973 permitted both "farm uses" and "kennels," and argue that separately providing for both uses in the same zone indicates that the two use categories are mutually exclusive, and that "farm use," including "animal husbandry," was not intended to encompass dog kennels. Petitioners also cite CCC 1973 10.10, and argue that it requires the county to give effect to the provisions of CCC 1973 3.170(1) and (2) that specify the permitted and conditional uses in the RRM-2 zone, rather than the more general provision petitioners argue is found at CCC 1973 1.060.[1]

In their second assignment of error, petitioners argue that the county's interpretation of CCC 1973 is inconsistent with the purpose of CCC 1973, and with the underlying policy of CCC 1973 to establish separate zoning districts. Therefore, under ORS 197.829(1)(b) or

[1] CCC 1973 10.10 provided in relevant part:

> "Where the conditions imposed by a provision of this ordinance are less restrictive than comparable conditions imposed by any other provisions which are more restrictive, the more restrictive shall govern." Record 112

(c), petitioners contend that interpretation cannot be affirmed.[2] According to petitioners, allowing the breeding kennel operation in a residential zone is inconsistent with the purpose set out in CCC 1973 1.020 and with the policy of CCC 1973 in general in creating zoning districts where uses are restricted, because the noise and other off-site impacts of a 50-dog breeding kennel operation in a residential zone do not promote either health or safety in the residential zone.

The county responds to petitioners' first assignment of error by first pointing to portions of the county's decision that respondent characterizes as "alternative findings" adopted by the county, and faults petitioners for failing to challenge those portions of the decision. *See DLCD v. Josephine County*, 18 Or LUBA 798, 801-02 (1990) (an assignment of error challenging a local government's findings addressing an approval criterion must be denied where there is an unchallenged finding that the approval criterion does not apply). However, the portions of the decision that respondent characterizes as "alternative findings" are merely additional explanations and legal theories for why the breeding kennel constitutes "animal husbandry" and a "farm use" under CCC 1973 1.060. They are not alternative sets of independently dispositive findings, and petitioners' failure to challenge those findings does not require that LUBA deny the first assignment of error.

On the merits, the county responds to petitioners' first assignment of error by arguing that the county's interpretation of CCC 1973 1.060 as allowing the breeding kennel operation as "animal husbandry" must be affirmed because it is not inconsistent with the express language of CCC 1973 1.060, CCC 1973 3.170 or CCC 1973 10.10. With respect to petitioners' second assignment of error, the county responds that the county's interpretation of CCC 1973 1.060 is not inconsistent with CCC 1973 1.020 or with the policy embodied in

[2] CCC 1973 1.020 provides that "[t]he purpose of this ordinance is to promote the health, safety and general welfare and to carry out the comprehensive plan of the county." Record 155.

adopting CCC 1973.[3] According to the county, the exemptions for farm uses set out in CCC 1973 1.060 embody the specific policy adopted by the county to protect farming and farm uses from the use restrictions of the ordinance. In contrast, the purpose statement set out in CCC 1973 1.020 is a broad statement regarding the underlying purpose of the ordinance.

Whether petitioners' contrary interpretation of CCC 1973 1.060 is better or more consistent with the language, purpose and policy of CCC 1973 is not the relevant question. The relevant question to be addressed is whether the county's interpretation of all of the relevant provisions of CCC 1973 is plausible. *Siporen*, 349 Or at 259. We agree with respondent that the county's interpretation of the relevant provisions of CCC 1973 is not inconsistent with the express language, purpose and policy underlying the provisions being interpreted. Given the county's explanation of its interpretation of CCC 1973 1.060 embodied in the decision, we conclude that the county's interpretation of the relevant provisions of CCC 1973 is not inconsistent with the express language of the ordinance. ORS 197.829(1)(a). As explained above, the county rejected petitioners' argument that CCC 1973 3.170 required the county to deny the nonconforming use, and concluded that the breeding kennel operation was "animal husbandry," a "farm use" under CCC 1973 1.060 that was exempted from the provisions of CCC 1973 3.170. The county relied on the express language of CCC 1973 1.060 and the Court of Appeals' interpretation of the term "animal husbandry" in the EFU zoning statute as including a breeding kennel operation.

We also agree with the county that the commissioners' interpretation of CCC 1973 1.060 is not inconsistent with the general purpose and policy of that zoning ordinance to "promote the public health, safety and general welfare and to carry out the comprehensive plan[.]" ORS 197.829(1)(b) and (c). It is doubtful that many interpretations could be

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[3] Respondent also argues that petitioners are precluded from raising the issue presented in their second assignment of error because they failed to raise the issue below. ORS 197.763(1) and ORS 197.835(3). In their reply brief, petitioners cite Record 113-14, where the issue was clearly raised. The issue presented in the second assignment of error was not waived.

"inconsistent" with such a generally worded purpose provision. In any case, the county's interpretation that farm uses, including animal husbandry, which includes breeding kennels, are allowed in a rural residential zone seems equally consistent with the policy of promoting the public health, safety, and general welfare as petitioners' preferred interpretation.

Finally, in a portion of their first assignment of error, petitioners challenge the county's reliance on planning commissioner Weberg's statements made during the planning commission's deliberations, and argue that to the extent the county purported to rely on Weberg's statements as legislative history to support its interpretation of CCC 1973 1.060, those statements are not legislative history and do not support the county's interpretation. According to petitioners, nothing that Weberg said during the planning commission's deliberations supports the county's interpretation of CCC 1973. We understand petitioners to argue that Weberg's statements were merely Weberg's opinion as to the meaning of CCC 1973 1.060, and do not provide evidentiary support for the county's interpretation as either legislative history or other evidence. Petition for Review 23; Reply Brief 3.

We understand the county to take the position that Weberg's statements made during the planning commission's deliberations on the appeal, after the evidentiary record in the proceedings had closed, are something akin to legislative history for CCC 1973 that provides further additional support for the county's interpretation of the express language of CCC 1973 1.060 as providing a broad exemption for farm uses and its interpretation of "animal husbandry." If that is respondent's position, it is wrong. Post-enactment statements made by a currently serving member of a local decision making body who was also a member of a local legislative body at the time a land use regulation was enacted are not legislative history. *David v. City of Hillsboro*, 57 Or LUBA 112, 136 (2008). However, for the reasons set forth above we agree with respondent that the county's interpretation of CCC 1973 1.060 is not inconsistent with the express language or underlying purpose or policy of CCC 1973.

At most the county's attempt to rely on Weberg's statements as legislative history that further supports its interpretation of CCC 1973 1.060 is harmless error.

The county's interpretation of the relevant provisions of CCC 1973 is not inconsistent with the express language of CCC 1973 or the purpose or underlying policy that provides a basis for CCC 1973. ORS 197.829(1)(a) - (c). Accordingly, LUBA is required to affirm that interpretation.

The first and second assignments of error are denied.

2. Fourth Assignment of Error

As explained above, in interpreting CCC 1973 1.060 to provide a broad exemption for farm uses and to allow the breeding kennel operation as "animal husbandry" under CCC 1973 1.060, the county cited and relied on what the decision characterizes as "the personal knowledge of the purpose and intent of the 1973 zoning ordinance provided by [planning] Commissioner Weberg, (the longest serving Planning Commissioner in the State of Oregon since 1971) * * *" in support of its interpretation. Record 18. Planning commissioner Weberg was a member of the planning commission in 1973, and although it is not clear from the decision, it appears all parties agree that the reference to planning commissioner Weberg's "personal knowledge of the purpose and intent of [CCC 1973]" is a reference to statements that the county court believed planning commissioner Weberg made during the deliberations of the planning commission on the nonconforming use application that is the subject of this appeal, regarding his understanding of the intent of the county in enacting CCC 1973 1.060 in 1973. Record 278.

In their fourth assignment of error, petitioners argue that the county committed a procedural error in allowing Weberg to testify during deliberations after the evidentiary record had closed, without giving petitioners an opportunity to respond to that testimony, and

in relying on Weberg's testimony as evidentiary support for its decision.[4] According to petitioners, allowing that testimony after the record had closed and relying on that testimony to support its decision is a procedural error that warrants remand of the decision to allow petitioners to rebut that testimony. ORS 197.839(9)(a)(B).

Apparently the county does not dispute that Weberg's statements made during deliberations constitute testimony and evidence in support of the county's decision.[5] However, we disagree with both parties' position in the fourth assignment of error that Weberg's statements made during planning commission deliberations constitute "testimony" and new evidence to which petitioners had a right to respond.[6] The transcripts of the meeting during which the planning commission deliberated on the application indicate that Weberg said very little regarding what he thought was the intent of the drafters of CCC 1973. Record 278-285. Other participants in the deliberations may have paraphrased what they thought Weberg had said or would say, but Weberg appears to have offered only his opinion on what CCC 1973 1.060 allowed. Record 286 (transcript of July 28, 2010 hearing, quoting commissioner Weberg as saying "Well, I guess you and I disagree on animal husbandry. I think raising a dog is part of animal husbandry"). Because those statements did not constitute "evidence," the county did not commit a procedural error in allowing those

[4] According to the record, prior to the record closing, petitioners requested that any evidence or testimony by Weberg as to the intent of the drafters of CCC 1973 1.060 be introduced while the record was still open in order for them to respond, but Weberg declined that request. Record 532-33.

[5] That position is strange, because if the county allowed evidence to be introduced by a member of the deliberating body or otherwise after the record had closed and without opportunity for other parties to respond to that evidence, and that evidence was also relied on by the local government in its final decision, such actions would almost certainly constitute procedural error that would require remand of the decision to allow the other parties an opportunity to respond to the evidence. *Gunzel v. City of Silverton*, 53 Or LUBA 174, 179 (2006).

[6] CCC does not define "evidence" or "testimony," but ORS 197.763(9)(b) defines "[e]vidence" to mean "facts, documents, data or other information offered to demonstrate compliance or noncompliance with the standards believed by the proponent to be relevant to the decision."

statements to be made during deliberations. Accordingly, petitioners' fourth assignment of error provides no basis for reversal or remand of the decision.[7]

The fourth assignment of error is denied.

THIRD ASSIGNMENT OF ERROR

In petitioners' third assignment of error, they argue that the county erred in verifying the kennel operation as a non-conforming use without considering the fact that the kennel operation that was originally established in 1977 bred a different type of dog than the kennel presently breeds. We understand petitioners to argue that the county should have considered the change in the type of dog that is bred in the kennel that occurred sometime after the kennel became non-conforming as an "alteration" of the original non-conforming use under ORS 215.130, and should have required the applicant to seek approval for an alteration of the kennel under ORS 215.130(9)(a), which allows a nonconforming use to be altered to allow a change in the use that is "of no greater adverse impact to the neighborhood."[8] Stated differently, we understand petitioners to argue that the county should have limited the nature

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[7] Because we determine that Weberg's statements do not constitute testimony or evidence, we need not address the county's arguments in its response brief that petitioners are precluded from raising the issue set forth in the fourth assignment of error to LUBA because petitioners failed to assign error to portions of the decision in which the county found that petitioners waived the issue.

[8] ORS 215.130 provides in relevant part:

> "(5) The lawful use of any building, structure or land at the time of the enactment or amendment of any zoning ordinance or regulation may be continued. *Alteration of any such use may be permitted subject to subsection (9) of this section.* Alteration of any such use shall be permitted when necessary to comply with any lawful requirement for alteration in the use. Except as provided in ORS 215.215, a county shall not place conditions upon the continuation or alteration of a use described under this subsection when necessary to comply with state or local health or safety requirements, or to maintain in good repair the existing structures associated with the use. A change of ownership or occupancy shall be permitted.
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> " * * * * *
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> "(9) As used in this section, 'alteration' of a nonconforming use includes:
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> > "(a) A change in the use of no greater adverse impact to the neighborhood[.]" (Emphasis added.)

of the kennel use that it verified to a kennel that breeds the specific dog breed that the operator of the kennel bred when the kennel was first established or when the kennel became nonconforming, and that the county can approve a change in dog breeds as an alteration to that verified nonconforming use only upon a finding based on evidence that the alteration is "of no greater adverse impact to the neighborhood."

The county responds, initially, that the issue was not raised below and petitioners are precluded from raising the issue. However, the decision adopted findings specifically responding to the issue, making it fairly obvious that the issue was raised below. Record 26.

The county found that "nature of the use is a dog breeding kennel for 50 dogs," and that that use has continued in existence for more than 20 years. Record 26. The county also found that:

> "the use has not been altered, that the applicant continues to breed dogs and has done so for many years. The [county] finds that [petitioners'] claim that a change in the type of dog breed is an alteration to the use is absurd and patently rejects that argument. Continuing to breed dogs is no different than continuing to breed cattle only changing the type of cattle. The [county] finds this is not a change of use." Record 26.

We understand the county to have determined in so finding that a change in the type of dog that is bred in a non-conforming breeding kennel can *never* amount to an alteration of that non-conforming kennel use, for purposes of ORS 215.120(9). While we have doubts about whether the county is correct that a change in the type of dog that is bred in a non-conforming kennel can *never* amount to an "alteration" of a non-conforming use, we need not address the breadth of that categorical assertion, because for the reasons set forth below we agree with the county that petitioners have not demonstrated that the county erred in concluding that the change in dog breeds in this case constitutes an alteration for purposes of ORS 215.130(9)(a).

Petitioners asserted to the county below that the change in the breed of dog is an "alteration" of the kennel, alleging that that change has led to "greater adverse impacts to the

neighborhood" under ORS 215.130(9)(a). *See* n 8. Specifically, petitioner's attorney asserted in a memorandum to the county that "Rhodesian Ridgebacks are not known for barking" and that "[p]enned up [mini-Australian shepherds] * * * are known for having barking problems." Record 634. That memorandum includes footnotes that contain what appear to be citations to internet websites. However, any support for their assertions that petitioners may have found on those websites is not a part of the record of this appeal, so that beyond petitioners' unsupported statement, there is no evidence in the record that the current type of dog bred in the kennel is known for having "barking problems" or that otherwise explains what is meant by "barking problems," compared to the type of dog bred at the time the kennel became nonconforming.

The only other evidence that petitioners cite to support their contention that the change in dog breed was an "alteration" of the non-conforming use is evidence that in 2009, the kennel was found by a circuit court to be a public nuisance for barking. However, while that evidence might indicate that the kennel currently has an adverse impact on the neighborhood, that evidence says nothing about whether the kennel's adverse impact on the neighborhood from barking from the dogs bred in the kennel in 2009 is *greater* than when the kennel bred a different type of dog. On that point, there is no evidence whatsoever in the record.

In sum, petitioners have not established that the county erred in rejecting petitioner's unsupported assertion below that the change in dog breed after the kennel became nonconforming constitutes an "alteration" of the nonconforming use for purposes of ORS 215.130(5) and (9).

The third assignment of error is denied.

FIFTH ASSIGNMENT OF ERROR

In their fifth assignment of error, petitioners argue that the county committed a procedural error because the county's notice of the planning commission hearing failed to list

CCC 1973 1.060 as an applicable approval criterion. We understand petitioners to argue that the failure of the notice of the hearing to list CCC 1973 1.060 violates ORS 197.763(3)(b), which requires the notice of hearing to list all applicable approval criteria.[9] Petitioners request that the decision be remanded to the county with instructions to the county to issue a hearing notice that includes CCC 1973 1.060. Petition for Review 34.

The county responds that CCC 1973 1.060 is not an approval criterion that applied to the application to verify a nonconforming use and was not required to be included in the notice of hearing. The county also responds that even if CCC 1973 1.060 was an applicable approval criterion, the failure to list an applicable criterion is not a procedural error that itself warrants reversal or remand of the decision; rather, the remedy for a local government's failure to list an applicable approval criterion is to allow a party to raise new issues before LUBA under ORS 197.835(4)(a). Finally, the county responds that even if the county committed a procedural error in failing to list CCC 1973 1.060 in the notice of the planning commission hearing, petitioners' substantial rights were not prejudiced because CCC 1973 1.060 was listed as an applicable criterion in the staff report issued prior to the county court's hearing on petitioners' appeal of the planning commission decision and petitioners had the opportunity to fully address CCC 1973 1.060 in their appeal to the county court.

We need not decide here whether CCC 1973 1.060 is an "applicable criteri[on] from the ordinance and the plan that apply to the application at issue" under ORS 197.763(3)(b). Petitioners have not demonstrated that their rights were prejudiced by the planning commission notice's failure to list CCC 1973 1.060 in the notice of hearing, where petitioners in fact were given an opportunity to present argument on CCC 1973 1.060 and the other provisions of CCC 1973.

The fifth assignment of error is denied.

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[9] ORS 197.763(3)(b) requires the hearing notice to list, in relevant part "* * * the applicable criteria from the ordinance and the plan that apply to the application at issue[.]"

The county's decision is affirmed.