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

MEDELLA BISON RANCH, LLC,
Petitioner,

vs.

JACKSON COUNTY,
Respondent.

LUBA No. 2022-020

FINAL OPINION
AND ORDER

Appeal from Jackson County.

Kevin J. Jacoby filed the petition for review and argued on behalf of petitioner. Also on the brief were Brett Mulligan and Green Light Law Group.

Madison Simmons filed the respondent's brief and argued on behalf of respondent.

ZAMUDIO, Board Member; RYAN, Board Chair; RUDD, Board Member, participated in the decision.

AFFIRMED 02/23/2023

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

Opinion by Zamudio.

NATURE OF THE DECISION

Petitioner appeals a county hearings officer code enforcement order.

FACTS

The subject property is approximately 52 acres and zoned Exclusive Farm Use (EFU). Petitioner is a limited liability company that owns the subject property. Sometime in 2021, petitioner leased the property to a tenant for the purpose of growing cannabis.[1] The tenant constructed 33 greenhouses on the property. On July 20, 2021, a county code enforcement officer issued a citation alleging that petitioner violated Jackson County Land Development Ordinance (LDO) 1.8.1 by "[f]ail[ing] to obtain land use approval for 33 greenhouse structures on [the] property." Record 13. We quote and discuss LDO 1.8.1 below. On February 10, 2022, the hearings officer held a public hearing on the code enforcement action.

LDO Table 4.2-1(2) allows "[b]uildings, other than dwellings, customarily provided in conjunction with farm use" as Type 1 uses in the EFU zone. (Boldface omitted.) LDO 4.2.2(A) provides:

> "Type 1 uses are permitted by-right, requiring only non-discretionary staff review to demonstrate compliance with the standards of this Ordinance. A Zoning Information Sheet [(ZIS)]

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[1] A copy of the lease agreement is not in the record provided to LUBA. In the first assignment of error, discussed below, petitioner challenges some of the hearings officer's findings of fact regarding the content of the lease.

> may be issued to document findings or to track progress toward compliance. Type 1 permits are limited to situations that do not require interpretation or the exercise of policy or legal judgment." (Boldface and italics omitted.)

Like LDO 4.2.2(A), LDO 3.1.2 provides:

> "Type 1 uses are authorized by right, requiring only non-discretionary staff review to demonstrate compliance with the standards of this Ordinance. A [ZIS] may be issued to document findings or to track progress toward compliance. Type 1 authorizations are limited to situations that do not require interpretation or the exercise of policy or legal judgment. Type 1 authorizations are not land use decisions as defined by ORS 215.402."

LDO 3.1.1(C) provides, in part, "[ZIS] are used to: (1) provide information regarding the status of development; (2) ensure compliance with all standards and procedures of this Ordinance; and (3) to authorize Type 1 uses."

On October 28, 2021, after the county issued the citation and before the hearing, the county code enforcement division manager issued a memo to code enforcement officers explaining that the county requires a ZIS for Type 1 uses, as outlined in LDO 3.1.1(C). Record 9. To obtain nondiscretionary staff review, an applicant must pay a standard appointment fee, pay separate ZIS and document notary fees, and record separate deed declarations for each structure that qualifies as a Type 1 use. The division manager explained that, because the planning department treats each structure independently for purposes of review, the code enforcement division considers each individual structure without ZIS documentation to be an individual violation. *Id.*

LDO 1.8.1 provides, in part:

> "It is a violation of County Law for any person or other entity to violate this Ordinance. Specifically, it is a violation to:
>
> "* * * * *
>
> "B) Use land, construct, occupy, or place improvements, sell or transfer land by an instrument of conveyance, or conduct any activity on land, in any manner not in accordance with the standards set forth in this Ordinance, or with any special permit or order of the Development Services Department, Hearings Officer, Planning Commission, or Board of Commissioners issued hereunder."

LDO 1.8 provides, "Enforcement of a violation of this Ordinance is processed in accordance with the provisions of [Jackson County Code (JCC)] Chapters 202 and 203, as applicable." JCC 202.99(a) provides, in part:

> "Every person who commits, attempts to commit, conspires to commit, or aids or abets in the commission of any act declared in these Codified Ordinances to be a violation, whether individually or in connection with another person, or as principal, agent or accessory, shall be guilty of such violation. Every person who falsely, fraudulently, forcibly or willfully induces, causes, coerces, requires, permits or directs another to violate any provision of these Codified Ordinances shall likewise be guilty of such violation."

The hearings officer concluded that the greenhouses qualified as buildings customarily provided in conjunction with farm use and were therefore allowed as Type 1 uses in the EFU zone under LDO Table 4.2-1(2). Citing LDO 3.1.1(C), LDO 3.1.2, and the October 28, 2021 memo, the hearings officer concluded that separate staff review was required for each greenhouse. The hearings officer concluded that construction and use of the greenhouses without Type 1 review

constituted violations under LDO 1.8.1. Citing *State v. Wilcox*, 216 Or 110, 337 P2d 797 (1959), the hearings officer concluded that acting "willfully," for purposes of JCC 202.99(a), means acting intentionally, as opposed to acting accidentally or negligently. The hearings officer concluded that petitioner "both aided and intentionally permitted the cannabis grow greenhouses to be erected and used on the Premises" without staff review. Record 3. The hearings officer concluded that petitioner was guilty of the alleged violations and issued a decision imposing a fine of $1,000 for each violation, for a total of $33,000. This appeal followed.

FIRST ASSIGNMENT OF ERROR

Petitioner's first assignment of error is a substantial evidence challenge. We will remand a decision that is not supported by substantial evidence in the whole record. ORS 197.835(9)(a)(C); OAR 661-010-0071(2)(b).[2] Substantial evidence is evidence a reasonable person would rely on in making a decision. *Dodd v. Hood River County*, 317 Or 172, 179, 855 P2d 608 (1993). In reviewing the evidence, LUBA may not substitute its judgment for that of the local decision-maker. Rather, LUBA must consider all the evidence to which it is directed and

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[2] ORS 197.835(9)(a)(C) provides that the Board shall reverse or remand the land use decision under review if the Board finds that the local government "[m]ade a decision not supported by substantial evidence in the whole record."

OAR 661-010-0071(2)(b) provides that the Board shall remand a land use decision for further proceedings when "[t]he decision is not supported by substantial evidence in the whole record."

determine whether, based on that evidence, a reasonable local decision-maker could reach the decision that it did. *Younger v. City of Portland*, 305 Or 346, 358-60, 752 P2d 262 (1988).

We set out, in detail, the hearings officer's findings of fact and conclusions of law that petitioner challenges before turning to petitioner's argument. Finding 4 provides:

> "At the hearing, [petitioner's manager] admitted that the 33 greenhouses were located on the Premises. They were leased to a third party * * *. [Petitioner's manager] testified that the Tenant had told him that the greenhouses did not need permits because they were under eight feet in height. In January 2022, [petitioner's manager] provided the County with a copy of the lease which was executed by [petitioner's manager] in his personal capacity. The lease is a commercial lease for the calendar year 2021, rather than an agricultural lease, and the 'leasable area' is described as all floor space measured from exterior walls, doors and windows. The purpose of the lease is for growing agricultural hemp. And the tenant is explicitly allowed to make the improvement of 'Building greenhouses.' While the lease is somewhat amateurishly cobbled together, it is absolutely clear from both the lease and the testimony at the hearing that [petitioner's manager and petitioner] permitted the tenant to construct greenhouses on the Premises for a cannabis grow and charged the tenant $120,000 for the lease. In a handwritten, updated addendum, tenant agreed to follow state and federal guidelines, but County land use permitting requirements were not mentioned." Record 2.

Finding 5 provides:

> "It is also clear that [petitioner] did not act like a traditional landlord, but either acted in concert with the tenant or in disregard of the lease. After being cited for the LDO violation in July 2021, [petitioner's manager] testified that he authorized his property manager to simply

> remove the greenhouses and bury the cannabis grow plants on the Premises." *Id.*

Conclusion 2 provides:

> "[Petitioner,] acting through its Manager * * *, both aided and intentionally permitted the cannabis grow greenhouses to be erected and used on the Premises, which is a violation of the LDO permitting requirements discussed above. [Petitioner] appears to have profited handsomely for allowing the LDO violations to occur on its Premises." Record 3.

As quoted above, in Finding 4, the hearings officer found that petitioner's manager provided the county with a copy of the lease in January 2022, and the hearings officer described some of the lease terms. Record 2. Petitioner does not challenge the finding that the county was given a copy of the lease but, rather, observes that a copy of the lease is not in the record before LUBA and asserts that no lease was submitted at the February 10, 2022 hearing.

Petitioner argues that petitioner's manager testified during the hearing that the lease was for the 2021 grow season, that the lease required the tenant to comply with local regulations and permitting requirements, that petitioner's manager inquired with the tenant as to whether permits were required for the greenhouses, and that the tenant removed the greenhouses after the county issued the complaint. Petitioner argues that there was no testimony during the hearing regarding the "leasable area," that the lease allowed the tenant to "[b]uild[] greenhouses," regarding a handwritten addendum requiring compliance with state and federal law, or that the cannabis plants were buried. Petitioner argues that the following hearings officer findings of fact are not supported by

substantial evidence: (1) that petitioner "aided and intentionally permitted" the construction and use of the greenhouses; (2) that petitioner's manager entered into the lease in his personal, rather than representative, capacity; (3) regarding the specific terms of the lease; (4) regarding the alleged handwritten addendum; (5) that the lease was "somewhat amateurishly cobbled together"; (6) that petitioner did not act like a traditional landlord; (7) that petitioner worked in concert with the tenant regarding the alleged violations; (8) that petitioner's "property manager," rather than the tenant themselves, removed the greenhouses; and (9) that petitioner "profited handsomely" from allowing the LDO violations.

The county responds that the applicable substantial evidence standard of review is directed at "the decision," not individual findings. The county argues that many of the challenged findings of fact were not necessary to the decision that violations occurred and that, accordingly, petitioner's argument that those findings of fact are not supported by substantial evidence in the record provides no basis for reversal or remand. The county asserts that petitioner's manager testified during the hearing that they knew of the greenhouses on the property and that they knew, when entering into the lease, that the tenant would construct and use the greenhouses. Accordingly, the county argues that the hearings officer's conclusion that petitioner intentionally permitted the construction and use of the greenhouses without obtaining county review is supported by substantial evidence and, thus, that the county's decision is supported by substantial evidence.

Based on petitioner's arguments and the county's responses, we agree with petitioner that many of the challenged findings of fact are not supported by substantial evidence in the whole record. However, we agree with the county that the hearings officer's conclusion that petitioner intentionally permitted the construction and use of the greenhouses is supported by substantial evidence, namely, petitioner's manager's testimony during the code enforcement hearing. Petitioner's manager testified as follows:

> Petitioner's Manager: "The property was leased. And part of the lease agreement was that they had to follow all county and state and other laws. And I said—I asked them, specifically—I said, 'Do you need a permit for greenhouses?' And they said, 'No. As long as it's under eight feet in height, we don't need a permit.' And they said, 'Because it's agricultural use, because it's on EFU, you don't need that.' So, they said, 'Yeah, we've done this before. It's fine.' I said, 'Okay, great.'
>
> "* * * * *
>
> "When we signed the lease agreement, they were allowed to put up greenhouses, as long as they were compliant with all the laws. And they assured me that they would be in compliance. When I got the violation, I spoke with them, and I said, 'Hey, you need to go get permits for this.' And they said, 'Well, we don't need permits.' And so, we went back and forth over whether they needed permits or not. Eventually, I finally got them to take them down and remove them." Audio Recording, Jackson County Hearings Officer, Feb 10, 2022, at 3:49:52.

The hearings officer and petitioner's manager then engaged in the following colloquy:

> Hearings Officer: "So, the lease was for?"

Petitioner's Manager: "For a growing season."

Hearings Officer: "For a growing season to put greenhouses on the property for?"

Petitioner's Manager: "Yep. For hemp."

Hearings Officer: "For industrial hemp? Okay." *Id.* at 3:51:32.

Petitioner's manager testified that the lease agreement authorized construction and use of the greenhouses and that petitioner knowingly allowed the tenant to construct and use the greenhouses without any county review. That evidence is evidence that a reasonable person would rely upon to conclude that petitioner intentionally permitted the construction and use of the greenhouses.

The question then becomes whether the remainder of the challenged and unsupported findings of fact provide a basis for remand. We will remand when a petitioner demonstrates that a challenged finding is (1) unsupported by substantial evidence and (2) critical to the decision. We generally will not remand based on evidentiary challenges to findings where the petitioner fails to explain why the challenged findings are critical to the appealed decision and where the challenged findings do not appear to be critical to the decision. *See Von Lubken v. Hood River County*, 24 Or LUBA 271, 284-85 (1992), *rev'd and rem'd on other grounds*, 118 Or App 246, 846 P2d 1178 (1993) (citing *Gann v. City of Portland*, 12 Or LUBA 1, 6 (1984); *McCarty v. City of Portland*, 20 Or LUBA 86, 89 (1990); *Dougherty v. Tillamook County*, 12 Or LUBA 20, 34 (1982); *Tichy v. City of Portland*, 6 Or LUBA 13, 23-24 (1982); *Deschutes Development v.*

Deschutes Cty., 5 Or LUBA 218 (1982)). *But see Mazeski v. Wasco County*, 28 Or LUBA 159, 169-71 (1994), *aff'd*, 133 Or App 258, 890 P2d 455 (1995) (remanding based on lack of substantial evidence for challenged findings where the findings were "clearly critical to the county's decision," even though the petitioners did not explain why the challenged findings were critical to the decision).

Here, we agree with the county that the challenged and unsupported findings of fact are not critical to the hearings officer's conclusion that petitioner violated county law for purposes of LDO 1.8.1(B) and JCC 202.99(a). Our conclusion in that regard is based on the hearing colloquy quoted above and the hearings officer's finding that "it is absolutely clear from *both* the lease *and the testimony at the hearing* that [petitioner's manager and petitioner] permitted the tenant to construct greenhouses on the Premises." Record 2 (emphases added). Petitioner's manager's testimony is substantial evidence that petitioner willfully permitted the violations to occur on petitioner's property, which is all that is required to support a decision that petitioner is liable for the violations. Accordingly, the unsupported findings provide no basis for remand.

The first assignment of error is denied.

SECOND ASSIGNMENT OF ERROR

ORS 215.283(1)(e) allows in EFU zones "primary or accessory dwellings and other buildings customarily provided in conjunction with farm use," subject to restrictions that are not relevant here. It is undisputed that the greenhouses are

buildings customarily provided in conjunction with farm use and allowed outright under ORS 215.283(1)(e). In *Brentmar v. Jackson County*, the Supreme Court held that the uses listed in ORS 215.283(1) are "uses 'as of right,' which may not be subjected to additional local criteria." 321 Or 481, 496, 900 P2d 1030 (1995). The court held that "a county may not enact or apply legislative criteria of its own that supplement those found in ORS 215.2[8]3(1)." *Id.*

As explained above, LDO Table 4.2-1(2) allows "[b]uildings, other than dwellings, customarily provided in conjunction with farm use" as Type 1 uses in the EFU zone. The county requires review for Type 1 uses. Petitioner argues that the county exceeded its jurisdiction by mandating land use review for agricultural buildings on EFU land. Petitioner argues that the above-described mandatory Type 1 review and ZIS process constitute impermissible additional local criteria. Thus, the county exceeded its jurisdiction by issuing an enforcement order based on the failure to obtain county review. We will reverse a land use decision when the governing body exceeded its jurisdiction. ORS 197.835(9)(a)(A); OAR 661-010-0071(1)(a).

The county responds, and we agree that the county's review process does not apply any additional criteria that supplement ORS 215.283(1)(e). The county has not adopted or applied additional criteria to buildings customarily provided in conjunction with farm use. A "criterion" is a substantive "standard on which a decision or judgment may be based." *Webster's Third New Int'l Dictionary* 538 (unabridged ed 2002); *see also Davenport v. City of Tigard*, 121 Or App 135,

141, 854 P2d 483 (1993) (concluding that "the term 'standards and criteria,' as used in ORS 227.178(3) and ORS 215.428(3)," means "substantive factors that are actually applied and that have a meaningful impact on the decision permitting or denying an application"). Petitioner has not identified any supplemental criteria that the county applies in its Type 1 review process for buildings customarily provided in conjunction with farm use. Instead, the purpose of Type 1 review is to ensure that the proposed building is in fact a building customarily provided in conjunction with farm use and that the building will be constructed and used in compliance with other applicable regulations, such as floodplain and fire safety. The county argues that *Brentmar* does not prohibit a local government from requiring such review. We agree.

ORS 215.283(1), as interpreted by the court in *Brentmar*, does not insulate listed uses from any local review. Indeed, many of the uses listed in ORS 215.283(1) are subject to Type 1, Type 2, and even Type 3 review.[3] *See* LDO Table 4.2-1.

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[3] "Type 1 uses are authorized by right, requiring only non-discretionary staff review * * *." LDO 3.1.2; LDO 4.2.2(A). "Type 2 uses are subject to administrative review. These decisions are discretionary and therefore require a notice of decision and opportunity for hearing." LDO 3.1.3; LDO 4.2.2(B). Type 3 uses "may be allowed subject to findings of compliance with applicable approval criteria and development standards, and submission of a site development plan * * * when physical development is proposed as part of the permit. Type 3 decisions require a notice of decision and opportunity for hearing." LDO 3.1.4; LDO 4.2.2(C).

LDO 3.1.1(C) provides that a ZIS is used "to authorize Type 1 uses." LDO 4.2.2(A) provides that Type 1 uses are "permitted by-right" and require "non-discretionary staff review" to determine compliance with the LDO, and that a ZIS "may be issued to document findings or to track progress toward compliance." LDO 3.1.2, quoted above, contains similar language. We agree with the county that a requirement for nondiscretionary staff review does not constitute the application of a local criterion that is more restrictive than state statute for purposes of *Brentmar*. In other words, the staff review required by the LDO does not subject uses allowed under ORS 215.283(1)(e) to supplemental local criteria. The county did not exceed its jurisdiction.

The second assignment of error is denied.

THIRD ASSIGNMENT OF ERROR

In the third assignment of error, petitioner argues that the hearings officer misconstrued the applicable law in concluding that the LDO requires land use review for agricultural structures on land zoned EFU. Again, LDO 3.1.2, quoted above, provides that Type 1 uses are authorized by right and require only nondiscretionary staff review. LDO 3.1.1(C), also quoted above, provides that a ZIS is used "to authorize Type 1 uses."

Petitioner observes that LDO 3.1.1(A) provides, in part, "Before establishing any land use regulated by this Ordinance, *other than a Type 1 use*, an application for a Land Use Permit will be filed with the Department." (Emphasis added.) Petitioner argues that, while staff review may be required for

a Type 1 use, there is no requirement that a property owner obtain such review. Petitioner argues that, under LDO 3.1.2, a property owner "may" elect to obtain ZIS review but is not required to do so. Petitioner argues, "[R]ather than place any affirmative duty on a landowner or person in possession for a Type 1 use, LDO 3.1.2 solely creates a duty in County staff to complete a non-discretionary staff review to demonstrate compliance." Petition for Review 29.

The county responds that, in *Gross v. Jackson County*, 74 Or LUBA 563 (2016), *aff'd*, 284 Or App 673, 393 P3d 1201 (2017), we affirmed an interpretation of LDO 3.1.1(C) and LDO 3.1.2 that is the same as the hearings officer's interpretation that petitioner challenges in this appeal. In *Gross*, as in the present appeal, the petitioners constructed greenhouses on their property without obtaining staff review, a code enforcement officer issued a complaint, and a hearings officer affirmed the complaint and imposed a fine. The petitioners argued that the hearings officer misconstrued the applicable law in concluding that a property owner must obtain staff review for a Type 1 use. The petitioners argued that "the express language of LDO 3.1.2 makes obtaining authorization of the greenhouses through issuance of a [ZIS] for the greenhouses permissive, not mandatory." *Gross*, 74 Or LUBA at 571. We agreed with the county that,

> "while documentation of a Type I use through issuance of a [ZIS] is a permissive method of documenting county review and approval under the language of LDO 3.1.2, *staff review of a Type I use is not permissive*. LDO 3.1.2 requires for Type I uses 'non-discretionary staff review to demonstrate compliance with the standards of [the LDO].' * * * The LDO requires a property owner who seeks to

> construct that building [to verify] that the building is allowed, under the procedures in LDO 3.1.1 and 3.1.2." *Id.* at 571-72 (emphasis added).

We again affirm the county hearings officer's interpretation in the context of this appeal. While LDO 3.1.2 provides that a ZIS "may" be issued to document findings or track progress towards compliance, we reject petitioner's assertion that that language provides a property owner discretion to not seek staff review. LDO 3.1.2 provides that a ZIS "*may be issued* to document findings or to track progress toward compliance." (Emphasis added.) It is the county, not the applicant, that "issues" the ZIS, and, based on that language, it is reasonable to conclude that the county may determine whether to issue a ZIS in conducting its required review. *See Mattson v. Lane County*, ___ Or LUBA ___, ___ (LUBA No 2020-024, July 16, 2020) (slip op at 11-12) (reasoning that, where a county code provides that a legal lot verification "may be reviewed pursuant to Type I procedures," it is the county, not the applicant, that may determine the appropriate review procedure). We agree with the county that the hearings officer did not misconstrue the LDO.

Petitioner argues that the hearings officer erred in finding a violation of LDO 1.8.1 because the decision was based, in part, on an unpublished staff memo. Petitioner observes that the hearings officer referred to the October 28, 2021 memo, which states that it is the planning department's practice to issue a separate ZIS for each structure that qualifies as a Type 1 use and that, accordingly, each structure that qualifies as a Type 1 use that does not obtain staff

review constitutes a separate violation. Because the memo is not a standard set forth in the LDO, petitioner argues that the hearings officer erred in concluding that there were any violations under LDO 1.8.1.

The hearings officer did not conclude that there were violations because the greenhouses were not constructed and used in accordance with the memo. Rather, the hearings officer concluded that there were violations because the greenhouses were not constructed and used in accordance with LDO 3.1.1(C) and LDO 3.1.2. The hearings officer referred to the memo merely as outlining the planning department's practice under LDO 3.1.1(C). The hearings officer did not err in concluding that there were violations under LDO 1.8.1 by referring to a memo explaining the planning department's practices under the LDO.

The third assignment of error is denied.

FOURTH ASSIGNMENT OF ERROR

Again, LDO 1.8 provides, "Enforcement of a violation of this Ordinance is processed in accordance with the provisions of [JCC] Chapters 202 and 203, as applicable." JCC 203.03(c) provides, in part:

> "In a case to go before a County Hearings Officer, the citation shall consist of a complaint and summons. * * * The citation shall contain the following information or blanks in which such information shall be entered:
>
> "* * * * *
>
> "(4) The section of the Codified Ordinances or title and section of any other ordinance or State law violated; [and]

"(5) A brief description of the alleged violation in such a manner as can be readily understood by a person making reasonable effort to do so[.]

Similarly, JCC 294.07 provides, in part:

"(a) In a County violations case, all parties shall be afforded an opportunity for hearing after reasonable notice, and served, as provided in JCC Section 203.03, 203.05 and 203.06.

"(b) Notice shall include:

"* * * * *

"(3) A reference to the particular sections of the statutes and rules involved; [and]

"(4) A short and plain statement of the matters asserted or charged[.]"

In the fourth assignment of error, petitioner argues that the county committed procedural errors that prejudiced petitioner's substantial rights. ORS 197.835(9)(a)(B); OAR 661-010-0071(2)(c).[4] The substantial rights of the parties include "the rights to an adequate opportunity to prepare and submit their case and a full and fair hearing." *Muller v. Polk County*, 16 Or LUBA 771, 775 (1988).

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[4] ORS 197.835(9)(a)(B) provides that the Board shall reverse or remand the land use decision under review if the Board finds that the local government "[f]ailed to follow the procedures applicable to the matter before it in a manner that prejudiced the substantial rights of the petitioner."

OAR 661-010-0071(2)(c) provides that the Board shall remand a land use decision for further proceedings when "[t]he decision is flawed by procedural errors that prejudice the substantial rights of the petitioner(s)."

Petitioner argues that the complaint issued by the code enforcement officer did not refer to all of the statutes and rules that were involved and, therefore, did not comply with JCC 294.07(b)(3). Petitioner argues that, while the complaint issued by the code enforcement officer referred to LDO 1.8.1, it did not refer to LDO 202.99(a), LDO 3.1.1(C), LDO 3.1.2, or ORS 215.283(1)(e). Petitioner observes that JCC 294.07(b) is identical to ORS 183.415(3), which governs notices of contested case hearings before state agencies. Petitioner observes that the Court of Appeals has held that the statutes and rules that are "involved," for purposes of ORS 183.415(3)(c), are those that have "some element of substantial relevance." *Drayton v. Dept. of Transportation*, 186 Or App 1, 11, 62 P3d 430 (2003), *vac'd on other grounds*, 341 Or 244, 142 P3d 72 (2006). Petitioner argues that LDO 202.99(a), LDO 3.1.1(C), LDO 3.1.2, and ORS 215.283(1)(e) were "involved" and that the county's failure to refer to them in the citation prejudiced petitioner's right to an adequate opportunity to prepare its case.

Petitioner also argues that the complaint issued by the code enforcement officer did not include an adequate factual statement and, therefore, did not comply with JCC 294.07(b)(4). Petitioner argues that, while the complaint alleged that petitioner violated LDO 1.8.1 by "[f]ail[ing] to obtain land use approval for 33 greenhouse structures on the property," Record 13, it did not state how petitioner "committed, attempted to commit, conspired to commit, or aided or abetted in the commission" of the violations for purposes of LDO 202.99(a).

Petitioner argues that the complaint's failure to include such a statement prejudiced petitioner's right to an adequate opportunity to prepare its case.

The county responds that petitioner was not found to have violated any provision not referred to in the complaint—that is, the complaint alleged that petitioner violated LDO 1.8.1, and the hearings officer concluded that petitioner violated LDO 1.8.1. The county observes that LDO 1.8.1 is a subsection of LDO 1.8 and that LDO 1.8 provides that enforcement of the LDO is processed in accordance with JCC chapter 202. Because the complaint referred to LDO 1.8.1, the county argues that petitioner had adequate notice of the applicability of LDO 202.99(a) and that the complaint therefore complied with JCC 294.07(b)(3).

We tend to agree with petitioner that LDO 3.1.1(C) and LDO 3.1.2 were "involved," for purposes JCC 294.07(b)(3), and that the failure to include those provisions in the complaint constitutes procedural error. However, in order to demonstrate prejudice to justify remand for a procedural error, a petitioner must explain "with some specificity what would have been different or more complete" had the local government followed the correct procedures. *Concerned Citizens v. Jackson County*, 33 Or LUBA 70, 83 (1997). The county observes that petitioner was able to effectively litigate the claims against it at the hearing, and petitioner has not explained what would have been different or more complete had the complaint referred to LDO 3.1.1(C) and LDO 3.1.2. Similarly, petitioner has not explained what would have been different or more complete had the

complaint included a more detailed factual statement. Accordingly, petitioner has not demonstrated that any procedural error prejudiced its substantial rights.[5]

The fourth assignment of error is denied.

The county's decision is affirmed.

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[5] Petitioner observes that the Court of Appeals has held that a violation of ORS 183.415(3)(c), which governs state agency contested case hearings, is "prejudicial in and of itself." *Villaneuva v. Bd. of Psychologist Exam'rs*, 179 Or App 134, 138, 39 P3d 238 (2002). However, petitioner does not explain why we should reach the same conclusion with respect to JCC 294.07(b)(3), which governs county hearings officer enforcement hearings, particularly since doing so would result in a departure from our normal standard of review of procedural errors. *See Friends of the Metolius v. Jefferson County*, 50 Or LUBA 735, 739 (2005) (explaining that the statutes governing review of land use decisions are *sui generis* and that caution is appropriate in extrapolating to or from other statutory contexts and the statutes and rules governing LUBA's review).