



1  
2  
3  
4

REVERSED

11/18/2015

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14

**NATURE OF THE DECISION**

Petitioners appeal a county hearings officer’s decision approving a residential treatment center on land zoned Exclusive Farm Use (EFU).

**FACTS**

On January 20, 2015, Journey to Completion Center, LLC (the Applicant) filed an application for approval of an inpatient residential treatment center for persons with drug, alcohol and other substance abuse problems, in an existing dwelling on 96 acres of EFU-zoned land. The residential treatment center is proposed to treat up to fifteen clients.

Planning staff issued a tentative decision approving the application, subject to conditions, and petitioners appealed the staff decision. The hearings officer issued his final decision approving the application, and this appeal followed.

1 **FIRST ASSIGNMENT OF ERROR**

2 **A. Special Residences**

3 ORS 197.660 *et seq.* governs the siting of “Special Residences”  
4 described in the statute.<sup>1</sup> ORS 197.665(3)(a) and ORS 215.283(2)(o) allows  
5 “residential homes as defined in ORS 197.660, in existing dwellings” to be

---

<sup>1</sup> ORS 197.663 sets out the legislative policy for the statutes:

“The Legislative Assembly finds and declares that:

“(1) It is the policy of this state that persons with disabilities and elderly persons are entitled to live as normally as possible within communities and should not be excluded from communities because their disability or age requires them to live in groups;

“(2) There is a growing need for residential homes and residential facilities to provide quality care and protection for persons with disabilities and elderly persons and to prevent inappropriate placement of such persons in state institutions and nursing homes;

“(3) It is often difficult to site and establish residential homes and residential facilities in the communities of this state;

“(4) To meet the growing need for residential homes and residential facilities, it is the policy of this state that residential homes and residential facilities shall be considered a residential use of property for zoning purposes; and

“(5) It is the policy of this state to integrate residential facilities into the communities of this state. The objective of

1 sited on EFU-zoned land. Petitioners argue that the county’s approval of the  
2 application “improperly construes” ORS 215.283(2)(o) and ORS  
3 197.665(3)(a), LCDC’s administrative rules that implement the statute, and  
4 Jackson County Land Development Ordinance (LDO) 4.2.6(J) and LDO Table  
5 4.2-1, the county’s code provisions that implement the statute.<sup>2</sup> Petitioners  
6 argue that the decision “violates a provision of law and is prohibited as a matter  
7 of law,” and ask for reversal of the decision. OAR 661-010-0071(1)(c).

8       The various definitions included in ORS 197.660 and the definitions that  
9 are cross-referenced and set out in ORS 443.400 are confusing. We set out and  
10 summarize the definitions that are relevant to the proposed use and necessary to  
11 understand the county’s decision.

12       As we set out in more detail below, ORS 197.660 governs the siting of  
13 structures that may provide inpatient treatment services: “a residential home”  
14 and a “residential facility.” ORS 197.665(3) governs the location of “residential  
15 homes” and, consistent with ORS 215.283(2)(o), allows the county to approve  
16 “*a residential home* in an existing dwelling in” EFU zones. (Emphasis added).

---

integration cannot be accomplished if residential facilities  
are concentrated in any one area.”

<sup>2</sup> LUBA is authorized to reverse or remand a land use decision if the decision “[i]mproperly construed the applicable law[.]” ORS 197.835(9)(a)(D).  
Page 5

1 ORS 197.660(2) defines “residential home” as “a residential treatment \* \* \*  
2 home, as defined in ORS 443.400 \* \* \* that provides residential care alone or  
3 in conjunction with treatment or training or a combination thereof for *five or*  
4 *fewer individuals* who need not be related.” In turn, a “residential treatment  
5 home” is defined in ORS 443.400(10) as “*a facility* that provides *for five or*  
6 *fewer individuals* with mental, emotional or behavioral disturbances or alcohol  
7 or drug dependence, residential care and treatment in one or more buildings on  
8 contiguous properties.” (Emphases added).

9 ORS 197.667 governs the location of “residential facilities” and allows a  
10 “residential facility” as permitted or conditional uses in residential zones.<sup>3</sup> ORS

---

<sup>3</sup> ORS 197.667 provides:

“Location of residential facility; application and supporting documentation.

“(1) A residential facility shall be a permitted use in any zone where multifamily residential uses are a permitted use.

“(2) A residential facility shall be a conditional use in any zone where multifamily residential uses are a conditional use.

“(3) A city or county may allow a residential facility in a residential zone other than those zones described in subsections (1) and (2) of this section, including a zone where a single-family dwelling is allowed.

1 197.660(1) defines “residential facility” to mean “\* \* \*a residential treatment  
2 facility, as [that] term[] [is] defined in ORS 443.400, that provides residential  
3 care alone or in conjunction with treatment or training or a combination thereof  
4 *for six to fifteen individuals \* \* \**.” ORS 443.400(9) defines “residential  
5 treatment facility” as “a facility that provides, *for six or more individuals* with  
6 mental, emotional or behavioral disturbances or alcohol or drug dependence,  
7 residential care and treatment in one or more buildings on contiguous  
8 properties.” (Emphasis added.)

9 When the dust settles on all of the quoted definitions, as applied to the  
10 application that the county approved, the statutes work as follows:

- 11 • Residential treatment homes that provide residential care and treatment  
12 for *five or fewer individuals who need not be related* with mental,  
13 emotional or behavioral disturbances or alcohol or drug dependence are  
14 allowed in the EFU zone.

---

“(4) A city or county may require an applicant proposing to site a residential facility within its jurisdiction to supply the city or county with a copy of the entire application and supporting documentation for state licensing of the facility, except for information which is exempt from public disclosure under ORS 192.410 to 192.505. However, cities and counties shall not require independent proof of the same conditions that have been required by the Department of Human Services under ORS 418.205 to 418.327 for licensing of a residential facility.”

- 1       • Residential treatment facilities that provide residential care and treatment  
2       *for six to fifteen individuals* with mental, emotional or behavioral  
3       disturbances or alcohol or drug dependence are not allowed in the EFU  
4       zone, but are allowed as permitted or conditional uses in residential  
5       zones.

6       OAR 660, Division 33 contains the Land Conservation and Development  
7       Commission’s (LCDC’s) administrative rule that implements Statewide  
8       Planning Goal 3 (Agricultural Land).<sup>4</sup> OAR 660-033-0120 adopts a Table that  
9       sets out all uses allowed as permitted or conditional uses on agricultural land.  
10      The Table lists a “[*r*]esidential home or facility as defined in ORS 197.660, in  
11      existing dwellings” as one of the uses allowed in the EFU zone.<sup>5</sup> (Emphasis  
12      added.) The LDO also includes a table, Table 4.2-1, that lists uses allowed in  
13      the EFU zone, and allows as a conditional use on agricultural lands  
14      “[*r*]esidential home/facility in existing dwellings.” LDO Table 4.2-1(14)  
15      (emphasis added).

16      As explained above, the Applicant proposes to provide inpatient  
17      treatment to between six and fifteen individuals, and the proposal therefore

---

<sup>4</sup> The purpose of Division 33 is “to preserve and maintain agricultural lands as defined by Goal 3 for farm use, and to implement ORS 215.203 through 215.327 and 215.438 through 215.459 and 215.700 through 215.799.”

1 qualifies as a “residential treatment facility.” The proposal does not qualify as a  
2 “residential home” or a “residential treatment home” because that type of  
3 service is limited to five or fewer clients. The Applicant asserted before the  
4 county that Table 4.2-1(14) and OAR 660-033-0120’s Table allow its proposed  
5 use in the EFU zone. The county’s planning staff agreed with the Applicant and  
6 issued a decision approving the application.

7         Petitioners appealed the decision to the hearings officer. Petitioners  
8 argued that the Applicant’s proposed use is not authorized by ORS  
9 215.283(2)(o) because it seeks approval of a use that falls under the definition  
10 of “residential facility” at ORS 197.660(1), which is allowed only in residential  
11 zones, rather than a “residential home” as defined in ORS 197.660(2), which is  
12 allowed in the EFU zone. Petitioners also argued that the Table and LDO Table  
13 4.2-1(14)’s apparent authorization of a “residential facility” in the EFU zone  
14 are inconsistent with the more limited statutory authorization in ORS  
15 215.283(2)(o) of a “residential home” in an existing dwelling in the EFU zone.

16         The hearings officer agreed that the application appeared to seek a use  
17 that is not allowed under ORS 215.283(2)(o), and that the Table and LDO

---

<sup>5</sup> Although petitioners do not raise the issue, we note that OAR 660-033-0010, -0120 and -0130 do not reference ORS 197.660 *et seq.* as statutes that are  
Page 9

1 Table 4.2-1 appear to be inconsistent with the statute. Record 5. However, the  
2 hearings officer concluded that it was outside of his authority to determine  
3 whether the Table and the LDO conflict with the statute, and denied  
4 petitioners' appeal.

5 **B. First Assignment of Error**

6 In their first assignment of error, petitioners argue that the proposed use  
7 is not a use that is authorized in the EFU zone, and that the county improperly  
8 concluded that the Table and LDO Table 4.2-1 authorize the use. According to  
9 petitioners, the Table and LDO Table 4.2-1 cannot provide authority for the  
10 county to approve the use, because the tables are inconsistent with ORS  
11 215.283(2)(o) to the extent they authorize uses that are broader than the use  
12 authorized under ORS 215.283(2)(o), "residential homes" in EFU zones.  
13 Petitioners also point out that even if the Table and Table 4.2-1 authorize uses  
14 that are broader than the statute, LDO 1.5.1 requires that where a statute  
15 contains more restrictive than standards than those contained in the LDO, the  
16 county must apply more restrictive provisions of the statute.<sup>6</sup>

---

implemented by the rule.

<sup>6</sup> LDO 1.5.1 provides in relevant part:  
Page 10

1 We agree with petitioners that the county erred in approving the  
2 application. The proposed use is not a use that is authorized in the EFU zone  
3 under ORS 215.283(2)(o). The proposed use is a “residential facility” and not a  
4 “residential home.” A “residential facility” is not a use that is authorized in the  
5 EFU zone.

6 However, we disagree with petitioners that the Table (and Table 4.2-1)  
7 are inconsistent with ORS 215.283(2)(o), or that the tables otherwise allow a  
8 “residential treatment facility” in the EFU zone. First, the Table uses the phrase  
9 “[r]esidential home or facility as defined in ORS 197.660.” That phrase differs  
10 both from the statutory authorization at ORS 215.283(2)(o) of a “residential  
11 home,” and from the defined term “residential facility” at ORS 197.660(1).  
12 Although the phrase in the Table is imprecisely worded, it more than likely is  
13 intended to reflect and incorporate ORS 197.660(2)’s incorporation of the

---

“This Ordinance is not intended to abrogate any other law, ordinance, regulation, or permit requirement. Where conditions, standards, or requirements imposed by any provision of this Ordinance are more restrictive than comparable standards imposed by any other law, ordinance, or regulation, the provisions of this Ordinance will govern. Wherever the provisions of any other statute, ordinance, or regulation impose other standards which are more restrictive than those set forth in this Ordinance, then the provisions of such statute, ordinance, or regulation will govern.

\* \* \*

1 definition of “residential treatment home” at ORS 443.400(10): “*a facility* that  
2 provides” certain services to persons described therein. In other words, the  
3 Table’s reference to “residential home or facility” is a reference to a residential  
4 home as defined in ORS 197.660 and the incorporated definition at ORS  
5 443.400(10), *i.e.* a “facility” that treats five or fewer individuals. The Table is  
6 not referring to a “residential facility” or a “residential treatment facility” as  
7 those terms are defined in ORS 197.660(1) and ORS 443.400(9), respectively.  
8 Accordingly, we read the Table to be consistent with ORS 215.283(2)(o) and to  
9 authorize a “residential home” as defined in ORS 197.660(2) in the EFU zone.  
10 We conclude there is no conflict between the Table and ORS 215.283(2)(o).

11 In sum, we agree with petitioners that the county erred in approving a  
12 residential facility that is not allowed in the EFU zone.

13 The first assignment of error is sustained.

#### 14 **CONCLUSION**

15 In their second assignment of error, petitioners argue that the hearings  
16 officer erred in concluding that the Applicant established that it has legal  
17 access to the property, and that the county committed a procedural error that  
18 prejudiced their substantial rights when it refused to consider petitioners’  
19 arguments that the Applicant lacks legal access to the subject property. In the  
20 third assignment of error, petitioners argue that the hearings officer erred in  
Page 12

1 failing to apply the LDO's off-street parking and loading standards to the  
2 proposed use.

3         We sustain the first assignment of error, based on the conclusion that the  
4 proposed residential treatment center is not an allowed use in the EFU zone.  
5 The county's decision "violates a provision of applicable law and is prohibited  
6 as a matter of law[,]” and accordingly, the appropriate disposition is reversal of  
7 the decision. OAR 661-010-0071(1)(c). Because we reverse the decision, we  
8 need not address petitioners' second and third assignments of error.

9         The decision is reversed.