

1 Opinion by Kellington.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a resolution of the city council
4 interpreting the Salem Revised Code (SRC).

5 **FACTS**

6 The subject property is zoned Single Family Residential
7 (RS). In the area surrounding the subject property,
8 properties are zoned Multi-Family Residential, Commercial
9 Retail, and Public Education. Uses in the area surrounding
10 the subject property include single family dwellings, a
11 nursing home, a trailer park, and apartments.

12 Petitioner applied for an interpretation of the SRC
13 that its proposed alcohol and drug rehabilitation facility
14 is a use allowed in the RS zone. Specifically, petitioner
15 proposes to establish a "short term residential care
16 facility for up to twenty clients and a long term
17 residential care [facility] for up to fifteen clients."
18 Petition for Review 6.

19 The RS zone allows the following as a "special use"¹:

20 "Residential care facilities, including homeless
21 shelters serving five or fewer persons (836),
22 except residential homes."² SRC 146.030(a)(6).

¹Under the SRC, a "special use" is permitted in a zoning district when developed and conducted in compliance with standards for that special use found in SRC Chapter 119.

²SRC 113.090 adopts the "Standard Industrial Classification Manual" (SIC) definitions for terms not defined in the SRC. The parenthetical reference to "836" in the quoted portion of SRC 146.030(a)(6) is to the

1 The planning commission determined the proposed use is
2 a "residential care facility" as that term is used in
3 SRC 146.030(a)(6), and that it provides "residential care"
4 as defined in SIC Group 836, Industry No. 8361 (SIC No.
5 8361). Accordingly, the planning commission determined the
6 proposed use is allowed in the RS zone as a special use.

7 The city council reviewed the planning commission's
8 decision on its own motion. The city council determined the
9 proposed use does not provide "residential care" as defined
10 by SIC No. 8361 and, consequently, is not properly
11 considered a "residential care facility" allowed in the RS
12 zone under SRC 146.030(a)(6). This appeal followed.

13 **SECOND ASSIGNMENT OF ERROR**

14 "Respondent's findings are inadequate to justify
15 and support its decision."

16 Petitioner contends because the city's findings
17 incorporate several documents by reference, they are so
18 confusing that it is impossible to ascertain the basis for
19 the city's decision.

20 We agree with petitioner that the findings are
21 difficult to follow. However, the findings are sufficient
22 for this Board to review petitioner's challenges to the
23 city's decision.

24 The second assignment of error is denied.

three digit "Industry Group Number" for "Residential Care." SIC Group 836 includes a single four digit "Industry Number," SIC Industry No. 8361, which is also entitled "Residential Care." SIC Industry No. 8361 provides a definition for residential care establishments.

1 **FIRST ASSIGNMENT OF ERROR**

2 "Respondent improperly interpreted its zone code
3 to exclude a Residential Care Facility from a RS
4 zone."

5 **THIRD ASSIGNMENT OF ERROR**

6 "Respondent's decision is not supported by
7 substantial evidence in this record."

8 Petitioner argues the SIC No. 8361 definition of
9 "Residential Care" should not be applied to determine the
10 meaning of "residential care facility" as used in
11 SRC 146.030(a)(6). Petitioner argues it is only appropriate
12 to utilize SIC definitions if a particular SRC term is
13 ambiguous. Petitioner claims the meaning of "Residential
14 Care Facility" is plain.

15 We agree with the city that under SRC 146.030(a)(6) and
16 SRC 113.090, the SIC definition of "Residential Care"
17 governs whether a particular use is a "Residential Care
18 Facility."

19 The facility is proposed to provide residential
20 treatment to persons suffering from drug or alcohol
21 addiction. The proposed treatment program has two aspects,
22 generally referred to by the parties as "short" term
23 detoxification and "long" term rehabilitation care. During
24 both the short term and the long term phases of the program,
25 treated persons will reside at the proposed facility.³

³The short term detoxification program is proposed to have 20 beds, and the long term rehabilitation program, 15 beds. The long term program will

1 The city determined the following additional facts:

2 "The Council finds that the proposed use is
3 comprised of a detoxification component and a
4 residential treatment component. The residential
5 treatment component involves inpatient
6 rehabilitative services based on a 'social model'
7 of education and counseling. The detox component,
8 as described by the applicant, focuses on
9 management and relief of physical symptoms
10 associated with alcohol/drug withdrawal with
11 education and counseling limited to the final and
12 release phase of the detox treatment. The detox
13 component [includes] medical staff checking vital
14 signs and the assessing and evaluating of the
15 client's degree of addiction to determine the
16 proper course of care. The process involves the
17 staff's determining whether the client is merely
18 intoxicated and in need of a bed for the night to
19 dry out or whether his drug/alcohol use rises to
20 the level of an illness requiring specialized,
21 medical care. * * *" Record 3.

22 SIC No. 8361 defines "Residential Care" as follows:

23 "Establishments primarily engaged in the provision
24 of residential social and personal care for
25 children, the aged, and special categories of
26 persons with some limits on ability for self care,
27 but where medical care is not a major element.
28 Included are establishments providing 24-hour
29 year-round care for children. Boarding schools
30 providing elementary and secondary education are
31 [classified elsewhere]. Establishments primarily
32 engaged in providing nursing and health related
33 personal care are classified in [Group] 805
34 [("Nursing and Personal Care Facilities)]."
35 (Emphasis supplied.)

36 Following the definition in SIC No. 8361 is a list of

have fewer beds because it is not anticipated that every short term client needs or would benefit from the long term rehabilitation program. Some clients of the short term program may be placed in an outpatient program elsewhere. Record 63. We reject the city's suggestion that clients of the proposed facility will not "reside" at the facility.

1 specific uses which provide "Residential Care." Included
2 among those listed uses are: "Alcoholism rehabilitation
3 centers, residential: with health care incidental" and "Drug
4 rehabilitation centers, residential: with health care
5 incidental." (Emphasis supplied.)

6 The city determined that neither the short term
7 detoxification component of the program nor the long term
8 rehabilitation component of the program falls within the
9 above quoted SIC No. 8361 definition of "Residential Care."
10 Rather, the city determined the short term detoxification
11 program most appropriately fits within SIC Group 806⁴
12 ("Hospitals") or within SIC Group 809⁵ ("Miscellaneous

⁴SIC Group 806 provides:

"Hospitals

"This group includes establishments primarily engaged in providing diagnostic services, extensive medical treatment including surgical services, and other hospital services, as well as continuous nursing services. These establishments have an organized medical staff, inpatient beds, and equipment and facilities to provide complete health care. Convalescent homes with extended care facilities, sometimes referred to as convalescent hospitals, are classified in Industry 8051." (Emphasis supplied.)

⁵SIC Group 809 lists several industries. SIC Industry No. 8093 provides:

"Specialty Outpatient Facilities, Not Elsewhere Classified

"Establishments primarily engaged in outpatient care of a specialized nature with permanent facilities and with medical staff to provide diagnosis, treatment, or both for patients who are ambulatory and do not require inpatient care. Offices and clinics of health practitioners are classified according to their primary activity in Industry Groups 801 through 804." (Emphasis supplied.)

1 Health and Allied Services, Not Elsewhere Classified"),
2 because the city believes the proposed short term
3 detoxification component of the proposed use will provide
4 "primarily" health care. Similarly, the city determined the
5 long term rehabilitation portion of the proposed use does
6 not fall within the "Residential Care" definition of SIC
7 No. 8361, but rather is most appropriately classified as a
8 "Nursing and Personal Care Facilit[y], Not Elsewhere
9 Classified," as that use is defined in SIC Group 805,
10 Industry No. 8059 (SIC No. 8059).⁶

SIC Industry No. 8093 lists the following relevant examples:

"Alcohol treatment, outpatient clinics.

"* * * * *

"Outpatient detoxification centers.

"* * * * *

"Outpatient treatment clinics for alcoholism or drug
addiction."

⁶SIC Group 805 states:

"Nursing and Personal Care Facilities

"This group includes establishments primarily engaged in
providing inpatient nursing and health-related personal care.
Establishments providing diagnostic, surgical, and extensive
medical services are classified in Industry Group 806, and
those providing residential care with incidental nursing or
medical services are classified in Industry Group 836."
(Emphasis supplied.)

SIC No. 8059 provides:

"NURSING AND PERSONAL CARE FACILITIES, NOT ELSEWHERE CLASSIFIED

1 There are essentially only two choices under the above
2 described SIC definitions. Either health care is an
3 "incidental" part of the proposed use or it is a "primary"
4 part of the proposed use. If the provision of health care
5 is an "incidental" part of the proposed use, then the use
6 provides "Residential Care" as defined by the SIC and is
7 properly termed a "Residential Care Facility" under SRC
8 146.030(a)(6). On the other hand, if health care is a
9 "primary" part of the proposed use, then the facility does
10 not provide "Residential Care" under the SIC and the
11 facility cannot be termed a "Residential Care Facility"
12 under SRC 146.030(a)(6). The issue disputed by the parties
13 is whether the evidence in the record supports the city's
14 determination that the proposed facility provides
15 "primarily" health care.

16 We have examined all of the evidence in the record
17 cited by the parties. The record establishes the proposed
18 facility will refuse to admit anyone in need of medical

"Establishments primarily engaged in providing some nursing and/or health related care to patients who do not require the degree of care and treatment that a skilled or intermediate care facility is designed to provide. Patients in these facilities, because of their mental or physical condition, require some nursing care, including the administering of medications and treatments or the supervision of self-administered medications in accordance with a physician's orders. Establishments primarily engaged in providing day-to-day personal care without supervision of the delivery of health services prescribed by a physician are classified in Industry 8361." (Emphasis supplied.)

1 attention.⁷ Record 53, 56, 63. The temperature and blood
2 pressure of potential admittees will be taken. Record 43.
3 The facility employee in charge of admissions will determine
4 whether a proposed admittee requires medical attention. The
5 facility will have a nurse on call to assist the admissions
6 clerk in making that determination. Record 41, 65. Once
7 admitted to the program, the admittee will be provided with
8 residential support, education and counseling services.⁸
9 Record 40, 55. No medication or medical treatment will be
10 provided at the proposed facility.⁹ Record 41, 56. During

⁷Specifically, the proposed facility will refuse to accept anyone who is "unconscious, who has an obvious medical emergency requiring hospital services, who is physically abusive, or who is exhibiting life threatening withdrawal symptoms." Record 53, 55.

⁸Specifically, the record indicates the following services will be provided at the proposed facility:

- "1. Safe withdrawal from alcohol/drugs.
- "2. Assessment and evaluation.
- "3. Individualized and group counseling.
- "4. Alcohol-drug abuse education.
- "5. Proper nutrition.
- "6. Relapse prevention plan.
- "7. Placement from detox into appropriate continuum of care. This addresses recidivism ('revolving door')." Record 57.

⁹If an admittee is taking doctor prescribed medication at the time of admission, then the admittee will be allowed to continue taking such medication while residing at the proposed facility. The materials describing the proposal state the following:

1 the first 30 days of the program, admittees will not be
2 allowed to leave the facility, and visitation with others
3 outside of the facility will be discouraged. Record 65-66.
4 If at any time an admittee develops "shakes or
5 hallucinations or become[s] ill or violent, [the admittee
6 will be] referred to a local hospital." Record 43-44.

7 The evidentiary record does not include substantial
8 evidence that the proposed facility, including both the
9 short term and long term components of the program, will
10 provide "primarily" health related services, as defined in
11 SIC Groups 805, 806 and 809. We conclude the record
12 establishes as a matter of law that the provision of health
13 services at the proposed facility will be incidental only.

14 The first and third assignments of error are sustained.

15 The city's decision is reversed.¹⁰

16

"A social detox does not have stock prescriptions of tranquilizers on board for everyone. Prescribed medications may be on the unit in two situations. One is that case when a client may be transported to the local hospital for stabilization and upon return may have a hospital approved medication. Secondly, once in a while at admission time the client may have an authorized medication." Record 56.

¹⁰We do not determine that the city must approve all permits required by the proposed facility. Rather, we determine that the city's decision that the proposed facility does not constitute a "special use" allowable in the RS zone under SRC 114.030(a)(6) is erroneous as a matter of law.