BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

JOE KEICHER,
Petitioner,

vs.

CLACKAMAS COUNTY,
Respondent,

and

CLACKAMAS COUNTY FIRE
DISTRICT NO. 1,
Intervenor-Respondent.

LUBA No. 2000-157

FINAL OPINION
AND ORDER

Appeal from Clackamas County.

Edward J. Sullivan and William K. Kabeiseman, Portland, filed the petition for review. With them on the brief was Preston, Gates and Ellis. William K. Kabeiseman argued on behalf of petitioner.

No appearance by Clackamas County.

Clark I. Balfour and Richard G. Lorenz, Portland, filed the response brief. With them on the brief was Cable, Huston, Benedict, Haagensen and Lloyd. Clark I. Balfour argued on behalf of intervenor-respondent.

Carolyn H. Cogswell and J. Kenneth Jones, Eugene, filed an amicus brief on behalf of amici Special Districts Association of Oregon and Oregon Fire District Directors Association. With them on the brief was Speer, Hoyt, Jones, Poppe, Wolf & Griffith, P.C.

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

AFFIRMED 03/15/2001

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

Opinion by Holstun.

NATURE OF THE DECISION

Petitioner appeals a county decision concluding that a proposed fire station is an outright permitted use in the county's Exclusive Farm Use (EFU) zone.

MOTION TO INTERVENE

Clackamas County Fire District No. 1 (hereafter CCFD or intervenor), the applicant below, moves to intervene on the side of respondent. There is no opposition to the motion, and it is allowed.

FACTS

CCFD is a rural fire protection district that provides fire protection and emergency medical service (EMS) services to areas of the county located outside the Metro Urban Growth Boundary (UGB).[1] CCFD also provides such services to two types of areas inside the UGB. First, although most of CCFD is located outside the UGB, some portions of the district are located inside the UGB but outside city limits. Second, CCFD has entered mutual aid agreements with Oregon City and other cities to provide services to certain areas of the adjoining cities that are located outside CCFD. These areas are inside the UGB *and* inside city limits.

The proposed fire station would replace the existing Beavercreek Fire Station that is located in the nearby Beavercreek rural center on non-EFU-zoned land. The proposed fire station would be located over two miles outside the UGB on a five-acre leased site on a 71-acre EFU-zoned parcel. The challenged decision includes the following description of the proposal:

> "The fire station would include living facilities for on-duty staff (sleeping quarters, a day room, kitchen, utility room, exercise room and

[1]ORS chapter 478 sets out a comprehensive statutory scheme that sets out the requirements for formation of rural fire protection districts, as well as their powers and duties.

> showers/toilets/lockers), bays for storing equipment and vehicles, an office, a classroom and a lobby. There would be direct vehicular access to Beavercreek Road, which adjoins the lease site. Land around the lease site is used for farming except for farm homes south and west of [the] lease site." Record 1.

Although most of the proposed fire station's service area is located outside the UGB, its service area includes some unincorporated lands located inside the UGB. The proposed fire station is also expected to provide service to some areas located within adjoining cities, pursuant to mutual aid agreements with those cities. The county hearings officer interpreted relevant statutory EFU-zone requirements to authorize the disputed fire station to provide fire and EMS services to these urban areas and to authorize on-site training for fire service and EMS personnel. Petitioner argues the hearings officer misconstrued relevant EFU-zone provisions and made findings about the rural nature of CCFD's service areas that are not supported by substantial evidence.

FIRST, SECOND AND THIRD ASSIGNMENTS OF ERROR

ORS 215.283(1) includes a long list of uses and activities that are allowed outright in rural EFU zones.[2] Two of those uses and activities are relevant in this appeal. ORS 215.283(1)(d) authorizes utility facilities necessary for public service. ORS 215.283(1)(w) allows "[f]ire service facilities providing rural fire protection services."[3] Although ORS 215.283(1)(w) requires that the "services" that such fire service facilities provide must be "rural," the challenged decision, petitioner and intervenor all appear to assume that a fire service facility provides "rural fire protection services," if those services are provided to rural areas rather than urban areas. Because the parties and the decision take that approach,

[2]Counties must allow the uses listed in ORS 215.283(1) and may not subject such uses to additional county land use regulations. *Brentmar v. Jackson County*, 321 Or 481, 900 P2d 1030 (1995).

[3]ORS 215.213(1) and (2) set out a substantially parallel set of EFU zoning requirements for counties that have adopted marginal lands designations pursuant to ORS 197.247 (1991). ORS 215.213(1). Clackamas County did not elect to designate marginal lands and ORS 215.283(1) and (2) apply to Clackamas County.

and no party suggests any other way of determining whether fire protection services are "rural," within the meaning of ORS 215.283(1)(w), we follow the same approach.[4]

The challenged decision concludes that land is properly viewed as "rural," within the meaning of ORS 215.283(1)(w), if it is located outside a UGB.[5] Petitioner disputes that interpretation.[6] The challenged decision also explains that there are at least three ways to interpret ORS 215.283(1)(w). First, ORS 215.283(1)(w) could be interpreted to allow fire facilities if the service area includes *any* rural areas. Second, the statute could require that such fire facilities *primarily* serve rural areas. Finally, the statute could require that such fire facilities serve *exclusively* rural areas. The challenged decision adopts the second interpretation, and petitioner argues that the third interpretation is correct. Finally, petitioner argues that even if the county's interpretation is correct, the record does not include substantial evidence that the proposed fire station will primarily serve rural lands. Petitioner

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[4]There is argument included on pages five and six of the petition for review where petitioner suggests that fire stations may provide fire protection services that are "urban" or "rural" in nature, without regard to the nature of the area served. However, petitioner does not develop an argument in support of that suggestion. In his remaining arguments he does not question the hearings officer's assumption that the question of whether fire protection services are rural is determined by the urban or rural nature of the area served. Petitioner simply disagrees with the way the hearings officer implemented that approach. We note that there is at least one document in the record that suggests that fire protection services can be categorized as urban, suburban and rural. Record 389-90. If that is the case, it might dramatically simplify application of ORS 215.283(1)(w) since the focus would be on the types of service to be provided rather than the areas to be served. However, no party develops an argument that fire protection services themselves, as opposed to the areas receiving those services, can be categorized as urban, suburban and rural; and we are unwilling to pursue that possibility on our own without assistance from the parties.

[5]The statewide planning goals include the following definition of "Rural Land":

> "Rural lands are those which are outside the urban growth boundary and are:
>
> "(a) Non-urban agricultural, forest or open space lands or,
>
> "(b) Other lands suitable for sparse settlement, small farms or acreage homesites with no or hardly any public services, and which are not suitable, necessary or intended for urban use."

[6]According to petitioner, many areas located within the disputed fire station's service area include development that is urban in nature or density and for that reason should be considered urban land, even though they are located outside the UGB.

advances a number of arguments under these assignments of error, which we separately address below.

A. The Challenged Decision Improperly Inserts a Word that the Legislature did not Include in ORS 215.283(1)(w)

The challenged decision interprets ORS 215.283(1)(w) "to allow a fire station in the EFU zone when it *primarily* serves [a] rural area." Record 15 (emphasis in original). Petitioner argues:

> "The hearings officer's interpretation is flawed because it violates ORS 174.010 * * *.[7] Here, the hearings officer clearly inserted a wor[d] that had been omitted. The statute says that facilities 'providing rural fire protection services' may be established in an EFU zone; it does not say that facilities 'providing *primarily* rural fire protection services' are allowed. The insertion of the word 'primarily' is contrary to the language of the statute and violates ORS 174.010." Petition for Review 5 (emphasis in original).

One problem with petitioner's ORS 174.010 argument is that it arguably applies to petitioner's reading of the statute as well it applies to the hearings officer's. While the hearings officer interpretation inserts the word "primarily," petitioner's interpretation effectively inserts the word "exclusively." The statute does not expressly state either qualification.

It is possible that by saying "rural fire protection services" the legislature meant to authorize rural fire protection services only, and its failure to include an express mention of "urban" fire protection services means the legislature intended to prohibit the facilities authorized by ORS 215.283(1)(w) from providing services to any urban areas. If we limit our focus to the language of ORS 215.283(1)(w), petitioner's construction is certainly possible. Intervenor and amici rely largely on the practical problems that they argue would

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[7]ORS 174.010 provides:

> "In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all."

effectively make it impossible to site fire service facilities on EFU-zoned land anywhere near a UGB.[8] But petitioner's construction is consistent with a number of appellate court decisions, which hold that statutory authorizations for nonfarm uses in EFU zones should be construed narrowly in favor of the legislative policy against converting agricultural land to nonfarm use. *Nelson v. Benton County*, 115 Or App 453, 459, 839 P2d 233 (1992); *McCaw Communications, Inc. v. Marion County*, 96 Or App 552, 555, 773 P2d 779 (1989); *Hopper v. Clackamas County*, 87 Or App 167, 172, 741 P2d 921 (1987), *rev den* 304 Or 680, 748 P2d 142 (1988).

However, neither the legislative policy in ORS 215.243 nor the cases applying that policy state an immutable rule of construction. *Von Lubken v. Hood River County*, 118 Or App 246, 250, 846 P2d 1178 (1993). When interpreting ORS 215.283(1)(w), we must consider its statutory context. *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610, 859 P2d 1143 (1993). We believe that such a contextual construction should include consideration of ORS chapter 478, which authorizes and establishes a regulatory framework for rural fire protection districts. We do not understand petitioner to dispute that fire protection services are commonly provided in rural areas by the rural fire protection districts that are authorized by ORS chapter 478.

Rural fire protection districts are limited by statute in their ability to include areas within incorporated cities.[9] However, rural fire protection districts are expressly authorized to enter into agreements with cities and other municipal corporations to provide fire

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[8]As amici and intervenor explain it, such fire stations commonly cooperate with city and other urban fire service providers and provide protection to some areas that petitioner considers urban or quasi-urban. According to amici and intervenor, rural fire protection district fire stations would be required to refuse to provide service to nearby urban or quasi-urban lands interspersed within their service areas, under petitioner's reading of the statute. Amici and intervenor take the position that that result is both unworkable and absurd.

[9]ORS 478.010(2)(a) provides that a rural fire district may not include "[t]erritory within a city unless otherwise authorized by law."

protection services.[10] These agreements clearly could, and according to amici as a matter of common practice do, lead to rural fire protection districts such as CCFD extending fire protection services beyond rural areas to include some urban areas.[11] Finally, we note that ORS 478.260(2) directs that facility sites be selected based on service considerations rather than the site's existing zoning.[12] Therefore, while rural fire protection districts may select EFU-zoned parcels, as in this case, properties in other rural or urban zones might also be selected.

1 In view of this statutory structure for providing rural fire protection services, it is clear that rural fire protection districts are not required to exclude urban areas. To the contrary, they are authorized to cooperate with city and other urban fire protection service providers to provide services more efficiently. In this context, we agree with intervenor and amici that if the legislature intended the facilities authorized by ORS 215.283(1)(w) to only include facilities that provided "exclusively rural fire protection services," it would have included the word "exclusively." Although it might be appropriate to imply an exclusivity requirement in other statutory contexts, we agree with amici and intervenor that such an implication is not warranted here.[13]

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[10]ORS 478.300(1) provides:

> "In addition to the authority to enter agreements under ORS 190.003 to 190.620, a district, city, municipal corporation or other governmental agency, may contract with any person for the purpose of affording fire fighting, protection or prevention facilities or road-lighting facilities and services, or both, to such person"

[11]We do not understand petitioner to dispute the point.

[12]ORS 478.260(2) provides:

> "The [district] board, with advice and counsel of the fire chief, shall select the location of the fire house or houses or headquarters of the fire department of the district. Such sites shall be chosen with a view to the best service to the residents and properties of the whole district and may be acquired by purchase or exercise of the powers of eminent domain * * *."

[13]Later in this opinion we reject suggestions by amici that *any* facilities constructed by a rural fire protection district should come within the authority granted by ORS 215.283(1)(w), no matter who may be served by those facilities. Nevertheless, we believe it is appropriate to assume the legislature was aware of the

Amici and intervenor suggest that the hearings officer's less extreme reading of ORS 215.283(1)(w) to require that the facilities it authorizes must "primarily" serve rural areas is also at odds with the statute. They suggest that ORS 215.283(1)(w) is satisfied if the proposed fire station provides *any* service to rural areas. However, intervenor does not make that argument in support of a cross-assignment of error. We therefore assume without deciding that ORS 215.283(1)(w) imposes a requirement that the proposed fire station must *primarily* serve rural areas.

B. The Challenged Decision Misinterprets the Word "Rural" in ORS 215.283(1)(w)

The hearings officer interpreted the word "rural," as it is used in ORS 215.283(1)(w), to refer to fire protection services to areas that are outside an urban growth boundary. As petitioner correctly notes, the ill-defined distinction between "urban" and "rural" uses has generated a significant amount of litigation and rulemaking in at least one other context. *See 1000 Friends of Oregon v. LCDC (Curry Co.)*, 301 Or 447, 724 P2d 268 (1986) (application of Goal 14 (Urbanization) to rural residential lands); OAR 660-004-0040 (same). Petitioner contends that services to developed areas outside an acknowledged UGB could constitute service to urban areas, if the existing or planned-for development qualifies as an urban level of development.

2 Again, because the legislature is presumably aware of the application of Goal 14 outside UGBs to limit approval of new quasi-urban levels of development under *1000 Friends of Oregon v. LCDC (Curry Co.)* and LCDC rules, petitioner's argument is not implausible. We agree that any areas for which a Goal 14 exception has been approved to allow urban level development would have to be considered as urban, along with areas located inside acknowledged UGBs. However, petitioner does not identify *any* lands within the proposed fire station's service area for which Goal 14 exceptions have been approved.

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existence of rural fire protection districts, and their customary method of operation, in determining what the legislature meant in ORS 215.283(1)(w) when it used the words "rural fire protection services."

Rather, he appears to argue Goal 14 exceptions *should* be required for certain areas or *may* be required for certain areas in the future. We agree with the hearings officer that the county can rely on *existing* planning and zoning, for purposes of determining whether a fire station primarily serves rural areas, within the meaning of ORS 215.283(1)(w).

C. Focus on Proposed Facility's Service Area Rather than the Entire District

Petitioner argues that a majority of the responses that are made by all stations in CCFD are to urban areas.[14] Petitioner argues that the hearings officer erred by considering the service area for the proposed fire station (which is 95 percent rural) and its anticipated responses to rural areas (which constitute somewhere between 67 percent and 76 percent of total responses, according to evidence cited by petitioner), rather than considering the entire district. Had the entire district been considered, petitioner argues the hearings officer would have been required to conclude that the proposed fire station will primarily serve urban areas.

Petitioner's argument is inconsistent with the language of the statute. Whether a particular fire station primarily provides fire protection services to rural areas can only be determined by examining the area that the facility will serve. The area that is served by other stations in CCFD is not relevant to that inquiry. The hearings officer correctly examined the proposed fire station's anticipated service area to determine whether the proposed fire station will primarily serve rural areas.[15]

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[14]Each of the fire stations within CCFD is assigned a service area, which includes a portion of CCFD. According to intervenor, the proposed station's service area is designed to allow incident responses within six minutes, 90 percent of the time.

[15]It would appear to be true, as petitioner argues, that CCFD could modify the service area for the proposed fire station at any time. We also assume it could expand the district to include additional urban or rural areas in the future. Neither of those possibilities has any impact on the appropriate area to consider in making the inquiry the hearings officer concluded is required under ORS 215.283(1)(w).

D. The Hearings Officer's Findings Regarding Rural Fire Protection Services

3 The hearings officer found that 95 percent of the area to be served by the proposed fire station is rural land located outside the UGB. We agree with the hearings officer that a fire station that serves a 95-percent rural area primarily serves a rural area. However, because the urban area served by the proposed fire station generates more than five percent of the annual calls that result in incident responses, the hearings officer also considered that percentage as well. The hearings officer found that between 11 and 12 percent of the total annual calls in 1999 from the existing Beavercreek station were to urban areas.[16] Petitioner argues the hearings officer was mistaken in this finding and that the 12 percent of total responses noted by the hearings officer includes only responses to cities and does not include responses to urban areas inside the UGB but outside city limits. Petitioner speculates that as many as 12 percent more of the total responses in 1999 may have been to areas inside the UGB but outside city limits. Petition for Review 15. According to petitioner, that would make 24 percent of the total responses in 1999 urban. Elsewhere in the petition for review, petitioner states that 33 percent of the fire station's total incident responses in 1999 may have been to urban areas within the nearby UGBs. Even if petitioner is correct in this regard, we would still agree with the hearings officer that the proposed fire station primarily serves rural areas. A fire station with only five percent of its service area inside a UGB and somewhere between 67 percent and 76 percent of its incident responses going to rural areas outside the UGB primarily serves rural areas.[17]

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[16]The evidence the hearings officer relied on to support this finding appears at page 136 of the record. That evidence shows that 45 of the total 396 incident responses from the Beavercreek Fire Station in 1999 (11.36 percent) were mutual aid responses to areas in nearby cities. In 1998, 19 of the total 236 incident responses from the Beavercreek Fire Station (8.05 percent) were mutual aid responses to areas in nearby cities.

[17]Petitioner also argues that some of the calls to areas outside the UGB should be considered incident responses to urban areas. Petitioner does not identify how many of these kinds of calls he believes were made in 1999 and 1998. In any event, we reject the argument for reasons explained earlier in this opinion.

The first, second and third assignments of error are denied.

FOURTH ASSIGNMENT OF ERROR

Under this assignment of error, petitioner challenges two accessory functions that the proposed fire station will provide: (1) EMS services and (2) on-site training. According to petitioner, although ORS 478.260(3) authorizes rural fire protection districts to offer EMS services, that separate authorization demonstrates that fire protection services and EMS services are different services, and that provision of the latter is not authorized for the facilities authorized by ORS 215.283(1)(w). Petitioner also argues training facilities are simply not allowed by ORS 215.283(1)(w).

The hearings officer's decision includes the following findings regarding these issues:

> "The hearings officer is convinced by * * * testimony that enabling legislation authorizes emergency medical services to be provided only by cities and rural fire districts. The only way for EMS to be provided in the rural area consistent with enabling statutes is by the fire district. Rural fire and medical services are integrated in practice --- physically and through personnel --- and cannot be separated. The fact that the legislature authorized them separately does not dictate that they be provided separately nor preclude them from being operated in an integrated manner.
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> "* * * Although training could be conducted in the urban area, training facilities proposed on the lease site consist of one room that is incapable physically of accommodating a large number of people or supporting activities that serve more than the local rural area. * * * Appropriate-scale medical and training facilities, such as proposed in this case, are necessary and common accessory functions for a rural fire station." Record 13.

Intervenor argues in support of the hearings officer's findings that, under petitioner's construction of ORS 215.283(1)(w), fire fighters could extinguish flames but could not aid injured residents or injured fire fighters. Intervenor points out that the statute does not expressly authorize other common aspects of a fire station that intervenor believes the legislature surely intended to allow, including bathrooms, a kitchen and sleeping quarters. According to intervenor, petitioner's arguments "[put] the statute at war with common sense." Intervenor's Brief 12.

We are mindful that neither LUBA nor the appellate courts are free to rewrite statutes to align those statutes with our notion of "common sense." Similarly, our authority to construe statutes to avoid what we may perceive to be absurd results is extremely limited. *Recovery House VI v. City of Eugene*, 156 Or App 509, 516, 965 P2d 488 (1998) (*citing Clackamas County v. Gay*, 146 Or App 706, 711-18, 934 P2d 551, *rev den* 325 Or 438, 939 P2d 621 (1997), Landau, J., concurring). Nevertheless, our obligation under *PGE* is to seek to identify and give effect to what we understand to be the legislature's intent. 317 Or at 610. In doing so we must begin with the text of the statute. The text of the statute, viewed in isolation, makes no mention of EMS services or training. If that text is viewed solely in the context of the EFU zoning statutes, which at least nominally disfavor nonfarm uses, petitioner's construction is reasonable.[18] However, when viewed in larger context, including the legislature's failure to expressly define what it meant in ORS 215.283(1)(w) by "[f]ire service facilities," we are persuaded by the hearings officer's legal reasoning and his unchallenged findings of fact.

4 Once again, we believe it is appropriate to assume that the legislature was aware that rural fire protection districts are authorized by ORS 478.260(3) to provide EMS service and that they commonly integrate such services with their fire protection services. While all questions on this point could have been eliminated had the statute been more clearly written, such is frequently the case with statutes. It is much easier to pick statutes apart after the fact than to write them so that they clearly and precisely implement an identified legislative intent and anticipate all possible future factual backdrops. In this case, we are persuaded by the hearings officer's reasoning, as well as the arguments of intervenor and amici, that the legislature did not intend to preclude the fire service facilities authorized by ORS

[18]We say nominally because even though ORS 215.243 expresses a legislative policy favoring preservation of farm land for farm uses, ORS 215.213(1) and (2) and ORS 215.283(1) and (2) make provision for long lists of nonfarm uses in EFU zones.

215.283(1)(w) from also providing EMS services or providing appropriately limited on-site training. We conclude that both are included within the statutory authorization for fire service facilities.

The fourth assignment of error is denied.

FIFTH ASSIGNMENT OF ERROR

At the time the application that led to the disputed decision was submitted, Clackamas County had not amended its EFU zone to incorporate the provisions of ORS 215.283(1)(w). Under the fifth assignment of error, petitioner argues that ORS 215.283(1)(w) is not self executing and that, until the county amends its EFU zoning ordinance to incorporate ORS 215.283(1)(w), it may not approve a fire station in the EFU zone pursuant to that authority. Petitioner also argues that in amending its EFU zone, the county will be required to provide notice in accordance with ORS 197.047 and that the county may not circumvent that notice requirement by applying ORS 215.283(1)(w) directly to approve the disputed fire station.[19]

5 Taking the second argument first, we agree with intervenor and amici that the notice requirement of ORS 197.047 could not be applicable here, because ORS 215.283(1)(w) authorizes what was *not* previously expressly authorized in the EFU zone; it does not "limit or prohibit otherwise permissible land uses."

6 Petitioner's other argument under this assignment of error is also without merit. Under *Brentmar* and ORS 197.646(1), the county was legally obligated to amend its EFU zone to allow the facilities authorized by ORS 215.283(1)(w) as soon as that statute took effect and applied to the county. ORS 215.283(1)(w) has applied to the county since October 23, 1999. As relevant, ORS 197.646(3) provides:

[19]ORS 197.047 requires that certain notice be given where statutes or administrative rules "limit or prohibit otherwise permissible land uses."

> "When a local government does not adopt * * * land use regulation amendments as required by [ORS 197.646(1)], the new or amended goal, rule or statute shall be directly applicable to the local government's land use decisions. * * *"

The county did not err by applying ORS 215.283(1)(w) directly in this case.

The fifth assignment of error is denied.

SIXTH ASSIGNMENT OF ERROR

Although utility facilities necessary for public service are nominally outright permitted uses under ORS 215.283(1)(d), those uses may not be allowed without first demonstrating that it is not feasible to locate the utility facility on property other than rural EFU-zoned property. *Dayton Prairie Water Assoc. v. Yamhill County*, 38 Or LUBA 14, 18-21, *aff'd* 170 Or App 6, 11 P3d 671 (2000); *Clackamas Co. Svc. Dist. No. 1 v. Clackamas County*, 35 Or LUBA 374, 378-80 (1998); ORS 215.275. This requirement is sometimes referred to as the "necessity" test, which refers to the requirement that it be shown to be necessary to site the facility on EFU-zoned land. Citing our recent decision in *Cox v. Polk County*, ___ Or LUBA ___ (LUBA No. 2000-030, November 2, 2000), *appeal pending*, petitioner argues that the proposed fire station is properly viewed as *both* a fire station and a utility facility and therefore the necessity test applies and was not addressed by the hearings officer.

7 We reject the argument. The statutory construction question presented in *Cox* was significantly different than the question presented here. There the question was whether a proposal to use EFU-zoned land as an adjunct to a city sewer treatment system to allow application of treated effluent on farm land was properly viewed as (1) a farm use, (2) a utility facility or (3) both. We concluded the facility at issue in that case came within both of those general categories of uses. The question posed under this assignment of error is whether the proposed fire station falls within both the general category of utility facilities (which requires application of the necessity test) and the more specific category of fire

service facilities (which does not require application of the necessity test). We find that the more specific provision applies exclusively, and the fire station need not be separately approved as a utility facility. ORS 174.020; *See Mercy Health Promotion v. Dept. of Rev*., 310 Or 123, 130, 795 P2d 1082 (1990) (where one statute addresses a "very broad class" of situations and another addresses the "precise" situation at issue, the more specific statute applies); *Thompson v. IDS Life Ins. Co*., 274 Or 649, 656, 549 P2d 510 (1976) (same).

To the extent our conclusion above does not entirely resolve any statutory ambiguity, statutory and legislative history support the same result. ORS 215.283(1)(w) was adopted as part of larger legislative effort to address "utility facilities necessary for public service" in EFU zones. Or Laws 1999, ch 816 (HB 2865). As originally introduced, HB 2865 added a reference to "fire service" facilities in the ORS 215.283(1)(d) provisions governing utility facilities.[20] Had HB 2865 been adopted in that form, the disputed fire station would clearly have been subject to the necessity test that was adopted as modified by HB 2865. However, HB 2865 was amended before it was adopted to include entirely different subsections of ORS 215.283(1) to authorize certain uses, including fire service facilities.[21] Or Laws 1999, ch 816, §2. Those separate statutory provisions are now codified at ORS 215.283(1)(w), (x) and (y).[22] One of the proponents of the legislation explained that these amendments "[add]

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[20]As introduced, HB 2865 would have amended ORS 215.283(1)(d), which authorizes utility facilities necessary for public service in EFU zones, to add the bold language as follows:

> "Utility **and fire service** facilities necessary for public service * * *. **As used in this paragraph, 'necessary' means the person locating the facility has reviewed relevant factors regarding the location of the utility or fire service facility and has made a reasonable judgment that the quantity, quality of service or cost-effective delivery of the utility or fire service will be enhanced by locating the facility at the proposed site.**"

[21]The required alternative site analysis or necessity test was also relocated from ORS 215.283(1)(d) to appear in a separate section. Or Laws 1999, ch 816, §3. That section is now codified at ORS 215.275, and ORS 215.283(1)(d) cross-references and requires that utility facilities satisfy the necessity test that is set out at ORS 215.275.

[22]Unlike ORS 215.283(1)(d), ORS 215.283(1)(w), (x) and (y) do not cross-reference or require compliance with the necessity test.

fire facilities, irrigation canals, and utility service lines as uses not subject to the 'necessity' requirement." Testimony of Burton Weast, Minutes of the House Water and Environment Committee Work Session on HB 2865, May 17, 1999, page 8.

The county did not err by failing to require that the disputed fire station be separately approved as a utility facility subject to the necessity test. The sixth assignment of error is denied.[23]

AMICI'S ADDITIONAL ARGUMENTS

We have limited our decision in this case to its facts. Ninty-five percent of the disputed fire station's service area is rural and well over half of its incident responses will be to rural areas, based on 1999 figures for the existing fire station. We agree with intervenor and amici that such a fire station is authorized by ORS 215.283(1)(w).

Citing the uncertainty that such a result leaves for this fire station and other fire stations on EFU-zoned parcels that are left to wonder how much of their service areas must be rural and how many of their incident responses must be to rural areas, amici suggest that a fire station is authorized by ORS 215.283(1)(w) if it provides fire protection services to any rural area. Amici's brief can also be read to suggest that any facility constructed by a rural fire protection district authorized under ORS chapter 478 should fall within the scope of ORS 215.283(1)(w), without further inquiry.

Although the solutions amici propose would perhaps eliminate uncertainty, they are not supported by the text and context of ORS 215.283(1)(w). Amici's first suggestion would make the limitation to "rural fire protection services" almost entirely meaningless. That standard presumably would be met in all cases because the facility would be located on a rural EFU-zoned parcel. Amici's second suggestion regarding rural fire protection district

[23]Petitioner also makes an argument under the fifth assignment of error that depends on the argument he advances under the sixth assignment of error. Because we deny the sixth assignment of error, we reject petitioner's related and dependent argument under the fifth assignment of error as well.

facilities may be closer to what the legislature meant to say. However, the fundamental difficulty with that suggestion is that the legislature adopted precisely that approach with irrigation districts in ORS 215.283(1)(x), and it did not do so in ORS 215.283(1)(w).[24] We are not free to rewrite ORS 215.283(1)(w) to adopt the approach the legislature took for irrigation districts in ORS 215.283(1)(x). The uncertainty that exists under ORS 215.283(1)(w) is created by the statutory language itself, and only the legislature, or perhaps LCDC through rulemaking, can eliminate that uncertainty.

The county's decision is affirmed.

[24]ORS 215.283(1)(x) authorizes the following structures and facilities in EFU zones:

> "Irrigation canals, delivery lines, and those structures and accessory operational facilities associated with a district as defined in ORS 540.505."