

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

3
4 SCOTT COOKMAN and
5 LAUREL COOKMAN,
6 *Petitioners,*

7
8 vs.

9
10 MARION COUNTY,
11 *Respondent.*

12
13 LUBA No. 2003-008

14
15 FINAL OPINION
16 AND ORDER

17
18 Appeal from Marion County.

19
20 Ross Day, Tigard, and Mark C. Hoyt, Salem, filed the petition for review and argued
21 on behalf of petitioners. With them on the brief was Oregonians in Action Legal Center.

22
23 Jane Ellen Stonecipher, Assistant Legal Counsel, Salem, filed the response brief and
24 argued on behalf of respondent. With her on the brief was Michael J. Hansen.

25
26 HOLSTUN, Board Member; BASSHAM, Board Chair; BRIGGS, Board Member;
27 participated in the decision.

28
29 AFFIRMED

06/05/2003

30
31 You are entitled to judicial review of this Order. Judicial review is governed by the
32 provisions of ORS 197.850.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

NATURE OF THE DECISION

Petitioners appeal a county decision that grants conditional use approval for a bed and breakfast inn on property zoned Exclusive Farm Use (EFU).

FACTS

Petitioners own and reside in a dwelling on a 5.14-acre parcel zoned EFU. All surrounding properties are zoned EFU. Petitioners operate Willamette Gables Riverside Estate (hereafter WGRE) as a home occupation. WGRE operates a bed and breakfast inn and hosts a variety of special events. According to a brochure in the record, the bed and breakfast part of the home occupation has five rooms. The bed and breakfast rooms are apparently available individually or in conjunction with special events. The brochure describes the special events part of the business in some detail. Record 182-183. For special events, WGRE can accommodate 200 people outdoors and 100 people indoors, with seating for 200 outdoors and up to 50 indoors. WGRE facilities can be leased for “meetings, seminars, retreats, private parties, picnics, garden parties, teas, weddings, receptions, [and] anniversaries.” Record 182. Persons leasing WGRE for special events may choose their own caterer or choose from a list of caterers that WGRE maintains. A dance floor and 40-foot by 40-foot canopy are available and “[e]vent coordination services [are] available for an additional fee.” *Id.*

Petitioners began operation of WGRE without seeking or receiving any land use permits from the county. On July 31, 2001, a county employee informed petitioners that the business was operating in violation of the Marion County Rural Zoning Ordinance (MCRZO). At that time, petitioners were told they must (1) cease operations; (2) move the business to another location, where the business would not violate the zoning ordinance; or (3) seek approval for their business through a land use application. Record 293.

1 MCRZO 136.060(c) authorizes home occupations in the county’s EFU zone as a
2 conditional use. Petitioners filed an application for conditional use approval for WGRE as a
3 bed and breakfast inn home occupation. The planning director approved the application with
4 conditions. One condition limited the activities on the property to the bed and breakfast part
5 of the business, and prohibited “meetings and special events.”¹ Petitioners appealed the
6 planning director’s decision to the county hearings officer. The hearings officer affirmed the
7 planning director’s decision and approved the application, with modifications to the
8 conditions of approval.² Petitioners appealed the hearings officer’s decision to the board of
9 county commissioners. The board of commissioners denied the appeal and affirmed the
10 hearings officer’s decision. This appeal followed.

¹ The planning director’s decision includes the following conditions:

- “8. The occupation or activity shall be continually conducted solely by residents of the dwelling as a secondary use and continually meet the definition of a ‘Bed and Breakfast Inn’ * * *. Meetings and special events are not permitted.
- “9. Failure to comply with the above conditions result [sic] in this approval being voided.” Record 265.

² The hearings officer’s conditions of approval include the following:

- “9. Applicants’ meetings and special events business is prohibited, unless adjudged by a court of competent jurisdiction to be allowed or conditionally permitted in the EFU zone, or unless approved through the land use process.

“* * * * *

- “16. Failure to comply with the above conditions may result in this approval being cancelled. Prior to canceling the permit approval, applicants will be afforded an opportunity to show good cause why the permit should not be cancelled.” Record 69.

1 **SECOND ASSIGNMENT OF ERROR**

2 Petitioners argue that the county cannot regulate the special events part of their home
3 occupation through conditions of approval for the bed and breakfast inn because, pursuant to
4 ORS 197.015(10)(d), those gatherings are exempt from county land use regulations.³

5 According to petitioners, gatherings of fewer than 3,000 persons, such as the
6 gatherings that occur on their property, are exempt from county land use regulations under
7 ORS 197.015(10)(d) and it was error for the county to impose conditions of approval on
8 WGRE under the MCRZO that require them to terminate that aspect of their home
9 occupation. The hearings officer characterized petitioners’ argument under ORS
10 197.015(10)(d) as follows:

11 “Applicants claim that they may hold as many gatherings as they like on the
12 subject property, as long as each gathering is less than 3,000 people, and the
13 combined hours of all gatherings do not exceed 120 hours in a three-month
14 period. Under this theory, 120 one-hour events with up to 2,999 attendees
15 could be held per quarter on EFU zoned property. * * *” Record 45.

16 The hearings officer rejected petitioners’ ORS 197.015(10)(d) argument and
17 explained her interpretation of the statutory exemption for certain small gatherings as
18 follows:

19 “The more consistent interpretation is that one unregulated gathering, not
20 exceeding 120 consecutive hours, is allowed within one three month period.
21 This interpretation exempts occasional short-term gatherings from land use
22 regulation, but allows land use regulation of longer and more frequent
23 events.” *Id.*

24 We agree with the hearings officer. Even if we assume that ORS 197.015(10)(d)
25 preempts local regulation of the gatherings described in the statute, petitioners’ special
26 events business clearly does not fall within that preemption. It is clear from the record that

³ ORS 197.015(10)(a) sets out the definition of “land use decision.” ORS 197.015(b) through (d) provide certain exceptions to the definition of “land use decision” set out in ORS 197.015(a). ORS 197.015(d) provides, in relevant part, that the definition of “land use decision” “[d]oes not include authorization of an outdoor mass gathering as defined in ORS 433.735, or other gathering of fewer than 3,000 persons that is not anticipated to continue for more than 120 hours in any three-month period.”

1 petitioners did not seek county approval of their special events business on the basis that only
2 one special event would be held on the subject property in any three month period. In a
3 separate opinion issued this date, we examine the statutory provisions governing outdoor
4 mass gatherings and the 1999 legislative amendments now codified at ORS 197.015(10)(d).
5 *Landsem Farms, LP v. Marion County*, ___ Or LUBA ___ (LUBA No. 2002-160, June 5,
6 2003). In that opinion we conclude that even if ORS 197.015(10)(d) does prohibit county
7 regulation of gatherings of “fewer than 3,000” people, the prohibition is not as broad as
8 petitioners argue it is. Even if ORS 197.015(10)(d) does prohibit county regulation of
9 gatherings of “fewer than 3,000” on petitioners’ property, it would only do so if those
10 gatherings occurred “no more frequently than once every three months.” *Landsem Farms,*
11 *LP v. Marion County*, slip op at 10. The special events at WGRE occur more frequently than
12 once every three months, and ORS 197.015(10)(d) does not bar the county from prohibiting
13 operation of the WGRE special events business in the county’s EFU zone.

14 The second assignment of error is denied.

15 **THIRD ASSIGNMENT OF ERROR**

16 MCRZO 119.060 specifically authorizes the county to impose conditions when it
17 grants conditional use approval.⁴ However, petitioners contend that their application for
18 conditional use approval concerned only the bed and breakfast part of their business. While
19 MCRZO 119.060 authorizes the county to place conditions on their operation of the bed and
20 breakfast, petitioners argue MCRZO 119.060 does not authorize the county to impose

⁴ MCRZO 119.060 provides, in relevant part:

“The [county] may prescribe restrictions or limitations for the proposed conditional use but may not reduce any requirement or standard specified by this ordinance as a condition to the use. * * * The [county] shall impose conditions only after it has determined that such conditions are necessary for the public health, safety or general welfare, or to protect persons working or residing in the area, or the protection of property or improvements in the area. The [county] may prescribe such conditions it deems necessary to fulfill the purpose and intent of [the MCRZO].”

1 conditions on what they contend is the unrelated special events business. Petitioners contend
2 that the county therefore erred in imposing the disputed conditions regarding the special
3 events business.⁵

4 Once the hearings officer rejected petitioners' argument that ORS 197.015(10)(d)
5 prohibits county application of its land use regulations to their special events business, the
6 hearings officer noted that the planning director had already determined that the special
7 events business is not permitted in the EFU zone. The hearings officer recognized that
8 petitioners were not seeking approval of the special events business, but noted that continued
9 operation of the WGRE special events business violates the MCRZO. Therefore, even
10 though petitioners were not seeking conditional use approval for the special events business,
11 the hearings officer explained that such a violation of the MCRZO would require that the
12 requested conditional use approval for the bed and breakfast be denied, even if the bed and
13 breakfast would otherwise qualify for conditional use approval.⁶ Rather than deny the
14 request for conditional use approval for the bed and breakfast, the hearings officer imposed
15 the disputed conditions of approval requiring that petitioners cease operation of the special

⁵ Petitioners' claim that the special events business is unrelated to the bed and breakfast business is not explained. Petitioners' claim is contrary to the hearings officers findings:

“[Petitioners] noted at [the] hearing that the bed and breakfast inn and the events business use different contracts but use the same ‘books’. This indicates that the businesses are integrated * * *.” Record 46.

⁶ MCRZO 110.680 prohibits county approval of a conditional use permit, where the land that would be the subject of the conditional use permit is in violation of the MCRZO:

“No permit for the use of land or structures or for the alteration or construction of any structure shall be issued and no land use approval shall be granted if the land for which the permit or approval is sought is being used in violation of any condition of approval of any land use action, or is being used or has been divided in violation of the provisions of this ordinance unless issuance of the permit would correct the violation.”

1 events business and not resume that special events business on the subject property unless
2 land use approval for the special events business is first obtained.⁷

3 The county argues that the disputed conditions are *required* by MCRZO 110.680 and,
4 since MCRZO 119.060 authorizes the county to attach “conditions it deems necessary to
5 fulfill the purpose and intent of [the MCRZO],” they are *authorized* by MCRZO 119.060.

6 Clearly MCRZO 119.060 grants the county broad authority to impose conditions of
7 approval. Just as clearly, MCRZO 110.680 can be interpreted to allow or require that the
8 county impose a condition of approval that petitioners discontinue their special events
9 business on the property. Although we do not believe MCRZO 110.680 necessarily dictates
10 that the county impose a condition that adds an additional legal consequence that the
11 conditional use permit for the bed and breakfast could be revoked if petitioners continue to
12 operate the special events business in the future, we believe it was within the county’s
13 discretion under ORS 197.829(1) to interpret MCRZO 110.680 to allow it to impose such a
14 condition.

15 The third assignment of error is denied.

16 **FIRST ASSIGNMENT OF ERROR**

17 **A. Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA)**

18 42 U.S.C. 2000cc § (2000)(a) provides, in relevant part:

19 “(1) GENERAL RULE- No government shall impose or implement a land
20 use regulation in a manner that imposes a substantial burden on the
21 religious exercise of a person * * *, unless the government
22 demonstrates that imposition of the burden on that person * * *

23 “(A) is in furtherance of a compelling governmental interest; and

24 “(B) is the least restrictive means of furthering that compelling
25 governmental interest.

⁷ The hearings officer’s condition 16 differs from the planning director’s condition 8 to eliminate the suggestion in the planning director’s condition 8 that the conditional use permit for the bed and breakfast might become void without first giving petitioners an opportunity to contest that action.

1 “(2) SCOPE OF APPLICATION- [42 U.S.C. 2000cc, Section 2] applies in
2 any case which—

3 “* * * * *

4 “(C) [a] substantial burden is imposed in the implementation of a
5 land use regulation or system of land use regulations, under
6 which a government makes, or has in place formal or informal
7 procedures or practices that permit the government to make,
8 individualized assessments of the proposed uses for the
9 property involved.”

10 According to petitioners, petitioner Laurel Cookman is an ordained minister, and the
11 disputed conditions can be read to prohibit her from engaging in protected religious activity
12 on the subject property.⁸ Petitioners argue that they raised this issue before the county
13 hearings officer, and the hearings officer improperly decided that petitioners failed to
14 demonstrate that they have standing to bring such a claim.

15 The county responds that petitioners mischaracterize the conditions of approval.
16 According to the county, the conditions of approval simply provide that if the special events
17 aspect of the WGRE home business is continued in the future, the conditional use permit for
18 the bed and breakfast aspect of the WGRE home business may be revoked. Simply stated,
19 the county contends that the conditions are directed at petitioners’ special events business,
20 not at the exercise of petitioners’ religion. According to the county, the disputed conditions
21 do not “prevent Mrs. Cookman from conducting a religious service on the property in
22 connection with her ministry.” Respondent’s Brief 15. We also understand the county to
23 argue that the disputed conditions are not directed at any protected religious or political
24 activities that bed and breakfast guests might engage in on the subject property.

25 We agree with the county that there is nothing in the wording of the disputed
26 conditions that suggests they are directed at religious services that Mrs. Cookman may
27 conduct on the property in the future, or that the bed and breakfast conditional use permit

⁸ See n 2.

1 would be revoked if she performed religious services on the subject property. As the county
2 correctly points out, petitioners cite no authority that suggests the county’s regulation of
3 petitioners’ special events business runs afoul of RLUIPA simply because some of those
4 special events might be religious or political in nature or because Mrs. Cookman might
5 perform some weddings that the special events business might schedule on the subject
6 property.

7 This subassignment of error is denied.

8 **B. Constitutionally Protected Activities**

9 Having decided that neither the second and third assignments of error nor RLUIPA
10 provide a basis for reversal or remand, we now turn to petitioners’ constitutional arguments.
11 *See Planned Parenthood Assn. v. Dept. of Human Res.*, 297 Or 562, 564-565, 687 P2d 785
12 (1984) (subconstitutional arguments should be addressed prior to addressing arguments that a
13 challenged decision violates constitutional provisions); *DeFazio v. WPPSS*, 296 Or 550, 555,
14 679 P2d 1316 (1984) (same). Petitioners advance a number of such arguments. First,
15 petitioners contend that the county violated their right to due process by failing to inform
16 them when they applied for conditional use approval for the bed and breakfast that the
17 disputed conditions might be imposed to prohibit the special events business. Second,
18 petitioners contend the county is improperly coercing petitioners into waiving their
19 constitutional right to have the county prove in a justice or circuit court proceeding that their
20 special events business violates applicable law. Third, petitioners argue the county has no
21 provisions for the “show cause” hearing that condition 16 seems to anticipate in the event the
22 county determines that continued operation of the special events business warrants canceling
23 the conditional use permit for the bed and breakfast, and that petitioners’ right to due process
24 will be violated by subjecting them to such an ad hoc hearing. Finally, petitioners argue the
25 disputed conditions are overbroad. We address each of petitioners’ due process arguments
26 below.

1 **1. Failure to Provide Notice**

2 The county adopted Marion County Ordinance 1105 in 1999. Ordinance 1105 was
3 adopted to establish “a procedure whereby ordinances of Marion County can be enforced
4 quickly and cost-effectively.” Record 229. Section 7 of the ordinance sets out the
5 requirements for a violation citation. Violation citations may be filed in any justice court in
6 the county. Record 231. A person receiving a violation citation may request a justice court
7 hearing. Record 232. In a justice court hearing on a violation citation, the county has “the
8 burden of proving the violation of the ordinance(s) by a preponderance of the evidence.”
9 Record 234. The Oregon Rules of Civil Procedure for pretrial discovery apply in violation
10 citation justice court proceedings. Record 234. In cases where the county successfully
11 prosecutes a violation citation, a fine may be imposed and costs may be assessed. Record
12 234. No other “loss by forfeiture, suspension or revocation of any license or any other
13 privilege or civil penalty” may be imposed under Ordinance 1105.⁹ Petitioners contend that
14 Ordinance 1105, ORS 215.185 and ORS 197.825(3)(a) “provide the exclusive means and
15 method Marion County may use to prosecute an alleged violation of Marion County’s
16 ordinances, including zoning ordinances.”¹⁰ Petition for Review 9.

⁹ Ordinance Section 3(4) clarifies that the county retains other remedies for violations of county ordinances:

“The [c]ounty may, at any time, whether before or after the issuance of one or more violation citations, institute a complaint in the Marion County Circuit Court for any other remedy provided by law including, but not limited to, injunction, mandamus, abatement, receivership or other appropriate proceedings to prevent, temporarily or permanently enjoin or abate the violation.”

¹⁰ ORS 197.825(3) provides in part:

“[T]he circuit courts of this state retain jurisdiction:

“(a) To grant declaratory, injunctive or mandatory relief in proceedings arising from decisions described in ORS 197.015(10)(b) or proceedings brought to enforce the provisions of an adopted comprehensive plan or land use regulations[.]”

ORS 215.185(1) provides:

1 Petitioners argue:

2 “[I]n this matter, the County did not even [provide] the most basic of due
3 process protections: the County never told [petitioners] that by signing a land
4 use application, they were waiving rights they would otherwise have under
5 [Ordinance 1105].” Petition for Review 8.

6 Petitioners contend that the county violated petitioners right to due process by not telling
7 them that they “waived their rights” to have the county prove their special events business is
8 not permitted in the EFU zone. Petition for Review 9. Instead, petitioners complain that the
9 county has assumed the role of “judge, jury and executioner,” and shifted the burden to
10 petitioners to prove that the special events business is permissible in the EFU zone or risk
11 losing the conditional use permit for their bed and breakfast. Petition for Review 11.

12 As we have already explained, the county found that petitioners’ special events
13 business is not a permitted use in the EFU zone. The hearings officer explained that because
14 the special events business constitutes a violation of the MCRZO, MCRZO 110.680 would
15 require that the county deny the request for a conditional use permit to operate the bed and
16 breakfast. Rather than do that, the planning director and hearings officer imposed the
17 disputed conditions.

18 The county contends that petitioner’s claim that they have been denied due process is
19 without merit. In its brief, the county argues that petitioners’ are simply wrong about
20 Ordinance 1105 and the cited statutes constituting the county’s *exclusive* remedies for
21 enforcing the MCRZO. As the county correctly points out, neither Ordinance 1105 nor the

“In case a building or other structure is, or is proposed to be, located, constructed, maintained, repaired, altered, or used, or any land is, or is proposed to be, used, in violation of an ordinance or regulation designed to implement a comprehensive plan, the governing body of the county or a person whose interest in real property in the county is or may be affected by the violation, may, in addition to other remedies provided by law, institute injunction, mandamus, abatement, or other appropriate proceedings to prevent, temporarily or permanently enjoin, abate, or remove the unlawful location, construction, maintenance, repair, alteration, or use.”

1 cited statutes purport to provide exclusive land use regulation enforcement remedies.¹¹
2 *Clackamas County v. Marson*, 128 Or App 18, 874 P2d 110 (1994), which petitioners cite in
3 support of their exclusive remedy arguments, does not hold that ORS 215.185 and ORS
4 197.825(3)(a) provide the *exclusive* means by which counties may enforce their zoning
5 ordinance. *Marson* simply holds that in the circumstances presented in that case the statutes
6 provided an *available* procedure for doing so. 128 Or App 22. These statutes certainly
7 authorize such enforcement action; however, there is simply nothing in either statute or in
8 Ordinance 1105 that prohibits the county from seeking to enforce the MCRZO, directly or
9 indirectly, by other appropriate means.

10 While petitioners may not have been aware of the possibility that the county would
11 apply MCRZO 110.680 and impose the disputed conditions when petitioners filed their
12 application for conditional use approval for the bed and breakfast, the county points out that
13 they certainly were aware of it after the planning director issued his decision. Since the
14 planning director's decision, petitioners (1) were provided a hearing before the hearings
15 officer, (2) were allowed an appeal to the board of county commissioners, (3) are now
16 pursuing an appeal at LUBA, and (4) will be entitled to seek judicial review of LUBA's
17 opinion in this matter. Respondent argues that petitioners have had ample opportunities to
18 challenge the disputed conditions and to challenge the county's factual and legal rationale for
19 imposing those conditions. Given those opportunities, respondent argues that petitioners'

¹¹ Strictly speaking MCRZO 110.680 is not a code enforcement provision at all. Rather, it is a conditional use permit approval criterion that petitioners must comply with. It represents a county policy that land use permits should not be granted for properties that are currently in violation of the MCRZO, unless the land use permit is required to correct the violation. There is nothing improper with such a policy or with requiring that a conditional use permit applicant carry the burden of establishing that the property that is the subject of the conditional use permit application is not currently being used in a way that violates the MCRZO. However, MCRZO 110.680 does have the effect of making it unnecessary in some cases for the county to pursue justice court or circuit court actions under Ordinance 1105, ORS 215.185 and ORS 197.825(3)(a) where a conditional use permit applicant corrects an existing violation in order to secure approval of the conditional use permit. Therefore, MCRZO 110.680 can be viewed as both a conditional use permit approval criterion and as an indirect enforcement tool.

1 contention that they have been denied due process is without merit. We agree with
2 respondent.

3 This subassignment of error is denied.

4 **2. Coerced Waiver of Rights**

5 Petitioners contend the disputed conditions coerced petitioners “into waiving their
6 right to defend an enforcement action in circuit court.” Petition for Review 15.

7 The county contends that petitioner have not been coerced into waiving any rights.
8 The county does not dispute that, if petitioners had elected not to pursue the conditional use
9 permit and elected simply to operate the bed and breakfast and special events businesses
10 without seeking land use approval, the burden of proof would be on the county in any justice
11 court proceeding to impose a civil penalty or in any circuit court proceeding to enjoin
12 petitioners’ operation of the bed and breakfast and special events business. Neither do we
13 understand the county to dispute that petitioners rather than the county will have the burden
14 of proving that their special events business is not in violation of the MCRZO in any county
15 proceeding under the disputed conditions to revoke the conditional use permit. However, the
16 county contends that petitioners have always had and continue to have a right to elect to
17 continue to operate their bed and breakfast and special events business without land use
18 permits, and thereby force the county to pursue an enforcement action to fine petitioners or to
19 force them to cease operation of the bed and breakfast and special events businesses.

20 Only if petitioners decide to seek conditional use approval for their bed and breakfast
21 must they shoulder the burden of establishing the legality of their special events business and
22 having failed to do so, run the risk that they will lose the conditional use permit for the bed
23 and breakfast if they continue to operate the special events business in the future. Petitioners
24 understandably wish that the choice to seek conditional use approval did not come with that
25 obligation, but that obligation results from the MCRZO 110.680 requirement that petitioners
26 establish that their current use of the property complies with the MCRZO rather than any

1 coercion by the county. MCRZO 110.680 may force petitioners to make a choice they wish
2 they did not have to make, and in that limited sense might be characterized as coercive, but it
3 does not deprive petitioners of their constitutional right to due process of law. As we have
4 already explained, petitioners have no statutory or constitutional right to force the county to
5 enforce the MCRZO in a particular manner or judicial forum.

6 **3. Lack of County Procedure for Enforcement of Conditions**

7 Under this subassignment of error petitioners repeat their coercion arguments and
8 their contention that Ordinance 1105, ORS 215.185 and ORS 197.825(3)(a) provide the only
9 enforcement mechanisms the county may employ to assert its claim that petitioners' special
10 events business is not allowed in the EFU zone. We have already rejected those arguments.
11 Petitioners also contend that the disputed conditions are improper because the county lacks
12 procedures for the "opportunity to show cause" that is referenced in the hearings officer's
13 condition 16 to ensure that petitioners will have an adequate opportunity to be heard in the
14 event the county seeks to apply the disputed conditions and terminate the conditional use
15 permit for the bed and breakfast business. In this undefined show case process, petitioners
16 repeat their argument that the county is in a position to assume the role of "judge, jury and
17 executioner." Petition for Review 16.

18 Petitioners are correct that the MCRZO neither expressly sets out an administrative
19 procedure that authorizes show cause hearings nor sets out a particular procedure for
20 conditional use permit revocations. However, as the county points out, MCRZO 110.680,
21 the same MCRZO provision that the planning director and hearings officer relied on to
22 impose the disputed condition, describes an administrative review procedure which the
23 county contends is the procedure that would apply here. That administrative review
24 procedure calls for the planning director or the planning director's designee to render an
25 administrative decision without a prior hearing. While MCRZO 110.680 does not appear to
26 provide petitioner any particular procedural or substantive rights prior to such an initial

1 administrative decision, MCRZO 110.680(c) and (f) provide that if petitioners request a
2 hearing after the initial administrative decision is rendered, the county hearings officer must
3 hold a hearing pursuant to MCRZO Chapter 111. The procedures set out at MCRZO Chapter
4 111 appear to be consistent with the ORS 197.763 statutory requirements for quasi-judicial
5 land use hearings, and appear to have been adopted to implement that statute. Given these
6 rights to (1) a quasi-judicial land use hearing before the hearings officer, (2) a further local
7 appeal, (3) LUBA review to consider the legal and evidentiary adequacy of the county's
8 decision, and (4) judicial review of LUBA's decision, the county argues that it is hardly
9 accurate to describe the disputed conditions as allowing the county to become judge, jury and
10 executioner.

11 With the county's clarification of the procedure that the county would be required to
12 follow in the event the county takes action in the future to cancel the conditional use permit,
13 we agree with the county that this subassignment of error is without merit.

14 This subassignment of error is denied.

15 **4. Overbreadth and Vagueness**

16 Petitioners next argue that the conditions are so broad and vague [that they
17 encompass] all aspects of [petitioners'] life on their property." Petition for Review 18.
18 Because the county "makes almost no effort to define what conduct will result in a violation
19 of the condition," petitioners contend the conditions fail to pass "constitutional muster." *Id.*

20 The county responds that the object of the disputed conditions is not religious or
21 political meetings on the subject property. We understand the county to argue the conditions
22 neither address nor prohibit religious or political meetings. The county contends that the
23 object of the disputed conditions is petitioners' special events business. As we have already
24 noted, the fact that that special events business might, if it were allowed in the EFU zone,
25 schedule special events where persons might engage in constitutionally protected speech or

1 other activities, does not mean that the conditions represent an improper county regulation of
2 constitutionally protected activities.

3 As noted, petitioners complain that the conditions make no attempt to define the
4 conduct that might result in violation of the condition. The short answer to that complaint is
5 that notwithstanding petitioners' attempt to characterize the object of the conditions as
6 constitutionally protected religious activity and political speech, they are directed instead at
7 petitioners' special events business rather than the events that special events business might
8 schedule that might or might not include constitutionally protected activity. Petitioners'
9 vagueness and overbreadth arguments are without merit.

10

- 1 This subassignment of error is denied.
- 2 The first assignment of error is denied.
- 3 The county's decision is affirmed.