

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

3  
4 DEREK DAVIS and JENNIFER DAVIS,  
5 *Petitioners,*

6  
7 vs.

8  
9 JACKSON COUNTY,  
10 *Respondent.*

11  
12 LUBA No. 2011-028

13  
14 FINAL OPINION  
15 AND ORDER

16  
17 Appeal from Jackson County.

18  
19 Derek Davis and Jennifer Davis, Medford, represented themselves. Derek Davis filed  
20 the petition for review and argued on his own behalf.

21  
22 Frank Hammond, Medford, filed the response brief and argued on behalf of  
23 respondent. With him on the brief was the Law Offices of Frank Hammond LLC.

24  
25 BASSHAM, Board Member; RYAN, Board Chair; HOLSTUN, Board Member,  
26 participated in the decision.

27  
28 AFFIRMED

07/06/2011

29  
30 You are entitled to judicial review of this Order. Judicial review is governed by the  
31 provisions of ORS 197.850.

**NATURE OF THE DECISION**

Petitioners appeal a hearings officer’s decision in a land use enforcement action that petitioners’ use of their property as a short-term vacation rental is not a permitted use in the Woodland Resource zone.

**FACTS**

The subject property is a 15-acre parcel zoned Woodland Resource (WR), a forest zone. The property is developed with a large dwelling with a number of amenities such as a swimming pool, a zipline, and a 9-hole chip-and-putt golf course. Petitioners do not reside on the property. In response to a complaint from neighbors, a county enforcement officer investigated and eventually cited petitioners for operating a commercial use on the property not allowed in the WR zone. The officer alleged that petitioners advertise and lease their property for large events such as weddings, and also lease the property to individuals or families as a weekend or weekly vacation rental.

Petitioners agreed to discontinue leasing the property for large events, but argued to the county hearings officer that leasing the property for short-term vacation rentals is a residential use permitted in the WR zone, no different than renting the property to long-term or month-to-month tenants. The hearings officer disagreed, concluded that a short-term vacation rental is not a use permitted in the WR zone, and ordered petitioners to cease that activity. The hearings officer also imposed a \$600 fine. This appeal followed.

**FIRST AND SECOND ASSIGNMENTS OF ERROR**

Jackson County Land Development Ordinance (LDO) Table 4.3-1 lists the uses allowed in the WR zone. Under the category of “commercial uses,” Table 4.3-1 lists only two uses: large destination resort and home occupation/home business. Under the category of “Residential Uses,” Table 4.3-1 lists a number of uses, including “large tract forest dwelling,” “forest template dwelling,” and “ownership of record dwelling.”

1           Petitioners argue that the hearings officer erred in concluding that leasing a dwelling  
2 as a short term vacation rental is not a “residential use” allowed in the WR zone. According  
3 to petitioners, Table 4.3-1 is silent as the rental of residential property, and there is no basis  
4 in the code to distinguish between short-term rentals and long-term rentals. Petitioners cite  
5 to *City of Portland v. Carriage Inn*, 67 Or App 44, 676 P2d 943 (1984), for the proposition  
6 that unless a zoning ordinance expressly prohibits transient or short-term occupancy of  
7 dwelling units in a residential zone, such uses must be treated the same way as long-term  
8 residential occupancy.

9           *City of Portland v. Carriage Inn* does not assist petitioners because, as the county  
10 points out in its brief, the county’s zoning ordinance includes provisions that effectively  
11 prohibit short term vacation rentals in the WR zone. LDO 13.2. sets out a number of use  
12 categories. The use category of “Residential Uses” includes, in relevant part “Household  
13 Living,” defined as “residential occupancy of a dwelling unit by a family” where “[t]enancy  
14 is arranged on a month-to-month or longer basis.” LDO 13.2.3(A)(1).<sup>1</sup> Subsection (2)  
15 describes an exclusion from “household living” for certain multi-unit lodgings rented on a  
16 monthly or longer basis, which fall into the use category of “Visitor Accommodation.”

17           In turn, LDO 13.2.4 describes the county’s commercial uses. LDO 13.2.4(P) defines  
18 the use category “Visitor Accommodation” as facilities that “provide lodging where tenancy

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<sup>1</sup> LDO 13.2.3(A) provides, in relevant part:

***“Household Living***

***“(1) Characteristics; Accessory Uses***

“Includes residential occupancy of a dwelling unit by a family. Tenancy is arranged on a month-to-month or longer basis. \* \* \*

***“(2) Exclusion***

“Lodging in a dwelling unit where more than two-thirds (2/3) of the units are rented on a monthly or longer basis is considered a hotel or motel use and is classified as a Visitor Accommodation.”

1 may be arranged for periods of less than 30 days.”<sup>2</sup> Under the foregoing definitions, there is  
2 no possible dispute that the short-term vacation rental at issue in this appeal does not fall into  
3 any category of residential use, and instead fall squarely into the definition of “visitor  
4 accommodation,” a commercial use that is not permitted in the WR zone. Contrary to  
5 petitioners’ argument, the LDC does distinguish between short-term and long-term rental of  
6 dwellings. As the relevant use categories are defined, the term of tenancy largely determines  
7 whether the rental is a residential use or commercial use.

8 Although the hearings officer did not address the above definitions, he correctly  
9 rejected petitioners’ argument that a short-term vacation rental is a residential use, and  
10 correctly concluded that a short term vacation rental is a commercial use not permitted in the  
11 WR zone.

12 The first and second assignments of error are denied.

13 The county’s decision is affirmed.

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<sup>2</sup> LDO 13.2.4(P) provides:

***“Visitor Accommodation***

***“(1) Characteristics; Accessory Uses***

“Includes facilities provide lodging where tenancy may be arranged for periods of less than 30 days. Accessory uses may include restaurants, offices, parking, and recreational uses, including swimming pools.

***“(2) Exclusion***

“(a) Lodging where the residents meet the definition of a family and where tenancy is arranged at a minimum on a month-to-month basis is classified as ‘Household Living.’

“(b) Lodging where the residents do not meet the definition of a family and where tenancy is arranged at a minimum on a month-to-month basis is classified as ‘Group Living.’”