

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

MILLER FAMILY FARM LIMITED PARTNERSHIP,

Petitioner,

vs.

LANE COUNTY,

Respondent,

and

LANDWATCH LANE COUNTY,

Intervenor-Respondent.

LUBA No. 2024-086

FINAL OPINION

AND ORDER

Appeal from Lane County.

Bill Kloos filed the petition for review and reply briefs and argued on behalf of petitioner.

Anne C. Davies filed the respondent's brief and argued on behalf of respondent.

Sean T. Malone filed the intervenor-respondent's brief.

ZAMUDIO, Board Chair; BASSHAM, Board Member; WILSON, Board Member, participated in the decision.

AFFIRMED 07/02/2025

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

NATURE OF THE DECISION

Petitioner, the applicant below, appeals a county hearings official decision denying a floodplain verification for two unpermitted structures located in the Special Flood Hazard Area (SFHA).

BACKGROUND

The subject property is located on the south bank of the McKenzie River. The property is developed with a dwelling and several outbuildings. Two outbuildings are located within the SFHA in an area zoned Exclusive Farm Use with a Floodplain Combining zone.¹ One building is referred to as a “horse stall” and the other is referred to as a “pole barn” in the challenged decision. The hearings official found that “the horse stall is used primarily for general light storage of consumer goods such as boat motors, pressure washers, etc., and that the pole barn has been improved by installation of interior finished walls and ceilings, cabinets, lighting, and fixtures such as a refrigerator and shelving containing consumer goods and trophies.” Record 20. Petitioner does not

¹ Lane Code (LC) 16.244(2)(d) provides:

“‘Area of special flood hazard’ means the land in the floodplain within a community subject to a 1 percent or greater chance of flooding in any given year. It is shown on the Flood Insurance Rate Map (FIRM) as Zone A, AO, AH, A1-30, AE, A99, AR, V, VO, V1-30, VE. ‘Special flood hazard area’ is synonymous in meaning with the phrase ‘area of special flood hazard.’”

1 challenge those findings. In this decision, we refer to the buildings as a “stall”
2 and “barn” without implying the agricultural uses that those terms usually carry.

3 The stall is approximately 400 square feet with a concrete slab. It has a
4 metal roof and wood siding.



5 Picture 3: Horse stall

6 Record 316.

7 The barn is approximately 6,000 square feet with a concrete slab. It has a
8 metal roof and the sides “are constructed out of 2 x 6 horizontal girts at 24” o.c.,
9 then ribbed sheetmetal panels are installed over the top of them.” Record 34.

- 1 “The walls are made of horizontal flat 2x6 members with the sheetmetal
- 2 covering it.” Record 404.



- 3 Picture 9: Boat storage under lean-to attached to the “pole barn” structure
- 4 Record 322.



1 Picture 7: "Pole barn" structure interior

2 Record 320.



Picture 5: Non-vented interior room in "pole barn" structure

Record 318.

Any "development" that occurs within the SFHA requires a floodplain development permit. Lane Code (LC) 16.244(4)(c). Typically, applicants submit a Type I Floodplain Verification Application to obtain a county determination whether proposed development is in a SFHA. If the county verifies that the proposed development is in the SFHA, then an applicant would apply for a floodplain development permit under the standards in LC 16.244. Record 256.

Petitioner applied for a floodplain verification for the stall and barn to attempt to come into compliance with the floodplain development code to comply

1 with a county code enforcement order in a separate proceeding. Petitioner sought
2 a determination that the stall and barn are not “structures” for purposes of the
3 floodplain regulations and, thus, petitioner was not required to obtain floodplain
4 development permits as such. Petitioner initially applied for a Type I Floodplain
5 Verification but later withdrew that application and requested that the county
6 process a Type II Floodplain Verification. “Despite a Type II request for a
7 floodplain verification being atypical, staff accepted and initialized the Type II
8 permit.” Record 256. The planning director denied the verification and concluded
9 that the stall and barn are structures that require floodplain permits. Record 251.
10 Petitioner appealed to the county hearings official, who issued a decision
11 affirming the director’s decision. This appeal followed.

12 **ASSIGNMENT OF ERROR**

13 In a single assignment of error, petitioner argues that the hearings official’s
14 decision that the two buildings are “structures” that require floodplain
15 development permits (1) includes an interpretation that is inadequate for review,
16 (2) is not supported by adequate findings, (3) misconstrues the code, and (4) is
17 not supported by substantial evidence. The county and intervenor-respondent
18 Landwatch Lane County (together, respondents) respond that the hearings
19 official did not err in concluding that the stall and barn are structures that require
20 floodplain development permits and request that we affirm the decision.

21 Petitioner replies, and we agree, that respondents do not directly respond
22 to the specific arguments in the petition for review, which challenge the hearings

1 official's decision. Instead, respondents essentially argue alternative and
2 additional bases for denial and request that we affirm the denial based on our own
3 interpretation of the floodplain regulations and the undisputed facts in the record.
4 The county agrees with petitioner that the hearings official's decision and
5 interpretation of the applicable criteria is inadequate. The county joins in
6 petitioner's request that we exercise our discretion to interpret the relevant terms
7 in the first instance under ORS 197.829(2), which provides: "If a local
8 government fails to interpret a provision of its comprehensive plan or land use
9 regulations, or if such interpretation is inadequate for review, the board may make
10 its own determination of whether the local government decision is correct."
11 Differently, intervenor defends the hearings official's decision as adequate and
12 correct.

13 We review a hearings official's interpretation of a local code provision to
14 determine whether the interpretation is correct. *Gage v. City of Portland*, 319 Or
15 308, 317, 877 P2d 1187 (1994). We will exercise the authority granted under
16 ORS 197.829(2) only if the relevant facts are undisputed and LUBA is presented
17 with a pure question of law that the parties have discussed thoroughly in their
18 briefs. *Miller v. Clackamas County*, 31 Or LUBA 104, 106 (1996). When the
19 purpose of the local provision is unclear and subject to numerous interpretations,
20 we will decline to exercise our authority under ORS 197.829(2) and will remand
21 the decision to the local government for the requisite interpretation. *Thomas v.*
22 *Wasco County*, 30 Or LUBA 302, 313 (1996). We agree with petitioner and

1 respondent that the hearings official's decision does not completely answer the
2 central interpretive issue presented in this case, the parties have thoroughly
3 briefed the interpretive issue, and the relevant facts are undisputed. In this
4 decision, we explain where and why we affirm the hearings official's decision
5 and, where the hearings official's decision contains an inadequate interpretation,
6 we exercise our authority under ORS 197.829(2).

7 We start by setting out the relevant code provisions and facts before
8 proceeding to petitioner's arguments. LC 16.244 provides floodplain regulations
9 for land zoned Floodplain Combining Zone. It is undisputed that the stall and
10 barn are located in the SFHA and in the Floodplain Combining Zone. The county
11 explains that the SFHA is mapped by the Federal Emergency Management
12 Agency (FEMA). Floodplain "regulations and their enforcement are highly
13 regulated by FEMA, and a community's participation in the flood insurance
14 program, and the availability of insurance discounts and grant opportunities, are
15 dependent on a community's adoption and enforcement of certain floodplain
16 regulations." Respondent's Brief 4.

17 LC 16.244 begins with the following findings:

18 "(i) The flood hazard areas of Lane County are subject to periodic
19 inundation which may result in loss of life and property, health and
20 safety hazards, disruption of commerce and governmental services,
21 extraordinary public expenditures for flood protection and relief,
22 and impairment of the tax base, all of which adversely affect the
23 public health, safety, and general welfare.

24 "(ii) These flood losses may be caused by the cumulative effect of

1 obstructions in special flood hazard areas which increase flood
2 heights and velocities, and when inadequately anchored, cause
3 damage in other areas. Uses that are inadequately flood proofed,
4 elevated, or otherwise protected from flood damage also contribute
5 to flood loss.” LC 16.244(1)(b).

6 LC 16.244(4)(c)(i) provides:

7 “Floodplain Development Permit Required. A development permit
8 must be obtained before construction or development begins within
9 any area laterally (horizontally) within the [SFHA] established in
10 section (3)(b). The development permit will be required for all
11 structures, including manufactured dwellings, and for all other
12 development, as defined in section (2), including fill and other
13 development activities.”

14 Any “development” that occurs within the SFHA requires a floodplain
15 development permit. “‘Development’ means any man-made change to improved
16 or unimproved real estate, including but not limited to buildings or other
17 structures, mining, dredging, filling, grading, paving, excavation or drilling
18 operations or storage of equipment or materials.” LC 16.244(2)(m). “‘Structure’
19 means for floodplain management purposes, a walled and roofed building,
20 including a gas or liquid storage tank that is principally above ground, as well as
21 a manufactured dwelling.” LC 16.244(2)(oo). The location and character of the
22 development determines the applicable elevation and flood proofing
23 requirements for purposes of a floodplain permit.

24 Intervenor argues that we should affirm the denial because the stall and
25 barn are indisputably “development” that require floodplain permits and, thus,
26 we need not determine whether they are “structures” for floodplain management

1 purposes in order to affirm the hearings official's denial. Petitioner replies that
2 petitioner does not dispute that both buildings constitute "development" that
3 require floodplain development permits. Instead, petitioner argues, the question
4 presented to the hearings official and to LUBA in this appeal is "whether the
5 development is a 'structure,' 'agricultural structure,' or something else." Reply
6 to Intervenor-Respondent's Brief 1. Petitioner argues that determination will
7 determine what elevation and flood proofing standards apply to the floodplain
8 permit.

9 A person may obtain a variance to elevation or flood proofing requirements
10 for agricultural structures that meet certain criteria. LC 16.244(4)(d)(i)(ff).

11 "Agricultural structure' means a structure used exclusively in
12 connection with the production, harvesting, storage, raising or
13 drying of agricultural commodities and livestock; not used for
14 human habitation.

15 "(i) The structure is walled and roofed, meaning it has at least two
16 outside rigid walls and fully secured roof.

17 "(ii) Includes aquaculture (farming that is conducted in water)
18 structures that are walled and roofed and used exclusively for
19 the production, harvesting, storage, raising or drying of
20 aquatic animals or plants." LC 16.244(2)(a).

21 The hearings official found that the stall and barn are not used for
22 agricultural purposes and petitioner does not challenge that finding or otherwise
23 argue that the stall and barn are "agricultural structures." Instead, petitioner
24 argues, as it did below, that the term "structure" in LC 16.244(2)(oo) must be
25 interpreted by reference to the definition of "agricultural structure" in LC

1 16.244(2)(a). That is, a building is not a “structure” unless it has at least two
2 outside rigid walls. Further, according to petitioner, a “rigid wall” means either a
3 load-bearing wall, or a wall that is designed to withstand flood water forces and
4 not fail. For those definitions, petitioner relies on written testimony from
5 petitioner’s engineer, who opined that the stall does not have rigid walls because
6 flood water would flow through gaps in the siding and the barn does not have
7 rigid walls because the siding would fail under floodwater pressure. Record 34-
8 35. The hearings official rejected that argument and engineer opinion, finding
9 that nothing in the LC suggests that to be “rigid” walls must be capable of
10 withstanding floodwater forces. Record 22.

11 We find it difficult to follow the petitioner’s reasoning, as the hearings
12 official evidently did. Petitioner frames their inquiry as “whether the barns, with
13 their framing, which is structurally independent of the siding that will fail during
14 the base flood, must still be regulated as a ‘structure’ or ‘agricultural structure’
15 under the code?” Reply to Respondent’s Brief 3. We understand petitioner to
16 accept that the stall and barn are “development” that require floodplain
17 development permits. We understand petitioner to accept that the stall and barn
18 are not “agricultural structures” because they are not used for agricultural
19 purposes. Petitioner asserts that the stall and barn are not “structures” for
20 purposes of floodplain permitting because they do not have “rigid” walls, as
21 petitioner understands the term “rigid.” Essentially, petitioner argues that the stall
22 and barn are buildings that do not have “walls” and are not “structures” and,

1 therefore, the buildings are regulated as “development,” but not as “structures”
2 for purposes of floodplain permitting. Our understanding from petitioner is that,
3 if the stall and barn are “structures,” then they are not allowed in the SFHA and
4 so they must be removed or significantly modified.

5 Petitioner argues that the term “wall” in the LC 16.244(2)(oo) definition
6 of “structure” must be interpreted as a “rigid wall” because that language is used
7 to define an “agricultural structure” in LC 16.244(2)(m). In other words,
8 petitioner argues that the context of LC 16.244(2)(m) informs and controls the
9 interpretation of LC 16.244(2)(oo).

10 We agree with respondents that petitioner’s proffered interpretation is
11 incorrect. The hearings official found that “wall” in LC 16.244(2)(oo) is not
12 defined in the code and carries its plain meaning. However, the hearings official
13 did not describe the plain meaning other than to state that “a wall is a ‘wall.’”
14 Record 21. Webster’s defines “wall” as “a vertical architectural member used to
15 define and divide a space; *esp* : one of the sides of a room or building that
16 connects the floor and ceiling or foundation and roof” and “the external layer of
17 structural material surrounding an object.” *Webster’s Third New Int’l Dictionary*
18 2572 (unabridged ed 2002). The hearings official rejected petitioner’s argument
19 that “wall” means the sides of a building that are load-bearing or able to withstand
20 floodwater pressure without failing.

21 The county could have—but did not—adopt a more precise definition of
22 the generally understood term “wall.” Accordingly, as the hearings official did,

1 we interpret “wall” as its plain meaning under the dictionary definitions set out
2 above. Under those definitions, the stall and the barn are “walled” and, thus, those
3 buildings are “structures.”

4 Under the hearings official’s interpretation that the stall and barn are
5 “walled,” and the undisputed fact that neither building is an agricultural building,
6 it was unnecessary for the hearings official to address the issue of whether the
7 stall and barn walls are “rigid” for purposes of the definition of “agricultural
8 structure.” Nonetheless, the hearings official went on to address petitioner’s
9 contextual argument, and determined that the stall and barn have rigid walls,
10 defining “rigid,” not as load-bearing or floodwater resistant, but by its plain
11 meaning: “Stiff or unyielding; not pliant or flexible; hard.” Record 21-22
12 (quoting Random House Unabridged Dictionary, Second Edition). On appeal,
13 petitioner challenges the hearings official’s interpretation of “rigid.”

14 We agree with the respondents that the phrase “rigid wall” in the definition
15 of “agricultural structure” does not control the interpretation of the more general
16 and unmodified term “walled.” Thus, the issue of whether the stall and barn have
17 “rigid walls” is not material to the conclusion that the stall and barn are structures.
18 There is no indication that the county intended to regulate only those
19 *nonagricultural* structures that have “rigid walls.” The term “rigid” does not
20 modify the term “walled” for purposes of LC 16.244(2)(oo). Thus, we agree with
21 respondents that even if the hearings official made inadequate findings or
22 misinterpreted the term “rigid,” those errors would provide no basis for remand.

1 Other context in the floodplain regulations supports the hearings official's
2 conclusion that the stall and barn are "walled" "structures," despite the evidence
3 that the walls are not designed to withstand floodwater pressure. In the Coastal
4 High Hazard Flood Zones, where special flood hazards include "high velocity
5 waters from surges," for flood hazard reduction structures must

6 "have the space below the lowest floor either free of obstruction or
7 constructed with *non-supporting breakaway walls*, open wood
8 lattice-work, or insect screening intended to collapse under wind and
9 water loads without causing collapse, displacement, or other
10 structural damage to the elevated portion of the building or
11 supporting foundation system." LC 16.244(5)(c)(i)(dd) (emphasis
12 added).

13 "Breakaway wall" is "a wall that is not part of the structural support of the
14 building and is intended through its design and construction to collapse under
15 specific lateral loading forces, without causing damage to the elevated portion of
16 the building or supporting foundation system." LC 16.244(2)(i).

17 "[A] breakaway wall must have a design safe loading resistance of
18 not less than 10 and no more than 20 pounds per square foot. Use of
19 breakaway walls which exceed a design safe loading resistance of
20 20 pounds per square foot (either by design or when so required by
21 local or state codes) may be permitted only if a registered
22 professional engineer or architect certifies that the designs proposed
23 meet the following conditions:

24 "(i-i) Breakaway wall collapse must result from water
25 load less than that which would occur during the
26 base flood; and

27 "(ii-ii) If breakaway walls are utilized, such enclosed space
28 must be useable solely for parking of vehicles,

1 building access, or storage. Such space will not be
2 used for human habitation.

3 “(iii-iii) Walls intended to break away under flood loads
4 must have flood openings that meet or exceed the
5 criteria for flood openings in section (5)(b)(i).” LC
6 16.244(5)(c)(i)(dd)(A).

7 Petitioner argues that the stall and barn are not “walled” because the wood
8 and metal siding enclosing the interior spaces are not load-bearing and would not
9 withstand floodwater pressure. Petitioner relies on and quotes the following
10 engineer testimony:

11 “FEMA defines a breakaway wall as a wall that is designed to fail
12 under water pressure and not damage the structure when it falls over.
13 If we use this definition, then, conversely, a rigid wall must be one
14 that can withstand the water forces and not fail, but if it did, it will
15 damage the gravity support of the building. In my professional
16 opinion, this is what FEMA was trying to get at.” Record 34-35.

17 The county floodplain regulations specify what a “breakaway wall” is and
18 where that type of wall is required. However, the code does not provide that
19 buildings with non-loadbearing walls or walls that would not withstand
20 floodwater pressure are not “structures.” Indeed, the code does not provide that
21 buildings with “breakaway walls” are not “structures.” Instead, “structure”
22 simply means “a walled and roofed building.” In that context “wall” is not
23 qualified as being part of the structural support or as being able to withstand any
24 certain amount of pressure. The county knows how to insert such qualifications
25 and it did not do so. Accordingly, the hearings official did not err in concluding
26 that the stall and the barn are “walled” “structures.”

1 Finally, petitioner argues that the hearings official's decision is not
2 supported by substantial evidence. We understand petitioner to argue that
3 petitioner's engineer's testimony was so credible and persuasive that no
4 reasonable person could conclude that the vertical materials enclosing the stall
5 and barn are "walls." That evidentiary argument depends on petitioner prevailing
6 on its interpretive argument, which we reject. Accordingly, petitioner's
7 evidentiary argument provides no independent basis for remand.

8 The county's decision is affirmed.