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

FRIENDS OF YAMHILL COUNTY,
Petitioner,

vs.

YAMHILL COUNTY,
Respondent,

and

GRANGE HILL LLC,
Intervenor-Respondent.

LUBA No. 2022-081

FINAL OPINION
AND ORDER

Appeal on remand from the Supreme Court.

Andrew Mulkey represented petitioner.

Jodi M. Gollehon represented respondent.

Elaine Albrich represented intervenor-respondent.

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

REMANDED 09/19/2025

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

Opinion by Bassham.

NATURE OF THE DECISION

Petitioner appeals a board of commissioners' decision approving a conditional use permit (CUP) to operate a bed and breakfast as a home occupation on land zoned exclusive farm use.

BACKGROUND

This matter is on remand from the Supreme Court. *Friends of Yamhill County v. Yamhill County*, 373 Or 790, 572 P3d 278 (2025). In the underlying LUBA decision, we affirmed the county's decision approving a CUP to operate a bed and breakfast home occupation on land zoned exclusive farm use (EFU), and currently farmed as a vineyard. *Friends of Yamhill County v. Yamhill County*, LUBA No 2022-081 (Dec 27, 2022). In 2020, the county approved an application by a prior owner of the property for a dwelling in conjunction with farm use on the subject property, based on the vineyard use. After acquiring the property, intervenor-respondent Grange Hill, LLC (intervenor) filed the present CUP application for a home occupation bed and breakfast, to be operated within that yet-to-be-constructed farm dwelling. The proposed dwelling would include nine guest rooms and an innkeeper's suite.

Petitioner appealed our decision to the Court of Appeals. On appeal, the Court of Appeals reversed, concluding that, as a matter of law, the proposed structure was not a "dwelling" at all, but rather a type of motel. *Friends of Yamhill County v. Yamhill County*, 325 Or App 282, 529 P3d 1007 (2003). The Supreme

Court granted review of the Court of Appeals' decision, and affirmed the court's decision in part, and reversed in part. The Supreme Court disagreed with the Court of Appeals that the proposed use is a "motel," but agreed that LUBA had erred in affirming the county's approval of the home occupation. According to the Supreme Court:

> "[T]he legislature intended the 'dwelling' requirement for a home occupation under ORS 215.448 to mean a structure that satisfies the requirements for a particular category of 'dwelling' that the land use laws normally allow on property in the zone. When, as here, the purported category of dwelling is a 'primary dwelling' on EFU land, those requirements include that the structure will be the home for a farm operator. * * * LUBA erroneously dismissed that requirement as irrelevant to whether the proposed structure satisfies the 'dwelling' requirement in ORS 215.448[.]" *Friends of Yamhill County*, 373 Or at 793.

The Supreme Court remanded our decision for us to consider petitioner's challenges to the CUP "under the standards articulated in this opinion." *Id.* at 814. We now address the Supreme Court's remand.

MOTION FOR REMAND

On August 29, 2025, intervenor and the county (together, respondents) filed a joint motion for remand, taking the position that "the sole issue on remand is whether [intervenor's] primary dwelling satisfies the requirements for a category of dwelling that the EFU zone allows[.]" Motion for Remand 2-3. Respondents request that LUBA remand the case to the county "without further proceedings," so that the county can hold a remand hearing and accept evidence

on this sole remaining issue. Alternatively, respondents request the opportunity to provide supplemental briefing regarding the "farm operator" issue.

Petitioner responds that remand should not be limited to the "farm operator" issue that is primarily raised in the first assignment of error's second subassignment. Petitioner argues that the Supreme Court reversed and remanded LUBA's decision *in toto*, which means that none of LUBA's dispositions survived judicial review. Further, petitioner argues that at least with respect to the "design characteristics" issue also raised in the first subassignment of error's second subassignment, the Supreme Court explicitly rejected both LUBA's and the Court of Appeals' opposing resolutions of that issue, and articulated a more nuanced approach that requires LUBA to re-evaluate that issue on remand.

We agree with petitioner that the Supreme Court's remand to LUBA was not limited to the single "farm operator" issue, but requires re-evaluation of potentially all of LUBA's dispositions, as necessary to ensure consistency with the court's rulings and those portions of the Court of Appeals' decision that the court agreed with or left intact. Accordingly, we deny respondents' motion to remand solely on the farm operator issue, and further decline, as unnecessary, respondents' request to supply additional briefing on that issue.

For the reasons explained below, we remand the decision back to the county for further proceedings.

FIRST ASSIGNMENT OF ERROR

The county approved intervenor's bed and breakfast home occupation as a conditional use that operates primarily in a "dwelling." Petitioner's first assignment of error is that the county's decision violates ORS 215.448 and YCZO 1004.01, which authorize home occupations in dwellings or other buildings normally associated with the uses permitted in the underlying zone, here, the county's EFU zone.[1] Petitioner's specific arguments are set out in four subassignments of error. The second subassignment of error is most pertinent to the Supreme Court's remand, so we begin there.

A. Second Subassignment of Error

1. Farm Operator

Petitioner's second subassignment of error is that the building being constructed by intervenor is not a "dwelling" or "other building" allowed in the EFU zone and that intervenor's application therefore does not comply with the requirement in ORS 215.448 that the home occupation be operated therein. Petition for Review 31-32. Petitioner argued, in part, that "[t]he statutory text does not contemplate that a 'primary' 'dwelling' authorized by ORS

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[1] ORS 215.448(1)(c) requires that a home occupation be operated substantially in "[t]he dwelling" or "[o]ther buildings normally associated with uses permitted in the zone in which the property is located[.]" ORS 215.448(3) provides that "[n]othing in this section authorizes the governing body or its designate to permit construction of any structure that would not otherwise be allowed in the zone in which the home occupation is to be established."

215.283(1)(e) as anything other than a building designed and used as a home or primary residence for a farm operator." Petition for Review 26. In its decision, the Supreme Court essentially agreed with that argument.

Considering the text, context, and legislative history of ORS 215.448(1)(c)(A), the Supreme Court determined that, for purposes of the statute, a "dwelling" is

> "a structure that satisfies the requirements for a particular category of 'dwelling' that the land use laws allow as of right in the zone. Here, the only identified category of allowed dwelling is a 'primary dwelling in conjunction with farm use,' and * * * the legislature intended such dwellings to mean a farm operator's home." *Friends of Yamhill County*, 373 Or at 799.

Further, the Court held that there is

> "a legislative intent that the 'dwelling' requirement incorporates the land use laws and regulations that govern whether a proposed structure qualifies as a 'dwelling' allowed on property in the particular zone. And when the structure is in any area zoned for exclusive farm use, the categories of dwelling normally allowed, or allowed 'as of right,' are limited to dwellings that facilitate the farming operation: 'primary or accessory dwellings * * * customarily provided in conjunction with farm use," ORS 215.283(1)(e), and a 'dwelling' that 'is occupied by a relative of the farm operator or the farm operator's spouse' if 'the farm operator does or will require the assistance of the relative in the management of the farm use,' ORS 215.283(1)(d). In other words, it is not enough that the structure will be occupied by 'a person as their household.'" *Id.* at 803-04.

As we understand the Court's decision, the Supreme Court held that for a building to qualify as a "dwelling" for purposes of obtaining a conditional use

permit for a home occupation in the EFU zone, the building must constitute one of the buildings authorized in the EFU zone, in this case, a "dwelling in conjunction with farm use" or "primary dwelling." As a consequence, in the present case intervenor must demonstrate, and the county must find, among other things, that the dwelling proposed for the home occupation is the home of the "farm operator" for the farm use that qualifies the subject property for the primary dwelling.

Intervenor proposed that the dwelling would be occupied by a "resident" who would occupy the innkeeper's suite, but did not propose, and the county did not find, that any resident of the dwelling would be the "farm operator" who farms the vineyard that qualifies the property for the dwelling. Accordingly, the present record and findings do not provide a basis for the county to conclude that the dwelling proposed for the home occupation qualifies as a "dwelling" for purposes of ORS 215.448(1)(c)(A), under the Supreme Court's interpretation of that statute. We therefore sustain this portion of the second subassignment of error.

2. Design Characteristics and Structural Code Standards

The remainder of the second subassignment of error concerns arguments that the proposed dwelling, as designed, does not qualify as a "dwelling" for purposes of ORS 215.448(1)(c), because the proposed building will be built to structural building code regulations applicable to non-residential transient housing such as motels and hotels. We rejected that argument, concluding that

building code standards are not determinative of whether the building is a "dwelling" for purposes of ORS Chapter 215. *Friends of Yamhill County*, LUBA No 2022-081 (slip op at 14).

The Court of Appeals, however, agreed with petitioner that, although not dispositive, "a structure's design, including applicable building code standards, certainly is relevant to a determination of the nature of the structure." *Friends of Yamhill County*, 325 Or App at 293. On review, the Supreme Court agreed with the Court of Appeals on that point:

> "[Petitioner] has argued that a bed and breakfast facility with more than five guest rooms must be considered a 'hotel or motel' because that is how the state building code's structural speciality code (OSSC) classifies such occupancies. OSSC 310.2; OSSC 310.4. The Court of Appeals reasoned that those code standards are relevant to the nature of structure but not dispositive of whether the structure is a 'dwelling' for purposes of ORS 215.448, and we agree." *Friends of Yamhill County*, 373 Or at 805 n 4.

The Supreme Court ultimately rejected the Court of Appeals' conclusion that, because the structure predominantly has the design characteristics of a hotel or motel, as a matter of law the structure is not a "dwelling." The Supreme Court specifically rejected the lower court's view that the "entire structure" must constitute a dwelling in order to qualify as a dwelling for purposes of ORS 215.448.

> "* * * We understand the Court of Appeals' concern that this structure purporting to be a 'primary dwelling' also has design characteristics of a 'motel,' which is not a category of building allowed in an EFU zone. But the county found that the same proposed structure meets the design characteristics of a single-

> family residence, and LUBA affirmed that finding. There undoubtedly will be structures that seemingly straddle the design standards for two categories of building—whether it is a structure that meets the design standards of a single-family residence but also has nine bedrooms with *en suite* bathrooms or a structure that meets the design standards of a single-family residence but includes an enormous 'home theater' space. When that is the case, the county and LUBA must determine whether the structure is a 'dwelling,' and the fact that the structure might have characteristics consistent with a single-family dwelling is not dispositive. But the fact that the structure has some characteristics of a motel is not dispositive either. Thus, to the extent that the Court of Appeals concluded that a structure that has some characteristics of a motel cannot be a dwelling, as a matter of law, we disagree." *Friends of Yamhill County*, 373 Or at 807.

In footnote 5 appended to the above quote, the court clarified what it was not deciding:

> "Because we resolve this case on the basis of LUBA's erroneous conclusion that the structure at issue can qualify as a 'dwelling' under ORS 215.448 without satisfying the requirements for the 'primary dwelling' the structure purports to be—here, without satisfying the requirement that the structure be occupied by a farm operator—we need not, and do not, address when, as a matter of law, a structure that has the characteristics of both a single-family residence and another type of structure is a 'dwelling.'" *Id.* at n 5.

The court cautioned, however, that:

> "a 'dwelling' sharing the design characteristics of a category of building that is not allowed as of right in the zone might struggle to satisfy other requirements of ORS 215.448 that give effect to the legislature's goal of preserving Oregon's agricultural economy, including that the home occupation 'shall not unreasonably interfere with other uses permitted' in the EFU zone and that the home occupation process does not authorize 'construction of any structure that would not otherwise be allowed in the zone.' ORS 215.448(1)(B)(d), (3)." *Id.*

When the dust settles, we understand the Court of Appeals and Supreme Court to have both held that design characteristics, including those driven by building code regulations, are relevant but not determinative considerations in concluding whether a proposed structure is a "dwelling" for purposes of ORS 215.448. The Supreme Court found that in hybrid situations where a proposed structure has both the design characteristics of a dwelling and another category of use that is not allowed in the applicable zone, the county must initially determine, subject to LUBA's review, whether the structure qualifies as a "dwelling" for purposes of ORS 215.448.

In the present case, the county found, and we affirmed, that because the proposed structure included many of the design characteristics of a dwelling (*e.g.*, bedrooms, a kitchen, bathrooms, common living space, etc.) the structure therefore constituted a "dwelling," without further analysis. As we understand it, that conclusion is the mirror image of the Court of Appeals' erroneous conclusion that, because the structure included many design characteristics of a hotel or motel, it therefore cannot constitute a dwelling. Under the Supreme Court's more nuanced view, in such hybrid situations the county must make an initial determination, based on all relevant considerations, whether the proposed structure is properly characterized as a dwelling or something else.

Because the county did not make such an initial determination, at least one based on all relevant considerations, including design characteristics and building code regulations, on remand we conclude that the most appropriate course is to

also sustain this portion of the second subassignment of error, and remand for the county to address both the "farm operator" and "design characteristics" issues raised in the second subassignment of error.

The second subassignment of error is sustained.

B. First Subassignment of Error

Petitioner's first subassignment of error focuses on YCZO 1004.01(C), the local cognate of ORS 215.448(1)(c), and associated code definitions. Like the statute, YCZO 1004.01(C) requires that "[t]he home occupation will be operated substantially in the dwelling or in other buildings normally associated with uses permitted in the zone in which the property is located."

Petitioner argues that the county may not approve the home occupation CUP for the bed and breakfast because the building in which the use will occur is not a "dwelling" as that term and associated terms are defined by the YCZO. Petition for Review 10. YCZO 202 defines "dwelling," in relevant part, as a building containing one "dwelling unit" that is designed for and occupied by "one (1) family only."[2] Citing code definitions of "dwelling unit" and "family,"

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[2] YCZO 202 includes the following relevant definitions:

> "DWELLING: A building containing one (1) dwelling unit designed for and occupied by one (1) family only. The term dwelling includes a manufactured dwelling but does not include a hotel, motel, travel trailer, boarding, lodging or rooming house, private hospital, rest home or nursing home or other accommodations used for transient occupancy."

petitioner argued that the proposed building does not qualify as a "dwelling," because it is not a single dwelling unit that is designed for and occupied by one family only, as the relevant terms are defined.

In resolving petitioner's first subassignment of error, we noted that the findings did not explicitly interpret the cited county code provisions and definitions. We chose to exercise our discretion to interpret the code provisions relating bed and breakfast uses to dwellings. ORS 197.829(2); *see also Green v. Douglas County*, 245 Or App 430, 440-41, 263 P3d 355 (2011) (explaining when and how LUBA may exercise this discretion). Although we agreed with petitioner that the proposed use of the building does not fit within the code definitions of "dwelling," "dwelling unit," and "family," read in isolation, we ultimately concluded that, read in context with other code provisions that explicitly allow a bed and breakfast in a dwelling as a home occupation, the cited definitions do not

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> "DWELLING UNIT: One (1) room or rooms connected together, constituting an independent housekeeping establishment designed and used for occupancy by one (1) family, including dependent relatives and caretakers, and includes permanent provisions for living, sleeping, cooking (limited to one kitchen only) and sanitation (full bathroom)."
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> "FAMILY: One or more person related by blood, marriage, legal adoption or legal guardianship plus not more than five (5) additional persons, including foster and shelter care persons or, up to five (5) unrelated persons, all living together as a single housekeeping unit."

exclude the proposed building from the scope of the code term "dwelling," as used in YCZO 1004.01(C).

Because YCZO 1004.01(C) implements ORS 215.445(1)(c), the Supreme Court's interpretation of the latter has significance for the former. Home occupations in the EFU zone under ORS 215.283(2)(i) are "conditional uses" that counties may choose to allow or not on EFU lands, subject to whatever additional restrictions the county has adopted. *See Brentmar v. Jackson County*, 321 Or 481, 496, 900 P2d 1030 (1995). In approving a use under ORS 215.283(2), the county may be more restrictive than the statute, but not less restrictive. *Id.* Accordingly, the county must apply YCZO 1004.01(C) and the relevant code definitions consistently with the Supreme Court's holding in this appeal, and at least as restrictively. But, as with all ORS 215.283(2) uses, the county has the option of applying code provisions regarding home occupations on EFU land that are more restrictive than set out by statute. If those code provisions are ambiguous, as in the present case, the county may resolve those ambiguities by interpretation, and such interpretations could potentially result in more restrictive application of local standards than are required by statute.

In the present case, the foregoing counsels that LUBA withdraw the code interpretations that we adopted under ORS 197.829(2), in the absence of reviewable county interpretations, and remand the decision in part to allow the county board of commissioners the opportunity to adopt necessary interpretations in the first instance. In other words, because the Supreme Court overruled our

interpretation of the statutory meaning of "dwelling" as applied in this case and the decision must be remanded in any event, it is more consistent with *Green* to give the county governing body the opportunity to interpret its own legislation in the first instance, than for LUBA to continue to impose its own interpretations. On remand, the county must apply YCZO 1004.01(C) consistently with the Supreme Court's decision. In addition, the county must address the YCZO 202 definitions of "dwelling," "dwelling unit," and "family" and determine whether the proposed building use constitutes a "dwelling" for purposes of YCZO 1004.01(C), when read in context with those definitions and any other relevant code text.

The first subassignment of error is sustained.

C. Third Subassignment of Error

Petitioner's third subassignment of error is framed as an alternative. If LUBA agrees that the proposed building is not a "dwelling," petitioner argues that the county cannot nonetheless approve the home occupation by treating the building as an "other building normally associated with uses allowed in the zone" set out in ORS 215.448(1)(c)(B) and YCZO 1004.01(C). Petitioner argued: "To the extent that the evidence in the record * * * could be used to provide an alternative basis for approval, * * * this sub-assignment of error demonstrates why those alternative bases are wrong as a matter of law." Petition for Review 33.

We concluded that the county did not rely on the "other building" language in ORS 215.448(1)(c)(B) and YCZO 1004.01(C) to approve the home occupation, but relied solely on the conclusion that the building constitutes a "dwelling." Neither the Court of Appeals' nor the Supreme Court's decision provides any reason to disturb that disposition. Accordingly, this alternative subassignment of error is denied.

D. Fourth Subassignment of Error

We rejected the fourth subassignment of error as entirely derivative of the first three subassignments, and hence not stating an independent basis for reversal or remand. The Supreme Court's decision does not require us to revisit our resolution of petitioner's fourth subassignment of error.

Petitioner's first assignment of error is sustained, in part.

SECOND ASSIGNMENT OF ERROR

Under its second assignment of error, petitioner argued in part that the 2020 approval for a farm operator dwelling had expired by its terms and there was no evidence in the record that it had been extended. We rejected that argument, noting that the record included testimony that the 2020 permit had been extended. The Supreme Court's decision does not require us to revisit that resolution.

Petitioner also challenged the adequacy of the county's findings regarding whether the proposed use qualifies as a "dwelling" as that term is used and defined in statute and county code. We concluded that the findings met the basic

requirements of adequate findings, that is, they identified the applicable standards and explained why the facts found demonstrate that those standards are met. However, that disposition was based in part on conclusions that were overturned on appeal. Under the Supreme Court's decision, the county's existing findings are clearly inadequate in at least one respect: failure to address whether the structure is the residence of the farm operator. Because remand is necessary under the first assignment of error for the county to adopt new or additional findings, possibly supported by new or additional evidence, addressing whether the proposed structure constitutes a "dwelling" under the applicable statutory and code provisions, we also sustain this portion of the second assignment of error and remand for the county to adopt more adequate findings.

The second assignment of error is sustained, in part.

DISPOSITION

The county's decision is remanded for further proceedings consistent with the Supreme Court's decision and this opinion.