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

FRIENDS OF YAMHILL COUNTY,
Petitioner,

vs.

YAMHILL COUNTY,
Respondent,

and

KELLAN LANCASTER,
and 15660 GROUND, LLC,
Intervenors-Respondents.

LUBA No. 2022-090

FINAL OPINION
AND ORDER

Appeal from Yamhill County.

Eve Goldman filed the petition for review and reply brief and argued on behalf of petitioner.

Jodi M. Gollehon filed a joint response brief on behalf of respondent. Also on the brief was Mark C. Hoyt, Sherman, Sherman, Johnnie & Hoyt, LLP, and Beery, Elsner, & Hammond, LLP.

Mark C. Hoyt filed the intervenor-respondent's brief and argued on behalf of intervenors-respondents. Also on the brief was Jodi M. Gollehon, Sherman, Sherman, Johnnie & Hoyt, LLP, and Beery, Elsner, & Hammond, LLP.

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

REMANDED 12/17/2025

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

Opinion by Wilson.

NATURE OF THE DECISION

Petitioner appeals a county decision approving a bed and breakfast inn as a conditional use in an exclusive farm use zone.

FACTS

Intervenors-respondents (intervenors) own an 80.49-acre tract of land zoned Exclusive Farm Use 80-acre minimum (EF-80). Intervenors are part of a collection of family farms that grow crops, raise livestock, sell farm products, and offer agritourism experiences on the subject property and the surrounding area. In 2021, intervenors received approval for a replacement dwelling to replace an existing manufactured home originally approved as a farm dwelling with a 10,520 square-foot dwelling with nine suites. In 2022, intervenors obtained a residential dwelling permit for the dwelling. Petitioner attempted to appeal the approval of the dwelling permit, but the appeal was denied as untimely. Later in 2022, intervenors applied for a conditional use permit to operate a bed and breakfast in the approved dwelling. In response to opponents' arguments, intervenors revised the layout of the dwelling to include an innkeeper suite.

The planning commission approved the conditional use permit, and petitioner appealed to the board of commissioners. The board of commissioners denied petitioner's appeal and affirmed the planning commission's decision approving the conditional use permit for the bed and breakfast. This appeal followed.

When this appeal was filed, petitioner had filed an appeal of a similar decision by the county that approved another nine-guestroom bed and breakfast on EF-80 land in a previously approved farm dwelling – the *Grange Hill* case. We affirmed the county's decision. *Friends of Yamhill County v. Yamhill County*, LUBA No 2022-081 (Dec 27, 2022) (*Grange Hill I*). That appeal had proceeded to the Court of Appeals (and eventually to the Supreme Court), so as the two cases involve similar issues, at the request of the parties LUBA stayed this appeal pending final resolution of the *Grange Hill* case. The Court of Appeals issued its decision on April 19, 2023, *Friends of Yamhill County v. Yamhill County*, 325 Or App 282, 529 P3d 1007 (2023) (*Grange Hill II*). The Supreme Court issued its decision in the *Grange Hill* case on July 3, 2025, *Friends of Yamhill County v. Yamhill County*, 373 Or 790, 572 P3d 278 (2025) (*Grange Hill III*). On remand from the Supreme Court, we remanded the decision. *Friends of Yamhill County v. Yamhill County*, LUBA No 2022-081 (September 9, 2025) (*Grange Hill IV*). After the Supreme Court's decision in *Grange Hill III*, we reactivated this appeal.

MOTION TO STRIKE

Intervenors and the county (respondents) move to strike the second assignment of error. When this appeal was stayed, the parties filed a "Stipulated Motion for Extension of Time to File Petition [for Review]" (Motion). The Motion included a section entitled "Stipulated Scope of Issues on Appeal," which describes the parties' private agreement regarding the issues petitioner may raise in the petition for review.

> "Petitioner agrees that the assignments of error * * * will be focused on the topic of whether statute, local code, and/or building code allow Respondent to approve a nine-room bed and breakfast for overnight lodging use in the structure * * * pursuant to the home occupation statute and related code provisions." Motion 2.

The second assignment of error argues that the county improperly approved the bed and breakfast conditional use without requiring that the proposed guest lodging be *conducted within the residence of the operator* as required by local code provisions. According to respondents, the second assignment of error exceeds the scope of their stipulated agreement. We express no opinion on whether the second assignment of error falls within the scope of the parties' agreement. Even if the second assignment of error falls outside the scope of the parties' agreement that would not affect the scope of our review. As we stated in our order granting the motion to extend the time for filing the petition for review:

> "This section [the Stipulated Scope of Issues on Appeal] is not the proper subject of a motion for an extension of time, which is governed by our rule at OAR 661-010-0067. OAR 661-010-0067(2) does not provide any authority for the parties to limit LUBA's scope of review in a motion for an extension of time. LUBA's review of the arguments in this appeal is not affected by the parties' agreement." *Id.* (footnote omitted).

Respondents' motion to strike is denied.

FIRST ASSIGNMENT OF ERROR

Petitioner argues that the county misconstrued the law, made inadequate findings, and made a decision not supported by substantial evidence by approving the bed and breakfast in a building that is not a dwelling allowed in EFU zones.

Bed and breakfasts are allowed as home occupation conditional uses in EFU zones. Yamhill County Zoning Ordinance (YCZO) 402.04(I). In addition to meeting the conditional use approval criteria (which are not in dispute in this appeal), an applicant must also meet the home occupation approval criteria of YCZO 1004.00, which implements ORS 215.448 and OAR 660-033-0130(14).[1]

ORS 215.448 provides:

> "(1) The governing body of a county or its designate may allow, subject to the approval of the governing body or its designate, the establishment of a home occupation and the parking of vehicles in any zone. However, in an exclusive farm use zone, forest zone or a mixed farm and forest zone that allows residential uses, the following standards apply to the home occupation:
>
> > "(a) It shall be operated by a resident or employee of a resident of the property on which the business is located;
> >
> > "(b) It shall employ on the site no more than five full-time

[1] As the application was filed in 2022, the 2022 versions of the applicable statutes and administrative rules apply in this appeal. While OAR 660-033-0130(14) has been amended to add subsections, the operative language remains the same. All of our citations to statutes and rules are to the versions applicable in 2022.

or part-time persons;

"(c) *It shall be operated substantially in:*

"*(A) The dwelling;* or

"(B) Other buildings normally associated with uses permitted in the zone in which the property is located; and

"(d) It shall not unreasonably interfere with other uses permitted in the zone in which the property is located.

"(2) The governing body of the county or its designate may establish additional reasonable conditions of approval for the establishment of a home occupation under subsection (1) of this section.

"(3) Nothing 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.

"(4) The existence of home occupations shall not be used as justification for a zone change." (Emphasis added.)[2]

Petitioner argues that the proposed bed and breakfast would not be operated in a "dwelling" under ORS 215.448. According to petitioner, under *Grange Hill III*, respondents were required to demonstrate that the building proposed for the bed and breakfast is a "dwelling" under ORS 215.448(1)(c)(A). The resolution of the *Grange Hill* cases informs this analysis.

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[2] OAR 660-033-0130(14) and YCZO 1401.00 largely mirror ORS 215.448.

A. The *Grange Hill* Cases

The prior owner of the subject property in the *Grange Hill* cases obtained approval to build a primary dwelling in conjunction with farm use under ORS 215.283(1)(e) – a "farm dwelling." After receiving approval for the farm dwelling, the prior owner obtained conditional use approval for a nine-guestroom bed and breakfast within the farm dwelling. Prior to building the farm dwelling, the prior owner sold the property to Grange Hill. While the farm dwelling approval transferred with the sale of the property, the bed and breakfast conditional use approval did not. Grange Hill then applied for approval of a conditional use permit to operate a bed and breakfast in the farm dwelling, which was approved. Petitioner appealed the approval of the bed and breakfast to LUBA. *Grange Hill I*, slip op 8-10.

In *Grange Hill I*, petitioner argued that the applicant needed to demonstrate that the proposed dwelling still satisfied the approval criteria for a farm dwelling. We disagreed with petitioner and interpreted the requirement of ORS 215.448(1)(c)(A) that the bed and breakfast home occupation "be operated substantially in the dwelling" only to require that the proposed dwelling be occupied by a person as their household. We concluded that the farm dwelling approval criteria were "an initial – not an ongoing – requirement and that it was not pertinent to whether the structure qualified as a 'dwelling' within the which the home occupation must operate under ORS 215.448." *Grange Hill III*, 373 at

797 (describing our opinion). As discussed later, the Court of Appeals decided the case on another basis.

The Supreme Court addressed this issue and reversed our opinion. The Supreme Court agreed with petitioner. In interpreting the meaning of the term "dwelling" in ORS 215.448(1)(c)(A), the court reasoned:

> "* * * the legislature intended to require that a home occupation would be conditionally permitted only if it will operate substantially within a structure – dwelling or other building – that the land use laws normally allow in the zone in which the property is located.
>
> "That meaning, in turn, points to 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 arm 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.'" *Grange Hill III*, 373 Or at 803-04.

Thus, when seeking a bed and breakfast home occupation conditional use permit in an EFU zone, an applicant must satisfy the approval criteria for the home occupation conditional use permit *and also* the approval criteria for the type of dwelling permitted in the EFU zone – a farm dwelling in the *Grange Hill* case. *Id.* at 811 ("[T]he legislature intended the 'dwelling' requirement to incorporate the land use laws and regulations that govern whether a proposed

structure meets the requirements for a category of 'dwelling' that is normally allowed on property in the particular zone."). This is true even though those approval criteria were already satisfied when obtaining the original farm dwelling approval.

Another issue in the *Grange Hill* case was whether the structure itself qualified as a dwelling – or was something else, like a hotel. Petitioner argued that a nine-guestroom structure, built to hotel structural building code standards was not a "dwelling" for purposes of ORS 215.448(1)(c)(A). We rejected that argument and concluded that building code standards are not determinative of whether the building is a "dwelling" for purposes of ORS 215.448(1)(c)(A), but rather the nature of structure depended on its planned use. *Grange Hill I*, slip op 14.

While the Court of Appeals did not specifically address whether the applicant was required to satisfy the approval criteria for a farm dwelling as well as a bed and breakfast home occupation, the court did address whether the proposed structure was properly classified as a "dwelling" or a "hotel." The Court of Appeals found that "[a]lthough not dispositive, * * * a structure's design, including applicable building code standards, certainly is relevant to a determination of the nature of structure." *Grange Hill II*, 325 Or App at 293. The Court of Appeals then held that the proposed structure was not a "dwelling" for purposes of ORS 215.448(1)(c)(A) because the entire structure would not be used as a "dwelling":

"When both definitions ['dwelling' and 'motel'] are considered together, it is apparent that, even if a portion of the structure could provide a residence for an innkeeper, the design features of the proposed structure as a whole are those of a hotel, for transient lodging. * * * it does not appear that the proposed structure is properly characterized as a primary or accessory dwelling customarily provided in conjunction with farm use." *Id.* at 294.

The Supreme Court disagreed with both LUBA and the Court of Appeals. As we explained in *Grange Hill IV*, initially quoting the Supreme Court:

> "'* * * 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.' *Grange Hill III*, 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."' *Grange Hill IV*, slip op 8-9.

In *Grange Hill IV*, we concluded:

> "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." *Id.* slip op 10.

Thus, in hybrid situations where the proposed bed and breakfast home occupation is proposed within a structure with characteristics of both a dwelling and a hotel, the county decision maker must determine whether the structure is a dwelling considering those factors.

B. First Sub-Assignment of Error

Petitioner argues that just as the applicant in the *Grange Hill* case had to satisfy the approval criteria for the type of dwelling allowed in an EFU zone – a farm dwelling – in the present case, the applicant was also required to satisfy the

approval criteria for an allowed dwelling – a replacement dwelling.[3] ORS 215.291 addresses replacement dwellings. In general, replacement dwellings are allowed if the dwelling to be replaced was lawfully established and has or had intact walls and a roof, indoor plumbing, interior lighting, and a heating system.[4]

Respondents initially argue that all that is required by *Grange Hill III* is that the proposed structure is one that is approved "as of right" in the zone. ORS 215.283 provides for uses that are allowed "as of right" in that zone a county must allow such uses – ORS 215.283(1) – and provides for uses that may be allowed at the county's discretion – ORS 215.283(2). *See Brentmar v. Jackson County*, 321 OR 481, 496 (1995) (discussing the distinction between sub-1 and sub-2 uses). According to respondents, because replacement dwellings are sub-1 "as of right" uses, the prior replacement dwelling approval is all that is required for the county to approve the home occupation conditional use bed and breakfast, and the county need not and should not inquire into the nature of the structure used for the bed and breakfast.

Respondents' argument is clearly at odds with the Supreme Court's decision in *Grange Hill III*. In *Grange Hill III*, the dwelling in which the bed and

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[3] The replacement dwelling replaced a previously approved farm dwelling. Petitioner did not argue in the petition for review that intervenor was required to satisfy the approval criteria for a farm dwelling. Petitioner confirmed this at oral argument.

[4] OAR 660-033-0130(8) provides more detailed requirements for replacement dwelling on agricultural land. YCZO 402.02(M) implements the statute and rule.

breakfast was proposed to be located was a previously approved farm dwelling. Farm dwellings are sub-1 "as of right" uses just as replacement dwellings are. ORS 215.283(1)(e) & (p). The applicant in the *Grange Hill* cases needed to demonstrate that the structure in which the bed and breakfast would be operated was a farm dwelling, essentially requiring the bed and breakfast conditional use applicant to *again* satisfy the farm dwelling approval criteria. Similarly, here, intervenors must demonstrate that the structure in which the bed and breakfast would be operated satisfies the approval criteria for a replacement dwelling.

We recognize and agree with intervenor that this requirement is at odds with the general principle that an unappealed land use approval is final. *See* ORS 197.805 (providing that "time is of the essence in reaching final decisions in matters involving land use"); *Johnson v. Landwatch Lane County*, 327 Or App 485, 536 P3d 12 (2023) ("Finality is an established and important feature expressly incorporated into Oregon's land use laws. * * * Finality brings certainty. Certainty in this context allows private and public entities as well as ordinary people to make important decisions about whether to sell or purchase real property and whether and how to develop and use that property."). Nevertheless, the Supreme Court concluded that, in order to obtain an approval to operate a conditional use home occupation bed and breakfast in a dwelling on farm land, the applicant must first demonstrate that the structure in which the home occupation will operate is still a type of dwelling allowed in the zone, even though the manner of proof requires the county to revisit and revalidate a

previous dwelling approval. *See Grange Hill III*, 373 Or at 813 ("[I]t is the new conditional use permit, not the original dwelling approval, that makes it essential for the structure to meet the requirements for a 'dwelling' or other building 'normally associated with uses permitted in the zone in which the property is located.").

Respondents also argue that the county did in fact find that the approval criteria for a replacement dwelling were satisfied. The county's findings state:

> "The applicant is requesting permission to use a single-family dwelling as a nine (9) guestroom bed and breakfast. The dwelling that will be used as the bed and breakfast is currently under construction and is replacing a dwelling that used to be located on the property[.]" Record 24.

Respondents also cite the following statement in a letter to the county from one of intervenors' attorneys:

> "* * * the home is allowed as a replacement of an existing dwelling on the property; therefore, this is not also a new farm or nonfarm dwelling application. It is simply an application to use a replacement dwelling as a 'bed and breakfast inn,' which is expressly allowed in the County's resource zones as a 'home occupation' under YCZO 1004." Record 164.[5]

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[5] While this letter is mentioned in the county's "Procedural Findings" it does not appear that the county adopted the contents of the letter as part of its findings. Even assuming the letter was adopted into the findings, the quoted statement does not establish that the county found that the approval criteria for a replacement dwelling were re-satisfied.

The record citations provided by respondents do not demonstrate that the county re-evaluated whether the approval criteria for a replacement dwelling were satisfied. The citations merely show that the county found that intervenors had a lawfully approved replacement dwelling and that the county believed that evidence of that prior approval was all that was needed to allow a bed and breakfast home occupation conditional use permit.[6]

Respondents further argue that by "acknowledging the existing replacement dwelling approval, the County referenced the previous docket number, effectively incorporating the record of that prior land use decision into its Decision." Respondents' Brief 16-17. We are not persuaded by respondents' "implicit incorporation" argument. The findings merely state that the proposed location of the bed and breakfast is the replacement dwelling that was approved in 2021 and cited the case number. The county did not incorporate anything from that prior decision, let alone the findings establishing compliance with the replacement dwelling approval criteria.

Respondents next argue that because the previously allowed dwelling is a replacement dwelling rather than a farm dwelling that the county need not reexamine the criteria for the replacement dwelling. According to respondents, the approval criteria for a farm dwelling concern the proposed use of the dwelling

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[6] The county's position was understandable because at the time the *Grange Hill* cases had not been issued, and the county would have had no reason to believe it needed to revisit the replacement dwelling approval.

while the approval criteria for a replacement dwelling only concern the underlying physical structure to be replaced. In other words, while the circumstances and evidentiary bases which supported the original approval of a farm dwelling might have changed a bed and breakfast home occupation conditional use permit is submitted, the circumstances and evidentiary bases regarding whether the replacement dwelling should be replaced cannot have changed.

The approval criteria for the farm dwelling in the *Grange Hill* cases include, among other things, that the farm operator meet a farm income test, that no other dwellings exist on the farm operation, and that the dwelling be occupied by the farm operator. OAR 660-033-0135(4). According to respondents, whether those approval criteria can be satisfied can change over time. The approval criteria for replacement dwellings require the applicant to demonstrate that the structure proposed to be replaced was lawfully established and that it had amenities for human occupation, such as indoor plumbing. ORS 215.291. According to respondents, whether those approval criteria are satisfied does not change over time. As the circumstances under which the replacement dwelling was originally approved cannot have changed, respondents argue that the county was not required to determine whether the structure in which the bed and breakfast would operate is still a replacement dwelling.

While that is not an unreasonable argument, it again is at odds with *Grange Hill III*. While the Supreme Court did discuss the requirement that the farm

operator reside in the dwelling, as discussed later, the court also discussed the design characteristics of the structure. The design characteristics of the structure did not change – so the court required reconsideration of characteristics that had not changed since the original farm dwelling approval. Furthermore, the Supreme Court did not mention, let alone make a distinction between, approval criteria for the underlying dwelling that were static and those that were fluid. *Grange Hill III* made clear that demonstrating that a proposed bed and breakfast will operate in a dwelling type that is still allowed in the EFU zone is a prerequisite to approving the bed and breakfast home occupation.[7]

Finally, respondents argue that requiring the county to revisit the already lawfully approved replacement dwelling is an impermissible collateral attack on the prior decision.[8] According to respondents, the time for challenging the approval for the replacement dwelling was when it was originally approved, and petitioner should not get another bite at the apple. Respondents cite *McLaughlin*

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[7] Respondents provide legislative history designed to illustrate that the purpose of the replacement dwelling statute is to protect an owner's right to replace a bona fide dwelling and not to impose additional land use restrictions on new dwellings. We generally agree with respondents' characterization of the legislative history. That legislative history, however, only applies when an applicant is attempting to demonstrate compliance with the approval criteria for a replacement dwelling – either for a stand-alone replacement dwelling or as a replacement dwelling in which a bed and breakfast is proposed as a home occupation.

[8] Respondents do not argue issue preclusion – only impermissible collateral attack on a previous decision.

v. Douglas County, 70 Or LUBA 314 (2014) in support of their argument. In *McLaughlin*, the applicants had obtained conditional use approval for a pipeline as a part of a liquid natural gas terminal. The applicant had obtained a number of extensions of that conditional use permit that were not challenged. The applicant then sought to remove a condition of approval to allow the natural gas terminal to be for export rather than import purposes. The petitioners attempted to challenge the conditional use permit extensions that had been granted prior to the challenged decision. We explained that the petitioners' arguments were "impermissible collateral attacks on the final extension decisions that were not appealed and were not before the county and are not before LUBA in this appeal." *Id.* at 319.

While respondents are correct that *McLaughlin* stands for the principle that prior approved decisions cannot be collaterally attacked in a subsequent case, the approval sought in *McLaughlin* did not require the county to revisit the underlying conditional use permit criteria. Instead, the county was only required to determine whether to remove a condition of approval. Differently, under *Grange Hill III*, an applicant for a bed and breakfast home occupation on EFU land *must* demonstrate that the proposed bed and breakfast will operate in a dwelling type that is allowed in the EFU zone, which requires the county to reexamine the approval criteria for the dwelling that the bed and breakfast is proposed to be operated in. Respondents are presumably correct that, even if petitioner is able to ultimately defeat the bed and breakfast conditional use permit

application, denial of the conditional use permit application would have no effect on the prior approval of the replacement dwelling. Any attempt to use the effect of a denial of the present application on the prior approved replacement dwelling would presumably be a collateral attack on that decision. The resolution of this appeal should have no effect on the prior approval of the replacement dwelling. Therefore, there is no collateral attack on the prior approved replacement dwelling.

The first sub-assignment of error is sustained.

C. Second Sub-Assignment of Error

Petitioner argues that the county failed to properly consider the design characteristics of the structure in determining whether it was a permitted "dwelling" under ORS 215.448(1)(c). According to petitioner, under *Grange Hill III*, when a structure has design characteristics of both an allowed dwelling and an unallowed structure such as a hotel, the county must determine which type of structure it is by evaluating the different design characteristics. As we explained earlier, the Supreme Court held:

> "* * * 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." *Grange Hill III*, 373 Or at 813.

In the present case, the structure is similar to the structure in the *Grange Hill* case – a large structure with nine guest-room suites and an innkeeper suite

that is built to hotel structural building code standards. There is little doubt that the present case also involves such a "hybrid situation." As *Grange Hill III* makes clear, the county is required to determine which type of structure is proposed – a permitted "dwelling" or something impermissible such as a hotel. According to petitioner, the present case is similar to the *Grange Hill* case in that the county did not make such a determination.

As the challenged decision was issued long before *Grange Hill III*, it is understandable why the county did not expressly conduct such a hybrid analysis. Respondents argue that the county nonetheless did conduct a sufficient analysis and properly determined that the structure is a permissible dwelling under ORS 215.448(1)(c). The county's findings state:

> "Neither does the county comprehensive plan nor the county zoning ordinance place any limits on the maximum square footage or the maximum number of bedrooms that can be built within a single-family dwelling. The dwelling that the Applicant is proposing for use as the bed and breakfast is replacing a single-family dwelling that had been present on the subject parcel for a number of years, so the presence of a dwelling on the subject property will remain unchanged and does not constitute an urban use." Record 22.

While this finding touches on the issue of whether the structure can qualify as a dwelling, it does not satisfy the hybrid analysis requirement laid out by the Supreme Court in *Grange Hill III*. The findings do not address the design characteristics, such as the structure being built to hotel structural building code standards, to the degree required by *Grange Hill III*.

Respondents also cite testimony from the county planning director:

> "I guess in the Friends of Yamhill County appeal, it says the structure has nine separate rooms, each with an exterior door for ingress and egress, and no interior access to the rest of the structure. And I would say that's just not accurate. It does, it is all designed to be together. It's got a hallway that connects it. There's not a design standard on the size or the layout of a structure. * * *
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> "I'm thinking of Del Smith's house is I think 26,000 square-feet, has eleven bedrooms and just one kitchen – it's a big kitchen, but you know one kitchen – a whole bunch of accessory uses in there including an indoor pool and you know all of that is something that you can build as a single-family dwelling and do I guess I don't see how this that has you know a kitchen, a number of bedrooms and bathrooms, is different, and I think this is a single family dwelling unit and can be used as a single-family dwelling unit and it can also be used as a bed and breakfast." Planning Director Testimony, July 14, 2022 Public Hearing.

While this testimony gets closer to the hybrid analysis required by *Grange Hill III*, it is still insufficient to fully conduct the required analysis. For example, the planning director does not discuss the impact of the structure being built to hotel structural building code standards, which the Supreme Court stated was a design characteristic that must be evaluated. Even if the planning director's statements were sufficient to address the hybrid analysis requirement, the county did not adopt or incorporate those statements in its decision. Again, while it understandable why the county did not engage in the hybrid analysis required by *Grange Hill III*, the analysis of whether the structure is more properly classified as a dwelling or a hotel is now required.[9]

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[9] As we explained in *Grange Hill IV*, bed and breakfast home occupations are sub-2 uses and the county may impose more stringent regulations than state law

This portion of the second sub-assignment of error is sustained.

Under the second sub-assignment of error, petitioner also argues that the county erred by finding that that structure is a "dwelling" under the YCZO. YCZO 202 defines "dwelling" in pertinent part as a building containing one "dwelling unit" that is designed for and occupied by "one (1) family only." According to petitioner, because the structure in which the proposed bed and breakfast home occupation will be sited is clearly not "designed" for one family only, it cannot qualify as a "dwelling" as defined at YCZO 202. Petitioners argue that because under the YCZO a bed and breakfast is allowed as a home occupation only in a "dwelling" as defined at YCZO 202, the proposed bed and breakfast home occupation use must be denied.

Petitioner raised the same issue in *Grange Hill I*. As we explained in *Grange Hill IV*, the county did not explicitly interpret YCZO 202, so we exercised our discretion to interpret the code provisions in the first place. In *Grange Hill I*, we explained that while read in isolation the proposed bed and breakfast did not comply with the code provisions of "dwelling," "dwelling unit," and "family," when read in context with other code provisions that explicitly allow bed and breakfasts in a dwelling as a home occupation YCZO 202 did not exclude the proposed building from the scope of the term "dwelling" in the

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requires if it so chooses. Therefore, the county could conceivably interpret the definition of "dwelling" for purposes of YCZO 202 more stringently than "dwelling" under ORS 215.448(1).

YCZO. *Grange Hill IV*, sip op 12-13. We further explained that since home occupations are sub-2 uses under *Brentmar* conceivably the county could apply more stringent requirements than required under state law, and as the Supreme Court's decision in *Grange Hill III* could affect the county's interpretation, we withdrew our interpretation and remanded the decision for the county to interpret the provisions in the first instance. *Id.* at 13-14.

The Supreme Court made clear in *Grange III* that under state law bed and breakfasts are permissible "dwellings" even if the structure is used in part for transient lodgers:

> "Moreover, a limitation that precluded a structure from qualifying as a 'dwelling' under ORS 215.448 if part of the structure is used for transient lodgers would be incompatible with newer land use provisions that expressly contemplate that a bed and breakfast is one type of home occupation that may be approved for EFU land. * * * Those newer provisions have effect only if it is possible for a 'bed and breakfast facility' to satisfy the 'dwelling' requirement for a home occupation, and that informs our understanding that the 'dwelling' requirement can be satisfied even if the dwelling will be occupied at least in part by transient lodgers." *Grange Hill III*, 373 Or at 806.[10]

While in the *Grange Hill* case the county did not adopt an explicit interpretation on this issue, in the present case the county did adopt an explicit

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[10] The Supreme Court's holding is in accord with our interpretation in *Grange Hill I*.

interpretation of the relationship between the YCZO 202 definition of dwelling and the code provisions governing bed and breakfast home occupation:

> "YCZO's pathway for beds and breakfasts on County resource zones is clear and subject to standards developed specific to this purpose. *See* YCZO Ch. 1012 (Country Inn/Bed and Breakfast Facilities) and 1004 (Home Occupations). Given the specific and well-tailored allowances for 'County Inns' and 'Bed and Breakfast Facilities' in the YCZO, [petitioner's] argument that the definition of 'dwelling' somehow makes a bed and breakfast impermissible is incorrect.
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> "[Petitioner] asks the County to read the allowances for 'County Inn/Bed and Breakfast Facilities' out of the YCZO. However, under Oregon law, the County's definition of 'dwelling' must be read consistent with any more specific provisions in the YCZO. ORS 174.010; *see State ex rel Juv. Dept. v.* MT, 321 Or 419, 426 (1995) ('When a general statute and a specific statute both purport to control an area of law, this court considers the specific statute to take precedence over an inconsistent general statute related to the same subject.'); ORS 174.020(2) ('When a general and particular provision are inconsistent, the latter is paramount to the former so that a particular intent controls a general intent that is inconsistent with the particular intent.'). A home occupation, including one for a 'County Inn/Bed and Breakfast Facility' is a conditional use, which is subject to specific criteria beyond those required to establish a 'dwelling' (which in many cases is permitted by right). As the more specific use category, a bed and breakfast must be permissible as an allowable use of a 'dwelling' in order to give effect to the entire YCZO, as required by ORS 174.010 and to comply with the express mandate of ORS 174.020."

The county apparently understood petitioners to argue categorically that no bed and breakfast use could ever be allowed as a home occupation in a dwelling. The county rejected that categorical argument, on the grounds that the

more specific bed and breakfast code provisions prevail over the general definition of dwelling. To the extent petitioner advances that categorical argument on appeal, we agree with the county.

Under ORS 197.829(1), as construed in *Siporen v. City of Medfo*rd, 349 Or 247, 259, 243 P3d 776 (2010), LUBA must defer to a local governing body's interpretation of its comprehensive plan and land use regulations, unless the local government's interpretation is inconsistent with the express language, purpose, or underlying policy of the comprehensive plan or land use regulation. *Crowley v. City of Hood River*, 294 Or App 240, 244, 430 P3d 1113 (2018). In *Crowley*, an appeal that involved the city council's interpretation of the city's comprehensive plan, the Court of Appeals explained: "Whether the city's interpretation of its comprehensive plan is inconsistent with the plan, or the purposes or policies underlying that plan, depends on whether the interpretation is plausible, given the interpretive principles that ordinarily apply to the construction of ordinances under the rules of *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-12, 859 P2d 1143 (1993), as modified by *State v. Gaines*, 346 Or 160, 171-72, 206 P3d 1042 (2009)." *Id.* (internal quotation marks and brackets omitted).

In the present case, petitioner does not acknowledge or challenge the above-quoted interpretation regarding the relationship between the code definition of dwelling and the code provisions governing bed and breakfast home occupations. Petitioner makes no effort to demonstrate that that interpretation is

implausible. Absent some challenge to those findings and that interpretation, petitioner's arguments under this portion of the second sub-assignment of error do not provide a basis for reversal or remand.

This portion of the second sub-assignment of error is denied.

SECOND ASSIGNMENT OF ERROR

YCZO 202 defines bed and breakfast inns as being "conducted in the residence of the operator." Petitioner argues that the county misconstrued the law and failed to make adequate findings not supported by substantial evidence that the proposed bed and breakfast would by conducted in the residence of the operator.

In the original application, intervenors proposed that the bed and breakfast would be managed by a caretaker who would reside in a dwelling on an adjacent parcel owned by intervenors. After opponents questioned whether this would comply with YCZO 202, intervenors amended the application to include a bedroom suite for "an onsite resident employee who will work as the innkeeper." Record 27, 225. The findings state:

> "The revised building plans for the dwelling now include a bedroom suite for an onsite resident employee who will work as the innkeeper, and the Applicant's written justification has been amended to specify that the bed and breakfast inn's caretaker will reside in the dwelling to be used as the bed and breakfast inn. A condition of approval will require that the bed and breakfast in be managed by an innkeeper who resides full-time at the dwelling being operated as a bed and breakfast inn. A condition of approval will require the Applicant to provide the name and contact information for the person(s) living in the dwelling and acting as the

innkeeper to the Planning Director, and further that the Applicant shall provide revised contact information if a new innkeeper is hired to operate the bed and breakfast inn." Record 27.[11]

Petitioner argues that moving a paid employee onsite to manage the property does not turn the proposed dwelling into the residence of a bed and breakfast operator. Petitioner point to evidence that intervenors are the owner and operator of the proposed dwelling called Inn the Ground and the architectural plans were drawn for the Inn the Ground project with intervenors as the clients. Record 203, 232. According to petitioner, the plans were not drawn for "The Residence of Mr. and Mrs. John Caretaker," and therefore intervenors would be the operators rather than the onsite innkeeper.

The findings do not address this issue. While the county imposed a condition of approval that "operation of the bed and breakfast shall be managed by a full-time resident of the dwelling," that begs the question of whether the innkeeper is also the operator rather than the intervenor owners. Findings must address and respond to specific issues relevant to compliance with applicable approval standards that were raised in the proceedings below. *Norvell v. Portland Area LGBC*, 43 Or App 849, 853, 604 P2d 896 (1979). Respondents argue that the county is entitled to *Siporen* deference based on the condition of approval

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[11] The decision includes a condition of approval that "[o]peration of the bed and breakfast shall be managed by a full-time resident of the dwelling * * *." Record 36.

requiring operation of the bed and breakfast to be managed by a full-time resident of the dwelling. The condition of approval, however, addresses whether the innkeeper must live in the proposed dwelling as opposed to the original application where the innkeeper would reside nearby. The condition of approval does not address whether the true operator of the proposed bed and breakfast would be the innkeeper or intervenors.

Respondents also argue that the county was not required to make any findings regarding whether the innkeeper was the operator because meeting the definition of operator is not an approval criterion. According to respondents, nothing in the approval criteria for home occupations under ORS 215.448 or YCZO 1004 even refer to an "operator." While respondents are technically correct that that neither ORS 215.448 nor YCZO 14.00 contain the word "operator," ORS 215.448(1)(a) requires that the home occupation "shall be operated by a resident or employee of a resident of the property on which the business is located" and YCZO 14.00(A) requires that the "home occupation will be operated be a resident of the property on which the business is located." We see no distinction between a requirement that a home occupation be operated by a resident of the property and a requirement that the operator be a resident of the property. The home occupation approval criteria include that the operator must be a resident of the property.

Opponents raised the issue of whether the operator of the proposed bed and breakfast would be the innkeeper or intervenors. That issue goes to an approval

criterion for bed and breakfast home occupation conditional uses. The county's findings do not address that issue. Therefore, the county's findings are inadequate. OAR 661-010-0071(2)(a).

The second assignment of error is sustained.

The county's decision is remanded.