



1 Opinion by Kellington.

2 **NATURE OF THE DECISION**

3 Petitioner appeals an order of the county hearings  
4 officer denying his conditional use permit application for a  
5 36 hole golf course, driving range and clubhouse on a 350  
6 acre parcel zoned General Agricultural District (GAD), an  
7 exclusive farm use zone.

8 **INTRODUCTION**

9 The challenged decision relies on three grounds to deny  
10 petitioner's application. The county concedes petitioner's  
11 first and third assignments of error challenging two of  
12 those grounds for denial. However, the county does not  
13 concede the second assignment of error, which challenges the  
14 third basis for denying the application.

15 It is the applicant's burden to establish compliance  
16 with each relevant approval standard. Consequently, where  
17 the applicant fails to establish compliance with a single  
18 approval standard, a decision denying an application must be  
19 affirmed. Garre v. Clackamas County, 18 Or LUBA 877, aff'd  
20 102 Or App 123 (1990). Accordingly, we determine whether  
21 the county properly determined the proposal fails to satisfy  
22 Clackamas County Zoning and Development Ordinance  
23 (ZDO) 1011.03(B), concerning "high priority" open space, the  
24 subject of the second assignment of error.

25 **SECOND ASSIGNMENT OF ERROR**

26 "The hearings officer's findings regarding  
27 conflicts between the proposed use and the

1 'wetlands' provision of the ZDO are internally  
2 inconsistent, contrary to the law and apply  
3 restriction[s] and policies that are not approved  
4 criteria."

5 Clackamas County Comprehensive Plan (plan) policy 17.3  
6 requires county review of certain conditional use  
7 applications, including the subject golf course application,  
8 to assure consistency with ZDO section 1000 until a "wetland  
9 resource management plan has been adopted." Record 3.  
10 There is no adopted wetland resource management plan  
11 covering the subject property.

12 ZDO 1011.03(B) provides:

13 "'High Priority' open space<sup>[1]</sup> shall be preserved  
14 outright, except:

15 "\* \* \* \* \*

16 "Commercial or industrial developments affecting  
17 wetlands or Significant Natural Areas may be  
18 allowed \* \* \*."

19 The issue under this assignment of error is whether the  
20 proposed golf course is a "commercial" use which may be  
21 allowed on "high priority" open space under ZDO 1011.03(B),  
22 subject to certain other standards. The challenged decision  
23 interprets the term "commercial," as used in ZDO 1011.03(B),  
24 to exclude golf courses. Record 3-4. If we agree with the  
25 hearings officer that the proposed golf course is not a

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<sup>1</sup>There is no dispute in this appeal that the subject property contains "high priority" open space. High priority" open space apparently includes wetlands, and there is no dispute that there are wetland areas on the subject property.

1 commercial use, then the decision correctly concludes that  
2 the application for the subject golf course must be denied  
3 under ZDO 1011.03(B) because it fails to establish that  
4 "high priority" open space will be preserved.

5 In Clark v. Jackson County, 313 Or 508, 514-15,  
6 \_\_\_\_ P2d \_\_\_\_ (1992), the Supreme Court expressed our scope  
7 of review in determining whether a challenged local  
8 government decision correctly interprets local ordinance  
9 provisions:

10 "Under ORS 197.835(7)(a)(D),<sup>[2]</sup> LUBA is granted  
11 review authority over a county's interpretation of  
12 a local land use ordinance. If a county has  
13 construed an ordinance in a manner that clearly is  
14 contrary to the enacted language, LUBA acts within  
15 its scope of review in finding that the county  
16 improperly construed the applicable law. \* \* \*

17 \* \* \* \* \*

18 "LUBA is to affirm the county's interpretation of  
19 its own ordinance unless LUBA determines that the  
20 county's interpretation is inconsistent with  
21 express language of the ordinance or its apparent  
22 purpose or policy. LUBA lacks authority to  
23 substitute its own interpretation of the ordinance  
24 unless the county's interpretation was  
25 inconsistent with that ordinance, including its  
26 context."

27 We also interpret local ordinances in a manner which gives  
28 effect to all parts. Kenton Neighborhood Assoc. v. City of  
29 Portland, 17 Or LUBA 784, 797 (1989).

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<sup>2</sup>ORS 197.835(7)(a)(D) provides LUBA "shall" reverse or remand a challenged decision where it determines the local government "[i]mproperly construed the applicable law \* \* \*."

1           Petitioner argues the term "commercial" use simply  
2 means any use operated for profit. Petitioner cites the  
3 broad use of the term "commercial" in ZDO 202-8, defining  
4 "commercial farms," as establishing the county's intent to  
5 define "commercial" uses broadly.<sup>3</sup> Petitioner also cites  
6 the following permitted uses in the county's Service  
7 Recreational District (SRD):

8           "Private commercial, noncommercial or nonprofit  
9 recreational areas, uses and facilities, including  
10 country clubs, lodges, fraternal organizations,  
11 swimming pools, golf courses, riding stables, boat  
12 moorages, parks and concessions. \* \* \*"  
13 (Emphasis supplied.) ZDO 813.01(A).

14 Petitioner argues this list establishes that golf courses  
15 are commercial uses under the ZDO.

16           We agree with the county that petitioner's construction  
17 of the term "commercial" use would absorb the industrial use  
18 category, a separate use category listed in the ZDO.<sup>4</sup> The  
19 ZDO definition of commercial farm adds little to  
20 petitioner's argument that a golf course is a commercial  
21 use. The ZDO definition of commercial farm relates to  
22 whether a farming operation is one the county will consider

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<sup>3</sup>Petitioner also contends that ZDO 503.03 lists golf driving ranges as uses allowed in the county's General Commercial (C-3) zone. However, the version of ZDO 503.03 which petitioner cites bears the date "6/84" and has been revised. Because the golf course application was filed on August 15, 1991, the ZDO adopted December 31, 1990 (1990 ZDO) applies. The 1990 ZDO does not list driving ranges as allowed uses in the C-3 zoning district.

<sup>4</sup>ZDO 601-606 are industrial zoning districts authorizing various profit oriented businesses.

1 to be for profit. There is nothing about the ZDO  
2 definition of a commercial farm which attempts to establish  
3 what a "commercial" use is.

4 Additionally, ZDO 813.01(A), quoted above, does not  
5 support petitioner's position. ZDO 813.01(A) simply states  
6 that certain uses, which could be private commercial,  
7 private noncommercial or private nonprofit uses, are  
8 permissible in the SRD zone. While ZDO 813.01(A) may  
9 suggest it is possible that a particular golf course could  
10 be a commercial use, it does not say that all golf courses  
11 are necessarily commercial uses.<sup>5</sup>

12 Finally, the purposes of the county's commercial zones  
13 are instructive. For example, the county's C-3 zone is to:

14 "A. Provide for \* \* \* areas to meet county  
15 residents' shopping needs for a wide range of  
16 good[s] and services located in areas  
17 accessible by transit and automobile.

18 "B. Provide for transit and pedestrian oriented  
19 mixed use areas consistent with the policies  
20 of the [plan].

21 "C. Provide for the sale of large-scale items in  
22 areas with good transportation access and  
23 minimal conflict with other uses."  
24 ZDO 503.01.

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<sup>5</sup>We note that the Rural Commercial zone conditionally allows "service recreation" uses, which presumably include at least some of the uses allowed in the SRD zoning district. However, the Rural Commercial zone also lists as conditionally permitted uses "churches and religious institutions," as well as public schools. Consequently, that service recreation uses are conditionally allowed in the Rural Commercial zone does not establish that golf courses are necessarily commercial uses.

1 The purpose of the Community Commercial zone is to:

2       "\* \* \* provide for the local shopping needs of  
3       several neighborhoods in locations easily  
4       accessible to those neighborhoods by local transit  
5       service, automobile, bicycle and walking." ZDO  
6       502.01.

7 The purpose of the Rural Tourist Commercial District is to:

8       "\* \* \* provide for the orderly development of  
9       commercial establishments to serve the retail  
10       commercial needs of the residents of the Mt. Hood  
11       Community, as well as the many tourists who  
12       annually visit this area of the County."  
13       ZDO 504.01.

14 The purpose of the Rural Commercial zone is to:

15       "\* \* \* accommodate local shopping needs, recognize  
16       and protect the historic character of rural  
17       centers, while preserving and protecting the  
18       agricultural or forestry character of the  
19       surrounding areas." ZDO 505.01

20 The purpose of the Neighborhood Commercial zone is to:

21       "\* \* \* provide for convenience commercial needs of  
22       residential neighborhoods in locations easily  
23       accessible to these neighborhoods with minimal  
24       negative impacts."<sup>6</sup> ZDO 501.01.

25       Essentially, the purposes of the county's commercial  
26       zones, as listed above, are to provide for retail oriented  
27       needs in areas characterized by good transportation  
28       services. Such needs and services are not identified with  
29       the particular golf course proposed here. The hallmark of  
30       the proposed golf course is facilitating the playing of the

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<sup>6</sup>Similar objectives are stated for the county's Office Commercial and Retail Commercial zones.

1 game of golf. No one suggests that the proposed golf course  
2 itself provides for retail shopping needs, or that it is in  
3 a location characterized by good transportation services.  
4 Accordingly, the county's interpretation of its own  
5 ordinance is not "inconsistent with express language of the  
6 ordinance or its apparent purpose or policy." Clark v.  
7 Jackson County, supra. We conclude the county correctly  
8 determined the proposed golf course is not a commercial use  
9 and, therefore, is subject to ZDO 1011.03(B), and that the  
10 county properly denied petitioner's application.

11 The second assignment of error is denied.

12 **FOURTH ASSIGNMENT OF ERROR**

13 "The Hearings Officer's findings are not supported  
14 by substantial evidence in the record as a whole."

15 This assignment challenges the evidentiary support for  
16 the bases for denial at issue in the first and third  
17 assignments of error. In view of the county's concessions  
18 concerning those assignments, no purpose is served in  
19 reviewing these evidentiary arguments. Petitioner also  
20 repeats his legal arguments that a golf course is a  
21 commercial use as he defines that term. Petitioner cites  
22 evidence in the record to establish that the golf course  
23 meets his definition of "commercial" use. However, as  
24 explained above, we reject petitioner's definition of  
25 commercial use. Consequently, that there is evidence in the  
26 record supporting petitioner's position that the golf course  
27 meets his definition of commercial use, provides no basis

1 for reversal or remand of the challenged decision.

2 The fourth assignment of error is denied.

3 The county's decision is affirmed.