

1 Opinion by Sherton.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a county hearings officer's decision
4 denying his application for a home occupation permit for a
5 mail order business.

6 **FACTS**

7 The subject property consists of approximately 19
8 acres. It is designated Forest by the Clackamas County
9 Comprehensive Plan and is zoned Transitional Timber, 20 Acre
10 District (TT-20). Approximately five acres of the subject
11 property are developed with two dwellings, barns and other
12 outbuildings. The property was once part of a large dairy
13 operation and was subsequently planted in hay. A portion of
14 the subject property is currently used as livestock pasture.

15 **ASSIGNMENTS OF ERROR**

16 Clackamas County Zoning and Development Ordinance
17 (ZDO) 403.04(B) provides that a home occupation in the TT-20
18 zone must comply with ZDO 403.05(A)(1) through (5).
19 ZDO 403.05(A) establishes criteria for approval of nonforest
20 dwellings and other nonforest uses in the TT-20 zone.
21 ZDO 403.05(A)(4) requires that a proposed nonforest use:

22 "Is situated upon generally unsuitable land for
23 the production of farm and forest products,
24 considering the terrain, adverse soil or land
25 conditions, drainage and flooding, vegetation,
26 location and size of the tract[.]"

27 The county denied petitioner's application for a home
28 occupation permit on the basis of noncompliance with

1 ZDO 403.05(A)(4). The county found the record does not
2 contain substantial evidence to support a determination that
3 the subject 19-acre property is generally unsuitable for the
4 production of farm products.

5 Petitioners' assignments of error challenge the
6 county's interpretation of ZDO 403.05(A)(4). The sole issue
7 in this appeal is whether the county can interpret the
8 "generally unsuitable land" standard of ZDO 403.05(A)(4) as
9 applying to the entire 19 acre property, rather than only to
10 the portion of the property on which the home occupation is
11 proposed to be located. Petitioner argues it is not
12 necessary to interpret ZDO 403.05(A)(4) as applying to the
13 entire property, because other ZDO standards limit home
14 occupations to a maximum of 1,000 sq. ft. of building space.
15 Petitioner also argues that under the county's
16 interpretation, it would be almost impossible to approve a
17 home occupation in the TT-20 zone.

18 In the challenged decision, the county considered
19 petitioner's argument that ZDO 403.05(A)(4) should be
20 interpreted to require only the portion of the subject
21 property on which the proposed home occupation will be
22 located to be generally unsuitable for farm use, and found:

23 "* * * The TT-20 zoning district requires that a
24 proposed home occupation satisfy * * * the
25 nonforest use criteria [of ZDO] 403.05(A). Oregon
26 case law and Clackamas County decisions have held
27 that to satisfy the nonforest use criteri[a] set
28 forth in [ZDO] 403.05(A)(4), the unsuitability of
29 the subject property as a whole must be

1 demonstrated. There is no logical or legal reason
2 that [ZDO] 403.05(A)(4) should be accorded a
3 different interpretation for a home occupation
4 application." (Emphasis added.) Record 3-4.

5 This Board is required to defer to a local government's
6 interpretation of its own ordinances, unless that
7 interpretation is contrary to the express words, policy or
8 context of the local enactment. Clark v. Jackson County,
9 313 Or 508, 514-15, 836 P2d 710 (1992). This means we must
10 defer to a local government's interpretation of its own
11 enactments, unless that interpretation is "clearly wrong."
12 Goose Hollow Foothills League v. City of Portland, 117 Or
13 App 211, 217, ___ P2d ___ (1992); West v. Clackamas County,
14 116 Or App 89, 93, 840 P2d 1354 (1992).

15 Past decisions of this Board and the appellate courts
16 have established that in the context of approving nonfarm
17 dwellings in an exclusive farm use zone, it is within the
18 county's discretion to interpret language virtually
19 identical to that of ZDO 403.05(A)(4) to require that the
20 entire property on which a proposed nonfarm dwelling is
21 proposed to be located be generally unsuitable for the
22 production of farm products. Smith v. Clackamas County, 313
23 Or 519, 836 P2d 716 (1992). The TT-20 zone is also a
24 resource protection zone, albeit a forest zone rather than
25 an exclusive farm use zone. Further, ZDO 403.05(A)(4) is an
26 approval standard not only for home occupations in the TT-20
27 zone, but also for nonforest dwellings and other nonforest
28 uses in the TT-20 zone. We see nothing inconsistent with

1 the words, context or policy of the ZDO in interpreting
2 ZDO 403.05(A)(4) to require that the entire property on
3 which a home occupation is proposed to be located be
4 generally unsuitable for the production of farm and forest
5 crops.¹

6 The assignments of error are denied.

7 The county's decision is affirmed.

¹It would probably also be within the county's discretion to interpret the language of ZDO 403.05(A)(4) as petitioner suggests. See Wuester v. Clackamas County, ___ Or LUBA ___ (LUBA No. 93-017, June 9, 1993), slip op 19 (county acted within its interpretive discretion in interpreting a standard in the General Timber District (GTD) zone worded identically to ZDO 403.05(A)(4) as applying only to the land under the building where a home occupation will be located); see also DLCD v. Coos County, ___ Or LUBA ___ (LUBA No. 91-193, December 16, 1992). Under Clark v. Jackson County, supra, a local government has the discretion to interpret the same language, when found in different provisions of its code or used in different contexts, differently, so long as each interpretation is not "clearly wrong." This is not to say the county is free to arbitrarily vary its interpretation of ZDO 403.05(A)(4) when acting on home occupation permit applications, but nothing in the record establishes that the county has done so here.