



1 Opinion by Holstun.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a county decision granting a home  
4 occupation permit for an automobile repair business.

5 **FACTS**

6 The business at issue in this appeal reconstructs  
7 wrecked vehicles. The business utilizes a hydraulically  
8 operated frame pulling machine, an air compressor and air  
9 tools. The work performed by the business includes frame  
10 and sheet metal work, which involves cutting, hammering,  
11 bending and welding. The work is conducted in an existing  
12 2,400 square foot metal shed, referred to in the local  
13 proceedings and in this opinion as the shop building. In  
14 addition to the shop building, the subject property contains  
15 the applicant's residence, a machine shed and a pasture.  
16 The subject property is designated Forest in the  
17 comprehensive plan and is zoned General Timber District  
18 (GTD), a forest zone.

19 **WAIVER**

20 We first consider respondent's contentions that  
21 petitioner waived a number of the issues raised in his  
22 eleven assignments of error by failing to raise those issues  
23 during the proceedings below.

24 The "raise it or waive it" provisions applicable to  
25 quasi-judicial land use decisions are found at ORS 197.763

1 and ORS 197.835(2).<sup>1</sup> ORS 197.835(2) provides, in relevant  
2 part, as follows:

3 "Issues [raised in a petition for review at LUBA]  
4 shall be limited to those raised by any  
5 participant before the local hearings body as  
6 provided by ORS 197.763. A petitioner may raise  
7 new issues to [LUBA] if:

8 "(a) The local government failed to follow the  
9 requirements of ORS 197.763; \* \* \*

10 " \* \* \* \* "

11 One of the requirements of ORS 197.763 is that the  
12 notice of hearing "[l]ist the applicable criteria from the  
13 ordinance and the plan that apply to the application at  
14 issue." ORS 197.763(3)(b). The hearing notice provided by  
15 the county in this matter pursuant to ORS 197.763(3)(b) did  
16 not list Clackamas County Zoning and Development Ordinance  
17 (ZDO) 404.05(A), which is one of the applicable ZDO  
18 criteria. Therefore, the county failed to follow one of the  
19 requirements of ORS 197.763, and the question presented is  
20 to what extent that failure permits petitioner to raise  
21 issues at LUBA that were not first raised locally.

22 Respondent concedes petitioner may raise issues  
23 concerning ZDO 404.05(A). See Ruff v. Harney County, 23 Or  
24 LUBA 521, 525 (1992); Nuenschwander v. City of Ashland, 20  
25 Or LUBA 144, 157 (1990). However, respondent argues  
26 petitioner may not raise issues concerning certain other

---

<sup>1</sup>ORS 197.830(10) includes language identical to the language of  
ORS 197.835(2) quoted below in the text.

1 applicable plan and ZDO criteria that were listed in the  
2 notice required by ORS 197.763(3)(b), where petitioner  
3 failed to raise any issue concerning those listed criteria  
4 during the local government proceedings in this matter.<sup>2</sup>

5 Petitioner contends the "raise it or waive it"  
6 provisions of ORS 197.763 and ORS 197.835(2) are an  
7 all-or-nothing proposition, so that the county's failure to  
8 list a single relevant criterion means petitioner need not  
9 have raised issues locally as a prerequisite for raising  
10 those issues before LUBA, even where those issues pertain to  
11 plan or land use regulation criteria that were listed in the  
12 notice required by ORS 197.763(3)(b).

13 We look first to the words of the statute and the  
14 statutory history.<sup>3</sup> The "raise it or waive it" provisions  
15 of ORS 197.763 replaced ORS 197.762, which provided a more  
16 limited "raise it or waive it" requirement. Or Laws 1989,  
17 ch 761, § 10(a). ORS 197.762 was adopted in 1987 to  
18 partially displace statutory provisions which this Board and  
19 the Oregon Court of Appeals construed as providing that  
20 issues could be raised in an appeal at LUBA, without regard  
21 to whether those issues were first raised during the local

---

<sup>2</sup>Respondent also argues petitioner waived his right to raise issues concerning certain alleged statutory requirements concerning home occupations, because he failed to raise those statutory provisions during the local proceedings.

<sup>3</sup>The legislative history supplied by the parties is not helpful in determining the scope of the consequence under ORS 197.835(2) for a local government's failure to follow the procedures set out in ORS 197.763.

1 proceedings leading to the challenged land use decision.<sup>4</sup>  
2 Lane County v. City of Eugene, 54 Or App 26, 33, 633 P2d  
3 1306 (1981); McNulty v. City of Lake Oswego, 14 Or LUBA 366,  
4 370 (1986).

5 In essence, petitioner's construction of the  
6 ORS 197.835(2) exception to the "raise it or waive it" rule  
7 results in a reversion to the nonwaiver rule that existed  
8 prior to the adoption of ORS 197.762 and 197.763, if the  
9 local government fails to follow the procedures required by  
10 ORS 197.763. That construction is consistent with a literal  
11 reading and application of the words of ORS 197.835(2),  
12 quoted supra. While this Board is not cited to anything  
13 that suggests the legislature specifically intended this  
14 result, a return to the prior nonwaiver rule certainly is  
15 not inconsistent with anything in the legislative history  
16 that is cited. Neither does that construction produce an  
17 absurd result. See Southwood Homeowners v. City Council of  
18 Philomath, 106 Or App 21, 24, 806 P2d 162 (1991) (citing  
19 Dennehy v. City of Portland, 87 Or App 33, 40, 740 P2d 806  
20 (1987)).

21 The main problem with respondent's argument that the  
22 legal consequence of failing to list ZDO 404.05(A) as a  
23 criterion is limited to allowing new issues to be raised  
24 with regard to that criterion is that there is nothing in

---

<sup>4</sup>ORS 197.762 was adopted by Oregon Laws 1987, chapter 729, section 15.

1 the words of ORS 197.835(2) or in related statutory  
2 provisions to support such a limited construction of the  
3 right to raise new issues under ORS 197.835(2). The  
4 legislature could have provided in ORS 197.835(2) that  
5 failure to follow a requirement of ORS 197.763 would not  
6 obviate the need for a petitioner at LUBA to first raise an  
7 issue locally, unless the local government's failure to  
8 follow the requirement of ORS 197.763 somehow affected a  
9 petitioner's ability to raise that issue.<sup>5</sup> The legislature  
10 did not do so, and this Board may not insert a limitation  
11 into the statute that the legislature has omitted.  
12 174.010.<sup>6</sup>

13 Respondent's waiver arguments are rejected, and in  
14 addressing the assignments of error below, we do not

---

<sup>5</sup>For example, ORS 197.835(7)(a)(B) states that procedural errors provide a basis for reversal or remand only if such procedural errors result in "prejudice to the substantial rights of the petitioner." We have held that under ORS 197.835(7)(a)(B), failure to follow the procedural requirements of ORS 197.763 will only result in reversal or remand if the failure to follow ORS 197.763 procedures results in prejudice to petitioner's substantial rights. ORS 197.835(2) does not provide that the right to raise new issues depends on a showing that the failure to observe ORS 197.763 requirements resulted in prejudice to petitioner's ability to raise particular issues locally.

<sup>6</sup>ORS 174.010 provides the following general rule for construction of statutes:

"In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted \* \* \*."

1 consider those arguments further.<sup>7</sup>

2 **FIRST ASSIGNMENT OF ERROR**

3 Under the first assignment of error, petitioner alleges  
4 the challenged decision violates statutory provisions  
5 limiting operation of home occupations to dwellings and  
6 accessory buildings associated with permitted uses.<sup>8</sup>

7 ORS 215.448(1) provides as follows:

8 "The governing body of a county or its designate  
9 may allow \* \* \* the establishment of a home  
10 occupation in any zone \* \* \* if the home  
11 occupation:

12 "\* \* \* \* \*

13 "(c) Will be operated in:

14 "(A) The dwelling; or

15 "(B) Other buildings normally associated with  
16 uses permitted in the zone in which the  
17 property is located[.]

18 "\* \* \* \* \*"

19 The challenged decision includes the following  
20 condition of approval:

21 "The maximum number of vehicles associated with  
22 the business that can be located on the subject  
23 property at any time shall be a total of five (5).  
24 Vehicles include unattached trailers. No more  
25 than one of the five total vehicles permitted to

---

<sup>7</sup>Respondent asserts waiver as a total or partial response to petitioner's first through sixth and ninth and tenth assignments of error.

<sup>8</sup>Under the second assignment of error, discussed infra, petitioner alleges the ZDO imposes similar limitations on home occupations, and is violated by the challenged decision.

1 be parked, stored or repaired on the property  
2 shall exceed 11,000 pounds gross vehicle weight."  
3 Record 7.

4 An additional condition limits parking of vehicles to be  
5 repaired to enclosed buildings or areas "not visible from  
6 off the property." Id.

7 We do not understand petitioner to contend that parking  
8 the applicant's or employees' vehicles on the property  
9 violates ORS 215.448(1). However, petitioner does argue the  
10 above described conditions of approval authorize outside  
11 parking or storage of trailers and vehicles to be repaired,  
12 which petitioner argues is prohibited by ORS 215.448(1).  
13 For the reasons explained below, we agree with petitioner.

14 **A. Applicability of the Statute**

15 Respondent contends that while it may be argued that  
16 county provisions for home occupations must be consistent  
17 with ORS 215.448(1), the statute is not directly applicable  
18 as an approval criterion and the first assignment of error  
19 should therefore be denied.

20 While ORS 215.448(1) is an enabling statute, it both  
21 authorizes local governments to approve home occupations and  
22 places limits on that authorization. Therefore, the county  
23 may not authorize home occupations that violate the  
24 statutory limitations on home occupations in



1 ORS 215.448(1).<sup>9</sup> See Kenagy v. Benton County, 115 Or App  
2 131, 134-36, 838 P2d 1076, rev den 315 Or 271 (1992). As  
3 explained below under the second assignment of error, we  
4 agree with the county that the relevant ZDO provisions,  
5 which appear to have been adopted to implement  
6 ORS 215.448(1), allow home occupations to be conducted, in  
7 part, outside the dwelling and other authorized buildings.  
8 The statute does not. Because the county may not authorize  
9 what the statute prohibits, the statute controls where it  
10 conflicts with the ZDO.

11 **B. Limitation of Home Occupation to Dwelling or Other**  
12 **Buildings**

13 In Slavich v. Columbia County, 16 Or LUBA 704, 707  
14 (1988), we held that ORS 215.448(1)(c), and a county code  
15 provision incorporating that statutory provision, precluded  
16 county authorization of a day care center and group home  
17 which included an "unlimited amount of activity by children  
18 and staff outside of existing buildings." We also have  
19 interpreted code language identical to that in  
20 ORS 215.448(1)(c) as precluding authorization of an  
21 automobile repossession business which conducted a  
22 significant amount of the business outside the dwelling.  
23 Stevenson v. Douglas County, 23 Or LUBA 227, 232 (1992).

24 Respondent argues the parking of vehicles to be

---

<sup>9</sup>If the county were free to authorize home occupations without imposing the statutory limits, the statutory limits would be meaningless.

1 repaired and the storage of trailers outdoors is a less  
2 significant part of the home occupation than was the case in  
3 Slavich and Stevenson. Moreover, respondent notes, the area  
4 where such outdoor storage will occur is visually screened  
5 from adjoining properties.

6 While the quantum of business conducted outside the  
7 dwelling and other buildings normally associated with  
8 permitted uses in the zone may be less in this case than in  
9 Slavich and Stevenson, we nevertheless conclude the statute  
10 is violated by the county's decision. The statutory  
11 language simply provides no basis for reading in a de  
12 minimis exception to the requirement that home occupations  
13 be limited to the dwelling and other buildings associated  
14 with permitted uses.

15 The first assignment of error is sustained.

16 **SECOND ASSIGNMENT OF ERROR**

17 Petitioner contends the challenged decision allows part  
18 of the home occupation to be conducted outside the dwelling  
19 or accessory structures, in violation of applicable ZDO  
20 provisions.

21 Unlike the statutory provisions discussed under the  
22 first assignment of error, the ZDO 822.01(A) definition of  
23 "Home Occupation" envisions that a home occupation may  
24 extend beyond the dwelling or accessory buildings.<sup>10</sup>

---

<sup>10</sup>ZDO 822.01(A) provides as follows:

1 However, notwithstanding ZDO 822.01(A), ZDO 822.05(H)  
2 prohibits "outside storage, display of goods or merchandise,  
3 or external evidence of a home occupation \* \* \*, except as  
4 otherwise provided in ZDO 822.05."

5 An exception to the prohibition of ZDO 822.05(H) is ZDO  
6 822.05(K), which allows outside parking of "vehicles which  
7 are associated with a home occupation", including "vehicles  
8 to be repaired." Petitioner contends the applicant  
9 currently has parts and scrap stored outside in the storage  
10 area shown on the site map submitted in conjunction with the  
11 application in this matter. Petitioner argues such outside  
12 storage of parts and scrap is prohibited by ZDO 822.05(H)  
13 and does not come within the exception provided by ZDO  
14 822.05(K). We agree.<sup>11</sup>

15 However, we also agree with respondent that the  
16 challenged decision does not authorize any outside storage  
17 of parts or scrap. While such outside storage may have  
18 occurred in the past and may currently be occurring, the

---

"'Home Occupation' is an occupation or business activity which results in a product or service and which: is conducted, in whole or in part, in either the dwelling or in an accessory building normally associated with permitted uses; is conducted by at least one family member occupying the residence; and is clearly subordinate to the residential use of the dwelling and premises." (Emphasis added.)

<sup>11</sup>Respondent contends that all parts and scrap are stored in a trailer in the storage area and that the trailer qualifies as a vehicle and therefore falls within the exception provided by ZDO 822.05(K). While that construction of ZDO 822.05(K) might be a permissible one to which this Board would be obliged to defer, that construction of ZDO 822.05(K) is not included in the challenged decision.

1 challenged decision does not purport to authorize such  
2 outside storage.

3 The second assignment of error is denied.

4 **THIRD ASSIGNMENT OF ERROR**

5 Under this assignment of error, petitioner contends the  
6 county violated ORS 215.448(3) and ZDO 404.07(A) by  
7 authorizing construction of a building not otherwise allowed  
8 in the GTD zone.<sup>12</sup>

9 The shortest answer to petitioner's argument under this  
10 assignment of error is that the challenged decision  
11 authorizes a home occupation in an existing structure. It  
12 does not authorize construction of any building and,  
13 therefore, could not violate ORS 215.448(3) and ZDO  
14 404.07(A) in the manner alleged.

15 The third assignment of error is denied.

16 **FOURTH, FIFTH AND SIXTH ASSIGNMENTS OF ERROR**

17 ORS 215.448(1)(c) requires that a home occupation be  
18 operated in a dwelling or "[o]ther buildings normally  
19 associated with uses permitted in the zone in which the  
20 property is located[.]" ZDO 822.01(A) provides that a home

---

<sup>12</sup>The county's authority to allow home occupations under ORS 215.448 is limited by ORS 215.448(3), which provides as follows:

"Nothing in [ORS 215.448] 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."

ZDO 404.07(A), read together with other parts of ZDO Section 404, imposes a similar prohibition.

1 occupation is one that "is conducted, in whole or in part,  
2 in either the dwelling or in an accessory building normally  
3 associated with permitted uses \* \* \* and is clearly  
4 subordinate to the residential use of the dwelling and  
5 premises."

6 Under the fourth and fifth assignments of error,  
7 petitioner contends the county erred by failing to find the  
8 challenged home occupation will be located in a building  
9 normally associated with uses permitted in the zone, as  
10 required by ORS 215.448(1)(c).<sup>13</sup> Under the sixth assignment  
11 of error, petitioner alleges the county erred by failing to  
12 find the challenged home occupation "is clearly subordinate  
13 to the residential use of the dwelling and premises," as  
14 required by ZDO 822.01(A).

15 Respondent does not argue the decision includes the  
16 findings petitioner contends are required or that those  
17 findings are unnecessary. Rather, respondent contends  
18 petitioner waived his right to assert the issues raised  
19 under these assignments of error by failing to raise the  
20 issues during the local proceedings. For the reasons

---

<sup>13</sup>Respondent again argues ORS 215.448(1)(c) does not apply directly to the challenged decision. As explained earlier, the provisions of ORS 215.448 both authorize counties to allow home occupations in all zones and limit that authority. The ZDO 822.01(A) limitation on home occupations requiring that the home occupation be "conducted, in whole or in part, in either the dwelling or in an accessory building normally associated with permitted uses" is identical to that provided by ORS 215.448(1)(c). Therefore, while we do not agree that the statute is inapplicable, the identical ZDO 822.01(A) requirement applies in any event.

1 explained above, we conclude the issues were not waived.

2 The fourth, fifth and sixth assignments of error are  
3 sustained.

4 **SEVENTH ASSIGNMENT OF ERROR**

5 ZDO 822.05(D) provides that "up to 1,000 square feet of  
6 accessory building space may be used for the home  
7 occupation." Petitioner argues the county's finding that  
8 the challenged home occupation will occupy no more than  
9 1,000 square feet of the shop building is not supported by  
10 substantial evidence in the record.

11 We have explained on numerous occasions that a local  
12 government may demonstrate compliance with a criterion by  
13 adopting findings explaining that it is feasible to comply  
14 with the criterion and imposing a condition that the  
15 criterion be satisfied. Goodrich v. Jackson County, 22 Or  
16 LUBA 434, 443 (1991); Simonson v. Marion County, 21 Or LUBA  
17 313, 323 (1991). The hearings officer adopted the following  
18 findings:

19 "In addition to the residence, the applicant  
20 proposes to locate the business in an existing 40'  
21 by 60' shop. The applicant has testified that no  
22 more than 1,000 square feet of this shop space  
23 will be used in the home occupation. To assure  
24 compliance with the 1,000 square foot maximum, a  
25 condition of approval will require that not more  
26 than 1,000 square feet of the shop be physically  
27 partitioned for the home occupation use, that a  
28 to-scale drawing of this space be filed with the  
29 Planning Division, and that no modification of the  
30 partitioned area be permitted without prior notice  
31 \* \* \* and approval \* \* \*." Record 2.

1 The challenged decision includes a condition of approval in  
2 accordance with the above findings. Record 7.

3 We conclude the above finding and condition are  
4 adequate to demonstrate compliance with ZDO 822.05(D).  
5 While petitioner questions whether the space that will  
6 actually be used by various aspects of the home occupation  
7 will exceed a total of 1,000 square feet of the shop  
8 building, we conclude the condition that a drawing be  
9 submitted and approved to partition not more than 1,000  
10 square feet of the shop building for use in the home  
11 occupation is sufficient to assure compliance with ZDO  
12 822.05(D).

13 One questionable aspect of our above conclusion  
14 concerning the adequacy of the condition is the applicant's  
15 proposal to exclude, for purposes of the ZDO 822.05(D) 1,000  
16 square foot limitation, an area designated as "access to  
17 work area." Record 94. The county apparently agreed that  
18 the "access to work area" need not be included for purposes  
19 of complying with the 1,000 square foot limitation.  
20 Petitioner contends excluding that area from the shop  
21 building area is like excluding "hallways and stairs" from  
22 calculation of dwelling minimum floor areas. Petition for  
23 Review 27.

24 The county's apparent interpretation of ZDO 822.05(D)  
25 as allowing the "access to work area" to be excluded for  
26 purposes of the 1,000 square foot maximum makes full use of

1 its interpretive discretion under Clark v. Jackson County,  
2 313 Or 508, 836 P2d 710 (1992). However, we cannot say that  
3 interpretation is clearly wrong. See Goose Hollow Foothills  
4 League v. City of Portland, 117 Or App 211, \_\_\_ P2d \_\_\_  
5 (1992); West v. Clackamas County, 116 Or App 89, 840 P2d  
6 1354 (1992); Cope v. Cannon Beach, 115 Or App 11, 836 P2d  
7 775 (1992).

8 **EIGHTH ASSIGNMENT OF ERROR**

9 Petitioner argues the county's finding of compliance  
10 with the noise criterion imposed by ZDO 822.05(F) is not  
11 supported by substantial evidence. ZDO 822.05(F) provides  
12 as follows:

13 "A home occupation shall not create noise which  
14 measured off the property exceeds 60 dba between  
15 the hours of 8:00 a.m. and 6:00 p.m. A home  
16 occupation shall not create noise which is  
17 detectable to normal sensory perception off the  
18 property between the hours of 6:00 p.m. and 8:00  
19 a.m. \* \* \*"

20 The challenged decision explains that the strict noise  
21 limitation applicable between 6:00 p.m. and 8:00 a.m. will  
22 be met by a condition of approval limiting the hours of  
23 operation of the home occupation so that the use will not be  
24 allowed during those hours. The findings addressing the 60  
25 dba limitation applicable between the hours of 8:00 a.m. and  
26 6:00 p.m. are as follows:

27 "A condition of approval will specifically require  
28 compliance with this subsection. Based on the  
29 testimony and letters from persons who are  
30 familiar with the applicant's business, there is



1 no reason to believe that these noise limits will  
2 not be met. \* \* \* A further condition of approval  
3 will require that the door to the shop building be  
4 kept closed during any time when the machinery is  
5 in operation, further reducing the level of noise  
6 impact during hours of operation." Record 3.

7 The above finding is at best an expression of belief  
8 that the standard will not be violated; it is not an  
9 adequate finding of compliance with ZDO 822.05(F). Even if  
10 the finding were adequate, we agree with petitioner that it  
11 is not supported by substantial evidence in the record.  
12 While there are expressions by the applicant's attorney and  
13 others that the noise generated by the home occupation is  
14 not excessive and that ZDO 822.05(F) will not be violated,  
15 we agree with petitioner that those statements do not  
16 constitute substantial evidence that the "noise \* \* \*  
17 measured off the property [will not exceed] 60 dba between  
18 the hours of 8:00 a.m. and 6:00 p.m." While the challenged  
19 home occupation may well be capable of satisfying ZDO  
20 822.05(F), the evidence in the record is not sufficient to  
21 allow a reasonable person to have any idea what the off-  
22 property decibel level may be.

23 The eighth assignment of error is sustained.

24 **NINTH AND TENTH ASSIGNMENTS OF ERROR**

25 Both ORS 215.448(1)(d) and ZDO 822.05(M) require that  
26 home occupations "not interfere with existing uses on nearby  
27 land or with other uses permitted in the zone in which the  
28 property is located." Petitioner argues the county failed

1 to adopt the required finding of noninterference with "other  
2 uses permitted in the zone in which the property is  
3 located."

4 The county found that the challenged home occupation  
5 will not interfere "with the farm/forest uses permitted in  
6 the underlying GTD zoning district." Record 5. However,  
7 the county did not find that the challenged home occupation  
8 will not interfere with other types of uses allowed in the  
9 GTD zone, and petitioner cites a number of such uses he  
10 claims the challenged home occupation could significantly  
11 affect.

12 We agree the county failed to adopt the findings  
13 required under ORS 215.448(1)(d) and ZDO 822.05(M) regarding  
14 interference with nonfarm/nonforest uses allowable in the  
15 GTD zone.

16 The ninth and tenth assignments of error are sustained.

17 **ELEVENTH ASSIGNMENT OF ERROR**

18 ZDO 404.04(B) requires that home occupations comply  
19 with the criteria set forth in ZDO 404.05(A) for nonforest  
20 dwellings. ZDO 404.05(A)(4) requires that nonforest  
21 dwellings be "situated upon generally unsuitable land of the  
22 production of farm and forest products \* \* \*." Under his  
23 final assignment of error, petitioner contends the county's  
24 finding that the home occupation will be located on land  
25 that is unsuitable for the production of farm and forest  
26 products is unsupported by substantial evidence in the whole

1 record.

2 If the entire subject property upon which the shop  
3 building and dwelling are located is considered, there is no  
4 dispute that the subject property is suitable for the  
5 production of farm crops. Such a "whole parcel" analysis  
6 would be required under the substantively identical  
7 "generally unsuitable lands" standard applicable to approval  
8 of nonfarm dwellings in exclusive farm use (EFU) zones. See  
9 ORS 215.213(3)(b); 215.283(3)(d); Smith v. Clackamas County,  
10 313 Or 519, 836 P2d 716 (1992). However, respondent  
11 contends it is not required that the county consider the  
12 entire subject property in approving a home occupation in a  
13 forest zone. We agree. See Clark v. Jackson County, supra  
14 (whole parcel analysis not required for generally unsuitable  
15 land criterion applicable to mineral and aggregate mining  
16 use in the EFU zone).

17 Although the county apparently applies the "whole  
18 parcel" analysis to approval of forest dwellings in the GTD  
19 zone under ZDO 404.05(A)(4), respondent contends it need  
20 not, and in this case did not, interpret ZDO 404.04(B) and  
21 ZDO 404.05(A)(4) together as requiring that the "whole  
22 parcel" be considered in applying the generally unsuitable  
23 land requirement to a home occupation in the GTD zone.  
24 Respondent contends that since no additional area of the  
25 subject property is being converted to a nonfarm or  
26 nonforest use and only existing buildings are to be

1 utilized, it is appropriate to limit the application of the  
2 generally unsuitable criterion to the land under the  
3 existing shop building where the challenged home occupation  
4 will be located. Respondent contends that if only the land  
5 under the shop building is considered, that land is properly  
6 considered generally unsuitable for production of farm or  
7 forest products.

8 This assignment of error turns on whether the county  
9 acted within its interpretive discretion in construing its  
10 "generally unsuitable lands" standard. There is nothing in  
11 the language of either ZDO 404.04(B) or ZDO 404.05(A)(4)  
12 which suggest that a more limited application of the  
13 "generally unsuitable lands" criterion is intended when  
14 considering home occupations under those sections. However,  
15 such was also the case in Clark v. Jackson County, supra.  
16 In construing the very same ZDO 404.05(A)(4) language as  
17 applying to the whole parcel, when approving forest  
18 dwellings in the GTD zone, and as applying to only the land  
19 under the building where a home occupation will be located  
20 in the GTD zone, the county again is exercising its  
21 interpretive discretion under Clark to the fullest.<sup>14</sup>

---

<sup>14</sup>In Clark, the "generally unsuitable lands" criterion applicable to the disputed mining use in the EFU zone was contained in a section of the county's land development ordinance separate from the "generally unsuitable lands" criterion applicable to farm dwellings in the EFU zone. Similarly, in this case ZDO 404.04(B) requires that the "generally unsuitable lands" standard applicable to nonforest dwellings in the GTD be applied when approving home occupations in the GTD zoning district. Therefore, the

1 However, we cannot say the county's interpretation is  
2 clearly wrong. See Goose Hollow Foothills League v. City of  
3 Portland, supra; West v. Clackamas County, supra; Cope v.  
4 Cannon Beach, supra.

5 The eleventh assignment of error is denied.

6 The county's decision is remanded.

---

county is not obligated to apply the "whole parcel" analysis, as it would be if the GTD zoning district were an EFU zoning district.