



1 Opinion by Holstun.

2 **NATURE OF THE DECISION**

3 Petitioners appeal a county decision denying their  
4 application for a conditional use permit for a commercial or  
5 processing activity in conjunction with timber and farm  
6 uses.

7 **FACTS**

8 The subject property includes 8.67 acres and is zoned  
9 Rural Residential Farm Forest 5 Acre (RRFF-5). The property  
10 is designated "Rural" in the Clackamas County Comprehensive  
11 Plan.

12 Among the conditional uses allowed in the RRFF-5 zone  
13 are "[c]ommercial or processing activities that are in  
14 conjunction with timber and farm uses." Clackamas County  
15 Zoning and Development Ordinance (ZDO) 309.05(A)(9). In  
16 1982, conditional use approval was granted for a firewood  
17 yard on the subject property, as a commercial activity in  
18 conjunction with timber and farm uses. Since 1982,  
19 operations on the subject property have expanded to include  
20 sale of landscaping supplies, processing of yard debris and  
21 other material and sale of the resulting mulch and soil  
22 products

23 Petitioners applied for a conditional use permit  
24 authorizing the above-described expanded operations, and  
25 that application was denied by the county hearings officer.  
26 The hearings officer concluded the expanded operations do

1 not qualify as "[c]ommercial or processing activities that  
2 are in conjunction with timber and farm uses."

3 **DECISION**

4 In explaining his interpretation of the meaning of  
5 "[c]ommercial or processing activities that are in  
6 conjunction with timber and farm uses," as that concept is  
7 used in ZDO 309.05(A)(9), the hearings officer relied, in  
8 large part, on the Oregon Supreme Court's construction of  
9 similar language appearing in the exclusive farm use (EFU)  
10 zoning statutes at ORS 215.283(2)(a). Craven v. Jackson  
11 County, 308 Or 281, 779 P2d 1011 (1989).<sup>1</sup> The Supreme Court  
12 explained its understanding of the scope of "[c]ommercial  
13 activities that are in conjunction with farm use" in that  
14 case, as follows:

15 "The phrase upon which the validity of the  
16 [conditional use permit] turns is 'in conjunction  
17 with farm use,' which is not statutorily defined.  
18 We believe that to be 'in conjunction with farm  
19 use,' the commercial activity must enhance the  
20 farming enterprises of the local agricultural  
21 community to which the EFU land hosting that  
22 commercial activity relates. The agricultural and  
23 commercial activities must occur together in the  
24 local community to satisfy the statute. Wine  
25 production will provide a local market outlet for  
26 grapes of other growers in the area, assisting  
27 their agricultural efforts. Hopefully, it will

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<sup>1</sup>ORS 215.283(2) sets out certain nonfarm uses that may be allowed in EFU zones. ORS 215.283(2)(a) authorizes "[c]ommercial activities that are in conjunction with farm use." In Craven, the Oregon Supreme Court concluded ORS 215.283(2)(a) could reasonably be interpreted to allow a winery and retail tasting room in conjunction with a vineyard that ultimately would provide some, but not all of the grapes used by the winery.

1 also make [the applicant's] efforts to transform a  
2 hayfield into a vineyard successful, thereby  
3 increasing both the intensity and value of  
4 agricultural products coming from the same acres.  
5 Both results fit into the policy of preserving  
6 farm land for farm use.

7 "Sales of souvenirs which advertise the winery may  
8 cause others to come to the area and buy the  
9 produce of the vineyards and farms roundabout.  
10 Such sales may reinforce the profitability of  
11 operations and the likelihood that agricultural  
12 use of the land will continue. At least LUBA  
13 could reasonably so find, as it did, and interpret  
14 the incidental sales of souvenirs with logos as  
15 being "in conjunction with farm use." Craven,  
16 supra, 308 Or at 298.

17 The hearings officer acknowledged that the statutory  
18 language at issue in Craven appeared in the EFU zoning  
19 statutes and that the RRF-5 zone is not an EFU zone.  
20 However, the hearings officer concluded he saw no reason to  
21 give the identical phrase "in conjunction with \* \* \* farm  
22 use" in ZDO 309.05(A)(9) a different construction. The  
23 hearings officer went on to explain:

24 "[T]he hearings officer concludes that, for this  
25 use to be permitted as a commercial activity in  
26 conjunction with forest or farm uses, the  
27 applicant must establish that there is a direct  
28 connection or direct association between the  
29 proposed use and forest or farm uses, and that it  
30 must enhance the timber or farm enterprises of the  
31 local rural community in which it is located."  
32 (Emphases added.) Record 3.

33 The hearings officer applied the above described  
34 interpretation of ZDO 309.05(A)(9) and reached the following  
35 conclusions:

1 "The record is clear that the applicants'  
2 landscaping supplies processing and sales business  
3 does not have a direct connection or association  
4 with farm or forest uses in the rural community in  
5 which the business is located. Testimony and  
6 other evidence establishes that the materials  
7 brought into the site for the landscaping business  
8 do not come from this area. the rock brought in  
9 is not a timber or farm product. The wood  
10 products which are brought in, including bark  
11 dust, sawdust and shavings, are a product of the  
12 timber industry, but they come from various  
13 sources, none of which are identified as being  
14 located in this rural community. The debris used  
15 in the composting operation comes primarily from  
16 landscape maintenance businesses, and is material  
17 mostly removed from residential properties.  
18 Additionally, this record establishes that the  
19 materials sold are not intended to, and do not  
20 primarily enhance timber or farm enterprises  
21 within this community. The evidence received  
22 establishes that sales are primarily for  
23 landscaping on residential lands within the nearby  
24 urban areas. It is clear from the record that  
25 some farm operations utilize products from this  
26 use \* \* \*, but the use is not primarily directed  
27 to farm or forest uses." Record 3-4.

28 **A. Interpretative Challenge**

29 Petitioner first contends the hearings officer failed  
30 to explain his interpretation of ZDO 309.05(A)(9) and that  
31 he misconstrued that code provision. We review petitioners'  
32 challenges of the hearings officer's interpretation and  
33 application of ZDO 309.05(A)(9) to determine whether the  
34 interpretation is reasonable and correct. McCoy v. Linn  
35 County, 90 Or App 271, 752 P2d 323 (1988). In considering  
36 the hearings officer's interpretation, we do not apply the  
37 more deferential standard of review that would be required  
38 by ORS 197.829 and Clark v. Jackson County, 313 Or 508, 836

1 P2d 710 (1992) if the challenged decision had been adopted  
2 by the local governing body. Gage v. City of Portland, 319  
3 Or 308 \_\_\_ P2d \_\_\_ (1994); Watson v. Clackamas County, 129  
4 Or App 428, \_\_\_ P2d \_\_\_ (1994).

5 **1. Nature of RRFF-5 Zone**

6 The RRFF-5 zone is not an EFU zone. Because the Oregon  
7 Supreme Court relied on the underlying statutory purpose of  
8 the EFU zone to preserve farm land for farm use, in  
9 explaining its understanding of ORS 215.283(2)(a) in Craven,  
10 petitioners contend the hearings officer erred in applying  
11 the supreme court's interpretation to similar language in  
12 ZDO 309.05(A)(9).

13 While the different zoning context might provide the  
14 hearings officer with a basis for construing  
15 ZDO 309.05(A)(9) differently than the Oregon Supreme Court  
16 construed ORS 215.283(2)(a), the different zoning context  
17 does not make it unreasonable for him to construe  
18 ZDO 309.05(A)(9) in the same way. ZDO 309.05(A)(9) allows  
19 "processing" as well as "commercial" uses and those uses may  
20 be in conjunction with either "timber" or "farm" uses.  
21 However, we fail to see how it is unreasonable for the  
22 hearings officer to require the same kind of connection  
23 between "commercial or processing activities" and "timber  
24 and farm uses" that the supreme court found appropriate in  
25 Craven between "commercial activities" and "farm use" under  
26 ORS 215.283(2)(a). The operative code and statutory

1 language requiring the connection ("in conjunction with") is  
2 identical.<sup>2</sup>

3 This subassignment of error is denied.

4 **2. Direct Connection or Association**

5 Petitioners next argue the hearings officer further  
6 refined the interpretation of "in conjunction with" in  
7 Craven to require that the proposed use have a "direct  
8 connection or association with farm or forest uses[.]"  
9 Record 3. Petitioners further fault the hearings officer  
10 for basing the "direct connection or association"  
11 requirement on a dictionary definition of "in conjunction  
12 with," while failing to provide the dictionary definition  
13 upon which he relied. Petitioners contend this elaboration  
14 improperly makes ZDO 309.05(A)(9) even more stringent than  
15 ORS 215.283(2)(a).

16 We do not find the hearings officer's failure to cite  
17 the dictionary definition upon which he relied to be a  
18 reversible error in this case. When the hearings officer's  
19 decision is read as a whole, it is apparent that he was  
20 seeking to identify a customer/seller or seller/customer  
21 relationship between the proposed use and the timber and  
22 farm uses in the rural community in which the use is  
23 located. A customer/seller connection between the proposed

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<sup>2</sup>There is no dispute that petitioners' proposed use is either a "processing" use or a "commercial" use or both. As far as we can tell, the hearings officer considered arguments that petitioners' use has or lacks the requisite connection with either "timber" or "farm" uses.

1 winery and vineyards in the local agricultural community is  
2 the connection the Oregon Supreme Court found sufficient in  
3 Craven. The hearings officer's reference to that connection  
4 as a "direct connection or association," if error, was  
5 harmless error in this case.

6 This subassignment of error is denied.

7 **3. Primarily Nontimber and Nonfarm Related**  
8 **Sales**

9 The hearings officer's findings, quoted in part above,  
10 include findings that "sales are primarily for landscaping  
11 on residential lands within the nearby urban areas." Record  
12 4. Petitioners complain there is no basis in Craven for  
13 requiring that sales by their commercial activity  
14 "primarily" be to timber or farming enterprises in the local  
15 community.

16 The relevant portion of the supreme court's decision in  
17 Craven is quoted earlier in this opinion. That decision  
18 makes it clear it was the vineyard's role as a "local market  
19 outlet for grapes of \* \* \* growers in the area" that made it  
20 a "commercial activity in conjunction with farm use." The  
21 proposed winery in Craven was to include retail sale of  
22 souvenirs. The supreme court specifically referred to the  
23 sale of souvenirs as "incidental" and concluded that such  
24 sales did not necessarily disqualify the winery in that case  
25 as a commercial activity in conjunction with farm use,  
26 because "[s]uch sales may reinforce the profitability of  
27 operations and the likelihood that agricultural use of the



1 land will continue." Craven, supra, 308 Or at 289. It is  
2 apparent from the supreme court's decision in Craven that  
3 the fact the winery was primarily a buyer and processor of  
4 grapes into wine, and only incidentally a seller of  
5 souvenirs, was important.

6 The finding challenged above appears only to address  
7 "sales" of landscaping materials. It does not clearly  
8 address other kinds of sales by petitioners or sales by the  
9 suppliers from which petitioners purchase raw materials. We  
10 conclude the hearings officer may, consistent with Craven,  
11 interpret ZDO 309.05(A)(9) as requiring that petitioners'  
12 sales and purchases be primarily to customers and from  
13 suppliers that constitute "timber or farm uses" in the  
14 relevant rural area. To the extent petitioners contend  
15 Craven requires otherwise, we reject the contention.

16 This subassignment of error is denied.

17 **4. Scope of Timber and Farm Uses and**  
18 **Designation of the Local Rural Community**

19 Petitioners complain that the term "farm use" is  
20 defined more broadly in ZDO 309.03(B) than that term is  
21 defined in the EFU zoning statutes.<sup>3</sup> In particular,

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<sup>3</sup>ZDO 309.03(B) identifies the following as a primary use allowable in the RRF-5 zoning district:

"Current employment of land for general farm uses including:

"1. Raising, harvesting and selling of crops.

1 petitioners contend ZDO 309.03(B)(7) is broad enough to  
2 include noncommercial farms.<sup>4</sup> Petitioners contend the  
3 hearings officer was required to include consideration of  
4 noncommercial farms in his analysis of whether petitioners'  
5 operation enhances timber or farming enterprises.

6 In addition, petitioners contend the hearings officer  
7 failed to identify or designate the relevant "local rural  
8 community," so that it can be determined whether the timber  
9 and farm suppliers and customers of petitioners' operation  
10 are located within that local rural community.

11 It is difficult to tell from the challenged decision or  
12 the record how the hearings officer distinguished between  
13 timber and farm uses and other uses. There is evidence in

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"2. Feeding, breeding, selling and management of livestock,  
poultry, fur-bearing animals or honeybees.

"3. Selling of products of livestock, poultry, fur-bearing  
animals or honeybees.

"4. Dairying and the selling of dairy products.

"5. Preparation and storage of the products raised on such  
lands for man's use and animal use.

"6. Distribution by marketing or otherwise of products raised  
on such lands.

"7. Any other agricultural use, horticultural use, animal  
husbandry or any combination thereof."

<sup>4</sup>ZDO 202 defines "Non-Commercial Farm," as follows:

"A parcel where all or part of the land is used for production  
of farm products for use or consumption by the owners or  
residents of the property, or which provides insignificant  
income."

1 the record suggesting that at least some of petitioners'  
2 customers represent urban residential uses, located in  
3 cities some distance from the subject property. However,  
4 there is also evidence in the record that some of the  
5 customers and suppliers may fall within the county's  
6 definition of noncommercial farms.<sup>5</sup> The hearings officer  
7 did not specifically address the meaning of the term "farm  
8 use," as used in ZDO 309.05(A)(9). It appears the hearings  
9 officer may have applied too narrow a construction of that  
10 term in the challenged decision. We therefore remand the  
11 challenged decision for the hearings officer to explain the  
12 scope of the term "farm use," as it is used in  
13 ZDO 309.05(A)(9), and then explain whether the evidence  
14 shows that petitioners' customers and suppliers primarily  
15 represent farm or timber uses.

16 We also agree with petitioners that the hearings  
17 officer must more clearly identify the relevant "rural local  
18 community."<sup>6</sup> As the record now stands, the hearings officer  
19 refers to Wankers Corner (Record 125), but does not identify  
20 the relevant "rural local community" in the challenged

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<sup>5</sup>Petitioners contend "hobby farms" can be considered as customers or suppliers in determining whether the proposal is a commercial activity in conjunction with farm use under ZDO 309.05(A)(9). The definition of noncommercial farm does not employ the term "hobby farm."

<sup>6</sup>We assume the hearings officer's use of the term "rural local community" is intended to parallel in some way the supreme court's use of the term "local agricultural community" in Craven. The supreme court did not explain its understanding of the scope of the term "local agricultural community."

1 decision. We cannot tell whether Wankers Corner is a  
2 sufficiently well defined area to allow the analysis that is  
3 required to determine whether petitioners' operation  
4 constitutes a commercial activity in conjunction with timber  
5 and farm uses in the "local rural community."<sup>7</sup>

6 This subassignment of error is sustained.

7 Petitioners' challenge to the hearings officer's  
8 interpretation and application of ZDO 309.05(A)(9) is  
9 sustained in part.

10 **B. Evidentiary Challenge**

11 Petitioners contend the evidence in the record  
12 demonstrates petitioners' operation satisfies the Craven  
13 interpretation. Because we conclude the hearings officer's  
14 decision must be remanded to provide additional  
15 clarification on the scope of the term "farm use" as used in  
16 ZDO 309.05(A)(9), and to more clearly delineate the relevant  
17 "local rural community," we do not consider petitioners'  
18 evidentiary challenge.

19 The county's decision is remanded.

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<sup>7</sup>In reviewing the evidence cited by both petitioners and respondent, it frequently is not clear whether the customers and suppliers cited are located within or outside Wankers Corner.