

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

3  
4 ERNEST KUNZE, GARY LINN,            )  
5 THOR ARONSON, and JIM GIDLEY,        )

6                                        )  
7                   Petitioners,        )  
8                                        )

9           vs.                         )

10                                        )  
11 CLACKAMAS COUNTY,                    )

12                                        )  
13                   Respondent,         )  
14                                        )

15           and                         )

16                                        )  
17 RALPH HATLEY,                         )  
18                                        )

19                   Intervenor-Respondent.                                 )

LUBA No. 93-177

FINAL OPINION  
AND ORDER

20  
21  
22           On remand from the Court of Appeals.

23  
24           Edward J. Sullivan and Daniel H. Kearns, Portland,  
25 represented petitioners.

26  
27           Michael E. Judd, Chief Assistant County Counsel, Oregon  
28 City, represented respondent.

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30           Lawrence R. Derr, Portland, represented intervenor-  
31 respondent.

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33           SHERTON, Referee; HOLSTUN, Chief Referee; KELLINGTON,  
34 Referee, participated in the decision.

35  
36                   REMANDED                                 01/27/95

37  
38           You are entitled to judicial review of this Order.  
39 Judicial review is governed by the provisions of ORS  
40 197.850.

1 Opinion by Sherton.

2 On April 15, 1994, we issued a final opinion and order  
3 remanding the county hearings officer's decision approving a  
4 farm dwelling that is the subject of this appeal. Kunze v.  
5 Clackamas County, 27 Or LUBA 130 (1994) (Kunze I). Our  
6 decision was appealed to the Court of Appeals. The Oregon  
7 Supreme Court subsequently held, in Gage v. City of  
8 Portland, 319 Or 308, 877 P2d 1187 (1994), that the  
9 deferential standard for review of local government  
10 interpretations of local enactments articulated in Clark v.  
11 Jackson County, 313 Or 508, 836 P2d 710 (1992), is  
12 inapplicable to interpretations of local legislation by  
13 local government hearings officers.

14 The Court of Appeals subsequently determined that if  
15 hearings officers' interpretations of local enactments are  
16 not entitled to deference under Clark, neither are they  
17 entitled to deference under ORS 197.829, which is applicable  
18 to this appeal. Watson v. Clackamas County, 129 Or App 428,  
19 879 P2d 1309, rev den 320 Or 407 (1994). The court remanded  
20 this appeal to LUBA, "to make the initial determination,"  
21 without according the deference required by Clark, of  
22 whether the county hearings officer correctly construed the  
23 the provisions of the Clackamas County Zoning and  
24 Development Ordinance (ZDO) at issue in this appeal.<sup>1</sup> Kunze

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<sup>1</sup>The court noted it would interpret the ZDO provisions the same way the  
hearings officer did, but concluded the initial determination of whether

1 v. Clackamas County, 129 Or App 481, 485, 879 P2d 1311,  
2 rev den 320 Or 325 (1994).

3       The interpretive dispute we must resolve concerns  
4 certain ZDO provisions defining "commercial farm" and  
5 establishing standards for approval of a farm dwelling in  
6 the EFU-20 zone. The ZDO provisions at issue are quoted,  
7 and the parties' arguments concerning interpretation of  
8 these provisions are set out in detail, in Kunze I, 27  
9 Or LUBA at 132-33 and 134-38, respectively. We have  
10 reviewed the arguments and conclude the hearings officer's  
11 interpretation is reasonable and correct. McCoy v. Linn  
12 County, 90 Or App 271, 752 P2d 323 (1988).

13       This subassignment of error is denied. However,  
14 because we sustained another subassignment of error that is  
15 not affected by the Court of Appeals' decision, the  
16 challenged decision must be remanded.

17       The county's decision is remanded.

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the hearings officer's interpretation is correct should be made in the LUBA review process.