



1 Opinion by DuBay.

2 NATURE OF DECISION

3 By Ordinance No. 397, the county amended its zoning map to  
4 change the designation of a one acre parcel from  
5 Agricultural/Forestry Small Holdings District (AF-10) to  
6 Resource Industrial District (RI). Petitioners, who are  
7 adjacent property owners, objected to the zone change in the  
8 county proceedings and appeal the decision here.

9 FACTS

10 The property is part of a 10 acre tract zoned AF-10 and  
11 proposed for vineyard use. The applicant proposes to construct  
12 a winery and to make wine from grapes grown on and off the 10  
13 acre site. Wine-tasting and retail sale of wine are also  
14 proposed at the winery.

15 Farm uses are permitted in the AF-10 district, and the  
16 parties agree raising grapes and making wine from grapes grown  
17 on site is a farm use. Wineries are permitted uses in the RI  
18 Zone. Although "winery" is not defined in the ordinance, the  
19 parties agree a winery in the RI Zone may process grapes grown  
20 off site.

21 The board of county commissioners interpreted the term  
22 winery in the findings, saying the term as used in the zoning  
23 ordinance includes an on-premise tasting room and the retail  
24 sale of wine. Petitioners object to this interpretation,  
25 arguing the ordinance should not be construed to allow the  
26 tasting room and retail sale of wine at the winery. They also

1 claim the zone change could not be approved without an  
2 exception to Goal 3 (agricultural land). We reject the former  
3 objection but concur in the latter objection. We therefore  
4 conclude the decision must be remanded.

5 FIRST ASSIGNMENT OF ERROR

6 Petitioners challenge the county's interpretation of the  
7 zoning ordinance on four separate bases. In summary they are:

- 8 1. The county did not give the term "winery" its  
9 common meaning as required by the ordinance.
- 10 2. The interpretation is contrary to and  
11 inconsistent with the intent of the county's  
12 planning documents.
- 13 3. The interpretation is unreasonable.
- 14 4. The result of the interpretation is a decision  
15 without proper review standards.

16 Before we take up the merits of each of these challenges,  
17 it will be useful to clarify our standard of review of claims  
18 where it is alleged a local governing body wrongly interprets  
19 its own enactments. Generally, an interpretation of ambiguous  
20 terms by a local governing body which is not clearly contrary  
21 to the express language of the local jurisdiction's ordinance  
22 is given some weight in our consideration. Fifth Avenue Corp.  
23 v. Washington Co., 282 Or 591, 581 P2d 50 (1978); Fisher v.  
24 Gresham, 69 Or App 411, 685 P2d 484 (1984); DeWolfe v.  
25 Clackamas County Board of Commissioners, 66 Or App 580, 674 P2d  
26 1191 (1984); City of Medford v. Jackson County, 57 Or App 155,  
643 P2d 1353 (1982); Cascade Broadcasting v. Groener, 51 Or App  
533, 626 P2d 386 (1981); and Bienz v. City of Dayton, 29 Or App

1 761, 566 P2d 904 (1977). Further, we may defer to a local  
2 governing body's reasonable interpretation of ambiguities of  
3 its own enactments. Fisher v. Gresham, supra; Alluis v. Marion  
4 County, 64 Or App 478, 668 P2d 1242 (1983); and Heilman v. City  
5 of Roseburg, 39 Or App 71, 591 P2d 390 (1979).

6 Recently, the Court of Appeals has observed that we are not  
7 bound by local interpretations. Gordon v. Clackamas  
8 County, \_\_\_ Or App \_\_\_, \_\_\_ P2d \_\_\_ (Slip Op. of April 3,  
9 1985). Only in circumstances in which we do not accept an  
10 interpretation by local decisionmakers is it necessary to turn  
11 to rules and principles of construction. The first question  
12 before us is whether we should accept the county's  
13 interpretation of the term "winery" as used in the zoning  
14 ordinance.

15 Petitioners claim the county's interpretation should not be  
16 accepted as it is contrary to the ordinance provision requiring  
17 undefined terms to be "construed according to their common,  
18 ordinary and accepted meaning." Section 201.01 Yamhill County  
19 Zoning Ordinance (YCZO). Petitioners point to the statement of  
20 purpose for the RI District:

21 "...to accommodate the present foreseeable demand for  
22 food packaging and processing industries in areas  
23 close to the resource utilized, where high weight or  
24 bulk, low value, perishable produce must be  
25 transported short distances in short time to  
26 processing plants." Section 701.01 YCZO.

25 Petitioners read this provision to limit uses in the RI  
26 Zone to "packaging and processing" and argue the definitions of

1 "winery" and "processing" found in the dictionary lead  
2 inevitably to the conclusion a winery is a place where wine is  
3 made, not marketed.

4 The county commissioners found a majority of wineries in  
5 the county have on-premise wine tasting rooms and sell wine at  
6 retail. There is evidence in the record that tasting  
7 facilities are almost always present at wineries throughout the  
8 United States and that retail sales of wine are small  
9 wineries. Record at 18. These facts provide a basis for the  
10 county's interpretation that the common understanding of what  
11 occurs at wineries includes tasting facilities and provisions  
12 for retail sales of wine directly to consumers.

13 We find the county's interpretation is not contrary to the  
14 express provisions of the ordinance, and therefore, the first  
15 sub-assignment of error is denied.

16 Petitioners next allege the county's interpretation is  
17 inconsistent with the intent of the zoning ordinance and  
18 comprehensive plan and is, therefore, unreasonable. In  
19 addition, petitioners claim the county's interpretation permits  
20 decisions without the proper criteria.

21 We understand each of these sub-assignments of error to  
22 challenge the reasonableness of the county's interpretation.  
23 For example, petitioners insist retail sales of wine and  
24 tasting facilities are commercial uses and that such uses are  
25 intended to be allowed in zones other than the RI Zone.  
26 Because they are not intended in the RI Zone, petitioners

1 argue, it is not reasonable to allow them there by an  
2 interpretation of the ordinance.

3 To make the point retail sale of wine is not intended in  
4 the RI Zone, petitioners rely on the stated purpose for that  
5 zone as set forth in Section 701.01 of the zoning ordinance as  
6 quoted above.<sup>1</sup> Petitioners say the purpose clause indicates  
7 wineries in the RI Zone are limited to processing only.  
8 Although we recognize that Section 701.01 states the RI Zone  
9 accommodates placement of certain food processing activities  
10 near the source of supply, we note also the ordinance does not  
11 expressly exclude other activities related to or associated  
12 with food processing and packaging. Therefore, we are  
13 reluctant to read the ordinance to exclude all activities  
14 related to permitted uses. Statements of purpose are not  
15 necessarily binding standards. Anderson v. Peden, 284 Or 313,  
16 320, 587 P2d 59 (1978).

17 Section 701.02 designates the following as permitted uses  
18 in the RI Zone:

19 "A. Fruit, nut or vegetable packing, processing,  
20 warehousing or cold storage operation;

21 "B. Winery;

22 \* \* \*

23 "E. Accessory Uses...."

24 Not only are accessory uses expressly permitted, but  
25 wineries are allowed as a category distinct from food  
26 processing.<sup>2</sup> It is reasonable to conclude the term "winery"

1 is separately listed because other activities besides those  
2 listed in Section 701.02A take place at a winery. Otherwise  
3 there would be little reason to specifically allow wineries as  
4 permitted uses in addition to fruit processing operations.

5 Given these ordinance provisions, the county's  
6 interpretation of "winery" to include related uses that are  
7 common to other wineries in the county and industry as a whole  
8 was reasonable. There is no justification for this Board to  
9 supplant the county's interpretation. Alluis v. Marion County,  
10 64 Or App 478, 668 P2d 1242 (1983).

11 Petitioners make an additional argument the county's  
12 interpretation is unreasonable because retail sales of wine  
13 would be allowed without benefit of review procedures adequate  
14 to insure compatibility with other uses allowed in the area.  
15 Petitioners say the change of zone results in allowance of new  
16 permitted uses without compliance with the stricter standards  
17 for conditional use permits, such as compatibility with  
18 adjacent uses. While petitioners are correct that criteria  
19 applicable to a change in zone are different from, and in some  
20 circumstances possibly less stringent than, the criteria  
21 associated with conditional use permit proceedings, petitioners  
22 have not cited any authority for their claim that the zone  
23 change at issue here must be subject to criteria and analysis  
24 appropriate for a conditional use. There is no claim by  
25 petitioners that the county improperly applied the criteria for  
26 the zone change. Accordingly, this argument is rejected.

1 For the foregoing reasons, we uphold the county's  
2 interpretation of its ordinance and deny the first assignment  
3 of error. Gordon v. Clackamas County, \_\_\_ Or App \_\_\_, \_\_\_  
4 P2d \_\_\_ (Slip Op. of April 3, 1985).

5 SECOND ASSIGNMENT OF ERROR

6 The county's comprehensive plan and zoning ordinance have  
7 been acknowledged by the Land Conservation and Development  
8 Commission as being in compliance with the statewide planning  
9 goals. The property in question is agricultural land as  
10 defined in Goal 3, and in order to zone the property AF-10 it  
11 was necessary to take an exception to that goal in the  
12 acknowledgement proceedings. In their second assignment of  
13 error, petitioners say the county failed to take another  
14 exception to Goal 3 when the zone was changed from AF-10 to  
15 RI. Petitioners rely on OAR 660-04-018:

16 "(1) When a jurisdiction changes the types or  
17 intensities of uses or zones allowed in an  
18 exception area which the Commission has  
19 previously acknowledged and when the new use or  
uses would have a substantial impact upon  
adjacent uses, a new or modified exception is  
required.

20 "(2) A new or modified exception is not required where  
21 the changed uses or zones were clearly identified  
and authorized by the previously acknowledged  
exception."

22 There are two proposed winery activities said by  
23 petitioners to increase the intensity of use, therefore  
24 triggering the requirement for a new exception to Goal 3: (1)  
25 the purchasing and processing of grapes grown off site and (2)  
26

1 the operation of the tasting room and retail sale of wine.  
2 Petitioners say these two activities will have a substantial  
3 impact on adjacent residential properties. It follows, say  
4 petitioners, the rule above-quoted requires a new or modified  
5 exception.

6 The county asserts three arguments in answer to this  
7 assignment of error. First, the county says no new exception  
8 is necessary because the contemplated winery uses are  
9 considered farm uses by Goal 3. Even if the winery is not an  
10 agricultural use, the county says there will not be substantial  
11 impacts within the meaning of OAR 660-04-018. Last, the county  
12 makes the argument the proposed use was clearly identified as  
13 an agricultural use and authorized in the former exception to  
14 Goal 3 taken by the county. We do not accept these arguments.

15 As noted above, the parties agree that processing grapes  
16 grown off site is not permitted in the AF-10 Zone as a farm  
17 use. The source of the grapes used at the winery is important  
18 because the definition of farm use in ORS 205.203(2)(a) and the  
19 county zoning ordinance refers to preparation, storage and  
20 marketing of the products raised on "such land."<sup>3</sup> The county  
21 points out, correctly we believe, that wine tasting and retail  
22 sale of wine are marketing activities described in these  
23 definitions of farm use. However, the definitions limit  
24 preparation, storage and marketing to products grown on site,  
25 or, in the words of the statute, "such land." Consequently,  
26 the preparation, storage and marketing of grapes grown off site

1 is not a farm use as defined. Nevertheless, the county  
2 contends that allowance of making and marketing wine from  
3 grapes grown off site does not require an exception to Goal 3  
4 because it is a use allowed on lands zoned for exclusive farm  
5 use by ORS 215.213. This statute provides in part:

6 "(2) The following uses may be established in any area  
7 zoned for exclusive farm use if the use meets  
8 reasonable standards adopted by the governing  
9 body:

\* \* \*

10 "(c) Commercial activities that are in  
11 conjunction with farm use."

12 Because commercial activities in conjunction with farm use are  
13 allowed by ORS 215.213, the county argues such uses are  
14 considered to be farm uses by explicit language in Goal 3. The  
15 goal states:

16 "Farm use - is as set forth in ORS 215.203 and  
17 includes the non-farm uses authorized by ORS  
18 215.213." (Emphasis supplied.)

19 Assuming the county is correct that processing and  
20 marketing grapes grown off site constitute a commercial  
21 activity in conjunction with farm use, we do not agree an  
22 exception to Goal 3 is unnecessary on that basis alone. Goal 3  
23 requires that agricultural lands are to be "preserved by  
24 adopting exclusive farm use zones pursuant to Chapter 215." As  
25 noted above, ORS 215.213(2) allows commercial activities in  
26 conjunction with farm use only "if the use meets reasonable  
standards adopted by the governing body." In the RI Zone a  
winery capable of processing grapes grown off site and

1 marketing wine made from such grapes is allowed as a matter of  
2 right without any standards. The unrestricted allowance of  
3 such uses without special standards is not in accordance with  
4 ORS 215.213(2) and, therefore, not in compliance with the  
5 requirement of Goal 3 to adopt exclusive farm zones pursuant to  
6 ORS Chapter 215. We conclude Goal 3 does not sanction a zoning  
7 classification on agricultural land which allows a winery to  
8 process grapes grown off site and market wine from such grapes  
9 without reasonable standards for approval.

10 For the above reasons, we also find the processing, storage  
11 and marketing of wine made from grapes grown off site is not a  
12 farm use clearly identified in the prior exception. We  
13 therefore reject the county's argument based on that position.

14 The county next contends an exception is not required  
15 because the winery will not substantially impact adjacent  
16 uses. To make this argument, the county says the change in use  
17 will be relatively minor since wineries are farm uses allowed  
18 in the AF-10 Zone and, therefore, the only increase in use is  
19 the preparation, storage and marketing the wine made from  
20 grapes grown off site.

21 Opponents of the zone change raised this issue at the  
22 hearing before the county commissioners, stating there would be  
23 significant impacts on surrounding lands and asserting an  
24 exception to Goal 3 is required. We believe the objections  
25 were voiced with sufficient particularity to require the county  
26 commissioners to address this issue. Norvell v. Portland LGBC,

1 43 Or App 849, 604 P2d 896 (1979); Corbett/Terwilliger Lair  
2 Hill Legal Fund v. Portland, 9 Or LUBA 245 (1983). The  
3 question before the county was whether any impacts on  
4 surrounding land from allowance of the zone change would be  
5 substantial, thereby necessitating a new or modified exception  
6 to Goal 3 as required by OAR 660-04-018.

7 The county's only finding in response to the charge there  
8 would be significant impacts on surrounding lands is in Finding  
9 No. 10. The finding stated that any impacts on adjoining  
10 property would be ameliorated by application of a site design  
11 review process and directed the staff to impose specific  
12 conditions for site design review. Neither this finding, nor  
13 any other finding, disclose the extent of impacts on  
14 surrounding land, if any, expected from processing, storing and  
15 marketing wine from grapes grown off site and the effects of  
16 such impacts. These findings do not provide sufficient  
17 information to determine whether the change to an RI Zone will  
18 result in conditions mandating a new exception as set forth in  
19 OAR 660-04-018.

20 The matter must therefore be remanded for adoption of  
21 findings showing compliance with the requirement in OAR  
22 660-04-018 that a new exception to Goal 3 be taken or, in the  
23 alternative, why the conditions stated in the rule will not  
24 occur.

25 REMANDED.

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FOOTNOTES

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Petitioners say the comprehensive plan reflects the same language as Section 701.01.

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Arguably, wine tasting and retail sale of wine may be considered accessory uses allowed by the ordinance. By considering these two activities within the permissible scope of winery operations, the county did not examine whether they were accessory uses or not. However, the allowance of accessory uses is an indication the ordinance was not intended to narrowly construe the uses allowed under the listed permitted uses.

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3  
The definition of "farm use" in ORS 215.203(2)(a) and Section 501.02A of the county zoning ordinance are essentially in agreement. The statute provides in relevant part:

"'Farm use' includes the preparation and storage of the products raised on such land for human use and animal use and disposal by marketing or otherwise."

The county zoning ordinance includes similar language:

"Farm use includes the preparation, storage and marketing of the products raised on such land for man's use and animal use...."

We assume the party's interpretation of "such land" in both definitions means the land on which the preparation, storage and marketing takes place. However, we express no opinion whether this is the correct interpretation of the statute.