

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

MARK WEIST,)	
)	
Petitioner,)	LUBA No. 89-119
)	
vs.)	FINAL OPINION
)	AND ORDER
JACKSON COUNTY,)	
)	
Respondent.)	

Appeal from Jackson County.

Claudette L. Yost, Medford, filed the petition for review and argued on behalf of petitioner.

Duane M. Schultz, Medford, filed the response brief and argued on behalf of respondent.

SHERTON, Chief Referee; HOLSTUN, Referee, participated in the decision.

REMANDED

01/12/90

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

Opinion by Sherton.

NATURE OF THE DECISION

Petitioner appeals an order of the Jackson County Board of Commissioners approving a conditional use permit for a hunting and fishing preserve and a nonfarm dwelling on property in the Exclusive Farm Use (EFU) district.

FACTS

The subject property consists of 240 acres. Adjacent properties are zoned Forest Resource (F-160), Open Space Reserve (OSR) or EFU. Other nearby properties are zoned Woodland Resource (WR), Farm Residential (F-5) or Rural Residential (RR-5). The subject property is within "the impacted area of the Blacktail Deer Winter Range - sensitive habitat area." Record 10. The U.S. Bureau of Land Management (BLM) property adjoining the subject property to the north is deer and elk winter range - sensitive habitat area, but is not identified as "impacted." Id.

In 1986, the applicant began operating the Rogue Wings Hunt Club on the subject property. The applicant also constructed a third nonfarm dwelling, which is used as a clubhouse and manager's residence.¹ No county approvals or permits were obtained for these uses at that time. On January 30, 1989, the county planning department issued a

¹The two other nonfarm dwellings on the subject property were not subjects of the county conditional use permit proceeding and are not at issue in this appeal.

Warning of Violation for the operation of a hunting and fishing preserve without zoning approval, construction of structures without building permits and use of structures not connected to an adequate sanitation system. The applicant applied for a conditional use permit for a hunting and fishing preserve shortly thereafter.² The proposed hunting and fishing preserve use includes (1) release of pen raised pheasant, partridge, quail and duck for fee hunting, (2) planting of feed and cover vegetation, and (3) stocking of farm ponds for fee fishing.

The planning department tentatively approved the application. Surrounding residents requested review by the planning commission. After a public hearing, the planning commission denied the application. The applicant appealed the planning commission's decision to the board of commissioners, which conducted a de novo review. After additional public hearings and a site view, the board of commissioners approved the application. This appeal followed.

FIRST ASSIGNMENT OF ERROR

"Jackson County erred in approving the Rogue Wing [sic] Hunt Club because the applicant failed to establish compliance with the standards and criteria of the Jackson County Land Development

²Whether the conditional use permit application includes a third nonfarm dwelling is an issue raised in this appeal. The application did include a dog kennel. However, the dog kennel portion of the application was not approved by the county and is not at issue in this appeal.

Ordinance for approval of a conditional use permit pursuant to Section 260.040."

In this assignment error, petitioner challenges the county's compliance with four provisions of the Jackson County Comprehensive Plan (plan)³ and with Jackson County Land Development Ordinance (LDO) 260.040(2). Each challenge is addressed separately below.

A. Plan Agricultural Policy 2

Agricultural Policy 2 provides, in relevant part:

"Conflicts between agricultural and nonagricultural land uses shall be minimized by the following:

"A. The county, in cooperation with the cities, shall develop and implement buffering techniques on the periphery or [sic] urban growth boundaries which abut agricultural land. Buffering techniques shall be encouraged on the nonfarm land.

"* * * * *"

Petitioner argues that although "the obvious intent of [Agricultural] Policy 2 is to minimize urban and agricultural conflicts, non-farm uses in agricultural area

³Petitioner argues that the plan provisions addressed in this assignment of error are applicable approval criteria for the subject conditional use permit because LDO 260.040 provides, in relevant part:

"In order to grant a conditional use permit, the County must make the following findings:

"(1) That the permit would be in conformance with the Jackson County Comprehensive Plan for the area * * * and the Comprehensive Plan for the county as a whole."

"* * * * *"

must also conform to this policy which addresses incompatible land uses." Petition for Review 9. Petitioner maintains this policy applies to the proposed hunting and fishing preserve because it is a nonfarm use in an agricultural area. Petitioner contends the county's findings do not demonstrate compliance with Agricultural Policy 2. Petitioner also contends there is not substantial evidence in the whole record to support a determination of compliance with Agricultural Policy 2.

We agree with petitioner that Agricultural Policy 2A is obviously intended to address conflicts between agricultural land and abutting urban land on the periphery of urban growth boundaries (UGBs). However, we do not agree that this policy applies to conflicts between farm and nonfarm uses in agricultural areas removed from any UGB, which is the situation involved in this appeal.

Furthermore, the plan Implementation Strategy for Agricultural Policy 2A states as follows:

"The [LDO] and other applicable ordinances shall conform with the above policy. These ordinances should prevent the expansion of pockets of rural and suburban development that lie within agricultural uses."

Through the implementation strategy, the county clearly indicates that the direction to "develop and implement buffering techniques" found in Agricultural Policy 2A is intended to be carried out through development of appropriate LDO or other ordinance provisions. We,

therefore, conclude that Agricultural Policy 2A is not an approval standard for individual land use actions.

This subassignment of error is denied.

B. Plan Agricultural Policy 3

Agricultural Policy 3 provides, in relevant part:

"The county recognizes that the priority use of farm land shall be for farm uses. At all times in which non-agricultural uses * * * are proposed on farm land the applicant shall be required to provide substantial and compelling findings which document that * * * no feasible alternative site in the area exists which has less impact on agricultural land."

The county adopted the following findings relevant to Agricultural Policy 3:

"Regarding alternative sites the applicant has indicated that 'If I could find a better piece of land for our purposes, I would buy it.' He also indicated that the site chosen for his property was carefully selected to minimize the impact on agricultural land.

* * * * *

"Based on the applicant's testimony at the public hearing, and the conditions imposed by the Board in the approval, the Board concluded that the hunting and fishing preserve operation will not take additional land out of agricultural production. Conditions of approval, which limit [the hunting season and the types of guns and shot used, and establish no shooting buffers on the perimeter of the subject property,] will adequately mitigate the noise impacts on the adjoining properties, and will reduce the impacts on agricultural uses to an acceptable level." Record 7.

Petitioner argues that this policy requires the

applicant to demonstrate that "alternative sites do not exist which would have less impact on agricultural land." Petition for Review 12. According to petitioner, there is extensive evidence in the record of adverse impacts the proposed use will have on agricultural land in the area. Petitioner argues that neither the applicant nor the county provided an inventory of land in the area to document whether a feasible alternative site for the proposed use with less impact on agricultural land exists. Petitioner also contends the county's findings of compliance with Agricultural Policy 3 are inadequate and not supported by substantial evidence in the record.

The county argues that Agricultural Policy 3 is intended to ensure that farm uses are given priority on agricultural land. The county contends that this policy does not require an inventory of land to establish that no feasible alternative sites exist. The county argues that "logic would dictate it would not be 'feasible' for the applicant to move his entire operation to a newly purchased piece of property in the area simply to re-establish his hunting and fishing preserve." Respondent's Brief 6. The county further argues that the applicant's testimony indicates that the property was selected to minimize impacts and that "he would have bought a better piece of land if he could have found it." Id.

We agree with petitioner that Agricultural Policy 3

requires the county to find that there are no feasible alternative sites for the proposed use which would have less impact on agricultural land.⁴ This will require either (1) an analysis of potential alternative sites and a comparison of the impacts on agricultural land of the proposed use at the subject and alternative feasible sites, or (2) a determination that the proposed use at the subject site will have no impacts on agricultural land.⁵ We do not believe that this policy applies any differently where the subject use was begun prior to obtaining county approvals required at the time. The county cannot deem all alternative sites "infeasible" simply because it would be difficult for an applicant to move an improperly commenced use.

The county concluded that the proposed use (1) "will not take additional land out of agricultural production," and (2) considering conditions imposed mitigating noise impacts on adjoining property, will have an "acceptable level" of impacts on agricultural uses. Record 7. This conclusion recognizes that there will be some level of

⁴We note that it is clear that Agricultural Policy 3 is a mandatory approval criterion for conditional use permits for nonfarm uses on farm land. In addition to being directed to "applicants" and worded in a mandatory fashion, its Implementation Strategy states:

"Land use actions subject to review by applicable County ordinances shall meet this policy."

⁵If the proposed use would have no impacts at the subject site, then it logically cannot have less impacts at another site.

impacts on agricultural uses on adjoining agricultural land. The county's decision does not, however, demonstrate that there are no feasible alternative sites or that the level of impact on agricultural land would not be less at a feasible alternative site and, therefore, does not comply with Agricultural Policy 3.⁶

Because the county's findings are inadequate to demonstrate compliance with Agricultural Policy 3, no purpose would be served by reviewing those findings for evidentiary support in the record. Beck v. Tillamook County, ___ Or LUBA ___ (LUBA No. 89-096, January 8, 1990), slip op 23; DLCD v. Columbia County, ___ Or LUBA ___ (LUBA No. 87-109, March 15, 1988), slip op 7.

This subassignment of error is sustained.

C. Plan Environmental Quality Policies 1 and 8

Environmental Quality Policies 1 and 8 provide:

"Criteria shall be developed to consider environmental impacts on all discretionary land development actions and to assure compliance with applicable state and federal environmental quality

⁶Pursuant to ORS 197.835(9)(b), although the county's findings are inadequate, we may nevertheless affirm the county's decision, or part of the decision, if the parties identify evidence in the record which "clearly supports" the decision. In this instance, petitioner identifies testimony in the record by neighboring property owners concerning adverse impacts of the proposed use on agricultural uses, especially domestic livestock raising. The county identifies no other evidence in the record other than undocumented testimony by the applicant that he chose the subject property to minimize impacts on agricultural land and a statement that "[i]f I could find a better piece of land for our purposes, I would buy it." Record 254. This evidence does not "clearly support" a determination of compliance with Agricultural Policy 3.

standards."

"The county shall promote an environment free from unnecessary, excessive and offensive noise that may jeopardize the health, safety, and welfare of county citizens."

Petitioner argues that the goal of the plan's Environmental Quality element is "to ensure and improve the quality of the natural environment and resources in a responsible manner." Petition for Review 12. Petitioner observes that the plan "notes that 'man is the only creature capable of significantly degrading the natural environment,' and 'the very nature of man's demands on natural resources has created a continued decline in the quality of the environment.'" Petition for Review 13. Petitioner argues that because noise can degrade the quality of life, the Department of Environmental Quality (DEQ) has issued noise regulations. Petitioner describes DEQ noise regulations which he argues are applicable to the proposed use.

Petitioner's argument fails to explain what petitioner thinks is wrong with the county's interpretation or application of Environmental Quality Policies 1 and 8. Petitioner does not explain why he considers the county's findings inadequate. Petitioner does not argue that the findings are not supported by substantial evidence in the record. It is not our function to make petitioner's arguments for petitioner. Deschutes Development v. Deschutes County, 5 Or LUBA 218, 220 (1982).

This subassignment of error is denied.

D. Plan Natural and Historic Resources Element

Petitioner points out the county's decision finds that "the subject property is within the impacted area of the Blacktail Deer Winter Range - sensitive habitat area." Record 10. Petitioner argues that it is clear from the record that the subject property is "a part of the limited remaining winter habitats for deer and elk." Petition for Review 19. Petitioner asserts that the applicant's testimony demonstrates that the subject property is used by wintering deer and elk. Petitioner argues that "[a]s a natural resource, the deer and elk range are required to be protected," citing "Natural and Historic Resource Element and [LDO] 280.110(3)E." Petition for Review 19. Petitioner contends that the record does not support a determination that impacts on deer and elk wintering on the subject property will be mitigated.

As best we can determine, petitioner argues under this subassignment that the county's decision does not adequately mitigate impacts on deer and elk wintering on the subject property. However, petitioner does not explain what provision of the plan Natural and Historic Resources Element or LDO 280.110(3)(E)⁷ requires the county to determine, in

⁷LDO Section 280.110 establishes provisions governing county designation and regulation of "Areas of Special Concern" (ASCs). LDO 280.110(3) lists ASCs designated at the time of the adoption of LDO 280.110. LDO 280.110(3)(E), cited by petitioner, is ASC-82-3, which is described as

approving a conditional use permit for the subject use, that impacts on deer and elk wintering on the subject property will be mitigated. We will not make petitioner's argument for petitioner. Deschutes Development v. Deschutes County, supra.

This assignment of error is denied.

E. LDO 260.040(2)

LDO 260.040 establishes standards and criteria for county action on conditional use permit applications. LDO 260.040(2) requires the county to determine the following:

"That the location, size, design, and operating characteristics of the proposed use will have minimal adverse impact on the liveability, value, or appropriate development of abutting properties and the surrounding area."

1. Property Values

The county's findings addressing the impact of the proposed use on the value of neighboring properties are as

including "all lands on which development will affect survival of wildlife." LDO 280.110(3)(E)(i) provides that such lands are (1) those identified as sensitive fish and wildlife habitat on maps prepared by the Department of Fish and Wildlife (ODFW) and approved by the county board or, (2) in the absence of such approved ODFW maps, all lands in certain zones (including EFU) which are shown on certain maps in the Natural and Historic Resources Element, except when "ODFW indicates that the winter range is not critical to survival of the species or that existing development or partitioning have already adversely impacted habitat to the extent that habitat is no longer available." LDO 280.110(3)(E)(ii) establishes several approval standards for "any land use action subject to review under this section." Petitioner does not demonstrate that the subject property is part of ASC-82-3, explain why the proposed land use action is subject to review under LDO 280.110(3)(E)(ii) or explain why he believes the county's decision violated the standards of that provision.

follows:

"* * * letters from real estate brokers were submitted which indicated that property values on adjoining and surrounding properties would be reduced if the Hunting Preserve was approved on the subject property.

"* * * * *

"Based on the testimony provided by [the applicant], that hunting and fishing preserves in other areas of Oregon have actually increased the value of the preserve and adjoining properties, the Board [of Commissioners] finds that the preserve operation may not adversely impact the value of adjoining properties.

"The Board finds that the proposal for both the hunting and fishing preserve, as well as the third nonfarm dwelling, as conditioned herein, will not adversely impact the * * * value * * * of abutting properties and the surrounding area. * * *"
Record 16.

Petitioner argues that the record does not contain substantial evidence to support a county finding that the proposed use would have minimal impact on property values, as is required by LDO 260.040(2). Petitioner argues that the county based its determination solely on unsupported testimony of the applicant which has no basis in fact. Petitioner contends that the applicant's testimony was directly rebutted by the testimony of neighboring property owners and the expert testimony of area realtors that property values would be substantially affected by the proposed hunting club. Record 128, 129, 156, 176. Petitioner cites additional supportive testimony at Record 123, 130-131, 136, 144.

The county argues that the letters petitioner describes as "expert" testimony are of little evidentiary value because they consist of personal opinions, with no data supplying the foundation for those opinions. The county argues that petitioner simply disagrees with the weight given to this testimony by the board of commissioners. According to the county, this is not a basis upon which LUBA can reverse or remand the county's decision.

The county also contends that LUBA has previously held that LDO 260.040(2) provides the county with considerable discretion in deciding whether a proposed use will have more than a "minimal impact" on surrounding properties, and that LUBA cannot substitute its judgment for the county's on matters of ordinance interpretation, provided the interpretation is reasonable. Valley View Nursery v. Jackson County, 15 Or LUBA 591, 598 (1987).⁸ The county argues that our previous ruling is equally applicable to this appeal.

Substantial evidence is evidence a reasonable person would rely on in reaching a decision. City of Portland v. Bureau of Labor and Ind., 298 Or 104, 119, 690 P2d 475 (1984); Bay v. State Board of Education, 233 Or 601, 605, 378 P2d 558 (1974); Braidwood v. City of Portland, 24 Or App

⁸But see McCoy v. Linn County, 90 Or App 271, 275-276, 752 P2d 323 (1988) (meaning of local legislation is question of law which LUBA must decide).

477, 480, 546 P2d 777 (1976). In determining whether evidence is substantial, LUBA must consider the evidence in the whole record, both that which supports and that which detracts from the challenged decision. ORS 197.837(7)(a)(C); Younger v. City of Portland, 305 Or 346, 356, 752 P2d 262 (1988).

In this case, although the county's decision states that the decision is based on the testimony of the applicant, neither the county nor petitioner has cited, in their briefs or in the decision, where in the record that testimony can be found. We will not search the record for the applicant's testimony on this point. Thus, we find that the relevant evidence in the record cited by the parties consists of the following:

- (1) A letter from a Medford real estate broker who was not able to sell a 10 acre property adjacent to the Jackson County Sports Park. The broker states that the proposed use "in a [sic] area of 5 acre zoning would really depreciate the value of all the properties in the area. Probably up to 40% of the present value."⁹ Record 129.
- (2) A letter from a real estate broker "specializing in the Upper Rogue Area," which

⁹We agree with the county that this and the following letter by real estate brokers express personal opinions. However, that does not mean that the letters have no evidentiary value. The county also argues that this letter should not be given weight because the Jackson County Sports Park referred to in the letter is a different and more intense type of use than the use proposed in this case. However, the county's argument appears to rely on information concerning the Sports Park which is not in the record. Our review is limited to the record. ORS 197.830(13)(a).

states "[i]f the nearby gun club is in fact shooting guns early in the morning and disrupting peace and quiet, then this would affect your value of your property." Record 156.

(3) Letters from neighboring property owners stating they checked with realtors and were informed that the proposed hunting club would adversely affect their property values. Record 131, 144, 176.

(4) A letter from a neighboring property owner stating that the "hunt club has had a major [adverse] impact on my property value." Record 136.

The LDO does not define "minimal" adverse impact. However, "minimal" is a word in common usage, and Webster's Third New International Dictionary defines it as "constituting the least possible in size, number or degree" or "extremely minute." The evidence summarized above indicates that the proposed use could have an appreciable adverse impact on surrounding property values. In the absence of contrary evidence, we conclude that the evidence summarized above is not evidence upon which a reasonable person would base a determination that the proposed use will have "minimal adverse impact" on the value of abutting and surrounding properties.

This subassignment of error is sustained.

2. Livability

The county's findings addressing the impact of the proposed use on the livability of neighboring properties are as follows:

"Testimony at the public hearing indicated that the traffic and noise from the Hunting Preserve operation have had an adverse impact on the livability of the surrounding area. Testimony did not find any such impacts from the third nonfarm dwelling.

" * * * * *

The Board finds that the hunting activities on the preserve will have impacts on adjoining residences, but that with the conditions included in this approval, the impacts will be no greater than customary and normal impacts created by other area residents hunting on their own property. The Board finds that the hunting will only be a seasonal activity, occurring for only seven months of the year, and that conditions have been included in this approval which limit the operation to mitigate impacts on the neighborhood.

" * * * * *

"The Board finds that the proposal for both the hunting and fishing preserve, as well as the third nonfarm dwelling, as conditioned herein, will not adversely impact the livability * * * of abutting properties and the surrounding area. * * *"
Record 16.

Petitioner argues that the above-quoted county findings are not supported by substantial evidence in the record. Petitioner argues that he and other neighbors of the hunt club presented a great deal of reliable written and verbal testimony, based on their experiences since the hunt club began operating in 1986, that the hunt club has caused substantial adverse impacts on the livability of their properties. Petitioner provides 20 citations to evidence in the record on this issue. Petitioner argues that the findings should have responded to this evidence of impacts

on livability. Petitioner further argues the county improperly shifted the burden of proof to petitioner to demonstrate that the hunt club would cause substantial adverse impacts on livability, rather than requiring the applicant to prove there would be no such impacts.

The county does not respond directly to this argument by petitioner in its response to petitioner's allegation of failure to comply with LDO 260.040(2). However, elsewhere in the county's brief, it cites testimony by the applicant that no violation of state or federal noise standards occurs on the subject property and that, when contacted by the county, DEQ had no comment on the proposed use. Record 43, 87. The county also points out that the board of commissioners conducted a site visit which included test shooting, in order to evaluate noise impacts. Record 38.

The evidence petitioner cites in the record includes testimony by owners of adjoining and neighboring properties that the proposed hunting club will adversely impact the livability of their properties due to noise (Record 59, 123, 131, 134, 144, 153, 159, 160, 172, 175, 180, 181), traffic (Record 131, 153, 180, 181), fire hazard (Record 173, 176, 180, 181), threats to safety (Record 123, 131, 134, 137, 141, 158, 160, 180, 181, 183), effects on pets and domestic animals (Record 55, 60, 74, 131, 135, 137, 139, 158, 173, 180, 181, 183) and trespass (Record 74, 137, 160, 180, 181, 184). At least some of these letters state the testimony is

based on actual experiences with the hunt club as it has operated since 1986 and, therefore, cannot be dismissed as merely expressing speculative fears.

We have said on numerous occasions that a local government must address in its findings relevant issues which are raised by evidence presented to it in its proceedings. City of Wood Village v. Portland Metro Area LGBC, 48 Or App 79, 87, 616 P2d 528 (1980); Hillcrest Vineyard v. Bd. of Comm. Douglas Co., 45 Or App 285, 293, 608 P2d 201 (1980); McConnell v. City of West Linn, ___ Or LUBA ___ (LUBA No. 88-111, March 14, 1989), slip op 20. In this case, with the exception of stating that there was testimony at the public hearing concerning noise and traffic impacts, the county's findings fail to address any of the relevant issues concerning adverse impacts on livability raised by the evidence described above.¹⁰

¹⁰The county identifies evidence in the record to support its determination of compliance with LDO 260.040(2) with regard to noise impacts. However, the only evidence cited is unsupported testimony by the applicant that current use of his property complies with state and federal noise standards and a lack of comment on the proposed use by DEQ. Although the county cites evidence in the record that the board of commissioners conducted a site view involving noise testing, the county does not cite evidence establishing the results of those tests. Considered together with the evidence of adverse impacts of noise on livability identified by petitioner, we do not find that the evidence "clearly supports" a determination of compliance with LDO 260.040(2) with regard to the impacts of noise on livability. See. ORS 197.835(9)(b).

Furthermore, since the parties cite no evidence in the record which supports a determination that the proposed use will have only a minimal adverse impact on the livability of surrounding properties with regard to traffic, fire hazard, safety, effects on animals and trespass, the evidence

This subassignment of error is sustained.

The first assignment of error is sustained, in part.

SECOND ASSIGNMENT OF ERROR

"Approval of a third nonfarm dwelling on the hunt club property violates Section 218.020 and 218.010 of the [LDO]."

Petitioner's argument under this assignment of error, in its entirety, consists of the following:

"Applicant failed to apply for a permit for the third nonfarm dwelling. Permits are required to conform to Section 218.120, Standards for Approval of a Nonfarm Dwelling and Parcel. Record at 238. Further, no public hearing was held on this issue and [it] was not before the County. The Board found the Nonfarm dwelling compatible with the Jackson County Comprehensive Plan. However, there lacks substantial evidence on this issue in the record. Record at 014-015."

We have considerable difficulty in comprehending petitioner's argument. The assignment of error itself alleges violation of LDO 218.010 (EFU zone purpose section) and 218.020 (statement that farm or nonfarm partitions, conditional uses and nonfarm dwellings must be consistent with the agricultural land policy of ORS 215.243). However, petitioner's argument does not mention these sections or explain why they are violated by the county's decision.

As best we can determine, the complaint made in the first part of petitioner's argument is that neither the application nor the county's notices of hearing specifically

identified in the record also fails to "clearly support" such a determination with regard to these impacts.

stated that the proposed conditional use included a third nonfarm dwelling. Petitioner cites LDO 218.120 (Standards for Approval of a Nonfarm Dwelling and Parcel), but does not argue how the county violated this provision.¹¹ Without a showing that an applicable legal criterion or standard has been violated by the county's decision, we cannot grant relief. Sellwood Harbor Condo Assoc. v. City of Portland, ___ Or LUBA ___ (LUBA No. 87-079 and 87-080, April 1, 1989), slip op 8; Lane County School District 71 v. Lane County, 15 Or LUBA 150, 153 (1986).¹²

The second part of petitioner's argument alleges the county's determination that the proposed third nonfarm dwelling complies with the plan is not supported by substantial evidence in the record. The findings at Record 14-15, cited by petitioner, address the compliance of the third nonfarm dwelling with LDO 218.120(1) and LDO 218.020. They include a statement that plan Agricultural Policy 3 is implemented by LDO 218.120(1)(C),

¹¹We note that LDO 218.120 states that it applies to a "first nonfarm dwelling." Subsection (12) of LDO 218.040 (Conditional Uses) lists as a conditional use "an additional nonfarm dwelling." LDO 218.040(12) provides that such additional nonfarm dwellings must satisfy the approval criteria of LDO 218.120(1), but does not require that applications for additional nonfarm dwellings be processed according to the procedural requirements of LDO 218.120(2).

¹²We further note that if petitioner is arguing the county failed to follow applicable procedural requirements, under ORS 197.835(7)(a)(B), we can only remand the county's decision for such an error if petitioner demonstrates that his substantial rights were prejudiced. Petitioner makes no such claim or demonstration.

and a finding of compliance with those standards. We, therefore, interpret petitioner's argument as challenging the evidentiary support for the county's determination that the proposed third nonfarm dwelling complies with Agricultural Policy 3.

We previously determined that Agricultural Policy 3 is a mandatory approval standard for conditional use permits in the EFU zone. See n 4, supra. Neither party cites any evidence in the record to support a determination that the proposed third nonfarm dwelling complies with Agricultural Policy 3.

The second assignment of error is sustained, in part.

THIRD ASSIGNMENT OF ERROR

"Jackson County erred for failure to define the criteria for a hunting and fishing preserve and thereby correctly apply a standard to determine whether the Rogue Wings Hunt Club is a conditional use in Jackson County Exclusive Farm Use Zone."

Petitioner asserts that the LDO does not define the term "hunting and fishing preserve." Petitioner offers dictionary definitions for "hunting" and "preserve," and argues that "[w]hether a 'shooting club' which raises domestic birds and releases them for hunters who do not have to 'hunt' their game applies to the Rogue Wings Hunt Club cannot be determined without criteria set out by the County." Petition for Review 20. Petitioner also argues that the proposed use is a "major commercial enterprise [which] is not common practice in this area." Id.

As best we can determine, petitioner is arguing that the county cannot determine whether the proposed use is a "hunting and fishing preserve," as listed in LDO 218.040(3), without first adopting criteria defining what a "hunting and fishing preserve" is. However, petitioner does not explain the source or nature of any such legal requirement for the adoption of criteria. It is not our function to make petitioner's arguments for petitioner. Deschutes Development v. Deschutes County, supra.

The third assignment of error is denied.

The county's decision is remanded.