

1 Opinion by Sherton.

2 **NATURE OF THE DECISION**

3 Petitioners appeal a county decision granting
4 conditional use approval to establish rifle, pistol and
5 shotgun shooting ranges as a park operated by a nonprofit
6 community organization.

7 **MOTION TO INTERVENE**

8 Mt. Harris Sportsmen's Club, the applicant below, moves
9 to intervene in this appeal on the side of respondent.
10 There is no objection to the motion, and it is allowed.

11 **FACTS**

12 The subject property is designated Timber-Grazing by
13 the Union County Comprehensive Plan (plan) and is zoned
14 Timber-Grazing (A-4). The subject property is also located
15 in an area designated in the plan as big game critical
16 wildlife habitat. The county staff report describes the
17 proposal as follows:

18 "The proposed shooting range will be located east
19 of Grays Corner Road between Hull and McKennon
20 Lanes. The site is a basalt knob that has
21 previously been used for excavation. The rifle
22 range is proposed to be located on the east flank
23 of the basalt knob while the pistol and trap
24 shooting ranges would be located within the former
25 excavation site. Two access roads would be
26 created[,] one for the rifle range and the other
27 for the pistol and trap ranges. The rifle range
28 parking area would include 30-35 parking spaces
29 while the pistol/trap range [parking area] would
30 include about 15 parking spaces. * * * The
31 nearest residence is the [property owner's]
32 dwelling, about one-half mile southwest of the
33 proposed range. Other residences are located

1 about one-half mile to the north and one and
2 one-half miles to the south." Record 265.

3 **FIRST, SECOND AND THIRD ASSIGNMENTS OF ERROR**

4 Petitioners' assignments of error contend the county
5 adopted inadequate findings, or findings not supported by
6 substantial evidence, with regard to the issues of effects
7 on property values, noise, and impacts on big game and
8 non-game wildlife habitat.

9 **A. Compatibility Test**

10 Union County Zoning, Partition and Subdivision
11 Ordinance (UCZPSO) 5.03(1)(B) provides that "parks * * *
12 operated by * * * a nonprofit community organization" may be
13 allowed as conditional uses in the A-4 zone subject to
14 "meeting the compatibility test in [UCZPSO] Article 21.00."
15 (Emphasis added.) The challenged decision states:

16 "[UCZPSO] 21.06 identifies general standards
17 governing conditional uses and in [subsection] 1
18 states

19 "'A conditional use shall ordinarily
20 comply with the standards of the zone
21 concerned for uses permitted outright
22 except as specifically modified by the
23 [county] in granting the conditional use
24 [approval].'

25 "The County interprets this requirement as having
26 to meet a general test of compatibility with
27 adjacent land use practices. Proponents and
28 opponents were informed of this interpretation
29 prior to and as a part of the initial evidentiary
30 hearing. Therefore, the applicants are required
31 to satisfy a general test of compatibility with
32 adjacent land use practices." (Emphasis added.)
33 Record 3.

1 No party disputes the county's interpretation of
2 UCZPSO 5.03(1) and 21.06(1) as establishing an approval
3 standard that a conditional use in the A-4 zone be
4 "compatible with adjacent land use practices."
5 Consequently, we rely on this interpretation in considering
6 petitioners' arguments below.

7 **1. Property Values**

8 Petitioners contend they raised below the issue of
9 adverse effects of the proposed shooting ranges on their
10 property values. Petitioners argue the county must either
11 address this issue in its findings or explain why this issue
12 is not relevant to compliance with the "compatibility"
13 standard described above. Petitioners argue evidence was
14 introduced below, from three real estate professionals and
15 two property owners, that the proposed shooting ranges will
16 decrease the market value of agricultural and residential
17 property in the area. Record 77, 79, 82, 83, 213.
18 According to petitioners, the only contrary evidence was a
19 conclusory opinion from a person who is not a real estate
20 professional. Record 164.

21 The county's findings must address specific issues that
22 were raised during the county proceedings and are relevant
23 to compliance with applicable approval standards. Norvell
24 v. Portland Area LGBC, 43 Or App 849, 853, 604 P2d 896
25 (1979); Heiller v. Josephine County, 23 Or LUBA 551, 556
26 (1992). The challenged decision lists, by author and date,

1 the testimony offered below "addressing the standard [of] 'a
2 general test of compatibility with adjacent land use
3 practices.'" Record 6. This list includes a subheading for
4 testimony on "[r]educed property values and marketability."
5 Id. Thus, it appears the county considers this issue
6 relevant to its compatibility standard. However, the county
7 failed to adopt findings determining the effects of the
8 proposal on property values and explaining how these effects
9 relate to compliance with the compatibility standard.

10 This subassignment of error is sustained.

11 **2. Noise**

12 The challenged decision addresses the noise issue as
13 follows:

14 "[County] Commissioners witnessed firing [at the
15 site of the proposed shooting range] from three
16 [homes, including petitioners']].

17 "* * * * *

18 "Weapons firing was * * * scheduled when
19 background noise was at a minimum. The
20 Commissioners collectively witnessed the
21 demonstration from each of the three locations.
22 All weapons were fired at least twice for each
23 location. The location and direction of firing
24 was as proposed by [intervenor's] site plan.

25 "The Board finds the shooting range noise * * *,
26 while noticeable at the nearest residence * * *,
27 is not incompatible because it does not
28 substantially exceed the normal background noise
29 within the area. The sound testing results
30 conducted by Mr. Krei and included in the
31 application identify ambient or background noise
32 of 47.0 db while rifle (30.06) fire recorded
33 55.3 db. Also, during the April 22, 1993

1 demonstration, several noises from agricultural
2 practices -- helicopter, fertilizer truck and
3 airplane -- exceeded noise from weapons firing."
4 Record 7.

5 The challenged decision also imposes a condition limiting
6 the proposed shooting range's hours of operation to
7 8:00 a.m. to 6:00 p.m. Record 10.

8 From the above, we understand the county to have based
9 its determination of compatibility with regard to noise on
10 two key findings. The first is that noise produced by the
11 shooting range will not substantially exceed the normal
12 background noise in the area, as measured in the Krei
13 report. The second is that, as perceived from the nearest
14 residences during the April 22, 1993 demonstration, noise
15 from certain agricultural practices in the area can exceed
16 that produced by the shooting range.

17 **a. Livability**

18 Petitioners contend the county's determination that the
19 proposed use is compatible with residential use of nearby
20 properties is not supported by substantial evidence in the
21 whole record. Petitioners argue the Krei report, referred
22 to in the above findings, is not reliable evidence, because
23 it is an unsworn and unverified memorandum from a National
24 Rifle Association field representative. Petitioners further
25 argue there is no evidence in the record that "normal
26 background noise" in the area "consists of helicopters,
27 trucks and airplanes." Petition for Review 20. Rather,

1 petitioners argue there is considerable testimony in the
2 record that "normal background noise" in this area is peace
3 and quiet, and that residents of nearby dwellings are
4 disturbed by the sounds of gunshots at the subject site.

5 Substantial evidence is evidence a reasonable person
6 would rely on in reaching a decision. City of Portland v.
7 Bureau of Labor and Ind., 298 Or 104, 119, 690 P2d 475
8 (1984); Bay v. State Board of Education, 233 Or 601, 605,
9 378 P2d 558 (1963); Van Gordon v. Oregon State Board of
10 Dental Examiners, 63 Or App 561, 567, 666 P2d 276 (1983);
11 Braidwood v. City of Portland, 24 Or App 477, 480, 546 P2d
12 777 (1976). Where we conclude a reasonable person could
13 reach the decision made by the local government, in view of
14 all the evidence in the record, we defer to the local
15 government's choice between conflicting evidence. Younger
16 v. City of Portland, 305 Or 356, 360, 752 P2d 262 (1988);
17 Angel v. City of Portland, 22 Or LUBA 649, 659, aff'd 113
18 Or App 169 (1992); Wissusik v. Yamhill County, 20 Or LUBA
19 246, 260 (1990); Douglas v. Multnomah County, 18 Or LUBA
20 607, 617 (1990).

21 We have reviewed the evidence in the record cited by
22 the parties. Record 20, 67, 72, 114, 124, 143-45, 157-59,
23 164, 213, 258-62, 277-82. The Krei report includes
24 information on the equipment, conditions and procedures used
25 in conducting the noise tests described therein.
26 Record 277-82. Petitioners point to nothing undermining the

1 accuracy of the sound measurements in the Krei report or the
2 evidentiary value of that report. Krei did not present
3 sworn testimony, and an independent witness did not verify
4 his report. However, neither of these facts means a
5 reasonable person would not rely on the report. Although
6 there is conflicting testimony in the record from property
7 owners in the area, the Krei report supports the county's
8 finding that, as measured at the nearest residence, shooting
9 noise from the subject site does not substantially exceed
10 normal background noise level.

11 The county also found that noise from certain
12 agricultural practices in the area, including noise from a
13 helicopter, a fertilizer truck and an airplane, can exceed
14 that produced by the shooting range. We do not understand
15 petitioners to contend helicopters, airplanes and fertilizer
16 trucks are never used to carry out agricultural practices in
17 the area, or that noise from the shooting range, as
18 perceived at nearby residences, exceeds the noise produced
19 by these vehicles.¹ Rather, petitioners argue there is no
20 evidence in the record that use of these vehicles for
21 agricultural practices is frequent and constitutes "normal
22 background noise."² However, the challenged decision does

¹In fact, petitioners concede noise from such agricultural equipment is heard from time to time in the area, and varies according to the season of the year. Petition for Review 16.

²Petitioners contend the presence of the vehicles in question at the time of the scheduled firing demonstration witnessed by the county

1 not rely on a finding that noise from these vehicles
2 constitutes "normal background noise" and, therefore, we do
3 not consider this aspect of petitioners' evidentiary
4 challenge further.

5 In conclusion, we believe a reasonable person could
6 rely on the evidence in the record to conclude, as the
7 county did, that the noise produced by the proposed shooting
8 range will not be incompatible with the livability of nearby
9 properties.

10 This subassignment of error is denied.

11 **b. Livestock**

12 Petitioners contend the relevant issue of noise impacts
13 from the shooting range on domestic livestock on neighboring
14 properties was raised during the proceedings below.
15 Record 65, 213. Petitioners contend the county improperly
16 failed to address this issue in its findings. Norvell v.
17 Portland Area LGBC, supra. We agree.

18 This subassignment of error is sustained.

19 **B. Big Game Critical Wildlife Habitat**

20 UCZPSO 20.09 establishes procedural and substantive
21 standards for land use actions in or affecting certain
22 designated resource areas. The parties agree the subject
23 site is within a designated big game critical wildlife

commissioners was arranged by the owner of the subject property and one of
intervenor's members. However, this contention is not supported by
evidence in the record and, in any case, is relevant only to petitioners'
argument that noise from such vehicles is not "normal background noise" in
the subject area.

1 habitat area that is identified in the county plan as a "3C"
2 (limit conflicting uses) site, and that UCZPSO 20.09 is
3 applicable to the challenged decision. Arguably relevant
4 portions of UCZPSO 20.09 include the following:

5 * * * * *

6 "3. Review Classifications

7 "A. [T]he applicant must, in coordination
8 with the responsible agency, develop a
9 management plan which would allow for
10 both resource preservation and the
11 proposed use. If the responsible agency
12 and the applicant cannot agree on such a
13 management plan, the proposed activity
14 will be reviewed through the conditional
15 use process. * * * Conflicts will be
16 mitigated in favor of the resource on 3C
17 sites.

18 * * * * *

19 "4. Under the conditional use process land use
20 decisions will consider the economic, social,
21 environmental, and energy consequences when
22 attempting to mitigate conflicts between
23 development and resource preservation.

24 * * * * *

25 In addition, UCZPSO 20.09(5) establishes economic, social
26 environmental, and energy (ESEE) criteria that must be
27 considered "during the appropriate decision making process."

28 Petitioners contend the challenged decision does not
29 comply with UCZPSO with regard to big game critical wildlife
30 habitat areas. Petitioners argue no management plan has
31 been developed in coordination with the Oregon Department of
32 Fish and Wildlife (ODFW) to preserve the resource and

1 mitigate conflicts, as required by UCZPSO 20.09(3)(A).
2 Petitioners also argue the county has not determined the
3 ESEE consequences of conflicts between the proposed shooting
4 range and the big game critical wildlife habitat area, as
5 required by UCZPSO 20.09(4).

6 The challenged decision addresses the requirements of
7 UCZPSO 20.09 as follows:

8 "[T]he applicants must participate with ODFW to
9 develop a management plan which would allow for
10 both resource preservation and the proposed uses.
11 Conflicts between big game critical wildlife
12 habitat and the shooting range will be mitigated
13 in favor of the big game critical wildlife
14 habitat.

15 "In addition, the applicants will consider the
16 economic, social, environmental, and energy
17 consequences when attempting to mitigate conflicts
18 between the shooting ranges and the [big game]
19 critical wildlife habitat." Record 3.

20 With the possible exception of a condition prohibiting use
21 of the shooting range from December 1 through April 1, the
22 conditions of approval imposed by the challenged decision do
23 not appear to include any conditions related to carrying out
24 the requirements of UCZPSO 20.09.

25 We agree with petitioners that the record does not
26 include a management plan developed by ODFW and intervenor
27 for the proposed use and site.³ Additionally, it is not

³Intervenor cites a planning commission finding stating the applicants have prepared a coordinated management plan with ODFW. Record 144. However, this finding appears to be inconsistent with the finding adopted by the board of commissioners quoted in the text. Further, no such plan

1 clear what the county believes UCZPSO 20.09 requires with
2 regard to such a plan, in acting on the subject conditional
3 use application. The above quoted findings simply appear to
4 restate the requirements of UCZPSO 20.09(3)(A) and (4).

5 This Board may not interpret a local government's
6 ordinances in the first instance, but rather must review the
7 local government's interpretation of its ordinances. Gage
8 v. City of Portland, 123 Or App 269, ___ P2d ___ (1993);
9 Weeks v. City of Tillamook, 117 Or App 449, 453-54, 844 P2d
10 914 (1992). The challenged decision does not interpret the
11 provisions of UCZPSO 20.09 sufficiently for us to review
12 that interpretation and respond to petitioners' arguments.
13 On remand, the county must explain what provisions of
14 UCZPSO 20.09 concerning big game critical wildlife habitat
15 areas are applicable to the subject conditional use
16 application, what they require and whether they are
17 satisfied.

18 This subassignment of error is sustained.

19 **C. Nongame Wildlife**

20 Petitioners contend the challenged decision is not
21 supported by substantial evidence in the record concerning
22 the impacts of the proposed use on nongame wildlife, with
23 regard to satisfying the "compatibility" standard and the

appears in the record. The only related item we are cited to in the record is a letter from an ODFW representative to the county planning department "advising" that no use of the proposed shooting range should be allowed when certain environmental conditions exist. Record 283-84.

1 resource protection requirements of UCZPSO 20.09.

2 The challenged decision states:

3 "[N]either [UCZPSO 20.09] nor the 'compatibility'
4 test require addressing non-game wildlife
5 considerations. * * *" Record 8.

6 Petitioners do not challenge the above interpretation
7 of the relevant UCZPSO provisions and do not present
8 argument concerning why either the "compatibility" standard
9 or UCZPSO 20.09 requires consideration of impacts of the
10 proposed use on nongame wildlife.

11 This subassignment of error is denied.

12 The first, second and third assignments of error are
13 sustained, in part.

14 The county's decision is remanded.