



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.<sup>1</sup> 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."<sup>2</sup> However, the challenged decision does

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

<sup>2</sup>Petitioners 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

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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.<sup>3</sup> Additionally, it is not

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<sup>3</sup>Intervenor 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

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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.