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

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CLARENCE OKESON,)
)
 Petitioners,) LUBA NO. 83-075
)
 v.)
) FINAL OPINION
 UNION COUNTY,) AND ORDER
)
 Respondents.)

Appeal from Union County.

Clarence E. Okeson, Harrisburg, filed a petition for review and argued the cause on his own behalf.

Dale Mammon, La Grande, filed a brief and argued the cause for respondent.

DuBay, Referee; Bagg, Chief Referee; Kressel, Referee, participated in the decision.

Remanded 12/14/83

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of Oregon Laws 1983, ch 827.

1 Opinion by DuBay

2 NATURE OF THE DECISION

3 This is an appeal from a county order approving a
4 conditional use permit for a trap shooting range in an
5 agricultural zone.

6 FACTS

7 The parcel involved is 10 acres in size¹ and is located
8 near the City of Elgin. It is flat, includes Class III
9 soils,² and is covered with log wastes over one-third of the
10 surface with the remainder in pasture grass. The comprehensive
11 plan identifies the property as rural residential. However,
12 the zone designation is A-2 (agricultural), and that
13 classification allows "private parks" as a conditional use.
14 County Court Record 10.

15 The applicant requested approval of a proposal to build
16 two, possibly three, trap shooting "fans" and "possibly a club
17 house." Planning Commission Record 4. The petitioner owns
18 land adjacent to the property on the south and appeared in
19 opposition at the hearing before the county court.

20 FIRST, SECOND AND THIRD ASSIGNMENTS OF ERROR

21 These assignments of error allege impacts on adjacent land
22 resulting from the noise of shooting on the trap range and
23 claim such shooting constitutes a public safety hazard.
24 Petitioner states the noise would disturb the tranquility of
25 the neighbors, frighten livestock, injure adjacent agricultural
26 activities and in general conflict with nearby uses. There is

1 a safety hazard, petitioner says, because there are many small
2 children near the property who would be endangered.

3 The county ordinance for conditional uses states:

4 "A conditional use shall ordinarily comply with the
5 standards of the zone concerned for uses permitted
6 outright except as specifically modified by the
7 planning commission in granting the conditional use."
8 Union County Zoning, Partition and Subdivision
9 Ordinance, §19.06

10 This ordinance section has no specific standard for noise
11 or any other characteristic or impact on the senses. Neither
12 does the ordinance establish public safety as a standard.
13 Here, the staff report to the planning commission and the
14 county court said there must be a determination of "the
15 compatibility of the proposed use with adjacent land use
16 practices." County Court Record 10. No one, including
17 petitioner, objected to the utilization of that standard at any
18 stage of the proceeding, and, in fact, both petitioner and
19 respondent agreed in this review that compatibility with
20 adjacent uses is the standard to be considered in this case.
21 We will accept, therefore, that criterion for purposes of this
22 review.³

23 The finding addressing compatibility states:

24 "The establishment of a trap shooting range would not
25 be in conflict with adjacent land use practices
26 because it would be a public recreation area which is
27 authorized in that area." Finding No. 6.

28 That finding does not explain how shooting and shooting
29 noise or any other aspect of the use will affect adjacent uses

1 or whether the trap range will or will not be compatible with
2 adjacent uses. The statement is a mere conclusion with no
3 supporting facts. It is, therefore, not sufficient to show
4 compliance with the compatibility standard. Moore v. Clackamas
5 County, 7 Or LUBA 106 (1982).⁴ Failure to make adequate
6 findings showing compliance with the compatibility standard is
7 reason to sustain these assignments of error. Sunnyside
8 Neighborhood League v. Clackamas County, 280 Or 3, 569 P2d 1063
9 (1977).

10 There is another basis for sustaining these assignments of
11 error. The county's order approving the trap range was made
12 contingent on verification that the Department of Environmental
13 Quality (DEQ) noise standards were met. The record, however,
14 fails to disclose any discussion at the planning commission or
15 county court hearings of DEQ standards or the ability of the
16 proposed use to meet them.⁵ In effect, the order deferred
17 consideration of those standards on the proposed use. Since
18 the issue of noise was critical to a finding of compatibility,
19 the determination of noise compatibility should have occurred
20 prior to the decision. Such essential findings must be made
21 prior to approval and not relegated to the status of
22 ministerial check offs. See Margulis v. Portland, 4 Or LUBA 89
23 (1981); Turner v. Washington Co., ___ Or LUBA ___ (LUBA No.
24 83-014, 1983).

25 These assignments of error are sustained.

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1 FOURTH ASSIGNMENT OF ERROR

2 This assignment alleges error based on inconsistency with
3 prior decisions of the county. Petitioner notes the county
4 court refused to allow a race track on the same property in
5 1980 and refused to allow a senior care facility on adjacent
6 property in 1982. Petitioner asserts the reasons for
7 disallowance of the two prior applications continues to exist
8 and equally apply to the application for a trap range. For
9 example, the petitioner points to the findings of the county in
10 1980 that noise and dust from a motorpark - racetrack is not
11 compatible with residential uses. According to petitioner, the
12 same rationale now applies in an application for a trap range.
13 Petitioner also argues the 1982 order found the residential
14 care facility would not be in keeping with the adjacent land
15 use practices. For the same reason, he says, the trap range
16 would be subject to these same conflicts.

17 The issue here is whether or not Order No. 82-86 meets all
18 the applicable criteria based upon the facts in the record.
19 There is no requirement local government actions must be
20 consistent with past decisions, but only that a decision must
21 be correct when made. Indeed, to require consistency for that
22 sake alone would run the risk of perpetuating error. This
23 assignment is denied.

24 FIFTH ASSIGNMENT OF ERROR

25 This assignment, in part, challenges the order as violating
26 the Goal 3 requirement of preserving and maintaining

1 agricultural land. The goal is applicable to this
2 quasi-judicial decision because the county's plan and zoning
3 ordinance have not yet been acknowledged by LCDC. Petitioner
4 claims the county gave no consideration to unavailability of
5 alternative locations (presumably on non-resource lands) and
6 the compatibility of the trap shooting range with adjacent
7 agricultural uses, particularly livestock husbandry.

8 The property does have characteristics of agricultural
9 land. The record shows it includes Class III soils. It is
10 mostly covered with hay and pasture grass, and lands adjacent
11 on the north and west are used as pasture. It is zoned A-2,
12 Agricultural, and by that zoning the county recognizes the land
13 as agricultural land. That is not to say the property must be
14 preserved for farm use. ORS 215.213 makes specific provision
15 for certain non-farm uses on agricultural land. That statute
16 allows, subject to the approval of the governing body:

17 "(c) Private parks, playgrounds, hunting and fishing
18 preserves and campgrounds." ORS 215.213(2)(c).

19 The question is, therefore, whether a trap shooting range is a
20 non-farm use allowed by statute, i.e. a private park. The
21 county's ordinances and the findings fail to show what the
22 county considers to be a "private park" and whether a trap
23 shooting range is included within that term. Neither is there
24 a finding that this particular trap range is a private park.
25 Moreover, the order defers the determination of this matter to
26 a later staff "verification."⁶ For the same reason that the

1 determination of compliance with DEQ noise standards must occur
2 prior to the decision as discussed above, any determination
3 that a proposed use is a nonfarm use described in ORS 215.213
4 must also be made as part of the final decision and may not be
5 delegated. The findings do not satisfy this requirement.

6 Petitioner's additional argument that Goal 3 requires
7 consideration of the unavailability of alternative locations
8 for the requested use is misdirected. The pertinent part of
9 Goal 3 states:

10 "The conversion of rural agricultural land to
11 urbanizable land shall be based upon consideration of
12 the following factors: * * * * (3) unavailability of
13 an alternative suitable location for the requested
14 use; * * * A governing body proposing to convert rural
15 agricultural land to urbanizable land shall follow the
16 procedures and requirements set forth in the Land Use
17 Planning Goal (Goal 2) for goal exceptions." Goal 3.

18 The goal requires consideration of an alternative site when
19 addressing a change from rural agricultural land to urbanizable
20 land. That is not the case here. The issue here is whether or
21 not one of the uses allowed on EFU land by ORS 215.213 shall be
22 authorized. That statute obviates the necessity of taking an
23 exception requiring consideration of alternative locations.

24 Petitioner also claims the county's order violates Goal 8
25 because of inconsistency with a goal guideline to minimize
26 environmental deterioration. Goal 8 is a planning goal
directing governmental agencies to plan for present and future
recreational requirements.⁷ The guideline upon which
petitioner basis his argument is not part of the goal and is

1 not a standard by which all land use actions must be measured.
2 In any event, the findings, as previously noted, are unclear as
3 to whether the proposed trap range is a "private park." If it
4 is, there should be findings addressing whether or not Goal 8
5 applies. Review of such issues must await findings setting
6 forth how the trap range will be used and how such range will
7 comply with all applicable criteria.

8 Lastly, petitioner claims the establishment of the trap
9 range would interfere with use of adjoining property for
10 livestock husbandry. This is a restatement of the first and
11 third assignments of error discussed above. The Board finds no
12 need to repeat the earlier discussion.

13 This assignment of error is sustained.

14 SIXTH ASSIGNMENT OF ERROR

15 This assignment asserts a defect in procedure. Petitioner
16 states he received two notices of hearing, copies of which were
17 attached to the petition. The first notice was of a hearing
18 before the planning commission "to consider the application * *
19 * to partition approximately 11 acres from 87.42 acres to
20 establish a trap range * * * *" The petitioner claims that
21 notice is defective because the term "trap range" did not
22 adequately advise him of the nature of the use. However, the
23 decision to partition was not appealed to the county court and
24 is not subject to review here.

25 The second notice was of a hearing before the county court

26 / /

1 on June 15 "to consider the recommendation of the Union County
2 Planning Commission to approve the application * * * for a
3 conditional use to establish a trap shooting range, organized
4 and operated by the Elgin Trap Club * * * " County Court
5 Record 15. The notice lists petitioner as an addressee.

6 Petitioner attended that hearing and testified in opposition.

7 The Board finds the notice clearly states a "trap shooting
8 range" is part of the application. The Board fails to
9 understand how petitioner was not adequately informed of the
10 nature of the proceeding by this notice. In any event, since
11 petitioner appeared before the county court to contest the
12 conditional use decision here reviewed, and since there was no
13 allegation of prejudice or injury to petitioner resulting from
14 any defect in the notice, the Board denies petitioner's claim
15 of error on such grounds. 1983 Or Laws, ch 827, §32(8)(a)(B);
16 Lee v. Portland, 3 Or LUBA 31 (1981).

17 SEVENTH ASSIGNMENT OF ERROR

18 This assignment of error alleges the county failed to
19 enforce the applicable law regarding unlicensed junkyards,
20 referring to conditions on the property owned by the
21 applicant. Whether or not the county enforces state law in
22 other matters is unrelated to the decision of the county to
23 allow a conditional use for a trap range. This assignment is
24 denied.

25 The decision of the Union County Court is remanded for
26 further proceedings not inconsistent with this opinion. The

1 county must make appropriate findings on whether the proposed
2 conditional use is within the definition of "private park" as
3 the term is used in the county's ordinance and ORS
4 215.213(2)(c), how the trap range would affect uses on adjacent
5 and nearby lands, and whether the trap range, including the
6 noise generated by it, would be compatible with nearby uses.

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FOOTNOTES

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4 The applicant owned 43.5 acres. When he filed the
5 application for the conditional use permit, he applied also for
6 a variance to allow for a partition of ten acres on which to
7 place the trap range. The variance was allowed by the planning
8 commission. That decision was not appealed to the county
9 court, and under the county ordinances the decision became
10 final. It is not reviewed in this proceeding.

11 2
12 The planning staff report notes the Soil Conservation
13 Service has identified the majority of the soils on the 10 acre
14 parcel as Ramo Variant Silt Loam which has a capability Class
15 IIIe. County Court Record 10.

16 3
17 The method of adoption of the compatibility standard is not
18 contested here. The petitioner and respondent agree the
19 standard is appropriate. See Anderson v. Peden, 284 Or 313,
20 323 (1978).

21 4
22 See also Publishers Paper v. Benton County, 6 Or LUBA 182
23 (1982).

24 5
25 The record does include a copy of a letter from the
26 planning department to the applicant which discusses the DEQ
regulations and the orientation of firing angles as it affects
transmission of noise. The letter is dated June 21, 1983, six
days after the decision and, therefore, can not be considered
as part of the record subject to review before this Board.
Subject to the power of LUBA to hold its own evidentiary
hearings where certain procedural or constitutional issues are
raised, review of the record by LUBA is confined to those
matters before the local governing body when it made this
decision. 1983 Or Laws, ch 827, §31(11).

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28 Finding No. 8 states:

29 "Motion is contingent on verification of a shooting range