

1 Opinion by Hanna.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a county order allowing placement of
4 a dwelling in the Willamette River Greenway on land zoned
5 for very low density residential use.

6 **MOTION TO INTERVENE**

7 Philip Lisac and Norma Lisac move to intervene in this
8 proceeding on the side of respondent. There is no
9 opposition to the motion, and it is allowed.

10 **FACTS**

11 The subject property consists of 1.7 acres. The
12 Yamhill County Comprehensive Plan (plan) designates the
13 property Very Low Density Residential and Willamette River
14 Greenway. The subject property is zoned Very Low Density
15 Residential - 2 1/2 Acres (VLDR-2 1/2) and Willamette River
16 Greenway Overlay District. The adjoining properties to the
17 east and west are similarly designated and zoned. The
18 subject and adjoining VLDR-2 1/2 zoned properties are the
19 subject of an exception to Statewide Planning Goal 3
20 (Agricultural Lands)(Goal 3 exception) that was adopted by
21 the county as part of its acknowledged plan. Petitioner
22 owns the parcel adjoining the subject property to the west,
23 on which a dwelling is located. The subject property is
24 bounded on the south by the Willamette River and on the
25 north by Wilsonville Road. The subject property is
26 comprised entirely of U.S. Soil Conservation Service (SCS)

1 Class II and III soils.

2 In Reeves v. Yamhill County, 28 Or LUBA 123 (1994)
3 (Reeves I) we sustained the county decision in part and
4 remanded it in part. We remanded the decision to allow the
5 county to find facts to support its conclusions pertaining
6 to YCZO 902.06(D). Petitioner appealed our decision. In
7 Reeves v. Yamhill County, 132 Or App 263 (1994) (Reeves II)
8 the Court of Appeals affirmed our decision in part and
9 remanded it in part. In Reeves II, the court remanded the
10 decision because LUBA erred when it sustained the county's
11 interpretation of the county's Goal 3 exception in the
12 absence of the language of the exception. The court
13 remanded our decision for a determination of the meaning of
14 YCZO 902.06(E) in light of the Goal 3 exception provision of
15 the plan. In Reeves v. Yamhill County, 29 Or LUBA ____ (LUBA
16 No. 94-105, March 6, 1995) (Reeves III), we remanded the
17 county decision to allow the county to "interpret and apply
18 YCZO 902.06(E) and to correct the deficiency in the findings
19 addressing YCZO 902.06(D) identified in Reeves I."¹

¹YCZO 902.06 provides, in relevant part:

"Prior to issuance of a Greenway permit, the applicant must demonstrate compliance with the following considerations and criteria:

" * * * * *

"D. That the quality of the air, water and land resources in and adjacent to the WRG Overlay District shall be preserved with any development, change of use, or intensification of use, within the WRG Overlay District.

1 On May 17, 1995, the county made its decision on
2 remand. The county: (1) readopted its earlier findings
3 except those that address YCZO 902.06(D) and YCZO
4 902.06(E); (2) made new findings for YCZO 902.06(D) that
5 establish that the air, water and land resources will be
6 preserved; and (3) made new findings on the apparent
7 conflict between YCZO 902.06(E), which expressly requires
8 that the property be preserved and maintained for farm use,
9 and the Goal 3 exception that applies to the property. This
10 appeal followed.

11 **FIRST ASSIGNMENT OF ERROR**

12 Petitioner contends that the county approval of
13 intervenor's permit is in violation of Statewide Planning
14 Goal 15 (Willamette River Greenway), as well as Yamhill
15 County Zoning Ordinance (YCZO) 902 (Willamette River
16 Greenway Overlay District).² Petitioner argues that because
17 the subject permit is not for a use allowed under YCZO
18 902.04 (Use provisions), intervenor must obtain a Greenway
19 permit. Petitioner contends further that to obtain a
20 Greenway permit, intervenor must demonstrate compliance with

"E. That lands exhibiting Class I-IV soils for agricultural
production shall be preserved and maintained for farm use."

²After setting forth the first assignment of error, petitioner makes no further reference to Goal 15. After acknowledgment of the local comprehensive plan and land use regulation, the Statewide Planning Goals no longer apply directly. Central Eastside Industrial Council v. Portland, 29 Or LUBA ___ (LUBA No. 93-221, July 18, 1995). We conclude the mention of Goal 15 was an error and do not address it further.

1 all elements of YCZO 902.06 (Greenway permit considerations
2 and criteria) which petitioner alleges intervenors have
3 failed to do.

4 Intervenor reason that because the Goal 3 exception
5 plan provision conflicts with the language of YCZO
6 902.06(E), YCZO 902.06(E) does not apply.³ In the
7 challenged decision, the county interprets its ordinance as
8 conflicting with the overriding Goal 3 exception in the
9 plan. See Baker v. City of Milwaukee, 271 Or 500, 514, 533
10 P2d 772 (1975).

11 The county determines that the express language of YCZO
12 902.06(E), "[t]hat lands exhibiting Class I-IV soils for
13 agricultural production shall be preserved and maintained
14 for farm use" conflicts with the plan policy that "the
15 subject property is not suitable for agricultural

³With respect to the subject property the Goal 3 exception provision provides:

"* * * * *

"Sections 1 and 6 have 27 parcels 10 acres or less in size of which 21 are occupied by dwellings. Two more dwellings are located on parcels larger than ten acres.

"* * * * *

"Code Area land within Sections 1 and 6 has fair or better soil suitability for septic drainfields.

"* * * * *

"Sections 22 and 23, 1 and 6 are committed to rural residential use by an evenly-distributed pattern of small parcels and individual ownerships, and poor agricultural productivity potential."

1 production, and that it is committed to low density
2 residential development." Record 9. The county makes
3 extensive findings to support this conclusion. See Record
4 8-12.

5 Petitioner challenges the county decision by
6 reformulating the issues. Petitioner disputes the county
7 findings and reasons that because the plan policy for the
8 VLDR 2 1/2 zone encourages "opportunities for small scale or
9 intensive agricultural and forestry activities," it
10 contemplates both residential uses and agricultural uses in
11 the zone. Petition for Review 12. Petitioner devotes much
12 of his argument to establishing that two plan policies, that
13 for the VLDR zone and that for the WRG Overlay District, are
14 not in conflict. However, the county has not found the
15 conflict to be between the plan policies, but between YCZO
16 902.06(E) and the Goal 3 exception. Petitioner argues that
17 "[t]he placement of a residential structure on the subject
18 property is inconsistent with [YCZO 902.06(E)]," and later
19 counters that the plan provision of the WRG Overlay District
20 does not create a conflict with the plan policy for the VLDR
21 2 1/2 zone. Petition for Review 8, 12. He states "[t]he
22 preservation of Class I-IV soil for farm use on a parcel by
23 parcel basis is not necessarily inconsistent with an
24 exceptions declaration that the same property is not to be
25 classified as EFU land." Petition for Review 9-10.

26 Petitioner suggests one interpretation of the county's

1 plan and code provisions. However, of the potential
2 interpretations from which the county could have chosen, the
3 county chose an interpretation different from that argued by
4 petitioner. The interpretation chosen by the county does
5 not contravene the acknowledged provisions of the Goal 3
6 exception. Moreover, the county explained that, if YCZO
7 902.06(E) were applied to the sections 1 and 6 exceptions
8 area, no new farm dwellings could be built because all of
9 the buildable land in the exception area would be subject to
10 YCZO 902.06(E). The Goal 3 exception would have no meaning
11 if it were applied concurrently with YCZO 902.06(E).

12 This Board is required to defer to a local governing
13 body's interpretation of its own enactment, unless that
14 interpretation is contrary to the express words, purpose or
15 policy of the local enactment or to a state statute,
16 statewide planning goal or administrative rule which the
17 local enactment implements. ORS 197.829; Gage v. City of
18 Portland, 319 Or 308, 316-17, 877 P2d 1187 (1994); Clark v.
19 Jackson County, 313 Or 508, 514-15, 836 P2d 710 (1992).
20 This means we must defer to a local government's
21 interpretation of its own enactments, unless that
22 interpretation is "clearly wrong." Goose Hollow Foothills
23 League v. City of Portland, 117 Or App 211, 217, 843 P 2d
24 992 (1992); West v. Clackamas County, 116 Or App 89, 93, 840
25 P2d 1354 (1992). Further, where local enactments contain a
26 variety of arguably relevant provisions that equally support

1 different interpretations, the selection of an
2 interpretation is for the local government to make. Reusser
3 v. Washington County, 122 Or App 33, 36-37, 857 P2d 182, rev
4 den 318 Or 60 (1993); West v. Clackamas County, supra.

5 The county has not made an interpretation of its plan
6 and ordinance provisions that is clearly wrong.

7 The first assignment of error is denied.

8 **SECOND ASSIGNMENT OF ERROR**

9 Petitioner contends that the county has not provided
10 sufficient factual support for its findings that the quality
11 of air, water and land resources is preserved as required by
12 YCZO 902.06(D). Petitioner does not present any evidence to
13 refute that set forth by the county in its findings.
14 Petitioner merely argues that the county does not have
15 sufficient evidence to support its findings.

16 The crux of the dispute is that the evidence showing
17 resource preservation was gathered on intervenors' property
18 rather than on neighboring properties, and the effects
19 extrapolated to the property of adjacent neighbors. The
20 adequacy of the onsite sewage system was based on a
21 determination by the county sanitarian that the soils were
22 adequate for a septic system for the residential use
23 described. Record 5. Water availability and quality were
24 based on samples from intervenors' well and not from
25 adjacent neighboring wells. In the same manner, evidence of
26 maintenance of air quality was demonstrated from the

1 standpoint of the intervenors' contribution to any potential
2 problem.

3 There is no authority to which we have been cited that
4 precludes the county from analyzing the evidence as it has
5 in this instance. The record is replete with detailed,
6 well-developed findings based on substantial evidence
7 pertaining to intervenors' use of and effect on the quality
8 of air, water and land resources in and adjacent to the WRG
9 Overlay District. See Record 4-8. There is substantial
10 evidence to establish compliance with the considerations and
11 criteria of YCZO 902.06(D). See City of Portland v. Bureau
12 of Labor and Ind., 298 Or 104, 119, 690 P2d 475 (1984).
13 Furthermore, where different reasonable conclusions can be
14 drawn from the evidence in the record, it is for the local
15 government to make the choice between the different
16 reasonable conclusions. Wilson Park Neigh. Assoc. v. City
17 of Portland, 24 Or LUBA 98 (1992). See Corbett/Terwilliger
18 Neigh. Assoc. v. City of Portland, 25 Or LUBA 601 (1993),
19 Reeves v. Washington County, 24 Or LUBA 483 (1993).

20 The second assignment of error is denied.

21 **THIRD ASSIGNMENT OF ERROR**

22 We understand petitioner to argue that the findings
23 that address air, water and sewage disposal under YCZO
24 902.06(D) in the second assignment of error allow him to
25 reopen YCZO 502.1 on the same topics. The application of
26 YCZO 502.1 was decided in Reeves I. Petitioner does not

1 establish that the applicability of YCZO 502.1 was reopened
2 on remand. Therefore, it cannot be reopened now. Beck v.
3 City of Tillamook, 313 Or 148, 831 P2d 678 (1992).

4 The third assignment of error is denied.

5 The county's decision is affirmed.