

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

3
4 DONLEE A. SCHELLENBERG and)
5 TERRY DRAKE,)
6)
7 Petitioners,)
8)
9 vs.)
10)
11 POLK COUNTY,)
12)
13 Respondent,)
14)
15 and)
16)
17 DON KEUN CHAEY,)
18)
19 Intervenor-Respondent.)

LUBA No. 91-206
FINAL OPINION
AND ORDER

20
21
22 Appeal from Polk County.

23
24 Donlee A. Schellenberg and Terry Drake, Dallas, filed
25 the petition for review and argued on their own behalf.

26
27 Robert W. Oliver, Dallas, filed a response brief and
28 argued on behalf of respondent.

29
30 Wallace W. Lien, Salem, filed a response brief and
31 argued on behalf of intervenor-respondent.

32
33 SHERTON, Referee; HOLSTUN, Chief Referee; KELLINGTON,
34 Referee, participated in the decision.

35
36 AFFIRMED 02/19/92

37
38 You are entitled to judicial review of this Order.
39 Judicial review is governed by the provisions of ORS
40 197.850.

1 Opinion by Sherton.

2 **NATURE OF THE DECISION**

3 Petitioners appeal a Polk County Board of Commissioners
4 order approving a 36-hole golf course as a conditional use
5 in an exclusive farm use zone.

6 **MOTION TO INTERVENE**

7 Dong Keun Chaey moves to intervene on the side of
8 respondent in this appeal proceeding. There is no
9 opposition to the motion, and it is granted.

10 **FACTS**

11 This is the second time a board of commissioners
12 decision approving intervenor-respondent's (intervenor's)
13 application for a conditional use permit has been appealed
14 to this Board. In Schellenberg v. Polk County, ___ Or LUBA
15 ___ (LUBA No. 91-018, August 2, 1991) (Schellenberg I),
16 slip op 2-3, we set out the relevant facts as follows:

17 "The subject property is approximately 520 acres
18 in size, designated Agricultural on the Polk
19 County Comprehensive Plan (plan) map and zoned
20 Exclusive Farm Use (EFU). The subject property
21 contains gently sloping lowlands in the south and
22 east, rising steeply to the north and west. * * *
23 The subject property has frontage on State Highway
24 22 to the south and Perrydale Road to the east.

25 "Land to the east, north and west of the subject
26 property is zoned EFU and contains commercial
27 farms producing grains and grass seed, woodlots,
28 orchards and a large commercial dairy. Record¹

¹The local record in Schellenberg I is included in the local record of
the challenged decision. In this opinion, the local record in

1 16, 175, 199-200. Reimer Reservoir is located on
2 the adjacent property to the north. Land to the
3 south of the subject property is zoned Farm/Forest
4 (F/F) and Acreage Residential - Five Acre (AR-5),
5 and contains small farms and rural residences.
6 (Footnote omitted.) Id.

7 In Schellenberg I, we remanded the county's first
8 decision because its findings were inadequate to demonstrate
9 compliance with the requirement of ORS 215.296(1) and
10 PCZO 136.060 that the proposed use will not force a
11 significant change in, or increase the cost of, accepted
12 farm or forest practices on surrounding lands devoted to
13 farm or forest use.²

14 After the county's first decision was remanded by
15 Schellenberg I, on September 25, 1991, the board of
16 commissioners held an evidentiary hearing on the issue of
17 compliance of the proposed golf course with ORS 215.296(1)
18 and PCZO 136.060. The record was left open until October 7,
19 1991, for the submittal of additional written materials. On
20 October 30, 1991, the board of commissioners adopted the
21 challenged order approving the conditional use permit.

22 **FIRST ASSIGNMENT OF ERROR**

23 "Respondent made [a] gross procedural error and
24 prejudiced Petitioners' rights by apparently
25 allowing, and considering the addition [to the]

Schellenberg I is cited as "Record ____." The local record compiled after our decision was issued in Schellenberg I, remanding the county's first decision, is cited as "Remand Record ____."

²In addition, because the county's findings were inadequate, we did not determine whether they were supported by substantial evidence in the record. Schellenberg I, slip op at 24.

1 original Conditional Use Request * * * of a 20
2 acre parcel and its related water resources."

3 Petitioners contend the county erred by effectively
4 allowing the conditional use permit application to be
5 amended after remand to include an additional 20 acre
6 parcel, and the water rights appurtenant thereto, without
7 giving notice to petitioners that such an addition to or
8 amendment of the application had occurred. Petitioners
9 argue they did not have an adequate opportunity to respond
10 to this change in the application.

11 Respondent and intervenor-respondent (respondents)
12 contend the subject conditional use permit application has
13 not been amended. Respondents argue the study submitted by
14 intervenor prior to the September 25, 1991 hearing on remand
15 indicates that intervenor purchased an additional 20 acre
16 parcel, solely for the purpose of using the water rights and
17 approved water storage site associated with that parcel, but
18 that the parcel itself is not part of the proposed golf
19 course development. Remand Record 81.

20 Respondents also argue the issue petitioners seek to
21 raise under this assignment of error has been waived,
22 because it was not raised in the proceeding before the
23 county. ORS 197.763(1); 197.835(2).

24 With regard to quasi-judicial land use hearings,
25 ORS 197.763(1) provides:

26 "An issue which may be the basis for an appeal to
27 [LUBA] shall be raised not later than the close of

1 the record at or following the final evidentiary
2 hearing on the proposal before the local
3 government. Such issues shall be raised with
4 sufficient specificity so as to afford the
5 governing body, planning commission, hearings body
6 or hearings officer, and the parties an adequate
7 opportunity to respond to each issue."

8 Additionally, ORS 197.835(2) provides that our scope of
9 review is limited to issues "raised by any participant
10 before the local hearings body as provided by ORS 197.763."

11 The purpose of ORS 197.763(1) and 197.835(2) is to
12 prevent unfair surprise. While ORS 197.763(1) does not
13 require that arguments identical to those in the petition
14 for review have been presented during the local proceedings,
15 it does require that the argument presented in the local
16 proceedings "sufficiently raise the issue sought to be
17 raised in the petition for review, so that the local
18 government and other parties had a chance to respond to that
19 issue in the local proceedings." Hale v. City of Beaverton,
20 ___ Or LUBA ___ (LUBA No. 90-159, June 4, 1991), slip op 8;
21 Boldt v. Clackamas County, ___ Or LUBA ___ (LUBA No. 90-147,
22 March 12, 1991), slip op 8, aff'd 107 Or App 619 (1991).

23 Petitioners contend the issue they seek to raise in
24 this assignment of error was raised below by the following
25 statement in a letter from petitioner Drake to the board of
26 commissioners:³

³Petitioners do not contend the "waiver" provisions of ORS 197.763(1) and 197.835(2) do not apply because the county failed to follow the procedures required by ORS 197.763. Neither do petitioners contend they

1 "The [Planning] Staff Study opens the door to the
2 water issue (possibly erroneously) and then
3 proceeds to ignore both upstream and downstream
4 potential impacts on accepted practices. The
5 Staff Study further states as facts issues
6 concerning water and water rights that have been
7 and continue to be challenged." Remand Record 37.

8 While the above quoted statement mentions "the water
9 issue," it does not refer to a "20 acre parcel," any alleged
10 "addition or amendment to the application" or "inadequate
11 notice." In fact, the statement appears to refer to the
12 same "water issue" raised in Schellenberg I, slip op
13 at 13-15 (alleged county failure to consider impacts on
14 water resources when considering impacts of the proposed
15 golf course on accepted farm and forest practices). Thus,
16 the above quoted statement does not give the county and
17 other parties an opportunity to respond to petitioners' new
18 "water issue." We therefore agree with respondents that
19 petitioners did not raise the issue of inadequate notice and
20 opportunity to respond to the alleged addition of a 20 acre
21 parcel and its water rights to the conditional use
22 application in the county proceedings. Consequently,

were unaware of intervenor's proposed use of the 20 acre parcel and its water rights prior to the close of the evidentiary record in the county proceedings and, therefore, were precluded from raising this issue below. We note the record shows that intervenor's study addressing the requirements of ORS 215.296(1) and PCZO 136.060, in which intervenor's purchase and proposed use of the 20 acre parcel is discussed, was submitted to the county sometime prior to the issuance of the September 16, 1991 county staff report. Remand Record 60. As we discuss under the second assignment of error, infra, petitioners do contend they were unaware of this study prior to the public hearing. However, the study was discussed in detail at the September 25, 1991 public hearing, and the evidentiary record was left open until October 7, 1991. Remand Record 46-49, 51.

1 petitioners may not seek review of that issue by this Board.

2 The first assignment of error is denied.

3 **SECOND ASSIGNMENT OF ERROR**

4 "Respondent inadequately notified petitioners of
5 the scope, new materials and information, and the
6 potential time frame concerning the single remand
7 hearing; significantly prejudicing the rights of
8 the Petitioners."

9 Petitioners contend the county improperly failed to
10 inform them of the existence of new information submitted by
11 intervenor and of a new county staff report.⁴ Petitioners
12 contend they reasonably inferred from the notice of hearing
13 that only the original application and staff report were
14 available for review. Petitioners argue they had no reason
15 to know that a new staff report was issued or that
16 intervenor had submitted new information to the county,
17 between the issuance of Schellenberg I and the September 25,
18 1991 evidentiary hearing on remand. Petitioners argue they
19 were prejudiced by this lack of notice because the county
20 planning staff made recommendations to the board of
21 commissioners based on intervenor's new submittal, prior to
22 petitioners' first opportunity to testify, and because the
23 board of commissioners refused to give petitioners a

⁴Petitioners do not specifically identify in the remand record the "new information" submitted by intervenor. However, as we understand it, the new information referred to is basically the study submitted by intervenor addressing the requirements of ORS 215.296(1) and PCZO 136.060. Remand Record 61-89. See n 3. The "new county staff report" is dated, and presumably was available on, September 16, 1991, nine days before the public hearing. Remand Record 60.

1 reasonable time to submit their own study in response to
2 intervenor's submittal.⁵

3 Respondents argue petitioners do not identify any
4 applicable legal standard with which the county's notice of
5 hearing failed to comply.⁶ Respondents contend the county's
6 notice of the evidentiary hearing on remand was governed by,
7 and complied with, ORS 197.763(3). Respondents maintain
8 there is no legal requirement that a county public hearing
9 notice list all materials in the county's possession. To
10 the contrary, respondents contend the parties to a land use
11 proceeding have a duty to familiarize themselves with the
12 record and the evidence in the county's file. Respondents
13 also argue petitioners were not prejudiced by their lack of
14 advanced knowledge of intervenor's additional submittal and
15 the new staff report, because at the close of the
16 September 25, 1991 hearing, the record was left open for 12
17 days for additional written submittals.

18 Petitioners fail to identify any provision of
19 constitution, statute, comprehensive plan or county

⁵The record indicates petitioner Drake asked that the record be left open for two months to allow him to submit his own consultant's study. Remand Record 49.

⁶Respondents also contend petitioners failed to raise this issue below. However, the record includes statements by petitioner Drake objecting to the lack of notification that a new study had been submitted by intervenor, and that a new staff report based on that study had been submitted, to the board of commissioners prior to the September 25, 1991 hearing. Remand Record 36, 49. Therefore, we conclude petitioners sufficiently raised this issue below.

1 ordinance violated by the alleged defect in the county's
2 notice of public hearing.⁷ Without a showing that an
3 applicable legal criterion or standard has been violated by
4 the appealed decision, LUBA cannot grant relief.⁸ 19th
5 Street Project v. City of The Dalles, ___ Or LUBA ___ (LUBA
6 No. 90-053, February 11, 1991), slip op 14; Weist v. Jackson
7 County, 18 Or LUBA 627, 641 (1990); Lane School District 71

⁷The notice of hearing states, in relevant part:

"ANY PERSON desiring to speak for or against this proposed request may do so either in person or by representative at the public hearing. Also, written comments may be directed to the Polk County Community Development Department, Planning Section, [mailing address]. Written testimony must be received in the Polk County Community Development Department, prior to the close of the public hearing. Oral testimony must be rendered at the public hearing. Copies of the application and staff report are available for inspection at no cost and for purchase at a reasonable cost. * * *" (Emphasis added.) Remand Record 95-96.

The above quoted language certainly is sufficient to inform petitioners that written submittals may be made to the county planning department prior to the public hearing. Petitioners could not reasonably assume, based on the language of this notice, that no new materials had been submitted by the applicant, nor a new staff report issued, after this Board remanded the county's first decision. We agree with respondents that parties to a land use proceeding have a duty to familiarize themselves with the record and the evidence in the local government file. Sigurdson v. Marion County, 9 Or LUBA 163, 167 (1983).

⁸In addition, we note that even if the notice of hearing were defective in some way, that would be a procedural error. Under ORS 197.835(7)(A)(B), a procedural error provides a basis for reversal or remand only if it prejudiced petitioners' substantial rights. We do not see how petitioners could have been prejudiced by any defect in the notice of hearing, as petitioner Drake appeared at the hearing (and stated that petitioner Schellenberg could not attend because he was out of town), and the board of commissioners left the evidentiary record open for additional written submittals for twelve days, more than the seven days extension petitioners are entitled to under ORS 197.763(6). Remand Record 48, 51. Furthermore, both petitioners submitted additional written materials prior to the close of the record. Remand Record 35-37.

1 v. Lane County, 15 Or LUBA 150, 153 (1986).

2 The second assignment of error is denied.

3 **FOURTH ASSIGNMENT OF ERROR**

4 "Respondent committed procedural error and
5 prejudiced Petitioners' rights by receiving
6 without question or challenge testimony completely
7 outside the stated and written rules concerning
8 the scope of the remand hearing."

9 Petitioners contend a representative of the Dallas City
10 Council and unidentified others "presented opinions and
11 information outside the stated scope of the hearing, without
12 challenge from the Board [of Commissioners]." Petition for
13 Review 13.

14 Petitioners do not explain why the alleged error
15 constitutes a basis for reversal or remand of the challenged
16 decision. It is petitioners' responsibility to state a
17 basis upon which we may grant relief. Deschutes Development
18 v. Deschutes County, 5 Or LUBA 218, 220 (1982).

19 The fourth assignment of error is denied.

20 **THIRD ASSIGNMENT OF ERROR**

21 "Respondent improperly construed applicable law
22 (ORS 215.296(1)) and rejected requests by
23 Petitioners to clearly define 'accepted farm or
24 forest practices.' This failure of Respondent
25 [results in] an inventory of such practices
26 substantially less than required by the statutes
27 and [Schellenberg I]."

28 **FIFTH ASSIGNMENT OF ERROR**

29 "Respondent * * * only included farm and forest
30 practices on 'commercial farms' in [its] 'study
31 area.' This is clearly [an] inadequate inventory
32 of accepted practices under ORS 215.296(1)

1 irrespective of definitions of accepted farm and
2 forest practices."

3 PCZO 136.060.J provides, in relevant part:

4 "**Conditional Uses.** The following uses may be
5 permitted [in the EFU zone] subject to * * *
6 findings that the proposed use will not force a
7 significant change in accepted farm or forest
8 practices on surrounding lands devoted to farm or
9 forest use, or significantly increase the cost of
10 such practices.

11 "* * * * *

12 "J. Golf courses;

13 "* * * * *."

14 This PCZO provision implements ORS 215.296(1), which
15 provides:

16 "A use allowed under ORS 215.213(2) or
17 215.283(2)^[9] may be approved only where the local
18 governing body or its designee finds that the use
19 will not:

20 "(a) Force a significant change in accepted farm
21 or forest practices on surrounding lands
22 devoted to farm or forest use; or

23 "(b) Significantly increase the cost of accepted
24 farm or forest practices on surrounding lands
25 devoted to farm or forest use."

26 In Schellenberg I, we said that to demonstrate
27 compliance with PCZO 136.060.J and ORS 215.296(1), findings
28 must:

29 "* * * (1) describe the farm and forest practices
30 on surrounding lands devoted to farm or forest

⁹ORS 215.213(2)(f) and 215.283(2)(e) list "golf courses" as a nonfarm use which may be established in an exclusive farm use zone.

1 use, (2) explain why the proposed use will not
2 force a significant change in those practices, and
3 (3) explain why the proposed use will not
4 significantly increase the cost of those
5 practices. See Washington Co. Farm Bureau v.
6 Washington Co., [___ Or LUBA ___ (LUBA No. 90-154,
7 March 29, 1991), slip op 9 n 6]." Schellenberg I,
8 slip op at 20.

9 We also found the findings adopted by the county in support
10 of its first decision approving the subject conditional use
11 permit were inadequate because they did not "identify the
12 'surrounding lands devoted to farm and forest use' and [did]
13 not describe the 'accepted farming practices' occurring on
14 such lands * * *." Id., slip op at 21.

15 The challenged decision includes extensive findings
16 adopted after remand to demonstrate compliance with
17 PCZO 136.060.J and ORS 215.296(1). The analysis employed by
18 the county includes the following steps:

- 19 (1) Identification of a "study area." Remand
20 Record 8-10.
- 21 (2) Identification of land within the study area
22 devoted to farm or forest use. Remand Record
23 10-11.
- 24 (3) Identification of crops or livestock grown on
25 those lands and the accepted farming
26 practices associated with each type of
27 operation. Remand Record 11-17.
- 28 (4) Identification of operating characteristics
29 of the proposed golf course. Remand Record
30 17-18.
- 31 (5) Determination of impacts of proposed golf
32 course operations on identified accepted
33 farming practices. Remand Record 18-21.

1 Under these assignments of error, petitioners challenge
2 the adequacy of the county's analysis with regard to
3 (1) identification of surrounding lands, (2) consideration
4 of land devoted to noncommercial, as well as commercial,
5 farm or forest uses, and (3) identification of accepted farm
6 and forest practices.

7 **A. Identification of Surrounding Lands**

8 Petitioners contend:

9 " * * * the study area should extend at least 3
10 miles [from the proposed golf course] spatially
11 and that the observation of potential and accepted
12 farm and forest practices should extend to at
13 least 10 to 12 miles in order to provide a barely
14 statistically valid sample. * * *" Petition for
15 Review 11.

16 Petitioners further argue that such a proposed 3 mile radius
17 for "surrounding lands" would include the farm of petitioner
18 Drake and the majority of the Salt Creek farming community
19 which petitioners seek to protect.¹⁰ As we understand it,
20 petitioners' concern is mainly that the study area, i.e.
21 "surrounding lands," identified by the county is not large
22 enough to include a varied enough sample of farm and forest
23 operations.

24 The county's findings describe the "study area" it
25 considered as follows:

26 "For purposes of this application, surrounding

¹⁰Petitioner Schellenberg's farm is included within the study area identified by the county. Record 11.

1 lands are defined as being those lands within a
2 study area bordered by Sunnyside Road * * * to the
3 north; Van Well Road to the west; the ridge line
4 south of Highway 22 on the south; and Smithfield
5 Road and Morris Road to the east. This study area
6 is identified in the three large land use
7 inventory maps submitted at the hearing.^[11]

8 " * * * The study area [has] easily identifiable
9 boundaries and/or geographical features which
10 include a variety of different features, yet are
11 similar in character. To the north and south are
12 ridge lines which provide a break and natural
13 boundary for [the] study area. Smithfield and
14 Morris Roads also provide an eastern limitation to
15 the study area, as these roads conveniently run in
16 a north and south direction from Highway 22 to the
17 south, to the Sunnyside Road ridge line extension
18 to the north. Van Well Road lies at the bottom of
19 a ridge line, and although the top of the ridge
20 might be a logical break, the ridge line does not
21 run the full north and south length of the study
22 area, and many properties include ridge land as
23 well as side hill and flat land properties up to
24 Van Well Road. Van Well Road runs the full length
25 of the study area and provides a convenient
26 boundary for ease in identification of the study
27 area." Record 8-9.

28 Neither ORS ch 215 nor the PCZO define the "surrounding
29 lands" required to be considered in determining compliance
30 with ORS 215.296(1) and PCZO 136.060. The county's findings
31 include a detailed description of a study area extending
32 from 1/2 to 1 1/2 miles from the boundaries of the proposed
33 golf course, and explain how the boundaries of that study

¹¹These maps indicate the boundary of the study area varies somewhat in its distance from the boundaries of the proposed golf course, from a minimum of approximately 1/2 mile on the southwest to a maximum of approximately 1 1/2 miles on the northeast.

1 area were chosen. Petitioners do not specifically challenge
2 the county's findings, but rather simply contend a
3 significantly larger study area should have been chosen.
4 Petitioners offer no support for their contention that
5 property outside the county's study area includes different
6 types of farming operations or would be affected by the
7 proposed golf course. We see no reason why the "surrounding
8 lands" identified by the county are not sufficient to
9 satisfy ORS 215.296(1) and PCZO 136.060.

10 This subassignment of error is denied.

11 **B. Identification of Lands Devoted to Farm or Forest**
12 **Use**

13 Petitioners point out the table included in the
14 county's findings, of properties within the study area found
15 to be devoted to farm or forest use, does not include any
16 ownerships smaller than 80 acres. Remand Record 11.
17 Petitioners contend the county improperly limited its
18 consideration of "surrounding lands devoted to farm or
19 forest use," as that term is used in ORS 215.296(1) and PCZO
20 136.060, to lands which are part of commercial farm or
21 forest operations.

22 The county's findings state it relied on the definition
23 of "farm use" in ORS 215.203(2)(a), and the virtually
24 identical definition in PCZO 110.223, in identifying lands
25 within the study area devoted to farm use. The findings
26 also state the county identified lands devoted to forest use
27 by simply replacing the word "farm" in these definitions

1 with the word "forest." Remand Record 10. With regard to
2 the issue of consideration of noncommercial farm and forest
3 uses, the findings specifically state:

4 "[The Board of Commissioners] is not limiting
5 itself in this identification [of lands devoted to
6 farm or forest use] to commercial farm or forest
7 uses, nor does this Board deal only with wholesale
8 rather than retail or direct sale marketing
9 operations. If land is within the [PCZO] and
10 statutory definition of farm use, and the
11 corollary definition for forest use, that parcel
12 was then considered here. This Board has not
13 limited itself by zone or size. In this Board's
14 opinion only the parcels specified in the above
15 table are in farm or forest use." Remand
16 Record 11.

17 Petitioners do not challenge the above quoted findings.
18 Neither do they identify any properties within the study
19 area which they contend were improperly excluded from
20 consideration because they are not devoted to a commercial
21 farm or forest use. Rather, petitioners simply infer from
22 the fact that the county's table of land devoted to farm or
23 forest use includes no ownerships less than 80 acres in
24 size,¹² the county must have improperly excluded land in
25 noncommercial farm or forest operations.

26 The challenged decision clearly states that the county
27 considered all surrounding lands devoted to farm or forest
28 uses, whether commercial or noncommercial, as required by

¹²We note the large inventory maps in the record indicate that many of these ownerships are comprised of more than one parcel of land, and that some of the individual parcels appear to be less than 80 acres in size.

1 ORS 215.296(1) and PCZO 136.060. Petitioners' argument
2 provides no basis for concluding the county improperly
3 interpreted or applied ORS 215.296(1) or PCZO 136.060.

4 This subassignment of error is denied.

5 **C. Identification of Accepted Farm and Forest**
6 **Practices**

7 Petitioners contend that the "accepted farm and forest
8 practices" which must be considered under ORS 215.296(1) and
9 PCZO 136.060 include all those farm or forest practices
10 which are not precluded by government regulation.
11 Petitioners argue that the county improperly considered only
12 farm and forest practices currently in use within the study
13 area. As an example, petitioners contend the county
14 improperly failed to identify as an accepted farm practice
15 for a dairy farm, the use of a manure settling pond and
16 irrigation of surrounding fields with the effluent from such
17 pond.

18 Respondents contend the county's findings show the
19 county did not limit its consideration of "accepted farm or
20 forest practices" to those currently in use in the study
21 area:

22 "Accepted farming practices is defined in
23 ORS 215.203(2)(c),^[13] and a corollary definition

¹³ORS 215.203(2)(c) defines "accepted farming practice" as:

"[A] mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to obtain a

1 for accepted forest practices can be arrived at by
2 use of the same definition with simply
3 substituting forest uses for the farm uses * * *.

4 "[The Board of Commissioners] does not utilize the
5 phrase 'existing farm practices' as alleged by the
6 opponents. Although 'existing' and 'accepted' may
7 be used interchangeably for some purposes, the
8 statutory and ordinance standard by which this
9 application is being judged is 'accepted farm or
10 forest practices' and this Board will use no other
11 standard to determine this case.

12 * * * * *

13 * * * The best way to analyze the farm or forest
14 practices which are generally accepted is by
15 looking to the crop type and following it through
16 its agricultural cycle." Remand Record 11-12.

17 With regard to the one specific example of a farm practice
18 cited by petitioners, respondents argue the county's
19 identification of accepted farming practices for the dairy
20 farm adjacent to the proposed golf course includes the
21 practice cited by petitioners:

22 * * * the dairy operation has the manure
23 generated by the cattle, spread over the crop land
24 as additional soil supplement. * * *" Remand
25 Record 13.

26 The county's decision states it based its
27 identification of "accepted farm or forest practices" on
28 lands within the study area devoted to farm or forest use on
29 the definition of "accepted farming practice" in
30 ORS 215.203(2)(c). This is a correct approach to
31 interpreting the virtually identical term "accepted farm

profit in money, and customarily utilized in conjunction with
farm use."

1 * * * practices" in ORS 215.296(1) and PCZO 136.060.
2 Further, use of the ORS 215.203(2)(c) definition, which
3 includes "mode[s] of operation * * * common to farms of a
4 similar nature," would not result in the identification of
5 only those practices currently in use on farms in the study
6 area, as petitioners allege.

7 Petitioners do not specifically challenge the county's
8 findings. The sole basis offered by petitioners for their
9 contention that the county identified only existing farm
10 practices is their argument that the county failed to
11 consider, with regard to dairy farms, the use of manure
12 settling ponds and irrigation of surrounding fields with the
13 effluent from such ponds. Petitioners cite no evidence in
14 the record that this practice is a common mode of operation
15 on dairy farms. Additionally, petitioners do not contend
16 there is a significant difference between the practice they
17 cite and the one identified in the county's findings on
18 dairy farms -- spreading the manure produced by the dairy
19 cattle over crop land. In the absence of evidence in the
20 record that the practice cited by petitioner is a common
21 mode of operation for dairy farms, we find the county's
22 detailed findings identifying accepted farm practices to be
23 adequate.

24 This subassignment of error is denied.

25 The third and fifth assignments of error are denied.

26 The county's decision is affirmed.