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

FRITZ VON LUBKEN, JOANN)
VON LUBKEN, and VON LUBKEN)
ORCHARDS, INC.,)
Petitioners,)
vs.)
HOOD RIVER COUNTY,)
Respondent,)
and)
BROOKSIDE, INC.,)
Intervenor-Respondent.)

LUBA No. 92-126
FINAL OPINION
AND ORDER

Appeal from Hood River County.

Max M. Miller, Portland, represented petitioners.

Teunis Wyers, Hood River, represented respondent.

B. Gil Sharp, Hood River, represented intervenor-respondent.

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

REVERSED 10/11/93

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

1 Opinion by Holstun.

2 Our final opinion and order in this matter was reversed
3 and remanded by the court of appeals. Von Lubken v. Hood
4 River County, 24 Or LUBA 271 (1992), rev'd 118 Or App 246
5 (1993). The court of appeals held the county's repeal of
6 comprehensive plan Standard D(9) was not effective at the
7 time the disputed application was submitted, because the
8 plan amendment was not acknowledged at the time the
9 application was submitted. Von Lubken v. Hood River County,
10 118 Or App 246, 249, ___ P2d ___ (1993). Standard D(9)
11 provides "[d]evelopment will not occur on lands capable of
12 sustaining accepted farming practices." There is no dispute
13 that the land in question is capable of sustaining accepted
14 farming practices. Because the disputed permit application
15 cannot be approved under Standard D(9), which the court has
16 concluded was applicable at the time the application was
17 submitted, the county's decision must be reversed. See
18 McKay Creek Valley v. Washington County, 122 Or App 59, ___
19 P2d ___ (1993); OAR 661-10-071(1)(c); Seitz v. City of
20 Ashland, 24 Or LUBA 311, 314 (1993).

21 In discussing petitioners' second assignment of error,
22 the court stated the following:

23 "Finally, petitioners argue that LUBA erred by
24 considering the six impacts of the golf course on
25 their farm operations in isolation and that
26 ORS 215.296(1) should be construed to require
27 their cumulative effects to be considered. We
28 agree with petitioners' reading of the statute.
29 Because we remand, the county and/or LUBA will

1 have the opportunity to reconsider the
2 compatibility of the proposed use with ORS
3 215.296(1)." 118 Or App at 251.

4 Because the county's decision must be reversed in any
5 event, we are not sure any purpose would be served by our
6 reconsideration of the compatibility of the proposed use
7 with ORS 215.296(1). However, although we have no reason to
8 believe the county considered the six impacts relating to
9 ORS 215.296(1) in isolation, we cannot determine from the
10 county's findings that it considered their cumulative
11 effects. We therefore sustain the second assignment of
12 error on the sole basis that the county failed to explain in
13 its decision that the impacts it considered in concluding
14 that ORS 215.296(1) is satisfied were considered
15 cumulatively rather than in isolation.

16 The county's decision is reversed.¹

¹On September 29, 1993, intervenor-respondent advised the Board that the application for the permit approval challenged in this appeal had been withdrawn. There was no accompanying motion requesting that this Board not issue an opinion on remand. Petitioners advised the Board on October 1, 1993 that, in their view, "LUBA must act on the Appellate Judgment entered by the Court of Appeals on September 10, 1993."