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, filed the petition for review and argued on behalf of petitioners. With him on the brief was Tonkon, Torp, Galen, Marmaduke & Booth.

Teunis Wyers, Hood River, filed a response brief and argued on behalf of respondent.

B. Gil Sharp, Hood River, filed a response brief and argued on behalf of intervenors-respondent. With him on the brief was Jaques & Sharp.

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

AFFIRMED 11/20/92

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

Opinion by Holstun.

NATURE OF THE DECISION

Petitioners appeal a county decision granting conditional use approval for an 18 hole golf course located on approximately 170 acres of land, 113 acres of which are zoned Exclusive Farm Use (EFU).

MOTION TO INTERVENE

Brookside, Inc. the applicant below, moves to intervene in this proceeding on the side of respondent. There is no opposition to the motion, and it is allowed.

FACTS

The county first granted conditional use approval for the disputed golf course on March 6, 1989. Petitioners appealed that decision to this Board and requested a stay. We denied the request for stay, Von Lubken v. Hood River County, 17 Or LUBA 1150 (1989), but remanded the county's decision. Von Lubken v. Hood River County, 18 Or LUBA 18 (1989) (Von Lubken I). On February 5, 1990, the county again granted conditional use approval. This Board affirmed the county's February 5, 1990 decision, but our decision was reversed by the Court of Appeals. Von Lubken v. Hood River County, 19 Or LUBA 404, rev'd 104 Or App 683, modified 106 Or App 226, rev den 311 Or 349 (Von Lubken II). The central issue in Von Lubken II was whether a Hood River County Comprehensive Plan (HRCCP) Goal 3 standard, referred to as Standard D(9), applied to conditional use approval required

for the disputed golf course. There was no dispute in Von Lubken II that the challenged golf course violated Standard D(9), if the standard applied. We concluded that the standard did not apply, but the Court of Appeals held that it did. Id.

Following the Court of Appeals' decision in Von Lubken II, the county, on June 3, 1991, adopted an ordinance deleting Standard D(9) from the HRCCP. That decision was appealed to this Board.[1] On November 6, 1991, this Board remanded the county's decision. Von Lubken v. Hood River County, ___ Or LUBA ___ (LUBA Nos. 91-102/103, November 8, 1991) (Von Lubken III). Our remand in Von Lubken III was based on the failure of the county's findings to explain how the decision to delete Standard D(9) complied with Statewide Planning Goal 3 (Agricultural Lands) and applicable HRCCP policies. Von Lubken III, slip op at 13-14. On December 16, 1991, the county adopted new findings in support of the ordinance deleting Standard D(9). The county's December 16, 1991 action deleting Standard D(9) was not appealed to this Board and became final.[2] Moreover, there does not appear to

[1]Actually, the county adopted two decisions -- the ordinance deleting Standard D(9) and a resolution adopting findings in support of the ordinance.

[2]Both respondent and intervenor-respondent (respondents) argue the county's December 16, 1991 order adopting findings in response to our remand in Von Lubken III was sufficient to give effect to the June 3, 1991 ordinance amending the HRCCP to delete Standard D(9). Petitioners offer no contrary argument, and appear to concede the point. Petition for Review 9

be any dispute that by operation of ORS 197.625(2), the amendment deleting Standard D(9) from the HRCCP was deemed acknowledged 21 days later on January 6, 1992.[3]

The application that led to the decision challenged in this appeal was filed on August 12, 1991. This application was submitted after the ordinance deleting Standard D(9) was adopted on June 3, 1991, and before our decision in Von Lubken III remanding that ordinance. The application was ultimately approved by the planning commission on January 24, 1992.[4] The planning commission's decision on this application was affirmed by the board of county commissioners on June 15, 1992. The board of county commissioners' June 15, 1992 decision is challenged in this appeal.

During the time the county decisions concerning the disputed golf course have been appealed to this Board and the appellate courts, the golf course has been completed. The golf course was open for play between July 1990 and August 1991. The golf course essentially surrounds two

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n 2. Therefore, for purposes of this opinion, we assume respondents are correct.

[3]ORS 197.625(1) provides, in relevant part, as follows:

> "If no notice of intent to appeal is filed within the 21-day period set out in ORS 197.830(8), the amendment to the acknowledged comprehensive plan * * * shall be considered acknowledged upon the expiration of the 21-day period. * * *"

[4]As noted earlier, after our November 8, 1991 decision in Von Lubken III, the county took action on Decmeber 16, 1991 to again delete Standard D(9) from the HRCCP, and that decision was not appealed.

parcels used by petitioners for orchard purposes. The original decision approving the golf course, and the current decision, require a buffer area between the golf course and petitioners' orchard to minimize conflicts between the two. The parties dispute whether the buffer has been adequate to perform that purpose and whether the golf course, as further conditioned by the challenged decision, will force significant changes in petitioners' accepted farm practices and the costs of such farm practices.

FIRST ASSIGNMENT OF ERROR

In their first assignment of error, petitioners allege respondent erroneously concluded Standard D(9) does not apply to the challenged application. Petitioners argue that because the county's June 3, 1991 decision amending the HRCCP to delete Standard D(9) was remanded in Von Lubken III, the standards in effect when the application was first submitted on August 12, 1991 included Standard D(9).

Under ORS 215.428(3), the standards applicable to the disputed conditional use approval are those standards in effect when the application leading to the challenged decision was submitted. See Kirpal Light Satsang v. Douglas County, 96 Or App 207, 772 P2d 944, modified 97 Or App 614, rev den 308 Or 382 (1989). On August 12, 1991, when the application that led to the decision challenged in this appeal was submitted, the ordinance deleting Standard D(9)

from the HRCCP was effective.[5]

Petitioners' arguments under this assignment of error confuse the fact that the ordinance deleting Standard D(9) was not deemed acknowledged by operation of ORS 197.625(2), with the question of whether the June 3, 1991 ordinance was effective to delete Standard D(9) from the HRCCP. While the June 3, 1991 HRCCP amendment deleting Standard D(9) was not deemed acknowledged at the time the permit application challenged in this appeal was submitted, it was effective at that time and continued to be effective until our decision in Von Lubken III remanded the ordinance on November 9, 1991.

A variety of arguments are possible concerning the legal effect our decision in Von Lubken III might have had on this case, had the county not taken further action on December 16, 1991 to delete Standard D(9) following our decision in Von Lubken III. However, because the county took action following our decision in Von Lubken III to delete Standard D(9) a second time, under any plausible argument, Standard D(9) was not among the HRCCP plan standards applicable to the challenged decision. On both August 16, 1991, the date the application was submitted, and June 15, 1992, the date the challenged decision was adopted,

[5]There is no dispute that under the Hood River County Charter, the ordinance adopted on June 3, 1991 became effective 30 days later, on July 3, 1991.

the HRCCP had been amended to delete Standard D(9). Additionally, on the latter date, by operation of ORS 197.625(2), the amendment to the HRCCP to delete Standard D(9) was deemed acknowledged.

Respondent correctly concluded that Standard D(9) does not apply to the challenged decision. The first assignment of error is denied.

SECOND ASSIGNMENT OF ERROR

Under ORS 215.283(2)(e), golf courses may be established in an EFU zone, subject to the standards in ORS 215.296. ORS 215.296(1) and (2) provide as follows:

> "(1) A use allowed under [ORS] 215.283(2) may be approved only where the local governing body or its designee finds that the use will not:
>
> "(a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or
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> "(b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.
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> "(2) An applicant for a [nonfarm] use allowed under [ORS] 215.283(2) may demonstrate that the standards for approval set forth in subsection (1) of this section will be satisfied through the imposition of conditions. * * *"

Petitioners argue the county erroneously concluded that the disputed golf course will comply with the requirements of

ORS 215.296(1).[6]

As the record in this case makes clear, there exist both potential and real conflicts between accepted farm practices and the nonfarm uses permitted under the EFU zoning statutes. A central purpose of this state's land use program, and the exclusive farm use zoning statutes in particular, is to require that land be developed in a manner that will avoid or minimize such conflicts. Accepted farm practices associated with orchards such as petitioners' include ground and aerial application of a variety of agricultural chemicals, as well as on-site agricultural operations that may be hazardous to trespassing golfers and rendered more dangerous by errant golf balls landing in petitioners' orchard.

All other things being equal, the least constraining neighbors for orchards such as petitioners are similar farm uses. An orchard surrounded by like uses is more likely to have neighbors who understand and are more tolerant of the needs and impacts associated with such uses. For example, such neighbors may be far more tolerant of aerial or ground spraying of agricultural chemicals under conditions where

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[6]Petitioners' challenge under the second assignment of error is presented as an evidentiary challenge, without reference to the findings adopted by the county to address ORS 215.296(1). In their fourth assignment of error, petitioners identify 56 separate findings or groups of findings that they claim are erroneous and not supported by the record. As we note infra, some of the findings challenged under the fourth assignment of error address ORS 215.296(1).

there may be significant drift onto their properties, because they anticipate and receive reciprocal tolerance from their neighbors in conducting their own spraying activities.

ORS 215.296(1) recognizes that nonfarm uses and users may be more sensitive to and less tolerant of accepted farm practices. However, ORS 215.296(1) does not require that a county approving a nonfarm use in the EFU zone assure that there will be no required changes in accepted farm practices on surrounding lands and no increase in the costs associated with such farm practices. In other words, ORS 215.296(1) does not guarantee farmers in EFU zones they will be able to continue to exercise accepted farm practices in precisely the same manner they may historically have conducted those practices when surrounded by similar farm uses. Rather, ORS 215.296(1) protects such farmers from having to make significant changes in accepted farm practices and from incurring significant increases in the costs associated with such accepted farm practices, if one of the many nonfarm uses permitted under the EFU zoning statutes is approved on nearby EFU zoned property.

As discussed below, we have no doubt petitioners' orchard operation has been forced to alter some of its accepted farm practices as a result of the disputed golf course. However, the relevant question under the statute is whether those changes or the costs of those changes have

been or will be significant. For the reasons explained below, we believe the evidence in the record in this case is such that a reasonable decision maker could answer that question either way. In such circumstances, the decision is supported by substantial evidence, and ORS 197.835(7)(a)(C) requires that we defer to the local government's decision. Younger v. City of Portland, 305 Or 346, 360, 352 P2d 262 (1988); Douglas v. Multnomah County, 18 Or LUBA 607, 617 (1990).

A. Trespass

Since the golf course has been constructed, petitioners contend a significant number of golf balls from the golf course land in petitioners' orchard, endangering both the orchard crop and workers. Petitioners contend the golf balls must be picked up before mowing to avoid having the mower strike golf balls. Petitioners further contend workers have nearly been struck by golf balls.

Petitioners also contend golfers have come onto their property to retrieve golf balls. Petitioners argue that these trespassing golfers damage crops and place themselves in danger from accepted farm practices such as the spraying of agricultural chemicals.

Intervenor contends that petitioners' estimate of the number of golf balls landing on the orchard is greatly

exaggerated.[7] Moreover, intervenor contends the trees planted in the buffer area have not yet reached maturity and that once they mature, those trees will more effectively block golf balls from leaving the golf course and landing on petitioners' property. Until the trees mature, intervenor points out a condition was imposed by the county requiring intervenor to install a 30 foot high screen, 70 feet from the out-of-bounds markers on the golf course and ten feet from petitioners' property line, to block golf balls from entering petitioners' property.[8] With this condition, intervenor contends the minimal number of golf balls that may nevertheless leave the golf course and enter petitioners' property will not be sufficient to force a significant change in accepted farm practices or significantly increase the costs of such farm practices.

With regard to trespass by golfers onto petitioners' property, intervenor does not dispute there have been instances of trespass. However, intervenor points out the challenged decision imposes a condition in response to this problem requiring a six foot high fence with barbed wire on

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[7]Intervenor cites evidence in the record that some of the golf balls petitioners contend have landed in the orchard actually were collected by petitioners or petitioners' employees from the buffer area and the golf course.

[8]Respondents point out there is evidence in the record that such a screen placed between the driving range and an adjacent fairway has been effective in blocking golf balls from entering the fairway.

top between the golf course and petitioners' property. Intervenor points out petitioners make no claim that this fence will be ineffective in stopping golfers from trespassing on petitioners' property in the future.

We agree with intervenor that there is substantial evidence in the whole record that, as conditioned, the incidence of errant golf balls and trespassing golfers in the future will not force significant change in or significantly increase the cost of petitioners' farm practices. This subassignment of error is denied.

B. Aerial Spraying

The parties do not dispute that aerial spraying is an accepted farm practice for orchards such as petitioners'. The challenged decision requires that the golf course be closed, upon reasonable notice from petitioners, so that aerial spraying may be conducted without golfers being present on the golf course. The purpose of this condition is to avoid subjecting golfers to drifting spray, which apparently cannot be avoided with any substantial degree of certainty. The person who has conducted aerial spraying activity on petitioners' orchards in the past testified that he would no longer be willing to do so, because the orchards were surrounded by the golf course. Petitioners' sprayer cited concerns with golfers coming into contact with residual off-site spray drift and with enforcing closure of the golf course to golfers during aerial spraying.

In the proceedings leading to the decision challenged in Von Lubken I, intervenor submitted testimony concerning the feasibility of aerial spraying of golf courses adjoining orchards in Yakima, Washington. In our decision in Von Lubken I, we concluded the county's reliance on that testimony in concluding that petitioners would not be prevented from aerial spraying of their orchards was reasonable. Petitioners contend that testimony is substantially undercut by the testimony of petitioners' sprayer, particularly in view of the factual differences between the Yakima orchards and petitioners' orchard. Petitioners argue that while it may be possible to apply agricultural chemicals from the air onto orchards such as those cited in Yakima, which are bordered on only one or two sides by a golf course, by awaiting favorable atmospheric conditions, it is not possible to do so where an orchard is surrounded on all sides by a golf course.

Petitioners concede intervenor produced testimony from an aerial sprayer who indicated he would be willing to conduct aerial spraying on petitioners' orchard. However, petitioners contend that sprayer indicated in a telephone call that he would only spray under certain conditions that petitioners' current sprayer does not impose, and petitioners argue intervenor's sprayer would charge more

than petitioners' current sprayer.[9] Petitioners emphasize that spraying must be conducted within the windows of time when the chemicals need to be applied, if spraying is to be effective.

The question of whether the presence of the golf course significantly affects petitioners' ability to aerially spray their orchard is an exceedingly close one. There is no question from the record that this accepted farm practice is rendered more difficult by the presence of the golf course. However, the record demonstrates that it is possible to apply agricultural chemicals from the air, even where golf courses adjoin the orchard being sprayed. Although petitioners' orchard may present particular difficulties in this regard because it is surrounded by the golf course, at least one aerial sprayer is willing to spray petitioners' orchard, and the county has conditioned its approval of the golf course on intervenor closing the golf course so that aerial spraying can be carried out without golfers being present on the course. In view of these circumstances, we agree with intervenor that there is substantial evidence in

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[9]Petitioners do not identify how much more the sprayer would charge and do not contend that the amount is significantly more than their present sprayer charges.

Petitioners also complain that one planning commission member based his decision in part on an ex parte contact with intervenor's aerial sprayer. As we noted earlier, the decision challenged in this appeal is the decision of the board of county commissioners. There is no argument that members of the board of county commissioners engaged in improper ex parte contacts with the aerial sprayer.

the whole record that the golf course, as conditioned, will not force a significant change in or significantly increase the costs of aerial spraying of petitioners' orchard.

This subassignment of error is denied.

C. Ground Spraying

Petitioners contend, and respondents do not dispute, that ground spraying of agricultural chemicals also is an accepted farm practice. Petitioners argue that under certain conditions drift from such spray may travel up to 400 feet onto the golf course and come in contact with golfers. The potential for such contact is exacerbated, petitioners argue, because fine droplets of spray are not visible to the naked eye. Petitioners argue the golfers go into the 80 foot buffers and that petitioners have had to stop spraying when golfers are present, missing the opportunity to spray during optimal time periods. Petitioners contend these impacts have significantly affected both the cost of and their ability to conduct this accepted farm practice.

Intervenor disputes the magnitude of ground spraying drift and contends that it is not an accepted farm practice to spray during conditions where drift onto adjoining properties is expected. Moreover, intervenor identifies testimony in the record that it is an accepted farm practice to communicate and coordinate with adjoining property owners where drift onto adjoining properties may occur. Intervenor

also points out conditions have been imposed requiring that intervenor provide monitors to take steps to prevent golfers from playing on any hole where spraying is being conducted within 100 feet of the property line. Such action to prevent golfer contact with spray could be improved, intervenor argues, if petitioners would utilize the 24 hour a day answering machine intervenor is required to maintain for purposes of receiving notices of spraying activity. Intervenor contends that requiring notification of expected ground spraying activity, so that steps can be taken to prevent golfers from coming into contact with ground spray, does not force a significant change in petitioners' ground spraying activity and does not significantly increase the cost of that activity.

We conclude the county's determination that the golf course will not significantly affect nor significantly increase the costs of petitioners' ground spraying activities is supported by substantial evidence in the whole record.

D. Air Flow

Adequate air flow into and air drainage from petitioners' orchard is important. For example, inadequate air drainage can lead to cold winter air stagnation which can damage orchard crops. Petitioners contend the fast growing trees planted in the buffer area to contain errant golf balls will inhibit air flow. Petitioners contend this

is particularly the case because the buffer area also includes the 30 foot screen installed to block golf balls while the trees reach maturity and the six foot fence to restrict golfer access to the adjoining orchards. Petitioners contended below that they will be forced to purchase expensive fans and smudge pots to counteract the effect of this air stagnation.

Intervenor identifies evidence in the record that the fence, screen and trees in the buffer area will not significantly affect air flow.[10] Intervenor's Brief 20. The evidence identified by intervenor is evidence upon which a reasonable person would rely.

This subassignment of error is denied.

E. Dust

Petitioners contend that during construction of the existing golf course, dust was deposited on petitioners' orchard, resulting in a mite infestation. Petitioners argue they have been required to apply sprays to control the mites, affecting their accepted farm practices and the costs of those practices.

Intervenor contends that there is absolutely no evidence in the record, other than petitioners' unsupported contentions concerning activity on the subject property in

[10]Intervenor also contends the record shows other development and vegetation on petitioners' property has as much of an impact on air flow as the buffer area features.

the past, to suggest that the challenged decision will result in creation of any dust in the future or that such dust would significantly affect accepted farm practices or their cost. Intervenor argues there is simply no basis in the record to suspect that the challenged decision will result in the creation of dust in the future. We agree.

This subassignment of error is denied

F. Liability

Although intervenor has agreed to guarantee that petitioners will be able to obtain insurance in the future at a cost equal to or lower than that paid by other orchardists in the area, petitioners contend the presence of golfers may expose them to liability above that covered by available insurance.

Intervenor points out there is evidence in the record of an absence of claims for injury or property damage filed against orchardists by golf course patrons using golf courses next to orchards. Moreover, respondent found that petitioners' concerns that such liability may occur in the future are speculative.

We agree with intervenor that the record is sufficient to demonstrate that liability exposure will not force significant changes in or significantly increase the costs of petitioners' farm practices.

This subassignment of error is denied.

The second assignment of error is denied.

THIRD ASSIGNMENT OF ERROR

Petitioners contend the HRCCP includes standards requiring that agricultural uses in EFU zones be protected from incompatible uses. Citing paragraph 7 of the challenged decision, petitioners contend the board of county commissioners improperly refused to consider evidence of the actual operation of the golf course and improperly limited its review of the evidence on compatibility to evidence from the local proceedings leading to our decision in Von Lubken I. The cited paragraph is as follows:

> "The evidence of the golf course operations during 1990 and 1991 was consistent with the [board of county commissioners'] prior analysis in its March 6, 1989, and February 5, 1990, orders supporting the granting of this permit. Those orders were upheld on all issues except the interpretation of Standard D(9). Nothing that has happened since changes our findings on the substantive issues previously decided." Record I, page 4.[11]

Intervenor argues the above finding does not establish that the board of county commissioners refused to consider evidence of the actual operation of the golf course in 1990 and 1991. To the contrary, intervenor argues the finding shows the board of county commissioners did consider that evidence but determined such evidence did not affect its prior conclusions. We agree with intervenor.

The third assignment of error is denied.

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[11]As explained in our August 24, 1992 Order on Record Objections, the record submitted by respondent in this matter is composed of four separate volumes: Record I, Record II, Record App A and Record App B.

FOURTH ASSIGNMENT OF ERROR

Under this assignment of error, petitioners identify 56 findings or groups of findings and allege that those findings "are completely erroneous and not supported by the record." Petition for Review 24. Petitioners make no attempt to explain why the findings listed in the petition for review are critical to the challenged decision and, with limited exceptions, offer no explanation for why they believe the disputed findings are inadequate or not supported by the record. A number of the findings or groups of findings identified by petitioners do not appear to be critical to the challenged decision, and we do not consider petitioners' challenge to those findings further.[12] For other findings or groups of findings, petitioners fail to include sufficient argument to establish that the findings are erroneous or, if the findings are erroneous, why the the error is important to the decision. We therefore do not consider petitioners' challenge to these findings further.[13] Gann v. City of Portland, 12 Or LUBA 1, 6 (1984); see McCarty v. City of Portland, 20 Or LUBA 86, 89 (1990); Dougherty v. Tillamook County, 12 Or LUBA 20, 34 (1982); Tichy v. City of Portland, 6 Or LUBA 13, 23-24 (1982); Deschutes Development Co. v. Deschutes County, 5 Or LUBA 218

[12]Utilizing petitioners' numbering scheme, items 7, 8, 15, 17, 20, 32, 33, 42, and 43 fall into this category.

[13]Items 13, 21, 23 and 30 fall into this category.

(1982).

We address the remaining findings identified by petitioners briefly, but by doing so we do not suggest that petitioners may simply allege that findings are defective and unsupported by substantial evidence and thereby obligate respondents and intervenors to explain why the findings are sufficient and supported by substantial evidence. We expect petitioners to offer at least some argument in support of such allegations to raise an issue sufficiently to warrant review by this Board. See Gann v. City of Portland, supra; Deschutes Development Co. v. Deschutes County, supra.

A. Item 1

Under this item, petitioners identify a finding characterizing the disputed golf course as a type of open space. Petitioners argue the finding shows respondent extended to the golf course an improper presumption of acceptability as a conditional use based on that characterization.

We also question the relevance of characterizing the disputed golf course as a type of open space to the issue of whether applicable conditional use approval standards are met. However, we do not agree the challenged finding shows respondent extended an improper presumption of acceptability as a conditional use based on that characterization.[14]

[14]In support of petitioners' challenge of findings it identifies under items 3, 6, 10, 16, 18, 25, 28, 29, 31, 38, 41, 44, 45, and 49, petitioners

We reject petitioners' challenge to the findings identified in item 1.

B. Item 2

Under this item, petitioners challenge findings that explain golf courses are authorized in the EFU zone and that the county previously approved the disputed golf course. Petitioners' entire argument is as follows:

> "Neither the County nor LUBA has considered this application based upon the record in this case. Their prior findings are irrelevant given the changed record." Petition for Review 25.

We do not agree the county limited its review to the prior record. Indeed, the county explicitly considered evidence of the actual operation of the golf course. Moreover, we do not agree that the prior county findings necessarily are irrelevant; and petitioners offer no argument concerning why, given the new evidence, those findings should be considered irrelevant.

We reject petitioners' challenge to the findings identified in item 2.[15]

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simply include a reference to item 1 without further explanation. We reject petitioners' challenge to the findings contained in these items for the same reason we reject their challenge to the findings identified in item 1.

[15]In support of petitioners' challenge to findings it identifies under items 11, 39, 40, and 47, petitioners simply include a reference to item 2 without further explanation. We reject petitioners' challenge to the findings contained in these items for the same reason we reject their challenge to the findings identified in item 2.

C. Item 4

Under this item, petitioners challenge a statement that the HRCCP identifies a need for 27 holes of golf. Petitioners contend the HRCCP "actually only contemplated, at most, 18 holes of golf." Petition for Review 25. However, petitioners fail to identify where in the HRCCP the disputed information concerning the need for holes of golf can be found.

It is unclear to us whether the needed number of golf holes cited in the finding is erroneous and, if so, whether the error is significant. Without a more developed argument to establish the existence of an error and the significance of the error, we reject petitioners' challenge to the findings in item 4.[16]

D. Item 5

Petitioners allege the findings challenged under this item incorrectly conclude Standard D(9) was deleted before the disputed application was submitted.

We rejected this argument under the first assignment of error and reject petitioner's challenge to the findings challenged in item 5 for the same reasons.

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[16]In support of petitioners' challenge to findings it identifies under items 9, 12, 14, 19, 22, 26, 27, 29, 35, and 46, petitioners simply include a reference to item 4 without further explanation. We reject petitioners' challenge to the findings contained in these items for the same reason we reject their challenge to the findings identified in item 4.

E. Item 24

Under this item petitioners challenge findings that the challenged golf course is compatible with farm use and in compliance with ORS 215.296. Petitioners' entire argument is as follows:

> "The golf course is neither compatible with farm use, nor in compliance with ORS 215.296." Petition for Review 26.

In our discussion of the second assignment of error, we address petitioners' allegations concerning the impacts of the disputed golf course on petitioners' orchard. An additional and more detailed discussion of the findings cited by petitioner under this item is not warranted in view of the lack of additional argument from petitioners.[17]

F. Item 37

In this item, petitioners challenge a finding discussing the county's prior interpretation that Standard D(9) was never intended to apply to golf courses. Petitioners point out that the county's prior interpretation of Standard D(9) was rejected by the Court of Appeals in Von Lubken II.

The county did not rely on the prior interpretation of

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[17]In support of petitioners' challenge to findings it identifies under items 26, 27, 29, 30, 34, 35, 36, 39, 44, 45, 46, 47, 50, 51, 52, 53, 54, 55, and 56, petitioners simply include a reference to item 24 without further explanation. We reject petitioners' challenge to the findings contained in these items for the same reason we reject their challenge to the findings identified in item 24.

Standard D(9) in adopting the decision challenged in this appeal and the finding challenged under this item therefore provides no basis for reversal or remand.[18]

G. Item 48

Under this item, petitioners challenge a finding explaining that orchards adjoining golf courses have been able to coexist without excessive conflicts. Petitioners argue "[n]o other orchard in Hood River County has blocks fully surrounded by a golf course or other conflicting use." Petition for Review 27.

In our discussion under the second assignment of error, we conclude the arguments advanced by petitioners, including the argument quoted above, was not sufficient to demonstrate that the disputed golf course will force significant changes in accepted farm practices or significant increases in the costs of such practices. An additional and more detailed discussion of the finding cited by petitioner under this item is not warranted in view of the lack of additional argument from petitioners.

The fourth assignment of error is denied.

The county's decision is affirmed.

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[18]In support of petitioners' challenge to findings it identifies under items 40, 44 and 46, petitioners simply include a reference to item 37 without further explanation. We reject petitioners' challenge to the findings contained in these items for the same reason we reject their challenge to the findings identified in item 37.