

No. 71213-6-I

COURT OF APPEALS  
DIVISION ONE  
OF THE STATE OF WASHINGTON

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GLENN COOK, an individual  
Appellant  
v.

KING COUNTY, a Washington County,  
Respondent.

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BRIEF OF APPELLANT

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**I. INTRODUCTION.**

This is an appeal of a King County Superior Court Order denying a Land Use Petition based on the Appellant, Glenn Cook's (hereinafter "Mr. Cook") inability to complete the multilevel permitting process imposed upon him by the compounded governmental obligation of FEMA regulations, State Shoreline rules and King County wetland, grading and tangled land use ordinances, in the timeframe handed down by the Hearing Examiner.

The county has prohibited Mr. Cook from landing his personal aircraft on his pasture and from storing it in his barn.

**II. SUMMARY OF ISSUES.**

Whether the trial court, properly denied the Appellant, Mr. Cook's Land Use Petition Act Appeal.

**III. STATEMENT OF THE CASE.**

The Hearing Examiner abused discretion and acted arbitrarily and capriciously by requiring submittal of permits by deadlines and without adequate and obtainable time frames. The county's various departments cannot accommodate permitting, as ordered because the CAD (Critical Area Designation) approval or designation is a prerequisite to applying for septic system designs approval and the county's time frame for the CAD is 3-4 months, and a building permit application cannot be submitted without

another pre-application meeting and septic system design approval all of which are dependent upon determination of floodway status, which the appellant is prepared to apply for an amendment thereto.

Compounding the offense of the Hearing Examiner's Decision, after issuance of the Decision of May 14, 2013, and in reliance thereon the Petitioner having incurred additional expense in excess of \$30,000 in producing the necessary application documents for and submittal for the CAD expended, the fee for which King County accepted \$1,460.55, which it has retained, without remittance, even though the County summarily rejected the application (CP 14). Without a CAD, the former DDES and King County Health Department (septic system) will not let the Petitioner move forward in the permitting process. (CP 14).

The prejudicial attitude of the hearing examiner who failed to provide adequate time to complete the permitting process is seen in his statement:

“And so ensued five years of fruit less delay and bureaucratic buffoonery”. (CP 14)

The decision requires Mr. Cook to file application for building permits on or before July 19, 2013. (CP 14). Fulfillment of that requirement is gruelingly impossible, for the reasons stated below; but moreover known to the Hearing Examiner, Stafford Smith. (CP 14).

Aspects of the problem. There are several aspects of the problem of complying with the decision time line ordered as related by Stephen Bottheim of Land Use Division:

Mr. Cook has contracted with a professional hydrologist to prepare and submit an application to FEMA for a letter of amendment for determination whether the offending structures are located in the flood fringe versus flood way for dealing with King County Dept of Health for an ABC septic system permit, and the Land Use Division. But with assurance of cooperation by DDES, the Petitioner is reticence to contract for the great added expense.

The County requires the following procedural steps before formal submittal of the required application for building permits:

Submittal of application for critical area designation (CAD), following approval by Stephen Bottheim, was filed on May 22, 2013, a day before the door of opportunity was slammed in Petitioner's face on May 23, 2013. (CP 14).

Review and decision on the CAD application would have taken at least 90 days (July 22), 3 days past the July 19 deadline in the Decision. (CP 14).

The letter to be issued by the Department of Permitting and Environment on the CAD application was to be a prerequisite to applying

for the Health Department septic system ABC permit, decision on which is a prerequisite to submitting the ABC building permits. (CP 14).

A renewed pre-screening meeting (a pre-application meeting was held in 2006 but their value lasts only 180 days and the requirements have now changed) is required before submitting the building permit application (with the attendant documents), and documents for which are now being prepared. (CP 14).

On May 22, 2013, the undersigned attorney met with Stephen Bottheim at the intake counter who reviewed the application for critical area designation (CAD). (CP 14). This application is the first step in complying with the Hearing Examiner's decision. (CP 14).

The information and time line data described above are facts relayed to James D. McBride by Stephen Bottheim on May 22, 2013. (CP 14).

King County rules concerning construction of residential and agricultural structures require more time to complete than provided in the orders appealed. (CP 14).

Mr. Cook Appealed the Hearing Examiner's Order to King County Superior Court. The King County Superior Court Judge denied Mr. Cook's appeal. (CP 14).

**IV. ASSIGNMENTS OF ERROR ON APPEAL**

**A. KING COUNTY SUPERIOR COURT ERRED WHEN IT DENIED MR. COOK'S LUPA PETITION.**

Mr. Cook seeks reversal of the May 14, 2013 and May 23, 2013 orders denying time to complete the permitting process.

**V. SUMMARY OF ARGUMENT.**

The hearing examiner abused discretion and acted arbitrarily and capriciously by requiring submittal of permits by deadlines and within inadequate and non-obtainable time frames. The county's various departments cannot accommodate permitting, as ordered because the CAD approval or designation is a prerequisite to applying for septic system designs approval and the county's time frame for the CAD is 3-4 months, and a building permit application cannot be submitted without another pre-application meeting and septic system design approval all of which are dependent upon determination of floodway status, which the appellant is prepared to apply for an amendment thereto.

**VI. ARGUMENT.**

**A. STANDARD OF REVIEW.**

Under Land Use Petition Act, Court of Appeals stands in the shoes of the superior court, and reviews the hearing examiner's land use decision de novo on the basis of the administrative record. *See Girton v. City of Seattle*, 97 Wn. App. 360, 983 P.2d 1135, review denied 140 Wn2d 1007, 999 P.2d 1259 (1999).

**B. ABUSE OF DISCRETION.**

“An abuse of discretion is found where the court's decision is manifestly unreasonable, or exercised on untenable grounds, or based on untenable reasons.” *Hizey v. Carpenter*, 119 Wn.2d 251, 268, 830 P.2d 646 (1992). King County and the Department of Environmental Services abused their discretion in their refusal to grant Mr. Cook additional time to complete the permitting process to comply with the code enforcement. The County did not provide Mr. Cook with enough time to complete the Critical Area Designation to get a permit.

**VII. CONCLUSION.**

King County and the Department of Permitting and Environmental Review abused their discretion in their refusal to grant Mr. Cook additional time to complete the permitting process to comply with the code

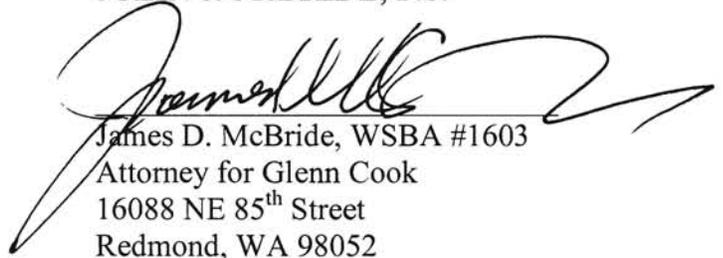
complete the Critical Area Designation to get a permit. Mr. Cook can complete the required permitting and comply with the code enforcement if he is given more time.

**RELIEF REQUESTED**

Mr. Cook requests remand to the code enforcement proceedings with direction to permit Mr. Cook to complete the permitting process.

Respectfully submitted this 16 day of April, 2014

**JULIN & McBRIDE, P.S.**



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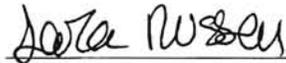
I, SARA J. RUSSEL, being duly sworn first upon oath, depose and say that:

I am a citizen of the United States of America, over the age of 21 years and competent to be a witness herein.

On the 16<sup>th</sup> day of April, 2014, I sent via email to jill.hendrix@kingcounty.gov and deposited a copy of the Brief of the Appellant in the United States Mail, first class mail, postage prepaid to:

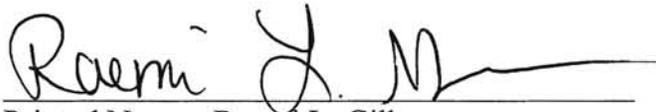
King County Prosecuting Attorney's Office  
Daniel T. Satterberg, Prosecuting Attorney  
Jill Hendrix, Prosecuting Attorney  
W400 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

Dated this 16<sup>th</sup> day of April, 2014



SARA J. RUSSELL

SUBSCRIBED AND SWORN to before me this 16<sup>th</sup> day of April,  
2014



Printed Name: Raemi L. Gilkerson  
NOTARY PUBLIC in and for the State of WA,  
Residing at: Lynnwood, WA  
My Commission Expires: 11/20/17

RAEMI L. GILKERSON  
STATE OF WASHINGTON  
NOTARY PUBLIC  
MY COMMISSION EXPIRES  
11-20-17