

NO. 71213-6-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

GLENN COOK,

Appellant,

v.

KING COUNTY,

Respondent.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE WILLIAM DOWNING

BRIEF OF RESPONDENT

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DIVISION I
JAN 19 11 21 AM '11

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I. INTRODUCTION

Appellant Glenn Cook seeks review of the trial court's denial of his Land Use Petition Act ("LUPA") appeal, which upheld a decision of King County Hearing Examiner pro tem Stafford Smith, issued on May 14, 2013. Though not raised directly at the superior court level, appellant also seeks by this appeal reversal of a subsequent decision by Interim Hearing Examiner David Spohr, issued on May 23, 2013. Brief of Appellant, p. 5, Assignments of Error on Appeal.

The May 14, 2013 decision of Examiner Smith denied appellant Cook's appeal of a Notice and Order issued by King County Department of Development and Environmental Services ("DDES"), subsequently renamed Department of Permitting and Environmental Review ("DPER") , an appeal that lasted five years, due to appellant's repeated requests for continuances. CP 9, ¶ 3, and CP 9, Decision.

Examiner Smith ruled, on the basis of properly admitted evidence presented at the hearing, that the appellant did not substantively dispute the validity of the DPER Notice and Order, had not met his burden of proof on most of the issues presented, and that the compliance requirements of the relevant county land

use code provisions were impracticable for the appellant to achieve. CP 9-10.

On May 22, 2013, appellant filed with the Hearing Examiner a motion to stay enforcement of Hearing Examiner Smith's decision. The basis for appellant's motion was that he needed additional time to abate the violations on his property. CP 14. On May 23, 2013, Interim Hearing Examiner David Spohr entered a ruling, after consideration of the May 14, 2013 findings, conclusions, and order of Examiner Smith, that appellant's likelihood of code compliance was all but impossible. CP 13, ¶¶ 2-3. That ruling requested DPER to respond to appellant's motion, and advise the Examiner whether the conclusion that compliance by Mr. Cook was unrealistic was reasonable CP 13, ¶¶ 4-5. On May 31, 2013, DPER responded, with a detailed letter explaining that appellant's chance of satisfying the necessary requirements for complete code compliance were virtually nonexistent. CP __.¹

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¹ Because Appellant Cook did not designate the entire LUPA record for appellate review, DPER's May 31, 2013 response to Examiner Spohr's decision is not yet included the Clerk's Papers. King County has filed a Supplemental Designation with Superior Court and Division One, and will file an Errata with a proper Clerk's Papers citation after the DPER May 31, 2013 response is designated and made part of the appellate record.

II. STATEMENT OF ISSUES

1. Were the Hearing Examiner decisions supported by substantial evidence?
2. Were the Hearing Examiner decisions based on erroneous interpretations of the applicable law?
3. Were the Hearing Examiner decisions clearly erroneous applications of the applicable law to the facts of the case?

III. STATEMENT OF THE CASE

This action arises out of King County's investigation of Petitioner's violations of various health, building, and environmental land use laws. These violations occur on certain real property which is located at parcel 2326069031, a parcel of real property, in the unincorporated portion of King County. CP 54-57. On February 26, 2008, the King County Department of Development and Environmental Services ["DDES," now, Department of Permitting and Environmental Review, "DPER"] issued an administrative Notice and Order to Petitioner regarding the violations. CP 54-57. That Notice and Order cited Mr. Cook with the following violations:

1. Construction of a foundation and placement of a residence without the required permits, inspections and approvals; within an environmentally critical area (aquatic area, floodplain) and/or its buffer and within the shoreline conservancy area;

2. Placement of and additions to an accessory structure (hanger being used as storage and a roof over a recreational vehicle) without the required permits, inspections and approvals; within an environmentally critical area (aquatic area, floodplain) and/or its buffer and within the shoreline conservancy area;
3. Placement of a commercial coach without the required permits, inspections and approvals; within an environmentally critical area (aquatic area, floodplain) and/or its buffer and within the shoreline conservancy area;
4. Accumulation of assorted rubbish, salvage and debris including but not limited to household goods, appliances, scrap metal, scrap wood, glass and plastic throughout the premises of this residential site;
5. Occupancy of a substandard dwelling (recreational vehicle);
6. Clearing and/or grading within a critical area (aquatic area, floodplain) and/or its buffer and a Shoreline Environment without the required permits and/or approvals;
7. Establishment of a use (aircraft runway and aircraft storage) not allowed in the zone;
8. The placement of structures (platform, deck addition onto RV) and the storage of a recreational vehicle within an environmentally critical area (aquatic area, floodplain) and/or its buffer and within the shoreline conservancy area.

CP 54-55.

The King County Code provides that Notice and Orders can be challenged through an administrative appeal before the King County Hearing Examiner. The code provides that such administrative appeals must be initiated by filing a Notice of Appeal within 14 days after the Notice and Order is issued. KCC 20.24.090; CP 57. Within 21 days after the Notice and Order is issued, an appellant is also required to file a Statement of Appeal. CP 57.

Petitioner filed a timely Appeal. CP 59-68. After a five-year period of multiple continuances and interlocutory orders, on May 14, 2013, the Hearing Examiner issued a decision which denied Petitioner's appeal. CP 4-11.

Briefly summarized, Petitioner Glenn Cook's primary bases for appeal are:

1. "(Mr. Cook's) inability to complete the multilevel permitting process imposed on 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." Brief of Appellant, Introduction, p. 1;
2. "The Hearing Examiner abused discretion and acted arbitrarily and capriciously by

requiring submittal of permits by deadlines and without adequate and obtainable time frames.” Brief of Appellant, Statement of the Case, p. 1;

3. “King County rules concerning construction of residential and agricultural structures require more time to complete than provided in the orders appealed (CP 14).” Brief of Appellant, Statement of the Case, p. 4; and,
4. “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. Brief of Appellant, Abuse of Discretion, p. 6.

In the course of reaching his published Findings and Conclusions, Examiner *pro tem* Stafford Smith, a seasoned Hearing Examiner with extensive land use appellate experience, documented his review of the appellate record. The following excerpts from the Report and Decision reflect some of Examiner Smith’s close consideration of the factual and legal issues presented, and his key findings and conclusions.

A. Procedural Background

2. . . . For the most part the appeal statement does not deny the existence of the cited structures or uses, but rather argues that the

notice and order is vague and inadequate or that the uses and structures are actually permitted as configured. For example, the existence of the aircraft hangar and runway are acknowledged, but the county's attempted regulation of their use is challenged. Further, the continued residential occupancy of a recreational vehicle (RV) for a period of some 15 years has been admitted. And the repeated representations by the Appellant's attorney of an intention to apply for shoreline variances to legalize various structures on the property must be regarded as an admission that the parcel lies within shoreline management jurisdiction.

3. The major event in the five-year procedural saga that led up to the May 7, 2013 hearing was a motion for stay and continuance filed by attorney McBride on May 22, 2008. It sought to stay the appeal hearing pending determination of a menu of preliminary actions, including filing of a number of permit applications and completion of various studies. The centerpiece of this continuance strategy was a request to defer the county enforcement process pending completion of an appeal before the Federal Emergency Management Agency (FEMA) challenging the designation of the Cook property as lying within a floodway² and requesting its reclassification as floodplain.³

* * * * *

² The floodway is the land most severely affected by flooding and must be able to carry and discharge floodwaters. No development is allowed in this area. DPER Customer Information Bulletin No. 38, p. 2, CP 81-89.

³ Floodplain is the total area subject to inundation by the 100-Year Flood (also known as the "Base Flood"). DPER Customer Information Bulletin No. 38, p.4, CP 84.

9. . . . On January 12, 2012, the prior Examiner issued a pre-hearing document in this proceeding, entitled, "Notice of Pending Further Continuance On-call and Interlocutory Order," that documented the results of a telephonic conference held on July 6, 2012. It relates that "the Appellant has agreed to provide information regarding the FEMA review process and understood timeline for FEMA's review and decision on Applicant's pending letter of map change application." This item is of interest in the context of Mr. Weiss's (*Mr. Weiss was a lay witness during the hearing*) testimony at the May 7, 2013 hearing to the effect that the Cook appeal to FEMA was denied sometime in 2011. Mr. McBride elaborated that the FEMA appeal failed because it could not even be legally maintained unless formally supported by the County Executive. This tells us that the Applicant and his attorney were still milking the FEMA appeal for further delays well after they knew that the FEMA appeal had been denied and was indeed a legal impossibility.

10. The current Examiner assigned to this case issued a notice of hearing on January 22, 2013, reciting, among other things, that "no request for further indefinite continuance of the hearing date or the deadlines stated" would be entertained. So Mr. McBride at 3:56 p.m. on the Friday before the hearing scheduled for Tuesday, May 7, 2013, filed with the Hearing Examiner's Office a document labeled "Motion for Continuance for Definite Period." It requested a 60 day continuance of the hearing so that the Appellant could file a new and different FEMA appeal. It appears that Mr. McBride had recently visited the FEMA website and discovered a newly instituted online letter of map change process that he thought it might

be fun to try. Mr. McBride's motion was heard and summarily denied by the Hearing Examiner at the opening of the May 7, 2013, hearing.

B. Substantive Issues

11. . . . The Appellant provided a minimal defense to the citations within the notice and order. As regards the first three, no dispute exists that the residence, accessory structures and commercial coach were placed on the property without building permits. The county's mapping shows the entire site as lying within shoreline management jurisdiction, a fact which in itself is sufficient to sustain the critical area citations in their broadest context. In addition, the Snoqualime River obviously forms the western boundary of the site, and the Appellant's own biological report identifies two wetlands on the parcel as well as a seasonal stream. It is therefore plain that to some extent aquatic areas and their buffers are existent features on the property.

12. The operative FEMA map for this part of the county, most recently revised in 2005, shows the Cook property to be not only within the floodplain but in the floodway as well, thus subjecting the parcel to a very restrictive regulatory regime. Even though this floodway designation has been at least nominally contested by the Appellant (and FEMA's map updating process appears to be largely paralyzed), there is no serious reason to doubt that a floodway designation is appropriate in this instance. This is because the Cook property falls in the central part of the FEMA designated floodway. As shown by the aerial photographs, it indeed lies between the current Snoqualmie River channel and a remnant older

river channel further east. As depicted by the current FEMA map, the site is about 2,000 feet east of the western boundary of the FEMA floodway and nearly a mile west of the floodway's eastern boundary. The three aerial photographs in exhibit 9 taken in 2002, 2007 and 2009 all clearly show a remnant river channel lying along the east side of the site and intruding onto its southeast corner. There is no basis either in the record or in elementary logic for concluding that a property located within a river's meander zone, bounded on one side by the existing river channel and on the other by the river's former channel (now an open water wetland), can be regarded as lying somehow outside the floodway. Present and historic river channels bracket the Cook property on both sides; welcome to Downtown Floodway.

13. Regarding citation no. 5 within the notice and order, Mr. Cook admitted that the RV on his site has been regularly occupied for some 15 years. Section 202 of the International Property Maintenance Code defines a legal dwelling unit as one that provides permanent provisions for living, sleeping, eating, cooking and sanitation. An RV intrinsically fails to meet this definition.

* * * * *

15. Citation no. 7 within the notice and order must be upheld as to the aircraft runway use. There is nothing within the relevant provisions of KCC Title 21A.08 that permits a runway as accessory to either a residential or an agricultural resource use. Runways are permitted as regional uses for specified forestry, agriculture or emergency services but only with the issuance of a special use permit. KCC 21A.06.050, cited by the appeal

statement, only provides a definition for an airport/heliport and is non-regulatory in effect. But no showing has been made by DPER that storage of a small airplane itself is a prohibited activity.

CONCLUSIONS:

1. Except for the allegations of clearing and grading within a critical area and aircraft storage, DPER has made a *prima facie* showing in support of each of the violations cited within its notice and order. The Appellant has offered no substantial evidence that the alleged violations either do not exist or exist in a form permitted by the regulatory scheme. The anecdotal testimony from Mr. Cook and Mr. Weiss to the effect that structures on the Cook property have not flooded in the past few years lacks foundation, documentation and specificity and relates to an inadequate analytical time frame. Floodplain regulations are based on a precisely calculated probability of a 100-year flood event, not on casual short-term observations. The Appellant's burden of proof has not been met.
2. The continuing pleas from the Appellant's attorney for regulatory leniency are not persuasive. Even if one disregards a lengthy prior history of deception and manipulation, there is no reason to believe that further delay could produce a different regulatory outcome. Appeals to FEMA mapping determinations may entertain some hope of success when a parcel lies close to the edge of a regulatory boundary. In such a case, more sophisticated elevation data can sometimes generate a boundary shift sufficient to remove a lot or structure from regulatory limitations. But Mr. Cook's parcel lies near the middle of the floodway. The likelihood that he would be able to generate

data warranting his parcel's removal from floodway status can only be described as infinitesimal.

3. As a matter of course, a notice and order issued by DPER will include as a compliance remedy the option to obtain certain necessary permits. Sometimes that is a realistic option; other times it is not. The order set forth below retains *pro forma* the option for the Appellant to secure permits within a regulated floodway. But as explained above, the facts of record do not disclose any basis for believing that such permits can ever be issued. Accordingly, the compliance deadlines set forth below should be strictly adhered to. The Appellant already has been availed a generous 5-year window to search for a path out of the regulatory maze. The outcome was mere tomfoolery. It's time for the party to end.

DECISION:

The Glenn Cook code enforcement appeal is GRANTED as to item number 6 within the notice and order relating to clearing and grading and that portion of item 7 related specifically to aircraft storage. The appeal is DENIED, and the notice and order upheld, as to the remaining citations.

(Footnotes and *italicized parenthetical added*.) Excerpts from Report and Decision as set forth in King County's Response to Petitioner's LUPA Brief, CP 38-42.

On June 12, 2013, Hearing Examiner *pro tem* Stafford Smith denied Appellant's motion for reconsideration and to stay enforcement, reasoning and ruling as follows:

8. . . . Mr. Sandin's May 31, 2013 letter confirmed that on Mr. Cook's floodway parcel "without change in the designation of the floodplain, none of the structures, as currently used, could be approved." The letter then explained that, due to the Cook's property's location in the central part of the mapped floodway, its regulatory status cannot be altered by a (relatively) simple application to FEMA for a letter of map amendment (LOMA). Rather, it would require a more rigorous and complex letter of map revision (LOMR): . . .

9. Finally, with respect specifically to the large storage facility/airplane hangar on the Cook property, Mr. Sandin related that it could conceivably be issued a permit without a FEMA map amendment but that "the process would be difficult and expensive." To approve the structure as an agricultural accessory building would require Mr. Cook to establish an agricultural use of the property (currently nonexistent) and demonstrate that its siting would not result in a loss of effective flood storage. This would likely require the building to be elevated to allow water passage underneath or reconstructed to allow water to flow through. Further, its current location impinges upon a stream buffer, so it would probably have to be moved. Finally, though not mentioned by Mr. Sandin, there is nothing in the record to suggest that Mr. Cook has any actual interest in either establishing agricultural operations on the property or employing the structure in any manner whatever if his residential use is terminated. In short, the exercise of permitting the structure as an agricultural accessory building would not only be difficult and expensive but probably pointless as well.

ORDER

The motion of Glenn Cook for reconsideration of the Examiner's May 14, 2013, decision and requesting a stay of permit application deadlines is DENIED. The May 14, 2013 decision is affirmed as issued.

ORDERED June 12, 2013.

Order Denying Reconsideration, CP ____-____.⁴

Petitioner has now filed this LUPA appeal to Division One, again challenging the Hearing Examiner's decision. King County submits to this Court that the appellant's brief completely fails to satisfy his burden to show, directly or indirectly, that the Hearing Examiner either failed to properly consider the evidence in the administrative record, or erroneously applied the applicable law to the issues presented, in his adjudication of Mr. Cook's challenge to the County's Notice and Order. The Hearing Examiner's May 14, 2013 Report and Decision and subsequent refusal to stay enforcement are supported by substantial evidence, and properly applied applicable law.

⁴ Because Appellant Cook did not designate the entire LUPA record for appellate review, The Hearing Examiner's Order Denying Motion for Reconsideration, entered June 12, 2013, is not yet included the Clerk's Papers. King County has filed a Supplemental Designation with Superior Court and Division One, and will file an Errata with the Court containing a proper Clerk's Papers citation after the Examiner's June 12, 2013 order is designated and made part of the appellate record.

Similarly, the May 23, 2013 Decision entered by Hearing Examiner Spohr was carefully reasoned. It properly paid deference to DPER, the relevant regulatory authority, and requested DPER confirm whether appellant Cook's prospects for obtaining all necessary county permits and approvals, and FEMA remapping of his property, were realistically achievable, or impracticable.

The County further contends that Mr. Cook's legal arguments lack merit. For all these reasons, therefore, his LUPA appeal must fail.

IV. ARGUMENT

A. The Hearing Examiner Did Not Abuse His Discretion in Denying Appellant's Appeal or Motion For Stay of Enforcement.

Standard of Review

A party seeking relief under the Land Use Petition Act has the burden to show that a local government's land use decision violates the standards set forth in RCW 36.70C.130(1), which may be paraphrased as follows:

- a. the decision maker engaged in unlawful procedure, unless the error was harmless;
- b. the land use decision is an erroneous interpretation of the law,

- after granting appropriate deference to the local government;
- c. the land use decision is not supported by substantial evidence;
 - d. the land use decision is a clearly erroneous application of the law to the facts;
 - e. the land use decision is outside the jurisdiction of the decision maker; or
 - f. the land use decision violates the constitutional rights of the party seeking relief.

See RCW 36.70C.130(1).

In *Rosema v. City of Seattle*, 166 Wn.App. 293, 269 P.3d 393 (Div. I, 2012), Division One of the Court of Appeals explained the standard of review of LUPA cases as follows: “. . . [U]nder LUPA, the party who filed the petition must establish that one of the standards in RCW 36.70C.130(1) is met.” *Rosema v. City of Seattle*, 166 Wn.App 293, at 297, 269 P.3d 393. The *Rosema* Court went on to explain various tests under the LUPA standard for review:

We review the City's actions on the administrative record, without reference to the superior court decision. Under LUPA, the party who filed the petition must establish that one of the standards in RCW 36.70C.130(1) is met. The statute provides, in pertinent part:

(b) The land use decision is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise;

(c) The land use decision is not supported by evidence that is substantial when viewed in light of the whole record before the court;

(d) The land use decision is a clearly erroneous application of the law to the facts. . . .

. . . We review alleged errors of law de novo, after giving due deference to the local jurisdiction's interpretation of its codes and standards where there is ambiguity or conflict. We review a challenge to the sufficiency of the evidence under the substantial evidence standard, viewing the evidence and reasonable inferences in the light most favorable to the prevailing party in the highest forum that exercised factfinding authority. We review application of the law to the facts under the clearly erroneous standard, reversing only when, after considering the entire record, we are firmly convinced the administrative body erred.

(Footnotes by the Court omitted. Emphasis added.). *Rosema*, at 297-98.

Rosema holds that this Court, in its consideration of Appellant Cook's contention that he was treated unfairly by the County and the Hearing Examiner, and Mr. Cook's claim that the Examiners misinterpreted and/or misapplied the applicable law, must view the evidence in the record of the controlling FEMA

designations, the appellant's failure to present any meritorious defense to the County's Notice and Order, and significantly, the demonstrative evidence of the utter futility of Petitioner's dubious FEMA appeal, *and all reasonable inferences to be drawn from that evidence, in the light most favorable to the County*. When applying *Rosema's* substantial evidence standard to Mr. Cook's appeal, the County must prevail, because the most reasonable view of the record compels the conclusion that Appellant Cook did not submit any evidence of substantial weight, or any persuasive controlling legal authority, to the Hearing Examiner.

Similarly, *Rosema* holds that under Washington State's "clearly erroneous" standard, the Examiner's decisions to uphold the Notice and Order cannot be reversed unless the reviewing court, after considering the entire appellate record, leaves its review firmly convinced that Examiner Stafford made an error in deciding the appeal in King County's favor. Appellant failed to cite any supporting authority for either of the examiners to follow, and more importantly, the examiners simply did not err.

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B. The Hearing Examiner Decisions Were Based on Substantial Evidence

The excerpts set forth at pages 6-14 above herein clearly demonstrate that in the course of reaching his decision, Hearing Examiner Stafford Smith provided numerous references to the factual evidence in the administrative record on Mr. Cook's appeal. Examiner Smith pointed to the County and FEMA mapping designations as the factual bases of his finding that the appellant's property is situated in a floodway/wetland. CP 8, ¶ 12. And in his weighing of the merits of appellant's appeal, Examiner Smith also pointed out appellant's complete lack of supporting evidence. For example, among his conclusion, he noted that:

Except for the allegations of clearing and grading within a critical area and aircraft storage, DPER has made a *prima facie* showing in support of each of the violations cited within its notice and order. The Appellant has offered no substantial evidence that the alleged violations either do not exist or exist in a form permitted by the regulatory scheme. The anecdotal testimony from Mr. Cook and Mr. Weiss to the effect that structures on the Cook property have not flooded in the past few years lacks foundation, documentation and specificity and relates to an inadequate analytical time frame. Floodplain regulations are based on a precisely calculated probability of a 100-year flood event, not on casual short-term observations. The Appellant's burden of proof has not been met.

CP 9, ¶ 1.

C. Appellant Fails to Point to Any Controlling Legal Authority

Other than to support his argument for the applicable standard of review of his appeal, appellant does not cite a single legal authority in support of his arguments that the decisions of Examiners Smith and Spohr warrant reversals. Division One caselaw supports King County's argument that no unsupported arguments of the appellant's appeal should be considered by the Court:

. . . We will not consider an inadequately briefed argument. See Bohn v. Cody, 119 Wn.2d 357, 368, 832 P.2d 71 (1992) (appellate court will not consider inadequately briefed argument); Cowiche Canyon Conservancy v. Bosley, 118 Wn. 2d 801, 809, 828 P.2d 549 (1992) (argument unsupported by citation to the record or authority will not be considered).

See, *Norcon Builders, LLC v. GMP Homes VG, LLC*, 161 Wn.App. 474, 486, 254 P.3d 835 (2011).

The decision not to afford appellant Cook even more time is not without reason, untenable, or "manifestly unreasonable," when examined against the five-year procedural backdrop of his appeal, his inability to mount a serious challenge to the violations presented by the County, and his complete failure to meet his burden of proof

requiring him to refute the evidence that it was impossible for him to satisfy all the regulatory requirements to reverse the FEMA mapping designation placing his property in the middle of a 100-year flood plain, bring his illegal buildings into compliance with all applicable wetland and shoreline regulations, and use his property as an aircraft landing strip.

At best, appellant Cook's appeal only repeats hollow conclusory assertions that the decisions of the hearing examiners were manifestly unjust. The reasoning process of each examiner's ruling is clear, and unambiguously points to concrete evidence that was properly submitted to him and properly admitted into the record. None of the conclusions of the examiners should reasonably be deemed untenable. Since Mr. Cook's appeal was granted a five-year life span, he received all the process that was due.

D. Appellant's Assignment of Error Challenging the May 23, 2013 Hearing Examiner's Ruling Should Not Be Considered

Appellant Cook assigned error in this Court of the May 23, 2013 ruling of Hearing Examiner David Spohr, on appellant's motion for reconsideration and for an order staying enforcement of the May 14, 2013 decision of Hearing Examiner Smith. But

appellant did not assign error to Examiner Spohr's May 23, 2013 ruling, or to Examiner Smith's June 12, 2013 ruling denying his motion for reconsideration in his LUPA appeal filed with superior court.

Because Mr. Cook failed to raise any challenge to these rulings in his LUPA appeal in superior court, his assignments of error should not be heard. *Mangat v. Snohomish County*, 176 Wn.App. 324, 308 P.3d 786, 791 (Wn.App. Div. 1,2013) provides persuasive authority in support of this argument:

The Mangats make two additional arguments: (1) the County had no authority to "revive" their application because it had expired; and (2) the County had no authority to "backdate" the plat application. These arguments, however, were never made to the trial court and are instead being raised for the first time on appeal. As such, we decline to consider them. RAP 2.5(a) (appellate court may "refuse to review any claim of error which was not raised in the trial court").

Mangat v. Snohomish County, 176 Wn.App. 324, 334, 308 P.3d 786, 791 (Wn.App. Div. 1,2013).

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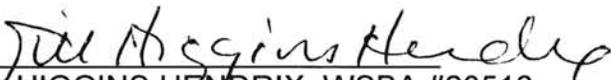
V. CONCLUSION

For the foregoing reasons, the trial court's dismissal of appellant Cook's LUPA appeal should be affirmed.

DATED this 19th day of May, 2014.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 
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Senior Deputy Prosecuting Attorney
Attorneys for Respondents King County

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CERTIFICATE OF SERVICE

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STATE OF WASHINGTON

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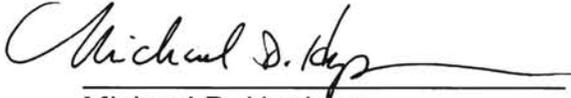
I, Michael Hepburn, hereby certify and declare under penalty of perjury under the laws of the State of Washington that the following is true and accurate:

1. I am a legal assistant in the King County Office of the Prosecuting Attorney, over eighteen years of age, not a party to this action, competent to testify, and make this declaration from my personal knowledge.

2. On Monday, May 19, 2014, I caused to be delivered via legal messenger to the address of the offices of the attorney for appellant Glenn Cook as specified below, copies of King County's Cover Letter to Division One, King County's Response Brief, Supplemental Designation of Clerk's Papers, and this Certificate of Service. Said copies of the aforementioned documents were delivered to the address below:

James D. McBride, Esq.
16088 NE 85th Street
Redmond, WA 98052

DATED: This 19th day of May, 2014, at Seattle, Washington.


Michael D. Hepburn

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RESPONDENT'S ERRATA TO RESPONDENT'S BRIEF

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ERRATA

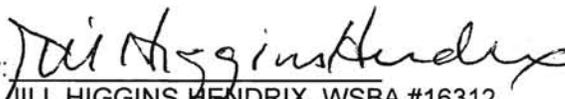
Page 2 of Respondent's Brief contains the following citation to the King County Superior Court record: "CP ____." The citation should read, "CP 311-314." The citation refers to a letter from Randy Sandin of the King County Department of Permitting and Environmental Services to the King County Hearing Examiner, dated May 31, 2014, responding to issues raised by appellant Cook's motion for reconsideration and for an order staying enforcement of the Hearing Examiner's May 14, 2013 Report and Decision.

Page 14 of Respondent's Brief contains the following citation to the King County Superior Court record: "CP ____ - ____." The citation should read, "CP 209-210." The citation references the June 12, 2013 Order Denying Appellant's Motion for Reconsideration, entered by King County Hearing Examiner pro tem Stafford Smith.

DATED this 23rd day of May, 2014.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 
JILL HIGGINS HENDRIX, WSBA #16312
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NO. 71213-6-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

GLENN COOK,

Appellant,

v.

KING COUNTY,

Respondent.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE WILLIAM DOWNING

CERTIFICATE OF SERVICE

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FILED
COURT OF APPEALS DIVISION I
STATE OF WASHINGTON
2014 MAY 23 PM 3:10

ORIGINAL

I, Michael Hepburn, hereby certify and declare under penalty of perjury under the laws of the State of Washington that the following is true and accurate:

1. I am a legal assistant in the King County Office of the Prosecuting Attorney, over eighteen years of age, not a party to this action, competent to testify, and make this declaration from my personal knowledge.
2. On Friday, May 23, 2014, I caused to be delivered via legal messenger to the address of the offices of the attorney for appellant Glenn Cook as specified below, copies of Respondent's Errata to Respondent's Brief, and this Certificate of Service. Said copies of the aforementioned documents were delivered to the address below:

James D. McBride, Esq.
16088 NE 85th Street
Redmond, WA 98052

DATED: This 23rd day of May, 2014, at Seattle, Washington.



Michael D. Hepburn