



TABLE OF CONTENTS

	<u>Page</u>
Table of Contents	i
Table of Cases, Statutes Other Authorities	ii
Introduction	1
Comment #1: Collateral Attack	1
Comment #2: Fraud	9
Comment #3: Deference	12
Comment #4: Measurement Methodology	16
Comment #5: Site Visit	18
Comment #6: The BOCC "To the extent" Decision	20
Comment #7: International Residential Code 2006 Edition	
Comment #8: Aggrieved Party and Standing	21
Conclusion and Request for Relief	21

TABLE OF CASES, STATUTES AND OTHER  
AUTHORITIES

	<i>Page</i>
<i>Cingular Wireless, L.L.C. v. Thurston County</i> 131 Wn. App. 756	13
<i>Farrell v. Score</i> , 67 Wn.2d 957, 958-59, 411 P.2d 146 (1966))	11
<i>Freeburg</i> , 71 Wn. App. at 371	13
<i>Hanna v. Allen</i> , 153 Wash. 485, 279 Pac. 1098	2
<i>HELLER BLDG., LLC V. CITY OF BELLEVUE</i> 147 Wn. App. 46, 194 P.3d 264 (2008)	8
<i>HOBERG v. BELLEVUE</i> 76 Wn. App. 357 (1994)	14
<i>MISSION SPRINGS v. CITY OF SPOKANE</i> 134 Wn.2d 947, 954 P.2d 250 (1998)	11
<i>Postema v. Pollution Control Hearings Bd.</i> , 142 Wn.2d 68, 77, 11 P.3d 726 (2000)	17
<i>TAYLOR v. STEVENS COUNTY</i> , 111 Wn.2d 159, 759 P.2d 447 (1988)	8
<i>THOMPSON et al., Respondents, v. SHORT et al.</i> <i>Appellants</i> , 6 Wn.2d 71	1
<i>Treosti v. Treosti</i> , 168 Wash. 672, 13 P. (2d) 45	2
<i>International Residential Code 2006 Edition</i>	20
34 C. J. 521, § 827	2
<i>RCW 36.70B.070</i>	6
<i>RCW 36.70C.010</i>	1, 19, 21
<i>RCW 36.70C.030</i>	4, 7
<i>RCW 36.70C.060</i>	21
<i>RCW 36.70C.120</i>	18
<i>TCC 17.15.200</i>	21
<i>TCC 17.15.620</i>	15
<i>TCC 17.15.620B2</i>	16
<i>TCC 17.15.620(B) (3)</i>	15

## INTRODUCTION

In a reply memorandum, it seems to make the most sense to use "Comments" on new arguments contained in the "Joint Brief of Appellants' in Response" with a sincere effort to avoid repeating what is in Appellant's (Stientjes) Brief but in no way abandoning any position, argument or authority stated therein.

However, it is worthwhile to review the purpose of the Land Use Petition Act that states:

*RCW 36.70C.010 Purpose.*

*The purpose of this chapter is to reform the process for judicial review of land use decisions made by local jurisdictions, by establishing uniform, expedited appeal procedures and uniform criteria for reviewing such decisions, in order to provide consistent, predictable, and timely judicial review.*

### Comment #1: Collateral Attack.

Via and Thurston pretend their attack is a direct attack rather than a collateral attack. The definition of collateral attack is well established in Washington law in *THOMPSON et al., Respondents, v. SHORT et al. Appellants*, 6 Wn.2d 71:

"A collateral attack is defined in 34 C. J. 521, § 827, as follows:

"A collateral attack is an attempt to impeach the judgment (a building permit in this instance) by matters *dehors*<sup>1</sup> the record, in an action other than that in which it was rendered; an attempt to avoid, defeat, or evade it, or deny its force and effect, in some incidental proceeding not provided by law for the express purpose of attacking it; any proceeding which is not instituted for the express purpose of annulling, correcting, or modifying such decree; an objection, incidentally raised in the course of the proceeding, which presents an issue collateral to the issues made by the pleadings. In other words, if the action or proceeding has an independent purpose and contemplates some other relief or result, although the overturning of the judgment may be important or even necessary to its success, then the attack upon the judgment is collateral."

"In *Hanna v. Allen*, 153 Wash. 485, 279 Pac. 1098, the above definition of collateral attack was approved, the opinion further stating:

"A collateral attack upon a judgment has been defined to mean any proceeding in which the integrity of a judgment is challenged, except those made in the action wherein the judgment is rendered or by appeal, and except suits brought to obtain decrees declaring judgments to be void *ab initio*."

"The above definition is cited with approval in *Treosti v. Treosti*, 168 Wash. 672, 13 P. (2d) 45.

"The question then arises as to whether or not the trial court properly allowed the judgment in the water case to be impeached by matters *de hors* the record, and when we refer to the "record" we mean the record as made in the water case, which was before the trial court in the instant case. We find the rule announced in 15 R. C. L. 893, § 373, as follows:

---

<sup>1</sup> Foreign to

"According to the common law rule, adhered to at the present time in most of the states, the presumption in favor of the jurisdiction of a court of general jurisdiction is conclusive and its judgment cannot be collaterally attacked where no want of jurisdiction is apparent of record. "Whenever the record of such a court is merely silent upon any particular matter, it will be presumed, notwithstanding such silence, that whatever ought to have been done was not only done but that it was rightly done. So where the judgment contains recitals as to the jurisdictional facts these are deemed to import absolute verity unless contradicted by other portions of the record. Consequently such a judgment cannot be collaterally attacked in courts of the same state by showing facts aliunde<sup>2</sup> the record, although such facts might be sufficient to impeach the judgment in a direct proceeding against it. The validity of a judgment when collaterally attacked must be tried by an inspection of the judgment roll alone, and no other or further evidence on the subject is admissible, not even evidence that no notice had been given." (Emphasis supplied)

In this appeal case before this Court, the collateral attack is on a prior land-use decision that resulted in the issuance of the Stientjes building permit. Via and Thurston are attempting to use methods other than a direct, timely appeal under LUPA (even though both were engaged in the case prior to the appeal expiration time.) Via and Thurston attempt to reopen all issues on the building permit simply because of the issuance of a stop work order (SWO) on the project. There is no jurisdiction when the Respondent's attempt to use a stop work order to launch a collateral

---

<sup>2</sup> from a source extrinsic to the matter, document, or instrument under consideration

attack on a land-use issue as it is in an incidental proceeding not provided by law for the express purpose of attacking or appealing a land-use issue.

Can you imagine how the finality desired and required by LUPA would be accomplished if every building permit could be re-opened for ab initio reconsideration each time a building job was subjected to a stop work order? That is the rule of law Via and Thurston are suggesting for the State of Washington, without citing even one favorable precedent, case or statute. In fact, RCW 36.70C.030 expressly provides:

"Chapter exclusive means of judicial review of land use decisions--Exceptions."

"(1) This chapter replaces the writ of certiorari for appeal of land use decisions and shall be the exclusive means of judicial review of land use decisions . . . ."

Via and Thurston still do not respond to the Hearing Examiner having made a specific finding that "Appellants have made it clear that their appeal of the November 19, 2007 decision is actually an appeal of the July 11, 2007 building permit." Page 10 of first HE decision (Record Exhibit I.) That finding of fact alone should have sounded the death knell of the Via and Thurston proceedings four years ago. (At that time, the Thurston County Staff was agreeing with Stientjes. Not until the matter got to the BOCC (Board of County Commissioners) did Thurston

County jump ship and start attacking their own staff.)

Via and Thurston argue that multiple errors were committed in the process of issuing the building permit to Stientjes. Where do they put the rule of law that states: "Whenever the record of such a court is merely silent upon any particular matter, it will be presumed, notwithstanding such silence, that whatever ought to have been done was not only done but that it was rightly done." (supra)

Every action attempted by Via and Thurston to vacate the building permit land-use decision after August 1, 2007 (the LUPA appeal deadline date) is untimely and in the category of "collateral attack" and there is no jurisdiction.

The attacks on the building permit are invalid because those matters that they suggest should have been considered are presumed to have been considered and properly so in the issuance of the building permit. There is a legal presumption that the processor at the DSD (Development Services Department) reviewed every issue and appropriately decided it prior to the issuance of the building permit, it cannot be reopened by a collateral attack.

In addition to the foregoing legal presumption, if you look at the record, there was not one witness

that testified that Thurston County was in any way misled by the Application for a Building Permit submitted by the Stientjes contractor.

Thurston County has legal time parameters within which they must respond to an Application for a Building Permit. RCW 36.70B.070 legally controls project permit applications such as building permits. It provides:

"36.70B.070--Determination of completeness--  
Notice to applicant.

(1) Within twenty-eight days after receiving a project permit application, a local government planning pursuant to RCW 36.70A.040 shall mail or provide in person a written determination to the applicant, stating either:

(a) That the application is complete; or

(b) That the application is incomplete and what is necessary to make the application complete.

Thurston County determined the application was complete and issued the building permit immediately over the counter. If they thought the application was incomplete the law is clear they have an obligation to inform in writing what is necessary to make the application complete. There is not a scintilla of evidence that shows any person in Thurston County was in any way misled as a result of this Application for Building Permit as presented to Thurston County by the contractor.

Via and Thurston County repeatedly reference an allegedly incomplete site plan. (Again, the legal presumption is that it is complete and accurate.) The site plan approved by Thurston County on July 11, 2007 was attached to the building permit on July 11, 2007 and is a part of the record herein, as Amended Exhibit N3, consisting of four pages. The placement of the RV shed on the lot was clear in that it was to be 20 feet from the Via property and centered.

Thurston County Ordinances provide that Thurston County can issue a Stop Work Order, however, those Ordinances have to be read and applied so that Thurston County does not in any way use the SWO to collaterally attack a prior finalized land-use decision. Via and Thurston County improperly try to use the issuance of the stop work order to reopen the Building Permit, ab initio, in this case.

In fact and in law, LUPA prohibits such activity, as LUPA is the exclusive method of appealing and/or changing an issued building permit.

RCW 36.70C.030 Chapter exclusive means of judicial review of land use decisions--  
Exceptions.

- (1) This chapter replaces the writ of certiorari for appeal of land use decisions and shall be the exclusive means of judicial review of land use decisions. . . .

The same rule disposes of Via and Thurston's repeated references to the International Residential Code. They erroneously suggest that the IRC is an additional means that can be used to collaterally attack the land-use decision that resulted in the building permit being issued months previously. Such is not the law.

*TAYLOR v. STEVENS COUNTY*, 111 Wn.2d 159, 759 P.2d 447 (1988) on pages 29 and 30 of the Joint Brief was a pre-LUPA case and has little to do with the case at bar. In that case the court was trying to deal with some tort doctrines and determining if a County had liability to a homeowner whose contractor evidently didn't comply with some building code provisions.

*HELLER BLDG., LLC V. CITY OF BELLEVUE* 147 Wn. App. 46, 194 P.3d 264 (2008) on page 30 of the Joint Brief is cited for the proposition that you don't receive any rights when you get a building permit.<sup>3</sup> This case doesn't stand for that proposition. Heller Building tried to expand the scope of his building permit after construction started. He argued that he could make whatever changes he wanted after the construction started even if that created a product prohibited by the Bellevue Construction Code when he applied for the

---

<sup>3</sup> The Petitioners do not claim the "Vested Rights Doctrine".

building permit. Such is not the factual scenario of the case at bar.

**Comment #2: Fraud.**

There is not a scintilla of evidence in the record from the individual(s) in the Development Services Department (DSD) that processed the Application for Building Permit. There is no evidence the processors were in any way hampered or misled in doing their normal review of the Application for Building Permit with the information provided in the Application for Building Permit. The irrefutable legal presumption is that the building permit was properly issued after appropriate consideration of all matters, and the issue cannot be revisited.

Obviously, the processors saw Hogam Bay on the application because he or she issued the permit showing Hogam Bay in the approved site plan attached to the Building Permit. See Amended Exhibit N3 attached hereto and incorporated herein being the Building Permit, with the attachments that were issued as part of the building permit.

What does Amended Exhibit N3 show? It is obviously the building permit requested by somebody named Lois Anderson on July 11, 2007 who was representing the Builder for the Petitioners. Kim Rubert of the DSD approved the construction

plans/drawings. Deborah King of the DSD issued the Permit. The minimum front yard setback was 20 feet. (That is the distance between the Via boundary and the constructed building.) The third page of the Amended Exhibit N3 is the site plan approved by DSD on 7/11/07 by stamp specifically stating "APPROVED AS NOTED THURSTON COUNTY DEVELOPMENT SERVICES, BY D. KING, DATE 7/11/07, Site Plan." On the third and fourth pages, it is clearly acknowledged by DSD that this property is on Hogum Bay, a known part of Puget Sound. Does not the foregoing quoted law<sup>4</sup> on collateral attack under Comment #1 above conclude any issue surrounding the application for and validity of the building permit?

Via and Thurston attempt to collaterally attack the building permit by alleging site plan deficiencies and argue that the alleged deficiencies in the site plan approved by Thurston County somehow extend the issuance date of the building permit to sometime in November 2007. Amended Exhibit N3 clearly shows that the site plan was reviewed to the satisfaction of the DSD and approved on 7/11/07, the date of the final, valid permit issuance.

Via and Thurston try to come up with some new legal theory that in order for the Petitioners to

---

<sup>4</sup>Whenever the record of such a court is merely silent upon any particular matter, it will be presumed, notwithstanding such silence, that whatever ought to have been done was

get protection from LUPA, they have to qualify as an "innocent property owner." What does that mean? That three-word phrase is shown only once in all of the appellate cases decided in the state of Washington and that is in a criminal case. It's not a term defined in Washington law. There is not one scintilla of evidence that Stientjes was in any way culpable in this matter. The allegations by Respondents Via seem to try to create an undercurrent with the Court that Stientjes does not have clean hands because of some sort of "fraud." Fraud requires the following elements:

"The elements of fraud are (1) representation of an existing fact; (2) materiality of the representation; (3) falsity of the representation; (4) knowledge of the falsity or reckless disregard as to its truth; (5) intent to induce reliance on the representation; (6) ignorance of the falsity; (7) reliance on the truth of the representation; (8) justifiable reliance; and (9) damages. *Id.* n.4 (citing *Farrell v. Score*, 67 Wn.2d 957, 958-59, 411 P.2d 146 (1966)).

Again, there is no evidence in the record that a fraud undercurrent is in any way valid. In fact and in law, it is nothing but another vain effort at an impermissible collateral attack.

Via and Thurston offer *MISSION SPRINGS v. CITY OF SPOKANE* 134 Wn.2d 947, 954 P.2d 250 (1998) as authority for incomplete applications, however, it

---

not only done but that it was rightly done.

has no application to the case at bar because the facts arose out of 1993, prior to the passage of LUPA. In fact, this is one of the kinds of cases that LUPA was designed to prevent.

**Comment #3: Deference.**

Via and Thurston state that the BOCC is entitled to deference (p 12 of Joint Brief) as experts. There is no evidence that is true, either factually or legally. They are elected County Commissioners. There are no educational or training requirements in either law or land use to be a County Commissioner. Is there any evidence that any one of the three of them have any legal training? Is there any evidence whatsoever that any of them have any training in land-use matters? In fact they have neither. They are elected politicians. To suggest that County Commissioners are entitled to deference is to suggest that their rulings cannot be judicially reviewed and that is not the intention of the deference doctrine. Deference was created to help Courts when the legal or factual matters before the court are unduly complex and an expert in the area may genuinely need the Court.

The experts in this matter are presumably those that deal with planning and land-use because of their specific education and experience in the

field. The individuals who work in the DSD and the Hearing Examiner are presumed to be experts because that is the job they daily perform. In the case of Mike Kain, he is the Planning Department head and he testified that he worked on passage of the Critical Area Ordinance (CAO) when it started 17 years ago. Presumably the individuals in the Department of Planning and the Hearing Examiner are hired for their expertise. That is where deference must be given. The Department of Planning (part of the DSD) and the Hearing Examiner have reviewed the law and the land-use facts in this case and determined that Stientjes was entitled to the building permit. It should have been 'case closed' since 2007.

*Cingular Wireless, L.L.C. v. Thurston County* 131 Wn. App. 756 is cited by Via and Thurston on page 10 of their Joint Brief. They cited the case for the proposition of deference. It is important what the court said: "Substantial evidence is evidence that would persuade a fair-minded person of the truth of the statement asserted. *Freeburg*, 71 Wn. App. at 371. Our deferential review requires us to consider all of the evidence and reasonable inferences in the light most favorable to the party who prevailed in the highest forum that exercised fact-finding authority. *Freeburg*, 71 Wn. App. at 371-72. **Here, that was the hearing examiner.**" (emphasis provided)

*HOBERG v. BELLEVUE* 76 Wn. App. 357 (1994) (page 9 of Respondents Brief) is cited for the proposition that "courts have provided "considerable judicial deference" to the construction of an ambiguous ordinance by "officials" charged with its enforcement. Actually the decision said that the deference should go to the "agency" charged with enforcement. That would mean the individuals and departments that specialize in law and land-use, not a political body such as BOCC. As will be pointed out later, the method of measuring set back is not specified in the Ordinances. Surveys have never been used because they're too expensive. Measuring methodology used by Thurston County for 17 years was used in the Stientjes case as testified to by Mike Kain, the Planning Department manager (Transcript of Hearing Examiner Proceedings, Pages 53-75).

People like Mike Kain and the Hearing Examiner are the ones who read and applied the ordinances for all those years in light of the intent of the drafters (one of whom was the same Mike Kain) using the methodology contemplated by the Ordinance for 17 years. The fact that there is a new BOCC made up of new politicians does not imply equal knowledge of methodology or legislative intent with the Department of Planning or the Hearing Examiner.

The BOCC decision says that the "fundamental issue

in this case is interpreting TCC 17.15.620 (B) (2)". This is the Ordinance that specifies the need to measure the 2:1 Marine Bluff setback for residential appurtenances. It does not specify a methodology.

The BOCC decision ignores the next section in *TCC 17.15.620* being *TCC 17.1 5.620(B) (3)* that provides (and was italicized for special emphasis by the Hearing Examiner):

"In those cases where the size, shape, topography, or existing development would preclude development on a preexisting lot, or where the geology of a bluff can safely accommodate development within the 2:1 slope, the review authority may reduce the marine bluff setback to the farthest practical point landward, as provided in TCC Sections 17.15.415 and 17.15.420. "

The importance of the Hearing Examiner's italization is to show that the Ordinances are to be intelligently applied and where a bluff can safely accommodate a light usage project, such as an RV shed, it should be granted or allowed. The BOCC ignores this Ordinance.

The Thurston County Code has two other 'minor intrusion' discretionary ordinances being *TCC 17.15.620* where the foundation of the new facility is below the 2:1 slope line and *TCC 17.15.635 (E) (5) (b)* that provides<sup>5</sup> that the review authority

---

<sup>5</sup> 2. The primary structure and its normal residential appurtenances shall be set back from the top of the marine bluff for a distance which is the greater of the

shall allow development within the setback of a marine bluff hazard area as provided in TCC Section 17.15.620B2 when the geotechnical report demonstrates that the hazards associated with the marine bluff can be overcome in such a manner as to prevent hazard to life, limb, or property, and/or the integrity of the marine bluff. This provision alone allows the placement of the RV shed. The Hearing Examiner cited the ordinance and gave due consideration. The BOCC ignored it. The BOCC gave no consideration to these discretionary Ordinances whereas the Hearing Examiner quoted both Ordinances in his Decision.

#### **Comment #4 Measurement Methodology.**

Via and Thurston County are saying that Thurston County DSD for the past 17 years has misapplied the Ordinance using a certain methodology of measuring bluffs when residential building permits were issued. According to the Kain testimony (Transcript of Hearing Examiner Proceedings, Pages 53-75), the method used the past 17 years was

---

following:

- a. Not less than fifty feet landward from the top of the marine bluff; or
- b. A point measured from the ordinary high water mark landward at a slope of 2:1 (horizontal to vertical) which intersects with the preexisting topography of the site.

**Minor encroachment into the 2:1 setback may be permitted by the review authority where the structure foundation is set below the 2:1 slope line.**

3. In those cases where the size, shape, topography, or existing development would preclude development on a preexisting lot, or where the geology of a bluff can safely accommodate development within the 2:1 slope, the review authority may reduce the marine bluff setback to the farthest practical point landward, as provided in TCC Sections 17.15.415 and 17.15.420.

legislatively contemplated, worked and safe development was accomplished. Is the Ordinance ambiguous or clear on the issue of requiring a survey? There is simply no mention of a required survey.

If survey exactitude is required, why have the discretionary Ordinances giving DSD discretion to allow a building permit in situations where development does not affect safety? A new interpretation by a new BOCC should not and cannot control the vague language of the Ordinance retroactively and require the destruction of the building built with a valid and existing building permit from Thurston County. If Thurston County wants to change the requirement, they can certainly legislate that appropriately for future use by the DSD. If there is to be a more stringent new survey requirement, it must be accomplished by the repeal of any discretionary ordinance and Notice to the public of the more stringent requirements.

For 17+ years the DSD has interpreted the Ordinance without the need for surveys in residential cases. Mike Kain testifies that was intended and it has served Thurston County well using the less expensive methodologies. Only when the Court is reviewing an agency's interpretation of an ambiguous statute is the agency's interpretation of the statute afforded deference.

*Postema v. Pollution Control Hearings Bd.*, 142 Wn.2d 68, 77, 11 P.3d 726 (2000). The DSD and Hearing Examiner's interpretation of this ambiguous Ordinance is entitled to deference.

**Comment #5 Site Visit.**

The scope of review under LUPA is set forth in RCW 36.70C.120, as follows:

RCW 36.70C.120 Scope of review--Discovery.

(1) When the land use decision being reviewed was made by a quasi-judicial body or officer who made factual determinations in support of the decision and the parties to the quasi-judicial proceeding had an opportunity consistent with due process to make a record on the factual issues, judicial review of factual issues and the conclusions drawn from the factual issues shall be confined to the record created by the quasi-judicial body or officer, except as provided in subsections (2) through (4) of this section.

(2) For decisions described in subsection (1) of this section, the record may be supplemented by additional evidence only if the additional evidence relates to:

(a) Grounds for disqualification of a member of the body or of the officer that made the land use decision, when such grounds were unknown by the petitioner at the time the record was created;

(b) Matters that were improperly excluded from the record after being offered by a party to the quasi-judicial proceeding; or

(c) Matters that were outside the jurisdiction of the body or officer that made the land use decision.

The BOCC clearly violated this statutory provision

making their decision a nullity.

Counsel for Thurston County has pointed out that Thurston County has an Ordinance specifically allowing a site inspection. That Ordinance as used in this case is a violation of LUPA. It must be brought into compliance with LUPA as the purpose of LUPA requires uniformity and prohibits independent evidence collection. *RCW 36.70.010.*

The undersigned counsel attempted to address the BOCC on this issue on June 22, 2010 so as to allow the record to be complete. The BOCC quickly adjourned and would not interactively respond on the record. The parties are entitled to know how the BOCC made its decision and any factual information they collected. It may be false evidence for which there is an explanation. The secret site inspection was done improperly also because it was done without notice to the parties, it was untimely because it was four years after the relevant time, and it seems to be deceitful in that facts were not reported on the record in any way. In fact, in their oral decision they say "the Board sitting as an appellate body may only review the evidence that was presented to the Examiner and decide whether or not the hearing examiner's decision is supported by the facts presented to him and the applicable state and county regulations." They said one thing and did another in a prejudicial manner. That is judicial or

quasi-judicial misconduct. The remedy should be that their decision is set aside.

**Comment #6 The BOCC "To the Extent"**

**Decision.**

In Appellant's (Stientjes) Brief LUPA-2 filed herein, each of the purported findings by the BOCC supporting their conclusion that there was not substantial evidence were reviewed and commented upon. The BOCC seems to have known the result they wanted, and simply said that if anybody felt there were any facts contrary to their desired conclusions, those facts were wrong.

**Comment #7: International Residential Code  
2006 Edition.**

Are Via and Thurston really suggesting that the *International Residential Code 2006 Edition*, a code used for construction standards, adopted by reference in the county, gives them a method of collaterally attacking a land-use decision and legally preempting LUPA, a duly promulgated law of the state of Washington that is drafted and promulgated to be the exclusive method of changing a land-use decision? Such is simply not the case and all of the foregoing authorities and arguments apply to defeat this assertion.

### **Comment #8 Aggrieved Party and Standing**

In addition to the briefing in the Stientjes APPELLANT'S BRIEF commencing at page 34 on Standing and Aggrieved Person, Stientjes would point out, *RCW 36.70C.010*, that requires all counties of the state to apply the law uniformly. This must be interpreted to mean that Thurston County must change their definition of "Aggrieved Person" at *TCC 17.15.200* so as to comply with the definition in *RCW 36.70C.060* on "Standing."

### **CONCLUSION AND REQUEST FOR RELIEF**

The conclusion by the BOCC that the building permit was not issued until November 2007 (after building completion) and the itemized findings of fact and conclusions of law of the Hearing Examiner were not supported by substantial evidence is simply incredible. The decisions of the Hearing Examiner show a carefully conducted hearing, carefully found facts, carefully applied conclusions of law, acumen for the land-use law area, expertise, experience and intelligence. When viewed in light of the whole record before the court, these land use decisions as rendered by the Hearing Examiner are supported by evidence that is substantial as required by *RCW 36.70C.130* and both BOCC decisions must be overturned and the

COURT OF APPEALS  
DIVISION II

11 OCT -5 PM 12:34

STATE OF WASHINGTON

BY \_\_\_\_\_  
DEPUTY

Hearing Examiner decisions reinstated.

Petitioners request the relief initially requested  
in their Appellants' Brief.

**DATED** this October 3, 2011.



HARLAN C. STIENTJES  
#18647 WSBA  
Attorney for  
Plaintiffs  
9840 Johnson Point  
Road NE  
Olympia, WA 98516  
(360) 357-8855

**CERTIFICATE OF MAILING**

I **HEREBY CERTIFY** that a true and accurate copy of the above-stated Appellants' Reply Brief-LUPA 2 was mailed by first class mail, postage prepaid this October 3, 2011 and to the opposing parties as required by rule.

Jeff Fancher  
Development Services Attorney  
2000 Lakeridge Drive SW, Building 1  
Olympia, WA 98502

Paul J. Hirsch  
Attorney  
P.O. Box 771  
Manchester, WA 98353-0771

Washington State Court of Appeals, Division II  
950 Broadway, Suite 300,  
Tacoma, WA 98402



Harlan C. Stientjes