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RESOURCE STEWARDSHIP DEPARTMENT

Creating Solutions for Our Future

Cliff Moore
Director

MEMORANDUM

TO: Parties of Record

FROM: Cami Petersen
Land Use Clerk

DATE: November 21, 2011

SUBJECT: **Project No. 2009101125, Sequence No. 11-110934 VE, Jeff Brown and
Melanie Reimer**

Attached is a copy of the Decision of the Board of Thurston County Commissioners relating to the above-mentioned case.

Please contact me at (360) 754-3355 extension 6348 if you have questions regarding this Decision.

BEFORE THE BOARD OF COUNTY COMMISSIONERS
THURSTON COUNTY, WASHINGTON

In Re the Matter of,

Jeff Brown and Melanie Reimer

Project No. 2009101125

DECISION

THIS MATTER came before the Board of County Commissioners (Board) on November 10, and 18, 2011, as a result of an appeal by Jeff Brown and Melanie Brown (Appellants) of the Hearing Examiner's September 14, 2011 decision that partially approved the Appellants' Reasonable Use Exception (RUEX) application to build a single story residence with no basement within a landslide hazard area buffer.

The Appellants' Appeal timely alleged one error¹:

The Hearing Examiner ignored Finding of Fact 12 of her July 5, 2011 decision which specifically allowed a two-story house.

The Appellants' appeal, while timely, fails to satisfy TCC 2.06.070 which requires an appellant to provide argument in support of the issues presented for review together with citations to legal authority and references to relevant parts of the record. See also RAP 10.3(a) (6). Written arguments that are not supported by any reference to the record or by citation of authority need not be considered by an appellate body. See *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992). The Appellants assigned error to the Hearing Examiner's interpretation of her own finding No. 12 is not supported by any argument whatsoever, nor did the Appellants cite to any relevant evidence in the record to support their assertion. As the *Cowiche Canyon* court aptly observed "it is not the function of the appellate court to search through the entire record to locate relevant testimony or evidence." Appellants' assignment of error need not be considered by this Board due to the Appellants utter lack of argument and citations to the record and could be summarily dismissed for this reason alone.

Nonetheless, the Board has reviewed the hearing examiner's decision, the evidence in the record, and considered oral argument presented by the Appellants' attorney. The Board finds that the record does not support Appellants' assertion that the Hearing Examiner approved an RUEX application for a two story residence. First, finding of fact 12 relates to the Appellants' original RUEX application for a *one story residence with a daylight basement* that cuts into a slope designated as a landslide hazard area. Hearing Examiner's July 5, 2011 Decision, Finding No. 1 and 2. Secondly, in order to approve an RUEX, the hearing examiner must find that "no reasonable use with less impact on the critical area or buffer is possible." TCC 17.15.415C (2). In reviewing the original RUEX application, the Hearing Examiner found that she could not approve a residence with a basement because the "evidence supports a finding that the site will support other uses with less impact on the

¹ The Appellants also alleged the Hearing Examiner erred in her decision regarding the removal of existing block walls on the property. However, the Board does not have jurisdiction to review this alleged error, because the Appellants did not timely appeal this decision of the Hearing Examiner which was issued on July 22, 2011.

landslide hazard area. These might include, for example, a two-story home. . ." Hearing Examiner's July 5, 2011 Decision, Finding No. 12. The plain language of Finding of Fact No. 12 simply finds that the site will support other less intrusive uses of the property. This finding does not purport to approve an RUEX application for a two story residence for the simple fact that no such application was before her. Furthermore, the hearing examiner made a subsequent finding that it is unclear "whether the soils on site would, or would not support a two story home." Hearing Examiner's July 5, 2011 Decision, Finding No. 24. This finding of fact was not challenged by the Appellants, and therefore becomes a verity on appeal. Thus even if Appellants' characterization of Finding of Fact 12 was correct, this finding is not supported by substantial evidence in the record, nor is there any evidence in the record before the Board that Appellants proposal "is for a two story structure and that the site will support a two story structure." Hearing Examiner Response to Clarification, September 26, 2011.

IT IS HEREBY ORDERED AS FOLLOWS:

The hearing examiner's decision is affirmed.

Dated this 21 day of November 2011.

ATTEST:

Cami Peterson
Clerk of the Board

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Thurston County, Washington

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