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Mr. Kernen Lien, Senior Planner  
City of Edmonds, Planning Division  
122 – 5<sup>th</sup> Avenue  
Edmonds, Washington 98020

**Hand Delivered**

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DEVELOPMENT SERVICES  
COUNTER

Re: PLN20130022, 50 Pine Street, Edmonds, Reply to APL20130007

Dear Mr. Lien:

This letter is submitted on behalf of Edmonds Pine Street LLC, the property owner and Applicant herein, in response to the Town of Woodway's appeal of the Architectural Design Board's May 16, 2013 design review approval under PLN20130022 and the additional argument made by Mayor Carla A. Nichols by letter dated and filed with the City on September 26, 2013 ("Collectively, "Woodway Appeal").

All citations to the Record are to the complete written record compiled by staff for this matter and available on the City Council's webpage, by stamped page number. References to the May 15, 2013 ADB transcript are shown as "Transcript at \_\_\_".

A summary of the proposal, its procedural history, and the review's standards governing the ADB and City Council proceedings herein is set forth in Sections I-III of Applicant's reply to the appeal of Clair and Bill Widing and Jon and Laura Fleming ("Widing-Fleming Appeal") dated and submitted to the City contemporaneously with this letter. More detailed information on these aspects of the proposal is available at Record 0004-05; 0240-243; 0481-490; and Transcript at 6-13.

A. Reply to Appellant's Arguments

Appellant Woodway periodically has participated in public processes relating to the Point Edwards development over the last 11 years. Appellant did not comment on or

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appeal the City's DNS following SEPA review of the proposal earlier this year but appeals the substantive decision of the ADB. The following responses cover both Woodway's August 21, 2013 appeal and its September 26, 2013 argument in support thereof.

Woodway asserts generally that the Board's decision does not conform to the City's design standards and identifies nine conclusions of law that allegedly have no support in the Record. Woodway objects generally to the Council's action in remanding this matter to the ADB for entry of consistent findings and conclusions, a mandate followed by staff and the Board that resulted in the Findings, Conclusion and Decision of the Board dated August 7, 2013 ("FC") that have been returned to the Council in response to its order.

Woodway's contentions are underlined below, followed by Applicant's response:

1. The FC do not discuss Design Criteria 20.11.030(A)(4). This is untrue and also misapprehends the referenced Code section. Findings and Conclusions 2-4 at FC page 6 expressly refer to and determine compliance with the standards generally outlined in the referenced criterion, and dozens of other provisions confirm satisfaction of the UDGs under the Comprehensive Plan, which the Code identifies as the specific standards by which compliance with the general design criteria in ECDC Ch. 20.11 are to be measured. ECDC 20.11.020(A). See Record 0017, Staff Summary Points 2 and 3.
2. FC 4.a.C.8.a and C.8.c. Appellant argues its own interpretation of these provisions in relation to the proposal, but fails to cite to the Record and relies principally on the advisory comments and opinions of staff to support its claim, rather than looking to the Record and the deliberations, statements, findings, and conclusions of the ADB. These are statements of opinion, lacking any evidentiary or probative weight. Evidentiary support for the Board's findings/conclusions may be found, *inter alia*, at Record 0023-25, 0034-44, 0056-60, 0469, and 0575, and at Transcript 3, 12, 14-16, and 28.
3. FC 4.a.D.1.b. The Board concludes that UDG D.1.b is satisfied. Its additional comments in FC 4.a.C.8.d further support its decision on this point. Again, Appellant argues in a conclusory manner from its perspective and

interpretation, not from the Record. Additional support for the Board's determinations that the proposal conforms to Edmonds patterns and to the surrounding setting, notably the Point Edwards project itself, is found, *inter alia*, at Record 0034, 0056-58, and 0060, and at Transcript 15, 16, and 27-28.

4. FC 4.a.C.13.c. Woodway contends the Board's findings of sufficient buffering and view preservation are flawed, apparently on the theory that any view impact is fatal, which is not the standard. This is not what the UDG states and Woodway's contrary opinions are immaterial. The Board's determinations show an awareness of the evidence and of the relevant screening, buffering, and view considerations. The primary view protection issues under the UDGs are for views to the west toward Puget Sound and the Olympics, in any case, and these views will not be materially impacted from within Edmonds, if at all. Evidentiary support is found, *inter alia*, at Record 0018, 0039-40, 0044, 0052, 0066, 0072-73, 0356, 0462, and at Transcript 14, 17.
5. FC 4.a.C.13.d. The referenced finding and conclusion is accurate and substantiated on the Record. The building does, in fact and by design, step or terrace into the hillside along its steepest slope, like the other residential buildings in Point Edwards as they step downhill. The proposed building shows just two stories above grade on the uphill (high) side, and four or five stories on the downhill (low) side, depending on wing. Other buildings in Point Edwards have up to four stories of structure exposed on their downhill faces. As the Board confirmed, there is a visual step along/down the hillside. See Record 0037, 0039-40, 0070, 0072, 0074, -461-62, -466, 0494-95, 0504, and Transcript at 14-16.
6. FC 4.a.C.10.b and C.10.c [sic]. We assume Woodway's reference in its appeal to UDG C.10.c was unintentional, which deals with creating a sense of welcome and activity. Woodway says nothing about this aspect of the design in the Appeal and supplementary argument. As for UDG C.10.b, the

contention pertains to the Town's desire that the City require Applicant to replace existing City standard Cobra street lights along the south side of Pine Street in the City with special, architectural light standards, not required by the City's requirements and which the City will not maintain and has no authority to mandate. The Town's preference was not accepted by the ADB, and is not required to be accepted by the City. The City has no legal authority to require Applicant to replace the existing City street lights or to install the non-conforming light standards. Any such action would be voluntary by Applicant and would require both City and Woodway acknowledgement, consent, and agreement as to future maintenance and replacement, among other considerations. Moreover, the referenced UDG refers only to light coming from the project and spilling off-site, and therefore is inapposite. As demonstrated in the Record, the proposed on-site lighting meets City standards and requirements and was found by the ADB to supply adequate illumination and security. Record 0011-12, 0059, 0068.

7. FC 4.a.D.1.a. The proposed building does not impact views to the west toward Puget Sound and the Olympic Range from within Edmonds, as previously noted and as the ADB's finding/conclusion states. No impact. No issue. No mitigation. These proceedings are not under SEPA, which is the appropriate setting for broad consideration of potential view impacts. Woodway had the opportunity to appeal the City's environmental determination, but did not. Appellant's observation is baseless and may simply reflect a misreading of the referenced guideline, limited as it facially is to west-facing views.
8. FC 4.a.D.2.b. Appellant's contentions here are muddled. The ADB's finding/conclusion is clear and speaks for itself and is supported by ample evidence in the Record. Appellant cites to nothing, leaving the argument

empty. Relevant material presented to the Board can be found, *inter alia*, at Record 0024, 0028, 0031, 0036, 0038, 0041-42, 0060, and 0070-75.

In the main, Appellant's contentions are unsupported by evidence in or reference to the Record, and Appellant therefore does not meet its burden of proof to definitively show that the Board's determinations are without evidentiary support or legally void, and thus clearly erroneous. We submit no such sufficient showing is possible on this Record.

The Record contains considerable evidentiary support for the Boards determinations and the FC, individually and in the whole. The Board made clear that it reached its conclusions based on the project's conformance with Edmonds design guidelines and standards, prior staff and ADB input and direction, and consistency with existing conditions in Point Edwards. Transcript at 26-28. There was one dissenting vote out of six for the Board's decision in May, and all six Board members voted to approve the FC as accurately reflecting their determinations and consistent with the decision rendered. Transcript at 29; ADB Minutes of Regular Meeting, August 7, 2013 at 4. Even without the benefit of presumed validity, the Record contains more than sufficient supporting evidence for each and every finding and conclusion made by the ADB and for its approval of this proposal.

Appellant leans too much on staff's non-binding advisory input in areas where the Board disagreed with staff in design matters. The ADB is free to follow or depart from staff's design suggestions so long as the Record and controlling Code and Comprehensive Plan provisions sufficiently support its actions and decisions, as clearly is the case here.

As the designated and authorized design review decision maker, the ADB must assess the valid evidence presented to it in light of the applicable standards and guidance, and reach a reasonable decision, sometimes balancing ideas that are in a healthy tension (such as UDGs like D.4.e calling for design compatibility with the surrounding built environment and those like E.1.d mandating design originality and distinctiveness). The guidelines exist, as specified in ECDC 20.11.020(A) to provide appropriate direction and clarity for applicants. But the concepts embodied in the

UDGs require reasonable subjectivity and must be balanced in the holistic design review process, as has been demonstrated in this instance. It is the Board's duty and challenge to exercise reasonable and appropriate discretion, within the bounds of the written guidelines in order to strike an acceptable balance, neither violating the spirit of the guidelines nor imposing unreasonable or unpredictable burdens on applicants. See ECDC 20.11.020(A).

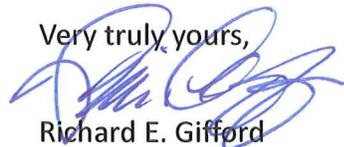
In the face of some confusing movements and suggestions by staff, the Board proceeded consistently and coherently under the controlling design standards and carefully followed the Council's directive to issue supporting findings and conclusions. The resulting decision that is before the Council on closed record review is well supported by the Record and satisfies all legal tests and standards.

B. Conclusion and Requested Relief

In summary, Appellant's concerns and arguments are not meritorious, lack evidentiary support, and fail to meet the required burden of proof.

Based on the foregoing, the Woodway Appeal fails. The Applicant respectfully requests that the Council dismiss the Appeal and sustain the determinations and decision of the ADB reflected in its May 16, 2013 written decision.

Very truly yours,



Richard E. Gifford  
Attorney for Applicant,  
Edmonds Pine Street LLC

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