

APL 20130006

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RECEIVED
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DEVELOPMENT SERVICES
COUNTER

August 20, 2013

Keren Lien, Senior planner
City of Edmonds
Development Services Department -- Planning Division
121 5th Avenue North
Edmonds, WA 98020

RE: Appeal of Type III B Decision of the Architectural Design Board Regarding
PLN20130022 -- Point Edwards Building 10 located at 50 Pine Street

Dear Mr. Lien:

This letter and the accompanying documents constitute a timely appeal to the Notice of Final Decision regarding PLN20130022 issued on August 7, 2013 by the Architectural Design Board. Included with this correspondence and incorporated by reference herein are the following documents:

1. Summary of Appeal;
2. Content of Appeal -- including appellant names, statement on standing to appeal, identification of the application which is the subject of the appeal, statement of grounds for appeal with facts upon which the appeal is based (with references to facts in the record), the specific relief sought, and a statement that appellants have read the appeal and believe its content to be true. (Attachment 1--Factual Bases for Appeal of ABD Approval of PLN 20130022);

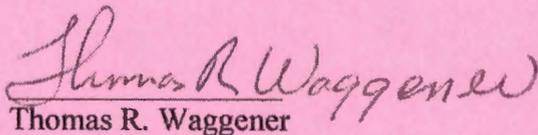
4. The Documents identified in Paragraphs 1, 2 and 3 above, are hereby substituted for copies of the documents submitted with the Appellant's prior appeal. These documents have been updated to reflect modifications to the originals on file with City.

5. In addition to the terms and conditions of the appeal documents described above, the Appellant identifies the following findings and conclusions stated in the Findings, Conclusions and Decision of the ADB, dated August 7, 2013 as clearly erroneous

- a. Findings 13, 20 and 22;
- b. Conclusions 2 and 3;
- c. Conclusion 4(a) generally and, without limiting the generality of the foregoing, more specifically, C.2.a, C.6.b, C.7.a, C.8.a, C.8.b, C.8.c, C.8.d, C.13.a, C.13.d, C.14.c, D.1.b, D.2.a, D.2.b, D.2.c, D.3.a, D.3.b, D.4.b, D.4.c, D.4.e, E.1.b, E.1.c, E.1.e; and
- d. Conclusions 5, 6, 8, 9, 10 and 12.

Pursuant to Council Action on July 2, 2013, Appellant Waggener is exempt from filing an appeal fee for this appeal.

Sincerely,


Thomas R. Waggener

Summary: Appeal of ADB Approval of PLN 20130022

Appellant(s) and Standing **Thomas R. Waggener**, individually and on behalf of the additional parties listed in Attachment 2 pursuant to ECDC 20.07.003, has standing to appeal since every individual has submitted written comments to the Planning Division (“Division”) and/or provided testimony at the Architectural Design Board (“ADB”) meeting held on May 15 2013. I, Thomas R. Waggener, submitted a written letter to the ADB and also presented verbal comments at the May 15, 2013 public hearing before the ADB. The standing of the other appellants is found on Attachment 2.

Subject ADB Approval on May 15, 2013 of PLN 20130022
“Building 10” located at 50 Pine Street in the Point Edwards development in Edmonds, Washington.

The factual basis for each of these grounds is provided in Attachment 1

Summary of Grounds for Appeal

1. The ADB failed to issue accurate and credible findings based on the recommendations and conditions set forth in the Staff Report date May 9, 2013 with respect to:
 - 1.1 Design requirements for human scale and consistency with surrounding environment,
 - 1.2 Modulated roof exemption, and
 - 1.3 Parking.
2. The ADB failed to consider the goals and policies in the Comprehensive Plan.
3. The ADB and the Division failed to correct technical errors in the applicant’s methodology for measuring Building 10’s height and the adequacy of its 35-foot exemption request.
4. The Proposal failed to address adequately the specifics of the ADB’s December 19, 2012 design recommendations for PLN 20120040 (the previous proposal for Building 10, withdrawn and resubmitted as PLN 20130022)

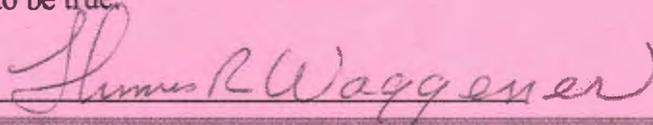
Specific Relief Sought

1. Set aside the ADB Approval of Proposal PLN20130022 issued on May 15, 2013 and remand for redesign and resubmission as an independent new proposal without reference to prior findings and previous design determinations.
2. In the alternative, follow all five of the Planning Division’s written recommendations as set forth in its Staff Report dated May 9, 2013.

Statement and signature

I, Thomas R. Waggener, state that I have read the contents of this appeal and believe them to be true. The additional individuals listed in Attachment 2 have affixed their signatures also certifying they have read the appeal and believe the contents to be true.

SIGNED _____



Attachment 1: Factual Bases for Appeal of ADB Approval of PLN 20130022

<p>1. The ADB failed to issue accurate and credible findings based on the recommendations and conditions set forth in the Staff Report date May 9, 2013 with respect to design requirements for human scale and consistency with surrounding environment, applicant's request for modulated roof exemption, and parking.</p>	
<p><i>Facts</i></p>	<p><i>Implications of approved PLN 20130022</i></p>
<p>The ADB failed to issue accurate and credible findings of fact and conclusions of law based on the recommendations and conditions set forth in the Staff Report dated May 9, 2013.</p>	<ul style="list-style-type: none"> • <i>The approval of PLN 20130022 is invalid because the written findings and conclusions issued by the ADB on August 7, 2013 are not consistent with staff recommendations, and are not supported by the official transcript of the May 15, 2013 ADB meeting.</i>
<p>1.1. Human Scale and Consistency with Surrounding Environment</p>	
<p>ECDC Title 10 establishes the Architectural Design Board; the powers and duties to review and study land use within the city of Edmonds from a design standpoint are found in ECDC 10.05.040B</p> <p>ECDC Title 20.10 establishes criteria for Design Review <u>in addition</u> to the general purposes of the comprehensive plan and the zoning ordinance. The purpose for including design review in the community development code is set forth at ECDC 20.10.100 which lists the following factors to be considered:</p> <ul style="list-style-type: none"> • Encourage aesthetic environments in Edmonds; • Promote development which features amenities and excellence in the form of variations of siting, types of structures and adaptation to and conservation of topography and other natural features; and • Encourage creative approaches to the use of land and related physical developments. <p>Except for certain exemptions not relevant to this discussion, design review pursuant to ECDC 20.10.020 includes, but is not limited to, buildings, parking lots, and lighting.</p>	<ul style="list-style-type: none"> • <i>The ABD directives issued in December 2012 clearly relate to design and place the issue of the size and mass of Building 10 squarely and properly before the ADB for its full consideration.</i> • <i>The conclusion of the ADB to prohibit further discussion in May related to items it specifically requested in December is not in keeping with its prescribed duties.</i>

<p>ECDC 20.11.030A specifically states that: <i>“The building shall be designed to...avoid conflict with the existing and planned character of the nearby area. All elements of building design shall form an integrated development, harmonious in scale, line and massLong, massive unbroken or monotonous buildings shall be avoided in order to comply with the purposes of this chapter and with the design objectives of the comprehensive plan.”</i></p> <p>ECDC 20.11.030B states that: <i>“The existing character of the site and the nearby area should be the starting point for the design of the building and all site treatment.”</i></p>	<ul style="list-style-type: none"> • There is no evidence, as cited below, that the ADB considered the extent to which the Proposal meets these explicit requirements of ECDC 20.11.030A and B.
<p>Following the hearing held on December 19, 2012, the ADB made several recommendations including:</p> <ul style="list-style-type: none"> • Directing the applicant to make the design of Building 10 more consistent with other development approved and constructed at Point Edwards and with the Point Edwards Master Plan. • Directing the applicant to “take into consideration the following design elements present in the existing Point Edwards Buildings...more human scale...” ADB Verbatim Transcript May 15, 2013 Public Hearing (“Transcript”) pages 2-3. <p>The Staff Report of May 9, 2013 regarding PLN 20130022 cites the lack of Building 10’s overall design conformance with the Master Plan.</p> <ul style="list-style-type: none"> • Section VI.3.C, p. 8: <i>...the scale of Building 10 is out of character with the rest of the Point Edwards development and the overall topography of the site.</i> • Section VI.L.4, p. 10: <i>...the scale and form of the building is out of character with other buildings in the Point Edwards development. Stepping the eastern portion of the building down would still result in one of the tallest buildings in the Point Edwards development, but would be closer in scale with the rest of the Point Edwards development, providing a more human scale</i> 	<ul style="list-style-type: none"> • Despite Staff Report citations of design inadequacy, at its May 15, 2013 meeting, the ADB ignored the Planning Division’s recommendations without explanation; no alternatives were explored or discussed. • The construction of Building 10, as currently envisioned, does not comply with ECDC 16.75, the Master Plan, the Comprehensive Plan, or design codes found in ECDC Title 20. • Now envisioned by the applicant as a “stand-alone” building, it will be far more massive and much taller than any other Master Plan building. • Its proposed length (measuring in excess of 375 feet from East to West) is almost twice the length of the longest existing Point Edwards buildings. • It includes above-ground parking for 77 vehicles and provides 24-hour lighting. • The nine existing buildings at Point Edwards (constructed from 2005 to 2011) all fit into a common set of Master Plan design elements and assumptions of unity and harmony with the site including: <ul style="list-style-type: none"> ○ Height (three residential stories)

<ul style="list-style-type: none"> • VI.L.6, p 11: <i>The five stories of the eastern portion of the proposed Building 10 do not maintain the smaller scale that is historically found in Edmonds.</i> • Section VI.L.8, p11: <i>As proposed, Building 10 would not reinforce the existing building patterns found in Point Edwards.</i> 	<ul style="list-style-type: none"> ○ Scale (21-34 units per building—one building has 41 units) ○ Building design and materials, ○ Landscaping ○ Underground residential parking spaces (only transient parking is accommodated with above ground parking.) • Building 10 fails to conform to the Master Plan or to meet the design standards contained in the City's Comprehensive Plan, which the ADB is required to review and consider under ECDC 20.11.020 and 20.11.030.
<p>At the May 15, 2013 hearing several ADB members made the following comments to indicate there was no jurisdiction to consider the bulk, mass, and height of the Proposal including the following excerpts (found at Transcript pages 27-28):</p> <ul style="list-style-type: none"> • “The design meets the code;” • “To comment on height when it’s meeting code is going beyond our responsibility;” • “We are going beyond what we requested in April (sic);” • “I don’t think we have the opportunity now to change the parameters for them (applicant);” and • “Changing building size wasn’t mentioned.” <p>One member stated: “The building is <i>approaching</i> being consistent with the rest of the site as far as materials.” (emphasis added).</p>	<ul style="list-style-type: none"> • Without explanation the ADB selectively chose which conditions to enforce from its own December 19, 2012 hearing, and which conditions to ignore. • Both the applicant and the Division explicitly acknowledged at the May 15, 2013 hearing that the withdrawal/resubmission by the applicant rested on a SEPA consideration and that the December 19, 2012 conditions remained relevant to a review of the Proposal. The comment by one member that the proposal is “approaching consistency” implies the proposal is not yet fully compliant and more information is needed. • Failure to consider all relevant design issues based on an (erroneous) conclusion that once a project ‘meets code’ nothing further need be considered essentially eliminates the necessity for any review by a design board.

1.2. Modulated Roof Exemption

ECDC 16.75.020 outlines site development standards and at footnote 4 specifically states as follows:

“Roof may extend up to five feet above the state height limit if designed as part of an approved modulated design in accordance with Chapter 20.10 ECDC.”

Section VII, p.14 of the Staff Report discusses “Building Height:”

“The ADB will have to determine if the roof design is modulated enough to warrant the additional five feet allowed by the zoning code. If the additional five feet is granted, the building as proposed appears to comply with the maximum allowable height for the MP1 zone. While the building may comply with the maximum height allowed by the zone, the proposal must also meet site design standards.”

“As discussed in detail above....staff is recommending the eastern portion of Building 10 be stepped down to better conform with the site’s topography and be more consistent with the rest of the Point Edwards development.”

- The ADB and the Division failed to properly to consider the adequacy of the applicant’s Roof Modulation 35- foot height exemption request.

1.3. Parking

The nine existing buildings completed from 2005 to 2011 all fit into a common set of Master Plan design elements and assumptions of unity and harmony with the site including: building design and materials, landscaping, and underground spaces (only Transient parking is accommodated for above-ground parking.)

- There were approximately 25 on-street parking spaces initially associated with Building 10. Approved PLN20130022 includes an above- ground parking lot with 74 stalls and 24-hour lighting.
- Mr. Lien acknowledges this was a significant change over the earlier 2006 design when he states, “...(i)t was a large increase in the surface parking area.” Transcript, page 3.
- No applicable regulations exist for underground parking.

There are no codes related to underground parking, so the Division used general City parking standards to conclude above-ground parking was permissible. Transcript, page 4.

- The ADB failed to apply appropriate review standards to the issue of on street parking.
- The ADB did not explain its rationale for relying on ordinary City parking standards rather than examining the increased parking numbers in accordance with the Master Plan and Comprehensive Plan. A more proper analysis would have been to compare the proposed increase with the surrounding development which features 100% underground garage parking for residents in existing buildings.
- By failing to address how above-ground parking deviates from underground parking in all other existing buildings, the ADB has failed to perform its design review function.

2. The ADB failed to consider the goals and policies in the Comprehensive Plan	
Facts	Implications of approved PLN 20130022
<p>Section C of the Comprehensive Plan states the following with respect to site design:</p> <ul style="list-style-type: none"> • <i>Do not use repetitive monotonous building forms and massing in multi-family or commercial projects (C.8.a.)</i> • <i>Retain connection with the scale and character of the City of Edmonds through the use of similar materials, proportions, forms, masses or building elements. (C.8.c.)</i> <p>Section D of the Comprehensive Plan states the following with respect to design objectives for building forms: <i>Building height and modulation guidelines are essential to create diversity in building forms, minimize shadows cast by taller buildings upon the pedestrian areas and to ensure compliance with policies in the city's Comprehensive Plan.</i></p> <ul style="list-style-type: none"> • D.2. Design Objectives for Massing. <ul style="list-style-type: none"> <i>D.2.a. Encourage human scale elements in building design.</i> <i>D.2.b. Reduce bulk and mass of buildings.</i> <i>D.2.d. Explore flexible site calculations to eliminate building masses that have one story on one elevation and four or greater stories on another.</i> • D.3. Design Objectives for Roof Modulation. <ul style="list-style-type: none"> <i>D.3.a. To break up the overall massing of the roof.</i> <i>D.3.b. Create human scale in the building.</i> • D.4. Design Objectives for Wall Modulation. <ul style="list-style-type: none"> <i>D.4.b. Break up large building mass and scale of a facade.</i> <i>D.4.c. To avoid stark and imposing building facades.</i> <i>D.4.d. To create a pedestrian scale appropriate to Edmonds.</i> <i>D.4.e. To become compatible with the surrounding built environment.</i> <p>The Master Plan states at page 14: <i>"In the Upper Yard (governed in the proposed MP-1 Zone regulations), the residential buildings 'will be designed to fit into the terraced hilltop and hillside.'"</i></p>	<ul style="list-style-type: none"> • <i>While building materials and some horizontal applications were added by the applicant, the issue of mass and scale were not substantively addressed. See Staff Report XII. Summary.</i> • <i>Staff Report section I, line 2 states "the overall scale of the building is out of character with the Pt. Edwards development and is not harmonious with the site's topography."</i> • <i>Further, the Master Plan clearly links the "Building Dimensions and Relationships" to the Design guidelines.</i>

3. Both the ADB and the Division failed to correct technical errors in the applicant's methodology for measuring the height of Building 10 and the adequacy of the applicant's 35-foot exemption request.

Facts	Implications of approved PLN 20130022
<ul style="list-style-type: none"> • ECDC Title 16.75 was created by Ordinance 3402 and was passed on July 2, 2002, as part of the contract rezone agreement incorporated into the City's Comprehensive Plan, adopted in 1995. • The upper portion of the zone, including the site of Building 10, was designated as MP1. It was recognized that the topography of the site presented unique issues addressed in ECDC 16.75.020 B. • Not yet having a Master Plan, but needing to control building height on the steep slopes (35 feet), the City included three specific illustrations (Figures A, B, and C of 16.75.020) to insure clarity regarding the measurement of the allowed height of 35 feet. • There is a consistency in the wording and diagrams of all three examples: The 'rectangle' used to determine the mean altitude from which measurement is calculated is <u>around the walls of the visible portions of the building</u>. It is clear from the drawings, and the words of this section, that it is the <u>visible portion of the structure</u> that is to be enveloped by the rectangle for measurement, a method unique to the MP zones due to the topography of the site. • The City was aware of the site issues at the time of adoption in 2002 because the Ordinance specifically provides in ECDC 16.75.005 F the following statement: <i>"The height limit and calculation procedures established for the MP1 and MP2 zones have been adopted after full consideration of the topographical constraints of sites within the zones. Variances are not available under current City code provisions in order to make more profitable use of a property. In adopting these provisions, the City Council has specifically provided for, and made allowances for the site constraints and topographical features inherent in development of the designated MP1 and MP2 sites. Therefore, no other height variance would typically be available absent a special showing of constraints unanticipated at the date of adoption of this ordinance."</i> (emphasis added). 	<ul style="list-style-type: none"> • The Division's, and by extension the ADB's, error lies in failing to require the applicant to demonstrate that its use of the height measurement methodology stated in ECDC 21.40.030A will result in the same number of allowed stories and the same overall height at the Building 10 site as would the use of ECDC 16.75.020. • If the Division's stated goal is trying to achieve "consistency in application of the development code" this should have been required. • The applicant obviously could not have met this test, however, because application of ECDC 21.40.030.A at the Building 10 site results in measuring building height from a baseline almost 18 feet above the 1st level grade, a result which would have been impossible to achieve at a lesser-sloped site like that occupied by the Gregory Building. • At five stories tall as currently envisioned, Building 10 could not be built elsewhere in the Edmonds bowl.

- Despite citing the necessity for Building 10 to conform to the provisions of ECDC Title 16.75, the May 9, 2013 Staff Report instead used ECDC 21.40.030.A to justify the five-story proposed height for a portion of the building based on comparison with another property -- The Gregory Building stating at page 5:

The height rectangle used to calculate the average grade for determining the maximum allowed height encompasses the underground parking structure. This is consistent with how height calculations were performed on the Gregory Building located at 505 Fifth Avenue South under ADB-2003-44.

- The Master Plan states at page 14: *“To encourage the appearance of smaller building masses – building heights will be calculated separately for each clearly separated portion of a building.”* This is further emphasized in ECDC 16.75.020B. Footnote 5.

- *This is a different measurement methodology than that found in ECDC 16.75.020 and is not appropriate here; the topography of the Gregory Building was virtually flat and highly dissimilar to the hilly sloping site at Building 10. Thus, the comparison is flawed and not justified.*
- *As noted above, the Division justifies ignoring ECDC Title 16.75 by citing the City’s need for “consistency in application of the development code,” thus potentially enabling the arbitrary use of any Edmonds building—rather than the MPI code—as the measurement standard.*
- *The “rectangle” applied is an irregular, non-square configuration inconsistent with the Master Plan directive.*

4. The Proposal fails to adequately address the specific areas of concern noted by the ADB at the December 19, 2012 for PLN 20120040 (the previous proposal for Building 10 subsequently withdrawn and resubmitted as PLN 20130022)

Facts	Implications of approved PLN 20130022
<p>The Staff Report of May 9, 2013 regarding PLN 20130022 cites the lack of Building 10's overall design conformance with the Master Plan.</p> <ul style="list-style-type: none"> • Section VI.L.3.C, p. 8: <i>...the scale of Building 10 is out of character with the rest of the Point Edwards development and the overall topography of the site.</i> • Section VI.L.4, p. 10: <i>...the scale and form of the building is out of character with other buildings in the Point Edwards development. Stepping the eastern portion of the building down would still result in one of the tallest buildings in the Point Edwards development, but would be closer in scale with the rest of the Point Edwards development, providing a more human scale....</i> • VI.L.6, p 11: <i>The five stories of the eastern portion of the proposed Building 10 do not maintain the smaller scale that is historically found in Edmonds.</i> • Section VI.L.8, p11: <i>As proposed, Building 10 would not reinforce the existing building patterns found in Point Edwards...</i> 	<ul style="list-style-type: none"> • Despite Staff Report citations of design inadequacy, the ADB ignored the Planning Division's recommendations without explanation; no alternatives were explored or discussed. • Building 10 still fails to conform to the Master Plan or to meet the design standards contained in the City's Comprehensive Plan, which the ADB is required to review and consider under ECDC 20.11.020 and 20.11.030. • The ADB selectively chose which conditions to enforce from its own December 19, 2012 hearing, and which conditions to ignore. • Both the applicant and the Division explicitly acknowledged at the May 15, 2013 hearing that the withdrawal and resubmission of the application by the applicant rested on a SEPA consideration and the December 19, 2012 conditions remained relevant to a review of the new Proposal. However, addressing those conditions neither constitutes – nor substitutes for – a thorough review of the new Proposal PLN20130022.

Attachment 2: Additional Parties of Record With Standing To Join Appeal

We, the undersigned, having provided written and/oral comments regarding PLN 20130022 on or before May 15, 2013, affirm that we have read the contents of this appeal, believe it to be true, and hereby join in this appeal.

JANET E. DAWSON 46 Pine St #302	Janet E Dawson 425 361-7493
Keith Dawson 45 Pine St #302	Keith Dawson 425-361-7493
THOMAS E MURPHY 55- Pine Street # 304	Thomas E Murphy 425-967-3505
Mary Gail Murphy 55 Pine St # 304	Gail Murphy 425-967-3505
ANDREA BONNICKSEN 75 Pine Street # 204	Andrea Bonnicksen 425-678-0506
Shirley J Ozkewicz 41 Pine St. #208	Shirley Ozkewicz 425-582-2267
Ferri A. Golner 45 Pine St #206	Ferri A. Golner 425-678-8961
Jean Barrett 45 Pine St #310	Jean Barrett 425-678-8339
Stephen Reisman 45 Pine St # 308	Stephen Reisman 425 967-5390
Maurreen Rivelle 51 Pine St # 207	Maurreen Rivelle 425-308-2252

Attachment 2: Additional Parties of Record With Standing To Join Appeal

We, the undersigned, having provided written and/oral comments regarding PLN 20130022 on or before May 15, 2013, affirm that we have read the contents of this appeal, believe it to be true, and hereby join in this appeal.

MARY D. PINTLER 65 pine St #305 Edmonds WA 98026	Mary D. Pintler 425-967-3357
JAMES PELGARINO 45 PINE ST #202 Edmonds WA	James Pelgarino 425-776-6845
Earl & Susan Larson 41 Pine St #107 Edmonds	Susan Larson Earl Larson 425-499-6099
Ruth "JR" Thompson 65 Pine St. #210 Edmonds WA 98026	Ruth Thompson 425-492-4055
URSULA JOHNSON 51 PINE ST. #311, Edmonds WA 98026	Ursula Johnson 425-360-9915
May Louise Knapp 61 Pine ST. #108 Edmonds	May Louise Knapp 425-774-4544
Catherine L. Yocom 45 Pine St. #108 Edmonds WA 98026	Catherine Yocom 425 771 8395
MARY MONTGOMERY 65 PINE ST #304 EDMONDS WA 98026	Mary M. Montgomery 425 775 5337
31 Pine St #305, Edmonds WA 98026	Zoe Gurevich 425 582 7712
ZOE GUREVICH	
Marjorie Swenson 45 Pine Street #205	Marjorie Swenson (425) 744-0929

Attachment 2: Additional Parties of Record With Standing To Join Appeal

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RALPH SWEENSON	Ralph Sweeney
45 Pine St. #205, Edmonds	425-744-0929
-James Peters	James Peter
45 Pine St #207	425-412-3831
Thomas J. Barrett	Thomas J. Barrett
45 Pine St. #310 Edmonds ⁹⁸⁰²⁰	425-678-8339
JE A. SHORE	Jill Shore
31 PINE ST #208 EDMONDS, WA ⁹⁸⁰²⁰	425-582-0485
Edward Morris	Edward Morris
61 Pine #204 Edmonds WA ⁹⁸⁰²⁰	760-902-1887
Nancy Bittner	Nancy Bittner
31 Pine St. #214 Edmonds WA ⁹⁸⁰²⁰	425-640-6699
Margaret Mesaros	Margaret Mesaros
51 Pine St #211 Edmonds WA ⁹⁸⁰²⁰	(206) 948-9516
DENISE REIBMAN	Denise Reibman
45 PINE ST #308	425-967 5390
LOIS RATHVON	Lois Rall
71 PINE ST # 302	425-744 12721
THOMAS R WAGGENER	Thomas R Waggener
65 PINE ST, #103	425-582-0410

Attachment 2: Additional Parties of Record With Standing To Join Appeal

We, the undersigned, having provided written and/or oral comments regarding PLN 20130022 on or before May 15, 2013, affirm that we have read the contents of this appeal, believe it to be true, and hereby join in this appeal.

Sally E. Shobe	Sally E. Shobe
31 Pine St. #208	425-582-0485
Franina Dean	Franina
45 Pine St #209	425 743-9696
David Golner	David Golner
45 Pine St #206	425-678-8961
Douglas K. Julian	Douglas K. Julian
65 Pine St #201	425-260-0249
Janis I. Smith	Janis I. Smith
45 Pine St. #204	425-771-2176
FLOYD E. SMITH	Floyd E. Smith
45 Pine St #204	425 771-2176
Sharon L. Ruff	Sharon L. Ruff
55 Pine St. #212	425-776-6778
DANA DAVIES	Dana Davies
45 PINE ST #105	425-582-0354

PARTY OF RECORD

URSULA JOHNSON
51 PINE STREET, #311
EDMONDS, WA 98020
Phone: 425-967-3463

I SENT A LETTER TO MR. K. LIEN, SR. PLANNER
CITY OF EDMONDS, ON APRIL 4, 2013, STATING
OUR CONCERN THE PROPOSED RENTAL COMPLEX
WOULD HAVE ON OUR COMMUNITY.

I HAVE READ THE CONTENTS OF THE APPEAL
AND BELIEVE THEM TO BE TRUE.

I UNDERSTAND THAT CHRISTY CUFFLY IS
ACTING SOLELY IN AN INDIVIDUAL CAPACITY
AS A CITIZEN OF EDMONDS AND IS NOT
THE LEGAL COUNSEL FOR ME, PERSONALLY,
OR FOR THE GROUP IN GENERAL.

Ursula Johnson

PURCELL & ADAMS, PLLC

ATTORNEYS

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Email: dpurcell@purcelladams.com

DOUGLAS W. PURCELL

September 27, 2013

RECEIVED

SEP 27 2013

**DEVELOPMENT SERVICES
COUNTER**

HAND DELIVERED

Mr. Kernen Lien, Senior Planner
City of Edmonds, Planning Division
122 – 5th Avenue
Edmonds, WA 98020

Re: PLN20130022, 50 Pine Street, Edmonds, Argument on APL20130006

Dear Mr. Lien:

This appeal concerns Building 10 of the Point Edwards development. Building 10 has always been envisioned as a compatible component of the development as it has been developed over the course of the last 10+ years. The 9 buildings already developed consist of three stories containing approximately 261 condominium units. The buildings are stepped down the steep hillside from a location just below the proposed location of Building 10 and, as such, have significant facade facing toward the West, which facade appears to conform to the slopes of the hillside. The current construction does not present a significant façade from the North, East and South.

The lot upon which Building 10 is to be placed is at the very apex of the development. The proposed building is five stories in height with 85 units and a 74 parking stall surface parking lot. As such, it will loom over the Point Edwards development and be of a very different character with the prior development. Building 10 will be the most prominent and visually strongest component of the view of Point Edwards from the Edmonds Bowl and otherwise, presenting a very massive visual façade from the East, South and North. It will stand high above

its Pine Street location due to height calculation manipulations and will be a major shift or change in the nature of the Point Edwards development.

The upper portion of the Point Edwards development, with which we are here concerned, was the result of a contract rezone as described in Ordinance No. 3411, with an effective date of August 2, 2002. Incorporated into the contractual obligations of the rezone was a requirement that the developer comply with the provisions of the Site Master Plan for Point Edwards (Finding of Fact No. 10, Record 0004), which provides, among other things, That the “residential buildings will be designed to fit into the terraced hilltop and hillside. (Record 0240). The MP-1 zone and the Master Plan for Point Edwards also provide that the development must meet the design standards of ECDC 20.11.

As a result of the remand by the council at the first closed record hearing on July 2, 3013, and instructions to the ADB to prepare findings and conclusions consistent with the decision of approval reached by the board at the May 15th hearing, two and one half pages of “deliberation” at that hearing, most of which was spent discussing what the board members felt they could not consider, has turned into twenty-six (26) pages of findings and conclusions, making it appear that the board considered each and every aspect of the building and design guidelines. That process is a gross misrepresentation of the actual action of the ADB. As Mr. Taraday points out with great perception, at 26:38 of the recorded transcript of the August 7, 2013 meeting of the ADB, “This is an awkward procedure.” Since the board was dealing with findings and conclusions which they had not considered or developed, Mr. Taraday was restating the obvious.

The board having gone through this “awkward procedure,” the Council now has before it a series of findings and conclusions which are not supported by the record. It is not the purpose of this argument to belabor each such finding and conclusion, but to address the substantial

difficulty which exists in the substance of the board's determination. The objected to findings and conclusions are specifically listed in the Appeal documentation.

ECDC 20.11.030A specifically states: "The building shall be designed to . . . avoid conflict with the existing and planned character of the nearby area. All elements of building design shall form an integrated development, harmonious in scale, line and mass. . . . Long, massive unbroken or monotonous buildings shall be avoided in order to comply with the design objectives of the comprehensive plan."

ECDC 20.11.030B states: The existing character of the site and nearby area should be the starting point for the design of the building."

Between the concept from the Master Plan, of terracing into the hillside, and the direction from the design guidelines that the development be consistent with its surroundings (even more specific in this case, as the building is part of an overall development scheme approved more than ten years ago), the ADB is charged with making a determination that the building, not just standing alone, but as part of the overall Point Edwards development is consistent with the other buildings in the project. The board in conclusions such as C.8.C (Record 0012) and several others, has reached such a conclusion. These conclusions are clearly erroneous.

It is constructive to look at the City's design analysis from the time of approval which, at paragraph B.6 (Record 0210) states:

"Pt. Edwards Condominiums are designed to conform to the unique site constraints imposed by topography, soil conditions, subsurface geology, natural vegetation and drainage. Individual structures are, typically, 2 stories of frame construction over a 1 story sub grade concrete parking structure with a single row of units fronting the garage structure on the lowest (downhill) level. Typical 3-story buildings only show a 1 to 2 story facades at the uphill face."

In addition, the report has, as an attachment, drawings of buildings which are considered to be acceptable and unacceptable for the terraced hillside. Include in the unacceptable category is building which is taller than the surrounding buildings (Record 0257).

As city staff stated in its May 9, 2013 report in advance of the ADB hearing on May 15, 2013: "It is up to the Architectural Design Board to determine whether the Project is consistent with the Urban Design Guidelines. Staff feels the overall design elements of the building are consistent with the guidelines, but that the building's layout with respect to being designed to take existing topography into account and scale with respect to the rest of Point Edwards is not consistent with design guidelines."

It is generally the argument of Appellant Waggener that the ADB's various findings and conclusions that the scale and mass of Building 10 conform to the design guidelines and the Master Plan are clearly erroneous. Building 10 is the last building to be constructed. It is at the highest point of the development and yet, will be, by far, the tallest of all the buildings. Building 10 will concentrate 24.6% of the developed living units into 8.7% of the available land area of the development. It will have a 74 car surface parking lot, when the original plans showed only a 28 stall lot. The project will be a massive intrusion into the Edmonds skyline, totally inconsistent with both the current design concepts and the plans upon which the City and its citizens relied in approving the project in 2002.

In addition, it is the contention of the Appellant that none of these or the other steps required of the ADB were taken in its deliberations on May 15, 2013 or in connection with the after-the-fact adoption of the findings and conclusions on August 7, 2013.

A. The Board Inappropriately Relied Upon the Determinations Made at the December 19, 2012 Hearing.

On December 19, 2012, the ADB continued a public hearing for the purpose of re-configuring Building 10. The Board at that time issued a set of proposed “guidance” to the applicant:

“A. The Architectural Design Board reviewed a previous iteration of Building 10 at a public hearing during the December 19, 2012 ADB meeting (Attachment 7) under file number PLN20120040. The ADB moved that the public hearing be continued to a future date and that the applicant modify the design proposal for building 10 as follows:

1. The design of Building 10 should be more consistent with the other development approved and constructed at Point Edwards under the Point Edwards Master Plan.
2. Additional landscaping should be provided along the rockery or in the parking lot along the south side of the surface parking lot.
3. The applicant should take into consideration the following design elements present in the existing Point Edwards buildings: residential fenestration, broad overhangs, more human scale, distinction between floor-to-floor heights, and Pacific Northwest elements and materials.”

The December 19, 2012 hearing and its aftermath are not precedential. However, it is clear from many of the comments made by the Board during their discussion on May 15, 2013 that they considered many of the matters to be off the table.

As indicated by the above, the Board was apparently confused and felt it had previously determined certain issues with regard to height and bulk. And, as a consequence, it did not undertake the correct level of analysis to the issues that were to be addressed.

B. The Board did not properly review the December 19 design criteria.

Even if the Board felt that it was bound by the design criteria from December 19, 2012, as staff correctly points out on page 14, the applicant by the May 15, 2013 hearing had complied with conditions 2 and 4 of the December criteria above, but did not, in staff's option, address either 1 or 3 relating to consistency with other development approved and constructed at Point Edwards or with regard to more human scale as provided in Paragraph 3. These are the exact components which the ADB has erroneously determined now are consistent.

Thus, at least in the interpretation of the staff and the clear language of the design criteria issues from the December 19, 2012 meeting, bulk and size of the property was an issue to be directly addressed.

2. The Board Did Not Sufficiently Consider and In Fact Refused to Consider Height and Roof Modulation Issues Despite the Fact that Such Issues Were Directly Raised by the Staff Report.

The Urban Design guideline which is frequently repeated throughout the record as it relates to roof modulation and bulk of buildings is stated as follows:

ECDC 20.11.030A states that the building shall be designed to "...avoid conflict with the existing and planned character of the nearby area. All elements of building design shall form an engraded development of harmonious scale, line and map....long, massive, unbroken or monotonous buildings shall be avoided in order to comply with the purposes of this chapter and with the design objectives of the comprehensive plan."

In evaluating the modulation aspect of the roof in this particular case, the ADB should take into account that aspect of whether the roof modulation is sufficient to meet Urban Design guidelines. Because of the location of Building 10, the roof modulation is of major importance. As regards a "streetscape" rooftop modulation, the facade of Building 10 as it meets the "height

criteria” is sufficiently high so that there is no visual impact on persons walking along Pine Street. On the other hand, the massive nature of the building as it towers over Point Edwards as follows: “However Building 10 is the last of the Point Edwards development and as such it needs to be viewed in context of the overall Point Edward master plan. Building 10 will crown the Point Edwards development and will stand above the rest of the existing Point Edwards buildings.” (Record 0011)

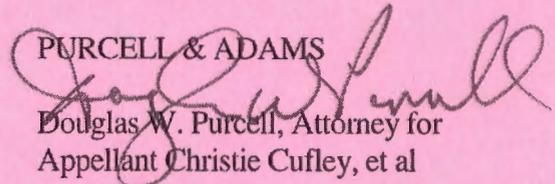
When viewed from a distance, the roof modulations proposed by the applicant will disappear into a relatively flat roof line, creating from the view corridors looking down towards Point Edwards, a “long, monotonous building.”

3. Conclusions and Requested Relief.

As previously described, the Waggener Appellants continue to rely on the proposals and appealable topics as described in great detail in their appeal.

In addition, this argument is addressed primarily to the failure of the ADB to come to grips with the vast inconsistency of the proposed development with both the current status of Point Edwards and the proffered design and conditions upon which the development was originally approved. The Appellant requests that the Council return the application to the Architectural Design Board with specific instructions to reject the current proposed design.

Respectfully submitted by:


PURCELL & ADAMS
Douglas W. Purcell, Attorney for
Appellant Christie Cufley, et al

DWP
Cc: Client

RICHARD E. GIFFORD PLLC

October 4, 2013

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COUNTER

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

Hand Delivered

Re: PLN20130022, 50 Pine Street, Edmonds, Reply to APL20130006

Dear Mr. Lien:

The following materials are submitted on behalf of Edmonds Pine Street LLC (“Applicant”) in reply to (1) the appeal (“Appeal”) of Thomas R. Waggener, et al. (“Appellant”) of the Architectural Design Board’s (“ADB”) May 16, 2003 decision in this matter, and, (2) supplementary argument in support of the Appeal from Douglas Purcell, Appellant’s attorney, dated and filed with the City on September 27, 2013.

This letter incorporates by reference Sections I-III of Applicant’s reply, also submitted to you this date, to the Town of Woodway’s Appeal of the ADB’s decision.

All citations herein to the Record are by reference to the appropriate page or pages of the written record prepared by the City for this matter. Citations to the May 15 ADB transcript are shown “Transcript at ___”. Citations to the ADB’s approved Findings, Conclusions and Decision dated August 7, 2013 (“FC”) are shown as “FC ___”.

A. Response to Appellant

The Appeal rests principally on opinion, interpretation, and repetitions of staff advisory comments to the ADB, not factual showings. In summary, Appellant fails to meet the burden of proof required to justify modification or reversal.

1. The Record Supports ADB’s Decision (Response to Appeal, Attachment 1, page

As acknowledged by staff in the May 9, 2013 Planning Division Report (“SR II”), this

proposal technically is a new application, but has a long history and arose in an existing context. Record 0005, 10; 0453-62; 0481-512. It was modified at the Board's direction last December and incorporates the Board's explicit instructions and guidance. Transcript at 2-3, 27-28; Record 0485-88.

The ADB's December terms [Record 0003, 0005] were the kind of helpful "specific direction and guidance to applicants" required from the City under ECDC 20.11.020(A). The Urban Design Guidelines (UDGs) in the City's Comprehensive Plan are the primary means of meeting this requirement and the standard against which design is measured. Id.; Record 0010 (SR II, Part VI.3.B); FC Conclusions 2, 3. The Board supplied Applicant with consistent direction under the UDGs in December, and confirmed design conformance at the May 15 hearing. Record 0003; Transcript at 27, 28.

The May 15 Record is extensive. In all, it consists of well over 500 pages of written material, in addition to a 28-page hearing transcript, and 26 pages of detailed findings of fact and conclusions of law.

The Board is charged with authority and responsibility to review any development requiring SEPA review, as this one does, in a public hearing, and render a decision. ECDC 20.11.020; FC Conclusion 1. The Board conducted the required hearing, considered all evidence, rendered its decision, and adopted the FC. The Board's design determinations and the FC are supported and sustained by the Record in detail, and as a whole. Id.

As directed by the Council on remand, at its August 7, 2013 public meeting, the Board reviewed draft findings and conclusions drawn up by staff, deliberated, made certain changes to ensure consistency with the Record and its decision, and, unanimously adopted the FC.

Appellant deems 33 findings and conclusions in the FC to be clearly erroneous, without offering support or explanation. Likewise, Appellant's attorney asserts without substantiation that the Board's findings and conclusions, in general, "are not supported

by the record". He refers to Appellant's laundry list of offending findings and conclusions but declines to "belabor" them, meaning he offers no viable evidence or argument in support of the contentions. Instead, he offers generalizations, minimizes and demeans the Board's efforts, and questions the good faith of the exhaustive process that was imposed by the Council. Whatever this sort of blustery "argument" is intended to accomplish, Appellant is shooting blanks, ignoring the record, and sidestepping the factual, Record-based showing that is required. The facts and evidence to substantiate Appellant's claims simply do not exist.

By contrast, the attached Schedule 1 provides, for each of the disputed findings and conclusions, citations to the Record, to the Transcript, and to the FC, for the Council's convenience in surveying the actual evidence presented and considered.

2. Appellant Over Weights Staff Suggestions to the Board and Argues Selectively (Appeal Attachment 1, pages 1-2, 4, 6, 8)

Appellant apparently believes that it is City staff that has decision making authority in design review matters under ECDC 20.11.010. Staff plays an important role, to be sure, and exercises primary responsibility for confirming compliance with bulk and use standards under the zoning ordinance. Staff input to the ADB on design is allowed and even expected, but is advisory only. Staff fills a secondary, supporting role in this design review process. The ADB must exercise its informed, independent judgment regarding design issues, on the whole record. ECDC 20.11.020(A).

Staff determinations on development standards receive deference. ECDC 20.11.020(B). Aesthetic, architectural, style, and other aspects of design review are the province and prerogative of the ADB. ECDC 20.11.020(A). The ADB conducts the hearing, considers all relevant information in the record and City Code and policy, and renders its design decision accordingly. The ADB, not staff, is the designated decision maker in the case of any public hearing on design review under ECDC. Ch. 20.11, and acts in the place of staff for such applications. ECDC 20.11.010(A)(1). Staff input to the Board is invited and considered, but is not controlling. E.g., Transcript at 26-28.

Appellant's strategy is one of picking and choosing to suit the issue. Where Appellant likes staff's position, that position is stressed. Where staff and Appellant disagree, Appellant ignores or disputes staff. Likewise, Appellant similarly highlights or ignores particular design guidelines. The determining factor appears to be what approach best serves Appellant's goal to overturn the Board's decision.

The design review process is holistic, covering all relevant considerations (some 75 UDGs). See Record 0010-15, 0058-60; FC Conclusion 4.a. It is not a process of picking those one likes and leaving the rest, or placing one or a few select guidelines above the others. Each of the guidelines is meaningful and important and best effort must be made to account for all in a comprehensive design review. This is the task assigned to the ADB, and how the Board conducted its review. Transcript at 27-28.

Code section 20.11.030(A)(4) exemplifies the coordinated weighing and balancing process that is involved:

"Long, massive, unbroken or monotonous buildings shall be avoided . . . This criterion is meant to describe the entire building. All elements of the design of a building including the massing, building forms, architectural details, and finish materials contribute to whether or not a building is found to be long, massive, unbroken or monotonous."

Expanding on this concept, the Code mentions various building architectural/design features that contribute to and mitigate a building's mass in multi-family zones: windows with architectural fenestration; multiple rooflines or forms; architecturally detailed entrances; appropriate landscaping; the use of multiple materials. Id. The subject design contains all of these elements, some introduced or adjusted in response to ADB direction, and others that contribute to a compliant overall design as approved by the Board. Record 0023-75, 0453-78, 0486-90; 11-17, 26-28; FC.

In the same way that all elements of a building must be taken into account in comprehensively assessing its mass and presentation, all applicable design guidelines and considerations are part of an integrated design review. The ADB had input from staff, from Appellant and other interested parties, from the Applicant and its architect

and legal counsel, as well as its own background and guidance given on the design issues at the December hearing.

The question presented to the Council on closed record review is whether the Appellant has established by substantial and convincing evidence that the Board's decision was clearly erroneous. The staff's determinations on zoning code compliance (incorporated into the decision), and the ADB's findings and conclusion regarding design approval, are to be upheld absent a lack of support in the record and compelling contrary evidence. It is not a matter of opinion or substituted judgment, but of proof.

Appellant relies on non-expert opinions and interpretations, purely advisory suggestions from staff, and a customized mixture of UDGs, and fails to demonstrate clear error on the part of the Board based on the controlling Record.

3. The Board's Refusal to Require Removal of a Floor or Other Intrusive Structural Changes is a Valid Exercise of Discretion Supported by the Record.

Mr. Lien surprised everybody when he suggested the Board make the Applicant "lop out" a floor from the east wing to "step" the building from east to west. Record 0013, 18; Transcript at 4 [K.Lien testimony]. This came out of nowhere.

Nothing along these lines was said during pre-application review, in the first staff report for the December 2012 public hearing (although the structure, height, and overall building mass/bulk were the same), at the December hearing, or during project re-design. See Record 0226, 0240-243; 0488-490.

That staff had not thought this through was evident when, at the hearing, Mr. Lien backed away from his statements, explaining that they were "simplistic" and incomplete and now felt that other design techniques having a similar visual effect, "while maintaining five stories", would be acceptable and receive staff support. Transcript, Lien Testimony, at 4. Nothing further was suggested by staff.

The Board questioned Mr. Lien on the record, seeking clarification, and came back to the issue during deliberations. Transcript at 5-6, 26-28. Applicant spoke to the issue on the Record and objected to any such requirement as unnecessary under the

UDGs and inappropriate in substance and timing. Transcript at 12-13. The Board agreed and chose not to impose such a condition. Id. at 27-28.

Appellant sticks with Mr. Liens abandoned “simplistic” thought, and in fact, re-doubles it by asking that a full floor be lopped out of each wing of the building. This notion does not even appear in the Record, much less have any credible support. Transcript at 4,-6, 27-29. It is a stab in the dark.

4. Approved Modulated Roof Design (Attachment 1, page 4)

The proposal includes a modulated roof design. Record 0453-62; 0474. Applicant’s architect addressed this explicitly in the design packet and in his presentation to the Board. Id.; Transcript at 14-16. Staff did not contest this evidence, nor did any other party of record. Staff correctly confirmed that the modulated design determination was for the ADB to make. Record 0008; Transcript at 3.

Staff acknowledged on the record that the City’s Code allows a five-foot height bonus for modulated roof design, but does not specify standards for modulation in ECDC Ch. 16.75, the governing zoning provisions. However the Code does contain guidance that the Board has used on many occasions. Applicant presented a comparison roof modulation standard from another section of the Code and described the consistency of this standard with the subject proposal. Record 0459, 0474, 0512 This, too, was uncontested. The ADB agreed with the Applicant and approved the roof as a modulated design. FC, Conclusions 4.a.D.3.a and 8.b.

5. Parking Standards Are Met (Attachment 1, page 4)

Staff found the proposal fully compliant with City parking standards Record 0009-10. The City’s Parking Code does not require underground parking. ECDC Ch. 1750; Transcript at 4-6. Surface parking is allowed. Record at 0009-10.

Although the City cannot require underground parking, the proposal provides nearly half of its parking below grade (70 stalls), with 74 surface spaces. Record 0010, 0057; Transcript at 3, 5-6. The 144 spaces exceeds the parking requirement, and is fully compliant with ECDC Ch. 17.50 parking standards. Record at 0010; Transcript at 5.

As a design element, the Board considered and required additional planting, trellising, and other design amenities to provide increased screening for the surface parking area. Record 0003, 0080-82. A concept plan for the larger project approved in 2003 surface parking on this site, as did the detailed design for Building 10 first approved by the ADB in 2006. Transcript at 6; Record at 0205, 0217-18, 0493, 0496.

6. Height Calculation (Attachment 1, pages 6 and 7)

The Code supplies definitions and a height calculation methodology. In the pre-application review phase, Applicant's architect conferred with staff and received direction and confirmation regarding the height calculation for this project. Staff repeatedly has approved the method and resulting height calculations. E.g., Record 0008-9; Transcript at 3-6. 13. The height calculation method used in the design with advance staff approval is explained in detail in SR II. Record 0008-9, 0017. Staff's assessment and approval is entitled to deference, is consistent with Code provisions and past City practice, was considered and approved by the ADB, conforms with the Code, and is supported by the Record. Appellant offers a convoluted interpretation of the Code that contradicts the language of the Code, misinterprets some aspects, overlooks past practice, and completely disregards staff's informed assessments, which receive deference. The contentions are baseless.

Appellant's assertion that a five-story building could not be built elsewhere in the Edmonds "bowl" is outside the record and, in any event, immaterial. The issue is what the City's Code and practice allow for THIS SITE given its topographic characteristics. Allowed height depends on Code standards and particular site characteristics, not hypothetical extrapolations. Staff has approved and confirmed the height calculation and the project's compliance, and the Board properly accepted that determination. FC Findings 10, 13, Conclusions 8.b, 10.

7. Appellant Would Supplant Express ADB Conclusions with Non-binding Staff Commentary (Attachment 1, page 8)

Appellant argues with the ADB over the meaning of its own clear statement that the re-design accomplished what it sought in its directives and now aligns with the

design guidelines. Transcript at 27-28; FC Conclusion 4. The Board clearly ratified and approved the revised design as both meeting the City's design criteria and fulfilling its specific directives during the December 2012 hearing (Transcript at 27-28; CF) yet Appellant claims otherwise, once again leaning on precatory staff comments for support, as if it does not matter what the Board said or decided. The Board issued the directives, and the Board itself confirmed that the new design satisfies those directives fully while complying with the broader sweep of the UDGs as a whole. Id. The Board considered staff's input along with other material in the Record before making its decision.

Appellant wishes the Board had required major structural adjustment to the building when it gave direction to the Applicant in December, and suggests that is what the Board meant, based on disconnected comments by staff in SR II. But the Board's December re-design order, recorded verbatim in the Record, says nothing of the sort, and the Board did not state otherwise at the May hearing. In fact, the Board, like Applicant, clearly was caught off guard by staff's surprise suggestion, and questioned staff quite extensively about it and about the final shift in meaning given by Mr. Lien. The idea was no part of the ADB's guidance to Applicant in December, and was excluded purposely from the Board's decision in May. The Record is not limited to the Board's four instructions, nor was the Board's consideration, as the FCs clearly show. Appellant is engaging in wishful thinking and creative reconstruction.

While Appellant argues that the Board should apply its December 2012 directives (though in the manner desired by Appellant), Appellant's attorney asserts they should have no bearing on the Board's thinking or its decision. The fact is that the Board supplied direction to the Applicant in a good faith effort to provide helpful guidance, and Applicant accepted the input revised its design in a good faith effort to comply. The Board now has undertaken a thorough, independent review of the revised design, finding it in conformance with Code, Plans, and policy, and at the same time, responsive to and consistent with its December instructions. Transcript at 26-28; FC

Conclusions 2-5, 7-12. It rendered its approval accordingly, supported by the record on review.

8. Extensive Evidence in the Record and the History of the Project Support the Board's Decision to Conditionally Approve the Revised Design

This proposal has been vetted by staff and the ADB through 17 months of processing that has encompassed pre-application review with two all-hands staff meetings, project submittal, an initial public hearing in December 2012, re-design of the project in response to specific ADB direction, new SEPA review required by the City mid-stream, a new, stand-alone parking study demanded by the City, and a second public hearing during which the revised design was again intensely scrutinized by the public, staff, and the ADB. Record 0004-6, 0240, 0481-90. The effort has been exhaustive.

Applicant has been proactive and forthcoming about the design from the outset, and thorough in its submittals. Everything required requested by the City, and more, has been provided.

The core of the building--size, shape, mass, footprint, landscaping, parking plan and configuration, amenities, and other important elements are unchanged, except for revisions validly stipulated by staff and/or the ADB. Record 0460-62, 0468-69, 0484, 0487-89, 0503-05.

The ADB-ordered re-design was conducted in good faith reliance on the Board's input. At the end of the day, the ADB exercised its authority and discretion, conditioning its final approval on a few design refinements urged by staff. Record 0003; Transcript at 28-29.

9. The Supplementary Argument Adds Nothing of Substance or Merit to the Appeal

Mr. Purcell's letter is of little import. He objects to various aspects of the design process, such as staff-verified height calculations and the Board's adoption of the FC as directed by the Council, but offers no evidentiary support from the record. Applicant agrees that the remand step was awkward, but it was necessary to ensure proper and complete process under the City's design review protocols.

Mr. Purcell echoes the general, unsubstantiated charge that the Board's decision and the FC's supporting it, are clearly erroneous. No proof whatsoever is offered. His reference to ECDC 20.11.030(A) is misleading and incomplete. That Code section explicitly adds that all aspects of a building and its architectural design contribute to the assessment of its mass and scale, and references particular elements that are a distinct part of this proposal. No one disputes that this building will exist in a context and that consideration needs to be given to surrounding development. This is precisely what the Board asked Applicant to do in December, Applicant responded, and the Board endorsed the design as responsive and much more compatible with surrounding buildings and site features. Transcript at 27-28.

Mr. Purcell's references to Record 0210 and 0257 appear to be intended to refer to Record 0088-89 and 0139. The first reference is not to the City's prior design analysis but to Provision B.6 in a narrative prepared by the developer about Point Edwards, noting basic characteristics of buildings with two and three residential stories (some of which also had additional exposed stories containing underground parking). The second reference is an excerpted page from the former Edmonds Downtown Waterfront Plan, now superseded by the Urban Design Element and UDGs in the Comprehensive Plan and no longer relevant. It is the current UDGs that matter.

Like Appellant, Mr. Purcell over weights staff opinions and suggestions. The Board is obligated to make these determinations based on the Record and its informed judgment. It is not a rubber stamp for staff.

The density concentration information on page 4 of his argument also is misleading. It is more meaningful to compare the proposed Building 10 footprint to the total developed footprint at Point Edwards, a 13% ratio. More instructive is that just 42.9% of the available land area at the 50 Pine Street site will be covered, well below the limit of 75% lot coverage allowable per individual lot.

Mr. Purcell suggests that the Board relied exclusively on its December 19 directives in approving the proposal. His interpretation flies in the face of the Record and the Board's explicit findings and conclusions. The entire record must be considered, not

merely the Board's summary discussions at the end. The standard is the record as whole. The Board determined that it was neither necessary under the City's design criteria, nor appropriate, to compel further major design changes, and so omitted any reference to floor removal or building "step" requirements. That staff had a different "opinion" can be acknowledged, but is neither relevant nor probative.

Mr. Purcell repeats his truncated and misleading quotation of portions of ECDC 20.11.030(A) with respect to approved modulated roof design. This issue was thoroughly addressed in Appellant's presentation, other parts of the Record, and staff commentary, as previously noted. Mr. Purcell introduces his own notion about modulated roof design, to the effect that it is not the modulation, but the appearance of modulation that matters, and, in particular, as viewed by pedestrians walking along Pine Street. This is a unique view, nowhere presented in the Code or UDGs. It is nothing more than one man's non-expert opinion and has no relevance or bearing in these proceedings.

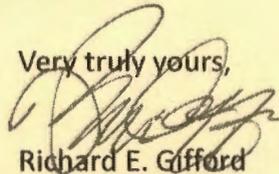
Disapproval and disagreement are insufficient to overturn the presumptively valid decision of the ADB. They are supported by evidence in the Record and consistent, comprehensive findings of fact and conclusions of law. Appellant has not met its burden of proof. The ADB's decision should be upheld in all respects.

B. Conclusion; Requested Relief

The Record supports the Board's decision. Appellant has not met, and cannot meet, its burden of showing the decision to be clearly erroneous. Applicant respectfully requests that the Council affirm the ADB's decision.

Thank you for the opportunity to submit this reply to the Appeal. The Applicant appreciates the Council's consideration of this matter.

Very truly yours,



Richard E. Gifford
Attorney for Applicant,
Edmonds Pine Street

Schedule 1—Supporting References to the Record**Findings of Fact:**

13 (Record 0008-9, 0017, 0031, 0051, 0238, 0488, 0491; Transcript at 3-5); **20** (Record 0459, 0474, 0491, 0512; Transcript at 3); **22** (Record at 0023-25; 0460; 0486-90; Transcript at 12, 14-15, 26-28)

Conclusions of Law (and Mixed Findings and Conclusions):

2 (Record 0010-11, 0058-60; 0488-0490; ECDC 20.11.020(A)); **3** (Record 0010-11; ECDC 20.11.020(A)); **4.a** [C.2.a (Record 0009-11| 0016; 028); **C.6.b** (Record 0008, 0012-13, 0024-25, 0035, 0041); **C.7.a** (Record 0014-15, 0042; Transcript at 17-18); **C.8.a** (Record 0023-25, 0059-60, 0469, 0474; Transcript at 14-16); **C.8.b** (Record at 0012 [Part K], 0058; Transcript at 3, 12, 15-16, and 28 [Board Member Guenther]); **C.8.c** (Record 0034, 0456-58, 0060; Transcript at 28); **C.8.d** (Record 0034, 0060m 0456-58; Transcript at 15-16, 28); **C.13.a** (N/A as no significant landscape features exist other than the boulder retaining wall that will remain as part of the project); **C.13.d** (Record 0037, 0039-40, 0051, 0070, 0072, 0074, 0139-40, 0201-03, 0456-0458, 0461-62; Transcript at 14); **C.14.c** (Record 0012, 0015-16, 0024, 0052-58, 0060, 0462, 0475, 0489; Transcript at 17); **D.1.b** (Record 0034, 0056-58, 0060; Transcript at 15, 16, 28); **D.2.a** (Record 0011, 0024, 0027, 0036, 0038-44, 0058-60, 0462); **D.2.b** (Record 0024, 0028, 0031, 0036, 0038, 0041-42, 0060, 0070-75); **D.2.c** (Record 0012, 0014-16; 0035-36, 0038-39, 0041, 0059-60, 0459, 0474); **D.3.a**(Record 0008, 0038, 0060, 0459, 0474, 0491-92, 0512; Transcript at 3, 16); **D.3.b** (Record 0011, 0024, 0027, 0036, 0038-44, 0058-60, 0462); **D.4.b** (Record 0012, 0014-16, 0024, 0028, 0031, 0035-36, 0038-39, 0041-42, 0059-60, 0070-75, 0459, 0474); **D.4.c** (Record 0012, 0014-16, 0024, 0028, 0031, 0035-36, 0038-39, 0041-42, 0059-60, 0070-75, 0459, 0474); **D.4.e** (Record 0034, 0056-58, 0060; Transcript at 15, 16, 28); **E.1.b** (Record at 0034-36, 0038-41, 0060, 0354-56, 0474); **E.1.c** (Record 0026-61; 0459-62; Transcript 14-18, 28); **E.1.e** (Record 0026-61, 0459-62; Transcript at 12, 14-16, 28); **5** (Record 0007-10, 0011 [Part F], 0015-16, 0017 [Staff Summary Point No. 1]); **6** (Record 0030, 0033, 0053, 0109-0127 and 0160-0179 [Point Edwards approved Master Plan, 2002], 0182-86 [approved MP zoning for Point Edwards site, ECDC Ch. 16.75], 0455, 0466, 0467, 0482-83, 0493, 0494, 0495, 0496, 0497, 0501; Transcript at 12-13, 14-16); **8** (Record 0007-10, 0225-228, 0238; Transcript at 2-6 [K. Lien testimony]); **9** (Record 0007-10, 0011 [Part F], 0015-16, 0017 [Staff Summary Point No. 1], 0028); **10** (Record 0007-10, 0011 [Part F], 0015-16, 0017 [Staff Summary Point No. 1], 0028); **12** (Record 0024, 0027-30, 0033, 0053, 0069-75, 0109-0127 and 0160-0179 [Point Edwards approved Master Plan, 2002], 0182-86 [approved MP zoning for Point Edwards site, ECDC Ch. 16.75], 0455-58, 0466, 0467, 0482-83, 0487-90, 0493, 0494, 0495, 0496, 0497, 0501; Transcript at 12-13, 14-16; ADB Findings 10, 12, 13, 14, 21, 21)