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MAY - 9 2012

PLANNING DEPT.

Cliff Sanderlin & Heather Marks
10522 235th PI SW, Edmonds, WA 98020
Clifheat@drizzle.com

May 9, 2012

Edmonds City Council
Edmonds, WA

RE: RESPONSE TO REBUTTALS OF OUR APPEAL OF BURNSTEAD
CONSTRUCTION COMPANY PRD - WOODWAY ELEMENTARY PLAT/PRD, P-
2007-17/PRD-2007-18.

1. With reference to WRITTEN ARGUMENTS of May 4, 2012 from Burnstead
Construction that our appeals and those of the Millers and Tagios were untimely:

***Our response: We were given the deadline of April 3, 2012, by Kiernen
Lien, of the Edmonds Planning Department. See Lien email in Exhibit 1.***

2. That per Edmonds code, the requirements of a closed record appeal
forbid the presentation of new material.

***Our reply: We did not present "new material." This is material presented
by Heather Marks in 2007 in her testimony to the Hearing Examiner at the
time, who erroneously disregarded ECDC 23.90.040, and again in 2012.
ECDC 23.90.040 stipulates that:***

Approval for alteration of land adjacent to the fish and wildlife habitat
conservation area or its buffer shall not occur prior to consultation with the
Washington Department of Fish and Wildlife for animal species, the Washington
State Department of Natural Resources for plant species, and other appropriate
federal or state agencies. The City of Edmonds and the applicant violated
Edmonds ordinances and State Law in ignoring the Fish and Wildlife Habitat
Conservation Area in 2007 and again in 2012.

Furthermore, we argued in 2007 and again in 2012 that **the applicant's wildlife
biologist ignored the existence of environmentally critical areas pertaining
to the subject property.** The biologist's erroneous information and
interpretations were used as a basis for the erroneous decision of the 2007
Hearing Examiner, which was subsequently overturned in Snohomish County
Superior Court. Now, the 2012 Hearing Examiner, in her decision, has
compounded these errors and omissions.

The professional **biologist's wildlife report was based on an evaluation of
the wrong property**, with very different characteristics from the applicant's
property. From page 4 of the report: "*Habitat 2: Medium-aged mixed forest: This
habitat unit occurs along the northern edge.... Vegetation is characterized by a
canopy of primarily western red cedar ...and red alder ... with an understory of*

salal...and sword fern...Wildlife detected in this zone includes song sparrow and dark-eyed junco...

OUR COMMENT: *The construction company's contract biologist observed the wrong area--as was pointed out in the hearings of 2007, an error that he acknowledged during that hearing. The western red cedar, red alder and salal described are located on property owned by Edmonds and now part of Hickman Park. This area is habitat for a resident pair of pileated woodpeckers.*

The biologist's wildlife report also stated: "The on-site forested habitat connects to some additional forested lands off-site. Because the width of this area of forest is so narrow, it is unlikely that it serves as a wildlife travel corridor for many wildlife species..."

OUR COMMENT: *It IS a wildlife corridor.* Paul S. Anderson, Wetland Specialist for the Washington State Department of Ecology commented **"...Narrow though the forest stand may be, it is still providing habitat connectivity and meets the FWHCA definition under Edmonds Municipal Code §23.90.010.A.10."** (See Exhibits)

We are not alone in our concern about preserving the last vestiges of wildlife habitat, especially when it is part of a wildlife corridor like this one. The appeals of all the neighbors, which you consider an irritation, are widely supported by our community. In fact, they have underwritten the \$365 fee for each of our appeals.

In a city like Edmonds that is nearly 100 percent built-out, there is a valid reason why a few small pieces of property are still undeveloped. They either do not qualify due to slide conditions, wetland status, wildlife protection, or historical use by the community. In the case of OWWWE, the 5.61 acres you want to build 27 houses on fits all these categories. If it is to be developed, we sincerely hope that the builders stop taking shortcuts in order to bully their way through. If there has been a delay of five years in Burnstead's ability to develop the property, it is only due to the poor market for new housing, but because they have failed repeatedly to follow the laws of our state and city.

Burnstead Construction, like other developers, regards City and state regulations as hurdles to overcome, not as guidelines for protecting the community and its environment. It's not enough for the builder and City Development Support office to check off a box that says "Hearing Held. Move on to the next box." I believe our City's elected leaders know there is a difference between speaking at a City hearing and actually *being heard*. The people of Southwest Edmonds certainly do, having been through many hearings over the years that were nothing more than charades.

Thank you for considering our response.

Sincerely,

A handwritten signature in black ink that reads "Cliff Sanderlin". The signature is written in a cursive style with a prominent "C" and "S".

Cliff Sanderlin

Date: May 9, 2012

Attached on following page.

Exhibit 1, Email correspondence from Kernen Lien regarding appeal deadline

EXHIBIT 1 – May 9, 2012

EMAIL From:

Kernen Lien <lien@ci.edmonds.wa.us>

Subject: RE: P-2007-17/PRD-2007-18 Please send correspondence regarding deadline for the Hearing Examiner appeals

Date: May 8, 2012 11:03:22 AM CDT

To: Cliff Sanderlin
<clifheat@drizzle.com>

Cc: Darlene Miller
<rkmiller4@comcast.net>, Ira Shelton
<ixs@comcast.net>, KATHIE Ledger
<katled@comcast.net>, Lora Petso
<VotePetso@aol.com>, Colin Southcote-
Want <AlbionAct@aol.com>and 3 more...

Return-Path: <lien@ci.edmonds.wa.us>

X-Spam-Checker-Version: SpamAssassin 3.2.4 (2008-01-01) on
spam.ipns.com

X-Spam-Level:

X-Spam-Status: No, score=0.0 required=3.0
tests=HTML_MESSAGE,UNPARSEABLE_
RELAY autolearn=disabled version=3.2.4

X-Spam-Summary: 0.0 UNPARSEABLE_RELAY
Informational: message has unparseable
relay lines 0.0 HTML_MESSAGE
BODY: HTML included in message

X-Original-To: clifheat@drizzle.com

Received: from mx01.csolutions.net
(mx01.csolutions.net [208.110.132.66]) by
mail01.ipns.com (Postfix) with ESMTP id
56FCE3DAFF for <clifheat@drizzle.com>;
Tue, 8 May 2012 10:04:00 -0600 (MDT)

Received: From exprod8og111.obsmtpl.com
(64.18.3.22) by mx01.csolutions.net
(MAILFOUNDRY) id
YSIKOJknEeGX2QAw for
clifheat@drizzle.com; Tue, 8 May 2012
16:03:48 -0000 (GMT)

Received: from edmondsmx1.edmonds.local
([74.112.48.2]) by
exprod8ob111.postini.com ([64.18.7.12])

with SMTP ID
DSNKT6ID3Sp2FyzmWF+jkoJfkUrdV+KW
mrUB@postini.com; Tue, 08 May 2012
09:03:48 PDT

X-Envelope-From: lien@ci.edmonds.wa.us
X-Envelope-To: clifheat@drizzle.com
X-Mimeole: Produced By Microsoft Exchange V6.5
Mime-Version: 1.0
Content-Type: multipart/mixed;
boundary="=_mail01.ipns.com-5742-
1336493048-0001-2"
Content-Class: urn:content-classes:message
X-Vipre-Scanned: 0387CE34002E740387CF81
Message-Id:
<C8797CB3F6D5E242B7B9C0040DB5
EB540A86D669@edmondsmx1.edmonds.l
ocal>
In-Reply-To: <F3CBEB7B-17F3-44AF-A382-
EBEAC3941A66@drizzle.com>
X-Ms-Has-Attach:
X-Ms-Tnef-Correlator:
Thread-Topic: P-2007-17/PRD-2007-18 Please send
correspondence regarding deadline for the
Hearing Examiner appeals
Thread-Index:
Ac0tLVhLnQqwAIMvSP2HJsQTGVay4g
AAMeWw
References: <F3CBEB7B-17F3-44AF-A382-
EBEAC3941A66@drizzle.com>

Mr. Sanderlin et al.

ECDC 20.07.004.B provides *"Time to File. An appeal must be filed within 14 days after the issuance of the hearing body's written decision."*

I did not send out a letter to all parties stating when the appeal deadline was; however, there was some email correspondence with

the Miller's in which I stated the appeal deadlines. These emails are attached. The March 13, 2012 email under question 2.d, I stated we considered the day the decision is issued is the day it was mailed.

Note on the record at page 000025, Hearing Examiner signed the decision on March 7th, but on the declaration of service (record 000026 -000027), under item 4 the Hearing Examiner indicated the decision was mailed on March 8th. We considered the March 8th declaration of service as the day of issuance with a 14-day appeal deadline of March 22.

With the request for reconsideration from the City the appeal period starts over according to ECDC 20.06.010.G.1 which states, "The time period for appeal shall recommence and be the same for all parties of record, regardless of whether a party filed a motion for reconsideration."

Again, the Hearing Examiner signed the Order on Reconsideration the day before she mailed it. The Order of Reconsideration was signed March 19th (record at 000038), but was not mailed until March 20th (record at 000039). Counting the day the Order was mailed as the day of issuance, the appeal deadline was April 3rd.

Let me know if there is anything else I can do for you.

Kernen Lien ☐ Associate Planner ☐ City of Edmonds | Development Services Department ☐ lien@ci.edmonds.wa.us ☐ 425-771-0220 x1223

From: Cliff Sanderlin [mailto:clifheat@drizzle.com] ☐ **Sent:** Tuesday, May 08, 2012 8:15 AM ☐ **To:** Lien, Kernen ☐ **Cc:** Darlene Miller; Ira Shelton; KATHIE Ledger; Lora Petso; Colin Southcote-Want; Dino Tagios; Sophia Tagios; Heather Marks ☐ **Subject:** RE: P-2007-17/PRD-2007-18 Please send correspondence regarding deadline for the Hearing Examiner appeals

Kernen,

Since the Burnstead rebuttal contends that some of our appeals were "untimely" we will state that we relied on City staff for the April 3 deadline. As I recall, we received a notice by snail mail that the deadline for our appeals was extended because the City had filed a Motion to Reconsider to correct some errors.

Our appeals were Bates stamped March 30 (Petso), April 2 (Shelton), and April 3 (Marks-Sanderlin and Miller-Tagios.)

Can you send us the documents electronically regarding appeal dates, both the initial and the revised dates as well as the reason for the extension? Some of us are out of town and do not have hard copy files with us.

Thanks! -- Cliff

PS: Please reply to all on the cc list. (thanks again)

Cliff Sanderlin & Heather Marks
10522 235th PI SW
Edmonds, WA 98020-5732
Home: 206-546-8983
Cell: 206-409-3255
clifheat@drizzle.com

From: "Lien, Kernen" <lien@ci.edmonds.wa.us>
Subject: RE: Burnstead PRD by Hickman Park near Woodway Meadows

Date: March 22, 2012 5:56:00 PM CDT
To: "Darlene Miller" <rkmiller4@comcast.net>

Mr. and Mrs. Miller,

An appeal must be filed within 14 days of issuance of the decision. The day the decision was mailed is the date of issuance which was March 20th, so the appeal deadline is 4 p.m. on April 3rd.

Let me know if you have any other questions.

Kernen Lien ☐ Associate Planner ☐ City of Edmonds | Development Services Department ☐ lien@ci.edmonds.wa.us ☐ 425-771-0220 x1223

From: Darlene Miller [mailto:rkmiller4@comcast.net] ☐ **Sent:** Thursday, March 22, 2012 3:50 PM ☐ **To:** Lien, Kernen ☐ **Subject:** RE: Burnstead PRD by Hickman Park near Woodway Meadows

Mr. Lien,

Thank you for your reply to my March 18th email. Because we got another mailing from the City in today's mail, I have a question on dates.

Today we received a "BEFORE THE HEARING EXAMINER FOR THE CITY OF EDMONDS" letter from the Hearing Examiner that was dated March 19, 2012; postmarked March 20, 2012; and delivered to our mailbox today, March 22, 2012.

Does the 14 days during which to file an appeal to the Edmonds City Council begin on Monday, March 19th, or on Tuesday March 20th when the decision was mailed out to parties of record? Also, could you please tell me the actual date by which we need to submit our appeal?

Thank you very much,

Darlene and Rick Miller

From: Lien, Kernen [mailto:lien@ci.edmonds.wa.us] **Sent:** Monday, March 19, 2012 8:54 AM **To:** Darlene Miller **Subject:** RE: Burnstead PRD by Hickman Park near Woodway Meadows

Mr. and Mrs. Miller,

Please see my responses below in red.

Kernen Lien Associate Planner City of Edmonds | Development Services Department | lien@ci.edmonds.wa.us | 425-771-0220 x1223

From: Darlene Miller [mailto:rkmiller4@comcast.net] **Sent:** Sunday, March 18, 2012 9:24 PM **To:** Lien, Kernen **Subject:** Burnstead PRD by Hickman Park near Woodway Meadows

Mr. Lien,

Thank you again for your quick and helpful reply to our March 13th email. We have read through your comments, read through the code and talked with my husband. We have decided to appeal the decision to the Edmonds City Council. Before doing so we have a couple additional questions:

1. Additional time to submit Appeal: because of the "MEMORANDUM" we received from the City dated March 15, 2012 we know that a "Request for Reconsideration" was submitted on this PRD. Are we correct that we now do NOT have to have our Appeal in by March 22nd since per your reply to my March 13th email's question #2 part d states: "...the appeal clock (14 days) doesn't start until the Hearing Examiner's Order on Reconsideration (basically the final decision from the Hearing Examiner)" ?

You are correct. A request for reconsideration stays the Hearing Examiners decision. A new 14-day appeal period will begin once the

Hearing Examiner issues an order on reconsideration. The Hearing Examiner has 10 business days to issue the order on reconsideration, which by my calculation should be March 29th.

2. Appeal notification: are we correct that we will hear in writing, since we're a 'party of record' as to the Hearing Examiner's decision mentioned above, AND in a timely enough matter that we will have 14 days to submit our appeal? We're just making sure we don't have to somehow 'watch out for' the HE's decision to be sure we don't lose our 14 days.

The Hearing Examiner will mail the order on reconsideration out to all the parties that received the decision.

3. Can we Appeal together?:

a. We assume it is ok for my husband and me to submit a joint appeal and pay just \$365.00, signing both of our names to our one, joint appeal.

b. Is it also ok for us to join together with another party of record per 20.07.003, who also submitted written testimony timely for last month's hearing? For example, could my husband and I and our 'party of record' neighbor go in together, submit one Appeal where we'd all sign the letter and pool our money to pay one \$365.00 fee? I don't see any information in the link that talks about going in together to submit Appeals, nor about married couples.

I think as long as all parties to the appeal are parties of record as defined by ECDC 20.07.003, you all agree on the content of the appeal and sign the appeal, there is no reason why you could submit a combined appeal.

4. Appeal requirements: I looked at the link you provided and see the following 7 requirements for an acceptable Appeal and have some questions:

a. #2 below: "appellant's standing to appeal" – Would we state that our property abuts to the PRD property in question to fulfill this requirement? I don't know what it is asking and can't ask him this evening if he knows yet want to get this email off to you.

Your standing to appeal is that you're a party of record. You submitted comments prior to the hearing and testified at the hearing.

b. #3 below: We assume the answer is Burnstead Development; if not, what would we say here?

There are actually two permits associated with Burnstead proposal (Woodway Elementary Preliminary Plat/PRD) that could be appealed. Both are Type III-B decisions appealable to City Council. P-2007-17 is the formal plat portion of the proposal and P-2007-18 is the Planned Residential Development portion of the proposal. Depending on the content of your appeal, you may appeal either the plat or the PRD or both. I can't advise on the content of your appeal, I can only help with regards to what the appeal process is.

c. Part D below says that a fee must be paid, (you told us the Appeal fee is \$365.00) and provides 7 things we must do to properly Appeal. Are you aware of anything else, in addition to these 7 things mentioned in the ECC and paying the fee, that we need to do to properly Appeal (other than submitting it timely)?

Submit the appeal with the content identified below, pay the fee of \$365, and submit it to the City 14 days after the Hearing Examiners order on reconsideration. The appeal must be received by the City's Development Services Department (2nd Floor City Hall) by 4:00 p.m. on the last day of the appeal period. If you want to verify the appeal period when you receive the order on reconsideration, just drop me another email.

D. Content of Appeal. Appeals shall be in writing, be accompanied by the required appeal fee as set forth in the city's adopted fee resolution, and contain the following information:

1. Appellant's name, address and phone number;
2. A statement describing appellant's standing to appeal;
3. Identification of the application which is the subject of the appeal;

4. Appellant's statement of grounds for appeal and the facts upon which the appeal is based with specific references to the facts in the record;

5. The specific relief sought;

6. A statement that the appellant has read the appeal and believes the contents to be true, followed by the appellant's signature.

7. All written submittals should be typed on letter size paper (eight and one-half by 11), with one-inch margins, using readable font type (such as Times New Roman) and size (no smaller than 12), single sided.

Again, thank you very much for your help.

Your welcome.

Regards,
Darlene and Rick Miller

From: "Lien, Kernen" <lien@ci.edmonds.wa.us>
Subject: RE: How to appeal
Date: March 13, 2012 5:50:05 PM CDT
To: "Darlene Miller" <rkmiller4@comcast.net>

Mr. and Mrs. Miller,

Please see my responses below in red.

Kernen Lien ☐ Associate Planner ☐ City of Edmonds | Development
Services Department ☐ lien@ci.edmonds.wa.us ☐ 425-771-0220 x1223

From: Darlene Miller [mailto:rkmiller4@comcast.net] **Sent:** Tuesday, March 13, 2012 2:11 PM **To:** Lien, Kernan **Subject:** How to appeal **Importance:** High

Re: Burnstead PRD by Hickman Park near Woodway Meadows

Mr. Lien,

I'm writing today because my husband and I do not know how to properly and effectively appeal the Hearing Examiner's recent ruling on the above-referenced property but need to do so right away, and, in the appropriate manner and timing. We feel the HE has made errors and wish to exercise our right to appeal the ruling. The "FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION" packet we received in the mail recently ends with: "This decision is final and subject to appeal to the City Council by closed record review as governed by..... Appeal deadlines are short (14 days from issuance of the decision)...." So we can tell from the mailing that we are entitled to appeal.

If you could answer our questions below, and those we don't even know to ask BUT THAT would provide information we need to know in order to do this properly, timely and in the right order we would really appreciate it.

1. What is a "closed record review"? Is it #2 or #3 below?

A closed record review is an appeal to the City Council based on the record established before the Hearing Examiner with no new evidence or information allowed to be submitted (with a few exceptions). ECDC 20.07

(<http://www.mrsc.org/mc/edmonds/edmonds20/edmonds2007.html>)

spells out the procedure for closed record appeals.

2. Last time a ruling on this PRD was appealed we see that the folks doing so submitted a "request for reconsideration". We don't know if this is the type of appeal mentioned above.

A request for reconsideration is not an appeal. It is basically asking the Hearing Examiner to "reconsider" her decision. Details on what can be included in a request for reconsideration are spelled out in ECDC

20.06.010

<http://www.mrsc.org/mc/edmonds/edmonds20/edmonds2006.html#20.06.010>).

a. Is this the first step in appealing this ruling also?

One does not have to do a request for reconsideration prior to appealing. One could just appeal the decision without doing a request for reconsideration.

b. If not, what is our first step?

As noted above, a request for reconsideration does not have to proceed an actual appeal. One could just appeal the decision.

c. If so, who/where to we submit it?

Both requests for reconsideration and appeals are filed at the Development Services Division (2nd Floor City Hall). The request for reconsideration goes back to the hearing examiner, where an appeal would go to the City Council.

d. By when must we submit it? Including the actual date by which it's due since it can be confusing when the "clock starts running" on this recent HE ruling – March 7th plus 14 days which equals March 21st?????

I just spoke with the City Attorney about timing. The Hearing Examiner signed the decision on March 7th but did not mail it until March 8th, so we are considering March 8th the day on which the decision was issued. A request for reconsideration must be requested within 10 calendar days, which would be March 18th. Since March 18th is a Sunday, a request for reconsideration will be accepted until 4 pm on March 19th.

An appeal must be filed within 14 days of the decision or by 4 pm on March 22nd.

If a reconsideration is filed, that stays the decision. So if a reconsideration request is submitted, the appeal clock (14 days)

doesn't start until the Hearing Examiner's Order on Reconsideration (basically the final decision from the Hearing Examiner).

3. If submitting a "request for reconsideration" is not our first step, what is?

a. Is it appealing to the Edmonds City Council?

As noted above, one does not have to first request reconsideration, one could directly appeal the decision to the City Council for closed record review.

b. If so, how do we do that?

Details on how to submit an appeal is contained in ECDC 20.07 which is linked above. Content of the appeal is spelled out in ECDC 20.07.004.D, and as noted above, the appeal is submitted to the Development Services Division on the second floor of City Hall.

c. By when must we submit it? Including the actual date.....

An appeal to City Council must be filed by March 22nd, unless a request for reconsideration is made.

There are fees associated with both a request for reconsideration and an appeal. The fee for a request for reconsideration is \$175, and the fee for an appeal is \$365. Additionally, if a party asks for a verbatim transcript of the hearing, the requesting party will have to pay for the transcript too. I lost my estimate of the verbatim transcript, but I think it was around \$350.

Thank you very much in advance for helping with this matter.

Your welcome. Let me know if you have any other questions.

Darlene and Rick Miller
23623 107th Place West
Edmonds, WA 98020-5257
206 542-5098

