DATE: June 7, 2013

PROJECT: HILLMAN RESIDENCE
1139 SIERRA PLACE
EDMONDS WA 98020

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DEVELOPMENT SERVICES
COUNTER

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SUBJECT: **PLN20120033**

APPLICANT'S RESPONSE TO APPEAL OF MAY 8, 2013 and FURTHER COMMENTS OF MAY 31, 2013

The following is our rebuttal to the arguments presented in the appeal, organized by topic rather than the order presented in the appeal documents. Page number references are to the above two appeal documents unless otherwise noted; four-digit references are to the city's Bates Stamped numbering system per their request.

1. **The Shoreline Master Plan (May 31, first page) does not apply to this property.**

The plan's jurisdiction, per the city's website, only includes properties within 200 feet of the shore, with a focus on places like the Edmonds Marsh and Lake Ballinger. Compliance with this program is therefore not applicable to our lot. That being said, we follow the appellants' reasoning that the city has adopted

environmental protection regulations over the years for the public good. The city staff's approval of our proposal indicates their agreement that we have met their code's requirements in this regard. The appellants seem to ignore the fact that our proposal leaves the great majority of the lot and its critical areas not only undisturbed, but in large part enhanced, to promote the functions of the wetland and stream.

2. There is no arbitrary time limit for vacant lots to be developed.

There is no basis in city code to claim that if a lot has not been developed in the last hundred years it cannot be (May 31, middle of p. 2). Attempts by previous owners to develop a lot also do not form any basis for denial of a new application, especially when the previous applications were not denied.

3. We have a clearly reasonable expectation to be able to build a house.

We disagree with the appellants' statement that we "simply had no reasonable expectation that [we] would be allowed to develop" (May 31, middle of p. 3) and so should not expect to be able to obtain a variance for this property. The house next door (1111 Sierra Place) was built under a very similar variance (city file PLN199900136) as described in the city's staff report of March 7, 2013 (beginning with 0083: History/Background), as that lot also contains wetland and stream features (0199: Hachler site plan).

There was an existing variance (PLN20040008) in place *on our lot* that was *still active* (under BLD20100196) at the time we bought it, and under which we

could have built a much larger home based on that prior plan (0205: Site Plan for the Lewis Residence). However, we chose to submit a new variance application with a smaller house plan and greatly reduced critical area disruption (0166: Wetland Resources Inc., hereinafter "WRI" report, table 2 comparison). We expected that a more modest proposal would be approved, and it was.

4. Price paid for a property does not dictate its buildability.

The appellants' comparison of our lot to two upslope view lots (May 8, top of p. 12) without similar critical areas exaggerates our lot's value. The hearing examiner considered the issue of lot price in his deliberations, but concluded that it was irrelevant to our minimum reasonable use (0075: March 28, 2013 decision, p. 15, line 5). Considering only the price paid in a lot's value would render all inherited property worthless, as the heirs did not pay anything for it; therefore price paid cannot be the sole metric for property value. The price we paid for our lot reflected other factors, including higher design and development costs than would be needed for a plain, simple, flat, dry, non-stream lot. The price was also affected by the state of the economy at the time, in a global housing depression with property foreclosures and bank failures commonplace.

We felt we could invest our time and effort to optimize our design to balance the competing critical area concerns with drainage, setback, tree, neighborhood and economic factors. We believe our proposal is the most

reasonable way to develop this lot with a single-family residence in conformance with its zoning and addressing all of the issues. We have used the code's variance provisions contained in the city's zoning and development regulations that were already in place at the time we purchased our lot, not something adopted afterward. We do not seek "a total abrogation of the laws" as the appellants claim (May 8, middle of p. 10), but rather are working within the framework of existing codes.

We are not seeking a maximization of possible economic benefit nor do we stand to "reap a windfall profit" (May 8, middle of p. 12). This .93-acre lot in the RS-12 zone (0109: Whole Site Plan) would normally be allowed 35% maximum lot coverage (ECDC 16.20.030 Table of site development standards), yielding a 14,179 sf (square foot) footprint, a mansion with 6-1/2 times the size of our proposed 2174 sf footprint (0109: Whole Site Plan).

5. **"A minimum reasonable use of the subject property is a single-family home."** (0017: Hearing Examiner's Final Decision upon Reconsideration dated April 24, 2013, p. 17, item 10)

The appellants quote in the code's definition of reasonable use (May 8, bottom of p. 8), "For example, the minimum reasonable use of a residential lot which meets or exceeds minimum bulk requirements is use for one single-family residential structure" but then go on to say bulk requirements are not defined. The minimum requirements for an RS-12 lot include a 12,000 sf lot area and 80' of lot

width (ECDC 16.20.030 Table of site development standards), which our lot far exceeds. Normally, these requirements would allow our lot to be subdivided into three 12,000+ sf parcels, with a 4200+ sf footprint house on *each* one (based on the 35% allowable coverage in the table).

The code does not, as the appellants suggest, then negate critical areas considerations in development of that legal residential lot. Our consideration of the critical areas led to our drastically smaller one-house proposal with only 5.8% lot coverage (0109: Whole Site Plan). The appellants don't seem to have given any weight to the huge positive of our leaving the remaining *94.2% of the lot undeveloped.*

6. Our proposed plan is minimal compared to others in the immediate vicinity.

Our proposed 2174 sf footprint (0109: Whole Site Plan), including garage, is smaller than the footprints of all of the homes immediately adjacent to our lot, which average 2936 sf (0167: WRI report, table 3). The appellant (Brown) previously suggested (0271: letter of September 25, 2012, item 6), taking into account the smallest home nearby, the Mallot house across the street built in 1962 (1344 sf floor 1 living space plus 483 sf garage = 1827 sf footprint), which brings that footprint average down to 2798 sf, still way over our 2174 sf. In order to enjoy what most of our closest neighbors do, we would have had to propose a larger footprint resulting in an even larger area of wetland disturbance than the 11% proposed.

7. **One could claim that "minimum" is at least what the neighbors have, but we are not asking for a house that big.**

We do not contend that we are entitled to build a house that is as big as those of all of our neighbors. As shown in 0167: WRI report table 3, our proposal is significantly more modest than most of the other neighbors' homes. Their average living area 3798 sf (or 3582 sf including Mallot), the largest being 4754 sf, which is over 2000 sf more than our proposal.

8. **The previous variance approved for this lot was for a much larger house and driveway.**

The prior owners' approved variance (city file PLN20040008) was for a 4146 sf footprint (0166: WRI report, table 2, Lewis), and a long access driveway (0205: Site Plan for the Lewis Residence) with much greater wetland and buffer disturbance areas. Though the deck they proposed was denied (as described in May 8, p. 5, top third), the rest of their variance remained *approved, and was active* (city file BLD20100196) when we purchased the lot. **How can we disturb *less* wetland and buffer than a previously approved variance and not have that be considered minimum?**

9. **The wetland/stream property next door was granted a similar variance.**

Our variance does not create a precedent. In claiming our house would set a "dangerous precedent" (May 8, last paragraph of p. 13), the appellants fail to

acknowledge the house next door to us at 1111 Sierra Place (0167: WRI report, table 3, Hachler), on a similar wetland and stream lot, built under a similar variance approval (city file PLN199900136), with a larger footprint. It was built primarily in the wetland buffer, with the house edges intruding into the wetland itself and located only 10' away from the stream (0199: Hachler Site Plan); their driveway crosses both the wetland and the stream. They were not required to design an even smaller house and shrink their rear yard setback to further reduce their wetland disturbance.

The appellants' request for further research of other properties by the city staff (May 8, middle of p. 14) has no basis in the record, and appears to be a delay tactic. There is no better comparable property to use as a precedent for our variance approval than the one next door at 1111 Sierra Place.

10. A building staying entirely out of the wetland is not reasonable for this lot.

On this lot, a house designed to be located completely out of the wetland would be problematic, from size and configuration standpoints as well as drainage aspects. Our attempts to create such a plan were discarded due to various non-feasibility reasons and were not submitted to the city and therefore not included in the record. As can be seen from the Partial Site Plan (0110) the frontage of a house staying completely out of the wetland would be limited on the east side by the westernmost point of the wetland edge and on the west by the drainage ditch

and storm drain pipe, effectively allowing no more than a 25' front wall, or just enough room for a 2-car garage. This is not reasonable for a single-family home in the RS-12 zone.

The 1600 sf footprint inclusive of garage (May 8, bottom of p. 6) discussed by the hearing examiner would reduce the house's first floor living area to about 1000 sf, a limit to which no other neighbors have been held, and is unreasonable for this vicinity. He did not put this size limitation in his conditions of approval (0020: Hearing Examiner's Final Decision upon Reconsideration, dated April 24, 2103, p. 20).

The exact location of where "reasonable" ends and "unreasonable" begins is neither codified nor always obvious, but the hearing examiner did include guidelines for making that determination in his conditions of approval (0020). He also recognized the complex engineering challenges involved in the design for this lot, and that sweeping suggestions such as "Why don't you just build entirely out of the wetland?" do not have simple answers, as individual changes have ripple effect ramifications in the overall design.

Many preliminary designs we tried simply could not be built due to engineering limitations (like drainage can't run uphill). For example, the drainage design would be infeasible were the driveway catch basin to be placed so low in elevation that downhill drainage would end up below the level of the stream bank where it needs to discharge (0027: item J). Similarly, the driveway apron cannot

be placed at a different elevation than the existing roadway. The hearing examiner recognized there were such limiting factors and left the city staff a certain amount of discretion to verify that a given design is technically possible and appropriate (0020).

Our design goal was to strike a balance between all of the competing concerns, the wetland being one of them. Ours is a low-functioning sloped wetland (beginning on 0151: WRI report, p. 5) with minimal ability to affect water flow, water quality, or wildlife habitat. The small portion of it we propose to disturb is its least viable area, and our proposed mitigation plan is expected to result in a net increase of wetland functions (0159: WRI report, p. 13, 5th paragraph).

11. The wetland biologist's follow-up to the hearing examiner's decision is on file at the city.

The appellants state that as of the date of their appeal filing, "no further information has been provided by the City or Wetland Resources, Inc." On April 5, 2013 we forwarded to Jen Machuga of the Planning Department an April 4, 2013 letter from Andrea Bachman of WRI (0054-0055) that addressed wetland versus stream buffer disturbance in response to the hearing examiner's March 28, 2013 decision (0077-0078: condition 1, p. 17 line 18 through p. 18 line 1). While not admissible into the present record under the "no new evidence" rule, it is a matter of public record available to the appellants (city file PLN20120033).

12. There is no justification for disrespectful comments about the wetland biologist's credentials.

Although not stated outright, the appellants attempt to discredit the wetland biologist on this project, calling her "paid" and "partisan" (May 8, middle of p. 13), as though her report is somehow unprofessionally biased. Maybe they feel they must do so in order to dispute her approval of the project. However, the city has verified and acknowledged the qualifications of Wetland Resources, Inc., placing the firm on their critical areas consultant roster, and has accepted and agreed with their conclusions.

In summary, we believe the appellants' arguments have failed their burden of proof for recommending denial of our variance, and we respectfully request that the council deny their appeal and uphold the hearing examiner's decision.

We believe the foregoing to be true.

Thank you for your consideration.

Tom and Lin Hillman, Applicants