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BEFORE THE HEARING EXAMINER FOR THE CITY OF EDMONDS

Phil Olbrechts, Hearing Examiner

RE: Tom and Lin Hillman PLN20120033	FINAL DECISION UPON RECONSIDERATION
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INTRODUCTION

This Final Decision Upon Reconsideration replaces the final decision issued for the above-captioned matter that issued on March 28, 2013. The requested variance and reasonable use requests remain approved. Condition 1 of the March 28, 2013 decision is modified to provide more specific direction on the relocation of the home. Condition 2, requiring stormwater monitoring, is removed.

The applicants are requesting a street setback variance, a side yard variance and two critical areas reasonable use variance requests to construct a single-family home at 1139 Sierra Place. The setback variances are necessary to provide separation from an on-site wetland and the reasonable use variances are necessary because it is not possible to build a single-family home on the subject lot without encroaching into a wetland and a stream buffer. In the street setback variance request, the applicants seek to reduce the street setback from 25 feet to 12 feet for placement of the residence. In the side yard variance request, the applicants seek to reduce a side yard setback from 10 to 3 feet for placement of a retaining wall. The reasonable use variance involves a request to building within a stream and wetland buffer as well as the wetland itself. The setback variances are approved. The reasonable use variance is approved for the encroachment within the wetland and stream buffers.

The conditions of approval require further staff investigation for authorization of the encroachment into the wetland itself. There is insufficient evidence in the record to determine if the proposal has been designed to minimize wetland encroachments as required by the variance criteria. Direct encroachment into a wetland, as opposed to its buffers, potentially involves a significant impairment of wetland functions. Further information is needed to determine whether the direct encroachment of this proposal should or can be avoided.

ORAL TESTIMONY

Staff Presentation

Ms. Jennifer Machuga, associate planner, stated the site is at 1139 Sierra Place. The site is currently a vacant lot in a single-family residential RS12 zone, and the property owners Tom and Lin Hillman are proposing to construct a new single-family residence on the site. As seen in the attachments in the staff report, development of the site is very limited by the existing critical areas on the property. There is a category three wetland across the middle of the property, and the minimum required fifty-foot wetland buffers cover the majority of the project site. There is also a non-fish bearing type NE stream on the northern side of the site, and the minimum required fifty-foot stream buffer overlaps the wetland buffers. There is also an erosion hazard area located on the eastern portion of the site. Due to the location of these critical areas throughout much of the site, development of the site is really impossible without some impact to these critical areas and their buffers.

Ms. Machuga said the city code has a provision for when a site is so encumbered by critical areas and their associated buffers that it is not possible to develop the site in such a way that it complies with the city critical area codes. This provision, the Critical Areas Reasonable Use Variance, allows for exceptions to the requirements to the critical areas code in order to allow the development of the site in such a way that has the least possible impact on the critical areas while still allowing the applicant reasonable use of that property. The applicants, the Hillmans, are requesting Critical Areas Reasonable Use Variance because they feel that the strict application of the critical area codes would deny all reasonable economic use of the property. The applicant is also requesting a Setback Variance to reduce the minimum required street setback from twenty-five feet to twelve feet for the residents and to reduce that street setback to three feet for retaining wall. They have also proposed to reduce the minimum required western side setback from ten feet to three feet for retaining wall while the house would comply with the side setback requirements. These proposals have been consolidated onto one application and are being reviewed as a Type 3B decision.

Ms. Machuga testified that the applicant has provided project plans, a wetland report, and a geotechnical report, all of which are included as attachments to the staff report. There was a previous critical areas variance that was approved on this site for the previous owner, and that variance authorized the home to be constructed on the eastern side of the site, allowing the road to cut through the wetland area. It was found, however, that locating the house on the western side of the site had less impact on the critical areas than going with what was previously approved. Therefore, the proposed residence would be in the south west side of the site. The proposed building on the site would be 2,174 square feet and would include a 570 square feet garage, almost 1,600 square feet living space on the first floor, and a little over 1,000 square feet living space on the second floor. In order for the Setback Variance to be approved, the Hearing Examiner must find that all six required criteria in ECDC 20.85.010 are met.

1 These criteria include that the site must have special circumstances that would deprive
2 the owner of use rights and privileges permitted to other properties in the vicinity, that
3 the approval of the variance would not grant a special privilege, that the approval of
4 the variance would be consistent with the comprehensive plan and with the zoning
5 ordinance, that the variance would not be significantly detrimental to public health,
6 safety, and welfare, and that the variance is the minimum necessary to allow the
7 property owner rights enjoyed by other property owners in the vicinity. This is
8 discussed in detail in the staff report.

9 Ms. Machuga stated that the request for this setback variance appears to be consistent
10 with the required criteria, because the purpose of the requested setback variances is to
11 pull the house further to the south-western corner of the site for minimal impact on the
12 critical areas. The size of the proposed house appears consistent with the size of the
13 neighbouring houses. The requested variances are consistent with the comprehensive
14 plan and with zoning ordinances. It does not appear that reducing the setbacks for
15 construction of the home would be detrimental, and it appears that these are the
16 minimum variances necessary to construct a home comparable to other homes in the
17 neighbourhood. For the Critical Areas variance to be approved, the Hearing Examiner
18 must find that the proposal is consistent with the criteria in ECDC 23.40.210 A2 and
19 B. These criteria include that the application of the critical areas regulations would
20 deny all reasonable economic use of the property, that no other reasonable economic
21 use of the property would have less impact on the critical areas, that the proposed
22 impact on the critical areas is the minimum necessary, that there are special conditions
23 on the property, that the inability to derive reasonable economic use from the property
24 is not the fault of the applicant, that the variance would not grant the applicant any
25 special privilege, that the proposal does not pose an unreasonable threat to public
health, safety, and welfare, that the proposal minimizes net loss of critical areas
function and volume, that the proposal is consistent with all other applicable
regulations and standards, and that the approval is based on best available science. The
staff report goes into detail analysing these required criteria and determined they are
met. The site has special circumstances due to the location of the critical areas, and
the presence of these critical areas is not due to any actions of the property owner. The
size of the proposed home is consistent with the size of the neighbouring homes, thus
the allowing the variance would not be granting a special privilege, and the mitigation
plan detailed in the wetland report is based on the best available science and includes
measures to enhance the wetland, the stream, and the buffer areas.

Ms. Machuga noted that on February 26, 2013 the city issued a determination of non-
significance concerning the storm water system, and the period for comments and
appeals ended on March 12, 2013. No appeals were received. The city provided public
notice consistent with the requirements for ECDC 20.03, and they received a few
public comments. One major concern brought up in the comments dealt with drainage.
The engineering division found that the proposed project is compliant with the
wetland report, but they will conduct a full review of the storm water system during
the building permit application review.

1 The attachments from the staff report and the staff report itself were entered as
2 exhibits. A letter from the PUD was entered as an exhibit. The city received a few
3 comments, including (1) an e-mail from Mr. David Thorpe dated March 11, 2013, (2)
4 a letter from Mr. Todd Brown dated March 12, 2013, and (3) an e-mail from Kevin
5 Fagerstrom, dated March 11, 2013. These were entered as exhibits in addition to an e-
6 mail from Robert Chave dated March 12, 2013.

7 Ms. Machuga stated that the applicant could address whether they considered putting
8 more living space on the second floor and over the garage to avoid further
9 encouragement on the critical areas. There is a twelve foot distance from the street in
10 order to leave enough space for the detention room, but the applicant might better
11 address that question.

12 Applicants

13 Ms. Lin Hillman explained that they originally wanted to build a one-story house, but
14 they had several discussions with the city and with neighbours and decided to have a
15 second floor in order to shrink the footprint. The storm drainage pipe is two feet and
16 requires five feet on either side, which is why they needed twelve feet between the
17 house and the street; they tried to place the storm drainage pipe as far from the stream
18 as possible. There is evidence of the previous owner degrading the critical area, and
19 nobody seems concerned with caring for the critical space, but her family hopes to
20 improve the existing condition and to put a fence around the remaining wetland to
21 prevent pickup trucks from backing in to dump debris.

22 Ms. Hillman said that they have talked to several neighbours about the issues, and the
23 primary concern seems to be drainage. In the past, during high rainfall events, the
24 culvert pipes have become clogged, and the city public works people had to come to
25 dig out the sediment, rocks, etc. inside it. Their surveyor suggested that their proposal
for the property include a plan to add a metal grid from preventing large debris from
getting into the pipes, which would mitigate the clogging problem. The Department of
Fish and Wildlife liked the idea. She also sent applications for approval to the
Department of Ecology and the Army Corp of Engineers.

26 Public Comments

27 Mr. Todd Brown, who lives at 1135 Sierra Place up the access lane, said that the
28 variances are concerning to the neighbourhood because, one, he thinks factual
29 inaccuracies and strategic omissions in the planning documents; two, the applicants
30 have failed to get written permission from the adjacent property owners, which the
31 city requires; three, he thinks there are insufficient mitigation measures; and, four, he
32 thinks that there are alternative interpretations of the city code regarding the best use
33 of the property. He said correct drainage was the most important issue. The stream is
34 prone to flooding, and the proposed plan increases the risk that flooding poses to
35 access to the lane, to the house at 1111 Sierra Place to the west, and to other properties
downstream. There could potentially be risk to the city from flood damage. Both

1 culverts are technically private, and the city has not yet obtained written permission
2 from the property owners at 1111 Sierra Place for this project.

3 Mr. Brown said the code requires the approach that least impacts wetlands and most
4 closely mimics natural water flow, but the aerial photos provided in the staff report to
5 indicate water flow direction are factually incorrect. Additionally, he said that
6 attachment ten is incorrect in stating that the wetland on the 1111 property is charged
7 solely from its own springs and stream. He also wanted to dispute the claims that the
8 southwest culvert was not viable. He himself has seen water flowing in and out, and he
9 thinks they must have been digging in to the wrong spot when looking for the output.
10 The culvert has never really been backed up. On top of that, he thinks a trash rack
11 would be ineffective in preventing a blockage due to the soil types in the area. The
12 review of neighbourhood homes strategically omitted the nearest home at 1130 Sierra
13 Place directly across from the property. His house is 2,050 square feet, including the
14 basement, but is on a 1,400 square foot plot, which means a smaller house is possible.
15 There are other reasonable uses for the property, too, such as putting a small wood
16 shop. Mr. Brown also cites esoteric reasons, considering this is the last undeveloped
17 wetland on Olympic Avenue. Habitat construction would permanently change the
18 wildlife, and cutting down the trees in the area is inconsistent with the Edmonds
19 personality. Mr. Brown said he and his wife have seven at least sixty different bird
20 species on the site as well as a beaver.

21 Mr. Brown added that he thought it would be a shame for the variances to be approved
22 simply because a lot of time has been put into the project, and how the cheap price at
23 which the land was purchased is evidence that this property is not meant for a project
24 like the proposed.

25 Mr. Steve Schroder, 1142 Vista Place, showed an aerial photograph in which you
could see the proposed property in relation to his house as well as to where Mr. Brown
lives. He said he is opposed to the development, because he believes there are simply
pieces of land in Edmonds that are not suitable for development. The area for the
proposed project is a wonderful oasis that should not be disturbed. He said that the
adjacent lots were sold for around half a million dollars, but this property was
purchased for only \$75,000. Additionally, the development would actually encroach
on the wetlands, never mind the buffer. He said that the \$5,200 proposed for plans to
mitigate the encroachment is hardly sufficient. He questioned why the codes make
exceptions for areas that supposedly deny all reasonable economic use, because those
areas ought to be preserved as they are. The reduction of the street setback from
twenty-five to twelve is an example of how the variances ought to be applied, but that
is the only proper application of the variances.

Ms. Ina Fernandez said that she has lived in the area for thirty-five years, and she is
concerned about the water flooding across the street to the mailboxes, which has
happened in the past. She opposes the proposed plan as too dangerous with concern to
flooding.

1 Ms. Sherry Zinner, who lives at 1027 Carol Way, showed a video that she took of the
2 area during a rainfall in December. She said that this reveals the large volume of water
3 that comes down from the property at 1139 Sierra Place. This water was not being
4 caught by the storm water system. She said that she consulted Mike Johnson at Storm
5 Water Management about an ankle-deep stream that has started to form in her
6 backyard during the heavy rain season for the last few years. He made the
7 determination that this was not a problem for which the city is responsible; it is a
8 private civil matter dealing with private properties. She said she is concerned,
9 therefore, with how the proposed development project will actually handle the
10 drainage risks. The last few development projects on wetland areas are what caused
11 the current flooding in her backyard. Trying to redirect the storm water flow, which
12 the proposed development will do, poses an unpredictable risk, and she does not want
13 an experiment that might adversely affect her private property to be under the control
14 of private property owners rather than of the city. The storm water flow is already
15 overwhelming, and she does not want to risk an increase in flow.

10 Mr. David Thorpe, who lives at 2117 Shell Valley Road, said he was concerned
11 particularly with the reduction of the critical areas buffer from fifty to zero.
12 Additionally, he pointed out that there are slope issues; they are less than forty percent
13 but should be considered nonetheless. He said that in Shell Valley the citizens
14 encouraged the city to build an emergency access road that cut through the wetland,
15 and this development destroyed the wetland. The wildlife has disappeared. He said he
16 does not want to deny people to build, or to use their property, but wetlands are rare in
17 the city, and every remaining wetland ought to be preserved.

15 Ms. Katherine Erikson, who lives at 615 Twelfth Avenue North, which is upside the
16 Sierra Place property, said that she cannot speak to issues surrounding drainage, but
17 she wanted to address one concern the Hillmans raised. She personally has witnessed
18 the dumping on the property that Ms. Hillman mentioned, and she agrees that
19 someone, either the government or a private property owner, ought to address that
20 issue. The property needs someone to look after it.

19 Staff Rebuttal

20 Ms. Jennifer Lambert, engineering technician for the city, stated that the city is very
21 much aware of the storm water concerns. In regards to the drainage plans, at this
22 phase, they are looking simply at whether it is feasible to put in a drainage system that
23 meets the current city storm water requirements. According to the wetland resources
24 person, the natural drainage flow eventually goes into the stream, thus using the south-
25 west culvert for overflow makes the proposed drainage plan feasible. The trash rack
was supposed to be an added protective matter; the city does, in fact, maintain that
culvert.

25 Ms. Lambert said the written approval from 1111 Sierra Place to use the south-west
culvert is required only if wetland resources showed that the water was naturally
draining there and the applicant wanted to install some sort of storm water system that

1 used the culvert. But at this time, that usage of the south-west culvert is to mimic
2 existing conditions, thus at this time nothing is changing, therefore written permission
3 is not required. Answering a question from the Hearing Examiner, she said that a
4 development with over 2,000 square feet is required to install some sort of storm water
management system. The Hearing Examiner also asked whether encroaching on the
wetlands would impair the storm water functions of the wetland, and Ms. Lamburgh
referred to the Wetland Resources consultant.

5 Ms. Andrea Bachman, the senior ecologist at Wetland Resources, said the wetland was
6 classified as a slope wetland, a kind that is generally less functional in retaining water
7 than a flatter wetland. In fact, the proposed development will encroach on the area in
the wetland that is least useful in retaining storm water.

8 The Hearing Examiner asked her why she thought they could not move more living
9 space to the second floor to minimize encroachment, but she could not speak to that.

10 Applicant Rebuttal

11 Ms. Lin Hillman testified that the issue of the wetland mitigation plan only calling for
12 \$5,000 worth of plants was only the initial mitigation. She said the report also calls for
13 annual monitoring and continued mitigation as necessary. She said the property was
14 originally listed for \$150,000, and the price they paid for it had a lot to do with their
negotiations with her bank. Her family thought they could do a good job maintaining
the property, which has been severely neglected. They see themselves as custodians of
the wetland rather than as developers of the property.

15 Ms. Hillman said the standard to which their development being held is reasonable.
16 The standard does not say you have to avoid building in a critical area or together, or
17 you have to build the smallest house possible in a box shape; the neighbouring houses
are not held to that standard, and neither are they. The storm drainage maps from the
18 city indicate that there are two options for sending storm water. One is the stream,
which is what they have chosen to do. The other is a storm line that is across the street.
19 If they ran a pipe from their property over to the line, the pipe would be running
uphill, and tapping into the line further down the street would be extremely disruptive.
20 The neighbours have suggested they use the southern culvert pipe, but that is not in the
21 city's storm map, which is why she does not think using that pipe for anything other
than overflow is appropriate. Their storm drainage mitigation plans would turn a flood
22 into a trickle and would meet the requirement for storm water retention. The city
mandates concerning growth management would support three houses on this
23 property, thus the one small house they plan to build meets the balance between
growth and preservation that is required. Additionally, Edmonds does not have in
24 place a way to address the upkeep of a wetland on a larger scale. The state says that
larger wetland preservation is best, but their recommendations are for a one hundred
25 feet buffer that, if drawn around this stream, would touch neighbouring houses that
have been built.

1 Mr. Tom Hillman added that they are allowed reasonable use of their property, thus
2 they should have the ability to make their house the size they want within reason.
3 They are looking to make a reasonably sized house with as minor a footprint as
4 possible.

5 **EXHIBITS**

6 All 27 attachments listed on page 19 of the staff report were admitted into evidence as
7 Exhibits 1-27. At hearing on March 15, 2013 the following exhibits were also
8 admitted:

- 9 Exhibit 28 the staff report
- 10 Exhibit 29 letter from the PUD
- 11 Exhibit 30 e-mail from Mr. David Thorpe dated March 11, 2013
- 12 Exhibit 31 letter from Mr. Todd Brown dated March 12, 2013
- 13 Exhibit 32 e-mail from Kevin Fagerstrom, dated March 11, 2013
- 14 Exhibit 33 e-mail from Robert Shave dated March 12, 2013
- 15 Exhibit 34 an aerial photograph from Mr. Steve Schroder
- 16 Exhibit 35 an aerial map from Ms. Sherry Zinner
- 17 Exhibit 36 Letter from Ms. Sherry Zinner
- 18 Exhibit 37 April 8, 2013 Reconsideration Request from City
- 19 Exhibit 38 April 8, 2013 Reconsideration Request from Applicants
- 20 Exhibit 39 April 9, 2013 Notice of Requests for Reconsideration
- 21 Exhibit 40 April 10, 2013 Applicant Modification to Reconsideration Request
- 22 Exhibit 41 April 16, 2013 Order on Reconsideration
- 23 Exhibit 42 April 19, 2013 Todd Brown Reconsideration comments
- 24 Exhibit 43 April 21, 2013 Cheri Zehner Reconsideration comments
- 25 Exhibit 44 April 22, 2013 Alan Rutledge Reconsideration comments
- Exhibit 45 April 21, 2013 David Thorpe Reconsideration comments
- Exhibit 46 April 22, 2013 Applicant Reconsideration comments
- Exhibit 47 April 23, 2013 City Reconsideration reply
- Exhibit 48 April 23, 2013 Applicant Reconsideration reply
- Exhibit 49 Declaration of Mailing of Order on Reconsideration

20 **FINDINGS OF FACT**

21 **Procedural:**

- 22 1. Applicant. The applicants are Tom and Lin Hillman.
- 23 2. Hearing. A hearing was held at 3:00 pm on March 15, 2013 at the
24 Edmonds City Council meeting chambers.
- 25 2.5. Reconsideration. Timely requests for reconsideration were filed
by the applicants and the City on April 8, 2013. Notice of the requests was sent by
the City to all parties of record on April 9, 2013. The applicants submitted a

1 modification to their reconsideration request on April 9, 2013 and that date is
2 considered the date of the reconsideration requests for purposes of the ECDC
3 20.06.010(G) ten day decision deadline. An Order on Reconsideration, setting an
4 initial comment deadline of April 22, 2013, was mailed out to all parties of record on
5 April 16, 2013¹. Five comment letters were received. As authorized by the Order on
6 Reconsideration, replies to the reconsideration comments were submitted by the
7 applicant and the City on April 23, 2013.

8
9 **Substantive:**

10 3. Site/Proposal Description. The applicants are requesting a street setback
11 variance, a side yard variance and a critical areas reasonable use variance request to
12 construct a single-family home at 1139 Sierra Place. The proposed residence
13 contains a total living area of 2,623 square feet, with a footprint of 2,174 square feet.
14 The subject lot is 0.93 acres in size.

15 The purpose of the setback variances is to locate the residence and associated
16 improvements further out of the critical areas and buffers than what otherwise might
17 be possible. In the street setback variance request, the applicants seek to reduce the
18 street setback from 25 feet required by ECDC 16.20.030 for the RS zone to 12 feet
19 for placement of the residence. In the side yard variance request, the applicants seek
20 to reduce a side yard setback from 10 feet required by ECDC 16.20.030 for the RS 12
21 zone to 3 feet for placement of a retaining wall.

22 The applicants cannot build a single-family home on their property without approval
23 of a reasonable use variance. A Category III wetland and its associated buffer cover
24 approximately the western two-thirds of the site and extend off-site to the north and
25 the south. The only part of the property not encumbered by the wetland or its buffer
is the eastern third of the property, which could only be accessed by a driveway built
through the wetland and buffers. A Type Np non-fish bearing stream is located on
the northern side of the western approximate half of the site. Additionally, an erosion
hazard area is located on the eastern side of the site with enough of a slope to make
development of the eastern portion of the site challenging.

In the reasonable use variance request, the applicants seek to construct their proposed
home within the 50 foot buffer of a Category III wetland imposed by ECDC
23.50.040(F)(1)(c) in addition to construction within the wetland itself, which is
prohibited by ECDC 23.50.040(B). The Category III wetland is about a half-acre in
size. The total area of permanent wetland impact will be 1,790 square feet while the
total area of permanent buffer impact will be 3,920 square feet.

¹ In her reconsideration comments, Ms. Zehner expressed concern with the fact that she only had a few days to respond. She received the Order on Reconsideration in the mail on April 18, 2013 and comments were due April 22, 2013. The reason for the short time frame is because ECDC 20.06.010(G) requires a final decision within ten days of the receipt of a request for reconsideration. This means there is only ten days to review the request(s), prepare and mail an Order on Reconsideration, await the comments in response to the Order, review those comments and write a final decision. It should also be noted that comment from the adjoining property owners was not required for a ruling on the reconsideration requests. The four days is the most that could be provided given the short time frames imposed by City code for reconsideration review.

1 The reasonable use variance request also seeks to encroach into a stream buffer. A
2 Type Np stream traverses the northern portion of the subject property. ECDC
3 23.90.040(D)(1) requires a fifty foot buffer for Type Np streams. The applicants
propose to build their home within 25 feet of the stream.

4 A consolidated application for a critical areas reasonable use variance and rear
5 setback variance was submitted by prior owners of the property, Darryl and Shari
6 Lewis, under File No. PLN20040008 (the site was referred to at that time as 1142
7 Sierra Place). For the Lewis application, the residence was proposed to be located on
8 the eastern portion of the property with an access driveway running generally along
9 the southern side of the site, going through a portion of the wetland. The project site
plan from the Lewis variance application is included for reference as Attachment 14.
Additionally, a table comparing the critical areas impacts of the subject application to
the Lewis variance prepared by the applicant is included within Table 2 of the
“Critical Areas Study and Wetland Mitigation Plan” (Attachment 8).

10 A building permit application was submitted under File No. BLD20080237 for the
11 single-family residence approved under the Lewis variance application (File No.
12 PLN20040008). That building permit application expired, and a second building
13 permit application was submitted under File No. BLD20100196. That building
permit application also expired and was never issued.

14 The Hillmans purchased the property in April of 2011 (according to Snohomish
15 County Assessor’s records), and came up with a new design and location for the
16 proposed residence on the southwestern portion of the subject site in an attempt to
17 take the existing critical areas and topographical constraints better into account. The
Hillmans submitted a consolidated application for the requested street and side
setback variance and critical areas reasonable use variance on August, 1, 2012.

18 4. Characteristics of the Area. The subject site is located within a single-
19 family residential neighborhood in Edmonds. The site is one of the few undeveloped
20 parcels in the area and is completely surrounded by parcels that are currently
developed with single-family residences.

21 5. Adverse Impacts. With the extensive mitigation required by the
22 conditions of approval, there are no adverse impacts associated with the requested
variances. Impacts are more specifically addressed below.

23 A. Stormwater Impacts. One of the two impacts of greatest concern is stormwater
24 impacts. Neighboring property owners provided compelling information on
25 significant flooding problems in the vicinity of the project. However, the proposed
home has been placed in an area designed to minimize disruption of on-site drainage
patterns and the City’s stormwater regulations will ensure that there are no off-site
impacts.

1 As noted in the critical area study, Ex.8, the location of the home is optimized to
2 minimize stormwater impacts. The existing drainage on the site consists of a
3 southeasterly to northeasterly flow pattern, following a downslope gradient from the
4 high point of the property to the lowest elevation of the stream bed in its northwestern
5 corner. The proposed single-family home for the property is located in the southwest
6 corner of the site, where it will not interfere with the natural flow pattern of the
7 upslope portions of the lot; the bulk of the site will remain undisturbed and continue to
8 drain towards the stream in the present manner. Part of the home will encroach into a
9 wetland and it is recognized that an important wetland function is to retain stormwater,
10 which helps prevent flooding. However, the wetland report notes that the on-site
11 wetland has a severely limited potential to provide flood control functions because of
12 its lack of depressional features and lack of ability to become ponded. The minor
13 encroachment into the wetland should not have any significant impact on the limited
14 flood storage capacity of the wetland. The critical area study also concludes at page 9
15 that the proposal will not “create flooding issues in downstream systems”.

10 As confirmed by City engineering staff during the hearing, the City’s stormwater
11 regulations require a stormwater system that will retain pre-development stormwater
12 volumes, velocities and discharge locations. Consequently, if the regulations satisfy
13 their objectives there should be no stormwater impacts to adjoining properties.
14 Further, City engineering staff have thoroughly reviewed the proposal and the
15 comments made by concerned neighbors during the hearing process and have not
16 found any need for additional stormwater mitigation.

14 The March 28, 2013 decision required a three year monitoring plan to assure that the
15 City’s stormwater regulations did indeed prevent any increases in stormwater runoff as
16 maintained by the applicants and the City. The purpose of the monitoring plan was to
17 alleviate well-justified anxieties by adjoining property owners that the proposal would
18 contribute to flooding problems on their property. The adjoining property owners
19 ably demonstrated during the hearing that their properties were subject to significant
20 and regular flooding. Given that wetlands and stream buffers can serve to store flood
21 waters during rain events, the filling of those areas as proposed by the applicants could
22 exacerbate those flooding problems. A monitoring program would serve as an iron-
23 clad assurance to the neighbors that the stormwater mitigation required by the City
24 would prevent any adverse impacts as assured by the applicants’ consultants and City
25 engineers.

22 Although a monitoring plan under these circumstances is certainly a reasonable means
23 of responding to neighborhood concerns, the need for such a monitoring plan is
24 ultimately not supported by the evidence in the record. Since the monitoring plan has
25 been contested by both the applicants and the City, there is no legal basis to require it.
Although neighboring property owners have shown that they have flooding problems,
it is somewhat debatable whether those flood waters originate or first traverse the
applicants’ property. More importantly, there is no evidence that the proposal as
mitigated will exacerbate these flooding problems. As previously noted, the critical
areas report concludes that the proposal will not create any flooding problems and City

1 staff have not found any need for additional stormwater mitigation. The critical areas
2 report was written by a wetland ecologist and City staff have training and experience
3 in stormwater engineering. The City's stormwater regulations are based upon decades
4 of engineering science and have been designed to prevent any increase in off-site
5 storm-water flows. Mr. Brown has raised some good technical issues regarding
6 maintenance of the culverts and the need for a trash rack. The conditions of approval
7 require City engineering staff to consider these comments when evaluating the final
8 drainage system design². Beyond Mr. Brown's comments, there is no expert evidence
9 or otherwise to rebut the conclusions of the applicant and city experts that the proposal
10 will not create adverse stormwater impacts on adjoining properties.

11 It is recognized that the City's stormwater regulations only require maintenance of
12 pre-development maintenance rates of up to a 10-year, 24-hour storm event only. This
13 does leave the possibility that the proposal could result in an increase in off-site run-
14 off for larger storm events. As noted in the reconsideration order, compliance with the
15 City's stormwater regulations does not in all cases satisfy the variance and rezone
16 criteria for ensuring that approval doesn't adversely affect neighboring properties.
17 However, the City's stormwater regulations do set a legislative standard on acceptable
18 stormwater impacts and standard should be followed absent a showing of unique
19 circumstances that the regulations are ineffective for the development in question.
20 The subject property is fairly unique in the extent of critical areas on the property.
21 However, as previously noted the wetland do not have any significant flood storage
22 capacity because of its lack of depressional features and lack of ability to become
23 ponded. The proposed encroachment into the wetland is relatively minor. There is no
24 evidence that this minor encroachment into a wetland with minor storage capacity
25 would have any significant impact on flooding that exceeds the 10-year storm events,
nor could that reasonably be inferred from the record. For these reasons, the
administrative record does not support the extra-ordinary measure of stormwater
mitigation beyond that required by the City's stormwater regulations, including a
monitoring plan.

18 **B. Wetland Impacts.** The second major impact of concern is the impacts to
19 wetlands. The proposal will not adversely affect wetlands. The wetland report
20 concludes at p. 8 that "the proposed development is expected to reduce the level of
21 existing functions on the site somewhat". In order to mitigate for the wetland
22 encroachment, the applicant proposes to enhance 15,560 square feet of the wetland,
23 for an 8:1 ratio. The applicant also proposes to enhance 2,410 square feet of buffer in
the northwestern corner of the property for a 0.5:1 ratio. With this mitigation, the
wetland report concludes that there will be no net loss of wetland function. The report

24 ² In their reconsideration request the applicants request that the condition requiring consideration of
25 Mr. Brown's concerns during engineering review be stricken because they are not supported by City
code. Condition No. 3 clearly required consideration of those concerns "when reviewing and applying
the City's stormwater regulations". Any requirements imposed by the City staff would be based upon
an application of City stormwater standards to the information provided by Mr. Brown and would,
consequently, be based upon City code. All conditions imposed upon this proposal are firmly rooted in
the requirements of City development standards.

1 was prepared by Andrea Bachman, a senior wetland ecologist working for Wetland
2 Resources, Inc. The City's regulations require that wetland reports be either prepared
3 by a qualified professional who is either a City selected wetlands consultant operating
4 under a three party agreement between the applicant, city and consultant, or that the
5 consultant's work be subject to peer review. See ECDC 23.40.090. Given the
6 qualifications of the wetlands consultant, the safe-guards for objective review and the
7 absence of any evidence supporting contrary determinations, it is determined that there
8 will be no net loss of wetland function.

9
10 C. Stream Impacts. No significant adverse impacts to the on-site stream are
11 anticipated as a result of the request buffer reduction from 50 to 25 feet. ECDC
12 23.90.040.D.1 establishes a standard buffer width of 50 feet for Type Np streams.
13 However, if the applicant were to provide a 50-foot stream buffer, this would push the
14 residence further east into the Category 3 wetland. Thus, as part of the requested
15 critical area variance, a balance is needed between potential impacts to the stream and
16 potential impacts to the wetland. The applicant has proposed reducing the stream
17 buffer to 25-feet, while allowing for a stormwater outfall pipe to be located within this
18 buffer in order to directly discharge into the stream. The critical areas code does not
19 specify a minimum ratio of stream buffer enhancement when reducing the buffer
20 below the standard 50-foot buffer required for a Type Np stream and for a stormwater
21 outfall pipe directly discharging into the stream. In the case of the subject lot, the
22 entire area of proposed reduced stream buffer entirely overlaps the wetland and/or
23 wetland buffer. As such, mitigation associated with the impacted wetland and wetland
24 buffer will also mitigate for the impacted stream buffer. The applicant's proposal to
25 provide mitigation at a ratio that is twice the minimum required for the portion of the
wetland that is to be disturbed helps to compensate for this overlap in stream and
wetland buffers. The critical areas report, p. 9, concludes that the proposed
enhancement plan will improve stream buffer functions. There is no evidence to the
contrary.

18 D. Setback Variance Impacts. There are no adverse impacts discernible from the
19 record that would result from the requested street and side yard variances. The staff
20 report notes that "*due to the topography of the surrounding area, it does not appear
21 that the proposed residence would significantly impact existing views of Puget
22 Sound.*" Despite heavy opposition from neighboring property owners, no one has
23 raised any concern about potential view impacts and there is nothing in the record to
24 suggest that would be a problem. Given these facts, it is determined that the proposal
25 will not create any adverse view impacts. The side yard setback will not noticeably
diminish the passage of light and air, as the eastern half of the property adjoining to
the west is undeveloped and encumbered by a wetland. City staff have also not raised
any concerns over site distance impacts or other traffic issues with the street setback
variance request.

6. Minimum Variance. The most challenging issue for this proposal is whether the
request constitutes the minimum necessary to grant relief from the City's critical area
regulations. It appears that encroachments into the wetland could be almost entirely

1 avoided by limiting the building footprint to 1,600 square feet, inclusive of garage
2 space. The need to encroach into 1,790 square feet of Class III wetland is based upon
3 the applicants' desire to have vaulted ceilings and a driveway that could be larger than
4 necessary to serve the property. Almost of the living space and the garage could be
5 located within the footprint proposed outside of the wetland if the applicant fully built
6 out the second story of the proposed home in lieu of vaulted ceilings.

7 As noted in the staff report, the proposed living area of 2,623 square feet appears to be
8 average, if not smaller than those of existing residences within the vicinity, as
9 demonstrated by the sizes of other homes in the area tabulated by the applicant in
10 Table 3 of Ex. 8. As identified by comments from Todd and Candy Brown, Ex. 23,
11 one outlier not identified in Table 3 is the Mallot home, located across the street with
12 living space of 2,063 square feet.

13 If only a buffer encroachment were proposed, as opposed to encroachment into the
14 wetland itself, the size of the proposed home would clearly be considered a minimum
15 variance request given the larger sizes of surrounding homes. However, a significant
16 complicating factor in this application is that it appears that the encroachment into the
17 wetland itself could be avoided entirely if the home is redesigned to replace the
18 vaulted ceiling space with additional living space. The only reasons for not fully using
19 second floor living space presented by the applicant were that they have a preference
20 for first floor living space as they grow older and they want to avoid a boxy
21 appearance for their home. The author of the wetland report, Andrea Bachman, was
22 not able to provide any reason why the home couldn't be redesigned to avoid
23 encroachment into the wetland. These are not sufficient reasons to justify an
24 encroachment into wetlands.

25 The concern over encroachment into wetlands is premised upon the understanding that
encroaching into a wetland can cause significantly greater harm than limiting
encroachments to buffer areas. The primary function of a wetland buffer would
appear to be protection of a wetland from adjoining development, although it is
recognized that a buffer has its own significance in the provision of habitat that is
unique to wetland boundaries. Although a priority for building within buffers over
wetlands themselves is a reasonable inference to make, this priority is not expressly
imposed in the City's wetland regulations and there is no scientific evidence in the
record to support this priority. Consequently, the conditions of approval will require
the wetland consultant to address whether developing in the buffer would create
significantly more damage to wetland functions than limiting development to the
wetland buffer by prohibiting the proposal from encroaching into the wetland.

CONCLUSIONS OF LAW

Procedural:

1. Authority of Hearing Examiner. ECDC 20.85.020 provides the Hearing Examiner with the authority to review and act upon variance applications as Type III-A.

Substantive:

2. Zoning Designations. The area is zoned Single-Family Residential (RS-12).

3. Review Criteria and Application. Variances to street and side yard setback requirements are set by ECDC 20.85.010, quoted below and applied through corresponding conclusions of law. Variances to critical area wetland buffers are governed by ECDC 23.40.210(A)(2) and 23.40.210(B). Applicable criteria are quoted in italics below and applied through corresponding conclusions of law.

ECDC 20.85.010: *No variance may be approved unless all of the findings in this section can be made.*

ECDC 20.85.010.A(1) – Special Circumstances: *That, because of special circumstances relating to the property, the strict enforcement of the zoning ordinance would deprive the owner of use rights and privileges permitted to other properties in the vicinity with the same zoning.*

- a. *Special circumstances include the size, shape, topography, location or surroundings of the property, public necessity as of public structures and uses as set forth in ECDC [17.00.030](#) and environmental factors such as vegetation, streams, ponds and wildlife habitats.*
- b. *Special circumstances should not be predicated upon any factor personal to the owner such as age or disability, extra expense which may be necessary to comply with the zoning ordinance, the ability to secure a scenic view, the ability to make more profitable use of the property, nor any factor resulting from the action of the owner or any past owner of the same property;*

4. The criterion is met for the street and side yard variances because the objective of the variances is to displace the footprint of the single-family home as far as possible from the Category III wetland and its buffers, which is solely attributable to the critical areas on the property.

ECDC 20.85.010(B) – Special Privilege: *That the approval of the variance would not be a grant of special privilege to the property in comparison with the limitations upon other properties in the vicinity with the same zoning;*

1 5. As noted in the staff report, similar setback variances have been approved
2 for a couple other homes in the vicinity of the project in order to enable the
3 construction of a single-family home within a critical area. In a broader sense,
4 setback variances would likely be granted to anyone seeking to build a single-family
5 home in the RS district vicinity if it would reduce otherwise unavoidable wetland
6 impacts.

7 **ECDC 20.85.101(C) – Comprehensive Plan:** *That the approval of the variance will
8 be consistent with the comprehensive plan;*

9 6. The requested setback variances are consistent with the comprehensive
10 plan for the reasons outlined at p. 8 and Section VII of the staff report, adopted and
11 incorporated by this reference as if set forth in full.

12 **ECDC 20.85.010(D) – Zoning Ordinance:** *That the approval of the variance will be
13 consistent with the purposes of the zoning ordinance and the zone district in which
14 the property is located;*

15 7. A single-family home is a permitted primary use in the RS-12 district.
16 Approval of the variance would be consistent with the purposes of the zoning
17 ordinance and the RS-12 district.

18 **ECDC 20.85.010(E) – Not Detrimental:** *That the variance as approved or
19 conditionally approved will not be significantly detrimental to the public health,
20 safety and welfare or injurious to the property or improvements in the vicinity and
21 same zone;*

22 8. As determined in Finding of Fact No. 5, there are no significant adverse
23 impacts associated with the proposal. Consequently the criterion is met.

24 **ECDC 20.85.010(F) – Minimum Variance:** *That the approved variance is the
25 minimum necessary to allow the owner the rights enjoyed by other properties in the
vicinity with the same zoning.*

9. As discussed in FOF No. 3, the purpose of the variance is to maximize the
distance of the proposal from the Category III wetland and so should be considered
the minimum necessary to enjoy the same development rights as others in the vicinity
with the same zoning. The size of the home, which is referenced in the staff report
under the analysis of the criterion quoted above, is irrelevant since any reduction in
building size would not result in any reduction of the setback encroachment. Any
reduction in home size should be used to increase the separation from the wetland.

ECDC 23.40.210(A)(2)(a): *The application of this title would deny all reasonable
economic use of a property or subject parcel;*

“**Reasonable economic use(s)**” is defined pursuant to ECDC 23.40.320 as follows: “*The
minimum use to which a property owner is entitled under applicable state and federal*

1 constitutional provisions in order to avoid a taking and/or violation of substantive due
2 process. “Reasonable economic use” shall be liberally construed to protect the
3 constitutional property rights of the applicant. For example, the minimum reasonable use
4 of a residential lot which meets or exceeds minimum bulk requirements is use for one
single-family residential structure. Determination of “reasonable economic use” shall
not include consideration of factors personal to the owner such as a desire to make a
more profitable use of the site.”

5 10. Application of the critical areas ordinance would deny the applicants minimum
6 reasonable use of their property if not variance is granted. A minimum reasonable use of
7 the subject property is a single family home. The definition of reasonable use quoted
8 above makes it clear that minimum reasonable use is a single-family home for a lot that
9 meets all bulk requirements, such as minimum lot size, setbacks, and lot width. Were it
10 not for the critical areas at the project site, the subject lot is easily large enough to
11 accommodate a single-family home that satisfies all minimum bulk requirements. No
12 single family home could be built upon the subject property without encroaching into a
13 critical area or a critical area buffer. The only options for the applicants are to either
14 build the home into the wetland and stream buffers and potentially the wetland itself as
15 currently proposed, or to build a driveway through the wetland and its buffer as proposed
16 in the previously approved variance.

17 **ECDC 23.40.210(A)(2)(b):** *No other reasonable economic use of the property*
18 *consistent with the underlying zoning and the city comprehensive plan has less impact on*
19 *the critical area;*

20 11. As concluded in Conclusion of Law No. 11, a single-family home is defined
21 as a minimum reasonable use for the subject property. As a minimum reasonable use, no
22 other type of reasonable use could be required for the property unless it allowed for a
23 greater economic return on the property. As outlined in ECDC 16.20.010, more intense
24 uses allowed for the subject property include uses such as churches and schools. None of
25 these types of uses could be construed as creating less impact to critical areas. If the
“other” reasonable use referenced in the criterion above encompasses different project
design as opposed to different types of uses, then as discussed in Finding of Fact No. 6
there is an open question as to whether impacts could be further reduced by building
upwards into the second floor as opposed to outward into the wetland. Project design
appears to be more directly addressed in the next criterion and at any rate project design
is addressed in the conditions of approval to ensure that the design minimizes impacts to
the wetland.

26 **ECDC 23.40.210(A)(2)(c):** *The proposed impact to the critical area is the minimum*
27 *necessary to allow for reasonable economic use of the property;*

28 12. As discussed in Finding of Fact No. 6 and Conclusion of Law No. 11, there is
29 an open question as to whether the home has been designed to minimize impacts to the
30 on-site wetland. The conditions of approval require further staff investigation and
31 redesign of the project to the extent necessary to mitigate project impacts. According to
32 the testimony of Mr. Brown, the applicants only had to pay \$75,000 for their lot whereas
33 other lots in the vicinity average approximately \$500,000. Although Mr. Brown did not
34 provide any hard data to substantiate his cost estimates, his assertions were undisputed by
35 the applicants and it is fair to conclude that the purchase price of the applicants’ property
was substantially reduced as a result of the wetland and stream. As discussed in the

1 Order on Reconsideration, investment backed expectations are one of the factors involved
2 in assessing reasonable use. If the living space and garage is limited to the footprint
3 identified in Condition No. 1 of this decision, the applicants would still have 2,600 square
4 feet of living space. This would be 1,200 square feet less than the average living space
available to other homes that the applicants identified in the vicinity, but given the
significantly reduced land value this would still qualify as reasonable use if there was an
appreciable environmental benefit to not building within the wetland.

5 **ECDC 23.40.210(A)(2)(d):** *The inability of the applicant to derive reasonable economic*
6 *use of the property is not the result of actions by the applicant after the effective date of*
the ordinance codified in this title or its predecessor;

7 13. The use limitations of the property are all directly attributable to the on-site
8 critical areas and not to any actions by the applicant. However, the applicant's need for
first floor living space due to advancing age is personally attributable to the applicants
and cannot serve as justification for the currently proposed house design.

9 **ECDC 23.40.210(A)(2)(e)³:** *The proposal does not pose an unreasonable threat to the*
10 *public health, safety, or welfare on or off the development proposal site;*

11 14. As determined in Finding of Fact No. 5, as conditioned there are no
12 significant adverse impacts associated with the proposal and, therefore, the proposal does
not pose an unreasonable threat to the public health, safety, or welfare on or off the
development proposal site.

13 **ECDC 23.40.210(A)(2)(f):** *The proposal minimizes net loss of critical area functions and*
14 *values consistent with the best available science; and*

15 15. As determined in Finding of Fact No. 5(B) and (C), the proposal will not
16 create any net loss of critical area functions and values. This determination was based
17 upon the study of a qualified wetland biologist, who in turn based her mitigation and
18 assessment upon several scientific studies identified at p. 19 of her report. The scientific
19 studies and the opinions and analysis of the wetland biologist qualify as best available
science as defined in ECDC 23.40.310 because the biologist is professionally trained and
works for a reputable company selected by the City and the studies she relied upon have
been prepared by state and federal agencies such as the Washington State Department of
Ecology, the U.S. Department of Interior Fish and Wildlife, and the U.S. Department of
Agriculture.

20 **ECDC 23.40.210(A)(2)(g):** *The proposal is consistent with other applicable regulations*
21 *and standards.*

22 16. The applicant has sought and is being granted variance requests to street
23 and side yard setback requirements that the proposal will not meet. Compliance with
24 all other applicable regulations and standards will be assessed and enforced during
building permit review.

25 _____
³ In response to the many assertions of the applicants that additional stormwater conditions are not
based upon code, this provision would be one such source of code authority in addition to ECDC
23.40.210(B)(5) as referenced in the applicants' 4/21/13 reconsideration comments .

1 **ECDC 23.40.210(B)(1):** *Special conditions and circumstances exist that are peculiar to*
2 *the land, the lot, or something inherent in the land, and that are not applicable to other*
3 *lands in the same district;*

4 17. As testified by several neighbors, the subject property is unique in its
5 abundance of critical areas.

6 **ECDC 23.40.210(B)(2):** *The special conditions and circumstances do not result from*
7 *the actions of the applicant;*

8 18. See COL No. 13.

9 **ECDC 23.40.210(B)(3):** *A literal interpretation of the provisions of this title would*
10 *deprive the applicant of all reasonable economic uses and privileges permitted to other*
11 *properties in the vicinity and zone of the subject property under the terms of this title, and*
12 *the variance requested is the minimum necessary to provide the applicant with such*
13 *rights;*

14 19. See COL No. 10.

15 **ECDC 23.40.210(B)(4):** *Granting the variance requested will not confer on the*
16 *applicant any special privilege that is denied by this title to other lands, structures, or*
17 *buildings under similar circumstances;*

18 20. The applicants simply seek to build a reasonably sized single-family home on
19 a lot large enough for that purpose. That is a right enjoyed by all other property owners
20 in the vicinity and is not a request for a special privilege.

21 **ECDC 23.40.210(B)(5):** *The granting of the variance is consistent with the general*
22 *purpose and intent of this title, and will not further degrade the functions or values of the*
23 *associated critical areas or otherwise be materially detrimental to the public welfare or*
24 *injurious to the property or improvements in the vicinity of the subject property; and*

25 21. As determined in Finding of Fact No. 5, there are no adverse impacts
associated with the proposal and it will not create any net loss in wetland or stream
unction while also providing for reasonable use of the property. Given these factors the
property the granting of the variance is consistent with the purpose and intent of the
critical areas ordinance and is not detrimental to the public welfare or injurious to
property or improvements in the vicinity.

ECDC 23.40.210(B)(6): *The decision to grant the variance is based upon the best*
available science and gives special consideration to conservation or protection measures
necessary to preserve or enhance anadromous fish habitat.

22. As noted in COL No. 15, the granting of the variance is based upon best
available science and as noted in Finding of Fact No. 3, there is no fish habitat
associated with the proposal.

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DECISION

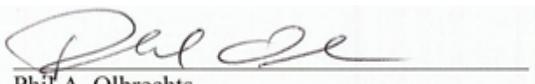
The street, side yard and critical area reasonable use variance stream and wetland requests are approved, subject to the following conditions and modifications:

1. As discussed in FOF No. 6, staff shall consult with a qualified wetland biologist, who can be Andrea Bachman, to determine whether removing the proposed wetland encroachment would appreciably improve upon impacts to wetland functions. If there is any appreciable environmental benefit to avoiding the proposed wetland encroachment, the building footprint for the home, inclusive of the garage, will be limited to the squared building space (including the west bay window) depicted in Ex. 4, Sheet 2, excluding the garage area and the room appended to the north of the garage to the extent it encroaches into the wetland. The southeast wetland encroachment of this living space is authorized. The driveway shall be located outside the wetland. Retaining walls may be built into the wetland to the extent necessary to support the home and driveway. If the driveway cannot be built to City standards without encroaching more than a foot into the wetland, the applicants may build the home as proposed with the 1,790 square foot encroachment.
2. City engineering staff shall consider the stormwater comments of Todd Brown in Ex. 31 and the stormwater concerns summarized in the testimony section of this decision when reviewing and applying the City’s stormwater regulations.
3. The applicant must obtain a building permit and all other required local, state, and federal permits prior to commencing work on the subject site.
4. Individual elements of this project are required to meet all applicable city codes. The applicant must show full compliance with all applicable regulations and standards that are not part of the approved variance at the time of building permit application review.
5. The applicant shall complete mitigation as detailed in the “Critical Area Study and Wetland Mitigation Plan” dated November 27, 2012 by Wetland Resources, Inc. (Attachment 8).
6. The existing man-made trench located along the west property line shall remain in place as a potential overflow channel for any stream high water event. In addition, the subject proposal shall not inhibit the usage of the existing southwestern storm drainage culvert.
7. During the building permit process, the applicant will be required to install a trash rack at the northwestern stream inlet if determined necessary by City staff and secure all applicable permits for all work within the stream and associated buffer. The applicant will also be required to revise the storm easement such that the easement encompasses the creek.

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8. The approved variance must be acted on by the owner within one year from the date of approval or the variance shall expire and be null and void, unless the owner files an application for an extension of time before the expiration and the city approves the application.

Dated this 24th day of April, 2013.


Phil A. Olbrechts

Edmonds Hearing Examiner

Appeal Right and Valuation Notices

This land use decision is final and subject to closed record appeal to the City Council as authorized by ECDC 20.01.003. Appeals must be filed within 14 days of the issuance of this decision as required by ECDC 20.07.004(B). Reconsideration may be requested within 10 calendar days of issuance of this decision as required by ECDC 20.06.010.

Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.