

RESOLUTION NO. 1309

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EDMONDS, WASHINGTON, RELATING TO LAND USE AND ZONING, ADOPTING FINDINGS AND CONCLUSIONS TO REVERSE THE AUGUST 7, 2013 DECISION OF THE ARCHITECTURAL REVIEW BOARD GRANTING CONDITIONAL DESIGN APPROVAL FOR BUILDING 10 IN THE POINT EDWARDS PROJECT LOCATED AT 50 PINE STREET, EDMONDS, WA, PLN20130022, PARTIALLY AFFIRMING THE APPEALS OF DAVID INADOMI, THE TOWN OF WOODWAY, THOMAS WAGGENER, CLAIR AND BILL WIDING AND JOHN AND LAURA FLEMING.

WHEREAS, a proposed design for Building 10 in the Point Edwards project on 50 Pine Street in Edmonds was submitted by Joe Kolmer of Weber Thompson (hereinafter the “Applicant”) on November 1, 2012; and

WHEREAS, this design application was withdrawn by the Applicant on March 25, 2013; and

WHEREAS, a new design application, together with a new SEPA checklist and traffic study was submitted to the City for Building 10 on March 26, 2013; and

WHEREAS, the City issued a Determination of Non-Significance (DNS) under the State Environmental Policy Act (SEPA) for this application on April 12, 2013; and

WHEREAS, the City did not receive any valid appeals of the SEPA DNS; and

WHEREAS, a public hearing was held by the Architectural Design Board (ADB) on May 15, 2013 and the ADB voted to conditionally approve the design application; and

WHEREAS, the City received three appeals of the ADB’s decision; and

WHEREAS, the City Council held a closed record hearing on the appeals on July 2, 2013; and

WHEREAS, the City Council voted at the July 2, 2013 hearing to remand the matter to

the ADB for the entry of findings of fact and conclusions to support their decision, based on the Applicant's agreement to sign a written waiver of the prohibition on more than one open record hearing and one closed record appeal (RCW 36.70B.060) and the deadline for issuance of a final decision (RCW 36.70B.080); and

WHEREAS, on August 7, 2013, the ADB entered its Findings, Conclusions and Decision on the Point Edwards Building 10 located on Pine Street in Edmonds; and

WHEREAS, the City received four appeals of the ADB's decision (David Inadomi, APL 20130005; Thomas Waggener, APL 20130006; Town of Woodway, APL 20130007; and the appeal of Clair Widing, Bill Widing, Jon Fleming and Laura Fleming, APL 20130008); and

WHEREAS, the City Council considered the appeals during a closed record appeal hearing held on October 15, 2013, which was continued until November 12, 2013; and

WHEREAS, on November 12, 2013, the City Council deliberated and voted to reverse the ADB; and

WHEREAS, these Findings of Fact and Conclusions of Law supporting the City Council's decision were considered by the Council at a continued hearing held on December 17, 2013; Now, Therefore,

THE CITY COUNCIL OF THE CITY OF EDMONDS, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

FINDINGS.

Section 1. Closed Record Public Hearing.

A. *Notice.* Notice of the Closed Record Public Hearing on July 2, 2013 and the continuations of this Hearing on October 15, November 12, December 3, 2013, and December 17, 2013 was provided as required by Edmonds Municipal Code Section 20.07.004(F). Public

Notice of the Council's Closed Record Appeal Hearing on July 7, 2013 was published in the Herald on June 6, 2013. Public Notice of the Hearing on October 15, 2013 was published in the Herald on September 29, 2013. Because the remaining hearings were continued to a date certain, no additional public notice was published.

B. *Appearance of Fairness, Conflict of Interest and Ex Parte Communications.* At the outset of the closed record public hearing on July 2, 2013 and all continued hearings on October 15 and November 12, 2013, the decision makers were individually asked to disclose any appearance of fairness, conflict of interest and ex parte communications. Each Councilmember and the Mayor stated that he/she had none to disclose, except on December 17, 2013 Council President Petso disclosed that she had recently received two emails and that she recently discovered that she has a relative that works with the applicant. The Mayor asked the members of the audience whether any one wished to challenge any decision maker's participation in the closed record hearing, and there was no reply.

C. *Councilmember Yamamoto.* Councilmember Frank Yamamoto was excused from the October 15, 2013 closed record hearing because of illness. However, he reviewed the administrative record together with the minutes of the October 15, 2013 hearing and participated in the November 12, 2013 continuation of the closed record hearing (based on the holding of *Belcher v. Kitsap County*, 60 Wash. App. 949, 955, 808 P.2d 750 (1991)).

D. *Exhibits.* The following exhibits were considered by the City Council in this closed record appeal:

<u>Doc. #.</u>	<u>Bates #</u>	<u>Description</u>
1	0001	ADB Findings, Conclusion and Decision
2	0026	ADB Agenda Memorandum (8/7/13)
3	0028	Combined Proposed Findings, Conclusion and Decision

<u>Doc #</u>	<u>Bates #</u>	<u>Description</u>
4	0055	Staff's Proposed Findings, Conclusion and Decision
5	0074	Applicant Amendments to Staff's Proposed Findings Conclusions and Decision
6	0099	Douglas Purcell's Amendments to Staff's Proposed Findings, Conclusions and Decision.
7	0118	Log of comments received by not provided to ADB during remand.
8	0119	May 16, 2013 Notice of Final Decision.
9	0120	Synopsis of May 15, 2013 ADB Meeting.
10	0122	ADB Staff Report (May 9, 2013)
11	0140	Land Use Application
12	0141	Applicant Cover Letter
13	0144	Applicant's Point Edwards Building 10 ADB Design Packet
14	0194	Original Point Edwards Approval and Staff Report
15	0267	Contract Rezone and Point Edwards Master Plan
16	0311	Building 10 2006 Approved Modification and Staff Report
17	0343	ADB meeting minutes (December 19, 2013).
18	0358	Application Withdrawal Letter.
19	0362	SEPA MDNS issued May 9, 2003
20	0365	Adoption of May 9, 2003 MDNS
21	0369	SEPA Checklist (March 26, 2013).
22	0392	Traffic Impact Analysis by Popp Assoc. March 25, 2013
23	0452	DNS issued April 12, 2013
24	0454	Public Notice Documentation.
25	0468	Technical Review Committee Comment Sheets.
26	0470	Engineering Division Approval.
27	0472	Illustrations of Building 10 from ADB 2006-97
28	0475	Comment letters and e-mails.
29	0571	Applicant augmented ADB material provided at the May 15, 2013 public hearing.
30	0581	Staff Power Point Presentation from May 15, 2013 public hearing.
31	0599	Applicant testimony from May 15, 2013 public hearing.
32	0631	Town of Woodway testimony from May 15, 2013 public hearing.
33	0635	Christy Cufley testimony from May 15, 2013 public hearing.
34	0637	Jeff Yocum display from May 15, 2013 public hearing
35	0638	Sign-up Sheet from May 15, 2013 public hearing.

Appeal Documents – **NOTE: The Bates stamped record was updated in June of 2013. The expanded version added 118 pages. Some of the references in the appeal documents added after this occurred were mis-numbered as a result.**

<u>Doc. #.</u>	<u>Bates #</u>	<u>Description</u>
36		Appeal APL20130005 of David Inadomi, August 20, 2013
37		Appeal APL20130006 of Thomas R. Waggener, August 20, 2013
38		Appeal of Town of Woodway, August 21, 2013
39		Appeal of Clair & Bill Widing, Jon & Laura Fleming, August 21, 2013
40		Letter from Woodway Mayor Nichols, September 23, 2013
41		Letter from D. Purcell dated September 27, 2013.
42		Response of Applicant to Inadomi appeal, October 4, 2013
43		Response of Applicant to Waggener appeal, October 4, 2013
44		Response of Applicant to Town of Woodway appeal, October 4, 2013
45		Response of Applicant to Widing and Fleming appeal, October 4, 2013
46		Reply from Appellant Inadomi to Applicant's Response, October 7, 2013
47		Memo to City Council from Special Counsel Morris, October 14, 2013
48		Memo to City Council from Kernan Lien dated September 30, 2013.
49		Compilation of ADB's August 7, 2013 decision, together with documents numbered 36 through 46 above.

E. *General Jurisdiction of the City Council.* “All design review decisions of the hearing examiner or the ADB are appealable to the City Council as provided in chapter 20.07 ECDC.”¹ “An appeal must be filed within 14 days after the issuance of the hearing body’s decision.”² The ADB’s decision issued on August 7, 2013. All of the appeals were received on August 20 or 21, 2013, and so were timely filed.

¹ ECDC Section 20.11.040.

² ECDC Section 20.07.004(B).

F. *Background.* Here is a description of the pertinent events relating to this application.

Date **Description.**

- 1995 The Downtown Waterfront Plan was adopted as an element of the Edmonds Comprehensive Plan. The Downtown Waterfront plan “called for any future development of certain properties located in the southwestern portion of the City to occur only upon the formulation of a ‘master plan’ to guide that development.”³
- 2002 The MP Zone was established, the Point Edwards Master Plan is adopted and the subject property was rezoned to MP1 as part of a contract rezone, to allow for master planned development of the property as contemplated in the Comprehensive Plan and as more particularly described in the Downtown Plan.⁴
- 2002 ADB approved design application under ADB-2002-226 for Point Edwards allowing 295 units.⁵ Two of the original twelve conditions pertinent to this application were:
- Staff shall confirm the landscape plan has not significantly changed from the current proposal or it must return to the Board for final approval; and
 - Staff shall confirm that the materials and colors used are consistent with the design of the development or they must be brought back to the Board for final approval.⁶
- 2005 Pt. Edwards submitted an application to increase the number of units to 350. A Mitigated Determination of Non Significance issued for a proposal to “increase the number of total units anticipated for the Pt. Edwards project from 300 to 350. Zoning would allow 419. The current proposal also makes a slight change to the footprint of Building 5. . . .”⁷
- 2005 ADB approved an increase in the number of units at Point Edwards to 350 units.⁸
- 2006 Pt. Edwards applied for and received approval to “extend the roof line from the western elevation to the eastern elevation,” and to increase the number of units in the building by 8-9 units, but staying below the maximum of 350 units approved in 2005.⁹ Under ADB 2006-97, the ADB approved the design for an angled building with west (four-story) and east (five-story) wings, a level, modulated roof and 69 multifamily units.¹⁰ Building

³ Administrative Record 0280.

⁴ AR 0208.

⁵ AR 0001.

⁶ AR 0195.

⁷ AR 0365.

⁸ AR 0001.

⁹ AR 0334, 0329.

¹⁰ AR 0001.

permits were issued by the City for the approved design in 2008, but construction did not proceed under these permits.¹¹

2012 November - Pt. Edwards applied for ADB approval for Building 10, with 89 units.¹²

December – ADB holds a public hearing and directed the applicant to modify the design proposal for Building 10.¹³

2013 January – The City notified Pt. Edwards that SEPA required new traffic study.

March -- Pt. Edwards withdrew its original application and submits new application with SEPA checklist and traffic study. This application reduces the number of units to 85.¹⁴

April – The City issued Determination of NonSignificance, and no valid appeals were received.

May – The ADB held a public hearing on the revised application on May 15, 2013, and voted to approve the application. The ADB did not issue a written decision.¹⁵

June – The City received three appeals of the ADB’s decision.¹⁶

July – The City Council held a closed record hearing on the appeals. The City Council noted that there was no written decision by the ADB. The applicant expressed its willingness to sign a written waiver of the deadline for the City to issue a final decision and waiving the limitation on one open record hearing and one closed record appeal.¹⁷ The City Council voted to remand the matter back to the ADB for entry of Findings of Fact and Conclusions, consistent with the ADB’s vote.¹⁸

August – The ADB voted to adopt its Findings of Fact and Conclusions of Law, dated August 7, 2013, which is referred to as the “Final Decision.”

August – The City received four appeals of the ADB’s decision (from D. Inadomi, APL20130005; Thomas Waggener, APL20130006; the Town of Woodway, APL20130007 and the Widings and Flemings (APL20130008).

¹¹ AR 0001.

¹² Doc 45 (Gifford letter in response to Widing Appeal, October 4, 2013, p. 2.), AR 468 and May 15, 2013 verbatim transcript, p. 2.

¹³ AR 0123.

¹⁴ AR 0001.

¹⁵ AR 0121.

¹⁶ AR 0004.

¹⁷ The applicant never signed a written waiver, but the applicant’s agreement with the described process is included in the transcript/minutes of the July 2, 2013 hearing. The applicant is precluded from challenging this process under the invited error doctrine. See, *Humbert/Birch Creek Construction v. Walla Walla County*, 145 Wash. App. 185, 192, 185 P.3d 660 (2008).

¹⁸ AR 0004.

October 15, 2013 – The City Council holds a closed record hearing on the appeals and continues the hearing until November 12, 2013. It was announced that the Bates stamped record was updated, which resulted in the addition of 118 pages, and as a result, some of the documents subsequently added to the administrative record included erroneous references to the record. At the close of his hearing, the City’s attorney proposes to prepare a compilation of the appeal issues from the administrative record for the Council’s ease in reviewing the lengthy record.

November 12, 2013 – the City Council held a closed record hearing on the appeals. The Council heard the objections of the applicant’s attorney Gifford and appellant Tom Waggoner to the document prepared by the City’s attorney. The document was provided in advance of the November 12, 2013 continued hearing to the City Council (and is identified as No. 49 herein), as well as all of the parties. The Council voted to reverse the ADB and directed staff to prepare findings of fact and conclusions.

December 17, 2013 – the City Council considered the findings of fact and conclusions, made changes and voted on the final version.

G. General Description of the Application. The overall size of the Point Edwards Project is 24.06 acres.¹⁹ The subject site is part of the Point Edwards Master Plan and contract rezone which originally included ten multi-family residential structures, nine of which have been completed, comprising a total of 261 units and two amenity centers. The applicant proposes to construct Building 10, another multi-family structure, with eighty-five (85) units on approximately 2.1 acres (91,688 square feet), on property that is currently vacant and cleared. There will be eighty-five (85) units in the multi-family residential building with 21,000 GSF of structured parking (70 parking stalls) and 74 surface parking stalls.²⁰

H. Standard of Review for Appeals. In a closed record appeal:

The city council shall determine whether the decision by the hearing body/officer is clearly erroneous given the evidence in the record. The city council shall affirm, modify or reverse the decision of the hearing body/officer accordingly...

ECMC Section 20.07.005(H). A finding is “clearly erroneous” when “although there is evidence to support it, the reviewing court on the record is left with the definite and firm conviction that a mistake has been committed.” *Phoenix Development v. City of Woodinville*, 171 Wash.2d 820, 828, 256 P.3d 1150 (2011).

The City Council’s decision must be based on the law and substantial evidence in the administrative record. RCW 36.70C.130(1). Substantial evidence is “evidence that would persuade a fair-minded person of the truth of the statement asserted.” *Families of Manito v. City*

¹⁹ AR 0004, AR 0290.

²⁰ AR 0004.

of Spokane, 172 Wash. App. 727, 739, 291 P.3d 930 (2013).

I. Appeals. As stated above, there were four separate appeals of the ADB's Final Decision with at least 22 separate appeal issues, many of which were duplicative or overlapping. Therefore, the similar appeal issues have been grouped together below.

1. Whether the ADB's Final Decision is clearly erroneous on the issue of compliance with applicable design review criteria, codes and comprehensive plan elements/policies, regarding bulk, mass and scale.

Appellants challenge the ADB's decision based on the following:

- C.8.a Do not use repetitive, monotonous building forms and massing in large multi-family or commercial projects.**
- C.8.c Retain a connection with the scale and character of the City of Edmonds through the use of similar materials, proportions, forms, masses or building elements.**
- C.13.d Integrate buildings into their site by stepping the mass of the building along steep sloping sites.**
- D.1.b Maintain the smaller scale and character of historic Edmonds.**
- D.2.a Encourage human scale elements in building design.**
- D.2.b Reduce bulk and mass of buildings.**
- D.2.d Explore flexible site calculations to eliminate building masses that have one story on one elevation and four or greater stories on another.**
- D.4.b Break up large building mass and scale of a façade.**
- D.4.c To avoid stark and imposing building facades.**
- D.4.d To create a pedestrian scale appropriate to Edmonds.**
- D.4.e To become compatible with the surrounding built environment.**

In addition, the Downtown Waterfront Plan includes the following policies applicable to this issue:

Preliminary Guidelines for the Point Edwards Site.

1. The development, including buildings and site improvements

should ‘fit’ with the site’s topography and character. That is, the building should be clustered or terraced to conform to the ridge lines and utilize the headlands as a backdrop.²¹ ...

ECDC Section 20.11.030(A)(4) also provides:

Long, massive, unbroken or monotonous buildings shall be avoided in order to comply with the purposes of this chapter and the design objectives of the comprehensive plan. This criterion is meant to describe the entire building. All elements of the design of a building including the massing, building forms, architectural details and finish materials contribute to whether or not a building is found to be long, massive, unbroken or monotonous.

Here is the portion of the ADB’s Decision regarding the Building 10 application’s compliance with C.8.a.:

A variety of materials, colors, modulation and landscaping have been employed to help break down the scale of the building, articulate the façade and present an interesting and distinctive design that also integrates with the surrounding neighborhood. The top floor of the building’s north and east sides has been set back, which helps modulate height and allow for generous roof overhangs, emphasizing a horizontal orientation for the building. A window wall slot, or setback, has been designed at the north side of the building where the west and east wings join, dividing the façade into 2 separate pieces. Terraces, Juliette balconies, and fenestration strategies add texture to the façade, and help tie the building’s material palette together. The color and material selections connect with the choices for predecessor buildings in Point Edwards and connect the proposal with its surroundings without sacrificing design originality.²²

Here is the portion of the ADB’s Decision regarding the Building 10 application’s compliance with C.8.c:

While the design of Building 10 is slightly different than the other buildings at Point Edwards and has a distinctive design identity by expressing a four and five-story height from the north façade, Building 10 is generally consistent with the proportions, forms, and masses of the other buildings associated with the Point Edwards development as illustrated by the five and six story groupings of existing building construction showing the bulk and scale of the Point Edwards development as a whole. Proposed Building 10 represents a consistent and coherent addition to the overall design and

²¹ AR 0257. Two diagrams depicting what is “OK fit with existing site” and what is “unacceptable” are included on this page.

²² AR 0011.

corresponds with surrounding buildings in Point Edwards. See response to criterion D.4.e. below.

Here is the portion of the ADB's Decision regarding the Building 10 application's compliance with C.13.d:

The proposed building is stepped into the hillside with the southern (uphill) façade of the building extended above grade at two stories in height, so that the building visually steps down from south to north along the most steeply sloping aspect of the site.

Here is the portion of the ADB's Decision regarding the Building 10 application's compliance with D.1.b.

See response to criterion C.8.d above. The proposed building is compatible with the surrounding Point Edwards project of which it is a part, under the approved Point Edwards Master Plan. The project and this site are outside the historic downtown waterfront core of Edmonds. While a substantial structure like the other nine residential buildings in the approved development, its mass is modulated and softened by color and material choices, vertical and horizontal breaks and variations in the building façade, varied roof features and step backs. The building is consistent with the Point Edwards project as a whole, conforms with all zoning bulk and use standards, and is not incompatible with scale and character of the City of Edmonds as a whole. The design of the building draws on elements and patterns found in Point Edwards, which itself [*language missing in original*].

Here is the ADB's Decision regarding the Building 10 application's compliance with D.2.a:

Textures and materials, as well as detailing of material transitions, trim, balconies and roof overhangs provide fine grain of human-scaled elements on the building. The covered entryway and amenity areas, with semi-private seating areas, water feature, barbecuing area and fire pit offer additional human-scale and focus to the overall building design.

Here is the ADB's Decision regarding the Building 10 application's compliance with D.2.b:

The building is articulated for the most part with elements of varying materials, colors, bays, and roof hipped roof forms. The above-grade footprint has been reduced 25% from the previous 2006 approved design iteration, and the slot (or setback) created where both buildings wings meet helps to reduce bulk and scale further at the structure's core. The top floor of both east and north facades has been set back to further reduce building

mass. Topography plat a significant role in adjusting the scale of the building as well, since it steps into the site and presents only two floors above ground along the entire south elevation (both wings) of the building and three stories at the west elevation.

Here is the ADB's Decision regarding the Building 10 application's compliance with D.2.d:

The height calculation methodology used is consistent with the zoning code and with past City practice as stated by City staff.

Here is the ADB's Decision regarding the Building 10 application's compliance with D.4.c:

See discussion at criterion D.2.b above.

Here is the ADB's Decision regarding the Building 10 application's compliance with D.4.d:

As noted at D.2.b discussion above.

Here is the ADB's Decision regarding the Building 10 application's compliance with D.4.e:

The building uses compatible architectural vocabulary with existing Point Edwards multi-family buildings, amenity buildings and the Woodway reference to the south, to provide a balanced response to the existing site character and surrounding built environment. Landscape elements mimic those of the surrounding Point Edwards development and further integrate the proposed development.

Using the erroneous height calculation methodology, the proposed building height elevation of 191.02 is 40 feet above the average grade.²³ The proposed building is shown on plans in the administrative record.²⁴ The following table compares the size, scale and height of all of the Point Edwards residential buildings, including proposed building 10:²⁵

²³ AR 0004.

²⁴ See, AR 0144 through 0193, specifically the elevations on pages 0153-0156 and 0188 of the AR. See also, additional materials submitted by the applicant at the May 15, 2013 ADB meeting at 0574 – 0576, May 15, 2013 verbatim transcript on page 14, AR 0575-0576.

²⁵ The information regarding the average grade, top roof, official height, overall height of tallest façade and building length of the buildings in Point Edwards is not in the administrative record. However, the City Council can take judicial notice of these facts. Further elaboration on this issue appears in Conclusion of Law No. 7 on page 24.

<u>Building</u>	<u>Average Grade</u>	<u>Top Roof</u>	<u>Official Height</u>
1	79 feet	110.65 feet	31.65 feet
2	82 feet	110.65 feet	28.65 feet
3	102.5 feet	137.3 feet	34.8 feet
4	106.5 feet	136.8 feet	30.3 feet
5	89.5 feet	122.5 feet	33 feet
6	112 feet	149 feet	37 feet
7	118 feet	149 feet	31 feet
8	118.4 feet	153 feet	34.6 feet
9	141.75 feet	180.5 feet	38.75 feet
10	151.02 feet	191.02 feet	40 feet

<u>Building</u>	<u>Overall Height of Tallest Façade</u>	<u>Building Length (approx.)</u>
1	35.9 feet	187 feet
2	35.9 feet	261 feet
3	35.9 feet	186 feet
4	36 feet	196 feet
5	36.5 feet	274 feet
6	36.3 feet	230 feet
7	36.3 feet	232 feet
8	45.5 feet	268 feet
9	47.92 feet	257 feet
10	58.27 feet	335 feet

Appellants Woodway, Widing and Fleming assert that Building 10 is a long, high and massive building, and that stepping back the building does not reduce/modulate the height of the structure. These appellants suggest that a practical method to reduce the bulk and mass is to reduce the height of the building to four stories with the east wing reduced to three stories.²⁶

Appellant Waggener reiterates that the Staff Report (at section 1, line 2) states “the overall scale of the building is out of character with the Pt. Edwards development and is not harmonious with the site’s topography.”²⁷ Mr. Waggener also points to ECDC 20.11.030(B), which provides that “the existing character of the site and nearby area should be the starting point for the design of the building.”

²⁶ Appeal Docs. No. 38 and 39.

²⁷ AR 130.

Appellant Inadomi asserts that there is no building of similar size or characteristics to use as a basis of comparison even for simply identifying those design features that may or may not work on such a large scale.” The administrative record also includes a number of comments from the public complaining about the bulk, mass and scale of the building.²⁸

According to the Appellants Woodway, Widing and Fleming, the “building actually extends three stories (not two stories) in height above average grade, since the parking lot/building sit atop the average historical grade with the surface parking lot planned to sit on top of that parking structure. Thus the parking structure plus two stories of residential units equates to three stories above the average grade and should be included in the calculation.” These appellants also note that “building 10 is not being ‘stepped’ into the slope, rather, it is being installed on top of the slope.”

The City Staff observed that “the overall scale of the building is out of character with the Point Edwards development . . .”²⁹ Staff noted that:

Although the proposed Building 10 with the tops of both the eastern and western portions at the same level may comply with the maximum zoning height, this configuration is not consistent with the Point Edwards Master Plan or with a number of design standards and policies in the City’s Comprehensive Plan. Developments must comply both with the zoning standards and the design standards for a specific site. Staff feels that if the eastern portion of Building 10 stepped down as proposed with the original design, it would be compliant with the City’s design standards.³⁰

²⁸ AR 0482, 0485, “The building is massive, partly because it does not have a modulated roofline following down the slope of the hill. . . .”; 0487, “It would be a massive building covering the entire top of the hill overlooking the city and the port . . .”; 0491, “The building will be almost twice as long as existing buildings. It will be excessively tall. How can a 5 story tall building be just 40 feet tall when it will rise 58 feet from the foundation and 71 feet from the sidewalk/street?”; 0502, “This will be a five-story, densely populated structure unlike anything else in Edmonds for its size and visibility. Sitting atop a hill, it will be seen from all areas that Edmonds holds in pride, including the marsh, marina, beaches, and ferries. The large amount of glass on the surface of the five-story building will invite glare and thereby magnify the building’s visibility . . .”; 0503, “The building will be too massive and densely populated, with an average apartment size of around 900 square feet. . . . This is compared to an average of approximately 1400 square feet in the other nine Point Edwards buildings. The City of Edmonds Master Plan for Point Edwards assumes that the size of Point Edwards’ units will be in the 1500 square foot range. Its length will be almost twice that of any other Point Edwards building. . . . The structure will be five stories high (58 feet), towering above the street over 71 feet, dominating the Point Edwards hillside . . . The proposal lists the building height calculation as 40 feet. . . . How can a five-story building be just 40 feet tall when it rises 58 feet from the foundation on the street side and 71 feet above the sidewalk/street?”; 0505, “The structure raises concerns including: 1. Large above ground footprint inconsistent with existing development. . . .”; 0527, “The plans for 50 Pine Street show a monolithic structure that is visually unrelated to (and unlike) the current buildings at Point Edwards as well as the neighboring areas. . . .”

²⁹ AR 0130.

³⁰ AR 0131. The Plan policies and design guidelines supporting the Staff’s recommendation as set forth above are included in AR 0131 and 0132.

Council Findings: The Council has considered a number of documents in the administrative record with regard to the bulk, mass and scale of proposed Building 10. It considered documents showing the building from an uphill point of view,³¹ the size of Building 10 in relation to the other buildings in the Point Edwards Project,³² and the Council evaluated the size of Building 10 in relation to other buildings in Edmonds.³³ There is substantial evidence in the administrative record to support the conclusion that the proposed multi-family Building 10 is long and massive.³⁴

The ADB determined that “the building is consistent with the Point Edwards project as a whole, conforms to all zoning bulk and use standards and is not incompatible with the scale and character of the City of Edmonds as a whole.”³⁵ The ADB also concluded that design guideline C.8.c. was satisfied, which requires that the proposed building “retain a connection with the scale and character of the City of Edmonds, through the use of similar materials, *proportions, forms, masses* or building elements.” In its decision, the ADB states that the proposed building was “generally consistent” with the other Point Edwards buildings, without describing what these consistencies or compatibilities might be. In addition, the ADB has failed to describe in what manner the proposed Building 10 retains a “connection to” or how it is “similar” to any other building in Edmonds. The largest existing Point Edwards building on the Project site has only 41 units, yet proposed Building 10 would have 85 units.³⁶ At its highest point, proposed building 10 would have 5 floors. The existing Point Edwards buildings have three levels of residential units.³⁷ Buildings 8 and 9 appear to be four stories high when viewed from the street below because of the underground parking.³⁸ All of the existing Point Edwards buildings have underground parking, yet Building 10 would have a surface parking lot for 74 cars with 24 hour lighting. The applicant has not identified any other comparable building in Edmonds in response to this appeal issue.

The ADB determined that the proposed Building 10 “steps into the site and presents only two floors above ground along the entire south elevation (both wings of the building and three stories at the west elevation.” However, the mock-ups of the proposed Building 10 do not show it to be “stepped” into the slope as mandated by the City’s Downtown Waterfront Plan, which requires that the building be “terraced to conform to the ridge lines and utilize the headlands as a backdrop.”³⁹ (A diagram in the Downtown Waterfront Plan which depicts the Council’s intent behind Guideline C.13.d shows that the proposed Building 10 conforms to the “unacceptable” example.)⁴⁰ The Council also agrees with the analysis provided in the Staff Report⁴¹ which

³¹ AR 0153-0156, 0188, 0574-0576.

³² AR 0635, 0146 (square footage of all Point Edwards buildings), 0148 (aerial image, showing Building 10 in relation to the other buildings in the Project).

³³ AR 0012, 0586, 0587, 0155, 0188, 0574, 0130-0132, see also, page 13.

³⁴ AR 0155, 0188.

³⁵ AR 0017.

³⁶ AR 0146.

³⁷ AR 0132.

³⁸ AR 0132.

³⁹ AR 0257.

⁴⁰ AR 0257-0258.

⁴¹ AR 0131-0132, 0472 - 0474.

provides substantial support for the conclusion that the previous approval of proposed building 10 under ADB-2002-226 demonstrated how the building could be stepped down and satisfy the relevant zoning standards and design guidelines. The original application for building 10 showed a building stepped down along the slope and integrated into the site. In contrast, the current application shows the eastern portion of the building at the higher elevation as the hill slopes away, which makes the building appear to tower over the landscape.⁴²

2. Whether the ADB’s Final Decision is clearly erroneous on the issue of compliance with applicable design review criteria, codes and comprehensive plan elements and/or policies, regarding height and modulated roof design.

Appellants challenge the ADB’s Final Decision based on the following:

D.3.a. To break up the overall massing of the roof.

Appellants also challenge the ADB’s Final Decision with regard to ECDC 16.75.005(F), which provides that:

The height limits and calculation procedures established for the MP1 and MP2 zones have been adopted after full consideration of the topographical constraints of sites within the zones. Variances are not available under the current City code provisions in order to make more profitable use of a property. In adopting these provisions, the City Council has specifically provided for, and made allowances for the site constraints and topographical features inherent in development of the designated MP1 and MP2 zones. Therefore, no other height variance would typically be available absent a special showing of constraints unanticipated at the date of adoption of this ordinance.

ECDC 16.75.010(D) provides that the height limit in the MP1 zone is 35 feet, but the “roof may extend up to five feet above the state (sic) height limit if designed as part of an approved modulated design in accordance with chapter 20.10 ECDC.”

The following appears in the City’s Downtown Waterfront Plan as a “preliminary guideline for the Point Edwards site:”

4. Height should be restricted to prohibit tower or massive block-like development. The height limit should be measured from each point on the building’s perimeter to encourage terracing. A 35’ maximum height limit is recommended as an interim measure. However this limit should be studied further as site development options become more defined. . . .⁴³

The ADB’s Decision on the Building 10 application’s compliance with D.3.a is:

⁴² AR 0132, 0472 - 0474.

⁴³ AR 0257/

As noted in Finding 20, a variety of materials and color combine with hipped roof forms, which extend above the main parapet, to help break up the massing of the roof, and constitute an approved roof design.

And, in Conclusion No. 8, of the ADB's Decision, the ADB determined that:

ECDC 16.75.020(B): . . . (b). Height. The allowable height in the MPI zone is 35 feet with an additional 5 feet allowed as part of an approved modulated design in accordance with Chapter 20.10 ECDC to a maximum of 40 feet. The proposed building includes an approved modulated roof design (Conclusions of Law 4.a.D.3.a) and is allowed the additional five feet. The proposed building is compliant with the maximum height established in ECDC 16.75.020.B.

ECDC 16.75.020: Roof may extend up to five feet above the stated height limit if designed as part of an approved modulated design in accordance with Chapter 20.10 ECDC

Appellant Waggener states that the method used by the staff and relied upon by the ADB to calculate the building height (based on the manner in which height calculations were performed on the Gregory Building located at 505 Fifth Avenue South) is different from ECDC 16.75.020 and is not appropriate for Building 10. This is because "the topography of the Gregory Building was virtually flat and highly dissimilar to the hilly, sloping site at Building 10." Appellant Waggener also asserts that the ADB's decision on height was not based on the City's code --- specifically, the three illustrations (Figures A, B and C in 16.75.020), which were added to the code to insure clarity regarding the measurement of the allowed height of 35 feet.⁴⁴

Council Findings.

The proposed height of Building 10 contributes to the mass, bulk and scale of the structure, which was discussed previously.⁴⁵ Many of the findings in that previous discussion apply here, such as the ADB's failure to identify any building in the Point Edwards Project or in the surrounding area that is of a similar height, given the proposed location of building 10. Building 10 will be located on a site above the other buildings in Point Edwards, so that it will tower over the others. One document submitted by the applicant demonstrates the height difference between the proposed building 10 and the other buildings in the Point Edwards development, Attachment 2 to the applicant's Reply to Inadomi Appeal, which appears as Doc. No. 42 in the Administrative Record.

The Downtown Waterfront Plan also specifically mentions the interface between height and terracing, and includes diagrams depicting an "unacceptable" example. This "unacceptable"

⁴⁴ Appeal Doc. 37 and 43 (emphasis in original).

⁴⁵ See also, the graph on page 13.

example is similar to the proposed Point Edwards Building 10, as it shows one structure substantially higher than the others.

The Council acknowledges that the code height limit is 35 feet, and with an “approved modulated roof design,” the maximum allowed height is actually 40 feet. However, the Design Guidelines and Comprehensive Plan policies identified in the previous section of these Findings with regard to mass, bulk, scale and stepping of the structure into the slope significantly affect the height of the structure.⁴⁶ As stated in the previous section, ADB clearly erred by failing to address all of the relevant design criteria, code provisions and comprehensive plan policies on relating to mass, bulk, scale and stepping of the structure into the slope, which in turn, led to an approval of a structure that towers over the other buildings in Point Edwards.

3. Whether the ADB’s Final Decision is clearly erroneous on the issue of compliance with applicable design review criteria, codes and comprehensive plan elements/policies, regarding parking, lighting, landscaping, buffers and privacy.

Appellants have appealed the ADB’s decision on parking, lighting, landscaping, buffers and privacy, based on:

- C.13.c. Buffer incompatible uses.**
- C.14.b Maintain privacy of single family residential areas.**
- C.14.c Reduce harsh visual impact of parking lots and cars.⁴⁷**

The ADB’s Decision on the Building 10 application’s compliance with C.13.c is:

Building 10 is located within the Point Edwards development, which is a multi-family development and the building is the last of the buildings approved under ADB-2002-226 so the building is compatible with the rest of the Point Edwards development. Landscaping is provided along the southern property line to buffer the development from the single family property just to the south of the site. Condition #2 will further help buffer the site from the adjacent single family property. The difference in elevation with the site occupied by the adjoining single family dwelling being

⁴⁶ See, *Victoria Tower Partnership v. City of Seattle*, 59 Wash. App. 592, 800 P.2d 380 (1990). In *Victoria Tower*, the developer applied for a permit to add a 16-story tower to its building. The projected height was 174 feet and the zoning for the property allowed a maximum height of 239 feet. The city approved the permit with a condition that the tower be limited to eight stories (based on incompatibility with neighborhood scale and a growth housing policy in the city’s comprehensive plan). The court held that the city council had authority to rely upon growth policies in restricting the height of the building, and the council’s decision that the project was contrary to the growth policies was not clearly erroneous.

⁴⁷ This criterion also appears in the previous section. It has been added here because the mitigation proposed to “reduce harsh visual impact of parking lots and cars” is additional landscaping.

substantially higher than the subject property also provides natural buffering and view preservation.

The ADB's Decision on the Building 10 application's compliance with C.14.b is:

Landscaping, trellises, and canopies are a few of the methods implemented to help screen uses from one another. The building is stepped into the steep slope so that it presents only two visible floors from the south, which also are below the level of the adjoining residences in Woodway.

The ADB's Decision on the Building 10 application's compliance with C.14.c.

The proposal includes landscaping features to the south of the building, including trellising and plant material in the surface lot itself, to soften visual impact and add color and natural material. An added trellis or additional landscaping would further reduce the visual impact and this has been provided for as a condition of approval. This is also consistent with the ADB recommendation #2 to the applicant regarding the design of Building 10 from the December 19, 2012 ADB meeting. The ADB concludes that conditioning the approval on the provision of this additional trellis feature and the applicant's consultation with the adjoining residential neighbor in Woodway regarding additional landscape screening for that property is necessary for the proposal to satisfy criterion C.14.c, and that the project as presented by the applicant does meet that criterion with the imposition of Condition 2, below.

Appellant Inadomi argues that "there has not been enough bare ground left to provide significant vegetative barriers." The ADB required, as part of its approval, that "a trellis no taller than 6 feet with associated planting should be installed adjacent to the top of the rockery on the south side of the surface parking area, *and the applicant should work with the adjacent property owner to provide additional screening landscaping.*"⁴⁸ Mr. Inadomi believes that the ADB's condition is clearly erroneous because:

[W]ith no open space available on the parking lot side, the necessary vegetation would need to be on my property, which at this point is presumably at my expense. . . . There has been a conscious decision to maximize surface parking by extending concrete all the way to the rockery. It is irrelevant that the number of units and surface parking stalls falls within 'acceptable' limits if the concomitant responsibility to adequately provide meaningful screening of the parking lot is not undertaken.⁴⁹

⁴⁸ AR 0025.

⁴⁹ DOC 36, Inadomi Appeal.

Council Findings:

The proposed parking lot for building 10 does run along the Inadomi property line.⁵⁰ The parking spaces are located within the setbacks and the parking can be seen from the southwest.⁵¹ It is easy to see that the placement of parking spaces in the setbacks eliminates the space available to the applicant for the provision of landscaping along this southern property line as a buffer. The ADB's proposed method to address this problem was to require the applicant to install a trellis and stating that the applicant "should work with the adjacent property owner to provide additional screening landscaping."⁵² The term "should" is discretionary, meaning that after approval, the applicant may choose not to provide any additional screening at all.

Therefore, the ADB has not determined what, if any, additional landscaping may be installed in this space, given the property owner's assertion that there is insufficient area for installation. In addition, the ADB has adopted a condition which contemplates that a criterion for approval that is discretionary, and which may be satisfied after approval is given. In other words, the applicant may or may not negotiate compliance with the adjacent property owner. This condition is unenforceable, and even if it were a mandatory condition, it still does not allow Mr. Inadomi the opportunity to challenge the evidence and potential noncompliance. Mr. Inadomi is entitled to an express determination of the landscaping and buffer issue and an opportunity to challenge it, if warranted, prior to final approval.⁵³

CONCLUSIONS OF LAW.

1. The City Council's Findings of Fact and Conclusions of Law may be more expansive and detailed than the motion originally adopted.⁵⁴
2. The ADB's August 7, 2013 Findings of Fact and Conclusions of Law were not clearly erroneous simply because they were entered four months after the May 15, 2013 ADB hearing in which the Building 10 application was conditionally approved.⁵⁵ No one has claimed to be prejudiced by the delay in entering the ADB's decision.
3. The ADB's Final Decision was clearly erroneous with regard to the finding that the proposed Building 10 satisfied the applicable design review criteria, codes and comprehensive plan elements/policies regarding bulk, mass and scale, and the integration of the building into the sloping site. The ADB's approval was based on a number of conclusions that the proposed building 10 satisfied the applicable design review criteria, codes and comprehensive plan

⁵⁰ AR 0148.

⁵¹ AR 0166, 0170, 0171, 0174, 0175.

⁵² AR 0025.

⁵³ See, *Knight v. City of Yelm*, 173 Wn.2d 325, 343-45, 267 P.3d 973 (2011) (addressing a similar situation involving preliminary plat approval where the city council failed to condition approval on a showing of adequate water provision, and thus, removed any burden on the city to make an adequate showing).

⁵⁴ *Snohomish County Improvement Alliance v. Snohomish County*, 61 Wash. App. 64, 72, 808 P.2d 781 (1991).

⁵⁵ *Martel v. City of Vancouver Bd. of Adjustment*, 35 Wash. App. 250, 258, 666 P.2d 916 (1993).

elements/policies, but the ADB did not point to any evidence in the record to support these conclusions.⁵⁶

4. The ADB's Final Decision was clearly erroneous with regard to height. The ADB failed to consider how the failure of the applicant to step the building into the slope, as required by the City's applicable design review criteria, codes and comprehensive plan elements/policies, affected the height of the structure. The City may condition the height of the structure even if it satisfies the City's zoning code height limit,⁵⁷ because these other applicable design review criteria, codes and comprehensive plan policies were not addressed. Building height should have been calculated as required in the Master Plan on AR 0240.

5. The ADB's decision with regard to parking, lighting, and landscaping was clearly erroneous, for failing to consider the applicable design guidelines relating to buffering of incompatible uses (large surface parking lot and adjacent single-family residential development), the maintenance of privacy for single-family residential areas and the reduction of the harsh visual impact associated with a large surface parking lot. The ADB's proposed condition to address these guidelines failed to consider the facts (that parking was proposed in the setback, reducing available area for installation of a landscape buffer), proposed a condition that was inadequate to address the problem (trellis) and imposed an unenforceable condition (applicant's option to negotiate with the neighboring property owner for additional landscaping).

6. The City Council consideration of facts relating to the size, mass, scale and height of the buildings in the Point Edwards development (on page 13) is based on judicial notice. Under ER 201(b).

A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

Judicial notice may be taken at any stage of the proceeding. ER 201(f). Here, the measurements relating to the average grade, top roof, official height, overall height of tallest façade and building length are matters that are "capable of accurate and ready determination." The plans for all of the Point Edwards buildings are in the City's records and the applicant likely has its own copies of these plans for the buildings that it constructed.

7. The City Council's decision is based on the findings of facts and conclusions set forth herein and the Council does not decide any remaining appeal issues.

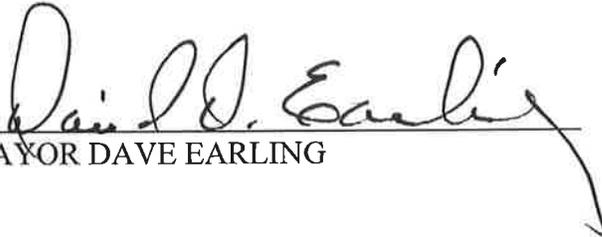
⁵⁶ *Weyerhaeuser v. Pierce County*, 124 Wash.2d 26, 35-36, 873 P.2d 498 (1994) ("Findings of fact by an administrative agency are subject to the same requirements as are findings of fact drawn by a trial court. . . . Findings must be made on matters 'which establish the existence or nonexistence of determinative factual matters.' Statements of the positions of the parties and a summary of the evidence presented, with findings that consist of general conclusions drawn from 'indefinite, uncertain, undeterminative narration of general conditions and events are not adequate.'")

⁵⁷ *See, Victoria Partnership v. City of Seattle*, 59 Wash. App. 592, 800 P.2d 380 (1992).

DECISION

The City Council reverses the Architectural Design Board's Decision. The design application is denied for the reasons stated above.

DATED this 18th day of December, 2013.


MAYOR DAVE EARLING

ATTEST:


CITY CLERK, SCOTT PASSEY

FILED WITH THE CITY CLERK:	December 18, 2013
PASSED BY THE CITY COUNCIL:	December 17, 2013
RESOLUTION NO.	1309

Compliance with RCW 36.70B.130. Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.
Appeals. This decision may be appealed to superior court according to chapter 36.70C RCW, within the deadlines set forth in RCW 36.70C.040.