

EDMONDS CITY COUNCIL APPROVED MINUTES

October 15, 2013

The Edmonds City Council meeting was called to order at 6:18 p.m. by Mayor Earling in the Council Chambers, 250 5th Avenue North, Edmonds.

ELECTED OFFICIALS PRESENT

Dave Earling, Mayor
Lora Petso, Council President
Strom Peterson, Councilmember
Joan Bloom, Councilmember
Kristiana Johnson, Councilmember
Adrienne Fraley-Monillas, Councilmember
Diane Buckshnis, Councilmember

ELECTED OFFICIALS ABSENT

Frank Yamamoto, Councilmember

STAFF PRESENT

Roger Neumaier, Finance Director
Kernen Lien, Senior Planner
Rob English, City Engineer
Jeanie McConnell, Engineering Program Mgr. 1
Jen Machuga, Planner
Jeff Taraday, City Attorney
Sandy Chase, City Clerk
Scott Passey, City Clerk
Linda Hynd, Deputy City Clerk
Jana Spellman, Senior Executive Council Asst.
Jeannie Dines, Recorder

1. ROLL CALL

City Clerk Sandy Chase called the roll. All elected officials were present with the exception of Councilmember Yamamoto.

2. CONVENE IN EXECUTIVE SESSION REGARDING A REAL ESTATE MATTER PER RCW 42.30.110(1)(b).

At 6:20 p.m., Mayor Earling announced that the City Council would not meet in executive session because the incorrect RCW was cited on the agenda. The executive session will be rescheduled. He declared a recess until the candidates for the Tree Board interviews arrived.

3. INTERVIEW CANDIDATES FOR POSSIBLE APPOINTMENT TO THE EDMONDS CITIZENS' TREE BOARD.

Mayor Earling reconvened the regular City Council meeting at 6:28 p.m. He announced the Tree Board interviews would be held in the Jury Meeting room located in the Public Safety Complex. He stated the interviews are open to the public and are expected to last approximately 30 minutes. Council President Petso and Councilmembers Fraley-Monillas, Bloom, Peterson, Buckshnis and Peterson interviewed candidates Rene Travis and Barbara Brooke Harrell.

The interviews concluded at 6:58 p.m. Mayor Earling reconvened the regular City Council meeting at 7:01 p.m. and led the flag salute.

4. APPROVAL OF AGENDA

COUNCIL PRESIDENT PETSO MOVED, SECONDED BY COUNCILMEMBER PETERSON, TO APPROVE THE AGENDA IN CONTENT AND ORDER, DELETING ITEMS 13 and 14 WHICH ARE NO LONGER NEEDED. MOTION CARRIED UNANIMOUSLY.

5. APPROVAL OF CONSENT AGENDA ITEMS

Councilmember Bloom requested Item K be removed from the Consent Agenda and Council President Petso requested Item A be removed.

COUNCIL PRESIDENT PETSO MOVED, SECONDED BY COUNCILMEMBER PETERSON, TO APPROVE THE REMAINDER OF THE CONSENT AGENDA. MOTION CARRIED UNANIMOUSLY. The agenda items approved are as follows:

- B. APPROVAL OF CITY COUNCIL MINUTES FOR THE AUDIT ENTRANCE CONFERENCE OF OCTOBER 8, 2013.**
- C. APPROVAL OF CLAIM CHECKS #204754 THROUGH #204871 DATED OCTOBER 10, 2013 FOR \$321,970.92. APPROVAL OF PAYROLL CHECK #60520 FOR \$449.02.**
- D. AUTHORIZATION TO PAY CLAIMANT BRITTA HOLMBERG IN THE AMOUNT OF \$2,927.56.**
- E. AUTHORIZATION FOR MAYOR TO SIGN 2013-2015 COORDINATED PREVENTION GRANT AGREEMENT WITH DEPARTMENT OF ECOLOGY.**
- F. AUTHORIZATION FOR THE MAYOR TO SIGN SUPPLEMENTAL AGREEMENT NO. 1 TO THE PROFESSIONAL SERVICES AGREEMENT WITH MACLEOD RECKORD, PLLC, FOR CITY PARK REVITALIZATION.**
- G. AUTHORIZATION FOR MAYOR TO SIGN AN INTERAGENCY AGREEMENT (IAA) WITH THE DEPARTMENT OF ECOLOGY FOR FUNDING THE REGIONAL STORMWATER MONITORING PROGRAM.**
- H. QUARTERLY PUBLIC WORKS PROJECT REPORT.**
- I. AWC INTERLOCAL AGREEMENT AND RESOLUTION NO. 1300 FOR PARTICIPATION IN AWC'S NEW SELF-FUNDED INSURANCE PROGRAMS.**
- J. AUGUST 2013 BUDGETARY FINANCIAL REPORT.**

ITEM A: APPROVAL OF CITY COUNCIL MEETING MINUTES OF OCTOBER 8, 2013.

Council President Petso requested the motion at the top of page 4 be revised to read:

MOTION CARRIED ~~(5-2)~~, (5-1), PETERSON VOTING NO.

COUNCIL PRESIDENT PETSO MOVED, SECONDED BY COUNCILMEMBER PETERSON, TO APPROVE ITEM A AS AMENDED. MOTION CARRIED UNANIMOUSLY.

ITEM K: REFER PROPOSED STREET TREE MANAGEMENT POLICY TO CITIZEN'S TREE BOARD.

Councilmember Bloom explained the Tree Board has no dedicated staff support. She requested Council identify what staff member will prepare, schedule and present this item to the Tree Board. She suggested Public Works provide support as Public Works Director Phil Williams presented this item to the Parks, Planning & Public Works Committee. Council President Petso offered to contact Mr. Williams to request a staff member make the presentation to the Tree Board. Mayor Earling suggested also involving Senior Executive Council Assistant Jana Spellman.

COUNCILMEMBER BLOOM MOVED, SECONDED BY COUNCILMEMBER FRALEY-MONILLAS, TO APPROVE ITEM K, WITH PHIL WILLIAMS WORKING WITH JANA SPELLMAN TO SCHEDULE THIS ITEM ON THE TREE BOARD'S AGENDA AND ALLOCATE STAFF TO PRESENT TO THE TREE BOARD. MOTION CARRIED UNANIMOUSLY.

Excuse Councilmember Yamamoto

COUNCILMEMBER PETERSON MOVED, SECONDED BY COUNCILMEMBER JOHNSON, TO EXCUSE COUNCILMEMBER YAMAMOTO FROM TONIGHT'S MEETING AND THE PREVIOUS MEETING.

Councilmember Peterson explained Councilmember Yamamoto had heart surgery on September 12. He is recovering and hopes to return to the Council in the next couple weeks.

MOTION CARRIED UNANIMOUSLY.

6. AUDIENCE COMMENTS

Alvin Rutledge, Edmonds, relayed he spoke with Councilmember Yamamoto who said he would be gone 2-3 more weeks. Councilmember Yamamoto looks forward to returning and has been following the Council's work. Next, Mr. Rutledge thanked everyone who participated in the candidate forums and encouraged voters to support their candidates.

Roger Hertrich, Edmonds, recalled last week he spoke to the Council to express his concerns with the waterfront and the Mayor's proposal to dig a "ditch or big hole to create a highway system through the middle of our town." Following that meeting, at the Finance Committee meeting, Mayor Earling made a comment to him, "if you say ditches again I will come after you." Mr. Hertrich questioned what Mayor Earling meant by come after him. He viewed Mayor Earling's comment as a threat, a way to stifle his free speech and a violation of the City's code of conduct. He was concerned with the intent of Mayor Earling's comments when Mayor Earling is the highest, most powerful person in the City with the entire police force available to him. He invited Mayor Earling to offer a reasonable explanation for his comment.

Mayor Earling responded he was affronted by Mr. Hertrich's constant use of the word ditch, referring to a grant request to the State. Had Mr. Hertrich waited for him to continue their conversation, he would have said he will be after Mr. Hertrich with the two-page narrative that was sent to State Senators. He pointed out nowhere in the narrative is there any mention of a ditch, only an alternatives analysis for the at-grade crossing and completion of the SR104 study. Mr. Hertrich responded that request was done outside of the Council; it was Mayor Earling's intent to request funds, not the Council's. His interpretation of an open cut trench was a ditch. He interpreted Mayor Earling's comment as a threat and intended to file paperwork with the Police Department.

7. PROCLAMATION IN HONOR OF FRIENDS OF THE EDMONDS LIBRARY WEEK, OCTOBER 20-26, 2013.

Mayor Earling read a proclamation declaring October 20 – 26, 2013 as Friends of the Edmonds Library Week in Edmonds. He presented the proclamation to Lesly Kaplan, Managing Librarian, Edmonds Library. Ms. Kaplan commented on the incredible work the Friends of the Edmonds Library do for the library, raising thousands of dollars to help support programs as well as other projects. The Friends will be celebrated at an open house at the library on Sunday, October 20, 2:00 – 3:30 p.m. The event will also honor Edmonds Masons who donated ten bikes for kids who are reading. She also invited the public to the Friends of the Edmonds Library book sale on Saturday, October 26 from 9:00 a.m. to 4:00 p.m.

8. DOMESTIC VIOLENCE MONTH ~ YWCA WEEK WITHOUT VIOLENCE PROCLAMATION.

Mayor Earling read a proclamation declaring October 2013 as Domestic Violence Awareness Month and the third week of October as YWCA Week without Violence. He presented the proclamation to Mary Ann Dillon, YWCA. On behalf of the YWCA of Seattle, King and Snohomish Counties and domestic violence advocates and survivors, Ms. Dillon thanked the City for the proclamation. She explained domestic violence is often a silent crime; issuing the proclamation helps give voice to a problem that impacts 1 in 4 American women as well as many women and children in the community.

9. CLOSED RECORD REVIEW OF THE ARCHITECTURAL DESIGN BOARD'S DESIGN APPROVAL OF POINT EDWARDS' BUILDING 10 TO BE LOCATED AT 50 PINE STREET UNDER FILE PLN20130022. APPEAL NUMBERS APL20130005 - APL20130008.

Mayor Earling explained the purpose of this closed record hearing is for the City Council to address four appeals of the Architectural Design Board's (ADB) decision, conditionally approving revisions of Building 10 of the Point Edwards development which includes a multi-family residential building and associated parking located at 50 Pine Street, Edmonds. He opened the closed record public hearing.

Mayor Earling described the hearing procedures. The City Clerk will make a recording of the proceedings. This is a hearing on the appeals of Thomas Waggener who is represented by Attorney Doug Purcell; the Town of Woodway who is represented by Woodway Mayor Carla Nichols and Attorney Wayne Tanaka; Clair and Bill Widing and John and Laura Fleming; and David Inadomi representing himself. It is not an open record hearing and there will be no opportunity during the closed record appeal hearing for public testimony. Oral argument will be allowed from appellants and parties of record. The parties of record include the applicant, any person who testified at the open record public hearing on the application, and any person who individually submitted written comments regarding the application at the open record public hearing. The City Clerk has a list of persons who meet the definition of a party of record.

Mayor Earling explained the Appearance of Fairness Doctrine requires this hearing be fair in form, substance and appearance. The hearing must not only be fair, it must also appear to be fair. He asked whether any member of the decision-making body has engaged in communication with opponents or proponents regarding the issues in this appeal outside the public hearing process. Councilmembers Buckshnis, Bloom, Fraley-Monillas, Peterson, and Johnson stated they have had no outside communication. Council President Petso reported two people attempted discussion, one via email and one in person. In each case the person accepted her explanation that she could not discuss the matter with them and there was no substantive communication. Mayor Earling advised he has had no outside communication.

Mayor Earling asked if any member of the Council had a conflict of interest or believed he/she could not consider and hear the application in a fair and objective manner. Council President Petso and Councilmembers Johnson, Peterson and Bloom stated they have no conflicts. Councilmember Fraley-Monillas stated she has friends and co-workers of 35 years who live at the site; she has not had conversations with them regarding this issue and she believes she can be fair. Councilmember Buckshnis reported she knows Doug Purcell but has no conflict. Mayor Earling reported he has no conflict.

Mayor Earling asked whether any audience member objected to his or any Councilmembers' participation. There were no objections voiced. Mayor Earling advised all Councilmember and he would participate in the hearing.

Mayor Earling relayed the Council has agreed on the following format for the closed record appeal:

1. Staff Introduction (15 minutes)
2. APL20130005 (Inadomi) Argument (10 minutes)

3. Applicant Response (10 minutes)
4. APL20130006 (Waggener et al.) Argument (10 minutes)
5. Applicant Response (10 minutes)
6. APL20130007 (Town of Woodway) Argument (10 minutes)
7. Applicant Response (10 minutes)
8. APL20130008 (Clair and Bill Widing and John and Laura Fleming) Argument (10 minutes)
9. Applicant Response (10 minutes)
10. Other Parties of Record Argument – 3 minutes each
11. Applicant response to other parties of record (equal to accumulated time of other parties of record)
12. Council Questions and Deliberations

Mayor Earling advised the appellants may reserve some of their allotted time for rebuttal. He requested they each inform him of the amount of time they wished to reserve prior to beginning their argument.

Mayor Earling explained the Council's jurisdiction in this closed record hearing is to determine whether the decision of the ADB is clearly erroneous given the evidence of the record. The City Council shall affirm, modify or reverse the decision of the ADB accordingly.

Staff Introduction

Senior Planner Kernen Lien explained Building 10 under consideration tonight is the last of the proposed buildings at the Point Edwards development. The site was originally a tank farm. A master plan was developed for the site that resulted in:

- Text Changes to the code: MP1 and MP2 zones (CDC-2002-37)
- Contract Rezone (R-2002-38)
 - Any development at Point Edwards must be consistent with the MP1 and MP2 zones as well as the approved master plan.
- Original Development Plan (ADB-2002-226) approved in 2003
 - 295 multi-family residential units
- A number of amendments to original proposal
 - Increase in total units to 350 (ADB-2005-49)
 - Currently 261 units built at the site

Mr. Lien explained the design of Building 10 has undergone a number of changes over the years. He displayed Building Sections of Building 10E and 10W (ADB-2002-226). He explained there were no elevation views of Building 10 at that time. In 2006 a proposal was made to amend Building 10 (ADB-2006-97). He displayed a photo composite of the proposed Building 10 – Original Plan and Proposed Building 10 – Modified Roof Plan. He explained the original Building 10 had a step down from the east to the west side. The 2006 proposal leveled out the building and eliminated the step down. The 2006 proposal which included 69 multi-family units was never built.

Mr. Lien displayed a drawing of Building 10 west and east proposed in 2012 (PLN201200400). This proposal was for 89 units. This building was the subject of the December 19, 2012 ADB public hearing; that public hearing was continued. He displayed a drawing of Building 10 west and east proposed in 2013 (PLN20130022), the proposal approved by the ADB and the subject of the appeal. This proposal contains 85 units which is within the 350 approved units for the site.

Mr. Lien described the progression from PLN20120040 to PLN20130022.

- ADB Public Hearing December 19, 2012 (PLN20120040)
 - Continued Public Hearing
 - Referred to applicant for modifications

- Design of Building 10 should be more consistent with other development approved and constructed at Point Edwards under the Point Edwards Master Plan
- Additional landscaping should be provided along the rockery or in the parking lot along the south side of the surface parking lot
- Applicant should take into consideration the following design elements present in the existing Point Edwards buildings:
 - Residential fenestration
 - Broad overhangs
 - More human scale
 - Distinction between floor to floor height
 - Pacific NW elements and materials
- Applicant must submit samples of proposed materials

Following the December 19, 2013 public hearing, procedural issues arose in regard to SEPA. Under the original proposal (2002), the City issued a Mitigated Determination of Non-Significance (MDNS) on May 23, 2003. The MDNS was adopted again in 2005 with the increase of units from 295 to 350. The concern raised with SEPA was in regard to a specific condition in the MDNS, a \$22,000 fee collected by the City for a signalization project at the Pine Street/SR-104 intersection. The need for the signalization project was not triggered by development of Point Edwards but was intended to be the development's fair share of the signalization project triggered by the Edmonds Crossing project. The Edmonds Crossing project was put on hold and the signalization project did not proceed. As that specific condition was in the SEPA determination, the City felt SEPA should be redone for the project.

Redoing SEPA raised procedural concerns. SEPA appeals are heard by the Hearing Examiner; there are provisions against two open record public hearings. A public hearing before the ADB had begun before this SEPA concern arose; if SEPA was issued and appealed, there was a risk of two open record public hearings. The applicant decided to withdraw their application, PLN20120040, and submit a new application, PLN20130022. The City did a new SEPA analysis which included a traffic impact analysis and issued a Determination of Non Significance (DNS) on April 12, 2013. That SEPA determination was not appealed.

Although PLN20130022 is technically a new application, the applicant responded to the conditions the ADB presented in December 2012. He displayed drawings of Building 10 west and east views. He reviewed Building 10 approval:

- Staff found the building consistent with the Zoning Code
- ADB found Building 10 to be consistent with design standards in the Comprehensive Plan and the Building Code and approved the design of Building 10 at their May 15, 2013 meeting
- Three appeals of the ADB approval were received
- On July 7, 2013 the Council remanded the decision back to ADB to enter Findings and Conclusions
 - Staff prepared a first draft and made it available to all other parties of record for comment. The applicant and one appellant group added to the draft Findings and Conclusions
- ADB reviewed and adopted Findings and Conclusions on August 7, 2013
- Four appeals of the ADB approval have been received

APL20130005 (Inadomi) Argument

David Inadomi, Woodway, requested time for rebuttal. Mayor Earling offered to inform him when he reached eight minutes. Mr. Inadomi clarified for the record a concern about asking for late information on completed issues, noting much of it stems from the procedural faux pas of remanding the decision to the ADB for preparation of Findings and Conclusions to support their decision. To the statement that he did not attend a public hearing in 2005 where the number of units increased to 350; he agreed he was unaware of that public hearing. It would have been premature to object because a decision had not been made to

put a large or majority percentage of units in one building rather than dispersing them among buildings yet to be constructed. He also did not speak at the ADB's meeting last year, the first available opportunity regarding the current proposal. To the comment that he has never discussed noise and lighting issues for Building 10, he referred to his testimony contained in the transcript of the May 15, 2013 ADB meeting.

Dr. Inadomi commented when considering a project like Building 10, basic fundamental concepts/values need to be satisfied: does the construction represent the essence of the design objectives for the City of Edmonds, is it in complete compliance with all the current codes, and is the ultimate goal worth the 100% opposition by local residents who will be most affected by the construction? If the answer to these questions is yes, the next phase of building should proceed. If not, the areas in question need to be identified and perhaps modified so that it is palatable to a majority rather than overwhelmingly unfavorable. He urged the Council to consider that when making their final decision.

Applicant Response

Rick Gifford, 23901 Edmonds Way, land use attorney representing Edmonds Pine Street LLC, explained he was unaware the Bates stamped portion of the record had been updated. An initial Bates stamped record was issued in June with the first appeals; an expanded version (640 pages) was issued that added 118 pages of materials that arose as a result of the remand to the ADB and the ADB's adoption of Findings and Conclusions. When he prepared written materials that were submitted on October 4 and 11, 2013, he cited to the previous Bates stamped record and his citations are off by 118 pages. He noted the transcript of the May 15, 2013 ADB meeting, the July 2, 2013 City Council meeting minutes, the ADB's August 7, 2013 meeting minutes and a memo from Mr. Lien to the Council dated September 30, 2013 are also part of the record but not included in the Bates stamped record. His references tonight will be to the 640 page version of the Bates stamped record.

Mr. Gifford introduced John Goodman, Principal, Edmonds Pine Street LLC; and Architects Joe Kolmer and Myer Harrell, Weber Thomas. Mr. Gifford acknowledged this project has received a great deal of scrutiny as it should because it is a major contribution, the last building in the overall Point Edwards community. Unfortunately the process has been somewhat erratic and unpredictable and issues have made it more prolonged and confusing than necessary. He referred the Council to the record where these issues are addressed extensively in writing and oral testimony. He expressed concern that the process that is to be open, direct, clear and certain has not been in this case for a variety of reasons.

To the issue of the technicality of a new application versus the reality, he displayed page 578, a drawing comparing the northwest view of the December 2012 design and the May 2013 design, a revised design in response to direction provided by the ADB. He displayed page 579, a drawing comparing the northeast view of the December 2012 and May 2013 designs. He also displayed page 580, a drawing comparing the southwest view of the December 2012 and May 2013 designs. He noted 2-3 levels were visible from this perspective, more stories visible on the downslope similar to other buildings in Point Edwards. He explained the modified design that the ADB reviewed in May was responsive to the ADB's December mandate. He displayed page 356, minutes of the ADB's December 19, 2012 meeting, and the ADB's motion to continue the public hearing and direct the applicant to modify the design proposal for Building 10. He noted they could have chosen not to modify their proposal but in the interest of proceeding with the project, they commenced design review in accordance with the ADB's directives to be more consistent with the other development at Point Edwards, and add landscaping in the surface parking lot, and design and architectural elements such as fenestration, modulation, and articulation that are typical for major project design.

He explained this is a continuing design evolution that began over a decade ago with the original Point Edwards approval. He displayed page 612, a building cross-section of Building 10E and 10W, four stories visible on the lower slope and 2 – 2½ stories visible on the upper. He displayed page 611, off street parking plan from the 2003 ADB approval, explaining this view illustrates the master plan and projected

building for the project. This view illustrates a large angled building along Pine Street with surface parking behind, a building footprint very similar to the current plan. This view also illustrates the other Point Edwards buildings stair-stepping or terracing down the slope. All the buildings in this view were level roofed; all nine buildings constructed in Point Edwards to date are level-roofed with modulation just as Building 10 is proposed.

Mr. Gifford displayed page 169, a cross section of the current building, four floors on one wing the same as the original and five floors on the other wing, an additional story visible on the downslope and 2 – 3 stories visible on the up slope similar to the original and the 2006 design. He displayed page 573, the ADB Approved Concept (2006), noting there was a separate review process to secure the ADB's approval of a level roof. That was the sole focus of that proceeding and this view was the result of that process, a large hinged building with western and eastern wings. The eastern wing has five visible stories on the downslope, four visible stories on the upslope, a significant larger building footprint but similar in concept, shape and features, with surface parking behind the building.

Mr. Gifford recognized Dr. Inadomi's desire for a smaller building with fewer living units, fewer occupants, and fewer parking spaces because it would be less impactful to his property. However, those are not the issues on review. The issue of tonight's closed record review is the validity of the ADB's assessment of the project and whether there is substantial evidence in the record to support its decisions. In the code those decisions are entitled to substantial deference. There have been plans since 2002-2003 for a large multi-family building with surface parking on this property. He referenced pages 317, 322, and 148. When Dr. Inadomi purchased his residence in 2004, Point Edwards had been approved and site work was underway. He referred to Dr. Inadomi's comment in the materials he submitted that they did not expect a building this size, pointing out a similar building was approved in concept in 2003, and in 2006 a larger but similar building in overall mass and footprint, five stories in the east wing and four stories in the west wing was approved. He recognized this design needed to stand on its own and could not piggyback on earlier designs.

Mr. Gifford referred to environmental considerations such as view, noise and other impacts, explaining any structure would have some impact on view. No one, without express legal entitlement, is entitled by law to an unobstructed view. He acknowledged the building will be visible in the foreground in the view corridor as would any aboveground structure on this property. For the SEPA review, a new SEPA checklist was prepared that addressed view, noise, light and glare issues. Staff did not comment on those disclosures nor was the City's DNA determination appealed. Dr. Inadomi was not involved in earlier proceedings but became involved in 2012. He summarized Dr. Inadomi has not submitted any verifiable or valid evidence and there is nothing in the record to substantiate his views or call into question the determinations made by the ADB.

Appellant Rebuttal

Dr. Inadomi responded he was aware there would be a building on the property when he purchased his home in 2004. The plan at that time was considerably fewer units, 30 something, and 20 something parking stalls, which would create less noise and traffic. He acknowledged he did not participate in the SEPA appeal but spoke about noise and lighting issues at the ADB's May 15, 2013 hearing. He felt his objections and concerns were thought of as a nuisance or inconsequential. He hoped the Council took his points to heart when forming their final decision.

APL20130006 (Waggener et. al) Argument

Doug Purcell, attorney representing Waggener et al., asked to reserve 2 minutes for rebuttal. Mr. Purcell commented it was clear there were a lot of aspects of Building 10 that the public and residents of Point Edwards had not expected. The principal issue goes back to 2002 with the approval of the contract rezone that required among other things that the property conform generally to the MP1 zone and residential building be designed to fit into the terraced hillside. The project was described as a stair-step

down the hill so as not to intrude significantly into the view corridor. The applicant described the buildings as two stories with a third story of covered parking. That description encompassed all buildings including Building 10. Nine buildings were constructed, leaving the apex of the property undeveloped. Instead of the terraced look, the proposal is a monolithic building, much larger than any other buildings on the site at the top of the hillside where it will be intrusive into view corridors throughout the Edmonds area.

Mr. Purcell relayed Mr. Waggener's appeal raises a number of issues and specific items in the Findings and Conclusions. His objections have the same basic issue, the ADB is required to find that this building conforms or fits in and is consistent with the other development in Point Edwards. It is their position that the conclusions of law and findings of fact reached by the ADB with regard to that issue is clearly erroneous because when looking at the original concept compared to the structure as currently proposed, it is out of scale and out of scale at the most significant point of the property. Among other issues, this building sites 25% of the units on 10% of the property. It increases the surface parking spaces from 20 something to 74. This is the only five-story building on Point Edwards, five stories at the top of the property.

Mr. Purcell questioned how the 2½ pages of deliberations that occurred at the ADB's May 15, 2013 hearing were converted to 26 pages of Findings and Conclusions. He opined the Findings and Conclusions were not the presentation of the ADB but of staff and the applicant. Although the Council directed the ADB to prepare Findings and Conclusions, it is their position the creation of Findings and Conclusions after the fact was inappropriate.

Mr. Purcell relayed the ADB found there was appropriate roof modulation to allow an additional 5 feet of height for a total height of 40 feet. While there is modulation that may represent breakup of the monolithic aspects of the building as viewed when walking down Pine Street, as viewed from the bowl and downtown Edmonds it will appear to be a flat roofline creating a monolithic building rather than a modulated roofline. It is clear from the ADB's deliberations that the provisions of roof modulation that allow increased height were never considered.

Applicant Response

Mr. Gifford responded the assertion is that the ADB did not follow staff's recommendations regarding the design criteria for human scale and design consistency, as well as questions about modulated roof allowance and parking, that the ADB generally did not consider the urban design guidelines and that staff and the ADB are wrong about the application of City height standards. He noted the heavy reliance on what staff says with regard to design matters is misplaced; staff's primary role in this process is to assess zoning matters, bulk and use standards, parking requirements, setbacks, etc. Staff has done that and has consistently found this proposal fully in compliance with all zoning, bulk and use standards.

He displayed a page with code excerpts, explaining Chapter 20.11.020.B states in zoning matters staff's determination is to receive substantial deference. He referred to Chapter 20.11.020.A which states the ADB makes other design assessments with advisory input from staff. It is the discretion and expertise of the ADB in light of the record and applicable standards and guidelines that are controlling. Chapter 20.11.020.A states the ADB has an obligation to provide specific direction and guidance to applicants in design matters. This is what the Urban Design Guidelines are designed to do. He believed that was what the ADB was attempting to do in good faith in December when it provided the applicant four design modification directives. The design guidelines are the primary sources of that direction and the design criteria in Chapter 20.11 states the tie breaker is the 75 Urban Design Guidelines in the Comprehensive Plan. The ADB has entered Findings and Conclusions with regard to each of the guidelines. Utilizing a draft prepared by staff with input from parties of record, in an open meeting the ADB considered, deliberated and made a number of changes to ensure consistency. The ADB unanimously approved the Findings and Conclusions and Decision consistent with its May 15, 2013 decision.

To the issue of guidance, help, clarity and early detection of issues, Mr. Gifford explained that was fundamental to the City's development review process, the underpinning of the pre-application process. This applicant went through two pre-application meetings with staff in May and September 2012. The fundamental components of mass, height, footprint, and setback for this building were the same. The purpose of the pre-application meeting as stated in City bulletin 58 is to provide early detection, to identify major issues for the benefit of the applicant, to help the applicant in the process. The applicant did not receive that type of input until much later in the process, days before the second public hearing was held. He suggested the role of the ADB, the Council, the code and the Comprehensive Plan in providing reasonable, predictable, clear direction and guidance to applicants be considered.

Mr. Gifford referred to Chapter 20.06.006.C, the appellant has the burden of proof to demonstrate there was clear error and that there is no significant evidence in the record supporting the ADB's decision. He relayed his written materials contain numerous citations to the record of supporting evidence, testimony and facts. He referred to the 33 item list Mr. Waggener submitted with no support or documentation, declaring 33 of the ADB's findings erroneous without any citation to the record. Conversely, he cited multiple incidences in the record where evidence supports 32 of the 33 ADB's findings; the 33rd finding is not applicable. Staff has repeatedly confirmed zoning; the ADB has repeatedly reviewed and extensively confirmed design elements. Staff respected its advisory role with regard to modulated roof design and deferred entirely to the ADB. The ADB was presented with considerable evidence of modulated design and the ADB approved it. He referred to pages 188, 190, 577, 592 and 609.

Mr. Gifford noted in other areas staff offered shifting opinions over the course of the process. Opinions were not expressed in the two pre-application meetings held in May and September 2012 and were not expressed prior to the formal application in November prior to the December hearing and were not addressed in the first staff report to the ADB in December. The idea of stepping a building laterally west to east, a concept never before done in Point Edwards, was not presented until 6 days before the second hearing. Staff indicated the way to address that would be to lop a floor off the east wing of the building. By the time of the hearing, staff rethought that and referred to that idea as simplistic and said although it may be necessary to step the building, it may not be necessary to remove the entire floor. That adjustment in staff's thinking was not particularly clear and provided no guidance to the ADB or the applicant and has never been fully explained other than clarified in a memo to Council in September; no alternatives were suggested. The ADB heard staff's change in position and rejected any further structural change to the building.

In that process, in addition to confirming conformance with all the urban design guidelines and design criteria, the ADB acknowledged and applauded the applicant for their responsiveness to the ADB's December direction. The ADB affirmed that design and in its Findings and Conclusions, affirmed the design guidelines were met as well as affirmed staff's determinations with regard to zoning. Mr. Gifford summarized all those aspects of the ADB's decision are entitled to substantial deference by the Council upon review.

With regard to terracing, he referred to page 292 that addresses buildings being terraced or stepped down the hillside which has been done at Point Edwards. He displayed an excerpt from the Point Edwards Master Plan that speaks to terracing the buildings down the hillside. He displayed a drawing that illustrates Building 10 continues the design of stepping buildings down the hill.

Appellant Rebuttal

Mr. Purcell referred to the ADB's findings related to the Urban Design Guidelines. The principal difference on this property is the importance of its integration into the Point Edwards development. He referred to page 0210 regarding conformance with the City's Comprehensive Plan, approved Point Edwards Master Plan and land use regulations that were prepared by the applicant. Paragraph B.6 states Point Edwards Condominiums are designed to conform to the unique site constraints imposed by

topography, soil conditions, subsurface geology, natural vegetation and drainage. Individual structures are typically 2 stories of frame construction over a 1-story subgrade concrete parking structure with a single row of units fronting the garage structure on the lowest (downhill) level. Typical 3-story buildings only show 1 to 2 story facades at the uphill face. Mr. Purcell summarized that describes the current development at Point Edwards; this building will be very different if allowed to be constructed as proposed.

APL20130007 (Town of Woodway) Argument

Carla Nichols, Mayor, Town of Woodway, asked to retain two minutes for rebuttal. She said this issue is about community and neighbors. Many Woodway residents have relayed their concerns about this proposal to her and other Councilmembers, not just the four appellants. She urged the Council to be fair to Edmonds, Woodway and the future and to overturn approval of the project.

Wayne Tanaka, attorney representing Town of Woodway, commented Edmonds has been a leader in design review, establishing the ADB and design review criteria. Although good design is pleasing aesthetically, it also promotes property values and quality of life. From reviewing the record, it is clear the ADB initially did not undertake a systematic analysis of the design criteria in developing their initial decision. The Council was correct in remanding the matter to the ADB to enter specific findings. However, the Council should have allowed the ADB to modify or reverse its decision. Questions arose when the ADB reviewed the specific criteria, but the ADB felt constrained by the Council's action to justify their decision through findings of fact. The design guidelines focus on, 1) how a building looks such as fenestration, breaking up long lines, etc., and 2) how the building fits with its surroundings. He relayed they had no complaint with the way the building looks, but it does not fit in that location in terms of height and bulk, it is too big and out of scale for that location and that neighborhood. It is bigger than any other building in Point Edwards and due to its unique location and specific topography on the high point, it sticks out like a sore thumb.

Mr. Tanaka relayed the Council has delegated this appellate role to itself; that is appropriate due to the element of judgment in applying the criteria. He agreed with Mr. Gifford that staff's role was compliance with the code as far as setback requirements, etc. and their decision should be upheld unless it was clearly in error. The design elements that the ADB considers are a matter of judgment and the appellants', staff's, applicant's judgments are not controlling; the Council reflects the community's values and how design fits with the surroundings. He cited design objective D.1.b that requires a project to maintain the smaller scale and character of historic Edmonds, commenting the intent appears to be to have all building that are subject to ADB review reflect what already exists and to be consistent. He suggested the Council imagine this building in downtown Edmonds, concluding that it does not fit.

Mr. Tanaka recognized a building would be constructed on the property. He asked the Council to exercise its discretion and judgment, does this building fit in with its surroundings and does it maintain the smaller scale and character of historic Edmonds? He relayed Woodway's concern about the placement of streetlamps, relaying their belief that there would be consistency in the design. Due to glare, he requested the Council add a condition requiring streetlamps be consistent

Applicant Response

Mr. Gifford referred to slide 29, a list of record citations to the 33 Findings and Conclusions alleged by the Waggener's appeal to be clearly erroneous, for which Mr. Waggener provided no record citations. He agreed Point Edwards and Edmonds want to be good neighbors and appreciated Woodway's concerns. The code and design guidelines focus on fairness to applicants. In Chapter 20.11 the City is required to provide helpful guidance and direction to applicants. The City's pre-application process is designed to provide early warning to identify major issues to help the applicant through the process. The fairest way to proceed is always to uniformly and consistently apply the written standards of the code, the Comprehensive Plan and the Master Plan. The ADB found this project fully compliant with the Urban

Design Guidelines, the code design criteria, fully compliant with all relevant zoning provisions, and fully compliant with the Master Plan. He expressed surprise that Mr. Tanaka was all but asking the Council to substitute its judgment for the ADB's decision; that does not meet the burden of proof for determining the ADB's decision as clearly erroneous. The ADB has been given the legal authority, the discretion to review these issues and make these decisions. There was no authority for the Council to substitute its judgment for the ADB in the name of community interest.

Mr. Gifford said the applicant is very sensitive to the community's concerns; this will be a high quality project with very high quality units. As the ADB determined, it fully conforms to the City's design standards and zoning requirements and is consistent with the master plan based on the evidence in the record and applying the appropriate legal standards. In response to Mr. Tanaka's reference to design criteria D.1.b, he noted that is one criterion out of 75. He referenced citations to D.1.b on pages 152, 574, 575, 576, 178 and pages 15, 16, and 28 of the ADB's verbatim transcript. He read from the ADB's Findings and Conclusions with regard to conformance with D.1.b, 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 itself. He pointed out that finding also references criterion C.8.d.

Mr. Gifford referred to slide 25, an excerpt from the verbatim transcript of the ADB's May 15, 2013 meeting shortly before the ADB voted 5-1 to approve the project, Board Member Guenther's comment that it was inappropriate to start talking about pulling the floor out of the east side, that the ADB was to talk about the consistency of the building with the rest of the site, discussion about landscaping and design materials and viewing a sample board, that the materials, the scale, the articulation of the face are more appropriate with the rest of the site and Board Member Guenther's conclusion that the design elements were right on. Mr. Gifford pointed out the ADB looked to the design guidelines and recognized the decision about a building was not limited to one or two aspects; all aspects are considered including the modulation of the façade, articulation of the building, setback, architectural fenestration, color and material variations, and modulated roof design with hip roof forms that correspond to Dr. Inadomi's house upslope from the project. He noted the entire top floor is stepped back. All those elements were taken into account in the original design and revised at the request and direction of the ADB in December to produce a consistent and coherent design that fits with the surrounding environment as the ADB found.

Although theories could be constructed after the fact and requests made to substitute judgment and community goals, citizens, the applicant, the ADB, staff and the Council are constricted by the standards established in the code, design criteria and guidelines in the Comprehensive Plan, specifically the Urban Design Guidelines. The ADB considered those and approved the project; that decision is what the Council must evaluate. There is no valid basis on the record or the law, certainly not the Findings and Conclusions that were approved by the ADB, for any finding that this is a clearly erroneous decision, no basis for changing or overturning the ADB's decision. The ADB's decision should stand on the facts and the law.

Appellant Rebuttal

Mr. Tanaka responded the Town appreciated that the developer thought they had worked through all the issues with staff and the ADB and felt somewhat blindsided. A public process has been established for citizens to provide their opinions about what staff, the applicant and the ADB have done. If the Council wanted only the staff and the ADB's information and suggestions to be controlling, the public should not be allowed to offer testimony. The existing process allows the public to be part of the process.

Mr. Tanaka clarified he was not suggesting the Council substitute its judgment; the Council must find that the ADB was clearly erroneous in order to overturn their decision. Clearly erroneous means the Council is firmly convinced that a mistake has been made. These are subjective judgments to some extent; it is not the building height or if it meets the setback, it is the Council's, ADB's and the public's judgment regarding how the building fits with the surrounding neighborhood. That is stated in different ways in various criteria, criteria D.1.b is the most appropriate. Although Mr. Gifford provided citations, Mr. Tanaka pointed out there was no description of how the building meets the smaller scale of historic Edmonds.

APL20130008 (Clair and Bill Widing and John and Laura Fleming) Argument

John Fleming, 216 Chinook Road, Woodway, asked to reserve 2 minutes for rebuttal. Mr. Fleming raised the question, how easy is it to determine fact versus opinion? This discussion is about the ADB's Findings and Conclusions related to whether Building 10 meets the design standards in the code. He referred to the outcry from the neighborhood that disagrees with the ADB's findings. The applicant has stated the appellant's responses are based on opinions not proof or fact. One of the design objectives is to retain a connection with the scale and character of the City of Edmonds through the use of similar materials, proportions, forms, masses and building elements; how does one prove that? He referred to criteria D.1.b, maintain the smaller scale and character of historic Edmonds. He questioned how "smaller scale and character" could be defined and proved. The design standards and objectives are guidelines intended to preserve the character, look and feel of the community; how can the ADB's findings prove that Building 10 meets these standards or not? At some level it is always opinion and judgment.

Mr. Fleming relayed the intent when the design objectives were written was to maintain the character of the community; that determination is based on opinion. He asked if the Council felt Building 10 maintained the character and quaint nature of the community. He questioned if this would set a precedent in the community and whether the Council wanted to start that precedent by approving this building. He asked if Councilmembers ran for Council to open this door; he feared future developers would use Building 10 as evidence of what has been approved in the past to get larger buildings approved in the future. In his opinion, Building 10 does not meet the objective of retaining the scale and character of the City. He envisioned the Council wanted their beliefs to count, that they were a voice for the people and wanted to leave a legacy. He questioned whether they wanted this building to be part of their legacy, whether Building 10 fit the scale and character of Edmonds, and did it meet the design objectives in the code. He encouraged the Council to listen to the people they represent and overturn the ADB's decision which is in fact their opinion.

Applicant Response

Mr. Gifford responded no matter how much someone wanted to come up with their own standards, a community, political or legacy standard, that was not at issue. The issue is the code, 75 Urban Design Guidelines and the Point Edwards Master Plan. There is also the applicant's reasonable investment expectations in considering the code and design guidelines, prior approvals, the history of the site and doing their best to interact with staff and the ADB over the past 19 months of process. All the issues related to size, scale, overall mass, building area, dimensional elements have been established since May 2012. Not until a few days before the last hearing did the applicant receive input from staff that further structural changes needed to be made. The Council's job is a closed record review of a decision that is entitled to substantial deference on zoning matters as well as design matters. The appellants have the burden of proof. He referred to Mr. Fleming's comments about nuancing and opinions, and agreed these were judgment calls but as part of a holistic review as anticipated by Chapter 20.11, a consideration of all relevant elements. In the end the ADB is assigned the responsibility to reasonably exercise its discretion in light of those standards.

Mr. Gifford expressed concern that the Council was being asked to substitute its judgment rather than looking closely at the ADB's decision, looking at the entire record and the arguments presented and

determining if there was evidence in the record to support the decision. They have made repeated citations to the record; little citation to the record been made by any of the appellants. He urged the Council to look at the record and their numerous citations to the record. To the comment about 2½ pages of ADB deliberation, he pointed out that is not at issue; the entire record, over 700 pages of material and testimony over months of process is what is under consideration. That is what the ADB considered and that is what the Council must consider; it cannot be thrown open to political nuance and judgment, community issues or neighborhood opposition. He urged Council to apply the law to the facts, consider the record, consider the ADB's multiple reviews and the laborious process and affirm the ADB's decision.

Mr. Gifford commented this was a difficult process, not knowing what issues will be raised until this evening. To the comment that there are no 5 story buildings in the Edmonds bowl, he referred to several examples including 220 Railroad Avenue, the senior center, has five residential floors; the Commodore Condominiums at 546 Alder Street has 5 stories; and the El Capitan Condominium at 200 James Street has 5 stories. Whether there are other five story buildings in Edmonds is not the issue, the issue is this building, this site, and applying the design guidelines and code to this site which staff, the ADB, and the applicant have done. On that basis, he asked that the Council affirm the ADB's decision, approving this project with specified conditions.

Appellant Rebuttal

Mr. Fleming responded looking at the law and the design objectives and the spirit of the law, Building 10 does not fit into the community, does not fit into Point Edwards, and does not fit into Edmonds regardless of the number of stories that it or other buildings in the bowl have. He doubted the room would be full of people and opinions if it did. Because Building 10 does not meet the design objectives, he requested the ADB's decision be reversed and that the Council consider all the opinions in the room. He doubted anyone viewing the existing development at Point Edwards would conclude the proposed buildings fit with the community.

Mayor Earling explained City Attorney Jeff Taraday is representing staff in this matter; Carol Morris is the designated attorney for the Council.

Mayor Earling declared a brief recess. He cautioned the audience not to lobby elected officials during the break.

Other Parties of Record Argument – 3 minutes each

George Fotheringham, 65 Pine Street, Edmonds, commented the ADB board members who made this decision are volunteers appointed by the Council, not elected officials. While acting in good faith, the ADB made mistakes; they did not consider the massive proposed building, used an inappropriate standard to conclude there was adequate parking, did not resolve the modulated roof exemption question, and did not issue initial findings and conclusions. Written findings and conclusions were issued following the ADB's August 7, 2013 meeting. These findings were essentially written by the City Attorney and 44% of the language in the final document was written by the developer. The final version of the Findings and Conclusions is 25 pages long, much more than the ADB's less than 3 page discussion in the August 7, 2013 minutes. This process has been unfair and not neutral or transparent. Over 100 citizens cleared their calendars to attend the July 2, 2013 hearing and many spent time and effort preparing 3 minute statements. At that meeting, it appeared the Council's legal counsel, Ms. Morris, had engaged in advance communication with the developer and Councilmembers and had not notified any of the appellants she would recommend the matter be remanded. She did not solicit input from appellants on July 2, 2013 and simply asserted the appellants were not prejudice. He disagreed with that dismissive statement.

Further those who signed the petition were not told prior to signing that they would be prevented from addressing the Council tonight. That decision was not announced until September 26, 2013. Mr.

Fotheringham questioned how the Council could call itself representative when members of the governing body deliberately refused to read emails and petitions from 700 citizens, all of which were in opposition to the current proposal and many of whom do not reside at Point Edwards. It was disheartening to receive a memo from the City's legal counsel sent via email at 12:21 p.m. today that implies the appellants have not met their burden of proof, before the Council has heard from the appellants or had an opportunity to deliberate. Unlike the ADB, the Council is elected and directly accountable to citizens, charged with following the law, ensuring a fair review process, a process that is fair and appears fair. He requested the Council ensure what is left of the process be impartial.

Nancy Jacobs, 65 Pine Street, offered several overhead slides and handouts. Attorney Carol Morris inquired if they were part of the record; Ms. Jacobs advised they were not part of the record although the information they contained was in the record. Ms. Morris advised the administrative record was closed and no new information could be introduced in a closed record hearing. Mayor Earling explained the Council must make their decision based on the information contained in the record. Ms. Jacobs opined that was prejudicial.

Ms. Jacobs explained she lives across the street from proposed Building 10. She purchased her condominium in early 2012; before she purchased, she was shown a scale model of the Point Edwards Master Plan as then represented by the developer. The scale model shows a three story building and a 28 stall surface parking lot. The developer put the scale model in his onsite sales center in 2003. Dr. Inadomi has the right to be concerned because according to the scale model when standing on the loop road below the proposed building, the top of the hill and Dr. Inadomi's house are visible and the view is not obstructed. She pointed out people bought condominiums based on this scale model that showed the harmonious composition of the entire development and how the proposed building fit into it. The scale model has never changed despite the design changes that have occurred in 2003, 2006, and 2012; it still shows the building as 3 stories, a step down of the east wing of the building, setback from Pine Street minimizing the building's visual mass, and one level of underground parking.

Ms. Jacobs said the developer's current proposal is a radical departure from what he represented to prospective purchasers and residents. They trusted him to keep his word. The developer now wants approval of a standalone building that bears little resemblance to the scale model or the existing development and he argues that the City has changed the rules and dragged him through this process. Several Point Edwards owners have indicated they would not have purchased their units had they seen a model depicting the more massive five story building. In spring 2013, the developer placed a brown paper bag over the portion of the scale model where the proposed building was located, after he had sold 100% of the units in the other 9 buildings. She urged the Council to reject the current proposal.

Tom Mesaros, 51 Pine Street, Edmonds, commented all of the 9 buildings in the existing Point Edwards community covered by the Master Plan have resident parking below the building with 1-2 spaces allotted for each unit. The ADB has now approved plans to construct a building that places 25% of the allowed units on 10% of the site and utilizes a massive surface parking area. No other residential structure in the Point Edwards community has exterior parking. Of the 24 acres on the Point Edwards site covered by the Master Plan and the Comprehensive Plan, approximately ¼ of the total units will be jammed on 10% of the land. The number of units in existing buildings range from 22 to 34; the proposed 10th building has 85 units. None of this fits with the Master Plan and Comprehensive Plan for the Point Edwards community. He questioned whether the prior request to increase the number of units would have been approved if the Council had been aware that the number of units would be concentrated in one massive structure rather than equally distributed over the ten buildings. Existing units average 1400 square feet, compared to the average 900 square feet of units in the proposed building. The traffic and parking demands will be significantly greater than those presented by the current buildings and the result will be detrimental. The Master Plan called for buildings to be setback into the hillside in order to blend with the topography. The proposed structure obliterates the hillside rather than blending with it. He

envisioned visitors to Edmonds 5-7 years in the future looking at the development, asking what were they thinking when they built that building? He requested the Council correct the grave failure of the ADB to thoroughly and properly review this proposal.

Kevin O’Keefe, Point Edwards, Edmonds, commented he was shown the model when he put down earnest money on his unit in spring 2005. The model was gorgeous, built into the topography, everything flowed and the lines of view were open. While he was moving in 2006, he was not told the developer had applied for more units in Building 10. While living there, no one knew more units had been requested; he was unaware until his barber told him last year. The developer worked with the ADB to add units without the residents’ knowledge. He pointed out the design for fewer units was gorgeous, fit Edmonds and Woodway, and fit his comprehension of what Point Edwards was going to look like. Had he known that a gigantic, monstrous apartment building would be approved in 2013, he would not have purchased a unit in Point Edwards. Many of his neighbors have expressed the same sentiment. He urged the Council to reconsider the ADB’s decision, not just for his and his neighbor’s sake but for Edmonds in the future. He summarized Edmonds is a jewel but with buildings like this it will turn into Ballard or Kirkland.

Lisa Elstrom-Bauer, Woodway, commented she moved into Woodway in 2000 before the project was developed on the site. She recalled when a wastewater treatment plant was proposed on the site and being happy when a condominium project was proposed, especially the design that was proposed at that time. She appreciated how the buildings have been constructed on the site to date. The process needs to include input from the community regarding heights, how the buildings look, and how they fit into the community. This is a special community, located on Puget Sound with trees, small buildings and communities visible from the Puget Sound corridor. A cityscape of large buildings the size of Building 10 is not visible until one reaches Seattle. She feared this mistake may not be realized for several years; what is visible now when looking up at the hillside from the waterfront is a well-planned building development site with neighbors, trees, nature and a community atmosphere. She summarized it would be detrimental to the community to have Building 10 constructed as currently proposed and she urged the Council to reverse the decision.

Applicant Response to Other Parties of Record

Mr. Gifford said although he appreciated the effort the Council has made to include everyone who wants to comment on this project, he did not believe it was proper to allow non-appellant parties of record who had the opportunity to participate in the proceedings previously on multiple occasions but elected not to file appeals an opportunity to present testimony tonight. This matter is on appeal; four appeals were filed, the applicant has responded to those appeals. He recommended the Council not consider that testimony.

Mr. Gifford said many of the comments are not germane to the proceedings. In accordance with the code, the ADB is charged with the responsibility of reviewing evidence in the record and making a decision on design. Staff is charged with the responsibility and authority to make determinations on zoning matters, parking, setbacks, height, and bulk which they have done. The decisions by staff and the ADB are entitled to substantial deference as expressly stated in the code. The Council’s review and decision is on the record and only the record; the record consists of evidence and facts that were presented to the ADB and legal issues presented during the hearing. This is not a case where it is appropriate for the Council to substitute its judgment for the provisions in the code and the Comprehensive Plan. The opinions that have been expressed and now reiterated by non-appellant parties of record are along the lines of there should be different rules. If the application of the code provisions and the design guidelines produces results the Council or citizens do not like, citizens can vote the Council out or the Council can amend the code or revise the Comprehensive Plan.

Mr. Gifford referred to the fundamental principles of the design review process, the pre-application process, to provide guidance to the applicant, clarity, consistency, certainty and predictability in the process. The code makes it staff’s express duty to provide helpful guidance and direction to applicants

and to consistently apply it to development approvals. They tried hard to respond to the ADB's direction, have met all requirements even some they objected to and felt were inappropriate such as the SEPA review. They have done everything possible to maintain the process, not confuse citizens, and provide opportunity for comment. The ADB in hearing the evidence, reviewing the proposal and applying the law, made a decision to approve the project, finding it compliant, suitable and consistent with the surroundings. He requested the Council review this matter as required in consideration of the record and in light of the applicable law, the City's code and design guidelines and affirm the ADB's decision.

Council Questions

Mayor Earling explained the Council may now ask clarifying questions of applicants, parties of record, and appellants and there is opportunity for rebuttal by staff and the parties. The City Council shall not request information outside the administrative record. The Council may decide they do not need to ask additional questions, close the oral argument portion of the closed record hearing and move into deliberations.

Councilmember Buckshnis advised she did not receive the email around noon today that was mentioned by one of the appellants. City Attorney Jeff Taraday said he did not send an email today. Ms. Morris referred to an email she sent yesterday that was forwarded to everyone this afternoon. Mr. Tanaka said the Town of Woodway did not receive that email. Mr. Lien explained he sent an email this afternoon to Mayor Nichols, Thomas Waggener, Doug Purcell, the Widings, Dr. Inadomi, the Council and the applicant.

Councilmember Buckshnis observed the original Point Edwards Master Plan with 419 units was not part of the record. In 2005 the ADB increased the proposed number of units from 295 to 350. She asked about the ADB's authority to make that change. Mr. Lien answered the original Point Edwards Master Plan is part of the record and included 419 units. The 2003 approval was for 295 units. Portions of the ADB's approval have returned to the ADB over the years. As different iterations went back to the ADB, they were considered minor modifications of the previous approval and did not require public hearings or notice. That may be why residents were not aware of some of the updates to the plan. The 2005 increase to 350 units was done as part of a building modification to Building 5. The City considered that request and adopted the original MDNS stating the proposal was still consistent and was less than the 419 units in the Master Plan.

Councilmember Buckshnis commented 350 units on 10 lots would be approximately 35 units per lot. She asked whether most of the buildings had been constructed by 2005 when the change from 295 units to 350 units was requested. Mr. Lien assumed the remaining buildings had not yet been constructed since Building 5 was under consideration at that time. He assumed the buildings were constructed in sequence.

Councilmember Buckshnis observed in December 2012 the number of parking stalls increased from 27 to 74. Mr. Lien answered the increase in the number of surface parking stalls was largely due to the increase in the number of units in the proposed building. The 2006 building had 69 units. The proposed building now has 85 units. Additional parking spaces are required to comply with the City's parking standards.

Councilmember Buckshnis asked if the ADB's Findings and Conclusions were prepared by staff and all parties and did not go back to the ADB for review. Mr. Taraday explained the Findings and Conclusions before the Council on appeal were reviewed by the ADB and ultimately approved. He acknowledged the members of the ADB did not draft the Findings and Conclusions; they were drafted by a group that included himself, Mr. Lien, Mr. Gifford and all parties of record were invited to submit proposed revisions. That is commonly how Findings and Conclusions are prepared, even in a court of law; the judge does not draft Findings and Conclusions. Typically the judge asks the parties to draft Findings and Conclusions for his subsequent review. The parties exchange drafts; if they agree, one draft is sent to the

judge for approval, if they disagree, multiple drafts are sent to the judge for consideration and the judge combines them.

Councilmember Buckshnis observed it appeared the applicant pulled the application and resubmitted but did not start the process over. She asked whether that constituted an illegal process. Mr. Taraday answered the applicant voluntarily withdrew their application. Having done that, strictly, legally and technically speaking they are starting from scratch with their 2013 application. While the applicant refers to the 2012 hearing for historical context, the 2012 hearing is not part of this application. From a process standpoint, the City has done everything necessary to comply with State law.

Council President Petso referred to Mr. Purcell's comment that the 2002 documents describe a project that fits into the hillside, 2 stories with parking underneath. She asked for reference to a page number in the record. Mr. Purcell referenced page 0210, the City's design analysis from the original approval. Mr. Gifford said that is not the City's design analysis, they are materials supplied by the applicant outlining conformance with the then-applicable design guidelines.

Council President Petso asked for clarification that the 2013 application is before the Council, not the 2012 design. Ms. Morris agreed. Council President Petso asked if likewise the 2003 and 2006 designs were not before the Council. Ms. Morris agreed.

Council President Petso referred to comments that the ADB's vote was unanimous but the ADB minutes (page 4, August 7, 2013) do not reflect a vote on the motion to adopt the Findings, Conclusions and Decision. Mr. Lien offered to listen to the audio recording to determine whether a vote was taken.

Council President Petso referred to the comment that the Council's decision could establish a precedent with regard to what constitutes a modulated roof and massing. She asked if the Council's decision could be subsequently used by a developer to show the modulation or massing that was allowed. Ms. Morris answered if the facts were similar enough it could be used as a precedent. The Council also has the ability to change the code.

Council President Petso referred to a statement by Mr. Tanaka that the ADB did not initially review the design criteria and asked for a citation to the record. Mr. Tanaka clarified he stated the ADB did not go through each design criteria like they did the second time.

Mr. Lien advised he listened to the audio of the August 7, 2013 ADB meeting; the ADB voted 6-0 to approve the Findings, Conclusions and Decision. The vote is approximately 43 minutes into the audio of the meeting.

Council President Petso asked whether the pre-application process was binding in any way if something arises after the pre-application process. Ms. Morris responded it absolutely is not binding.

Council President Petso asked how far outside the bounds of judicial notice the Council can stretch. For example could she visit a local grocery store in an effort to visualize the size of a 74 space parking lot? Ms. Morris answered the Council should be looking at the appeals and determining whether or not the appellants have demonstrated that the ADB's decision was clearly erroneous and then determine whether any of the appellants have submitted references to the record to demonstrate/substantiate their allegations. The Council is not charged with doing any new empirical studies to determine whether the design criteria have been met. Council President Petso asked for clarification of Ms. Morris' comments, whether she was saying the size of the surface parking lot did not relate to the appeal. Ms. Morris explained to determine whether any of the appeals can be sustained by the Council, the Council needs to determine whether the appellants have submitted any evidence to support the fact that the ADB's decision was clearly erroneous as to that point. Mr. Tanaka relayed the Town of Woodway does not believe that advice is correct.

Councilmember Buckshnis asked Mr. Tanaka to explain why he did not believe the advice was correct. Mr. Tanaka responded the advice is too limiting and therefore incorrect. While true the Council needs to determine whether or not the appellants, who have the burden of proof, have met that burden of proof and whether there are sufficient facts in the record to support it, that does not mean that the Council cannot engage in some analysis of what a 74 space parking lot looks like.

In regard to the burden of the appellants, Ms. Morris said her memo quoted from the code and case law. If Mr. Tanaka's comment was related to Council President Petso's question about empirical analysis, she agreed some type of analysis would need to be done to determine whether information in the record was correct. Councilmember Buckshnis commented the fact that the parking is surface parking and not underground is a difference. She concluded Ms. Morris and Mr. Tanaka were saying the same thing but in a different way.

Mr. Gifford relayed it has been confirmed by staff that the City has no ability to require underground parking. This building meets and exceeds the parking requirements. The only issues they have been asked to consider are additional landscaping, trellises, screening, and buffering which were done and satisfied the ADB. The Council is limited to the record; in his legal opinion going outside the record, visiting other sites, would violate legal requirements.

Councilmember Bloom referred to Mr. Lien's comment that the City considered the 2005 increase to 350 units and inquired about the process to review the increase in units. Mr. Lien advised he did not include the 2005 ADB file in the record; he included the 2005 adoption of the original MDNS which is in the record at page 365. There is discussion in the staff report with regard to Building 5 and the ADB's approval of additional units which is still within the 419 units allowed by the Master Plan for the site.

Councilmember Bloom asked if all the other buildings were completed when the applicant requested an increase from 295 units to 350 which was approved by the ADB. Mr. Lien was unsure of the exact sequence of building construction but believed they were constructed in order one through ten. Since Building 5 was under consideration at the time, he assumed Buildings 1 - 4 were under construction and potentially the additional units could have been distributed over the remaining 5-6 buildings. Councilmember Bloom questioned why the ADB increased the number of units, anticipating that was the reason Building 10 was taller when the other buildings were only 3 stories. Mr. Lien answered the plan that drives development is the Point Edwards Master Plan. He referred to the Point Edwards Master Plan on page 290, an attachment to the contract rezone. The Master Plan states at a permitted density of 2,400 square feet per dwelling units, the maximum number of dwelling units that would be allowed on this 24.06- acre site would be 419. The Master Plan, which development at Point Edwards must comply with, envisioned up to 419 units. SEPA was done on the contract rezone and the Comprehensive Plan amendment, SEPA was done in 2002 under the original ADB approval, that SEPA was adopted in 2003 when the number of the units increased from 295 to 350. Even though the number of units was increased to 350 halfway through the project, it is consistent with the original master plan that allowed up to 419 units.

Councilmember Bloom relayed her understanding the maximum height of the buildings was to be 35 + 5 feet. Mr. Lien agreed; a maximum of 40 feet; 35 feet plus 5 feet with an approved modulated design. Councilmember Bloom observed 40 feet would only be 4 stories, yet this building is 5 stories. She asked how the height was calculated. Mr. Lien answered the City calculates height from average grade. A rectangle is drawn around the building, the elevation at four corners is used to determine an average grade and the height limit is calculated from there. For proposals on a hillside such as Building 10 the average grade runs through the middle. He referred to the average grade shown on page 193, noting the average elevation is not always at the lowest level; the average elevation, particularly on a slope could cut through the building itself. In the image on page 193 the average grade is about 143. The southern façade shows 2

stories which is below 40 feet. Because the north façade is on the downhill side of the slope, it has a taller façade but from the average grade it still complies with the zone.

Councilmember Bloom referred to appellant Thomas Waggener's presentation where he talked about the different height calculation in ECDC 21.40.030.A versus ECDC 16.75.020. She asked Mr. Lien to explain the differences and why one method was used instead of the other. Mr. Lien referred to 16.75.020.B, the table that lists the different height standards. The maximum height for the MP1 zone is 35 feet and footnote 4 states the roof may extend up to 5 feet above the stated height limit if design is part of an approved modulated design in accordance with 20.10. The ADB found Building 10 met the modulated design and granted the additional 5 feet. Mr. Waggener is referring to footnote 5 that states building height may be calculated separately for each clearly separate portion of the building as illustrated but not limited to Figures A, B and C below. Mr. Lien explained Figures A, B and C show how buildings with distinct separate units, the height rectangle could be done separately for each distinct portion of the building. The code states this calculation method may be used; it is not a requirement to calculate height for each distinct portion of a building. The code section he referenced in the staff report, 21.40.030, is the definition of height which identifies how height calculations are performed; 21.40.030.B addresses average grade. The standard way the City calculates height is described in 21.40.030 and that is what the applicant chose to do.

Councilmember Bloom asked how the height would have differed if it had been calculated based on 16.75.020. **Joe Kolmer, Weber Thomas**, stated they did a number of studies; in many cases the building ended up being higher. The calculation that was done early on used the smallest rectangle. The goal was to comply with the zoning. Regardless of the height calculation method, there would be five stories in the eastern wing and four in the western wing. Neither option reduced the building height by a story.

Councilmember Buckshnis referred to page 321, Original Building Section 10E and 10W, explaining it illustrates underground parking and only 3 stories, yet page 192 and 193, the current footprint is an entirely different building with 5 stories. She questioned how Building 10 increased from 3 stories to 5 stories. Mr. Lien responded the print on page 321 was difficult to read and he was uncertain what the proposed building heights were compared to the maximum allowable height. The buildings in that rendering could have been below the maximum allowable 40 feet which may be the reason they are shown as 4 stories. The current proposal is the maximum height allowed by code.

COUNCIL PRESIDENT PETSO MOVED, SECONDED BY COUNCILMEMBER FRALEY-MONILLAS, TO EXTEND THE MEETING FOR 30 MINUTES. MOTION CARRIED UNANIMOUSLY.

Councilmember Buckshnis pointed out the Council does not appoint ADB members; the Mayor selects the members and the Council interviews and confirms their appointment. The ADB does not work for or report to the Council.

Councilmember Peterson recalled comments that Building 10 was represented to the residents of Point Edwards during the building phase as something different than the current concept. He asked whether the Council could take that into account in its deliberations. Ms. Morris answered no, the Council is to consider the ADB's decision and compliance with the design guidelines, the code, and the Comprehensive Plan as stated in the Findings and Conclusions.

Council President Petso noted page 321, one of the original pages from the master plan, is not clear. She asked whether the Council was allowed to obtain a clear copy of that page before making a decision. Ms. Morris answered yes if the Council felt it was important to its decision.

Council Deliberation

Ms. Morris advised by her count there were 17 different citations to various code sections and allegations of error in the appeals; some are duplicative. The Council can review and make a decision on each one

tonight. If the Council wanted to continue the matter, she could prepare a worksheet that lists the citations/allegations of error, combine duplicative ones, and list the actual code provision. Councilmember Fraley-Monillas supported Ms. Morris' suggestion.

Council President Petso asked whether two weeks was sufficient for her to prepare the worksheet. Ms. Morris answered yes. Council President Petso advised the materials would need to be provided to Council several days in advance if Council deliberations were scheduled on October 29. She suggested shortening the October 29 budget workshop to free up time for this matter. City Clerk Sandy Chase advised there are complicated departments presenting their budgets on October 29 such as the Police Department and Public Works. Council President Petso asked whether the presentations could be deferred to a future meeting if the Council accepted public comment on October 29. Mayor Earling suggested that be discussed at tomorrow's staff meeting. Ms. Morris offered to prepare the worksheet by Thursday at 5:00 p.m. and deliberations could be scheduled on the October 22 agenda.

Councilmember Peterson advised October 29 is a fifth Tuesday; the Council typically does not meet on the fifth Tuesday. October 29 is also his wedding anniversary and he had informed the Council President he would not be at that meeting due to plans made before the meeting was scheduled.

It was the consensus of the Council to schedule deliberations on the October 22 agenda.

Mr. Tanaka asked whether the appellants and the applicant would have an opportunity to comment on Ms. Morris' worksheet. Mayor Earling relayed the intent was to have questions/answers followed by Council deliberation. Mr. Tanaka relayed his understanding that Ms. Morris will summarize the appeal points and present them to the Council. He was concerned the appeal points may not be accurately conveyed. Ms. Morris explained her intent was a spreadsheet listing the 17+ appeal issues and citations from the appeals and a verbatim listing of the appeal issues just as they are written in the appeals. She will provide that to the Council on Thursday before 5:00 p.m. and staff can distribute it to everyone else. She did not plan to summarize the appeal issues.

Mr. Gifford advised he is leaving Friday and will be gone for 10 days. He will not be available to submit comments or attend the October 22 meeting.

As the applicant's attorney will not be available most of the next two weeks, Council President Petso suggested rescheduling for November 12 before committee meetings.

It was the consensus of the Council to schedule deliberations on November 12. Ms. Morris will provide the spreadsheet to Council by October 25.

10. REPORT ON CITY COUNCIL COMMITTEE MEETINGS OF OCTOBER 8, 2013

Finance Committee

Councilmember Buckshnis reported the committee discussed the following:

- Establishment and Operation of Any Structures or Uses Relating to Collective Gardens, Marijuana Production, Marijuana Processing, or Marijuana Retailing in the City of Edmonds – Scheduled for full Council
- Authorization for Mayor to Sign 2013-2015 Coordinated Prevention Grant Agreement with Department of Ecology – Referred to Consent Agenda
- Presentation and Discussion of Utility Rate Adjustments – Scheduled for full Council
- Backflow Prevention Compliance Fee Authorization Discussion – Scheduled for full Council
- Bond Counsel Contract for Edmonds Center for the Arts – Task Force will pursue
- Snohomish County Investment Pool – Information only
- August 2013 Budgetary Financial Report – Referred to Consent Agenda

Parks, Planning & Public Works Committee

Councilmember Johnson reported the committee discussed:

- Establishment and Operation of Any Structures or Uses Relating to Collective Gardens, Marijuana Production, Marijuana Processing, or Marijuana Retailing in the City of Edmonds – Continued discussion at a future meeting
- Backflow prevention compliance fee authorization – Add fee to proposed permit fees in the 2014 budget
- Presentation and discussion of utility rate adjustments – Schedule a presentation and public hearing at full Council
- The following items were referred to tonight's or future Consent Agendas:
 - Authorization for Mayor to sign addendum to the A/E PSA for City Park
 - Authorization for Mayor to sign Interagency Agreement (IAA) with the Department of Ecology for Funding the Regional Stormwater Monitoring Program
 - Interlocal Agreement with the City of Mountlake Terrace to replace and maintain approximately 400 linear feet of 8" sewerline and 400 feet waterline and associated appurtenances within Mountlake Terrace City limits
 - Authorization for Mayor to sign Supplemental Agreement #3 with Perteet for additional design work for the 228th St. SW Corridor Improvement Project
 - Quarterly Public Works Project Report
 - Review of Street Tree Management Policy

Public Safety & Personnel Committee

Councilmember Peterson reported the committee discussed:

- AWC Interlocal Agreement and Resolution for participation in AWC's new self-funded insurance programs – Forwarded to Consent Agenda
- Edmonds City Code Chapter 2.10 Revisions – Revisions will be included in Chapter 2.10 for discussion by full Council
- Code of Conduct – Schedule on a future Council agenda
- Council attendance via speaker phone – Forward for full Council discussion to finalize policy
- Establishment and Operation of Any Structures or Uses Relating to Collective Gardens, Marijuana Production, Marijuana Processing, or Marijuana Retailing in the City of Edmonds – forward to full Council for a policy discussion to include discussion of federal guidelines and discussion of buffer issues

11. MAYOR'S COMMENTS

Mayor Earling reported the Chamber, restaurants and retail businesses are holding an Edmonds Kind of Soirée at the Edmonds Yacht Club on Friday, October 18 from 6:00 – 9:00 p.m. He invited Councilmembers and citizens to attend.

12. COUNCIL COMMENTS

Council President Petso advised the marijuana discussion was tentatively scheduled on the November 26 agenda, a 4th Tuesday. Although action is not typically taken on 4th Tuesdays, she expected the Council to forward the issue to the Planning Board. Mayor Earling provided a reminder of the six month moratorium that began in August.

Councilmember Fraley-Monillas provided Councilmembers and the Mayor an invitation to the Boys & Girls Club Gala Auction on Saturday, November 16 at the Lynnwood Convention Center. She invited anyone interested in attending to register online.

Councilmember Buckshnis reported the annual Halloween Howl is this Saturday from 11:00 a.m. to 2:00 p.m. at the Marina Beach. The event will include dog friendly vendors and great costumes.

13. **CONVENE IN EXECUTIVE SESSION REGARDING PENDING OR POTENTIAL LITIGATION PER RCW 42.30.110(1)(i).**

This item was removed from the agenda via action taken under agenda item 4.

14. **RECONVENE IN OPEN SESSION. POTENTIAL ACTION AS A RESULT OF MEETING IN EXECUTIVE SESSION.**

This item was removed from the agenda via action taken under agenda item 4.

15. **ADJOURN**

With no further business, the Council meeting was adjourned at 10:25 p.m.