

John C. Belcher*
Jack O. Swanson
Chester T. Lackey
Terrance G. Lewis
Douglas K. Robertson
Bradley D. Swanson
*Of Counsel

Belcher | Swanson

LAW FIRM, PLLC

Scot S. Swanson
Peter R. Dworkin
Mark A. Lackey
Hugh C. Klinedinst
Kristen C. Reid
Colm P. Nelson

November 4, 2013

Dawn Sturwold
Hearing Examiner
City of Bellingham
210 Lottie St.
Bellingham, WA 98225

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HEARING EXAMINER
CITY OF BELLINGHAM

RE: Motion for Reconsideration
Ambling University Development, Applicant
4413 Consolidation Ave.
PDC2013-00002, VAR 2013-00001, DRC2013-00008 & CAP2013-00019
Planned Development for University Ridge

Dear Madam Hearing Examiner:

Please find attached the Applicant's Motion for Reconsideration (the "Motion").

In order to notify the neighbors of the Motion, please post this on the City's University Ridge webpage.

Please contact us regarding how you wish to proceed with this Motion.

Very truly yours,

BELCHER SWANSON LAW FIRM



BRADLEY D. SWANSON
Attorney at Law

BDS:hc

Enc.

Cc: Client
Jeff Thomas, City of Bellingham Planning Director
Kathy Bell, City of Bellingham Planning Department
Alan Marriner, City of Bellingham City Attorney
Property Owner

900 DUPONT STREET, BELLINGHAM, WASHINGTON 98225-3105

TELEPHONE 360.734.6390 FAX 360.671.0753

www.belcherswanson.com

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THE HEARING EXAMINER OF THE CITY OF BELLINGHAM
WHATCOM COUNTY, WASHINGTON

IN RE:

HE-13PL-007

AMBLING UNIVERSITY
DEVELOPMENT, Applicant
4413 Consolidation Avenue

MOTION FOR RECONSIDERATION

PDC2013-00002, VAR 2013-00001,
DRC2013-00008 & CAP2013-00019/
Planned Development for University Ridge

DAWN STURWOLD, HEARING EXAMINER

I. INTRODUCTION

The Applicant, Ambling Development University Group, proposes to construct the University Ridge Development (the "Project") at 4413 Consolidation Avenue in Bellingham (the "Property"). The Hearing Examiner issued its decision on the Project (the "Decision") on October 23, 2013. The Applicant studied the Decision and evaluated its impact on the Project and the Property. The Applicant agrees with the Decision in almost every facet. However, the Applicant requests the Hearing Examiner reconsider and/or clarify two minor points of the Decision. If these changes and/or clarifications are granted the Applicant will be able to construct the Project within a smaller footprint and less intrusive manner causing the Project to better fit the neighborhood character.

The Applicant moves for reconsideration (the "Motion") of the Decision on the following two issues:

- (1) The Project is restricted to no more than three bedrooms per unit.
- (2) The peaks and ridgelines of the Project's upper buildings cannot extend above the centerline elevation of Puget Street.

The Applicant requests that (1) the three bedrooms per unit restriction be removed and (2) the height restriction be clarified or modified.

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B. Better Student Environment

Two bedroom units and four bedroom units are the industry standard in purpose-built student housing because students typically room with a buddy. Two buddies can share a two bedroom unit. Two pairs of buddies can share a four bedroom unit. Practically speaking, if the students are comfortable they are happy. This makes for a stronger development, which is more likely to succeed and be a productive element in the neighborhood.

C. Improved Site Plan

The Applicant reviewed several two/four bedroom unit scenario with 528 beds. The Applicant believes that it can work within the remaining components of the Decision to craft the Project so that it will be even less intrusive on the neighborhood than was presented in the application and at the hearing.⁶ The Applicant believes that the flexibility with two/four bedroom units allows the Applicant to minimize the Project’s footprint while maximizing its using the buildings as efficiently as possible.

The flexibility in design makes for numerous possible combinations of two and four bedroom units.⁷ As long as the total number of units and beds does not exceed 176 and 528, respectively, the Project’s intensity will be appropriate for the Property and the neighborhood.

The decrease in the intensity of the Project (576 beds to 528 beds) as prescribed in the Decision certainly causes the impact on the Property and neighborhood to decrease. The required number of parking stalls, which is yet undetermined,⁸ will remain the same or decrease. The amount of traffic generated by the project will remain the same or decrease. Impervious surface area, stormwater infrastructure, retaining wall heights, clearing limits, and grading areas could all remain the same or decrease. This trickle effect goes on so that the total site disturbance will likely decrease. The flexibility of the two/four bedroom combination may make these decreases even more pronounced. Granting reconsideration to

⁶ Subject to the clarification of the height limitation, which is discussed below.
⁷ The Applicant is considering studio units and three bedroom units for the Project. See footnote 5, above.
⁸ Parking is based on Order Paragraphs 4 and 9.

1 allow for the two/four bedroom combination increases the financial feasibility of the Project
2 and also makes the Project a better development for the neighborhood.

3
4 **D. Conversion to Traditional Multi-Family Use**

5 The Applicant considered the discussion in the Decision about possible conversion
6 of the Project to a non-student, multi-family use in the future. The Applicant analyzed the
7 Project with that in mind. First, allowing the Applicant to have four bedroom units makes
8 the Project more likely to be successful. That fact, on its own, mitigates substantially the
9 possibility that the Project will be converted to multifamily units in the future. Second, if
10 four bedroom units were converted to a multi-family use, there are simple non-destructive
11 methods to ensure compliance with the City's definition of "family". For instance, a fourth
12 bedroom could be created into an office, den, family room, or other "non-bedroom" use.
13 Strict in-house enforcement could be utilized to ensure that the non-family tenants did not
14 violate the definition of "family".

15 The Applicant is confident that Project will not be converted to a traditional multi-
16 family use in the future. However, in the unfortunate and unlikely scenario where the
17 Project is converted to a traditional multi-family use, the potential problem with enforcing
18 the definition of "family" against non-family tenants will be effectively addressed.

19
20 **E. Re-Characterize the Use**

21 It is highly unlikely that the students residing at the Project will meet the definition
22 of "family". As a result, characterizing the Project as a "multi-family" use (just like a
23 standard apartment building) almost necessitates the three bedrooms per unit maximum
24 because the Bellingham Municipal Code ("BMC") requires a "family" to reside in a multi-
25 family unit.⁹ On the other hand, characterizing the Project as a "boarding and rooming
26 house" use does not trigger this same requirement.¹⁰

27 There is no basis in the BMC to limit the characterization of the Project to "multi-
family" use. The Applicant applied for a "boarding and rooming house" use and the City

⁹ The definition of "family" at BMC 20.08.020 limits the maximum number of unrelated persons in one unit to three persons.

¹⁰ The definition of "boarding and rooming house" contained in BMC 20.08.020 specifically exempts this use from complying with the definition of "family".

1 Staff recommended approval of that use. Yet, the Hearing Examiner removes the Project
2 from the “boarding and rooming house” use because the Project if converted to a multi-
3 family use in the future, it would not comply with the definition of “family”.¹¹ The Hearing
4 Examiner does this by imposing the conditional use criteria to the Project.¹²

5 Even though the “boarding and rooming house” use is a conditional use in other
6 zones, the conditional use criteria are irrelevant here because the “boarding and rooming
7 house” use is a permitted use in the Residential Planned zone.¹³ The “Planned” zone
8 requires a much more robust analysis and review of every project proposing a permitted use
9 than permitted uses in other zones. This analysis and review is very similar to the
10 conditional use process. As a result, the Bellingham City Council made the legislative
11 decision that it was acceptable to make conditional uses in other zones permitted uses in the
12 “Planned” zone.

13 Characterizing the use as a “boarding and rooming house” under the BMC does
14 nothing more than allow the flexibility four bedroom units. The maximum number of beds
15 (528) stays the same. The maximum number of units (176) stays the same. The maximum
16 number of buildings (4) stays the same. The necessary infrastructure will likely decrease,
17 which results in a less intrusive site plan. The students will be happier because they can
18 more readily room with their buddies. The viability of the Project increases. On the whole,
19 the Project will be better for the neighborhood.

20 The Applicant respectfully requests that the Hearing Examiner reconsider its ruling
21 in Findings of Fact 56 through 99, Conclusions of Law 3 through 6, and Order Paragraphs 1
22 through 3 and characterize the Project as a “boarding and rooming house” use and allow
23 four bedroom units.

24 III. PUGET CENTERLINE HEIGHT RESTRICTION

25 A. Remove the Restriction

26 ¹¹ See Findings of Fact 98 and 99, Decision pg. 28. See also Conclusions of Law 4, 5, and 6, Decision pgs. 50
27 and 51.

¹² See Findings of Fact 64, 65, 66, and 67, Decision pgs. 18, 19, and 20. See also Conclusion of Law 3,
Decision pg. 50.

¹³ See BMC 20.38.050(B)(2)(i).

1 Restricting the height of the Buildings 1 and 2 to the elevation of the Puget Street
2 centerline is difficult to navigate.¹⁴ The elevation of the Puget Street centerline increases to
3 the south (i.e. up the hill). The elevation of the Puget Street centerline at the north end of
4 Building 1 is 411', but it is 450' at the south end of Building 2. Buildings 1 and 2 follow a
5 contour on the site and retain a common elevation at the ridgeline. As proposed in the
6 application and presented at the hearing, the elevation of the ridgeline of Buildings 1 and 2
7 is approximately 428'. As a result, depending on where the elevation of the Puget Street
8 centerline is measured, the Buildings may or may not comply with the restriction. For
9 example, if the relevant elevation of the Puget Street centerline is at the south end of
10 Building 2, the Buildings can be constructed as proposed. If the relevant elevation of the
11 Puget Street centerline is at the north end of Building 1, the Buildings cannot be constructed
as proposed.¹⁵

12 The variation in the elevation of the Puget Street centerline makes analysis of the
13 height restriction and subsequent site and building design very difficult. The difference
14 between the elevation of the Puget Street centerline at the south end of Building 2 and the
15 north end of Building 1 is 39'. Compliance with this moving target makes designing these
buildings very difficult.

16 Moreover, the elevation of the Puget Street centerline is not an appropriate datum
17 point from which to measure a height restriction for Buildings 1 and 2. Instead, the proper
18 datum would be the finished floor elevations of the houses on the opposite side of Puget
19 Street, because they directly relate to eye height of a person standing in the living room. All
20 the homes on the east side of Puget Street are two stories with steep driveways.¹⁶ This
21 results in living space at an elevation substantially higher than the elevation of the Puget
22 Street centerline. A person standing in the window on the first floor will be 5 to 6 feet
23 above the floor at eye height. Even a sitting person will be 4' above finished floor
elevation. As a result, even if built out to the maximum allowable height under the zoning

24 _____
25 ¹⁴ Please find attached Exhibits A and B, which are part of the record. Exhibit A shows the site layout with the
locations of cross-sections. Exhibit B shows the cross-sections. Building numbers used in this document
correlate to the building numbers assigned on Exhibit A.

26 ¹⁵ Interestingly, this restriction completely disregards the 58' height limit (based on height definition #1
27 contained in BMC 20.08.020). Thus, even if the building complies with the 58' height limit, the building may
not be constructible at that height due to this added restriction.

¹⁶ This is, in some part, due to topography, but most likely it is to create a better view from the living room.

1 code of 58', a the views from the homes on the east side of Puget Street will not be
2 obstructed or negatively impacted by Buildings 1 and 2. The residents on Puget Street will
3 continue to enjoy the view from their living rooms, looking over the cars travelling up Puget
4 Street as well as the roofs of Buildings 1 and 2.

5 If the four bedroom units are allowed, the Applicant believes that, due to greater
6 flexibility in site and building design, more natural vegetation retention and additional
7 landscaping could be possible on the east side of the site to further screen the tops of the
8 Buildings 1 and 2. However, not removing this height restriction will force the Applicant to
9 design around the height restriction. This could result in less attractive buildings or
10 buildings with larger footprints, which results in a greater disturbance of the site.

11 Considering these factors, the heights of Buildings 1 and 2 will not be unduly
12 detrimental to the views from these single family properties and the restriction on building
13 height imposed in Finding of Fact 107, Conclusion of Law 12, and Order Paragraph 31
14 should be removed.

14 **B. In the Alternative: Modify the Restriction**

15 Alternatively, if the Hearing Examiner is not inclined to remove the restriction, the
16 Applicant requests that the additional height requirement for Buildings 1 and 2 be modified
17 so that it has a nexus to the view being protected, is easier to understand, and is less
18 restrictive.

19 The Applicant proposes that the Hearing Examiner establish a separate datum for
20 this restriction for each building based on the lowest approximate finished floor elevation of
21 the floor containing the view windows of certain homes on the east side of and abutting
22 Puget Street that directly overlook one of the buildings.¹⁷ For Building 1, the relevant
23 approximate finished floor elevation shall be the lowest of the following houses: 824 Puget
24 Street, 820 Puget Street, and 816 Puget Street. For Building 2, the relevant approximate
25 finished floor elevation shall be the lowest of the following houses: 810 Puget Street, 808
26 Puget Street, and 804 Puget Street.

27 ¹⁷ Determining the approximate finished floor elevation does not require entrance into the homes or the
property. A survey from the street level can measure and record these elevations.

1 The Applicant respectfully requests that the Hearing Examiner completely remove
2 the height restriction requiring the ridgelines of Buildings 1 and 2 to be at or below the
3 elevation of the Puget Street centerline. Alternatively, the Applicant respectfully requests
4 that the Hearing Examiner modify the height restriction to reference the approximate
5 finished floor elevation of the addresses listed above.

6 **IV. RELIEF REQUESTED**

7 **A. Grounds to Grant Relief**

8 The Hearing Examiner may grant a motion for reconsideration on any of five
9 grounds.¹⁸ This Motion is based on subsections four and five, which are: (4) clear mistake
10 as to a material fact and (5) clear error as to the law, which should be corrected in the
11 interests of justice.

12 **B. Basis to Reconsider the Restriction on Bedrooms per Unit**

13 The clear mistake of fact is that limiting the Project to three-bedroom units reduces
14 the impacts of the development. Four bedroom units are appropriate and will allow for
15 greater flexibility and an overall better development. So long as the Applicant stays under
16 the threshold for number of students (528) and number of units (176), four bedroom units
17 are appropriate at the Project.

18 The clear error of law in the Decision is the Hearing Examiner's characterization of
19 the Project as "multi-family," rather than as a "boarding and rooming house." The latter
20 designation of "boarding and rooming house" was proposed by the Applicant and
21 recommended by Staff. There is no basis in the BMC to justify characterizing the Project as
22 multi-family.

23 As long as the number of units and the number of beds remains at or below the
24 thresholds established in the Decision and which the Applicant does not challenge here, the
25 boarding and rooming house designation is an appropriate use with the appropriate intensity
26 at the Property and fits within the character of the neighborhood.

27 ¹⁸ Hearing Examiner Rule (HE Rule) 2: 28(a)1 – 5.

1 **C. Basis to Reconsider the Height Restriction**

2 The clear mistake of fact is that, limiting the height of Buildings 1 and 2 by
3 referencing the centerline elevation of Puget Street has no rational relationship to protecting
4 the views of those homes on the east side of Puget Street. Views from the neighboring
5 property on the east side of Puget Street are well above the centerline of Puget Street. As a
6 result, even if Buildings 1 and 2 are built to the maximum allowable height under the
7 variance (i.e. 58'), they will not impair those views. Further, the flexibility in design gained
8 by permitting four bedroom units will allow the buildings to be redesigned such that there is
9 even less intrusion on these views than was anticipated in the original application and
presented at the hearing.

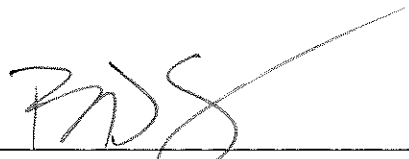
10 The clear error of law is that Buildings 1 and 2 as proposed will be unduly
11 detrimental to the public welfare and to the properties across Puget Street. As discussed
12 above, Puget Street is not the correct datum to determine the height of Buildings 1 and 2.
13 Instead it is approximate finished floor height of the houses on Puget Street. Thus, allowing
14 the height of these structures to exceed the centerline of Puget Street does not affect the
15 views and therefore, is not unduly detrimental to the public welfare or the relevant
16 properties. Lastly, using the centerline elevation of Puget Street imposes a confusing
standard, which is difficult to enforce. In the interest of justice, this should be corrected.

17 **V. CONCLUSION**

18 Based on the foregoing, the Applicant respectfully requests that the Hearing
19 Examiner grant this Motion, reconsider its decision, and make the changes to the Decision
as set forth herein.

20 RESPECTFULLY SUBMITTED this 4th day of November 2013.

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22 BELCHER SWANSON LAW FIRM, PLLC

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25 _____
26 BRADLEY D. SWANSON, WSBA #37157
Attorney for Applicant

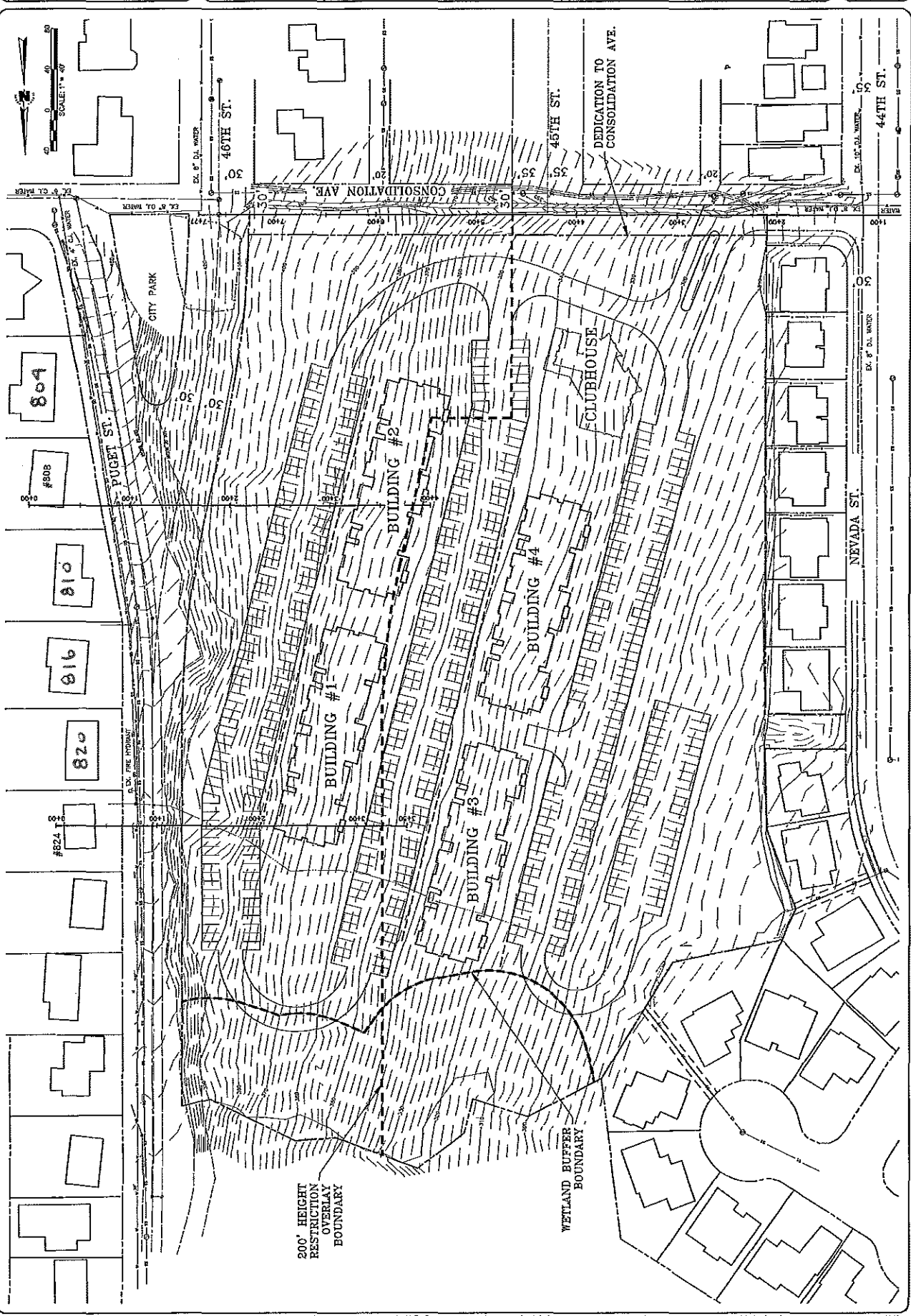
EXHIBIT

“A”

PREPARED FOR: AMBLING UNIVERSITY DEVELOPMENT GROUP
 UNIVERSITY RIDGE STUDENT HOUSING
 BELLINGHAM, WA
 COUNTY OF YAKIMA, WASHINGTON

RONALD T. JEPSON & ASSOC.
 CIVIL ENGINEERING - SURVEYING - LAND PLANNING
 222 6200 NINTON, SUITE 2 BELLINGHAM, WASHINGTON 98222
 360-735-5179 FAX 360-735-67-8928 WWW.RTJEPSONENGINEERS.COM

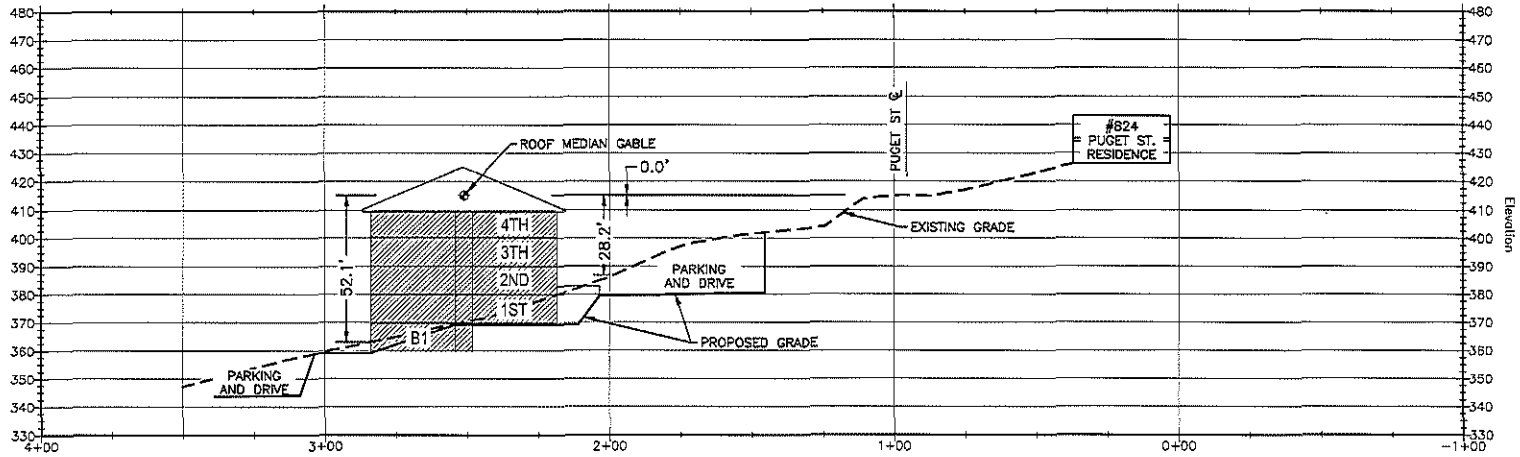
PRELIMINARY
 NOT FOR CONSTRUCTION



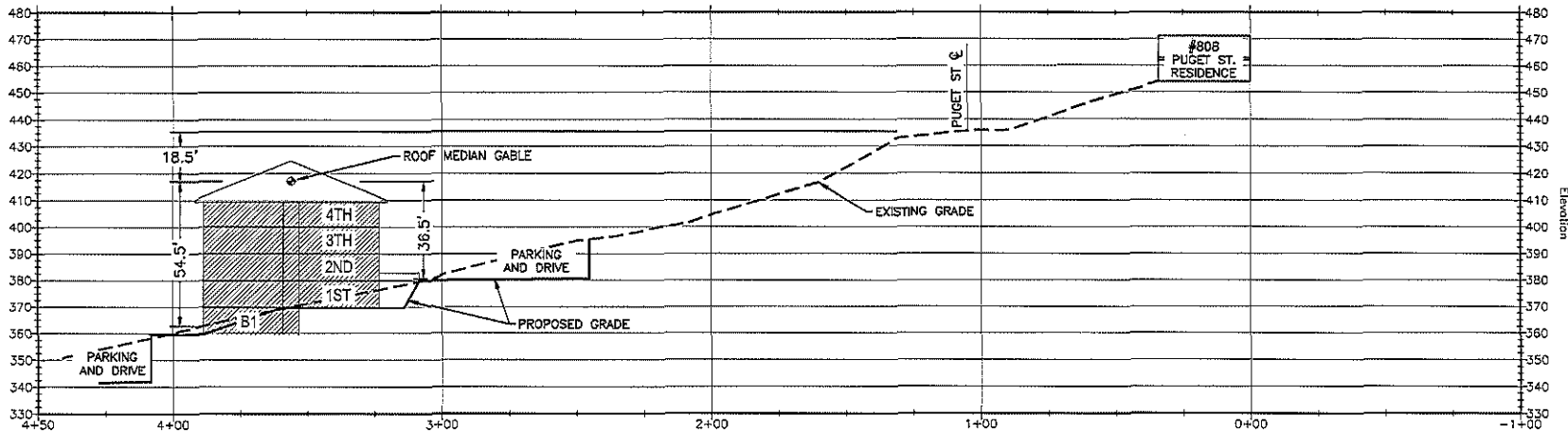
SHEET 1 OF 2
 DATE 2/2/2013
 DRAWN BY: [Name]
 CHECKED BY: [Name]

EXHIBIT
“B”

824 PUGET ST. PROFILE
VSCALE: 1=20'



808 PUGET ST. PROFILE
VSCALE: 1=20'




DESIGNED BY	ETJ
DRAWN BY	EPJ
DATE	2/9/2013
PROJECT	RONALD T. JEPSON DRIVE
NO.	2381

**FOR REVIEW
NOT FOR CONSTRUCTION**

RONALD T. JEPSON & ASSOC.

CIVIL ENGINEERING SURVEYING LAND SURVEYING
1000 UNIVERSITY AVENUE, SUITE 1000 BELLINGHAM, WA 98225
360-733-2400 FAX 360-417-8931 WWW.RTJANDASSOC.COM



PREPARED FOR: ABLEING UNIVERSITY DEVELOPMENT GROUP

PUGET ST. SECTIONS
UNIVERSITY RIDGE STUDENT HOUSING
BELLINGHAM, WA

WASHINGTON
COUNTY OF WHATCOMB

SCALE:	AS SHOWN
DATE:	2/9/2013
SHEET:	2 OF 2
NO.	11060

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THE HEARING EXAMINER OF THE CITY OF BELLINGHAM
WHATCOM COUNTY, WASHINGTON

IN RE:	HE-13PL-007
AMBLING UNIVERSITY DEVELOPMENT, Applicant 4413 Consolidation Avenue	DECLARATION OF SERVICE
PDC2013-00002, VAR 2013-00001, DRC2013-00008 & CAP2013-00019/ Planned Development for University Ridge	
	DAWN STURWOLD, HEARING EXAMINER

I, Heather Calloway, hereby certify as follows:

I am employed in the County of Whatcom, State of Washington. I am over the age of 18 and not a party to the within action. My business and place of employment is Belcher Swanson Law Firm, PLLC, 900 Dupont Street, Bellingham, Washington 98225.

On the date set forth below, I served the following documents on the interested parties in this action in the manner described below and addressed as follows:

PARTY/COUNSEL	DELIVERY INSTRUCTIONS
Dawn Sturwold Hearing Examiner, City of Bellingham 210 Lottie St. Bellingham, WA 98225	<input checked="" type="checkbox"/> By Hand Delivery <input checked="" type="checkbox"/> By Electronic Mail
Jeff Thomas City of Bellingham Planning Director 210 Lottie St. Bellingham, WA 98225	<input checked="" type="checkbox"/> By Hand Delivery <input checked="" type="checkbox"/> By Electronic Mail
Kathy Bell City of Bellingham Planning Department 210 Lottie St. Bellingham, WA 98225	<input checked="" type="checkbox"/> By Hand Delivery <input checked="" type="checkbox"/> By Electronic Mail

DECLARATION OF SERVICE - 1

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Alan Marriner City of Bellingham, City Attorney 210 Lottie St. Bellingham, WA 98225	<input checked="" type="checkbox"/> By Hand Delivery <input checked="" type="checkbox"/> By Electronic Mail
Irving H and Joan F. Hawley Trust c/o Kevin DeVries Exxel Pacific 323 Telegraph Road Bellingham, WA 98226	<input checked="" type="checkbox"/> By Electronic Mail

- 1. *Motion for Reconsideration*
- 2. *Declaration of Service*

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 4th day of November 2013 at Bellingham, Washington


HEATHER CALLOWAY