

FAEGRE & BENSON LLP

2200 WELLS FARGO CENTER, 90 SOUTH SEVENTH STREET
MINNEAPOLIS, MINNESOTA 55402-3901

TELEPHONE 612.766.7000
FACSIMILE 612.766.1600
www.faegre.com

JOHN H. HERMAN
jherman@faegre.com
612.766.8908

October 27, 2004

Chair Gary Schiff and Members of the
Zoning and Planning Committee
City of Minneapolis
350 South Fifth Street
307 City Hall
Minneapolis, MN 55415

BY MESSENGER

Re: CUP Appeal, Edgewater Condominium: Six story, 28-unit condominium
development at Knox Avenue and Lake Street in the R-6 Zoning District and
Shoreland Overlay District

Dear Members of the Committee:

At this week's Z&P Committee, you will hear a very important appeal to the conditional use permits ("CUP") granted for the Edgewater. The development is a proposed 28-unit condominium on the site of a currently deteriorating and structurally impaired, 28-unit apartment building at Lake Street and Knox Avenue South, set back about a-half block from Lake Calhoun. The Planning Commission voted 5-1-1 to grant a CUP to allow the height of the proposed building in the Shoreland Overlay District at 6 stories, 82 feet, a height that is permitted under the site's R-6 zoning designation. Attached to this letter is a copy of the detailed response to the Appellants' argument ("Response").

Factually False Allegations by Appellants. In a drawing attached to the appeal, the Appellants have grossly exaggerated the Edgewater's height and mass. The Appellants' drawing also ignores the buildings upper floor setbacks and architectural articulation. Exhibit I attached to the Response depicts the extent of the exaggeration. The architects of the Edgewater have outlined the accurate dimensions of the Edgewater over the Appellants' drawing.

In addition, the Appellants also make its case on factually incorrect allegations about details of the Edgewater proposal, including the following:

- The Appellants claim the alley on the site will be narrowed, causing a wind tunnel effect from West to East. In fact, the alley will be widened. There will be no wind tunnel effect because the prevailing winds do not come from the West in Minneapolis and the alley plus an adjacent 10 foot landscaped buffer is too wide to cause a canyon effect.
- The Appellants claim the proposed building will shadow the alley to the south which will increase the amount of ice and snow accumulation in the alley. In fact, the new building will never create shadows on the alley to the south. (See Exhibit D for the shadow studies attached to the Response.).

- The Appellants claim there will be more traffic congestion and not enough parking will be provided. The proposed Edgewater will have the same number of units as the current apartment building on the site, so there will be no increase in traffic. The proposed building will provide 14 additional parking spaces than currently exist on the site. All of the parking will be underground.
- The Appellants claim the Edgewater will block lake views from Knox Avenue. The proposed Edgewater will not block views any more than a structure that could be built on the site at 2 and ½ stories without the CUP for height.

Shoreland CUP Criteria. The proposed Edgewater condominium building meets the standards as set forth in the Shoreland Overlay District. The purpose of the Shoreland Overlay District is “to preserve and enhance the environmental qualities of surface waters and the natural and economic values of shoreland areas within the city, to provide for the efficient and beneficial utilization of those waters and shoreland areas, to comply with the requirements of state law regarding the management of shoreland areas, and to protect the public health, safety and welfare.” Mpls. Code, Sec. 551.440. The Edgewater will improve the environmental qualities of Lake Calhoun by improving the quality of the stormwater management. The proposal will increase the amount of the pervious surface from 1550 square feet to 3636 square feet. In addition, the Edgewater will incorporate green roof technologies into the roof and into the first floor patios. The economic values of the Shoreland area will be increased. The Edgewater will be an efficient reuse of a site currently containing a deteriorating building that cannot be rehabilitated due to foundation problems.

The Edgewater meets the criteria set forth in the Shoreland Ordinance to increase height as set forth in the Minneapolis Code, Section 551.480:

- The Edgewater will not impact the access to light and air of the surrounding properties;
- The Edgewater will not shadow residential properties or significant public places (See Exhibit D to the Response for the shadow studies);
- The Edgewater is consistent with the scale and character of the neighborhood which has several 6- to 9-story buildings nearby according to the Planning Commission, Mr. Perry Thorvig, an independent professional planner with 36 years experience and original author of your Shoreland Ordinance, and Dr. Thomas Fisher, the Dean of the University of Minnesota’s College of Architecture and Landscape Architecture;
- The Edgewater will not impede views of landmark buildings, significant open spaces or water bodies, as shown on accurate depictions of the proposed building attached as Exhibit H and J to the attached response; and
- In 10 years, according to a professional arborist, the young trees around the Edgewater will grow and largely obscure the view of the building from Lake Calhoun (See Exhibit K to the Response for depictions of the tree line and the proposed Edgewater from Lake Calhoun.)

Neighbor Support. Mr. Gassen and his development team have attended a number of meetings with the neighbors since June to discuss the proposal. Many of the neighbors are supportive, including five of the immediately, adjacent neighbors (See Exhibit A attached to the Response for a map showing which neighbors [houses highlighted in red] sent letters of support). In addition, the zoning committee of the East Isles Residents’ Association and the Uptown Association Board of Directors have provided letters of support.

Precedent. One of the arguments made by Appellants is concern that permitting the 6-story building would set a precedent, hindering the City's ability to prevent "high-rises" around the Lakes or in other shoreland areas. While a 6-story building is not a high-rise, there are a number of unique factors associated with the Edgewater site. The underlying zoning district is R-6, which permits 6-story building without the need for a CUP. There are no other R-6 sites in the ECCO neighborhood and very few near lakes in the City. For high-rises or even 6-story buildings to be built in ECCO, there would have to be a wholesale rezoning of the area. The site is on Lake Street, designated by the Minneapolis Comprehensive Plan as a Commercial Corridor. The Minneapolis Comprehensive Plan encourages higher density residential uses on Commercial Corridors.

A CUP analysis is a site and fact-based inquiry. Each site is different and specific. A total denial of all height CUPs would be arbitrary and capricious. To deny a CUP, the record must demonstrate factually based material adverse impacts that cannot be mitigated. When applying the criteria to consider a height CUP, see above, the Edgewater explicitly complies and offers many positive benefits. The Edgewater would not set a precedent for projects that do not comply with the Shoreland Ordinance. But the reverse is true – a denial would evidence a uniform pattern of denial of CUPs regardless of facts in the record.

We appreciate your consideration of the enclosed materials. If you have any questions, do not hesitate to call.

Very truly yours,



John H. Herman

JHH:husba

Enclosures

cc: Clark Gassen
David Graham
Lars Peterssen

MI:1153518.01

**CITY OF MINNEAPOLIS
ZONING & PLANNING COMMITTEE**

**RESPONSE TO CUP APPEAL FILED ON THE EDGEWATER PROJECT
WEST LAKE STREET AT KNOX AVENUE SOUTH**

I. INTRODUCTION
(BZZ-1825 and VAC-1445)

On September 27, 2004, the Planning Commission voted 6-0-1 to grant Clark Gassen with Financial Freedom Development, a Conditional Use Permit (“CUP”) to build a 28 unit condominium development named the “Edgewater” in the R-6 Zoning District; three variances to reduce the front yard setback, the corner side yard setback, and the rear yard setback; and approval of the site plan. The Planning Commission also approved an alley vacation and the establishment of a new alley. The Planning Commission voted 5-1-1 to grant Mr. Gassen a CUP to increase the height of the building located in the Shoreland Overlay District from the permitted 2½ stories/35 feet to 6 stories/82 feet.

On October 7, 2004, Steve Buckley and Vicki Fraher filed an appeal. The appeal alleges a number of facts related to the development of the Edgewater that are simply not true. Those allegations are discussed below. For the reasons provided in this response to Mr. Buckley and Ms. Fraher’s appeal and as found by the Planning Commission on September 27, 2004, the Edgewater meets the conditions for approval.

II. BACKGROUND, DESIGN QUALITY AND R-6 COMPLIANCE

The Edgewater is a unique new proposal for a very high quality, 28-unit condominium designed by Elness Swenson Graham Architects, Inc. and Domain Architecture & Design, Inc. The design meets all standards of the highest quality design: street front units, roof setbacks, underground parking, increased landscaping, stone exterior and model green roof technology. The architects and the developer made a conscious decision early in the development process to stay within the underlying R-6 zoning guidelines for height, floor area ratio (“FAR”) and density. The Edgewater does not need a CUP to increase the height or an FAR Variance under the R-6 zoning requirements, but it does need a CUP to increase the height over 2½ stories, because the Edgewater is located in the Shoreland Overlay District. The Edgewater meets the criteria for granting the Shoreland CUP, and also furthers the purposes of the Shoreland Overlay District. The Edgewater received letters of support from many neighbors, including many of the immediately adjacent neighbors. (See Exhibit A for a map identifying the neighbors [whose houses are highlighted in red] who submitted letters of support.)

III. REQUIRED CUP FINDINGS

The Appellants object to the Planning Commission’s findings for both the CUP for the multi-family dwelling in the R-6 District and for the CUP to increase the height of a building over the permitted 2½ stories/35 feet in the Shoreland Overlay District. As the first 6 findings

for both CUPs are the same, the response below to the appeal combines the Appellants' objections to both CUPs, as well as addresses the Appellants' other objections.

1. *Will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare.*

The Appellants claim that the current parking/alley area will be reduced from a width of 52 feet to 12 feet wide. They also claim that the Edgewater building will overhang much of the alley opening. They claim that such a narrowing and the overhang will decrease natural surveillance of the area, increase crime, endanger pedestrians using the alley, and create an urban canyon effect.

The 52 feet wide "alley" the Appellants cite includes an impervious surface parking lot. **In fact, the area of the alley will be increased from 14 feet wide to approximately 16 feet wide. In addition, there will be a 10-foot wide landscape strip placed next to the alley, which will improve the quality of the surface runoff and improve drainage from the alley.** The combination of the alley and landscaping area will be 26 feet wide. The overhang on the building will not overhang most of the alley, but will only extend 3 feet from the building.

As part of any site plan approval process, sites plans are reviewed by a Crime Prevention Specialist in regards to crime prevention design. The Crime Prevention Specialist did not comment or find that the 26 feet wide alley and landscaping area will decrease the natural surveillance of the area or increase crime. The only comment listed in the Planning Division's report on the Edgewater from the Crime Prevention Specialist was that the three individual patios on West Lake Street should be gated off from the public side walk (Planning Division Report on The Edgewater, September 27, 2004, p. 13). **In fact, the Planning Division found that the Edgewater "maximizes natural surveillance and facilitates pedestrian access"** (Planning Division Report on The Edgewater, September 27, 2004, p. 10).

The current surface parking lot and alley are extremely dangerous in their current configuration. The alley bisects the surface parking lot, and cars are parked on either side of the alley perpendicular to the alley. At the end of the parking lot, the alley makes a 90-degree turn to the south. **Currently, the residents of the block to the south have to drive through the parking lot, but that those parked in the lot have to back up into the alley to exit.** A former resident of the current Edgewater apartment building testified at the Planning Commission hearing that he had to park at the end of this lot and his car was hit twice (Excerpt of City Planning Commission Minutes on the Edgewater, p. 13).

The proposed Edgewater will **eliminate the surface parking lot** so that cars will not be backing into the alley. It will also **increase the turning radius** since the alley width will be increased, and current sitelines will be improved. In addition, the Edgewater will have its **main vehicular entrance off Knox** so that the traffic in the alley will be reduced. Therefore, the Edgewater will improve the safety of both the pedestrians and drivers using the alley. The public works department recommended approval of the alley re-design, and did not find that the new alley will endanger pedestrians using the alley.

The Edgewater and the property to the south will not create an “urban canyon” . The building on the lot south of the Edgewater site is set back from the lot line approximately 8 to 10 feet. The combination of 26 feet plus the 8 additional feet still creates an opening approximately 34 feet wide for the length of the house, which is less than 50 feet. This is hardly an urban canyon. The Appellants also claim that the “resulting canyon effect also creates high velocity winds vectoring from the open waters of Lake Calhoun.” This could only occur if the winds came from the west and if the area was narrow for a long distance, far longer than the length of the house or the new Edgewater will be. Furthermore, the winds in Minneapolis typically do not come from the West. For seven months of the year, from October to April, the prevailing winds in Minneapolis come from the Northwest. The Edgewater building will buffer most of the winds to the alley and the neighborhood to the South. The other five months, from May to September, the prevailing winds are from the South and the Southeast (See excerpts from Brown, G.Z. & DeKay, Mark. *Sun, Wind & Light: Architectural Design Strategies*. Second Edition. 2001. John Wiley & Sons, Inc., New York attached hereto as Exhibit B).

The Appellants also make the following claim: “Exposed luxury vehicles will attract more crime to the area. We believe that the condominium owners drive high value, luxury vehicles, many exposed to outside parking.” **The Edgewater will provide more parking than is required under the zoning code and the parking area will be completely enclosed.** Other than the Appellants' belief, there is no proof that (1) there will be more luxury vehicles parked outside near the Edgewater or (2) that luxury vehicles attract more crime to an area. If the Appellants' allegations are true, and this was a basis to deny a CUP, all condominium development in the City would cease.

As for improving safety, the **current Edgewater apartment building is in extremely poor condition** (See the letters and reports from Braun Intertec and Wenzel Engineering Incorporated regarding the condition of the current Edgewater apartment building, attached hereto as Exhibit C). This building was built over swamp deposited peat over 80 years ago. Braun Intertec found that at the boring locations, the peat would be subject to significant decomposition and consolidation over time. The engineering companies found that there were excessive differential settlement problems and that there were problems with the structural framing of the building. One of the engineers felt that the uneven floors within the building could be a stumbling hazard to people. To date, the developer's business plan has been to buy buildings and rehabilitate them. However, the condition of the Edgewater is so poor that this was not a feasible option. The new building will be a high quality – and safe – building.

As will be discussed in more detail below, the proposed Edgewater will not increase shadowing to neighboring properties and will not increase traffic congestion or parking congestion in the nearby neighborhoods. By incorporating green roof and green technologies into the building's construction, improving and increasing the pervious surface and landscaping, and improving the stormwater treatment from the site, the Edgewater will improve the public health, safety, morals, comfort and general welfare.

2. *Will not be injurious to the use and enjoyment of other property in the vicinity and will not impede the normal or orderly development and improvement of surrounding properties for uses permitted in the District.*

The Appellants indicate that they believe that the Edgewater will be injurious to other property, as it will impede the lake views while walking through the alley and on Knox Avenue sidewalk. They also claim that it will be injurious because they claim that it will eliminate the lake views for 3009 and 3015 Knox Avenue residents.

Under the Shoreland Overlay District, a two-and-one-half story structure is permitted without obtaining a CUP. A two-and-one-half story building on the Edgewater site would impede the lake views while walking on the Knox Avenue sidewalk. The Edgewater will not completely block the view of the lake from 3009 Knox Avenue, as the view will still remain through the alley. To the extent that the view is blocked, the view would be blocked by a two-and-one-half story building. The house at 3015 Knox is not directly across the Edgewater site, so the Edgewater will have little or impact on the view from 3015 Knox to Lake Calhoun. **The extra height of the proposed Edgewater building will not impact views from the sidewalk and from 3009 and 3015 Knox any differently than a structure that could be built on the site without the CUP.** Therefore, this cannot be a basis to deny the CUP for height above two-and-one-half stories.

The Edgewater will not have any impact on the lake views while walking through the alley, as you will be able to see the lake from the alley.

Appellants also claim that the current building contains a number of affordable units available to students, recent graduates and families with children, and that by eliminating these units, it will impede the normal and orderly development of area. It should be noted that the current Edgewater apartment building contains mostly studios and one-bedroom apartments, and has nine two-bedroom units. The on-site manager does not believe that any families with children reside in the building. Furthermore, as mentioned above, the current Edgewater apartment building has some significant structural problems, so in the relatively near future, the apartment building will have to cease operating. Therefore, the new Edgewater will not impede the normal and orderly development and improvement of surrounding property.

In addition, as the Planning Division pointed out, according to the 2000 Census, approximately 62% of the dwelling units in the ECCO neighborhood are rental. The addition of for-sale condominiums will increase the owner-occupied base in the neighborhood and create a better balance in the neighborhood between rental and owner-occupied housing.

The proposed Edgewater will not impede the normal or orderly development and improvement of surrounding property for uses permitted in the District. The Edgewater is zoned R-6, which is a "high-density, residential district." The Edgewater is not asking for a FAR or density variance. The Edgewater site could accommodate 13 more dwelling units under the zoning code that is being proposed by the developer.¹ The Edgewater is not asking for an up-

¹ The site is 16,568 square feet. In the R-6 District, one dwelling unit can be built for every 400 square feet. Mpls. Code, Table 546-17.

zoning for its property. The surrounding property is zoned residential and commercial, both of which are consistent with the Edgewater. The Edgewater is not out of character for the area, as there are already several 6 to 9 story, multi-family developments within one to two blocks of the site.

3. *Adequate utilities, access roads, drainage, necessary facilities for other measures have been or will be provided.*

The Appellants claim that the Edgewater will cause more congestion in the alley because they allege the site plan calls for alley access to a surface parking lot. All of the Edgewater's **parking areas will be enclosed**. There is an entrance to enclosed parking on the alley, but this is an entrance for only 11 of the 42 parking spaces (a significant reduction of 16 from the 27 spaces currently using the alley). **The entrance to the majority of the enclosed parking is off of Knox Avenue, so the congestion in the alley will be decreased.**

The Appellants also allege that the Edgewater will cause more frequent electrical blackouts. They claim that the larger size of the building will increase electric consumption to the point of causing electrical blackouts. They have provided no evidence which would verify this claim. As would be the case of any new building built under today's building code standards replacing an 80+ year old building, the new Edgewater will update and improve the existing electrical distribution and on-site infrastructure.

The Appellants also claim that excess shadowing from the building will result in ice and snow accumulation in the alley near the Edgewater. As will be discussed in more detail below, because of the angle of the sun and the Edgewater's location on the north side of the block, **the Edgewater building will not shadow the alley to the south**. In addition, the **increase in pervious surface and the 10-foot wide landscaping area that will run the length of the Edgewater site will improve the drainage from the alley**. The new alley will be completely redesigned and corrective work will reduce the build-up of water, ice and snow. Lastly, the alley redesign will make snow removal easier. Under current conditions, the alley is difficult to plow on the Edgewater site. The plowing has to be coordinated with the cars on the parking lot because the alley goes through the parking lot. With the removal of the lot, it should be possible to completely clear the snow, without interference from parked cars.

The Planning Division indicated that increase in the height of the building would have no impact on utilities, access roads or drainage.

4. *Adequate measures have or will be provided to minimize traffic congestion in public streets.*

The Appellants claim that the new Edgewater will increase vehicular traffic. However, the new Edgewater will provide the same number of units as the current Edgewater site so traffic should be about the same.

The Appellants also claim the vehicular entrance to the Edgewater off of Knox is too close to the intersection of Knox and West Lake Street. They state that the entrance is 90 feet

from the intersection, but it will actually be 100 feet and 4 inches from the intersection. They claim that the intersection of Knox and West Lake is highly accident prone due to cars turning South from Lake onto Knox. They also claim that many pedestrians cross Knox at West Lake on their way to Lake Calhoun. However, other than saying the project will increase traffic, the Appellants do not make any conclusions or allegations how the Edgewater's vehicular entrance will impact the intersection or the pedestrians 100 feet away at the intersection of Knox and Lake.

The Appellants also allege the Edgewater will further congest the alley because they claim there will be more drivers from the Edgewater, the alley will be narrowed, the narrowing of the alley will not allow 2-way traffic, and Knox will have to be closed during construction. To reiterate, there are the same number of units in the current and the new Edgewater (and far fewer than are permitted under the R-6 zoning district). The main entrance to the parking area is off of Knox Avenue, not through the alley. The alley will not be narrowed but will be widened. The turn to the south in the alley will be widened. The increase in width will permit 2-way traffic. During construction, the developer intends to maintain alley access.

The Appellants claim that the Edgewater will not provide enough parking. The new Edgewater will increase the number of parking stalls from 27 to 42 and they will all be enclosed within the building. During the public hearing on the project, a former resident and a nearby neighbor spoke in favor of the project for many reasons, including the fact that **by providing more parking on-site, more parking would be available on the street for other residents.**

The Appellants assert that all of the owners of the Edgewater units will have two cars, so the Edgewater should provide parking for 56 cars, not 42. Some owners of the units probably will have two cars, but some of the units are just over 1,000 square feet and 21 of the 28 units are less than 1,635 square feet. The developer's marketing staff anticipates marketing the units to single people and empty-nesters. It is anticipated based on comparable sales that some of the owners of the units will only have one car. It should be noted that the **proposed Edgewater will provide 14 more spaces than is required under the zoning code.**

There is no evidence that the Edgewater will increase traffic congestion, and the Planning Division found that the increasing of height of building will have no impact on the traffic congestion in the public streets.

5. *It is consistent with the applicable policies and Comprehensive Plan.*

The Edgewater site is designated as a multi-family housing site in the Comprehensive Plan. Also according to the Comprehensive Plan, the site is on a designated Commercial Corridor and is near the Uptown Activity Center. The Edgewater proposal furthers many of the policies in the Comprehensive Plan including the following:

- Support the development of residential dwellings of appropriate form and density.
- Promote the development of well designed moderate-density residential dwellings adjacent to one or more of the following land use features: growth centers, commercial corridors, community corridors and activity centers.

- Use both infill development and new development opportunities to increase housing in the City.
- Support a mix of uses in Commercial Corridors...such as...higher density residential...where compatible with existing and desired street character.

The Appellants claim that the Edgewater is not consistent with the policies of the Comprehensive Plan. They claim that the Edgewater is part of a one block, residential neighborhood between South Knox Avenue and East Calhoun Parkway between Lake Street and 31st Avenue. **The Appellants ignore the fact that the Edgewater is on Lake Street, is located on a designated Commercial Corridor², and several 6 to 9 story multi-family buildings are located within one to two blocks of the site, close proximity in the area “surrounding” the site.**

The Appellants claim that the Edgewater doesn't “support the development of residential dwellings of appropriate form and density.” However, the site is zoned R-6, which is designated as “high-density, residential.” The Edgewater proposes to build 13 fewer units than are allowed under the code. A 28-unit condominium building is an appropriate form and density for the R-6 site. Further, considering a 28-unit apartment building has existed on the site for over 80 years, it is difficult to understand how a 28-unit condominium building is not appropriate density for the site. (See also the discussion of scale and context below, pp. 9-10).

The Appellants also claim that the Edgewater proposal is not “infill development” or “a new development opportunity to increase housing,” and that by destroying the current Edgewater apartment building, affordable housing will be destroyed. As stated above, the current Edgewater apartment building is nearing the end of its operational life so it will not be providing housing long term. Therefore, the Edgewater proposal is an opportunity to ensure that some type of housing will be provided on the site for years to come.

6. *And, does in all other respects, conform to the applicable regulations of the district in which it is located upon approval of this conditional use.*

The Edgewater will be in conformance with the applicable regulations of the zoning code. The Appellants claim that the Edgewater will not conform to the applicable regulations because the Edgewater's scale and character is “inappropriate relative to the neighborhood of single family homes.” Scale and character of the Edgewater is discussed below.

IV. ADDITIONAL STANDARDS TO INCREASE MAXIMUM HEIGHT IN THE SHORELAND ORDINANCE

The following are additional standards applicable to increasing the height of a structure over 2-and-1/2 stories in the Shoreland Overlay District:

1. *Access to light and air of surrounding properties.*

The Planning Division indicated that increasing the height of the proposed building would have minimal impact on the amount of light and air that the surrounding properties

² See the Minneapolis Comprehensive Plan, p. 1.4.4.

receive. The Appellants continue to erroneously claim that the alley space will be reduced to a width of 12 feet, which will reduce light and increase wind velocities. As described above and is evident from the site plan, the alley will be 16 feet wide and the adjacent landscaping will be 10 feet wide for a total of 26 feet. The building will not produce any shadows over the alley. The wind velocities will not be increased as winds do not typically come from the west in Minneapolis and the alley area is too wide to have any affect on wind velocities in any case.

2. *Shadowing of residential properties are significant public spaces.*

The shadow studies are attached hereto as Exhibit D. The shadow studies analyze the shadows from the existing building, the developer's proposed six-story building, and the Planning Division's alternative for the four-story building.³ As the studies reveal, there is no material difference between the proposed six-story building and the alternative four-story building, and the shadows produced from both of those buildings are not significantly more than the current four-story building.⁴ The current building shadows the ECCO Sculpture Garden and either a new four-story or six-story building would shadow the ECCO Sculpture Garden to the same extent. However, neither the six-story building nor the four-story building will shadow the Refectory. In the wintertime, **the Edgewater site produces shadows mostly over roadway areas**. Late in the day in the wintertime, the current building shadows a few residential properties and the 6-story building will shadow those same properties.

The Appellants continue their claim that the Edgewater will shadow the alley. Due to the angle of the sun, at no time during the year will the building cast shadows to the south over the alley.

3. *The scale and character of surrounding uses.*

The Appellants attempt to define their neighborhood as the one block area bounded by East Lake Calhoun Parkway and Knox Avenue South between Lake Street and 31st Street. The Edgewater site is located on the northern-most lot of this area and faces the north.

Many of the Planning Commissioners stated during the public hearing that they thought that the context of the surrounding neighborhood was much larger than this one block area. At the Planning Commission meeting, it was apparent that the Planning Division staff internally struggled with this issue, and some planners within the Division were in favor of granting the CUP for 6 stories.⁵ Attached as Exhibit E is a report from Perry Thorvig, a City Planner with Dahlgren, Shardlow & Uban who has been working for 36 years in Minneapolis. In

³ The Planning Division recommended that the Planning Commission grant a CUP to increase the height over 2-and-½ stories/35 feet to 4 stories/56 feet. The Planning Commission, after hearing over an hour of testimony from neighbors both for and against the project, overruled the Planning Division and granted the CUP for 6 stories and 82 feet.

⁴ Also attached to the exhibit are the original shadow studies submitted to the Planning Division, which also show the shadows in the Spring and Fall.

⁵ The staff member making the presentation on the Edgewater said "Do you want me to be honest on this one? We did have discussions of height as staff and some fell on the side of approving a 6-story, and some fell on the side of approving a 4-story given the existing height scale of the building, or the number of stories of the building." (Excerpts of the City Planning Commission minutes on the Edgewater, p. 6.)

his report, Mr. Thorvig discusses what may be considered the “neighborhood” and “surrounding uses” of the Edgewater site. In Mr. Thorvig’s opinion, the one block area is far too limited and that “surrounding uses” could be uses within a set distance in all directions or within an area where the character of the area shows a definite change. In Mr. Thorvig’s expert opinion, it seems appropriate to look at the neighborhood at least within two or three blocks of the Edgewater site. Mr. Thorvig notes that within a two or three block area of the site, there are various uses, from 2½-story single family homes to nine-story multi-family developments. Mr. Thorvig concludes that the proposed Edgewater development is consistent with the scale and character of the neighborhood. In addition, the Dean of the University of Minnesota’s College of Architecture and Landscape Architecture, Tom Fisher, visited the Edgewater site. In a letter to Council Member Dan Niziolek, he stated that “The project matches the height of neighboring multi-family buildings, and has a scale and level of detail appropriate of the neighboring residential community. The building also provides an attractive gateway to the Uptown commercial area” (See letter attached as Exhibit F).

A further key advantage of placing a six-story building on **the Edgewater site is that the site has an elevation noticeably lower than the area to the South. The grade rises approximately 16 feet from the Edgewater site to 31st Street** (See the elevation studies for the buildings located along Calhoun Parkway from Lagoon to 31st Street, attached as Exhibit G). The top of the proposed Edgewater building has an elevation of 944 feet and will be built on a site that is on an elevation of 862 feet at grade. The grade at Calhoun Parkway and 31st Street, a block away, is 878 feet and a six-story on that corner has an elevation of 953 feet and 4 inches. To the north, there are two larger structures along Calhoun Parkway that are built on a grade of approximately 857 feet and the tops of the buildings (without including the mechanical areas) are at elevations of 947 feet and 942 feet. Because the heights of many of the buildings in the surrounding area vary and the Edgewater will not be the building at the highest elevation within a two blocks, the proposed Edgewater will be compatible with the surrounding uses. (See a panorama photograph of the Edgewater site from Lake Calhoun, from Lagoon Avenue to 31st street, attached as Exhibit H).

The record reflects that the Planning Division itself was internally divided as to whether to approve a 4 or 6 story building when considering the compatibility with the scale and character of the neighborhood. However, the Planning Division also defined the “scale and context” as the one block area that includes the Edgewater site, between Knox Avenue and Calhoun Parkway, and West Lake Street and 31st Street. The Planning Commission (by a vote of 5-1-1), a professional planner with 36 years experience, and the Dean of the University of Minnesota’s College of Architecture and Landscape Architecture unequivocally concluded that the Edgewater’s neighborhood extended at least beyond that one block area and that the Edgewater proposal of 6 stories is compatible with the scale and character of the neighborhood. Many of the immediately adjacent neighbors agree. (See the letters of support attached to the Planning Division’s report on the Edgewater.)

4. *Preservation of views of landmark buildings, significant open spaces or water bodies.*

The Appellants claim that the building will dominate the views from the lake. The Appellants provide a drawing of what they think the Edgewater will look like. The drawing is a

gross misrepresentation of the proposed Edgewater, making the Edgewater appear almost twice as big as it really will be. (See Exhibit I for a correct depiction of the Edgewater's mass in comparison to the Appellant's drawing.) Appellant's picture depicts the Edgewater as approximately 110 feet high and 160 feet wide, while the proposed Edgewater's will be actually 82 feet high and 112 feet wide. Attached to this appeal in Exhibit J is a depiction based on computer models and drawn by professional architects. The accurate depiction of the proposed Edgewater is not nearly as high or imposing as the Appellants' depiction. The Appellants have continued to distort and exaggerate the Edgewater's size and height.

In addition, **over time, the young trees already planted between the Edgewater and Lake Calhoun will grow and obscure the building from the lake.** According to Peter Macdonagh, who is a registered Landscape Architect and an International Society Arboriculture Certified Arborist and a Royal Horticulture Society Certified Horticulturist (U.K.), as well as an adjunct faculty in the Landscape Department at the University of Minnesota, the tree canopy surrounding the Edgewater site within 10 years will be 23 to 55 feet. Within 30 to 50 years, the tree canopy will be 70 feet to 80 feet high, completely obscuring the Edgewater from the middle of Lake Calhoun (See Exhibit K for depictions of the treeline and the report by Mr. Macdonagh).

Currently, the trees surrounding the Edgewater site are fairly young. Within the last 15 years, a building and parking lot were on the ECCO Sculpture Garden site were demolished. More recently, the nearby park refectory was renovated and re-landscaped, the parkway was rerouted, and a planted median was added. Because of these changes, most of the trees in the ECCO sculpture garden and on the parkway, and around the refectory have been planted within the last 5 to 10 years. Because the trees are so young, the tree canopy between the Edgewater and the lake does not match the tree line as established on the adjacent western and northern shores of Lake Calhoun. In time, the trees will mature and their canopy will help complete the beautiful tree line surrounding the lake.

The Appellants also claim that people using the lake in boats will face afternoon sun reflections from the Edgewater resulting in "loss of their soul pacification experience on the water." The architects do not believe that the building will produce reflections as much of the façade will be stone. With the increase in the tree canopy over time, any possibility of reflections would be eliminated.

V. CONCLUSION

The purpose of the Shoreland Ordinance is to "preserve and enhance the environmental qualities of the surface waters and the natural and economic values of the shoreland areas within the City, to provide for the efficient and beneficial utilization of those waters and shoreland areas, to comply with the requirements of state law regarding the management of shoreland areas, and to protect the public health, safety, and welfare." The new Edgewater development will increase the amount of pervious surface on the site and will also incorporate some green technologies, including some green roof technologies, as well as possible bioswales, which will result in the improvement in the quality of any runoff from the site. Therefore, the natural values of the shoreland area will be benefited by the Edgewater. The economic values of the shoreland

area will also benefit as the Edgewater proposal will increase the economic value of the site, increasing the amount of property taxes the site will generate.

The proposed Edgewater will also "provide for the efficient and beneficial utilization of [the shoreland] waters and shoreland areas" as the Edgewater will not shadow or otherwise impact the shoreland area. In addition, the Edgewater site will have to be redeveloped in the near future due to the failing foundation. The new proposal will ensure a quality, gateway development on the site which will produce housing for many years to come. The proposed Edgewater will comply with the state law regarding the management of Shoreland area and, as stated in this response to the appeal, will protect the public health, safety and welfare.

The Appellants have made a number of allegations that are simply not true. They have misrepresented the Edgewater proposal and made false allegations regarding its height. They have thrown out allegations like throwing spaghetti against a refrigerator, hoping one would stick. None of their allegations stick. People are entitled to their opinions, but not their facts.

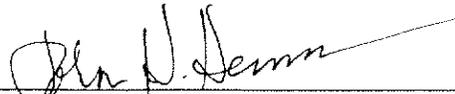
When a CUP is granted and a challenge is made, the challenges must be factually accurate. While a governmental entity can deny a CUP, the reasons for denial must be based on accurate facts in the record. *C.R. Investments, Inc. v. Village of Shoreview*, 304 N.W.2d 320 (Minn. 1981); *Scott County Lumber Company, Inc. v. City of Shakopee*, 417 N.W.2d 721 (Minn. App. 1988), *rev. denied* (Minn. 1988). It is not enough for the Appellants, for example, to allege that the alley will be narrowed. When the facts indicate that the alley width will be increased, the allegations fail.

For every question raised by the Appellant about the Edgewater, the facts have proven that the proposed Edgewater meets the purposes and furthers the goals of the Minneapolis Comprehensive Plan, the R-6 Zoning District and Shoreland Overlay District. Granting the CUP on this record is mandated as a matter of law.

Respectfully Submitted:

FAEGRE & BENSON

Date: October 27, 2004

By: 

John H. Herman
Bridget A. Hust
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402