

Hearing Date: March 24, 2021

HEARINGS EXAMINER JOE TURNER

**BEFORE THE HEARINGS EXAMINER  
OF THE CITY OF CAMAS**

In the Matter of the Application of Discover  
Recovery for:

CONDITIONAL USE PERMIT

File No. CUP21-01

APPLICANT DISCOVER RECOVERY'S  
POST-HEARING BRIEF

**I. INTRODUCTION**

Discover Recovery ("Applicant") proposes to reuse an existing building, once used for a more intense, impactful bed and breakfast and event use and most recently as an assisted living facility, as a convalescent home. Applicant's use will provide full-time care and treatment for up to 15 individuals seeking to recover from disorders in the abuse of drugs, alcohol, and other substances (the "Proposed Use"). Under the Camas Municipal Code ("CMC"), this Proposed Use is permitted through a conditional use permit ("CUP") with conditions that are found to be appropriate to minimize possible adverse impacts on the surrounding area. Here, the modest size of the Proposed Use, the lack of changes to the existing building, the protective features of the existing site with its large lot size and greater than typical setbacks, and the proposed conditions minimize possible adverse impacts and

APPLICANT'S POST-HEARING BRIEF – 1

1 demonstrate compliance with the criteria established for CUP issuance under CMC  
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3 18.43.050. The generalized, speculative concerns that have been presented by commenters  
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5 about safety and security, proximity to other uses, and economic impacts on property value  
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7 do not demonstrate a material detrimental impact of the Proposed Use under the City of  
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9 Camas (the “City”) CUP criteria. Applicant has reviewed and listened to public comments  
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11 and worked to address reasonable concerns and minimize impacts. To the extent that  
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13 comments identify possible adverse impacts of the Proposed Use, Applicant has offered and  
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15 committed to comply with additional conditions to further the compatibility of the Proposed  
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17 Use with the neighborhood. The substantive CUP criteria in the local code have been met  
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19 and the Hearings Examiner should issue the permit requested with appropriate conditions to  
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21 minimize adverse impacts but not unduly restrict the Applicant’s ability to engage in a use  
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23 that is conditionally allowed.  
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## 28 II. FACTUAL BACKGROUND

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30 The following includes a factual background regarding the subject property, the  
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32 proposed use of the site, and impacts of the proposed use.  
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### 34 A. The Property.

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36 The proposed convalescent home use is sited at 2213 NW 23rd Avenue, in the City  
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38 of Camas, Washington (“Property”). The Property is 2.39 acres in lot size and consists of a  
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40 single parcel on developed land. Staff Report at 1; Application Narrative at 1. The Property  
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42 is in a single-family zone, Residential 12,000 (“R-12”), where the proposed use must obtain  
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44 conditional use approval per CMC 18.07.040 - Table 2. Staff Report at 1. R-12 is a  
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46 residential zone that permits many residential use designations including, but not limited to:  
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1 adult family home, residential care facility, supported living arrangement, or housing for the  
2 disabled, assisted living, and a nursing, rest or convalescent home. CMC 18.07.040 - Table  
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4 2; Application Narrative at 2.  
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6 To the west of the Property is Harvest Community Church which lies on a two-acre  
7 parcel. Staff Report at 1. To the east of the Property is a five-acre City park, Dorothy Fox  
8 Park, and Dorothy Fox Elementary School. *Id.* To the south and north of the Property are  
9 residential subdivisions. *Id.* The surrounding area of the Property also includes several  
10 types of residential businesses including: assisted living facilities, a massage therapy  
11 business, and a skilled nursing center. Application Narrative at 7-8; Application Narrative,  
12 Ex. E.  
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15 On November 9, 1998, the Property received approval for a bed and breakfast and  
16 events use, under a conditional use permit, with 8 rooms and parking spaces for guests and  
17 events. CUP98-06; Application Narrative at 1. Thereafter, in 2013, the Property received  
18 approval with conditions to change from a bed and breakfast use to a 15-bed assisted living  
19 facility with 19 parking spaces for employees and residents. CUP13-04; Application  
20 Narrative at 1. The Property remains conditionally permitted as a 15-bed assisted living  
21 facility.  
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35 **B. The Proposed Use.**

36 Applicant proposes a convalescent home use by providing full-time care and  
37 treatment for up to 15 individuals seeking to recover from disorders in the abuse of drugs,  
38 alcohol, and other substances. Application Narrative at 2; Staff Report at 1. Such care will  
39 not include any surgical, obstetrical or acute illness services. Application Narrative at 2.  
40 The only withdrawal management services provided by Applicant are subacute. Ex. 283,  
41 Ex. A at 3-5. Specifically, Applicant provides subacute detoxification services to its patients  
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1 consistent with the American Society of Addiction Medicine (“ASAM”) level 3.5<sup>1</sup> (Clinically  
2 Managed Medium-Intensity Residential Services for adolescents and Clinically Managed  
3 High-Intensity Residential Services for adults) and ASAM level 3.7<sup>2</sup> (Medically Monitored  
4 High-Intensity Inpatient Services for adolescents and Medically Monitored Intensive  
5 Inpatient Services Withdrawal Management for adults). *Id.*

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10 Applicant does not provide acute care services for treatment of “severe, unstable  
11 problems” as described in ASAM Level 4. *Id.* at 3. Any indication of needed acute services  
12 for patients are referred out to an appropriate provider, usually a hospital or agency with  
13 ASAM 4.0 level of care. *Id.* Applicant is not a licensed hospital and will not apply for such  
14 license at the facility. *Id.* at 3-4.

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20 Applicant does not propose any exterior changes or additions on the Property.  
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22 Application Narrative at 2; Staff Report at 2. While some minor interior upgrades are  
23 proposed (deferred maintenance, painting), the proposed change in use will not require any  
24 modifications to the exterior of the building or expansions to its footprint. *Id.*

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<sup>1</sup>This level of care provides 24-hour care with trained counselors to stabilize multidimensional imminent danger and prepare for outpatient treatment. Patients in this level are able to tolerate and use full active milieu or therapeutic communities. Level 3 encompasses residential services that are described as co-occurring capable, co-occurring enhanced, and complexity capable services, which are staffed by designated addiction treatment, mental health, and general medical personnel who provide a range of services in a 24-hour treatment setting. *See Ex. 283, Ex. A at 4-5.*

<sup>2</sup> This level of care provides 24-hour nursing care with a physician’s availability for significant problems in Dimensions 1, 2, or 3. Patients in this level of care require medication and have a recent history of withdrawal management at a less intensive level of care, marked by past and current inability to complete withdrawal management and enter into continuing addiction treatment. This is the appropriate setting for patients with subacute biomedical and emotional, behavioral, or cognitive problems that are so severe that they require inpatient treatment. Level 3 encompasses residential services that are described as co-occurring capable, co-occurring enhanced, and complexity capable services, which are staffed by designated addiction treatment, mental health, and general medical personnel who provide a range of services in a 24-hour treatment setting. *See Ex. 283, Ex. A at 4.*

1 **C. Impacts of Proposed Use.**

2 Applicant's Proposed Use will not create adverse impacts. Besides Applicant's  
3 willingness to install gating and fencing as conditioned by the City as discussed below, there  
4 are no structural changes to the building or any exterior changes. Rather, the Proposed Use  
5 only seeks changes to the interior of the building with minor interior upgrades. Application  
6 Narrative at 2; Staff Report at 2. As further supported by evidence in the record, any  
7 potential noise and traffic impacts will be minimized and limited. Application Narrative 5-6  
8 and 8-9; Application Narrative, Ex. F. The Proposed Use will have no substantive  
9 transportation capacity or concurrency impacts at the site driveways or nearby intersections.  
10 *Id.* With limited daily trips during overnight operational hours, limited delivery services,  
11 and rules of operation limiting the use of vehicles, the proposed use also minimizes and  
12 limits noise impacts. *Id.* As such, impacts of the proposed use will likely be equivalent to  
13 the existing assisted living use and substantially less than the prior bed and breakfast and  
14 events use. *Id.*

15 Because measures incorporated in the Proposed Use reduce any potential adverse  
16 impacts to a level of non-significance, the City's Staff Report found that: "[n]o additional  
17 measures are warranted by CMC; however a continuous fence may provide additional  
18 clarity as to the boundary of the property. A condition to that effect is proposed." Staff  
19 Report at 4. In response to the Staff Report and community concerns regarding the  
20 Property's proximity to Dorothy Fox Park and Dorothy Fox Elementary School, Applicant  
21 agreed to install a gate on the driveway entrance of the Property and continuous fencing  
22 along the exterior boundary line of the Property. Ex. 125; Ex 133 at 3; attached Decl. of  
23 Thomas Feldman; Testimony of Thomas Feldman at March 24, 2021 public hearing; Staff  
24 Report at 6.

1           Commenters have also raised speculative impacts not based on this Proposed Use.  
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3       Many comments attempted to make comparisons between this Proposed Use and other  
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5       facilities and programs operated by other companies with different patients in different  
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7       locations and communities. For example, several commenters compared this Proposed Use  
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9       to Applicant's facility in Long Beach, WA. Ex. 115; Ex. 130; Ex. 257. While Long Beach  
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11       Police call logs and Pacific County Sheriff call reports regarding discharges against  
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13       treatment advice ("ATA") were submitted into the record by opponents of the Proposed Use,  
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15       the record demonstrates that none of the incidents resulted in any violent event or materially  
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17       detrimental damages. We are not aware of any of the police calls identified leading to  
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19       patients at the Long Beach facility being arrested or charged with any crimes, nor to our  
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21       knowledge have these patients been arrested immediately after discharge ATA. Ex. 268 at  
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23       142; *see also* Ex. 115, 130, 150, 257.

24           Notably, this Proposed Use in Camas differs in scope and size from Applicant's  
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26       Long Beach facility. The Long Beach facility is a 40-bed facility located in a rural setting  
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28       where there are no taxi services and no ride share applications available in the area. Ex. 268  
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30       at 142. In contrast, this Proposed Use includes a 15-bed facility that provides services to  
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32       professionals in a more densely populated area inside the City's Urban Growth Boundary  
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34       and near other metropolitan areas where taxi services and ride share applications are readily  
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36       available. *Id.* Further, the patient demographic at Camas will be adult and professional,  
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38       while the Long Beach facility has shown efficacy with young adults. Testimony of Thomas  
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40       Feldman at March 24, 2021 public hearing.

1 Commenters also raised issues about speculative impacts of the Proposed Use on  
2 crime and property values. While there is scant empirical work on crime and economic  
3 impacts, a 2016 study shows that substance use treatment centers reduce local crime and a  
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5 2019 study shows that there is no evidence of such centers affecting property values.  
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8 Ex. 268, at 30-122. Evidence of value increases near the facility in Long Beach,  
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10 Washington (Ex. 268 at 4-20 and 136-141) also contradicts the conclusory estimates and  
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12 reports from other states offered by commenters (Ex. 130 at 257, 258-289 and 291-343).  
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16 Commenters further raised issues regarding public safety and security impacts. To  
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18 minimize any safety impacts, in addition to the driveway gate and perimeter fencing,  
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20 Applicant proposed security measures such as cameras, 30-minute bed checks, rules of  
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22 operation, and training of its professional staff that will further minimize possible impacts  
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24 and provide for the public welfare in the vicinity of the use. Ex. 51; Ex. 52, Ex. 53;  
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26 Testimony of Thomas Feldman at March 24, 2021 public hearing; Decl. of Thomas  
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28 Feldman.  
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33 In addition to evidence in the record regarding the minimization of potential adverse  
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35 impacts of the Proposed Use, Applicant proposes the following conditions of approval to  
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37 further address and respond to community concerns and to demonstrate its commitment to  
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39 comply with conditions of approval:  
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43 A. Applicant shall have a minimum of three patients and a maximum of fifteen  
44 patients at the facility.  
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46 B. Applicant shall construct a continuous 6-foot solid fence along the property  
47 perimeter and a driveway gate prior to a certificate of occupancy being issued.

1 Such fencing and gate shall be consistent with applicable City development  
2 standards.

- 3 C. All patients shall be subject to a criminal background check prior to admission.  
4 Registered sex offenders and persons who have been convicted of violent crimes  
5 shall not be admitted.  
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7 D. Applicant shall provide full-time care for three or more chronically ill or infirm  
8 persons. Such care shall not include surgical, obstetrical or acute illness services.  
9 Only six of the fifteen beds at the facility shall be used for subacute  
10 detoxification services.  
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12 E. Applicant shall provide appropriate security measures for the facility. Such  
13 measures shall, at a minimum, include security cameras and perimeter fencing.  
14 For the first three years of operation, Applicant shall produce an annual report to  
15 the City that includes a brief, general description of discharges against treatment  
16 advice at the facility, police and emergency incidents, and safety measures used  
17 at the facility in the prior year.  
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19 F. For the first three years of operation, Applicant shall meet on an annual basis  
20 with representatives from the City, Camas School District, Harvest Community  
21 Church, and three designated neighborhood representatives for the purpose of  
22 discussing the Condition E annual report and addressing security concerns.  
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24 G. Applicant shall report incidents of discharge against treatment advice to the  
25 Camas Police Department.

26 *See Decl. of Thomas Feldman, attached.*

### 27 28 **III. LEGAL STANDARD**

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30 The Hearings Examiner is to review an application for CUP as a Type III permit  
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32 under Chapter 11.55 CMC. In rendering a decision, the Hearings Examiner is to be guided  
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34 by all the criteria expressed in CMC 18.43.050. As a City decision-maker, the Hearings  
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36 Examiner has “the authority to impose reasonable conditions of approval designed to ensure  
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38 that all applicable approval standards are, or can be met.” CMC 18.55.220.A. The Hearings  
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40 Examiner’s decision must be supported by findings of fact that are supported by evidence  
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42 that is substantial, when viewed in light of the whole record, and by legal conclusions and  
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1 interpretations that are consistent with applicable law, within the authority of the City and  
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3 the Hearings Examiner, and do not violate the constitutional rights of the applicant.<sup>3</sup>  
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#### 5 6 IV. ANALYSIS

##### 7 8 A. A conditional use is to be permitted if it complies with standards in the Code.

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10 A conditional use permit is a permitted exception to zoning ordinances.<sup>4</sup> It allows a  
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12 property owner to use property in a manner that the zoning regulations expressly permit  
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14 under conditions specified in the regulations. Here, the City of Camas land use and zoning  
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16 regulations anticipate that some residential care facilities like nursing, rest or convalescent  
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18 homes can be located in the R-12 zone if criteria established by the Code are satisfied. The  
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20 Hearings Examiner is charged with making that determination regarding compliance with  
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22 the Code's criteria, and with imposing permit conditions suitable to ensure compliance with  
23  
24 those criteria.  
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28 In determining the impacts of a conditionally proposed use, the City must rely upon  
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30 objective evidence and not upon the fears of and speculation by neighborhood residents,  
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32 especially those based on inaccurate stereotypes and popular prejudices. *Sunderland Family*  
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34 *Treatment Servs. v. City of Pasco*, 127 Wn.2d 782, 903 P.2d 986 (1995) (unsubstantiated  
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36 fears about safety of the elderly or children in the area or reduction in property values did  
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38 not support disapproval of special use permit). A decision cannot be made based on  
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44 <sup>3</sup> See standards of review under the Land Use Petition Act, Chapter 36.70C RCW at RCW  
45 36.70C.130.

46 <sup>4</sup> See Black's Law Dictionary (11th ed. 2019) (definition of "special-use permit" also termed  
47 "conditional-use permit").

1 community displeasure; it needs to be supported by policies and standards and made in  
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3 reliance on evidence in the record. *Maranatha Mining, Inc. v. Pierce County*, 59 Wn.App.  
4 795, 804, 801 P.2d 985, 992 (1990) (City Council's denial of a permit for a surface gravel  
5 mine and asphalt plant overturned as based "on community displeasure and not on reasons  
6 backed by policies and standards as the law requires"); *see also Kenart & Assoc. v. Skagit*  
7 *County*, 37 Wn.App. 295, 680 P.2d 439 (1980) (community displeasure and unsupported  
8 findings were not valid reasons for denial of a subdivision). "[I]f fear and community  
9 displeasure are allowed to be used to deny permits for essential services, such facilities  
10 could simply never be built." *Wash. State Dep't of Corrections v. City of Kennewick*, 86  
11 Wn.App. 521, 529; 937 P.2d 1119, 1124 (1997). Under the permit criteria, a conditional use  
12 complies if it is not materially detrimental to the public welfare, or injurious to the property  
13 or improvements in the vicinity, if appropriate measures are taken to minimize possible  
14 adverse impacts, and if the other CUP criteria of CMC 18.43.050 are satisfied.  
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32 **B. Full-time care and treatment to recover from disorders in the abuse of drugs,**  
33 **alcohol, and other substances is a convalescent home use in Camas.**  
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35 CMC 18.03.030 provides the following definition of a "convalescent home":  
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37 "Nursing, rest or convalescent home" means an establishment which provides  
38 full-time care for three or more chronically ill or infirm persons. Such care  
39 shall not include surgical, obstetrical or acute illness services.  
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44 While in other codes and other systems, this use might be called something else, other  
45 names and other definitions are not determinative of the meaning of the Camas Municipal  
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Code definitions. For that meaning, we first look to the plain language of the code, then to context, and finally to fulfilling the policy of the city regulations. With the plain meaning and intent in mind, the Proposed Use falls within the use category as a convalescent home.

**1. Interpretation of Code; Plain Language.**

When interpreting municipal ordinances, the rules of statutory construction applicable to interpretation of state statutes are used. *See, Tateuchi v. City of Bellevue*, 15 Wn.App.2d 888, 897-898, 478 P.3d 142, 149 (2020). Courts determine the plain meaning of a statute by looking to “the ordinary meaning of words, the basic rules of grammar, and the statutory context to conclude what the legislature has provided for in the statute and related statutes.” *Id.* (internal citations omitted).

“Convalescent” is not defined by the Code, so its common meaning is used to guide interpretation of the term. For that common meaning, courts look to standard English language dictionaries. *Id.* (citing *Boeing Co. v. Aetna Cas. & Sur. Co.*, 113 Wn.2d 869, 877, 784 P.2d 507 (1990)). As provided in Merriam-Webster’s Dictionary, “convalescent” means “recovering from sickness or debility: partially restored to health or strength.”<sup>5</sup> Further, the ordinary meaning of “convalesce” means “recovering from sickness or debility.” *Id.*

Although not determinative of the meaning in the City of Camas, it is notable that the City of Long Beach, Washington approved a nearly identical request regarding Applicant’s drug and alcohol rehabilitation center as a nursing home use under its municipal code. A memorandum dated December 11, 2017 from the Long Beach City Attorney was provided for the City of Camas to review during the pre-application process. *See Ex. 268 at*

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<sup>5</sup> “Convalescent.” *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/convalescent> (accessed April 14, 2021).

1 26-27. Like the proposed change of use in Camas, the Long Beach property was previously  
2 used as an assisted living facility before the Discover Recovery Long Beach facility began  
3 operating under its 2018 City of Long Beach conditional use permit.  
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6 Another term used in the “convalescent home” definition that is not defined by the  
7 code is “acute illness services”. Commenters have argued that Applicant’s services are  
8 “acute illness services” because the word “acute” is sometimes used in reference to patient  
9 circumstances in broad statements made by the company’s website and by its business  
10 director. That argument is misguided and mischaracterizes the detoxification services that  
11 Applicant provides to patients under state licenses.  
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14 The Code only uses the term “acute” in this “convalescent home” definition in  
15 CMC 18.03.030 and does not offer any definition of the word “acute”. But, state law  
16 regarding medical services and facilities provides some insight. Looking at state law and  
17 how that compares against the City’s definitions, it is reasonable to find that hospitals  
18 provide “acute” care services while treatment services that address less intensive care  
19 outside of a hospital setting is properly defined as “subacute.” Exhibit 283, Ex. A at 3-5.  
20 WAC 182-550-1050<sup>6</sup> defines hospital services and provides the following definitions  
21 involving “acute care” and “subacute care”:  
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- **“Acute”** - A medical condition of severe intensity with sudden onset. For the purposes of the acute physical medicine and rehabilitation (Acute PM&R) program, acute means an intense medical episode, not longer than three months.
  - **“Acute care”** - Care provided for patients who are not medically stable or have not attained a satisfactory level of rehabilitation. These patients require

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<sup>6</sup> A link to this regulation is provided [here](#).

1 frequent monitoring by a health care professional to maintain their health  
2 status.  
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- 4 • **“Subacute care”** - Care provided to a client which is less intensive than that  
5 given at an acute care hospital. Skilled nursing, nursing care facilities and  
6 other facilities provide subacute care services.  
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10 These statutory definitions are consistent with medical standards for levels of service and  
11 care under ASAM, described in Section II.B above.  
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13 In the Camas Municipal Code, the word “acute” modifies the phrase “illness  
14 services.” To interpret this phrase, plain language meanings should be consulted. Merriam-  
15 Webster’s Dictionary uses an example of “acute illness” and defines it as “having a sudden  
16 onset, sharp rise, and short course.”<sup>7</sup> For its “acute hospitals” example, the dictionary refers  
17 to “being, providing, or requiring short-term medical care (as for serious illness or traumatic  
18 injury).” *Id.*  
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20 An acute illness is an infirmity that requires sudden and immediate intervention. An  
21 asthma attack, heart attack, or stroke are examples of acute illnesses. For an acute illness, a  
22 person would seek emergency medical response and head to a hospital immediately. In fact,  
23 if a patient at Discover Recovery is suffering from an acute illness or symptoms of an acute  
24 illness, Discover Recovery seeks emergency medical response for that patient or refers such  
25 patient to an appropriate acute care provider for immediate medical attention. *See* Ex. 257 at  
26 17, 28, 66, 70, 74.  
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28 These phrases for “acute illness” do **not** describe care for persons seeking to recover  
29 from disorders in the abuse of drugs, alcohol, and other substances. The pre-admission  
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<sup>7</sup> “Acute.” *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/convalescent> (accessed April 14, 2021).

1 process for patients assesses severity of symptoms. *See* Ex. 283, Ex. A at 3. If acute  
2 services are presented, such patient is then immediately referred out to an appropriate acute  
3 care provider, usually a hospital. *See id.* Patients seeking admission for Discover  
4 Recovery's services are admitted in a process that could take days or weeks and does not  
5 require immediate intervention. While a portion of care provided may require subacute  
6 nursing care, such as detoxification services, the treatment and care offered to patients for  
7 this convalescent use is for a chronic infirmity and involves behavioral, mental, emotional  
8 and physical health that do not have a sudden onset, sharp rise, and short course. As  
9 provided in Exhibit 283, Discover Recovery will offer subacute detoxification services that  
10 are not within a hospital setting. *See* Exhibit 283, Ex. A; *see also* footnotes 1 and 2, *supra*.  
11 Acute illness or injury would be referred to another medical provider.  
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13 Applicant has stated and again confirms in the proposed conditions that its services  
14 to be offered at the facility include residential treatment services and some subacute care.  
15 None of the Discover Recovery services will be licensed by the state as acute care. *See*  
16 Exhibit 283, Ex. A at 3-5. With respect to the proportion of subacute detoxification services  
17 provided, Applicant is further agreeable to confining subacute detoxification to no more than  
18 six (6) of the 15 beds proposed at the facility.  
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## 20 **2. Applying the Camas Definition.**

21 The City's "convalescent home" definition has two components: (a) an element  
22 focused on the services provided; and (b) an element focused on the recipients of the  
23 services.  
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1                   **a.       Services Element**

2                   The definition first focuses on the services provided at the establishment. Those  
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4                   services are to provide “full-time care.” The definition also states that “[s]uch care shall not  
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6                   include surgical, obstetrical or acute illness services.” In other words, this is to be a non-  
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8                   hospital, skilled nursing establishment for care and treatment of persons recovering from  
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10                  illness or infirmities.  
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12                  Here, the Proposed Use would involve full-time care and treatment for individuals  
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14                  seeking to recover from disorders in the abuse of drugs, alcohol, and other substances. By  
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16                  providing such care and treatment services, the Proposed Use constitutes a convalescent  
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18                  home use. As discussed in Section III.B.1 above, “acute” is not defined in the Camas  
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20                  Municipal Code, but most commonly applies to care provided by hospitals. “Sub-acute”  
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22                  care is described in Applicant’s narrative description, and is applicable to a portion of  
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24                  Discover Recovery’s services. Applicant specifically focuses on providing a therapeutically  
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26                  planned living and rehabilitative intervention environment for the treatment of individuals  
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28                  together with some subacute care. Applicant’s services satisfy the services element of the  
29  
30                  “convalescent home” definition.  
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33                   **b.       Recipients Element**

34                  The second part of the “convalescent home” definition focuses on the recipients of  
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36                  the services, which are to include “three or more chronically ill or infirm persons.” Here,  
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38                  Applicant proposes a facility for up to 15 patients to receive full-time care and treatment to  
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40                  recover from disorders in the abuse of drugs, alcohol, and other substances. As the Staff  
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42                  Report points out, state law recognizes the category of “chronically ill or convalescent  
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44                  patients” to include those with “mental, emotional, or behavioral problems, intellectual  
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47

1 disabilities, or alcoholism.” RCW 43.190.020(a). The recipients of the services to be  
2 provided fall within this element of the City’s use definition for a convalescent home.  
3

4  
5 **3. Interpreting Code Definitions to Implement Public Policy.**  
6

7  
8 If the City does not recognize this use as falling within its “convalescent home”  
9 category, then it is failing to allow the siting of an essential public facility within its  
10 boundaries because no other permitted or conditionally permitted use covers this type of use  
11 – which would effectively exclude such a use from being sited in the city. Under the  
12 Growth Management Act, Chapter 36.70A RCW (the “GMA”), each city planning under the  
13 GMA is to provide for siting facilities such as inpatient facilities including substance abuse  
14 facilities. RCW 36.70A.200(1)(a). No local comprehensive plan or development regulation  
15 may preclude the siting of essential public facilities. RCW 36.70A.200(5). If ambiguity is  
16 found after considering the plain language of the City’s ordinances, reading the code’s  
17 definition of “convalescent home” and term “acute illness” to exclude this use to treat  
18 chronically ill or infirm persons with substance use disorders would be improper as it would  
19 be inconsistent with public policy for local development regulations. *See, e.g., In re Estate*  
20 *of Mower*, 193 Wn.App. 706, 713, 374 P.3d 180, 185 (2016) (policy considerations may  
21 provide a valuable rule of statutory construction in interpreting an ambiguous statute)  
22 (internal citations omitted).  
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38 **C. The CUP application is consistent with the criteria of CMC 18.43.050.**  
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40 The Proposed Use, especially as conditioned, satisfies the CMC’s criteria for  
41 issuance of a CUP under CMC 18.43.050 (the “CUP Criteria”). In the section below,  
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1 Applicant first addresses criteria that are not contested as having been satisfied and then  
2  
3 speaks to criteria where questions have been raised by commenters.  
4

5  
6 **1. The proposal satisfies the CUP Criteria under subsections .B, .C, and .F.**  
7

8 As discussed and stated in the Staff Report, the Proposed Use satisfies the following  
9  
10 criteria under CMC 18.43.050:  
11

12  
13 B. The proposed use shall meet or exceed the development standards that  
14 are required in the zoning district in which the subject property is situated;

15 C. The proposed use shall be compatible with the surrounding land uses  
16 in terms of traffic and pedestrian circulation, density, building, and site  
17 design; [...]

18 F. Any special conditions and criteria established for the proposed use  
19 have been satisfied.  
20

21  
22 With respect to Criterion B, Applicant does not propose any changes to the exterior of the  
23 existing structure, apart from installing a fence and gate in accordance with development  
24 standards. In addition, as noted in the Staff Report, the location of the existing structure on  
25 the site exceeds standards with respect to setbacks and mature landscaping is also in place  
26 on the site to provide screening benefits. Dedication of right-of-way (which Applicant  
27 accepts as a condition) will further provide road and sidewalk consistency at the site. For  
28 Criterion C, traffic circulation is compatible with the neighborhood<sup>8</sup> and will either have no  
29 substantive transportation capacity or concurrency impacts at the site driveways or nearby  
30 intersections, and pedestrian access is benefitted by the additional dedication of right-of-way  
31 for pedestrian circulation. The density, building, and site design are unchanged by the  
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<sup>8</sup> Application Narrative, Ex. F.

1 change in use and remain compatible with the surrounding land uses, especially with the  
2  
3 larger than typical lot size and greater site setbacks than required in the zone. The Code  
4  
5 does not establish any other special conditions or criteria for the proposed convalescent  
6  
7 home use, so Criterion F is also satisfied.  
8  
9

10  
11 **2. The proposed use will not be materially detrimental to the public**  
12 **welfare, or injurious to the property or improvements in the vicinity of**  
13 **the proposed use.**  
14

15 Commenters have raised questions with respect to compliance with CUP  
16  
17 Criterion A, most of which fall into the following topical categories: (a) safety and security;  
18  
19 (b) proximity to an elementary school, a park, and/or residences; and (c) property value  
20  
21 impacts. Each of these topics is addressed below.  
22

23 **a. Safety and Security.**  
24

25 A number of commenters have alleged that the Proposed Use will increase crime in  
26  
27 the vicinity and adversely impact public safety. The evidence, however, does not show that  
28  
29 those fears have materialized in actual public safety impacts in other locations. Studies have  
30  
31 debunked the premise, often based in fear and prejudicial stereotypes, that drug treatment  
32  
33 facilities cause an increase in crime in the vicinity. *See, e.g.*, Ex. 268, at 30-70. Instead, a  
34  
35 study conducted by the National Bureau of Economic Research in 2016 indicates that  
36  
37 substance abuse treatment facilities reduce both violent and financially motivated crimes in  
38  
39 their vicinity, and that the effects are particularly pronounced for relatively serious crimes.  
40  
41 *Id.*  
42

43 Because Camas Discover Recovery cannot operate until this CUP is granted,  
44  
45 opponents of this application have looked to Discover Recovery's facility in Long  
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47

1 Beach, Washington and tried to make inferences of harm to anticipate in Camas. Opponents  
2 have produced police call-logs (e.g., Ex. 115, 130, 150, 257) and provided testimony  
3 regarding the facility, neighbor impacts, and made allegations of what to expect when a  
4 patient is discharged ATA.  
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8  
9 Looking at the actual evidence, there is not a record to support a finding that the  
10 Proposed Use in Camas will be materially detrimental to public safety and welfare. The  
11 most the record shows with respect to injury or crime in the surrounding area related to a  
12 patient or former patient is minor property damage that one former Long Beach patient was  
13 found to have caused to a neighbor's shed - and which Thomas Feldman called the police to  
14 report and to volunteer to pay for the victim's loss. *See* Ex. 115 at page 175. The call-logs  
15 from the Long Beach Police Department merely show that, although not required by law,  
16 Discover Recovery provided local law enforcement with notice of discharges ATA. A call  
17 made to police does **not** equal a crime to person or property resulting from the convalescent  
18 home use. There is simply no evidence of criminal charges being filed as a result of these  
19 events, let alone a conviction. The call logs do not demonstrate any violent events caused  
20 by residents or discharged patients at the Long Beach facility. These police call logs instead  
21 show Discover Recovery working diligently with local law enforcement for the protection of  
22 its current or former patients and the local community.  
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36 Long Beach Police Chief Flint Wright confirmed this in statements offered to the  
37 *Camas-Washougal Post-Record* as published in a March 18, 2021 article. *See* Ex. 268, at  
38 125. His comments about the Long Beach Discover Recovery center included the  
39 following:  
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43

- 44 • “We’ve had calls over there, but it’s not been over the top.”
- 45 • “We’ll get a call that a client left against advice, or they’ll ask us to do a  
46  
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1 welfare check, but I wouldn't classify it as a problem. It's not something I  
2 wake up everyday worrying about."

- 3 • "We've had less trouble with the drug rehab than we did with the retirement  
4 home."

5  
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9 *Id.*

10 It's also likely that discharges ATA will operate differently in Camas than in Long  
11 Beach. At the larger Long Beach facility, a patient who is discharged and has no access to a  
12 vehicle at the facility has few options for how to travel from the facility. There is no access  
13 to ridesharing, taxi services, or regional bus services available at discharge. *See* Ex. 268 at  
14 142. The Camas facility, on the other hand, does have access to transportation alternatives.  
15 The patient demographic at Camas will be adult and professional, while the Long Beach  
16 facility has shown efficacy with young adults. Testimony of Thomas Feldman at March 24,  
17 2021 public hearing. It is anticipated then that patients at the Camas facility will have  
18 broader access to financial resources than Long Beach patients due to their more mature age  
19 and professional status. Nevertheless, although the options and risks at discharge ATA vary  
20 between these facilities, Applicant has agreed to notify the Camas Police Department of  
21 discharges ATA. Testimony of Thomas Feldman at March 24, 2021 public hearing; Decl. of  
22 Thomas Feldman.

23 As Long Beach resident Laura Meza states in her letter (Ex. 268 at 129), she was  
24 also concerned about safety and privacy for herself and her three children and two tenants in  
25 a triplex near the Discover Recovery Camas site when that use opened in 2018. But, she  
26 found Discover Recovery to be consistent in timely addressing concerns with a permanent  
27 solution. Ex. 268 at 129. Other Long Beach neighbors and community members speak to  
28 the safety of the facility and Discover Recovery's improvements to the building, its  
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1 landscaping, and its fencing. *Id.* at 129-135.

2  
3 In *Washington State Department of Corrections v. City of Kennewick*, the Court  
4 upheld a city planning director's grant of a conditional use permit for a work release facility  
5 and overturned decisions of a planning commission and city council which had reversed the  
6 director's permit decision. 86 Wn.App. 521, 937 P.2d 1119 (1997). Neighboring property  
7 owners had feared the facility would increase the incidence of crime in the area and decrease  
8 their properties' value. The planning commission and city council held that the work release  
9 use would be materially detrimental to surrounding property "in light of common experience  
10 result in a reduction in property values and the lessening of an owner's right to the  
11 comfortable and quiet enjoyment of his property." 86 Wn. App. at 528; 937 P.2d at 1124.  
12 The Court overturned the Kennewick planning commission and city council, finding that  
13 those perceptions and projections of increased crime and property value impacts were not  
14 sufficient to outweigh the substantial evidence that such impacts were not found to  
15 commonly result from the siting of similar work release facilities. The same is true here:  
16 ***the evidence supports a finding that material detrimental impacts will not result from the***  
17 ***Proposed Use***, particularly with the appropriate measures offered to further security.  
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33 **b. Proximity to Other Uses.**

34 Neither city nor state law sets any siting rules regarding proximity of convalescent  
35 home uses to schools or parks. Even if the City treated this use in a narrower drug  
36 rehabilitation services category, there is no state or local law restricting siting within a  
37 certain distance of a school or a public park. Proximity to single-family residential  
38 properties is anticipated by the City allowing convalescent homes as a conditional use in the  
39 R-12 zone.  
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Although the Code does not speak to proximity restrictions, looking at the specific

1 surrounding uses is part of determining appropriate measures to minimize possible adverse  
2 impacts. With respect to the public welfare of elementary school users and property, park  
3 users and property, church users and property, and surrounding residents and their property,  
4 the proposed perimeter fencing and gate imposes a boundary that minimizes impacts. The  
5 Applicant's proposed background checks and conditions against admission of registered sex  
6 offenders and persons convicted of violent crimes in its privately operated facility further  
7 provides for the security of children, families, faculty and staff in the vicinity as well as  
8 Applicant's patients and staff. Other security measures proposed by Applicant — such as  
9 cameras, rules of operation, 30-minute bed checks, and training of its professional staff —  
10 will further minimize possible impacts and provide for the public welfare in the vicinity of  
11 the use.  
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23 **c. Economic Impacts to Property Values are Not Addressed by**  
24 **Criterion A.**  
25

26 Criterion A does not apply a test for whether a proposed use will impact property  
27 values. There are other provisions in the Camas Municipal Code that expressly protect  
28 property values. For example, for the construction, location, and maintenance of certain  
29 signs affecting the public's health, safety and welfare, the plain text of CMC 18.15.010  
30 expressly considers signage impacts on the "economic value" of tourism and "economic  
31 growth." The plain text of CUP Criterion A does not include any consideration of impacts  
32 on surrounding "economic" or property values. Instead, Criterion A speaks to whether the  
33 use is "injurious to the property or improvements in the vicinity." That would be the case if  
34 a use proposed inadequate parking, shifting parking demand onto an adjacent property. Or,  
35 such injury to property or improvements could result if the proposed use generated  
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1 stormwater runoff that would damage a nearby building or cause erosion nearby. Based on  
2  
3 the plain text of CMC 18.43.050.A and in context of the CMC as a whole, the City did not  
4  
5 intend to consider the proposed use's impact on surrounding economic or property values.<sup>9</sup>  
6

7  
8 Arguendo, even if economic impacts were recognized by Criterion A, commenters  
9  
10 have not presented substantial evidence of materially detrimental or materially injurious  
11  
12 impacts resulting from the proposed reuse of this existing building in Camas, most recently  
13  
14 used as an assisted living facility, for a convalescent home use. While there is scant  
15  
16 empirical work on this question of economic impacts, a 2019 study shows instead that there  
17  
18 is no evidence that substance use disorder treatment centers affect property values. *See*  
19  
20 Ex. 268, at 71-122. Further, the assessed and appraised values of the properties surrounding  
21  
22 Applicant's existing and much larger Long Beach facility have increased since Discover  
23  
24 Recovery commenced its operations there in 2018. *Id.* at 4-20 (Pacific County Assessor  
25  
26 values) and 136-141 (appraisal conducted by a Member of the Appraisal Institute, or MAI).  
27  
28 Studies produced by opponents (Ex. 130 at pp. 258-289 and pp. 291-343) considering  
29  
30 impacts in central Virginia and Kane County, Illinois are not persuasive to use for  
31  
32 projections in Camas, Washington. The unsupported estimate of a person affiliated with  
33  
34 Keller Williams (Ex. 130 at p. 257) is conclusory and does not provide any indication of  
35  
36 variables considered or the appraisal credentials of Reno Warren. Other anecdotal claims  
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43 <sup>9</sup> Similarly, although environmental impacts are not called out in the CUP criteria, it is  
44 notable that the State Environmental Policy Act does not recognize economic impacts as impacts on  
45 the built environment. *See, e.g., Kucera v. State, Dep't of Transp.*, 140 Wn.2d 200, 995 P.2d 63  
46 (2000).  
47

1 based on perception and not on the facts should not guide a finding of adverse impact on  
2  
3 property values, nor do such claims demonstrate impacts rising to a level of materiality or  
4  
5 injury to property or improvements.  
6

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9 **3. Appropriate measures have been taken to minimize possible adverse**  
10 **impacts fulfilling CUP Criterion D.**  
11

12 As discussed above, CUP Criterion A employs a “materiality” threshold for  
13  
14 detrimental impacts. CUP Criterion D uses “appropriateness” and “minimization”  
15  
16 thresholds. The Code does not say that possible adverse impacts must be eliminated; rather,  
17  
18 they are to be minimized. It also does not say that every possible impact must be mitigated.  
19  
20 It says “appropriate measures” are to be taken to minimize possible adverse impacts that the  
21  
22 use may have on the area in the vicinity of the use.  
23  
24

25 As discussed above, security concerns have been raised by a number of commenters.  
26  
27 To address those possible impacts, the Applicant has proposed perimeter fencing, a gate at  
28  
29 the driveway, a criminal background check prior to admission, and a prohibition on  
30  
31 admitting registered sex offenders and persons convicted of violent crimes.  
32  
33

34 Applicant understands that the City must make a forward-looking assessment of  
35  
36 possible adverse impacts to perform its regulatory requirements under the CUP codes. For  
37  
38 this reason, Applicant proposes to make an annual security report to the City during its first  
39  
40 three years of operation and to hold meetings with the City and stakeholders annually to  
41  
42 discuss those reports and to address security concerns.  
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1                   **4. The proposed use is consistent with the goals and policies expressed in**  
2                   **the comprehensive plan.**  
3

4  
5                   As discussed in the Staff Report, Applicant posits that the treatment use is consistent  
6 with the provisions to encourage health services that offer programs and facilities to help  
7 persons with special needs and disabilities. Moreover, nothing about this proposed use as  
8 been identified as inconsistent with the City's Comprehensive Plan. Further, as noted  
9 above, allowance for siting of essential public facilities, including facilities for treating  
10 substance abuse, is a policy underlying the City's comprehensive plan under the GMA.  
11

12                   **CONCLUSION AND REQUESTED RELIEF**  
13

14                   As the Court held in *Maranatha Mining*, "[i]t is improper to deny the permit to an  
15 applicant who, throughout the application process, has demonstrated a willingness to  
16 mitigate any and every legitimate problem." 59 Wn.App. at 805, 801 P.2d at 992. Here, the  
17 City asked for fencing along the eastern property line to distinguish the property from the  
18 park and school sites; the Applicant proposes fencing along the entire property perimeter  
19 together with a gate at the driveway. Commenters raised questions about services provided  
20 and consistency with the "convalescent home" definition; the Applicant proposes to limit the  
21 proportion of sub-acute detoxification services provided to six (6) of the 15 beds in the  
22 facility. Questions have been raised about impacts over time, and Applicant has responded  
23 by proposing annual reports and annual stakeholder conversations to enable the City's  
24 monitoring of the Proposed Use.  
25

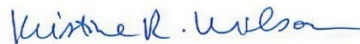
26                   Especially as conditioned, the Proposed Use satisfies the Code's criteria and,  
27 therefore, the use should be permitted. For the reasons stated above, Applicant requests that  
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1 the Hearings Examiner grant the conditional use permit, including the conditions  
2  
3 recommended by the City in the Staff Report plus the additional conditions that the  
4  
5 Applicant has committed to incorporate in its proposal.  
6  
7

8  
9 Dated this 14th day of April, 2021.  
10  
11  
12  
13

14 **PERKINS COIE LLP**  
15

16  
17 By:

18   
19

20 Kristine R. Wilson, WSBA #33152

21 Nikesh Patel, WSBA #57749

22 Attorneys for Applicant Discover  
23 Recovery  
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Hearing Date: March 24, 2021

HEARING EXAMINER JOE TURNER

**BEFORE THE HEARING EXAMINER  
OF THE CITY OF CAMAS**

In the Matter of the Application of Discover  
Recovery for:

CONDITIONAL USE PERMIT

File No. CUP21-01

DECLARATION OF THOMAS  
FELDMAN

**DECLARATION OF THOMAS FELDMAN**

I, Thomas Feldman, hereby declare as follows:

1. I am over the age of 18 years, make this declaration on personal knowledge of the facts stated herein, and am competent to testify.

2. I am a co-owner of Tranquility Partners, LLC, dba Discover Recovery (“Applicant”).

3. On behalf of Applicant, we incorporate the following as part of our proposal for use of this property, are agreeable to the City of Camas (“City”) including these as conditions of our permit for this convalescent home use, and confirm our commitment to comply with such conditions:

A. Applicant shall have a minimum of three patients and a maximum of fifteen patients at the facility.

B. Applicant shall construct a continuous 6-foot solid fence along the property

DECLARATION OF  
THOMAS FELDMAN – 1

152152466.1

**Perkins Coie LLP**  
10885 N.E. Fourth Street, Suite 700  
Bellevue, WA 98004-5579  
Phone: 425.635.1400  
Fax: 425.635.2400

1 perimeter and a driveway gate prior to a certificate of occupancy being  
2 issued. Such fencing and gate shall be consistent with applicable City  
3 development standards.  
4

5  
6  
7 C. All patients shall be subject to a criminal background check prior to  
8 admission. Registered sex offenders and persons who have been convicted of  
9 violent crimes shall not be admitted.  
10

11  
12 D. Applicant shall provide full-time care for three or more chronically ill or  
13 infirm persons. Such care shall not include surgical, obstetrical or acute  
14 illness services. Only six of the fifteen beds at the facility shall be used for  
15 subacute detoxification services.  
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17

18  
19 E. Applicant shall provide appropriate security measures for the facility. Such  
20 measures shall, at a minimum, include security cameras and perimeter  
21 fencing. For the first three years of operation, Applicant shall produce an  
22 annual report to the City that includes a brief, general description of  
23 discharges against treatment advice at the facility, police and emergency  
24 incidents, and safety measures used at the facility in the prior year.  
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27  
28 F. For the first three years of operation, Applicant shall meet on an annual basis  
29 with representatives from the City, Camas School District, Harvest  
30 Community Church, and three designated neighborhood representatives for  
31 the purpose of discussing the Condition E annual report and addressing  
32 security concerns.  
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36 G. Applicant shall report incidents of discharge against treatment advice to the  
37 Camas Police Department.  
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DECLARATION OF  
THOMAS FELDMAN – 2

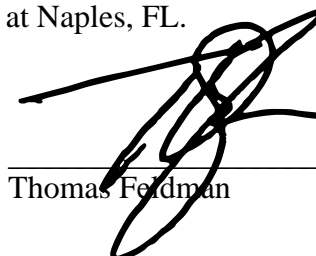
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Phone: 425.635.1400  
Fax: 425.635.2400

1 I declare under penalty of perjury under the laws of the State of Washington that the  
2 foregoing is true and correct.  
3

4 EXECUTED this 14th day of April, 2021 at Naples, FL.  
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Thomas Feldman

DECLARATION OF  
THOMAS FELDMAN – 3

152152466.1

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