



Community Development Department | Planning
 616 NE Fourth Avenue | Camas, WA 98607
 (360) 817-1568
communitydevelopment@cityofcamas.us

Hood Street Subdivision
 General Application Form Preliminary Subdivision Application **Case Number:** Appeal 22-02

Applicant Information

Applicant/Contact: Attn: Gayle Gerke, Olson Engineering, Inc. **Phone:** (360) 695-1385

Address: 222 E. Evergreen Blvd. gayleg@olsonengr.com

<i>Street Address</i>	<i>E-mail Address</i>
<u>Vancouver</u>	<u>WA 98660</u>
<i>City</i>	<i>State ZIP Code</i>

Property Information

Property Address: 1811 NW Hood 127415000 and 127440000

<i>Street Address</i>	<i>County Assessor # / Parcel #</i>
<u>Camas</u>	<u>WA 98607</u>
<i>City</i>	<i>State ZIP Code</i>

Zoning District R-7.5 **Site Size** 6.08 acres +/-

Description of Project

Brief description:
 The Applicant proposes to divide approximately 6.08 acres zoned R-7.5 into 18 lots for single-family detached homes.

Are you requesting a consolidated review per CMC 18.55.020(B)? YES NO

Permits Requested: Type I Type II Type III Type IV, BOA, Other

Property Owner or Contract Purchaser

Applicant and Owner's Name: Modern Dwellings LLC **Phone:** (971) 322-3318

<i>Last</i>	<i>First</i>
<u>8101 NE Glisan</u>	<u>sergey@modernnw.com</u>
<i>Street Address</i>	<i>Apartment/Unit #</i>
<u>Portland</u>	<u>OR 97213</u>
<i>City</i>	<i>State Zip</i>

Signature

I authorize the applicant to make this application. Further, I grant permission for city staff to conduct site inspections of the property.

Signature: **Date:** 01/11/22

Note: If multiple property owners are party to the application, an additional application form must be signed by each owner. If it is impractical to obtain a property owner signature, then a letter of authorization from the owner is required.

Date Submitted: 9/20/22	Pre-Application Date:	\$399.00 707946 9/20/22 KM
Staff:	Related Cases #	<input type="checkbox"/> Electronic Copy Submitted
		Validation of Fees

Application Checklist and Fees [updated on January 1, 2022]

◇ Annexation	\$863 - 10% petition; \$3,669 - 60% petition	001-00-345-890-00	\$	
◇ Appeal Fee		001-00-345-810-00	\$399.00	\$ 399.00
◇ Archaeological Review		001-00-345-810-00	\$137.00	\$
◇ Binding Site Plan	\$1,879 + \$24 per unit	001-00-345-810-00		\$
◇ Boundary Line Adjustment		001-00-345-810-00	\$103.00	\$
◇ Comprehensive Plan Amendment		001-00-345-810-00	\$5,826.00	\$
◇ Conditional Use Permit				
Residential	\$3,417 + \$105 per unit	001-00-345-810-00		\$
Non-Residential		001-00-345-810-00	\$4,328.00	\$
◇ Continuance of Public Hearing		001-00-345-810-00	\$524.00	\$
◇ Critical or Sensitive Areas (fee per type)		001-00-345-810-00	\$775.00	\$
	(wetlands, steep slopes or potentially unstable soils, streams and watercourses, vegetation removal, wildlife habitat)			
◇ Design Review				
Minor		001-00-345-810-00	\$433.00	\$
Committee		001-00-345-810-00	\$2,375.00	\$
◇ Development Agreement	\$877 first hearing; \$530 ea. add'l hearing/continuance	001-00-345-810-00		\$
◇ Engineering Department Review - Fees Collected at Time of Engineering Plan Approval				
Construction Plan Review & Inspection	(3% of approved estimated construction costs)			
Modification to Approved Construction Plan Review	(Fee shown for information only)		\$420.00	
Single Family Residence (SFR) - Stormwater Plan Review	(Fee shown for information only)		\$208.00	
Gates/Barrier on Private Street Plan Review	(Fee shown for information only)		\$1,041.00	
◇ Fire Department Review				
Short Plat or other Development Construction Plan Review & Insp.		115-09-345-830-10	\$284.00	\$
Subdivision or PRD Construction Plan Review & Inspection		115-09-345-830-10	\$354.00	\$
Commercial Construction Plan Review & Inspection		115-09-345-830-10	\$424.00	\$
◇ Home Occupation				
Minor - Notification (No fee)			\$0.00	
Major		001-00-321-900-00	\$69.00	\$
◇ LI/BP Development	\$4,328 + \$41.00 per 1000 sf of GFA	001-00-345-810-00		\$
◇ Minor Modifications to approved development		001-00-345-810-00	\$346.00	\$
◇ Planned Residential Development	\$35 per unit + subdivision fees	001-00-345-810-00		\$
◇ Plat, Preliminary				
Short Plat	4 lots or less: \$1,936 per lot	001-00-345-810-00		\$
Short Plat	5 lots or more: \$7,175 + \$250 per lot	001-00-345-810-00		\$
Subdivision	\$7,175 + \$250 per lot	001-00-345-810-00		\$
◇ Plat, Final:				
Short Plat		001-00-345-810-00	\$200.00	\$
Subdivision		001-00-345-810-00	\$2,375.00	\$
◇ Plat Modification/Alteration		001-00-345-810-00	\$1,196.00	\$
◇ Pre-Application (Type III or IV Permits)				
No fee for Type I or II				
General		001-00-345-810-00	\$354.00	\$
Subdivision (Type III or IV)		001-00-345-810-00	\$911.00	\$
◇ SEPA		001-00-345-890-00	\$810.00	\$
◇ Shoreline Permit		001-00-345-890-00	\$1,196.00	\$
◇ Sign Permit				
General Sign Permit	(Exempt if building permit is required)	001.00.322.400.00	\$41.00	\$
Master Sign Permit		001.00.322.400.00	\$126.00	\$
◇ Site Plan Review				
Residential	\$1,151 + \$34 per unit	001-00-345-810-00		\$
Non-Residential	\$2,876 + \$68 per 1000 sf of GFA	001-00-345-810-00		\$
Mixed Residential/Non Residential	(see below)	001-00-345-810-00		\$
	\$4,055 + \$34 per res unit + \$68 per 1000 sf of GFA			
◇ Temporary Use Permit		001-00-321-990-00	\$80.00	\$
◇ Variance (Minor)		001-00-345-810-00	\$695.00	\$
◇ Variance (Major)		001-00-345-810-00	\$1,295.00	\$
◇ Zone Change (single tract)		001-00-345-810-00	\$3,345.00	\$

Adopted by RES 1023 AUG 2005; Revised by RES 1113 SEPT 2007; Revised by RES 1163 OCT 2009; Revised by RES 1204 NOV 2010;
Revised by RES 15-001 JAN 2015; Revised by RES 15-007 MAY 2015; Revised by RES 15-018 DEC 2015; Revised by RES 16-019 NOV 2016;
Revised by RES 17-015 NOV 2017; Revised by RES 18-003 APRIL 2018; Revised by RES 18-013 NOV 2018; Revised by RES 19-018 DEC 2019
Revised by RES20-014 DEC 2020

Fees reviewed & approved by Planner:

9/20/22

Initial

Date

For office use only

Total Fees Due: \$ 399.00

City of Camas
616 NE 4th Avenue
Camas, WA 98607
360-834-2462

Finance Office Hours:
Monday-Friday 9:00 - 5:00 p.m.

Date/Time 09/20/2022 10:07 AM
Receipt No. 00707946
Receipt Date 09/20/2022
CR plan 399.00
appeal
appeal fee/plann
ing 399.00

Cash: 0.00
Other: 0.00
399.00
Check: 0.00

Total: 399.00
Change: 0.00

Check No: HOOD ST SUBDIVISION (SUB22-01)

CHRISTOPHER & SUSAN REIVE
Customer #: 000000
1829 NW COLUMBIA SUMMIT DR

CAMAS WA 98607-
Cashier: kmurphy
Station: IS02594

Christopher and Susan Reive
 1829 NW Columbia Summit Dr.
 Camas, WA 98607

RECEIVED
 SEP 20 2022
 BY: *Bernie Falcon*
 City Clerk

September 20, 2022

Mr. Joe Turner, AICP
 City of Camas Land Use Hearing Examiner
 c/o City of Camas Clerk – for filing
 616 NE Fourth Ave
 Camas, WA 98607

RE: REQUEST FOR RECONSIDERATION OF FINAL ORDER
 Hood Street Subdivision Preliminary Plat Application
 City of Camas File No. SUB22-01
 Petitioners: Christopher Reive and Susan Reive
 Applicant: Modern Dwellings LLC

Mr. Turner:

We, the Petitioners herein, are parties of record and request reconsideration of a portion of the Final Order in the above captioned case, as described in more detail below. We reside at 1829 NW Columbia Summit Dr., Camas, WA 98607 (“Petitioners’ real property”). We file this Petition pursuant to Camas Municipal Code (CMC) 18.55.235 for the reason that the conclusions of fact and law stated in the Final Order at Section C.3.a. are error. The error is material, substantial, and sets dangerous precedent for the appropriate administration of the City’s land use code.

First, we emphasize that we are not seeking reconsideration of or change to the Final Order’s basic conclusion that the “beveling” standard of CMC 18.09.080.B is applicable to the subject preliminary plat application, or that as properly interpreted and applied in this case, all lots abutting the north boundary of the site must be 12,000 square feet in area. Therefore, we agree with and accept the Final Order Special Condition of Approval E.31.c., which instructs Applicant to “[s]how all lots abutting the north boundary of the site with 12,000 square feet in area.”

However, to the extent Discussion Section C, paragraph 3.a. of the Final Order is intended to instruct the City Staff as how to implement that Special Condition, and therefore City Staff is instructed to not treat, during Final Plat Review, either proposed Tract “I” or, in the alternative, proposed Lot 9 as a “lot abutting the north boundary of the site”, that finding/instruction is derived from material errors in fact and law.

SUMMARY OF ARGUMENT

Based on the uncontested facts in this Administrative Record and as discussed below, the Final Order incorrectly applies, or fails to apply, controlling law to an area shown on the revised Preliminary Plat (Exhibit 51) as Tract “I”. Based on this record, the Examiner must find either: (1) The proposed Tract “I” does not qualify for treatment as a “tract”, as defined at CMC 18.03.040, and

Tract "I" should be stricken from any Final Plat as a condition of approval; or, (2) The proposed "fractional part of divided land having fixed boundaries" described on the revised Preliminary Plat as Tract "I" is not shown as having "sufficient area and dimension to meet minimum zoning requirements for width and area" and, therefore, is subject to Final Order Special Condition of Approval E.31.c. Either result requires the Examiner to include the proposed "lot" abutting the north boundary of the site and adjoining Petitioners' real property, whether that lot is labeled Lot 9 or Tract "I", within the instruction of Final Order Special Condition of Approval E.31.c and also¹ be shown as 12,000 square feet in area.

DISCUSSION

Relevant Facts:

1. The portion of Applicant's property (the "parcel") at issue in this matter is an undivided single parcel, and is 4.67 acres in area. (See, <https://gis.clark.wa.gov/gishome/Property/?pid=findSN&account=127415-000>). The parcel is described as Tax Lot #76, Section 9, Township 1 North, Range 3 East, Willamette Meridian (WM), Camas, Washington. (Exhibit 8). The northern boundary of the parcel is the northern boundary of the site, as defined in the Final Order. (See, Final Order A.1.)
2. Petitioners' real property is the "abutting property to the north" referenced in Final Order Discussion Section C, paragraph 3.a.
3. The City of Camas Planning Staff ("City Staff") issued a Notice of Public Hearing to consider the Applicant's request for approval of the Preliminary Plat in the above captioned matter on or about June 9, 2022. The public hearing was scheduled for July 7, 2022.
4. The City Staff finalized and posted its Staff Report, with Exhibits, on or about June 30, 2022.
5. Per its Staff Report, the City Staff recommended approval of the then proposed Preliminary Plat, subject to conditions. That proposed Preliminary Plat was attached to the Staff Report as Exhibit 17.
6. Exhibit 17, among other things, shows proposed Lot 9 as "abutting the north boundary of the site" with 9,000 square feet in area. There is no Tract "I" shown on that posted Preliminary Plat, and no mention of a proposed Tract "I" in the Staff Report.
7. As a material component of the City's approval recommendation of the proposed Preliminary Plat, the City Staff declared in its Staff Report that "*Lots 5-9 and 12-13 abut a lower density zone, therefore the lots shall be the largest size permitted in the R-7.5 zone which is 9,000 square feet per the density transfer provisions. Staff finds these lots comply with the beveling standards.*" (Staff Report, Page 13). As described below, this "finding" by City Staff was contested by Petitioners and ultimately deemed incorrect pursuant to the Final Order herein. (See, Final Order Special Condition of Approval E.31.c.)

¹ Currently, Final Order Special Condition of Approval E.31.c. is read to apply to proposed lots 5, 6 and 8 of the Revised Preliminary Plat (Exhibit 51).

8. In response to the Notice of Public Hearing and the City Staff's recommendation to approve the application as it existed at that time, on July 1, 2022, Petitioners herein filed written objections to the proposed Preliminary Plat. The focus of that objection was the appropriate interpretation and application of CMC 18.09.080.B ("beveling") to the facts in this case.
9. On July 7, 2022, presumably before or during the public hearing,² City Staff posted a memo of that same date (Exhibit 52). The memo mentions "*a revised plat (Exhibit 51)*", which presumably was posted on or about the same time as the City's memo. The memo does not mention or describe in any way "Tract I", which was shown for the first time on that "revised plat" (Exhibit 51). Nor does the memo mention any potential impact of the beveling argument advanced by Petitioners and of record at that time, or the purpose of the "*revised plat*", except to declare that it resulted from an "*updated negotiated preservation request to reduce setbacks.*"
10. On September 16, 2022, I spoke via video conference with Robert Maul and Madeline Sutherland, of the City Staff. Ms. Sutherland, the author of the memo (Exhibit 52), affirmed to me that nothing within the text of that document refers to or was intended to reference or describe Tract "I", and that the reference to a "*preservation request*" and reduced setbacks is not a reference to Applicant's unilateral addition of Tract "I" and modification of Lot 9 as shown in Exhibit 51.
11. Except for the fact that Exhibit 51 was posted by the City to its electronic public access portal at Applicant's request, Petitioners have found nothing in the Administrative Record demonstrating any comment by the City related to Applicant's revision of the Preliminary Plat as that relates to Applicant's new proposed Tract "I" and/or modification of the placement of Lot 9. Nor have we found anything in the Administrative Record demonstrating that the City recommended that specific revision to the Examiner.³
12. The sole public hearing was conducted in this matter on July 7, 2022. The appropriate interpretation and application of CMC 18.09.080.B ("beveling") was addressed in testimony and argued by Petitioners and Applicant during the public hearing. The application of beveling to Lot 9, as well as Lots 5, 6, and 8, was a material stated element of that argument. No one referenced or argued then whether the proposed Tract "I" would have any impact on how beveling would be applied, if it was applied at all. Following testimony, the beveling issue remained a disputed issue of law and the Examiner left the Administrative Record open to allow further argument after cases cited by the City and the Applicant as precedent had been made available for more thorough examination by all the parties. Per the Examiner's verbal Order, a briefing schedule was set: supplemental argument from all parties was due on or before July 14, 2022; replies to that argument were due on or before July 21, 2022; and, final argument (presumably by the Applicant only) was due on or before July 28, 2022.

² Petitioners are unable to glean from the City's website and public access portal the time or day the City posts items for public review.

³ Petitioners note that Exhibit 53, also dated July 7, 2022, with earlier emails attached, references several other proposed revisions and additions to the preliminary plat, separately posted as Exhibit 51. However, Exhibit 53 makes no mention of a City recommendation of approval of the new proposed Tract I or change of the placement of Lot 9.

13. Petitioners filed supplemental argument on the beveling question on July 14, 2002. Neither the City nor the Applicant filed anything within that time frame.
14. No party filed additional briefing (“replies”) between July 14 and July 21, 2022.
15. Applicants filed their pleading – titled “*Final Legal Argument*” – on or about July 25, 2022. Petitioners filed a written objection to Applicant’s filing, but to date there has been no ruling on the objection. Regardless, Applicant’s Final Legal Argument continued to focus on its opposition to the beveling argument advanced by Petitioners, making no mention of the revised Preliminary Plat (Exhibit 51), Tract “I”, or whether Tract “I” should be considered as relevant in any way to the Examiner’s review of the record in this matter.
16. On or about September 7, 2022, Examiner Joe Turner issued a Final Order in this matter. Among many other findings and orders, the Examiner declared as follows:

“C.3.a. The north boundary of proposed Lot 9 is a side yard, for which Table 2 of CMC 18.09.040 requires a minimum five-foot side yard setback. The applicant proposed to provide a ten foot wide tract (proposed Tract “I”) between Lot 9 and the north boundary of the site to increase the distance between any future structures on Lot 9 and the abutting properties to the north. Therefore, as discussed below, Lot 9 is not subject to the “beveling” standards of CMC 18.09.080.B because Lot 9 is not “adjacent” to the R-12 zoned lands to the north. Proposed Tract “I” is located between Lot 9 and the abutting property.”

Relevant Law Applicable to Proposed Tract “I”:

Washington Constitution:

Article XI, § 11.

Any county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.

Revised Code of Washington (“RCW”):

RCW 58.17.010 Purpose.

The legislature finds that the process by which land is divided is a matter of state concern and should be administered in a uniform manner by cities, towns, and counties throughout the state.

RCW 58.17.020 Definitions.

(9) "Lot" is a fractional part of divided lands having fixed boundaries, being of sufficient area and dimension to meet minimum zoning requirements for width and area. The term shall include tracts or parcels.

RCW 84.04.130. "Tract," "lot," etc

"Tract" or "lot," and "piece or parcel of real property," and "piece or parcel of lands" shall each be held to mean any contiguous quantity of land in the possession of, owned by, or recorded as the property of the same claimant, person or company.

Camas City Code ("CMC"):**18.03.040 - Definitions for development terms.**

"Lot" means a fractional part of divided lands having fixed boundaries, being of sufficient area and dimension to meet minimum zoning requirements for width and area. The term shall include parcels.

"Tract" means an area dedicated to such things as streets, easements and uses out of character with the principal use, but within a unit of area being measured. Tracts may include critical areas, storm ponds, and forestlands, parkland and other open space. Tracts shall not be considered lots for the purpose of determining short plat or subdivision status. Tracts shall not be considered buildable lots of record.

18.09.080 - Lot sizes.

B. When creating new lots via short plats or subdivisions that are adjacent to a different residential zone designation, the new lots along that common boundary shall be the maximum lot size allowed for the zone designation of the new development (if a lower density adjacent zone), or the minimum lot size allowed for the zone designation of the new development (if a greater density adjacent zone), as based on CMC 18.09.040 Table 2, Section A. In applying this section, where a land division is required to increase the size of lots, the land division may utilize the density transfer provisions provided for in CMC Section 18.09.060.

Analysis of Final Order:**Finding of Fact in Error:**

Section C.3.a. of the Final Order incorrectly declares that "*Proposed Tract "I" is located between Lot 9 and the abutting property* (emphasis added)." As noted above, the existing parcel abutting the property to the north of the site boundary is a 4.67 acre parcel which Applicant seeks permission to divide. Proposed Tract "I" isn't "located" anywhere yet, because it doesn't exist – yet. Correctly stated, and as noted by the Examiner earlier in Section C.3.a,⁴ Tract "I" is "proposed" to be located where it is illustrated on the revised Preliminary Plat because Applicant first requires Examiner's permission to create it, and final approval by the City's Community Development Director. (See, CMC 18.55.030 Table 1). Such permission and approval is not to be presumed by the City, the Applicant, the Petitioners herein, or the Examiner. To the extent the sentence above makes such a presumption, without the Examiner first conducting an appropriate analysis of the Applicant's unilateral insertion of the proposed Tract "I", such a finding of fact is error.

⁴ "... The applicant **proposed** to provide a ten foot wide tract (proposed Tract "I") between Lot 9 and the north boundary of the site ..."

Until the Final Order is complete and the Final Plat is approved by the City's Community Development Director, the illustration of Tract "I" on Exhibit 51 is simply lines drawn on a piece of paper. The proposed Tract "I" has no potential legal existence unless and until the Examiner analyzes Applicant's request, decides whether it can be approved as a matter of law, and makes such a finding ("conclusion of law"). *Id.* Because the analysis of Applicant's proposal to create Tract "I" has not yet occurred, the presumption that proposed Tract "I" exists and "is located" anywhere is error. And, this error is material because it forms the basis of Examiner's conclusion of law, which is also error.

Conclusion of Law in Error:

Section C.3.a. of the Final Order incorrectly concludes as follows: "*.... Lot 9 is not subject to the "beveling" standards of CMC 18.09.080.B because Lot 9 is not "adjacent" to the R-12 zoned lands to the north.*" This conclusion is based on the factual error described above, that proposed Tract "I" exists (before being approved to exist) and acts as a barrier lot or buffer which prevents Lot 9 from being considered a "lot adjacent to the site's northern boundary." As discussed below, Applicant's proposal to create Tract "I", as illustrated on the revised Preliminary Plat (Exhibit 51), cannot be approved. Proposed Tract "I" does not meet the requirements of the City's definition of an approvable "Tract". And regardless, if proposed Tract "I" were to be allowed, it would nonetheless be a "lot" subject to the "beveling" standards of CMC 18.09.080.B which does not meet minimum zoning requirements for width and area. In either event, the statement in Section C.3.a. above is error, must be removed, and the Final Order amended accordingly.

I. Proposed Tract "I" Does Not Meet the City's Applicable Definition

The City's definition of a "tract" is quoted in full above. See, CMC 18.03.040. That definition describes a tract as being "dedicated to such things as streets, easements and uses out of character with the principal use ..." Proposed Tract "I" is dedicated to none of those things, or to any other purpose of similar character. Indeed, to the extent the purpose of proposed Tract "I" is declared anywhere in the Administrative Record, it is the Examiner's statement at Section C.3.a. that Tract "I" is intended by Applicant "*to increase the distance between any future structures on Lot 9 and the abutting properties to the north.*" This statement, if accurate, does not address a community purpose and, if anything, is in "character with the principal use", which is an express violation of the definition.

We note that proposed Tract "I" does not invite or even allow community access (there is no easement shown providing access to this landlocked parcel), it comes with no stated community purpose, and there are no limits to its use by the future owner of Lot 9. There is no commitment of community maintenance, no fencing requirement, and no one designated to respond to concerns such as noxious weeds. While some of these concerns may be addressed by CC&Rs, there is no community benefit to support such a requirement and no access of record to allow it. In effect, the proposed Tract "I" is destined to be part of Lot 9's side yard in every feature except ownership.

In contrast, see Exhibit 53 which reviews and makes recommendations about several other areas illustrated on the revised Preliminary Plat (Exhibit 51) which are proposed by Applicant to address "storm facilities", "pedestrian access trails", "pedestrian access easements", and potential "ADA" constraints and requirements. Exhibit 53 demonstrates Applicant's awareness of the definition and requirements for an approvable "tract". Yet, the proposed Tract "I" is conspicuously ignored by Exhibit 53.

The procedural context also matters here.

- Applicant first proposed Tract “I” within the revised Preliminary Plat (Exhibit 51), which was prepared and filed sometime between July 1 and July 7, 2022. At that time, Petitioners had already filed objections to the Preliminary Plat (Exhibit 17) arguing that beveling (CMC 18.09.080.B) must be applied to all lots proposed to be located adjacent to the site’s northern boundary.
- Before the proposed revision, the side yard setback proposed for Lot 9 was 5 feet, and Lot 9 was proposed to be 9,000 square feet in area. The import of proposed Tract “I”, as noted by the Examiner, was to create an effective side yard setback for the proposed Lot 9 of 15 feet (5 feet of the side yard, plus 10 feet – the width of the proposed Tract “I”).
- The combined area of proposed Tract “I” and Lot 9 on the revised Preliminary Plat is now shown as 9,011 square feet (1,122 and 8,889, respectively).
- As of the date the revised Preliminary Plat was posted by the City, Applicants opposed the Petitioners’ assertion that beveling (CMC 18.09.080.B) must be applied to all lots proposed to be located adjacent to the site’s northern boundary, and the Examiner’s Final Order was not filed until September 7, 2022.
- Examiner correctly notes at Section C.5. the following:

CMC 18.09.040 Table 2 requires the following setbacks for the 12,000 square foot lots abutting the north boundary of the site proposed for Lots 5, 6, and 8:

- 30-foot front yard;
- 15-foot side yard;
- 15-foot street side yard; and
- 30-foot rear yard.

So, if Applicant’s intent in proposing Tract “I” was to “increase the distance between any future structures on Lot 9 and the abutting properties to the north” by creating an effective side yard setback of 15 ft between structures equivalent to CMC 18.09.040 Table 2, that purpose is no longer necessary due to the Examiner’s ruling regarding beveling. And, in any event, this private purpose is not recognized as proper by the City’s definition of a tract.

However, if Applicant’s intent in proposing Tract “I” before beveling could be ordered by the Examiner was to create a buffer “lot” between Lot 9 and “the abutting propert[y] to the north (Petitioners’ property)”, and thus avoid the application of beveling (CMC 18.09.080.B) to Lot 9, that purpose is clearly improper.

Either way, Applicant’s proposal to create Tract “I” must be denied. To allow Applicant’s request, regardless of Applicant’s actual intent, would frustrate the legislative purpose of beveling and invites abuse by others.

Based on the above, the Examiner should declare that proposed Tract “I”, as illustrated by Applicant on the revised Preliminary Plat (Exhibit 51), does not meet the City’s definition of an approvable “tract”, and Examiner should deny Applicant’s request to create Tract “I”. As a result of this conclusion of law, Lot 9 as shown on the original Preliminary Plat (Exhibit 17) does abut the north boundary of the site and it, or any other lot proposed by Applicant in a proposed Final Plat that

is similarly situated, should be 12,000 square feet in area. Discussion Section C. paragraph 3.a. should therefore be deleted, Discussion Section C. paragraphs 4.b. and 5. should be amended to include reference to Lot 9, and an amended Final Order issued.

II. Proposed Tract “I” is a “lot” and Subject to Beveling.

Petitioners advance the argument below in the alternative, only. While we believe the analysis and conclusion of law described below is correct, Examiner need only address this argument and reach this result if he disagrees with Petitioners’ argument above. If Examiner allows the Tract “I” to remain and be considered an element of the Final Plat, he must then still decide whether that “fractional part of divided lands having fixed boundaries” and described on the revised Preliminary Plat as Tract “I” is subject to beveling (CMC 18.09.080.B). As discussed below, Tract “I” is subject to beveling and its total area must be shown as 12,000 square feet.

The City of Camas’s definitions of “Lot” and “Tract” (CMC 18.03.040) are materially inconsistent with Washington state law, in violation of the Washington Constitution, Article XI, Section 11. As a result, CMC 18.03.040 cannot be used to exclude the proposed new lot at issue here (Tract “I”) from the beveling requirement of CMC 18.09.080.B.

As noted above, RCW 58.17.020 (9) defines a “Lot” to include “tracts or parcels”. This definition is preceded by the State’s declaration that “The legislature finds that the process by which land is divided is a matter of state concern and should be administered in a uniform manner by cities, towns, and counties throughout the state.” RCW 58.17.010. And, to illustrate that the State makes no distinction between “lot” and “tract”, it does not include a separate definition of “tract” to compare with the definition of “lot” in RCW 58.17.020. Instead and elsewhere, the State expressly uses the terms “lot” and “tract” interchangeably. See, RCW 84.04.130, quoted above.

The City has taken a different path. As demonstrated in this case, the path the City has chosen creates the potential for irreconcilable conflict, and if that is the result, the State statutes control.

The City’s definition of “Lot” mirrors the State definition, with one material exception – the City does not include “Tract” within its definition of “Lot”. Compare, CMC 18.03.040 and RCW 58.17.020 (9). And, unlike the State, the City has created a separate definition for a “Tract”, which we have referred to above. The City’s definition adds a qualifier, exclusive to the City: “Tracts shall not be considered lots for the purpose of determining short plat or subdivision status. Tracts shall not be considered buildable lots of record.” If there is a conflict between definitions here, it matters because the State definition of “Lot” (which includes “Tract”) declares that a “Lot” must also “meet minimum zoning requirements for width and area.” The City’s definition of “Tract” contains no such requirement. Because the lack of this minimum requirement for “width and area” matters in our case, this could be interpreted as an irreconcilable conflict between State and City controlling law, which violates Washington Constitution, Article XI, Section 11 and results in State law superseding the City Code. See generally, *State Dep’t of Ecology v. Wahkiakum Cnty.*, 184 Wash.App. 372, 337 P.3d 364 (Wash. App. 2014); *City of Seattle v. Williams*, 128 Wn.2d 341, 908 P.2d 359 (Wash. 1995); *Weden v. San Juan County*, 135 Wash.2d 678, 689, 958 P.2d 273 (1998).

The conflict described above may be avoided by a close reading of the City Code.

- Tracts “shall not be considered lots for the purpose of determining short plat or subdivision status. Tracts shall not be considered buildable lots of record.” CMC 18.03.040

- “[D]etermining short plat or subdivision status” (whatever that means) is not implicated by the proper application of CMC 18.09.080.B.⁵
- CMC 18.09.080B applies to “new lots”, and does not reference or expressly apply only to “buildable lots”.
- The City’s definition of “Lot” does not mention “Tract”. Therefore, a tract is not expressly excluded from the definition.
- Under State law, Tract “I” is a proposed “lot”, and on our facts, Tract “I” is a “new lot” if it is approved.

Therefore, beveling (CMC 18.09.080B.) is appropriately applied to Tract “I” because it is a new lot, and its status as not a “buildable lot” is irrelevant. Thus, there need be no conflict with State law. It is always appropriate to interpret a local ordinance or code provision to reconcile it with State law, and that seems permissible in this case. (See, the cases cited above).

In the absence of such a reading and reconciliation of the competing provisions, State law must prevail, the City’s conflicting definition of “Tract” must be ignored, the City’s definition of “Lot” must bow to the State’s definition, and CMC 18.09.080.B (beveling) applied to the “new lot” (Tract “I”). And so, the result is the same.

If the Examiner gets to this point in the analysis, Discussion Section C. paragraph 3.a. should be deleted, Discussion Section C. paragraphs 4.b. and 5. should be amended to include reference to Tract “I”, and an amended Final Order issued. Petitioners do not prefer this result, but it is required if Tract “I” survives the first threshold analysis.

Thank you for your consideration of this matter.

Sincerely,



Christopher L. Reive



Susan F. Reive

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⁵ Petitioners do not know what the City intends or means by this vague provision. We believe the limitation declared therein is too ambiguous to be enforceable.