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Via email to: rmaul@cityofcamas.us

July 14, 2022

City of Camas
Community Development Department
Attention: Robert Maul, Planning Manager
616 NE Fourth Ave
Camas, WA 98607

RE: Hood Street Subdivision Preliminary Plat Application
City of Camas File No. SUB22-01

Dear Mr. Maul:

The following supplements my earlier written objection to the above-referenced plat application, dated July 1, 2022, and my verbal testimony delivered at the public hearing of July 7, 2022 (a transcript of which was submitted at the time my testimony). This supplement is specifically allowed pursuant to the verbal order of Examiner Joseph Turner at the conclusion of the hearing. I understand that the administrative record remains open for such submittals from interested parties, including the Applicant and myself, until COB July 14, 2022 for initial argument, and until July 21, 2022 for rebuttal. What follows is my initial response to the testimony of the City and the Applicant at the July 7 hearing. Rebuttal to their supplemental submissions, if any, may timely follow. I understand from your office that you will forward my supplemental submissions to Examiner Turner upon receipt, and they will be included in the final administrative record of this plat application. If this is not correct, please notify me immediately.

At the hearing, and in response to my earlier written objection, the City referenced without citation or further explanation "earlier decisions" in support of its interpretation and application of CMC 18.09.080(B) in this case. Subsequently, the City (through your office) provided me with copies of two Notices of Decision: *Valley View Subdivision*, (City File #SUB18-02), dated October 31, 2018; and *Hancock Springs Subdivision*, (City File #SUB18-05), dated May 3, 2019. I presume these are the only prior decisions related to City action upon which the City now relies in this case. I will address each separately below.

The Applicant, through its Counsel (Stephen Morasch), referenced the *Hancock Springs* decision during his initial testimony in support of the *Hood Street* plat. Mr. Morasch acknowledged that he had given that Decision only a cursory review before (or during) the hearing, and stated that he thought the analysis of that decision could be applicable here. As discussed below, I agree.

First, however, I address Mr. Morasch's subsequent testimony, during which he described the Applicant's interpretation of the City's beveling provision at issue in this matter, CMC 18.09.080(B). His testimony and argument was given without reliance on any prior Decision or action of the City, and is both material and revealing in its scope.

For reference, I rely on the audio recording of the public hearing posted by the City at https://www.cityofcamas.us/bc-hearings-examiner/page/hearings-examiner-meeting-30 . Mr. Morasch's subsequent testimony begins at 1:09:20 of the recording. My transcript below of the relevant excerpt of his testimony begins at 1:10:05. I invite correction to any error in transcription – I listened three times, pausing often to try to ensure accuracy. And, the punctuation is mine based on context:

> *"We're still arguing that 9,000 square feet is allowed under the Code. One of the things that Mr. Reive argued was that the plat – I'll just read from his letter here – 'The only reference to density transfer and the beveling provision is' - the one he quoted up above – um – where he has in bold - 'where a land division is required to increase the size of the lots' – then he goes on to say – 'But, the provision it quotes does not apply here because the proposed plat before you does not propose to increase the size of any existing platted lot.'*
>
> *Well, if you're dividing lots, which is the whole Section 18.09.080, that's in the section of subdividing land, dividing lots, you would never divide any existing platted lot to make it larger. Well, you are dividing it. By definition, you are making it smaller than the existing lot.*
>
> *So, the bolded language 'where the land division is required to increase the size of the lot' can't refer to somebody who is doing a land division to make lots bigger somehow. I don't even know how that could possibly happen. That's sort of nonsensical.*
>
> *In order to interpret that, we need to look at the sentence right above, which is the one that that talks about, if you are abutting a higher density zone, then you have to use the minimum lot size allowed in your zone, but if you are abutting a lower density zone, you have to use your maximum lot size.*
>
> *So, that must be what this language is referring to when it says 'increase the lot sizes', because the sentence above says when you are abutting a lower density zone, you must use the maximum lot size in your zone. Which would mean you're increasing the lot size to over what you might otherwise propose because (…* garbled and not able to interpret *..)*
>
> *So, we believe that second sentence says where the situation is like here, you are abutting a lower density zone, so you are required to increase the lot size of the perimeter lots above what you might otherwise propose, then the rest of the sentence applies, which says 'the land division may use density transfer provisions.' And, when you use the density transfer provision, that imposes the lower maximum size of 9.000 square feet.*

> *We might even be able to propose less because there is no limit on what you can do when you use the density transfer provisions in that section, so maybe we could propose smaller than 9,000 square feet.*
>
> *But, we're not. We're proposing 9,000."*

Testimony excerpt ends at 1:12:43

Before I begin to parse Mr. Morasch's comments and conclusions, it is useful to recall what the operative City Code's beveling provision actually says. CMC 18.09.080(B) states in its entirety as follows:

> "*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*."

A basic premise of any effort to interpret and apply statutory (and, I submit, City Code) language, is that the Examiner's responsibility and objective is to determine the City's intent in adopting the provision. *Dep't of Ecology v. Campbell & Gwinn, L.L.C*., 146 Wash.2d 1, 9, 43 P.3d 4 (2002). "[I]f the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent." *Id*. at 9-10 [43 P.3d 4]. The "plain meaning" of a statutory provision is to be discerned from the ordinary meaning of the language at issue, as well as from the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole. *Wash. Pub. Ports Ass'n v. Dep't of Revenue*, 148 Wash.2d 637, 645, 62 P.3d 462 (2003); *Campbell & Gwinn,* 146 Wash.2d at 10-12, 43 P.3d 4.

So, in short, we look first for the Code language's plain meaning from its wording. If more is required for a more thorough understanding of the text, the context in which we see it is considered, along with the entire statutory scheme. See, *State v. Stratton*, 124 P.3d 660, 130 Wn. App. 760 (Wash. 2005). So, we start with a plain language analysis.

It is not reasonably disputed that applying the plain language of the first sentence of the beveling requirement to the record before the Examiner in this case must result in the following relevant Findings of Fact:

- The Hood Street Subdivision Plat Application proposes to create new lots via a subdivision.
- The Hood Street Subdivision is located adjacent to a different residential zone designation. Hood Street Subdivision is located within a R-7.5 zone. The residential zone designation of property adjacent to proposed lots 5, 6, 8, & 9 is R-12.
- R-12 is a lower density zone that R-7.5.

- The beveling language in the first sentence requires ("*shall be*") that the "new lots along the common boundary shall be the maximum lot size allowed for the zone designation of the new subdivision."
- The beveling language in the first sentence directs the Applicant only to CMC 18.09.040 Table 1, Section A to determine the maximum lot size allowed for R-7.5.[1]
- As declared in CMC 18.09.040 Table 1, Section A, the maximum lot size allowed for the Applicant's zone designation (7.5) is 12,000 square feet.

The Conclusion of Law that must follow from the above facts, which are not reasonably disputed, is that the border lots 5, 6, 8, & 9 of Hood Street Subdivision must be 12,000 square feet, unless some exception to this first sentence of the beveling provision exists. In search of such an exception, Applicant points only to the second sentence of that provision.

Again, first apply the plain meaning test. That second sentence only applies if "… *a land division is required to increase the size of lots…"* It is an undisputed fact that the proposed subdivision before the Examiner asks for permission (it is an application after-all) to create smaller lots from one or more existing larger parcels. So, where is the confusion here? How does the 'plain meaning' of this language yield a different result?

This is where Mr. Morasch's lack of imagination and verbal gymnastics need to be examined.

First, Mr. Morasch declares that the plain meaning analysis I proffer above is "nonsensical", solely because he personally can't imagine how any applicant for a subdivision plat approval could ever be seeking, as part of such application, to create a larger lot from a pre-existing lot located within the boundary of the new proposed plat. I submit in reply that the circumstance plainly described in the Code language is an actual possibility, which the Code anticipates regardless of its frequency.

It is not unknown for a developer to assemble disparate adjacent individual lots, of various shapes and/or sizes and different separate ownerships, in order to create a single contiguous larger parcel that is more economic to develop (subdivide) as a single residential development. In doing this, there is no assumption that the existing individual separate lots being gathered and consolidated will be of similar size or larger or smaller than what the developer plans for the final lot configuration proposed in what will become the proposed plat for the eventual development. It is entirely possible that the existing shapes and sizes of such disparate lots may be adjusted, up or down, by the developer to meet that developer's vision of the final residential development. And, if one or more of the disparate lots are adjacent to a different residential zoned property not to be included in the new development, and those lots are going to be enlarged, it is absolutely consistent with the principal of beveling to not require the maximum size in Section A because there is nothing to protect through beveling. The existing condition (density transition between adjacent zones) already exists, and no protection against such a new negative impact is needed.

[1] The original Code provision references Table 2, Section A. All parties concede the reference to Table 2, rather than Table 1, is inadvertent error. I believe that all parties agree that the error is corrected by reading the provision as above. I have no idea why the City had not corrected its obvious error before we got to this stage.

To the extent Mr. Morasch and I may disagree on the likelihood of the above circumstance occurring, I submit that my reasonable application of the plain meaning of the above language is possible (if not common), and preserves the "context" and the intent of the entire regulatory scheme of beveling. CMC 18.09.080(B). In contrast, Mr. Morasch's concluding comment in the above excerpt of his testimony shows that, in fact, his interpretation would destroy the intent of beveling.

> "*We might even be able to propose less* [than 9.000 square feet] *because there is no limit on what you can do when you use the density transfer provisions in that section, so maybe we could propose smaller than 9,000 square feet."*

In Mr. Morasch's world, there is no need for the first sentence of the beveling provision at all. According to Mr. Morasch, because the Code requires the Applicant to use a 'maximum lot size' for qualified border lots, and those will be larger than what is allowed elsewhere within the subdivision for non-border lots, that results in making a larger lot from a smaller lot (before any such smaller lot has actually been created of course), and thus the exception to Section A is always triggered and the requirement to use Section A is moot – always.

I submit that such an interpretation of that Code language is, using Mr. Morasch's language, nonsensical. More important for statutory analysis, the outcome he predicts is contrary to the obvious intent of beveling. The purpose of beveling is protection of the neighboring properties from the obvious negative impact of density shock caused by the placement of incompatible zones adjacent to each other. Mr. Morasch's interpretation would aggravate that negative impact rather than minimize or buffer it, and would eviscerate the use and purpose of the first sentence of CMC 18.09.080(B).

Next, do either of the Notices of Decision referenced by the City compel a different result? Without first reviewing either decision, the obvious answer to the above question is No. Neither Decision was appealed, and thus each represents the opinion of an Examiner of the same precedential status as our Examiner, Mr. Turner. In fact, the Examiner in both of the matters discussed below was our Examiner, Mr. Turner. While relevant opinions of other Examiners in other earlier cases may be informative, they are not binding in the current matter. When the former Examiner is the same as the one before us; well, one can always change his mind (assuming the issues are the same) if a different conclusion is more appropriate.

That said, there is no conflict here. As discussed below, neither Decision contradicts my arguments above. In fact, *Hancock Springs* actually supports the arguments herein and dictates against Mr. Morasch's proposed strained interpretation of the beveling provision. So, any dilemma over precedence is avoided.

Valley View Subdivision, (City File #SUB18-02), dated October 31, 2018.

This application was for a new 36 lot subdivision on 9.2 acres. The property was zoned R-7.5. It is adjacent to property to the East zoned R-15. The Decision at Page 3 (Paragraph 3 a – I, inclusive) details the "issues in the case". None of the stated issues being resolved addressed the applicability of the beveling provision, CMC 18.09.080(B).

At the bottom of Page 4 (Paragraph 5 a.), Mr. Turner describes an objection from Ms. Karen Wales, in which "*She objected to the proposed development density. The site should be developed with fewer larger homes*." While it is not clear whether Mr. Turner was addressing Ms. Wales's general objection over the proposed overall development density, Mr. Turner does make passing reference to the perimeter lot size requirement of CMC 18.09.080(B) on Page 8 (Paragraph 8. a.), and provides a footnote that simply states: "*CMC 18.09.080(B) requires new lots along the common property boundary needs (sic) to be the maximum size allowed of the zone designation with the development if adjacent to a lower density zone.*"

The final Decision makes no mention of the actual border lot sizes, nor provides any comment on how to interpret the beveling provision beyond what is described above.

Hancock Springs Subdivision, (City File #SUB18-05), dated May 3, 2019.

This application was for a new 20 lot subdivision on 9.95 acres. The new subdivision would comply with zone R-10 and is surrounded by properties zoned variously R-7.5, R-10, and R-12. The Decision at Page 3 (Paragraph 3 a – I, inclusive) details the "*issues in the case*". Paragraph 3. i. states: "*Whether the development is subject to the minimum lot size requirements of Camas Municipal Code ("CMC") 18.09.080(B)*" was deemed an issue in that case.

The issue described arose from the Applicant's request to provide a larger border lot (10,000 square feet) in the new subdivision to "buffer" an adjacent lot that contained a single large residence; that adjacent residence was located within a higher density zone. The Applicant was seeking an exception from the beveling requirement that the border lot be the "*minimum lot size allowed for the zone designation of the new development.*" Page 3, Paragraph 2. f. That was 8,000 square feet.

Later in the Decision, Mr. Turner notes a comment from Mike Andreotti, in which Mr. Andreotti notes that "*the owner of the adjacent property objects to smaller lots. Therefore, the applicant is relying on the density transfer provisions of CMC 18.09.060 to allow larger lots on the west boundary of the property in order to provide a transition between this site and the abutting lower density development."* Page 4, Paragraph 5. a. It does not appear that the adjacent property owner actually filed a separate written objection; only that the Applicant's proposal matched what that owner was asking for. In other words, there was no disagreement over the wording or language of the beveling provision, CMC 18.09.080(B). Unlike in our case, each party in the *Hancock Springs* case was asking for the same thing.

Regardless, Mr. Turner applied CMC 18.09.080(B) strictly and as written, requiring that the border lots at issue be the minimum lot size of 8,000 square feet. In so ruling, Mr. Turner declared that CMC 18.09.080(B) is more specific than CMC 18.09.060 about when density transfer can appropriately be used for sizing border lots when an adjacent property is zoned for a different density than the new development. Therefore, CMC 18.09.080(B) controls and, because that provision "*says nothing about the use of density transfer where smaller lots are required*", he denied the request. Page 8, Paragraph 10. a.

The facts of the *Hancock Springs* case are different from ours. And, unlike in our case, the Applicant and the adjacent land owner were each seeking to enlarge the border lot from the size required by the beveling provision. There was no disagreement over the meaning of CMC 18.09.080(B) or the specific language requiring use of the "minimum lot size".

The *Hancock Springs* Decision can, however, reasonably be argued to support the basic proposition explained above that density transfer, at least as it relates to border lots, can only be applied if CMC 18.09.080(B) expressly allows it. And, it is clear that if one were to apply Mr. Morasch's interpretation of the second sentence of the beveling provision to the *Hancock Springs* case, the Examiner's Decision would have been quite different. According to Mr. Morasch, every subdivision application by definition requires a finding that the Applicant has the ability to seek to "increase the size of lots", thus eviscerating the constraint imposed by the first sentence of CMC 18.09.080(B). Assuming such a finding in the *Hancock Springs* Decision, density transfer would have been available to the Applicant and all bets would then be off "… *because there is no limit on what you can do when you use the density transfer provisions in that section."* See, the Morasch testimony quoted above.

Instead, Examiner Turner found that the second sentence does not apply and the application of density transfer to the border lot was prohibited by the beveling provision.

I respectfully submit that applying the plain language of CMC 18.09.080(B), as it was applied in *Hancock Springs*, denies Applicant the ability to use density transfer to size the north border lots in this present case, currently lots 5, 6, 8, & 9. The result is that use of Table 1, Section A is required and those border lots must each be 12,000 square feet. There is no reasonable interpretation of the language of the City's beveling provision that gets you to different result.

Thank you for your consideration of this matter.

Sincerely,

Christopher L. Reive

Cc: Madeline Sutherland, Planner via email at MSutherland@cityofcamas.us
Steven Morasch via email at stevem@landerholm.com