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Hearings Examiner
c/o Robert Maul
616 NE 4th Avenue
Camas, WA 98607

Re: Applicant's Final Legal Argument in Hood Street Subdivision (SUB22-01)

Dear Hearings Examiner:

We represent the applicant, Modern Dwellings, LLC in the Hood Street Subdivision (Parcel No. 127415000) and are submitting this final legal argument in support of the application. The wetland and stormwater issues have been adequately addressed by Olson Engineering/Olson Environmental, so we will not address those issues further.

The only remaining issue of contention is whether CMC 18.09.080.B requires the lots abutting the R-12 zoned property to the north to be 12,000 square feet, or whether those lots may be made smaller through the density transfer provisions in CMC Section 18.09.060.

CMC 18.09.080.B states:

- 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 2¹, 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.

This section can be broken down into three parts:

1. Lots adjoining a lower density zone “shall be the maximum lot size allowed.”
2. Lots adjoining a higher density zone shall be “the minimum lot size allowed.”

¹ The reference to “Table 2” appears to be a scrivener's error because Table 2 relates to setbacks, whereas Table 1 relates to lot size. We assume the reference is intended to be to Table 1. Section A of Table 1 imposes a maximum lot size of 12,000 square feet in the R-7.5 zone. Section B of Table 1 sets a maximum lot size of 9,000 and a minimum lot size of 5,250 in the R-7.5 zone when using density transfer.

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3. The density transfer provisions of CMC 18.09.060 may be used only "where a land division is required to increase the size of lots."

The subject property is zoned R-7.5. The adjoining property to the north is zoned R-12, which is a lower density zoning than R-7.5. So the first part of CMC 18.09.080.B would require the subject lots adjoining the property to the north to be the "maximum size allowed," or 12,000 square feet.

However, the language in the third part of CMC 18.09.080.B ("where a land division is required to increase the size of lots") provides an exception, allowing the use of the density transfer provisions of CMC 18.09.060 to reduce the size of the lots.

Mr. Reive argues that the language "where a land division is required to increase the size of lots" refers to situations where an applicant voluntarily aggregates existing smaller parcels in order to consolidate them into a tract and then re-subdivide them into parcels that are larger than the initial constituent parcels. Why someone would want to consolidate small lots for the purpose of re-dividing them into larger lots is unclear.

In any event, Mr. Reive's hypothetical is off point. CMC 18.09.080.B does not apply when aggregating property, adjusting boundaries or consolidating existing lots to create larger parcels. By its terms, CMC 18.09.080.B only applies when "creating new lots via short plats or subdivisions."²

Further, in the hypothetical posed by Mr. Reive (aggregation or consolidation of lots for the purposes of adjustment or re-division), a land division would not be "required to increase the size of lots." Aggregation of parcels for purposes of consolidation and re-division would be a voluntary act of an applicant, not something the applicant "is required" to undertake.

The only interpretation that makes sense is that the language in the last sentence of CMC 18.09.080.B ("where a land division is required to increase the size of lots") refers to the requirement in the first sentence of CMC 18.09.080.B that lots adjoining a lower density zone "shall be the maximum lot size allowed."

The Examiner interpreted CMC 18.09.080.B thusly in the Final Order in Hancock Springs Subdivision (City File# SUB18-05). In Hancock Springs, the adjoining property was a higher density zone, so CMC 18.09.080.B required the new lots to be the "minimum size allowed."

² Based on the definitions of "short subdivision" and "subdivision" in CMC 18.03.040, short subdivisions and subdivisions involve "divisions" of land, not consolidations of existing lots or boundary adjustments. In the City of Camas, a subdivision is not required to consolidate lots.

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There was a large wetland that was being preserved in a tract³ (see page 1 of the Hancock Springs decision), and the applicant was relying on the density transfer provisions of CMC 18.09.060 to increase the size of the perimeter lots above the "minimum size allowed."

Under these circumstances the Examiner held it was not permissible to increase the perimeter lots above the "minimum size allowed." The Examiner adopted a detailed and well-reasoned interpretational analysis at page 8 of the Hancock Springs decision that directly addresses the issue at hand:

a. The examiner finds that the density transfer provisions of CMC 18.09.060 do not authorize larger lots on the west boundary of the site. CMC 18.09.060.D includes a general provision providing, that "[t]he city may provide additional or negotiated flexibility in lot sizes ... " However, CMC 18.09.080.B includes a specific provision authorizing use of density transfer, "[w]here a land division is required to increase the size of lots ... " "It is well settled that a more specific statute prevails over a general one should an apparent conflict exist." *Flight Options, LLC v. Dep 't of Revenue*, 172 Wash.2d 487, 504, 259 P.3d 234 (2011). In addition, it is a standard canon of construction that the inclusion of one thing implies the exclusion of another. *Detention of Dydasco*, In re, 85 Wn.App. 535, 538 n. 2, 933 P.2d 441 (1997). In this case, CMC 18.09.080.B is the more specific provision. This section expressly allows use of density transfer where larger lots are required on the boundaries of a development. The ordinance says nothing about the use of density transfer where smaller lots are required. Therefore, the examiner must find that the City Council did not intend to allow use of the density transfer provisions to allow larger lots abutting a lower density zone. Lots abutting the R-7.5 zoned properties west of the site must be the minimum lot size allowed in the R-10 zone. A condition of approval is warranted to that effect. [Emphasis added.]

The Examiner expressly interpreted CMC 18.09.080.B to expressly allow use of density transfer "where larger lots are required on the boundaries of a development." Mr. Reive's hypothetical involving aggregation of parcels, consolidation and re-division has nothing to do with requiring larger lots on the boundaries of subdivisions, and his proposed interpretation does not make sense in this context.

³ Per CMC 18.09.060.C, density transfer is allowed only "Where a land division proposes to set aside a tract for the protection of a critical area, natural open space network, or network connector (identified in the city of Camas parks plan), or approved as a recreational area."

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The interpretation the Examiner adopted in Hancock Springs should apply here: "CMC 18.09.080.B . . . expressly allows use of density transfer where larger lots are required on the boundaries of a development."

Based on that interpretation, the lot sizes of the perimeter lots could be reduced to 5,250 square feet (the minimum allowed for density transfer lots in the R-7.5 zone) through density transfer. However, that is not what the applicant is proposing. The applicant is proposing 9,000 square feet, which is the maximum lot size allowed under Table 1 for lots zoned R-7.5 in a subdivision using density transfer provisions of CMC 18.09.060.

Per Table 1, when using the density transfer provisions of CMC 18.09.060, the maximum allowable lot size is 9,000 square feet. Since CMC 18.09.080.B "expressly allows use of density transfer where larger lots are required on the boundaries of a development," and since the applicant is providing open space amenities in order to utilize the density transfer provisions, the "maximum lot size allowed" for purposes of the first sentence of CMC 18.09.080.B is 9,000 square feet, not 12,000 square feet.

Therefore the applicant respectfully requests the application be approved with the proposed 9,000 square foot perimeter lot sizes, rather than imposing a condition requiring lots adjoining a lower density zone to be increased to 12,000 square feet.

Sincerely,

LANDERHOLM, P.S.



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