



04/08/2022

Allen Unzelman, Hearings Examiner
City of Chehalis

RE: CU-21-002, ST-21-0011 Multiple Unit Dwellings
Zoning: R1 (Current), MRC (Proposed)
1137 Washington Ave, Chehalis
Parcel #:00583001000, 00549000000,005490001000,005492002000,
005604192001

Mr. Unzelman,

Thank you for taking the time to review this project on its merits. While the Chehalis Staff have issued a report describing their position, I would like to address the project from the owner and design professionals' point of view. For a synopsis, while we do agree and wish to comply with Staff on many points, there are some we disagree with. We are both recommending you approve the development so I believe we can come to an amenable solution, but we are concerned with length of future review times and level of compliance with some staff comments.

Below is a timeline of this proposal which will support reason for frustrations regarding the length of the approval process.

Zoning Process

- The clients Tom and Cara Nicholas, per recommendation from the city, submitted a letter requesting re-zoning to a higher density residential zone (specifically R-3) in anticipation for this project. The letter was accepted by the city on 03/28/2021.
- A staff letter for recommendation to rezone Mixed Residential Commercial (MRC) was posted on 5/07/2021. As of the date on this letter, we have not received any information as to when this process for approval will begin or be approved.

Vacate Process

- Application for Vacate was submitted on 6/3/2021 and the ordinance officially approved and signed by the Mayor on 10/11/2021. Delays in the vacate process was primarily caused by an initial recommendation to approve the vacate as originally submitted. Staff then changed their recommendation after the 3rd council meeting; to drastically reduce the remaining easements in a bid to almost double the price of the vacate and provide significantly less utility access and driveway widths for neighboring properties. After much debate, the original vacate request was approved with only minor changes to the easements and price of the vacate.
- A copy of the signed ordinance was sent to Fuller Designs on 12/14/2021. This ordinance was received over 2 months after approval and was only expedited based on multiple correspondences with city staff.

- A BLA and final payment for the vacated properties is awaiting land use approval through the Hearings Examiner (HE) process before completing.

Land Use Process

- The land use portion of this project was formally submitted to City staff on 6/14/2021, during which time a SEPA application was submitted.
- All permit fees were paid on 7/9/21 after they had been calculated by the City.
- Although application and payment for SEPA had been posted in early July, a Letter of Complete Application (LOCA) was not received until 8/31/21 which is 78 days after application. The SEPA checklist and Notice of Application (NOA) were published the same day. Had Fuller Designs not intervened, and pushed for the SEPA process to begin, it would have been delayed even further.
- Even though a LOCA had been received, the SEPA clock was stopped at the end of the two-week comment period on 9/14/21. The clock was stopped based on a traffic concern from an adjacent property owner. Staff then required a full TIA to complete the SEPA.
- While the development does not meet the criteria to need a TIA based on expected traffic counts, after much negotiation, a TIA was prepared and submitted on 1/26/22. This delay was primarily caused by City staff indicating, in the pre-application process, that a trip generation analysis was sufficient but then requiring a TIA at a much later time. If a TIA was required, it should have been identified in the pre-application process and not derived from a private party concern during the SEPA process.
- Comments on the TIA were sent over from the city on 2/10/22, response by Fuller Designs submitted on 2/14/22, and MDNS SEPA approval on 2/15/22.
- DRC meeting to formalize staff recommendation to the HE was held on 2/23/22.
- Although staff had formalized their comments on 2/23/22, it took until 4/7/2022 to receive the staff report. This results in short time periods to respond formally to staff comments. I apologize for the short review time to consider this response; however, it was prepared with the upmost haste.

As you can see there were many unnecessary complications with the project resulting from inefficiencies in City reviews and processes. While inefficiencies like this can cost the project owners unnecessary time and money, inefficiencies in the review process predominantly hurt the public. A long process strings out document submission over many months, or years, which complicates the approval process and impedes public participation. Public hearings for land use and vacate processes in this project have been strung out for many months regardless of the mandates in WAC 365-196-845 subsection 11, which restricts the number of public hearings for the same project.

To quote the intent of WAC 365-196-845.

The legislature finds that the lack of certainty in the approval of development projects can result in a waste of public and private resources, escalate housing costs for consumers and discourage the commitment to comprehensive planning which would make maximum efficient use of resources at the least economic cost to the public. Assurance to a development project applicant that upon government approval the project may proceed in accordance with existing policies and regulations, and subject to conditions of approval, will strengthen the public planning process, encourage private participation and comprehensive planning, and reduce the economic costs of development.

WAC 365-196-845 subsection 10 identifies a standard review process timeline.

(10) Project review timelines. Counties and cities must establish and implement a permit process time frame for review of each type of project permit application, and for consolidated permit applications, and must provide timely and predictable procedures for review. The time periods for county or city review of each type of complete application should not exceed one hundred twenty days unless written findings specify the additional time needed for processing. Project permit review time periods established elsewhere, such as in RCW 58.17.140 should be followed for those actions. Counties and cities are encouraged to consider expedited review for project permit applications for projects that are consistent with adopted development regulations and within the capacity of system wide infrastructure improvements.

We feel permit fees paid on the project are for a timely professional review, evaluation, and resultant approvals. To date we have not been provided with that service. As of the date on this letter, the time from initial land use application has been 43 weeks (303 days). This is obviously much longer than the 120 days mandated by the above WAC.

After this hearing, there will be more civil permits to obtain including civil site plan and stormwater approvals. We are concerned the civil review process will stall, parallel to other projects within the City. We are requesting that an additional condition be put on the project which holds the City to their municipally mandated timelines for review. We are requesting the HE place an additional condition to have the City complete any additional reviews through an expedited process and to not to exceed 30 additional calendar days. We realize the plans submitted for this hearing are not yet complete and will need to be updated with any conditions resulting from hearing examiner approval. We request the condition clarify the review time to begin once the final civil plans and drainage report are submitted to the City. Additionally, we request the condition be further required to ensure an in-depth review be completed on the City's first review of the documents submitted as stated in the Chehalis Municipal Code 12.04.140. The review clock would then resume (not restart) once comments are resubmitted. If the City fails to meet this review timeline, we request the HE reserve the right to make final civil determination (civil construction approval) on the project.

Please note regulating who approves a project is allowed by WAC 365-196-845 subsection 12.

(12) Project permit decisions. A county or city may provide for the same or a different decision maker, hearing body or officer for different categories of project permits. The consolidated permit review process must specify which decision maker must make the decision or recommendation, conduct any required hearings or decide an appeal to ensure that consolidated permit review occurs as provided in this section.

Furthermore, precedent has already been set with an HE taking final review from the City on a previous project within the City of Chehalis.

Response to items in the City's Staff Report.

To begin, we do agree with many of the staff's recommendations. Using the Chehalis Staff report as a guide, I would like to respond to each of the items discussed in order. Beginning on page 3 under Code analysis we begin.

CMC 17.09.130 Site Plan Review

- Item 1 - We **agree** the proposed land use is consistent with Comprehensive Plan and meets the overall intent of Chehalis Municipal Code. We also want to highlight this project approval should not be contingent on future land use zoning amendments. The project should receive "conditional approval" to construct this development regardless of current zoning. Staff is recommending an MRC zoning change however actual zoning may remain R1 for some time due to internal City and Growth Management processes.
- Items 2 through 6 – We **agree** with staff assessment.
- Item 7. We **agree** this project adequately mitigates impacts identified through the SEPA process. We also would like to further highlight that the project MDNS decision makes at least 2 conditions which are not in line with mitigating environmental impacts. Requiring a preliminary plat and a landscape architect on the project do not mitigate environmental impacts but are more rooted in procedural compliance and staff opinion.
 - We **agree** the preliminary plat (a BLA is more appropriate instead of a plat) can be submitted, this should be a condition of site plan approval and/or staff recommendation to HE rather than a SEPA condition. Changing imaginary lines of property ownership does nothing to protect the environment. Even though this condition is an improper use of the SEPA MDNS process we agree to preparing a preliminary and final BLA. See staff recommendation item 5 below for further discussion.
 - Having a landscape architect prepare a landscape plan does not offset any environmental impacts that the development has on the surrounding environment. RCW 18.96 does not support requiring a landscape architect on the project and Chehalis Municipal code does not support this condition either. We **disagree** with this staff recommendation and its adoption as a condition of approval. This is further described below in the staff recommendations item 4 section.
- Item 8. We **agree** with staff assessment

CMC 17.78.020 Use Chart Adopted

This site is currently zoned as R1, however based on initial request by the project owners, the city staff has proposed up-zoning the site to a new zoning classification which has not yet been established, Mixed Residential Commercial (MRC). We **agree** with the proposed change in zoning and initial talks with City Council have indicated this zoning will be approved. With that said we request any approvals be allowed to persist in the current zoning and not delay the project until city and GMA processes complete the rezone

CMC 17.42.020 Bulk Regulations (R1 Zone) and (R-3 Zone)

We agree with the City to allow this density on this property. The project is proposing 22 dwelling units spread over 3 acres. This gives a gross density of 7.3 dwellings per acre. This density is just above the max density of 6 DU/Acre allowed in the R-1 Zone and well within the 6-18 DU/Acre allowed in the R-3 zone. The MRC zoning has not yet been established so it is unknown what regulations will exist. Assuming it will be like R-3 we agree to conditional use approval at this density. As said above please allow conditional use on this property without tying the project approval to the rezone process which may take months to years.

CMC 14.42.030, CMC 17.48.030 Parking and Loading

- We agree with staff assessment.

CMC 17.42.040, CMC 17.48.040 Fences, walls, and hedges

- Items A-J are municipal code. Adherence is mandatory. Agree with staff assessment

CMC 17.42.080, CMC 17.48.080 Essential services/utilities

- We agree with the staff findings.

CMC 17.12.070 General layout of lots

- We agree with the staff findings.

CMC 17.12.075 Streets and roads

- We agree with the staff findings. Dwellings on Aust Manor are restricted to 2 single family homes and improvements to Aust Manor will not be required.

CMC 17.12.080 Utilities

- We agree with staff findings

CMC 17.09.185 Conditional use permits

- Item 1 - We have designed this proposal based on the city staff recommendations to up-zone this site to R-3 zoning. MRC zoning regulations are not yet public but agree with staff to allow this project in the current zoning with the intent to rezone to a higher density commensurate with the surrounding area.
- Items 2 and 3 - We agree with staff findings.

Staff Recommendations

We agree with nearly all the staff recommendations listed. Staff recommendations begin on page 7 of the staff report. Actual conditions recommended (at the bottom of the page shown in italics) differ slightly from the items voted in at the DRC meeting. Since these items differ, I will go through the italicized recommendations only as they seem to be the streamlined recommendations being sent to the HE.

- Item 1 – We agree with the staff findings but would like to clarify the updated site plan sent to the city on 3/16/22 and again on 4/7/22 (no changes copy only) is the plan being considered. The site plan presented in the DRC meeting on 2/23/22 is not being considered.

- Item 2 – We **agree** with the staff recommendation. Only 2 single family residences are proposed on Aust Manor and as such road improvements will not be required.
- Item 3 – We **are confused** with staff recommendations. This recommendation is inconsistent with staff’s recommendation above to follow municipal code 17.42.040 for fences, walls, and hedges. 17.42.040.A requires any fencing in the setback area to be either 42 or 48-inches depending on the opacity. 6’ is 72” and exceeds fencing height listed in the municipal code. If a 6’ high fence is required, we can comply but would like further clarification if we are to follow municipal code on this or receive special approval to extend the fence height to 6’.
- Item 4 – We **disagree** with staff recommendation on this subject. Staff quotes CMC 17.52.070 for landscaping requirements. This code refers to the R-UGA zoning and doesn’t apply to the project. CMC 17.42.070 or 17.48.070 should regulate this development as they are consistent with the R-1 or R-3 zoning. Fortunately, all 3 codes are consistent, and all are extremely basic in nature. Our intent is to provide landscaping consistent with Chehalis municipal code however our disagreement is rooted in the recommendation to “require” that a landscape architect perform this design.

Staff initially used the SEPA process to require a landscape architect (LA) and references RCW 18.96 in the justification for their decision. They fail to mention what environmental impacts are being mitigated and how the use of a LA mitigates those impacts to the environment. I would appreciate if the HE could completely read RCW 18.96 and pay particular attention to subsection 220.

RCW 18.96 is predominantly describing what a LA is and what educational/testing requirements one must achieve to become a LA in Washington State. RCW 18.96.220 is the only portion of this code which discusses what type of projects require a LA and which types of projects are exempt. Subsection 220 goes onto to specifically identify multiple professionals who do not need to be a LA to prepare landscape plans including surveyors, geologists, biologists, architects, engineers (like myself) and other recognized professions. RCW 18.96.220(9) directly exempts residential properties from requiring a LA at all. This means that “anyone” can do a landscaping plan on residential properties. I argue this project is purely residential. 18.96.220(8) indicates that irrigation plans can be done by anyone on all types of projects.

This condition of approval requiring a licensed LA to design the landscaping an irrigation plans has become a condition of many projects in the City of Chehalis. Chehalis Municipal Code and RCWs do not support requiring a LA to perform this function. We find this to be an illegal use of the SEPA and Hearings Examiner recommendation processes. SEPA and other staff recommendations should be based on actual project impacts to the environment and municipal code. Opinion based regulation at staff level is not enforceable. As such, I am recommending you reject the staff recommendation to “require” a LA on the project. If the project owners want to hire a LA or perform the design themselves that should be their decision.

This condition has become an added expense to our developments. Multiple other jurisdictions we work in allow plantings to be shown on the civil site plans provided by

the civil engineer as an appropriate condition for landscaping approval. Thurston County requires a licensed LA on certain developments; however, this is a Thurston County specific code driven condition of approval and provides a list of plantings/requirements for the landscape plans to be designed. If the Chehalis City Council would like to adopt similar code, subsequent developments would need to comply. Until this is done, opinion-based comments from City staff should be rejected.

- Item 5 – We **agree** with this recommendation. We maintain that providing a BLA does not help the project comply with environmental regulation but are committed to producing the documentation to record the necessary property boundary lines.
- Item 6 – We **agree** with this recommendation. We will provide frontage improvements on Washington street consistent with the Local Access public road section described in Table 1 under CMC 12.04.280.B. Please note that we are agreeing only to half-street, curb, gutter, and sidewalk as recommended by city staff.
- Item 7 – We **disagree** with this recommendation. Conditional use approval of this development should be able to be granted based on anticipated zoning. Staff inefficiency, internal City processes and Comprehensive plan updates all take much time and could delay the actual changing of the project zoning. Zoning updates have been promised for multiple years now and are included with a multitude of other comprehensive plan updates, annexations, UGA expansions, and other processes involved in growth management. Conditioning this development’s approval on finalization of zoning changes may delay the project approval for an undetermined amount of time. We request this recommendation be rejected or at least amended to a more measurable solution. I would suggest placing the results of this HE approval in a special agenda item for Council approval to allow this project in this current R-1 zone to exceed density and allow multi-family dwellings in in the current zoning. This way we can decouple this project from potential delays in the rezoning process while meeting the intended zoning of the area.
- I would like to clarify one additional item which was captured in the February 23rd DRC voted on recommendations but is not listed in the italicized final conditions being recommended. Item 6 from the 2/23/22 conditions indicate “The travel width inside the complex must be 26 feet. Access to the site must be 26 feet wide.” We **disagree** with this statement. The recommendation is not based in municipal code. All internal roadways in the development including the access are private roads. Road sections are described in Table 1 under CMC 12.04.280.B. Private roads are required to be 20’ wide, not 26’ wide. We have designed the project to meet Chehalis municipal code. This request was initially voted on in the DRC meeting but seems to be later removed when actual recommendations were forwarded as shown in italics. It seems like this recommendation was removed from the italicized recommendations as it is unsupported by municipal code. I would like to remain consistent with municipal code and provide 20’ travel width as allowed.

We apologize for the small amount of time you are given to review this information. I hope you can see that we take this project seriously and have swiftly put together a detailed response within the short amount of time we have been given. With that said, we do appreciate your commitment to making an objective decision on this project consistent with Chehalis Municipal Code, Washington State RCWs, and federal laws.

Sincerely,

A handwritten signature in blue ink that reads "A Fuller". The signature is fluid and cursive, with the first letter "A" being particularly large and stylized.

Aaron Fuller, PE
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