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BEFORE THE CITY OF CHEHALIS HEARING EXAMINER

In the Matter of:

Conditional Use Permit and Site Plan Review
Application Submitted by Tom and Cara
Nichols,

Applicant

CU 21 002
ST 21 0011

ORDER OF CONTINUANCE
EXTENDING TIME FOR FINAL
DECISION

The Hearing Examiner operates pursuant to authority provided by the Chehalis Municipal Code (“CMC”). Section 2.50 of the Code specifically provides that the Hearing Examiner shall have “all of the authority and duties granted in state statutes and the Chehalis Municipal Code.” While this language provides sufficient authority to the Hearing Examiner, the Hearing Examiner must also be mindful not to exceed the authority expressly provided by statute or City Code.

This case comprises an application for a conditional use permit and an application for site plan review of applicant’s proposed multi-family development. A core requirement for both issues is that the proposed use be allowable under the Code. For a conditional use permit to be issued under CMC 17.09.185, the use must be listed as a conditional use under CMC 17.78. For site plan review under 17.09.130, the project must be consistent with the requirements and intent of the Chehalis Municipal Code and the Comprehensive Plan.

From the evidence submitted in this case, both by the City and the applicant’s

1 representatives at the public hearing and the written materials submitted by the parties, it is clear
2 that multi-family use is not permitted under the current R-1 zoning of the applicant's property. For
3 purposes of consideration of a conditional use permit, multi-family use is not a conditional use
4 listed under CMC 17.78. For purposes of site-plan review under CMC 17.09.130, the proposed
5 multi-family use is not a permitted use within the current R-1 zoning and is not consistent with the
6 requirements of the current code.
7

8 At the same time, it is also clear from the evidence presented in this case that both City
9 Staff and the applicant anticipate a potential change in the zoning for this property based on a
10 proposal that has been submitted to the Chehalis City Council that is expected to be considered in
11 the coming months. However, as stated at the public hearing on this matter, the Hearing Examiner
12 is not aware of authority that would enable it to approve a project contingent on a future zoning
13 change authorized by the City Council.
14

15 Hence, it is necessary to continue this matter in order to allow ample opportunity to receive
16 and consider all potentially relevant evidence.
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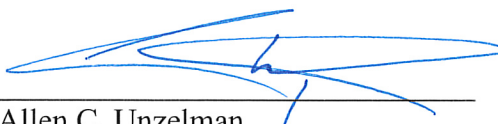
18 RCW 35A.63.170(3) requires that a final decision be issued by the Hearing Examiner
19 within ten working days following conclusion of all testimony and hearings unless a longer period
20 is mutually agreed to by the applicant. Because the extension of time provided by this Order is
21 being provided for the purpose of ensuring that all relevant testimony can be received and
22 considered, the ten day requirement for a final decision would not arise until all testimony is
23 concluded. Nonetheless, because a formal public hearing has already occurred in this matter, it is
24 important to note that the applicant in this case has communicated their assent to extending the
25 timeline through their representative Aaron Fuller.
26

27 Allowing additional time for receipt of additional evidence is also supported by CMC
28

1 2.50.080. Under CMC 2.50.080, “at any time prior to the filing of the final decision, the hearing
2 examiner may reopen the proceeding to receive evidence that was unavailable at the time of the
3 hearing.” CMC 2.50.080 requires a showing of significant relevance and good cause for the delay.
4
5 Based on the evidence admitted at the public hearing regarding the anticipation of a change in
6 zoning, the Hearing Examiner hereby finds that the anticipated evidence has significant relevance
7 and that there is good cause for the delay. All parties of record will be given notice of any evidence
8 subsequently received and granted an opportunity to review such evidence and file rebuttals.

9
10 **For the reasons set forth above, the time period for issuance of a ruling on this matter**
11 **is hereby continued and extended until August 30, 2022, in order to allow additional time for**
12 **receipt of anticipated evidence relative to zoning.** During this extended time period, City Staff
13 and the applicant shall submit additional evidence to the hearing examiner, and all other parties of
14 record, as it pertains to the issue of zoning changes of the applicant’s property. Once all of the
15 evidence is received, the Hearing Examiner will coordinate with the parties of record regarding
16 the process for admission of any additional evidence to the record and any other necessary
17 proceedings. At that time, a determination will be made as to whether additional public comment
18 opportunity is necessary prior to issuance of a final decision.
19

20 Dated this 27 day of April, 2022

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23 _____
24 Allen C. Unzelman
25 Hearing Examiner
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