

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BEFORE THE CITY OF CHEHALIS HEARING EXAMINER

In the Matter of:

CU-22-001

EMPIRE HOME CONSTRUCTION, LLC,
Subdivision/Preliminary Plat Application
within the Urban Growth Area of City of
Chehalis,

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND DECISION ON
CONDITIONAL USE PERMIT

Applicant

Applicant: Empire Home Construction, LLC
David Duvall
PO Box 241
Kelso, WA 98626

Represented by Seth Goodstein
ROI Law Firm, PLLC
1302 North I Street, Suite C
Tacoma, WA 98403

City of Chehalis: Amelia Schwartz, City Planner
City of Chehalis
1321 S. Market Blvd.
Chehalis, WA 98532¹

Summary of Project Proposal

Applicant seeks a conditional use permit for the placement of a manufactured home in an R1 zone within the city limits of the City of Chehalis.

¹ Chehalis City Attorney Erin Hillier was also present during the hearing but did not participate in the hearing.

1
2 **Location of Project**

3 The property is identified for tax purposes as Lewis County Tax Parcel Number
4 005604053038. The property is situated in Section 33, Township 14N, Range 02W, SWLY 50,
5 Lot 6 Haubers Addition. The property address is listed as 52 SE Spring Street, Chehalis, WA
6 98532.

7
8 **Summary of Ruling**

9 The subdivision application is **APPROVED/GRANTED** subject to conditions.

10
11 **Open Public Hearing**

12 An open public hearing on this application was held before the Hearing Examiner of the
13 City of Chehalis on March 10, 2022, at Chehalis City Hall.

14
15 **Materials Submitted and Record of Evidence**

16 In advance of the hearing, the City submitted a staff report providing an overview of the
17 application along with staff recommendations. The City's staff report, along with its exhibits A
18 through I, were presented at the commencement of the hearing and admitted into evidence based
19 upon the agreement of the parties. The Staff Report was admitted as **Exhibit 1.**

20
21 The Applicant, through representative Seth Goldstein of ROI Law Firm, PLLC, submitted
22 a Letter of Support in advance of the hearing, along with a number of attachments and exhibits.
23 The Applicant's Letter of Support was presented at the commencement of the hearing and admitted
24 into evidence based upon the agreement of the parties. Applicant's Letter of Support, together with
25 all attachments and exhibits thereto, was admitted as **Exhibit 2.**

26
27 A letter from nearby property owners John and Marie Panesko was submitted in advance

1 of the hearing. The Paneskos' letter was presented at the commencement of the hearing and
2 admitted into evidence based upon the agreement of the parties. The Paneskos' letter was admitted
3 as **Exhibit 3.**

4
5 A letter from nearby property owners Ric and Teresa Snelson was submitted in advance of
6 the hearing. The Snelsons' letter was presented at the commencement of the hearing and admitted
7 into evidence based upon the agreement of the parties. The Snelsons' letter was admitted as
8 **Exhibit 4.**

9
10 A letter from nearby property owners Bryan and Michelle Wheat was submitted in advance
11 of the hearing. The Wheats' letter was presented at the commencement of the hearing and admitted
12 into evidence based upon the agreement of the parties. The Wheats' letter was admitted as **Exhibit**
13 **5.**

14
15 A letter from Frank Dipola was submitted in advance of the hearing. Frank Dipola's letter
16 was presented at the commencement of the hearing and admitted into evidence based upon the
17 agreement of the parties. Frank Dipola's letter was admitted as **Exhibit 6.**

18 During the hearing, Applicant referenced and presented five (5) images or
19 renderings/drawings of the proposed site. Applicant's images were entered into evidence based on
20 the agreement of the parties as **Exhibit 7.**

21 The aforesaid exhibits comprise the following record:

- 22
23 Exhibit 1: Staff Report submitted by City of Chehalis (with all exhibits)
24 Exhibit 2: Applicant's Letter of Support (with all appendices and exhibits)
25 Exhibit 3: Letter from John and Marie Panesko
26 Exhibit 4: Letter from Ric and Teresa Snelson
27 Exhibit 5: Letter from Bryan and Michelle Wheat
28 Exhibit 6: Letter from Frank Dipola
Exhibit 7 Images and Renderings submitted by Applicant

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Testimony at Public Hearing

At the hearing, Chehalis City Planner Amelia Schwartz provided an overview of the City’s Staff Report and recommendations. Seth Goldstein, attorney for Applicant Empire Home Construction, LLC appeared on behalf of the applicant and provided an overview of the application and requested conditional use. No members of the public were present at the hearing.

NOW THEREFORE, upon consideration of the testimony and materials submitted prior to and during the open record hearing, the Hearing Examiner enters the following decision:

Applicable City Code Provisions Governing Condition Use Permits

Chapter 17.09 of the Chehalis Municipal Code (“CMC”) sets forth the criteria for issuance of a conditional use permit. Under CMC 17.09.185, a conditional use may be approved or modified only when all of the following criteria are met:

- 1. The use is listed as a conditional use in the master use table in Chapter 17.78 CMC, Use/Occupancy;
- 2. Is suitable for the proposed site considering size, shape, location, topography, existence of improvements and natural features;
- 3. Is timely, considering the adequacy of transportation systems, public facilities and services existing or planned for the area affected by the use;
- 4. The location, size, and functional characteristics of the proposal are such that it can be made reasonably compatible with and have minimal impact on the livability and development opportunities in the neighboring area;
- 5. Is consistent with the applicable goals and policies of the Chehalis comprehensive plan and the purpose of the underlying zone;
- 6. Complies with all applicable site plan review requirements; and
- 7. Does not have significant environmental consequences when compared with other permitted uses in the underlying zone which cannot be mitigated through conditions of approval.

- 1 7. **CMC 17.09.185(A)(3)—Timeliness and Adequacy of Facilities.** Under CMC
2 17.09.185(A)(3), a conditional use must be timely, considering the adequacy of
3 transportation systems, public facilities and services existing or planned for the area
4 affected by the use. The evidence, including but not limited to the City’s Staff Report and
5 the Applicant’s Letter of Support, reflects that the proposed use a single-family structure
6 within the R-1 zone of the City limits, within which adequate facilities exist. The evidence
7 establishes that the proposed use is timely, given the availability of public facilities, and no
8 evidence was submitted to meet the burden of proving otherwise. The evidentiary record
9 and testimony of the parties satisfies the factual bases required for 17.09.185(A)(4).
10
11
12 8. **CMC 17.09.185(A)(4)-Compatibility.** Under CMC 17.09.184(A)(4), a conditional use
13 may only be approved if the location, size, and functional characteristics of the proposal
14 are such that it can be made reasonably compatible with and have minimal impact on the
15 livability and development opportunities in the neighboring area.

16
17 The evidence establishes that the proposed conditional use is a residential structure
18 that is congruent with the intent of the R-1 zoning and the stated intent thereof. Specifically,
19 the evidence set forth within Applicant’s Letter of Support and the testimony provided by
20 both parties during the public hearing establishes that the Applicant’s proposed
21 manufactured home is functionally a single-family residential structure that is consistent
22 and compatible with the neighboring residential structures and use. The evidence further
23 reflects that the nature, characteristics, and overall appearance of the proposed structure
24 have been designed to blend with the residential neighborhood. Although not an inclusive
25 list of the evidence presented on this issue, the Applicant’s Letter of Support and testimony
26
27
28

1 at the public hearing established that the proposed structure will have a pitched roof, will
2 face the street, and will have exterior siding similar in appearance to materials commonly
3 used in “stick-build” homes. Moreover, the evidence establishes that the use would have
4 minimal, if any, impact on livability and development opportunities in the area. The
5 manufactured home will also be newly build.
6

7 The concerns set forth in the letters submitted by the Paneskos (*see* Exhibit 3),
8 Snelsons (*see* Exhibit 4), Wheats (*see* Exhibit 5), and Mr. Dipola (*see* Exhibit 6), are
9 seemingly based on this category of reasonable compatibility with the neighboring area
10 and minimal impact on livability and development opportunities in the neighboring area.
11 For example, the Snelsons indicate in their letter that allowing this use will “set a precedent
12 for future developers which devalues surrounding properties” (*see* Exhibit 4). Similarly,
13 the letters submitted by the Wheats and Paneskos also raise concerns regarding potential
14 decrease in property value (*see* Exhibits 5 and 3, respectively).
15

16 The concerns raised in the letters forth by the Paneskos, Snelsons, Wheats, and
17 Dipolas are very well-taken and appreciated. It is certainly fair and understandable that
18 neighborhood residents want to ensure that a new development is not allowed in their
19 neighborhood that is unreasonably unsightly or incongruous with the neighborhood.
20

21 But when presented with these concerns and provided an opportunity to respond,
22 Applicant set forth satisfactory evidence both through their Letter of Support and through
23 their testimony at the public hearing demonstrating the affirmative steps undertaken to
24 ensure the that the structure blends with the neighborhood and to show that this structure
25 will have minimal impact, if any, on the livability and development opportunities in the
26
27

1 neighboring area. The evidence presented by the Applicant in response to the letters makes
2 the Applicant's project distinguishable from the dangerous precedent cautioned by the
3 neighbors.
4

5 Although not determinative, when considering the impact that this structure will
6 have on the neighborhood, it is worth-while to note the prior appearance of this property
7 in the past couple of years. From review of images submitted into evidence, the property
8 appeared to be abandoned and significantly dilapidated. The letter submitted by the
9 Snelsons, for instance, refers to the prior structure as a "drug house" and expresses
10 excitement for its removal and placement of a new house on the property (*see* Exhibit 4).
11 Although our focus in the present inquiry is on the currently proposed structure and not
12 prior structures, the evident poor condition of the structure being replaced by this project
13 is notable when considering this current project's impact on the livability of the
14 neighboring area. Of course, simply concluding that a proposed conditional use improves
15 upon the prior condition is not, by itself, conclusive evidence of minimal impact. But it is
16 helpful when considering the impact of the proposed use on the neighboring properties.
17
18

19 For the reasons set forth above, there is a sufficient factual basis to meet the
20 requirement of CMC 17.09.185(A)(4).
21

- 22 9. **CMC 17.09.185(A)(5) Compatibility with Comprehensive Plan and Zoning.** Under
23 CMC 17.09.185(A)(5), a conditional use must be compatible with the applicable goals and
24 policies of the Chehalis Comprehensive Plan and the purpose of the underlying zone. The
25 purpose of the underlying R-1 zoning as set forth by CMC 17.42.001 is "*to provide an*
26 *area for development of low density single-family residences with relatively larger lot sizes*
27
28

1 *and adequate public facilities, and with zoning controls designed to protect the residential*
2 *living environment. Conditional uses are limited and must protect the residential character*
3 *of the zone.”* The evidence establishes that the proposed use is compatible with the
4 residential R-1 zoning. The evidence establishes that this structure is proposed for single-
5 family purposes that are in accord with the residential living environment of the zone and
6 is served by adequate public facilities. Further, the evidence establishes that this proposed
7 use would be limited to residential use and would protect the residential nature of the zone.

8
9 The uncontroverted evidence submitted by the City indicates that the proposed use
10 is consistent with the applicable goals and policies of the City’s Comprehensive Plan. This
11 includes, without limitation, the following:
12

- 13 • H.01 To encourage a diversity of housing types and opportunities to meet
14 the needs of all economic segments and special needs of the community;
- 15 • H.01.02 To support private individuals or developers to develop suitable
16 housing to meet the housing needs of low- and moderate-income persons;
17 and
18 • H.01.05 To Establish development regulations that provide for a range of
19 housing types that include single family, duplex, multi-family, mobile
20 homes, manufactured housing, and accessory dwellings.
21

22 The evidence presented is sufficient to satisfy the requirements of CMC
23 17.09.185(A)(5) and to establish that the proposed conditional use is consistent with the
24 applicable goals and policies of the City’s Comprehensive Plan and the purpose of the
25 underlying zone.
26

1 10. **CMC 17.09.185(A)(6)—Compliance with Site Plan Requirements.** Under CMC
2 19.09.185(A)6, a conditional use must comply with all applicable site plan review
3 requirements. The undisputed evidence submitted by the City indicates that the proposal
4 meets the site plan requirements and that the R-1 setback and coverage regulations are
5 satisfied. As a required condition set forth by the City’s Development Review Committee,
6 the completed site must include two off-street parking spaces in accordance with the
7 Chehalis Municipal Code. The City’s condition is hereby incorporated as a required
8 condition of applicant’s project.
9

10 The evidence is sufficient to meet the requirements of CMC 17.09.185(A)(6).
11

12 11. **CMC 17.09.185(A)(7) Environmental Consequences.** Under CMC 17.09.185(A)(7), a
13 conditional use must not have significant environmental consequences when compared
14 with other uses in the underlying zone which cannot be mitigated through conditions of
15 approval. There is no evidence that the proposed residential use will have significant
16 environmental consequences when compared with the other uses of this residential zone.
17 Of course, there are environmental consequences associated with almost any development.
18 In the present case, however, there is no evidence showing *significant* environmental
19 consequences relative to other uses of the zone or any environmental consequences that
20 rise to the level that they cannot be mitigated through conditions of approval. Therefore,
21 the evidence is sufficient to meet the requirements of CMC 17.09.185(A)(7).
22
23

24 12. **The Evidence is Factually Sufficient for Issuance of a Conditional Use Permit.** For
25 the reasons set forth above, a factual basis exists and is sufficient to support the granting
26
27
28

1 of a conditional use permit. All of the elements of CMC17.09.185 have been sufficiently
2 proven and a conditional use permit should be granted.

- 3
4 13. **All Legal Requirements Required for a Conditional Use Permit Have Been Met.** For
5 the reasons set forth above, as a matter of law, the application satisfies the legal
6 requirements required for the issuance of a conditional use permit.

7 **DECISION**

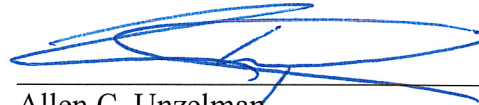
8 Based on the preceding Findings and Conclusions, the application is GRANTED, subject
9 to the following conditions.

- 10
11 1. Applicant must obtain and comply with all required permitting for construction
12 and development from any applicable agency or governmental authority;
- 13 2. Applicant must obtain all other necessary approvals for final
14 construction/development from the City of Chehalis and form any other required
15 agency;
- 16 3. Applicant must obtain water and sewer connection approval prior to issuance of
17 any building permits or occupancy;
- 18 4. Applicants must follow the plans and specifications set forth in their application
19 and as presented at the public hearing;
- 20 5. As a required condition set forth by the City's Development Review Committee,
21 the completed site must include two off-street parking spaces in accordance with
22 the Chehalis Municipal Code. The City's condition is hereby incorporated as a
23 required condition of applicant's project.
24
25
26
27
28

1 6. Applicant must comply with all applicable laws, rules, code provisions, and
2 regulations.
3

4 NOTICE: The decision of the Chehalis Hearing Examiner herein constitutes a Land Use
5 Decision as defined under Chapter 36.70C RCW. Accordingly, an aggrieved party has a
6 right of appeal to the Lewis County Superior Court by way of Petition filed within twenty-
7 one (21) days of issuance of this Land Use Decision. Prior to six days after the date of
8 mailing of the hearing examiner's written decision, any party of record may request
9 reconsideration. The request shall set forth alleged errors of fact, law or procedure, or issues
10 omitted from the hearing examiner's decision. Any request for reconsideration will stay
11 further issuance of city permits, but shall not stay the time frame for filing any appeal of
12 the hearing examiner's decision. Within seven days after receiving the reconsideration
13 request, the hearing examiner shall either: correct or amend the original decision without
14 an additional public hearing, or set the matter for an additional public hearing, in which
15 case a new notice shall be published, including notice to all parties of record; or confirm
16 the original decision.

17 DATED this 29 day of March, 2022



18 Allen C. Unzelman
19 Hearing Examiner
20 City of Chehalis