

**BEFORE THE CITY COUNCIL
OF THE CITY OF WEISER**

IN RE:

**Washington County
Application for Conditional
Use Permit for Prosecutor's
Office at 343 Main Street**

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) **REVISED FINDINGS OF FACT**
) **AND CONCLUSIONS OF LAW**
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) **CONDITIONAL USE PERMIT**
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This matter came before the Planning and Zoning Commission of the City of Weiser, Idaho, on August 19, 2024, for a public hearing and recommendation for a conditional use permit for a county prosecutor's office to be operated at 343 Main Street in the Residence "A" Zone in the City of Weiser. The Planning and Zoning Commission recommended the permit be denied. The matter next came before the City Council on September 23, 2024 for a public hearing and decision, at which the City Council voted to deny the permit. Applicant Washington County requested reconsideration of the denial, which was heard by the City Council on December 9, 2024, at which time the City Council voted 3-2 to deny the reconsideration. Washington County provided an interpretation of City code differing from the City's, and began the use without the permit in January of 2025. The City filed suit in Washington County District Court to enjoin the County from continuing the use without an approved permit. During the course of the litigation and upon further review of the record by the City's legal counsel, and in the furtherance of settling the litigation while fulfilling the City's duties under its Code and the Local Land Use Planning Act, the City hereby issues its revised findings of fact, conclusions of law, and a Conditional Use permit for Washington County to operate its Prosecutor's office at 343 Main Street subject to the Conditions set forth below:

FINDINGS OF FACT

1. Washington County applied for a conditional use permit on July 24, 2024 for operation of a prosecutor's office at 343 Main Street, in the Residence "A" zone in the City of Weiser.

2. The County's application stated the use would be for an office, the hours would be Monday- Friday, 9-5, would require no additional lighting, existing available on site parking would be sufficient for the 3-4 employees, and included a copy of the County assessor's records showing the previous use of a chiropractor's office and that the property's current ownership at the time of the hearing by Elemental Wellness and Chiropractic.

3. Weiser City Code § 10-1-2 provides that the purpose and intent of that code includes "reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the city."

4. Weiser City Code Title 10, Chapter 7 governs uses within the Residence "A" zone, in which the property lies. Weiser City Code § 10-7-1, "permitted uses," does not include the general practice of law as a permitted use in that zone. Weiser City Code § 10-7-2 includes in its enumerated list of conditional uses, "Public utilities and public service uses or structures other than the City of Weiser."

5. Weiser City Code Title 10, Chapter 18 governs conditional uses under the City's zoning code. Section 10-18-2 of that code provides authority to grant conditional uses if the city finds that the proposed locations will be desirable to the public convenience and welfare and will be in harmony with the various elements and objectives of the comprehensive general plan."

6. During the hearing before the City Planning and Zoning Commission on August 19, 2025, a city staff member stated at the opening of the hearing that there was "no issue as to why they can't issue another conditional use permit." A nearby resident testified he was opposed to the use of historical homes as office spaces. The commission determined the home was not on the historical register. The commission found that a prior property owner had converted a portion of the front yard into off-street parking. The commission reviewed the prior use of the property as a chiropractor's office. One commissioner stated that he believed this was not a permitted use at all under city code. Another commissioner stated that there were other commercial properties available for commercial uses. The Commission ultimately voted to recommend denial on the basis that the use "is not a use allowed by conditional use permit," and the written findings and

recommendation also state that the proposed use is not a "use deemed similar" to other conditional or permitted uses in that zone, and also refers to the intent provision of Weiser City Code § 10-1-2 in conserving the value of buildings.

7. During the October 29, 2024 hearing before the Weiser City Council, a city staff member suggested that the professional practice of law as a specified conditional use in the Zone may have been inadvertently omitted from the code. A nearby resident testified with concerns about mixed use and historical preservation challenges, and concerns about parking and green space reduction. The County's representative testified that the County intended to preserve the historical nature of the building, stating "if you want this property to stay historical you are going to want the County to own it," referring to the County recently receiving a historical preservation award. During deliberations, there was a statement mischaracterizing the proposed governmental prosecution use, stating "It is not the intent of the zone to allow a commercial business," and that it would not be a good precedent to set. Another member expressed concern about going "against our own P&Z's decision" as a basis for voting to deny the application. Another councilmember expressed concern about parking, and another reiterated a desire to support the P&Z recommendation. Notably, no testimony was received regarding any new or further reduction in green space, nor did the County articulate any such reduction in its application. No testimony was offered stating there were insufficient parking spaces to support the use as outlined in the application.

8. During the City Council's reconsideration on December 9, 2024, a councilmember remarked that parking would not be an issue as historically he has not seen more than three cars and it is on his regular daily driving route. Further discussion covered the property's close proximity to a commercial McDonald's across the street and a corner business nearby, how the property is at or near the dividing line between it and the commercial zone, and a comment by the police chief that it would benefit the city if the prosecutor's office was in that building.

9. The City's Comprehensive Plan and Future Land Use Map makes clear that the area in which the property lies is planned for mixed uses. The Land Use Chapter of the Comprehensive plan (at page 16) discusses a policy of concentrating higher density mixed uses in and around downtown Weiser while protecting the historic nature of the

architecture, and supports "identifying opportunities for development that support the community." The Plan's Community and Sustainable Design chapter articulates the City's pride in its historic legacy and its contribution to the appeal of the City. The Plan also states some principles to be followed to create the desired development plan, including "Refrain from distinct separation of land uses. Instead, promote a variety of mixed uses near each other facilitating a diverse and walkable community," and "Promote a gradual transition of land use types within a given community and between different communities in the City."

10. The proposed use is a public governmental use, by a governmental entity other than the City of Weiser. While the operation of a prosecutor's office is necessarily the practice of law, it is not a commercial law practice serving general walkup or retail clients and is not a commercial use.

Based on the foregoing FINDINGS OF FACT, the City of Weiser hereby makes the following:

CONCLUSIONS OF LAW

1. The proposed use of a Prosecutor's office by Washington County, a governmental entity other than the City Weiser, is a Conditional use under Weiser City Code § 10-7-2(O) and the Planning and Zoning Commission's finding that it is not was in error.

2. The proposed use will be in harmony with the various elements and objectives of the comprehensive general plan because it will not create an excessive additional demand for parking, will not be a commercial use, and will, as stated by the applicant, preserve the historic nature of the structure. In addition, the use provides a mix of uses in the area and is consistent with the Future Land Use Map's call for mixed uses in the area.

3. The previous denial by the City was in part based upon an erroneous conclusion by the Planning and Zoning Commission that the proposed use was neither a permitted nor conditional use under any provision of the code.

4. The applicant has agreed to conditions of use sufficient to address concerns raised during the hearings and to ensure the use will be harmonious with the objectives and elements of the Comprehensive Plan, to-wit: the County shall preserve the historic nature of the building and shall not use the building for the general commercial private practice of law.

5. The requested conditional use permit is consistent with the City's Comprehensive Plan.

Based on the forgoing CONCLUSIONS OF LAW, the City of Weiser hereby grants the following

CONDITIONAL USE PERMIT

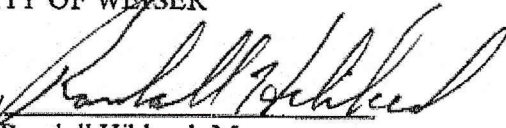
The City of Weiser hereby grants the Conditional Use Permit requested by Washington County in its application dated July 24, 2024, for the operation of the County Prosecutor's office located at 343 Main St., with the following Conditions:

1. Shall only be used by Washington County as a governmental public service use as legal counsel serving Washington County and shall not be used for the general private practice of law.
2. Shall maintain the existing historic character of the building.

DATED this 22nd day of December, 2025.

CITY OF WEISER

By


Randall Hibberd, Mayor

ATTEST:


City Clerk

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into, effective as of the ^{22nd} day of December, 2025 (the "Effective Date"), by and among, the City of Weiser, a municipal corporation of the state of Idaho, ("City") and Washington County, a political subdivision of the State of Idaho ("County"). Weiser and Washington County may be referred to collectively in this Agreement as the "Parties" or individually as a "Party."

RECITALS:

A. Washington County owns real property located at 343 Main Street in the City of Weiser, which is located in the City's Residence "A" zone.

B. Washington County applied for a conditional use permit to operate its County Prosecutor's office at the 343 Main Street address. The City's Planning and Zoning Commission and City Council conducted public hearings, took testimony, deliberated, heard a motion for reconsideration, ultimately denying the County's conditional use permit application.

C. Washington County took the position in writing that the City's code allowed the use and that no conditional use permit was required, and began the use without a permit in January of 2025.

D. A dispute arose between the Parties relating to the interpretation of the City's zoning code and its applicability to this particular use in this zone.

E. Weiser filed a Complaint for Declaratory and Injunctive Relief in the Third District Court of Idaho, in and for Washington County, case No. CV 44-25-0307, on July 21, 2025 captioned *City of Weiser v. Washington County*, (the "Lawsuit").

F. During the course of the litigation, the City determined that based upon the record developed during its proceedings, it can legally issue a conditional use permit for the County's use of a prosecutor's office in that zone, given the County's representations at the hearings regarding preserving the historical nature of the building and not engaging in the private practice of law at the site.

G. The Parties have now negotiated a settlement of all claims arising from the facts contained in these recitals and the Lawsuit, and now desire to execute this Agreement.

AGREEMENTS:

In consideration of the mutual promises made by and between the Parties and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Settlement Terms.

1.1. The above Recitals are incorporated herein by reference as if set forth in full again here.

1.2. The City agrees to approve and issue a conditional use permit to the County in the form that is attached hereto as **Exhibit A ("Conditional Use Permit")**.

1.3. Washington County agrees to abide by the conditions contained in the Permit.

1.4. The City agrees to dismiss the Lawsuit with prejudice, with each Party to bear its own costs and fees, upon execution of this Agreement.

1.5. Each Party hereto agrees that the settlement terms set forth above are intended as consideration for such Party's waiver of all claims that it may have against the other arising from the subject matter of the Agreement and which may have accrued on or before the date of this Agreement.

2. Further Assurances. The Parties shall, and hereby do instruct their respective counsel, to take such further actions, and agree to provide to each other and their heirs, successors, assigns, and other legal representatives, such cooperation and assistance reasonably requested by any other Party to more fully and effectively implement the purposes of this Agreement and the terms the Parties have agreed upon.

3. Binding Effect; Binding Authority. Each Party hereto understands and expressly agrees that this Agreement shall bind and benefit its respective heirs, subsidiaries, members, affiliates, officers, employees, agents, attorneys, representatives, predecessors, successors, and assigns.

4. No Admission of Liability. It is understood and expressly agreed by each of the Parties that this is a compromised settlement of disputed claims, and that the execution of the terms herein and the delivery of any other consideration exchanged for this Agreement shall not be deemed or construed as an admission of any liability on the part of, or in favor of, any Party.

5. Entire Agreement; Modification; Severability. This Agreement constitutes the final, complete, and exclusive statement of the terms of the agreement between the Parties hereto relating to the rights granted by it and its obligations assumed hereunder. No Party has been induced to enter into this Agreement by, nor is any party relying on, any representation or warranty outside those expressly set forth in this Agreement. This Agreement may be supplemented, amended, or modified only by the mutual agreement of the Parties, in a writing signed by all the Parties. If a court or an arbitrator of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected.

6. Attorney's Fees. The Parties stipulate and agree that in any action or proceeding henceforth brought to enforce this Agreement or any of its terms, the prevailing party in that action or proceeding shall be entitled to reasonable attorney's fees and costs incurred in connection with that action or proceeding, in addition to any and all other relief to which the prevailing party may be entitled.

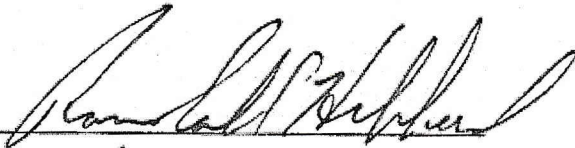
7. **Agreement Freely Entered Into.** The Parties and, each of them represent and agree that this Agreement has been given voluntarily and free from duress or undue influence on the part of any person.

8. **Costs.** Each Party hereto shall bear its respective costs and attorney's fees incurred in connection with the disputes described in the Recitals set forth above, the Lawsuit, the settlement entered into hereby, and this Agreement.

9. **Counterparts.** This Agreement may be executed in counterparts, and such counterparts together shall constitute one and the same instrument. Counterparts delivered by facsimile or other electronic means shall have the same effectiveness as ink-signed originals.

10. **Choice of Law.** This Agreement shall be governed by the laws of the State of Idaho, as it would apply to contracts negotiated, executed, delivered, and performed solely in such jurisdiction, excluding the laws regarding the principles of conflicts of laws. Exclusive venue for suit on this Agreement shall rest with the Idaho State Court, District of Idaho, located in Ada County, Idaho, and all parties hereto agree and consent to exclusive venue being proper in such county and with such court.

CITY OF WEISER

By: 

Its: Mayer

WASHINGTON COUNTY

By: _____