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3 **BEFORE THE HEARING EXAMINER FOR THE TOWN OF**  
4 **LA CONNER, WASHINGTON**

5 David Lowell, Hearing Examiner  
6

7 RE: Atkinson Development / KSA 8 Investments CUP 9 10 Conditional Use Permit Case No.: LU21-56CU	<b>FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION</b>
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11  
12 **DECISION**  
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14 The Conditional Use Permit is approved, subject to the conditions listed on pages 15 to  
15 18 of this Decision.  
16

17 **INTRODUCTION**  
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19 The subject project (hereinafter “project”) is the construction of a three-story building  
20 containing 14 multi-family dwelling units on the 2<sup>nd</sup> and 3<sup>rd</sup> floors and six lodging (i.e.  
21 hotel) rooms on the first floor of a new structure at 306 Center Street (Skagit County  
22 Assessor’s Parcel Number: P74143), La Conner, WA (hereinafter “site”).  
23

24 **EXHIBITS**  
25

26 Exhibits Submitted by the Town of La Conner  
27

28 A. Staff Report from Michael Davolio to the Hearing Examiner dated March 10,  
2022 that includes the below-listed items:

1: Application  
2: SEPA Checklist  
3.: Public Notices

4. Department of Ecology Site Information
5. Geotechnical Evaluation
6. Phase II Environmental Site Assessment: Subsurface Investigation Report
7. Cultural Resources Survey
8. Public Comments

B. Memo from Michael Davolio to the Hearing Examiner dated April 6, 2022 containing additional points of reference

C. Meeting minutes from the Town of La Conner's Planning Commission meeting held on March 15, 2022 and includes a list of those who spoke at the Commission's hearing

D. Letter dated April 2, 2020 [sic] from Maggie Wilder

E. Letter dated April 1, 2022 from Georgia Johnson

F. Letter dated April 1, 2022 from Gary and Heike Nelson

G. Letter dated April 2, 2022 from Brandon Atkinson/KSA Investments

H. Email dated April 4, 2022 from Don Pendleton and Kathy Shiner

I. Letter dated April 4, 2022 from Linda Talman

J. Email dated April 6, 2022 from Linda Talman

## ORAL TESTIMONY

## Witnesses – present at the March 31, 2022 virtual hearing

- Michael Davolio, (Planning Director for the Town of La Conner)
- Brandon Atkinson, (Applicant)
- Katie Atkinson (Applicant):
- Maggie Wilder (party of record)
- Heiki Nelson (party of record)
- Debra Aldrich (party of record)
- Gary Nelson (party of record)
- Linda Talman (party of record)
- Charlie Morgan (Applicant's Architect)
- Frank Liddell (party of record)

1                   o Roger Vallo (Applicant's representative)

2

3                   Following is a summary of the oral testimony heard by the Examiner. A complete  
4                   recording of the hearing is on file with the Town of LaConner and is with this reference  
5                   made part of this decision.

6                   The Examiner made brief introductory remarks noting the proceeding was being  
7                   recorded and the Staff Report (Exhibit A) with its associated Attachments identified as 1  
8                   - 8 were being admitted into the record. The Examiner then swore in the Town's  
9                   representative Michael Davolio, their Planning Director.

10

11                  **Michael Davolio** (Town's Planning Director). Mr. Davolio provided an overview of  
12                  his staff report. Mr. Davolio stated the preliminary SEPA determination issued on  
13                  November 6, 2021 was properly posted on the site, published, and mailed to property  
14                  owners within 300 feet of the project site. Mr. Davolio explained that following the  
15                  issuance of the preliminary SEPA determination he was made aware that an abutting  
16                  property was historically a gas station that had been investigated for potential  
17                  contamination by the Department of Ecology (DOE) and the site and this abutting  
18                  property were under common ownership when the referenced DOE investigation  
19                  occurred. Since the SEPA checklist submitted by the applicant had no indication of  
20                  this prior neighboring use, or of any existing soil or environmental conditions that  
21                  may have an impact on the proposal, Mr. Davolio notified the applicant that their  
22                  application was deemed incomplete until appropriate studies were completed to  
23                  determine existing soil conditions. The Applicant completed these studies and  
24                  submitted them to the Town before the final SEPA determination for this project was  
25                  issued.

26

27                  **Brandon Atkinson** (the Applicant): Mr. Atkinson outlined when they purchased the  
28                  property and their goals for it. He apologized about the controversy regarding the  
earlier demolition, and stated he did feel the Town's Public Works staff make sure  
the demolition was done safely. He then spoke in general about the additional

1 work that needed to be completed to address the environmental concerns. He feels  
2 this project will be of great benefit to the Town and it will look very beautiful.

3  
4 **Katie Atkinson** (the Applicant): Mrs. Atkinson stated the property will look great  
5 and beautiful and will be quite an improvement over the "vacant run down shed" that  
6 was once present on the property.

7  
8 **Maggie Wilder** (Party of Record): Ms. Wilder's comments were against the project.  
9 She feels there will be too many "negative effects" to the surrounding neighborhood  
10 such as: traffic issues, privacy and that the project is just "too big a project". Ms.  
11 Wilder stated the Applicant should work to get the property rezoned first, the  
12 Applicant wants a quick "turn around profit" project, and that the Applicants are not  
13 really interested in the long-term well-being of La Conner. She thinks applicant  
14 should re-zone it as residential then live up to these requirements. She does not  
15 think applicant being truthful from beginning of application - as they were said to be  
16 rentals - when really condos. She feels the Planning Commission acted on "good  
17 faith" and principle in rejecting this proposal. She is against the "sheer size" of a 3-  
18 story building. She has privacy concerns and fears people will be looking down at  
19 us. She said it is not an attractive project, the scale is uncharacteristic of  
surrounding buildings, it is urban density and is unfriendly to families. Ms. Wilder  
also has written comments that are exhibits to this Decision.

20  
21 **Heiki Nelson** (Party of Record): Ms. Nelson's comments were against the project.  
22 Mrs. Nelson stated she has been civil engineer for 25 years and has vast experience  
23 with these sorts of projects. Mrs. Nelson is concerned about the impacts to the Town  
24 as a whole. She does not feel there is a conditional use for something like this in the  
code, and that the project is too big; and if it were in a different area no more than  
25 10,000 sq. ft. would be allowed. She has not seen proper landscape plans. Also,  
26 she was very upset about how applicant handled the demolition issue and called it  
very arrogant. She also focused on negative effects of project and this is too big a  
27 project for that location. She expressed grave environmental concerns. She has  
28 concerns regarding parking and thinks the project will alter the character of

1 surrounding area. Ms. Nelson also has written comments that are exhibits to this  
2 Decision.

3  
4 **Debra Aldrich** (Party of Record): Ms. Aldrich's comments were against the  
5 project. She feels it is too tall and too big a project. She feels La Conner needs  
6 more residential areas but not this project. She has parking concerns. She stated that  
7 La Conner is a tourist town not a big city like Burlington. She is not against a  
8 "special use permit" but not a conditional use permit. She worries about garbage  
9 (pollution) concerns; she is concerned that the Fire Department has not signed off on  
10 this project. She feels the 30-foot-tall building will hurt views of nearby neighbors;  
11 and she is concerned about parking issues (in that not enough spaces planned). She  
12 said there might also be drainage issues. Ms. Aldrich also has written comments that  
are exhibits to this Decision.

13  
14 **Gary Nelson** (Party of Record): Mr. Nelson's comments were against the project.  
15 He worries that this project has not received the Fire Chief's approval which could be  
16 an issue because the ladder of fire department only goes 35 feet which could be  
17 problematic. Mr. Nelson expressed concerns over right-of-way utilities issues and  
18 asked if garbage trucks will have proper access to the site. He stated this project  
19 will block view of the surrounding hills and nearby areas. He is worried about this  
20 project to the overall public, life, health and safety of the community and is  
21 concerned about parking. He said historically this was a filing station on south side  
22 of the lot and it was a bulk/oil fill station on station on north. He does not think  
23 enough environmental testing has occurred on the north side of Lot 1. His  
recollection was that this was the historical use from approximately 1950-1976.

24  
25 **Linda Talman** (Party of Record): Ms. Talman's comments were against the  
26 project. She is very concerned about parking issues. She brought up the overall  
27 "Comprehensive Plan" for La Conner's future – and wondered if this project is  
28 really going to create "affordable housing"? She stated there will be a parking gate  
and that this is not affordable housing, etc. She feels if this project was in a

residential zone it would be limited to 10,000 sq ft in size. Ms. Talman also has written comments that are exhibits to this Decision.

**Charlie Morgan** (Applicant's Architect): Mr. Morgan is the architect for the applicant/project. He said they have followed the law. He stated that he has empathy and understands that change is hard, and he understand the legitimate concerns of the folks who are against the project; however, he feels the project totally complies with all aspects of the La Conner code. Also, he said the State of Washington is giving tax credits to entities that fix up old gas stations and thus this is a positive for this project. He said they have successfully met the conditional use in this case: no more than 50% of ground floors are multiple family dwelling units - this is done correctly. The code allows what they are doing.

**Frank Liddell** (Party of Record): Mr. Liddell's were against the project. Mr. Liddell has lived near the project site for 17 years (he lives across the street from project). He stated the project is not providing the type of housing that La Conner so desperately needs. He stated these are single bedrooms and not family units. He is concerned there will be no yards, room for pets, and that it won't help with school enrollment. He stated the foundation of La Conner is multi-generational families and he wants to keep it a small town and not a city and that the project does not help in this quest. He foresees poop pollutions issues. He said this project will result in less sunlight and he has privacy concerns because the building is 30 feet tall.

**Roger Vallo** (Applicant's consultant/representative): Mr. Vallo is a consultant working for the applicant. Mr. Vallo stated wants to clarify the concern about utilities. He will make sure that there is proper approval at all levels (Public Works in LC and Fire Department) and plans are being reviewed once they are given permit.

**Michael Davolio** (Town's Planning Director). Mr. Davolio made rebuttal comments stating short term rentals are defined as those rented for less than 30 days, and there is nothing in the Town's Code that limits residential density in commercial zones. Mr. Davolio encouraged those in attendance to contact Town Council if they believe

1 the municipal code should be changed and noted the Applicant is entitled to develop  
2 his property under the codes in effect when they submitted a complete application.

3  
4 The Hearing Examiner concludes the meeting and stated he will keep the record open  
5 for five (5) business days.  
6

7 Materials Received After the March 31, 2022 Hearing While the Record was Open:  
8

- A. Supplemental Staff Report from Michael Davolio to the Hearing Examiner dated April 6, 2022
- B. Letter dated April 2, 2020 [sic] from Maggie Wilder
- C. Letter dated April 1, 2022 from Georgia Johnson
- D. Letter dated April 1, 2022 from Gary and Heike Nelson
- E. Letter dated April 2, 2022 from Brandon Atkinson/KSA Investments
- F. Email dated April 4, 2022 from Don Pendleton and Kathy Shiner
- G. Letter dated April 4, 2022 from Linda Talman
- H. Email dated April 6, 2022 from Linda Talman

16 Upon consideration of the testimony and exhibits submitted as part of the hearing, the  
17 Hearing Examiner enters the following Findings and Conclusions as the basis for the  
18 decision as issued herein:  
19

## 20 FINDINGS OF FACT

- 21 1. **Owners.** The owner is identified as KSA Investments, LLC – this LLC is governed  
22 by Kate and Brandon Atkinson.
- 23 2. **Site.** The site is addressed as 306 Center Street, La Conner, WA and is identified by  
24 the Skagit County Assessor as tax parcel P74143.
- 25 3. **Virtual Hearing.** A virtual hearing was held on March 31, 2022, via Zoom web  
26 application, Zoom Meeting ID No. 885 9114 1934.
- 27 4. **Procedural.** LCMC 15.135.050 classifies the subject Conditional Use Permit as a  
28 Type IV permit with a recommendation made by the Planning Director or Planning  
Commission and a final decision made by the Hearing Examiner.

1 a. Chapter 13.10 LCMC designates the Town planner as the person responsible  
2 for the administration of the Town's SEPA procedures and policies. Unless a  
3 SEPA appeal is filed the Hearing Examiner has no authority in the SEPA  
4 process. There were no SEPA appeals filed for this project.

5 b. The La Conner Planning Commission held a meeting on March 15, 2022,  
6 where they made a 3-0 motion to deny the subject Conditional Use Permit.

7 5. **Zoning.** The site has a zoning designation of Commercial. The zoning regulations  
8 for the Commercial Zone are codified under Chapter 15.35 of the La Conner  
9 Municipal Code (LCMC). The site is not located within the Town's Historic  
10 Preservation District Overlay Zone and is not within what is defined as the Morris  
11 Street Commercial District under LCMC 15.50.025.

12 6. **Surrounding Zoning.** To the north and east of the site on the opposite sides of  
13 Center Street and North Fourth Street, respectively, are properties within the  
14 Residential Zone.

15 7. **Conditional Use Permit and Site Uses.** The permit brought before the Hearing  
16 Examiner is a Conditional Use Permit to allow what is described by Town staff as  
17 "six short-term dwelling units" on the ground floor of the proposed three-story  
18 structure. The second and third stories of the proposed structure are described by  
19 Town staff as containing a total of "14 long-term dwelling units". On the Town of  
20 La Conner Master Permit Application the project description provided by the  
21 Applicant states, "1 apartment building with 14 dwelling units, 6 transient housing  
22 units, associated parking". The Conditional Use Application Narrative submitted by  
23 the Applicant also describes the ground floor uses as "transient housing".  
24 a. LCMC 15.35.020(10) allows "lodging establishments such as hotels, motels,  
25 and inns" as permitted uses. LCMC 15.10.525 defines "hotel, motel, or  
26 apartment hotel" as "any building containing six or more guest rooms  
27 intended or designed to be used, or which are used, rented or hired out to be  
28 occupied, or which are occupied for sleeping purposes by guests."

29 b. LCMC 15.35.030(2) states "Dwelling units, attached or unattached, are not to  
30 exceed 49 percent of the square footage of the building(s), for all uses, of the  
31 properties of a development on the ground floor. Dwelling units located  
32 above the ground floor are not limited in square footage except that the

1 maximum floor area for all development (commercial and residential) must  
2 not be more than two times the property area. Residential uses in the  
3 commercial zone to the extent practical must have their access located to the  
4 rear or side of the structure where they are located” with approval of a  
5 Conditional Use Permit.

6 c. LCMC 15.35.030(8) allows “Guesthouse/Guest Rental – Residential  
7 Dwelling Units Rented as Guesthouse. The guesthouse residential unit must  
8 also comply with all the provisions of this code that pertain to residential  
9 conditional uses in the Commercial Zone” with approval of a Conditional  
10 Use Permit. The Examiner finds neither the 14 multi-family residential units  
11 on the second and third floors or the six ground floor hotel rooms are  
12 classified as Guesthouse/Guest Rental – Residential Dwelling Units Rented  
as Guesthouse.

13 d. LCMC 15.10.380 defines “dwelling units” as “an enclosure containing  
14 sleeping, kitchen, and bathroom facilities designed for and used or held ready  
15 for use as permanent residence by one family”. LCMC 15.10.390 defines  
16 multifamily dwellings as a “detached building containing three or more  
17 dwelling units, each containing sleeping, kitchen, and bathroom facilities,  
18 and designed for and used or held ready for use by three or more families  
living independently of each other”.

19 e. The term “transient housing” is not used or defined in the LCMC. However,  
20 in the staff report provided to the Examiner staff states “The short-term  
21 residential uses (lodging establishment) proposed for the first floor are  
22 permitted per Section 15.35.020(10)” making clear that the six ground floor  
23 units are classified by staff as lodging establishments such as hotels, motels,  
24 and inns.

25 f. The six ground floor rooms shall be classified as lodging establishments such  
26 as hotels, motels, and inns.

27 g. The 14 second and third floor units shall be classified as multi-family  
dwelling units.

28 8. **Conditional Use Permit Requirements.** The provisions that “pertain to residential  
conditional uses in the Commercial Zone” contained in LCMC 15.35.030(2) state (in

1 part), “Dwelling units located above the ground floor are not limited in square  
2 footage except that the maximum floor area for all development (commercial and  
3 residential) must not be more than two times the property area. Residential uses in  
4 the commercial zone to the extent practical must have their access located to the rear  
5 or side of the structure where they are located.” This means the floor area of all the  
6 combined commercial and residential floor area of the development on the 15,300 s.f.  
7 property must be less than 30,600 s.f. LCMC 15.10.475 defines usable floor area;  
8 and LCMC 15.10.480 defines “gross floor area”. Since LCMC 15.35.030(2) does  
9 not state the floor area is to be “usable” the definition of “gross floor area” must be  
used to determine compliance with the limitations of the maximum floor area.

- 10 a. LCMC 15.10.480 defines gross floor area as, “the total area of a building  
11 measured by taking the outside dimensions of the building at each floor level  
12 intended for occupancy or storage.”
- 13 b. The Application materials state “...the combination of on grade parking,  
14 interior space, setbacks, and pervious surface limits the development to  
15 approximately 20,488 sf” and these materials summarize the floor area of the  
main, second and third floor areas at 17,540 s.f. Neither of these square  
footages appear to meet the definition of gross floor area of the development.
- 16 c. The Application materials submitted by the Applicant list the total property  
17 area as 15,300 s.f.

18 9. **Setbacks.** The north and east property lines abutting Center and North Fourth  
19 Streets, respectively, are where front yard setbacks must be observed. The south  
20 property line must observe a 25-foot setback as it is considered a rear yard.

21 10. **Floodplain Regulations.** The site is located within the 100-year floodplain, and as  
22 such, the maximum building height is 30 feet measured from one-foot above the  
23 base flood elevation to the highest point on the building. The site is located in  
24 FEMA zone A7 with a base flood elevation of 8 measured using the National  
25 Geodetic Vertical Datum of 1929 (NGVD 29) (Community-Panel Number 530156  
0001 B, with an effective date of 12/18/1984). The maximum building height is  
26 limited to 30 feet from elevation 9 (using NGVD 29 datum) to the highest point on  
27 the building. The materials provided to the Examiner note the floodplain elevation  
28

1 as being 11.8' and the finished floor as 12.8'. However, these materials do not  
2 indicate the datum these elevations are based on.

3 **11. Parking Requirements.** LCMC 15.90.030(3)(c)(iv) requires hotels and motels to  
4 have one off-street parking space per each paid unit plus one per on-site manager.  
5 The six ground floor rooms are required to have six off-street parking spaces plus  
6 one per on-site manager. LCMC 15.90.030(1)(b) requires two off-street parking  
7 spaces per multifamily, dwelling or apartment; however, LCMC 15.90.030(3)(c)(vii)  
8 allows residential uses in commercial zones to provide one space for the first 1,200  
9 s.f. of the unit and one additional space if the unit is larger than 1,200 s.f.. All of the  
10 proposed multifamily units on the second and third floors are less than 1,200 s.f. in  
11 size. The 14 multifamily units necessitate 14 off-street parking spaces. A total of 21  
12 off-street parking spaces must be provided if an on-site manager for the hotel rooms  
13 is present and 20 off-street parking spaces must be provided if an on-site manager  
for the hotel rooms is not present.

14 a. The Applicant's materials show 90-degree parking being provided on the  
15 site; and as such LCMC 15.90.010 requires the following:  
16 i. These parking spaces be an unencumbered 9 feet wide by 18.5 feet  
17 deep and 10 feet wide by 18.5 feet deep if abutting a wall.  
18 ii. An access drive no less than 24 feet in width be provided between the  
19 two rows of parking spaces.  
20 iii. No more than 50% of the required parking space be compact with  
21 dimension of 8.5' by 16 feet.  
22 b. The Site Plan submitted by the Applicant appears to indicate at least four of  
23 the compact parking spaces and at least five of the full-size parking spaces  
24 are partially encumbered with structural supports for the proposed building.  
25 Note 1 within LCMC 15.90.010 indicates parking spaces must be  
26 unencumbered. Conditions ensuring the minimum dimensions of the parking  
27 spaces and drive aisle are included as part of this decision since the Examiner  
28 is not able to verify compliance with these requirements.

12. **Screening Requirements.** LCMC 15.90.010(8) requires screening be required  
when a commercial property abuts a "residential area". The Examiner notes this  
refers to a "residential area" not a residential zone. The property abutting the west

1 property line of the site is a residential area as it contains a single-family residential  
2 structure even though it is zoned Commercial. The property abutting the south  
3 property line of the site is zoned Commercial and is developed with non-residential  
4 uses and therefore is not a residential area. Therefore, the project is required to  
5 incorporate the screening requirements outlined within LCMC 15.90.040 along the  
6 west property line of the site.

7 **13. Landscaping Requirements.** Chapter 15.105 LCMC contains the landscaping  
8 requirements for the Town. The project is subject to the street frontage landscaping  
9 requirements in LCMC 15.105.120, the parking lot landscaping requirements in  
10 LCMC 15.105.140, and the screening requirements in LCMC 15.105.150. The  
11 Applicant's materials identify improvements (e.g. ADA Ramp, stairs, and landings)  
12 being constructed in the street frontage area; these improvements are either touching  
13 or are within less than five feet of the back of the sidewalk. The Examiner finds the  
14 Applicant has not complied with the street frontage landscaping requirements  
15 codified within LCMC 15.105.120.

- 16 a. There isn't enough information in the record for the Examiner to determine if  
17 the screening requirements codified within LCMC 15.105.150 required along  
18 the south and west property lines of the site are being satisfied.
- 19 b. LCMC 15.105.120 states planting along street frontages are required to be  
20 designed to "soften and enhance the development on the site and provide a  
21 pleasant pedestrian environment".

22 **14. Conditional Use Permit Criteria.** Compliance with the conditional use permit  
23 criteria found in LCMC 15.135.190 will be satisfied, as conditioned, as follows:

- 24 (a) The use is listed as a conditional use in the underlying district.
  - 25 • LCMC 15.35.030(2) lists attached dwelling units as a conditional use.
- 26 (b) The characteristics of the site are suitable for the proposed use  
27 considering size, shape, location, topography, existence of improvements and  
28 natural features.
  - 29 • The size, shape, location, topography, existing of improvements and  
30 natural features of the site are suitable, as conditioned, to allow the 14  
31 multi-family dwelling units on the second and third floors of the

1 project structure. Exhibits A and B submitted by the Town contain  
2 additional details relied upon by the Examiner.

3 (c) The site and proposed development is timely, considering the adequacy of  
4 transportation systems, public facilities and services existing or planned for  
5 the area affected by the use.

6 • As conditioned, transportation systems, public facilities and services  
7 are adequate for the proposed use. Exhibits A and B submitted by the  
8 Town contain additional details relied upon by the Examiner.

9 (d) The proposed use will not alter the character of the surrounding area in a  
10 manner which substantially limits, impairs, or precludes the use of  
11 surrounding properties for the primary uses listed in the underlying district.

12 • The character of the surrounding area will not be altered by the  
13 proposed multi-family dwelling units in a manner that substantially  
14 limits, impairs, or precludes the use of surrounding properties for the  
15 primary uses listed in the underlying district(s). The surrounding  
16 areas to the north and east of the site are zoned Residential; and the  
17 Residential district allows multifamily residential units or apartments  
18 with approval of an Administrative Conditional Use Permit (LCMC  
19 15.20.055). This is noteworthy because the surrounding areas zoned  
20 Residential are also allowed to develop the same use as the subject  
21 conditional use permit. The surrounding areas to the south and west  
22 of the site share the Commercial zoning designation of the site. The  
23 property to the south of the site is already developed with commercial  
24 uses and the property immediately west of the site is currently  
25 developed with a single-family residential home; however, this  
26 property could be redeveloped to contain any of the uses allowed in  
27 the Commercial zone. Exhibits A and B submitted by the Town  
28 contain additional details relied upon by the Examiner for this  
criterion.

(e) The proposal, through findings, satisfies the goals and policies of the  
comprehensive plan, Shoreline Management Act, and floodplain ordinance,  
which apply to the proposed use, if applicable.

1           • The Examiner has reviewed the goals and policies of the  
2           comprehensive plan and finds, as conditioned, they are satisfied with  
3           the subject project. The site is not subject to the Shoreline  
4           Management Act. The structure is located within the floodplain and  
5           will be required to comply with all applicable floodplain regulations.

6           (f) Setbacks or buffers proposed by applicant are shown to mitigate potential  
7           adverse impacts that might emerge from the proposed conditional use.

8           • As conditioned the project will have setbacks and buffers to mitigate  
9           the potential adverse impacts that might emerge from the proposed  
10           conditional use. Specifically, the Examiner is requiring additional  
11           frontage landscaping along the north and east property lines, which  
12           means there will be larger setbacks from the north, east, and west  
13           property lines, and screening along the south and west property lines  
14           to ensure these criteria are met.

15           (g) The use must cause no adverse effect on the surrounding area due to  
16           traffic, parking, noise, odor, air or water pollution.

17           • As conditioned, the use will have no adverse effect on the  
18           surrounding area due to traffic, parking, noise, odor, air or water  
19           pollution. Traffic, parking, noise, odor, air and water pollution  
20           impacts are all mitigated by compliance with the Town's applicable  
21           development regulations. Findings of Fact #11 and 12 (above)  
22           outline the parking and screening requirements the project will be  
23           required to comply with. Without a Conditional Use Permit the  
24           Applicant could create second and third story hotel rooms instead of  
25           dwelling units. The potential adverse effects of these two uses, hotel  
26           rooms versus multi-family dwelling units, are substantially similar.

27           (h) Consideration shall be given to the cumulative impact of like uses within  
28           the neighborhood.

• The Examiner is not aware of any other like uses within the  
neighborhood, and no evidence of other like uses within the  
neighborhood were submitted as part of the record. Therefore, the

1                   Examiner finds there are no cumulative impacts that need to be taken  
2                   into consideration.

3                   **CONCLUSIONS OF LAW**

4

5                   1. The procedural and substantive requirements for the SEPA process and for the  
6                   Conditional Use permit have been satisfied.

7                   2. As conditioned, the project will comply with the Conditional Use permit criteria codified  
8                   within LCMC 15.35.030(2), 15.135.190, and the dimensional standards within LCMC  
9                   15.35.090.

10                  3. As conditioned, the project will comply with the parking, screening and landscaping  
11                  requirements codified in Chapters 15.90 and 15.105 LCMC.

12                  **DECISION**

13                  Based on the findings of fact and conclusion of law contained herein, it is the decision of  
14                  the Hearing Examiner to approve the proposed Conditional Use Permit subject to the  
15                  below-listed conditions of approval:

16                  1. The six hotel rooms shall be consistent with the definition of such in LCMC  
17                  15.10.525. In addition, the Applicant shall comply with all applicable duration  
18                  of stay regulations adopted by the Town.

19                  2. The 14 multi-family units shall be consistent with the definition of such in  
20                  LCMC 15.10.390. This does not preclude the Applicant from creating  
21                  condominiums of these multi-family units consistent with State and local laws.

22                  3. The floor area of all the combined commercial and residential floor area of the  
23                  development on the 15,300 s.f. property must be less than 30,600 s.f. When  
24                  calculating the square footage of the combined commercial and residential floor  
25                  areas the Applicant shall use the definition of “gross floor area” codified in  
26                  LCMC 15.10.480.

27                  4. A total of 21 off-street parking spaces must be provided if an on-site manager for  
28                  the hotel rooms is present and 20 off-street parking spaces must be provided if an  
                        on-site manager for the hotel rooms is not present. Consistent with LCMC

15.90.010 all parking spaces and the access drive to these spaces must be  
unencumbered and meet the following minimum dimensions and requirements:

- a. Regular (non-compact) spaces must be 9 feet wide by 18.5 feet deep and 10 feet wide by 18.5 feet deep if abutting a wall.
- b. An access drive no less than 24 feet in width must be provided between the two rows of parking spaces.
- c. No more than 50% of the required parking space can be compact with dimension of 8.5' by 16 feet.

5. The project is required to incorporate landscape screening along the length of the west property line, except the area between the north property line to the north face of the structure shall have street frontage landscaping versus screening landscaping installed. This screening shall be a minimum of five feet in width, it shall include a six-foot-tall fence along the property line and shall have landscape screen planting complying with LCMC 15.105.150(2) installed.
6. The project is required to incorporate street frontage landscaping along both Center and Fourth Streets except where the curb cut and the landings for the stairs are located. The intent of this condition is to soften and enhance the development on the site and to provide a pleasant pedestrian environment. This street frontage landscaping shall be a minimum of five feet in width from the back of the sidewalk and shall incorporate street trees, shrubs and groundcovers providing seasonal colors and interesting textures.
  - a. The Applicant shall work with Town staff to incorporate necessary elements, such as root barrier, to ensure this landscaping does not adversely impact the improvements in the abutting right-of-way.
7. The landscaping along the south property line of the site shall include no less than five trees along with shrubs and ground cover planted in quantities and spaces to provide for 80 percent ground coverage within three years.
8. All site improvements must comply with the corner vision requirements listed under LCMC 15.105.060.
9. The maximum building height shall be 30 feet measured from one foot above the base flood elevation to the highest point on the building. These measurements shall comply with Finding of Fact #10 (above) in this decision.

1 a. Any access to the roof of the structure shall be approved by the Fire Chief  
2 and shall not result in any portion of the structure exceeding the height  
3 limitations outlined within this condition.

4 b. Mechanical equipment and any other type of equipment or improvement  
5 cannot be placed such that it extends above the 30-foot height limitation  
6 outlined within this condition.

7 10. The plans submitted to the Examiner do not identify the location or design of a  
8 garbage dumpster. If a garbage dumpster is required, the Applicant shall be  
9 required to create a space on the site allowing the dumpster to be emptied in a  
10 safe and efficient manner. The dumpster shall be surrounded by an enclosure  
11 with a gate. The dumpster shall not be located in the frontage landscaping  
12 required under condition #6 (above). The exact dumpster location, enclosure,  
and other relevant details shall be prescribed by the Town.

13 11. The Applicant shall submit revised plans showing compliance with conditions 2  
14 – 10 (listed above) that must be approved by the Town Planner, the Public  
15 Works Department, as well as any other applicable Town staff before  
16 construction related permits (i.e. Building or Grading permits) are issued.

17 12. The following SEPA mitigation measure has been applied to this project:  
18       “Once the existing residential structure is removed from the site,  
19       remediation of the contaminated soil identified near the former bulk fuel  
20       tanks shall be excavated and disposed of at a Subtitle D landfill. The  
21       excavation shall occur in the vicinity of boring #B3, as identified in the  
22       Phase II Environmental Site Assessment performed by Dixon  
23       Environmental Services, LLC (Dixon). Such excavation shall extend  
24       outward and in a northerly direction. The possibility of further  
25       contamination beneath the existing house shall be examined”.

26       In addition to this SEPA condition, the project is further conditioned such  
27       that if any contamination is found all work on the site shall cease until further  
28       studies are completed and submitted to the Town for their review and  
approval, or approval with additional conditions (as applicable).

1 Dated this 11<sup>th</sup> day of May, 2022

2  
3 

4 David D. Lowell, Esq.  
5

6 Town of La Conner Hearing Examiner  
7

## 8 APPEAL RIGHT AND VALUATION NOTICES 9

10 1. A land use decision by the hearing examiner shall be appealed by filing a petition in  
11 superior court within 21 calendar days of the issuance of the land use decision. For  
12 the purposes of this section, the date on which a land use decision is issued is:  
13 a. Three days after a written decision is mailed by the town or, if not mailed,  
14 the date on which the town provides notice that a written decision is  
15 publicly available.  
16 b. If the land use decision is made by order, ordinance or resolution by the  
17 hearing examiner or town council, the date the order, ordinance or  
18 resolution is passed.  
19 c. If neither of the above applies, the date the decision is entered into the  
20 public record.  
21 2. Affected property owners may request a change in valuation for property tax  
22 purposes notwithstanding any program of revaluation.  
23

## 24 NOTES TO THE APPLICANT 25

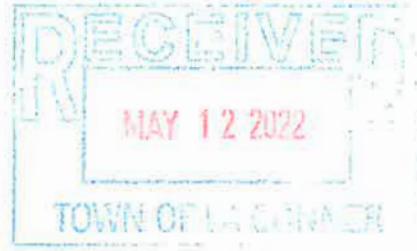
26 Following are items not subject to appeal the Applicant and subject project will be  
27 required to comply with:

28 1. Building permit(s) must be obtained from the Town of La Conner and Skagit County.  
2. Any signage to be added to the property shall require separate approval from the  
3. The below listed conditions from the Final Mitigated Determination of Non-  
Significance shall be complied with:

- 1 a. The maximum height of any portion of the building shall be not more  
2 than 30 feet, as measured from one foot above the base flood elevation to  
3 the highest point on the building. Any roof access must be approved by  
4 the fire chief.
- 5 b. Once the existing residential structure is removed from the site,  
6 remediation of the contaminated soil identified near the former bulk fuel  
7 tanks shall be excavated and disposed of at a Subtitle D landfill. The  
8 excavation shall occur in the vicinity of boring B3, as identified in the  
9 Phase II Environmental Site Assessment performed by Dixon  
10 Environmental Services, LLC (Dixon). Such excavation shall extend  
11 outward and in a northerly direction. The possibility of further  
12 contamination beneath the existing house shall be examined.
- 13 c. Performance monitoring shall be conducted by an environmental  
14 professional during remedial activities to direct advancement of the  
15 excavation. Once field screening indicates that the contamination has  
16 been successfully removed, confirmation soil samples shall be collected  
17 directly from the sidewalls and/or bottom of the remedial excavation.
- 18 d. Groundwater monitoring well shall be installed on the property, with  
19 subsequent sampling performed in accordance with the recommendations  
20 set forth in the Dixon report.
- 21 e. A resistant vapor barrier shall be installed beneath the new building to be  
22 constructed.
- 23 f. With regard to site archaeology, an Unanticipated Discoveries Protocol  
24 (UDP) shall be established. All workers on site shall be trained in this  
25 protocol, and a copy of the UDP shall be kept on site at all times.
- 26 g. All contractors and subcontractors must be licensed to conduct business  
27 in the Town of La Conner.
- 28 h. The permit holder must provide contact information on all contractors  
and subcontractors to the Town of La Conner prior to commencement of  
construction.
- i. All contractors and subcontractors must report sales tax transactions  
within the Town of La Conner. The La Conner sales tax number is 2905.

j. The following conditions have been identified that may be used to mitigate the adverse environmental impacts of the proposal:

- i. Construction best management practices will be implemented as necessary for erosion control and to prevent waste materials from entering ground or surface waters.
- ii. Drainage report required.
- iii. Storm water runoff will be collected and drained from the site in a manner to be approved by the Public Works Director.
- iv. The lighting intended to be used directs light downwards to minimize light pollution, improve nighttime visibility and protect potential nocturnal ecosystems offsite. Measures anticipated are similar to those recommended by LEED 2009 New Construction Credit 8 "Light Pollution Reduction".
- v. Prior to any ground-disturbing activities within the property boundary a professional archaeologist should give an unanticipated discovery protocol (UDP) training given to all construction personnel. A copy of the Unanticipated Discoveries Protocol (UDP) in the Cultural Resources Report prepared for the project is to be on site at all times.
- vi. In the event that any ground-disturbing activities (as outlined above) uncover protected cultural material (e.g., bones, shell, stone or antler tools), all work in the immediate vicinity shall stop, the area should be secured, and any equipment moved to a safe distance away from the location. The on-site superintendent shall then follow the steps specified in the UDP.
- vii. In the event that any ground-disturbing activities or other project activities related to this development or in any future development uncover human remains, all work in the immediate vicinity shall stop, the area shall be secured, and any equipment moved to a safe distance away from the location. The on-site superintendent shall then follow the steps specified in the UDP.



# *Town of La Conner*

## **REQUEST FOR RECONSIDERATION**

(Staff Use Only)

File No:

LU21-56011

Date

Received: 5-12-22

This Request for Reconsideration form is for Town of La Conner Hearing Examiner decisions and recommendations only. Any person who participated in the hearing or submitted comments for the record (Party of Record) may file a written request with the Hearing Examiner for reconsideration.

The request must be filed within 5 business days of the date of service of the Hearing Examiner's decision or recommendation, and shall explicitly set forth alleged errors of law or fact. No new evidence may be submitted.

Requests for Reconsideration may be delivered to the Office of the Town Clerk/Finance Director by mail or personal delivery before 4:00 p.m. on the last day of the reconsideration period. There is no fee for a Request for Reconsideration.

Town of La Conner Office of the Town Clerk/Finance Director Contact Information:

Mailing Address:

Office of the Town Clerk  
P.O. Box 400  
La Conner, WA 98257

Personal Delivery:

Town Hall  
204 Douglas Street  
La Conner, WA  
(360) 466-3125

## **Section A. General Information**

Name of Requestor: Michael Davolio, AICP

Address: 204 Douglas St.

City: La Conner State: WA Zip: 98257

Email: planner@townoflaconner.org

Phone: (home) \_\_\_\_\_ (work) 360-466-3125 (cell) \_\_\_\_\_

Name of project: Atkinson/KSA residential development

Date of Hearing Examiner decision/recommendation: 5/11/2022

Expiration date of reconsideration period: 5/18/2022

## **Section B. Basis for Request for Reconsideration**

Please fill out items 1-4 below. Reference all applicable City Code citations and attach additional sheets if necessary.

1. Please indicate whether this request for reconsideration addresses an error in

\_\_\_\_\_, LAW \_\_\_\_\_ and/or an error in FACT \_\_\_\_\_.

2. Please provide a concise statement identifying each alleged error; identify the specific factual or legal errors or misinterpretations; and/or identify the specific laws, code sections or plan policies that have been misapplied, misinterpreted or violated: \_\_\_\_\_

No error in law or in fact has been identified. The request is for reconsideration of an interpretation. \_\_\_\_\_

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\_\_\_\_\_

3. Please state the specific relief requested: \_\_\_\_\_

1. Setbacks. Our municipal code provides that corner lots can be considered to have two front yard setbacks and two side yard setbacks. By using this interpretation, the 25-foot rear yard setback would be eliminated, and the applicant would have more flexibility in providing landscaping in wider front yards. We ask that this be permitted.

2. Long-term residential use. The proposed development shows no long-term residential use on the first floor of their proposed building, even though our Municipal Code allows that up to 49% of the first floor could be allocated to such use in our Commercial zone. We would like to clarify that the applicant, if he chooses to do so, could change up to 49% of the building's first floor from short-term to long-term residential use. This proposed change would have no impact on any other aspect of the development.

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## Danielle Freiberger

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**From:** Michael Davolio <planner@townoflaconner.org>  
**Sent:** Thursday, May 12, 2022 2:42 PM  
**To:** David Lowell; Danielle Freiberger; Scott Thomas  
**Cc:** mayor  
**Subject:** RE: Atkinson - Center Street project

Mr. Lowell,

As provided in the La Conner Municipal Code, I hereby request your reconsideration of your decision related to the proposed development at 306 Center Street. Said reconsideration would focus on two issues:

- Setbacks. Our municipal code provides that corner lots can be considered to have two front yard setbacks and two side yard setbacks. By using this interpretation, the 25-foot rear yard setback would be eliminated, and the applicant would have more flexibility in providing landscaping in wider front yards. We ask that this be permitted.
- Long-term residential use. The proposed development shows no long-term residential use on the first floor of their proposed building, even though our Municipal Code allows that up to 49% of the first floor could be allocated to such use in our Commercial zone. We would like to clarify that the applicant, if he chooses to do so, could change up to 49% of the building's first floor from short-term to long-term residential use. This proposed change would have no impact on any other aspect of the development.

Thank you for your consideration of these matters.

Best regards,

Michael Davolio, AICP  
*Planning Director*

---



Town of La Conner  
PO Box 400  
204 Douglas Street  
La Conner, WA 98257

PHONE: (360) 466-3125 | WEB: [www.townoflaconner.org](http://www.townoflaconner.org)

WARNING: Please be advised the Town of La Conner is required to comply with Chapter 42.56 RCW, Public Records Act. This means that information you submit to the Town via email (including personal information) is likely subject to disclosure as a public record.

**From:** David Lowell [<mailto:david@lowell-law.com>]  
**Sent:** Thursday, May 12, 2022 2:16 PM  
**To:** Michael Davolio ([planner@townoflaconner.org](mailto:planner@townoflaconner.org)); Danielle Freiberger; Scott Thomas  
**Subject:** Atkinson - Center Street project

Mr. Davolio:

Consistent with LCMC 15.12.010 I can classify from your email yesterday regarding the side yards, as a request for reconsideration. Please confirm this was your intent. If this was your intent I'll wait five days and will render a revised decision.

Thank you,

Thank you for your time and attention to this matter.

LOWELL LAW OFFICE (Established 1995)

DAVID D. LOWELL, Attorney at Law

Physical address: 606 East Fairhaven Avenue, Burlington, WA 98233

Mailing address: PO Box 1346, Burlington, WA 98233

email: [david@lowell-law.com](mailto:david@lowell-law.com)

fax: 360.547.6549

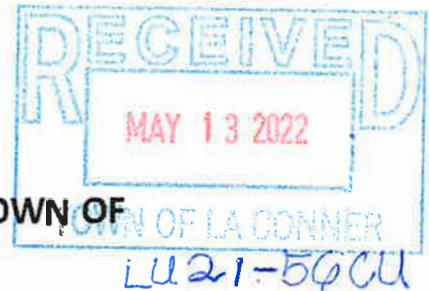
office phone: 360.755.0111

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***\*\*MEMBER OF NATIONAL ASSOCIATION OF DISTINGUISHED COUNSEL***

(Awarded to top 1% of attorneys in America)



BEFORE THE HEARING EXAMINER FOR THE TOWN OF LA CONNER  
LA CONNER, WASHINGTON

David Lowell, Hearing Examiner

RE: Atkinson Development / KSA Investments CUP ) Case No: LU21-56CU  
Conditional Use Permit ) REQUEST FOR RECONSIDERATION  
 ) LCMC 15.12.100

NOW COMES Linda Talman, a party of record (Decision, page 2, line 27) who disagrees with the decision of the examiner and makes written request for reconsideration by the examiner within five days of the date of service of the written decision (May 11, 2022).

The party of record, Linda Talman, alleges the following specific error of fact in the decision. Finding of Fact #5, Zoning, finds that the site has a zoning designation of Commercial.

Attached as Exhibit 1 is a copy of the Contract Rezone entered into between the Town of La Conner and the owners of the subject property, Gerald and Donna Blades. To It recites that the site, prior to the contract rezone was residential. In exchange for the Town changing the zoning of the site to commercial the owners agreed that if they sought to improve the site application to approve the plan would require the site to be treated as if it were located within the Historical Preservation District. Any violation or failure to comply with this would cause the site to revert to residential. The parties agreed that this agreement shall become an encumbrance upon the land.

Failure of the Town to provide this Contract Rezone document to the Hearing Examiner is error and denies procedural due process and appearance of fairness to the parties in this matter (LCMC 15.12.010 (2).

The examiner should reconsider his decision and issue a revised decision (LCMC 15.12.100).

Respectfully submitted this 13<sup>th</sup> day of May 2022.

REQUEST FOR RECONSIDERATION - 1

State of Washington  
County of Skagit  
Suzanne Christine King  
Suzanne Christine King  
Expires: 10/29/2011

inda Taiman  
Suzanne Christine King  
Notary Public  
State of Washington  
My Appointment Expires 10/29/2024  
Commission Number 21000673



**3. Please state the specific relief requested:**

Attached

May 13, 2022

Re Appearance of Fairness

For the Reconsideration re 306 Center.

On March 23 I requested information from the Town re any rezone discussion of the property proposed for the development.

On March 28 I received an answer from the town administrator saying that he had the right to take five days to answer me. And he was legally correct.

On March 28 he also informed me that he would need another 10 days to get it and review it. Again he was legally correct.

But being legally right and doing the right thing are not always the same, are they? I received the documents two days after the record for submission to the Hearing Examiner closed. =

Why does it matter?

One of the documents from 1986 was a contract rezone requested by the Blades to change the project property from residential to commercial HPD. That is what the front of the property was. The condition of the contract was that it would be considered for all purposes to be in the HPD (historic preservation district) And that they would agree to have it revert to residential if they didn't abide by the condition. It also stated that this be filed and go with the property. The contract is still valid.

The town is obliged to respect it.

Respectfully,

Linda Talman



Enclosed:

Contract rezone. 1986. **A**

Application for Reconsideration **B**

\$250.

Letter from Scott Thomas **C**

Email from me to town with FOI request. **C**

1980 Zoning Map

*Dret*  
Cover letter



## *Town of La Conner*

March 28, 2022

Linda Talman  
PO Box 392  
La Conner, WA 98257

SUBJECT: Public Disclosure Request

Dear Linda:

I am in receipt of your request for the production of public records, received by the Town of La Conner on March 23, 2022. Enclosed is a copy of your request, which describes the documents you have requested.

I anticipate that it will require approximately 10 days to complete a search for these records, and conduct a legal review. I therefore estimate that the records will be made available for review on or about April 8, 2022. The Town will, of course, provide you with access to those records that are not exempt from disclosure as soon as our search and review are completed.

I suggest you contact the Northwest Regional Branch of the State Archives:  
[https://www.sos.wa.gov/archives/archives\\_holdings.aspx?r=6](https://www.sos.wa.gov/archives/archives_holdings.aspx?r=6).

Please contact me at your convenience if you have any questions or concerns.

Sincerely,

Scott Thomas  
Town Administrator / Town Attorney  
TOWN OF LA CONNER

---

204 Douglas Street, PO Box 400, La Conner, WA 98257

(360) 466-3125, Fax (360) 466-3901

Website: [www.townoflaconner.org](http://www.townoflaconner.org)

---Original Message---

From: Linda Talman <[linda.talman@gmail.com](mailto:linda.talman@gmail.com)>  
Sent: Wednesday, March 23, 2022 10:10 AM  
To: Scott Thomas <[administrator@townoflaconner.org](mailto:administrator@townoflaconner.org)>; Andrea Clerk <[deputyclerk@townoflaconner.org](mailto:deputyclerk@townoflaconner.org)>  
Cc: maggie wilder <[wildermaggie@hotmail.com](mailto:wildermaggie@hotmail.com)>; Georgia Johnson <[swtcomice@aol.com](mailto:swtcomice@aol.com)>  
Subject: New FOI request

As per Scott's advice that my request was too large to be accommodated in time for the hearing, I am making a simpler request.

I would like to see the zoning maps of the town over time:

The first one and the iterations that followed over time. They should be in the comp plans.

I would also like to see the rezones on the center street property. Particularly in the 80s.

The info I sent in the last request might help with the search. It is from the last Danielle when she totally organized the archives to make them searchable before she retired.

I think that the town should start recording the history of the town zoning and planning. There might be a grant for that.

Sent from my iPhone

**CENTRE**  
**306**

CONTRACT REZONE

This is an agreement between the Town of La Conner, a municipal corporation of the State of Washington, hereinafter referred to as "Town", and Gerald and Donna Blades, owners of that certain property more particularly described below, hereinafter referred to as "Owner". This is a concomitant agreement between the parties which is mutually intended to benefit the citizens of the Town of La Conner and the Owner, and is intended to condition the rezone of property described below by placing a specific condition and restriction upon the Owner through this agreement. The Owner agrees to accept and fulfill the conditions set forth in this agreement in consideration of the benefit received for granting of the rezone of real property.

I. Real Property: The real property which is the subject of this agreement is owned by Gerald and Donna Blades whose address is P.O. Box 482, La Conner, WA 98257. The property which is the subject of this agreement is located in the Town of La Conner, Skagit County, Washington, and consists of Lots 3, 6 and 7 and the East 3 feet of Lot 2 in Block 9, "Calhoun Addition to the Town of La Conner", as per Plat recorded in Volume 1 of Plats, page 14, records of Skagit County, Washington.

II. Conditions of Agreement: Owner agrees to accept the following condition and restriction as an integral part of the agreement to rezone the Owners' property. This condition is as follows:

Prior to any development or improvement of the above-described real property which would, under the applicable ordinances of the Town of La Conner require the application for an issuance of a building permit,

CONTRACT REZONE  
Page 1 of 3

ORIGINAL

application shall be made to the appropriate person, commission, committee or body for approval of the plan to develop or improve said property as would be required if said property were located within the Historical Preservation District of the Town of La Conner. The parties agree that Owners' property, which is the subject of this Contract Rezone, is not presently located within the Historical Preservation District, but Owner agrees to be bound by the same application and review process which applies to property located within the Historical Preservation District as if the above-described property were located within the Historical Preservation District. Owner understands that any breach, violation or failure to comply with this condition shall cause the property in question to revert back to the underlying zone in effect prior to this rezone, namely residential. Owner agrees and understands that the City Attorney of the Town shall be authorized to take any action deemed necessary to enforce this agreement.

III. The Rezone: By previous action of the Town Council of the Town of La Conner, the real property which is the subject of this agreement has been changed from the previous zoning classification of residential to the rezone classification of commercial which shall become effective immediately upon the signing of this agreement. The land owner shall enjoy all use and benefits of the new zoning classification under the condition imposed by this agreement. Owner agrees and hereby authorizes Town to record the original or a copy of this agreement with the Skagit County Auditor so that this agreement will become a matter of public notice to subsequent purchasers and shall become an encumbrance upon the land.

DATED THIS 25th day of December, 1986.



GERALD BLADES

CONTRACT REZONE  
Page 2 of 3

Donna  
DONNA BLADES

STATE OF WASHINGTON) ) SS.  
COUNTY OF SKAGIT )

I certify that I know or have satisfactory evidence that  
GERALD BLADES and DONNA BLADES signed this instrument and  
acknowledged it to be their free and voluntary act for the uses  
and purposes mentioned in the instrument.

DATED: December 21, 1986  
Signature of Notary Public

Notary Public in and for the  
State of Washington, residing  
at Mount Vernon  
My appointment expires 11/1

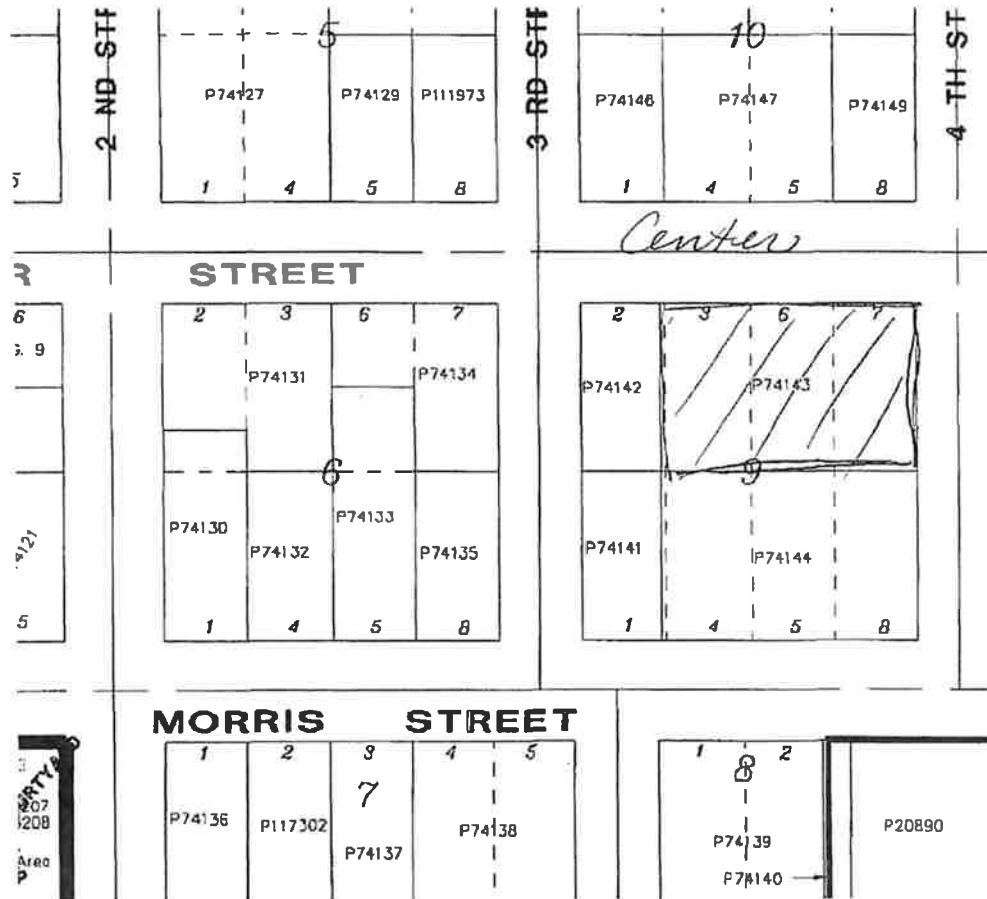
TOWN OF LA CONNER

BY Mary M. Lane  
MARY LANE, Mayor

Attested by:

Approved as to form:  
  
DIANNE EDMONDS GODDARD  
La Conner City Attorney

CONTRACT REZONE  
Page 3 of 3



1980 map





# *Town of La Conner*

## **REQUEST FOR RECONSIDERATION**

(Staff Use Only)

File No:

LU21-5604

Date

Received: 5-18-22

This Request for Reconsideration form is for Town of La Conner Hearing Examiner decisions and recommendations only. Any person who participated in the hearing or submitted comments for the record (Party of Record) may file a written request with the Hearing Examiner for reconsideration.

The request must be filed within 5 business days of the date of service of the Hearing Examiner's decision or recommendation, and shall explicitly set forth alleged errors of law or fact. No new evidence may be submitted.

Requests for Reconsideration may be delivered to the Office of the Town Clerk/Finance Director by mail or personal delivery before 4:00 p.m. on the last day of the reconsideration period. There is no fee for a Request for Reconsideration.

Town of La Conner Office of the Town Clerk/Finance Director Contact Information:

Mailing Address:

Office of the Town Clerk  
P.O. Box 400  
La Conner, WA 98257

Personal Delivery:

Town Hall  
204 Douglas Street  
La Conner, WA  
(360) 466-3125

### Section A. General Information

Name of Requestor: BRANDON ATKINSON (KSA INVESTMENTS)

Address: 721 MAPLE STREET

City: La CONNER State: WA Zip: 98257

Email: BRANDON.KATE.ATKINSON@gmail.com

Phone: (home) \_\_\_\_\_ (work) \_\_\_\_\_ (cell) 360 708 9255

Name of project: 306 CENTER STREET, Pt 4143, La CONNER WA

Date of Hearing Examiner decision/recommendation: MAY 11, 2022

Expiration date of reconsideration period: MAY 20, 2022

### Section B. Basis for Request for Reconsideration

Please fill out items 1-4 below. Reference all applicable City Code citations and attach additional sheets if necessary.

1. Please indicate whether this request for reconsideration addresses an error in

\_\_\_\_\_, LAW ✓ and/or an error in FACT ✓.

2. Please provide a concise statement identifying each alleged error; identify the specific factual or legal errors or misinterpretations; and/or identify the specific laws, code sections or plan policies that have been misapplied, misinterpreted or violated:

WE REQUEST RECONSIDERATION OF ITEMS A AND B  
ONLY OF DECISION NUMBER 9.

SEE PAGE 4 ATTACHED FOR DETAIL

3. Please state the specific relief requested:

Allow for minimal height overruns, consistent with IBC, for equipment needed to operate the building. In particular the elevator overrun.

SEE ATTACHED PAGE 4 FOR DETAIL

WE ALSO REQUEST THE TIME AND OPPORTUNITY TO RESPOND TO ANY OTHER REQUEST FOR RECONSIDERATION THAT MAY BE SUBMITTED.

Request for reconsideration of decision number 9 a. and b. to allow necessary overruns (no change is requested for the approval required from the fire Chief of Skagit County or for the 30 feet building height limitation) for the following reasons:

1. The requirement that mechanical and other type of equipment not exceed the 30 height limit is out of date and not realistic. Nearly all other Towns, Cities and Counties have updated to allow for necessary equipment including elevators and stairs.
2. IBC code was updated in 2018 in recognition of the need. See attached codes.
3. Example - City of Anacortes b. Exceptions The following structures may be erected above height limits established in Tables 19.42.020 and 19.42.030.
  - Roof structures housing or screening elevators, stairways, tanks, roof top wind generators, ventilating fans or similar equipment required for building operation and maintenance may exceed the height limit by;
    - a. Up to 10 feet in the R3, R3A, R4, R4a, mixed use, and industrial zones, provided the added height is limited to what is necessary to screen or enclose the use.
    - b. Up to 15 feet on buildings over four stories in height where they allow access to shared roof decks that meet the requirement of AMC 19.62.040(B)(1)

#### Other Considerations

1. The primary market that is targeted with the building design is seniors wishing to downsize and live in a secure manageable home. Elevators are a priority.
2. Safety – gurney access via elevator is highly desired by fire and 911 first providers. Roof top refuge may be required in an emergency.
3. Stair access to the roof may be required by the Fire Marshall (TBD).
4. Mechanical equipment and other necessary devices are easier to conceal on roof tops.
5. La Conner has already allowed elevator and other types of mechanical devices on other building in town to exceed the 30' height limit. Two are in the same neighborhood as 306 Center. They are the Channel Lodge on First Street and the Retirement Apartments on Center and First Street. Both are larger than ours and the Retirement Apartments are four story including underground parking. Their elevators and other roof top overruns exceed the 30' building height limit. Based on our research the codes have not been changed since they were built. The La Conner height code 15.35.040 limits height in the Commercial Zone to 30 feet but does not restrict overruns for elevators and other necessary equipment to operate the building safely and conveniently for tenants.

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## 4TION

p. III, IV.

Editor II

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**[BG] 1510.1 General.** The provisions of this section shall govern the construction of rooftop structures.

**1510.1.1 Area limitation.** The aggregate area of penthouses and other enclosed rooftop structures shall not exceed one-third the area of the supporting roof deck. Such penthouses and other enclosed rooftop structures shall not be required to be included in determining the building area or number of stories as regulated by Section 503.1. The area of such penthouses shall not be included in determining the fire area specified in Section 901.7.

**[BG] 1510.2 Penthouses.** Penthouses in compliance with Sections 1510.2.1 through 1510.2.5 shall be considered as a portion of the story directly below the roof deck on which such penthouses are located. Other penthouses shall be considered as an additional story of the building.

**[BG] 1510.2.1 Height above roof deck.** Penthouses constructed on buildings of other than Type I construction shall not exceed 18 feet (5486 mm) in height above the roof deck as measured to the average height of the roof of the penthouse. Penthouses located on the roof of buildings of Type I construction shall not be limited in height.

**Exception:** Where used to enclose tanks or elevators that travel to the roof level, penthouses shall be permitted to have a maximum height of 28 feet (8534 mm) above the roof deck.

**[BG] 1510.2.2 Use limitations.** Penthouses shall not be used for purposes other than the shelter of mechanical or electrical equipment, tanks, elevators and related machinery, or vertical shaft openings in the roof assembly.

**[BG] 1510.2.3 Weather protection.** Provisions such as louvers, louver blades or flashing shall be made to protect the mechanical and electrical equipment and the building interior from the elements.

[BG] **1510.2.4 Type of construction.** Penthouses shall be constructed with walls, floors and roofs as required for the type of construction of the building on which such penthouses are built.



# *Town of La Conner*

## **REQUEST FOR RECONSIDERATION**

(Staff Use Only)

File No:

LU21-56001

Date

Received: 5-19-22

This Request for Reconsideration form is for Town of La Conner Hearing Examiner decisions and recommendations only. Any person who participated in the hearing or submitted comments for the record (Party of Record) may file a written request with the Hearing Examiner for reconsideration.

The request must be filed within 5 business days of the date of service of the Hearing Examiner's decision or recommendation, and shall explicitly set forth alleged errors of law or fact. No new evidence may be submitted.

Requests for Reconsideration may be delivered to the Office of the Town Clerk/Finance Director by mail or personal delivery before 4:00 p.m. on the last day of the reconsideration period. There is a \$250 application fee plus Hearing Examiner fees for a Request for Reconsideration.

Town of La Conner Office of the Town Clerk/Finance Director Contact Information:

Mailing Address:

Office of the Town Clerk  
P.O. Box 400  
La Conner, WA 98257

Personal Delivery:

Town Hall  
204 Douglas Street  
La Conner, WA  
(360) 466-3125

### Section A. General Information

Name of Requestor: FIRE CHIEF

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Email: \_\_\_\_\_

Phone: (home) \_\_\_\_\_ (work) \_\_\_\_\_ (cell) \_\_\_\_\_

Name of project: \_\_\_\_\_

Date of Hearing Examiner decision/recommendation: \_\_\_\_\_

Expiration date of reconsideration period: \_\_\_\_\_

### Section B. Basis for Request for Reconsideration

Please fill out items 1-4 below. Reference all applicable City Code citations and attach additional sheets if necessary.

1. Please indicate whether this request for reconsideration addresses an error in

\_\_\_\_\_, LAW \_\_\_\_ and/or an error in FACT \_\_\_\_.

2. Please provide a concise statement identifying each alleged error; identify the specific factual or legal errors or misinterpretations; and/or identify the specific laws, code sections or plan policies that have been misapplied, misinterpreted or violated:

THE CURRENT PARKING LOT LAYOUT FAILS TO PROVIDE ACCESS FOR FIRE APPARATUS TO VEHICLES PARKED WITHIN THE ON-SITE PARKING AREA. THE DESIGN THIS FAILS TO MEET THE CRITERIA ESTABLISHED IN LCMC 15, 35-0300.

3. Please state the specific relief requested:

CONDITION OF APPROVAL NO. 9 SHOULD  
BE AMENDED TO REQUIRE  
COMPLIANCE W/ ACCESS REQUIREMENTS  
OF THE FIRE CODE



# *Town of La Conner*

June 2, 2022

To All Parties of Record of the Project Captioned Below

SUBJECT: 306 Center Street Development

Greetings:

I have been asked by the Hearing Examiner to inform you that he has determined that it is appropriate to provide to each party of record an opportunity consistent with due process to respond to the requests for reconsideration that were received by the Town concerning the project captioned above. No reply briefs (i.e., a response to a response) shall be considered by the Hearing Examiner. Each party of record has already received a copy of each request for reconsideration.

Any response to a request for reconsideration must be in writing and received by the Town Clerk no later than 4:00 p.m. on June 15, 2022. Responses may be hand-delivered to Town Hall; mailed to the Town of La Conner, P.O. Box 400, La Conner, WA 98257, or emailed to the following address: [planning@townoflaconner.org](mailto:planning@townoflaconner.org)

Responses must be limited to the arguments specifically raised in the requests for reconsideration. All responses must be limited to 10 pages, double spaced, with 1 inch margins and with a Courier, Arial, or Times New Roman font size no less than 12 pt.

Sincerely,

*Town of La Conner*

Scott Thomas  
Town Administrator

cc: Hearing Examiner  
Michael Davolio

---

204 Douglas Street, PO Box 400, La Conner, WA 98257

(360) 466-3125, Fax ((360) 466-3901

Website: [www.townoflaconner.org](http://www.townoflaconner.org)

From: **David Lowell** <[david@lowell-law.com](mailto:david@lowell-law.com)>  
Date: Thu, May 26, 2022 at 8:57 AM  
Subject: Re: Center Street  
To: Scott Thomas <[administrator@townoflaconner.org](mailto:administrator@townoflaconner.org)>

Mr. Thomas:

Thank you for making me aware of this request.

To safeguard procedural due process, appearance of fairness, and to establish clear and understandable rules governing the land use decision-making process<sup>1</sup> I am requesting that you, as the Town Administrator using your authority under Chapter 2.00 LCMV, assist me with establishing the appropriate practice and procedures to administer the requests for reconsideration received for case number LU21-56CU.

Regarding requests for reconsideration the La Conner Municipal Code states (in part), “the examiner may take such further action as the examiner deems proper and may render a revised decision.” (LCMC 15.12.100)

Following is an outline of a proposed process for dealing with the requests for reconsideration received for case number LU21-56CU that I believe is proper, provides procedural due process, is clear and understandable, and ensures the appearance of fairness.

1. Have all parties requesting reconsideration stipulate, in writing, to an agreed process for reconsideration. This stipulation should, if possible, be binding and limit the ability to appeal the agreed upon process. Assistance from the Town in creating and obtaining signatures for such a stipulation would be greatly appreciated; however, I am open to suggestions as to how to get this accomplished.
2. Distribute all requests for reconsideration to every party requesting reconsideration.
3. Set a reasonably short timeframe within which all parties will have to submit additional information to respond to the requests for reconsideration.
4. Limit the scope of responses to items specifically referenced in the reconsideration requests.
5. Make certain responses mandatory, and others optional. For example, I would like the Town to verify whether the contract rezone submitted as part of a reconsideration request remains a valid document, or not.

Thank you in advance for your consideration of this request and the proposed procedure to resolve the requests for reconsideration that were received.

Sincerely,

David D. Lowell, Esq.  
Hearing Examiner, Town of La Conner

Thank you for your time and attention to this matter.

LOWELL LAW OFFICE (Established 1995)  
DAVID D. LOWELL, Attorney at Law  
Physical address: <606 East Fairhaven Avenue, Burlington, WA 98233>  
Mailing address: PO Box 1346, Burlington, WA 98233  
email: [david@lowell-law.com](mailto:david@lowell-law.com)  
fax: 360.547.6549  
office phone: 360.755.0111

**CONFIDENTIALITY NOTICE**

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**\*\*MEMBER OF NATIONAL ASSOCIATION OF DISTINGUISHED COUNSEL**  
(Awarded to top 1% of attorneys in America)

On Wed, May 25, 2022 at 8:17 AM Scott Thomas <[administrator@townoflaconner.org](mailto:administrator@townoflaconner.org)> wrote:

Examiner Lowell:

I believe you have received the requests for reconsideration received by the Town in this matter. I see that one of the requestors has asked for an opportunity to respond to other requests; I assume that others may wish to do likewise if that option is available. Do you have any objections to receiving a response from opposing parties to a particular request for reconsideration, and if so, what kind of deadline would you like to set for submission of opposition materials?

Thanks

*Scott Thomas*  
*Administrator/Town Attorney*

**Town of La Conner**  
204 Douglas Street, PO Box 400  
La Conner, WA 98257  
Phone: (360) 466-3125  
Fax: (360) 466-3901  
Website: [www.townoflaconner.org](http://www.townoflaconner.org)

*NOTICE: Incoming and outgoing emails are subject to public disclosure requirements.*

BEFORE THE HEARING EXAMINER  
FOR THE TOWN OF LA CONNER, WASHINGTON

## David Lowell, Hearing Examiner

## Atkinson Development / KSA Investments CUP

NO. LU21-56CU

RESPONSE OF DEBBIE ALDRICH  
TO APPLICANT'S MOTION FOR  
RECONSIDERATION

The applicant has requested reconsideration of Condition 9.A and 9.B. Combined, these conditions preclude any portion of the proposed structure to exceed the Code's 30-foot height limitation. The motion for reconsideration identifies three reasons for revising that condition. The motion also identifies five "other considerations" in support of the motion. Neither the reasons nor the "other considerations" provide an adequate basis for revising the condition.

The three reasons listed reference codes of other jurisdictions (and the IBC Code) which – it is contended – would allow for greater height. The obvious and complete response is that the Examiner is required to apply La Conner’s Code, not any of the other codes. For better or for worse, the applicant is vested to the Town’s code that was in effect when it filed its application. If the applicant believes the Town should revise its code to mimic the codes of other jurisdictions, it is free to request the Town Council to amend the Town’s code. But the current project application, vested to

1 the current code, must be judged by the current code, not the codes of other jurisdictions that may (or  
2 may not) be adopted by the Town at some unknown date in the future.

3 The “other considerations” listed in the motion are a hodgepodge of reasons that the Town  
4 Council might consider if it were requested to amend the current height limitation. These policy  
5 considerations may (or may not) provide adequate justification for the Town Council to amend the  
6 code in the future. But until and unless the Town Council amends the code (based on these “other  
7 considerations” or any other rationale), the applicant must meet the current Code requirements.

8  
9 Apart from seeking an amendment from the Town Council (which the applicant has not done),  
10 the applicant’s other mechanism for seeking to relax the 30-foot height limitation is by requesting a  
11 variance. *See La Conner Municipal Code, § 15.125.040.* But the applicant has not filed an  
12 application for a variance either. The Examiner cannot rule on a variance application when a  
13 variance application has not been filed.

14  
15 Nor, for that matter, has the applicant made any attempt to demonstrate that it meets the  
16 criteria required for granting a variance. A core criterion for any variance is that there are special  
17 conditions “which are peculiar to the land, structure, or building involved . . . which are not  
18 applicable to other lands, structures, or buildings in the same district.” LMC 15.125.0.040(2)(a).  
19 The applicant has made no effort to establish that there is some “peculiar” condition of this lot that  
20 requires a variance from the standard code height limitations. Nor is there any evidence in the  
21 record to support such a finding.

22  
23 Basing a variance for this project on a “peculiarity” of the “structure or building” is  
24 impossible because there is no existing structure or building that remain as part of the project.  
25 Instead, the applicant proposes to create a new structure/building. There is nothing “peculiar”  
26 about the non-existent building that requires a variance. The applicant’s desire to add structural

1 components on the rooftop is not an adequate justification. All the applicant need do is reduce the  
2 height of the remainder of the building (up to the roof) to assure that the total height (building plus  
3 rooftop elements) stays within the 30-foot height limitation.

4 To the same effect, a variance cannot be created if the need for the variance “result[s] from  
5 the actions of the applicant.” LMC 15.125.040(2)(c). Yet it is precisely because of the actions of  
6 the applicant that it needs a variance. If the applicant merely revised its building design to lower  
7 the total height of the project (structure plus rooftop features less than or equal to 30 feet) no  
8 variance would be required. The applicant has brought the need for a variance upon itself. It is not  
9 due to any “peculiar” feature of the property or existing building/structure.

10  
11 For the foregoing reasons, the motion for reconsideration should be denied.

12 Dated this 21<sup>st</sup> day of June, 2022.

13  
14 Respectfully submitted,

15 BRICKLIN & NEWMAN, LLP

16  
17  
18 By:   
19 David A. Bricklin, WSBA No. 7583  
20 Attorney for Debbie Aldrich  
21  
22  
23  
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25  
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BEFORE THE HEARING EXAMINER  
FOR THE TOWN OF LA CONNER, WASHINGTON

David Lowell, Hearing Examiner

## Atkinson Development / KSA Investments CUP

NO. LU21-56CU

RESPONSE OF DEBBIE ALDRICH  
TO TOWN OF LA CONNER'S  
MOTION FOR RECONSIDERATION

The Town's planning staff (Michael Davolio) has requested that the Examiner modify two parts of the decision, one related to setbacks and the other to long-term residential use. The applicant has not requested either of these modifications. If the applicant has not sought these modifications, it seems inappropriate to modify the decision to provide additional flexibility not requested by the applicant.

The requests also should be denied because they are not consistent with the contract rezone which burdens this property. That contract rezone provides that development of this property must be consistent with the Historic Preservation District Design Guidelines (even though the property is zoned Commercial). The requested modifications have not been analyzed for consistency with the Historic Preservation District Guidelines. Therefore, those modifications should not be approved.

RESPONSE TO DEBBIE ALDRICH TO TOWN OF LA CONNER'S  
MOTION FOR RECONSIDERATION - 1

**Bricklin & Newman, LLP**  
Attorneys at Law  
123 NW 36th Street, Suite 205  
Seattle WA 98107  
Tel. (206) 264-8600

1      Dated this 21<sup>st</sup> day of June, 2022.

2      Respectfully submitted,

3      BRICKLIN & NEWMAN, LLP

4

5      

6      By:

7      

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David A. Bricklin, WSBA No. 7583  
8      Attorney for Debbie Aldrich

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RESPONSE TO DEBBIE ALDRICH TO TOWN OF LA CONNER'S  
MOTION FOR RECONSIDERATION - 2

**Bricklin & Newman, LLP**  
Attorneys at Law  
123 NW 36th Street, Suite 205  
Seattle WA 98107  
Tel. (206) 264-8600

To : Hearing Examiner David Lowell  
From: Brandon and Kate Atkinson, KSA Investments LLC  
Subject: 306 Center Street Development  
June 15, 2022  
Reference Case NO: LU21 - 56CU  
Attachments Exhibit 1 (ordinance 568 description )



This is in response to Linda Talman's Request For Reconsideration dated May 13, 2022. It is our opinion that Her Exhibit 1, a questionable rezone contract between the Town of La Conner and Gerald and Donna Blades is not valid and not pertinent to our Application for a Conditional Use Permit and should be disregarded by the Hearing Examiner.

Our current Application for Conditional Use includes a site plan which shows the project to be in the Commercial zone and compliant with all existing codes as defined in ordinance 568 (See Exhibit 1) dated September 26, 1989 and in the properly approved La Conner Comprehensive Plan. Ordinance 568 superseded all previous zoning codes applicable to the subject site.

Also, there is no Town requirement to include in the Conditional Use Application any architectural style criteria or final building plans in fact it is not possible since we do not know what we will be allowed to design and build until we receive conditional use determination. Architectural design approval falls under the Building Permit Application, therefore, even if Talman's Exhibit 1 had been valid there was no need for the Town to provide it to the Hearing Examiner at this time.

When our approval has been finalized for a mixed use project we will follow Town procedures, design the building and submit an application for a building permit. It has always been our intent to create a beautiful structure that is compatible with La Conner and the neighborhood architecture. Toward that end if the Town requires it for whatever reason we will follow design criteria guidelines for the Historical District when we apply for a building permit and design the building. This would not require any change to our existing site plan including our request for certain industry standard height overruns for the elevator or other minor overruns needed to operate the building. It also has no affect on and nothing to do with our Application For Conditional Use.

In summary”

1. The Town did not error by not submitting the Exhibit 1 document. It was not valid and not required for any decisions needed with regards to a Conditional Use Permit.
2. Current established properly ratified published codes and zones have been fully complied with.
3. We are concerned about the true intent of Linda Talman's request. During the proceedings of our applications no one requested that the building be of historic design. It appears that the attempted use of Talman's Exhibit 1 is a torturous attempt to interfere with and take away our property rights to satisfy their own interest.

We request that the Hearing Examiner's decision to approve the project and our request for minor height overruns stand and be approved and we be permitted to proceed to the next phase of our project.

4

ORDINANCE NO. 568

AN ORDINANCE PERTAINING TO THE COMPREHENSIVE PLAN OF THE  
TOWN OF LA CONNER, ADOPTING THE ZONING MAP AND REPEALING  
ORDINANCE NO. 458, 459, 506, AND ORDINANCE NO. 561.

ADOPTED THIS 26<sup>th</sup> day of September, 1989

From Georgia Johnson

360-202-1032 307 Center Street POBOX 877 LaConner Washington 98257

**Response to Reconsideration by LaConner Fire Chief on 306 Center Street**

The reconsideration from the LaConner Fire Chief speaks to the problem we have with the continued changes to the development application that is incomplete. The fire chief has been left with reconsideration as recourse and reflects on the lack of ability or intended missing information about fire safety needs in parking lot design and the roof of 3<sup>rd</sup> floor by applicant. Whatever the reason might be, does it seem smart to approve a development devised by an applicant in this way without conditions related to fire department needs and general safety included by planner? It does not make sense to approve a design that will ultimately be corrected later, again by applicant.

My suggestion is to send this application back to the applicant's drawing board for completion, include detailed information about fire gained from fire chief, go back to the planning commission for review, so that what you receive for consideration shows an understanding and response to the fire chiefs concerns and needs.

From: Georgia Johnson

360-202-1032 POBOX 877 LaConner Wa 98257 307 Center Street

**Response to Reconsideration Requested by Michael Davolio, Town Planner**

**On the 306 Center Street Development Application**

This reconsideration is an unsolicited assist from the town, through the planner, to the applicant developer, considering two issues of concern from other parties of record, set backs, and the short-term residential use.

This action is one of a series of inappropriate maneuvers by planner –

Please review the initial application submitted to planner, described as a pre-application, missing and misrepresenting information (see the word “flats”, later confessed as condominiums, see the 1<sup>st</sup> floor vacation rental access on Center Street which we were told was error, lack of SEPA need until educated by the public, planner doesn’t require any conditions at that time). It was posted with a comment closing date that required persons interested to respond with concerns ahead of an actual application; the applicant then sent in a document responding to these concerns.

This type of maneuvering has been repeated throughout this entire process.

At every given point of concern, every reference to town of LaConner municipal code, concerns over fire safety before any review by fire chief/marshal, before presentation to hearing examiner, the applicant has opportunity to muddle the plan and throw out ideas that change the design as originated. This is not good planning. Please keep in mind the denial of this project by the planning commission. If you have questions about their decision I would hope you would contact the chairman.

My suggestion here to you Mr. Lowell is that you hand this entire package back to the

town planner, with instructions to the applicant to submit his finished plan with all the conditions noted included in design and implementation as best he can, go through the planning commission process again, and have an application come to your desk in such a way that you can clearly make your decision. The longer this process goes on, the more conversations you hold with LaConner administration the more damaging to our trust in this process.

From: Georgia Johnson. 360-202-1032 POBOX 877 LaConner 98257 6/17/22

**Response to Reconsideration from Linda Talman to the 306 Center St.**

**Development**

The information included within Ms. Talmans reconsideration is vital to town government, town citizens, and your understanding and determining the true zoning class at this time, which follows in determining what building can be designed and built at this site.

The fact that a determination of validity of the contract between the Blades and the Town of LaConner in 1986 has not been embraced and agreed to by the town administration should be a red flag of trouble. Note that in the reconsideration the contract was found valid by land use lawyers contacted by Ms. Talman.

Note that this information was discovered and shared only after a FOI was requested, that the town did not send the information in a timely manner for your period of examination.

Because of this rather huge glitch I suggest you send this entire project back to the applicant and town government so that a proper zoning can be determined, and applicant can submit a building plan that meets those zoning requirements. Once done it would be important for all to see it go back to the planning commission for review, then on to you. Thank you.

June 20, 2022

Re: Center Street Project

To: Hearing Examiner

From: James Matthews – Person of Record

Re: Atkinson/KSA Reconsideration Request



1. The La Conner building code is clear and is not a function of Anacortes or any other town, city, or county and their respective code. A total of thirty feet above, one foot above the flood plain, is irrefutable. La Conner is in a flood plain with a very high water-table. All of the above were clear when the application was made and cannot be violated.
2. Additionally, Chapter 5 of the Land Use Element of the La Conner comprehensive plan under growth management policies states under section 5A-6.

*“Development should have the primary fiscal responsibility to provide parks, recreation, and open space to mitigate the impacts created by their development.”*

Further, the comprehensive plan in the neighborhood conservation section under policies is very clear.

5K-1 states: Protect residential zones from encroachment by commercial or industrial uses.

5K-3 states: Siting and designing of new construction to minimize disruption of visual amenities and solar resources to adjacent property owners, public roadways, banks, and waterways.

Community Design Policy 5Z-1 – Maintain a small scale for structures. New structures should not overpower existing structures or visually dominate La Conner’s small-town streetscapes.

The Atkinson plan has no evidence of any of this. On the contrary, the parcel in question as proposed is extremely over built and crammed into a very small lot as well as being way outsized relative to neighboring buildings.

There is no recreational provision and no open space provided in the proposal. There is not even 8x8 space provided for a required garbage dumpster enclosure.

3. This project needs to be dramatically scaled down to something appropriate to the neighborhood. EG: Four single family homes or a couple of two-story townhouses.

James Matthews  
310 N 3rd Street  
La Conner WA 98257

June 21, 2022

Re: Center Street Project

To: Hearing Examiner

Fr: James Matthews-person of record

Regarding Planner Michael Davolio's  
Reconsideration Request

Re: relief request #1

Re: corner lots, etc.- "We ask that this be permitted-etc"

Re: relief request #2

Re: long term residential use- "We would like to clarify that the applicant, if he chooses etc" — — —

Who is the **we**??

Is it the planner and the developer?

Is it the planner and the mayor?

Is it the planner and the town administrator?

Or is it all of the above?

This needs to be both clarified and negated.

James Matthews  
310 N.3rd street  
La Conner Wa. 98257



June 21, 2022

RE: Center Street Project

To: Hearing Examiner

Fr: James Matthews-person of record

Regarding Linda Talman's reconsideration request:



The contract rezone filed by Gerald Blades in 1986 is clearly valid, and it is preposterous to consider it otherwise. The mayor at the time, signed it, the La Conner town council approved it, the La Conner city attorney and Town Clerk both signed it.

The Town failed to file the rezone, at the time. The Town is therefore responsible for that failure.

Now, the Town needs to file the zoning request and accept the full responsibility of the results associated with that failure.

After all, it was the Town who had the document all along, and neglected to completely research the property in question, when the Atkinson request was presented.

The town merely saw the development opportunity, and gave it the green light, without any regard for the prior use or the zoning history of the property.

Unfortunately, the Town failed to do diligence on the property before granting the conditional use permit, and must now figure out how to rectify the situation.

The desires of the citizens of La Conner, rather than the profit desires of an outside developer, must be the primary and only consideration.

The responses of the public in both the La Conner Weekly News, and in letters to the Town, are clearly against this. It is an inappropriate and ill conceived development, as proposed, and must be terminated.

James Matthews  
310 N. 3rd street  
La Conner Wa. 98257

6/20/2022

Response to KSA investments for reconsideration of

306 Centre Street Proposed Development

Decision #9 A&B      Maximum of 30-foot height

In regards to exceeding the height requirements, this is a situation caused by design.

The equipment can all be concealed by having the mechanical equipment on the second floor, there may be a need to alter the configuration of some units. This is a condition created by design and can be solved by design.

As far as the elevator access to the roof, I believe in case of fire alarm triggering the power is shut down to the elevators as not to act as a chimney and spread the fire.

Consideration must also be considered on how to evacuate the building in case of fire.

It takes two firefighters for every individual that is in this building. And as the developer claims he is targeting seniors who wish to downsize that could be an issue.

Thank you for reading this response

Gary Nelson

403 Morris Street

6/20/2022                    Response for the reconsideration of the Town of La Conner  
                                  Planning Director

As requested by the planner of flexibility for the developer. As a traffic and pedestrian safety measure and considering the elderly occupants of the building that we consider on the North and east sides of the project to require greater front yard setbacks as for pedestrian safety. I am aware this is not part of the current code but as this is a conditional use, we can lessen the impact on the community and the Residents of the Building.

Gary Nelson

403 Morris Street

June 19, 2022

Response by Kathy Shiner to 306 Centre Street to Hearing Examiner



As a party of record, I would like to respond to Dr. Atkinson's reconsideration.

Dr. Atkinson refers to La Conner's height codes as out of date using Anacortes as an example. Anacortes population is 18,370 and occupies 15.53 square miles. La Conner's population is 979 and occupies .41 square miles. By scale, the Town of La Conner is much smaller than the City of Anacortes. The size and scale of projects isn't comparable. La Conner is in a flood zone so our 30 ft height restriction is not considering that the building height is 9 feet above base flood elevation. So again, no comparison. The codes represent the desire of the community to keep its buildings to scale with the size of the Town and the existing surrounding residential and commercial buildings.

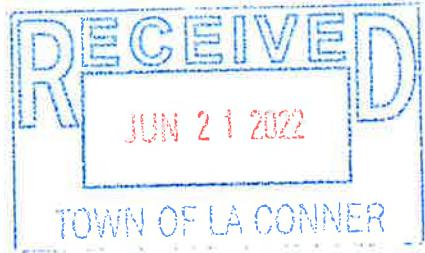
He purchased the property with plans for development knowing the current building codes. When my husband and I first received the notice of application for development, Atkinson's plan was to build a 3 story apartment with 14 long term rentals on the top 2 floors and 6 short term rentals on the ground floor apparently with no need for an elevator. Since then, he has decided his market will be seniors in need of elevator access. . If he is intent on serving his senior target market, he has several options. He can build a two story building to still keep within the 30ft height restriction with room to accommodate the mechanical equipment to operate an elevator and maybe have a peaked roof for architectural interest and/or a rooftop garden and patio area. A win-win for everyone. He refers to other buildings in the area, specifically the Channel Lodge and the Retirement Inn, as being over 30ft. Those two buildings do not loom over residential housing. He hasn't asked for a height variance, but wants the Town to change the Comp Plan to allow for his development plans. As far as I know, the Town has no plans to change its Comp Plan height restrictions.

Especially now, when there is so much pressure from developers to push the limits, the Town needs to stand by its building codes to preserve the unique character and historical nature of the Town. As the banner states as you enter town on Morris Street, Tiny Town with Big Charm.

Kathy Shiner

June 19, 2022

Response by Kathy Shiner to 306 Centre Street



To: Hearing Examiner

As a party of record, I would like to respond to Michael Davolio's Reconsideration

I find it peculiar that our Town Planner is filing a Reconsideration for the developers project. It seems that it's the developers responsibility or his representatives to bring these two requests to the attention of the Hearing Examiner. I object to Mr. Davolio, as a Town government representative, requesting a reconsideration.

It seems like the Municipal Code is clear on setback requirements in the Commercial Zone 15.35 and not to be adjusted for the developers "flexibility".

When a building application is submitted to the Planner, the terminology of what type of use is being requested should match the terminology of the codes. Mr. Davolio refers to short term and long term residential use. In researching the Municipal Code, I don't see this terminology referred to at all. The Hearing Examiner is using the 6 short term rentals to mean a hotel. Mr. Davolio is asking in his reconsideration number 2, using the term long term residential use, but seeking the wording from 15.35.030 which refers to dwelling units.

(2) Dwelling units, attached or unattached, are not to exceed 49 percent of the square footage of the building(s), for all uses, of the properties of a development on the ground floor. Dwelling units located above the ground floor are not limited in square footage except that the maximum floor area for all development (commercial and residential) must not be more than two times the property area. Residential uses in the commercial zone to the extent practical must have their access located to the rear or side of the structure where they are located.

So does that mean if down the road he might turn 49% of the ground floor hotel into residential dwelling units that he will be adding kitchens and changing the entrance to each unit to the side or rear of the building. Sounds like Dr. Atkinson and/or Davolio wants to do one thing now and then change it later once he figures out if the hotel or the dwelling units make more sense for his profit and the time necessary to manage a hotel.

The intent for this development is not clear or transparent. The wording from day one, when we got the first notice of application from the Town dated November 9, 2021, has gone from short term, long term rentals to short term, long term residential. The wording has been confusing all along. The way the application and any subsequent requests for conditional use permits is worded, needs to represent the wording in the La Conner Municipal Code.

The reconsideration should be denied.

June 19, 2022

Reconsideration Response to 306 Centre Street



To: Hearing Examiner

As a party of record, I would like to respond to Linda Talman's reconsideration.

I believe Linda has uncovered the most pertinent document with information regarding the property at 306 Centre Street. George and Donna Blade came to the Town of La Conner requesting a rezone from residential to commercial. Blades also owned the abutting property at 315 Morris Street which is zoned commercial within the Historic Preservation District. The Town and the Blades negotiated, over about a six month period. The Blades were denied the rezone by the Town Council twice, but then on the third try a compromise was agreed upon by both parties. The contract was finally negotiated allowing for the rezone from residential to commercial, but with an encumbrance attached, that would follow future sales. The rezone stipulated that if the property was ever developed or improved that the application review process would follow the Historic Preservation District guidelines, and if not, the property would revert to residential. In the contract, the Town was responsible for filing the contract with the County Auditor so that future sales would carry the same encumbrances. The contract was never filed by the Town which was their responsibility per the terms of the contract. According to Scott Thomas and other land use attorneys that the neighborhood opposition group has spoken to, the contract is, non the less, valid.

Dr. Atkinson has been caught in a contractual mess. It seems like the property should revert to residential since the terms of the contract have not been met. At the least, the whole development plan should be reevaluated as commercial within the Historic Preservation District, and sent back to the developer for a new application.

The Town government has known about this since the end of March or beginning of April. Why they haven't done anything about it is also negligent. The Town signed the contract and needs to abide by the terms of the rezone.

Kathy Shiner

## TALMAN RESPONSE TO ATKINSON REQUEST



1. The developer quotes the code of the City of Anacortes.
  - a. Response: The project is not in Anacortes.
  - b. Response: Anacortes is not on the flood plain and therefore not subject to the floodplain elevation + 1 rule. Anacortes's 30 foot building is our 38 foot building.
  - c. Response: Shorter buildings in La Conner are allowed to put things on the roof. He has created his own hardship.
  - d. Response: The developer has created his own hardship by creating a design that is testing the limits of what he can do and then asking for more.
2. The developer states that the building needs elevators.
  - a. Response. The developer has again created his own hardship by asking for a three story building onto which the elevator overrun extends beyond the height allowed in the code.
3. The developer states that an elevator is needed for access to the roof by firefighters.
  - a. While it is true that the fire department will need to reach any roof, the Fire Department of La Conner does not have a truck that can reach the proposed roof, particularly if the fire needs fighting from the street.

4. The developer states that mechanical equipment is easier to conceal on the roof.

a. Equipment would be just as easy to conceal on the second story roof.

Again, the developer has created his own hardship by asking for the limit and then asking for more.

5. Retirement Inn example setting precedent for a big building. a. The Retirement Inn was given a Variance for that height. (source: Foi Request for that record.) A variance, as you know, is given for a property which cannot enjoy the privileges of other properties in a similar location. The variance language was improved after the Retirement Inn situation. You can't have a variance just because you want to skirt around the code.

b. The Inn would not have received the variance with current code. c. The Retirement Inn is not four stories as he states. It is three stories with a hole underneath for parking.

d. A variance, as you know, does not set precedent for other projects.

The request should be denied as it violates the Municipal Code of La Conner.

Dated: June 19, 2022



**NO. LU21-56CU**

**Response to Fire Department request.**

The Fire Chief rightly states that the access to building through the parking lot is not adequate. I agree with this point but there is more that the examiner needs to know.

**Responses:**

1. The La Conner Fire Department (LFD) does not have a final plan for the property for two possible reasons:
  - a. There isn't one.
  - b. The plan keeps changing.
2. The LFD does not have a ladder truck that would reach to the roof.
3. On Center Street there is a power line that would prevent a ladder from accessing from Center.
4. There is not enough room on the west side between the proposed building and the neighbor fenced property for ladder access to the roof.

5. The elevator power is shut off when the fire alarm sounds. It would need a FD override - if they were on the scene.
6. Their tallest ladder fully extended is only 35' straight up. When we account for climbing angle it will only reach ~30' in the air depending on setbacks.
7. Water flow is a concern. If they don't have enough water they cannot effectively fight a multistory building.
8. As a rural fire department they don't currently train a lot on multi story family buildings.
9. They do not have a town IFC (fire) inspection program to verify all preventive fire systems are in compliance each year.

## **Conclusion**

Although it is customary for the FD to give final approval later in the process, it is not customary for the FD to get a project of this size and scope with so few controls on it. An official retirement place has safeguards to contain and slow the fire. They have automatic hall doors that close when the alarms go off. They have firewalls. They have multiple exits. It is obvious that this building with its currently proposed use and targeted market (that the developer described as seniors who want to

downsize ) is potentially a nightmare for our young volunteer firemen and women. Although this is not an official “retirement home” it is a de facto one. Your ruling could protect our volunteer first responders and the occupants of the project. Which of the occupants of the twenty units up to forty humans and unknown numbers of pets) would they rescue first? The project should be denied in its current iteration. It is unsafe.

Date 6/20/2022

Linda Talman



## Talman Response to Planner Request for Reconsideration

1. The Planner requests reconsiderations for a project and items on that project that the developer has not requested. This request should be denied because it was never requested by the developer.
2. The request of the 25 foot setback is not an exchange of location for the 25 foot setback from back to front, but an exchange of the back 25 ft location in return for giving the developer flexibility. "Flexibility" is not a term defined in The Municipal Code of La Conner. This request must be denied.
3. The Planner speaks to the addition of Long-Term Residential.
  - a. The Municipal Code of La Conner has no language for Long-term Residential - (Term on second paragraph of planner's request, line one.)
  - b. The Municipal Code of La Conner has no language for short-term Residential. – (term used in second paragraph of Planner's request, line three.

4. The Hearing Examiner correctly interpreted that the ground floor proposed use was actually hotel, a place for sleeping, not residing, and would require an onsite manager and an extra parking spot.

**Conclusion:**

The Planner's request for reconsideration must be denied because it was not asked for by the Developer, it proposes an exchange of 25 feet of setback in return for "flexibility" and because it proposes a trade of two uses that are not defined in The Municipal Code of La Conner.

Date Juneteenth - June 19, 2022

Linda Talman

**Response to the Zone Correction Request (Talman response to Talman request  
which Mr. Thomas wrote to me that I was allowed to do.)**



**To paraphrase of the Talman reconsideration request:**

The request was for the zone correction in the Hearing Examiner's Decision. The decision called it Commercial - which is understandable since that is what the town stated to the developer - and what the town may have thought it was. However it was not Commercial.

The Talman request was based on the discovery(FOI) of the Contract Rezone that Jerry and Donna Blades made with the town in 1986.

This contract was not revealed to Linda Talman until just after the hearing. And though it was not filed, it is a valid contract.

**Response to this request:**

Discussions with land use attorneys and developers on both sides of the land use aisle confirm that the contract is valid even though not filed. All say that the contract should be filed but whether they do or not, see it as a valid contract. Scott Thomas agrees (from his words in a council meeting.) The only question is - did the Blades live up to the terms of the contract or not. And, therefore, follows the question - should it revert to Residential or remain Commercial HPD?

Further looking through documents revealed by FOI requests received two days after the the hearing reveal the following::

- a. The Town Council voted to rezone the property with the HPD commercial designation. The public hearing and the rezone motion passed in DECEMBER, 1986. The Blades wanted any future development on that property be considered HPD so that it could be reviewed using the HPD guidelines. (This rezone would represent a compromise between straight out commercial and residential.) The Town Council agreed and rezoned it with those conditions.
- b. The newspaper record of that time confirmed this account.
- c. The planner (Gary Gidley) of the time wrote:

On December 1, 1986, the La Conner Planning Commission passed a resolution requesting that the Town Council require that Historic District design review be required if the Blade rezone is approved. This would allow the Planning Commission the opportunity to review the development plans for the property.

- d. In April of 87, there was a letter by Vince Sellen, council member who had voted in favor of the rezone but who in April of the next year forwarded a list of complaints from his constituents to the Mayor Lam. He wrote the following which might indicate that it reverts to residential.

"4/9/87

Re: Citizen complaints in reference to activities on Blades Morris Ave properties.

I have had complaints from community members over certain activities that may be non-compliant uses and/or safety and environmental hazards.

Complaints: (from citizens)

1. Use of storage tanks
  - a. Questions about types of materials stored .
  - b. Concern for condition of tanks and pumping equipment.
  - c. Noise level of operation
  - d. Attitude of truck drivers
    1. Threatening?
    2. Secretive
  - e. Industrial Use in Commercial Zone?
  - f. "50 gal. Spill."
2. Travel Trailers being used as residences since since fall.
3. When is property going to be cleaned up?
4. Didn't Blades say they were going to remove tanks?"

- e. Preceding and following that was into the next administration were many problems between the town and the Blades regarding the oil. Mayor Bud Moore spent a great deal of time on those issues.
2. All of the above shows that the Blades did not honor their contract rezone. The property should be, therefore, residential.

**How could this oversight of filing have happened?.**

Bad things seem to happen in this town when something related to town government happens in December. People are distracted with the holidays and not paying attention.

- a. The town clerk was a pro tem clerk
- b. The planners changed from Ladd to Gidley.(Source: records request)
- c. On November 26, 1986, Gary Gidley placed the property in the HPD. Someone told him he was wrong. Council asked for a public hearing on December 8, 1986. The Council agreed to honor the Contract rezone. Later in December the council made it official. (Sources: The minutes of the Council meeting; Channel Town Press, December 10, 1986.

**Summary:**

I hope that it was a clerical error for the town but in any case neither the town nor the developer did due diligence on the property. The mistake was a careless one and the town should be responsible for the Town's mistakes and actions of the past. They could have checked ahead of time and they didn't. It would have been as easy for them to check as it was for me.

I suppose it was to their advantage not to know.

But once they knew, they should have filed it and told the developer. The longer they wait, the worse it looks. And the more liable they will be. When the contract is filed, it will become an encumbrance upon the property and follow the land ownership. That will be important when the developer almost inevitably sells the property.

The Talman request should be accepted. The project will be made to follow the HPD guidelines or the Residential guidelines. The project should be not be allowed as proposed because the property is not Commercial.

Further the planner failed to put conditions on this property. He wrote to you, Examiner Lowell, on April 8 (written on the 6th but sent on the 8th), that it didn't need conditions because it was residential in the middle of residential failing to have any understanding that this cannot be looked at solely through that one lens. He went on to say that Center Street can handle the traffic - again failing to observe that this is a walking community and that Center doesn't even have sidewalks. He also said that there were street parking spots

failing to understand that street spots don't count for the project and that people already park there. He fails to understand that the 21 spots provided far outweigh the 31 spots that they are removing. He claims that the drilling surveys have been done - and they had- but not where the oil was leaking and almost not even on their property bordering as it did the south property line. There was never any respect for anything that was spoken by the neighbors. If there is any better proof that this is not a commercial neighborhood it is the fierce devotion of the neighbors to the safety of their families and the welfare of the town. A proper CUP would have downsized this property making the zone correction unnecessary. The developer created the problem. The planner inappropriately supports the developer.

The residents shouldn't have to pay the price for the total lack of due diligence shown by the Town by their pushing through and showing favor to something that is far far taller than anything around, creates dangerous walking conditions, early shadows over their house to the north and their solar potential and potential health hazard from the unresolved aromatics. The project as designed even puts a stress on the south half of that property so the developers are not even a good neighbor to commercials.

Yes, this is a neighborhood –a neighborhood that welcomes new neighbors. But we don't need to locate so many people on the same piece of property. That is not supported by the code. It is not supported by the Comp Plan - which only speaks to the need for the affordable housing. It does not support just any kind of housing.

The developer says he needs to have so many units in order to have it "pencil out" without any data to support that claim - a common ruse for developers. (Pencil out is a term they use prior meetings)

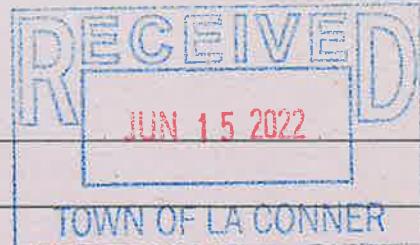
Penciling out is not in the Town of La Conner Municipal code

The contract rezone should be honored. The town was negligent. Both the planner and the administrator are strangers to the history of this town. Newcomers. They don't even live here. For them to not search the records at the start is reprehensible or incompetent. They behaved as if there was no history before they arrived. I got the records by asking Danielle for them. It was not hard to do.

The contract rezone should be honored. The town should face the consequences.

Date: June 19, 2022

Linda Talman



June 17, 2022

Michael Davalio  
Town of La Conner Planning Director  
P.O. Box 400  
La Conner, WA 98257

Dear Mr. Davalio,

I agree with the decision by  
Hearing Examiner to extend the  
deadline on 306 Ctr. St. Development  
for reconsideration on this project.

Thank you for making me  
aware of the process - I still  
support this project, hope  
it moves toward completion.

Regards

Marilyn Thostenson

Marilyn Thostenson  
705 S. Whatcom St.  
La Conner, WA 98257

To: Hearing Examiner David Lowell  
From: Roger Vallo, Planning Consultant for Brandon and Kate Atkinson  
Subject: 306 Center Street  
June 11, 2022  
Reference Case N0: LU21-56CU  
Attachments ; Exhibits 1,2 and 3



This is in response to the Request for Reconsideration submitted by the "Fire Chief"

We question the authenticity of this request. The sender did not identify himself, the request form is incomplete and the statements are incorrect. During the application process I met with the appropriate La Conner Fire Department representative Annie Avery the La Conner Planning Director was in attendance. We discussed the project and the site plan in detail she had no concerns with the plan and made some recommendations and comments regarding what we need to do as we proceed with submitting the building permit application. After the meeting her comments were sent to me in an email which is attached as Exhibit 1.

When the building permit application is submitted including all fire safety requirements it must be reviewed and approved first by the La Conner Planning Director and the La Conner Volunteer Fire representative then by the Skagit County, Planning Director and Fire Marshall. I called the County Deputy Fire Marshall Bonnie La Count and reviewed our plans with her. Her response is attached as Exhibit 2 she makes no objections to the preliminary plans and assist with information that will be needed to get our building permit.

At the Hearing I testified and clarified that the Public Works and Fire Department reviews and approvals were in process but could not be completed until we submitted our building permit application. The building plan can not be done until we have an approved Conditional Use Permit.

I have attached as Exhibit 3 a letter from our Architect regarding the "Fire Chief" Request for Reconsideration it speaks for itself.

We are concerned that there is an organized attempt to stop our project with whatever means including interfering with our property rights and that the subject Request For Reconsideration could be a part of it.

Roger Vallo   
Vallo Consulting Services, Planning and Project Management  
844 Wanapum Drive  
La Conner WA 98257  
360 348 2557

**From:** roger vallo  
**Sent:** Thursday, January 6, 2022 2:47 PM  
**To:** Charlie Morgan Jr  
**Subject:** FW: Center Street Project in La Conner

This from the local Fire department.  
Sent from [Mail](#) for Windows

**From:** [Annie Avery](#)  
**Sent:** Thursday, January 6, 2022 12:44 PM  
**To:** [roger vallo](#)  
**Cc:** [Brandon Atkinson](#)  
**Subject:** Re: Center Street Project in La Conner

The 30 roof height and elevator over run is fine. The water lines is something that will need to be discussed with your sprinkler designer and public works to make sure flows are where they need to be. The access is fine as long as we can get the truck within 150 feet of all areas of the building. We will also require a Knox box for access.

Thank you,  
Annie Avery

Sent from my iPhone

> On Jan 5, 2022, at 1:32 PM, roger vallo <[roger\\_vallo@msn.com](mailto:roger_vallo@msn.com)> wrote:  
>

**From:** roger vallo  
**Sent:** Wednesday, January 5, 2022 1:32 PM  
**To:** annieavery511@gmail.com  
**Cc:** Brandon Atkinson  
**Subject:** RE: Center Street Project in La Conner

Good afternoon Annie,

Just checking to see if you received my email, see below, and if you have any corrections?

Thanks,

Roger Vallo  
 Planning Consultant for La Conner Center Street project.

Sent from [Mail](#) for Windows

**From:** [roger vallo](#)  
**Sent:** Thursday, December 16, 2021 2:06 PM  
**To:** [annieavery511@gmail.com](#)  
**Cc:** [Brandon Atkinson](#)  
**Subject:** Center Street Project in La Conner

Reference: Our meeting with La Conner Planning Director Michael Devolio

In the referenced meeting we discussed the following items regarding fire requirements for our proposed building. The building will be three floors, 30' high with an elevator shaft that will extend 8 to 10' above the 30' roof height. There would also be an access door on the stairwell that would extend above the roof height. The elevator would be sized for gurney and other equipment that might be needed for emergency 911 service to each condo unit.

This is my understanding of the La Conner Fire Marshalls position on our plans:

1. 30 feet roof height is OK for ladder access.
2. The Fire Marshall has no issues with the elevator shaft and stairwell overruns.
3. The elevator is considered a plus for emergency service but is not necessarily a requirement of the Fire Marshall
4. The property is only a short distance from Center and Fourth Street and there will be parking lot access so truck access is not a problem.
5. Since we will access the 8" water pipe on Morris Street and not the 4" pipe that currently serves the site from Center Street, flow and pressure should not be a problem.
6. The 8" water pipe will loop to Center Street but any need for an additional Hydrant has not been determined. We will work with you in that regard.

Please let me know if these are correct or if you have any comments or changes.



EXHIBIT 2

**From:** roger vallo <[roger\\_vallo@msn.com](mailto:roger_vallo@msn.com)>  
**Sent:** Tuesday, November 30, 2021 9:35 AM  
**To:** Bonnie LaCount <[bonniel@co.skagit.wa.us](mailto:bonniel@co.skagit.wa.us)>  
**Subject:** RE: La Conner WA project

CAUTION: This email originated from an external email address. Do not click links or open attachments unless you recognize the sender, you are expecting this email and attachments, and you know the content is safe.

Bonnie, did you receive this?

Thanks  
Roger

Sent from [Mail for Windows](#)

**From:** [roger\\_vallo](mailto:roger_vallo)  
**Sent:** Friday, November 26, 2021 11:40 AM  
**To:** [bonniel@co.skagit.wa.us](mailto:bonniel@co.skagit.wa.us)  
**Subject:** FW: La Conner WA project

Note this is forwarded because I sent it to an incorrect address see below  
Sent from [Mail for Windows](#)

**From:** [roger\\_vallo](mailto:roger_vallo)  
**Sent:** Friday, November 26, 2021 11:25 AM  
**To:** [bonniel@co.skagitwa.us](mailto:bonniel@co.skagitwa.us)  
**Cc:** Brandon Atkinson  
**Subject:** La Conner WA project

Hello Bonnie and Mark,

My name is Roger Vallo. I am managing a La Conner building project for Dr. Brandon Atkinson the property owner.

Property address: 306 Center Street, La Conner WA 98257

We have completed the preliminary site plan, the City planning review meeting and the initial applications which include a request for conditional use. The site is in the commercial zone, the building 3 story, we are requesting that the upper two floors be residential apartments/condos. The lower floors will be abnb commercial.

I would like to meet with you to discuss all fire requirements and avoid any misunderstanding as we proceed with the permitting process. Here are some of my questions.

1. Fire sprinklers – I assume they are required. Will they be commercial? Residential? Specific type?
2. It will be a three story building with stairs and an elevator. What roof access will be required? Upright door from stairs? Other? The La Conner building height limit is 30" so we will have to extend above that for door and elevator?
3. Hydrant locations and flow – The pipe that currently serves the properties off Center Street is only a 4" pipe so we plan to extend to the pipe on 4<sup>th</sup> street which is an 8" pipe. Will a new hydrant be required?
4. It does not appear to have any truck access issues but would like to be sure?
5. The building design and construction, access, stairs, floors, walls etc. will meet all fire code requirements.
6. Any other information you can provide at this time?

You can email or call or preferably I can visit your office to discuss. Please let me know.

Thanks

Roger Vallo  
Vallo Consulting  
Project Planning and Management  
488 Wanapum Drive, La Conner WA 98257  
Phone 360 348 2557

Sent from Mail for Windows

**From:** Bonnie LaCount  
**Sent:** Tuesday, November 30, 2021 10:52 AM  
**To:** 'roger vallo'  
**Cc:** Randy Johnson  
**Subject:** RE: La Conner WA project

Hi Roger,

I have received your email and have some initial comments. The Town of La Conner may have additional ordinance requirements that exceed our code and the project will have to comply with the more restrictive code.

1. Fire Sprinklers: (NFPA 13) with fire alarm system (NFPA 72) would be required for the commercial occupancy with multi family dwelling above.
2. Building code question and needs to be routed to them for the requirement.
3. Must meet IFC Appendix C & B, as attached. The fire flow (Appendix B) is based off the construction type and square footage. Then reference (Appendix C) for the hydrants.
4. See Appendix D for access. The street side would be considered aerial fire apparatus access during an emergency times with this being a corner lot.

Hopefully this information is helpful to your project. All permits are routed to the Town for a concurrency letter and then submitted to our department for permitting. I have Cc'd Randy Johnson who is our Commercial Plans Examiner and you can ask him any questions or clarification needed to further assist with your project.

Additional requirements may be identified at time of permit submittal, without knowing all the intended occupancy's type and specific building type.

Contact me for any further clarification or questions and we look forward to working with you on this project.

Sincerely,

**Bonnie LaCount**  
*Deputy Fire Marshal*

**Skagit County Planning & Development Services**  
1800 Continental Place  
Mount Vernon, WA 98273  
Direct 360-416-1842 | Cell 360-661-6022



**RCHITECTS**

**CHARLES MORGAN & ASSOCIATES, LLC**

June 7, 2022

*EXHIBIT 3*

KSA Investments LLC,  
721 Maple Street  
La Conner WA 98257

RE: 306 Center Street, La Conner

Dr. Brandon and Kate Atkinson,

As for the comments from the Fire Chief.

The comment does not have any name or signature and is out of context with the correspondence with Annie Avery who in her email represents the local Fire Department. In most cases the comments Fire related code issues should come from the person acting as the Fire Marshall and they should have a title as you find with the email from Bonnie LaCount.

The first discrepancy with the comment is fact that it is referring to a Land Use Code and not a Life Safety code regulated by the International Fire Code or the International Building Department code. Parking in a structure is allowed by both IFC and the IBC. With it being a land Use code it would seem unlikely that the fire Department would not have jurisdiction on item unless it was defined in the La Conner land Use code. Furthermore the referred code has no reference that under building parking is not allowed and as state above IFC and IBC both allow parking in and under a structure so long as it meets the life safety codes.

As for the second comment, this is the one that makes me question the authenticity of Fire Chief since the International Fire Code has specific criteria that requires a building to have Fire Apparatus access on the site and this building has none of the requirements. The building is less than 30' tall. The building is full equipped with a fire sprinkler system and no portion of building beyond the allowable distance from the two public right-of-way to require the access. It is very clear in the IFC code that the building does not require fire apparatus access on the site. These codes I mention do match the comments made by Annie Avery.

Sincerely,

*Charles E. Morgan*

Charles Morgan  
Architect



CHARLES MORGAN  
& ASSOCIATES, LLC

Page 1 of 1

7301 BEVERLY LANE  
EVERETT WA 98203  
425-353-2888