

Andrea - Deputy Clerk

From: Scott Thomas <administrator@townoflaconner.org>
Sent: Monday, October 3, 2022 11:25 AM
To: Andrea Moore
Subject: FW: 306 Center Street
Attachments: Letter to Town 10 3 22.pdf

Go ahead and post.

*Scott Thomas
Administrator/ Town Attorney*

Town of La Conner
204 Douglas Street, PO Box 400
La Conner, WA 98257
Phone: (360) 466-3125
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NOTICE: Incoming and outgoing emails are subject to public disclosure requirements.



La Conner – it leaves you speechless, and then turns you into a storyteller.

From: Maria DeGoede - La Conner Finance Director <financedirector@townoflaconner.org>
Sent: Monday, October 3, 2022 11:02 AM
To: Scott Thomas <administrator@townoflaconner.org>
Subject: FW: 306 Center Street

Maria De Goede
Finance Director

Town of La Conner
PO Box 400
La Conner, WA 98257
Phone: 360.466.3125
E-mail: financedirector@townoflaconner.org
Web Site: <http://www.laconner.net>

From: L Clark [<mailto:k9walkerwa113@hotmail.com>]
Sent: Monday, October 3, 2022 10:11 AM
To: Maria DeGoede - La Conner Finance Director
Cc: council_1@townoflaconner.org; council_2@townoflaconner.org; council_3@townoflaconner.org;
council_4@townoflaconner.org; council_5@townoflaconner.org
Subject: 306 Center Street

Linda R. Clark
(360) 391-1431

October 3, 2022

Dear Town Council Members:

I think it's important for you and the residents of La Conner to have a clearer picture of what occurred with the 306 Center Street Project. Therefore, I have done some research into the people involved in making the decision and the aspects of a conditional use permit and administrative conditional use permit as listed below.¹

First, there are five types of permits according to the La Conner Municipal Code: Type I, Type II, Type III, Type IV, Type V. As indicated below ONLY the Town's Hearing Examiner will decide whether or not to grant a conditional use permit. Recommendations, as indicated below, are made by the planning director or Planning Commission.

PLEASE REFER TO THE ATTACHED LETTER FOR THE REMAINDER

Linda R. Clark
(360) 391-1431

October 3, 2022

Dear Town Council Members:

I think it's important for you and the residents of La Conner to have a clearer picture of what occurred with the 306 Center Street Project. Therefore, I have done some research into the people involved in making the decision and the aspects of a conditional use permit and administrative conditional use permit as listed below.¹

First, there are five types of permits according to the La Conner Municipal Code: Type I, Type II, Type III, Type IV, Type V. As indicated below ONLY the Town's Hearing Examiner will decide whether or not to grant a conditional use permit. Recommendations, as indicated below, are made by the planning director or Planning Commission.

15.135.050

15.135.050 Process classification and procedures.



(1) Classification. Project permits shall be classified by the planning director as Types I through V according to Table A, below.

Table A – Permit Classifications

I Administrative	II Planning Director	III Planning Commission	IV Hearing Examiner	V Town Council
Building and construction permits; LCMC 15.135.020	Land use review of permitted and accessory uses exempt from SEPA; LCMC 15.135.120	Demolition permits for Type I and II structures; Chapter 15.112 LCMC		Non-areawide rezone; LCMC 15.125.080
Lot line adjustments; LCMC 15.125.050	Temporary structures; LCMC 15.110.030	Historic design review of major new construction; LCMC 15.50.060	Conditional use permits; LCMC 15.135.190	Final plat; Chapter 15.30 LCMC
Sign permits; Chapter 15.115 LCMC	Bed and breakfast; CMC 15.20.055	Tree removal permits (excluding residential outside the HPD); Chapter 15.60 LCMC		Shoreline permit revision
Demolition permits for Type III structures; Chapter	Critical areas; Chapter 15.65 LCMC	Temporary use permits; LCMC 15.110.050	Preliminary plat approval; Chapter 15.30 LCMC	

¹ FYI, I worked as a paralegal for nearly 10 years and finished 77 credits toward my law degree so I have significant background in the legal field.

Accessory uses; LCMC 15.40.030			SEPA appeals; LCMC 13.10.090	
			PURD; Chapter 15.25 LCMC	

(2) Procedures. Type I through Type V shall be processed pursuant to the procedures outlined in Table B, below.

Table B – Review Procedures

Process Type	I	II	III	IV	V
Recommendation made by	N/A	N/A	Planning commission, if consolidated with Type IV or V permit applications	Planning director or planning commission	Planning commission
Final decision made by	Planning director, public works director or designees	Planning director or designee	Planning commission unless consolidated with Type IV or V permit applications	Hearing examiner	Town council
Notice of application	No	Yes ¹	Yes	Yes	Yes
Open record public hearing	No	Only if appealed, open record hearing before hearing examiner	Yes, before planning commission unless consolidated with Type IV or V permit applications	Yes, before hearing examiner for final decision	Yes, before hearing examiner for recommendation
Closed record appeal/final decision	Only if appealed, a closed record hearing before the hearing examiner, except that appeals of a building official order shall be remanded to the Skagit County building appeals board	No	Only if appealed, closed record hearing before hearing examiner	No	Yes, before town council
Judicial appeal	Yes	Yes	Yes	Yes	Yes

Hearing Examiner

According to La Conner’s Municipal Code, the town’s Hearing Examiner is hired by the mayor.

15.12.030

15.12.030 Selection – Contract.

 **SHARE**

The examiner shall be selected by the mayor subject to confirmation by the town council. The examiner may be retained under a professional services contract for a term and on conditions determined appropriate by the mayor. The contract may also provide for examiners pro tem to serve in the absence of the examiner under such terms and conditions deemed appropriate by the mayor. The contracts shall be approved by the council. [Ord. 686 § 3, 1996.]


David B. Lowell

Mr. Lowell² is a general practitioner in Burlington, Washington who according to his website, graduated from Seattle University and completed his law degree at Creighton University in 1992.

According to Mr. Lowell's website, although he describes himself as a general practitioner, the majority of his practice focuses on: divorce, alimony, child custody, child support, paternity, personal injury, contract law, bankruptcy, DUI, criminal defense, wills and trusts. He does not describe any specific experience in land use or municipal law.

Conditional Use Permits

State of Washington

 **WAC 173-27-160**

Review criteria for conditional use permits.

The purpose of a conditional use permit is to provide a system within the master program which allows flexibility in the application of use regulations in a manner consistent with the policies of RCW **90.58.020**. In authorizing a conditional use, special conditions may be attached to the permit by local government or the department to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the act and the local master program.

(1) Uses which are classified or set forth in the applicable master program as conditional uses may be authorized provided that the applicant demonstrates all of the following:

- (a) That the proposed use is consistent with the policies of RCW **90.58.020** and the master program;
- (b) That the proposed use will not interfere with the normal public use of public shorelines;
- (c) That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program;
- (d) That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and
- (e) That the public interest suffers no substantial detrimental effect.

(2) In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW **90.58.020** and shall not produce substantial adverse effects to the shoreline environment.

(3) Other uses which are not classified or set forth in the applicable master program may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the master program.

(4) Uses which are specifically prohibited by the master program may not be authorized pursuant to either subsection (1) or (2) of this section.

[Statutory Authority: RCW **90.58.140**(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-27-160, filed 9/30/96, effective 10/31/96.]

² Presuming there is only one David B. Lowell in Skagit County.

Skagit County

11.01 General

The objective of the conditional use permit is to allow more control and flexibility in the implementation of this Master Program. By applying special conditions, the scope of uses within each of the six shoreline areas can be expanded to include many additional uses. Activities classified as conditional uses shall be permitted only where the applicant can demonstrate that the proposed use will meet standards and criteria that will ensure that the proposed use will be compatible with the permitted uses within the same area.

Town of La Conner

15.10.255 Conditional use.



“Conditional use” means a use addressing a limited or specific need but, due to a potential adverse effect upon permitted uses or public services and facilities, is only allowed subject to review by the hearing examiner, of the use standards of the district, and the certain criteria in this code. [Ord. 901 § 2, 2003; Ord. 671 § 2, 1995.]

Residential Zone

15.20.010/15.20.020

15.20.010 Purpose.

The purpose of this zone is to provide for and protect areas for a mix of residential structures and uses, to promote economical and efficient use of the land, stable neighborhoods, and safety, efficiency and convenience for the residents of the town. [Ord. 671 § 3.2.A, 1995.]

15.20.020 General.

(1) Residential uses include single-family dwellings, accessory dwelling units, multifamily dwellings in a variety of housing types, modular and manufactured housing, and adult family homes. Recreational vehicles are not permitted in any zone as a residential use.

(2) Residential structures in the Historic Preservation District are subject to the provisions of Chapters [15.50](#) and [15.55](#) LCMC, Historic Preservation. [Ord. 1211 § 2(A), 2022; Ord. 671 § 3.2.B, 1995.]

15.20.030/15.20.040

15.20.030 Permitted uses.

The following uses and structures are permitted in an RD Zone by certificate of authorization:

- (1) One single-family dwelling unit per lot;
- (2) One factory-built/manufactured home per lot;
- (3) One accessory dwelling unit – See LCMC [15.110.080](#);
- (4) Adult family homes/supported living arrangements;
- (5) Accessory uses and structures normally incidental to primary dwelling units – see Chapter [15.110](#) LCMC. [Ord. 1191 § 2 (Exh. A), 2020; Ord. 671 § 3.2.C, 1995.]

15.20.040 Land use developments allowed.

The following land use developments are allowed in an RD Zone:

- (1) Planned unit residential developments;
- (2) Residential subdivisions and short subdivisions. [Ord. 671 § 3.2.D, 1995.]

15.20.050

15.20.050 Conditional use permits.

The following uses and structures are permitted in an RD Zone by conditional use permit (Type IV permit):

- (1) Pre-school and day care centers, subject to applicable building codes, lot size and coverage standards, parking, loading/unloading and signage requirements, and state (DSHS) licenses and certifications;
- (2) Churches; provided, that all structures are set back at least 25 feet on all sides for abutting property lines and abutting residential and public use zones;
- (3) Rest/convalescent/nursing homes; provided, that all structures are set back at least 25 feet on all sides from abutting property lines and abutting residential and public use zones;
- (4) Private or public lodges, clubs and community organizations;
- (5) Antennas plus antenna mounts of more than 20 feet in height, four feet in width and of bulk area more than 16 square feet;
- (6) Parks, playgrounds and recreation uses such as tennis courts, athletic fields, pools and restrooms for use of the general public; provided, that subject property is under lease to or otherwise under complete control of the town of La Conner. Conditional use permits will be revoked when not under the control of the town of La Conner;
- (7) Along Maple Street only, existing medical and dental uses. [Ord. 1191 § 2 (Exh. A), 2020; Ord. 963 § 10, 2005; Ord. 901 § 3, 2003; Ord. 884 § 1, 2003; Ord. 691 § 1, 1997; Ord. 671 § 3.2.E, 1995.]

Administrative Conditional Use Permit

Skagit County

14.16.900 Special use permit requirements.



(1) Special Uses.

- (a) Purpose. To provide a means to recognize and approve land uses not specifically identified as allowed uses. A special use permit must demonstrate that the proposed activity will not adversely affect or prevent those uses normally allowed within the respective district.

14.06.050 Application level.



(1) Applications for development permits and other administrative determinations shall be categorized as one of four levels as follows; provided, that shoreline applications shall be processed as described in the Skagit County Shoreline Management Master Program:

- (a) Level I. Level I applications are those applications for which a final decision is made by the applicable administrative staff, either the Director of Public Works or his/her designee, or the Director of Planning and Development Services or his/her designee, without a public hearing. That decision may then be appealed in an open record appeal hearing to the Hearing Examiner. The Hearing Examiner decision may then be appealed in a closed record appeal to the Board. Actions reviewable as Level I applications include:
 - (i) Boundary line adjustments pursuant to SCC Chapter 14.18.
 - (ii) Preliminary and final short subdivision approvals and extensions pursuant to SCC Chapter 14.18.
 - (iii) Binding site plans pursuant to SCC Chapter 14.18 of less than nine lots, tracts, parcels or units.
 - (iv) Preliminary long subdivisions of fewer than nine lots, tracts or parcels unless a public hearing has been requested pursuant to SCC 14.06.110(15), in which case they shall be processed as a Level II-HE decision, the same as preliminary long subdivisions of between nine and 50 lots; and provided, that the additional notice procedures of SCC 14.06.110(15) for this administrative long subdivision must be met. RCW 58.17.095 provides statutory authority for the administrative long development permits subdivision process.

- (v) [Flood](#) area pursuant to [SCC Chapter 14.34](#).
 - (vi) Applicability of any of the provisions of [SCC Title 14](#) to the issuance of [building permits](#) including, but not limited to, [application](#) of mitigation pursuant to the authority of the [State Environmental Policy Act](#) and [SCC Chapter 16.12](#).
 - (vii) Administrative special [use](#) permits, pursuant to [SCC 14.16.900\(1\)](#).
 - (viii) Concurrency review pursuant to [SCC Chapter 14.28](#) (Concurrency).
 - (ix) Threshold determinations pursuant to [SCC Chapter 16.12](#) (State Environmental Policy Act).
 - (x) Technical deviations from the requirements of [SCC Chapter 14.32](#) (Stormwater Management).
 - (xi) Administrative interpretations initiated by the [County](#) or another party regarding any existing permit or land [use](#) approval prior to its issuance or any issued or approved permit or land [use](#) approval that did not originally require a [public hearing](#).
 - (xii) Administrative decisions.
 - (xiii) Administrative [variances](#) pursuant to [SCC 14.10.020\(1\)](#).
 - (xiv) [Forest Practice Act](#) waivers for single-family residential [development](#).
 - (xv) Administrative orders and civil penalties issued pursuant to [SCC Chapter 14.44](#).
 - (xvi) [Preliminary subdivision](#) approval extensions pursuant to [SCC 14.18.100\(6\)\(e\)](#).
 - (xvii) [Development permit](#) application denials pursuant to [SCC 14.06.105](#).
 - (xviii) Interpretations by the [Building Official](#) and Fire Code Official pursuant to [SCC Title 15](#).
- (b) Level II. Level II [applications](#) are those [applications](#) that require an open record predecision hearing level before the [Hearing Examiner](#) and for which the [Hearing Examiner](#) decision is final, unless that decision is appealed to the [Board](#) in a [closed record appeal](#). Level II [applications](#) include:
- (i) [Hearing Examiner](#) [variances](#) pursuant to [SCC 14.10.020\(3\)](#).
 - (ii) [Hearing Examiner](#) special [use](#) permits.
 - (iii) [Forest Practices Act](#) waivers for other than single-family residential [development](#).
 - (iv) Request from the [County](#) or another party to review or interpret a previously issued land [use](#) permit or land [use](#) approval that required a [public hearing](#) by any [County](#) entity or [Board](#), including, but not limited to, conditional [uses](#), special [uses](#) and [variances](#) for the purpose of considering possible revocation, suspension, clarification or modification.
 - (v) [Hearing Examiner](#) URDP pursuant to [SCC 14.16.910\(2\)](#).
 - (vi) Review of preliminary [long subdivisions](#) which contain between nine and 50 [lots](#), tracts or parcels on [contiguous land](#) under the same ownership pursuant to [SCC Chapter 14.18](#).
 - (vii) Review of [binding site plans](#) that contain between nine and 50 [lots](#), tracts, parcels or units on [contiguous land](#) under the same ownership pursuant to [SCC Chapter 14.18](#).
 - (viii) Local [essential public facilities](#) per [SCC 14.16.600](#).

What is a Special Use application/permit?

It is a basic principle of zoning to group together similar land uses. It is the purpose of the Zoning Ordinance of Skagit County to protect property, improvements and persons against avoidable damage, loss, hazard, or inconvenience by reason of locating uses that are incompatible with the type of use for which certain areas and zones are defined.

The Special Use application process provides an opportunity to recognize and permit land uses not specifically allowed in certain zoning designations. Certain uses, because of their unique characteristics or rare occurrence, require special review. A Special Use permit allows a specific type of use or activity to occur in a zone, although it is not a preferred use in a zone, subject to conditions for construction and/or operation. Uses determined by the Director of Planning and Development Services to be the same or similar to examples provided in the zoning text are eligible for consideration under the applicable zoning districts.

Town of La Conner

15.10.043

15.10.043 Administrative conditional use.

 SHARE

“Administrative conditional use” means a use addressing a limited or specific need but, due to a potential adverse effect upon permitted uses or public services and facilities, is only allowed subject to review by the planning director of the use standards of the district, and the certain criteria in this code. [Ord. 955, 2005; Ord. 901 § 1, 2003.]

15.20.055

15.20.055 Administrative conditional use permits.

The following uses and structures are permitted in the RD Zone with an administrative conditional use permit (Type II permit):

- (1) Multifamily residential units or apartments;
- (2) Retirement apartments for senior citizens;
- (3) Rooming houses, boardinghouses, bed and breakfasts. [Ord. 1191 § 2 (Exh. A), 2020; Ord. 963 § 5, 2005; Ord. 901 § 4, 2003.]

3

Town Planner

2.07.010 Position created.

 SHARE

The position of planning director is hereby created. The position shall be filled by appointment of the mayor and shall serve at the pleasure of the mayor. [Ord. 846 § 2, 2002.]

³ The City of Auburn has an application for an Administrative Use Permit which “typically require an expanded degree of control to make sure the uses are consistent with, and compatible to, other existing and permitted uses within a zone.” Whatcom County has an Administrative Use Permit for which such things as accessory apartment, temporary secondary dwelling units (mother-in-law suites), cottage industries, and mini-day care homes can be approved by a zoning administrator. Kittitas County indicates that a conditional or administrative conditional permit may be granted if “the proposed use is essential or desirable to the public convenience and not detrimental or injurious to the public health, peace, or safety or character of the surrounding neighborhood”. In Snohomish County, these include a temporary dwelling for a relative, an accessory apartment, and an expansion of a grandfathered (nonconforming) use. I have also found something in the State of California and they indicate that Administrative Permits should be used for minor land use actions that have little potential affect on surrounding properties and that are non-controversial but nevertheless require special consideration to ensure that they can be designed, located, and operated in a way that will not interfere with the use and enjoyment of surrounding properties, e.g. special events, second unit development permit. (City of Downey and City of El Cerrito)

Michael Davolio

A formerly retired planner and artist who works two days a week and “[w]ants to help the community manage growth in a responsible way.” *La Conner Weekly News*, February 17, 2021.

According to the above, you and the Planning Commission, basically have no power when significant decisions concerning the development and future of La Conner are made. Instead, they are made by the town planner or the hearing examiner, who are both hired by the mayor.

There is precedent concerning council members filing suit against a mayor and administrative staff. Perhaps you should consider this. Although I have not researched these to determine whether they are viable causes of action a few that come to mind are: unlawful usurpation of the power of town residents with use of an overreaching administrative conditional use permit; hiring of unqualified staff members (e.g. a hearing examiner with little or no experience in land use or municipal law [according to his website]); hiring of conflicted staff members (e.g. an administrator who also serves as the town attorney or a town planner who can’t decide whether he wants to be retired or an artist⁴) and giving both staff members the power to unilaterally decide on significant developments within the town.

Best regards,

Linda Clark

⁴ I realize this is a bit of a stretch, but you get the idea. Mr. Davolio may have been an effective planner in the past, but the Town of La Conner deserves to have a town planner who is committed to the Town in full effect. Not someone who decided to come out of retirement because he was bored or because he heard about the opening for the position. Again, based upon the article in the La Conner Weekly News.