

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.

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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.

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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.

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11 For the foregoing reasons, the motion for reconsideration should be denied.
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13 Dated this 21st day of June, 2022.

14 Respectfully submitted,

15 BRICKLIN & NEWMAN, LLP

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

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.

1 Dated this 21st day of June, 2022.

2 Respectfully submitted,

3 BRICKLIN & NEWMAN, LLP

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6 By:

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

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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.

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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 26th 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 3rd 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 1st 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.

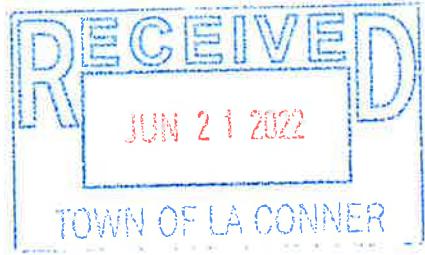
He purchased the property with plans for development knowing the current building codes. When my husband and I first received the notice of application for development, Atkinson's plan was to build a 3 story apartment with 14 long term rentals on the top 2 floors and 6 short term rentals on the ground 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

NO. LU21-56CU



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2 Pages

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)

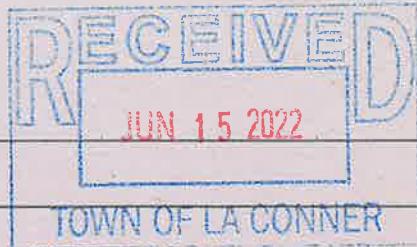
Penciling out is not in the Town of La Conner Municipal code

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> 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>
Sent: Tuesday, November 30, 2021 9:35 AM
To: Bonnie LaCount <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
Sent: Friday, November 26, 2021 11:40 AM
To: 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
Sent: Friday, November 26, 2021 11:25 AM
To: 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 4th 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