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3 **BEFORE THE HEARING EXAMINER FOR THE TOWN OF**

4 **LA CONNER, WASHINGTON**

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7 David Lowell, Hearing Examiner

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| 9 RE: Atkinson Development / KSA 10 Investments CUP | 11 |
| 12 Reconsideration Requests for 13 Conditional Use Permit | 14 FINDINGS OF FACT, CONCLUSIONS 15 OF LAW AND FINAL DECISION |
| 16 Case No.: LU21-56CU | 17 |

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19 **BACKGROUND AND SUMMARY**

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- On May 11, 2022 the Hearing Examiner (Examiner) issued conditional approval of Conditional Use Permit identified by the Town of La Conner as LU21-56CU (Exhibit A).
- Following issuance of this approval the Examiner received four (4) requests for reconsideration (Exhibits B - E).
- On May 25, 2022 Mr. Thomas (the Town of La Conner's Administrator) contacted the Examiner asking for direction regarding potentially allowing the Applicant and Parties of Record to respond to other reconsideration requests received for the subject Conditional Use Permit. In response, the Examiner sent an email dated May 26, 2022 back to Mr. Thomas outlining a proposed process to handle this request. Mr. Thomas then issued a letter to the Parties of Record outlining the process by which they could comment on other requests for reconsideration received by the Town (Exhibit F contains these emails and letter).
- In response to Mr. Thomas' letter (Exhibit F) a total of 20 responses to the requests for reconsideration were received (Exhibits G – Z).

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EXHIBITS

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3 Following are the Exhibits associated with this ruling:

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- 5 A. Hearing Examiner Lowell's decision dated May 11, 2022 for the Atkinson
6 Development / KSA Investments Conditional Use Permit, Case No.: LU21-56CU
7 with its Exhibits identified as A – J.
- 8 B. Request for Reconsideration from Michael Davolio dated May 12, 2022.
- 9 C. Request for Reconsideration from Linda Talman dated May 13, 2022.
- 10 D. Request for Reconsideration from Brandson Atkinson (KSA Investments) dated May
11 18, 2022.
- 12 E. Request for Reconsideration from Fire Chief dated May 19, 2022.
- 13 F. Letter from Scott Thomas dated June 2, 2022, email from Scott Thomas to Examiner
14 dated May 25, 2022, and email from Examiner dated May 26, 2022.
- 15 G. Response of Debbie Aldrich to Applicant's Motion for Reconsideration, dated
16 06/21/2022, submitted by attorney David A. Bricklin.
- 17 H. Response of Debbie Aldrich to Town of La Conner's Motion for Reconsideration,
18 dated 06/21/2022, submitted by attorney David A. Bricklin.
- 19 I. Letter dated 06/15/2022, submitted by Brandon and Kate Atkinson, KSA Investments
20 LLC.
- 21 J. Letter Responding to Reconsideration by La Conner Fire Chief, submitted by Georgia
22 Johnson.
- 23 K. Letter Responding to Reconsideration by Michael Davolio, submitted by Georgia
24 Johnson.
- 25 L. Letter Responding to Reconsideration by Linda Talman, submitted by Georgia
26 Johnson.
- 27 M. Letter dated 06/20/2022, responding to Atkinson/KSA's Reconsideration Request,
28 submitted by James Matthews.
- N. Letter dated 06/21/2022, responding to Michael Davolio's Reconsideration Request,
submitted by James Matthews.
- O. Letter dated 06/21/2022, responding to Linda Talman's Reconsideration Request,
submitted by James Matthews.

1 P. Letter dated 06/20/2022, responding to KSA Investments' Reconsideration Request,
2 submitted by Gary Nelson.

3 Q. Letter dated 06/20/2022, responding to the Planning Director's Reconsideration
4 Request, submitted by Gary Nelson.

5 R. Letter dated 06/19/2022, responding to Dr. Atkinson's Reconsideration Request,
6 submitted by Kathy Shiner.

7 S. Letter dated 06/19/2022, responding to Michael Davolio's Reconsideration Request,
8 submitted by Kathy Shiner.

9 T. Letter dated 06/19/2022, responding to Linda Talman's Reconsideration Request,
10 submitted by Kathy Shiner.

11 U. Letter dated 06/19/2022, responding to Atkinson's Reconsideration Request,
12 submitted by Linda Talman.

13 V. Letter dated 06/20/2022, responding to Fire Department's Reconsideration Request,
14 submitted by Linda Talman.

15 W. Letter dated 06/19/2022, responding to Planner's Reconsideration Request, submitted
16 by Linda Talman.

17 X. Letter dated 06/19/2022, responding to Zone Correction Request, submitted by Linda
18 Talman.

19 Y. Letter dated 06/17/2022, submitted by Marilyn Thostenson.

20 Z. Letter dated 06/11/2022, responding to Fire Chief's Reconsideration Request,
21 submitted by Roger Vallo.

22 Upon consideration of the above-listed exhibits, the Hearing Examiner enters the
23 following Findings and Conclusions as the basis for the decision issued herein:

24 **FINDINGS OF FACT**

25 1. La Conner Municipal Code (LCMC) 15.12.100 outlines the timing and process
26 under which requests for reconsideration of decisions by the Hearing Examiner can
27 be made. In sum, the referenced code requires reconsideration requests to be made
28 within five days of the date of service of the written decision, to be filed with the
clerk-treasurer on forms adopted by the Town, to identify if the requestor is a party

1 of record or the town, and they must allege a specific error of law and/or an error of
2 fact.

3 2. Using the provisions under LCMC 15.12.080 and the definition of “Service” under
4 LCMC 15.12.020(j) the Examiner finds all four requests for reconsideration were
5 filed within the required timeframe.

6 3. All four requests for reconsideration appear to have been filed with the clerk-
7 treasurer on forms provided by the Town, all were identified as being a party of
8 record or the town, and all identified whether they were alleging a specific error of
9 law and/or an error of fact.

10 4. The question before the Examiner is not whether 306 Center Street, La Conner, WA,
11 identified by the Skagit County Assessor as tax parcel P74143 (hereinafter subject
12 site or site) is zoned Commercial; but rather the question is whether the site must
13 also comply with the regulations applicable the Historical Preservation District given
14 the fact the site is zoned Commercial, as agreed upon under the Contract Rezone
15 between the Town and Gerald and Donna Blades dated December 21, 1986 (Exhibit
16 C, hereinafter Contract Rezone). This Contract Rezone supports this when it states,
17 “The parties agree that Owners’ property, which is the subject of this Contract
18 Rezone, is not presently located within the Historical Preservation District, but
19 Owner agrees to be bound by the same application and review process which applies
20 to property located within the Historical Preservation District as if the above-
21 described property were located within the Historical Preservation District” and
22 “...the real property which is the subject of this agreement has been changed from
23 the previous zoning classification of residential to the rezone classification of
24 commercial...”.

25 5. The Examiner is not able to verify if the Contract Rezone was recorded with the
26 Skagit County Auditor or not.

27 6. A cover page to Ordinance 568 was provided to the Examiner (Exhibit I); however,
28 as indicated in Finding of Fact #4 (above), the fact that Ordinance 568 was adopted
and Ordinances 458, 459, 506, and 561 were repealed have no bearing on whether
the site must also comply with the requirements of the Historical Preservation
District as directed under the Contract Rezone.

1 7. The site is located within the Town of La Conner and is required to comply with the
2 development regulations adopted by the Town. Development regulations adopted by
3 jurisdictions other than the Town cannot be used to regulate the development of the
4 subject site.

5 8. The regulations of the International Building Code that are purported within the
6 Reconsideration Request identified as Exhibit D to supersede the Town's zoning
7 code cannot be utilized to exceed the height limits codified within LCMC
8 15.35.040(8) because doing so would, in effect, nullify the provisions of the
9 referenced zoning code and the IBC does not have this authority (IBC, Part 1 –
Scope and Application and LCMC Title 15).

10 9. The Examiner's May 11, 2022 decision contained a condition requiring revised plans
11 be submitted to the Town showing compliance with specific conditions and these
12 revised plans would need to be approved by the Town Planner, the Public Works
13 Department, and other applicable Town staff prior to issuance of construction related
14 permits such as building or grading permits. The other applicable Town staff the
15 Examiner was referring in this condition included, but are not limited to, the
16 Building Official and the Fire Marshall.

17 10. While the Examiner has reviewed the requirements of LCMC Chapter 15.50,
18 Historic Preservation District, the Examiner does not have a copy of the regulations
19 for the Historical Preservation District in effect when the Contract Rezone was
20 executed. After reviewing the regulations contained within the currently adopted
21 LCMC Chapter 15.50 the Examiner finds if the subject site is subject to these
22 requirements it is likely substantial changes to the currently submitted Conditional
23 Use Permit plans and associated materials will be required. The Examiner notes
24 there are differences in the regulations between the Historic Preservation and the
25 Commercial Districts specific to required setbacks, prescribed exterior building
26 materials and details, ornamentation, and many other elements.

27 11. The 20 responses to the reconsideration requests (Exhibits G to Z) were read and
28 considered by the Examiner.

29 12. LCMC 15.12.010 states, in part, the purpose of the municipal code regarding the
Hearing Examiner is to:

- 1 • Ensure procedural due process and appearance of fairness of land use regulatory
2 hearings and decisions.
- 3 • Provide and efficient and effective land use regulatory system which integrates
4 the public hearing and decision-making processes for land use matters.
- 5 • Provide for consistency and predictability in land use decision-making and the
6 application of policies and regulations adopted by the town.
- 7 • Establish clear and understandable rules governing the land use decision-making
process.

CONCLUSIONS OF LAW

- 11 1. The procedural and substantive requirements for reconsideration requests have been
12 satisfied.

DECISION

15 Based on the findings of fact and conclusion of law contained herein, and to ensure and
16 provide procedural due process, the appearance of fairness of land use regulatory
17 hearings and decisions, efficient and effective land use regulatory system, and
18 consistency as well as predictability in land use decision-making the Examiner makes
19 the following Decision:

- 20 1. With the validity and potential applicability of the Contract Rezone (Exhibit C) in
21 question, and without additional information in the Examiner's record, the Examiner
22 is compelled to remand the below-listed narrow issues surrounding whether the site
23 must comply with requirements from the Historical Preservation District, back to the
24 Town. The specific questions the Examiner remands back to the Town to respond to
are listed below:
 - 25 a. Is the Contract Rezone a valid contract with provisions applicable to the
26 proposed 2022 development on the subject site?
 - 27 b. Must development on the subject site comply with the regulations of the
28 Historical Preservation District?

- c. If the Town finds development on the subject site must comply with the regulations of the Historical Preservation District, which regulations apply?
 - i. Do the regulations of the Historical Preservation District in effect when the Contract Rezone was executed apply; or do the regulations of the Historic Preservation District in effect when the current Conditional Use Permit was deemed technically comply apply?
 - ii. Which, specific regulations from the Historical Preservation District apply to the current development of the site?
- 2. To answer the questions being remanded back to the Town (outlined above under #1), the Examiner asks the Town to follow their procedures for administrative decisions outlined in LCMC Chapter 15.135, in conjunction the following supplemental procedures:
 - a. The Town issue a Notice, with a reasonable comment period, to allow the site owners and parties of record for file LU21-54CU to submit materials relevant to the items remanded back to the Town.
 - b. The Town issue a Notice of Decision with an appeal period that is distributed to the site owners, parties of record for file LU21-56CU, and any new parties of record for the subject administrative determination.
- 3. If the Town issues an administrative determination finding the Contract Rezone is not valid and the site does not need to comply with regulations from the Historical Preservation District and this determination is not appealed; or if appealed the Town's determination prevails, the Examiner's May 11, 2022 Decision shall stand except as modified by the decisions outlined below under #4 to #6 containing the responses to the reconsiderations requests. Conversely, if following the Town's administrative determination requirements from the Historical Preservation District are found to be applicable to the current development of the site, the decisions outlined below under #4 to #6 are null and void because the Examiner's May 11, 2022 Decision would have been based on incomplete and incorrect Findings of Fact and Conclusions of Law and the entire Conditional Use Permit must be remanded back to the Town to be processed again with updated and changed plans and supplemental materials from the Applicant.

1 4. The request for reconsideration submitted by Michael Davolio (Exhibit B) regarding
2 setbacks is approved; which means the subject site would have two front yard
3 setbacks located along its north and east property lines and would have two side yard
4 setbacks along its south and west property lines. Mr. Davolio's request for
5 reconsideration regarding long-term residential use is denied. Should the Applicant
6 wish to change the proposed use(s) on the subject site they must go through the
7 applicable processes to allow these uses.

8 5. The request for reconsideration submitted by Brandson Atkinson (KSA Investments)
9 (Exhibit D) are denied. This denial is based on the Findings of Fact outlined in this
10 Decision under #7 and #8 and the fact that the materials submitted as part of this
11 reconsideration request did not provide the requisite information for the Examiner to
12 be able to verify if the "Channel Lodge on First Street" or the "Retirement
13 Apartments on Center and First Street" have the same zoning designations as the
14 subject site if the development regulations these two developments were subject to
15 are the same as those the site is subject to.

16 6. In response to the request for reconsideration submitted by the Fire Marshall
17 (Exhibit E) the Examiner is adding a condition of approval to the May 22, 2022
18 Decision as follows:

19 13. The project must submit plans and any supplemental materials necessary
20 demonstrating the requirements of the International Fire Code, adopted by
21 the Town via LCMC Chapter 13.05, will be satisfied.

22 Additionally, condition of approval #11 in the May 22, 2022 Decision shall be
23 amended as follows. Note: no text is being removed and the new text is underlined.

24 11. The Applicant shall submit revised plans showing compliance with
25 conditions 2 – 10 (listed above) and condition #13 (listed below) that must be
26 approved by the Town Planner, the Public Works Department, Building
27 Official, Fire Marshall as well as any other applicable Town staff before
28 construction related permits (i.e. Building or Grading permits) are issued.

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2 Dated this 20th day of July, 2022
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David D. Lowell, Esq.

Town of La Conner Hearing Examiner