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

5 David Lowell, Hearing Examiner
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8 Linda Talman and Deborah Aldrich
9 Appellants,
10 v.
11 Town of La Conner,
12 Respondent.
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**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND DECISION:**

**ADMINISTRATION
DETERMINATION RE: ATKINSON
DEVELOPMENT / KSA
INVESTMENTS CUP (CASE NO.:
LU21-56CU)**

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16 **DECISION**
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18 The appeal is denied and the Town's Administrative Determination is affirmed.
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21 The subject appeal is to an Administrative Determination made by the Town of La
22 Conner's Planning Director, Michael Davolio, dated September 20, 2022, on issues
23 remanded to the Town by the Hearing Examiner (Examiner) following requests for
24 reconsideration of the Atkinson Development / KSA Investments Conditional Use
25 Permit (CUP) identified by the Town as LU21-56CU.
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EXHIBITS

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- 3 A. Contract Rezone approved and signed by Gerald Blades, Donna Blades, and the
- 4 Town of La Conner [signed by Mary Lam (Mayor), Kathleen Earnst (Town
- 5 Clerk), and Dianne Edmonds Goddard (City Attorney)] on December 21, 1986
- 6 B. Decision dated May 11, 2022, from the Hearing Examiner on the Atkinson
- 7 Development / KSA Investments CUP, Conditional Use Permit, Case No.: LU21-56CU with its associated Exhibits identified as A to J
- 8 C. Decision dated July 20, 2022, from the Hearing Examiner on the Atkinson
- 9 Development / KSA Investments CUP, Reconsideration Requests for
- 10 Conditional Use Permit, Case No.: LU21-56CU with its associated Exhibits
- 11 identified as A to Z
- 12 D. Memo dated August 26, 2022, and proposed Ordinance dated September 13,
- 13 2022, both from Dan O'Donnell
- 14 E. Memo dated September 9, 2022 from Alexandra L. Kenyon and Michael R.
- 15 Kenyon (Kenyon Disend)
- 16 F. Administrative Determination dated September 20, 2022, from Michael Davolio
- 17 G. Appeal dated October 3, 2022, from Linda Talman and Deborah Aldrich with its
- 18 associated Exhibits identified as A to K
- 19 H. Correspondence dated November 9, 2022 from Brandon Atkinson
- 20 I. Appellant's Response to Kenyon Disend Memorandum dated December 28,
- 21 2022 from David A. Bricklin (Bricklin & Newman, LLP)
- 22 J. Reply of Appellants dated November 25, 2022 from Linda Talman and Debbie
- 23 Aldrich

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ORAL TESTIMONY

25 Witnesses – present at the December 1, 2022 virtual hearing

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- 27 o David Bricklin (Attorney representing the Appellants);
- 28 o Linda Talman (party of record)
- o Debra Aldrich (party of record)
- o Scott Thomas (Town Administrator and Attorney)

1 o Brandon Atkinson and Katie Atkinson (Applicants for Conditional Use
2 Permit, Case No.: LU21-56CU)

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

6 **David Bricklin** (Attorney representing the Appellants): made remarks that mirrored
7 the materials in the record (Exhibits G and I).

9 **Linda Talman and Deborah Aldrich** (Appellants): Ms. Talman and Ms. Aldrich
10 introduced themselves.

12 **Scott Thomas** (Town Administrator and Attorney): provided brief overview of the
13 reasoning behind the Administrative Decision.

14 **Brandon Atkinson and Katie Atkinson** (Applicants for Conditional Use Permit,
15 Case No.: LU21-56CU): stated they had compiled with all requirements to-date,
16 they are frustrated with this process, they do not feel they have done anything wrong
17 and feel the building will benefit the town and feel that enforcing an agreement 30
18 years ago that was not filed is fundamentally unfair.

20 **Roger Vallo:** spoke briefly and reinforced the comments by Mr. Atkinson; in
21 particular, that they had no knowledge of the contract rezone and that they have
22 diligently complied with the process.

23 Upon consideration of the testimony and exhibits submitted as part of the hearing, the
24 Hearing Examiner enters the following Findings and Conclusions as the basis for the
25 decision as issued herein:

1 FINDINGS OF FACT

- 2 1. **Owners.** The current site owner is identified as KSA Investments, LLC – this LLC
3 is governed by Kate and Brandon Atkinson.
- 4 2. **Site.** The site is addressed as 306 Center Street, La Conner, WA and is identified by
5 the Skagit County Assessor as tax parcel P74143 (hereinafter “site”).
- 6 3. **Virtual Hearing.** A virtual hearing was held on December 1, 2022, via Zoom web
7 application, and video and audio files of this hearing are on file with the Town of La
8 Conner.
- 9 4. **Background.** On May 11, 2022 the Examiner rendered a decision on the Atkinson
10 Development / KSA Investments CUP, Conditional Use Permit, Case No.: LU21-
11 56CU (Exhibit B); and on July 20, 2022 the Examiner rendered a decision on the
12 Atkinson Development / KSA Investments CUP, Reconsideration Requests for
13 Conditional Use Permit, Case No.: LU21-56CU (Exhibit C). The Examiner’s
14 decision on the Atkinson Development / KSA Investments CUP, Reconsideration
15 Requests for Conditional Use Permit, Case No.: LU21-56CU remanded the below-
16 listed issues back to the Town because without additional information the Examiner
17 was not able to render a decision on certain issues raised in the requests for
reconsideration:
 - 18 a. Is the Contract Rezone a valid contract with provisions applicable to the
19 proposed 2022 development on the subject site?
 - 20 b. Must development on the subject site comply with the regulations of the
Historical Preservation District?
 - 21 c. If the Town finds development on the subject site must comply with the
22 regulations of the Historical Preservation District, which regulations apply?
 - 23 i. Do the regulations of the Historical Preservation District in effect
24 when the Contract Rezone was executed apply; or do the regulations
25 of the Historic Preservation District in effect when the current
26 Conditional Use Permit was deemed technically comply apply?
 - 27 ii. Which, specific regulations from the Historical Preservation District
28 apply to the current development of the site?

1 In addition, after the December 1, 2022 hearing, Mr. Bricklin raised an issue with
2 the Hearing Examiner that the “Kenyon Disend” memo proffered by La Conner City
3 Administrator/Attorney Scott Thomas may not have been provided to him (Mr.
4 Bricklin) prior to the December 1, 2022 hearing and thus was unclear whether this
5 should be part of the record. The Hearing Examiner, in the interests of due process,
6 allowed Mr. Bricklin the opportunity to submit a written Response to the Kenyon
7 Disdend memo which he did on December 28, 2022.

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5. **Zoning.** On December 21, 1986, the site was owned by Gerald and Donna Blades who executed a Contract Rezone with the Town of La Conner (Exhibit A) (hereinafter Contract Rezone). The Contract Rezone changed the zoning of the site from Residential to Commercial and (in sum) required future improvements/development of the site to comply with the procedural and substantive requirements of the Town’s Historic Preservation District. In 1989, after the Contract Rezone was approved, the Town approved a rezone (including the site) to Commercial. The 1989 rezone did not reference or incorporate the Contract Rezone. The zoning regulations for the Commercial Zone are codified under Chapter 15.35 of the La Conner Municipal Code (LCMC). The site is not located within the Town’s Historic Preservation District Overlay Zone and is not within what is defined as the Morris Street Commercial District under LCMC 15.50.025.
6. **Contract Rezone.** The Contract Rezone contained a condition requiring it to be recorded with the Skagit County Auditor, “Owner agrees and hereby authorizes Town to record the original or a copy of this agreement with the Skagit County Auditor so that this agreement will become a matter of public notice to subsequent purchasers and shall become an encumbrance upon the land.” The Contract Rezone was not recorded with the Skagit County Auditor.
7. **Notice.** Examination of the title of the site was completed by Chicago Title Insurance Company of Washington for the current owners before taking title of the subject property. This examination did not identify the Contract Rezone; therefore, the owners took title of the subject property without knowledge of the Contract Rezone.

8. **Prior CUPs by Town.** Two separate Conditional Use Permits were issued by the Town in the 1990s without requiring the regulations for the Historical Preservation District be complied with. One of the CUPs authorized placement a trailer on the property temporarily and the second CUP allowed placement of a mobile home on the property.
9. **Administrative Determination.** The Town issued an Administrative Determination on September 20, 2022 (Exhibit F). The Town received a timely appeal to this Determination (Exhibit G).

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over this appeal, LCMC 15.12.130(1).
2. Any finding herein which may be deemed a conclusion is hereby adopted as such.
3. The statement in the Contract Rezone requiring this document be recorded is a condition precedent^{1,2}. Since the Contract Rezone was not recorded it discharges the duty of the owner to comply with the regulations of the Historical Preservation District.
4. The owners were not provided with constructive or record notice of the Contract Rezone before purchasing the site and paying consultants to create technical reports, plans, and other items submitted to the Town of La Conner to receive permits authorizing the development of the site. Absent constructive or record notice, unrecorded dedications and liens have been found by courts to be unenforceable and not binding on purchasers of property^{3,4}. Although dedications and liens are different types of documents/encumbrances than a Contract Rezone, the Examiner finds the need for record or constructive notice and the need for bona fide purchasers to be able to rely on record title are substantially similar.

¹ Ross v. Harding, 64 Wn.2d 231, 391 P.2d 526 (Wash. 1964).

² Partlow v. Mathews, 43 Wn. (2d) 398, 261 P. (2d) 394 (Wash. 1953).

³ Spokane v. Catholic Bishop, 33 Wn. 2d 496, 33 Wash. 2d 496, 206 P. 2d 277 (Wash. 1949).

⁴ Kshensky v. Pioneer Title, 22 Wn. App. 817, 592 P.2d 667 (Wash. 1979).

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DECISION

2 Based on the findings of fact and conclusion of law contained herein it is the decision of
3 the Hearing Examiner to deny the appeal and affirm the Town's Administrative
4 Determination.

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6 Dated this 8th day of February, 2023

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9 David D. Lowell, Esq.

10 Town of La Conner Hearing Examiner

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APPEAL RIGHT

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13 1. This decision can be appealed by filing a petition in Superior Court within 21
14 calendar days of this action. A Party of Record or the Town must comply with the
15 requirements of the Land Use Petition Act.