



## **TOWN OF LA CONNER PLANNING COMMISSION Meeting Notice**

September 16, 6PM

Upper Maple Center, La Conner WA, and Livestreamed  
Information is below and on the Town Website

Skagit County Washington  
Incorporated 1890  
[www.townoflaconner.org](http://www.townoflaconner.org)

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### **Agenda**

#### **I. Convene**

#### **II. Public Comments (Topics not otherwise on the Agenda) – Time Limit 3 Minutes**

#### **III. Minutes:** Approve Minutes from the September 2, 2025 meeting.

#### **IV. Welcome to Commissioner McCain**

#### **V. Presentations:**

1. Planning Commission Overview: By Town Administrator Scott Thomas

#### **VI. Old Business**

1. Status Report – Public Participation Program
  - a. “Actionable fixes” update
2. Request for Reconsideration: LU25-39HDR
3. Discussion of color for LU25-41HDR

#### **VII. New Business**

- a. Historic Preservation District: Color Discussion

#### **VIII. Closing Comments:**

Live Streaming Info: <https://laconnerwa.portal.civicclerk.com/>

## TOWN OF LA CONNER PLANNING COMMISSION MEETING MINUTES DRAFT September 2, 2025

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The Planning Commission meeting was called to order at 6:00 p.m.

Commissioners present: Maya Ojalehto, Timothy Corey, Bruce Bradburn, and Sommer Holt

Staff: Ajah Eills, Jennifer Herring

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**ELECT PLANNING CHAIR:** Commissioner Bradburn made a motion to elect Commissioner Sommer Holt as Planning Commission Chair. Commissioner Ojalehto seconded. **Motion to elect Commissioner Sommer Holt carried unanimously.**

### **PUBLIC COMMENT**

Gerry George discussed the topic of building materials being staged on parcel P133450 and that he felt it did not make sense to do this.

Leslie Smith thanked the Planning Commission for their work. Also expressed that they believed there is a lack of Commissioners and Councilmembers attending each other's meetings. Commissioner Holt mentioned that council meetings and planning meetings are recorded and are available to be watched from home and that physical attendance does not mean the meetings are not watched.

Linda Talman expressed that they felt everyone should watch the videos. They wished the minutes were included in the packets of all the different commissions/councils. Commissioner Holt let Linda Talman know that the minutes for all meetings were available on the Town's website.

Planner Ajah Eills clarified that for the topic of P133450 that no permits have been issued and that no land use decisions have been made.

### **MINUTES:**

Commissioner Corey moved to approve the minutes and seconded by Commissioner Bradburn. Commission Holt mentioned one typo correction from the August 19th, 2025 meeting. **Motion to approve the minutes with corrections carried unanimously.**

### **OLD BUSINESS:**

Planner Eills reported that the ADA Community Mingle on August 19<sup>th</sup>, 2025 went really well. They plan to work with the Public Works Director Brian Lease on working on the actionable citizen suggestions. Examples of some actionable improvements included more hand rails and even painting steps in contrasting colors. Planner Eills will give the Planning Commission updates on the progress.

## **NEW BUSINESS:**

Public hearing for LU25-39HDR was opened – Planner Eills explained that in the Municipal Code vertical siding is not allowed in the Historic District only horizontal. They went on to express that just because the code has not been applied before concerning this does not mean it should not be enforced moving forward. The owner of the property, Lynn Laurel, brought 15 photos that show examples of vertical siding in the Historic District including the Library and others. Commissioner Holt asked if all of the examples were commercial and if there were any residential. Lynn Laurel said one example was residential. Commissioner Holt opened up public comment on this permit. Mary Davis wondered where the Town gets its definition of historical. Planner Eills explains the definitions come from the Town's Municipal Code Chapter 15.50.090 of the code which addressed vertical siding specifically. Linda Talman stated that they believed the variation in the commercial buildings was by design. Planner Eills clarified there were a few parts the code that Linda could be referencing. For example, the entryways of commercial facades. Commissioner Holt closed public comment on LU25-39HDR. Commissioners then debated the permit. Commissioner Ojalehto mentioned following the code. Commissioner Holt expressed seeing both sides but that this could be a slippery slope. They also asked owner Lynn Laurel if they were against horizontal siding, which the owner replied that they just liked it better. More debate followed. **Commissioner Bradburn made motion to approve LU25-39HDR and Commissioner Corey seconded. Motion passed unanimously.**

Public hearing for LU25-41 HDR was opened – Planner Eills let Commissioners know this was a repaint at 313 Morris Street. The proposed colors were crimson and dark gray. Commissioner Holt asked if the colors were approved. Planner Eills confirmed that they had not been approved yet, but seems like it may have already been painted. General discussion followed concerning the color red on the actual building verses the color submitted for approval. Planner Eills stated they could go back to applicant and require a hex code for these colors. **Commissioner Holt made a motion to approve part LU25-41 HDR. Approval of the gray color and requiring more information for the red color. Clarification was requested on if the change was made or already painted. Commissioner Ojalehto seconded. Motion passed unanimously.**

Planner Eills went into the rolls and authority of the Planning Commission. They went on to explain that the Planning Commission has the authority to approve class 3 permits only. Additionally, Planning Commission also makes recommendations to the La Conner Municipal Code and Comprehensive Plan. All other classes of permits are not approved by the Planning Commission. Planner Eills went into detail on each of the other permit classes and their authorities.

## **COMMISSIONER COMMENTS/STAFF COMMENTS:**

There were no Staff or Commissioner comments.

With no further business Commissioner Bradburn moved to adjourn the meeting at 6:49 p.m. Seconded by Commissioner Ojalehto. **Motion carried unanimously.**

**MEMORANDUM**

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TO: Planning Commission  
FROM: Planning Staff  
SUBJECT: Town Administrator: Scott Thomas Presentation Memo  
DATE: September 12, 2025

The Town Administrator, Scott Thomas, will be speaking to you today about the Planning Commission role and process. As part of that presentation, he requested that the following handbook be shared with you as background material. Please note that is it quite long, about 76 pages.

Thank you.

# You be the Judge

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A Handbook for the Land Use Decisionmaker

**Jim Driscoll  
and  
Ted Hunter**

The authors extend their thanks to Carol Greene of the Association of Washington Cities who helped conceive and refine the concept of this handbook. We are also grateful for the help of Kay Shoudy, Bob Landes, Wayne Tanaka, Bob Stowe, Jeff Wilson, Jim Roberts, and Greg Bertram. This group of experienced land use attorneys, city officials, and planners provided valuable insights. Special thanks to Kathy Pugh, Dorn Williston, and Yolanka Wulff for their assistance in publishing this handbook.

The burden on local officials when making land use decisions is a heavy one. The men and women who serve as local officials are charged with balancing competing interests in a highly charged atmosphere where the threat of a lawsuit is always present. If we are able to lighten that burden even slightly by the suggestions in this handbook, our efforts will be successful.

#### *A Disclaimer and Caveat*

*This handbook is designed to help the land use decision maker follow the proper procedures when hearing and deciding land use matters in a quasi-judicial hearing. Use of the tools in this handbook will help officials avoid liability for land use decisions and, more importantly, ensure a fair land use decision making process. The information is of general application only. It does not offer legal advice for specific cases and should not be relied on for application to specific cases. Legal questions regarding specific cases should be directed to an attorney.*

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# Table of Contents

	<u>Page</u>
<b>Introduction</b> . . . . .	i
<b>The Framework</b>	
1. The Quasi-Judicial Proceeding. . . . .	3
2. Procedural Due Process . . . . .	6
<b>Key Elements of Procedural Due Process</b>	
1. Fairness. . . . .	11
2. Notice . . . . .	17
3. The Hearing . . . . .	22
4. The Record . . . . .	29
5. The Decision . . . . .	33
<b>Other Systems</b>	
1. The Land Use Hearing Examiner System .	41
2. The Mediation System . . . . .	43
<b>Glossary and Identification of Key Players</b>	
1. Glossary of Terms . . . . .	49
2. Roles of Key Players. . . . .	52
<b>Appendices</b>	
1. Practical Examples of Procedural Issues Faced by the Land Use Decisionmaker . .	57
2. Master Checklist for the Local Official. .	60
3. Outline of Rules of Procedure for Conducting Hearings. . . . .	67

## Introduction

The United States Constitution guarantees procedural fairness in the due process clauses of the Fifth and Fourteenth Amendments. The purpose of this handbook is to help local officials understand the elements of procedural due process required in a land use hearing. It is intended to assist decisionmakers in reaching decisions that are fair and equitable, and that will withstand legal review by the courts.

The handbook contains:

- A brief discussion of each element of procedural due process.
- A checklist to help the decisionmaker comply with each element of procedural due process.
- Examples of common problems with some suggested solution.

The terms “local official” or “decisionmaker” includes members of the City or County Council, Planning Commission, Board of Adjustment, Design Review Board, Zoning Board, the Hearing Examiner, or any other group or individual recognized by the municipality as having authority to decide a land use request. For consistency purposes, we have used the terms “City” and “City Council” throughout this book, but the text applies to any local or regional government entity who must make formal land use decisions.

Most land use decisions are made at the local level. In the past, courts have given broad discretion to local

governments and officials when making these decisions. Generally, if the court found that a procedural due process error had occurred, the case would have been returned to the local decisionmaker for reconsideration.<sup>1</sup>

Recently, the courts have scrutinized procedural due process errors more closely.<sup>2</sup> Instead of returning the cases to the local entity, the reviewing court has in some instances decided the case against the governmental entity. And the courts have gone a step further. They have in a few cases ordered the local governmental entity to pay monetary damages for their procedural due process failure. While these damages are usually awarded against the local government, individual officials may also be found liable.

Since the basis for liability is a federal civil rights statute, these cases impact every city and county. They add a monetary burden to the responsibility already placed upon the local official to protect the procedural rights of those who appear at a quasi-judicial hearing. **If a local official fails to protect due process rights at quasi-judicial**

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<sup>1</sup> Unlike some legal publications, this handbook does not provide a legal citation for every statement made. The discussions and advice offered in this handbook are based on many laws and court decisions, but an attempt has been made to create a “user friendly” format with very limited “legalese.” See Appendix 3 for a summary of statutes and court decisions relevant to land use decisionmaking.

<sup>2</sup> Examples of Washington State cases may be found in the Washington State Case Compendium that accompanies this handbook. The compendium is available from the law firm of Driscoll & Hunter at (206) 233-1908 or fax orders to (206) 628-0953.

**proceedings, the city or county - and even the local official - may have to pay monetary damages to the one harmed.**

While the handbook does not offer a guarantee from lawsuits, it provides guidelines and suggestions that can reduce liability. It will also give the local decisionmaker a better understanding of what courts will consider if a local decision is appealed.

## The Framework



*Failure to follow the proper procedural steps in a quasi-judicial proceeding can result in liability for the municipality and its officers.*

## 1

# The Quasi-Judicial Proceeding

This handbook provides guidance for using “quasi-judicial proceedings” in reaching decisions or recommendations on land use requests. These proceedings do not apply to legislative decisions.

If proper procedural steps are not followed during quasi-judicial proceedings, a local decision is vulnerable to being overturned by the courts. This is problematic for two reasons: first, it may result in courts deciding important land use decisions instead of local elected officials, and second, there is a risk that a court could impose monetary damages on the local government. These results could have long lasting impacts on both the land uses and the finances of a city.

## Is This a Quasi-Judicial Matter

The first step in a land use decision is to decide whether the land use request requires a quasi-judicial proceeding.

The determination is important because only in a quasi-judicial proceeding must the decisionmaking body follow strict procedural requirements. If the requirements are not followed, the decision may be declared invalid - with the municipality (and perhaps the local official) possibly liable for monetary damages.

Generally, a proceeding is quasi-judicial if it will determine the legal rights, duties, or privileges of specific parties in a hearing. In contrast, legislative proceedings have area-wide or community significance. Thus, in quasi-judicial proceedings the local official must sit as a judge rather than a legislator. In practice, most land use requests impact specific parties and are thus quasi-judicial. Usually the only type of land use requests that are not quasi-judicial are area-wide rezones and area-wide annexations.

However, there are times when it is not readily apparent whether a particular action is quasi-judicial. The following test will assist the local official in determining whether an action is quasi-judicial or legislative. The official must first answer two key questions:

1. Is a public hearing required by state statute or local ordinance?
2. Will the decisionmaker consider evidence for or against the proposal?

If both of these questions are answered in the negative, then the proceeding is legislative in nature, and procedural requirements in this handbook do not apply. However, if either, or both questions are answered "yes," the decisionmaker must consider an additional question:

3. Will the decision (or recommendation) impact specific parties or will it have an area-wide impact of community significance?

If the decision will impact specific parties, the action is quasi-judicial.

Even though courts and legislatures have tried to define "quasi-judicial," there are some situations in which it is difficult to determine whether a quasi-judicial process is required. Often this occurs when an action has several components. For example, a hearing may combine a rezone of an area with individual permit requests. **When in doubt, the wisest choice is to treat the proceeding as a quasi-judicial proceeding.**

The procedural due process protections that apply in a quasi-judicial proceeding are designed to ensure a fair hearing for all. There is no liability for treating any proceeding as quasi-judicial. However, there can be liability for failing to follow procedural requirements if the request requires a quasi-judicial proceeding.

Examples of Quasi-Judicial Hearings	Examples of Legislative Hearings
<ul style="list-style-type: none"><li>• Subdivisions</li><li>• Variances</li><li>• Conditional Use Permits</li><li>• Zoning Code Violations</li><li>• Small Rezones</li></ul>	<ul style="list-style-type: none"><li>• Passage of Ordinances</li><li>• Passage of Budgets</li><li>• Rezones of Community-wide Significance</li></ul>

## 2 Procedural Due Process

*Procedural due process is the legal method that must be used to reach a decision on a land use request.*

If a quasi-judicial proceeding is required, certain “procedural due process” elements must be satisfied. Procedural due process is simply the legal method that must be used to reach a decision on a land use request. It includes everything that occurs from the time an application is filed until the final decision is made.

The requirement for “due process” in quasi-judicial proceedings is based on guarantees in the federal and state constitutions that prohibit government from depriving a person of life, liberty **or property** without due process of law.” As interpreted by the courts, due process has both substantive and procedural elements. This handbook will focus on **procedural** due process.<sup>1</sup>

For land use hearings, procedural due process includes the following:

- Appearance of fairness for decisionmakers.
- Proper notice of the hearing.
- A proper hearing process.
- A complete record.
- A decision based on the record that meets legal requirements.

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<sup>1</sup>Substantive due process generally means that local government action regulating land must not be arbitrary and capricious. That is, zoning and development regulations must be enacted for a legitimate governmental purpose such as protection of health, safety, morals or the environment. Furthermore, the specific regulations must actually further the legitimate public purpose for which it was enacted.

These elements of procedural due process will be discussed in detail in this handbook.

Before a quasi-judicial hearing is started, the presiding official of the hearing should review the procedural due process requirements with the City Attorney and other members of the decisionmaking body. Failure to follow procedural due process requirements may result in a decision that is declared invalid and in monetary damages imposed against the local government.

Procedural due process requirements are similar to a recipe for baking a cake. The cake does not suddenly appear – it is made only after each step of the recipe is closely followed. If the baker leaves out one ingredient or adds too much of another, the results are disastrous.

Think of a land use hearing as a similar process. The goal is to arrive at a correct and workable decision on a permit application. However, if the procedures (the recipe) are not followed correctly, the results may be disastrous.

Like a good baker, the decisionmaker must follow the recipe to attain the desired goal. The five key elements of procedural due process are the ingredients the decisionmaker must use to ensure a fair process. These key elements are presented in detail in the next chapter.

## Checklist to Prepare for a Land Use Hearing

The decisionmaker must first determine if the hearing is a legislative hearing or a quasi-judicial hearing.

- Is a public hearing required by state statute or local ordinance?
- Will the decisionmaker consider evidence for and against the proposal?
- Will the decision (or recommendation) impact specific parties or will it have an area-wide impact of community significance?

If the answers to the first two questions are both “yes,” and the decision will impact primarily specific persons, the hearing is likely a quasi-judicial one.



If the hearing is quasi-judicial, are the decisionmakers familiar with the five elements of procedural due process:

- Can the hearing be fair?
- Has the proper notice been issued?
- Is there an appropriate hearing process in place?
- Can an accurate record of the hearing be developed?
- Can a decision that meets all legal requirements be issued?

## **Key Elements of Procedural Due Process**



## 1 Fairness

Of all of the elements of due process, the most intriguing is the concept of fairness. "Fairness" exists in a public hearing when all the participants are given an opportunity to present testimony and evidence to an unbiased decisionmaker. If fairness is not present in a hearing, the entire process is suspect and the decision could be invalidated. Common sense often defines what constitutes fairness, but it cannot be used as a solid legal foundation to support a Council's actions. The decisionmaker must also be aware of certain legal principles involving fairness that have been set by courts and legislatures throughout the United States.

Many courts have addressed the issue of fairness in review of land use decisions. Judges will require that not only must the proceedings be fair, they must appear to be fair. Thus, even though a decisionmaker may have no direct conflict of interest, he or she may be prohibited from hearing and voting on a land use request if there is an appearance that he or she cannot act in a fair manner.

It is important that local decisionmakers are familiar with any fairness statutes or legal precedents that have been established in their state. The most important issues of fairness involve what relationships the decisionmaker has with a person who may benefit from a decision, and how open the communications have been between a decisionmaker and such persons.

The following example of the Appearance of Fairness doctrine enacted in Washington state will provide more detail on the importance of these issues.

- A decisionmaker can conduct business from his or her office with a constituent on any matter other than a quasi-judicial action.

If a party wishes to disqualify a decisionmaker on an appearance of fairness violation, the challenge must be made at the time the alleged violation is known. Failure to do so precludes further challenges on the appearance of fairness doctrine.

The issues of fairness is a critical element of the due process that must be applied in a land use hearing. It is very important that a decisionmaker check state laws –both local statutes and legal precedents – to determine what specific rules apply to the appearance of fairness. Answering this question also provides a good guiding principle:

“Would a fair minded person in attendance at this hearing say that everyone was heard who should have been heard, and that the decisionmaker was impartial and free of outside influences?”

If this question can be answered with a truthful, emphatic “yes,” free from any doubt, then the fairness element of procedural due process most likely has been satisfied.

### **Example: Washington State's Appearance of Fairness Doctrine**

The appearance of fairness doctrine is a legal doctrine created by the Washington state courts in the 1970s as a means of ensuring that decisionmakers act in an unbiased role when deciding land use requests. The courts have often interpreted this doctrine and have found violations resulting from a financial conflict of interest, employment conflicts of interest, and real property ownership conflicts of interest.

In 1982, the Washington State Legislature enacted an appearance of fairness statute (Revised Code of Washington, Chapter 42.36) that established guidelines for fairness at land use hearings. One of the activities controlled by the appearance of fairness statute is *ex parte* communications, which are prohibited in quasi-judicial proceedings. *Ex parte* communications occur when the decisionmaker engages in conversations with the proponent or opponent outside of the official hearing. If the decisionmaker does not announce on the public record that *ex parte* communications have occurred, the process could fail because of an appearance of fairness violation.

The statute addresses other issues involving fairness and decisionmakers should consider these before each hearing.

Some behaviors of decisionmakers are specifically excluded from the appearance of fairness doctrine.

- Candidates for public office may publicly discuss or express opinions on a particular issue even though that issue may come before them at a later land use hearing.
- Candidates for public offices can accept campaign contributions from individuals who might appear before them.

- A decisionmaker can conduct business from his or her office with a constituent on any matter other than a quasi-judicial action.

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## Fairness Checklist

*A decisionmaker must answer the first five questions "yes" and the second five questions "no" to participate fairly in a quasi-judicial proceeding.*

- If ex parte contacts have occurred, have they been revealed at the public hearing?
- Has an opportunity been given to object to a decisionmaker's participation in the hearing because of ex parte contact?
- Does the decisionmaker have an impartial attitude toward the request?
- Is the decisionmaker free from any direct financial benefit that could result from the approval or denial of the request?
- Is the decisionmaker free from any indirect financial benefit that could result from the approval or denial of the request?

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- Does the decisionmaker have any personal interest in which he or she stands to gain or lose by the decision?
- Will there be any prospective employment for the decisionmaker or his/her family as a result of the decision?
- Is there any business competition between the decisionmaker and any of the parties at the hearing?
- Are there any family relationships between the decisionmaker and the parties at the hearing?
- Has the decisionmaker made a final decision on the request before hearing any testimony or evidence?

## FAIRNESS

### Examples of Practical Solutions

**Problem.** On the afternoon before a hearing, an acquaintance calls a Councilmember about a variance request.

**Solution.** The Councilmember should inform the acquaintance that she cannot talk about the case. All testimony should be presented at the hearing.

**Problem.** A Councilmember announces at the City Council meeting that she received a telephone call prior to the council meeting. No objections are made at the time of the announcement, but when the decision is made a disgruntled party objects to the decision because of a violation of the appearance of fairness doctrine.

**Solution.** If the disgruntled party did not make the objection at the time the announcement was made, he or she has waived the right to object. The Councilmember's participation is acceptable.

**Problem.** A Councilmember is to hear a conditional use permit request for a commercial building in a residential zone. The applicant is the employer of the Councilmember's daughter.

**Solution.** The Councilmember should withdraw from consideration of the case. There is an indirect benefit to a family member. If, however, the councilmember refuses to withdraw she should at least announce her conflict to the public.

**Problem.** A Councilmember was previously on the planning commission. While on the Planning Commission he sat in judgment of a variance request. The variance has now been appealed to the City Council.

**Problem.** The Councilmember's business partner requests approval of a permit to construct his home.

**Problem.** A Councilmember campaigned for office by advocating no further growth. A preliminary plat is now before her.

**Solution.** The Councilmember can remain as a voting member on the City Council for the request because there is no conflict of interest.

**Solution.** The Councilmember should step down and not sit as a member of the City Council on the permit request.

**Solution.** The Councilmember may sit in judgment on the preliminary plat. Campaign statements are not reasons for dismissal from a hearing.

## 2 Notice

An important element of the land use hearing process is the notice that must be given of the action pending before the decisionmaker. Notice is required because it provides advance warning to parties so that they can intelligently prepare for and participate in the hearing.

Notice requirements are established by state statutes and local ordinances. Local officials should familiarize themselves with the notice requirements of their community and have the notice ordinances available during the public hearing. If it is apparent prior to the start of a hearing that improper or inadequate notice has been given, the presiding officer must decide whether to begin the hearing or postpone it in order that proper notice can be given.

If the hearing has begun and it becomes apparent that proper notice has not been given, it should be rescheduled (or adjourned and continued) so proper notice can be given to all who must receive it. For the convenience of parties who appear at the improperly noticed hearing, it is acceptable to take their testimony as part of the official record. The parties can also choose to wait until the properly noticed hearing to present their testimony. If proper notice has not been given, the applicant should not testify or submit evidence until proper notice has been given. All opponents should have an opportunity to respond to all of the testimony of the applicant.

A helpful tool for determining if proper notice has been given is a "Certification of Public Notice." This document can be submitted by the planning department as part of the record to establish when notice was given; the manner in which notice was given; and to whom it was given. With this document as part of the record, the burden of showing that notice was not

*Notice is required because it provides advance warning to parties so they can prepare for and participate in the hearing.*

properly given is on the party making such a claim. If that burden is not shown, you may proceed with the hearing.

The checklist which follows will help ensure that you comply with the notice requirements of procedural due process.

## NOTICE CHECKLIST

*Review the applicable state statutes and local ordinances for specific notice requirements. Legal requirements vary depending on the type of application. Posting, mailing, and publication may all be required or there may be other notice requirements. Strict compliance with ordinances and statutes is required.*

- Has Notice been given to all required property owners?
- Was the Notice published?
- Was the Notice posted at the proper site?
- Did the Notice identify the property?
- Did the Notice state the requested land use action?
- Did the notice state the correct hearing date and time?
- Did the Notice state the location of the hearing?
- Did the city staff file an optional Certification of Public Notice?
- If Notice was not consistent with the local ordinance or state law, has the hearing been rescheduled?

## NOTICE

### Examples of Practical Solutions

**Problem.** No notice of the hearing of a requested permit was given.

**Solution.** Reschedule the hearing and require proper notice be given.

**Problem.** The notice incorrectly identified the property that is the subject of the request.

**Solution.** Reschedule the hearing and reissue notice with the correct land description.

**Problem.** A witness claims no notice was given. The Planning Department argues that it was.

**Solution.** Ask staff for the "Certification of Public Notice," if available. Ask witness for the basis of the contention. Consider each argument and decide.

**Problem.** Even though notice was not properly given, some witnesses still want to testify.

**Solution.** Ask which witnesses cannot be at the rescheduled hearing. Allow only those who absolutely cannot testify at rescheduled hearing date to testify. Take rest of testimony at the rescheduled hearing.

**Problem.** Mailed notice went to the mortgage holders, not the residents or buyers of a house.

**Solution.** Review state and local notice requirements to see if specific instructions for notice to tenants or buyers is required. If not, proper notice has been given.

**Problem.** During a hearing on a permit where proper notice was given, the applicant requests a decision on another permit requested.

**Solution.** Each permit request must be given proper notice. Limit the hearing and the decision to the permit that has received proper notice.

### 3 | The Hearing

*The hearing is a fact-finding forum from which a decision must result.*

The purpose of a land use hearing is to have the facts of a case presented in a manner that will assist the decisionmaker in making a fair, legal and complete decision. The hearing must be conducted in a controlled environment that allows all parties an opportunity to present testimony and evidence to support or oppose a position. Although not as formal as a trial, the hearing is a fact finding forum and the decision must be based on the evidence presented at the hearing.

#### **Hearing Set-Up**

Hearings should be held in a room or chamber that is comfortable and appropriate for the proceeding. Crowding too many people into a small room can create a hostile atmosphere. In addition,

- The room should have good lighting and ventilation.
- The room should be set up in a way that separates the decisionmakers from the parties.
- If possible, the planning department and the applicant should be given tables to spread out files.
- The applicant should be seated at a separate table from the city staff.
- A podium with a microphone should be placed near the front of the room for witnesses to present testimony.

#### **Testimony Guidelines**

It is the responsibility of the presiding official (generally either a Hearing Examiner or City Council Chairperson) to keep the testimony and evidence relevant to the issues. Extraneous or irrelevant testimony adds nothing to the hearing and makes the

decisionmaking process more complicated and difficult. Always keep the testimony focused on the issues of the hearing.

Although a hearing is more relaxed than a judicial trial, certain rules of decorum should apply. Testimony should be given only at a podium and into a microphone. All witnesses should be required to identify themselves at the podium. No testimony should ever be accepted from audience members who shout from their seat.

All testimony and evidence should be tape recorded. All witnesses must testify at a microphone so that their testimony is clearly recorded.

Testimony can be limited by time, but this should be made clear at the start of the hearing. The presiding official can ask at the outset for a show of hands of the witnesses who will testify. Based on the number of witnesses and the available time, time limits on individual testimony can be established. If this procedure is used, the presiding official must be careful to enforce the time limits.

It is advisable to have a spokesperson for a group of opponents or proponents present the initial testimony. Usually, this testimony is organized and covers most of the contested issues. This testimony becomes the basis of a case and eliminates the need for many witnesses to present redundant, and often tiresome, testimony. It may be beneficial to allow group spokespersons a larger allotment of time than individuals.

A key element of a hearing is crowd control. Unruly behavior, such as booing, hissing, harassing remarks, or other obnoxious behavior, **cannot** be an element of a hearing. Such behavior will often intimidate witnesses. A hearing is not a popularity contest but is a legal process in which facts and opinions are presented to unbiased decisionmakers. Emotional displays or undignified presentations add absolutely nothing to a hearing.

*One key function of the decisionmaker is to control the crowd and preserve the proper decorum for the hearing.*

*As long as all parties have been given a fair and equal opportunity to present their case, the courts will not interfere with the hearing procedure.*

and, in fact, detract from it. It is very important that the presiding official forbids such behavior. If the instructions are ignored the hearing should be halted until order is restored.

Because administrative hearings may be reviewed by the court, testimony should be given under oath or affirmation. This serves two purposes – it satisfies the legal requirement for testimony to be truthful and it is symbolic of the seriousness of the proceeding. A simple oath to give follows:

*"Do you promise that the testimony that you are to give will be the truth. If so, respond I do."*

## **The Hearing Agenda**

All hearings should begin with a brief explanation of the hearing guidelines by the presiding officer, including a description of the procedures to be used. As long as all parties have been given a fair and equal opportunity to present their case, the courts will not interfere with the hearing procedure.

A good model for the procedural agenda of a hearing follows:

1. **Introduction.** The presiding officer introduces the request being heard and goes over ground rules for the hearing.
2. **Initial presentation of the facts.** Made by the planning official, this includes: (a) an identification of the requested permit; (b) a description of the land that is involved with the request; (c) a discussion of the impact of the request to the land and surrounding properties. An optional part of the planning official's presentation can be a recommendation by the City.
3. **Presentation by the applicant.** The applicant has the burden of proof and must present testimony or evidence to support the request. The applicant can agree or disagree with the planning official's presentation. At this point, he or she should present all technical expert witnesses and



raise any issues relating to conditions recommended by the City.

4. **Testimony by members of the public.** The testimony can be in support of, or in opposition to, the request. The presiding officer may recognize the speakers from the floor or may call names from a sign up list. The presiding officer should state the ground rules for testimony.
5. **Response by the Planning Department.** After the public testimony, the planning department is given a final opportunity for a rebuttal and response to any testimony that has been received.
6. **Rebuttal by the applicant.** The last opportunity to be heard belongs to the applicant. The applicant may rebut testimony or evidence but should **not** submit new testimony or evidence.
7. **Decision by the decisionmaker.** A decision is made either at the hearing or at a later date depending on the adopted procedure of the community. All decisions must be supported by specific sections of the written decision entitled "Findings of Fact" and "Conclusions of Law."

### Practical Advice on Hearings

The length of a hearing should be controlled. A time for adjournment should be announced at the time the hearing begins. For example, if a hearing starts at 7:00 p.m., it should be concluded by 10:00 p.m. and continued to another time, if necessary. If the hearing is held during the regular workday (9:00 a.m. to 5:00 p.m.), lunch breaks should be taken. Breaks are appropriate in any long hearing and can be useful if the audience is unruly. It is advisable that instead of holding a marathon hearing, the hearing be held on a number of days. This allows the decisionmaker time to comprehend all of the material presented and eliminates the need for action on important matters at late hours when all are fatigued.

## THE HEARING CHECKLIST

*If all questions on this checklist can be answered with a "yes", the hearing element of procedural due process will be satisfied. Before the testimony begins, ask the following questions:*

- Have the microphones and tape recording machines been set up properly and do they work?
- Has the presiding official described the Rules of Procedure to be followed?
- Has the audience been advised of the rules of behavior?
- Has the presiding official asked if everyone present understands the rules of behavior?
- Has the audience been advised that testimony is to be given at the podium and into a microphone?
- Has the order of presentation been announced?  
(e.g., Planning Department, the applicant, witnesses in opposition, supporting witnesses, rebuttal of the applicant.)

During the hearing, ensure that the following questions are always answered with a “yes”:

- Have all witnesses identified themselves on the record?
- Have all witnesses been sworn under oath (group or individual)?
- Have all exhibits been identified for the record?
- Is the testimony focused on the request: Is it relevant?
- Have all those who desire to testify been given an opportunity to be heard?
- If the hearing is to be continued, has a definite time, date, and location of the hearing been announced?

## THE HEARING

### Examples of Practical Solutions

**Problem.** Opponents are booing and hissing.

**Solution.** Prior to the hearing, read ground rules and set behavioral limits. Make sure everyone understands them. If behavior is out of hand, remind everyone that they heard and **understood** the limits set. If the behavior continues, take a break. If that does not resolve it, adjourn the hearing. If at any time behavior is becoming dangerous or threatening, call the police.

**Problem.** It is late and everyone is tired and edgy.

**Solution.** If possible, continue the hearing until the next available date. If the place and time are announced at the hearing, no new notice is needed.

**Problem.** The applicant will not respond to questions.

**Solution.** Remind the applicant that he has the burden of proving the request.

**Problem.** The witness wants to talk “apples” even though the request involves “oranges.”

**Solution.** Limit testimony to “oranges” and cut off witnesses who stray from the relevant issues.

## 4 The Record

All land use decisions **must** be based on the official record (testimony and exhibits) that is developed at the public hearing. This requirement is mandatory for two reasons:

- The record must provide the basis and support of the decision of the decisionmaker.
- Courts review and rely upon the official record to reach a decision on appeal. Courts will not take new testimony and evidence in reviewing a land use decision.

The record consists of all oral testimony and physical exhibits presented at the hearing. No land use decision can be based on material that is not contained within the record. A decisionmaker cannot rely on some fact or opinion that was not presented in testimony or evidence at the hearing.

*The record is  
the foundation of  
the decision.*

All testimony should be tape recorded. The tape is part of the record and precautions should be taken to make sure the recorder is operating correctly. If the tape has not recorded the proceedings, it is advisable to rehear the matter.

Testimony should be given by witnesses under oath. The witnesses must identify themselves for the record. If witnesses refer to written material other than their own writings, they should identify the author and the publication of the document. If witnesses submit anything in writing, the written piece should be admitted as an exhibit.

Decisionmakers should remember that all oral comments made during a hearing are part of the record. For this reason exaggeration, snideness, sarcasm or other unnecessary statements by decisionmakers should be avoided. Such comments could cause the reviewer of the record (i.e., the courts) to interpret the meaning in a manner different than intended.

The Planning staff report and all of its attachments should be part of the official record and should be admitted as an exhibit at the outset of the hearing. A great deal of the information needed to reach a decision is contained in the staff report and decisionmakers should read it thoroughly prior to the hearing. It is helpful to have copies of the staff report available at the hearing.

Examples of exhibits are writings, maps, charts, and articles. Each document of evidence should be identified with an exhibit number (e.g., exhibit 1, exhibit 2).

Objections to exhibits should be allowed and if objections are made, the decisionmaker must decide whether the exhibits should be admitted or not. Because the rules of evidence that govern trial proceedings are not directly applicable in administrative proceedings, the decision as to whether an exhibit should be admitted can be based on what a reasonable person would do.

## THE RECORD CHECKLIST

*All questions which follow must be answered "yes" to satisfy the record requirements of procedural due process.*

- Are all tape recording machines working?
- Are microphones in working order and turned on?
- Have all of the exhibits relevant to the hearing been submitted and identified by letter or number in a sequential order?
- Has all testimony been given either orally or in written form (no shaking of heads, shrugs, etc.)?
- Have all witnesses identified themselves?
- Have all witnesses referred to the exhibit number rather than "this thing" or "that"?
- Is the decisionmaker satisfied with the content of the record so that a decision can be made based solely on a review of the record?

## The Record

### Examples of Practical Solutions

**Problem.** The tape recorder is broken.

**Solution.** Replace or repair it before continuing. Have unrecorded testimony restated.

**Problem.** All witnesses refer to a map as "this".

**Solution.** Give the map an exhibit number (e.g. exhibit #1) and have witnesses refer to it as "exhibit #1." Avoid general terms such as this, that, here, there, etc.

**Problem.** People are giving testimony from the audience.

**Solution.** Have all witnesses speak into a microphone and identify themselves. Do not take testimony from the audience.

**Problem.** When asked a question, the witness shakes her head.

**Solution.** Require oral answers to assure all testimony is heard and recorded.

**Problem.** The content of the record does not provide enough information for the decisionmaker to make a decision based on the record.

**Solution.** Ask questions during the hearing so that all necessary information is on the record. If no one can answer essential questions, continue the hearing to a later date when all necessary facts can be presented.

## 5 The Decision

The culmination of the entire land use review process is the decision. Making a decision in a land use hearing is not as easy as saying "yes" or "no."

- The decision must be the result of a deliberative process after review of all testimony and exhibits presented at the hearing.
- The decision must be expressed in a specific manner that will best withstand a legal challenge.
- The land use decision must relate to the land and not to the owner, and the owner's welfare should not be the basis for a decision.

All decisions must be based on the record developed at the public hearing. Only those facts included in the record can be considered. Going outside the record (relying on something not presented in testimony or exhibits) defeats the purpose of the hearing and invites court intervention. An administrative decision is arbitrary and capricious if it disregards the facts that have been presented.

*All decisions  
must be based on  
the record  
developed at the  
public hearing.*

When the record is complete and a decision must be made, the decisionmaker must apply the appropriate legal criteria for review of the requested land use permit. These criteria are found in city ordinances or state statutes. For example, if a variance is requested, the decisionmaker should refer to the variance ordinance for the exact criteria that must be satisfied. **If the criteria are satisfied, the permit must be approved, even if popular opinion is contrary. If the criteria are not satisfied, the permit cannot be approved.**

Reliance on the criteria is the legal justification of the decision. A land use decision without legal justification is said to

be “erroneous as a matter of law” and will be overturned by courts.

The decision can be oral or written, but all decisions must be supported by written Findings of Fact. Findings of Fact are statements of the facts – derived from the record of the hearing – that support the decision.

The key information to be addressed in Findings of Fact is that information which satisfies or does not satisfy the required legal criteria. For example, if a variance requires a showing of a special circumstance, the Findings of Fact should identify the special circumstance that supports the need for a variance.

A decision must also include written Conclusions of Law which are statements of how the facts satisfy, or fail to satisfy, the legal criteria for the request. Findings of Fact and Conclusions of Law must be precise and understandable.<sup>1</sup>

A decision can be:

- A denial;
- An approval; or
- An approval with conditions.

If a request is approved or denied, the reasons should be stated. Any conditions imposed as part of the approval should be clear, complete, free of ambiguity, supported by the facts, and enforceable.

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<sup>1</sup>Many communities have established hearing examiner systems to assist with this legal requirement of making decisions supported by Findings of Fact and Conclusions of Law. Hearing examiners are trained in the details of administrative law and provide a source of legal and planning expertise. Hearing examiner systems also provide a reliable and unbiased method of dealing with land use issues. (For more information, see Other Systems, Section 1, The Land Use Hearing Examiner pg. 41.)

## THE DECISION CHECKLIST

*All questions must be answered with a clear "yes" to satisfy this element of procedural due process.*

- Is the decision based on the record?
- Are there written Findings of Fact to support a decision?
- Are there written Conclusions of Law to support a decision?
- Have the criteria of the ordinance been reviewed?
- Do the conclusions refer to the facts that satisfy (or fail to satisfy) the criteria?
- If the decision is a denial, has a reason been given based on the criteria?
- If the decision is an approval, are all criteria satisfied?
- If a decision of approval is conditioned, are the conditions clear and understandable?
- Is the decision limited only to the request that has been properly noticed?

## The Decision

### Examples of Practical Solutions

**Problem.** One Councilmember announces that she will vote to deny a permit because of information presented to her at her office, outside of the public hearing.

**Solution.** The decision should be based on the record only, not on information presented outside the hearing. The Councilmember should also announce the ex parte contact (see appearance of fairness).

**Problem.** A City Council makes a difficult decision on a complicated request. There are no written Findings of Fact to support the decision.

**Solution.** The Council should ask the City Attorney to draft Findings of Fact based on the record to support the decision. Findings of Fact are necessary.

**Problem.** An oral vote of denial is made by a Councilmember even though staff has testified that the criteria set forth in the ordinance is satisfied and there is no contradictory testimony.

**Solution.** Remind the colleague that the ordinance criteria must be followed. Ask for the facts supporting the denial. If the denial cannot be supported, ask for reconsideration.

**Problem.** Even though the applicant has only applied for a conditional use permit, the council also wants to approve a variance.

**Solution.** The Council can take no action on the variance. All permits must be applied for before they are decided.

**Problem.** Officials of a small town question whether the same land use procedural requirements apply as they do to larger cities.

**Solution.** Small towns are held to the same standards as large cities.

**Problem.** The tape recorder is broken and someone stole the microphones.

**Solution.** Stop the hearing and continue it when it can be recorded.



## Other Systems

## Other Systems

The traditional method of making land use decisions is for a Council, Planning Commission, Board of Adjustment, or other city board to hold a formal public hearing on a land use application and then make the decision in an open public meeting.

Other methods of decisionmaking are available. This section discusses two alternative methods for making decisions on land use applications that have been used successfully in many municipalities: (1) The Land Use Hearing Examiner; and (2) Mediation.

Both the Land Use Hearing Examiner process and the Mediation process are systems designed to improve the efficiency of land use decisionmaking. Both systems can help protect the city from liability and ensure a fair decisionmaking process for all.

The Hearing Examiner and Mediation systems rely on professionals with experience in land use matters. Both mediators and Hearing Examiners should have expertise in applicable local, state and federal land use and environmental laws. Hearing Examiners should also be experts in procedural due process. City Councils should adopt rules of procedure for Hearing Examiners and mediators to follow. This will ensure that the interests of the City Council are followed.

Compliance with state and federal laws – particularly those regarding procedural due process – is necessary because a city may be held liable for failure to follow procedural due process requirements. A Hearing Examiner or Mediator must be well-versed in due process requirements in order to help protect the city from liability and to help guarantee a fair process for all participants.

## 1 The Land Use Hearing Examiner

A Land Use Hearing Examiner is an individual or firm appointed by the Council to:

- Conduct quasi-judicial hearings on land use applications.
- Prepare written findings of fact and conclusions of law based on information presented at a public hearing.
- Issue a decision or recommendation to the Council based on the record developed at the hearing.

The Council through ordinances defines the authority of the Hearing Examiner who acts as the hearing officer of the Council.

The Land Use Hearing Examiner is responsible for complying with the procedural requirements of a public hearing and for the decision on an application. Procedural compliance includes determining whether public notice has been properly given, conducting a fair hearing; developing a proper record of the proceedings; and issuing a decision or recommendation based on supportable Findings of Fact and Conclusions of Law.

A Land Use Hearing Examiner is usually trained in law, although some individuals have a planning background. Increasingly, however, the land use decision process requires a thorough knowledge of all legal requirements, including an understanding of administrative procedure, statutes, ordinances and appellate court decisions.

### **Advantages**

If properly implemented, the Hearing Examiner system has several advantages over the traditional method of making land use decisions. An important advantage of Hearing Examiners

is that they resolve many land use decisions without requiring a lot of time from City Councilmembers. This saves Councilmembers' time for more important legislative issues. Councilmembers may still hear appeals of Hearing Examiner decisions, although many cities have the appeal go directly to court. They may also choose to ask the Hearing Examiner to only make recommendations on certain types of land use decisions. In this instance the Hearing Examiner would hold a public hearing and build a formal record, and make a recommendation to the Council. The Councilmembers would review the record and the recommendation, and make a final decision. This should still save a significant amount of Council time.

Other advantages to a Hearing Examiner system include:

- A precise and defined system in which all participants are aware of the procedure, format, and methods.
- Expertise of a decisionmaker trained in procedural and substantive legal requirements.
- A written record to support decisions.
- Removal of land use decisions from the political arena.
- Elimination of lobbying or influencing of decisionmakers
- Establishment of consistency of land use decisions within the community.
- Greater likelihood of reaching a decision based on logic rather than politics or emotion.
- More likely to form a decision based on logic rather than politics or emotion.

A Land Use Hearing Examiner should draft Rules of Procedure to govern the hearings process. (An outline of sample rules is provided in Appendix 3.)

## 2 The Mediation System

*Mediation can  
create a  
win/win solution.*

Another alternative to the customary formal land use hearing is mediation.

In a typical controversial hearing, those attending will state their positions for and against a proposal in the strongest possible way. **Positions** are the focus, which often are different from the **interests** of the participants.

For example, a project opponent often will allege noncompliance with the zoning code as a reason for opposing a proposal; while the proponent will claim benefits for the city in favor of the proposed project. In a formal hearing, there is little opportunity to determine the specific concerns of citizens opposed to the project or changes the developer may be willing to make to address these concerns. Although the city must make a decision where one party will win and the other will lose, the bottom line is that both **proponents** and **opponents** must live with the results of the decision, even though one or both may be dissatisfied.

Mediation, however, can create a win/win solution.

Mediation allows the applicant, the city and citizens to negotiate differences in an informal, non-adversarial setting with the assistance of a facilitator.

- The mediation process is voluntary for all participants and an agreement is reached only if all participants agree.
- Mediation may be used to resolve all or part of a dispute.
- All agreements must be consistent with zoning laws of the state and city.

Those issues that are resolved through mediation can become part of the final decision on the application, while unresolved issues go forward to a formal public hearing. The agreements reached in mediation are presented at the public hearing and adopted as part of the decision. The decisionmaking body makes the final decision on any unresolved issues.

### **Advantages**

Mediation has several advantages over the formal land use hearing process. In mediation, the parties to a dispute retain control over the outcome. An agreement is reached only if all agree to it. This is contrasted to the formal hearing process, where the parties must surrender the decisionmaking authority to someone who is not directly impacted by the land use issue.

In mediation, creative solutions to a dispute are possible. The mediator can suggest approaches to resolving differences without the parties losing face.

Consider, for example, a grocery store expansion. A neighborhood group may be very concerned about the excessive light from a new neon sign that is planned. The neighbors find that there are no guidelines for the amount of light that may be emitted from signs in their community. If this decision went to a hearing on whether the expansion should be allowed, the neighborhood group would likely have to oppose the entire expansion, because there is no criteria to control the lighting from the sign. The decisionmaker would then have to choose a winner and a loser in this dispute. In mediation, however, a trained mediator could identify the lighting concern, and work with the grocery store to modify the sign. Thus, the dispute could be eliminated with both parties wining on the issues that are important to them.

Mediation is often less expensive than a formal hearing because the formal presentation of witnesses and other evidence is not necessary. Participants in a mediation process

may agree on a set of facts or the opinion of an independent expert without having to present opposing witnesses or evidence.

Mediation is also more likely to preserve relationships between parties, who may be neighbors, in disagreements over a land use application. Since all parties must agree to the outcome of a mediation, there is no winner or loser. Mediation seeks to find the "win/win" solution to disputes. There still may be conflict between neighbors and developers, but mediation allows those conflicts to be worked through in a setting that seeks to find solutions.

Mediation of land use disputes should follow procedural guidelines to ensure fairness. Requirements relating to notice, fairness and a written agreement are as important for mediation sessions as they are for land use hearings.

Another alternative is for the City Council to authorize the Office of Land Use Hearing Examiner to conduct mediations. Under this system one hearing examiner, as a neutral facilitator, attempts to mediate issues surrounding a land use application. If the mediation is not successful, a different hearing examiner conducts the formal hearing and issues a decision. This ensures a clear separation of the mediation process from the formal land use hearing process.



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## **Glossary and Identification of Key Players**

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## 1      Glossary of Terms

The land use hearing process has a language all its own. Some terms – like “ex parte contract” and “de novo hearing” – are full of mystery and are not easily understood. Often words without a common meaning are used by the people involved in the land use process. Sometimes the terms are used intentionally to confuse or intimidate others. Usually a simple set of words can replace the confusing terms. This glossary is designed to help local officials understand the specific language of a land use hearing.

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**Arbitrary and Capricious.** A standard used by courts to review appeals of land use decisions. If a decision is not supported by facts, it will be arbitrary and capricious

**Appearance of Fairness.** Actions which create a true or false impression that a local official is not being fair when making a land use decision. Examples of actions that may violate the appearance of fairness include unrevealed ex parte contact, personal or monetary interest in the outcome of a request, unfair hearings, pre-judgment and apparent hostility or favoritism toward a party.

**Appeal.** When a party of record requests the City Council to review a decision or recommendation by the Hearing Examiner or Planning Commission. The review is usually based on the record developed at the previous hearing.

**Cross Examination.** Asking questions of a witness who has previously testified for the other side. The questioning is done by one representing the opposing position.

**Direct Examination.** Asking questions of a witness by someone advocating the same position.

**De Novo Hearing.** A “new” hearing. If a land use recommendation or decision is appealed to a City Council and the Council decides to make an entirely new record before deciding the matter, or takes new evidence in addition to the existing record, a de novo hearing has occurred.

**Ex Parte Contact.** Ex parte contacts are those that happen outside the hearing between a decisionmaker and an opponent or proponent of a land use proposal. Ex parte contacts may violate the appearance of fairness doctrine.

**Findings of Fact & Conclusions of Law.** Written sections of a formal decision that explain the basis for the decision. Findings of Fact are based on the facts presented at the hearing, and Conclusions of Law apply legal criteria to the facts presented.

**Mediation.** A voluntary process where an independent person (the mediator) assists people involved in disputes to reach agreement. A mediation process can avoid controversial disputes and help find creative solutions to land use problems.

**Personal Interest.** When a local official has something to gain or lose by a land use decision. Personal interests may include land ownership, employment opportunities, business competition, family relationships and financial interests. Inappropriate personal interests may disqualify one from participating in a decision.

**Procedural Due Process.** The process used to reach a decision on a land use request. It includes everything that occurs from the time an application is filed until the final decision is made.

**Quasi-Judicial Proceeding.** A process where a decisionmaker must make a choice between competing positions and where the outcome will have a greater impact on one

group of citizens than on the public generally. Quasi-judicial differs from legislative proceedings in that legislative proceedings impact the community as a whole. A local official may hear and decide both legislative and quasi-judicial matters. The procedural requirements for land use decisionmaking imposed by the courts apply only to quasi-judicial matters.

**Relevancy.** Refers to the nature of testimony and evidence offered during a public hearing on a specific application. If testimony or evidence does not directly apply to the decision at hand, it is irrelevant and should not be considered in making the decision.

**Right to Be Heard.** An element of procedural due process that allows every person an opportunity to present relevant written or oral testimony.

**Rules of Evidence.** Refers to a large body of law that seeks to control what can be relied on to reach a decision and what cannot be relied on. The Rules of Evidence are relaxed in land use hearings, but are useful references in the event there is a dispute about the evidence presented.

**Substantive Due Process.** Refers to the impact of the decision or regulation on an individual's property rights. It is violated by decisionmaking that is arbitrary and capricious or irrational, or that does not serve a legitimate governmental purpose.

**The Record.** All of the testimony, documents, written materials, displays and other items that are received by the decisionmakers during the course of public hearing. A complete and understandable record is an essential element of procedural due process. Failure to maintain such a record can invalidate a quasi-judicial proceeding.

## 2 Roles of Key Players in the Land Use Decisionmaking Process

*As with all groups, there are certain individuals who play a key role in the decisionmaking process. Each has a defined duty that must be performed in order for the process to work. They include:*

**Presiding Officer.** Usually the chairperson of the City Council or Planning Commission (if the hearing examiner of such a system is used). The effective presiding officer sets the tenor of the proceeding by defining the guidelines of the hearing and setting the applicable limits for the participants. He or she should keep the discussion focused on the problem and move the meeting along. The presiding officer is responsible for setting time limitations and schedules.

**Clerk or recording secretary.** The Clerk or the recording secretary is in charge of the record. He or she must keep a list of exhibits (and their locations) and the names of witnesses. The Clerk is often responsible for the logistics of the hearing.

**Planning Department representative.** It is the responsibility of the planning department to present the facts of the case and the administrative review that has been conducted. The planning department representative should prepare a staff report for review.

**City Attorney.** The City Attorney is charged with keeping the proceedings on the legal track. The City Attorney should advise the City Council on legal procedures and substantive issues. If a hearing examiner is a lawyer, the City Attorney's responsibility for seeing that legal procedure is being followed is reduced.

**Applicant.** The applicant is the party seeking approval of the land use permit. The applicant has the burden of proving that all criteria for approval of the permit are satisfied.

**Appellant.** The appellant is a party that has appealed a prior decision made by a city official. The appellant has the burden of proving that the city's decision was in error.

**Witness.** The witness is an individual whose testimony is given under oath and becomes part of the official record of the hearing.

**Council or Board Members.** It is their responsibility to read staff reports, listen to testimony and review evidence. The members should seek information needed to make a decision.



## **Appendices**

## APPENDIX 1 | Practical Examples of Procedural Issues

### **Example**

You are a member of the City Council. Your city is in the process of revising its comprehensive plan. Council hearings are scheduled for Tuesday evening. On Tuesday morning, your next door neighbor comes over for coffee and starts telling you what should be in the comprehensive plan. She makes a point of telling you that if your neighborhood is protected as a residential area, she and a lot of other neighbors will be very happy and will support you with financial contributions for your next campaign. Must you reveal your talk with your neighbor at the hearing.

### **Answer**

*The adoption of the Comprehensive Plan is a legislative issue because it will have a broad community impact. The lobbying of the neighbor is acceptable.*

### **Example**

You are presiding at a hearing on a controversial request for a rezone. Your city ordinances state that the public notice must be given by publication, by posting and by mailing to those within 200 feet of the property. Someone at the hearing says he lives next door to the property proposed for a rezone, but he never received a mailed notice. The clerk explains that the mailing was never done because it cost too much and, besides, everyone in town already knew about the hearing. Should you reschedule the hearing to a future date?

### **Answer**

*Yes. Proper notice was not given. Schedule a specific time, place, and date and have the city staff send out revised notice of the hearing.*

**Example**

You are on the City Council. You must decide a request for a variance tonight. A public hearing on the variance was held by the Planning Commission two weeks ago. No one except the applicant thinks the variance is a good idea. You ask the clerk to read the minutes of the public hearing. The only minutes of the Planning Commission state: "Members of the Planning Commission expressed several concerns about the proposal". On that basis, you vote NO on the variance request. The variance is denied. Was the City Council decision proper?

**Answer**

*The decision of the City Council is improper. Decisions must be based on facts and law that are presented in the record. Opinions of the Planning Commissioners are not facts, and should not be the basis for the decision.*

**Example**

The Planning Commission reviewed a preliminary plat application and recommended to the City Council that it be approved for ten building lots with no conditions. At the Council meeting, the applicant points out how sixteen lots could be created and asks the Council to approve the plat for sixteen building lots with a condition that traffic will not be increased over what would occur with the development of ten lots. Since the Planning Commission did not have the information that the applicant presented to the Council, the Council approves the plat for sixteen building lots. A neighbor to the site, not present at the Council meeting, now wants to challenge the Council. Does she have a case?

**Answer**

*Yes. The applicant has changed his request. It is assumed that notice was given for a ten lot subdivision. The decision should only address that request. The Council was in error to approve the larger plat.*

**Example**

The applicant is a church that wants to expand its facility in a residential zone. The site also includes some wetlands. At the public hearing for a conditional use permit, a non-resident of the city who is concerned about the environment wants to testify against the application. The Mayor does not allow the testimony. The permit is approved by voice vote. The non-resident threatens a damage action against the city. Were the mayor's actions proper?

**Answer**

*No. The residency of the witness has no importance as to whether he can testify. However, the proximity of the witness' residence and the impact to him can be considered by the Council in reaching a decision.*

## APPENDIX 2 Master Checklist for the Local Official in a Land Use Hearing

### Checklist to Prepare for a Land Use Hearing

The decisionmaker must first determine if the hearing is a legislative hearing or a quasi-judicial hearing.

- Is a public hearing required by state statute or local ordinance?
- Will the decisionmaker consider evidence for and against the proposal?
- Will the decision (or recommendation) impact specific parties or will it have an area-wide impact of community significance?

If the answers to the first two questions are both “yes,” and the decision will impact primarily specific persons, the hearing is likely a quasi-judicial one.



If the hearing is quasi-judicial, are the decisionmakers familiar with the five elements of procedural due process:

- Can the hearing be fair?
- Has the proper notice been issued?
- Is there an appropriate hearing process in place?
- Can an accurate record of the hearing be developed?
- Can a decision that meets all legal requirements be issued?

## Fairness Checklist

*A decisionmaker must answer the first five questions "yes" and the second five questions "no" to participate fairly in a quasi-judicial proceeding.*

- If ex parte contacts have occurred, have they been revealed at the public hearing?
- Has an opportunity been given to object to a decisionmaker's participation in the hearing because of ex parte contact?
- Does the decisionmaker have a reasonable impartial attitude toward the request?
- Is the decisionmaker free from any direct financial benefit that could result from the approval or denial of the request?
- Is the decisionmaker free from any indirect financial benefit that could result from the approval or denial of the request?

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- Does the decisionmaker have any personal interest in which he or she stands to gain or lose by the decision?
- Will there be any prospective employment for the decisionmaker or his/her family as a result of the decision?
- Is there any business competition between the decisionmaker and any of the parties at the hearing?
- Are there any family relationships between the decisionmaker and the parties at the hearing?
- Has the decisionmaker made a final decision on the request before hearing any testimony or evidence?

## NOTICE CHECKLIST

*Review the applicable state statutes and local ordinances for specific notice requirements. Legal requirements vary depending on the type of application. Posting, mailing, and publication may all be required or there may be other notice requirements. Strict compliance with ordinances and statutes is required.*

- Has Notice been given to all required property owners?
- Was the Notice published?
- Was the Notice posted at the proper site?
- Did the Notice identify the property?
- Did the Notice state the requested land use action?
- Did the notice state the correct hearing date and time?
- Did the Notice state the location of the hearing?
- Did the city staff file an optional Certification of Public Notice?
- If Notice was not consistent with the local ordinance or state law, has the hearing been rescheduled?

## THE HEARING CHECKLIST

*If all questions on this checklist can be answered with a "yes", the hearing element of procedural due process will be satisfied. Before the testimony begins, ask the following questions:*

- Have the microphones and tape recording machines been set up properly and do they work?
- Has the presiding official described the Rules of Procedure to be followed?
- Has the audience been advised of the rules of behavior?
  - no boozing, hissing or cheering
  - show respect for all opinions
  - only witnesses who are under oath are allowed to speak
- Ask if everyone present understands the rules of behavior.
- Has the audience been advised that testimony is to be given at the podium and into a microphone?
- Has the order of presentation been announced?  
(e.g., Planning Department, the applicant, witnesses in opposition, supporting witnesses, rebuttal of the applicant.)

*(Continued)*

## THE HEARING CHECKLIST

*(Continued)*

During the hearing, ensure that the following questions are always answered with a "yes":

- Have all witnesses identified themselves on the record?
- Have all witnesses been sworn under oath (group or individual)?
- Have all exhibits been identified for the record?
- Is the testimony focused on the request: Is it relevant?
- Have all those who desire to testify been given an opportunity to be heard?
- If the hearing is to be continued, has a definite time, date, and location of the hearing been announced?

## THE RECORD CHECKLIST

*All questions which follow must be answered "yes" to satisfy the record requirements of procedural due process.*

- Are all tape recording machines working?
- Are microphones in working order and turned on?
- Have all of the exhibits relevant to the hearing been submitted and identified by letter or number in a sequential order?
- Has all testimony been given either orally or in written form (no shaking of heads, shrugs, etc.)?
- Have all witnesses identified themselves?
- Have all witnesses referred to the exhibit number rather than "this thing" or "that"?
- Is the decisionmaker satisfied with the content of the record so that a decision can be made based solely on a review of the record?

## THE DECISION CHECKLIST

*All questions must be answered with a clear "yes" to satisfy this element of procedural due process.*

- Is the decision based on the record?
- Are there written Findings of Fact to support a decision?
- Are there written Conclusions of Law to support a decision?
- Have the criteria of the ordinance been reviewed?
- Do the conclusions refer to the facts that satisfy (or fail to satisfy) the criteria?
- If the decision is a denial, has a reason been given based on the criteria?
- If the decision is an approval, are **all** criteria satisfied?
- If a decision of approval is conditioned, are the conditions clear and understandable?
- Is the decision limited only to the request that has been properly noticed?

**APPENDIX 3****Outline of Rules of Procedure  
for Conducting Hearings****I. Definitions**

- Applicant
- Party
- Local Government
- Governing body
- Departmental staff
- Local ordinance
- State law
- Hearing Examiner
- Ex parte communication
- Clerk

**II. Ex Parte Communications**

- Initiated by member of the public
- Initiated by decisionmaker
- Remedy

**III. Hearing Examiner as Presiding Official\***

- Qualifications
- Appointment
- Removal
- Conflict of interest
- Disqualifications and replacement
- Independence

\*This section may be deleted if a Hearing Examiner system is not used.

**IV. Powers and Responsibilities of Presiding Official**

- Prescribe rules of procedure
- Hold conferences
- Administer oaths
- Issue subpoenas
- Allow oral and written testimony
- Prohibit or limit cross examination
- Rule on motions and other procedural items
- Regulate the course of the hearings and the conduct of parties
- Rule on, receive, exclude or limit evidence
- Abbreviate hearing's normal sequence of events
- Fix time limits
- Limit number of witnesses and length of testimony
- Take official notice of facts
- Question any party presenting testimony
- Make final decisions and/or recommendations to governing body
- Report periodically to governing body

**V. Nature of Proceedings**

- Frequency and schedule
- Computation of time
- Prehearing conference
- Informal format

- Expedited proceedings
- Trip to inspect land
- Burden of proof
- Rules of evidence
- Limits on testimony
- Public comment period
- Record of hearing

**VI. Rights of Applicant and Parties**

- Due notice
- Due process
- Testimony
- Limited cross examination
- Objection
- Motion
- Legal counsel

**VII. Elements of Hearing**

- Decisionmaker's introductory statement
- Report of departmental staff
- Testimony of applicant
- Testimony of support
- Testimony of opposition
- Cross examination (if allowed)
- Rebuttal
- Questions by the decisionmaker

**VIII. Hearing Docket**

- Application
- Staff report
- Public comments

- Evidence received
- List of exhibits
- Matters officially noticed
- Findings of fact
- Conclusions of law
- Decision or recommendation

**IX. Content of Staff Report**

- Names and addresses of land owner and applicant
- Summary of the requested action
- Common and legal descriptions of property
- Technical data summary of the property
- Current and proposed access to property
- In-depth analysis of project and its impact from the perspective of statutory criteria
- History of requested action and development in the surrounding properties
- Summary of any other requested land use permits in the area
- Appropriate maps
- Summary of public reaction to proposal
- Staff's conclusions

**X. Other Procedures**

- Withdrawal of application
- Continuation of hearing
- Reopening hearing and reconsideration
- Appeal

**MEMORANDUM**

---

TO: Planning Commission  
FROM: Planning Staff  
SUBJECT: Request for Reconsideration Memo  
DATE: September 12, 2025

The Town Council has requested that the Planning Commission reconsider their decision to approve vertical siding on the new home at 514/516 Road Street. This kind of request is called a “Request for Reconsideration.” The formal written request is attached to this memo.

Essentially, the Town Council asks you to take a second look at the project, and states their belief that Planning Commission should issue a revised decision that disallows the use of vertical siding.

This remains under your authority to decide. The recommendations as contained in the original staff report have not changed. The original staff report is attached to this memo.

1  
2  
3  
4  
5  
6  
7 **BEFORE THE PLANNING COMMISSION**  
8 **FOR THE TOWN OF LA CONNER**

9 **IN RE:**

10 **514/516 Road Street**

11 **NO. LU25-39HDR**

12 **REQUEST FOR**  
**RECONSIDERATION**

---

13 COMES NOW the Town of La Conner, and pursuant to Chapter 15.135 LCMC, seeks  
14 reconsideration of the Planning Commission's decision to approve the use of vertical siding on a  
15 residential project within the La Conner Historic preservation District.

16 **I. Decision**

17 The decision for which reconsideration is sought concerns an application for a new home  
18 situated at 514 Road Street in La Conner, Washington. The site is within the Historic Preservation  
19 District ("HPD") of the Town. The applicant for project, Lynn Laurel, has proposed siding with a  
20 vertical orientation. The Planning Commission conducted Historic Design Review, and approved the  
21 application.

22 Pursuant to the Town Council's decision of September 9, 2025, the La Conner Town Council  
23 respectfully requests the La Conner Planning Commission reconsider its decision in the matter  
24 captioned above.

25 **Town of La Conner**  
P.O. Box 400  
La Conner, WA 98257  
(360) 466-3125 Phone

## 1 II. Jurisdiction

2 Pursuant to Section 15.135.050 LCMC, the Planning Commission is provided the authority  
 3 to conduct historic design review of major new construction. The Town Council seeks  
 4 reconsideration of the Planning Commission's determination that proposed project complies with the  
 5 criteria set forth in Chapter 15.50 LCMC.

## 6 III. Error of Law

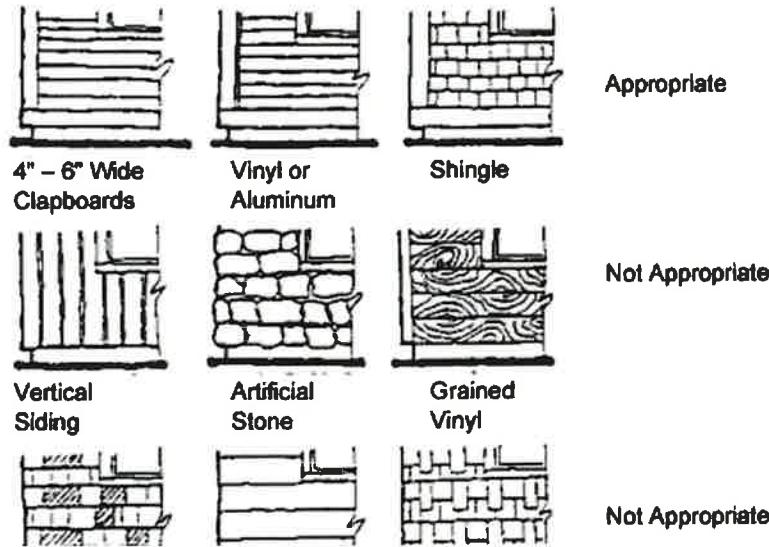
7 As stated in the Staff Report for this project, “[t]he proposed siding of the home is in a vertical  
 8 orientation, which is disallowed under LCMC 15.50.090 (2).” That section of the code reads as  
 9 follows:

10 (2) Wood – Clapboard, Weatherboard, Shingles, Siding, Decorative Elements.  
 11 Wood features may also include cornices, brackets, window architraves, and door-  
 12 way pediments, and their paints, finishes, and colors.

13 \* \* \*

14 (c) Horizontal wood siding in four-to-six-inch shiplap or clapboard is  
 15 preferred. Avoid vertical or wide horizontal siding.

16 **Siding Materials:**  
 17 4" to 6" siding and trim  
 18 are nearly always the  
 19 best choice



1 The project proposes the use of vertical siding for a new residential structure, which is inappropriate  
2 and to be avoided. This project is not for the repair or replacement of an existing residence. La  
3 Conner's municipal code specifically prohibits the use of vertical siding, and the Planning  
4 Commission's approval of the use of vertical siding is error.

5 **IV. Relief Requested**

6 The Planning Commission should reconsider its decision allowing the use of vertical siding,  
7 and issue a revised decision that disallows the use of vertical siding for project No. LU25-39HDR.

8

9 DATED this 11 day of Sept, 2025.

10

11 TOWN OF LA CONNER

12 Marnie Hannan



# *Town of La Conner*

Post Office Box 400  
La Conner, Washington 98257

## *Staff Report*

**TO:** Planning Commission  
**FROM:** Ajah Eills, Planning Director  
**APPLICANT:** Lynn Laurel  
**PROPERTY OWNER:** Lynn Laurel  
**PROJECT LOCATION:** 514/516 Road Street, La Conner WA, P74389  
**DATE:** August 26, 2025  
**APPLICATION FILE#:** LU25-39HDR  
**Historic Design Review**

## PROJECT DESCRIPTION

The application is for review and approval of a new home at 514 Road Street, Parcel P74389, in the Residential Zone. This home would replace a mobile home that was previously located on this site. In addition, the applicant is applying to put a new deck on the existing home. The applicant is the property owner.

The property is 514 Road Street, La Conner, WA, parcel P74389. It is within the La Conner Floodplain and not within 200ft of the shoreline. The exterior changes proposed are to create a new 1,551.3 square foot home with associated site changes, including the relocation of the existing shed, the development of a privacy fence between the two homes, the addition of a patio, and the replacement of a gravel driveway with concrete. Please see the attachments for a site plan (attachment 1), external elevations for the new home (attachment 2), and a visual representation of the deck that will be added to the existing home (attachment 3). This review is for the application of the Historic Preservation District code to the project.

## **FINDINGS of FACT**

1. The subject property is located within the town's Residential Zone. This building is allowed under the uses of the Residential Zone.
2. The subject property is within a floodplain. The subject property is not located within 200' of the shoreline. The project will need a floodplain permit. SEPA determination is not required.
3. The following sections of the Town of La Conner Municipal Code apply to this application:
  - Chapter 15.20 Residential Zone
  - Chapter 15.50 Historic Preservation District
4. The subject property is located within the Historic Preservation District. The proposed changes are to create a new structure within the District.
5. The proposed changes would not have a negative impact on the rest of the building, or on any surrounding property.
6. The proposed siding of the home is in a vertical orientation, which is disallowed under LCMC 15.50.090 (2). Please see attachment 4 for the code language and the visual figure included in code.

7. The applicant has submitted photos of buildings within the Historic Preservation District that currently have vertical siding. Please see attachment 5 for those photos.
8. The proposed design of the new home includes horizontal windows, which LCMC 15.50.090 (5) states should be avoided. The word “should” is defined in LCMC Chapter 15.50.025 (8) as follows: “(8) “Should,” in the context of this chapter, denotes a requirement that may be modified if the applicant demonstrates that the proposal or project as designed furthers the goals and objectives of the chapter equal to or better than the requirement would.”
9. The applicant has submitted photos of buildings within the Historic Preservation that currently have horizontal windows. Please see attachment 5.
10. In order to assess the requirement for vertical windows, staff poses the following question: would horizontal windows further the goals and objectives of the chapter equal to or better than the requirement for vertical windows? The following are the listed goals and objectives in chapter 15.50, from the section 15.50.101. Staff notes are in red, following the listed goal/objective.
  - Provide for the identification and protection of structures and sites within the town that reflect special elements of the town’s architectural, artistic, aesthetic, historical, economic, and social heritage; **Not applicable to a new home**
  - Facilitate restoration and upkeep of historic structures; **Not applicable to a new home**
  - Encourage public knowledge and appreciation of the town’s history and culture; **Not applicable to a new home**
  - Foster community pride and sense of identity based on recognition and use of historic resources; **Not applicable to a new home**
  - Preserve diverse architectural styles reflecting phases of the town’s history and encourage complimentary design and construction impacting historic resources; **Applicable to the development. The HPD already has buildings with horizontal windows that are complimentary in design; the proposed horizontal windows are comparable with the existing ones, and complimentary in design to the rest of the home. Horizontal windows would in this case further this goal equally to having all vertical windows.**
  - Enhance property values and increase economic benefits to the town and its residents; **Building a new house will enhance property values, but the shape of windows will likely not affect the value of the home. Not applicable to the window orientation.**
  - Identify and resolve conflicts between the preservation of historic structures and alternative land uses; **Not applicable to a new home**
  - Integrate the requirements for historic preservation into the development review process. **Not applicable to this question.**
  - Ensure that new construction and additions respect the scale, forms and proportions of the Historic Preservation District. **Applicable to this development. This new edition contains horizontal windows, and the applicant has supplied examples within the HPD that have the same scale and proportions as the proposed windows. Based on those examples, the proposed horizontal windows respect the scale, form and proportion of the HPD equally as well to all vertically proportioned windows.**
11. The proposed palette is compatible with existing historic preservation district colors. The applicant would like to paint the home with muted yellows and white, which are well represented in both the Sherman Willians and Benjamin Moore Historic Paint Collections.

12. The applicant is proposing to add a new deck to the existing home on the property. The deck will be made of cedar wood and is consistent with the setback restrictions. Porches and decks add character to residential entryways and are encouraged by LCMC 15.50.090 (8).
13. Dimensional Requirements: Section 15.35.040 of the LCMC sets forth dimensional standards. The proposed building is consistent with the town's height limits and setback restrictions.
14. The development, as modified by the following conditions, meets the requirements of all relevant codes and statutes.

**Staff Recommendation:**

Staff has determined that this application be approved, pending review and comment by the Planning Commission. It is further recommended that the following conditions be attached to the approval of this proposal:

1. Applicant shall modify the planned siding of the home to comply with LCMC 15.50.090 (2).
2. If adjacent rights-of-way are impacted, a Right-of-Way permit shall be required.
3. All debris must be contained and removed from the site upon completion of work, with special attention paid to ensure no debris enters the waterways or Town sewer system.
4. All contractors and subcontractors must be licensed to conduct business in the Town of La Conner.
5. The permit holder must provide contact information on all contractors and subcontractors to the Town of La Conner prior to commencement of construction.
6. All contractors and subcontractors must report sales tax transactions within the Town of La Conner. The La Conner sales tax number is 2905.
7. All of the work performed shall be fully consistent in terms of colors and materials with the information provided in the applicant's submittal.

Nothing in this approval shall be construed to exempt the proposal from any Federal, State or local regulations.

Ajah Eills, Planning Director  
Town of La Conner

REVISIONS	BY

## Attachment 1

# ACCUPLAN

CUSTOM BUILDING DESIGN  
NEW CONSTRUCTION • REMODELS • ADDITIONS • GARAGES • SHOPS • DECKS  
7926 Delvin Hill Road, Sedro-Woolley, WA 98284  
brett@accuratebuildingplans.com

PROPOSED RESIDENCE FOR:  
**LYNN LAUREL**  
516 ROAD STREET, LA CONNER, WASHINGTON

DEVELOPED AREAS:

TOTAL LOT AREA: 8,860.0 S.F. (0.2034 ACRE)			
DEVELOPED AREA	EXISTING	PROP. ADDED/REMOVED	TOTALS
EXIST. RESIDENCE (ADU)	885.3 S.F. (9.99%)	-----	885.3 S.F. (9.99%)
EXIST. PORCH	21.1 S.F. (0.31%)	-----	21.1 S.F. (0.31%)
EXIST. CARPORT	346.3 S.F. (3.91%)	-----	48.5 S.F. (0.55%)
EXIST. DECKS	48.5 S.F. (0.55%)	-----	346.3 S.F. (3.91%)
EXIST. TRAILER	362.0 S.F. (4.09%)	- 362.0 S.F.	-----
EXIST. SHED	192.0 S.F. (2.17%)	-----	192.0 S.F. (2.17%)
PATIOS/WALKS/DRIVES	2,010.6 S.F. (22.69%)	- 628.4 S.F.	1,382.2 S.F. (15.60%)
PROPOSED RESIDENCE	-----	+ 1,551.3 S.F.	1,551.3 S.F. (17.51%)
PROP. COVD WALK	-----	+ 89.3 S.F.	89.3 S.F. (1.01%)
PROP. PATIO	-----	+ 256.6 S.F.	256.6 S.F. (2.89%)
TOTALS	3,812.4 S.F. (43.71%)	+ 906.8 S.F.	4,719.2 S.F. (53.94%)

IMPERVIOUS SURFACES:

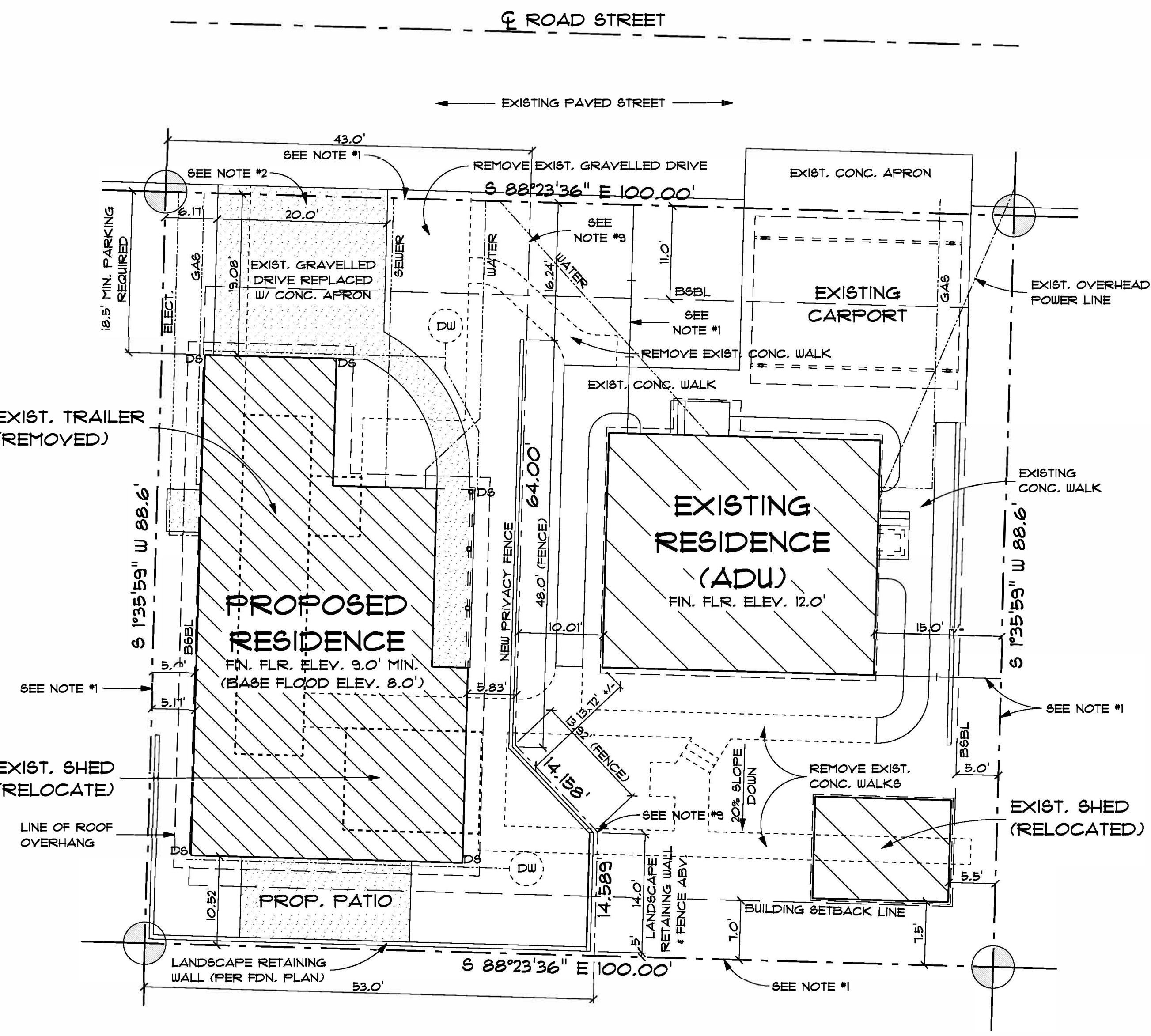
TOTAL LOT AREA: 8,860.0 S.F. (0.2034 ACRE)			
IMPERVIOUS AREA	EXISTING	PROP. ADDED/REMOVED	TOTALS
BUILDINGS *	2,091.2 S.F.	+ 1,546.6 S.F.	3,643.8 S.F.
DECK/PATIOS/WALKS/DRIVES **	1,854.3 S.F.	- 620.9 S.F.	1,163.4 S.F.
TOTALS	3,951.5 S.F.	+ 855.7 S.F.	4,807.2 S.F.

\* INCLUDING ROOF OVERHANG

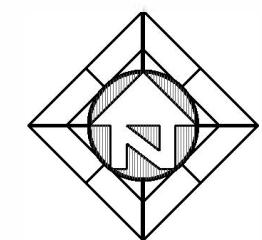
\*\* NOT COVERED BY ROOF OVERHANG

SITE PLAN NOTES:

1. INSTALL SILT FENCE PER BMP C233 AT PERIMETER OF AREA DISTURBED BY CONSTRUCTION (TOTAL AREA DISTURBED BY CONSTRUCTION IS APPROXIMATELY 6,253 S.F. CLEARLY MARK PERIMETER OF NEUTRAL SLOPE/UP/SLOPE AREAS TO BE DISTURBED BY CONSTRUCTION WITH HIGH-VISIBILITY CONSTRUCTION TAPE, RIBBON OR SIMILAR METHOD. VERIFY VEGETATED STRIP (BMP C234) OR STRAW WATTLES (BMP C235) AT STORMWATER OUTLET. STORMWATER CHANNELS (IF ANY) TO BE STABILIZED PER BMP C12, C202 AND/OR C203. IF STORMWATER IS CHANNELLED TO EXISTING DRAIN INLET PROTECT PER BMP C220 & MAINTAIN AS NEEDED UNTIL CONSTRUCTION IS COMPLETED)
2. EXISTING/REBUILT DRIVEWAY/PARKING TO ACT AS CONSTRUCTION ACCESS PER BMP C105
3. BARE GROUND & PROPOSED STRUCTURE, AREAS DEPOLITATED DURING CONSTRUCTION AND STOCKPILED SOIL TO BE PROTECTED WITH GROUND COVER PER BMP C120, C121, C122, C123, C124, C125, C131 AND/OR C140 TO PREVENT EROSION
4. DOWNSPOUTS (DS) TO BE CONNECTED BY TIGHTLINE TO NEW DRYWELL (DW) WHERE SHOWN PER BMP T5.10A (TOTAL ROOF AREA SERVED IS 1984.6 S.F.)
5. RUNOFF FROM DEMOLITION DEBRIS, CONC. TRUCK WASTE AND OTHER POLLUTANTS TO BE MITIGATED PER BMP C151, C152 & C153
6. SLOPE GRAVELLED/CONC. WALKS/LANDINGS AWAY FROM STRUCTURE MINIMUM 1/4" PLF (2%) TO DRAIN STORMWATER SHEET FLOW ONTO ADJACENT VEGETATED STRIP (EXIST/REPLANTED LAWN)
7. POWER, GAS, WATER & SEWER LINE LOCATIONS NOT CONFIRMED (BUILDER TO REQUEST UTILITY LOCATE PRIOR TO STARTING ANY LAND-DISTURBING ACTIVITY OR EXCAVATION WORK. BUILDER TO VERIFY LOCATIONS FOR CONNECTIONS TO CITY UTILITIES WITH CITY OF LA CONNER)
8. SITE SLOPES LESS THAN 5% IN ANY DIRECTION EXCEPT FOR SLOPED AREA SHOWN ON SITE PLAN
9. IMAGINARY PROPERTY LINE SHOWN BETWEEN EXIST. RESIDENCE (ADU) AND PROP. RESIDENCE FOR FIRE-SEPARATION PURPOSES (SEE NOTE #6 ON SHEET 4)
10. NOT ALL OF THESE ITEMS WILL APPLY TO THIS SITE. IT IS THE BUILDER'S RESPONSIBILITY (4 BUILDING OFFICIAL) TO DETERMINE WHICH ITEMS ARE APPLICABLE PER THIS SITE'S UNIQUE CONDITIONS

SITE PLAN

SCALE: 1" = 10'-0"

LEGAL DESCRIPTION:

(0.2000 ac) LOTS 16 & 17, BLOCK 18, MAP OF SYNDICATE ADDITION TO THE TOWN OF LA CONNER, SKAGIT CO., WASH. AS PER PLAT RECORDED IN VOLUME 2 OF PLATS, PAGE 109, RECORDS OF SKAGIT COUNTY, WASHINGTON

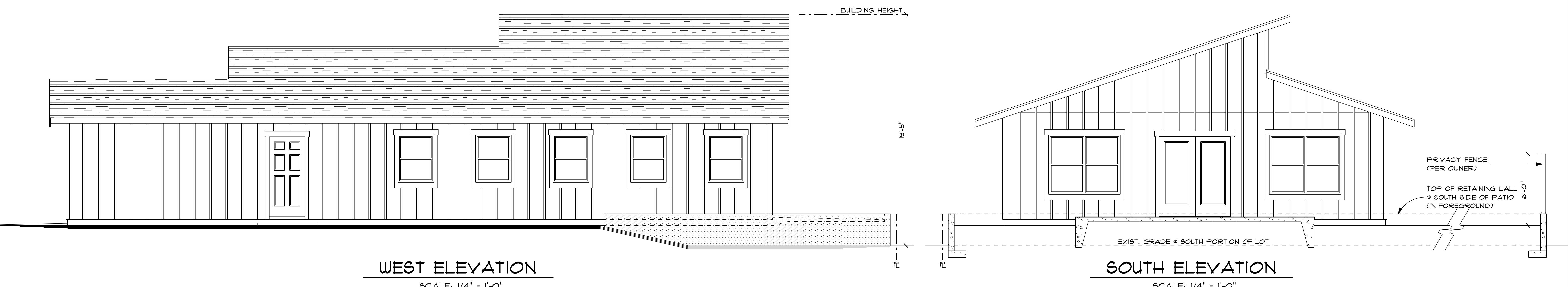
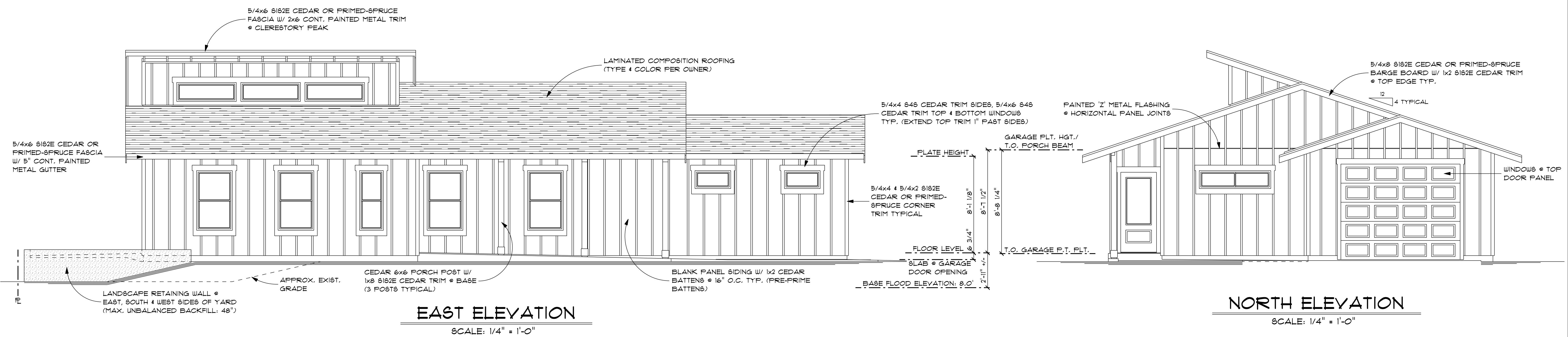
A PORTION OF THE SOUTHEAST 1/4 OF SECTION 36, TOWNSHIP 34 NORTH, RANGE 2 EAST, W.M., LA CONNER, WASHINGTON

PARCEL# P14389

SITE ADDRESS: 516 ROAD STREET, LA CONNER, WA 98257

ACCUPLAN CUSTOM BUILDING DESIGN (DESIGNER) HAS TAKEN CARE TO VERIFY THE ACCURACY OF THESE PLANS. IT IS THE BUILDER'S RESPONSIBILITY TO VERIFY ALL DIMENSIONS PRIOR TO STARTING CONSTRUCTION. ALL CONSTRUCTION SHALL COMPLY WITH THE 2021 INTERNATIONAL RESIDENTIAL CODE (4 ASSOCIATED 2021 CODES), 2021 WASHINGTON STATE ENERGY CODE, AND ALL APPLICABLE LOCAL, STATE & FEDERAL BUILDING CODES THAT HAVE BEEN LAWFULLY ADOPTED BY THE BUILDING DEPARTMENT OF JURISDICTION. DESIGNER IS NOT RESPONSIBLE FOR ANY CHANGES MADE TO THESE PLANS, SPECIFICATIONS OR DETAILS BY OTHERS OR BY THE BUILDER ON-SITE

© 2025  
ACCUPLAN CUSTOM  
BUILDING DESIGN  
DRAWN BY  
BJ  
DATE  
MAY 28, 2025  
JOB NUMBER  
2604  
SHEET  
1  
OF EIGHT SHEETS



**ACCUPLAN**  
CUSTOM BUILDING DESIGN  
NEW CONSTRUCTION • REMODELS • ADDITIONS • GARAGES • SHOPS • DECKS  
7926 Delvin Hill Road, Sedro-Woolley, WA 98284  
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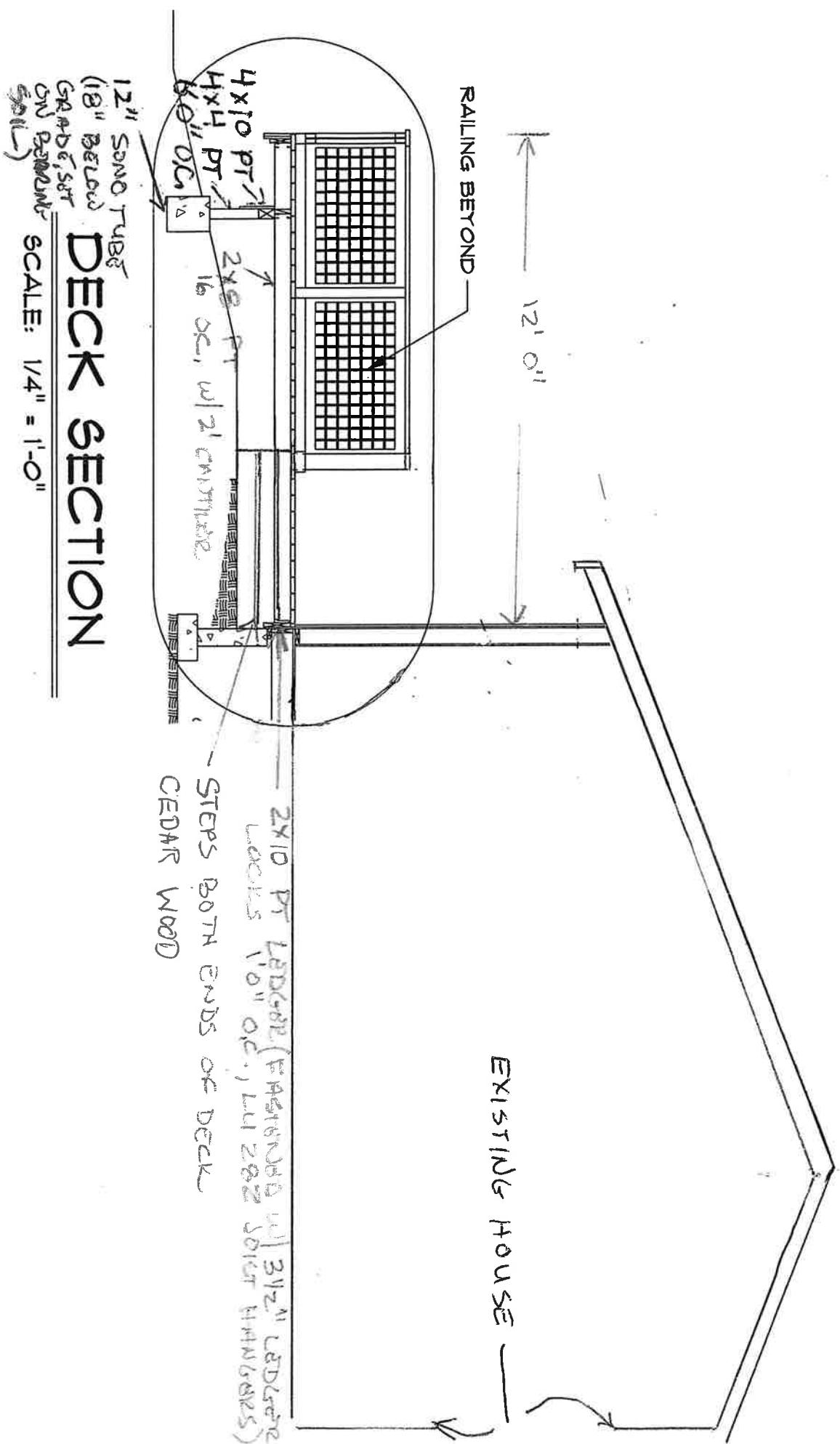
**LYNN LAUREL**  
516 ROAD STREET, LA CONNER, WASHINGTON

© 2025  
ACCUPLAN CUSTOM  
BUILDING DESIGN  
DRAWN BY  
BJ  
DATE  
MAY 28, 2025  
JOB NUMBER  
2804  
SHEET  
2  
OF EIGHT SHEETS

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9

Lynn Lurk deck addition @ 516 Ross St. Belmont





## Attachment 4

**15.50.090 Building exterior.**

(1) Masonry – Brick, Stone, Terra-Cotta, Concrete, Adobe, Stucco, Mortar. Masonry features may include walls, brackets, railings, cornices, window architraves, door pediments, steps, and columns, joint unit and size, tooling and bonding patterns, coatings, and color.

- (a) Masonry features should be identified, retained, preserved and protected using approved methods and techniques generally recognized for historic structures.
- (b) Deteriorated mortar should be replaced with mortar which duplicates the strength, composition, color, and texture of the old mortar. Old mortar joints should be duplicated in width and in joint profile.

(2) Wood – Clapboard, Weatherboard, Shingles, **Siding**, Decorative Elements. Wood features may also include cornices, brackets, window architraves, and door-way pediments, and their paints, finishes, and colors.

- (a) Wood features should be identified, retained, preserved, protected and maintained using approved methods and techniques generally recognized for historic structures.
- (b) Repair may include limited replacement in kind – or with compatible substitute materials – of those extensively deteriorated or missing parts of features where there are surviving prototypes such as brackets, moldings, or sections of siding. Features of the existing structure should guide the new work.
- (c) Horizontal wood siding in four-to-six-inch shiplap or clapboard is preferred. Avoid vertical or wide horizontal siding.
- (d) Avoid panelized siding, batten siding and artificial stone. Wainscot is to be used only in keeping with historic architectural character of the structure.

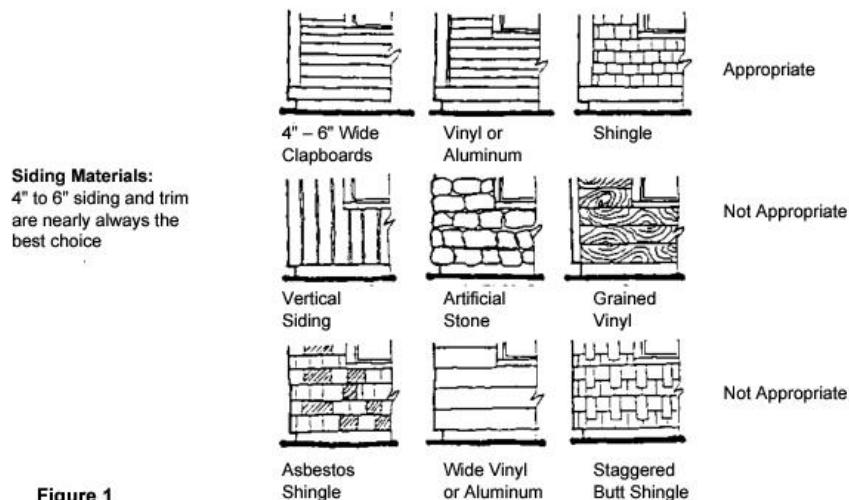
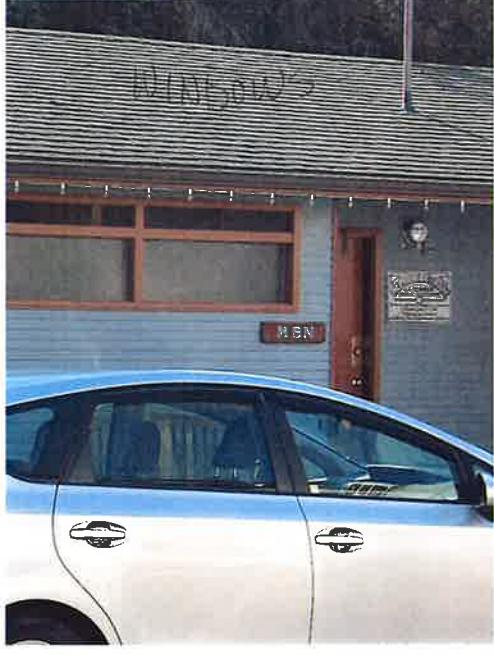


Figure 1

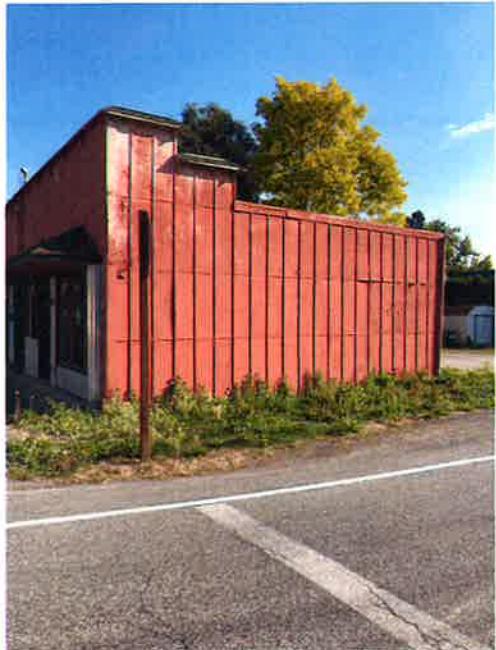
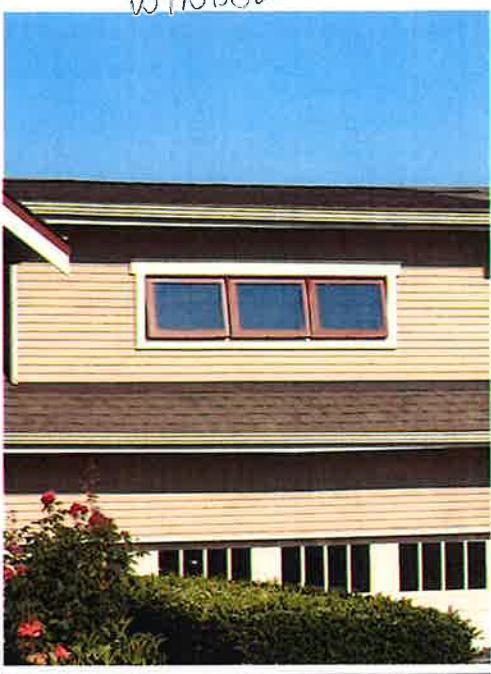




WINDOW

95

WINDOW



MEMORANDUM

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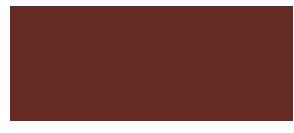
TO: Planning Commission  
FROM: Planning Staff  
SUBJECT: LU25-41HDR Color Follow-Up  
DATE: September 12, 2025

During the last Commission meeting, Commissioners heard LU25-41HDR, relating to repainting 313 Morris Street. As part of this, the Commission asked Planning to confirm that the color painted on the building was the same color as was submitted in the swatch. The color painted on the is the same color as submitted in the swatch. Because color can look very different on different materials, on computer screen, and with different lighting, I believe that we should edit the code to include specific permitted hex color codes so that there is absolute clarity about the colors that are allowed verses not allowed. This is discussed more in the next agenda item, but is also relevant here.

Here is the color submitted:



Here is a selection of historical reds found in Sherman Williams or Benjamin Moore historical paint collection.



Color Recommendations for HPD by HEX code:

Historic Color SW Pallets from Sherman Williams American Heritage Historic Color Combos are listed below. SW Pallets include Body, Trim, and two Accent colors. Sherman Williams provided these pallets, I did not pick the colors myself.

SW Pallet 1:

Body: Renwick Rose Beige (#B18A73) 

Trim: Renwick Beige (#C4B19E) 

Accent 1: Pewter Tankard (#A39C90) 

Accent 2: Polished Mahogany (#432925) 

SW Pallet 2:

Body: Renwick Golden Oak (#96724D) 

Trim: Downing Straw (#CAA97B) 

Accent 1: Roycroft Vellum (#EBDBC0) 

Accent 2: Deepest Mauve (#705D5C) 

SW Pallet 3:

Body: Downing Sand (#CCBDA6) 

Trim: Rookwood Clay (#9B7F64) 

Accent 1: Rookwood Sash Green (#456560) 

Accent 2: Rookwood Blue Green (#748579) 

SW Pallet 4:

Body: Sheraton Sage (#958C6D) 

Trim: Downing Sand (#CCBDA6) 

Accent: Rookwood Antique Gold (#A17E50) 

Accent 2: Fairfax Brown (#64483D) 

SW Pallet 5:

Body: Eastlake Gold (#C79467) 

Trim: Classical White (#EDE2CB) 

Accent 1: Curio Gray (#9B8C7A) 

Accent 2: Downing Slate (#737A80) 

SW Pallet 6:

Body: Pearl Gray (#CDD0C5) 

Trim: Classic Light Buff (#F0EADB) 

Accent 1: Colonial Revival Stone (#A8947C) 

Accent 2: Mulberry Silk (#967A70) 

SW Pallet 7:

Body: Downing Slate (#737A80) 

Trim: Downing Straw (#CAA97B) 

Accent1: Rookwood Antique Gold (#A17E50) 

Accent 2: Rookwood Medium Brown (#715544) 

## SW Pallet 8:

Body: Downing Earth (#897C67) 

Trim: Renwick Beige (#C4B19E) 

Accent 1: Rookwood Terra Cotta (#995A42) 

Accent 2: Rookwood Dark Brown (#5F4B41) 

## SW Pallet 9:

Body: Renwick Olive (#948565) 

Trim: Downing Sand (#CCBDA6) 

Accent 1: Rookwood Dark Green (#575D4B) 

Accent 2: Rookwood Amber (#BD8145) 

## SW Pallet 10:

Body: Craftsman Brown (#AF9278) 

Trim: Roycroft Vellum (#EBDBC0) 

Accent 1: Rookwood Brown (#81634C) 

Accent 2: Naval (#2D3B49) 

## SW Pallet 11:

Body: Birdseye Maple (#E4C291) 

Trim: Roycroft Brass (#7B6A50) 

Accent 1: Roycroft Bronze Green (#565448) 

Accent 2: Aurora Brown (#6C4339) 

SW Pallet 12:

Body: Roycroft Pewter (#5C605F) 

Trim: Weathered Shingle (#938068) 

Accent 1: Roycroft Vellum (#EBDBC0) 

Accent 2: Roycroft Copper Red (#793324) 

SW Pallet 13:

Body: Antique White (#E9DCC6) 

Trim: Roycroft Suede (#A79472) 

Accent 1: Creamy (#EEE7D9) 

Accent 2: Bunglehouse Blue (#47626F) 

SW Pallet 14:

Body: Peace Yellow (#EFCF9D) 

Trim: Rookwood Antique Gold (#A17E50) 

Accent 1: Classical White (#EDE2CB) 

Accent 2: Roycroft Bottle Green (#303E36) 

SW Pallet 15:

Body: Roycroft Mist Gray (#C1BCB0) 

Trim: Downing Stone (#A4A093) 

Accent 1: Extra White (#EDEEE9) 

Accent 2: Rookwood Dark Red (#492728) 

SW Pallet 16:

Body: Downing Stone (#A4A093) 

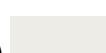
Trim: Sage Green Light (#74715E) 

Accent 1: Roycroft Bronze Green (#565448) 

Accent 2: Classic Light Buff (#F0EADB) 

SW Pallet 17:

Body: Rookwood Clay (#9B7F64) 

Trim: Pure White (#EEECE5) 

Accent 1: Downing Sand (#CCBDA6) 

Accent 2: Teal Stencil (#688482) 

SW Pallet 18:

Body: Downing Straw (#CAA97B) 

Trim: Roycroft Vellum (#EBDBC0) 

Accent 1: Roycroft Pewter (#5C605F) 

Accent 2: Classic French Gray (#888782) 

## SW Pallet 19:

Body: Needlepoint Navy (#5A6A73) 

Trim: Classic Light Buff (#F0EADB) 

Accent 1: New Colonial Yellow (#D9AD7F) 

Accent 2: Antiquarian Brown (#946644) 

## SW Pallet 20:

Body: Chelsea Gray (#B6B7B0) 

Trim: Westchester Gray (#797978) 

Accent 1: Decorous Amber (#AC7559) 

Accent 2: Roycroft Pewter (#5C605F) 

## SW Pallet 21:

Body: Downing Sand (#CCBDA6) 

Trim: Classical White (#EDE2CB) 

Accent 1: Toile Red (#8B534E) 

Accent 2: Rookwood Dark Brown (#5F4B41) 

## SW Pallet 22:

Body: Colonial Revival Stone (#A8947C) 

Trim: Classical White (#EDE2CB) 

Accent 1: Tricorn Black (#2F2F30) 

Accent 2: Rookwood Red (#622f2d) 

SW Pallet 23:

Body: Colonial Revival Gray (#B4B9B9) 

Trim: Pure White (#EEECE5) 

Accent 1: Downing Slate (#737A80) 

Accent 2: Harvester (#EDC38E) 

SW Pallet 24:

Body: Colonial Revival Green Stone (#A39B7E) 

Trim: Classic Light Buff (#F0EADB) 

Accent 1: Polished Mahogany (#432925) 

Accent 2: Roycroft Bronze Green (#565448) 

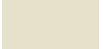
Benjamin Moore also has a Historical Color Collection with expert-picked coordinating colors. Benjamin Moore provides coordinating colors with the main color. A selection of historical colors with accompanying historical colors with HEX code included follows. I selected historical colors that had at least two historical coordinating colors listed. This took some time, and because of that I wanted to get Commissioner input before continuing with pallets.

BM Pallet 1:

Body: Louisburg Green (#9C9E87) 

Accent 1: Wickham Gray (#D4D8D2) 

Accent 2: Guilford Green (#CBCDAE) 

Accent 3: Lancaster Whitewash (#E6E1CB) 

BM Pallet 2:

Body: Beacon Hill Damask (#E5DBAB) 

Accent 1: Greenmount Silk (#ECE4C4) 

Accent 2: Danville Tan (#BBAB88) 

BM Pallet 3:

Body: Hawthorne Yellow (#F5E1A4) 

Accent 1: Wickham Gray (#D4D8D2) 

Accent 2: Abingdon Putty (#D6CEB1) 