

# CITY OF LYNDEN



Mayor  
Scott Korthuis

Council Members  
Gary Bode  
Ron De Valois  
Gerald Kuiken  
Nick H. Laninga  
Brent Lenssen  
Kyle Strengholt  
Mark Wohlrab

Online (Microsoft Teams) City Council Meeting  
City Hall - 300 Fourth Street  
April 05, 2021

Members of the public may join the city council meeting telephonically by dialing 1-253-948-9362. You will then be prompted to enter the Conference ID 175 963 053#. It is necessary to enter the # symbol after entering the numerals.

To join the city council meeting via computer please contact the city clerk at 360-255-7085 before 5 p.m. the day of the council meeting and provide an email address so a meeting invitation can be emailed to you.

If you would like to speak before council, please contact the city clerk before 12:00 noon on Thursday prior to the council meeting so that you can be added to the agenda. The time allotted to speak is up to 4 minutes. You can speak to any topic that is not on that night's agenda.

Unscheduled public comments will not be taken at council meeting until further notice.

## **Call to Order**

## **Roll Call**

## **Pledge of Allegiance**

## **Oath of Office**

## **Approval of Minutes**

[1.](#) Draft Council Minutes- Regular Meeting

## **Items from the Audience**

### ***Scheduled***

### ***Unscheduled (20 Minutes)***

*Audience members may address the Council on any issue other than those scheduled for a public hearing or those on which the public hearing has been closed. Prior to commenting, please state your name, address, and topic. Please keep comments under 4 minutes.*

**Consent Agenda**

- [2.](#) Approval of Payroll and Claims
- [3.](#) Remand of Site-Specific Rezone 20-05 – O & S Farms
- [4.](#) Ordinance No. 1623 – Site Specific Rezone 20-04 – Lagerwey / Kode Kamp Vista
- [5.](#) Preliminary Plat Approval – Kode Kamp Long Plat

**Public Hearing**

**Unfinished Business**

**New Business**

- [6.](#) Ordinance No. 1622-Park Impact Fees
- [7.](#) Select Hearing Examiner

**Other Business**

- [8.](#) Draft Parks Committee Minutes March 15, 2021
- [9.](#) Draft- Public Works Committee Meeting Minutes March 3, 2021 REVISED
- [10.](#) Calendar

**Executive Session**

**Adjournment**

# CITY OF LYNDEN

## EXECUTIVE SUMMARY



<b>Meeting Date:</b>	April 5, 2021	
<b>Name of Agenda Item:</b>	Draft Council Minutes- Regular Meeting	
<b>Section of Agenda:</b>	Approval of Minutes	
<b>Department:</b>	Administration	
<b>Council Committee Review:</b>	<input type="checkbox"/> Community Development <input type="checkbox"/> Public Safety <input type="checkbox"/> Finance <input type="checkbox"/> Public Works <input type="checkbox"/> Parks <input type="checkbox"/> Other: N/A	<b>Legal Review:</b> <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required
<b>Attachments:</b>	Draft Council Minutes- Regular Meeting	
<b>Summary Statement:</b>	Draft Council Minutes- Regular Meeting	
<b>Recommended Action:</b>	For Council review.	

# CITY OF LYNDEN

## CITY COUNCIL MINUTES OF REGULAR MEETING



March 15, 2021

### 1. CALL TO ORDER

Mayor Korthuis called to order the March 15, 2021 regular session of the Lynden City Council at 7:00 p.m. held through an online web-based meeting platform (Microsoft Teams).

#### ROLL CALL - None

Members present: Mayor Scott Korthuis and Councilors, Ron De Valois, Jerry Kuiken, Brent Lenssen, Nick Laninga, Kyle Strengholt and Mark Wohlrab.

Members absent Gary Bode absent with notice.

Staff present: Finance Director Anthony Burrows, Fire Chief Mark Billmire, Parks Director Vern Meenderinck, Planning Director Heidi Gudde, Police Chief Steve Taylor, Public Works Director Steve Banham, City Clerk Pam Brown, City Administrator Mike Martin, and City Attorney Catherine Moore.

#### OATH OF OFFICE- None

#### APPROVAL OF MINUTES

***Councilor Strengholt moved and Councilor Kuiken seconded to approve the March 1, 2021 regular council minutes as presented. Motion approved on a 6-0 vote.***

#### ITEMS FROM THE AUDIENCE

##### Scheduled- None

##### Unscheduled

Allie Macomber, 9529 Hammer Road, Lynden

Expressed how happy she and her family are to reside in Lynden and thanked the Mayor and the Council for the direction and guidance they have provided throughout the COVID-19 event. She spoke in support of protecting constitutional rights and also for the protection of the citizen's rights and personal freedoms.



# CITY OF LYNDEN

CITY COUNCIL  
MINUTES OF REGULAR MEETING



## 2. CONSENT AGENDA

**Payroll information is unavailable at this time because of the finance department's transition to a new payroll system (Caselle)**

### **Approval of Claims – March 16, 2021**

Manual Warrants No.	<u>21578</u>	through	=		\$278.52
EFT Payment Pre-Pays					\$3,263.43
				Sub Total Pre-Pays	\$3,541.95
Voucher Warrants No.	<u>21606</u>	through	<u>21753</u>		\$1,053,966.25
EFT Payments					<u>\$0.000</u>
				Sub Total	\$1,053,966.26
				Total Accts. Payable	<b>\$1,057,508.20</b>

### **Award Bid for Foxtail Street Extension Project**

Staff recently solicited bids for the Foxtail Street Extension Project. Ten bids were received on March 4, 2021 and Reichardt and Ebe Engineering prepared the Bid Tabulation. The Public Works Committee, at their March 3rd meeting, concurred that the bid results could be forwarded directly to City Council after informing them of the results. The Committee was advised of the bids and concurred to recommend award to Colacurcio Brothers, Inc., the lowest responsive and responsible bidder, in the amount of \$371,615.19, including Washington state sales tax. This amount was below the Engineer's estimate.

***Councilor Kuiken moved and Councilor Wohlrab seconded to approve the Consent Agenda. Motion approved on a 6-0 vote.***

## 3. PUBLIC HEARING - None

## 4. UNFINISHED BUSINESS- None

## 5. NEW BUSINESS

### **Amendment to the Public Defender's Contract**

Angela Anderson became Lynden's Public Defender in October 2019 and entered into a contract with the city for a term that ends in October 2021. She recently asked that some

# CITY OF LYNDEN

## CITY COUNCIL MINUTES OF REGULAR MEETING



terms in the agreement be changed to reflect local market rates. Specifically, she asked that the pay for cases she is assigned to be raised from \$275/case to \$350/case. This amount is consistent with the per case rate in Ferndale, Sumas, and Blaine. She also asked that the rate for the more labor-intensive cases involving Driving Under the Influence and certain Domestic Violence be increased to \$400/case. Together, these changes would add an estimated \$12,150 cost to the annual contract (about \$8,000 for the remainder of 2021). The amended contract would increase the assigned case rate effective immediately, while the DUI and DV case rates would take effect Nov. 1 this year.

In exchange for amending the contract before it expires in October, Ms. Anderson has agreed to extend her contract for two years, meaning it will expire in October 2023. Ms. Anderson is well regarded by her colleagues in Lynden's Municipal Court, including Judge Lewis, and together they operate as an efficient team. There is no metric that can prove the efficacy of our Court, but there is little doubt that a smoothly working court system saves Lynden much more than the additional cost of this contract amendment.

***Councilor Wohlrab moved and Councilor Kuiken seconded to amend the contract with Ms. Anderson to include the changes as described. Motion approved on a 6-0 vote.***

### Site Specific Rezone- Kode Kamp (Lagerwey Property)

Jeff Palmer, on behalf of Northwood Partners LLC, has applied for a site-specific rezone of approximately 28 acres located at the northeast corner of Kamm Road and Northwood Road. The subject property is currently zoned for single family residential with a minimum lot size of 10,000 square feet (RS-100). The applicant has requested that the zoning shift to a residential zoning known as Residential – Mixed Density (RMD). This is a zoning category that calls for a variety of lot sizes and is meant to accommodate detached single-family homes, attached (or paired) single-family homes, and duplexes.

The applicant has provided a narrative which responds to the site-specific rezone criteria found in LMC 17.19.050. Additionally, the applicant has simultaneously applied for long plat approval of the same property. The proposed 92-lot long plat utilizes the RMD lot configuration criteria described in LMC 19.16 and a variety of lot sizes which range from the 10,000's to the 6,000's.

The Planning Commission considered the Rezone request at a public hearing on January 28, 2021. The Commission voted to recommend the rezone action but with specific conditions as outlined in Resolution 21-03. The Technical Review Committee has concluded review and also recommends approval of the rezone. However, as the conditions described by the Planning

# CITY OF LYNDEN

## CITY COUNCIL MINUTES OF REGULAR MEETING



Commission is specific to potential changes in lot configuration and plat design, staff recommends the Site-Specific Rezone be considered on its own merit and decision based on the criteria related to rezone requests. Changes which would result in additional lots or other significant changes to the plat would be brought before the Planning Commission in a separate action. Staff does not recommend that rezone action be connected to specifics of plat configuration. An ordinance reflecting the Council's decision will be brought forward at a subsequent meeting.

***Councilor Wohlrab left the council meeting at 7:10 p.m.***

***Councilor Lenssen moved and Councilor Strengholt seconded to approve the Lagerwey / Kode Kamp Site Specific Rezone, Application 20-04 shifting the subject property from a residential designation of RS-100 to Residential Mixed Density. Motion approved on a 5-0 vote.***

### Preliminary Plat Approval- Kode Kamp Long Plat

Jeff Palmer, on behalf of Northwood Partners LLC, has applied for the subdivision of approximately 28 acres located at the northeast corner of Kamm Road and Northwood Road into 92 lots. The proposed long plat is dependent on a corresponding application to rezone the property from RS-100 to Residential –Mixed Density (RMD). This is a zoning category that calls for a variety of lot sizes and is meant to accommodate detached single-family homes, attached (or paired) single-family homes, and duplexes. Proposed lot sizes range from the 6,000 square foot rant to well over 10,000 square feet.

The applicant has indicated a desire to maintain all the lots for single family detached homes except for 5 lots near the Northwood entrance of the plat which would be used for duplexes. Pedestrian accommodations will be made interior to the plat in the form of sidewalks and, on Northwood Road, widened roadway shoulder that is delineated by a curb and flexible lane markers.

The Technical Review Committee has concluded review with a recommendation to approve the long plat with the applicant meeting two specific conditions related to minimum lot sizes and / or the location of the duplex lots.

A public hearing was held before the Planning Commission on January 28, 2021. The Planning Commission concluded the hearing by voting to recommend to the City Council but similar to staff recommendation included the following conditions:

- (1.) That duplex lots be disbursed throughout the interior of the plat in areas where on-street parking is more readily available; and
- (2.) That there be no single family or duplex parking be allowed on Northwood Road; and

# CITY OF LYNDEN

## CITY COUNCIL MINUTES OF REGULAR MEETING



(3.) That the East Lynden Trail be extended along Northwood Road to meet condition #34 as noted in the Technical Review Committee Report dated January 6, 2021, under Parks and Recreation.

***Councilor Lenssen moved and Councilor Kuiken seconded, grant preliminary approval of the Kode Kamp Long Plat 20-01 as conditioned by the Planning Commission and to authorize the Mayor's signature on the attached Findings of Fact and Conclusions of Law. Motion approved on a 5-0 vote.***

### Site Specific Rezone 20-05 – O & S Farms

Ashley Gosal, on behalf of Fishtrap Creek LLC, has applied for a site-specific rezone of the property located at 8035 Guide Meridian. The subject property is currently zoned Commercial Services – Regional (CSR).

The applicant has requested that the zoning shift to Commercial Services – Local (CSL). CSR zoning has traditionally been geared toward big box retail and strip shopping centers. More recently the City updated the CSR definition and permitted uses to embrace uses consistent with business parks including light manufacturing and warehousing. Many uses that are permitted in CSL are also permitted in CSR with the notable exception of multi-family residential in a mixed-use setting. This is only permitted in CSL and is a primary reason the applicant seeks this rezone request.

The City's Land Use Code includes the criteria by which site specific rezones can be approved. These are addressed in the application. Technical Review Committee comments and report to the Planning Commission are found in the council packet. The Committee's review concluded with a recommendation for approval of the site-specific rezone given that the aforementioned code revisions and the changes to the retail market marked a change condition as described in the approval criteria (LMC 17.19.050).

The Planning Commission considered the rezone request at a public hearing on January 28, 2021. The hearing concluded with a recommendation to the City Council to deny the rezone request. The minutes of this meeting are included in the packet as well as Planning Commission Resolution 21-02. After the Planning Commission decision, the Planning Department received a letter from legal counsel for the applicant. The letter outlines concerns related to the January 28th hearing. Per RCW 42.30.140(2) the City Attorney has recommended that these concerns be discussed in executive session prior to Council action on the rezone application.

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## CITY COUNCIL MINUTES OF REGULAR MEETING



### 6. OTHER BUSINESS

#### Council Committee Updates

Councilor Strengholt gave a summary of the Finance Committee meeting. Councilor Lenssen gave a summary of the most recent Public Safety Committee meeting. Chief Taylor spoke to the recent Supreme Court decision (the “Blake” decision) which had the effect of eliminating the statute that was relied on for many drug cases. Councilor De Valois summarized today’s Parks Committee meeting.

### 7. EXECUTIVE SESSION

Council recessed into executive session at 7:25 p.m. concerning a matter of potential litigation. The executive session is expected to last 10 minutes and a decision is expected.

The Council meeting reconvened at 7:35 p.m.

***Councilor Kuiken moved and Councilor Lenssen seconded to order a site-specific re-zone application back to the Planning Commission for a new open record hearing at which public testimony will be taken. The Planning Commission will need to make written findings as to each criterion in LMC 17.19.050 and 17.09.040. Also, Commissioner Timmer must consider if she should recuse herself from the deliberations. The City Council needs a response by May 13, 2021. Motion approved on a 5-0 vote.***

### 8. ADJOURNMENT

The March 15, 2021 regular session of the Lynden City Council adjourned at 7:58 p.m.

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Pamela D. Brown, MMC  
City Clerk

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Scott Korthuis  
Mayor

# CITY OF LYNDEN

## EXECUTIVE SUMMARY



<b>Meeting Date:</b>	April 5, 2021	
<b>Name of Agenda Item:</b>	Approval of Payroll and Claims	
<b>Section of Agenda:</b>	Consent	
<b>Department:</b>	Finance	
<b>Council Committee Review:</b>	<input type="checkbox"/> Community Development <input checked="" type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
	<b>Legal Review:</b> <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required	
<b>Attachments:</b>	None	
<b>Summary Statement:</b>	Approval of Payroll and Claims	
<b>Recommended Action:</b>	Approval of Payroll and Claims	

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## EXECUTIVE SUMMARY



<b>Meeting Date:</b>	April 5, 2021	
<b>Name of Agenda Item:</b>	Remand of Site Specific Rezone 20-05 – O & S Farms	
<b>Section of Agenda:</b>	Consent	
<b>Department:</b>	Planning Department	
<b>Council Committee Review:</b>	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
	<b>Legal Review:</b> <input checked="" type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input type="checkbox"/> Review Not Required	
<b>Attachments:</b>		
Findings of Fact, Conclusions of Law and Order related to Site Specific Rezone 20-05 – O&S Farms		
<b>Summary Statement:</b>		
<p>On March 15, 2021 the City Council remanded the Site Specific Rezone application 20-05 to the Planning Commission for reasons specified in the attached order.</p> <p>The rezone application was submitted by Ashley Gosal, on behalf of Fishtrap Creek LLC. The request would shift the property located at 8035 Guide Meridian from Commercial Services – Regional (CSR) to Commercial Services – Local (CSL).</p> <p>The City’s Land Use Code includes the criteria by which site specific rezones can be approved. These are addressed in the application. The Committee’s review concluded with a recommendation for approval of the site specific rezone given that the aforementioned code revisions and the changes to the retail market marked a change condition as described in the approval criteria (LMC 17.19.050).</p> <p>The Planning Commission considered the rezone request at a public hearing on January 28, 2021. The hearing concluded with a recommendation to the City Council to deny the rezone request.</p> <p>After the Planning Commission decision, the Planning Department received a letter from legal counsel for the applicant. The letter outlines concerns related to the January 28<sup>th</sup> hearing. Per RCW 42.30.140(2) the City Attorney recommended that these concerns be discussed in executive session. The resulting decision was to remand the item to the Planning Commission for a new open public hearing as detailed in the attached document.</p>		
<b>Recommended Action:</b>		
Motion to recommend approval of the Findings of Fact, Conclusions of Law and Order regarding Site Specific Rezone Application 20-05 by Fishtrap Creek, LLC. which calls for a new hearing to occur on or before May 22, 2021, and authorize the Mayor’s signature on the document.		



CITY OF LYNDEN  
FINDINGS OF FACT, CONCLUSIONS OF LAW, and ORDER

REGARDING Site Specific Rezone Application #20-05 by Fishtrap Creek, LLC / O&S Farms,  Petitioner	Site-Specific Rezone Application #20-05  FINDINGS OF FACT, CONCLUSIONS OF LAW, CONDITIONS and ORDER
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**I. SUMMARY OF DECISION**

Site Specific Rezone Application #20-05 by Fishtrap Creek, LLC / O&S Farms is **REMANDED** to the Planning Commission, subject to this Order.

**II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Fishtrap Creek, LLC (“Owner”) is owner of the premises known as 8035 Guide Meridian, Lynden, Washington, Whatcom County Tax Parcel Numbers 400225 491440 0000,400225 502431 0000 and 400225 5314420 000, legally described at Exhibit A hereto (Hereafter “Property”).

Ashley Gosal filed Site Specific Rezone Application #20-05 (“Application”) on behalf of the Owner to rezone the Property from Commercial Services Regional (CSR) to Commercial Shopping Local (CSL). Said application having come before the City Council of the City of Lynden on March 15, 2021, and the Council having fully and duly considered said application, hereby find as follows:

1.01 Application. Ashley Gosal filed the Application on behalf of the Owner rezone the Property from Commercial Services Regional (CSR) to Commercial Shopping Local (CSL), which was accepted by the City as complete and containing all information required by LMC 17.19.010 on December 22, 2020.

1.02 Location. The property is located on the southwest corner of the intersection of Guide Meridian and Bay-Lyn Road.

1.03 Ownership. Fishtrap Creek, LLC is the Owner of the Property.

1.04 Request. To rezone the Property from Commercial Services Regional (CSR) to Commercial Shopping Local (CSL).

1.05 Reason for Request. To allow future development of a mixed-use commercial center and multi-family residences consistent with the requirements of the CSL zone on the Property. No specific development proposal has been submitted.



1.06 Staff Comments. The Planning Commission and the Council considered the memorandum of staff attached as Exhibit B hereto. Staff recommend approval of the application subject to conditions.

1.07 SEPA Threshold Determination. Site Specific Rezone #20-05 was issued a Determination of Non-Significance on December 31, 2020. This application is within the scope of the original determination.

1.08 Existing Development. The Property is unimproved and cleared.

1.09 Applicable Code Provisions. A site-specific rezone application must meet all of the criteria in LMC 17.19.050 for approval. If the Planning Commission recommends approval, it must make written findings that the application meets all of the criteria in LMC 17.09.040(C).

1.10 Planning Commission Meeting. A hearing on the Application was held before the Planning Commission on January 28, 2021 virtually via Microsoft Teams. All commissioners asserted that they had no conflicts of interest with the Application. The hearing was required to be an open record public hearing, and even though members of the public were present, public testimony was not solicited or invited other than from the applicant. In other words, it was not announced at any point of the proceedings that if any member of the public in attendance wished to address the Planning Commission, now was their opportunity to do so.

1.11 Planning Commission Recommendation. The Lynden Planning Commission recommended denial of the rezone application in Resolution 21-02.

1.12 Insufficient Hearing. Because the hearing on the Application was not announced as open for public testimony and no public testimony was taken, it did not conform to the requirements of 17.09.040(B).

1.13 Appearance of Fairness. The applicant's attorney has argued that Commissioner Karen Timmer may have a conflict of interest with the Application, which may rise to the level of a violation of the Appearance of Fairness doctrine. More information is needed to determine whether Commissioner Timmer must recuse herself.

1.14 Remand. Under LMC 17.09.090, the City Council may remand an application back to the Planning Commission when the record is insufficient or otherwise flawed. The significant irregularities with the open record hearing on the Application warrant remand here.

The foregoing Findings of Fact and Conclusions of Law are not labeled. Those sections which are most properly considered Findings of Fact are hereby designated as such. Those sections which are most properly considered Conclusions of Law are also designated as such.

**III. DECISION**

Based upon the preceding findings and conclusions, Site Specific Rezone Application #20-05 is hereby **REMANDED** to the Planning Commission for further proceedings consistent with the following order:

1. The Planning Commission shall hold a new, complete open record hearing on the Application fully conforming to 17.09.040(B), at which public testimony shall be taken in addition to the other evidence presented.
2. Commissioner Karen Timmer shall either (a) recuse herself from considering and voting on the Application, or (b) fully disclose any potential reason for her recusal or potential conflict of interest on the record prior to commencement of proceedings at the next hearing and consult with the City’s attorney at that time to determine whether her recusal is necessary.
3. After the open record hearing, and fully considering the public testimony given therein, the Planning Commission shall pass a resolution with new written findings as to whether the Application meets the criteria in LMC 17.19.050 and, if applicable, LMC 17.09.040(C), and a new recommendation to grant or deny the application on or before May 13, 2021.
4. The 120-day project review deadline specified in RCW 36.70B.080 and LMC 17.09.100 shall be tolled until the Application returns to the City Council for consideration.

Done by the Lynden City Council by a vote of \_\_\_\_ to \_\_\_\_.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Scott Korthuis, Mayor

# EXHIBIT A

## Legal Description of the Property:

### Parcel A:

A tract of land located in the Northeast Quarter of the Northeast Quarter of Section 25, Township 40 North, Range 2, East of W.M., said parcel being more particularly described as follows:

Beginning at the intersection of the centerlines of the Guide Meridian Road and County Road Number 51, (formerly known as the Birch Bay Lynden Road and now known as Bay Lyn Drive); thence West a distance of 533 feet; thence South, parallel with the centerline of said Guide Meridian Road to the South line of said Quarter Quarter; thence Easterly along said South line a distance of 533 feet, more or less, to the centerline of said Guide Meridian Road; thence Northerly along said centerline to the point of beginning.

Except the North 300 feet of the East 144 feet thereof.

Also except: Beginning at a point which is 422 feet West of the intersections of the centerlines of the Guide Meridian Road and County Road Number 51, (formerly known as the Birch Bay Lynden Road and now known as Bay Lyn Drive); thence South parallel with the Guide Meridian Road a distance of 141 feet; thence South 49°00'00" West a distance of 83 feet; thence South 77°00'00" West to the West line, extended Southerly of that parcel described in Whatcom County Auditor's File Number 9004302009, thence Northerly along said West line and its Southerly extension to the centerline of County Road No. 51; thence Easterly along the centerline of said Road Number 51; thence Easterly along the centerline of said Road Number 51 a distance of 92 feet to the point of beginning.

And except the right-of-way for Bay-Lyn Drive, lying along the Northerly line thereof, except also the right-of-way for Guide Meridian Road, lying along the Easterly line thereof.

Also except that portion deeded to the State of Washington by that certain instrument recorded June 29, 2007, under Whatcom County Auditor's File No. 2070605388.

Situate in Whatcom County, Washington.

### Parcel B:

A tract of land in Section 25, Township 40 North, Range 2 East of W.M., described as follows:

Beginning at a point in the center of the intersection of the Guide Meridian Road and County Road No. 51; thence West along the center line of said Road No. 51, 144 feet; thence South 300 feet parallel to the center line of Guide Meridian Road; thence East 144 feet parallel to Road No. 51; thence North 300 feet to the point of beginning.

Except therefrom the Guide Meridian Road and Bay-Lyn Drive lying along the Westerly line thereof.

Also except that portion deeded to the State of Washington by that certain instrument recorded June 29, 2007, under Whatcom County Auditor's File No. 2070605388.

Situate in Whatcom County, Washington.

# EXHIBIT B

## CITY OF LYNDEN

### EXECUTIVE SUMMARY - PLANNING COMMISSION



<b>Meeting Date:</b>	January 28, 2021
<b>Name of Agenda Item:</b>	Public Hearing for Site Specific Rezone 20-05, O&S Rezone at 8035 Guide Meridian
<b>Type of Hearing:</b>	Quasi-Judicial
<b>Attachments:</b>	TRC Report, Site Specific Rezone Application 20-05 with supporting maps
<b>Summary Statement:</b>	<p>Ashley Gosal, on behalf of Fishtrap Creek LLC, has applied for a site-specific rezone of two parcels location at 8035 Guide Meridian. This is the southwest corner of the intersection of Guide Meridian and Bay Lyn Road. The subject property is currently zoned Commercial Services – Regional (CSR). The applicant has requested that the zoning shift to Commercial Services – Local (CSL). The Lynden Municipal Code defines these zones as follows (LMC 19.23.010):</p> <p><i>“Local commercial services (CSL): The purpose of the CSL zone is to provide a location for local scale retail development (stores less than sixty-five thousand square feet), medical, professional and financial services. Development within this zone should focus on pedestrian connectivity to the surrounding area and mixed-use development is strongly encouraged. This zone, together with the historic business district, provides the primary location for civic and social activities within the community.</i></p> <p><i>Regional commercial services (CSR): The purpose of the CSR zone is to support the development of large format retail and regional commercial development. In addition, this zone may support commercial establishments which require a retail contact with the public together with professional offices, storage and warehousing, or light manufacturing. This zone is located where larger parcels and arterial streets are available to support the traffic and land needs for these types of uses. This zone provides the primary location for businesses serving both the local and regional trade area.”</i></p> <p>As the Planning Commission may recall, CSR zoning has traditionally been geared toward big box retail and strip shopping centers. More recently the City updated the CSR definition and permitted uses to embrace uses consistent with busines parks including light manufacturing and warehousing. Many uses that are permitted in CSL are also permitted in CSR with the notable exception of multi-family residential in a mixed use setting. This is only permitted in CSL and is a primary reason the applicant seeks this rezone request.</p> <p>The City’s Land Use Code includes the criteria by which site specific rezones can be approved. These are addressed in the application. Staff’s review comments are found in the attached TRC report. These are primarily advisory in nature.</p>



Staff has concluded review with the following reasons to support the proposed rezone:

- Although located on the Guide Meridian corridor, access to the Guide and Bay Lyn Road must be carefully considered due to its proximity to the intersection of Guide Meridian and Birch Bay Lynden Road. As access may be somewhat limited or primarily directed to a Bay Lyn Road access point, the location does not have the same access to arterial roads as other CSR properties in this same area.
- The opportunity for a mixed use and/or local retail can be an attractive sort of project to have at this Lynden gateway and would support other retail services in this area.
- Residential opportunities provided by a mixed-use project would be located near services, employment opportunities, and mass transit corridors.
- The property is bordered by residential property on its western border and impacted by the FEMA mapped floodplain on its southern border which could reduce the scale of the future project located here.

Concerns related to the rezone include the ability of the future project to provide pedestrian connectivity as the CSL zoning description describes. However, design specifications such as walkways, crosswalks, pedestrian scaled architectural elements, and exterior lighting can assist in meeting these requirements and will be taken into careful consideration by staff and the Design Review Board.

**Recommended Action:**

Motion to recommend to the City Council the approval of O&S site specific rezone request, application number 20-05.

# CITY OF LYNDEN

## EXECUTIVE SUMMARY



<b>Meeting Date:</b>	April 5, 2021	
<b>Name of Agenda Item:</b>	Ord 1034 – Site Specific Rezone 20-04 – Lagerwey / Kode Kamp Vista	
<b>Section of Agenda:</b>	Consent	
<b>Department:</b>	Planning Department	
<b>Council Committee Review:</b>	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
		<b>Legal Review:</b> <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required
<b>Attachments:</b>		
Draft Ord 1034, Findings of Fact pertaining to Council approval of Site Specific Rezone 20-04		
<b>Summary Statement:</b>		
<p>On March 15, 2021 the City Council voted to approve Site Specific Rezone 20-04 for the Lagerwey / Kode Kamp Vista property. The approval will shift the property from a residential zoning category of RS-100 to a Residential -Mixed Density zoning (RMD)</p> <p>The attached ordinance and findings of fact relate to the Council’s approval.</p>		
<b>Recommended Action:</b>		
Motion to approve Ordinance 1034 which rezones the Lagerwey / Kode Kamp Vista property from RS-100 to RMD zoning category and authorize the Mayor’s signature on the document as well as the associated Findings of Fact.		

**ORDINANCE NO. 1623**

**AN ORDINANCE REZONING CERTAIN PROPERTY  
IN THE CITY OF LYNDEN, WASHINGTON**

WHEREAS, the City of Lynden fixed the 15th day of March 2021, as the date to consider the Lagerwey site specific rezone for the following property from Single Family Residential (RS-100) to Residential Mixed Density (RMD).

THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 15, TOWNSHIP 40 NORTH, RANGE 3 EAST, W.M. EXCEPTING THEREFROM THE NORTH HALF OF THE NORTH HALF OF SAID SOUTHWEST QUARTER OF THE NORTHEAST QUARTER; FURTHER EXCEPTING ONE ACRE FOR CEMETERY; FURTHER EXCEPTING RIGHT-OF-WAY FOR COUNTY ROADS KNOWN AS KAMM ROAD AND NORTHWOOD ROAD ON THE SOUTHERN AND WESTERN BOUNDARIES THEREOF. SITUATE IN WHATCOM COUNTY, WASHINGTON.

**COMMONLY DESCRIBED AS:** 8744 Northwood Road, Lynden.

WHEREAS, the Proponents have provided the City with an affidavit for the posting of the notice of application and public hearing in three locations near the Property, and the receipts for the certified mailing of said notice to all property owners within three hundred feet of the Property; and

WHEREAS, the Lynden Planning Commission held a public hearing on January 28, 2021, to accept public testimony on the proposed rezone, and that meeting was duly recorded; and

WHEREAS, Planning Commission Resolution #21-03, outlines the Commission’s recommendation of approval for the proposed Lagerwey Rezone.

WHEREAS, on March 15, 2021, the Lynden City Council did convene and inquire into the proposed change of zone, and has determined to grant the rezone request as submitted; and

WHEREAS, after careful consideration of the record for the Lagerwey / Kode Kamp Vista Rezone request, the Lynden City Council enters the following Findings of Fact regarding the proposed rezone, provided the conditions set forth in Section 2 herein are met;

1. Notice. Proper notices of the hearing were published and posted within the vicinity of the property as required by law.
2. Location. The subject property is located at 8744 Northwood Road, Lynden, in Whatcom County, Washington.
3. Ownership. Petitioner, Northwood Partners, Inc. is the owner of the subject property.
4. Request. Petitioner requests that the subject property be granted a site-specific rezone from Single Family Residential (RS-100) to Residential Mixed Density (RMD).
5. Reason for Request. The rezone will provide an opportunity for infill within the City of Lynden.
6. Change in Conditions: The housing market has changed substantially since the property was originally zoned RS-100. Entry level home buyers would typically not be able to purchase lots within a RS-100 neighborhood. RMD zoning allows for a variety of lot sizes and associated housing types.
7. Comprehensive Plan and City Code. The proposed rezone is consistent with the Comprehensive Plan land use designation for the property; it is consistent with and satisfies applicable city codes, including LMC 17.09.040 (C); and it will further the goals of the Lynden Comprehensive Plan.
8. Public Health and Safety. The proposed rezone will promote the health, safety, and welfare of the community.

NOW, THEREFORE BE IT ORDAINED by the City Council of the City of Lynden, Washington, as follows:

Section 1: The zoning map of the City of Lynden and Ordinance No. 1623 adopting said zoning map are hereby amended to rezone the Property to RMD (Residential Mixed Density).

Section 2: This rezone is granted subject to the following condition:

Approval of the Lagerwey Rezone is subject to the findings, conditions and recommendations of the Technical Review Committee Report dated January 5, 2021.

Section 3: If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The council hereby declares that it would have passed this code and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases has been declared invalid or unconstitutional, and if, for any reason, this ordinance should be declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect.

Section 4: Any ordinance or parts or ordinances in conflict herewith are hereby repealed.

Section 5: This ordinance shall be in full force and effect from and after its passage by the City Council and approval by the Mayor, if approved, and acknowledgment by the Petitioner, otherwise as provided by law, five (5) days after the date of publication.

PASSED BY THE CITY COUNCIL OF THE CITY OF LYNDEN, WASHINGTON, AND APPROVED BY THE MAYOR on the \_\_\_\_\_ day of \_\_\_\_\_, 2021

\_\_\_\_\_  
M A Y O R, Scott Korthuis

ATTEST:

\_\_\_\_\_  
CITY CLERK, Pamela Brown

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY, Robert Carmichael



CITY OF LYNDEN  
FINDINGS OF FACT AND CONCLUSIONS OF LAW

REGARDING THE APPLICATION OF  
Northwood Partners, LLC, TO  
REZONE PROPERTY

RZ #20-04

FINDINGS OF FACT, CONCLUSIONS  
OF LAW, CONDITIONS and  
DECISION

Petitioner

Northwood Partners, LLC, is owner of the premises known as:

THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 15,  
TOWNSHIP 40 NORTH, RANGE 3 EAST, W.M. EXCEPTING THEREFROM THE NORTH  
HALF OF THE NORTH HALF OF SAID SOUTHWEST QUARTER OF THE NORTHEAST  
QUARTER; FURTHER EXCEPTING ONE ACRE FOR CEMETERY; FURTHER EXCEPTING  
RIGHT-OF-WAY FOR COUNTY ROADS KNOWN AS KAMM ROAD AND NORTHWOOD  
ROAD ON THE SOUTHERN AND WESTERN BOUNDARIES THEREOF. SITUATE IN  
WHATCOM COUNTY, WASHINGTON.

**COMMONLY DESCRIBED AS:** 8744 Northwood Road, Lynden.

(Hereafter "Property").

Agent, Jeff Palmer on behalf of Northwood Partners, LLC has applied to rezone property from Single Family Residential (RS-100) to Residential Mixed Density (RMD). Said application having come before the City Council of the City of Lynden on March 15, 2021, and the Council having fully and duly considered said application, hereby makes the following:

**I. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1.01 Application. Northwood Partners, LLC, ("Property Owner") filed an application for a site-specific rezone which was accepted by the City as complete and containing all information required by LMC 17.19.010 on October 19, 2020.

1.02 Location. The property is located at 8744 Northwood Road, Lynden.

1.03 Ownership. Northwood Partners, LLC is the Property Owner.

1.04 Request. To rezone property from Single- Family Residential (RS-100) to Residential Mixed Family (RMD).

1.05 Reason for Request. To make effective use of land within the existing city limits where all urban services are available.

1.06 Planning Commission Recommendation. The Lynden Planning Commission recommended approval of the rezone application and noted the following findings:

- The site-specific rezone, as presented, adequately meets the criteria outlined in 17.09.050 of the Lynden Municipal Code. This includes, but is not limited to, recognition that the housing market has changed substantially since the property was originally zoned RS-100. Entry level home buyers would typically not be able to purchase lots within a RS-100 neighborhood. RMD zoning allows for a variety of lot sizes and associated housing types.
- The accommodation of additional housing units in this area serves the public good as it is located near to the Lynden Middle School and Cornerstone Christian school.
- The proposed rezone is consistent with the Comprehensive Plan land use designation for the property; it is consistent with and satisfies applicable city codes, including LMC 17.09.040 (C); and it will further the goals of the Lynden Comprehensive Plan.

1.07 Conformance with Criteria for Site Specific Rezones. The rezone application as presented is in conformance with the criteria for granting a site-specific rezone as listed in Section 17.19.050 as follows:

- a. That there has been a significant change in circumstances since approval of the current zoning and warrants reclassification of the subject property as proposed.
- b. The proposed site-specific rezone is consistent with the City's comprehensive plan and applicable sub-area plan(s).
- c. The project proposal is consistent with the City's development codes and regulations for the zoning proposed for the project.
- d. The proposed site-specific rezone is compatible with existing uses and zoning in the surrounding area.
- e. The proposed site-specific rezone does promote the health, safety, and general welfare of the community.

1.08 Public Interest. The application does adequately meet the criteria outlined in LMC 17.19.050.

1.09 SEPA Threshold Determination. Environmental review of the proposal has been made under the requirements of Chapter 197-11 WAC and a Mitigated Determination of Non-Significance has been entered.

The foregoing Findings of Fact and Conclusions of Law are not labeled. Those sections which are most properly considered Findings of Fact are hereby designated as such. Those sections which are most properly considered Conclusions of Law are also designated as such. From the foregoing Findings of Fact and Conclusions of Law, the Council establishes the following conditions:

**2. CONDITIONS**

Any approval of the Petitioner’s application shall be subject to the conditions listed below:

1. *Public Health and Safety:* Rezone and development of the subject property have preceded the improvement of nearby arterial roads (Northwood Road, Kamm Road). Be advised, that future development in this area will need to facilitate safe pedestrian movements despite these sub-standard roads.
2. *Zoning Designation - Permitted Uses:* Be advised, Residential Mixed Density (RMD) allows up to 8 dwelling units per acre and is subject to the permitted uses and standards as described in LMC 19.16 including a maximum building height of 32 feet.
3. *Housing Types:* Be advised, plats developed within RMD zoning must indicate which lots are permitted to include duplex or paired housing types.
4. *Design Review:* The construction of duplex buildings are subject to Design Review Board approval prior to permit approval.
5. *Street Trees:* Future development will require compliance with Chapter 18.14.130 regarding street trees and planting strips. These aspects of design must appear in the Design Review Board submittal package.
6. *Transportation Impact Fees:* Be advised, transportation impact fees will be due at the time of permit. The current rate of this fee for single family buildings is \$2111.00 and \$1309.00 per unit for duplex buildings.
7. *Landscape Bonding:* Be advised, performance and maintenance bonding will be required for the landscape installed at the time of development. This relates to street trees and any required landscape buffer. Bonds are due prior to issuance of final building occupancy.
8. *Environmental Review:* Conditions associated with the SEPA review (SEPA 20-13) which was conducted concurrently with this application will apply to the proposed development.

- 9. *Infrastructure Improvements:* Be advised, at the time of future development, all public improvements must be constructed to the current standards as noted in the City of Lynden Manual for Engineering Design and Development Standards.
- 10. *Stormwater Management:* At the time of future development, all plans must be designed and constructed in compliance with the Department of Ecology’s Best Management Practices and the standards approved in the Manual for Engineering Design and Development Standards. Storm drainage report per the City of Lynden and the Department of Ecology standards required.
- 11. *Stormwater Management:* Be advised, at the time of future development, a stormwater management plan prepared by a professional engineer will be required for this development and must be approved by the City of Lynden prior to approval of construction plans. An erosion control plan must be included in the drainage plan and construction plans as necessary.
- 12. *Water and sewer:* Each unit must be individually metered.
- 13. *Fire Code:* Future Development will require full compliance with the Fire Code.
- 14. *Fire Impact Fees:* Be advised, fire impact fees will be due at the time of permit. The current rate of this fee is \$517.00 per single family home and \$389.00 per duplex unit.
- 15. *Park and Trail Amenities:* Future development may require participation and or easements for trail system and parks. Connections to trails and parks will be reviewed at the time of Design Review Board approval.
- 16. *Park Impact Fees:* Be advised, park impact fees will be due at the time of permit. The current rate of this fee is \$936.00 per single family home and \$546.00 per duplex unit.

**3. DECISION**

Petitioner’s application for a site-specific rezone shifting the subject property from Single Family Residential (RS-100) to Residential Mixed Density (RMD) is hereby **approved**, by the Lynden City Council by a vote of 7-0.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Scott Korthuis, Mayor

# CITY OF LYNDEN

## EXECUTIVE SUMMARY



<b>Meeting Date:</b>	April 5, 2021	
<b>Name of Agenda Item:</b>	Preliminary Plat Approval – Kode Kamp Long Plat	
<b>Section of Agenda:</b>	Consent	
<b>Department:</b>	Planning Department	
<b>Council Committee Review:</b>	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
	<b>Legal Review:</b> <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required	
<b>Attachments:</b>		
Findings of Fact pertaining to Council approval of Long Plat application 20-01		
<b>Summary Statement:</b>		
<p>Jeff Palmer, on behalf of Northwood Partners LLC, applied for the subdivision of approximately 28 acres located at the northeast corner of Kamm Road and Northwood Road into 92 lots. Proposed lot sizes, consistent with the newly assigned RMD zoning category, range from the 6,000 square foot to well over 10,000 square feet. The applicant has indicated a desire to maintain all the lots for single family detached homes except for 5 lots which would be used for duplexes. Pedestrian accommodations will be made interior to the plat in the form of sidewalks and, on Northwood Road, widened roadway shoulder that is delineated by a curb and flexible lane markers.</p> <p>City Council voted to approve the preliminary long plat for Kode Kamp Vista on March 15, 2021. The attached Findings of Fact document this approval.</p>		
<b>Recommended Action:</b>		
Motion to approve the attached Findings of Fact and Conclusions of Law associated with the Kode Kamp Vista Long Plat and authorize the Mayor’s signature on the document.		

CITY OF LYNDEN  
FINDINGS OF FACT AND CONCLUSIONS OF LAW

REGARDING THE APPLICATION OF Northwood Partners, LLC, TO SUBDIVIDE PROPERTY	LP #20-01
Petitioner	FINDINGS OF FACT, CONCLUSIONS OF LAW, CONDITIONS and DECISION on SUBDIVISION APPLICATION #20-01

THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 15, TOWNSHIP 40 NORTH, RANGE 3 EAST, W.M. EXCEPTING THEREFROM THE NORTH HALF OF THE NORTH HALF OF SAID SOUTHWEST QUARTER OF THE NORTHEAST QUARTER; FURTHER EXCEPTING ONE ACRE FOR CEMETERY; FURTHER EXCEPTING RIGHT-OF-WAY FOR COUNTY ROADS KNOWN AS KAMM ROAD AND NORTHWOOD ROAD ON THE SOUTHERN AND WESTERN BOUNDARIES THEREOF. SITUATE IN WHATCOM COUNTY, WASHINGTON.

**COMMONLY DESCRIBED AS:** 8744 Northwood Road, Lynden.

Has applied for a subdivision of the above described parcel into 92 residential lots within the RMD zone. The Lynden Planning Commission held a public hearing on January 28, 2021, and recommended approval to the City Council through Planning Commission Resolution #21-04. Said request having come before the Lynden City Council on March 15, 2021, and the Lynden City Council having fully and duly considered the request, hereby makes the following:

**I. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1.01 Application. Northwood Partners, LLC, has filed an application (“Property Owners”) for a subdivision which was accepted by the City as complete on December 4, 2020.

1.02 Location. The Property is located at 8744 Northwood Road in Lynden, Whatcom Co., Washington as described above.

1.03 Ownership. Northwood Partners, LLC are the Property Owners.

1.04 Request. To subdivide a parcel approximately 28.41 acres in size into 92 residential lots located within the RMD zone.

1.05 Reason for Request. To make effective use of land within the existing city limits where all urban services are available.

1.06 Conformance with Zoning and Comprehensive Plans. The subdivision of the Property proposed in the application is in conformity with City zoning ordinances,

comprehensive plans, and all other applicable City development regulations including Chapter 17.15 LMC.

1.07 Compliance with General Requirements for Subdivision Approval. The application complies with Chapter 18.06 LMC, General Requirements for Subdivision Approval, as applicable.

1.08 Compliance with Lot and Plat Design Standards. The application complies with lot and plat design standards as required under Chapter 18.14 LMC, as applicable.

1.09 Compliance with Project Manual for Engineering Design and Development Standards. The application complies with the development standards and requirements set forth in Title 18 LMC and with the Project Manual for Engineering Design and Development Standards.

1.10 Appropriate Provisions for Promoting Health, Safety and General Welfare. The application makes appropriate provisions for public health, safety and general welfare.

1.11 Open Spaces, Streets, Roads, Sidewalks and Alleys. The application makes appropriate provisions for public open spaces, roads, streets, sidewalks and alleys.

1.12 Potable Water Supplies, Sanitary Wastes and Drainage Ways. The application makes appropriate provisions for public drainage ways, potable water supplies and sanitary wastes.

1.13 Public Interest. The application results in additional infilling within the City consistent with the City's Comprehensive Plan and the Growth Management Act. The public interest will be served by the approval of the application.

1.14 Critical Area Review. The Critical Area checklist for this project has been submitted and requires no further review.

1.15 SEPA Determination. Environmental review of the proposal has been made under the requirements of WAC 197-11 and a mitigated determination of non-significance has been made.

The foregoing Findings of Fact and Conclusions of Law are not labeled. Those sections which are most properly considered Findings of Fact are hereby designated as such. Those sections which are most properly considered Conclusions of Law are also designated as such. From the foregoing Findings of Fact and Conclusions of Law, the Council establishes the following conditions:

**II. CONDITIONS**

Any approval of the Petitioner’s application shall be subject to the conditions as listed below:

The proposed long plat was reviewed against the subdivision standards found in Chapter 18 of the Lynden Municipal Code (LMC) and the Engineering Design and Development Standards. The following aspects were found to be consistent with these standards:

*Zoning:* The area to be developed in this application is located within the RMD residential mixed density zone and permits the development of a mixture of single-family and duplex housing styles and types.

*Minimum Lot Size:* If the proposed rezone of the property is approved by the City Council the new zoning category, allows for detached single-family homes on lots as small as 6,000 square feet. Attached / paired homes are permitted on lots as small as 4,000 square feet. Duplexes are permitted on lots of at least 8,000 square feet. The lots proposed in this subdivision meet the RMD minimum lot size for detached dwellings (6,000 square feet). As proposed, parcels within this plat range from 6,000 square feet to about 28,700 square feet.

*Street Sections:* Per Chapter 4 of the Engineering Design and Development Standards the minimum street width, for a publicly dedicated access street right-of-way is 60 feet. This standard has been met as proposed.

*Build-out:* Be advised, both single family and duplex homes are permitted within the RMD zone. All lots are subject to the development requirements listed under 19.16 of the Lynden Municipal Code and associated design standards.

*Parking:* Be advised, per Chapter 19.51.040 of the LMC, a minimum of 2 parking stalls is required per home and or unit. It is important to note that if an enclosed single car garage is provided per dwelling unit, a minimum of two outside spaces must be provided. If an enclosed garage for two or more vehicles is provided, a minimum of one outside parking space must be provided.

**Specific Project Comments from the Technical Review Committee:**

**Planning and Development**

1. Applicant Response Required: Provide a written response to each of the Technical Review Committee’s comments below. Advisory comments should be acknowledged. A Word version of this document will be provided to you for your convenience.



- 2. Agent Authorization: Please provide an agent authorization letter, formation documents, or other documentation which allows Jeff Palmer to process the long plat application on behalf of Northwood Partners LLC.
- 3. Plat Documents: Provide draft plat sheets include the plats signature page with plat notes.
- 4. Phasing Plan: Please respond indicating if the plat improvements will be phased. If phasing of the plat is planned, provide a plat map which shows phases as well as a plan indicating the interim condition which will exist following the build-out of Phase 1 but not Phase 2. Staff is particularly interested in the infrastructure improvements which will exist at this time. Show the proposed condition of the street section and existing buildings at this stage of completion. See Public Works comments related to the minimum roadway standard for emergency access.
- 5. Plat Area Break-down: Whatcom County and the City of Lynden have been mandated to participate in an annual report provided to the State which tracks achieved housing density. In an effort to track accurate data for this program all plats will be required to provide supporting data. Please provide on the face of the plat a table which breaks down the total area of the plat into the categories shown below. Note that in some instances the area may be zero and that “other infrastructure” could refer to area used for sewer pump station, stormwater ponds, etc.

	Plat Area (in square feet)
Gross plat area	
Reserve tracts	
Critical areas	
Right of ways (ROWs)	
Other infrastructure	
Net developable	
Percent ROW and Infrastructure	%

- 6. Utility Easements: Per 18.14.075, the proposed plat must identify the required 5-foot utility easements around the interior property line of all lots. Revise plat map to include this easement on the face of the plat.

7. Street Name: Provide a street name for the proposed long plat. Be advised, the street name must be approved by the Whatcom County emergency dispatching agencies and avoid duplication with any other road within the County.

8. Street Tree Requirements: Be advised, street trees will be required. Submission of tree locations, species selection, and planting specifications must be included in the utilities plan (civil review) to avoid conflicts. Planting and establishment must be executed as described here:

a. As per Section 18.14.130, Street trees shall be provided by the sub-divider in all subdivisions within the dedicated public utility easements adjacent to the street; preferably between the curb and the sidewalk.

1. One street tree is required for every 50 linear feet of street frontage. Distance may be averaged due to driveways and sight distance requirements.

2. Street trees shall be a minimum caliper of 1 1/2" at the time of installation, small trees used under powerlines shall be a minimum a caliper of 1".

3. Street trees shall be selected, installed, and maintained in accordance with the standard City of Lynden engineering specifications. Trees shall be placed on the property with consideration of potential driveway cuts and utility services.

b. Establishment of street trees and planting strips shall be per an approved site plan in conformance with design and bonding standards as set forth in LMC 19.61.

c. Maintenance of street trees and planting strips shall be the responsibility of the adjoining property owner and shall be done in accordance with the city's engineering design and development standards.

9. Topography: Due to the sloping nature of the site (a grade change of approximately 50 feet), the grading of the site will affect the buildability and drainage plans of each lot. Please provide a preliminary grading plan with the plat drawings. Civil plans must include proposed site topography at 2-foot intervals which ties into the finished grades of the right-of-way and surrounding properties. Be advised, this topography information must be confirmed on as-built drawings. Approved grades will be used to establish pre-construction elevations from which final building heights will be measured.

10. Critical Areas: The applicant has submitted a Critical Areas Assessment of the subject parcel. The report identifies wetlands and regulated streams on the

property. The civil construction plans shall clearly indicate the onsite location of these wetlands and their buffers. The proposed development avoids critical areas and their buffers. Any alterations to the proposal that results in impact to any critical areas and/or their buffers will require additional impact analysis and an approved mitigation plan.

Unobtrusive fencing (split rail) and Critical Area signage designating the location of the onsite critical areas is required consistent with LMC 16.16.210.

A conservation easement that designates ownership, liability, maintenance responsibility and enhancement opportunities for the critical areas and their buffers is required. Easement language shall be submitted for City approval. The conservation easement shall be recorded as a separate document and referenced on the final plat.

- 11. Existing Structures: This property was surveyed during the 2018 City of Lynden historic resources reconnaissance survey. The house and portions of the barn and other farm structures are more than 100 years old. Although the structures are likely not eligible for federal listing, they may be considered potentially eligible for listing on the Lynden Register due to their age and connection to Lynden’s agricultural legacy. As such, prior to demolition, an Intensive Survey of the structures as defined by the Washington State Standards for Cultural Resource Reporting is required. Survey results shall be provided to the City and added to WISAARD, the DAHP online database for this address.
- 12. Cultural Resources: The applicant shall have an Inadvertent Discovery Plan onsite that identifies protocol for contacting the appropriate authorities and protecting archaeological resources if they are inadvertently found during future construction activity.

While no archaeological resources were found, there are known cultural sites in the vicinity. Additional consultation with the Nooksack Tribe and the Department of Archaeology and Historic Preservation is required to ensure these sites are protected.

- 13. Vehicular Access Prohibition: Be advised, no private driveways are permitted on Kamm or Northwood Roads. Access to lots must be internal to the plat. This vehicular prohibition must appear on the face of the plat.
- 14. Pipe Stem Lots: A long plat may utilize one pipe stem lot for every 25 lots or portion thereof (LMC 18.14.040). As such, the proposed plat may utilize up to 4 pipe stem lots. Staff has identified these lots as lots 10, 25,42, and 87. Pipe stems shall be a minimum of 24 feet wide, shall not be longer than 150 feet, and the address must be clearly marked at the street for emergency access. It appears lot 25 and lot 42 were designed with stems only 20 feet in width. Please revise to meet the minimum standard of 24 feet.

15. Easement Access Lots: *In addition to pipestem lots, a long plat may also utilize private access easements for one lot per 25 lots or portion thereof. As such, the proposed plat may design up to 4 lots without accessible frontage on public streets and utilize an access easement instead (LMC 18.14.110(c)). Access easements shall be a minimum of 24 feet wide, shall not be longer than 150 feet, and the address must be clearly marked at the street for emergency access. The plat design currently exceeds the 4-lot maximum. Staff has identified applicable lots as lots 1, 2, 68, 69, and 70. Please revise the plat to include not more than 4 lots accessed via access easement.*
16. Frontage Requirements and Lot Access: Unless an approved pipestem or access easement lot, no lots shall be created that have less than 50-feet of frontage except that lots on cul-de-sacs may reduce frontages to no less than 40 feet as long as a 50-foot width is achieved at the point of front setback (15 feet from the property line). It appears that some lots in the proposed plat may not meet this standard. Please provide a drawing which demonstrates compliance with this section of code in each of the two cul-de-sacs. (LMC 18.14.020)
17. Housing Types: If the proposed rezone of the property is approved by the City Council the new zoning category or Residential Mixed Density, allows for attached / paired homes (each on their own lot) and duplexes (on lots at least 8,000 square feet in size). The plat must clearly address if these housing types will be permitted and if so, on which lots. Please add an applicable plat note and indicate on the face of the plat map if necessary.

### **Public Works**

18. Right-of-Way: Dedication is required along the full frontage of Northwood Road to achieve a total dimension of 30 feet to the center line of the road.
19. Street Section: Street section of Currant Street extension must match the existing roadway to the north of the proposed plat.
20. Phase 1 Emergency Access: If phasing is proposed, be advised, at the time of Phase 1 construction, Phase 2 street sections must be constructed to a minimum of a 24-foot wide, stabilized surface which is sufficient to support emergency vehicles. If the stabilized surface is gravel, or similar, a minimum of 50 linear feet must be paved adjacent to any existing public right-of-way to prevent tracking of material onto roadway surfaces.
21. Access: As proposed, no vehicular access will be permitted to/from Kamm Road. Any existing driveways must be abandoned prior to final plat approval.
22. Lot Access: Vehicular access will be prohibited from proposed lots to/from Kamm Road and Northwood Road.

- 23. Eastern Roadway Stub: The proposed eastern roadway stub accesses property which is not part of the City’s Urban Growth Area. As such it is unlikely to be added to the City for some time (no sooner than the year 2036 unless otherwise petitioned to be added). City staff recommends the stub be dedicated as right-of-way easement but not improved beyond what is needed to access lots 68-71. A curb cut in this area will be limited to 30 feet with the balance of the stub finished with curb and sidewalk. Additionally, staff recommends the plat and, if needed, property covenants address the use of the area until such time is developed into a street.
  
- 24. Engineering Design Standards: All proposed streets must meet the minimum separation requirements as outlined in the City of Lynden Project Manual for Engineering Design and Development Standards.
  
- 25. Utility Easements: Plat must show the required 10-foot utility easement along the frontage of each lot (back of sidewalk).
  
- 26. Traffic analysis needs to be completed. All recommended items of the report shall be completed.
  
- 27. Street Lighting: Puget Sound Energy to design street lighting. Please submit a final plan.
  
- 28. Stormwater Advisory Comments
  - a. A stormwater management plan prepared by a professional engineer will be required for this development and must be approved by the City of Lynden prior to approval of construction plans. An erosion control plan must be included in the drainage plan and construction plans as necessary.
  
  - b. All plans must be designed and constructed in compliance with the Department of Ecology’s Best Management Practices and the standards approved in the Manual for Engineering Design and Development Standards.
  
  - c. Stormwater from public streets may be infiltrated within the dedicated right-of-way, or within a separate dedicated tract, but may not be within the street prism. Infiltration areas and street trees should have adequate separation to insure the proper functioning of the drainage system and survival of the tree.
  
  - d. A Construction National Pollutant Discharge Elimination System (NPDES) permit may be needed.

## 29. Water

- a. As per 6.2 (M) of the City of Lynden Project Manual for Engineering Design and Development Standards, the water mainline must be looped through the plat and extended to the east and west property lines. Show easements as appropriate on the face of the plat.
- b. Be advised, water system design and construction must meet the requirements of the City of Lynden Engineering Design and Development Standards
- c. Be advised, each house and/or unit within this plat must be individually metered. Water meters must be located within the City right-of-way.

## 30. Sanitary Sewer

- a. Be advised, sanitary sewer design and construction must meet the requirements of the City of Lynden Engineering Design and Development Standards.
- b. Sanitary sewer services for all units and must be sized for maximum number of units.
- c. As per 7.2 (P) of the City of Lynden Project Manual for Engineering Design and Development Standards, sanitary sewer must be extended to the north property line unless other service is available. Show easements as appropriate on the face of the plat.
- d. Be advised that all parcels in this plat are within the East Lynden Sewer Special Assessment Area and will be subject to additional connection charges for the regional sanitary sewer facilities. This must be noted on the face of the plat.

## **Fire and Life Safety**

31. *Fire Service Impact Fee:* Be advised, half of the required fire impact fee is due at the time of final plat approval. The balance of the fire impact fees is deferred to the time of building permit. Contact Planning staff for an estimated fee total.
32. *Street Addressing:* Be advised, address numbers must be clearly posted on each house to assist in efficient fire aid response.
33. *Hydrants:* The installation of a fire hydrant is required. The final hydrant location will be determined upon review of civil plans and must be approved by the Fire Department.

## **Parks and Recreation**

34. *Trail Easement:* This development is located along sub-standard roadways which do not have pedestrian accommodations. It is also identified along the

proposed route of the East Lynden Loop Trail. As such, the proposal must accommodate that trail system. At a minimum this must include a separated 8-foot wide asphalt pedestrian path and public access easement (if not in ROW) parallel to Northwood Road. An equivalent amenity such as a more creative path winding through the development could also be proposed by the applicant during the long plat review process.

35. *Park Impact Fee:* Be advised, half of the required park impact fee is due at the time of final plat approval. The balance of the park impact fees can be deferred to the time of building permit. Contact Planning staff for an estimated fee total.

### **Long Plat Advisory Comments**

36. *Impact Fees:* Be advised, prior to final plat (PRD) approval, the developer will be required to pay transportation mitigation fees, plus the first half of park and fire mitigation fees. Contact Planning Staff for a fee estimate.
37. *Civil Drawings:* The construction drawings for any civil and utility improvements must be submitted for review and approval prior to construction. These drawing must illustrate that the utility improvements and extensions meet the standards listed within the Project Manual for Engineering Design and Development Standards, unless they have been specifically varied by the approval of the plat. It is the project engineer's responsibility to be aware of these standards.
38. *Civil Review Deposit Required:* Be advised, a review deposit of \$200 per lot, \$2,000 minimum, to review the construction plans and a plat / PRD construction inspection deposit of \$350 per lot, \$5,000 minimum, is due prior to review and construction respectively.
39. *Infrastructure Installation:* A City of Lynden Fill and Grade Permit is required prior to the commencement of site work. The site and utility work must be addressed on SEPA Checklist.
40. *Performance Bonding Requirements:* Be advised, a 150% performance bond may be required for all work in the City's right-of-way or on city owned property which is deemed incomplete. Only items not specifically exempted from bonding under LMC 18.18.010(G) are eligible for bonding.
41. *Maintenance Bonding Requirements:* A post construction maintenance bond for infrastructure in the amount of 10% of the construction costs will be required prior to final plat approval.
42. *Landscape Bonding:* Be advised, performance and maintenance bonding will be required for the plat. This relates to street trees and any required mitigation trees. Bonds are due prior to final plat approval.

- 43. Surveying: All surveying work and engineering design must be based on the City of Lynden survey control monuments. AutoCAD files for all improvements must be provided to the City in digital format approved by the City. A copy of the City's control monuments is available to the project consultant for their use.
- 44. Expiration of Preliminary Approval: Petitioner shall record the final subdivision, with the County in conformance with LMC 18.06.010.2, 18.06.020 and 18.06.030 within five (5) years of the date this preliminary approval becomes final, after which City approval of this application shall become void; provided that, this one year deadline may be extended for up to one (1) additional year upon application to and approval by the City Council.
- 45. Property Addressing: Be advised, all street addressing must follow the requirements of the Lynden Municipal Code. Addresses will be assigned by the Public Works Department prior to final Long Plat approval.
- 46. Covenants, Conditions and Restrictions (CC&Rs): CC&R's for the long plat may be recorded in conjunction with the final long plat. This document can impose more restrictive conditions on the property but not less restrictive than City of Lynden development code. Be advised, enforcement of CC&R documents is the responsibility of the developer and/or neighborhood association.
- 47. Design Review: Design Review Approval will be required for all duplex buildings.

**III. DECISION**

Petitioner's application to subdivide the property described herein into ninety-two (92) parcels for future development is hereby **Preliminarily Approved** as outlined in Planning Commission Resolution #21-04 and subject to the conditions set forth in this document.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Scott Korthuis  
Mayor



# CITY OF LYNDEN



## EXECUTIVE SUMMARY

<b>Meeting Date:</b>	April 5, 2021	
<b>Name of Agenda Item:</b>	Park Impact Fees- Ordinance 1622	
<b>Section of Agenda:</b>	New Business	
<b>Department:</b>	Parks	
<b>Council Committee Review:</b>	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input checked="" type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
	<b>Legal Review:</b> <input type="checkbox"/> Yes - Reviewed <input checked="" type="checkbox"/> No - Not Reviewed <input type="checkbox"/> Review Not Required	
<b>Attachments:</b>		
Ordinance 1622		
<b>Summary Statement:</b>		
<p>The City of Lynden adopted Ordinance 1197 setting the fee schedule for Park Impact Fees in 2004. Fees were set at \$936.00 per house at that time and have not been updated since. The updated Park and Trail Master Plan was adopted and updated on Dec. 21, 2020 and the Parks Department was mandated to study costs and level of service relating to maintaining and developing our parks system in a manner that would fund a portion of the acquisition and development through the use of park impact fees that more closely related to actual costs for acquisition and development. A cost of living index has been added to the fees so they will be updated annually rather than have to return every couple of years to have fees increased.</p> <p>Parks committee has reviewed the ordinance and recommends forwarding the ordinance to full council for approval</p>		
<b>Recommended Action:</b>		
Motion to approve Ordinance 1622 amending the unified fee schedule for the purpose of updating Park and Trail Impact fees and authorize the Mayor signature.		

**ORDINANCE NO. 1622**

**AN ORDINANCE OF THE CITY OF LYNDEN  
TO AMEND THE UNIFIED FEE SCHEDULE  
FOR THE PURPOSE OF UPDATING  
PARK AND TRAIL IMPACT FEES**

WHEREAS, the Lynden City Council adopted the updated Lynden Park and Trail Master Plan (the Parks Plan) on December 21, 2020; and

WHEREAS, the Parks Plan identifies Capital Improvement Projects that will become necessary for the City to provide a desired level of service for its park system and continue to maintain a high quality of life for the community; and

WHEREAS, the Parks Plan identifies a suite of funding sources that are used by the City to fund its park system and the identified Capital Improvement Projects; and

WHEREAS, RCW 82.02.050 authorizes the City to impose impact fees on development activity as part of the financing for public facilities and guides the expenditures of these impact fees; and

WHEREAS, Ordinance 1197 of the City of Lynden, which was adopted in 2004, established standards and formulas for mitigating the impacts of property development on the City's park and recreation system, referred to as Park Impact Fees; and

WHEREAS, the Lynden Municipal Code, Title 3.40 provides for the dedication of property or the financial assessment through impact fees to mitigate for the increase of impacts caused by new development; and

WHEREAS, as the City continues to grow, the City Council Parks Committee has determined that to sufficiently fund the anticipated costs of providing adequate parks, recreation facilities, trails and open space associated with forecasted growth, Exhibit A of Ordinance 1197, which includes specific formulas for collecting Park Impact Fees from approved development projects within the City, shall be updated to reflect current population estimates, and property acquisition and land development cost assumptions; and

WHEREAS, Exhibit A of this ordinance, which is herein incorporated in full, includes updated formulas for implementing mitigation measures and establishes the base park impact fee rate for providing or contributing to parks, recreation facilities and open spaces necessitated by the property developments for which the mitigation is assessed; and

WHEREAS, the base park impact fee rate, as determined in Exhibit A of this ordinance, shall be adjusted for inflation annually, without adjusting the formulas in Exhibit A, according to the West Region Consumer Price Index annual change calculated after the first half of the year and be effective on January 1.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LYNDEN, WASHINGTON, HEREBY ORDAINS AS FOLLOWS:

**Section 1:** The Unified Fee Schedule of the City of Lynden shall be amended to update the base Park Impact Fees as described in Exhibit A, section 7:

PASSED BY THE CITY COUNCIL OF THE CITY OF LYNDEN BY AN AFFIRMATIVE VOTE, \_\_\_\_\_ IN FAVOR \_\_\_\_\_ AGAINST AND SIGNED BY THE MAYOR on the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
M A Y O R

ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

EXHIBIT “A”

ASSUMPTIONS, STANDARDS AND FORMULAS FOR PUBLIC PARKS, RECREATION FACILITIES, AND OPEN SPACE DEDICATION AND IMPACT MITIGATION FEES

1. LEVEL OF SERVICE

The City desires to achieve and maintain an improved park and open space level of service standard of 7 acres per 1,000 persons.

2. SERVICE DEMAND

Based on the WA State OFM 2012 Housing Data, household populations within the City are as follows:

- 2.8 persons per detached single-family unit
- 1.7 persons per multi-family unit

3. COST OF SERVICE

The City estimates the acquisition costs for land suitable for park, recreation and open space purposes and the development costs of additional park facilities necessitated by new development as follows:

- a. Acquisition cost per acre = \$90,000
- b. Development cost per acre = \$135,000

Total Cost of Service per acre = \$225,000

4. IMPROVEMENT TO ACQUISITION RATIO

The ratio of the cost of unimproved park properties to improved park properties is \$225,000 per acre to \$90,000 per acre or 2.5 : 1.

5. FORMULA ADJUSTMENTS

Recognizing that the provision of parks, open spaces and recreational facilities that serve the community as a whole benefit the entire population and in consideration of possible past and future payments made by new development and to provide a balance between the requirements imposed on new development and other sources of public funds, the following adjustment shall be applied to the dedication or assessment formula in this exhibit: 35% adjustment.

6. DEDICATION REQUIREMENTS

When it is determined that a proposed dedication of an improved park, open space or recreation facility is appropriate and that it meets the goals and policies established in the Park and Trail Master Plan, the requirement shall be as follows:

- a. Single family unit or mobile home or lot:

7 acres per 1000 population = 0.007 per person  
0.007 acres/person x 2.8 persons per unit = 0.02 acres/unit  
0.02 acres/unit x 43,560 sq. ft./acre = 871 sq. ft/unit  
871 sq. ft. – 35% adjustment = 566 square feet per unit

- b. Multi-family dwelling unit (duplex and greater):

7 acres per 1000 population = 0.007 per person  
0.007 acres/person x 1.7 persons per unit = 0.012 acres/unit  
0.012 acres/unit x 43,560 sq. ft./acre = 523 sq. ft/unit  
523 sq. ft. – 35% adjustment = 340 square feet per unit

Non-Residential development demand for park and recreation facilities is approximately 25% of the single-family residential demand for similar facilities. Dedication requirements are based on the single-family unit (SFU) requirement and are further broken down as follows:

- a. General Commercial = 25% of SFU or 142 sq ft per 1000 sq ft GFA
- b. Retail = 15% of SFU or 85 sq ft per 1000 sq ft GFA
- c. Manufacturing or warehouse space = 10% of SFU or 57 sq ft per 1000 sq ft per 1000 sq ft of GFA
- d. Assembly (i.e. schools/churches) = 5% of SFU or 28 sq ft per 1000 sq ft of GFA

When it is determined that a proposed dedication of an unimproved park land or open space is appropriate and that it meets the goals and policies established in the Park and Trail Master Plan, the ratio of improved park land to unimproved park land established in Section 4 above shall be used and the requirement shall be as follows:

- a. Single family unit, Duplex unit or mobile home or lot:  
566 square feet/unit x 2.5 = 1,415 square feet/unit  
1,415 sq. ft. – 35% adjustment = 920 square feet per unit

- b. Multi-family dwelling unit:  
341 square feet/unit x 2.5 = 853 square feet/unit  
853 sq. ft. – 35% adjustment = 554 square feet per unit

- c. General Commercial = 25% of SFU or 230 sq. ft. per 1000 sq. ft. GFA

- d. Retail = 15% of SFU or 138 sq. ft per 1000 sq. ft. GFA
- e. Manufacturing or warehouse space = 10% of SFU or 92 sq. ft per 1000 sq. ft. GFA
- f. Assembly (i.e. schools/churches) = 5% of SFU or 46 square feet per 1000 square feet of GFA

7. MITIGATION ASSESSMENTS

The following mitigation assessments shall be applied for those development projects that do not include a dedication of park land. The assessments are based on the cost of services established in Section 3 above.

- a. Single family unit or mobile home or lot:  
0.02 acres/unit x \$225,000 per acre = \$4,500/unit  
\$4,500 – 35% adjustment = **\$2,925 per unit**
- b. Multi-family dwelling unit:  
0.012 acres/unit x \$225,000 per acre = \$2,700/unit  
\$2,700 – 35% adjustment = **\$1,755 per unit**
- c. General Commercial = 25% of SFU or **\$731 per 1000 sq. ft. GFA**
- d. Retail = 15% of SFU or **\$439 per 1000 sq. ft. GFA**
- e. Manufacturing or warehouse space = 10% of SFU or **\$293 per 1000 sq. ft. GFA**
- f. Assembly (i.e. schools/churches) = 5% of SFU or **\$146 per 1000 square feet of GFA**

# CITY OF LYNDEN



## EXECUTIVE SUMMARY

<b>Meeting Date:</b>	April 5, 2021	
<b>Name of Agenda Item:</b>	Select Hearing Examiner	
<b>Section of Agenda:</b>	New Business	
<b>Department:</b>	Administration	
<b>Council Committee Review:</b>	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input type="checkbox"/> Public Works <input checked="" type="checkbox"/> Other: Panel
		<b>Legal Review:</b>
		<input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input type="checkbox"/> Review Not Required
<b>Attachments:</b>		
Rajeev Majumdar RFP response, including resume.		
<b>Summary Statement:</b>		
<p>At its March 1 meeting, the City Council adopted Ordinance 1516 which created the position of Hearing Examiner. The ordinance included language that required the City Council itself to select the Hearing Examiner. Council decided to use a process where a committee comprised of Councilmembers, the Mayor and staff vetted the applicants, selected its preferred candidate, then advanced that recommendation to the full City Council.</p> <p>Shortly after Council adopted Ordinance 1516, staff circulated a Request for Proposals and received back three well-qualified responses. The vetting committee met with the three candidates (two in-person, one of the remotely) on March 29. Councilmembers and the Mayor unanimously selected Rajeev Majumdar as its preferred candidate. His entire response to the RFP is attached.</p>		
<b>Recommended Action:</b>		
Motion to direct the staff to complete the hiring process to employ Rajeev Majumdar as Lynden's Hearing Examiner.		



# WHATCOM LAW GROUP

A PROFESSIONAL SERVICES CORPORATION

Roger L. Ellingson, JD	☎ (360) 332-7000
Rajeev D. Majumdar, MAIS, MPA, JD	☎ (360) 384-6400
Casie C. Rodenberger, JD	☎ (360) 332-6677
	🌐 WhatcomLaw.com

March 11, 2021

City of Lynden  
Attn: Mike Martin, Lynden City Administrator  
300 4th Street  
Lynden, WA 98264

**RE: Request for Qualifications and Proposals for Hearing Examiner Services**

To Mayor Korthuis and the Lynden City Council:

My goal is to affect meaningful and positive change in people’s lives through public service, while building a life for my family in a rural environment. To further this goal, I am seeking appointment to the position of Land Use Hearing Examiner, which would enhance and complement my ongoing law practice, and is a position I am well trained for. Our law office has provided hearing examiner services to the City of Blaine since 2005, and I personally have served without contract as the Land Use Hearing Examiner *Pro Tem* for the City of Oak Harbor, Island County, and Whatcom County, as well as being contracted since 2019 as the ongoing Land Use Hearing Examiner *Pro-Tem* for Island County.

My advanced studies in graduate and law school, my experience with the federal government, and my judicial experience give me a skill-set that I believe would serve City of Lynden well. My abilities to write, present, and present arguments persuasively in the legal field have not only been tested by peer-reviewed publication, but by pursuing an active criminal and civil motion practice in Federal, Tribal, and Superior Courts throughout northwest Washington. I have maintained a stable private practice in Whatcom County for the last thirteen years.

I have built a reputation for competency and honesty in my professional life, and as a result I have been entrusted with wide-ranging judicial opportunities. I have served as Judge *Pro Tem* in the cities of Blaine and Sumas, as well as for Whatcom Superior Court. From 2013 to 2016, I served as a Commissioner *Pro Tem* for Whatcom Superior Court in an ongoing capacity, until I was elected to represent Congressional District #2

✉ PO Box 1258, Blaine, WA 98231

289 H Street, Blaine, WA 98230 | 2417 Main Street, Ferndale, WA 98248





on the Washington State Bar Association’s Board of Governors. This judicial experience has given me a practiced outsider neutrality that is applicable to City of Lynden’s task in question.

I have a strong work ethic and drive. The initiative that drove me to investigate the totalitarian state of Myanmar and interview members of their Attorney General’s Office for my graduate research, and later to take a job with the U.S. Government’s National Nuclear Security Administration enforcing our country’s Weapons of Mass Destruction counter-proliferation efforts, is the same initiative that I will bring to my work for City of Lynden.

Thank you for your time and consideration. My attestation of qualifications and proposal follows below, and please additionally find enclosed and referenced below: a résumé outlining my professional and personal experiences; three Hearing Examiner Decision writing samples; a list of local governmental references; and a list of additional professional references.

Respectfully,

Rajeev D. Majumdar

Enclosures (5)

**CITY OF LYNDEN  
LAND USE HEARING EXAMINER  
QUALIFICATIONS & CONTRACT PROPOSAL**

**I. A summary of my qualifications, including my education and employment background that demonstrates my familiarity with land use law and hearing processes.**

An Attorney in Good Standing

I have practiced law since 2007;<sup>1</sup> I am licensed and in good standing with Washington State Bar Association which regulates the practice of law in Washington, and

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<sup>1</sup> - Washington State Bar Association #39753



I am also in good standing in every other jurisdiction I have been admitted to. I have never had any adverse disciplinary findings against my license, and no criminal charges levied against me except a charge of Minor in Possession of Alcohol when I was twenty to which I pled guilty in Idaho.

From 2008 to present, I have been in private practice at the Whatcom Law Group, P.S., where I am now the managing partner. No attorney at my firm can foresee a potential conflict of interest arising. My career thus far has been a well-rounded one characterized by wearing many hats including academic, judicial, and prosecutorial roles in addition to my private practice. My professional life is balanced by a long standing commitment to public service. **See Exhibit A, Resume.**

A proposed *pro-tem* under this contract would be Roger Ellingson, who has been the hearing examiner of Blaine since 2005. He has practiced law since 1985,<sup>2</sup> and in Washington since 1989.<sup>3</sup> He is licensed and in good standing with Washington State Bar Association and is also in inactive but good standing in every other jurisdiction he has been admitted to. He has never had any adverse disciplinary findings against his license, or no criminal charges levied against him. Mr. Ellingson is transitioning to a reduced case load and “of counsel” status at the end of the year but would be available for conflicts; as he will no longer be in the office actively in 2022 he will be screened from all potential conflicts that could arise.

Previous Experience with Land Use and as a Hearing Examiner and Qualifications Related Thereto

Since 2008, I have managed a portfolio that includes prosecutorial services for public institutions and a private practice primarily focused around business and real estate transactions and property development. During that time, Mr. Ellingson, the founding partner of my firm, has served as the Hearing Examiner of Blaine, WA, since 2005 and I am assuming that role later this year. I personally have served without contract as Land Use Hearing Examiner *Pro Tem* for the City of Oak Harbor, Island County, and Whatcom County, as well as being contracted since 2019 as the ongoing Land Use Hearing Examiner *Pro Tem* for Island County. I have never missed a deadline in preparing any decision. **See Exhibits B, C, & D Sample Written Decisions.**

Work as a hearing examiner requires practiced dispassion. The right of a property owner to use their property in their own way and for their own purposes is deemed both a liberty and a property right in our country. As a consequence, when a government body exerts its right to safeguard the common good through land use restrictions, emotions often run high. Further, legal requirements imposed on local governments by the State and the inevitable changes thereto result in increasingly complex issues regarding the regulations or ordinances that apply to any given project. This can be difficult for the public to understand, and further there has been an increased politicization regarding land

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2 - Oregon State Bar Association #851935

3 - Washington State Bar Association #19292



use issues. This has resulted in an increased number of hearings with multiple attorneys representing various interests, longer hearings, and an ever expanding list of legal issues which need to be resolved by a hearing examiner in issuing a Decision.

My experience on the bench, not only as a hearing examiner but as a Superior Court judicial official, has given me the experience to handle contentious hearings while treating each participant with respect. I have managed contentious hearings with significant in-person public comment for the City of Oak Harbor, Island County, and Whatcom County. In each of those scenarios I was able to control the room through clear messaging about the purpose of public comment and its importance.

I have reviewed the City of Lynden’s recently passed Ordinance 1615 and surveyed the associated land use codes— they are straightforward and logical, and I am confident in my ability to apply the rules as written. I have not reviewed Lynden’s land use regulations in their entirety, but the layout of the code is familiar and logical. I have a great deal of experience of making factual findings and applying law to those facts in ways the Lynden Code would expect.

#### “Good Results” — Cultivating Respect for the Process with all Stakeholders

As I mentioned above, an understanding of the tensions surrounding land use hearing exams is necessary to effectuate control of a hearing when a room can be raucous, but for any situation the key to smooth hearings and sound decisions are functional relationships and a cultivation of the participants respect for the process. Making clear that an orderly and nondisruptive process is the best way for all participants to have their voice heard is critical. In particular, the Hearing Examiner’s relationship with land use planning staff is key to enabling the coordinating of a functional process that facilitates a meaningful comment period and analysis. In the jurisdictions that I have done the greatest number of hearings for, Island and Whatcom Counties, I have extremely good relationships with staff that I have worked with repeatedly. In fact, I have a solid reputation with all municipal and county agencies I have provided services for. **See Exhibit E, Local Jurisdiction References.**

All stakeholders, however, must be treated with respect— this is something I am practiced at. I have developed a good reputation throughout the County as someone who listens and leads throughout the course of my career. Working with varied stakeholders I have worked on contentious issues of youth homelessness in Whatcom County for which I have been recognized locally and statewide. Similarly, having led the 41,000 member Washington State Bar Association as its President, I have successfully balanced the wants and needs of a rather litigious population while representing them to the Supreme Court, the State Legislature, the Governor’s Office, and the media. These experiences speak not only to my abilities, but also to my journey and the experiences from which I have gleaned lessons learned and added them to my toolkit and the value I put on functional relationships. **See Exhibit F, Professional References.**

#### Ability to Travel to and Familiarity with Lynden



Though I do not reside in Lynden, I have been domiciled in rural Whatcom County since 2008. During that time, I have visited Lynden habitually, for both work and pleasure—in fact, Lynden is often a lunch time destination, whether or not I have court or am meeting with a client. I consider myself comfortably familiar with Lynden, its environs, and its businesses.

## **II. Contract Proposal:**

### Nature of Contract

1. Whatcom Law Group, P.S. (herein “Whatcom Law Group”) would be an independent contractor and shall perform its duties in a manner so as to accomplish the goals of the City of Lynden (herein “City”), in compliance with applicable state and local laws and regulations. Whatcom Law Group shall have control over and shall be solely responsible for the manner in which it fulfills its responsibilities under the contract, and shall be responsible to the City only to the extent that suitable means are utilized to attain the goals of the City as stated herein or as otherwise communicated to the Whatcom Law Group; provided however that in all circumstances Whatcom Law Group shall comply with all applicable State of Washington laws and regulations and City codes, regulations, ordinances and policies with respect to the performance of its obligations herein.
2. Whatcom Law Group will provide without additional charge experienced support staff to assist the Hearing Examiner in communications and to assist in administrative and technical editing of decisions, but the City will also need to provide clerical support. The City shall provide reasonable clerical support without cost to the Whatcom Law Group as requested to enable it to fulfill its duties under the contract. The support provided by the City shall include, but not be limited to: acceptance and processing appeal applications and fees; preparation of technical reports, exhibits, and other documents necessary to conduct a hearing; mailing and publication of required notices and decisions; scheduling of hearings and recording hearings as required by statute or ordinance; keeping of records post-hearing; and facilitating meetings between City Staff and the Hearing Examiner to improve processes and communication.
3. To the extent permitted by law, the City agrees to hold harmless and indemnify the Whatcom Law Group and its employees from and against all claims, suits, actions, and costs arising from acts or omissions on the part of the City of Lynden or the Whatcom Law Group in the good faith performance of its duties herein.

### Contractor's Duties

1. The Whatcom Law Group shall fulfill all the functions of Hearing Examiner for the City as set forth in the Lynden Municipal Code's Ordinance 1615.



2. The Whatcom Law Group shall cooperate with the City's efforts to respond to public record requests in identifying responsive records and providing such records to City staff or providing the City with an exemption log that identifies clearly all the records that were not provided, either in whole or in part, together with an explanation as to why the record was withheld.
3. The Whatcom Law Group shall actively avoid *ex-parte* contact with any applicant or appellant, as well avoid engagement on any matters that could result in an actual, potential, or perceived conflict of interest or its ability to fulfill this contract.
4. The Whatcom Law Group shall provide feedback to the City on the issues with the process or the code and their implementation.
5. The Whatcom Law Group shall bill the City for services provided on a monthly basis. All bills shall indicate thereon the amount of time and the item or matter on which such time was spent (broken down to the nearest 1/10th of the hour).

#### City Duties

1. The City shall tender payment for invoices within thirty (30) days after receipt by the City.
2. The City shall provide and be responsible for the following clerical support:
  - a. Delivering a complete and up-to-date case file including all correspondence, exhibits, and a written staff report(s) to the Hearing Examiner at least ten (10) days prior to hearing, whenever possible, as well as maps and such other exhibits as may be necessary regarding each matter to be heard;
  - b. The City shall make all required copies of such correspondence, notices and hearing exhibits and shall keep and maintain all official files and records of the hearings and perform all other activities necessary to administratively process said material, and provide them to the Hearing Examiner as needed, including current updates up to the time of each hearing;
  - c. Schedule all hearings after conferring with Hearing Examiner's availability;
  - d. Sending out and/or publishing public notices of hearings;
  - e. Mailing written Findings, Conclusions, and Recommendations or Decisions and any notices of appeal rights;
3. Responding to public records requests when addressed to Hearing Examiner, involving Hearing Examiner, or related to Hearing Examiner's cases or duties herein.
4. The City will provide support for responses to public or media inquiries or requests referred directly to the Hearing Examiner.



5. The City shall furnish a hearing room, speaking system, and an audio/video recording system. The City shall make that recording available to the Hearing Examiner to review online within 12 hours of the hearing.
6. The City shall identify, advise, and provide copies to the Hearing Examiner of any changes or enactments to all pertinent Ordinances, Resolutions, and Policies as well as applicable and current State/Federal Statutes and Administrative Codes.

#### Cost Proposal

1. A flat rate reimbursement of \$1,800.00 for each appeal hearing. This flat rate fee shall include up to 9 hours of attorney time as well as any support, travel time, and mileage.
2. A flat rate reimbursement of \$1,400.00 for each hearing that does not involve an appeal. This flat rate fee shall include up to 7 hours of attorney time as well as any support, travel time, and mileage.
3. Hours worked in excess of the hours included in the flat rate fees, other services requested by the City not contemplated by any contract, or for administrative matters with the City, shall be reimbursed at the rate of \$200.00 per hour.<sup>4</sup> Rates will be billed in 1/10<sup>th</sup> of an hour increments, but never be less than 2/10<sup>ths</sup> of an hour on any given day.
4. No additional travel time shall be billed.
5. No additional support staff time shall be billed.
6. The City shall reimburse expenses incurred in the course of carrying out the duties of Hearing Examiner, including but not limited to postage and copies at 20¢ per sheet.

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<sup>4</sup> - This is the rate paid to Whatcom Law Group, P.S. by the City of Blaine, my usual private practice rate ranges between \$250 and \$375.

**Rajeev D. Majumdar**  
P.O. Box 1258, Blaine, WA 98231  
(206) 214-5177  
*rajeev@whatcomlaw.com*

**EDUCATION:**

Passed exams & admitted to *Tulalip Indian Nation* and the *Washington State Bars*; admitted without exam to *Lummi Indian Nation, Nooksack Indian Nation, Pala Band of Mission Indians, Swinomish Nation, and Federal Western District of Washington Bars*.

*Juris Doctorate –cum laude*, Seattle University, May 2007.

An Associate Editor of the *Seattle University Law Review*; Teaching Assistant for Property Law (2005-2007).

*Master’s Degree in International Affairs*, University of Washington, June 2004.

*Master’s Degree in Public Administration*, University of Washington, June 2004.

*Bachelor of Science in Biology and Philosophy, with a minor in Chemistry*, Albertson College of Idaho, June 1999.

**RECENT HONORS and ACHIEVEMENTS:**

- Recognized by LAW Advocates for Outstanding Service (2021)
- Fellow of the American Bar Foundation (2020- present)
- Fellow of the Washington Judicial Institute (2019)
- Local Hero Award from Washington State Bar Association (2015)
- Graduate of the Washington State Bar Association’s Washington Leadership Initiative (2015)
- Graduate of The National Institute on the Prosecution of Domestic Violence (2013)
- *Pro Bono* Public Service Commendations from Washington State Bar Association (2010, 2012-19)
- Joint Acknowledgement for *pro bono* legal services provided to the victims of Hurricanes Katrina and Rita, from the Supreme Court of Louisiana and the Louisiana Bar Association (2007)

**CURRENT EMPLOYMENT:**

**Whatcom Law Group, P.S. - Attorney**, Blaine, WA (since 2008, managing partner since 2020)

- Supervises eight employees.
- Manages a broad litigation practice with emphasis on general civil litigation.
- Manages a thriving real property, business formation, and transactional practice.
- Cultivated broad clientele with additional focus on Canadian, Indian, Native, and Persian communities.

**City of Blaine – Prosecuting Attorney**, Blaine, WA (since 2011)

- Responsible for filing charges and prosecuting criminal, civil infraction, appellate, and code enforcement cases for the City of Blaine.
- Providing review and advice to the police department, city manager, and city council on questions of law, including ordinance revision.

**City of Bellingham – Special Prosecuting Attorney**, Bellingham, WA (since 2014)

- Developed as part of a team a Wellness Court for Mental Health.
- Responsible for representing the City of Bellingham in criminal mental health diversion in Wellness Court, and further developing that court.
- Responsible for representing the City of Bellingham in attorney represented contested traffic cases, as well as providing review and advice to the police department’s traffic unit.

**JUDICIAL ROLES:**

**Nooksack Court of Appeals – Appellate Court Judge**, Deming, WA (since 2019)

- Responsible for *en banc* reviews and appeals from the trial court.

**Island County Hearing Examiner – Conflict Hearing Examiner**, Coupeville, WA (since 2019)

- Responsible for performing the judicial duties of the County Land Use Hearing Examiner.



**Whatcom County Hearing Examiner – Conflict Hearing Examiner, Bellingham, WA (since 2019)**

- Responsible for performing the judicial duties of the County Land Use Hearing Examiner.

**Nooksack Tribal Court – Judge Pro Tem, Deming, WA (since 2018)**

- Responsible for performing the judicial duties of the tribal court in both civil and criminal matters.

**City of Oak Harbor Hearing Examiner – Conflict Hearing Examiner, Oak Harbor, WA (since 2018)**

- Responsible for performing the judicial duties of the Municipal Land Use Hearing Examiner

**Sumas Municipal Court – Judge Pro Tem, Sumas, WA (2018)**

- Responsible for performing the judicial duties of the municipal court in both infraction and criminal matters.

**Blaine Municipal Court – Judge Pro Tem, Blaine, WA (2010, 2013-14)**

- Responsible for performing the judicial duties of the municipal court in both infraction and criminal matters.

**Whatcom County Superior Court – Commissioner Pro Tem on ongoing basis, Bellingham, WA (2013-16)**

- Responsible for performing the judicial duties of the superior court, subject to revision by an elected judge.
- Appearing for felony first appearances, domestic relations motions, mental health commitments, dependency proceedings, truancy proceedings, juvenile criminal proceedings & conducting settlement conferences.

**COMMUNITY INVOLVEMENT:**

**Prior Service**

- Washington State Board for Judicial Administration, Board member (2019- 20)
- Board Member of Sun Community Services, providing transitional housing in Whatcom County (2010- 2020)
- Board Member for North West Youth Services, providing resources to at-risk youth (2013- 2019)
- *Pro-bono* research on Federal legislation for the Indian Institute of Estate Planning and Probate (2007-08)
- *Pro-bono* Expert Witness in custody disputes and family law matters, regarding South Asian culture (2006-10)
- Volunteered at NOLAC and the Pro Bono Project in New Orleans to help Hurricane Katrina victims (2006)
- President of Seattle University School of Law’s South Asian Law Student Association (2006-07)
- Board Member of the UW Jackson School of Intl. Studies Alumni Association (2004-06)

**Current Service**

- Eagle Scout (1992- present)
- Washington State Bar Association, Member (2007- present)
  - Elected President, and served as President-elect and Immediate Past President (2018- present)
  - Elected Governor representing Congressional District 2 on the Board of Governors, (2016-18)
  - CLE Committee of the Washington Young Lawyers Division (2010- 12)
- Whatcom County Bar Association, Member (2008- present)
  - Editor of the Whatcom County Bar Journal (2010- present)
- American Bar Association, Member (2010- present)
  - Delegate to the ABA House of Delegates (2020- present)
- Board Member of LAW Advocates, providing civil legal assistance to the indigent (2012- present)
  - Elected Chairman (2015-16)
  - Served as Interim Executive Director (2015)
  - *Pro-bono* attorney for individual clients and at LAW Advocates clinics for the indigent in Bellingham, WA (2008- present)
- Washington State Municipal Attorneys Association, Member (2014- present)
- National Conference of Bar Presidents, Member (2018- present)
  - Diversity, Equity, and Inclusion Committee (2020- present)
- Washington State Bar Foundation, Trustee (2019- present)

**PRIOR WORK EXPERIENCE:**

**WWU, Fairhaven College – Adjunct Professor, Bellingham, WA (2015-18)**

- Responsible for teaching “Rights, Liberties, and Justice in America,” a constitutional and civil rights course.

**Nooksack Indian Nation - Prosecutor, Deming, WA (2016-18)**

- Responsible for filing charges and prosecuting criminal, civil infraction and code enforcement cases for the Nooksack Tribe.



- Providing review and advice to the law enforcement and tribal council on questions of law and statute revision.

**City of Ferndale – Special Prosecuting Attorney, Ferndale, WA (regularly since 2010)**

- Prosecution of conflict criminal cases for the City of Ferndale.

**WA State DSHS, Division of Child Support’s Hearings Unit – Claims Officer, Seattle, WA (2008)**

- Facilitated administrative child support and criminal contempt proceedings, as well as supporting Claims Officers and Support Enforcement Officers in extracting child support and arrears owed to the State.
- Developed and analyze a database of over 2300 individuals currently in contempt for cost-benefit and policy analysis with regards to pursuing criminal contempt.
- Audited cases with excessive outstanding arrears with little probability of collection for write-off.

**King County Superior Court - Extern Clerk to Judge Mary Yu, Seattle, WA (2006)**

- Reviewed and summarized pleadings arising from the Unified Family Court calendar.
- Researched policy and issues presented to the judge for decision, applying law to the facts and drafting findings.

**Tulalip Indian Nation – Summer Prosecutor, Tulalip, WA (2006)**

- Filed charges, declined cases, established plea agreements, tracked the case calendar and conducted arraignments as well as all court appearances.
- Provided consultations for the tribal police and the community.
- Conducted in-depth research of tribal and federal law for code writing and policy advancement.

**Carney Badley Spellman P.S. – Summer Associate, Seattle, WA (2005)**

- Wrote legal briefs, drafted orders, formed contracts, conducted research and prepared evidence in support of a variety of ongoing cases, as well as contributing to mediation & client development meetings.
- Developed a *pro bono* action that removed racially restrictive covenants from property titles.
- In-depth participation in plaintiff’s litigation from initiation to trial.

**National Bureau of Asian Research (NBR) – Fellow, Seattle, WA (2003-04)**

- Tracked the development of conventional military power and policy, as well as the proliferation of Weapons of Mass Destruction (WMD), and using this information to update and maintain the Strategic Asia Database, which details the state of affairs in Asia at the time.
- Provided research support to the various authors contributing to the annual journal, *Strategic Asia*, and individual analysis publications put out by NBR.
- Developed a distribution plan, targeting key policy makers in government and the private sector as the recipients of policy reports generated by NBR.

**National Nuclear Security Administration – Graduate Resident, Washington D.C. (2001-02)**

- Primary responsibilities included policy construction and analysis of issues related to the nuclear fuel cycle and WMD: understanding their construction and providing advice on the wide array of national and foreign technical means that can be brought to bear on national security dilemmas.
- Program Management of projects relevant to national security interests; involved in a project that required thorough study for modifying technical and legal protocols between the USA and foreign nations.
- Participated in interagency working groups with Depts. of Defense, Energy, and State. Served as the liaison from NA-22 to DOE Office of Science’s Office of Nuclear & High-Energy Physics.
- Conducted extensive policy analysis of the new strategic outlook of national security priorities to combat global terrorism and technical implications, as derived from the President’s directives following the events of Sept. 11<sup>th</sup>.

**PUBLICATIONS:**

**Washington State Court Special Immigrant Juvenile Status Bench Book and Resource Guide**

- Co-authored through Washington Leadership Initiative in response to a statewide need identified by judicial officers who requested an SIJS Bench Book to educate judiciary (2015).

**The Underutilized Sovereign Right to Eminent Domain: A Primer for Tribes.**

- Awarded the Viola Spencer Memorial Award for Legal Writing in Indian Law (2007).

- Selected to be published in 4 UCLA INDIGENOUS PEOPLE'S J. L. CULTURE & RESISTANCE 1 (2008), but journal was terminated.

**Racially Restrictive Covenants in the State of Washington: A Primer for Practitioners.**

- Published in 30 SEATTLE U. L. REV. 4 (2007).

**OTHER EXPERIENCE:**

- Presidential Law Scholarship from Seattle University's School of Law (2004-07)
- Foreign Language Area Studies (FLAS) Fellowship (2000, 03-04)
- Grants awarded from the University of Washington's Grad. School, as well as the Jackson School of Intl. Studies' Center for Intl. Studies, and Center of S.E. Asian Studies, for a research expedition to Myanmar (2003)
- Twice awarded an IAWW Fellowship (2000-01, 02-03)
- Pacific Northwest National Laboratory Graduate Student Fellow (2002)
- Argonne National Laboratory Guest Graduate Student Fellow (2001)
- Honors Scholarship from Albertson College, four years consecutively (1995-99)
- Harold and Phyllis Thomas Scholarship, Albertson College, four years consecutively (1995-99)
- Accepted to "Bioethics in the New Millennium," an international conference at Princeton University (1999)
- Selected to live in Queensland, Australia for seven weeks, to study environmental, industrial, and international policies relating to the area, as well as to do ecological research (1998)
- Papers accepted and presented to Northwest Undergraduate Philosophy Conference (1997-98)
- University of Washington Graduate Student Senator for 2 terms (1999-2001)
- President of the Albertson College Philosophy & Religion Association (1997-99)
- Albertson College Student Senator for 6 terms, President *Pro-tem* for final term (1996-99)
- Extensive travel in North America, Europe, Asia & Australia; conducted research in Burma
- **Language Skills:** Working knowledge of spoken and written Hindi, Urdu, and Bengali, with studies continuing. Familiarity with Burmese, Perso-Arabic, Tibetan, Gurumukhi, & Gujarati Scripts.

**WHATCOM COUNTY HEARING EXAMINER**

RE: Zoning Conditional Use Permit	)	CUP2017-0007
Application for	)	
	)	
<b>John Karuza</b>	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
	)	AND DECISION

**SUMMARY OF APPLICATION AND DECISION**

Application: The Applicant seeks a Zoning Conditional Use Permit for the construction of a 2,400 sq. ft. indoor commercial dog kennel, with an approximately 2,880 sq. ft. outdoor kennel area for boarding onsite a total of up to 60 dogs on 10.26 acres, addressed as 6460 Sisters Drive, Everson, Washington.

Decision: The requested permit is granted, subject to conditions.

**FINDINGS OF FACT**

**INTRODUCTION**

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted herein and evidence presented at the public hearing.

**I.  
PRELIMINARY INFORMATION**

Applicant:	John Karuza
Property Location:	6460 Sisters Drive Everson, Washington 98247
Assessor's Parcel No.	390314 331482
Zoning:	Rural District [R10A]
Comprehensive Plan:	Rural
Subarea:	Lynden Nooksack

Total Acreage: 10.26 acres

Water Supply: Public Water – Hemmi Road Water Association

Sewage Disposal: On-site sewage system

Solid Waste Disposal: Nooksack Valley Disposal

Fire Protection: Fire District No. 1

Law Enforcement: Whatcom County Sheriff's Office

Adjacent Land Uses: North: Single Family Residential  
 East: Single Family Residential  
 South: Vacant Lot  
 West: Residential

Easements: As recorded under WC Auditor's file No. 207-0402896 - Notice on Title for Regulated Critical Areas/Buffers Pursuant to Title 16.16

Authorizing Ordinances:

1. Revised Code of Washington [RCW] Chapter 36.70
2. Whatcom County Comprehensive Plan
3. Whatcom County Code, Title 20, Official Whatcom County Zoning Ordinance
4. Whatcom County Code, Title 14, Use of Natural Resources
5. Whatcom County Code Chapter 15, Building Code/Fire Code
6. State Environmental Policy Act (SEPA)
7. Washington Administrative Code Chapter 197-11
8. Whatcom County Environmental Policy Administration Chapter 16.08
9. Whatcom County Code Chapter 16.16, Critical Areas
10. Whatcom County Code Title 22, Whatcom County Project Permit Procedures
11. Whatcom County Code Title 24, Health Regulations

SEPA Review: The Whatcom County SEPA Official has determined that the proposal is categorically exempt from SEPA review.

Legal Notices: Published – Notice of Application, May 19, 2017

Mailed – Notice of Application, February 14, 2017

Published – Notice of Public Hearing, February 21, 2019

Posted – Notice of Public Hearing, February 21 & Feb 28, 2019

Mailed – Notice of Public Hearing, February 14, 2019

Mailed – Notice of Public Hearing to Interested Parties, February 21, 2019

Hearing Date: March 6, 2019

Parties of Record

John Karuza  
27 Shorewood Drive  
Bellingham, WA 98225

Dannon Traxler  
Langabeer & Traxler, P.S.  
2701 Meridian Street  
Bellingham, WA 98225

Royce Buckingham  
Whatcom County Civil Deputy Prosecutor

Sam McDaniel, Planner  
Planning and Development Services

Sarah Cierebiej  
Whatcom County Environmental Health Specialist

Douglas Ranney  
Whatcom County Public Works Engineering Manager / Development

Linda Abitia  
2048 Central Road  
Everson, WA 98247

Scott Barker  
1824 Central Road  
Everson, WA 98247

Bernard and Mary Brower  
1832 Central Road  
Everson, WA 98247

Scott & Jill Conner  
1860 Central Road

Everson, WA 98247

Matt and Aimee Galley  
1910 McBeath Drive  
Everson, WA 98247

Bob and Sabrina Hlebichuk  
2045 Central Road  
Everson, WA 98247

Bernard and Christine Loudon  
2033 Central Road  
Everson, WA 98247

Timothy and Brooke Lucas  
20168 Central Road  
Everson, WA 98247

Denise Macris, Real Estate Trainer  
No address given

Steven and Connie Regan  
1724 Central Road  
Everson, WA 98247

Charles Rossi  
6565 Everson Goshen Road  
Everson, WA 98247

Ronald and Martha Snyder  
1832 Central Road  
Everson, WA 98247

Garett and Rhonda Wise  
1950 Central Road  
Everson, WA 98247

Exhibits:

1. Conditional Use Application with attachments
  - 1-1 Determination of Completeness May 2, 2017
  - 1-2 PDS Comment Letter, with Project Description, May 2, 2017
  - 1-3 Address Mailing Labels
  - 1-4 First American Title Insurance: Statutory Warranty Deed
  - 1-5 Nooksack Valley Disposal Services, November 18, 2016



- 1-6 On-Site Sewage System Construction Permit, 6-3-05 to 6-3-10
  - 1-7 Water Availability: Public Water System, County Health Dept 11-10-2017
  - 1-8 Hemmi Road Water Association Membership Certificate, Dec 13, 2012
  - 1-9 Preliminary Traffic & Concurrency Information, 3-18-2017
  - 1-10 Staff Memo, Pre-Application Routing Checklist, May 19, 2017
  - 1-16 Staff Report, August 30, 2018
2. Project Narrative with Exhibits
- 2-1 Exh A: Noise Mitigation for Proposed Kennel
  - 2-2 Exh B: Nooksack Valley Disposal & Recycling, Nov. 18, 2016
  - 2-3 Exh C: Business Insider: Factors that lower your home's value
  - 2-4 Exh D: List of homes sold w/in 2000-in the area
  - 2-5 Exh E: Steve Moore Real Estate Business; Renay Daniels, Realtor; Don Montgomery, Realtor, comments, Oct. 30, 2017
  - 2-6 Exh F: Fire Chief Mel Blankers, Fire District No. 1, letter Nov 6, 2018; County Fire Inspector, memo, dated June 1, 2017
  - 2-7 Exh H: Response to Tim and Brooke Lucas, letter dated 6/03/2017 from Ms. Rebecca Zaiss and John Karuza, with attached letter from Mr. Lucas, dated May 31, 2017
  - 2-8 Exh G: Letter dated July 17, 2018 from Mr. Karuza to Ms. Barisic re: Sight Line Survey work for CUP
3. Staff Report, dated February 25, 2019
4. Agency Comments:
- Nooksack Valley Disposal, 11/18/2016
  - Plans Examiner-Building Services, Revised June 01, 2017, with General Conditions for Commercial Buildings
  - Environmental Health, June 1, 2017
  - Natural Resources, June 1, 2017
  - Fire Marshal, June 1, 2017
  - Engineering Services, February 1, 2019
  - Engineering Services, Exemption from Concurrency Evaluation, June 1, 2017
5. Public Comments
- Allen and Anne Greer, opposing project, May 30, 2017, and March 2, 2019
  - Charles and Laurel Rossi, concerns, June 2, 2017, and March 2, 2019
  - Bernie Loudon, opposed, June 2, 2017
  - Marisue Williams, opposed, June 3, 2017
  - Bernie and Mary Brower, opposed, no date
  - Connie and Steve Regan, not directly affected, June 2, 2017
  - Ron and Marty Snyder, opposed, May 31, 2017

- Bob and Sabrina Hlebichuk, opposed, comment form May 19, May 30, May 31, July 3, 2017
  - Cole Hilton, opposed, May 26 and June 9, 2017
  - Timothy and Brooke Lucas, opposed, June 8, 2017
  - Scott Barker, concerns, June 2, 2017
  - Scott and Jill Conner, opposed, May 26, May 30, 2017, and Feb 28, 2019
  - Kristen Reid, Attorney, June 1, 2017
  - Peter and Becky Harder, opposed, June 2, 2017
  - Matt Galley, concerns, no date
  - Garrett and Rhonda Wise, opposed, May 31, 2017
  - Nathan Lovegren, concerns opposing project, March 4, 2019
  - Tami Scott, opposed, March 3, 2019
  - James and Marna Vinup, opposed, March 3, 2019
  - Larry Bouma, opposed, March 5, 2019
6. Preliminary/Conceptual Stormwater Design Report, prepared by Associated Project Consultants, Inc., P.S., prepared April 24, 2018
  7. Bellingham Herald Tear-Sheet Legal Notice of Application, published May 19, 2017
  8. Certificate of Mailing Notice of Public Hearing, February 14, 2019
  9. Certificate of Mailing Notice of Public Hearing to Interested Parties, February 21, 2019
  10. Certificate of Posting Notice of Public Hearing, February 21 and February 28, 2019
  11. Affidavit of Publication Legal Notice of Public Hearing, February 21, 2019
  12. Revised Site Plan, prepared by Associated Project Consultants, Inc. dated Mar. 14, 2017
  13. Large Site Plan, prepared by Fuller Building Design, dated March 15, 2017
  14. Testimony read into the record by Bernie Loudon re: Real Estate values, letter from Meralee Byker, Feb 25, 2019
  15. Chris Weitzel comment's dated March 5, 2019
  16. Brad Howell Windemere Real Estate email, March 4, 2019
  17. Sabrina Hlebichuk written comments stated at hearing



- 18. Tina Loudon's statements from written testimony at hearing
- 19. Aerial photo of kennel site showing adjacent property owner's property, submitted by Applicant's Attorney

**II.**

John Karuza, the Applicant, is seeking approval for a Zoning Conditional Use Permit to authorize a commercial kennel consisting of one new building to be constructed on a 10.26 acre site located at 6460 Sister's Drive for the purposes of boarding up to a total of 60 dogs for a fee. The proposed internal square footage of the building is 2,400 (24 x 10). Building construction as proposed is a typical ranch house style construction with enclosed outdoor kennel areas extending from the main body of the building. The subject parcel is zoned as a Rural District.

**III.**

The Whatcom County Technical Review Committee has recommended approval of the Zoning Conditional Use Permit and issued a report entitled, "Findings, Conclusions, and Recommendations," dated February 25, 2019 (herein "Staff Report"). The Applicant has indicated that the staff report is factually correct, and the Applicant otherwise stated no objection to the Conditions of Approval recommended by Staff. There was significant public comment on this matter, both written and at the hearing, falling into four primary areas: Potential noise, potential traffic concerns, potential water quality impacts, and potential decreases in property values.

**IV.**

**Specific Findings as to Noise.** The structure is proposed to be insulated for sound control in such a way to meet or exceed commercial kennel industry standards, as follows:

Sound-proofing, with 6-ft. studs, and sound-proof insulation in the walls and ceilings as well as sound absorbing acoustical panels on the walls

and suspended from the ceiling. Each wing of the building will have heat and conditioning and an air exchange system so that no windows or doors will need to be opened that would allow sound to escape.

The building will be constructed in a low spot on the property, and there is a berm to the North and East sides of the building, with the rest of the property surrounded by acres of large fir, cedar, maple, cottonwood, and alder trees, which will further minimize noise issues for other properties in the area.

The Applicant indicated that drop-off and pick-up times will be limited to the following hours: Monday through Friday, from 7-11 a.m. and 3-6 p.m.; and Saturday and Sunday from 7-9 a.m. and 3-6 p.m. The Applicant proposed that dogs will only be allowed outside during pick-up and drop-off and between certain hours of the day for outside play. The limited hours of outside play and nature walks will be allowed in a supervised and controlled manner and will occur at 8 a.m., 12 p.m., 4 p.m., and 8 p.m., for approximately 15-20 minutes at a time.

If the use is approved, the Applicant has agreed to post a security bond in the amount of \$1,000.00 to be used by the County to hire an independent sound analyst should legitimate complaints be made to indicate that the approved measures to condition impacts were not successful, warranting random review, and further mitigation. This bond is proposed to be maintained for the duration of the approved use.

**V.**

**Specific findings as to traffic impact.** Preliminary Traffic Information was reviewed by the Whatcom County Engineering Services Department. Through their review, it was determined that the proposed development will generate nine or less, new p.m. peak hour trips. This number of peak hour trips is no more than what would be expected for a new single-family residence in the area. Additional impacts to traffic should not be disturbing to existing or future uses. There is one nearby residence to the

north that could directly be impacted, and to this end the Staff Report has recommended roadway and driveway access improvements designed to mitigate any increase in traffic to the site.

Testimony from Douglas Ranney of Whatcom County Public Works was particularly enlightening regarding why a traffic study was not required and why a site-distance analysis was more appropriate in this case, given the level of expected traffic.

**VI.**

**Specific findings as to water quality.** The Applicant has proposed that pet waste will be collected and disposed of by Nooksack Valley Disposal off-site. If approved, the subject property will be serviced with public water by the Hemmi Road Water Association which allows for two water connections, one of which will serve the kennel (the other serves the single-family residence onsite). The site will also be served by an existing septic system that has been determined to be adequate for the use. The Technical Review Committee has recommended that prior to issuance of any development permit, the Applicant must demonstrate how any non-residential wastewater generated onsite will be properly held and disposed, and that any non-residential wastewater generated on site (including grooming wastewater) cannot be directed into the OSS system.

**VII.**

**Specific Findings as to the effect on surrounding property values.** The evidence presented was primarily anecdotal and hearsay in nature as presented by both sides about the effect on property values. In any case, the issue did not seem to be germane and it does appear that the Rural Zoning status that applies to the subject property did contemplate the existence of the boarding and kenneling of domestic animals as indicated by the existence of WCC 20.36.156 authorizing such use with a conditional use permit. This shows the legislative intent that, subject to conditions minimizing impacts, the use be allowed in appropriate locations in this Zone. General

objections to the use based on issues that would apply to most sites throughout the Zone, such as impacts on property values, are not relevant to Conditional Use Approval.

**VIII.**

The Findings and Conclusions of the Technical Review Committee of the Land Use Services Division of Whatcom County Planning and Development Services, as set forth in the Staff Report, Exhibit No. 3, dated February 25, 2019, a copy of which is attached hereto, are hereby adopted as findings of fact by the Hearing Examiner and incorporated herein by this reference.

**IX.**

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following:

**CONCLUSIONS OF LAW**

**I.**

The project is consistent with the Whatcom County Comprehensive Plan and Zoning Ordinances, but further requires a Conditional Use Permit pursuant to WCC 20.36.156 which requires such for commercial kennels and stables intended for the boarding or training of domestic animals in Rural Districts. The establishment of commercial dog kennels appears to be a contemplated and appropriate use for this property under its current zoning, and the Applicant is not required to show that “the proposed location is the most efficient place for the proposed use with respect to providing needed services to the public” under that Code.

**II.**

The proposed Application for the dog kennel can be approved if it is consistent with the Zoning Conditional Use Criteria of WCC 20.84.220 (1 through 9). Subject to the Conditions of Approval attached hereto, the proposed use will be consistent with the Conditional Use Criteria, and a Zoning Conditional Use Permit should be granted with those conditions.

III.

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following:

**DECISION**

***A Zoning Conditional Use Permit is hereby granted to John Karuza for the construction of 2,400 sq. ft. indoor commercial dog kennel, with an approximately 2,880 sq. ft. outdoor kennel area on Assessor's Parcel No. 390314 331482, addressed as 6460 Sisters Drive, Everson, Washington. The permit is granted subject to the following required conditions:***

**Planning Division – Current Planning**

1. The use and location on the site shall not be modified or changed in any way without further approval of the Whatcom County Hearing Examiner.
2. A maximum total of four (4) full time employees may be employed in the operations of the commercial kennel.
3. Landscaping shall be maintained pursuant to WCC 20.80.300. A scaled landscape site plan detailing the existing and proposed vegetative buffers screening the use from adjacent uses shall be submitted and approved by planning and development services department prior to issuance of the commercial building permit as required in Section IX (D) of these conditions.
4. Pursuant to WCC 20.36.656, approval of this application shall be subject to the stormwater management provisions of the Whatcom County Development Standards, unless specifically exempted.
5. Pursuant to WCC 20.80.500, adequate parking shall be established on an approved customer, employee, and parking plan that shall be submitted prior to issuance of the required commercial building permit [see Section IX (D)].
6. Hours of Operation for customer visits to the site are between 7 am – 6 pm seven days per week but pick-up and drop-off times will be limited, as follows: Monday through Friday, from 7-11 a.m. and 3-6 p.m.; and Saturday and Sunday from 7-9 a.m. and 3-6 p.m.
7. Pursuant to WCC 20.80.523; any lights used to illuminate a parking lot shall be so arranged as to direct the light away from the adjoining property and the public road.

8. The buildings will be insulated to control sound to industry standards for commercial kennels, and all animals are to be confined within the interior walls of the approximately 2,400 square feet of proposed structure comprising the kennel operations. Except that dogs will only be allowed outside during pick-up and drop-off and between certain hours of the day for outside play. The limited hours of outside play and nature walks will be allowed in a supervised and controlled manner and will occur at 8 a.m., 12 p.m., 4 p.m., and 8 p.m., for approximately 15-20 minutes at a time.
9. Security Bond For Independent Noise Analysis: In order to alleviate any future public costs associated with dispatch of enforcement to answer potential complaints about noise from barking dogs, the applicant has agreed to post a security bond in the amount of \$1000.00 to be used by the County to hire an independent sound analyst should legitimate complaints be made to indicate that the approved measures to condition impacts from potential noise from barking dogs were not successful, warranting random review, and further mitigation. This bond shall be maintained for the duration of the approved use.
10. Pursuant to WCC 20.80.355; all trash and/or garbage collection and storage areas must be screened from view from adjacent streets and properties using a solid fence or wall a minimum of six feet high. Trash and storage areas shall be submitted prior to issuance of the required commercial building permit.
11. Should archaeological materials (e.g. shell midden, faunal remains, stone tools) or human remains be observed during the scope of operations as approved, all work in the immediate vicinity shall stop, and the area shall be secured. The State Office of Archaeology and Historic Preservation (360-586-3065) and the Lummi Nation Tribal Historic Preservation Office (360-384-2298) shall be contacted immediately in order to help assess the situation and determine how to preserve the resource(s). Compliance with all applicable laws pertaining to archaeological resources is required.
12. Title 14, Right to Farm – Disclosure: The owners of the property upon which this conditional use permit approval is granted shall sign a statement of acknowledgment containing a disclosure that pertains to the use of natural resources in Whatcom County. This disclosure shall be made on forms provided by Whatcom County, which shall then be recorded in the Whatcom County Auditor's office.

- The disclosure shall contain the following language:

*The subject property is within or near designated agriculture lands on which a variety of commercial activities may occur that are not compatible with residential development for certain periods of limited duration. You may be subject to inconveniences or discomforts arising from such*

*operations, including but not limited to noise, odors, flies, fumes, dust, smoke, the operation of machinery of any kind during any 24-hour period (including aircraft), the storage and application of manure, and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides and pesticides. Whatcom County has determined that the use of real property for agricultural operations is a high priority and favored use and will not consider to be a nuisance those inconveniences or discomforts arising from farm operations, if such operations are consistent with commonly accepted good management practices and otherwise comply with local, state, and federal laws.*

**Health Department**

1. Water: The applicant must have an approved public water supply for this proposal. The applicant has provided an approved water availability notification form from the Hemmi Road Water Association for 2 connections: one for the proposed single family residence and one for the proposed kennel.
2. Sewage: The applicant must demonstrate adequate sewage disposal capacity for the proposed project. The applicant has an approved on-site sewage system (OSS) design for 4 bedrooms that has been installed. The applicant has recently been approved to build a 3 bedroom single family residence on the property. The applicant may use the existing OSS to support the kennel office bathroom. A septic tank only permit for the kennel bathroom may be required at the time of building permit application.
3. Wastewater: Any non-residential wastewater generated on site (including grooming wastewater) cannot be directed into the OSS system. At the time of building permit application, the applicant must demonstrate how any non-residential wastewater generated onsite will be properly held and disposed.
4. Solid Waste: Animal wastes generated by the proposal must be disposed of properly. The applicant has provided a copy of the letter from Nooksack Valley Disposal for dog waste collection and disposal.

**Building Services Division:** The Whatcom County Plans Examiner requires the following condition(s) for the above permit.

1. A commercial building permit is required for this project. It will be reviewed under the current adopted edition of the International Building Code (IBC) and must comply with all other applicable codes and ordinances adopted by Whatcom County.
2. A pre-application screen meeting will be required prior to submittal for permit to determine if a Building Services pre-application meeting will be required or waived. If a Conditional Use Permit is required, it must be approved prior to the screening



meeting date. Call 360-778-5900 to set up a screening meeting with the Building Department supervisor or a plans examiner.

3. When you have completed your screening and have completed any requirements indicated on your screening form or you have completed your pre-application meeting and have completed any requirements from that meeting you may set up your appointment for permit submittal. Appointments are available on Mondays through Friday. To schedule an appointment, contact Planning and Development Services (369-778-5900). Please have your pre-application number and/or your contact information and geographic (tax parcel) number available when you call to schedule. The commercial building permit application form is available on-line at: [www.whatcomcounty.us/pds](http://www.whatcomcounty.us/pds) under Quick Links > Applications/Forms.
4. No Building plans were provided for the Residents or the Kennel at the time of the review; therefore comments will be general in nature and will be more complete once plans are provided.
5. The following requirements/findings are from the 2015 IBC for the Kennel. Requirements for the residents will be per the 2015 International Residential Code 2015 (IRC 2015)
  - Preliminary occupancy classifications:
    - a. - R3 for the Residents (IRC 2015)
    - b. - B; Kennel
  - Exiting for the kennel shall meet the requirements of IBC Chapter 10 – Means of Egress. Maximum occupant load shall be determined and proper egress widths shall be shown on plans.
  - Minimum plumbing facilities (restrooms) (Kennel) are required in accordance with WA State Amendments (WAC) to IBC Chapter 29 – Minimum Plumbing fixtures and sanitation facilities. Occupant count for plumbing shall be calculated per CH 29.
  - The site and Kennel building shall meet the barrier-free, handicap accessible requirements of the IBC Chapters 10, 11 and Appendix E; ICC/ANSI A117.1-10; and WAC 51-50.
  - Heating, cooling, lighting and building envelope shall comply with the current adopted edition of the Washington State Energy Code (WSEC)
  - Ventilations shall comply with the current adopted edition of the International Mechanical Code (IMC)
6. Refer to the attached General Conditions for Commercial Buildings for additional building permit requirements.

**Fire Marshal's Office**

1. Access road from the county right of way shall meet commercial standards and is required to be widened to a minimum of 20-foot drivable surface as



required by Whatcom County Fire Marshal's Office road standards. This is from the county road to the purposed business.

2. Fire Truck turn-a-round is required to meet the commercial standard and not the residential standard as shown on the site plan presently.
3. The proposal shall comply with all applicable codes and ordinances adopted by Whatcom County. Any overlooked hazardous condition and/or violation of applicable code does not imply approval of such condition or violation.

**Public Works – Engineering Division**

1. Preliminary Stormwater Report prepared by licensed civil engineer was submitted, reviewed, and accepted for the CUP application. However, Final Stormwater Report including details, calculations and drainage design site plan shall be submitted with building permit application for the final approval.
2. Preliminary Traffic Information has been reviewed. Subject development will generate 9 or less new p.m. peak hr. trips. Exemption from Concurrency evaluation has been issued, ECE2017-00034.
3. Certified Record Drawings (as-built) for the installation of any new drainage system/facility shall be provided and approved by the PW Engineering Services upon construction completion, and prior to any Certificate of Occupancy.
4. As per Chapter 2, Sec. 218, (B), the applicant shall post a Stormwater Maintenance Security with the PW Engineering Services for new drainage facilities installation. The security shall be for an amount of 10% of the engineer's construction cost estimate or \$5,000 (whichever is greater). The security shall be in effect for 2 years from the date of provisional acceptance of newly constructed drainage facilities.
5. Pursuant to DOE 2012/14 Manual, Vol. I, Chapter 3, applicant shall complete and record a Declaration of Covenant and Grant of Easement for the stormwater maintenance purposes. Document is required to be recorded prior to issuance of any Certificate of Final Occupancy.
6. The applicant shall obtain a Revocable Encroachment Permit from the Engineering Services prior to the onset of any construction in the County Right of Way, including paved apron and any off-site construction.
7. Interior traffic circulation shall be designed as per FM requirements and WC Development Standards.

- 8. All roads, stormwater facilities, and grading plans shall be designed and stamped by a Washington State Licensed Civil Engineer and submitted for county engineering review and approval prior to construction.

**Critical Areas**

- 1. All proposed expansion outside the already developed portions of the parcel (Approved Development Area dated April 26, 2017 and site plan review dated June 1, 2017) shall be reviewed under the building structural permit (such as a final site plan review and clearing limits inspection). If additional impacts to critical areas are identified, a critical areas assessment report may be required.

**NOTICE OF POTENTIAL REVOCATION AND PENALTIES**

This Approval is subject to all of the above-stated conditions. Failure to comply with them may be cause for its revocation. Complaints regarding a violation of the conditions of this permit should be filed with Whatcom County Planning and Development Services. The Hearing Examiner may not take any action to revoke this approval without further public hearing. Violations of this title shall constitute Class I civil infractions pursuant to RCW 7.80.120. The maximum penalty and the default amount for such violations shall be consistent with Chapter 7.80.RCW.

**NOTICE OF APPEAL PROCEDURES FROM FINAL DECISIONS OF THE WHATCOM COUNTY HEARING EXAMINER**

This action of the Hearing Examiner is final.

The applicant, any party of record, or any county department may appeal any final decision of the hearing examiner to Superior Court or other body as specified by WCC 22.05.020. The appellant shall file a written notice of appeal within 21 calendar days of the final decision of the hearing examiner, as provided in RCW 36.70C.040.

More detailed information about appeal procedures is contained in the Whatcom County Code Title 22 and Title 23.60 and which is available at <http://www.codepublishing.com/WA/WhatcomCounty>.

DATED this 13<sup>th</sup> day of March 2019.

Rajeev D. Majumdar, Hearing Examiner *Pro Tem*

**WHATCOM COUNTY HEARING EXAMINER**

**re:** The application of **Lynden Public Works** for a Shoreline Substantial Development Permit and Shoreline Variance Permit

*“Berthusen Park Restroom Facility”*

SHR2020-0007; and  
SHV2020-0003

FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
DECISION

**SUMMARY OF APPLICATION AND DECISION**

Application: Lynden Public Works seeks a Shoreline Substantial Development Permit and Shoreline Variance Permit to replace a park restroom building within the City of Lynden Berthusen Park. The project proposes the demolition of the eastern most restroom and replacing it with a CXT Precast Montrose restroom building. The restroom facility is within a Shoreline Buffer associated with Bertrand Creek and the overall roof area of the structure will be expanded from 280 SF to 570 SF.

Decision: The requested permits are granted, subject to conditions.

**INTRODUCTION**

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted herein and evidence presented at the public hearing.

**FINDINGS OF FACT**

I.

**PRELIMINARY INFORMATION**

Applicant: The City of Lynden Public Works

Property Location: Berthusen Park, 8837 Berthusen Road,  
Lynden, WA 98264

Legal Description: Within Section 14, Township 40 North, Range 02 East, W.M.

Parcel Number: 400214 306442  
 Adjacent Water Body: Bertrand Creek  
 Shoreline Designation: Conservancy  
 Statewide Significance: No  
 Application Submitted: March 11, 2020  
 Notice of Completeness: March 23, 2020  
 Notice of Application: March 25, 2020  
 End of Comment Period: April 24, 2020

Authorizing Ordinances: SMP 23.50           Applicability  
                                   SMP 23.70.010       Administration  
                                   SMP 23.70.030       Hearing Examiner

Applicable Shoreline Program Provisions

SMP 23.20                   Goals and Objectives  
 SMP 23.30.020           Official Shoreline Map  
 SMP 23.30                 Shoreline Designations  
 SMP 23.40                 Shoreline of Statewide Significance  
 SMP 23.60.010           Substantial Development Permit Criteria  
 SMP 23.60.030           Variance Permit Criteria  
 SMP 23.60.130           Public Hearings  
 SMP 23.90                 General Policies & Regulations  
 SMP 23.100                Shoreline Use Policies & Regulations

SEPA Review:           Categorically Exempt pursuant to WAC 197-11-800(1)(a)(iv)

Legal Notices:        Published – Notice of Public Hearing, July 16, 2020  
                                   Posted – Notice of Public Hearing, July 16, 2020  
                                   Mailed – Notice of Public Hearing, July 9, 2020

Hearing Date:         July 29, 2020

Parties of Record

Steve Banham  
 Lynden Public Works  
 300 4<sup>th</sup> Street  
 Lynden, WA 98264

Mark Sandal

Lynden Programs Manager  
300 4<sup>th</sup> Street  
Lynden, WA 98264

Olivia Moseley  
Reichhardt & Ebe Engineering  
PO Box 978  
Lynden, Washington 98264

Andrew Hicks, Shoreline Administrator  
Planning and Development Services  
Whatcom County

Ryan Ericson  
Planning and Development Services  
Whatcom County

Exhibits:

1. Shoreline Substantial Development Master Land Use Application with attachments
  - 1-1 Shoreline Substantial Supplemental Application
  - 1-2 Shoreline Variance Master Land Use Application & Supplemental Application
  - 1-3 PDS Guidelines for Finding Property Owners for Hearing Notices
  - 1-4 Fee Responsibility
  - 1-5 Agent Authorization
  - 1-6 Project Narrative
  - 1-7 Determination of Completeness, dated March 23, 2020
  - 1-8 PDS Comment Letter, with Project Description, March 25, 2020
  - 1-9 Customer Receipt, March 11, 2020
  
2. Staff Report, July 17, 2020
  
3. R&E/Reichhardt & Ebe, Engineering, Inc, Berthusen Park Restrooms – Alternatives Analysis Memorandum, prepared by Olivia Moseley, EIT, dated March 9, 2020, with attached Site Map Exhibit
  
4. R&E/Reichhardt & Ebe, Engineering, Inc, Berthusen Park Restrooms- Recorded Deed & Easements Memorandum, prepared by Olivia Moseley, EIT, with attached Statutory Warranty Deed, 11/18/1998
  
5. Natural Resources: Conservation Service: Web Soil Survey: National Cooperative Soil Survey, dated 11/1/2019 -Soil Map—Whatcom County Area, Washington, with attached maps: Bertrand Cr./Fishtrap Cr.; Bull Trout; Coho; Fall Chum; Sockeye; Winter Steelhead; and Fish Habitat Conservation Areas
  
6. Whatcom County Preliminary Traffic & Concurrency Information, with Trip Generation Information, prepared by Olivia Moseley, March 5, 2020

- 7. County Preliminary Stormwater Proposal: Berthusen Park Restrooms, with Site Plan Requirements, prepared by Olivia Moseley, March 5, 2020, and Memorandum dated March 2, 2020 re: Stormwater Evaluation of Project Area, with attached Existing Stormwater Areas, Predeveloped Storm Exhibit Map, Exhibit A; Exhibit B- Flow Charts
- 8. GeoEngineers: Wetland and FWHCAs Assessment and Buffer Mitigation Report: Berthusen Park Restroom Replacement, dated February 6, 2020, with attached Vicinity Map, Figure 1; Wetlands and Stream Site Plan, Figure 2; Appendix A-Site Photographs- Figure A-1, Figure A-2, Figure A-3; Appendix B-Background Data and Maps: NWI Map, Wetlands & Critical Areas Ordinance-Wetlands Map
- 9. Washington Department of Fish and Wildlife Priority Habitats and Species Report, 11/01/2019, with an attached WDFW Test Map, Nov. 1, 2019; Appendix C Wetland Determination Datasheets: Wetland Determination Data Form-Western Mountains, Valleys, and Coast Region; Cowardin Classes-Figure 1; Hydroperiods, Figure 2; Contributing Basin, Figure 3; Habitat, Figure 4; Washington State Water Quality Atlas/Department of Ecology: Whatcom County: Water quality improvement projects; Appendix E: Site Plans-Preliminary Site Plans, prepared by R&E, dated 3/09/2020
- 10. Certificate of Mailing Notice of Application dated March 25, 2020
- 11 Bellingham Herald Legal Notice of Application, March 25, 2020
- 12. Certificate of Posting: Notice of Public Hearing, July 15, 2020
- 13. Certificate of Mailing: Notice of Public Hearing, July 10, 2020
- 14. Legal Notice of Zoom Public Hearing, July 16, 2020

**II.**

The proposed project is for the demolition of an existing restroom building with a roof area of 280 SF and installation of a CXT Precast Montrose restroom building with a roof area of 570 SF. The footprint of the existing structure is approximately 215 SF and the proposed footprint area is 433 SF. In addition to the new restroom building approximately 115 linear feet of 1-inch water service, 55 linear feet of 4-inch sanitary sewer, and 90 linear feet of underground power service will be installed.

**III.**

The Whatcom County Shoreline Administrator has recommended approval of the requested Shoreline Substantial Development Permit and Shoreline Variance for the proposed replacement of an existing restroom building with a roof area of 280 SF and installation of a CXT Precast Montrose restroom building with a roof area of 570 SF. The Staff Report entitled “Findings, Conclusions, and Recommendations,” dated July 17, 2020,

a copy of which is attached hereto. The Applicant has indicated that the Staff Report is factually correct. The Applicant stated no objection to the Conditions of Approval recommended by Staff. There was no public comment on this matter at the hearing. The Findings of Fact contained in the Staff Report are adopted and incorporated herein by this reference.

**IV.**

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following:

**CONCLUSIONS OF LAW**

**I.**

The Conclusions of Law are set forth in the Staff Report, Exhibit No. 2 in the Hearing Examiner file, dated July 17, 2020, are adopted and incorporated herein by this reference as Conclusions of Law. Subject to the Conditions of Approval recommended by Staff, the Hearing Examiner also concludes that the proposal is consistent with the Goals, Policies, and Purpose of the Shoreline Management Act, RCW 90.58, and with the Goals and Policies of the Whatcom County Shoreline Management Program.

**II.**

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following:

**DECISION**

*A Shoreline Substantial Development Permit and Shoreline Variance Permit are hereby granted to Lynden Public Works Department to replace the existing eastern most restroom of a park restroom building within Lynden Berthusen Park located on Assessor’s Parcel Number 4002147 306442, addressed as 8837 Berthusen Road, Lynden, Washington. The Permit is granted subject to the following Conditions of Approval:*

- 1. The proposed shoreline developments shall be consistent with the scope and site plans stamped “Site Plan Review Approval” and initialed by the Shoreline Administrator on July 20, 2020. Any changes to the proposed development may require additional review and approval by the Whatcom County Shoreline

Administrator and/or Whatcom County Hearing Examiner.

- 2 The project must be constructed in accordance with the submitted plans/drawings and supporting documentation and comply with all agency permit conditions.
- 3 Issuance of this shoreline permit does not release the applicant from any other Local, State, regional or Federal statutes or regulations applicable to the proposed development.
- 4 Washington State Department of Ecology Water Quality Standards shall be maintained.
- 5 The project shall not result in significant degradation of ground or surface waters and shall be completed during periods of dry weather.
- 6 A commercial building permit is required for this project. It will be reviewed under the current adopted edition of the International Building Code (IBC) and must comply with all other applicable codes and ordinances adopted by Whatcom County.
- 7. Prior to building permit issuance, the Berthusen Park bridge must be evaluated by an engineer, to see if it meets the requirements of the International Fire Code. The bridge is required to be rated to AASHTO HB-17 Construction standards. If the bridge does not meet this standard, it may require additional structural modification or replacement.
- 8 Stormwater from the proposed development shall be controlled in a manner which does not degrade any critical areas or surface waters or direct water onto neighboring properties.
- 9 All construction debris shall be removed from the shoreline environment upon completion of the project and disposed of in accordance to all applicable regulations.
- 10. Mitigation Requirements:
  - a Mitigation measures and BMPS shall be installed per the GeoEngineers Report dated February 06, 2020 and date stamped Mar 11, 2020 Titled Wetland and FWHCAs Assessment and Buffer Mitigation Report.
  - b Recorded Conservation Easement. Prior to building permit issuance a conservation easement with mitigation form must be submitted and approved by the Natural Resource Department. The signed Conservation Easement by the Natural Resource Department must be recorded with the Whatcom County Auditor. The applicant will provide the County with the document recording \_\_\_\_\_ numbering.  
<http://www.co.whatcom.wa.us/DocumentCenter/View/2192/Conservation-Easement-Including-Mitigation-PDF>
  - c Monitoring. The monitoring period for this project is 5 years, unless an



annual report fails to meet performance standards, then an additional year is added to the period. The following spring after the approved as-built inspection begins the monitoring period. The project has been approved to use the standard Mitigation-Monitoring report form.

<http://www.co.whatcom.wa.us/DocumentCenter/View/33014/Mitigation-Monitoring-Report-Form>

- d. Mitigation Case. A mitigation case will be created at the time of building permit submittal. The case will be for the 5 years of monitoring.
- e. As-built Mitigation Approval. The project has been approved to use the As-Built documentation form. Prior to requesting an as- built inspection <http://www.co.whatcom.wa.us/DocumentCenter/View/28923/As-built-Documentation-Form>
- f. Fees. Applicant will pay for all outstanding fees at time of building permit issuance.
- g. Any change in site plan shall have further review by Natural Resource staff.
- h. If any part of the proposed project is creating unanticipated impacts to the environment a contingency plan shall be authored by the applicant's biological consultant. The contingency plan shall tailor a different approach to offsetting critical areas losses from the construction of the project, and be reviewed and approved by the Whatcom County Critical Areas staff.

11. Should archaeological resources (e.g. shell midden, faunal remains, stone tools) be observed during project activities, all work in the immediate vicinity should stop, and the area should be secured. The Washington State Department of Archaeology and Historic Preservation (Gretchen Kaehler, Local Government Archaeologist 360-586-3088) and the Lummi Nation Tribal Historic Preservation Office (Lena Tso, THPO 360-312-2257; Tamela Smart, Deputy THPO 360-312-2253) should be contacted immediately in order to help assess the situation and to determine how to preserve the resource(s). Compliance with all applicable laws pertaining to archaeological resources is required.

12. If ground disturbing activities encounter human skeletal remains during the course of construction, then all activity will cease that may cause further disturbance to those remains. The area of the find will be secured and protected from further disturbance. The finding of human skeletal remains will be reported to the county medical examiner/coroner and local law enforcement in the most expeditious manner possible. The remains will not be touched, moved, or further disturbed. The county medical examiner/coroner will assume jurisdiction over the human skeletal remains and make a determination of whether those remains are forensic or non-forensic. If the county medical examiner/coroner determines the remains are non-forensic, then they will report that finding to the Department of

Archaeology and Historic Preservation (DAHP) who will then take jurisdiction over the remains. The DAHP will notify any appropriate cemeteries and all affected tribes of the find. The State Physical Anthropologist will make a determination of whether the remains are Indian or Non-Indian and report that finding to any appropriate cemeteries and the affected tribes. The DAHP will then handle all consultation with the affected parties as to the future preservation, excavation, and disposition of the remains.

- 13. Construction shall be commenced within two (2) years of the effective date of this shoreline permit, as defined by 23.60.190(A)(3), and shall be completed in five (5) years. The Shoreline Administrator may grant a single extension for a period of not more than one (1) year based on a showing of good cause. Such request must be filed with the Shoreline Administrator before the expiration date described above.

**NOTICE OF POTENTIAL REVOCATION AND PENALTIES**

This Approval is subject to all of the above-stated conditions. Failure to comply with them may be cause for its revocation. Complaints regarding a violation of the conditions of this permit should be filed with Whatcom County Planning and Development Services. The Hearing Examiner may not take any action to revoke this approval without further public hearing. Violations of this title shall constitute Class I civil infractions pursuant to RCW 7.80.120. The maximum penalty and the default amount for such violations shall be consistent with Chapter 7.80.RCW.

FURTHER, in addition to incurring civil liability under Shoreline Management Program Section 23.80.20 and RCW 90.58.210, pursuant to RCW 90.58.220 any person found to have willfully engaged in activities on shorelines of the state in violation of the provisions of the act or the Shoreline Management Program or other regulations adopted pursuant thereto shall be guilty of a gross misdemeanor and shall be punished by a fine of not less than \$25 or more than \$1,000 or by imprisonment in the county jail for not more than 90 days, or by both such fine and imprisonment; provided that the fine for the third and all subsequent violations in any five year period shall not be less than \$500 nor more than \$10,000.

Any person who willfully violates any court order, regulatory order or injunction issued pursuant to the Shoreline Management Program shall be subject to a fine of not more than \$5,000, imprisonment in the county jail for not more than 90 days, or both. This approval does not release the applicant from any regulations and procedures required of any other public agency, or any County requirements other than the requirement to obtain a Shoreline Substantial Development Permit and Shoreline Conditional Use Permit. This permit may be rescinded pursuant to RCW 90.58.140(8)

in the event the permittee fails to comply with the terms or conditions thereof. Pursuant to Whatcom County Shoreline Management Program Section 23.60.151 this permit shall expire within two years of the date of its approval and a new permit will be required, if the permittee fails to make substantial progress toward completion of the project for which it was approved. Pursuant to Section 23.60.152 it shall expire if the project is not completed within five years of the date of the approval, unless the permittee has requested a review, and upon good cause shown, been granted an extension of the permit.

THIS PERMIT IS NOT VALID (AND NO CONSTRUCTION NOR OPERATION AUTHORIZED BY THIS PERMIT SHALL BEGIN) UNTIL THIRTY (30) DAYS AFTER THE DATE OF FILING AS DEFINED BY RCW 90.58.140(6) AND WAC 197-14-090, OR UNTIL ALL REVIEW PROCEEDINGS INITIATED WITHIN THIRTY DAYS FROM THE DATE OF SUCH FILING HAVE TERMINATED; EXCEPT AS PROVIDED IN RCW 90.58.140(5)(A)(B)(C).

**NOTICE OF APPEAL PROCEDURES FROM FINAL DECISIONS  
OF THE WHATCOM COUNTY HEARING EXAMINER**

This action of the Hearing Examiner is final.

The applicant, any party of record, or any county department may appeal any final decision of the hearing examiner to Superior Court or other body as specified by WCC 22.05.020. The appellant shall file a written notice of appeal within 21 calendar days of the final decision of the hearing examiner, as provided in RCW 36.70C.040.

More detailed information about appeal procedures is contained in the Whatcom County Code Title 22 and Title 23.60 and which is available at <http://www.codepublishing.com/WA/WhatcomCounty>.

Dated this 6<sup>th</sup> day of August 2020

\_\_\_\_\_  
Rajeev Majumdar, Hearing Examiner *Pro-Tem*

**ISLAND COUNTY HEARING EXAMINER**

**RE: *Site Plan Review for Conditional Use Permit***

Cove Club Crestwood, LLC

**No. SPR 262/19**

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
DECISION**

**SUMMARY OF APPLICATION AND DECISION**

**Application:** The Applicant seeks a Site Plan Review for a Type III Approval for the construction of a 400 sq. ft. indoor shooting range, situated on a 7.4 acre site, addressed as 1865 Crestwood Cove Ct, Freeland, WA.

**Decision:** The Hearing Examiner hereby approves the installation of the indoor shooting range, subject to conditions.

**INTRODUCTION**

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted herein and evidence presented at the public hearing held on October 31, 2019.

**FINDINGS OF FACT**

**I.**

**PRELIMINARY INFORMATION**

**Applicant:** Cove Club Crestwood, LLC

**Property Location:** 1865 Crestwood Cove Ct  
Freeland, Washington

**Assessor's Parcel No.** R22902-077-3140

**Zoning:** Rural [R]

**Allowable Density:** 1DU/ 5AC

**Critical Overlays:** Not within the area of the site of proposed shooting range.

Total Acreage: 7.4 acres

Law Enforcement: Island County Sheriff's Office

Authorizing Ordinances:

1. Revised Code of Washington [RCW] Chapter 36.70
2. Island County Code, Title 11, Land Development Standards
3. Island County Code, Title 12, Roads and Bridges
4. Island County Code, Title 13, Public Works
5. Island County Code, Title 16, Planning and Subdivisions
6. Island County Code, Title 17, Zoning
7. State Environmental Policy Act (SEPA)
8. Washington Administrative Code Chapter 197-11-800

SEPA Review: The Island County SEPA Official has determined that the proposal is categorically exempt from SEPA review.

Legal Notices: Community Meeting, 1/4/19

Posting – Public Notice, 8/15/19

Mailing – Public Notice, 8/9/19

Mailing – Public Hearing Letter, 9/26/19

Hearing Date: October 31, 2019

Parties of Record

Michelle Pezley, Senior Planner  
 Island County Community and Development  
 P.O. Box 5000  
 Coupeville, WA 98239

James Ihnot, Attorney and Agent of Applicant  
 610 Market St. Ste. 100  
 Kirkland, WA 98033

Ted Clifton, Agent of Applicant  
 460 Kineth Point Place  
 Coupeville, WA 98239

Michael McInerney, Range Master and Agent of Applicant  
4848 Pinewood Circle  
Langley, WA 98260

Bob Posner  
4019 Alder Ave.  
Freeland, WA 98249

Marianne Edaine, Whidbey Environmental Action Network (WEAN)  
P.O. Box 53  
Langely, WA 98260

Peter Feichtmeir  
5090 E Harbor Rd.  
Freeland, WA 98249

Robin Charlwood  
1842 Foliage St.  
Freeland, WA 98249

Ron Knox  
4010 Alder Ave  
Freeland, WA

Tom Cahill  
1895 Brainers Rd.  
Freeland, WA 98249

Victor Eckland III  
5127 E. Harbor Rd.  
Freeland, WA 98249

Marge Buckley  
P.O. Box 575  
Freeland, WA 98249

Steve Erickson, WEAN  
P.O. Box 53  
Langley, WA 98260

Larry Nelsen  
5196 E. Harbor Rd.  
Freeland, WA 98249

Exhibits:

**Staff Report**

- 1. Staff Report

**Site Data**

- 2. Island County Request for Comments form; dated 7/29/19
- 3. Map of Parcel

**Application & Reports**

- 4. Letter re: project siting of a pre-engineered & constructed containerized gun firing range; from: Agent, Ted Clifton of Cove Club Crestwood, LLC; dated 7/14/19
- 5. Master Land Development Permit Application; dated 7/16/19
- 6. Form C – Application for SITE PLAN review
  - a. Directions to site with attached google map
  - b. S. ½ Sec. 2 Twp. 29 R.2E – Map ID: 285 (11X17 Map)
  - c. Transportation Concurrency letter with attached Certificate; from: Nikki Davis, Traffic Engineer w/ Public Works; dated received 7/16/19
  - d. Access to County Road Right of Way Application; issue date 6/1/04
  - e. Solid Waste Management Plan; signed and dated 3/20/19
- 7. Parcel Map of Legal Description with attached 11” X 17” Gun Range Site Map
- 8. Cove Club Range Facility Procedural Manual w/ attached Range Rules & Facility Waiver
- 9. Construction Plans titled, “Cove Club LLC 2-Lane 50 Feet Static Rifle Range; prepared by: Shooting Range Industries, LLC
- 10. Community Meeting Attendance Sheet w/ attached Notes; dated 1/4/19
- 11. Pre- Application Summary; dated 3/1/19

**Notices**

- 12. Affidavit of Posting the Public Notice Sign; dated 8/15/19
- 13. Affidavit of Mailing the public notice to Parties of Record & Property Owners within 300 feet w/ attached addresses; Dated 8/9/19
- 14. Notice of Public Hearing Letter; dated 9/26/19

**Agency Comments/ Review letters**

- 15. Letter re: Water availability verification and sewage disposal system; from: Clea Barenburg, Land Use Coordinator from Public Health; dated 8/16/19
- 16. Letter re: Building permit requirements from: Tamra Patterson, Plans Examiner/ Building Inspector; dated 8/19/19
- 17. Letter re: Site Plan Review; from: Bill Poss, Public Works Development Coordinator; dated 8/16/19

- 18. Email re: review with no objections as proposed; from: Chris Garden, Training Supervisor/ Marine Unit Supervisor, Reserve Liaison of Island County Sherriff's Office; dated 10/10/19
- 19. Inadvertent Discovery Plan w/ attached photos.

**Public Comments**

- 20. Email of Opposition; from: Victor Eckland III; dated 8/23/19
- 21. Letter of Opposition w/ attached google map illustrating location of gun range to residents property; from: Michael M. George; dated 8/22/19
- 22. Letter of Opposition; from: Wayne & Janice Bates; dated received 8/26/19
- 23. Letter of Opposition; from: Karen Knight; dated 8/22/19
- 24. Letter of Concern & request for information; from: Kathryn S. Beaumont; dated 8/23/19
- 25. Letter of Complaint; from: Marge Buckley & Victor Eckland; dated 8/23/19
- 26. Email of Opposition; from: Robin G. Charlwood; dated 8/27/19
- 27. Email of Opposition; from: Cheryl Weisz; dated 8/27/19
- 28. Email of Complaint w/ Concerns; from: Gretchen Luxenberg; dated 8/29/19
- 29. Letter of Opposition w attached Notice of Application; from: Larry and Rhonda Nelsen; dated 8/30/19
- 30. Letter of Opposition; from: Virginia Hale; dated 8/30/19
- 31. Email of Opposition; from: Lenore Norrgard; dated 9/2/19
- 32. Email of Opposition; from: Peter Feichtmeir & Sarah Patton; dated 9/2/19
- 33. Email of Concerns; from: Kim Kelzer; dated 9/3/19
- 34. Email of Opposition; from: Carolyn Tamler; dated 9/3/19
- 35. Email of Concern; from: Deborah Shibley; dated 9/3/19
- 36. Letter of Opposition; from: Robert Posner; dated 9/4/19
- 37. Email of Opposition; from: Dianne Shiner; dated 9/4/19
- 38. Email of comments w/ concerns; from: Marianne Edain w/ Whidbey Environmental Action Network (WEAN); dated 9/5/19
- 39. Email of concern; from: Rebecca Rickabaugh; dated 9/5/19

**Additional Exhibits** (exhibits that were received after the Hearing Examiner's binder of exhibits has been created)

- 40. CD – Sound Study prepared by: Shooting Range Industries, LLC
- 41. Staff Report Letter to Agent and Parties of Record; dated 10/16/19
- 42. Email of Opposition from: Ken Kortlever; dated 9/4/19
- 43. Email of Opposition; from: John Stroh Jr and Carla Stroh dated 9/4/19
- 44. Email of Opposition with attachment to complaint investigation request; from: [mrobnett@whidbey.com](mailto:mrobnett@whidbey.com) dated 9/5/19
- 45. Email of clarification re: Detailed update; from: Michelle Pezley to Victoria Moore dated 10/16/19
- 46. Email of Opposition; from: Robin Charlwood dated 10/16/19
- 47. Email of Opposition; from: Marianne Edain with attachments dated 10/23/19
- 48. Email string from Janet St. Clair; re: Urgent community concern; dated 10/30/19



- 49. Email string of Opposition; from Dianne Shiner ; re: Urgent community concern; dated 10/30/19
- 50. Email of Opposition; from: Robin Charlwood; re: Urgent Community Concern; dated 10/30/19
- 51. Email sting of Opposition; from: Robin Charlwood; re: Urgent Community Concern; dated 10/31/19
- 52. Express annual Report with changes; submitted at hearing by Marianne Edain w/ WEAN; 10/31/19
- 53. Annual Report; submitted at hearing by Marianne Edain w/ WEAN; 10/31/19
- 54. Cove Club Crestwood Property Search; submitted at hearing by Marianne Edain w/ WEAN; 10/31/19
- 55. Notice of Appearance; submitted at hearing by Jim Ihnot, Attorney representing Cove Club Crestwood, LLC.; 10/31/19
- 56. Cove Club Crestwood Hearing, LLC Handout; submitted at hearing by Tom Cahill; dated 10/31/19

**II.**

The subject parcel is zoned as Rural.

The County received a code complaint that the property owner had moved the shooting range container to the property in January.

The applicant held a community meeting on January 4, 2019.

The applicant proposed to use a custom designed shipping container for the shooting range (herein "Container") to be next to an existing barn. The property is located off Crestwood Cove Court, a private road off East Harbor Road. The site consists of a single-family residence, guest cottage, detached accessory structure with a bedroom and a barn. The shooting range will be over 400 feet from any critical area, and 500 feet from any residence. The applicant proposes the shooting range will be private range that will only serve the property owners and guests.

**III.**

Island County staff has recommended approval of the Conditional Use Permit's Site Plan Review with conditions and issued a report entitled, "Staff Report & Recommendation, Type III Site Plan Review – SPR 262/19, Indoor Shooting Range," dated October 15, 2019 (herein "Staff Report"). The Applicant has indicated that the staff report is factually correct, and the Applicant otherwise stated no objection to the Conditions of Approval recommended by Staff. There was significant public comment

on this matter, both written and at the hearing, falling into four primary areas: Potential noise; prior bad acts of the applicant; the possession of firearms by foreign nationals and related safety concerns; and the fact that the applicant owns multiple adjacent lots which members of the public felt should be regulated comprehensively.

All oral testimony in favor and against the permit was made under oath.

**IV.**

**Specific Findings as to Noise.**

A great deal of public comment dealt with objection to noise, and existing objections to noise on the lot generated by outdoor shooting. The structure (Ex. 9) is proposed to be insulated for in such a way to minimize all sight and the majority of sound that would be produced by the firing of firearms. A video demonstration of the sound proofing construction was submitted and showed sound at 30 ft. away from the building being below speaking level (Ex. 40).

Michael McInerney, an agent of the applicant, testified as to the range guidelines submitted (Ex. 8) and to the limitations on caliber and speed of bullet and the noise generated- specifically noting the rules designed to maximize safety and minimize sound. Michael McInerney also testified about the discontinuation of outdoor firearm use should the permit be granted.

**V.**

**Specific findings as to prior bad acts.**

Much of the public comment made reference to prior applications or problems with code enforcement by this applicant on other parcels, and specifically to a code complaint made in regards to the moving of the Container onto the site prior to approval of any firearms range, and use of a sea plane to access the property.

In regards to public comment about prior violation and prior applications on other sites, and documentation (witness Marianne Edaine identifying Ex. 47) that previous violations should be resolved. Michelle Pezley testified that she was not aware of any legal basis to require an owner of to undergo such a review, and that any violations had been cured.

In regards to public comment about this specific site, Michelle Pezley testified

that there was a code complaint that the Container had moved on site and a stop-work order. Pezley also testified that granting the permit would cure the defect, and is a regular part of code compliance- that often the requirement for permits arises out of code complaints. There was testimony from Ted Clifton regarding his orders from the Applicant to get any and all applicants required, and information they received stating a permit wasn't needed for a container to be on the property. There was testimony from Jim Ihnot in regards to contacting the County Government on December of 2018 about the permit process and placing the container in place; and that the container has remained secured, locked, not accessed, and unused. Further, Ihnot testified a sea plane only arrived once, and that has never occurred again.

**VI.**

**Specific findings as to multiple lot regulation.**

Much of the public comment made demand for a site plan review for all parcels owned by the applicant. Michelle Pezley testified that she was not aware of any legal basis to require an owner of multiple lots to undergo such a review, and that general policy is to take applicants at their word as stated in the application and not to analyze intention.

**VII.**

**Specific findings as to the use of firearms by foreign nationals and safety.**

Some public comment expressed concern at non-U.S. Citizens possessing or carrying firearms in the area, as it was not "part of their culture," because it was unlawful under RCW 9.41.175, or because no one would be monitoring their usage. RCW 9.41.175 is a criminal statute that deals with nonimmigrant aliens, who are not residents of Washington or a citizen of Canada. Michael McInerney testified as to the safety plan and gun range rules as well as to the legal requirements for nonimmigrant aliens to possess firearms. No evidence was presented that any nonimmigrant aliens, who are not residents of Washington or a citizen of Canada were in possession or carrying firearms in violation of the requirements of that law. Further, it is found that the applicant is not a nonimmigrant alien, but is a properly constituted Washington Business entity registered with the Washington Secretary of State as seen by documents

submitted at the hearing (Ex. 53).

Some public comment was made about guns in general, how they made neighborhoods feel unsafe, and that the applicant should use an existing business (“The Holmes Harbor Rod and Gun Club”) nearby that was a gun range. There was testimony about law enforcement being called in response to gunfire, but no testimony about actual unlawful or violent acts involving firearm discharge. The Island County Sheriff’s Office reviewed this proposal and had no objections (Ex. 18).

**VIII.**

The Factual Findings of the Island County staff, as set forth in the Staff Report, Exhibit No. 1, dated October 15, 2019, a copy of which is attached hereto, are hereby adopted as findings of fact by the Hearing Examiner and incorporated herein by this reference, except where explicitly contradicted by this decision.

**IX.**

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following:

**CONCLUSIONS OF LAW**

**I.**

The proper notices have been given. This matter was properly heard as a Type III Application with a required public hearing. This application is exempt from SEPA pursuant to WAC 197-11-800.

**II.**

For a parcel zoned Rural, a gun club or shooting range is a Type III conditional use permit application per Island County Code (ICC) 17.03.035.D. The conditional use review is under a Site Plan Review application per ICC 16.15.

A conditional use is appropriately granted only when based on the criteria outlined in ICC 16.15.060, including that the proposed use and its design fulfill the definition of rural character as defined in chapter 17.03, specifically 17.03.040.

The proposed use shall not result in a significant adverse environmental impact that cannot be mitigated by reasonable mitigation measures outlined in general

conditions of this decision. The use will be adequately served by and will not impose an undue burden on any of the improvements, facilities, utilities, or services existing or planned to serve the area.

The establishments of shooting ranges appear to be a contemplated and appropriate use for this property under its current zoning, and the proposal complies with all of the applicable provisions of the applicable regulations, including prescribed development/performance standards and all applicable development standards and design guidelines.

The subject site is physically suitable for the type, density and intensity of the use being proposed. The location, size, design and operating characteristics of the proposed development/use would not be detrimental to the neighborhood, nor be detrimental to the public interest, health, safety, or welfare of the County in conformance with the standards of this chapter, chapters 17.02B, and 17.03. ***See additional specific findings on this subject below in §§ III-VI.***

The proposed use and its design fulfill the definition of rural character as defined in the ICC, specifically, it will remain the case that open space, the natural landscape, and vegetation predominate over the built environment; a shooting range and firearm shooting fosters traditional aspects of rural lifestyles; the visual landscapes that are traditionally found in rural areas and communities will be preserved; the use will not interfere with the use of the land by wildlife and for fish and wildlife habitat in a greater degree than already exists; the use will not result in inappropriate conversion of undeveloped land into sprawling, low-density development; the use does not require the extension of urban governmental services; and the use approved with conditions is consistent with the protection of natural surface water flows and ground water and surface water recharge and discharge areas.

The proposed use meets all other statutory and code requirements and guidelines as outlined in the Staff Report.

**III.**

**Specific conclusions as to noise and safety.**

The overwhelming weight of the testimony and evidence demonstrated that the

proposed use is engineered to minimize or completely eliminate any and all sight and sound of firearms usage outside of the very immediate vicinity of the Container on the Applicant's premises. Further, the proposed use, its construction (Ex. 9) and its proposed guidelines for use (Ex. 8) seem designed to eliminate danger from the vicinity. However, mindful of community concerns about safety and levels of use, the nature of the neighborhood as testified to in public comment, representations by agents of the Applicant, and the possibility of defects in construction, the hearing examiner has specifically added conditions #1-3 to limit the use on the premises specifically to address all of those factors.

**IV.**

**Specific findings as to prior bad acts and multiple lot regulation.**

There was a code complaint that the Container had moved on site, prior to the acquisition for the installation or usage of the Container. There was mixed testimony as to the level of communication the Applicant had with the County prior to the Containers arrival, but it is an uncontested fact that there was a process underway with a public hearing being held as early as 1/4/19. The container was locked, and there was testimony that the Applicant was seeking to get approval from the County to place it permanently before it would be opened for use. It is not surprising that County Governments often require rectification and compliance after learning of deviation or failure to acquire permits. The stop-work order, and the requirement of this permitting process appear to be a reasonable and appropriate remedy decided upon by the County, especially in light of the fact that the Container was unusable and unused and it appears there was more likely than not communication on the part of the Applicant to the County about the Container's existence in December of 2018.

There is not a legal basis to require the applicant to undergo multi-site review, and any violations on other sites appear to have been cured or non-continuing based on the testimony before the hearing examiner. Prior violations, although troubling, do not constitute a valid reason to deny approval of a site plan.

**V.**

**Specific findings as to the use of firearms by foreign nationals.**

The concept of the County applying land use regulations differently to applicants based on ethnicity, race, country of origin, or culture is rejected absolutely. Requests by the community for the hearing examiner to prejudge, hold suspicions, make assumptions, or require special monitoring by law enforcement of land use due to any applicant's (or to any member, shareholder, or agent of an applicant) ethnicity, race, country of origin, or culture is not well taken and rejected absolutely. There is no legal basis to do so, and it would be unlawful for the County to do so under both the United States and Washington Constitutions.

**VI.**

**Specific findings as to requiring the applicant to use an already existing business or club providing similar use services.**

The establishment of shooting ranges appear to be a contemplated and appropriate use for this property under its current zoning, and the Applicant is not required to show that the proposed location is the most efficient place for the proposed use, or that alternatives are not available. Firearm shooting is a traditional aspect of rural lifestyles, and is therefore encompassed inside the definition of rural character as defined by the ICC. What might be inappropriate in an urban or commercial setting such as the discharge of firearms is not necessarily inappropriate in a rural setting. The zoning of the area clearly contemplates, specifically if not in great detail, the placement of shooting ranges or gun clubs.

It would be inappropriate for the County to steer business to an existing business. More so, when such uses (provided they meet the criteria for said use) are appropriate for the zoning in place. People buy property based on the zoning and the permitted or potentially permitted uses and have a proper expectation to engage in zoned uses providing they meet conditional criteria. People buying property in neighborhoods zoned for contemplated uses, should expect such contemplated uses to occur.

**VII.**

Any legal conclusions of the Island County staff, as set forth in the Staff Report, Exhibit No. 1, dated October 15, 2019, a copy of which is attached hereto, are hereby



adopted as conclusions of law by the Hearing Examiner and incorporated herein by this reference, except where explicitly contradicted by this decision.

**VIII.**

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

**IX.**

The proposed Application for the gun range can be approved if it is consistent with the ICC. Subject to the Conditions of Approval attached hereto, the proposed use will be consistent with the ICC criteria including is consistent with all applicable zoning, land use, and environmental regulations, and therefore a Conditional Use Permit should be granted with those conditions. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following:

**DECISION**

***The Site Plan Review Application is approved for the construction of an indoor firing range on Assessor's Parcel No. R22902-077-3140, addressed as 1865 Crestwood Cove Ct., Freeland, Washington. The approval is granted subject to the following required conditions:***

**General Conditions:**

1. All training or recreational firearms shooting activity on the property will take place inside the Container.
2. Use of the Container is to be strictly in compliance with the Cove Club Range Facility Procedural Manual submitted as **Exhibit 8**, including the limitation on types of firearms.
3. The Container is for the use of the owners and non-fee guests only-no public access. No guests who pay the applicant a fee for any service will be allowed to use the Container.
4. Site development activities approved by this decision shall be in substantial conformance to the site plan as shown on **Exhibit 7**.
5. For deviations from the approved plans, the approved firearms, or the approved users of the shooting range changes, revisions shall be reviewed and approved



through a formal site plan amendment process. Further, if the use of the approved structure changes, site plan review, and additional requirements may apply.

- 6. The applicants must adhere to all conditions and requirements outlined in the attached memorandum from Island County Public Building Department (See **Exhibit 16**).
- 7. The applicants must adhere to all conditions and requirements outlined in the attached memorandum from Island County Public Health (See **Exhibit 15**).
- 8. The applicants must adhere to all conditions and requirements outlined in the attached memorandum from Island County Public Works (See **Exhibit 17**).
- 9. All development activities on and use of the subject parcel shall be in compliance with all applicable Washington State laws and Island County codes.
- 10. The conditions of approval identified in this report are subject to change if any information provided by the applicants or their authorized representative are found to be inaccurate.
- 11. All noise must cease from 10:00 p.m. until 7 a.m. as required by ICC 9.60.030.
- 12. Dead or dying vegetation must be replaced immediately, or if in winter, within the next planting season per ICC 17.03.180.P.3.b(vi).
- 13. In the event that any ground-disturbing activities, other project activities related to this development, or in any future development uncover protected cultural materials (e.g. bones, shell, stone tools, beads, ceramics, old bottles, hearths, etc.), the actions as listed in Attachment E must be followed. Compliance with all applicable laws pertaining to archaeological resources (RCW 27.53, 27.44 and WAC 25-48) and human remains (RCW 68.50) is required. Failure to comply with this requirement could constitute a Class C Felony.
- 14. The property owner or designee shall arrange with the all emergency responders to have access to the gate.

**Prior to Building Permit:**

- 15. Site plan approval does not guarantee the issuance of a building permit. The applicants shall submit an application and applicable fees for building permits under a separate application, required for any building or construction activity on the subject property.
- 16. Prior to issuance of the building permit, the applicant shall provide a landscaping plan which shows screening from neighbors and public right-of-way

**Prior to Occupancy**

- 17. All lighting fixtures must be a full cut-off design that is shielded, hooded, and oriented in such a way as to not be visible past the property boundaries.
- 18. Prior to final occupancy of the building permit, landscaping shall be installed and inspected by County staff.

**NOTICE OF EXPIRATION OF SITE PLAN APPROVAL**

This approval is valid for a period of five (5) years. The building permits for development of the site shall be obtained pursuant thereto being utilized within five years after the effective date of site plan approval per ICC 16.15.160. If the permit or permits are not used or construction work is not initiated within this time and carried on to Site Plan approval, the Site Plan shall become null and void and any approval, permit, or conditions granted thereby shall be deemed to have lapsed.

**NOTICE OF POTENTIAL REVOCATION AND PENALTIES**

This Approval is subject to all of the above-stated conditions. Failure to comply with them may be cause for its revocation. Complaints regarding a violation of the conditions of this permit should be filed with Island County Planning and Community Development Services.

**NOTICE OF APPEAL PROCEDURES FROM FINAL DECISIONS OF THE ISLAND COUNTY HEARING EXAMINER**

This action of the Hearing Examiner is final.

This is a Final Land-use Decision. This Decision may be appealed as provided by State law to either the Island County Superior Court in accordance with the time limits and rules of the Land Use Petition Act, RCW 36.70C, or to an appropriate administrative agency, if applicable.

ENTERED this 9<sup>th</sup> day of November 2019, pursuant to authority granted under the Laws of the State of Washington and Island County.

\_\_\_\_\_  
Rajeev D. Majumdar,  
Island County Hearing Examiner *Pro Tem*

**Rajeev D. Majumdar**

P.O. Box 1258, Blaine, WA

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# CITY OF LYNDEN

## EXECUTIVE SUMMARY



<b>Meeting Date:</b>	April 5, 2021	
<b>Name of Agenda Item:</b>	Draft Parks Committee Minutes March 15, 2021	
<b>Section of Agenda:</b>	Other Business	
<b>Department:</b>	Parks	
<b>Council Committee Review:</b>	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input checked="" type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
	<b>Legal Review:</b> <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input type="checkbox"/> Review Not Required	
<b>Attachments:</b>		
ES-Draft Parks Committee Minutes March 15, 2021		
<b>Summary Statement:</b>		
See Next page		
<b>Recommended Action:</b>		
For Council Review		

# CITY OF LYNDEN



PARKS DEPARTMENT  
Vern Meenderinck, Parks Director  
(360) 354 - 6717

## PARKS COMMITTEE MINUTES

March 15, 2021

### 1. ROLL CALL:

**Members Present:** Mayor Scott Korthuis; Councilors, Ron DeValois, and Nick Laninga  
Mark Wohlrab (Virtual)

**Staff Present:** City Administrator Mike Martin; Parks Director Vern Meenderinck; and Park Admin.  
Assist. Nancy Norris, City Planner Dave Timmer

### 2. ACTION ITEMS:

#### A. Approval of Parks Committee Minutes- February 16, 2021

DeValois motioned to approve the minutes and Laninga approved the motion.

**Action: The Parks Committee Minutes from February 16, 2021 were approved.**

#### B. Park Impact Fees- Resolution 1622

Draft changes to increase fees to \$2,925.

-Reasoning relating to actual costs of acquisition and Development costs.

-Motion to approve the revised impact fee schedule and forward it to full council.

**Action: Recommendation to bring to full council, to increase the Park Impact fees from \$936 to \$2,925 to adequately capture the actual cost for Park Development. Bring to Council the first meeting in April.**

### 3. INFORMATION ITEMS:

#### A. Berthusen Trails

After meeting with Tim Van Beek and Arlan Boogard from Washington Trails Assoc. It was agreed that Washington Trails would have volunteer groups scheduled for some time in May to improve 3 sections of trails at Berthusen. The only cost to the City would be supplying the gravel needed.

#### **Berthusen Shelter Repair**

The Shelter was damaged this winter from a large fallen tree limb and is currently being repaired by Arlan Holleman.

#### B. Updates on Parks projects:

##### **Benson Park barn:**

Should have an RFQ (P) finished and delivered by the end of the month.

Checking with a couple of local land architects for pricing on a Master Plan for the south 20-acre development.

Harlan Kredit is working with a couple of local nurseries to decide the type of trees to plant. His recommendation is to wait until we have a plan in place so we know where the trees should go, rather than planting them now and then having to move them as the mortality rate would be quite high.

# CITY OF LYNDEN



## PARKS DEPARTMENT

Vern Meenderinck, Parks Director  
(360) 354 - 6717

***Dickinson:***

No report on surveying. A member of the Rec District has been getting prices on pedestrian bridges.

***Glennig Property:***

A request for \$250,000 from the county Conservation futures fund was approved. Leaving approximately \$200,000 left to raise. The Glennig committee is confident they will be able to raise that by the end of the year.

***Depot to 8<sup>th</sup> Trail:***

The Mayor is continuing to be in contact with the school district and Vander Griend regarding purchasing the surplus portion.

**C. Cameras for Parks:**

Matt Torak has been in contact with Security Solutions who have agreed to donate 3 cameras for 5 years, and they have also received a commitment from a Wi-Fi provider to provide Wi-Fi for free for a period of 3 years. Pole and cameras are ordered and should be installed the first part of April.

**D. Maintenance Supervisor position**

Advertised in house, with end date of March 15, 2021.  
Will be doing interviews the week of March 22, 2021.

**A. ITEMS ADDED:**

**A.** Forge Fitness will have a Soft Opening next week Monday. The Pool will be closed for 2 weeks while they cover the ceiling and walls. Many community members have expressed much gratitude for the new renovations made to the facility!

**Meeting Adjourned: 4:41pm.**

**NEXT MEETING DATE:**  
**Parks Committee: April 19, 2021**

# CITY OF LYNDEN

## EXECUTIVE SUMMARY



<b>Meeting Date:</b>	April 5, 2021	
<b>Name of Agenda Item:</b>	Public Works Committee Meeting Minutes March 3, 2021- REVISED	
<b>Section of Agenda:</b>	Approval of Minutes	
<b>Department:</b>	Public Works	
<b>Council Committee Review:</b>	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input checked="" type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
		<b>Legal Review:</b> <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required
<b>Attachments:</b>	March 3, 2021 Draft Public Works Committee Meeting Minutes- REVISED	
<b>Summary Statement:</b>	Draft minutes for the March 3, 2021 Public Works Committee meeting. REVISED	
<b>Recommended Action:</b>	For Review	





## PUBLIC WORKS COMMITTEE MINUTES

4:00 PM March 3, 2021  
Microsoft Teams Virtual Meeting  
City Hall 2<sup>nd</sup> Floor Large Conference Room

### 1. ROLL CALL

Members Present: Ron De Valois, Jerry Kuiken

Members Absent (with Notice): Mayor Scott Korthuis, Councilor Gary Bode

Staff Present: City Administrator Mike Martin; Public Works Director Steve Banham, Programs Manager Mark Sandal, Sr. Admin. Assistant Miriam Kentner

Public Present: Gary Vis, Paige Hastings, Jordan Hastings, Kalise Hastings, Ron Hanson, Paul Skinner

### 2. ACTION ITEMS

#### A. **Approve Minutes from February 3, 2021**

De Valois motioned to approve the minutes and Kuiken seconded the motion.

**Action**

***The minutes from February 3, 2021 were approved.***

#### B. **Recommendation to Forward Bid for Foxtail Street Extension to March 15, 2021 City Council meeting for Award**

Committee discussed upcoming Foxtail Street Extension bid opening on March 4, 2021. Staff had been in communication with local contractors and is expecting a strong turnout. The City will be assessing a Latecomer Reimbursement to the unserved and undeveloped parcels abutting the road for the water and sewer utilities and sidewalk. Staff is coordinating utilities with Puget Sound Energy and Cascade Natural Gas.

**Action**

***The Public Works Committee concurred to recommend awarding the bid for the Foxtail Street Extension project at the March 15, 2021 City Council meeting.***

#### C. **Request for Crosswalk - Northwood at Brome Street**

Paul Skinner, resident at 2109 Ninebark Street, asked the committee to install a crosswalk on Northwood Road at Brome Street. He stated close to 100 dwelling units have been constructed on the east side of Northwood and more are planned. The new Middle School and City Park to the west generate increased pedestrian traffic. The Committee discussed the need for a crosswalk and the often-perceived safety of a crosswalk. The speed in this section of Northwood has been reduced to 25mph but because it was historically higher motorists tend to speed.

**Action**

***The Public Works Committee concurred to recommend the installation of a crosswalk on Northwood Road at Brome Street upon review by staff to determine the feasibility of a crosswalk in this area. Staff noted that installation could possibly take place in early summer.***

**3. INFORMATION ITEMS**

**A. Six Year Transportation Improvement Plan (2022-2027)**

Banham presented the Draft Six Year Transportation Improvement Plan (2022-2027) for review. The Committee discussed the current Federally funded projects. Banham asked the Committee to review the document for discussion at the next Committee meeting. The final Six Year Transportation Improvement Plan is scheduled to come before City Council for a Public Hearing at the first meeting in June.

**B. 7<sup>th</sup> Street Parking Lot Issues**

**1) Direct Access into Parking Lot – Door and Landing on West Side of Mural Building**

Ron Hanson, owner of the Mural Building at 610 Front Street, is asking for permission to install an emergency exit door in the wall displaying the Mural on the east side of the City’s newly improved 7<sup>th</sup> Street Parking Lot. The door is needed for a 2<sup>nd</sup> exit from any first-floor commercial development. Banham explained he spoke with the City attorney who suggested that an easement can be prepared, likely as an amendment to the existing airspace easement which would include just compensation for the easement.

**Action**

**The Public Works Committee concurred to recommend that staff draft an easement agreement for access to the 7<sup>th</sup> Street parking lot, including compensation for this agreement, to be presented at a future City Council meeting.**

**2) Seasonal Outdoor Dining Using Parking Lot**

Hanson indicated that he understands that a special event permit would be needed to obtain permission to use the 7<sup>th</sup> Street parking lot for seasonal outdoor dining (follow-up from the February 3, 2021 Committee Meeting).

**C. On Call Contracts for Water and Sewer Evaluations of New Large Development Proposals.**

Staff stated on-call engineering contracts have been established with the two engineering consultants, BHC and RH2, who prepared the Sewer and Water Comprehensive plans respectively. The City can now use these firms to evaluate potential impacts from major development proposals on the utilities. Large projects can accelerate the need for plant improvements or require conveyance and distribution system improvements. Staff mentioned a couple of proposals currently being evaluated.

**D. Requirement to Connect to Sewer**

Sandal introduced Paige Hastings, Jordan Hastings and Kalise Hastings who are interested in developing the property south of 1403 Kamm Road into two lots. They have contacted the City to ask about sewer service for these lots or the feasibility of the City

allowing the installation of a septic system. Sandal presented a map showing the property location and of existing sewer lines which are all more than 400 feet away on Kamm Road or impacted by critical areas in other directions. This parcel is included in the recent Latecomer Agreement put in place by Bob Libolt for the sewer line constructed to the south. A large wetland lies between this property and that new sewer main. City staff indicated that septic system design and requirements are through the Whatcom County Health Department and is recommending that the owners contact them about constructing an onsite septic until sewer is constructed heading north on the parcel immediately to the west owned by Mr. Koetje. The City stated the property owners must sign and record a covenant requiring connection to City sewer and that they provide a 20-foot utility easement to the City along the south of their property for future sewer service to their property and those further to the east.

**E. Lynden Fire Station Street and Sidewalk Repair and ADA Compliance**

Staff indicated that the City is planning to replace the sidewalk on the North and East sides of the Fire Station and repair the damage caused by tree roots on Liberty Street. New sidewalk and ramps will meet current ADA standards. Street trees will be replaced with English Hornbeams (matching those in front of City Hall) with appropriate root barrier protection for the new sidewalks and curbs.

**F. Project Funding Application (Federal STBG - Surface Transportation Block Grant)**

Banham stated that staff will be applying for STBG funding through the Whatcom Council of Governments. Staff is considering application options as intersection repairs for 3<sup>rd</sup> and 1<sup>st</sup> Streets at Main Street, possibly to include concrete travel surfaces to handle heavy freight. Staff also mentioned that North Benson Road, which is also a federal route, is another possible candidate for this grant. This section of Benson is in the Pepin Lite improvement needs.

**G. Puget Sound Energy Electrical Extension on Main Street West of Guide Meridian**

The Committee discussed the installation of a primary electrical feeder extension along Main Street west of Guide Meridian to supply berry processing plants. Additional power is needed to avoid power disruptions and/or outages on the berry farms to the west. The City is coordinating the placement of this feeder with planned STBG-funded roadway improvements to West Main Street including a roundabout at the intersection with Berthusen Road planned for 2022.

**H. FEMA Reimbursement Estimate for WWTP Outfall Replacement Due to Flooding Jan/Feb 2020**

The Federal share of the WWTP Outfall riparian zone re-planting project reimbursement is 75% (\$84,671.19). The project is currently under final FEMA review.

**I. Advanced Arterial Intersection Signage**

Banham stated that staff recently received an email from Mr. Todd Williams, a City resident, expressing concern for the lack of advance arterial signage on Bender Road approaching Homestead Boulevard, Grover Street approaching Hampton Road, and on Main Street approaching 17<sup>th</sup> and 19<sup>th</sup> Streets. Williams requested the Committee consider adding advance intersection warning signage at these locations similar to that place in advance of intersections on county roads. Gary Vis suggested appropriately sized and place wayfinding signage might be a better way to make motorist aware of the services that make these intersections important.

**Action**

***The Public Works Committee requested that staff continue to observe the area, but not install any signage at this time but consider alternatives. This request will also be added to an upcoming meeting for further discussion.***

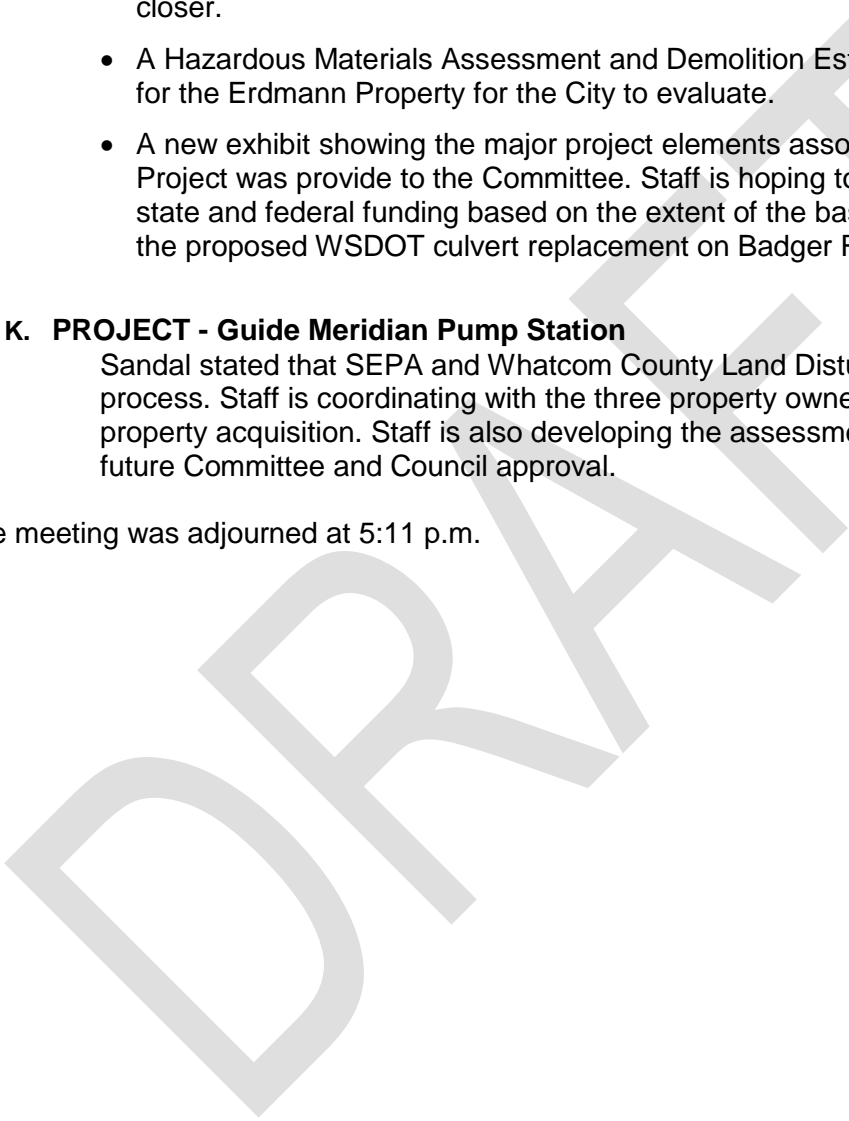
**J. PROJECT - Pepin Update**

- Main Street Bridge - 2022 construction is planned due to permitting and lead time on bridge materials. The engineer is finalizing the type, size and location (TSL Report) for the new bridge. The orientation of the bridge is driving a longer road closer.
- A Hazardous Materials Assessment and Demolition Estimate are being prepared for the Erdmann Property for the City to evaluate.
- A new exhibit showing the major project elements associated with the Pepin Lite Project was provide to the Committee. Staff is hoping to use this to apply for future state and federal funding based on the extent of the basin located in Canada and the proposed WSDOT culvert replacement on Badger Road (SR-546).

**K. PROJECT - Guide Meridian Pump Station**

Sandal stated that SEPA and Whatcom County Land Disturbance permits are in process. Staff is coordinating with the three property owners for easements and property acquisition. Staff is also developing the assessment reimbursement area for future Committee and Council approval.

The meeting was adjourned at 5:11 p.m.



# CITY OF LYNDEN

## EXECUTIVE SUMMARY



<b>Meeting Date:</b>	April 5, 2021	
<b>Name of Agenda Item:</b>	Calendar	
<b>Section of Agenda:</b>	Other Business	
<b>Department:</b>	Administration	
<b>Council Committee Review:</b>	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input type="checkbox"/> Public Works <input type="checkbox"/> Other: N/A
	<b>Legal Review:</b> <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required	
<b>Attachments:</b>	Outlook Calendar	
<b>Summary Statement:</b>	See next page.	
<b>Recommended Action:</b>	None	

**April 5, 2021**  
Monday

7:00 PM - 9:00 PM

City Council Meeting -- To Be Determined

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**April 6, 2021**  
Tuesday

8:30 AM - 9:30 AM

Leadership Team Meeting -- To Be Determined: May be Teams Meeting

5:00 PM - 6:30 PM

Design Review Board -- To be determined

**April 7, 2021**  
Wednesday

All Day

Court -- Annex Council Chamber; Annex North East Conference Room; Annex South East Conference Room; Annex East Training Room

4:00 PM - 6:00 PM

Public Works Committee Meeting -- City Hall 2nd Floor Large Conference Room  
Welcome!

Public Works Committee Meeting meets Wednesday at 4:00 pm

We look forward to seeing you in person at City Hall in the upstairs Conference room **or** by joining virtually with Microsoft Teams by clicking the link below.

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Microsoft Teams meeting  
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**April 7, 2021 Continued**

Wednesday

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**April 9, 2021**

Friday

10:00 AM - 11:00 AM

Meeting: Steve/Mike -- Mike's Office

**April 12, 2021**

Monday

9:00 AM - 10:00 AM

Meeting: Vern/Mike -- Mike's Office

**April 13, 2021**

Tuesday

8:30 AM - 9:30 AM

Leadership Team Meeting -- To Be Determined

**April 14, 2021**

Wednesday

All Day

Possible Jury Trial -- Annex Council Chamber; Annex North East Conference Room; Annex South East Conference Room; Annex East Training Room

9:00 AM - 10:00 AM

Meeting: Mark/Mike -- Mike's Office

7:00 PM - 9:00 PM

Park and Rec. District Meeting -- Annex South East Conference Room

**April 15, 2021**  
Thursday

2:00 PM - 4:00 PM

Technical Review Committee -- Microsoft Teams Meeting

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Microsoft Teams meeting

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**April 19, 2021**  
Monday

3:00 PM - 4:00 PM

Finance Committee Meeting -- Microsoft Teams Meeting

Finance Committee Meetings are being held via Teams due to COVID precautions

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Microsoft Teams meeting

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**4:00 PM - 5:00 PM**

**Parks Committee -- City Hall 1st Floor Large Conference Room**

**7:00 PM - 9:00 PM**

**City Council Meeting -- To Be Determined**