

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
February 01, 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 300215987#. 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

Pledge of Allegiance

Roll Call

Oath of Office

Approval of Minutes

[1.](#) Draft Council Minutes- January 19, 2021

Items from the Audience

Scheduled - David and Kathleen Dillard

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.](#) Set Public Hearing - Ordinance 1620 Amending Chapter 13.08 of the Lynden Municipal Code – Water Project Design Standards
- [4.](#) Set the Public Hearing - Zoning Text Amend re Manufactured Home Communities
- [5.](#) Set the Public Hearing for Pepin Area Wide Rezone, Rezone #20-02
- [6.](#) Set the Public Hearing – Stuit Development Agreement

Public Hearing

- [7.](#) Ord 1615 – Code Amendment accommodating a Hearing Examiner Role

Unfinished Business

New Business

Other Business

- [8.](#) Calendar

Executive Session

Adjournment

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:		February 1, 2021
Name of Agenda Item:		Draft Council Minutes- Regular Meeting
Section of Agenda:		Approval of Minutes
Department:		Administration
Council Committee Review:		Legal Review:
<input type="checkbox"/> Community Development	<input type="checkbox"/> Public Safety	<input type="checkbox"/> Yes - Reviewed
<input type="checkbox"/> Finance	<input type="checkbox"/> Public Works	<input type="checkbox"/> No - Not Reviewed
<input type="checkbox"/> Parks	<input type="checkbox"/> Other: N/A	<input checked="" type="checkbox"/> Review Not Required
Attachments:		
Draft Council Minutes- Regular Meeting		
Summary Statement:		
Draft Council Minutes- Regular Meeting		
Recommended Action:		
For Council review.		

CITY OF LYNDEN

CITY COUNCIL MINUTES OF REGULAR MEETING



January 19, 2021

1. CALL TO ORDER

Mayor Korthuis called to order the January 19, 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

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

Members absent: None

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 Bob Carmichael.

OATH OF OFFICE- None

APPROVAL OF MINUTES

Councilor Wohlrab moved and Councilor Kuiken seconded to approve the January 4, 2021 regular council minutes as presented. Motion approved on a 7-0 vote.

ITEMS FROM THE AUDIENCE

Scheduled- None

Unscheduled- None

2. CONSENT AGENDA

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

CITY OF LYNDEN

CITY COUNCIL
MINUTES OF REGULAR MEETING



Approval of Claims – December 31, 2020- Printed January 20, 2021

Manual Warrants No.	<u>21188</u>	through	<u>21190</u>		\$9,447.48
EFT Payment Pre-Pays					\$26,290.15
				Sub Total Pre-Pays	\$35,737.63
Voucher Warrants No.	<u>21200</u>	through	<u>21339</u>		\$991,419.49
EFT Payments					\$0.000
				Sub Total	\$991,419.49
				Total Accts. Payable	\$1,027,157.12

Select Mayor Pro Tem for 2021 Pulled from Consent Agenda- Requires a Motion.

Appointment to the Park and Trail Advisory Committee

Reappointment to the Berthusen Advisory Committee

Resolution No. 1030 – Request to Cancel Warrant No. 20573

Councilor Kuiken moved and Councilor Strengholt seconded to approve the Consent Agenda with item #2 pulled. Motion approved on a 7-0 vote.

Mayor Korthuis thanked Rena Rudy and Tanya Assink for continuing on the Park and Trail Advisory Committee. He also thanked Tim Van Beek for stepping in and continuing the term for Jeff Roberts (term ends 12/21/2021).

Mayor Korthuis also thanked Harlan Kredit, Marlin Hendricks, and Mike Lewis for agreeing to serve and addition 3-year term on the Berthusen Advisory Committee.

Mayor Korthuis accepted nominations for the Mayor Pro Tem position. Nick Laninga nominated Gary Bode. There were no other nominations. Council voted Gary Bode in as Mayor Pro Tem with a vote of 7-0.

3. PUBLIC HEARING

Broersma Short Plat Vacation

Tim and Stephanie Broersma, owners of both Lot A and B of a two-lot Nieuwsma Short Plat, are requesting to vacate this platted subdivision and thereby create a single lot a little over 1 acre in size. Specifically, this action would remove Lot B from the Nieuwsma Short Plat.

CITY OF LYNDEN

CITY COUNCIL MINUTES OF REGULAR MEETING



The vacate of this property will allow the Broersma family to construct a single-family home and associated amenities without the encumbrances of the lot lines and easements associated with the existing plat. Vacates of short plats are relatively rare and not specifically addressed in the City's municipal code. Absent of a more specific process, the request was noticed and brought to public hearing before the City Council consistent with RCW 58.17.212.

Staff has no objection to the request to vacate the existing property division and associated access easement. As noted in the staff report, typical utility easements are to remain.

Mayor Korthuis opened the Public Hearing at 7:05

There were no comments.

Mayor Korthuis closed the Public Hearing at 7:05

Councilor Lenssen moved and Councilor Strengholt seconded to approve Short Plat Vacate 20-01 which removes Lot B from the Nieuwsma Short Plat and authorize the Mayor's signature on the corresponding Findings of Fact and Conclusions of Law. Motion approved on a 7-0 vote.

4. UNFINISHED BUSINESS

Ordinance No. 1618- Setting the Final Property Tax for 2021

The City of Lynden is required by State regulations to adopt a 2021 property tax levy. On November 16, 2020, the City Council approved Ordinance No. 1609 which was passed relying on the preliminary figures for the assessed valuation of the City's tax base, as provided by the Whatcom County Assessor's Office at that time.

The original executive summary presented to Council on November 16, 2020 indicated that an ordinance setting the exact final levy would be forwarded to the Finance Committee and City Council for consideration when the County Assessor's Office provided the final assessed valuation for 2020. The County Assessor's office has provided the final numbers at this time.

For Council information, the final calculations result in a total dollar levy amount of \$3,526,471. Per Council's direction this amount incorporated a 0.602% increase in the regular property tax, as allowed per the Revised Code of Washington. This total dollar levy reflects a mil rate of \$1.57603 per \$1,000 of assessed valuation. This is a decrease of approximately 11 cents from the 2020 rate.

The Finance Committee reviewed this ordinance at their committee meeting, prior to the Council meeting on January 19, 2021.

CITY OF LYNDEN

CITY COUNCIL MINUTES OF REGULAR MEETING



Councilor Strengholt moved and Councilor seconded to approve Ordinance No. 1618 and authorize the Mayor's signature. Motion approved on a 7-0 vote.

5. NEW BUSINESS-None

6. OTHER BUSINESS

Council Committee Updates

Councilor Wohlrab reporting Public Safety Committee discussion of the following:

- Update on labor disputes with Fire and Police departments
- Overtime in December for Fire and Police departments
- Fire department experienced 41 times when the department had overlapping calls
- Update on hiring for Fire department Assistant Chief position – the position is going back out with an adjustment to the city's job description for AC
- Fire personnel are temporarily located at Badger Road, the admin office is located at the Annex
- All police replacement vehicles for 2020 have been ordered

Councilor Strengholt reporting Finance Committee discussion of the following:

- Discussion of OT
- Discussion of sales tax revenue – year 2020 ended at 1.5% under budget
- Reviewed items on the consent agenda
- Reviewed court revenue – the amount is consistent with the past couple of years
- Update to fire station remodel interfund loan

Councilor De Valois reporting Parks Committee discussion of the following:

- Discussion of the Maintenance Supervisor position, recruiting to begin in March 2021
- Discussion of Berthusen Trail maintenance
- Benson Barn plans
- Dickinson property is being surveyed
- Glenning Street property has collected approximately \$60,000
- Depot Road to 8th Street trail section is being pursued
- Bender Field usage

CITY OF LYNDEN

CITY COUNCIL MINUTES OF REGULAR MEETING



7. EXECUTIVE SESSION

Council recessed into executive session at 7:20 p.m. to discuss a potential litigation matter. It was anticipated that the executive session would last approximately 20 minutes total and that a decision would not be made.

The Council meeting reconvened at 7:40 p.m.

8. ADJOURNMENT

The January 19, 2021 regular session of the Lynden City Council adjourned at 7:41 p.m.

Pamela D. Brown, MMC
City Clerk

Scott Korthuis
Mayor

DRAFT

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	February 1, 2021	
Name of Agenda Item:	Approval of Payroll and Claims	
Section of Agenda:	Consent	
Department:	Finance	
Council Committee Review:	<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: _____
	Legal Review: <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required	
Attachments:	None	
Summary Statement:	Approval of Payroll and Claims	
Recommended Action:	Approval of Payroll and Claims	

CITY OF LYNDEN

EXECUTIVE SUMMARY – City Council



Meeting Date:	February 1, 2021	
Name of Agenda Item:	Set Public Hearing - Ordinance 1620 Amending Chapter 13.08 of the Lynden Municipal Code – Water Project Design Standards	
Section of Agenda:	Consent	
Department:	Public Works	
<u>Council Committee Review:</u>	<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: _____
		<u>Legal Review:</u>
		<input checked="" type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input type="checkbox"/> Review Not Required
Attachments:		
Ordinance 1620 – Amending Chapter 13.08 of the Lynden Municipal Code – Water Project Design Standards		
Summary Statement:		
<p>The City of Lynden recently adopted the 2021 Engineering and Development Design Standards. Chapter Six of those newly adopted standards provides specific Water Design Standards applicable to those constructing improvements or connections to the City water system. Chapter 13.08.010 of the Lynden Municipal Code currently contains outdated and incomplete standards for City water system facilities and appurtenances which have not been updated since Ordinance No. 560 was adopted in 1977.</p> <p>Ordinance 1620 updates Chapter 13.08.10 of the Lynden Municipal Code to revise language associated with the Project Manual for Engineering Design and Development Standards that was adopted on December 21, 2020.</p> <p>The Public Works Committee reviewed these changes at their October 7, 2020 meeting.</p>		
Recommended Action:		
That City Council set a Public Hearing date of February 16, 2021 to hear comments on Resolution No. 1620 Amending Chapter 13.08 of the Lynden Municipal Code – Water Project Design Standards.		

ORDINANCE 1620

**AN ORDINANCE OF THE CITY OF LYNDEN, WASHINGTON
AMENDING ORDINANCE 560
AND CHAPTER 13.08 OF THE LYNDEN MUNICIPAL CODE
WATER PROJECT DESIGN STANDARDS**

WHEREAS The City of Lynden recently adopted the 2021 Engineering and Development Design Standards and published those standards to the City website; and

WHEREAS Chapter 6 of those newly adopted standards provides specific Water Design Standards applicable to those constructing improvements or connections to the City Water System; and

WHEREAS Chapter 13.08.010 of the Lynden Municipal Code (LMC) currently contains outdated and incomplete standards for City water system facilities and appurtenances which have not been updated since 1977 by Ordinance 560; and

NOW, THEREFORE, The City Council of the City of Lynden does hereby ordain as follows:

Section 1. LMC Chapter 13.08, inclusive of title, are hereby either amended or repealed and shall hereafter read as follows:

Chapter 13.08 – WATER PROJECT DESIGN STANDARDS

13.08.010 - General Standards – Developer Requirements

All work shall comply with the latest edition of the City of Lynden Engineering and Development Design Standards Project Manual.

- A. Mains shall be laid only in dedicated streets or in easements which have been granted to the city. A street is normally not considered dedicated until the plat which created it has been filed with the Whatcom County auditor.
- B. The developer shall obtain all necessary easements without cost to the city. Whenever a main is to be laid other than in a public street, a permanent easement of not less than ten feet on each side of the centerline shall be provided. The developer shall supply the city engineer with the supporting data necessary to verify the location of the easement. If legal services are required by the city in connection with the easement, other than formal review, the cost of such services shall be reimbursed by the developer to the city on demand and before acceptance of the extension.
- C. The developer shall pay for permits as may be required for the work, and shall pay for all surveys, easements, rights-of-way, and franchises required for the work. The developer shall give all notices and comply with all laws, ordinances, rules, and regulations bearing on the conduct of the work.

13.08.020 - New materials and equipment required - Continuity of manufacturer.

All materials and equipment shall be new and undamaged. Where possible, the same manufacturer of each item shall be used throughout the job.

13.08.030 - Backflow prevention devices.

Where the possibility of contamination of the water supply exists, the city will require that certain service be equipped with a back-flow prevention device per Chapter 13.10 of this title. The determination as to the need, size and location of a backflow device shall be solely determined by the Public Works Department.

13.08.040 - Inspections.

All water lines and mains shall be inspected by a Public Works Department inspector before they are covered. The developer shall notify the city at least twenty-four hours in advance for a water line inspection.

Section 2. Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 3. This Ordinance shall be in force and effect five (5) days from and after its passage, approval and publication.

PASSED BY THE CITY COUNCIL OF THE CITY OF LYNDEN BY AN AFFIRMATIVE VOTE, _____ IN FAVOR _____, AGAINST, AND SIGNED BY THE MAYOR THIS _____ DAY OF FEBRUARY, 2021.

MAYOR SCOTT KORTHUIS

Attest:

City Clerk Pamela D. Brown

Approved as to Form:

City Attorney Robert A. Carmichael

CITY OF LYNDEN



EXECUTIVE SUMMARY

Meeting Date:	February 1, 2021	
Name of Agenda Item:	Set the Public Hearing - Zoning Text Amend re Manufactured Home Communities	
Section of Agenda:	Consent	
Department:	Planning Department	
Council Committee Review:	<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: _____
	Legal Review: <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required	
Attachments:		
Planning Commission Minutes and Meeting Pkg of 12-10-20 including staff's Technical Review Committee Reports and code redlined revisions		
Summary Statement:		
<p>Lesa Starkenburg-Kroontje, representing her client Four 'S' Investments, has applied for a Zoning Text Amendment regarding the expansion of the nonconforming use of a mobile home park within the Commercial Services-Regional (CSR) Zoning category. The request is somewhat focused on the Duffner Mobile Home Park located on Front Street just west of the Guide Meridian. However, the amendment would apply to any other mobile home communities (MHCs) within the CSR zoning category. (Staff believes this is limited to one other circumstance – the unit pads located at the Windmill Inn Motel located at 8022 Guide Meridian.) Non-conforming uses are addressed in LMC 19.35. A use, like the Duffner Mobile Home Park, which is brought into the City and does not match the permitted uses of its zoning category is considered a legal nonconforming use. Although a legal nonconforming use can continue to operate, it is not permitted to expand.</p> <p>The Duffner Mobile Home Park was recently able to connect to City sewer services and decommission aging septic systems. This available connection has also initiated the applicant's opportunity to request additional housing units be placed on the property as each would be able to connect to sewer services. The amendment application describes the potential benefits that additional stock of affordable housing could provide to the City.</p> <p>Staff review, with the assistance of the City's legal counsel, has concluded with a recommendation to approve the expansion of MHCs in the City's CSR zones only as a conditional use and subject to appropriate setback and buffering requirements that may result as a review of the conditional use permit application. To be consistent with State Statues, staff also recommends that the City's definitions related to MHCs in Chapter 17 be updated as attached and the corresponding text amendments to Chapters 18 and 19 be made in accordance with these updates.</p>		
Recommended Action:		
Motion to set the public hearing for February 16, 2021 to consider Zoning Text Amendment 20-02 and the corresponding Ordinance 1616.		

CITY OF LYNDEN



PLANNING DEPARTMENT
Heidi Gudde, Planning Director
(360) 354-5532

PLANNING COMMISSION AGENDA

7:30 PM December 10, 2020
Microsoft Teams Meeting

1. CALL TO ORDER

2. ROLL CALL

Commissioners Present: Bryan Korthuis, Blair Scott, Diane Veltkamp, Gerald Veltkamp, Tim Faber, Karen Timmer and Nikki Turner.

Commissioners Absent with Notice: None

Staff: Mike Martin, Heidi Gudde and Korene Samec

3. APPROVAL OF THE MINUTES OF November 12, 2020

Faber approved as presented. Turner seconded.

4. DECLARATION OF CONFLICT

None of the Commissioners reported any ex-parte contact or conflict of interest.

5. PUBLIC HEARINGS TO CONSIDER:

A. Dillard Conditional Use Permit #20-03, 422 Woodcreek Drive

Gudde summarized the proposed Conditional Use Permit Application. The City of Lynden’s zoning code provides residents, who meet specific performance criteria, the opportunity to use their homes as short-term vacation rentals. These are regulated per the City’s code section on Bed and Breakfast Establishments.

Prior to operation, the homeowner must be granted a Conditional Use Permit (CUP) as a short-term rental may have an impact on the surrounding properties. The CUP process includes notifying property owners within 300 feet and demonstrating that the property will meet the criteria outlined in LMC 19.49.020 and can meet the operational regulations of LMC 19.49.030 (attached).

The pending CUP application has been submitted by David and Kathleen Dillard; who’s property is located at 422 Woodcreek Drive. The attached application includes an aerial map of the neighborhood and a floor plan of the residence. The Dillard’s already have a legal Accessory Dwelling Unit, located in the basement floor of their residence. This ADU has been used for both long-term and short-term rentals. With this CUP proposal they are seeking to make the short-term rental option legal. They are not proposing to make physical changes to the home. Consistent with code, the property owner is intending to remain onsite when the property is being used as a short-term rental. The property will provide adequate on-site

parking and landscape buffers/fence are in place to reduce impacts to others. The request is also consistent with similar requests approved elsewhere within the City.

Staff has received concerns regarding increased parking impacts due to the fact that the Dillard’s have two driveways off of Woodcreek Drive and about the approved building permit that allows the Dillard’s to construct a shop in the rear yard. Gudde noted that the conditions in the Staff Report for the CUP specifically state that the ADU / Air B&B can only be located within the approved ADU not the proposed detached shop. Gudde also mentioned the possibility of installing a privacy fence along the northern property line to provide a buffer.

Public Comment

Dave Dillard, applicant spoke and stated that the proposed shop, currently under construction will help relieve some of the parking concerns as some vehicles will be parked inside the shop which will move parking off of the street.

Dillard stated that for the last three years we have rented the unit as a full-time rental which had a vehicle in driveway all of the time. The parking will actually be reduced as there will no longer be someone residing in the unit fulltime.

Linda Sharp, 450 Woodcreek Drive. Sharp asked if the CUP states that the ADU will be located in the existing home and will not be in the proposed shop. Gudde replied, yes. Sharp also asked about a privacy fence constructed on the Dillard’s property line. D. Veltkamp stated, that was a recommendation from Staff.

Questions or Comments from the Commissioners

- Faber asked what is the time frame for the construction of the shop? Dillard replied, next summer.
- K Timmer asked if the shop will be completed next summer or just in the process of being completed? Dillard replied, completed.
- Faber asked about screening on the property lines. Gudde replied, that the south side of property appears to be adequately screened, however, screening on the north property line is recommended. Faber questioned the screening on the north side as the ADU exists on the other side of the property. Gudde stated that the recommendation came out of discussions regarding privacy and parking concerns with the neighbor.
- Linda Sharp stated that there is a lot of traffic generated from the Dillard family and the Sharps would like some additional privacy between the properties and to better designate the property lines. In addition, the Dillard’s park a freightliner in the driveway between the two homes. along the northern property line.

- The Dillard's state that the driveway on the northside has never been used by renters. It is a private driveway only.
- Timmer asked if the north driveway is currently used? The Dillard's replied, yes, it is our private driveway.

Scott motion to close the public portion of the hearing. Seconded by Korthuis and the motion passed 6-0

The Commission had no concerns with the CUP criteria. The buffering issue is not due to the CUP request.

K Timmer stated that a nightly rental can have more impact than a monthly rental. The City needs to tread carefully. Maybe a buffer is not out of the question as the neighbors could be negatively impacted.

G Veltkamp has concerns regarding forcing the Dillard's to put up a fence. A fence or buffering is not required for the shop building. The screening on the north property line is a separate issue.

Faber agrees with G. Veltkamp and stated that the parties involved need to work together for a solution. The fence is a different issue than the CUP request. Faber has no concerns with the CUP criteria.

Brief discussion regarding annual review of the CUP.

Faber made a motion to recommend to the City Council the approval of the proposed Dillard Conditional Use Permit to allow short-term rentals as proposed at their property at 422 Woodcreek Drive, subject to annual review as written in code. Seconded by Blair Scott and the motion passed 6-0.

B. KODA Rezone #20-03, 295 S BC Avenue

Gudde summarized the request. The property owner is seeking to rezone this property from Multi-Family Residential (RM-4) to Multi-Family (RM-2). The subject property has unique characteristics that have led to the owner’s decision to pursue a down zone.

The Planning Department is tasked with keeping up to date on Growth Management Policies and staying on task with City’s Comprehensive Plan goal to seek / maintain higher density opportunities. This is especially important for those located relatively near commercial services such as shopping and the downtown core.

It should be noted that constraints of the critical areas support the need for medium to higher density housing to more thoroughly utilize building areas. Additionally, higher density development would not be out of character for the neighborhood as multi-family buildings, the relatively large scale of the New Hope Center, and cluster developments are all located in close proximity to this property. Considering these factors, the request to downzone this area should be considered carefully in light of the City’s growth management goals.

While the applicant has expressed an openness to an RM-3 zoning the primary reason that RM-2 was pursued was because the smaller setbacks associated with RM-2 were a better fit for the housing types they have planned for the property. Staff also recognizes that parking requirement and building height limits within the City’s development code may also restrict the actual achievable density on this property. For these reasons, and other described in the TRC report, staff supports the property owners request to rezone to an RM-2 designation

Public Comment

Roger Anderson and Ray Kornelis, applicants spoke. Anderson and Kornelis are joint partners in the proposed rezone. Plans include making two lots on-site for single family homes. We could build a home under RM-4, however, achieving the setbacks in that zone is a bit more difficult than in RM-2. We have no intent of building multi-family.

Questions or Comments from the Commissioners

- D Veltkamp asked about the access point to the property. Would additional property be needed if it was zoned RM-2? Gudde stated that the size really depends on the density, not necessarily the zoning.
- Discussion about buffer / buildable area. Building would need to be in front of the 50-foot buffer shown on the map in the packet. Questions on the validity of the map with regards to buffer lines etc.
- Anderson stated that the map is correct, and the buffer zone is accurate. Northwest Ecological prepared the wetland study in 2019.

- Faber asked how much acreage would be left outside of the wetlands. Roger said just over an acre up on the ridge of which we have plans to divide into two lots.
- Turner asked how the property would be divided? Heidi stated that there is not a subdivision plan submitted at this point. One lot would be close to the existing barn with the second lot being south of that area. As you head east, the property is not buildable.
- K Timmer confirmed that the future plan is to create two additional lots, correct?. Yes, 2 new lots for a total of three.

K. Timmer motion to close the public portion of the hearing. Seconded by G. Veltkamp and the motion passed 6-0

Other Commissioner Comments:

- The Commission agreed that it is a reasonable request.
- Faber stated that the access does not lend itself to multi-family development.
- Korthuis stated that the crunch of the wetland does not make sense for multi-family development.

The Commission reviewed the criteria associated with a site-specific rezone and agreed that things have changed in the area since the current zoning was established and at that time, the rezone did not take in consideration the topography of the land / wetland which would greatly limit the density of units allowed.

In addition, other properties in the area are zoned RM-2.

Faber made a motion to recommend to the City Council the approval of the KODA Rezone request from an RM-4 to an RM-2 designation, Application #20-03, According to the Staff Report dated December 1, 2020. Seconded by Bryan Korthuis. Motion passed unanimously.

C. Zoning Text Amendment – Hearing Examiner

Planning Commission met with the Community Development Committee several months ago to discuss the introduction of a hearing examiner.

Gudde gave an overview of the amendment. In 2018 the City of Lynden began researching the use of a hearing examiner after several costly and time-consuming administrative appeals were defended. Use of a hearing examiner, typically an experienced land use attorney, could provide multiple benefits to the City. These include an expediency in processing applications, the unbiased opinion of a professional, removing social/political influence from the process, reducing the City’s liability, and decreasing the obligations placed on volunteer boards.

A hearing examiner could be considered as the reviewer of appeals/applications where specific legal or technical criteria are listed. Feedback regarding this initiative has led to a code amendment drafted to include some appeals and some variance requests. Decisions made by the hearing examiner would go to the City Council if appealed. This code amendment also provides an opportunity to update sections of code to current organizational structure and other improvements. In summary, the attached draft ordinance proposes:

- To remove an unusual and glaring liability found in Chapter 17.13.060(B) which allows any three property owners or three residents of the City to petition for the review of any permit issued under the development code without indicating a specific appeal period.
- That a hearing examiner would hear some administrative appeals.
- That a hearing examiner would hear variances from Chapter 19. These variance applications are currently heard by the Board of Adjustments. This change would eliminate the need for a Board of Adjustments.
- That a hearing examiner would hear appeals of the Building Official’s decisions that are currently directed to the Board of Appeals (described in Chapter 15.14), which has never been created.

Previous drafts of the code amendment had shifted the review of Conditional Use Permits and Shoreline Permit to the hearing examiner as well. After feedback from the last workshop, the attached ordinance does not include these applications in the hearing examiner’s scope of work. However, staff and legal counsel urge the Planning Commission and the City Council to reconsider the issue of shoreline permits. The City’s Shoreline Master Plan is over 100 pages of shoreline specific code. Mitigation work and compliance is often highly dependent on work from certified biologists and the best available science related to shoreline / riparian mitigation. Staff’s recommendation is to send shoreline permits to a hearing examiner for a decision. Appeal of these decisions would be heard by the State’s Shoreline Hearings Board as is the current path within the City’s development code.

Gudde stated, for SEPA Appeals, they would be handled first with the Hearing Examiner, and the project associated with it would come forward to the Commission after the SEPA appeal was decided on.

For Variance and Shoreline applications not associated with land use applications, they would go to the hearing examiner for a decision.

For consolidated land use applications that include Shoreline permits, they would still go before the Planning Commission.

There are two Hearing Examiner options; the structure that the City is proposing is to allow a dispute to be heard by City Council, another option would be to appeal to the Superior Court.

Mike Martin, this is his 5th City he has worked for of which many used a hearing examiner. Over the years, Martin has heard many concerns from leaders thinking that with a hearing examiner, they will lose local control. Let me assure you that local control remains with the City Council.

The need for a hearing examiner boils down to the fact that the review will be handled by an unbiased, highly trained person to review and decide on an issue.

At anytime, the City Council can revisit the hearing examiner chosen.

The City often has 4-5 attorneys working on the same issued at one time. We are trying to make this a more efficient and a less expensive process. The City has no plans to hire additional planners, we punch above our weight and make use of the people we have.

A lot of Cities use a hearing examiner for many more items than what we are proposing. This is a modest way of trying out this need. We can always add to the list as time goes on.

Faber appreciates and stands behind the proposal for a hearing examiner whole heartedly. Faber can get behind the Shoreline recommendation as well. It is very technical and having a someone who specializes in that area makes good sense. No problem at all with the hearing examiner reviewing the specific applications as proposed.

G. Veltkamp concurs with Faber. You need to trust the professionals. This is above the PC's pay grade. It is very specific and technical and it is important to have the professionals review the applications.

B Korthuis, the blue-line document is pretty much what was explained to us at our joint meeting in July, which he appreciated very much. Having a hearing examiner is definitely something that the City should acquire.

Public Comment - None

Scott motioned to close the public portion of the hearing. Seconded by K. Timmer and the motion passed 6-0.

No additional comments were brought forward from the Commissioners.

Faber made a motion to recommend to the City Council the approval of Ord 1615 with the revision to include the hearing examiner’s review of shoreline permits. Seconded by Bryan Korthuis. Motion passed unanimously.

D. Zoning Text Amendment #20-02 – Mobile Home Parks

Gudde addressed the text amendment. Lesa Starkenberg-Kroontje, representing her client Four ‘S’ Investments, has applied for a Zoning Text Amendment regarding the expansion of the nonconforming use of a mobile home park within the Commercial Services-Regional (CSR) Zoning category. The request is somewhat focused on the Duffner Mobile Home Park located on Front Street just west of the Guide Meridian. However, it is important to keep in mind that the amendment would apply to any other mobile home communities (MHCs) within the CSR zoning category. Staff believes this is limited to one other circumstance – the unit pads located at the Windmill Inn Motel located at 8022 Guide Meridian.

Non-conforming uses are addressed in LMC 19.35. A use, like the Duffner Mobile Home Park, which is brought into the City that does not match the permitted uses of its zoning category is considered a legal nonconforming use. This is referred to as times as a use that is “grandfathered”. Although a legal nonconforming use can continue to operate, it is not permitted to expand.

The Duffner Mobile Home Park was recently able to connect to City sewer services and decommission aging septic systems. This available connection has also initiated the applicant opportunity to request additional housing units be placed on the property as each would be able to connect to sewer services.

In the attached applicant explores the potential benefits that additional stock of affordable housing can provide to the City. Staff review can be found in two TRC reports – the final report dated December 4, 2020.

Staff review, with the assistance of the City’s legal counsel, has concluded with a recommendation to approve the expansion of MHCs in the City’s CSR zones only as a conditional use and subject to appropriate setback and buffering requirements that may result as a review of the conditional use permit application. To be consistent with State Statues, staff also recommends that the City’s definitions related to MHCs in Chapter 17 be updated as attached and the corresponding text amendments to Chapters 18 and 19 be made in accordance with these updates.

Public Comment

Lesla Starkenburg, Agent for Applicant, spoke. Starkenburg stated that she is speaking on behalf of the owners of the Duffner Mobile Home Park. This request ended up being more work than originally thought. That was not the intent in the beginning, so thank you to Staff for the hard work. Starkenburg stated that many inconsistencies were found once the process was started.

Allowing this amendment would provide more affordable housing in the City as well as the use of surplus land. It allows for continued property income while the owners wait for the commercial development to take off in the area. The concept originally came up a year ago in

a council committee meeting where we were discussing the property and its connections to the sewer line. The idea for a ZTA was brought forward as her client's property is considered a non-conforming use as it is not allowed to intensify. Council members at that time indicated that a text amendment was a good idea.

Commissioner Comments

- Scott, the request sounds reasonable, however, when I think of the concept of a manufactured home it seems like something with more permanence, not an RV. Concern if we open this up. Starckenburg stated, at this location we are looking to add 4-5 units in the middle of the property. This ZTA would only apply to a couple of parcels in town. The impact would be minimal and it would require a conditional use permit approval and building permit. Bringing in units would require compliance with the code.
- G Veltkamp agrees that it is affordable housing. What would stop someone from placing 4 mobile homes and then renting them out for rental income? Lesa stated that there is a separate landlord CCR's that need to be met. K Timmer stated that she cannot see an investor buying and renting it for income.
- Timmer stated that this is another form of affordable housing which is really needed in Lynden.
- Veltkamp asked, if they added 4 units, would they be held to meeting development standards for streets similar to houses. Gudde stated that it would be unreasonable to make them meet street standards, they would however, need to apply for a CUP which would come before the Planning Commission and the City Council. The Fire Department would also have the opportunity to weigh in. Staff would recommend buffering, site lighting and that the parking code is met.
- Faber, how many additional units can fit on this specific property? Lesa stated about 4-5. Can multiple units be brought in under one CUP? Lesa does not see why not. A site plan can show the delineated area and associated buffering etc. under one CUP. After that each unit would require its own building permit.
- Gudde stated that a distinguishing difference between this property and the Windmill is that sewer is at this site and there are no flood plain concerns. At the windmill, there is no sewer and there are considerable flood plain issues that would need to be dealt with.

Scott motioned to close the public portion of the hearing. Seconded by G. Veltkamp and the motion passed 6-0.

Scott has no objections as any additional units would need to come before the Commission through a conditional use permit. Korthuis stated that it seems like an over-do amendment that needs to be cleaned up.

Faber likes the checks and balances for review.

Faber made a Motion to recommend to the City Council the approval of the proposed zoning text amendment, ZTA 20-02 as conditioned by staff. The amendment would allow nonconforming mobile / manufactured home communities, through the approval of a conditional use permit, to expand by adding additional pads / units within existing community boundaries. And further recommend to Council the approval of code updates to applicable definitions and affected code sections within Chapters 17, 18 and 19. Seconded by Bryan Korthuis and the motion passed 6-0.

The Commission thanked Lesa Starkenburg and Staff for their work on this amendment.

6. ADJOURNMENT

Motion to adjourn by Scott at 9:35 pm. Seconded by Turner.



Meeting Date:	December 10, 2020 (Continued from the November 12 th PC Meeting)
Name of Agenda Item:	Public Hearing for Zoning Text Amendment re Mobile Home Communities
Type of Hearing:	Legislative
Attachments:	
December 4 th Final TRC Report, Staff-proposed Code Redlines, Revised text amendment request, August 3 rd TRC Report, Original ZTA Application and Supporting Information	
Summary Statement:	
<p>Lesla Starkenberg-Kroontje, representing her client Four ‘S’ Investments, has applied for a Zoning Text Amendment regarding the expansion of the nonconforming use of a mobile home park within the Commercial Services-Regional (CSR) Zoning category. The request is somewhat focused on the Duffner Mobile Home Park located on Front Street just west of the Guide Meridian. However, it is important to keep in mind that the amendment would apply to any other mobile home communities (MHCs) within the CSR zoning category. Staff believes this is limited to one other circumstance – the unit pads located at the Windmill Inn Motel located at 8022 Guide Meridian.</p> <p>Non-conforming uses are addressed in LMC 19.35. A use, like the Duffner Mobile Home Park, which is brought into the City that does not match the permitted uses of its zoning category is considered a legal nonconforming use. This is referred to as times as a use that is “grandfathered”. Although a legal nonconforming use can continue to operate, it is not permitted to expand.</p> <p>The Duffner Mobile Home Park was recently able to connect to City sewer services and decommission aging septic systems. This available connection has also initiated the applicant opportunity to request additional housing units be placed on the property as each would be able to connect to sewer services.</p> <p>In the attached applicant explores the potential benefits that additional stock of affordable housing can provide to the City. Staff review can be found in two TRC reports – the final report dated December 4, 2020.</p> <p>Staff review, with the assistance of the City’s legal counsel, has concluded with a recommendation to approve the expansion of MHCs in the City’s CSR zones only as a conditional use and subject to appropriate setback and buffering requirements that may result as a review of the conditional use permit application. To be consistent with State Statues, staff also recommends that the City’s definitions related to MHCs in Chapter 17 be updated as attached and the corresponding text amendments to Chapters 18 and 19 be made in accordance with these updates.</p>	
Recommended Action:	
<p>Motion to recommend to the City Council the approval of the proposed zoning text amendment, ZTA 20-02 as conditioned by staff. The amendment would allow nonconforming mobile / manufactured home communities, through the approval of a conditional use permit, to expand by adding additional pads / units within existing community boundaries. And further recommend to Council the approval of code updates to applicable definitions and affected code sections within Chapters 17, 18 and 19 as attached.</p>	

CITY OF LYNDEN



TECHNICAL REVIEW COMMITTEE Development Project Report

Date Issued:	December 4, 2020
Project Name:	ZTA #20-02, Four "S"
Applicant:	Four "S" Investments, US., Inc.
Property Owner:	Lesa Starkenburg Agent for, Four "S" Investments
Site Address:	N/A
Parcel Number	N/A
Zoning Designation:	CSR
Application Type:	Zoning Text Amendment
Parcel Size:	N/A
Hearing Type:	Legislative
Hearing Objective:	The objective of this public hearing is to determine whether the proposed amendment to Section 19.23.020 and 19.21.060 of the Municipal Code furthers the intent and purpose of the CSR zoning designation and is consistent with the Comprehensive Plan
Date application determined complete:	June 17, 2020
Date of Publication:	August 19, 2020
SEPA Determination:	N/A
Project Description:	The applicant is requesting a Zoning Text Amendment to Section 19.23.020 and 19.21.060 of the Lynden Municipal Code regarding permitted uses and special property uses within the CSR (Regional Commercial Services) zone.

Background and Notification Requirements:

In accordance with Chapter 17.15 LMC, the proposed action was reviewed for concurrency and should the conditions listed within this report be met, a finding of concurrency will be made in accordance with Section 17.15.060(C)(3).

As with all Zoning Text Amendments, any changes to such text could affect all properties within that zoning designation.

The applicant has met the minimum submittal requirements and the application was determined to be complete on July 17, 2020. The notice of application was published on that same date.

The City has received proof of certified mailing and the affidavit of posting in accordance with the City’s requirements.

Summary:

The applicant is requesting a zoning text amendment to the following Sections of the Lynden Municipal Code:

19.23.020-Permitted Uses. The expansion of existing, legal nonconforming mobile home parks shall be a permitted use in the CSR zone, provided the expansion meets the current setback requirements and other use and bulk requirements. The expansion may increase the number of units on the site but shall not expand the nonconforming use beyond the property boundaries that existed at the time the use became nonconforming.

The applicant has withdrawn the request related to the residential use of travel trailers on the subject property. (i.e. revisions to 19.21.060-Special Property Uses -Travel Trailer and Recreational Vehicles -Regulations Authorized) in response to staff’s initial review however further study of the issue has shown that the State code, RCW 35A.21.312(3) limits a city’s authority to prohibit the use of recreational vehicles within established mobile / manufactured home communities (MHCs) (subject to some conditions). As such, the addition of “units” to this and other MHCs within the City should be assumed to be either RV’s, or manufactured homes which are single, double, or triple-wide in size.

Staff review and comment related to the proposed zoning text amendment is as follows:

Planning Department Comments:

1. *Housing Types:* The City’s comprehensive plan is supportive of a variety of housing types and encourages development which may assist in the affordability of housing. The applicant has provided a summary of rents and / or purchase price for homes within mobile home parks within the City to give context to this issue.

2. *Use Intensification or Expansion:* Legal counsel has interpreted the addition of new housing pads / units to the MHC as an expansion of a nonconforming use rather than an intensification. This is due to the nature of the development as it existing when the MHC became nonconforming. And, due to the impact that

additional units would have on the surrounding property owners in both visual appearance and increased traffic demand.

3. *Development Standards:* While staff agrees that it would be unreasonable to expect a nonconforming MHC to meet all of the development and siting standards related to MHCs as listed in LMC 18.22, the impacts of additional units must be considered when proposed. Staff recommends that the addition of units to an existing MHC within the CSR (Commercial Services -Regional) be listed as a Conditional Use Permit (CUP). And, that the approval of the CUP be conditioned on meeting setback, providing buffers, and other appropriate design standards as determined during the review of the CUP. Connecting to City utilities is required.

Resulting redlines of the staff recommendation are attached.

4. *City Definitions:* Definitions related to the mobile and manufactured homes currently appear in conflict with each other as they appear in both LMC 18.22 and LMC 17.01.030. Additionally the City's definitions may not be consistent with the State of Washington definitions and provisions. Initial legal review has resulted in the attached redlines which reflect an update and consolidation of the City's definitions related to MHCs.

Fire and Life Safety

1. *Life and Safety Standards:* Be advised that the expansion of existing mobile home parks must provide adequate life and safety access throughout the park consistent with LMC 18.22.

Parks and Recreation

The Parks Department has reviewed the application and has no comment.

Excerpt of 17.01.030 – Definitions related to ZTA 20-02.

The following definitions shall apply to Titles 16 through 19; other definitions may be found in individual titles. The definitions set forth in this chapter shall apply to the terms used in this title. Those terms not defined in this chapter, shall be as defined in the 1991 Uniform Zoning Code.

.....

"Manufactured home, Designated" A designated manufacture home means a single-family home constructed after June 15, 1976, in accordance with state and federal requirements for manufactured homes which: (a) is comprised of at least two fully enclosed parallel sections each of not less than twelve feet wide by thirty-six feet long; (b) was originally constructed with and now has a composition or wood shake or shingle, coated metal, or similar roof of not less than 4:12 pitch; and (c) has exterior siding similar in appearance to siding materials commonly used on site-built, single-family homes according to the International Building Codes.

"Manufactured home" means a single-family dwelling required to be built in accordance with the federal Department of Housing and Urban Development's manufactured housing construction safety standards and regulations (24 CFR 3280 et seq) adopted June 15, 1976 under the national Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401 et seq.).

~~"Manufactured home park (or subdivision)" means the development of property for the purpose of placing two or more manufactured homes under the provisions of Chapters 18.22 and 19.19 of the Lynden Municipal Code.~~

.....

~~"Mobile home" means a transportable, factory-built home designed and intended to be used as a year-round dwelling, and built prior to the enactment of the Federal Manufactured Housing and Safety Standards Act of 1974. A factory-built dwelling constructed prior to the implementation of the federal Department of Housing and Urban Development's manufactured housing construction safety standards and regulations (24 CFR 3280 et seq) adopted June 15, 1976, and acceptable under applicable state codes in effect at the time of construction or introduction of the home into the state. Mobil homes have not been built since June 15, 1976.~~

"Mobile home awning" means a stationary structure, permanent or demountable, used in conjunction with a mobile home, other than a window awning, for the purpose of providing shelter from the sun and rain, and having a roof with supports and not more than one wall or storage cabinet substituted for a wall.

"Mobile / manufactured home community" or "MHC" means mobile or manufactured home parks or subdivisions.

~~"Mobile / manufactured home park" means a plot or tract of land divided into lots, under the ownership or management of one person, firm or corporation for the purpose of locating two or more mobile homes to be used for human occupancy. Individual lots may be sold within the mobile home park, but the mobile home park must still have a mobile home manager. means a tract of land under single ownership or control upon which two or more mobile/manufactured homes occupied as dwellings may be located.~~

"Mobile/manufactured home subdivision" means two or more mobile/manufactured homes on separate lots developed under the provisions of Title 18 LMC where mobile/manufactured homes are permanently installed for residential use on individually owned lots.

.....

"Modular home" means a home built in a factory in modules that is then transported and set up on a parcel of land.

.....

"New manufactured home" means any manufactured home required to be titled under Title 46 RCW, which has not been previously titled to a retail purchaser, and is not a "used manufactured home" as defined in RCW 82.45.032(2).

"Nonconforming building" means a building or structure or portion thereof lawfully existing at the time this code became effective, which was designed, erected or structurally altered for a use that does not conform to the zoning regulations of the district in which it is located.

"Nonconforming lot" means a lawfully established lot which does not conform to the provisions of the development code.

"Nonconforming use" means a use which lawfully occupied a building or land at the time this code became effective, which has been lawfully continued and which does not now conform with the use and zoning regulations.

.....

"Permitted use" means the specific purpose for which land and/or a building is designed, arranged and intended, or for which it is or may be occupied or maintained. The term "permitted use" or its equivalent shall not be deemed to include any nonconforming use.

.....

"Plat" means a map or representation of a subdivision showing thereon the division of a tract or parcel of land into lots, blocks, streets and alleys, or other divisions and dedications.

.....

"Recreational vehicle" means a vehicular unit, other than a mobile home, which is designed as a temporary dwelling for travel, recreational and vacation use, and which is either self-propelled, mounted on or pulled by another vehicle. Examples include, but are not limited to, a travel trailer, camping trailer, truck camper, motor home, fifth wheel trailer or van.

Excerpt of 18.22 – Revisions related to ZTA 20-02.

18.22.010 - Purpose.

The purpose of this chapter is to establish the standards and criteria by which mobile/manufactured home subdivisions and parks may be sited and developed within the city. These standards are necessary to ensure the uniform, coordinated development of the community and to assure the general health, welfare and safety of the occupants of the mobile/manufactured homes that are located within a subdivision or park developed under these standards.

(Ord. 1194 §§ 1, 10, 2004).

(Ord. No. 1546, § 9, 12-4-2017)

18.22.020 - Definitions. (See LMC 17.01.030)

- ~~A. "Mobile/manufactured home park" means a tract of land under single ownership or control upon which two or more mobile/manufactured homes occupied as dwellings may be located.~~
- ~~B. "Mobile/manufactured home subdivision" means two or more mobile/manufactured homes on separate lots developed under the provisions of Title 18 LMC where mobile/manufactured homes are permanently installed for residential use on individually owned lots.~~
- ~~C. "Manufactured home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes, the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than one hundred eighty consecutive days. For insurance purposes, the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.~~
- ~~D. "Mobile home " means a structure, transportable in one or more sections, which in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. Calculations used to determine the number of square feet in a structure will be based on the structure's exterior dimensions measured at the largest horizontal projections when erected on site. These dimensions will include all expandable rooms, cabinets, and other projections containing interior space, but do not include bay windows. This term includes all structures that meet the above requirements and with respect to which the manufacturer voluntarily complies with the standards set forth in Part 3280 by HUD. WAC 296-150B-015(28).~~

(Ord. 1194 §§ 1, 10, 2004).

(Ord. No. 1546, § 9, 12-4-2017)

18.22.030 - Requirements for a completed application.

An application must submit the information as stated in 18.16.010 LMC for preliminary plats.

(Ord. 1194 §§ 1, 10, 2004).

(Ord. No. 1546, § 9, 12-4-2017)

18.22.040 - Type of approval required.

- A. All mobile home parks shall be processed in the same manner as a binding site plan.
- B. All mobile/manufactured home subdivisions shall be processed in the same manner as subdivisions in this title.

(Ord. 1194 §§ 1, 10, 2004).

(Ord. No. 1546, § 9, 12-4-2017)

18.22.050 - Siting criteria.

The following minimum criteria apply to the siting of mobile/manufactured home parks and subdivisions.

- A. Minimum site development area: Five acres
- B. Maximum site development area: Twenty acres
- C. Minimum perimeter buffer: Thirty feet of Type V landscape buffer.
- D. Minimum unit site area: Four thousand two hundred square feet.
- E. Minimum common open space area: Ten percent of gross site area. Common open space consists of either an active or passive recreational area accessible and useable to all tenants within the park. Common open space is exclusive of the required perimeter buffers.
- F. Maximum density: Six units per acre.
- G. Unit type:
 - 1. Recreational vehicles which meet fire and safety regulation; hook up to utilities in a way that meets code; are appropriately skirted; and contain at least one toilet and at least one shower or that these amenities are provided to the residents of the MH community (RCW 35A.21.312(3)).
 - 2. Single, double or triple wide configuration, including
 - 3. Modular units/homes.

(Ord. 1194 §§ 1, 10, 2004).

(Ord. No. 1546, § 9, 12-4-2017)

18.22.060 - Development standards.

All plans for improvements listed below shall be designed and stamped by a professional engineer:

- A. Easements for electric, telephone, telecommunications, water, storm and sanitary sewer, gas and similar utilities shall be a minimum of ten feet to assure future maintenance.
- B. Subdivisions shall provide underground utility lines, including, but not limited to those for electricity, communications, cable TV and street lighting.
- C. All streets, curbs, gutters, sidewalks, bridges, drains, culverts, and related structures and facilities shall be constructed in accordance with the other chapters of the LMC, city's design and development standards and applicable state and federal requirements; provided however:
 - 1. Private roads within a mobile/manufactured home park shall be privately owned. Interior roads must have a minimum surface width of twenty-four feet with a rolled edge curb on

both sides of the street. Interior roads must meet the construction requirements of the project manual for engineering design and development standards for the street section. No on-street parking will be permitted.

- 2. Public roads. Roads within a mobile/manufactured home subdivision must be public streets, meeting the requirements of the City of Lynden Project Manual for Engineering Design and Development Standards for a residential access street.
- D. Water supply facilities adequate to provide potable water from a public supply to each lot within a subdivision shall be installed in conformity with the city's design and development standards. Each lot shall be provided with a connection to the city's sanitary sewer, water and stormwater system in conformity with the city's design and development standards.
- E. Prior to construction of any structures within the subdivision, all public utilities shall be installed in conformance with the city's design and development standards.
- F. Parking. Parking shall be as required per Chapter 19.51 LMC. One additional off-street parking space will be required for every five mobile/manufactured home site within a mobile/manufactured home park. These parking areas shall be spaced through the park conveniently to the homes they are intended to serve.
- G. Outdoor lighting. Outdoor lighting shall be provided to adequately illuminate pedestrian walkways as required in the city's design and development standards. Such lighting shall be shielded so that the direct illumination shall be confined to the property boundaries of the light source. Ground mounted floodlighting or light projection above the horizontal plane is prohibited between midnight and sunrise.
- H. Landscaping. Landscaping shall be as provided in Chapter 19.61 LMC for mobile home parks or subdivisions.

(Ord. 1194 §§ 1, 10, 2004).

(Ord. No. 1546, § 9, 12-4-2017)

Excerpt of LMC 19.15 – RS Single-Family Building Zones

19.15.010 - Purpose and zones established.

A. Three single family zones are established:

Zone	Minimum Lot Size	Maximum Density
RS-100	10,000 square feet	4 DU/acre
RS-84	8,400 square feet	4.5 DU/acre
RS-72	7,200 square feet	5 DU/acre

Existing lots may be developed with single family homes even though they do not meet the size requirements of single-family zones. Future land divisions must meet the area requirements specified in the zone; provided however, that Title 18, subdivisions, provides for methods of subdivision resulting in lots of different sizes.

The goal of this title is to: protect the character and the social and economic stability of all parts of the community and to encourage the orderly and beneficial development of the community through appropriate growth management techniques; to assure proper urban form and open space separation of urban areas; to protect environmentally critical areas and allow flexibility in site and design standards while promoting infill projects compatible with existing single-family developments.

B. Use of Low Impact Development Techniques. When an application for single family development seeks to add additional residential density to a parcel or parcels as infill development, the pertinent approving body, the planning director, planning commission, or city council, as applicable, is authorized to approve land divisions even though they may not meet the lot size requirements of single-family zones presented in this Title under the following conditions:

1. Site planning incorporates LID components that minimize impervious surfaces and achieves a more restrictive percent maximum coverage than would the larger lot size;
2. Site planning and design documents are completed by a licensed engineer in the State of Washington;
3. The proposed development integrates with the character of the neighborhood;
4. The requested waiver must be specified and justified in writing to the technical review committee and the approving body
5. Written documentation of the decision on the waiver is recorded by the director in city records.

(Ord. No. 1581, § B, 6-3-2019)

19.15.020 - Primary permitted uses.

A. The primary land uses permitted in the single-family zones are detached, site-built single-family dwellings and new designated manufactured homes as defined in Section 17.01.030 of the Lynden Municipal Code.

- B. Mobile homes as defined in LMC Section 17.01.030 LMC are prohibited.
- C. Personal services are allowed in the neighborhood commercial overlay in the Pepin Creek Subarea only. This is to allow for businesses such as barbershops, beauty salons, day spas, laundry facilities, dry-cleaning, or others that would serve the subarea.
- D. Sales of general consumer goods are allowed in the neighborhood commercial overlay in the Pepin Creek Subarea only. This is to allow for retail sales of food, household goods, pet supplies, and other goods to residents in the subarea. The sales of goods geared toward a regional customer base, as determined by the planning director, are not allowed. Such regional uses include fuel sales, auto sales, large format stores, construction and landscaping materials, farm equipment. Outdoor storage associated with the sales of general consumer goods is also not allowed.
- E. Restaurants and cafes are allowed in the neighborhood commercial overlay in the Pepin Creek Subarea only.
- F. Professional offices, banks and financial institutions in the neighborhood commercial overlay in the Pepin Creek Subarea only.

(Ord. No. 1581, § B, 6-3-2019)

Excerpt of 19.16 – Residential Mixed Density (RMD) Zone

19.16.010 - Purpose and intent.

The purpose of creating the residential mixed density zone (RMD) is to meet the stated goals of the comprehensive plan by allowing increased residential density to be integrated within single family neighborhoods within the community.

The intent in the creation of this zone is to allow a creative mixture of single-family and duplex housing styles and types. Development of this area should focus on maintaining the aesthetic quality of the city in general and the neighborhood in particular by providing for architectural diversity, adequate landscaping and open space and making low impact development (LID) the preferred and commonly used approach to site development.

(Ord. No. 1576, § B, 3-4-2019; Ord. No. 1581, § B, 6-3-2019)

19.16.020 - Permitted uses.

Permitted uses in the residential mixed density zone are as follows:

- A. Single-family dwelling units, including detached site built single family dwellings, and new designated manufactured homes as defined in Section 17.01.030 LMC. This includes types such as large lot single family and small lot single family units. Mobile homes as defined in Section 17.01.030 LMC are prohibited.
- B. Two single-family attached dwelling units, which are ground related, fee simple-ownership units that are attached through shared walls or rooflines are allowed. This includes types such as townhomes, units with attached garages, and other innovative types.
- C. Duplex units. This includes two attached units on one parcel.

(Ord. No. 1576, § B, 3-4-2019; Ord. No. 1581, § B, 6-3-2019)

Excerpt of Chapter 19.17 – RM Multifamily Building Zones

19.17.010 - Purpose and zones established.

The goal is to allow flexibility in site and design standards while promoting infill projects compatible with existing multi-family developments.

Six multi-family zones are established:

RM-1, Residential Multi-Family 1 zone; (up to 2 units/building)

RM-2, Residential Multi-Family 2 zone; (up to 4 units/building)

RM-3, Residential Multi-Family 3 zone; (up to 12 units/building)

RM-4, Residential Multi-Family 4 zone; (up to 50 units/building)

RM-PC, Residential Multi-Family Pepin Creek zone; (up to 4 units/building and sometimes up to 8 units/building)

~~SO, Senior Overlay zone; (up to 30 units/acre)~~

- A. Use of Low Impact Development Techniques. When an application for multi-family development seeks to add additional residential density to a parcel or parcels as infill development, the pertinent approving body, the planning director, planning commission, or city council, is authorized to approve future land divisions even though they may not meet the lot size requirements of multi-family zones presented in this Title under the following conditions:
 1. Site planning incorporates LID components that minimize impervious surfaces and achieves a more restrictive percent maximum coverage than would the larger lot size;
 2. Site planning and design documents are completed by a licensed civil engineer in the State of Washington;
 3. The proposed development integrates with the character of the neighborhood;
 4. The requested waiver must be specified and justified in writing to the technical review committee and the approving body;
 5. Written documentation of the decision on the waiver is recorded by the director in city records.

(Ord. No. 1581, § B, 6-3-2019)

19.17.020 - Primary permitted uses.

The primary land uses permitted in the multi-family zones are residential buildings as shown in the table below:

	ZONE			
	RM-1	RM-2	RM-3	RM-4
Single Family Dwelling Unit	P	P	P	P
Duplex Units	P	P	P	P

Three or Four units per building	N	P	P	P
More than four units per building	N	N	P	P
New-Designated manufactured homes as defined in Section 17.01.030 of the Lynden Municipal Code	P	P	P	P
Mobile homes as defined in Section 17.01.030 LMC	N	N	N	N

P = Permitted Use; N = Not Allowed

(Ord. No. 1581, § B, 6-3-2019)

Chapter 19.19 - MH MANUFACTURED HOME ZONE^[4]

Footnotes:

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Editor's note— Ord. No. 1581, § A, adopted June 3, 2019, repealed Ch. 19.19., §§ 19.19.010—19.19.170, and enacted a new Ch. 19.19 as set out herein. The former Ch. 19.19 pertained to similar subject matter. Please refer to the Code Comparative Table for full derivation.

19.19.010 - Established.

There is established the MH—Manufactured Home Zone and the standards and regulations by which certain land uses may be permitted therein.

(Ord. No. 1581, § B, 6-3-2019)

19.19.030 - Primary permitted uses.

- A. The primary uses permitted in the MH—Manufactured Home Zone is manufactured homes, and manufactured home parks, as provided in this chapter, subject to the minimum standards and conditions set forth in this chapter and within Chapter 18.22.
- B. Site built, detached single family dwelling units are also considered a permitted use within the MH zone, provided that the total number of site built houses does not exceed twenty percent of the total units within the manufactured home park or development.
- C. Mobile homes as defined in Section 17.01.030 LMC are prohibited.

(Ord. No. 1581, § B, 6-3-2019)

19.19.040 - Accessory permitted uses.

The accessory uses permitted in the MH zone are as follows:

- A. Private garages.
- B. Carports.
- C. Tool shed, satellite dish, outdoor patios and outdoor fireplaces.
- D. A maintenance building containing equipment and tools for owners of manufactured homes that are necessary for the repair and preservation of a manufactured home.

(Ord. No. 1581, § B, 6-3-2019)

19.19.050 - Secondary permitted uses.

The secondary uses permitted in the MH manufactured home zone are as follows:

- A. Community laundry facilities used by the residents of the park or development.
- B. Community buildings for the residents of the park or development. These buildings may contain offices, recreational facilities and meeting halls.
- C. Private swimming pools, as provided in Chapter 15.16 in the International Building Code adopted pursuant to Chapter 15.02 of the Lynden Municipal Code and subject to LMC 19.37.090.

(Ord. No. 1581, § B, 6-3-2019)

19.19.060 - Maximum density.

The maximum density of a manufactured home park or development in the MH Zone shall not exceed six units per gross acre.

(Ord. No. 1581, § B, 6-3-2019)

19.19.070 - Minimum width of individual space.

No manufactured home space in the MH Zone shall be less than forty-five feet in width.

(Ord. No. 1581, § B, 6-3-2019)

19.19.080 - Manufactured home construction requirements.

- A. Manufactured homes must meet or exceed all Federal and/or State requirements.
- B. Manufactured homes placed within the city of Lynden must meet the definition of a manufactured home as defined in Section 17.01.030 of the Lynden Municipal Code.

(Ord. No. 1581, § B, 6-3-2019)

19.19.090 - Height, area, setback and bulk requirements.

The following provides regulations for height, area, setbacks & bulk requirements:

Minimum Lot Size (sq. ft.)	Lot Coverage	Height		Yard Setbacks in Feet			
				Side Yard			
		Feet	Story	Front	Rear	Minimum	Total
4,200	40%	25	2	20	20	7	17

(Ord. No. 1581, § B, 6-3-2019)

19.19.100 - Manufactured home park—Individual space boundary requirements.

The boundaries of each manufactured home space in a manufactured home park shall be clearly defined and marked by a fence, planting or other suitable means approved by the planning director, or by clearly visible, permanent markers at each corner of the space. For the purposes of this code, this boundary will be considered a property line.

(Ord. No. 1581, § B, 6-3-2019)

19.19.110 - Manufactured home park—Automobile parking requirements.

There shall be provided at least two automobile parking spaces for each manufactured home space, plus one additional automobile parking space for every five manufactured home spaces or any portion thereof for guests, visitors, service vehicles and additional automobiles of the tenants of the park.

(Ord. No. 1581, § B, 6-3-2019)

19.19.120 - Manufactured home park—Development standards.

See Chapter 18.22 of the Lynden Municipal Code.

(Ord. No. 1581, § B, 6-3-2019)

19.19.150 - Manufactured home park—Landscaping.

Privacy landscape buffers shall be required around the entire perimeter of the manufactured home park as required under Chapter 19.61 - Landscaping and Chapter 18.22-Manufactured Home Park and Subdivision Standards.

(Ord. No. 1581, § B, 6-3-2019)

Excerpts of 19.21 – TR – Travel Trailer and Recreational Vehicle Zone

19.21.010 - Established.

There is established the TR travel trailer and recreational vehicle zone and the standards and regulations by which certain land uses may be permitted therein.

(Ord. 1000 § A(part), 1995).

19.21.020 - Purpose.

The essential purpose of the TR travel trailer and recreational vehicle zone is to provide for uses, buildings and/or structures in which travel trailers and recreational vehicles may be located with restrictions for their uses.

(Ord. 1000 § A(part), 1995).

19.21.060 - Special property uses—Travel trailer and recreational vehicles—Regulations authorized.

Travel trailer and recreational vehicles may be permitted ~~only~~ in travel trailer and recreational vehicle zones as provided in this chapter, subject to the minimum standards and conditions set forth in this chapter.

Recreational vehicles and travel trailers may be permitted for permanent, residential use within mobile home parks including those located within the CSR zone, provided that appropriate skirting and other performance standards are met for the recreational vehicles and travel trailers and provided that the provision of the underlying zone are met.

(Ord. 1000 § A(part), 1995).

Excerpt of 19.23 - Commercial Zoning

19.23.020 - Permitted uses.

The following table shows the uses permitted in each of the zoning areas. Any use that is not listed below is not a permitted use unless it is determined to be comparable to a permitted use by the planning director based on the applicant's statement of use. The applicant shall bear the burden of proof to show how the use is comparable to a listed use.

In the table below, uses are notated as follows: P = Permitted Use; PA = Permitted as an accessory use; N = Not permitted; C = Permitted as a conditional use.

Land Use	HBD	CSL	CSR
Adult entertainment uses	N	C(4)	N
Agricultural product and/or equipment parts sales	N	C	P
Animal auction barn	N	N	N
Animal hospitals, veterinary clinics and kennels and veterinary laboratories	N	C	C
Auction facilities for other goods	N	P	P
Automotive support services such as auto repair, auto body painting and repair, window repair and replacement	N	C	P
Banks and financial institutions	P	P	P
Barber shops, beauty salons	P	P	P
Bed and breakfast	P	P	N
Body piercing and tattoo studios	N	N	P
Business Parks where at least 20% of the total GFA of the park is related to onsite retail, showroom, or office use.	N	N	P(9)
Business schools	P	P	P
Car wash	N	P	P
Carpet sales	P	P	P

Clubs and lodges	P	P	N
Commercial recreation - indoor (includes bowling alleys, skating rinks)	P	P	P
Commercial sporting events	C(7)	N	C(7)
Construction material sales	N	C	P
Contractors and construction services	N	C	P
Convention center, including banquet facilities and/or meeting halls	C	P	P
Day care facilities	P	P	PA
Day spas	P	P	P
Farm implement and machinery sales and service or large machinery rentals (over 500 lb.)	N	C	P
Fitness facilities	P	P	P
Fueling stations (may include convenience store)	N	P(2)	P(2)
Government agency offices or government facilities where at least 20% of the GFA is office-use related.	C	P	P
Grocery store	P	P	P
Home furnishings stores	P	P	P
Home improvement and hardware stores	P	P	P
Hospitals	N	N	N
Hotels, motels — includes indoor restaurants, gift shops and other businesses associated with a hotel or motel	P	P	P
House of Worship	N	P	P
Laundry and dry cleaning facilities	P	P	P

Landscape plants and landscape materials for retail sales	N	P	P
Liquefied petroleum storage station for more than 1,000 gallons, subject to International Fire Code standards	N	N	P
Liquor sales	P	P	P
Manufacture, fabrication, assembly, woodworking and metal working shops, where at least 20% of the GFA is related to on-site retail or office space. All uses subject to the performance standards of Chapter 19.25 of LMC	N	C(10)	P
Manufactured home parks	N	N	N
Marijuana related businesses including retail sales, production, processing, medical marijuana collective gardens, and medical marijuana cooperative	N	N	N
Martial arts or dance schools	P	P	P
Medical and dental clinics (see Surgical Centers below)	P	P	P
Medical services overlay	N	N	P
Mini-storage facilities	P(6)	P	P
<u>Mobile / Manufactured Home Communities established prior to annexation and considered an Existing Nonconforming Use</u>	<u>N</u>	<u>N</u>	<u>C(11)</u>
Motor vehicle and recreational vehicle sales and service	N	C	P
Multi-family residences	P(5)	P(5), (8)	N
Non-retail communications services	P	P	P
Non-profit offices that include warehousing	C	C	P
On-site hazardous waste treatment (no treatment allowed in HBD) and storage as an accessory use to any activity generating hazardous waste and lawfully allowed in the zone, provided that such facilities meet the state siting criteria adopted pursuant to the requirements of Chapter 70.105.210 RCW.	PA	PA	PA

Pet supply store and grooming (no boarding)	P	P	P
Pharmacy	P	P	P
Photography studio	P	P	P
Printing and duplicating shops	P	P	P
Professional and business offices	P	P	P
Public use facilities	P	P	P
Research and development facilities	N	P	P
Restaurant — with drive thru	N	P	P
Restaurants and cafés	P	P	P
Retail (general retail) not otherwise defined	P	P	P
Retail appliance and electronic equipment sales, including parts sales and repair	P	P	P
Retail feed and seed stores	N	P	P
Retail heating, plumbing and electrical equipment sales, including parts sales and repair	N	P	P
Retail shopping center or mall	P	P	P
Retail stores greater than 65,000 square feet	N	N	P(1)
Sign design, fabrication, and installation companies	N	C	P
Single-family residences existing prior to 1992	N	P	N
Skilled nursing and assisted living facilities	N	P	N
Surgical centers	N	C	P
Theaters and movie theaters	P	P	P

Truck and trailer sales and service	N	C	P
Undertaking establishment	N	P	N
Utility facilities	C	C	P
Video arcades	P(3)	P(3)	P(3)
Warehousing, including open to the public	P(6)	N	C
Wholesaling, including open to the public	N	N	C

- (1) See Sections 19.23.080 and 19.23.090 for special conditions for large retail uses.
- (2) See Section 19.23.100, Special Conditions for Automobile Service Stations.
- (3) Any arcade with ten or more machines shall have an adult supervisor on the premises during all hours of operation and shall not be located within three hundred feet of a school, church or residence.
- (4) These uses may not be located within three hundred feet from Front Street, or two hundred feet from a residentially zoned area, or within two hundred feet from the fairgrounds, or five hundred feet from a church or school.
- (5) This use is permitted as part of a mixed use development, where at least sixty percent of the ground floor area is a permitted commercial use. This is calculated based on the ground floor area of all the buildings on the site where there are multiple buildings proposed.
- (6) The use is permitted under the following conditions. These conditions may be varied through the receipt of a conditional use permit.
 - a. The use must take place in an existing building. The building may be modified for warehousing or mini-storage purposes, but construction of a new facility will require a conditional use permit. New construction must meet all Dutch/European design requirements for the CSL zone.
 - b. Primary access to these facilities may not be from Front Street or Grover Street, nor may a new facility front on either of these streets, and existing pedestrian access to Front Street, Grover Street, Riverview Road or 7th Street may not be closed.
 - c. Off-street loading and truck parking facilities must be available at the site and may not abut Front Street or Grover Street without a landscape buffer as required in Section 19.61.090.A. All off-street parking requirements must be met on site.
 - d. The site must meet the requirements of the engineering design and development standards and the Uniform Building Code and Uniform Fire Code.
- (7) Commercial sporting events are permitted in the CSR zone and conditionally permitted in the HBD zone under the following conditions:
 - a. The promoter/proprietor of the event must provide proof of insurance in an amount and form approved by the finance director.

- b. Off-street parking is provided and monitored to ensure emergency access at all times;
 - c. Police and fire departments are notified at least thirty days in advance of the event to ensure adequate personnel coverage. Costs of scheduling additional personnel may be billed to the applicant.
 - d. No alcohol may be sold, distributed or consumed on site.
 - e. Mixed martial arts, boxing, wrestling or other "fight-type" events must meet the requirements of RCW 67.08.
- (8) Multi-family development is permitted within the CSL zone under the following conditions:
- a. This use is permitted only within the North Lynden Sub-Area;
 - b. No residential development will be permitted at the intersections of arterial streets and/or state highways in the area determined by measuring two hundred feet along both front and side property lines and diagonally connecting the ends of the two lines.
 - c. Minimum density: Eight units per acre.
 - d. Maximum density: Twenty-four units per acre.
 - e. Off-street parking: As required by Chapter 19.51 LMC.
 - f. Height: As per Section 19.23.050.
 - g. Setbacks: As per Section 19.17.060.A.
 - h. Minimum lot size: Based on number of units and calculated under Section 19.17.060.B.
 - i. Lot coverage and open space: As per Section 19.17.060.A.
- (9) Business parks are required to formalize a development agreement with the city council after receiving a recommendation from the planning commission which:
- a. Specifies a list of permitted, conditional, and prohibited uses with the business park.
 - b. Outlines a parking and loading standards which anticipates the uses permitted.
 - c. Creates standards for and screening of outdoor storage and refuse areas.
 - d. Addresses unique signage requirements.
 - e. Indicates how the building siting and architecture addresses the street frontages at a pedestrian scale.
- (10) Manufacture, fabrication, assembly, woodworking and metal working shops locating within a CSL zoning category must acquire a conditional use permit if the subject property is located within three hundred feet of a residentially zoned property.
- (11) The expansion of existing, legal nonconforming mobile / manufactured home communities (MHCs) by adding addition units / pads within an existing community boundary shall be permitted only with an approved Conditional Use Permit (CUP). Approval of the CUP may be conditioned on meeting setbacks, providing buffers, and other appropriate design standards for MHCs. Connecting all units to City utilities is required. This is Conditional Use is applicable only within the CSR zone.

(Ord. No. 1357, § A, 6-1-2009; Ord. No. 1477, § A, 2-17-2015; Ord. No. 1547, § 10, 12-4-2017; Ord. No. 1553, § 2, 3-19-2018)

Chapter 19.35 – Nonconforming Uses

This chapter shall apply to all land, all land uses and development, and all structures and facilities with the City of Lynden.

19.35.010 - Existing nonconforming uses—Continuation authorized.

Any nonconforming use, as defined in the definitions of Chapter 17.01, which lawfully existed at the time of the final passage of the ordinance codified in this title, is permitted to continue and to be maintained and operated.

(Ord. 1000 § A(part), 1995).

19.35.020 - Essential use alteration—Limitation.

A nonconforming use may be changed or altered only to uses within the same classification or to a use in a classification of higher priority in accordance with the essential use classification established in the established districts of the ordinance codified in this title.

(Ord. 1000 § A(part), 1995).

19.35.030 - Nonconforming bulk only—Alteration—Variance required.

A nonconformer as to bulk, but not as to use, may be substantially altered, renovated, enlarged or reconstructed only through the granting of a variance as provided in this title.

(Ord. 1000 § A(part), 1995).

19.35.040 - Enlargement or expansion—Conformance required.

A building or structure containing a nonconforming use shall not be enlarged or expanded unless the use is brought into conformance with the provisions of this title.

(Ord. 1000 § A(part), 1995).

19.35.050 - Maintenance not to be construed as alteration.

Regular and ordinary maintenance shall not be construed as enlargement, expansion, change, alteration, renovation or reconstruction as used in this chapter.

(Ord. 1000 § A(part), 1995).

19.35.060 - Vacancy—Use discontinuance when.

A nonconforming use which has been discontinued for a period of one year or more shall not be reactivated nor operated, nor shall an occupancy permit be granted to such discontinued use. In such instances, an occupancy permit shall be granted only when the use has been brought into conformity with the provisions of this title. When a building or structure is vacant, the use therein shall be deemed discontinued.

(Ord. 1000 § A(part), 1995).

19.35.070 - Deterioration or destruction—Use discontinuance when.

When a building or structure containing a nonconforming use is destroyed or deteriorates to the extent to fifty percent or more, as determined by the building inspector, such nonconforming use shall be discontinued and any subsequent use of the property shall be in conformance with the provisions of this title.

(Ord. 1000 § A(part), 1995).

Chapter 19.49 - CONDITIONAL USE PERMITS

Footnotes:

--- (8) ---

Prior ordinance history: Ords. 1000 and 1002.

19.49.010 - Purpose.

The purpose of the conditional use permit (CUP) is to allow the proper integration of specific land uses which may be suitable only under certain conditions in specific locations in a zoning district, or when the site is regulated in a particular manner. It is the intent of this section to allow certain uses which, because of their usual size, special requirements, adverse impacts, possible safety hazards or detrimental effects on surrounding properties are classified as conditional uses.

(Ord. 1080 § D, 1999).

19.49.020 - Standards and criteria for granting a CUP.

- A. Certain uses may be allowed by a CUP granted by the city council, after it receives the recommendation of the planning commission. The planning commission shall issue its recommendation after a public hearing on the CUP application. In the application and during the hearing process, it shall be clearly shown by the applicant that the proposed use is not detrimental to the surrounding area or a liability to adjacent uses. For the purpose of this chapter, the surrounding area, or neighborhood, means those parcels that are in close proximity to the subject parcel.
- B. An application for a CUP may be made only for those uses specified under the conditional use section of the appropriate zoning district.
- C. The planning commission and council shall enter findings to support any recommendation or decision on a CUP application. Conditions may be attached to CUP approvals to mitigate any adverse impacts, protect surrounding properties and to promote the general welfare of the public. A CUP will be granted only if the proposed use complies with the standards and criteria listed below. The applicant shall bear the burden of proof in all CUP proceedings.
 - 1. The proposed use in the proposed location will not be detrimental to surrounding uses legally existing or permitted outright within the zoning district.
 - 2. The proposed use, together with proposed mitigation, will not be detrimental to public health or safety and will be compatible with the surrounding area and land uses with respect to the following:
 - a. Traffic and pedestrian circulation;
 - b. Noise, smoke, fumes, glare or odors generated by the proposed use;
 - c. Building and site design; and
 - d. The physical characteristics of the subject property.
 - 3. The proposed use is supported by adequate public facilities and services unless conditions can be established to mitigate adverse impacts to those facilities or services.
 - 4. The traffic generated by the proposed use will not cause the traffic circulation system in the vicinity to deteriorate below the adopted level of service.
 - 5. The proposed use complies with the performance standards, parking requirements, height, setback and lot coverage requirements, landscaping standards and other provisions of the Lynden Municipal Code.

- 6. There are adequate buffering devices, as specified in the landscape standards, or other topographic characteristics, to protect the adjacent properties from adverse impacts of the proposed use.
- 7. The proposed use will not destroy or substantially damage any natural, scenic or historic feature of major importance.
- 8. The proposed use is generally consistent with the purposes and objectives of the city comprehensive plan and applicable sub-area plan.

(Ord. 1112 § C, 2001; Ord. 1080 § E, 1999).

19.49.030 - Special conditions for the approval of a bed and breakfast establishment.

Bed and breakfast establishments require a CUP in all single-family zones and the RM-3 and RM-4 zones and are permitted within the RM-1, RM-2, HBD and CSL zones. All proposed bed and breakfast establishments, regardless of zone, shall be required to show compliance with the standards listed below. Bed and breakfast establishments proposed within an area requiring a CUP will be required to meet the standards and criteria listed in Section 19.49.020 as well as those conditions listed below:

- A. A bed and breakfast establishment shall appear as any other single-family residence within the surrounding area. One flat, unlighted sign, not exceeding sixteen square feet mounted flush against the building will be permitted. In addition, a single monument sign may be permitted if it meets the requirements for monument signs within Chapter 19.33.
- B. The applicant shall comply with local fire and building codes and guidelines fixed by the city fire chief and building inspector, including, but not limited to adequate exits as required by the Uniform Building Codes. A smoke alarm and a household size fire extinguisher shall be present in each guestroom.
- C. A telephone shall be available for occupant use with emergency numbers and the address of the establishment posted.
- D. Proprietors of the bed and breakfast establishment shall follow health guidelines and regulations of the Whatcom County department of health and Washington State regulations.
- E. The applicant shall meet all requirements for the provision of off-street parking. Parking shall be adequately screened from the neighboring properties.
- F. An annual business license shall be required and an inspection fee, in an amount set by resolution of the Lynden city council, shall accompany each application and renewal. The public works director, building inspector or fire chief may require inspections.
- G. Dwellings with more than two rooms available for guests shall be considered transient accommodations and will be subject to regulation by the State Board of Social and Health Services under Chapter 248-144, WAC TRANSIENT ACCOMMODATIONS.
- H. The operator of the bed and breakfast shall reside on the premises. Owner and operator quarters and guest-rooms shall be in the same building.
- I. No other business, service or commercial activity may be conducted on the premises. Breakfast only may be served and no meals may be served to the general public.

(Ord. 1080 § F, 1999).

(Ord. No. 1390, § D, 2-22-2011)

19.49.040 - Special conditions for the approval of CUP within West Lynden sub-area.

In addition to being required to satisfy the general CUP standards and criteria listed in Section 19.49.020, CUP applicants in the West Lynden sub-area shall also meet the below listed criteria:

- A. Multitenant buildings with separate entrances for each tenant shall not be oriented to the guide meridian.
- B. Any retail establishment, or combination of retail establishments, in a single building greater than fifteen thousand square feet shall incorporate the following elements in the design:
 - 1. Facades in excess of one hundred horizontal feet shall incorporate recesses and projections.
 - 2. Windows, awnings and arcades shall total at least sixty percent of the facade length abutting a public street.
 - 3. Predominant exterior building materials shall be of high quality, including, but not limited to, brick, wood, sandstone, or other native stone, and tinted/textured up concrete panels, and prefabricated steel panels are discouraged.

Restaurants, cafes, and service stations within the CS-3 zone must be located within seven hundred feet of the guide meridian and have frontage on West Main Street.

(Ord. 1080 § G, 1999)

19.49.045 - Special conditions for approval of CUP for assembly and distribution of products.

In addition to being required to satisfy the general CUP standards and criteria listed in Section 19.49.020, applicants for a CUP for the assembly of products shall also meet the criteria below:

- A. The applicant must demonstrate the need to locate within the CSL zone rather than an industrial zone in terms of the availability of sites suitable to the proposed use;
- B. A complete selection of the products assembled must be prominently displayed and offered for retail sale on-site;
- C. All storage of supplies and materials must be enclosed or screened from view;
- D. Hours of retail sales operations must be consistent with surrounding businesses. This will not affect the hours of operation for assembly of products.

(Ord. 1112 § D, 2001).

(Ord. No. 1390, § D, 2-22-2011)

19.49.050 - Maximum coverage and minimum lot size for certain conditional uses.

The following uses are conditional in the zones listed below and are subject to the following restrictions, in addition to the standards and criteria in Section 19.49.020.

<u>Use</u>	<u>Zone</u>	<u>Maximum Lot Coverage</u>	<u>Minimum Lot Size in Square Feet</u>
Churches	All residential zones	30%	12,000
Schools	Residential	30%	12,000

Schools	Nonresidential	35%	12,000
Utility substations	All zones	35%	8,000
Libraries and post offices	All zones	35%	8,000

(Ord. 1080 § H, 1999)

19.49.060 - Content—Violations.

Any CUP that is issued, shall certify the location, nature and extent of the uses, together with all conditions that are imposed and other information deemed necessary for the issuance of the permit. A copy of the permit shall be kept on file and reviewed annually by the planner. If at any time it is found that the use no longer complies with the conditions specified therein the owner shall be declared in violation of this chapter. Remedies of the city may include criminal enforcement and/or revocation of the conditional use permit.

(Ord. 1080 § I, 1999).

19.49.070 - One-year validity.

- A. Conditional use permits shall expire twelve months after issuance unless construction or the establishment of the use has commenced. The planner may extend the expiration date by six months upon written request and evidence that the applicant intends to activate the permit within that time limit.
- B. An application for a CUP that has not been approved or has been denied in whole or in part shall not be resubmitted for a period of one year from the date of such denial.

(Ord. 1080 § J, 1999).

19.49.080 - Modification of or addition to, existing conditional uses.

- A. Modifications of existing conditional uses, or additions to such uses, shall require application for an additional conditional use permit; provided that, in lieu of a new application the planner may administratively consider, approve or disapprove a one-time addition or modification to an approved conditional use when such addition or modification meets the following criteria:
 - 1. The addition or modification to the building(s) shall constitute less than ten percent of the total floor area originally approved; and
 - 2. The addition or modification is determined by the planner not to have a significant impact beyond the site based on the criteria listed Section 19.49.020 above or the criteria specific to the sub-area.
- B. Such additions or modifications approved administratively shall be recorded by the planner on the CUP record.

(Ord. 1080 § K, 1999).

19.49.090 - Application process.

See Chapters 17.05, 17.07 and 17.09 of the Lynden Municipal Code.
(Ord. 1080 § L, 1999).

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OCT 22 2020

City of Lynden
Planning Department

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October 21, 2020

Via Delivery

City of Lynden Planning Department
Attn: Heidi & Korene
300 4th Street
Lynden, WA 98264

Re: Four ‘S’ Investments U.S., Inc. / Text Amendment Application

Dear Heidi & Korene:

In response to your draft Staff Report and the questions we discussed on the processing of this text amendment application, please find attached on behalf of Four ‘S’ Investments U.S., Inc., an updated Attachment to Text Amendment Application.

At this time, to streamline the approval process, we removed the entire proposed section regarding use of recreational vehicles. In addition, to ensure that the site development standards are consistent with the as built environment, I inserted new proposed language regarding standards for nonconforming mobile home parks under Section 19.23.020.

The Applicant agrees with the City of Lynden’s definitions in LMC 17.01.030 should control and that the definitions in LMC 18 should be updated to be consistent with LMC 17.

Thank you for your assistance. Should you have any questions, please feel free to contact my office.

Sincerely,

Lesa Starkenburg-Kroontje

enc.
cc: client

Attachment
to
Text Amendment Application

Re: Four ‘S’ Investments U.S., Inc.

*** Please state the changes you are proposing:**

The Applicant is proposing two additions to the code, as follows:

- 1) **Section 19.23.020 – Permitted Uses.** The expansion of existing, legal nonconforming mobile home parks shall be a permitted use in the CSR zone, provided the expansion meets the standards contained below. The expansion may increase the number of units on the site but shall not expand the nonconforming use beyond the property boundaries that existed at the time the use became nonconforming.

- 2) **Section 18.22.070 – Nonconforming Mobile Home Parks under Section 19.23.020.** For nonconforming mobile home parks, no subdivision or binding site plan is required so long as the property is utilized for rental spaces and is not separately condominiumized or transferred. In addition, the balance of the provisions contained in Section 18 are not applicable; provided, however, the following standards shall apply:
 - A. Connection to the City of Lynden sewer system;
 - B. Connection to the City of Lynden water supply;
 - C. The parking requirements contained in Section 18.22.060.F.; and
 - D. In the event it abuts the exterior property line then screening may be required through the building permit process.

*** Please state the reason(s) why the above section(s) of the Lynden Zoning Ordinance should be amended. Please note the potential benefits and the potential negative impacts of the amendment:**

Potential Benefits:

This amendment would allow additional affordable housing in the Lynden community. Lynden has a shortage of small, affordable dwelling units and struggles to provide options to residents. This shortage can be seen by low vacancy rates and long wait lists.

The proposed amendments are limited to the CSR zoning district. In order to utilize existing mobile home parks at a greater capacity and to their highest and best land use potential the addition of more units should be allowed. As mobile homes are temporary in nature the removal of the structures can easily be accommodated when the site is ready to convert to a commercial use.

Potential Negative Impacts:

A potential negative impact is that there may be less incentive for a nonconforming mobile home park to convert to a different commercial use. However, this potential negative impact is outweighed by the interim benefits to the City from this proposal.

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(360) 354-7822
Fax: (360) 354-6929
Email: starkenburgkroontje@msn.com

August 18, 2020

Via Email

City of Lynden Planning
Attn: Korene & Heidi
300 4th Street
Lynden, WA 98264

Re: Four 'S' Investments U.S., Inc.
Zoning Text Amendment

Dear Korene and Heidi:

Please find attached additional information regarding the impact of this text amendment on affordable housing as requested in the draft TRC Report dated August 3, 2020 regarding the Zoning Text Amendment for Four 'S' Investments U.S., Inc.

I have included various rental rates and comparisons for your review.

Should you have any questions or require any additional information, please feel free to contact my office.

Sincerely,

Lesa Starkenburg-Kroontje

enc.

Mobile Home's within City Limits

Duffner Mobile Home Park:

Rental Rate per month for land space: \$500
Rental Rate per month for land & trailer: \$850
Value of trailers recently sold: \$10,000 - \$25,000

Dodson Mobile Home Park – 1245 Bradley Road

Rental Rate per month: \$450 - \$500
Value of trailers recently sold: \$95,000 - \$110,000

Windmill Inn – 8022 WA539, Lynden

Rental Rate per month for a 5th Wheel land space: \$500

Just Outside City Limits

7343 Hannegan Road

Rental Rate for land space per month: \$425

Hidden Village Mobile Home Park – 7062 Guide Meridian

Rental Rate for land space per month: \$475

Lynden KOA – Called for inquiries, no response.

In comparison the average rent rate in Lynden for a 2 bedroom apartment is approximately \$1,200.00.

CITY OF LYNDEN



TECHNICAL REVIEW COMMITTEE Development Project Report

Date Issued:	August 3, 2020
Project Name:	ZTA #20-02, Four "S"
Applicant:	Four "S" Investments, US., Inc.
Property Owner:	Lesa Starkenburg Agent for, Four "S" Investments
Site Address:	N/A
Parcel Number	N/A
Zoning Designation:	CSR
Application Type:	Zoning Text Amendment
Parcel Size:	N/A
Hearing Type:	Quasi-Judicial
Hearing Objective:	The objective of this public hearing is to determine whether the proposed amendment to Section 19.23.020 and 19.21.060 of the Municipal Code furthers the intent and purpose of the CSR zoning designation and is consistent with the Comprehensive Plan
Date application determined complete:	June 17, 2020
Date of Publication:	August 19, 2020
SEPA Determination:	N/A
Project Description:	The applicant is requesting a Zoning Text Amendment to Section 19.23.020 and 19.21.060 of the Lynden Municipal Code regarding permitted uses and special property uses within the CSR (Regional Commercial Services) zone.

Background and Notification Requirements:

In accordance with Chapter 17.15 LMC, the proposed action was reviewed for concurrency and should the conditions listed within this report be met, a finding of concurrency will be made in accordance with Section 17.15.060(C)(3).

As with all Zoning Text Amendments, any changes to such text could affect all properties within that zoning designation.

The applicant has met the minimum submittal requirements and the application was determined to be complete on July 17, 2020. The notice of application was published on that same date.

The City has received proof of certified mailing and the affidavit of posting in accordance with the City’s requirements.

Summary:

The applicant is requesting a zoning text amendment to the following Sections of the Lynden Municipal Code:

19.23.020-Permitted Uses. The expansion of existing, legal nonconforming mobile home parks shall be a permitted use in the CSR zone, provided the expansion meets the current setback requirements and other use and bulk requirements. The expansion may increase the number of units on the site but shall not expand the nonconforming use beyond the property boundaries that existed at the time the use became nonconforming.

19.21.060-Special Property Uses -Travel Trailer and Recreational Vehicles -Regulations Authorized. Recreational vehicles and travel trailers may be permitted for permanent, residential use within mobile home parks located within the CSR zone, provided the appropriate skirting and other performance standards are met for the recreational vehicles and travel trailers and provided that the provisions of the underlying zone are met.

Staff review is as follows:

Planning Department Comments:

1. *Housing Types:* The City’s comprehensive plan is supportive of a variety of housing types and encourages development which may assist in the affordability of housing. Please provide a summary of rents and / or purchase price for homes within mobile home parks within the City to give context to this issue.
2. *Recreational Vehicles:* The City of Lynden includes a zoning category (Travel Trailer & RV – TR-RW) which permits the use of recreational vehicles. This is done expressly with these three uses in mind: Travel trailer and RV camping, tent camping, and camping cabins. All uses are recreational in nature. Additionally, travel trailer and recreational vehicle zone is established for short term use. No travel trailer or recreational vehicle shall remain longer than ninety days. (LMC 19.21.015).

LMC 19.22 identifies residential design standards expected of residential areas with the purpose of protecting and enhancing property values for the community as a whole. This specifically includes creating high quality communities that have variation of architectural style and durable materials (LMC 19.22.010(B)(1)(b)).

Due to the transitory nature of RV living, the inconsistencies such a provision would add to code, and the lack of architectural style and durability called for in the City’s design standards, staff does not support the use of RV’s within any residential community including mobile home parks. Although the applicant may opt to retain the request, staff will not support the approval of the RV provision of the zoning text amendment.

3. *City Definitions:* Be advised, the Lynden Municipal Code (LMC) includes discrepancies in the definitions listed below. These may have bearing on the understanding and approval of the proposed zoning text amendment. Staff recommends that the definitions of LMC 17 be updated and the definitions in LMC 18 refer to LMC 17.

- a. **Per LMC 17.01.030 “Manufactured home”** means a single-family home constructed after June 15, 1976, in accordance with state and federal requirements for manufactured homes which: (a) is comprised of at least two fully enclosed parallel sections each of not less than twelve feet wide by thirty-six feet long; (b) was originally constructed with and now has a composition or wood shake or shingle, coated metal, or similar roof of not less than 4:12 pitch; and (c) has exterior siding similar in appearance to siding materials commonly used on site-built, single-family homes according to the International Building Codes.
- b. **Per LMC 18.22.020 “Manufactured home”** means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes, the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than one hundred eighty consecutive days. For insurance purposes, the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.
- c. **Per LMC 17.01.030 “Mobile home”** means a transportable, factory-built home designed and intended to be used as a year-round dwelling, and built prior to the enactment of the Federal Manufactured Housing and Safety Standards Act of 1974.

put all definitions in chapter 17.

- d. **Per LMC 18.22.020 “Mobile home”** means a structure, transportable in one or more sections, which in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. Calculations used to determine the number of square feet in a structure will be based on the structure's exterior dimensions measured at the largest horizontal projections when erected on site. These dimensions will include all expandable rooms, cabinets, and other projections containing interior space, but do not include bay windows. This term includes all structures that meet the above requirements and with respect to which the manufacturer voluntarily complies with the standards set forth in Part 3280 by HUD. WAC 296-150B-015(28).
 - e. **Per LMC 17.01.030 “Mobile home park”** means a plot or tract of land divided into lots, under the ownership or management of one person, firm or corporation for the purpose of locating two or more mobile homes to be used for human occupancy. Individual lots may be sold within the mobile home park, but the mobile home park must still have a mobile home manager.
 - f. **Per LMC 18.22.020 “Mobile home park”** means a tract of land under single ownership or control upon which two or more mobile/manufactured homes occupied as dwellings may be located.
 - g. **“Recreational vehicle”** means a vehicular unit, other than a mobile home, which is designed as a temporary dwelling for travel, recreational and vacation use, and which is either self-propelled, mounted on or pulled by another vehicle. Examples include, but are not limited to, a travel trailer, camping trailer, truck camper, motor home, fifth wheel trailer or van.
4. *Permitted Uses:* To provide context to uses permitted within the City, please note that mobile homes are not permitted in any of the residential multi-family (RM) or commercial (CSL, CSR) zones within the City. However, manufactured homes are permitted in all RM zones within the City. In this case, per LMC 17.01.030, these manufactured homes are defined to be consistent with what is commonly known as a “double-wide” but does not include a “single wide” manufactured home in that definition.

Mobile homes and mobile home parks are prohibited in all zones. Manufactured home zone (MH), a zoning category that is specific to communities of manufactured homes also prohibit mobile homes. Manufactured homes in MH zoning categories must be “double-wide” and not “single-wide”.

That said, staff recommends a more through crafting of the zoning text amendment that fits the specifics of the request. This will include, at a minimum, revisions to have consistent definitions of mobile home and mobile home parks.

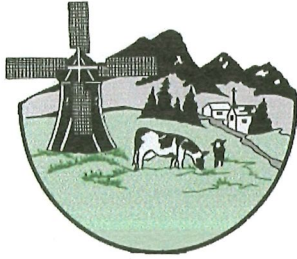
5. *Approval Process:* Be advised, all mobile home parks shall be processed in the same manner as a binding site plan. And, all mobile home subdivisions shall be processed in the same manner as plats. See LMC 18.22.040.
6. *Development Standards:* LMC 18.22 includes minimum criteria that apply to the siting of mobile homes within a mobile home park. Be advised, these are the standards which would apply to the expansion of an existing park. Applicable codes related to site development including, but not limited to, minimum parking requirements, landscaping, outdoor lighting will be applicable and may affect existing private roadways.

Fire and Life Safety

1. Be advised that the expansion of existing mobile home parks must provide adequate life and safety access throughout the park consistent with LMC 18.22.

Parks and Recreation

1. The Parks Department has reviewed the application and has no comment.



ZTA# 20-02

City of Lynden

PLND 9308

Zoning Text Amendment Application

General Information:

Applicant / Agent

Name: Four 'S' Investments U.S., Inc.

Address: c/o Starkenburg-Kroontje Attorney at Law PO Box 231, Lynden, WA 98264

Telephone Number: (360) 354-7822 Fax Number: (360) 354-6929

E-mail Address: starkenburgkroontje@msn.com

Who is the primary contact for this project? This person will receive all official correspondence for the project. Property owner Applicant

Section(s) to amend: 19.23.020 & 19.21.060

Please state the changes you are proposing:

See Attached.

Please state the reason(s) why the above section(s) of the Lynden Zoning Ordinance should be amended. Please note the potential benefits and the potential negative impacts of the amendment: (Attach additional sheets as necessary)

See Attached.

By signing this application, I certify that all the information submitted is true and correct. I also understand that no final approval will be issued until all final review costs are paid in full.

Applicant's Signature: [Signature] Date: 5/28/2020

Property Owner's Signature: [Signature] Date: 5/28/2020

Property Owner's Printed Name: Four "S" Investments Date: 5/28/2020

US, Inc

Pre-application meeting date: _____

(Applications will not be accepted without a pre-application meeting)

Fee's (ZTA \$300.00) date paid: _____ Receipt # _____

Attachment
to
Zoning Text Amendment Application

Re: Four ‘S’ Investments U.S., Inc.

*** Please state the changes you are proposing:**

The Applicant is proposing two additions to the zoning code, as follows:

- 1) **Section 19.23.020 – Permitted Uses.** The expansion of existing, legal nonconforming mobile home parks shall be a permitted use in the CSR zone, provided the expansion meets the current setback requirements and other use and bulk requirements. The expansion may increase the number of units on the site but shall not expand the nonconforming use beyond the property boundaries that existed at the time the use became nonconforming.

- 2) **Section 19.21.060 – Special Property Uses – Travel Trailer and Recreational Vehicles – Regulations Authorized.** Recreational vehicles and travel trailers may be permitted for permanent, residential use within mobile home parks located within the CSR zone, provided the appropriate skirting and other performance standards are met for the recreational vehicles and travel trailers and provided that the provisions of the underlying zone are met.

*** Please state the reason(s) why the above section(s) of the Lynden Zoning Ordinance should be amended. Please note the potential benefits and the potential negative impacts of the amendment:**

Potential Benefits:

This amendment would allow additional affordable housing in the Lynden community. Lynden has a shortage of small, affordable dwelling units and struggles to provide options to residents. This shortage can be seen by low vacancy rates and long wait lists.

The use of recreational vehicles for permanent, residential use will also help provide additional affordable housing in the Lynden community. There is a demand in our community for flexible, mobile and affordable housing.

The proposed amendments are limited to the CSR zoning district. In order to utilize existing mobile home parks at a greater capacity and to their highest and best land use potential the addition of more units should be allowed. As mobile homes and recreational vehicles are temporary in nature the removal of the structures can easily be accommodated when the site is ready to convert to a commercial use.

Potential Negative Impacts:

A potential negative impact is that there may be less incentive for a nonconforming mobile home park to convert to a different commercial use. However, this potential negative impact is outweighed by the interim benefits to the City from this proposal.

STARKENBURG – KROONTJE
Attorney at Law, P.S.
313 4th Street
P.O. Box 231
Lynden, WA 98264
(360) 354-7822
Fax: (360) 354-6929
Email: starkenburgkroontje@msn.com

MEMO

TO: City of Lynden
Korene Samec

FROM: Lesa Starkenburg-Kroontje

DATE: June 3, 2020

RE: Duffner Court

Please find enclosed a check in the amount of \$450.00 for the additional fees due in regards to the Zoning Text Amendment application and SEPA submitted on behalf of Four ‘S’ Investments Duffner Court Mobile Home Park.

If you have any questions, or require additional information, please feel free to contact my office.

CITY OF LYNDEN



EXECUTIVE SUMMARY

Meeting Date:	February 1, 2021	
Name of Agenda Item:	Set the Public Hearing for Pepin Area Wide Rezone, Rezone #20-02	
Section of Agenda:	Consent	
Department:	Planning Department	
Council Committee Review:	<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: _____
		Legal Review: <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required
Attachments:		
Proposed Ord 1619, Planning Commission Minutes and Meeting Pkg of 1-14-20 including staff's Technical Review Committee Report		
Summary Statement:		
<p>In March of 2020 the City of Lynden adopted the Pepin Creek Sub-Area plan. This document is a guide for an area slated to accommodate a majority of residential growth in the next 15 years. The proposed rezone action would officially shift the properties within the City's boundaries to the zoning categories described in the plan. It is an action that is required so that the City's zoning map and comprehensive plan are not in conflict. It is important to complete this step before the moratorium on development is lifted from these properties.</p> <p>The parcels affected by the rezone actions are detailed in the application. These property owners have been involved in the sub-area planning process and were contacted about the January 14th hearing before the Planning Commission. Properties outside of the City, but within the planned sub-area, will retain their zoning categories as assigned by Whatcom County until they are annexed into the City. However, anticipating these future zoning assignments allows the City to more accurately predict and plan for development in these areas.</p> <p>On January 14, the Planning Commission held a public hearing to consider the area wide rezone and recommended approval to the City Council. Changes to the sub-area plan are likely to occur in the future in response to a revised project scope for the creek realignment. However, the proposed zoning categories within the moratorium remain a good fit for the sub-area and staff will be asking that the Council review and approve the rezone request at the February 16th hearing.</p>		
Recommended Action:		
Motion to set the public hearing for February 16, 2021 to consider Rezone Application 20-02 and the corresponding Ord 1619 which revises the residential zoning categories within the Pepin Creek Sub-Area.		

ORDINANCE NO. 1619

**AN ORDINANCE TO REZONE
PROPERTY WITHIN THE PEPIN CREEK SUBAREA AND
IN THE CITY LIMITS OF LYNDEN**

WHEREAS, on December 17, 2018 the City Council adopted Ordinance 1569 establishing the Pepin Creek Subarea, which comprises approximately 460 acres, 110 acres of which are within the Lynden city limits; and

WHEREAS, on March 2, 2020, after intensive planning, gathering public input, and work sessions with the Lynden Planning Commission and City Council, the City Council approved Ordinance 1600, which adopted the Pepin Creek Subarea Plan and is established to guide the logical development of land use within the Pepin Creek Subarea; and

WHEREAS, the adopted Pepin Creek Subarea Plan proposes future land use and zoning designations, intending to accommodate much of the City’s forthcoming residential growth while fostering a diversity of housing types and recreational opportunities; and

WHEREAS, in December 2020, the City of Lynden Planning Department, submitted a complete application for an area-wide rezone of those parcels of the Pepin Creek Subarea that are already within the city limits, to align with the zoning designations that were determined by the adopted Pepin Creek Subarea Plan; and

WHEREAS, the Lynden Planning Commission held a public hearing on January 14, 2021 to accept public testimony on the proposed Pepin Creek Subarea rezone and recommended approval to align the zoning designations of those parcels as determined by the Pepin Creek Subarea Plan; and

WHEREAS, Lynden City Council held a public hearing on February 16, 2021 to further seek additional public input on the rezone proposal; and

NOW, THEREFORE, The City Council of the City of Lynden does ordain, as follows:

Section 1 The City’s Zoning Map is hereby amended to change the zoning designations of those parcels in the Pepin Creek Subarea and already within the city limits to line up with the established zoning categories as determined by Exhibit 24 in the Pepin Creek Subarea Plan.

Section 2 This rezone proposal is granted on the following conditions:

- a. These conditions shall run with the land and be binding upon the property owner, their successors and/or assigns.

Section 3 Any ordinance or parts of ordinances in conflict herewith are hereby repealed.

Section 4 Should any section, subsection, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 5 Any ordinance or parts of ordinances in conflict herewith are hereby repealed.

Section 6 This ordinance shall be in force and effect, five (5) days after its passage, approval and publication as provided by law.

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

CITY OF LYNDEN

PLANNING DEPARTMENT
Heidi Gudde, Planning Director
(360) 354-5532



PLANNING COMMISSION Minutes

7:30 PM January 14, 2021
Microsoft Teams Meeting

1. CALL TO ORDER

2. ROLL CALL

Bryan Korthuis absent with notice.

Staff: Heidi Gudde and Dave Timmer

Public: Some members of the public virtually attended the meeting.

3. APPROVAL OF THE MINUTES OF December 10, 2020

Motion to approve minutes by Gerald V with a second by Blair Scott.

Minutes approved 5-0

4. PUBLIC HEARING:

a. Pepin Area-wide Rezone #20-05, Pepin Creek Sub-Area

Planning Director Gudde gave an overview of the Pepin Creek Subarea. Future residential growth, a portion is in the current City limits, while a majority is still within the County (the City's UGA). Double Ditch is a substandard road. The properties that are in the City are currently under a development moratorium.

Gudde gave a brief summary of the following components of the approved Pepin Creek Subarea Plan:

- Vision and Guiding principles
- The public input and feedback, planning commission, city council and land use and hydrological consultants collected when developing the sub-area plan.
- Transportation corridors and open space
- Housing types
- Future Land Use
- Design Review Standards
- Zoning – which included a new zone category RM-PC

The zoning map from Exhibit 24 of the PCSA plan is what is being proposed for tonight's meeting. It is important to confirm the zoning categories as the City discusses removing the moratorium because the Sub-Area Plan within the City's Comprehensive Plan must be consistent with the City's Zoning Map.

Blair Scott asks how the zoning might change in the parcels outside the City limits when they come in. Gudde explained that, at this point, we expect them to be zoned as shown unless conditions change until the time of annexations. That specific discussion can occur, based on the best information at the time that those parcels are designated for annexation.

Diane Veltkamp asks about Pepin Lite and the recent design work and discussion to decrease the cost of the Creek relocation project. Changing the location of the creek - different than what was presented while the PCSA plan was being reviewed and approved - may require adjustments to other parts of the plan, including to the zoning.

Gudde gave an overview of the discussion regarding Pepin Lite as well as the hydrology of the area – the intercept ditch, the WSDOT culvert at Badger/Double Ditch, the way water moves and drains through here is dynamic, but developers will have to deal with the stormwater onsite as is required by DOE stormwater regulations. Furthermore, they will have to build with the appropriate separation from groundwater which may require elevation based on the specific ground water conditions of the parcel.

Tim Faber asks about the future of the channel as the remaining portions of the subarea are annexed and built out. He assumes that the goal is to build the full channel. What about Benson Road?

Heidi describes additional possibilities for Pepin Lite, options of what might happen to Double Ditch Road. Also, Benson ditch may stay as is. Improvements can occur on the side of Benson that does not include the ditch. Also, Pepin Parkway and the internal street network will alleviate pressure on Benson and Double Ditch. The future zoning, again, as annexation occurs might need to be re-looked at when that time comes. That discussion will have to happen with the best information that is available at that time. Changes to the Sub-Area plan may be warranted depending on Council direction.

Several of the Planning Commissioners express concern about the continuing evolving nature of the sub area and creek relocation. Is the zoning as presented in the Plan still appropriate even in the channel is not down the center?

Gudde explains that she is confident that the zoning on the parcels currently within the City, as presented, even with changes to the channel, is appropriate at this time. She is looking forward to seeing how the RM-PC zone starts to develop, the single-family zoning (RS-72) around the existing single-family parcels along Benson Rd will be consistent with those properties, and the RM3 zoning near the park gives higher density housing types easy access to that open space amenity. Staff is not proposing making adjustments to the presented zoning for those parcels within the current City limits or anticipating that the adoption of Pepin Lite designs would warrant a change to the zoning categories of the parcel already within the City.

Tim Faber asks about the Pepin Lite unit count. How is that different that the approved plan? Pepin lite allows more units within the Sub-area because of land in the north area of the subarea which would not then be encumbered by the new channel.

Gudde gives a brief overview of the financial assessment work / review that is still ongoing. The City is working with a consultant to develop an appropriate financial assessment option to recover some of the costs of the channel relocation project. One option is a SEPA mitigation which bases fees on the impacts of development. Other option is a Local Improvement District (LID) which bases the financial assessment on the increase to the assessed value of the properties within that defined district.

No questions from the public.

Blair moves to close the public portion of the hearing. Tim seconds and motion passes 5-0

Commissioners are comfortable with the zoning as presented. It gives some direction.

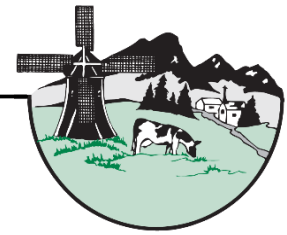
Tim Faber motions to recommend to City Council the approval of Rezone #20-02 Pepin Creek Subarea as presented in the Pepin Creek Subarea Plan. Second by Blair Scott. Motion passes 5-0.

5. ADJOURNMENT

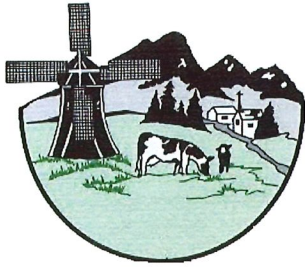
Heidi gives a brief intro to the next meeting - Lagerway property rezone and long plat.

Diane asks about time of meetings (7 or 7:30?) Commissioners are interested in 7:00 meetings. Heidi says that we will plan on 7:00pm start for the next Planning Commission meeting on January 26 and stick with that unless there are objections.

Meeting adjourned at 8:30pm.



Meeting Date:	January 14, 2021
Name of Agenda Item:	Public Hearing for the Rezone of Pepin Creek Sub-Area Properties (within COL)
Type of Hearing:	Legislative
Attachments:	
City-initiated Rezone Application, Proposed Zoning Map, Letter to land owners, See also Pepin Creek Sub-Area Plan, Memo regarding unit counts associated with the zoning assignment	
Summary Statement:	
<p>In March of 2020 the City of Lynden adopted the Pepin Creek Sub-Area plan. This document is a guide for an area slated to accommodate a majority of residential growth in the next 15 years.</p> <p>The proposed rezone action would officially shift the properties within the City’s boundaries to the zoning categories described in the plan. It is an action that is required so that the City’s zoning map and comprehensive plan are not in conflict. It is important to complete this step before the moratorium on development is lifted from these properties.</p> <p>The rezone applies to properties within the City limits and these are detailed in the application. These property owners have been involved in the sub-area planning process and contacted about the hearing planned for January 14th. Properties outside of the City, but within the planned sub-area, will retain their zoning categories as assigned by Whatcom County until they are annexed into the City. However, anticipating these future zoning assignments allows the City to more accurately predict and plan for development in these areas.</p> <p>Changes to the sub-area plan may be warranted given a phased or reduced scale of the Pepin creek relocation project which is currently being studied by City staff. These revisions will be brought to the Planning Commission for review as part of a sub-area plan amendment when they are ready to move forward.</p> <p>At this time staff is asking that the Planning Commission review the rezone request in light of the current Pepin Creek Sub-Area plan.</p>	
Recommended Action:	
Motion to recommend to the City Council the approval of the Pepin area-wide rezone consistent with map described in the Pepin Creek Sub-area Plan.	



City of Lynden

Rezone Application

Applicant Information

Name: Dave Timmer, City Planner, COL Planning Dept

Address: 300 4th St, Lynden WA 98264

Telephone Number: (360) 354-5532 **Fax Number:** _____

E-mail Address: timmerd@lyndenwa.org

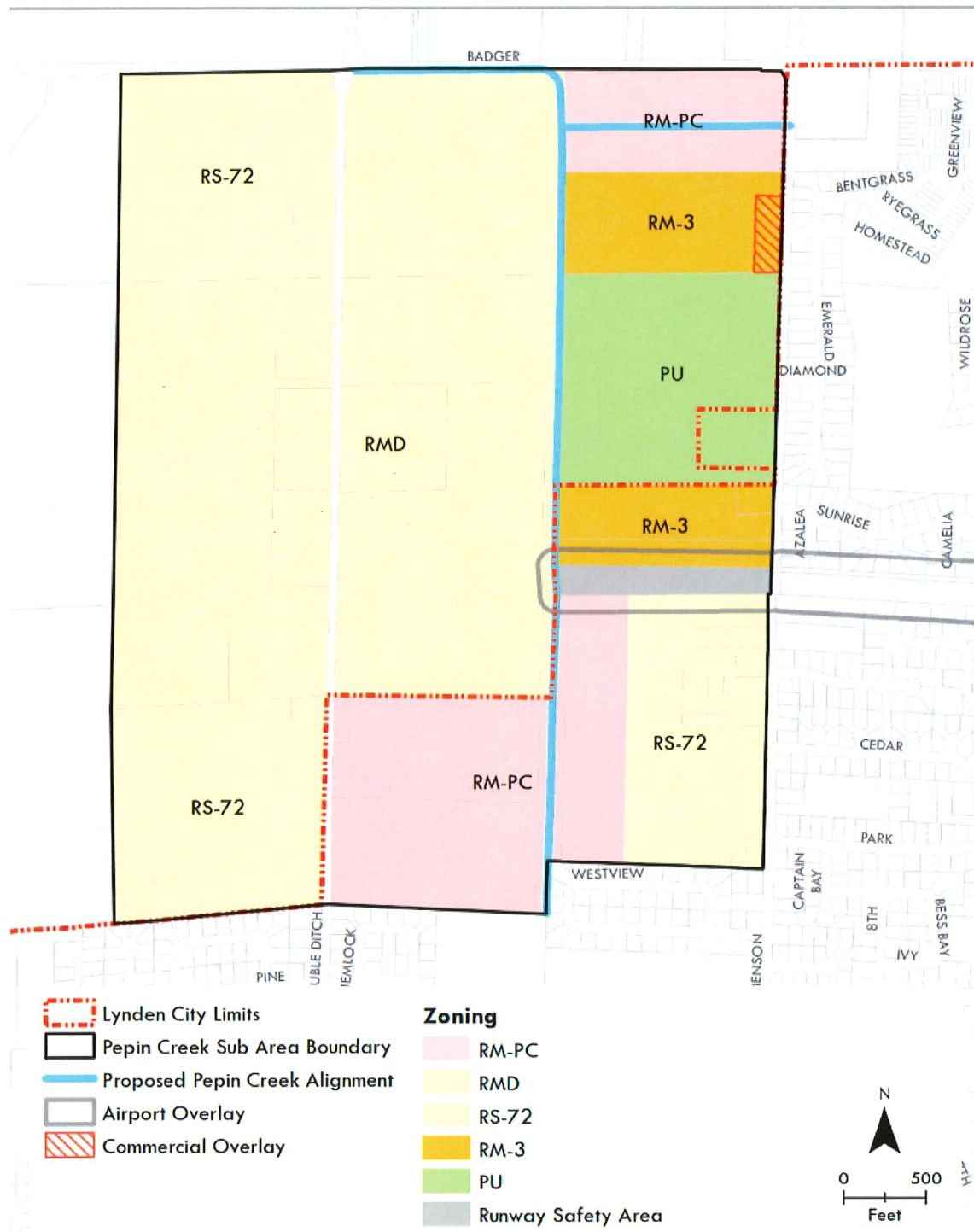
Application is hereby made for a rezone as follows:

Type of Rezone Requested:

Current Zoning Designation: RMD Proposed Zoning Designation: RM-PC, RS-72, RM-3

This rezone request only applies to those parcels of the Pepin Creek Subarea that are within the current City Limits. They are listed below. Those parcels outside of the City limits would be zoned according to the Pepin Creek Subarea zoning map at the time of their annexation. On the below map, the dotted red line indicates the current City limits. This zoning map for the Pepin Creek Subarea was approved and adopted by City Council in February 2020.

Map A: Pepin Creek Subarea Zone Map



Attach narrative explaining the reason for the request / zoning change

This proposed rezone is the result of the continued planning efforts for the Pepin Creek subarea. In February 2020, the City adopted the Pepin Creek Subarea Plan (PCSA) which reflected a desire by policy makers to balance the need to accommodate projected growth, to protect existing land uses, and to work toward financing the relocation of Pepin Creek in order to allow residential development to occur in this area. The PCSA Plan provides guidelines for the development of residential neighborhoods, recreational opportunities and to connect the new neighborhoods into the fabric of this growing city.

The road to adopting the PCSA Plan included rewrites and additions to the City's zoning code, a new code chapter (LMC 19.22) that firmed up the City's residential design standards, multiple public hearings and intensive public involvement and feedback. The level of planning involved with this Subarea is unprecedented in the City's history and was done in an effort to meet the goals and policies of the City's Comprehensive Plan and take the City's welfare, safety and character into account. The product of those efforts, the Pepin Creek Subarea Plan, will guide the City's residential growth in this area for decades.

This rezone proposal is essentially a housekeeping effort to officially rezone those properties that are within the current City limits to line up with the approved and adopted Pepin Creek Subarea Plan.

Property Information

Pepin Creek Subarea Rezone - 2020						
<u>Address</u>	<u>Parcel No.</u>	<u>Property Owner</u>	<u>Size</u>	<u>Current Zoning</u>	<u>Proposed Zoning</u>	
8594 Double Ditch Rd	4003182721280000	R and L McCollister Trust	0.6	RMD	RM-PC	
8594 Double Ditch Rd	4003183640940000	R and L McCollister Trust	17.99	RMD	RM-PC	
8500 Double Ditch Rd	4003183640320000	Vander haak and Bouma	18.59	RMD	RM-PC	
Benson Rd	4003184901120000	Frazier, Davis, Rack and Cordell	38.54	RMD	RM-PC, RS-72	
8593 Benson Rd	4003185071250000	Randal Reimer	0.89	RS-100	RS-72	
8595 Benson Rd	4003185201350000	Bryan and Sandra Cobb	0.69	RS-100	RS-72	
8597 Benson Rd	4003185101350000	John and Mary Martin	0.34	RS-100	RS-72	
8601 Benson Rd	4003184871410000	Jayson and Stacy Van Mersbergen	0.77	RS-100	RS-72	
8603 Benson Rd	4003184991460000	Joshua and Jennifer Dyck	0.26	RS-100	RS-72	
8605 Benson Rd	4003185201460000	Marcia Crabtree	0.62	RS-100	RS-72	
8617 Benson Rd	4003185201550000	Robert and Norma Siguaw	0.6	RS-100	RS-72	
Benson Rd	4003184901550000	Brad and Kari Rader	1.37	RS-100	RS-72	
8629 Benson Rd	4003185051720000	Brad and Kari Rader	1.5	RS-100	RS-72	
8600 Benson Rd	4003184772070000	City of Lynden	4.95	RS-100	RS-72	
8661 Benson Rd	4003184772250000	Gary and Cynthia Witman	4.94	RS-100	RM-3	
8683 Benson Rd	4003184772500000	Anthony Bovenkamp C/o Linda Bishop	8.9	RS-100	RM-3	
8691 Benson Rd	4003185292570000	Ken and Barbara Vander Veen	0.88	RS-100	RM-3	
8727 Benson Rd	4003185092950000	City of Lynden	2.75	RS-100	PU	
Pepin Channel Parcels						
Non-addressed	4003184310320000	City of Lynden	1.11	RMD	RM-PC	
Non-addressed	4003184310960000	City of Lynden	1.11	RMD	RM-PC	
Non-addressed	4003184381120000	City of Lynden	2.77	RMD	RM-PC	

By signing this application, I certify that all the information submitted is true and correct. I also understand that no final approval will be issued until all final review costs are paid in full.

SUBMITTED BY: David R Timmer DATE: 12/01/20

APPLICANT SIGNATURE: [Signature] DATE: 12/01/20

APPLICANT PRINTED NAME _____ DATE: _____

Pre-application meeting date: _____

(Applications will not be accepted without a pre-application meeting)

Fee's (RZ \$450.00) date paid: _____ receipt # _____

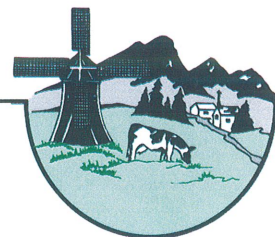
CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	February 1, 2021	
Name of Agenda Item:	Set the Public Hearing – Stuit Development Agreement	
Section of Agenda:	Consent	
Department:	Planning Department	
Council Committee Review:	<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: _____
	Legal Review: <input checked="" type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input type="checkbox"/> Review Not Required	
Attachments:		
Proposed Revised Stuit Short Plat, Letter to Vacate Findings, 10-22-19 Findings of Fact, Original Short Plat Application		
Summary Statement:		
<p>Dannon Traxler, representing her clients Ben and Lindy Stuit, has proposed a development agreement that outlines an alternate schedule for infrastructure build-out on a proposed short plat located on Flynn Road (Bay Lyn Road). The Stuits seek to construct a single-family home on Lot A of the short plat and burden the remaining undeveloped portion of the short plat, Lot C, with the majority of infrastructure improvements.</p> <p>Staff originally issued findings with the intent to approve the 4-lot short plat. These findings were later vacated at the request of Ms. Traxler so that the Stuits could propose the alternate development schedule. The revised short plat application has been reduced to 3 lots consistent with the terms of the proposed development agreement. Administrative approval of the revised short plat and associated conditions will hinge on the details of the development agreement.</p> <p>Staff and legal counsel’s review is expected to conclude with a draft agreement and associated no-build covenant that is subject to a public hearing and Council’s review at the February 16th meeting.</p>		
Recommended Action:		
Motion to set the public hearing for February 16, 2021 to consider the Stuit Development Agreement which pertains to a pending short plat application.		

CITY OF LYNDEN



Heidi Gudde, Planning Director
PLANNING DEPARTMENT
(360) 354 - 5532

November 5, 2019

Jeromy DeMeyer
Northwest Surveying & GPS, Inc
407 5th Street
Lynden, WA 98264

RE: Vacate of Findings of Fact and Determination - SP #18-03, Stuit Family Short Plat

Dear Mr. DeMeyer:

I am writing to formally vacate the Findings of Fact and Conclusions of Law (the Findings) and determination, dated October 22, 2019, which are associated with the Stuit Family Short Plat, City of Lynden application SP #18-03.

Dannon Traxler, attorney for the Stuit family, has formally requested this action so that the property owners can continue to work with the City on an alternative to infrastructure installation and bonding requirements. As a result, revised findings may be issued.

The property owner has waived the applicable timeframe for the City's application review and it will remained stayed until such time that the parties agree that the short plat should proceed or be withdrawn.

If you have questions regarding this action, please feel free to contact me directly.

Sincerely,

Heidi Gudde, AICP
Planning Director

cc. Ben and Lindy Stuit
Dannon Traxler, Langabeer & Traxler, P.S.



City of Lynden

SHORT PLAT APPLICATION

SP# 18-08

General Information:

PLN 09228

Property Owner

Name: Benjamin Stuit

Address: 8036 Flynn Road, Lynden, WA 98246

Telephone Number: _____ Fax Number: _____

E-mail Address: _____

Applicant (Agent, Land Surveyor or Engineer)

Name: Jeromy DeMeyer of Northwest Surveying & GPS, Inc.

Address: 407 5th Street, Lynden

Telephone Number: 360-354-1950 Fax Number: 354-7644

E-mail Address: jeromy@nwsurvey.com

Who is the primary contact for this project? This person will receive all official correspondence for the project. Property owner Applicant

Application is hereby made for a short plat as follows:

Property Information

A. LOCATION:

Address: 8036 Flynn Road, Lynden, WA

Legal Description (attach if necessary): See deed

B. DESCRIPTION OF SUBDIVISION:

Current property size: 590' x 463' Total square footage: 27,318

Total acreage: 3.38 Zoning classification: RS-100 RM-2

Number of new lots: three

Minimum lot size: 110.06' x 135.96' Minimum square footage: 14,984 SF

BY SIGNING THIS APPLICATION, I CERTIFY THAT ALL THE INFORMATION SUBMITTED IS TRUE AND CORRECT. I ALSO UNDERSTAND THAT NO FINAL APPROVAL WILL BE ISSUED UNTIL ALL FINAL REVIEW COSTS ARE PAID IN FULL.

Applicant's Signature: [Signature] Date: 9/14/18
Property Owner [Signature] 9-21-18

PRE-APPLICATION MEETING DATE: _____ HEARING DATE: _____

(APPLICATIONS WILL NOT BE ACCEPTED WITHOUT A PRE-APPLICATION MEETING)

FEE'S (SHORT PLAT \$250.00 + \$100.00 PER LOT) DATE PAID: _____ RECEIPT # _____



City of Lynden

Critical Areas Checklist

Section: 22 Township: 40 Range: 2E Parcel Number: 400225 388/423 0000

Site Address: 8036 Flynn Road

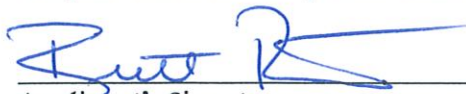
Proposed Uses: residential 4 Lot Short Plat

Please answer the following questions concerning Critical Area indicators *located on or within 200-feet of the project area:*

- a. Are you aware of any environmental documentation that has been prepared related to critical areas that includes the subject area? (If yes, please attach a list of document titles).
 Yes No Unknown
- b. Are there any surface waters (including year-round and seasonal streams, lakes, ponds, swamps)?
 Yes No Unknown
- c. Is there vegetation that is associated with wetlands?
 Yes No Unknown
- d. Have any wetlands been identified?
 Yes No Unknown
- e. Are there areas where the ground is consistently inundated or saturated with water?
 Yes No Unknown
- f. Are there any State or Federally listed sensitive, endangered, or threatened species and habitats?
 Yes No Unknown
- g. Are there slopes of 15% or greater?
 Yes No Unknown
- h. Is the project located within a Flood Hazard Zone?
 Yes No Unknown
- i. Do you know of any landslide hazard areas?
 Yes No Unknown

I grant permission to the field inspector to enter the building site to determine the presence or absence of critical areas.

I understand that if the information on this form is later determined to be incorrect, the project or activity may be subject to conditions or denial as necessary to meet the requirements of Chapter 16.16 of the Lynden Critical Areas Ordinance.


Applicant's Signature

2/14/18
Date



2120601346
Page: 1 of 2
6/12/2012 3:21 PM
DEED \$63.00
Whatcom County, WA
Request of: CHICAGO TITLE INSURANCE

When recorded return to:
Benjamin L. Stuit
8036 Flynn Road
Lynden, WA 98264

Filed for record at the request of:



607 Front Street
Lynden, WA 98264

Escrow No.: 245347427

QUIT CLAIM DEED

THE GRANTOR(S)

Lindy S. Stuit, spouse of Benjamin L. Stuit
for and in consideration of to establish separate property in hand paid, conveys and quit claims to
Benjamin L. Stuit, a married man as his sole and separate property

the following described real estate, situated in the County of Whatcom, State of Washington together
with all after acquired title of the grantor(s) herein:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

Abbreviated Legal: (Required if full legal not inserted above.)

Ptn NW NE Sec 25, Twn 40 N, R2E Tax/Map ID(s): 400225 388423 0000

Tax Parcel Number(s): 125969, 400225 388423 0000

Dated June 11, 2012
Lindy S. Stuit
Lindy S. Stuit

State of WA
Whatcom COUNTY of WHATCOM

I certify that I know or have satisfactory evidence that Lindy S. Stuit is the person who appeared before
me, and said person acknowledged that she signed this instrument and acknowledged it to be her free
and voluntary act for the uses and purposes mentioned in this instrument.

Dated: 6-11-12

Marlin Du Bois
Name: _____
Notary Public in and for the State of WA
Residing at: B. Hill
My appointment expires: 3-17-15

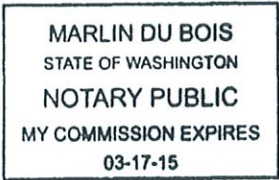
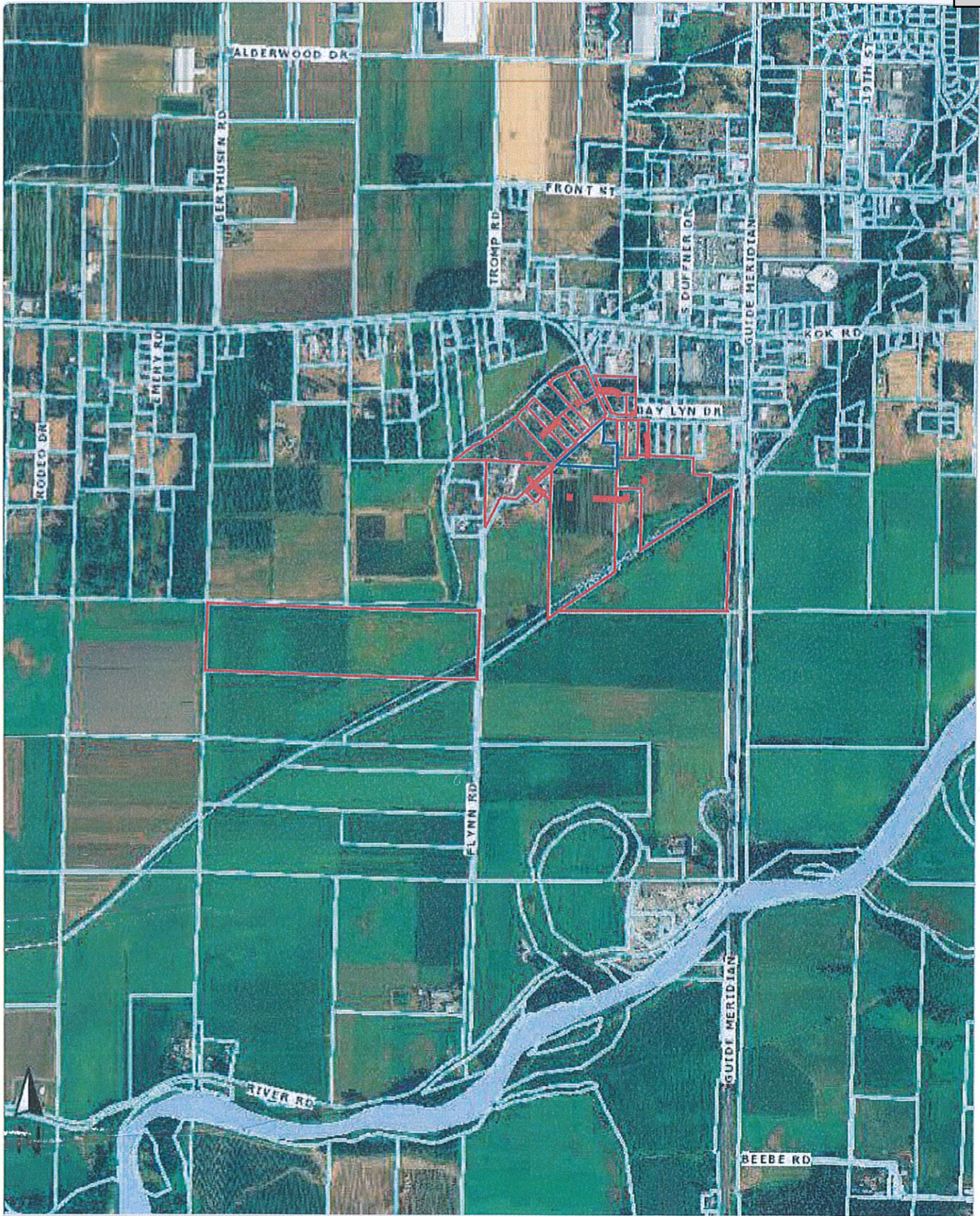


EXHIBIT "A"
Legal Description

For APN/Parcel ID(s): 125969
Tax Map ID(s): 400225 388423 0000

All that portion of the Northwest Quarter of the Northeast Quarter of Section 25, Township 40 North, Range 2 East of W.M., lying South and East of the county road (Schuleyman Road) as at present laid out and established, except beginning on the East line of said tract 317 feet North of the Southeast corner thereof; thence West 138 feet; thence North to the county road (Schuleyman Road); thence Northeasterly and East along said Schuleyman Road and county road to the East line of said Northwest Quarter of the Northeast Quarter; thence South along said East line to the true point of beginning; subject to boundary line agreement recorded under Auditor's File No. 1307170, less roads.

Situate in Whatcom County, Washington



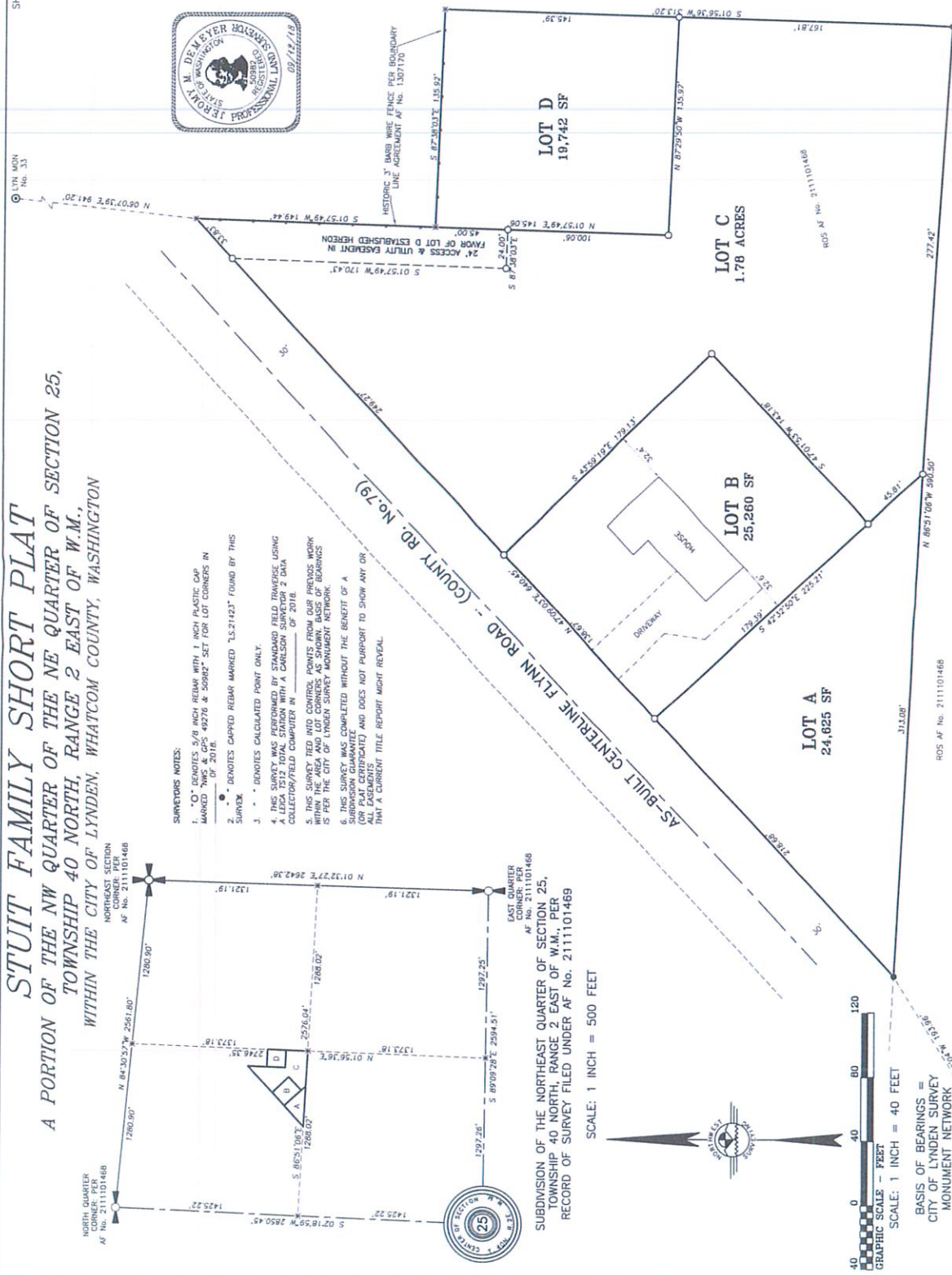
Whatcom Land Title

2011 Young Street Bellingham, WA 98225
Ph: (360) 676-8484 Toll Free: (800) 334-6314

This map/plat is being furnished as an aid in locating the herein described land in relation to adjoining streets, natural boundaries and other land, and is not a survey of the land depicted. Except to the extent a policy of title insurance is expressly modified by endorsement, if any, the company does not insure dimensions, distances, location of easements, acreage or other matters shown thereon.

SHEET 2 OF 2

STUIT FAMILY SHORT PLAT
 A PORTION OF THE NW QUARTER OF THE NE QUARTER OF SECTION 25,
 TOWNSHIP 40 NORTH, RANGE 2 EAST OF W.M.,
 WITHIN THE CITY OF LYNDEN, WHATCOM COUNTY, WASHINGTON



- SURVEYOR'S NOTES:**
1. "O" DENOTES 5/8" INCH REBAR WITH 1 INCH PLASTIC CAP MARKED "NWS & GPS 49276 & 50992" SET FOR LOT CORNERS IN 09/2016.
 2. "S" DENOTES CHIPPED REBAR MARKED "S-21437" FOUND BY THIS SURVEYOR.
 3. "-" DENOTES CALCULATED POINT ONLY.
 4. THIS SURVEY WAS PERFORMED BY STANDARD FIELD TRAVERSE USING A LEICA 1512 TOTAL STATION WITH A CARLSON SURVEYOR 2 DATA COLLECTION/FIELD COMPUTER IN 09/2016.
 5. THIS SURVEY TIED AND CONTROL POINTS FROM OUR PREVIOUS WORK (OR PLAT CERTIFICATE) AND DOES NOT PURPORT TO SHOW ANY OR THAT A CURRENT TITLE REPORT MIGHT REVEAL.
 6. THIS SURVEY WAS COMPLETED WITHOUT THE BENEFIT OF A SUBDIVISION GUARANTEE.

NORTH QUARTER CORNER PER AF No. 2111101468
 EAST QUARTER CORNER PER AF No. 2111101468
 SUBDIVISION OF THE NORTHEAST QUARTER OF SECTION 25,
 TOWNSHIP 40 NORTH, RANGE 2 EAST OF W.M., PER
 RECORD OF SURVEY FILED UNDER AF No. 2111101469
 SCALE: 1 INCH = 500 FEET



DATE:	09/12/18	JOB NO.:	18-372
DRAWN BY:	BRETT	REVIEWED BY:	JEREMY
NORTHWEST SURVEYING & GPS, INC. Jerome M. DeMeyer, L.S. No. 50092 Brett W. DeMeyer, L.S. No. 49276 407 5TH STREET, LYNDEN WASHINGTON, 98564 PH: (360) 354-1950 NWSURVEY.COM		DR: J25-002\J2500A	SHEET: 2 OF 2

STUIT FAMILY SHORT PLAT
A PORTION OF THE NW QUARTER OF SECTION 25,
TOWNSHIP 40 NORTH, RANGE 2 EAST OF W.M.,
WITHIN THE CITY OF LYNDEN, WHATCOM COUNTY, WASHINGTON

LAND DESCRIPTION:
 ALL THAT PORTION OF THE NORTHWEST QUARTER OF SECTION 25, TOWNSHIP 40 NORTH, RANGE 2 EAST OF W.M., LYNDEN, WHATCOM COUNTY, WASHINGTON, BEING THE LAND ESTABLISHED BY DEED BEGONING ON THE EAST END OF SAID TRACT 3176 FEET NORTH OF THE SOUTHWEST CORNER THEREOF, AND WEST ALONG THE ROAD (SCHULEYMAN ROAD), THENCE NORTHEASTERLY AND EAST ALONG SAID SCHULEYMAN ROAD AND COUNTY ROAD TO THE EAST LINE OF SAID NORTHWEST QUARTER OF THE NORTHWEST QUARTER, THENCE SOUTH ALONG SAID EAST LINE TO THE TRUE POINT OF BEGINNING, SUBJECT TO BOUNDARY LINE AGREEMENT RECORDED UNDER AUDITOR'S FILE NO. 13071760, LESS ROADS.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

SUBJECT TO AND/OR TOGETHER WITH ALL EASEMENTS, COVENANTS, RESTRICTIONS AND/OR AGREEMENTS OF RECORD, OR OTHERWISE

SURVEYOR'S CERTIFICATE:
 I HEREBY CERTIFY THAT THIS SHORT PLAT WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON AN ACTUAL SURVEY MADE IN COMPLIANCE WITH STATE LAWS.

JEREMY M. DEWEYER, P.L.S. CERTIFICATE NO. 50982 DATE _____
 NORTHWEST SURVEYING & GPS INC, 407 5TH STREET, LYNDEN, WA 98264

DECLARATION:
 KNOW ALL MEN BY THESE PRESENTS, THAT I, THE UNDERSIGNED OWNER, HEREBY DECLARE THIS PLAT ENTITLED "STUIT FAMILY SHORT PLAT" IS MADE WITH MY FREE CONSENT AND IN ACCORDANCE WITH MY WISHES AND DO HEREBY GRANT AND RESERVE ANY EASEMENTS SHOWN HEREON FOR THE USES INDICATED HEREON.

THIS _____ DAY OF _____, 2018.

PUBLIC WORKS DEPARTMENT APPROVAL:
 EXAMINED AND APPROVED BY THE LYNDEN PUBLIC WORKS DEPARTMENT AS TO THE LAYOUT OF ROADS AND RIGHT-OF-WAY AND ACCEPTANCE OF THE DEDICATION AND/OR EASEMENTS ON BEHALF OF THE CITY OF LYNDEN IN ACCORDANCE WITH THE CITY OF LYNDEN DEVELOPMENT STANDARDS.

THIS _____ DAY OF _____, 2018.

STEVE BANTAM, P.E., PUBLIC WORKS DIRECTOR

ACKNOWLEDGMENT
 STATE OF WASHINGTON }
 COUNTY OF WHATCOM }

CERTIFIED THAT I, JEREMY M. DEWEYER, OR HAVE PERSONALLY OBSERVED THAT BENJAMIN STUIT IS THE PERSON WHO APPEARED BEFORE ME AND SAID PERSON AS A WITNESS TO THE INSTRUMENT AND SAID STUIT IS AUTHORIZED TO EXECUTE THE INSTRUMENT AND ACKNOWLEDGED IT TO BE THE FREE AND VOLUNTARY ACT OF SUCH PARTY FOR THE USES AND PURPOSES MENTIONED IN THE INSTRUMENT.

THIS _____ DAY OF _____, 2018.

FINANCE DIRECTOR APPROVAL:
 I, FINANCE DIRECTOR OF THE CITY OF LYNDEN, WASHINGTON, DO HEREBY CERTIFY THAT I AM THE OFFICER IN CHARGE OF COLLECTIONS OF SPECIAL ASSESSMENTS FOR WHICH THE PROPERTY ENRICHED IN THIS PLAT MAY BE LIABLE AT THIS DATE, AND THAT ALL SPECIAL CITY OF LYNDEN ASSESSMENTS ASSESSED AGAINST THE PROPERTY IN THIS PLAT WHICH UNDER SAID PLAT BECOMES STREETS, ALLEY AND OTHER PUBLIC PLACES, HAVE BEEN PAID.

CITY OF LYNDEN FINANCE DIRECTOR _____ DATE _____

NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON:
 RESIDING AT _____ WASHINGTON
 MY COMMISSION EXPIRES _____

JOINT ROAD MAINTENANCE AGREEMENTS:
 ALL COSTS OF MAINTAINING, REPAIRING, IMPROVING OR OTHERWISE CONNECTED WITH THE VARIOUS WHEEL WHEELS, GRASSES & UTILITY EGRESS AS SHOWN ON THIS PLAT SHALL BE PAID BY THE OWNERS OF THE PROPERTY ENRICHED IN THIS PLAT BASED ON A RATIO OF USE. SAID COSTS SHALL THEREFORE BECOME AN ENFORCEABLE LIEN AGAINST ANY LOT WHOSE OWNERS REFUSE OR FAIL TO PARTICIPATE IN THE MAINTENANCE, REPAIRS OR IMPROVEMENTS MADE BY AGREEMENT OF THE OTHER OWNERS. THIS PROVISION SHALL BE CONSTRUED AS A COVENANT RUNNING WITH THE LAND.

CITY OF LYNDEN APPROVAL:
 I HEREBY CERTIFY THAT I HAVE EXAMINED THIS SHORT PLAT FOR CONFORMANCE WITH APPLICABLE STATE STATUTES AND CITY SUBDIVISION AND ZONING ORDINANCES AND HEREBY APPROVE THE SAME.

THIS _____ DAY OF _____, 2018.

HEIDI GLODE, PLANNING DIRECTOR

SURVEYOR'S NOTES: SEE SHEET 2

AUDITOR'S CERTIFICATE:
 I HEREBY CERTIFY THAT THIS SHORT PLAT WAS FILED FOR RECORD IN THE OFFICE OF WHATCOM COUNTY, WASHINGTON, THIS _____ DAY OF _____, 2018, AT _____ A.M./P.M. AT THE REQUEST OF NORTHWEST SURVEYING & GPS, INC. AND IS RECORDED UNDER AUDITOR'S FILE NUMBER _____

AUDITOR OF WHATCOM COUNTY _____ BY _____ DEPUTY AUDITOR

FINANCE DIRECTOR APPROVAL:
 I, FINANCE DIRECTOR OF THE CITY OF LYNDEN, WASHINGTON, DO HEREBY CERTIFY THAT I AM THE OFFICER IN CHARGE OF COLLECTIONS OF SPECIAL ASSESSMENTS FOR WHICH THE PROPERTY ENRICHED IN THIS PLAT MAY BE LIABLE AT THIS DATE, AND THAT ALL SPECIAL CITY OF LYNDEN ASSESSMENTS ASSESSED AGAINST THE PROPERTY IN THIS PLAT WHICH UNDER SAID PLAT BECOMES STREETS, ALLEY AND OTHER PUBLIC PLACES, HAVE BEEN PAID.

CITY OF LYNDEN FINANCE DIRECTOR _____ DATE _____

AUDITOR'S CERTIFICATE:
 I HEREBY CERTIFY THAT THIS SHORT PLAT WAS FILED FOR RECORD IN THE OFFICE OF WHATCOM COUNTY, WASHINGTON, THIS _____ DAY OF _____, 2018, AT _____ A.M./P.M. AT THE REQUEST OF NORTHWEST SURVEYING & GPS, INC. AND IS RECORDED UNDER AUDITOR'S FILE NUMBER _____

AUDITOR OF WHATCOM COUNTY _____ BY _____ DEPUTY AUDITOR

FINANCE DIRECTOR APPROVAL:
 I, FINANCE DIRECTOR OF THE CITY OF LYNDEN, WASHINGTON, DO HEREBY CERTIFY THAT I AM THE OFFICER IN CHARGE OF COLLECTIONS OF SPECIAL ASSESSMENTS FOR WHICH THE PROPERTY ENRICHED IN THIS PLAT MAY BE LIABLE AT THIS DATE, AND THAT ALL SPECIAL CITY OF LYNDEN ASSESSMENTS ASSESSED AGAINST THE PROPERTY IN THIS PLAT WHICH UNDER SAID PLAT BECOMES STREETS, ALLEY AND OTHER PUBLIC PLACES, HAVE BEEN PAID.

CITY OF LYNDEN FINANCE DIRECTOR _____ DATE _____



NORTHWEST SURVEYING & GPS, INC.
 Jeremy M. DeWeyer, L.S. No. 50982
 Brett W. DeWites, L.S. No. 49276
 407 5TH STREET, LYNDEN, WASHINGTON, 98264
 PH. (360) 354-1950
 NWSURVEY.COM

DATE: 09/12/18
 DRAWN BY: BRETT
 REVIEWED BY: JEREMY
 JOB NO.: 18-372
 SHEET: 1 OF 2
 DWA: V24-002V-00000A
 CRD: 2540020P-CRD

ORIGINAL

vacated

CITY OF LYNDEN
ADMINISTRATIVE DECISION

REGARDING THE APPLICATION OF
**Northwest Surveying & GPS, Inc. on
behalf of Benjamin Stuit**, TO SHORT
PLAT

NO. 18-03

FINDINGS OF FACT, CONCLUSIONS
OF LAW, CONDITIONS and
DECISION on SHORT PLAT
APPLICATION

Petitioner

City of Lynden, owner of the premises known as:

ALL THAT PORTION OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 40 NORTH, RANGE 2 EAST OF W.M., LYING SOUTH AND EAST OF THE COUNTY ROAD, (SCHULEYMAN ROAD, NOW KNOWN AS FLYNN ROAD) AS AT PRESENT LAID OUT AND ESTABLISHED, EXCEPT BEGINNING ON THE EAST LINE OF SAID TRACT 317 FEET NORTH OF THE SOUTHEAST CORNER THEREOF; THENCE WEST 138 FEET; THENCE NORTH TO THE COUNTY ROAD (SCHULEYMAN ROAD, NOW KNOWN AS FLYNN ROAD); THENCE NORTHEASTERLY AND EAST ALONG SAID SCHULEYMAN ROAD (NOW KNOWN AS FLYNN ROAD) AND COUNTY ROAD TO THE EAST LINE OF SAID NORTHWEST QUARTER OF THE NORTHEAST QUARTER; THENCE SOUTH ALONG SAID EAST LINE TO THE TRUE POINT OF BEGINNING; SUBJECT TO BOUNDARY LINE AGREEMENT RECORDED UNDER AUDITOR'S FILE NO. 1307170, LESS ROADS. ALL SITUATE IN WHATCOM COUNTY WASHINGTON.

COMMONLY DESCRIBED AS: 8036 Flynn Road, Lynden

for a short subdivision of the above-described parcel of approximately 3.38 acres into 4 parcels, with a minimum lot size of 14,984 square feet in size within the RM-2 zone. Said application having come before the Technical Review Committee on November 1, 2018, and the Planning Director having fully and duly considered said application, hereby makes the following:

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1.01 Application. Northwest Surveying and GPS, Inc on behalf of Benjamin Stuit, filed a short plat application which was accepted by the City as complete and containing all information required by LMC 18.12.010 on September 20, 2018.

1.02 Location. The Property is located at 8036 Flynn Road in Lynden, Whatcom Co., Washington.

1.03 Ownership. Benjamin Stuit.

1.04 Request. To create 3 additional (4 total) parcels for future development at the above noted location.

1.05 Conformance with Zoning and Comprehensive Plans. The short 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.

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

1.07 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.

1.08 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, as applicable.

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

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

1.11 Potable Water Supplies, Sanitary Wastes and Drainage Ways. The application makes appropriate provisions for public drainage ways, potable water supplies and sanitary wastes under the conditions listed below.

1.12 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.

1.13 Critical Area Review. The Critical Area Checklist submitted for this project found this application to have no immediate impact on Lynden's identified critical areas.

1.14 Floodplain. The Nooksack River floodplain impacts these proposed lots.

1.15 SEPA Determination. This short plat is exempt from further SEPA review under WAC 197-11-800(6). Be advised that SEPA review may be required under other project activities such as fill and grade and building permits.

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 Director establishes the following conditions:

CONDITIONS

Any approval of the Petitioner's application shall be subject to the following conditions. Be advised, many plat conditions / improvements are triggered by development. For the purposes of this document, development shall mean the issuance of the first building permit for a new residential structure. This does not preclude the existing home from adding accessory structures to Lot B, adding to, or modifying the home as permitted per the Building Code:

Standard Conditions

2.01 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.

- 2.02 Petitioner shall record the final short plat with the County in conformance with LMC 18.06.010.2, 18.06.020 and 18.06.030 within one (1) year 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.
- 2.03 The construction drawings for any improvements will 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.
- 2.04 There is a review deposit of \$200 per lot, \$2,000 minimum, to review the construction plans and a plat construction inspection deposit of \$350 per lot, \$5,000 minimum, due prior to review and construction respectively.
- 2.05 A post construction maintenance bond for 10% of the public facility construction costs will be required prior to final plat approval. A 150% performance bond is required for all work in the City's right-of-way or on city owned property.
- 2.06 Prior to final short plat approval, the developer will be required to pay final plat fees. In addition, at the time of development, transportation, park and fire mitigation fees will be due in full.
- 2.07 All improvements and development must meet the City of Lynden and current Department of Ecology requirements for Stormwater / drainage management.

Planning Conditions

- 2.08 Be advised, this property is zoned RM-2 (Residential Multi-Family) and allows up to 4-units per building as outlined in Section 19.17.010 of the Lynden Municipal Code.
- 2.09 Multi-family construction is subject to Design Review Board approval. Properties developed with multi-family units will be required to demonstrate compliance with the City's Design Standards including provision for pedestrian access.
- 2.10 Utility Easements: Per 18.14.075, the proposed plat shall identify the required 5-foot utility easements around the interior property line of all lots.
- 2.11 Access Easement: The short plat as submitted includes one access easement which is permitted as per 18.14.080.
- 2.12 Delineation of the Special Flood Hazard Area must be shown on the plat.
- 2.13 Be advised, fill and grade, or building proposals that impact the floodplain are subject to meeting the requirements of FEMA and the specific building requirements in LMC 16.12.
- 2.14 Per Section 18.14.120, each lot with street frontage will be required to provide street trees at the time the lot is developed. Trees shall be located within the dedicated public

utility easement adjacent to the street. There shall be a minimum of one tree per lot with a maximum of one hundred feet between trees. Maintenance of street trees shall be the responsibility of the adjoining property owner.

- 2.15 Prior to issuance of a certificate of occupancy, residential structures must provide clearly marked address numbers at the street for emergency location.
- 2.16 Lynden Municipal Code Section 18.12.040 prohibits further short platting of these parcels in any manner for a period of five years from the date this plat is recorded.

Public Works Conditions

- 2.17 At the time of development, Flynn Road must be improved to City Standards. At the time of plat, a 10-foot right-of-way dedication is required along the full frontage of Flynn Road which would provide a 30-foot right-of-way on the southeast side.
- 2.18 A sewer connection is not currently available in close proximity to the subject property. All development or future land action will require connection to the City's sanitary sewer with the exception of one additional septic system for the entirety of the plat. This system shall not be designed to service more than one single-family residence. The septic system must meet all requirements of the Whatcom County Health Department including, but not limited to, the avoidance all well head protection areas.
- 2.19 A 10-foot utility easement is required, for the full frontage of Flynn Road, to be shown on the face of the plat.
- 2.20 A 20-foot sanitary sewer easement is required along the entire southern portion of the plat to allow for future sewer connection of lots A, B, C and D. Show on the face of the plat.
- 2.21 As per LMC 18.14.150, at the time of development both water and sewer shall be extended to the furthest extent of all properties of this short plat and shall participate in sewer extension and required pump station costs and connect to sewer when available.
- 2.22 Connection to city water is required for all new construction.
- 2.23 At the time of development the watermain on Flynn Road shall be upsized to an 8-inch line from Bay-Lyn Drive to the south end of the plat.
- 2.24 When installed, all water meters to have traffic rated meter boxes and must be sized for the maximum number of units.
- 2.25 All adjacent well and well head protection areas must be shown on the plat.
- 2.26 Be advised, fire sprinklers may be required for multi-family units. City system protection will be required.

DECISION

Petitioner's application to subdivide the parcel described herein into four lots is hereby **Preliminarily Approved** subject to the conditions set forth in this document.

This Preliminary Approval shall become the Final Approval of the City, subject to the conditions herein, upon (1) the Petitioner's completion and filing of proof of completion of the notice required by LMC 17.07.020; and (2) the expiration of the 14-day appeal period established therein if no appeal is timely filed.

DATED: 10.22.2019



Heidi Gudde, Planning Director

 * Prepared by: Northwest Surveying
 * Routine: Area Summary Coord File: 254002GP.CRD 12/02/20 13:47:06
 * Input Scale Factor: 1.000000000 Output Scale Factor: 1.000000000
 *-----

LOT C

Pt ID	Ang Rt	Bearing	Distance	Pt ID	Northing	Easting
234		N 47°09'03"E	283.10	19	709395.762	1241868.342
19	45°11'14"	S 01°57'49"W	149.44	18	709246.410	1241863.222
18	269°35'52"	S 87°38'03"E	135.92	17	709240.799	1241999.026
17	90°25'21"	S 01°56'36"W	313.20	15	708927.779	1241988.405
15	88°47'42"	N 86°51'06"W	277.42	277	708943.015	1241711.404
277	135°41'44"	N 42°32'50"W	45.81	20003	708976.765	1241680.427
20003	90°25'17"	N 47°01'53"E	143.18	20004	709074.356	1241785.196
20004	271°01'12"	N 43°59'19"W	179.13	234	709203.236	1241660.787
234	88°51'38"					

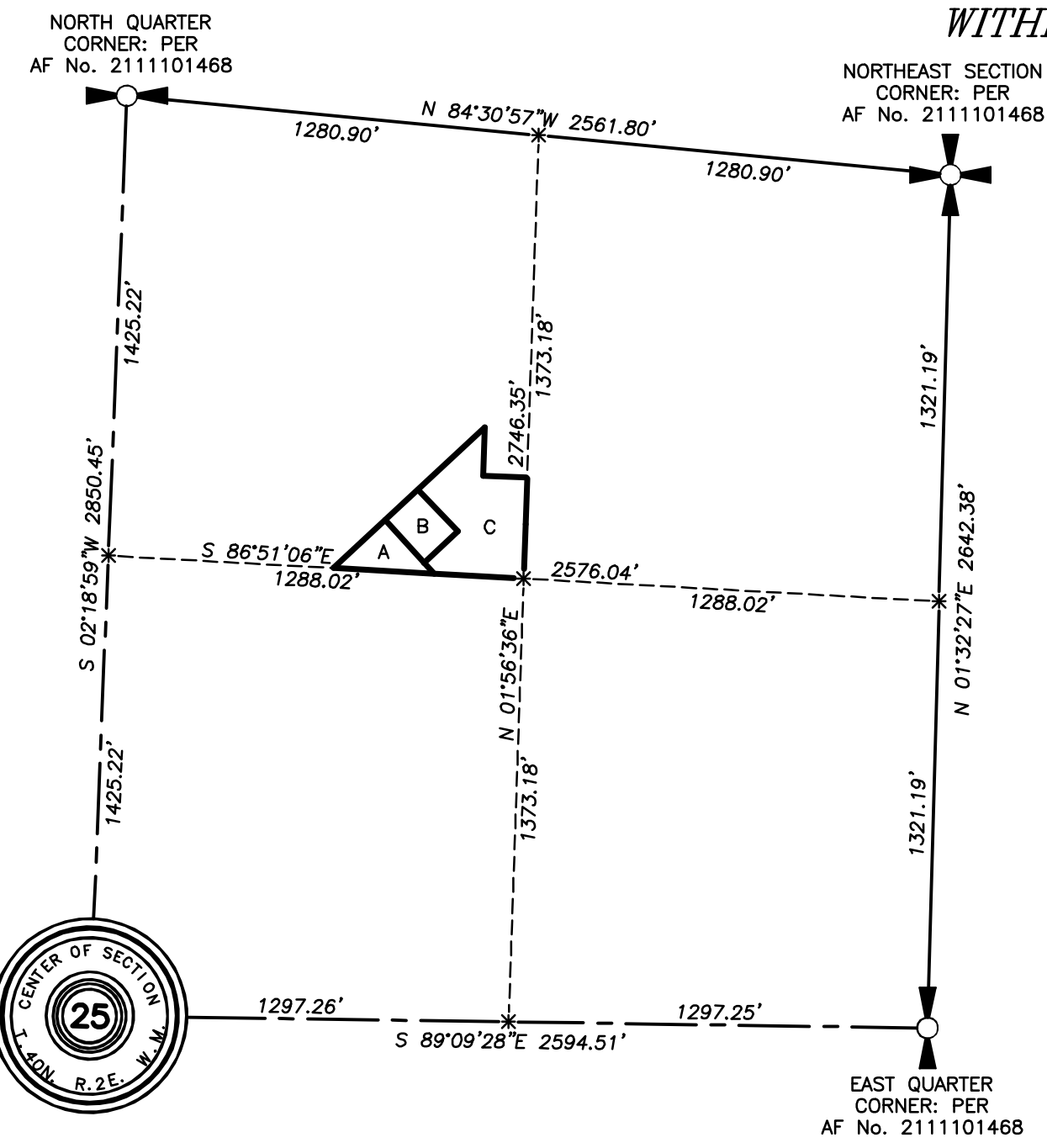
Perimeter: 1527.20 Cumulative Perimeter: 1527.20

Approx: Sq. Feet: 97253 Acres: 2.23
 Approx: Total - Sq. Feet: 97253 Acres: 2.23

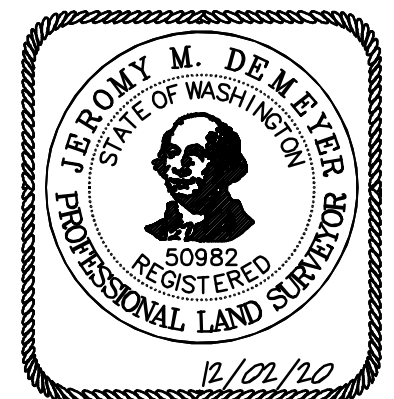
Correct Ending Coordinates, North: 709203.234 East: 1241660.789
 Ending Coordinates, North: 709203.236 East: 1241660.787
 Error, N: 0.00 E: -0.00 Total: 0.00 Brg: S 36°22'23"E
 Distance Traversed: 1527.20 Closure: 709957

STUIT FAMILY SHORT PLAT

A PORTION OF THE NW QUARTER OF THE NE QUARTER OF SECTION 25,
TOWNSHIP 40 NORTH, RANGE 2 EAST OF W.M.,
WITHIN THE CITY OF LYNDEN, WHATCOM COUNTY, WASHINGTON

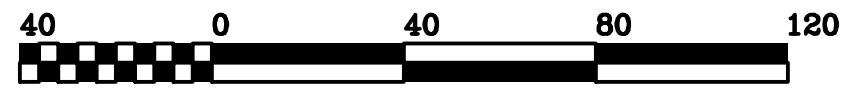
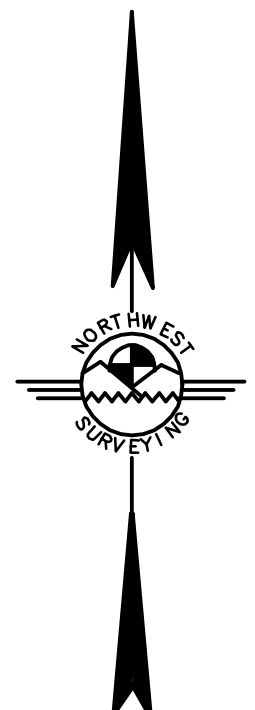


- SURVEYORS NOTES:**
- "O" DENOTES 5/8 INCH REBAR WITH 1 INCH PLASTIC CAP MARKED "NWS & GPS 49276 & 50982" SET FOR LOT CORNERS IN OF 2018.
 - "•" DENOTES CAPPED REBAR MARKED "LS.21423" FOUND BY THIS SURVEY.
 - " " DENOTES CALCULATED POINT ONLY.
 - THIS SURVEY WAS PERFORMED BY STANDARD FIELD TRAVERSE USING A LEICA TS12 TOTAL STATION WITH A CARLSON SURVEYOR 2 DATA COLLECTOR/FIELD COMPUTER IN OF 2018.
 - THIS SURVEY TIED INTO CONTROL POINTS FROM OUR PREVIOUS WORK WITHIN THE AREA AND LOT CORNERS AS SHOWN. BASIS OF BEARINGS IS PER THE CITY OF LYNDEN SURVEY MONUMENT NETWORK.
 - THIS SURVEY WAS COMPLETED WITHOUT THE BENEFIT OF A SUBDIVISION GUARANTEE (OR PLAT CERTIFICATE) AND DOES NOT PURPORT TO SHOW ANY OR ALL EASEMENTS THAT A CURRENT TITLE REPORT MIGHT REVEAL.



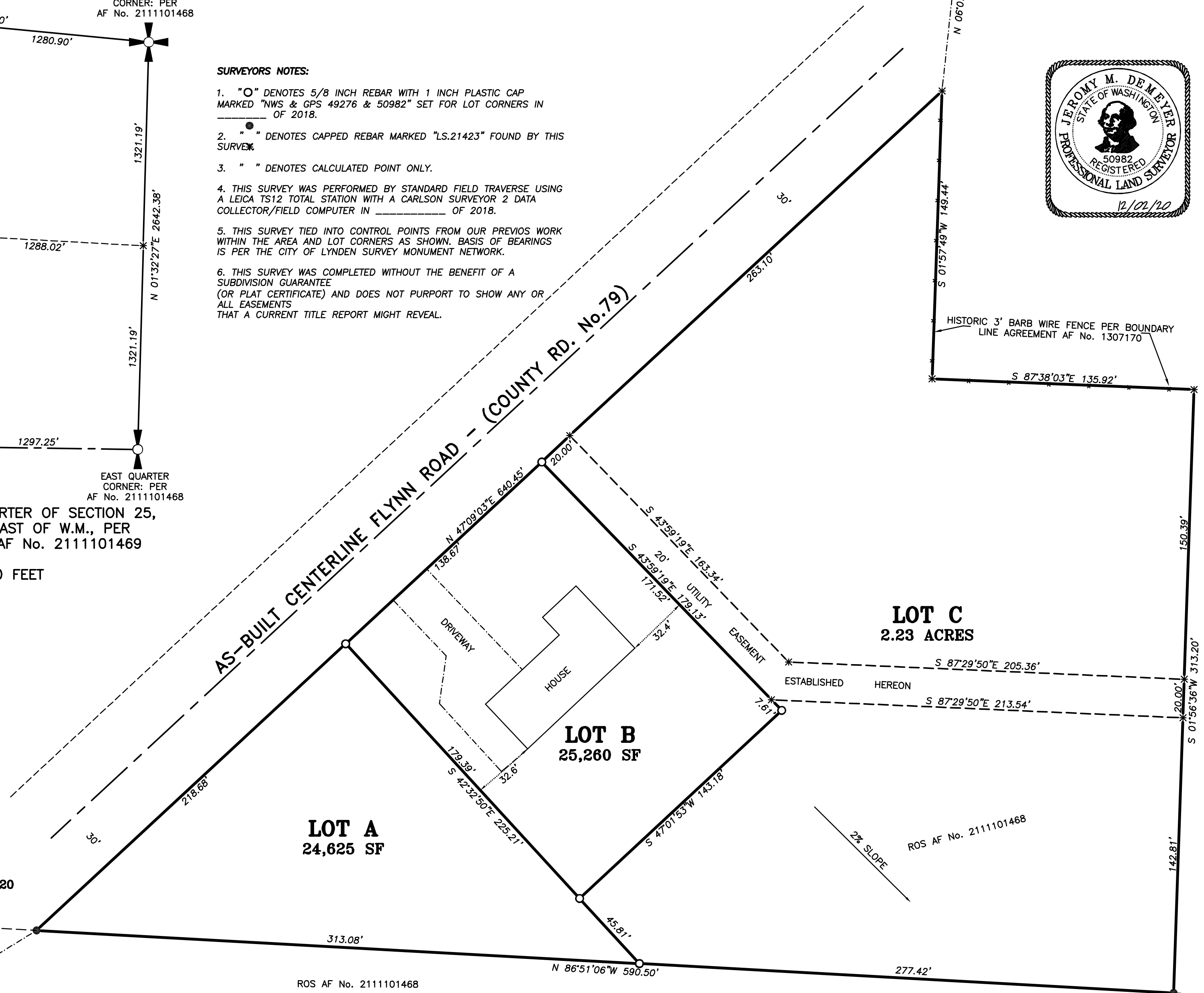
SUBDIVISION OF THE NORTHEAST QUARTER OF SECTION 25,
TOWNSHIP 40 NORTH, RANGE 2 EAST OF W.M., PER
RECORD OF SURVEY FILED UNDER AF No. 2111101469

SCALE: 1 INCH = 500 FEET



SCALE: 1 INCH = 40 FEET

BASIS OF BEARINGS =
CITY OF LYNDEN SURVEY
MONUMENT NETWORK



LYN MON No. 39

	NORTHWEST SURVEYING & GPS, INC. Jeromy M. DeMeyer, L.S. No. 50982 Brett W. De Vries, L.S. No. 49276 407 5TH STREET, LYNDEN WASHINGTON, 98264 PH. (360) 354-1950 NWSURVEY.COM		
	DRAWN BY: BRETT	DATE: 12/02/20	JOB NO.: 18-372
REVIEWED BY: JEROMY	DIR: \254002\FBOUMA CRD: 254002GP.CRD	SHEET: 2 OF 2	

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	February 1, 2021	
Name of Agenda Item:	Ord 1615 – Code Amendment accommodating a Hearing Examiner Role	
Section of Agenda:	Public Hearing	
Department:	Planning Department	
Council Committee Review:	<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: _____
	Legal Review: <input checked="" type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input type="checkbox"/> Review Not Required	
Attachments:		
Proposed Ord 1615, Planning Commission Minutes and Meeting Pkg of 12-10-20, Flowcharts illustrating change in review/appeal process, Ord 1615 with the most recent changes tracked		
Summary Statement:		
<p>In 2018 the City of Lynden began researching the use of a hearing examiner after several costly and time-consuming administrative appeals were defended. Benefits of the use of a hearing examiner include an expediency in processing appeals, the unbiased opinion of a professional, removing social/political influence from the process, reducing the City’s liability, and decreasing the obligations placed on volunteer boards. Generally, a hearing examiner could be considered as the reviewer of appeals/applications where specific legal or technical criteria are listed.</p> <p>Feedback regarding this initiative has led to a code amendment drafted to include some appeals and some variance requests. Decisions made by the hearing examiner would go to the City Council if appealed. This code amendment also provides an opportunity to update sections of code to current organizational structure and other improvements.</p> <p>The individual selected for the Hearing Examiner position would be selected by the City Council. A corresponding request for qualifications has been drafted and distributed to Council members.</p> <p>On December 10, 2020, the Planning Commission held a public hearing on the proposal. Consistent with staff and legal counsel’s recommendation the Commission voted to recommend approval of the amendment with the additional of stand-alone Shoreline Permits to the hearing examiner’s scope of work. Appeal of these Shoreline decisions would continue to be heard by the State’s Shoreline Hearings Board as is the current path within the City’s development code.</p>		
Recommended Action:		
Motion to approve Ordinance 1615 which amends the Lynden Municipal Code to create a hearing examiner role and scope of authority, and to authorize the Mayor’s signature on the document.		

ORDINANCE NO. 1615

AN ORDINANCE OF THE CITY OF LYNDEN ADOPTING A NEW CHAPTER 2.09 TO THE LYNDEN MUNICIPAL CODE AND AMENDING NUMEROUS CHAPTERS OF THE LYNDEN MUNICIPAL CODE, FOR THE PURPOSE OF ESTABLISHING THE OFFICE OF HEARING EXAMINER, AND ADOPTING PROCEDURAL RULES FOR THE CITY OF LYNDEN HEARING EXAMINER

WHEREAS, the Lynden City Council and the Lynden Planning Commission have been devoting increasing time to regulatory land use decisions and appeals therefrom; and

WHEREAS, the Lynden City Council believes appointing a hearing examiner to render final regulatory land use decisions will better promote fairness, due process, and efficiency in the hearing and resolution of certain types of land use disputes; and

WHEREAS, the City has the authority to establish the office of the hearing examiner pursuant to the authority provided by Article 11, Section 11 of the Washington State Constitution, RCW 35A.63.170 and Chapter 58.17 RCW; and

WHEREAS, the hearing examiner will assume all duties currently assigned to the board of adjustment and the board of appeals, in addition to some tasks currently assigned to the planning commission and city council; and

WHEREAS, as part of this process, some duties of the public works director are being shifted to the planning director; and

WHEREAS, the public interest will be served by amending the Lynden Municipal Code to include an office of the hearing examiner; and

WHEREAS, the foregoing recitals are material findings and declarations of the Lynden City Council;

NOW THEREFORE LET IT BE ORDAINED BY THE CITY COUNCIL OF LYNDEN AS FOLLOWS:

SECTION 1:

A new Chapter 2.09 of the Lynden Municipal Code is hereby enacted. Underlines indicate additions to the Code:

Chapter 2.09

HEARING EXAMINER

Sections:

- 2.09.010 Creation of Office—Purpose
- 2.09.020 Appointment—Contract—Pro Tem
- 2.09.025 Qualifications

- 2.09.030 Freedom from Improper Influence
- 2.09.035 Conflicts
- 2.09.040 Jurisdiction—Duties—Powers
- 2.09.045 Open Record
- 2.09.050 Procedures

2.09.010 Creation of Office—Purpose

The office of the hearing examiner is hereby created. The office of the hearing examiner is independent of city departments, boards, and commissions. It is responsible for the impartial administration of administrative proceedings in accordance with this chapter and shall preside over all such proceedings. Unless context requires otherwise, the term “hearing examiner” in this chapter shall be interpreted as including any hearing examiners pro tem.

2.09.020 Appointment—Contract—Pro Tem

- A. The city council shall appoint the hearing examiner by the vote of the majority of the members. Appointment shall be made by professional service contract.
- B. The city council may appoint one or more hearing examiners pro tem for terms specified at the time of appointment to serve in case the hearing examiner has a conflict or is absent. A hearing examiner pro tem shall have the same powers as the hearing examiner.

2.09.025 Qualifications

The hearing examiner shall be appointed based on his or her qualifications for the duties of such office. The hearing examiner shall be an attorney in good standing and admitted to the bar of the State of Washington with experience in land use or as a hearing examiner. Hearing examiners shall hold no other elective or appointive office or position in the city’s government. The same qualifications apply to hearing examiners pro tem.

2.09.030 Freedom from Improper Influence

No city official or any other person shall interfere with or attempt to interfere with the hearing examiner in the performance of his or her designated duties. This section does not prohibit the City attorney from rendering legal services to the hearing examiner if requested by the hearing examiner and approved by the mayor.

2.09.035 Conflicts

The hearing examiner shall not conduct or participate in any hearing or decision in which the hearing examiner has a direct or indirect personal interest which might improperly interfere with the decision-making process or violate the appearance of fairness doctrine or the codification of such doctrine in Chapter 42.36 RCW. Any actual or potential conflict of interest shall be disclosed to the parties immediately upon discovery of such conflict and the hearing

examiner shall abstain from any further proceedings in the matter unless all parties agree in writing to have the matter heard by that hearing examiner.

2.09.040 Jurisdiction—Duties--Powers

- A. The hearing examiner shall have the power to receive and examine available information, conduct public hearings, prepare a record thereof, and enter decisions as provided by ordinance.
- B. The hearing examiner shall have the exclusive jurisdiction to hold an open record hearing and make a decision on the following matters:
 - 1. Appeals of the determinations of the fees and dedications made under Chs. 3.28, 3.40, 3.44, and 19.67 LMC;
 - 2. Appeals of dangerous dog declarations under Ch. 6.09 LMC;
 - 3. Appeals of determinations of eligibility for relocation assistance under Ch. 12.36 LMC;
 - 4. Appeals of the city's determination to suspend services, impose penalties, recover costs, establish compliance schedules, or terminate a user's wastewater and/or collection services, under Ch. 13.12 LMC;
 - 5. Appeals of the city's computation or application of the stormwater management utility service charge or FCI charges or imposition of sanctions or fines under Ch. 13.24 LMC;
 - 6. Challenges of the written interpretations and/or decisions of the public works director made under Ch. 13.28 LMC;
 - 7. Petitions for exemptions from payment of the utility fee or for conversion to exempt status, and appeals of the city's computation of the applicable fees assessed, under Ch. 13.32 LMC;
 - 8. Appeals of the determination of the planning director regarding moving buildings under Ch. 15.05 LMC;
 - 9. Appeals of the determination of the building code official as described in Ch. 15.14 LMC;
 - 10. Appeals of final SEPA threshold determinations and adequacy of final EISs, made under Ch. 16.05 LMC, including related procedural and substantive issues;
 - 11. Appeal of director's final critical area determinations;

- 12. All applications for shoreline permits or revisions to shoreline permits under Ch. 16.08 LMC, except where the permit or revision is part of a project application being decided upon by a different hearing body;
 - 13. Under Ch. 16.12 LMC – Floodplain Management, all appeals of determinations of the director, and variance requests where not consolidated with an underlying project application being decided upon by a different hearing body;
 - 14. Appeals of the imposition of penalties or of the planning director's decision on mitigation or revision under Ch. 16.16 LMC;
 - 15. Appeals of the administrative approvals described in LMC 17.09.010 and 17.09.020;
 - 16. Appeals of administrative interpretations and approvals under LMC 17.11.010;
 - 17. Appeals of civil regulatory orders and civil fines issued under Ch. 17.13 LMC;
 - 18. Appeals of the results of concurrency tests, denials of proposed mitigation for transportation facilities, and any other determinations of capacity or calculations or assessments of any fees made under Ch. 17.15 LMC;
 - 19. Amortization periods for nonconforming signs;
 - 20. All variances from the requirements of Title 19, except variances from the requirements of Ch. 19.33 LMC and LMC 19.22.030, .040, and .050, and except where the variance is part of a project application being decided upon by a different hearing body;
 - 21. Appeals of determinations of building official as described in LMC 19.42.040;
 - 22. Appeals of administrative interpretations made under Ch. 19.59 LMC; and
 - 23. Other actions as required by this code.
- C. In order to avoid the city holding two hearings on one project, the hearing examiner shall only hear variance applications and shoreline permit applications or revisions that are not filed as part of an underlying project for which another hearing body will conduct a hearing. For example, if an applicant submits a long plat application along with a variance application to use an alternative cul-de-sac design, the hearing on the variance on the cul-de-sac shall be consolidated with the hearing on the long plat, and the consolidated hearing shall be before the hearing body holding the hearing on the long plat.
- D. The hearing examiner is empowered to act in lieu of the board of adjustment, the board of appeals, the city council, the planning commission and such other officials, boards, or commissions as may be assigned for those matters listed in subsection (B) of this

section. Wherever existing ordinances, codes or policies authorize or direct the board of adjustment, the board of appeals, the city council, the planning commission or other officials, boards, or commissions to undertake certain activities which the hearing examiner has been assigned under said subsection (B), such ordinances, codes or policies shall be construed to refer to the hearing examiner.

- E. The hearing examiner may include in a decision any conditions of approval that are necessary to ensure that the proposal complies with all applicable code criteria and comprehensive plan policies.
- F. The hearing examiner has such other powers as are necessary to carry out the purpose and intent of this chapter, including without limitation to conduct pre-hearing conferences; to require the submittal of information; to schedule and continue hearings; to administer oaths and affirmations; to issue subpoenas; to regulate the course of pre-hearing discovery; to preside over hearings and the conduct of parties; to question parties and witnesses at a hearing; to rule on all evidentiary, procedural and other matters, including all motions; to maintain order; to establish post-hearing procedures; to issue findings of fact and conclusions of law; to enter final decisions; and to adopt procedures consistent with 2.09.050.
- G. With the exception of shoreline permit applications and revisions heard by the hearing examiner, the hearing examiner’s decision on these matters identified in subsection (B) shall be final unless timely appealed to the City Council following the procedures in Ch. 17.11 LMC. The City Council shall hear appeals of these matters as closed record appeals. The hearing examiner shall make the final decision of the city on the shoreline permit issues he or she hears. The determination of the hearing examiner on shoreline permit applications and revisions shall be subject to appeal to the Shoreline Hearings Board.

2.09.045 Open Record and Open to Public

For every matter over which the hearing examiner has jurisdiction, the hearing examiner will conduct an open record hearing, which shall be open to the public.

2.09.050 Procedures

The City Council shall approve rules and regulations for procedural matters related to the duties of the office of the hearing examiner.

SECTION 2:

The following sections of the Lynden Municipal Code are hereby amended. Underlines indicate additions and strikethroughs indicate deletions.

3.28.190 - Appeals to hearing examiner.

Any taxpayer aggrieved by the amount of the fee or tax found by the city finance director to be required under the provisions of this chapter may appeal to the hearing examiner from such finding by filing a written notice of appeal with the city finance director within fourteen days from the time such taxpayer was given notice of such amount. The finance director shall, as soon as practicable, fix a time and place for the hearing of such appeal, and shall cause a notice of the time and place thereof to be delivered or mailed to the appellant. The taxpayer shall be entitled to be heard and to introduce evidence on his or her own behalf. The hearing examiner shall, following the hearing, ascertain the correct amount of the fee or tax and render a decision. The finance director shall immediately notify the appellant thereof, which amount, together with the costs of appeal, if such applicant is unsuccessful therein, must be paid within five days after such notice is given. The hearing examiner may, by subpoena, require the attendance thereat of any person, and may also require him to produce any pertinent books and records. Any person served with such subpoena shall appear at the time and place therein stated, produce the records required, if any, and shall testify truthfully under oath administered by the hearing examiner as to any matter required of him pertinent to the appeal, and it is unlawful for him to fail or refuse so to do.

3.40.110 – Appeals and adjustments.

Any person(s) seeking an adjustment to the dedication or mitigation assessments required by this chapter shall have a right to appeal to the hearing examiner. Any such appeal shall be filed with the city clerk in writing within fourteen days after the date of mailing or transmittal by the city of written notice of the specific dedication or mitigation assessments required by this chapter. Following receipt of such an appeal, the hearing examiner shall hold a public hearing to consider the appeal. In considering the appeal the hearing examiner may, in his or her discretion, take into account unusual circumstances in a specific case and may consider studies and data submitted by the appellant(s). The hearing examiner shall issue such determination as he or she deems fair and equitable. The decision of the hearing examiner shall be in writing.

3.44.050 - Appeals and adjustments.

Any person desiring to appeal from a decision made in the enforcement of the provisions of this chapter or any person seeking an adjustment to the dedication or mitigation assessments required by this chapter due to unusual circumstances in specific cases shall file an appeal with the city clerk in writing within fourteen days after the date of mailing or transmittal by the city of written notice of the specific dedication or mitigation assessments required. The appeal shall be

heard by the hearing examiner in conformance with Ch. 2.09 LMC. Upon the conclusion of the hearing, the hearing examiner shall issue a written decision.

3.46.110 – Appeals.

A. A developer or property owner shall have the right to file an appeal of the amount of an impact fee determined by the director. All such appeals shall be filed and reviewed in conformance with the requirements established for filing appeals authorized by Title 17 of this code as set forth in Chapter 17.11 and shall be heard by the hearing examiner as an open record appeal as provided in Chapter 17.03 of this code. The developer or property owner shall bear the burden of proving:

- 1. That the director committed error in calculating the developer's/property owner's proportionate share, as determined by an individual fee calculation or, if relevant, as set forth in the fee schedule, or in granting credit for the benefit factors;
- 2. That the director based his/her determination upon incorrect data; or
- 3. That the director's decision was arbitrary and capricious.

5.02.080 – License – Appeals.

Any person applying for or holding a license under this chapter who is aggrieved by an action of the city clerk or other city official in connection with a license may appeal the matter to the city council by:

- A. Filing a letter with the city clerk, stating the matter complained of, within thirty days of the action complained of; and
- B. Appearing in person before the council or any of its committees which may be designated to hear and decide the appeal by the mayor.

5.16.100 – Grievance procedure – Hearing – Notice – Decision.

Any person aggrieved by the action of the police chief in the disapproval of a permit or license as provided in Section 5.16.040 may appeal to the city council. Such appeal shall be taken by filing with the city council within fourteen days after notice of the action complained of has been mailed to such person's last known address, and shall consist of a written statement setting forth fully the grounds for the appeal. The council shall set a time and place for a hearing on such appeal, and notice of such hearing shall be given to the appellant in the same manner as provided in Section 5.16.080 for notice of hearing on revocation. The decision and order of the city council appeal shall be final.

5.40.040 - License issuance for operation of business.

The public works director shall issue all business licenses to operate horse taxis, after review of the license application and inspection reports of the chief of police, or his designee. The public works director may, in his or her sole discretion, approve or deny the application. Any applicant denied a license by the public works director may appeal to the city council. Such appeal shall be filed no later than thirty days after the decision of the public works director.

6.09.050 – Appeal of dangerous dog or potentially dangerous dog declaration.

The owner may file an appeal with the city clerk to be forwarded to the hearing examiner challenging the final written order and declaration of the police chief made pursuant to this chapter. The appeal must be filed within fourteen days of the date of mailing the declaration of dangerous dog or potentially dangerous dog. The hearing examiner shall conduct an open-record public hearing for any timely filed appeal within thirty days of the date of filing and shall issue his or her decision in writing.

12.36.030 – Appeal requirements.

Appeals must be in writing accompanied with the applicable appeal fee if any. The appeal should include the following:

1. The City's project name.
2. The project parcel number or the tax parcel number of the real property involved.
3. Date of the relocation notice that is being appealed.
4. Name of the aggrieved person ("appellant").
5. A statement of issues/concerns.
6. An explanation of what the appellant is claiming, including all facts, reasons, and any supporting evidence as to the nature of the grievance or why the appellant is otherwise aggrieved.
7. The relief requested.
8. The signature, current address and telephone number of the appellant or the appellant's authorized representative.

12.36.040 - Right to representation and inspection of documents.

Any appellant has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the appellant’s own expense. The appellant shall have a right to inspect and copy all written materials in City files pertinent to their appeal, subject to reasonable conditions consistent with the Public Records Act. The City shall have the right to charge a reasonable fee for providing copies of documents requested.

12.36.050 - Scope of review of the appeal.

12.36.051 - Appeal to Public Works Director.

Within fourteen days of receipt of an appeal under this chapter, the Public Works Director will evaluate the appeal to determine if it is complete. The Public Works Director will send written notice to the appellant informing them if the appeal has been determined to be complete or requesting additional information. If the appeal is determined to be complete, the Public Works Director will issue and mail to the appellant a written decision on the appeal, based on applicable relocation assistance regulations, within fifteen days of the date of notice of completeness. If additional information is necessary to process the appeal, the Public Works Director will request the appellant file any additional information within ten days. Within fifteen days of (a) receiving the requested additional information, or (b) the deadline for receiving the requested additional information if sufficient additional information is not received, the Public Works Director will issue and mail to the appellant a written decision on the appeal based on applicable relocation assistance regulations. A written decision on appeal issued by the Public Works Director pursuant to this section shall be the City's final decision unless an appeal of the Public Works Director's decision is filed as set forth in section 12.36.052 LMC.

12.36.052 - Appeal of Public Works Director determination to Hearing Examiner .

If the appellant believes the Public Works Director has not correctly evaluated the appeal, the appellant may appeal the decision of the Public Works Director to the Hearing Examiner by filing a written appeal with the Public Works Director within fourteen days of the date of mailing of the City Public Work Director's decision. Appeals filed after the fourteen-day time period has lapsed will not be considered. The Hearing Examiner will conduct an open record hearing and review and make a decision in writing on the appeal based on applicable relocation assistance regulations.

13.12.285 – Administrative enforcement remedies.

A. State Responsibility for Administrative Actions. The department is charged with permitting and regulating significant industrial users’ discharging to the city POTW. Except for emergency actions, it shall be the policy of the director to coordinate actions in regard

to control of such users with the department until such time as a local pretreatment program for the city may be authorized by the state. Failure to conduct such coordination, however, shall not invalidate any action of the city authorized by this chapter.

B. Notification of Violation.

1. Whenever the director finds that any user has violated or is continuing to violate any provision of this chapter, or an order issued hereunder, the director may serve upon such user written notice of the violation.
2. Within ten days of receipt of such notice of violation, the user shall submit to the director an explanation of the violation and a plan to satisfactorily correct and prevent the reoccurrence of such violation(s). The plan shall include specific actions the user will take, and the completion dates of each. Submission of this plan in no way relieves the user of liability for any violations occurring before or after receipt of the notice of violation.
3. Nothing in this section shall limit the authority of the city to take any action, including emergency actions or any other enforcement action, without first issuing a notice of violation.

C. Consent Orders.

1. The director, upon approval of the city council, is empowered to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any user responsible for noncompliance. Such consent orders shall include specific action to be taken by the user to correct the noncompliance within a time schedule also specified by the consent order.
2. Compliance schedules, when included in consent orders, may not extend the compliance date beyond any applicable state or federal deadlines. Consent orders shall have the same force and effect as compliance orders issued pursuant to any section regarding criminal prosecution, and shall be judicially enforceable.
3. Failure to comply with any terms or requirements of a consent order by the user shall be an additional and independent basis for termination of wastewater services, including collection and treatment, or for any other enforcement action authorized under this chapter and deemed appropriate by the director.

D. Compliance Orders.

1. Whenever the director finds that a user has violated, or continues to violate, any provision of this chapter, or order issued hereunder, the director may issue a compliance order to the user responsible for the violation. This order shall direct that adequate pretreatment facilities, devise, or other related appurtenances be installed and properly operated and maintained. The order shall specify that wastewater services, including

collection and treatment, shall be discontinued and/or applicable penalties imposed unless, following a specified time period, the directed actions are taken.

2. Compliance orders may also contain such other requirements as might be reasonably necessary and appropriate to address the violation or noncompliance, including, but not limited to, the installation of pretreatment technology, additional self-monitoring, and management practices designed to minimize the amount of pollutants discharged to the POTW. A compliance order may not extend the deadline for compliance beyond any applicable state or federal deadlines, nor does a compliance order release the user from liability from any past, present, or continuing violation(s). Issuance of a compliance order shall not be a prerequisite to taking any other action against the user.

3. Failure to comply with any terms or requirements of a compliance order by a user shall be an additional and independent basis for termination of wastewater services, including collection and treatment, or any other enforcement action authorized under this chapter and deemed appropriate by the director.

E. Appeal.

1. A user may appeal the city's determination to suspend services, impose penalties, recover costs, or establish compliance schedules, through cease-and-desist orders (hereinafter called collectively "enforcement actions"). A user shall also have the right to a hearing prior to termination of a user's wastewater collection and treatment services.

2. Notice shall be served on the user specifying the enforcement action, and the reasons for such action.

3. A user wishing to contest an enforcement action shall, within fourteen days of receiving notice of the decision or order, file a notice of appeal with the director. The notice of appeal shall state the grounds for the appeal with specificity and shall be signed by the appellant.

4. The hearing examiner shall hold an open record hearing on the appeal in conformance with the procedures of Chs. 2.09, 17.09 and 17.11 LMC. The hearing examiner shall hear all evidence presented by the user, receive input from city personnel regarding the enforcement action, and shall render a written decision affirming the enforcement action, reversing it, or modifying it. The decision shall be served on the user.

F. Cease and Desist Orders.

1. The director may issue a cease-and-desist order upon finding a user has or is violating this chapter, a wastewater discharge permit order issued by the department, any other pretreatment standard or requirement. The decision to issue a cease-and-desist order shall consider the likelihood that a user's violations in conjunction with other discharges could cause a threat to the POTW, POTW workers, or the public, or cause pass through,

interference, or a violation of the POTW's NPDES permit. The order issued by the director will direct the user to cease and desist all such violations and to:

- a. Immediately cease such actions or discharges as described;
 - b. Comply with all applicable pretreatment standards and requirements;
 - c. Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.
2. Issuance of a cease-and-desist order shall not be a bar against, or a prerequisite for, taking any other action against the user.

G. Emergency Suspension of Wastewater Services.

- 1. The director may immediately suspend wastewater services, including collection and treatment, after informal notice to the user, if it appears to the city that such suspension is necessary to stop an actual or threatened discharge which reasonably appears to present or cause an imminent or substantial endangerment to either the environment, normal operation of the POTW, or the health or welfare of any person or the general public.
- 2. Any user notified of a suspension of its wastewater discharge shall immediately cease all such discharges. In the event of a user's failure to immediately comply voluntarily with the suspension order, the director shall take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW, its receiving stream, or the danger to the public. The director may allow the user to recommence its discharge when the user has demonstrated that the period of endangerment has passed, unless termination proceedings (under subsections F and G of this section) are initiated against the user.
- 3. It is unlawful for any person to prevent the director and/or city from terminating wastewater collection and treatment services in an emergency situation, by barring entry, by physically interfering with city employees or contractors, or by any other means.
- 4. A user that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful contribution and the measures taken to prevent any future occurrence, to the director prior to the date of any administrative hearing authorized by this chapter.
- 5. Nothing in this section shall be interpreted as requiring an administrative hearing prior to any emergency suspension under this section.

H. Termination of Treatment Services (Non-Emergency):

1. The director shall have authority to terminate wastewater services, including collection and treatment, through the issuance of a termination order to any user upon determining that such user has:

- a. Refused access allowed by this chapter thereby preventing the implementation of any purpose of this chapter;
- b. Violated any provision of this chapter including the discharge prohibitions and standards of Section 13.12.140; or
- c. Violated any lawful order of the city issued with respect to this chapter.

2. For users holding permits to discharge to the city POTW, violation of the following conditions is also grounds for terminating discharge services:

- a. Failure to accurately report wastewater constituents or characteristics;
- b. Failure to report significant changes in operations or wastewater constituents or characteristics; or
- c. Violation of any term or condition of the user's waste discharge permit.

3. Issuance of a termination order by the city shall not be a bar to, or a prerequisite for, taking any other action against the user.

13.24.090 – Appeals; burden of proof.

A. Appeal to Hearing Examiner. Any property owner who believes that the stormwater management utility service charge for their property has been incorrectly computed or applied and/or that FCI charges have not been properly assessed may appeal to the hearing examiner within fourteen days of the director's determination of said charges ~~and~~ by filing a written statement of appeal with the director. The appeal to the hearing examiner shall be an open record appeal and shall be conducted according to the procedures in Chs. 2.09, 17.09, and 17.11 LMC. During the hearing, the hearing examiner shall consider the recommendation of the director. The hearing examiner shall issue a written decision, notice of which shall be provided to the parties. Any adjustments authorized by the appeal process shall only be effective against billings subsequent to the date the appeal is filed and shall not be retroactively applied.

B. Burden of Proof. The burden of proof in any petition or appeal filed under this chapter shall be on the property owner.

13.24.095 – Sanctions.

In addition to any other remedy or sanction available, a property owner who fails to comply with any provision of this chapter, with a final order issued by the city pursuant to this chapter, or who fails to conform to the terms of an issued approval, may be subject to a

civil penalty, in accordance with Chapter 1.24 of this Code, due and payable not later than ten days after issuance of final decision.

A. Late Payment Fees. A late payment fee shall be added to each property owner's account if payment is not received by the due date. Said late fees shall be in an amount established by resolution of the city council.

B. Penalties shall be per Section 1.24.015 of this code.

C. Aiding or Abetting. Any person who, through an act of commission or omission, aids or abets in the violation shall be considered to have committed a violation for the purposes of the civil penalty.

D. Notice of Penalty. The notice shall be in writing, which shall be served either by certified mail with return receipt requested or by personal service, to the person incurring the same. The notice shall describe the violation, the date(s) of violation, and shall order the acts constituting the violation to cease and desist, and, in appropriate cases, require necessary corrective action within a specific time.

E. Collection. Civil penalties shall be due and payable not later than ten days following issuance of notice of penalty. If remission or appeal of the fine is sought, the fine shall be due and payable not later than ten days following issuance of a final decision. If a fine remains unpaid thirty days after issuance, the director may take actions necessary to recover the fine. Penalties shall be paid into the appropriate city fund.

F. Application for Remission. Any person incurring a civil penalty may, within ten days of issuance of the notice of penalty, apply in writing to the director for remission of the fine. The director shall issue a decision on the application for remission within ten days.

G. Issuance of Decisions. For purposes of this chapter, any written decisions of the director shall be deemed issued upon the date said written decision is deposited in the U.S. mail to the last known address of the person subject to the decision or is hand delivered to said person.

13.28.150 - Appeal.

A developer may file an appeal to the hearing examiner challenging the written interpretations and/or decisions of the public works director made pursuant to this chapter. The appeal must be filed with the public works director within fourteen days of the date of mailing the interpretation or decision of the public works director.

13.32.070 – Utility Fee.

A. Monthly Utility Fee Formula. A monthly utility fee for the operation of the Utility shall be established from time to time by resolution of the city council in conformity with RCW 35.21.766, as now or hereafter amended. The amount of the fee shall be based upon cost of regulating ambulance service and the cost of providing utility services as determined by a cost-of-service study pursuant to RCW 35.21.766(3). Those costs shall be divided among City of Lynden residents and occupants based on a combined demand and availability calculation consistent with accepted principles of utility rate setting. The rate attributable to costs for availability of the utility shall be uniformly applied across user classifications within the utility. The rate attributable to demand costs shall be established and billed to each utility user classification based on each user classification's burden on the utility. The fee charged by the utility shall reflect a combination of the availability cost and the demand cost and may in the discretion of the city council be reduced or subsidized by other city funds as authorized by RCW 35.21.766, as amended. The resulting fee shall be assessed to identifiable use classifications. Fees will not exceed the revenue requirements to cover the costs of the utility, as authorized by the city council by adoption of an annual budget and subsequent amendments.

B. Classifications. The utility fee shall be collected on a monthly basis from each of the following utility user classifications:

1. Single family residential;
2. Multifamily residential;
3. Commercial/ non-profit business not listed in other categories;
4. Assisted living/nursing homes;
5. Adult family homes/boarding homes;
6. Public;
7. Hotel/motel;
8. Campgrounds;
9. Fairground.

The owner or occupant of each single-family dwelling unit, adult family home, and boarding home and each owner or occupant of each dwelling unit for the multifamily residential classification and each owner of all other classifications shall be responsible for payment of the utility fee. Adult family homes and boarding homes which are single family dwelling units shall be classified as an adult family home or boarding home as applicable. The public classification is limited to all users which are political subdivisions of the state, state or federal agencies,

municipal corporations, schools, school districts. The City will determine which user classification applies when more than one classification is applicable.

C. Utility Fee Exemptions—Reductions.

1. Persons who are Medicaid eligible and who reside in a nursing facility, boarding home, adult family home or receive in-home services are exempt from the utility fee, pursuant to RCW 35.21.766 (4)(d)(i).
2. Any change in use of a dwelling unit, parcel or building, or any other change in circumstance that eliminates application of an exemption from the utility fee shall immediately make the affected property subject to applicable utility fees. The utility fee shall become due and payable as of the date of the change in use and shall continue until qualification for an exemption. It is the owner's or occupant's responsibility to notify the City of all use changes.
3. Monthly rates, and initial and final charges may be prorated in accordance with the City's standard utility prorating practices.
4. Any customer seeking an exemption from payment of the utility fee and/or conversion from covered to exempt status, must file a written petition with the city public works director seeking a determination as to whether a specific dwelling unit, parcel or building satisfies the exemption requirements set forth in this section. The public works director shall forward the petition to the hearing examiner, who shall conduct an open record hearing and issue a written decision.
5. The utility fee charged shall reflect an exemption for persons who are Medicaid eligible and who reside in a nursing facility, boarding home, adult family home, or receive in-home services.
6. The utility fee charged may reflect an exemption or reduction for designated classes consistent with Article VIII, Section 7 of the State Constitution.
7. The amounts of exemption or reduction shall be a general expense of the utility, and designated as an availability cost, to be spread uniformly across the utility user classifications.

D. Appeal. Fees assessed under this section may be appealed to the hearing examiner by submission of a written statement of appeal to the director within fourteen days of receipt of the director's determination. The appeal shall be heard as an open record hearing. The director shall submit a staff recommendation for the hearing examiner's review. After the open record hearing, the hearing examiner shall issue a written decision.

E. Periodic Utility Fee Review. The city finance director, or the city finance director's designee, in consultation with the city administrator shall periodically perform financial review and analysis of the utility's revenues, expenses, indebtedness, fees and accounting, and recommend budgets, fee adjustments and financial policy. Based on such review, the city finance director may recommend changes, amendments or additions for adoption by the city council.

F. Limitation on Total Revenue. The total revenue generated by the utility shall not exceed the total costs necessary to regulate, operate, maintain the utility.

15.02.060 - Building valuation schedule—Permit fees.

A. The valuation schedule to be utilized by the planning director or his or her designee in administering the International Building Code shall be set by resolution of the city council.

B. Building permit fees shall be as set forth by resolution of the city council.

15.03.060 - Building valuation schedule—Permit fees.

A. The valuation schedule to be utilized by the planning director or his designee in administering the International Existing Building Code shall be set by resolution of the city council.

B. Building permit fees shall be as set forth by resolution of the city council.

15.05.010 - Moving buildings—Allowed when.

Previously occupied buildings located within the city limits may be moved to another location with the permission of the planning director under the following conditions:

- 1) The building is to be relocated on the same parcel; or the building is non-residential, the occupied area is less than five hundred square feet, and the building is to be relocated to a non-residential parcel; or the building is listed, or deemed by an approved professional survey to be potentially listed on the National Register of Historic Places and/or the Lynden Register of Historic Places and all other preservation options have been exhausted, or the building faces the prospect of demolition; and
- 2) The building shall comply with the existing building and zoning codes and other applicable ordinances in the city.
- 3) The applicant shall, within ten days after making an application to move any building with an area greater than or equal to five hundred square feet, cause the interior or exterior walls, ceiling or flooring to be removed to such an extent necessary to permit a registered professional engineer to examine the materials and type of construction of

the building to ascertain whether it can be safely moved and that it will comply with the existing building code and other applicable ordinances in the city. A written report shall be provided to the building official.

- 4) In addition to the above inspection, the applicant shall comply with all other relevant city approval and permit procedures; and
- 5) A bond, assignment of savings, or irrevocable letter of credit, in a form approved by the city attorney, shall be filed with the city in an amount sufficient to:
 - a. Remove and dispose of the structure should the applicant abandon it before the move is completed; and
 - b. Guarantee the site improvements, construction, painting, and finishing the exterior of the building shall be completed in accordance with the Lynden Municipal Code within ninety days; and
 - c. Guarantee the restoration of the original location by capping the existing utilities, removal of the existing foundation, grading and clearing the location of all debris resulting from the move.
- 6) Should the moving operation require use of or travel over city rights-of-way, the applicant shall:
 - a. Prove they have liability insurance in the amount of at least one million dollars, listing the city as an additional named insured. This insurance will remain in full force and effect during the moving operation and will hold the city harmless from all claims arising from the moving operation.
 - b. If moving the building will require use of an oversize/overheight vehicle, then a permit will be required from the public works department.
- 7) The applicant shall execute and deliver to the city a document holding the city harmless from any and all claims arising from the removal and relocation of the house.

In any case in which the planning director denies permission for such a move, the applicant may appeal the decision to the hearing examiner under the provisions of Chapter 17.11 of the Lynden Municipal Code.

15.08.030 - Plumbing system inspection authorized when.

Where any structure is permitted to connect to any city sanitary sewage system and/or water system, the planning director or his/her designee may make or require an inspection of the plumbing system to ensure compliance with any city requirements, prior to a final inspection by the planning director or his/her designee.

15.14.010 - Application for appeal.

After exhausting all administrative remedies, a person shall have the right to appeal a decision of the building code official to the hearing examiner. An application for appeal shall be based on a claim that the true intent of the codes adopted in this chapter or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or an equally good or better alternate material or method of construction is proposed. The application shall be filed on a form obtained from the city building code official within fourteen days after the notice of the decision was mailed and shall be accompanied by an application fee in an amount set by the city council.

15.14 .020 - Open hearing.

All hearings before the hearing examiner related to a provision of this chapter shall be open to the public. The appellant, the appellant's representative, the city building code official and any person whose interests are affected shall be given an opportunity to be heard.

15.14 .030 - Authority.

The hearing examiner shall have authority to review decisions of the code official for the following legally adopted codes:

- A. International Building Code;
- B. International Mechanical Code;
- C. International Fire Code;
- D. Uniform Plumbing Code;
- E. Washington Energy Code;
- F. Washington State Ventilation and Indoor Air Quality Code.

15.14 .040 - Hearing examiner decision.

If the appellant convinces the hearing examiner either that the true intent of the codes or the rules adopted thereunder have been incorrectly interpreted, or that the provisions of this code do not fully apply to the appellant's situation or that there is an equally good or better interpretation of the section or sections in question, then the hearing examiner may modify or reverse the decision of the code official . The hearing examiner shall have no authority relative to the interpretation of the administrative provisions of the code nor shall the hearing examiner be empowered to waive specific requirements of the codes listed in this chapter. The city's building code official shall take immediate action in accordance with the decision of the hearing examiner.

16.05.160 – Substantive authority

- A. The policies and goals set forth in this chapter are supplementary to those in the existing authorization of the city of Lynden.

- B. The city may attach conditions to a permit or approval for a purpose so long as:
 - 1. Such conditions are necessary to mitigate specific probable adverse environmental impacts identified in environmental documents prepared pursuant to this chapter; and
 - 2. Such conditions are in writing; and
 - 3. The mitigation measures included in such conditions are reasonable and capable of being accomplished; and
 - 4. The city has considered whether other local, state, or federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts; and
 - 5. Such conditions are based on one or more policies in subsection D of this section and cited in the license or other decision document.

- C. The city may deny a permit or approval for a proposal on the basis of SEPA so long as:
 - 1. A finding is made that approving the proposal would result in probable significant adverse environmental impacts that are identified in a FEIS or final SEIS prepared pursuant to this chapter; and
 - 2. A finding is made that there are no reasonable mitigation measures capable of being accomplished that are sufficient to mitigate the identified impact; and
 - 3. The denial is based on one or more policies identified in subsection D of this section and identified in writing in the decision document.

- D. The city designates and adopts by reference the following policies as the basis for the city's exercise of authority pursuant to this section:
 - 1. The city shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:
 - a. Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

- b. Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
- c. Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
- d. Preserve important historic, cultural, and natural aspects of our national heritage;
- e. Maintain, wherever possible, an environment which supports diversity and variety of individual choice;
- f. Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
- g. Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

2. The city recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

E. When any proposal or action not requiring a decision of the city council is conditioned or denied on the basis of SEPA by a nonelected official, the decision shall be appealable to the hearing examiner. Such appeal may be perfected by the proponent or any aggrieved party by giving notice to the responsible official within fourteen days of the decision being appealed. Review by the hearing examiner shall be on a de novo basis.

16.08.020 – Shoreline Permit Review.

The hearing on shoreline permit applications and revisions shall be consolidated with other applications pertaining to the same project. Unless consolidated with another application, the hearing for which will be conducted by another hearing body, the hearing examiner shall conduct an open record hearing and decide whether to grant, grant with conditions, or deny all applications for shoreline permits or revisions to shoreline permits. The open record hearing shall generally follow the procedures outlined in Title 17 LMC. Regardless of whether the hearing is before the hearing examiner or another hearing body, staff shall submit a staff report with a recommendation as part of the hearing process.

16.08 .030 – Shoreline Permit Appeal.

The hearing examiner, city council or Department of Ecology decision on a shoreline permit or revision thereto may be appealed to the Shoreline Hearings Board within twenty-one (21) days of such decision, in accordance with RCW 90.58.180 and WAC 173-27-100, as amended.

16.12.110 – Appeals and Variance procedure.

A. Hearing Examiner.

1. The hearing examiner shall hear and decide appeals described in LMC 16.12.110(A)(2), and requests for variances from the requirements of this chapter not accompanied by or for an underlying project application that will be heard by a different hearing body. Appeals and variance requests shall be heard in open record hearings. In all cases, the public works director shall supply the hearing examiner with a staff report and recommendation.

2. The hearing examiner shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the public works director in the enforcement or administration of this chapter.

3. For both appeals and variance requests filed under this chapter, the hearing examiner’s decision shall be subject to closed-record appeal to the city council. The hearing examiner’s decision shall be the final decision of the city if not timely appealed to the city council.

4. In passing upon appeals and variance requests , the hearing examiner shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and:

- a. The danger that materials may be swept onto other lands to the injury of others;
- b. The danger to life and property due to flooding or erosion damage;
- c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- d. The importance of the services provided by the proposed facility to the community;
- e. The necessity to the facility of a waterfront location, where applicable;
- f. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
- g. The compatibility of the proposed use with existing and anticipated development;
- h. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

- i. The safety of access to the property in times of flood for ordinary and emergency vehicles;
- j. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
- k. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

l. Compliance with the Endangered Species Act.

5. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing paragraphs a through l of subdivision 4 of subsection A of this section have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing a variance increases.

6. Upon consideration of the factors of subdivision 4 of subsection A of this section and the purpose of this chapter, the hearing examiner or city council may attach such conditions to the granting of variances as deemed necessary to further the purposes of this chapter.

7. The public works director shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.

B. Conditions for Variances.

1. Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this section.

2. Variances shall not be issued within any designated floodway.

3. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

4. Variances shall only be issued upon:

- a. A showing of good and sufficient cause;

- b. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
 - c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in subdivision 4 of subsection A of this section, or conflict with existing local laws or ordinances.
5. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
6. Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece of property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations are quite rare.
7. Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry-floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria, except subdivision 5 of this subsection, and otherwise complies with Section 16.12.120(A) and (B).

16.16.140 – Offense and penalty.

- A. Any person, firm, partnership, limited liability company, corporation, or other legal entity that fails to comply or causes the failure to comply with any provision of this chapter shall be guilty of a misdemeanor. Each day or portion of a day during which such a violation is found to have occurred shall constitute a separate offense.
- B. The city may levy civil penalties against any person, firm, partnership, limited liability company, corporation, or other legal entity for failure to comply or causing a failure to comply with of any of the provisions of this chapter. The civil penalty shall be assessed as a one-time penalty of five hundred dollars and/or a maximum rate of five hundred dollars per day per violation.
- C. A failure to comply with a provision of this chapter occurs when a party: (1) develops within or disturbs a critical area or its buffer without fully complying the requirements of this chapter; or (2) fails to comply with mitigation requirements imposed pursuant to this chapter.
- D. The penalty provided in subsection B above shall be imposed by serving the responsible party with a notice in writing, either by certified mail with return receipt requested, or by personal service. The notice shall include the amount of the penalty imposed and shall describe the

violation with reasonable particularity in ordering the act or acts constituting the violation or violations to cease and desist or, in appropriate cases, requiring necessary corrective action to be taken within a specific and reasonable time.

E. Within thirty days after the notice is received, the party incurring the penalty may apply in writing to the planning director for remission or mitigation of such penalty. Upon receipt of the application, the planning director may remit or mitigate the penalty upon whatever terms the department in its discretion deems proper. The planning director's final decision on mitigation or revision shall be reviewed by the hearing examiner if the aggrieved party files a written appeal of said decision with the planning director withinfourteen days of its issuance.

17.01.030 - Definitions

The following definitions shall apply to Titles 16 through 19; other definitions may be found in individual titles. The definitions set forth in this chapter shall apply to the terms used in this title. Those terms not defined in this chapter, shall be as defined in the 1991 Uniform Zoning Code.

...

"Final decision" means the final action by the staff, city board, hearing examiner, or city council.

...

"Hearing body" means the city council, planning commission, hearing examiner, or other officer, board, or commission before which an open or closed record hearing occurs.

"Hearing examiner" means the hearing examiner or hearing examiner pro tem of the city of Lynden as established by ordinance.

...

"Open record hearing" means a hearing, conducted by a hearing body that creates the city's record through testimony and submission of evidence and information. An open record hearing may be held prior to the city's decision on a development permit application; or may be held on an appeal if no open record hearing has already been held on the development permit application. Provisions of this code require either that an open record hearing be held before the final decision-making body (e.g., city council or hearing examiner) or before a body making a recommendation to a decision-making body (e.g., planning commission).

...

"Variance" means a permissible modification of the application of Titles 13, 16, 17, 18, and 19 or other development standards of this code to a particular property, subject to the approval of the hearing examiner, city council, or other hearing body as provided by this code.

17.03.020 - Planning director.

The planning director shall review and act on the following:

A. Authority. The planning director, "the director," is responsible for the administration of Titles 16, 17, 18 and 19 of this code, except for Chapter 16.12.

B. Administrative Interpretation. Upon request or as determined necessary, the director shall interpret the meaning or application of the provisions of the titles and issue a written administrative interpretation within thirty days. All requests for interpretation shall be written and shall concisely identify the issue and desired interpretation. Appeals of an administrative interpretation shall be filed in conformance with Section 17.11.020.

C. Administrative Approvals. Administrative approvals as set forth in Sections 17.09.010(A) and 17.09.020 and as otherwise provided in Titles 16, 17, 18 and 19.

17.03.030 - City council.

In addition to its legislative responsibility, the city council shall:

A. Review and make the final decision of the city on development permit applications and open record appeals that were heard, reviewed, and had recommendations entered thereon by the planning commission. A nonexclusive listing of the development permit applications and appeals on which the planning commission will conduct open record hearings and make recommendation to the city council is set forth in Section 17.03.040(A). The final decision of the city in such matters shall be made by the city council without conducting an additional hearing or considering additional evidence.

B. Conduct the closed record appeal and make the final decision of the city on appeals from the decisions of the hearing examiner. A nonexclusive list of the matters for which the hearing examiner renders a decision is at LMC 2.09.040(B). The hearing examiner’s decision on all of these matters is subject to closed record appeal before the city council.

C. Conduct the hearing(s), review, and make the final decision of the city on the following:

1. Open record hearings on requests for variances from development standards identified in Section 17.17.010 when such requests do not include another development permit application as described in Section 17.17.020(B);
2. Closed record appeals of design review board decisions;
3. Open record hearing on petitions for the vacation of right-of-way;
4. Open record hearings on the revocation or modification of existing permits or approvals, as provided in Section 17.13.070;
5. All other matters as are required or authorized by this code or state law.

17.03.040 - Planning commission.

A. Planning Commission Open Record Hearings and Recommendation to City Council. The planning commission shall conduct an open record hearing, review, enter findings, and make recommendations to the city council on the following development permit applications and open record appeals:

- 1. Subdivisions, binding site plans, planned unit developments, planned residential developments or planned commercial developments;
- 2. Conditional use permits;
- 3. Site-specific rezones, including site-specific comprehensive plan map amendments;
- 3. Variance requests from development standards identified in Section 17.17.010 when such requests are accompanied by another development permit application as described in Section 17.17.020(A);
- 4. Shoreline permit and revisions applications when such applications are accompanied by another development permit application to be heard by the planning commission;
- 5. Other actions requested or remanded by the city council or as required by this code.

17.03.050 – Hearing examiner.

The hearing examiner shall review and act on the subjects over which the hearing examiner has jurisdiction pursuant to 2.09.040.

17.05.090 - Consolidated processing of development applications and appeals.

A. Consolidated Processing Required. Except as otherwise authorized or required by provisions in city code, the city shall provide for consolidated processing of development permit applications and appeals so that there is not more than one open record hearing and one closed record hearing for the same development proposal or project, as required by Chapter 36.70B RCW.

B. Exclusions from Consolidation Requirements.

1. Appeals of SEPA Threshold Determinations. Hearings on appeals of SEPA threshold determinations shall be excluded from consolidated processing requirements for development permit applications and shall be heard and decided upon by the hearing examiner. The SEPA threshold determination appeal shall be the only matter discussed at the hearing, even where this will result in a development proposal being subject to more than one open record hearing and one closed record appeal.

2. Grounds for Excluding Appeals of SEPA Threshold Determinations. Appeals of SEPA threshold determinations often involve technical issues best suited to the expertise of the

hearing examiner. Further, from a procedural standpoint, it is efficient to resolve SEPA issues before evaluating other aspects of the project.

3. Determinations by Design Review Board. Design review, landscape plan, and signage issues shall be excluded from consolidated processing requirements for development permit applications and shall be heard and decided upon by the design review board in conformance with Chapter 19.45 of this code. Aside from design review, landscape plan, and sign issues, the design review board shall not have any other development permit applications or appeals to review or decide upon, even where this will result in a development proposal being subject to more than one open record hearing and one closed record appeal.

4. Grounds for Excluding Design Review by Design Review Board from Consolidation Requirements. The sole function and purpose of the design review board is to review and make decisions on design, landscape plan, and signage aspects of development proposals for multifamily dwellings and commercial buildings. The design review board has longstanding exclusive special expertise in the city in reviewing and deciding upon design review, landscape plan, and signage issues. Such expertise is not possessed by or readily transferred to any other hearing body in the city. Special circumstances under RCW 36.70B.140(1) are therefore presented warranting exclusion of design, landscape plan, and sign review as conducted by the design review board from consolidated processing requirements. In addition, design review may take place for development proposals involving only the issuance of building permits exempt from Chapter 43.21C RCW and may therefore be excluded from consolidated processing requirements pursuant to RCW 36.70B.140(2).

5. Administrative Approvals. Administrative approvals identified in Sections 17.09.010 and 17.09.020 which are categorically exempt from environmental review under Chapter 43.21C RCW shall be exempt from the consolidation requirements in this chapter and Chapter 36.70B RCW. Nothing in this section shall prevent consolidation of such administrative approvals with related development proposals, in the discretion of the director.

6. Grounds for Excluding Administrative Approvals from Consolidation Requirements. The city has authority to exclude the administrative approvals which are categorically exempt from environmental review from consolidation requirements pursuant to RCW 36.70B.140(2).

17.07.050 - Notice of decision.

A written notice for all final decisions of the city shall be sent to the applicant and all parties of record. For development applications requiring planning commission review and city council approval, the notice shall include the minutes, or the signed ordinance or resolution. For decisions made by the hearing examiner, the notice shall include the hearing examiner’s written

findings of fact, conclusions of law, and decision. For shoreline permits, notice of decision must also be sent to the department of ecology and the Washington State Attorney General.

17.09.010 - Administrative approvals without notice.

A. The director may approve, approve with conditions, or deny the following without notice:

- 1. Lot line adjustments;
- 2. Extension of time for approval;
- 3. Minor amendments or modifications to approved developments or permits. Minor amendments are those which may affect the precise dimensions or location of buildings, accessory structures and driveways, but do not affect: (i) overall project character, (ii) increase the number of lots, dwelling units or density or (iii) decrease the quality or amount of open space.

B. The public works director may approve, approve with conditions, or deny the following without notice:

- 1. Fill and grade permits;
- 2. Floodplain development permits;
- 3. Building permits.

C. Decisions under this section shall be deemed made on the date issued. Appeals therefrom shall be governed by Chapter 17.11 of this code. Upon receipt of any such appeal, a notice of development application shall be prepared substantially in conformance with the requirements of Section 17.07.010 and shall be combined with notice of the open record appeal hearing substantially in conformance with Section 17.07.030. Following the open record hearing, the hearing examiner shall enter findings and render a decision on appeal.

17.09.020 - Administrative approvals subject to notice.

A. The director may grant preliminary approval or approval with conditions, or may deny the following actions subject to the notice and appeal requirements of this section:

- 1. Home occupations;
- 2. Short plats.

B. Final Administrative Approvals. Preliminary approvals under this section shall become final subject to the following:

- 1. If no appeal is submitted, the preliminary approval becomes the final decision of the city at the expiration of the fourteen-day notice period established in Section 17.07.020.

2. If a written notice of appeal is received within the specified time the matter will be referred to the hearing examiner for an open record hearing, except as otherwise noted in Titles 16 through 19. Upon receipt of any such appeal, the notice of application shall be combined with notice of the open record appeal hearing substantially in conformance with Section 17.07.030. Following the open record hearing, the hearing examiner shall make a decision on the appeal.

17.09.025 – Hearing Examiner Actions on Appeals.

A. Actions. Following completion of an open record hearing on an appeal, the hearing examiner shall enter a decision on the matter in writing. The decision shall be supported by written findings of fact and conclusions of law.

B. The hearing examiner’s decision shall include one of the following actions:

- 1. Approve;
- 2. Approve with conditions;
- 3. Modify, with or without the applicant's concurrence, provided that the modifications do not:
 - a. Enlarge the area or scope of the project,
 - b. Increase the density or proposed building size,
 - c. Significantly increase adverse environmental impacts as determined by the responsible official;
- 4. Deny without prejudice;
- 5. Deny with prejudice;
- 6. Remand to City staff for action consistent with its decision.

C. The hearing examiner’s decision on any matter is subject to a closed-record appeal before the city council. If not timely appealed, the hearing examiner’s decision shall become the final decision of the city.

17.09.060 - Procedures for public hearings.

Public hearings shall be conducted in accordance with the hearing body's rules of procedure and shall serve to create or supplement an evidentiary record upon which the body will base its decision. Before the planning commission, the chair shall open the public hearing. Before the hearing examiner, the hearing examiner shall open the public hearing. Before the city council, the mayor shall open the public hearing. In general, the following sequence of events shall be observed:

- A. Staff presentation, including submittal of any administrative reports. Members of the hearing body may ask questions of the staff.
- B. Applicant presentation, including submittal of any materials. Members of the hearing body may ask questions of the applicant.
- C. Testimony or comments by the public germane to the matter. Questions directed to the staff or the applicant shall be posed and/or allowed by the chair, hearing examiner, or mayor at his or her discretion.
- D. Rebuttal, response or clarifying statements by the staff and the applicant.
- E. The evidentiary portion of the public hearing shall be closed and the hearing body shall deliberate on the matter before it.

17.09.080 - Reconsideration.

- A. A party of record to an open record hearing or closed record appeal may seek reconsideration of a final decision of the hearing examiner, planning commission, or council, or of a planning commission recommendation on a matter identified in LMC 17.03.030, 17.03.040, or 17.03.050 by filing a written request for reconsideration with the director within five days of the date of issuance of the final decision or mailing of the planning commission recommendation, as applicable. The request shall comply with the content requirements listed in Section 17.11.020(B).
- B. The hearing body that issued the final decision of which the party seeks reconsideration shall consider the request at its next regularly scheduled meeting which follows the request by five or more days, except that the hearing examiner shall consider a request for reconsideration at least five days but not more than thirty days after the request is filed. All hearing bodies shall consider reconsideration requests without public comment or oral argument by the party filing the request.
- C. If the hearing body denies the request for reconsideration, said denial must be in writing and issued in the same form as the original final decision or recommendation, and notice of the denial shall be provided to all parties in the same manner as a final decision. The date of written denial of a timely filed written request for reconsideration shall be considered the new date of issuance of the final written decision by the city, or recommendation of the planning commission, as applicable.
- D. If the request is granted, the hearing body may immediately revise and reissue its decision or recommendation or may call for argument in accordance with the procedures for closed record appeals. Notice of the granted request for consideration shall be provided to all parties in the same way as notice of a final decision.
- E. Reconsideration shall be granted only when an obvious legal error has occurred or a material factual issue has been overlooked that would change the previous decision.

17.09.090 - Remand.

In the event the hearing examiner or city council determines that the public hearing record or record on appeal is insufficient or otherwise flawed, the hearing examiner or council may remand the matter back to the decisionmaker or hearing body to correct the deficiencies. The remand order shall specify the items or issues to be considered and the time frame for completing the additional review and work.

17.09.100 - Final decision.

A. Time. The final decision of the city on a development proposal shall be made within one hundred twenty days from the date of the letter of completeness. The one hundred twenty-day deadline does not apply to the following matters or circumstances:

1. Amendments to the comprehensive plan or development code;
2. Any time required to correct plans, perform studies or provide additional information, provided that within fourteen days of receiving the requested additional information, the director shall determine whether the information is adequate to resume the project review;
3. Substantial project revisions made or requested by an applicant, in which case the one hundred twenty days will be calculated from the time that the city determines the revised application to be complete;
4. All time required for the preparation and review of an environmental impact statement;
5. Projects involving the siting of an essential public facility;
6. An extension of time mutually agreed upon by the city and the applicant;
7. All time required to obtain a variance;
8. Any remand to the hearing body;
9. All time required for the administrative appeal of a determination of significance.

B. Effective Date. The final decision of the city made by the city council, hearing examiner or applicable hearing body shall be effective on the date of issuance of the decision, motion, resolution or ordinance, or subsequent decision in response to a timely filed motion for reconsideration. For purposes of this chapter, the date of issuance of the decision is:

1. Three days after a written decision is mailed by the city or, if not mailed, the "date of notice" listed in the decision which shall be the date on which the city provides notice that a written decision is publicly available;

- 2. If the final decision is made by ordinance or resolution by the city council sitting in a quasi-judicial capacity, the date the council passes the ordinance or resolution;
- 3. If neither subsections(B)(1) or (B)(2) of this section applies, the date the decision is entered into the public record.

17.11.010 - Appeal of administrative interpretations and approvals.

Administrative interpretations made pursuant to Section 17.03.020(B) and administrative approvals made pursuant to Sections 17.09.010 and 17.09.020 may be appealed to the hearing examiner by applicants or parties of record in accordance with the provisions of this chapter. The hearing examiner’s decision shall be subject to closed record appeal to the city council.

17.11.020 – Appeals

A. Filing. All appeals, either open or closed record, and to any hearing body, authorized by this title shall be filed with the director within fourteen days after the date of the decision of the matter being appealed. These deadlines are jurisdictional. Appeals untimely or improperly filed shall not be considered.

B. Contents. The notice of appeal shall contain a concise statement identifying:

- 1. The decision being appealed;
- 2. The name and address of the appellant and his or her interest(s) in the matter;
- 3. The specific reasons why the appellant believes the decision to be wrong;
- 4. The desired outcome or changes to the decision;
- 5. The appeals fee.

Notwithstanding any other provision in city code, for an open record appeal of an impact fee determination, the appellant may elect to have the appeal consolidated with another open record hearing before the planning commission on the same project. Such election shall be clearly stated on the notice of appeal at the time of filing. Failure to so state this election on the notice of appeal at the time of filing shall result in the impact fee open record appeal hearing being conducted by the hearing examiner.

C. Appeal Process. Appeals shall be reviewed and processed, depending on the nature of the appeal, in conformance with Chapter 17.03 of the city code. Consolidation, notice, and other procedural requirements governing appeals are set forth in Chapters 17.05, 17.07 and 17.09 of the city code.

D. Burden of Proof and Standards for Granting Relief on Appeal. In any open record or closed record appeal, the burden of proof shall be on the appellant. Except where a different standard

of review is specified for a particular type of appeal elsewhere in city code, the decision on appeal shall be upheld unless it is shown to be:

- 1. Clearly erroneous under the law;
- 2. Not supported by substantial evidence; or
- 3. Arbitrary and capricious.

17.11.030 - Judicial appeal.

A. Appeals from the final decision of the city council or other city body involving Titles 16 through 19 of this code, and for which all other appeals specifically authorized have been timely exhausted, shall be made to Whatcom County Superior Court pursuant to the time limits and process established in Chapter 36.70C RCW ("Land Use Petition Act").

B. Notice of the appeal and any other pleadings required to be filed with the court shall be served as required by Chapter 36.70C RCW. This requirement is jurisdictional.

C. The cost of transcribing and preparing all records ordered certified by the court or desired by the appellant for such appeal shall be borne by the appellant, as prescribed in Chapter 36.70C RCW. The appellant shall post with the city clerk prior to the preparation of any records an advance fee deposit in the amount specified by the city clerk. Any overage will be promptly returned to the appellant.

17.11.040 – Appeal to the shoreline hearings board.

Final decisions of the city on shoreline substantial development permits, shoreline conditional use permits and shoreline variance requests are made by the hearing examiner when not accompanied by another project application to be heard by a different hearing body, or by the city council after recommendation from the planning commission pursuant to the city's shoreline management program. Appeals of such final decisions may be taken to the shoreline hearings board as provided in the Shorelines Management Act of 1971 and implementing regulations.

17.13.040 – Civil regulatory order.

A. Authority. A civil regulatory order may be issued and served upon a person if any activity by or at the direction of that person is, has been, or may be taken in violation of the development code.

B. Notice. A civil regulatory order shall be deemed served and shall be effective when posted at the location of the violation and/or delivered to any suitable person at the location and/or delivered by registered mail or otherwise to the owner or other person having responsibility for the location.

C. Content. A civil regulatory order shall set forth:

1. The name and address of the person to whom it is directed;
2. The location and specific description of the violation;
3. A notice that the order is effective immediately upon posting at the site and/or receipt by the person to whom it is directed;
4. An order that the violation immediately cease, or that the potential violation be avoided;
5. An order that the person stop work until correction and/or remediation of the violation as specified in the order;
6. A specific description of the actions required to correct, remedy, or avoid the violation, including a time limit to complete such actions;
7. A notice that failure to comply with the regulatory order may result in further enforcement actions, including civil fines and criminal penalties.

D. Remedial Action. The director may require any action reasonably calculated to correct or avoid the violation, including but not limited to replacement, repair, supplementation, revegetation or restoration.

E. Appeal. A civil regulatory order may be appealed in an open record appeal to the hearing examiner in accordance with Chapter 17.11 of this code.

17.13.050 – Civil fines.

A. Authority. A person who violates any provision of the development code, or who fails to obtain any necessary permit or who fails to comply with a civil regulatory order shall be subject to a civil fine.

B. Amount. The civil fine assessed shall not exceed one thousand dollars for each violation. Each separate day, event, action or occurrence shall constitute a separate violation.

C. Notice. A civil fine shall be imposed by a written notice and shall be effective when served or posted as set forth in Section 17.13.030(B). The notice shall describe the date, nature, location, and act(s) comprising the violation, the amount of the fine, and the authority under which the fine has been issued.

D. Collection. Civil fines shall be immediately due and payable upon issuance and receipt of the notice. The director may issue a regulatory order stopping work until such fine is paid. If remission or appeal of the fine is sought, the fine shall be due and payable upon issuance of a final decision. If a fine remains unpaid thirty days after it becomes due and payable, the director may take actions necessary to recover the fine. Civil fines shall be paid into the city's general fund.

E. Application for Remission. Any person incurring a civil fine may, within ten days of receipt of the notice, apply in writing to the director for remission of the fine. The director shall issue a decision on the application within ten days. A fine may be remitted only upon a demonstration of extraordinary circumstances.

F. Appeal. Following the director's final determination on a timely application for remission, the civil fine imposed may be appealed to the hearing examiner in an open record hearing as set forth in Chapter 17.11 of this code.

17.15.060 – Application – Procedures.

The review of the application for concurrency shall be integrated with the development permit and environmental review process, to avoid duplication of the review processes, as required by Chapter 17.05 Consolidated Application Process. The following provisions pertain only to the portion of the review process addressing the project's ability to meet the requirements for concurrency.

A. Preapplication Meetings. In accordance with Section 17.05.020, all persons proposing development, with the exception of building permits, shall attend a preapplication meeting to discuss the development process and requirements. The proponent shall at this time request a nonbinding concurrency determination (see subsection (C)(1) of this section) to learn whether adequate public facilities are available to serve new development.

B. Application. Any application, accompanying traffic impact analysis and other documentation which is subject to this chapter shall be reviewed by the planning director and used to determine its impact on each public facility affected. A proposal shall not be approved under this chapter if there is no concurrency with public facilities as required in this chapter. Additionally, the planning director shall determine if mitigation is required and appropriate under this chapter due to lack of concurrency and, if required, whether any transportation mitigation proposed by the developer meets the requirements of Section 17.15.080.

C. Processing of Applications—Approval/Denial. Issuance of final development permits shall be subject to the following concurrency requirements:

1. Concurrency Inquiry. An applicant may inquire whether or not facility capacity exists without an accompanying request for a development permit; but available capacity cannot be reserved at that time. A fee as established by resolution of the city council may be charged for such "concurrency determination."

2. Concurrency Test. Development applications that would result in a reduction of a level of service below the minimum level of service standard for public facility(ies) concurrent with their approval must be denied. For conducting the concurrency test, the level of service standards for water, sewer, stormwater, fire, parks, transportation and other public facilities shall be as provided in the comprehensive plan and in Section 17.15.070.

If the planning director determines that revisions to the proposed development may create additional impacts, the application may be required to undergo an additional concurrency test. The test shall be completed by the city within thirty days of receipt of a complete application as set forth in subsection A of this section. A "finding of concurrency" will be rendered only in conjunction with a complete development/concurrency application.

a. If existing or planned capacity of concurrency facilities is equal to or greater than capacity required to maintain the level of service standard for the impact from the development application, the concurrency test is passed.

b. Transportation Facilities. If the capacity of concurrency facilities is less than the capacity required to maintain the level of service standard for intersections impacted by development application, the concurrency test is not passed. The applicant may:

- i. Accept the city's denial of approval for lack of concurrency regarding transportation facilities, as required by RCW 36.70A.070(6)(e);
- ii. Accept mitigation for transportation facilities as provided in Section 17.15.080 of this chapter;
- iii. Appeal the results of the concurrency test to the hearing examiner in accordance with Chapter 17.11 of this code.

c. Other Public Facilities. If the capacity of concurrency facilities is less than the capacity required to maintain the level of service standard for the impact from the development application, the concurrency test is not passed. The applicant may:

- i. Accept a ninety-day reservation of the available, existing capacity and modify the application to reduce the need for facility capacity that does not exist;
- ii. Accept a ninety-day reservation of the available, existing capacity and demonstrate to the city's satisfaction that the proposed development will have a lower need for facility capacity than usual and therefore, capacity is adequate;
- iii. Accept a ninety-day reservation of available facilities that exist and arrange with the appropriate facility and service provider for the provision of the additional capacity required; or
- iv. Accept the city's denial of the development permit. Denial of the permit for lack of concurrency with public facilities is an emergency measure taken by the city to investigate whether there is just cause or ability to amend or revise the comprehensive plan;
- v. Appeal the results of the concurrency test to the hearing examiner in accordance with Chapter 17.11 of this code.

3. Finding of Concurrency. The determination that facility capacity is available shall be based on information provided by the applicant to the satisfaction and approval of the planning director. The finding of concurrency shall be binding on the city at such time as the city determines that adequate capacity is available or the applicant provides mitigation or assurances, as set forth in Section 17.15.080.

4. Term of Capacity. A finding of concurrency shall be valid at final approval and will remain valid so long as satisfactory development progress is made. The planning director may at his or her discretion require the applicant to submit proof of such progress. If the development is not under construction one year after the date of final approval, or construction has ceased for a period of one year, the finding of concurrency shall expire. The unused capacity shall then be returned to the pool of available capacity, and the applicant shall be required to undergo an additional concurrency test prior to commencement of construction.

5. Unused Capacity. Any capacity that is not used because the developer decides not to develop, or the accompanying development permit expires, shall be returned to the pool of available capacity.

6. Level of Service Areas. The standards for levels of service of transportation facilities shall be applied to the issuance of development permits.

7. Funded Projects. The developer may rely on capacity provided by funded projects, including projects in the current capital facilities plan (CFP) and by street improvements under contract as part of other approved development proposals. The approval is subject to the requirements that the applicant must fully fund or mitigate any impacts as required in this chapter. If the list of funded projects is modified after the time the proposal vests, the applicant may elect to rely on the new capacity provided by the modified list of funded projects provided that such election must be made prior to issuance of a development permit.

D. Development Approval. No final development permit shall be issued by the city unless there is sufficient capacity of public facilities available to meet the standards for levels of service after existing development and for the proposed development as required in this chapter.

E. Nonassignability of Determination. The determination that facility capacity is available runs with the land and is not personal to the applicant. The determination is not assignable or transferable to another lot or parcel.

17.15.080 – Mitigation for transportation facilities.

A. General. If mitigation is required to meet the intersection level of service standard, the applicant may instead choose to: 1. Reduce the size of the development until the standard is met; 2. Delay development schedule until city and/or others provide needed

improvements; or 3. Provide the mitigation as provided for in this chapter. Mitigation must be acceptable to the city in form and amount, to guarantee the applicant's pro rata share of the financial obligation for capital improvements for the benefit of the subject property.

B. Fees. Determination of transportation mitigation fees shall be as follows:

- 1. Transportation mitigation fees shall be based on the per peak hour trip rate.
- 2. City standards shall include:
 - a. Trip generation rates set forth in the latest edition of the Institute of Transportation Engineers, Information Report—Trip Generation. The presumption is that rates used by the city are accurate unless proven otherwise.
 - b. For projects with nontraditional peak hour impacts or different from standard projects, a special report, based on generally accepted traffic engineering principles may be submitted and considered.
- 3. Credits shall be given to reflect the projected impact on the community system such as, traffic decreases where an existing facility on site is removed or replaced, and traffic reduction systems which are binding and likely to remain effective for the life of the project.
- 4. Credits may also be given for projects which create a significant economic benefit to the community, including industrial or manufacturing uses with an excess of five hundred trips per day. The size of the credit shall be measured at an appropriate percentage of the anticipated annual tax revenue increase to the community and available for capital contribution to transportation facilities on the approved plan as a result of the project.

C. Mitigation Approval. If concurrency does not exist as required by this chapter, to obtain concurrency, the applicant may submit proposed mitigation measures to the planning director for council approval as follows:

- 1. Payment for and Timing of Improvements. Payment for developer-funded transportation improvements affecting streets and intersections within the city's direct operational control necessary to meet the requirements for concurrency must be made as follows:
 - a. For projects involving the division of land for sale or lease—upon the issuance of building permit for construction of each lot of record, for the traffic attributable to that lot.
 - b. For projects approved through site plan review—upon the issuance of the building permit authorizing the construction of any phase, for the traffic associated with that phase.

- c. For any project over one hundred peak hour trips per day—the fee may be paid in installments, at the municipal rate of interest in effect on the day of building permit issuance, with fifty percent being paid at the issuance of the building permit and the balance paid within twenty-four months.
 - d. Any such improvements required to be constructed by a developer to meet the requirements for concurrency must be under construction within six months after issuance of a certificate of occupancy, final plat approval or such other approval for the proposed development.
 - e. All improvements shall comply with construction standards provided in Title 12 of this code, and the city's Project Manual for Engineering Design and Development Standards.
 - f. Furthermore, the city administrator or his or her designee shall require an assurance device to guarantee completion of such improvements in accordance with the construction standards.
 - g. The finance director shall be responsible for maintaining all mitigation funds received under this chapter.
 - h. Payment for or the requirement of the developer to construct any transportation improvement necessary to meet the requirements of concurrency which is partially or wholly outside the city's direct operational control must be submitted for approval by the appropriate agency(ies) which have control. Should the appropriate agency(ies) elect to postpone the proposed improvements, or refuse to accept the proposed mitigation, the planning director or his or her designee shall collect and hold the amount estimated for mitigation until the improvement is made as required in this chapter. An assurance device satisfactory to the city administrator may substitute for the payment required in this subsection.
 - i. The project proponent may provide funding in an amount equal to the cost estimate of the city administrator or his or her designee, for necessary traffic improvements. The city administrator may require actual construction rather than provision of funding. Funds, or other commitments, for projects to be constructed by the city must be paid in full by the project proponent to the city prior to issuance of a development permit, final plat approval or such other approval for the project.
2. Transportation Demand Management. As a mitigation measure, the project proponent may establish transportation demand management (TDM) strategies to reduce single occupant vehicle trips generated by the project. The project proponent shall document the specific measures to be implemented and the number of trips to be reduced by each measure. The TDM program may be denied based on the criteria of subdivision 3 of this subsection. The planning director or his or her designee must approve the strategies and

shall monitor and enforce the performance of agreed upon TDM measures. The planning director will determine if performance measuring devices shall be imposed and may require annual documentation of the continued effectiveness of such measures. The planning director may require that additional measures be implemented if the agreed upon measures fail to result in the reduction of the stated number of trips.

3. Decision Criteria—Acceptable Mitigation. Acceptable mitigation requires a finding by the planning director that:

- a. The mitigation is consistent with the comprehensive plan;
- b. The mitigation contributes to system performance;
- c. Improvements to an intersection or roadway may not shift traffic to a residential area;
- d. Improvements to an intersection or roadway may not shift traffic to other intersections for which there is no acceptable mitigation available;
- e. Improvements to an intersection or roadway may not shift traffic to intersections within another jurisdiction which would violate that jurisdiction's policies and regulations;
- f. Improvements to an intersection or roadway may not shift traffic to an arterial or state highway and violate the LOS prescribed for intersections on such;
- g. The effect of the improvement would not result in a reduction of the loss of another transportation objective, including but not limited to maintaining turning lanes, sidewalks, or bicycle lanes;
- h. The adverse environmental impacts of the facilities improvement can be reasonably alleviated;
- i. The improvement will not violate accepted engineering standards and practices.

Notwithstanding the foregoing, the planning director may require correction of a documented safety-related deficiency.

4. Mitigation Denial—Appeal Process. If the planning director determines that the proposed mitigation does not meet the requirements of this chapter, the planning director may deny the proposed improvements and determine the project is inconsistent with this chapter. The planning director's decision may be appealed by the applicant to the hearing examiner pursuant to the provisions of Chapter 17.11.

17.15.090 – Accounting and appeals.

A. All fees collected under this chapter shall be placed in separate accounts for the dedicated purpose for which collected. Such funds may only be expended for identified facilities on an approved plan, and must be spent within six years absent a specific situation where the city can justify a longer period.

B. Any person aggrieved by the action of the planning director based on a determination of capacity issued under this chapter, or the calculation or assessment of any fee, shall have the right to appeal such action to the hearing examiner. A disputed fee shall be paid under protest and the permit may be issued. Any such appeal shall be processed pursuant to the appeals procedures set forth in Chapter 17.11 of this code.

C. Any such appeal shall consider the issues raised, the proper fee to be assessed, and the necessity to find concurrency as a precondition to any project approval. The proper fee to be charged on appeal is determined (1) by compliance with the terms of the ordinance codified in this chapter, and (2) if for any reason the terms of the ordinance codified in this chapter are found inappropriate, such fee as necessary to assure concurrence for all facilities identified in this section, but not to exceed the fee collected pursuant to this chapter.

17.17.020 – Review and approval process.

A. When a request for a variance from development standards listed in Section 17.17.010 is consolidated with a development application, the variance request shall be considered concurrently with the development application. Such a variance application shall be heard in accordance with the provisions of Sections 17.09.025, 17.09.040 and 17.09.050 of the Lynden Municipal Code.

B. When a request for a variance to any provisions, standards or requirements listed in Section 17.17.010 does not include an application for additional development permits, or the proposed action does not require an open record public hearing, the application will be reviewed in accordance with the provisions of Chapter 17.05 of the Lynden Municipal Code. Said variance request will be heard by the city council in an open record public hearing consistent with the provisions of Section 17.09.060 of the Lynden Municipal Code.

17.17.040 – Standards and criteria for granting a variance.

Where unnecessary hardships and practical difficulties render it difficult to carry out the development standards of the City of Lynden as listed in Section 17.17.010, the hearing body shall have power to grant a variance in harmony with the general purpose and intent of the provisions of the development standards so that the spirit of those standards will be observed, public safety secured and substantial justice done. However, the hearing body shall not vary any of the rules, regulations or provisions of those development standards unless findings are made that all of the following conditions exist in each case:

A. The variance shall not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity in which the property on behalf of which the application was filed is located;

B. That such variance is necessary, because of special circumstances relating to the size, shape, topography, location or surroundings of the subject property to provide it with rights and privileges permitted to other properties in the vicinity in which the subject property is located;

C. That the granting of such a variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is located; and

D. That the variance request is based on sound engineering judgment and includes additional mitigation sufficient to offset adverse impacts to the public interest likely to result from granting the variance.

Findings shall include a report which may contain pertinent information regarding any existing conditions relating to topography, geology, utilization of property, and such conditions set forth by the official plans, development plans, and the comprehensive plans.

19.22.010 Establishment, Relief, and Purpose

A. Establishment and Relief. There is established therein residential design standards and regulation by which residential structures may be permitted and maintained.

- 1. Relief from the required standards must be sought through the variance process.
- 2. Variance requests which relate specifically to site design development standards described in Section 19.22.020 shall be submitted to the hearing examiner consistent with Chapter 19.47 LMC.
- 3. Variance requests which relate specifically to the residential design criteria described in Section 19.22.030 through 19.22.050 shall be submitted to the Design Review Board consistent with LMC 19.45.035.

B. Purpose.

- 1. The essential purpose of the residential design standards to ensure that new developments meet and maintain a number of objectives that strive to promote orderly community growth and protect and enhance property values for the community as a whole.
 - a. To soften and enhance the built environment using yards and green space, to incorporate inviting pedestrian scale elements into all residential construction, and to provide adequate parking areas.
 - b. To create high-quality communities that have variation of architectural style and durable materials.

- c. To reduce the visual impact of the garage and accessory structures and emphasize the pedestrian environment.
 - d. To enhance the aesthetics of communities through the installation of landscape and the screening of undesirable elements. Also, to enhance safety and function of residential properties through appropriate exterior lighting, addressing, and fencing.
2. Residential design standards also seek to encourage low impact design (LID) techniques such as rain gardens, xeriscape, or pervious pavement to minimize adverse impacts on the natural environment.

19.42.040 – Appeal of determination of building official.

Any interested or aggrieved person, or any officer, official of any department, board or commission of the city, jointly or severally, may appeal to the hearing examiner any determination of the building official in the application of the provision of the zoning ordinance to a particular land and/or structure. The hearing examiner’s decision shall be final unless appealed to the city council. The city council shall hear the appeal as a closed record appeal and shall make the final decision of the city.

19.45.040 – Decision by the design review board.

The design review board shall review each application to determine if the design meets the guidelines as adopted in the design review guidebook for signs, and commercial and multi-family construction. It shall:

- A. Grant approval of the proposed exterior design or sign, or
- B. Deny the proposed design, or
- C. Approve the exterior design with conditions, which shall be noted by the building inspector.

The building official shall enforce the decisions of the design review board when granting a building permit. All designs shall be subject to the International Building Code as well as all Lynden Municipal codes.

The design review board shall not impose conditions which are contrary to the requirements of any applicable building codes.

The decision of the design review board shall be the final decision of the city, unless appealed within fourteen days to the Lynden City Council.

19.47.010 - Hearing examiner – Variances.

The hearing examiner has jurisdiction over requests for variances from the requirements of Title 19, except for Chapter 19.33 and LMC 19.22.003, .040, and .050, when such variances are not

applied for in conjunction with an underlying project, the application for which will be heard by a different hearing body, as provided by section 2.09.040. The decision of the hearing examiner shall be subject to closed record appeal to the city council as provided in Ch. 17.11 LMC. Applications for variances from the requirements of Title 19 that are made in conjunction with another project application for which an open record hearing is required shall be consolidated with that project application, and the hearing body hearing the underlying project application shall also issue a decision on the variance application. Terms used in this chapter are defined in LMC 17.01.030.

19.47.020 - Variance—Request—Hearing.

Any property owner or developer may make a request to the hearing body authorized to hear such request for a variance from bulk provision of the zoning ordinance. The applicant shall appear at the public hearing, at the time and place fixed by the hearing body, in person, by agent or by attorney.

19.47.030 - Variance —Support or Opposition

Any interested or aggrieved person or persons, jointly or severally, and any officer or official of any department, board or commission of the city, jointly or severally, may support or oppose, in writing, any applicant's request for a variance. The written statement shall specify the reasons for supporting or opposing the applicant's request, contain the signature and description of the land of each property owner, and be submitted timely to the hearing body .

19.47.040 - Variance —Application procedure.

Unless stated otherwise in this Chapter, the notice and procedural requirements for variance proceedings shall be substantially the same as an appeal before the hearing examiner brought under Ch. 17.11 LMC, and shall be conducted consistent with Ch. 17.09 LMC.19.47. .050 - Variance —Stay authorized when.

A request to a hearing body for a variance from the requirements of Title 19 stays all proceedings, in furtherance of the action for which the variance is sought. However, upon a motion by a party, the hearing body may make a finding supported by clear, cogent, and convincing evidence that a stay would cause imminent peril to life or property, in which case such action shall not be stayed other than by an order issued by the Superior Court.

19.47.060 - Jurisdiction—Variances—Power to vary rules and regulations when.

Where unnecessary hardships and practical difficulties render it difficult to carry out a bulk provision of the zoning ordinance, the hearing body may grant a variance in harmony with the general purpose and intent of the provisions contained in this title from any rules, regulations or provisions of the zoning ordinance relating to the bulk provisions of the zoning ordinance, so that the spirit of the ordinance will be observed, public safety secured, and substantial justice done.

However, the hearing body may only grant a variance if it finds that all of the following conditions exist for each variance application:

- A. The variance shall not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and zone in which the property on behalf of which the application is located;
- B. That such variance is necessary, because of special circumstances relating to the size, shape, topography, location or surroundings of the subject property, to provide it with rights and privileges permitted to other properties in the vicinity and zone in which the subject property is located; and
- C. That the granting of such a variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is located.

19.47.070 – Hearing—Decision.

Hearings on variance requests shall be open record hearings and shall follow substantially the same format as provided in Section 17.09.060. Notice and other procedural elements shall be as provided in the other applicable sections of Title 17, including Ch. 17.11 LMC.

The hearing body’s decision shall be in substantially the same form as a decision on an appeal under Title 17 and shall include written findings of facts, conclusions of law, and decision. The findings of fact shall include pertinent information regarding any existing or preexisting conditions relating to topography, geology, utilization, and such conditions set forth by the official plans, development plans, and the comprehensive plans, and relevant facts which support and oppose the contention of the applicant. The hearing body’s decision on a variance request may grant the variance, deny the variance, or grant the variance with conditions. The hearing body’s decision may be subject to reconsideration under the same process set forth in Section 17.09.080.

19.47.080 –Decision by hearing body—Appeal—Effective date.

Section 17.09.100(B) provides the effective date of the decision, unless the hearing body makes a finding that making the decision effective immediately is necessary for the preservation of property or personal rights. If the hearing body’s decision is associated with a pending permit application, the decision shall cease to be effective on the same date said application expires without having been granted. Otherwise, if the applicant does not obtain a building permit and/or occupancy permit within one year from the effective date of the effective date of the final decision of the city, the decision shall cease to be effective.

19.59.180 - Variances.

When an application for a communications facility does not require the approval of the planning commission and is not otherwise associated with a project application to be heard by another

hearing body, the hearing examiner shall have the authority to grant a variance from the requirements of this chapter, subject to closed record appeal to the city council as provided in Ch. 17.11 LMC. If the communication facility requires the planning commission’s approval under LMC 19.59.060, the planning commission shall consolidate the hearing on the variance with the hearing on the application and make a decision on both matters. If the variance application for the communication facility is otherwise dependent on or connected to another underlying project application for which an open record hearing is required, the two hearings shall be consolidated and the hearing body making the decision on the underlying project shall also issue a decision on the variance application.

19.59.190 – Interpretations.

Where there is any dispute concerning the interpretation of this chapter, the decision of the city planner shall prevail, subject to open record appeal to the hearing examiner. The hearing examiner’s decision shall be in writing and shall be subject to closed record appeal to the city council pursuant to Ch. 17.11 LMC.

19.59.220 – Nonconforming facilities.

A. Nonconforming facilities shall be removed or brought into compliance with this chapter no later than the expiration of the amortization period of each such facility, determined as follows:

1. For facilities made nonconforming by passage of the ordinance codified in this chapter, January 1, 2002.
2. For facilities made nonconforming by passage of any subsequent ordinance, five years after the effective date of such ordinance.

B. Loss of Nonconforming Status.

1. A nonconforming wireless communications facility shall immediately lose its legal, nonconforming status if:
 - a. The facility is altered in any way in structure or color, or if the structure exceeds the allowable number of appurtenance facilities;
 - b. The facility is damaged in excess of fifty percent of the original cost of the facility;
 - c. The facility is relocated; or
 - d. The facility is replaced.

2. On the occurrence of any of the events described in subsection (B)(1) of this section, the wireless communications facility shall be immediately brought into compliance with

this chapter with a new permit secured therefor, or shall be removed; provided, however, that the city planner may authorize specific alterations of such nonconforming facilities if it is found that:

- a. The end of the nonconforming facility's amortization period is more than two years away; and
- b. The total amount of aggregate noncompliance of the facility area of the existing facilities on the premises is reduced at least fifty percent by the proposed alterations; and
- c. The alteration shall not affect the original amortization period for the nonconforming facility.

C. Notice of Nonconforming Facilities. The city planner shall endeavor to give notice of the legal nonconformance and amortization periods set forth in this section to the owners of wireless communications facilities required to be removed. Such notice should be given to the owners of the facilities as shown by city records within one hundred twenty days of the effective date of the ordinance which renders the facilities nonconforming, whichever occurs later. Only one such notice need be given. Failure of the city planner to give the notice specified in this section, or failure of the facility owner to receive any such notice shall not limit or affect the city's power to enforce this chapter, or in any way reduce the ability of the city to require removal of the nonconforming facilities as provided by law.

D. Administrative Appeal. The owner of a nonconforming wireless communications facility may appeal to the city planner to request an extended period of use of such facility beyond the amortization period determined by this section. Any such appeal must be made to the city planner upon forms provided by the city and must be accompanied by an appeal filing fee as set by resolution of the city council. The city planner shall require that the appellant provide as part of the appeal a general description of the facility, its dimensions and physical position; evidence sufficient to establish the date and cost of the facility as originally constructed and installed; the amount of depreciation claimed and the depreciation schedule used for such facility as reflected by Internal Revenue Service schedules for prior years; the estimated cost of relocation or alteration of such facility, where applicable; together with any other information or documents specified by the city planner which are reasonably necessary to assist the city in making a determination on the appeal. The city planner shall consider the statements and documentary evidence contained in the application and any supplementary information which may reasonably be required. In addition, the city planner shall inspect the subject facility to determine its general condition, state of repair, and the extent to which the facility does not conform to the requirements and limitations of this chapter. The city planner may also request that the facility is inspected by the building official for structural soundness and building details. In making the determination, the city planner shall consider the unrecoverable cost invested in the

facility, the estimated remaining life of the facility, and the degree of nonconformity. The city planner shall prepare and make available for public inspection the specific method used in processing such appeals. All determinations of appeals made pursuant to this section shall be made in writing with specific findings of fact and conclusions in support of the decision. All such determinations of the city planner are subject to open record appeal to the hearing examiner as provided by this title. The hearing examiner’s decision shall be subject to closed record appeal to the city council under the procedures in Ch. 17.11 LMC.

19.67.110 – Appeals and adjustments.

Any person(s) seeking an adjustment to the dedication or mitigation assessments required by this chapter shall have a right to appeal to the hearing examiner. Any such appeal shall be filed with the city clerk in writing within fourteen days after the date of mailing or transmittal by the city of written notice of the specific dedication or mitigation assessments required by this chapter. Following receipt of such an appeal, the hearing examiner shall hold an open record hearing to consider the appeal. In considering the appeal, the hearing examiner may, in his or her discretion, take into account unusual circumstances in a specific case and may consider studies and data submitted by the appellant(s). The hearing examiner shall issue a written decision as he or she deems fair and equitable.

SECTION 3:

The City Council hereby approves the procedures of the office of the hearing examiner attached as Exhibit A hereto.

SECTION 4:

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 ordinance 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 5:

Any ordinance or parts of ordinances in conflict herewith are hereby repealed.

This ordinance shall be in full force and effect five (5) days after its passage, approval and publication as provided by law.

PASSED by the City Council this _____ day of _____, 2021,

and signed by the Mayor on the _____ day of _____, 2021.

MAYOR

ATTEST:

City Clerk

APPROVED AS TO FORM:

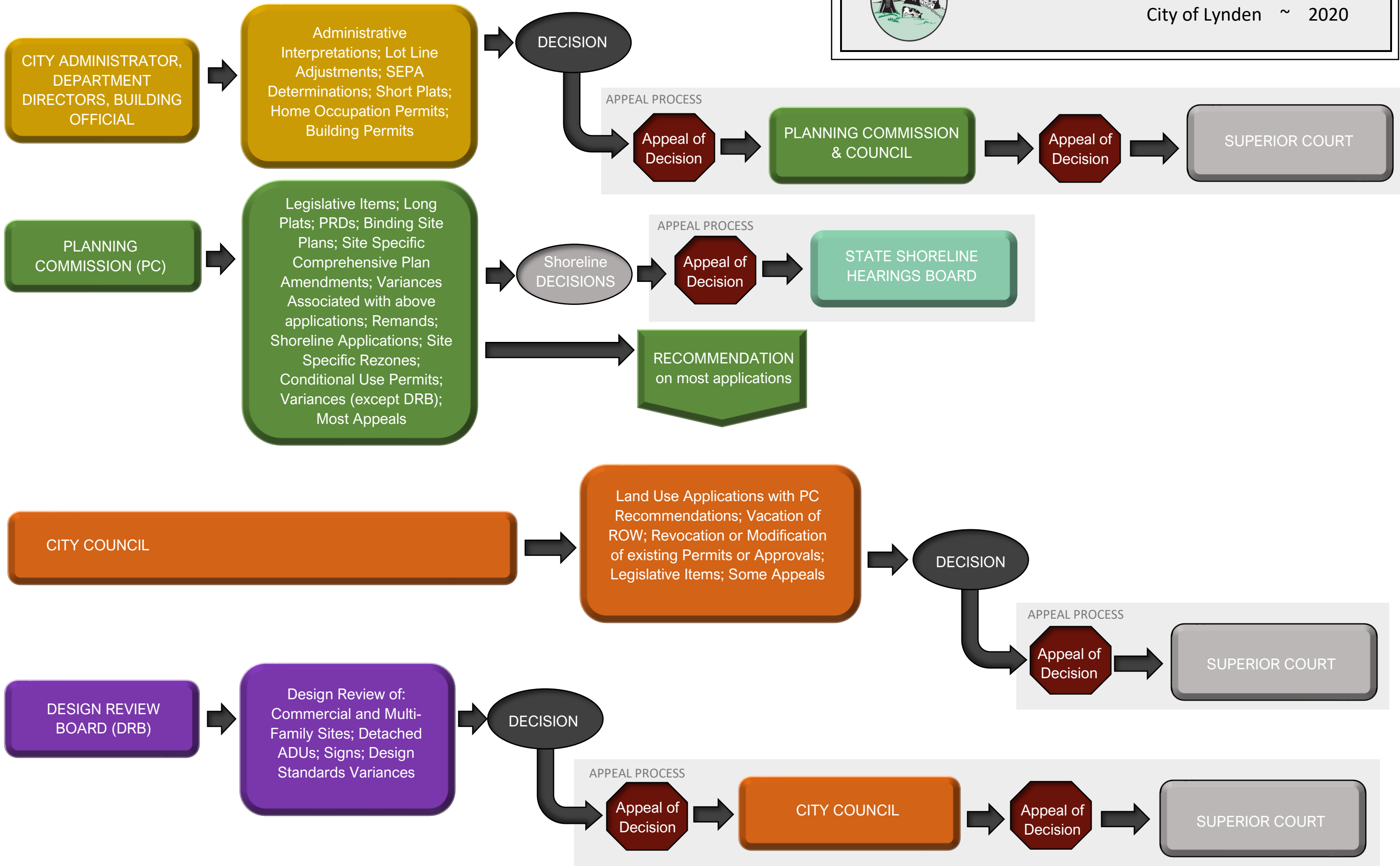
City Attorney

REVIEWING ENTITY

CITY OF LYNDEN APPLICATION & PROCESS - EXISTING



Initiative to install a Hearing Examiner Process
City of Lynden ~ 2020



ORDINANCE NO. 1615

AN ORDINANCE OF THE CITY OF LYNDEN ADOPTING A NEW CHAPTER 2.09 TO THE LYNDEN MUNICIPAL CODE AND AMENDING NUMEROUS CHAPTERS OF THE LYNDEN MUNICIPAL CODE, FOR THE PURPOSE OF ESTABLISHING THE OFFICE OF HEARING EXAMINER, AND ADOPTING PROCEDURAL RULES FOR THE CITY OF LYNDEN HEARING EXAMINER

WHEREAS, the Lynden City Council and the Lynden Planning Commission have been devoting increasing time to regulatory land use decisions and appeals therefrom; and

WHEREAS, the Lynden City Council believes appointing a hearing examiner to render final regulatory land use decisions will better promote fairness, due process, and efficiency in the hearing and resolution of certain types of land use disputes; and

WHEREAS, the City has the authority to establish the office of the hearing examiner pursuant to the authority provided by Article 11, Section 11 of the Washington State Constitution, RCW 35A.63.170 and Chapter 58.17 RCW; and

WHEREAS, the hearing examiner will assume all duties currently assigned to the board of adjustment and the board of appeals, in addition to some tasks currently assigned to the planning commission and city council; and

WHEREAS, as part of this process, some duties of the public works director are being shifted to the planning director; and

WHEREAS, the public interest will be served by amending the Lynden Municipal Code to include an office of the hearing examiner; and

WHEREAS, the foregoing recitals are material findings and declarations of the Lynden City Council;

NOW THEREFORE LET IT BE ORDAINED BY THE CITY COUNCIL OF LYNDEN AS FOLLOWS:

SECTION 1:

A new Chapter 2.09 of the Lynden Municipal Code is hereby enacted. Underlines indicate additions to the Code:

Chapter 2.09

HEARING EXAMINER

Sections:

- 2.09.010 Creation of Office—Purpose**
- 2.09.020 Appointment—Contract—Pro Tem**
- 2.09.025 Qualifications**
- 2.09.030 Freedom from Improper Influence**

- 2.09.035 Conflicts
- 2.09.040 Jurisdiction—Duties—Powers
- 2.09.045 Open Record
- 2.09.050 Procedures

2.09.010 Creation of Office—Purpose

The office of the hearing examiner is hereby created. The office of the hearing examiner is independent of city departments, boards, and commissions. It is responsible for the impartial administration of administrative proceedings in accordance with this chapter and shall preside over all such proceedings. Unless context requires otherwise, the term “hearing examiner” in this chapter shall be interpreted as including any hearing examiners pro tem.

2.09.020 Appointment—Contract—Pro Tem

- A. The city council shall appoint the hearing examiner by the vote of the majority of the members. Appointment shall be made by professional service contract.
- B. The city council may appoint one or more hearing examiners pro tem for terms specified at the time of appointment to serve in case the hearing examiner has a conflict or is absent. A hearing examiner pro tem shall have the same powers as the hearing examiner.

2.09.025 Qualifications

The hearing examiner shall be appointed based on his or her qualifications for the duties of such office. The hearing examiner shall be an attorney in good standing and admitted to the bar of the State of Washington with experience in land use or as a hearing examiner. Hearing examiners shall hold no other elective or appointive office or position in the city’s government. The same qualifications apply to hearing examiners pro tem.

2.09.030 Freedom from Improper Influence

No city official or any other person shall interfere with or attempt to interfere with the hearing examiner in the performance of his or her designated duties. This section does not prohibit the City attorney from rendering legal services to the hearing examiner if requested by the hearing examiner and approved by the mayor.

2.09.035 Conflicts

The hearing examiner shall not conduct or participate in any hearing or decision in which the hearing examiner has a direct or indirect personal interest which might improperly interfere with the decision-making process or violate the appearance of fairness doctrine or the codification of such doctrine in Chapter 42.36 RCW. Any actual or potential conflict of interest shall be disclosed to the parties immediately upon discovery of such conflict and the hearing

examiner shall abstain from any further proceedings in the matter unless all parties agree in writing to have the matter heard by that hearing examiner.

2.09.040 Jurisdiction—Duties--Powers

- A. The hearing examiner shall have the power to receive and examine available information, conduct public hearings, prepare a record thereof, and enter decisions as provided by ordinance.
- B. The hearing examiner shall have the exclusive jurisdiction to hold an open record hearing and make a decision on the following matters:
 - 1. Appeals of the determinations of the fees and dedications made under Chs. 3.28, 3.40, 3.44, and 19.67 LMC;
 - 2. Appeals of dangerous dog declarations under Ch. 6.09 LMC;
 - 3. Appeals of determinations of eligibility for relocation assistance under Ch. 12.36 LMC;
 - 4. Appeals of the city's determination to suspend services, impose penalties, recover costs, establish compliance schedules, or terminate a user’s wastewater and/or collection services, under Ch. 13.12 LMC;
 - 5. Appeals of the city’s computation or application of the stormwater management utility service charge or FCI charges or imposition of sanctions or fines under Ch. 13.24 LMC;
 - 6. Challenges of the written interpretations and/or decisions of the public works director made under Ch. 13.28 LMC;
 - 7. Petitions for exemptions from payment of the utility fee or for conversion to exempt status, and appeals of the city’s computation of the applicable fees assessed, under Ch. 13.32 LMC;
 - 8. Appeals of the determination of the planning director regarding moving buildings under Ch. 15.05 LMC;
 - 9. Appeals of the determination of the building code official as described in Ch. 15.14 LMC;
 - 10. Appeals of final SEPA threshold determinations and adequacy of final EISs, made under Ch. 16.05 LMC, including related procedural and substantive issues;
 - 11. Appeal of director's final critical area determinations;

~~11.12.~~ All applications for shoreline permits or revisions to shoreline permits under Ch. 16.08 LMC, except where the permit or revision is part of a project application being decided upon by a different hearing body;

~~12.13.~~ Under Ch. 16.12 LMC – Floodplain Management, all appeals of determinations of the director, and variance requests where not consolidated with an underlying project application being decided upon by a different hearing body;

~~13.14.~~ Appeals of the imposition of penalties or of the planning director's decision on mitigation or revision under Ch. 16.16 LMC;

~~14.15.~~ Appeals of the administrative approvals described in LMC 17.09.010 and 17.09.020;

~~15.16.~~ Appeals of administrative interpretations and approvals under LMC 17.11.010;

~~16.17.~~ Appeals of civil regulatory orders and civil fines issued under Ch. 17.13 LMC;

~~17.18.~~ Appeals of the results of concurrency tests, denials of proposed mitigation for transportation facilities, and any other determinations of capacity or calculations or assessments of any fees made under Ch. 17.15 LMC;

~~18.19.~~ Amortization periods for nonconforming signs;

~~19.20.~~ All variances from the requirements of Title 19, except variances from the requirements of Ch. 19.33 LMC and LMC 19.22.030, .040, and .050, and except where the variance is part of a project application being decided upon by a different hearing body;

~~20.21.~~ Appeals of determinations of building official as described in LMC 19.42.040;

~~21.22.~~ Appeals of administrative interpretations made under Ch. 19.59 LMC; and

~~22.23.~~ Other actions as required by this code.

C. In order to avoid the city holding two hearings on one project, the hearing examiner shall only hear variance applications and shoreline permit applications or revisions that are not filed as part of an underlying project for which another hearing body will conduct a hearing. For example, if an applicant submits a long plat application along with a variance application to use a different an alternative cul-de-sac design, the hearing on the variance on the cul-de-sac shall be consolidated with the hearing on the

long plat, and the consolidated hearing shall be before the hearing body holding the hearing on the long plat.

- D. The hearing examiner is empowered to act in lieu of the board of adjustment, the board of appeals, the city council, the planning commission and such other officials, boards, or commissions as may be assigned for those matters listed in subsection (B) of this section. Wherever existing ordinances, codes or policies authorize or direct the board of adjustment, the board of appeals, the city council, the planning commission or other officials, boards, or commissions to undertake certain activities which the hearing examiner has been assigned under said subsection (B), such ordinances, codes or policies shall be construed to refer to the hearing examiner.
- E. The hearing examiner may include in a decision any conditions of approval that are necessary to ensure that the proposal complies with all applicable code criteria and comprehensive plan policies.
- F. The hearing examiner has such other powers as are necessary to carry out the purpose and intent of this chapter, including without limitation to conduct pre-hearing conferences; to require the submittal of information; to schedule and continue hearings; to administer oaths and affirmations; to issue subpoenas; to regulate the course of pre-hearing discovery; to preside over hearings and the conduct of parties; to question parties and witnesses at a hearing; to rule on all evidentiary, procedural and other matters, including all motions; to maintain order; to establish post-hearing procedures; to issue findings of fact and conclusions of law; to enter final decisions; and to adopt procedures consistent with 2.09.050.
- G. With the exception of shoreline permit applications and revisions heard by the hearing examiner, the hearing examiner’s decision on these matters identified in subsection (B) shall be final unless timely appealed to the City Council following the procedures in Ch. 17.11 LMC. The City Council shall hear appeals of these matters as closed record appeals. The hearing examiner shall make the final decision of the city on the shoreline permit issues he or she hears. The determination of the hearing examiner on shoreline permit applications and revisions shall be subject to appeal to the Shoreline Hearings Board.

2.09.045 Open Record and Open to Public

For every matter over which the hearing examiner has jurisdiction, the hearing examiner will conduct an open record hearing, which shall be open to the public.

2.09.050 Procedures

The City Council shall approve rules and regulations for procedural matters related to the duties of the office of the hearing examiner.

SECTION 2:

The following sections of the Lynden Municipal Code are hereby amended. Underlines indicate additions and strikethroughs indicate deletions.

3.28.190 - Appeals to ~~council~~ hearing examiner.

Any taxpayer aggrieved by the amount of the fee or tax found by the city finance director to be required under the provisions of this chapter may appeal to the ~~city council~~ hearing examiner from such finding by filing a written notice of appeal with the city finance director within seven fourteen days from the time such taxpayer was given notice of such amount. The finance director shall, as soon as practicable, fix a time and place for the hearing of such appeal, and ~~he~~ shall cause a notice of the time and place thereof to be delivered or mailed to the appellant. ~~At such hearing~~ the taxpayer shall be entitled to be heard and to introduce evidence on his or her own behalf. The ~~city council~~ hearing examiner shall, following the hearing, thereupon ~~ascertain the correct amount of the fee or tax by resolution and render a decision. and t~~ The finance director shall immediately notify the appellant thereof, which amount, together with the costs of appeal, if such applicant is unsuccessful therein, must be paid within five days after such notice is given. The ~~mayor~~ hearing examiner may, by subpoena, require the attendance thereat of any person, and may also require him to produce any pertinent books and records. Any person served with such subpoena shall appear at the time and place therein stated, produce the records required, if any, and shall testify truthfully under oath administered by the hearing examiner ~~mayor~~ as to any matter required of him pertinent to the appeal, and it is unlawful for him to fail or refuse so to do.

3.40.110 – Appeals and adjustments.

Any person(s) seeking an adjustment to the dedication or mitigation assessments required by this chapter shall have a right to appeal to the ~~city council~~ hearing examiner. Any such appeal shall be filed with the city clerk in writing within ~~ten~~ fourteen days after the date of mailing or transmittal by the city of written notice of the specific dedication or mitigation assessments required by this chapter. Following receipt of such an appeal, the ~~city council~~ hearing examiner shall hold a public hearing to consider the appeal ~~at its next available meeting~~. In considering the appeal the ~~city council~~ hearing examiner may, in ~~its~~ his or her discretion, take into account unusual circumstances in a specific case and may consider studies and data submitted by the appellant(s). The ~~city council~~ hearing examiner shall issue such determination as he or she ~~it~~ deems fair and equitable. The decision of the ~~city council~~ hearing examiner shall be in writing. ~~and shall be the final decision of the city.~~

3.44.050 - Appeals and adjustments.

Any person desiring to appeal from a decision made in the enforcement of the provisions of this chapter or any person seeking an adjustment to the dedication or mitigation assessments required by this chapter due to unusual circumstances in specific cases, shall file ~~submit~~ an appeal with the city clerk in writing within fourteen days after the date of mailing or transmittal by the city of written notice of the specific dedication or mitigation assessments required. ~~in accordance with the provisions of Chapter 17.11 of the Lynden Municipal Code and~~ The appeal shall be heard by the city council as an open record appeal as provided in Chapter 17.03 of the Lynden Municipal Code hearing examiner in conformance with Ch. 2.09 LMC. Upon the conclusion of the hearing, the hearing examiner shall issue a written decision.

3.46.110 – Appeals.

A. A developer or property owner shall have the right to file an appeal of the amount of an impact fee determined by the director. All such appeals shall be filed and reviewed in conformance with the requirements established for filing appeals authorized by Title 17 of this code as set forth in Chapter 17.11; and shall be heard by the ~~city council~~ hearing examiner as an open record appeal as provided in Chapter 17.03 of this code. The developer or property owner shall bear the burden of proving:

1. That the director committed error in calculating the developer's/property owner's proportionate share, as determined by an individual fee calculation or, if relevant, as set forth in the fee schedule, or in granting credit for the benefit factors;
2. That the director based his/her determination upon incorrect data; or
3. That the director's decision was arbitrary and capricious.

5.02.080 – License – Appeals.

Any person applying for or holding a license under this chapter, who is aggrieved by an action of the city clerk or other city official in connection with a license, may appeal the matter to the city council by:

- A. Filing a letter with the city clerk, stating the matter complained of, within thirty days of the action complained of; and

- B. Appearing in person before the council or any of its committees which may be designated to hear and decide the appeal by the mayor.

5.16.100 – Grievance procedure – Hearing – Notice – Decision.

Any person aggrieved by the action of the police chief in the disapproval of a permit or license as provided in Section 5.16.040, ~~of this chapter, may shall have the right of~~ appeal to the city council. Such appeal shall be taken by filing with the city council within fourteen days after notice of the action complained of has been mailed to such person's last known address, and shall consist of a written statement setting forth fully the grounds for the appeal. The council shall set a time and place for a hearing on such appeal, and notice of such hearing shall be given to the appellant in the same manner as provided in Section 5.16.080 ~~of this chapter,~~ for notice of hearing on revocation. The decision and order of the city council appeal shall be final ~~and conclusive.~~

5.40.040 - License issuance for operation of business.

~~No business license to operate a horse taxi shall be issued except by~~ the city council, public works director shall issue all business licenses to operate horse taxis, after review of the license application and inspection reports of the chief of police, or his designee. The ~~city council~~ public works director may, in ~~its~~ his or her sole discretion, approve or deny the application. Any applicant denied a license by the ~~city council~~ public works director may ~~shall have the right to~~ appeal to the ~~Whatcom County superior court~~ city council. Such appeal shall be filed no later than thirty days after the decision of the ~~city council~~ public works director.

6.09.050 – Appeal of dangerous dog or potentially dangerous dog declaration.

The owner may file an appeal with the city clerk to be forwarded to the hearing examiner ~~to the city council~~ challenging the final written order and declaration of the police chief made pursuant to this chapter. The appeal must be filed within ~~ten~~ fourteen days of the date of mailing the declaration of dangerous dog or potentially dangerous dog. The ~~city council~~ hearing examiner ~~will~~ shall conduct an open-record public hearing for any timely filed appeal within thirty days of the date of filing and shall issue his or her ~~its~~ decision in writing.

12.36.030 – Appeal requirements.

Appeals must be in writing accompanied with the applicable appeal fee if any. The appeal ~~shall~~ should include the following:

1. The City's project name.
2. The project parcel number or the tax parcel number of the real property involved.
3. Date of the relocation notice that is being appealed.
4. Name of the aggrieved person~~(s)~~ ("appellant~~(s)~~").
5. A statement of issues/concerns.
6. An explanation of what the appellant is claiming, including; all facts, reasons, and any supporting evidence as to the nature of the grievance or why the appellant is otherwise aggrieved.
7. The relief requested.
8. The signature, current address and telephone number of the appellant or the person's appellant's authorized representative.

12.36.040 - Right to representation and inspection of documents.

Any appellant has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person's appellant's own expense. The appellant shall have a right to inspect and copy all written materials in City files pertinent to their appeal, subject to reasonable conditions consistent with the Public Records Act. The City shall have the right to charge a reasonable fee for providing copies of documents requested.

12.36.050 - Scope of review of the appeal.

12.36.051 - Appeal to Public Works Director.

Within fourteen days of receipt of an appeal under this chapter, the Public Works Director will evaluate the appeal to determine if it is complete. The Public Works Director will send written notice to the appellant informing them if the appeal has been determined to be complete or requesting additional information. If the appeal is determined to be complete, the Public Works Director will issue and mail to the appellant a written decision on the appeal, based on applicable relocation assistance regulations, within fifteen days of the date of notice of completeness. If additional information is necessary to process the appeal, the Public Works Director will request the appellant file any additional information within ten days. Within fifteen days of (a) receiving the requested additional information, or (b) the deadline for receiving the requested additional information if sufficient additional information is not received, the Public Works Director will issue and mail to the appellant a written decision on the appeal based on applicable relocation

assistance regulations. A written decision on appeal issued by the Public Works Director pursuant to this section shall be the City's final decision unless an appeal of the Public Works Director's decision is filed as set forth in section 12.36.052 LMC.

12.36.052 - Appeal of Public Works Director determination to Hearing Examiner City Council.

If the appellant believes the Public Works Director has not correctly evaluated the appeal, the appellant may appeal the decision of the Public Works Director to the City Council Hearing Examiner by filing a written appeal with the Public Works Director within ~~ten~~ fourteen days of the date of mailing of the City Public Work Director's decision. Appeals filed after the ~~ten~~fourteen-day time period has lapsed will not be considered. The Hearing Examiner City Council will conduct an open record hearing and review and make ~~the final~~ a decision in writing of the City on the appeal based on applicable relocation assistance regulations.

13.12.285 – Administrative enforcement remedies.

A. State Responsibility for Administrative Actions. The department is charged with permitting and regulating significant industrial user~~s~~' discharging to the city POTW. Except for emergency actions, it shall be the policy of the director to coordinate actions in regard to control of such users with the department until such time as a local pretreatment program for the city may be authorized by the state. Failure to conduct such coordination, however, shall not invalidate any action of the city authorized by this chapter.

B. Notification of Violation.

1. Whenever the director finds that any user has violated or is continuing to violate any provision of this chapter, or an order issued hereunder, the director may serve upon such user written notice of the violation.

2. Within ten days of receipt of such notice of violation, the user shall submit to the director an explanation of the violation and a plan to satisfactorily correct and prevent the reoccurrence of such violation(s). The plan shall include specific actions the user will take, and the completion dates of each. Submission of this plan in no way relieves the user of liability for any violations occurring before or after receipt of the notice of violation.

3. Nothing in this section shall limit the authority of the city to take any action, including emergency actions or any other enforcement action, without first issuing a notice of violation.

C. Consent Orders.

1. The director, upon approval of the city council, is empowered to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any user responsible for noncompliance. Such consent orders shall include specific action to be taken by the user to correct the noncompliance within a time schedule also specified by the consent order.
2. Compliance schedules, when included in consent orders, may not extend the compliance date beyond any applicable state or federal deadlines. Consent orders shall have the same force and effect as compliance orders issued pursuant to any section regarding criminal prosecution, and shall be judicially enforceable.
3. Failure to comply with any terms or requirements of a consent order by the user shall be an additional and independent basis for termination of wastewater services, including collection and treatment, or for any other enforcement action authorized under this chapter and deemed appropriate by the director.

D. Compliance Orders.

1. Whenever the director finds that a user has violated, or continues to violate, any provision of this chapter, or order issued hereunder, the director may issue a compliance order to the user responsible for the violation. This order shall direct that adequate pretreatment facilities, devise, or other related appurtenances be installed and properly operated and maintained. The order shall specify that wastewater services, including collection and treatment, shall be discontinued and/or applicable penalties imposed unless, following a specified time period, the directed actions are taken.
2. Compliance orders may also contain such other requirements as might be reasonably necessary and appropriate to address the violation or noncompliance, including, but not limited to, the installation of pretreatment technology, additional self-monitoring, and management practices designed to minimize the amount of pollutants discharged to the POTW. A compliance order may not extend the deadline for compliance beyond any applicable state or federal deadlines, nor does a compliance order release the user from liability from any past, present, or continuing violation(s). Issuance of a compliance order shall not be a prerequisite to taking any other action against the user.
3. Failure to comply with any terms or requirements of a compliance order by a user shall be an additional and independent basis for termination of wastewater services, including collection and treatment, or any other enforcement action authorized under this chapter and deemed appropriate by the director.

E. ~~Administrative (Show Cause) Hearing~~ Appeal.

1. A user ~~shall be afforded the opportunity to an administrative hearing to contest~~ may appeal the city's determination to suspend services, impose penalties, recover costs, or establish compliance schedules, through cease and desist orders (hereinafter called collectively "enforcement actions"). A user shall also have the right to a hearing prior to termination of a user's wastewater collection and treatment services.

2. Notice shall be served on the user specifying the enforcement action, and the reasons for such action.

3. A user wishing to contest an enforcement action shall, within ~~ten~~fourteen days of receiving notice of the decision or order, file a notice of appeal with the director ~~a notice of request for an administrative hearing~~. The notice of appeal shall state the grounds for the appeal with specificity and shall be signed by the appellant.

4. The hearing examiner shall hold an open record hearing on the appeal in conformance with the procedures of Chs. 2.09, 17.09 and 17.11 LMC. This administrative hearing shall be held before the director. It shall be heard within thirty days of receipt by the director of the notice of request for hearing. The user requesting the hearing shall receive at least ten days notice of the date of the hearing.

~~5.~~ The director hearing examiner shall hear all evidence presented by the user, receive input from city personnel regarding the enforcement action, and shall render a written decision affirming the enforcement action, reversing it, or modifying it. The decision shall be served on the user.

~~6. A user desiring to appeal the decision of the director at an administrative hearing shall, within ten days of receipt of such decision, file a notice of appeal of such decision with the office of the city administrator. The appeal shall be heard as a closed record appeal in accordance with Chapters 17.09 and 17.11 of the Lynden Municipal Code.~~

~~7. An administrative hearing shall not be a bar against, or prerequisite for, taking any other action against the user.~~

F. Cease and Desist Orders.

1. The director may issue a cease and desist order upon finding a user has or is violating ~~either:~~ this chapter, a wastewater discharge permit order issued by the department, any other pretreatment standard or requirement. The decision to issue a cease and desist order shall consider the likelihood that a user's violations in conjunction with other discharges could cause a threat to the POTW, POTW workers, or the public, or cause pass through, interference, or a violation of the POTW's NPDES permit. The order issued by the director will direct the user to cease and desist all such violations and to:

- a. Immediately cease such actions or discharges as described;
- b. Comply with all applicable pretreatment standards and requirements;

c. Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.

2. Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the user.

G. Emergency Suspension of Wastewater Services.

1. The director may immediately suspend wastewater services, including collection and treatment, after informal notice to the user, if it appears to the city that such suspension is necessary to stop an actual or threatened discharge which reasonably appears to present or cause an imminent or substantial endangerment to either the environment, normal operation of the POTW, or the health or welfare of any person or the general public.

2. Any user notified of a suspension of its wastewater discharge shall immediately cease all such discharges. In the event of a user's failure to immediately comply voluntarily with the suspension order, the director shall take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW, its receiving stream, or the danger to the public. The director may allow the user to recommence its discharge when the user has demonstrated that the period of endangerment has passed, unless termination proceedings (under subsections F and G of this section) are initiated against the user.

3. It is unlawful for any person to prevent the director and/or city from terminating wastewater collection and treatment services in an emergency situation, by barring entry, by physically interfering with city employees or contractors, or by any other means.

4. A user that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful contribution and the measures taken to prevent any future occurrence, to the director prior to the date of any administrative hearing authorized by this chapter.

5. Nothing in this section shall be interpreted as requiring an administrative hearing prior to any emergency suspension under this section.

H. Termination of Treatment Services (Non-Emergency):

1. The director shall have authority to terminate wastewater services, including collection and treatment, through the issuance of a termination order to any user upon determining that such user has:

a. Refused access allowed by this chapter thereby preventing the implementation of any purpose of this chapter;

- b. Violated any provision of this chapter including the discharge prohibitions and standards of Section 13.12.140; or
 - c. Violated any lawful order of the city issued with respect to this chapter.
2. For users holding permits to discharge to the city POTW, violation of the following conditions is also grounds for terminating discharge services:
- a. Failure to accurately report wastewater constituents or characteristics;
 - b. Failure to report significant changes in operations or wastewater constituents or characteristics; or
 - c. Violation of any term or condition of the user's waste discharge permit.
3. Issuance of a termination order by the city shall not be a bar to, or a prerequisite for, taking any other action against the user.

13.24.090 – ~~Petitions; Appeals; burden of proof; sanctions.~~

~~A. Administrative Petition to Public Works Director. Any property owner who believes that the stormwater management utility service charge for their property has been incorrectly computed or applied and/or that FCI charges have not been properly assessed may petition, in writing, to the director of public works for a review of said computations, application or FCI charges. Any such petition shall be filed within thirty days of the date on the invoice or notice of the charge for which redress is sought. The director shall render a written decision affirming the service charge, reversing it, or modifying it and shall issue said written decision to petitioner within thirty days following receipt of the petition, unless said time period is extended by agreement of the petitioner; provided that, failure to issue a decision within said thirty days shall not cause the petition to be granted. FCI charges as used herein are described in Section 13.24.110.~~

~~AB. Administrative Appeal to Hearing Examiner Council. If not satisfied with a determination of the public works director made under Section 13.24.080 or 13.24.090, Any property owner who believes that the stormwater management utility service charge for their property has been incorrectly computed or applied and/or that FCI charges have not been properly assessed ~~the property owner~~ may appeal to the hearing examiner city council within ~~ten~~fourteen days of the director's determination of said charges ~~decision~~ by filing a written statement of appeal with the director. The appeal to ~~city council~~ the hearing examiner shall be an open record appeal and shall be conducted according to the procedures ~~for public hearings in Section 17.09.060 of this code.~~ in Chs. 2.09, 17.09, and 17.11 LMC. During the hearing, the hearing examiner shall consider the recommendation~~

of the director. The hearing examiner shall issue a written decision, notice of which shall be provided to the parties. Any adjustments authorized by the appeal process shall only be effective against billings subsequent to the date the appeal is filed and shall not be retroactively applied.

B.C. Burden of Proof. The burden of proof in any petition or appeal filed under this chapter shall be on the property owner.

13.24.095 – Sanctions.

~~D. Sanctions.~~ In addition to any other remedy or sanction available, a property owner who fails to comply with any provision of this chapter, with a final order issued by the city pursuant to this chapter, or who fails to conform to the terms of an issued approval, may be subject to a civil penalty, in accordance with Chapter 1.24 of this Code, due and payable not later than ten days after issuance of final decision.

A1. Late Payment Fees. A late payment fee shall be added to each property owner's account if payment is not received by the due date. Said late fees shall be in an amount established by resolution of the city council.

B2. Penalties shall be per Section 1.24.015 of this code.

C3. Aiding or Abetting. Any person who, through an act of commission or omission, aids or abets in the violation shall be considered to have committed a violation for the purposes of the civil penalty.

D4. Notice of Penalty. The notice shall be in writing, which shall be served either by certified mail with return receipt requested or by personal service, to the person incurring the same. The notice shall describe the violation, the date(s) of violation, and shall order the acts constituting the violation to cease and desist, and, in appropriate cases, require necessary corrective action within a specific time.

E5. Collection. Civil penalties shall be due and payable not later than ten days following issuance of notice of penalty. If remission or appeal of the fine is sought, the fine shall be due and payable not later than ten days following issuance of a final decision. If a fine remains unpaid thirty days after issuance, the director may take actions necessary to recover the fine. Penalties shall be paid into the appropriate city fund.

F6. Application for Remission. Any person incurring a civil penalty may, within ten days of issuance of the notice of penalty, apply in writing to the director for remission of the fine. The director shall issue a decision on the application for remission within ten days.

G7. Issuance of Decisions. For purposes of this chapter, any written decisions of the director shall be deemed issued upon the date said written decision is deposited in the U.S. mail to the last known address of the person subject to the decision or is hand delivered to said person.

13.28.150 - Appeal.

A ~~D~~ developer may file an appeal to the ~~city council~~ hearing examiner challenging the written interpretations and/or decisions of the public works director made pursuant to this chapter. The appeal must be filed with the public works director within ~~ten~~fourteen days of the date of mailing the interpretation or decision of the public works director.

13.32.070 – Utility Fee.

A. Monthly Utility Fee Formula. A monthly utility fee for the operation of the Utility shall be established from time to time by resolution of the city council in conformity with RCW 35.21.766, as now or hereafter amended. The amount of the fee shall be based upon cost of regulating ambulance service and the cost of providing utility services as determined by a cost-of-service study pursuant to RCW 35.21.766(3). Those costs shall be divided among City of Lynden residents and occupants based on a combined demand and availability calculation consistent with accepted principles of utility rate setting. The rate attributable to costs for availability of the utility shall be uniformly applied across user classifications within the utility. The rate attributable to demand costs shall be established and billed to each utility user classification based on each user classification's burden on the utility. The fee charged by the utility shall reflect a combination of the availability cost and the demand cost and may in the discretion of the city council be reduced or subsidized by other city funds as authorized by RCW 35.21.766, as amended. The resulting fee shall be assessed to identifiable use classifications. Fees will not exceed the revenue requirements to cover the costs of the utility, as authorized by the city council by adoption of an annual budget and subsequent amendments.

B. Classifications. The utility fee shall be collected on a monthly basis from each of the following utility user classifications:

1. Single family residential;
2. Multifamily residential;
3. Commercial/ non-profit business not listed in other categories;
4. Assisted living/nursing homes;
5. Adult family homes/boarding homes;
6. Public;

- 7. Hotel/motel;
- 8. Campgrounds;
- 9. Fairground.

The owner or occupant of each single-family dwelling unit, adult family homes, and boarding homes and each owner or occupant of each dwelling unit for the multifamily residential classification and each owner of all other classifications shall be responsible for payment of the utility fee. Adult family homes and boarding homes which are single family dwelling units shall be classified as an adult family home or boarding home as applicable. The public classification is limited to all users which are political subdivisions of the state, state or federal agencies, municipal corporations, schools, school districts. The City will determine which user classification applies when more than one classification is applicable.

C. Utility Fee Exemptions—Reductions.

- 1. Persons who are Medicaid eligible and who reside in a nursing facility, boarding home, adult family home or receive in-home services are exempt from the utility fee, pursuant to RCW 35.21.766 (4)(d)(i).
- 2. Any change in use of a dwelling unit, parcel or building, or any other change in circumstance that eliminates application of an exemption from the utility fee shall immediately make the affected property subject to applicable utility fees. The utility fee shall become due and payable as of the date of the change in use and shall continue until qualification for an exemption. It is the owner's or occupant's responsibility to notify the City of all use changes.
- 3. Monthly rates, and initial and final charges may be prorated in accordance with the City's standard utility prorating practices.
- 4. Any customer seeking an exemption from payment of the utility fee and/or conversion from covered to exempt status, must file a written petition with the city ~~finance~~ public works director seeking a determination as to whether a specific dwelling unit, parcel or building satisfies the exemption requirements set forth in this section. The public works director shall forward the petition to the hearing examiner, who shall conduct an open record hearing and issue a written decision. The city finance director will issue a written decision and mail said decision to the customer. The city finance director's determination may be appealed to the city council by filing a written appeal with the city finance director within ten days of the date of mailing of the decision. Appeals filed after the ten day time period has lapsed will not be considered. The city council will conduct an open record hearing and review and make the final decision of the city on the appeal.

- 5. The utility fee charged shall reflect an exemption for persons who are Medicaid eligible and who reside in a nursing facility, boarding home, adult family home, or receive in-home services.
- 6. The utility fee charged may reflect an exemption or reduction for designated classes consistent with Article VIII, Section 7 of the State Constitution.
- 7. The amounts of exemption or reduction shall be a general expense of the utility, and designated as an availability cost, to be spread uniformly across the utility user classifications.

D. Appeal. Fees assessed under this section may be appealed to the hearing examiner by submission of a written statement of appeal to the director within fourteen days of receipt of the director’s determination. The appeal shall be heard as an open record hearing. The director shall submit a staff recommendation for the hearing examiner’s review. After the open record hearing, the hearing examiner shall issue a written decision.

~~D.E.~~ Periodic Utility Fee Review. The city finance director, or the city finance director's designee, in consultation with the city administrator shall periodically perform financial review and analysis of the utility's revenues, expenses, indebtedness, fees and accounting, and recommend budgets, fee adjustments and financial policy. Based on such review, the city finance director may recommend changes, amendments or additions for adoption by the city council.

~~FE.~~ Limitation on Total Revenue. The total revenue generated by the utility shall not exceed the total costs necessary to regulate, operate, maintain the utility.

15.02.060 - Building valuation schedule—Permit fees.

- A. The valuation schedule to be utilized by the ~~public works~~ planning director or his or her designee in administering the International Building Code shall be set by resolution of the city council.
- B. Building permit fees shall be as set forth by resolution of the city council.

15.03.060 - Building valuation schedule—Permit fees.

- A. The valuation schedule to be utilized by the ~~public works~~ planning director or his designee in administering the International Existing Building Code shall be set by resolution of the city council.
- B. Building permit fees shall be as set forth by resolution of the city council.

15.05.010 - Moving buildings—Allowed when.

Previously occupied buildings located within the city limits may be moved to another location with the permission of the public works planning director under the following conditions:

- 1) The building is to be relocated on the same parcel; or the building is non-residential, the occupied area is less than five hundred square feet, and the building is to be relocated to a non-residential parcel; or the building is listed, or deemed by an approved professional survey to be potentially listed on the National Register of Historic Places and/or the Lynden Register of Historic Places and all other preservation options have been exhausted, or the building faces the prospect of demolition; and
- 2) The building shall comply with the existing building and zoning codes and other applicable ordinances in the city.
- 3) The applicant shall, within ten days after making an application to move any building with an area greater than or equal to five hundred square feet, cause the interior or exterior walls, ceiling or flooring to be removed to such an extent necessary to permit a registered professional engineer to examine the materials and type of construction of the building to ascertain whether it can be safely moved and that it will comply with the existing building code and other applicable ordinances in the city. A written report shall be provided to the building official.
- 4) In addition to the above inspection, the applicant shall comply with all other relevant city approval and permit procedures; and
- 5) A bond, assignment of savings, or irrevocable letter of credit, in a form approved by the city attorney, shall be filed with the city in an amount sufficient to:
 - a. Remove and dispose of the structure should the applicant abandon it before the move is completed; and
 - b. Guarantee the site improvements, construction, painting, and finishing the exterior of the building shall be completed in accordance with the Lynden Municipal Code within ninety days; and
 - c. Guarantee the restoration of the original location by capping the existing utilities, removal of the existing foundation, grading and clearing the location of all debris resulting from the move.
- 6) Should the moving operation require use of or travel over city rights-of-way, the applicant shall:
 - a. Prove they have liability insurance in the amount of at least one million dollars, listing the city as an additional named insured. This insurance will remain in full

force and effect during the moving operation and will hold the city harmless from all claims arising from the moving operation.

b. If moving the building will require use of an oversize/overheight vehicle, then a permit will be required from the public works department.

7) The applicant shall execute and deliver to the city a document holding the city harmless from any and all claims arising from the removal and relocation of the house.

In any case in which the public works planning director denies permission for such a move, the applicant may appeal the decision to the city council hearing examiner under the provisions of Chapter 17.11 of the Lynden Municipal Code.

15.08.030 - Plumbing system inspection authorized when.

Where any structure is permitted to connect to any city sanitary sewage system and/or water system, the public works planning director or his/her designee may make or require an inspection of the plumbing system to ensure compliance with any city requirements, prior to a final inspection by the public works planning director or his/her designee.

15.14.010 - Application for appeal.

After exhausting all administrative remedies, a person shall have the right to appeal a decision of the building code official to the board of appeals hearing examiner. An application for appeal shall be based on a claim that the true intent of the codes adopted in this chapter or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or an equally good or better alternate material or method of construction is proposed. The application shall be filed ~~{on a form obtained from the city building code official}~~ within twenty-fourteen days after the notice of the decision was mailed and shall be accompanied by an application fee in an amount ~~of seventy five dollars, until such time as it is changed by the city council by resolution~~ set by the city council.

~~**15.14.020 - Membership of board.**~~

~~The board of appeals shall consist of five members appointed by the mayor.~~

~~A. Qualifications. The board of appeals shall consist of five city residents, one from five of the six following professions or disciplines:~~

- ~~1. Registered design professional who is a registered architect; or a builder or superintendent of building construction with at least ten years' experience, five of which shall have been in responsible charge of work;~~

~~2. Registered design professional with structural engineering or architectural experience;~~

~~3. Registered design professional with mechanical and plumbing engineering experience; or a mechanical contractor with at least ten years' experience, five of which shall have been in responsible charge of work;~~

~~4. Registered design professional with electrical engineering experience; or an electrical contractor with at least ten years' experience, five of which shall have been in responsible charge of work;~~

~~5. Registered design professional with fire protection engineering experience, or a fire protection contractor with at least ten years' experience, five of which shall have been in responsible charge of work;~~

~~B. Alternate Members. The mayor shall appoint two alternate members who shall be called by the board chairman to hear appeals during the absence or disqualification of a member. Alternate members shall possess the qualifications required for board membership and shall be appointed for five years, or until a successor has been appointed.~~

~~C. Chairman. The board shall annually select one of its members to serve as chairman. The term of the chairman shall be for one year. The chairman shall not serve more than two one-year terms.~~

~~D. Disqualification of Member. A member shall not hear an appeal in which that member has a personal, professional or financial interest.~~

~~E. Secretary. The city administrator shall designate a qualified clerk to serve as secretary to the board. The secretary shall file a detailed record of all proceedings in the office of the city clerk.~~

~~**15.14.030 – Notice of meeting.**~~

~~The board shall meet upon notice from the chairman, within thirty days of the filing of an appeal, or at stated periodic meetings.~~

~~**15.14.040 .020 - Open hearing.**~~

All hearings before the board hearing examiner related to a provision of this chapter shall be open to the public. The appellant, the appellant's representative, the city building code official and any person whose interests are affected shall be given an opportunity to be heard.

~~**15.14.050 – Procedure and quorum.**~~

~~A. The board shall adopt and make available to the public through the secretary procedures under which a hearing will be conducted. The procedures shall not require compliance with strict rules of evidence, but shall mandate that only relevant information be received.~~

~~B. A minimum of three members or alternate members of the board shall constitute a quorum.~~

15.14.060 Postponed hearing.

~~When five members are not present to hear an appeal, either the appellant or the appellant's representative shall have the right to request a postponement of the hearing, provided that no more than one such postponement shall be allowed to the appellant.~~

15.14.070 .030 - Authority.

The board hearing examiner shall have authority to review decisions of the code official for the following legally adopted codes:

- A. International Building Code;
- B. International Mechanical Code;
- C. International Fire Code;
- D. Uniform Plumbing Code;
- E. Washington Energy Code;
- F. Washington State Ventilation and Indoor Air Quality Code.

15.14.080 .040 - Board Hearing examiner decision.

If the appellant convinces the board hearing examiner either that the true intent of the codes or the rules adopted thereunder have been incorrectly interpreted, or that the provisions of this code do not fully apply to the appellant's situation or that there is an equally good or better interpretation of the section or sections in question, then the board hearing examiner may modify or reverse the decision of the code official ~~by a concurring vote of at least three members or alternate members.~~ The board hearing examiner shall have no authority relative to the interpretation of the administrative provisions of the code nor shall the board hearing examiner be empowered to waive specific requirements of the codes listed in this chapter. The city's

building code official shall take immediate action in accordance with the decision of the board hearing examiner.

~~A. Resolution. The decision of the board shall be by resolution. Certified copies shall be furnished to the appellant and to the code official.~~

~~B. Administration. The city's building code official shall take immediate action in accordance with the decision of the board.~~

~~15.14.090 – Court review.~~

~~Any person, whether or not a previous party of the appeal, shall have the right to apply to the appropriate court for a writ of certiorari to correct errors of law. Application for review shall be made in the manner and time required by law following the mailing of the decision to the appellant.~~

16.05.160 – Substantive authority

A. The policies and goals set forth in this chapter are supplementary to those in the existing authorization of the city of Lynden.

B. The city may attach conditions to a permit or approval for a purpose so long as:

- 1. Such conditions are necessary to mitigate specific probable adverse environmental impacts identified in environmental documents prepared pursuant to this chapter; and
- 2. Such conditions are in writing; and
- 3. The mitigation measures included in such conditions are reasonable and capable of being accomplished; and
- 4. The city has considered whether other local, state, or federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts; and
- 5. Such conditions are based on one or more policies in subsection D of this section and cited in the license or other decision document.

C. The city may deny a permit or approval for a proposal on the basis of SEPA so long as:

- 1. A finding is made that approving the proposal would result in probable significant adverse environmental impacts that are identified in a FEIS or final SEIS prepared pursuant to this chapter; and

- 2. A finding is made that there are no reasonable mitigation measures capable of being accomplished that are sufficient to mitigate the identified impact; and
- 3. The denial is based on one or more policies identified in subsection D of this section and identified in writing in the decision document.

D. The city designates and adopts by reference the following policies as the basis for the city's exercise of authority pursuant to this section:

- 1. The city shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:
 - a. Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
 - b. Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
 - c. Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
 - d. Preserve important historic, cultural, and natural aspects of our national heritage;
 - e. Maintain, wherever possible, an environment which supports diversity and variety of individual choice;
 - f. Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
 - g. Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

2. The city recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

E. When any proposal or action not requiring a decision of the city council is conditioned or denied on the basis of SEPA by a nonelected official, the decision shall be appealable to the city council hearing examiner. Such appeal may be perfected by the proponent or any aggrieved party by giving notice to the responsible official within ~~ten~~ fourteen days of the decision being appealed. Review by the city council hearing examiner shall be on a de novo basis.

16.08.020 – Shoreline Permit Review.

~~As per 17.03.040 (B) of the LMC, the Planning Commission shall hear, review, and make the final decision of the City on all shoreline permits in accordance with the City’s shoreline management program.~~

~~The~~ The hearing on shoreline permit applications and revisions shall be consolidated with other applications pertaining to the same project. Unless consolidated with another application, the hearing for which will be conducted by another hearing body, the hearing examiner shall conduct an open record hearing and decide whether to grant, grant with conditions, or deny all applications for shoreline permits or revisions to shoreline permits. The open record hearing shall generally follow the procedures outlined in Title 17 LMC. ~~Staff~~Regardless of whether the hearing is before the hearing examiner or another hearing body, staff shall submit a staff report with a recommendation as part of the hearing process.

16.08.030 – Shoreline Permit Revision.

~~A Planning Commission or Department of Ecology decision on revision to the permit shall be appealed within twenty-one (21) days of such decision, in accordance with RCW 90.58.180 and WAC 173-27-100, as amended.~~

16.08.040 .030 – Shoreline Permit Appeal.

~~Any appeal of administrative interpretations and approvals, or Planning Commission decisions will be in accordance with Ch. 17.11 LMC.~~

~~The hearing examiner’s decision shall be subject to closed record appeal to the city council made pursuant to the procedures in Ch.17.11 LMC. On appeal, the city council shall make the final decision of the city.~~

The hearing examiner, city council or Department of Ecology decision on a shoreline permit or revision thereto may be appealed to the Shoreline Hearings Board within twenty-one (21) days of such decision, in accordance with RCW 90.58.180 and WAC 173-27-100, as amended.

16.12.110 – Appeals and Variance procedure.

A. ~~Appeal Board.~~ Hearing Examiner.

1. The ~~board of adjustments as established by the city~~ hearing examiner shall hear and decide appeals described in LMC 16.12.110(-A)(-2), and requests for variances from the

requirements of this chapter not accompanied by or for an underlying project application that will be heard by a different hearing body from the requirements of this chapter. Appeals and variance requests shall be heard in open record hearings. In all cases, the public works director shall supply the hearing examiner with a staff report and recommendation.

2. The ~~board of adjustment~~ hearing examiner shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the public works director in the enforcement or administration of this chapter.

3. For both appeals and variance requests filed under this chapter, the hearing examiner's decision shall be subject to closed-record appeal to the city council. The hearing examiner's decision shall be the final decision of the city if not timely appealed to the city council. Those aggrieved by the decision of the board of adjustment, or any taxpayer, may appeal such decision to the county superior court as provided by law.

4. In passing upon appeals and variance requests such applications, the ~~board of adjustment,~~ hearing examiner shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and:

- a. The danger that materials may be swept onto other lands to the injury of others;
- b. The danger to life and property due to flooding or erosion damage;
- c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- d. The importance of the services provided by the proposed facility to the community;
- e. The necessity to the facility of a waterfront location, where applicable;
- f. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
- g. The compatibility of the proposed use with existing and anticipated development;
- h. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- i. The safety of access to the property in times of flood for ordinary and emergency vehicles;
- j. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and

k. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

l. Compliance with the Endangered Species Act.

5. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing paragraphs a through l of subdivision 4 of subsection A of this section have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing ~~a the~~ variance increases.

6. Upon consideration of the factors of subdivision 4 of subsection A of this section and the purpose of this chapter, the ~~board of adjustment~~ hearing examiner or city council may attach such conditions to the granting of variances as ~~it~~ deems necessary to further the purposes of this chapter.

7. The public works director shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.

B. Conditions for Variances.

1. Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this section.

2. Variances shall not be issued within any designated floodway.

3. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

4. Variances shall only be issued upon:

a. A showing of good and sufficient cause;

b. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and

c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in subdivision 4 of subsection A of this section, or conflict with existing local laws or ordinances.

5. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting ~~from~~ from the reduced lowest floor elevation.

6. Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece of property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations are quite rare.

7. Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry-floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria, except subdivision 5 of this subsection, and otherwise complies with Section 16.12.120(A) and (B).

16.16.140 – Offense and penalty.

A. Any person, firm, partnership, limited liability company, corporation, or other legal entity that fails to comply or causes the failure to comply with any provision of this chapter shall be guilty of a misdemeanor. Each day or portion of a day during which such a violation is found to have occurred shall constitute a separate offense.

B. The city may levy civil penalties against any person, firm, partnership, limited liability company, corporation, or other legal entity for failure to comply or causing a failure to comply with of any of the provisions of this chapter. The civil penalty shall be assessed as a one-time penalty of five hundred dollars and/or a maximum rate of five hundred dollars per day per violation.

C. A failure to comply with a provision of this chapter occurs when a party: (1) develops within or disturbs a critical area or its buffer without fully complying the requirements of this chapter; or (2) fails to comply with mitigation requirements imposed pursuant to this chapter.

D. The penalty provided in subsection B above shall be imposed by serving the responsible party with a notice in writing, either by certified mail with return receipt requested, or by personal service. The notice shall include the amount of the penalty imposed and shall describe the violation with reasonable particularity in ordering the act or acts constituting the violation or violations to cease and desist or, in appropriate cases, requiring necessary corrective action to be taken within a specific and reasonable time.

E. Within thirty days after the notice is received, the party incurring the penalty may apply in writing to the planning director for remission or mitigation of such penalty. Upon receipt of the application, the planning director may remit or mitigate the penalty upon whatever terms the

department in its discretion deems proper. The planning director's final decision on mitigation or revision shall be reviewed by ~~The City Council~~ the hearing examiner if the aggrieved party files a written appeal ~~therewith~~ of said decision with the planning director within ~~ten~~fourteen days of its issuance.

17.01.030 - Definitions

The following definitions shall apply to Titles 16 through 19; other definitions may be found in individual titles. The definitions set forth in this chapter shall apply to the terms used in this title. Those terms not defined in this chapter, shall be as defined in the 1991 Uniform Zoning Code.

...

"Final decision" means the final action by the staff, city board, hearing examiner, or city council.

...

"Hearing body" means the city council, planning commission, hearing examiner, or other officer, board, or commission before which an open or closed record hearing occurs.

"Hearing examiner" means the hearing examiner or hearing examiner pro tem of the city of Lynden as established by ordinance.

...

"Open record hearing" means a hearing, conducted by a single hearing body ~~or officer authorized to conduct such hearings~~ that creates the city's record through testimony and submission of evidence and information. An open record hearing may be held prior to the city's decision on a development permit application; or may be held on an appeal if no open record hearing has already been held on the development permit application. Provisions of this code require either that an open record hearing be held before the final decision-making body (e.g., city council or hearing examiner) or before a body making a recommendation to a decision-making body (e.g., planning commission). ~~A hearing body conducting an open record hearing (e.g., planning commission) need not be the decision-making body, but instead may make findings and forward a recommendation to the decision making body (e.g., city council), all in accordance with city ordinance.~~

...

"Variance" means a permissible modification of the application of Titles 13, 16, 17, 18, and 19 or other development standards of this code to a particular property, subject to the approval of the board of adjustments hearing examiner, city council, or other hearing body as provided by this code.

17.03.020 - Planning director.

The planning director shall review and act on the following:

A. Authority. The planning director, "the director," is responsible for the administration of Titles 16, 17, 18 and 19 of this code, except for Chapter 16.12.

B. Administrative Interpretation. Upon request or as determined necessary, the director shall interpret the meaning or application of the provisions of the titles and issue a written administrative interpretation within thirty days. All requests for interpretation shall be written and shall concisely identify the issue and desired interpretation. Appeals of an administrative interpretation shall be filed in conformance with Section 17.11.020.

C. Administrative Approvals. Administrative approvals as set forth in Sections 17.09.010(A) and 17.09.020 and as otherwise provided in Titles 16, 17, 18 and 19.

17.03.030 - City council.

In addition to its legislative responsibility, the city council shall:

A. Review and make the final decision of the city on development permit applications and open record appeals that were heard, reviewed, and had recommendations entered thereon by the planning commission. A nonexclusive listing of the development permit applications and appeals on which the planning commission will conduct open record hearings and make recommendation to the city council is set forth in Section 17.03.040(A). The final decision of the city in such matters shall be made by the city council without conducting an additional hearing or considering additional evidence.

B. Conduct the closed record appeal and make the final decision of the city on appeals from the decisions of the hearing examiner. A nonexclusive list of the matters for which the hearing examiner renders a decision is at LMC 2.09.040(B). The hearing examiner’s decision on all of these matters is subject to closed record appeal before the city council.

B.C. Conduct the hearing(s), review, and make the final decision of the city on the following:

1. Open record hearings on requests for variances from development standards identified in Section 17.17.010 when such requests do not include another development permit application as described in Section 17.17.020(B);
2. Closed record appeals of design review board decisions;
3. Open record hearing on petitions for the vacation of right-of-way;
4. Open record hearings on the revocation or modification of existing permits or approvals, as provided in Section 17.13.070;

~~5. Open record hearing on appeals from civil regulatory orders or fines, as provided in Chapter 17.13 of this code;~~

~~6. Open record hearing on appeals from determinations made under city impact fee ordinances, unless the appellant elects in conformance with Section 17.11.020 to have the impact fee open record appeal hearing conducted by the planning commission in conjunction with another open record hearing on the same project;~~

~~7.5.~~ All other matters as are required or authorized by this code or state law.

17.03.040 - Planning commission.

A. Planning Commission Open Record Hearings and Recommendation to City Council. The planning commission shall conduct an open record hearing, review, enter findings, and make recommendations to the city council on the following development permit applications and open record appeals:

1. Subdivisions, binding site plans, planned unit developments, planned residential developments or planned commercial developments;

2. Conditional use permits;

~~2.~~ 3. Site-specific rezones, including site-specific comprehensive plan map amendments;

~~3.~~ ~~4.~~ Variance requests from development standards identified in Section 17.17.010 when such requests are accompanied by another development permit application as described in Section 17.17.020(A);

4. Shoreline permit and revisions applications when such applications are accompanied by another development permit application to be heard by the planning commission;

~~5. Open record appeal of SEPA threshold determination made by SEPA official;~~

~~6. Open record appeal of director's final decision on short plat application;~~

~~7. Open record appeal of director's final critical area determinations;~~

~~8. Open record appeal of director's final decision on concurrency requirements under Chapter 17.15 of this code;~~

~~9. Open record appeal of administrative interpretations made by the director pursuant to Section 17.09.020(B);~~

~~10. Open record appeal of administrative approval made pursuant to Sections 17.09.010 and 17.09.020;~~

5. 4. 12.5 Other actions requested or remanded by the city council or as required by this code.

~~B. Planning Commission as Final Decision-maker. The planning commission shall hear, review, and make the final decision of the city on all shoreline permits in accordance with the city's shoreline management program.~~

~~**17.03.050 – Board of adjustment.**~~

~~The board of adjustment shall review and act on the following subjects:~~

~~A. Variances from the standards and dimensional regulations of the Zoning Code, Title 19, such as height, width, size, setback and yard restrictions.~~

~~B. Amortization periods for nonconforming signs.~~

~~The review criteria and procedures for the board of adjustment are contained in Chapter 19.47 of this code. The decision of the board of adjustment is the final decision of the city. Any appeal from a final decision of the board of adjustment shall be governed by Chapter 36.70C RCW and as hereafter amended.~~

~~**17.03.050 – Hearing examiner.**~~

~~The hearing examiner shall review and act on the subjects over which the hearing examiner has jurisdiction pursuant to 2.09.040.~~

17.05.090 - Consolidated processing of development applications and appeals.

A. Consolidated Processing Required. Except as otherwise authorized or required by provisions in city code, the city shall provide for consolidated processing of development permit applications and appeals so that there is not more than one open record hearing and one closed record hearing for the same development proposal or project, as required by Chapter 36.70B RCW. ~~This requirement for consolidation includes the consolidation of an appeal of a SEPA threshold determination with, if applicable, the hearing on associated approval.~~

B. Exclusions from Consolidation Requirements.

~~1. Determinations by Board of Adjustment. Zoning variances and amortization periods for nonconforming signs shall be excluded from consolidated processing requirements for development permit applications and shall be heard and decided upon by the board of adjustment in conformance with Chapter 19.47 of this code. Aside from zoning variance requests and determining amortization periods for nonconforming signs, the board of adjustment shall not have any other development permit applications or appeals to review or decide upon, even where this will result in a development proposal being subject to more than one open record hearing and one closed record appeal.~~

~~2. Grounds for Excluding Zoning Variance Requests by Board of Adjustment from Consolidation Requirements. The sole function and purpose of the board of adjustment~~

~~is to review and make decisions on requests for zoning variances. The decisions are not subject to additional administrative appeals. The board of adjustment has longstanding exclusive special expertise in the city in reviewing and deciding upon zoning variance requests. Such expertise is not possessed by or readily transferred to any other hearing body in the city. Special circumstances under RCW 36.70B.140(1) are therefore presented warranting exclusion of zoning variance requests from consolidated processing requirements. In addition, zoning variances are administrative approvals which are exempt from Chapter 43.21C RCW and may therefore be excluded from consolidated processing requirements pursuant to RCW 36.70B.140(2).~~

1. Appeals of SEPA Threshold Determinations. Hearings on appeals of SEPA threshold determinations shall be excluded from consolidated processing requirements for development permit applications and shall be heard and decided upon by the hearing examiner. The SEPA threshold determination appeal shall be the only matter discussed at the hearing, even where this will result in a development proposal being subject to more than one open record hearing and one closed record appeal.

2. Grounds for Excluding Appeals of SEPA Threshold Determinations. Appeals of SEPA threshold determinations often involve technical issues best suited to the expertise of the hearing examiner. Further, from a procedural standpoint, it is efficient to resolve SEPA issues before evaluating other aspects of the project.

3. Determinations by Design Review Board. Design review, landscape plan, and signage issues shall be excluded from consolidated processing requirements for development permit applications and shall be heard and decided upon by the design review board in conformance with Chapter 19.45 of this code. Aside from design review, landscape plan, and sign issues, the design review board shall not have any other development permit applications or appeals to review or decide upon, even where this will result in a development proposal being subject to more than one open record hearing and one closed record appeal.

4. Grounds for Excluding Design Review by Design Review Board from Consolidation Requirements. The sole function and purpose of the design review board is to review and make decisions on design, landscape plan, and signage aspects of development proposals for multifamily dwellings and commercial buildings. The design review board has longstanding exclusive special expertise in the city in reviewing and deciding upon design review, landscape plan, and signage issues. Such expertise is not possessed by or readily transferred to any other hearing body in the city. Special circumstances under RCW 36.70B.140(1) are therefore presented warranting exclusion of design, landscape plan, and sign review as conducted by the design review board from consolidated processing requirements. In addition, design review may take place for development proposals involving only the issuance of building permits exempt from Chapter 43.21C RCW and

may therefore be excluded from consolidated processing requirements pursuant to RCW 36.70B.140(2).

5. Administrative Approvals. Administrative approvals identified in Sections 17.09.010 and 17.09.020 which are categorically exempt from environmental review under Chapter 43.21C RCW shall be exempt from the consolidation requirements in this chapter and Chapter 36.70B RCW. Nothing in this section shall prevent consolidation of such administrative approvals with related development proposals, in the discretion of the director.

6. Grounds for Excluding Administrative Approvals from Consolidation Requirements. The city has authority to exclude the administrative approvals which are categorically exempt from environmental review from consolidation requirements pursuant to RCW 36.70B.140(2).

17.07.050 - Notice of decision.

A written notice for all final decisions of the city shall be sent to the applicant and all parties of record. For development applications requiring planning commission review and city council approval, the notice shall include the minutes, or the signed ordinance or resolution. For decisions made by the hearing examiner, the notice shall include the hearing examiner’s written findings of fact, conclusions of law, and decision. For shoreline permits, notice of decision must also be sent to the department of ecology and the Washington State Attorney General.

17.09.010 - Administrative approvals without notice.

A. The director may approve, approve with conditions, or deny the following without notice:

- 1. Lot line adjustments;
- 2. Extension of time for approval;
- 3. Minor amendments or modifications to approved developments or permits. Minor amendments are those which may affect the precise dimensions or location of buildings, accessory structures and driveways, but do not affect: (i) overall project character, (ii) increase the number of lots, dwelling units or density or (iii) decrease the quality or amount of open space.

B. The public works director may approve, approve with conditions, or deny the following without notice:

- 1. Fill and grade permits;
- 2. Floodplain development permits;
- 3. Building permits.

C. Decisions under this section shall be deemed made on the date issued. Appeals therefrom shall be governed by Chapter 17.11 of this code. Upon receipt of any such appeal, a notice of development application shall be prepared substantially in conformance with the requirements of Section 17.07.010 and shall be combined with notice of the open record appeal hearing substantially in conformance with Section 17.07.030. Following the open record hearing, the ~~planning commission~~ hearing examiner shall enter findings and ~~forward its recommendations to the city council~~ render a decision on appeal. ~~The city council shall make the final decision of the city on the appeal.~~

17.09.020 - Administrative approvals subject to notice.

A. The director may grant preliminary approval or approval with conditions, or may deny the following actions subject to the notice and appeal requirements of this section:

- 1. Home occupations;
- 2. Short plats.

B. Final Administrative Approvals. Preliminary approvals under this section shall become final subject to the following:

- 1. If no appeal is submitted, the preliminary approval becomes the final decision of the city at the expiration of the fourteen-day notice period established in Section 17.07.020.
- 2. If a written notice of appeal is received within the specified time the matter will be referred to the hearing examiner ~~planning commission~~ for an open record hearing, except as otherwise noted in Titles 16 through 19. Upon receipt of any such appeal, the notice of application shall be combined with notice of the open record appeal hearing substantially in conformance with Section 17.07.030. Following the open record hearing, ~~the planning commission shall enter findings and forward its recommendations to the city council. The city council~~ the hearing examiner shall make ~~the final~~ a decision ~~of the city~~ on the appeal.

17.09.025 – Hearing Examiner Actions on Appeals.

A. Actions. Following completion of an open record hearing on an appeal, the hearing examiner shall enter a decision on the matter in writing. The decision shall be supported by written findings of fact and conclusions of law.

B. The hearing examiner’s decision shall include one of the following actions:

- 1. Approve;
- 2. Approve with conditions;
- 3. Modify, with or without the applicant's concurrence, provided that the modifications do not:
 - a. Enlarge the area or scope of the project,
 - b. Increase the density or proposed building size,
 - c. Significantly increase adverse environmental impacts as determined by the responsible official;
- 4. Deny without prejudice;
- 5. Deny with prejudice;
- 6. Remand to City staff for action consistent with its decision.

C. The hearing examiner’s decision on any matter is subject to a closed-record appeal before the city council. If not timely appealed, the hearing examiner’s decision shall become the final decision of the city.

17.09.060 - Procedures for public hearings.

Public hearings shall be conducted in accordance with the hearing body's rules of procedure and shall serve to create or supplement an evidentiary record upon which the body will base its decision. Before the planning commission, the chair shall open the public hearing. Before the hearing examiner, the hearing examiner shall open the public hearing. Before the city council, the mayor shall open the public hearing. In general, the following sequence of events shall be observed:

- A. Staff presentation, including submittal of any administrative reports. Members of the hearing body may ask questions of the staff.
- B. Applicant presentation, including submittal of any materials. Members of the hearing body may ask questions of the applicant.
- C. Testimony or comments by the public germane to the matter. Questions directed to the staff or the applicant shall be posed and/or allowed by the chair, hearing examiner, or mayor at his or her discretion.
- D. Rebuttal, response or clarifying statements by the staff and the applicant.

E. The evidentiary portion of the public hearing shall be closed and the hearing body shall deliberate on the matter before it.

17.09.080 - Reconsideration.

A. A party of record to an open record hearing or closed record appeal may seek reconsideration of a final decision of the hearing examiner, planning commission, or council, or of a planning commission recommendation on a matter identified in ~~Section 17.03.040(A)~~ LMC 17.03.030, 17.03.040, or 17.03.050 by filing a written request for reconsideration with the director within five days of the date of issuance of the final decision or mailing of the planning commission recommendation, as applicable. The request shall comply with the content requirements listed in Section 17.11.020(B).

B. The ~~council, planning commission, or other~~ hearing body that issued the final decision of which the party seeks reconsideration shall consider the request at its next regularly scheduled meeting which follows the request by five or more days, except that the hearing examiner shall consider a request for reconsideration at least five days but not more than thirty days after the request is filed. All hearing bodies shall consider reconsideration requests without public comment or oral argument by the party filing the request.

C. If the ~~request is denied, hearing body denies the request for reconsideration,~~ said denial must be in writing and issued in the same form as the original final decision or recommendation, and notice of the denial shall be provided to all parties in the same manner as a final decision. The date of written denial of a timely filed written request for reconsideration shall be considered the new date of issuance of the final written decision by the city, or recommendation of the planning commission, as applicable.

D. If the request is granted, the ~~council, planning commission or other~~ hearing body may immediately revise and reissue its decision or recommendation or may call for argument in accordance with the procedures for closed record appeals. Notice of the granted request for consideration shall be provided to all parties in the same way as notice of a final decision.

E. Reconsideration ~~should~~ shall be granted only when an obvious legal error has occurred or a material factual issue has been overlooked that would change the previous decision.

17.09.090 - Remand.

In the event the hearing examiner or city council determines that the public hearing record or record on appeal is insufficient or otherwise flawed, the hearing examiner or council may remand the matter back to the decisionmaker or hearing body to correct the deficiencies. The ~~council remand order~~ shall specify the items or issues to be considered and the time frame for completing the additional review and work.

17.09.100 - Final decision.

A. Time. The final decision of the city on a development proposal shall be made within one hundred twenty days from the date of the letter of completeness. ~~Exceptions to this include~~ The one hundred twenty-day deadline does not apply to the following matters or circumstances:

1. Amendments to the comprehensive plan or development code;
2. Any time required to correct plans, perform studies or provide additional information, provided that within fourteen days of receiving the requested additional information, the director shall determine whether the information is adequate to resume the project review;
3. Substantial project revisions made or requested by an applicant, in which case the one hundred twenty days will be calculated from the time that the city determines the revised application to be complete;
4. All time required for the preparation and review of an environmental impact statement;
5. Projects involving the siting of an essential public facility;
6. An extension of time mutually agreed upon by the city and the applicant;
7. All time required to obtain a variance;
8. Any remand to the hearing body;
9. All time required for the administrative appeal of a determination of significance.

B. Effective Date. The final decision of the city made by the city council, hearing examiner or applicable hearing body shall be effective on the date of issuance of the decision, motion, resolution or ordinance, or subsequent decision in response to a timely filed motion for reconsideration. For purposes of this chapter, the date of issuance of the decision is:

1. Three days after a written decision is mailed by the city or, if not mailed, the "date of notice" listed in the decision which shall be the date on which the city provides notice that a written decision is publicly available;
2. If the final decision is made by ordinance or resolution by the city council sitting in a quasi-judicial capacity, the date the council passes the ordinance or resolution;
3. If neither subsections(B)(1) or (B)(2) of this section applies, the date the decision is entered into the public record.

17.11.010 - Appeal of administrative interpretations and approvals.

Administrative interpretations made pursuant to Section 17.03.020(B) and administrative approvals made pursuant to Sections 17.09.010 and 17.09.020 may be appealed to the hearing examiner; by applicants or parties of record in accordance with the provisions of this chapter. The hearing examiner’s decision shall be subject to closed record appeal to the city council.

17.11.020 – Appeals

A. Filing. ~~Appeals~~ All appeals, either open or closed record, and to any hearing body, authorized by this title shall be filed with the director within fourteen days after the date of the decision of the matter being appealed, ~~including appeals of administrative approvals subject to notice pursuant to Section 17.09.020.~~ These deadlines are jurisdictional. Appeals untimely or improperly filed shall not be considered.

B. Contents. The notice of appeal shall contain a concise statement identifying:

1. The decision being appealed;
2. The name and address of the appellant and his or her interest(s) in the matter;
3. The specific reasons why the appellant believes the decision to be wrong. ~~The appellant shall bear the burden of proving the decision was wrong;~~
4. The desired outcome or changes to the decision;
5. The appeals fee.

Notwithstanding any other provision in city code, for an open record appeal of an impact fee determination, the appellant may elect to have the appeal consolidated with another open record hearing before the planning commission on the same project. Such election shall be clearly stated on the notice of appeal at the time of filing. Failure to so state this election on the notice of appeal at the time of filing shall result in the impact fee open record appeal hearing being conducted by the hearing examiner~~city council~~.

C. Appeal Process. Appeals shall be reviewed and processed, depending on the nature of the appeal, in conformance with Chapter 17.03 of the city code. Consolidation, notice, and other procedural requirements governing appeals are set forth in Chapters 17.05, 17.07 and 17.09 of the city code.

D. Burden of Proof and Standards for Granting Relief on Appeal. In any open record or closed record appeal, the burden of proof shall be on the appellant. Except where a different standard of review is specified for a particular type of appeal elsewhere in city code, the decision on appeal shall be upheld unless it is shown to be:

1. Clearly erroneous under the law;

- 2. Not supported by substantial evidence; or
- 3. Arbitrary and capricious.

17.11.030 - Judicial appeal.

A. Appeals from the final decision of the city council, ~~board of adjustment~~, or other city ~~board or~~ body involving Titles 16 through 19 of this code, and for which all other appeals specifically authorized have been timely exhausted, shall be made to Whatcom County Superior Court pursuant to the time limits and process established in Chapter 36.70C RCW ("Land Use Petition Act").

B. Notice of the appeal and any other pleadings required to be filed with the court shall be served as required by Chapter 36.70C RCW. This requirement is jurisdictional.

C. The cost of transcribing and preparing all records ordered certified by the court or desired by the appellant for such appeal shall be borne by the appellant, as prescribed in Chapter 36.70C RCW. The appellant shall post with the city clerk prior to the preparation of any records an advance fee deposit in the amount specified by the city clerk. Any overage will be promptly returned to the appellant.

17.11.040 – Appeal to the shoreline hearings board.

Final decisions of the city on shoreline substantial development permits, shoreline conditional use permits and shoreline variance requests are made by the [hearing examiner when not accompanied by another project application to be heard by a different hearing body, or by the city council after recommendation from the](#) planning commission pursuant to the city's shoreline management program. Appeals of such ~~planning commission final~~ decisions may be taken to the shoreline hearings board as provided in the Shorelines Management Act of 1971 and implementing regulations.

17.13.040 – Civil regulatory order.

A. Authority. A civil regulatory order may be issued and served upon a person if any activity by or at the direction of that person is, has been, or may be taken in violation of the development code.

B. Notice. A civil regulatory order shall be deemed served and shall be effective when posted at the location of the violation and/or delivered to any suitable person at the location and/or delivered by registered mail or otherwise to the owner or other person having responsibility for the location.

C. Content. A civil regulatory order shall set forth:

- 1. The name and address of the person to whom it is directed;

- 2. The location and specific description of the violation;
- 3. A notice that the order is effective immediately upon posting at the site and/or receipt by the person to whom it is directed;
- 4. An order that the violation immediately cease, or that the potential violation be avoided;
- 5. An order that the person stop work until correction and/or remediation of the violation as specified in the order;
- 6. A specific description of the actions required to correct, remedy, or avoid the violation, including a time limit to complete such actions;
- 7. A notice that failure to comply with the regulatory order may result in further enforcement actions, including civil fines and criminal penalties.

D. Remedial Action. The director may require any action reasonably calculated to correct or avoid the violation, including but not limited to replacement, repair, supplementation, revegetation or restoration.

E. Appeal. A civil regulatory order may be appealed in an open record appeal to the [city council hearing examiner](#) in accordance with Chapter 17.11 of this code.

17.13.050 – Civil fines.

A. Authority. A person who violates any provision of the development code, or who fails to obtain any necessary permit or who fails to comply with a civil regulatory order shall be subject to a civil fine.

B. Amount. The civil fine assessed shall not exceed one thousand dollars for each violation. Each separate day, event, action or occurrence shall constitute a separate violation.

C. Notice. A civil fine shall be imposed by a written notice, and shall be effective when served or posted as set forth in Section 17.13.030(B). The notice shall describe the date, nature, location, and act(s) comprising the violation, the amount of the fine, and the authority under which the fine has been issued.

D. Collection. Civil fines shall be immediately due and payable upon issuance and receipt of the notice. The director may issue a regulatory order stopping work until such fine is paid. If remission or appeal of the fine is sought, the fine shall be due and payable upon issuance of a final decision. If a fine remains unpaid thirty days after it becomes due and payable, the director may take actions necessary to recover the fine. Civil fines shall be paid into the city's general fund.

E. Application for Remission. Any person incurring a civil fine may, within ten days of receipt of the notice, apply in writing to the director for remission of the fine. The director shall issue a decision on the application within ten days. A fine may be remitted only upon a demonstration of extraordinary circumstances.

F. Appeal. Following the director's final determination on a timely application for remission, the civil fine imposed may be appealed to the city council hearing examiner in an open record hearing as set forth in Chapter 17.11 of this code.

17.15.060 – Application – Procedures.

The review of the application for concurrency shall be integrated with the development permit and environmental review process, to avoid duplication of the review processes, as required by Chapter 17.05 Consolidated Application Process. The following provisions pertain only to the portion of the review process addressing the project's ability to meet the requirements for concurrency.

A. Preapplication Meetings. In accordance with Section 17.05.020, all persons proposing development, with the exception of building permits, shall attend a preapplication meeting to discuss the development process and requirements. The proponent shall at this time request a nonbinding concurrency determination (see subsection (C)(1) of this section) to learn whether adequate public facilities are available to serve new development.

B. Application. Any application, accompanying traffic impact analysis and other documentation which is subject to this chapter shall be reviewed by the planning director and used to determine its impact on each public facility affected. A proposal shall not be approved under this chapter if there is no concurrency with public facilities as required in this chapter. Additionally, the planning director shall determine if mitigation is required and appropriate under this chapter due to lack of concurrency and, if required, whether any transportation mitigation proposed by the developer meets the requirements of Section 17.15.080.

C. Processing of Applications—Approval/Denial. Issuance of final development permits shall be subject to the following concurrency requirements:

- 1. Concurrency Inquiry. An applicant may inquire whether or not facility capacity exists without an accompanying request for a development permit; but available capacity cannot be reserved at that time. A fee as established by resolution of the city council may be charged for such "concurrency determination."
- 2. Concurrency Test. Development applications that would result in a reduction of a level of service below the minimum level of service standard for public facility(ies) concurrent with their approval must be denied. For conducting the concurrency test, the level of service standards for water, sewer, stormwater, fire, parks, transportation and other public facilities shall be as provided in the comprehensive plan and in Section 17.15.070.

If the planning director determines that revisions to the proposed development may create additional impacts, the application may be required to undergo an additional concurrency test. The test shall be completed by the city within thirty days of receipt of a complete application as set forth in subsection A of this section. A "finding of concurrency" will be rendered only in conjunction with a complete development/concurrency application.

a. If existing or planned capacity of concurrency facilities is equal to or greater than capacity required to maintain the level of service standard for the impact from the development application, the concurrency test is passed.

b. Transportation Facilities. If the capacity of concurrency facilities is less than the capacity required to maintain the level of service standard for intersections impacted by development application, the concurrency test is not passed. The applicant may:

i. Accept the city's denial of approval for lack of concurrency regarding transportation facilities, as required by RCW 36.70A.070(6)(e);

ii. Accept mitigation for transportation facilities as provided in Section 17.15.080 of this chapter;

iii. Appeal the results of the concurrency test [to the hearing examiner](#) in accordance with Chapter 17.11 of this code.

c. Other Public Facilities. If the capacity of concurrency facilities is less than the capacity required to maintain the level of service standard for the impact from the development application, the concurrency test is not passed. The applicant may:

i. Accept a ninety-day reservation of the available, existing capacity and modify the application to reduce the need for facility capacity that does not exist;

ii. Accept a ninety-day reservation of the available, existing capacity and demonstrate to the city's satisfaction that the proposed development will have a lower need for facility capacity than usual and therefore, capacity is adequate;

iii. Accept a ninety-day reservation of available facilities that exist and arrange with the appropriate facility and service provider for the provision of the additional capacity required; or

iv. Accept the city's denial of the development permit. Denial of the permit for lack of concurrency with public facilities is an emergency measure taken by the city to investigate whether there is just cause or ability to amend or revise the comprehensive plan;

v. Appeal the results of the concurrency test [to the hearing examiner](#) in accordance with Chapter 17.11 of this code.

3. Finding of Concurrency. The determination that facility capacity is available shall be based on information provided by the applicant to the satisfaction and approval of the planning director. The finding of concurrency shall be binding on the city at such time as the city determines that adequate capacity is available or the applicant provides mitigation or assurances, as set forth in Section 17.15.080.

4. Term of Capacity. A finding of concurrency shall be valid at final approval and will remain valid so long as satisfactory development progress is made. The planning director may at his or her discretion require the applicant to submit proof of such progress. If the development is not under construction one year after the date of final approval, or construction has ceased for a period of one year, the finding of concurrency shall expire. The unused capacity shall then be returned to the pool of available capacity, and the applicant shall be required to undergo an additional concurrency test prior to commencement of construction.

5. Unused Capacity. Any capacity that is not used because the developer decides not to develop, or the accompanying development permit expires, shall be returned to the pool of available capacity.

6. Level of Service Areas. The standards for levels of service of transportation facilities shall be applied to the issuance of development permits.

7. Funded Projects. The developer may rely on capacity provided by funded projects, including projects in the current capital facilities plan (CFP) and by street improvements under contract as part of other approved development proposals. The approval is subject to the requirements that the applicant must fully fund or mitigate any impacts as required in this chapter. If the list of funded projects is modified after the time the proposal vests, the applicant may elect to rely on the new capacity provided by the modified list of funded projects provided that such election must be made prior to issuance of a development permit.

D. Development Approval. No final development permit shall be issued by the city unless there is sufficient capacity of public facilities available to meet the standards for levels of service after existing development and for the proposed development as required in this chapter.

E. Nonassignability of Determination. The determination that facility capacity is available runs with the land and is not personal to the applicant. The determination is not assignable or transferable to another lot or parcel.

17.15.080 – Mitigation for transportation facilities.

A. General. If mitigation is required to meet the intersection level of service standard, the applicant may instead choose to: 1. Reduce the size of the development until the standard is met; 2. Delay development schedule until city and/or others provide needed improvements; or 3. Provide the mitigation as provided for in this chapter. Mitigation must be acceptable to the city in form and amount, to guarantee the applicant's pro rata share of the financial obligation for capital improvements for the benefit of the subject property.

B. Fees. Determination of transportation mitigation fees shall be as follows:

1. Transportation mitigation fees shall be based on the per peak hour trip rate.
2. City standards shall include:
 - a. Trip generation rates set forth in the latest edition of the Institute of Transportation Engineers, Information Report—Trip Generation. The presumption is that rates used by the city are accurate unless proven otherwise.
 - b. For projects with nontraditional peak hour impacts or different from standard projects, a special report, based on generally accepted traffic engineering principles may be submitted and considered.
3. Credits shall be given to reflect the projected impact on the community system such as, traffic decreases where an existing facility on site is removed or replaced, and traffic reduction systems which are binding and likely to remain effective for the life of the project.
4. Credits may also be given for projects which create a significant economic benefit to the community, including industrial or manufacturing uses with an excess of five hundred trips per day. The size of the credit shall be measured at an appropriate percentage of the anticipated annual tax revenue increase to the community and available for capital contribution to transportation facilities on the approved plan as a result of the project.

C. Mitigation Approval. If concurrency does not exist as required by this chapter, to obtain concurrency, the applicant may submit proposed mitigation measures to the planning director for council approval as follows:

1. Payment for and Timing of Improvements. Payment for developer-funded transportation improvements affecting streets and intersections within the city's direct operational control necessary to meet the requirements for concurrency must be made as follows:
 - a. For projects involving the division of land for sale or lease—upon the issuance of building permit for construction of each lot of record, for the traffic attributable to that lot.

- b. For projects approved through site plan review—upon the issuance of the building permit authorizing the construction of any phase, for the traffic associated with that phase.
 - c. For any project over one hundred peak hour trips per day—the fee may be paid in installments, at the municipal rate of interest in effect on the day of building permit issuance, with fifty percent being paid at the issuance of the building permit and the balance paid within twenty-four months.
 - d. Any such improvements required to be constructed by a developer to meet the requirements for concurrency must be under construction within six months after issuance of a certificate of occupancy, final plat approval or such other approval for the proposed development.
 - e. All improvements shall comply with construction standards provided in Title 12 of this code, and the city's Project Manual for Engineering Design and Development Standards.
 - f. Furthermore, the city administrator or his or her designee shall require an assurance device to guarantee completion of such improvements in accordance with the construction standards.
 - g. The finance director shall be responsible for maintaining all mitigation funds received under this chapter.
 - h. Payment for or the requirement of the developer to construct any transportation improvement necessary to meet the requirements of concurrency which is partially or wholly outside the city's direct operational control must be submitted for approval by the appropriate agency(ies) which have control. Should the appropriate agency(ies) elect to postpone the proposed improvements, or refuse to accept the proposed mitigation, the planning director or his or her designee shall collect and hold the amount estimated for mitigation until the improvement is made as required in this chapter. An assurance device satisfactory to the city administrator may substitute for the payment required in this subsection.
 - i. The project proponent may provide funding in an amount equal to the cost estimate of the city administrator or his or her designee, for necessary traffic improvements. The city administrator may require actual construction rather than provision of funding. Funds, or other commitments, for projects to be constructed by the city must be paid in full by the project proponent to the city prior to issuance of a development permit, final plat approval or such other approval for the project.
2. Transportation Demand Management. As a mitigation measure, the project proponent may establish transportation demand management (TDM) strategies to reduce single occupant vehicle trips generated by the project. The project proponent shall document

the specific measures to be implemented and the number of trips to be reduced by each measure. The TDM program may be denied based on the criteria of subdivision 3 of this subsection. The planning director or his or her designee must approve the strategies and shall monitor and enforce the performance of agreed upon TDM measures. The planning director will determine if performance measuring devices shall be imposed, and may require annual documentation of the continued effectiveness of such measures. The planning director may require that additional measures be implemented if the agreed upon measures fail to result in the reduction of the stated number of trips.

3. Decision Criteria—Acceptable Mitigation. Acceptable mitigation requires a finding by the planning director that:

- a. The mitigation is consistent with the comprehensive plan;
- b. The mitigation contributes to system performance;
- c. Improvements to an intersection or roadway may not shift traffic to a residential area;
- d. Improvements to an intersection or roadway may not shift traffic to other intersections for which there is no acceptable mitigation available;
- e. Improvements to an intersection or roadway may not shift traffic to intersections within another jurisdiction which would violate that jurisdiction's policies and regulations;
- f. Improvements to an intersection or roadway may not shift traffic to an arterial or state highway and violate the LOS prescribed for intersections on such;
- g. The effect of the improvement would not result in a reduction of the loss of another transportation objective, including but not limited to maintaining turning lanes, sidewalks, or bicycle lanes;
- h. The adverse environmental impacts of the facilities improvement can be reasonably alleviated;
- i. The improvement will not violate accepted engineering standards and practices.

Notwithstanding the foregoing, the planning director may require correction of a documented safety-related deficiency.

4. Mitigation Denial—Appeal Process. If the planning director determines that the proposed mitigation does not meet the requirements of this chapter, the planning director may deny the proposed improvements and determine the project is inconsistent with this chapter. The planning director's decision may be appealed by the applicant to the [city council hearing examiner](#) pursuant to the provisions of Chapter 17.11.

17.15.090 – Accounting and appeals.

A. All fees collected under this chapter shall be placed in separate accounts for the dedicated purpose for which collected. Such funds may only be expended for identified facilities on an approved plan, and must be spent within six years absent a specific situation where the city can justify a longer period.

B. Any person aggrieved by the action of the planning director based on a determination of capacity issued under this chapter, or the calculation or assessment of any fee, shall have the right to appeal such action to the hearing examiner. A disputed fee shall be paid under protest and the permit may be issued. Any such appeal shall be processed pursuant to the appeals procedures set forth in Chapter 17.11 of this code.

C. Any such appeal shall consider the issues raised, the proper fee to be assessed, and the necessity to find concurrency as a precondition to any project approval. The proper fee to be charged on appeal is determined (1) by compliance with the terms of the ordinance codified in this chapter, and (2) if for any reason the terms of the ordinance codified in this chapter are found inappropriate, such fee as necessary to assure concurrence for all facilities identified in this section, but not to exceed the fee collected pursuant to this chapter.

17.17.020 – Review and approval process.

A. When a request for a variance from development standards listed in Section 17.17.010 is consolidated with a development application, the variance request shall be considered concurrently with the development application. Such a variance application shall be heard in accordance with the provisions of Sections 17.09.025, 17.09.040 and ~~Section~~ 17.09.050 of the Lynden Municipal Code.

B. When a request for a variance to any provisions, standards or requirements listed in Section 17.17.010 does not include an application for additional development permits, or the proposed action does not require an open record public hearing, the application will be reviewed in accordance with the provisions of Chapter 17.05 of the Lynden Municipal Code. Said variance request will be heard by the city council in an open record public hearing consistent with the provisions of Section 17.09.060 of the Lynden Municipal Code.

17.17.040 – Standards and criteria for granting a variance.

Where ~~there are~~ unnecessary hardships and practical difficulties ~~which~~ render it difficult to carry out ~~the provisions of~~ the development standards of the City of Lynden as listed in Section 17.17.010, the city council hearing body shall have power to grant a variance in harmony with the general purpose and intent of the provisions of the development standards so that the spirit of

those standards will be observed, public safety secured and substantial justice done. However, the ~~city council hearing body~~ shall not vary any of the rules, regulations or provisions of those development standards unless ~~it shall approve~~ findings are made that all of the following conditions exist in each case:

A. The variance shall not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity in which the property on behalf of which the application was filed is located;

B. That such variance is necessary, because of special circumstances relating to the size, shape, topography, location or surroundings of the subject property, ~~to provide it with rights and privileges permitted to other properties in the vicinity in which the subject property is located;~~

C. That the granting of such a variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is located; and

~~C. That the granting of such a variance will not be materially detrimental to the public health, safety and general welfare;~~

~~D. That the granting of such a variance will not be injurious to the property or improvements in the vicinity and zone in which the subject property is located.~~

DE. That the variance request is based on sound engineering judgment and includes additional mitigation sufficient to offset adverse impacts to the public interest likely to result from granting the variance. ~~and~~

Findings shall include a report which may contain pertinent information regarding any existing conditions relating to topography, geology, utilization of property, and such conditions set forth by the official plans, development plans, and the comprehensive plans.

~~18.08.020 – Administrative approval process.~~

~~A lot line adjustment is an administrative approval and the planning director shall make the final decision, subject to appeal under Chapter 17.11 LMC. The application shall be processed under the provisions of Section 17.09.010 LMC.~~

~~18.12.010 – Approval required.~~

~~Any action which will result in a short subdivision of any lot, tract, parcel or plot of land for any reason not exempted by RCW 58.17.040 and Section 18.04.040 LMC shall be subject to approval by the planning director, subject to appeal under Chapter 17.11 LMC. Approval shall be based on the standards and conditions set forth in this title. For the purposes of this chapter, a short subdivision will be the subdivision of any parcel into four or fewer lots.~~

19.42.040 – Appeal of determination of building official.

Any interested or aggrieved person, or any officer, official of any department, board or commission of the city, jointly or severally, may appeal to the hearing examiner any determination of the building official in the application of the provision of the zoning ordinance to a particular land and/or structure. The hearing examiner’s decision shall be final unless appealed to the city council. The city council shall hear the appeal as a closed record appeal and shall make the final decision of the city.

19.22.010 Establishment, Relief, and Purpose

A. Establishment and Relief. There is established therein residential design standards and regulation by which residential structures may be permitted and maintained.

1. Relief from the required standards must be sought through the variance process.
2. Variance requests which relate specifically to site design development standards described in Section 19.22.020 shall be submitted to the Board of Adjustment hearing examiner consistent with Section Chapter 19.47 LMC.
3. Variance requests which relate specifically to the residential design criteria described in Section 19.22.030 through 19.22.050 shall be submitted to the Design Review Board consistent with LMC 19.45.035.

B. Purpose.

1. The essential purpose of the residential design standards to ensure that new developments meet and maintain a number of objectives that strive to promote orderly community growth and protect and enhance property values for the community as a whole.

- a. To soften and enhance the built environment using yards and green space, to incorporate inviting pedestrian scale elements into all residential construction, and to provide adequate parking areas.
 - b. To create high-quality communities that have variation of architectural style and durable materials.
 - c. To reduce the visual impact of the garage and accessory structures and emphasize the pedestrian environment.
 - d. To enhance the aesthetics of communities through the installation of landscape and the screening of undesirable elements. Also, to enhance safety and function of residential properties through appropriate exterior lighting, addressing, and fencing.
2. Residential design standards also seek to encourage low impact design (LID) techniques such as rain gardens, xeriscape, or pervious pavement to minimize adverse impacts on the natural environment.

19.45.040 – Decision by the design review board.

The design review board shall review each application to determine if the design meets the guidelines as adopted in the design review guidebook for signs, and commercial and multi-family construction. It shall:

- A. Grant approval of the proposed exterior design or sign, or
- B. Deny the proposed design, or
- C. Approve the exterior design with conditions, which shall be noted by the building inspector.

The building official shall enforce the decisions of the design review board when granting a building permit. All designs shall be subject to the International Building Code as well as all Lynden Municipal codes.

The design review board shall not impose conditions which are contrary to the requirements of any applicable building codes.

The decision of the design review board shall be ~~final~~ the final decision of the city, unless appealed within ~~ten~~ fourteen days to the Lynden City Council.

19.47.010 - ~~Established~~ Hearing examiner – Variances.

~~A board of adjustment is established. The word "board" when used in this title shall mean the board of adjustment. The hearing examiner has jurisdiction over requests for variances from the requirements of Title 19, except for Chapter 19.33 and LMC 19.22.003, .040, and .050, when such variances are not applied for in conjunction with an underlying project, the application for which~~

will be heard by a different hearing body, as provided by section 2.09.040. The decision of the hearing examiner shall be subject to closed record appeal to the city council as provided in Ch. 17.11 LMC. Applications for variances from the requirements of Title 19 that are made in conjunction with another project application for which an open record hearing is required shall be consolidated with that project application, and the hearing body hearing the underlying project application shall also issue a decision on the variance application. Terms used in this chapter are defined in LMC 17.01.030.

~~**19.47.020—Membership—Appointment—Term—Compensation—Vacancy—Removal.**~~

~~The board shall consist of five members, all of whom shall serve without salary. The board members shall be appointed by the mayor with consent of the council and shall consist of citizens having an understanding of the benefits of zoning to the municipality. In case any vacancy should occur in the membership of the board, for any cause, the mayor shall fill such vacancy by making an appointment with the consent of the council. The members of the board may be removed by the mayor, subject to the approval of the council, for such causes as he shall deem sufficient, which shall be set forth in a letter filed with the council. The initial membership shall consist of one member appointed for one year, one for two years, one for three years, and two for four years, and each appointment thereafter will be for four years.~~

~~**19.47.030—Meetings—Notice—Rule promulgation—Records—Quorum.**~~

~~Meetings of the board shall be held at least once each month, for not less than six months of each year, and at such other times as the chairman of the board may determine. There shall be a fixed place of meeting, and all regular board meetings shall be open to the public.~~

~~Notice of said meeting shall be given at least ten days in advance of the meeting date. The owner of the property for which the adjustment is sought shall notify all property owners within three hundred feet of the property. Notification shall be by certified mail or registered mail, and satisfactory evidence of such notice must be provided prior to the hearing date. The board shall adopt its own rules or procedures and keep a record of its proceedings, findings and action in each case, and the vote of each member on each question considered in the proceedings. The presence of three members shall be necessary to constitute a quorum.~~

~~**19.47.040 020 - Special exception or v Variance—Request—Hearing.**~~

~~Any interested or aggrieved person, or any officer, official of any department, board or commission of the city, jointly or severally, may be the appellant, and property owner or developer may make a request to the board hearing body authorized to hear such request for a special exception for relief variance from bulk provision of the zoning ordinance ~~or any determination of the building inspector in the application of the provision of the zoning ordinance to the appellant's land and/or structure; provided, however, that a variance shall not be granted in favor of any property which has previously had a boundary line adjustment.~~ The appellant~~

applicant shall appear at the public hearing, at the time and place fixed by the ~~board~~ hearing body, in person, by agent or by attorney.

19.47.~~050.030~~ - ~~Special exception or v~~Variance — Support or Opposition

Any interested or aggrieved person or persons, jointly or severally, and any officer or official of any department, board or commission of the city, jointly or severally, may support or oppose, ~~by petition or letter, in writing,~~ any applicant's request for a ~~special exception or~~ variance. ~~The petition or letter~~ written statement shall specify the reasons for supporting or opposing the ~~appellant's~~ applicant's request, ~~and shall~~ contain the signature and description of the land of each property owner ~~petition or letter,~~ and ~~The petition or letter shall~~ be submitted timely to the ~~board~~ hearing body ~~at or by the time designated in its rules or procedure.~~

~~19.47.060 - Special exception or variance — Review by board.~~

~~The board may by motion initiate a review of the building inspector's interpretation of the provisions of the zoning ordinance upon a vote by a majority of the members if those present constitute a quorum. It also shall review any interpretation of the provision of the zoning ordinance made by the building inspector and any order, requirement, decision or determination relating thereto, upon receipt of any application or petition requesting a review of any application or petition requesting a review of the interpretation, and it shall hear and decide all applications for special exceptions and variances.~~

19.47.~~070.040~~ - Variance — Application procedure.

~~See Chapters 17.05, 17.07 and 17.09 of this code.~~ Unless stated otherwise in this Chapter, the notice and procedural requirements for variance proceedings shall be substantially the same as an appeal before the hearing examiner brought under Ch. 17.11 LMC, and shall be conducted consistent with Ch. 17.09 LMC.

19.47.~~080 .050~~ - ~~Special exception or v~~Variance — Stay authorized when.

A request to ~~the a board hearing body~~ for ~~any special exception a~~ variance from the requirements of Title 19 stays all proceedings, in furtherance of the action for which the variance is sought. from which the request for a special exception was taken, However, upon a motion by a party, the hearing body may make a finding supported by clear, cogent, and convincing evidence that unless the building inspector from whom the request for a special exception is taken, certifies to the board after the notice of a request for a special exception shall have been filed with him that by reason of facts stated in the certification, a stay would, ~~in his opinion,~~ cause imminent peril to life or property, in which case such action shall not be stayed other~~wise~~ wise than by an restraining order ~~which may be~~ issued by the Superior Court. ~~The decision of the board on the request for a stay shall be transmitted to the building inspector.~~

19.47.~~110.060~~ - Jurisdiction—Variances—Power to vary rules and regulations when.

Where ~~there are~~ unnecessary hardships and practical difficulties ~~which~~ render it difficult to carry out ~~the provision of~~ a bulk provision of the zoning ordinance, the ~~board hearing body may shall~~ have power, in passing upon requests therefor, to grant a variance in harmony with the general purpose and intent of the provisions contained in this title, ~~and such variances may vary from~~ any rules, regulations or provisions of the zoning ordinance relating to the bulk provisions of the zoning ordinance, so that the spirit of the ordinance will be observed, ~~the~~ public safety secured, ~~and~~ substantial justice done. However, the ~~board hearing body shall not vary any of the rules, regulations or provisions of the ordinance codified in this title unless may only grant a variance if~~ it ~~shall find~~ s that all of the following conditions exist ~~in each case of a request for a~~ each variance ~~from the provisions of this title~~ application:

- A. The variance shall not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and zone in which the property on behalf of which the application is located;
- B. That such variance is necessary, because of special circumstances relating to the size, shape, topography, location or surroundings of the subject property, to provide it with rights and privileges permitted to other properties in the vicinity and zone in which the subject property is located; and
- C. That the granting of such a variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is located.

19.47.120.070 – Findings Hearing—Decision.

Hearings on variance requests shall be open record hearings and shall follow substantially the same format as provided in Section 17.09.060. Notice and other procedural elements shall be as provided in the other applicable sections of Title 17, including Ch. 17.11 LMC.

~~The board's findings shall include a report, in which a comparison is made of the appellant's request for a variance in harmony with the provisions of the zoning ordinance, and of the present land utilization pattern within the neighborhood area of the appellant's land. Such report may contain other~~ The hearing body's decision shall be in substantially the same form as a decision on an appeal under Title 17 and shall include written findings of facts, conclusions of law, and decision. The findings of fact shall include pertinent information regarding any existing or preexisting conditions relating to topography, geology, utilization, and such conditions set forth by the official plans, development plans, and the comprehensive plans, and as may be included in the board's findings. The board's findings shall include all of the relevant facts which support and oppose the contention of the ~~appellant~~ applicant. The hearing body's decision on a variance request may grant the variance, deny the variance, or grant the variance with conditions. The hearing body's decision may be subject to reconsideration under the same process set forth in Section 17.09.080.

19.47.130.080 – Decision by ~~board~~ hearing body – Appeal – Effective ~~when~~ date.

~~The decision of the board granting or denying a special exception and/or, shall not become final until the expiration of five days from the date of entry of such decision in the official records of the board, Section 17.09.100(B) provides the effective date of the decision, unless the board hearing body shall find~~ makes a finding ~~that the making of the decision effective immediately is necessary for the preservation of property or personal rights, and shall so certify on the record, and if~~ If the hearing body’s decision is associated with a pending permit application, the decision shall cease to be effective on the same date said application expires without having been granted. Otherwise, if the applicant does not obtain a building permit and/or occupancy permit ~~is not obtained by the appellant~~ within one year from the effective date of the effective date of the final decision of the city, board’s decision, the ~~board’s~~ decision shall cease to be effective. ~~The decision of the board shall be final, subject to review by the Superior Court.~~

19.59.180 - Variances.

When an application for a communications facility does not require the approval of the planning commission and is not otherwise associated with a project application to be heard by another hearing body, ~~the board of adjustment~~ hearing examiner shall have the authority to grant a variance from the requirements of this chapter, subject to closed record appeal to the city council as provided in Ch. 17.11 LMC. If the communication facility requires the planning commission’s approval under LMC 19.59.060, the planning commission shall consolidate the hearing on the variance with the hearing on the application and make a decision on both matters. If the variance application for the communication facility is otherwise dependent on or connected to another underlying project application for which an open record hearing is required, the two hearings shall be consolidated and the hearing body making the decision on the underlying project shall also issue a decision on the variance application. ~~in accordance with the procedures and considerations provided in Chapter 19.47.~~

19.59.190 – Interpretations.

Where there is any dispute concerning the interpretation of this chapter, the decision of the city planner shall prevail, subject to open record appeal to the ~~code appeals board as provided in Title 15 of this code~~ hearing examiner. The hearing examiner’s decision shall be in writing and shall be subject to closed record appeal to the city council pursuant to Ch. 17.11 LMC.

19.59.220 – Nonconforming facilities.

A. Nonconforming facilities shall be removed or brought into compliance with this chapter no later than the expiration of the amortization period of each such facility, determined as follows:

1. For facilities made nonconforming by passage of the ordinance codified in this chapter, January 1, 2002.
2. For facilities made nonconforming by passage of any subsequent ordinance, five years after the effective date of such ordinance.

B. Loss of Nonconforming Status.

1. A nonconforming wireless communications facility shall immediately lose its legal, nonconforming status if:

- a. The facility is altered in any way in structure or color, or if the structure exceeds the allowable number of appurtenance facilities;
- b. The facility is damaged in excess of fifty percent of the original cost of the facility;
- c. The facility is relocated; or
- d. The facility is replaced.

2. On the occurrence of any of the events described in subsection (B)(1) of this section, the wireless communications facility shall be immediately brought into compliance with this chapter with a new permit secured therefor, or shall be removed; provided, however, that the city planner may authorize specific alterations of such nonconforming facilities if it is found that:

- a. The end of the nonconforming facility's amortization period is more than two years away; and
- b. The total amount of aggregate noncompliance of the facility area of the existing facilities on the premises is reduced at least fifty percent by the proposed alterations; and
- c. The alteration shall not affect the original amortization period for the nonconforming facility.

C. Notice of Nonconforming Facilities. The city planner shall endeavor to give notice of the legal nonconformance and amortization periods set forth in this section to the owners of wireless communications facilities required to be removed. Such notice should be given to the owners of the facilities as shown by city records within one hundred twenty days of the effective date of the ordinance which renders the facilities nonconforming, whichever occurs later. Only one such notice need be given. Failure of the city planner to give the notice specified in this section, or failure of the facility owner to receive any such notice

shall not limit or affect the city's power to enforce this chapter, or in any way reduce the ability of the city to require removal of the nonconforming facilities as provided by law.

D. Administrative Appeal. The owner of a nonconforming wireless communications facility may appeal to the city planner to request an extended period of use of such facility beyond the amortization period determined by this section. Any such appeal must be made to the city planner upon forms provided by the city and must be accompanied by an appeal filing fee as set by resolution of the city council. The city planner shall require that the appellant provide as part of the appeal a general description of the facility, its dimensions and physical position; evidence sufficient to establish the date and cost of the facility as originally constructed and installed; the amount of depreciation claimed and the depreciation schedule used for such facility as reflected by Internal Revenue Service schedules for prior years; the estimated cost of relocation or alteration of such facility, where applicable; together with any other information or documents specified by the city planner which are reasonably necessary to assist the city in making a determination on the appeal. The city planner shall consider the statements and documentary evidence contained in the application and any supplementary information which may reasonably be required. In addition, the city planner shall inspect the subject facility to determine its general condition, state of repair, and the extent to which the facility does not conform to the requirements and limitations of this chapter. The city planner may also request that the facility is inspected by the building official for structural soundness and building details. In making the determination, the city planner shall consider the unrecoverable cost invested in the facility, the estimated remaining life of the facility, and the degree of nonconformity. The city planner shall prepare and make available for public inspection the specific method used in processing such appeals. All determinations of appeals made pursuant to this section shall be made in writing with specific findings of fact and conclusions in support of the decision. All such determinations of the city planner are subject to open record appeal to the city council hearing examiner as provided by this title. The hearing examiner's decision shall be subject to closed record appeal to the city council under the procedures in Ch. 17.11 LMC.

19.67.110 – Appeals and adjustments.

Any person(s) seeking an adjustment to the dedication or mitigation assessments required by this chapter shall have a right to appeal to the city council hearing examiner. Any such appeal shall be filed with the city clerk in writing within ten- fourteen days after the date of mailing or transmittal by the city of written notice of the specific dedication or mitigation assessments required by this chapter. Following receipt of such an appeal, the city council hearing examiner shall hold an open record-public hearing to consider the appeal at its next available meeting. In considering the appeal, the city council hearing examiner may, in its his or her discretion, take into account unusual circumstances in a specific case and may consider studies and data

submitted by the appellant(s). The ~~city council~~ hearing examiner shall issue ~~such determination~~ a written decision as ~~he or she~~ deems fair and equitable. ~~The decision of the city council shall be in writing and shall be the final decision of the city.~~

SECTION 3:

The City Council hereby approves the procedures of the office of the hearing examiner attached as Exhibit A hereto.

SECTION 4:

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 ordinance 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 5:

Any ordinance or parts of ordinances in conflict herewith are hereby repealed.

This ordinance shall be in full force and effect five (5) days after its passage, approval and publication as provided by law.

PASSED by the City Council this _____ day of _____, 20_____, and signed by the Mayor on the _____ day of _____, 20_____.

MAYOR

ATTEST:

City Clerk


APPROVED AS TO FORM:

City Attorney

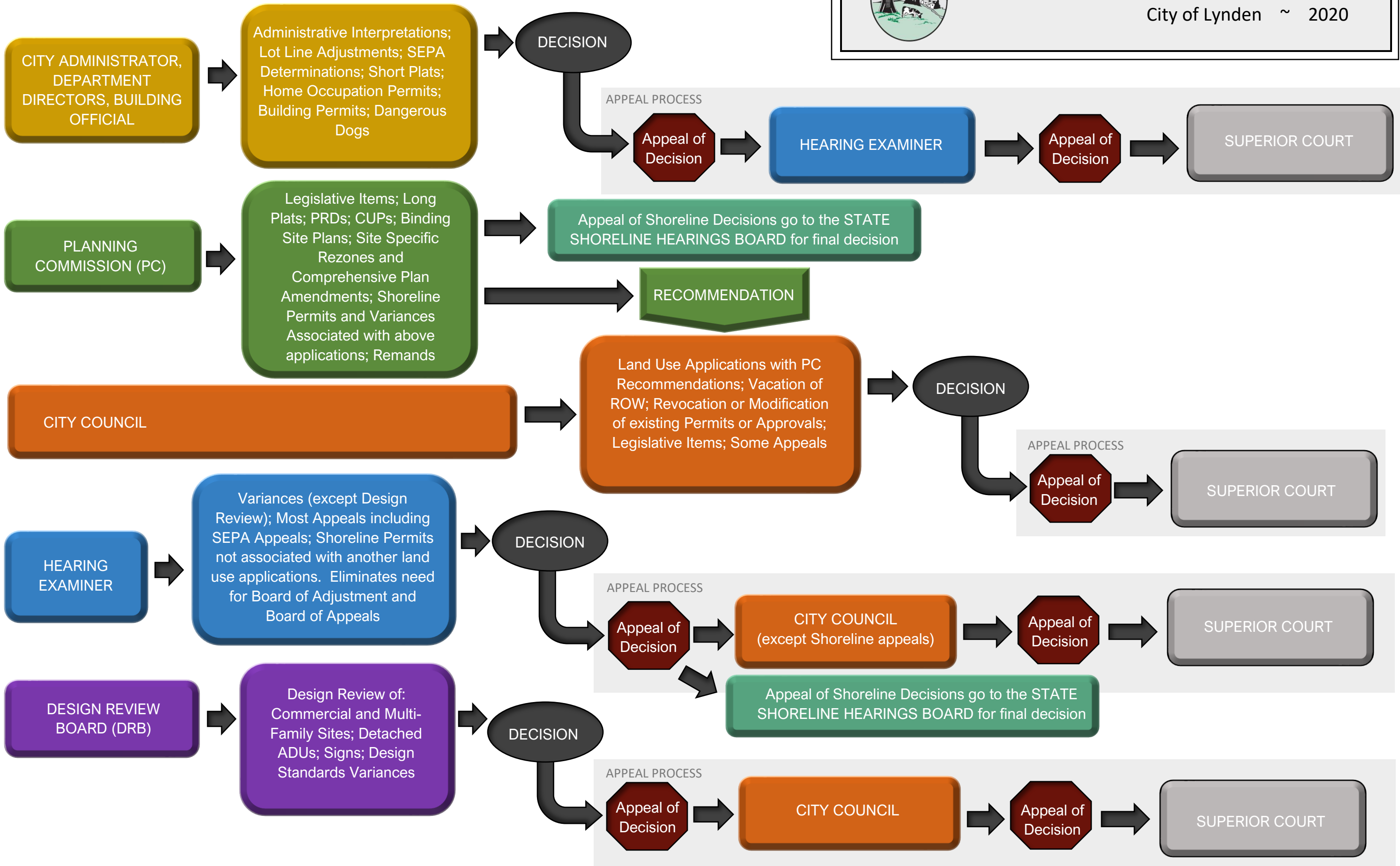
REVIEWING ENTITY

APPLICATION

REVIEW PROCESS – PROPOSED IN ORD 1615



Initiative to install a Hearing Examiner Process
City of Lynden ~ 2020



CITY OF LYNDEN

PLANNING DEPARTMENT
Heidi Gudde, Planning Director
(360) 354-5532



PLANNING COMMISSION AGENDA

7:30 PM December 10, 2020
Microsoft Teams Meeting

1. CALL TO ORDER

2. ROLL CALL

Commissioners Present: Bryan Korthuis, Blair Scott, Diane Veltkamp, Gerald Veltkamp, Tim Faber, Karen Timmer and Nikki Turner.

Commissioners Absent with Notice: None

Staff: Mike Martin, Heidi Gudde and Korene Samec

3. APPROVAL OF THE MINUTES OF November 12, 2020

Faber approved as presented. Turner seconded.

4. DECLARATION OF CONFLICT

None of the Commissioners reported any ex-parte contact or conflict of interest.

5. PUBLIC HEARINGS TO CONSIDER:

A. Dillard Conditional Use Permit #20-03, 422 Woodcreek Drive

Gudde summarized the proposed Conditional Use Permit Application. The City of Lynden’s zoning code provides residents, who meet specific performance criteria, the opportunity to use their homes as short-term vacation rentals. These are regulated per the City’s code section on Bed and Breakfast Establishments.

Prior to operation, the homeowner must be granted a Conditional Use Permit (CUP) as a short-term rental may have an impact on the surrounding properties. The CUP process includes notifying property owners within 300 feet and demonstrating that the property will meet the criteria outlined in LMC 19.49.020 and can meet the operational regulations of LMC 19.49.030 (attached).

The pending CUP application has been submitted by David and Kathleen Dillard; who’s property is located at 422 Woodcreek Drive. The attached application includes an aerial map of the neighborhood and a floor plan of the residence. The Dillard’s already have a legal Accessory Dwelling Unit, located in the basement floor of their residence. This ADU has been used for both long-term and short-term rentals. With this CUP proposal they are seeking to make the short-term rental option legal. They are not proposing to make physical changes to the home. Consistent with code, the property owner is intending to remain onsite when the property is being used as a short-term rental. The property will provide adequate on-site

parking and landscape buffers/fence are in place to reduce impacts to others. The request is also consistent with similar requests approved elsewhere within the City.

Staff has received concerns regarding increased parking impacts due to the fact that the Dillard’s have two driveways off of Woodcreek Drive and about the approved building permit that allows the Dillard’s to construct a shop in the rear yard. Gudde noted that the conditions in the Staff Report for the CUP specifically state that the ADU / Air B&B can only be located within the approved ADU not the proposed detached shop. Gudde also mentioned the possibility of installing a privacy fence along the northern property line to provide a buffer.

Public Comment

Dave Dillard, applicant spoke and stated that the proposed shop, currently under construction will help relieve some of the parking concerns as some vehicles will be parked inside the shop which will move parking off of the street.

Dillard stated that for the last three years we have rented the unit as a full-time rental which had a vehicle in driveway all of the time. The parking will actually be reduced as there will no longer be someone residing in the unit fulltime.

Linda Sharp, 450 Woodcreek Drive. Sharp asked if the CUP states that the ADU will be located in the existing home and will not be in the proposed shop. Gudde replied, yes. Sharp also asked about a privacy fence constructed on the Dillard’s property line. D. Veltkamp stated, that was a recommendation from Staff.

Questions or Comments from the Commissioners

- Faber asked what is the time frame for the construction of the shop? Dillard replied, next summer.
- K Timmer asked if the shop will be completed next summer or just in the process of being completed? Dillard replied, completed.
- Faber asked about screening on the property lines. Gudde replied, that the south side of property appears to be adequately screened, however, screening on the north property line is recommended. Faber questioned the screening on the north side as the ADU exists on the other side of the property. Gudde stated that the recommendation came out of discussions regarding privacy and parking concerns with the neighbor.
- Linda Sharp stated that there is a lot of traffic generated from the Dillard family and the Sharps would like some additional privacy between the properties and to better designate the property lines. In addition, the Dillard’s park a freightliner in the driveway between the two homes. along the northern property line.

- The Dillard's state that the driveway on the northside has never been used by renters. It is a private driveway only.
- Timmer asked if the north driveway is currently used? The Dillard's replied, yes, it is our private driveway.

Scott motion to close the public portion of the hearing. Seconded by Korthuis and the motion passed 6-0

The Commission had no concerns with the CUP criteria. The buffering issue is not due to the CUP request.

K Timmer stated that a nightly rental can have more impact than a monthly rental. The City needs to tread carefully. Maybe a buffer is not out of the question as the neighbors could be negatively impacted.

G Veltkamp has concerns regarding forcing the Dillard's to put up a fence. A fence or buffering is not required for the shop building. The screening on the north property line is a separate issue.

Faber agrees with G. Veltkamp and stated that the parties involved need to work together for a solution. The fence is a different issue than the CUP request. Faber has no concerns with the CUP criteria.

Brief discussion regarding annual review of the CUP.

Faber made a motion to recommend to the City Council the approval of the proposed Dillard Conditional Use Permit to allow short-term rentals as proposed at their property at 422 Woodcreek Drive, subject to annual review as written in code. Seconded by Blair Scott and the motion passed 6-0.

B. KODA Rezone #20-03, 295 S BC Avenue

Gudde summarized the request. The property owner is seeking to rezone this property from Multi-Family Residential (RM-4) to Multi-Family (RM-2). The subject property has unique characteristics that have led to the owner’s decision to pursue a down zone.

The Planning Department is tasked with keeping up to date on Growth Management Policies and staying on task with City’s Comprehensive Plan goal to seek / maintain higher density opportunities. This is especially important for those located relatively near commercial services such as shopping and the downtown core.

It should be noted that constraints of the critical areas support the need for medium to higher density housing to more thoroughly utilize building areas. Additionally, higher density development would not be out of character for the neighborhood as multi-family buildings, the relatively large scale of the New Hope Center, and cluster developments are all located in close proximity to this property. Considering these factors, the request to downzone this area should be considered carefully in light of the City’s growth management goals.

While the applicant has expressed an openness to an RM-3 zoning the primary reason that RM-2 was pursued was because the smaller setbacks associated with RM-2 were a better fit for the housing types they have planned for the property. Staff also recognizes that parking requirement and building height limits within the City’s development code may also restrict the actual achievable density on this property. For these reasons, and other described in the TRC report, staff supports the property owners request to rezone to an RM-2 designation

Public Comment

Roger Anderson and Ray Kornelis, applicants spoke. Anderson and Kornelis are joint partners in the proposed rezone. Plans include making two lots on-site for single family homes. We could build a home under RM-4, however, achieving the setbacks in that zone is a bit more difficult than in RM-2. We have no intent of building multi-family.

Questions or Comments from the Commissioners

- D Veltkamp asked about the access point to the property. Would additional property be needed if it was zoned RM-2? Gudde stated that the size really depends on the density, not necessarily the zoning.
- Discussion about buffer / buildable area. Building would need to be in front of the 50-foot buffer shown on the map in the packet. Questions on the validity of the map with regards to buffer lines etc.
- Anderson stated that the map is correct, and the buffer zone is accurate. Northwest Ecological prepared the wetland study in 2019.

- Faber asked how much acreage would be left outside of the wetlands. Roger said just over an acre up on the ridge of which we have plans to divide into two lots.
- Turner asked how the property would be divided? Heidi stated that there is not a subdivision plan submitted at this point. One lot would be close to the existing barn with the second lot being south of that area. As you head east, the property is not buildable.
- K Timmer confirmed that the future plan is to create two additional lots, correct?. Yes, 2 new lots for a total of three.

K. Timmer motion to close the public portion of the hearing. Seconded by G. Veltkamp and the motion passed 6-0

Other Commissioner Comments:

- The Commission agreed that it is a reasonable request.
- Faber stated that the access does not lend itself to multi-family development.
- Korthuis stated that the crunch of the wetland does not make sense for multi-family development.

The Commission reviewed the criteria associated with a site-specific rezone and agreed that things have changed in the area since the current zoning was established and at that time, the rezone did not take in consideration the topography of the land / wetland which would greatly limit the density of units allowed.

In addition, other properties in the area are zoned RM-2.

Faber made a motion to recommend to the City Council the approval of the KODA Rezone request from an RM-4 to an RM-2 designation, Application #20-03, According to the Staff Report dated December 1, 2020. Seconded by Bryan Korthuis. Motion passed unanimously.

C. Zoning Text Amendment – Hearing Examiner

Planning Commission met with the Community Development Committee several months ago to discuss the introduction of a hearing examiner.

Gudde gave an overview of the amendment. In 2018 the City of Lynden began researching the use of a hearing examiner after several costly and time-consuming administrative appeals were defended. Use of a hearing examiner, typically an experienced land use attorney, could provide multiple benefits to the City. These include an expediency in processing applications, the unbiased opinion of a professional, removing social/political influence from the process, reducing the City’s liability, and decreasing the obligations placed on volunteer boards.

A hearing examiner could be considered as the reviewer of appeals/applications where specific legal or technical criteria are listed. Feedback regarding this initiative has led to a code amendment drafted to include some appeals and some variance requests. Decisions made by the hearing examiner would go to the City Council if appealed. This code amendment also provides an opportunity to update sections of code to current organizational structure and other improvements. In summary, the attached draft ordinance proposes:

- To remove an unusual and glaring liability found in Chapter 17.13.060(B) which allows any three property owners or three residents of the City to petition for the review of any permit issued under the development code without indicating a specific appeal period.
- That a hearing examiner would hear some administrative appeals.
- That a hearing examiner would hear variances from Chapter 19. These variance applications are currently heard by the Board of Adjustments. This change would eliminate the need for a Board of Adjustments.
- That a hearing examiner would hear appeals of the Building Official’s decisions that are currently directed to the Board of Appeals (described in Chapter 15.14), which has never been created.

Previous drafts of the code amendment had shifted the review of Conditional Use Permits and Shoreline Permit to the hearing examiner as well. After feedback from the last workshop, the attached ordinance does not include these applications in the hearing examiner’s scope of work. However, staff and legal counsel urge the Planning Commission and the City Council to reconsider the issue of shoreline permits. The City’s Shoreline Master Plan is over 100 pages of shoreline specific code. Mitigation work and compliance is often highly dependent on work from certified biologists and the best available science related to shoreline / riparian mitigation. Staff’s recommendation is to send shoreline permits to a hearing examiner for a decision. Appeal of these decisions would be heard by the State’s Shoreline Hearings Board as is the current path within the City’s development code.

Gudde stated, for SEPA Appeals, they would be handled first with the Hearing Examiner, and the project associated with it would come forward to the Commission after the SEPA appeal was decided on.

For Variance and Shoreline applications not associated with land use applications, they would go to the hearing examiner for a decision.

For consolidated land use applications that include Shoreline permits, they would still go before the Planning Commission.

There are two Hearing Examiner options; the structure that the City is proposing is to allow a dispute to be heard by City Council, another option would be to appeal to the Superior Court.

Mike Martin, this is his 5th City he has worked for of which many used a hearing examiner. Over the years, Martin has heard many concerns from leaders thinking that with a hearing examiner, they will lose local control. Let me assure you that local control remains with the City Council.

The need for a hearing examiner boils down to the fact that the review will be handled by an unbiased, highly trained person to review and decide on an issue.

At anytime, the City Council can revisit the hearing examiner chosen.

The City often has 4-5 attorneys working on the same issued at one time. We are trying to make this a more efficient and a less expensive process. The City has no plans to hire additional planners, we punch above our weight and make use of the people we have.

A lot of Cities use a hearing examiner for many more items than what we are proposing. This is a modest way of trying out this need. We can always add to the list as time goes on.

Faber appreciates and stands behind the proposal for a hearing examiner whole heartedly. Faber can get behind the Shoreline recommendation as well. It is very technical and having a someone who specializes in that area makes good sense. No problem at all with the hearing examiner reviewing the specific applications as proposed.

G. Veltkamp concurs with Faber. You need to trust the professionals. This is above the PC's pay grade. It is very specific and technical and it is important to have the professionals review the applications.

B Korthuis, the blue-line document is pretty much what was explained to us at our joint meeting in July, which he appreciated very much. Having a hearing examiner is definitely something that the City should acquire.

Public Comment - None

Scott motioned to close the public portion of the hearing. Seconded by K. Timmer and the motion passed 6-0.

No additional comments were brought forward from the Commissioners.

Faber made a motion to recommend to the City Council the approval of Ord 1615 with the revision to include the hearing examiner's review of shoreline permits. Seconded by Bryan Korthuis. Motion passed unanimously.

D. Zoning Text Amendment #20-02 – Mobile Home Parks

Gudde addressed the text amendment. Lesa Starckenberg-Kroontje, representing her client Four ‘S’ Investments, has applied for a Zoning Text Amendment regarding the expansion of the nonconforming use of a mobile home park within the Commercial Services-Regional (CSR) Zoning category. The request is somewhat focused on the Duffner Mobile Home Park located on Front Street just west of the Guide Meridian. However, it is important to keep in mind that the amendment would apply to any other mobile home communities (MHCs) within the CSR zoning category. Staff believes this is limited to one other circumstance – the unit pads located at the Windmill Inn Motel located at 8022 Guide Meridian.

Non-conforming uses are addressed in LMC 19.35. A use, like the Duffner Mobile Home Park, which is brought into the City that does not match the permitted uses of its zoning category is considered a legal nonconforming use. This is referred to as times as a use that is “grandfathered”. Although a legal nonconforming use can continue to operate, it is not permitted to expand.

The Duffner Mobile Home Park was recently able to connect to City sewer services and decommission aging septic systems. This available connection has also initiated the applicant opportunity to request additional housing units be placed on the property as each would be able to connect to sewer services.

In the attached applicant explores the potential benefits that additional stock of affordable housing can provide to the City. Staff review can be found in two TRC reports – the final report dated December 4, 2020.

Staff review, with the assistance of the City’s legal counsel, has concluded with a recommendation to approve the expansion of MHCs in the City’s CSR zones only as a conditional use and subject to appropriate setback and buffering requirements that may result as a review of the conditional use permit application. To be consistent with State Statues, staff also recommends that the City’s definitions related to MHCs in Chapter 17 be updated as attached and the corresponding text amendments to Chapters 18 and 19 be made in accordance with these updates.

Public Comment

Lesla Starckenburg, Agent for Applicant, spoke. Starckenburg stated that she is speaking on behalf of the owners of the Duffner Mobile Home Park. This request ended up being more work than originally thought. That was not the intent in the beginning, so thank you to Staff for the hard work. Starckenburg stated that many inconsistencies were found once the process was started.

Allowing this amendment would provide more affordable housing in the City as well as the use of surplus land. It allows for continued property income while the owners wait for the commercial development to take off in the area. The concept originally came up a year ago in

a council committee meeting where we were discussing the property and its connections to the sewer line. The idea for a ZTA was brought forward as her client's property is considered a non-conforming use as it is not allowed to intensify. Council members at that time indicated that a text amendment was a good idea.

Commissioner Comments

- Scott, the request sounds reasonable, however, when I think of the concept of a manufactured home it seems like something with more permanence, not an RV. Concern if we open this up. Starckenburg stated, at this location we are looking to add 4-5 units in the middle of the property. This ZTA would only apply to a couple of parcels in town. The impact would be minimal and it would require a conditional use permit approval and building permit. Bringing in units would require compliance with the code.
- G Veltkamp agrees that it is affordable housing. What would stop someone from placing 4 mobile homes and then renting them out for rental income? Lesa stated that there is a separate landlord CCR's that need to be met. K Timmer stated that she cannot see an investor buying and renting it for income.
- Timmer stated that this is another form of affordable housing which is really needed in Lynden.
- Veltkamp asked, if they added 4 units, would they be held to meeting development standards for streets similar to houses. Gudde stated that it would be unreasonable to make them meet street standards, they would however, need to apply for a CUP which would come before the Planning Commission and the City Council. The Fire Department would also have the opportunity to weigh in. Staff would recommend buffering, site lighting and that the parking code is met.
- Faber, how many additional units can fit on this specific property? Lesa stated about 4-5. Can multiple units be brought in under one CUP? Lesa does not see why not. A site plan can show the delineated area and associated buffering etc. under one CUP. After that each unit would require its own building permit.
- Gudde stated that a distinguishing difference between this property and the Windmill is that sewer is at this site and there are no flood plain concerns. At the windmill, there is no sewer and there are considerable flood plain issues that would need to be dealt with.

Scott motioned to close the public portion of the hearing. Seconded by G. Veltkamp and the motion passed 6-0.

Scott has no objections as any additional units would need to come before the Commission through a conditional use permit. Korthuis stated that it seems like an over-do amendment that needs to be cleaned up.

Faber likes the checks and balances for review.

Faber made a Motion to recommend to the City Council the approval of the proposed zoning text amendment, ZTA 20-02 as conditioned by staff. The amendment would allow nonconforming mobile / manufactured home communities, through the approval of a conditional use permit, to expand by adding additional pads / units within existing community boundaries. And further recommend to Council the approval of code updates to applicable definitions and affected code sections within Chapters 17, 18 and 19. Seconded by Bryan Korthuis and the motion passed 6-0.

The Commission thanked Lesa Starkenburg and Staff for their work on this amendment.

6. ADJOURNMENT

Motion to adjourn by Scott at 9:35 pm. Seconded by Turner.



Meeting Date:	December 10, 2020
Name of Agenda Item:	Public Hearing for Zoning Text Amendment re Use of Hearing Examiner
Type of Hearing:	Legislative
Attachments:	
Draft Ord 1615, Minutes of 7-22-20 Joint CDC and PC Workshop, Decision flowcharts, Record of previous apps	
Summary Statement:	
<p>In 2018 the City of Lynden began researching the use of a hearing examiner after several costly and time-consuming administrative appeals were defended. Use of a hearing examiner, typically an experienced land use attorney, could provide multiple benefits to the City. These include an expediency in processing applications, the unbiased opinion of a professional, removing social/political influence from the process, reducing the City’s liability, and decreasing the obligations placed on volunteer boards.</p> <p>Generally, a hearing examiner could be considered as the reviewer of appeals/applications where specific legal or technical criteria are listed. Feedback regarding this initiative has led to a code amendment drafted to include some appeals and some variance requests. Decisions made by the hearing examiner would go to the City Council if appealed. This code amendment also provides an opportunity to update sections of code to current organizational structure and other improvements. In summary, the attached draft ordinance proposes:</p> <ul style="list-style-type: none"> • To remove an unusual and glaring liability found in Chapter 17.13.060(B) which allows any three property owners or three residents of the City to petition for the review of any permit issued under the development code without indicating a specific appeal period. • That a hearing examiner would hear some administrative appeals. • That a hearing examiner would hear variances from Chapter 19. These variance applications are currently heard by the Board of Adjustments. This change would eliminate the need for a Board of Adjustments. • That a hearing examiner would hear appeals of the Building Official’s decisions that are currently directed to the Board of Appeals (described in Chapter 15.14), which has never been created. <p>Previous drafts of the code amendment had shifted the review of Conditional Use Permits and Shoreline Permit to the hearing examiner as well. After feedback from the last workshop, the attached ordinance does not include these applications in the hearing examiner’s scope of work. However, staff and legal counsel urge the Planning Commission and the City Council to reconsider the issue of shoreline permits. The City’s Shoreline Master Plan is over 100 pages of shoreline specific code. Mitigation work and compliance is often highly dependent on work from certified biologists and the best available science related to shoreline / riparian mitigation. Staff’s recommendation is to send shoreline permits to a hearing examiner for a decision. Appeal of these decisions would be heard by the State’s Shoreline Hearings Board as is the current path within the City’s development code.</p>	
Recommended Action:	
Motion to recommend to the City Council the approval of Ord 1615 with the revision to include the hearing examiner’s review of shoreline permits.	

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	February 1, 2021	
Name of Agenda Item:	Calendar	
Section of Agenda:	Other Business	
Department:	Administration	
Council Committee Review:	<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
		Legal Review: <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required
Attachments:	Outlook Calendar	
Summary Statement:	See next page.	
Recommended Action:	None	

February 1, 2021
Monday

7:00 PM - 9:00 PM

City Council Meeting -- Online Via Teams

Microsoft Teams meeting
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[+1 253-948-9362,,300215987#](#) United States, Tacoma
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February 2, 2021
Tuesday

8:30 AM - 9:30 AM

Leadership Team Meeting -- Annex Council Chamber

5:00 PM - 6:30 PM

Design Review Board -- To be determined

February 3, 2021
Wednesday

4:00 PM - 6:00 PM

Public Works Committee Meeting -- Microsoft Teams Meeting
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.

Microsoft Teams meeting
Join on your computer or mobile app
[Click here to join the meeting](#)
Or call in (audio only)
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February 3, 2021 Continued

Wednesday

February 4, 2021

Thursday

2:00 PM - 4:00 PM

Technical Review Committee -- Microsoft Teams Meeting

Microsoft Teams meeting

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Or call in (audio only)

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4:00 PM - 5:00 PM

Public Safety Committee Meeting -- Microsoft Teams Meeting

Microsoft Teams meeting

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February 4, 2021 Continued
Thursday

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February 8, 2021
Monday

9:00 AM - 10:00 AM

Meeting: Vern/Mike -- Mike's Office

February 9, 2021
Tuesday

8:30 AM - 9:30 AM

Leadership Team Meeting -- To Be Determined

February 10, 2021
Wednesday

All Day

Court -- 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

February 11, 2021
Thursday

7:00 PM - 9:30 PM

Planning Commission Meeting -- Microsoft Teams Meeting

February 11, 2021 Continued
Thursday

Microsoft Teams meeting

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February 12, 2021
Friday

10:00 AM - 11:00 AM

Meeting: Steve/Mike -- Mike's Office

February 15, 2021
Monday

All Day

Presidents' Day Holiday -- Lynden City Offices Closed