

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
March 15, 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 778 920 625#. 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- No

Roll Call

Oath of Office-None

Approval of Minutes

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

Items from the Audience

Scheduled

Unscheduled (20 Minutes)

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

Consent Agenda

- [2.](#) Approval of Payroll and Claims
- [3.](#) Award Bid for Foxtail Street Extension Project

Public Hearing

Unfinished Business

New Business

- [4.](#) Amendment to Public Defender’s Contract
- [5.](#) Preliminary Plat Approval – Kode Kamp Long Plat
- [6.](#) Site Specific Rezone – Kode Kamp (Lagerwey Property)
- [7.](#) Site Specific Rezone 20-05 – O & S Farms

Other Business

- [8.](#) Public Works Committee Meeting Minutes March 3, 2021
- [9.](#) Public Safety Draft Minutes- March 4, 2021
- [10.](#) Calendar

Executive Session

Adjournment

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	March 15, 2021	
Name of Agenda Item:	Draft Council Minutes- Regular Meeting	
Section of Agenda:	Approval of Minutes	
Department:	Administration	
Council Committee Review:	<input type="checkbox"/> Community Development <input type="checkbox"/> Public Safety <input type="checkbox"/> Finance <input type="checkbox"/> Public Works <input type="checkbox"/> Parks <input type="checkbox"/> Other: N/A	Legal Review: <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <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



March 1, 2021

1. CALL TO ORDER

Mayor Korthuis called to order the March 1, 2021 regular session of the Lynden City Council at 7:00 p.m. held through an online web-based meeting platform (Microsoft Teams).

ROLL CALL - None

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

Members absent: None

Staff present: Fire Chief Mark Billmire, Parks Director Vern Meenderinck, Planning Director Heidi Gudde, 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 Kuiken moved and Councilor Strengholt seconded to approve the February 16, 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 – March 3, 2021

Manual Warrants No.	<u>21543</u>	-	<u>21544</u>		\$7,183.68
EFT Payment Pre-Pays					\$33,954.73
				Sub Total Pre-Pays	\$41,138.41
Voucher Warrants No.	<u>21545</u>	through	<u>21577</u>		\$60,975.95
EFT Payments					<u>\$0.000</u>
				Sub Total	\$60,975.95
				Total Accts. Payable	\$102,114.36

Berthusen Park Agricultural Land Lease
COVID-19 Federal Reimbursement Contract
Resolution No. 1033- Stuit Development Agreement

Councilor De Valois moved and Councilor Kuiken seconded to approve the Consent Agenda. Motion approved on a 7-0 vote.

3. PUBLIC HEARING

Ordinance No. 1621 Pepin Creek Moratorium Extension

The Pepin Creek moratorium has been in place since September of 2016. It was established in recognition of development constraints associated with what is now known as the Pepin Creek Sub-area. The City has undertaken significant efforts to examine these constraints and develop solutions which would allow for growth in this area.

Since then, the City Council has approved the Pepin Creek Sub-Area Plan that addresses circulation, open space and assigned land use and zoning within the area. Additionally, because of the significant infrastructure improvements associated with the creek re-alignment and the improvement of Benson and Double Ditch Roads, Council has since recognized that work must be undertaken in a reduced or phased approach. The engineering team, Public Works, and Planning departments have developed a plan which decreases the overall infrastructure cost associated with the creek realignment, is largely consistent with the concepts of the approved sub-area plan and focuses first on portions of the sub-area already within the City and under moratorium.

The financial mitigation study has concluded with a SEPA mitigation fee showing merit for use in allocation of infrastructure costs. The Planning Department has subsequently drafted a Resolution of Intent which outlines the required steps toward lifting the moratorium and will be circulated to the City Council prior to the February 16 Council meeting. It is anticipated that these next steps will require an extension of the moratorium. As a result, City staff

CITY OF LYNDEN

CITY COUNCIL MINUTES OF REGULAR MEETING



recommends that the Council set a public hearing date of March 1st to consider extending the moratorium through June 30, 2021. The current date of expiration is March 9, 2021.

Mayor Korthuis opened the Public Hearing at 7:04

There were no comments.

Mayor Korthuis closed the Public Hearing at 7:04

Councilor Lenssen moved and Councilor Kuiken seconded, to approve Ordinance No. 1621 extending the moratorium of development on those properties identified within the Pepin Creek Sub-Area through June 30, 2021 and authorize the Mayor's signature on the Ordinance. Motion approved on a 7-0 vote.

4. UNFINISHED BUSINESS

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.

All decisions made by the Hearing Examiner, apart from Shoreline land use permits, will be appealable to the City Council. Shoreline permits, per the City's Shoreline Master Program, remain appealable to the State Shoreline Hearing's Board.

The individual selected for the Hearing Examiner position would be selected by the City Council. A corresponding request for qualifications has been drafted and was distributed to Council members in January and reviewed with the Community Development Committee. The Technical Review Committee and the Planning Commission recommend approval as presented.

On February 1, 2021, the City Council held a public hearing on Ordinance 1615 but continued the item to March 1, 2021.

Councilor Lenssen moved and Councilor De Valois seconded, to approve Ordinance No. 1615 with an effective date of May 1, 2021, amending the Lynden Municipal Code to create a Hearing Examiner role and scope of authority, and to authorize the Mayor's signature on the Ordinance. Motion approved on a 7-0 vote.

Council members Gerald Kuiken, Mark Wohlrab, and Brent Lenssen agreed be on the panel that selects the Hearing Examiner.

CITY OF LYNDEN

CITY COUNCIL
MINUTES OF REGULAR MEETING



5. NEW BUSINESS

Resolution No. 1031- A Resolution of Intent regarding the Pepin Creek Project

At the January CDC / Special Council Meeting staff presented concepts for the allocation of costs associated with the Pepin Lite infrastructure. As Council will recall, the goal of the Pepin Lite design is to reduce overall infrastructure costs, focus on transportation improvements within the Pepin Creek Sub-Area, and lift the existing development moratorium.

The 13 projects identified in Pepin Lite include creek re-location but also considerable street improvement projects. Nine of the projects directly serve the development within the Pepin Creek Sub-Area. Another 4 projects are identified as providing benefit to existing neighborhoods or the general community.

Next steps in the planning process include the establishment of a fair allocation of costs for the 9 projects specific to the sub-area. The mechanism that showed the most merit is the use of Transportation Impact Fees (TIF) administered in the form of a SEPA mitigation fee. This fee can be based on the percentage of trips which will be generated by the build-out of the Sub-Area. Traffic analysis concluded that 98.7% of new trips in this area will stem from development in the Sub-Area. This is the nexus for allocating 98.7% of the 9 infrastructure projects to new development. Since the January meeting Berk Consulting conducted a market analysis to determine if this is a realistic share of costs for private development to assume.

Results showed that development within the Sub-Area appears feasible even if it shoulders 98.7% of the cost of infrastructure improvements, other fees, utility costs, and raw land costs. Given these results, staff has drafted the attached Resolution of Intent which summarizes the conclusions of the Pepin Creek Financial Mitigation Study and outlines the path toward lifting the moratorium on development within the Sub-Area. While the resolution does not finalize needed legislative changes, it clearly outlines the City Council's direction on this complicated project and provides guidance to staff and landowners in this area.

Councilor Lenssen moved and Councilor Strengholt seconded, approve Resolution No. 1031 outlining the Council's intentions in the allocation of infrastructure costs associated with the Pepin Creek Sub-Area and authorize the Mayor's signature on the Resolution. Motion approved on a 7-0 vote.

6. OTHER BUSINESS

Council Committee Updates - None

CITY OF LYNDEN

CITY COUNCIL MINUTES OF REGULAR MEETING



7. EXECUTIVE SESSION

Council did not hold an executive session.

The Council meeting reconvened at 7:17 p.m.

8. ADJOURNMENT

The March 1, 2021 regular session of the Lynden City Council adjourned at 7:17 p.m.

Pamela D. Brown, MMC
City Clerk

Scott Korthuis
Mayor

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	March 15, 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:	March 15, 2021	
Name of Agenda Item:	Award Bid for Foxtail Street Extension Project	
Section of Agenda:	Consent	
Department:	Public Works	
Council Committee Review:	<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: _____	Legal Review: <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required
Attachments:	Certified Bid Tabulation Recommendation to Award	
Summary Statement:	<p>Staff recently solicited bids for the Foxtail Street Extension Project. Ten bids were received on March 4, 2021 and Reichhardt and Ebe Engineering prepared the attached Bid Tabulation.</p> <p>The Public Works Committee, at their March 3rd meeting, concurred that the bid results could be forwarded directly to City Council after informing them of the results. The Committee was advised of the bids and concurred to recommend award to Colacurcio Brothers, Inc., the lowest responsive and responsible bidder, in the amount of \$371,615.19, including Washington State Sales Tax, which was below the Engineer’s estimate.</p>	
Recommended Action:	<p>That City Council award the contract for the Foxtail Street Extension project to Colacurcio Brothers, Inc., in the amount of \$371,615.19, including Washington State Sales Tax, and authorize the Mayor to sign the contract.</p>	



March 5, 2021

City of Lynden
300 4th Street
Lynden, WA 98264

Attn: Mark Sandal
Programs Manager

Re: City of Lynden
Foxtail Street Gap Elimination

Recommendation to Award

Dear Mark Sandal;

We have reviewed all construction bid proposals for the above referenced project. Colacurcio Brothers, Inc. provided the lowest responsive bid for Schedules A, B, and C at \$371,615.19.

The Certified Tabulation of Bids Received and the Bidder's Checklist are attached for your information and review.

We recommend that you award the contract to Colacurcio Brothers, Inc. subject to the following:

1. Required project funds are available.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Nathan Zylstra', written over a horizontal line.

Nathan Zylstra, P.E.
Reichhardt & Ebe Engineering, Inc.

R&E Reichhardt & Ebe ENGINEERING INC

423 Front Street Lynden, WA 98264

Table with columns for City of Lynden, Bidder's Name, Engineer's Estimate, and various contractor names like Colacurcio Brothers, Inc and Tiger Construction, Ltd.

CERTIFIED BID TABULATION
By: Nathan Zylstra, P.E.
Date: March 5, 2021

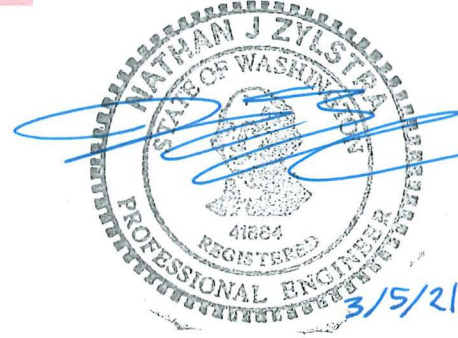
Main bid tabulation table with columns: Item No., Item Description, Quantity, Unit, Unit Price, Amount, and columns for 10 different contractors.

Schedule B - Water Main table with columns: Item No., Item Description, Quantity, Unit, Unit Price, Amount, and contractor columns.

Schedule C - Sanitary Sewer table with columns: Item No., Item Description, Quantity, Unit, Unit Price, Amount, and contractor columns.

TOTAL SCHEDULES A, B, and C (Including Sales Tax) \$ 493,046.20 \$ 371,615.19 \$ 374,368.01 \$ 392,771.60 \$ 405,463.94 \$ 437,431.29 \$ 450,046.30 \$ 486,614.81 \$ 489,547.90 \$ 492,856.00 \$ 493,393.15

Denotes Mathematical Error
Denotes Bid Rejected



CITY OF LYNDEN



EXECUTIVE SUMMARY

Meeting Date:	March 15, 2021	
Name of Agenda Item:	Amendment to Public Defender's Contract	
Section of Agenda:	New 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: _____
	Legal Review: <input checked="" type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input type="checkbox"/> Review Not Required	
Attachments:	Amended Public Defender Contract, red-lined version Amended Public Defender Contract, clean version	
Summary Statement:	<p>Angela Anderson became Lynden's Public Defender in October 2019 and entered into a contract with the city for a term that ends in October 2021. She recently asked that some terms in the agreement be changed to reflect local market rates. Specifically, she asked that the pay for cases she is assigned to be raised from \$275/case to \$350/case. This amount is consistent with the per case rate in Ferndale, Sumas and Blaine. She also asked that the rate for the more labor-intensive cases involving Driving Under the Influence and certain Domestic Violence be increased to \$400/case.</p> <p>Together, these changes would add an estimated \$12,150 cost to the annual contract (about \$8,000 for the remainder of 2021). The amended contract would increase the assigned case rate effective immediately, while the DUI and DV case rates would take effect Nov. 1 this year.</p> <p>In exchange for amending the contract before it expires in October, Ms. Anderson has agreed to extend her contract for two years, meaning it will expire in October 2023.</p> <p>Ms. Anderson is well regarded by her colleagues in Lynden's Municipal Court, including Judge Lewis, and together they operate as an efficient team. There is no metric that can prove the efficacy of our Court, but there is little doubt that a smoothly working court system saves Lynden much more than the additional cost of this contract amendment.</p>	
Recommended Action:	Amend the contract with Ms. Anderson to include the changes as described.	

**City of Lynden
Public Defender Contract for Services
Indigent Criminal Defense**

This Agreement entered into this _____ day of _____, ~~2021~~ between the City of Lynden, a municipal corporation, hereinafter referred to as the “City”, and Angela Anderson, Anderson Legal, PLLC, hereinafter referred to as the “Contractor”, for the purpose of providing attorney services as outlined herein, commencing the 14th day of October, 2019 and terminating October 13, 2023+.

The parties agree as follows:

Section I – Services

Contractor agrees to provide all professional services necessary for indigent defendants charged with misdemeanors and gross misdemeanors in the City of Lynden, Washington. Services include:

- 1) Attending regular and special sessions of the Lynden Municipal Court for all assigned defendants, pursuant to the Lynden Municipal Court calendar;
- 2) Timely contacting defendants if the defendant is incarcerated;
- 3) Appearing in Whatcom County Jail for hearings in the jail when necessary and as determined by the Lynden Municipal Court;
- 4) Having available an all-hours pager or phone number to respond to calls;
- 5) Meeting with clients as appropriate;
- 6) Representing indigent defendants in appeals to the Whatcom County Superior Court except when representing the same defendant during the trial; and
- 7) Performing services consistent with the standard of practice within the Lynden community.

The Contractor agrees to provide professional legal services for all Lynden Municipal Court cases that have been determined to be within the scope of indigent defense. Cases shall be assigned to the Contractor at the discretion of the Lynden Municipal Court Judge. The maximum number of cases which the Contractor will be assigned shall be consistent with the Standards for Indigent Defense adopted by the Washington Supreme Court, and as hereafter amended, and which allows the Contractor the ability to give each client the time and effort necessary to ensure effective representation.

Section II – Consideration

In consideration for the services described above, the City agrees to pay the Contractor for such services as follows:

1) The sum of two hundred and seventy-five dollars (~~\$350275~~) per assigned case, except for those in 2) below, including probation revocation cases and probation review cases. Contractor will be paid at the same rate for pending cases temporarily handled by Westergreen Law at the time this Agreement is effective which are transferred to Contractor.

2) Beginning November 1, 2021, the sum of \$400 per assigned case of Driving Under the Influence (DUI), Physical Control and for Fourth Degree Domestic Violence Assaults.

If a warrant is issued for a no show, on a defendant who is on the public defender’s case load, and that warrant is not served within 45 days of the issuance of the warrant, nor the defendant found or available to be contacted within said 45 days, the public defender may enter a Motion to Withdraw from the case. Should the defendant later return to Lynden Municipal Court and require a public defender, the Contractor may charge the City as he/she would for a new case.

2)3) The sum of fifty dollars (\$50) per hour up to a maximum of six hundred dollars (\$600) for all appeals taken to Superior Court.

3)4) The sum of three hundred dollars (\$300) for cases that terminate in a bench trial before the Municipal Court Judge.

4)5) The sum of three hundred dollars (\$300) per half day spent in jury trial.

5)6) Reimbursement for the costs of investigation services as appropriate; provided that such services must be supported by documentation satisfactory to the City of Lynden.

6)7) Reimbursement for costs of the following nature, supported by documentation satisfactory to the City of Lynden.

- a) The actual reasonable cost of an expert witness or interpreter ordered by the Lynden Municipal Court in connection with services performed under the terms of this Agreement.
- b) The actual reasonable expense of service of subpoenas, if any required in connection with the services performed under the terms of this Agreement.

8) The Contractor’s compensation shall be paid monthly on account for cases assigned during that month, with payment due within 30 days of the invoice

date. This shall also apply to the cases described in subsection 1 above transferred to Contractor. The City of Lynden Finance Department must receive invoices from Contractor by the 5th of each month (or the following Monday if the 5th falls on a weekend day) for processing during the current month. The Finance Department is required to seek City Council approval of invoices during the second Council meeting of the month (third Monday) before payment can be rendered.

Section III – Review & Supervision

The City reserves the right to assure that indigent clients referred to the Contractor hereunder receive proper representation and further reserves the right to review and investigate the quality of such representation and require the Contractor to assist in any such review or investigation. Nothing in this section shall be construed or applied in any manner that may violate the confidentiality of any privileged information.

Section IV – Maintenance of Office

The Contractor shall be responsible for (1) access to an office that accommodates confidential meetings with clients (2) a postal address and (3) adequate telephone services to ensure prompt responses to client contacts to provide adequate legal representation as required by this Agreement.

Section V – Licensing

The Contractor agrees to remain licensed to practice law in the State of Washington during the term of any criminal defense contract with the City, and will further, at all times pertinent thereto, abide by the code of professional responsibility.

Section VI—Standards for Indigent Defense Services

The Contractor agrees to perform services consistent with the requirements contained in the Standards for Indigent Defense Services adopted by the Washington Supreme Court and as hereafter amended.

Section VII – Malpractice Insurance

The Contractor shall furnish to the City and file with the City Clerk and at all times during the existence of this Contract, maintain in full force and effect, at its own cost and expense, a professional malpractice insurance policy, each with a minimum liability of \$1,000,000 per occurrence/ \$2,000,000 aggregate. Failure to maintain coverage with the limits provided herein shall be a material breach of this Contract and cause for termination at any time. A policy naming the individual Contractor, among others named in the policy, shall be considered in compliance with this provision. A Certificate of Insurance containing the aforementioned minimum limits shall be provided to the City prior to the signing of this Contract. Written notice of cancellation or reduction in coverage shall be delivered to the City thirty (30) days in advance of the effective date thereof. Any company from which said professional malpractice insurance policy is obtained shall be approved by the state

insurance commissioner pursuant to Title 48 RCW, and shall have at least an A or an A+ Best Rating.

Section VIII – Assignment or Subcontracting

The Contractor shall not assign or subcontract any portion of the services provided under the terms of this Agreement without obtaining prior written approval from the City; except that, from time to time the Contractor may subcontract with another qualified attorney from the approved list of attorneys attached as Exhibit A to assist with the services provided under the terms of this Agreement. Any request for an addition to the approved list of qualified attorneys shall be submitted to the City Administrator for approval prior to said attorney providing services under this Agreement, which approval may be withheld in the City’s sole discretion. If after three (3) business days, no decision is made by the City Administrator on a requested addition to the approved list set forth in Exhibit A, the addition shall be deemed accepted by the City. A qualified attorney shall mean an attorney licensed to practice law in the state of Washington who is able to certify that he or she complies with the applicable Standards for Indigent Defense Services as adopted by the Washington Supreme Court and as hereafter amended. All terms and conditions of this Agreement shall apply to any approved subcontract related to this Agreement. Contractor shall remain fully responsible for compliance with the terms and conditions of this Agreement on any case assigned to Contractor, including cases in which services are subcontracted by Contractor to another attorney as provided herein.

The City shall not assign any defense of indigent defendants to any Contractor or Attorney at Law other than to the Contractor herein; except that, the City shall assign an indigent defendant with whom the Contractor has a conflict of interest, to an Attorney-at- Law of the City’s choice. Except as otherwise provided, assignment of indigent defendant cases to an Attorney-at-Law other than the Contractor shall constitute a material breach of this agreement by the City, and the City shall be liable to the Contractor for the fee that the Contractor would have received from the City had the case been properly assigned to the Contractor.

Section IX – Non-Discrimination

During the term of this Agreement, the Contractor agrees that no person shall, on the grounds of race, creed, color, national origin, sex, marital status, age, religion, or on the presence of any sensory, mental or physical disability, be excluded from full employment rights with the Contractor or from representation by the Contractor. The Contractor shall not discriminate against any employee or applicant for employment for the above reasons, provided the prohibition against discrimination in employment because of disability shall not apply if the particular disability prevents performance of the particular work involved.

Section X – Relationship of Parties

The parties intend that this Agreement shall create an independent Contractor relationship between the Contractor and the City. The Contractor shall not be considered to be agent, employee, servant or representative of the City for any purpose whatsoever, and no employee of the Contractor will be entitled to any benefits of City employment. The Contractor will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants and/or sub-contractors during the term of this Agreement.

In the performance of the services herein contemplated, the Contractor shall be deemed to be an independent Contractor with the authority to control and direct the performance of the details of the work; subject however, to direction by the Lynden Municipal Court and the City's right of inspection and review.

Section XI – Communication Between Parties

Communication between the Contractor and the City shall be addressed to the regular place of business of each party.

In the case of the Contractor, all communications to the Contractor, and referrals of cases, shall be sent to:

Anderson Legal, PLLC
Angela Anderson
~~2636 Hampton Place~~
~~Bellingham, WA 98225~~ 301 Prospect Street
Bellingham WA 98225

In the case of the City, all communications to the City shall be sent to:

City of Lynden,
Court Clerk
300 4th Street
Lynden, WA 98264

Section XII – Termination of Parties

In the event that the City in its sole discretion determines that the work of the Contractor or another qualified attorney hired by the Contractor, is unsatisfactory, the City shall notify the Contractor by serving at least thirty (30) days prior, written notice to the Contractor stating reasons why this Agreement is being terminated.

Either the City or the Contractor may terminate this Agreement without cause. To terminate this Agreement without cause, the party terminating shall notify the other party at least sixty (60) days in advance of the proposed date of termination and, during that sixty-day period, this Agreement shall remain in force unless terminated earlier by mutual agreement of the parties.

In the event that the date of termination of this Agreement passes without the execution of a similar contract by the parties that renews the Agreement herein and if, in that event, the parties continue to perform according to this contract's terms, then the terms of this Agreement shall control the duties and obligations of the parties until they execute a new written agreement.

Following termination of this Agreement, Contractor shall cooperate with the City to assist with transfer of all assigned pending cases to the attorney selected by the City to provide

indigent defense services. Pending cases shall mean cases assigned to Contractor in accordance with this Agreement which have not been resolved.

Section XIII-Remedies for Breach and attorney’s fees and costs

All remedies available in law and equity shall be available in the event of a breach of this Agreement. In the event, legal action is initiated by either party against the other, the prevailing party shall be entitled, in addition to all other amounts to which it is otherwise entitled by this Agreement, to its reasonable attorney's fees and costs, including those incurred on appeal.

Section XIV-Nonwaiver of Breach

Failure of either party to require performance of any provision of this Agreement shall not limit such party’s right to enforce such provision, nor shall a waiver of any breach of any provision of this Agreement constitute a waiver of any succeeding breach of such provision or a waiver of such provision itself.

Section XV – Venue Stipulation

This Agreement has been and shall be construed as having been made and delivered within the State of Washington, and it is mutually agreed that this Agreement shall be governed by the laws of the State of Washington and that any action in law or equity concerning this Agreement shall be instituted and maintained only in the Whatcom County Superior Court, Bellingham, Washington.

Section XVI-Integration

This writing supersedes all prior agreements between the parties (whether written or oral) and constitutes the full and only agreement between the parties, there being no promises, agreements or understandings, written or oral, except as herein set forth, or as hereinafter may be amended in writing. This Agreement may only be amended or modified by written agreement of the parties.

Section XVII-Severability

If any portion of this Agreement is deemed void, illegal or unenforceable, the balance of this Agreement shall not be affected thereby.

In Witness Whereof, the parties enter into this Agreement, mutually agree on above terms, are authorized to execute this Agreement and the parties have executed this Agreement on the day and year indicated.



Angela Anderson, Anderson Legal PLLC
Attorney-at-Law

Scott Korthuis
Mayor, City of Lynden

STATE OF WASHINGTON)
) §
COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that Scott Korthuis is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Mayor of the City of Lynden to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

NOTARY PUBLIC in and for the State of WA.
My commission expires _____.

STATE OF WASHINGTON)
) §
COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that Angela Anderson signed this instrument and acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it for Anderson Legal, PLLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

NOTARY PUBLIC in and for the State of WA.
My commission expires _____

EXHIBIT A

Bratlien, Mark, WSBA #33819
Lackie, Patrick, WSBA # 31484

**City of Lynden
Public Defender Contract for Services
Indigent Criminal Defense**

This Agreement entered into this _____ day of _____, 2021 between the City of Lynden, a municipal corporation, hereinafter referred to as the “City”, and Angela Anderson, Anderson Legal, PLLC, hereinafter referred to as the “Contractor”, for the purpose of providing attorney services as outlined herein, commencing the 14th day of October, 2019 and terminating October 13, 2023.

The parties agree as follows:

Section I – Services

Contractor agrees to provide all professional services necessary for indigent defendants charged with misdemeanors and gross misdemeanors in the City of Lynden, Washington. Services include:

- 1) Attending regular and special sessions of the Lynden Municipal Court for all assigned defendants, pursuant to the Lynden Municipal Court calendar;
- 2) Timely contacting defendants if the defendant is incarcerated;
- 3) Appearing in Whatcom County Jail for hearings in the jail when necessary and as determined by the Lynden Municipal Court;
- 4) Having available an all-hours pager or phone number to respond to calls;
- 5) Meeting with clients as appropriate;
- 6) Representing indigent defendants in appeals to the Whatcom County Superior Court except when representing the same defendant during the trial; and
- 7) Performing services consistent with the standard of practice within the Lynden community.

The Contractor agrees to provide professional legal services for all Lynden Municipal Court cases that have been determined to be within the scope of indigent defense. Cases shall be assigned to the Contractor at the discretion of the Lynden Municipal Court Judge. The maximum number of cases which the Contractor will be assigned shall be consistent with the Standards for Indigent Defense adopted by the Washington Supreme Court, and as hereafter amended, and which allows the Contractor the ability to give each client the time and effort necessary to ensure effective representation.

Section II – Consideration

In consideration for the services described above, the City agrees to pay the Contractor for such services as follows:

- 1) The sum of two hundred and seventy-five dollars (\$350) per assigned case, except for those in 2) below, including probation revocation cases and probation review cases. Contractor will be paid at the same rate for pending cases temporarily handled by Westergreen Law at the time this Agreement is effective which are transferred to Contractor.
- 2) Beginning November 1, 2021, the sum of \$400 per assigned case of Driving Under the Influence (DUI), Physical Control and for Fourth Degree Domestic Violence Assaults.

If a warrant is issued for a no show, on a defendant who is on the public defender’s case load, and that warrant is not served within 45 days of the issuance of the warrant, nor the defendant found or available to be contacted within said 45 days, the public defender may enter a Motion to Withdraw from the case. Should the defendant later return to Lynden Municipal Court and require a public defender, the Contractor may charge the City as he/she would for a new case.

- 3) The sum of fifty dollars (\$50) per hour up to a maximum of six hundred dollars (\$600) for all appeals taken to Superior Court.
- 4) The sum of three hundred dollars (\$300) for cases that terminate in a bench trial before the Municipal Court Judge.
- 5) The sum of three hundred dollars (\$300) per half day spent in jury trial.
- 6) Reimbursement for the costs of investigation services as appropriate; provided that such services must be supported by documentation satisfactory to the City of Lynden.
- 7) Reimbursement for costs of the following nature, supported by documentation satisfactory to the City of Lynden.
 - a) The actual reasonable cost of an expert witness or interpreter ordered by the Lynden Municipal Court in connection with services performed under the terms of this Agreement.
 - b) The actual reasonable expense of service of subpoenas, if any required in connection with the services performed under the terms of this Agreement.
- 8) The Contractor’s compensation shall be paid monthly on account for cases assigned during that month, with payment due within 30 days of the invoice

date. This shall also apply to the cases described in subsection 1 above transferred to Contractor. The City of Lynden Finance Department must receive invoices from Contractor by the 5th of each month (or the following Monday if the 5th falls on a weekend day) for processing during the current month. The Finance Department is required to seek City Council approval of invoices during the second Council meeting of the month (third Monday) before payment can be rendered.

Section III – Review & Supervision

The City reserves the right to assure that indigent clients referred to the Contractor hereunder receive proper representation and further reserves the right to review and investigate the quality of such representation and require the Contractor to assist in any such review or investigation. Nothing in this section shall be construed or applied in any manner that may violate the confidentiality of any privileged information.

Section IV – Maintenance of Office

The Contractor shall be responsible for (1) access to an office that accommodates confidential meetings with clients (2) a postal address and (3) adequate telephone services to ensure prompt responses to client contacts to provide adequate legal representation as required by this Agreement.

Section V – Licensing

The Contractor agrees to remain licensed to practice law in the State of Washington during the term of any criminal defense contract with the City, and will further, at all times pertinent thereto, abide by the code of professional responsibility.

Section VI—Standards for Indigent Defense Services

The Contractor agrees to perform services consistent with the requirements contained in the Standards for Indigent Defense Services adopted by the Washington Supreme Court and as hereafter amended.

Section VII – Malpractice Insurance

The Contractor shall furnish to the City and file with the City Clerk and at all times during the existence of this Contract, maintain in full force and effect, at its own cost and expense, a professional malpractice insurance policy, each with a minimum liability of \$1,000,000 per occurrence/ \$2,000,000 aggregate. Failure to maintain coverage with the limits provided herein shall be a material breach of this Contract and cause for termination at any time. A policy naming the individual Contractor, among others named in the policy, shall be considered in compliance with this provision. A Certificate of Insurance containing the aforementioned minimum limits shall be provided to the City prior to the signing of this Contract. Written notice of cancellation or reduction in coverage shall be delivered to the City thirty (30) days in advance of the effective date thereof. Any company from which said professional malpractice insurance policy is obtained shall be approved by the state

insurance commissioner pursuant to Title 48 RCW, and shall have at least an A or an A+ Best Rating.

Section VIII – Assignment or Subcontracting

The Contractor shall not assign or subcontract any portion of the services provided under the terms of this Agreement without obtaining prior written approval from the City; except that, from time to time the Contractor may subcontract with another qualified attorney from the approved list of attorneys attached as Exhibit A to assist with the services provided under the terms of this Agreement. Any request for an addition to the approved list of qualified attorneys shall be submitted to the City Administrator for approval prior to said attorney providing services under this Agreement, which approval may be withheld in the City’s sole discretion. If after three (3) business days, no decision is made by the City Administrator on a requested addition to the approved list set forth in Exhibit A, the addition shall be deemed accepted by the City. A qualified attorney shall mean an attorney licensed to practice law in the state of Washington who is able to certify that he or she complies with the applicable Standards for Indigent Defense Services as adopted by the Washington Supreme Court and as hereafter amended. All terms and conditions of this Agreement shall apply to any approved subcontract related to this Agreement. Contractor shall remain fully responsible for compliance with the terms and conditions of this Agreement on any case assigned to Contractor, including cases in which services are subcontracted by Contractor to another attorney as provided herein.

The City shall not assign any defense of indigent defendants to any Contractor or Attorney at Law other than to the Contractor herein; except that, the City shall assign an indigent defendant with whom the Contractor has a conflict of interest, to an Attorney-at- Law of the City’s choice. Except as otherwise provided, assignment of indigent defendant cases to an Attorney-at-Law other than the Contractor shall constitute a material breach of this agreement by the City, and the City shall be liable to the Contractor for the fee that the Contractor would have received from the City had the case been properly assigned to the Contractor.

Section IX – Non-Discrimination

During the term of this Agreement, the Contractor agrees that no person shall, on the grounds of race, creed, color, national origin, sex, marital status, age, religion, or on the presence of any sensory, mental or physical disability, be excluded from full employment rights with the Contractor or from representation by the Contractor. The Contractor shall not discriminate against any employee or applicant for employment for the above reasons, provided the prohibition against discrimination in employment because of disability shall not apply if the particular disability prevents performance of the particular work involved.

Section X – Relationship of Parties

The parties intend that this Agreement shall create an independent Contractor relationship between the Contractor and the City. The Contractor shall not be considered to be agent, employee, servant or representative of the City for any purpose whatsoever, and no employee of the Contractor will be entitled to any benefits of City employment. The Contractor will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants and/or sub-contractors during the term of this Agreement.

In the performance of the services herein contemplated, the Contractor shall be deemed to be an independent Contractor with the authority to control and direct the performance of the details of the work; subject however, to direction by the Lynden Municipal Court and the City's right of inspection and review.

Section XI – Communication Between Parties

Communication between the Contractor and the City shall be addressed to the regular place of business of each party.

In the case of the Contractor, all communications to the Contractor, and referrals of cases, shall be sent to:

Anderson Legal, PLLC
Angela Anderson
301 Prospect Street
Bellingham WA 98225

In the case of the City, all communications to the City shall be sent to:

City of Lynden,
Court Clerk
300 4th Street
Lynden, WA 98264

Section XII – Termination of Parties

In the event that the City in its sole discretion determines that the work of the Contractor or another qualified attorney hired by the Contractor, is unsatisfactory, the City shall notify the Contractor by serving at least thirty (30) days prior, written notice to the Contractor stating reasons why this Agreement is being terminated.

Either the City or the Contractor may terminate this Agreement without cause. To terminate this Agreement without cause, the party terminating shall notify the other party at least sixty (60) days in advance of the proposed date of termination and, during that sixty-day period, this Agreement shall remain in force unless terminated earlier by mutual agreement of the parties.

In the event that the date of termination of this Agreement passes without the execution of a similar contract by the parties that renews the Agreement herein and if, in that event, the parties continue to perform according to this contract's terms, then the terms of this Agreement shall control the duties and obligations of the parties until they execute a new written agreement.

Following termination of this Agreement, Contractor shall cooperate with the City to assist with transfer of all assigned pending cases to the attorney selected by the City to provide indigent defense services. Pending cases shall mean cases assigned to Contractor in accordance with this Agreement which have not been resolved.

Section XIII-Remedies for Breach and attorney’s fees and costs

All remedies available in law and equity shall be available in the event of a breach of this Agreement. In the event, legal action is initiated by either party against the other, the prevailing party shall be entitled, in addition to all other amounts to which it is otherwise entitled by this Agreement, to its reasonable attorney's fees and costs, including those incurred on appeal.

Section XIV-Nonwaiver of Breach

Failure of either party to require performance of any provision of this Agreement shall not limit such party’s right to enforce such provision, nor shall a waiver of any breach of any provision of this Agreement constitute a waiver of any succeeding breach of such provision or a waiver of such provision itself.

Section XV – Venue Stipulation

This Agreement has been and shall be construed as having been made and delivered within the State of Washington, and it is mutually agreed that this Agreement shall be governed by the laws of the State of Washington and that any action in law or equity concerning this Agreement shall be instituted and maintained only in the Whatcom County Superior Court, Bellingham, Washington.

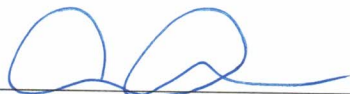
Section XVI-Integration

This writing supersedes all prior agreements between the parties (whether written or oral) and constitutes the full and only agreement between the parties, there being no promises, agreements or understandings, written or oral, except as herein set forth, or as hereinafter may be amended in writing. This Agreement may only be amended or modified by written agreement of the parties.

Section XVII-Severability

If any portion of this Agreement is deemed void, illegal or unenforceable, the balance of this Agreement shall not be affected thereby.

In Witness Whereof, the parties enter into this Agreement, mutually agree on above terms, are authorized to execute this Agreement and the parties have executed this Agreement on the day and year indicated.



Angela Anderson, Anderson Legal PLLC
Attorney-at-Law

Scott Korthuis
Mayor, City of Lynden

STATE OF WASHINGTON)
) §
COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that Scott Korthuis is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Mayor of the City of Lynden to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

NOTARY PUBLIC in and for the State of WA.

My commission expires _____.

STATE OF WASHINGTON)
) §
COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that Angela Anderson signed this instrument and acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it for Anderson Legal, PLLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

NOTARY PUBLIC in and for the State of WA.

My commission expires _____

EXHIBIT A

Bratlien, Mark, WSBA #33819
Lackie, Patrick, WSBA # 31484

CITY OF LYNDEN



EXECUTIVE SUMMARY

Meeting Date:	March 15, 2021	
Name of Agenda Item:	Preliminary Plat Approval – Kode Kamp Long Plat	
Section of Agenda:	New Business	
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:		
Long Plat Application 20-01 and supporting materials, Staff memo to the PC, Planning Commission Minutes.		
Summary Statement:		
<p>Jeff Palmer, on behalf of Northwood Partners LLC, has applied for the subdivision of approximately 28 acres located at the northeast corner of Kamm Road and Northwood Road into 92 lots. The proposed long plat is dependent on a corresponding application to rezone the property from RS-100 to Residential – Mixed Density (RMD). This is a zoning category that calls for a variety of lot sizes and is meant to accommodate detached single-family homes, attached (or paired) single-family homes, and duplexes. Proposed lot sizes range from the 6,000 square foot rant to well over 10,000 square feet. The applicant has indicated a desire to maintain all the lots for single family detached homes except for 5 lots near the Northwood entrance of the plat which would be used for duplexes. Pedestrian accommodations will be made interior to the plat in the form of sidewalks and, on Northwood Road, widened roadway shoulder that is delineated by a curb and flexible lane markers.</p> <p>The Technical Review Committee has concluded review with a recommendation to approve the long plat with the applicant meeting two specific conditions related to minimum lot sizes and / or the location of the duplex lots.</p> <p>A public hearing was held before the Planning Commission on January 28, 2021. The Planning Commission concluded the hearing by voting to recommend to the City Council but similar to staff recommendation included the following conditions. (1.) That duplex lots be disbursed throughout the interior of the plat in areas where on-street parking is more readily available; and (2.) That there be no single family or duplex parking be allowed on Northwood Road and (3.) That the East Lynden Trail be extended along Northwood Road to meet condition #34 as noted in the Technical Review Committee Report dated January 6, 2021, under Parks and Recreation.</p>		
Recommended Action:		
Motion to grant preliminary approval of the Kode Kamp Long Plat 20-01 as conditioned by the Planning Commission and to authorize the Mayor’s signature on the attached Findings of Fact and Conclusions of Law.		



City of Lynden Long Plat Application

Property Owner

Name: Northwood Partners, LLC

Address: 1841 Front Street, Suite A, Lynden WA 98264

Telephone Number: 360-354-1184 Fax Number: 360-319-9526

E-mail Address: jeff@axiomcc.net

Applicant (Agent, Land Surveyor or Engineer)

Name: _____

Address: _____

Telephone Number: _____ Fax Number: _____

E-mail Address: _____

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

Property owner Applicant

Property Information:

Project Location (street address / block range): 8744 Northwood Road, Lynden WA 98264

Attach complete legal description

Description of Subdivision:

Current Property Size: 1,237,542 SF Total Acreage: 28.41 AC

Zoning Classification: _____ Number of New Lots: 94

Minimum Lot Size: 6,000 sf Area of ROW in SF: 233,346 SF

Area of drainage facility in SF (if not included as part of a lot or within the ROW): N/A

By signing this application, I certify that all the information submitted is true and correct.

SUBMITTED BY: Jeff Palmer, CFO **DATE:** 7/28/2020

PROPERTY OWNER SIGNATURE: Jeff Palmer, CFO  **DATE:** _____

PROPERTY OWNER PRINTED NAME Jeff Palmer **DATE:** _____

PRE-APPLICATION MEETING DATE: 8/24/2020 **HEARING DATE:** _____

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

FEE'S (LONG PLAT – PRELIMINARY \$350.00 + \$120.00 PER LOT) **DATE PAID:** 10/2/2020 **RECEIPT #** _____

FEE'S (LONG PLAT – FINAL \$70.00 PER LOT) **DATE PAID:** _____ **RECEIPT #** _____



City of Lynden Long Plat Requirements

Section: 15 Township: 40 Range: 03 Parcel Number: 400315333313

Site Address: 8744 Northwood Rd

Proposed Uses: Single-family residential long 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 Wetland delineation by Miller Environmental Services, Inc.
- 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.

CITY OF LYNDEN



TECHNICAL REVIEW COMMITTEE Development Project Report

Date Issued:	January 6, 2021
Project Name:	Kode Kamp Vista Long Plat #20-01
Applicant:	Northwood Partners, LLC.
Property Owner:	Northwood Partners, LLC.
Site Address:	8744 Northwood Road, Lynden
Parcel Number:	400315-333313
Zoning Designation:	RMD (Residential Mixed Density) proposed under current rezone application #20-04
Application Type:	Long Plat
Parcel Size:	28.41 Acres
Hearing Type:	Quasi-Judicial
Hearing Objective:	The objective of this public hearing is to determine whether the proposed subdivision meets the requirements found within the City of Lynden Subdivision Code – Title 18.
Date application determined complete:	December 4, 2020
Date of Publication:	January 20, 2021
SEPA Determination:	MDNS was issued on December 11, 2020
Project Description:	A Long Plat application requesting to subdivide approximately 28.41 acres into 94 residential multi-family lots within the RMD zone.

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).

Project Summary:

Applicant’s comments and responses will follow in red font.

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

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

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

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

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

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

Specific Project Comments from the Technical Review Committee:

Planning and Development

1. Applicant Response Required: Provide a written response to each of the Technical Review Committee’s comments below. Advisory comments should be

acknowledged. A Word version of this document will be provided to you for your convenience.

- 2. Agent Authorization: Please provide an agent authorization letter, formation documents, or other documentation which allows Jeff Palmer to process the long plat application on behalf of Northwood Partners LLC. **A letter authorizing Jeff Palmer to process the plat application will be provided shortly.**
- 3. Plat Documents: Provide draft plat sheets include the plats signature page with plat notes. **Draft plats sheets are attached with this response.**
- 4. Phasing Plan: Please respond indicating if the plat improvements will be phased. If phasing of the plat is planned, provide a plat map which shows phases as well as a plan indicating the interim condition which will exist following the build-out of Phase 1 but not Phase 2. Staff is particularly interested in the infrastructure improvements which will exist at this time. Show the proposed condition of the street section and existing buildings at this stage of completion. See Public Works comments related to the minimum roadway standard for emergency access.
 - a. **We will clarify access points from cul-de-sac or road on face of plat. No curb cuts for cul-de-sac entrance. We will clarify in plat covenants.**
 - b. **Phase 1 will include all utilities, infrastructure and paving.**
 - c. **Fencing will be restricted along sidewalk per plat covenants.**
 - d. **Phasing plan is represented on attached prelim plat maps.**
- 5. Plat Area Break-down: Whatcom County and the City of Lynden have been mandated to participate in an annual report provided to the State which tracks achieved housing density. In an effort to track accurate data for this program all plats will be required to provide supporting data. Please provide on the face of the plat a table which breaks down the total area of the plat into the categories shown below. Note that in some instances the area may be zero and that “other infrastructure” could refer to area used for sewer pump station, stormwater ponds, etc.

This grid is completed with a separate exhibit, which is attached to this response.

	Plat Area (in square feet)
Gross plat area	

Reserve tracts	
Critical areas	
Right of ways (ROWs)	
Other infrastructure	
Net developable	
Percent ROW and Infrastructure	%

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

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

- 8. Street Tree Requirements: Be advised, street trees will be required. Submission of tree locations, species selection, and planting specifications must be included in the utilities plan (civil review) to avoid conflicts. Planting and establishment must be executed as described here: **Agreed. Our prelim plat has our proposed planting placement indicated. We will provide a more formal plan that identifies appropriate specie(s) and planting specifications.**
 - a. As per Section 18.14.130, Street trees shall be provided by the sub-divider in all subdivisions within the dedicated public utility easements adjacent to the street; preferably between the curb and the sidewalk. **As noted on the face of the attached prelim plat.**
 - 1. One street tree is required for every 50 linear feet of street frontage. Distance may be averaged due to driveways and sight distance requirements. **Noted and we will comply.**
 - 2. Street trees shall be a minimum caliper of 1 1/2" at the time of installation, small trees used under powerlines shall be a minimum a caliper of 1". **Noted and we will comply.**

- 3. Street trees shall be selected, installed, and maintained in accordance with the standard City of Lynden engineering specifications. Trees shall be placed on the property with consideration of potential driveway cuts and utility services. **Noted and we will comply.**
 - b. Establishment of street trees and planting strips shall be per an approved site plan in conformance with design and bonding standards as set forth in LMC 19.61. **Noted and we will comply.**
 - c. Maintenance of street trees and planting strips shall be the responsibility of the adjoining property owner and shall be done in accordance with the city's engineering design and development standards. **Noted, and we will include appropriate language in our covenants.**
9. Topography: Due to the sloping nature of the site (a grade change of approximately 50 feet), the grading of the site will affect the buildability and drainage plans of each lot. Please provide a preliminary grading plan with the plat drawings. Civil plans must include proposed site topography at 2-foot intervals which ties into the finished grades of the right-of-ways and surrounding properties. Be advised, this topography information must be confirmed on as-built drawings. Approved grades will be used to establish pre-construction elevations from which final building heights will be measured. **Applicant will use the plat to alter the approved grade as appropriate to the site conditions, in conformity with plat requirements. Draft grade plan is prepared for consideration.**
10. Critical Areas: The applicant has submitted a Critical Areas Assessment of the subject parcel. The report identifies wetlands and regulated streams on the property. The civil construction plans shall clearly indicate the onsite location of these wetlands and their buffers. The proposed development avoids critical areas and their buffers. Any alterations to the proposal that results in impact to any critical areas and/or their buffers will require additional impact analysis and an approved mitigation plan. **Applicant intends on developing the plat as-indicated on the submitted plat drawings. Noted that, if any changes are contemplated, Applicant will be responsible for updating the Critical Areas report and following all required mitigation steps per approved plan.**
- Unobtrusive fencing (split rail) and Critical Area signage designating the location of the onsite critical areas is required consistent with LMC 16.16.210. **Applicant intends on using split rail fencing and appropriate signage to clearly delineate the critical areas from developable parcels.**

A conservation easement that designates ownership, liability, maintenance responsibility and enhancement opportunities for the critical areas and their buffers is required. Easement language shall be submitted for City approval. The conservation easement shall be recorded as a separate document and referenced on the final plat. Applicant will create a conservation easement as part of the platting process and will create an HOA as part of the plat development, which will be vested with the ownership, liability, maintenance responsibilities and any post-development enhancement opportunities for the critical areas as designated. We will submit language describing what the conservation easement will look like at the completion of our development, and we will include in the Stormwater Report consideration of flow into the critical areas (downstream wetlands).

■ We will prepare mounding analysis for wetlands impacts and infiltration

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

While no archaeological resources were found, there are known cultural sites in the vicinity. Additional consultation with the Nooksack Tribe and the Department of Archaeology and Historic Preservation is required to ensure these sites are protected. City staff has reached out to the Nooksack Tribe about their comments to ask for clarification and guidance related to their SEPA comments. Applicant will follow City and Tribal guidance.

- 13. Vehicular Access Prohibition: Be advised, no private driveways are permitted on Kamm or Northwood Roads. Access to lots must be internal to the plat. This vehicular prohibition must appear on the face of the plat. Applicant’s prelim plat

map legend calls out each lot's access, and the plat covenants will describe lots that have two potential access points and which one is designated.

- 14. Pipe Stem Lots: A long plat may utilize one pipe stem lot for every 25 lots or portion thereof (LMC 18.14.040). As such, the proposed plat may utilize up to 4 pipe stem lots. Staff has identified these lots as lots 10, 25, 42, and 87. Pipe stems shall be a minimum of 24 feet wide, shall not be longer than 150 feet, and the address must be clearly marked at the street for emergency access. It appears lot 25 and lot 42 were designed with stems only 20 feet in width. Please revise to meet the minimum standard of 24 feet. **Noted and Applicant will comply. See attached updated prelim plat map.**

- 15. Easement Access Lots: *In addition to pipestem lots, a long plat may also utilize private access easements for one lot per 25 lots or portion thereof.* As such, the proposed plat may design up to 4 lots without accessible frontage on public streets and utilize an access easement instead (LMC 18.14.110(c)). Access easements shall be a minimum of 24 feet wide, shall not be longer than 150 feet, and the address must be clearly marked at the street for emergency access. The plat design currently exceeds the 4-lot maximum. Staff has identified applicable lots as lots 1, 2, 68, 69, and 70. Please revise the plat to include not more than 4 lots accessed via access easement. **Noted and Applicant will comply. See attached updated prelim plat map.**

- 16. Frontage Requirements and Lot Access: Unless an approved pipestem or access easement lot, no lots shall be created that have less than 50-feet of frontage except that lots on cul-de-sacs may reduce frontages to no less than 40 feet as long as a 50-foot width is achieved at the point of front setback (15 feet from the property line). It appears that some lots in the proposed plat may not meet this standard. Please provide a drawing which demonstrates compliance with this section of code in each of the two cul-de-sacs. (LMC 18.14.020) **Noted and Applicant will comply. See attached updated prelim plat map.**

- 17. Housing Types: If the proposed rezone of the property is approved by the City Council the new zoning category or Residential Mixed Density, allows for attached / paired homes (each on their own lot) and duplexes (on lots at least 8,000 square feet in size). The plat must clearly address if these housing types will be permitted and if so, on which lots. Please add an applicable plat note and indicate on the face of the plat map if necessary. **The development will largely consist of single family residences, with only 5 lots allowing duplex construction. Two of the lots are presently slightly under the 8,000 sf minimum, and our updated plat will be revised to increase lots 91 and 92 to the minimum standard. There will be no other home types. The lot housing types are called out on the plat legend.**

Public Works

- 18. Right-of-Way: Dedication is required along the full frontage of Northwood Road to achieve a total dimension of 30 feet to the center line of the road. **Noted and we will comply.**

- 19. Street Section: Street section of Currant Street extension must match the existing roadway to the north of the proposed plat. **Noted and we will comply.**

- 20. Phase 1 Emergency Access: If phasing is proposed, be advised, at the time of Phase 1 construction, Phase 2 street sections must be constructed to a minimum of a 24-foot wide, stabilized surface which is sufficient to support emergency vehicles. If the stabilized surface is gravel, or similar, a minimum of 50 linear feet must be paved adjacent to any existing public right-of-way to prevent tracking of material onto roadway surfaces. **Noted and we will comply.**

- 21. Access: As proposed, no vehicular access will be permitted to/from Kamm Road. Any existing driveways must be abandoned prior to final plat approval. **Noted and we will comply.**

- 22. Lot Access: Vehicular access will be prohibited from proposed lots to/from Kamm Road and Northwood Road. **Noted and we will comply. Noted also related to Lot 93 adjacent to Northwood – driveway to be located as far from Northwood as possible. Also, lots with dual access (lots 57, 58, 59): plat will indicate access point, front and rear and restrict access on the alternate side. Applicant indicates that the front access will stem from the cul-de-sac – which could be rear or front yard access. City code permits rear yard fencing up to 3 feet from sidewalk. Staff recommends that CCRs address alternate standards if desired for a more attractive appears from the south street.**

- 23. Eastern Roadway Stub: The proposed eastern roadway stub accesses property which is not part of the City’s Urban Growth Area. As such it is unlikely to be added to the City for some time (no sooner than the year 2036 unless otherwise petitioned to be added). City staff recommends the stub be dedicated as right-of-way easement but not improved beyond what is needed to access lots 68-71. A curb cut in this area will be limited to 30 feet with the balance of the stub finished with curb and sidewalk. Additionally, staff recommends the plat and, if needed, property covenants address the use of the area until such time is developed into a street. **Applicant will post as “unimproved ROW” and notes that City will not assume maintenance. Farm access will be indicated on the face of the plat –**

beneficiary to maintain. Applicant will address how to prevent tracking onto public streets such as 50' of paving or spalls/cobbles. Applicant will also:

- a. Include curbs on the eastern edge of ROW
- b. Include the easement on the plat and on the plat covenants

24. Engineering Design Standards: All proposed streets must meet the minimum separation requirements as outlined in the City of Lynden Project Manual for Engineering Design and Development Standards. **Noted and we will comply.**

25. Utility Easements: Plat must show the required 10-foot utility easement along the frontage of each lot (back of sidewalk). **Noted and we will comply.**

26. Traffic analysis needs to be completed. All recommended items of the report shall be completed.

- a. **This is Completed.**

27. Street Lighting: Puget Sound Energy to design street lighting. Please submit a final plan.

- a. **Per phasing plan. PSE will perform plat planning, including entry lighting off Northwood. Applicant will engage PSE.**

28. Stormwater Advisory Comments

- a. A stormwater management plan prepared by a professional engineer will be required for this development and must be approved by the City of Lynden prior to approval of construction plans. An erosion control plan must be included in the drainage plan and construction plans as necessary. **A preliminary Stormwater Plan is already prepared by Freeland and Associates, and it will be finalized to City requirements.**
- b. All plans must be designed and constructed in compliance with the Department of Ecology's Best Management Practices and the standards approved in the Manual for Engineering Design and Development Standards. **Noted and we will comply.**

- c. Stormwater from public streets may be infiltrated within the dedicated right-of-way, or within a separate dedicated tract, but may not be within the street prism. Infiltration areas and street trees should have adequate separation to insure the proper functioning of the drainage system and survival of the tree. **Noted and we will comply.**
- d. A Construction National Pollutant Discharge Elimination System (NPDES) permit may be needed. **Applicant will review need for NPDES permit and secure if required.**

29. Water

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

30. Sanitary Sewer

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

charges for the regional sanitary sewer facilities. This must be noted on the face of the plat.

- i. This latecomer fee was paid by Sellers and is released effective 9-25-2020.

Fire and Life Safety

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

Parks and Recreation

- 34. *Trail Easement:* This development is located along sub-standard roadways which do not have pedestrian accommodations. It is also identified along the proposed route of the East Lynden Loop Trail. As such, the proposal must accommodate that trail system. At a minimum this must include a separated 8-foot wide asphalt pedestrian path and public access easement (if not in ROW) parallel to Northwood Road. An equivalent amenity such as a more creative path winding through the development could also be proposed by the applicant during the long plat review process.
 - a. While part of the East Lynden Loop Trail, it doesn't easily tie into a walking path system nor lend itself to an external path.
 - b. The Plat is served by paved sidewalks that tie to North Prairie Phase 7 to the north. This will safely serve all pedestrian traffic within the adjacent plats.
 - c. Northwood ROW may be widened by X feet to accommodate bike traffic. Need City detail to determine.
 - d. Current plan is to consider west side easement concurrent with water line.
- 35. *Park Impact Fee:* Be advised, half of the required park impact fee is due at the time of final plat approval. The balance of the park impact fees can be deferred to the time of building permit. Contact Planning staff for an estimated fee total. **Applicant will contact Staff and make timely payment.**

Long Plat Advisory Comments

36. Impact Fees: Be advised, prior to final plat (PRD) approval, the developer will be required to pay transportation mitigation fees, plus the first half of park and fire mitigation fees. Contact Planning Staff for a fee estimate. **Noted.**
37. Civil Drawings: The construction drawings for any civil and utility improvements must be submitted for review and approval prior to construction. These drawing must illustrate that the utility improvements and extensions meet the standards listed within the Project Manual for Engineering Design and Development Standards, unless they have been specifically varied by the approval of the plat. It is the project engineer's responsibility to be aware of these standards. **Noted.**
38. Civil Review Deposit Required: Be advised, a review deposit of \$200 per lot, \$2,000 minimum, to review the construction plans and a plat / PRD construction inspection deposit of \$350 per lot, \$5,000 minimum, is due prior to review and construction respectively. **Noted and Applicant will timely pay fees.**
39. Infrastructure Installation: A City of Lynden Fill and Grade Permit is required prior to the commencement of site work. The site and utility work must be addressed on SEPA Checklist. **Noted. SEPA is complete.**
40. Performance Bonding Requirements: Be advised, a 150% performance bond may be required for all work in the City's right-of-way or on city owned property which is deemed incomplete. Only items not specifically exempted from bonding under LMC 18.18.010(G) are eligible for bonding. **Noted. Please advise if a bond is required.**
41. Maintenance Bonding Requirements: A post construction maintenance bond for infrastructure in the amount of 10% of the construction costs will be required prior to final plat approval. **Noted. We will secure and provide the maintenance bond.**
42. Landscape Bonding: Be advised, performance and maintenance bonding will be required for the plat. This relates to street trees and any required mitigation trees. Bonds are due prior to final plat approval. **Noted. We will secure and provide the landscape performance and maintenance bonds.**
43. Surveying: All surveying work and engineering design must be based on the City of Lynden survey control monuments. AutoCAD files for all improvements must be provided to the City in digital format approved by the City. A copy of the City's control monuments is available to the project consultant for their use. **Noted.**
44. Expiration of Preliminary Approval: Petitioner shall record the final subdivision, with the County in conformance with LMC 18.06.010.2, 18.06.020 and 18.06.030

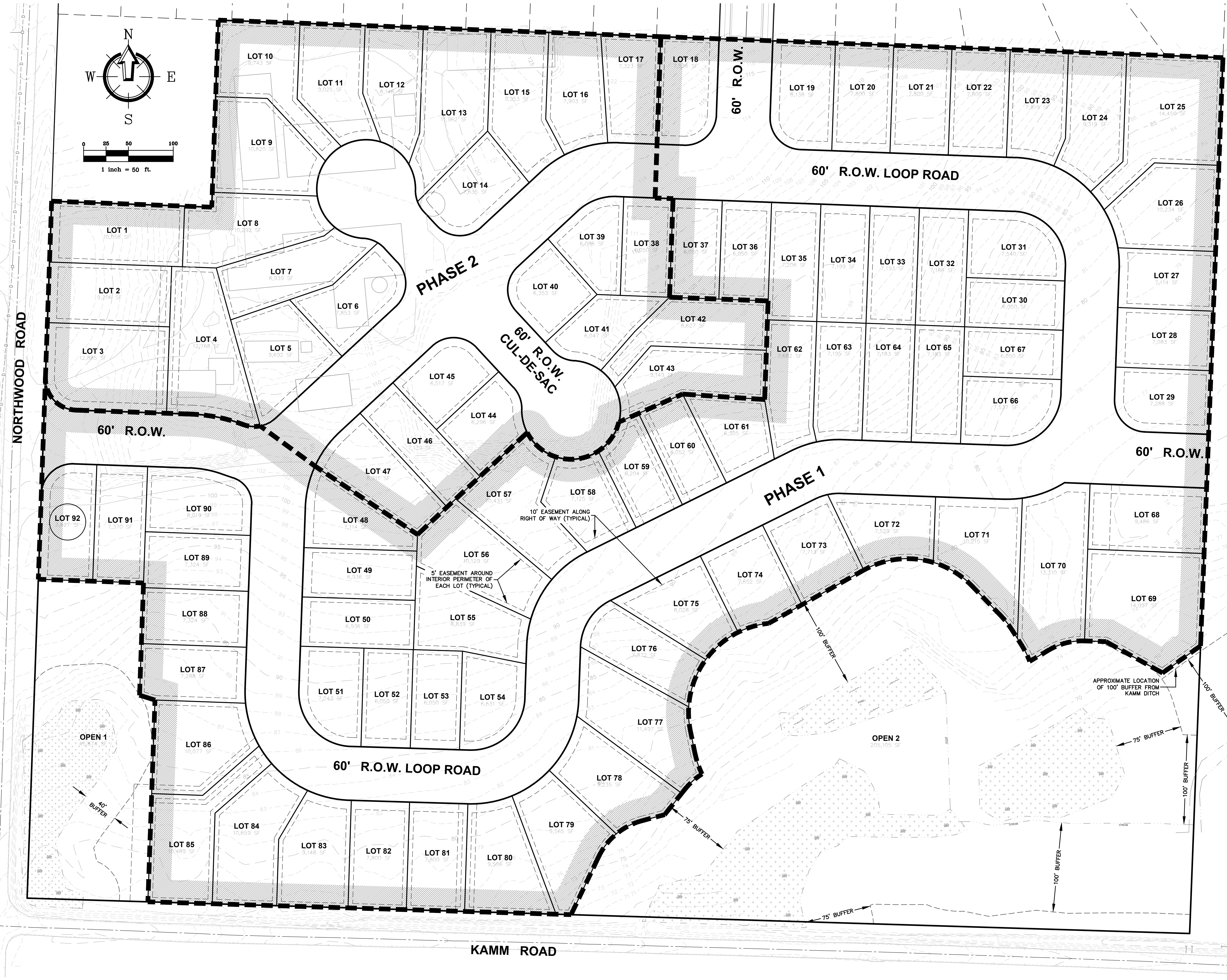
within five (5) years of the date this preliminary approval becomes final, after which City approval of this application shall become void; provided that, this one year deadline may be extended for up to one (1) additional year upon application to and approval by the City Council. **Noted.**

- 45. Property Addressing: Be advised, all street addressing must follow the requirements of the Lynden Municipal Code. Addresses will be assigned by the Public Works Department prior to final Long Plat approval. **Noted.**

- 46. Covenants, Conditions and Restrictions (CC&Rs): CC&R's for the long plat may be recorded in conjunction with the final long plat. This document can impose more restrictive conditions on the property but not less restrictive than City of Lynden development code. Be advised, enforcement of CC&R documents is the responsibility of the developer and/or neighborhood association. **Noted.**
Applicant will develop CC&Rs as noted in this TRC response.

- 47. Design Review: Design Review Approval will be required for all duplex buildings. **Noted.**

PARCEL INFORMATION				
PARCEL #	AREA (SF)	PHASE	ACCESS	USE TYPE
1	10,058	2	LOOP	DUPLEX
2	9,206	2	LOOP	DUPLEX
3	12,885	2	LOOP	DUPLEX
4	12,768	2	LOOP	SINGLE
5	9,692	2	LOOP	SINGLE
6	7,853	2	LOOP	SINGLE
7	8,939	2	CUL-DE-SAC	SINGLE
8	10,292	2	CUL-DE-SAC	SINGLE
9	10,820	2	CUL-DE-SAC	SINGLE
10	9,743	2	CUL-DE-SAC	SINGLE
11	9,025	2	CUL-DE-SAC	SINGLE
12	8,146	2	CUL-DE-SAC	SINGLE
13	11,982	2	CUL-DE-SAC	SINGLE
14	7,635	2	LOOP	SINGLE
15	9,853	2	LOOP	SINGLE
16	7,903	2	LOOP	SINGLE
17	7,323	2	LOOP	SINGLE
18	7,536	1	LOOP	SINGLE
19	8,138	1	LOOP	SINGLE
20	7,800	1	LOOP	SINGLE
21	7,800	1	LOOP	SINGLE
22	7,800	1	LOOP	SINGLE
23	7,819	1	LOOP	SINGLE
24	9,319	1	LOOP	SINGLE
25	14,450	1	LOOP	SINGLE
26	10,234	1	LOOP	SINGLE
27	7,114	1	LOOP	SINGLE
28	7,083	1	LOOP	SINGLE
29	7,288	1	LOOP	SINGLE
30	6,050	1	LOOP	SINGLE
31	7,540	1	LOOP	SINGLE
32	7,196	1	LOOP	SINGLE
33	7,193	1	LOOP	SINGLE
34	7,199	1	LOOP	SINGLE
35	7,206	1	LOOP	SINGLE
36	6,050	1	LOOP	SINGLE
37	6,050	1	LOOP	SINGLE
38	6,050	2	LOOP	SINGLE
39	6,086	2	LOOP	SINGLE
40	6,353	2	CUL-DE-SAC	SINGLE
41	6,047	2	CUL-DE-SAC	SINGLE
42	8,627	2	CUL-DE-SAC	SINGLE
43	9,149	2	CUL-DE-SAC	SINGLE
44	6,296	2	CUL-DE-SAC	SINGLE
45	6,517	2	CUL-DE-SAC	SINGLE
46	7,139	2	LOOP	SINGLE
47	8,711	2	LOOP	SINGLE
48	7,114	1	LOOP	SINGLE
49	6,936	1	LOOP	SINGLE
50	6,936	1	LOOP	SINGLE
51	7,043	1	LOOP	SINGLE
52	6,050	1	LOOP	SINGLE
53	6,050	1	LOOP	SINGLE
54	6,631	1	LOOP	SINGLE
55	8,839	1	LOOP	SINGLE
56	10,129	1	LOOP	SINGLE
57	10,431	1	CUL-DE-SAC	SINGLE
58	7,125	1	CUL-DE-SAC	SINGLE
59	6,204	1	CUL-DE-SAC	SINGLE
60	6,305	1	LOOP	SINGLE
61	6,186	1	LOOP	SINGLE
62	7,682	1	LOOP	SINGLE
63	7,195	1	LOOP	SINGLE
64	7,183	1	LOOP	SINGLE
65	7,183	1	LOOP	SINGLE
66	7,537	1	LOOP	SINGLE
67	6,050	1	LOOP	SINGLE
68	9,486	1	LOOP	SINGLE
69	14,997	1	LOOP	SINGLE
70	13,310	1	LOOP	SINGLE
71	10,215	1	LOOP	SINGLE
72	7,529	1	LOOP	SINGLE
73	7,713	1	LOOP	SINGLE
74	7,652	1	LOOP	SINGLE
75	8,028	1	LOOP	SINGLE
76	7,872	1	LOOP	SINGLE
77	11,497	1	LOOP	SINGLE
78	9,235	1	LOOP	SINGLE
79	9,565	1	LOOP	SINGLE
80	9,508	1	LOOP	SINGLE
81	7,800	1	LOOP	SINGLE
82	7,800	1	LOOP	SINGLE
83	9,148	1	LOOP	SINGLE
84	10,659	1	LOOP	SINGLE
85	10,489	1	LOOP	SINGLE
86	10,077	1	LOOP	SINGLE
87	7,288	1	LOOP	SINGLE
88	7,324	1	LOOP	SINGLE
89	7,324	1	LOOP	SINGLE
90	8,019	1	LOOP	SINGLE
91	7,370	1	LOOP	DUPLEX
92	7,627	1	LOOP	DUPLEX



REV.	DATE	DESCRIPTION

CLIENT: **AXIOM CONSTRUCTION & CONSULTING LLC**
 1841 FRONT STREET, SUITE A
 LYNDEN, WA 98264
 CALL BEFORE YOU DIG
 FOR BURIED UTILITY LOCATIONS
 1-800-424-5655

PROJECT LOCATION: **KODE KAMP VISTA PLAT**
 8744 NORTHWOOD ROAD
 LYNDEN, WA 98226
 DRAWING #: 20083SP5.DWG
 DESIGNED BY: MDB
 DRAWN BY: MDB
 CHECKED BY: JPS

SHEET CONTENTS: **PRELIMINARY SITE PLAN**

PRELIMINARY

JOB #: 20083 DATE: 01-16-2021
 SCALE: HORIZ: 1"=50' VERT: N/A SHEET: **PRE1**



Meeting Date:	January 28, 2021
Name of Agenda Item:	Public Hearing for Kode Kamp Vista Long Plat
Type of Hearing:	Quasi-Judicial
Attachments:	TRC Report, Long Plat Application 20-01, Lot Layout and Site Plan, Critical Areas Study, Traffic Study, Public Comment (received through SEPA review)
Summary Statement:	<p>Jeff Palmer, on behalf of Northwood Partners LLC, has applied for the subdivision of approximately 28 acres located at the northeast corner of Kamm Road and Northwood Road. The proposed long plat is dependent on a corresponding application to rezone the property from RS-100 to Residential – Mixed Density (RMD). This is a zoning category that calls for a variety of lot sizes and is meant to accommodate detached single-family homes, attached (or paired) single-family homes, and duplexes.</p> <p>Plat design includes a curvilinear street which loops through the 28 acres, connects to the North Prairie Phase 7 plat to the north and accesses Northwood Road. The plat also includes two areas of wetlands near the Kamm Road corridor. These wetlands have been described and delineated in a corresponding critical area report. As required by LMC 16 the plat provides buffers to these areas.</p> <p>The plat application initially requested 94 lots but after revision this was reduced to 92 lots. Lot sizes range from those which are over 10,000 square feet to those which are in the 6,000 square foot range. As required by code, the plat will designate housing types per lot. The applicant has indicated a desire to maintain all the lots for single family detached homes except for 5 lots near the Northwood entrance of the plat (see the lot layout legend for specifics). Two of the lots selected for duplexes (lot 91 and 92) will require modification to reach the minimum 8,000 sf size needed to accommodate duplexes.</p> <p>Pedestrian accommodations will be made interior to the plat in the form of sidewalks. As the property is somewhat isolated from other pedestrian networks and as Northwood Road will not be improved for some time the SEPA determination included the requirement for the developer to participate in facilitating pedestrian / bicycle movement along Northwood Road. The Technical Review Committee determined that the most reasonable way to accommodate this under the current road conditions is to provide a widened roadway shoulder on Northwood Road that is delineated by a curb and flexible lane markers (similar to the treatment done on a portion of Line Road). The TRC further concluded that the west side of Northwood Road would provide the most opportunity for this widened shoulder and connection to other properties and the Brome Street intersection.</p> <p>Staff’s review comments are found in the attached TRC report along with applicant responses to each. Recent revisions to the plat have included the lots which would accommodate duplexes. This includes somewhat of a ‘pod’ of duplexes on lots 1, 2, and 3 and well as two lots across the street. Locating duplexes here an all in one location and utilizing an access easement is somewhat concerning as duplex residents will have little opportunity to utilize on-street parking. Parking pressure in this area may</p>

lead to residents parking on Northwood Road – which is not encouraged due to the substandard nature of this roadway. If duplexes are to be located in this area staff would recommend a plat condition that the developer create paved and striped on-street parallel parking areas along the east side of Northwood along the lot frontage of 1, 2, 3, and 92. Or, that the duplex lots be located elsewhere in the plat.

Staff has concluded review with a recommendation to approve the long plat however with the following conditions:

- 1. Lot sizes be adjusted to ensure lots 91 and 92 reach the minimum of 8,000 sf to accommodate duplex construction; and
- 2. Paved and striped on-street parking areas be created on Northwood Road to accommodate on-street parking needs of the duplex pod located at the entrance to the plat.
Or,
- 3. Duplex lots be disbursed throughout the plat (on lots at least 8,000 sf or greater) in areas where on-street parking is more readily available.

Recommended Action:

Motion to recommend to the City Council the approval of Kode Kamp Vista Long Plat consistent with TRC report dated January 6, 2021 and staff conditions 1 and 2 or condition 3 as described above.



220 West Champion Street, Suite 200 | 360.650.1408
Bellingham, WA 98225 | 360.650.1401
FREELAND & ASSOCIATES

BY:	
DESCRIPTION:	
REV:	DATE:

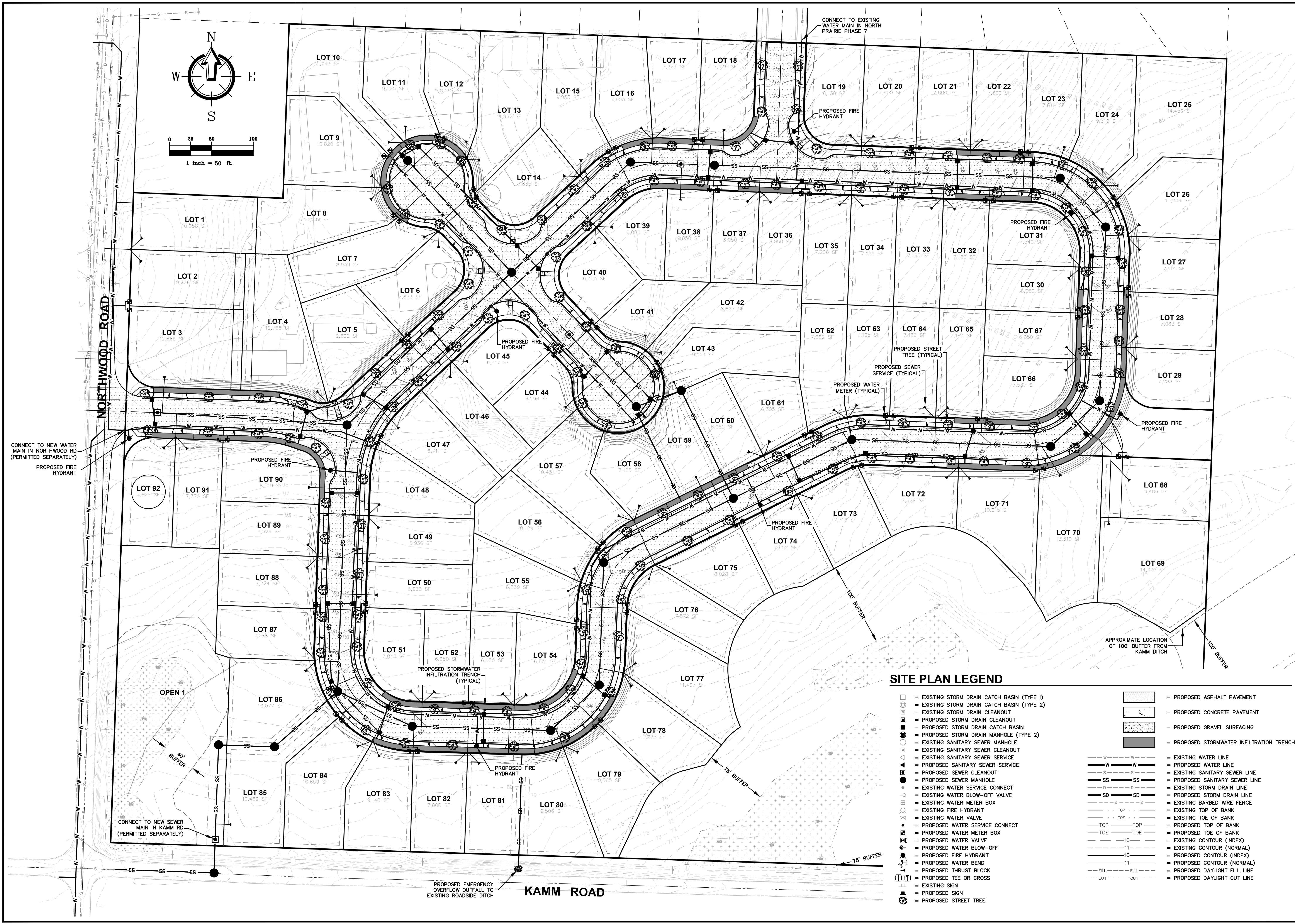
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PROJECT LOCATION: **KODE KAMP VISTA PLAT**
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SHEET CONTENTS: **PRELIMINARY UTILITY & GRADING PLAN**

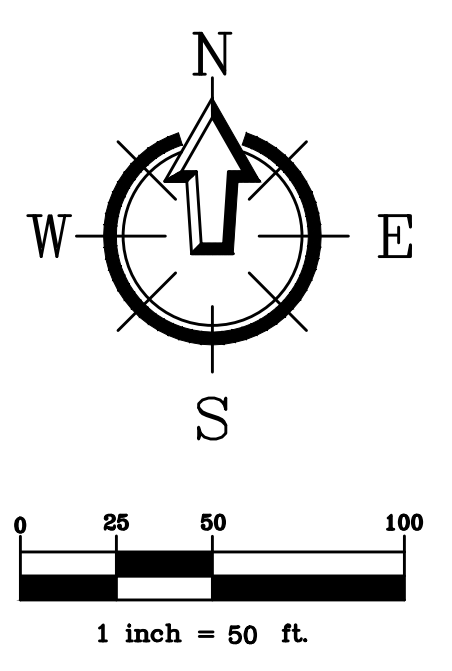


JOB #: 20083 DATE: 01-16-2021
SCALE: HORIZ: 1"=50' VERT: N/A
SHEET: **PRE2**



SITE PLAN LEGEND

- = EXISTING STORM DRAIN CATCH BASIN (TYPE 1)
- = EXISTING STORM DRAIN CATCH BASIN (TYPE 2)
- = EXISTING STORM DRAIN CLEANOUT
- = PROPOSED STORM DRAIN CLEANOUT
- = PROPOSED STORM DRAIN CATCH BASIN
- = PROPOSED STORM DRAIN MANHOLE (TYPE 2)
- = EXISTING SANITARY SEWER MANHOLE
- = EXISTING SANITARY SEWER CLEANOUT
- = PROPOSED SANITARY SEWER SERVICE
- = PROPOSED SANITARY SEWER SERVICE
- = PROPOSED SEWER CLEANOUT
- = PROPOSED SEWER MANHOLE
- = EXISTING WATER SERVICE CONNECT
- = EXISTING WATER BLOW-OFF VALVE
- = EXISTING WATER METER BOX
- = EXISTING FIRE HYDRANT
- = EXISTING WATER VALVE
- = PROPOSED WATER SERVICE CONNECT
- = PROPOSED WATER METER BOX
- = PROPOSED WATER VALVE
- = PROPOSED WATER BLOW-OFF
- = PROPOSED FIRE HYDRANT
- = PROPOSED WATER BEND
- = PROPOSED THRUST BLOCK
- = PROPOSED TEE OR CROSS
- = EXISTING SIGN
- = PROPOSED SIGN
- = PROPOSED STREET TREE
- ▨ = PROPOSED ASPHALT PAVEMENT
- ▨ = PROPOSED CONCRETE PAVEMENT
- ▨ = PROPOSED GRAVEL SURFACING
- ▨ = PROPOSED STORMWATER INFILTRATION TRENCH
- W — W — = EXISTING WATER LINE
- S — S — = PROPOSED WATER LINE
- SS — SS — = EXISTING SANITARY SEWER LINE
- SS — SS — = PROPOSED SANITARY SEWER LINE
- D — D — = EXISTING STORM DRAIN LINE
- SD — SD — = PROPOSED STORM DRAIN LINE
- X — X — = EXISTING BARBED WIRE FENCE
- TOP — TOP — = EXISTING TOP OF BANK
- TOE — TOE — = EXISTING TOE OF BANK
- TOP — TOP — = PROPOSED TOP OF BANK
- TOE — TOE — = PROPOSED TOE OF BANK
- 10 — 10 — = EXISTING CONTOUR (INDEX)
- 11 — 11 — = EXISTING CONTOUR (NORMAL)
- 10 — 10 — = PROPOSED CONTOUR (NORMAL)
- 11 — 11 — = PROPOSED CONTOUR (NORMAL)
- FILL — FILL — = PROPOSED DAYLIGHT FILL LINE
- CUT — CUT — = PROPOSED DAYLIGHT CUT LINE



CONNECT TO NEW WATER MAIN IN NORTHWOOD RD (PERMITTED SEPARATELY)
PROPOSED FIRE HYDRANT

CONNECT TO NEW SEWER MAIN IN KAMM RD (PERMITTED SEPARATELY)

CONNECT TO EXISTING WATER MAIN IN NORTH PRAIRIE PHASE 7

APPROXIMATE LOCATION OF 100' BUFFER FROM KAMM DITCH

OPEN 1

PROPOSED EMERGENCY OVERFLOW OUTFALL TO EXISTING ROADSIDE DITCH

KAMM ROAD

NORTHWOOD ROAD

100' BUFFER

75' BUFFER

40' BUFFER

BARTLETT

360-306-8311
mandabeth78@hotmail.com

1553 Kamm Rd.
Lynden, WA 98264

December 19, 2020

Heidi Gudde
Planning Director
300 4th St.
Lynden, WA 98264

RECEIVED
DEC 28 2020
City of Lynden
Planning Department

Ms. Gudde,

After receiving our letter from the City of Lynden on the MDNS proposal to change the zoning of parcel 400315333313 we felt necessary that our voice needed to be heard. We understand that we are simple residents that love our city and this letter may never make a difference however; we feel someone has to speak up and try to bring common sense back to the city planning system.

We understand that in order to make a buck, the more dwellings, the more money. In your letter it states that "variety of housing options is key in the City of Lynden's sustainable growth strategy" but we both know that this is just a piece of fiction made to make the community believe. The bottom line is MONEY. Money for the construction companies and money for the city from services and taxes.

Look at what construction companies have already done to our once beautiful community. Yeah, I said "once". I hate to say that in the last few years I have been embarrassed to call Lynden home. The city and construction companies are turning it into just another overcrowded city with no charm or individuality.

What people really want is OLD Lynden. Charming Lynden. Beautiful Lynden. Look around. The most desirable properties are in RS-100 neighborhoods. Nice houses (not too big) with a large yard so you don't feel like your neighbor can hear you sneeze. Not my first choice in bodily function.

I pray that this letter at least opens one person's eyes and can help change the city's blasé attitude to lower the zoning. Please give Lynden her dignity and stop stacking and packing houses.

Sincerely yours,



Grant & Amanda Bartlett

ORIGINAL

CITY OF LYNDEN
PLANNING COMMISSION RESOLUTION #21-04

**A resolution of recommendation for the approval of the
Kode Kamp Vista Long Plat**

WHEREAS, Northwood Partners, LLC, hereinafter called the "Proponents," submitted a complete application to the City of Lynden, hereinafter called "the City," for the subdivision of approximately 28.41 acres into 92 single family residential building lots at 8744 Northwood Road in Lynden; and

WHEREAS, the RMD zone, permits single-family homes only on lots with a minimum of 6,000 square feet subject to the requirements listed under 19.16 of the Lynden Municipal Code in accordance with the zoning and subdivision ordinances; and

WHEREAS, the application was determined complete on December 4, 2020, and the notice of application was published in the Lynden Tribune on January 20, 2021; and

WHEREAS, the Proponent has provided the City with receipts for the certified mailing of all required notices to all property owners within three hundred feet of the subject property together with the affidavits of posting said notices; and

WHEREAS, the proposal was reviewed under the State Environmental Policy Act and a mitigated determination of non-significance was issued for the project, and

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

WHEREAS, the City's Technical Review Committee has reviewed the request for the subdivision of the property and has provided comments and recommendations to the Planning Commission in a report dated January 6, 2021, and

WHEREAS, the Lynden Planning Commission has reviewed the application and has made the following findings of fact for recommending **approval** the Kode Kamp Vista Long Plat:

1. The development is consistent with the Comprehensive Plan and meets the applicable requirements and intent of the Lynden Municipal Code.
2. The development makes adequate provisions for open space, drainage ways, streets and other public ways, transit stops, water supply, sanitary wastes, parks and recreation facilities, playgrounds, sites for schools and school grounds.
3. The development adequately mitigates impacts identified under Titles 16-19.
4. The development is beneficial to the public health, safety and welfare and is in the public interest.

5. The development does not lower the level of service of transportation and / or neighborhood park facilities below the minimum standards established within the Comprehensive Plan, and fully complies with Chapter 17.15 of the City Code.
6. The area, location and features of land proposed for dedication are a direct result of the development proposal, are reasonably needed to mitigate the effects of the development and are proportional to the impacts created by the development.

NOW THEREFORE, BE IT RESOLVED by the Lynden Planning Commission to recommend approval of the **Kode Kamp Vista Long Plat #20-01** by a vote of 5-0, to the Lynden City Council, subject to the Technical Review Committee Report dated January 6, 2021, and further subject to the following conditions:

- That duplex lots be disbursed throughout the interior of the plat (on lots at least 8,000 sf or greater) in areas where on-street parking is more readily available and that there be no single family or duplex parking allowed on Northwood Road.
- That the East Lynden Trail be extended along Northwood Road to meet condition #34 as noted in the Technical Review Committee Report dated January 6, 2021, under Parks and Recreation.

PASSED by the Planning Commission of the City of Lynden, Whatcom County, at their regular meeting held on the 28th day of January 2021.



Diane Veltkamp, Chairperson
Lynden Planning Commission



Heidi Gudde,
Planning Director

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	March 15, 2021	
Name of Agenda Item:	Site Specific Rezone – Kode Kamp (Lagerwey Property)	
Section of Agenda:	New Business	
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 Resolution 21-03, Staff memo to the PC, TRC Report, Site Specific Rezone Application 20-04 and supporting materials.		
Summary Statement:		
<p>Jeff Palmer, on behalf of Northwood Partners LLC, has applied for a site-specific rezone of approximately 28 acres located at the northeast corner of Kamm Road and Northwood Road. The subject property is currently zoned for single family residential with a minimum lot size of 10,000 square feet (RS-100). The applicant has requested that the zoning shift to a residential zoning known as Residential – Mixed Density (RMD). This is a zoning category that calls for a variety of lot sizes and is meant to accommodate detached single-family homes, attached (or paired) single-family homes, and duplexes.</p> <p>The applicant has provided a narrative which responds to the site-specific rezone criteria found in LMC 17.19.050. Additionally, the applicant has simultaneously applied for long plat approval of the same property. The proposed 92-lot long plat utilizes the RMD lot configuration criteria described in LMC 19.16 and a variety of lot sizes which range from the 10,000's to the 6,000's.</p> <p>The Planning Commission considered the Rezone request at a public hearing on January 28, 2021. The Commission voted to recommend the rezone action but with specific conditions as outlined in the attached Resolution 21-03. The Technical Review Committee has concluded review and also recommends approval of the rezone. However, as the conditions described by the Planning Commission are specific to potential changes in lot configuration and plat design, staff recommends the Site Specific Rezone be considered on its own merit and decision based on the criteria related to rezone requests. Changes which would result in additional lots or other significant changes to the plat would be brought before the Planning Commission in a separate action. Staff does not recommend that rezone action be connected to specifics of plat configuration. An ordinance reflecting the Council's decision will be brought forward at a subsequent meeting.</p>		
Recommended Action:		
Motion to approve the Lagerwey / Kode Kamp Site Specific Rezone, Application 20-04 shifting the subject property from a residential designation of RS-100 to Residential Mixed Density.		



City of Lynden

Rezone

Application Requirements

1. *Completed application form for the rezone request.*
2. *All applicable fees.*
3. *Property site map showing the following:*
 - property dimensions*
 - street and alley dimensions*
 - footprint and dimensions of existing buildings*
 - setbacks*
 - other existing physical features*
 - north point and scale*
 - topography*
4. *Area map showing the following:*
 - adjacent properties*
 - zoning of adjacent properties*
 - nearby structures and buildings*
 - streets/highways*
 - watercourses*
 - easements*
5. *Project drawings showing the following (if applicable):*
 - building / site elevations of the proposed project*
 - floor plans*
 - landscaping plans*
6. *Legal description of the property.*
7. *Names and addresses of all persons, firms and corporations holding interest in the property.*
8. *SEPA checklist.*
9. *A narrative regarding the background, the reason for seeking the proposed rezone, and the effect of the proposal on adjacent areas.*
10. *A statement explaining changed circumstances in the area since adoption of the current zoning or a mistake in the current zoning.*
11. *A statement explaining how the proposed rezone is consistent with the City's comprehensive plan, applicable sub-area plans, and with protecting the public health, safety, and welfare.*
12. *Critical Areas Ordinance Checklist.*



City of Lynden

Rezone Application

Applicant Information

Name: Northwood Partners, LLC

Address: 1841 Front Street, Suite A, Lynden WA 98264

Telephone Number: 360-354-1184 **Fax Number:** 360-318-9526

E-mail Address: jeff@axiomcc.net

Application is hereby made for a rezone as follows:

Type of Rezone Requested:

Current Zoning Designation: RS 100 Proposed Zoning Designation: RMD

Attach narrative explaining the reason for the request / zoning change

Property Information

Address: 8744 Northwood Road, Lynden WA 98264

Legal Description: *(Attach Additional Sheets if Necessary)*

The Southwest quarter to the Northeast quarter of Section 15, Township 40 North, Range 3 East of W.M. excepting therefrom the North half of the North half of the Southwest quarter of the Northeast quarter, and excepting one acre for cemetery and county roads known as Kamm Road and Northwood Road, excepting right-of-way for drainage

Property Size: 1,297 **X** 977

Total Square Footage: 1,237,542 **Total Acreage:** 28.41

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: Jeff Palmer, CFO, Northwood Partners LLC **DATE:** 7/28/2020

PROPERTY OWNER SIGNATURE:  **DATE:** 10/01/2020

PROPERTY OWNER PRINTED NAME: Jeff Palmer **DATE:** 7/28/2020

Pre-application meeting date: 8/24/2020

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

Fee's (RZ \$450.00) date paid: 10/2/2020 receipt # _____

CITY OF LYNDEN



TECHNICAL REVIEW COMMITTEE Development Project Report

Date Issued:	January 5, 2021
Project Name:	Site Specific Rezone – Lagerwey
Project Description:	The applicant is requesting a rezone from Single Family Residential (RS-100) to Residential Mixed Density (RMD)
Applicant:	Jeff Palmer, Agent for Northwood Partners, LLC
Property Owner:	Northwood Partners, LLC
Site Address:	8744 Northwood Road, Lynden
Parcel Number:	400315-333313
Parcel Size and Zoning Designation:	28.41 acres currently zoned single-family RS-100
Hearing Objective:	To determine whether the proposal meets the criteria listed for a site specific rezone.
Date application determined complete:	December 4, 2020
Date of Publication:	November 4, 2020
SEPA Determination:	MDNS Issued December 11, 2020

Summary

The property owner is seeking to rezone this property from Single Family Residential (RS-100) to Residential Mixed Density (RMD).

To be approved, site specific rezone request must demonstrate that it meets the criteria listed in LMC 17.19.050:

A. The current zoning was either approved in error or that a significant change in circumstances since approval of the current zoning warrants reclassification of the subject property as proposed;

B. The proposed site-specific rezone is consistent with the city's comprehensive plan and applicable subarea plan(s);

C. The project proposal is consistent with the city's development codes and regulations for the zoning proposed for the project;

D. The proposed site-specific rezone is compatible with existing uses and zoning in the surrounding area; and

E. The proposed site-specific rezone will promote the health, safety and general welfare of the community.

The rezone application included a narrative that responds to these criteria. The narrative accurately references relevant goals from the City of Lynden’s Comprehensive Plan.

Staff completed review of the Site Specific Rezone request and corresponding Long Plat Application and have developed the following comments:

Planning Department Comments

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

Advisory Comments - Public Works Department

- 9. *Infrastructure Improvements:* Be advised, at the time of future development, all public improvements must be constructed to the current standards as noted in the City of Lynden Manual for Engineering Design and Development Standards.
- 10. *Stormwater Management:* At the time of future development, all plans must be designed and constructed in compliance with the Department of Ecology’s Best Management Practices and the standards approved in the Manual for Engineering Design and Development Standards. Storm drainage report per the City of Lynden and the Department of Ecology standards required.
- 11. *Stormwater Management:* Be advised, at the time of future development, a stormwater management plan prepared by a professional engineer will be required for this development and must be approved by the City of Lynden prior to approval of construction plans. An erosion control plan must be included in the drainage plan and construction plans as necessary.
- 12. *Water and sewer:* Each unit must be individually metered.

Advisory Comments - Fire and Life Safety

- 13. *Fire Code:* Future Development will require full compliance with the Fire Code.
- 14. *Fire Impact Fees:* Be advised, fire impact fees will be due at the time of permit. The current rate of this fee is \$517.00 per single family home and \$389.00 per duplex unit.

Advisory Comments - Parks and Recreation

- 15. *Park and Trail Amenities:* Future development may require participation and or easements for trail system and parks. Connections to trails and parks will be reviewed at the time of Design Review Board approval.
- 16. *Park Impact Fees:* Be advised, park impact fees will be due at the time of permit. The current rate of this fee is \$936.00 per single family home and \$546.00 per duplex unit.

October 2, 2020

Northwood Partners, LLC
1841 Front Street, Suite A
Lynden, WA 98264

City of Lynden Planning Department
300 4th Street
Lynden WA 98264
Contact: Heidi Gudde

Rezone Narrative in Support of Kode Kamp Vista Long Plat and Rezoning Applications
8744 Northwood Road, Lynden WA 98264

Applicant/Owner:
Northwood Partners, LLC
1841 Front Street, Suite A
Lynden, WA 98264
360-354-1184 ext. 201
Contact: Jeff Palmer, CFO

Applicant's Engineer:
Freeland & Associates
220 West Champion Street, Suite 200
Bellingham WA 98225
360-650-1408
Contact: Michael Bratt, PE

This narrative is provided in support of the Applicant's proposed rezoning of the Kode Kamp Vista Long Plat, which is approximately 28.4 acres of largely undeveloped property currently used for agricultural purposes and currently zoned RS-100.

Applicant has fulfilled the various submission requirements set out in the City of Lynden Rezoning Application, which Applicant submitted electronically on October 2, 2020 and as part of a formal

submittal package separately delivered. We now wish to proceed with the Rezone and through formal plat approval.

Overview and Background:

Northwood Partners, LLC (“Northwood” or “Applicant”) is made up of lifetime Lynden residents Kent Kamphouse, Derek DeKoster, and Tim Koetje. The partners all presently still call Lynden home, and all have a vision of contributing back to their hometown by providing affordable and available residential home sites. All three partners are active in local construction, so each has first-hand experience with what a shortfall in building lots can and will do to the community. Opportunities for an increasing variety of housing options is key in the City of Lynden’s sustainable growth strategy, and housing is the bedrock for community growth, tax base, job retention and opportunities for Lynden’s children.

With that in mind, Northwood Partners proposed a new residential long plat including 94 new single- and multi-family duplex lots of various sizes conforming with the proposed RMD zoning, plus limited open space and internal pedestrian access on a site just south of the recently developed North Prairie Phase 7 residential development. Currently the site is approximately 28.4 acres in size and previously used solely by a single family for its agricultural purposes.

The RMD rezoning is determined to provide a better mix of homesites to various builders, including a large number of single family residence sites with average lot sizing in excess of the neighboring 7,200 square foot average, combined with several smaller duplex sites that offer a variety of builders the option to create affordable living in a well-developed plat. Price points are projected to start in the \$300s - \$400s for finished duplex units, which will likely represent the most affordable housing options available when the units come to market. This will not come at the cost of quality of life or decreased overall sense of the Kode Kamp neighborhood. There will be a blend of larger view lots, mid-sized building lots and duplex lots – in short, a well-conceived neighborhood that doesn’t simply maximize density.

In this fashion, Kode Kamp Vista meets the purpose and intent of the Residential Mixed Density Zone criteria of increasing density by integrating multifamily homes with single family neighborhoods within the Lynden community. The intent of RMD is to allow a creative mix of single family and duplex housing styles and types. The plat demonstrates careful use of the various topography and potential view corridors that will be attractive to a variety of custom and speculative home builders, which in turn leads to architectural diversity. All lots will be sufficiently sized to promote individual homeowner landscaping and provide space and privacy.

This mix of lots will focus attention on keeping an appropriate housing aesthetic quality that compliments Lynden in general and the immediate surrounding neighborhoods specifically.

Northwood simultaneously submitted the rezone application along with the plat application. Northwood’s request is that each application, while reviewed using their respective approval criteria, is being considered holistically as they are co-dependent – the plat is dependent on the rezoning.

Reasons for Seeking the Proposed Rezone, and the Effect of the Proposal on Adjacent Areas:

The property at present is not built-out to highest and best use and is mostly vacant land except for one home and an agricultural business spread across 28 acres. Inefficient development results in higher infrastructure and utility costs. Yet, public sewer and water utilities are available in the public right of way in Northwood Road, and are viable in serving the RMD density of development on the property. This parcel best serves the community land use needs with an appropriately designed residential plat, taking advantage of more compact development and offering an array of home choices.

Northwood Partners is sensitive to the continued acute shortage of available single- and multi-family lots to local builders. Whatcom County generally and Lynden specifically face housing shortages brought about by increasing demand – the opportunity to live and work in the Lynden area is hugely popular – and the impacts to our local economy by not meeting builders’ needs. Lynden is quickly running out of building options, the lack of which will translate to lost City revenues, jobs, and opportunities.

For these reasons, Northwood proposes a medium density development with a thoughtful blend of single-family homes and duplexes, all built on lots that conform with the requirements of LMC 19.16:

1. No lot will be less than 6,000 square feet, and these smaller lots will be used solely for duplex units;
2. More than 40% of the lots will be in excess of 7,200 square feet;
3. All setbacks will be met or exceeded;
4. All Kode Kamp Vista lots adjoining the North Prairie development will exceed the minimum lot sizing of that adjoining zone; and
5. Lot sizes and lot frontage widths are intermixed in the plat design to encourage varying house designs and promote more street interest.

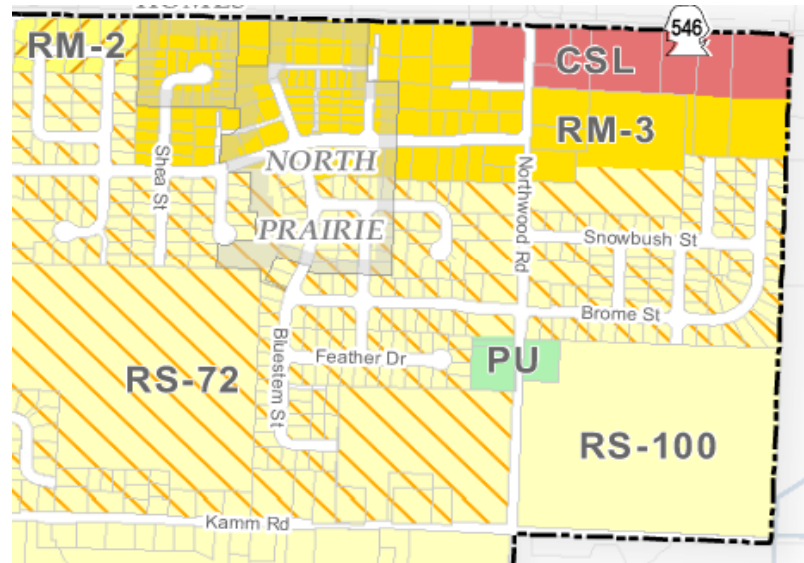
The proposed zoning change would allow a higher density of residents over the existing RS-100, which has been shown to decrease the per-capita footprint of local infrastructure. This translates into less total infrastructure required, which decreases land impact and sprawl. Utilization of public sewer and the appropriate waste disposal facilities will minimize impact on land quality. The existing riparian margin will assist in the protection of local waterways. Development shall include storm-water mitigation pursuant to city code and public works standards. There are no impacted wetlands.

The full build-out of the property (at the proposed zone designation of RMD) would entail new rights of way to be dedicated to the public domain, and increase cross-connectivity in the immediate vicinity at a much higher rate than the existing RS-100 zoning, and a higher number of residents could reside in proximity to these new dedications and utilize the infrastructure. Development in the proposed zoning designations will create extension of convenient, safe, and efficient transportation facilities.

The change in zoning would further allow a higher density and more efficient use of land, and thusly, utilities and energy resources. Smaller, more efficient homes would be permissible as a result of the zone change. Proximity to significant destinations such as two public schools could be argued to lower the daily Vehicle Miles Travelled (VMT) by residents of the development. Allowing a higher density of

residents would comprehensively decrease the strain on energy resources comparing to lower density uses long-term.

There will also be no negative impact on the immediately surrounding area. Kode Kamp Vista is bordered to the south and to the east by unincorporated land outside Lynden City limits and outside the UGA, and the effect on the north and western borders will be to bring our proposed development into harmony with the North Prairie neighborhood. Here is how the property appears as-zoned today:



Granting our request for change of zoning to RMD will clearly bring consistency and a greater sense of community to the existing neighborhood. The Kode Kamp Vista plat will offer very similar sized lots designed to attract an array of builders and buyers

Statement on Changed Circumstances in the Area since Adoption of the Current Zoning:

The undeveloped parcel is located in East Lynden and is presently zoned RS-100, which is overly restrictive for development purposes and inconsistent with the City’s growth plan and the pressing need for residential lots. Following the City’s Comprehensive Plan, the annexed East Lynden land was specifically targeted for growth; more than 73% of all new single family and multifamily homes have been built in North and East Lynden sub-areas in the past 18 years, and the majority of these homes were built in East Lynden.

The North Prairie development sets the tone for the East Lynden sub-area and a majority of residential growth is concentrated in East Lynden. The 2004 annexation foresaw this growth curve, and now is the time for updating the underlying zoning to meet the realized growth.

Statement on How the Proposed Rezone is Consistent with the City’s Comprehensive Plan, applicable Sub-Area Plans, and with the Protecting the Public Health, Safety, and Welfare:

The Comprehensive Plan states that the zoning ordinance shall allow variable lot sizes in single-family residential subdivisions, consistent with the Growth Management Goals and Policies. Specifically, the City of Lynden Value Statements include, among other items:

- Targeting an average net residential density of five units per acre within the City limits;
- The City will maintain a lot inventory, or land supply, sufficient for five years of growth;
- The City will continue to pursue housing options within the City that provide opportunities for home ownership; and
- The City will seek to maintain a ratio of 75% single family homes and 25% multifamily homes.

The proposed change in zoning supports these Value Statements by providing more opportunities for well-planned single-family and multi-family developments, which is the primary type of development that offers significant lot variability. The primary land use goal of the Comprehensive Plan is to manage growth in a coordinated and sustainable fashion, and in such a manner as to reduce sprawl, protect the environment, and enhance Lynden residents’ quality of life. Rezoning from a minimum of 10,000 square feet per lot and no multifamily meets that litmus test. Extending neighborhoods with consistent, thoughtful planning maintains community spirit and a small-town atmosphere while encouraging appropriate growth and meeting the challenge for new home options.

Kode Kamp Vista, as platted, provides availability of affordable housing to many economic segments, promotes a variety of residential densities and housing types, all while protecting the environment and surrounding agricultural lands. There are no impacted wetlands in the development. There are no areas of environmental significance that will be disturbed. Utilities are already present in the public right of way, minimizing the financial burden on the City of Lynden and reducing the development impact to the land.

This is the last available undeveloped parcel on the eastern border of the City limits, and it represents an opportunity to enhance Lynden’s housing options.

Respectfully submitted,
NORTHWOOD PARTNERS, LLC

Jeff Palmer

Jeff Palmer
Chief Financial Officer

Vicinity Map



CITY OF LYNDEN
PLANNING COMMISSION RESOLUTION #21-03

A resolution of recommendation for approval of the Lagerwey Site Specific Rezone #20-04, to the Lynden City Council.

WHEREAS, Jeff Palmer, on behalf of Northwood Partners, LLC, hereinafter called the "Proponent," submitted a complete application to the City of Lynden, hereinafter called the "City," for a Site-Specific Rezone requesting to change the zoning designation of Single Family Residential (RS-100) to Residential Mixed Density (RMD) at 8744 Northwood Road in Lynden, Washington; and

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

WHEREAS, in addition to the notification requirements listed above, site-specific rezones that result in a density of five or more residential units per acre must install a 4-foot X 8-foot sign on site providing project and meeting details; and

WHEREAS, the application was determined to be complete on December 4, 2020, and the notice of application was published in the Lynden Tribune on December 23, 2020; and

WHEREAS, the subject parcel totals approximately 28.41 acres and has property zoned both single family residential (RS-72) and public use (PU) to the north, and to the west. Property to the east and south is beyond the City limits and used agriculturally; and

WHEREAS, the Lynden Planning Commission held a virtual public hearing via Microsoft Teams on January 28, 2021, to accept public testimony on the proposed Site-Specific Rezone request, and that meeting was duly documented;

WHEREAS, the City's Technical Review Committee has reviewed the request for the Site-Specific Rezone and has provided findings, conditions, and recommendations to the Planning Commission in a report dated January 5, 2021; and

WHEREAS, site-specific rezones shall be reviewed in light of the City's Comprehensive planning goals. To recommend approval of this request, the Planning Commission must find that the application satisfies the criteria listed within Section 17.09.050 of the Lynden Municipal Code.

- a. The current zoning was either approved in error or that a significant change in circumstances since approval of the current zoning warrants reclassification of the subject property as proposed; and
- b. The proposed site-specific rezone is consistent with the City's comprehensive plan and applicable sub-area plan(s); and

- c. The project proposal is consistent with the City’s development codes and regulations for the zoning proposed for the project.
- d. The proposed site-specific rezone is compatible with existing uses and zoning in the surrounding area; and
- e. The proposed site-specific rezone will promote the health, safety, and general welfare of the community; and

WHEREAS, the Lynden Planning Commission has reviewed the request and has specifically concluded that:

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

NOW THEREFORE, BE IT RESOLVED by the Lynden Planning Commission to recommend approval by a vote of 5-0, to the Lynden City Council, of the Lagerwey Site Specific Rezone #20-04, subject to the Technical Review Committee Report dated January 5, 2021 and further subject to the following conditions:

- That no more than 30-lots within this development be less than 7200 square feet.
- That if there is a major change in the proposed plat design, the rezone would need to be resubmitted to the Planning Commission for review.

PASSED a recommendation of approval by the Planning Commission of the City of Lynden, Whatcom County, at their meeting held the 28th day of January 2021.



 Diane Veltkamp, Chairperson,
 Lynden Planning Commission



 Heidi Gudde, AICP
 Planning Director



Meeting Date:	January 28, 2021
Name of Agenda Item:	Public Hearing for Site Specific Rezone 20-04, Kode Kamp Rezone
Type of Hearing:	Quasi-Judicial
Attachments:	
TRC Report, Site Specific Rezone Application 20-05, Vicinity Map, (see Kode Kamp Long Plat for maps and more information)	
Summary Statement:	
<p>Jeff Palmer, on behalf of Northwood Partners LLC, has applied for a site-specific rezone of approximately 28 acres located at the northeast corner of Kamm Road and Northwood Road. The subject property is currently zoned for single family residential with a minimum lot size of 10,000 square feet (RS-100). The applicant has requested that the zoning shift to a residential zoning known as Residential – Mixed Density (RMD). This is a zoning category that calls for a variety of lot sizes and is meant to accommodate detached single-family homes, attached (or paired) single-family homes, and duplexes.</p> <p>Application materials and staff references to the project fall under a variety of names. As the property was formally owned by the Lagerwey family it may be called the Lagerwey Rezone in some places in the application package. Alternately it may be called the Northwood Partners Rezone or, like the long plat the Kode Kamp Vista Rezone. All of these names refer to the same subject property.</p> <p>The applicant has provided a narrative which responds to the site-specific rezone criteria found in LMC 17.19.050. Additionally, the applicant has simultaneously applied for long plat approval of the same property. The proposed 92-lot long plat utilizes the RMD lot configuration criteria described in LMC 19.16 and a variety of lot sizes which range from the 10,000’s to the 6,000’s.</p> <p>Staff’s review comments are found in the attached TRC report.</p> <p>Staff has concluded review with the following reasons to support the proposed rezone:</p> <ul style="list-style-type: none"> • The housing market has changed substantially since the property was originally zoned RS-100. Entry level home buyers would typically not be able to purchase lots within a RS-100 neighborhood. RMD zoning allows for a variety of lot sizes and associated housing types. • The accommodation of additional housing units in this area serves the public good as it is located near to the Lynden Middle School and Cornerstone Christian school. • The rezone is consistent with the City’s Comprehensive Plan. 	
Recommended Action:	
Motion to recommend to the City Council the approval of site specific rezone request as presented by Northwood Partners LLC, application number 20-04.	

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	March 15, 2021	
Name of Agenda Item:	Site Specific Rezone 20-05 – O & S Farms	
Section of Agenda:	New Business	
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 Resolution 21-02, Staff memo to the PC, TRC Report, Site Specific Rezone Application 20-05 and supporting materials, Letter to Planning Director re PC Hearing, Public Comment.		
Summary Statement:		
<p>Ashley Gosal, on behalf of Fishtrap Creek LLC, has applied for a site-specific rezone of the property located at 8035 Guide Meridian. The subject property is currently zoned Commercial Services – Regional (CSR). The applicant has requested that the zoning shift to Commercial Services – Local (CSL).</p> <p>CSR zoning has traditionally been geared toward big box retail and strip shopping centers. More recently the City updated the CSR definition and permitted uses to embrace uses consistent with busines parks including light manufacturing and warehousing. Many uses that are permitted in CSL are also permitted in CSR with the notable exception of multi-family residential in a mixed-use setting. This is only permitted in CSL and is a primary reason the applicant seeks this rezone request.</p> <p>The City’s Land Use Code includes the criteria by which site specific rezones can be approved. These are addressed in the application. Technical Review Committee comments and report to the Planning Commission are found in the attached packet. The Committee’s review concluded with a recommendation for approval of the site specific rezone given that the aforementioned code revisions and the changes to the retail market marked a change condition as described in the approval criteria (LMC 17.19.050).</p> <p>The Planning Commission considered the rezone request at a public hearing on January 28, 2021. The hearing concluded with a recommendation to the City Council to deny the rezone request. The minutes of this meeting are attached as well as Planning Commission Resolution 21-02.</p> <p>After the Planning Commission decision, the Planning Department received a letter from legal counsel for the applicant. The letter outlines concerns related to the January 28th hearing. Per RCW 42.30.140(2) the City Attorney has recommended that these concerns be discussed in executive session prior to Council action on the rezone application.</p>		
Recommended Action:		

REZONE APPLICATION

SUBMITTED BY ASHLEY GOSAL OF O&S FARMS, LLC.

8035 Guide Meridian
Lynden, WA 98264

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City of Lynden

Rezone Application

Applicant Information

Name: Ashley Gosal
Address: 8798 Guide Meridian
Telephone Number: 619-643-9375 **Fax Number:**
E-mail Address: ashleygosal@gmail.com

Application is hereby made for a rezone as follows:

Type of Rezone Requested:

Current Zoning Designation: CSR **Proposed Zoning Designation:** CSL

Attach narrative explaining the reason for the request / zoning change

Property Information

Address: 8035 Guide Meridian, Lynden WA 98264

Legal Description: (Attach Additional Sheets if Necessary)

See attached.

Property Size: _____ **X** _____

Total Square Footage: 246,550 SF **Total Acreage:** 5.66 Acres

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.

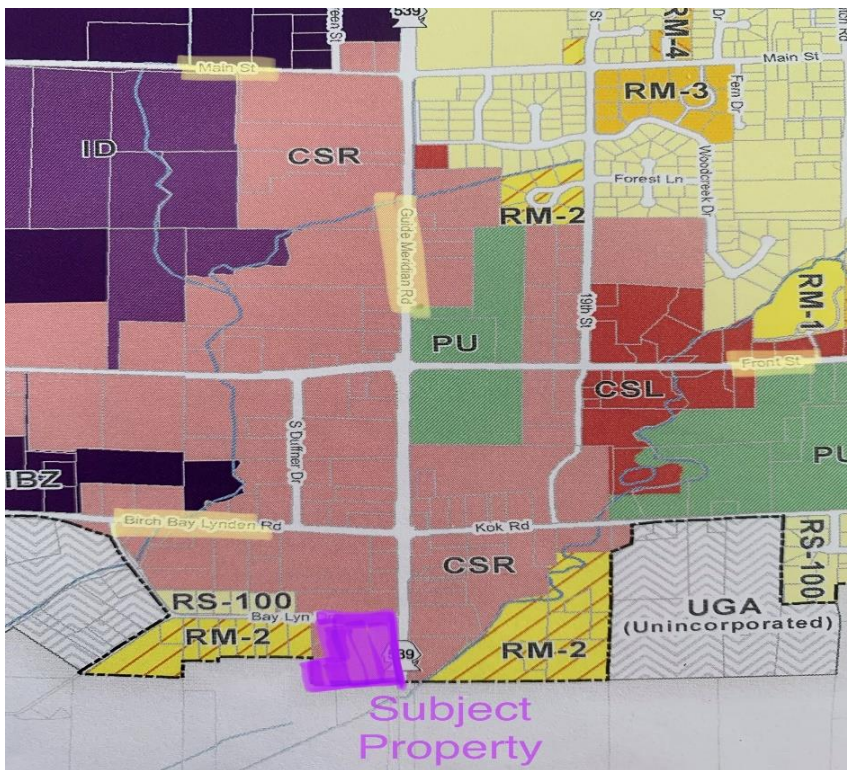
SUBMITTED BY: Ashley Gosal *Ashley Gosal* **DATE:** 11/24/2020
PROPERTY OWNER SIGNATURE: *James Clay* **DATE:** 11/24/2020
PROPERTY OWNER PRINTED NAME: Fishtrap Creek, LLC **DATE:** 11/24/2020

Pre-application meeting date: November 5, 2020 at 2:00 pm

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

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

Summary of Subject Property

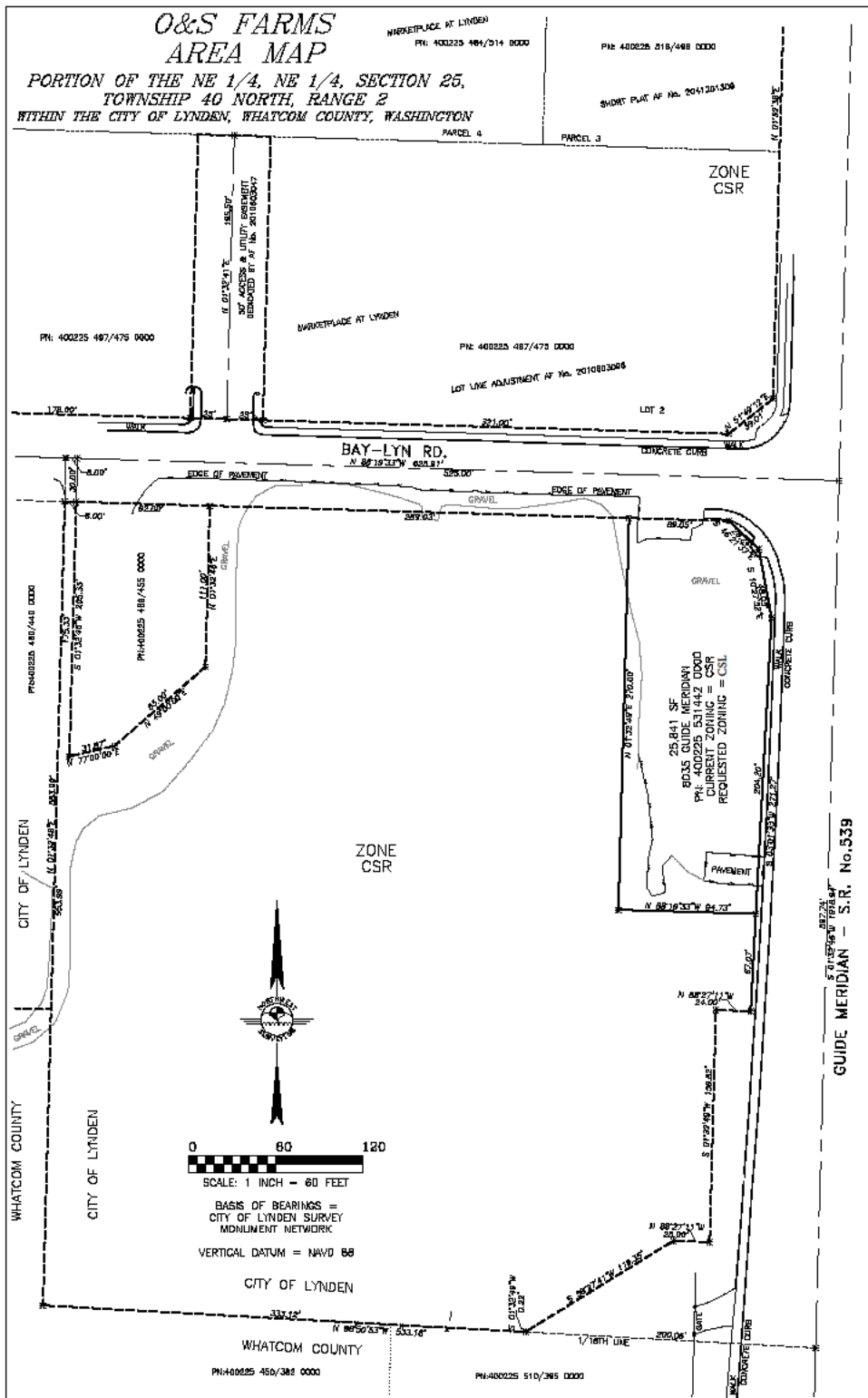


Payment of All Applicable Fees:

Applicant has submitted two checks:

- \$450.00 (Application)
- \$350.00 (SEPA)

Property Area Map:



Project Drawings:

Not Applicable. This application is solely for the rezone.

Once rezone is approved, Applicant will begin development plans and associated drawings.

Legal Description of the Property:

Parcel A:

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

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

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

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

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

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

Situate in Whatcom County, Washington.

Parcel B:

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

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

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

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

Situate in Whatcom County, Washington.

Names and Addresses of All Persons, Firms, and Corporations Holding Interest in the Property:

Rezone Applicant:

Ashley Gosal on behalf of O&S Farms LLC

Address: 4362 Valle Dr, La Mesa, CA 91941

Contact: (619)-643-9375

ashleygosal@gmail.com

Current Owner:

James Clay, Fishtrap Creek LLC

Address: 1201 11th St., Suite 202, Bellingham, WA 98225

Ownership Interest:

Owen Gosal, O&S Farms LLC

Address: 8798 Guide Meridian, Lynden, WA 98264

Contact: (360)815-0212

SEPA Checklist:

SEPA ENVIRONMENTAL CHECKLIST

Purpose of checklist:

Governmental agencies use this checklist to help determine whether the environmental impacts of your proposal are significant. This information is also helpful to determine if available avoidance, minimization or compensatory mitigation measures will address the probable significant impacts or if an environmental impact statement will be prepared to further analyze the proposal.

Instructions for applicants:

This environmental checklist asks you to describe some basic information about your proposal. Please answer each question accurately and carefully, to the best of your knowledge. You may need to consult with an agency specialist or private consultant for some questions. You may use "not applicable" or "does not apply" only when you can explain why it does not apply and not when the answer is unknown. You may also attach or incorporate by reference additional studies reports. Complete and accurate answers to these questions often avoid delays with the SEPA process as well as later in the decision-making process.

The checklist questions apply to all parts of your proposal, even if you plan to do them over a period of time or on different parcels of land. Attach any additional information that will help describe your proposal or its environmental effects. The agency to which you submit this checklist may ask you to explain your answers or provide additional information reasonably related to determining if there may be significant adverse impact.

Instructions for Lead Agencies:

Please adjust the format of this template as needed. Additional information may be necessary to evaluate the existing environment, all interrelated aspects of the proposal and an analysis of adverse impacts. The checklist is considered the first but not necessarily the only source of information needed to make an adequate threshold determination. Once a threshold determination is made, the lead agency is responsible for the completeness and accuracy of the checklist and other supporting documents.

Use of checklist for nonproject proposals:

For nonproject proposals (such as ordinances, regulations, plans and programs), complete the applicable parts of sections A and B plus the [SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS \(part D\)](#). Please completely answer all questions that apply and note that the words "project," "applicant," and "property or site" should be read as "proposal," "proponent," and "affected geographic area," respectively. The lead agency may exclude (for non-projects) questions in Part B - Environmental Elements –that do not contribute meaningfully to the analysis of the proposal.



City of Lynden

SEPA Environmental Checklist

SEPA Fees: \$350.00

A. Background

1. Name of proposed project, if applicable: [To be determined at a future date.](#)
2. Name of applicant: [O&S Farms](#)
3. Address and phone number of applicant and contact person:
[Ashley Gosal](#)
[619-643-9375](#)
[4362 Valle Dr, La Mesa, CA 91941](#)
4. Date checklist prepared: [11/20/2020](#)
5. Agency requesting checklist: [City of Lynden](#)
6. Proposed timing or schedule (including phasing, if applicable): [Rezone expected to be completed by April 2021. Property development to begin Spring of 2021.](#)
7. Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain. [Yes, once the Property is successfully rezoned from CSR to CSL, applicant will prepare redevelopment plans for a commercial multi-family center on the property.](#)
8. List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal. [None or unknown at this time.](#)
9. Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal? If yes, explain. [No.](#)
10. List any government approvals or permits that will be needed for your proposal, if known. [Rezone approval, development plan approval\(s\), construction permit approval\(s\).](#)
11. Give brief, complete description of your proposal, including the proposed uses and the size of the project and site. There are several questions later in this checklist that ask you to

describe certain aspects of your proposal. You do not need to repeat those answers on this page. (Lead agencies may modify this form to include additional specific information on project description.) *At this stage, the proposal is only for a rezone of the Property from CSR to CSL. There is no project proposal.*

12. Location of the proposal. Give sufficient information for a person to understand the precise location of your proposed project, including a street address, if any, and section, township, and range, if known. If a proposal would occur over a range of area, provide the range or boundaries of the site(s). Provide a legal description, site plan, vicinity map, and topographic map, if reasonably available. While you should submit any plans required by the agency, you are not required to duplicate maps or detailed plans submitted with any permit applications related to this checklist. *The location for the proposal is 8035 Guide Meridian, Lynden, WA 98264. Portion of the NE ¼, NE 1/4 , Section 25, Township 40 North, Range 2 within the County of Lynden, Whatcom County, Washington.*

At this stage, this is only an application for initial rezoning of the Property. We do not yet have a proposed project, however, a future development project is intended for the entire Property.

Please see attached legal description for specifics on the Property, including a Site Map, Area Map, and Topographic Map.

B. ENVIRONMENTAL ELEMENTS

1. Earth

a. General description of the site:

(circle one): **Flat**, rolling, hilly, steep slopes, mountainous, other _____

b. What is the steepest slope on the site (approximate percent slope)? *Please see attached topographic map indicating all slopes. Site is generally flat. There is a general slope between two tiers of 11%.*

c. What general types of soils are found on the site (for example, clay, sand, gravel, peat, muck)? If you know the classification of agricultural soils, specify them and note any agricultural land of long-term commercial significance and whether the proposal results in removing any of these soils. *Dirt with some areas of gravel.*

d. Are there surface indications or history of unstable soils in the immediate vicinity? If so, describe. *No, not to our knowledge.*

e. Describe the purpose, type, total area, and approximate quantities and total affected area of any filling, excavation, and grading proposed. Indicate source of fill. *Unknown at this time. The current proposal is for rezoning from CSR to CSL only.*

- f. Could erosion occur as a result of clearing, construction, or use? If so, generally describe. **Not anticipated. The current proposal is for rezoning only.**
- g. About what percent of the site will be covered with impervious surfaces after project construction (for example, asphalt or buildings)? **Unknown at this stage. The current proposal is for rezoning from CSR to CSL only. There is only an initial concept for the Property (no project proposal).**
- h. Proposed measures to reduce or control erosion, or other impacts to the earth, if any: **Unknown at this stage. The current proposal is for rezoning from CSR to CSL only. There is no project proposal.**

2. Air

- a. What types of emissions to the air would result from the proposal during construction, operation, and maintenance when the project is completed? If any, generally describe and give approximate quantities if known. **Unknown at this stage. The current proposal is for rezoning from CSR to CSL only. There is no project proposal.**
- b. Are there any off-site sources of emissions or odor that may affect your proposal? If so, generally describe. **No, not to our knowledge.**
- c. Proposed measures to reduce or control emissions or other impacts to air, if any: **Unknown at this stage.**

3. Water

- a. Surface Water:
 - 1) Is there any surface water body on or in the immediate vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, wetlands)? If yes, describe type and provide names. If appropriate, state what stream or river it flows into
No, not to our knowledge.
 - Will the project require any work over, in, or adjacent to (within 200 feet) the described waters? If yes, please describe and attach available plans. **Unknown at this stage. There is only an initial concept for the Property (no project proposal).**
 - 2) Estimate the amount of fill and dredge material that would be placed in or removed from surface water or wetlands and indicate the area of the site that would be affected. Indicate the source of fill material. **Unknown at this stage. There is only an initial concept for the Property (no project proposal).**
 - 3) Will the proposal require surface water withdrawals or diversions? Give general description, purpose, and approximate quantities if known. **Unknown at this stage. There is only an initial concept for the Property (no**

project proposal).

- 4) Does the proposal lie within a 100-year floodplain? If so, note location on the site plan. [Currently, yes. See attached Site Plan.](#)
- 5) Does the proposal involve any discharges of waste materials to surface waters? If so, describe the type of waste and anticipated volume of discharge. [Unknown at this stage. There is only an initial concept for the Property \(no project proposal\).](#)

b. Ground Water:

- 1) Will groundwater be withdrawn from a well for drinking water or other purposes? If so, give a general description of the well, proposed uses and approximate quantities withdrawn from the well. Will water be discharged to groundwater? Give general description, purpose, and approximate quantities if known. [Unknown at this stage. The current proposal is for rezoning from CSR to CSL only. There is no development project proposal. City to install pump station.](#)
- 2) Describe waste material that will be discharged into the ground from septic tanks or other sources, if any (for example: Domestic sewage; industrial, containing the following chemicals. . . ; agricultural; etc.). Describe the general size of the system, the number of such systems, the number of houses to be served (if applicable), or the number of animals or humans the system(s) are expected to serve. [Unknown at this stage. The current proposal is for rezoning from CSR to CSL only. There is no project development proposal yet.](#)

c. Water runoff (including stormwater):

- 1) Describe the source of runoff (including storm water) and method of collection and disposal, if any (include quantities, if known). Where will this water flow? Will this water flow into other waters? If so, describe. [Unknown at this stage.](#)
- 2) Could waste materials enter ground or surface waters? If so, generally describe. [Unknown at this stage. There is only an initial concept for the Property \(no project proposal\).](#)
- 3) Does the proposal alter or otherwise affect drainage patterns in the vicinity of the site? If so, describe. [Unknown at this stage. There is only an initial concept for the Property \(no project proposal\).](#)

d. Proposed measures to reduce or control surface, ground, and runoff water, and drainage pattern impacts, if any: [Unknown at this stage. The current proposal is for rezoning from CSR to CSL only. There is no project proposal.](#)

4. Plants

- a. Check the types of vegetation found on the site:
 - deciduous tree: alder, maple, aspen, other
 - evergreen tree: fir, cedar, pine, other
 - shrubs
 - grass
 - pasture
 - crop or grain
 - Orchards, vineyards or other permanent crops.
 - wet soil plants: cattail, buttercup, bullrush, skunk cabbage, other
 - water plants: water lily, eelgrass, milfoil, other
 - other types of vegetation

- b. What kind and amount of vegetation will be removed or altered? *Unknown at this stage. The current proposal is for rezoning from CSR to CSL only. There is no project proposal.*

- c. List threatened and endangered species known to be on or near the site. *None, to our knowledge.*

- d. Proposed landscaping, use of native plants, or other measures to preserve or enhance vegetation on the site, if any: *Unknown at this stage. The current proposal is for rezoning from CSR to CSL only. There is no project proposal.*

- e. List all noxious weeds and invasive species known to be on or near the site. *None, to our knowledge.*

5. Animals

- a. List any birds and other animals which have been observed on or near the site or are known to be on or near the site. *None, to our knowledge.*

Examples include:

birds: hawk, heron, eagle, songbirds, other:
 mammals: deer, bear, elk, beaver, other:
 fish: bass, salmon, trout, herring, shellfish, other _____

- b. List any threatened and endangered species known to be on or near the site. *None, to our knowledge.*

- c. Is the site part of a migration route? If so, explain. *Not to our knowledge.*

- d. Proposed measures to preserve or enhance wildlife, if any: *Unknown at this stage.*

- e. List any invasive animal species known to be on or near the site. *Not to our knowledge.*

6. Energy and Natural Resources

- a. What kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Describe whether it will be used for heating, manufacturing, etc. *Unknown at this stage. The current proposal is for rezoning from CSR to CSL only. There is no project proposal.*
- b. Would your project affect the potential use of solar energy by adjacent properties? If so, generally describe. *Unknown at this stage. There is only an initial rezone for the Property (not a project proposal).*
- c. What kinds of energy conservation features are included in the plans of this proposal? List other proposed measures to reduce or control energy impacts, if any: *Unknown at this stage. There is only an initial rezone for the Property (not a project proposal).*

7. Environmental Health

- a. Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste, that could occur as a result of this proposal? If so, describe. *Unknown at this stage. The current proposal is for rezoning from CSR to CSL only. There is no project proposal yet.*
 - 1) Describe any known or possible contamination at the site from present or past uses. *Unknown at this stage.*
 - 2) Describe existing hazardous chemicals/conditions that might affect project development and design. This includes underground hazardous liquid and gas transmission pipelines located within the project area and in the vicinity. *Unknown at this stage.*
 - 3) Describe any toxic or hazardous chemicals that might be stored, used, or produced during the project's development or construction, or at any time during the operating life of the project. *Unknown at this stage.*
 - 4) Describe special emergency services that might be required. Proposed measures to reduce or control environmental health hazards, if any: *Unknown at this stage. There is only an initial rezone for the Property (not a project proposal).*
- b. Noise
 - 1) What types of noise exist in the area which may affect your project (for example: traffic, equipment, operation, other)? *None, to our knowledge.*
 - 2) What types and levels of noise would be created by or associated with the project

on a short-term or a long-term basis (for example: traffic, construction, operation, other)? Indicate what hours noise would come from the site. Construction of a development, and eventual traffic to serve the development are expected.

3) Proposed measures to reduce or control noise impacts, if any: Unknown at this stage. The current proposal is for rezoning from CSR to CSL only. There is no project proposal yet.

8. Land and Shoreline Use

- a. What is the current use of the site and adjacent properties? Will the proposal affect current land uses on nearby or adjacent properties? If so, describe. The current use of the site is CSR (Commercial Regional). Adjacent Properties are CSR and CSL. The proposal will not affect land uses on nearby or adjacent properties.

- b. Has the project site been used as working farmlands or working forest lands? If so, describe. How much agricultural or forest land of long-term commercial significance will be converted to other uses as a result of the proposal, if any? If resource lands have not been designated, how many acres in farmland or forest land tax status will be converted to nonfarm or nonforest use? The land has been vacant.
 - 1) Will the proposal affect or be affected by surrounding working farm or forest land normal business operations, such as oversize equipment access, the application of pesticides, tilling, and harvesting? If so, how: Unknown but not expected.

- c. Describe any structures on the site. None.

- d. Will any structures be demolished? If so, what? None.

- e. What is the current zoning classification of the site? CSR.

- f. What is the current comprehensive plan designation of the site? Unknown.

- g. If applicable, what is the current shoreline master program designation of the site? Unknown.

- h. Has any part of the site been classified as a critical area by the city or county? If so, specify. Unknown. The Flood Plain on the site is the only critical area we are aware of.

- i. Approximately how many people would reside or work in the completed project? Unknown at this stage. This is an application solely for rezoning of the Property at this stage. Development plans have not been determined.

- j. Approximately how many people would the completed project displace? None.

- k. Proposed measures to avoid or reduce displacement impacts, if any: *N/A*
- l. Proposed measures to ensure the proposal is compatible with existing and projected land uses and plans, if any: *This rezoning application is meant to ensure that the Property is compatible with existing and projected land uses and plans per the City of Lynden.*
- m. Proposed measures to reduce or control impacts to agricultural and forest lands of long-term commercial significance, if any: *Unknown at this stage. This is an application solely for rezoning of the Property at this stage. Development plans have not been determined.*

9. Housing

- a. Approximately how many units would be provided, if any? Indicate whether high, mid- dle, or low-income housing. *Unknown at this stage. This is an application solely for rezoning of the Property at this stage. Development plans have not been determined.*
- b. Approximately how many units, if any, would be eliminated? Indicate whether high, middle, or low-income housing. *Unknown at this stage. This is an application solely for rezoning of the Property at this stage. Development plans have not been determined.*
- c. Proposed measures to reduce or control housing impacts, if any: *Unknown at this stage. This is an application solely for rezoning of the Property at this stage. Development plans have not been determined.*

10. Aesthetics

- a. What is the tallest height of any proposed structure(s), not including antennas; what is the principal exterior building material(s) proposed? *Unknown at this stage. This is an application solely for rezoning of the Property at this stage. Development plans have not been determined.*
- b. What views in the immediate vicinity would be altered or obstructed? *Unknown at this stage. This is an application solely for rezoning of the Property at this stage. Development plans have not been determined.*
- b. Proposed measures to reduce or control aesthetic impacts, if any: *Unknown at this stage. This is an application solely for rezoning of the Property at this stage. Development plans have not been determined.*

11. Light and Glare

- a. What type of light or glare will the proposal produce? What time of day would it mainly occur? **Unknown at this stage.** This is an application solely for rezoning of the Property at this stage. Development plans have not been determined.

- b. Could light or glare from the finished project be a safety hazard or interfere with views? **Not expected, but unknown at this stage.** This is an application solely for rezoning of the Property at this stage. Development plans have not been determined.

- c. What existing off-site sources of light or glare may affect your proposal? **Unknown at this stage.** This is an application solely for rezoning of the Property at this stage. Development plans have not been determined.

- d. Proposed measures to reduce or control light and glare impacts, if any: **Unknown at this stage.** This is an application solely for rezoning of the Property at this stage. Development plans have not been determined.

12. Recreation

- a. What designated and informal recreational opportunities are in the immediate vicinity? **Unknown at this stage.** This is an application solely for rezoning of the Property at this stage. Development plans have not been determined.

- b. Would the proposed project displace any existing recreational uses? If so, describe. **Not expected, but unknown at this stage.** This is an application solely for rezoning of the Property at this stage. Development plans have not been determined.

- c. Proposed measures to reduce or control impacts on recreation, including recreation opportunities to be provided by the project or applicant, if any: **Unknown at this stage.** This is an application solely for rezoning of the Property at this stage. Development plans have not been determined.

13. Historic and cultural preservation

- a. Are there any buildings, structures, or sites, located on or near the site that are over 45 years old listed in or eligible for listing in national, state, or local preservation registers ? If so, specifically describe. **No.**

- b. Are there any landmarks, features, or other evidence of Indian or historic use or occupation? This may include human burials or old cemeteries. Are there any material evidence, artifacts, or areas of cultural importance on or near the site? Please list any professional studies conducted at the site to identify such resources. **No.**

- c. Describe the methods used to assess the potential impacts to cultural and historic resources on or near the project site. Examples include consultation with tribes and the department of archeology and historic preservation, archaeological surveys, historic maps, GIS data, etc. **Not applicable.**

- d. Proposed measures to avoid, minimize, or compensate for loss, changes to, and disturbance to resources. Please include plans for the above and any permits that may be required. **Not applicable.**

14. Transportation

- a. Identify public streets and highways serving the site or affected geographic area and describe proposed access to the existing street system. Show on site plans, if any.
Proposed access to this Property would be (left in) from Bay Lynn Road, as well as access (right out) onto Guide Meridian. Further details have not been determined as this is only an application solely for rezoning of the Property at this stage. Development plans have not been determined.

- b. Is the site or affected geographic area currently served by public transit? If so, generally describe. If not, what is the approximate distance to the nearest transit stop? **Not to our knowledge.**

- c. How many additional parking spaces would the completed project or non-project proposal have? How many would the project or proposal eliminate? **The project will not eliminate any parking. Proposed parking is unknown at this time, as this is only an application solely for rezoning of the Property at this stage. Development plans have not been determined.**

- d. Will the proposal require any new or improvements to existing roads, streets, pedestrian, bicycle or state transportation facilities, not including driveways? If so, generally describe (indicate whether public or private). **When a project proposal is presented, the proposal may require improvements to existing roads (as described above) including a left turn access into the Property from Bay Lynn Road.**

- e. Will the project or proposal use (or occur in the immediate vicinity of) water, rail, or air transportation? If so, generally describe. **Not expected.**

- f. How many vehicular trips per day would be generated by the completed project or proposal? If known, indicate when peak volumes would occur and what percentage of the volume would be trucks (such as commercial and nonpassenger vehicles). What data or transportation models were used to make these estimates? *Unknown at this time, as this is only an application solely for rezoning of the Property at this stage. Development plans have not been determined.*
- g. Will the proposal interfere with, affect or be affected by the movement of agricultural and forest products on roads or streets in the area? If so, generally describe. *Not expected.*
- h. Proposed measures to reduce or control transportation impacts, if any: *Unknown at this time.*

15. Public Services

- a. Would the project result in an increased need for public services (for example: fire protection, police protection, public transit, health care, schools, other)? *If so, generally describe. Once the rezone is approved, and the development plans are determined, it is expected that there will be an increased need for public services (including fire and police support of the development and its residents).*
- i. Proposed measures to reduce or control direct impacts on public services, if any. *Unknown at this time, as this is only an application solely for rezoning of the Property at this stage. Development plans have not been determined.*

16. Utilities

- a. Circle utilities currently available at the site: electricity, natural gas, water, refuse service, telephone, sanitary sewer, septic system, other _____. *Unknown at this time. City will install a sewer pump on the site.*
- j. Describe the utilities that are proposed for the project, the utility providing the service, and the general construction activities on the site or in the immediate vicinity which might be needed. *Unknown at this time, as this is only an application solely for rezoning of the Property at this stage. Development plans have not been determined.*

C. Signature

The above answers are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

Signature: *Ashley Josal*

Name of signee Ashley Gosal
 Position and Agency/Organization _____
 Date Submitted: 11/24/2020

D. supplemental sheet for nonproject actions

(IT IS NOT NECESSARY to use this sheet for project actions)

Because these questions are very general, it may be helpful to read them in conjunction with the list of the elements of the environment.

When answering these questions, be aware of the extent the proposal, or the types of activities likely to result from the proposal, would affect the item at a greater intensity or at a faster rate than if the proposal were not implemented. Respond briefly and in general terms.

- k. How would the proposal be likely to increase discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise?
 Unknown at this time, as this is only an application solely for rezoning of the Property at this stage. Development plans have not been determined.

Proposed measures to avoid or reduce such increases are: Unknown at this time, as this is only an application solely for rezoning of the Property at this stage. Development plans have not been determined.

- 1. How would the proposal be likely to affect plants, animals, fish, or marine life? A Property rezone is not expected to affect plants, animals, fish or marine life.

Proposed measures to protect or conserve plants, animals, fish, or marine life are: N/A

- 2. How would the proposal be likely to deplete energy or natural resources? N/A

Proposed measures to protect or conserve energy and natural resources are: N/A

- 3. How would the proposal be likely to use or affect environmentally sensitive areas or areas designated (or eligible or under study) for governmental protection; such as parks, wilderness, wild and scenic rivers, threatened or endangered species habitat, historic or cultural sites, wetlands, floodplains, or prime farmlands? A Property rezone is not expected to affect sensitive areas for government protection.

Proposed measures to protect such resources or to avoid or reduce impacts are: N/A

- 4. How would the proposal be likely to affect land and shoreline use, including whether it would allow or encourage land or shoreline uses incompatible with existing plans? N/A

Proposed measures to avoid or reduce shoreline and land use impacts are: [N/A](#)

- 5. How would the proposal be likely to increase demands on transportation or public services and utilities? [Unknown at this time, as this is only an application solely for rezoning of the Property at this stage. Development plans have not been determined.](#)

Proposed measures to reduce or respond to such demand(s) are: [Unknown at this stage.](#)

- 6. Identify, if possible, whether the proposal may conflict with local, state, or federal laws or requirements for the protection of the environment. [Not expected, but unknown at this time, as this is only an application solely for rezoning of the Property at this stage. Development plans have not been determined.](#)

Narrative regarding the background, reason for seeking the proposed rezone, and the effect of the proposal on adjacent areas:

Many years ago, the City of Lynden designated the property at 8035 Guide Meridian (the “Property”) within the commercial service regional (CSR) zone. This zone was meant to attract large retail and regional commercial developments to the area. Properties similarly situated rented shops, created equipment stores, and allowed big-box retailers to take over their properties with stores larger than 65,000 square feet. However, because of development impediments on the Property and weak prospects after development, such development never came to fruition on the Property. Surrounding landowners developed around the property as the City of Lynden has grown, but the Property remains underutilized and underdeveloped. What’s more is that if the zoning designation does not change, development of the Property is just not financially or economically feasible.

Given the significant growth in the City of Lynden and the need for more housing opportunities and support services, zoning designations must be updated to accommodate. We see the need to change the zoning of the Property from CSR to CSL to allow for development that is consistent with the city’s needs, growth and development plans. By designating the property to be CSL zoning, the city will allow for feasible development of the property and in turn nurture economic growth for residents of Lynden to experience housing opportunities, support services, walkability and an improved quality of life. Within the Property, a CSL designation would allow for a mixed-use commercial center, multi-family residences. The zoning also allows for support services such as assisted living facilities, day care centers and a bed and breakfast for Lynden families, residents and visitors. As soon as the rezone application is approved, we would like to work with the City to support the City’s growth by building a village-like residential center that will include live-work concepts to accommodate every resident of Lynden.

The rezoning from CSR to CSL will not only effect the property, but will effect the surrounding area. The development of this site will stimulate growth, create more development and housing opportunities, and create a commercial attraction for the City as it is the gateway to the city from the south. As an example, one nearby property to the east owned by Hollander Investments, is considering redevelopment of their site to also create more residential and commercial opportunities. Developing alongside our project, the Hollander-owned project may propose trails to help revitalize and connect the community while increasing resident accessibility to stores, resources and services. Working together, we believe that the two properties can form an attractive and economically supportive gateway to the City of Lynden.

Statement Explaining Changed Circumstances in the area since adoption of the current zoning or a mistake in the current zoning:

The City of Lynden established the current commercial regional (CSR) designation for the property at 8035 Guide Meridian at a time when the surrounding areas were generally undeveloped. The purpose of the CSR designation was to support the development of large retail and regional commercial developments larger than 65,000 square feet. At the time, the zone designation was fair because the area was not highly-populated and the Property was at or near the ‘edges’ of the city. The CSR zone designation supported storage facilities, warehouses, light manufacturing and other establishments that were intended to be further from the downtown core.

Over the past several years, the City of Lynden has grown considerably. Lynden is more developed, populated and dense. The City is now home to more than 15,000 residents, many of whom are priced out of the single-family home market due to supply and demand constraints. Furthermore, the areas surrounding the Property have developed significantly to support the growth of the community, but development constraints have left this Property behind.

We believe that the changed circumstances and Lynden’s growth not only support the need for a rezoning of this Property, but also so that the Property can be better utilized to serve the Lynden community. Creating a mixed-use project would allow for commercial development, additional housing opportunities, pedestrian connectivity and businesses that support local (rather than regional) residents and the local economy. The purpose of this redevelopment is to do what is best for the City of Lynden and its residents because we want to support the growth of the community.

A statement explaining how the proposed rezone is consistent with the City’s comprehensive plan, applicable sub area plans, and with protecting public health, safety, and welfare.

The proposed rezoning is consistent with the City’s comprehensive plan as CSL zoning provides for growth, greater density, and local scale retail development that will better serve the Lynden community. The rezone is within the city limits and is generally consistent with adjacent zoning and developments. The rezone is also consistent with the City’s overall growth plans and is within the boundaries set by Whatcom County in terms of where development should occur before City limits are expanded.

Specifically, the rezoning is consistent with the City of Lynden’s desire to build more housing for it’s residents. Rezoning of this site to CSL will allow this property to be developed into a mixed-use center that can include residential, recreational, civic, and a social center. This will give residents a better sense of community and connection. The proposed rezone will also support public health and welfare because it will provide for additional housing units (thereby decreasing stress on the current housing supply). Increased supply should reduce pressure on the supply/demand equilibrium and, the hope is, create more affordable units for residents. Furthermore, development of the Project is intended create more commercial opportunities for local businesses to stay within Lynden (rather than relocating to Bellingham, for example. This will not only allow more residents to work within our community, but will encourage more local shopping and spending, further supporting the welfare of the City of Lynden and its residents.

Critical Areas Ordinance Checklist:



City of Lynden

Critical Areas Checklist

Section: 25 Township: 40 Range: 2 Parcel Number: 4002254914400000,
4002255024310000, 4002255314420000

Site Address: 8035 Guide Meridian, Lynden, WA

Proposed Uses: Mixed Use Commercial/Residential

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.

Ashley Gosal
Applicant's Signature

11/24/2020
Date

CITY OF LYNDEN



TECHNICAL REVIEW COMMITTEE Development Project Report

Date Issued:	January 25, 2021
Project Name:	Fishtrap Creek, LLC
Project Description:	The applicant is requesting a rezone from Commercial Services Regional (CSR) to Commercial Shopping Local (CSL)
Applicant:	Ashley Gosal, Agent for Fishtrap Creek, LLC
Property Owner:	Fishtrap Creek, LLC
Site Address:	8035 Guide Meridian, Lynden
Parcel Number:	400225-531442
Parcel Size and Zoning Designation:	5.66 acres currently zoned CSR (Commercial Services Regional)
Hearing Objective:	To determine whether the proposal meets the criteria listed for a site specific rezone.
Date application determined complete:	December 22, 2020
Date of Publication:	January 27, 2021
SEPA Determination:	DNS Issued on December 31, 2020

Summary:

The agent for the property owner is seeking to rezone this property from Commercial Services Regional (CSR) to Commercial Shopping Local (CSL). The applicant asserts that given the significant growth in the City of Lynden and the need for more housing opportunities and support services, the zoning designations must be updated to accommodate. Additionally, the application argues that by designating the property to be CSL zoning, the City will allow for feasible development of the property and in turn nurture economic growth for residents of Lynden to experience housing opportunities, support services, walkability, and an improved quality of life. A CSL designation would allow for a mixed-use commercial center and multi-family residences.

To be approved, site specific rezone request must demonstrate that it meets the criteria listed in LMC 17.19.050:

- A. The current zoning was either approved in error or that a significant change in circumstances since approval of the current zoning warrants reclassification of the subject property as proposed;*

B. The proposed site-specific rezone is consistent with the city's comprehensive plan and applicable subarea plan(s);

C. The project proposal is consistent with the city's development codes and regulations for the zoning proposed for the project;

D. The proposed site-specific rezone is compatible with existing uses and zoning in the surrounding area; and

E. The proposed site-specific rezone will promote the health, safety and general welfare of the community.

The rezone application includes a narrative that responds to these criteria. The narrative accurately references relevant goals from the City of Lynden’s Comprehensive Plan. Staff completed review of the Site Specific Rezone request and has developed the following comments:

Staff review generated the following comments – many of which are advisory in nature.

Planning Department Comments

1. *Public Health and Safety:* Rezone and future development of the subject property will need to facilitate safe pedestrian movements.
2. *Zoning Designation - Permitted Uses:* Be advised, the Local Commercial Services (CSL) zone allows a wide variety of uses and is subject to the permitted uses as described in LMC 19.23. If the rezone is approved, please note that development within this zone should focus on pedestrian connectivity to the surrounding area and mixed-use development is encouraged.
3. *Design Review:* Be advised, commercial and mixed-use construction is subject to Design Review Board approval prior to permit approval.
4. *Street Trees:* Future development will require compliance with Chapter 18.14.130 regarding street trees and planting strips. These aspects of design must appear in the Design Review Board submittal package.
5. *Transportation Impact Fees:* Be advised, transportation impact fees will be due at the time of permit. The current rate of this fee is \$1309.00 per multi-family unit. The rate for non-residential uses varies, please contact the Planning Department for more information.
6. *Landscape Bonding:* Be advised, performance and maintenance bonding will be required for the landscape installed at the time of development. This relates to street trees and any required landscape buffer. Bonds are due prior to issuance of final building occupancy.

7. *Environmental Review:* Conditions associated with the SEPA review (SEPA 20-14) which was conducted concurrently with this application will apply to the proposed development.

Advisory Comments - Public Works Department

8. *Infrastructure Improvements:* Be advised, at the time of future development, all public improvements must be constructed to the current standards as noted in the City of Lynden Manual for Engineering Design and Development Standards.
9. *Stormwater Management:* At the time of future development, all plans must be designed and constructed in compliance with the Department of Ecology's Best Management Practices and the standards approved in the Manual for Engineering Design and Development Standards. Storm drainage report per the City of Lynden and the Department of Ecology standards required.
10. *Access:* Access standards listed within the City of Lynden's Engineering Design and Development Standards and Washington State Department of Transportation (WSDOT) Standards must be met.
11. *Water:* If future plans include the creation of condominiums, the City recommends that each unit must be individually metered.
12. *Sewer:* Be advised that a city sewer pump station is planned in the southwest portion of the site. Sewer will be pumped north to Bay Lyn Drive and will require the appropriate easement to accommodate. In addition, this station will also serve areas east of SR-539 (Guide Meridian) which will require necessary easements. Financial participation in this infrastructure improvement will be reviewed consistent with the assessed value of any property dedicated to the pump station. Be advised that any additional funds which may fulfill this, and other properties 'fair share' will be pursued through a City-initiated late comer agreement or utility assessment.

Advisory Comments - Fire and Life Safety

13. *Fire Code:* Future Development will require full compliance with the Fire Code.
14. *Fire Impact Fees:* Be advised, fire impact fees will be due at the time of permit. The current rate of this fee is \$389.00 per multi-family unit and \$0.28 per square foot for non-residential uses.

Advisory Comments - Parks and Recreation

15. *Park and Trail Amenities:* Future development may require participation and or easements for trail system and parks. Connections to trails and parks will be reviewed at the time of Design Review Board approval.

- 16. *Park Impact Fees:* Be advised, park impact fees will be due at the time of permit. The current rate of this fee is \$546.00 per multi-family unit, \$234.00 per 1,000 square feet for general commercial and \$140.00 per 1,000 square feet for retail.

CITY OF LYNDEN
PLANNING COMMISSION RESOLUTION #21-02

A resolution of recommendation for denial of the Fishtrap Creek, LLC / O&S Farms Site Specific Rezone #20-05, to the Lynden City Council.

WHEREAS, Ashley Gosal on behalf of Fishtrap Creek, LLC, hereinafter called the "Proponent," submitted a complete application to the City of Lynden, hereinafter called the "City," for a Rezone requesting to change the zoning designation from Commercial Services - Regional (CSR) to Commercial Services - Local (CSL) located at 8035 Guide Meridian in Lynden, Washington.

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

WHEREAS, the application was determined to be complete on December 22, 2020, and the notice of application was published in the Lynden Tribune on January 6, 2021;

WHEREAS, the subject parcel is approximately 5.66 acres and has property zoned Regional Commercial Services (CSR) to the north, Residential Multi-Family (RM-2) to the west, State Highway (SR 539) to the east and the city limits to the south.

WHEREAS, the Lynden Planning Commission held a virtual public hearing on January 28, 2021, via Microsoft Teams to accept public testimony on the proposed Rezone request, and that meeting was duly recorded;

WHEREAS, the City's Technical Review Committee has reviewed the request for the Rezone and has provided findings, conditions, and recommendations to the Planning Commission in a report dated January 25, 2021.

WHEREAS, site-specific rezones shall be reviewed in light of the City's Comprehensive planning goals. To recommend approval of this request, the Planning Commission must find that the application satisfies the criteria listed within Section 17.09.050 of the Lynden Municipal Code.

- a. The current zoning was either approved in error or that a significant change in circumstances since approval of the current zoning warrants reclassification of the subject property as proposed; and
- b. The proposed site-specific rezone is consistent with the City's comprehensive plan and applicable sub-area plan(s); and
- c. The project proposal is consistent with the City's development codes and regulations for the zoning proposed for the project.
- d. The proposed site-specific rezone is compatible with existing uses and zoning in the surrounding area; and

- e. The proposed site-specific rezone will promote the health, safety, and general welfare of the community; and

WHEREAS, the Lynden Planning Commission has reviewed the request and has specifically concluded that:

1. The rezone application does not adequately meet the criteria for a site-specific rezone.
2. Residential development which may occur in a mixed used project under CSL zoning will not promote the general health and safety of the residents and may hinder public safety.
3. There is not enough evidence to support the request to remove the property from its current zoning.
4. Limited CSR (Regional Commercial Services) property available within the city limits.

NOW THEREFORE, BE IT RESOLVED by the Lynden Planning Commission to recommend *denial* of the request to rezone property from Commercial Services – Regional (CSR) to Commercial Services - Local (CSL), by a vote of 6-0.

PASSED by the Planning Commission of the City of Lynden, Whatcom County, at their meeting held the 28th day of January 2021.



 Diane Veltkamp, Chairperson,
 Lynden Planning Commission



 Heidi Gudde, AICP
 Planning Director



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

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

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

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

Recommended Action:

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

February 3, 2021

Patrick J. Mullaney
600 University Street, Suite 3600
Seattle, WA 98101
D. 206.386.7532
patrick.mullaney@stoel.com

VIA E-MAIL and FIRST CLASS MAIL

City of Lynden
Attn: Ms. Heidi Gudde
Planning and Community Development Director
300 4th Street
Lynden, WA 98264
guddeh@lyndenwa.org

Re: Planning Commission Hearing

Dear Ms. Gudde:

Stoel Rives, LLP has been engaged to represent Fishtrap Creek, LLC (“Fishtrap Creek”) in connection with its rezone application for the 5-acre property located at 8035 Guide Meridian Road in Lynden, WA. Ashley Gosal, on behalf of Fishtrap Creek, has requested a modest rezone of the property from CSR (Commercial Services Regional) to CSL (Commercial Services Local) zoning, which would reduce commercial use intensity and permit residential uses to foster community-oriented, mixed use development on the site.

As you are aware, Fishtrap Creek’s rezone request received a positive recommendation from your Department after a thorough review by City Staff and the City’s Technical Review Committee. Despite this positive recommendation, at a January 28, 2021 City of Lynden Planning Commission hearing, the Planning Commission opted to forward a recommendation of denial to the City Council.

After a thorough review of the hearing tape, our office has grave concerns about the procedure and substance of the Planning Commission hearing, which are detailed below. In summary, the Planning Commission hearing was improper, arbitrary and capricious and failed to comply with both Washington’s Appearance of Fairness Doctrine (“AOFD”) and Washington’s prohibition against arbitrary interpretations of land use regulations. For these reasons, we request that this letter be provided to the City Attorney for legal review and analysis, and that the letter be included in the packet forwarded to City Council as part of its independent deliberation on the rezone application.

A. Washington’s Appearance of Fairness Doctrine Requires Procedurally Fair Hearings Conducted by Impartial Decision-makers.

When reviewing a site-specific rezone, the Lynden Municipal Code (“LMC”) 17.03.040.3 requires that the Planning Commission “conduct an open record hearing, review, enter findings and make recommendations to the City Council.” The Planning Commission’s open-record hearing must comply with Washington’s Appearance of Fairness Doctrine (“AOFD”), which is codified at RCW 42.36.010.

The AOFD requires that government decision-makers conduct non-court hearings and proceedings in a way that is fair and unbiased in both appearance and fact. To satisfy the AOFD, quasi-judicial public hearings must meet two requirements: 1) the hearings must be procedurally fair, and 2) the hearings must appear to be conducted by impartial decision-makers.

In *Smith v. Skagit Cty.*, 75 Wn.2d 715, 453 P.2d 832 (1969), the Washington Supreme Court explained the AOFD as follows:

In short, when the law which calls for public hearings gives the public not only the right to attend but the right to be heard as well, the hearings must not only be fair but must appear to be so. It is a situation where appearances are quite as important as substance.

Smith, 75 Wn.2d at 733.

Thus, to preserve public confidence in governmental processes which bring about zoning changes, the AOFD requires that hearings be conducted in an impartial, even-handed manner. *Swift v. Island Cy.*, 87 Wn.2d 348, 361, 552 P.2d 175 (1976). In *Swift*, the test for whether the appearance of fairness doctrine has been violated was stated as:

Would a disinterested person, having been apprised of the totality of a board member’s personal interest in a matter being acted upon, be reasonably justified in thinking that partiality may exist? If answered in the affirmative, such deliberations, and any course of conduct reached thereon, should be voided.

The January 28, 2021 Planning Commission hearing fell well short of both AOFD standards. First, the Lynden Municipal Code (“LMC”) required the Planning Commission to take testimony and evidence so that it could “consider facts germane to the proposal.” LMC 17.09.040.B. However, at the hearing, the Planning Commission did not ask for, or allow, public testimony despite the presence of several members of the community, including adjacent property owners, who had called in to comment in favor of the proposal.

Instead, Planning Commission Chair Diane Veltkamp stated that there was opposition to the proposal but did not solicit or give an opportunity for any of said opponents to provide testimony, nor was the floor opened for public comment for any community members who had called in to testify in favor of the proposed rezone.

Failure to treat all parties equally and accept relevant testimony from both sides at an open record public hearing violates the AOFD. Additionally, the Planning Commission did not focus on the rezone application before it, and instead asked Fishtrap Creek several questions that related to specific development of the property, which was not germane to its rezone request. For example, the Planning Commission inquired about soil types, the floodplain level and whether the applicant would construct storage units on the site. Following these limited, off-topic questions, the Planning Commission closed the public testimony and during its closed deliberations opined that “they did not have sufficient answers from the Applicant.”

As to the second AOFD requirement, the AOFD requires disclosures of potential conflicts of interest or other facts that may be indicia of partiality. For example, the courts found AOFD violations when a planning commission chairman owned property adjacent to the property that was subject to a rezone application (*Buell v. Bremerton*, 80 Wn.2d 518, 495 P.2d 1358 (1972)) and when planning commission members were active in a civic group that was promoting a proposed rezone (*Save a Valuable Environment v. Bothell*, 89 Wn.2d 862, 576 P.2d 401 (1978)).

At the Planning Commission hearing, no Commission member disclosed any potential conflicts-of-interest or offered to recuse themselves from hearing the matter. Fishtrap Creek has since learned that Commissioner Karen Timmer is the Managing Director of a realty office that recently represented an unsuccessful prospective purchaser in connection with an attempted purchase of the property that is the subject of the rezone, and that this prospective purchaser is also an employee in Commissioner Timmer’s realty office. It is Fishtrap Creek’s understanding that the unsuccessful purchaser, bought property across the street from the rezone site, and remains interested in purchasing it should Fishtrap Creek fall out of contract.

This potential conflict-of-interest was not disclosed at the hearing, and Commissioner Timmer did not offer to recuse herself. Additionally, during the hearing, Commissioner Timmer was the lead and most vocal opponent to the rezone, and improperly opined on the potential financial considerations to the property seller from holding onto the property rather than completing its sale to Fishtrap Creek, which again was not a proper topic for consideration under the applicable decision criteria.

Additionally, Commissioner Timmer made the motion to deny Staff’s recommendation for approval of the rezone, citing arbitrary reasons such as the seller’s financial interests, insufficient project information, and city-wide planning matters – none of which are the Code’s decision-making criteria for evaluating a rezone. Fishtrap Creek is left to ponder Commissioner Timmer’s motives for injecting a discussion of the relative financial merits of a property sale into this rezone hearing, but the comments demonstrate potential bias and a conflict-of-interest that warranted disclosure and possible recusal under the AOFD.

B. Washington Law Requires Adherence to Codified Decision-making Criteria.

Application of subjective standards that are not established in City’s Municipal Code leads to arbitrary decision-making that is prohibited by Washington law.

As stated previously, in this case, Fishtrap Creek is proposing a relatively modest rezone from Regional Commercial Services (CSR) to Local Commercial Services (CSL). The main differences between the CSR and CSL zones are that the CSL zone would reduce the commercial intensity from large format retail and regional commercial to local-scale retail and would allow for residential uses to facilitate the possible creation of a pedestrian-oriented, mixed-use area. Thus, the requested rezone was a down-zone of commercial use intensity that would reduce auto-oriented, large format retail uses and would allow for the creation of transit-oriented, in-fill, community-oriented, mixed-use development (including residential) which is encouraged by the Growth Management Act and the City’s comprehensive plan.

Per LMC 17.19.050, the Planning Commission was charged with evaluating Fishtrap Creek’s rezone application “for consistency with the city’s development code, adopted plans and regulations” using the following criteria:

- A. The current zoning was either approved in error or that a significant change in circumstances since approval of the current zoning warrants reclassification of the subject property as proposed;
- B. The proposed site-specific rezone is consistent with the city’s comprehensive plan and applicable subarea plan(s);
- C. The project proposal is consistent with the city's development codes and regulations for the zoning proposed for the project;
- D. The proposed site-specific rezone is compatible with existing uses and zoning in the surrounding area; and
- E. The proposed site-specific rezone will promote the health, safety and general welfare of the community.

Instead of reviewing Fishtrap Creek’s rezone request for consistency with the above criteria, the Planning Commission undertook a subjective analysis that led it to reject the Planning Staff’s conclusion that changed conditions warranted the rezone and that the rezone was consistent with City’s comprehensive plan and development regulations and should be approved.

The Planning Commission also did not consider the Fishtrap Creek’s reasoning or responses. Instead, the Commission discussed their personal opinions about the merits of the rezone. Direct quotes from the Commission hearing include the following:

- “I don’t know if we want to see downzoning”;

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- “I hate to see downzoning to where we put housing there”
- “Will we be sorry if we change this to local?”
- “I don’t personally feel Guide is the right area”;
- “That is my personal opinion, maybe not just personal. But that it needs to stay that way.”
- “How much of the property is in the flood plain? What is the flood plain level?”
- “Do you know anything about the soil type? Or you don’t know that?”
- “Why has development thus far not been financially or economically feasible?”
- “Septic systems in this area –why is City doing it now to benefit this property?”
- I would rather see our downtown area... that we could have this elsewhere” “I don’t personally feel Guide Meridian is the area to do this”
- “I do think that once they get sewer there on the property they’re going to get their money because it’s going to be much more valuable”
- On Commissioner recommended denial of the rezone because the “residential aspect in this area will not only not promote the health, safety and general welfare of the community – but may hinder it.”

The bulk of the Commission’s deliberations focused on the first criteria regarding the extent of changed conditions. Commissioner Velcamp then said that she would “buzz through the next criteria” simply reading these criteria out loud to the Commissioners. No discussion was had on the application’s compliance with the criteria , and the Applicant’s responses and City Staff analysis were not reviewed.

As demonstrated by the quotes above, following prompting from Commissioner Timmer, the Planning Commission improperly discussed and considered the economic benefit to the seller of potentially holding onto the property and selling it at a later date after the City had completed installing sewer infrastructure. Commissioner Timmer stated, “I do think that once they get sewer there on the property they’re going to get their money because it’s going to be much more valuable.” This statement is particularly concerning given Commissioner’s Timmer’s representation of an unsuccessful prospective purchaser of the property, that may have a continued interest in purchasing it should Fishtrap Creek fall out of contract.

Toward the end of its deliberations, the Commissioners commented that they did not have enough information about the project, stating “If they came forward with a proposal, and we could see benefit to the City then possibly we could justify it” when, in fact, there was no development

project presented because this application was for a site-specific rezone unrelated to a specific development proposal.

The project-specific information that the Planning Commission requested was inapplicable to the applicable rezone criteria and the Planning Commission’s denial based, in part, on a purported lack of project-specific information rendered its decision arbitrary and capricious. The Planning Commission further compounded its error by raising these issues after closing public testimony and entering into the deliberative phase of the proceedings, thereby denying the City, the applicant, or other interested parties the opportunity to respond to its off-topic considerations.

Ultimately, the Planning Commission denied the requested rezone, claiming that the proposal would adversely affect the health and safety of Lynden’s citizens. This conclusion was unsupported by factual evidence, and the Planning Commission failed to explain what element of the proposal would adversely impact health and safety or how this alleged impact was likely to occur.

In fact, as acknowledged by City Staff, the requested rezone would incorporate local businesses, residential opportunities and walkability – all of which would improve health, safety and welfare of the community. Instead, as the hearing tape demonstrates, the Planning Commission improperly focused on financial impacts to the potential seller; project-specific development questions that were beyond the scope of a rezone application; and the existence of other residential planning areas within the City of Lynden.

The Planning Commission’s reliance on these *ad hoc* decision-making criteria violated Washington’s unconstitutional vagueness doctrine. *Burien Bark Supply v. King County*, 106 Wash.2d 868, 871, 725 P.2d 994 (1993). In the area of land use, a court looks not only at the face of the ordinance but also at its application to the person who has sought to comply with the ordinance and/or who is alleged to have failed to comply. *Id.* at 871. An ordinance which forbids an act in terms so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application violates due process of law. *Grant Cty. v. Bohne*, 89 Wn.2d 953, 955, 577 P.2d 138, 139 (1978). Thus, to limit arbitrary and discretionary enforcement of the law, the unconstitutional vagueness doctrine requires that regulatory decisions be made against ascertainable standards. *Id.*

In *Anderson v. City of Issaquah*, 70 Wn. App. 64, 75, 851 P.2d 744, 751 (1993), the Issaquah development commission rejected an applicant’s development application because the members did not like the proposed building color and architectural features, stating that the proposed building was “not compatible” with their conception of the proper image of Issaquah. The Court found that this form of decision-making violated the unconstitutional vagueness doctrine:

As they were applied to Anderson, it is also clear the code sections at issue fail to pass constitutional muster. Because the commissioners themselves had no objective guidelines to follow, they necessarily had to resort to their own subjective “feelings”. The “statement” Issaquah is apparently trying to make on its “signature

February 3, 2021
Page 7

street” is not written in the code. In order to be enforceable, that “statement” must be written down in the code, in understandable terms. The unacceptable alternative is what happened here. The commissioners enforced not a building design code but their own arbitrary concept of the provisions of an unwritten “statement” to be made on Gilman Boulevard. The commissioners’ individual concepts were as vague and undefined as those written in the code. This is the very epitome of discretionary, arbitrary enforcement of the law.

Anderson v. City of Issaquah, 70 Wash. App. 64, 77–78, 851 P.2d 744, 752 (1993) (citations omitted); see also, *Hayes v. City of Seattle*, 131 Wn.2d 706, 717–18, 934 P.2d 1179, opinion corrected, 943 P.2d 265 (1997) (conclusory action taken without regard to the surrounding facts and circumstances is arbitrary and capricious).

Here, the Planning Commission did not consider the merits of the requested rezone against the applicable Municipal Code provisions. One Commissioner stated “[a] residential aspect in this area will not only not promote the health, safety and general welfare of the community – but may hinder it.” As seen in the *Anderson* case, conclusory action taken without reliance on express code provisions and without regard to the surrounding facts and circumstances is arbitrary and capricious. By deviating from the Code’s adopted standards, the Planning Commission engaged in *ad hoc* decision-making that resulted in impermissible discretionary and arbitrary enforcement of the law.

In conclusion, the Planning Commission failed to comply with Washington law, which required a fair and unbiased hearing and application of the facts to Code’s decision-making criteria. Here, the Planning Commission excluded testimony from interested parties, raised issues that were not germane to Fishtrap Creek’s rezone application, did not disclose potential conflicts of interest, and did not establish a factual and legal basis for ignoring Staff’s recommendation of approval. Accordingly, this letter is to put the shortcomings of the Planning Commission’s process on record with the City Attorney for evaluation and legal consideration, and to request that the City Attorney advise the City Council of the weight and legal nature of these concerns. We believe that in light of the failures to comply with Washington Law, the Planning Commission’s recommendation should be voided, and Fishtrap Creek’s rezone application should be reviewed independently by the City Council consistent with the applicable Code requirements and Planning Staff’s recommendation for approval.

Sincerely,



Patrick J. Mullaney
Stoel Rives, LLP
Attorneys for Ashley Gosal on behalf of Fishtrap Creek, LLC.

Cc: client

Attn: City Council Members
City of Lynden
300 4th Street
Lynden, WA 98264
Phone: 360.354.5532

Members of the City Council,

I am a homeowner at 152 Bay Lynn Drive , Lynden Wa . I am writing to offer my support for the rezone proposal for 8035 Guide Meridian that was presented at the Planning Commission Meeting last week. I called in to be a part of the public hearing, but was unfortunately never given an opportunity to speak.

I am terribly disappointed in the Planning Commission meeting last week. Rather than focusing on the merits of this rezone and whether it met the criteria, the Planning Commission meeting took the form of personal opinions about "where else" residential could be. Despite the fact that the prospective purchaser was simply applying for a rezone, the commission asked project specific questions which the purchaser could not answer (both because they do not yet have a project, AND because they asked the questions in closed session). All in all, the rezone would still leave the site commercial, just add a residential component to help house more Lynden residents. As someone who lives and works in Lynden, I know that is what Lynden needs. I hope that the City Council understands the importance of housing and will approve this rezone to support its residents.

Regards,



Aleesha Gosal

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	March 15, 2021	
Name of Agenda Item:	Public Works Committee Meeting Minutes March 3, 2021	
Section of Agenda:	Approval of Minutes	
Department:	Public Works	
Council Committee Review:	<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: _____
		Legal Review: <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required
Attachments:		
March 3, 2021 Draft Public Works Committee Meeting Minutes		
Summary Statement:		
Draft minutes for the March 3, 2021 Public Works Committee meeting.		
Recommended Action:		
For Review		

CITY OF LYNDEN

PUBLIC WORKS DEPARTMENT
360-354-3446



PUBLIC WORKS COMMITTEE MINUTES

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

1. ROLL CALL

Members Present: Ron De Valois, Jerry Kuiken

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

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

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

2. ACTION ITEMS

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

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

Action

The minutes from February 3, 2021 were approved.

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

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

Action

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

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

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

Action

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

3. INFORMATION ITEMS

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

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

B. 7th Street Parking Lot Issues

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

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

Action

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

2) Seasonal Outdoor Dining Using Parking Lot

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

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

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

D. Requirement to Connect to Sewer

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

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

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

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

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

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

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

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

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

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

I. Advanced Arterial Intersection Signage

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

Action

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

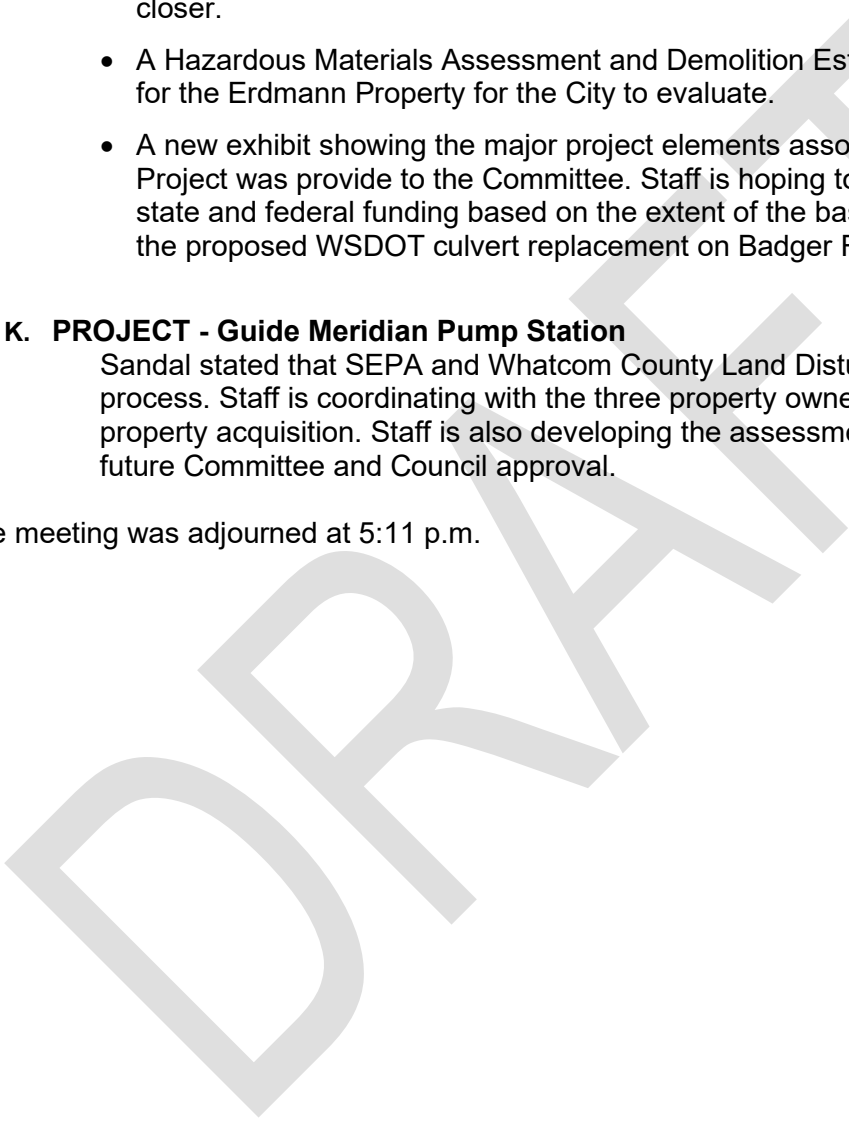
J. PROJECT - Pepin Update

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

K. PROJECT - Guide Meridian Pump Station

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

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



CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	March 15, 2021	
Name of Agenda Item:	Public Safety Draft Minutes- March 4, 2021	
Section of Agenda:	Other Business	
Department:	Police	
Council Committee Review:	<input type="checkbox"/> Community Development <input checked="" type="checkbox"/> Public Safety <input type="checkbox"/> Finance <input type="checkbox"/> Public Works <input type="checkbox"/> Parks <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:	Public Safety Draft Minutes- March 4, 2021	
Summary Statement:	Public Safety Draft Minutes- March 4, 2021 attached for review.	
Recommended Action:	For Council review.	

CITY OF LYNDEN

POLICE DEPARTMENT

Steve Taylor, Police Chief

(360) 354-2828



Public Safety Committee Meeting Minutes

Online (Microsoft Teams)

4:00 PM March 04, 2021

Call to Order

Roll Call

Members present: Councilors Mark Wohlrab, Brent Lenssen and Gerald Kuiken

Members absent: Mayor Scott Korthuis

Staff present: City Administrator Mike Martin, Chief Mark Billmire, Chief Steve Taylor, Lieutenant Jeremy Bos, Lieutenant Russ Martin, Support Services Manager Holly Vega, and HR Manager Kim Clemons

Approval of Minutes

1. **Approval of February meeting minutes**

The minutes from the February 4, 2021 meeting were approved.

Items from the Audience

2. **Speeding concern in the Westview neighborhood**

Jeff Heinrichs, *1415 Westview Circle*, expressed concern regarding the speed of vehicles in the Westview neighborhood, which is full of families with young children. He noted that most of the residents tend to drive approximately 15 mph through the neighborhood, which he feels is more reasonable than the unposted 25 mph. He suggested possibly lowering the speed limit and/or installing official 'children at play' traffic signs. Councilor Wohlrab will discuss options with Public Works and respond to Mr. Heinrichs' concern.

Committee Items

3. **Code Revisions to LMC Chapter 5.04 - Alcoholic Beverages**

Not discussed.

4. **Public Safety Overtime - January 2021**

January totals were 231 hours for Fire, and 228 hours for Police. Chief Billmire reported that February is down to 169 overtime hours with 159 volunteer hours for Fire. Chief Taylor reported the total for Police in February is 164 hours.

Fire Department Items

5. Fire Monthly Report - February 2021

Chief Billmire presented the monthly report for February, noting 32% of calls were overlapping; three instances when no Lynden units were available, and we relied on auto aid from other districts. There was an increase in fire inspections for businesses re-opening and needing to know the occupancy. Progress on the station renovation continues with panels put up on the second floor.

There was one applicant for the Assistant Chief position on the second round, but they lacked the experience Chief Billmire is looking for. A volunteer firefighter at the top of the eligibility list was hired to fill a recent vacancy, although the list has now expired.

Police Department Items

6. Drug Possession Ordinance Draft

Greg Greenan, the City Municipal Court Prosecutor drafted the proposed ordinance from Washington State RCW, which was just recently ruled unconstitutional by the Supreme Court, so it will need to be revised if Council chooses to adopt it. There are varying legal interpretations whether WA State law preempts any municipal code regarding simple drug possession. Mr. Greenan raised concern that if Lynden adopts an ordinance and charges someone with a crime, we will likely face challenges from defense attorneys.

7. Police Monthly Report - February 2021

Chief Taylor presented the Police monthly report for February. There were several vehicle prowls in newer developments on the east side of town. Many homes have great video surveillance providing footage that assisted in positively identifying the suspect.

One officer is still on extended medical leave but is making good progress and may return to work sooner than anticipated. Upgrades to the evidence room recommended in the LEMAP evaluation have been made to add extra security for firearms, narcotics, and currency. Lieutenant Martin and Lieutenant Bos installed the new fence barrier themselves, saving \$2,300 in installation costs.

8. Police 2019 - 2020 Overview

Criminal and other activity statistics were provided for 2019 and 2020. Overtime totals and breakdowns were also provided showing a reduction of over 900 hours from 2019 to 2020 and still trending downward.

Added Items

9. Amendment to Contract Public Defender

City Administrator Mike Martin provided an executive summary and proposed amendment to the public defender contract. The changes to the rates are consistent with other jurisdictions. Judge Lewis and Mayor Korthuis both agree the amendment is fair and appropriate. It also extends the current contract an additional two years. The Committee recommends approval at the March 15, 2021 council meeting.

Adjournment

Meeting adjourned at 4:44 p.m.

DRAFT

March 15, 2021
Monday

4:00 PM - 5:00 PM

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

7:00 PM - 9:00 PM

City Council Meeting -- Online Teams Meeting

Microsoft Teams meeting

Join on your computer or mobile app

[Click here to join the meeting](#)

Or call in (audio only)

[+1 253-948-9362,,778920625#](#) United States, Tacoma

Phone Conference ID: 778 920 625#

[Find a local number](#) | [Reset PIN](#)

[Learn More](#) | [Meeting options](#)

March 17, 2021
Wednesday

All Day

St. Patrick's Day -- United States

9:00 AM - 12:00 PM

2021 Spring Virtual Education Days -- Virtual Sessions via Zoom
<http://www.wmcaclerks.org/event-4167656/RegistrationsList/33344958>

Athenian Dialogue

We Band of Angels
March 17 & 18, 2021 ~ 9:00AM - Noon (each day)
\$75.00
Space is limited to the first 30 registrations

Academy Session

March 17, 2021 Continued

Wednesday

The Power of Positive Leadership
March 17 & 18, 2021 ~ 1:00PM - 4:00PM (each day)
\$75.00
Space is limited to the first 50 registrations

Discounted price for Athenian Dialogue + Academy Session Registration
\$125

For more information please visit the 2021 Spring Education Days page.

March 18, 2021

Thursday

9:00 AM - 12:00 PM

2021 Spring Virtual Education Days -- Virtual Sessions via Zoom
<http://www.wmcaclerks.org/event-4167656/RegistrationsList/33344958>

Athenian Dialogue

We Band of Angels
March 17 & 18, 2021 ~ 9:00AM - Noon (each day)
\$75.00
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Academy Session
The Power of Positive Leadership
March 17 & 18, 2021 ~ 1:00PM - 4:00PM (each day)
\$75.00
Space is limited to the first 50 registrations

Discounted price for Athenian Dialogue + Academy Session Registration
\$125

For more information please visit the 2021 Spring Education Days page.

9:00 AM - 10:00 AM

Meeting: Kim/Pam -- TBD

March 22, 2021
Monday

All Day PRR-Krystal?

March 23, 2021
Tuesday

8:30 AM - 9:30 AM Leadership Team Meeting -- To Be Determined

March 24, 2021
Wednesday

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

March 25, 2021
Thursday

9:00 AM - 10:00 AM Meeting: Kim/Pam -- TBD

March 28, 2021
Sunday

8:00 AM - 8:30 AM Mayor Scott's B-Day

March 30, 2021
Tuesday

9:00 AM - 9:30 AM COVID-19 2.0 -- Birch Bay

April 4, 2021
Sunday

All Day Easter Day -- United States

April 5, 2021
Monday

8:00 AM - 9:00 AM Scheduled In OFFICE -- At My Desk

April 5, 2021 Continued

Monday

126

7:00 PM - 9:00 PM

City Council Meeting -- To Be Determined

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	March 15, 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	