



Mayor
Scott Korthuis

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

City Council Agenda - Regular Meeting
City Hall Annex, 205 4th Street
August 05, 2019

Call to Order

Pledge of Allegiance

Roll Call

Oath of Office

Approval of Minutes

1. Draft Regular Council Minutes- July 15, 2019

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

Public Hearing

Unfinished Business

3. Ordinance No. 1587- Right-of-Way Relocation-17th Street Extension Project

New Business

4. Public Defender Interim Contract
5. Budget amendment for Police Department Siding - 2019 Budget

- 6. Consideration of the Preliminary Plat Approval - Young's Long Plat and Development Standards Variance #19-01

Other Business

- 7. Draft Public Works Committee Meeting Minutes - July 10, 2019
- 8. CDC Minutes of 7-17-19
- 9. Calendar

Executive Session

Adjournment

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	August 5, 2019	
Name of Agenda Item:	Draft Council Minutes- Regular Meeting	
Section of Agenda:	Approval of Minutes	
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: N/A
	Legal Review: <input checked="" type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input type="checkbox"/> Review Not Required	
Attachments:	Draft Council Minutes- Regular Meeting- July 15, 2019	
Summary Statement:	Draft Council Minutes- Regular Meeting- July 15, 2019	
Recommended Action:	For Council review.	

CITY OF LYNDEN



CITY COUNCIL MINUTES OF REGULAR MEETING

July 15, 2019

1. CALL TO ORDER

Mayor Korthuis called to order the July 15, 2019 regular session of the Lynden City Council at 7:00 p.m. at the Lynden City Hall Annex.

ROLL CALL

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

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 Strengholt moved and Councilor Laninga seconded that the regular council minutes of July 1, 2019 be approved as presented. Motion approved on a 7-0 vote.

ITEMS FROM THE AUDIENCE

Scheduled: None

Nonscheduled:

Cynthia Ripke-Kutsagoitz, 7062 Guide Meridian, #30, Lynden

Cynthia Ripke-Kutsagoitz apologized to Council for her attitude when she last spoke before them. She also provided anti-abortion literature for the council file and asked that council not conduct business with planned parenthood.

Gary Vis, 518 Front Street, Lynden

Mr. Vis reminded council of the Raspberry Festival scheduled for Friday, July 19 and Saturday, July 20, 2019. Currently there are 248, 3-person teams entered in the basketball tournament with 38 of the teams consisting of kindergarten through 2nd grade children.

CITY OF LYNDEN



CITY COUNCIL MINUTES OF REGULAR MEETING

2. CONSENT AGENDA

Approval of Payroll Disbursed – July 1-15, 2019

Paychex EFT	\$332,734.72
City of Lynden EFT	\$63,764.23
Warrant Liability	\$58,395.10
	\$454,894.05
Paychex EFT Liability	\$6,762.60
Total EFT & Other Liabilities	\$461.656.65

Approval of Claims – July 17, 2019

Manual Warrants No.	<u>73352</u>	through	<u>73353</u>		\$9,278.73
EFT Payment Pre-Pays					\$156,731.35
	Sub Total Pre-Pays				\$166,010.08
Voucher Warrants No.	<u>73316</u>	through	<u>73351</u>		\$622,246.90
EFT Payments					<u>27,220.20</u>
	Sub Total				\$649,467.10
	Total Accts. Payable				\$815,477.18

Ordinance No. 1585-Appointing Agents to Receive Service of Claims

Washington State law regarding service of damage claims on local governments, RCW 4.96.010-020, requires that local governments appoint an agent to receive all claims filed under authority of Chapter 4.96 RCW; and the City of Lynden is required by RCW 4.96.010 -020 to appoint an agent(s) to receive claims against the City of Lynden and to record the identity of the agent(s) and the agent's address with the County Auditor. Once Ordinance No. 1585 is adopted and recorded it will repeal and replace Ordinance No. 1123.

Ordinance No. 1588- Extension of Line of Credit; Banner Bank Proposal

Ordinance No. 1231 was approved by council on May 2, 2005. It allowed the city to have a revolving line of credit. The notes have provided interim financing for capital projects such as the Water Reservoir project (for DWSRF reimbursement), Arterial Street capital improvements, Police Station Acquisition/Remodel (prior to issuance of permanent financing), and East Lynden Sewer Sub-Basin improvement projects.

Presently, outstanding balances on the line of credit consist of several funds awaiting reimbursement monies; Pepin Creek project, Riverview Road, and Jim Kaemingk Sr. Trail Extension. The line of credit is available to provide interim financing for LPD Stonegarden grant reimbursements and Street Capital Construction projects. These projects are secured by grant and/or other intergovernmental funding on a reimbursement basis.



CITY COUNCIL MINUTES OF REGULAR MEETING

Since 2005, Ordinance No. 1231 has been amended by Ordinance No. 1261, 1295, 1319, 1355, 1376, 1400, 1420, 1444, 1467, 1485, 1510, 1534 and 1558 each authorizing an extension of the maturity date of the notes. The city received an offer from Banner Bank (formerly Skagit State Bank) to extend the maturity date of the notes from July 31, 2019 to July 31, 2020 at a rate of 3.75%, which is a 0% increase from the previous rate. The closing date is anticipated to be July 31, 2019.

Councilor Kuiken advised council that there were some minor revisions to the wording in Ordinance 1588 that were not included in copy in the council packets. The wording revisions were reviewed by the Finance Committee and it was recommended that council adopt Ordinance No. 1588.

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

3. PUBLIC HEARING - None

Ordinance No. 1584-Vacation of Right of Way between 135 and 136 Terrace Drive

The City of Lynden, at the request of adjacent property owners, is proposing to vacate the southern section of Terrace Drive.

The City has determined that future development to be served by this 24-foot-wide unimproved right-of-way will be limited to only three lots, that the portion to be vacated is not needed by the City, and that the public is best served with the described rights-of-way in private ownership. The right-of-way will not be extended beyond the currently approved Van Dragt short plat or serve as a connector to other more streets because it abuts the floodplain.

As such, staff recommend that the City Council accept the appraised value of \$1,500.00 as of May 24, 2019 determined by certified appraiser Peter Suni and vacate the identified portion of Terrace Drive on the condition that the City be granted easement rights and that a private access easement and maintenance agreement be established between the property owners of Lots 15 and 16 of the Plat of Mountain View and property owners of the Van Dragt Short Plat.

Mayor Korthuis opened the Public Hearing at 7:08 p.m.
There were no comments.
Mayor Korthuis closed the Public Hearing at 7:08 p.m.

Councilor Bode and Councilor De Valois seconded that City Council approve Ordinance No. 1584, approving the Vacation of Right of Way Between lots 135 and 136 Terrace Drive, accepting the appraised value, approve the Access and Utility Easement to the City, and authorize the Mayor to sign the documents upon verification of private access easement with the Van Dragt Short Plat. Motion approved on 7-0 vote.



Right of Way Relocation – 17th Street Extension Project

The City of Lynden is considering a modification to the vacation of the right-of-way easement for the extension of 17th Street resulting from the Settlement between Marina Timmermans and the City of Lynden. This settlement agreement was originally executed in October of 2013.

An alteration to the settlement is now being considered to shift the proposed right-of-way approximately 8-feet to the west, to the benefit of the property owner, to create a larger and more developable portion of property east of the proposed street.

As such, the owner of the property underlying the proposed vacated easement and the City have agreed to exchange the vacated easement for a similar easement of equal value located slightly west of the easement being vacated.

Action to be completed by ordinance at the August 5th Regular City Council Meeting based on testimony at tonight's Public Hearing and receipt of the signed Right of Way Grant from Marina A. Timmermans, the underlying property owner.

Mayor Korthuis opened the Public Hearing at 7:12 p.m.

Brian Ray and Polly Ray each offered comments related to the project. Comments were in favor of the project.

Mayor Korthuis closed the Public Hearing at 7:17 p.m.

4. UNFINISHED BUSINESS- None

5. NEW BUSINESS

Public Defender Contract- This item was pulled from the agenda; no action was taken.

Lieutenant - Memorandum of Understanding (MOU)

In the absence of an Assistant Fire Chief, the department's three lieutenants have assumed duties that normally would have been assigned to the Assistant Chief position. These duties include training, scheduling, fleet maintenance, and committee participation among other things. From August 2017 until December 2018, the lieutenants were designated as temporary Captains and given entry-level Captains pay to acknowledge their taking on these additional duties.

A previous Memorandum of Understanding (MOU) included a three-month period after a new Fire Chief was recruited and hired – which ended in December 2018. This extended period was intended to give Chief Billmire time to evaluate the department's staffing, so he could decide whether he wished to hire an Assistant Chief or have those duties taken over using some other option.



CITY COUNCIL MINUTES OF REGULAR MEETING

The Department intends to advance a budget initiative in the 2020 budget cycle that, if approved, would create the Assistant Chief position. Meanwhile, the Lieutenants continue to perform the functions normally assigned to an Assistant Chief, even though the MOU expired December 2018. The MOU extends the duration until one month after a new Assistant Chief is hired. The Chief believes this is fair and consistent with the intent of the previous MOU and recommends that Council approve this amendment.

Councilor Lenssen and Councilor Wohlrab seconded to approve the Memorandum of Understanding which extends the Temporary Fire Captains. Motion approved on 7-0 vote.

Resolution No. 1004-Shared Vacation Leave for Police Officer

The City has a few employees who, in addition to their job with the City, also serve as reservists in one of our armed services. The City is required by law to provide paid leave for up to 21 days during annual deployment for those individuals. One of our police officers has been called to service. That deployment is expected to last two months, from July 1– September 1, 2019.

This police officer does not have enough leave time for his deployment. The City wishes to help the officer by allowing him to use “shared vacation leave”, similar to the shared sick leave program employees may use for extraordinary sick leave events. In this case, the officer would draw down his vacation leave to 80 hours, then he would use “shared vacation” leave donated by others in the organization. Employees can donate up to 24 hours of their vacation, and the “bank” would be capped at 200 donated hours.

Importantly, this is a “one-time” program specifically created for this officer. Before it is implemented, the Teamster labor unit he belongs to must provide written acknowledgement that this is not precedent setting.

Councilor Lenssen and Councilor Bode seconded to approve Resolution No. 1004 creating a one-time shared vacation bank for this Police Officer. Motion approved on 7-0 vote.

Loaned Executive Management Assistance Program Agreement (LEMAP)

Chief Knapp has requested Washington Association of Sheriffs and Police Chiefs (WASPC) conduct a review of administration and operations of the Police Department by the Loaned Executive Management Assistance Program (LEMAP).

Councilor Lenssen and Councilor Bode seconded to approve the LEMAP Agreement and authorize the Mayor’s signature. Motion approved on 7-0 vote.



CITY COUNCIL MINUTES OF REGULAR MEETING

6. OTHER BUSINESS

Council Committee Updates

Councilor Lenssen reported for the Public Safety Committee, discussion involved:

- Most of the items discussed are on the night's council agenda
- Lynden Watch is operating well
- Police vehicles

Councilor De Valois reported for the Parks Committee, discussion involved:

- Future of the YMCA Building
- Rotary project at Bender Field
- Benson Park planning and funding
- Request for track for dirt bikes
- House on Dickinson property
- Glenning street property use
- Identification signs for local parks

Councilor Kuiken reported for the Finance Committee, discussion involved:

- Approved Payroll and Claims
- Sales Tax revenue continues to come in strong
- Ordinance regarding the Line of Credit that was on the night's council agenda
- Police and Fire department overtime

A brief overview of the workplan for each department was presented to Council. This presentation is not meant to be detailed but is instead meant as an overview. Staff plans to present their workplan quarterly.

City Attorney Bob Carmichael discussed with Council the subject of campaign signs. He stated that campaign signs are protected speech under the First Amendment and that the City's ordinances that regulate campaign signs are unconstitutional and ordinances regulating campaign signs should not be enforced unless it's a matter of the public's safety.

Mayor updated Council with the details of the Dutch Embassy's visit. That group will be coming to Lynden on Wednesday, July 24, 2019. The mayor is planning a breakfast meeting and invites council members to attend.

7. EXECUTIVE SESSION

Council did not hold an executive session.

CITY OF LYNDEN

CITY COUNCIL
MINUTES OF REGULAR MEETING



8. ADJOURNMENT

The July 15, 2019 regular session of the Lynden City Council adjourned at 8:25 p.m.

Pamela D. Brown, MMC
City Clerk

Scott Korthuis
Mayor

DRAFT

CITY OF LYNDEN



EXECUTIVE SUMMARY

Meeting Date:	August 5, 2019	
Name of Agenda Item:	Approval of Payroll and Claims	
Section of Agenda:	Consent	
Department:	Finance	
Council Committee Review:	Legal Review:	
<input type="checkbox"/> Community Development <input type="checkbox"/> Public Safety <input checked="" type="checkbox"/> Finance <input type="checkbox"/> Public Works <input type="checkbox"/> Parks <input type="checkbox"/> Other: _____	<input type="checkbox"/> Yes - Reviewed <input checked="" type="checkbox"/> No - Not Reviewed <input type="checkbox"/> Review Not Required	
Attachments:		
None		
Summary Statement:		
<p>RCW 42.24.180 sets forth the conditions for issuance of warrants or checks before Council approval. The auditing officer and the City officers designated to sign the warrants shall have an official duty for the faithful discharge of his or her duties.</p> <p>The City Council has adopted contracting, hiring, purchasing, and disbursing policies that implement effective internal controls; and shall provide for its review of the documentation supporting claims paid for its approval of all warrants issued in payment of claims and/or payroll at regularly scheduled public meetings within one month of issuance.</p> <p>The City Council shall require that if, upon review, it disapproves some claims and/or payroll, the auditing officer and the officer designated to sign the warrants or checks shall jointly cause the disapproved claims to be recognized as receivables and to pursue collection diligently until the amounts disapproved are collected or until the City Council is satisfied and approves the claims and/or payroll.</p> <p>The Finance Committee and/or full City Council may stipulate that certain kinds or amounts of claims and/or payroll should not be paid before the City Council has reviewed the supporting documents.</p>		
Recommended Action:		
Approve the payment of City Payroll and Claims.		

CITY OF LYNDEN



EXECUTIVE SUMMARY

Meeting Date:	August 5, 2019	
Name of Agenda Item:	Ord 1587- Right of Way Relocation - 17 th Street Extension Project	
Section of Agenda:	Unfinished Business	
Department:	Planning, 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 checked="" type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input type="checkbox"/> Review Not Required
Attachments:		
Ord 1587, Real Property Exchange Agreement		
Summary Statement:		
<p>The City of Lynden is considering a modification to the vacation of the right-of-way easement for the extension of 17th Street resulting from the Settlement between Marina Timmermans and the City of Lynden. This settlement agreement was originally executed in October of 2013.</p> <p>An alteration to the settlement is now being considered to shift the proposed right-of-way approximately 8-foot to the west, to the benefit of the property owner, to create a larger and more developable portion of property east of the proposed street.</p> <p>As such, the owner of the property underlying the proposed vacated easement and the City have agreed to exchange the vacated easement for a similar easement of equal value located slightly west of the easement being vacated.</p> <p>A public hearing on this issue was held before the City Council on July 17, 2019.</p>		
Recommended Action:		
Motion to approve Ordinance 1587 vacating a portion of Right-of-Way and approving the corresponding agreement for a Right of Way Grant from Marina A Timmermans, the underlying property owner to facilitate the 17 th Street Extension Project and authorizing the Mayor's signature on the documents.		

ORDINANCE NO. 1587

AN ORDINANCE VACATING A PORTION OF PUBLIC RIGHT-OF-WAY WITHIN THE CITY OF LYNDEN, WHATCOM COUNTY, WASHINGTON

WHEREAS, City of Lynden ("City"), considered the vacation of a portion of the right-of-way easement for the extension of 17th Street ("Right of Way Easement") resulting from the Settlement Agreement between Marina Timmermans ("Timmermans") and the City of Lynden executed on or about October 29, 2013, a copy of which is attached hereto as EXHIBIT A; and

WHEREAS, Timmermans remains the owner of the properties subject to the Settlement Agreement relevant to this ordinance; and

WHEREAS, Timmermans and the City have executed a Real Property Exchange Agreement, which is attached hereto as EXHIBIT B, and the purpose of which is to move the Right of Way Easement approximately eight (8) feet to the West; and

WHEREAS, to accomplish the purpose of the Real Property Exchange Agreement, Timmermans will grant to the City an additional eight (8) foot wide right of way easement on the west side of the existing Right of Way Easement if the City vacates a corresponding eight (8) foot-wide section of the Right of Way Easement on its east side; and

WHEREAS, Timmermans has executed the right of way dedication and deed as required by the Real Property Exchange Agreement, which are attached as EXHIBIT C hereto; and

WHEREAS, the value of the portion of the Right of Way Easement being vacated is equivalent to the value of the right of way easement being dedicated; and

WHEREAS, Chapter 35.79 RCW and LMC 17.21.070 provide the City with the authority to vacate certain rights-of-way by ordinance after a public hearing; and

WHEREAS, as required by LMC 17.21.030 and RCW 35.79.020, notices were duly mailed on June 19, 2019, posted in three public places and on the street where the vacate is proposed; and

WHEREAS, no adjoining property owner submitted a protest to the vacation; and

WHEREAS, on July 15, 2019, the City Council of the City of Lynden did convene and hold a public hearing on the vacation and has determined to grant the same; and

WHEREAS, the Lynden City Council has determined that future development to be served by the portion of the Right of Way Easement described in Section 1 (below) and shown on Exhibit A (attached) will be limited, that the portion of the Right of Way Easement to be vacated is not needed by the City, and that the public is best served with the described portion of the Right of Way Easement in private ownership;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LYNDEN, WASHINGTON, as follows:

Section 1: That the following described portion of said right-of-way is hereby vacated:

That portion of the Southwest Quarter of the Northeast Quarter, Section 19, Township 40 North, Range 3 East, W.M. in Whatcom County, WA and within Lots B and C of the Timmermans Lot Line Adjustment recorded at Auditor’s File Number 2021003073, records of said County, and a portion of Lot 3 of the Timmermans Short Plat recorded at Auditor’s File Number 1530446, said records, and described as follows:

Commencing at the northwest corner of said Lot B of Timmermans Lot Line Adjustment; thence coincident with the north line of Lot B North 89°16’44” East with basis of bearing being the City of Lynden Survey Monument Network (North 89°05’32” East per record) a distance of 90.10 feet to the **True Point of Beginning**; thence leaving said boundary southerly on a tangent curve to the right with a radius of 13.00 feet through a central angle of 90°00’00” an arc distance of 20.42 feet to the point of tangency; thence South 00°43’16” West 117.19 feet to a point on the common boundary of said Lots B and C; thence continuing South 00°43’16” East 60.06 feet to the point of tangency of a curve to the left having a radius of 230.00 feet; thence along said curve through a central angle of 43°13’06” an arc length of 173.49 feet to the point of a reverse curve having a radius of 470.00 feet; thence along said curve through a central angle of 4°52’16” an arc length of 39.96 feet to the most southerly of the southeast corners of said Lot C; thence leaving said curve and coincident with the easterly boundary of said Lot C North 1°58’06” East (North 0°20’22” East per record) 90.68 feet to a Point of Curvature of a curve to the right having a radius point North 55°53’32” East 170.00 feet; thence along said curve northwesterly through a central angle of 34°49’44” an arc length of 103.34 feet to the point of tangency; thence North 0°43’16” East 177.25 feet to the point of curvature of a curve to the right having a radius of 13.00 feet; thence through a central angle of 90°00’00” an arc distance of 20.42 feet to a point on said north line of Lot B; thence coincident with said north line South 89°16’44” West 86.00 feet to the true point of beginning.

Commonly Described As: the unimproved right of way easement extending north from the current northern terminus of 17th Street to an intersection with Main Street, Lynden, Washington.

Section 2: That a certified copy of this ordinance be sent to the Auditor of Whatcom County, Washington, and recorded by said Whatcom County Auditor.

Section 3: This ordinance shall be in full force and effect from and after its passage by the City Council and approval by the Mayor, otherwise as provided by law, five days after the date of its publication.

PASSED by the City Council this _____ day of _____, 2019. Signed and approved by the Mayor this _____ day of _____ 2019.

MAYOR

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

State of Washington
County of Whatcom

Signed by Mayor Scott Korthuis and attested by Pam Brown before me on this ___ day of _____, 2019.

NOTARY PUBLIC, in and for the
State of Washington, residing at

Filed for Record at Request of:

CARMICHAEL CLARK, PS
P.O. Box 5226
Bellingham, Washington 98227
(360) 647-1500

DOCUMENT TITLE:

RIGHT-OF-WAY GRANT

REFERENCE NUMBER OF RELATED DOCUMENT:**GRANTOR:**

MARINA A TIMMERMANS

GRANTEE:

CITY OF LYNDEN

ABBREVIATED LEGAL DESCRIPTION:

That portion of the SW Quarter of the NE Quarter Section 19, Township 40 N, Range 3 E W.M. in Whatcom County, WA and within Lots B and C of the Timmermans Lot Line Adjustment Auditor's File Number 2021003073 and a portion of Lot 3 of the Timmermans Short Plat Auditor's File Number 1530446. Full legal description in Exhibit B hereto

ASSESSOR'S TAX PARCEL NUMBER:

Tax Parcel #'s 400319 394429 0000 & 400319 396411 0000 & 400319 406430 0000

STATE OF WASHINGTON)
) ss
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, a Washington Municipal Corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this _____ day of _____, 2019.

NOTARY PUBLIC in and for the State of Washington
Residing at _____
My appointment expires: _____

EXHIBIT A

EXISTING, TO BE REVISED, 17th STREET RIGHT OF WAY/EXCHANGE AGREEMENT

MARINA A. TIMMERMANS AND CITY OF LYNDEN

TAX PARCEL NUMBERS 400319 394429 0000 & 400319 406430 0000

That portion of the Southwest Quarter of the Northeast Quarter, Section 19, Township 40 North, Range 3 East, W.M. in Whatcom County, WA and within a portion of Lot B of the Timmermans Lot Line Adjustment recorded at Auditor's File Number 2021003073, records of said County and a portion of Lot 3 of the Timmermans Short Plat recorded at Auditor's File Number 1530446, said records, and described as follows:

The following description is copied from the Settlement and Release Agreement document executed by the City and Timmermans recorded at Auditors File Number 2131003260:

Commencing at the northwest corner of Lot B of "Timmermans Lot Line Adjustment" as per the map thereof recorded under Whatcom County Auditor's File Number 2021003073; thence North 89°05'32" East along the north line of Lot B a distance of 98.10 feet to the **True Point of Beginning**; thence Southerly on a tangent curve to the right, having a radius of 13.00 feet, through a central angle of 90°00'00" an arc distance of 20.42 feet to a point of tangency; thence South 00°54'28" East a distance of 113.82 feet to a point on the south line of Lot B, being also the north line of Lot C of said Lot Line Adjustment; thence continuing South 00°54'28" East a distance of 75.98 feet to the beginning of a tangent curve to the left, thence southerly along said curve to the left, having a radius of 220.00 feet, through a central angle of 42°34'22" an arc distance of 163.47 feet to the beginning of a tangent reverse curve with a radius of 470.00 feet; thence southerly along said curve to the right through an angle of 4°13'35" an arc length of 34.67 feet to the southeast corner of Lot C, "Timmermans Lot Line Adjustment"; thence North 00°20'22" East along the east line of Lot C a distance of 93.39 feet to the beginning of a non-tangent curve to the right, which radius point bears North 58°19'48" East; thence northerly along said curve to the right, having a radius of 160.00 feet, through a central angle of

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30°45'45" an arc distance of 85.90 feet to a point of tangency; thence North 00°54'28" west a distance of 89.82 feet to the north line of Lot C, "Timmermans Lot Line Adjustment" being also the south line of Lot 3, "Timmermans Short Plat" thence continuing North 00°54'28" West a distance of 99.97 feet to the beginning of a tangent curve to the right; thence northeasterly along said curve, having a radius of 13.00 feet; through a central angle of 90°00'00" an arc distance of 20.42 feet to a point of tangency on the north line of Lot 3 "Timmermans Short Plat"; thence South 89°05'32" West along the north line of Lot 3 and along the north line of Lot B, "Timmermans Short Plat" a distance of 6.00 feet to the True Point of Beginning.

Recopied from AFN 2131003260 on 6/11/2019.



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EXHIBIT B

REVISED 17th STREET RIGHT OF WAY/EXCHANGE AGREEMENT

MARINA A. TIMMERMANS AND CITY OF LYNDEN

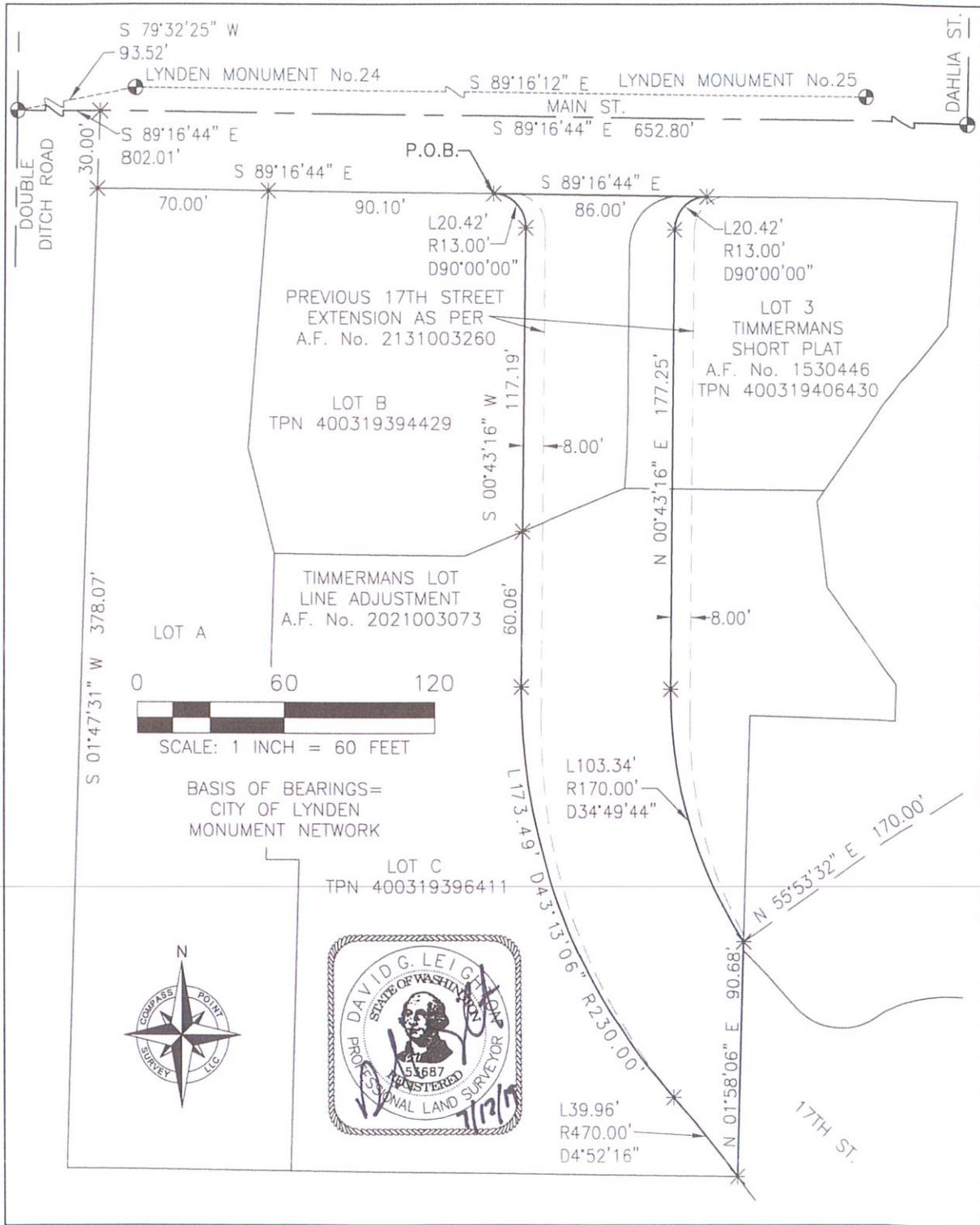
TAX PARCEL #s 400319 394429 0000 & 400319 396411 0000
& 400319 406430 0000

That portion of the Southwest Quarter of the Northeast Quarter, Section 19, Township 40 North, Range 3 East, W.M. in Whatcom County, WA and within Lots B and C of the Timmermans Lot Line Adjustment recorded at Auditor's File Number 2021003073, records of said County, and a portion of Lot 3 of the Timmermans Short Plat recorded at Auditor's File Number 1530446, said records, and described as follows:

Commencing at the northwest corner of said Lot B of Timmermans Lot Line Adjustment; thence coincident with the north line of Lot B North $89^{\circ}16'44''$ East with basis of bearing being the City of Lynden Survey Monument Network (North $89^{\circ}05'32''$ East per record) a distance of 90.10 feet to the **True Point of Beginning**; thence leaving said boundary southerly on a tangent curve to the right with a radius of 13.00 feet through a central angle of $90^{\circ}00'00''$ an arc distance of 20.42 feet to the point of tangency; thence South $00^{\circ}43'16''$ West 117.19 feet to a point on the common boundary of said Lots B and C; thence continuing South $00^{\circ}43'16''$ East 60.06 feet to the point of tangency of a curve to the left having a radius of 230.00 feet; thence along said curve through a central angle of $43^{\circ}13'06''$ an arc length of 173.49 feet to the point of a reverse curve having a radius of 470.00 feet; thence along said curve through a central angle of $4^{\circ}52'16''$ an arc length of 39.96 feet to the most southerly of the southeast corners of said Lot C; thence leaving said curve and coincident with the easterly boundary of said Lot C North $1^{\circ}58'06''$ East (North $0^{\circ}20'22''$ East per record) 90.68 feet to a Point of Curvature of a curve to the right having a radius point North $55^{\circ}53'32''$ East 170.00 feet; thence along said curve northwesterly through a central angle of $34^{\circ}49'44''$ an arc length of 103.34 feet to the point of tangency; thence North $0^{\circ}43'16''$ East 177.25 feet to the point of curvature of a curve to the right having a radius of 13.00 feet; thence through a central angle of $90^{\circ}00'00''$ an arc distance of 20.42 feet to a point on said north line of Lot B; thence coincident with said north line South $89^{\circ}16'44''$ West 86.00 feet to the true point of beginning.

Prepared on 6/11/2019, revised 7/17/2009 for TPN only.





DRAWN BY: RL
CHECKED BY: DE
DATE: 06/11/19
REV: 07/17/19

EXHIBIT C MAP
 WITHIN THE SE 1/4, NE 1/4, SECTION 19,
 TOWNSHIP 40 NORTH, RANGE 3 EAST OF W.M.
 WHATCOM COUNTY, WASHINGTON

COMPASS POINT SURVEY, LLC

523 FRONT STREET, LYNDEN, WA 98264
 PH. 360-354-8320 FAX. 360-354-8321

**REAL PROPERTY EXCHANGE AGREEMENT
BETWEEN THE CITY OF LYNDEN
AND MARINA TIMMERMANS
("Agreement")**

This Right-Of-Way / Easement Exchange Agreement is made and entered into ____ this day of _____ 2019, by and between the City of Lynden, a municipal corporation ("City" or "the City") and <Marina Timmermans, a single woman, ("Timmermans")> for and in consideration of the mutual promises and performances set forth herein.

Recitals

WHEREAS, pursuant to a Settlement and Release Agreement executed by The City and Timmermans on or about October 29, 2013, attached hereto as Exhibit "A" and incorporated herein by reference, the City obtained from Timmermans an Easement for the Right-Of-Way for the planned extension of 17th Street in Lynden.

WHEREAS, thereafter, Timmermans inquired as to whether said Right-Of-Way obtained by the City pursuant to Exhibit A might be shifted west approximately eight (8) feet in order to allow for the development of a certain parcel owned by ~~Timmermans~~ Bill and Adria Cummins situated east of and abutting the Right-Of-Way.

WHEREAS, the new Right-Of-Way resulting from shifting the right-of-way eight (8) feet to the west as requested by Timmermans is described in the Right-Of-Way dedication and Deed attached hereto as Exhibit B.

WHEREAS, the City plans to construct the proposed 17th Street extension <during the 2019 building Season, or whenever>.

WHEREAS, the City and the Timmermans believe that the fair market values of the Right-Of-Way / Easement conveyed to the City pursuant to Exhibit A and the Right-Of-Way / Easement evidenced by Exhibit B, which the Parties intend to exchange for the Exhibit A easement pursuant to this Agreement are reasonably equivalent.

WHEREAS, the Parties desire to exchange the Right-Of-Way / Easement currently owned by the City and described in Exhibit A and the Right-Of-Way / Easement currently owned by Timmermans and described in Exhibit B on an "as is" like-kind exchange basis.

Whereas, pursuant to this agreement, Resolution No. 1005 attached thereto as Exhibit C, and LMC 17.21.070, the City will initiate the vacation of the Easement described in Exhibit A. It is understood by the parties that this agreement is contingent upon the vacation of the easement described in Exhibit A and that in the event said easement is not vacated, this agreement is void ad initio.

Based on the foregoing, and in consideration of the promises and performances set forth below, the City and the Timmermans hereby agree as follows:

Agreement

1. **Conveyance.** The City agrees to vacate the easement described in Exhibit A on the closing date for and in consideration for the Timmermans' conveyance to the City of the Easement / Right-Of-Way described in Exhibit B. Timmermans agrees to convey the Easement / Right-Of-Way described in Exhibit B to the City on the closing date for and in consideration of City's vacation of the easement described in Exhibit A.

2. **Exchange Value.** The City and the Timmermans agree that the "as is" fair market values of Easement A and Easement B are reasonably equivalent and each easement is deemed to be fair and reasonable consideration for the other.

3. **Condition of Title.**

(a) Following the vacation of Easement A the underlying property shall remain subject to (a) rights reserved in federal patents or state deeds, (b) building or use restrictions general to the local jurisdiction (including but not limited to restrictions imposed by the Shoreline Management Act, Growth Management Act or similar acts), (c) any other existing easements, and (d) building or zoning regulations or restrictions.

(b) Easement B shall be conveyed to the City by the Timmermans free of encumbrances or defects except for (a) rights reserved in federal patents or state deeds, (b) building or use restrictions general to the local jurisdiction (including but not limited to restrictions imposed by the Shoreline Management Act, Growth Management Act or similar acts), (c) existing easements not inconsistent with the City's intended use, and (d) building or zoning regulations or restrictions.

4. **Property Interests Conveyed As Is.** The City offers to vacate and Timmermans offers to convey their respective easements in their "as is" condition. Neither party makes any representations or warranties of any kind regarding the condition of the land or any improvements thereon. Without in any way limiting the generality of the directly preceding sentence, the City makes no representations or warranties to the Timmermans regarding the condition of the property underlying Easement A or its suitability for the Timmermans' intended investment or development purposes. Notwithstanding the foregoing, both parties represent and warrant that to the best of their knowledge without inquiry or investigation there are no hazardous or dangerous substances on, under, around or released from their respective parcels and/or the improvements (if any) thereon.

5. **Closing.** The conveyance shall close upon the occurrence of both the recording of the Right-Of-Way Deed conveying Easement B with the County Auditor's office and the vacation of Easement A ("Closing Date"), or sooner upon mutual agreement.

6. **Closing Date.** For purposes of this Agreement, "Closing Date" shall be construed as the date upon which all appropriate documents are recorded with the County.
7. **Costs and Expenses.** Except as expressly provided for herein each party shall be responsible for payment of their own costs and expenses, including fees of attorneys and accountants, incurred in conjunction with this transaction.
8. **Entire Agreement.** This Agreement supersedes any and all agreements between the parties hereto regarding the subject property which are prior to the time of this Agreement. Neither the City nor the Timmermans shall be bound by any statement, understanding, agreement, promise, representation or stipulation, express or implied, that is not expressly stated herein.
9. **Addenda.** Any addendum attached hereto that is signed by both parties shall be deemed a part hereof.
10. **Existing Lease.** If there are any existing leases or rental agreements affecting either parcel, such leases or rental agreements shall be irrevocably terminated by the City or the Timmermans, as the case may be, prior to the Closing Date.
11. **Conduct Before Closing.** Between the date of this Agreement and the Closing Date, the City and the Timmermans shall each maintain the parcels in good condition and repair.
12. **Legal Counsel.** The City and the Timmermans each covenant and warrant that they were advised of their opportunity to be represented in this transaction by independent legal counsel or advisors of their own choosing and that the other party has done nothing to interfere or discourage their respective rights to seek such advice.
13. **Time.** Time is of the essence in fulfilling and effectuating the terms of this Agreement.
14. **Real Estate Commission.** The City and the Timmermans hereby represent and warrant to each other that there are no real estate brokers or agents involved in this transaction and that no listing or sales commissions will be due to anyone.

Executed on the dates set forth adjacent to each party's signature below.

CITY OF LYNDEN:

Mayor

Date: _____

Address: 300 4th Street
Lynden, WA 98264

Approved as to form and content:

City Attorney

"TIMMERMANS":



Marina Timmermans

Date: 7-16-019

Address: 1703 Main Street
Lynden, WA 98264

EXHIBIT A

EXISTING, TO BE REVISED, 17th STREET RIGHT OF WAY/EXCHANGE AGREEMENT

MARINA A. TIMMERMANS AND CITY OF LYNDEN

TAX PARCEL NUMBERS 400319 394429 0000 & 400319 406430 0000

That portion of the Southwest Quarter of the Northeast Quarter, Section 19, Township 40 North, Range 3 East, W.M. in Whatcom County, WA and within a portion of Lot B of the Timmermans Lot Line Adjustment recorded at Auditor's File Number 2021003073, records of said County and a portion of Lot 3 of the Timmermans Short Plat recorded at Auditor's File Number 1530446, said records, and described as follows:

The following description is copied from the Settlement and Release Agreement document executed by the City and Timmermans recorded at Auditors File Number 2131003260:

Commencing at the northwest corner of Lot B of "Timmermans Lot Line Adjustment" as per the map thereof recorded under Whatcom County Auditor's File Number 2021003073; thence North $89^{\circ}05'32''$ East along the north line of Lot B a distance of 98.10 feet to the **True Point of Beginning**; thence Southerly on a tangent curve to the right, having a radius of 13.00 feet, through a central angle of $90^{\circ}00'00''$ an arc distance of 20.42 feet to a point of tangency; thence South $00^{\circ}54'28''$ East a distance of 113.82 feet to a point on the south line of Lot B, being also the north line of Lot C of said Lot Line Adjustment; thence continuing South $00^{\circ}54'28''$ East a distance of 75.98 feet to the beginning of a tangent curve to the left, thence southerly along said curve to the left, having a radius of 220.00 feet, through a central angle of $42^{\circ}34'22''$ an arc distance of 163.47 feet to the beginning of a tangent reverse curve with a radius of 470.00 feet; thence southerly along said curve to the right through an angle of $4^{\circ}13'35''$ an arc length of 34.67 feet to the southeast corner of Lot C, "Timmermans Lot Line Adjustment"; thence North $00^{\circ}20'22''$ East along the east line of Lot C a distance of 93.39 feet to the beginning of a non-tangent curve to the right, which radius point bears North $58^{\circ}19'48''$ East; thence northerly along said curve to the right, having a radius of 160.00 feet, through a central angle of

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30°45'45" an arc distance of 85.90 feet to a point of tangency; thence North 00°54'28" west a distance of 89.82 feet to the north line of Lot C, "Timmermans Lot Line Adjustment" being also the south line of Lot 3, "Timmermans Short Plat" thence continuing North 00°54'28" West a distance of 99.97 feet to the beginning of a tangent curve to the right; thence northeasterly along said curve, having a radius of 13.00 feet; through a central angle of 90°00'00" an arc distance of 20.42 feet to a point of tangency on the north line of Lot 3 "Timmermans Short Plat"; thence South 89°05'32" West along the north line of Lot 3 and along the north line of Lot B, "Timmermans Short Plat" a distance of 6.00 feet to the True Point of Beginning.

Recopied from AFN 2131003260 on 6/11/2019.



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EXHIBIT B

REVISED 17th STREET RIGHT OF WAY/EXCHANGE AGREEMENT

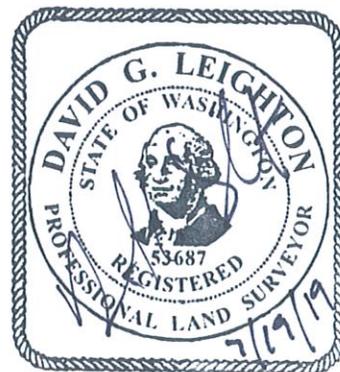
MARINA A. TIMMERMANS AND CITY OF LYNDEN

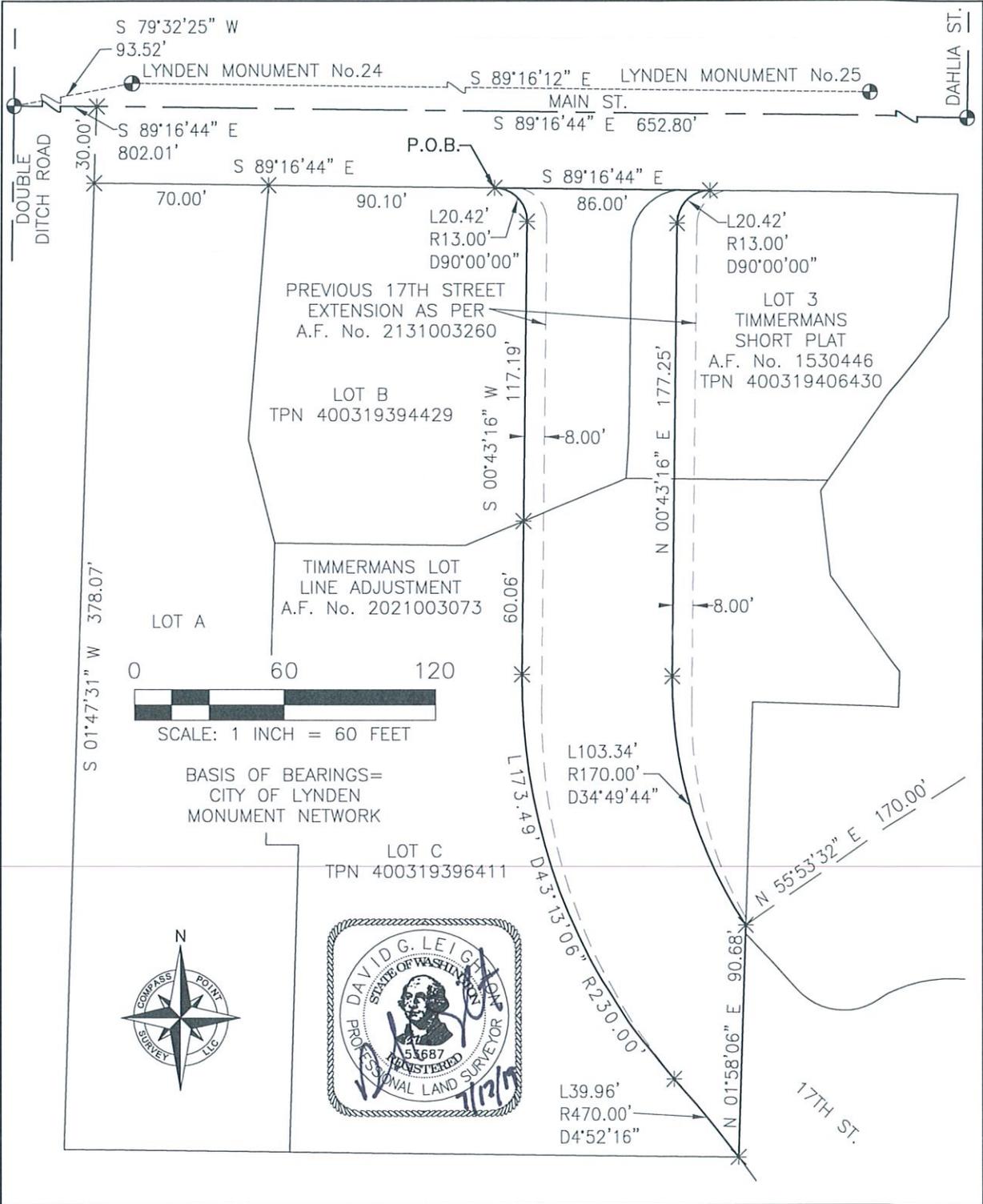
TAX PARCEL #s 400319 394429 0000 & 400319 396411 0000
& 400319 406430 0000

That portion of the Southwest Quarter of the Northeast Quarter, Section 19, Township 40 North, Range 3 East, W.M. in Whatcom County, WA and within Lots B and C of the Timmermans Lot Line Adjustment recorded at Auditor's File Number 2021003073, records of said County, and a portion of Lot 3 of the Timmermans Short Plat recorded at Auditor's File Number 1530446, said records, and described as follows:

Commencing at the northwest corner of said Lot B of Timmermans Lot Line Adjustment; thence coincident with the north line of Lot B North $89^{\circ}16'44''$ East with basis of bearing being the City of Lynden Survey Monument Network (North $89^{\circ}05'32''$ East per record) a distance of 90.10 feet to the **True Point of Beginning**; thence leaving said boundary southerly on a tangent curve to the right with a radius of 13.00 feet through a central angle of $90^{\circ}00'00''$ an arc distance of 20.42 feet to the point of tangency; thence South $00^{\circ}43'16''$ West 117.19 feet to a point on the common boundary of said Lots B and C; thence continuing South $00^{\circ}43'16''$ East 60.06 feet to the point of tangency of a curve to the left having a radius of 230.00 feet; thence along said curve through a central angle of $43^{\circ}13'06''$ an arc length of 173.49 feet to the point of a reverse curve having a radius of 470.00 feet; thence along said curve through a central angle of $4^{\circ}52'16''$ an arc length of 39.96 feet to the most southerly of the southeast corners of said Lot C; thence leaving said curve and coincident with the easterly boundary of said Lot C North $1^{\circ}58'06''$ East (North $0^{\circ}20'22''$ East per record) 90.68 feet to a Point of Curvature of a curve to the right having a radius point North $55^{\circ}53'32''$ East 170.00 feet; thence along said curve northwesterly through a central angle of $34^{\circ}49'44''$ an arc length of 103.34 feet to the point of tangency; thence North $0^{\circ}43'16''$ East 177.25 feet to the point of curvature of a curve to the right having a radius of 13.00 feet; thence through a central angle of $90^{\circ}00'00''$ an arc distance of 20.42 feet to a point on said north line of Lot B; thence coincident with said north line South $89^{\circ}16'44''$ West 86.00 feet to the true point of beginning.

Prepared on 6/11/2019, revised 7/17/2009 for TPN only.





DRAWN BY: RL
CHECKED BY: DE
DATE: 06/11/19
REV: 07/17/19

EXHIBIT C MAP
 WITHIN THE SE 1/4, NE 1/4, SECTION 19,
 TOWNSHIP 40 NORTH, RANGE 3 EAST OF W.M.
 WHATCOM COUNTY, WASHINGTON

COMPASS POINT SURVEY, LLC

523 FRONT STREET, LYNDEN, WA 98264
 PH. 360-354-8320 FAX. 360-354-8321

RESOLUTION NO. 1005

A Resolution of the City Council of the City of Lynden to hold a Public Hearing on a potential street vacation of the current right of way for the 17th Street extension to Lynden.

WHEREAS, City of Lynden ("City"), is considering the vacation of the right-of-way easement for the extension of 17th Street resulting from the Settlement between Marina Timmermans and the City of Lynden executed on or about October 29, 2013, a copy of which is attached hereto as EXHIBIT A; and

WHEREAS, the owners of the property underlying the proposed vacated easement and the City have agreed to exchange the vacated easement for a similar easement of equal value located slightly west of the easement being vacated, which agreement is attached hereto as Exhibit B; and

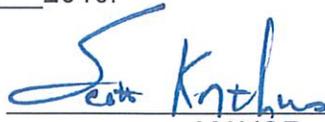
WHEREAS, Chapter 35.79 RCW and LMC 17.21.070 provide the City with the authority to vacate certain rights-of-way by resolution after a public hearing, and

WHEREAS, the City of Lynden will provide notice of the public hearing as set out in Section 17.21.030 B of the Lynden Municipal Code, and RCW 35.79.020 for the Proposed Right-of-Way Vacation; and

WHEREAS, if fifty percent of the abutting property owners as shown on Exhibit A file written objection to the Proposed Right-of-Way Vacation with the City Clerk, prior to the time of hearing, the City shall be prohibited from proceeding with the Proposed Right-of-Way Vacation;

NOW THEREFORE BE IT RESOLVED that the Mayor and the City Council of the City of Lynden will hold a public hearing on the Proposed Right-of-Way Vacation on July 15, 2019 at the Lynden City Council Chambers located at 205 4th Street.

APPROVED this 17 day of June 2019.


MAYOR

ATTEST:

APPROVED AS TO FORM:


CITY CLERK PAM BROWN


CITY ATTORNEY



213100326
Page: 1 of 10
10/30/2013 3:27 PM
AGR \$81.20
Whatcom County, WA

Request of: ZERVAS LAW

RETURN DOCUMENT TO:

Greg Greenan
Zender Thurston PS
PO Box 5226
B'ham, WA 98227

Use dark black ink and print legibly. Documents not legible will be rejected per RCW 65.04.045 & 65.04.047

DOCUMENT TITLE(S):
- Agreement

AUDITOR FILE NUMBER & VOL. & PG. NUMBERS OF DOCUMENT(S) BEING ASSIGNED OR RELEASED:
N/A

Additional reference numbers can be found on page _____ of document.

GRANTOR(S)/GRANTEES
CITY OF LYNDEN
MARINA A. TIMMERMANS

Additional grantor(s) can be found on page _____ of document.

GRANTEE(S) ^{GRANTORS}
(CITY OF LYNDEN,
MARINA A. TIMMERMANS)

Additional grantee(s) can be found on page _____ of document.

ABBREVIATED LEGAL DESCRIPTION: (Lot, block, plat name OR; qtr/qtr, section, township and range OR; unit, building and condo name.)
LOT B TIMMERMANS LLA AS REC AF 2021003073;
LOT C TIMMERMANS LLA AS REC AF 2021003073;
LOT 3 TIMMERMANS SHORT PLATS REL BOOK
13 SHORT PLATS PG 28

Additional legal(s) can be found on page _____ of document.

ASSESSOR'S 16-DIGIT GEO-PARCEL NUMBER: 400319 394429
0000; 400319396411 0000; 400319 406430 0000

Additional numbers can be found on page _____ of document.

The Auditor/Recorder will rely on the information provided on this form. The responsibility for the accuracy of the indexing information is that of the document preparer.

FILED
SETTLEMENT AND RELEASE AGREEMENT

2013 OCT 20 PM 2:35

THIS SETTLEMENT AND RELEASE ("Agreement") is entered into by and between Marina Timmermans ("Mrs. Timmermans"), a single person, and the City of Lynden ("Lynden"), a Washington municipal corporation, (collectively, "Parties"), and shall be effective as of the date of full execution entered below.

WHEREAS, the City of Lynden is a municipal corporation with a population of approximately 12,000 people, located in Whatcom County, Washington;

WHEREAS, Mrs. Timmermans owns property within Lynden, to wit: 1703 Main Street. Lynden, WA 98264, which is legally described as follows:

That portion of the East half of the Southwest quarter of the Northeast quarter, Section 19, Township 40 North, Range 3 East of W.M., described as follows: Commencing at a point on the North line of the Southwest quarter of the Northeast quarter of Section 19, Township 40 North, Range 3 East, 8 rods East of the Northwest corner of said East half of the Southwest quarter of the Northeast quarter; Thence South along a line parallel to and 8 rods East of the West line of the East half of the Southwest quarter of the Northeast quarter, a distance of 408 feet; Thence East parallel with the North line of said quarter quarter to a point 268 feet due West of the East line of said East half of the Southwest quarter of the Northeast quarter; Thence North to a point 230 feet South of the North line of the Southwest quarter of the Northeast quarter; Thence East 58 feet; Thence North to the center of a creek running along the Northeast corner of property; Thence Northerly following the center of said creek to the North line of the Southwest quarter of the Northeast quarter; Thence West along said North line of the Southwest quarter of the Northeast quarter to the point of beginning. EXCEPT Main Street (County Road No. 106).

Situated in Whatcom County, Washington.

WHEREAS, in order to complete the extension of 17th Street north to Main Street in the City of Lynden it is necessary to route the street through Mrs. Timmermans' property;

WHEREAS, in connection with the Timmermans' October 2, 1985, Short Plat, and anticipating its future need for a portion of the Timmermans' property for the eventual street extension, the City imposed a covenant barring the development of any structures within a delineated portion of Lot B; because the location of the street extension has been changed, the City no longer needs the covenanted area;

WHEREAS, on April 12, 2007, Lynden filed a condemnation petition (Petition) in the Superior Court of the State of Washington in and for Whatcom County naming Mrs. Timmermans as respondent for the purpose of condemning an easement for the 17th Street right-of-way through Mrs. Timmermans' property;

WHEREAS, on July 16, 2010, the parties filed a stipulated order on public use and necessity wherein they agreed that (a) the actual right-of-way would be shifted eastward, and (b) before trial, the City could elect to base just compensation on the area delineated in the Petition or on the actual agreed-to right-of-way location;

WHEREAS, In response to the Petition, Mrs. Timmermans filed two claims for inverse condemnation based upon denial of a short plat application occurring before the filing of the petition and alleged delay following the filing of the petition, which claims were dismissed—the first by the parties' stipulation, and the second by the court;

WHEREAS, the parties agreed on a resolution of the issue of just compensation as set forth below;

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

1. Transfer of Easement. Concomitant with the payment described in Section 2, the parties will execute and file (with the Court and the Whatcom County Assessor's Office) the stipulated judgment and decree of appropriation attached hereto as Exhibit A, thereby transferring to the City of Lynden the easement contemplated in the Stipulation on Public Use and Necessity.

2. Timing of Payment. Lynden shall deliver or cause delivery of its payment of Two Hundred and Fifty Thousand Dollars (\$250,000.00), by check made payable to IOLTA, Zervas Law, P.S., to the offices of Zervas Law located at 1909 Broadway, Bellingham, WA, on or before close of business on October 31, 2013, in payment for the easement referenced in Paragraph 1.

3. Dismissal. The Parties shall move for dismissal of the condemnation action with prejudice and without costs or fees to either party except as otherwise provided herein, no later than 10 days after the disbursement of funds to Mrs. Timmerman. Dismissal shall occur upon entry of an order of dismissal by the court consistent with the terms of this Agreement.

4. Release, Cancel and Void No-build Covenant. The City shall also cancel, release and void the covenant against building any structures that was imposed in connection with the October 3, 1985, Timmermans Short Plat. Should it be determined that any further

action by the City is required to complete the covenant's cancellation, release and void, the City will undertake such action without undue delay.

5. Mutual Release. For and in consideration of the payment of the sum of Two Hundred and Fifty Thousand and 00/100 Dollars (\$250,000.00) and the easement conveyed in consideration thereof, the undersigned parties herewith release and forever discharge each other and their respective insurers, predecessors, successors and affiliated companies, as well as all of their agents, employees, owners, and attorneys from all claims in any way relating to the lawsuit entitled *City of Lynden, Petitioner v. Marina A. Timmermans, Respondent*, Cause Number 07 2 00866 3, except as set out in the October 7, 2013, Order Granting Petitioner's Motion for Partial Summary Judgment.

The City of Lynden agrees to pay Mrs. Timmermans the sum of Two Hundred and Fifty Thousand and 00/100 Dollars (\$250,000.00) by delivering to Zervas Law, P.S., a check for the full amount that is made payable to IOLTA Zervas Law, P.S. on or before the close of business on October 31, 2013, and Maria Timmermans agrees to convey the easement described in Exhibit A.

As part of the consideration of the agreed settlement of the above case Mrs. Timmermans herewith warrants that no other person or entity has an ownership interest in the Timmermans property that is the subject of this agreement that would entitle that person to share in any award for just compensation for the interest therein condemned by the City of Lynden.

This is a compromised settlement of disputed claims and is not an admission of fault or liability by anyone.

The undersigned warrant and represent that they have not sold, assigned, granted or transferred to any person, firm, or corporation any claim, demand, action or cause of action, or any part thereof, which could affect their right to execute this Agreement. The undersigned warrant and represent that they have full authority to do so, and bind themselves to this Agreement.

The preparation of this Agreement has been a joint effort and the resulting document shall not be construed more severely against any one of the parties than against the other.

6. Remedy for Breach. For any breach of this Agreement all remedies in law and equity shall be available including the remedy of specific performance.

7. Reasonable Costs and Attorney's Fees. In the event it becomes necessary for either party to retain an attorney to undertake action to induce or enforce or defend a claim under this Agreement, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees and costs related to the enforcement or defense of a claim under this Agreement.

8. Amendment. This Agreement may not be modified or amended except by the written agreement of the parties.

9. **Governing Law.** This Agreement shall be construed and interpreted according to the laws of the State of Washington.

10. **Complete Agreement.** This Agreement, including its Exhibits, and the Purchase and Sale Agreement of even date is a fully integrated and complete Agreement and supersedes all prior or contemporaneous oral or written agreements or understandings between the parties apart from the terms and provisions expressly set forth or incorporated herein.

11. **Severability.** If any section, subsection, sentence, clause, or phrase in this Agreement is for any reason held to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby. Each term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

12. **Complete Understanding.** The undersigned hereby declare that the terms of this Settlement and Release Agreement have been completely read and are fully understood and voluntarily accepted, following ample opportunity to confer with legal counsel, for the purpose of making a full and final compromise and settlement of any and all claims or potential claims, disputed or otherwise arising prior to the date of this Settlement and Release Agreement.

13. **Authorization.** Each person signing this Agreement represents and warrants that he or she has authority to sign this Agreement on behalf of and to bind the party represented, and that any necessary conditions precedent to the execution of this Agreement on behalf of the party represented have been satisfied.

14. **Counterparts.** This Agreement may be executed in counterparts and each executed counterpart shall have the same force and effect as the original instrument and as if all of the parties to the counterparts had signed the same instrument. Electronic facsimile signatures and/or electronically scanned signatures shall be sufficient to demonstrate a party's assent to this Agreement. If the counterparts are not signed on the same day, the effective date of this Agreement shall be the latter date of the two dates.

15. **Effective Date.** This Agreement shall be effective as of the as of the date of full execution entered below.

DATED: 10-26-2013
Marina Timmermans

Marina Timmermans

DATED: 10-29-2013
City of Lynden

By: Scott Kuhns

Title: Mayor

Exhibit A

FILED
2013 OCT 30 PM 2:35

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF WHATCOM

CITY OF LYNDEN, a non-charter code city,

Petitioner,

v.

MARINA A. TIMMERMANS,

Respondent.

No. 07 2 00866 3

**STIPULATED JUDGMENT AND
DECREE OF APPROPRIATION**

Judge Snyder

JUDGMENT SUMMARY

Judgment Creditor:	MARINA A. TIMMERMANS
Attorney For Judgment Creditor:	DOMINIQUE ZERVAS
Judgment Debtor:	CITY OF LYNDEN
Principal Judgment Amount Due:	\$250,000.000
Interest to date of Judgment:	included in Principal Judgment amount
Attorney Fees:	included in Principal Judgment amount
Expert Witness Fees:	included in Principal Judgment amount
Evaluation Costs:	included in Principal Judgment amount
Other Amounts:	included in Principal Judgment amount

THIS MATTER coming on before the above-entitled court, Petitioner the City of Lynden appearing by T. Gregory Greenan, Zender Thurston PS, and Respondent Marina A. Timmermans, appearing by and through Dominique Zervas, Zervas Law, P.S.; and the undersigned parties having agreed that TWO HUNDRED FIFTY THOUSAND and 00/100

1 Dollars (\$250,000.00) is just compensation for the taking and/or damaging of the property
2 and/or property rights as described in Exhibit "A", now, therefore,

3 IT IS ORDERED, ADJUDGED AND DECREED that upon entry of this stipulated order,
4 the State shall become the owner of the property and/or property rights as described in the
5 attached Exhibit "A."

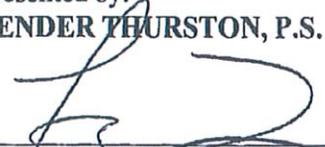
6 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that entry of this decree
7 terminates all further litigation in this matter except for any proceedings that may be necessary
8 to determine entitlement to these funds and any orders necessary to disburse the funds.
9

10 DONE IN OPEN COURT this 30 day of October, 2013.

11
12 **Charles R. Snyder**

13 JUDGE SNYDER
14 Whatcom County Superior Court

15 Presented by:
16 **ZENDER THURSTON, P.S.**

17 
18 GREG GREENAN, WSBA #16094
19 BRYAN L. PAGE, WSBA #38358
20 Attorney for Petitioner

21 Copy Received; Approved for Entry:
22 **ZERVAS LAW, P.S.**

23  10.26-13
24 DOMINIQUE ZERVAS, WSBA #34098
25 Attorney for Respondent

EXHIBIT A
LEGAL DESCRIPTION, AND MAP DEPICTING, EASEMENT

Exhibit A
Easement Description

A tract of land within the Southwest quarter of the Northeast quarter of Section 19, Township 40 North, Range 3 East of W.M., being a portion of Lot B and Lot A of "Timmermans Lot Line Adjustment" as per the map thereof recorded under Whatcom County Auditor's File Number 2021003073 and also being a portion of Lot 3 of "Timmermans Short Plat" as per the map thereof recorded under Whatcom County Auditor's File Number 1630446 and being more particularly described as follows:

Commencing at the northwest corner of Lot B of "Timmermans Lot Line Adjustment" as per the map thereof recorded under Whatcom County Auditor's File Number 2021003073; thence North 89°05'32" East along the north line of Lot B a distance of 98.10 feet to the *True Point of Beginning*; thence Southerly on a tangent curve to the right, having a radius of 13.00 feet, through a central angle of 90°00'00" an arc distance of 20.42 feet to a point of tangency; thence South 00°54'28" East a distance of 113.82 feet to a point on the south line of Lot B, being also the north line of Lot C of said Lot Line Adjustment; thence continuing South 00°54'28" East a distance of 75.98 feet to the beginning of a tangent curve to the left, thence southerly along said curve to the left, having a radius of 220.00 feet, through a central angle of 42°34'22" an arc distance of 163.47 feet to the beginning of a tangent reverse curve with a radius of 470.00 feet; thence southerly along said curve to the right through a angle of 4°13'35" an arc length of 34.67 feet to the southeast corner of Lot C, "Timmermans Lot Line Adjustment"; thence North 00°20'22" East along the east line of Lot C a distance of 93.39 feet to the beginning of a non tangent curve to the right, which radius point bears North 58°19'48" East; thence northerly along said curve to the right, having a radius of 160.00 feet, through a central angle of 30°45'45" an arc distance of 85.90 feet to a point of tangency; thence North 00°54'28" West a distance of 89.82 feet to the north line of Lot C, "Timmermans Lot Line Adjustment" being also the south line of Lot 3, "Timmermans Short Plat" thence continuing North 00°54'28" West a distance of 99.97 feet to the beginning of a tangent curve to the right; thence northeasterly along said curve, having a radius of 13.00 feet; through a central angle of 90°00'00" an arc distance of 20.42 feet to a point of tangency on the north line of Lot 3 "Timmermans Short Plat"; thence South 89°05'32" West along the north line of Lot 3 and along the north line of Lot B, "Timmermans Short Plat" a distance of 86.00 feet to the *True Point of Beginning*.



Exhibit B.

Filed for Record at Request of:
CARMICHAEL CLARK, PS
P.O. Box 5226
Bellingham, Washington 98227
(360) 647-1500

DOCUMENT TITLE:
RIGHT-OF-WAY GRANT

REFERENCE NUMBER OF RELATED DOCUMENT:

GRANTOR:
<>

GRANTEE:
<>

ABBREVIATED LEGAL DESCRIPTION:
<>
Full legal description at page 2 hereto

ASSESSOR'S TAX PARCEL NUMBER:
<>

RIGHT-OF-WAY GRANT

THIS RIGHT-OF-WAY GRANT ("Grant") is made this ____ day of _____, 2017, by <> ("Grantor") to the CITY OF LYNDEN, a Washington municipal corporation (hereinafter "Grantee" or "City").

The GRANTOR, for and in consideration of public interest and other good and valuable consideration, grants, dedicates and conveys to the GRANTEE, a perpetual and exclusive public easement over the following described real property situated in the City of Lynden, County of Whatcom, State of Washington:

See **Exhibit A** attached hereto, and fully incorporated herein by reference (the "Property").

The purpose of this Right-of-Way Grant is to provide the Grantee with an exclusive, perpetual and unlimited right-of-way for public ingress, egress, utilities, curbs, gutters, sidewalks and all public right-of-way purposes for the Property described at Exhibit A and depicted at **Exhibit B** hereto.

The Right-of-Way Easement shall constitute covenants running with the land, and shall be binding on the undersigned and all successors, assignees, devisees, or transferees of the parties and shall in all respects attach to the individual properties legally described in this Right-of-Way Grant.

GRANTOR:

GRANTEE:

CITY OF LYNDEN, a Washington municipal

<>

By: Scott Korthuis
Its: Mayor

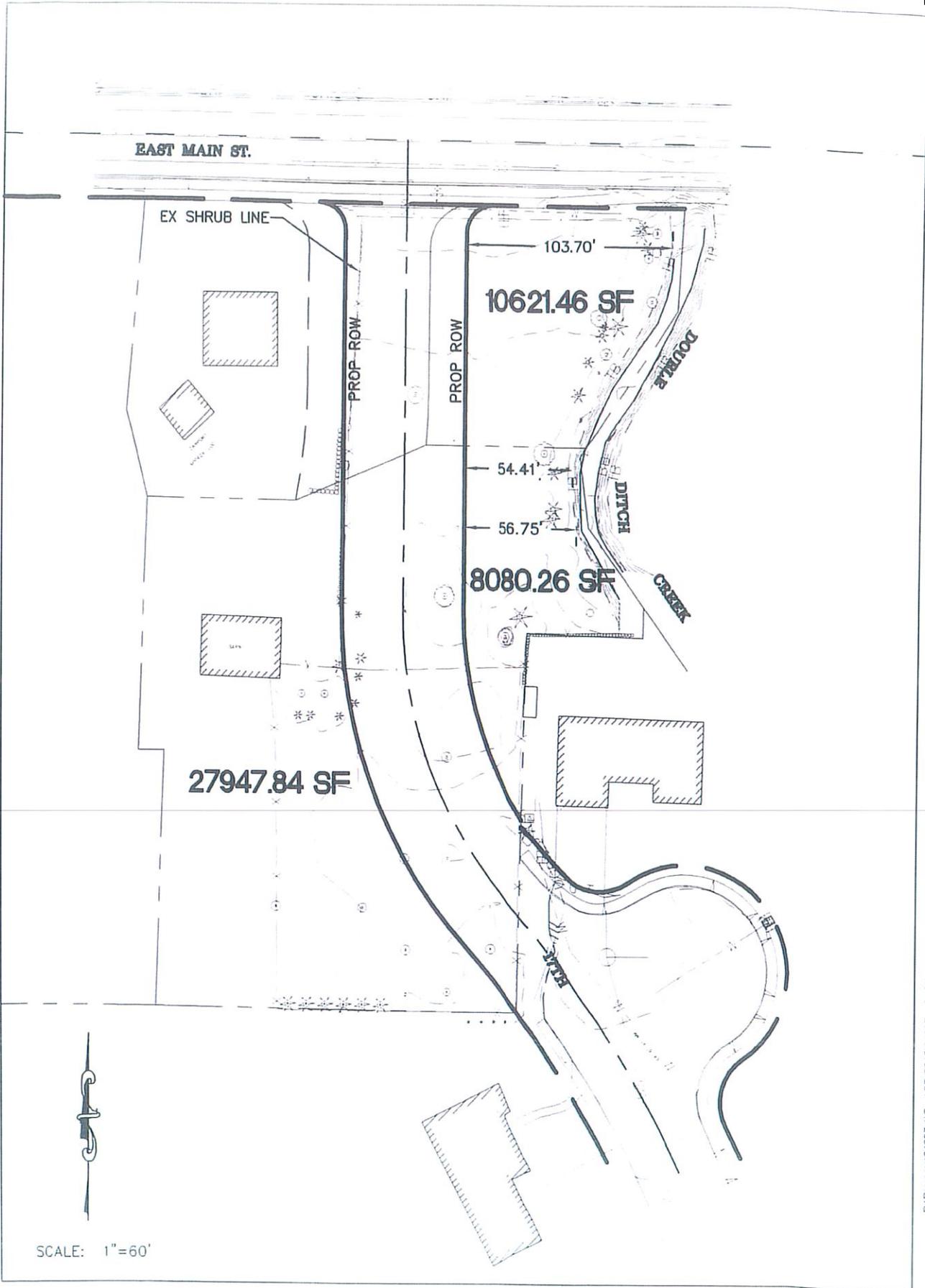
<>

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that <> is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

DATED this ____ day of _____, 2017.

NOTARY PUBLIC in and for the State of Washington
Residing at _____



CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	August 5, 2019	
Name of Agenda Item:	Public Defender Interim 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 checked="" 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:	1) Public Defender Interim Contract	
Summary Statement:	<p>The City of Lynden provides Public Defender services to individuals who are accused of a crime but who cannot afford an attorney. Our previous Public Defender is no longer able to provide those services. As a result, the City needs to hire an interim replacement while recruiting a permanent Public Defender.</p> <p>Sharon Westergreen, a qualified attorney living in Everson, has agreed to provide Interim Public Defender services for the City until a permanent replacement can be identified. That search is expected to take 60 to 90 days. The cost and scope of the contract are generally comparable with of the cost and scope of the previous contract the City had with the previous Public Defender.</p>	
Recommended Action:	Approve the attached contract for interim Public Defender services	

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

This Agreement for Interim Indigent Criminal Defense Services (“Agreement”) by and between the City of Lynden, a municipal corporation, hereinafter referred to as the “City,” and Sharon D. Westergreen, Westergreen Law, hereinafter referred to as the “Contractor,” collectively referred to as “Parties,” is for the purpose of providing attorney services as outlined herein, commencing August 1, 2019.

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 current Lynden Municipal Court calendar (if additional court appearances are added to the Public Defender schedule that existed as of July 15, 2019, this Contract shall be re-negotiated to accommodate for the extra work);
- 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 to respond to calls;
- 5) Representing indigent defendants in appeals to the Whatcom County Superior Court except when representing the same defendant during the trial; and
- 6) 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 three hundred dollars (\$300) per assigned case except that probation revocation cases and probation review cases shall be paid at \$240 per case. For purposes of this paragraph, case shall mean criminal charge.

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) The sum of one thousand dollars (\$1000) for all appeals taken to Superior Court.
- 3) In addition to the flat fee for the case, bench trials and court hearings requiring witness attendance shall be paid at a rate of fifty dollars (\$50) per hour.
- 4) The sum of three hundred dollars (\$300) per half day spent in jury trial, in addition to the per case fee set forth in subparagraph 1.
- 5) 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) 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.
- 7) 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. 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 contact.

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 case 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 Contractor may have a qualified attorney fill-in for the Contractor should the Contractor require coverage on an occasional ad-hoc basis. Abuse of this provision shall be grounds for the City to terminate this Contract.

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:

Sharon D. Westergreen
P.O. Box 174
Everson, WA 98247

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 fourteen (14) 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 fourteen (14) days in advance of the proposed date of termination and, during that fourteen-day period, this Agreement shall remain in force unless terminated earlier by mutual agreement of the Parties.

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. Should the City pay the selected attorney on a monthly basis, Contractor shall withdraw from pending cases and substitute the selected attorney for all said cases. Should the City pay the selected attorney on a per case basis, at Contractor's discretion, Contractor may move to withdraw from pending cases and substitute the selected attorney.

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.


 Contractor
 Sharon D. Westergreen, Westergreen 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 Sharon D. Westergreen signed this instrument and acknowledged that he signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledges it to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 7-24-19



NOTARY PUBLIC in and for the State of WA.

My commission expires 08/04/20



EXHIBIT A

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

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

This Agreement for Interim Indigent Criminal Defense Services (“Agreement”) by and entered into this _____ day of _____, 2019 between the City of Lynden, a municipal corporation, hereinafter referred to as the “City”, and ~~⇨, Sharon D. Westergreen, Westergreen Law,~~ hereinafter referred to as the “Contractor”, collectively referred to as “Parties”, is for the purpose of providing attorney services as outlined herein, commencing the _____ day of _____, August 1, 2019 ~~and terminating~~ ~~⇨.~~

The ~~P~~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 current Lynden Municipal Court calendar (if additional court appearances are added to the Public Defender schedule that existed as of July 15, 2019, this Contract shall be re-negotiated to accommodate for the extra work);
- 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 to respond to calls;
- 5) Representing indigent defendants in appeals to the Whatcom County Superior Court except when representing the same defendant during the trial; and
- 6) 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~~three hundred dollars (~~\$275~~\$300) per assigned case ~~except that including~~ probation revocation cases and probation review cases shall be paid at \$240 per case. For purposes of this paragraph, case shall mean criminal charge.

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) The sum of ~~fifty dollars (\$50) per hour up to a maximum of six hundred dollars (\$600)~~one thousand dollars (\$1000) for all appeals taken to Superior Court.

- 3) In addition to the flat fee for the case, b~~The sum of three hundred dollars (\$300) for cases that terminate in a bench trial before the Municipal Court Judge~~Bench trials and court hearings requiring witness attendance shall be paid at a rate of fifty dollars (\$50) per hour.

- 4) The sum of three hundred dollars (\$300) per half day spent in jury trial, in addition to the per case fee set forth in subparagraph 1.

- 5) 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) 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~~7) 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. 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 have (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 contact~~ ~~agrees to maintain a law office within Whatcom County, Washington with sufficient facilities to provide adequate legal representation as required by this contract.~~

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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~~ case 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 Contractor may assign or subcontract any portion of the services set forth in Paragraph I may have a competent attorney to~~ fill-in for the Contractor should the Contractor require coverage on an occasional ad-hoc basis. Abuse of this provision shall be grounds for the City to terminate this Contract.

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:

~~Contractor's name~~ Sharon D. Westergreen
~~Street Address~~ P.O. Box 174
~~City and zip code~~ Everson, WA 98247

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

City of Lynden,
~~Court~~ City 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 ~~thirtyfourteen~~ (30)14 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)fourteen~~ (14) days in advance of the proposed date of termination and, during that ~~sixtyfourteen~~-day period, this Agreement shall remain in force unless terminated earlier by mutual agreement of the Parties.

Comment [SJ1]: I reduced this number down because of the short term nature of this contract and so there can be a reasonable transition time when the new permanent defense attorney is selected.

~~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.~~

Comment [SJ2]: I removed this as this is a short term contract with no set term.

~~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. Should the City pay the selected attorney on a monthly basis, Contractor shall withdraw from pending cases and substitute the selected attorney for all said cases. Should the City pay the selected attorney on a per case basis, at Contractor's discretion, Contractor may move to withdraw from pending cases and substitute the selected attorney from pending cases.~~

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 Pparties (whether written or oral) and constitutes the full and only agreement between the Pparties, 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 Pparties.

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.

Contractor _____ Scott Korthuis _____
~~Attorney at Law Sharon D. Westergreen, Westergreen Law~~ _____
~~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 ~~Sharon D. Westergreen~~ signed this instrument and acknowledged that he signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledges ~~it for~~ it 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

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CITY OF LYNDEN



EXECUTIVE SUMMARY

Meeting Date:	August 5, 2019	
Name of Agenda Item:	Budget amendment for Police Department Siding – 2019 Budget	
Section of Agenda:	New Business	
Department:	Police	
Council Committee Review:	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input checked="" 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:		
Axiom Proposal		
Summary Statement:		
<p>The Police Department was remodeled and occupied in 2005/2006. The east and south-facing exterior walls of the building were designed and installed with 4ft x 4ft painted plywood panel siding. The panels are now failing; showing signs of peeling, warping and rotting.</p> <p>Local contractor, Tim Koetje, President of Axiom Construction & Consulting LLC, was contacted and provided a bid for Aluminum Composite Panel siding at well below the current rate for materials and installation (See attached letter and proposal). Aluminum Composite Panels carry a 20-year warranty and will likely last for the life of the building.</p> <p>The project will be funded through Capital Outlay as well as the Capital Reserve Fund.</p>		
Recommended Action:		
Approve a 2019 budget amendment for Police Department exterior siding, and authorize the Mayor’s signature on the Axiom Proposal.		



Axiom Construction
1841 Front St. Suite "A"
360-354-1184
Axiomcc.net



Lynden Police Station – Reclad
203 19th St., Lynden, WA 98264

Dear Sgt. Bos,

To achieve this type of build in our industry we typically see Aluminum composite Rainscreen systems go for \$54-58/sf. for supply and install of the material on a public project where labor costs are a premium. Using Tim Koetje's civic pride to achieve a discounted price along with our ability to execute the work at an extremely efficient pace has helped us get down to a manageable \$39/sf. The total price does include all of the integrated - flashing, new downspouts and new gutter at the east elevation while still staying under \$49/sf. for supply and installation of materials mentioned above. If you have any questions please feel free to contact Tim or myself.

Regards,

Grant Bonsen
Estimator / Business Development



PHONE: 360.354.1184 FAX 360.318.9526 1841 Front St. Suite A - Lynden, WA 98264

Proposal

No: 19085.R1

Date: 7/30/2019

Work To Be Performed For:

Lynden Police Station Reclad – Lynden, WA

We hereby propose to furnish all the materials and perform all the labor necessary for the completion of:

074214 - Aluminum Composite Panels @ South & East Elevations Only:

Supply and installation of ACM and accessories:

- Phoenix "Flex" Panel 4mm route & return PE core, .020" thick aluminum face sandwiched between ethylene core
- Upper color to be Chevy Blue with Metallic Silver lower level similar to sketch attached
- Installed over existing furring with concealed clips and fasteners for a secure installation
- 20-year warranty, Axiom 2-year craftsmanship warranty

076200 - Sheet Metal Flashing and Trim:

Supply and installation of flashing and accessories:

- 24ga prefinished rake, eave, and clip at roof related flashings installed with a concealed cleat
- 24ga head, sill, jamb, j-trim, and base flashing at exterior ACM panels
- 24ga stainless base flashing at brick masonry / ACM panel transition
- Trim flashings at 8 lights and other electrical devices per building layout
- 6" box gutter at east elevation to replace the existing broken gutter, installed with gutter straps and 3x4 downspouts
- 20-year finish warranty, Axiom 2-year craftsmanship warranty

Base Bid - \$111,955.00

Tear Off & Haul Away Old Plywood - \$9,480.00

Notes: Bid With Plan Set Dated:

Axiom is not responsible for delays or project impacts caused by others, Axiom is not responsible for predecessor latent defects or defective workmanship, nor is responsible for design and/or engineering errors

Addenda: Axiom acknowledges receipt of addenda: #

Schedule: Proposal based on standard working hours, and does not consider any premium overtime;

Exclusions: WSST, Bonding, Hoisting and Scaffolding, Traffic Management, and Site Access, Delegated Design & Engineering/Stamps, Changes to Building Envelope Drawings, Firestopping, Painting, Insulation, Interior Work, Exterior Exposed Caulking/Glazing Caulking/Interior Caulking, Early Payment Discounts, Louvers, TPO/PVC Flashings, Framing, Shimming, Blocking, Excess Liability Insurance, Nailers, Curbs, Welding, Custom Colors, Heavy Gage Metals, Fall Protection Anchors, Garbage Disposal, Interior Metals, Patching & Painting, CMU/Brick/Concrete Cutting, Grinding, HAZMAT, Recycling, Parking Permits, Lead, Damage by Other Trades

Any alteration or deviation from above specifications involving extra costs, will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements are contingent upon strikes, accidents or delays beyond our control. Owner will carry fire, tornado and other necessary insurance upon above work.

Respectfully submitted: Grant Bonsen - Estimator / Business Development

Note -This proposal may be withdrawn by us if not accepted within 35 days

ACCEPTANCE OF PROPOSAL

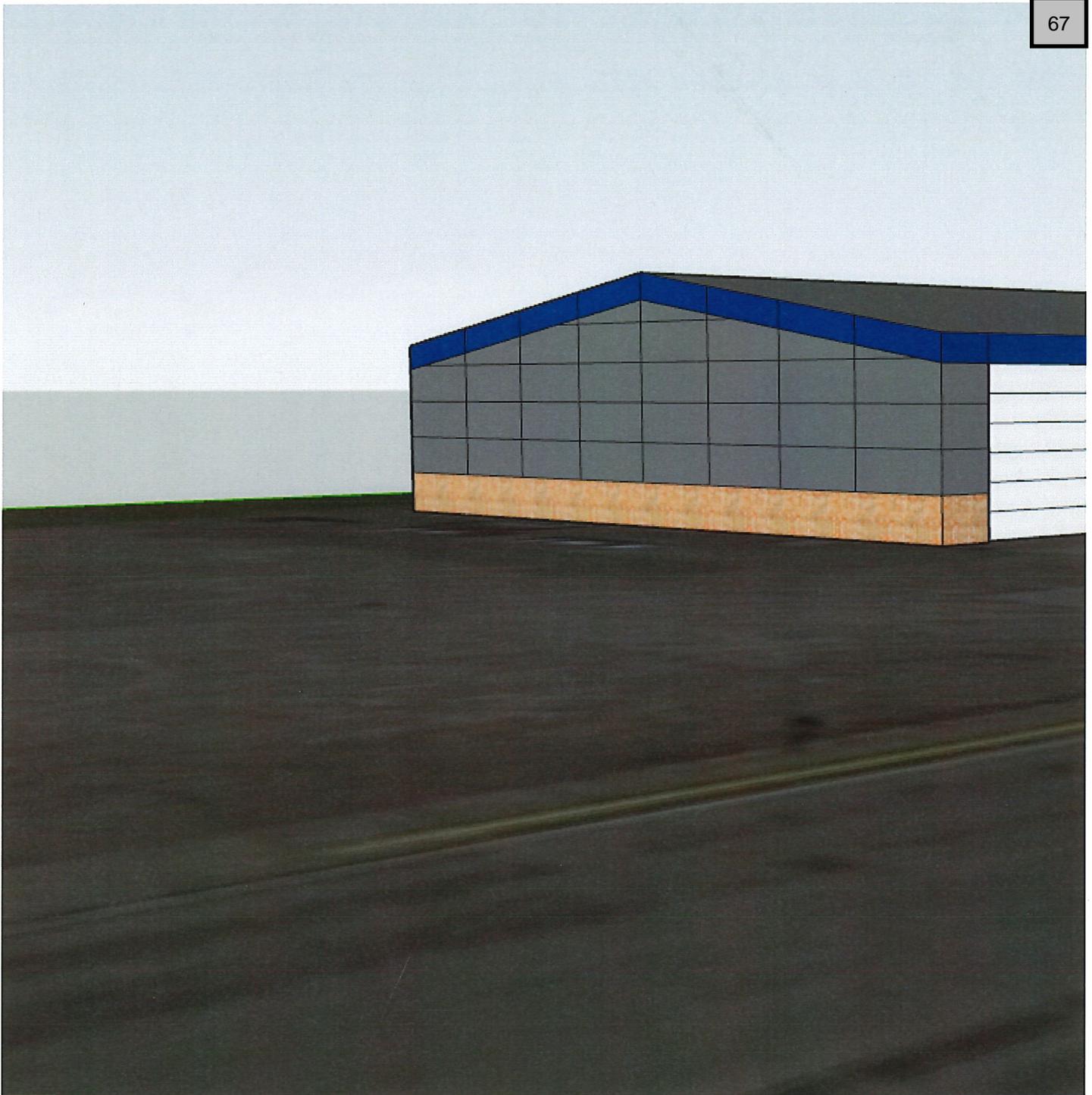
The above prices, specifications and conditions are satisfactory. Acceptance subject to execution of a mutually agreeable subcontract with the project specific inclusions and exclusions listed above.

Accepted Date:

Signature:







AXIOM

Tim Koetje – President

Axiom Construction & Consulting L.L.C.

1841 Front Street, Suite A, Lynden WA 98264

p. 360.354.1184 ext. 221 f. 360.318.9526

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	August 5, 2019	
Name of Agenda Item:	Consideration of the preliminary plat approval for the Young's Long Plat and Development Standards Variance	
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:	Application Materials, TRC Report, Minutes, and Planning Commission Resolution and Draft Findings of Fact	
Summary Statement:	<p>On July 11, 2019, the Planning Commission held a public hearing at the request of Joan Kayser, on behalf of the Jack and Josephine Young Living Trust for the subdivision of 3.35 acres located at 8323 Double Ditch Road. The proposed long plat includes 7 single family lots. As the property is located within the RS-100 zoning designation, only single-family homes will be permitted.</p> <p>As part of the Long Plat request, the applicants are also requesting a Development Standards Variance to allow a cul-de-sac which exceeds the maximum cul-de-sac length of 450-feet.</p> <p>At the April 13th meeting the Planning Commission recommended approval of the long plat request. Tonight, Council is being asked to grant preliminary plat approval of the Young's Long Plat and Development Standards Variance.</p>	
Recommended Action:	Motion to grant preliminary plat approval of the Young's Long Plat and Development Standards Variance #19-01, and if acceptable, to authorize the Mayor's signature on the attached Findings of Fact and Conclusions of Law.	

CITY OF LYNDEN



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

Planning Department Memorandum

To: Planning Commission
From: Heidi Gudde, Planning Director
Date: July 3, 2019
Re: Long Plat Application 19-01 – Young’s Long Plat and Development Standards Variance Application 19-01

Long Plat application 19-01 has been brought forward by the Young Family. Located with a single access point at 8323 Double Ditch Road, just south of Village Drive, the property is zoned for single-family use with minimum lot sizes of 10,000 square feet (RS-100). The 3.35 acre plat is proposing the creation of 7 single family lots. The design of the plat is a single stubbed cul-de-sac. To facilitate the plat layout that is proposed, the applicant is requesting that the cul-de-sac exceed the maximum cul-de-sac length of 450 feet. Development Standards Variance Application 19-01 requesting this exception has been submitted for the Commission’s review.

Beyond the development standards variance, the long plat application is proposing to meet the plat design criteria described in LMC 18.14.



Subject property highlighted in yellow.



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

It should be noted that previous land use actions on this property have resulted in approval conditions related to the existing onsite trees which is discussed in the TRC report. Additionally, LMC 19.61.140 requires that healthy trees greater than 12" in diameter at five feet in height be preserved by every reasonable effort. And, that those trees that are removed be replaced in equal number. As such, the applicant is developing a survey documenting the tree inventory on the property and identifying those trees or stands of trees which can be safely preserved. In the SEPA findings, staff has required that the applicant develop a plan to replace trees which are removed. The mitigation may result in the need for a landscape easement to be placed on the face of the plat.

As required, the Young family has notified residents within 300 feet of the property line of the long plat proposal and the corresponding environmental review through the SEPA process. The Planning Department has had inquiries related to the notices but no formal comments were submitted to the record.

Consistent with LMC 17.03 the application is seeking the Planning Commission's review in a public hearing. Assuming that adequate information has been provided, the Commission is expected to develop a recommendation to the City Council. The recommendation could be one of approval, approval with conditions, or a recommendation of denial. The application and complete record created during the review and hearing process will move to the City Council for consideration. No additional comment will be added to the record after the Planning Commission closes their public hearing.

CITY OF LYNDEN
PLANNING COMMISSION RESOLUTION #19-01

**A resolution of recommendation for the approval of the
Young's Long Plat and Development Standards Variance**

WHEREAS, Joan Kayser on behalf of the Jack and Josephine young Living Trust, hereinafter called the "Proponents," submitted a complete application to the City of Lynden, hereinafter called "the City," for the subdivision of approximately 3.35 acres into 7 single family residential building lots at 8323 Double Ditch Road in Lynden.

WHEREAS, running concurrently with the long plat application, the applicants are also seeking a development standards variance requesting that the proposed cul-de-sac serving their plat to exceed the maximum length of 450-feet as noted under LMC 18.14.100 (C).

WHEREAS, the RS-100 zone, permits single-family homes only on lots with a minimum of 10,000 square feet subject to the requirements listed under 19.15.060 of the Lynden Municipal Code in accordance with the zoning and subdivision ordinances; and

WHEREAS, the application was determined complete on May 8, 2019, and the notice of application was published in the Lynden Tribune on May 22, 2019; 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 public hearing on July 11, 2019, at the City of Lynden, City Hall Annex, 205 4th Street, Lynden, Washington, 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 June 26, 2019, and

WHEREAS, the Lynden Planning Commission has reviewed the criteria listed in LMC 17.17.040 regarding the Development Standards Varaince and has found the following to be true:

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

- C. That the granting of such a variance will not be materially detrimental to the public health, safety and general welfare; and
- D. That the granting of such a variance will not be injurious to the property or improvements in the vicinity and zone in which the subject property is located.
- E. That the variance request is based on sound engineering judgement and includes additional mitigation sufficient to offset adverse impacts to the public interest likely to result from granting the variance.”

WHEREAS, the Lynden Planning Commission has reviewed the application and has made the following findings of fact for recommending **approval** the Young’s Long Plat and Development Standards:

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 **Young’s Long Plat and Development Standards Variance #19-01** by a vote of 5-0, to the Lynden City Council, subject to the Technical Review Committee Report dated June 26, 2019 and further subject to the following condition:

- That tree numbers 36-43, 44-51 and 90-92 of the Kayser Tree Inventory conducted by Aubrey Stargell, Certified Arborist dated June 24, 2019, be retained unless deemed to be unsafe or in poor health by a licensed arborist. If these trees are removed, they must be replaced with 5-foot to 6-foot native conifers per SEPA Determination #19-05.

PASSED by the Planning Commission of the City of Lynden, Whatcom County, at their regular meeting held on the 11th day of July 2019.



 Tim Faber, Chairperson
 Lynden Planning Commission



 Heidi Guddé,
 Planning Director

CITY OF LYNDEN
FINDINGS OF FACT AND CONCLUSIONS OF LAW

REGARDING THE APPLICATION OF
Joan Kayser on behalf of the Jack and
Josephine Young Living Trust, TO
SUBDIVIDE PROPERTY

Petitioner

LP #19-01

FINDINGS OF FACT, CONCLUSIONS OF
LAW, CONDITIONS and DECISION on
SUBDIVISION APPLICATION #19-01

LOT B, YOUNG’S DOUBLE DITCH LOT LINE ADJUSTMENT, AS PER THE MAP
THEREOF RECORDED IN THE AUDITOR’S OFFICE OF WHATCOM COUNTY,
WASHINGTON UNDER FILE NO. 2018-0501734. SITUATE IN WHATCOM COUNTY,
WASHINGTON.

COMMONLY DESCRIBED AS: 8323 Double Ditch Road, Lynden

Has applied for a subdivision of the above described parcel into 7 residential lots within the RS-100 zone. In addition, the applicants are also requesting a Development Standards Variance requesting that the proposed cul-de-sac serving their plat exceed the maximum length of 450-feet. The Lynden Planning Commission held a public hearing on July 11, 2019, and recommended approval to the City Council through Planning Commission Resolution #19-01. Said request having come before the Lynden City Council on August 5, 2018, and the Lynden City Council having fully and duly considered the request, hereby makes the following:

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1.01 Application. Joan Kayser on behalf of the Jack and Josephine Young Living Trust, has filed an application (“Property Owners”) for a subdivision which was accepted by the City as complete on May 8, 2019.

1.02 Location. The Property is located at 8323 Double Ditch Road in Lynden, Whatcom Co., Washington as described above.

1.03 Ownership. Jack and Josephine Young Living Trust are the Property Owners.

1.04 Request. To subdivide a parcel approximately 3.35 acres in size into 7 residential lots located within the RS-100 zone.

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

1.06 Conformance with Zoning and Comprehensive Plans. The subdivision of the Property proposed in the application is in conformity with City zoning ordinances, comprehensive plans, and all other applicable City development regulations including Chapter 17.15 LMC.

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

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

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

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

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

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

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

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

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

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

II. CONDITIONS

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

Project Summary:

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 RS-100 single family zone.

Minimum Lot Size: The lots proposed in this subdivision meet the RS-100 minimum lot size of 10,000 square feet. As initially proposed, parcels of the Young Long Plat range from 13,550 square feet to 17,827 square feet.

Lot width: Per 18.14.010(c), the minimum frontage of each lot must be at least 50 feet. For lots located within the cul-de-sac, the minimum frontage must be at least 40-feet.

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

Cul-de-Sac Length: Per LMC 18.14.100(C), cul-de-sac street shall not exceed 450 feet in length unless specifically varied through the process described in Chapter 17.17. Staff understands that in conjunction with the subdivision a variance has been proposed which would allow the cul-de-sac to exceed 450 feet. This application is addressed in the comments below.

Build-out: Be advised, only single-family homes and association accessory uses are permitted within the RS-100 zone. All lots are subject to the development requirements listed under 19.15 of the Lynden Municipal Code and associated design standards. This includes, but is not limited to, Section 19.15.060 which sets a maximum lot coverage of 35% for each lot.

Parking: Be advised, per Chapter 19.51.040 of the LMC, a minimum of 2 parking stalls is required *per home*. 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.

Long Plat Advisory Comments

1. **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.
2. **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.
3. **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.
4. **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.

5. *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.
6. *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.
7. *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.
8. *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.
9. *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.
10. *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 PRD approval.
11. *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. The City of Lynden does not monitor or enforce restrictions which appear in CC&R documents.

Specific Project Comments from the Technical Review Committee:

Planning and Development

1. *Plat Area Break-down:* Whatcom County and the City of Lynden have been mandated to participate in an annual report provided to the State which tracks achieved housing density. In an effort to track accurate data for this program all plats will be required to provide supporting data. Please provide on the face of the plat a table which breaks down the total area of the plat into the categories shown below. Note that in some instances the area may be zero and that "other infrastructure" could refer to area used for sewer pump station, stormwater ponds, etc.

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

2. *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.
3. *Tree Note:* The character of the Double Ditch neighborhood includes the presence of large trees intermingled among the residences. This character was emphasized with the requirement for a tree inventory and report placed on the previous LLA (Young’s Double Ditch LLA, AF #2018-0501734).

Furthermore, Per LMC 19.16.140, all trees greater than 12” diameter at breast height (DBH) shall be identified and marked on the plat and a narrative of how those trees will be impacted or preserved shall be provided to the City. Efforts shall be made to preserve healthy large trees on this entire parcel.

Provide tree inventory showing trees greater than 12” DBH and how these relate to the proposed plat. This inventory and report shall be updated prior to preliminary plat approval. Impacts to large trees will require mitigation.

Provide a planting plan for the plat. If those boundary trees are no longer present, applicant will be required to plant additional trees (native conifers) along the boundary. Note protected planting areas for these boundary trees on the face of the plat.

4. *Street Trees:* Be advised, per Sec. 18.14.120, the developer will be required to provide street trees within the dedicated public utility easement adjacent to the street or the 4 foot planting strip. There shall be a minimum of one tree per lot with a maximum of one hundred feet between trees. The minimum size of street trees at the time of installation shall be 2 inches diameter at breast height (DBH). Species of tree to be consistent with the City of Lynden approved tree list. Installation must include root barrier and be done according to Figure 4-19A of the Engineering Design and Development Standards. General maintenance of street trees shall be the responsibility of the adjoining property owner.

Public Works

5. *Utility Easements:* Revise plat to show the required 10 foot utility easement along the frontage of each lot.
6. Stormwater Advisory Comments
 - a. A stormwater management plan prepared by a professional engineer will be required for this development and must be approved by the City of Lynden prior to approval of construction plans. An erosion control plan must be included in the drainage plan and construction plans as necessary.
 - b. All plans must be designed and constructed in compliance with the Department of Ecology's Best Management Practices and the standards approved in the Manual for Engineering Design and Development Standards.
 - c. Stormwater from public streets may be infiltrated within the dedicated right-of-way, or within a separate dedicated tract, but may not be within the street prism. Infiltration areas and street trees should have adequate separation to insure the proper functioning of the drainage system and survival of the tree.
 - d. A Construction National Pollutant Discharge Elimination System (NPDES) permit may be needed.
7. 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 extended to the north side of the proposed plat. Show easements as appropriate on the face of the plat.
 - b. 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.
8. Sanitary Sewer
 - a. Be advised, sanitary sewer and water system design and construction must meet the requirements of the City of Lynden Engineering Design and Development Standards.
 - b. 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 side of the proposed plat. Show easements as appropriate on the face of the plat.

Fire and Life Safety

9. *Fire Service Impact Fee:* Half of the required fire impact fee is due at the time of final plat approval. The balance of the fire impact fees can be deferred to the time of building permit. Contact Planning staff for an estimated fee total.
10. *Street Addressing:* Be advised, address numbers must be clearly posted on each house to assist in efficient fire aid response.

11. *Hydrants:* The installation of a fire hydrant is required within the cul-de-sac. The final hydrant location will be determined upon review of civil plans and must be approved by the Fire Department.

Parks and Recreation

12. *Park Impact Fee:* 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.

Young Long Plat Development Standards Variance

Project Name:	Young’s Long Plat and Development Standards Variance #19-01
Application Type:	Long Plat & Development Standards Variance
Hearing Type:	Quasi-Judicial
Hearing Objective:	The objective of this public hearing is to determine whether the proposed subdivision and variance meets the requirements found within the City of Lynden Subdivision Code – Title 18.
Project Description:	A Long Plat and Development Standards Variance application requesting to subdivide approximately 3.35 acres into 7 single family residential lots within the RS-100 zone. The applicant is also requesting a variance to LMC 18.14.100 regarding cul-de-sac lengths.

The applicant is requesting a variance to Section 18.14.100 (C) of the Lynden Municipal Code (LMC) which states that cul-de-sac streets shall not exceed four hundred and fifty feet in length unless specifically varied through the process outlined in LMC 17.17.

LMC 17.17.040 states, where there are unnecessary hardships and practical difficulties which render it difficult to carry out the provisions of the development standards, the City Council shall have power to grant a variance in harmony with the general purpose and intent of the provisions contained therein. Such variances may vary the rules, regulations or provisions of the development standards so that the spirit of those standards will be observed; public safety secured; and substantial justice done. However, the City Council shall not vary any of the rules, regulations or provisions of those development standards unless it shall approve findings that all of the following conditions exist in each case:

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

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

The applicant provided the following response to the criteria listed above:

“Because there is no other way to access this property, we are requesting a variance on the length of the cul-de-sac from 450-feet to approximately 528-feet.”

Variance Application Comments from the Technical Review Committee:

Planning and Development

1. *Variance Justification:* Please provide a response to each of the variance conditions listed above (A-E). Staff recommends that responses explore examples of this variance being granted elsewhere in the City; expound on what, if any, impacts the variance would have on surrounding properties; note the conversations with the Lynden Fire regarding the ability of the Department to provide service to the full length of the extended cul-de-sac. **Applicant provided, on June 20,2019, responses to each of the development standards variance criteria. See attached.**
2. *Alternate Design Analysis:* Although the applicant has stated that there is no other way to access the property, alternative plat designs could avoid a cul-de-sac longer than 450 feet through the use of pipe-stem lots or by creating larger lots. Provide in writing an expanded discussion on these issues which would justify the variance. **Applicant provided, on June 20,2019, responses to each of the development standards variance criteria. See attached.**

Fire Department

Variance Request: The Lynden Fire Department does not have concerns regarding the proposed development standards variance of an extended dead end if a standard turn-around (cul-de-sac) is constructed and the homes are

III. DECISION

Petitioner’s application to subdivide the property described herein into seven (7) parcels for future development and to allow the requested development standards variance is hereby **Preliminarily Approved** as outlined in Planning Commission Resolution #19-01 and subject to the conditions set forth in this document.

DATED: _____

 Scott Korthuis
 Mayor

PLANNING COMMISSION MEETING MINUTES

7:30 PM July 11, 2019
City Hall Annex

1. CALL TO ORDER

2. ROLL CALL

Present: Gerald Veltkamp, Blair Scott, Lynn Templeton, Tim Faber, Brett Kok and Bryan Korthuis

Absent with notice: Diane Veltkamp.

Staff Present: Gudde, Planning Director and Samec, City Planner.

The Commission welcomed Bryan Korthuis to the Commission. This is his first meeting with the Planning Commission.

3. APPROVAL OF MINUTES

A. April 11, 2019

Minutes approved as presented. Scott motion / G. Veltkamp 2nd. Approved unanimously.

4. Declaration of Conflict

Kok will abstain from the Rosewood Rezone discussion and vote. Kok has property close to the proposed parcel and prefers not to be involved in the agenda item. Other than Kok, none of the other Commissioners reported any ex-parte contact or conflict of interest.

5. PUBLIC HEARINGS

A. Youngs Long Plat and Development Standards Variance #19-01

Chairperson Faber opened the public hearing. Gudde addressed her memo dated July 3, 2019. The application has been brought forward by the Young Family. Located with a single access point at 8323 Double Ditch Road, just south of Village Drive, the property is zoned for single-family use with minimum lot sizes of 10,000 square feet (RS-100). The 3.35 acre plat is proposing the creation of 7 single family lots. The design of the plat is a single stubbed cul-de-sac. To facilitate the plat layout that is proposed, the applicant is requesting that the cul-de-sac exceed the maximum cul-de-sac length of 450 feet. Development Standards Variance

Application 19-01 requesting this exception has also been submitted for the review. Beyond the development standards variance, the long plat application is proposing to meet the plat design criteria described in LMC 18.14.

It should be noted that previous land use actions on this property have resulted in approval conditions related to the existing onsite trees which is discussed in the TRC report. Additionally, LMC 19.61.140 requires that healthy trees greater than 12" in diameter at five feet in height be preserved by every reasonable effort. And, that those trees that are removed be replaced in equal number. As such, the applicant is developing a survey documenting the tree inventory on the property and identifying those trees or stands of trees which can be safely preserved. In the SEPA findings, staff has required that the applicant develop a plan to replace trees which are removed. The mitigation may result in the need for a landscape easement to be placed on the face of the plat.

Speaking in Favor.

Joan Kayser, 8323 Double Ditch Road, Lynden

Kayser addressed the Commission and stated that she is the trustee of the family trust. Kayser is requesting to sub-divide the property into 7 single family lots served by a cul-de-sac that exceeds 450-feet. Their goal is to create large lots and to encourage custom homes and preserve the existing neighborhood. Kayser stated that various plat designs were looked at and the proposed layout is the most straightforward and aesthetically pleasing way to reach their goal.

Kayser addressed the Development Standards Variance criteria (see packet for applicant's complete response) and stated that the variance will not grant *special privilege* as there are several examples of other cul-de-sacs that exceed the 450-foot length requirement.

That the variance is necessary because of *special circumstances* relating to the property. Kayser stated that the proposed layout will allow the subject property to be developed as allowed by code while minimizing the length of road and shared infrastructure, both public and private. Neighboring properties are already developed.

That granting the variance will *not be materially detrimental* to the public. Kayser stated that the Fire Department has reviewed the request and determined that the longer cul-de-sac length can safely be serviced by emergency vehicles. The Kayser's are aware that they will need to install a fire hydrant.

That the variance will *not be injurious* to the property or vicinity. Kayser stated that the proposed plat layout will allow for the creation of residential lots consistent with the character of the residential developments surrounding the site.

That the variance is based on *sound engineering judgement* and includes additional mitigation sufficient to offset adverse impacts. Kayser stated that the

proposed cul-de-sac will create a simple road and utility layout that will minimize stormwater runoff and future maintenance efforts.

With regards to the tree note outlined in number 3 of the TRC Report, Kayser hired an arborist to conduct a Tree Inventory at the City's request. The survey has been submitted to both the Planning Department and the Commissioners. The tree survey recorded 92 trees of 12-inch dbh and larger. Many of the trees show significant damage and or decay. A tree risk assessment was not part of the scope of the tree inventory (survey is in file).

Code states that all trees greater than 12" diameter at breast height (DBH) shall be identified and marked on the plat and a narrative of how those trees will be impacted or preserved shall be provided to the City. Efforts shall be made to preserve healthy large trees on this entire parcel. In addition, the TRC Report also asks that the proponents provide a planting plan for the plat. If those boundary trees are no longer present, applicant will be required to plant additional trees (native conifers) along the boundary.

Kayser stated that they are happy to leave the trees if that is what the Commission prefers. They will do their best to preserve as many trees as they can, however, there are many that need to come down. Kayser would prefer to remove the trees now and plant new trees once the homeowners of each lot decide where to place their homes.

The City has not had a strong preservation stance in the past. Replacement of trees will be difficult to enforce.

Gudde addressed the tree inventory and noted that she circled several trees along the north and south boundaries of the plat, those trees will either need to be preserved or replaced. The SEPA determination for the project also addresses that requirement. Another option could be to leave a majority of trees and have individual lot owners come into the City and indicate their intent.

Templeton stated that the area tends to be wet. Are there wetlands on site? Is there a detention pond proposed? Gudde stated that there are no identified wetlands and each lot is required to handle water on site. Civil plans that address that issue will come once the plat receives preliminary approval.

Templeton also asked if cul-de-sac will have a sidewalk? Gudde replied yes, the plat intends to meet all City standards except for the length of the cul-de-sac.

Kailey and Ryan Bovenkamp, 1632 Liberty Street, Unit 202, Lynden

Bovenkamp stated that her and her husband grew up in Lynden. They are supportive of the request. Ryan grew up on Fern Drive, which directly abuts the proposal. They reached out to Joan Kayser regarding the potential to purchase one of the parcels.

The Bovenkamp's also addressed the trees in the area and stated that they do creak, and some have fallen. They are not in great shape and that is a concern for safety. If they are able to acquire and build on one of the proposed parcels, they would prefer to do their own landscaping and plant their own trees. The Bovenkamp's are hopeful that the Commission votes in favor of the request.

Speaking in Opposition. None

Scott is concerned with leaving the removal of trees to the new homeowner as it will be an additional burden to them. It will be easier to require the developer to remove the trees now. It is more efficient, and it will eliminate concerns of tree removal during the construction phase. Faber agrees.

Kok asked if there is a specific type of tree required if they are required to replant? Gudde stated that the City's replacement code is not specific enough to talk about quality or type of tree. The City and proponent can discuss at that time.

Faber stated that an arborist should be hired to review the health of the trees and that information is what should be used regarding preservation etc.

Korthuis asked if there are any utility conflicts near the trees? No, all utilities come up the street.

G. Veltkamp stated that a professional opinion speaks volumes. There may be some very weak trees that could potentially be a cause for concern.

Faber asked the Commission for plat design comments.

Kok stated that the proposed plat fits in well with the neighborhood and he has no concern with the request for a longer cul-de-sac.

Templeton's only concern with the long cul-de-sac is the amount of speed one could gain while driving down the street. Gudde stated, that the street design for this plat will include on-street parking and studies show that on street parking tends to slow traffic.

G. Veltkamp has no concerns with the variance request. The amount of traffic that will be generated is minimal.

Korthuis agrees, not a concern.

Scott concurs.

Faber closed the public hearing at 8:10.

With regards to the trees, Scott would like to see that the developers work out the tree issue so that the new lot owners do not get stuck with the task. The Commission agreed.

Scott motioned to recommend approval of the Young's Long Plat and Development Standards Variance #19-01 as presented according to the findings, conditions and recommendations of the Technical Review Committee Report dated June 26, 2019, and further subject to the following condition:

- **That tree numbers 36-43, 44-51 and 90-92 of the Kayser Tree Inventory conducted by Aubrey Stargell, Certified Arborist dated June 24, 2019, be retained unless deemed to be unsafe or in poor health by a licensed arborist. If these trees are removed, they must be replaced with 5-foot to 6-foot native conifers per SEPA Determination #19-05. Seconded by Kok and the motion passed 6-0.**



TECHNICAL REVIEW COMMITTEE
Development Project Report

Date Issued:	June 12, 2019, Updated June 26, 2019
Project Name:	Young's Long Plat and Development Standards Variance #19-01
Applicant:	Joan Kayser
Property Owner:	Jack and Josephine Young Living Trust
Site Address:	8323 Double Ditch Road
Parcel Number:	400319-224357
Zoning Designation:	RS-100 Single Family
Application Type:	Long Plat & Development Standards Variance
Parcel Size:	3.35 Acres
Hearing Type:	Quasi-Judicial
Hearing Objective:	The objective of this public hearing is to determine whether the proposed subdivision and variance meets the requirements found within the City of Lynden Subdivision Code – Title 18.
Date application determined complete:	May 8, 2019
Date of Publication:	May 22, 2019
SEPA Determination:	MDNS
Project Description:	A Long Plat and Development Standards Variance application requesting to subdivide approximately 3.35 acres into 7 single family residential lots within the RS-100 zone. The applicant is also requesting a variance to LMC 18.14.100 regarding cul-de-sac lengths.

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:

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 RS-100 single family zone.

Minimum Lot Size: The lots proposed in this subdivision meet the RS-100 minimum lot size of 10,000 square feet. As initially proposed, parcels of the Young Long Plat range from 13,550 square feet to 17,827 square feet.

Lot width: Per 18.14.010(c), the minimum frontage of each lot must be at least 50 feet. For lots located within the cul-de-sac, the minimum frontage must be at least 40-feet.

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

Cul-de-Sac Length: Per LMC 18.14.100(C), cul-de-sac street shall not exceed 450 feet in length unless specifically varied through the process described in Chapter 17.17. Staff understands that in conjunction with the subdivision a variance has been proposed which would allow the cul-de-sac to exceed 450 feet. This application is addressed in the comments below.

Build-out: Be advised, only single-family homes and association accessory uses are permitted within the RS-100 zone. All lots are subject to the development requirements listed under 19.15 of the Lynden Municipal Code and associated design standards. This includes, but is not limited to, Section 19.15.060 which sets a maximum lot coverage of 35% for each lot.

Parking: Be advised, per Chapter 19.51.040 of the LMC, a minimum of 2 parking stalls is required *per home*. 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.

Long Plat Advisory Comments

1. *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.

2. 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.
3. 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.
4. 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.
5. 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.
6. 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.
7. 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.
8. 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.
9. 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.

- 10. 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 PRD approval.
- 11. 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. The City of Lynden does not monitor or enforce restrictions which appear in CC&R documents.

Specific Project Comments from the Technical Review Committee:

Planning and Development

- 1. Plat Area Break-down: Whatcom County and the City of Lynden have been mandated to participate in an annual report provided to the State which tracks achieved housing density. In an effort to track accurate data for this program all plats will be required to provide supporting data. Please provide on the face of the plat a table which breaks down the total area of the plat into the categories shown below. Note that in some instances the area may be zero and that "other infrastructure" could refer to area used for sewer pump station, stormwater ponds, etc.

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

2. *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.
3. *Tree Note:* The character of the Double Ditch neighborhood includes the presence of large trees intermingled among the residences. This character was emphasized with the requirement for a tree inventory and report placed on the previous LLA (Young's Double Ditch LLA, AF #2018-0501734).

Furthermore, Per LMC 19.16.140, all trees greater than 12" diameter at breast height (DBH) shall be identified and marked on the plat and a narrative of how those trees will be impacted or preserved shall be provided to the City. Efforts shall be made to preserve healthy large trees on this entire parcel.

Provide tree inventory showing trees greater than 12" DBH and how these relate to the proposed plat. This inventory and report shall be updated prior to preliminary plat approval. Impacts to large trees will require mitigation.

Provide a planting plan for the plat. If those boundary trees are no longer present, applicant will be required to plant additional trees (native conifers) along the boundary. Note protected planting areas for these boundary trees on the face of the plat.

4. *Street Trees:* Be advised, per Sec. 18.14.120, the developer will be required to provide street trees within the dedicated public utility easement adjacent to the street or the 4 foot planting strip. There shall be a minimum of one tree per lot with a maximum of one hundred feet between trees. The minimum size of street trees at the time of installation shall be 2 inches diameter at breast height (DBH). Species of tree to be consistent with the City of Lynden approved tree list. Installation must include root barrier and be done according to Figure 4-19A of the Engineering Design and Development Standards. General maintenance of street trees shall be the responsibility of the adjoining property owner.

Public Works

5. *Utility Easements:* Revise plat to show the required 10 foot utility easement along the frontage of each lot.
6. *Stormwater Advisory Comments*
 - a. A stormwater management plan prepared by a professional engineer will be required for this development and must be approved by the City of

Lynden prior to approval of construction plans. An erosion control plan must be included in the drainage plan and construction plans as necessary.

- b. All plans must be designed and constructed in compliance with the Department of Ecology's Best Management Practices and the standards approved in the Manual for Engineering Design and Development Standards.
- c. Stormwater from public streets may be infiltrated within the dedicated right-of-way, or within a separate dedicated tract, but may not be within the street prism. Infiltration areas and street trees should have adequate separation to insure the proper functioning of the drainage system and survival of the tree.
- d. A Construction National Pollutant Discharge Elimination System (NPDES) permit may be needed.

7. 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 extended to the north side of the proposed plat. Show easements as appropriate on the face of the plat.
- b. 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.

8. Sanitary Sewer

- a. Be advised, sanitary sewer and water system design and construction must meet the requirements of the City of Lynden Engineering Design and Development Standards.
- b. 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 side of the proposed plat. Show easements as appropriate on the face of the plat.

Fire and Life Safety

- 9. *Fire Service Impact Fee:* Half of the required fire impact fee is due at the time of final plat approval. The balance of the fire impact fees can be deferred to the time of building permit. Contact Planning staff for an estimated fee total.

10. *Street Addressing:* Be advised, address numbers must be clearly posted on each house to assist in efficient fire aid response.
11. *Hydrants:* The installation of a fire hydrant is required within the cul-de-sac. The final hydrant location will be determined upon review of civil plans and must be approved by the Fire Department.

Parks and Recreation

12. *Park Impact Fee:* 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.

Young Long Plat Development Standards Variance

Project Name:	Young's Long Plat and Development Standards Variance #19-01
Application Type:	Long Plat & Development Standards Variance
Hearing Type:	Quasi-Judicial
Hearing Objective:	The objective of this public hearing is to determine whether the proposed subdivision and variance meets the requirements found within the City of Lynden Subdivision Code – Title 18.
Project Description:	A Long Plat and Development Standards Variance application requesting to subdivide approximately 3.35 acres into 7 single family residential lots within the RS-100 zone. The applicant is also requesting a variance to LMC 18.14.100 regarding cul-de-sac lengths.

The applicant is requesting a variance to Section 18.14.100 (C) of the Lynden Municipal Code (LMC) which states that cul-de-sac streets shall not exceed four hundred and fifty feet in length unless specifically varied through the process outlined in LMC 17.17.

LMC 17.17.040 states, where there are unnecessary hardships and practical difficulties which render it difficult to carry out the provisions of the development standards, the City Council shall have power to grant a variance in harmony with the general purpose and intent of the provisions contained therein. Such variances may vary the rules, regulations or provisions of the development standards so that the spirit of those standards will be observed; public safety secured; and substantial justice done. However, the City Council shall not vary any of the rules, regulations or provisions of those development standards unless it shall approve findings that all of the following conditions exist in each case:

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

- C. That the granting of such a variance will not be materially detrimental to the public health, safety and general welfare; and
- D. That the granting of such a variance will not be injurious to the property or improvements in the vicinity and zone in which the subject property is located.
- E. That the variance request is based on sound engineering judgement and includes additional mitigation sufficient to offset adverse impacts to the public interest likely to result from granting the variance.”

The applicant provided the following response to the criteria listed above:

“Because there is no other way to access this property, we are requesting a variance on the length of the cul-de-sac from 450-feet to approximately 528-feet.”

Variance Application Comments from the Technical Review Committee:

Planning and Development

1. *Variance Justification:* Please provide a response to each of the variance conditions listed above (A-E). Staff recommends that responses explore examples of this variance being granted elsewhere in the City; expound on what, if any, impacts the variance would have on surrounding properties; note the conversations with the Lynden Fire regarding the ability of the Department to provide service to the full length of the extended cul-de-sac. **Applicant provided, on June 20,2019, responses to each of the development standards variance criteria. See attached.**
2. *Alternate Design Analysis:* Although the applicant has stated that there is no other way to access the property, alternative plat designs could avoid a cul-de-sac longer than 450 feet through the use of pipe-stem lots or by creating larger lots. Provide in writing an expanded discussion on these issues which would justify the variance. **Applicant provided, on June 20,2019, responses to each of the development standards variance criteria. See attached.**

Fire Department

3. *Variance Request:* The Lynden Fire Department does not have concerns regarding the proposed development standards variance of an extended dead end if a standard turn-around (cul-de-sac) is constructed and the homes are clearly addressed as typically required.



Young Long Plat Development Standards Variance

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LMC 17.17.040 states, where there are unnecessary hardships and practical difficulties which render it difficult to carry out the provisions of the development standards, the City Council shall have power to grant a variance in harmony with the general purpose and intent of the provisions contained therein. Such variances may vary the rules, regulations or provisions of the development standards so that the spirit of those standards will be observed; public safety secured; and substantial justice done. However, the City Council shall not vary any of the rules, regulations or provisions of those development standards unless it shall approve findings that all of the following conditions exist in each case:

- A. The variance shall not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity in which the property on behalf of which the application was filed is located; **A variance will not grant special privilege for this project. The variance will allow construction of a cul-de-sac, which is consistent with the character of neighboring residential developments in the immediate vicinity of the project. Neighboring residential developments to the east (i.e. connecting to Village Drive), to the west (i.e. connecting to Wood Creek Drive/ Forest Lane), and to the north of Main Street are all served by a series of cul-de-**

sacs. Furthermore, Lynden contains roughly a dozen examples of other cul-de-sacs that exceed the 450-foot length requirement, including, but not limited to:

- Wood Creek Drive – 1,200 feet from intersection with Forest Lane
- Fern Drive – 600 feet from intersection with Main Street
- E Front Street – 1,300 feet from intersection with Terrace Drive
- Bender Park Boulevard – 1,460 feet from intersection with Aaron Drive
- Shea Street – 690 feet from intersection with Aaron Drive
- Woodsman Drive – 650 feet from intersection with Fescue Street
- Farmview Terrace – 700 feet from intersection with S 17th Street

Several of these examples have been completed within the past five years.

- B. That such variance is necessary, because of special circumstances relating to the size, shape, topography, location, or surroundings of the subject property, to provide it with rights and privileges permitted to other properties in the vicinity in which the subject property is located; The proposed lot layout will allow the subject property to be developed as allowed by code while minimizing the length of road and shared infrastructure, both public and private. Neighboring properties to the north are already developed and preclude a connection to Fern Drive (i.e. another cul-de-sac that is longer than 450 feet). Likewise, existing property to the west is fully developed and does not provide an access point to Wood Creek Drive. Existing parcels along Double Ditch Road to the north and south of the proposed cul-de-sac are already developed and cannot accommodate a second access point to Double Ditch Road.
- C. That the granting of such a variance will not be materially detrimental to the public health, safety and general welfare; Lynden Fire Department has reviewed the site plan and has determined that the longer cul-de-sac length can safely be serviced by emergency vehicles. We are also aware that we will need to install a fire hydrant.
- D. That the granting of such a variance will not be injurious to the property or improvements in the vicinity and zone in which the subject property is located. The proposed plat layout will allow for the creation of residential lots consistent with the character of residential developments surrounding the site. All new lots will meet the sizes that are required by local zoning.
- E. That the variance request is based on sound engineering judgement and includes additional mitigation sufficient to offset adverse impacts to the public interest likely to result from granting the variance. The proposed cul-de-sac will create a simple road and utility layout that will minimize stormwater runoff generation and future maintenance efforts. A straight road will create the smallest amount of impervious surface and will minimize utility bends and fittings when compared to looping and/or branching street networks.

Variance Application Comments from the Technical Review Committee:

Planning and Development

1. *Variance Justification:* Please provide a response to each of the variance conditions listed above (A-E). Staff recommends that responses explore examples of this variance being granted elsewhere in the City; expound on what, if any, impacts the variance would have on surrounding properties; note the conversations with the Lynden Fire regarding the ability of the Department to provide service to the full length of the extended cul-de-sac. Responses to conditions A through E are provided above.
2. *Alternate Design Analysis:* Although the applicant has stated that there is no other way to access the property, alternative plat designs could avoid a cul-de-sac longer than 450 feet through the use of pipe-stem lots or by creating larger lots. Provide in writing an expanded discussion on these issues which would justify the variance.

Our intent with this development is to create large lots to encourage custom homes in keeping with and preserving the integrity of the surrounding neighborhood. In designing the long plat, we looked at various options for the plat design and found that this layout is the most straightforward and aesthetically pleasing way to reach that goal. Also reference section E as to further reason for this layout. The lots are approximately equivalent in size and are all easily accessed. All lots are considerably larger than the current zoning. Making them even larger would mean fewer lots with the same development costs and make the project cost prohibitive.

This property has been in our family for over 70 years and I personally have lived here for 20 years and plan to continue to live here. We have a vested interest in this project and the final outcome. We are striving to create a beautiful and desirable neighborhood on our property.

LP # 19-01
PLN 09259



City of Lynden

Long Plat Application

Property Owner

Name: Jack A + Josephine Young Living Trust
Address: 8323 Double Ditch Rd, Lynden
Telephone Number: 360-410-8386 Fax Number: 888-273-3981
E-mail Address: rj.kayser@msn.com

Applicant (Agent, Land Surveyor or Engineer)

Name: Joan Kayser
Address: 8323 Double Ditch, Lynden
Telephone Number: 360-410-8386 Fax Number: 888-273-3981
E-mail Address: rj.kayser@msn.com

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): 8300 range of Double Ditch Rd
Attach complete legal description Lot B Young's Double Ditch LLA

Description of Subdivision:

Current Property Size: _____ X _____ Total Acreage: 3.35
Zoning Classification: RS-100 Number of New Lots: 7
Minimum Lot Size: 13,550 Area of ROW in SF: _____
Area of drainage facility in SF (if not included as part of a lot or within the ROW): _____

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

Applicant's Signature: Joan Kayser Date: 4-12-19

Property Owner's Signature: Joan Kayser, Hee Date: 4-12-19

PRE-APPLICATION MEETING DATE: 4-4-19 HEARING DATE: _____
(APPLICATIONS WILL NOT BE ACCEPTED WITHOUT A PRE-APPLICATION MEETING)
 FEE'S (LONG PLAT - PRELIMINARY \$300.00 + \$100.00 PER LOT) DATE PAID: _____ RECEIPT # _____
 FEE'S (LONG PLAT - FINAL \$50.00 PER LOT) DATE PAID: _____ RECEIPT # _____

300.00 DSV
1000.00 LP
300.00 SEPA

PLND 9260

DSV #19-01



City of Lynden

Development Standards Variance Application

Property Owner

Name: Jack A Young & Josephine Young Living Trust
 Address: 8323 Double Ditch Rd, Lynden
 Telephone Number: 360 410 8386 Fax Number: 888-273-3981
 E-mail Address: rjkayser@msn.com

Applicant (Agent, Land Surveyor or Engineer)

Name: Joan Kayser
 Address: same as above
 Telephone Number: 360 410 8386 Fax Number: 888-273-3981
 E-mail Address: rjkayser@msn.com

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): 8300 block Double Ditch

Variance Request:

Section of the Municipal Code or Engineering Design and Development Standards to be varied: Lynden Municipal Code Section 18.14.100 (c)

Identify Desired Result: cut de-sac of 528'

DSV Criteria must be attached

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

Applicant's Signature: Joan Kayser Date: 4-12-19

Property Owner's Signature: Joan Kayser, Hee Date: 4-12-19

PRE-APPLICATION MEETING DATE: 4-4-19 HEARING DATE: _____
 (APPLICATIONS WILL NOT BE ACCEPTED WITHOUT A PRE-APPLICATION MEETING)
 FEE'S (DSV \$300.00 BASE FEE OR FINAL REVIEW COST) DATE PAID: _____ RECEIPT # _____

YOUNG

PRELIMINARY KAYSER LONG PLAT
 A PORTION OF THE SE QUARTER OF THE NW QUARTER OF SECTION 19,
 TOWNSHIP 40 NORTH, RANGE 3 EAST OF W.M.,
 WITHIN THE CITY OF LYNDEN, WHATCOM COUNTY, WASHINGTON

Curve	Bearing	Length	Chords
C1	S 87°53'20" W	93.65	93.65
C2	S 01°33'50" W	117.10	117.10
C3	S 01°33'50" W	148.10	148.10
C4	S 01°33'50" W	148.10	148.10
C5	S 01°33'50" W	148.10	148.10
C6	S 01°33'50" W	148.10	148.10
C7	S 01°33'50" W	148.10	148.10

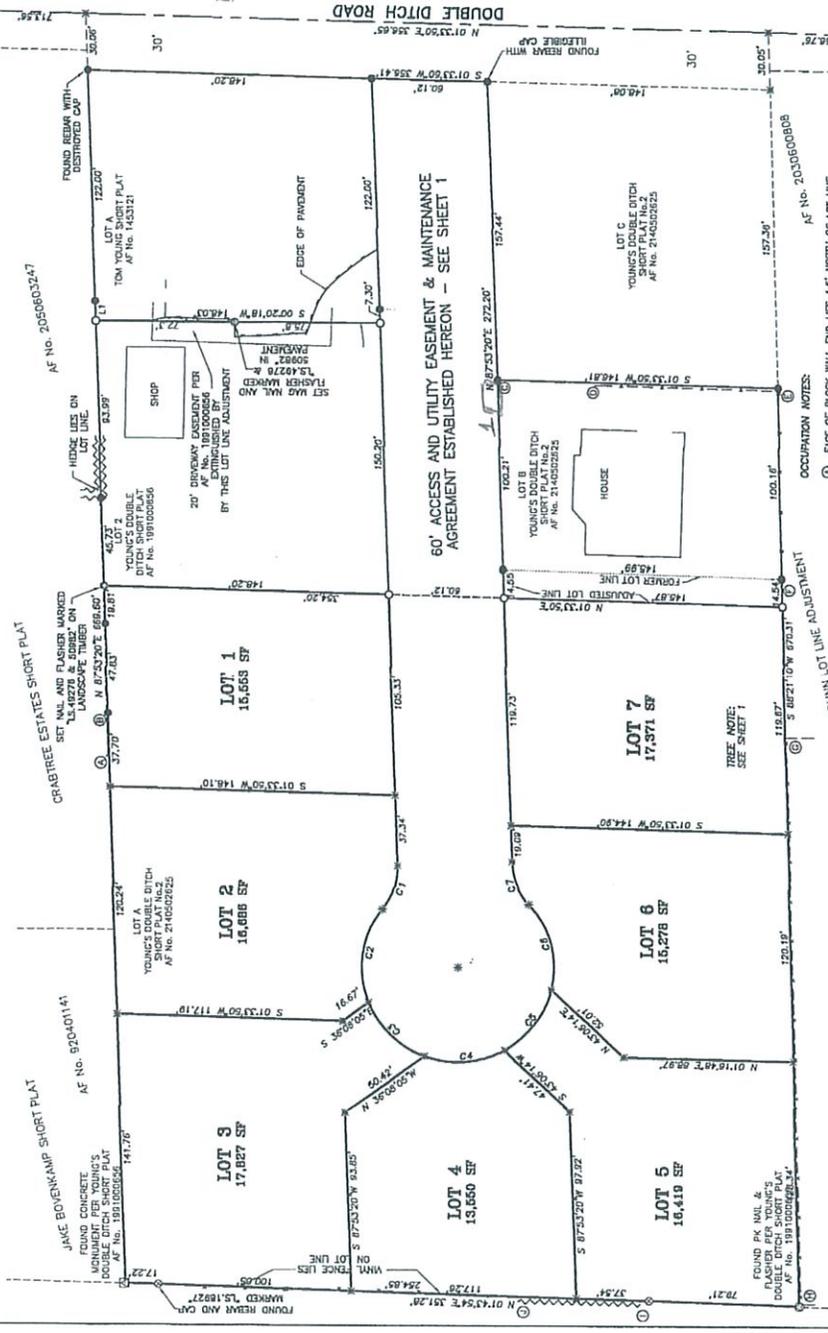
Course	Bearing	Chords
L1	S 87°53'20" W	93.65
L2	S 01°33'50" W	117.10
L3	S 01°33'50" W	148.10
L4	S 01°33'50" W	148.10
L5	S 01°33'50" W	148.10
L6	S 01°33'50" W	148.10
L7	S 01°33'50" W	148.10
L8	S 01°33'50" W	148.10

Curve	Bearing	Length	Chords
C1	S 87°53'20" W	93.65	93.65
C2	S 01°33'50" W	117.10	117.10
C3	S 01°33'50" W	148.10	148.10
C4	S 01°33'50" W	148.10	148.10

Curve
 Adjustment



SCALE: 1" = 40 FEET
 BASIS OF BEARINGS =
 CITY OF LYNDEN SURVEY
 MONUMENT NETWORK



SURVEYOR'S NOTES:
 1. "O" DENOTES 5/8" INCH REBAR WITH 1 INCH PLASTIC CAP MARKED "MS & GPS 46276 & 50827" SET BY THIS SURVEY.
 2. "●" DENOTES CAPPED REBAR MARKED "LS 3430" FOUND BY THIS SURVEY.
 3. "X" DENOTES CALCULATED POINT ONLY.
 4. THIS SURVEY WAS PERFORMED BY STANDARD FIELD TRAVERSE USING A LEICA TS12 TOTAL STATION WITH A CANNON SURVEYOR PLUS COLLECTOR/FIELD COMPUTER IN DECEMBER OF 2017 AND FEBRUARY OF 2018. ACCURACY EXCEEDS 1:10000.
 5. THIS SURVEY TIED INTO STREET MONUMENTATION AND LOT CORNERS AS SHOWN AND RELEI OF BEARINGS AND DISTANCES TO MONUMENT PLAT No. 2, FILED UNDER AF No. 214050225 FOR BASIS OF BEARINGS AND DISTANCES.
 6. THIS SURVEY WAS COMPLETED WITHOUT THE BENEFIT OF A CURRENT TITLE REPORT AND DOES NOT PURPORT TO SHOW ANY OR ALL DEFICIENCIES THAT A CURRENT TITLE REPORT MIGHT REVEAL.

OCCUPATIONAL INDICATORS AND EXISTING FENCE LINE NOTE:
 THIS SURVEY HAS DEPICTED EXISTING FENCE LINES AND/OR IMPROVEMENTS IN ACCORDANCE WITH W.A.C. CH. 362.100. THESE IMPROVEMENTS ARE NOT GUARANTEED TO BE THE LEGAL BOUNDARIES OF UNDIVIDED TITLE UNLESS THE LEGAL RESOLUTION OF OWNERSHIP BASED UPON UNWRITTEN TITLE CLAIMS HAS NOT BEEN RESOLVED BY THIS SURVEY.

NORTHWEST SURVEYING & GPS, INC.
 JERRY BELIER, L.S. 50982
 BRETT DE VRIES, L.S. 49276
 4 0 7 5 T. 360.354.1150 INSURANCE: C024

TOWNSHIP
40

RANGE
3E

SECTION
19

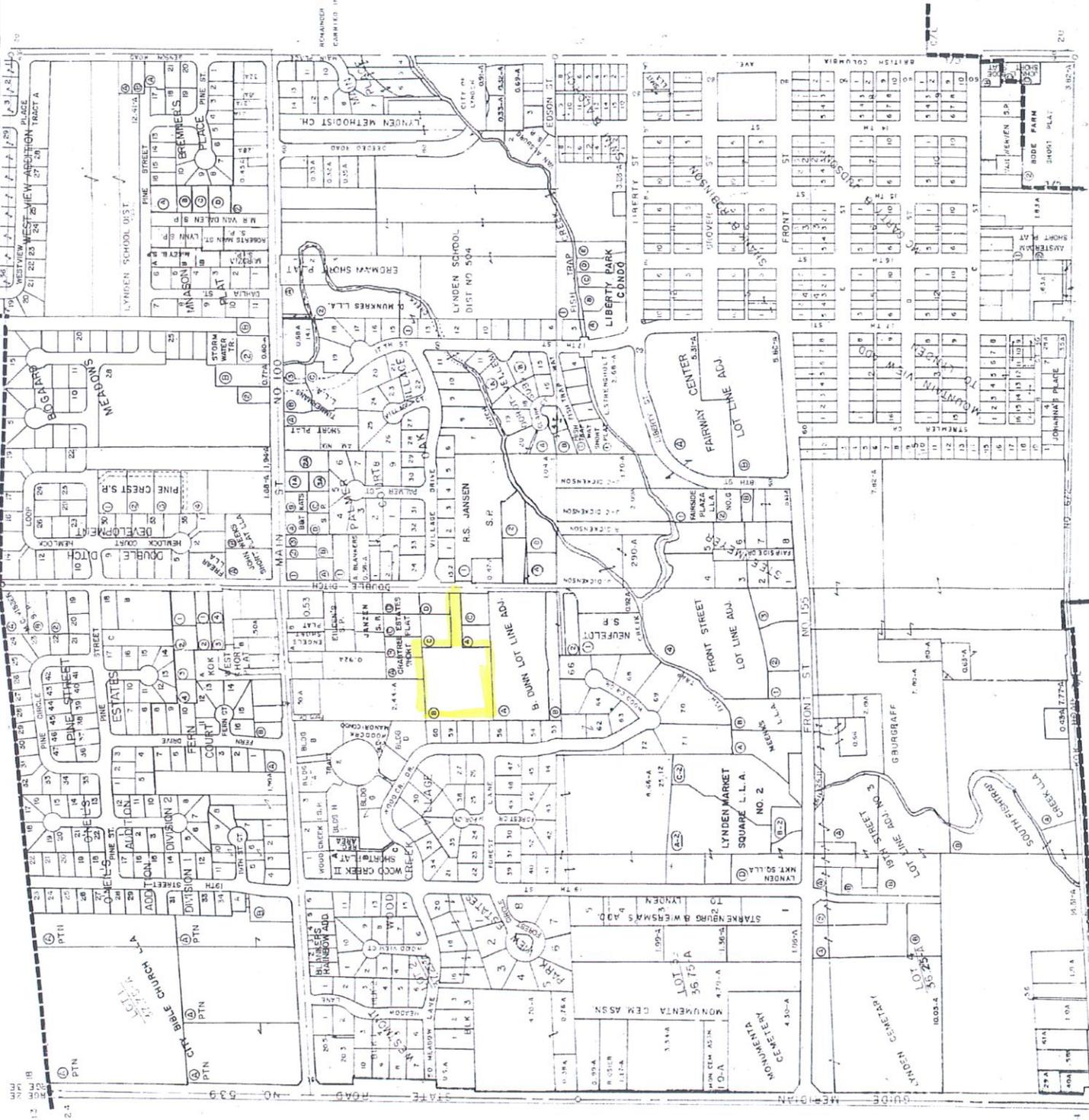
MAP NO.
01

SCALE
1" = 400'

DATE
12/25/86

REVISED
24 OCT 2018
Assessor's Office
Whitcomb Co.

THIS MAP SHOWS
PROPERTY LOCATION
AND NOT GUARANTEED
FOR ACCURATE
MEASUREMENTS



1.2
2.4
PTN

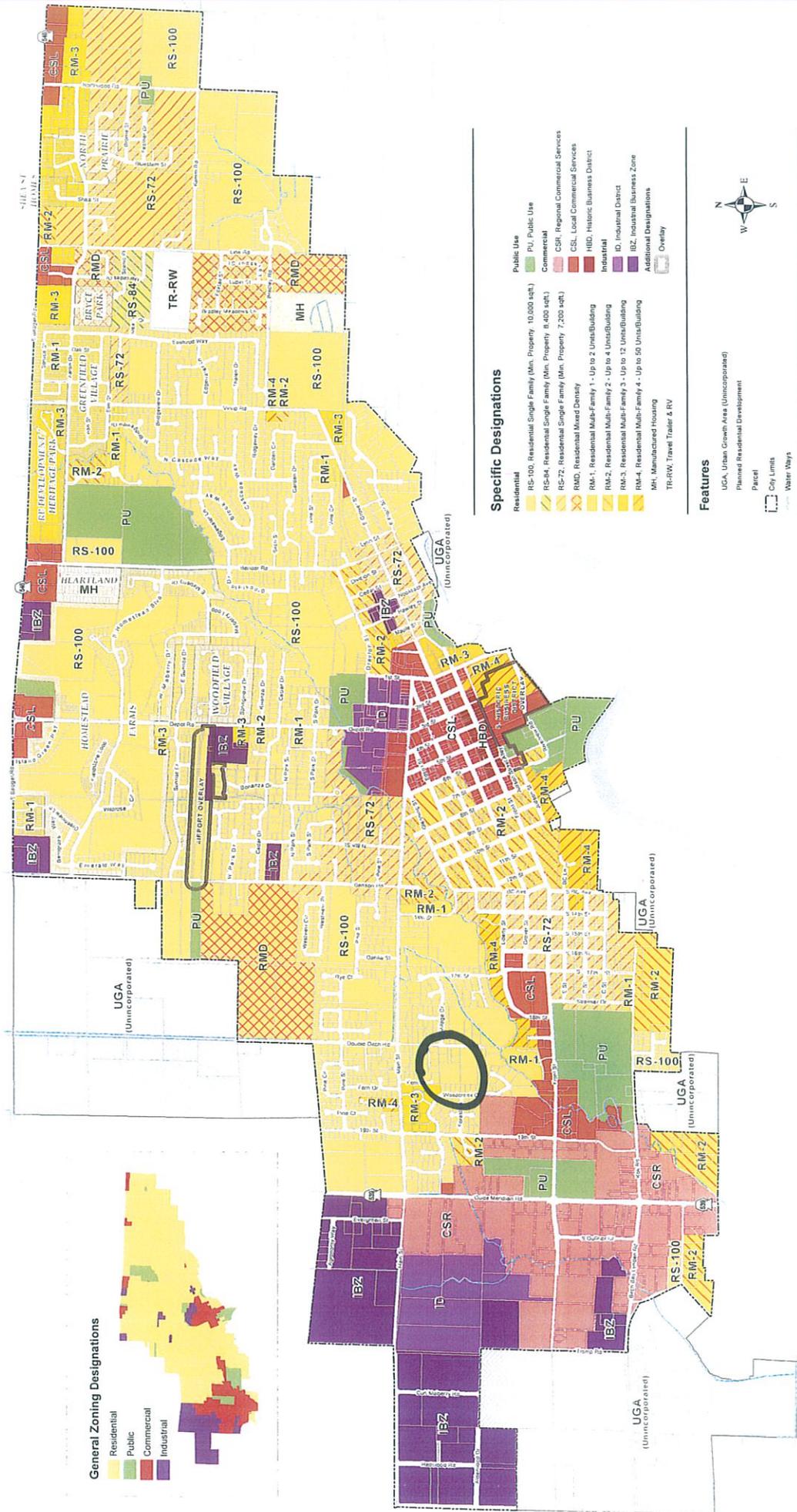
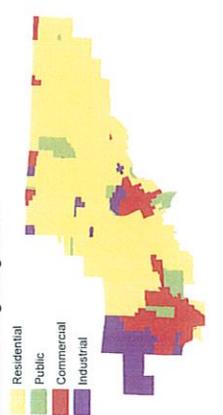
2.4



Zoning

City of Lynden

General Zoning Designations



Specific Designations

- Residential**
 - RS-100, Residential Single Family (Min. Property 10,000 sqft.)
 - RS-84, Residential Single Family (Min. Property 8,400 sqft.)
 - RS-72, Residential Single Family (Min. Property 7,200 sqft.)
 - RMD, Residential Mixed Density
 - RM-1, Residential Multi-Family 1 - Up to 2 Units/Building
 - RM-2, Residential Multi-Family 2 - Up to 4 Units/Building
 - RM-3, Residential Multi-Family 3 - Up to 12 Units/Building
 - RM-4, Residential Multi-Family 4 - Up to 50 Units/Building
 - MH, Manufactured Housing
 - TR-RW, Travel Trailer & RV
- Public Use**
 - PU, Public Use
- Commercial**
 - CSR, Regional Commercial Services
 - CSL, Local Commercial Services
- Industrial**
 - HBD, Historic Business District
 - ID, Industrial District
 - IBZ, Industrial Business Zone
- Additional Designations**
 - Overlay

Features

- UGA, Urban Growth Area (Unincorporated)
- Planned Residential Development
- Parcel
- City Limits
- Water Ways



2014-0501734

YOUNG'S DOUBLE DITCH LOT LINE ADJUSTMENT

A PORTION OF THE SE QUARTER OF SECTION 19,
TOWNSHIP 40 NORTH, RANGE 3 EAST OF W.M.,
WITHIN THE CITY OF LYNDEN, WHATCOM COUNTY, WASHINGTON

FORMER LAND DESCRIPTIONS:

- LOT A, YOUNG'S DOUBLE DITCH SHORT PLAT NO. 2, ACCORDING TO THE PLAT THEREOF, RECORDED UNDER AUDITOR'S FILE NO. 214650262, RECORDS OF WHATCOM COUNTY, WASHINGTON.
- LOT B, YOUNG'S DOUBLE DITCH SHORT PLAT NO. 2, ACCORDING TO THE PLAT THEREOF, RECORDED UNDER AUDITOR'S FILE NO. 214650262, RECORDS OF WHATCOM COUNTY, WASHINGTON.
- LOT C, YOUNG'S DOUBLE DITCH SHORT PLAT, ACCORDING TO THE PLAT THEREOF, RECORDED UNDER AUDITOR'S FILE NO. 191000056, RECORDS OF WHATCOM COUNTY, WASHINGTON.
- LOT D, TOM YOUNG SHORT PLAT, ACCORDING TO THE PLAT THEREOF, RECORDED UNDER AUDITOR'S FILE NO. 1431321, RECORDS OF WHATCOM COUNTY, WASHINGTON.

ADJUSTED LAND DESCRIPTIONS:

- LOT A OF THE YOUNG'S DOUBLE DITCH LOT LINE ADJUSTMENT, AS PER THE MAP THEREOF, RECORDED IN THE AUDITOR'S OFFICE OF WHATCOM COUNTY, WASHINGTON.
 - LOT B OF THE YOUNG'S DOUBLE DITCH LOT LINE ADJUSTMENT, AS PER THE MAP THEREOF, RECORDED IN THE AUDITOR'S OFFICE OF WHATCOM COUNTY, WASHINGTON.
 - LOT C OF THE YOUNG'S DOUBLE DITCH LOT LINE ADJUSTMENT, AS PER THE MAP THEREOF, RECORDED IN THE AUDITOR'S OFFICE OF WHATCOM COUNTY, WASHINGTON.
 - LOT D OF THE YOUNG'S DOUBLE DITCH LOT LINE ADJUSTMENT, AS PER THE MAP THEREOF, RECORDED IN THE AUDITOR'S OFFICE OF WHATCOM COUNTY, WASHINGTON.
- ALL SUBJECT TO AND/OR TOGETHER WITH ALL EASEMENTS, COVENANTS, RESTRICTIONS AND/OR AGREEMENTS OF RECORD, OR OTHERWISE.

SURVEYOR'S CERTIFICATE:

I HEREBY CERTIFY THAT THIS LOT LINE ADJUSTMENT WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON AN ACTUAL SURVEY MADE IN COMPLIANCE WITH STATE LAWS.

Jeromy Demeyer
JEROMY DEMEYER, P.L.S. CERTIFICATE NO. 50982 DATE 05-15-18
NORTHWEST SURVEYING & GPS, INC. 407 5TH STREET, LYNDEN, WA 98264

CITY OF LYNDEN APPROVAL:

I HEREBY CERTIFY THAT I HAVE EXAMINED THIS LOT LINE ADJUSTMENT FOR CONFORMANCE WITH APPLICABLE STATE STATUTES AND CITY SUBORDINANCE AND ZONING ORDINANCES AND HEREBY APPROVE THE SAME.

THIS 24th DAY OF April, 2018.

Hedi Goode
HEDI GOODE, PLANNING DIRECTOR

AUDITOR'S CERTIFICATE:

I HEREBY CERTIFY THAT THIS LOT LINE ADJUSTMENT WAS FILED FOR RECORD IN THE OFFICE OF WHATCOM COUNTY, WASHINGTON THIS 15th DAY OF May, 2018 AT 2:32 PM (P.M.) AT THE REQUEST OF NORTHWEST SURVEYING & GPS, INC. AND IS RECORDED UNDER AUDITOR'S FILE NUMBER 2018-0501734

Debbie O'Connell
DEBBIE O'CONNELL, DEPUTY AUDITOR

DECLARATION - LOT LINE ADJUSTMENT:

KNOW ALL MEN BY THESE PRESENTS, THAT WE, THE UNDERSIGNED OWNERS, HEREBY DECLARES THIS LOT LINE ADJUSTMENT IS MADE WITH OUR FREE CONSENT AND ACCORDANCE WITH OUR WISHES AND DO HEREBY GRANT AND RESERVE ANY EASEMENTS SHOWN HEREON FOR THE USES AND PURPOSES MENTIONED IN THE INSTRUMENT.

Richard Kayser
RICHARD KAYSER, LOT A
Josephine Young
JOSEPHINE YOUNG, CO-TRUSTEE OF THE JACK YOUNG JOSEPHINE YOUNG TRUST
11/7/0 NOVEMBER 2, 2017 - LOT B, C, D

ACKNOWLEDGMENT

STATE OF WASHINGTON)
COUNTY OF WHATCOM)
I, CERTIFY THAT I KNOW OR HAVE SATISFACTORY EVIDENCE THAT RICHARD KAYSER AND JOAN KAYSER ARE THE PERSONS WHO APPEARED BEFORE ME, AND SAID PERSONS ACKNOWLEDGED THAT THEY SIGNED THIS INSTRUMENT, ON DATE STATED THAT THEY ARE AUTHORIZED TO EXECUTE THE INSTRUMENT AND ACKNOWLEDGED IT TO BE THE FREE AND VOLUNTARY ACT OF SUCH PARTIES FOR THE USES AND PURPOSES MENTIONED IN THE INSTRUMENT.
THIS 11th DAY OF March, 2018.
John H. Kelly
NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON.
RESIDING AT *Feenice*, WASHINGTON. MY COMMISSION EXPIRES 11-19-2020



ACKNOWLEDGMENT

STATE OF WASHINGTON)
COUNTY OF WHATCOM)
I, CERTIFY THAT I KNOW OR HAVE SATISFACTORY EVIDENCE THAT JOHN E. KAYSER AND JOSEPHINE YOUNG ARE THE PERSONS WHO APPEARED BEFORE ME, AND SAID PERSONS ACKNOWLEDGED THAT THEY SIGNED THIS INSTRUMENT, ON DATE STATED THAT THEY ARE AUTHORIZED TO EXECUTE THE INSTRUMENT AND ACKNOWLEDGED IT AS CO-TRUSTEES OF THE JACK YOUNG JOSEPHINE YOUNG TRUST 11/7/0 NOVEMBER 2, 2017, TO BE THE FREE AND VOLUNTARY ACT OF SUCH PARTY FOR THE USES AND PURPOSES MENTIONED IN THE INSTRUMENT.
THIS 21st DAY OF March, 2018.
John M. Kersner
NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON.
RESIDING AT *Feenice*, WASHINGTON. MY COMMISSION EXPIRES 11-14-2020



DECLARATION - 60' ACCESS & UTILITY EASEMENT:

KNOW ALL MEN BY THESE PRESENTS, THAT WE, THE UNDERSIGNED OWNERS OF PROPERTY ADJACENT TO THIS YOUNG'S DOUBLE DITCH LOT LINE ADJUSTMENT AND WHO SHARES ACCESS WITH THIS LOT LINE ADJUSTMENT, HEREBY DECLARE AND AGREE THAT THE 60' ACCESS AND UTILITY EASEMENT SHOWN HEREON IS MADE IN ACCORDANCE WITH THE INTENT OF THE YOUNG'S DOUBLE DITCH SHORT PLAT NO. 2 AS ENFORCED BY OUR CO-TRUSTEES OF THE JACK YOUNG JOSEPHINE YOUNG TRUST 11/7/0 NOVEMBER 2, 2017. WE ALSO SOON TO EVIDENCE OUR CONSENT TO THE MAINTENANCE NOTE SET FORTH ON THIS LOT LINE ADJUSTMENT.

John M. Kersner
JOHN M. KERSNER, LOT C
YOUNG'S DOUBLE DITCH SHORT PLAT NO. 2

ACKNOWLEDGMENT

STATE OF WASHINGTON)
COUNTY OF WHATCOM)
I, CERTIFY THAT I KNOW OR HAVE SATISFACTORY EVIDENCE THAT JOHN M. KERSNER AND KATHLEEN M. KERSNER ARE THE PERSONS WHO APPEARED BEFORE ME, AND SAID PERSONS ACKNOWLEDGED THAT THEY SIGNED THIS INSTRUMENT, ON DATE STATED THAT THEY ARE AUTHORIZED TO EXECUTE THE INSTRUMENT AND ACKNOWLEDGED IT TO BE THE FREE AND VOLUNTARY ACT OF SUCH PARTY FOR THE USES AND PURPOSES MENTIONED IN THE INSTRUMENT.
THIS 4th DAY OF April, 2018.
John M. Kersner
NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON.
RESIDING AT *Feenice*, WASHINGTON. MY COMMISSION EXPIRES 11-14-2020



60' ACCESS AND UTILITY EASEMENT AND MAINTENANCE NOTE:

THE 60' ACCESS AND UTILITY EASEMENT AS SHOWN HEREON AMENDS AND REPLACES IN ITS ENTIRETY THE EXISTING VARIABLE WIDTH ACCESS & UTILITY EASEMENT ESTABLISHED ON THE YOUNG'S DOUBLE DITCH SHORT PLAT NO. 2 FILED UNDER AP NO. 2145002630. ALL ACCESS & UTILITY EASEMENTS ESTABLISHED ON THE YOUNG'S DOUBLE DITCH SHORT PLAT NO. 2 FILED UNDER AP NO. 2145002630, BY ALL LOT OWNERS WITHIN THIS LOT LINE ADJUSTMENT AND ALSO BY THE OWNERS OF LOT C OF YOUNG'S DOUBLE DITCH SHORT PLAT NO. 2 (AS ENFORCED BY THEIR SIGNATURES ABOVE), BASED ON THE PRO RATA USE OF THE EASEMENT BY EACH LOT OWNER (TAKING IN TO ACCOUNT THE ACTUAL LENGTH OF THE EASEMENT AREA UTILIZED BY A LOT OWNER FOR ACCESS TO THEIR LOT) AND AS AGREED TO BY THE SIGNATURES ABOVE, SHALL REMAIN IN FULL FORCE AND EFFECT. THE SIGNATURES ABOVE SHALL CONSTITUTE AN ENFORCEABLE LIEN AGAINST ANY LOT WHOSE OWNER REFUSES OR FAILS TO PAY THEIR SHARE OF SAID COSTS AS DETERMINED BY THE COURT OF APPEALS IN ACCORDANCE WITH WASHINGTON STATE LAW. THIS PROVISION SHALL BE CONSTRUED AS A COVENANT RUNNING WITH THE LAND.

TREE NOTE:

LOT B OF THIS LOT LINE ADJUSTMENT INCLUDES A NUMBER OF LARGE TREES PRIOR TO AND/OR UPON FURTHER DEVELOPMENT OF LOT B. AN INVENTORY OF ALL EXISTING TREES GREATER THAN THREE INCHES IN DIAMETER AT CHEST HEIGHT MUST BE PROVIDED TO THE CITY OF LYNDEN. THE INVENTORY MUST BE MADE TO PRESERVE HEALTHY AND SAFE TREES WITHIN A 10 FOOT STRIP ALONG THE SOUTH AND WEST BOUNDARY LINES OF SAID LOT B.



NORTHWEST SURVEYING & GPS, INC.
JEROMY DEMEYER, L.S. 50982
BRETT DE VRIES, L.S. 49276
4 0 7 5 T H S T R E E T, L Y N D E N, W A.
PH. 360.354.1050 NWSURVEY.COM

Yours Double Ditch

2018-050704

YOUNG'S DOUBLE DITCH LOT LINE ADJUSTMENT

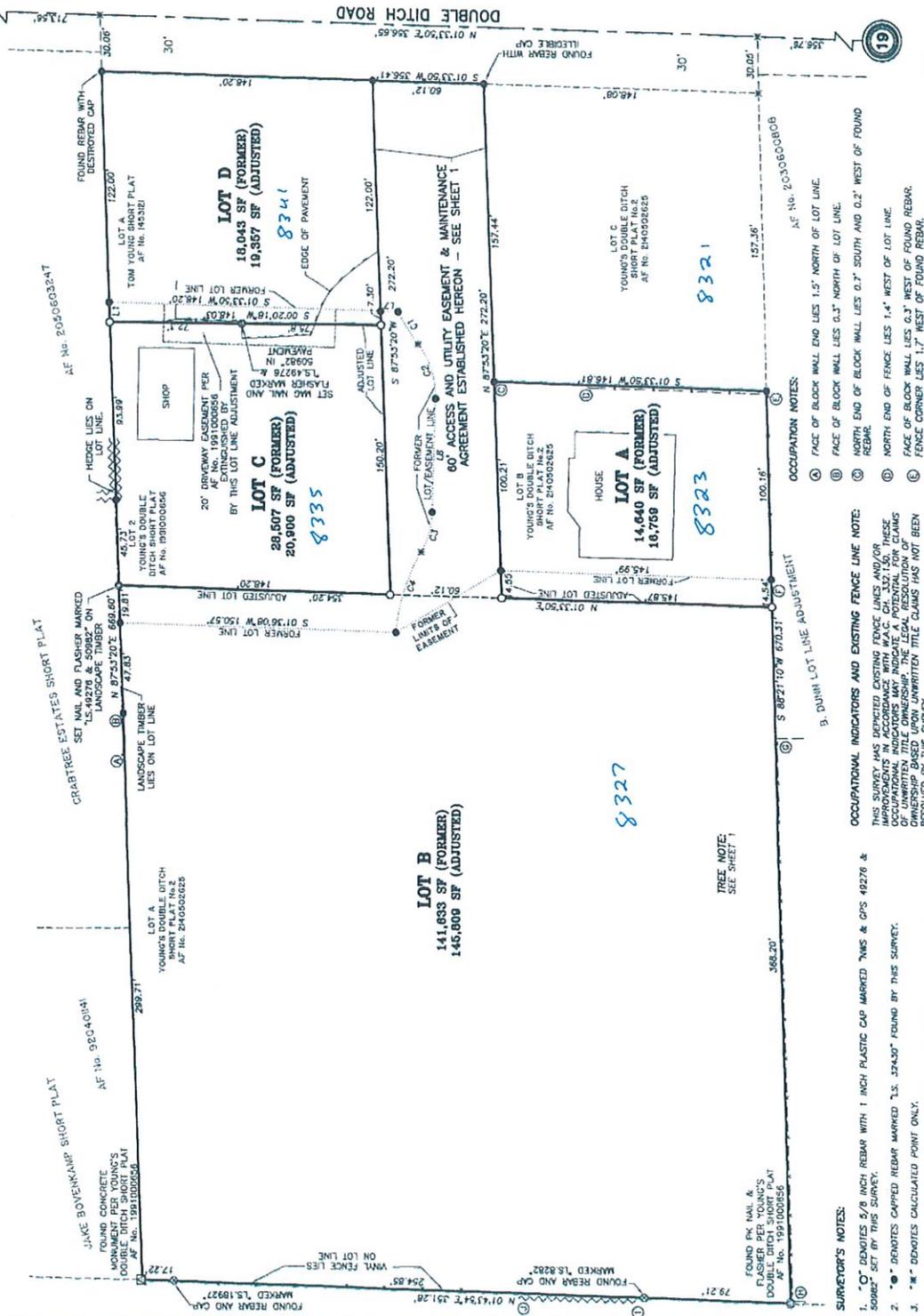
A PORTION OF THE SE QUARTER OF THE NW QUARTER OF SECTION 19,
TOWNSHIP 40 NORTH, RANGE 3 EAST OF W.M.,
WITHIN THE CITY OF LYNDEN, WHATCOM COUNTY, WASHINGTON

SHEET 2 OF 2



Curve	Bearing	Distance
L1	S 87°53'20" W	27.07'
L2	S 02°20'18" W	27.07'
L3	N 89°23'02" E	8.07'
L4	S 87°53'20" W	13.27'
L5	S 02°20'18" W	27.07'
L6	S 87°53'20" W	32.68'
L7	S 02°20'18" W	9.50'
L8	N 88°21'53" W	60.00'

Curve	Radius	Length	Delta
C1	45.00'	30.91'	19°27'10"
C2	45.00'	22.75'	28°12'10"
C3	195.00'	46.32'	24°43'40"



BASIS OF BEARINGS =
CITY OF LYNDEN SURVEY
MONUMENT NETWORK

LLA #1

SURVEYOR'S NOTES:

- "O" DENOTES 5/8 INCH REBAR WITH 1 INCH PLASTIC CAP MARKED "NWS & GPS 492276 & 509827" SET BY THIS SURVEY.
- "•" DENOTES CAPPED REBAR MARKED "S. 38430" FOUND BY THIS SURVEY.
- "#•" DENOTES CALCULATED POINT ONLY.
- THIS SURVEY WAS PERFORMED BY STANDARD FIELD TRAVERSE USING A LEICA TS12 TOTAL STATION WITH A CARLSON SURVEYOR PLUS COLLECTOR/FIELD COMPUTER IN DECEMBER OF 2017 AND FEBRUARY OF 2018. ACCURACY EXCEEDS 1:10,000.
- THIS SURVEY TIED INTO STREET MONUMENTATION AND LOT CORNERS AS SHOWN AND REIED UPON YOUNG'S DOUBLE DITCH SHORT PLAT No. 2, FILED UNDER AF No. 2146502625 FOR BASIS OF BEARINGS AND SECTION SUBDIVISION.
- THIS SURVEY WAS COMPLETED WITHOUT THE BENEFIT OF A CURRENT TITLE REPORT AND DOES NOT PURPORT TO SHOW ANY OR ALL EASEMENTS THAT A CURRENT TITLE REPORT MIGHT REVEAL.

NORTHWEST SURVEYING & GPS, INC.
 LYNDEN, WASHINGTON
 BRETT DE VRIES, L.S. 402276
 407 5TH STREET, LYNDEN, WA
 PH. 360.354.1950 NWSURVEY.COM

OCCUPANCY NOTES:

- FACE OF BLOCK WALL END LIES 1.5' NORTH OF LOT LINE.
- FACE OF BLOCK WALL LIES 0.3' NORTH OF LOT LINE.
- NORTH END OF BLOCK WALL LIES 0.7' SOUTH AND 0.2' WEST OF FOUND REBAR.
- NORTH END OF FENCE LIES 1.4' WEST OF LOT LINE.
- FACE OF BLOCK WALL LIES 0.3' WEST OF FOUND REBAR.
- FENCE CORNER LIES 1.7' WEST OF FOUND REBAR.
- WEST END VINYL FENCE LIES 0.3' NORTH AND 8.6' EAST OF SET REBAR.
- CHAIN LINK FENCE CORNER LIES 0.7' SOUTH OF LOT LINE.
- CHAIN LINK FENCE CORNER LIES 0.9' SOUTH AND 1.1' EAST OF FOUND MAIL AND FLASHER.
- SOUTH END OF TREE LIES 1.9' WEST OF LOT LINE.
- NORTH END OF TREE LIES 2.5' WEST OF LOT LINE.

TREE NOTE:
SEE SHEET 1

FOUND REBAR AND CAP:
FOUND REBAR AND CAP MARKED "S. 38430" FOUND BY THIS SURVEY.

FOUND REBAR AND CAP:
FOUND REBAR AND CAP MARKED "S. 38430" FOUND BY THIS SURVEY.

Whatcom County Assessor & Treasurer

Property Search Results > 185024 JACK A & JOSEPHINE YOUNG LIVING TRUST for Year 2019 - 2020

Property

Account

Property ID:	185024	Legal Description:	LOT B YOUNG'S DOUBLE DITCH LLA AS REC AF 2018-0501734
Parcel # / Geo ID:	4003192243570000	Agent Code:	
Type:	Real		
Tax Area:	0400 - LYNDEN 504 L C10 LPR	Land Use Code	18
Open Space:	N	DFL	N
Historic Property:	N	Remodel Property:	N
Multi-Family Redevelopment:	N		
Township:	T40N	Section:	19
Range:	R03E	Legal Acres:	3.3500

Location

Address:	DOUBLE DITCH RD LYNDEN, WA	Mapsc0:	
Neighborhood:	2240010300 RAC	Map ID:	2JMS_19MID
Neighborhood CD:	2240010300		

Owner

Name:	JACK A & JOSEPHINE YOUNG LIVING TRUST	Owner ID:	554185
Mailing Address:	JOSEPHINE YOUNG & JOAN KAYSER TR 8323 DOUBLE DITCH RD LYNDEN, WA 98264-9791	% Ownership:	100.0000000000%
		Exemptions:	

Pay Tax Due

Select the appropriate checkbox next to the year to be paid. Multiple years may be selected.

Year - Statement ID	Tax	Assessment	Penalty	Interest	Total Due
2019 - 120378 (First Half/Next)	\$1129.33	\$0.00	\$0.00	\$0.00	\$1129.33
2019 - 120378 (Balance)	\$2258.59	\$0.00	\$0.00	\$0.00	\$2258.59

Total Amount to Pay: \$

*Convenience Fee not included

Taxes and Assessment Details

Property Tax Information as of 03/20/2019

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	8/5/2019	Legal Review: <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required
Department:	Public Works	
Contact Name/Phone:	Heather Sytsma / 360-255-5487	
Council Committee Review:		
<input type="checkbox"/> Community Development	<input type="checkbox"/> Public Safety	
<input type="checkbox"/> Finance	<input checked="" type="checkbox"/> Public Works	
<input type="checkbox"/> Parks	<input type="checkbox"/> Other: _____	
Attachments:		
July 10, 2019 Draft Public Works Committee Meeting Minutes		
Name of Agenda Item:		
Draft Public Works Committee Meeting Minutes – July 10, 2019		
Summary Statement:		
Draft minutes for the July 10, 2019 Public Works Committee meeting		
Recommended Action:		
For Review		



PUBLIC WORKS COMMITTEE MINUTES

4:15 PM July 10, 2019

City Hall 2nd Floor Large Conference Room

1. ROLL CALL

Members Present: Councilors Gary Bode, Ron De Valois and Jerry Kuiken

Staff Present: City Administrator Mike Martin; Public Works Director Steve Banham; Programs Manager Mark Sandal; and Sr. Admin. Assistant Heather Sytsma

Public Present: Blake Starkenburg, Pat Schoening, Marc Simons, Gary Vis

2. ACTION ITEMS

A. No Minutes to Approve as June 5th Meeting became a Special City Council Meeting Approved by the Full City Council on June 17th.

B. Request for Parking Agreement and Parking Permit System for 7th Street Parking Lot – Ron and Alida Hanson & Tim and Christine Keiper – Draft Agreement for Downtown Shared Parking

Banham explained that since the new owners of 610 Front Street are remodeling the building (Mural Building) to provide six units of housing, they have a requirement to provide one off-street parking space per residential unit within 300 feet of the building. The owners would like to enter into a parking agreement with the City, as their remodeled building will only have garage space for three vehicles. They are seeking permitted parking for any additional parking that is needed by the tenants. These permits would allow the tenants to park in any lot downtown, except the Community Center lot, without the two-hour time restriction.

Banham stated that this agreement is being handled by the Planning Department and that this agreement will also be reviewed by the Community Development Committee.

Action

The Public Works Committee concurred that the parking agreement and permit system are an acceptable means for this building to achieve the required number of parking units.

C. Request for Temporary Construction Easement and Restrictive Covenant for No-Build Zone at 7th Street Parking Lot Mural Wall

Banham presented a Temporary Construction Easement for the owners of 610 Front Street (Hanson & Keiper) to utilize the 7th Street parking lot during construction.

Banham also presented a Restrictive Covenant for No-Build Zone at the 7th Street parking lot mural. This covenant prohibits the owners of the building from removing the mural unless it is replaced with a City-approved mural.

Action

The Public Works Committee expressed their support of both the Temporary Construction Easement and the Restrictive Covenant for No-Build Zone at the 7th Street parking lot wall mural.

D. Pepin ER Emergency Response Plan and Response to Public Comments

Banham stated that there was a good turnout at the public meeting, although no comments were received from the public. He stated that staff mailed out more information after the fact. The Emergency Response Plan will be implemented, which means the City will extend the ditch so any overflow is directed to Main Street. Depending on future flood events, portions of Main Street will be closed due to drainage. Staff is currently looking at other ways to redirect the stormwater.

Action

The Public Works Committee concurred with staff finalizing the plan and working with the FHWA-ER funding to complete the emergency intercept ditch.

E. Amendment to Septic to Sewer Code Section 13.12 to Require Utility Easements

Banham presented copies of the ordinance amending the septic to sewer code. The revision preserves the residential waiver but adds conditions for non-single-family septic to sewer conversions. With larger parcels wanting to connect, the City needs to be able to consider service to other surrounding properties. This might require a utility easement in exchange for the waiver. Also the amount of the fees waived is much larger and could have an adverse impact on the sewer utility. The City may want to consider outside water quality funding to supplement the revenue lost to the sewer utility.

Action

The Public Works Committee concurred to recommend approval to City Council of the Amendment to the Septic to Sewer Code Section 13.12 to require utility easements and discretion by Public Works on the benefits of waiving the connection fees for non-single-family connections.

3. INFORMATION ITEMS

A. Erdmann Property Purchase Update

Banham stated that he is interested in purchasing the Erdmann properties at 1625 Main Street, which was recently listed at \$225,000, using the low-interest loan from the Department of Ecology for the development of Pepin Creek. The two parcels are located next to the City-owned property at 1633 Main Street (Martin property). He explained that the purchase of this property would provide an opportunity for downstream shoreline stabilization and restoration, elongating the slope of the stream to provide for shallower cuts upstream which will reduce construction costs.

Martin stated he is ambivalent about this right now: it is not something that needs to be purchased just because the City has the funds. Martin stated there are a lot of unknowns with this project, so not having a piece of property that the City isn't even sure they might need is ok with him.

After some discussion, the Committee decided that purchasing this property is not necessary at this time and that the City should progress the design further to determine the benefit of City ownership. However, this option should be re-visited every 6-12 months.

B. New Downtown Bike Racks – Downtown Lynden Business Association Letter

Banham stated that the Downtown Business Association (DBA) has purchased additional bike racks for the downtown core and would like the Public Works department to install them. Vis cautioned staff about placement of the bike racks, noting that there are already tables, chairs, large planters and hanging baskets impeding pedestrian flow on the sidewalk. Bode stated that restaurants that want bike racks will have to choose between a bike rack or outside dining.

Sandal did state that one location for a bike rack is near a corner bulb away from the sidewalk and that the intent of the placement is to not impede pedestrian traffic.

Banham stated that staff is working with the DBA on locations and being sensitive to pedestrian walkways. The Committee expressed concern about sidewalk mobility and asked staff to work closely with the DBA to ensure that placement does not adversely impact pedestrian mobility and that the locations are closely coordinated with outdoor seating.

C. WSDOT Replacement of Double Ditch Culverts

Banham stated staff will request that the City attorney draft a letter to send to WSDOT addressing City concerns about the increased water flow into town with the up-sizing of these culverts possibly overwhelming the existing ditch system and causing flooding.

D. Line Road School Crosswalk Flashing Lights

Sandal stated that during construction and the opening of Line Road, Lynden School District Superintendent Jim Frey asked about lighted, enhanced signage for school zones. One option would be lighted “school zone” signs with solar panels and LED flashers around the border. Sandal stated he can bring an example to a future Public Works Committee meeting.

E. Small Works Roster Paving Work – Liberty, 3rd, 6th & 7th Streets and Birch Bay Lynden Road – DeKoster Excavating Inc. Request for Paving

Sandal stated that Ryan Spoelstra of DeKoster Excavating submitted a request for the City’s participation in replacing pavement in front of First Reformed Church where they are reconfiguring parking and removing trees and tree roots on Liberty Street. Because the roots extend half-way across the roadway, they requested that city assist in paving where the roots were removed, as the street is old. Banham stated that there is money in the budget for this type of roadway improvement, so the crew will be working with DeKoster Excavating on scheduling.

Sandal stated that the City crew will be grinding out the wheel ruts on Birch Bay Lynden Road and placing asphalt to smooth the roadway. The Committee agreed these would be good projects for this summer.

F. Projects:

1. 7th Street Project – Front Street Sitting-Wall / Planter Finishing Material and Project Schedule

Banham distributed the Planning Director's sketch of the proposed intersection of Front and 7th Streets with a planter bulb large enough for the annual downtown Christmas tree. The planter will be close to ground level on the parking lot side, and approximately two feet high on the street side.

2. Wastewater Treatment Plant Outfall

Banham stated the next progress meeting is this Friday and the fish window begins on July 15th. Strider has been busy with material and workplan submittals.

3. Old Elevated Water Tank (Old Middle School Property) Soil Remediation – Small Works Roster Project – No Bids Received – Re-bid 6-28-19

Sandal stated that no bids were received for the re-bid, even though the work schedule window was extended. Sandal explained that the City will be allowed to negotiate with a contractor to perform the work as staff cannot perform the work because the labor is too time-intensive. The work needs to be done by the end of 2019.

4. West Front EDI Grant / Loan Application

Banham stated that the Mayor advised him that there was a County EDI meeting today. The County was asking if the City was planning on applying for any funding. Staff is trying to work on an application to get an EDI grant/loan to build West Front Street to Tromp Road (all-weather full-width street). The City has recently been successful in getting commitments from property owners on the south side to dedicate the needed right-of-way.

5. Water System Plan Update

Banham stated that he is working on this. The City still needs to provide a service area update to Whatcom County and at the request of DOH will show that the City is willing to take on any nitrate-affected water systems if annual water right issues are resolved.

G. Bedlington Hydrant Meter Granted for 2019 to Irrigate Potatoes

Banham informed the Committee that Bedlington Farms is using a hydrant meter to irrigate their field at the corner of Main Street and Guide Meridian.

4. ITEMS ADDED:

A. 17th Street Extension Concerns

Two members of the community (Marc Simons and Pat Schoening) attended the meeting with questions about 17th Street. Bode asked about the notices that were sent out regarding moving an easement eight feet to the west. Banham explained the methodology of the easement and the design process for the street extension, noting that staff is hoping to advertise and award a construction contract before end of 2019. Construction may continue into 2020.

Marc Simons asked about placement of stop signs and speed bumps along 17th Street to discourage speed since it will now be a thru-street. He is hoping for stop signs at Village Drive and south-bound on 17th Street. Sandal said it gets too confusing at a T-intersection if only two lanes of traffic have stop signs. He said the engineers are looking at various types of traffic calming, and there will be a slight curve at the north end of 17th Street as it reaches Main Street, so this should slow vehicle speeds. Banham added that stop signs aren't supposed to be installed just to reduce speed, they're for vehicle and

pedestrian safety. Additionally, stop signs tend to increase traffic noises associated with acceleration and braking. Banham stated that, since the trail has been completed on the east side of 17th Street, the City is researching methods for continuing the trail further to the west across the street, and possibly include a pedestrian refuge or accommodating a future pedestrian-actuated crossing light.

Pat Schoening asked whether the project will include sidewalks on 17th Street. Banham noted that 17th Street does have some gaps in the sidewalks, especially going north from the Fishtrap Way, that staff would like to see eliminated. He stated that on the east side there is a difficulty with the grade of the properties and making sidewalk and driveways fit with the road. Staff has their engineer researching this issue.

Bode asked if staff can place traffic counters on 17th Street and/or Village Drive to determine when people are exceeding the speed limit in the area. Banham requested that Sandal have traffic counters installed to get current volumes and speeds on Village Drive and 17th Street.

De Valois asked what street width is planned. Banham stated a standard 36-foot street is planned, which allows for parking on both sides of the street.

Banham noted that staff will bring this back to Committee and plan to hold a neighborhood meeting as soon as more design details are ready.

B. School Zone Crossing Lights

Bode asked if school zone radar speed sign can be placed in more effective areas than the current locations on 14th Street at Fisher Elementary. Sandal said he has had some discussions with the school district about adding crossing zone lights in other areas. Sandal said he will research the possibility of relocating the radar portions of these signs.

C. Barriers for Festivals

Vis asked whether sturdier barriers could be used for festival events downtown, particularly at Front street when it is closed and traffic detoured onto 7th. Banham stated that he has seen other agencies use water-filled jersey barriers. He stated that staff can research the cost of these, as the City does not currently own any.

The meeting was adjourned at 6:00 p.m.

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	August 5, 2019	
Name of Agenda Item:	CDC Minutes of 7-17-19	
Section of Agenda:	Other	
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:		
Draft Community Development Committee Meeting Minutes of July 17, 2019		
Summary Statement:		
Draft CDC Minutes of 7-17-19 attached for review.		
Note: Attached minutes have not yet been approved by the CDC. June CDC meeting was cancelled.		
Recommended Action:		
Council Review		



COMMUNITY DEVELOPMENT COMMITTEE MEETING AGENDA

4:00 PM July 17, 2019
2nd Floor Conference Room, City Hall

1. ROLL CALL

City Council Members: Mark Wohlrab, Scott Korthuis, Brent Lenssen,
City Staff: Heidi Gudde, Mike Martin,
Public Attendees: Kathy Stanford, Gary Vis

2. ACTION ITEMS:

A. Minutes from the May 29, 2019 meeting approved as presented.

3. DISCUSSION ITEMS

A. 610 Front Street - Mural Building (Liquor Store) Renovation

a. Draft Parking Agreement Discussed

Committee members requested revisions regarding the following points in the agreement:

- Scope - Indicate in the agreement the total number of parking permits will be issued for this building. Although code requires only one space per unit in the HBD, staff assumes that each unit will realistically require two spaces 2 per unit. With the proposal for 6 units this mean 12 vehicles – but 3 of those vehicles parked in the building’s garage – leaving a total of 9 downtown parking permits the City is willing to issue to 610 Front Street.
- Administration - Indicated a preference to have the administration of parking permits primarily handled by the property owner so that City staff is not interacting with changing lease holders and / or condo owners.
- Fees - Allowing free residential parking on the City’s property constitutes a gifting of public property. The City is obligated to consider the public good. Although it could be argued that having residents live downtown is good for the business economy, the Committee agreed that a fee would help cover the cost of parking lot maintenance, snow clearing, repair, etc. The Committee considered fees used by nearby jurisdictions and

significantly reduced that amount. Discussion resolved that an appropriate fee, at this point, could be 20 dollars per month per permit. These fees would be collected by City Staff on an annual basis. The downtown residential parking permit fee should be included on the unified fee list, approved as part of the budget, and subject to periodic increases.

b. Draft Restrictive Covenant / Mural preservation reviewed

Committee had no concerns or revisions to add to this document at this time.

c. Draft Temporary Construction Easement

Committee had no concerns or revisions to add to this document at this time.

B. Interlocal Agreement for Interim County-Wide Planning Policies (CWPP)

Review of the document primarily focused on the 6b of Section 1 which indicates that at least 6 of the 8 jurisdictions are needed for the ratification of a planning policy amendment. This means 3 cities, even if they are small, could prevent ratification.

KS expressed support of 6b because even the 3 smallest cities have unique characteristics such as mining resources which could be otherwise overlooked.

SK noted that it would be very unusual to have 3 small cities prevent ratification as the small cities are generally aligned in their concerns. Mayor expressed a willingness to go to 4 jurisdictions but not more than that.

C. Regional Wayfinding Program

a. Plan Refinement / Phasing

b. Funding Sources – EDI, Hotel / Motel Tax

Mayor related the support of County Executive, Jack Louws of EDI money of 1 million as well as the potential to borrow from EDI funds at a low interest rate. This opens up the possibility of installing in one phase but paying for the project over an extended amount of time.

Sandy Ward of Bellingham Whatcom Tourism office to be invited to the City Council to present the regional wayfinding program.

HG noted that the value of having a consultant work on this project

Vis related his displeasure with the cost of the program and noted his preference for some directional signs at strategic locations rather than an elaborate plan.

Committee agreed that Lodging Tax was a potential source of funding but also had reservations about the total cost of the project.

HG noted that the sign menu should be considered the Cadillac of plans and that a pared down version of the plan could potentially reduce costs to a more comfortable level.

D. Bars and Taverns Policy

Committee discussed this issue because the land use code is not specific about bars and taverns. Consistent with legal advice the Planning Director has been interpreting tavern use as comparable to other retail uses such as restaurants, cafes, and liquor sales – which the code specifically does mention.

MM noted that existing establishments has warranted additional attention in noise complaints, requests for special event permits and street closures.

Discussed the difference between bars, taverns, and breweries and noted that Lynden traditionally has been home to several bars / taverns.

Discussed the ability of the Lynden market to support more taverns.

KS noted that brewery culture is very different than an alcohol and dancing (club, bar) sort of establishment. Breweries can be family friendly.

Committee seemed to conclude that establishments should not be 100% age restricted but should be accessible to families either through the use of a brewery license or restaurant use.

Staff to research restrictions related to breweries vs. taverns/bars as set by the liquor control board. And, subsequently, draft a policy memo that would outline the comparable uses and emphasize family friendly atmospheres rather than bars and taverns that are age restricted.

E. Other

- a. Sidewalk Obstructions: Draft of a revised LMC12.28.020 distributed by Brent related to sidewalk obstructions.
- b. Special Events: Support to have arterial streets closed only by Council. The DBA to bring forward annual list of street closures like the Chamber does each year.
- c. Small Lot Development: Kline Road –Builders there doing smaller lots provided some insight to BL. Emphasized that small lot subdivisions are best built out by a single builder so that adjacent homes can strategically place living spaces to maintain privacy between neighbors.

SK shared recent statistic that the housing shortage in Bellingham is currently estimated at 3000 units.

Next Meeting Date: August 21, 2019

DRAFT

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	August 5, 2019	
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		

August 5, 2019

120

Monday

7:00 PM - 9:00 PM

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

August 6, 2019

Tuesday

All Day

REMIND LT Berthusen BBQ

8:30 AM - 9:30 AM

LT Meeting -- City Hall 1st Floor Large Conference Room

5:00 PM - 6:30 PM

Design Review Board Meeting -- Annex South East Conference Room

August 7, 2019

Wednesday

9:00 AM - 5:00 PM

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

10:00 AM - 11:00 AM

Check-In -- Mike's Office

4:15 PM - 6:00 PM

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

August 8, 2019

Thursday

9:00 AM - 10:00 AM

**All Staff - Parks -- Annex Council Chamber
Parks Hosting**

7:30 PM - 9:30 PM

Planning Commission Meeting -- Annex Council Chamber

August 9, 2019

Friday

121

10:00 AM - 11:00 AM

Check-In Steve/Mike -- Mike's Office

11:00 AM - 12:00 PM

Check-In Heidi/Mike -- Mike's Office

August 13, 2019

Tuesday

8:30 AM - 9:30 AM

LT Meeting -- City Hall 1st Floor Large Conference Room

August 14, 2019

Wednesday

7:00 PM - 9:00 PM

Rec. District Meeting -- Annex South East Conference Room

August 15, 2019

Thursday

10:00 AM - 12:00 PM

County Fire Operations Committee Meeting -- Annex Council Chamber

August 19, 2019

Monday

3:00 PM - 4:00 PM

Finance Committee Meeting -- City Hall 1st Floor Large Conference Room
Visit WWW.LYNDENWA.ORG to view the agenda

4:00 PM - 5:00 PM

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

7:00 PM - 9:00 PM

Copy: Council Meeting -- Annex Council Chamber; Annex East Training Room; Annex North East Conference Room; Annex South East Conference Room