

CITY OF LYNDEN



Mayor
Scott Korthuis

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

Online (Microsoft Teams) City Council Meeting
City Hall - 300 Fourth Street
May 17, 2021

Members of the public may join the city council meeting telephonically by dialing 1-253- 948-9362. You will then be prompted to enter the Conference ID 348 925 120 #. It is necessary to enter the # symbol after entering the numerals.

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

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

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

Call to Order

Pledge of Allegiance - None

Roll Call

Oath of Office - None

Approval of Minutes

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

Items from the Audience

Scheduled - None

Unscheduled (20 Minutes)

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

Consent Agenda

- [2.](#) Approval of Payroll and Claims
- [3.](#) Glenning Park Conservation Easement
- [4.](#) Resolution No. 1037 – Net Increase in the revolving Cash Fund
- [5.](#) Appointment to Lynden Historic Preservation Commission – Kelsey Maloy

Public Hearing

- [6.](#) Resolution 1036 – Adopting a Six Year Transportation Improvement Program (STIP) 2022-2027

Unfinished Business- None

New Business

- [7.](#) Finance Department- Approval of one additional Full-Time Employee
- [8.](#) Ordinance No. 1624 - Site Specific Rezone- O&S Farms
- [9.](#) Procedures for the Hearing Examiner Role

Other Business

- [10.](#) Public Safety Draft Minutes- May 6, 2021
- [11.](#) Calendar

Executive Session

Adjournment

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	May 17, 2021	
Name of Agenda Item:	Draft Council Minutes- Regular Meeting	
Section of Agenda:	Approval of Minutes	
Department:	Administration	
Council Committee Review:	<input type="checkbox"/> Community Development <input type="checkbox"/> Public Safety <input type="checkbox"/> Finance <input type="checkbox"/> Public Works <input type="checkbox"/> Parks <input type="checkbox"/> Other: N/A	Legal Review: <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required
Attachments:	Draft Council Minutes- Regular Meeting	
Summary Statement:	Draft Council Minutes- Regular Meeting	
Recommended Action:	For Council review.	

CITY OF LYNDEN

CITY COUNCIL MINUTES OF REGULAR MEETING



May 3, 2021

1. CALL TO ORDER

Mayor Korthuis called to order the May 3, 2021 regular session of the Lynden City Council at 7:00 p.m., held through an online web-based meeting platform (Microsoft Teams).

ROLL CALL - None

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

Members absent: *None, Councilor Strengholt joined the meeting after the approval of minutes.*

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

OATH OF OFFICE- None

APPROVAL OF MINUTES

Councilor Kuiken moved and Councilor De Valois seconded to approve the April 19, 2021 regular council minutes as presented. Motion approved on a 6-0 vote.

Councilor Strengholt joined the meeting after the approval of minutes.

ITEMS FROM THE AUDIENCE

Scheduled- None

Unscheduled - None

CITY OF LYNDEN

CITY COUNCIL
MINUTES OF REGULAR MEETING



2. CONSENT AGENDA

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

Approval of Claims – May 4, 2021

Manual Warrants No.	<u>21960</u>	through	<u>21962</u>		\$379,579.36
EFT Payment Pre-Pays					\$29,471.73
				Sub Total Pre-Pays	\$409,051.09
Voucher Warrants No.	<u>21963</u>	through	<u>21981</u>		\$84,464.34
EFT Payments					<u>\$0.000</u>
				Sub Total	\$84,464.34
				Total Accts. Payable	\$493,515.43

Set Public Hearing-Resolution No. 1036- Adopting Six Year Transportation Improvement Program (STIP) 2022-2027
Year 2022 Budget Calendar
Replacement of Mural at 610 Front Street

Councilor Laninga spoke to the Replacement of the Mural at 610 Front Street. He thanked artist Bill Swinburnson for his work and expressed that the mural was a treasured piece of Lynden's history.

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

3. PUBLIC HEARING - None

4. UNFINISHED BUSINESS- None

5. NEW BUSINESS- None

CITY OF LYNDEN

CITY COUNCIL MINUTES OF REGULAR MEETING



6. OTHER BUSINESS

Council Committee Updates

Councilor Bode reporting for Public Works Committee stated discussion of the following:

- Left turn signal on Front & 19th
- Bradley & Line Road traffic count
- Hydrant metering for Ridenour sports complex
- Main Street bridge design
- Forge Fitness facility and needed maintenance
- West Front Street expansion
- Crosswalk for Apple Valley apartments
- Long term parking in front of Lynden businesses

Councilor Lenssen reporting for Community Development Committee stated discussion of the following:

- Swinburnson mural
- Transportation Impact Fees
- West Lynden and fee deductions
- Possibly another Pepin Creek moratorium

Gary Vis, Chamber of Commerce Director, discussed the process involved in canceling the Farmer's Day Parade and Razzberry Festival. After discussing the recent COVID restrictions for Parades, Fairs and Festival events with staff from the Governor Inslee's office, the determination was made that the Chamber would be unable to meet the latest restrictions.

7. EXECUTIVE SESSION

Council did not hold an executive session.

8. ADJOURNMENT

The May 3, 2021 regular session of the Lynden City Council adjourned at 7:25 p.m.

Pamela D. Brown, MMC
City Clerk

Scott Korthuis
Mayor

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	May 17, 2021	
Name of Agenda Item:	Approval of Payroll and Claims	
Section of Agenda:	Consent	
Department:	Finance	
Council Committee Review:	<input type="checkbox"/> Community Development <input checked="" type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
		Legal Review: <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required
Attachments:	None	
Summary Statement:	Approval of Payroll and Claims	
Recommended Action:	Approval of Payroll and Claims	

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	May 17, 2021	
Name of Agenda Item:	Glenning Park Conservation Easement	
Section of Agenda:	Consent	
Department:	Parks	
Council Committee Review:	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input checked="" type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
Legal Review:	<input checked="" type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input type="checkbox"/> Review Not Required	
Attachments:	Glenning Park Conservation Easement	
Summary Statement:	<p>The City of Lynden applied for funds from the county conservation future funds to help pay a portion of the cost for obtaining the Glenning Park property. The county agreed to the request and has drawn up a Conservation Easement to maintain the property in perpetuity as open space and requires that it be preserved, maintained and protected as such in perpetuity.</p> <p>The Parks committee reviewed the Easement at their meeting this afternoon and recommends forwarding the easement to full council for approval.</p>	
Recommended Action:	Motion to approve the Glenning Park Conservation Easement and authorize the mayor's signature	

When Recorded Return to:
Director
City of Lynden Parks Dept.
8770 Bender Rd.
Lynden WA 98264
Phone: (360) 354-6717

DOCUMENT TITLE: GLENNING PARK (CITY OF LYNDEN) CONSERVATION EASEMENT

GRANTOR: THE CITY OF LYNDEN

GRANTEE: WHATCOM COUNTY

**ABBREVIATED LEGAL DESCRIPTION:
Lots 1-10, Block 32, & Lots 1-10, Block 33, Plat of City of Lynden
(Ptn SE ¼ NW ¼ S20 T40N R03E and SW ¼ NW ¼ S20 T40N R03E)**

ASSESSOR’S TAX PARCEL NUMBERS: 400320 142393 0000

GLENNING PARK (CITY OF LYNDEN) CONSERVATION EASEMENT

- 1. Parties/Instrument.** The CITY OF LYNDEN (“Grantor”) and WHATCOM COUNTY (“Grantee”) as the parties to a Conservation Easement (“Easement”). The City and County hereinafter collectively referred to as the “Parties.”
- 2. Facts and Objectives/Recitals.**
 - 2.1. The Grantor is owner of that certain real property situated in Whatcom County, Washington, known as Glenning Park (“Protected Property”), the legal description of which is attached as Exhibit A and incorporated herein by this reference.
 - 2.2. The Grantor and Grantee are both political subdivisions of the State of Washington.

- 2.3. The Protected Property is a 4-acre parcel of land located in the Lynden city limits. The Protected Property is centrally located and situated within an established residential neighborhood. The Protected Property includes two existing basketball courts and four baseball fields and otherwise remains mostly undeveloped. Its continued availability as a public park is of great value to City and County residents and would enhance current recreational activities in the area.
- 2.4. Based on the Protected Property’s value to the public, the Grantee has identified the Protected Property as public land within Whatcom County that is properly preserved under RCW 84.34.240 (Acquisition of open space-Conservation futures fund) and Chapter 3.25 (Conservation Futures Property Tax Levy and Fund) of the Whatcom County Code.
- 2.5. RCW 39.33.010 authorizes political subdivisions of the State of Washington to sell, transfer, exchange or otherwise dispose of property or property rights to other State political subdivisions, on such terms and decisions as may be mutually agreed upon.
- 2.6. To preserve and maintain the nature of the Protected Property, the Grantee seeks to purchase a non-possessory property interest in the Protected Property from the Grantor.
- 2.7. The Parties’ intent and purpose (“Purpose”) of this transaction is to maintain the Protected Property in perpetuity as open space and to require that it be preserved, maintained and protected as such in perpetuity.
- 2.8. For purposes of this Easement the term "open space" or "open space land" shall mean: any land area, the preservation of which in its present use does enhance the value to the public of abutting or neighboring parks, forests, wildlife reserves, natural reservations or sanctuaries or other open space, or does enhance recreational activities.

3. Purpose

It is the purpose of this Conservation Easement to assure that the Protected Property will be preserved forever as open space for public use and access, and public recreational activities, and to prevent any use of the Protected Property that will significantly impair or interfere with its value as public open space and for recreation. Grantor intends that this Conservation Easement will confine the use of and activity on the Protected Property to such uses and activities that are consistent with the purpose described above herein.

4. Conveyance and Consideration

- 4.1 For the reasons stated above, in consideration of the mutual covenants, terms, conditions, and restrictions contained in this Conservation Easement Deed, and in consideration of payment of \$250,000.00 from Grantee to Grantor, the receipt of

which is acknowledged, Grantor hereby grants, conveys and warrants to Grantee a Conservation Easement in perpetuity over the Protected Property, consisting of certain rights in the Protected Property, as defined in this Conservation Easement Deed, subject only to the restrictions contained in this Conservation Easement Deed.

- 4.2 This conveyance is a conveyance of an interest in real property under the provisions of RCW 64.04.130, subject only to the mutual covenants, terms, conditions and restrictions set forth in this Conservation Easement Deed and to title matters of record as of the date of this Conservation Easement Deed.
- 4.3 Grantor expressly intends that this Conservation Easement run with the land and that this Conservation Easement shall be binding upon Grantor's personal representatives, heirs, successors, and assigns in perpetuity.

5. Prohibited Uses and Activities

- 5.1 General: Any use of, or activity on, the Protected Property inconsistent with the Purpose of this Conservation Easement is prohibited, and Grantor acknowledges and agrees that it will not conduct, engage in, or permit any such use or activity. Without limiting the generality of this subsection, the following uses of, or activities on, the Protected Property, though not an exhaustive list, are inconsistent with the Purpose of this Conservation Easement and shall be prohibited;
- 5.2 Subdivision and Development Rights: The legal or de facto division, subdivision, platting, partitioning or planned unit development of the Protected Property is prohibited.
- 5.3 Construction: The placement or construction of any buildings, structures, or other improvements of any kind is prohibited, except those necessary and consistent with the use for public park and recreation purposes such as, but not limited to, restrooms, picnic shelters, playfields, grounds and sports courts, play structures and gardens.
- 5.4 Recreation: The following forms of recreation are prohibited on the Protected Property: golf courses; commercial use of motorized or mechanized recreational vehicles such as motorcycles, snowmobiles, and dune buggies; and commercial overnight camping. Other commercial public recreation uses may be allowed only pursuant to a commercial use permit approved by the City.
- 5.5 Erosion or Water Pollution: Any use or activity that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters is prohibited, including the use of manure lagoons or disposal of wastewater in manners inconsistent with the terms of this Conservation Easement Deed.

- 5.6 Waste Disposal: Except as expressly permitted in Section V, the disposal or storage of rubbish, garbage, debris, vehicles, abandoned equipment, parts thereof, or other unsightly, offensive, or hazardous waste or material on the Protected Property is prohibited.
- 5.7 Commercial Signs: The placement of commercial signs, billboards, or other advertising material on the Protected Property is prohibited; except to state the access conditions to and use of the Protected Property or in sponsorship of park or recreational activities.

6. Grant in Perpetuity.

- 6.1 This Easement shall run with the property in perpetuity and shall bind the Parties and their respective successors and assigns forever.
- 6.2 Subsequent Transfers. Grantor agrees to:
 - 6.2.1 Incorporate the terms of this Conservation Easement Deed by reference in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Protected Property, including, without limitation, a leasehold interest; and
 - 6.2.2 Describe this Conservation Easement Deed in and append it to any executory contract for the transfer of any interest in the Protected Property; and
 - 6.2.3 Obtain a certificate from the purchaser, leaseholder or other party gaining an interest in all or part of the Protected Property and any financier, acknowledging their awareness of this Conservation Easement and their intent to comply with it. Such certificate shall be appended to and recorded with any deed or other legal instrument by which Grantor divests itself of any interest in all or a portion of the Protected Property; and
 - 6.2.4 Give written notice to Local Grantee of the transfer of any interest in all or a portion of the Protected Property no later than forty-five (45) days prior to the date of such transfer. Such notice to Local Grantee shall include the name, address, and telephone number of the prospective transferee or the prospective transferee's representative.
- 6.3 The failure of Grantor to perform any act required by sub-section 6.2 herein shall not impair the validity of this Conservation Easement Deed or limit its enforceability in any way.

7. Rights of Grantee.

- 7.1. Should the Grantor, its successors or assigns, undertake any activity in violation of this Easement, the Grantee shall have the right to compel the restoration of that portion of the Protected Property affected by such activity to the condition that existed prior to the undertaking of such unauthorized activity. In such case, the cost of restoration shall be borne by the Grantor or those of its successors or assigns against whom judgement is entered.
- 7.2 Any forbearance by the Grantee to exercise any rights under this agreement in the event of breach shall not be deemed to be a waiver of the Grantee's rights under this Easement.

8. Miscellaneous.

- 8.1. The terms "Grantor" and "Grantee," wherever used in this Easement, shall include the above-named City of Lynden and its successors and assigns, and the above-named Whatcom County and its successors and assigns.
- 8.2. No term or provision of this Easement is intended to be, or shall be, for the benefit of any person, firm, organization, or corporation not a party to this Easement, and no such other person, firm, organization, or corporation shall have any right or cause of action hereunder.
- 8.3. Nothing contained in this Easement shall be construed to entitle the Grantee to bring any action against the Grantor to abate, correct, or restore any condition on the Protected Property resulting from activities and actions of prior owners of the Protected Property or from causes beyond the Grantor's control, including, without limitation, natural disasters such as fire, flood, storm, pest infestation or earth movement, or for acts of the public or of trespassers, or for any change resulting from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Party resulting from such causes.
- 8.4. This instrument sets forth the entire agreement of the Parties with respect to the Protected Property and supersedes all prior discussions, negotiations, understandings, or agreements between the Parties relating to this Easement and the Protected Party, all of which are merged herein.
- 8.5. In the event that any of the provisions contained in this Easement are declared invalid or unenforceable in the future by a court of competent jurisdiction, all remaining provisions shall remain in effect.
- 8.6. Notice to the Grantee shall be to the registered agent of the County, who until further notice shall be:

STATE OF WASHINGTON)

)ss.

COUNTY OF WHATCOM)

On this ____ day of _____, 2021, before me personally appeared Satpal Sidhu to me known to be the County Executive of Whatcom County and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

NOTARY PUBLIC in and for the State of
Washington residing at _____.

My commission expires _____

Michael McFarlane, Director

APPROVED AS TO LEGAL FORM

Senior Deputy Prosecuting Attorney

Exhibit A
Legal Description

LOTS 1 THROUGH 10, BLOCK 32, AND LOTS 1 THROUGH 10, BLOCK 33,
SUPPLEMENTAL AND CORRECTED PLAT OF LYNDEN, ACCORDING TO THE PLAT
THEREOF, RECORDED IN VOLUME 3 OF PLATS, PAGE 48, RECORDS OF WHATCOM
COUNTY, WASHINGTON.

TOGETHER WITH THOSE PORTIONS OF SEVENTH STREET, AND OF ALLEYS
WITHIN SAID BLOCKS AS VACATED UNDER TOWN OF LYNDEN ORDINANCE NO.
208, RECORDED AUGUST 3, 1925 UNDER AUDITOR'S FILE NO. 295877.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

Exhibit B
Map of Protected Property



CITY OF LYNDEN

EXECUTIVE SUMMARY - FINANCE



Meeting Date:	May 17, 2020	
Name of Agenda Item:	Resolution No. 1037 – Net Increase in the revolving Cash Fund	
Section of Agenda:	Consent	
Department:	Finance	
Council Committee Review:	<input type="checkbox"/> Community Development <input checked="" type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
		Legal Review: <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required
Attachments:		
Resolution No. 1037 – Net Increase in the revolving Cash Fund		
Summary Statement:		
<p>Currently the Lynden Public Works Department (LPWD) has a cash fund for the purpose of making change for citizen transactions. The LPWD has cash drawers assigned to it, each one assigned to an individual with the understanding that they are responsible for the funds as stated in the Resolution. Due to the operational need an increase in in the revolving cash fund limit is required. Resolution No. 1037 would increase the cash limit of the revolving Cash Fund from \$2,300 to \$2,600.</p> <p>Resolution No. 1037 would increase the total of the City's revolving cash fund from \$2,300 to \$2,600.</p> <p>The Finance Committee approved the recommended increase in their May 17, 2021 meeting and has forwarded the Resolution to the full Council.</p>		
Recommended Action:		
That the Council approve Resolution No. 1037 as presented and authorize the Mayor's signature.		

RESOLUTION NO. 1037

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LYNDEN, WASHINGTON,
REGULATING AN INCREASE TO THE REVOLVING CASH FUND ADMINISTERED BY THE
FINANCE DIRECTOR

WHEREAS, the City of Lynden deems it necessary to maintain a revolving cash fund for the purpose of making change; and

WHEREAS, the City of Lynden finds it necessary to increase this stated fund from \$2,300 to \$2,600 due to an increase in funds in the Public Works Department; and

WHEREAS, the City of Lynden’s revolving cash fund will not be used for personal cash advances secured by check or IOU’s; and

WHEREAS, The City of Lynden’s revolving cash fund will be maintained and administered by the Finance Director or his appointed designee; and

WHEREAS, all Ordinances or Resolutions in conflict herewith are hereby repealed.

NOW THEREFORE, BE IT RESOLVED, the Lynden City Council authorizes that the Lynden Revolving Cash Fund be increased, for the reasons stated above, from \$2,300 to \$2,600. Be it further resolved that this resolution shall be in full force and effect from and after its passage by the City Council and approved by the Mayor.

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

ATTEST:

MAYOR

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	May 17, 2021	
Name of Agenda Item:	Appointment to Lynden Historic Preservation Commission – Kelsey Maloy	
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 checked="" type="checkbox"/> Other: <u>Mayor</u>
		Legal Review:
		<input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required
Attachments:		
Kelsey Maloy Resume and Cover Letter		
Summary Statement:		
<p>The Mayor has appointed a new member, Kelsey Maloy, to fill a vacancy on the Lynden Historic Preservation Commission. This appointment is being brought forward to the City Council meeting for confirmation. Kelsey will be filling the seat vacated by Mark Bratt, who resigned his term in 2020.</p> <p>For those who may not be aware, the Lynden Historic Preservation Commission consists of five members. They are responsible for hearing and deciding on nominations to the Lynden Historic Places Register, as well as approving proposed alterations to those historic structures.</p> <p>Kelsey brings an academic background in archeology and museum organization. She is particularly interested in using history to connect people to the story of their place.</p>		
Recommended Action:		
Motion to confirm the appointment of Kelsey Maloy to the Lynden Historic Preservation Commission beginning immediately and expiring on December 31, 2024.		

CITY OF LYNDEN



Mayor
Scott Korthuis

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

Lynden Historic Preservation Commission Application

Please complete the application below and return to Mayor Scott Korthuis at 300 4th Street, Lynden, WA 98264 or KorthuisS@lyndenwa.org.

Name: Kelsey Maloy

Address: 2136 Cherry St. Lynden WA 98264

Phone: (360) 393-1761 E-mail address: Kelseymaloy@outlook.com

Are you available at work? No Phone: _____

Please provide a recent resume and cover letter that addresses these questions:

1. Why would your background, interests, and/or education be an asset to the Lynden Historic Preservation Commission?
2. Why do you think an official Historic Preservation Commission is important for the city of Lynden?
3. Do you have prior experience participating on community committees?

Thank you for your willingness to serve the Lynden Community. I will contact you to discuss your application.

Scott Korthuis, Mayor
City of Lynden

1/11/2021

Kelsey Maloy
2136 Cherry St.
Lynden WA

Mayor Scott Korthuis
City of Lynden
215 4th St, Lynden, WA

Dear Mayor Korthuis,

I am writing you out of interest in an opportunity to fill the vacancy on the Historic Preservation Committee. Growing up in Lynden and receiving opportunities to travel the world helped me appreciate my home's cultural resources, from a distance. As a local from Whatcom County, I feel my academic training in archaeology and heritage preservation at Western Washington University is a desirable quality. Just after graduation with my Bachelors, I was selected for National Service with Appalachian National Forest Heritage Area, to operate museums and assist with community development in rural American and Appalachian Heritage as a federal civilian employee. My collective duties included, program coordinating, collections management, education and outreach while mindfully connecting visitors to existing cultural resources. After this national placement, I returned to Washington State to fulfil a grant funded project with Washington State Parks and Recreational Commission, based In Deception Pass State Park. I achieved a role as the Foundation's Project Manager and simultaneous placement as an Interpretive Naturalist for the entire park In totality, presenting and documenting the human journey in academic, heritage and community-based contexts has been my professional passion in archeological and museum-based settings in the Pacific Northwest.

I think historic preservation is important, every place tells a story. Some places contain artifacts in plain sight. The buildings, streets, homes, cemeteries that belong to prior generations contain specific and important details. The commission gives a voice to these significant places and details. Although a Historic Preservation Commission cannot preserve everything, I feel that having a committee audit these changes in our community is essential for growth and relations. A preservation commission can potentially share deeper meanings of everyday nuances and inspire a sincere interest in existing historic resources. There is so much potential for this commission, to help audit the historical places, but there is potential in education and stewardship.

I have immediate experience working as a project manager for the Deception Pass Park Foundation. Prior to the board roles with the Deception Pass Park Foundation, I served to perform community advisory roles, in support of the Beverly Heritage Center's Collections and Archival projects that provided resources for community programming in rural Appalachia. At present, I am pursuing the next professional step in my career, I feel a committee position with the Historic Preservation Commission will translate to my academic goals. At present, I have applied to Western Washington University towards an MA Anthropology Program for this upcoming academic year.

Thank you for your consideration of my placement within this committee.

Sincerely,

Kelsey Maloy



Kelsey Maloy

Professional objective:

I am a transitioning college graduate looking to apply experience and applied interest in holistic areas of conservation. With my background, as a well-rounded public archaeologist and museum educator with experience as an archaeology technician, I combine areas of academic and heritage industries across North America. In any team-based mission, I bring a positive, outgoing attitude, with experience in coordinated field work, ethics cultivated through National and State, Civilian Conservation Corps in heritage placements with federal, state, and local agencies. I value a critical awareness to handle equipment properly and follow a clear directive between project activities and goals. I exercise skills in time management and delegation of duty to ensure best trade practices and quality workmanship across projects. I exercise intrapersonal abilities to work with multiple hierarchies, community leaders, environmental groups, and external management.

Education / Experience

Western Washington University 2016-2018

Whatcom Community College: 2011-2013

- Museum Educator/ Conservator
- Archeological Survey Experience
- Public Lands Certificate
- Nonprofit Operations Experience
- Wilderness First Aid
- Public Lands Improvement (USDA)
- Interpretive Specialist
- Local, State and National Placement

September 2020 - October 2020

Whatcom Historic Cemetery District 10
Community and Public Lands Coordinator

October 2019- Aug 2020

Washington State Parks Deception Pass State Park
Interpretive Naturalist- AmeriCorps 1750 hours
State and National Service Member

October 2019- March 2020

The Deception Pass Park Foundation
Program Coordinator – AmeriCorps 1750 hours
State and National Service Member

September 2018 – July 2019: National Service

Appalachian National Forest Heritage Area

March 2018- July 2019

The Beverly Heritage Center
Collections Manager

September 2018 - May 2019

The Stirrup Gallery
Collections Manager

September 2018- May 2019

Augusta Heritage Center
Folk Archives Registrar

January 2017 – June 2017

Western Washington University
Archaeology Lab Tech & Illustrator
20 hours/week (work study)

September 2017 – August 2020

Lynden Pioneer Museum Volunteer
Museum Educator 15 hours /week

Memberships and Awards-

American Association of State and Local History – Museum Education and Outreach (2020)

West Virginia Society of Archaeology – 2018- 2020

Association of Washington Anthropology Membership- NWAC Conference panel participant (2017- 2020)

Northeast Document Conservation Center- Document handling workshop (2019)

AmeriCorps Service Member, NCCC & State and National (2018-2020)

Public Lands Certification. USDA & USFS (2020 – 2022)

CITY OF LYNDEN

EXECUTIVE SUMMARY – City Council



Meeting Date:	May 17, 2021	
Name of Agenda Item:	Resolution 1036 – Adopting a Six Year Transportation Improvement Program (STIP) 2022-2027	
Section of Agenda:	Public Hearing	
Department:	Public Works	
<u>Council Committee Review:</u>	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input checked="" type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
	<u>Legal Review:</u>	
	<input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required	
Attachments:		
STIP Project List, Map, Resolution 1036		
Summary Statement:		
<p>By law, a public hearing must be held for City Council to consider comments regarding the City's Six Year Transportation Improvement Program (2022 to 2027). Attached are Lynden's proposed transportation improvement projects that will be submitted to the Whatcom Council of Governments and from there to the Washington State Department of Transportation (WSDOT) as part of their statewide program.</p> <p>To be eligible for funding for these projects, every city and county must prepare a planned local list of projects which ultimately is forwarded to the WSDOT by July 31 of each year for inclusion in the State's Transportation Improvement Program (STIP) list.</p> <p>The Public Works Committee reviewed the STIP projects at their April 7, 2021 meeting and recommended that City Council set a public hearing date of May 17, 2021 at 7:00 p.m. at the Lynden City Hall Annex, to hear comments on the City's Six-Year Transportation Improvement Program.</p> <p>After the hearing is closed, the Council may pass Resolution 1036 (attached) approving the program.</p>		
Recommended Action:		
That City Council approve Resolution No. 1036 adopting the 2022-2027 Six Year Transportation Improvement Program for the City of Lynden and authorize the Mayor's signature on the resolution.		

RESOLUTION NO. 1036

**A RESOLUTION ADOPTING A SIX (6) YEAR TRANSPORTATION
IMPROVEMENT PROGRAM (STIP)
FOR THE CITY OF LYNDEN, WHATCOM COUNTY, WASHINGTON**

WHEREAS, the City of Lynden is required to prepare a Six (6) Year Transportation Improvement Program (STIP); and

WHEREAS, a report has been prepared and submitted by the City Public Works Director for a Six (6) Year Transportation Program for years 2022-2027, copies of which are on file in the office of the City Clerk;

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

SECTION 1: That the 2022-2027 Six (6) Year Transportation Improvement Program be adopted as the official Six (6) Year Transportation Improvement Program of the City of Lynden, Washington.

SECTION 2: That the City Clerk and the City Public Works Director are hereby directed to file a copy of this resolution with the State of Washington Department of Transportation.

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

ADOPTED by the City Council of the City of Lynden, Whatcom County, Washington, on the _____ day of _____, 2021 and signed and approved by the Mayor on the same date.

MAYOR SCOTT KORTHUIS

ATTEST:

CITY CLERK PAMELA BROWN

APPROVED AS TO FORM:

CITY ATTORNEY ROBERT CARMICHAEL

City of Lynden
2022 - 2027 Six Year
 Transportation Improvement Program
 In Priority Order
 Keyed to Map

Ref No.	Project	Description	Termini	Classified	Phase	2022 - 2027					Funding Sources (\$ in thousands)				Total
						2022	2023	2024	2025 - 2027	Local	State	TIB	Federal		
1	Main Street Bridge <i>Pepin Lite Concept</i>	Bridge and approaches	Main Street over relocated Pepin Creek (Double Ditch)		PE					400				400	
					Const	X						DOC 2,800			2,800
2	Pine Street Bridge <i>Pepin Lite Concept</i>	Vehicular Bridge and approaches	Pine Street over relocated Pepin Creek (Double Ditch) <i>Development Mitigation Project</i>		PE	X				421				421	
					Const		X			2,387				2,387	
3	Pepin Creek Main Stem <i>Pepin Lite Concept</i>	Upstream (Pepin Lite) Phased Relocation	Main Street to East/West Creek Corridor <i>Development Mitigation Project</i>		PE	X				421	DOE			421	
					Const			X		8,136	DOE?			8,136	
4	East/West Pepin Creek Corridor <i>Pepin Lite Concept</i>	Upstream (Pepin Lite) Phased Relocation	North end of Pepin Main Stem to Double Ditch Road <i>Development Mitigation Project</i>		PE	X				151				151	
					Const				X	1,508				1,508	
5	Double Ditch Road	Widen/Improve to City Arterial Street Standard (40') <i>Prerequisite: Construct Cross-Culvert to the North and redirect Pepin Creek into new channel</i>	Main Street to City Limits (Pepin Parkway) Connect to Future Pepin Parkway Include Water & Sewer Trunk Lines <i>Development Mitigation Project</i>		PE			X		581				581	
					Const				X	5,231				5,231	
6	Pepin Parkway Bridge	Pepin Parkway Arterial (Center Median Stormwater) Arterial Street - driveway access and parking restricted	On Pepin Parkway over the relocated Pepin Creek <i>Development Mitigation Project</i>		PE			X		265				265	
					Const				X	2,386				2,386	
7	Pepin Parkway Arterial	Pepin Parkway Arterial (Center Median Stormwater) Arterial Street - driveway access and parking restricted	Benson Road to Double Ditch		PE				X	588				588	
					Const				X	5,294				5,294	
8	Benson Road	Widen to the west to avoid ditch on east. Pedestrian on west side - possible 10' separated trail Arterial Street - driveway access and parking restricted	Sunrise Drive to Badger Road Connect to Future Pepin Parkway Construction Development Dependent		PE			X		478				478	
					Const				X	4,306				4,306	
9	Kaemingk Trail Extension - Depot to 8th Street	Paved Trail and Widened Sidewalk on 8th St <i>Trail: Park Impact Fee Funds, Sidewalk: Street Funds</i>	North 8th Street to Depot Road and 8th Street to Main		PE 2021									0	
					Const	X				800	DOC? 200			1,000	
10	Judson Area Streets - Low Impact Development	Stormwater Low Impact Development Ecology Stormwater Grants Phased Construction (Grant Dependent), Utility Fund Match	8th, 9th and 10th Streets between Front and Judson and Judson from 10th to 7th		PE	X				50	120			170	
					Const	X	X	X	X	650	1,950			2,600	

City of Lynden
2022 - 2027 Six Year
 Transportation Improvement Program
 In Priority Order
 Keyed to Map

Ref No.	Project	Description	Termini	Classified	Phase	2022 - 2027					Funding Sources (\$ in thousands)				Total
						2022	2023	2024	2025 - 2027	Local	State	TIB	Federal		
11	South Park Street & Water Utility Improvements	Grind & Overlay <i>Waterline Replacement</i>	Depot Road to North Park		PE	X					150				150
		<i>Sewer Utility Fund Project</i>			Const		X				1,200				1,200
12	Cedar Drive Street & Sewer Utility Improvements	Replace Sewer and Repair Road	Depot Road to 124 E Cedar		PE/ROW	X					110				110
		<i>Sewer Utility Fund Project</i>			Const	X					1,100				1,100
13	Main Street Corridor Completion	Reconstruct Street & Roundabout at Berthusen	Intersection at Berthusen Road east 0.5 miles		PE 2021						125				125
		<i>Surface Transportation Block Grant (STBG) through Whatcom Council of Governments (WCOG)</i>			Const	X	X				1,000			800	1,800
14	Tromp Road	Upgrade to Full City Standard <i>Planning Purposes Only</i>	Front Street north to Alderwood right-of-way, then west to Curt Maberry		PE				X		100				100
		<i>Community Economic Development (CEDS) listed</i>			Const				X		1,000				1,000
15	Bradley Road Pedestrian Improvements	Sidewalk	Vinup Road to Line Road		PE				X		22		82		104
		<i>Applying for 2021 TIB Funds (TIB = 82%)</i>			Const				X		120	450	328		898
16	Line Road	Upgrade to Full City Standard	Aaron to Badger Road		PE				X		50				50
		<i>Planning Purposes Only</i>			Const				X		1,500				1,500
17	3rd Street	Street Reconstruction <i>Planning Purposes</i>	Grover Street to Front St <i>Historic Business District</i>		PE				X		20				20
18	4th Street	Street Reconstruction/Centennial Park Integration <i>Planning Purposes Only</i> <i>Community Economic Development (CEDS) listed</i>	Grover Street to Judson St <i>Historic Business District</i>		PE				X		20				20
19	6th Street	Street Reconstruction <i>Planning Purposes</i>	Grover Street to Front St <i>Historic Business District</i>		PE				X		20				20
20	Northwood Road	Upgrade to Full City Std <i>Planning Purposes Only</i>	South City limits to Badger		PE				X		70				70
21	Kamm Road	Upgrade to Full City Standard <i>Planning Purposes Only</i>	Line Road to Northwood		PE				X		70				70
22	E. Badger (SR-546) Intersections w/ City Arterials	Channelization/Roundabout & Lighting <i>Planning Purposes Only</i>	Roundabouts or Intersection Improvement at Line, Vinup , & Benson Roads		PE				X		500	WSDOT 500			1,000
23	Judson Street Alley	Widen and Reconstruct Relocate Utility Poles <i>Community Economic Development (CEDS) listed</i>	3rd Street to 7th Street <i>Possible Directional Restrictions</i>		ROW/PE				X		50				50

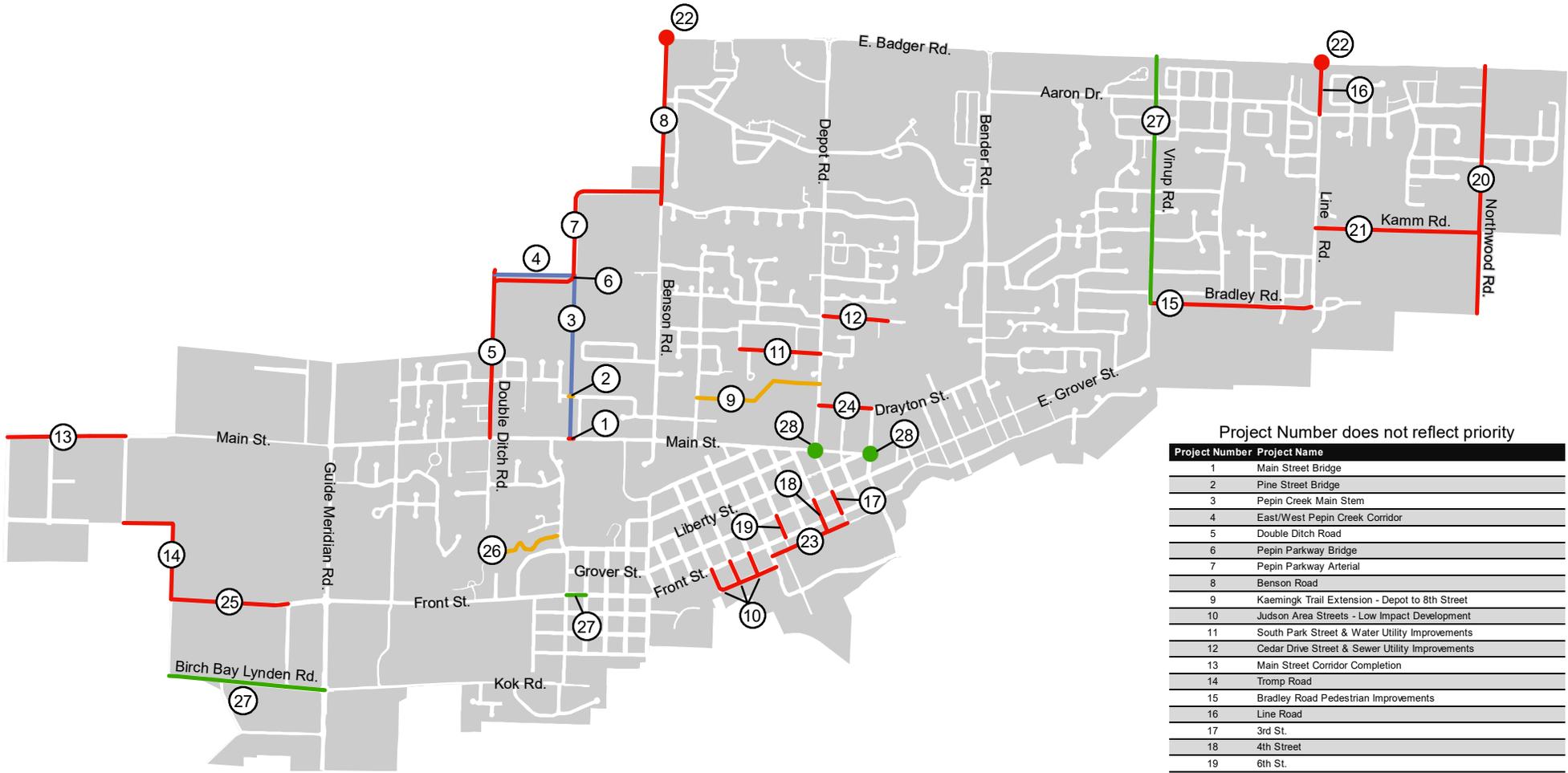
City of Lynden
2022 - 2027 Six Year
 Transportation Improvement Program
 In Priority Order
 Keyed to Map

Ref No.	Project	Description	Termini	Classified	Phase	2022 - 2027					Funding Sources (\$ in thousands)				Total
						2022	2023	2024	2025 - 2027	Local	State	TIB	Federal		
24	Drayton Street Extension	Eliminate Gap and Resurface Existing Street	1st Street to Depot Road <i>Possible Directional Restrictions</i>		ROW/PE				X	50				50	
25	Front Street (West) Arterial	Upgrade to Full Arterial City Standard <i>Street: \$2,600,000</i> <i>Utilities: \$700,000</i>	Duffner Drive to Tromp Road <i>west of Guide Meridian</i>		PE 2021					50				50	
					Const			X	3,300			3,300			
26	Kaemingk Trail Extension to Dickinson Park	Paved Trail w/ 2 Bridges <i>2019 Parks & Trails Bond</i>	17th Street to existing Ridgecreek Trail		PE	X				200				200	
					Const		X		2,500			2,500			
27	Arterial Maintenance Overlays Classified Routes	Grind and Overlay w/ ADA Upgrades	Birch Bay Lynden Rd, Vinup Rd, Front St		Const				X	4,500				4,500	
28	Intersection Repairs and ADA Classified Routes	Replace Asphalt w/ Concrete, ADA Upgrades	Intersections: Main & 3rd, Main & 1st,		Const				X	4,500				4,500	
29	Wayfinding Signage	City Implementation of County-wide Program	Various Arterial Roadway Locations		Const				X	150				150	
30	Miscellaneous Chip Seal/Maintenance	Miscellaneous Streets Chip/Fog seals	Various Locations		Const	X	X	X	X	200				200	
31	Non-Motorized Facilities	Non-Motorized Facilities/ADA Sidewalks	Various Locations		Const	X	X	X	X	50				50	
TOTAL:										\$56,780	\$6,020	\$410	\$800	\$64,010	

Street Project Funding Matrix

STREET DESCRIPTION	Cost Estimate	Note	FUNDING PROGRAMS:													Local (Matching) Funds							
			Priority	Design Status	Fed Route	WCOG		County	TIB			Ecology	Port	WSDOT	PWTF		Developer	\$550K	\$200K				
						STP-R	TAP (Bike/Ped)	EDI	UAP (Arterial)	SP (Sidewalk)	APP (Pavement)	Storm WQ (LID)	Small Cities	Active Trans.	Emergency /Predesign	Construction							
						86.5 % grants		50% grant & 1%. 20 yr	80% grants			1.5%, 20 yr	50% grant	86.5% grant	0.78%, 5 yr 1.56% 20yr								
Fall, every 3 yrs	Anytime	August			Oct	Feb		3/22/2018	???						163 TBD	302 Arterial	011 Streets	401 Water	405 Sewer	410 Storm			
Bradley Road¹ (Vinup to Line)	#REF!		Y		Y	?			?							X	X						
Line Road (Bradley to Badger)	#REF!	A			Y	?			?							X	X						
W. Main Street (Guide to Berthusen)	#REF!				Y	Ongoing		X								X	X						
W. Front Street (Guide to Tromp)	??		Y		N			X			?		Pending			X	X						
Tromp Road² (BBL to Main)	#REF!				N	NA	NA	X			?				2	X	X	NA	NA	NA			
4th Street (Judson Alley to Grover)	??				N	NA	NA		NA	NA	NA		Ongoing		80%	X	X						
Drayton Street (to Depot)	#REF!				N	NA	NA		NA	NA	NA					X	X						
Kamm Road (Line to Northwood)	\$ 3,200,000	B			Y											X	X						
Northwood Road³ (Kamm to Badger)	\$ 4,700,000	B			Y						?					X	X						
Benson Road⁴ (Main to Badger)	\$ 7,020,000	B			Y											X	X						
Double Ditch Road⁴ (Main to City Limits)	\$ 1,710,000	B			Y											X	X						
Residential Streets																							
Cedar Street (Depot to dead end)												?				NA	X		X		X	X	
Judson Street (8th to 10th)												Offer Pending				NA	X		X				
South Park Street (Depot to W.Park)																NA	X		X	X			
Meadow Lane																NA	X		X	?	?	?	
Bonanza Dr./Cessna St./Piper St.												?				NA	X		X	?	?	?	

Notes:
¹ Possibly use TIB Sidewalk (SP) Funds to construct pedestrian improvements
² Tromp from W. Front Street to the north is Developer Constructed
³ Consider using TIB APP funding to resurface until full City Standard at later date.
⁴ Consider Phasing
^A Needs to be Revised
^B Estimates from 2016 Transportation Plan Update 2017



Project Number does not reflect priority

Project Number	Project Name
1	Main Street Bridge
2	Pine Street Bridge
3	Pepin Creek Main Stem
4	East/West Pepin Creek Corridor
5	Double Ditch Road
6	Pepin Parkway Bridge
7	Pepin Parkway Arterial
8	Benson Road
9	Kaemingk Trail Extension - Depot to 8th Street
10	Judson Area Streets - Low Impact Development
11	South Park Street & Water Utility Improvements
12	Cedar Drive Street & Sewer Utility Improvements
13	Main Street Corridor Completion
14	Tromp Road
15	Bradley Road Pedestrian Improvements
16	Line Road
17	3rd St.
18	4th Street
19	6th St.
20	Northwood Road
21	Kamm Road
22	E. Badger Road (SR-546) Intersections w/ City Arterials
23	Judson Street Alley
24	Drayton Street Extension
25	Front Street (West) Arterial
26	Kaemingk Trail Extension to Dickenson Park
27	Arterial Maintenance Overlays Vinup Road
27	Arterial Maintenance Overlays Birch Bay Lynden Road
27	Arterial Maintenance Overlays Front Street
28	Intersection Repairs and ADA Intersection (1st Street & Main Street)
28	Intersection Repairs and ADA Intersection (3rd Street & Main Street)

Path: \\Saturn\gis\Projects\Public Works\TransportationImprovement\Projects\TIP2022\TIP2022Projects.mxd

Project Type

- Motorized
- Non-Motorized
- Non-Motorized Road Drainage
- Overlay

2022 - 2027 Transportation Improvement Projects



Updated: 29 Mar 2021

CITY OF LYNDEN

EXECUTIVE SUMMARY - FINANCE



Meeting Date:	May 17, 2020	
Name of Agenda Item:	Approval of one additional Full Time Employee	
Section of Agenda:	New Business	
Department:	Finance	
Council Committee Review:	<input type="checkbox"/> Community Development <input checked="" type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
	Legal Review: <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required	
Attachments:		
None		
Summary Statement:		
<p>Increasing operational demands and work volume have shown the need for additional resources in some of the City's administrative offices. One of those areas is the Finance Department, as constantly increasing State and Federal regulatory and reporting requirements are pushing up against limited departmental resources. These limitations have been recognized and discussed by the City Administrator and the Mayor. Both the City Administrator and Mayor have given their approval to the Finance Director for one additional entry level full-time employee (FTE) in the Finance Department.</p> <p>The Finance Committee reviewed this request and has given their approval in their May 17, 2021 meeting and is forwarding the request to the full Council.</p>		
Recommended Action:		
That the Council approve the request for one entry level FTE.		

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	May 17, 2021	
Name of Agenda Item:	Ord 1624 Site Specific Rezone 20-05 – O & S Farms	
Section of Agenda:	New Business	
Department:	Planning Department	
Council Committee Review:	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
	Legal Review: <input checked="" type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input type="checkbox"/> Review Not Required	
Attachments:		
Draft Ord 1624, Planning Commission Reso, Minutes of the 4-22-21 PC Mtg, City Council Remand Order, Applicant’s Letter of Concern re 1-28-21 Hearing, Minutes of the 1-28-21 PC Mtg, Rezone 20-05 Application from O&S Farms (1 st and 2 nd Submittals)		
Summary Statement:		
<p>Site specific rezone application #20-05 was submitted by Ashley Gosal, on behalf of Fishtrap Creek LLC. The request would shift the property located at 8035 Guide Meridian from Commercial Services – Regional (CSR) to Commercial Services – Local (CSL). The most significant change in this shift is the ability of CSL properties to blend residential uses with commercial.</p> <p>On March 15, 2021 the City Council remanded the Site-Specific Rezone application 20-05 to the Planning Commission after concerns regarding the January 28th hearing were raised by the applicant. Subsequently the Planning Commission held a second hearing on the item on April 22. The Planning Commission raised concerns related to the ability of the project to safely accommodate residential uses along a State highway however, the hearing concluded with a 4-0 recommendation to the City Council to approve the rezone request.</p> <p>Staff’s review concluded with a recommendation for approval noting a diminishing market demand for standalone commercial space of this scale; that the City code related to the definitions of the two commercial categories were revised since the property was originally zoned CSR; that the opportunity for a mixed-use project, afforded by the CSL zoning, would be an attractive sort of project to have at this gateway to Lynden; and that it would locate residential uses, if developed here, near services and provide transitional zoning to other low density residential properties on Bay Lyn Drive. Staff, like the Planning Commission, noted that pedestrian accommodations (frontage improvement on Bay Lyn Drive) would need to be incorporated into future designs and reviewed by the Design Review Board.</p>		
Recommended Action:		
Motion to recommend approval of Ordinance 1624 approving rezone application #20-05 as submitted by Fishtrap Creek, LLC., and authorize the Mayor’s signature on the document.		

ORDINANCE NO. 1624

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

WHEREAS, the City of Lynden fixed the 17th day of May 2021, as the date to consider the O & S Farms Site Specific Rezone for the following property from Regional Commercial Services (CSR) to Local Commercial Services (CSR).

PARCEL A: A TRACT OF LAND LOCATED IN THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 40 NORTH, RANGE 2, EAST OF W.M, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE CENTERLINES OF THE GUIDE MERIDIAN ROAD AND COUNTY ROAD NUMBER 51, (FORMERLY KNOWN AS BIRCH BAY LYNDEN ROAD AND NOW KNOWN AS BAY LYN DRIVE); THENCE WEST A DISTANCE OF 533 FEET; THENCE SOUTH, PARALLEL WITH THE CENTERLINE OF SAID GUIDE MERIDIAN ROAD TO THE SOUTH LINE OF SAID QUARTER QUARTER; THENCE EASTERLY ALONG SAID SOUTH LINE A DISTANCE OF 533 FEET, MORE OR LESS, TO THE CENTERLINE OF SAID GUIDE MERIDIAN ROAD; THENCE NORTHERLY ALONG SAID CENTERLINE TO THE POINT OF BEGINNING. EXCEPT THE NORTH 300 FEET OF THE EAST 144 FEET THEREOF.

ALSO EXCEPT BEGINNING AT A POINT WHICH IS 422 FEET WEST OF THE INTERSECTIONS OF THE CENTERLINES OF THE GUIDE MERIDIAN ROAD AND COUNTY ROAD NUMBER 51, (FORMERLY KNOWN AS THE BIRCH BAY LYNDEN ROAD AND NOW KNOWN AS BAY LYN DRIVE); THENCE SOUTH PARALLEL WITH THE GUIDE MERIDIAN ROAD A DISTANCE OF 141 FEET; THENCE SOUTH 49° 00' 00" WEST A DISTANCE OF 83 FEET; THENCE SOUTH 77° 00' 00" WEST TO THE WEST LINE, EXTENDED SOUTHERLY OF THAT PARCEL DESCRIBED IN WHATCOM COUNTY AUDITOR'S FILE NUMBER 9004302009, THENCE NORTHERLY ALONG SAID WEST LINE AND ITS SOUTHERLY EXTENSION TO THE CENTERLINE OF COUNTY ROAD NO. 51; THENCE EASTERLY THE CENTERLINE OF SAID ROAD NUMBER 51; THENCE EASTERLY ALONG THE CENTERLINE OF SAID ROAD NUMBER 51 A DISTANCE OF 92 FEET TO THE POINT OF BEGINNING.

AND EXCEPT THE RIGHT -WAY FOR BAY-LYN DRIVE LYING ALONG THE NORTHERLY LINE THEREOF, EXCEPT ALSO THE RIGHT-OF-WAY FOR GUIDE MERIDIAN ROAD, LYING ALONG THE EASTERLY LINE THEREOF. ALSO, EXCEPT THAT PORTION DEEDED TO THE STATE OF WASHINGTON BY THAT CERTAIN INSTRUMENT RECORDED JUNE 29, 2007, UNDER WHATCOM COUNTY AUDITOR'S FILE NO. 2070605388. SITUATE IN WHATCOM COUNTY, WASHINGTON.

PARCEL B: ATRACT OF LAND IN SECTION 25, TOWNSHIP 40 NORTH, RANGE 2 EAST OF W.M, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE CENTER OF THE INTERSECTION OF THE GUIDE MERIDIAN ROAD AND COUNTY ROAD NO. 51; THENCE WEST ALONG THE CENTERLINE OF SAID ROAD NO. 51, 144 FEET THENCE SOUTH 300 FEET PARALLEL TO THE CENTER LINE OF GUIDE MERIDIAN ROAD; THENCE EAST 144 FEET PARALLEL TO ROAD NO. 51; THENCE NORTH 300 FEET TO THE POINT OF BEGINNING. EXCEPT THEREFROM THE GUIDE MERIDIAN ROAD AND BAY-LYN DRIVE LYING ALONG THE WESTERLY LINE THEREOF.

ALSO EXCEPT THAT PORTION DEEDED TO THE STATE OF WASHINGTON BY THAT CERTAIN INSTRUMENT RECORDED JUNE 29, 2007, UNDER WHATCOM COUNTY AUDITOR'S FILE NO. 2070605388. SITUATE IN WHATCOM COUNTY, WASHINGTON.

COMMONLY DESCRIBED AS: 8035 Guide Meridian, Lynden.

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

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

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

WHEREAS, on January 28, 2021, the Lynden Planning Commission voted to recommend denial of the proposed Fishtrap Creek, LLC / O&S Farms Site Specific Rezone request.

WHEREAS, on February 5, 2021, the Lynden Planning Department received a letter from Stoel Rives, Attorney representing Fishtrap Creek LLC., noting concerns related to procedure and substance during the Planning Commission hearing held on January 28, 2021,

WHEREAS, on April 5, 2021, The Lynden City Council voted to remand the Fishtrap Creek, LLC / O&S Farms Site Specific Rezone request back to the Planning Commission to hold a new, complete open record hearing fully conforming to 17.09.040 (B).

WHEREAS, on April 22, 2021, the Lynden Planning Commission held a virtual public hearing, via Microsoft Teams to accept public testimony on the proposed Rezone request, and that meeting was duly recorded. At that hearing, the Lynden Planning Commission voted to recommend approval of the proposed Fishtrap Creek, LLC / O&S Farms Site Specific Rezone request as outlined in Planning Commission Resolution #21-05.

WHEREAS, on May 17, 2021, the Lynden City Council did convene and inquire into the proposed change of zone, and has determined to grant the rezone request as submitted; and

WHEREAS, after careful consideration of the record for the O & S Farms Site Specific Rezone request, the Lynden City Council enters the following Findings of Fact regarding the proposed rezone, provided the conditions set forth in Section 2 herein are met;

1. Notice. Proper notices of the hearing were published and posted within the vicinity of the property as required by law.
2. Location. The subject property is located at 8035 Guide Meridian, Lynden, in Whatcom County, Washington.
3. Ownership. Petitioner, Fishtrap Creek, LLC. is the owner of the subject property.
4. Request. Petitioner requests that the subject property be granted a site-specific rezone from Regional Commercial Services (CSR) to Local Commercial Services (CSL).
5. Reason for Request. The rezone will provide an opportunity for infill within the City of Lynden.
6. Change in Conditions: The shift in commercial zoning descriptions will assist with the declining need for retail spaces, and the advantage that additional residences in this location will have.
7. Comprehensive Plan and City Code. The proposed rezone is consistent with the Comprehensive Plan land use designation for the property; it is consistent with and satisfies applicable city codes, including LMC 17.09.040 (C); and it will further the goals of the Lynden Comprehensive Plan.
8. Public Health and Safety. The proposed rezone will promote the health, safety, and welfare of the community.

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

Section 1: The zoning map of the City of Lynden and Ordinance No. 1624 adopting said zoning map are hereby amended to rezone the Property to CSL (Local Commercial Services).

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

Approval of the O & S Farms Site Specific Rezone is subject to the findings, conditions and recommendations of the Technical Review Committee Report dated January 25, 2021.

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

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

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

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

M A Y O R, Scott Korthuis

ATTEST:

CITY CLERK, Pamela Brown

APPROVED AS TO FORM:

CITY ATTORNEY, Robert Carmichael

CITY OF LYNDEN
PLANNING COMMISSION RESOLUTION #21-02

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

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

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

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

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

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

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

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

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

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

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

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

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

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



 Diane Veltkamp, Chairperson,
 Lynden Planning Commission



 Heidi Gudde, AICP
 Planning Director

CITY OF LYNDEN



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

PLANNING COMMISSION AGENDA

7:00 PM April 22, 2021
Microsoft Teams Meeting

1. CALL TO ORDER

2. ROLL CALL

Commissioners Present: Bryan Korthuis, Diane Veltkamp and Gerald Veltkamp, Tim Faber

Commissioners Absent with Notice: Blair Scott and Karen Timmer

Staff: Heidi Gudde and Korene Samec

City Attorney, Catherine Moore. Moore stated that she has been invited to attend the meeting to assist the PC going through this remand.

3. APPROVAL OF THE MINUTES - None

4. DECLARATION OF CONFLICT

This hearing is to be heard as if the Commission has never heard this rezone request before. None of the Commissioners reported any ex-parte contact or conflict of interest.

5. PUBLIC HEARING / REMAND

A. Site Specific Rezone #20-05, Fishtrap Creek, LLC / O&S Farms 8035 Guide Meridian, Lynden

Catherine Moore stated that this is a remand by the City Council. It was remanded back to the Commission for the following reasons:

1. To ensure that Commissioner Timmer had no conflict of interest. Timmer is not present tonight therefore, we will either finish tonight and be done or continue to the next meeting where we can go over Commissioner Timmer's declaration of conflict.
2. To ensure that the Commission conducts a proper open record hearing. There was concern that members of the public may not have been invited to speak.
3. As always, the Commission is bound to evaluate the proposal based on the criteria established under the code. The Planning Commission acts as an independent review separate from staff and City Council they are to make their own recommendations.

Gudde summarized the Executive Summary regarding the above noted project. Ashley Gosal, on behalf of Fishtrap Creek LLC, has applied for a site-specific rezone at 8035 Guide Meridian. This is the southwest corner of the intersection of Guide Meridian and Bay Lyn Drive. The subject property is currently zoned Commercial Services – Regional (CSR). The applicant has requested that the zoning shift to Commercial Services – Local (CSL).

As the Planning Commission held a public hearing on this item on January 28, 2021. Subsequently the applicant’s attorney raised concerns regarding the hearing process. In response the City Council approved the attached order of remand which calls for a new hearing to be held on the item. Detailed findings of the remand are included in the order.

It is critical that the Planning Commission’s review and deliberation focus on the criteria by which site specific rezones can be approved. These are addressed in the application and supplemented by the applicant’s letter dated April 12, 2021.

Staff maintains the previous recommendation of approval due to the shift in commercial zoning descriptions, the declining need for retail spaces, and the advantage that additional residences in this location will have. This is an area of the City where mixed use is most viable. Planners target these areas for higher density residential in transit-oriented designs because of their proximity to services. The potential of residential uses, in addition to commercial uses in this location, will also assist in the collection of sewer service fees. The City will use these to recoup the cost of installing a sewer pump station in this area – construction that is scheduled to begin next year.

Overall, it can be argued that the rezone to CSL rather than CSR is a modern refinement of a zoning that was put in place decade ago.

D Veltkamp opened the public hearing.

Ashley Gosal, Agent for Fishtrap Creek LLC / O& S Farms. Gosal, addressed the Commission and stated that she submitted additional substantive information regarding the rezone request that she feels sufficiently demonstrates how this rezone application meets each of the City’s criteria for a site-specific rezone. Gosal stated that she is available to answer any questions.

Faber has two questions:

This rezone would allow a large mixed-use development, can you please speak to how well other mixed-use projects in Lynden have been received and how are they selling?

Faber also addressed the large mixed use in East Lynden on Aaron Drive. It seems as if the residential fills, however, the commercial seems very hard to fill. Concerned if we allow more residential, that will take off, but the commercial spaces will be left empty.

Gudde stated that the Salmonberry / Tractor Supply development initial take off was slow as they were not eligible for traditional financing mostly because of the difference between condo and apartment designations. The units were recently moved to a condo designation which makes it easier for home buyers to finance. The units are small but they are selling, filling and already turning over to second buyers. Market wise it has done very well. No concerns with parking. The main concern heard is regarding the architecture. It was meant to blend with Tractor Supply.

As to the mixed use on Mercedes Drive, it does not have the same accessibility to amenities that Salmonberry does. The commercial is located on an island with no other commercial nearby. IN addition, there are parking constraints with the property. There may be a day when we have enough services to support commercial in that area. Faber stated that whatever would be built there will need to blend and function well with the surrounding area.

D. Veltkamp asked about the letters that were received in support regarding the rezone. Aleesha Gosal, Chantel Johnson, Darren Johnson and Vern and Shelly VanderGarde and asked what their relationship was to the applicant.

Gosal replied, that Aleesha Gosal is a family member to the applicant, however, she is a homeowner in Lynden. Coming in on her own accord as she received a notice.

Aleesha Gosal, 152 Bay Lyn Drive, Gosal addressed the Commission and stated that she owns 152 Bay Lyn Drive in Lynden and received a letter regarding the request.

Gary Vis, Director, Lynden Chamber of Commerce, 518 Front Street, Lynden.
Much of what I will speak to this evening was presented to the Planning Commission in February 2017, in regards to the Arneson Property rezone request to move from commercial to residential zoning. I have updated the numbers and data as best possible, given my own curiosity regarding the current Covid impacted business climate, and associated changes in the commercial property area, specifically retail and office space. As I mentioned then, and would like to share again, a mixed-use commercial/ residential building can, when done correctly and placed correctly, be an important and vital addition to Lynden. One component to that placement, the most vital, is the success of both the commercial and the residential together.

In the 2008, Pitney Bowes was commissioned by the City of Lynden to create a report on commercial properties within Lynden, suggest long-term opportunities, and identify the potential for growth. The report identified 770,000 sq. ft. of retail only space, excluding the current Tractor Supply, the Dollar Tree location at Lynden Towne Plaza, and the Waples Building in downtown Lynden.

Additional space added from 2007-2017 included not only the three locations mentioned above, but two additional buildings at Bender Plaza, and other converted space, roughly

80,000 sq. ft. additional for a total estimated retail square footage of 850,000 sq. ft. The Pitney Bowes report suggested that an additional 65,850 sq. ft. could be filled by 2013, based upon an annual growth rate of 3.5%. The actual growth in that period was 2.4%, or a 2007 U.S. Census estimate of 11,150 to the 2013 estimate of 13,517.

At the time of my testimony to Commission members in 2017, **the 2007 U.S. Census Bureau Economic Census reported the United States as a whole had 46.6 sq. ft. of retail per capita, with the U.K. as number 2 in the world with 9 sq. ft. per capita. Lynden, again at the time of my 2017 presentation, had a rate of 63 sq. ft. per capita.** At the time, I offered a 2014 Forbes article by author Robin Lewis titled “The Great Retail Demassification”, the premise of which was the significant overbuild of retail space. Given in light of the continuing growth of internet shopping, the author asked the rhetorical question “Try to compute how many square feet of retail space some 5 billion e-commerce retail sites have added to the (retail space) congestion”. It should be noted estimates for the actual number of e-commerce sites for 2020 was 12-24 million worldwide, although the actual number of sellers is unknown, as Amazon alone has in the millions of vendors utilizing their platform.

Since the time of my 2017 report, additional commercial space has been added to the City, by construction or repurposing, most notably the parcel immediately south of Safeway, with Grocery Outlet, Popeye’s, etc., the former Homeland Security/Border Patrol Station along the Guide Meridian, and smaller spaces along Aaron Drive, Evergreen Street, and various other, smaller locations scattered throughout the city. Even now, the Planning Department is engaged in other commercial development projects moving forward. **In addition, with the decline of malls and brick and mortar retail in general, and conversion or demolition of space for housing or industrial needs, not including the current challenges due to the ongoing Coronavirus situation, estimates are the U.S, as of 2019, has reduced square footage to 23 sq. ft. per capita, and by some accounts (Modern Retail; Bloomberg) the U.K. and France have decreased to an estimated 5 sq. ft. per person, and Germany to at an estimated 2.5 sq. ft. per person.**

Given the addition of an estimated 50,000+ sq. ft. into the Lynden market, increasing the total to over 900,000 sq. ft of retail alone, and an estimated City population for 2019 of 15,223, **the Lynden community is more than double the lower estimated national rate of retail space per capita, at 59.12%. Using the school district boundaries estimated population of 20,000 persons, per square footage is currently estimated at 45 sq. ft. per capita. Should the school district population double, reaching 40,000 persons, and all else remains the same in regards to current retail space, Lynden would have 22.5 sq. ft. per capita, and to emphasize, having added zero additional commercial space.**

Currently, as you are very aware, the long-term impacts of CoVID-19 on all commercial space, especially retail and office, are unknown. **E-commerce sales are estimated to have risen from 9% in 2017, to 14.4% in 2020, with estimates of 19.2% by 2024.**

(Statista.com) Such trends are confirmed by the City of Lynden sales tax revenue sources, with 65% of 2020 collected taxes coming from products purchased from outside Lynden, an increase of 10% over 2019. Until our shopping routines return to somewhat normal conditions, it is unknown if this a long-term trend, or simply a matter of a short-term solution to the current situation. **Additional retail impacts will occur as housing costs and rentals rates increase significantly faster than area wages, decreasing discretionary spending.**

Office space needs continue to be an unknown, especially for areas such as Lynden, as larger metro-areas such as Seattle see decreases in occupied space and lease rates. This has been driven in large part by employers and employees in many industries, including tech, financial, engineering and other non-manufacturing professions, finding some freedom from traditional office settings, and working remotely from areas far outside major metro offices. This trend has also been seen somewhat locally, in similar though smaller firms, as technology allows for customer and client to meet remotely, and consolidation of space occurs as employees rotate in and out of the brick and mortar offices as needed. While anecdotally we have heard of and spoken with families moving into Lynden for a different life-style experience, due to the opportunities afforded by remote work, it is unknown in what numbers these individuals exist, or if these individuals will seek a traditional out-of-home office. At this point in time, it at a minimum appears that office space is opening up, and may be expanding, as former retail space is converted to office space.

It does appear at the national level, additional medical space is a trend, but our area is already slated for a newly constructed space, so the impacts to Lynden will likely be minimal, due to our population.

Lynden continues to have significant availability of commercial space. This includes Bender Plaza, Fairway Center, Lynden Towne Plaza, the Aaron Drive commercial/multi-family structure, several properties in the downtown area, although several former banks are being reused or repurposed. Many of these spaces have been empty for several years, and once again, with the unknowns of the longer-term impacts to businesses due to the CoVID-19 situation, it remains to be seen if more space will become vacant, how much, or for how long.

I am deeply concerned with the ability of our current and future commercial property owners to maintain a price point where they are able to not only see a return for their investment, but also to generate sufficient revenue to maintain their properties in a manner consistent with our community standards, while upgrading properties to meet the potentially different needs of new tenant. With the double blow of decreased retail and office tenants, and many unknowns now and moving forward.

I would advise all to “proceed with caution” regarding future commercial space needs. It has been my understanding and observation for over two decades that the Planning

Commission's role in our government structure is to create new opportunities, in balance with maintaining the community we currently have, including sustainable and viable commercial centers.

The proposal before the Commission is very helpful in this regard. As we are all aware, the opportunity for starter housing, in various forms, is a genuine need, and as some of the Commission has heard me speak to previously, placing all multi-family housing in the ever-expanding outskirts of Lynden is unhelpful, and in some cases, detrimental to the overall community as a whole.

In the case of Lynden, it is my opinion that there is wisdom in placing the commercial/residential component of our housing mix near or as close to existing services as possible. This mixed use provides the long-term income needed for investment purposes, balancing the often-transitory nature of multi-family housing. It may be said the mix of the two, placed properly within the community, is a symbiotic relationship, each helping the other to exist. The current parcel being discussed this evening seems ideal. It is located in walkable distance to transit, grocery, pharmacy, medical, dining, clothing, even potential work opportunities, and unlike newer areas of our community, is situated along a road network designed specifically for higher-volume traffic, and does not require many decades of build-up of surrounding services to support those who will live there. Provided, of course, adequate and plentiful parking is provided. I'm all about the parking.

In closing, I support the change in zoning of this parcel, and as a member of the group that reviewed this zoning some time ago, believe that given the changes to our economic trends, and needs for housing, this mix will serve our community well for the decades to come, and demonstrate the flexibility and willingness to adapt Lynden is known for.

Thank you for your time and willingness to listen, and I hope you find the information useful to your discussion. I would be happy to clarify my remarks or answer any questions you may have.

Faber asked as a border town, how does that factor into that? Vis replied, Pitney Bowes excluded any Canadian traffic from their report because it is such an unknown factor. It always varies from time to time. It does have an impact but we are becoming more self-reliant. You must look at the residents of your community as your cake and the Canadian market can be your frosting. Serve the community and the community surrounding you first.

Combining two uses helps other areas in the community. The other commercial can build off of that and they can help each other.

Veltkamp asked about public transit and residential safety. The Guide Meridian is a very busy road. Vis replied that WTA has been very amenable to place pick up locations where

we need them. There are great opportunities. I am not concerned that WTA will not be responsive to any concerns or requests we bring to them.

D. Veltkamp asked about locating residential on a State Highway. Gudde, replied that once dedication is achieved along the State Highway, the underlying zoning setbacks apply. Every site plan gets reviewed by the Design Review Board. The intent is not to put residential close to the Guide.

Veltkamp referenced MF development within the CSL zone and questioned the 200-foot setback requirement listed under sub-section #8. Staff replied that sub-section #8 only applies to the North Lynden Sub-Area, not for this property.

Darren Johnson, 865 Brookfield Drive in Lynden,

Gosal’s plan is great, mixed use on this property is the best use. The development of multi-family will help with the lack of affordable housing in Lynden.

Aleesha Gosal, addressed the Commission and state that as a homeowner, she is in support of this request.

None in opposition.

Korthuis asked how close is the nearest park? Gudde replied, the closest trail connection (in the future) will be along the Fishtrap Creek. The closest park may be Dickenson’s. Korthuis stated that the property is a bit isolated from a park. How often does the bus come through that location? Vis stated that the Mayor has advocated for more WTA stops in Lynden.

Faber asked about the access to the Guide Meridian? Will there be another access or will it be off of Bay Lyn Drive? Gudde replied, the access will be off of Bay Lyn Drive.

How many feet is it from the stop light at Kok Road? Gudde noted that the question is off topic, but a traffic light is permitted per WSDOT standards as the two would be far enough apart from each other. The distance is roughly 700+ feet.

Veltkamp stated that one of the CSL elements speaks about pedestrian connectivity. Gudde replied, that CSL does have an emphasis on pedestrian connectivity. Without knowing what the development will look like it is difficult to know what that will include.

Gosal stated that the project will meet development, pedestrian and site design requirements, Pedestrian connectivity can be accomplished in many ways. The project is a large site and there is a lot of room to work with.

Gosal stated that she has been in real estate development for over 10 years and is no stranger to requirements and or development. The intent of the project will eventually

accomplish what is best for the city including parks, trails, parking, and provide pedestrian connectivity to the surrounding sites. For now, we are focusing on the rezone, the project details will come later.

Veltkamp addressed Gudde’s comment in her report regarding the collection of sewer fees. Veltkamp stated that it is a moot point and cannot base whether or not the city will get the money out of it. Moore stated that the PC can discuss if Gudde or the applicant would like to explain how it relates to one of the criteria for a site specific rezone?

Gosal replied, several criteria apply; one being the health, safety and general welfare of the City. Being able to pay into funds will help the city reallocate budget funds to other items and to pay down quickly and efficiently as possible is going to be in the best interest of the city. It is compatible with the city development plans, codes and regulations as this sewer pump station is part of the city’s plan.

Gosal did talk to Public Works and was informed that multi-family is more viable than commercial with regards to paying for the sewer. Gudde concurred.

Veltkamp stated that one of the main points that was talked about at the last meeting was that this is one of the few CSR parcels available. Is it wise to move from CSR to CSL?

Gosal asked how does this relates to the criteria for a rezone? Veltkamp stated that by allowing residential it decreases the amount of commercial availability, especially on a state highway. This topic was discussed at the last meeting and there was concern about rezoning this piece to CSL when the other commercial in the areas was CSR.

Korthuis replied, that the discussion fell under Item D of the criteria which speaks to compatibility with existing uses and zoning. Gosal stated that Item D speaks specifically to compatibility with existing uses and zoning not other CS zoned properties and the amount or locations of those. Korthuis stated that it was regarding the properties right next to it.

Ashley again thanked the PC for taking their time and reconsideration in reviewing this proposal. Thank you to Gary Vis and all other speakers of support.

No further questions from the Commission.

Faber motion to close the public portion of the hearing. Seconded by Korthuis and the motion passed 4-0

17.19.050 - Criteria for approval of site-specific rezone.

Site-specific rezone requests must satisfy the requirements established for development proposals in Section 17.09.040(C). In addition, no application for a site-specific rezone shall be approved unless the applicant demonstrates that each of the following criteria is satisfied:

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

Discussion: Faber appreciates Vis’ reminder of the study. Faber supports that things have changed and agrees that more residential is warranted. If this does go through it is important that it is compatible with the commercial component so that it is not isolated. Korthuis and G. Veltkamp agrees with Faber.

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

Discussion: Faber agrees with what is written in the Staff Report. This property has been vacant for quite some time. If there is a way to encourage development on this property that is appropriate and in line with the City’s Comprehensive Plan. Greater density would give greater opportunity for the commercial component to serve the local community. Korthuis and G. Veltkamp agree with Faber.

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

Discussion: This one is difficult as there is not a development proposal submitted associated with the Rezone. The DRB and the City will need to take a careful look when a development does come in.

It is supposed to meet all 5 criteria? Since there is not a site specific development included and it is supposed to meet all 5 criteria, can conditions be added to the Site Specific Rezone such as requiring that the residential be located further from the Guide Meridian.?

Moore: You will need to rely on staff and the DRB. The PC should not sub zone within a zone. It is too difficult to regulate.

Faber is comfortable with the Applicants response regarding once a development proposal is submitted.

Korthuis stated that as soon as there is a proposal it will have to meet and be subject to all of the regulations.

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

Discussion: G. Veltkamp stated that it is compatible. Faber agrees. D. Veltkamp stated that the report states that the residential is to the east, a correction may be needed.

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

Discussion: Korthuis has a hard time with this one. Putting residents right on the Guide with no great access to very much. Safety concerns? To say that it promotes the health, safety and general welfare of the community is a difficult one. D. Veltkamp stated that there are no sidewalks on the Guide Meridian. Gudde replied, yes, there are sidewalks on the Guide Meridian.

Faber addressed Page 9 of the PDF. DRB and Staff will review. We will need to ensure that there are safe means to cross the busy roads. If there is a stop light at some time in the future, then great. Our attention at this time should be focused on getting people safely across Bay Lyn Drive as they will go to Safeway, restaurants etc.

Residential should be focused to the back, away from the Guide. We have heard from the developers that this will be the goal. If we let residential right on the Guide, Faber is not sure anyone would want to live right on the Guide. The focus facing the Guide should be commercial. Faber trusts that if the developers want a successful development, that is how it should be laid out.

In the regards to site development. Bay Lyn drive is considered a sub-standard road. Frontage improvements would be part of a development project that comes forward.

G. Veltkamp stated that there needs to be a lot of work done if this is to happen. Pedestrian connectivity is necessary. The in and out by Safeway is not safe for pedestrians.

D. Veltkamp states that this is the one that she has difficulty with.

Korthuis says that the word “promote” is the word that is difficult. The safety is a big concern. No issues with the other criteria, just this one.

Faber stated that enough has been said that satisfies him. We will hope that whatever proposal is brought forward will focus on pedestrian safety and connectivity. The health

and safety will be picked up with the development proposal at that time. We will have to rely on the DRB. Faber trusts that staff will have a good eye.

D. Veltkamp questions whether or not the DRB's responsibility is to look at traffic and safety etc. Gudde stated that Staff has authority through SEPA to look a traffic and the project proposal. Pedestrian and off-site impacts are looked at by Staff. Staff and DRB will cross processes in review.

G. Veltkamp is okay.

Moore reminded the Commission that we do not know what type of development will locate here. The discussion needs to be a little more high level.

Faber made a motion to recommend approval to the City Council of the O&S Site Specific Rezone application #20-05 subject to the TRC Report Seconded by G. Veltkamp and the motion passed 4-0.

**The Commission provided the following rational for their decision:
17.09.040 (C)**

Required Findings. The Planning Commission shall not approve or recommend approval of a proposed development unless it first makes the following findings and conclusions:

1. The development is consistent with the comprehensive plan and meets the applicable requirements and intent of this code. **Yes – Has Met.**
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. **Yes, these will be addressed when the project comes in. Will meet.**
3. The development adequately mitigates impacts identified under Titles 16 through 19. **N/A – Will meet.**
4. The development is beneficial to the public health, safety and welfare and is in the public interest. **Will be addressed and discussed once a development proposal comes in. At the time, the rezone will be okay – Will meet.**
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. If the

development results in a level of service lower than those set forth in the comprehensive plan, the development may be approved if improvements or strategies to raise the level of service above the minimum standard are made concurrent with the development, and in conformance with all requirements in Chapter 17.15 of the city code. For the purpose of this section, "concurrent with the development" is defined as the required improvements or strategies in place at the time of occupancy, or a financial commitment is in place to complete the improvements or strategies within six years of approval of the development. **This is a trust level and we are trusting that it will be handled properly – Will meet.**

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. **Project specific. Will meet.**

The Commission noted that one cannot affirmatively agree that it meets as there is no project attached at this time. The Commission would like to ask Council that Section 17.09.040 (C) be modified so that this can be used for site-specific rezones in the future. There are too many unknowns when there is not a development proposal attached.

5. ADJOURNMENT

Motion to adjourn by Korthuis at 9:10 pm. Seconded by Faber and the motion passed 4-0.



Meeting Date:	April 22, 2021
Name of Agenda Item:	Remand -Public Hearing for Site Specific Rezone 20-05, O&S Rezone at 8035 Guide Meridian
Type of Hearing:	Quasi-Judicial
Attachments:	
Council Findings re Remand of Site Specific Rezone 20-05, Applicant letter dated , TRC Report, Site Specific Rezone Application 20-05 with supporting maps	
Summary Statement:	
<p>Ashley Gosal, on behalf of Fishtrap Creek LLC, has applied for a site-specific rezone at 8035 Guide Meridian. This is the southwest corner of the intersection of Guide Meridian and Bay Lyn Road. The subject property is currently zoned Commercial Services – Regional (CSR). The applicant has requested that the zoning shift to Commercial Services – Local (CSL).</p> <p>As the Planning Commission held a public hearing on this item on January 28, 2021. Subsequently the applicant’s attorney raised concerns regarding the hearing process. In response the City Council approved the attached order of remand which calls for a new hearing to be held on the item. Detailed findings of the remand are included in the order.</p> <p>It is critical that the Planning Commission’s review and deliberation focus on the criteria by which site specific rezones can be approved. These are addressed in the application and supplemented by the applicant in the attached letter dated April 12, 2021.</p> <p>The executive summary and the staff report that previously accompanied the application to the January hearing is attached. Staff maintains the previous recommendation of approval due to the shift in commercial zoning descriptions, the declining need for retail spaces, and the advantage that additional residences in this location will have. This is an area of the City where mixed use is most viable. Planners target these areas for higher density residential in transit oriented designs because of their proximity to services. The potential of residential uses, in addition to commercial uses in this location, will also assist in the collection of sewer service fees. The City will use these to recoup the cost of installing a sewer pump station in this area – construction that is scheduled to begin next year.</p> <p>Overall, it can be argued that the rezone to CSL rather than CSR is a modern refinement of a zoning that was put in place decade ago</p>	
Recommended Action:	
Motion to recommend to the City Council the approval of O&S site specific rezone request, application number 20-05.	

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

(Find zoning categories described and permitted uses in LMC 19.23. This is online at <https://www.lyndenwa.org/planning/zoning/>)

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

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

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

I. SUMMARY OF DECISION

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

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

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

1.08 Existing Development. The Property is unimproved and cleared.

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

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

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

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

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

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

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

III. DECISION

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

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

Done by the Lynden City Council by a vote of 6 to 0.

DATED: 4/5/2021



 Scott Korthuis, Mayor

EXHIBIT A

Legal Description of the Property:

Parcel A:

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

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

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

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

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

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

Situate in Whatcom County, Washington.

Parcel B:

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

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

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

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

Situate in Whatcom County, Washington.

EXHIBIT B

CITY OF LYNDEN

EXECUTIVE SUMMARY - PLANNING COMMISSION



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

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

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

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

Recommended Action:

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

Mark Sandal

From: Eric Vavra <EVavra@recivil.com>
Sent: Monday, April 12, 2021 5:35 PM
To: Mark Sandal
Cc: Ian Hinton
Subject: S. Park Overlay and Water Main - Initial Design Questions
Attachments: S Park Overlay Questions_4-12-21.pdf

Hi Mark,

We have a few clarification questions for you regarding the South Park overlay and water main project:

- 1) ROW – There are portions where existing sidewalk falls outside of ROW limits (see attached). Are you ok with leaving the sidewalk in its current location? Or should we move the sidewalk when we replace curb ramps?
- 2) The existing curb return radii are substandard (see attached for examples). Should we increase all curb returns to a 25 foot radius? Or replace in-kind?
- 3) All existing sidewalk is 5ft. Should we replace in-kind where necessary or do you want to reconstruct all sidewalk at 6ft wide?
- 4) There is a portion along the east side of Beermink where there is no sidewalk. Are you interested in constructing ~150ft of new sidewalk between S. Park at the NE corner and where it currently terminates (see attached)?
- 5) There is a 150ft x 16ft portion of the Beermink roadway that is currently a gravel surface. Please confirm you are ok with leaving as-is. (see attached)
- 6) Please confirm you want to replace only the driveways that are not currently ADA compliant (versus all or no driveways regardless of whether they are compliant).

Feel free to call to discuss if that’s easiest.

Thanks,

Eric Vavra, PE
 Project Engineer



p: 360.354.3687
 a: PO Box 978 | 423 Front St., Lynden, WA 98264
www.recivil.com



February 3, 2021

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

VIA E-MAIL and FIRST CLASS MAIL

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

Re: Planning Commission Hearing

Dear Ms. Gudde:

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

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

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

February 3, 2021
Page 2

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

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

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

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

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

Smith, 75 Wn.2d at 733.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

February 3, 2021
Page 5

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

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

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

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

February 3, 2021
Page 6

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

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

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

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

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

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

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

February 3, 2021
Page 7

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

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

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

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

Sincerely,



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

Cc: client

City of Lynden - Planning Commission
300 4th St
Lynden, WA 98264

April 12, 2021

Planning Commission:

On January 28, 2021, applicant Fishtrap Creek, LLC came before the Planning Commission in connection with a rezone application for the five-acre property located at 8035 Guide Meridian Road in Lynden, WA. Fishtrap Creek requested a modest rezone of the property from CSR (Commercial Services Regional) to CSL (Commercial Services Local) zoning, which would reduce commercial-use intensity and permit residential uses to foster community-oriented, mixed use development on the site.

Fishtrap Creek's rezone request received a positive review and recommendation for approval from the city's planning department after a thorough review by city staff and the city's technical review committee. Despite this positive recommendation, the City of Lynden's Planning Commission opted to forward a recommendation of denial to the City Council. After reviewing the hearing tape in detail, we believe this decision was made unfairly and without proper regard to the criteria for a site-specific rezone. Accordingly, the Lynden City Council remanded the decision.

When reviewing a site-specific rezone, the planning commission was required to follow both the Lynden Municipal Code ("LMC") 17.03.040.3 and Washington's Appearance of Fairness Doctrine ("AOFD"), which is codified at RCW 42.36.010. The January 28, 2021 planning commission hearing fell well short of these standards. First, the LMC required the planning commission to take testimony and evidence so that it could "consider facts germane to the proposal." LMC 17.09.040.B. The planning commission did not ask for, or allow, public testimony despite the presence of several members of the community, including adjacent property owners, who called in to comment in favor of the proposal. Some members of the public who attended that meeting have since contacted Fishtrap Creek about the lack of procedural fairness in the rezone meeting. The planning commission also did not focus on the rezone criteria and instead focused on development related questions related to future development of the property (regarding storage units, soil types and financial interests - ultimately citing insufficient project information). None of these questions were germane to a rezone request. Following these limited, off-topic questions, the planning commission closed the public hearing and opined that "they did not have sufficient answers from the applicant [regarding the development]." Specifically, it was stated that "If the [applicant] came forward with a proposal, and [the planning commission] could see benefit to the City then possibly [they] could justify it." Not only were the development questions inapplicable to a site-specific rezone



request, such questions refocused attention away from the applicable rezone criteria and rendered the planning commission’s recommendation arbitrary and capricious.

As a result of the City Council’s review and remand of the associated recommendation, Fishtrap Creek is presenting for a second time the modest rezone of 8035 Guide Meridian from Regional Commercial Services (CSR) to Local Commercial Services (CSL). The main differences between the zones are that a CSL zone would: (a) reduce the commercial intensity from large format regional commercial to local-scale retail and; (b) allow for mixed use development as part of the redevelopment of the Property, both of which are encouraged as part of the Growth Management Act and the City’s comprehensive plan.

Per LMC 17.19.050, the planning commission should thus evaluate Fishtrap Creek’s rezone application “for consistency with the city’s development code, adopted plans and regulations” using the following criteria:

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

Applicant’s Response to Criteria: This rezone application is submitted because of a significant change in circumstances since the CSR zoning was enacted. First, the city originally designated the property within the CSR zone at the time when the surrounding area was not highly populated and the property was at or near the ‘edges’ of an otherwise undeveloped city. The CSR zone designation supported storage facilities, warehouses, light manufacturing and other establishments that were intended to be further from the downtown core. Since the surrounding areas were generally undeveloped, this zoning was meant to support large retail and regional commercial developments at otherwise undesirable edges of the City. Such zoning was never able to support development on this property. A second change in circumstances is the pace at which the City of Lynden’s population growth outpaces its currently housing supply. The city’s 2002 population growth report showed that the projection for 2022 was 16,900 residents and that that number would be updated to 18, 235 residents in only two years. This astonishing growth is just one of many markers of change in the City of Lynden. Third, the City is currently home to more than 15,000 residents and 95% of single-family homes are occupied. This heightened demand and lack of supply not only puts a strain on the supply/demand equilibrium but also means that many Lynden residents are and will continue to be priced out of the single-family home market. Even larger housing complexes which make up only 15% of the City’s housing units have a 91% occupancy rate. This incredibly low vacancy and the City’s projected growth evidence changing circumstances that support the



need for more residential opportunity with the city limits. As stated in a report on the City’s own website, the City is “striving to increase density” within the city limits. Fourth, trends with respect to retail shopping and consumer patterns are also changing. Amazon and other leading ecommerce giants have changed the shopping experience in recent years. Easy one-click buys and same-day delivery are what 80 percent of shoppers now look for when shopping. What were previously reasons to use regional retailers (such as convenience and variety) are no longer a priority for shoppers. This is obvious as we’ve watched many large box retailers either shut down brick and mortar stores or move operations to principally online sales. The demand for the big box retail has simply changed. Fifth, in addition to logistical and operational changes, consumer bases and priorities are also changing. Shoppers are focusing more on local businesses, farmers markets and trends in support of small and local entrepreneurs. In 2019, shoppers spending at small businesses increased by 3 million over large retail stores. Rezoning to allow for a mixed-use project would not only allow for more focus on Lynden as a community, but it would support the changing population patterns, economics and retail patterns of the City and its residents. By allowing for additional housing opportunities, pedestrian connectivity and businesses that support local (rather than regional) we are simply trying to keep up with a changing economy.

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

Applicant’s Response to Criteria: As outlined in the staff report, in the review and analysis by the Technical Review Committee, and in the recommendation provided as part of the staff report, the City’s planning department has already determined that the proposed rezone is consistent with the city’s comprehensive plan and applicable subarea plans. As a general summary of staff’s findings, CSL zoning provides for growth, greater density, and local scale retail development that will serve the Lynden community. The rezoning is also consistent with the City of Lynden’s desire to increase density within the City limits and increase housing supply for its residents. The rezone also encourages growth within the City of Lynden and Whatcom County desired areas for growth. The rezone of the property to CSL will allow the already zoned commercial areas to develop most efficiently It will also allow local leadership to address changing residential and retail patterns. This will give residents a better sense of community and connection, which is all consistent with the city’s comprehensive plan.



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

Applicant's Response to Criteria: This is not a project proposal, so this question is generally not applicable. Currently, there is no specific project proposal for the property. This application is only for a rezoning of the property from CSR to CSL. Once development of the project does take place, the applicant intends to work closely with City staff to ensure that the project is consistent with Lynden's current development codes and regulations and Lynden's growth plans. The applicant truly wants to see the City develop in the best way possible and understands that the best way to ensure that is to work with city staff and local officials.

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

Applicant's Response to Criteria: This relatively modest rezone from Regional Commercial Services (CSR) to Local Commercial Services (CSL) is compatible with existing uses and zoning in the area. Specifically, the parcels directly north and west of the property are zoned commercial and the parcel directly east of the property is residential. Thus, this rezone to commercial and mixed use is not only compatible with existing adjacent uses, but it promotes cohesion between the parcels by allowing this property to function as a connecting project. This rezone would create the cohesion between residential to the east, and commercial to the north and west. Further demonstrating compatibility is the consistency between the current CSR and proposed CSL zones. The change to CSL zone would maintain the site as commercial, simply reducing commercial intensity from large format regional commercial to allow for more local-scale retail. This modest change maintains consistency with surrounding commercial uses while also integrating the changing community and its surrounding residential uses. It is anticipated that integration could facilitate a mixed-use area that is community focused and consistent with neighboring zoning, all of which is encouraged by the Growth Management Act and the city's comprehensive plan.

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

Applicant's Response to Criteria: The principal goal of this site-specific rezone is to support the public health, safety and welfare of the City of



Lynden. By modestly rezoning the property from CSR to CSL this property would better support the city and its residents. First, allowing for mixed-use development will allow for residential opportunities on the property which will decrease stress on the city's current housing supply, reduce strain on the supply/demand equilibrium and allow more residents of Lynden to live in their community. Second, those residents will be able to better support the businesses that are in their community. A recent survey by Nextdoor found that 98% of consumers say local businesses make a positive impact on their neighborhoods' quality of life. Third, this rezone would also allow for more commercial opportunities for local businesses to stay within Lynden (rather than relocating to Bellingham, for example). Not only would this create a local financial economic benefit (a 2020 study by Intuit found that for every \$100 spent at local businesses, \$48 is put back into the local economy) but it would also create more jobs for Lynden's residents. Local businesses are the engine of our economy and it by supporting these businesses we support the health and welfare of our local economy. Fourth, when small businesses work together, there are also more opportunities to serve the community, cut down on overall waste, and reduce travel emissions. For example, local grocery stores may carry produce from local farms, which supports other local businesses, cuts down on transportation costs, reduces carbon emissions, and supports and encourages a sense of community. The aforementioned Intuit survey showed that 57 percent of consumers said they shop local to keep money within their community and 38 percent of consumers support local businesses to feel connected with their community. This rezone is thus an opportunity to support the health of our community. Allowing residents to live and work within Lynden is not only good for the mental health, safety and the welfare of our community, but it encourages more local shopping and spending which in turn supports the economic, fiscal and societal welfare of the City of Lynden and its residents.

We trust that the above responses substantiate the applicant's rezone request and the city staff's recommendation for approval, and sufficiently demonstrate how this rezone application meets each of the City's criteria for a site specific rezone. Should you have any questions or concerns, please do not hesitate to reach out to me at 619-643-9375.

Sincerely,

A handwritten signature in cursive script that reads "Ashley Gosal".

Ashley Gosal on behalf of Fishtrap Creek, LLC.

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

Members of the City Council,

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

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

Regards,



Aleesha Gosal

CITY OF LYNDEN

EXECUTIVE SUMMARY - PLANNING COMMISSION



Meeting Date:	January 28, 2021
Name of Agenda Item:	Public Hearing for Site Specific Rezone 20-05, O&S Rezone at 8035 Guide Meridian
Type of Hearing:	Quasi-Judicial

Attachments:
TRC Report, Site Specific Rezone Application 20-05 with supporting maps

Summary Statement:

Ashley Gosal, on behalf of Fishtrap Creek LLC, has applied for a site-specific rezone of two parcels location at 8035 Guide Meridian. This is the southwest corner of the intersection of Guide Meridian and Bay Lyn Road. The subject property is currently zoned Commercial Services – Regional (CSR). The applicant has requested that the zoning shift to Commercial Services – Local (CSL). The Lynden Municipal Code defines these zones as follows (LMC 19.23.010):

“Local commercial services (CSL): The purpose of the CSL zone is to provide a location for local scale retail development (stores less than sixty-five thousand square feet), medical, professional and financial services. Development within this zone should focus on pedestrian connectivity to the surrounding area and mixed-use development is strongly encouraged. This zone, together with the historic business district, provides the primary location for civic and social activities within the community.

Regional commercial services (CSR): The purpose of the CSR zone is to support the development of large format retail and regional commercial development. In addition, this zone may support commercial establishments which require a retail contact with the public together with professional offices, storage and warehousing, or light manufacturing. This zone is located where larger parcels and arterial streets are available to support the traffic and land needs for these types of uses. This zone provides the primary location for businesses serving both the local and regional trade area.”

As the Planning Commission may recall, CSR zoning has traditionally been geared toward big box retail and strip shopping centers. More recently the City updated the CSR definition and permitted uses to embrace uses consistent with busines parks including light manufacturing and warehousing. Many uses that are permitted in CSL are also permitted in CSR with the notable exception of multi-family residential in a mixed use setting. This is only permitted in CSL and is a primary reason the applicant seeks this rezone request.

The City’s Land Use Code includes the criteria by which site specific rezones can be approved. These are addressed in the application. Staff’s review comments are found in the attached TRC report. These are primarily advisory in nature.

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

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

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

Recommended Action:

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



CITY OF LYNDEN

TECHNICAL REVIEW COMMITTEE
Development Project Report



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

Summary:

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

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

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

- B. *The proposed site-specific rezone is consistent with the city's comprehensive plan and applicable subarea plan(s);*
- C. *The project proposal is consistent with the city's development codes and regulations for the zoning proposed for the project;*
- D. *The proposed site-specific rezone is compatible with existing uses and zoning in the surrounding area; and*
- E. *The proposed site-specific rezone will promote the health, safety and general welfare of the community.*

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

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

Planning Department Comments

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

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

Advisory Comments - Public Works Department

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

Advisory Comments - Fire and Life Safety

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

Advisory Comments - Parks and Recreation

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

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

REZONE APPLICATION

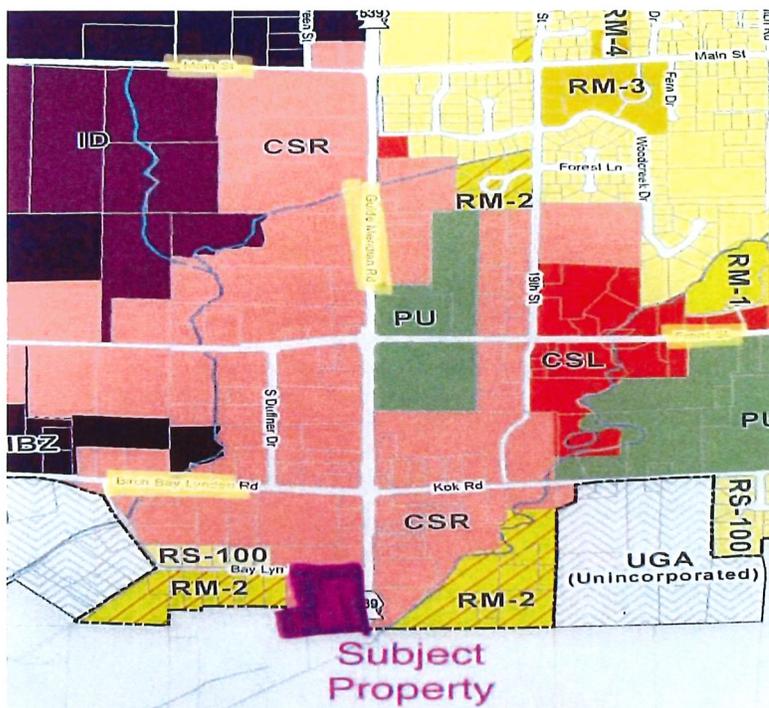
SUBMITTED BY ASHLEY GOSAL OF O&S FARMS, LLC.

8035 Guide Meridian
Lynden, WA 98264

Table of Contents

<u>Rezoning Application</u>	<u>Page 2</u>
<u>Summary of Application and Fees</u>	<u>Page 3</u>
<u>Property Site Map</u>	<u>Page 4</u>
<u>Property Area Map</u>	<u>Page 5</u>
<u>Project Drawings</u>	<u>Page 6</u>
<u>Legal Description of Property</u>	<u>Page 7</u>
<u>Persons Associated with the Property</u>	<u>Page 8</u>
<u>SEPA Checklist</u>	<u>Page 9</u>
<u>Narrative for Rezoning</u>	<u>Page 23</u>
<u>Statement of Changed Circumstances</u>	<u>Page 24</u>
<u>Statement of Consistency</u>	<u>Page 25</u>
<u>Critical Areas Checklist</u>	<u>Page 26</u>

Summary of Subject Property



Payment of All Applicable Fees:

Applicant has submitted two checks:

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

Project Drawings:

Not Applicable. This application is solely for the rezone.

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

Legal Description of the Property:

Parcel A:

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

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

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

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

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

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

Situate in Whatcom County, Washington

Parcel B:

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

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

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

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

Situate in Whatcom County, Washington

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

Rezone Applicant:

Ashley Gosal on behalf of O&S Farms LLC
Address: 4362 Valle Dr, La Mesa, CA 91941
Contact: (619)-643-9375
ashleygosal@gmail.com

Current Owner:

James Clay, Fishtrap Creek LLC
Address: 1201 11th St., Suite 202, Bellingham, WA 98225

Ownership Interest:

Owen Gosal, O&S Farms LLC
Address: 8798 Guide Meridian, Lynden, WA 98264
Contact: (360)815-0212

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

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

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

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

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

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

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

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

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

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

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

Critical Areas Ordinance Checklist:



City of Lynden

Critical Areas Checklist

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

Site Address: 8035 Guide Meridian, Lynden, WA

Proposed Uses: Mixed Use Commercial/Residential

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

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

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

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

Ashley Gosal
Applicant's Signature

11/24/2020
Date

CITY OF LYNDEN

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



PLANNING COMMISSION AGENDA

7:30 PM January 28, 2021
Microsoft Teams Meeting

1. CALL TO ORDER

2. ROLL CALL

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

Commissioners Absent with Notice: None

Staff: Mike Martin, Heidi Gudde and Korene Samec

3. APPROVAL OF THE MINUTES OF January 14, 2021

Faber approved as presented. Turner seconded.

4. DECLARATION OF CONFLICT

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

Bryan Korthuis has direct involvement with items B & C on the agenda and would like to be recused.

5. ELECTION OF CHAIRPERSON AND VICE CHAIRPERSON

All nominations were tallied, and the positions remain the same as the previous year. Diane Veltkamp as Chair and Tim Faber as Vice Chair for 2020. Scott/Turner 6-0.

D. Veltkamp thanked the Commission and Staff for all of their hard work and research with projects that are important to the City.

PUBLIC HEARINGS TO CONSIDER:

A. Rezone #20-05, O&S, 8035 Guide Meridian

Gudde summarized the proposed Rezone Application. O & S Farms / Fishtrap Creek LLC, has applied for a site-specific rezone of two parcels location at 8035 Guide Meridian. This is the southwest corner of the intersection of Guide Meridian and Bay Lyn Drive. The subject property is currently zoned Commercial Services – Regional (CSR). The applicant has requested that the zoning shift to Commercial Services – Local (CSL). The Lynden Municipal Code defines these zones as follows (LMC 19.23.010):

“Local commercial services (CSL): The purpose of the CSL zone is to provide a location for local scale retail development (stores less than sixty-five thousand square feet), medical, professional and financial services. Development within this zone should focus on pedestrian connectivity to the surrounding area and mixed-use development is strongly encouraged. This zone, together with the historic business district, provides the primary location for civic and social activities within the community.

Regional commercial services (CSR): The purpose of the CSR zone is to support the development of large format retail and regional commercial development. In addition, this zone may support commercial establishments which require a retail contact with the public together with professional offices, storage and warehousing, or light manufacturing. This zone is located where larger parcels and arterial streets are available to support the traffic and land needs for these types of uses. This zone provides the primary location for businesses serving both the local and regional trade area.”

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

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

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

Concerns related to the rezone include the ability of the future project to provide pedestrian connectivity as the CSL zoning description describes. However, design specifications such as walkways, crosswalks, pedestrian scaled architectural elements, and exterior lighting can

assist in meeting these requirements and will be taken into careful consideration by staff and the Design Review Board

The Commission will only be reviewing the rezone this evening, no separate development plans at this time. Future plans could potentially require a traffic signal at the corner of the Guide and Bay Lyn Drive

This property is also affected by the flood plain on the southeast portion of the property.

Public Comment

Ashley Gosal, Agent for Fishtrap Creek LLC, applicant spoke and stated that proposal the request is to rezone 5.6 acres from CSR to CSL.

CSR zoning has hindered the property in its ability to be developed. The community has grown and we have not been able to accommodate the City appropriately.

Showed conceptual images only to show, their future intent to integrate the community with residential, retail, commercial etc.

Questions or Comments from the Commissioners

Scott looking for clarification. Commercial on the bottom, and residential on top? Gosal, replied, yes, the intention is to comply with the CRS zone which includes a 60/40 split of commercial on the bottom and residential on the top.

Faber asked about the flood plain. How much of the property is in the flood plain? Gosal does not know the percentage. Gudde stated that property within the flood plain is able to be developed as long as it meets the flood plain requirements / specifications. Any development that occurs, must adhere to the current FEMA rules. At time of development, elevations would need be verified to establish finished floor elevations etc.

D. Velkamp asked about soil types? Gosal stated that no soil analysis has been completed to date, however, will be done once we look to develop. Based on initial review of due-diligence reports, Gosal does not believe that there are any significant soil concerns that would negatively impact development on this property.

Korthuis referenced the narrative in the rezone application asking for clarification on “What’s more is that if the zoning designation does not change, development of the property is just not financially or economically feasible.” Gosal replied that there have been several attempts to develop the property, however, to date has not been done. The requirements for development, such as tie-ins to the sewer and flood plain issues, make the development and purchase of this property very expensive. A move to residential will make better use of the property to better serve the community and will also help bring more money into the project and make it more viable to develop.

Faber asked about existing septic systems in the area. Gudde, stated that the existing sewer system is located within the Guide Meridian and for it to reach this area would need to be pumped up to this location. There have been others interested in developing this property, however, the City was not working on a sewer pump station and the expectation was that private development would be responsible for the construction which is a large cost to put on a developer. Having sewer available to the property and to the surrounding area will be beneficial to the neighborhood.

K Timmer asked if the request was for rezone only or sewer as well? Only rezone. K. Timmer stated that the City has very little commercial on the west side of the Guide Meridian. Once the commercial is gone, it is gone. Maybe the City should not down zone at this time? We do have space for mixed use elsewhere in the City, just concerned in this area. In favor of mixed uses, loves affordable housing but this might not be the right location.

Gosal stated that supply and demand constraints are pushing people out of the market which are forcing families to rent or to commute from Bellingham. Have a mixed use development will allow families to stay in Lynden, will bring development back to Lynden, work in Lynden, support local businesses in Lynden and in general support the community.

D. Veltkamp stated that there are other mixed use properties in town of which the commercial portion has not filled along with several commercial buildings that are empty. Will we be sorry if we change the zoning?

Scott shares the same concern. When commercial is gone, it's gone. But we do need jobs and affordable housing etc. It is a difficult decision.

Gosal is aware of the mixed uses properties in town and she is not interested in being an owner of empty commercial space. The intent is to make the commercial usable for the residents. The concept is to integrate and serve the community, make it a useable space, compatible and a gateway into Lynden. This property is located at the entrance of Lynden and as we can see the commercial on the east side has done well, the west side could as well. This space could be usable and play off of the existing commercial that is in the area. We want to create a community space

Turner asked how long has the property been vacant? Gosal believes that the property has never been developed. Timmer stated that it used to be a dairy years ago.

G. Veltkamp is concerned that if commercial does not work then storage units could be created as they are allowed in the CSL zone? Gosal replied, that creating storage units is in no way her intention for this property. Gosal wants to create a space where residents thrive and have a sense of community.

G. Veltkamp asked if the Commission could place a condition on the rezone that would prohibit storage units? Gudde discourages placing conditions on a rezone. It is difficult to monitor over time. Self-storage is permitted in both commercial zones.

D. Veltkamp asked for clarification, there was no sewer available up until this point which could have had a hinderance on the development of this property, however, regardless of a CSR or CSL zone, sewer is a reality now correct? Guide replied, yes, it is on the City's work plan.

D. Veltkamp asked for any further comments from the Commissioners or the proponent?

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

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

*A. The current zoning was either approved in error or that a significant change in circumstances since approval of the current zoning warrants reclassification of the subject property as proposed; **No***

*B. The proposed site-specific rezone is consistent with the city's comprehensive plan and applicable subarea plan(s); **No***

*C. The project proposal is consistent with the city's development codes and regulations for the zoning proposed for the project; N/A, **no development proposal submitted.***

*D. The proposed site-specific rezone is compatible with existing uses and zoning in the surrounding area; and **No***

*E. The proposed site-specific rezone will promote the health, safety and general welfare of the community. **No***

Commissioner Discussion:

- Several Commissioners agreed that there has not been significant changes.
- Lack of sewer could be a reason why the property was not developed in the past, however, that does not affect the zoning. With sewer coming to the property, it would be good for CSR or CSL and should not be tied to the zoning.

- Timmer stated that having sewer in that location may enhance the desire to develop in either zone, however, maybe it did not develop under its current zoning was because sewer was not available. Its hard to tell? We do not have a lot of commercial on the Guide Meridian. Mixed used is nice, but Timmer would prefer commercial for this location and residential somewhere else.
- Korthuis appreciates and agrees with Timmer. FEMA remapping and sewer are two major things happening with this property, however, neither one affects zoning and are completely separate issues. There have been no other changes to warrant the change. Having a hard time finding reasons to support the rezone.
- Faber can see the dilemma that the developers have. The property has sat vacant for a very long time. Sewer will be great for this area, but the sewer was/is not an impediment for development. Regarding zoning, Faber believes that mixed use density could lend well to buffering the entrance of Lynden from the existing RM2 zoning. Giving up commercial property on the Guide is concerning. However, encouraging development sooner than later is a good thing. Not opposed, there are benefits.
- Turner addressed traffic and the hard median and stated that mixed use would be better than a big box store. A traffic study would need to be done regardless of the use to determine a signal etc.
- G. Veltkamp stated that he can see both sides. Having successful independent businesses in that location would be great, however is having a hard time thinking what store would fit there. No opposition to rezoning.
- D. Veltkamp stated that under CSR zoning, you can have a 65,000 square foot building but you do not have to build a box store, you can build many different commercial options. Gudde stated that 5.6 acres is not viable for a big box store. The City is not seeing a lot of demand for commercial space, it is more for industrial at this time.

Gosal addressed the Commission and asked if she could respond to comments?

Timmer motioned to reopen the public hearing in order to allow the applicant to make a comment. Seconded by Turner and the motion passed 6-0.,

Gosal addressed the Commission and stated that she has two comments. Having sewer in that location does make it more feasible, however, the lack of sewer is a significant

impediment to any development regardless of the zoning. Several issues on this site (sewer, flood plain) make it costly to develop, not just the sewer.

A lot of discussion between CSR vs CSL. There was concern mentioned regarding storage units, industrial uses, which could be built under its current zoning. The important thing to figure out is what would be the most advantageous way to develop the property for the benefit of the residents.

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

Korthuis stated that the concept for mixed use in this location is a good one, but unsure of whether or not it would work. To steal away valuable commercial property for residential use on a high traffic thoroughfare is tough.

Timmer agrees with Korthuis and stated that the mixed use is better suited elsewhere. Does not see a box store coming into that area, however, there could be more of what is across the street. The better place for walk, live, mixed use should be our downtown not along the Guide Meridian. Once sewer is available to the property, they will be able to get their money out of the property as it will be much more valuable. Timmer would love to see a development in Lynden where one could live, get coffee and groceries all within walking distance, just would not want to cross the Guide for it.

Faber stated that there does not seem to be much support for recommending approval. Faber would rather see this type of development than industry and does not see a whole lot more needed for retail. The area is pretty much built out. Mixed use with some commercial would be a good thing.

Veltkamp stated that this is the only area for major regional commercial area in the City. Concerned with creating more vacant local commercial. Made reference to what happens to housing on the Guide (south of town). Likes the concept but concerned that this is not the place for it.

Korthuis referenced the criteria and asked if every one of criteria needs to be met in order to approve the rezone? Veltkamp replied, yes.

Turner stated that she agrees with Faber.

Timmer made a motion to recommend denial to the City Council of the O&S Site Specific Rezone #20-05. Seconded by Scott and the motion passed 6-0.

The Commission provided the following rational for denying the rezone is as follows:

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

B. Rezone #20-04, Kode Kamp Vista (Lagerwey), 8744 Northwood Road

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

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

Commissioner Veltkamp opened the public hearing.

Public Comment

Derek DeKoster, Agent for Northwood Partners LLC, stated they are looking to rezone 28.41 acres from RS-100 to RMD to accommodate a 92-lot subdivision. The price point and affordability of the 7000 square foot lot ranges in Lynden seem to be good fit for the community. The development will allow a variety of options to purchase at many different price points. There is a nice mix of lot sizes.

DeKoster noted that this will be an attractive development that we will be proud of.

Questions or Comments from the Commissioners

- Faber asked if the main reason for the change from RS-100 to RMD is to be allowed smaller lot sizes? DeKoster replied, yes, and to give a variety of lot sizes. Every lot is over 6000 square feet and it seems to work very well for the need in Lynden.
- Faber addressed Staff's concerns regarding the duplex parcels. Faber likes the idea of having duplex lots (91 and 92), located near the entrance of Northwood Road instead of locating them in the middle of the single family portion of the neighborhood. The square footages would need to be increased to 8000 to accommodate duplex. Having the duplexes near the main entrance of the development provides a parking concern on Northwood.
- Veltkamp has concerns with the RMD zoning if this specific plat design is not built as proposed? DeKoster stated that they have no other plans to develop something different than what is proposed. Put a stipulation on the rezone if you want. This is what we are building if approved.
- DeKoster stated that a trail will be installed along Northwood Road and will offer a wider Northwood Road width.
- Scott likes the proposal and agrees that the duplexes should be moved elsewhere.
- Faber stated that it is a nice layout with a good variety of lot sizes. The Commission could condition the rezone indicating that they will accept RMD zoning with only a certain number of lots or percentage of lots under 7200 square feet. Brief discussion and decided that a number was better than a percentage.
- Turner asked about the walking trail along Northwood Road. There will be a condition placed on the plat requiring that the trail must be part of the plan.
- Veltkamp is concerned with lots 32-35 and 62-65 as they are all very narrow. Do they have the ability to have varying house designs? Faber replied, the house will be narrow, however, you can change the appearance of the home to avoid a cookie cutter look. G. Veltkamp stated that you could make 0 lot line homes on those lots. You could definitely make them look different you just need to be creative. DeKoster was concerned with zero lot lines on lots that have slopes. Shea street homes are built on narrow lots, however, they turned out great. A lot of different builders come with their own ideas. There is good effort made to make each home different.
- Scott is all for the development proposal, it looks nice.

- Improvements to pedestrian protection. Improvements will take place West side of Northwood Road which will also provide a good connection to Brome Street.
- Numbering of the lots changed from 94 to 92 in order to adjust the subdivision standards.
- Faber – timing between Phase 1 and 2? DeKoster replied that the plan will be to complete phase 1 and begin phase 2 right away.
- Lagoon? Environmental review / Building Official will request more details if needed.
- Any special conditions with the proximity to the cemetery? The City is in contact with the Tribe and will continue to follow through.
- Timmer added to the chat “I think the builders who have previously built on smaller lots have done a good job in not making the houses look the same”.

DeKoster, thanked the Commission for their time. This development will be done well and will satisfy the need of the community. We have proven ourselves with the other developments we have done.

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

Other Commissioner Comments:

- Faber likes the layout and the plan. It is a good continuation of what has already been developed in the area. Scott agrees.
- Turner agrees and likes the variety of lot sizes.
- The Commission agreed that it is a reasonable request.

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

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

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

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

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

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

The Commission agreed that the rezone meets the criteria listed above and concurs with staff that:

- That the housing market has changed substantially since the property was originally zoned RS-100. Entry level home buyers would typically not be able to purchase lots within a RS-100 neighborhood. RMD zoning allows for a variety of lot sizes and associated housing types.
- The accommodation of additional housing units in this area serves the public good as it is located near to the Lynden Middle School and Cornerstone Christian school.
- The rezone is consistent with the City's Comprehensive Plan.

Faber made a motion to recommend to the City Council the approval of site-specific rezone request as presented by Northwood Partners LLC, application number 20-04. Subject to the following conditions:

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

Seconded by Scott. Motion passed unanimously.

C. Long Plat #20-01, Kode Kamp Vista, 8744 Northwood Road

The Commission reviewed the Staff Report associated with the Long Plat. The request is to subdivide approximately 28 acres located at the northeast corner of Kamm Road and Northwood Road.

Plat design includes a curvilinear street which loops through the 28 acres, connects to the North Prairie Phase 7 plat to the north and accesses Northwood Road. The plat also includes two areas of wetlands near the Kamm Road corridor. These wetlands have been described and delineated in a corresponding critical area report. As required by LMC 16 the plat provides buffers to these areas.

The plat application initially requested 94 lots but after revision this was reduced to 92 lots. Lot sizes range from those which are over 10,000 square feet to those which are in the 6,000 square foot range. As required by code, the plat will designate housing types per lot. The applicant has indicated a desire to maintain all the lots for single family detached homes except for 5 lots near the Northwood entrance of the plat (see the lot layout legend for specifics). Two of the lots selected for duplexes (lot 91 and 92) will require modification to reach the minimum 8,000 sf size needed to accommodate duplexes.

Pedestrian accommodations will be made interior to the plat in the form of sidewalks. As the property is somewhat isolated from other pedestrian networks and as Northwood Road will not be improved for some time the SEPA determination included the requirement for the developer to participate in facilitating pedestrian / bicycle movement along Northwood Road. The Technical Review Committee determined that the most reasonable way to accommodate this under the current road conditions is to provide a widened roadway shoulder on Northwood Road that is delineated by a curb and flexible lane markers (similar to the treatment done on a portion of Line Road). The TRC further concluded that the west side of Northwood Road would provide the most opportunity for this widened shoulder and connection to other properties and the Brome Street intersection.

Recent revisions to the plat have included the lots which would accommodate duplexes. This includes somewhat of a 'pod' of duplexes on lots 1, 2, and 3 and well as two lots across the street. Locating duplexes here in an all in one location and utilizing an access easement is somewhat concerning as duplex residents will have little opportunity to utilize on-street parking. Parking pressure in this area may lead to residents parking on Northwood Road – which is not encouraged due to the substandard nature of this roadway. If duplexes are to be located in this area staff would recommend a plat condition that the developer create paved and striped on-street parallel parking areas along the east side of Northwood along the lot frontage of 1, 2, 3, and 92. Or, that the duplex lots be located elsewhere in the plat.

Questions or Comments from the Commissioners

The Planning Commission discussed the 3 conditions that Staff recommended for the proposed long plat.

1. Lot sizes be adjusted to ensure lots 91 and 92 reach the minimum of 8,000 sf to accommodate duplex construction. **The Commission would like to remove this as it no longer applies.**
2. Paved and striped on-street parking areas be created on Northwood Road to accommodate on-street parking needs of the duplex pod located at the entrance to the plat. **The Commission indicated that they would like to see the duplex lots be located within the interior of the plat, not on Northwood Road.**
3. Duplex lots be disbursed throughout **the interior** of the plat (on lots at least 8,000 sf or greater) in areas where on-street parking is more readily available.

In addition, the Commission addressed item #34 of the Technical Review Committee Report Trail Easement: This development is located along sub-standard roadways which do not have pedestrian accommodations. It is also identified along the proposed route of the East Lynden Loop Trail. As such, **the proposal must accommodate that trail system. At a minimum this must include a separated 8-foot wide asphalt pedestrian path and public access easement (if not in ROW) parallel to Northwood Road.** An equivalent amenity such as a more creative path winding through the development could also be proposed by the applicant during the long plat review process.

Veltkamp wanted to be certain that the Trail / Parks and Rec condition noted in the TRC report is included. Concerned that the Council does not read their entire packet and wants to be sure that the importance of installing a trail in so that it meets the goals of the park and trail master plan and the East Lynden Loop. The Commission cares about trails. Timmer stated that she believes the Council feels the same. Veltkamp agreed and stated that a lot of "plans" in East Lynden area never actually came to fruition.

Timmer does not mind having duplexes on Northwood Road, there just needs to be enough parking. In her opinion, single family is not great on Northwood Road and multi-family is not great in the middle of a development. Timmer would prefer to see the duplex lots grouped together. Will go with the majority.

D. Veltkamp is concerned with the traffic on Northwood.

Faber stated that he wants to give the developers the flexibility to decide on the duplex placement and does not want to dictate what lots they are.

Turner asked if the Commission could stipulate that there be enough parking to accommodate the duplex units? Staff replied that they will be required by code to have enough parking.

Other Commissioner Comments:

- The Commission agreed that it is a reasonable request.
- The Commission agreed that the long plat request will provide housing opportunities for the community.

Faber made a motion to recommend to the City Council the approval of the Kode Kamp Vista Long Plat #20-01, consistent with TRC report dated January 6, 2021 and further subject to the following conditions.

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

Seconded by Timmer. Motion passed unanimously.

6. ADJOURNMENT

Motion to adjourn by Scott at 10:20 pm. Seconded by Turner.

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	May 17, 2021	
Name of Agenda Item:	Procedures for the Hearing Examiner Role	
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 checked="" type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input type="checkbox"/> Review Not Required	
Attachments:		
Proposed Procedures for the Hearing Examiner Role, Section 3 of Ord 1615		
Summary Statement:		
<p>In March of this year the City Council adopted ordinance 1615 which created a hearing examiner role for the City of Lynden. In Section 3 of this ordinance references the procedures of the office as Exhibit A however this Exhibit was missing from the Council package at the time of approval.</p> <p>To rectify this absence the procedures being brought forward at this time for Council approval.</p>		
Recommended Action:		
Motion to approve to approve the procedures of the office of hearing examiner for the City of Lynden in accordance with Ordinance 1615.		

**RULES OF PROCEDURE FOR PROCEEDINGS BEFORE
THE HEARING EXAMINER OF THE CITY OF LYNDEN, WASHINGTON**

Table of Contents

1. Applicability..... 2

2. Amendment of Rules. 2

3. Interpretation. 2

4. Definitions. 3

5. Expeditious Proceedings. 4

6. Frequency and Scheduling of Proceedings. 4

7. Consolidation. 4

8. Format for Submission of Applications for Variances and Appeals of Administrative Decisions. 4

9. Withdrawal of Application or Appeal. 4

10. Presiding Officer..... 4

11. Recusal. 4

12. Ex Parte Communications. 5

13. Computation of Time. 5

14. Extension of Deadlines..... 5

15. Rights of Applicants and Appellants to Fair Hearing..... 5

16. Rights of Parties of Record..... 5

17. Name, Address, and Telephone Number Required for Official Notifications and Service. 5

18. Filing and Service of Documents..... 6

19. Legal Counsel. 6

20. Notice of Appearance. 6

21. Intervention. 6

22. Pre-Hearing Conference..... 7

23. Submission Deadline for Legal Authority..... 7

24. Motions. 7

25. Staff Reports Regarding Applications. 8

26. City Response to Submission of Appeal..... 8

27. Discovery..... 8

28. Dismissal without Hearing. 9

29. Notice of Hearings..... 9

30. Format of Hearings. 9

31. Format of Hearings for Applications. 9

32. Format of Hearings for Appeals of Administrative Decisions. 9

33. Evidence. 10

34. Witnesses. 10

35. Site Inspection..... 11

36. Electronic Record of Hearing. 11

37. Transcript. 11

38. Contents of the Record. 11

39. Continuances. 12

40. Leaving the Record Open..... 12

41. Re-Opening Proceedings..... 12

42. Decision of the Hearing Examiner..... 12

43. Notice of Decision. 12

44. Clerical Errors. 13

45. Termination of Jurisdiction. 13

46. Reconsideration. 13

47. Appeals of Hearing Examiner Decisions..... 13

1. Applicability.

These Rules of Procedure (hereinafter “Rules”) shall be followed in all proceedings before the Hearing Examiner of the City of Lynden, Washington. These Rules supplement the provisions of the Lynden Municipal Code relating to proceedings before the Hearing Examiner.

2. Amendment of Rules.

These Rules may be amended only by an ordinance of the City of Lynden adopting such amendment.

3. Interpretation.

The Hearing Examiner shall interpret the Rules and determine the application of the Rules to specific circumstances so that proceedings are fair and due process is achieved. Where there are questions of proceeding or practice not addressed by these Rules, the Hearing Examiner shall follow a practice or proceeding which provides fair treatment and due process of law to all Parties.

4. Definitions.

Terms used herein are defined below:

- A. "Appeal" for the purposes of these rules means an appeal, petition, or challenge of an administrative decision over which the Hearing Examiner has jurisdiction pursuant to LMC 2.09.040.
- B. "Appellant" means the person who submits a complete and timely Appeal.
- C. "Applicant" means a person who has timely and completely submitted an Application.
- D. "Application" for the purposes of these rules means an application over which the Hearing Examiner has jurisdiction, unless context clearly requires otherwise.
- E. "City" has the meaning provided for it in LMC 17.01.030.
- F. "City Code" has the meaning provided for it in LMC 17.01.030.
- G. "Days" refers to calendar days unless explicitly stated otherwise.
- H. "Department" refers to the city department issuing the administrative decision being appealed or administering the applicable section of the City Code. "Department" may refer to the planning department, public works department, or other department as context requires.
- I. "Director" refers to the highest-ranking city staff person in the Department as defined above. For matters brought to the Hearing Examiner, the Director is usually, but not necessarily, the director of the planning department or public works department.
- J. "Ex Parte Communication" is a communication that occurs between any person and the Hearing Examiner outside of the presence of the other Parties of Record.
- K. "Hearing Examiner" has the meaning provided for it in LMC 17.01.030.
- L. "Intervenor" means a person granted intervention pursuant to Rule 21. An Intervenor has the same rights of participation in the proceedings as the Appellant or Applicant and the City, unless such rights are expressly limited by the Hearing Examiner.
- M. "Motion" means an oral or written request to the Hearing Examiner for an order or ruling.
- N. "Open Record Hearing" has the meaning provided for it in LMC 17.01.030.
- O. "Party" refers to a Party of Record.
- P. "Party of Record" has the meaning provided for it in LMC 17.01.030.
- Q. "Person" has the meaning provided for it in LMC 17.01.030.
- R. "Rules" means these Rules of Procedure for Proceedings Before the Hearing Examiner of the City of Lynden, Washington.
- S. "Record" means the official record of documents, briefs, motions, testimony, recordings, and other items submitted, created and/or relied on during the course of the proceedings before the Hearing Examiner, which will be the full and complete record of proceedings if the Hearing Examiner's decision is appealed.
- T. "Timely" means within the time frame provided by City Code, these Rules, or within the time specified by the Hearing Examiner.
- U. "Variance" as used in these Rules refers only to variances over which the Hearing Examiner has jurisdiction pursuant to LMC 2.09.040.

5. Expeditious Proceedings.

To the extent practicable and consistent with requirements of law, hearings shall be conducted expeditiously. The Hearing Examiner and all Parties shall make every reasonable effort to avoid delay.

6. Frequency and Scheduling of Proceedings.

Hearings before the Hearing Examiner shall be scheduled on an as-needed basis. Applications or Appeals requiring a proceeding before the Hearing Examiner shall be scheduled for hearing promptly after notification by the Director that the Application or Appeal is complete.

7. Consolidation.

Whenever practical and consistent with the City Code and state law, proceedings before the Hearing Examiner related to the same matter may be consolidated. The Hearing Examiner may order consolidation with or without a request from a Party of Record.

8. Format for Submission of Applications for Variances and Appeals of Administrative Decisions.

The format for Applications for variances from the requirements of Title 19 is laid out in LMC 19.47.070. The format for Appeals of administrative decisions made under Title 17 is laid out in LMC 17.11.020. The City Code may require specific information or a specific format for Applications or Appeals brought under other sections. The Director shall not accept an Application or Appeal if it does not conform to the requirements specified in the City Code.

9. Withdrawal of Application or Appeal.

- A. If an Applicant or Appellant requests to withdraw its Application or Appeal before official notice of the public hearing is served, the Applicant or Appellant shall notify the Director and the withdrawal shall be permitted.
- B. If a withdrawal request is made after official notice of the public hearing is served, the Hearing Examiner may permit or deny the withdrawal at his or her discretion.
- C. The City may return any fees paid by the Applicant or Appellant if no City time has been spent on the Application or Appeal.

10. Presiding Officer.

The Hearing Examiner is the presiding officer over proceedings before him or her. The Hearing Examiner shall ensure a fair and impartial hearing, take all necessary action to avoid undue delay, gather facts necessary to make his or her decision, and maintain order. The Hearing Examiner shall have all powers necessary to achieve these ends.

11. Recusal.

Because of a conflict as defined in LMC 2.09.035 or another substantial reason, a Hearing Examiner may recuse him- or herself from a particular hearing, with or without a request for recusal from a Party. A Party requesting recusal must do so as soon as possible after the reason for the requested recusal is known. If a Hearing Examiner is recused, a Hearing Examiner pro tem will take his or her place. The recusal of the Hearing Examiner may be grounds for a continuance depending on the circumstances.

12. Ex Parte Communications.

- A. No person, regardless of whether that person is a Party of Record, may communicate ex parte in any way with the Hearing Examiner regarding the merits of a particular hearing or a factually-related petition or Application. The Hearing Examiner may likewise not communicate ex parte in any way about the same topics with any person.
- B. If prohibited ex parte communication occurs, it shall be immediately disclosed to all Parties of Record and made a part of the record. If a substantial prohibited ex parte communication occurs, the Hearing Examiner shall exercise his or her proper discretion and determine whether he or she must recuse him- or herself.
- C. A person may communicate ex parte with the Hearing Examiner concerning strictly procedural matters or to make requests for publicly available documents.

13. Computation of Time.

Except as otherwise provided in the City Code or these Rules, any prescribed period of time begins on the first day following that on which the act initiating the period of time occurred. When the last day of the period of time is a Saturday, Sunday, or City holiday, the period shall extend to the following business day. All materials due on a given day must be served on all other Parties and submitted to the Hearing Examiner before 5:00 PM on that day unless otherwise agreed.

14. Extension of Deadlines.

Any Party may move to extend any deadline specified in these rules, except for the deadlines to file an Appeal or Application. The Hearing Examiner may grant or deny such motions at his or her discretion.

15. Rights of Applicants and Appellants to Fair Hearing.

All Applicants and Appellants have the rights of due notice, due process, cross-examination, rebuttal, presentation of evidence, objection, motion, argument, and all other rights essential to a fair open record hearing.

16. Rights of Parties of Record.

- A. Appellants, Applicants, the City, and Intervenors may participate in any pre-hearing conference, submit legal briefing, motions, and witness and exhibit lists, present witnesses and testimony at the hearing, and perform other hearing-related functions as needed to protect their legal rights and interests.
- B. Parties of Record who are not an Appellant, Applicant, the City, or an Intervenor may submit exhibits, written statements, and testimony to the Hearing Examiner at the hearing or after the hearing but before the close of the record. Such Parties shall participate in the other aspects of the hearing only at the Hearing Examiner’s discretion, unless such Parties are granted Intervenor status.

17. Name, Address, and Telephone Number Required for Official Notifications and Service.

- A. Each Party of Record shall supply the Hearing Examiner and other Parties with their name, mailing address, and telephone number for receipt of official notifications and service.

- B. When a Party consists of more than one individual, such as an association, corporation, or other entity, that Party shall designate one individual to be its representative. The Party shall inform the Hearing Examiner and other Parties of the name, mailing address, and telephone number of the representative for receipt of official notifications and service. The representative alone shall exercise the rights of that Party, and notice or communication to the representative shall constitute notice or communication to the Party.
- C. When an attorney enters a notice of appearance on behalf of a Party, all official notices and service shall be directed to the attorney instead of to the Party.

18. Filing and Service of Documents.

- A. Appeals and Applications shall be submitted to the Director. The Director may also request additional information to be submitted to his or her office after receiving the initial Appeal or Application.
- B. All documents filed subsequently shall be submitted directly to the Hearing Examiner at the mailing address or email address the Hearing Examiner specifies.
- C. Documents shall be served personally or by first-class, registered, or certified mail. Service shall be regarded as complete upon the deposit of a properly addressed and stamped envelope in the regular facilities of the US Postal Service, or upon the time of personal service. One City office or agency may serve another City office or agency using the intra-city mail system. The Parties are encouraged to agree to at least one alternative method of service, such as fax, email, or other electronic transmission. Any such agreement shall be filed with the Hearing Examiner.

19. Legal Counsel.

- A. Parties' counsel. All Parties participating in any hearing may be represented by legal counsel at all stages of the proceedings. A notice of appearance pursuant to Rule 20 is required.
- B. City Attorney. The Hearing Examiner may at his or her discretion request the presence of the city attorney or his designee, at any hearing or meeting to advise on matters of law and procedure, subject to approval of the mayor.

20. Notice of Appearance.

When an attorney represents a Party, the attorney shall file a notice of appearance with the Hearing Examiner and send a copy of that notice to all other Parties, except that such notice of appearance shall not be required if the attorney representing the Party filed the Application or Appeal. Failure to file a notice of appearance at least seven days before a hearing shall be grounds for a continuance.

21. Intervention.

- A. A person may intervene as a matter of right when the requirements of intervention in Washington State Superior Court Civil Rule 24(a), or its successor rule, are met.
- B. At his or her discretion, the Hearing Examiner may permit the intervention of a person when the requirements for permissive intervention in Washington State Superior Court Civil Rule 24(b), Intervention, or its successor rule, are met.
- C. A person desiring to intervene shall file a motion for intervention stating the legal ground for intervention with the Hearing Examiner before the date of the hearing.

- D. A person granted intervention shall have a right to participate in all aspects of the proceedings, including without limitation pre-hearing conferences, briefing, motions, presentation of witnesses and exhibits, and oral argument, unless such right is expressly limited by the Hearing Examiner as a condition of permissive intervention.

22. Pre-Hearing Conference.

- A. The Hearing Examiner may require one or more pre-hearing conferences, which may be in person, by virtual meeting, or telephonic, to discuss matters appropriate to ensure the orderly and expeditious disposition of the proceedings. Items discussed at a pre-hearing conference may include:
 - i. Whether issue clarification statements, dispositive motions, exhibit lists and distribution, witness lists, hearing briefs, post-hearing briefs, and other submittals are needed, and if so, deadlines and methods of filing and service of the same;
 - ii. The date, time, and location the hearing is to be held;
 - iii. Issues related to discovery;
 - iv. Issues related to intervention; and
 - v. Other procedural issues as the Hearing Examiner deems appropriate.
- B. The Appellant or Applicant, City, and all Intervenors shall receive written notice of a pre-hearing conference at least three business days in advance of the conference, unless otherwise agreed. All participants shall attend the conference either personally or via a representative or attorney, unless the Hearing Examiner grants permission to not attend.
- C. Following a pre-hearing conference, the Hearing Examiner may issue orders reflecting the actions taken, decisions made, or rulings made during the conference.

23. Submission Deadline for Legal Authority.

All forms of legal authority, including briefs, staff reports, memoranda, upon which an Appellant or Applicant, the City, or an Intervenor will be relying or presenting at the hearing, must be submitted to the Hearing Examiner at least seven days in advance of the hearing. At his or her discretion, the Hearing Examiner may require legal authority to be submitted earlier than seven days prior to the hearing. When justified, the Hearing Examiner may refuse to consider or admit into the record any legal authority received late. The Hearing Examiner shall make all such documents available to the public at least five days in advance of the hearing, or if documents are submitted late but accepted by the Hearing Examiner, as soon as reasonably feasible.

24. Motions.

- A. All motions, other than those made orally during a hearing, shall be in writing and shall state the relief requested and the grounds for that relief. Motions must be served on the Appellant or Applicant, City, and Intervenors the same day they are submitted to the Hearing Examiner.
- B. Unless otherwise specified by the Hearing Examiner, the other Parties may file and serve a written answer to a motion within seven days of the filing of the motion.
- C. Unless otherwise specified by the Hearing Examiner, the Hearing Examiner shall rule on the motion within 48 hours of the passing of the deadline for answers to the motion or within 48 hours of oral argument, whichever is later. There is no right to oral argument for a

motion filed outside of a hearing, but the Hearing Examiner may in his or her discretion grant a request for or require oral argument before ruling on the motion.

- D. Motions made orally during a hearing may be answered and ruled on immediately.

25. Staff Reports Regarding Applications.

A staff report shall be submitted within fifteen days of the date an Application is filed with the Hearing Examiner. The staff report informs the Hearing Examiner of the Department’s position regarding the application. It should contain the following elements:

- A. Basic factual information about the property and the Applicant, such as name, ownership, address, parcel number, lot size, zone, availability of utilities and public services, and other relevant information;
- B. A detailed description of the lot or lots, including location of existing structures and other improvements, vegetation, slope, critical areas and buffers, and other relevant factors;
- C. A description of the Application and Applicant’s objective;
- D. Information about the zone the property occupies and neighboring uses;
- E. A description of how public notice was achieved, a summary of the public comments the Department received, and a statement of whether the Department concludes that the public comments were adequately addressed in the staff report;
- F. A statement describing the results of any related SEPA review, or a statement explaining why no SEPA review occurred;
- G. Analysis of the proposal’s consistency with the City Code and Comprehensive Plan; and
- H. The Department’s recommendation, including any recommended conditions of approval.

26. City Response to Submission of Appeal.

When an Appeal has been filed with Hearing Examiner, the Department shall file a written response to the Appeal if required by City Code or ordered by the Hearing Examiner, or may file a response on its own initiative. The response shall be submitted to the Hearing Examiner and served on other Parties within thirty days after the submission of the Appeal, unless otherwise ordered by the Hearing Examiner. The response should fully inform the Hearing Examiner of how the Department made the determination being appealed, including relevant facts and City Code citations as needed.

27. Discovery.

- A. At his or her discretion, the Hearing Examiner may permit discovery upon the motion of the Applicant, Appellant, City or Intervenor. The Hearing Examiner may limit the scope of discovery as appropriate. The Hearing Examiner shall generally not permit discovery, except in exceptional circumstances and where good cause is shown.
- B. Subpoenas. The Hearing Examiner is authorized by LMC 2.09.040(F) to issue subpoenas. To that end, the Hearing Examiner, in his or her sole discretion, may issue a subpoena consistently with the procedures described in Washington State Superior Court Civil Rule 45.

28. Dismissal without Hearing.

The Hearing Examiner may dismiss without a hearing and with or without a motion, any Appeal or Application over which the Hearing Examiner determines that he or she has no jurisdiction, or which is without merit on its face, frivolous, or brought only to secure delay.

29. Notice of Hearings.

Notice of hearings before the Hearing Examiner shall be made pursuant to LMC 17.07.030.

30. Format of Hearings.

Hearings shall be of an informal nature, but shall allow a reviewing body to easily ascertain the relevant facts, evidence, and arguments presented during the hearing and allow the Parties to develop a complete record. The order in which Parties present their cases shall not impact the applicable burden(s) of proof.

31. Format of Hearings for Applications.

- A. When the Hearing Examiner holds a hearing to determine whether an Application should be granted, generally, the hearing should proceed according to the following outline:
 - i. Hearing examiner’s introductory statement;
 - ii. Opening statements by the Parties, if any;
 - iii. Presentation of staff report by the City;
 - iv. Presentation and/or testimony by the Applicant;
 - v. Presentation and/or testimony by Intervenors;
 - vi. Public comment regarding the Application;
 - vii. Opportunity for City, Applicant, Intervenors and the Hearing Examiner to ask questions to any Party, or to cross examine any witness immediately following direct testimony from that witness;
 - viii. Opportunity for rebuttal.
- B. The Hearing Examiner may alter the order of the proceedings as needed.

32. Format of Hearings for Appeals of Administrative Decisions.

- A. When the Hearing Examiner holds a hearing of an Appeal of an administrative decision, generally, the hearing should proceed according to this outline:
 - i. Hearing Examiner’s introductory statement;
 - ii. Opening statements by the Parties;
 - iii. Presentation of evidence by the Appellant;
 - iv. Presentation of evidence by the City;
 - v. Presentation of evidence by the landowner or other Party who sought the administrative decision now being appealed, if different than the Appellant;
 - vi. Presentation of evidence by Intervenors to appeal;
 - vii. Limited public comment regarding the Appeal, if any;
 - viii. Opportunity for rebuttal;
 - ix. Closing statements of the Parties.
- B. The Hearing Examiner may alter the order of the proceedings as needed.

33. Evidence.

- A. The Hearing Examiner has discretion over the admission of evidence.
- B. Admissibility. The federal district court or state superior court rules of evidence that would apply in a court setting need not be observed, but may serve to guide the Hearing Examiner in his or her discretion. Generally, any and all relevant evidence with probative value from a reliable source shall be admitted, including hearsay. It is the Hearing Examiner’s prerogative to give weight to admitted evidence as they see appropriate.
- C. Objection. Any Party may object to the admission of evidence into the record. The Hearing Examiner shall rule on all objections to evidence made during the hearing before the close of the record.
- D. Testimony. The Hearing Examiner may limit testimony that would be repetitious or irrelevant, may impose a reasonable limit on the number of witnesses and the length of their testimony, and may limit cross examination only to what is necessary for the full disclosure of facts.
- E. Documents. Documentary evidence may be received in the form of copies if the original is not readily available.
- F. Privilege. To the extent recognized by law, the rules of privilege shall apply.
- G. Judicial Notice. The Hearing Examiner may take judicial notice of a fact if the truth of the fact cannot reasonably be doubted. In addition, the Hearing Examiner may take judicial notice of facts within his or her specialized knowledge. The Hearing Examiner may give notice to the Parties that he or she is taking judicial notice of a fact; this can be accomplished by an announcement during the proceedings.
- H. No additional evidence may be submitted after the close of the record. The Hearing Examiner may re-open the record to allow new evidence at his or her discretion if the evidence has significant relevance and there is good cause for the delay in its submission.

34. Witnesses.

- A. All witnesses testifying before the Hearing Examiner shall take an oath or affirmation to be truthful.
- B. If a witness testifies via an interpreter, the interpreter shall take an oath that a true interpretation shall be made.
- C. As Hearing Examiner proceedings are open to the public, it is anticipated that some members of the public may wish to testify. Witnesses who are not Parties of Record and are not called by Parties of Record shall be allowed to testify in proceedings on an Application, subject to Rule 33.D. Witnesses who are not Parties of Record and are not called by Parties of Record may be allowed to testify in Appeal proceedings, at the Hearing Examiner’s discretion. The Applicant, City, and Intervenors may in their discretion cross-examine members of the public testifying as witnesses in proceedings on an Application. The Appellant, City, and Intervenors may be allowed to cross-examine members of the public testifying as witnesses in proceedings on an Appeal, at the Hearing Examiner’s discretion.
- D. Witnesses may present their testimony via telephone, virtual meeting, or video-conference at the discretion of the Hearing Examiner, as long as all present can hear or hear and see the witness and the ability to cross-examine the witness is not impacted.

35. Site Inspection.

When helpful to develop a full understanding of the case or making a finding of fact, the Hearing Examiner may inspect the site(s) at issue prior to, during or subsequent to the hearing. The Hearing Examiner shall provide notice to the Applicant or Appellant, City, and Intervenors when the site inspection will occur. If Parties attend the site inspection, all persons must observe the ex parte communications rules at Rule 12. The Hearing Examiner’s observations made during the site inspection shall be added to the official record including but not limited to the location, date, time, length and attendees at the site inspection.

36. Electronic Record of Hearing.

- A. Hearings shall be electronically recorded or recorded by court reporter verbatim and such recordings shall be a part of the record.
- B. Copies of the recording shall be made available upon request by a Party or a member of the public within a reasonable time. The City may charge a reasonable fee for the copying of the recording.
- C. No minutes of the hearing will be kept.

37. Transcript.

Anyone desiring a transcript of a hearing shall be responsible for obtaining the electronic recording of the proceeding and arranging and paying for the creation of a verbatim transcript. The Applicant or Appellant, City, and Intervenors shall have an opportunity to review and comment on the transcript. The Hearing Examiner shall resolve any issues that the Parties raise regarding the transcript. When the Hearing Examiner has resolved all conflicts and is satisfied that the transcript provides a reliable record of the proceedings, the Hearing Examiner shall certify the transcript. No transcript shall be considered an official record of the proceedings without the Hearing Examiner’s certification.

38. Contents of the Record.

- A. The record shall include at least all of the following:
 - i. The Application or Appeal;
 - ii. The Department’s report or recommendation;
 - iii. All correspondence, memos, reports, studies, environmental documents, and other public documents contained in the Department’s files on the issue before the Hearing Examiner;
 - iv. Written comments from the public and other agencies submitted to either the Department or the Hearing Examiner in a timely manner;
 - v. Statement of matters officially noted, if any;
 - vi. The Hearing Examiner’s written decision;
 - vii. Mailing lists and notices for notice and decision;
 - viii. The video or audio recording of the hearing;
 - ix. The official transcript of the hearing, if any; and
 - x. Any document, item, or other materials the Hearing Examiner admitted into evidence, made part of the record, relied on, or considered.

- B. A Party may object to the inclusion of any particular document in the record. Such objections shall be made either by written motion before the hearing or by oral motion during the hearing. The Hearing Examiner shall rule on such objections prior to the close of the record.

39. Continuances.

- A. The Hearing Examiner may continue or re-open proceedings for good cause by entering an order to that effect prior to issuing his or her decision.
- B. If the Hearing Examiner continues proceedings during a hearing and announces the date, time, place, and nature of the future hearing, no further notice of the continuance is required. When the Hearing Examiner determines after a hearing that a future hearing is needed, all Parties of Record shall be provided at least seven days’ notice of the date, time, place, and nature of the future hearing. Such notice shall also be published in the city official newspaper.

40. Leaving the Record Open.

The Hearing Examiner may leave the record open at the conclusion of a hearing to receive further evidence or argument or for other good cause, under conditions the Hearing Examiner deems appropriate. All Parties of Record shall be given notice that the record has been left open and the date it will be closed.

41. Re-Opening Proceedings.

At any time prior to the issuance of the decision, the Hearing Examiner may re-open proceedings for the reception of further evidence or legal briefing. All Parties of Record shall be given notice of re-opening of the proceedings.

42. Decision of the Hearing Examiner.

The written decision of the Hearing Examiner shall include all of the following elements:

- A. A statement of the nature and background of the proceeding;
- B. Findings of Fact. The findings of fact are a statement of all the facts that form the basis of the decision. The findings of fact must be derived exclusively from testimony and evidence presented during the hearing and facts of which the Hearing Examiner took official notice. The source of each finding of fact should be identified and cited;
- C. Conclusions of Law. Conclusions of law should cite to specific provisions of law or regulations and include reasons and precedents relied on, whenever applicable. If relevant, the conclusions of law should address how the decision is supported by the comprehensive plan and the effect of the decision on properties in the vicinity; and
- D. Order. The Hearing Examiner’s order shall be based on the entire record and supported by reliable, probative, substantial evidence.

43. Notice of Decision.

Notice of the Hearing Examiner’s decision shall be sent to all Parties of Record pursuant to LMC 17.07.050.

44. Clerical Errors.

Clerical errors in any part of the record or decision arising from an oversight or from errors in computation may be corrected by an order at the Hearing Examiner’s initiation or in response to a motion of any Party.

45. Termination of Jurisdiction.

The jurisdiction of the Hearing Examiner is terminated upon the issuance of the Hearing Examiner’s decision, except when the Hearing Examiner expressly retains jurisdiction, a reviewing court remands a matter to the Hearing Examiner, or as otherwise provided in these Rules or the City Code.

46. Reconsideration.

Any Party of Record may request reconsideration pursuant to LMC 17.09.080.

47. Appeals of Hearing Examiner Decisions.

The effect of the hearing examiner’s decision may vary by type of Application or Appeal and is as stated in the City Code. For most matters, the hearing examiner’s decision is the final decision of the City, subject to appeal to the City Council. For other matters, appeals may be made to superior court, the shoreline hearings board, or other reviewing body.

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

19.67.110 – Appeals and adjustments.

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

SECTION 3:

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

SECTION 4:

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

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	May 17, 2021	
Name of Agenda Item:	Public Safety Draft Minutes- May 6, 2021	
Section of Agenda:	Other 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:	Public Safety Draft Minutes- May 6, 2021	
Summary Statement:	Public Safety Draft Minutes- May 6, 2021 attached for review.	
Recommended Action:	For Council review.	

CITY OF LYNDEN

POLICE DEPARTMENT

Steve Taylor, Police Chief

(360) 354-2828



Public Safety Committee Meeting Minutes

Online (Microsoft Teams)

4:00 PM May 06, 2021

Call to Order

Roll Call

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

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

Approval of Minutes

1. **Approval of April 1, 2021 meeting minutes**

The minutes from the April 1, 2021 meeting were approved.

Items from the Audience

Scheduled

2. **Speed limit on Main Street - Yuliya Knibbe**

Citizen Yuliya Knibbe has concerns regarding the posted 35 mph speed limit on Main Street, which is an arterial road as well as a residential area. She notes there is a lot of traffic including large semi-trucks traveling quite fast. Councilor Wohlrab advised the committee would review traffic count data and follow up next month.

Committee Items

3. **Review on Westview Circle speeding complaint**

No new information; not discussed.

4. **Front Street safety concern - car vs pedestrian collision**

There have been 2 vehicle vs pedestrian accidents at the intersection of Front Street and 7th Street within the last 6 months. The Police Department will review the area to identify any possible visibility issues (trees, signage, etc).

5. **Aaron Drive speed complaints**

Complaints have been received regarding speeding vehicles on Aaron Drive. Mayor Korthuis has recent traffic count information available, and notes that traffic is generally going the speed limit with a handful of vehicles speeding in excess. Councilor Wohlrab will share the data with the concerned citizens.

6. Crosswalk request at Edgewater and Vinup

A request was made by a citizen to add a crosswalk on Vinup Road at Edgewater Lane. The committee was not inclined to support the request as Edgewater Lane does not line up on both sides of Vinup Road, and there are other busier intersections that do not currently have crosswalks.

7. Public Safety Overtime - March 2021

Fire Department had 264.75 overtime hours in April, and 439 volunteer hours. Typically, the overtime/volunteer ratio is about 50/50 split, so volunteer hours were up.

Police Department had 281 overtime hours in April, 70% in shift coverage for medical/light duty and vacation coverage.

Fire Department Items**8. Fire Monthly Report - April 2021**

Chief Billmire presented the monthly report for April. Call volume remained normal, 45 overlapping calls (31%). Fire prevention and inspections continue to increase.

9. AC Recruitment Update

The Assistant Chief position was reposted last Friday through the Daily Dispatch, a fire publication. Chief Billmire will coordinate with Kara Turner upon her return to post through other recruitment sources. No significant changes were made to the job description.

10. Fire Station Renovation Update

The renovation project is still on schedule, working on mechanical, electrical, plumbing and HVAC inside the building. Notice was received that the contractor may be petitioning the City to adjust the bid due to the 200% increase in lumber costs.

11. IAFF Local 106 - Contract Negotiations begin June 1

Contract negotiations begin June 1, 2021. Chief Billmire does not anticipate any big hang-up issues or surprises and hopes the process goes smoothly.

Police Department Items**12. Police Monthly Report**

Lieutenant Martin presented the monthly report for April, noting there has been an increase in public order maintenance calls, disorderly subjects, and transients throughout the last year.

13. City of Lynden - Friendship Diversion Services Agreement

Mike Martin overviewed the proposed agreement between the Municipal Court and Friendship Diversion Services for electronic home monitoring services. Judge Lewis requested the City consider the agreement and both the Prosecutor and Public Defender support it. It is less expensive than our current contract and offers a sliding fee scale for lower income. It will require a separate resolution, which Carmichael Clark is aware of.

Added Items

14. COVID cases in Lynden have increased significantly. Mayor Korthuis will update and publish the new data more frequently for public awareness.

Adjournment

Meeting adjourned at 4:49 p.m.

DRAFT

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	May 17, 2021	
Name of Agenda Item:	Calendar	
Section of Agenda:	Other Business	
Department:	Administration	
Council Committee Review:	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input type="checkbox"/> Public Works <input type="checkbox"/> Other: N/A
		Legal Review: <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required
Attachments:	Outlook Calendar	
Summary Statement:	See next page.	
Recommended Action:	None	

May 17, 2021
Monday

3:00 PM - 4:00 PM

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

Microsoft Teams meeting

Join on your computer or mobile app

[Click here to join the meeting](#)

Or call in (audio only)

[+1 253-948-9362,,752440887#](#) United States, Tacoma

Phone Conference ID: 752 440 887#

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

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

4:00 PM - 5:00 PM

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

7:00 PM - 9:00 PM

City Council Meeting -- Online Microsoft TEAMS meeting

May 18, 2021
Tuesday

4:00 PM - 5:00 PM

Civil Service Meeting -- City Hall 1st Floor Large Conference Room or ONLINE
REVISED TO CORRECT TIME (4-5). Thanks Gary.

Please see information below for Online or Telephonic attendance.

May 18, 2021 Continued
Tuesday

Microsoft Teams meeting

Join on your computer or mobile app

[Click here to join the meeting](#)

Or call in (audio only)

[+1 253-948-9362,,346942904#](#) United States, Tacoma

Phone Conference ID: 346 942 904#

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

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

May 19, 2021
Wednesday

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

8:00 AM - 12:00 PM 2021 WAPRO Virtual Spring Conference -- ONLINE
<http://events.r20.constantcontact.com/register/event?llr=tcx9ub4ab&oeidk=a07ehp2wqixee4c378>

Please join us for the 2021 Virtual Spring Conference on May 19th (8-12pm) & 20th (8-12:15pm). Day 1 is our general session with multiple guest speakers and Case Law/Legal Updates. Day 2 is our breakout sessions. We are looking forward to having you join us! For registration cancellations, a full WAPRO credit will be offered or a \$5 refund fee.

May 20, 2021
Thursday

All Day

8:00 AM - 12:00 PM WAPRO TRAINING -- ONLINE

May 21, 2021

Friday

All Day

Payday!!!

10:00 AM - 11:00 AM

WMCA Handbook -- Zoom
Scheduled by Cmte 4-9-21.

Zoom info will follow later.

Topic - Review of update for Chapters 3 and 4

11:30 AM - 5:00 PM

Appt-Pam -- Bellingham

May 24, 2021

Monday

11:00 AM - 12:00 PM

Foxtail Ribbon-Cutting -- West end of Foxtail (Eastwood Way side)



I've attached a map showing the location with a red circle on the west side where we will cut the ribbon.

May 25, 2021

Tuesday

8:30 AM - 9:30 AM

Leadership Team Meeting -- To Be Determined

May 26, 2021

Wednesday

All Day

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

May 28, 2021

Friday

12:00 AM - 12:00 AM

Pam Vacation -- Out of Office

Hi Kim: I asked for this off a while ago....but if you would like to take it instead that is good with me. Just let me know.

Thanks.

Pam

May 28, 2021 Continued
Friday

May 29, 2021
Saturday

All Day Pam Vacation -- Out of Office Please See Above

May 30, 2021
Sunday

All Day Pam Vacation -- Out of Office Please See Above

May 31, 2021
Monday

All Day Pam Vacation -- Out of Office Please See Above

All Day Memorial Day -- United States

June 1, 2021
Tuesday

12:00 AM - 12:00 AM Pam Vacation -- Out of Office Please See Above

All Day SCHEDULE LABS

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

June 2, 2021
Wednesday

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

June 4, 2021
Friday

11:30 AM - 5:00 PM Appt-Pam -- Bellingham

June 7, 2021
Monday

All Day Payday!!!

June 7, 2021 Continued

Monday

133

7:00 PM - 9:00 PM

City Council Meeting -- To Be Determined