

CITY OF LYNDEN
CITY COUNCIL RESOLUTION 23-1086

**A resolution of the Council of the City of Lynden, Washington,
to approve Conditional Use Permit 23-01 regarding Premier Packing Height
Allowance**

BACKGROUND

WHEREAS, Lynden Municipal Code (LMC) 19.25.060 includes provisions for industrial users to increase the maximum height of a building through a Conditional Use Permit (CUP); and

WHEREAS, Chill Build Lynden III, LLC, owns a vacant property located at 603 Curt Maberry Road, Tax Assessors Parcel Number 4002241613100000 (the Property), and desires to construct an industrial seafood processing facility and freezer warehouse on the Property. The building is designed to exceed the maximum height standard of 45 feet as permitted outright in LMC 19.25.060; and

WHEREAS, a Conditional Use Permit addressing food production and a maximum building height standard of 50 feet was previously approved for the Property on December 19, 2022 as CUP 22-02; and

WHEREAS, after subsequent review of business needs, the property owner made application to seek a revised maximum building height standard of 80 feet for the same facility which would allow the freezer portion of the facility to increase storage capacity and take advantage of the most efficient stacking technologies.

PROCESS

WHEREAS, Freeland and Associates, Inc, the agent representing Chill Build Lynden III, LLC, submitted a Conditional Use Permit application (CUP 23-01) which was determined to be complete on September 18, 2023; and

WHEREAS, the property owner updated SEPA 22-09, a previously reviewed environmental analysis, to address the additional height proposal; and

WHEREAS, a notice of a Mitigated Determination of Non-Significance (MDNS) on the revised SEPA checklist was issued October 6, 2023; and

WHEREAS, the notice of the Conditional Use Permit application was published on October 11, 2023, which invited public comment on the proposal; and

WHEREAS, on October 26, 2023, the Lynden Planning Commission held a public hearing to accept public comment and develop a recommendation on the proposal, and

WHEREAS, the Planning Commission recommended approval of CUP 23-01 with specific conditions as documented in PC Resolution 23-05; and

WHEREAS, the City Council subsequently considered the proposal at a November 20, 2023, meeting which resulted in the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT

1.01 Application. JP Slagle, Freeland and Associates, Inc, (“Applicant”) filed a conditional use application which was accepted by the City as complete on September 18, 2023.

1.02 Location. The Property is located at 603 Curt Maberry Road in Lynden, Whatcom Co., Washington as described above.

1.03 Ownership. Chill Build Lynden III, LLC.

1.04 Reason for Request. The request is for a modification to Conditional Use Permit #22-02. The modification includes a redesigned facility that contains an expanded freezer space with a maximum height of 80 feet from the previously approved 50-foot limit. The additional height will create additional vertical storage capacity to support storage of frozen products.

1.06 Compliance with Project Manual for Engineering Design and Development Standards. The application can comply with the development standards and requirements set forth in the Project Manual for Engineering Design and Development Standards, as applicable.

1.06 Critical Area Review. There were no critical areas found to be on the site.

1.07 SEPA Determination. Formal notice of the SEPA Determination, a Mitigated Determination of Non-Significance (MDNS), was published in the Lynden Tribune on November 2, 2022, and mailed to neighbors within 300 ft of the property. The findings here are consistent with the determination.

1.08 CUP 23-01 will Support Industrial Growth in West Lynden Subarea. The granting of the Conditional Use Permit will support the growth of an existing city of Lynden industry and associated employment as it relocates from a smaller space in the center of the city to the West Lynden industrial area. This shift is consistent with the City of Lynden Comprehensive Plan which allocates this area of the city for industrial growth.

1.09 CUP 23-01 will Provide Additional Jobs, Modernize Existing Facility, and Improve Water Quality Discharged from the Property. The Property is located in an area that is slated for industrial use. Approval of CUP 23-01 will provide jobs and support the Western fishing industry. Additionally, the applicant is currently operating out of an outdated facility which has proved to be problematic when striving to comply with discharge standards. The new facility will include modern

filtering systems which will significantly improve the quality of the waste discharged from this facility and reduce the impact to city waterways and the burden to the city wastewater treatment facility.

1.10 Views from Public Right of Way to be Protected. CUP 23-01 is designed to take into account views from public right of way. It will include landscape buffer, street trees, shielded exterior lighting, screened mechanical equipment, and siting of the building so that the loading docks are oriented away from Main Street, the street most frequently used by the general public.

1.11 Life Safety and Building Construction Measures. CUP 23-01 will be designed to provide for life safety access in accordance with International Building and Fire Codes. Provisions for life safety have been made through site access and facility design. The internal site is designed to provide access for fire apparatus and the building construction will be held to the standards of the International Building and Fire Codes.

1.12 Noise and Odor Provisions. CUP 23-01 will be held to comply with all City standards including those related to noise and odor. Upon operation the use will be held to performance standards detailed in the Lynden Municipal code including those related to noise and odor.

1.13 Public Water. Potable Water is Available on the Property.

1.14 Open Spaces, Streets, Roads, Sidewalks and Alleys. The facility will be located on Curt Maberry Drive which is an improved right-of-way that includes sidewalks.

1.15. Findings from CUP 22-02 Incorporated Herein. All Findings and Findings of Fact from CUP 22-02 are incorporated herein by this reference to the extent not inconsistent with the above Findings of Fact. If there is a conflict between any of the above Findings of Fact and the Findings or Findings of Fact in CUP 22-02, the above Findings of Fact shall control.

CONCLUSIONS OF LAW

2.01 Appropriate Provisions Made for Open Spaces, Roads, Streets, Sidewalks, and Alleys. The application makes appropriate provisions for public open spaces, roads, streets, sidewalks, and alleys. Facility development here will also trigger the requirement to dedicate and make improvements to the right-of-way of Alderwood Drive along the project's southern property line. The project is also subject to traffic impact fees which are utilized to make improvements to the nearby roadway network.

2.02 Potable Water Supplies, Sanitary Wastes and Drainage Ways. The application makes appropriate provisions for public drainage ways, potable water supplies and sanitary wastes. Due to the nature of the use of fish and seafood

processing, a sewer discharge study will be required prior to connection with the city's sewer system to ensure compliance. The application will also be held to the Western Washington Stormwater Manual.

2.03 Public Interest. The application is consistent with the City's comprehensive plan and the Growth Management Act. The project serves the public interest in that it represents a significant property improvement which benefits the Lynden tax base. The modernization of the existing facility on the Property will promote compliance with existing discharge standards, reduce impact to city waterways, and lessen the burden on the city's wastewater treatment facility

2.04 Compliance with Criteria for Granting a Conditional Use Permit. The application as presented during the public hearing complies with the criteria listed within Section 19.57.210 of the Lynden Municipal Code with conditions that address mitigation of impacts.

2.05 Appropriate Provisions for Promoting Public Health, Safety and Welfare. Based on the foregoing, CUP 23-01 is found to promote the public health, safety, and welfare and conform to the City Comprehensive Plan.

2.06 Conclusions from CUP 22-02 Incorporated Herein. All Conclusions and Conclusions of Law from CUP 22-02 are incorporated herein by this reference to the extent not inconsistent with the above Conclusions of Law. If there is a conflict between any of the above Conclusions of Law and the Conclusions of Law or Conclusions in CUP 22-02, the above Conclusions of Law shall control.

Any of the foregoing Finding of Fact which should rather have been designated Conclusions of Law, and Conclusions of Law which should rather have been designated Findings of Fact, shall be validated as such and so conformed.

The foregoing recitals are a material part of this permit Decision.

NOW THEREFORE, BE IT RESOLVED by the Lynden City Council to approve Conditional Use Permit 23-01 concerning a maximum building height allowance of 80 feet for the Premier Packing seafood processing and freezer warehouse under the conditions set forth herein. The environmental impacts of the proposed development have been reviewed through SEPA 22-09. The final determination and associated conditions of this SEPA review are fully incorporated herein by this reference. The conditions of the food processing use, having been previously reviewed and approved through CUP 22-02, have been transferred to this application and are fully incorporated herein by this reference. In addition, said applicable conditions from CUP 22-02 are hereby expanded to address the proposed height modification as detailed here:

1. To minimize impacts to surrounding properties all exterior lighting must be shielded or “dark-sky compliant” lighting throughout the site to minimize lighting impacts.
2. Sewer Discharge. Prior to issuance of the building permit, a sewer discharge study is required to verify impacts, treatment loads, and pipe size. Be advised, this study will require 3rd party review and the applicant assuming associated costs of this review.
3. Roof-mounted mechanical equipment including condenser units must be screened from view so that this mechanical equipment is not visible from public streets.
4. The Conditional Use Permit will be evaluated annually to ensure that compliance with the performance standards as described in LMC 19.25.040 are met, especially as they relate to noise and smell.
5. So as to mitigate the scale of the proposed freezer the street trees required along the southern property line must be a species of shade tree which will mature to a height of 30 feet or greater such as similar species of trees thriving in that area (Tulip Tree). Additionally, these street trees must be a minimum 2-inch caliper at the time of installation and spaced per City of Lynden street tree requirements.
6. Compliance with all City code and all State and Federal laws and regulations.

PASSED BY THE CITY COUNCIL BY AN AFFIRMATIVE VOTE OF _____ IN FAVOR, _____ AGAINST, SIGNED THIS 20TH DAY OF NOVEMBER 2023.

MAYOR

Scott Korthuis, Mayor

ATTEST:

Pam Brown, City Clerk

APPROVED AS TO FORM:

Bob Carmichael, City Attorney