

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

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**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 Exhibit B 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 \_\_\_\_ to \_\_\_\_.

DATED: \_\_\_\_\_

\_\_\_\_\_  
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



<b>Meeting Date:</b>	January 28, 2021
<b>Name of Agenda Item:</b>	Public Hearing for Site Specific Rezone 20-05, O&S Rezone at 8035 Guide Meridian
<b>Type of Hearing:</b>	Quasi-Judicial
<b>Attachments:</b>	TRC Report, Site Specific Rezone Application 20-05 with supporting maps
<b>Summary Statement:</b>	<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.