

CITY OF LYNDEN

EXECUTIVE SUMMARY - PLANNING COMMISSION



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.

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";

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

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

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

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

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

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

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

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

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

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

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

February 3, 2021

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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,

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:	
<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.



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

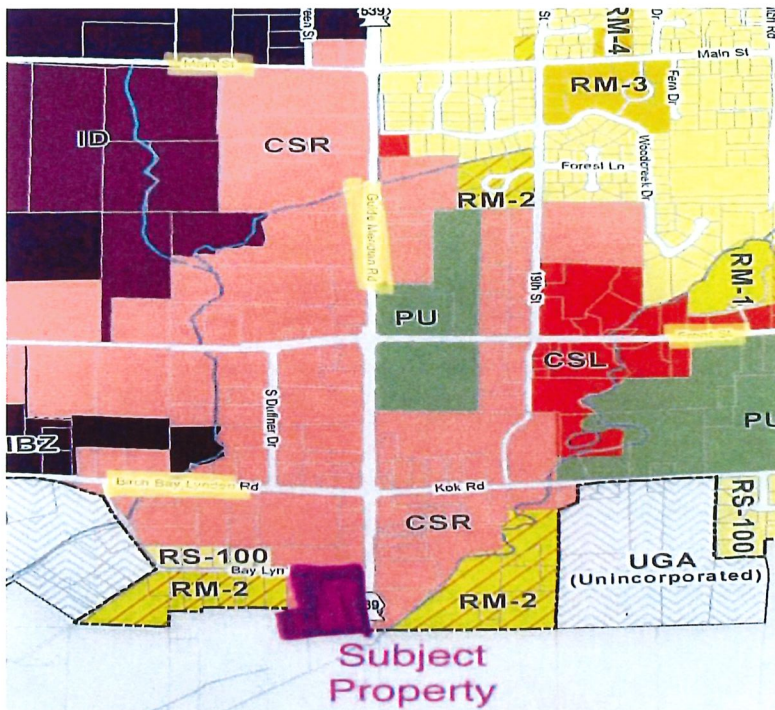
SUBMITTED BY ASHLEY GOSAL OF O&S FARMS, LLC.

8035 Guide Meridian
Lynden, WA 98264

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Summary of Subject Property

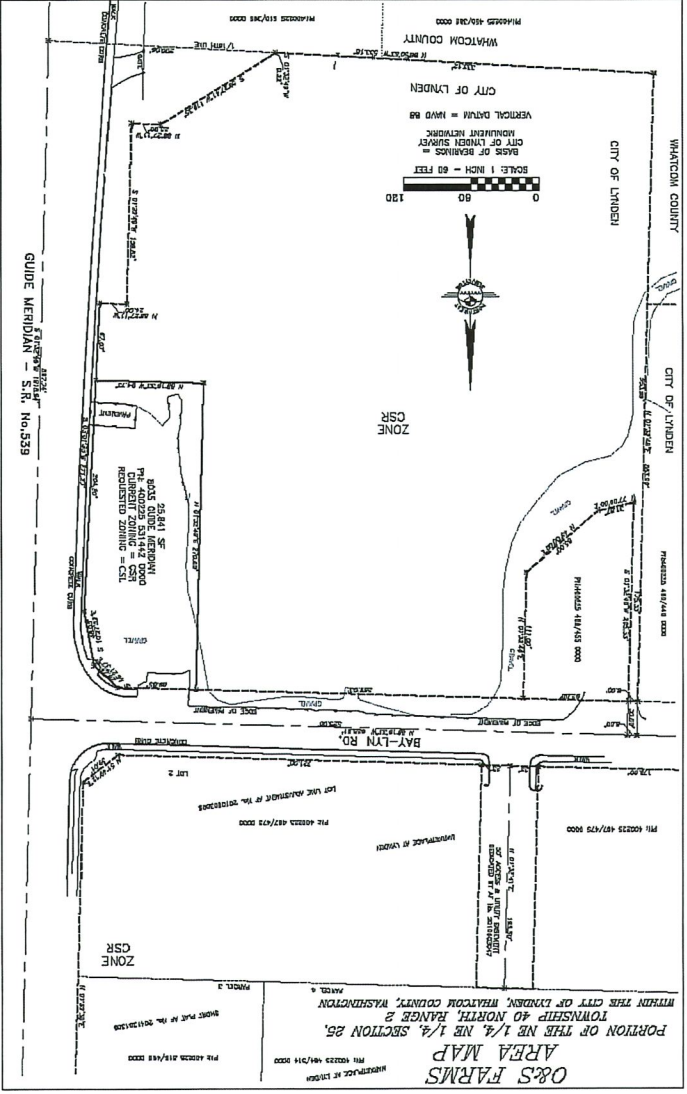


Payment of All Applicable Fees:

Applicant has submitted two checks:

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

Property Area Map:



Project Drawings:

Not Applicable. This application is solely for the rezone.

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

Legal Description of the Property:

Parcel A:

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

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

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

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

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

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

Situate in Whatcom County, Washington

Parcel B:

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

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

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

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

Situate in Whatcom County, Washington

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

Rezone Applicant:

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

Current Owner:

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

Ownership Interest:

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

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.

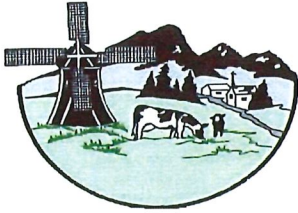
We believe that the changed circumstances and Lynden's growth not only support the need for a rezoning of this Property, but also so that the Property can be better utilized to serve the Lynden community. Creating a mixed-use project would allow for commercial development, additional housing opportunities, 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

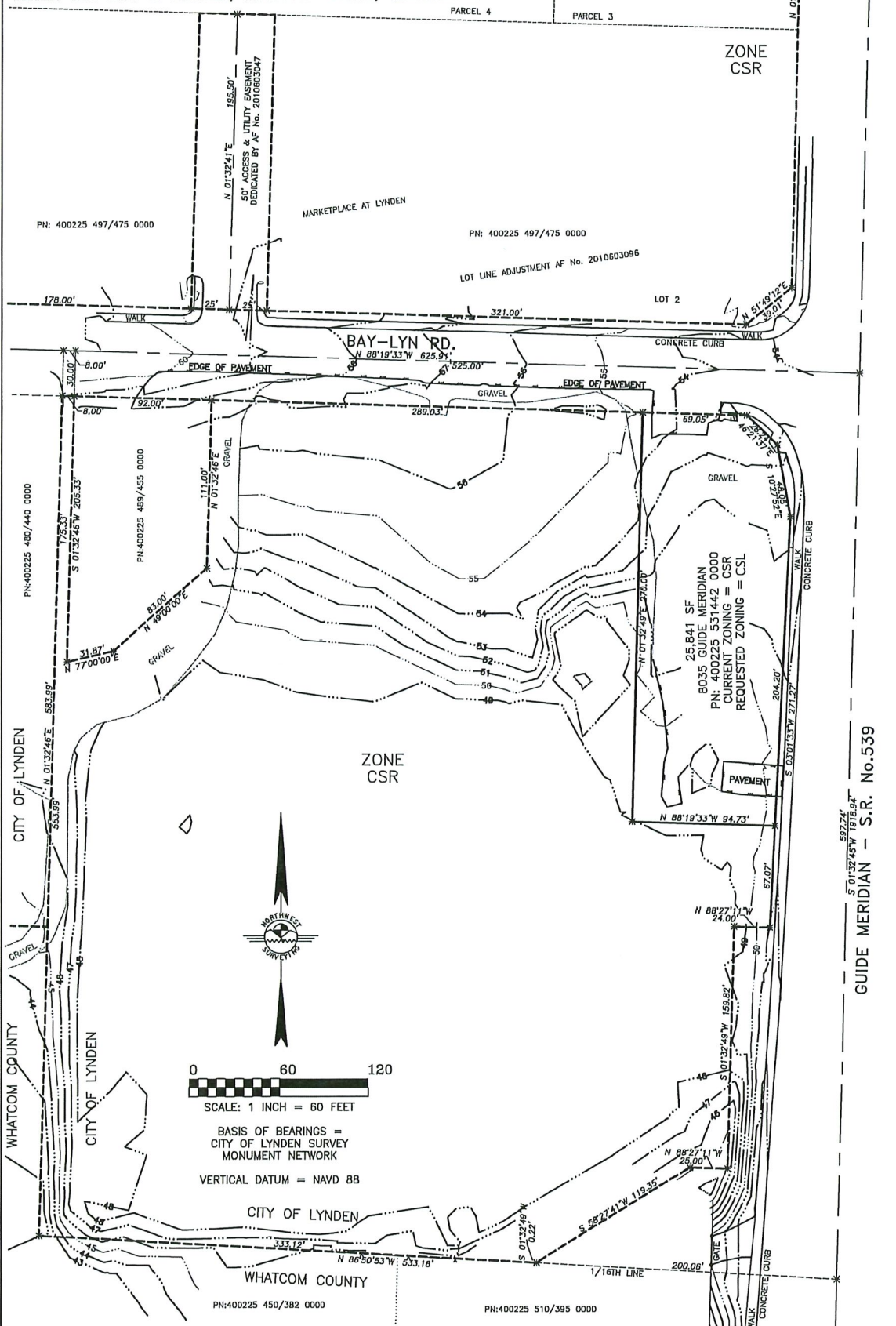
O&S FARMS SITE MAP

PORTION OF THE NE 1/4, NE 1/4, SECTION 25,
TOWNSHIP 40 NORTH, RANGE 2
WITHIN THE CITY OF LYNDEN, WHATCOM COUNTY, WASHINGTON

MARKETPLACE AT LYNDEN
PN: 400225 484/514 0000

PN: 400225 516/496 0000

SHORT PLAT AF No. 2041201309



SCALE: 1 INCH = 60 FEET

BASIS OF BEARINGS =
CITY OF LYNDEN SURVEY
MONUMENT NETWORK

VERTICAL DATUM = NAVD 88

GUIDE MERIDIAN - S.R. No. 539

PN:400225 450/382 0000 PN:400225 510/395 0000