



PLANNING COMMISSION MEETING MINUTES

7:00 PM July 27, 2022

City Hall Annex

1. CALL TO ORDER

2. ROLL CALL

Present: Tim Faber, Blair Scott, Jim Kaemingk, Darren Johnson.

Absent with notice: Khush Brar, Hollie Lyons with notice and Bryan Korthuis without notice.

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

3. APPROVAL OF MINUTES

A. None

4. DECLARATION OF CONFLICT

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

5. PUBLIC HEARING - Quasi-Judicial Item

A. CUP #21-04 Lynden Automotive, 8894 Bender Road

Faber opened the public hearing.

Gudde addressed the Commission and stated CUP's are for uses that are not necessarily appropriate for the area but may be allowed subject to certain conditions and review.

Gudde stated On November 18, 2021, the Planning Commission held a public hearing to consider a Conditional Use Permit (CUP) for Lynden Automotive Specialists, located at 8894 Bender Road. The application sought the permit to allow a full-service auto repair shop in the CSL zone (Bender Plaza) in Lynden.

The Planning Commission recommended approval of the CUP but with very specific conditions. As the location had already begun operating as a full-service auto repair shop in violation of permitted commercial uses designated in LMC 19.23.010, the Commission designated a specific timeframe for compliance. The City Council subsequently considered the application on December 6, 2021 and concurred with the resolution of the Planning Commission.

Subsequently, the applicant had 30 days to install a landscape screen and 3 months to submit a stormwater report. No action has been taken to fulfill these conditions others related to business operation despite written and phone communication with the applicant.

As the conditions of the Conditional Use Permit have not been fulfilled the Planning Commission is being asked to consider a revocation of the permit. Staff is seeking a Commission recommendation and will then bring the item to the City Council for a final decision. Applicant and public testimony on the revocation can be provided at the

Planning Commission hearing and will become part of the record for the Council to consider. A revocation of the conditional use permit would require that the applicant discontinue the use of mechanic services at this location (although lube services can remain).

Gudde stated that Staff has also issued a recommendation to City Council. The motion is as follows: *Motion to recommend to the City Council that Conditional Use Permit #21-04 for Lynden Automotive be revoked and that mechanic services at this location be immediately discontinued.*

Gudde also added that a specific deadline for mechanic services should be noted.

Speaking in Favor:

Gerardo Morado, Owner, Lynden Automotive Specialist 8894 Bender Road, Lynden
Morado stated that he started working on the issue with the previous owners, the McEvoy's, however they started the process of selling the property to the new owner Parm (also present). Morado states that the McEvoy's did not inform Parm of the situation that was going on between the business and the city. Morado stated that he continued to try and address the issues on his own but ultimately what was agreed upon was that the landscape screening and other conditions was more on the owner than the person leasing the property. Morado stated that in talking with the McEvoy's they would take it thorough the process and I would help as it is for my business. The sale of the property took some time and when it was complete, we had lost what we were approved to do under the CUP.

A few months back, Morado and the new owner got on the same page and wanted to move forward but the CUP had already been revoked.

Scott asked, did you purchase the business after all of this started? No, I purchased the business in 2021. Were you the owner during the first hearing when all of these stipulations took effect? Correct, I was the owner of Lynden Automotive at that time, however, not the owner of the property. Scott stated, we are addressing the issues with the mechanic services at this location. Morado stated regardless, the burden would still fall to the property owner.

Morado stated that the property was leased to him as a mechanic shop not as an express lube shop. I am operating my lease as I originally intended to. When I got hit with the CUP requirement, it was unexpected. Prior to being in this location, the express lube also did mechanic work for multiple years and had no issues.

Kaemingk asked, when you were approached by the City regarding the CUP, did they ask you to do this or the property owners? Morado replied, me and McEvoy. When the property sold, the lease was also transferred to the new owners. Does the lease say that you can operate an automotive repair shop? Yes, and I signed a 5/6 year lease.

Kaemingk asked Morado if he has a plan? Yes, we absolutely do. Number 1 & 2 we are ready to move on as soon as we get this approved again. Morado's concern is with condition number 3 & 4 as he does a lot of work with dealerships from here to Bellingham. There are often cars without plates or expired tabs. Cars are also brought to the shop that have been broken down and stored in a garage for months or years. It's difficult to force them to put tabs on the vehicle just to bring it to a shop. 1, 2 & 5 no issues, but 3 & 4 need to be discussed.

Johnson asked, have you started addressing some of the conditions? Morado replied yes, we removed the storage container. Two months ago we went to court, thought we were ready to put in the landscaping and was told that we had to go through this process again because it had been revoked.

Scott asked, are you prepared to move forward with the landscaping now? Yes, Parm is prepared to install the landscaping. Parm and I are the ones going to court with the City Attorney. Gudde stated that Morado is mentioning court because the case started as a violation. If a violation is not addressed, it eventually goes to the City Prosecutor. Gudde has been in contact with the Prosecutor and his conditions on this matter are to follow the conditions of approval for the CUP. Until that is done, it will remain as a violation against the property.

Faber informed Morado that the CUP at this point has not been revoked. Tonight's meeting is what that process is for. The revocation requires the same process that put the CUP in place and only the City Council can revoke it, not Staff or the City Prosecutor.

Morado states that they would have done the landscaping a month ago, however, was told not to because of this upcoming process.

Scott stated that there are a lot more cars parked at the shop than he understood would be. Morado stated that a specific "number" of cars is new to him. He was not given a number. Faber stated that the decision letter indicates 10. From the lease, the whole northwest corner is our property. Morado stated that he cannot operate with just 10 vehicles, that does not work for him. We are an automotive repair shop. Other shops have a lot more than that.

Faber, how many employees do you have? Morado, 4. There are 10 parking stalls on the north side 4 on the northwest, two up against the building and 9 on the southwest. I did not lease that business as a lube shop. I am a mechanic, and I opened the business as one.

Faber stated, that's exactly why we put these conditions in place. This site was not designed as a mechanic / repair shop it was designed for a lube shop where vehicles came and went, they did not stick around for long periods of time. Repair shops are permitted in a different zone that allows the heavier use. This is a fairly small building for

such a big use. There are only 2 bays which forces additional repairs to happen outside which requires caution when allowing the use in the area/zone.

Faber, at this point, if the PC is confident that Morado and the new owner will be rectifying the concerns / conditions can we sent a new date for compliance? Gudde replied, yes.

Faber, you are the applicant on the original CUP, you are the one asking for the CUP. This should not be passed on to the owner. You should work with the owner, but the responsibility is with you. Morado stated that he would rather leave and take his business elsewhere and not deal with this but, ultimately if I leave and another business wants to do something other than an express lube, this process will have to be done. Faber said, not if it's an express lube. Morado stated that the previous tenant did mechanic work in this location for 15 years with no concerns. Why now? Faber stated because there was a complaint. Once the City receives a complaint, this process starts. Morado stated that he has a number of complaints. Is the City going to talk Martins Feed about the dust and smell? When I called the city regarding that issue, I was told they were grandfathered in? That's not fair. Faber, those are the rules.

Faber asked, how long would you need to comply with the conditions? Morado stated less than 30-days. Faber asked if the PC could change the number of vehicles allowed as part of their recommendation? Gudde replied, yes.

Gudde asked if compliance is not met by the new deadline, would the revocation be recommended or does the Commission want it to come back to them. Faber stated, if it is not met by the new deadline, it would be revoked. The PC does not need to see it again.

Morado stated, we are good to screen the 10 stalls in back, the 4 on NW corner up to the northwest corner of the building. That is what he thought he and Heidi had agreed on. That was the purpose of screening that area. The stalls in front, off of Bender Road can be employee parking and transitioning vehicles that come and go.

The Commission addressed the area map that was included in the CUP packet. Counted available stalls and discussed the possibility of increasing the long-term parking stalls from 10 to 16. Morado stated that if we can make this agreement, I will move cars around and make sure long-term vehicles are parked where the screen is and the short-term vehicles are parked in the other stalls.

Scott expressed concern regarding what the vehicle limits / restrictions after the first hearing vs. what Morado thinks. Faber stated that conditions 3 & 4, of the original CUP decision letter is fairly clear. If we agree to allow more vehicles, we will need to revise our original decision. The Commission reviewed the conditions.

Scott asked Morado to define long term? Morado stated, for a mechanic shop it could be up to 1 to 2 months depending on the type of work. Transmission, new engine, waiting for parts, waiting for customers to get funds etc.

Brief discussion regarding some of the existing cars on site. Scott said that some of them have been there long enough to lose air in the tires. Morado replied, there are two cars that need to go, but no one will tow them out as they are abandoned. He will work on that.

Morado stated that his only concern is that you give us an additional 30 days to comply, we work on the conditions and then get turned down at City Council. I would like to know now so I can start working on compliance or look for another location.

Faber asked Morado if there was anything else he would like to say before we close the public hearing. Faber wants to make sure that the Commission has heard everything Morado wants to relay to us.

Faber summarized: possible 30-day extension, provide screening where the long-term vehicles will be parked, increase long term parking stalls from 10 stalls to 16 stalls, parking spaces to the south of the building would be for employee parking and day use only, no overnight parking. Faber asked Morado if that would be an acceptable solution? Morado, replied yes, 100%.

Kaemingk asked Morado how many years left on your lease? Morado replied, 4 years. Kaemingk asked if the business is working well for him? Morado, yes, business is good with the exception of having the city on me and having to go to court every month. I am providing good service to the community, generating tax dollars, and it is good for this side of town. Our reviews are good.

Kaemingk asked, long term will the location be big enough for the business? Morado stated he leased another shop and another location with 5 bays. I am transitioning some over there, but this location is a good location for me. This is my community and this is where I live. I want to stay here.

Kaemingk would like to see the abandoned vehicles currently on site removed. Morado stated that he can pay \$300 per car and get them removed. You should probably do that for your business. The PC is trying to help you out and give you extra time, so help us out as well. Morado, we will definitely make progress to clean it up.

Keep in mind, the Planning Commission makes a recommendation to City Council. This item will go to the City Council in August for the final decision. The 30 days will begin once you receive a Council decision in August. Scott stated, you should start cleaning up the vehicles now so that Council will look favorably on you. Morado we will definitely start the clean-up.

Gudde stated that we have received complaints from the Department of Ecology regarding illicit discharge into the storm system. That is why we had condition number 1 and to date we have not received a stormwater report. It is highly unlikely that Morado will be able to

get one within 30-days. They have been notified of elicit discharge, however, we are still seeing engines being pressure washed.

Gudde stated, what we heard from council at the first meeting is that they want businesses to succeed. At the same time, they have been on notice for months and months with no compliance.

Kaemingk motioned to close the public hearing. Motion passed, 4-0.

Faber asked, is there an oil separator already in place since it was approved as a lube shop? We will need a report to determine that. Does the city have old plans that could determine that? There may be a system in place as this was originally constructed as a lube and oil business. A full report may not be necessary, however, we do need an engineer to review. Faber asked if anyone has been hired to investigate this issue? Gudde replied, not to her knowledge, we have not been contacted by anyone.

Scott expressed concern that there has been no effort to rectify the situation, rather just excuses. Are we just delaying the inevitable if he has no intention of adhering to the request? Kaemingk stated that it seems as if Morado originally thought the dispute was with the property owner. Maybe he did not understand. Gudde stated that Morado was not at the first meeting, however, he was well aware of the meeting but indicated that it was not necessary. He did not advocate at that time, so the Planning Commission made recommendations without his comments.

Johnson thinks that Morado will do the right thing after this meeting tonight. I do not think he thought he had people up here that want him to succeed.

Faber stated that he does not know the circumstances on why he did not attend the first meeting, however, it was unfortunate that he was not able to attend.

Faber stated that he would lean towards some sort of leniency. Does not think that he needs a stormwater report, just a civil engineer that can verify if oil etc. can go down the drain? Morado can also go to the city and see if there are any plans to review. He needs to find out the situation.

Kaemingk stated that hopefully the property owner will help him. If she loses the lease, she will no longer have him as a paying tenant.

No further comments from the Commission.

Scott motioned to recommend denial of the Lynden Automotive CUP revocation by a vote of 4-0, to the Lynden City Council, unless the following conditions are met within 30-days of Council approval:

- 1. Comply with all items of the Staff report dated November 12, 2021.**

2. The applicant has one (1) month to provide a stormwater report or memo prepared by a civil engineer, verifying outdoor automotive mechanical work, washing & cleaning activities in the existing parking lot is in compliance with stormwater elicited discharge requirements. Applicant may inquire at City Hall for archived plans to determine if the storm drains used in the outdoor mechanic work, washing & cleaning activities, drain to an existing oil water separator. Any discharge into the existing drainage system must be compliant with elicited discharge requirements. If it is determined that there is a compliant oil water separator on-site, this system shall be maintained and cleaned. If the existing drains are not connected to an approved system, the outdoor mechanic work, washing and cleaning activities shall cease and desist, until such time as a new compliant system is designed and installed.
3. The proposed landscape screen, specifically, is a Type 3 landscape buffer and installed within 30 days of Council decision.
4. Sixteen (16) long term vehicles under repair are allowed only within the marked sixteen (16) stalls adjacent to the new landscaped area.
5. All parking stalls along Bender Road, south of the existing buildings shall be maintained for employee parking and short-term parking (day use) only. No overnight parking permitted.
6. Removal of storage containers from the site shall be permanent.

Seconded by Kaemingk, and the motion passed 4-0.

The Commission also discussed upcoming Planning Commission Meetings, the upcoming CPA's, Code Revisions and Pepin Creek.

6. ADJOURNMENT

Motion to adjourn by Scott / Second by Johnson. Meeting adjourned at 8:35 pm.