



**Snohomish County**

**DECISION of the SNOHOMISH COUNTY  
HEARING EXAMINER**

**Hearing Examiner's Office**

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**Millie Judge**  
Hearing Examiner

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**DATE OF DECISION:** November 1, 2012

**PLAT/PROJECT NAME:** Stratford Court

**APPLICANT/  
LANDOWNER:** Phoenix Development  
16108 Ash Way, Suite 201  
Lynnwood, WA 98087

**FILE NO.:** 12-104285 SD

**TYPE OF REQUEST:** Rezone and Preliminary Subdivision Approval using Lot Size Averaging

**DECISION  
(SUMMARY):** Rezone is GRANTED.  
Preliminary subdivision approval is GRANTED, subject to conditions.

**BASIC INFORMATION**

**LOCATION:** 3808 220th Street SE, Bothell

**ACREAGE:** 7.4 acres

**NUMBER OF LOTS:** 35 lots

**AVERAGE LOT SIZE:** 7,362 square feet

**MINIMUM LOT SIZE:** 5,033 square feet

**GROSS DENSITY:** 4.7 du/acre (6.67 du/acre net)

**GMACP DESIGNATION:** Urban Low Density Residential

**ZONING:** R-9600

**PROPOSED ZONING:** R-7200

**UTILITIES:**

Water: Alderwood Water and Sewer District

Sewer: Alderwood Water and Sewer District

Electricity: Snohomish County PUD No. 1

**SCHOOL DISTRICT:** Northshore School District No. 417

**FIRE DISTRICT:** Snohomish County Fire District No. 7

**PDS STAFF RECOMMENDATION:** Approve, subject to conditions.

**NOTE:** For a complete record, an electronic recording of the hearing in this case and the Tape Log is available in the Office of the Hearing Examiner.

Based on a preponderance of the evidence of record, the following Findings of Fact, Conclusions of Law and Decision are entered.

### **FINDINGS OF FACT**

1. **Regulatory Review and Vesting.** A complete application was submitted to Planning and Development Services (PDS) on May 23, 2012 for purposes of regulatory vesting. Between this date and October 8, 2012, the Applicant was required to resubmit its proposal two additional times before it was deemed to meet the County's regulations. As of the date of the public hearing, 59 days of the 120-day review period had elapsed.
2. **Public Hearing.** A public hearing was held on October 17, 2012. Appearing for the Applicant was Jim Egge and Loree Quade, Phoenix Development, Inc., and Rob Long, Blueline Group. Stacey Abbott and Mark Brown appeared on behalf of PDS. Two citizens appeared and Nick Dobos testified as an interested party.
3. **The Record.** All of the Exhibits shown on the master list of exhibits (Exhibits A.1 through L.1) were entered into the record as evidence, along with the testimony of witnesses presented at the open record hearing and the Tape Log. In addition to the pre-filed exhibits, new exhibits were added to the record at the public hearing including Exhibits K.1, H.7, I.7, J.4, and L.1. A corrected copy of J.5 was substituted in the record. The entire record was considered by the Examiner in reaching this decision.
4. **Public Notice.** The Examiner finds that PDS concurrently gave proper public notice of the open record hearing, SEPA threshold determination, Traffic Concurrence and Impact Fee Determinations as required by the County Code. (Exhibits E.1, E.2, F.1, F.2 and F.3)

#### **A. Background Information**

5. **Applicant's Proposal.** The applicant is requesting approval of a rezone of approximately 7.43 acres from R-9600 to R-7200, concurrent with preliminary approval for a 35-lot single-family residential subdivision. The new lots would be served by a new public road system off 39<sup>th</sup> Ave SE and 37<sup>th</sup> Ave SE. The existing residence located on proposed Lot 10 will remain, continuing to take access from 220<sup>th</sup> Street SE. Lot sizes within the development average 7,362 square feet.
6. **Site Description and Surrounding Uses.** The project site is 7.43 acres in size, made up of two parcels containing one single family residence on the north side. Existing foundations still remain of a demolished residence at the southwest end of the site. Existing vegetation is comprised of lawn, brush, and scattered trees. There are no streams or wetlands located onsite or adjacent to the subject site. The properties immediately adjacent to the site on the south and a portion of the parcels to the east are zoned R-7200. The parcels to the south were recently rezoned to R-7200 and subdivided to 51 lots. The portion of the parcels to the east zoned R-7200, were also recently rezoned and subdivided into 36 lots. The other portion of the parcels to the east is zone R-9600 as is the parcel to the west. The parcels directly north are zoned R-7200 and subdivided with a planned residential development. All of the adjacent areas are developed with residential uses.

7. Issues of Concern:

- A. Agency Comments. No issues were raised during agency reviews.
- B. Citizen Comments. Several citizen letters were received about the proposed project. A letter of concern was received from Hesham Anan and Rania Hussein. The issues raised are the addition of traffic in general and the park and ride lot at Canyon Park not being adequate to serve the community's needs. (Exhibit I.4) PDS responded that all new developments in the urban area shall provide transportation demand management measures. Sufficient TDM measures shall be provided to indicate the potential for removing a minimum of five (5) percent of the development's P.M. peak hour trips from the road system. The applicant has submitted an acceptable TDM plan to fulfill this obligation. They also noted that public transit is available to the subject development and the closest transit stop is located approximately 0.70 miles away at the intersection of 35th Ave SE/228th St SE.

Separate emails were received from Nick Dobos and Jarett Goodkin (Exhibits I.1 and I.2 respectively). These were both written on behalf of the Beaumont Homeowners Association, seeking information about the potential impact of the proposed project on the neighboring Beaumont storm detention and water quality system. Mr. Robert Long, PE, Blueline Group, provided a written response to both Mr. Dobos and Mr. Goodkin. The email describes the bypass drainage system and advised that the drainage from Stratford Court will not impact Beaumont's storm drainage system. (Exhibit J1)

Finally, PDS received letters of concern and a DVD from Mr. Gene Grieve raising concerns about the proposed plat of Stafford Court, and the allowance of drainage and sewer easements to an adjacent parcel for future development. (Exhibit I.3, I.5 and I.6) Loree Quade responded by agreeing to provide the requested easements to the adjacent parcel. (Exhibit J.2) These easements have been shown on the plat map with recommendation of approval.

**B. Compliance with Codes and Policies**

**Subdivision Approval**

In order to grant preliminary subdivision approval, the Hearing Examiner must find that the applicant has met the approval criteria set forth in SCC 30.41A.100 et seq. The Examiner considers each regulation in turn.

8. Park and Recreation Impact Mitigation (Chapter 30.66A SCC) The proposal is within Park Service Area No. 307, and is subject to Chapter 30.66A SCC, which requires payment of \$1,244.49 per each new single-family residential unit, to be paid prior to building permit issuance for each unit. The Examiner finds that such payment or contribution of in-kind mitigation is acceptable as mitigation for parks and recreation impacts in accordance with County policies.
9. Traffic Mitigation and Road Design Standards (Title 13 SCC, & Chapters 30.24 and 30.66B SCC) The Hearing Examiner has considered the impacts of the development in light of the requirements under Title 13 SCC and Chapters 30.24 and 30.66B SCC and finds that the development proposal, as conditioned based on the information in the record, and in the PDS Staff Recommendation, meets the County's traffic mitigation and road design standards.

A. Road System Impacts, Concurrency and Inadequate Road Conditions (IRC).

i. Road System Capacity Impacts (SCC 30.66B.330) In terms of addressing the capacity issues raised by citizens, according to SCC 30.66B.330(1), a development shall mitigate its impact upon the future capacity of the road system by paying a road system impact fee reasonably related to the impacts of the development on arterial roads located in the same transportation service area as the development, at the rate identified in SCC 30.66B.330 for the type and location of the proposed development. A development's road system impact fee will be equal to the development's new average daily traffic (ADT), based on the 8<sup>th</sup> Edition of the ITE Trip Generation report published by the Institute of Transportation Engineers, times the per trip amount for the specific transportation service area identified in SCC 30.66B.330, with a few exceptions.

The impact fee for the subject development is based on the new ADTs generated by the new single-family residences. The development will generate 9.57 ADT per lot, (300.02 total new ADT) and has a road system capacity impact fee of \$69,004.60 (\$2,029.55 per SFR building permit), based on \$230.00/ADT, which is the TSA "F" amount per ADT for residential developments inside the UGA. The impact fee payments are due in accordance with the provisions of SCC 30.66B.340. Payment of such impact fees as mitigation for impacts to county roads demonstrates compliance with SCC 30.66B.330. (Exhibits C.1, C.2 and C.3)

ii. Concurrency (SCC 30.66B.120) The County makes a concurrency determination for each development application to ensure the development will not impact a county arterial unit in arrears or cause a county arterial to go in arrears. The subject development is located in TSA F, which, as of the date of submittal, had no arterial units in arrears.

The subject development generates 23.51 new A.M. peak-hour trips and 31.66 new P.M. peak-hour trips, which is less than the threshold of 50 peak-hour trips, and thus, the developer was not evaluated under SCC 30.66B.035.

The development was determined to be concurrent June 28, 2012. The concurrency determination expires 6 years from the date of the determination. (Exhibit F)

iii. Inadequate Road Conditions (SCC 30.66B.210) Regardless of the existing level of service, development which adds three or more p.m. peak-hour trips to a location in the road system determined to have an existing IRC at the time of imposition of mitigation requirements, or development whose traffic will cause an IRC at the time of full occupancy of the development, must eliminate it. To eliminate an IRC means to make sufficient changes to the road system to allow the County engineer to determine that the location no longer constitutes an IRC. (SCC 30.66B.210(1)) An inadequate road condition (IRC) means *"any road condition, whether existing on the road system or created by a new development's access or impact on the road system, which jeopardizes the safety of road users, including non-automotive users, as determined by the county engineer."* (SCC 30.911.020)

The County Engineer determines whether or not a location constitutes an IRC in accordance with the Department of Public Works' adopted Administrative Rule 4223, using a 3-step process. First a technical evaluation of hazards is done in accordance with the 1997 Federal Highway Administration, Department of Transportation's Report No. FHWA-RD-77-82, "Identification of Hazardous Locations." Second, a 3-person review board, consisting of DPW senior level transportation professionals, meets to

confer as to whether the location constitutes an IRC. Third, the County Engineer makes a final evaluation and signs off on the IRC determination. (DPW Rule 4223) The County Engineer's determination that a location constitutes an IRC is final and is not subject to review or appeal pursuant to SCC 30.66B.820, but the effect of an IRC location determination on a development may be appealed in accordance with SCC 30.66B.820.

The subject development proposal will not impact any IRC locations identified within TSA F with three or more of its PM peak hour trips, nor will it create any. Therefore, mitigation will not be required with respect to inadequate road conditions and no restrictions to building permit issuance or certificate of occupancy/final inspection will be imposed under this section of Chapter 30.66B SCC.

- B. Frontage Improvements (SCC 30.66B.410) All developments will be required to make frontage improvements along the parcel's frontage on any opened, constructed, and maintained public road. The required improvement shall be constructed in accordance with the EDDS, including correction of horizontal and vertical alignments, if applicable. Construction of frontage improvements is required prior to recording unless bonding of improvements is allowed by PDS, in which case construction is required prior to any occupancy of the development.

Here, DPW Rule 4222.020(1) requires the construction of full urban frontage improvements along the subject property frontage on 39<sup>th</sup> Ave SE consisting of:

- Pavement widening such that the curb location matches the existing curb to the north and south (22 or 23 feet) with asphalt concrete pavement.
- Cement concrete curb and gutter
- Planter strip with a width of 5 feet
- Cement concrete sidewalk with a width of 5 feet

The development's frontage on 39<sup>th</sup> Ave SE is in the impact fee cost basis (Appendix D of the Transportation Needs Report), therefore impact fee credits are applicable.

Construction of frontage improvements is required prior to recording unless bonding of improvements is allowed by PDS, in which case construction is required prior to any occupancy of the development.

- C. Access and Circulation (SCC 30.66B.420 and Chapter 30.24 SCC) All developments are required to: (1) Provide for access and transportation circulation in accordance with the comprehensive plan and this chapter applicable to the particular development; (2) Design and construct such access in accordance with the EDDS; (3) Improve existing roads that provide access to the development in order to comply with adopted design standards, in accordance with SCC 30.66B.430; (4) Access to state highways and city streets must be made in accordance with the applicable state or city standards and requirements; and (5) All developments that propose to take access via an existing public or private road which, for the vehicle trips projected to use the road after full occupancy of the development, is not designed and constructed in accordance with the EDDS, must improve such road to bring it into compliance with the EDDS, when the DPW Director determines it necessary to provide for safety and the operational efficiency of the road. The extent of improvements is established by the director of public works in accordance with SCC 30.66B.430.

PDS staff considered the application in light of its proposed access and road circulation, the extent of existing facilities and right-of-way, sight-distances and any needed improvements to any of these items. Their analysis is shown in Exhibit K (at pages 6-9), which is incorporated herein by this reference as if set forth in full.

- D. Road Classification and Right-of-Way Requirements (SCC 30.66B.510 and 30.66B.520) A development shall be required to dedicate, establish or deed right-of-way to the County for road purposes as a condition of approval of the development, when to do so is reasonably necessary as a direct result of a proposed development, for improvement, use or maintenance of the road system serving the development. The extent of right-of-way and improvements required from a developer is based on an analysis of various factors including the road classification(s) serving the development (both internally and externally), access and circulation requirements, sight distance, and the factors described below in SCC 30.66B.430, below. In the present case, there are two proposed public roads within the internal road system: Roads A and B.
- E. Extent of Improvements (SCC 30.66B.430) In determining the extent of required improvements, the Director of DPW considers, among other relevant factors, the criteria set forth in SCC 30.66B.430(a) through (p). (Exhibit K) The Hearing Examiner has reviewed those factors and finds that the recommended extent of improvements are consistent with SCC 30.66B.430 and the facts set forth in the entire record.

The road serving this development, 39<sup>th</sup> Ave SE, is designated as a Minor Arterial and requires a right-of-way width of 40 feet on each side of the right-of-way centerline. Currently, 20 to 30 feet of right-of-way exists on the development's side of the right-of-way. Therefore, the development would be required to dedicate 20 to 10 feet of additional right-of-way. The applicant has requested and received approval to provide 35 total feet of right-of-way instead of 40 feet. With this approval is a recommendation that a minimum five foot easement be provided in a tract along the parcel's frontage along 39<sup>th</sup> Ave SE. It will be a recommended condition of approval that this condition is shown on the final recorded plat. The necessary right-of-way has been shown.

The road serving this development, 220<sup>th</sup> St SE, is designated as a non-arterial and requires a right-of-way width of 30 feet on each side of the right-of-way centerline. Currently, 30 feet of right-of-way exists on the development's side of the right-of-way. Therefore, no additional right-of-way is required. The existing right-of-way is adequately shown on the preliminary plat.

39<sup>th</sup> Ave SE is in the impact fee cost basis (Appendix D of the Transportation Needs Report), therefore credit towards the applicant's impact fee for the dedicated right-of-way beyond 30 feet from centerline is applicable.

- F. Impacts to State Highways (SCC 30.66B.710) When a development's road system includes a state highway, mitigation requirements will be established using the County's SEPA authority consistent with the terms of the interlocal agreement between the County and the WSDOT. This is consistent with the County's SEPA policy SCC 30.61.230(9), through which the county designates and adopts by reference the formally designated SEPA policies of other affected agencies for the exercise of the County's SEPA authority.

This development is subject to SEPA and thus is subject to the Interlocal Agreement (ILA) with the Washington State Department of Transportation (WSDOT) and Snohomish County effective December 21, 1997, and as amended. However, the

applicant's traffic study indicates that no trips from the subject development will impact any trips on WSDOT's Exhibit "C" and that mitigation should not be required for State Highways. A comment received from WSDOT on June 5, 2012 agrees with this finding. Mitigation is not required for WSDOT.

- G. Impacts to City Streets and Roads (SCC 30.66B.720) The DPW will recommend mitigation measures of the development's direct traffic impact on the city, town or other county roads to the approving authority and the approving authority will impose such measures as a condition of approval of the development in conformance with the terms of the ILA referred to in SCC 30.61.230 between the County and the other agency. An ILA has been executed between the County and the City of Bothell for traffic mitigation for impacts on the City's road system.

With respect to the City of Bothell, the traffic study indicates that the development will impact City streets with 33 net new units. Therefore, the applicant would owe the City of Bothell impact fees amounting to \$72,637.95. Comments dated August 8, 2012 were received from Bothell indicating their acceptance of this amount. (Exhibit H.1) Payment is a condition of approval for this development.

- H. Transportation Demand Management (TDM) (SCC 30.66B.630) The County requires TDM of developments inside the UGA and developments that impact arterial units designated as ultimate capacity. TDM Measures shall have the potential to remove a minimum of five percent of a development's P.M. peak hour trips from the road system. This requirement shall be met by site design requirements provided under SCC 30.66B.630 or SCC 30.66B.630, as applicable, except where the development proposes construction or purchase of specific off-site TDM measures or voluntary payment in lieu of site design, in accordance with SCC 30.66B.645. (See, SCC 30.66B.650). The applicant has submitted an acceptable TDM plan to fulfill this obligation. A five percent credit is applied to the impact mitigation fee.

Based on the Findings of Fact set forth above, the Hearing Examiner finds that the proposed development as conditioned, will meet the County's traffic mitigation and road design standards.

10. Pedestrian Facilities (RCW 58.17.110)

A. Safe Walkways for School Children. The County is required to make findings regarding safe walking conditions for school children that may reside in the subject development. Comments from the Northshore School District received on June 5, 2012 have been received. Those comments indicate that all students who live in the development will be picked up by bus at the intersection of 39<sup>th</sup> Ave SE/222<sup>nd</sup> PI SE. After the subject development is recorded adequate pedestrian facilities will exist to this location. Based on the above no off-site pedestrian facilities will be required.

B. Bicycle Facilities. The County's current adopted Countywide Bicycle Facility System Map (Map) became effect on February 1, 2006 and is part of the County's GMA Comprehensive Plan (GMACP). The subject development does border on a right-of-way that has been identified on the adopted Bicycle Facility System Map. A bicycle path is required along the developments frontage on 39<sup>th</sup> Ave SE and will be part of the recommended frontage improvements. The above described frontage improvement and right-of-way dedication will accommodate a bicycle lane.

11. Mitigation for Impacts to Schools (Chapter 30.66C SCC) Chapter 30.66C SCC provides for collection of school impact mitigation fees at the time of building permit issuance based upon

certified amounts in effect at that time. Pursuant to Chapter 30.66C SCC, school impact mitigation fees will be determined according to the Base Fee Schedule in effect for the Northshore School District No. 417 at the time of building permit submittal and collected at the time of building permit issuance for the proposed units. (Exhibit K) Credit is to be given for two (2) existing lot. Payment of school impact fees has been included as a condition of approval of the development.

12. Drainage and Land Disturbing Activities (Clearing and Grading) (Chapters 30.63A and 30.63B SCC) The applicant proposes a 35 lot single-family development. Frontage improvements are required along 39th Ave. SE. The applicant proposes 1.22 acres of new pollution generating impervious within the new and existing right of way and 2.34 acres of new impervious coverage on the lots which includes pollution and non-pollution generating impervious. Lot 10 shall contain the existing house.

The applicant proposes greater than 5,000 square feet of new impervious in each basin. Therefore a Full Stormwater Site Plan shall be required and both basins shall be subject to minimum requirements 1-9.

The applicants engineer proposes to meet water quality treatment by installing a storm filter vault in the east basin and a detention/water quality vault in the west basin. A stormwater vault is proposed in both basins to meet flow control.

Grading quantities are anticipated to be approximately 14,000 cubic yards of cut and 14,000 cubic yards of fill, primarily for road, drainage facility, and home site construction. Water quality would be controlled during construction by use of silt fences and straw bales in accordance with a Temporary Erosion and Sedimentation Control Plan (TESCP) required by Chapter 30.63A SCC.

Based on the preliminary findings made by the staff of PDS's Engineering Section relating to drainage and grading, this project will meet the requirements the SCC 30.63A and SCC 30.63B and the Drainage Manual (Version adopted September 30, 2010).

13. Critical Areas Regulations (Chapters 30.62, 30.62A, 30.62 B, and 32.62C SCC) No critical areas exist onsite or within 600 feet of the site and, therefore, no additional requirements shall be imposed related to protection of critical areas.
14. International Fire Code (Chapter 30.53A SCC) PDS sent a request for review document to Fire District #7. Comments were received from Chief Gary Meek. (Exhibit H.6) All comments have been addressed and are noted as recommendations of conditions of approval.

Planning and Development Services Fire Marshal's Office completed a review of the project on September 9, 2012. The Fire Marshal's Office recommended approval for preliminary short with comments related to the construction review of the plat (fire hydrant spacing, appropriate numbering on the houses) as well as proposed conditions to be placed on the face of the final plat. The Fire Marshal's Office concluded that the fire apparatus access as depicted meets the minimum requirements of Snohomish County Code 30.53A.150. Conditions of approval have been included. (Exhibit H.7)

15. Utilities. Sanitary sewer will be supplied by the Alderwood Water and Wastewater District. A Certificate of Sewer Availability has been received dated June 14, 2012. (Exhibit H.5) Water will be supplied by the Alderwood Water and Wastewater District. A Certificate of Sewer Availability has been received dated June 14, 201. (Exhibit H.4) Snohomish County Public Utility District has provided correspondence indicating that they can provide electrical service for



the project dated June 14, 2012. (Exhibit H.3) Finally, Snohomish County Health District has provided correspondence indicating that they have no objections to the proposal dated August 19, 2012. (Exhibit H.2)

16. Zoning (Chapter 30.2 SCC) This project will meet zoning code requirements for lot size, bulk regulations and other zoning code requirements, including those required under the Lot Size Averaging Code, as discussed below.
17. State Environmental Policy Act (SEPA) (Chapter 30.61 SCC) PDS issued a Determination of Nonsignificance (DNS) for the subject application on September 25, 2012. (Exhibit E.2) Notice of the SEPA Determination was provided by mail, posting and publication as required. (Exhibits F.1, F.2, and F.3) The DNS was not appealed. Accordingly, the Hearing Examiner finds that compliance with the procedural requirements of SEPA has been met.
18. Subdivision Code (Chapter 30.41A SCC) The proposed plat also meets Chapter 30.41A SCC requirements. As conditioned, the plat will meet all of the County's transportation and road regulations and design standards. The Examiner finds that all lots as proposed are outside of all regulated flood hazard areas and that none of the lots are proposed in areas that are subject to flood, inundation or swamp conditions. (SCC 30.41A.110) The Fire Marshall has determined that the project will meet the County's fire regulations subject to the proposed conditions included in the PDS Staff Recommendation. As amended. (Exhibits K) Accordingly, the Hearing Examiner finds that the proposed plat, as conditioned, also meets the general requirements under SCC 30.41A.100 with respect to health, safety and general welfare of the community.
19. Plats – Subdivisions – Dedications (Chapter 58.17 RCW) The subdivision has been reviewed for conformance with criteria established by RCW 58.17.100, .110, .120, and .195. The criteria require that the plat conform with applicable zoning ordinances and comprehensive plans, and make appropriate provisions for the public health, safety and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, and other planning features including safe pedestrian facilities for students.

The proposed subdivision conforms generally with the development regulations of Title 30 SCC. There is open space provided within the subdivision in the form of active open space, wetland, stream and buffer areas. The single-family homes within the subdivision will be in character with the urban area. Provisions for adequate drainage have been made in the conceptual plat design which indicates that the final design can conform to Chapter 30.63A SCC and Chapter 30.63C SCC. The plat, as conditioned, will conform to Chapters 30.66A, 30.66B and 30.66C SCC, satisfying County requirements with respect to parks and recreation, traffic, roads and walkway design standards, and school mitigation. The proposal as conditioned meets the applicable version of the International Fire Code. Adequate drinking water and sewage disposal will be provided by the Silver Lake Water and Sewer District.

20. Urban Residential Design Standards (Ch. 30.23A SCC) Urban residential design standards apply to new residential development located within urban growth areas including subdivisions regulated under SCC 30.41A. Per SCC 30.23A.100, an administrative site development plan shall be required for all residential development subject to the requirements of this chapter. The administrative site plan was reviewed by PDS to assure there are no conflicts with the preliminary plat. According to SCC 30.23A.100(2)(b), when residential development requires both an administrative site plan approval and a Type 2 Hearing Examiner decision, the administrative site plan shall not be approved until the Hearing Examiner has issued a decision. SCC 30.23A.100(2)(c) requires the PDS Director must find that the administrative site plan is consistent with the applicable requirements of Subtitle 30.2 SCC. The Director's decision on the

administrative site plan shall be consistent with any Hearing Examiner decision issued for the residential development, and shall be a condition of approval.

21. Landscaping Standards (Chapter 30.24 SCC) The proposal has been evaluated for compliance with SCC 30.25.015. All residential developments located within urban growth areas are required to landscape a minimum of 10 percent of the total gross area of the site to the standards unless exempted otherwise. The 10 percent requirement may include perimeter landscaping, parking lot and detention facility landscaping, tree retention areas and street trees not in a public right-of-way. In the instant case, the gross site area is 323,482 square feet. Therefore, 32,348 square feet must be landscaped. SCC 30.25.016(6)(c) allows for a 10% reduction in the required landscaping if at least 10 percent of the existing significant trees are retained. The total percentage of significant trees being retained is 39 percent or 56 trees of 141 total significant trees onsite. The 10 percent reduction in required landscaping has been allowed, requiring 29,113 square feet of landscaping. The Applicant has proposed landscaping of 29,282 square feet, exceeding the minimum requirement. (See Exhibit B.3)
22. Lot Size Averaging Regulations (SCC 30.23.210) The proposal has been evaluated for compliance with the lot size averaging (LSA) provisions of SCC 30.23.210, which provide that the minimum lot area of the applicable zone is deemed to have been met if the area in lots plus critical areas and their buffers and areas designated as open space or recreational uses, if any, divided by the number of lots proposed, is not less than the minimum lot area requirement. In no case shall the density achieved be greater than the gross site area divided by the underlying zoning.

In determining the appropriate calculation, lots may not be less than 3,000 square feet in area, and any lot having an area less than the minimum zoning requirement must provide a minimum lot width of not less than 40 feet, and right-of-way (ROW) setbacks of 15 feet, except that garages must be setback 18 feet from the ROW (except alleys) and corner lots may reduce one ROW setback to no less than 10 feet. Lot coverage for this proposed subdivision is a maximum of 55 percent. The LSA calculation is as follows:

Area in Lots (227,666 square feet) + Critical Areas and Buffers (0 square feet) + Open Space (10,141 square feet) = (257,666 square feet ÷ 35 of lots proposed) = 7,362 square feet

The minimum zoning requirement is 7,200 square feet. No lot is less than 3,000 square feet, and all lots comply with minimum lot width and setback requirements. Roadways and surface detention/retention facilities are not counted toward the LSA calculations. Accordingly, the Hearing Examiner finds that the proposal is consistent with the lot size averaging provisions of SCC 30.23.210.

23. Rezone Request (Ch. 30.41C SCC)

The applicant is seeking a rezone from R-9600 to R-7200 pursuant to Chapter 30.42C SCC. In order to grant a rezone, the Hearing Examiner must find that (1) the proposal is consistent with the comprehensive plan; (2) that the proposal bears a substantial relationship to the public health, safety and welfare; and (3) where applicable, that minimum zoning criteria found in Chapters 30.31A through 30.31F SCC are met.

(A) The proposal is consistent with the Comprehensive Plan. The proposed project seeks a rezone to R-7200. The rezone will allow higher densities than would be allowed under the existing zoning of R-9600.

The proposed project seeks a rezone to R-7200. The rezone will allow higher densities than would be allowed under the existing zoning of R-9600. The request is in conformance with the applicable components of the General Policy Plan elements as discussed below.

(1) The Population and Employment Element of the GPP requires that growth be directed primarily to the urban areas (Objective PE 1.A, page PE-4) that have existing or planned public facility and service capabilities to accommodate growth (PE Policy 1.A.2., page PE-4). As demonstrated above, the project will provide adequate public facilities and service capabilities, and, therefore, meets the criteria of the Population and Employment section.

(2) The Land Use Element - Urban Development Patterns Policy (LU-15) and Goal LU-2 (LU-16) are intended to improve the efficiency of urban residential land utilization and to require a minimum net density of 4-6 dwelling units per acre. The existing neighborhood contains a mixture of small lots and large lots. The large lots located within the UGA do not comply with the current standard of 4-6 dwelling units per acre. Land division is required to meet the 4-6 du/ac standard, or the land cannot be developed. LU Policies 2.A.1 and 2.A.3 (LU-16) require densities of 4-6 du/acre. The project will result in a net density of 6.67 du/acre. This density satisfies the requirement.

(3) The Housing Element of the GPP requires efficient infill development in urban growth areas (HO Policy 1.D.3., page HO-5). The rezone is a necessary component of the development, which is an infill development within both established and newly developed neighborhoods. However, Goal HO-2 of the Housing section (HO-6), also requires that the vitality and character of existing residential neighborhoods should be maintained. Here, while the physical attributes of lots within the neighborhood will be changed by the proposed rezone, and smaller lots and higher densities, relative to the existing conditions, will be different from the existing lot dimensions of the neighborhood, the overall character of the area will be the same. It will consist of single family residential housing, with typical urban amenities such as open space, sidewalks, and the like. The rezone does not affect this. The proposed rezone will maintain a residential neighborhood and will not allow commercial agricultural uses, commercial development, and multifamily development on the site.

Based upon the discussion of the applicable GPP above, the Hearing Examiner finds that the proposed rezone is consistent with the GMACP.

(B) The proposal bears a substantial relationship to the public health, safety, and welfare. The application for the proposed rezone is concurrent with the application for a subdivision. Review of the land development proposal has been made for compliance with the relevant codes, policies, and standards of Snohomish County. PDS and DPW have determined that the project, as conditioned, will satisfy those requirements, including a concurrency determination for access routes to and from the development, an evaluation of the road and access routes to comply with the relevant EDDS standards and SCC 30.66B, evaluation of the adequacy of stormwater and drainage system, adherence to the short subdivision codes, compliance with the fire and emergency access requirements, and provision of adequate potable water and sewage disposal. The intent of the Snohomish County codes, policies, and standards is to ensure that adequate provision has been made for the public health, safety, and welfare of the citizens. The Hearing Examiner finds that the proposed rezone and subdivision, as conditioned, bears a substantial relationship to the public health, safety and welfare.

(C) If applicable, minimum zoning criteria found in chapters 30.31A through 30.31F SCC are met. Here, the proposed site is located within a residential neighborhood. The proposed rezone is to

remain a residential zone within the Urban Low Density Residential designated area. Therefore, the zones specified in SCC 30.31A-F are not applicable to the proposal.

Based on the foregoing analysis, the Hearing Examiner finds that proposed rezone meets the requirements of Ch. 30.41C SCC and the rezone should be granted from R-9600 to R-7200.

24. Any Finding of Fact in this Decision, which should be deemed a Conclusion of Law, is hereby adopted as such.

### **CONCLUSIONS OF LAW**

1. The Examiner has original jurisdiction over subdivision applications pursuant to Chapter 30.72 SCC and Chapter 2.02 SCC.
2. The Examiner must review the proposed subdivision application under RCW 58.17.110, the legal standard for approval of a preliminary subdivision. The Examiner must find that:

The proposed subdivision complies with the established criteria therein and makes the appropriate provisions for public, health, safety and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, and other planning features including safe walking conditions for students . . . .

RCW 58.17.110. The Examiner concludes that the Applicant has met its burden in showing the established criteria have been met. The proposal is consistent with the state subdivision statute, the GMACP; GMA-based county codes, the type and character of land use permitted on the project site, the permitted density and applicable design and development standards.

3. Given the information provided in the record and the Findings of Fact made above, the Examiner also concludes that the Applicant has met its burden in showing that the subdivision application meets the requirements of Chapter 30.41A SCC.
4. The Hearing Examiner has reviewed the requirements for URDS and LSA and concludes that the development as designed meets the design and performance standards of both the Urban Residential Design Standards and the LSA regulations.
5. The Examiner concludes that adequate public services exist to serve this proposal.
6. If approved with the recommended preconditions and conditions, the proposal will make adequate provisions for the public health, safety, and general welfare.
7. The applicant has met its burden of proof to show that the rezone meets the requirements of Chapter 30.41C SCC and should be approved from R-9600 to R-7200.
8. Any Conclusion of Law in this Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

## DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Examiner hereby issues the following final decision and order:

### CONDITIONS

- A. The preliminary plat received by PDS on September 24, 2012 (Exhibit B1) shall be the approved plat configuration. Changes to the approved plat are governed by SCC 30.41A.330.
- B. Prior to initiation of any site work; and/or prior to issuance of any development/construction permits by the county:
  - i. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above.
  - ii. Fire flow and fire hydrants shall be provided in accordance with Snohomish County Code 30.53A.514 through 30.53A.520. The approved development/construction plans shall show hydrant locations and locations for new hydrants shall be approved by the Fire Marshal. Fire hydrants serving single-family dwellings shall have a maximum lateral spacing of 600 feet with no lot or parcel in excess of 300 feet from a hydrant. The following requirements shall apply to the installation of any required hydrant:
    - a) Four (4) inch storz type steamer port fittings shall be provided on new hydrants.
    - b) The top(s) of the hydrant(s) shall be colored green.
    - c) Install blue street reflector(s) on the hydrant side of centerline to indicate hydrant location(s).
  - iii. Fire apparatus access roads shown on the approved development/construction plans shall have an unobstructed width of not less than 20 feet and an unobstructed vertical clearance of not less than 13'6". Access shall not be obstructed in any manner including the parking of vehicles. Signage or pavement striping shall be provided stating "NO PARKING – FIRE LANE" to ensure access availability. If pavement striping is used the curbs shall be painted yellow with black lettering. An enforcement plan shall be put in place for the towing of vehicles. The location for the signage and/or pavement striping for road B, including the area around the fire hydrants, shall be shown on the construction plans.
- C. The following additional restrictions and/or items shall be indicated on the face of the final plat:
  - i. The following language shall be indicated on the face of the final plat:

The dwelling units within this development are subject to park impact fees for the Nakeeta Beach park district in the amount of \$1244.49 per newly approved dwelling unit pursuant to Chapter 30.66A SCC. Payment of these mitigation fees is required prior to building permit issuance; provided that the building permit has been issued within five years after the application is deemed complete. After five years, park impact fees shall be based upon the rate in effect at the time of building permit issuance.
  - ii. The following language shall be indicated on the face of the final plat:

Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for a single-family residence:

\$2,029.55 per lot for mitigation of impacts on County roads paid to the County. Credit for certain expenditures may be allowed against said payments to the extent authorized by County code. Any reduction of the per lot amount shall be documented in the RECORDS OF DEVELOPER OBLIGATIONS FORM.

\$2,136.41 per lot for mitigation of impacts on city streets for the City of Bothell paid to the City. Proof of payment of the above amount shall be provided to the County.

These payments are due prior to or at the time of building permit issuance for each single-family residence. Notice of these mitigation payments shall be contained in any deeds involving this subdivision or the lot[s] therein.

iii. The following language shall be indicated on the face of the final plat:

The lots within this subdivision will be subject to school impact mitigation fees for the Northshore School District No.417 to be determined by the certified amount within the Base Fee Schedule in effect at the time of building permit application, and to be collected prior to building permit issuance, in accordance with the provisions of SCC 30.66C.010. Credit shall be given for 2 existing parcels. Lots 1 and 10 shall receive credit.

iv. The final plat shall show 35 feet of total right-of-way dedication along the property frontage on 39th Ave SE along with an easement (minimum five feet) for public road purposes.

v. The following language shall be indicated on the face of the final plat: Access to Lot 10 is restricted to 220<sup>th</sup> Street SE.

vi. The following language shall be indicated on the face of the final plat:

Approved numbers or addresses shall be placed on all new buildings in such a position as to be plainly visible and legible from the street or road fronting the property street signage shall be in place prior to occupancy. Numbers shall contrast with their background Section 505.1 IFC.

vii. The following language shall be indicated on the face of the final plat:

Dwellings that exceed 3,600 square feet the required fire flow shall be determined using Appendix B of the 2009 edition of the International Fire Code. If the dwellings that exceed 3,600 square feet cannot meet the required fire flow of Appendix B, the dwellings shall be provided with NFPA 13D fire suppression systems.

D. Prior to recording of the final plat:

i. Urban frontage improvements shall be constructed along the parcel's frontage on 39th Ave SE to the satisfaction of the County.

ii. The features on the approved TDM plan shall be constructed/installed.

iii. Approved numbers or addresses shall be placed on all existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property street signage shall be in place prior to occupancy. Numbers shall contrast with their background Section 505.1 IFC.

- iv. The administrative site plan required by 30.23A (Urban Residential Design Standards) shall be approved and implemented.


E. In conformity with applicable standards and timing requirements:

- i. The preliminary landscape plan (Exhibit B4) shall be implemented. All required landscaping shall be installed in accordance with the approved landscape plan prior to recording unless a security device is approved pursuant to SCC 30.84.

Nothing in this approval excuses the applicant, owner, lessee, agent, successor or assigns from compliance with any other federal, state or local statutes, ordinances or regulations applicable to this project.

Preliminary plats which are approved by the county are valid for seven (7) years from the date of approval and must be recorded within that time period unless an extension has been properly requested and granted pursuant to SCC 30.41A.300.

DATED this 1<sup>st</sup> day of November, 2012.

  
Millie Judge, Hearing Examiner

### EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

The decision of the Hearing Examiner is final and conclusive with right of appeal to the County Council. However, reconsideration by the Examiner may also be sought by one or more parties of record. The following paragraphs summarize the reconsideration and appeal processes. For more information about reconsideration and appeal procedures, please see Chapter 30.72 SCC and the respective Examiner and Council Rules of Procedure.

#### Reconsideration

Any party of record may request reconsideration by the Examiner **within 10 days** from the date of this decision. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2<sup>nd</sup> Floor, Robert J. Drewel Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S No. 405, 3000 Rockefeller Avenue, Everett WA 98201) **on or before NOVEMBER 13, 2012.** There is no fee for filing a petition for reconsideration. "The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties of record on the date of filing." [SCC 30.72.065]

A petition for reconsideration does not have to be in a special form but must: contain the name, mailing address and daytime telephone number of the petitioner, together with the signature of the petitioner or of the petitioner's attorney, if any; identify the specific findings, conclusions, actions and/or conditions for which reconsideration is requested; state the relief requested; and, where applicable, identify the specific nature of any newly discovered evidence and/or changes proposed by the Applicant.

The grounds for seeking reconsideration are limited to the following:

- (a) The Hearing Examiner exceeded the Hearing Examiner's jurisdiction;

- (b) The Hearing Examiner failed to follow the applicable procedure in reaching the Hearing Examiner's decision;
- (c) The Hearing Examiner committed an error of law;
- (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by the record;
- (e) New evidence which could not reasonably have been produced and which is material to the decision is discovered; or
- (f) The Applicant proposed changes to the application in response to deficiencies identified in the decision.

Petitions for reconsideration will be processed and considered by the Hearing Examiner pursuant to the provisions of SCC 30.72.065. Please include the County file number in any correspondence regarding this case.

### **Appeal**

An appeal to the County Council may be filed by any aggrieved party of record **within 14 days from the date of this decision**. Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the reconsideration petition has been disposed of by the hearing examiner. An aggrieved party need not file a petition for reconsideration but may file an appeal directly to the County Council. If a petition for reconsideration is filed, issues subsequently raised by that party on appeal to the County Council shall be limited to those issues raised in the petition for reconsideration.

Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S No. 604, 3000 Rockefeller Avenue, Everett, WA 98201) **on or before November 15, 2012**, and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00) for each appeal filed; PROVIDED, that the fee shall not be charged to a department of the County. The filing fee shall be refunded in any case where an appeal is summarily dismissed in whole without hearing under SCC 30.72.075.

An appeal must contain the following items in order to be complete: a detailed statement of the grounds for appeal; a detailed statement of the facts upon which the appeal is based, including citations to specific Hearing Examiner findings, conclusions, exhibits or oral testimony; written arguments in support of the appeal; the name, mailing address and daytime telephone number of each appellant, together with the signature of at least one of the appellants or of the attorney for the appellant(s), if any; the name, mailing address, daytime telephone number and signature of the appellant's agent or representative, if any; and the required filing fee.

The grounds for filing an appeal shall be limited to the following:

- (a) The decision exceeded the Hearing Examiner's jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching his decision;
- (c) The Hearing Examiner committed an error of law; or
- (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by substantial evidence in the record. [SCC 30.72.080]

Appeals will be processed and considered by the County Council pursuant to the provisions of Chapter 30.72 SCC. Please include the County file number in any correspondence regarding the case.



Staff Distribution:

Department of Planning and Development Services: Stacey Abbott

The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation." A copy of this Decision is being provided to the Snohomish County Assessor as required by RCW 36.70B.130.

PARTY OF RECORDS REGISTER  
STRATFORD COURT  
12-104285-SD  
HG: 10/17/12

PHOENIX DEVELOPEMT INC  
LOREE QUADE  
16108 ASH WAY SUITE 201  
LYNNWOOD WA 98087

SNO CO PLANNING & DEV/LAND USE  
STACEY ABBOTT  
3000 ROCKEFELLER AVE M/S 604  
EVERETT WA 98201

JIM EGGE  
10807 25TH ST SE  
LK STEVENS 98258

CHASE BANK  
1201 3RD AVE  
SEATTLE WA 98101

HESHAM ANAN & RANIA HUSSEIN  
3514 222ND PL SE  
BOTHELL WA 98021

NICK DOBOS  
3805 222ND PL SE  
BOTHELL WA 98201

DEPT OF PUBLIC WORKS  
COUNTY ENGINEER  
3000 ROCKEFELLER AVE M/S 607  
EVERETT WA 98201

BEAUMONT HOA  
JARETT GOODKIN  
2706 222ND PL SE  
BOTHELL WA 98201

GENE GREIVE  
3712 220TH ST SE  
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EVERETT WA 98201-3900

ALDERWOOD WATER &  
WASTEWATER DISTRICT  
DAN SCHEIL  
3626 156TH ST SW  
LYNNWOOD WA 98087-5021

SNO CO PUD NO 1  
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GERALD UBIGAU SURVIVOR'S  
TRUST  
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