



**DECISION of the SNOHOMISH COUNTY
HEARING EXAMINER**

Hearing Examiner's Office

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Gordon Sivley
Hearing Examiner

DATE OF DECISION: July 24, 2013

M/S 405
3000 Rockefeller Ave.
Everett, WA 98201

PLAT/PROJECT NAME: *Filbert Glen*

(425) 388-3538
FAX (425) 388-3201

**APPLICANT/
LANDOWNER:** Natural Nine Holdings, LLC
11807 7th St NE
Lake Stevens, WA 98258

FILE NO.: 13-100646 SD

TYPE OF REQUEST: Rezone and Preliminary Subdivision Approval

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

BASIC INFORMATION

LOCATION: 20029 Filbert Drive, Bothell
ACREAGE: 3.15 acres

NUMBER OF LOTS: 16 lots

MINIMUM LOT SIZE: 5432 square feet
GROSS DENSITY: 5.7 du/acre

GMACP DESIGNATION: Urban Low Density Residential (ULDR)

ZONING: R-9600
PROPOSED ZONING: R-7200

UTILITIES:
Water: Alderwood Water and Wastewater District
Sewer: Alderwood Water and Wastewater District
Electricity: Snohomish County PUD No. 1

SCHOOL DISTRICT: Northshore School District No. 417

FIRE DISTRICT: Snohomish County Fire Protection District No. 10

PDS STAFF RECOMMENDATION: Approve, subject to conditions.

A. BACKGROUND INFORMATION

1. **The Record.** The official record for this proceeding consists of the Exhibits entered into evidence (Exhibits A.1 through J), as well as the testimony of witnesses received at the open record hearing. The entire record was admitted into evidence and considered by the Examiner in reaching the decision herein.

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

2. **Parties of Record.** The Parties of Record are set forth in the Parties of Record Register and include interested parties who testified at the Open Record Hearing.
3. **Public Hearing.** A public hearing was held on July 10, 2013. Witnesses were sworn, testimony was presented, and exhibits were entered into the record at the hearing. Notices of the application and public hearing were issued according to the provisions of SCC 30.70.050. (Exhibits F.1, F.2 and F.3) Notice was concurrently given concerning the SEPA Threshold Determination, Traffic Concurrency and Impact Fee Determinations as required by the County Code.

Stacy Abbott, Alan Murray and Mark Brown appeared and testified on behalf of Snohomish County Department of Planning and Development Services (PDS). Appearing for the Applicant was Robert Nehring of Natural Nine Holdings, LLC.

In addition, two interested citizens, Rick Laird and Harry Cook, appeared at the public hearing.

B. FINDINGS OF FACT

The following Findings of Fact are supported by a preponderance of the evidence presented in the record pertaining to this matter.

1. **Applicant's Proposal.** The Applicant requests Preliminary Plat approval for a 16 lot subdivision along with a Rezone of the site from R-9600 to R-7200. The Applicant also requests approval of an Administrative Site Plan pursuant to SCC 30.23A.100.

2. Site Description. The project site is partially wooded with the remainder containing lawn and brush. There are no wetlands, streams or other critical areas on the site. Located on site is a single-family residence, a mobile home and three outbuildings. All of these structures will be removed as part of the proposed subdivision. There are no wetlands or streams on the site.
3. Adjacent uses. The properties immediately adjacent to the site on the north, south, east and west are zoned R-9600 and contain residential uses. The general area consists of a mixture of parcels zoned LDMR, R-9600 and R-7200. In general, as development (or redevelopment) is occurring, the parcels are being rezoned to LDMR and R-7200.
4. Project Chronology. The subject applications were submitted to PDS on January 15, 2013, and were determined to be complete as of the date of submittal. The Applicant submitted design revisions of the preliminary plat on March 29, 2013 and May 15, 2013. As of the date of the hearing, 83 days of the 120 day review period had elapsed.
5. State Environmental Policy Act Compliance. PDS issued a Determination of Nonsignificance (DNS) (Exhibit E.2) for the subject application on May 29, 2013. The DNS was not appealed. Accordingly, the Examiner finds that compliance with the substantive and procedural requirements of SEPA have been met.

6. Issues of Concern.

A. Public Agency Review. No significant issues of concern were raised by reviewing agencies.

B. Citizens. One citizen, Nancy Goring, who owns property to the north of the project site, submitted a letter of concern. (Exhibit H.1) She was concerned about standing water (drainage) on the adjacent property. Rick Laird, a neighbor who lives across Grimes Road from the proposal raised concerns about the increased density, the adequacy of the existing off-site drainage facilities to handle drainage from the subject development and possible overcrowding of schools. Harry Cook, who lives on 7th Avenue SE, was concerned primarily about the access to the proposed development which is proposed to be from 7th Avenue SE.

7. Applicant's testimony.

The Applicant presented testimony from Robert Nehring, project manager, who gave an overview of the project. Mr. Nehring indicated that he had conferred with Ms. Goring and some of her neighbors regarding their drainage issues and that he is assisting them in designing drainage improvement that will address their pre-existing ponding problems. Mr. Nehring also responded to the concerns raised by Mr. Laird and Mr. Cook.

8. Approval Criteria.

A. Rezone.

The Applicant is seeking a rezone of the site from R-9600 to R-7200 pursuant to Chapter 30.42A 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; (3) the proposal will not increase the density on any site where any significant trees were removed after January 7, 2009 and within six years prior to the date of application; and (4) where applicable, that minimum zoning criteria found in Chapters 30.31A through 30.31F SCC are met.

(i) 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 subject property is designated as ULDR on the Future Land Use Map (FLUM) of the Snohomish County GMA Comprehensive Plan (GMACP) and is located within an Urban Growth Area (UGA). The ULDR designation allows mostly detached housing developments on larger lot sizes. As outlined in the comprehensive plan, allowed implementing zones for this designation are R-7200, PRD-7200, R-8400, PRD-8400, R-9600, PRD-9600 and WFB. The Applicant is proposing a rezone of the site from R-9600 to R-7200, a listed implementing zone. Thus, although Mr. Laird was concerned about the rezone, the density proposed is in the middle of the range of implementing zones recommended in the Comprehensive Plan. Also, the number of lots proposed is not the maximum that might be allowed under R-7200 zoning. Utilizing Lot Size Averaging (LSA), a maximum of 19 lots could be accommodated on the site (16 are proposed). Even without rezoning, the subject site could accommodate 14 lots using LSA.

The Population and Employment Element of the General Policy Plan (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 discussed below, the project will provide adequate public facilities and service capabilities and, therefore, meets the criteria of the Population and Employment section.

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. LU Policies 2.A.1 and 2.A.3 (LU-16) require minimum densities of 4-6 du/acre. The project will result in a net density of 5.86 du/acre. This density satisfies the requirement.

The Housing Element of the GPP requires efficient infill development in UGAs (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. Goal HO-2 of the

Housing section (HO-6) requires that the vitality and character of existing residential neighborhoods should be maintained. Here, while the physical attributes of lots within the project site will be changed by the proposed rezone, resulting in smaller lots and higher densities that will be somewhat different from some of 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 foregoing discussion, the Examiner finds that the proposed rezone is consistent with the GMACP.

(ii) 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 Department of Public Works (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 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 Examiner finds that the proposed rezone, as conditioned, bears a substantial relationship to the public health, safety and welfare.

(iii) The proposal would not increase the allowed density of residential development on any site where any significant trees other than hazardous trees were removed after January 7, 2009, and within six years prior to the date of the submission of the application, pursuant to SCC 30.25.016(3). No significant trees were removed after January 7, 2009 or within six years of the submittal date. The proposal includes an administrative site plan which includes a tree survey, a tree preservation/replacement plan and landscaping plan. Review of that plan was completed by PDS which recommends that the project be subject to conditions of approval that will ensure that the plans will be implemented.

(iv) If applicable, minimum zoning criteria found in Chapters 30.31A through 30.31F SCC are met. Here, the proposed site is located within a developing residential neighborhood. The proposed rezone is to remain a residential zone within the ULDR 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 Chapter 30.41A SCC and the rezone should be granted from R-9600 to R-7200.

B. Subdivision Approval.

In order to grant preliminary subdivision approval, the 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.

(i) Park and Recreation Impact Mitigation. (Chapter 30.66A SCC) The proposal is within the Nakeeta Beach Park Service Area 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. Payment may be deferred from the time of building permit issuance, but must be paid in full either upon the closing of the sale of the property, or 18 months from the date of issuance of the original building permit, whichever is earlier, or prior to any occupancy of the structure if the property owner elects to retain ownership and not sell the property (30.66A.020(4) SCC). PDS has recommended a condition of approval for inclusion within the project decision to comply with the requirements of Chapter SCC 30.66A SCC. The Examiner finds that such payment is acceptable as mitigation for parks and recreation impacts in accordance with County codes and policies.

(ii) Traffic Mitigation and Road Design Standards. (Title 13 SCC, & Chapters 30.24 and 30.66B SCC)

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

(1) Road System Capacity Impacts. (SCC 30.66B.310) A development must 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.

The impact fee for this proposal is based on the new average daily trips (ADT) generated by 15 new homes, which is 9.57 ADT/home. This rate comes from the 8th Edition of the ITE Trip Generation Report (Land Use Code 210). The development will generate 135.66 new ADT and has a road system capacity impact fee of \$31,201.80 (\$1,950.11/building permit) based on \$230.00/ADT, the rate for a residential development located in the UGA in TSA F. 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.310.

(2) 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 the no arterial units in arrears. Therefore, pursuant to SCC 30.66B.160(2)(a), the development was determined concurrent. The proposed development generates 10.69 new AM peak-hour trips and 14.25 new PM peak-hour trips which is less than the threshold of 50 peak-hour trips and, therefore, the development was not evaluated under SCC 30.66B.035.

The development was determined to be concurrent as of February 13, 2013. The concurrency determination expires six years from the date of the determination, in this case February 13, 2019.

(3) Inadequate Road Conditions. (SCC 30.66B.210) Regardless of the existing level of service, development which adds three or more PM 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 the IRC.

DPW has determined that 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 IRC. 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 SCC 30.66B.210.

(b) Frontage Improvements (SCC 30.66B.410) All developments are required to make frontage improvements along the parcel's frontage on any opened, constructed, and maintained public road. The required improvement is to be constructed in accordance with the EDDS, including correction of horizontal and vertical alignments, if necessary.

The Applicant has requested to locate the sidewalk on Filbert Drive next to the curb and roadway in order to save 16 mature evergreen trees. This is permitted according to EDDS 4-01(A) with the Engineers approval. On February 12, 2013, the County Traffic Engineer reviewed and approved this request.

Here, the construction of full urban frontage improvements along the subject property's frontage on Filbert Drive is required. Required improvements will consist of:

- 18 foot of asphalt concrete pavement width from right-of-way centerline to curb face
- Cement concrete curb and gutter

- Five (5) foot planter strip
- Five (5) foot cement concrete sidewalk

Improvements to Grimes Road consist of:

- Asphalt concrete pavement that results in 36 feet of paving from the curb on the south side of the road to the face of curb for the subject development
- Cement concrete curb and gutter
- Five (5) foot planter strip
- Five (5) foot cement concrete sidewalk

The improvements to 7th Avenue SE are required to provide a road connection that accommodates auto as well as pedestrians and is ADA compliant.

None of the above roads on which frontage improvements are required are in the impact fee cost basis analysis for Chapter 30.66B SCC; therefore, credit for any frontage improvements towards the Applicant's impact fee is not 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 provide for access and transportation circulation in accordance with the comprehensive plan and SCC 30.66B.420, design and construct such access in accordance with the EDDS, and improve existing roads that provide access to the development in order to comply with adopted design standards, in accordance with SCC 30.66B.430.

Access to the proposed development is from 7th Avenue SE via a new newly constructed internal public road. The new public road is proposed to take access near the end of an existing public road, 7th Avenue SE. The Applicant proposes to slightly reconfigure the end of the existing roadway to adequately accommodate ADA requirements. The proposed road end is acceptable to the DPW. The proposed roadway appears to meet EDDS requirements for vertical and horizontal alignment.

Mr. Cook voiced concerns about access on 7th Avenue SE. DPW evaluated the sight distance at the proposed access point and found it met the minimum requirements of EDDS 3-08. Also, locating the access here will avoid creating another intersection on Filbert Drive. Doing so will assist in traffic flow and will be safer than other alternatives.

Under the authority of the County Engineer and in accordance with the EDDS, new internal road is classified as a non-arterial local road. The road will be a public road

serving approximately 160 ADT. The design speed for this road is 25 mph. The road shown on the plans meets the minimum requirements of EDDS for road grades, horizontal and vertical curves.

The County Engineer, in accordance with the EDDS, classified 7th Avenue SE, Grimes Road and Filbert Drive as local roads. The posted speed for these roads is 25 MPH.

(d) Right-of-Way Requirements. (SCC 30.66B.510 and 30.66B.520) A development is 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 road serving this development, Filbert Drive, is designated as a nonarterial 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 needed. The existing right-of-way is adequately shown on the preliminary plat.

The other road serving this development, Grimes Road, is also designated as a nonarterial and requires a right-of-way width of 30 feet on each side of the right-of-way centerline. Currently, 20 feet of right-of-way exists on the development's side of the right-of-way. Because of the location of the improvements on the opposite side of Grimes Road (south side) and 36 feet is the ultimate required distance between curbs the Applicant has requested that only six feet of additional right of way be dedicated. This request was approved by DPW. Six feet is shown on the preliminary plat for dedication on Grimes Road.

The intersection of Grimes Road/Filbert Drive will be realigned by the Applicant. This realignment will leave an excess of right-of-way at the intersection so no additional right of way dedication will be required on the corner.

Neither Filbert Drive nor Grimes Road 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 is not applicable.

(e) 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 (ILA) between the County and the Washington State Department of Transportation (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 ILA with the WSDOT and Snohomish County effective December 21, 1997, and as amended. The Applicant's traffic study proposes to mitigate impacts to the State highway by paying \$36.00/ADT. The dollar figure of \$4,883.76 (305.24/lot) is proposed in the study. This figure includes credit for on-site TDM measures. As indicated above an acceptable TDM plan has been submitted.

(f) Impacts to City Streets and Roads. (SCC 30.66B.720) Mitigation requirements for impacts on streets inside cities and roads in other counties are to be established in a manner that is consistent with the terms of a Reciprocal Traffic Mitigation ILA between the County and the other jurisdiction(s). This development is subject to the ILA between Snohomish County and the cities of Bothell and Mill Creek.

Pursuant to the Reciprocal Traffic Mitigation ILA between the County and the City of Bothell, a written proposal from the Applicant proposing measures to mitigate impacts on City streets is required. The Applicant has submitted an offer in the amount of \$19,526.06 (\$1220.38 per lot) as mitigation towards traffic impacts to the City generated by this development. The City of Bothell commented on April 12, 2013 via e-mail that this mitigation offer is acceptable. (Exhibit G.2) Payment of this amount will be made a condition of approval for this development.

The Applicant's traffic study indicates that mitigation is not required for the City of Mill Creek. Comment from the City dated April 15, 2015, indicates agreement with this finding. (Exhibit G.1)

(g) Transportation Demand Management (TDM). (SCC 30.66B.630) The County requires all new developments in the urban area to provide TDM measures. Sufficient TDM measures are to be provided to indicate the potential for removing a minimum of five percent of a development's P.M. peak hour trips from the road system. This requirement is to be met by site design requirements provided under SCC 30.66B.640, 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.620 or 30.66B.625. (SCC 30.66B.630). The Applicant has submitted a TDM plan to fulfill this obligation that PDS determined to be acceptable. Credit for TDM will be applied to the road system impact fees for the development and the Applicant's mitigation obligation to the City of Bothell.

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

(iii) Pedestrian Facilities. (RCW 58.17.110) 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 were received by PDS on January 31, 2013. (Exhibit G.5) Those comments indicate that the students who live in the development will all be picked up by bus at the intersection of Filbert Drive/Grimes Road. When the required internal road and frontage improvements are constructed, adequate pedestrian facilities will exist. Based on this, no additional off-site pedestrian facilities are required.

(iv) Bicycle Facilities. The County's current adopted County Wide Bicycle Facility System Map became effect on February 1, 2006. The subject development does not border on a right-of-way that has been identified on the adopted Bicycle Facility System Map. A bicycle path is not required along the development's frontage on Filbert Drive or Grimes Road.

(v) 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. Credit is to be given for one existing lot. Payment of school impact fees will be included as a condition of approval of the development. Mr. Laird expressed concerns about school overcrowding occasioned by the proposed development. The school fees imposed under Chapter 30.66 SCC are designed to help alleviate the burden upon the school district of the additional students who are expected to live in the new homes.

(vi) Drainage and Land Disturbing Activities (Clearing and Grading). (Chapters 30.63A, 30.63B and 30.63C SCC). The site is partially wooded, the remainder open land. Soils on the majority of the site consist of Alderwood Urban Land Complex, which has a hydrologic classification of "Type C". There are no wetlands or streams on the site.

The development of the site will result in adding approximately 78,000 square feet of new impervious surface for the sixteen new homes, driveways, sidewalks, patios, curb and gutter, sidewalk and street paving. Total proposed excavation includes approximately 10,000 cubic yards of cut and fill.

Stormwater will be collected in catch basins and conveyed in a piped drainage system to a single stormwater detention vault. Water quality treatment will be provided using a storm filter located downstream from the vault.

Runoff from the 3.15 acre on-site basin will be discharge into the existing drainage system at 7th Avenue SE on the north edge of Grimes Road. It will flow through the existing detention pond on the south side of Grimes road and then into Filbert Creek. Inspections of the downstream conveyance facilities were made by the project's engineer. No current downstream flow path capacity or erosion problems were identified during the inspections. Peak flow under developed conditions should be less than under existing conditions. It was well documented in the

Addendum to the Targeted Drainage Report (Exhibit C.3) and supported by PDS staff testimony that the drainage system south side of Grimes Road was specifically designed to accommodate the runoff from the site of the current proposal. Also, because the current proposal includes a detention vault upstream of the existing drainage system, the flows from the current proposal will actually be substantially lower than anticipated when the older facilities were designed.

The adjacent parcel's owner, Nancy Goring, whose private road abuts the north property line, had inquired as to the disposition of stormwater runoff that exists on the south side of her private road. PDS determined that neither the existing conditions of the subject site, nor the proposed subdivision were related to the standing water on the adjacent parcel. The Applicant's engineer provided his analysis and has proposed a drain along the common boundary which includes provisions for intercepting and conveying the runoff from all four northern lots to the drainage facilities in Filbert Road. The proposal appears to adequately address Ms. Goring's concerns.

The Applicant proposes greater than 5,000 square feet of new impervious surface. A full stormwater site plan is therefore required prior to development activity under the provisions of SCC 30.63A.300(3). The Applicant proposes greater than 7,000 square feet of clearing, will create more than 2,000 square feet of new and or replaced impervious surfacing and more than 100 cubic yards of grading. Therefore, an LDA permit in accordance with SCC 30.63B.070 will be required for the subject proposal. A Storm Water Pollution Prevention Plan (SWPP) that meets Department of Ecology (DOE) requirements will also be required. A Right-of-Way Permit will be required for construction of frontage improvements along Filbert Drive and Grimes Road.

(vii) Critical Areas Regulations. (Chapter 30.62) No wetlands or streams are located on site or within close proximity to the subject property. Filbert Creek and a narrow riparian wetland corridor are located approximately 250 feet from the southeastern tip of the subject property, across Grimes Road and behind several houses. Due to the distance between the stream and the subject property, the outer of the buffer lies off-site to the south. The stream and wetland system are protected in tracts associated with surrounding development. (Exhibit C.4)

(viii) International Fire Code. (Chapter 30.53A SCC) The Office of the Fire Marshal determined that the project was in compliance with Chapter 30.53A SCC, provided it complies with the following conditions:

(a) Fire flow and fire hydrants must be provided in accordance with Snohomish County Code 30.53A.514 through 30.53A.520. Fire hydrants serving single-family dwellings must have a maximum lateral spacing of 600 feet with no lot or parcel more than 300 feet from a hydrant. Hydrant locations must be depicted on the face of the plat, and locations for new hydrants must be approved by the Fire Marshal. All hydrants must meet the following requirements: four inch storz-type steamer port fittings must be provided on new hydrants, the tops of the hydrants must be colored green and blue

street reflectors must be installed on the hydrant side of the centerline of the streets serving the lots in the plat to indicate hydrant locations.

(b) The minimum required fire flow for this project is to be 1000 GPM at 20 psi for a one-hour duration. Prior to final plat approval, in order to assure consistency with the applicable provisions of SCC 30.53A.520(16), the Applicant must provide the required fire hydrants and written confirmation from the water purveyor that the minimum required fire flow of 1000 gpm at 20 psi for a one-hour duration can be provided. If the required fire flow cannot be provided, the new dwellings must be provided with NFPA 13-D fire suppression systems. If there are 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. This requirement must appear on the face of the final plat.

(c) Fire apparatus access shall not be obstructed in any manner including the parking of vehicles. Signage or pavement striping shall be provided on both sides of the access road if it is less than 28 feet in width and one side of the road if it is 28 feet wide but less than 36 feet wide stating "NO PARKING – FIRE LANE" to ensure access availability. If pavement striping is used the curbs shall be painted yellow with black lettering.

(d) Approved numbers or addresses must be placed on all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property and must be in place prior to occupancy. Numbers shall contrast with their background, as required by Section 505.1 of the International Fire Code.

(ix) Utilities. Water and sanitary sewer will be supplied by the Alderwood Water and Wastewater District. Certificates of Water and Sewer Availability were received dated December 20, 2012. (Exhibit G.4) The Snohomish County Health District provided correspondence dated February 14, 2013 indicating that it has no objections to the proposal provided the existing/remaining onsite sewage system(s) will be abandoned by having the septic tank(s) pumped by a certified pumper, then having the top of the tank removed or destroyed and the void filled. (Exhibit G.3) No comment from the Snohomish County Public Utility District was received indicating whether it can provide electrical service for the project but there is no evidence to suggest that it cannot do so.

(x) 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.

(xi) Landscaping Standards. (Chapter 30.25 SCC). PDS evaluated the proposal for compliance with SCC 30.25.015. All residential developments located within UGA are required to landscape a minimum of 10 percent of the total gross area of the site to the standards unless otherwise exempted. SCC 30.25.016(6)(c) allows for the overall landscaping requirement to be

reduced by 10 percent when at least 10 percent of the site's significant trees are retained. In the instant case, 40 percent of the significant trees will be retained. The gross site area is 137,571 square feet. Based on the 10 percent reduction, 12,381 square feet of landscaping is required. The Applicant has exceeded the required percentage by providing 13,551 square feet of landscaping.

(xii) Tree Retention. (Chapter 30.25 SCC). There are 47 significant trees on the subject site. Of the 47 significant trees, 19 (or 40 percent) will remain. A total of 28 significant trees are to be removed. Due to the caliper of each tree to be removed, 43 replacement trees are required. The landscape plan shows 43 replacement trees to be planted. A condition of approval will require implementation of the preliminary landscape plan. (Exhibit B.3) A final landscape plan will be required when construction plans are submitted.

(xiii) 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 50% of 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 will 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 short subdivision is a maximum of 55 percent. The LSA calculation is as follows:

Area in Lots (107,657 square feet) + Open Space (11,320 square feet) = (118,977 square feet)
÷ (16 lots proposed) = 7,436 square feet.

The minimum zoning requirement of the requested R-7200 zone is 7200 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 Examiner finds that the proposal is consistent with the lot size averaging provisions of SCC 30.23.210.

(xiv) 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. Accordingly,

the 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.

C. Administrative Site Plan Approval. (Ch. 30.23A SCC).

Urban residential design standards apply to new residential development located within UGAs including subdivisions regulated under Chapter 30.41A SCC. Under the requirements of SCC 30.23A.100, an administrative site development plan is required for all residential development that is subject to the requirements of Chapter 30.23A SCC. When residential development requires both an administrative site plan approval and a Type 2 decision issued by the Hearing Examiner after an open record hearing (as in the present case), the administrative site plan may not be approved until the Examiner's decision has been issued. Under SCC 30.23A100(2)(c), the Director of PDS must find that the administrative site plan is consistent with the applicable requirements of Subtitle 30.2 and the Director's decision must be consistent with the Examiner's decision issued for the residential development. These requirements will be implemented with a condition of approval.

9. 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 rezone and subdivision applications pursuant to Chapters 30.42A, 30.41A, 30.72 SCC and Chapter 2.02 SCC.
2. The Applicant has met its burden of proof to show that the rezone meets the requirements of Chapter 30.42A SCC and should be approved from R-9600 to R-7200.
3. 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

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.

4. The proposed subdivision also meets Chapter 30.41A SCC requirements. 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. 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 subdivision, 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 Alderwood Water and Wastewater District.
5. 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.
6. The Examiner concludes that adequate public services exist to serve this proposal.
7. If approved with the recommended preconditions and conditions, the proposal will make adequate provisions for the public health, safety, and general welfare.
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:

1. The application for a **REZONE** of the subject property from R-9600 to R-7200 is **GRANTED**.
2. The approval of a **PRELIMINARY SUBDIVISION** is hereby **GRANTED** subject to the following **CONDITIONS**:

CONDITIONS

- A. The Preliminary Plat received by PDS on May 15, 2013 (Exhibit B.1), shall be the approved plat configuration. Changes to the approved preliminary plat are governed by SCC 30.41A.330.
- B. Prior to initiation of any further site work, and/or prior to issuance of any development permits by the County:

- i. A detailed landscape and tree retention/replacement plan shall have been submitted to and approved by PDS. The plan shall be prepared in general conformance with Exhibit B.3 and with all required landscape standards.
- ii. Construction plans and a Full Stormwater Site Plan shall be submitted for review and approval, subject to Minimum Requirements 1-9.
- iii. A Land Disturbing Activities (LDA) permit shall be obtained, including a Stormwater Pollution Prevention Plan (SWPPP).

C. All site development work shall comply with the requirements of the plans and permits approved pursuant to Conditions A and B above and the following requirements:

- i. 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:

Four (4) inch storz type steamer port fittings shall be provided on new hydrants.

The top(s) of the hydrant(s) shall be colored green.

Blue street reflector(s) shall be installed on the hydrant side of centerline to indicate hydrant location(s).

- ii. Fire apparatus 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.

- iii. Approved numbers or addresses must be placed on all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property and must be in place prior to occupancy. Numbers shall contrast with their background, as required by Section 505.1 of the International Fire Code.

D. The following additional restrictions and/or items shall be indicated on the face of the final plat:

- i. "SCC Title 30.66B requires the new lot mitigation payments in the amounts shown below for each single-family residence building permit or twice the amount shown for a duplex:

\$1,950.11 per lot for mitigation of impacts on County roads paid to the County

\$305.24 per lot for mitigation of impacts on state highways paid to the County.

\$1,220.38 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 lots therein.”

ii. “The dwelling units within this development are subject to park impact fees for the North Creek park and recreation impact mitigation fee area of the County parks system in accordance with SCC 30.66A which requires payment of \$1244.49 for each new single-family residential unit. Park impact fees shall be based upon the rate in effect at the time of building permit issuance, provided that if the building permit is not issued within five years after the application is deemed complete, the fee shall be based upon the rate in effect at the time of building permit issuance.”

iii. “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 one existing lot. Lot 1 shall receive credit.”

iv. “If there are 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.”

v. “Approved numbers or addresses shall be placed on all new and existing buildings in such a position as to be plainly visible and legible from the street or access way fronting the property. Numbers shall contrast with their background Section 505.1 IFC.”

E. The final plat shall show a six-foot (6') right-of-way dedication along the property frontage on Grimes Road.

F. Prior to recording of the final plat:

i. The new public roads shall have been constructed to the satisfaction of DPW.

ii. Urban standard frontage improvements shall have been constructed along the property frontage on Filbert Drive, Grimes Road and 7th Avenue SE to the satisfaction of DPW unless

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

- iii. The features on the approved TDM plan shall be constructed / installed.
- iv. The administrative site plan required by Chapter 30.23A SCC (Urban Residential Design Standards) shall be approved.
- v. Documentation demonstrating that any existing onsite sewage systems have been abandoned by having the septic tank pumped by a certified pumper, then having the top of the tank removed or destroyed and the void filled (WAC 246-272A-0300) shall be provided to the PDS inspector and to the Snohomish Health District.
- vi. The developer shall provide the required fire hydrants and written confirmation from the water purveyor that the minimum required fire flow of 1,000 gpm at 20 psi for a one-hour duration can be provided. If the required fire flow cannot be provided the new dwellings shall be provided with NFPA 13-D fire suppression systems. It shall be noted as a restriction in the recording of the final plat that if there are 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.

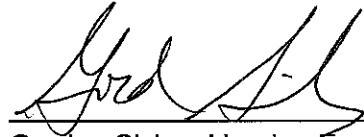
G. In conformity with applicable standards and timing requirements:

- i. The final approved landscape plan shall be implemented. All required landscaping (including planting of replacement trees) shall be installed in accordance with the approved landscape plan prior to recording unless a security device is approved pursuant to Chapter 30.84 SCC
- ii. Fire lane signs and/or striping shall be completed as required by the County Fire Marshal's Office.
- iii. All water, sewer, electrical and communication distribution and service lines shall be underground.
- iv. Approved numbers or addresses shall be placed on all new and existing buildings in such a position as to be plainly visible and legible from the street or access way fronting the property. Numbers shall contrast with their background Section 505.1 IFC.

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 24th day of July, 2013.



Gordon Sivley, 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 calendar days** from the date of this decision. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2nd 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 AUGUST 5, 2013.** 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, 2nd 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 AUGUST 7, 2013**, 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
13 100646 SD FILBERT GLEN
HEARING: JULY 10, 2013

NATURAL NINE HOLDINGS
11807 7TH ST NE
LK STEVENS WA 98258

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

CURTIS & CHARLENE AYERS
20029 FIBERT DR
BOTHELL WA 98012

BOB NEHRING
10515 20TH ST SE SUITE 125
LK STEVENS WA 98258

SNO CO DEPT OF PUBLIC WORKS
COUNTY ENGINEER
3000 ROCKEFELLER AVE M/S 607
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HARRY COOK
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CITY OF BOTHELL
WASIM KHAN
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BOTHELL WA 98011

RICK LAIRD
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NORTHSHORE SCHOOL DISTRICT
SUSAN REMBOLD
3330 MONTE VILLA PARKWAY
BOTHELL WA 98021

CITY OF MILL CREEK
SCOTT SMITH
15728 MAIN ST
MILL CREEK WA 98012

SNOHOMISH HEALTH DISTRICT
BRUCE STRAUGHN
3020 RUCKER AVE SUITE 104
EVERETT WA 98201-3900

ALDERWOOD WATER &
WASTEWATER
JON WYRICK
3626 156TH ST SW
LYNNWOOD WA 98087-5021