



**DECISION of the SNOHOMISH COUNTY
HEARING EXAMINER**

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DATE OF DECISION: November 5, 2013

PLAT/PROJECT NAME: *Yorkshire II*

**APPLICANT/
LANDOWNER:** KLN Construction, Inc.
19000 33rd Avenue West, Suite 200
Lynnwood, WA 98036

FILE NO.: 13-102333-SD

TYPE OF REQUEST: Rezone and Preliminary Subdivision/PRD Approval

**DECISION
(SUMMARY):** **Rezone is GRANTED;
Preliminary Subdivision and Planned Residential Development approval
is GRANTED, subject to CONDITIONS.**

BASIC INFORMATION

LOCATION: 17412 Sunset Road, Bothell, WA
ACREAGE: 1.98 acres

NUMBER OF LOTS: 12 lots

MINIMUM LOT SIZE: 3104 square feet
GROSS DENSITY: 6.02 du/acre

GMACP DESIGNATION: Urban Low Density Residential (ULDR)

ZONING: R-9600
PROPOSED ZONING: R-7200

UTILITIES:
Water: Silver Lake Water and Sewer District
Sewer: Silver Lake Water and Sewer District
Electricity: Snohomish County PUD No. 1

SCHOOL DISTRICT: Everett School District No. 2

FIRE DISTRICT: Snohomish County Fire Protection District No. 7

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.1), as well as the testimony of witnesses received at the open record hearing. The record was left open following the October 15th hearing until October 21, 2013 to permit Snohomish County Department of Planning and Development Services (PDS) to submit additional information related to the possible prior division of the property. This resulted in the submission of Exhibit J.1. This exhibit was also added to the record. 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 October 15, 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.

Robert Pemberton appeared and testified on behalf of PDS. Appearing for the Applicant was Brian Holtzclaw of KLN Construction, Inc.

No members of the general public appeared or testified 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 approval of a rezone from R-9600 to R-7200 and a 12-lot Planned Residential Development preliminary subdivision on 1.98 acres. The proposed development includes approximately 933 cubic yards of cut and 1,034 cubic yards of fill with 1.08 acres of new impervious surfaces and 1.98 acres of clearing. The proposed single-family residential lots range in size from 3,104 square feet to 6,609 square feet with 17,377 square feet of open space. Public water and sewer service will be provided by the Silver Lake Water and Sewer District. Mitigation fees are to be paid in accordance with Chapters 30.66A, 30.66B, and 30.66C SCC for project impacts to community parks, nearby road system traffic and to the Everett School District No. 2. No critical areas as defined by Chapter 30.62A SCC (Wetlands and Fish & Wildlife Habitat Conservation Areas) are known to exist on or near the site.

2. Site Description. The site is 1.98 acres, measuring 534 feet by 164 feet, on west side of Sunset Road. The site is fairly level, sloping down gradually toward the southwest corner of the site. The site contains two residences with lawn, driveways, landscaping and a shop. The rest of the site has dense trees and underbrush.
3. Adjacent uses. The zoning to the south and north of the site is R-7,200 (PRD). The approved preliminary plat of Yorkshire lies immediately to the south. The zoning to the west is R-9,600. The zoning to the east is R-7,200. Surrounding uses currently are low density residential, single-family residences on large lots.
4. Project Chronology. The Yorkshire II application was originally submitted to PDS on March 1, 2013, and was determined on March 1, 2013 to be complete as of the date of submittal for regulatory purposes, but insufficient for further review. Resubmittals of the application were received on June 11, 2013 and August 1, 2013 which were determined on August 15, 2013 to be sufficient for further review. As of the hearing date, 129 days of the 120-day review period had elapsed. At the October 15th hearing, the Applicant's representative orally waived the 120 Day decision-making period.
5. State Environmental Policy Act Compliance. PDS issued a Determination of Nonsignificance (DNS) for the subject application on September 22, 2013. (Exhibit E.2) The DNS was not appealed or specifically commented upon. Accordingly, the Examiner finds that compliance with the substantive and procedural requirements of SEPA have been met.
6. Approval Criteria.

A. Rezone.

The Applicant seeks 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.

In the context of the Growth Management Act (GMA), development regulations and, therefore, rezones must be consistent with and implement the comprehensive plan. (RCW 36.70.040) But in the context of site-specific rezones, the inquiry goes beyond mere consistency with the map designation of the comprehensive plan - as the Snohomish County Council explained in Motion 07-447, "The Comprehensive Plan is the most direct expression of public policy in the area of land use. In determining that a proposed rezone is consistent with the Comprehensive Plan, the proposal must be consistent with the policies as well as the map designation." The Examiner interprets this language, as well as the law applicable to rezones, to mean that the burden is upon the Applicant to demonstrate to the Examiner that the proposed rezone meets the applicable comprehensive plan policies. The subject application has been evaluated for consistency with the latest version of the GMACP.

The subject property is designated "Urban Low Density Residential" on the Future Land Use Map 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 proposes a rezone of the site from R-9600 to R-7200, a listed implementing zone.

The PDS analysis relating to the consistency of the requested rezone with the GMACP is set forth in Exhibit H at pages 13 through 15. The Applicant also prepared an analysis of GMACP consistency. (Exhibit A.2) Having reviewed the GMACP and the PDS and Applicant analyses relating to whether the proposed rezone is consistent with the GMACP, the Examiner concurs with said analyses and hereby adopts and incorporates by this reference the analyses in Exhibits H and A.2 herein as if set forth in full. Accordingly, the Examiner finds that the proposed rezone is consistent with the County's adopted 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 the 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). There is no evidence that any significant trees were removed from the site proposed for the rezone after January 7, 2009 or within six years of the submittal date and the Applicant submitted an affidavit attesting that no such tree removal occurred. (Exhibit A.5)

(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. 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 11 new homes, which is 9.52 ADT/home. This rate comes from the 9th Edition of the ITE Trip Generation Report (Land Use Code 210). The development will generate 99.48 new ADT and has a road system capacity impact fee of \$22,880.40 (\$1,906.70/building permit) based on \$230.00/ADT, the rate for a residential development located in the urban growth area in TSA E. 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 E 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 7.84 new AM peak-hour trips and 10.45 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 April 4, 2013. The concurrency determination expires six years from the date of the determination, in this case April 4, 2018.

(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 Inadequate Road Condition (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.

The subject development proposal will not impact any IRC locations identified within TSA E with three or more of its PM peak hour trips, nor will it create any IRC. 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.

Here, the construction of full urban frontage improvements along the subject property's frontage on Sunset Road is required. Sunset Road is designated as a collector arterial on the County's Arterial Circulation Map. To be consistent with DPW requirements for developments fronting on Sunset Road to accommodate a future center turn lane, required improvements will consist of:

- 23 feet of asphalt concrete pavement width from right-of-way centerline to curb face to accommodate a 5 foot bicycle lane and future center turn lane.
- Cement concrete vertical curb and gutter
- Five (5) foot planter strip
- Five (5) foot cement concrete sidewalk

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 lots in the proposed development will be as follows: a new public road, Road A, is proposed within the development which connects in two locations at the south property line to the roads in the preliminary plat of Yorkshire. Those two roads connect to 176th Street SE at the south property line of Yorkshire. 176th Street was recently constructed in conjunction with the plat of Sommerwood PFN 04-116395, and to the east, connects to Sunset Road.

Under the authority of the County Engineer and in accordance with the EDDS the new internal public road has been classified as a non-arterial local access road. The design speed for the road is 25 mph. The road shown on the plans meets the minimum requirements of EDDS for road grades, horizontal and vertical curves. The proposed right-of-way width of 51 feet is adequate for the required improvements to include: 28-foot pavement width (for two 10-foot travel lanes and an 8-foot parking strip), vertical curbs, 5-foot planter strips, 5-foot sidewalks, and 1-foot of right-of-way behind the sidewalks.

The County Engineer, in accordance with the EDDS, has classified 176th Street SE as a non-arterial urban residential road serving traffic volumes of less than 2000 ADT. The design speed for 176th Street SE is 25 mph.

176th Street SE intersects west off of Sunset Road, and is the north leg of a large rectangle of public roads on Sunset Road that provide access to several new subdivisions. It also provides access to Tambark Creek Community Park, a new County park currently under construction.

Sunset Road is designated as a collector arterial road on the County's Arterial Circulation Map. Sunset Road has 60-feet of deeded right-of-way between 169th Street SE and 180th Street SE, and SCC 30.66.B. 510 specifies a right-of-way width of 70 feet for a collector arterial road. The Applicant will dedicate an additional five feet of property for right-of-way where the development property fronts the road. The frontage improvements that have been required for this development are 18 feet of pavement widening plus a 5-foot wide bicycle lane, vertical curb, 5-foot planter strip, and 5-foot sidewalks on the development side of the right-of-way centerline. There are numerous proposed developments fronting Sunset Road that have been required to meet the same frontage improvement standard so this development will match that standard in order to be consistent with the other improvements.

The section of Sunset Road between 169th Street SE and 180th Street SE; meets EDDS requirements for road grades, horizontal and vertical curves. All but a handful of properties fronting Sunset Road between 169th and 180th Streets have preliminary approval for subdivisions, and when developed, frontage improvements will be constructed along both sides of Sunset Road so that there will be generally a pavement width of 46 feet (for a northbound travel lane, a center turn lane, a southbound travel lane, and a 5-foot wide bicycle lane on each side of the travel lanes), vertical curbs, 5-foot planters and 5-foot sidewalks.

(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.

Sunset Road is designated as a collector arterial road on the County's Arterial Circulation Map. This requires a right-of-way width of 35 feet on each side of the right-of-way centerline. Thirty feet of right-of-way presently exists on the development's side of the right-of-way. Therefore, five feet of additional right-of-way is required. This is adequately shown on the preliminary plat.

(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 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. The Applicant's traffic study indicates that no WSDOT projects be impacted by three or more directional peak hour trips. Comments from the WSDOT in an e-mail dated March 19, 2013 (Exhibit G.3), indicate that the subject development will not have a significant adverse impact on state highways and does not request any mitigation. Therefore, the Examiner finds that mitigation is not required for State highway impacts.

(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).

City of Mill Creek:

Snohomish County has an ILA with the City of Mill Creek and this development is within the influence area that requires traffic mitigation be considered for the City. Based on the trip distribution from the Gibson traffic study dated November 2012, the development will impact city arterials with a total of 11.11 PM peak hour trips. Gibson Traffic Consultants calculate that the applicant would owe Mill Creek a total of \$18,664.80, based on the mitigation fee of \$3,000.00 per PM peak hour trip x 11.11 PM peak hour trips x 56 percent (the standard rate for Area 1 where the development is located).

A copy of the offer to pay that amount, signed by the applicant was submitted with the application. The offer is signed by the City Engineer for the City of Mill Creek approving the offer. (Exhibit G.1) A condition of approval will be imposed that the Applicant pay \$18,664.80 to the City of Mill Creek for traffic mitigation.

City of Bothell.

Snohomish County has an ILA with the City of Bothell and this development is within the influence area that requires traffic mitigation be considered for the City. The Applicant's traffic study, Exhibit C.1, includes a proposal to mitigate impacts on Bothell city streets by paying mitigation fees in the total amount of \$17,182.94. This offer was accepted by the City on April 5, 2013. (Exhibit G.2)

(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 a site design, in accordance with SCC 30.66B.620 or 30.66B.625. (SCC 30.66B.630). In this case, the Applicant has submitted a site TDM design which was determined by DPW to satisfy the development's TDM obligation and a five percent reduction credit on the number of ADT generated by this project has been given in the development's Road System Capacity impact fees.

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 dated March 26, 2013 (Exhibit G.6) were received from the Everett School District indicating that all grade levels of public school students would be provided with bus service to school. The bus stop location identified by the school district is on Sunset Road and at the entrance to the development of Yorkshire, which is 176th Street SE.

Once the road system for the Yorkshire subdivision and the subject development, Yorkshire II, has been completed, there will be sidewalks, planters and vertical curbs in place along both sides of all the roads on which the homes will front, all the way to the bus stop on Sunset Road at 176th Street. Frontage improvements will also be constructed on the west side of Sunset Road, north and south of 176th Street SE. Based upon this, no additional off-site pedestrian facilities would be required and the Examiner finds that adequate provision for school children walking to the bus stop will have been made by the developer by the time the homes are occupied.

(iv) Bicycle Facilities. The County's current adopted County Wide Bicycle Facility System Map became effect on February 1, 2006. The subject development borders on a right-of-way that has been identified on the adopted Bicycle Facility System Map. A bicycle path is required along the development frontage on Sunset Road as detailed above.

(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 Everett School District No. 2 at the time of building permit submittal and collected at the time of building permit issuance for the proposed units. PDS indicated in testimony and through the submission of Exhibit J.1 that some PDS records dating from 1969 (before the County regulated short subdivisions) indicate that the subject site consists of three lots. However, such a division of the property was never recorded in the County Auditor's property records, the property was not segregated for tax purposes, the legal description from the current title report does not reflect the division and three houses were never built on the subject property. Under these circumstances, there is no clear basis for providing credit for three existing lots in calculating school impact mitigation amounts under SCC 30.66C.150. Therefore, 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. These school mitigation fees are designed to address the impacts of new development on possible crowding of local schools.

(vi) Drainage and Land Disturbing Activities (Clearing and Grading). (Chapters 30.63A, 30.63B and 30.63C SCC). PDS reviewed the drainage report (Exhibit C.2) and concluded that the proposal can conform to the code's drainage and grading requirements. The proposed subdivision was reviewed for compliance with the requirements of Drainage and Land Disturbing Activity codes and policies (SCC 30.63A and 30.63B).

Runoff from the proposed impervious surfaces will be collected and routed to an underground detention vault located in an easement on the adjacent plat of Yorkshire and will be constructed adjacent to the underground detention vault for that plat. Both vaults will be served by a

common access road from Yorkshire II. Water quality will be provided by a cartridge filter system within a catch basin that will receive discharge from the vault.

PDS Engineering reviewed the concept offered and recommended approval of the project, subject to conditions which would be imposed during full drainage plan review pursuant to Chapter 30.63A SCC. Grading quantities are anticipated to be less than 2,000 cubic yards of cut and 2,000 cubic yards of fill, primarily for road, drainage facility, and home site construction. Water quality will 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.

(vii) Critical Areas Regulations. (Chapter 30.62) No wetlands or streams are located on site or within 300 feet of the subject property. Therefore, no critical area mitigation is required for the proposed development.

(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 (4) 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 1-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' in width and one side of the road if it is 28' wide but less than 36' 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.

Snohomish County Fire Protection District No. 7 provided comments (Exhibit G.7) requesting that the county not allow secondary egress windows from upper level rooms be placed in those portions of structures that have less than 10 feet separation from adjoining structures. The District also requested that all street signs be posted before the beginning of home construction.

(ix) Utilities. Water and sanitary sewer will be supplied by the Silver Lake Water and Sewer District. Certificates of Water and Sewer Availability were received dated April 4, 2013. (Exhibit G.9) The Snohomish Health District has no objections to the project as long as public sewer and water is provided. The Health District recommends approval with the understanding that the existing/remaining onsite sewage systems will be abandoned by having the septic tanks pumped by a certified pumper, then having the top of the tanks removed or destroyed and the voids filled and also that any existing water wells be decommissioned in accordance with WAC 173-160-381. (Exhibit G.4) The Snohomish County Public Utility District provided correspondence dated March 22, 2013 indicating that it can provide electrical service for the project. (Exhibit G.5)

(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 Planned Residential Development Code, as discussed below.

C. Planned Residential Development Approval. (Chapter 30.42B SCC)

In addition to meeting the requirements of the County's subdivision regulations, the Applicant is seeking to develop a Planned Residential Development (PRD), and must meet the additional requirements of Chapter 30.42B SCC.

(i) Unit Yield (SCC 30.42B.040) PDS determined that the Net Development Area is 86,880 square feet yielding 12.07 units under the 7200 square foot lot size minimum. Since there are no critical areas or buffers, there is no bonus under SCC 30.42B.040(2)(c). Therefore, the total unit yield under SCC 30.42B.040(2)(d) is 24 units. The Applicant has proposed 14 units.

In the R-7200 zone, the maximum number of dwelling units allowed is reduced so that the maximum net density does not exceed nine (9) dwelling units per net acre. The net density for the subject application is 8.27 du/acre. Accordingly, the requirement has been met.

(ii) Design Criteria (SCC 30.42B.100) The proposed project has been reviewed by PDS and was found to meet the requirements of the applicable zoning regulations. This PRD is accompanied by an application for a preliminary subdivision and the Applicant has appropriately proposed the construction of single-family detached residential units in the R - 7200 zone.

(a) Open Space. A minimum of twenty percent of the gross site area or 17,376 square feet of open space is required. The total open space provided is 17,377 square feet which meets the requirement. Total open space will be permanently established in clearly designated separate tracts. The tracts in this development will be owned by all lot owners in accordance with SCC 30.42B.115(1)(e)(iii). Required covenants, conditions and restrictions will be recorded to provide for maintenance of the total open space in a manner which will assure its continued use as approved.

(b) Usable Open Space. Total open space must contain usable space to be developed for active and/or passive recreation purposes in the amount of 600 square feet per dwelling unit. The minimum requirement in this case is 12 units x 600 = 7,200

square feet and the Applicant has provided 10,762 square feet of the open space as usable open space. Forty percent (2880 square feet) of the required usable open space must be located in a single open space tract or permanent easement and this is provided since Tract 999 contains 5,124 square feet of usable open space. No areas of usable open space are less than 20 feet wide as required by SCC 30.42B.115(2)(d), except for segments containing trails. Usable open space must be accessed by all-weather pedestrian pathways and/or sidewalks from all lots and dwellings within the PRD. SCC 30.42B.115(2)(e). The proposal complies with these provisions.

(c) Active Recreation Uses. Thirty percent of the required useable open space is to be developed for active recreation uses. Based upon the useable open space provided of 10,762 square feet, 3,229 square feet of active recreation area is required. The Applicant proposes 5,124 square feet of active recreation area. The open play area and play structure comprise the majority of the active recreation spaces. The areas proposed for active recreation uses also meet the maximum slope criteria of less than 6 percent.

(d) Landscaping. All planned residential developments must meet the applicable tree retention and landscaping requirements in chapter 30.25 SCC. SCC 30.25.036 contains additional landscaping requirements for planned residential developments (PRDs).

(1) Site Perimeter Landscaping. Site perimeter landscaping is required and must be established as a tract or easement along any property boundary of a PRD where adjacent property is currently zoned or designated for single-family residential use. The landscaping depicted on Exhibit B.3 complies with this requirement.

(2) Parking Lot Landscaping. Landscaping has been provided that complies with the criteria for parking lot landscaping as shown on the landscape plans (see Exhibit B.3).

(e) Tree Retention and Replacement. The Applicant has submitted a conceptual tree plan (Exhibit B.3) that provides replacement trees at the rates required by SCC 30.25.016(3). A total of 51 significant trees will be removed. Eighty two (82) new trees are proposed to be planted in perimeter and parking lot landscaping areas and open space tracts.

(f) Roads, Access, Circulation, Pedestrian Facilities and Parking. In a PRD, roads, access, circulation, and pedestrian facilities are to be provided pursuant to Chapter 30.24 SCC. This PRD has been designed to provide adequate road access, connection and circulation to minimize traffic congestion, provide connection to adjoining neighborhoods where feasible, ensure adequate utility services, and provide emergency vehicle access. The configuration and design of the roads and access facilities in this development have been reviewed extensively and have been found to comply with Chapter 30.24 SCC, Chapter 30.66B SCC, Chapter 30.53A SCC, and the Engineering Design and Development Standards (EDDS).

Access to all dwelling units with the PRD will be by public road.

The County Engineer has determined the project provides adequate connection to county roads. Due to existing plat configurations and critical area constraints, road connectivity to other roads was not feasible.

The PRD has been designed to provide adequate and safe pedestrian access to and circulation within the development by sidewalks and trails.

The PRD has been designed to provide parking as required by Chapter 30.26 SCC. The code requires two spaces per dwelling unit plus ½ space per dwelling unit for guest parking. Two spaces per single-family dwelling unit (located in each home's garage) are proposed. Two additional parking spaces for guests are proposed for each dwelling unit.

(g) Bulk Requirements. PDS determined that the proposed PRD site plan complies with the dimensional standards within Table 1 of SCC 30.42B.145 for single-family residential development, including lot width, lot area, setbacks and lot coverage. The Applicant has demonstrated that all lots meet the bulk requirements.

(h) Specific Housing Types. The Applicant proposes single-family residential structures for this development. The development plans indicate variation in modulation of the front setbacks and building envelopes of the proposed residences. Typical floor plans and street elevation drawings submitted (see Exhibit A.4) will provide for a visually diversified streetscape as shown in the plans. The use of a variety of floor plans, elevations, and product types provide the modulation and variation prescribed. No portion of any building or appurtenance shall project into any open space. A condition will be imposed on the final plat to insure that this requirement is carried over into the building permit stage.

7. 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, subdivision and PRD applications pursuant to Chapters 30.42A, 30.41A, 30.42B and 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 all other relevant facts, including sidewalks and other planning features including safe walking conditions for students

The Examiner concludes that if the conditions of approval established herein are complied with, 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 Silver Lake Water and Sewer 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. Based on Finding of Fact 6.C. and a review of the code requirements for Planned Residential Developments (Chapter 30.42B SCC), the Examiner concludes that the development as designed meets the design and performance standards of the PRD regulations and the Official Site Plan should be approved.
7. The Examiner concludes that adequate public services exist to serve this proposal.
8. If approved with the recommended conditions, the proposal will make adequate provisions for the public health, safety, and general welfare.
9. 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** and **PLANNED RESIDENTIAL DEVELOPMENT** is hereby **GRANTED** subject to the following **CONDITIONS**:

CONDITIONS

- A. The Preliminary Plat and PRD Official Site Plan received by PDS on October 4, 2013 (Exhibit B.1) shall be the approved plat configuration and PRD Site Plan. Changes to the approved preliminary plat are governed by SCC 30.41A.330. Changes to the PRD Official Site Plan are governed by SCC 30.42B.220.

- 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, tree retention/replacement and recreational facilities 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 for perimeter, parking lot and open space treatment.
 - 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).
 - iv. PRD covenants, deeds and homeowners' association bylaws and other documents shall have been submitted to and approved by PDS guaranteeing maintenance of open space, community facilities, private roads and drives and all other commonly-owned and operated property. The documents shall have been reviewed by and accompanied by a certificate from an attorney that they comply with Chapter 30.42B SCC requirements prior to approval by PDS. To ensure permanent, ongoing maintenance of landscape areas, landscape maintenance covenants shall be prepared by the Applicant and submitted together with documents otherwise required for maintenance of site improvements pursuant to SCC 30.42B.250.
- 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.

iv. Structures shall be designed and constructed such that secondary egress windows from upper level rooms are not placed in those portions of structures that have less than 10 feet separation from adjoining structures.

v. All street signs shall be posted prior to the beginning of home construction.

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:

\$1906.70 per single-family building permit (to total \$22,880.40) for mitigation of impacts on County roads paid to the County.

\$1,555.40 per single-family building permit (to total \$18,664.80) for mitigation of impacts on City streets for the City of Mill Creek paid to the City. Proof of payment of the above amount shall be provided to the County.

\$1,431.91 per single-family building permit (to total \$17,182.94) 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. Payment of mitigation for impacts on county roads is due in accordance with the payment timing provisions of Chapter 30.66B SCC. 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 Nakeeta Beach park and recreation impact mitigation fee area of the County parks system in accordance with SCC 30.66A which requires payment of \$1,244.49 for each new single-family residential unit to be paid prior to building permit issuance unless payment is deferred as provided by SCC 30.66A.020(4). If any building permit is not issued within five years after this subdivision application was 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 Everett School District No. 2 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 parcel. Lot 1 shall receive credit."

iv. "All open space shall be protected as open space in perpetuity. Use of the open space tracts within this subdivision is restricted to those uses approved for the planned residential development, to include open play areas, picnic areas, recreation trail system, viewing platform, drainage facilities, benches and required landscape improvements as shown on the approved site plan and the approved landscape plan. Covenants, conditions and restrictions as recorded with the plat, and as may be amended in the future, shall include provisions for the continuing preservation and maintenance of the uses, facilities and landscaping within the open space as approved and constructed."

- v. "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."
- vi. "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 five-foot (5') right-of-way dedication along the property's frontage on Sunset Road.
- F. Prior to recording of the final plat:
 - i. The new public road shall have been constructed to the satisfaction of DPW.
 - ii. Urban standard frontage improvements shall have been constructed along the property's frontage on Sunset Road 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 public road system for Yorkshire (approved under PFN 05-126766 with a minor revision under PFN 13-102329) shall have been completed and accepted for maintenance by the County.
 - iv. An easement shall have been recorded providing an easement in the plat of Yorkshire for the construction, operation and maintenance of the drainage facility serving the subject property, as depicted on Exhibit B.1.
 - v. The administrative site plan required by Chapter 30.23A SCC (Urban Residential Design Standards) shall be approved.
 - vi. Documentation demonstrating that any existing on-site 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.
 - vii. Documentation demonstrating that any existing on-site water wells have been decommissioned in accordance with WAC 173-160-381 shall be provided to the PDS inspector and to the Snohomish Health District.
 - viii. 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.
 - ix. A bond or other guarantee of performance shall have been submitted to and accepted by PDS to assure compliance with the provisions of SCC 30.42B.210(3).

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 5th day of November, 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 November 15, 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]. The petitioner should file with the Office of the Hearing Examiner an affidavit of mailing or other proof of service at the time the petition for reconsideration is filed.

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 is discovered which could not reasonably have been produced at the open record hearing and which is material to the decision; 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 November 19, 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: Robert Pemberton

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
13-102333-SD YORKSHIRE II
HEARING: OCT 15, 2013
TIME: 2:00 PM
13-102333-sd

KLN CONSTRUCTION INC
CHER ANDERSON
19000 33RD AVE W, SUITE 200
LYNNWOOD WA 98036

SNO CO PLANNING & DEV/LAND USE
BOB PEMBERTON / WHEELER / ANN
GOETZ
3000 ROCKEFELLER AVE #604
EVERETT WA 98201

BEVERLEE TULLY
17420 SUNSET RD
BOTHELL WA 98012

SNO CO DEPT OF PUBLIC WORKS
COUNTY ENGINEER
3000 ROCKEFELLER AVE #607
EVERETT WA 98201

WA ST DEPT OF TRANSPORTATION
SCOTT RODMAN
PO BOX 330310
SEATTLE WA 98133-9710

SNOHOMISH HEALTH DISTRICT
BRUCE STRAUGHN
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ELISABETH TOBIN
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CHRISTI AMRINE
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