



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

June 1, 2009

Ordinance 16533

Proposed No. 2009-0022.3

Sponsors Patterson

1 AN ORDINANCE concurring with the recommendation of
2 the hearing examiner to approve, subject to conditions, the
3 application for public benefit rating system assessed
4 valuation for open space submitted by Richard and Bonnie
5 Landen for property located at 22612, 22618 and 22820 –
6 148th Avenue SE, Kent, WA 98042, designated department
7 of natural resources and parks, water and land resources
8 division file no. E08CT057.

9
10 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

11 SECTION 1. This ordinance does hereby adopt and incorporate herein as its
12 findings and conclusions the findings and conclusions contained in the revised report and
13 recommendation of the hearing examiner dated May 11, 2009, to approve subject to
14 conditions, the application for public benefit rating system assessed valuation for open
15 space submitted by Richard and Bonnie Landen for property located at 22612, 22618 and
16 22820 – 148th Avenue SE, Kent, WA 98042, designated department of natural resources
17 and parks, water and land resources division file no. E08CT057, and the council does

18 hereby adopt as its action the recommendation or recommendations contained in the
19 report.

20

Ordinance 16533 was introduced on 1/26/2009 and passed by the Metropolitan King
County Council on 6/1/2009, by the following vote:

Yes: 8 - Mr. Constantine, Mr. Ferguson, Ms. Hague, Ms. Lambert, Mr. von
Reichbauer, Mr. Gossett, Mr. Phillips and Ms. Patterson

No: 0

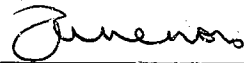
Excused: 1 - Mr. Dunn

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON



Dow Constantine, Chair

ATTEST:



Anne Noris, Clerk of the Council

Attachments A. Hearing Examiner Report dated May 11, 2009

May 11, 2009

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

400 Yesler Avenue, Room 404
Seattle, Washington 98104
Telephone (206) 296-4660
Facsimile (206) 296-1654
Email: hearingexaminer@kingcounty.gov

**REVISED REPORT AND RECOMMENDATION TO THE METROPOLITAN KING COUNTY
COUNCIL (supersedes March 5, 2009 Report and Recommendation)**

SUBJECT: Department of Natural Resources & Parks (DNRP), Water and Land Resources Division,
file no. **E08CT057**
Proposed Ordinance No. **2009-0022**

Open Space Taxation (Public Benefit Rating System; PBRs)
Application of

RICHARD & BONNIE LANDEN
22820 -148th Avenue SE
Kent, Washington 98042

Location of Property: 22612, 22618 and 22820 – 148th Avenue SE
Kent, Washington

SUMMARY OF RECOMMENDATIONS:

Department's Preliminary:	Approve 18.26 acres for 20% of market value
Department's Final:	Approve 18.26 acres for 20% of market value
Examiner:	Approve 18.26 acres for 20% of market value

PRELIMINARY REPORT:

The Department of Natural Resources & Parks, Water and Land Resources Division Report on item no. E08CT057 was received by the Examiner on February 12, 2009.

PUBLIC HEARING:

After reviewing the report and examining available information on file with the application, the Examiner conducted a public hearing on the application as follows:

The hearing on item no. E08CT057 was held by the Examiner on February 25, 2009, in the Hearing

Examiner's Conference Room, 400 Yesler Way, Room 404, Seattle, Washington. Following issuance of the Hearing Examiner's recommendation, the Applicants filed an appeal with the King County Council. The Hearing Examiner requested that the appeal be stayed and reopened the Examiner hearing on April 15, 2009, to allow for discussion and clarification of the appeal issues. The reopened hearing was closed on April 15, 2009.

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & RECOMMENDATION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. General Information:

Owner: Richard & Bonnie Landen

Location: 22820 – 148th Avenue SE

PBRS categories requested: **Open space resources**
 Aquifer protection area
 Farm and agricultural conservation land
 Forest stewardship land
 Rural open space
 Significant wildlife or salmonid habitat
 Special animal site
 Watershed protection area
Bonus category
 Additional surface water quality buffer

Categories recommended: **Open space resources**
 Farm and agricultural conservation land (contingent)
 Forest stewardship land
 Rural open space
 Significant wildlife or salmonid habitat
 Surface water quality buffer
Bonus category
 Additional surface water quality buffer

STR:	NW 14-22-05		
Zoning:	RA-5		
Parcel no.:	142205-9006	142205-9050	142205-9179
Total acreage:	10.38	6.12	4.89
Recommended PBRS:	8.35	5.13	4.78

(The land area recommended for PBRS enrollment is the entire parcel less the excluded area, which is what has been calculated by DNRP. In the event the County Assessor's official parcel

size is revised, the PBRs acreage shall be administratively adjusted to reflect that change.)

2. Except as modified herein, the facts set forth in the King County Department of Natural Resources & Parks, Water and Land Resources Division, Preliminary Report and testimony for the February 25, 2009, public hearing and April 15, 2009, reopened hearing are found correct and are incorporated herein by reference. Copies of the department report will be provided with the copies of this report submitted to the Metropolitan King County Council.
3. Timely application was made to King County for PBRs current use valuation of the property to begin in 2010. Notice of the application was given as required by law.
4. Page 1, section A.5 of the DNRP staff report was amended to include the farm and agricultural open space category under qualifying open space resources; and on page 5, the first sentence following the second bullet should read, “The property is traditional farm land that has not been...” rather than “Although credit for this category was not requested, the property is traditional...” (Based on the seeming probability of qualification under this category, the award is recommended to be contingent rather than conditional, making the immediate total point award 30 rather than 25. See next Finding.)
5. Credit for the farm and agricultural conservation land category is contingent upon receipt of a King Conservation District-approved farm management plan by August 1, 2009. The plan must address the control and removal of invasive plants in the property’s farmland areas (the areas outlined in green on Exhibit no. 4) in order for some or all of the farmland to be eligible for enrollment. Control and removal in these areas should be addressed within three years of enrollment or such acreage will be subject to removal from the program. Failure to qualify under this category would reduce the total point award by 5 points and decrease the enrolling acreage but would have no direct effect on the current use valuation for the enrolled portion of the property.
6. The Applicants state that the three year timeline for invasives removal on the farm portions is very tight and burdensome, and that they feel the counterpart ten-year timeline for invasives removal in the forest areas of the property in their County-approved forest stewardship plan is more reasonable.
7. DNRP responded by noting that:
 - A. One of the basic intentions of open space preservation under the PBRs program is that enrolled areas be vegetated with native species, not invasives, in order to provide the open space values promoted and rewarded by the PBRs program.
 - B. In order to qualify under the PBRs program, invasives must be removed so that “native vegetation” is predominant and maintained in enrolled properties.¹

¹ “Except as otherwise provided in this chapter, the following properties or areas are not eligible for open space classification: ... 4. Any portion of a property that is dominated by or whose resource value is compromised by invasive species, unless an approved and implemented restoration, rural stewardship or forest stewardship plan has been provided and is being implemented.” [KCC 20.36.190.E]

- C. The three-year schedule is consistent with a topically relevant state law governing forestry replanting (citing RCW 76.09.070).
- D. Based in part on input from other DNRP staff including professional foresters, a three-year window for restoration has long been concluded to be both reasonable and sufficiently effective to meet PBRS program requirements of native vegetation. (The discrepancy between the timeline approaches to the farmland and the forest land is explained by DNRP as due to the forest land being under a programmed management approach.)

(Also see DNRP communication, Exhibit no. 20, for greater detail of its position.)

- 8. The Examiner concurs with DNRP's assessment of the farm area invasive species removal requirement in this case, not only from a substantive standpoint but from one of deference as well. Absent clear error in DNRP's interpretation of the program and pertinent code regulations, deference should be accorded to its interpretation under KCC 20.36.190.B.3 and also under Washington case law. [*Mall, Inc. v. City of Seattle*, 108 Wn.2d 369, 385, 739 P.2d 668 (1987)] The Examiner shall affirm and incorporate DNRP's recommendation as expressed below.
- 9. Subject to the above-noted contingency and the additional condition of approval, the property contains priority open space resources and is eligible for a total award of 30 points under the King County Public Benefit Rating System. The resulting current use valuation therefore would be 20% of market value for 18.26 acres of the property.

CONCLUSION:

- 1. Subject to the above-noted contingency and the additional condition, approval of current use valuation of 20% of market value for 18.26 acres of the property pursuant to the Public Benefit Rating System adopted by Chapter 20.36 KCC would be consistent with the purposes and intent of King County to maintain, preserve, conserve and otherwise continue in existence adequate open space lands and to assure the use and enjoyment of natural resources and scenic beauty for the economic and social well-being of King County and its citizens.

RECOMMENDATION:

APPROVE current use valuation of 20% of market value for 18.26 acres of the property, subject to the conditions recommended in the Department of Natural Resources & Parks report for the February 25, 2009, and April 15, 2009, public hearings, the above-noted contingency and the following additional condition of approval:

- A. Enrollment of the farm acreage portions of the site is subject to the required control and removal of invasive species on those portions within three years of enrollment. This condition shall control over the more permissive invasive species removal language in recommended condition no. 7 of the DNRP report. The control and removal shall be set forth in a restoration plan component incorporated in the pending farm management plan, subject to DNRP plan approval. The control and removal shall be implemented and

completed over the time period established in the restoration plan. Failure to meet this condition will subject such areas of the property to disenrollment from the PBRs program.

Current use valuation shall be subject to all terms and conditions of RCW Chapter 84.34 and KCC Chapter 20.36, as may be amended from time to time, and all regulations and rules duly adopted to implement state law and county ordinances pertaining to current use valuation.

RECOMMENDED May 11, 2009.

Peter T. Donahue
King County Hearing Examiner

**NOTICE OF RIGHT TO APPEAL
AND ADDITIONAL ACTION REQUIRED**

In order to appeal the recommendation of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$250.00 (check payable to King County Office of Finance) **on or before May 26, 2009**. If a notice of appeal is filed, the original and 6 copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council **on or before June 1, 2009**. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1025, King County Courthouse, 516 3rd Avenue, Seattle, Washington 98104, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within 14 days calendar days of the date of this report, or if a written appeal statement and argument are not filed within 21 calendar days of the date of this report, the Clerk of the Council shall place a proposed ordinance which implements the Examiner's recommended action on the agenda of the next available Council meeting. At that meeting, the Council may adopt the Examiner's recommendation, may defer action, may refer the matter to a Council committee, or may remand to the Examiner for further hearing or further consideration.

Action of the Council is final. The action of the Council on a recommendation of the Examiner shall be final and conclusive unless within twenty-one (21) days from the date of the action an aggrieved party or person applies for a writ of certiorari from the Superior Court in and for the County of King, State of Washington, for the purpose of review of the action taken.

MINUTES OF THE FEBRUARY 25 AND APRIL 15, 2009 PUBLIC HEARINGS ON DEPARTMENT OF NATURAL RESOURCES & PARKS FILE NO. E08CT057:

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing and representing the Department was Ted Sullivan. There were no other participants in this hearing.

The following exhibits were offered and entered into the hearing record:

- Exhibit No. 1 *Not submitted*
- Exhibit No. 2 *Not submitted*
- Exhibit No. 3 *Not submitted*
- Exhibit No. 4 DNRP Preliminary Report to the Hearing Examiner
- Exhibit No. 5 Affidavit of Publication
- Exhibit No. 6 Notice of hearing from the Hearing Examiner's Office
- Exhibit No. 7 Notice of hearing from the PBRS/Timber program
- Exhibit No. 8 Legal notice and introductory ordinance to County Council
- Exhibit No. 9 Application signed/notarized
- Exhibit No. 9a Letter from Applicant re: pursuing Farm Management Plan option
- Exhibit No. 10 Assessor's map
- Exhibit No. 11 King County Assessor's database printout
- Exhibit No. 12 Arcview and orthophoto/aerial map
- Exhibit No. 13 Letter to neighbors re: notification of PBRS application
- Exhibit No. 14 Letter to applicant re: received application and approval schedule
- Exhibit No. 15 Forest Stewardship Plan
- Exhibit No. 16 *Reserved for future submission of* legal description of area to be enrolled
- Exhibit No. 17 *Reserved for future submission of* Farm Management Plan
- Exhibit No. 18 Applicant's statement of appeal to the King County Council
- Exhibit No. 19 Notice of reopened hearing from the Hearing Examiner's Office
- Exhibit No. 20 Email to Applicant re: reopened hearing and PBRS program criteria

PTD:mls
E08CT057 RPT
Attachment

This document is provided for information only. DO NOT complete and return. A completed copy will be furnished to the Applicant(s) by the Office of the Hearing Examiner after the application has been approved by the Metropolitan King County Council.

OPEN SPACE TAXATION AGREEMENT

Chapter 84.34 RCW

(To be used for "Open Space", "Timber Land" Classification or "Reclassification" Only)

Property Owner: XXX
Property Address: XXX
Granting Authority: King County, Washington
Legal Description:

Assessor's Property Tax Parcel or Account Number: XXX
Department of Natural Resources & Parks File Number: E0XCTXXX
This agreement is between XXX hereinafter called the "Owner", and
King County, Washington hereinafter called the "Granting Authority".

Whereas the owner of the above described real property having made application for classification of that property under the provisions of Chapter 84.34 RCW. And whereas, both the owner and granting authority agree to limit the use of said property, recognizing that such land has substantial public value as open space and that the preservation of such land constitutes an important physical, social, esthetic, and economic asset to the public, and both parties agree that the classification of the property during the life of this agreement shall be for:

Open Space Land/Timber Land

Now, therefore, the parties, in consideration of the mutual covenants and conditions set forth herein, do agree as follows:

1. During the term of this agreement, the land shall be used only in accordance with the preservation of its classified use.
2. No structures shall be erected upon such land except those directly related to, and compatible with, the classified use of the land.
3. This agreement shall be effective commencing on the date the legislative body receives the signed agreement from the property owner and shall remain in effect until the property is withdrawn or removed from classification.
4. This agreement shall apply to the parcels of land described herein and shall be binding upon the heirs, successors and assignees of the parties hereto.
5. The landowner may withdraw from this agreement if, after a period of eight years, he or she files a request to **withdraw** classification with the assessor. Two years from the date of that request the assessor shall withdraw classification from the land, and the applicable taxes and interest shall be imposed as provided in RCW 84.34.070 and 84.34.108.
6. After the effective date of this agreement, any change in use of the land, except through compliance with items (5), (7), or (9), shall be considered a **breach** of this agreement, and shall be subject to removal of classification and liable for applicable taxes, penalties, and interest as provided in RCW 84.34.080 and RCW 84.34.108.
7. A **breach** of agreement shall not have occurred and the additional tax shall not be imposed if removal of classification resulted solely from:
 - a) Transfer to a governmental entity in exchange for other land located within the State of Washington.
 - b) A taking through the exercise of the power of eminent domain, or sale or transfer to an entity having the power in anticipation of the exercise of such power and having manifested its intent in writing or by other official action.
 - c) A natural disaster such as a flood, windstorm, earthquake, or other such calamity rather than by virtue of the act of the land owner changing the use of such property.
 - d) Official action by an agency of the State of Washington or by the county or city where the land is located disallowing the present use of such land.
 - e) Transfer of land to a church when such land would qualify for exemption pursuant to RCW 84.36.020.
 - f) Acquisition of property interests by State agencies or agencies or organizations qualified under RCW 84.34.210 and 64.04.130 (see RCW 84.34.108(6)(f)).

- g) Removal of land classified as farm and agricultural land under RCW 84.34.020(2)(e).
 - h) Removal of land from classification after enactment of a statutory exemption that qualifies the land for exemption and receipt of notice from the owner to remove the land from classification.
 - i) The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120.
 - j) The creation, sale, or transfer of a fee interest or a conservation easement for the riparian open space program under RCW 76.09.040.
 - k) The sale or transfer of land within two years after the death of the owner of at least a fifty percent interest in the land if the land has been assessed and valued as forest land under chapter 84.33 RCW, or under chapter 84.34 RCW continuously since 1993. The date of death shown on the death certificate is the date used.
8. The county assessor may require an owner to submit data relevant to continuing the eligibility of any parcel of land described in this agreement.
 9. The owner may apply for reclassification as provided in Chapter 84.34 RCW.
 10. This agreement shall supersede any previous open space taxation agreement entered into for the subject property.

This agreement shall be subject to the following conditions:

See attached Hearing Examiner Report and Recommendation

It is declared that this agreement specifies the classification and conditions as provided for in Chapter 84.34 RCW and the conditions imposed by this Granting Authority. This agreement to tax according to the use of the property is not a contract and can be annulled or canceled at any time by the Legislature (RCW 84.34.070).

Granting Authority:

Dated _____

_____ King County, Washington

Council Chair

As owner(s) of the herein-described land I/we indicated by my/our signature(s) that I am/we are aware of the potential tax liability and hereby accept the classification and conditions of this agreement (must be signed by all owners).

Print Name

Signature

Date signed agreement received by Legislative Authority _____

For tax assistance, visit <http://dor.wa.gov> or call 1-800-647-7706. To inquire about the availability of this document in an alternate format for the visually impaired, please call (360) 705-6715. Teletype (TTY) users may call 1-800-451-7985.
REV 64 0022e (w) (7/27/05)