



**KING COUNTY**

1200 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

**Signature Report**

**March 30, 2009**

**Ordinance 16416**

**Proposed No.** 2008-0467.2

**Sponsors** Patterson and Constantine

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 John H. Bradley for  
5 property located at 13006 244th Avenue SE, Issaquah, WA  
6 98027, designated department of natural resources and  
7 parks, water and land resources division file no.  
8 E08CT013.

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 report and  
13 recommendation of the hearing examiner dated February 20, 2009, to approve subject to  
14 conditions, the application for public benefit rating system assessed valuation for open  
15 space submitted by John H. Bradley for property located at 13006 244th Avenue SE,  
16 Issaquah, WA 98027, designated department of natural resources and parks, water and

**Ordinance 16416**

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17 land resources division file no. E08CT013, and the council does hereby adopt as its  
18 action the recommendation or recommendations contained in the report.

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Ordinance 16416 was introduced on 8/25/2008 and passed by the Metropolitan King  
County Council on 3/30/2009, by the following vote:

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

No: 0

Excused: 1 - Mr. Phillips

KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON



Dow Constantine, Chair

ATTEST:



Anne Noris, Clerk of the Council

**Attachments**      A. Hearing Examiner Report dated February 20, 2009

February 20, 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: [hearex@metrokc.gov](mailto:hearex@metrokc.gov)

**REPORT AND RECOMMENDATION TO THE METROPOLITAN KING COUNTY COUNCIL**

**SUBJECT:** Department of Natural Resources & Parks (DNRP), Water and Land Resources Division,  
file no. **E08CT013**  
Proposed Ordinance No. **2008-0467**

Open Space Taxation (Public Benefit Rating System; PBRs)  
Application of  
**JOHN H. BRADLEY**  
13006 – 244th Avenue Southeast  
Issaquah, Washington 98027

Location of Property: 24417 Southeast 127th Street  
Issaquah, Washington

**SUMMARY OF RECOMMENDATIONS:**

Department's Preliminary:	Approve 7.19 acres for 50% of market value (with conditional allowance to 30% administratively)
Department's Final:	Approve 7.19 acres for 50% of market value (with conditional allowance to 30% administratively)
Examiner:	Approve 7.19 acres for 50% of market value (with conditional allowance to 30% administratively)

**PRELIMINARY REPORT:**

The Department of Natural Resources & Parks, Water and Land Resources Division Report on item no. E08CT013 was received by the Examiner on September 26, 2008.

**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. E08CT013 was held by the Examiner on October 8, 2008, in the Hearing

Examiner's Conference Room, 400 Yesler Way, Room 404, Seattle, Washington.

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: John H. Bradley

Location: 24417 Southeast 127th Street

PBRS categories requested: **Open space resources**  
 Active or passive recreation area  
 Buffer to public land  
 Equestrian-pedestrian trail linkage  
 Significant wildlife or salmonid habitat  
 Special animal site  
 Surface water quality buffer area  
 Watershed protection area

Categories recommended: **Open space resources**  
 Active or passive recreation area (conditional)  
 Farm and agricultural conservation land (contingent)  
 Significant wildlife or salmonid habitat

**Bonus category**  
 Public access – unlimited (conditional)

STR: NW 14-23-06  
 Zoning: RA-5  
 Parcel no.: 142306-9068  
 Total acreage: 8.27 acres  
 Recommended PBRS: 7.19 acres

(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 for the October 8, 2008, public 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.

The following changes were made to the staff report at hearing:

- A. On page 6, Bonus category, first bullet, Limited changed to Unlimited
- B. On page 6, Conclusion A, Bonus category, Limited changed to Unlimited

(Also see Finding no. 7 below.)

3. The subject property is currently enrolled in the farm and agricultural open space program. 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. The property contains priority open space resources and is eligible for a total award of 10 points under the King County Public Benefit Rating System. The resulting current use valuation therefore would be 50% of market value for 7.19 acres of the property.
5. Award under the farm and agricultural conservation land benefit category is contingent on implementation of a farm management plan produced by the King Conservation District by August 1, 2009.
6. Credit may be awarded administratively for the active or passive recreation area category if pertinent supporting documentation<sup>1</sup> is submitted. Such documentation must be received by DNRP by no later than December 1, 2009, for such administrative award to be considered.
7. At hearing, DNRP revised its recommendation regarding the public access bonus category qualification. Credit should not be awarded for the “public access- limited due to resource sensitivity” category as originally recommended by DNRP. DNRP’s assessment of the application and the nature of the property and its use was erroneous in two respects in considering award under that category. First, DNRP cited the purported “sensitivity” of equestrian use of the property. Under the PBRS program, it is not the sensitivity of property *users* that is to be considered under this category, but the “sensitive nature *of the [open space] resource*” on the property. [KCC 20.36.100.B.5.b, emphasis added] The sensitivity therefore must be a sensitivity related to the natural qualities, *i.e.*, the physical environment, of the site: flora, fauna (including species of concern, etc.), habitat, geology, hazard, aesthetic, archeology, etc.
8. Second, DNRP cited the property owner’s statement that the land is used by equestrians for training, as well as trail riding, noting that “this defined use limits the type of users, as well as provides an environment for educating riders.” This form of education is not directly and sufficiently related to any sensitive nature of the *resource*, even if one had been identified. Again, the PBRS program eligibility requirements note that with regard to the option of limiting public access because of resource sensitivity category, “access may be reasonably limited due to

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<sup>1</sup> “To be eligible as an active or passive recreation area, the facilities must be open to the general public or to specific public user groups, such as youth, senior citizens or people with disabilities. A property must be identified by the responsible agency within whose jurisdiction the property is located, as meeting the definition of an active or passive recreation area.” [KCC 20.36.100.A.1]

the sensitive nature of *the resource*, with access provided only to *appropriate* user groups. The access allowed shall generally be for an educational, scientific or research purpose. . .” [KCC 20.36.100.B.5.b, emphasis added] This eligibility language implies strongly that in order to qualify for award points while allowing only limited rather than unlimited access, “an educational, scientific or research purpose” in this context must be one that is especially valuable (for directly educational, scientific or research-related reasons) to accommodate despite (or specifically because of) the sensitive nature of the resource, not just a general recreation-oriented training or education purpose, such as the cited equestrian training, that could be accommodated generally elsewhere.

9. It is important to keep in mind that under the PBRs program, in order for a property to qualify for a bonus access point award, access must in most cases be allowed to the general public. (“For the purposes of this category, ‘public access’ means the *general public* is allowed access for uses such as, but not limited to, recreation, education or training.” [, emphasis added]) Limiting general public access is not permissible for award qualification except in specifically delineated special circumstances: a) the existence of a sensitivity of the open space resource as discussed above; b) access solely for environmental education by formal agreement; and c) seasonally limited access. In cases where no public access is allowed or access is limited to “member-only,” the program is specific that no points may be awarded under the access category.
10. In response to the above program interpretation by the Examiner at hearing, DNRP revised its recommendation to support qualification under the “public access – unlimited” category. Qualification under this category, similar to qualification of the property under the active or passive recreation category noted above, requires further documentation, in this case of general permission and of public use.<sup>2</sup> DNRP indicates that adequate documentation under this category would be provided by sufficiently persuasive letters or other documentation demonstrating use and support from past, present and future users (which must be at a level or breadth constituting “the public”), as well as documentation by the Applicant that public access is permitted. The documentation must be received by DNRP by no later than December 1, 2009, for such administrative award to be considered.
11. If credit is awarded under either or both of the above two conditional categories, the point total would increase by 5 points each, resulting in a current use valuation as low as 30% of market value.

#### CONCLUSION:

1. Approval of current use valuation of 50% of market value (or as low as 30% if approved as noted in the above Findings) for 7.19 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.

<sup>2</sup> “To be eligible for public access at one of the levels described in this category, a property owner shall demonstrate that the property is open to public access *and is used by the public.*” [KCC 20.36.100.B.5, emphasis added]

## RECOMMENDATION:

APPROVE current use valuation of 50% of market value (as low as 30% if approved as noted below) for 7.19 acres of the subject property, subject to the conditions recommended in the Department of Natural Resources & Parks report for the October 8, 2008 public hearing, the above-noted contingency and the following conditional allowances:

- A. Credit may be awarded administratively for the active or passive recreation area category as stated in Finding no. 6 above. Formal documentation must be received by DNRP by December 1, 2009 that the subject recreation facilities are open to the general public or to specific public user groups, such as youth, senior citizens or people with disabilities; and that the property has been formally identified by the responsible agency within whose jurisdiction the property is located as meeting the definition of an active or passive recreation area.
- B. Credit may be awarded administratively for the public access-unlimited bonus category as stated in Finding no. 10 above. Formal documentation must be received by DNRP by December 1, 2009 that the property is open to public access and is used by the public.

If credit is awarded under either or both of the above two conditional categories, the point total would increase by 5 points each, resulting in a current use valuation as low as 30% of market value.

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 February 20, 2009.

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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 March 6, 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 March 13, 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 3<sup>rd</sup> 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 OCTOBER 8, 2008 PUBLIC HEARING ON DEPARTMENT OF NATURAL RESOURCES & PARKS FILE NO. E08CT013:

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. 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 *Reserved for future submission of Farm Management Plan*
- Exhibit No. 15 *Reserved for future submission of legal description of area to be enrolled*
- Exhibit No. 16 Letter to applicant re: received application and approval schedule

PTD:gao  
E08CT013 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: **John H. Bradley**  
Property Address: **24417 Southeast 127th Street, Issaquah**  
Granting Authority: **King County, Washington**  
Legal Description:

Assessor's Property Tax Parcel or Account Number: **142306-9068**  
Department of Natural Resources & Parks File Number: **E08CT013**  
This agreement is between **John H. Bradley** 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**

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)