



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

June 1, 2009

Ordinance 16535

Proposed No. 2009-0128.2

Sponsors 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 Troy Roper and
5 Katherine Riffle Roper for property located at 20022 NE
6 133rd Street, Woodinville, WA 98077, designated
7 department of natural resources and parks, water and land
8 resources division file no. E08CT141.

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 May 7, 2009, to approve subject to
14 conditions, the application for public benefit rating system assessed valuation for open
15 space submitted by Troy Roper and Katherine Riffle Roper for property located at 20022
16 NE 133rd Street, Woodinville, WA 98077, designated department of natural resources
17 and parks, water and land resources division file no. E08CT141, and the council does

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

20

Ordinance 16535 was introduced on 2/23/2009 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 7, 2009

May 7, 2009

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

400 Yesler Avenue, Room 404
Seattle, Washington 98104
Telephone (206) 296-4660
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REPORT AND RECOMMENDATION TO THE METROPOLITAN KING COUNTY COUNCIL

SUBJECT: Department of Natural Resources & Parks (DNRP), Water and Land Resources Division,
file no. **E08CT141**
Proposed Ordinance No. **2009-0128**

Open Space Taxation (Public Benefit Rating System; PBRs)
Application of
TROY ROPER & KATHERINE RIFFLE ROPER
20022 NE 133rd Street
Woodinville, Washington 98077

Location of Property: 20022 NE 133rd Street
Woodinville, Washington

SUMMARY OF RECOMMENDATIONS:

Department's Preliminary:	Approve 9.25 acres for 50% of market value (contingent, with conditional allowance of minor additional area)
Department's Final:	Approve 9.25 acres for 50% of market value (contingent, with conditional allowance of minor additional area)
Examiner:	Approve 9.25 acres for 50% of market value (contingent, with conditional allowance of minor additional area)

PRELIMINARY REPORT:

The Department of Natural Resources & Parks, Water and Land Resources Division Report on item no. E08CT141 was received by the Examiner on March 31, 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. E08CT141 was held by the Examiner on April 8, 2009, 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: Troy Roper & Katherine Riffle Roper

Location: 20022 NE 133rd Street, Woodinville

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

Categories recommended: **Open space resources**
 Farm and agricultural conservation land (contingent)

STR: SW 20-26-06

Zoning: RA-5

Parcel no.: 062510-0085

Total acreage: 11.00 acres

Recommended PBRS: 9.25 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. The subject property is currently enrolled in the farm and agriculture 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.
3. 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 April 8, 2009, 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.

4. Award under the farm and agricultural conservation land category is contingent upon submittal of a King Conservation District-approved farm management plan for the property by October 1, 2009. Failure to qualify under this category will exclude the property from enrollment in the PBRS program at present due to current lack of eligibility under any other resource categories (see below findings).
5. The Applicants desire that their property be awarded qualification points under the “significant wildlife or salmonid habitat” category.
6. “For [PBRS] purposes... ”significant wildlife or salmonid habitat” means:
 - (1) an area used by animal species listed as endangered, threatened, sensitive or candidate by the Washington state Department of Fish and Wildlife or Department of Natural Resources as of the effective date of this ordinance, or used by species of local significance that are so listed by the King County Comprehensive Plan or a local jurisdiction;
 - (2) an area where the species listed in subsection A.16.a.(1). of this section are potentially found with sufficient frequency for critical ecological processes to occur such as reproduction, nesting, rearing, wintering, feeding or resting;
 - (3) a site that meets the criteria for priority habitats as defined by the Washington state Department of Fish and Wildlife that is so listed by the King County Comprehensive Plan or the local jurisdiction in which the property is located; or
 - (4) a site that meets criteria for a wildlife habitat conservation area as defined by the department or a local jurisdiction.

[KCC 20.36.100.A.16.a]

7. Qualification for award under the significant wildlife or salmonid habitat category requires that “the property...be verified by the department, or by expert determination acceptable to the department that qualified species are present or that the land fulfills the functions described in subsection A.16.a. of this section.... Property consisting mainly of disturbed or fragmented open space determined by the department as having minimal wildlife habitat significance is ineligible for this category.” [KCC 20.36.100.A.16.b]
8. The Applicants note the presence of various species of wildlife on the property, including past bald eagle presence including an unsuccessful attempt to nest in a tree¹; however, DNRP has been unable to verify such presence and the Applicants have not presented actual documentation or formal verification of the presence of any qualifying wildlife species or their use of the property. In another respect, the areas of the property cited by the Applicants as enhanced by aquatic plantings for wildlife use and supporting an increasing presence of wildlife are wetland and wetland buffer areas which are already regulated as protected open space by the critical areas regulations and therefore cannot qualify the property for award points in and of themselves. For PBRS qualification, a property must voluntarily provide qualifying open space areas over and

¹The nest fell from the tree.

any that is already provided through regulation or other encumbrance (such as a covenant, etc.). The remainder of the property (its unregulated areas) is mostly disturbed pastureland and residential homesite area which is not shown by the record to provide the wildlife presence and/or habitat qualities necessary to gain award. (Application may be made in the future to request award of credit under this category, should the wildlife and/or habitat characteristics change, such as via the possible replanting noted below, as discussed in the hearing.)

9. The Applicants also desire award under the aquifer protection area, watershed protection area, surface water quality buffer and additional surface water quality buffer categories.² The property at present does not qualify for such award under the specific PBRS criteria, as noted in detail in the next Finding, but the Applicants request that alternative consideration be granted because of the asserted unique waterflow characteristics of the site. (The property was extensively filled with spoils from construction of the adjacent Bear Creek Country Club, and such spoils were reworked and graded onsite. The result is that the property acts as a sponge of area waterflows, which then seep through wetlands and/or subsurface soils, and is asserted therefore to provide positive mitigation of runoff.)
10. While certainly laudable in its asserted runoff mitigation function, the alternative sponge-like quality of the property does not act to qualify for award points under the specific criteria of the PBRS program. There are no provisions in the program for alternative qualification. Properties must conform to the specific award criteria to gain award credit.
 - A. In order to qualify under the aquifer protection area, a property must voluntarily provide a significant area (at least one acre) of native vegetation, outside of areas already regulated to remain undisturbed (such as the onsite wetland and wetland buffer areas in the northwest corner and along the northern portions of the west boundary, which are protected by critical areas regulations). At present, the property does not contain such an area outside of the regulated areas.
 - B. For qualification under the watershed protection area category, a property must provide a significant level of native *forest* vegetation (again, outside of already-regulated areas), which the property does not.
 - C. Lastly, as already noted, in order to qualify for surface water quality buffer and additional surface water quality awards, the property must provide significant additional native vegetation buffers over and above those required by regulation in order to qualify under the pertinent award categories, and it does not at present.
 - D. In summary, as the PBRS program is currently structured, a property's runoff and soil

²Award under the watershed protection area category is given if “the enrolling forested area...consist[s] of an additional fifteen percent of forest cover beyond that required by county...regulation.” [KCC 20.36.100.A.20] The property has not been shown to qualify by providing forest cover substantially in excess of currently effective regulations. Nevertheless, award should continue to be granted based on the clearing limits of KCC 16.82.150 effective prior to their invalidation. Even though that regulatory basis of award consideration has been undercut by the invalidation, the established award structure was in part predicated on its effectiveness, and the policy principle behind the award structure remains and should be respected as intended. The principle is that forest cover is valuable for watershed protection and is eligible for PBRS award if its area is substantially (at least 15 percent) over and above the base expressed as the minimum value, whether expressed by the prior regulation or by any regulations which are currently effective.

characteristics cannot substitute for conformity with the established award criteria.

- E. As discussed in the hearing, in order to provide the areas of native vegetation necessary for the desired qualifications, the property would have to be restored/replanted with native vegetation under the auspices of a forest or rural stewardship plan or a resource restoration plan. Such replanting would have to be accomplished within three years of enrollment. It also may interfere with farming activity planned by the Applicants and may involve a significant front-end expense. The Applicants have the opportunity to apply for additional or revised PBRS qualification should they desire to pursue such replanting in the future.
11. As a final matter, the Applicants desire consideration of reducing the recommended PBRS-excluded area by rounding the sharp lobe of the cul de sac-shaped exclusion (see aerial map, Exhibit no. 4), noting that the excluded lobe area is merely mowed till. Consideration of such revision is recommended as a condition of approval, subject to DNRP approval with corresponding revision to the legal description submitted for the formal PBRS agreement (to be executed post-ordinance).
12. In summary, subject to the above-noted contingency, the property contains priority open space resources and is currently eligible for a total award of 5 points under the King County Public Benefit Rating System. The resulting current use valuation therefore would be 50% of market value for 9.25 acres of the property.

CONCLUSION:

1. Contingent upon submission of an approved farm management plan, approval of current use valuation of 50% of market value for 9.25 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 50% of market value for 9.25 acres of the subject property, subject to the conditions recommended in the Department of Natural Resources & Parks report for the April 8, 2009 public hearing, the above-noted contingency and the following additional condition of approval:

- A. DNRP shall consider a minor reduction of the excluded area depicted on the Exhibit no. 4 aerial photo by rounding the sharp lobe of the cul de sac-shaped exclusion, which shall be allowed if approved by DNRP. If DNRP approves any such revision, a correspondingly revised legal description and acreage calculation shall be submitted for the formal PBRS agreement.

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 7, 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 21, 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 May 22, 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 APRIL 8, 2009 PUBLIC HEARING ON DEPARTMENT OF NATURAL RESOURCES & PARKS FILE NO. E08CT141:

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Bill Bernstein and Ted Sullivan representing the Department and Applicants Troy Roper and Katherine Riffle Roper. 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 Letter to applicant re: received application and approval schedule
- Exhibit No. 15 *Reserved for future submission of* Forest Stewardship Plan
- Exhibit No. 16 *Reserved for future submission of* legal description of area to be enrolled
- Exhibit No. 17 Wetland delineation from Altmann Oliver Associates, LLC
- Exhibit No. 18 Letter from DDES to landowner re: wetland delineation

PTD:mls
E08CT141 RPT
Attachment

- 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.
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