

KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

April 9, 2002

Ordinance 14334

Proposed No. 2002-0044.2

Sponsors Sullivan

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 Stephen E. DiBiase
5 for property located at 24509 Southeast 238th Street, Maple
6 Valley, designated department of natural resources and
7 parks, water and land resources division file no.
8 E01CT051.

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11 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

12 SECTION 1. This ordinance does hereby adopt and incorporate herein as its
13 findings and conclusions the findings and conclusions contained in the report and
14 recommendation of the hearing examiner dated March 18, 2002, to approve subject to
15 conditions, the application for public benefit rating system assessed valuation for open
16 space submitted by Stephen E. DiBiase for property located at 24509 Southeast 238th
17 Street, Maple Valley, designated department of natural resources and parks, water and

Ordinance 14334

18 land resources division file no. E01CT051, and the council does hereby adopt as its
19 action the recommendation or recommendations contained in the report.

20

Ordinance 14334 was introduced on 1/28/2002 and passed by the Metropolitan King
County Council on 4/8/2002, by the following vote:

Yes: 12 - Ms. Sullivan, Ms. Edmonds, Mr. von Reichbauer, Ms. Lambert, Mr.
Phillips, Mr. Pelz, Mr. Constantine, Mr. Pullen, Mr. Gossett, Ms. Hague, Mr.
Irons and Ms. Patterson

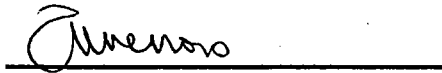
No: 0

Excused: 1 - Mr. McKenna

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON


Cynthia Sullivan, Chair

ATTEST:



Anne Noris, Clerk of the Council

Attachments A. Hearing Examiner Report dated March 18, 2002

March 18, 2002

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

850 Union Bank of California Building
900 Fourth Avenue
Seattle, Washington 98164
Telephone (206) 296-4660
Facsimile (206) 296-1654

REPORT AND RECOMMENDATION TO THE METROPOLITAN KING COUNTY COUNCIL

SUBJECT: Department of Natural Resources and Parks, Water and Land Resources Division
File No. **E01CT051**
Proposed Ordinance No. **2002-0044**

Open Space Taxation (Public Benefit Rating System)
Application of
Stephen E. DiBiase
151-B Taylor Northwest
Renton, WA 98055

Location of Property: 24509 Southeast 238th Street
Maple Valley, Washington

SUMMARY OF RECOMMENDATIONS:

Department's Preliminary:	Approve 5.17 acres for 30% of market value
Department's Final:	Approve 5.17 acres for 30% of market value
Examiner:	Approve 5.17 acres for 30% of market value

PRELIMINARY REPORT:

The Department of Natural Resources, Water and Land Resources Division Report on Item No. E01CT051 was received by the Examiner on February 20, 2002.

PUBLIC HEARING:

After reviewing the Department of Natural Resources and Parks, Water and Land Resources Division Report and examining available information on file with the application, the Examiner conducted a public hearing on the subject as follows:

The hearing on Item No. E01CT051 was opened by the Examiner at 9:35 a.m., March 6, 2002, in the Eighth Floor Conference Room, Union Bank of California Building, 900 Fourth Avenue, Seattle,

Washington, and closed at 11:20 a.m.

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: See "SUBJECT" above
 Location: See "SUBJECT" above
 Zoning: RA5
 STR: SW-SW-14-22-06

Acreage:
 Property Total: 5.35 acres
 Requested for Open Space: 5.35 acres
 Recommended Open Space: 5.17 acres*

Subject of Request:

Priority Resources:

HIGH PRIORITY RESOURCES

- Active or passive recreation area
- Property under option for purchase as park, recreation, open space land or capital improvement project mitigation site
- Aquifer protection area
- Scenic resource, viewpoint, or view corridor
- Surface water quality buffer area
- Open space close to urban or growth area
- Significant plant, wildlife, or salmonid habitat area
- Forest stewardship land

MEDIUM PRIORITY RESOURCE

- Public lands or right of way buffer
- Special animal site

BONUS RESOURCES

- Resource restoration
- Bonus surface water quality buffer

PUBLIC ACCESS

- Limited Access – Due to Resource Sensitivity

2. Property under option for purchase. Applicant DiBiase seeks five PBRs points for “property under option for purchase as park, recreation, open space land or capital improvement project mitigation site.” The Department of Natural Resources and Parks (DNRP) recommends against

* Recommended acreage excludes the calculated area of an existing paved road.

granting credit for that category, indicating that Applicant DiBiase is exploring the possibility of selling/transferring development rights (TDRs) from the property.

The Applicant also indicates that he would be willing to provide an option for purchase, to be recorded with King County Department of Records and Elections, in order to make the property eligible for the “property under option” 5 point PBRS benefit. DNRP responds that it is insufficient merely to record an offer for option; an agency must identify the land for purchase as park, recreation or other open space purpose. The recorded option must be agreed to between the property owner and the appropriate agency. Pages 4 and 5, Public Benefit Rating System, Resource Information. The hearing record contains no indication that any agency has designated the subject property for any particular public purpose or that any agency has effected an option agreement with the Applicant. The Applicant asks for “provisional” approval of this category in order to provide him additional time to negotiate an option agreement.

3. **Active or passive recreation area.** The Department recommends against granting PBRS credit for this category. The property is adjacent to the Cedar River. The Applicant would like to provide access to the river for appropriate individuals, such as kayakers, fishermen and swimmers in order to obtain PBRS credit for recreation. The Applicant concedes that it is difficult to access the river through this property at the present time. However, he argues, the river banks are not too steep to allow access and the brush and understory could be cleared away in order to develop a trail. These additional findings apply:
 - a. Several property owners hold an interest in the private road which crosses the subject property and which would necessarily be an integral part of any public access scheme. The record contains no indication that other property owners who share an interest in that road would grant permission. The Applicant questions whether their permission is required. This issue remains unresolved and would require either professional legal analysis or signed permission from the other property owners to resolve.
 - b. The area of concern lies within a 100 foot wide sensitive areas buffer. A grading and clearing permit is required to remove *any* vegetation within a sensitive areas buffer. The hearing record contains no evidence that the Applicant has sought or is seeking a grading permit, either to develop a trail, to modify the river bank or to remediate the unauthorized tree cutting that has occurred along the shoreline.
 - c. No provision or agreement has been effected with any user group. However, the Applicant states that he has talked to representatives of a kayak club who like the property as a potential Cedar River access location.
 - d. The recreational access contemplated by the Applicant may also require parking—another conflict with the sensitive areas protective buffer.
4. **Scenic resource, viewpoint or view corridor.** The Department recommends against granting PBRS credit for the “scenic resource, viewpoint or view corridor” category. The Applicant argues that a panoramic view of Mt. Rainier is attainable from a 30-foot wide strip of the subject property near Southeast 235th Street and that the Cedar River may be viewed from the subject property. In addition, he argues that the view of the subject property from the nearby trail bridge is also a scenic

resource.

DNRP advises us that neither the road nor the subject property are *designated* as a view corridor. Nor is the property open to the general public. The PBRS resource information document governing the PBRS evaluation system indicates that an area must contain ten or more acres of natural features which are visually significant. The subject property contains only 5.35 acres. Viewpoints must provide unlimited public access identified by a permanent sign. These circumstances do not exist on the subject property and no plan to provide them has been filed with this application.

5. **Scenic plant, wildlife or salmonid habitat area.** The Applicant seeks PBRS credit for having a significant wildlife, plant or salmonid habitat area. The Department recommends against granting credit for this category, observing that, at this time, the forest lacks the diversity and maturity to be habitat for significant species. The absence of such species on the property is not contested in the hearing record. Although the Cedar River provides salmonid habitat, the available protective sensitive area buffer is less than the 100 foot width required by KCC 20.24.
6. **Forest stewardship land; resource restoration.** There is evidence of tree cutting along the Cedar River shoreline within this property. The Applicant says that some of the tree loss along the shoreline is due to a 1996 slide. More recent tree cutting, he testifies, is the result of vandalism. He was unaware of the tree cutting (mostly alder) until the matter was brought to his attention by DNRP staff. He plans to replant and has already purchased trees to do so, although he has not consulted any agency or expert regarding appropriate or preferred species.

DNRP has not received a resource restoration plan. Further, tree cutting within a sensitive areas buffer, as in this case, is a violation of both KCC 21A.24 (sensitive areas) and KCC 16.82 (grading and clearing). Pursuant to KCC Title 23 (code enforcement) the property owner is responsible for restoration, particularly when the person(s) who cut the trees is unidentified. It is highly questionable whether credit for resource restoration could be granted to an owner who is, in fact, merely correcting a code violation.

Because the property contains more than five acres of contiguous forest and is classified RA, "forest stewardship land" credit is potentially possible. The Department indicates that, if a forest stewardship plan is received by the Office of Open Space and approved by a DNRP forester, then credit for this category would be appropriate. The Department reminds us that, in order to qualify for the 2003 tax assessment year, it would need to receive the forest stewardship plan no later than October 1, 2002 in a form sufficient to be approved by November 1, 2002.

Resource restoration credit and forest stewardship credit are not coincidentally awarded. An applicant must request one or the other.

8. **Revised DNRP recommendation.** The Department recommends allowing Applicant DiBiase until April 3, 2003 to file a restoration plan or until October 1, 2002, to file a forest stewardship plan. The Department also expressed willingness to provide the Applicant until October 1, 2002 to obtain the agreement of the other property owners who are beneficiaries of the joint use easement road to accept public use of that road; and, to obtain an option for purchase agreement with an appropriate public agency. In so doing, the Department observes that pursuing either resource

restoration or forest stewardship would work against the “public access” credit category.

9. **Department report adopted.** Except as modified herein, the facts set forth in the King County Department of Natural Resources and Parks, Water and Land Resources Division Preliminary Report to the King County Hearing Examiner for the March 6 2002, public hearing are found to be correct and are incorporated herein by this reference. Copies of the said Report will be attached to the copies of this Report submitted to the King County Council.

CONCLUSIONS:

1. Approval of current use valuation for 5.17 acres of the subject property, pursuant to the Public Benefit Rating System adopted by King County Ordinance No. 10511, 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.
2. Timely application has been made to King County for the current use valuation of the subject property to begin in 2003. Notice of said application was given in the manner required by law.
3. The Department’s willingness to stretch out this review until Spring, 2003 is generous, but not warranted by the facts of record. Restoration plan credit should not be granted when the objective is to correct a sensitive areas code violation. The restoration plan would necessarily require a clearing permit and DDES Site Development Services review, something which has not even been contemplated yet, let alone begun. DDES review is required because the proposed restoration would remediate a code violation and would require a grading and clearing permit.
4. Similarly, there is no cause for extending this review to October for the purpose of obtaining public access permission from other private easement road beneficiaries when the hearing record contains no evidence that the recreational access intended by the Applicant would receive DDES grading and clearing approval. The hearing record shows that, with regard to the “public access” and “resource restoration” PBRs credit categories the application is either unqualified or premature.
5. The “option for purchase” credit, as presented in this review, is not so complicated as the other issues. Either the Applicant will be able to obtain and record an option agreement from a public agency by the recommended October 1, 2002 deadline or it will not. For that reason, the recommendation below contains an opportunity for the Applicant to demonstrate compliance with the “option for purchase” PBRs category.
6. The forest stewardship plan issue also is less complicated. Either the Applicant can prepare and commit to a forest stewardship plan that DNRP will approve or he cannot. The October 1, 2002 deadline is sufficient to assure credit on the 2003 tax roll if he is successful.
7. The subject property contains priority open space resources and is entitled to bonus points pursuant to the King County Public Benefit Rating System, which justify a total award of 18 points. The resulting current use value is 30 % of market value for 5.17 acres of the subject

property.

RECOMMENDATION:

APPROVE the request for current use valuation of 30 % of market value for 5.17 acres of the subject property, subject to the conditions recommended in the Department of Natural Resources and Parks report for the March 6, 2002 public hearing.

- A. If the Applicant files with the Department of Natural Resources and Parks, **no later than October 1, 2002**, a recorded purchase option agreement with a public agency or non-profit organization whose objectives for the property are consistent with the PBRS criteria, then the Department may administratively grant an additional five PBRS points.
- B. If the Applicant files with the Department of Natural Resources and Parks, **no later than October 1, 2002**, a forest stewardship plan which is approved by a DNRP forester **no later than November 1, 2002**, then the Department may administratively grant an additional five PBRS points.
- C. Administratively awarded PBRS credit authorized herein shall modify the current use valuation of the subject property consistent with this schedule:

Public Benefit Rating Total Points Awarded	Tax Reduction	Current Use Valuation
16-20 points	70%	30% of Market Value
21-34 points	80%	20% of Market Value
35-52 points	90%	10% of Market Value

Current use valuation shall be subject to all terms and conditions of RCW 84.34 and King County Code Chapter 20.36, as the same 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 this 18th day of March, 2002.

R.S. Titus, Deputy
King County Hearing Examiner

TRANSMITTED this 18th day of March, 2002, to the following parties and interested persons:

Stephen E. DiBiase
151-B Taylor Northwest

Renton, WA 98055

Susan Monroe, Department of Assessments
Ted Sullivan, Department of Natural Resources

**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 \$125.00 (check payable to King County Office of Finance) *on or before April 1, 2002*. 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 April 7, 2002*. 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, 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 MARCH 6, 2002 PUBLIC HEARING ON DEPARTMENT OF NATURAL
RESOURCES FILE NO. E01CT051:**

R.S. Titus was the Hearing Examiner in this matter. Participating in the hearing and representing the Department was Ted Sullivan. Stephen E. DiBiase did participate 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 PBRS Staff Report

- Exhibit No. 5 Affidavit of Publication received
- Exhibit No. 6 Notice of hearing, Office of Hearing Examiner
- Exhibit No. 7 Notice of hearing, PBRs Program
- Exhibit No. 8 Legal notice and introductory ordinance to Council
- Exhibit No. 9 Application Signed/Notarized
- Exhibit No.10 Not Submitted
- Exhibit No.11 Assessor Map
- Exhibit No.12 King County Assessor's database
- Exhibit No.13 Arcview Map (includes Orthophoto; summer, 2000)

RST:gao

Attachment

curr-use\E01\E01CT051 RPT

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 an 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)

Owner(s) _____
Granting Authority _____
Legal Description _____

Assessor's Property Tax Parcel or Account Number _____
Department of Natural Resources File Number _____
This agreement between _____

hereinafter called the "Owner", and _____

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. **Withdrawal:** 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. **Breach:** 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(5)(f)).
 - g) Removal of land classified as farm and agricultural land under RCW 84.34.020(2)(d).
 - 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.
 - 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.
 - 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. Reclassification as provided in Chapter 84.34 RCW.
- This agreement shall be subject to the following conditions:

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 may be annulled or canceled at any time by the Legislature.

Granting Authority:

Dated _____

 City or County

 Title

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.

 Owner(s)

Dated _____

 (Must be signed by all owners)

Date signed agreement received by Legislative Authority _____

To inquire about the availability of this notice in an alternative format for the visually impaired or in a language other than English, please call (360) 753-3217. Teletype (TTY) users may call (800) 451-7985.