

March 20, 2018

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

King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
Telephone (206) 477-0860
hearingexaminer@kingcounty.gov
www.kingcounty.gov/independent/hearing-examiner

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

SUBJECT: Department of Natural Resources and Parks file no. **E17CT038**
Proposed ordinance no. **2018-0090**
Parcel no. **1721069066**

SHERWOOD STOLT AND EVELYN TAY

Open Space Taxation Application (Public Benefit Rating System)

Location: 20821 SE 322nd Street, Auburn

Applicants: **Evelyn Tay and Sherwood Stolt**
20821 SE 322nd Street
Auburn, WA 98092
Telephone: (206) 724-6268
Email: sherwoodstolt@gmail.com

King County: Department of Natural Resources and Parks
represented by **Bill Bernstein**
201 S Jackson Street Suite 600
Seattle, WA 98104
Telephone: (206) 477-4643
Email: bill.bernstein@kingcounty.gov

SUMMARY OF RECOMMENDATIONS:

Department's Recommendation:
Examiner's Recommendation:

Approve 3.30 acres for 20% of assessed value
Approve 3.30 acres for 20% of assessed value

PRELIMINARY REPORT:

On February 22, 2018, the Department of Natural Resources and Parks (DNRP) submitted its report on file no. E17CT038 to the Examiner.

PUBLIC HEARING:

After reviewing the preliminary report and examining available information on file with the application, the Examiner conducted a public hearing on the application on March 8, 2018, in the Fred Conference Room, 12th Floor, King County Courthouse, 516 Third Avenue, Seattle, Washington. The Examiner received the affidavit of notice publication on March 7, 2018.

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 Hearing Examiner's Office.

FINDINGS AND CONCLUSIONS:

1. General Information:

Owners:	Evelyn Tay and Sherwood Stolt 20821 SE 322nd Street Auburn, WA 98092
Location:	20821 SE 322nd Street, Auburn
STR:	NW 17-21-06
Zoning:	RA-5
Parcel no.:	1721069066
Total acreage:	5.00 acres

2. The Applicants timely filed an application to King County for PBRS program current use valuation of the property to begin in 2019. As required by law, notification of the application occurred.

3. A summary of relevant PBRS categories follows below. (Plain text represents a category an applicant requested an award for and that DNRP agrees is warranted. Any ~~striketrough~~ represents a category an applicant requested an award for but that DNRP disagrees is warranted. Any *italics* represents a category an applicant did not request an award for, but that DNRP nonetheless concludes is warranted. And any *asterisk* represents a category where DNRP finds an award is warranted, but only if certain contingencies or conditions are met.)

PBRS categories:	<u>Open Space Resources</u>	
	Buffer to public or current use classified land	
	<u>Significant wildlife or salmonid habitat</u>	5

Surface water quality buffer	5
Watershed protection area	5
<u>Bonus Categories</u>	
Resource restoration	5
<u>Additional surface water quality buffer</u>	<u>5</u>
	25

The DNRP-recommended score of 25 points results in a current use valuation of 20% of assessed value for the enrolled portion of the property. As to the land area recommended for PBRs enrollment, the Applicant requested 3.30 acres and DNRP recommends 3.30 acres. (Enrollment acreage is the entire parcel less the excluded area, as 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.)

4. Except as modified herein, the facts set forth in DNRP’s preliminary report and testimony at the March 8, 2018, public hearing are correct and incorporated herein by reference. Copies of this report and DNRP’s report will be provided to the Metropolitan King County Council for final approval.
5. The issue we probed most at hearing was the “buffer to public or current use classified land,” a category DNRP recommended against awarding. The issue is not outcome determinative here; at 25 points, awarding three additional points would still leave the Applicants seven points short of an extra 10% reduction in assessed value. Still, we take a moment to address the category, because in a future application the answer might have consequences.
6. The pertinent portion of KCC 20.36.100.B.3 awards three points as follows:

“[B]uffer to public or current use classified land” means land that has a plant community in which native plants are dominant or has other natural features, such as streams or wetlands, and that is adjacent and provides a buffer to a publicly owned park, trail, forest, land legally required to remain in a natural state or a state or federal highway or is adjacent to and provides a buffer to a property participating in a current use taxation program under chapter 84.33 or 84.34 RCW. The buffer shall be no less than fifty feet in length and fifty feet in width. Public roads may separate the public land, or land in private ownership classified under chapter 84.33 or 84.34 RCW, from the buffering land, if the entire buffer is at least as wide and long as the adjacent section of the road easement. ...
7. Looking at the 2015 aerial photo attached to DNRP’s report, 208th Avenue SE (the Avenue) runs north to south along the western edge of the Applicant property. The property on the western side of the Avenue is enrolled in PBRs. Yet DNRP recommended against awarding points in this category for two reasons. First, the Avenue

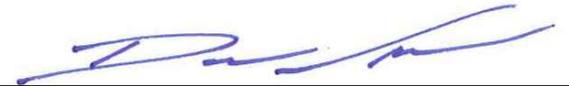
separates the properties. And second, a part of that previously-enrolled parcel that touches the Avenue is carved out for a driveway and single residence building envelope; this means some of the portion of the neighboring parcel's border closest to the Applicant property is *not* enrolled in PBRs. We think DNRP's ultimate conclusion—that an award in this category cannot be recommended—may be correct, but not for the reasons stated.

8. The fact that the Avenue separates the parcels is no bar. The code itself specifically says so: "Public roads may separate the...land in private ownership classified under chapter 84.33 or 84.34 RCW, from the buffering land." Even if it did not, while "abut" must actually "join at a border," a property is "adjacent" if it is "lying near or close to but not necessarily touching." BLACK'S LAW DICTIONARY (10th ed. 2014). So the Applicants' property is adjacent to the one across the Avenue, even if the Avenue keeps them from being abutting.
9. Similarly, the fact that the enrolled, adjacent property to the west has a carveout along the Avenue for its single-family residence building envelope is also no bar. There is no requirement that the entire length of the neighbor's previously-enrolled property be in the program. This has relevance even to applications not involving any road; the fact that not all of the previously-enrolled, or even of the applied-to-enroll property, is or will become enrolled in PBRs, as long as it meets the plant community and 50' x 30' requirements, that is enough.
10. Instead, the potential problem is that, where road separates the property, "the entire buffer" to be enrolled must be "at least as wide and long as the adjacent section of the road easement." The Applicants are enrolling as much of the western (Avenue-bounding) portion of their property as they control. But the northern part of their property is carved out by a second road, SE 322nd Street. Assuming a 60-foot total right-of-way for SE 322nd Street, the Applicants are not enrolling the most northerly 30 feet or so of their property as it borders the Avenue. The absence of the SE 322nd Street area means that the Applicants' PBRs-enrolling buffer is not quite as long as the adjacent Avenue. We avoid a definitive ruling, because it is a moot question for today's application: the answer will not change the Applicants' point total or enrolled acreage.
11. Award under all categories must be conditioned upon the control and removal of invasive plant species on the property within a three-year period. Such control and removal is mandatory for the property to qualify as credited open space. Failure to meet this condition will cause disenrollment of the property from the PBRs program.
12. Approval, pursuant to the Public Benefit Rating System adopted by Chapter 20.36 KCC, of 25 points and a current use valuation of 20% of assessed value for 3.30 acres of the property, is 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:

1. **APPROVE** current use valuation of 20% of assessed value for the 3.30-acre enrolled portion of the property.

DATED March 20, 2018.



David Spohr
Hearing Examiner

NOTICE OF RIGHT TO APPEAL

A person appeals an Examiner recommendation by following the steps described in KCC 20.22.230, including filing with the Clerk of the Council a sufficient appeal statement and a \$250 appeal fee (check payable to the King County FBOD). Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal. KCC 20.22.230 also requires that the appellant provide copies of the appeal statement to the Examiner and to any named parties listed on the front page of the Examiner's recommendation.

Prior to the close of business (4:30 p.m.) on *April 13, 2015*, an electronic copy of the appeal statement must be sent to Clerk.Council@kingcounty.gov and a paper copy of the appeal statement must be delivered to the Clerk of the Council's Office, Room 1200, King County Courthouse, 516 Third Avenue, Seattle, Washington 98104. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. If the Office of the Clerk is not officially open on the specified closing date, delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

Unless both a timely and sufficient appeal statement and filing fee are filed by *April 13, 2015*, the Clerk of the Council shall place on the agenda of the next available Council meeting a proposed ordinance implementing the Examiner's recommended action. At that meeting the Council may adopt the Examiner's recommendation, defer action, refer the matter to a Council committee, or remand to the Examiner for further hearing or further consideration.

If a timely and sufficient appeal statement and filing fee are filed by *April 13, 2015*, the Examiner will notify all parties and interested persons and provide information about "next steps."

**MINUTES OF THE MARCH 8, 2018, HEARING ON THE APPLICATION OF
SHERWOOD STOLT AND EVELYN TAY, FILE NO. E17CT038**

David Spohr was the Hearing Examiner in this matter. Bill Bernstein and Megan Kim both participated in the hearing on behalf of the department and Sherwood Stolt participated as the Applicant.

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

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|----------------|---|
| Exhibit no. 1 | <i>Reserved for open space taxation agreement</i> |
| Exhibit no. 2 | <i>Reserved for final ordinance</i> |
| Exhibit no. 3 | <i>Reserved for Hearing Examiner's report and recommendation</i> |
| Exhibit no. 4 | DNRP 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 program |
| Exhibit no. 8 | Legal notice and introductory ordinance to the King County Council |
| Exhibit no. 9 | Application signed/notarized |
| Exhibit no. 10 | <i>Reserved for future submission of legal description of area to be enrolled</i> |
| Exhibit no. 11 | Email to applicant regarding received application and approval schedule |
| Exhibit no. 12 | Arcview and orthophoto/aerial map |
| Exhibit no. 13 | Farm management plan |

DS/vsm