

## CITY COUNCIL REGULAR SESSION

Public hearing and action on Resolution of the City Council of the City of Bellevue, Washington, approving with conditions the application for Public Benefit Rating System Open Space Classification of the Timiri and Ostergaard property located at 4277 137<sup>th</sup> Ave. NE, Bellevue, Washington (King County Parcel No. 8669400210).

Liz Stead, Interim Co-Director, 452-2725

Nick Whipple, Code and Policy Planning Manager, 452-4578

*Development Services Department*

Catherine Drews, Assistant City Attorney, 452-4683

*City Attorney's Office*

## EXECUTIVE SUMMARY

Madhukirana Reddy Timiri and Velma Ostergaard applied to King County to enroll approximately 1.33 acres of their 1.38-acre parcel located in Bellevue, into King County's PBRs program for reclassification as open space. As the property is located in Bellevue, the City and King County both have review and approval authority meaning each jurisdiction must take separate and affirmative acts on the application for the tax reduction to take effect for the 2023 tax year. On June 21, the King County Council's Transportation, Economy, and Environment Committee (TrEE) held a public hearing on the application and approved with conditions enrollment of 0.23 acres into the PBRs program, and conditionally-approved enrollment for an additional 0.87 acres. The King County Council forwarded its approval to the City.

Staff has reviewed the application, the TrEE approval, and the applicable criteria, and is recommending approval consistent with King County's approval. Council is now asked to hold a public hearing on the Timiri and Ostergaard application, and after the public hearing and consideration of public comment and City and King County staff recommendations, Council may approve the application, approve the application with conditions, or deny the application. Because both entities have approval authority, any conditions imposed must be identical.

## RECOMMENDATION

Hold the public hearing, and after deliberation and consideration of public comment and staff recommendations, move to adopt Resolution No. 10133, approving the PBRs reclassification of the Timiri and Ostergaard property to open space, and adopting King County's findings, conclusions, and conditions enumerated in the King County revised staff report dated September 6, 2022, and authorizing all required notifications.

## BACKGROUND & ANALYSIS

### Regulatory Context

#### Open Space Taxation Act

Washington enacted the Open Space Taxation Act, Chapter 84.34 RCW, (the "Act") in 1970, primarily as an incentive for property owners to preserve open space, farm land, and timber land. In return,

eligible portions of the property are taxed at a lower rate. Instead of valuing these lands at their highest and best use, eligible land is valued for tax purposes based on its current use. For example, a property with a home on a two-acre parcel is entirely assessed at that use – single family residential – it's highest and best use. Under the Act, any portion of that two-acre parcel qualifying to reclassify as open space, farm land, or timber land will be taxed at a lower rate.

#### King County Public Benefit Rating System

Under the Act, King County adopted a “Public Benefit Rating System,” or PBRs (Chapter 20.36 KCC) for open space classification. Consistent with state goals, the purpose of King County's PBRs program is to encourage the conservation of natural resources in the County, including resources within city boundaries, to maintain important wildlife habitat, open space, wetlands and streams, working forests and productive farmlands. The PBRs program provides tax relief to property owners who agree to maintain their enrolled property as open space. The program reduces the appraised land value for the portion of the property enrolled in the program, resulting in lower taxable value for assessing taxes.

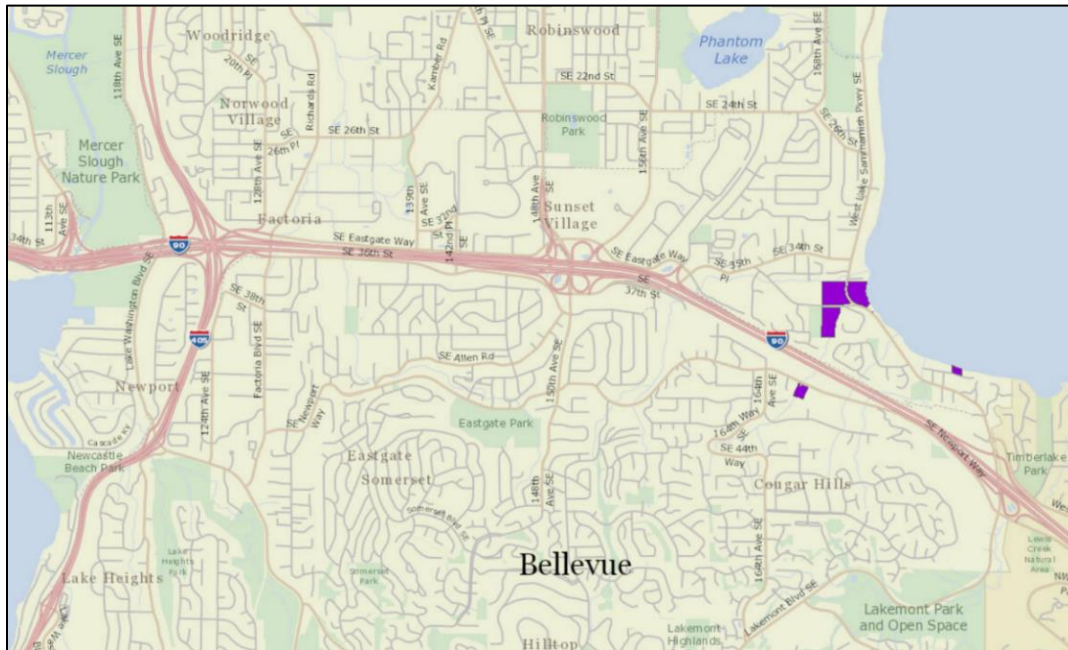
The PBRs program includes the approval criteria in the Act and are found in the open space resource categories listed in the PBRs program. Each open space resource category, such as “Urban Open Space” contains criteria consistent with approval criteria in the Act. The PBRs also includes additional criteria based on the goals of the Act and the County's program goals.

Under the PBRs program, the amount of tax reduction is based on a points system and depends on how much “public benefit” a property provides. Under the Act, King County is responsible for evaluating properties and assessing point values for enumerated open space features. The awarded points translate into an annual tax reduction ranging from 50 percent to 90 percent for the portion of land enrolled. In this case and as typical for open space classification, restoration and/or removal of invasive species are required for eligibility as open space in the program.

#### New Program to Bellevue

The Act and the PBRs program have been in place for many years, however, the City has not processed a PBRs application. According to the King County Current Use Taxation property map, there are five parcels in the City that are enrolled in the PBRs program, prior to their annexation into the City. See Figure 1 below.

**Figure 1. City of Bellevue Parcels Enrolled in PBRs Program**



### **Application and Review**

Any property owner may apply for a current use assessment and may do so any time during the year. If the application is approved, tax reduction begins on January 1 of the following year. Under the Act, specifically in RCW 84.34.050(1), the granting authorities must notify the assessor and the applicant of its approval or disapproval within six months from the receipt of the application. Property owners apply to King County, however, since the property is in the City, both the City and County review and take action on the application after holding the required public hearings. The City or County may approve, approve with conditions, approve only for part of the land, or deny the application. It is important to note that because the City and King County are both granting authorities, any conditions imposed must be identical. Denying the application or imposing additional conditions will require further action by the King County Council.

### **The Timiri and Ostergaard Enrollment Application**

The Timiri and Ostergaard applied to enroll approximately 1.33 acres of their 1.38-acre parcel into the PBRs program. The property is located in Bridle Trails at 4277 137<sup>th</sup> Avenue NE in a Single Family Residential (R-1) Land Use District, and developed with a single-family home built in 1966. See Figure 2 below. Timiri and Ostergaard have owned the property since 2019.

Timiri and Ostergaard applied for the PBRs program at the end of December 2021. The County forwarded a copy of this application and began working with City staff in March 2022. City and County staff collaboration included a joint site visit to the property, addressing questions County staff had about the property and surrounding area, and addressing questions City staff had about the County's review and proposed conditions for approval.

The County reviews and rates the application in accordance with its PBRs to determine if the

application should be approved or denied. King County Council TrEE held a public hearing on the application on June 21, 2022, and following the public hearing, the County approved the application for enrollment of 0.23 acres into King County's PBRS program, imposed conditions, and provided conditional approval for additional acreage. This approval was forwarded to the City, and an updated King County staff report, dated September 6, 2022, was subsequently forwarded to the City. See Attachment A.

#### King County's Analysis and Decision

King County has analyzed the Timiri and Ostergaard application and decided outright approval of enrolling 0.23 acres of the property into the PBRS program and conditional approval of additional acreage. A detailed analysis of Timiri and Ostergaard's application is included in the King County Staff Report as Attachment A. The County found enrollment of the 0.23 acres warranted because of the open space resources associated with the property (see eligible portion of the property in red in Figure 2 below), including:

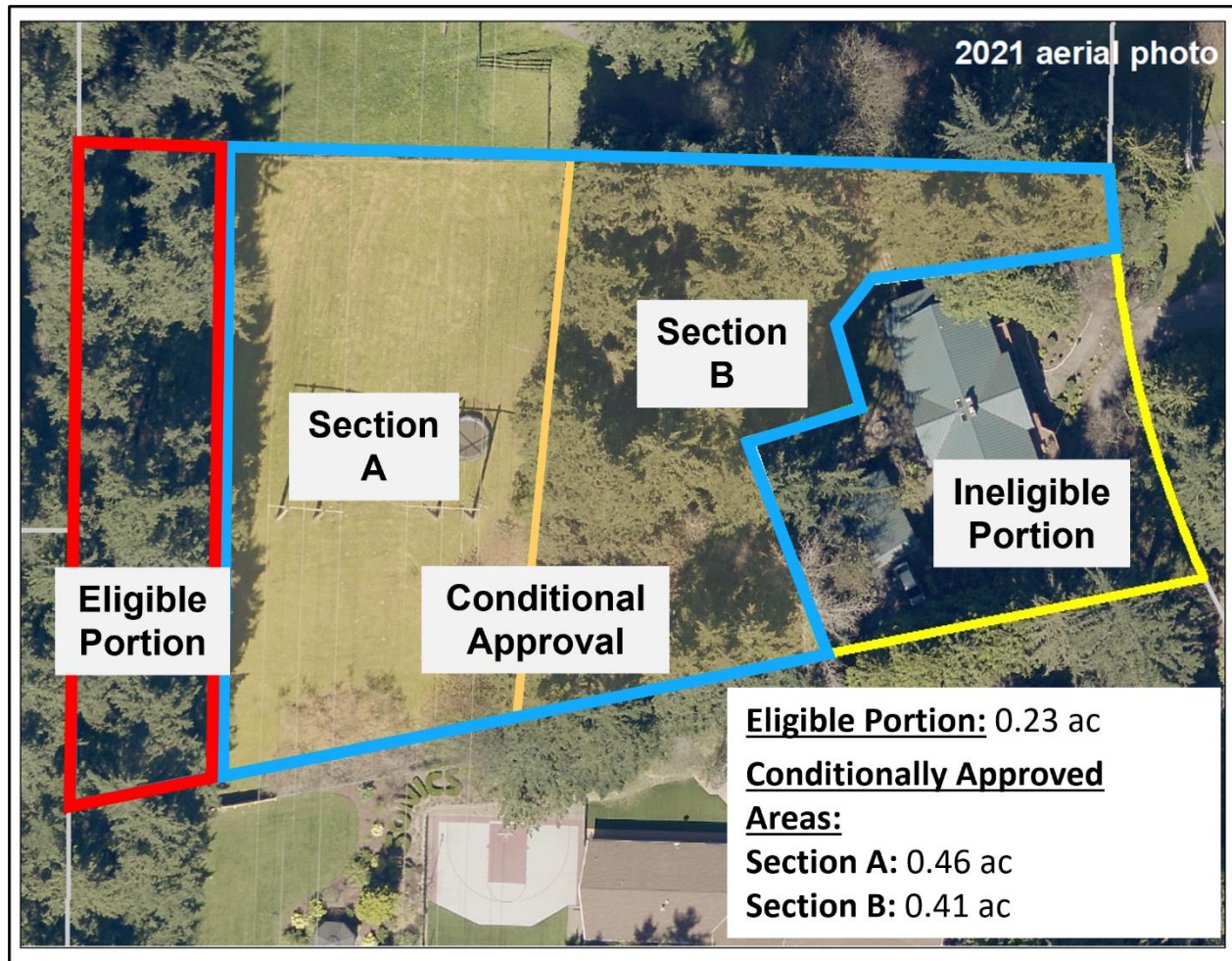
1. Public recreation area; and
2. Unlimited public access.

The County also conditionally approved additional areas for reclassification from Sections A and B (see sections outlined in blue in Figure 2 below). These areas qualify for two Bonus Categories, which requires the applicants to submit a restoration and planting plan for review and approval by King County, the City, and the two easement holders, Puget Sound Energy and the Olympic Pipeline Company. The two Bonus Categories include:

1. Resource restoration (subject to future plan approval and implementation); and
2. Urban open space (contingent on the awarding of resource restoration listed above and must include a minimum of 0.27 acres for award).



**Figure 2. Timiri and Ostergaard Property**



As discussed above, the PBRs program is based on a point system with corresponding tax reductions based on awarded points. For the Timiri and Ostergaard application, King County concluded that their property is entitled to 10 points, with a possible credit of 10 additional points by meeting the requirements for the two Bonus Categories of resource restoration and urban open space. The 10 points awarded for the categories of public recreation area and unlimited public access results in a 50 percent reduction in the taxable value of the eligible 0.23 acres (See eligible portion of the property in red in Figure 2). If the Bonus Category is administratively approved based on County-imposed conditions, additional acreage from Sections A and B in Figure 2, not to exceed 1.1 acres, could qualify for up to a maximum of 20 points. The final number of points depends on the applicants' conformance with the required condition. If the maximum 20 points are awarded, the taxable value of the enrolled acreage would be reduced by 70 percent.

#### City Review

The City conducts an independent review of the application using the review criteria in the Act, which are also in King County's PBRs program and therefore reviewed by the County. Consequently, King County's staff report is useful when considering the approval criteria. The City, however, must

independently consider the revenue implications. The Council has three options when reviewing the application: (1) Council may approve the application with King County's conditions; (2) approve the application and impose different conditions or no conditions; or (3) deny the application if Council finds the application unsupported by the record. Options one and two will complete the process, whereas option 3 requires additional action by the King County Council. For example, if the City imposed a different condition or modified a condition King County imposed, the application would return to King County for additional review and action because the conditions must be identical. The City may deny the application if the application is found unsupported by the record. Denials must be in writing and must include reasons for the denial (WAC 458-20-250). Applicants may appeal denials of open space classifications to superior court, which are reviewed for arbitrary and capricious action. If an application is denied, an applicant must wait 365 days to reapply.

#### Consideration of Revenue Loss or Shift

The Act requires consideration of "resulting revenue loss or tax shift" when determining if an application for reclassification should be approved or denied. Using data from the King County Assessor's Office, staff has calculated the revenue impact to be *de minimis*. Please note the calculations provided below are general in nature and do not account for differences in values of land and improvements, therefore they are best estimates for informational purposes only.

Table 1: 2022 Appraised Value (based on KC Assessor information, 6/2/2022)			
Assessor's Parcel Number	Land Value	Improvement Value	Total
8669400210	\$1,319,000.00	\$155,000.00	\$1,474,000.00

Table 1 above shows the appraised value for the subject property. The total tax assessed for the property in 2022 is \$10,816.42. Based on an eligible 50 percent reduction to the annual property taxes for the 0.23-acre of recommended land area, the annual property taxes would be reduced by approximately \$278.82. According to the King County Assessor's Office, the City receives approximately 10.3 percent of this tax amount and, therefore, the City would receive approximately **\$28.67 less** in annual tax revenue specific to this property's reduction. The Assessor would continue to assess the ineligible portion of the property at market value. If the property owners successfully meet the conditions required to enroll the additional acreage in Sections A and B in Figure 2, then the taxable value of the total acreage (1.1 acres) enrolled in the PBRs program would be reduced by an additional 20 percent, bringing the total tax reduction to 70 percent. This would correspond to an annual decrease in revenue to the City of approximately **\$443.21**.

#### City Review Process

Council is scheduled to hold a public hearing to consider the enrollment application and the King County Council's approval on September 6. After the public hearing, Council will deliberate and consider public comments received between August 22 and the public hearing, and City and County staff recommendations. Council may take final action on the application at any time following the public hearing; however, due to statutory timelines, such action should occur as early in 2022 as possible.

If Council does approve the application, the City must notify the County Assessor within 10 days of the

approval. King County will prepare an Open Space Taxation Agreement for the enrolling property later this fall, which must be signed by the Chair of the County Council and all owners. This Agreement will then be recorded, and a copy of the recorded document will be sent to the City.

#### Approval Criteria

Council may approve, approve with conditions, or deny the application, and may approve the application for only part of the land that is the subject of the application. The criteria for considering an application to reclassify land to open space for taxation purposes are set forth in the Act:

- (2) Benefits to the General Welfare. City may recognize the benefits to the general welfare resulting from preserving the current use of the property and shall consider:
  - (a) The resulting revenue loss or tax shift;
  - (b) Whether granting the application [for open space classification] will;
    - (i) conserve or enhance natural, cultural, or scenic resources,
    - (ii) protect streams, stream corridors, wetlands, natural shorelines and aquifers,
    - (iii) protect soil resources and unique or critical wildlife and native plant habitat,
    - (iv) promote conservation principles by example or by offering educational opportunities,
    - (v) enhance the value of abutting or neighboring parks, forests, wildlife preserves, nature reservations, sanctuaries, or other open spaces,
    - (vi) enhance recreation opportunities,
    - (vii) preserve historic and archaeological sites,
    - (viii) preserve visual quality along highway, road, and street corridors or scenic vistas, [and]
    - (ix) affect any other factors relevant in weighing benefits to the general welfare of preserving the current use of the property[.]

(RCW 84.34.037(2)).

As discussed above King County has evaluated the approval criteria by rating the application under the County's PBRs program, which is in its staff report. See Attachment A. Staff has reviewed King County's evaluation and approval and concluded it satisfies the relevant approval criteria set forth in RCW 84.34.037(2), with the exception of the impacts on tax revenue, which staff addressed above and concluded the impact was *de minimus*.

#### **Agreement Executed**

If Council approves the application, King County will prepare an agreement for the owner(s) to sign, which the owner may accept or reject. If accepted, the property owner must sign and return to King County within 30 days. The agreement must include all approval conditions, which will be binding on any heir, successor, or assignee of the parties. The Agreement may include a description of how the classified land may be used to retain its status, actions that will cause the removal of the land from the program, and consequences of a change in the classified use of the land. A copy of the signed agreement is sent within 10 days of the receipt to the County Assessor.

### **Duration of Classification**

Acreage enrolled in the PBRs program must remain undeveloped and classified as open space. Under the Act and the PBRs program, if the use changes from Open Space or is otherwise removed from the program, the property would be subject to the additional tax, interest, and penalty provisions of the Act. After ten years in the program,

The classification continues until the owner requests removal, the use no longer complies, a sale renders the land exempt from property taxes, or the ownership has changed and the new owner has not signed a Notice of Continuance. Additional tax, interest, and penalties will apply if the land is out of compliance and does not meet one of the statutory exceptions in the Act. If the property is removed after 10 years and is in compliance – compensating tax and interest (20 percent penalty waived).

### **Public Notice**

Notice of the Public Hearing was published in the Seattle Times on August 22.

## **POLICY & FISCAL IMPACTS**

### **Policy Impact**

The Timiri and Ostergarrd application is supported by the following Comprehensive Plan Policies:

- **Comprehensive Plan Policy LU-2:** Retain the city's park-like character through the preservation and enhancement of parks, open space, and tree canopy throughout the city.
- **Comprehensive Plan Policy LU-33:** Preserve open space and key natural features through a variety of techniques, such as sensitive site planning, conservation easements, transferring density, land use incentives and open space taxation.
- **Comprehensive Plan Policy EN-11:** Support partnerships between the city and private landowners to steward private lands, streams, habitat and other natural resources for public benefit.
- **Comprehensive Plan Policy EN-57:** Provide incentives to private property owners to achieve specific habitat improvement goals, including retention and enhancement of native vegetation.
- **Comprehensive Plan Policy EN-70:** Improve wildlife habitat especially in patches and linkages by enhancing vegetation composition and structure, and incorporating indigenous plant species compatible with the site.
- **Bridle Trails Subarea Plan Policy S-BT-40:** Natural vegetation should be protected and preserved to provide buffers between land uses.

### **Fiscal Impact**

If the PBRs enrollment application is approved, the City would receive approximately \$28.67 less in annual tax revenue specific to this property's reduction. If the applicant is awarded additional acreage for the two Bonus Categories, this amount will increase to approximately \$443.21. Please note calculations to determine revenue impacts are general in nature and do not account for differences in values of land and improvements, therefore they are best estimates for informational purposes only.



## **OPTIONS**

1. Hold the public hearing, and move to adopt the Resolution of the City Council of the City of Bellevue, Washington, approving with conditions the application for Public Benefit Rating System Open Space Classification of the Timiri and Ostergaard property located at 4277 137<sup>th</sup> Ave. NE, Bellevue, Washington (King County Parcel No. 8669400210).
2. Hold the public hearing, and following the public hearing, do not adopt the Resolution and provide alternative direction to staff.

## **ATTACHMENTS**

- A. King County Report for Enrollment in the Public Benefit Rating System and Approval  
Proposed Resolution No. 10133

## **AVAILABLE IN COUNCIL LIBRARY**

N/A