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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

LEGACY PARTNERS RIVERPARK APARTMENTS BUILDINGS
A/B LLC; LEGACY PARTNERS RIVERPARK APARTMENTS
BUILDING E LLC, Delaware Limited Liability Corporations,

Petitioners,

v.

KING COUNTY, WASHINGTON a Municipal Corporation,

Respondent.

KING COUNTY ANSWER TO PETITION FOR REVIEW

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 ORIGINAL

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I. **INTRODUCTION**

The Court of Appeals affirmed the King County Assessor's (Assessor's) authority to correct ministerial errors in Legacy's 2009 and 2010 tax assessments. Review of the decision is not warranted under RAP 13.4 criteria. Resolution of Legacy's refund claims in each year was based upon a straightforward application of well-established assessment principles. Legacy suggests that its case raises issues of conflicting opinion or broad public interest that simply do not exist.

II. **STATEMENT OF THE CASE**

Legacy owns two of four parcels that make up the recently constructed "Riverpark" development within the City of Redmond. CP 2 at 4.2 – 4.5. Legacy filed this tax refund action challenging the Assessor's authority to correct erroneous property tax assessment notices that were initially issued in assessment years 2009 and 2010 (tax years 2010 and 2011).¹ A summary of the background relevant to this petition regarding corrections made in each of the two years is provided below.

¹ The additional two Riverpark parcels were developed with hotel and office buildings. Owners of those parcels do not protest their assessments or otherwise seek a tax refund. CP 206 at ¶15.

A. Legacy Tax Assessment Corrections.

1. 2009 assessment (for taxes paid in 2010).

Prior to the development of Riverpark, assessment records listed nominal \$1,000 improvement values on each of Legacy's two parcels. CP 204 at ¶8. These \$1,000 figures did not reflect any determination of the actual fair market value of improvements on the properties. *Id.* The figures were instead carried in the Assessor's computer system as a placeholder, signaling that future development requiring valuation was anticipated on the site. *Id.*

Indeed, Legacy's apartments had already been largely constructed by the taxpayer² and valued by the Assessor in 2009. Upon inspecting the site in June of 2009, the Assessor determined and entered assessed new construction values for the apartments into its assessment tracking system. CP 204 at ¶¶6, 7 and CP 210 - 32. The 2009 value of improvements on parcel 733805-0010 was determined to be \$16,129,600. CP 204 at ¶7 and CP 228-32, 347 and 349. The 2009 value of improvements on parcel 733805-0040 was determined to be \$14,135,900. *Id.*

² Certificates of occupancy were issued for improvements on parcel 733805-0040 in August of 2009, and for parcel 733805-0010 improvements in March of 2010. CP 3 at 4.8 and 4.9.

Due to a clerical failure to release an automatic computer hold on the assessment, the actual 2009 improvement values determined by Assessor did not, however, properly post to the assessment roll. CP 204 at ¶9. The computer hold resulted from a program that automatically catches assessment increases of over thirty percent (or decreases of over 25 percent) from the prior year. CP 205 at 10. The automatic hold, referred to as a "Code 17" or "Catch and Release," is intended to provide a ministerial check against the possibility of an value input error – for example, by transposing numerals or adding or omitting digits.³ *Id.* The hold signals the need to verify that the actual values determined were correctly entered. *Id.* Because the automatic hold had not been released when the 2009 assessment roll was finalized, however, placeholder values of \$1,000 were incorrectly retained in the computer system used to develop the assessment roll, and the actual improvement values of \$16,129,600 and \$14,135,900 for Legacy's apartments failed to post to the roll. CP 204 at 9.

The Assessor did not become aware of the failure to post actual 2009 improvement values until May of 2010. CP 205 at 11. The Assessor was advised of the error by Riverpark's hotel parcel

³ The Code 17 hold was initiated after an incident in which a property valued at several hundred thousand dollars received an much higher, erroneous assessment of several million dollars. CP 205 at ¶10.

owners, who similarly received a notice with the obviously incorrect \$1,000 value. *Id.* The Assessor then promptly issued corrected assessments, accurately reflecting the actual \$16,129,600 and \$14,135,900 improvement values that had failed to post. CP 206 at ¶¶12 and CP 236-53. Corrected value notices were provided to Legacy on May 5, 2010, pursuant to RCW 84.48.065 (correction of erroneous assessments based upon manifest errors). CP 255-58.

Legacy filed this 2009 refund action challenging the Assessor's authority to correct initial, erroneous assessments under RCW 84.48.065 manifest error provisions. Legacy also challenged the revised 2009 assessment in a separate appeal to the King County Board of Equalization. CP 206 at ¶¶15.

2. 2010 assessment (for taxes paid in 2011).

Because the incorrect placeholder values had not been changed in the Assessor's computer system until after January 1, 2010, the \$1,000 values also incorrectly rolled forward in the system and automatically printed out on valuation notices that were initially provided to Legacy for assessment year 2010. CP 206 - 7 at ¶¶16 and CP 262.

An administrative correction setting forth actual 2010 improvement values of \$13,997,400 and \$15,433,300 was, however,

made on November 3, 2010. CP 207 at ¶¶17; CP 264-65. Unlike the prior year's assessment, these 2010 assessment corrections were made before the Assessor certified its applicable assessment roll in December of 2010. CP 207 at ¶¶17; CP 264-65. Corrected value notices were sent to Legacy on November 11, 2010. CP 208 at ¶¶18 and CP 267.

Even though assessment corrections were implemented before the 2010 assessment roll had closed, Legacy filed this action challenging its revised 2010 assessment on timeliness grounds. Legacy has also separately appealed its 2010 assessment to the King County Board of Equalization. CP 208 at ¶¶20.

B. Background Regarding Assessment Process.

Some brief background on the property tax assessment process is necessary to place Legacy's claims in proper context.

1. Establishing an assessment/tax roll.

Assessments are generally determined by the Assessor based upon the fair market value of property on January 1st of each assessment year. See RCW 84.40.020 ("All real property in this state subject to taxation shall be listed and assessed every year, with reference to its value on the first day of January of the year in which it is assessed."). Where new construction occurs on a parcel

after January the 1st, assessors may also include in their assessment the additional fair market value of that new construction as of July 31st of the assessment year. See RCW 36.21.080 (assessment of increased property value attributable to new construction considered as of July 31st of that year).

After the individual fair market values of all taxable property are determined, the Assessor places the values into an assessment roll that is certified to the County Council. CP 203 at ¶4. The Assessor utilizes these certified assessed values, relevant taxing district levies, and statutory and constitutional levy limitations to calculate the levy rates (expressed in dollars per every thousand dollars of assessed value) that will apply to individual taxpayers within the various taxing districts. *Id.*

The tax levy on an individual property is then established by multiplying the property's assessed value by its applicable levy rate. Tax bills are then prepared and sent out to the individual taxpayers for payment in the tax year: the year following assessment. *Id.*

Timelines for completing the annual assessment process are set forth in Chapter 84.40 RCW.

The assessor shall begin the preliminary work for each assessment not later than the first day of December of each year in all counties in the state.

The assessor shall also complete the duties of listing and placing valuations on all property by May 31st of each year, except that the listing and valuation of [new] construction ... under RCW 36.21.080 ... shall be completed by August 31st of each year....

RCW 84.40.040. As the Court of Appeals decision explains, these RCW 84.40.040 timelines are considered directory and do not generally limit the taxing power. Slip Opinion at pp. 8 - 10. *See also* King County Court of Appeals Brief at pp. 27 – 34.

2. Corrections to assessment roll.

a. Manifest error corrections.

State law likewise specifies certain circumstances under which assessed values can be revised after the assessment roll is finalized and tax statements have issued. For purposes relevant to the 2009 assessment revisions at issue here, RCW 84.48.065 authorizes assessors to correct "manifest errors" in a listing or assessment, that do not involve a revaluation of property. The manifest errors that are correctable under this section include clerical or posting errors or any other types of ministerial mistakes that are correctable by referring to the records and valuation methods applied to similarly situated properties, without exercising appraisal judgment. RCW 84.48.065; WAC 458-14-005.

RCW 84.48.065 expressly contemplates that such manifest error corrections will occur after close of the assessment rolls. The section provides that such manifest error corrections may be made for a period "three years preceding the year in which the error is discovered" and sets forth a process for placing the corrected values on a supplementary roll. RCW 84.48.065.

b. Omitted assessment corrections.

Entirely distinct from the authority to correct manifest errors under RCW 84.48.065, RCW 84.40.080 authorizes assessors to determine and assess property value that was previously altogether omitted from the assessment roll. Authority to assess omitted property under this "omit" section has very limited application and is not relied upon by the County to support either the 2009 or 2010 assessment corrections at issue in this case.⁴ More specifically, "omit" authority applies only where no value had been placed on an improvement. In such cases, RCW 84.40.080 sets forth a process for determining and assessing the improvement's previously omitted assessed value. *Id.* Unlike manifest error corrections, which are ministerial and do not involve any revaluation exercise, omit

⁴ Omit provisions do not apply in this case because the Assessor did place some value (albeit \$1,000) on Legacy's improvements. Omit authority is referenced in this response solely to give context to Legacy's omit-related arguments.

authority allows assessors to utilize appraisal judgment in their revaluation of property that was previously omitted from the tax roll.

III. ARGUMENT

Further review in this case is not warranted under RAP 13.4(b) criteria. Legacy's assertion that the Court of Appeals' unpublished decision either conflicts with prior Supreme Court decisions or raises important tax administration questions of statewide significance is not borne out by the well-established and narrow grounds upon which the decision is based.

A. **Manifest Error Correction of 2009 Assessments.**

The Court of Appeals affirmed the Assessor's authority to correct a ministerial posting error in its 2009 assessments pursuant to a plain reading of RCW 84.48.065(1). That provision allows assessments to be corrected due to, among other reasons, "manifest errors in the listing of property which do not involve a revaluation of property."

Legacy inaccurately suggests that the decision conflicts with *Tradewell Stores, Inc. v. Snohomish County*, 69 Wn.2d 352, 418 P.2d 466 (1966). There is no conflict between Division One's manifest error decision and the holding in *Tradewell*. *Tradewell* does not involve or even make mention of manifest error

corrections under RCW 84.48.065. Rather, it addresses assessment revisions in the altogether different context of omitted assessments under RCW 84.40.080. The Assessor has not relied upon, and Division One does not purport to address in any respect, the assessor's omit authority. The County acknowledges that omit authority does not apply, given that \$1,000 placeholder improvement values were initially applied to Legacy's parcels.⁵ Legacy suggests conflict that does not exist.

The Court's decision regarding the Assessor's 2009 manifest error correction likewise does not raise any significant issue of statewide importance. The decision turns on a rather unusual set of facts involving a computer program error that prevented previously established assessed value from posting to the assessment roll. With respect to these facts, the Court applies straightforward statutory standards in RCW 84.48.065 to its review and affirmance of the Assessor's corrective action.

⁵ Even if, hypothetically, no value had been placed on Legacy's parcels, and the omit statute did apply, there is no question that the Assessor's correction here would have been lawful under that RCW 84.40.080 omit authority. Indeed, in that hypothetical circumstance where no value was listed, the Assessor would not have been restricted to previously established assessment values and could have exercised appraisal judgment anew to value the parcels. RCW 84.40.080.

RCW 84.48.065 expressly allows for the “correction of manifest errors in the listing of property which do not involve a revaluation of property.” Legacy’s assertion that such manifest error corrections may not result in a change in assessed value is clearly at odds with the plain language and purpose of the statute to correct ministerial assessment errors, see RCW 84.48.065(1) (specifying that “[t]he county assessor or treasurer may cancel or correct assessments....”) (emphasis added); with the context in which such correction authorization appears, *id.* (delineating particular types of corrections that clearly relate to value and providing taxpayers opportunity to appeal revised values to the county board of equalization); and with common dictionary and adopted rule definitions, see WAC 458-14-005(14)(defining prohibited “revaluation” to mean a “change in the value of property based upon an exercise of appraisal judgment”) (emphasis added).⁶ In this case, the Assessor did not “revalue” Legacy’s parcels. It ministerially input previously determined assessed values that had erroneously failed to post to the rolls.

⁶ More detailed responses to each of Legacy’s arguments regarding the scope of RCW 84.48.065 manifest error correction authority are provided in at pages 5 through 7 of the Court of Appeals decision and at pages 13 through 22 of King County’s Court of Appeals brief.

Legacy also argues that Division One erred by affirming authority to correct assessed value under the manifest error statute after the assessment roll had closed. The plain language of the statute again readily refutes Legacy's claim. RCW 84.48.065 expressly authorizes manifest error corrections to be made for a period "three years preceding the year in which the error is discovered" and further sets forth a process for placing corrected values on a supplementary roll. RCW 84.48.065(1) and (3).

Legacy's suggestion that review should be accepted in order to establish a greater sense of finality in the assessment review process is misdirected. To the extent Legacy believes that the time restrictions on manifest error corrections set forth in RCW 84.48.065 should be more restrictive, that debatable⁷ policy argument is more appropriately made to the Legislature.

⁷ Certainly, from a fairness perspective, if manifest errors were not correctable in the manner described by RCW 84.48.065, the taxpayer whose property was manifestly undervalued would realize an unintended windfall – in this case, in the hundreds of thousands of dollars. That unpaid property tax burden would accordingly shift to other taxpayers (who would, as a result, be saddled with a larger percentage of the total property value upon which property taxes are allocated). Moreover, under Legacy's approach, the taxpayer whose property was manifestly overvalued would suffer unfair tax burdens that the legislature plainly sought to avoid. Taking, for example, the inverse of Legacy's immediate situation, if a property-owner's tax bill incorrectly listed multi-million dollar improvement value on a parcel whose structures were actually valued by assessment staff at \$1,000, Legacy's reading would preclude an Assessor from correcting the mistake as a manifest error under RCW 84.48.065.

B. 2010 Correction Before Close of 2010 Tax Roll.

The Court of Appeals likewise affirmed the Assessor's authority to correct Legacy's 2010 assessment before the 2010 tax roll had closed. The Court held that such action was subject to and satisfied applicable RCW 84.40.040 timelines.

Legacy erroneously argues that review of this portion of the decision is warranted in order to clarify an unresolved issue of whether the August 31st deadline in RCW 36.21.080 for listing new construction is directory or mandatory. In fact, the Court's holding with respect to the 2010 assessment was based upon ordinary assessment schedules in RCW 84.40.040 – and not upon new construction timelines in RCW 36.21.080. “As to the 2010 assessment, the Assessor correctly observes that RCW 84.40.040 rather than RCW 36.21.080 applies.” Slip Opinion at p. 8. The decision then goes on to acknowledge and apply the long-settled interpretation of RCW 84.40.040's directory timelines established under *Niichel v. Lancaster*, 97 Wn.2d 620, 647 P.2d 1021 (1982). There is no conflicting opinion or issue of statewide importance presented by the decision.

While Legacy erroneously claims that the Court should have applied new construction timelines to the Assessor's 2010

correction, this claim is premised upon an incorrect assertion that the corrected 2010 values were based upon new construction in 2010. In fact, the values at issue here were overwhelmingly based upon improvements that were already in existence as of the January 1, 2010 valuation date and were therefore subject to ordinary assessment timelines.⁸ *Supra* fn. 3 and 4.

Finally, even if for sake of argument the new construction timelines did apply to the 2010 assessment corrections, Legacy's claim that such provisions should be construed as mandatory and not directory is at odds with the longstanding reasoning and approach in *Niichel*. The affirmative wording, tax assessment context, and legislative history associated with new construction provisions all demonstrate that such timelines are, like other timelines for listing tax assessments, directory. Detailed responses to Legacy's arguments disputing the directory nature of new

⁸ At most, only a very minor sliver of 2010 improvement value can be attributed to finalized construction occurring on parcel 733805-0010. The apartments at issue had already been virtually complete in 2009. Indeed, a certificate of occupancy had already issued for improvements on parcel 733805-0040 in August of 2009. CP 3 at 4.8 and 4.9. The fact that any new 2010 construction value was *de minimis* is also clear by comparing Legacy's assessed improvement values in 2009 with those in 2010. *Supra* at pp. 2 and 5 (**2009 values** - \$16,129,600 for parcel 733805-0010 and \$14,135,900 for parcel 733805-0040; **2010 values** - \$13,997,400 for parcel 733805-0010 and \$15,433,300 for parcel 733805-0040). While the value of parcel 733805-0040 increased marginally between 2009 and 2010, this change was not the result of new 2010 construction. As noted above, that building had already been fully constructed and cleared for occupancy back in 2009.

construction timelines are provided at footnote 24 of the Court of Appeals' decision and at pages 28 through 36 of King County's Court of Appeals brief.

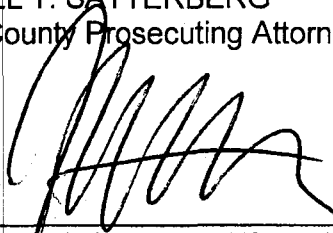
IV. CONCLUSION

For reasons set forth above, King County respectfully requests that Legacy's request for further review be denied.

DATED this 27th day of November, 2013.

Respectfully submitted,

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