69073-6

69073-6

No. 69073-6

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

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

Appellants,

vs.

KING COUNTY, WASHINGTON, a Municipal Corporation,

Respondent.

BRIEF OF APPELLANTS

William C. Severson
WILLIAM C. SEVERSON PLLC
1001 Fourth Avenue Suite 4400
Seattle, WA 98154-1192
(206) 838-4191
bill@seversonlaw.com
Attorney for Appellants

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

I. INTRODUCTION

This appeal involves a property tax refund lawsuit brought pursuant to Chapter 84.68 RCW. The taxpayers seek a refund of taxes paid as a result of untimely and unlawful increases to the assessed value of improvements located on two condominium parcels.

During 2009 and 2010, plaintiffs completed construction of two new condominium buildings at the Riverpark development in Redmond, Washington. While property is normally assessed for tax purposes at its value as of January 1st each year, RCW 36.21.080 authorizes county assessors to value new construction as of July 31st and to list that stepped-up value on the assessment rolls "up to August 31st" of that year. Here, the Assessor failed to list plaintiffs' new construction by the August 31st deadline. Instead, the improvements on each parcel were assessed at only $1,000. When the Assessor belatedly discovered these oversights, he revised the assessments to increase the improvement values to reflect the new construction. Those revisions, however, were untimely and unlawful. The Assessor's authority to list new construction at a stepped-up, mid-year value expires on August 31st. If the new construction is not listed by that date, the property is to be assessed under the general rule at its value as of January 1st, just like all other property.

The Assessor's revisions to the 2009 assessments were doubly invalid because the assessment rolls for 2009 were closed and tax bills had already been issued before the revisions were made. Once the assessment rolls are closed, assessors can correct omissions only as specifically authorized by RCW 84.40.080.[1] It is undisputed that RCW 84.40.080 does not authorize an assessment of the omitted new construction value on plaintiffs' property. To attempt to get around this roadblock, the Assessor argues that the omitted value can be retroactively listed and assessed as a "manifest error" correction under RCW 84.48.065.[2] That argument, as will be shown, is contrary to the plain language of the statutes, contrary to their statutory history, and contrary to long established precedent. RCW 84.48.065 does not authorize retroactive assessments to add new construction value that was omitted from the original assessment roll.

II. ASSIGNMENTS OF ERROR AND ISSUES

Assignments of Error

1. The trial court erred in determining that county assessors have authority to list new construction value on the assessment rolls after August 31st of the assessment year.

---

[1] RCW 84.40.080 is set out in Appendix 2.

[2] RCW 84.48.065 is set out in Appendix 3.

2. The trial court erred in determining that the November 3, 2010 revisions to plaintiffs' 2010 assessments were timely.

3. The trial court erred in determining that RCW 84.48.065 authorizes county assessors to retroactively increase improvement values listed on the assessment rolls after the rolls have closed.

4. The trial court erred in concluding that the revisions made by the Assessor in May 2010 to the 2009 assessed value of the improvements on plaintiffs' properties did not involve appraisal judgment.

5. The trial court erred in granting summary judgment to Defendant King County.

6. The trial court erred in failing to grant summary judgment to plaintiffs.

Issues Pertaining to Assessments of Error

1. Do assessors have authority to list new construction value on the assessment rolls after August 31st of the assessment year?

2. Even if the August 31st listing deadline for listing new construction is not mandatory, are the assessments at issue in this case nevertheless invalid because the Assessor failed to substantially comply with statutory requirements?

3. Does RCW 84.48.065 authorize the retroactive valuation increases that the Assessor made to the improvement values listed for plaintiffs' properties on the 2009 assessment roll?

III. STATEMENT OF THE CASE

A. Facts

Plaintiffs are the owners of two residential condominium buildings that are part of a new multipurpose development in Redmond, Washington known as Riverpark. Plaintiff Legacy Partners Riverpark Apartments Building A/B LLC owns Building A/B, which was assessed as parcel 733805-0010 ("parcel 0010"). CP 14 at 48. Legacy Partners Riverpark Apartments Building E LLC owns Building E, which was assessed as parcel 733805-0040 ("parcel 0040"). CP 14 at 48.

Construction work at Riverpark began in 2007 and was completed during 2009 and 2010.[3] Although the Assessor was aware of the new construction underway at Riverpark, the new construction value was not listed on assessment rolls by August 31st in either 2009 or 2010. CP 6 at 9-10. Rather, in both years the improvements on each parcel were initially assessed at $1,000. CP 6 at 9-10.

Facts Regarding the 2009 Assessment

In June 2009, a staff appraiser in the Assessor's office prepared proposed new construction values of $16,129,600 for parcel 0010 (Building A/B) and $14,135,900 for parcel 0040 (Building E). CP 14 at

[3] The certificate of occupancy for Building E was issued in August 2009. CP 14 at 54-55. The certificate of occupancy for Buildings A/B was issued in March 2010. CP 14 at 52.

127; CP 17 at 204. Those values, however, were not posted to the assessment rolls because the Assessor's computer system blocked postings of value increases of more than thirty percent until the new value was reviewed and approved by a senior appraiser. CP 14 at 159; CP 17 at 205. In the ordinary case, the assigned senior appraiser would release the hold after a cursory review of the proposed increase.[4] CP 17 at 205; CP 14 at 134. However, as a result of confusion caused by personnel changes in the Assessor's office, the holds on the proposed value increases for the Riverpark parcels were not released. CP 14 at 132. The 2009 assessment roll was finalized with a $1,000 improvement value for each of the parcels. CP 17 at 204-205.

The Assessor's office did not become aware that the new construction on plaintiffs' parcels had not been listed until late April, 2010. CP 14 at 132. By then, the 2009 assessment rolls had closed, taxes based on the original $1,000 improvement values had been billed, and the first half taxes had been paid. CP 17 at 205; CP 14 at 60-61. Nevertheless, and over the property owners' objections, the Assessor retroactively revised the 2009 improvement values to increase the improvement values

[4] This computer hold, referred to as a Code 17, enforced an office policy that required senior appraiser review and approval for assessments where the value increased by more than 30 percent or decreased by more than 25 percent as compared to the prior year assessed value. CP 17 at 205.

to the levels previously proposed by the staff appraiser. CP 17 at 206. Substitute second-half 2010 tax bills, with an October 31, 2010 due date, were then issued for the additional taxes on this increased value. CP 14 at 66-67. Plaintiffs paid those taxes under protest. CP 14 at 69-71.

Facts Regarding the 2010 Assessment

For the 2010 assessment year, the Assessor again initially valued the improvements on the Riverpark parcels at $1,000. Property value notices with those values were mailed to the plaintiffs on July 15, 2010. CP 14 at 73. Those values remained on the assessment roll until November 3, 2010 when the Assessor revised them to reflect the July 31, 2010 new construction value for the improvements.[5] Notices of these revisions were mailed to plaintiffs on November 11, 2010. CP 14 at 76. Plaintiffs paid the taxes on these assessments under protest, as well. CP 14 at 79-80.

B. Procedural Background

The foregoing facts are not disputed. The parties brought cross-motions for summary judgment regarding the validity of the revised assessments. On June 15, 2012, the Honorable Harry McCarthy granted defendant King County's motion for summary judgment and denied

[5] The revised 2010 improvement values were $13,997,400 for parcel 0010 and $15,433,300 for parcel 0040. CP 14 at 76.

plaintiffs' motion. Appendix 1. CP 28. Plaintiffs filed their notice of appeal on July 13, 2012. CP 30.

IV. SUMMARY OF ARGUMENT

Assessors, like other government officials, have only that authority which is expressly or impliedly delegated to them by the legislature. The statute that grants assessors the authority to assess newly constructed improvements at their value as of July 31st is clear and unambiguous. It provides:

> The county assessor is authorized to place any property that is increased in value due to construction or alteration for which a building permit was issued, or should have been issued ... on the assessment rolls for the purposes of tax levy up to August 31st of each year. The assessed valuation of the property shall be considered as of July 31st of that year.

RCW 36.21.080. This statute requires no construction. It grants assessors the authority to list new construction at its value as of July 31st, but that authority only extends "up to August 31st". After that date, assessors have no authority to list new construction at a stepped-up value.

The King County Assessor failed to meet this August 31st deadline in both 2009 and 2010. For the 2009 assessments, the new construction value was not added to the rolls until May 2010. For the 2010 assessments, the new construction value was added on November 3, 2010.

These belated new construction assessments were unauthorized and unlawful, and plaintiffs are entitled to have them reversed.

For the 2009 assessments, the County argues that it can get around the August 31st listing deadline by styling the revisions as "manifest error" corrections under RCW 84.48.065. That is incorrect. With one exception (which is not relevant here), the manifest errors that can be corrected under RCW 84.48.065 are limited to non-valuation errors. When property or value is erroneously omitted from an assessment roll, as was the case here, the error can be corrected *only* in the circumstances and in the manner specifically authorized by the omit assessment statute, RCW 84.40.080. The County concedes that RCW 84.40.080 does not allow an omit assessment of the 2009 new construction value. That is dispositive.

The County would interpret RCW 84.48.065 as broad authority to correct a wide range of valuation errors after the assessment rolls have closed. The practical effect of that interpretation would be to extend the August 31st new construction listing deadline for three years and to all but nullify the express the limitations on omit assessments that are contained in RCW 84.40.080. There is nothing in the language or history of the statutes to support that interpretation. RCW 84.48.065 does not authorize assessors to retroactively increase improvement values after the

assessment rolls of closed. The supplemental assessments of plaintiffs' parcels for 2009 were invalid.

V. ARGUMENT

A. Standard of Appellate Review

The appellate court reviews a trial court's summary judgment decision *de novo.* It performs the same inquiry as the trial court, viewing all facts and reasonable inferences in the light most favorable to the nonmoving party. *Elcon Const., Inc. v. Eastern Washington University*, 174 Wn.2d 157, 164, 273 P.3d 965 (2012). Summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.*

B. Assessors Have No Authority to List New Construction on the Assessment Rolls after August 31st of the Assessment Year

1. RCW 36.21.080 is clear on its face and requires no construction.

RCW 36.21.080 is clear and unambiguous. It authorizes assessors to list new construction on the assessment rolls "up to August 31st of each year." Assessors have no authority to list new construction at a July 31st value after that date. When a statute is clear on its face, it requires no construction. *Pacific Continental Bank v. Soundview 90, LLC*, 167 Wn.App. 373, 382, 273 P.3d 1009 (2012). RCW 36.21.080 requires no construction.

The procedure for listing new construction at a mid-year value is an exception to the general rule that property be assessed at its value as of January 1 of the assessment year.[6] Such exceptions are "strictly construed and allowed to extend only so far as their language warrants." *State v. Wanrow*, 88 Wn.2d 221, 232, 559 P.2d 548 (1977). Nothing in the language of RCW 36.21.080 warrants extending the assessors' authority to list new construction beyond August 31st.

RCW 36.21.080 means what it says. Assessors have until August 31st to place new construction value on the rolls at its stepped-up mid-year value. Once the August 31st deadline passes, the property must be assessed at its value as of January 1st, just like all other property.

2. The August 31st deadline for listing new construction is mandatory.

The County argues that assessors can ignore the August 31st deadline in RCW 36.21.080 because, under *Niichel v. Lancaster*, 97 Wn.2d 620, 647 P.2d 1021 (1982), statutory deadlines for assessor are merely directory. But *Niichel* does not support the County's argument.

Whether a statutory deadline is mandatory or directory is a statute specific inquiry. Different statutes "necessarily involve[] different

---

[6] *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.").

questions of legislative intent." *Erection Co. v. Department of Labor and Industries*, 121 Wn.2d 513, 519-520, 852 P.2d 288 (1993). *Niichel* addressed the language in RCW 84.40.040 for regular January 1st assessments which states that "[t]he assessor shall also complete the duties of listing and placing valuations on all property by May 31st of each year …." The court held that "shall" in this context was directory and, therefore, the assessor's failure to list property by May 31st did not invalidate the later assessment. After considering the language and purpose of that statute, the court concluded that the listing timeline for regular assessments was directory because it was only "a guide for the conduct of business and for orderly procedure rather than a limitation of power …." *Niichel,* 97 Wn.2d at 624 (*quoting* Sands, STATUTORY CONSTRUCTION).

RCW 36.21.080, however, is not merely a procedural guide for assessors. It is a *grant* of special statutory authority to treat new construction differently than all other property. Grants of authority are construed strictly. "'Wherever the language contains a grant of power, it was intended as a mandate. Wherever the language gives a direction as to the manner of exercising a power, it was intended that the power should be exercised in the manner directed, and in no other manner.'" *State ex rel. Linn v. Superior Court for King County*, 20 Wn.2d 138, 153, 146 P.2d 543

(1944) (*quoting Varney v. Justice,* 6 S.W. 457). "'Powers conferred upon a public officer can be exercised only in the manner, and under the circumstances, prescribed by law, and any attempted exercise thereof in any other manner or under different circumstances is a nullity.'" *In re Elvigen's Estate*, 191 Wash. 614, 623, 71 P.2d 672 (1937) (*quoting* 46 C.J. 1033, § 290). These rules apply to the grant of authority in RCW 36.21.080. The authority to list new construction at its stepped-up midyear value must be exercised in the manner prescribed.

A grant of authority is jurisdictional. Where a statute specifies the duration of a grant of authority, that term cannot be extended by judicial construction. It is mandatory. *Erection Co.* 121 Wn.2d at 519 (where time limit is stated in jurisdictional context, it is mandatory). The trial court improperly disregarded the express time limit on the grant of authority in RCW 36.21.080. That was error.

The County will cite *State v. Miller*, 32 Wn.2d 149, 201 P.2d 136 (1948) as support for its argument that assessors may disregard the August 31st listing deadline. But *Miller* is distinguishable. It involved the interplay of two statutes: one which directed the attorney general to file "such action as is proper in the premises" within thirty days after receiving a report from the state auditor of misfeasance, malfeasance, or nonfeasance by a public official, and one which provided that there is no

time limitation on actions brought in the name of the state. In *Miller,* the auditor charged the defendant with expending public funds in violation of the state nepotism statute, and the attorney general followed up with an action in the name of the state to recover the funds. The action, however, was not filed within thirty days of the auditor's report. Miller, the defendant, argued that the action was time barred. The court rejected that argument, explaining that:

> It is our opinion that the thirty-day period mentioned in Rem.Rev.Stat. § 9958, was only directory, in that it simply instructed the attorney general to expedite the public business by bringing actions such as the present one within a certain period .... It surely was not the intention of the legislature to allow public officials to escape liability for the illegal expenditure of public funds in the event press of business or other causes resulted in the commencement of actions being delayed.

32 Wn.2d at 156.

The statutory language and policy considerations here are entirely different than in *Miller.* The thirty-day period in *Miller* was not a condition on a grant of jurisdiction, but instead, a direction that the attorney general proceed expeditiously. The *Miller* court determined that there was no reason to treat the statute referencing the thirty-day period as a non-claim statute because there was no reason to bar the attorney general's suit if circumstances delayed the filing of the suit. The opposite is true here. There are good reasons for setting a real deadline for listing

new construction. New construction value is treated differently for tax purposes than other assessed value. It is not subject to the levy limitations imposed by RCW 84.55.010 and, therefore, it increases the aggregate amount of tax that districts may levy. However, new construction listings must be completed timely to allow taxing districts to include that value in determining their tax levies.

RCW 36.21.080 is not merely an exhortation to assessors to act expeditiously. The August 31st listing deadline reflects a reasonable legislative judgment as to when new construction listings must be completed in order to permit property taxes to be calculated and imposed in the manner contemplated by law. It is an express condition to the grant of authority to list new construction at a stepped up value. If the County wishes to change that deadline, its remedy lies with the legislature, not the courts. *See Erection Co.,* 121 Wn.2d at 522.

3. The new construction assessments for 2009 and 2010 would be untimely even if the August 31st deadline were merely directory.

Even when a statute is merely directory, officials must at least substantially comply with its terms. *Allen v. Public Utility Dist. No. 1 of Thurston County*, 55 Wn.2d 226, 347 P.2d 539 (1959); *State v. Twyman,* 98 Wn.App. 508, 514, 983 P.2d 703, 706 (1999). Substantial compliance means "actual compliance in respect to the substance essential to every

reasonable objective of the statute." *Application of Santore*, 28 Wn.App. 319, 327, 623 P.2d 702 (1981). This includes substantial compliance with the procedural aspects of the statute. *James v. County of Kitsap*, 154 Wn.2d 574, 115 P.3d 286 (2005).

Because new construction affects the amount of tax that districts can levy, its timely listing is crucial. This is the core objective of the August 31st listing deadline in RCW 36.21.080. That objective is not met if the new construction is first listed in November, or worse, in May of the following year, after tax bills have already been issued.

The August 31st deadline allows time for completing the assessment and levy process so that taxes can be levied and billed in a timely fashion. After new construction is listed, the assessment rolls must be equalized by the Department of Revenue for purposes of establishing the state tax levy (RCW 84.48.080) and certified to the taxing districts for setting local budgets and tax levies (RCW 84.48.130). Those local levies must then be voted and certified to the county legislative authority (RCW 84.52.020-.040) which is to finalize and certify them for extension onto the tax rolls by November 30th (RCW 84.52.070). Substantial compliance would at least require that the new construction be listed early enough so as not to disrupt the timely completion of this process. Obviously, a listing that is first initiated in May of the year *after* the entire process is

complete does not substantially comply with the August 31st deadline RCW 36.21.080.[7] Nor does a new construction listing that is first initiated in November of the assessment year. Delaying new construction listings until early November does not satisfy the purpose of the August 31st deadline because it does not assure adequate time to complete the levy process in an orderly fashion within the time period set by RCW 84.52.070.

Moreover, the belated 2009 and 2010 listings would have been untimely even for regular January 1 assessments under the standard set in *Niichel v. Lancaster*, *supra,* for regular assessments. *Niichel* did not abolish or indefinitely extend the assessment deadline. The opinion sets a limit on when even regular listings under RCW 84.40.040 must be completed:

> As long as the assessments are made in the year before the taxes are to be levied, including an allowance for time in which to appeal, the essential purpose of the statute is satisfied.
> ...
> [assessments are timely] so long as they are completed in time to allow for appeals and the imposition of the tax at the intended time.

[7] Such a belated assessment cannot be taken into account in setting tax levies because the levies have been set long before the assessment is made.

97 Wn.2d at 624, 627-628. The November 2010 revisions to plaintiffs' Riverpark assessments do not meet even this test. Plaintiffs had until Monday, January 11, 2011 to appeal the November 2010 Riverpark revaluations.[8] Those assessments were not completed in time to allow for appeals within the year before the taxes were to be collected. The November 2010 revisions were too late even under the permissive standard set in *Niichel* for regular assessments. The May 2010 listings were far too late to meet this standard.

C. When improvements are omitted from an assessment roll, the omission can be corrected only in the circumstances and in the manner authorized by RCW 84.40.080.

The County concedes that RCW 84.40.080 does not permit omit assessments for the 2009 new construction value. It attempts to invoke RCW 84.48.065 to get around the express limitations on such assessments in RCW 84.40.080. But that theory brings RCW 84.48.065 into direct conflict with RCW 84.40.080 and would all but nullify the express limitations in RCW 84.40.080.

RCW 84.40.080 provides a specific procedure for correcting omissions of property or value from an assessment roll. It limits when

---

[8] King County property owners have 60 days from the mailing of the notice of valuation change to appeal their assessment. RCW 84.40.038; King County Code §2.34.100.

such corrections can be made. In particular, omitted improvements may be retroactively assessed *only* when the omission is "evidenced by the assessment roll" itself. The purpose of this limitation is to allow corrections where improvements are clearly omitted from the roll (as evidenced by the roll itself), but to prohibit retroactive valuation changes to property listed on the rolls. *Tradewell Stores, Inc. v. Snohomish County*, 69 Wn.2d 352, 418 P.2d 466 (1966) (where improvements are listed and taxed, their valuation cannot be subsequently increased regardless of the degree of undervaluation).

Once the assessment roll for a year is closed, the values listed are final and can only be changed as specifically authorized by statute. *British Columbia Breweries Ltd. v. King County, supra.* 17 Wn.2d 437, 443, 135 P.2d 870 (1943). The policy underlying this long standing rule was explained in *E. K. Wood Lumber Co. v. Whatcom County*, 5 Wn.2d 63, 104 P.2d 752 (1940). That case involved an effort by the county assessor to retroactively assess timber value that had been omitted in setting the original land value. The court rejected the retroactive value increase because "[i]f appellants' [county's] position in the case at bar is correct [*i.e.,* that values listed on the rolls can be retroactively increased after the rolls are closed], one purchasing real property would do so at the risk of a later reassessment, although the physical condition of the land had not

changed. Stability of titles and the verity of public records are important consideration, and have always been protected both by the legislature and the courts." *Id.* at 72. This policy has not changed, and it is central to the limitations on omit assessments in RCW 84.40.080. Contrary to the County's argument, RCW 84.48.065 is not a back door way to get around this important principle or the long established rule.

RCW 84.40.080 permits assessors to make a correction when improvements are totally omitted from assessment, but it does not permit retroactive changes in improvement values listed on the rolls. It does not allow assessors to go back and correct under-valuations because:

> Property owners who are taxed for 'improvements' on a piece of property and who pay the amount for which they are billed should be entitled to rely on the record thus made.

Tradewell, 69 Wn.2d at 354-355.[9] An omission of an improvement (as opposed to an undervaluation of an improvement) is "evidenced by the assessment rolls" only when the initial roll shows no improvement value. The *Tradewell* court refused to be drawn into a case-by-case determination of whether the degree of undervaluation was sufficient to provide public

---

[9] *See also, Tacoma Goodwill Industries Rehabilitation Center, Inc. v. Pierce County*, 10 Wn.App. 197, 199, 518 P.2d 196 (1973) ("It has been consistently held that this statute [RCW 84.40.080] does not authorize the assessor to recover omitted value, where property has been listed but erroneously undervalued on the tax rolls of prior years."); *Star Iron & Steel Co. v. Pierce County*, 5 Wn.App. 515, 488 P.2d 776 (1971); *E. K. Wood Lumber Co. v. Whatcom County, supra.*.

notice that property had been omitted from assessment rather than just undervalued.[10] It is an all-or-nothing standard. Here, improvement value was listed on the original assessment roll, so no omitted improvement assessment can be made.

The limitations in RCW 84.40.080 on omit assessments preserve the finality of the completed assessment rolls and protect property owners against unfair *ex post facto* tax increases. They protect innocent third parties by prohibiting omit assessments where a *bona fide* purchaser, encumbrancer or contract buyer acquires an interest in the property before the omission is discovered. Omit assessments do not re-open a closed assessment year, but instead, are implemented as a special form of assessment for the year when the omission is discovered. That preserves the finality of the closed rolls and avoids placing an undue hardship on

---

[10] Indeed, the facts in this case are virtually identical to those in *Tradewell*. In *Tradewell* the taxpayer had constructed a new supermarket on a parcel that had a minimal improvement value listed on the original assessment roll. During 1960, when the new supermarket was built, the assessor's staff estimated the value of the new construction, but for "some undetermined reason" the new value was not posted to the assessment rolls. *Id.* at 353. Instead, the old nominal improvement value ($1215) remained on the assessment and tax rolls for five more years. In 1965, when the assessor finally discovered the error, he issued omit assessments going back three years (1962, 1963 and 1964) to increase the improvement value to reflect the newly constructed supermarket. Those increases were rejected by the court.

taxpayers.[11] None of these important safeguards, however, apply to revisions made under RCW 84.48.065.

The County asks the court to believe that the legislature went to all the trouble of establishing clear safeguards to protect taxpayers and innocent third parties from unfair retroactive taxes under RCW 84.40.080, then rendered those protections illusory by granting treasurers and assessors the power to impose the same retroactive tax – in a more draconian fashion – under RCW 84.48.065. That makes no sense. If improvement value is omitted from the assessment roll, that omission can be corrected only when authorized by RCW 84.40.080. RCW 84.48.065 is not a vehicle to get around the limitations and safeguards against retroactive valuation changes that are established by RCW 84.40.080.

D. The Omission of the New Construction Value Was Not a Manifest Error Correctable under RCW 84.48.065.

The County's theory is that RCW 84.48.065 authorizes assessors to retroactively correct undervalued property, provided only that the correction be made "by reference to the records and valuation methods applied to similarly situated properties, without exercising appraisal

---

[11] Taxes on an omit assessment are due the year after the assessment is made. Here, for example, had there been no improvement value listed on the original assessment roll, an omit assessment could have been made in 2010, and the tax on that assessment would have been payable in two installments in April and October of 2011. Instead, under the County's theory, the entire additional tax is payable in October 2010.

judgment."[12] That theory, however, is contrary to plain language of the statutes, contrary to legislative history, and contrary to every rule of statutory construction that bears on the question.

1. The County's theory is contrary to the plain language and meaning of the statutes.

Statutory interpretation begins with the plain meaning of the statute. "Plain meaning is to be discerned from the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole." *Lake v. Woodcreek Homeowners Ass'n*, 169 Wn.2d 516, 526, 243 P.3d 1283, 1288 (2010)(*internal quotation omitted*). The plain meaning of RCW 84.48.065 does not authorize assessors and treasurers to retroactively revise assessments to add value that was omitted from the assessment roll.

RCW 84.48.065 identifies specific errors on the assessment rolls that county assessors and treasurers may retroactively correct. Only one of these is a valuation error and that one is not relevant to this case. The following are the specific errors that may be corrected under RCW 84.48.065:

---

[12] The County's argument is based upon the definition of "manifest error" promulgated by the Department of Revenue in WAC 458-14-005(14). That rule is discussed in detail *infra* at pp. 30-34.

"*Manifest errors in description.*" This authorizes assessors and treasurers to correct erroneous legal descriptions that appear on an assessment roll. A correct legal description is important for property taxes because the tax is ultimately enforced as a lien against the property assessed. *See* RCW 84.60.010 - .020. This provision does not apply here because the error in this case was not a manifest error in description.

"*Double assessments.*" This authorizes a correction if a parcel is erroneously listed more than once on an assessment roll. The error in this case was not a double assessment.

"*Clerical errors in extending the rolls.*" "Extending the rolls" refers to the process of calculating and listing the tax liability against the property listed on the assessment rolls. *See, e.g.*, RCW 84.48.120; RCW 84.52.010; RCW 84.52.018; RCW 84.52.080; RCW 84.56.010; RCW 84.56.020; RCW 84.68.110; RCW 84.68.120; RCW 84.52.080(1). The error in this case was not a clerical error in extending the rolls.

"*Manifest errors in the listing of the property which do not involve a revaluation of property, except in the case that a taxpayer produces proof that an authorized land use authority has made a definitive change in the property's land use designation.*" This provision covers two types of errors. One is listing errors that result from "a definitive change in land use designation." This is the only valuation error that can be corrected

under RCW 84.48.065. It addresses the circumstance in which a property's value changes because of a definitive change in zoning or other land use designation. In that circumstance, the value can be revised to reflect the correct land use designation, provided however, that the assessor and land owner agree on the proper value. RCW 84.84.065(2)(i). This provision does not apply here because the error in this case did not result from a "definitive change in land use designation."

The second types of error covered by this provision are listing errors that "do not involve a revaluation of property." A revaluation is "a revised or new valuation or estimate." Webster's Third International Dictionary. The statute gives two examples of such errors, both of which involve a failure to give effect to a tax exemption. This provision does not apply here because the May 2010 assessment revisions *did* revalue the improvements on plaintiffs' properties. The whole point of the May 2010 revisions was to revalue the improvements to reflect the new construction.

The foregoing exhausts the assessment correction authority provided by RCW 84.48.065. None of the provisions authorize the valuation revisions made by the Assessor. The plain language demonstrates clearly that RCW 84.48.065 was not intended to provide a means by which assessors can evade the express limitations on omitted improvement assessments in RCW 84.40.080.

2. The legislative history of RCW 84.48.065 and RCW 84.40.080 confirm plaintiffs' reading of RCW 84.48.065.

The legislative history of RCW 84.48.065 confirms that it means what it says and that it does not authorize county treasurers or assessors to retroactively raise assessments of undervalued property.

The relevant language in RCW 84.48.065 originated as the second paragraph of Laws of 1915, ch. 122, § 2.[13] That provision consisted of two paragraphs that addressed two categories of errors that county treasurers (not assessors) were to report to the county board of equalization for correction. The second paragraph contained the language now embodied in RCW 84.48.065 dealing with non-valuation errors.

In 1955 these two paragraphs were recodified as separate sections of the Revised Code of Washington: the first paragraph as

---

[13] Laws of 1915, ch. 122 § 2 provided:

> If the county treasurer has reason to believe or is informed that any person has given to the county assessor a false statement of his personal property, or that the county assessor has not returned the full amount of personal property required to be listed in his county, or has omitted or made erroneous return of any property which is by law subject to taxation, or if it shall come to his knowledge that there is personal property which has not been listed for taxation for the current year, he shall prepare a record setting out the facts with reference to the same and file such record with the county board of equalization at its meeting on the third Monday in April....
>
> The county treasurer shall also make and file with the county board of equalization a record, setting forth the facts relating to such manifest errors in description, double assessments, clerical errors in extending the rolls, and such manifest errors in the listing of property which do not involve a re-valuation of property, such as the assessment of property exempted by law from taxation or the failure to deduct the exemption allowed by law to the head of a family as shall come to his attention after the rolls shall have been turned to him for collection.

RCW 84.56.390, and the second as RCW 84.56.400. Laws 1955, ch. 112. Then, in 1988, the legislature reformed and streamlined the assessment correction procedures by: (1) repealing RCW 84.56.390 (which had originated as the first paragraph of Laws of 1915, ch. 122, § 2), and (2) consolidating the authority of assessors and treasurers to correct non-valuation errors in a single statute – the new RCW 84.48.065. The 1988 amendment, however, did not expand the statute's correction authority. It still extends only to the non-valuation errors covered by the second paragraph of Laws 1915, ch. 112, § 2.

This history explains: (1) why RCW 84.48.065 contains none of the protections against *ex post facto* tax increases that are contained in RCW 84.40.080, and (2) why it gives equal correction authority to assessors and treasurers. It contains no protections against retroactive tax increases because none are needed. RCW 84.48.065 does not authorize retroactive valuation or tax increases. It only authorizes non-valuation corrections and value corrections that are agreed to by the taxpayer. These corrections cannot result in unfair *ex post facto* tax increases. This also explains why the statute gives equal correction authority to assessors and treasurers. It would not make sense to give treasurers independent authority to revise assessed values because treasurers have no authority over determining assessed values. *Brewer v. Dunning,* 122 Wash. 358,

359, 210 Pac. 672 (1922) ("[I]t was not in the province of a county treasurer to make an assessment.... The county treasurer has no such authority under law."). RCW 84.48.065 does not violate this long standing principle because it does not authorize treasurers to make valuation changes. It only authorizes the non-valuation corrections specified in the statute and valuation changes relating to changes in land use designation that are agreed to in writing by the assessor and taxpayer.

The legislative history of RCW 84.40.080 further confirms this reading of the statutes. County assessors have long been unhappy with the limits placed by RCW 84.40.080 on their ability to retroactively add new construction value to the rolls where some improvement value is already listed. They and the Department of Revenue have sought to amend RCW 84.40.080 to legislatively overrule *Tradewell* and to permit such retroactive assessments. The legislature, however, has rejected those efforts. For example, in 1994 the Department proposed Substitute Senate Bill 5372 which, among other things, would have expressly authorized assessors to make omit improvement assessments in the very circumstances present here, *i.e.,* where some improvement value is already

listed.[14] That bill, however, failed to pass. RCW 84.40.080, as interpreted in *Tradewell*, remains the law.[15]

3. RCW 84.48.065 should be interpreted to avoid conflict and to harmonize it with RCW 84.40.080.

Statutes should be construed in harmony with related provisions so that all language is given effect and none is rendered meaningless, superfluous or absurd. *AOL, LLC v. Washington State Dept. of Revenue*, 149 Wn.App. 533, 542, 205 P.3d 159, 163 (2009); *City of Medina v. Primm*, 160 Wn.2d 268, 277, 157 P.3d 379, 383 (2007). Where a general

---

[14] SSB 5372 would have amended RCW 84.40.080, in pertinent part, as follows: "((~~Where improvements have not been valued and assessed as a part of the real estate upon which the same may be located, as evidenced by the assessment rolls, they may be separately valued and assessed as omitted property under this section~~)) When any improvement has not been placed on an assessment roll as a part of the real estate upon which it is located, the improvement may, subject to RCW 84.40.085, be subsequently placed upon the assessment roll regardless of whether any other improvement on the real estate is listed on the assessment roll. For purposes of this section it is immaterial whether an assessment roll lists each improvement separately: PROVIDED, That no such assessment shall be made in any case where a bona fide purchaser ((~~, encumbrancer,~~)) or contract buyer has acquired any interest in said property prior to the time such improvements are assessed." The Senate Bill Report on SSB 5372 described the purpose of this proposed change: "Omitted improvements to real property may be added to the tax rolls even if other improvements already exist. The assessment of omitted improvements is not precluded by an intervening encumbrancer." *See* Appendix 4.

[15] *Friends of Snoqualmie Valley v. King County Boundary Review Bd.*, 118 Wn.2d 488, 496-497 (1992) (where legislature declines to amend statute previously interpreted by supreme court, it indicates legislative approval of the prior interpretation).

statute addresses the same subject as a more specific statute, and the two cannot be harmonized, the specific statute prevails over the general. *AOL, LLC, supra.* Plaintiff's construction of the statutes adheres to these rules. It avoids an interpretation that would render superfluous the limitations on omit assessments under RCW 84.40.080. It harmonizes the two statutes in a consistent, sensible scheme. The County's construction does not.

The County's construction places RCW 84.48.065 in direct conflict with the express limitations on omit assessments established by RCW 84.40.080. RCW 84.40.080 is crafted to allow retroactive assessments where the assessment roll itself provides fair notice of an omission, but to otherwise preserve the finality of a closed assessment roll and protect property owners and *bona fide* purchasers from *ex post facto* valuation increases. Moreover, an omit assessment never reopens a closed assessment roll. Instead, omit assessments are entered on the assessment roll for the year in which the omission is discovered. They are treated as an add-on to the current assessment roll so that they do not disrupt the finality of the closed assessment rolls. The County's construction of RCW 84.48.065 is fundamentally at odds with this entire statutory scheme.

It makes no sense for the legislature to have established two conflicting procedures for assessing property or value that is omitted from

the assessment rolls, and it makes no sense to interpret RCW 84.48.065 in a manner that undermines the procedures and safeguards built into RCW 84.40.080. Why would the legislature expressly protect *bona fide* purchasers from retroactive tax liabilities under RCW 84.40.080, yet allow the very same retroactive tax liability to be imposed under RCW 84.48.065? That would be absurd, and statutes should be interpreted to avoid absurd results. *Flanigan v. Dep't of Labor & Indus.*, 123 Wn.2d 418 (1994).

4. The Department of Revenue Cannot Expand the Assessor's Correction Authority under RCW 84.48.065 Through Rulemaking.

The County's claim under RCW 84.48.065 is based largely on the Department of Revenue's definition of "manifest error" in WAC 458-14-005(14). *See* Appendix 5. The County argues that that rule grants assessors and treasurers broad authority to retroactively revise valuations so long as the revaluation can be made "by reference to the records and valuation methods applied to similarly situated properties, without exercising appraisal judgment." *Id.* The Department's rule, however, is in direct conflict with the plain language of the statutes and so vague and ambiguous that it is impossible to understand exactly what it means. To the extent that the rule is intended to grant assessors the authority to make retroactive valuation changes as "manifest error" corrections, it is invalid.

The Department cannot grant by rule, what the legislature has refused to authorize by law.

The language of RCW 84.48.065 is plain and clear, and the Department cannot redefine "manifest error" to extend the application of the statute's error correction authority beyond what the legislature provided. Its apparent attempt to do so is entitled to no deference in court. *Association of Washington Business v. Department of Revenue*, 155 Wn.2d 430, 447, 120 P.3d 46 (2005) (Interpretive rules "serve merely as advance notice of the agency's position should a dispute arise and the matter result in litigation. . . . They are not binding on the courts and are afforded no deference other than the power of persuasion. Accuracy and logic are the only clout interpretive rules wield.").

The Department's definition of "manifest error" includes numerous items not mentioned in the statute (*e.g.,* "misapplication of statistical data"; "incorrect characteristic data", "erroneous measurements"). It substitutes broad categories of corrections for the more limited corrections specified in the statute. For example, the statute authorizes correction of "clerical errors in extending the rolls." The Department, in contrast, includes a much broader category of "clerical or posting errors" in its definition. And finally, the Department adds a catchall category to its definition of "manifest error" – *i.e.,* "any other

error which can be corrected by reference to the records and valuation methods applied to similarly situated properties, without exercising appraisal judgment" – that is so ambiguous that it has no discernable meaning.

The Department's rule does not accurately or logically interpret the statutory language in RCW 84.48.065. That statute is not ambiguous and it does not require an interpretive rule to understand its meaning.

Statutes authorizing the correction of assessment errors have long been interpreted as limited to non-valuation errors:

> A statute authorizing the correction of tax rolls for errors or omissions authorizes corrections only for clerical errors and does not authorize the correction of alleged errors in the determination of the cash value of property assessed. Accordingly, a supplemental tax roll may not be issued to correct an assessment merely because the assessor determines that the original assessment undervalued certain property.

84 C.J.S. Taxation § 601 at p. 628. This was the common understanding of manifest error corrections when the current statutory language was adopted in 1915, and that is the meaning that the legislature is presumed to have intended. *Cf. Northern Pac. Ry. Co. v. Henneford,* 9 Wn.2d 18, 21 (1941) (where undefined term has well understood meaning at common law, it is presumed that the legislature intended that meaning).[16] The

[16] *See also,* Hermance v. Ulster County Sup'rs, 26 Sickels 481, 1877 WL 12145, (N.Y. 1877).

Department of Revenue cannot, through rulemaking, "write into a statute something that the legislature did not put there." *Id.* It cannot, by rulemaking, redefine "manifest error" to get around the express statutory limitations on omitted improvement assessments that the legislature has refused to change.

Moreover, the Department's definition of "manifest error" is disastrously unclear. What is an error that "can be corrected by reference to the records and valuation methods applied to similarly situated properties, without exercising appraisal judgment"? What are "records and valuation methods applied to similarly situated properties"? What is "appraisal judgment"? The meaning of these terms is anything but self-evident. Here, for example, the Code 17 computer hold was not released because a senior appraiser did not review the proposed value increase and release the hold. How can it be said that that review – no matter how cursory – did not involve "appraisal judgment"? What would be the point of having a senior appraiser review a proposed value if not to bring the senior appraiser's "judgment" to bear on whether the value should be posted?

Under the County's interpretation of the Department's rule, the security of property titles and the protection of innocent third parties against retroactive tax liens would depend on some metaphysical

evaluation of the nature and substantiality of judgments rendered in the assessment process. That makes no sense. The security of innocent parties against *ex post facto* tax increases cannot depend on such amorphous distinctions.

A few examples may help illustrate the problems with the Department's rule and the County's argument. What if the assessor valued a parcel based on its income but used an "incorrect" estimate of expected income? When would that be an error of appraisal judgment and when would it be a manifest error? What if the error occurred because of a "clerical error" in choosing the income to use in the capitalization process? What would be a "clerical error" (as opposed to some other kind of error) in choosing the income to capitalize? What is "appraisal judgment"? What if the appraiser chose income from year one as the income to capitalize to determined value, thinking that year one income would be typical of income expected from the property, but later changed his mind because assessments of other similarly situated properties had treated year one income as atypical? Would that be an error correctable based on the "records and valuation methods applied to similarly situated properties"? The ambiguities of the Department's definition of "manifest error" are endless.

The Department's definition of "manifest error" is not based on the language of RCW 84.48.065 and it is in direct conflict with the express limitations on omitted improvement assessments in RCW 84.40.080. It apparently attempts to extend the correction authority of assessors far beyond the plain language and meaning of the statute. "Revaluation" has a common, well understood meaning – it is a revised or new valuation or estimate. When the value of property is changed, it is a revaluation. That meaning is consistent with the plain language, the policy and the history of RCW 84.48.065. The Department of Revenue has no rulemaking authority to revise the meaning of "manifest error" or to concoct a different definition for "revaluation" in order to imbue RCW 84.48.065 with correction authority that was not granted by the legislature.

E. The County's Construction of RCW 84.48.065 is Contrary to Established Principles of Statutory Construction.

RCW 84.40.080 and 84.48.065 are unambiguous, and their meaning can be determined by their plain language. *State v. Armendariz*, 160 Wn.2d 106, 110, 156 P.3d 201 (2007). But even if the meaning of "manifest error" and "revaluation" were ambiguous, the *ejusdem generis* principle would limit the correction authority in RCW 84.48.065 to the type of non-valuation errors that are listed as examples of manifest listing errors "which do not involve a revaluation of property." *Dean v.*

McFarland, 81 Wn.2d 215, 221 (1972)(under *ejusdem generis,* general terms are given meaning and effect only to the extent they suggest items similar to those designated by the specific terms). The examples of such errors listed in the statute, *i.e.,* failures to recognize exempt status, are errors that can be corrected without a "revaluation," as that term is commonly understood. Under *ejusdem generis*, the authority of treasurers and assessors to correct listing errors is limited to these types of non-valuation errors.

This conclusion is confirmed by the doctrine of *expressio unius est exclusio alterius* which holds that where a statute specifies the things upon which it operates, it is presumed that omissions are intended. *Wash. State Republican Party v. Wash. State Pub. Disclosure Comm'n*, 141 Wn.2d 245, 280 (2000). RCW 84.48.065 specifies one type of valuation error that can be corrected as a manifest error –erroneous values resulting from a "definitive change in land use designation." Because the legislature specified the one type of value correction that *can* be made under RCW 84.48.065, it is presumed that other types of revaluations are not authorized.

VI. CONCLUSION

The King County Assessor unlawfully increased the assessed values of the improvements on plaintiffs' Riverpark properties in 2009 and

2010. Those valuation increases were unlawful. Therefore, the decision of trial court should be reversed, and the case remanded to the trial court with instructions to grant summary judgment to plaintiffs ordering a refund of the unlawful taxes as provided by RCW 84.68.030.

Respectfully submitted this 7th day of September.

WILLIAM C. SEVERSON PLLC

William C. Severson, WSBA # 5806
1001 Fourth Avenue, Suite 4400
Seattle, WA 98154-1192
Tele: (206) 838-4191
Fax: (206) 389-1708

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on the date below signed, I caused true and correct copies of the following:

- **APPELLANTS' BRIEF**

to be served on counsel of record for defendant in the manner indicated below:

Mike Sinsky, Deputy Prosecuting Attorney

Via Legal Messenger

DATED AT SEATTLE, WASHINGTON, this 7th day of September, 2012

Honorable Harry McCarthy
June 15, 2011 @ 9:00AM

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

LEGACY PARTNERS RIVERPARK APARTMENTS BUILDINGS A/B LLC; LEGACY PARTNERS RIVERPARK APARTMENTS BUILDING E LLC, Delaware Limited Liability Corporations, Plaintiffs, vs. KING COUNTY, WASHINGTON, a Municipal Corporation, Defendant.	No. 11-2-22559-3 SEA ~~[Proposed]~~ ORDER GRANTING KING COUNTY'S MOTION FOR SUMMARY JUDGMENT AND DENYING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT (Clerk's Action Required)

ORDER OF SUMMARY JUDGMENT

THIS MATTER came on for hearing on June 15, 2012 before the Court on the parties' cross-motions for summary judgment. Plaintiffs are represented by William C. Severson, attorney at law, and Defendant King County is represented by Senior Deputy Prosecuting Attorney Michael Sinsky. The Court has reviewed and considered the following in connection with the motions:

i) Plaintiffs' Motion for Summary Judgment including the appendices thereto;

ii) Declaration of William C. Severson with attached Exhibits;

Daniel T. Satterberg, Prosecuting Attorney
CIVIL DIVISION
W400 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9015/FAX (206) 296-0191

iii) Declaration of Kerry L. Nicholson with attached Exhibits;

iv) King County's Motion for Summary Judgment;

v) Declaration of Michelle Hagen with attached Exhibits;

vi) Plaintiffs' Opposition to Defendant's Motion for Summary Judgment;

vii) King County's Response to Plaintiff's Cross-Motion for Summary Judgment;

viii) Declaration of Bonnie Christensen with attached Exhibit;

ix) Declaration of Iris Hoffner with attached Exhibits;

x) Plaintiffs' Reply on Motion for Summary Judgment;

xi) King County's Reply in Support of Motion for Summary Judgment; and

xii) Reply Declaration of Iris Hoffner

After careful consideration of the foregoing materials and the arguments of counsel, it is hereby:

ORDERED, ADJUDGED and DECREED that King County's Motion for Summary Judgment is GRANTED, and that plaintiffs' claims in this matter be and hereby are dismissed with prejudice.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that Plaintiffs' Motion for Summary Judgment is DENIED.

DONE IN OPEN COURT THIS 15 day of June, 2012.

JUDGE HARRY McCARTHY

Daniel T. Satterberg, Prosecuting Attorney
CIVIL DIVISION
W400 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9015/FAX (206) 296-0191

Presented by:

Michael J. Sinsky, WSBA #19073
Senior Deputy Prosecuting Attorney

Approved as to form

Attorney for Plaintiffs WSBA #15516

Daniel T. Satterberg, Prosecuting Attorney
CIVIL DIVISION
W400 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9015/FAX (206) 296-0191

Legacy Partners v. King County,
COA # 69073-6
Appendix 2.

RCW 84.40.080
Listing omitted property or improvements.

An assessor shall enter on the assessment roll in any year any property shown to have been omitted from the assessment roll of any preceding year, at the value for the preceding year, or if not then valued, at such value as the assessor shall determine for the preceding year, and such value shall be stated separately from the value of any other year. Where improvements have not been valued and assessed as a part of the real estate upon which the same may be located, as evidenced by the assessment rolls, they may be separately valued and assessed as omitted property under this section. No such assessment shall be made in any case where a bona fide purchaser, encumbrancer, or contract buyer has acquired any interest in said property prior to the time such improvements are assessed. When such an omitted assessment is made, the taxes levied thereon may be paid within one year of the due date of the taxes for the year in which the assessment is made without penalty or interest. In the assessment of personal property, the assessor shall assess the omitted value not reported by the taxpayer as evidenced by an inspection of either the property or the books and records of said taxpayer by the assessor.

Legacy Partners v. King County,
COA # 69073-6
Appendix 3

RCW 84.48.065
Cancellation and correction of erroneous assessments and assessments on property on which land use designation is changed.

(1) The county assessor or treasurer may cancel or correct assessments on the assessment or tax rolls which are erroneous due to manifest errors in description, double assessments, clerical errors in extending the rolls, and such manifest errors in the listing of the property which do not involve a revaluation of property, except in the case that a taxpayer produces proof that an authorized land use authority has made a definitive change in the property's land use designation. In such a case, correction of the assessment or tax rolls may be made notwithstanding the fact that the action involves a revaluation of property. Manifest errors that do not involve a revaluation of property include the assessment of property exempted by law from taxation or the failure to deduct the exemption allowed by law to the head of a family. When the county assessor cancels or corrects an assessment, the assessor shall send a notice to the taxpayer in accordance with RCW 84.40.045, advising the taxpayer that the action has been taken and notifying the taxpayer of the right to appeal the cancellation or correction to the county board of equalization, in accordance with RCW 84.40.038. When the county assessor or treasurer cancels or corrects an assessment, a record of such action shall be prepared, setting forth therein the facts relating to the error. The record shall also set forth by legal description all property belonging exclusively to the state, any county, or any municipal corporation whose property is exempt from taxation, upon which there remains, according to the tax roll, any unpaid taxes. No manifest error cancellation or correction, including a cancellation or correction made due to a definitive change of land use designation, shall be made for any period more than three years preceding the year in which the error is discovered.

(2)(a) In the case of a definitive change of land use designation, an assessor shall make corrections that involve a revaluation of property to the assessment roll when:

(i) The assessor and taxpayer have signed an agreement as to the true and fair value of the taxpayer's property setting forth in the agreement the valuation information upon which the agreement is based; and

(ii) The assessment roll has previously been certified in accordance with RCW 84.40.320.

(b) In all other cases, an assessor shall make corrections that involve a revaluation of property to the assessment roll when:

(i) The assessor and taxpayer have signed an agreement as to the true and fair value of the taxpayer's property setting forth in the agreement the valuation information upon which the agreement is based; and

(ii) The following conditions are met:

(A) The assessment roll has previously been certified in accordance with RCW 84.40.320;

(B) The taxpayer has timely filed a petition with the county board of equalization pursuant to RCW 84.40.038 for the current assessment year;

(C) The county board of equalization has not yet held a hearing on the merits of the taxpayer's petition.

(3) The assessor shall issue a supplementary roll or rolls including such cancellations and corrections, and the assessment and levy shall have the same force and effect as if made in the first instance, and the county treasurer shall proceed to collect the taxes due on the rolls as modified.

Legacy Partners v. King County,
COA # 69073-6
Appendix 4.

Senate Sub Bill 5372,

Original language to change rule on omit assessments of improvements:

Sec. 19. RCW 84.40.080 and 1973 2nd ex.s. c 8 s 1 are each amended to read as follows:

((~~The~~)) An assessor((~~, upon his own motion, or upon the application of any taxpayer,~~)) shall enter ((~~in the detail and assessment list of the current~~)) on the assessment roll in any year any property shown to have been omitted from the assessment ((~~list~~)) roll of any preceding year, at the ((~~valuation of that~~)) value for the preceding year, or if not then valued, at such ((~~valuation~~)) value as the assessor shall determine ((~~from~~)) for the preceding year, and such ((~~valuation~~)) value shall be stated ((~~in a separate line~~)) separately from the ((~~valuation~~)) value of ((~~the current~~)) any other year. ((~~Where improvements have not been valued and assessed as a part of the real estate upon which the same may be located, as evidenced by the assessment rolls, they may be separately valued and assessed as omitted property under this section~~)) When any improvement has not been placed on an assessment roll as a part of the real estate upon which it is located, the improvement may, subject to RCW 84.40.085, be subsequently placed upon the assessment roll regardless of whether any other improvement on the real estate is listed on the assessment roll. For purposes of this section it is immaterial whether an assessment roll lists each improvement separately: PROVIDED, That no such assessment shall be made in any case where a bona fide purchaser((~~, encumbrancer,~~)) or contract buyer has acquired any interest in said property prior to the time such improvements are assessed. When such an omitted assessment is made, the taxes levied thereon may be paid within one year of the due date of the taxes for the year in which the assessment is made without penalty or interest: AND PROVIDED FURTHER, That in the assessment of personal property, the assessor shall assess the omitted value not reported by the taxpayer as evidenced by an inspection of either the property or the books and records of said taxpayer by the assessor.

Severson Decl. Ex 1

Senate Bill Report to change:

> *"Omitted improvements to real property may be added to the tax rolls even if other improvements already exist. The assessment of omitted improvements is not precluded by an intervening encumbrancer."*

Did not pass:

SENATE BILL REPORT

2SSB 5372

AS PASSED SENATE, JANUARY 28, 1994

Brief Description: Changing multiple tax provisions.

SPONSORS: Senate Committee on Government Operations (originally sponsored by Senators Loveland and Winsley)

SENATE COMMITTEE ON GOVERNMENT OPERATIONS

Majority Report: That Second Substitute Senate Bill No. 5372 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Haugen, Chairman; Drew, Vice Chairman; Loveland, Oke and Winsley.

Staff: Rod McAulay (786-7754)

Hearing Dates: February 12, 1993; February 19, 1993; January 19, 1994

HOUSE COMMITTEE ON LOCAL GOVERNMENT

HOUSE COMMITTEE ON REVENUE

BACKGROUND:

Existing statutory provisions governing the assessment and collection of various state and local taxes contain inconsistent procedures, time frames and obsolete references to agencies and other statutes. There is a need for general technical housekeeping legislation to reduce confusion and aid efficiency and fairness in the assessment and collection of taxes.

SUMMARY:

Delinquent gambling taxes become a lien on real and personal property in the same manner as other taxes.

Joint school district levies collected by a county treasurer must be remitted monthly rather than quarterly.

A requirement that counties send tax foreclosure summons to city treasurers is deleted.

It is illegal to reuse or transfer a mobile home movement decal.

At least ten days prior to a hearing before the state Board of Tax Appeals, both the county assessor and the taxpayer must provide each other with evidence of comparable sales they intend to present.

The requirement that a notice of appeal from a county board of equalization decision be filed with the county auditor is deleted. The notice is filed directly with the state Board of Tax Appeals. The state Board of Tax Appeals may enter a multi-year order.

The terms "adequate stocking" and "merchantable stand of timber" are defined by the Forest Practices Board.

It is made clear that conservation future levies are subject to the 1 percent constitutional limit.

The court shall determine any penalty, not to exceed $5,000, for the failure of a secured party listed on the tax rolls to provide to the assessor the name and address of the person making the mortgage or contract payments. The formula for establishing such a penalty is deleted.

Omitted improvements to real property may be added to the tax rolls even if other improvements already exist. The assessment of omitted improvements is not precluded by an intervening encumbrancer.

At the request of 80 percent of the owners, the county assessor may charge all owners the actual cost of surveying and platting an irregular subdivision. These charges, if unpaid, become a lien on the property and may be collected in the same manner as a property tax.

The abstract of the tax rolls shall be transmitted by the assessors to the department of revenue by the 18th of August.

If a county fails to provide the Department of Revenue an assessment return by December 1, the department may proceed in a manner it deems appropriate to estimate the value of each class of property in the county.

The county assessor must provide the taxpayer with any evidence of comparable sales at least 15 days prior to a board of equalization hearing. The taxpayer must provide the assessor with his or her evidence of comparable sales at least ten days prior to such hearing. The Board of Equalization may enter multi-year orders.

A property tax levy may include corrections for errors which occurred in the prior year. A correcting levy is not subject to the 106 percent limit.

Language is clarified that taxes paid as a result of mistake, inadvertence, or lack of knowledge of a public employee or taxpayer is the basis for a refund.

The provision authorizing payment of property taxes by credit card is repealed. Other obsolete references or terms are corrected or repealed.

Appropriation: none

Revenue: none

Fiscal Note: available

HOUSE AMENDMENT(S):

The House amendments make numerous technical changes, updating references and terminology. Numerous provisions are added which increase the responsibilities of county treasurers for fiscal matters of the county and special taxing districts within the county. The authority of county treasurers to invest funds is clarified. County treasurers are authorized to provide collection services to other county agencies and to serve as or designate a fiscal agent on local bond issues. The authority of special taxing districts to name a fiscal agent on bond issues is repealed.

The use of "debit cards" to pay court fines is authorized.

Terminology regarding the assessed valuation of utility assets and private car company assets is changed.

Statutes requiring salaried county officers to remit all fees collected to the county treasurer and requiring transient traders to notify the assessor when they come into the state to do business are repealed.

Legacy Partners v. King County,
COA # 69073-6
Appendix 5

WAC 458-14-005
Definitions.
The following definitions apply to chapter 458-14 WAC:

(14) "Manifest error" means an error in listing or assessment, which does not involve a revaluation of property, including the following:

(a) An error in the legal description;

(b) A clerical or posting error;

(c) Double assessments;

(d) Misapplication of statistical data;

(e) Incorrect characteristic data;

(f) Incorrect placement of improvements;

(g) Erroneous measurements;

(h) The assessment of property exempted by law from taxation;

(i) The failure to deduct the exemption allowed by law to the head of a family; or

(j) Any other error which can be corrected by reference to the records and valuation methods applied to similarly situated properties, without exercising appraisal judgment.