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NO. 69073-6

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,

v.

KING COUNTY, WASHINGTON a Municipal Corporation,

Respondent.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE HARRY McCARTHY

BRIEF OF RESPONDENT KING COUNTY

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INTRODUCTION

Appellants, Legacy Partners Riverpark Apartments Buildings A/B LLC and Legacy Partners Riverpark Apartments Building E LLC (collectively "Legacy"), filed this property tax refund action challenging the King County Assessor's authority to correct erroneous property tax assessments in tax years 2010 and 2011. The Assessor's issuance of corrected assessments was well-supported by applicable statutory authority. The County respectfully requests that the King County Superior Court's decision to grant summary judgment dismissing Legacy's property tax refund claims be affirmed.

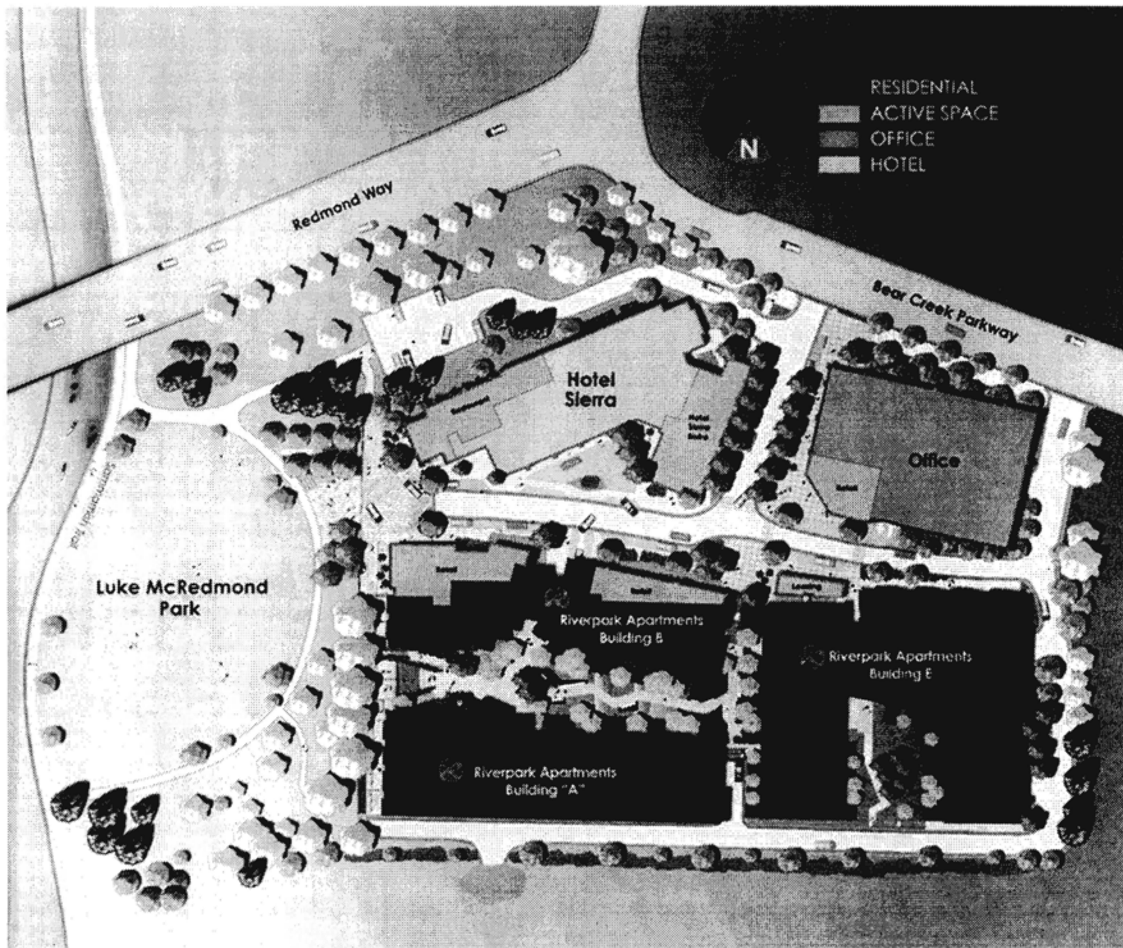
II. STATEMENT OF THE CASE

A. The Relevant Tax Parcels.

Legacy owns portions of a recently constructed Redmond development commonly referred to as "Riverpark." CP 2 at 4.2 – 4.5. Riverpark is composed of four separately owned tax parcels. Only two of the four parcels are at issue in this case: parcel 733805-0010 (containing Apartment Building A/B) and parcel 733805-0040 (containing Apartment Building E). *Id.*[1] The following

[1] Remaining parcels 733805-0020 and 733805-0030 were developed with hotel and office buildings, respectively. Owners of those parcels do not protest their assessments or otherwise seek a tax refund. CP 206 at ¶ 15.

map illustrates the configuration and location of relevant Riverpark parcels.



B. Assessments of Legacy's Tax Parcels.

Construction on each of the four Riverpark parcels began in 2008 and was completed in 2009 and 2010. CP 3 at ¶¶ 4.7 and 4.8. The Assessor was well aware of this development as it was occurring. Indeed, appraisal staff inspected the site and valued the improvements on each of the four parcels. CP 204 at ¶¶ 6 and 7 and

CP 228 - 32. The actual improvement values of approximately thirty million dollars that were determined by the Assessor for Legacy's two parcels were not, however, included in their initial property assessments. *Infra* at pp. 4-8. For reasons detailed below, the initial 2009 and 2010 assessments instead listed erroneous placeholder values of $1,000 for improvements on the two parcels. CP 204 at ¶ 9. In both years, the Assessor subsequently issued corrected assessments that reflected the actual improvement values that had been determined for the two parcels.

Legacy challenges the Assessor's authority to correct the erroneous 2009 and 2010 assessments in order to reflect the actual improvement values that had been determined, but were not properly entered, for their parcels. The refund amount sought by Legacy for the two combined years at issue is well in excess of a half-million dollars. CP 208 at ¶ 20.

While both 2009 and 2010 refund challenges involve disputes over the Assessor's authority to revise initially issued assessment values, the background and justifications for revisions made by the Assessor in the two years differ. The two years are therefore discussed separately to avoid unnecessary confusion.

1. 2009 Assessment (Taxes Payable in 2010).

Prior to development of the Riverpark structures, appraisal records listed a nominal $1,000 improvement value on each of Legacy's two parcels. CP 204 at ¶ 8. The $1,000 figure that was initially listed in no sense reflected anyone's determination of the actual fair market value of any actual improvements on the properties. *Id.* The $1,000 figure was instead carried in the system to serve as a placeholder, signaling that future development requiring valuation was anticipated on the site. *Id.*

Luxury apartment structures on Legacy's properties had already been substantially completed in 2009. On June 26, 2009, the Assessor's office conducted a site inspection of the Riverpark site improvements and thereupon established and entered into its computerized appraisal value tracking system assessed values for the extensive improvements that had been recently constructed on the parcels. CP 204 at ¶¶ 6, 7 and CP 210 - 32. For parcel 733805-0010 (Apartments A/B), the actual fair market value of improvements was determined to be $16,129,600. CP 204 at ¶ 7 and CP 228 - 32. The actual fair market value of improvements on parcel 733805-0040 (Apartment E) was determined to be $14,135,900. *Id.*

Due to a clerical error in failing to release an automatic computer hold, the 2009 improvement values that were determined by appraisal staff did not, however, properly post to the assessment roll. CP 204 at ¶ 9. The computer hold resulted from a program that automatically catches assessed value increases of over thirty percent (or decreases of over 25 percent) from the prior year. CP 205 at ¶ 10. The hold, commonly referred to within the Assessor's Office as a "Code 17" or "Catch and Release," is intended to avoid instances where an assessed value may have been erroneously input into the system -- for example, by transposing numerals or adding or omitting digits.[2] *Id.* Because the automatic Code 17 hold had not been released when the 2009 assessment roll was finalized, the placeholder improvement values of $1,000 were incorrectly retained in the computer system that was used to develop the assessment roll, and the actual improvement values of $16,129,600 and $14,135,900 failed to post to the roll. CP 204 at ¶ 9.

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[2] The Code 17 hold was initiated by a previous Assessor after a parcel with an improvement that was valued at several hundred thousand dollars erroneously received a tax bill showing an improvement value of several million dollars. CP 205 at ¶ 10. The hold was created so that significant value increases or decreases would be rechecked for ministerial errors, to make certain that there was a logical reason for the substantial changes, and that they were not simply the result of numbers having been transposed or incorrectly entered. *Id.*

The Assessor did not become aware of the failure to post actual improvement values on the 2009 assessment roll until May of 2010. CP 205 at ¶ 11. The errors were made known to the Assessor by owners of Riverpark's hotel parcel, who recognized the glaring error after similarly receiving notice that listed the obviously incorrect $1,000 improvement value. *Id.* Promptly after having been made aware of the posting error, the Assessor issued assessment roll corrections to Legacy, accurately reflecting the $16,129,600 and $14,135,900 improvement values that had previously failed to post. CP 206 at ¶ 12 and CP 236-53.

Notices of the corrected values were then provided to the taxpayers pursuant to RCW 84.48.065 (correction of erroneous assessments based upon manifest errors). CP206 at ¶ 13 and CP 255-58. The notices explained that "[v]alue was changed for the following reason(s): Failed to post." *Id.* The basis for the change in value was likewise reflected in the internal computer screen notes of appraisal staff dated May 4, 2010:

> TRC [tax roll correction] submitted for minor 0010, 0020 and 0040 because 2009 maintenance value failed to post. Minor 0010 imp changed from $1000 to $16,129,600. Minor 0020 imp changed from $1000 to $8,522,400 and minor 0040 changed from $1000 to $14,135,900.

CP 206 at ¶ 14 and CP 260. Corrected tax statements were issued to the taxpayers on May 5, 2010. CP 255 - 58.

In this action, Legacy challenges their revised 2009 assessment based upon argument that the Assessor purportedly lacked the legal ability to correct the initial, erroneous assessments under its RCW 84.48.065 manifest error authority.

In addition to filing this refund action, Legacy has challenged their revised 2009 assessment in an appeal to the King County Board of Equalization. CP 206 at ¶ 15.

2. 2010 Assessment (Taxes Payable in 2011).

Unlike the 2009 assessment corrections, the Assessor was able to correct and enter accurate 2010 assessment values for Legacy's parcels prior to the close of the applicable assessment roll.

The initial 2010 assessment notice sent out to Legacy was, however, erroneous. Because the incorrect placeholder value of $1,000 had not yet changed in the Assessor's computer appraisal system until after January 1, 2010, the $1,000 placeholder value incorrectly rolled forward in the computer 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 the actual improvement values of $13,997,400 and $15,433,300 was, however, properly posted on November 3, 2010, prior to certification of the 2010 assessment roll in December of 2010. CP 207 ¶ 17; CP 264-65. Updated notices of value, that included the correct assessments, were then sent to Legacy on November 11, 2010. CP 208 at ¶ 18 and CP 267.

Even though assessment corrections were implemented prior to close of the assessment rolls in December of 2010, Legacy has challenge their revised 2010 assessment based upon argument that revisions to the initial $1,000 improvement values were untimely under RCW 84.40.040.

In addition to commencing this refund action, Legacy has challenged their 2010 assessment in an appeal to the King County Board of Equalization. CP 208 at ¶ 20.

V. ARGUMENT

A. Standard of Review

This Court of Appeals reviews summary judgment decisions *de novo,* considering the same evidence presented to the trial court, under the same CR 56 review standard. *Lybbert v. Grant County,* 141 Wn.2d 29, 34, 1 P.3d 1124 (2000).

B. Assessment Process Background.

Some background regarding the assessment process is necessary to place Legacy's tax refund claims in proper context. Property taxes in Washington State are calculated based in large part upon property (land and improvement) values that are determined by the county assessor or State Department of Revenue.[3] In King County, property values are established by the Assessor through an annual assessment process that involves valuation of over 700,000 residential and commercial tax parcels. CP 203 at ¶ 3.

1. Property Valuation, Assessment Roll Certification and Property Tax Levy.

Assessments are 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 also include in their assessment the

[3] Washington utilizes a budget based property tax system. The system first determines total annual tax revenue by adding the annual budgets of all taxing authorities. CP 202-03 at ¶ 2. The portion of that total tax revenue owed by an individual taxpayer is then calculated based on his or her relative percentage share of the overall property value owned. *Id.*

additional fair market value of that new construction on July 31st of the assessment year. *See* RCW 36.21.080 (assessment of property that has increased in value due to new construction considered as of July 31st of that year).

After the individual fair market values of all taxable property are determined by Assessor staff, the values are placed into in an assessment roll that is certified by the Assessor 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 levy rates that will apply to individual taxpayers within the various taxing districts. *Id.* Such rates are expressed in dollars per every thousand dollars of assessed value. *Id.* The tax levy on an individual property is then determined by multiplying the property's assessed value by the applicable levy rate. Tax bills are thereafter prepared and sent out to the individual taxpayers for payment in the following tax year.[4] *Id*

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

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[4] In property tax parlance, the term "assessment year" refers to the year that property value is determined. The term "tax year" refers to the subsequent year in which taxes based on that assessment year value are payable. By way of example, 2010 assessment year values are payable in the 2011 tax year.

> 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.

While assessors endeavor to meet these timelines, due to the massive volume of work involved, the valuation process is often completed after these specified dates. CP 203 at ¶ 3. *See also* CP 311–15. As explained below, courts construing these provisions have determined that the timelines in RCW 84.40.040 are directory, however, and do not limit the taxing power. *Infra* at pp. 26-36.

2. Post assessment roll corrections

The foregoing subsection summarizes the process leading up to the County's annual establishment of an assessment roll and development of individual tax statements. 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 in this case, 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 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. *Infra* at pp. 13-22. RCW 84.48.065 contemplates that such manifest error corrections will occur after close of the assessment and rolls. The section expressly provides that assessment 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.

Separate and apart from the Assessor's authority to correct assessments based upon manifest error authority provided in RCW 84.48.065, RCW 84.40.080 authorizes assessors to determine and assess property value that was previously altogether omitted from the tax roll. *Infra at pp. 22-26.* Authority to assess omitted property under this "omit" section has limited application and is not relied upon by the County to support either the 2009 or 2010 assessment corrections at issue in this case.[5] More specifically, "omit" authority applies only where no value had been placed on the improvement.

[5] 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 herein solely to give context to Legacy's argument that RCW 84.40.080 omit limitations also govern manifest error corrections under RCW 84.48.065.

In such cases, RCW 84.40.080 sets forth a process for determining the value and assessing the previously omitted assessed value. *Id.*

C. Legacy's Challenged Assessment Corrections.

3. 2009 Assessment Correction Authorized By Manifest Error Statute and Rules.

The Assessor's May 10, 2010 correction of Legacy's 2009 assessment (for taxes payable in 2010) was well-supported by its legal authority to correct manifest errors pursuant to RCW 84.48.065. That section provides in pertinent part:

> (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....

In keeping with this section, WAC 458-14-005 further clarifies:

> (14) "Manifest error" means an error in listing or assessment, which does not involve a revaluation of property, including the following: ... (b) A clerical or posting error; ... 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.

Manifest error correction authority is explicitly provided by the foregoing provisions in cases such as this, to rectify "clerical or posting error[s]" or to correct ministerial errors (not involving exercise

of appraisal judgment) revealed by reference to existing records and valuation methods. *See* WAC 458-14-005(14)(b) and (j).

No exercise of appraisal judgment occurred in making the manifest error corrections at issue. As described above, thousand-dollar figures initially listed on Legacy's properties were merely placeholders that were not intended to reflect values that would list on the assessment roll. CP 204-6 at ¶¶ 6-12; CP 346-7 at ¶¶ 4-6. Actual improvement values that had been determined and entered onto appraisal records were simply carried forward without revision on the corrected 2009 assessments. *Id.* The County in no respect exercised appraisal judgment in lifting "catch and release" computer holds that initially kept values from posting to the rolls. It simply confirmed in ministerial fashion that the values had a factual basis (in this case, based on new construction on the site); had been the product of one of the recognized valuation methods[6] (in this case, the cost approach); and were properly entered (without extra numerals or transposition). *Id.* No effort to re-appraise property or second-guess the earlier appraisal judgment or value conclusion was involved in such review. *Id.* Assessor corrections appropriately

[6] WAC 458-07-025 specifies that "[i]n determining true and fair value, the assessor may use the sales (market data) approach, the cost approach, or the income approach, or a combination of the three approaches to value."

removed the computer hold and simply input the previously established values verbatim, with no revisions. CP 206 at ¶ 12. CP 346-7 at ¶ 6. This is precisely the sort of ministerial corrective action contemplated by RCW 84.48.065.

Legacy's argument that manifest error corrections may not correct assessment value is without merit. The very point of RCW 84.48.065 is to correct assessed value errors. The lead in to RCW 84.48.065 itself makes this point apparent: "[t]he county assessor or treasurer may cancel or correct <u>assessments</u>...." (emphasis added). Notice and appeal procedures outlined in the statute are likewise expressly directed at "assessment" cancelations or corrections. RCW 84.48.065(1).

Furthermore, notwithstanding Legacy's assertion to the contrary, the specific and general examples of manifest errors listed in RCW 84.48.065 plainly do contemplate assessed value revisions:

- Correction of a "manifest error in description" commonly revises the tax parcel's assessed value. For example, a one acre property improperly valued as two acres would remove assessed value attributable to the extra area.
- Correction of a "double assessment" likewise changes assessed value by removing any duplicative assessment amount from the tax parcel's assessed value.
- While a "clerical error extending the roll" may not necessarily change a property's assessed value, such corrections

certainly change the property's tax liability after the rolls have closed.

- Corrections resulting from errors in the "listing of property not involving revaluation of property" also change assessed value. As described below, this provision allows for other types of ministerial value corrections that do involve renewed exercise of appraisal judgment (except in cases where the error results from "a definitive change in the property's land use designation").

There is no merit to Legacy's related contention that the doctrine *expressio unis est exclusio alterius* precludes manifest error corrections that result in value changes.

> as we have repeatedly cautioned, the maxim of express mention and implicit exclusion " 'is to be used only as a means of ascertaining the legislative intent where it is doubtful, and not as a means of defeating the apparent intent of the legislature.' "

State v. Williams, 94 Wn.2d 531, 537, 617 P.2d 1012, 1016 (1980). Here legislative intent to allow for manifest error value changes, such as those at issue, is readily apparent both from the relevant statutory and rule text discussed above (each of which expressly allows for the correction of ministerial errors in assessment listings), and from the plainly unintended, illogical consequences of Legacy's alternative view (allowing assessment roll changes only if they are without value/tax consequence).

The general limitation on "revaluation of property" in RCW 84.48.065 is not, as Legacy suggests, a prohibition against revising an incorrect value on the assessment roll. It is, rather, a limitation on making value changes based upon an exercise of appraisal judgment. Indeed, the term "revaluation" is directly defined within applicable tax rules to mean "a change in value of property based upon an exercise of appraisal judgment." WAC 458-14-005(20) (emphasis added). This understanding is entirely consistent with the context noted above and with both the common understanding of the term "revaluation," which reflects a renewed act of undertaking a valuation exercise with respect to a property,[7] and the manner in which revaluation is utilized elsewhere in Washington's tax statutes.[8]

Legacy fundamentally misreads RCW 84.48.065 as limiting the universe of correctable manifest errors "not involving a revaluation of property" to tax exemptions. The misinterpretation is

[7] *See e.g.* Black's Law Dictionary, ("revaluation" means "resetting of the tax base by recomputing the value of real estate subject to taxation.") (emp. added). Collins English Dictionary (revaluation means "a fresh valuation or appraisal"); Webster's Third New International Dictionary (1976) ("revaluation" means "1. A revised or new valuation or estimate: reappraisal; 2. The act or process of revaluating"); New Oxford American Dictionary, 2d Edition (2005) ("revalue" means "assess the value of (something) again"); Webster's Ninth New Collegiate Dictionary (1990) ("revalue" means "to make a new valuation of : reappraise").

[8] *See e.g.* RCW 84.41 ("Revaluation of Property") (procedures and methods whereby the value of property is ascertained)

apparently based upon the portion of RCW 84.48.065(1) which reads: "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." Use of the word "include" (rather than "mean") in this context, however, denotes a non-exclusive, exemplary listing of certain manifest errors that do not involve revaluation of property.

> Generally, in interpreting statutory definitions, "includes" is construed as a term of enlargement while "means" is construed as a term of limitation. 2A C. Sands, *Statutes and Statutory Construction,* § 47.07, at 82 (4th ed. 1973).

Queets Band of Indians v. State, 102 Wn.2d 1, 4, 682 P.2d 909, 911 (1984). *See also State v. Hall*, 112 Wn.App. 164, 169, 48 P.3d 350, 352 (2002).[9] Certainly, if the legislature intended to limit the scope of "manifest errors that do not involve a revaluation of property" to these exemptions, it would have done so more directly by listing the exemptions in place of the quoted phrase.

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[9] The argument that was rejected in *Hall* is not unlike Legacy's theory in this case. In Hall, the Court considered whether an adopted child was a natural parent's "descendant" for purposes of RCW 9A.64.020. RCW 9A.64.020(3) provided that "[a]s used in this section, 'descendant' includes stepchildren and adopted children under eighteen years of age." The Court held that "RCW 9A.64.020(3) does not limit 'descendant' to those persons expressly named. Rather, the statute's use of the term 'includes,' denotes a non-exclusive exemplary listing. *See* 2A Norman Singer, *Statutes and Statutory Construction*, § 47.07, at 231 (6th ed. 2000) ('includes' is usually a term of enlargement, not limitation)." 112 Wn.App. at 169.

Legacy readily acknowledges that their restrictive view cannot be reconciled with applicable rules regarding manifest error correction authority or concerning use of the term "revaluation." They incorrectly argue, however, that these provisions are interpretive rules that should be afforded no deference. Such a position is wide of the mark. Even if the Department of Revenue's (DOR) formally adopted WAC direction on this matter could reasonably be viewed as non-binding and interpretive,[10] the rules are still be entitled to significant deference. The DOR is specially charged with interpreting and administering property tax statutes.

> The department of revenue shall, with the advice of the attorney general, decide all questions that may arise in reference to the true construction or interpretation of this title, or any part thereof, with reference to the powers and duties of taxing district officers, and such decision shall have force and effect until modified or annulled by the judgment or decree of a court of competent jurisdiction.

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[10] Unlike an interpretive rule, WAC 458-14-005 is enforceable in its own right. The rule was adopted pursuant to RCW 84.08.010, which directs the DOR to "exercise general supervision and control over the administration of the assessment and tax laws of the state" and requires the agency to "[f]ormulate such rules and processes for the assessment of both real and personal property for purposes of taxation...." Compliance with the rule itself is required and enforceable. *See* RCW 84.08.120 ("It shall be the duty of every public officer to comply with any lawful order, rule or regulation of the department of revenue made under the provisions of this title" and the DOR may seek court orders to compel compliance). *Cf. Assoc. of Washington Businesses v. DOR*, 155 Wn.2d 430, 447, 120 P.2d 46 (2005) (unlike legislative rules, no sanction results from violation of interpretive rule).

RCW 84.08.080. *See also* RCW 84.08.010, .120 (directing DOR to adopt tax assessment rules and providing for enforcement thereof). The DOR's position regarding the scope of manifest error authority is accordingly entitled to substantial weight. *See Impecoven v. DOR,* 120 Wn.2d 357, 363, 841 P.2d 752 (1992) ("While 'the ultimate authority' for determining a statute's meaning remains with the court, considerable deference will be given to the interpretation made by the agency charged with enforcing a statute."); *Weyerhaeuser v. DOE*, 86 Wn.2d 310, 314, 545 P.2d 5 (1976) ("where the legislature specifically delegates to an administrative agency the power to make rules, there is a presumption such rules are valid"). *Martinelli & Co., Inc. v. Dept. of Revenue*, 80 Wn.App. 930, 937, 912 P.2d 521, 524 (1996).[11]

Furthermore, if there could any reasonable doubt regarding the correctness of the DOR's position, that has been allayed by the legislature's decades long acquiescence in it. The WAC definition of "manifest error" has been in existence since 1990. None of the subsequent amendments to RCW 84.48.065 remotely suggests

[11] Neither the 1877 New York case nor C.J.S. references supplied by Legacy provide compelling authority for construing the Washington statutory and rule language at issue. Moreover, neither citation stands for the proposition that a manifest error correction may not change assessed value, in cases where such a change does not involve exercise of appraisal judgment.

legislative disagreement with the DOR's longstanding position. *See Council of Camp Fire v. DOR,* 105 Wn.2d 55, 65-66, 711 P.2d 300 (1985) ("Additional deference should be given to an agency's interpretation when the Legislature has amended a statute without altering the agency interpretation."); *State v. Peterson*, 100 Wn.2d 788, 791, 674 P.2d 1251 (1984) (legislature presumed to have enacted laws with knowledge of existing regulations).[12]

Finally, Legacy's legislative history discussion, highlighting references to both the treasurer and assessor in the current version of RCW 84.48.065, makes no point that the County does not readily concede: manifest error authority is generally not a vehicle for revising value based upon a renewed exercise of appraisal judgment.[13] Matters that can, however, be remedied under this section have, from the outset, included clerical errors and other

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[12] The notion that there may be instances where it may be more difficult to determine whether a potential assessment change involves exercise of appraisal judgment does not support Legacy's position that applicable rules should be ignored. The undisputed facts in this case plainly reveal that no exercise of appraisal judgment was involved in removing the computer hold and listing without change the 2009 assessed values that were previously determined for Legacy's properties. Even in cases where the determination was less clear, the usual interpretation rules would still apply.

[13] In any event, Legacy reads far too much into the "treasurer" and "assessor" references in its first sentence of RCW 84.48.065. These references merely acknowledge that each officer may correct those enumerated manifest errors that are within its respective, lawful function to correct. They are not intended to suggest either that the office's authority is expanded to allow either to undertake any of the corrections listed or that the nature of specified corrections should be narrowed such that either officer could perform them all.

errors in the listing of property that do not involve revaluation of property, such as that which occurred in this case.

Legacy's overly constricted view of the Assessor' manifest error correction authority is at odds with the plain language of the statute and seriously undermines the fundamental purpose of RCW 84.48.065 to allow assessment corrections to be made where, as in this instance, the ministerial revision is made based upon existing records of value that erroneously failed to post.

2. Manifest error authority not governed by omit statute

Legacy incorrectly argues that 2009 manifest error corrections under RCW 84.48.065 are prohibited because they would not be allowed under RCW 84.40.080's omitted value authority. To be clear, King County does not rely in any respect upon such omit authority to support the manifest error corrections at issue in this case. Legacy's 2009 corrections are justified based solely upon the Assessor's entirely separate authority to correct manifest errors in the assessment roll, granted by the Legislature in RCW 84.48.065.

Legacy's argument that "omit" limitations in RCW 84.40.080 restrict the Assessor's authority to correct manifest errors under RCW 84.48.065 finds no support in the statutes themselves. Certainly, there is no language in either RCW 84.40.080 (omitted value) or

RCW 84.48.065 (manifest error corrections) that even remotely suggests such a cross-limitation is intended.

Legacy's effort to graft omit restrictions onto the assessor's manifest error authority is similarly unsupported by any court decision construing such matters. Legacy's reliance on *Tradewell Stores* is misplaced. *Tradewell* affirmed the principal that exercise of omit authority under RCW 84.40.080 is limited to instances where no value had initially been placed upon the property. *Tradewell Stores v. Snohomish County,* 69 Wn.2d 353, 418 P.2d 466 (1966).[14] King County has no quarrel with the holding in *Tradewell* -- or with any legislative decision to modify or not modify the omit statute that was construed in that case. The case, however, makes no mention of, and does not purport to interpret, the separate and distinct manifest error provision relied upon by the County in this case.

Legacy makes a further, logically strained argument that omit limitations should apply in a manifest error context because there may be instances where the two assessment correction authorities overlap. At the outset, it is clear that the circumstances of this case

[14] In *Tradewell*, the grocery firm had razed several houses upon its property and erected a modern supermarket. The assessor, however, continued to value the property on the basis of its former improvements, the houses. The assessor then attempted to revalue the property pursuant to RCW 84.40.080 and change prior years' taxes, claiming that the new property, the supermarket, had been omitted from a real estate assessment. *Id.*

do not present such an overlap -- and that, even if they did, the taxpayer would be responsible for paying property tax on the correct value under one theory or the other.

There is no conflict between the manifest error and omit statutes that requires any extraordinary, reconciled interpretation of the plain language of these separate laws. The two statutes address entirely different circumstances and criteria and are therefore readily harmonized. Exercise of omit authority is justified only where value had been entirely omitted from the tax roll. RCW 84.40.080. By contrast, exercise of manifest error authority is allowed only where there has been

> an error in listing or assessment, which does not involve a revaluation of property, including the following: ... (b) A clerical or posting error; ... 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.

WAC 458-14-005 (14). While it is conceivable that there may be an instance in which a particular value was entirely omitted from the tax roll due to a clerical error (and would therefore be theoretically correctable on either omit or manifest error ground), such a possibility does not logically support Legacy's argument that omit limitations in

RCW 84.40.080 should govern manifest error corrections under RCW 84.48.065.[15]

Legacy's argument regarding the fairness or sensibility of providing manifest error correction authority that is, in some respects[16], broader than omit valuation restrictions amounts to little more than a debatable position of policy that is more appropriately addressed to the legislative branch. 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).[17] Moreover, under

[15] If such a circumstance were to arise where corrective action could be justified under either a manifest error or omit basis, the Assessor would simply apply one or the other authority, likely utilizing the procedure that is least onerous to the taxpayer. CP 303 at fn.4.

[16] Authority to correct omitted assessments is, in some respects, significantly broader than manifest error correction authority. For example, while manifest error corrections do not generally involve exercise of appraisal judgment, omitted assessments do. RCW 84.40.080

[17] Under Washington's budget-based property tax system, an individual property owner's tax burden is essentially based on his or her relative percentage share of the overall property value owned. As such, each person's property tax is marginally affected by increases or decreases in the assessed value of other taxpayers.

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.

Omit correction authority under RCW 84.40.080 is separate and distinct from the manifest error authority that was exercised in this case. Because the Assessor's 2009 manifest error correction occurred in accordance with RCW 84.48.065, dismissal of Legacy's refund 2009 property tax refund claim should be affirmed.

D. 2010 Assessment Revisions Occurring Prior to Close of the 2010 Assessment Roll Were Not Time-barred.

With respect to Legacy's challenged 2010 assessments, because the incorrect placeholder value of $1,000 had not yet changed in the Assessor's computer appraisal system until after January 1, 2010, the erroneous $1,000 placeholder value continued to incorrectly roll 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 the actual improvement values of $13,997,400 and $15,433,300 was, however, properly posted on November 3, 2010, prior to certification of the 2010 assessment roll in December of 2010. CP 207 ¶ 17; CP 264-65. Updated notices of value, that included the correct assessments, were then sent to Legacy on November 11, 2010. CP 208 at ¶ 18 and CP 267.

Even though these 2010 assessment corrections were implemented prior to close of the assessment rolls in December of 2010, Legacy has challenge their revised 2010 assessment based upon argument that revisions to the initial $1,000 improvement values were untimely under RCW 84.40.040.

Legacy incorrectly argues that the County was precluded from making these corrections after the May 31st dates specified in RCW 84.40.040 and RCW 36.21.080 for completing the duties of listing and placing valuations on property. The Washington Supreme Court has made clear, however, that the timelines in RCW 84.40.040 are not mandatory deadlines for finalizing assessments.

> [W]e cannot conceive that the legislature intended, in specifying the times at which assessment actions should be taken, to make the validity of the assessment depend upon strict compliance with those provisions. Even more than in the case of *Spokane County ex rel. Sullivan v. Glover*, supra,

> the effect of such an interpretation would be to undermine the taxing system of the State, for we are told that the Clallam County Assessor does not stand alone in his inability to meet such deadlines, but rather it is a problem of many county assessors throughout the state.
>
> We are shown no reason to suppose that the legislature attached special significance to the time schedule which it laid out in these statutes. The interest of the State is in seeing that the assessments are made before the year in which the taxes are levied, which was done in this case.
>
> Nor are these provisions designed to protect any interest of the taxpayer. The right which he is given is that of obtaining a review of the assessment if he questions its validity. There appears no reason why that review cannot be had as effectively in November as in August. The appellants have not shown that any right or interest of theirs has been adversely affected.
>
> To read these provisions as mandatory would gravely disserve the interests of this State and its people and would protect no right of any individual. The purpose of the taxing statutes would be effectively thwarted. Consequently, we cannot attribute to the legislature an intent to use the word "shall" in this context, in its mandatory sense.

Niichel v. Lancaster, 97 Wn.2d 620, 626-627, 647 P.2d 1021, 1024 (1982).

There is no merit to Legacy's argument that, unlike RCW 84.40.080, the new construction timelines in RCW 36.21.080 should be construed as mandatory rather than directive. RCW 36.21.080 is expressly referenced in RCW 84.40.040, with no indication of any intent to distinguish between the directory nature of

the specified timelines for determining regular and new construction values.

> 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 construction and mobile homes under RCW 36.21.080 and 36.21.090 shall be completed by August 31st of each year.

RCW 84.40.040 (emphasis added). The "shall also complete" language in this section, construed by the Court in *Niichel* to be directory, is the same as the "shall be completed" language in this section that applies to the valuation of new construction under the cross-referenced RCW 36.21.080.

There is likewise nothing in the language of RCW 36.21.080 itself, that purports to establish a mandatory deadline that differs from the other directory timelines in RCW 84.04.040. Like RCW 84.40.040, RCW 36.21.080 is worded as an affirmative description of assessor power, rather than as a prohibition on its exercise. *Compare RCW 84.04.040* ("assessor shall ... complete the duties of listing and placing valuations on all property by May 31st") *with* RCW 36.21.080 ("county assessor is authorized to [place new construction value] on the assessment rolls ... up to August 31st of

each year.). Both statutes serve the purpose of prescribing the procedure to be followed in making assessments and do not purport to limit the taxing power. *See Niichel,* 97 Wn.2d at 624 (directory nature of words that are affirmative, and relate to the manner in which the power or jurisdiction is to be exercised).[18]

Significantly, the directory timelines in RCW 84.40.040 and new construction timelines in RCW 36.40.040, cross-referenced therein, were adopted in the same legislative act. *See* 1982 Wash. Laws, 1st Ex.Sess. at Ch. 46 §§ 4 and 5. It would be particularly unusual to apply a different meaning to closely worded timelines established in the same act. Presumably, the Legislature intended these provisions to be read consistently. *See State v. S.P.*, 110 Wn.2d 886, 890, 756 P.2d 1315 (1988) (statutes must be read in harmony with other statutes enacted as part of same act).

None of the cases cited by Legacy supports its position that new construction timelines should be construed as jurisdictional

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[18] None of the multiple amendments to RCW 84.40.040 and RCW 36.21.080 that have occurred since *Niichel* reveals any legislative intent transform the directory nature of any of the specified tax assessment timelines into a mandatory deadlines. *See Broom v. Morgan Stanley*, 169 Wn.2d 231, 238, 236 P.3d 182, 185 (2010)("'[t]he Legislature is presumed to be aware of judicial interpretation of its enactments,' and where statutory language remains unchanged after a court decision the court will not overrule clear precedent interpreting the same statutory language.'").

deadlines. *See Erection Co. v. Department of Labor and Industries*, 121 Wn.2d 513, 853 P.2d 288 (1993) (agency lacked jurisdiction to consider appeal filed after specific statutory appeal deadline); *State ex rel. Linn v. Superior Court of King County*, 20 Wn.2d 138, 146 P.2d 543 (1944) (mandamus inappropriate to compel placement of charter amendment before voters when petition was not filed within constitutional time limits). As Legacy correctly notes, different statutes necessarily involve different questions of legislative intent. In the tax assessment context at issue, *Niichel* instructs that "courts are protective of the machinery by which taxes due the State and its subdivisions are collected." *Niichel*, 97 Wn.2d at 624 ("It is the policy of the law to insure the collection of all taxes, and whenever it is possible on any theory to do so the courts will construe the statutes to accomplish that result. Therefore statutes establishing the procedure for the collection of taxes are given a liberal construction.").[19] Legacy's argument for strictly construing new construction timelines is out of step with the admonition in *Niichel*.

[19] The notion that new construction tax procedures should be more strictly construed is particularly unsupportable given the Legislature apparently intended more liberalized authority for valuing new construction, using the more relaxed dates for valuing such additional improvements.

Legacy's approach is also based in part upon a fundamental misapplication of *State v. Wanrow,* 88 Wn.2d 221, 559 P.2d 548 (1977). *Wanrow* indicates that exceptions to a statutory rule are generally strictly construed and allowed to extend only so far as their language warrants. The exception considered in *Wanrow* was a negatively worded limitation on applicability of a statutory provision. 88 Wn.2d at 229-30 (statutory limitations on recording conversations "shall not apply to police and fire personnel in the following instances....") (emphasis added). No such limitation/exception exists in the grant of assessor authority at issue. *See* RCW 36.21.080 ("county assessor is authorized to place any property that is increased in value due to construction or alteration ... on the assessment rolls for the purposes of tax levy up to August 31st of each year.") (emphasis added).[20] As in *Niichel*, such an affirmative grant of authority is to be construed as directory. *See also State v. Miller*, 32.Wn.2d 149, 154, 201 P.2d 136 (1948) ("Affirmative statutory provisions relating to the time or the manner of performing official acts, unlimited or unqualified by negative words, are

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[20] Moreover, while the August 31st time for valuing new construction differs from the generally applicable July 31st date, it is not a statutory exception to the notion that valuation dates are to be construed as directory.

generally considered directory rather than mandatory.") (emphasis added).

As in every other case involving statutory construction, "the objective of the court is to ascertain the legislative intent, as disclosed by all the terms and provisions of the act in relation to the subject of legislation and by a consideration of the nature of the act, the general object to be accomplished, and the consequences that would result from construing the particular statute in one way or another." *Niichel v. Lancaster,* 97 Wn.2d 620, 625-626, 647 P.2d 1021 (1982). *See also Spokane County ex rel. Sullivan v. Glover*, 2 Wash.2d 162, 171, 97 P.2d 628 (1940)(considering the enormous expenses that would be incurred and the "utter perversion of our system of taxation" which would occur were the law construed as mandatory). Similar gross and unintended hardship to the assessment system would likewise result from the rigid view urged by Legacy. CP 383-4 at ¶¶ 2-4. New construction is a significant and much relied upon component of the County's overall property tax assessment, amounting to over 5.2 billion dollars in 2010. *Id.* For Legacy's claim alone, such values were approximately thirty million

dollars.[21] Legacy's approach would have seriously detrimental, plainly unintended consequences to the county's property tax system.

1. 2010 assessment satisfied *Niichel* requirements.

The timing of Legacy's *2010* Assessment plainly complied with *Niichel* requirements. *Niichel* instructs that, so long as the corrected assessment is made in the year before the taxes are to be levied and petitioners have retained their ability to appeal the revision, the central purpose of the assessment timeline is satisfied. *See Niichel*, 97 Wn.2d at 624. ("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."); and 97 Wn.2d at 627-28 ("there is no such compelling interest in the timeliness of assessment procedures, so long as

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[21] It is not clear why Legacy believes it would be entitled to a refund of its approximately $30 million total improvement value in 2010. Only a portion of that 2010 improvement value is actually attributable to new construction occurring in 2010. The overwhelming majority of the property's improvement value already existed as of January 1, 2010 and was not new in 2010. This is readily apparent from the fact that the 2009 corrected assessments already identified July 31, 2009 improvement values on the two parcels at over $30 million. CP 204 at ¶ 7 and CP 228 - 32. As such, even if for sake of argument new construction timelines were intended to serve as rigid deadlines on assessor valuation of added improvements, there would be no reasonable basis for extending that strict limitation to the property's $30 million improvement value that was not based upon new construction.

they are completed in time to allow for appeals and the imposition of the tax at the intended time").

These *Niichel* limitations were each satisfied in this case. Corrected assessments were made in November of 2010, before the 2010 assessment roll closed and in the year before 2011 taxes were levied upon the taxpayers. CP 207-8 at ¶¶ 17 and 18. Legacy was able to, and in fact did, appeal the corrected 2010 assessment both administratively to the King County Board of Equalization and judicially by this action for a refund pursuant to Chapter 84.68 RCW. CP 208 at ¶ 20.

Legacy incorrectly argues that *Niichel* required the County to correct its assessment a full appeal period (60 days) before the Council adopted its levy ordinance. *Niichel* imposes no such requirement. **First**, by specifying that assessments must include "an allowance for time in which to appeal," the Court simply intends that taxpayers have opportunity to appeal their assessments, as Legacy in this case has done. *See* 97 Wn.2d at 627-28. *Niichel* says nothing about any requirement that the appeal period (or resolution of the appeal) be completed before the tax levy is made. **Second**, *Niichel's* admonition that the assessments be made "in the year before the taxes are to be levied" is plainly not a reference to the

legislative act of certifying the levy as Legacy urges. *See* 97 Wn.2d at 624. (emphasis added). The term levy is being used by the Court in the ministerial sense of entering and collecting tax on individual property, not in the legislative sense of certifying the tax rolls.[22] *See DOR v. Hoppe,* 82 Wn.2d 549, 553-54 (1973)(discussing various legislative and ministerial meanings of the term "levy"). As noted above, the ministerial "levy" of taxes on individual taxpayers occurred in February of 2012 -- more than sixty days prior to the November 2010 assessment correction. *See CP 313-14* at ¶¶14 and 15. **Third**, even if Legacy's understanding was correct that assessments must be made sixty days before the final levy certification by the county legislative authority, the assessment in this case would still be timely under *Niichel.* The final 2010 levy certification ordinance was not adopted by the County Council until January 31, 2011 – more than sixty days after corrected assessment was issued, on November 11, 2010. *See* CP 313 and 334-44 (Ordinance 17021).

[22] Legacy's reading is altogether implausible given that the Court assumes assessment occurs "in the year before the taxes are to be levied," and the initial legislative levy occurs in the year of the assessment. *See e.g. CP 313* at ¶ 12.

VI. CONCLUSION

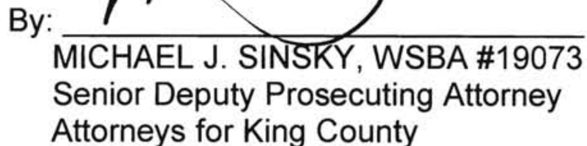
Because Legacy's 2009 manifest error corrections were authorized under RCW 84.48.065 manifest error standards, challenges to their 2009 assessment (for taxes payable in 2010) were appropriately dismissed. Likewise, because the Assessor was not precluded by RCW 84.40.040 or RCW 36.21.080 from making Legacy's 2010 assessment corrections, challenges to the 2010 assessments (for taxes payable in 2011) were properly rejected.

King County therefore respectfully requests that this Court affirm the Superior Court's decisions to deny Legacy's motion for summary judgment and to grant summary judgment in favor of King County.

DATED this 22nd day of October, 2012.

RESPECTFULLY submitted,

DANIEL T. SATTERBERG
Prosecuting Attorney



By: ______________________
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NO. 69073-6

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,

v.

KING COUNTY, WASHINGTON a Municipal Corporation,

Respondent.

2012 OCT 22 PM 2:45

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE HARRY McCARTHY

CERTIFICATE OF SERVICE

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ORIGINAL

I, Riley Glandon, hereby certify and declare under penalty of perjury under the laws of the state of Washington as follows:

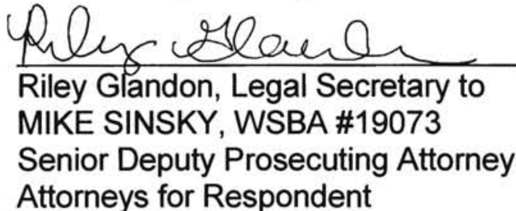
1. I am a legal secretary employed by King County Prosecutor's Office, I am over the age of 18, am not a party to this action and am competent to testify herein.
2. On October 22, 2012, I did cause to be delivered via ABC Legal Messenger a true and correct copy of the BRIEF OF RESPONDENT KING COUNTY and this Certificate of Service to:

William C. Severson
William C. Severson, PLLC
1001 4th Ave, Suite 4400
Seattle, Wa 98154

I declare under penalty of perjury under the laws of Washington that the foregoing is true and correct.

Dated this 22nd day of October, 2012 at Seattle, WA.

DANIEL T. SATTERBERG
Prosecuting Attorney



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