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December 19, 2022

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The Honorable Lawrence H. Haskell
Spokane County Prosecuting Attorney
1100 W Mallon Avenue
Spokane, WA 99260-0270

PROSECUTING ATTORNEY
SPOKANE COUNTY, WA

Dear Prosecutor Haskell:

By letter previously acknowledged, you have requested an opinion on the following question:

Because RCW 86.09.409 uses the term “relative value” as opposed to “assessed value,” may the Spokane County Board of County Commissioners use “market value” as opposed to “assessed value” when making assessments to fund the Newman Lake Flood Control Zone District?

BRIEF ANSWER

Yes. Flood control zone districts, including the Newman Lake Flood Control Zone District, may be funded through special assessments on the “relative values” of benefited properties. RCW 86.09.409. A related statute provides that in determining “relative values,” the assessed valuation “shall be construed to be prima facie correct.” RCW 86.09.415. It is likely that in using the term “relative values” and construing assessed values to be “prima facie correct” (as opposed to mandating use of assessed value), the legislature intended fair market values to be used to determine “relative value.” Thus, under RCW 86.09, where assessed value differs from fair market value, the fair market value may be used for assessment.

BACKGROUND

Per your letter of January 21, 2022, the Newman Lake Flood Control Zone District was created in 1968, pursuant to RCW 86.15. The Board of County Commissioners of Spokane County are the ex-officio supervisors of the District. Among the available methods for funding the ongoing operations of a flood control zone district, the Commissioners have opted to use special assessments on properties benefitted by flood control improvements, as authorized by RCW 86.15.160(2).

RCW 86.09 sets forth the process for assessing properties benefitted by the flood control zone district. Generally speaking, that process involves appointment of appraisers to determine the

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relative benefits that lands receive, creation of classes of property, and determination of relative benefits among properties within each class. *See* RCW 86.09.385-.419. Assessments to support the flood control zone district are based on these relative benefits. RCW 86.09.382. RCW 86.09 provides several methods for determining the ratio of benefits, including a method in which the ratio “may be determined in their relation to the relative values of the respective benefited lands, including improvements thereon” RCW 86.09.409. A related statute provides:

In determining the relative values of such lands, including improvements thereon, the assessed valuation of the same for general tax purposes last equalized shall be construed to be prima facie correct: PROVIDED, That nothing herein contained shall be construed to prevent the fixing of values where none are shown on the general tax roll or the revision of such values on the general tax roll in any instance where in the sole judgment of the revising officers for the district the value for general tax purposes is manifestly and grossly erroneous in its relation to value of like property in the district similarly situated

RCW 86.09.415.

Your question arises because the Spokane County Assessor has in some instances assigned two values to real property: assessed value and market value. The two values result from other statutes that require valuation of certain properties for property tax assessments based solely on their current use rather than typical appraisal methods. *E.g.*, RCW 84.34.060 (addressing open space land and timberland); RCW 84.34.065 (addressing farm and agricultural land); *see also* Washington State Dep’t of Revenue, *Open Space Taxation Act 5* (July 2021), <https://dor.wa.gov/sites/default/files/2022-02/OpenSpace.pdf> (stating that assessors must maintain two values for each parcel classified as open space, agricultural, or timber lands—fair market value and current use value). In those instances, my understanding is that the assessed value would be lower than the market value.

It may also be useful to set forth the general distinctions between ad valorem property taxes and special assessments on property, such as flood control zone district assessments. General ad valorem taxes are levied for the benefit of the entire taxing district, while special assessments inure to the benefit of specific property. *Gabelein v. Diking Dist. 1 of Island Cnty.*, 182 Wn. App. 217, 229-30, 328 P.3d 1008 (2014). Consistent with this difference, general ad valorem taxes are subject to constitutional uniformity requirements, while special assessments must be assessed in general proportion to the benefits conferred on the properties. *Id.*

ANALYSIS

Your question is one of statutory construction, in which we attempt to discern and carry out legislative intent. *Bennett v. Seattle Mental Health*, 166 Wn. App. 477, 483, 269 P.3d 1079 (2012). Understanding legislative intent requires looking at the language of the entire statute,

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related statutes, and the context of the statutory scheme. *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 11-12, 43 P.3d 4 (2002). Where possible, a court interprets statutes to avoid conflicts and “‘achieve a harmonious statutory scheme.’” *American Legion Post 149 v. Dep't of Health*, 164 Wn.2d 570, 585, 192 P.3d 306 (2008) (quoting *Echo Bay Cmty. Ass'n v. Dep't of Nat. Res.*, 139 Wn. App. 321, 327, 160 P.3d 1083 (2017), *review denied*, 163 Wn.2d 1016 (2008)). Where terms are not defined, courts will look to dictionaries for the meaning of a term. *Columbia Riverkeeper v. Port of Vancouver USA*, 188 Wn.2d 421, 435, 395 P.3d 1031 (2017).

Looking at the plain meaning of “relative values” in RCW 86.09.409, related statutes, and the statutory scheme as a whole, I conclude that “value” in “relative values” means market value. First, in isolation, this statutory language almost certainly would mean market value. The dictionary definition of “value” includes “the monetary worth of something: MARKET PRICE.” *Value*, Merriam-Webster.com, <https://www.merriam-webster.com/dictionary/value> (last visited Nov. 22, 2022).” In addition, since the relative value is used in RCW 86.09 to approximate the relative benefit to properties of flood control measures, it makes sense that “relative value” would mean the market value of properties, since a more valuable property would receive a greater benefit, in economic terms, from not being flooded than a property of lesser market value. See RCW 86.09.409 (relative values used to determine ratio of benefits to property).

Second, the statement in RCW 86.09.415 that “[i]n determining the relative values of such lands, including improvements thereon, the assessed valuation of the same for general tax purposes . . . shall be construed to be prima facie correct” does not change the likelihood that the legislature intended “relative values” to mean market values. At the time the statute was enacted in 1937, the assessed value was equal to the fair market value. See *Bellingham Cmty. Hotel Co. v. Whatcom County*, 190 Wash. 609, 612, 70 P.2d 301 (1937). And at that time, there were no statutes such as RCW 84.34.060 that called for an alternative valuation method.

The language chosen by the legislature in RCW 86.09.415 also suggests that market value was intended to be used in determining relative value even if it differed from assessed value. The legislature did not state that the assessed value “shall” be the relative value, but only that it was “construed to be prima facie correct.” RCW 86.09.415. The use of “prima facie” suggests that the relative value could be subject to further amendment based on additional information. See *Black's Law Dictionary* 1382 (10th ed. 2014) (prima facie: “based on what seems to be true on first examination, even though it ma[y] later be proved to be untrue” [bracketed information corrects a printed typo]). Further suggesting that the legislature intended market value to be used if it differed from assessed value is the proviso immediately following the “prima facie” language: “PROVIDED, That nothing herein contained shall be construed to prevent the fixing of values where none are shown on the general tax roll or *the revision of such values* on the general tax roll in any instance where *in the sole judgment of the revising officers for the district* the value for general tax purposes is manifestly and grossly erroneous” RCW 86.09.415 (emphases added).

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Finally, the “prima facie” language is most reasonably understood as incorporating the legal principle well recognized at the time that for ad valorem property tax purposes, assessed value was presumed correct and owners of assessed properties wishing to challenge the value would have the burden of showing it was incorrect by clear and convincing evidence. *E.g.*, *Bellingham Cmty. Hotel Co.*, 190 Wash. at 614-15 (“The presumption, of course, is that the assessing officer has performed his duty in a proper manner, and the rule is that evidence to overcome it must be clear and convincing.” (quoting *Bellingham Dev. Co. v. Whatcom County*, 187 Wash. 15, 18, 59 P.2d 920 (1936))). This principle has since been codified for property tax purposes. RCW 84.40.0301. Although usually described as a “presumption,” at least one court predating the statute expressed a similar principle in the same words used in the statute—“prima facie correct.” *In re Sixth Ave. Improvement in City of Seattle*, 155 Wash. 459, 471, 284 P. 738 (1930) (describing as an established principle of law that “an assessment roll, as established by the legislative authority of a municipality, will, when attacked in court, be considered as prima facie correct and in accord with the principles of law governing the preparation of such a roll, and the burden rests upon those attacking the same”). Thus, we conclude that a flood control zone district may use market value in determining relative values in RCW 86.09.409 where it determines that market value differs from assessed value.

Although not part of your question, we note that the statute providing for current use valuation of certain properties, which results in the difference between assessed value and market value noted above, exempts agricultural and timber lands from certain special benefit assessments. *See* RCW 84.34.320(1); WAC 458-30-510 to -590. We bring that statute and Department of Revenue regulations to your attention because among the “local improvement districts” which may be subject to that statute are flood control districts. *See* RCW 84.34.310(3), (4).

I hope the foregoing information will prove useful. This is an informal opinion and will not be published as an official Attorney General Opinion.

Sincerely,

Peter P. Gonick

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