

**ORDER OF THE CLALLAM COUNTY BOARD OF EQUALIZATION
REVIEW OF CURRENT USE DETERMINATION**

Property Owner: Bruce and Bonnie McCloskey
Petition Number: 2020-24
Property ID(s): 36372
Assessment Year: 2020 taxes payable 2021

Having considered the evidence presented by the parties in this appeal, the Board hereby:

Sustains the determination of the Assessor to remove the one acre home site from the agricultural classification and overrules the determination of the Assessor to impose seven years of taxes, interest and penalties for the removal of the one acre home site.

Petitioners: Bruce and Bonnie McCloskey

Hearing date: March 3rd, 2021

Property location: 5837 Old Olympic Highway, Sequim, WA 98382

Property description: 11 acre Lavender Farm

Assessor's Response prepared by: James Podlesny

Hearing attendees: Board members Bob Filip, Gordon Gibbs, Joy Thomson
(Via remote conferencing) Board Coordinator Rich Meier
Petitioner Bruce McCloskey
Assessor's Current Use Specialist Jim Podlesny

Petitioner's evidence:

- A document titled Attachment "A" dated 10-20-2020
- A copy of a letter from the Assessor
- A four page Notice of Continuance signed on 11-25-2013
- A letter to the Board of Equalization from the Appellant dated 01-04-2021

Assessor's Response:

- A written explanation packet detailing the current use removal of the subject property (24 pages)

Petitioner's comments:

Mr. McCloskey thanked the board members for the opportunity to present his case. He stated that when the property was purchased in 2013, their intent was to continue to operate the property as a farm. Since that date, that is exactly what has been done, including the adding of additional crops and two full-time employees.

At the time of purchase, the McCloskeys signed a document (Notice of Continuance) provided by the County. The document specifically states there will not be a penalty or back taxes for the building of a house on the parcel. The McCloskeys intended to build a home on the property when they purchased the parcel.

Mr. McCloskey summarized his petition into two independent issues:

- 1) One acre was removed from agricultural classification and established as the home site. While this removal is contrary to the document he was provided, Mr. McCloskey understood the reasoning and agreed in principle, but reserved the right to protest this removal on the technical issue.
- 2) The primary issue is that the property owners were penalized with seven years of back taxes and interest. Mr. McCloskey believes the taxes and penalties are unfair because the documents provided by the Assessor's office in 2013, and signed by the McCloskeys, specifically state there will be no taxes or penalties for building a principle residence for the owner of the property. Mr. McCloskey read from page 3, section 3 the Notice of Continuance;

The additional tax, interest and/or penalty shall not be imposed if the withdrawal or removal from classification resulted solely from removal of classified farm and agriculture land on which the principle residence for the farm operator or owner or housing for employees.

Mr. McCloskey explained to the board that was exactly what he had done, but he is being penalized. He believes it is wrong and unfair to make him pay seven years of taxes and penalties because there is a typo which provides conflicting interpretations. He stated that Mr. Podlesny of the Assessor's Office acknowledged there was a typo that created misinformation.

In conclusion, Mr. McCloskey stated he understood the removal of the one-acre home site from agriculture use, but he believes seven years of penalties is unfair. Had the petitioners been aware of the potential for seven years of taxes and penalties that would require payment to build the residence, they would have negotiated the purchase of the property differently.

Assessor's comments:

Mr. Podlesny explained he would be the first to admit that the RCWs are difficult to read. He also believes his predecessor in the Assessor's Office probably gave Mr. McCloskey the option of removing the parcel at the time of purchase or to delay the removal. Based on human nature, taxpayers usually overlook the future tax consequences while they are enjoying a fairly

significant exemption in the present. He thinks Mr. McCloskey was probably informed of his options. Additionally, there is a State tax discount for voluntarily withdrawing that allows for a 20% discount of the interest and penalties that could have saved the McCloskeys about \$1,500 if they had withdrawn the home site acre.

Mr. Podlesny concluded that even though the law is confusing to read, it does state that you need a 20-acre farm to be exempt for the housing acre.

Petitioner's additional comments:

Mr. McCloskey acknowledged that the law may technically make the distinction, but that was not what was stated in the paperwork presented to him by the county, and that he signed. It seems unreasonable to expect citizens to research the law after they have been provided the information from a county source. The document they signed does not state there is a 20-acre requirement to exempt a home site. He understands that the omission was an error created by a typo. He doesn't understand why they should be penalized by this error.

Question from the Board:

- 1) The board inquired if the date when the home was built had any bearing on the taxes, penalties, and interest. Mr. Podlesny said it did not. The Assessor's Office tries to handle the removals as discovered, but because of staff limitations, they cannot always get to them quickly. There comes a crunch at the end of the tax cycle to close the roll and apply the updates to be processed, so this removal may have appeared to be rushed. The law presumes the taxpayer is aware of the details of their exemptions so that the taxpayer cannot claim the Assessor is remiss in not providing a full education.

Mr. Podlesny stated that what is at issue, based on his reading of the law, is not the value of the land being removed, but whether the Assessor acted arbitrarily or capriciously. He believes they have not; this was simply a routine housekeeping action.

- 2) The Board inquired if there was any recourse for a taxpayer who had received information that appears to be in error.

Mr. Podlesny responded he is not aware of any recourse in the RCW. He explained that the McCloskeys' recourse would be to add on to their farm by acquiring continuous parcels to increase their holding to 20+ acres. They could then apply for a home site exemption. Mr. Podlesny stated that purchasing an additional 9 acres would be a reasonable option.

Mr. Podlesny wanted to add into the record the fact that the RCWs often state a law by omission, thus what is not written has to be taken as a fact and can be misleading in that regard. Additionally, the farm exemptions are favored programs in the state; they 'roll out the red carpet' for farmers. The law allows for low income requirements, easily accomplished transfers, and reclassifications and gives the benefit of every doubt to the farmer. When farms are subdivided into segments smaller than 20 acres, different regulations apply.

Mr. Podlesny explained for the record that the seven-year compensating tax is established by law and is composed of the property value difference year-over-year with penalties and interest applied.

Petitioner's additional comments:

Mr. McCloskey stated that there is no way he can add to the size of his farm because he is losing money as it is. He is simply challenging being penalized for seven years of back taxes, interest, and penalties.

Board comments:

The Board members stated that they had read through the documents several times and found the information difficult to understand as written. They empathize with the McCloskeys' efforts to comply with the directions the County provided.

The "Notice of Continuance" presented in both the petitioners' and the Assessor's evidence submissions, and signed by the McCloskeys at the time of purchase, states in section A, number 3, letter g;

"The additional tax, interest, and/or penalty shall not be imposed if the withdrawal or removal from classification resulted solely from" (g) "removal of classified farm and agriculture land on which the principle residence of the farm operator or owner or housing for employees".

This document does not stipulate that this section applies only to parcels of 20+ acres.

The Board recognizes Mr. Podlesny's reasoning in surmising the McCloskeys were verbally informed of the laws and options regarding their property at the time of purchase; however, no evidence was presented to substantiate this inference.

Finally, the Board agrees with Mr. McCloskey's statement that if he had been provided with accurate information regarding the requirement to pay seven years of tax and interest, rather than documents that stated information to the contrary, he would have had the opportunity to negotiate this factor into his purchase price.

Board decision:

Standard of proof: The Preponderance of Evidence

According to state law, the Assessor's determination is presumed to be correct and can be overcome only by a preponderance of evidence that the removal of the home site and assessment of seven years of taxes, interest and penalties were erroneously imposed (RCW 84.40.0301[1]). This means that the property owner must provide enough evidence to convince the Board that the Assessor's determination may be incorrect.


After considering the petition and the information provided at the hearing, the Board has made two findings:

- 1) The Board finds that the Assessor was correct in removing the one-acre home site from the agricultural classification.
- 2) The McCloskeys have provided sufficient evidence to overrule the determination of the Assessor to impose the seven years of taxes, interest, and penalties for the removal of the one-acre home site. These assessments were in direct contradiction to the language included in the Notice of Continuance signed by the McCloskeys.

Dated: **MAR 19 2021**

Mailed:

MAR 22 2021


Chairperson's Signature

NOTICE

This order can be appealed to the State Board of Tax Appeals by filing a notice of appeal with them at PO Box 40915, Olympia, WA 98504-0915, within thirty days of the date of mailing of this order. The Notice of Appeal form is available from either your county assessor or the State Board.

To ask about the availability of this publication in an alternate format for the visually impaired, please call 1-800-647-7706. Teletype (TTY) users may use the Washington Relay Service by calling 711. For tax assistance, call (360) 534-1400.

Distribution: • Assessor • Petitioner • BOE File