

BEFORE THE BOARD OF TAX APPEALS  
STATE OF WASHINGTON

BRUCE AND BONNIE MCCLOSKEY,	)	
	)	Docket No. 99003
Appellant,	)	
	)	ORDER DENYING EXCEPTION
v.	)	AND ADOPTING CORRECTED
	)	PROPOSED DECISION AS FINAL
PAMELA RUSHTON,	)	DECISION
Clallam County Assessor,	)	
	)	
Respondent.	)	
	)	

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The Appellant timely filed an exception to the Proposed Decision with the Board of Tax Appeals (Board). The Respondent filed a response.

By rule, the Board reviews “the specific and legal grounds” raised in the exception, and the Board is not permitted to consider any evidence or arguments that were not presented to the hearing officer.<sup>1</sup> To grant the exception, the Board must conclude that the hearing officer misunderstood or ignored pertinent facts, or misapplied the applicable law to the facts, and that, in light of the factual and legal grounds raised in the exception, the Proposed Decision was clearly “based ‘on untenable grounds’ or made ‘for untenable reasons’.”<sup>2</sup>

The Board has reviewed the Proposed Decision, the Appellant’s exception, the Assessor’s response, and all the relevant documents in the file. The Board finds that the Proposed Decision had a scrivener’s error in the property description. Specifically, the Proposed decision stated that the subject parcel was 1.4 acres instead of 11.4 acres. The Board corrects this below but finds that the Proposed Decision rests on supported facts, the correct legal standard, and a reasonable application of the law to the facts.

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<sup>1</sup> WAC 456-20-730(2).

<sup>2</sup> *State v. Rohrich*, 149 Wn.2d 647, 654, 71 P.3d 638 (2003).

<sup>3</sup> WAC 458-14-005(14) (providing examples of manifest errors).

<sup>4</sup> *Weyerhaeuser Co. v. Easter*, 126 Wn.2d 370, 381, 894 P.2d 1290 (1995).

The Board, therefore, denies the exception and adopts the Corrected Proposed Decision as the final decision in the case.

### CORRECTED PROPOSED DECISION

This matter came before Matthew Randazzo, Tax Referee, presiding for the Board of Tax Appeals (Board), on January 5, 2023, in an informal hearing pursuant to the rules and procedures set forth in chapter 456-10 WAC (Washington Administrative Code). The Appellants Bruce and Bonnie McCloskey (Owners) were represented by Bruce McCloskey. No one appeared for the Respondent, Pamela Rushton, Clallam County Assessor (Assessor).

The Board heard the testimony, reviewed the evidence, and considered the arguments made on behalf of both parties. The Board sustains the Clallam County Board of Equalization's corrected order.

### ISSUES

1. Whether the Assessor should have applied additional taxes, penalties, and interest for removal of the agricultural designation from a portion of the parcel, or whether the Owners are exempt pursuant to RCW 84.34.108(6)(l).
2. Whether the Board should grant the Owners' request for relief under the doctrine of equitable estoppel.

### PROCEDURAL HISTORY

The Assessor assessed a portion of the subject property with back taxes, penalties, and interest following that portion being used as residence and losing its designation as agricultural land. The Board of Equalization held that the Assessor was estopped from assessing the back taxes, penalties, and interest, because of an agreement between the Assessor and the Owners. That Board subsequently issued a corrected order, sustaining the assessment of back taxes, interest, and penalties. The Owners appealed to this Board.

## FACTS AND CONTENTIONS

The subject property is approximately 11.4 acres and has been classified as agricultural land since before the Owners purchased it in 2013.<sup>1</sup> At the time of purchase, the Owners signed a document confirming that they intended to continue to operate the property as agricultural land.<sup>2</sup> The agreement stated that the Owners would be liable for additional tax, interest, and penalties if the property was used for any nonconforming reasons.<sup>3</sup> The document also listed several exceptions to this, including “removal of classified farm and agricultural land on which the principal residence of the farm operator or owner or housing for employees.”<sup>4</sup> The agreement did not specify that this only applies to certain types of agricultural land.

Prior to 2020, all 11.4 acres were classified as agricultural land, pursuant to chapter 84.34 RCW. In 2020, the Owners built a residence on approximately one acre of the subject property.

When the Assessor became aware that the Owners had built a residence on the subject property, she sent the Owners notice that the acre that served as a residence would be withdrawn from the agricultural classification.<sup>5</sup> This did not affect the other 10.4 acres.<sup>6</sup>

### Owners' Evidence and Arguments

The Owners argue that the Assessor erred in assessing additional taxes, interest, and penalties because the removal of the land to be used as residence was due to error pursuant to 84.34.108(6)(l). Alternatively, the Owners argue that the Assessor should be estopped from assessing taxes, interest, and penalties because the document that they signed indicated that they could remove a portion of the land to serve as the Owners' primary residence.

The remainder of the parties' evidence is contained within the record. The Board reviewed the relevant evidence prior to issuing this decision.

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<sup>1</sup> Appellant's Ex. A1, A2.

<sup>2</sup> Appellant's Ex. A2.

<sup>3</sup> Appellant's Ex. A1.

<sup>4</sup> *Id.*

<sup>5</sup> Appellant's Ex. A2.

<sup>6</sup> *Id.*

## ANALYSIS

The Owners have not proved that they meet the exception for additional tax, interest, and penalties for removing a portion of the land from agricultural use because the statutory exception they cite only applies to the original classification of land, and they cannot prove all of the elements for equitable estoppel.

Washington State employs an open space program to “maintain, preserve, conserve, and otherwise continue in existence adequate open space lands for the production of food, fiber and forest crops, and to assure the use and enjoyment of natural resources and scenic beauty for the economic and social well-being of the state and its citizens.”<sup>7</sup> To accomplish this, the legislature determined that certain types of land, should be valued based on its current use, not highest and best use.<sup>8</sup> This applies to agricultural land, forest, and open space.<sup>9</sup>

The legislature defines agricultural land and categorizes it based on acreage, use, and income.<sup>10</sup> One category of agricultural land, defined in RCW 84.34.020(2)(a), requires that property be 20 or more acres, and prescribes other requirements regarding use and income. The legislature also allows for agricultural land in this category to use a portion of the parcel or parcels for “housing for employees and the principal place of residence of the farm operator or owner of land.”<sup>11</sup>

Another category of agricultural land, defined in RCW 84.34.020(2)(b), requires the property be five acres or more but less than 20 acres, and prescribes other requirements regarding use and income.<sup>12</sup> This category of agricultural land does not allow for a residence like agricultural land in subsection A of the statute.

When the owner of land desires to utilize this program, they apply for a current use classification under any of the available open space categories.<sup>13</sup> Once the application is approved, and the land is given a current use classification, it must remain under such

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<sup>7</sup> RCW 84.34.010.

<sup>8</sup> RCW 84.34.060.

<sup>9</sup> *Id.*

<sup>10</sup> RCW 84.34.020(2).

<sup>11</sup> RCW 84.34.020(2)(f).

<sup>12</sup> RCW 84.34.020(2)(b).

<sup>13</sup> RCW 84.34.030.

classification.<sup>14</sup> If the land, or a portion of the land, is removed from the classification, the Assessor must give written notice and an opportunity to be heard to the owner.<sup>15</sup>

If the removal is not reversed on appeal, the Assessor must, unless an exception applies, reassess the land and impose additional taxes, interest, and penalties.<sup>16</sup> The exceptions to imposing the additional taxes, interest, and penalties are prescribed by statute, and must be the sole reason for the removal.<sup>17</sup>

Among the exceptions the legislature created is the discovery that “the land was classified under this chapter in error through no fault of the owner.”<sup>18</sup> This exception does not apply if there is an independent basis for removal, and the legislature lists “the owner changing the use of the land” as an example of an independent basis.

The Owners do not meet this statutory exemption for two reasons. First, there is no argument that the land was classified in error. The Owners do not argue that the land should not be classified as agricultural land. Although the Owners argue that the removal of a portion of the subject to serve as a residence was an error because the Owners would not have done so if they were aware of the ramifications, this does not meet the plain language of the statute.

The second reason the Owners do not meet this exception is because it is not the sole basis for the removal. The legislature specifically lists “changing the use of the land” as an example of when this exception would not apply. Although the remainder of the parcel not being used as a residence continues to have the same use, this cannot be said for the portion that is a residence, and the exception does not apply to that portion.

The Owners also have not proved, by clear, cogent, and convincing evidence, that the Assessor is equitably estopped from assessing additional tax, interest, and penalties because the Owners doing so would impair a government function.

Courts must make three findings in order to grant equitable estoppel: (1) a party's admission, statement or act inconsistent with its later claim; (2) action by another party in reliance on the first party's act, statement, or admission; and (3) injury that would result to the relying party from allowing the first party to contradict or repudiate the prior act, statement, or

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<sup>14</sup> RCW 84.34.070(1).

<sup>15</sup> RCW 84.34.108(1)(d).

<sup>16</sup> RCW 84.34.108(4).

<sup>17</sup> RCW 84.34.108(6).

<sup>18</sup> RCW 84.34.108(6)(i).

admission.<sup>19</sup> When a party asserts the doctrine against the government, two additional requirements must be met: (4) equitable estoppel must be necessary to prevent a manifest injustice, and (5) the exercise of governmental functions must not be impaired as a result of the estoppel.<sup>20</sup> A party asserting equitable estoppel against either the government or a private party must prove each element of estoppel with clear, cogent, and convincing evidence.<sup>21</sup> Equitable estoppel against the government is not favored.<sup>22</sup>

In this case, it is not disputed that the notice of continuance signed by the taxpayer is inconsistent with the Assessor's imposition of additional tax, interest, and penalties. Similarly, the Owners have provided sufficient evidence that they relied on this statement and that injury would result from allowing the imposition of taxes, interest, and penalties. The Board finds that, although the first three elements have been met, the Owners have not met the additional elements required when equitable estoppel is asserted against the government.

The Board finds that applying equitable estoppel in this matter would impair government function. The Assessor *must* impose additional tax, interest, and penalties unless one of the statutory exceptions apply.<sup>23</sup> This function of government is not discretionary, and the remedy sought would more than impair the Assessor in doing so.

Because all of the elements must be met, and the Owners cannot meet the fifth element, the Board finds that the Assessor cannot be estopped from assessing the additional tax, interest, and penalties.

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<sup>19</sup> *Robinson v. City of Seattle*, 119 Wn.2d 34, 81, 829 P.2d 765 (1992).

<sup>20</sup> *Kramarevsky v. Dep't of Soc. & Health Servs.*, 122 Wn.2d 738, 743, 863 P.2d 535 (1993).

<sup>21</sup> *Id.* at 744.

<sup>22</sup> *Id.* at 743.

<sup>23</sup> RCW 84.34.108(4).

## DECISION

In accordance with RCW 84.08.130, the Board sustains the determination of the Clallam County Board of Equalization. The Clallam County Assessor and Treasurer are hereby directed that the assessment and tax rolls of Clallam County are to accord with, and give full effect to, the provisions of this decision.

ISSUED May 8, 2023.

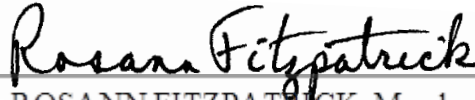
## BOARD OF TAX APPEALS



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MATTHEW RANDAZZO, Member

Concurring in result only



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ROSANN FITZPATRICK, Member