

Decision of the Thurston County Board of Equalization

Property Owner: LESTER REICHEL

Parcel Number(s): 21616210000, 21616210200, and 22630310000

Assessment Year: 2014 and 2015

Reconvene No.: 16-RR01

On January 12, 2017, the Thurston BOE held a hearing pursuant to an order of the Department of Revenue (DOR) “to hear the taxpayer’s *appeal* concerning removal of land from classification” under the Open Space Farm and Agricultural Program. Request for Reconvening Decision, November 10, 2016, p. 2 (*italics added*). Prior to the hearing, the BOE issued a hearing notice on November 21, 2016, in which it invited taxpayer Lester Reichel and the Thurston County Assessor to comment on both process and substance before or during the hearing. After considering the evidence and testimony, and reviewing the applicable Board of Tax Appeals (BTA) decisions, the BOE concludes BTA precedents preclude any BOE action in response to the DOR order because DOR did not reconvene the BOE pursuant to WAC 458-14-127 and the BOE is therefore without jurisdiction to hear Reichel’s appeal.

Participants: Lester Reichel, taxpayer, and his daughter, Sherri Anderson, participated in the hearing. Jeff Gadman, Administrative Manager, represented the Assessor.

Dates and Facts. For many years, Reichel had three parcels enrolled in the tax-deferral program under RCW 84.34 that is commonly called the Open Space Farm and Agricultural Program. County assessors administer the program in each county. Part of the responsibilities of each assessor is to inquire from time to time if the enrolled land is still used in the manner required by the program. WAC 458-30-270.

On March 13, 2015 the Thurston County Assessor sent its standard request for information form to Reichel in the course of the Assessor’s review of the use of Reichel’s land. Assessor Response, unnumbered p. 1. Reichel did not respond to the inquiry. *Id.*

The Assessor sent a follow-up communication labeled “Intent to Remove” to Reichel on September 17, 2015 that reminded him of his obligation to respond to the earlier inquiry. *Id.* The “Intent to Remove” was sent by regular and certified mail as required by WAC 458-30-270(3). The Certified Mail Receipt signed by Reichel was returned to the Assessor on September 28, 2015. *Id.* Again, Reichel did not respond by sending the requested information, or respond in any other way.

The Assessor filed with the County Auditor a Notice of Removal, recorded October 27, 2015. On the same day, a copy of the Notice of Removal was mailed to Reichel. *Id.*

Reichel had from October 27, 2015 to December 26, 2015 to file an appeal with the BOE. WAC 458-30-700(5). No appeal was filed.

In March 2016, Reichel’s daughter, Sherri Anderson, contacted the Assessor concerning the removal of her father’s parcels from the tax deferment program. Anderson informed the Assessor that her father suffers from Alzheimer’s disease and he had simply set aside the previous correspondence from the Assessor. *Id.*, p. 1-2. The Assessor requested that Anderson complete the Farm Information Sheet and Income Verification form and return it by April 15, 2016. *Id.*, p. 2.

On April 13, 2016 Anderson provided the Assessor with a Farm Management Information Sheet; Open Space Agricultural Income Verification; IRS Schedule F Profit or Loss From Farming; Short Term Lease Agreement; Power of Attorney; and Land Usage Maps. *Id.*

The Assessor states in its response that the “documents, reinforced by a physical inspection of each parcel, clearly showed that had these documents been received timely, the parcels would not have been removed” from the program. *Id.*

On April 28, the Assessor informed DOR that reinstatement of the parcels into the program classification was beyond the Assessor’s authority. *Id.*

On April 30, 2016, the time passed for Reichel to file a Late Filing Exception Request with the Thurston BOE.

On May 25, 2016 DOR requested information from the Assessor related to the Reichel parcels and removal. *Id.* On June 19, 2016 the Assessor sent a letter to Reichel and to Anderson informing them that DOR had requested information. *Id.*

On July 7, 2016, the Board of Equalization received Reichel's request for reconvening by mail. On the same day that it was received in the BOE office, the BOE sent Reichel's request for reconvening to DOR because it concerned the 2014 and 2015 assessment years.

Four months later, on November 10, 2016, DOR issued its Request for Reconvening Decision in response to Reichel's request.

On November 21, 2016, the BOE issued a Notice of Hearing for January 12, 2017.

At the hearing, there was no dispute between the parties over facts. The only significant testimony came from the Assessor's representative who stated in response to a question that the Assessor's office made no errors in how it proceeded to removal of Reichel's parcels.¹

DOR's Reconvening Decision. DOR's Request for Reconvening Decision states DOR "orders the Board [BOE] to hold a hearing and issue a determination stating if the subject property meets the qualifications to be in the Farm and Agricultural classification for the 2014 and 2015 assessment years." Decision, p. 2. Notwithstanding that statement, DOR also states, "Pursuant to RCW 84.08.060, the Department is reconvening the [BOE] to hear the taxpayer's *appeal* concerning removal of land from classification." Id. (*italics added*). The BOE concludes DOR ordered the BOE to hold a classification appeal hearing as if Reichel had filed an appeal with the BOE because fact-finding about the use of the land alone could not result in the relief sought by Reichel.

The Decision also states the taxpayer requested a reconvene "due to 100 percent overvaluation" but that "removal of land from the classification does not qualify for such a request." Id. DOR states that its "authority to reconvene boards of equalization is limited to claims of 100 percent overvaluation and extending the regular convened session allowing boards of equalization to complete their annual duties." Id., p. 3.

The Decision also expresses DOR's factual conclusion that DOR "believes if it had not been for the taxpayer's medical condition the information requested by the Assessor would have been submitted timely." Id., p. 2.

Altogether, DOR concludes a taxpayer who suffers from dementia is relieved from meeting the filing deadline for a removal appeal, and DOR does so without citation to statute, rule, or case law, and without any legal analysis to support its conclusion.²

Legal Analysis. In a recent decision concerning DOR's authority to reconvene a county board, the Board of Tax Appeals (BTA) implicitly approved of the county board's choice to conduct a legal analysis to determine if the county board had jurisdiction to do what DOR ordered. *Chaudhry v. Drew*, BTA Docket No. 91366, Proposed Decision, September 27, 2016. In the present case, the question of jurisdiction of the Thurston BOE to proceed as ordered by DOR arises again because, as explained below, it appears DOR did not follow the process for reconvening required by previous BTA decisions. Based on *Chaudhry*, it is the

¹ DOR also found no error on the part of the Assessor.

² RCW 84.34.108(3) requires a taxpayer who chooses to appeal a classification removal to do so by following RCW 84.40.038. The BTA has declared that RCW 84.34.038 is a jurisdictional statute with respect to county boards. *Chaudhry v. Drew*, BTA Docket No. 91366, Proposed Decision, p. 6, September 27, 2016. Under some circumstances, the absence of an appeal form from the taxpayer can be overcome by a *valid* reconvene decision by DOR. *Cook v. Department of Revenue*, BTA Docket No. 06-069 to 06-071, Final Decision on Summary Judgment, pp. 9-10, Jan. 25, 2007.

conclusion of the BOE that a legally deficient order from DOR cannot confer jurisdiction on the BOE to conduct an appeal hearing.³

The BTA stated in a twenty-year-old formal decision to which DOR was a party, “The Legislature has given the Department broad discretionary authority to reconvene any county board of equalization in order to perform any duty or take any action the board might lawfully have undertaken in the previous three years. RCW 84.08.060. *The Department has chosen to limit its discretion by adopting an administrative rule, WAC 458-14-127*, setting forth the circumstances under which it will reconvene a county board of equalization. *Our function in reviewing the Department’s reconvening decisions is limited to determining whether the Department has followed its own rule.* We have no authority to substitute our judgment for that of the Department as to the most appropriate manner of exercising its reconvening powers.” *James River Paper Company, Inc. v. Department of Revenue*, BTA Docket No. 96-54 and 96-054, Final Decision, pp. 4-5, July 23, 1997 (footnote omitted) (italics added) (*rev’d in part* on other grounds, *Triple Net Property LLC v. Department of Revenue*, BTA Docket 13-020, Final Decision, p. 7, Feb. 24, 2016). The quotation is not merely dicta; the BTA stated that as a matter of law DOR must follow WAC 458-14-127 that limits DOR’s application of RCW 84.08.060. *Id.*, p. 24, Conclusion of Law 4 (“The Department has chosen to limit its discretion by adopting an administrative rule, WAC 458-14-127, setting forth the circumstances under which it will reconvene a county board of equalization.”). The BTA has relied on *James River* in many cases concerning DOR’s reconvening authority,⁴ including one decided as recently as February 24, 2016 in which DOR was a party and the decision was made by the full board.⁵

DOR’s Decision ordering the BOE to hold a classification appeal hearing is not based on WAC 458-14-127, but as DOR states in its Decision the hearing is ordered by DOR pursuant to RCW 84.08.060. Decision, p. 2. Furthermore, DOR says in so many words that there is no basis to approve the reconvening request under WAC 458-14-127; DOR states that its “authority to reconvene boards of equalization is limited to claims of 100 percent overvaluation and extending the regular convened session allowing boards

³ The Reconvening Request Decision and order of DOR directed to the BOE is issued without notice to the BOE or an opportunity for the BOE to be heard, and without any avenue of appeal for the BOE. The circumstances are not those found in the normal course of judicial proceedings in which a party that receives an order from a court was a participant in the hearing that resulted in the order and then is expected to follow the order unless the order is vacated on appeal. And the BOE notes that from the outset of this matter, and just as in *Chaudhry*, the parties have not held opposing views calculated to result in spirited contention over applicable law and facts, including in particular the fundamental question of jurisdiction. In other words, but for the BOE undertaking a legal analysis of DOR’s Decision, no challenging legal analysis would occur because the parties are not opposed in their view of the desired outcome. Of course, this decision can be appealed to the BTA and so the parties have an avenue to obtain a remedy if they feel aggrieved by this decision.

⁴ See for e.g., *Cook v. Department of Revenue*, BTA Docket Nos. 57714 & 57716, Proposed Decision, Sept. 17, 2002; *Rempel v. Department of Revenue*, BTA Docket No. 69802, Proposed Decision, June 22, 2009); *Mikeladze v. Department of Revenue*, BTA Docket No. 82511, Proposed Decision, Nov. 18, 2013.

⁵ *Triple Net Property LLC v. Department of Revenue*, BTA Docket 13-020, Final Decision, Feb. 24, 2016 (see in particular n.15). It is not clear if *Triple Net Property* was a formal or informal BTA case; it has the hallmarks of a formal hearing including a hearing before the full board and an admonition about the requirement for an appealing party to pay the Board’s cost of providing material to Superior Court.

of equalization to complete their annual duties.”⁶ Decision, p. 3. The BOE concludes it lacks jurisdiction to act as if it has been reconvened because DOR issued an order that claims to rest on authority--RCW 84.08.060--the BTA has stated will not, alone, support a reconvene request. Therefore, any supposed jurisdiction the BOE received to convene and to hold a classification appeal hearing as a result of the DOR Decision that relies exclusively on RCW 84.08.060 is non-existent.⁷

The BOE is not without concern for Reichel and the suffering caused by dementia. However, the BOE occupies the lowest level of the property tax decision-making hierarchy and believes it is expected to follow statutes, rules, and BTA precedents that apply to the circumstances presented. If an equitable system of property taxation, or justice and necessity, require the BOE be reconvened in the absence of authority in WAC 458-14-127, then it is up to a higher authority to articulate a legal basis for that to the BOE, or for a higher authority to act on its own.⁸

/

/

/

/

/

/

/

⁶ Holding an appeal hearing for Reichel was never a part of the BOE’s “annual duties” because Reichel never created a duty for the BOE by filing an appeal with the BOE or created a duty by filing a late filing exception request form that could have led to a BOE hearing, and therefore the BOE never had a duty to the taxpayer. As with a lack of error by the Assessor, DOR found no error on the part of the BOE. See *Mikeladze v. Department of Revenue*, BTA Docket No. 82511, Proposed Decision, November 18, 2013.

⁷ The BTA has stated that RCW 84.08.060 gives DOR “broad discretionary authority” implies some limit to the application of the statute. *James River*, BTA Docket No. 96-54 and 96-054, pp. 4-5. However, the BOE could not find in BTA decisions any thorough analysis of RCW 84.08.060. The structure and words of RCW 84.08.060, in the view of the BOE, require analysis before application. Do the list of topics in sentence one of RCW 84.08.060 limit the reach of authority provided to DOR in sentence two of that section? Limit the reach of sentence three? If sentence two were read alone, would that reading render sentence one superfluous? Would sentence three be rendered superfluous? If sentence one limits the reach of sentences two and three, on what basis then does the extent of DOR’s limited authority include directing a county board to hear an appeal of a classification decision? Because the BOE’s inquiry ends with establishment that DOR did not follow BTA precedent and reconvene the BOE under WAC 458-14-127, the BOE does not attempt an analysis of RCW 84.08.060.

⁸ When issued in November, the BOE provided DOR with a copy of the Hearing Notice that contained, in so many words, the same legal analysis as is found in this decision. The BOE then inquired if DOR were considering any changes to the November 10, 2016 Decision. DOR responded it was not considering any changes. Nearly a month later, on January 4, 2017, DOR sent a letter to the BOE that can be fairly characterized as stating, “In the upcoming hearing, do what DOR told the BOE to do.”

DOR’s Reconvening Request Decision, in which DOR relies on some (unarticulated) authority to reach the legal conclusion that filing deadlines do not apply to those with dementia, and also found as a matter of fact what action Reichel would have taken in 2015 in the absence of dementia, begs the question could DOR use that same authority to finish what it started by finding facts about the use of Reichel’s land and then directing the Assessor to reinstate the classification, or not, according the DOR’s legal and factual conclusions.

Thurston County Board of Equalization
Lester Reichel
Reconvene No. 16-RR01
Page Five

Conclusion. Based on all of the above, the BOE concludes it was not reconvened, and not being reconvened, the BOE is without jurisdiction to conduct a removal appeal hearing or take any other action as a result of the January 12, 2017 hearing.

Dated this 12th day of January, 2017


Robert B. Shirley, Chairman


Ruth J. Elder, Clerk of the Board

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 or at their website at bta.state.wa.us/appeal/forms.htm 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 use the Washington Relay Service by calling 711. For tax assistance, call (360) 534-1400.

Distribution: • Assessor • Petitioner • BOE File
 • Petitioner's Representative Sherri Anderson
 • Diann Locke, DOR, Property Tax Division

REV 64 0058 (6/9/14)

SHIPPED JAN 17 2017