Bob Ferguson, Attorney General
Washington State Office of Attorney General
P.O. Box 40100
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SUBJECT: Request for Attorney General Letter Opinion

Dear Attorney General Ferguson:

I am writing to you regarding the Newman Lake Flood Control Zone District (hereafter referred to as NLFCZD), a flood control zone located in Spokane County and created pursuant to chapter 86.15 RCW. The Spokane County Board of County Commissioners acts as the ex-officio Board of Directors for NLFCZD. As the Prosecuting Attorney of Spokane County and statutory legal counsel for the Board of County Commissioners I am writing to request an Attorney General Letter Opinion on behalf of my client regarding the NLFCZD.

I. Background / Issue

The NLFCZD District was created October 29, 1968, pursuant to chapter 86.15 RCW. The Board of County Commissioners of Spokane County are the ex-officio supervisors of the NLFCZD (RCW 86.15.050).

Once created, a Flood Control District can be funded by various methods. They are set forth in RCW 86.15.160. Additionally, they can be funded by County aid under RCW 86.15.150.

At the present time, the Board of County Commissioners uses RCW 86.15.160(2) to fund the NLFCZD.
RCW 86.15.160(2) provides in material part:

86.15.160 Excess levies, assessments, regular levies, and charges-Local improvement districts. For the purposes of this chapter the supervisors may authorize:

.....

(2) An assessment upon property, including state property, specially benefited by flood control improvements or stormwater control improvements imposed under chapter 86.09 RCW. (Underlined emphasis added.)

Chapter 86.09 RCW sets for a methodology to establish how property is specially benefited under this funding option. It is a somewhat complicated process. Summarily speaking, after the creation of a flood control district, which includes is boundaries, the Board of County Commissioners appoints a board of three (3) appraisers (Appraisers). The Appraisers take all the land with the boundaries of the District and divide it into a number of classes which represent the relative benefit(s) of the properties to the benefits they receive from the actions of the district. Then, the Appraisers determine the percentage of benefits which each class receives from the actions of the district.

There are two (2) options which the Appraisers can use to determine the percentage of benefits which each class receives.

Option 1 is set forth in RCW 86.09.400. It authorizes the Appraisers to determine benefit based on “acreage”.

Option 2 is set forth in RCW 86.09.409. It authorizes the Appraisers, upon approval of the Board of County Commissioners, to use an alternate method to determine benefit based on “relative values of benefited land” as opposed to “acreage”.

RCW 86.09.409 provides as follows:

86.09.409 Assessments-Alternative method of determine benefit ratios. As an independent and alternative method to any other method herein authorized and subject to the prior written approval of the county legislative authority of the county within which the major portion of the district is situated, the ratio of benefits herein mentioned may be determined in their relation to the relative values of the respective benefits lands, including the improvement thereon, and the same shall be expressed in a relative percentage. (Underlined emphasis added.)
The Spokane County Board of County Commissioners has opted to use the “relative values” following RCW 86.09.409 as opposed to the use of “acreage” as provided under RCW 86.09.400. As a result, it is the value of the property and not the area that is used as the basis for assessment calculations.

RCW 86.09.409 referenced above states in part that, “.... the ratio of benefits herein mentioned may be determined in their relation to the relative values of the respective benefited lands, including the improvements thereon, and the same shall be expressed on a relative percentage basis.” (Emphasis added.)

The Spokane County Assessor has in some instances assigned two values to real property, i.e. assessed value and market value.

Assessed value is the value that reflects reductions in the value of the property because of benefits such as the property being classified as open space, agricultural, or timberland under chapter 84.34 RCW.

Market value is the value of the property without reductions in the value of property based upon a state statute.

RCW 86.09.415 provides as follows:

**RCW 86.09.415 Assessments-Determining relative values—General tax rolls.** 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: AND PROVIDED FURTHER, That in any instance where any tract of land is protected or partially protected from floods and is financially supporting the works affording such protection the revising officers for the district shall take the value of such existing flood protection into consideration and give such land equitable credit therefor. (Underlined emphasis added.)

It should be noted that RCW 86.09.415 became effective in 1937. This would have been well before many of the statutorily created reductions in assessed value were passed.
As a result of using "assessed value", many real property owners within the NLFCZD are receiving reductions in the assessed value of their property used as the basis for calculating their annual assessment. This is causing consternation among property owners within the NLFCZD.

The NLFCZD Appraisers have reconvened and are revisiting the ratio of benefits of classes of property within the NLFCZD. In this regard, they have asked the Board of County Commissioners if they can use the "market value" of properties within the NLFCZD as determined by the Spokane County Assessor as the basis for allocating assessments instead of the "assessed value" of properties within the NLFCZD as determined by the Assessor. If the Appraisers can use the "market value" arguably, those properties presently receiving a reduction in value as a result of being classified as open space under chapter 84.34 RCW or receiving any other reduction in value due to other applicable statute will end up paying more than they would if the Appraisers used "assessed" value.

II. Question Presented

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 NLFCZD?

Thank you for input on this important issue to the Board of County Commissioners.

Please let me know if you should have any questions regarding this issue or if I can provide you with additional information.

Very truly yours,

LARRY H. HASKELL
Spokane County Prosecuting Attorney