

No. 84185-3

COA No. 294935

In the  
SUPREME COURT  
of the  
STATE OF WASHINGTON

Jane Yurtis. Petitioner

v.

Pend Oreille County Assessor. Respondent

2008 JUN 23 AM 7:59  
OFFICE OF THE CLERK OF THE SUPREME COURT  
JANE YURTIS

*Appellant*

**Brief of Petitioner**

Jane Yurtis  
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Ione, WA 99139  
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## Introduction

What follows is a referral to and comment on a collection of evidence assembled to show to the Supreme Court that a confederacy exists between the Board of Tax Appeals and Pend Oreille County; to the end that they sustain one another in their oppression of the tax payers.

As a tax paying citizen of the state of Washington, it is my duty to bring this matter to the attention of the Court. As the chief administrator of the rule of law in the state of Washington, it is the duty of the Supreme Court to apply the law with great care and the utmost justice.<sup>1</sup>

## Assignments of Error and Issues

1. The superior court erred in determining that she was bound to "whatever was in the record submitted by the Board of Tax Appeals".

Is the superior court bound to whatever is in the record submitted by the Board of Tax Appeals?

2. The superior court erred in failing to admit the other evidence I identified of the contents of the "inaudible" portions of the transcript of the hearing with the Board of Tax Appeals.

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<sup>1</sup> Josephus, The Complete Works, translated by William Whiston, A.M., copyright 1998 by Thomas Nelson Publishers: ... *he (Jehoshaphat) returned to Jerusalem.. He there constituted judges ... and admonished them to pass all their sentences with care and justice. And if any of the people had differences of great consequence, they should send them to these judges, who would be obliged to give righteous sentences concerning such causes; and this with the greater care, because it is proper that the sentences which are given in that city where the temple of God is, and wherein the king dwells, be given with great care and the utmost justice.* p. 292, Book 9, Chapter 1, 1:4.

- Did the relevancy of the contents of the "inaudible" portions of the transcript depend upon the truth of fact that the "inaudible" portions were a subject of proof against the Assessor's valuation?

- Was the dissent of vice chair Shirley Winsley sufficient to support a finding of the truth of fact that the "inaudible" portions of the transcript were a subject of proof against the Assessor's valuation?

3. The superior court erred in finding that I submitted no competent evidence to correct the Assessor's valuation.

- Does the "clear, cogent, and convincing evidence" required by statute to correct an assessor's valuation translate into a requirement of a presentation of an opposing value which is grounded in the same basis as that required by assessors in determining value, or; does it translate into a presentation of evidence otherwise provided by statute?

4. The superior court erred by presuming correct the determinations of the Board of Tax Appeals and of Pend Oreille County that *the subject property would have water available if easement were given*; against a presentation of evidence sufficient to support a finding of fact that clear, cogent, and convincing evidence had been presented to the Board that the subject property would not have water available "if easement were given", and; against a presentation of evidence sufficient to support a finding of the falsity of fact that evidence, sufficient to support the Board's Finding of Fact no. 4 that *an easement owned by the Chippewa Water District exists through lot 84, exists somewhere in the record.*

- Was evidence sufficient to support a finding of the truth of the fact, that clear, cogent, and convincing evidence was presented to the Board of Tax Appeals that the easement across lot 84 is owned by me, presented to the superior court?
  - Was evidence sufficient to support a finding of the falsity of fact, that evidence sufficient to support the Board's Finding of Fact no. 4 exists somewhere in the record, presented to the superior court?
5. The superior court erred in dismissing and denying my Motion for Reconsideration/Motion for Joinder.
- Did the court make a separate and distinct ruling on the material issue of the existence in the record of evidence sufficient to support the Board's finding of fact that "an easement owned by the Chippewa Water District exists through lot 84", and; on the material issue of the lawfulness of the Board's procedure of subsequently considering a use for the subject property that was not reasonably probable of occurrence?
  - Can complete relief be accorded me in the absence of member Gardner and chairman Sebring of the Board of Tax Appeals?

#### Statement of the Case

It is undisputed that I bought my residence and the lot adjacent to it 25 years ago when the adjacent lot was yet platted

"residential", and; with water access to it via a planned street by the name of "Cole".

It is undisputed that the plan for Cole Street was afterwards vacated, and; along with it went the plan for water access to the adjacent lot.

It is undisputed that, with the property tax increase of 2005, I determined to challenge the Assessor's designation of the adjacent lot as a "residential" lot.

A hearing was held in Newport, Washington. To support my challenge, I offered as evidence a map of the area provided me by the Chippewa Water District. Apx. A, third page, Hearing Minutes and Decision Worksheet (notes).

The Assessor's determination, that the property would have water available "if an easement were given" and thereby be useable as a residential lot, was upheld by the Pend Oreille County Board of Equalization. id. Apx. A, second page.

A telephone hearing was conducted with the Board of Tax Appeals for review of the Pend Oreille County's decision. I prepared my opening statement ahead of time, and read it to the Board of Tax Appeals from my pre-prepared script. CP 121-123; CP 125-127. comp. CP 84, In. 17 - CP 87, In. 24.

The same map presented to Pend Oreille County, but rejected; was now accepted into evidence by the Board of Tax Appeals. CP 83, In. 23 - CP 84, In. 5.

Reading from my pre-prepared script, I advanced that no water service exists along the county road that separates the subject property from the Mill Pond. CP 85, In. 6-8. comp.: CP

125, Ins. 9-11; CP 121. Relying on RCW 84.40.030(1), I continued to read that the appraisal was not consistent with the vacation of Cole Street which vacation was in effect at the time of the appraisal and affected the use of the property as a residential lot. CP 84, In. 17 - CP 87, In. 24. comp.: CP 121-123; CP 125-127.

My statement, that no water service exists along the county road that separates the subject property from the Mill Pond, was not contested, and; the truth of the vacation of Cole Street was accepted by the Board of Tax Appeals. CP 92, In. 20 - CP 93, In. 1.

Referring to the map (Apx. B, appendix thereto) I advanced that the water service to my residential lot 81 eases in through that portion of vacated Cole Street now owned by lot 84; from a meter located on Chippewa Avenue. CP 84, In. 22 - CP 85, In. 5. comp.: CP 125, Ins. 5-11; CP 121.

My contention was proved by the map: that any water made available to the subject property "if easement were given" would have to flow, first; through my meter on Chippewa Av., then; through my waterline through my neighbor's property, and finally; through "an easement given" through my residential lot. CP 84, In. 22 - CP 85, In. 24. comp. CP 125, Ins. 5-27. CP 85, In. 23 - CP 86, In. 13. comp.: CP 125, In. 26 - CP 126, In. 7; CP 121-122. CP 87, Ins. 5-6. comp. CP 126, Ins. 19-23.

I testified that I am the owner of the easement across lot 84. CP 86, Ins. 7-8; CP 87, Ins. 5-6. comp.: CP 126, Ins. 2-6, Ins. 19-23; CP 121-122. I jabbed that, if the Assessor objects to the lower valuation for the subject property which necessarily resulted from the vacation of Cole St., then the Assessor should have timely

objected to the petition for its vacation instead of now denying that its vacation has had any significant physical influence on the use of the subject property as a residential lot. CP 87, Ins. 17-24. comp.: CP 126, In. 30 - CP 127, In. 3; CP 122-123.

I maintained that the easement across lot 84 is owned by me. CP 89, Ins. 12-17; CP 95, Ins. 11-15. cf. RP 10/22/09, p. 8, Ins. 10-17.

The Assessor's testimony corroborated own, that the easement across lot 84 is owned by me. CP 92, Ins. 9-11; CP 94, Ins. 6-7, In. 22 - CP 95, In. 2. His defense had centered on his concern that some day my children might inherit my property and use the subject property as a residential lot. CP 92, Ins. 1-6.

Hearing officer Gardner pressed the Assessor about the right of the Chippewa Water District to feed the subject property off the easement through lot 84. CP 95, Ins. 2-5.

The Assessor responded "if there was ... " (inaudible) CP 95, In 6.

After testifying that I repaired, one mid-winter, the waterline servicing my house that eases in through lot 84 (CP 95, Ins. 11-15. comp. RP 10/22/09, p. 8, Ins. 10-17.) I elaborated on some of the problems inherent in installing, on private property, the separate water meter that would be required to measure the water usage of the subject property. CP 95, Ins. 17-20. cf. RP 10/22/09, p. 8, In. 25 - p. 9, In. 5.

Hearing officer Gardner responded that her problem with my testimony was that it was not an area of my "expertise" and that I

"had no evidentiary material". CP 95, Ins. 21-24. She inquired whether I had read RCW 84.40.030(2)<sup>2</sup>. CP 96, Ins. 23-24.

I responded that I had, but that my whole point was that the subject property was not suitable as a residential lot, and; therefore; its value could not rightly be compared to the value of other residential lots. CP 96, In. 25 - CP 97. In. 7.

Responding to the hearing officer's invitation to add any final words, the Assessor did not to rebut my testimony that I was the owner of the easement across lot 84 and was responsible for maintaining the waterline servicing my house that eases in through lot 84, but; answered, only, that I could certainly combine the two lots into one if I so chose (and, by implication; if I had the money to make it happen). CP 98, In. 13 - CP 99, In. 2.

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The Board of Tax Appeals found as fact that the easement across my neighbor's lot is owned by the Chippewa Water District. Apx. C, p. 5, no. 4.

The Board apparently determined that there was no problem with the installation of a tap into an easement which, they alleged, was owned by the Chippewa Water District, nor; any problem with the installation on private property of the separate meter that would be needed for the measurement of the subject property's water usage. Thereby the Board of Tax Appeals upheld Pend Oreille County's determination that the use of the subject property as a residential lot was a reasonably probable occurrence "if easement

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<sup>2</sup> RCW 84.40.030(2): ... *consideration may be given to ... capitalization of income that would be derived from prudent use of the property.*

were given". Presumably I would have no problem with continuing to be responsible for any repairs to the waterline in the easement across lot 84, although said waterline would now be carrying water to the subject property as well as to my own.

I filed a Petition for Review of the Initial Decision taking exception to member Gardner's misrepresentation that *owner states that the water easement for her Lot 81 is through Lot 84 and that easement is owned by the Chippewa Water District (cf. Apx. C, p. 2, Ins. 18-19.)*, and; pointing out some of the errors which resulted from said misrepresentation. CP 5-76, Board of Tax Appeals Document Index No. 6.

My Petition for Review was denied; bearing the signatures of chair Terry Sebring and member Georgia Gardner, but; vice chair Shirley Winsley entered a dissent that the subject property is landlocked in terms of water access. Apx. D, p. 2.

I filed a Petition for Reconsideration of the denial of my Petition for Review, specifying the dissent of vice chair Shirley Winsley as its grounds. CP 5-76, Board of Tax Appeals Document Index No. 3.

My Petition for Reconsideration was denied, again; bearing the signatures of Terry Sebring and Georgia Gardner. CP 5-76: BTA Document Index, No. 2.

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I filed a Petition for Judicial Review stating that I believe I am entitled to redress because of RCW 34.05.570(3)(e) which provides that *The court shall grant relief from an agency order in an*

*adjudicative proceeding only if it determines that: The order is not supported by evidence that is substantial when viewed in light of the whole record before the court, which includes the agency record for judicial review ... . CP 178-180.*

The Board of Tax Appeals sent me a copy of the recording of the 8/1/06 hearing in compact disk format; with a letter advising to submit said compact disk to a court reporter for a transcription. CP 116-117.

Upon receipt of the transcription I noticed that there were numerous "inaudible" portions appearing in my testimony and in that of the Assessor. CP 77-106.

I filed a brief calling attention to the dissent of vice chair Shirley Winsley and contending that the order was not supported by evidence that is substantial when viewed in light of the whole record before the court, and; that the Board had engaged in unlawful procedure or decision-making process or failed to follow a prescribed procedure. CP 129-130. I maintained that evidence had been presented to the Board of Tax Appeals that the vacation of Cole Street affected a physical influence on the subject property by causing an incurable, functional, obsolescence on its use as a residential lot. CP 131. I pointed out the evidence, earlier submitted, that a Land Aggregation had been entered by the Pend Oreille County Planning Department combining the subject property with my residential lot. CP 132; CP 3-4.

I pointed out that a Petition for Review had been filed with the Board of Tax Appeals challenging their pivotal finding of fact that the easement across lot 84 is owned by the Chippewa Water

District, and relying on WAC 458-07-030(3); maintained that the use of the subject property was as a residential lot was not reasonably probable of occurrence. CP 132-133.

I advanced that the map accepted into evidence by the Board of Tax Appeal supported my contention that the subject property was landlocked in terms of water access. Referring to the Transcript and filling in the pertinent "inaudible" portions contained therein, I derided the Board's finding of fact that the easement across lot 84 is owned by the Chippewa Water District; because it was based solely on a statement which the Board members (with the exception of vice chair Shirley Winsley) apparently concurred was made by a person whom they would have reasonably believed was ignorant on the subject of ownership rights.<sup>3</sup> I pushed that the record is devoid of evidence that the easement through lot 84 is owned by the Chippewa Water District, or; that I had so stated. CP 133.

I argued that the record is devoid of evidence upon which the Board based their pivotal finding of fact, and; that the Board engaged in unlawful procedure by entering an order based solely on their unsubstantiated finding of fact that I made some statement to that effect. CP 133-134.

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<sup>3</sup> I had made known my belief that a neighbor's consent would be required before the Water District could install an easement for water access to the subject lot. cf. Transcript p. 10, ln. 23 - p. 11, ln. 2. comp. CP 140. Therefore, if I had also stated that the easement which exists across lot 84 is owned by the Water District, then; I would have shown myself to be a person who believes that my neighbor's consent would be required before the Water District could install a conduit off a waterline in an easement that they already own. Therefore, I ridiculed the Board for grounding a finding of fact on an alleged statement they reasonably and rightly should have believed was made by a person who had proved herself to be ignorant on the subject of the rights of the owner of the easement.

Relying on RCW 84.40.030(1) and WAC 458-07-030(3), I concluded that the appraisal was not consistent with the vacation of Cole St., which vacation undisputedly affected water access to the subject property, and; that, therefore, the use of the subject property as a residential lot was not to be considered in valuing the property at its highest and best use. I charged that the Board had unlawfully valued the property by considering a use which was not reasonably probable of occurrence, and; entered their order based solely on their unsubstantiated allegation that I made some statement to the effect that the water easement through lot 84 is owned by the Chippewa Water District. Relying on RCW 34.05.570(3)(e) I concluded that the Board's agreement with Pend Oreille County, that the highest and best use of the subject property is as a residential lot "if easement were given" and subsequent order, is not supported by evidence that is substantial when viewed in light of the whole record before the court. CP 134.

I identified much of the contents of the "inaudible" portions in my testimony, which had been transcribed from the copy of the recording provided me by the Board of Tax Appeals. CP 136-142.

The Pend Oreille County Prosecutor filed a brief on behalf of the Assessor, challenging my authentication of the "inaudible" portions of the Transcript. CP 181. Expanding upon an issue affirmatively introduced by the Board of Tax Appeals, that the clear, cogent, and convincing evidence required by RCW 84.40.0301<sup>4</sup>

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<sup>4</sup> RCW 84.40.0301. *Upon review by any court or appellate body of a determination of the valuation of property for purposes of taxation, it shall be presumed that the determination of the public official charged with the duty of*

for correcting an assessor's valuation meant that any assertion of opposing value must be grounded on one of the same bases as those imposed upon assessors in determining value (cf. RCW 84.40.030<sup>5</sup>), he argued that, because I had not grounded the value of my side yard specifically on sales as had the Assessor, the Board of Tax Appeals correctly ignored the issues and arguments I advanced concerning the incurable, functional, obsolescence of the property as a residential lot. CP 182-183.

I filed a Reply Brief advancing issue that a clearly audible copy of the recording of the hearing with the Board of Tax Appeals could not be obtained by the exercise of reasonable diligence, and; arguing that, therefore, it was proper that other evidence of the contents of the recording be given. CP 107-109. I challenged the respondent to point out "where in the record it is shown that I stated that the water easement through lot 84 is owned by the Chippewa Water District, or in the alternative, where in the record does other evidentiary material exist that the easement through lot 84 is owned by the Chippewa Water District". CP 110. I somewhat acquiesced to his contention, that RCW 84.40.0301 requires that any assertion of opposing value by an appellant must be grounded on the same basis used by the assessor in determining the value, by indicating the place in the Transcription where I actually did state that the property was used as a side yard to my residence and submitted

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*establishing such value is correct, but this presumption shall not be a defense against any correction indicated by clear, cogent and convincing evidence.*

<sup>5</sup> RCW 84.40.030: *All property shall be valued at one hundred percent of its true and fair value in money assessed on the same basis unless specifically provided otherwise by law ... The true and fair value of real property ... shall be based upon the following criteria: (1) ... sales ... (2) ... costs, ... capitalization of income ... (3) ... the true and fair value of the land exclusive of structures ...*

that it should have been obvious that I intended an extrapolation of value based on same method used by the Assessor in determining the value of the land of my residential lot excluding structures. CP 110-111. cf. RCW 84.40.030(3)<sup>6</sup>.

I concluded that, if the respondent purports to imply that the issues and arguments I advanced concerning the incurable, functional, obsolescence of the use of the property as a residential lot be ignored, then; the respondent is attempting to mislead the court away from recognizing that a pivotal finding of fact entered by the Board of Tax Appeals, which finding of fact he had effectively admitted was based on a blatantly false premise, is an inadequate basis for his affirmative defense that the functional obsolescence of the subject property as a residential lot is curable. CP 112-113.

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A hearing was held on September 24, 2009.

I objected to the accuracy of the Transcript of the recording of the hearing with the Board to Tax Appeals. RP, p. 3, ln. 21 - p. 4, ln. 5.

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A hearing was held on October 22, 2009.

I advanced that the unsubstantiated finding of fact by the Board of Tax Appeals, that the easement across lot 84 is owned by the Chippewa Water District, allowed the Board to uphold Pend Oreille County's determination that the property would have water available "if easement were given". RP10/22/09, p. 5, Ins. 1-6.

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<sup>6</sup> RCW 84.40.030(3): *In valuing any tract or parcel of real property, the true and fair value of the land, exclusive of structures thereon shall be determined ...*

I argued that, if it happens that I indeed did provide to the Board of Tax Appeals clear, cogent, and convincing evidence that I am the owner of the easement through lot 84, then; as vice chair Shirley Winsley noted in her dissent, in order to provide water access for the subject property, a neighbor's consent would be required to ease in water to the property from a meter on the street. p. 5, lns. 7-15.

I identified and commented on more of the "inaudible" portions of the Transcript, which portions continued to indicate that evidence, indeed, had been presented to the Board of Tax Appeals that I am the owner of the easement across lot 84. p. 5, ln.16 - p. 9, ln. 12.

Commenting on a statement made by hearing officer Gardner that her problem with my testimony was that it was not an area of my "expertise" and I had no "evidentiary material", I advanced issue that a homeowner need not be an "expert" to know where her water meter is, or where she was standing when she repaired a rupture in the water line easing across her neighbor's property. The implication, which should have been obvious to the superior court, was that I could not reasonably have been expected to have gone to the all the trouble and expense of repairing a waterline unless it belonged to me. p. 9, lns. 13-15.

I advanced argument that my presentation to the Board of Tax Appeals of uncontested testimony, that the easement through lot 84 is owned by me, should have been sufficient to establish the incurability of the functional obsolescence of the subject property as a residential lot. p. 9, ln. 16 - p. 10, ln. 5.

I contended that I am a witness with knowledge of the contents of the "inaudible" portions of the Transcript, and that it cannot be reasonably maintained that clear, cogent, and convincing evidence was not presented to the Board of Tax Appeals that the easement across lot 84 is owned by me, and; that, therefore, the functional obsolescence of the subject property as a residential lot is incurable. p. 10, Ins. 6-11.

The respondent did not rebut any of the issues or arguments I advanced, but; reiterated that the Board of Tax Appeals was looking for evidence of value for the property which was based on sales of residential lots, and; that the Assessor's determination of value was therefore properly assumed by the Board to be correct. p. 10, ln. 22 - p. 12, ln. 24.

The court consulted with Pend Oreille County whether my attack on the basis for the Assessor's valuation had any merit. p. 12, ln. 25 - p. 13, ln. 3.

Pend Oreille County responded that it did not. p. 13, Ins. 4-23.

Reading from my Reply Brief a quote from the Transcript, I tensely rebutted that it should have been obvious that I intended the lot to be valued on the basis of its being a side yard to my residential lot. p. 14, ln. 8 - p. 15, ln. 3.

The court dismissed the matter by deciding that she "is bound by whatever is in the record submitted by the Board of Tax Appeals", and; that I had failed to present evidence of fair market value as had the Assessor. Declining to rule on the issue of the existence in the record of evidence sufficient to support the Board's

finding of fact that the easement through lot 84 is owned by the Chippewa Water District, or; on the issue of the existence in the record of any kind of evidence whatsoever sufficient to support a finding of the reasonably probable occurrence of accessibility of water service to the subject property; the superior court decided that "There's nothing in the record to suggest that with a water district, that this property falls within, would not be allowed to serve any and all lots within the district." p. 17, Ins. 21-23. She had commented earlier that she believed that I was laboring under a misconception about the way the easement can be used, but; that she really did not need to get into that point. p. 16, Ins. 1-4.<sup>7</sup>

An Order was tentatively entered; denying and dismissing my Petition for Judicial Review. CP 171-173.

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I filed a Motion for More Definite Statement; poking holes in Pend Oreille County's proposed order. CP 143-156.

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I filed a Motion for Reconsideration/Motion for Joinder. CP 157-170.

I pointed out that I had filed a Petition for Review of the Initial Decision entered by the Board of Tax Appeals taking exception to the various misrepresentations and omissions. My Petition for Review was denied, but I pointed out that vice chair Shirley Winsley dissented that water access to the subject property could not come through lot 84 without my neighbor's consent. CP 157.

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<sup>7</sup> The superior court appears to have understood by my use of the term "ownership rights" (CP 133.), my referral to the rights of the owner of lot 84. Actually, I was referring to the rights of the owner of the easement across lot 84.

I pointed out that I had filed a Petition for Judicial Review based on RCW 34.05.570(3)(b)(e)(f) and (i), and advanced that the map accepted into evidence by the Board of Tax Appeals and the dissent of vice chair Shirley Winsley supported a finding that the subject property is landlocked in terms of water access. I conceded that if "an easement owned by the Chippewa Water District exists through lot 84", or if I had ever so stated; then, the use of the subject property as a residential lot would be a reasonably probable occurrence and the property could be considered as such. I argued that, however, if an easement owned by the Chippewa Water District does not exist through lot 84, or if I had never so stated; then, the use of the subject property as a residential lot would not be a reasonably probable occurrence and the property should not have been considered as such. CP 158.

I advanced that the Board of Tax Appeals had entered a pivotal finding of fact that "an easement owned by the Chippewa Water District exists through lot 84" based on their allegation that I had so stated, but; that the record is devoid of evidence to support either said allegation or said finding. I reiterated that the dissent of vice chair Shirley Winsley supported a finding that evidence was indeed presented to the Board of Tax Appeals that the easement across lot 84 is not owned by the Chippewa Water District. CP 158.

I concluded that the court had not addressed the issue of the existence in the record of evidence sufficient to support the Board's finding of fact that the Chippewa Water District owned the easement across lot 84, and; had not addressed the issue of whether the dissent of vice chair Shirley Winsley supported a

finding that evidence was indeed presented to the Board of Tax Appeals that the easement across lot 84 is not owned by the Chippewa Water District. Relying on RCW 34.05.570(1)(c)<sup>8</sup>, I submitted that the court's order should be reconsidered to allow for the court's ruling on the aforementioned, material, issues. CP 159.

Included with my Motion for Reconsideration was my Motion for Joinder of hearing officer Gardner and chairman Sebring of the Board of Tax Appeals. I advanced, again, that my offer to fill in the "inaudible" portions of the Transcription was based on the writing that I had read to the Board at the hearing, and; was based on my recollection of my responses to the issues then raised. I advanced, again, that a clear copy of the hearing with the Board could not be obtained by the exercise of reasonable diligence, and relying on ER 1005; again argued that therefore it was proper that other evidence of the contents of the "inaudible" portions was given. CP 159-160. comp. CP 107-108.

I again advanced that the original contents of the "inaudible" portions of the recording had been lost or destroyed, and; again called the court's attention to the dissent of vice chair Shirley Winsley. Again relying on ER 1004(a), I reiterated that other evidence of the contents of the "inaudible" portions was therefore admissible. CP 160. comp. CP 107-108.

Citing ER 901(a), (b)[1 & 4] I again argued that the requirement of authentication or identification, as a condition precedent to admissibility of the other evidence I gave, had been satisfied. CP 160. comp. CP 108.

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<sup>8</sup> RCW 34.05.570(1)(c): *The court shall make a separate and distinct ruling on each material issue on which the court's decision is based...*

Relying on ER 401, I again argued that the other evidence I gave of the contents of the "inaudible" portions of the recording is therefore relevant and admissible. CP 161. comp. CP 108-109.

Relying on the foregoing authorities I advanced that, with the entry of the Order Denying and Dismissing my Petition for Judicial Review, it now appeared that Pend Oreille County's determination of value would not have been upheld by the superior court had not pertinent portions of the contents of the recording been lost or destroyed. CP 161-162.

Relying on ER 104 I argued that the court is bound to admit the evidence, that any valuation by Pend Oreille County can stand in any formal appeal to superior court when pertinent portions of the contents of the official recording of the hearing are lost or destroyed, upon the introduction of evidence sufficient to support a finding of the truth of fact that the subject property would not be suitable as a residential lot "if easement were given". CP 162.

Relying on RPC 1.0(f), I argued that the Board of Tax Appeals knew that any water made available to the subject property "if easement were given" would have to flow, first, through my meter, then; through my easement across lot 84, and finally; through "an easement given" through my residential lot. CP 162. I concluded that, therefore, the court is bound to admit the evidence that the Board engaged in unlawful procedure or decision-making process or failed to follow a prescribed procedure.

Keeping with the criteria set forth in CR 19, I submitted that the joinder of Georgia Gardner, member of the Board of Tax

Appeals, and Terry Sebring, chairman; is needed for a just adjudication of this litigation. CP 163-164.

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A hearing was held on January 7, 2010.

I opened by citing the preamble to the Code of Judicial Conduct and advanced that the Board of Tax Appeals was a judge within the meaning of the Code. I cited Canon 2, section (b), pertaining to the need to maintain the functional independence of the three branches of government. I went on to cite Canon 3, section (a), and the comment to subsection (5) which pertains to a judge who manifests bias bringing the judiciary into disrepute. I concluded that the Board of Tax Appeals brought the judiciary into disrepute by engaging in bias which confounded the functional independence of the judicial and administrative branches of government. RP 1/7/10, p. 4, ln. 23 - p. 5, ln. 22.

After responding to Pend Oreille County's charge that the "inaudible" portions of the Transcript resulted from my failure to "make a record" (p. 5, ln. 23 - p. 6, ln.10.), I advanced that the dissent of vice chair Shirley Winsley was sufficient to support a finding of the truth of fact that clear, cogent, and convincing evidence had been presented to her that the subject property would not be useable as a residential lot "if easement were given". p. 6, ln. 11 - p. 7, ln. 10.

I submitted that, if the court should decide that the dissent of the vice chair along with the absence in the Transcript of any admonitions to me to "speak up" supported a finding that the "inaudible" portions were not due to my failure to "make a record",

and; supported a finding that clear, cogent, and convincing evidence had indeed been presented to the Board that the subject property would not be useable as a residential lot "if easement were given", then it would be in the interest of justice to consider how those "inaudible" portions came to be. p. 7, Ins. 11-16.

I concluded that chairman Sebring and member Gardner deserve the opportunity to explain the "inaudible" portions in the recording because I had presented, in my Motion for Reconsideration/ Motion for Joinder, evidence sufficient to support (1) a finding of the falsity of fact that the subject property would be suitable as a residential lot if "easement were given"; (2) a finding of the truth of fact that proper identification or authentication of the other evidence of the "inaudible" portions of the recording had been given; (3) a finding of the truth of fact that the other evidence given of the "inaudible" portions is relevant because it tends to make more likely the existence of the fact that Pend Oreille County's valuation is wrong; (4) that the Board of Tax Appeals knew that the subject property would not be suitable as a residential lot if "easement were given", and; (5) a finding of the truth of fact that a determination of value by Pend Oreille County can stand in any formal appeal to superior court as long as the Board of Tax Appeals retains their charge to make and keep the official recordings of hearings. p.7, ln. 17 - p. 8, ln. 14.

I expressed my desire to make the script, from which I had just read, part of the record. p. 8, Ins. 15-16. The court determined that it would not be necessary since I had just read it. p. 8, ln. 17.

Pend Oreille County did not rebut.

The court, apparently persuaded by Pend Oreille County's earlier declaration that my attack on the basis of the Assessor's valuation was without merit because I had failed to value the property according to the same criteria imposed on assessors in determining the value of property (cf. RP 11/22/09, p. 12, ln. 25 - p. 13, ln. 21.), denied by Motion for Reconsideration/Motion for Joinder. p. 9, ln. 9 - p. 10, ln. 19.

### **Summary Argument**

The Superior Court has so far sanctioned departure by the Board of Tax Appeals from the accepted and usual course of judicial proceedings as to call for review by the appellate court. RAP 2.3(b)(3).

The action is against a state officer in the nature of quo warranto, and as such; involves a fundamental and urgent issue of broad public import which requires prompt and ultimate determination. RAP 4.2(a)[4,5].

### **Argument**

**1. The superior court erred in determining that she was bound to "whatever was in the record submitted by the Board of Tax Appeals".** RP 10/22/09, p. 15, lns. 17-18.

**ER 904. ADMISSIBILITY OF DOCUMENTS (d) Effect of Rule.** *This rule does not restrict argument or proof relating to the weight to be accorded the evidence submitted, nor does it restrict the trier of fact's authority to determine the weight of the evidence after hearing all of the evidence and the arguments of opposing parties.*

- Therefore ER 904 allowed presentation of argument and proof relating to the weight to be accorded to the Transcript of the hearing with the Board of Tax Appeals, and; allowed the superior court to determine the weight of the Transcript after hearing all of the evidence and arguments of Pend Oreille County.

- Therefore, I submit that the superior court was not bound to accept whatever was in the record submitted by the Board of Tax Appeals, and erred in so determining.

**2. The superior court erred in declining to admit the other evidence I introduced of the contents of the "inaudible" portions of the transcript.** CP 172, Conclusions of Law nos. 4, 5.

**ER 401. DEFINITION OF "RELEVANT EVIDENCE"** *"Relevant Evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.*

**RULE 402. RELEVANT EVIDENCE GENERALLY ADMISSIBLE; IRRELEVANT EVIDENCE INADMISSIBLE** *All relevant evidence is admissible, ...*

**ER104. PRELIMINARY QUESTIONS (a) Questions of Admissibility Generally.** *Preliminary questions concerning ..the admissibility of evidence shall be determined by the court, subject to the provisions of section (b).* **(b) Relevancy Conditioned on Fact.** *When the relevancy of evidence depends upon the fulfillment of a condition of fact, the court shall admit it upon, or subject to, the*

*introduction of evidence sufficient to support a finding of the fulfillment of the condition.*

- Therefore the admissibility of the other evidence I introduced of the contents of the "inaudible" portions of the Transcript depended upon the truth of fact that evidence was presented to the Board of Tax Appeals that the subject property would not be suitable as a residential lot "if easement were given". cf. Apx. A, p. 2.

- I submit that the presentation of the dissent of vice chair Shirley Winsley, that I cannot force my neighbor to provide an easement for the subject property without that neighbor's consent, was sufficient to support a finding of the truth of fact that evidence was presented to the Board of Tax Appeals that the subject property would not be suitable as a residential lot "if easement were given" by me.

- Therefore, the superior court erred in failing to admit the other evidence I introduced of the contents of the "inaudible" portions of the transcript. ER 104(b).

**3. The superior court erred in finding that I submitted no competent evidence to correct the Assessor's valuation.** CP 172, Findings of Fact nos. 7, 8, 9, 10, 11.

**RCW 84.40.030.** *All property shall be valued at one hundred percent of its true and fair value in money assessed on the same basis unless specifically provided otherwise by law. (underline added)*

**RCW 34.05.570 Judicial Review.** (1) *Generally. Except to the extent that this chapter or another statute provides otherwise:* (b) The validity of agency action shall be determined in accordance with the standards of review provided in this section, ... (underline added) (3) ... *The court shall grant relief from an agency order in an adjudicative proceeding only if it determines that:* (c) *The agency has engaged in unlawful procedure or decision-making process, or has failed to follow a prescribed procedure; ...* (e) *The order is not supported by evidence that is substantial when viewed in light of the whole record before the court, which includes the agency record for judicial review, ...*

**WAC 458.07.030(3) True and fair value - Highest and best use.** ... Uses that are within the realm of possibility, but not reasonably probable of occurrence, shall not be considered in valuing property at its highest and best use. (underline added)

- Evidence was presented to the superior court sufficient to support a finding of the truth of fact that clear, cogent, and convincing evidence had been presented to the Board of Tax Appeals that the plan for Cole street was vacated by the time of the appraisal, and; that along with its vacation, went the plan for water service along that route. CP 137, comp. CP 84, In. 17 - CP 85, In. 24; CP 142, comp. CP 87, Ins. 17-24.

- Evidence was presented to the superior court sufficient to support a finding of the truth of fact that clear, cogent, and convincing evidence had been presented to the Board of Tax Appeals that any water made available to the subject property "if easement were given" would have to flow, first, through my meter,

then; through the easement across lot 84, and finally; through an "easement given" through my property. CP 121-127. comp.: CP 83, In. 24 - CP 84, In. 5; CP 84, In. 17- CP 87, In. 24.

- Evidence was presented to the superior court sufficient to support a finding of the truth of fact that clear, cogent, and convincing evidence had been presented to the Board of Tax Appeals that I am the owner of the easement across lot 84. CP 138, comp. CP 85, In. 24 - CP 86, In. 13.

- Therefore, evidence was presented to the superior court sufficient to support a finding of the truth of fact that clear, cogent, and convincing evidence had been presented to the Board of Tax Appeals that the use of the subject property as a residential lot was not reasonably probable of occurrence, and; that, therefore, the Board's order violated WAC 458.07.030(3).

- Also, evidence was presented to the superior court sufficient to support a finding of the truth of fact that that the respondent effectively admitted that, other than the Board's allegation, the record is devoid of evidence that the easement across lot 84 is owned by the Chippewa Water District.<sup>9</sup> CP 109.

- Therefore, evidence was presented to the superior court sufficient to enter a conclusion of law that the agency order was not supported by evidence that is substantial when viewed in light of the whole record before the court, and; that the agency had engaged in unlawful procedure or decision-making process or failed to follow the procedure prescribed by WAC 458.07.030(3).

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<sup>9</sup> CR 8(d): *Averments in a pleading to which a responsive pleading is required ... are admitted when not denied in the responsive pleading.*

- Nonetheless, the superior court rejected my correction of the Assessor's valuation which correction was based on RCW 34.05.570, and; which basis was allowable under RCW 84.40.030.
- Therefore, the superior court erred in finding that I submitted no competent evidence to correct the Assessor's valuation.

**4. The superior court erred by presuming correct the determinations of the Board of Tax Appeals and of Pend Oreille County that the subject property would have water available "if an easement were given" against a presentation of evidence sufficient to support a finding of the truth of fact that clear, cogent, and convincing evidence had been presented to the Board that the subject property would not have water available "if an easement were given", and; against a presentation of evidence sufficient to support a finding of the falsity of fact that evidence, sufficient to support the Board's Finding of Fact No. 4 that *an easement owned by the Chippewa Water District exists through lot 84, exists somewhere in the record.* CP 171-173.**

***RCW 84.40.0301. Upon review by any court or appellate body of a determination of the valuation of property for purposes of taxation, it shall be presumed that the determination of the public official charged with the duty of establishing such value is correct, but this presumption shall not be a defense against any correction indicated by clear, cogent and convincing evidence. (underline added.)***

- Evidence, sufficient to support a finding of the truth of fact that clear, cogent, and convincing evidence had been presented to

the Board that the subject property would not have water available "if easement were given", was presented to the superior court. RP 10/22/09, p. 5, ln. 9 - p. 6, ln. 24; p. 8, ln. 7 - p. 10, ln. 5. RP 1/7/10, p. 6, ln. 11 - p. 7, ln. 10. cf. Apx. D, p. 2, Ins. 10-15.

- No cogent rebuttal was offered.
- Therefore, evidence; sufficient to enter a finding of the truth of fact that clear, cogent, and convincing evidence had been presented to the Board of Tax Appeals that the subject property would not have water available "if easement were given", was presented to the superior court.
- Additionally, evidence; sufficient to support a finding of the falsity of fact that the record contains sufficient evidence to substantiate the Board's finding of fact no. 4 that *an easement owned by the Chippewa Water District exists through lot 84*, was presented to the superior court. CP 133; CP 112-113.
- No cogent rebuttal has ever been offered.
- Therefore, evidence; sufficient to enter a finding of the falsity of the Board's finding of fact no. 4, was presented to the superior court.
- Therefore the superior court erred by presuming correct the determinations of the Board of Tax Appeals and of Pend Oreille County that *the subject property would have water available if easement were given* against a presentation of evidence sufficient to support a finding of the truth of fact that clear, cogent, and convincing evidence had been presented to the Board that the subject property would not have water available "if easement were given", and; against a presentation of evidence sufficient to support

a finding of the falsity of fact that evidence, sufficient to support the Board's finding of fact no. 4 that *an easement owned by the Chippewa Water District exists through lot 84*, exists somewhere in the record.

**5. The superior court erred by denying my Motion for Reconsideration/Motion for Joinder. CP 173.**

Motion for Reconsideration

**RCW 34.05.570(1)(c):** *The court shall make a separate and distinct ruling on each material issue on which the court's decision is based...*

- I filed a Petition for Judicial Review, stating that I believe I am entitled to redress because RCW 34.05.570(3) provides that *The court shall grant relief from an agency order in an adjudicative proceeding only if it determines that: (e)The order is not supported by evidence that is substantial when viewed in light of the whole record before the court, which includes the agency record for judicial review ... . CP 178-180.*

- I filed a brief contending that the Board of Tax Appeals' finding of fact, that "an easement owned by the Chippewa Water District exists through lot 84", was not supported by evidence that is substantial when viewed in light of the whole record before the court, and citing WAC 458-07-030(3) and RCW 34.05.570(3)[c]; further contending that the Board had engaged in unlawful procedure or decision-making process or failed to follow a prescribed procedure by considering a use for the subject property which was not reasonably probable of occurrence. CP 130.

- The court declined to make a separate and distinct ruling on the material issue of the existence in the record of evidence sufficient to support the Board's said finding of fact (cf. Apx. C, p. 5, no. 4), and; on the material issue of the lawfulness of the Board's procedure of considering a use for the subject property which was not reasonably probable of occurrence. id. p. 5, finding of fact no. 7. cf. RP 10/22/09, p. 16, Ins.1-4.
- Therefore, the superior court erred by denying my Motion for Reconsideration.

#### Motion for Joinder

#### **CR 19. JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION**

**(a) Persons to Be Joined if Feasible.** *A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter ... shall be joined as a party ... if (1) in his absence complete relief cannot be accorded among those already parties ...*

a. I submit that evidence, presented to the superior court that clear, cogent, and convincing evidence had been presented to vice chair Shirley Winsley that the subject property would not be useable as a residential lot "if easement were given"; would be sufficient to support a finding of the truth of the fact that the same evidence was also presented to hearing officer Gardner.

b. I submit that a finding of the truth of the fact that the same evidence was also presented to hearing officer Gardner; would be sufficient to support a finding of the truth of fact that clear, cogent,

and convincing evidence was presented to hearing officer Gardner that the easement across lot 84 is owned by me.

c. I submit that a finding of the truth of the fact that clear, cogent, and convincing evidence was presented to hearing officer Gardner that the easement across lot 84 is owned by me, yet she entered a finding of fact that *the easement across lot 84 is owned by the Chippewa Water District*; would be sufficient to support a finding of the truth of fact that she falsified her finding of fact no. 4 that *the easement across lot 84 is owned by the Chippewa Water District*. RPC 1.0(f)<sup>10</sup>.

d. I submit that a finding of the truth of the fact that hearing officer Gardner falsified her finding of fact no. 4 would be sufficient to support a finding of the truth of fact that the "inaudible" portions of the Transcript resulted from her having lost or destroyed pertinent portions of the contents of the official recording; which pertinent portions supported the truth of fact that clear, cogent, and convincing evidence had indeed been presented to the Board of Tax Appeals that the easement across lot 84 is owned by me, and; which portions were therefore a subject of proof against the Assessor's valuation.

e. I submit that a finding of the truth of the fact that hearing officer Gardner lost or destroyed pertinent portions of the contents of the official recording which were a subject of proof against the Assessor's valuation; would be sufficient to support a finding of the truth of fact that she did so in order to uphold Pend Oreille County's determination that the subject property would be useable as a

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<sup>10</sup> RPC 1.0(f): *A person's knowledge may be inferred from circumstances.*

residential lot *if easement were given*, and; did so in order to uphold the Pend Oreille County Assessor's subsequent valuation, for taxation purposes, of my side yard as a residential lot.

f. I submit that a finding of the truth of the fact that hearing officer Gardner falsified a pivotal finding of fact and lost or destroyed pertinent portions of the contents of the official recording in order to uphold Pend Oreille County's valuation for taxation purposes of my side yard as a residential lot; would be sufficient to support a finding of the truth of fact that a confederacy exists between the Board of Tax Appeals and Pend Oreille County to the end that they sustain one another in their oppression of the tax payers.

g I submit that a finding of the truth of the fact that a confederacy exists between the Board of Tax Appeals and Pend Oreille County to the end that they sustain one another in their oppression of the tax payers; would be sufficient to support a finding of the truth of fact that the joinder of member Gardner and chairman Sebring is needed for a just adjudication of this litigation.

\*\*\*\*\*

Now; evidence sufficient to support a finding of the truth of the fact that clear, cogent, and convincing evidence was presented to vice chair Shirley Winsley that the subject property would not be useable as a residential lot "if easement were given"; was presented to the superior court. CP 157-158; RP 1/7/10, p. 6, ln. 11 - p. 7, ln. 10.

b. Therefore evidence sufficient to support a finding of the truth of the fact that clear, cogent, and convincing evidence was

presented to hearing officer Gardner that the easement across lot 84 is owned by me; was presented to the superior court. cf. RPC 1.0(f).

c. Therefore evidence sufficient to support a finding of the truth of the fact that hearing officer Gardner falsified her finding of fact that *the easement across lot 84 is owned by the Chippewa Water District*; was presented to the superior court.

d. Therefore evidence sufficient to support a finding of the truth of the fact that the "inaudible" portions of the Transcript resulted from member Gardner's having lost or destroyed pertinent portions of the contents of the official recording which supported a finding of the truth of fact that clear, cogent, and convincing evidence had been presented to the Board that the easement across lot 84 is owned by me, and which portions were therefore a subject of proof against Pend Oreille County's valuation; was presented to the superior court.

e. Therefore evidence sufficient to support a finding of the truth of the fact that hearing officer Gardner lost or destroyed pertinent portions of the contents of the official recording which supported a finding of the truth of fact that clear, cogent, and convincing evidence had indeed been presented to the Board that the easement across lot 84 is owned by me; in order to uphold Pend Oreille County's determination that the subject property would be useable as a residential lot *if easement were given*, and; in order to uphold Pend Oreille County's subsequent valuation of my side yard as a residential lot for taxation purposes; was presented to the superior court.

f. Therefore evidence sufficient to support a finding of the truth of the fact that a confederacy exists between the Board of Tax Appeals and Pend Oreille County to the end that they sustain one another in their oppression of the tax payers; was presented to the superior court.

g. Therefore evidence sufficient to support a finding of the truth of the fact that the joinder of hearing officer Gardner and chairman Sebring is needed for just adjudication; was presented to the superior court.

### Conclusion

#### **RAP 2.3 DECISIONS OF THE TRIAL COURT WHICH MAY BE REVIEWED BY DISCRETIONARY REVIEW**

**(a) Decision of Superior Court.** ... a party may seek review of any act of the superior court not appealable as a matter of right.

**(b) Considerations Governing Acceptance of Review.** ... discretionary review may be accepted only in the following circumstances: (3) The superior court has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by an inferior court ... as to call for review by the appellate court ...

#### **RAP 4.2 DIRECT REVIEW OF SUPERIOR COURT DECISION BY SUPREME COURT**

**(a) Type of Cases Reviewed Directly.** A party may seek review in the Supreme Court of a decision of a superior court which is subject to review as provided in Title 2 only in the following types of cases: (5) *Action against a state officer in the nature of quo warranto,*... (4) *Public Issues. A case involving a fundamental and urgent issue of broad public import which requires prompt and ultimate determination.*

I submit that, by upholding the Board of Tax Appeals conduct in certifying as correct a copy of an official recording which is resplendent with "inaudible" portions of contents of testimony <sup>11</sup> that were properly identified and authenticated as being a subject of proof against the Assessor's valuation, the superior court has so far sanctioned the Board's engagement in unlawful procedure or decision-making process and failure to follow a prescribed procedure as to call for review by the Supreme Court.

It appears that a confederacy exists between the Pend Oreille County Assessor and the Board of Tax Appeals; to the end that they sustain each other in extorting the taxpayers. Using sophistry, the Board of Tax Appeals makes straight the way for the Pend Oreille County Assessor to oppress the people with a tax rate higher than the law allows, and; the superior court, apparently believing herself to have no recourse but to rigorously adhere to the provisions of ER 902 <sup>12</sup>, justifies the Board in so doing.

In the absence of member Gardner and chairman Sebring complete relief cannot be accorded me because, as a tax payer who is concerned that the oppressors not be the only side represented in a litigation who enjoy the protection of the laws; I would continue to be stressed knowing that, by retaining their charge to make and keep the official recordings of proceedings, any determination of value by the Pend Oreille County Assessor

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<sup>11</sup> Presumably, according to the Board of Tax Appeals, the substantive evidence for my alleged statement that *the easement across lot 84 is owned by the Chippewa Water District* is "lost" somewhere in the "inaudible" portions of the contents of the Transcript. cf. Apx. C, p. 2, lns. 18-19.

<sup>12</sup> **ER 902. SELF-AUTHENTICATION** Extrinsic evidence of authenticity ... is not required with respect to the following: **(d) Certified Copies of Public Records.** A copy of an official record ... certified as correct ...

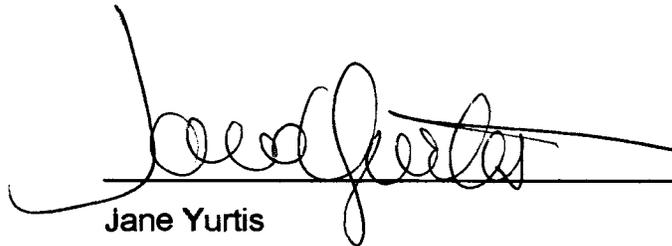
can stand in any formal appeal to superior court as long as extrinsic evidence of authenticity of whatever copy of an official recording of a hearing (nonetheless certified as correct) is not required.

Therefore, this case should be reviewed by the Supreme Court.

The following relief is sought:

- The removal of member Gardner and chairman Sebring from the taxpayers' payroll.
- The relief set forth in Brief of Appellant, p. 6-7. CP 134-35.
- Any other relief deemed just and equitable.

Date 7-26-10

  
Jane Yurtis

**A**



*Pend Oreille County*

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# BOARD OF EQUALIZATION

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Post Office Box 5018 • Newport, WA 99156-5018 • (509) 447-2712

Office Hours: Mon. - Fri., 8:00 a.m. to 4:30 p.m.

## ORDER OF THE PEND OREILLE COUNTY BOARD OF EQUALIZATION

TAXPAYER NAME: JANE YURTIS  
ADDRESS: 301 Wisconsin Avenue  
Ione, WA 99139  
PETITION NUMBER: BE05-05  
PARCEL NUMBER: 433706519082  
HEARING WAS HELD ON: October 25, 2005  
BOARD MEMBERS PRESENT: Don Wilson, Gary Yann

After full and complete consideration of all evidence presented in this matter, the Board of Equalization hereby orders the valuation of the property under consideration as evidenced by the Appeal Number entered hereon: value sustain.

DECISION OF BOARD: VALUE SUSTAIN

RECORDED ON TAPE NUMBER BOE05-05

  
Clerk Dated this 25<sup>th</sup> day of October, 2005.

**NOTICE: THIS ORDER CAN BE APPEALED TO THE STATE BOARD OF TAX APPEALS BY FILING NOTICE OF APPEAL WITH THE STATE BOARD WITHIN THIRTY DAYS OF THE DATE OF MAILING OF THIS ORDER. THE NOTICE OF APPEAL FORM IS AVAILABLE FROM THE COUNTY OR THE STATE BOARD.**

**ORDER OF THE PEND OREILLE COUNTY  
BOARD OF EQUALIZATION**

Parcel Owner: Jane Yurtis

Parcel: 433706519082

Assessment Year: 2005

Petition Number: BOE05-05

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

X sustains            \_\_\_ overrules            the determination of the Assessor.

**Assessor's True and Fair Value Determination**

**BOE's True and Fair Value Determination**

X Land                            \$ 11,108.00  
\_\_\_ Improvements            \$ \_\_\_\_\_  
\_\_\_ Timber/Minerals        \$ \_\_\_\_\_  
\_\_\_ Personal Property      \$ \_\_\_\_\_

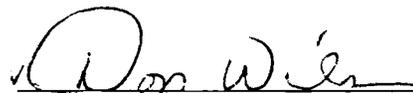
\_\_\_ Land                            \$ \_\_\_\_\_  
\_\_\_ Improvements            \$ \_\_\_\_\_  
\_\_\_ Timber/Minerals        \$ \_\_\_\_\_  
\_\_\_ Personal Property      \$ \_\_\_\_\_

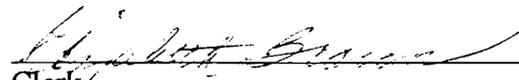
This decision is based on our finding that: Based on comparables presented by the Appraiser for like size land without water or sewer, but having water available and those parcels sold one to three years ago for from \$12,000 to \$15,000, and the fact that the subject property, Lot 81, would have water and sewer if an easement were given for such, thus making those utilities available. Property values are steadily increasing, while Appellant has requested the value of Lot 81 be placed at a value below what she purchased it for twenty years ago.

Now, Therefore it is ordered that the Assessor's determination of true and fair value of \$11,108.00 is reasonable and is therefore sustained.

Dated this 25<sup>th</sup> day of October, 2005.

SIGNED:

  
Chairperson

  
Clerk

**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 (30) 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 of Tax Appeals.

For tax assistance, visit <http://dor.wa.gov> or call (800) 647-7706. To inquire about the availability of this document in an alternate format or the visually impaired, please call (360) 486-2342. Teletype (TTY) users may call (800) 451-7985

**Distribution:** Assessor, Petitioner, BOE File

HEARING MINUTES AND DECISION WORKSHEET

Appellant: Jane Yurtis

Petition Number: BOE05-05

Assessor/Appraiser present (name) Jim McCroskey

Parcel Number and Location: Parcel # 433706519082
Located at: 301 Wisconsin Avenue, Ione, WA 99139

Table with 3 columns: Assessment Year 2005, Assessor Recommendation, and Petitioner Value. Rows include Land, Improvements, and Total.

Notes: Appellant Yurtis' presented information that there is no access for sewer/water. Presented a map from Chippewa Water District indicating Cole Street was originally planned, but those plans have since been vacated, making no access for sewer/water to Lot 80. Currently used as a side yard for her Lot 81. Appraiser spoke of highest and best use as being a residential lot and water and sewer is available, even if it must be done by easement, showing comparables for like size and bare land where water is available but sewer is not and selling from \$12,000 to \$15,000.

Proposed Decision: XX Assessment Upheld
Value Adjusted: Land \$, Improvements \$, Total \$

Reason for Decision: Based on comparables presented by the Appraiser for like size land without water or sewer, but having water available and those parcels sold one to three years ago for from \$12,000 to \$15,000, and the fact that the subject property, Lot 81, would have water and sewer if an easement were given for such, thus making those utilities available. Property values are steadily increasing. Appellant is requesting value be placed at a value below what she purchased it for twenty years ago.

Board Members Present: Don Wilson, Garry Yann
Date of Decision: October 25, 2005

Date Order Mailed to Appellant: November 2, 2005

SIGNED: Don Wilson (Chairperson), [Signature] (Clerk)

cc: Assessor, Petitioner, BOE file

**B**

Board of Tax Appeals  
Olympia, WA

**RECEIVED**

JUL 20 2006

STATE OF WASHINGTON  
BOARD OF TAX APPEALS

Re: Property Valuation Appeal  
Formal Docket No. 05-167  
County Petition No. 05-05  
Jane Yurtis

**ANSWER TO RESPONSE TO NOTICE OF APPEAL**

Affidavit of Appellant

The attached is a true and correct copy of the relevant portions of the map offered into evidence at the local 25 October, 2005, hearing, and declined by the Pend Oreille County Board of Equalization. Ex. A1-1 & 2.

Appellant hereby reserves the right to transcribe at some later date the local proceedings held on 25 October, 2005. Ex. A2.

Date 7-18-06

J.S.  
Jane Yurtis

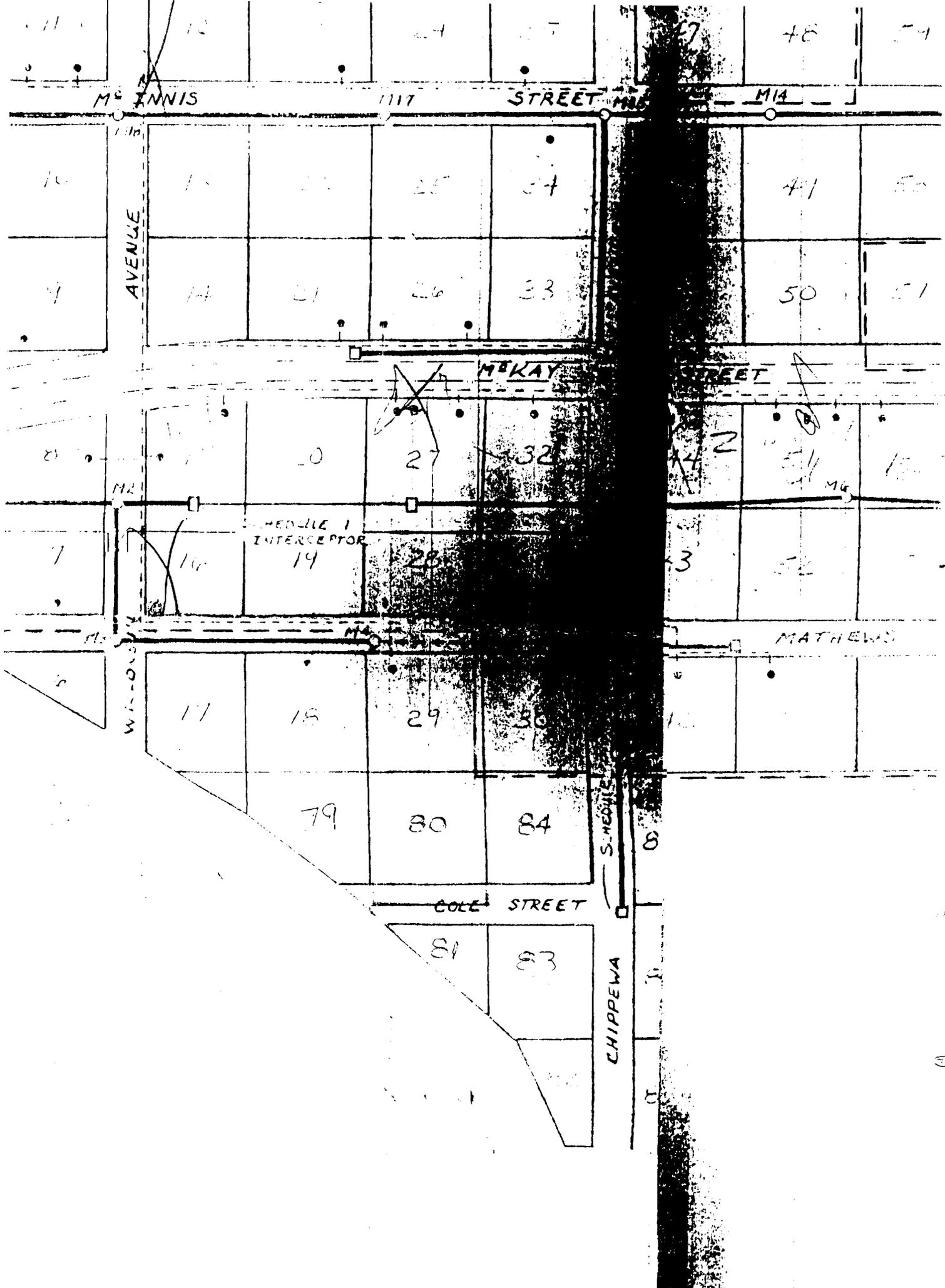
**CERTIFICATE OF SERVICE**

Pursuant to RCW 9A 72 085 the undersigned hereby certifies, under penalty of perjury under the laws of the state of Washington, that on the 18 day of July, 2006, I mailed Jane Yurtis **Answer to Response to Notice of Appeal** to the State Board of Tax Appeals, PO Box 40915, Olympia, WA, and to Janet Walker, Pend Oreille County Assessor, POB 5000 Newport WA 99156-5000 both via first class mail

Jane Yurtis  
Signature

18 July 2006  
Date

Olympia, WA  
Place



McANNIS STREET

McKAY STREET

M14

AVENUE

McKAY STREET

STREET

MEDIAN INTERCEPTOR

MATHEWS STREET

COLE STREET

CHIPPEWA AVENUE

11	12	13	14	15	16	17	18	19	20
21	22	23	24	25	26	27	28	29	30
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81	82	83	84	85	86	87	88	89	90

c

BEFORE THE BOARD OF TAX APPEALS  
STATE OF WASHINGTON

3	JANE YURTIS,	)	
4		)	
4	Appellant,	)	Docket No. 05-167
5		)	
5	v.	)	RE: Property Tax Appeal
6		)	
6	JANET WALKER,	)	INITIAL DECISION
7	Pend Oreille County Assessor,	)	
8		)	
8	Respondent.	)	
9		)	

This matter came before Georgia A. Gardner presiding for the Board of Tax Appeals (Board), on August 1, 2006, for a formal hearing<sup>1</sup> pursuant to the rules and procedures set forth in Chapter 456-09 Washington Administrative Code. Appellant, Jane Yurtis (Owner), represented herself. Assessor Janet Walker and Appraiser James McCroskey represented the Pend Oreille County Assessor (Assessor).

This Board heard the testimony, reviewed the evidence, and considered the arguments made on behalf of both parties. This Board now makes its decision as follows:

VALUATION FOR THE 2005 ASSESSMENT YEAR

<u>PARCEL NO.</u>	<u>BOARD OF EQUALIZATION VALUATION</u>	<u>BOARD OF TAX APPEALS VALUATION</u>
43-37-06-51-9082	Land: \$ 11,108	Land: \$ 11,108

<sup>1</sup> The hearing was conducted by telephone.

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ISSUE

The issue before the Board is the January 1, 2005, true and fair market value of property located at 301 Wisconsin Avenue, outside the city limits of Ione, Washington.

FACTS AND CONTENTIONS

The subject property is a one-acre parcel designated Lot 80, zoned residential, with water and sewer available. The Owner owns and resides on Lot 81, which is adjacent to the subject property. Lots 80 and 81 were previously separated by Cole Street; however, the Owner and other property owners applied for, and were granted, a vacation of Cole Street.<sup>2</sup> The two lots are therefore contiguous.

The Assessor valued the property at \$11,108. The Owner petitioned the Pend Oreille County Board of Equalization (County Board), which sustained the Assessor. The Owner now appeals to this Board contending a value of \$4,500. The Assessor asserts her original valuation.

In support of a lower value, the Owner testifies there is no separate sewer or water line to the subject property. She contends the only use of the parcel is as an extension of the yard of her residential parcel, Lot 81. The Owner testifies that, in order to obtain water and sewer connections for Lot 80, she would have to provide an easement through her Lot 81 or through a neighbor's property, Lot 84. The Owner states the water easement for Lot 81 is through Lot 84 and that easement is owned by the Chippewa Water District. The Owner presents no documentation of requirements for water and sewer service to be brought to the subject property.

The Owner offers no documentation or evidentiary material in support of her valuation of the subject property.

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<sup>2</sup> Testimony of Owner. The vacated land was split between Lots 80 and 81.

1 The Assessor presents four sales she considers comparable to the subject property. All  
2 three properties are in close proximity to the subject property and are of comparable size and  
3 quality. Water is available, but not extended, to the sale parcels, and sewer is not available. The  
4 sales occurred between May 2000 and April 2004, for sales prices of \$12,000 to \$15,500, with an  
5 average price of \$14,375 and a median price of \$15,000.

6 The Assessor notes the Owner may ask for the two parcels to be combined so that Lots  
7 80 and 81 are valued as one parcel. Since they are separate parcels, the Assessor testifies they  
8 must be valued as separate parcels, according to the highest and best use of each parcel. The  
9 highest and best use of the subject property, she states, is as a residential lot, and it has been so  
10 valued.

#### 11 ANALYSIS AND CONCLUSIONS

12 This Board's goal in its hearings is the acquisition of sufficient, accurate evidence to support  
13 a determination of true and fair value as defined by statute<sup>3</sup> and the Washington Administrative  
14 Code.<sup>4</sup>

15 The value of property for purposes of ad valorem taxation<sup>5</sup> is "market value,"<sup>6</sup> or the price  
16 the seller and buyer would freely agree to. A willing buyer pays a willing seller "market value"  
17 when both parties consider all reasonable uses of the property.  
18

19 The valuation placed on the property by the assessor is presumed to be correct, and  
20 can only be overcome by presentation of clear, cogent and convincing evidence<sup>7</sup> that the value is  
21

22 <sup>3</sup> RCW 84.40.030

23 <sup>4</sup> WAC 458-07-030

24 <sup>5</sup> Ad valorem taxes are based on the value of the property being taxed.

25 <sup>6</sup> "Market value means the amount of money which a purchaser willing, but not obliged, to buy would pay an owner willing, but not obligated, to sell, taking into consideration all uses to which the property is adapted and might in reason be applied." *Mason County Overtaxed, Inc. v. Mason County*, 62 Wn.2d 677, 683-84, 384 P.2d 352 (1963); *accord Carkonen v. Williams*, 76 Wn.2d 617, 458 P.2d 280 (1969).

<sup>7</sup> "Clear, cogent and convincing" evidence means a quantum of proof that is less than beyond a reasonable doubt, but more than a mere preponderance of the evidence. It is the quantum of evidence necessary to convince the trier of fact that the ultimate fact at issue is "highly probable." *In re Sego*, 82 Wn.2d 736, 513 P.2d 831 (1973).

1 erroneous.<sup>8</sup> “Clear, cogent and convincing evidence” is the language used to indicate the level of  
2 evidence the property owner must present in order to overcome the assumption the assessor is  
3 correct. The owner needs to demonstrate it is “highly probable” his valuation is correct and the  
4 assessor’s is wrong.

5 Here, then, is the basis of our decision: Has the Owner presented clear, cogent, and  
6 convincing evidence that the value is other than that declared by the Assessor? In this case, the  
7 Owner presents no evidence of value.

8 The Owner provides no evidence that the subject property could not be developed as a  
9 residential lot. It may require (although this requirement has not been demonstrated) easements  
10 through the Owner’s Lot 81; however, this is a requirement chosen by the Owner when she chose to  
11 apply for the street vacation.

12 The Assessor asserts the highest and best use of the subject property is for residential  
13 development and the Board agrees. Highest and best use is “the reasonably probable and legal use  
14 of vacant land or an improved property that is physically possible, legally permissible, appropriately  
15 supported, financially feasible, and that results in the highest value.”<sup>9</sup> Unless and until the Owner  
16 combines Lots 80 and 81 into a single parcel, Lot 80 remains a legally developable, financial  
17 feasible residential parcel. The Owner provides no evidence to the contrary.

18 The Assessor provides four sales for comparison with the subject property, all inferior  
19 because there is no sewer connection available. These properties sold in excess of the assessed  
20 value of the subject property. The Board concludes the Assessor’s valuation of the subject property  
21 is reasonable.

22 After review of the evidence presented at the hearing, it is our opinion that the Assessor’s  
23 determination of the true and fair value of the property is supported. This Board finds that the  
24

25  

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<sup>8</sup> RCW 84.40.0301; *Weyerhaeuser Co. v. Easter*, 126 Wn.2d 370, 894 P.2d 1290 (1995).

<sup>9</sup> Appraisal Institute, *The Appraisal of Real Estate* 305 (12th ed. 2001).

1 Owner has not presented the clear, cogent, and convincing evidence necessary to overcome the  
2 presumptive correctness of the value established by the Assessor.

3  
4 FINDINGS OF FACT

- 5  
6 1. The subject parcel is one acre, zoned residential, with water and sewer  
7 available.  
8 2. Because of a street vacation requested by the Owner, the subject parcel  
9 and the Owner's Lot 81 are contiguous.  
10 3. Because of the street vacation, water and sewer connections for the subject  
11 parcel would require an easement through the Owner's Lot 81 or  
12 neighboring Lot 84.  
13 4. An easement owned by the Chippewa Water District exists through Lot  
14 84.  
15 5. The Owner provides no evidence of value for the subject property.  
16 6. The Assessor provides four sales for comparison with the subject property,  
17 indicating a value of approximately \$15,000.  
18 7. The highest and best use of the subject parcel is as a residential lot.

19 Any Conclusion of Law that should be deemed a Finding of Fact is hereby adopted as  
20 such.

21 From these findings, this Board comes to these

22  
23 CONCLUSIONS OF LAW

- 24 1. The Owner is required to provide clear, cogent, and convincing evidence to over  
25 come the Assessor's presumption of correctness.  
26 2. The Owner does not provide evidence of value; therefore, the Assessor's valuation is  
27 presumed to be correct.

28 Any Finding of Fact that should be deemed a Conclusion of Law is hereby adopted as  
29 such.

1 From these conclusions, this Board enters this

2  
3 DECISION

4 In accordance with RCW 84.08.130, this Board sustains the determination of the Pend  
5 Oreille County Board of Equalization and orders the value as shown on page one of this  
6 decision.

7 The Pend Oreille County Assessor and Treasurer are hereby directed that the assessment and tax  
8 rolls of Pend Oreille County are to accord with and give full effect to the provisions of this  
9 decision.

10 DATED this 17 day of November, 2006.

11  
12 BOARD OF TAX APPEALS

13   
14 \_\_\_\_\_  
15 GEORGIA A. GARDNER, Member

16  
17 **Right of Review of this Initial Decision**

18 Pursuant to WAC 456-09-930, you may file a petition for review of this Initial Decision.  
19 You must file an original and four copies of the petition for review with the Board of Tax  
20 Appeals within twenty calendar days of the date of mailing of the Initial Decision. You must  
21 also serve a copy on all other parties or their representatives. The petition for review must  
22 specify the portions of the Initial Decision to which exception is taken and must refer to the  
23 evidence of record which is relied upon to support the petition. The other parties may submit  
24 one original and four copies of a reply to the petition with the Board of Tax Appeals within ten  
25 business days of the date of service of the petition. Copies of the reply must be served on all  
other parties. The Board will then consider the matter and issue a Final Decision.

If a petition for review is not filed, the Initial Decision becomes the Board's Final  
Decision twenty calendar days after the date of mailing of the Initial Decision.

**D**



1  
2 DATED this 5 day of January, 2007.

3 BOARD OF TAX APPEALS

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5   
TERRY SEBRING, Chair

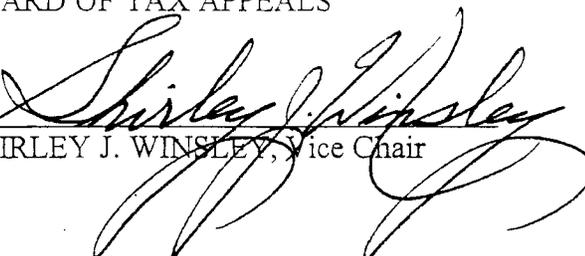
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8 GEORGIA A. GARDNER, Member

9  
10 DISSENT:

11 Since Cole Street is now a vacated street, Lot No. 80 has no direct access to Chippewa  
12 Avenue and, according to the map displaying this lot and other lots, Lot No. 80 is landlocked. A  
13 governmental entity by means of eminent domain can obtain road, water, sewer, and power  
14 easements for whatever reason on private property. A private party can not force his/her  
15 neighbor to provide road, water, sewer, or power easements without the neighbors' consent.

16  
17 DATED this 5 day of January, 2007.

18 BOARD OF TAX APPEALS

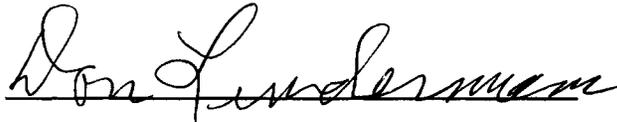
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21 SHIRLEY J. WINSLEY, Vice Chair

**Affidavit of Service**

I affirm that on 26 July, 2010, I forwarded by U.S. Mail true and correct copies of Jane's **Brief of Petitioner** to:

Supreme Court  
POB 40929  
Olympia, WA 98504-0929

Thomas Metzger, County Prosecutor  
229 S. Garden Av., POB 5070  
Newport, WA 99156

  
Don Lenderman