

No. 84185-3

COA No. 294935

In the  
SUPREME COURT  
of the  
STATE OF WASHINGTON

2/11 E

Jane Yurtis, Petitioner

v.

Pend Oreille County Assessor, Respondent

**BRIEF OF RESPONDENT**

Thomas A. Metzger  
Prosecuting Attorney  
Pend Oreille County  
P.O. Box 5070  
Newport, WA 99156  
(509) 447-1949

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TABLE OF AUTHORITIES

RCW 34.05.554

RCW 84.40.0301

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I.

PRELIMINARY MATTERS

**THERE ARE ABSOLUTELY NO GROUNDS FOR DIRECT REVIEW,  
ONE WORD SUMMARIZES THIS APPEAL, MERITLESS.**

Despite the pile of paperwork filed by the Petitioner, she has utterly failed to establish a recognized basis for Direct Review. Wild allegations of a “confederacy” existing between the Board of Tax Appeals and Pend Oreille County and allegations of using “sophistry” to oppress the people coupled with her request for relief including “The removal of member Gardner and chairman Sebring (*members of the Board of Tax Appeals*) from the taxpayer’s payroll.” do not meet the required showing, but rather support the frivolous, indeed absurd, nature of this so called “appeal”. Petitioner’s Brief, p. 1 and p. 36.

II.

**STATEMENT OF THE CASE**

Following the Petitioner’s loss at the Board of Equalization, she elected to have a formal hearing before the Board of Tax Appeals, CP 50, and therefore, her appeal in the Superior Court must be based solely upon the record she made before the Board of Tax Appeals. RCW 34.05.554 Furthermore, since the Petitioner is challenging the Assessor’s determination of value, RCW 84.40.0301 directs that the Assessor’s determination of value shall be presumed correct unless she can present “clear, cogent and convincing” evidence to the contrary. CP 28. “Clear, cogent and convincing evidence” is the language used to

indicate the level of evidence the property owner must present to overcome the presumption that the assessor is correct. The owner needs to demonstrate that it is “highly probable” that her valuation is correct and the assessor’s is wrong. CP 29. Based upon the sale of comparables as set forth in CP 29 and CP 63-76, the Assessor established a value of \$11,108.00 for the property. The Board of Equalization sustained that determination. CP 180. The Petitioner claims a value of \$4,500.00 with absolutely no evidence to support her claimed value. CP 27. As the Board of Tax Appeals found:

*“The owner offers no documentation or evidentiary material in support of her valuation of the subject property.” CP 27*

### III. **ARGUMENT**

The County Assessor’s valuation of \$11,500 is based upon the sales of comparable property. CP 63-76. It cannot be overemphasized that the Petitioner’s alleged value is a bare assertion with absolutely no factual support in the record before this court, or anywhere else for that matter. CP 27.

The Board of Equalization specifically noted:

*“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 over twenty years ago.” CP 180*

On appeal from the Board of Equalization’s determination, the Board of Tax Appeals, determined that:

*“The Owner offers no documentation or evidentiary material in support of her valuation of the subject property.” CP 27, lines 21,22.*

The Board of Tax Appeals concluded:

*"In this case, the Owner presents no evidence of value."* CP 29, lines 5-7.

Finally the Board of Tax Appeals made a Finding of Fact that:

*"The Owner provides no evidence of value for the subject property."* CP 30, line 10 and 20.

The transcript of the hearing before the Board is illustrative as contained in CP page 83 lines 17-25 and CP 84 lines 1-5:

HEARING OFFICER GARDENER: *"I have the taxpayer's petition to the county board, and what she indicates, that the value of her property is \$4,500. Is that the value you wish to use?"*

MS. YURTIS: *Yes.*

HEARING OFFICER GARDENER: *"Okay. Thank you. I have no evidence from Ms. Yurtis at all in the county board information, nor do I have - - the only evidence I have from you, Ms. Yurtis is a map. "*

MS. YURTIS: *"Yes."*

HEARING OFFICER GARDENER: *"so you're providing no other evidence?"*

MS. YURTIS: *"That's correct."*

The transcript of the hearing before the Board of Tax Appeals highlights the fact that the Petitioner lacks any evidence to support her argument: :

HEARING OFFICER GARDENER: *"Ms. Yurtis, my problem with your testimony is that this is not an area of your expertise and you have no evidentiary material to give us."* CP95, lines 21-24.9

Despite repeated invitations by the Hearing Officer to explain or document her claimed value, and despite this Respondent's specific challenge to the Petitioner to show where in the record she provided "clear cogent and convincing" evidence to support her claimed value, the Petitioner has declined to provide any information. CP 183, Respondent's Brief.

The Superior Court, based upon its review of the entire case file, including the Brief of Appellant, the Brief of Respondent, the Reply Brief of Appellant, the record before the Board of Tax Appeals and in particular Appellants Endnotes A through E, concluded that the Appellant had presented no competent or credible evidence to support her claimed valuation. The evidence presented was speculative and neither competent nor credible. CP 171-173.

IV.  
**CONCLUSION**

The Petitioner has utterly failed to establish any recognized basis for Direct Review. Furthermore, her patently meritless claim coupled with her wild allegations and absurd requests for relief warrant immediate rejection and dismissal by this Court.

A handwritten signature in black ink, appearing to read 'Tom Metzger', written over a horizontal line.

THOMAS A. METZGER WSBA #9487

A

**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**

<u>X</u> Land	\$ <u>11,108.00</u>
___ 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: Don Wien  
Chairperson

Elizabeth Brown  
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

B

BEFORE THE BOARD OF TAX APPEALS  
STATE OF WASHINGTON

JANE YURTIS,

Appellant,

v.

JANET WALKER,

Pend Oreille County Assessor,

Respondent.

Docket No. 05-167

RE: Property Tax Appeal

INITIAL DECISION

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.

---

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

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

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

16 From these findings, this Board comes to these

17  
18 CONCLUSIONS OF LAW

- 19
- 20 1. The Owner is required to provide clear, cogent, and convincing evidence to over  
come the Assessor's presumption of correctness.
  - 21 2. The Owner does not provide evidence of value; therefore, the Assessor's valuation is  
presumed to be correct.
- 22

23 Any Finding of Fact that should be deemed a Conclusion of Law is hereby adopted as  
24 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.

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Please be advised that a party petitioning for judicial review of a Final Decision is responsible for the reasonable costs incurred by this agency in preparing the necessary copies of the record for transmittal to the superior court. Charges for the transcript are payable separately to the court reporter.

C

**SUPERIOR COURT, STATE OF WASHINGTON, PEND OREILLE**

**JANE YURTIS,**

**Appellant,**

vs.

**JANET WALKER**

**Pend Oreille County Assessor**

**Respondent.**

**No. 07-2-00029-8**

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
ORDER DENYING AND DISMISSING  
PETITION FOR JUDICIAL REVIEW**

This matter came on regularly for hearing October 22, 2009 on the Appellant's Petition for Judicial Review. The court, having considered the files and records herein, including the Brief of Appellant, the Brief of Respondent, the Reply Brief of Appellant, the record of the Board of Tax Appeals, the Endnotes A through E as presented in the Appellants Brief and the argument of the parties the court hereby makes the following Findings of Fact:

**FINDINGS OF FACT**

1. The Appellant requested a formal hearing before the Board of Tax Appeals, and therefore, this Court's consideration of her Petition is confined to the record made before the Board of Tax Appeals.
2. Lot 80, the Appellant's property that is the subject of this Petition, is a vacant lot, currently without water or sewer service, located next to the Appellant's home which does have water and sewer service.
3. While the Appellant's home fronts Chippewa Avenue, Lot 80 has no direct access to Chippewa Avenue.

4. The Assessor determined the fair market value of Lot 80 was \$11,108.00 based upon sales of similar properties in the area.
5. The Appellant alleges a value of \$4,500.00.
6. The Appellant asserts that because Lot 80 does not front on Chippewa Avenue, and because it currently lacks water and sewer, that the Assessor's determination of value is too high.
7. The Appellant did not submit any evidence of fair market value.
8. The Appellant's evidence of value is totally speculative evidence that is not competent evidence.
9. Appellant's alleged value of \$4,500.00 is less than she paid for the property 20 years ago and is not credible evidence.
10. Appellant submitted no competent evidence to show that the value of Lot 80 should be \$4,500.00 rather than \$11,108.00 as determined by the Assessor.
11. Even if this court accepts as true and correct all of Appellant's Endnotes A through E as contained in Appellant's Brief, those Endnotes contain absolutely nothing to support the Appellant's alleged value of \$4,500.

#### CONCLUSIONS OF LAW

1. RCW 84.40.0301 requires that the Assessor's determination of value be presumed correct unless the Appellant can present "clear, cogent and convincing evidence" to the contrary.
2. "Clear, cogent and convincing evidence" is the language used to indicate the level of evidence the property owner must present to overcome the presumption that the Assessor is correct.
3. The Appellant must demonstrate that it is "highly probable" that her valuation is correct and the assessor's is wrong.
4. Based upon this Court's review of the record before the Board of Tax Appeals and this Court's review of the Appellant's Endnotes A through E as contained in the Appellant's Brief, the Appellant has presented no competent evidence to support her claimed valuation.
5. Based upon this Court's review of the record before the Board of Tax Appeals and this Court's review of the Appellant's Endnotes A through E as contained in the Appellant's Brief, the Appellant has presented no credible evidence to support her claimed valuation.

ORDER DENYING AND DISMISSING JUDICIAL PETITION

The Appellant presented speculative evidence that was neither competent evidence nor credible evidence to support her alleged valuation, and therefore:

IT IS ORDERED THAT THE ASSESSOR'S VALUATION OF \$11,108.00 IS HEREBY UPHeld AND APPELLANTS PETITION FOR JUDICIAL REVIEW IS HERBY DENIED AND DISMISSED WITH PREJUDICE. *And, the appellants motions for reconsideration & joinder are denied. pub pnb*

Dated this 7<sup>th</sup> day of Jan. 2010, 2009.

Rebecca Baker  
REBECCA BAKER, JUDGE

PRESENTED BY:

*Thomas A. Metzger*  
THOMAS A. METZGER WSBA #9487

~~AGREED BY:~~

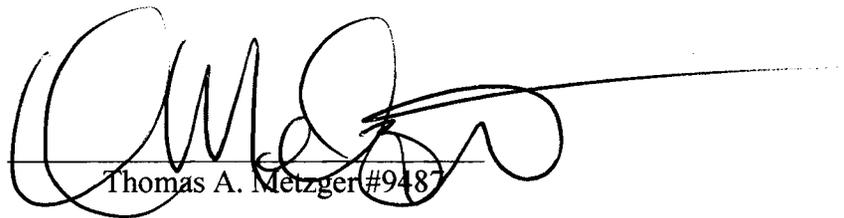
*comments on the record 1/7/10 pub*  
JANE YURTIS

AFFIDAVIT OF SERVICE

I affirm that on August 26, 2010, I forwarded by U.S. Mail true and correct copies of Respondent's Brief to:

Yane Yurtis  
P.O. Box 553  
Ione, WA 99139

Supreme Court  
P.O. Box 40929  
Olympia, WA 98504-0929



Thomas A. Metzger #9487