

FILED

MAY 09 2019

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 365387

IN THE COURT OF APPEALS, DIVISION THREE

PALMER D. STRAND AND PATRICIA N. STRAND

Appellant

v.

SPOKANE COUNTY AND SPOKANE COUNTY ASSESSOR

Respondents

REPLY BRIEF OF APPELLANT

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Appellant

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A. RECAP OF APPEAL BRIEF

- Identification of the public records request with reference to CP
- Identification of the Assessor's responses with reference to CP
- Identification of the RCW 42.56.520 denied public records
- Identification of Assessor's basis for summary judgment
- Identification of Strand's motion and memo for Show Cause and Assessor's response withdrawing alleged exemption
- Identification of Strand's Motion for Summary Judgment and disposition
- Recap of October 26, 2018 hearing with quotes and reference to CP
- Identification of dismissal order and relevant statements from it with reference CP
- Assignment of Errors
- Summary of Strand Arguments and specific arguments with reference CP
- Relief requested

B. REPLIES TO DEFENSE ARGUMENTS

1. Footnote WAC 44-14-04004(4)

WAC 44-14-04004(4) appears to apply to the Assessor's offer to create 215,000 Cards. It does not apply to the destruction of original

inspection records created during physical inspections that existed on/after the request is active as stated in *O'Neill v. City of Shoreline*, 170 Wn.2d 138 at 148; 240 P.3d 1149; 2010 and *Neighborhood Alliance v. Spokane Co.*, 172 Wn.2d 702 at 723, 750; 261 P.3d 119 (2011).¹

2. RAP 10.3 Content of Brief

The Strands designate and cite in their brief numerous Clerk's Papers which were not considered by Judge Fennessy at the Show Cause Hearing. All alleged factual statements and arguments cited to Clerk's Papers which were not considered by Judge Fennessy should be disregarded by this court.

Further, the Strands offered no affidavits or declarations to the trial court to support their facts or arguments.

This appeal is to the dismissal by summary judgment of judicial review for unlawful denial of responsive public records. (RCW 42.56.550) The underlying basis for the case is the existence of the requested-responsive public records. The Strand Brief would be seriously deficient if it did not address the existence and facts surrounding the Assessor's denial of the requested-responsive public records. This is the relevant statement by the Assessor in their response to the request and their order dismissing the case,

After reviewing our production, **I have concluded that we have provided all the responsive records in our possession with the exception of the property record cards** - the only official record of inspection - for all

¹ Brief of Appellant pages 28-20

parcels in the County, which you asked us not to send. I am closing this request as of today, November 21, 2017. [CP 142, 242] (emphasis added)

What are “all the responsive records” in the Assessor’s possession “with the exception of the property record cards”? Caselaw identifies the privilege log as an appropriate record. It was requested and unlawfully not provided. The Assessor identified their database(s)² is responsive to the request. It was requested and unlawfully not provided. The Assessor made multiple statements of the practice of destroying original inspection records over the 327 days this request was open and active. These statements are of the Assessor violating RCW 42.56.100. These records were protected. Arguably until this case is finally closed the destruction of inspection records is problematic. They are protected by this request and case. The Assessor deliberately destroyed these records while under protection. Caselaw addresses this specific action as violating the Public Records Act (“PRA”). Retention laws for inspection records were also violated potentially extending the period records were destroyed when they should have been retained. Original inspection records were requested and unlawfully not provided.

² The Assessor has previously identified separate databases for the website (<http://cp.spokanecounty.org/SCOUT/propertyinformation> . . .) and Proval but has never identified all databases, what records are on databases, who accesses databases, or anything about databases.

The Assessor's request for affidavits and declarations by a pro se litigant who instead produces evidence makes no sense.

3. Show Cause was Properly Denied

Strand's show cause motion and memo had one purpose to compel the Assessor to disclose the alleged statutory exemption for the Proval database from being a public record. It worked! The Assessor withdrew the allegation stating the database is a public record. The Assessor chose to exclude their original pleadings with these statements from this appeal. Strand's pleadings extensively excerpted word-for-word from the Assessor's pleadings. For example on October 19, 2018 defense response to producing a statutory exemption for the Proval database,

The Assessor's Office uses a computer software program known as ProVal. Spokane County does not own Pro Val, but uses it under certain terms and conditions set forth in a non-exclusive license. Proval's internal calibration and embedded object code is proprietary and not subject to public disclosure. (Declaration of Oesterheld)

The Assessor's Office is not asserting any exemption to request #5 based on proprietary information protected by a User Agreement between Thomson-Reuter and Spokane County. (Declaration of Oesterheld)

The history of every inspection of every parcel is contained in the data entered into Pro Val is a public record. (Declaration of Oesterheld) (emphasis added) [CP 206]

The above statement proves the show cause motion and memo worked! The Assessor did not challenge Strand's excerpts as correct!

The trial court's denial of a show cause motion and memo that accomplished their purpose makes no sense because the trial court cannot erase these facts. The Assessor's withdrawal of the alleged exemption is the fact underlying Strand's charge of Assessor and Oesterheld false statements for years because no exemption ever existed.

Respondent Brief, pages 6 and 7, misrepresented facts,

The Strands' Complaint under Relief Requested stated: "the Assessor to produce the unlawfully denied records requested in P-001 #5". (CP 14) Strands'# 5 request (CP 18) was for:

5. The complete real property inspection history of each-and-every appraiser for each year from Jan/1/2012 through the date the records are produced. This should include the properties inspected with a column for at least these inspection specifics:

- A. parcel number,
- B. parcel address,
- C. inspection date,
- D. "NC" if inspection resulted in No Change m value due to inspection.

(Outline added)

The Complaint includes P-001. [CP 18] P-001 states,

RECORDS REQUESTED IN DATABASE (EXCEL) FORMAT AND PHOTOS . . .

5. The complete real property inspection history of each-and-every appraiser for each year from Jan/1/2012 through the date the records are produced. This should include the properties inspected with a column for at least these inspection specifics:

- A. parcel number,
- B. parcel address,
- C. inspection date,
- D. "NC" if inspection resulted in No Change in value due to inspection.

(Outline added)

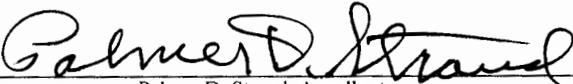
The Assessor's exclusion of the requested records to be in database format materially changes Strand's request. Strand's request for database data is the reason the Assessor responded on February 16, 2017 with database data.

#5: The complete real property inspection history of each-and-every appraiser for each year from Jan/1/2012 through the date the records are produced.

We do not generate any such record. As we have told you many times, the entire history of every inspection of every parcel is contained in the data entered into Proval. [CP 31]

(Outline added)

SUBMITTED this 9th of May 2019


Palmer D. Strand, Appellant


Patricia N. Strand, Appellant

CERTIFICATE OF SERVICE

I certify that on May 9, 2019, I served a true and correct copy of Reply

Brief of Appellant to:

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FOR: Spokane County and
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DATED this 9th of May 2019



Patricia N. Strand, Appellant