

No. 84185-3

COA No. 294935

In the
SUPREME COURT
of the
STATE OF WASHINGTON

Jane Yurtis, Petitioner

v.

Pend Oreille County Assessor, Respondent

Appellant

Reply Brief of Petitioner

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New Issues Raised in Brief of Respondent

The petitioner knew, and failed to raise before the Board of Tax Appeals, the issues of the Board's having entered an order unsupported by substantial evidence; of their failure to follow a prescribed procedure, and; of their engagement in unlawful procedure. The evidence presented by the petitioner, in addition to that contained in the Board record, does not relate to the Board's action at the time it was taken and is not needed to decide disputed issues regarding grounds for disqualification of Board member Gardner and chairman Sebring.

Therefore, the respondent appears to conclude, RCW 34.05.554 **Limitation on new issues** trumps the issues raised by the petitioner pursuant RCW 570.05.570 ¹, and; the interests of justice would not be served by resolution of the issue arising from the Board's having certified to the superior court as correct a copy of the recording of the 8/1/06 hearing that resulted in a transcription resplendent with "inaudible" portions of contents in the petitioner's testimony and in that of the respondent. cf. Brief of Respondent, first page.

Rebuttal of New Issues

I did not know, nor could I have been reasonably expected to discover, that the Board of Tax Appeals' order was not supported

¹ **RCW 570.05.570 (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. ...*

by substantial evidence until after I received a copy of the order. Nor could I, until that time, be expected to have known or discovered that the Board would enter their pivotal finding of fact based on a misrepresentation.

I exhausted the last feasible opportunity for seeking relief from the agency from their action in entering an order unsupported by substantial evidence and in entering their pivotal, but misrepresented, finding of fact that *An easement owned by the Chippewa Water District exists through Lot 84.* cf. BTA Document Index No. 6, Petition for Review; BTA Document Index No. 3, Petition for Reconsideration.

Vice chair Shirley Winsley of the Board of Tax Appeals apparently thought my pleadings had some merit. P's Brief, Apx. D, p. 2.

Therefore, sufficient evidence exists in the agency record to support a finding of truth of the fact that I did raise before the Board the issues of the Board's having entered an order that was not supported by substantial evidence; of the Board's failure to follow established procedure, and; of the Board's engagement in unlawful procedure.

I did not know and was under no duty to discover that the Board would certify, to the superior court as correct, a copy of a recording of the 8/1/06 hearing that was resplendent with so-called "inaudible" portions of contents in my testimony and in that of the respondent; until after the pleadings before the Board were closed and I received from the transcription service a transcript of the copy

which was provided me by the Board. cf. CP 5; RP 9/24/09, p. 3, Ins. 5-20; CP 116.

Therefore the issue of the Board's having certified to the superior court as correct a copy of the recording that was resplendent with "inaudible" portions of contents in my testimony and in that of the respondent, which issue was admittedly not raised before the Board, may nonetheless be raised on appeal.²

I submit that the interests of justice would be served by the resolution of the issue arising from the Board of Tax Appeals' action, occurring after I had exhausted the last feasible opportunity for seeking relief from the Board, in certifying to the superior court as correct a copy of the recording of the 8/1/06 hearing that resulted in a transcription containing numerous so-called "inaudible" portions of contents, and; which portions, had they not been "inaudible", would have been sufficient to support a finding that clear, cogent, and convincing evidence had indeed been presented to the Board which was sufficient to overthrow the Assessor's determination.³ cf. P's Brief, p. 23-28.

Further, RCW 34.05.562 provides that *the court may receive evidence in addition to that contained in the agency record only if it relates to the agency action at the time it was taken and is needed to decide disputed issues regarding grounds for disqualification of those taking the agency action.*

² **RCW 34.05.554 (1)** *Issues not raised before the agency may not be raised on appeal, except to the extent that: (a) The person did not know and was under no duty to discover facts giving rise to the issue ...*

³ **RCW 34.05.554 (1)** *Issues not raised before the agency may not be raised on appeal, except to the extent that: (d) The interests of justice would be served by resolution of an issue arising from: ... (ii) Agency action occurring after the person exhausted the last feasible opportunity for seeking relief from the agency.*

I submit that the evidence I presented to the court, that the Board of Tax Appeals tampered with the recording of the hearing in order to keep their pivotal but misrepresented finding of fact from toppling, related to the agency action at the time it was taken and is needed to decide disputed issues regarding grounds for disqualification of Board member Gardner and chairman Sebring. cf. P's Brief, p. 30-34.

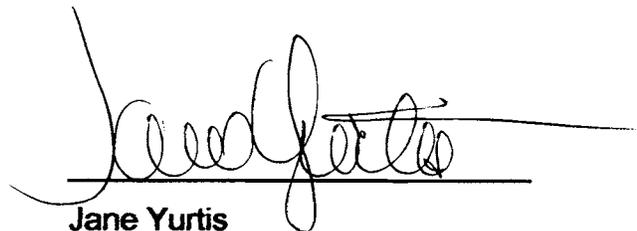
Conclusion

Therefore the issues raised on appeal are validated pursuant RCW 34.05.554.

Further, the evidence presented to the court in addition to that contained in the agency record; that the Board certified as correct a copy of the recording of the 8/1/06 hearing that resulted in a transcription containing numerous so-called "inaudible" portions of contents which otherwise would have been sufficient to support a finding that clear, cogent, and convincing evidence had indeed been presented to the Board sufficient to overthrow the Assessor's determination; is required by RCW 34.05.562 and RCW 34.05.570(3).

Therefore, this case should be reviewed by the Supreme Court pursuant RAP 2.3 and RAP 4.2. cf. P's Brief, p. 34-36.

Date 9-24-10


Jane Yurtis

Affidavit of Service

I affirm that on 24 September, 2010, I forwarded by U.S. Mail true and correct copies of Jane's **Reply Brief of Petitioner** to:

Supreme Court
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