

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
Sep 21, 2012, 9:07 am
BY RONALD R. CARPENTER
CLERK

No. 313409

RECEIVED BY E-MAIL

SUPREME COURT OF
THE STATE OF WASHINGTON

PALMER D. STRAND and
PATRICIA N. STRAND

Appellants,

vs.

VICKY HORTON,
SPOKANE COUNTY ASSESSOR,

Respondent.

BRIEF OF RESPONDENT

STEVEN J. TUCKER
Spokane County Prosecuting Attorney

Ronald P. Arkills
WSBA #10773
Deputy Prosecuting Attorney
1115 West Broadway Avenue
Spokane, Washington 99260
Tel: (509)477-5756
Fax: (509)477-3672
Attorney for Respondent

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
Sep 21, 2012, 9:07 am
BY RONALD R. CARPENTER
CLERK

No. 313409

RECEIVED BY E-MAIL *RS*

SUPREME COURT OF
THE STATE OF WASHINGTON

PALMER D. STRAND and
PATRICIA N. STRAND

Appellants,

vs.

VICKY HORTON,
SPOKANE COUNTY ASSESSOR,

Respondent.

BRIEF OF RESPONDENT

STEVEN J. TUCKER
Spokane County Prosecuting Attorney

Ronald P. Arkills
WSBA #10773
Deputy Prosecuting Attorney
1115 West Broadway Avenue
Spokane, Washington 99260
Tel: (509)477-5756
Fax: (509)477-3672
Attorney for Respondent

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. RESPONSE TO ASSIGNMENT OF ERROR AND ISSUES PERTAINING TO ASSIGNMENT OF ERROR.....	3
A. Response to Assignments of Error	3
B. Issues Pertaining to Assignments of Error	4
III. STATEMENT OF THE CASE	4
A. Nature of the Action	4
B. Statement of Facts.....	5
IV. ARGUMENT	9
A. Standard of Review	9
B. The Strands have presented various legal issues without designating them as assignments of error in violation of RAP 10.3(h). In the event this Court chooses to consider those issues, the Assessor will present legal argument on those questions.	11
C. The BTA properly considered and applied applicable law.....	12
1. The BTA properly accorded deference to the Assessor’s comparable sales appraisal methodology	15
2. The Assessor correctly valued the Subject Property as an economic unit.	16
D. The BTA decision is supported by substantial evidence.	21
E. The BTA decision is not arbitrary and capricious.	23

F. The BTA properly gave little weight to the Strands’ testimony regarding improvements to the Subject Property when the Strands refused to let the Assessor inspect the interior of their home	24
1. The decision to assign little weight to the Strands’ evidence regarding the interior of their home is based upon long-standing BTA precedent.....	24
2. Inspection of the Subject Property is authorized by RCW 84.40.025.....	25
3. Because the Assessor was lawfully on the Subject Property, and there was no interior inspection of the Strand home, no Fourth Amendment rights are implicated	26
4. Application of “the Rule” was not arbitrary and capricious; and the Strands received a full and fair hearing on the merits.....	27
G. The Court should strike portions of the Brief of the Appellant which are not supported by a reference to the record	29
H. This Court cannot consider the Strands’ claims of statutory violations, which are not supported by legal analysis.....	30
V. CONCLUSION	30
APPENDIX	A-1

TABLE OF AUTHORITIES

Table of Cases

Washington Cases

	<u>Page</u>
<i>Adoption of R.L.M.</i> , 138 Wn. App. 276, 156 P.3d 940 (2007)	29
<i>Ames v. Medical Quality Assurance Commission</i> , 166 Wn.2d 255, 208 P.3d 549 (2009).....	9, 10, 14
<i>Community Association v. Dept. of Ecology</i> , 149 Wn. App. 830, 205 P.3d 950 (2009)	11, 23
<i>Fosbre v. State</i> , 70 Wn.2d 578, 424 P.2d 901 (1967).....	30
<i>Graves v. Employment Security Department</i> , 144 Wn. App. 302, 182 P.3d 1004 (2008)	30
<i>Herman v. Shorelines Hearing Bd.</i> , 149 Wn. App. 444, 204 P.3d 928, <i>reviewed denied</i> , 166 Wn.2d 1029 (2009).....	9, 28, 29
<i>In re Sego</i> , 82 Wn.2d 736, 513 P.2d 831 (1973).....	12
<i>Keppeler v. Board of Trustees</i> , 38 Wn. App. 729, 688 P.2d 512 (1984).....	23
<i>King County v. Boundary Review Board</i> , 122 Wn.2d 648, 860 P. 2d 1024 (1993)	10
<i>Morrison v. Rutherford</i> , 83 Wn.2d 153, 516 P.2d 1036 (1973).....	20
<i>Nelson v. McGoldrick</i> , 127 Wn.2d 124, 896 P.2d 1258 (1995)	29

<i>Phoenix Development, Inc. v. City of Woodinville</i> , 171 Wn.2d 820, 256 P.3d 1150 (2011)	11, 22
<i>Pierce County v. State</i> , 144 Wn. App. 783, 185 P.3d 594 (2008)	29
<i>Residents v. Site Evaluation Council</i> , 165 Wn.2d 275, 197 P.3d 1153 (2008)	10
<i>Sahalee Country Club, Inc. v. Board of Tax Appeals</i> , 108 Wn.2d 26, 735 P.2d 1320 (1987).	13, 16
<i>Schofield v. Spokane County</i> , 96 Wn.App. 581, 980 P.2d 277 (1999).....	14
<i>Schuh v. Department of Ecology</i> , 100 Wn.2d 180, 667 P.2d 64 (1983).....	14
<i>State v. Lively</i> , 130 Wn.2d 1, 921 P.2d 1035 (1996).....	29
<i>State v. Vonhof</i> , 51 Wash. App. 33, 751 P.2d 1221 (1988), <i>cert. denied</i> , 488 U.S. 1008, 109 S.Ct. 790, 102 L.Ed.2d 782 (1989).....	26, 27
<i>University Village Ltd. Partners v. King County</i> , 106 Wn. App. 321, 23 P.3d 1090 (2001)	16, 17-19
<i>Univ. of Wash. Med. Ctr. v. Dept of Health</i> , 164 Wn.2d 95, 187 P.3d 243 (2008).....	11, 22
<i>Weyerhaeuser v. Easter</i> , 126 Wn.2d 370, 894 P.2d 1290 (1995)	12, 13
<i>Yakima County v. Growth Management Hearings Bd.</i> , 146 Wn. App. 679, 192 P.3d 12 (2008).....	30
<i>Yow v. Department of Revenue</i> , 147 Wn. App. 807, 199 P.3d 417 (2008), <i>review denied</i> , 166 Wn.2d 1012 (2009).....	23,24, 27

Other Cases

Hawkins v. Groom,
893 S.W.2d 123 (Tex.App. 1995)..... 27

Statutes

Chapter 34.05 RCW..... 1, 6, 9
Chapter 82.03 RCW..... 14
RCW 34.05.562 15, A-2
RCW 34.05.57010, A-3-5
RCW 36.21.01515, A-6-7
RCW 36.21.080 16, A-7
RCW 84.40.0252, 25, 26, 27, 28, A-7
RCW 84.40.031..... 12, A-9
RCW 84.40.030..... 13, 14, 16, 18, 20, A-8-9

Rules and Regulations

RAP 10.3(a)(5).....29, A-13
RAP 10.3(a)(8).....29, A-14
RAP 10.3(h) 11, 12, A-15
RAP 10.4(f)29,A-16
RAP 10.7 12,A-16
WAC 458-07-030 13, A-10
WAC 458-10-020 15, A-12

Other Authorities

<i>Cooney v. Theodore</i> , 2001 WL 355886(Wash.Bd.Tax.App.)	25
Department of Revenue, <i>Preliminary Findings on Computer Assisted Mass Appraisal(CAMA) Vendors Serving Washington State Counties</i> (2008).....	20
<i>Serna v. Cook</i> , 2006 WL 4058988(Wash.Bd.Tax.App.)	21
<i>Spangenberg v. Baenan</i> , 1999 WL 1132988(Wash.Bd.Tax.App.)	21
<i>Stixrud v. Hara</i> , 2011 WL 1788639(Wash.Bd.Tax. App.)	21
<i>Tyson v. Portman</i> , 2010 WL 816166(Wash.Bd.Tax.App.)	21
Wash. Const. art. 1, § 7.....	27, A-17
United States Constitution, Fourth Amendment.....	27, A-17

I. INTRODUCTION

Palmer D. Strand and Patricia N. Strand("Strands") own a single-family residential property located in Nine Mile Falls, Washington("Subject Property"). They appealed the Subject Property's 2009 assessed value to the Washington Board of Tax Appeals("BTA"), The BTA upheld the value.

The Strands then appealed the BTA Decision to the Superior Court of Spokane County pursuant to the Washington Administrative Procedure Act, Chapter 34.05 RCW. Finding that the BTA decision was supported by substantial evidence and not contrary to law, the Superior Court affirmed. The Strands then filed this appeal.

The Strands use this appeal as a sounding board for numerous grievances against the Spokane County Assessor("Assessor"), her staff, her attorney, and the BTA. One section of their brief even "states a case" against the Assessor.

Almost lost in the Strands' myriad of complaints is that the central issue in this case is whether the Subject Property's 2009 assessed value represents the property's true and correct value. The BTA correctly answered that question in the affirmative.

The Strands assign error to numerous Findings of Fact by the BTA, based on evidence they presented to the BTA. They simply disagree with

the BTA decision. They improperly ask the reviewing court to find their evidence supports a decision in their favor. The proper standard of review is to determine whether there is a sufficient quantum of evidence in the record to persuade a reasonable person of the correctness of the BTA decision. There is.

An entire section of the Strands' brief is devoted to listing the Assessor's numerous purported errors and misconduct in valuing the Subject Property. However, the BTA examined each of these arguments, and found them to be lacking. Deference should be accorded to this administrative agency acting within the area of its expertise.

The BTA carefully considered evidence and testimony submitted by both parties, and applied applicable law in reaching its decision. The Assessor's expert opinion of value was assigned greater weight than the Strands' lay opinion of value.

The Strands also level a constitutional challenge to the BTA decision not give substantial weight to their testimony regarding improvements to the Subject Property based upon their refusal to allow the Assessor to inspect their home's interior.

RCW 84.40.025 grants the Assessor the right to visit, investigate, and examine private property for purposes of assessment and valuation. No interior inspection of the Strands home took place; and, thus no

violation of Fourth Amendment rights occurred.

The BTA acted properly in assigning weight to the evidence presented in order to protect the rights of *both* parties to a fair hearing. It correctly recognizes the Assessor's due process right to prepare for a hearing by inspecting a taxpayer's property. Where the taxpayer denies such an inspection, the BTA does not give substantial weight to the taxpayer evidence regarding the portions of the property the Assessor was not permitted to inspect.

The Strands were not denied *any* rights to present evidence, question witnesses, or otherwise present their case--as evidenced by the extensive record in this case.

At the end of the day, a review of the administrative record reveals that the BTA decision is supported by substantial evidence; and is not contrary to law, or arbitrary and capricious. Therefore, it must be affirmed.

II. ASSIGNMENTS OF ERROR AND ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

A. Response To Assignments Of Error.

The Strands incorrectly assign error to the BTA's Findings of Fact Nos. 5 and 7-20. *Brief of Appellant*, at 2-10. These Findings are supported by substantial evidence in the administrative record, and should be

sustained.

B. Issues Pertaining To Assignments Of Error.

1. Is there substantial evidence in the record to support the challenged Findings of Fact?
2. Is the weight and credibility assigned to evidence by an administrative agency subject to judicial review?
3. Are an administrative agency's findings of fact subject to deference by a reviewing court?
4. Is the existence of evidence in the record contrary to an administrative agency's finding of fact sufficient to prevent the finding from being supported by substantial evidence?
5. Does an administrative hearing officer act unreasonably by accepting one party's opinion and rejecting the opinions of another party?

III. STATEMENT OF THE CASE

A. Nature of the Action

Palmer D. Strand and Patricia N. Strand("Strands"), owners of a single-family residential property located at 13206 W. Charles Road, Nine Mile Falls, Washington("Subject Property"), appeal the Washington Board of Tax Appeals("BTA") Docket No. 10-258 decision affirming the

Subject Property's 2009 assessed value of \$449,900 as set by the Spokane County Assessor ("Assessor"). Certified Record of Administrative Proceeding("AP") 3-12, 13-15, 129-153.

B. Statement of Facts

The Subject Property is a rectangular-shaped parcel--approximately five acres in size, which is located in a rural area of northwestern Spokane County. AP 130, 147, 207.

To the south, the Subject Property fronts on Charles Road, a two-lane paved county road, which provides access to the property. AP 207. To the north is the Spokane River, which generally runs parallel to Charles Road in the area. AP 130. The Subject Property is high-banked waterfront property, which lies 140 feet above the Spokane River. AP 130, 207-208. Access to the river is by a trail which traverses a hillside on the northern portion of the property. AP 130.

The Strands purchased the Subject Property in 2000 as unimproved land, and constructed a residence, which was completed in 2003. AP 147.

The residence is a 4,096 square foot ranch-style structure, with an attached enclosed garage consisting of 576 square feet, and a fully-finished basement. AP 130, 147. The home has a gabled metal roof, and vinyl siding. AP 130, 135, 208. The structure is rated of "Average-average" quality. AP 147. Access to the house is by way of a winding

driveway running northerly across the property from Charles Road. AP 131. Other site improvements include—among other things—a 1,200 square foot shop. AP 130.

The Strands initially appealed the Subject Property's 2009 assessed value to the Spokane County Board of Equalization("Local Board"). AP 130. The Local Board affirmed the assessed value, and the Strands appealed to the BTA. AP 130.

On August 8, 2011, BTA conducted a telephonic hearing in accordance with Chapter 34.05 RCW. AP 155; CP 260-301. Prior to the hearing, each party submitted exhibits and legal memoranda. AP 174-450.

Patricia Strand appeared pro se.

Much of the Strand case consisted of highlighting numerous alleged errors and misconduct by the Assessor's staff in valuing the Subject Property. She also challenged the skills and qualifications of Assessor's appraiser. AP 135; CP 262-282.

To support their claimed value, the Strands presented three sales of improved property. AP 136.

They also submitted a separate cost opinion of value, utilizing Marshall-Swift cost tables to determine the base value of their home. \$20,851.92 was deducted for defective vinyl siding on their home. AP 135.

The Strands determined that the improvement value should be \$196,929.

AP 137.

They opined that the land value was \$120,000 (\$24,000/acre). AP 137.

Thus, the Strands valued the Subject Property at \$316,929. AP 137.

Joseph Hollenback, Appraiser Supervisor for the Assessor, presented expert testimony in support of the assessed valuation of the Subject Property. AP 138-140. Mr. Hollenback has experience in the appraisal of real estate, and possesses the required training and accreditation from the Washington Department of Revenue to occupy his position. CP 283. In the performance of his duties, he adheres to the Uniform Standards of Appraisal Practice. CP 283.

Mr. Hollenback prepared the Assessor's Answer to Real Property Petition to support the Subject Property's 2009 assessed value. He applied a sales comparison approach, utilizing the sales of five comparable improved properties located in close proximity to the Subject Property occurring within five years of the January 1, 2009 valuation date. AP 177-186; CP 283-292. Mr. Hollenback adjusted the sales prices of each comparable property to account for differences from the Subject Property. AP 143, 179-180; CP 283-292. Based on the adjusted sales prices, Mr. Hollenback determined that Subject Property's market value was in the range of \$474,000 to \$663,900. AP 179-180.

On December 13, 2011, the BTA issued an Initial Decision affirming the 2009 assessed value for the Subject Property. AP 129-153.

The hearing officer found that Mr. Hollenback is an accredited, skilled,

and experienced appraiser, who adhered to standard appraisal industry practices; and that he is a credible witness. AP 148, 150. Conversely, she noted that the Strands lack experience, training and accreditation in the appraisal of real property. AP 150.

The hearing officer concluded that the Assessor's comparable sales presented the best indicator of the Subject Property's value. AP 150. On the other hand, the Strands' sales and real estate listings did not provide a fair indication of the Subject Property's value. AP 150. Their cost approach was deemed not appropriate where comparable sales data was available. AP 150.

The BTA gave less weight to the Strands' value opinion because: (1) they lacked appraisal training and experience; (2) their comparable sales did not present a fair indication of value, and contained erroneous adjustments; and (3) contrary to established appraisal practice, they used listing prices to establish value. AP 144, 146, 150.

The BTA assigned little weight to the Strands' many claims of alleged fraud, incompetence, as well as other improper practices and conduct leveled against the Assessor. The BTA found the assertions "trivial, irrelevant, and immaterial" and not diminishing the weight assigned the Assessor's value opinion. AP 147-148.

Consequently, the BTA concluded that the Strands had failed to meet their burden of proof. AP 150.

On January 3, 2012, the Strands sought reconsideration of the Initial Decision through a Petition for Review. AP 19-128.

On February 24, 2012, the BTA denied the Petition for Review, and adopted the Initial Decision as the Final Decision of the Board. AP 13-15.

On March 21, 2012, the Strands filed a Summons and Complaint appealing the Final Decision in Spokane County Superior Court. AP 3-12.

The trial court considered the administrative record, briefs of the parties, and oral argument. CP 442-443.

On June 8, 2012, Judge Gregory Sypolt issued an Order Affirming Decision, which upheld the BTA decision. CP 442-443.

The Strands appeal from that decision.

IV. ARGUMENT

A. Standard of Review.

This court applies the standards of the Washington Administrative Procedure Act (WAPA) Chapter 34.05 RCW, directly to the agency record in reviewing agency adjudicative proceedings. *Ames v. Medical Quality Assurance Commission*, 166 Wn.2d 255, 260, 208 P.3d 549(2009).

Subject to certain narrow exceptions, review is confined to the administrative record. *Herman v. Shorelines Hearing Bd.*, 149 Wn.App. 444, 454, 204 P.3d 928, *reviewed denied*, 166 Wn.2d 1029(2009).

Under the WAPA, a reviewing court may reverse an administrative order (1) if it is based on an error of law, (2) if it is unsupported by substantial evidence, (3) if it is arbitrary or capricious, (4) if it violates the constitution, (5) if it is beyond statutory authority, or (6) when the agency employs improper procedure. *Ames*, 166 Wn.2d at 260.

The Strands have the burden of demonstrating the decision's invalidity. RCW 34.05.570(1).

Issues of law are reviewed de novo. *Ames*, 166 Wn.2d at 260. This court may substitute its judgment for that of the administrative body on legal issues. *Ames*, 166 Wn.2d at 260-261. However, substantial weight is afforded the agency's interpretation of the law it administers—especially when the issue falls within the agency's expertise. *Ames*, 166 Wn.2d at 261.

On factual issues, this court reviews the evidence submitted to determine whether it constituted substantial evidence to support the factual findings of the agency. RCW 34.05.570(3)(e).

Substantial evidence is a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the order. *Residents v. Site Evaluation Council*, 165 Wn.2d 275, 317, 197 P.3d 1153(2008); *King County v. Boundary Review Board*, 122 Wn.2d 648, 675, 860 P. 2d 1024(1993).

This court may not substitute its judgment on witness credibility or the weight to be given conflicting evidence. *Phoenix Development, Inc. v. City of Woodinville*, 171 Wn.2d 820, 831-832, 256 P.3d 1150(2011); *Community Association v. Dept. of Ecology*, 149 Wn.App. 830, 843, 205 P.3d 950(2009). See also, *Univ. of Wash. Med. Ctr. v. Dept of Health.*, 164 Wn.2d 95, 103, 187 P.3d 243(2008)(“We do not reweigh the evidence.”).

B. The Strands have presented various legal issues without designating them as assignments of error in violation of RAP 10.3(h). In the event this Court chooses to consider those issues, the Assessor will present legal argument on those questions.

RAP 10.3(h) requires “a separate concise statement of each error a party contends was made by the agency entering the order, together with the issues pertaining to each assignment of error.”

The Brief of Appellant only assigns error to various BTA Findings. *Brief of Appellant*, at 2-11. No issues are stated relating to the Assignment of Error.

The brief also contains separate sections entitled: (1) Statement of Case Against the Assessor, *Brief of Appellant*, at 11-25; and (2) Statement of Case About the BTA’s Rule, *Brief of Appellant*, at 25-31; and (3) Argument, *Brief of Appellant*, at 31-33. These sections contain legal issues

unrelated to any designated assignment of error.

This court has discretion to impose sanctions for these errors. RAP 10.7.

Assuming *arguendo* that this court decides to consider the issues despite the violations of RAP 10.3(h), the Assessor presents legal argument on the issues below.

C. The BTA properly considered and applied applicable law.

RCW 84.40.0301 provides that the Assessor's valuation of the Subject Property is presumed correct:

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.

This presumption can be overcome only upon presentation of clear, cogent and convincing evidence that a correction is indicated. *Weyerhaeuser v. Easter*, 126 Wn.2d 370, 381, 894 P.2d 1290(1995). It is the quantum of evidence necessary to convince the trier of fact that the ultimate fact in issue is "highly probable". *In re Sego*, 82 Wn.2d 736, 739, 513 P.2d 831 (1973).

Weyerhaeuser, 126 Wn.2d at 381-82, sets forth the following

standard of proof in these proceedings:

“We adopt the following test to determine the appropriate standard of proof: (1) if a taxpayer overcomes the presumption of correctness on a specific value, the standard of proof shifts to preponderance of the evidence for all contested issues related to that value; and (2) if a taxpayer overcomes the presumption on the assessor's overall approach or technique, i.e., invalidates the technique, the standard of proof shifts to a preponderance of the evidence for all issues. The taxpayer retains the burden of persuasion at all times.”

See also, Washington Beef, Inc. v. Yakima County, 143 Wn.App. 165, 174-175, 177 P.3d 162(2008).

The Assessor's choice of the proper appraisal method(s) “should be afforded considerable discretion.” *Sahalee Country Club, Inc. v. Board of Tax Appeals*, 108 Wn.2d 26, 36, 735 P.2d 1320 (1987).

Under RCW 84.40.030 and WAC 458-07-030, the true and fair value of property is based upon sales of the subject property, or sales of comparable properties, made within the past five years.

The fact that properties are different is not dispositive on the question of whether or not properties are comparable. While any differences in the properties should be taken into account, the other properties need not be identical. *Sahalee Country Club*. 108 Wn.2d at 36. Any differences go to the weight of the evidence. *Id.*, at 37.

The cost approach and income capitalization approaches may also

be utilized where there are no comparable sales or the property is complex in nature. RCW 84.40.030(2).

However, the preferred methodology for determining the true and fair value of real estate is through the sales of similar properties. RCW 84.40.030.

The BTA properly considered and applied these rules of law in upholding the Subject Property's 2009 assessed value. AP 140-151.

Substantial weight is afforded the agency's interpretation of the law it administers—especially when the issue falls within the agency's expertise. *Ames*, 166 Wn.2d at 261.

The BTA is an independent state agency, which hears and determines taxpayer appeals of assessed property valuations. *See*, Chapter 82.03 RCW.

Therefore, considerable deference should be given to the specialized knowledge and expertise of the BTA in its application of relevant law. *Schuh v. Department of Ecology*, 100 Wn.2d 180, 186-187, 667 P.2d 64(1983); *Schofield v. Spokane County*, 96 Wn.App. 581, 587, 980 P.2d 277(1999).

1. The BTA properly accorded deference to the Assessor's comparable sales appraisal methodology.

The Strands apparently argue that based on numerous alleged flaws in the Assessor's comparable sales approach that no comparable sales were presented to support the Subject Property's assessed valuation. *Brief of Appellant*, at 11-25.

In fact, the Assessor did comply with RCW 84.30.030 by utilizing sales of similar properties sold in the past five years to support the assessed value. AP 176-186; CP 283-292.

The BTA correctly found the Assessor's expert witness, Joe Hollenback, to be an accredited appraiser "who has successfully completed and fulfilled all requirements imposed by the department for accreditation and who has a valid accreditation certificate." AP 144. RCW 36.21.015; WAC 458-10-020. This conclusion is supported by the record. CP 283.

Mr. Hollenback testified under oath regarding his appraisal methodology. CP 283-292. From this, the BTA concluded he had adhered to standard industry practices in the appraisal of the Subject Property. CR 148.

He explained each comparable sale, and his adjustments to the

sales price. CP 283-292.

The BTA concluded that Mr. Hollenback made proper adjustments to sales prices of the five comparable properties. AP 143.

The State Board found the failure to sign the Assessor's Answer to Real Property Petition did not affect Mr. Hollenback's credibility as a witness, or the weight given his testimony. CR 149-150.

It correctly found that the comparable sales approach was the preferred appraisal methodology, AP 145. RCW 84.40.030; WAC 458-07-030; and properly afforded deference to the Assessor's appraisal methodology. AP 145. *Sahalee Country Club, Inc.*, 108 Wn.2d at 36.¹

2. The Assessor correctly valued the Subject Property as an economic unit.

Relying primarily upon RCW 84.40.030 and *University Village*

¹ The Strands also improperly claim that the Subject Property's 2009 assessed value was raised arbitrarily \$32,800 based upon a May, 2009 exterior inspection of the Subject Property. However, the change resulted from new information received by the Assessor. At the time of fixing the Subject Property's 2008 assessed value, the Assessor believed that the Strands' basement was only partially finished. In April, 2010, Mrs. Stand testified at a State Board hearing that her home had a fully-finished basement. AP 183. Additionally, the Assessor received building permits showing a fully-finished basement. AP 182. Thus, for 2009, the Assessor increased the basement's finished square footage from 896 square feet to 1,900 square feet. AP 138, 181-83. As noted by the State Board in its Initial Decision:

"In accordance with RCW 36.21.080, the Assessor is authorized to place any property that increased in value due to construction or alteration for which a building permit was issued." AP 143.

Ltd. Partners v. King County, 106 Wn.App. 321, 23 P.3d 1090(2001), the Strands incorrectly claim that the land and improvements on the Subject Property must be valued separately. *Brief of Appellant*, at 22, 23. They claim the Assessor overvalued the land component of the Subject Property because the Assessor did not properly identify and value each and every property improvement. Instead, these authorities demonstrate that the Assessor properly valued the Subject Property as an economic unit.

In *University Village Ltd. Partners*, the owner of a Seattle shopping center challenged the property's value as violating the uniform taxation clause of article VIII, of the Washington Constitution by incorrectly valuing the property's land. The county assessor valued the shopping center as a whole using an income capitalization approach. Then, to comply with RCW 84.40.030(3), the assessor allocated a portion of the total value to the land using available land data. University Village claimed that because its land was given a different per square foot value than neighboring properties, the assessment ratio because different.

In rejecting this argument, the Court of Appeals specifically found that:

“Under chapter 84.04 RCW, the term ‘tax’ is defined as the imposition of ‘burdens upon property in proportion to the value thereof....’ Real property, for tax purposes, is defined as ‘the land itself ... and all buildings, structures or improvements or other fixtures of whatsoever kind

thereon.' Assessed value is 'the aggregate valuation of the property subject to taxation.....' These definitions reflect that taxes are imposed on property as a whole, not on individual parts of it. Indeed, Washington courts have consistently addressed issues of property assessments in that manner." (Emphasis supplied.)

University Village Ltd. Partners, 106 Wn.App. at 325-326.

Significant is the court's interpretation of RCW 84.40.030(3):

"RCW 84.40.030(3) requires an assessor to separately determine the values of the land and structures on the land in valuing real property. But the statute goes on to state that the sum of the values may not exceed the fair value of the total property. The subsection thus acknowledges that appraisals are, at best, estimates of value and that valuation of the components could lead to an excessive value of the property as a whole. This necessarily contemplates the potential adjustment of component values in order to keep their sum within a property's total assessed value. The assessor in this case did exactly as the statute mandates. An assessor has the discretion to select the appropriate appraisal method of assessing the value of real property. After ruling out the cost and market data approaches as unreliable, the assessor valued the property using the income method authorized by RCW 84.40.030(2) and approved by the Washington Supreme Court in County of Spokane. The income approach, by its nature, does not derive a total value of real property by first separately determining values for the land and improvements and adding them together. Rather, it determines a total value by capitalizing the income generated from the property.

To comply with RCW 84.40.030(3), the assessor then used the statutorily authorized market data approach to determine the percentage of total value that should be allocated to the land. The record establishes that the

assessor's methodology in doing so was based upon appropriate data and analysis. The fact that the trial court rejected the assessor's conclusion does not mean that the assessor's procedures were arbitrary or meaningless.

Reducing University Village's total property value by decreasing its land value would cause the disparity in assessment ratio the constitution prohibits.”

University Village Ltd. Partners, 106 Wn.App. at 326-327.

Thus, the Assessor correctly valued the Subject Property as an economic unit. There is no need to separately value individual improvements.

The Strand approach would have the Assessor determine market value by adding of each individual improvement to the land value. If followed, the Subject Property could easily be overvalued or undervalued for tax purposes.²

The Strands lodge numerous complaints against the Assessor's computer-assisted mass appraisal(CAMA) system. *Brief of Appellant*, at 16-22. Because of numerous purported errors in the mass appraisal system, they claim the Subject Property's assessed value does not reflect market value. *Brief of Appellant*, at 21.

² The Strands do not explain how the Assessor's purported omissions of certain improvements should reduce the value of their property. If anything, the omission would seem to result in undervaluation of the Subject Property.

However, the BTA found that the Assessor's sales comparison approach—which valued the Subject Property as an economic unit—establishes and justifies the assessed value determined through mass appraisal software. AP 139. This is consistent with *University Village Ltd. Partners* and RCW 84.40.030.³

As authorized by Washington law, *all* real property in Spokane County—including the Subject Property—is assessed utilizing CAMA software⁴, with assessed values adjusted by market sales of comparable properties. Where—as here—an assessed value is challenged by a

³ The Strands also rely on *University Village Ltd. Partners* to claim that they cannot be assessed more than 78.9% of value derived from Marshall & Swift cost tables. *Brief of Appellant*, at 23. The Strands compile a table comprised of seventeen properties which they erroneously claim the Assessor presented “as the basis of the assessment on [the Subject Property] in 2008 and 2009.” CP 179. This table represents an assessment ratio of 79%. CP 179. In fact, the Assessor only used Property Nos. 1-4 and 17 in the table to support the Subject Property's 2009 assessed value. CR 179-180. The Strands incorrectly state that the Subject Property's assessed value represents 100% of its market value. They present no evidence to support this claim. They apparently believe the *assessed* value is the *market* value. However, the Assessor's comparable sales approach estimates the *market value* of the Subject Property as ranging from \$474,000 to \$663,900, which is substantially higher than the Subject Property's *assessed value* of \$449,900. CR 179-180. The 2009 assessment ratios for Property Nos. 1-4 and 17 range from 62.91% to 94.63%. CP 179. The Assessor's range of market value would produce an assessment ratio for the Subject Property of 67.8% to 94.9%. CR 179-180. If anything, this demonstrates uniformity of taxation. Moreover, even if the Strands could demonstrate a difference in assessment ratio, they cannot show it was the result of purposeful discrimination. *Morrison v. Rutherford*, 83 Wn.2d 153, 516 P.2d 1036(1973).

⁴ The assessors in all 39 Washington counties use some form of CAMA software. Washington State Department of Revenue, *Preliminary Findings on Computer Assisted Mass Appraisal(CAMA) Vendors Serving Washington State Counties*(2008), <http://www.docstoc.com/docs/38206853/Preliminary-Findings-on-Computer-Assisted-Mass-Appraisal-%28CAMA>. The Manatron ProVal software utilized in Spokane County complies with Washington state laws and the International Association of Assessing Officers. *Id.*, at 19.

taxpayer, the Assessor supports the value through comparable sales. The BTA has uniformly upheld this methodology.⁵

D. The BTA decision is supported by substantial evidence.

The State Board correctly affirmed the Subject Property's 2009 assessed value.

As noted above, the Assessor presented a sales comparison approach utilizing the sales of five similar improved properties occurring within five years of the January 1, 2009 valuation. CR 139-140, 177-185. The Assessor's expert witness was found to be "an accredited, skilled, and experienced appraiser, who adheres to standard industry practices in the appraisal of the subject property." AP 148.

The BTA concluded the Assessor's comparable sales sufficiency similar to the Subject Property; and found that the Assessor had made reasonable adjustments to each sale to account for differences in the properties. AP 143, 145, 149, 150.

The Strands support their assignments of the error of BTA findings of fact with a laundry list of evidence they believe shows the BTA reached the incorrect conclusions. *Brief of Appellant*, at 2-11.

However, the existence of evidence contrary to the agency's

⁵ See, *Serna v. Cook*, 2006 WL 4058988(Wash.Bd.Tax.App.); *Spangenberg v. Baenan*, 1999 WL 1132988(Wash.Bd.Tax.App. Docket No. 51977); *Stixrud v. Hara*, 2011 WL 1788639(Wash.Bd.Tax. App.); *Tyson v. Portman*, 2010 WL 816166(Wash.Bd.Tax.App.).

findings is not sufficient in itself to label those findings not supported by substantial evidence or clearly erroneous. *Phoenix Development, Inc., v. City of Woodinville, supra*, 171 Wn.2d at 832; *Univ. of Wash. Med. Ctr. v. Dept of Health*, 164 Wn.2d at 102.

For instance, the Strands claim Assessor's comparable sales grid is rife with errors. *Brief of Appellant*, at 12-14. However, the BTA found the purported errors "trivial, irrelevant, and immaterial" and not diminishing the weight assigned the Assessor's value opinion. AP 147-148. Accordingly, the Assessor's comparable sales were found the best indicator of value. AP 150.

Likewise, BTA assigned little weight was assigned to the Strands' many claims of alleged fraud, incompetence, as well as other improper practices and conduct leveled against the Assessor.⁶ CR 148.

The BTA found the Assessor's witness to be a skilled and qualified real appraiser. AP 144. The Strands obviously disagree.

The State Board gave less weight to the Strands' value opinion because: (1) they lacked appraisal training and experience; (2) their comparable sales did not present a fair indication of value; (3) the

⁶ This is not surprising. The trivial errors referenced by the Strands obviously do not rise to the level of fraud or the criminal violations claimed by the Strands. They candidly admit that other public officials, such as the Department of Revenue, Attorney General, County Commissioners, etc. have also found their claims unconvincing. *Brief of Appellant*, at 23.

used listing prices to establish value. Moreover, their reliance on the cost approach was not favored where comparable sales were available. CR 150.

The BTA's acceptance of the Assessor's opinion of value and the rejection of the Strands' opinion of value cannot be deemed unreasonable based on the Strands' disagreement with that opinion. *Keppeler v. Board of Trustees*, 38 Wn.App. 729, 734, 688 P.2d 512(1984).

This court must defer to the BTA's finding that the Assessor's opinion of value is more credible. *Community Association*, 149 Wn.App. at 830.

Because the BTA's Findings of Fact are adequately supported by evidence in the administrative record, the State Board correctly ruled that the Strands failed to meet their burden of proof.

E. The BTA decision is not arbitrary and capricious.

The Strands declare in passing that the BTA decision is arbitrary and capricious. *Brief of Appellant*, at 36.

Arbitrary and capricious action is willful and unreasoning action, without consideration, and in disregard of the facts and circumstances. *Yow v. Department of Health*, 147 Wn.App. 807, 829, 199 P.3d 417(2008), *review denied*, 166 Wn.2d 1012(2009). Where there is room for two opinions, action is not arbitrary and capricious even though one may believe an erroneous conclusion has been reached. *Yow*, 147

Wn.App. at 829-830. Action taken after giving a party ample opportunity to be heard, exercised honestly and upon due consideration, is not arbitrary and capricious. *Yow*, 147 Wn.App. at 830.

As noted above, the BTA decision is supported by substantial evidence in the record. The BTA considered and applied applicable law to the facts. Both parties were provided a full and fair opportunity to present their case. The BTA rendered a reasoned decision. Such action is not arbitrary and capricious.

F. The BTA properly gave little weight to the Strands' testimony regarding improvements to the Subject Property when the Strands refused to let the Assessor inspect the interior of their home.

The Strands challenge the BTA's decision not to give substantial weight to their testimony regarding improvements to the Subject Property based upon their refusal to allow the Assessor to inspect their home's interior. *Brief of Appellant*, at 25-33.

1. The decision to assign little weight to the Strands' evidence regarding the interior of their home is based upon long-standing BTA precedent.

The BTA recognizes the Assessor's due process right to gather evidence to prepare for an administrative hearing.

The "Rule" referenced by the Strands is not a rule at all, it is a long-established BTA precedent by which the trier of fact assigns weight

to the credibility of witnesses in order to allow both parties a fair hearing:

“We are unable to give substantial weight to the Owners’ arguments concerning the condition and quality of their home, including those interior defects which relate to their claim that they were duped by their own real estate agent and the seller. Where property owners refuse to allow the Assessor to inspect their home prior to an appeal hearing, the Board will decline to consider any claims based upon conditions which only the Owners know about. *Dare v. Clifton, BTA Docket No. 41953 (1992)*. We recognize that many home owners may very well feel intimidated, even fearful, about allowing the Assessor into their homes, but the Assessor is entitled to a fair hearing of her case as well. One of the major elements of a fair hearing is the opportunity to respond to the arguments and evidence of the other party. ‘Although court-type discovery is not required in administrative proceedings, fundamental fairness requires that a party be given the opportunity to know what evidence is offered or considered and a chance to rebut such evidence.’ *2 Am. Jur. 2d, Administrative Law § 327(1994)*. Contrary to the view of the Owners, fairness requires us to allow both sides a reasonable opportunity to examine and contest the evidence offered by the other side prior to the hearing.”

Cooney v. Theodore, 2001 WL 355886(Wash.Bd.Tax.App.).

2. Inspection of the Subject Property is authorized by RCW 84.40.025.

RCW 84.40.025 provides:

“For the purpose of assessment and valuation of all taxable property in each county, any real or personal property in each county shall be subject to visitation, investigation, examination, discovery, and listing at any reasonable time by the county assessor of the county or by any employee thereof designated for this purpose by the assessor.”

3. Because the Assessor was lawfully on the Subject Property, and there was no interior inspection of the Strand home, no Fourth Amendment rights are implicated.

The Assessor agrees that her office twice requested interior inspections of the Strands' home pursuant to RCW 84.40.025 for purposes of valuing the Subject Property; and, was twice denied. The Assessor also agrees that the Strands were not required to permit an interior inspection of their home.

In *State v. Vonhof*, 51 Wash.App. 33, 34, 751 P.2d 1221 (1988), *cert. denied*, 488 U.S. 1008, 109 S.Ct. 790, 102 L.Ed.2d 782 (1989), a tax appraiser entered Vonhof's property through a locked gate with a key obtained by a neighbor, passed through an open gate, and walked past several " 'No Trespassing' " signs. *Vonhof*, 51 Wash.App. at 34. Upon reaching the house, he knocked and shouted, but no one answered. *Vonhof*, at 34. The appraiser then inspected the exterior of an unappraised shop building located 180 to 200 feet from the residence from which he smelled growing marijuana through an air vent. *Vonhof*, at 34.

The Court of Appeals found that the appraiser was legitimately on the property because RCW 84.40.025 "authorizes the assessor to visit,

the property because RCW 84.40.025 “authorizes the assessor to visit, investigate and examine property at any reasonable time.” *Vonhof*, 51 Wn.App. at 40. It concluded that the appraiser’s visit and *exterior* inspection was not a search within the Fourth Amendment or Const art. 1, Sec. 7. *Vonhof*, 51 Wn.App. at 41.

On January 25, 2010, the Assessor’s attorney, citing RCW 84.40.025, requested that the Assessor’s staff be permitted to conduct an inspection of the exterior and interior of all structures on the Subject Property for the purpose preparing for a BTA hearing. AP 19-128, Ex. A6-20. The Strands denied that request. *Brief of Appellant*, at 27. As a result, the Assessor did not inspect the Strand home.

Because there was no *interior* inspection of the Strand home, no Fourth Amendment interests are implicated.⁷

As illustrated by *Vonhof*, a mere request to enter the premises is not a violation of search and seizure rights. *Vonhof*, 51 Wn.App. at 40.

4. Application of “the Rule” was not arbitrary and capricious; and the Strands received a full and fair hearing on the merits.

The Strands improperly claim that application of “the Rule” is

⁷ See also, In *Hawkins v. Groom*, 893 S.W.2d 123(Tex.App. 1995), the county assessor entered the taxpayer’s property and shot a videotape of the premises in preparation for a tax appeal hearing. The taxpayer sued the assessor for trespass and invasion of privacy. Relying upon a statute similar to RCW 84.40.025, the court rejected the claims because the statute granted the assessor the right inspect the property for tax valuation purposes.

arbitrary and capricious. *Brief of Appellant*, at 25. *Yow v. Department of Health*, 147 Wn.App. at 829.

The record on review substantiates the BTA's findings that the Strands had twice denied the Assessor interior inspections of their home. AP 19-128, Ex. A6-20; AP 181; CP 221; *Appellant's Brief*, at 27.

As a result, BTA applied a long-standing precedent. AP 141-142.

Application of this precedent is limited only to "claims based on assertions that only the property owners know about", AP 141-142; and, in this case, was limited to the Board's reliance "on the subject's characteristics as provided by the Assessor when analyzing comparable sales to the subject property." AP 142.

The BTA did not deny the Strands of *any* rights to present evidence, question witnesses, or otherwise present their case--as evidenced by the extensive record in this case. It is clear that the BTA considered *all* of the Strands arguments. AP 130-138, 140-146.

The BTA acted properly in assigning weight to the evidence presented in order to protect the rights of *both* parties to a fair hearing following the Strands' denial of the Assessor's RCW 84.25.025 discovery request. The weight of evidence may not be reviewed by this court.

G. The Court should strike portions of the Brief of the Appellant which are not supported by a reference to the record.

This court reviews the BTA decision in a limited appellate capacity. *Herman v. Shorelines Hearings Bd.*, 149 Wn.App. at 455. Subject to the narrow exceptions contained in RCW 34.05.562, review is confined to the record established before the BTA; and the trial court may not consider new evidence outside the administrative record, or decide disputed factual issues. *Herman*, 149 Wn.App. at 455-56.

The Brief of Appellant contains numerous statements of fact that are not supported by a reference to the record. RAP 10.3(a)(5); RAP 10.4(f). These references should be stricken. *State v. Lively*, 130 Wn.2d 1, 18-19, n.4, 921 P.2d 1035(1996).

The Brief improperly also: (1) appends exhibits, which are not part of the record on review; and (2) includes in the excerpts from the 2008-2009 Uniform Standards of Appraisal Practice, which are also not included in the record on review. *See*, RAP 10.3(a)(8). These documents—as well as any reference to them—should also be stricken and not considered. *Lively*, 130 Wn.2d 1, 18-19, n.4; *Nelson v. McGoldrick*, 127 Wn.2d 124, 141, 896 P.2d 1258(1995); *Pierce County v. State*, 144 Wn.App. 783, 858, 185 P.3d 594(2008). *See also*, *Adoption of R.L.M.*, 138 Wn.App. 276, 283, 156 P.3d 940(2007)(the court may accept a brief

without considering erroneous references).

H. This Court cannot consider the Strands' claims of statutory violations, which are not supported by legal analysis.

The Brief of Appellant alleges violations of numerous statutes—and claims serious misconduct by the Assessor, her attorney and the BTA—without presenting supporting legal argument or analysis to back up her conclusions. *Brief of Appellant*, at 6, 7-9, 13-16, 19, 21-22, 26-27, 33-36. This court is asked simply to accept the Strands legal conclusions as true.

This court will not consider such bald legal conclusions without supporting legal analysis and argument. *Graves v. Employment Security Department*, 144 Wn.App. 302, 311-312, 182 P.3d 1004(2008). If a party raises an issue but fails to provide argument relating to the issue in his or her brief, the party waives any challenge. *Yakima County v. Growth Management Hearings Bd.*, 146 Wn.App. 679, 698, 192 P.3d 12(2008), citing *Fosbre v. State*, 70 Wn.2d 578, 583, 424 P.2d 901(1967).

V. CONCLUSION

Based on the foregoing, the Respondent Spokane County Assessor respectfully requests that the BTA's Final Decision in Docket No. 10-258, be affirmed.

RESPECTFULLY SUBMITTED this 20th day of September,

2012.

STEVEN J. TUCKER
Prosecuting Attorney

A handwritten signature in black ink, appearing to read 'Ronald P. Arkills', written over a horizontal line.

Ronald P. Arkills, WSBA #10773
Senior Deputy Prosecuting Attorney
Attorney for Respondent
1115 W. Broadway Avenue
Spokane, Washington 99260
(509)477-5764

APPENDIX

RCW 34.05.562

New evidence taken by court or agency.

(1) The court may receive evidence in addition to that contained in the agency record for judicial review, only if it relates to the validity of the agency action at the time it was taken and is needed to decide disputed issues regarding:

(a) Improper constitution as a decision-making body or grounds for disqualification of those taking the agency action;

(b) Unlawfulness of procedure or of decision-making process; or

(c) Material facts in rule making, brief adjudications, or other proceedings not required to be determined on the agency record.

(2) The court may remand a matter to the agency, before final disposition of a petition for review, with directions that the agency conduct fact-finding and other proceedings the court considers necessary and that the agency take such further action on the basis thereof as the court directs, if:

(a) The agency was required by this chapter or any other provision of law to base its action exclusively on a record of a type reasonably suitable for judicial review, but the agency failed to prepare or preserve an adequate record;

(b) The court finds that (i) new evidence has become available that relates to the validity of the agency action at the time it was taken, that one or more of the parties did not know and was under no duty to discover or could not have reasonably been discovered until after the agency action, and (ii) the interests of justice would be served by remand to the agency;

(c) The agency improperly excluded or omitted evidence from the record;
or

(d) A relevant provision of law changed after the agency action and the court determines that the new provision may control the outcome.

RCW 34.05.570

Judicial review.

(1) Generally. Except to the extent that this chapter or another statute provides otherwise:

(a) The burden of demonstrating the invalidity of agency action is on the party asserting invalidity;

(b) The validity of agency action shall be determined in accordance with the standards of review provided in this section, as applied to the agency action at the time it was taken;

(c) The court shall make a separate and distinct ruling on each material issue on which the court's decision is based; and

(d) The court shall grant relief only if it determines that a person seeking judicial relief has been substantially prejudiced by the action complained of.

(2) Review of rules. (a) A rule may be reviewed by petition for declaratory judgment filed pursuant to this subsection or in the context of any other review proceeding under this section. In an action challenging the validity of a rule, the agency shall be made a party to the proceeding.

(b)(i) The validity of any rule may be determined upon petition for a declaratory judgment addressed to the superior court of Thurston county, when it appears that the rule, or its threatened application, interferes with or impairs or immediately threatens to interfere with or impair the legal rights or privileges of the petitioner. The declaratory judgment order may be entered whether or not the petitioner has first requested the agency to pass upon the validity of the rule in question.

(ii) From June 10, 2004, until July 1, 2008:

(A) If the petitioner's residence or principal place of business is within the geographical boundaries of the third division of the court of appeals as defined by RCW 2.06.020(3), the petition may be filed in the superior court of Spokane, Yakima, or Thurston county; and

(B) If the petitioner's residence or principal place of business is within the geographical boundaries of district three of the first division of the court of appeals as defined by RCW 2.06.020(1), the petition may be filed in the superior court of Whatcom or Thurston county.

(c) In a proceeding involving review of a rule, the court shall declare the rule invalid only if it finds that: The rule violates constitutional provisions; the rule exceeds the statutory authority of the agency; the rule was adopted without compliance with statutory rule-making procedures; or the rule is arbitrary and capricious.

(3) Review of agency orders in adjudicative proceedings. The court shall grant relief from an agency order in an adjudicative proceeding only if it determines that:

(a) The order, or the statute or rule on which the order is based, is in violation of constitutional provisions on its face or as applied;

(b) The order is outside the statutory authority or jurisdiction of the agency conferred by any provision of law;

(c) The agency has engaged in unlawful procedure or decision-making process, or has failed to follow a prescribed procedure;

(d) The agency has erroneously interpreted or applied the law;

(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, supplemented by any additional evidence received by the court under this chapter;

(f) The agency has not decided all issues requiring resolution by the agency;

(g) A motion for disqualification under RCW 34.05.425 or 34.12.050 was made and was improperly denied or, if no motion was made, facts are shown to support the grant of such a motion that were not known and were not reasonably discoverable by the challenging party at the appropriate time for making such a motion;

(h) The order is inconsistent with a rule of the agency unless the agency

explains the inconsistency by stating facts and reasons to demonstrate a rational basis for inconsistency; or

(i) The order is arbitrary or capricious.

(4) Review of other agency action.

(a) All agency action not reviewable under subsection (2) or (3) of this section shall be reviewed under this subsection.

(b) A person whose rights are violated by an agency's failure to perform a duty that is required by law to be performed may file a petition for review pursuant to RCW 34.05.514, seeking an order pursuant to this subsection requiring performance. Within twenty days after service of the petition for review, the agency shall file and serve an answer to the petition, made in the same manner as an answer to a complaint in a civil action. The court may hear evidence, pursuant to RCW 34.05.562, on material issues of fact raised by the petition and answer.

(c) Relief for persons aggrieved by the performance of an agency action, including the exercise of discretion, or an action under (b) of this subsection can be granted only if the court determines that the action is:

(i) Unconstitutional;

(ii) Outside the statutory authority of the agency or the authority conferred by a provision of law;

(iii) Arbitrary or capricious; or

(iv) Taken by persons who were not properly constituted as agency officials lawfully entitled to take such action.

RCW 36.21.015

Qualifications for persons assessing real property -- Examination -- Examination waiver -- Continuing education requirement.

(1) Any person having the responsibility of valuing real property for purposes of taxation including persons acting as assistants or deputies to a county assessor under RCW 36.21.011 shall have first:

(a) Had at least one year of experience in transactions involving real property, in appraisal of real property, or in assessment of real property, or at least one year of experience in a combination of the three;

(b) Become knowledgeable in repair and remodeling of buildings and improvement of land, and in the significance of locality and area to the value of real property;

(c) Become knowledgeable in the standards for appraising property set forth by the department of revenue; and

(d) Met other minimum requirements specified by department of revenue rule.

(2) The department of revenue shall prepare and administer an examination on subjects related to the valuation of real property. No person shall assess real property for purposes of taxation without having passed said examination or having received an examination waiver from the department of revenue upon showing education or experience determined by the department to be equivalent to passing the examination. A person passing said examination or receiving an examination waiver shall be accredited accordingly by the department of revenue.

(3) The department of revenue may by rule establish continuing education requirements for persons assessing real property for purposes of taxation. The department shall provide accreditation of completion of requirements imposed under this section. No person shall assess real property for purposes of taxation without complying with requirements imposed under this subsection.

(4) To the extent practical, the department of revenue shall coordinate accreditation requirements under this section with the requirements for

certified real estate appraisers under chapter 18.140 RCW.

(5) The examination requirements of subsection (2) of this section shall not apply to any person who shall have either:

(a) Been certified as a real property appraiser by the department of personnel prior to July 1, 1992; or

(b) Attended and satisfactorily completed the assessor's school operated jointly by the department of revenue and the Washington state assessors association prior to August 9, 1971.

RCW 36.21.080

New construction building permits -- When property placed on assessment rolls.

The county assessor is authorized to place any property that is increased in value due to construction or alteration for which a building permit was issued, or should have been issued, under chapter 19.27, 19.27A, or 19.28 RCW or other laws providing for building permits on the assessment rolls for the purposes of tax levy up to August 31st of each year. The assessed valuation of the property shall be considered as of July 31st of that year.

RCW 84.40.025

Access to property required.

For the purpose of assessment and valuation of all taxable property in each county, any real or personal property in each county shall be subject to visitation, investigation, examination, discovery, and listing at any reasonable time by the county assessor of the county or by any employee thereof designated for this purpose by the assessor.

In any case of refusal to such access, the assessor shall request assistance from the department of revenue which may invoke the power granted by chapter 84.08 RCW.

RCW 84.40.030

Basis of valuation, assessment, appraisal – One hundred percent of true and fair value – Exceptions – Leasehold estates – Real property – Appraisal – Comparable sales.

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

Taxable leasehold estates shall be valued at such price as they would bring at a fair, voluntary sale for cash without any deductions for any indebtedness owed including rentals to be paid.

The true and fair value of real property for taxation purposes (including property upon which there is a coal or other mine, or stone or other quarry) shall be based upon the following criteria:

(1) Any sales of the property being appraised or similar properties with respect to sales made within the past five years. The appraisal shall be consistent with the comprehensive land use plan, development regulations under chapter 36.70A RCW, zoning, and any other governmental policies or practices in effect at the time of appraisal that affect the use of property, as well as physical and environmental influences. An assessment may not be determined by a method that assumes a land usage or highest and best use not permitted, for that property being appraised, under existing zoning or land use planning ordinances or statutes or other government restrictions. The appraisal shall also take into account: (a) In the use of sales by real estate contract as similar sales, the extent, if any, to which the stated selling price has been increased by reason of the down payment, interest rate, or other financing terms; and (b) the extent to which the sale of a similar property actually represents the general effective market demand for property of such type, in the geographical area in which such property is located. Sales involving deed releases or similar seller-developer financing arrangements shall not be used as sales of similar property.

(2) In addition to sales as defined in subsection (1) of this section, consideration may be given to cost, cost less depreciation, reconstruction cost less depreciation, or capitalization of income that would be derived from prudent use of the property, as limited by law or ordinance.

Consideration should be given to any agreement, between an owner of rental housing and any government agency, that restricts rental income, appreciation, and liquidity; and to the impact of government restrictions on operating expenses and on ownership rights in general of such housing. In the case of property of a complex nature, or being used under terms of a franchise from a public agency, or operating as a public utility, or property not having a record of sale within five years and not having a significant number of sales of similar property in the general area, the provisions of this subsection shall be the dominant factors in valuation. When provisions of this subsection are relied upon for establishing values the property owner shall be advised upon request of the factors used in arriving at such value.

(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; also the true and fair value of structures thereon, but the valuation shall not exceed the true and fair value of the total property as it exists. In valuing agricultural land, growing crops shall be excluded.

RCW 84.40.0301

Determination of value by public official -- Review -- Revaluation -- Presumptions.

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.

WAC 458-07-030 True and fair value -- Defined -- Criteria -- Highest and best use -- Data from property owner. (1) True and fair value -- Defined. All property must be valued and assessed at one hundred percent of true and fair value unless otherwise provided by law. "True and fair value" means market value and is the amount of money a buyer of property willing but not obligated to buy would pay a seller of property willing but not obligated to sell, taking into consideration all uses to which the property is adapted and might in reason be applied.

(2) True and fair value--Criteria. In determining true and fair value, the assessor may use the sales (market data) approach, the cost approach, or the income approach, or a combination of the three approaches to value. The provisions of (b) and (c) of this subsection, the cost and income approaches, respectively, shall be the dominant factors considered in determining true and fair value in cases of property of a complex nature, or property being used under terms of a franchise granted by a public agency, or property being operated as a public utility, or property not having a record of sale within five years and not having a significant number of sales of comparable property in the general area. When the cost or income approach is used, the assessor shall provide the property owner, upon request, with the factors used in arriving at the value determined, subject to any lawful restrictions on the disclosure of confidential or privileged tax information.

(a) Sales. Sales of the property being appraised or sales of comparable properties that occurred within five years of January 1st of the assessment year are valid indicators of true and fair value. In valuing property, the following shall be considered:

(i) Any governmental policies or practices, regulations or restrictions in effect at the time of appraisal that affect the use of property, including a comprehensive land use plan, developmental regulations under the Growth Management Act (chapter 36.70A RCW), and zoning ordinances. No appraisal may assume a land usage or highest and best use not permitted under existing zoning or land use planning ordinances or statutes or other government restrictions, unless such usage is otherwise allowed by law;

(ii) Physical and environmental influences that affect the use of the property;

(iii) When a sale involves a real estate contract, the extent, if any, to which

the down payment, interest rate, or other financing terms may have increased the selling price;

(iv) The extent to which the sale of a comparable property actually represents the general effective market demand for property of that type, in the geographical area in which the property is located; and

(v) Sales involving deed releases or similar seller-developer financing arrangements shall not be used as sales of comparable property in determining value.

(b) **Cost.** In determining true and fair value, consideration may be given to cost, cost less depreciation, or reconstruction cost less depreciation.

(c) **Income.** In determining true and fair value, consideration may be given to the capitalization of income that would be derived from prudent use of the property, as limited by law or ordinance. Consideration should be given to any agreement between an owner of rental housing and any government agency that restricts rental income, appreciation, and liquidity and to the impact of government restrictions on operating expenses and on ownership rights in general of such housing.

(d) **Manuals.** Appraisal manuals or guides published or approved by the department of revenue shall be considered in conjunction with the three approaches to value. The data contained in these manuals or guides must be analyzed and adjusted by the assessor to consider time, location, and any other applicable factors to properly reflect market value in the county.

(3) **True and fair value – Highest and best use.** Unless specifically provided otherwise by statute, all property shall be valued on the basis of its highest and best use for assessment purposes. Highest and best use is the most profitable, likely use to which a property can be put. It is the use which will yield the highest return on the owner's investment. Any reasonable use to which the property may be put may be taken into consideration and if it is peculiarly adapted to some particular use, that fact may be taken into consideration. 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.

(4) **Valuation of land and improvements.** In valuing any lot, tract, or parcel of real property, the assessor must determine the true and fair value

of the land, excluding the value of any structures on the land and excluding the value of any growing crops. The assessor must also determine the true and fair value of any structure on the land. The total value of the land and the structures must not exceed one hundred percent of the true and fair value of the total property as it exists at the time of appraisal.

(5) **Valuation data from property owners.** The assessor may require property owners to submit pertinent data regarding property in their control, including sales data, costs and characteristics of improvements, and other facts necessary for appraisal of the property.

WAC 458-10-020 Application for accreditation. (1) Prerequisite to application – Experience. Prior to applying for accreditation, applicants must have had at least one year of experience related to the items listed in this subsection. The requisite experience may include hours worked during the preceding two years but must include a minimum of one thousand hours worked in a minimum time period of twelve months. The work experience must be directly connected with the following:

- (a) Transactions involving real property;
- (b) Appraisal of real property;
- (c) Assessment of real property; or
- (d) A combination of (a), (b), and (c) of this subsection.

(2) **Prerequisite to application – Knowledge.** Prior to applying for accreditation, applicants must be knowledgeable in:

- (a) Repair and remodeling of buildings and improvement of land;
- (b) The significance of locality and area to the value of real property; and
- (c) The standards for appraising real property established by the department. (See WAC 458-10-060.)

(3) **Application procedure.** Any person desiring to be an accredited appraiser must complete an "Application for Accreditation" form and submit it to the property tax division of the department. The department

shall review the application and verify that the applicant meets the qualifications prescribed by chapter 36.21 RCW and chapter 458-10 WAC, including either passing the accreditation examination or qualifying for a waiver of or exemption from the examination. Upon completion of review and verification, the department shall, as appropriate, issue an accreditation certificate, reject the application and give the reason or reasons for the rejection, or notify the applicant of any further requirements prior to issuing an accreditation certificate. Forms shall be prepared by and are available from the property tax division of the department.

RAP 10.3 CONTENT OF BRIEF

(a) **Brief of Appellant or Petitioner.** The brief of the appellant or petitioner should contain under appropriate headings and in the order here indicated:

- (1) **Title Page.** A title page, which is the cover.
- (2) **Tables.** A table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with references to the pages of the brief where cited.
- (3) **Introduction.** A concise introduction. This section is optional. The introduction need not contain citations to the record of authority.
- (4) **Assignments of Error.** A separate concise statement of each error a party contends was made by the trial court, together with the issues pertaining to the assignments of error.
- (5) **Statement of the Case.** A fair statement of the facts and procedure relevant to the issues presented for review, without argument. Reference to the record must be included for each factual statement.
- (6) **Argument.** The argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record. The argument may be preceded by a summary. The court ordinarily encourages a concise statement of the standard of review as to each issue.
- (7) **Conclusion.** A short conclusion stating the precise relief sought.

(8) Appendix. An appendix to the brief if deemed appropriate by the party submitting the brief. An appendix may not include materials not contained in the record on review without permission from the appellate court, except as provided in rule 10.4(c).

(b) Brief of Respondent. The brief of respondent should conform to section (a) and answer the brief of appellant or petitioner. A statement of the issues and a statement of the case need not be made if respondent is satisfied with the statement in the brief of appellant or petitioner. If a respondent is also seeking review, the brief of respondent must state the assignments of error and the issues pertaining to those assignments of error presented for review by respondent and include argument of those issues.

(c) Reply Brief. A reply brief should conform with subsections (1), (2), (6), (7), and (8) of section (a) and be limited to a response to the issues in the brief to which the reply brief is directed.

(d) [Reserved; see rule 10.10]

(e) Amicus Curiae Brief. The brief of amicus curiae should conform to section (a), except assignments of error are not required and the brief should set forth a separate section regarding the identity and interest of amicus and be limited to the issues of concern to amicus. Amicus must review all briefs on file and avoid repetition of matters in other briefs.

(f) Answer to Brief of Amicus Curiae. The brief in answer to a brief of amicus curiae should be limited solely to the new matters raised in the brief of amicus curiae.

(g) Special Provision for Assignments of Error. A separate assignment of error for each instruction which a party contends was improperly given or refused must be included with reference to each instruction or proposed instruction by number. A separate assignment of error for each finding of fact a party contends was improperly made must be included with reference to the finding by number. The appellate court will only review a claimed error which is included in an assignment of error or clearly disclosed in the associated issue pertaining thereto.

(h) **Assignments of Error on Review of Certain Administrative Orders.** In addition to the assignments of error required by rule 10.3(a)(3) and 10.3(g), the brief of an appellant or respondent who is challenging an administrative adjudicative order under RCW 34.05 or a final order under RCW 41.64 shall set forth a separate concise statement of each error which a party contends was made by the agency issuing the order, together with the issues pertaining to each assignment of error.

RAP 10.4 PREPARATION AND FILING OF BRIEF BY PARTY

(a) **Typing or Printing Brief.** Briefs shall conform to the following requirements:

(1) An original and one legible, clean, and reproducible copy of the brief must be filed with the appellate court. The original brief should be printed or typed in black on 20-pound substance 8-1/2- by 11-inch white paper. Margins should be at least 2 inches on the left side and 1-1/2 inches on the right side and on the top and bottom of each page. The brief shall not contain any tabs, colored pages, or binding and should be stapled in the left-hand upper corner.

(2) The text of any brief typed or printed must appear double spaced and in print as 12 point or larger type in the following fonts or their equivalent: Times New Roman, Courier, CG Times, Arial, or in typewriter fonts, pica or elite. The same typeface and print size should be standard throughout the brief, except that footnotes may appear in print as 10 point or larger type and be the equivalent of single spaced. Quotations may be the equivalent of single spaced. Except for material in an appendix, the typewritten or printed material in the brief shall not be reduced or condensed by photographic or other means.

(b) **Length of Brief.** A brief of appellant, petitioner, or respondent should not exceed 50 pages. Appellant's reply brief should not exceed 25 pages. An amicus curiae brief, or answer thereto, should not exceed 20 pages. In a cross-appeal, the brief of appellant, brief of respondent/cross appellant, and reply brief of appellant/cross appellant should not exceed 50 pages and the reply brief of the cross respondent should not exceed 25 pages. For the purpose of determining compliance with this rule appendices, the title sheet, table of contents, and table of authorities are not included. For

compelling reasons the court may grant a motion to file an over-length brief.

(c) Text of Statute, Rule, Jury Instruction, or the Like. If a party presents an issue which requires study of a statute, rule, regulation, jury instruction, finding of fact, exhibit, or the like, the party should type the material portions of the text out verbatim or include them by copy in the text or in an appendix to the brief.

(d) Motion in Brief. A party may include in a brief only a motion which, if granted, would preclude hearing the case on the merits. The answer to a motion within a brief may be made within the brief of the answering party in the time allowed for filing the brief.

(e) Reference to Party. References to parties by such designations as "appellant" and "respondent" should be kept to a minimum. It promotes clarity to use the designations used in the lower court, the actual names of the parties, or descriptive terms such as "the employee," "the injured person," and "the taxpayer."

(f) Reference to Record. A reference to the record should designate the page and part of the record. Exhibits should be referred to by number. The clerk's papers should be abbreviated as "CP"; exhibits should be abbreviated as "Ex"; and the report of proceedings should be abbreviated as "RP." Suitable abbreviations for other recurrent references may be used.

(g) Citation Format. Citations should conform with the format prescribed by the Reporter of Decisions pursuant to GR 14(d). The format requirements of GR 14(a) - (b) do not apply to briefs filed in an appellate court.

(h) Unpublished Opinions. [Reserved. See GR 14.1.]
RULE 10.7

RAP 10.7 SUBMISSION OF IMPROPER BRIEF

If a party submits a brief that fails to comply with the requirements of Title 10, the appellate court, on its own initiative or on the motion of a party, may (1) order the brief returned for correction or replacement within a specified time, (2) order the brief stricken from the files with leave to file a new brief within a specified time, or (3) accept the brief. The

appellate court will ordinarily impose sanctions on a party or counsel for a party who files a brief that fails to comply with these rules.

WASHINGTON CONSTITUTION

ARTICLE I DECLARATION OF RIGHTS

SECTION 7 INVASION OF PRIVATE AFFAIRS OR HOME PROHIBITED. No person shall be disturbed in his private affairs, or his home invaded, without authority of law.

CONSTITUTION OF THE UNITED STATES

FOURTH AMENDMENT - SEARCH AND SEIZURE

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

OFFICE RECEPTIONIST, CLERK

To: Arkills, Ron
Subject: RE: Emailing: No. 87633--Strand v.Horton--Brief of Respondent--corrected.pdf ATTN:
SUPREME COURT CLERK

Rec. 9-21-12

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

-----Original Message-----

From: Arkills, Ron [<mailto:RArkills@spokanecounty.org>]
Sent: Friday, September 21, 2012 9:07 AM
To: OFFICE RECEPTIONIST, CLERK
Subject: RE: Emailing: No. 87633--Strand v.Horton--Brief of Respondent--corrected.pdf ATTN:
SUPREME COURT CLERK

There is it is.

Thank you for your patience.

-----Original Message-----

From: OFFICE RECEPTIONIST, CLERK [<mailto:SUPREME@COURTS.WA.GOV>]
Sent: Friday, September 21, 2012 9:04 AM
To: Arkills, Ron
Cc: afbpns@fastlane-i.com
Subject: RE: Emailing: No. 87633--Strand v.Horton--Brief of Respondent--corrected.pdf ATTN:
SUPREME COURT CLERK

You didn't send any attachment with your email?????

-----Original Message-----

From: Arkills, Ron [<mailto:RArkills@spokanecounty.org>]
Sent: Friday, September 21, 2012 9:02 AM
To: OFFICE RECEPTIONIST, CLERK
Cc: afbpns@fastlane-i.com
Subject: RE: Emailing: No. 87633--Strand v.Horton--Brief of Respondent--corrected.pdf ATTN:
SUPREME COURT CLERK

To: The Supreme Court Clerk
Re: No. 87633-9--Palmer D. Strand & Patricia Strand v. Vicky Horton, Spokane County Assessor

The Brief of Respondent filed yesterday inadvertantly contained duplicates of Pages 8 and 27. Attached for filing is the Brief of Respondent with the duplicate pages removed.

Ronald P. Arkills
WSBA #10773
Deputy Prosecuting Attorney
Spokane County Prosecutor--Civil Division
1115 W. Broadway Ave.
Spokane, WA 99260
Tel: 509-477-5756
Email: rarkills@spokanecounty

-----Original Message-----

From: OFFICE RECEPTIONIST, CLERK [<mailto:SUPREME@COURTS.WA.GOV>]
Sent: Thursday, September 20, 2012 4:37 PM
To: Arkills, Ron
Cc: afbyps@fastlane-i.com
Subject: RE: Emailing: No. 87633--Strand v.Horton--Brief of Respondent.pdf ATTN: SUPREME COURT CLERK

Rec'd 9-20-12

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

-----Original Message-----

From: Arkills, Ron [<mailto:RArkills@spokanecounty.org>]
Sent: Thursday, September 20, 2012 4:34 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: afbyps@fastlane-i.com
Subject: Emailing: No. 87633--Strand v.Horton--Brief of Respondent.pdf ATTN: SUPREME COURT CLERK

To: The Supreme Court Clerk
Re: No. 87633-9--Palmer D. Strand & Patricia Strand v. Vicky Horton, Spokane County Assessor

Attached for filing is the Brief of Respondent.

Ronald P. Arkills
WSBA #10773
Deputy Prosecuting Attorney
Spokane County Prosecutor--Civil Division
1115 W. Broadway Ave.
Spokane, WA 99260
Tel: 509-477-5756
Email: rarkills@spokanecounty