

**Order of the Thurston County
Board of Equalization**

CORRECTED ORDER

Property Owner: VIEWMONT PLACE LLC (Petition Numbers 16-0033 & 16-0034) &
HOLLAMER INVESTMENTS (Petition Number 16-0035)

Assessment Year: **2016**

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

☐ sustains ☒ overrules the determination of the assessor.

PETITION	PARCEL	ASSESS LAND	ASSESS BLDG	ASSESS TOTAL	BOE LAND	BOE BLDG	BOE TOTAL
16-0033	21724120100	535,000	0	535,000	160,500	0	160,500
16-0034	21724120200	482,400	0	482,400	145,000	0	145,000
16-0035	21724120402	719,850	0	719,850	216,000	0	216,000

This decision is based on our finding that: The Board overrules the Assessor's determinations of value based on the testimony and evidence presented. The issue before the BOE was the fair market value of three vacant commercial land parcels as of January 1, 2016. The Board relies, in a measure, on its previous reviews of the subject properties.

The Petitioner asserted that in 2006 and 2008 Mazama pocket gophers were spotted on the three parcels. He clarifies that the prairie habitat restrictions apply to all locations within a 600 feet radius of an identified gopher location. The Petitioner also asserts that the parcels are "not legally useable" because there is no habitat conservation plan (HCP) under which the county or the City of Yelm could approve development on parcels that were once observed by the government to contain protected gophers. The Petitioner also asserts that the City of Yelm's water restrictions prevent the development of subdivisions and that has the effect of substantially lowering the value of the three parcels.

The Petitioner referenced Thurston County's purchase of 148 acres of property for conversation purposes in 2015 for \$1,040,000, or \$7,027 per acre. He previously explained that this property was then conveyed to the Center for Natural Land Management for perpetual management for species preservation of the Mazama pocket gopher and other endangered prairie species. The Petitioner requests a valuation of \$10,000 per acre.

The Washington Department of Fish and Wildlife (WDFW) listed the Mazama pocket gopher as a state threatened species prior to January 1, 2012.¹ WAC 232-12-011(1). As a consequence, anyone who "hunts, fishes, possesses, or maliciously kills," or who "violates any rule of the commission regarding the taking, harming, harassment, possession, or transport of" a Mazama pocket gopher is guilty of a misdemeanor. RCW 77.15.130(1) and (2).²

On April 9, 2014, the United States Fish and Wildlife Service (USFWS) designated the Mazama pocket gopher as an endangered species. Designation protects not only the gophers, but also the habitat in which gophers thrive. USFWS informed the City of Yelm that for land where pocket gophers were once located, the City or the landowner would have to consult the USFWS prior to development approval.

¹ The Latin name is *Thomomys mazama*. WAC 232-12-011(1). There are four sub-species that inhabit parts of Thurston County: *T. m. pugetensis*, *glacialis*, *tumuli*, and *yelmensis*. 77 Fed. Reg. 73,789 (Dec. 11, 2012).

² "Whenever the performance of any act is prohibited by any statute, and no penalty for the violation of such statute is imposed, the committing of such act shall be a misdemeanor." RCW 9A.20.010. A misdemeanor is punishable by a fine of not more than one thousand dollars, or by imprisonment in a county jail for not more than ninety days, or by both fine and imprisonment. *Id.*

Testimony in this and other cases is that for land with active gopher populations and for land with substantiated reports of past gopher habitation, no development permits would be issued prior to the conduct of an evaluation of gopher activity at the time of a request for a permit. Gopher habitat evaluations acceptable to the governmental agencies were limited to the period June 1 through October 31 to assure accuracy of the habitat evaluation.

The Board must determine what a willing buyer have offered a willing seller to purchase each of the three parcels at issue on January 1, 2016. The BOE assumes sophisticated buyers and sellers for vacant land that, but for governmental restrictions, could be developed with the investment of considerable money and a reasonable profit made from that investment of money in development.

On January 1, 2016, a hypothetical,³ sophisticated seller with the same knowledge as the Petitioner would have had to disclose that on two past occasions Mazama pocket gophers, a designated and protected endangered species, were present on the parcels at issue. A sophisticated buyer would have known, or could easily have discovered, that no gopher habitat evaluation (if any) conducted on or about January 1, 2016, would be relied on by governmental entities to determine if the parcels at issue could be developed. The conclusion of the BOE is that a willing buyer would expect a substantial discount for purchasing land where gophers had been found in the past as compared to land that had no history of gopher habitation.

The Assessor provided a market-adjusted cost approach and comparable sales in support of the current assessed value. The Assessor's Representative testified that each parcel must be valued separately. The Assessor's Representative contends that the highest and best use might be to hold the property for investment purposes and future development. The Assessor's Representative testified that comparable sales 3 and 4 are properties with Mazama pocket gophers. The Assessor's Representative testified that water is available in the City of Yelm and that the *Hirst* decision is not relevant since well permits were still being issued as of the January 1, 2016, assessment date.

The Board sustains the Assessor's valuation unless there is clear, cogent, and convincing evidence that the Assessor has erred. In the event the Board alters the valuation, the Board is obligated to determine the fair market value of the parcels at issue. A fair market value determination requires a determination of the highest and best use based on applicable local zoning and then adjusted--up or down--for property characteristics and governmental restrictions that affect the land on the valuation date.

The Assessor has a standard downward adjustment of seventy percent for land that is unbuildable. The BOE concludes that a willing buyer would have to have concluded on January 1, 2016 that the parcels were unbuildable because there had been two governmental sightings of gophers on the property and because there had been no gopher habitat evaluation of the parcels on or about January 1, 2016. Accordingly, based on the clear, cogent, and convincing evidence that no development could have been initiated on January 1, 2016, the BOE overrules the Assessor and reduces the value of the three parcels as listed at the top of this order.

³ Most properties valued by the Assessor are not for sale so nearly every assessment valuation involves a hypothetical seller. It is for this reason that an owner's plans, or lack of plans, for their real property are not part of the calculation of assessed value.

The Assessor's Representative states that the Petitioner has not applied for permits to develop the subject properties. The Petitioner testified about pre-submission reviews conducted with the City of Yelm. The Board finds that there is no evidentiary standard that requires the Petitioner to apply for permits in order to find that the subject properties cannot be developed. Under the known circumstances, the Board concludes that there is no evidence to suggest that it would be worth the Petitioner's time, effort, and expense to apply for building permits.

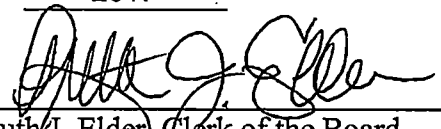
The Board considered Thurston County's purchase of 148 acres of conservation land in 2015 as cited by the Petitioner. The Assessor's Representative was uncertain as to whether the County's purchase was an arms-length transaction. The Board was unable to determine whether the property was listed for sale and whether the sale was an arms-length transaction.

The evidence and testimony supports the conclusion that on or about January 1, 2016, the City of Yelm would not have approved a building permit for any substantial development on the subject parcels because the City did not have sufficient water available to support a large development.

Finally, assessment valuations are made on the first day of each year. For land with gophers or a history of gophers, the value may rise or fall on future valuation dates based on changes to governmental restrictions and the process for determinations of the impact of gophers and the possibility of mitigation as well as the cost of mitigation.

Dated this 28th day of September, 2017


James Harvison, Chairman


Ruth J. Elder, Clerk of the Board

NOTICE

This order can be appealed to the State Board of Tax Appeals by filing a notice of appeal with them at PO Box 40915, Olympia, WA 98504-0915 or at their website at bta.state.wa.us/appeal/forms.htm within thirty days of the date of mailing of this order. The Notice of Appeal form is available from either your county assessor or the State Board.

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SHIPPED OCT 10 2017

Corrected Order SHIPPED NOV 28 2017