

## Order of the Thurston County Board of Equalization

Property Owner: CARL TEITGE & LEANNA LONG

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
16-0409	13632110303	32,600	0	32,600	20,000	0	20,000
16-0410	13632110304	32,600	0	32,600	10,000	0	10,000
16-0411	13632110401	66,800	68,200	135,000	30,000	30,000	60,000
16-0412	13632110402	32,900	0	32,900	10,000	0	10,000
16-0413	13632110801	32,600	0	32,600	15,000	0	15,000
16-0414	13632110802	32,600	0	32,600	10,000	0	10,000
16-0415	13632110901	32,600	0	32,600	20,000	0	20,000
16-0416	13632110902	32,750	0	32,750	10,000	0	10,000

This decision is based on our finding that: The Board overrules the Assessor's determination of value for each of the parcels based on the testimony and evidence presented. The Board relies, in a measure, on its previous reviews of the subject properties.

The Board took approximately one hour and five minutes of testimony from the Petitioner. The Petitioner submitted more than 450 pages of written materials. The Assessor was not represented at the hearing, but submitted written Responses.

The issue presented by the petitions listed above is the fair market value of the several parcels that are all inhabited by Mazama pocket gophers. The Washington Department of Fish and Wildlife (WDFW) listed the Mazama pocket gopher as a state threatened species prior to January 1, 2012.<sup>1</sup> WAC 232-12-011(1). Consequently, 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).<sup>2</sup>

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.

The Petitioner testified that the Washington State Board of Tax Appeals held hearings on appeals from the 2011 through 2014 assessment years, but no decisions have been issued yet. He testified that the development regulations were unclear at that time. He stated that everything changed after the Federal listing of the pocket gophers in April 2014.

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<sup>1</sup> 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).

<sup>2</sup> "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 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,<sup>3</sup> sophisticated seller with the same knowledge as the Petitioner would have had to disclose that 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 Petitioner testified that: he cannot do anything with the subject properties due to the pocket gophers; Thurston County cannot issue his permits until the Habitat Conservation Plan (HCP) is completed; the timeline for completion of the County's HCP is unknown; the only other option would be to submit his own HCP to US Fish and Wildlife; it is unclear as to what US Fish and Wildlife will accept; there is no public mitigation bank; obtaining approval for his HCP from US Fish and Wildlife would take years; John Kaufman had 12 mitigation credits approved by US Fish and Wildlife that he was selling for \$50,000 per credit if purchasing all 12 credits or \$75,000 each if purchasing less than 12 credits; the Center for Natural Lands Management is managing Mazama Meadow near Tenino and Old Highway 88 for mitigation and they are also working on possible mitigation on 183rd Avenue; it is unclear how many credits would be required to develop his 5 acre lots; the Petitioner was informed that the total acreage of these properties were not large enough to be used as gopher mitigation land; development of the subject property would require the purchase of at least 50 acres of prairie habitat land inhabited by pocket gophers, at an estimated cost of at least \$200,000; and development of the subject properties would require at least \$200,000 in consultant fees and attorney fees to develop a mitigation plan.

The Petitioner testified about the home on parcel number 13632110401: the disabled people residing there have not paid rent in three or four years; the occupants are permitted to stay there to watch over the property and to reduce the possibility of dumping; there are 3 to 4 inches of moss on the south side of the house; the electrical system is not good; there are plumbing and septic issues; and it would cost more than the home is worth to bring it to saleable condition.

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<sup>3</sup> 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 Petitioner testified about the parcels purchased by local realtor Larry Weaver, parcel numbers 85411600100 and 85411500100, which are 0.55 acres each. He stated that Mr. Weaver consulted with a private biologist prior to his purchase. Mr. Weaver purchased the properties on January 24, 2017, for \$64,000 each. Mr. Weaver informed him that pocket gophers were found on the third site visit, so his project stopped. The Petitioner testified that pocket gophers will spread to neighboring properties.

The Petitioner testified about the projects that Ms. Hoyer from the Assessor's Office presented to the Board of Tax Appeals. He stated that none of these properties was like the subject properties or subject to the same development restrictions.

The Petitioner questioned the Assessor's base rate of approximately \$78,000 per parcel. He testified that he researched 3 or 4 sales of 5 acre lots with dirt roads that sold for an average of \$60,000.

The Petitioner testified that the development costs for the subject parcels are prohibitive. He stated that there is no system to reserve mitigation credits and no plans for additional mitigation banks.

The Assessor provided a market-adjusted Cost Approach and a Neighborhood Sales Listing in support of the current assessed value. The Assessor reduced the 2016 assessments by a factor of 50 percent for Prairie Habitat.

The Assessor contends that the Petitioner has not attempted to develop the properties by applying for building permits; the Assessor contends that there is no evidence that the properties cannot be developed. The Assessor cites an agreement between the Petitioner, Thurston County, and the Washington State Department of Fish and Wildlife from April 2009 approving an Emergency Mitigation Plan to allow for development of the Petitioner's then-10-acre parcels. A copy of the agreement was not submitted to the Board for review. However, the Board recognizes that the development restrictions were significantly different in April 2009 than they were following the United State Fish and Wildlife Service's listing of the Mazama pocket gopher as an endangered species on April 9, 2014.

The Board finds that the petition records for the 2012 through 2016 assessment years demonstrates amply that it would cost the Petitioner more than \$100,000 to prepare a development plan sufficiently detailed enough to be accepted by the County. Furthermore, submission of this expensive development plan would result in rejection due to the presence of pocket gophers or it would be held indefinitely because there are no Federal, State, or County standards that can be used to approve a development that would result in taking so many pocket gophers as expert studies have found on the subject properties. 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. The Board concludes that there is no evidence to suggest that it would be worth the Petitioner's time, effort, and extraordinary expense to apply for building permits under these circumstances. The Board finds that the Petitioner is an expert in land development who has developed approximately 700 lots to date.

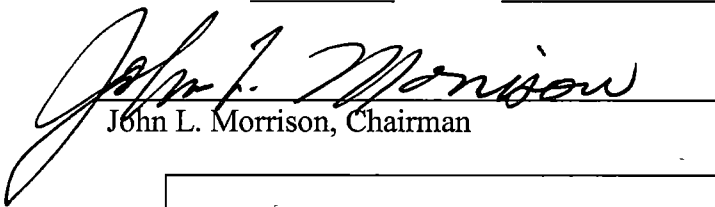
The Board sustains the Assessor's valuation unless there is clear, cogent, and convincing evidence that the Assessor has erred. In the event the Board alters the valuation, the Board is obligated to determine the fair market value of the parcels at issue. A fair market value determination requires a 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 pocket gophers had been sighted 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 parcels as listed at the top of this order.

The Board finds that additional consideration is warranted for the prairie habitat restrictions. The Board concludes that the Petitioners have provided clear, cogent, and convincing evidence sufficient to overcome the Assessor's presumption of correctness and to warrant a reduction in the valuations. The Board adopts the Petitioner's values for each parcel as requested at the hearing.

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 23rd day of April, 2018

  
John L. Morrison, 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](http://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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