

Order of the Thurston County Board of Equalization

Property Owner: VIEWMONT PLACE LLC (17-0065 and 17-0066) and
HOLLAMER INVESTMENTS LLC (17-0067)

Assessment 2017

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
17-0065	21724120100	834,000	0	834,000	250,200	0	250,200
17-0066	21724120200	561,400	0	561,400	168,400	0	168,400
17-0067	21724120402	845,700	0	845,700	253,700	0	253,700

This decision is based on our finding that: The Board overrules the Assessor's determinations of value for each of the petitions 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, 2017. 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 foot 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 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 for his properties.

The Petitioner asserts that the Board's determinations in the *Teitge* appeals applies to the subject properties.

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, 2017. 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, 2017, 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, 2017, 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 of each of the parcels. The Assessor provided information about five properties with prairie habitat that were able to be developed. The Board finds that two of these properties are zoned commercial or industrial. Testimony before the Board involving one of the properties indicated that there were no longer Mazama pocket gophers present on the site at the time of development and that ongoing monitoring was required by US Fish and Wildlife.

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, 2017, assessment date. She testified that 150 to 450 water hook ups were approved by the City of Yelm over the past few years.

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, 2017 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, 2017. Accordingly, based on the clear, cogent, and convincing evidence that no development could have been initiated on January 1, 2017, 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 the pre-submission review conducted with the City of Yelm and being advised that mitigation would be required. 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 Assessor's Representative testified that having to go through additional steps and spend additional money to develop the properties does not mean that the properties are unbuildable. The Petitioner testified that professional engineers, surveyors, and planners could not in good faith and in accordance with their professional ethics charge the Petitioner for work on an infeasible project.

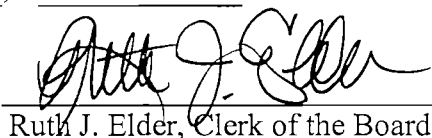
The Assessor's Representative stated that other developers have received approval for projects on a case-by-case basis. She testified that Kaufman Construction has an approved Habitat Conservation Plan and has a large area on the Deschutes River set aside for gopher credits. She stated that the Assessor's Office had recently received an excise tax affidavit for \$48,000 for credits for 4 acres.

The Board considered Thurston County's purchase of 148 acres of conservation land in 2015 as cited by the Petitioner. The Board finds that the Petitioner did not provide any evidence that the property was listed for sale, which would be a major factor in determining whether this was an arms-length transaction.

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 31st day of January, 2018


John 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 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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