

Order of the Thurston County Board of Equalization

Property Owners: DONALD AND PATRICIA INGERSOLL

Assessment Year: 2017

Having considered the evidence presented by the parties in these appeals, the Board hereby:

☐ sustains ☒ overrules the determinations of the assessor.

PETITION	PARCEL	ASSESS LAND	ASSESS BLDG	ASSESS TOTAL	BOE LAND	BOE BLDG	BOE TOTAL
17-0113	51120003300	104,400	0	104,400	31,320	0	31,320
17-0114	51120003400	105,400	0	105,400	31,620	0	31,620
17-0115	51120003500	101,800	0	101,800	30,540	0	30,540

This decision is based on our finding that: The Board overrules the Assessor's determination of value based on the testimony and evidence presented. The Board relies, in a measure, on its previous review of the subject properties. The Petitioners did not participate in the hearing.

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.

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 documentation of pocket gophers on the properties 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.

Testimony in 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.

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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.*

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 Petitioners would have had to disclose that the subject properties have been known to be inhabited with Mazama pocket gophers since 2005 and that in 2016 a biologist hired by the Petitioners identified the presence of 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. The Assessor's Representative testified that these properties are part of a vested planned unit development that was vested prior to the federal listing of the pocket gopher. She stated that the Assessor's Office is not advocating that anyone break the law and that it is up to the property owners to work with the US Fish and Wildlife Service for any mitigation.

The Petitioners contend that the Assessor's comparable sales do not include any gopher-infested triplex and fourplex lots. They stated that one owner of single family residential lots was required to set aside 40% of the property for gopher habitat, while another owner of single family residential lots was required to set aside one acre for gopher habitat. The Petitioners noted that setting aside either one acre of land or 40% of their parcels would make their properties unbuildable for a triplex or fourplex. The Petitioners also differentiate between the sales of duplex lots and triplex and fourplex lots.

The Petitioners stated that the plat of Glenmore Village shows an initial provision for a gopher habitat reservation, an area reserved for gophers on the plat, but that the reservation does not meet the current federal standards for the protection of pocket gophers.

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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 Board finds the Petitioners' arguments and analysis to be convincing. The Board concludes that the Petitioners provided clear, cogent, and convincing evidence sufficient to overcome the Assessor's presumption of correctness and to warrant a reduction in the valuation.

Dated this 12th day of March, 2018


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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