

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

Property Owner: RANDY DURRANT

Parcel Number(s): 12715230103

Assessment Year: 2017

Petition Number: 17-0256

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

☐ sustains ☒ overrules the determination of the assessor.

Assessor's True and Fair Value Determination

<input checked="" type="checkbox"/> Land	\$ 162,400
<input checked="" type="checkbox"/> Improvements	\$ 0
<input type="checkbox"/> Minerals	\$
<input type="checkbox"/> Personal Property	\$
TOTAL:	\$ 162,400

BOE True and Fair Value Determination

<input checked="" type="checkbox"/> Land	\$ 36,000
<input checked="" type="checkbox"/> Improvements	\$ 0
<input type="checkbox"/> Minerals	\$
<input type="checkbox"/> Personal Property	\$
TOTAL:	\$ 36,000

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 reviews of the subject property, as well as personal experience with similarly situated properties. The Petitioner shared similar concerns to past years, regarding the prairie habitat and pocket gopher restrictions impacting his ability to develop or sell his property. The Petitioner documented that he's had a number of prospective buyers interested in the subject property until they become aware of these restrictions. The Assessor's Representative did not participate in the hearing, but provided a written response that included a market-adjusted cost approach and a sales comparison approach in support of the current assessed value. The Board finds that the subject property is unbuildable as of January 1, 2017. Tax parcels are valued as of January 1 each year based on market information that is used to support a determination of what a hypothetical buyer would offer to pay. The development of land identified as prairie habitat requires a prairie habitat survey that is only conducted between June and October. A willing buyer cannot obtain a prairie habitat survey on January 1. The Petitioner's experience with a failed sales transaction demonstrates that bare land for which a prairie habitat survey is necessary is less valuable than bare land that can be developed without a prairie habitat survey. The Order for Petition Number 15-0107 is attached to this Order and is incorporated by reference. The Board finds that additional consideration is warranted for the restrictions related to prairie habitat and high groundwater, with an unknown cost to cure. The Board concludes that the Petitioner 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 16th day of August, 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 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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Distribution: • Assessor • Petitioner • BOE File

REV 64 0058 (6/9/14)

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

Attachment to 17-0256

Property Owner: RANDY DURRANT

Parcel Number(s): 12715230103

Assessment Year: 2015

Petition Number: 15-0107

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

☐ sustains ☒ overrules the determination of the assessor.

Assessor's True and Fair Value

<input checked="" type="checkbox"/> Land	\$ 183,900
<input checked="" type="checkbox"/> Improvements	\$ 0
<input type="checkbox"/> Minerals	\$
<input type="checkbox"/> Personal Property	\$
TOTAL:	\$ 183,900

BOE True and Fair Value Determination

<input checked="" type="checkbox"/> Land	\$ 92,000
<input checked="" type="checkbox"/> Improvements	\$ 0
<input type="checkbox"/> Minerals	\$
<input type="checkbox"/> Personal Property	\$
TOTAL:	\$ 92,000

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 issue before the BOE was the fair market value of one vacant land parcel as of January 1, 2015. Notwithstanding that a specific date is at the heart of the issue, the petitioner testified about several governmental actions taken before and after January 1, 2015, that did not provide information that pertains to the value on the one date that matters. This decision will not report, discuss, or consider evidence and testimony that concerns matters that were not known or had not occurred by January 1, 2015, unless they are otherwise probative.¹

The Parcel

The parcel is 6.62 acres in the vicinity of Rochester. The parcel is zoned for residential development.

Petitioner's Assertion

Petitioner asserted that the parcel is Mazama pocket gopher habitat and that governmental entities have reduced the value of the parcel through governmental restrictions imposed to protect gopher habitat. Petitioner stated he had two offers to purchase the parcel subsequent to 1 January, 2015. Petitioner provided a letter from GCH Puget Sound, Inc., dba Garette Custom Homes' president Matt Lewis who wrote that the inability to obtain a gopher habitat evaluation in 2015 was the cause for GHC to terminate its contract to purchase petitioner's parcel.

¹ See *City of Vancouver v. Gilbert*, BTA 98-72 (reported also as 98072 and 98-072), Initial Decision, May 22, 2002, pp. 16-22 (citing and quoting, *inter alia*, *First Nat'l Bank v. United States*, 763 F.2d 891, 894 (7th Cir, 1985)) (events subsequent to the valuation date are not considered in arriving at valuation unless they provide information that would call into question the accuracy of the valuation made on the date of valuation).

Recent History

Washington Department of Fish and Wildlife (WDFW) listed the Mazama pocket gopher as a state threatened species prior to January 1, 2012.² 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).³

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.

Gopher Habitat Evaluation Required

Testimony in this and other cases is that for land that contains gopher habitat 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 are limited to the period June 1 through October 31 to assure accuracy of the habitat evaluation.

Prior to June 1, 2015, a gopher habitat evaluation conducted by a privately contracted biologist was acceptable to the various governmental entities.⁴ A gopher habitat evaluation conducted between November 1, 2014 and May 31, 2015, however, would not have been accepted by governmental entities because it fell outside the period for evaluations acceptable to governmental entities.

Permit Application Required to Obtain Gopher Habitat Evaluation

Prior to scheduling a gopher habitat evaluation between June 1 and October 31, Thurston County requires a permit application and payment of the fees associated with the permit. It is not clear in this case if GCH filed for a permit and paid the fees; it may be that GCH only inquired of the county if the county would have sufficient staff to conduct a gopher habitat evaluation prior to October 31. The letter from GCH makes it clear the county could not provide a gopher habitat evaluation in 2015 and such an evaluation would have to wait until 2016. GCH states for that reason it cancelled its purchase from petitioner.

² 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).

³ “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.*

⁴ Since June 1, 2015, gopher habitat evaluations are only acceptable for permit purposes if conducted by Thurston County. See n.l, *supra*.

Fair Market Value

What would a hypothetical willing buyer have offered a hypothetical⁵ willing seller to purchase the parcel at issue on January 1, 2015 is the question that leads to the correct valuation. 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, 2015, a hypothetical, sophisticated seller with the same knowledge as the petitioner would have had to disclose that the parcel was in gopher habitat. A sophisticated buyer would have known, or could easily have discovered, that no gopher habitat evaluation (if any) conducted on or about January 1, 2015 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 on January 1 would expect a substantial discount for purchasing land that is gopher habitat, or would require an option to cancel the purchase in the event the buyer could not obtain a gopher habitat evaluation from a governmental entity, as is the case here.

Board Valuation

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 parcel 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.

In this case, the facts support the conclusion that the willing purchaser bargained for the option to cancel the purchase in the event the purchaser could not obtain a timely gopher habitat evaluation. That is, at the price agreed to with the buyer, the purchaser was unwilling to conclude the purchase once the presence or absence of gophers could not be determined. This supports a conclusion that the governmental restrictions imposed to protect pocket gophers, including the limited time and limited opportunity within that time to obtain a government-conducted gopher habitat evaluation, have a negative effect on the value of petitioner's parcel.

The Assessor did not appear at hearing. In other hearings on parcels associated with pocket gophers and their habitat, the Assessor has asserted that in order to prevail the landowner must apply for a permit and pay the fee and then be refused a permit before the Assessor can reduce the valuation assessment. The Assessor has stated the reason for its position is, in part, that appraisers are not habitat biologists.

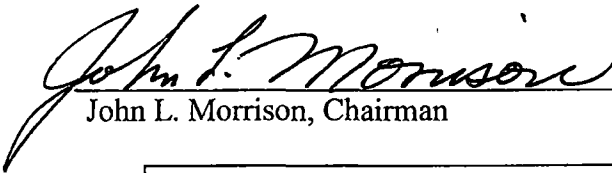
The Assessor's position ignores the fact that most parcels are not for sale or being readied for development on the first of January each year. See n. 5, supra. This case is an example where even though a taxpayer wished to sell and a developer attempted to purchase a parcel for development, the governmental restrictions imposed to protect pocket gophers, including the limited time and limited opportunity within that time to obtain a government-conducted gopher habitat evaluation, make such transactions risky or, as in this case, make such purchases end in failure.

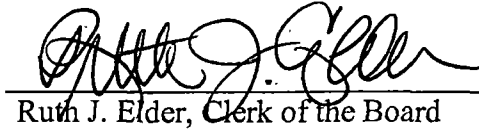
⁵ Most properties valued by the Assessor are not for sale so nearly every assessment valuation involves a hypothetical seller. It is for this reason that an owner's plans, or lack of plans, for their real property are not part of the calculation of assessed value.

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Accordingly, based on the clear, cogent, and convincing evidence that no development could possibly have been initiated on January 1, 2015, the BOE overrules the Assessor and reduces the value of the parcel to \$92,000.

Dated this 28th day of April, 2016


John L. Morrison, Chairman


Ruth J. Elder, Clerk of the Board

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