

Order of the Thurston County Board of Equalization

Property Owner: DENNIS DALY

Parcel Number(s): 37000002602

Assessment Year: 2017

Petition Number: 17-0459

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	\$ 341,400
<input checked="" type="checkbox"/> Improvements	\$ 0
<input type="checkbox"/> Minerals	\$
<input type="checkbox"/> Personal Property	\$
TOTAL:	\$ 341,400

BOE True and Fair Value Determination

<input checked="" type="checkbox"/> Land	\$ 74,500
<input checked="" type="checkbox"/> Improvements	\$ 0
<input type="checkbox"/> Minerals	\$
<input type="checkbox"/> Personal Property	\$
TOTAL:	\$ 74,500

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 Petitioner revised his estimate value to \$40,234 at the hearing. The Petitioner testified that: mazama pocket gophers are on site; the Assessor's adjustment for the pocket gophers is inadequate; the Assessor's comparable sales are not similar to the subject property; the subject property is worthless to the Petitioner at this time; the City of Tumwater will not permit the Petitioner to use the property for recreational vehicle storage or for small warehouses without fire sprinklers; and the bid to bring the water main to the subject property is \$130,570. The Petitioner shared concerns about the amount of the assessment increase. The Board does not consider the amount of assessment increase in determining the true and fair value of the subject property as of January 1, 2017.

The Assessor recommended a reduction in the valuation to \$198,300. The Board finds that the reasons for the recommended reduction are not manifest error corrections pursuant to RCW 84.48.065(1)(a). The Board finds that the standard of review is reduced from clear, cogent, and convincing evidence to the preponderance of the evidence due to the Assessor's recommended reduction. The Assessor provided a market-adjusted cost approach and comparable sales in support of the recommended value. The Assessor's Representative testified that: the Petitioner's bid for the water line does not follow the City's proposal; the late comers fee allows developers to recover the costs from other properties that may benefit from the extension of the utility line; the Assessor's comparable sales with the most similar conditions range between \$1.53 per square foot and \$4.72 per square foot, and support the recommended value of \$2.69 per square foot for the subject property; the Petitioner's originally requested value of \$50,000 equates to \$0.68 per square foot and is not supported by the evidence; the Petitioner did not submit any comparable sales to support his requested value; the Petitioner did not submit mitigation costs for the pocket gopher; and properties with pocket gophers can be developed.

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,

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).

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.

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 Board sustains the Assessor’s valuation unless there is clear, cogent, and convincing evidence that the Assessor has erred. As previously noted, the Assessor’s recommendation to reduce the valuation has reduced the standard of review in this case to the preponderance of the evidence. 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.

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

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.

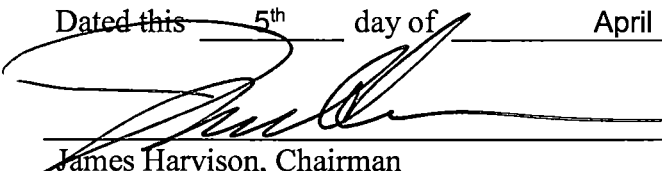
³ Most properties valued by the Assessor are not for sale so nearly every assessment valuation involves a hypothetical seller. It is for this reason that an owner’s plans, or lack of plans, for their real property are not part of the calculation of assessed value.

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.

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.

The Board concludes that the Petitioner provided the preponderance of the evidence to warrant a further reduction in the valuation, though not to the extent requested by the Petitioner.

Dated this 5th day of April, 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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