

Order of the Thurston County Board of Equalization

Property Owner: CARL TEITGE & LEANNA LONG

Assessment Year 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
17-0543	13632110303	38,000	0	38,000	20,000	0	20,000
17-0544	13632110304	38,000	0	38,000	10,000	0	10,000
17-0545	13632110401	78,000	76,100	154,100	35,000	30,000	65,000
17-0546	13632110402	38,300	0	38,300	10,000	0	10,000
17-0547	13632110801	37,900	0	37,900	15,000	0	15,000
17-0548	13632110802	37,900	0	37,900	10,000	0	10,000
17-0549	13632110901	37,900	0	37,900	20,000	0	20,000
17-0550	13632110902	38,100	0	38,100	10,000	0	10,000

This decision is based on our finding that: The Board overrules the Assessor's determination of value and adopts the Petitioner's requested 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 notes with concern that the Washington State Board of Tax Appeals (BTA) held hearings on appeals from the 2011 through 2014 assessment years in September 2017, but the BTA has not yet issued Decisions regarding these appeals. This Board delayed this hearing along with the hearing on the 2016 assessment year petitions in the hope that the BTA's Decisions would be available to the Board and the Parties prior to the hearings. While these BTA appeals involve years prior to the Federal listing of the pocket gopher in April 2014, it would have benefitted the Board and the Parties to have had the BTA's Decisions prior to this hearing.

The Board received testimony from both the Petitioner, Carl Teitge, and the Assessor's Representative, Jennifer McNeil. Both Parties submitted written materials.

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, 2012.¹ 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).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.

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 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 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 Petitioner testified that: Mazama pocket gophers were identified on the subject properties in 2008; the USFWS listed the Mazama pocket gophers as a threatened species in April 2014; Federal laws take precedent over County regulations; developers have advised the Petitioner that if a pocket gopher is present on any portion of a 40-acre parcel, the entire parcel is impacted by the restrictions; twenty-five percent of Thurston County has Mazama pocket gopher soils; the presence of the pocket gophers creates a stigma on the property; and disclosure about the pocket gophers would be required prior to any sale.

The Petitioner further testified that the USFWS requires property examination, and if pocket gophers are present, then the development process essentially stops. He stated that USFWS requires that either Thurston County have a Habitat Conservation Plan (HCP) or the owner have their own HCP prior to development. He stated that Thurston County does not yet have its HCP. The Petitioner testified that the HCP process is lengthy, a year or more. He reported that the USFWS advised him to wait for Thurston County's HCP, which would be faster than if he were to submit his own HCP.

The Petitioner testified that mitigation is required for the HCP. He stated that Thurston County did not have a mitigation bank in 2017. The Petitioner testified that Mazama Meadows is approximately 120 acres of potential mitigation land at Old Highway 99 and 183rd that could have from 79 to 200 mitigation units. He testified that it is still unclear what a "unit" is. The Petitioner testified that Kaufman Brothers was selling six mitigation credits for \$60,000 each as a bundle or \$70,000 individually. He testified that the builders at The Preserve neighborhood near the airport gave up one acre for each acre of development for mitigation.

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 Petitioner testified that when he met with USFWS staff in April or May 2017, he was informed that nothing could be done without mitigation. He testified that most of the pocket gophers on the subject properties are along Littlerock Road. The Petitioner offered the 20 acres in the front portion of the property as mitigation. He testified that USFWS informed him that his land was too small for the mitigation bank, as they want a minimum size of 50 acres. The Petitioner explained that funds to maintain the mitigation property in perpetuity could be \$500,000. He stated that he only mows the front 20 acres in the front to reduce the fire danger, but he leaves the 20 acres in the back of the property alone.

The Petitioner testified that USFWS staff would not set an appointment to meet with him again until 2019. He stated that there is no guarantee that his plan for the property will be accepted by USFWS. The Petitioner stated that it might not be financially feasible to obtain the required mitigation for his properties and that the Petitioners will likely lose their \$1.2 million investment in the subject properties. He contends that the properties are worthless.

The Petitioner testified that three site visits must be conducted between June and October, at least one month apart. He notes that while his study was done in 2008, this does not mean that the pocket gophers have since disappeared. The Petitioner testified that he has recently visited the properties with two experts and assures the Board that the pocket gophers are still there. The Petitioner referred to the 2008 map, which shows the circles from the Washington State Department of Fish and Wildlife. He explained that there is nowhere to develop the property and no buffer to work with.

The Petitioner testified that the Assessor proposes that he can obtain a reasonable use exception, which would permit him to build on the properties. He explained that the minimum 5,000 square feet would be less than the area required for the roads, septic systems, and utilities, so it would not be feasible. He contends that the reasonable use exception process does not trump USFWS regulations for the pocket gophers. The Petitioner contends that the subject properties are not at all like flood zone properties, as the Assessor suggests, since there are building regulations to work with for flood zone properties and mitigation is possible. In his rebuttal, the Petitioner testified that: the County's process does not override Federal regulations regarding the penalties for killing a pocket gopher; the reasonable use exception process is expensive; there is no evidence that the reasonable use exception has been approved for the Mazama pocket gopher; it is unreasonable to require the Petitioner to expend funds each year to prove that the property is still unbuildable; no mitigation process is available; and the Olympia Master Builders case showed that the USFWS has the final say on these issues, not Thurston County.

The Petitioner testified that the development costs for the subject parcels are prohibitive. He contends that the only way to make the project work would be to develop all the lots together at once. He reviewed the development costs: \$95,000 for roads, \$70,000 for Puget Sound Energy, and \$140,000 for Rochester Water System, for a total of \$305,000.

The Petitioner reviewed his comparable sales and the Assessor's comparable sales. He testified that the Assessor's sale on Klamath involved two half-acre lots that sold for a total of \$64,000 on January 24, 2017. He explained that: Larry Weaver bought the property after two site visits were conducted; Mazama pocket gophers were located on the third site visit; and Mr. Weaver purchased the properties after the Mazama pocket gophers were found due to a significant, non-refundable earnest money deposit that was required.

The Petitioner testified that the Kenworth property was part of a 19-lot subdivision called the Log Yard. He explained that this property was the burrow lot, or pit, and that no pocket gophers would be present there due to the compacted gravel on the site.

The Petitioner testified about the specific costs to develop each of the lots. He clarified that this presumes that the lots were buildable as of the assessment date, which they were not. The Petitioner provided the following testimony regarding the home on parcel number 13632110401: only the area that is currently developed can be used; the roof needs replacement; the sheeting is likely in need of replacement; the hot water does not function; sewage is piling up; and the prior tenants left \$10,000 of trash and abandoned vehicles on the property.

The Assessor provided a market-adjusted Cost Approach and a Neighborhood Sales Listing in support of the current assessed value. The Assessor reduced the 2017 assessments of the undeveloped lots by a factor of 50 percent for Prairie Habitat.

The Assessor's Representative testified that, according to Thurston County Community Planning and Economic Development, the critical area gopher review process includes a third option in addition to Thurston County's HCP or the owner's HCP: a reasonable use exception. She testified that that she has seen this option utilized by other property owners. She explained that the property owner might be able to set aside a mitigation area onsite and fence it off. The Assessor's Representative testified that the cost for a reasonable use exception review for residential properties of 5 acres or less is \$1,128 and that the time involved in the process is approximately one year. In her rebuttal, the Assessor's Representative testified that there are options other than Thurston County's HCP.

The Assessor's Representative testified that the presence of pocket gophers does not necessarily prohibit development. She stated that a Thurston County press release mentioned a dozen projects started in 2017.

The Assessor's Representative testified that since 2011, the Assessor has recognized the Petitioner's gopher study of 2008 and applied a 50 percent reduction. She stated that the Assessor has not received an updated map since that time.

The Assessor's Representative testified that in October 2017, Resource Stewardship provided copies of "likely take" letters to the Assessor's Office. She stated that 40 additional parcels received adjustments for Mazama pocket gophers. She stated that approximately 60 additional parcels are being reviewed for the 2019 assessment year.

The Assessor's Representative reviewed her comparable sales. She testified that the Klamath sale was listed by a realtor who subsequently purchased the lots. She noted that multiple site visits were performed and a likely take letter was issued prior to the purchase. The Assessor's Representative testified that the Kenworth sale had a hold letter in June 2017, that was subsequently released by USFWS in August 2017 after determining that a take was unlikely.

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The Assessor's Representative testified that the Petitioner has not provided documentation to demonstrate that the subject properties are unbuildable. In her rebuttal, the Assessor's Representative testified that the Assessor's Office has never required the Petitioner or any other property owner to provide documentation of a property being unbuildable on an annual basis. She clarified that additional site-specific documentation would be required to receive any further reduction.

The Assessor's Representative reviewed the Petitioner's comparable sales. She testified that: comparable sale 1 received a good to go letter; she was unable to locate Mazama pocket gopher information for comparable sales 2, 3, and 6; comparable sale 4 received a good to go letter on September 21, 2017, after the sale; comparable sale 5 sold on June 16, 2017, and a gopher review hold letter was issued in June 2018; and comparable sale 7 sold for \$24,000 in May 2017, received a good to go letter on September 7, 2017, was subsequently built on, and sold as an improved property in June 2018.

The Assessor's Representative clarified that the subject properties border Littlerock Road and when the Petitioner referred to roads, this means the long driveways used to access the parcels in the back. She explained that the legal descriptions of the back lots include the long access driveways. She stated that the Assessor views these as individual parcels.

The Board finds that the petition records for the 2012 through 2017 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.

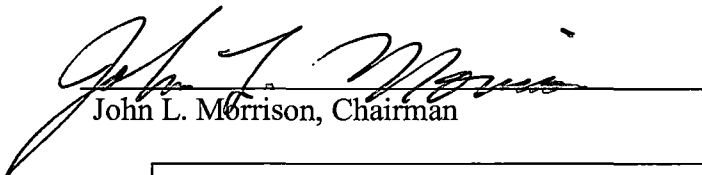
The Assessor has a standard downward adjustment of seventy percent for land that is unbuildable. The BOE concludes that a willing buyer would have to have concluded on January 1, 2017 that the parcels were unbuildable because pocket gophers had been sighted on the property and because there had been no gopher habitat evaluation of the parcels on or about January 1, 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 parcels as listed at the top of this order.

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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 8th day of November, 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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