

Order of the Thurston County Board of Equalization

Property Owner: DENNIS DALY

Parcel Number(s): 37000002602

Assessment Year: 2018

Petition Number: 18-0185

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	\$ <u>152,300</u>
<input checked="" type="checkbox"/> Improvements	\$ <u>0</u>
<input type="checkbox"/> Minerals	\$ _____
<input type="checkbox"/> Personal Property	\$ _____
TOTAL:	\$ <u>152,300</u>

BOE True and Fair Value Determination

<input checked="" type="checkbox"/> Land	\$ <u>63,500</u>
<input checked="" type="checkbox"/> Improvements	\$ <u>0</u>
<input type="checkbox"/> Minerals	\$ _____
<input type="checkbox"/> Personal Property	\$ _____
TOTAL:	\$ <u>63,500</u>

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.

Petitioner Dennis Daly participated in the hearing. The Petitioner revised his requested value to \$53,879 at the hearing. The Petitioner shared concerns about the impact of the Mazama pocket gopher on the potential development of the subject property. The Petitioner testified that: realtors will not list the property for sale; he listed the property for sale on Craigslist; he received an unsolicited offer from Simple Land Sales of California for \$25,315.79 in July 2019; the Assessor's adjustments are arbitrary; and the Assessor's comparable sales now have buildings.

The Assessor's Representative did not participate in the hearing, but provided a written Response including a market-adjusted cost approach and a sales comparison approach in support of the current assessed value.

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.

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

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.*

accuracy of the habitat evaluation.

The Board must determine what a willing buyer have offered a willing seller to purchase the subject property at issue on January 1, 2018. 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, 2018, 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, 2018, 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. 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, 2018, that the parcel was unbuildable because there had been no gopher habitat evaluation of the parcel on or about January 1, 2018.

Accordingly, based on the clear, cogent, and convincing evidence that no development could have been initiated on January 1, 2018, the BOE overrules the Assessor and reduces the value.

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.

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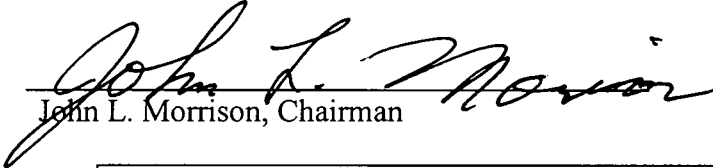
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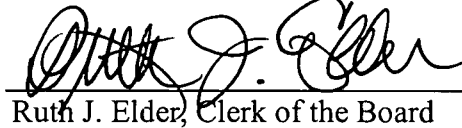
³ Most properties valued by the Assessor are not for sale so nearly every assessment valuation involves a hypothetical seller. It is for this reason that an owner's plans, or lack of plans, for their real property are not part of the calculation of assessed value.

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The Board finds that the Assessor's comparable sales 1 through 4 have different zoning than the subject property. The Board finds that additional consideration is warranted for the presence of the Mazama pocket gopher on the subject property. The Board finds that there was no way for the Petitioner to mitigate the pocket gophers as of January 1, 2018. The Board concludes that the Petitioner provided clear, cogent, and convincing evidence to overcome the Assessor's presumption of correctness and to warrant a reduction in the valuation. However, the Board finds that the evidence does not support a reduction to the extent requested by the Petitioner.

Dated this 15th day of August, 2019


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 formal or informal 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 appeal forms are available from either your county assessor or the State Board of Tax Appeals.

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