

# Order of the Thurston County Board of Equalization

Property Owners: DONALD AND PATRICIA INGERSOLL

Assessment Year: 2018

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
18-0035	51120003300	99,800	0	99,800	30,000	0	30,000
18-0036	51120003400	99,200	0	99,200	30,000	0	30,000
18-0037	51120003500	91,100	0	91,100	27,000	0	27,000

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 properties. The Petitioners did not participate in the hearing. On Petition, the Petitioners shared concerns about the impacts of the Mazama pocket gopher on the properties.

The Washington Department of Fish and Wildlife (WDFW) listed the Mazama pocket gopher as a state threatened species prior to January 1, 2012.<sup>1</sup> 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).<sup>2</sup>

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, 2018, 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, 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 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.

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, 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.

<sup>1</sup> 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).

<sup>2</sup> "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.*

On January 1, 2018, a hypothetical,<sup>3</sup> 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, 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 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 Assessor was represented by Teresa Hoyer, Commercial Appraiser, who provided a written Response including a market-adjusted cost approach and a sales comparison approach in support of the recommended reduction. The Assessor's Representative recommended a reduction for the land and total value of each of the parcels as follows: Petition 18-0035, Parcel Number 51120003300 to \$49,900; Petition 18-0036, Parcel Number 51120003400 to \$49,600; and Petition 18-0037, Parcel Number 51120003500 to \$45,600.

The Board finds that the recommended reductions are not a result of manifest error corrections pursuant to Revised Code of Washington 84.48.065(1)(a). Due to the recommended reduction the standard of review is reduced from clear, cogent, and convincing to the preponderance of the evidence.

Ms. Hoyer testified that the Petitioners lost vesting on their plat in October 2017, so an adjustment of 50 percent was added for the 2018 assessment year. She testified that: the Glenmore Village across the street was allowed to build out due to vesting, and while vesting does not fully bypass the US Fish and Wildlife Service requirements, but Glenmore Village was permitted to proceed with development.

/

/

/

/

/

/

/

/

/

/

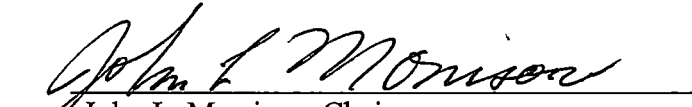
---

<sup>3</sup> 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.

Thurston County Board of Equalization  
Petition Numbers 18-0035 through 18-0037  
Donald and Patricia Ingersoll  
Page Three of Three

The Board finds the Petitioners' arguments and analysis to be convincing. The Board finds the subject property to be unbuildable. The Board concludes that the Petitioners provided the preponderance of the evidence sufficient to overcome the Assessor's presumption of correctness and to warrant a further reduction in the valuation.

Dated this 27<sup>th</sup> day of March, 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 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](http://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.

To ask about the availability of this publication in an alternate format for the visually impaired, please call 1-800-647-7706. Teletype (TTY) users use the Washington Relay Service by calling 711. For tax assistance, call (360) 534-1400.

**Distribution: • Assessor • Petitioner • BOE File**

REV 64 0058 (6/9/14)

**SHIPPED APR 30 2019**