

BEFORE THE BOARD OF TAX APPEALS  
STATE OF WASHINGTON

HENRY CONE and	)	
RUBY CONE,	)	
	)	Docket No. 55169
Appellants,	)	
	)	RE: Property Tax Appeal
v.	)	
	)	PROPOSED DECISION
JERRY PORTER,	)	
Pacific County Assessor,	)	
	)	
Respondent.	)	

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This matter came before Robert Barnes, Tax Referee, presiding for the Board of Tax Appeals (Board), for an informal hearing on July 18, 2000. Appellants, Henry and Ruby Cone (Owners), appeared on their own behalf together with Donna Dahlstrom, Guest Housing Manager. Respondent, Jerry Porter, Pacific County Assessor (Assessor), appeared on his own behalf.

This Board heard the testimony, reviewed the evidence, and considered the arguments made on behalf of both parties. This Board now makes its decision as follows:

VALUATION FOR THE 1999 ASSESSMENT YEAR

<u>PARCEL NO.</u>	<u>BOARD OF EQUALIZATION VALUATION</u>	<u>BOARD OF TAX APPEALS VALUATION</u>
121116018	Land: \$ 25,000	Land: \$ 25,000
	<u>Impr: \$114,000</u>	<u>Impr: \$112,100</u>
	Total: \$139,000	Total: \$137,100

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ISSUE

The issue in this appeal is the January 1, 1999, market value of new construction on property located at 31507 Sandridge Road, Ocean Park, Washington.

FACTS AND CONTENTIONS

The subject property is a 4.05-acre parcel of land. Improvements include a 1,416 square foot one-story, wood-frame,

single-family residence built in 1995 and a 1,440 square foot pole shop built in 1994. For the 1999 assessment year, the property also has a new 24 by 28 foot wood-frame building.

The Assessor valued the land and buildings at a total of \$139,000. The Owners appealed this value to the Pacific County Board of Equalization (County Board), which sustained the Assessor's value. The Owners now appeal to this Board, contending the market value is \$119,000: \$12,000 for land and \$107,000 for improvements.

The Owners state that they disagree with the Assessor's new construction value--which totals \$8,100--for a three-sided metal building. They submit documentation that illustrates they constructed the building, which adjoins the existing shop building, for \$5,420--including \$500 assigned for labor. In addition to their actual cost to construct the new outbuilding, the Owners submit three other estimates to support of their contention the Assessor overvalues the 1999 addition. These estimates indicate local contractors could construct a similar building at prices that range from \$7.73 to \$12.94 per square foot of building area. The Owners stress their cost to construct--including labor--was \$8.07 per square foot of building area, while the Assessor's value equals \$12.05 per square foot of building area.

In support of a reduced value, the Owners present 10 sales of residential properties. Of these 10 sales, nine contain enough information for this Board to review.<sup>1</sup> The sales occurred between October 1997 and July 2000 for sale prices ranging from \$83,000 to \$120,000. The residences, built between 1950 and 1998, have between 900 and 1,704 square feet of finished living area--the largest home includes 468 square feet of finished basement living area. This indicates sale prices between \$61 and \$110 per square foot of living area. The properties have between 17,360 square feet and 8.8 acres of land area. The Owners declare these sales, which--except for one sale--are in the flood plain, indicate that values on the Long Beach Peninsula are declining.

The Owners contend that an infestation of gorse<sup>2</sup> adversely impacts their property's value. They include correspondence out-

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<sup>1</sup> The remaining sale does not include the date of sale or the size of the manufactured home that sold with the property. For these reasons, this Board does not consider the sale in our analysis.

<sup>2</sup> The State Noxious Weed Control Board lists gorse as a class B non-designate noxious weed in Pacific County. See WAC 16-750-011(18).

lining the problems that result from infestations of this noxious weed. They suggest that until the Pacific County Noxious Weed Control Board suppresses the outbreak of gorse, their assessed value should be reduced because of this problem.

The Owners note that their property is a rural residence located in a flood zone. Because of "permanent, standing water" the Owners maintain that of their 4.05 acres only one acre is usable--because the remaining acres are underwater. The Owners cite a Pacific County ordinance that identifies areas on the Long Beach Peninsula that experience frequent flooding. They continue that Pacific County recognizes this problem and the Assessor reduced the value of a property on the Peninsula because of its location within the boundaries of the designated frequently flooded area. The Owners allege their property should also have a reduced value because they are within the designated frequently flooded area.<sup>3</sup>

The Owners contend that the Assessor's comparable sales are invalid and result in an "artificially high" value. The Owners maintain their sales result in a "more accurate" value. The Owners conclude that their actual cost to construct the new outbuilding should set its value. As additional support, the Owners include photographs of standing water, gorse, and the new building during several phases of its construction.

The Assessor stresses that the new construction value added in 1999 impacts only the new metal outbuilding. He emphasizes that the appraisal date for the subject property's other improvements and land is January 1, 1996. He notes that state regulations do not allow him to revalue property outside the authorized revaluation cycle. Thus, even though the subject may be located within the boundaries of a recognized frequently flooded area, by law he cannot change the assessed value of the subject property because the frequently flooded area was not established as of January 1, 1996. Additionally, he declares his 1996 value must be established according to evidence that was available on or near January 1, 1996, not recent sales--such as the October 1997 through July 2000 sales submitted by the Owners.

The Assessor stresses that he adjusts values based on market evidence. He explains that the property the Owners refer to as having its value reduced for being within the boundaries of Pacific County's frequently flooded area was designated on the map when the Assessor revalued this property, which occurred in

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<sup>3</sup> The Owners maintain they are within the boundaries of the designated frequently flooded area even though they have been unable to obtain a copy of the map that delineates the boundaries.

an assessment year after the valuation on the subject property. He notes that when he valued the Owners' property for the 1996 revaluation year, Pacific County did not have a map or an ordinance designating frequently flooded areas. The Assessor adds that the Owners are not even sure their property is within the boundaries of the designated frequently flooded area. He states he will take the location--if he determines the subject is actually located within the boundaries of the designated area--into consideration when he reappraises the subject property in its next revaluation cycle.

The Assessor states that when he calculates new construction--using the cost approach to value--he includes contractor labor prevailing rates. He continues that at times, actual costs to construct may not include market based labor costs or other indirect costs.

The Assessor maintains that his value on the subject land of \$25,000 reflects the value of a single building site and not necessarily a value on a per acre basis. The Assessor stresses the 1996 market supports a site value of \$25,000. The Assessor states that his sales in Sunset Sands subdivision have certain amenities that the subject does not enjoy--such as cable television. However, the Assessor declares his sales, which occurred between May 1994 and May 1995, support the 1996 assessed value.<sup>4</sup> He also submits land sales that support his \$25,000 site value for the subject land.

In rebuttal, the Owners stress that their new construction consists of a three-sided building with no access door between it and the pre-existing structure.

#### ANALYSIS AND CONCLUSIONS

This Board, giving full opportunity for all arguments and having considered all testimony and documentary evidence submitted by the parties in support of their respective positions, hereby enters the following analysis and conclusions:

The value of property for purposes of ad valorem taxation is "market value", that is: "the amount of money which a purchaser willing, but not obliged, to buy would pay an owner willing, but not obligated, to sell, taking into consideration all uses to which the property is adapted and might in reason be applied." Mason County Overtaxed, Inc. v. Mason County, 62 Wn.2d 677, 683-

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<sup>4</sup> The Assessor says the style, age, and condition of the residences in Sunset Sands makes them comparable to the subject property.

84, 384 P.2d 352 (1963); accord Carkonen v. Williams, 76 Wn.2d 617, 458 P.2d 280 (1969).

The value placed on the property by the assessor is presumed to be correct, and can only be overcome by presentation of clear, cogent, and convincing evidence that the value is erroneous. RCW 84.40.0301; Weyerhaeuser Co. v. Easter, 126 Wn.2d 370, 894 P.2d 1290 (1995). "Clear, cogent and convincing" evidence means a quantum of proof which is less than beyond a reasonable doubt, but more than a mere preponderance of the evidence. It is the quantum of evidence necessary to convince the trier of fact that the ultimate fact in issue is "highly probable". In re Sego, 82 Wn.2d 736, 513 P.2d 831 (1973).

This Board's goal in its hearings is the acquisition of sufficient, accurate evidence to support a determination of true and fair value as defined by statute (RCW 84.40.030) and the Washington Administrative Code (WAC 458-12-301).

RCW 84.40.030 states that property must be valued at 100 percent of its true and fair value. The appraisal shall consider the extent to which the sale of similar properties represent the general effective market demand for property of such type in the geographical area in which such property is located. The Assessor is afforded considerable discretion to determine the methodology employed to arrive at market value.

The Legislature has set up an orderly system for revaluation and appeal. . . . To improve assessment equity in the appeal process, the Department has adopted a set of rules, Chapter 458-14 WAC. One of these rules, WAC 458-14-046--working in conjunction with WAC 458-14-116--directs the county board of equalization to equalize properties according to values as of the first year of the revaluation cycle. In other words, the county board of equalization, when hearing appeals in mid-cycle, is to consider only evidence which establishes value as of the first year of the cycle. The Attorney General has issued an opinion that county boards of equalization must equalize property that was not revalued during the current year on the basis of the market value of the revaluation year in which the property was originally valued. AGO 14 (1992). Although an Attorney General Opinion is not controlling on a court, it is entitled to considerable weight. Kaiser Aluminum and Chem. Corp. v. Department of Labor and Indus., 121 Wn.2d 776, 854 P.2d 611 (1993).

In light of the consistent pattern of court decisions, the Department's rules expressing its policy on mid-cycle appeals, and the Attorney General's Opinion, we decline to disrupt the orderly system for revaluation and appeal intended by the Legislature and effectively sanction mid-cycle revaluations. . . . Allowing the Owner to appeal in a "mid-cycle" year, based on evidence that does not reflect the first year of the cycle, provides them with an unfair advantage and destroys the uniformity and equality tenets embraced by the courts and this Board in Enyeart v. Ridder, BTA Dockets Nos. 36894 and 36895 (1990). . . . Properties of like character may not be subject to different levels of taxation. Inter Island Tel. Co., Inc., supra.

Rocky Brook Hydroelectric v. Westerman, BTA Docket No. 50450 (1998). From a review of the facts in this case (and the law and rules governing appeals filed with county boards of equalization) this Board determines that 1996 is the correct year for establishing the value of the subject land and buildings--except for the new construction which the Assessor properly values as of 1999.

Application of site value normally occurs when there are a number of similar parcels within an area. Though the parcels may vary in size, location, and amenities, potential purchasers view them as relatively equal and are willing to pay a certain amount for any parcel regardless of differences, especially in size, with the comparison parcels. The key is that the parcel provides a basic homesite as do the comparison lots. We find that even though the Owners' land has a significant portion that is exposed to standing water, they do have a usable building site and the Assessor values it as such.

We understand the Owners' arguments regarding the impact that the gorse infestation has on their property's value. However, without market evidence illustrating the direct impact this problem has on market value, we have no basis for reducing the subject's value. Additionally, if the entire Peninsula is infested with gorse sales of Peninsula property will include any impact gorse has on market value.

After a thorough review of the sales presented to us, we find eight of the Owners' sales occurred more than 30 months after the valuation date. We find the factors influencing values, at the time of these sales, were not reasonably foreseeable on the valuation date. Therefore, while we consider these sales in our decision we place no weight on their sale prices.

We find the Assessor's sales are the best indicators of 1996 value because they occurred before the valuation date. However, this Board also relies on the sale presented by the Owners that occurred 22 months after the assessment date. Although its sale price is not reasonably foreseeable on the valuation date, it offers support for the Assessor's value. This property, located on a 1.06-acre site with improvements that were built in 1960, sold for \$95 per square foot of living area. This indicates a rounded value for the subject of \$135,000. We find this supports the Assessor's 1996 value of \$130,900.

We find the Assessor acted properly in placing the value of new construction on the assessment roll for the 1999 assessment year.<sup>5</sup> After thorough analysis, we find the Owners' actual cost to construct the new building is reliable. However, we conclude that in addition to the labor the Owners add to their actual costs--which equals more than 10 percent--other consideration must be given for contractor's overhead and profit. We look to the Residential Cost Handbook--published by Marshall & Swift, L.P.--to arrive at an adjustment rate. This publication indicates that for average quality residential construction, typical contractor's overhead and profit totals 12.4 percent, while labor equals 10.6 percent. See Marshall & Swift, L.P., Residential Cost Handbook D-4 (1998). When adjusted for this, the Owners' rounded cost to construct the new building totals \$6,200. We find, that because the structure is a three-sided building this adjusted cost indicates a reasonable value for the Owners' 1999 new construction. When this \$6,200 and the original value of \$130,900 are combined, the total value for the 1999 assessment year equals \$137,100.

#### DECISION

This Board finds the Owners have presented the clear, cogent, and convincing evidence necessary to overcome the presumptive correctness of the value of the new construction established by the Assessor for the 1999 assessment year. In accordance with RCW 84.08.130, this Board sets aside the decision of the Pacific County Board of Equalization and orders the value shown on page one of this decision for the 1999 assessment year. This order has effect up to the end of the assessment cycle. However, the Pacific County Assessor may revalue the subject property under the provisions of RCW 36.21.080 (new construction).

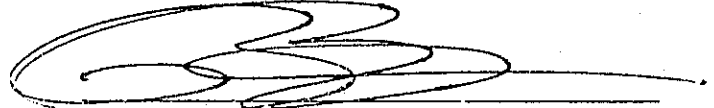
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<sup>5</sup> RCW 36.21.080 authorizes the Assessor to "place any property that is increased in value due to construction or alteration . . . on the assessment rolls for the purposes of tax levy up to August 31st of each year."

The Pacific County Assessor and Treasurer are hereby directed that the assessment and tax rolls of Pacific County are to accord with and give full effect to the provisions of this decision.

Dated this 16 day of October, 2000.

BOARD OF TAX APPEALS



ROBERT BARNES, Tax Referee

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Pursuant to WAC 456-10-730, you may file an exception to this Proposed Decision. You must file the letter of exception with the Board of Tax Appeals within twenty calendar days of the date of mailing of the proposed decision. You must also serve a copy on all other parties. The letter of exception should be brief and must clearly specify why the Proposed Decision did not properly consider the evidence or that there was an omission of certain pertinent facts. The other parties may submit a reply to the exception within ten business days. The Board will then consider the matter and issue a Final Decision. There is no reconsideration from the Board's Final Decision. If exceptions are not filed, the proposed decision becomes the Board's Final Decision.