

**BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO**

1313 Sherman Street, Room 315
Denver, Colorado 80203

**Docket No.: 62026,
62027 & 62028**

Petitioner:

**MAURICE O. REIBER
EARTH ENERGY RESOURCES, LLC
PARK LAKE RESOURCES LLC,**

v.

Respondent:

PARK COUNTY BOARD OF EQUALIZATION.

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on November 6, 2013, Diane M. DeVries and Gregg Near presiding. Petitioners were represented by John Reiber, *pro se*. Respondent was represented by Marcus McAskin, Esq. Petitioners are protesting the 2013 actual value of the subject properties.

The parties agreed to consolidate Docket Numbers 62026, 62027 & 62028 for a single hearing.

Subject properties are described as follows:

**Docket Number 62026
Mammoth—100%
Park County Schedule No. 90422**

**Docket Number 62027
Little Helen—33.3%
Park County Schedule No. 91046**

**Buckskin Placer—25%
Park County Schedule No. 91799**

Docket Number 62028

Ogden—50%
Park County Schedule No. 90339

Rough & Ready—100%
Park County Schedule No. 90508

Mineral Ranch #1 & #2—100%
Park County Schedule No. 91146

Pratt/Whipple—50%
Park County Schedule No. 91813

The subject properties consist of seven non-producing patented mining claims located in various mining districts within Economic Area 04 as defined by Respondent Park County. All of the claims were purchased by Petitioners with the intent of mining.

Petitioners are requesting the following actual values for the subject properties for tax year 2013:

DOCKET #	CLAIM	SIZE (ACRES)	OWNERSHIP	VALUE
62026	Mammoth	8.99	100%	\$809
62027	Little Helen	10.33	33.3%	\$310
62027	Buckskin Placer	8.0	25%	\$180
62028	Ogden	10.31	50%	\$465
62028	Rough & Ready	10.33	100%	\$930
62028	Mineral Ranch #1 & #2	6.925	100%	\$623
62028	Pratt/Whipple	12.91	50%	\$581
TOTAL:				\$3,898

Respondent determined a value of \$159,741 for the subject properties for tax year 2013 but is recommending a reduction to \$104,921.

Petitioners consider Park County’s Land Use Regulation prohibiting issuance of a building permit on a property located above 11,500 feet in elevation to be arbitrary. Mr. Reiber expressed concern that Respondent inappropriately identified Petitioners’ property as “vacant land” which resulted in a higher value opinion. Mr. Reiber presented an equalization argument claiming Petitioners are being treated unfairly. Petitioners’ exhibit “B” illustrated the valuation of Schedule Number 90373, the Reservoir Placer, to be \$69.14 per acre for the 2013 tax year while their property located in the same area, the Whipple Placer, has a value of \$14,749 per acre. Petitioners claim Respondent has not fully considered the following physical features of the above claims:

1. The Mammoth has a water diversion tunnel under the surface.
2. The Rough & Ready has terrain that is too steep for construction.
3. The Little Helen is contaminated by radioactivity.

4. The Mineral Ranch is steep and is also contaminated by radioactivity.
5. Ogden is located west of Montgomery Reservoir; land nearby is valued at \$69.14 per acre.
6. The Pratt/Whipple has 473' of an existing mine tunnel, a mine dump, subsidence and geologic hazards. This claim is also in the same location as the \$69.14 per acre property. The property is not a portion of the Placer Valley Subdivision and was specifically excluded from that development.

Petitioners have purchased over 175 similar properties in Park County and none are being used or presented by Respondent as determinative of value. Mr. Reiber stated Petitioners' sole intent in the purchase of these claims was for mining and that the appropriate value should be based upon the mining use for the property. Petitioners also consider it unreasonable that Respondent's appraiser considered transactions that took place up to five years prior to the assessment date.

Petitioners are requesting a 2013 actual value of \$3,898 for the subject properties.

Respondent's witness, Ms. Kristy M. Gould, a Certified General Appraiser, presented an aggregate value of \$104,921 using the market approach. Ms. Gould presented six comparable sales ranging in sale price from \$6,000 to \$190,000.00 and in size from 4.98 to 17.56 acres. Two additional sales were referenced in Ms. Gould's report, the Pilot, and Park County Schedule Number 91849, referencing the Gold Star Placer and Daisy Millsite.

The subject and the comparable sales are all Non-Producing Patented Mining claims. The assessor has classified these properties based upon their use and the Land Use Regulations in Park County. Property above 11,500 feet in elevation is not eligible for a building permit.

Ms. Gould commented upon the subject properties. The Mammoth is influenced by a water diversion tunnel under the surface; the Little Helen is located below 11,500 feet; the Buckskin Placer is nearby the Buckskin Cemetery and also close to the Town of Alma; the Ogden is below 11,500 feet and the value was reduced by the CBOE; the Rough & Ready is below 11,500 feet; the Mineral Ranch is partially above 11,500 feet but a building permit is issued to a property if any portion of a lot is below that elevation; the Pratt/Whipple is zoned residential and is surrounded by other residences.

The sales presented were adjusted downward at 0.55% per month to the valuation date. Additional adjustments were applied to the subject properties for factors such as size, access, topography, comparability and live water as appropriate.

Ms. Gould indicated there were insufficient sales for consideration during the applicable 18-month base period and research was extended to the allowable 5-year time frame.

After determining the appropriate adjustments for the value factors noted above, the adjustments were applied to the sales relied upon for each of Petitioners' properties under consideration. Ms. Gould concluded to the following:

CLAIM	CBOE VALUE/ACRE
Mammoth	\$4,412
Little Helen	\$7,186
Buckskin Placer	\$15,320
Ogden	\$8,358
Rough & Ready	\$16,099
Mineral Ranch #1 & #2	\$16,101
Pratt/Whipple	\$92,265

The above values were upheld at the CBOE hearings. Ms. Gould indicated the values of two mining claims, the Mineral and the Pratt/Whipple were adjusted based upon preparation for the BAA hearing. The value opinion for Petitioners' 100% interest in the Mineral was reduced to \$9,150 and for Petitioners' 50% interest in the Pratt/Whipple to \$44,396.

Respondent determined a value of \$159,741 for the subject properties for tax year 2013 but is recommending a reduction to \$104,921.

Mr. Reiber again questioned why the Reservoir Placer is valued at only \$69.14 per acre while the nearby and very similar Pratt/Whipple parcel was valued at \$14,749 per acre. Mr. Reiber asked if the County's position on an 11,500 foot limit on development is a matter of law. Petitioner noted that elevation maps are not totally reliable and Respondent cannot be certain of exact locations. Petitioner objected to the use of the American Flag claim as a comparable sale because it has a single family home on the site. Mr. Reiber also noted Respondent has not physically visited each of the sites and therefore cannot fairly consider geologic hazards. Mr. Reiber again pointed out instances where the same property, jointly owned by Petitioners with outside parties, has a different value. Mr. Reiber also claimed that potential use of the subject property as residential is not appropriate since these properties are to be used for mining and nothing else.

Respondent dismissed the use of Petitioners' purchases because, with only one exception, the transactions involved tax sales and personal representative deeds and therefore non-arm's length agreements. The Reservoir Placer was taxed at a different rate because it was part of an active mining operation. Respondent also stated the County's GIS system has been improved recently and elevations are more accurate. Respondent dismissed Petitioners' claim that County's valuation is based on "vacant land" as Petitioners' basis for that claim was the written appraisal report done in the preceding tax period and the term "vacant land" was an error only in description and not classification.

The Board is not persuaded by Petitioners' claim the property must be valued only as mining land because that is the land's intended use. The value being sought in the process is "value in exchange" and not "value in use". The Board has no jurisdiction regarding the land use regulations of Park County. The Board also does not question the appropriateness of considering all of the so-called bundle of rights; to do otherwise would contradict the principle of market value.

The Board is also dissatisfied with the report and analysis produced by Respondent. The Board found the report provided to be replete with errors, mis-statements, inappropriate and unsupported adjustments; a couple of examples are offered for consideration:

ITEM 1: Page 26 represents the appraiser's adjustment grid as it relates to the Mammoth. At the bottom of the page the comments section contains the following statements:

- "Acreage-Median sales price per acre was \$5,994, paired sales of Comp #1 vs. Comp #3 \$27,000/5.03 acres = \$5,368/\$5,370 (rounded). Sale 1 has 5 acres and Sale 3 has 5.17 acres. The difference in sale price is \$16,500 prior to adjustment for market conditions and, more appropriately, it is \$15,114 when comparing "time adjusted" sale prices." *None of the comments match the data presented.*
- "Access is adjusted by comparison of "Pilot vs. Comp 3". *Pilot does not appear anywhere within Respondent's report.*
- "Topography & Live Water-Comp #1 vs. Comp #2 25,900 divided by 2 for Topo & Stream equally adjustment for each \$12,950. The difference between Sale 1 and Sale 2 is \$0.00 prior to adjustment for market conditions; \$1,238 after adjustment." *This comment and adjustment makes no sense.*
- "Comparability-#91849 vs. #91849 adjusted for time applied a 24% adjustment". *Not only does this comment reference a document nowhere to be found in the report—it makes absolutely no sense.*

The burden of proof is on Petitioners to show that Respondent's valuation is incorrect. *Board of Assessment Appeals v. Sampson*, 105 P.3d 916, 920 (Colo. App. 2002). Petitioners did not meet that burden. Petitioners provided an equalization argument and presented no arm's length transactions supporting their opinion of value. The Board is unable to consider Petitioners' equalization arguments. See *Arapahoe County BOE v. Podoll*, 935 P.2d 14 (Colo. 1997). Furthermore, Petitioners' non-arm length transactions are not representative of the market values. In addition, the Board was not presented with any evidence to support Petitioners' claim of radioactivity pollution and subsidence. The only valuation provided, however flawed, was from Respondent.

Respondent presented sufficient evidence to support the reduction of value of Mineral Ranch #1 & #2 claim to \$9,150 and Pratt/Whipple claim to \$44,396.

ORDER:

The Petition is granted in part and denied in part. The Park County Assessor is ordered to correct their records for the Mineral and the Pratt/Whipple. The Board upholds the CBOE values for the remainder of the claims.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation of the respondent county, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

Section 39-8-108(2), C.R.S.

DATED and MAILED this 27th day of November, 2013.



BOARD OF ASSESSMENT APPEALS

Gregg Near

Diane M. DeVries

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.

Milla Lischuk