

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>DUCOMMUN BUSINESS TRUST,</p> <p>v.</p> <p>Respondent:</p> <p>SUMMIT COUNTY BOARD OF EQUALIZATION.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Dennis L. Ducommun Address: Box 848 Fraser, CO 80442 Phone Number: (970) 726-5388 E-mail: Attorney Reg. No.:</p>	<p>Docket Number: 38632</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on January 29, 2002, Debra A. Baumbach and Mark R. Linné presiding. Petitioner, Dennis L. Ducommun, appeared pro se. Respondent was represented by Frank Celico, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**SEC 11 TWN 8 S RNG 78 W OF 6TH PM LEE GOSS MS #4210
(Summit County Schedule No. 2804076)**

Petitioner is protesting the 2001 actual value of the subject property, a 2.18-acre mining claim parcel in the southern most portion of Summit County that is known as the Lee Goss mine. The property is not presently a producing mine.

ISSUES:

Petitioner:

Petitioner contends that the subject, the Lee Goss mine, is not vacant land but, rather, is a non-producing mine. According to Colorado Revised Statutes, specifically CRS 39-1-103, mines such as the subject, whether producing or non-producing, are not to be considered vacant land under the statutory citations. The Petitioner believes that the subject property should be valued at \$50.00 per acre.

Respondent:

Respondent contends that the property is not a producing mine, and the assigned value is well supported by the comparable sales analysis. The property should be valued at \$872.00 per acre, or a total of \$1,900.00. Petitioner fails to recognize that the subject is vacant development land with transferable development rights (TDR). This is a highest and best use issue. The subject is in the Upper Blue Basin district, an area accepted by the planning commission in order to provide for the movement of density from sending to receiving areas. The current valuation represents an increase in value from the previous base period due to the adoption of the TDR program. Some of the Petitioner's comparable sales are from Park County that does not have a TDR program in place.

FINDINGS OF FACT:

1. Mr. Dennis Ducommun, Petitioner, presented the appeal on his own behalf.
2. Based on the market approach, Petitioner presented an indicated value of \$100.00 for the subject property.
3. The Petitioner testified that the subject is known as the Lee Goss mine, and is not vacant land but, rather, is a non-producing mine. Mr. Ducommun indicated that according to Colorado Revised Statutes, specifically CRS 39-1-103, mines such as the subject, whether producing or non-producing, are not to be considered vacant land under the statutory citations.
4. Petitioner presented general information on several comparable sales ranging in sales price from \$50.00 to \$90.00 per acre.
5. The witness testified that the Respondent has valued the land at \$50.00 per acre.
6. The witness testified that the classification of the property as either vacant land or a non-producing mine is a critical issue.
7. In response to cross-examination, the Petitioner testified that he understands that Summit County has a transferable development rights program. He was uncertain if Park County had such a program or not.

8. The witness testified that he believes that the highest and best use of the subject is as a mining operation.

9. In response to questions from the Board, the Petitioner testified that the county official responsible for the TDR program indicated that there was no interest in acquiring TDR's from the area in which the subject property is located.

10. The witness testified that no income is produced by the subject property.

11. In response to questions from the Board, Mr. Ducommun testified that he spoke with Todd Robertson from Summit County, who indicated that the county was not interested in TDR from the subject area. If they did acquire TDR's, they would not sever the mineral rights.

12. Petitioner's witness, Mr. Ben Wright, testified that he was the owner of the Magnolia and Prospect mines, which are located adjacent to the Lee Goss mine.

13. The witness testified that several hundreds of thousands of dollars had been spent to evaluate the production capability of mines in proximity to the subject.

14. The witness testified that Colorado Revised Statutes require that minerals in place were not to be considered in the valuation of real property.

15. Mr. Wright testified that mining at the present time has limited feasibility, due to the fact that the necessary infrastructure is not present.

16. Petitioner is requesting a 2001 actual value of \$100.00 for the subject property.

17. Michael Peterson, a Colorado Licensed Appraiser with the Summit County Assessor's Office, testified that the subject was a 2.18-acre mining claim known as the Lee Goss mine.

18. The witness testified that he considered comparable sales to arrive at the valuation as of the assessment date of June 30, 2000. He felt that there was insufficient data to develop the cost and income approaches, but there was sufficient data to develop the direct sales comparison analysis.

19. The witness agreed that the subject property is unique; it is at 12,300-foot elevation, and it has no possibility for development other than as mining.

20. The witness testified that there is no access to the subject property from the Summit County side; there is seasonal access from the Park County side of the property.

21. The witness testified that he relied on Division of Property Taxation (DPT) guidelines to value the subject property.

22. The witness testified that under Summit County guidelines, you do not have to have 20 acres in order to transfer development rights from the subject.

23. Mr. Peterson testified that he felt that he had to re-classify the property as “other vacant land” based on its physical configuration.

24. The witness explained that Summit County’s TDR program is different from the Open Space Department that Todd Robertson heads. Summit County does not have an interest at the present time in acquiring the subject for the Open Space program.

25. Mr. Peterson testified that the TDR program is initiated by the property owner. An owner must designate a receiving site, and the ownership of the property is transferred to the county.

26. After determining that the highest and best use of the subject was as a sending site for Transferable Development Rights, Mr. Peterson testified that he examined the market for similarly situated sites with similar locational and physical characteristics.

27. The witness testified that the sites included as comparables were all sold for the purposes of transferring the development rights, and thus were very appropriate to use in determining a value for the subject.

28. In referring to the Petitioner’s sales, the witness testified that comparable #1 was located in Park County and was not a market sale. Sale #2 was a partial interest sale. It was a half interest in the property. This property was also located in Park County. This sale occurred in November 30, 2000, outside of the study period. Sale #3 was also for a partial interest. It was therefore not utilized in the valuation of the subject, which is a full interest.

29. The witness testified that he felt that the DPT’s guidelines required him to re-classify the property as “other vacant land” due to the fact that the property had no potential use as a mining property.

30. The witness testified that there is no real impact on the use of his property by virtue of this re-classification. The zoning of the property is not in question; it was zoned A-1, in which mining is an allowable use. The subject’s zoning has been changed at the present time. In the Upper Blue Basin, all backcountry-mining claims have been re-zoned which limits the size of structure and access.

31. The witness testified that he is not aware of any TDR program in Park County.

32. The witness referenced a listing of mining claims in Park County, which provide an indicated range of \$302.00 to \$4,780.00 per acre.

33. The witness testified that he was unaware of the reasons that the Summit County Board of Equalization reduced the value of adjacent tracts to \$50.00 per acre. He felt that there was no evidence to support such a reduction.

34. In response to cross-examination questioning, the witness testified that while he was aware of the referenced Statute 39-1-103, he felt that the highest and best use of the subject in the current market was not as a mining use.

35. Respondent's witness presented three comparable sales ranging in sales price from \$872.00 per acre to \$1,456.00 per acre and in size from 5.16 acres to 20.6 acres. Mr. Peterson concluded a value of \$872.00 per acre for the subject property.

36. Respondent assigned an actual value of \$1,900.00 to the subject property for tax year 2001.

CONCLUSIONS:

1. Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly classified for tax year 2001.

2. The Board sympathizes with a difficult valuation problem. The Respondent appears to have conscientiously attempted to thoroughly analyze and value the property in accordance with State Statute and the Division of Property Taxation guidelines.

3. The Board believes that the witness for the Respondent sincerely attempted to reconcile the guidelines of the Division of Property Taxation with the realities of the environment impacting the subject property,

4. The Board is troubled with the contradictory valuation conclusions of the Respondent County Board of Equalization in setting widely disparate values for similarly situated properties. While the Board does not consider uniformity arguments, per se, the difficulty of the Respondent in explaining the different treatment accorded the subject, provides an indication that the parcels referenced by the Petitioner were likely not valued in a uniform manner.

5. The Board does not concur with the classification of the subject as "other vacant land." There was clear disagreement between the parties as to the feasibility of mining on the parcel, and the subsequent valuation accorded to the property on the basis of its highest and best use. While the Board agrees with the valuation assigned to the subject property by the Respondent, it is less clear that the compulsion referenced by the Respondent to reclassify the subject as vacant land is absolutely required under DPT guidelines. There was testimony by the Petitioner that would support the contention that the property has the ability for eventual productive mining use. While the TDR program may present an alternative use to the mining use that would otherwise be the only use physically possible for the subject, the Board feels that the subject's highest and best use is less certain than expressed by the Respondent. For this reason, the Board believes that the testimony of the two mining professionals is sufficient to provide the benefit of the doubt in this matter.

ORDER:

The Respondent is ordered to reclassify the land as non-producing patented mining claim, with an actual value of \$1,900.00 for the subject property for tax year 2001.

APPEAL:

Petitioner may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

If Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 30 days from the date of this decision.

DATED and MAILED this 26th day of February, 2002.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach.

Debra A. Baumbach

Mark R. Linne

Mark R. Linne

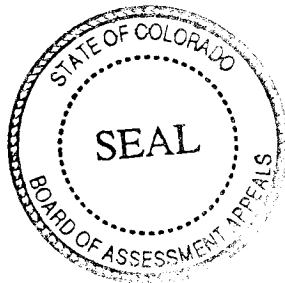
This decision was put on the record

FEB 20 2002

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

Diane Von Dollen

Diane Von Dollen



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