

<p><b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p><b>VIVACE REEF LLC – BRUCE R NEUMANN,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>BOULDER COUNTY BOARD OF COMMISSIONERS.</b></p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Bruce R. Neuman Address: Vivace Reef LLC 3213 Redstone Road Boulder, Colorado 80305 Phone Number: (303) 556-5884</p>	<p><b>Docket Number: 40191</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on February 21, 2003, Karen E. Hart and Rebecca A. Hawkins presiding. Petitioner appeared pro se. Respondent was represented by Robert R. Gunning, Esq.

**PROPERTY DESCRIPTION:**

Subject property is described as follows:

**County Road 83, Sunshine District, Boulder Colorado  
(Boulder County Schedule No. 0058766)**

Petitioner is requesting an abatement/refund of taxes on the subject property for tax years 1999 and 2000. The subject property consists of three contiguous mining claims that total approximately 11.36 acres. The site is located in a subdivision approximately six miles northwest of Boulder and is impacted by numerous mineshafts, tunnels, stopes and a waste rock dump site. It is irregular in shape with topography ranging from moderate to steep slope.

## **ISSUES:**

### **Petitioner:**

Petitioner contends that the subject property is vacant land consisting of three mining claims, but was taxed at its highest and best use. It was not suitable for a residential building site and should be valued as a mining claim. The unique features of the property were not addressed in the appraisal.

### **Respondent:**

Respondent contends that the subject property was properly valued using market sales including the sale of the subject during the base period. The Petitioner purchased the property in the base year as a residential building site. He was knowledgeable of the site plan review process, was aware of the access from Hwy 83 and knew of mining activities prior to the purchase.

## **FINDINGS OF FACT:**

1. Mr. Neumann is the manager of Vivace Reef LLC and presented the appeal on his own behalf.
2. Mr. Neumann indicated a value as a mining claim of \$11,870.00.
3. Mr. Neumann did not present comparable sales. He presented a list of new single-family building permits in the Sunshine Fire District for 1999 through 2000. He also presented single-family land use applications in the Sunshine Fire District for 1998 through 1999.
4. Mr. Neumann testified the subject property is unique as it has mining hazards, easement issues and access limitations due to the narrow configuration of Hwy 83 at this location.
5. Petitioner's witness, Mr. Del Shannon is a licensed engineer. He testified to being involved with the property since 1997, reviewing the site using civil engineering criteria. He testified to extensive amounts of subsidence throughout the site due to miners removing material and not properly compacting the area.
6. Mr. Shannon testified the property contains mine shafts, over 200 feet of tunnels and vertical cuts. Mr. Shannon wanted to place a residential structure as far away from the unstable area as possible. He recommended a sub-surface exploration program to insure the location of solid ground.
7. Mr. Shannon testified that due to mining hazards, ground movement and the severe slope, only one safe building site was available. He recommended a building site that required lengthening and relocating the driveway on the north side of the property. This placement would decrease the grade from 20% to a safe level of 10%.

8. The Petitioner testified to purchasing the subject property as a building site in 1998 for \$182,500.00. The seller was the University of Colorado and Mr. Neumann was an employee at that time. Mr. Neumann testified the property was offered for sale on the open market. The University of Colorado was dealing with a life annuity and wanted to move the property quickly, so they priced it accordingly.

9. Mr. Neumann testified the site plan review process clouds the property and results in a temporary taking as it suspends the rights of the owner. During the process the owner cannot utilize the property to its highest and best use. Future use is speculative based on a permit being issued.

10. Mr. Neumann testified the site plan review process does not allow the owner to know what rights they will have until the building permit is issued. He testified the process has created five “de facto” sub-classes not stated in the formal process:

- Not buildable due to slope, access etc.
- Build without land use review at less than 1000 square feet
- Presumptive size limits arbitrarily imposed
- Scaled down version of the application
- Application approval

11. Mr. Neumann testified that due to the mining hazards on the subject not enough valid comparables can be found; therefore, the mass appraisal approach cannot be used. He testified to a number of problems with the Boulder County appraisal, Respondent’s Exhibit #1; the appraiser did not include direct costs of development plus any necessary mining mitigation, the land value does not reflect the easements necessary to access the only feasible building site, due to the mining hazards not enough valid comparables can be found therefore the mass appraisal approach cannot be used.

12. Petitioner is requesting a 1999 and 2000 actual value of \$11,870.00 for the subject property.

13. Respondent's witness, Mr. Robert M. Mulvey a Certified General Appraiser with the Boulder County Assessor's Office, presented an indicated value of \$188,100.00 for the subject property, based on the market approach.

14. Mr. Mulvey presented three comparable sales ranging in sales price from \$245,000.00 to \$360,000.00 and in size from 8.5 acres to 37.10 acres. After adjustments were made, the sales ranged from \$189,000.00 to \$267,800.00.

15. Respondent’s Exhibit #1, a complete summary appraisal report, was admitted excluding page 21 of the document. Mr. Mulvey testified to sales used and how they compared to the subject property in location, privacy, size, view, access, topography and exposure. Sale #1 and Sale #2 were also mining claims; Sale #3 included an area that was used for mining.

16. Mr. Mulvey testified Sale #1 did not go through the site plan review process. It has a superior view of the eastern plains and the Continental Divide. It is superior in access as it

borders Sunshine Canyon Drive, which is a well-maintained gravel road. It was one building site and was in the vicinity of the subject property.

17. Mr. Mulvey testified Sale #2 was also in the vicinity of the subject and went under contract before the end of the base year period. It is smaller in size than the subject site and has superior access. It is adjacent to Highway 83 and is mostly level in topography. The location close to the intersection is inferior to the subject as it has more negative influence from dust and traffic noise. This site was sold with an approved site plan in place, which guarantees a legal building site.

18. Mr. Mulvey testified Sale #3 was in the same vicinity as the other sales and also had an approved site plan. This sale occurred about the same time as the purchase of the subject site. It is larger in size, inferior in view and superior in access as it borders Sunshine Canyon Drive.

19. Under cross-examination, Mr. Mulvey testified Highway 83 is inferior to Sunshine Canyon Drive. Sunshine Canyon Drive is wider and better maintained with newer homes in the area.

20. Mr. Mulvey testified the subject neighborhood is approximately four to five miles west of Boulder. Many mining claims exist in the area; however, the area supports newer custom homes.

21. Mr. Mulvey testified that due to the purchase price paid by the Petitioner, actual sales in the area and the location of county maintained Highway 83, the subject property should be designated as one building site.

22. Mr. Mulvey testified the purchase of the subject was an arms-length transaction, the buyer and seller were not related, and it was listed in MLS with exposure to the open market. He also considered the purchase price in his analysis.

23. Mr. Mulvey testified that prior to the 1999 tax year the subject site was not platted as a building site and was valued as a mining claim. The subject was listed for \$225,000.00 in 1997 and sold for \$182,500.00.

24. Mr. Mulvey testified that he made the assumption the subject property had a higher and better use other than a mining claim. This was due to the character of the neighborhood and direct access to Highway 83. Mr. Mulvey testified to seeing evidence of subsidence but stated no evidence had been presented to him opposing the use as a residential building site.

25. Mr. Mulvey testified the mining hazards and easement situation would not affect his value. State law requires valuing property at what it could sell for indicating a reasonable future use. Mr. Mulvey testified he ignored the non-producing mining use of the subject property.

26. Mr. Mulvey testified the testimony heard today would confirm his value conclusion rather than support any change. He felt the Petitioner was a knowledgeable buyer at the time of purchase and was familiar with the site plan review process.

27. Mr. Mulvey testified the best indication of value for tax years 1999 and 2000 is the sale price of the subject site. It was purchased for \$182,500.00 in January 1998 following the issuing of a Building Lot Determination letter by the Boulder County Land Use Department.

28. Respondent assigned an actual value of \$188,100.00 to the subject property for tax years 1999 and 2000.

### **CONCLUSIONS:**

1. Respondent presented sufficient probative evidence and testimony to prove that the subject property was correctly valued for tax years 1999 and 2000.

2. The Respondent presented three comparable sales. The sales were properly adjusted to account for differences to the subject.

3. The Board was most persuaded by Sales #1 and #2, which support the value. The assigned value is further supported by the purchase of the subject site by the Petitioner during the base period.

4. The Petitioner did not present any comparable sales to support a value of \$11,870.00.

5. The Petitioner attempted to show limited use of the property due to mining hazards and access problems. While the Board agrees these problems exist, the testimony more than adequately reflects the Petitioner was a knowledgeable and informed buyer. The Petitioner did research prior to the purchase, he was aware of the sites limited use and access. The Petitioner testified he had been buying and selling real estate over the last ten years and has been involved in approximately twelve pre-application hearings for site plan review. The subject property was clearly bought for a building site and not speculation.

6. The Board could give little weight to Petitioner's argument regarding the site review plan process. This testimony cannot be used to support Petitioner's value, as it does not follow any accepted appraisal guidelines or methods required in basic appraisal practice to arrive at value.

7. After careful consideration of all evidence and testimony presented, the Board affirms Respondent's assigned value of \$188,100.00.

### **ORDER:**

The petition is denied.

**APPEAL:**

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

If the Board recommends that this decision is a matter of statewide concern, or if it results in a significant decrease in the total valuation of the county, Respondent may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

If the Board does not make the aforementioned recommendation or result of Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

**DATED and MAILED** this 19<sup>th</sup> day of March, 2003.

**BOARD OF ASSESSMENT APPEALS**

*Karen E Hart*

Karen E. Hart

*Rebecca Hawkins*

Rebecca A. Hawkins

This decision was put on the record

**MAR 18 2003**

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

*Penny S. Lowenthal*  
Penny S. Lowenthal

