

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>GUMAER PLACER LLC,</p> <p>v.</p> <p>Respondent:</p> <p>PARK COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 47300</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on May 23, 2007, Karen E. Hart and MaryKay Kelley presiding. Petitioner was represented by Marco J. DeMarco, LLC Manager and agent. Respondent was represented by Stephen Groome, Esq. Petitioner is protesting the 2006 actual value of the subject property.

PROPERTY DESCRIPTION:

The subject property is described as follows:

**Gumaer Placer, Township 9, Range 78, Section 12
Park County Schedule No. 780912000000**

The subject property is a 140-acre patented mining claim near Alma. Petitioner holds a 33.33% ownership. Respondent assigned a value of \$47,073.00 for tax year 2006. Petitioner is requesting a value of zero due to easements that prohibit mining.

The Board notes that the subject property is classified as a patented mining claim and that classification is not at issue here.

Petitioner argued that the subject property is a mining claim rather than residential land with development potential and should be protected as such. Respondent referenced page 6.83 of the Assessor's Reference Library ("ARL") regarding mining claim classification:

A patented mining claim is land in which the United States government has conveyed fee simple title to private ownership. The intent of the U.S. government in granting title to owners of mining claims is for the purposes of extracting a mineral ore from the earth. However, owners of claims may use the surface land as any other private property.

3 Assessor's Reference Library 6.83 (2005). The ARL further instructs assessors: "If the claim is not used or has no probable use for mining purposes, determine the land's current use, assign the appropriate land classification, and value in the same manner as all other property in that classification." *Id.* at 6.85. Respondent noted that the subject property has good tree cover, access from Breckenridge Mountain Estates, and availability to electricity. There is building and rezoning of mining properties and active sales in the area. The Board acknowledges Petitioner's concern about development in the area and adjacent to his property but is bound by law and cannot prevent property owners from developing land on which mines are located. The Board does not have jurisdiction over the preservation of mining claims.

Respondent presented three comparable sales, all with the same classification, all non-producing patented mining claims like the subject. The comparables range in size from 96.86 acres to 155.7 acres, in sales price from \$111,250.00 to \$160,000.00, and in adjusted sales price from \$132,927.00 to \$148,742.00. All were adjusted for size and access. Comparable sale one had high-voltage power lines which restricted any type of use between 70 feet and 150 feet on either side and which Respondent likened to the subject property's pipeline easement. Sales two and three were adjusted for lack of similar restrictions. Respondent presented an indicated value of \$141,219.00 (\$47,073.00 for 1/3 interest) for the subject property.

Petitioner contended that existing easements prohibit access to the subject property, making ownership worthless. Electric poles and right of ways for open ditches and water structures, specifically a 66-foot wide right-of-way water pipeline owned by the City of Colorado Springs, obstruct access to the subject property.

Respondent referenced the Grant of Right Of Way, which states that:

[I]n the event the undersigned or its assigns resume mining or placer operations in the area of the right-of-way and easement herein granted and it appears by testing and other proper investigations that the mineral values are such that mining or placer operations can be profitably carried on in the area of said easement and right-of-way, the City of Colorado Springs, upon request of the undersigned, or its assigns, agrees to move the pipe line from said area to adjacent ground on said property or to further compensate the undersigned, or its assigns, for the privilege of permitting the pipe line to remain in said right-of-way area or procure a right-of-way by eminent

domain proceedings, if agreement for further compensation cannot be agreed upon by the parties.

Petitioner's Exhibit C. Respondent contended that the foregoing language in the agreement negates any impact to the use of the subject property for mining and therefore is not a negative factor to the subject property value. The Board agrees and is not convinced that the subject property has no value as argued by Petitioner.

Respondent presented sufficient probative evidence and testimony to prove that the subject property was correctly valued for tax year 2006. Respondent used sales of similar properties and adjusted them for differences in physical characteristics, including adjustments for existing easements. Petitioner did not present any sales to dispute Respondent's value conclusion.

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 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 14th day of July 2007.

BOARD OF ASSESSMENT APPEALS

Karen E Hart

Karen E. Hart

MaryKay Kelley

MaryKay Kelley

This decision was put on the record

JUL 13 2007

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

Heather Heinlein

Heather Heinlein

