

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>JAMES V. VAN ELLA,</p> <p>v.</p> <p>Respondent:</p> <p>CHAFFEE COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 52476</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on August 16, 2010, Sondra W. Mercier and Karen E. Hart presiding. Petitioner appeared pro se. Respondent was represented by Jennifer A. Davis, Esq. Petitioner is protesting the 2009 actual value of the subject property.

Subject property is described as follows:

**26020 County Road 398, Granite, Colorado
Chaffee County Schedule No. R300705400816**

The subject property is a 161.02 acre site comprised of three non-patented mining claims: June Placer, July Placer, and Gold Basin Placer. There is a metal building on the property that is 28' x 60' in size and was built in 1998. The subject property is recreationally mined. Access is from Forest Service Road 398.

The subject property lies above tree line. Petitioner testified that approximately a total of 25-30 acres in the middle of the subject property is distressed due to mining and the property has been scarred with a 65' deep, 250' wide, and 1,600' long strip mining hole. Petitioner has done some reclamation work in the years since his purchase of the property in 1990. Current mining permits allow 3.3 acres to be disturbed by mining with an additional 9.9 acres available for recreational prospecting.

The subject property building was described by Petitioner as a removable Midwestern hay barn of low cost construction. The building construction is metal exterior with a 4" x 6" native cut

timber frame and two door openings. Petitioner erected the building himself at a cost of less than \$5,000.00. Petitioner believes the building should be valued at \$5,000.00.

Petitioner did not present any comparable sales for the Board to consider, choosing to critique Respondent's sales. Petitioner does not believe Respondent's comparable sales are truly comparable to the subject property, pointing out that two comparable sales are only 30 acres in size versus the subject property's 161.02 acres.

Petitioner is requesting a 2009 actual value of \$90,000.00 for the subject property, with \$5,000.00 allocated to the improvement and \$85,000.00 allocated to the land.

Respondent presented an indicated value of \$158,531.00 for the subject property for tax year 2009, based on the market approach

Respondent presented three comparable sales ranging in sales price from \$18,000.00 to \$95,000.00 and in size from 30.43 acres to 117.78 acres. After adjustments were made, the sales ranged from \$105,123.00 to \$376,897.00, or \$1,246.00 to \$12,386.00 per acre.

Respondent's witness, Dean C. Russell, a Registered Appraiser with the Chaffee County Assessor's office testified that he chose the comparable sales based on their elevation, remote location, and accessibility attributes. Mr. Russell testified that the time trending adjustment was calculated by studying all types of vacant land located in northern Chaffee County. Mr. Russell calculated his land adjustment by using the comparable sale's prices per acre and applying that price to the acreage difference between the comparable and the subject property.

Comparable Sale 1 is located right at tree line but has trees. Approximately two acres of the property has been mined. It has access similar to the subject and was adjusted only for time and size. Comparable Sale 2 has no vehicle access and has some trees. Comparable Sale 3 is immediately adjacent to the subject property and comprised of a group of 10 or 11 mining claims. Access is from the same forest service road as the subject. This property has a gentle slope, no trees and a premium view.

Mr. Russell gave most weight to Comparable Sale 3 as it was located nearest to the subject property and had mining damage. This comparable sold for an adjusted sales price of \$1,246.00 per acre. Mr. Russell concluded to a land value of \$146,721.00 for the subject property, or \$911.00 per acre.

Respondent used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property improvement of \$11,810.00. Mr. Russell testified that he considered the subject building to be of good quality pole barn type construction. Mr. Russell was unaware the building value was in dispute.

Respondent assigned an actual value of \$121,112.00 to the subject property for tax year 2009, with \$11,810.00 allocated to the improvement and \$109,302.00 allocated to the land.

Respondent presented sufficient probative evidence and testimony to prove that the tax year 2009 valuation of the subject property was correct.

Regarding the subject property building, Respondent valued the building based on the cost approach using Marshall & Swift Valuation Service. The Board affirms Respondent's value of \$11,810.00 for the subject property building. Petitioner gave little basis for his requested value other than his testimony regarding its original cost which did not include labor as Petitioner built the building himself. The cost occurred more than ten years ago in 1998; the level of value date for tax year 2009 is June 30, 2008. The original costs are too old to be considered for valuing the subject property for tax year 2009.

Regarding the land value, Petitioner did not present any sales for the Board to consider. Therefore the Board had to rely upon Respondent's sales. The Board was not convinced the time adjustment was accurate as the adjustment was determined using sale studies based on all types of vacant land sales in northern Chaffee County. The Board is convinced that a time adjustment should be based on sales of non-patented mining claims. Therefore, the Board removed the time adjustment from the three sales.

Mr. Russell calculated his land size adjustment by taking the sales price per acre of each of the comparable sales and applying the varying resulting value to the acreage difference between the comparable sale and the subject property. This is not an acceptable appraisal methodology. Land size adjustment should be constant for each of the sale properties. The Board calculated a size adjustment using a \$900.00 per acre adjustment. The resulting adjusted sales price range was \$135,027.00 to \$182,531.00, a lesser range variance than that presented by Respondent's witness.

The Board could give little weight to Sales 1 and 2 as the net adjustments were simply too great to give any confidence as to the comparability of the properties to the subject, with the percentage adjustments being 280.81% and 750.15% respectively. Therefore the Board had to rely upon Respondent's Sale 3. This property is adjacent to the subject property, is somewhat comparable in size, and is similar to the subject in physical characteristics. Though Mr. Russell testified that there was some mining damage on Sale 3, the Board was not convinced the damage was as great as that on the subject property. The Board adjusted the \$133,916.00 indicated value of Sale 3 by \$900.00 per acre for a total affected mining area of 25 acres as testified by Petitioner. The resulting reduction was \$22,500.00, for a final adjusted indicated land value of \$111,416.00.

After adding the indicated land value of \$111,416.00 to the \$11,810.00 allocated for the improvement, the Board concluded that the subject property value should be \$123,226.00, a value slightly higher than the assigned value of \$121,112.00.

ORDER:

The petition is denied.

APPEAL:

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-five 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 15 day of October 2010.

BOARD OF ASSESSMENT APPEALS

Sondra W. Mercier

Sondra W. Mercier

Karen E. Hart

Karen E. Hart

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

Amy Bruins

Amy Bruins

