BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203 Petitioner: **EARTH ENERGY RESOURCES, LLC,** v. Respondent: **PARK COUNTY BOARD OF EQUALIZATION.**	**Docket No.: 58095**

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on January 30, 2012, Debra A. Baumbach and MaryKay Kelley presiding. Petitioner was represented by Paul M. Seby, Esq. and Marian C. Larsen, Esq. Respondent was represented by Marcus A. McAskin, Esq. Petitioner is protesting the 2011 actual value of the subject property.

Subject property is described as follows:

33.33% interest in Little Helen Mining Claim
Park County Schedule No. 91046 (10.331 total acres, 3.443 net acres)

100% interest in part of Mineral Ranch #2 S2 Mining Claim
100% interest in part of Mineral Ranch #1 S2 Mining Claim
100% interest in part of Mineral Ranch #2 N2 Mining Claim
Park County Schedule No. 91146 (6.925 acres)

25% interest in part of Buckskin Placer Mining Claim
Park County Schedule No. 91799 (8 total acres, 2 net acres)

50% interest in part of Whipple & Pratt #2 Placers
Park County Schedule No. 91813 (12.910 total acres, 6.455 net acres)

The subject properties are mining claims located on vacant land in mountainous terrain. All claims are federally patented and were originally active but are not currently producing.

Petitioner is requesting mineral classification and actual values of $90.00 per acre; $309.87 for the Little Helen claim, $623.25 for the Mineral Ranch claim, $180.00 for the Buckskin Placer, and $580.95 for the Whipple & Pratt Placers. Respondent assigned mineral classification and actual values for the following claims; Little Helen ($7,681.00), Mineral Ranch ($15,449.00), and Buckskin Placer ($19,079.00), the total being $42,209.00. Respondent assigned vacant land classification for the Whipple/Pratt Placers with an actual value of $57,028.00.

PETITIONER

Petitioner's witness, John Reiber, part owner of Earth Energy Resources, testified that the subject company was formed in 1992 with the sole purpose of acquiring properties for mineral exploration and mine project development. While none of the subject properties are currently producing, all carry federally-patented mining claims. Future use is mining.

Mr. Reiber argued that $90.00 per acre is appropriate for each of the subject claims. This figure is supported by all other claims his company owns in the county, and it is the maximum purchase price his company has paid per acre. He did not present any sales data to support this figure.

Mr. Reiber addressed Respondent's 2011 reclassification of the Whipple & Pratt Placers to vacant land. He argued that highest and best use is mining, not residential development. An existing tunnel and substantial mine dump are located on site, geologic hazards exist, and the slope is unstable. Residential zoning (in place since 1975) prohibits mining, and appeals for rezoning will continue to be made. Statute precludes changing property classification without a change in use; the actual use of the subject parcel since 1927 has not changed.

RESPONDENT

Respondent presented market approaches to value the various claims. The witness, Angela R. Kanack, Certified Residential Appraiser, presented individual market approaches for each of the claims.

Little Helen: Ms. Kanack presented three comparable sales ranging in sale price from $41,000.00 to $85,930.00. Adjusted sale prices ranged from $37,000.00 to $63,930.00 or $12,210.00 to $21,097.00 based on a 33.33% interest, which supported the assigned value of $7,681.00.

Mineral Ranch: Ms. Kanack presented three comparable sales ranging in sale price from $41,000.00 to $85,930.00. Adjusted sale prices ranged from $10,400.00 to $49,330.00 and supported the assigned value of $15,449.00 for a 100% interest.

Buckskin Placer: Ms. Kanack presented three comparable sales ranging in sale price from $15,000.00 to $85,930.00. Adjusted sale prices ranged from $27,300.00 to $84,030.00 or $6,825.00 to $21,007.00 based on a 25% interest, which supported the assigned value of $19,079.00.

Whipple & Pratt Placers: Ms. Kanack defended the 2011 classification change from mineral to vacant land: this property sits within Placer Valley, a developed residential subdivision with older seasonal cabins and many year-round homes; the area is attracting Summit County buyers due to lower prices; zoning was changed to residential in 1975, and because residential development is encroaching, vacant land classification is defended. The parcel, albeit steeply sloped, would allow a road (Mine Dump Road accesses this site), utilities, and building envelope. Highest and best use is vacant land.

Based on vacant land classification, Ms. Kanack presented six comparable sales ranging in sale price from $76,000.00 to $135,000.00. Most weight was assigned Sales 1 through 3 with adjusted sale prices ranging from $99,912.00 to $145,173.00 or $49,956.00 to $75,587.00 based on a 50% interest, supporting the subject's assigned value of $57,028.00.

Should the Board find for mineral classification, Ms. Kanack presented an estimated value of $188,109.00 or $94,054.00 based on a 50% interest.

BOARD CONCLUSIONS

Whipple and Pratt

Petitioner presented sufficient probative evidence and testimony to convince the Board that the Whipple and Pratt Placers were incorrectly classified for tax year 2011. Section 39-1-103(5)(c), C.R.S. indicates that "[o]nce any property is classified for property tax purposes, it shall remain so classified until such time as its actual use changes or the assessor discovers that the classification is erroneous." The Board is convinced that there has been no change in the surface use of the property. Zoning in and of itself is not a determining factor. The Board was given no evidence that the previous classification of mining was erroneous.

The Board is convinced that residential use of the Whipple and Pratt Placers is speculative. In *Board of Assessment Appeals v. Colorado Arlberg Club*, 762 P. 2d 146 (Colo. 1988), the court held that "speculative future uses cannot be considered in determining present market value." *Arlberg*, 762 P.2d at 154.

"Any non-producing patented mining claim with an actual or most probable use as a mineral property should be classified and valued as such." *See* Volume 3, Section 6.78 of the Assessor's Reference Library. The Board is convinced that the Whipple and Pratt Placers' most probable use is mining.

Petitioner presented no evidence (market sales) in support of $90.00 per acre for mining claims. Petitioner's testimony that $90.00 per acre is the highest price paid for mining claims was not supported by market data and is insufficient to rebut Respondent's concluded market value of $94,054.00 (50% interest).

The Board has no authority to increase the assigned value of $57,028.00.

Little Helen, Mineral Ranch, and Buckskin Placer

The parties are in agreement regarding mineral classification of these parcels.

Respondent presented market approaches regarding values for these parcels. Petitioner argued that $90.00 per acre was supported by sales of mining claims but presented no evidence (market sales) to defend this figure.

Respondent presented sufficient probative evidence and testimony to show that the subject properties were correctly valued for tax year 2011.

ORDER:

Respondent is ordered to change classification of the Whipple and Pratt Placers to mineral. The assigned value remains unchanged at $57,028.00.

Petitioner's petition for change in assigned values for the Little Helen, Mineral Ranch, and Buckskin Placer is denied.

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 22nd day of February, 2012.

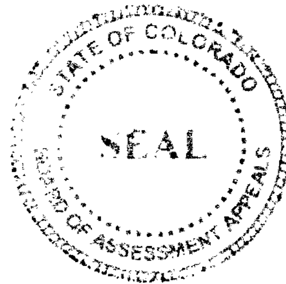
BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

MaryKay Kelley

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

Milla Crichton



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