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| <p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>BECKY A. J. SELL-HARRISON,</p> <p>v.</p> <p>Respondent:</p> <p>PARK COUNTY BOARD OF EQUALIZATION.</p> | <p>Docket No.: 58148 & 58417</p> |
| <p>ORDER</p> | |

THIS MATTER was heard by the Board of Assessment Appeals on December 22, 2011, with a supplemental hearing on May 4, 2012, Diane M. DeVries and Sondra W. Mercier presiding. Petitioner, Ms. Becky Sell-Harrison, appeared pro se. Respondent was represented by Marcus McAskin, Esq. Petitioner is protesting the 2011 classification and value of the subject property.

Dockets 58148 and 58417 were consolidated.

Subject property is described as follows:

**87.5% Interest in Indian Chief Mining Claim
95.31% Interest in William Wallace Mining Claim
Fairplay, Colorado
Park County Schedule No. R0090613 and R0090615**

The subject property consists of partial interest in two inactive mining claims. The property identified as Schedule R0090613 is an 87.5% interest in the 10.33-acre Indian Chief mining claim. The property identified as R0090615 includes a 95.31% interest in the 10.33-acre William Wallace mining claim.

Petitioner is requesting an actual value of \$9,394.00 for the property identified as Indian Chief and \$10,232.00 for the property identified as William Wallace, for tax year 2011. Respondent assigned a value of \$111,612.00 for the property identified as Indian Chief and \$105,769.00 for the property identified as William Wallace, for tax year 2011.

Petitioner contends that the property was classified as mining until the 2011 reappraisal year. Petitioner indicated that the property had been in the family for over 50 years and has been kept for purposes of mining. Petitioner testified that she had never received notification of a change in zoning to residential. Petitioner testified that they had no plans to build on the property, there were no utilities available, and that the William Wallace parcel could only be accessed through the Indian Chief parcel. The minority interest owner, Mr. Albert A. Potthoff, testified that he had no knowledge that either property was zoned residential and that he had not contacted Park County Planning with regards to residential use.

Respondent contends that the property was zoned residential since the 1970s; however, the information concerning residential zoning had just recently come to the attention of the Park County Assessor's Office. Upon learning that the subject was located within the residential zoning, Respondent changed the subject's classification from mining to vacant land.

Petitioner presented sufficient probative evidence and testimony to prove that the subject property was 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 was convinced that there had been no change in the surface use of the property to warrant a change in classification to vacant land. Further, Respondent provided insufficient evidence to indicate that the classification was erroneous.

Zoning is not determinative, but is simply one of the factors to be considered when determining the classification and valuation of the mining claims. *See* Volume 3, Section 6.76-77 of the Assessor's Reference Library. Other factors, such as claim's size and shape, slope, location, availability of infrastructure improvements, elevation, accessibility and availability of potable water, etc., may also be considered in determining the appropriate classification and valuation of the mining claims. *Id.*

Further, the Board was convinced that residential use was speculative and not supported by market evidence. 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. While Respondent showed that residential use would be legally permissible, insufficient evidence was provided that residential use would be physically possible, financially feasible or maximally productive, given the high elevation ranging from 10,800 to over 11,500 feet, the lack of utilities, restricted access and overall topography of the parcels.

"Any nonproducing 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 was convinced that the subject mining claims' most probable use is for mining purposes, not as a residential property.

In both hearings, Respondent relied on comparable sales of parcels that were ultimately developed for residential use to support the value estimate. The Board finds that Respondent's sales do not provide a reliable indication of the value of the subject parcels when classified as mining

claims. Respondent also provided evidence that indicated an average sales price of \$4,356.00 per acre for sales of mining claims that occurred within the five years prior to June 30, 2012, giving consideration only to sales of claims with 100% interest. Respondent then applied upward adjustments of 150% to 223%, with insufficient market evidence provided to support such significant adjustments.

The Board was convinced that the average sales price of \$4,356.00 per acre for the subject mining claims was supported by market data. The value of the Indian Chief mining claim identified by Schedule R0090613 is calculated as \$39,373.00 (\$4,356.00 per acre x 10.33 acres x 87.5% interest). The value of the William Wallace mining claim, identified as R0090615 is calculated as \$42,887.00 (\$4,356.00 per acre x 10.33 acres x 95.31% interest).

ORDER:

Respondent is ordered to reduce the 2011 actual value of the subject property identified by Schedule number R0090613 to \$39,373.00. Respondent is ordered to reduce the 2011 actual value of the subject property identified by Schedule number R0090615 to \$42,887.00.

The Park County Assessor is directed to change their records accordingly.

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 14th day of June, 2012.

BOARD OF ASSESSMENT APPEALS

Diane M DeVries

Diane M. DeVries

Sondra W Mercier

Sondra W. Mercier

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

Milla Crichton

Milla Crichton

