

**DECISION OF THE KENAI PENINSULA BOROUGH
BOARD OF EQUALIZATION**

Appellant:	Peek, Michael A.
Hearing Date:	May 23, 2011
Owner(s): Assessor's Parcel No. Legal Description:	Michael A. and Kristin Peek 025-455-03 T 10N R 8W SEC 13 Seward Meridian KN 0840065 MOOSE POINT SUB LOT 331
Owner(s): Assessor's Parcel No. Legal Description:	James A. Dobler, Michael A. Peek, and Dan R. Roseta 025-455-01 T 10N R 8W SEC 13 Seward Meridian KN 0840065 MOOSE POINT SUB LOT 329
Owner: Assessor's Parcel No. Legal Description:	Michael A. Peek 025-451-05 T 10N R 8W SEC 24 Seward Meridian KN 0840065 MOOSE POINT SUB LOT 293
Owner: Assessor's Parcel No. Legal Description:	Michael A. Peek 025-451-07 T 10N R 8W SEC 24 Seward Meridian KN 0840065 MOOSE POINT SUB LOT 295
Owner(s): Assessor's Parcel No. Legal Description:	James A. Dobler, Michael A. Peek, and Dan R. Roseta 025-454-03 T 10N R 8W SEC 13 & 14 Seward MERIDIAN KN 0840065 MOOSE POINT SUB LOT 327
Owner(s): Assessor's Parcel No. Legal Description:	James A. Dobler, Michael A. Peek and Dan R. Roseta 025-454-04 T 10N R 8W SEC 13 Seward Meridian KN 0840065 MOOSE POINT SUB LOT 328
Owner(s): Assessor's Parcel No. Legal Description:	Michael A. Peek and Kristin Peek 025-454-06 T 10N R 8W SEC 14 Seward Meridian KN 0840065 MOOSE POINT SUB LOT 267

Owner(s): Michael A. Peek and Kristin Peek
Assessor's Parcel No. 025-454-09
Legal Description: T 10N R 8W SEC 14, 23 & 24 Seward MERIDIAN KN
0840065 MOOSE POINT SUB LOT 264

Appellant/Owner: Michael A. Peek
Assessor's Parcel No. 025-455-02
Legal Description: T 10N R 8W SEC 13 Seward Meridian KN 0840065 MOOSE
POINT SUB LOT 330

Owner(s): James A. Dobler, Michael A. Peek, and Dan R. Roseta
Assessor's Parcel No. 025-455-14
Legal Description: T 10N R 8W SEC 13 Seward Meridian KN 0840065 MOOSE
POINT SUB LOT 350

Owner(s): James A. Dobler, Michael A. Peek, and Dan R. Roseta
Assessor's Parcel No. 025-455-15
Legal Description: T 10N R 8W SEC 13 Seward Meridian KN 0840065 MOOSE
POINT SUB LOT 351

Appellant/Owner: Michael A. Peek
Assessor's Parcel No. 025-455-16
Legal Description: T 10N R 8W SEC 13 Seward Meridian KN 0840065 MOOSE
POINT SUB LOT 352

Owner(s): James A. Dobler, Michael A. Peek, and Dan R. Roseta
Assessor's Parcel No. 025-455-17
Legal Description: T 10N R 8W SEC 13 Seward Meridian KN 0840065 MOOSE
POINT SUB LOT 353

Appeal No.: 2011-109 – Land Values

Tax Year: 2011

Assessed Value Appealed:	Parcel 025-455-03:	Land Value	\$13,700
	Parcel 025-455-01:	Land Value	\$12,300
	Parcel 025-451-05:	Land Value	\$11,600
	Parcel 025-451-07:	Land Value	\$12,400
	Parcel 025-454-03:	Land Value	\$11,500
	Parcel 025-454-04:	Land Value	\$12,400
	Parcel 025-454-06:	Land Value	\$11,000

Parcel 025-454-09:	Land Value	\$12,300
Parcel 025-455-02:	Land Value	\$12,300
Parcel 025-455-14:	Land Value	\$11,500
Parcel 025-455-15:	Land Value	\$11,500
Parcel 025-455-16:	Land Value	\$ 9,600
Parcel 025-455-17:	Land Value	\$ 8,900

Reason for Appeal: Excessive, unequal and improper valuation

Decision of BOE
Regarding Value:

Parcel 025-455-03:	Land Value	\$12,500
Parcel 025-455-01:	Land Value	\$12,300
Parcel 025-451-05:	Land Value	\$11,600
Parcel 025-451-07:	Land Value	\$12,400
Parcel 025-454-03:	Land Value	\$11,500
Parcel 025-454-04:	Land Value	\$12,400
Parcel 025-454-06:	Land Value	\$11,000
Parcel 025-454-09:	Land Value	\$12,300
Parcel 025-455-02:	Land Value	\$12,300
Parcel 025-455-14:	Land Value	\$11,500
Parcel 025-455-15:	Land Value	\$11,500
Parcel 025-455-16:	Land Value	\$ 9,600
Parcel 025-455-17:	Land Value	\$ 8,900

The Board of Equalization (“Board”) of the Kenai Peninsula Borough (“KPB”) was convened on May 23, 2011, to hear an appeal by Michael A. Peek regarding the 2011 assessed valuation of the above described properties which are located in the Moose Point Subdivision, Nikiski, AK (hereinafter “property”).

Chair Betty Glick and Board Members Gary Knopp (Vice Chair), Barbara Belluomini, Mike Wiley and Ray Tauriainen were present, constituting a quorum. Appellant Michael A. Peek was present and sworn in for the hearing. KPB Appraisal Manager Denis Mueller was also sworn in and testified on behalf of the Assessing Department.

The Appellant asked to present evidence on all parcels included in the same appeal case number 2011-109 at the same time since the basis for his argument that the valuation is excessive is the same for each parcel. The Assessor and Board agreed to hear the appeal on all parcels included in the same appeal case number 2011-109 in the manner suggested by the Appellant.

APPELLANTS' ARGUMENT & EVIDENCE

Appellant Michael Peek testified that the Assessor's excessive valuation of land for all of the parcels was the reason the appeals were filed. He then explained that prior to 2009 the parcels had been assessed at the value it was originally sold for. In 2009 the assessed value was increased by 20 percent. Mr. Peek said when the property was sold by the borough it was sold as a remote property and that it was never guaranteed that access would be developed. He further explained it has been indicated that the borough would like to eventually build some type of access.

Mr. Peek explained the tax applied to the real property did include fire service, ambulance service, and road maintenance although practically speaking none of those services are available due to the remote location of the parcels. He added when Nikiski Fire Department was asked if they could respond to a cabin fire in that remote location they said only with an act of God or a helicopter. Mr. Peek explained that ambulance service was available at one time but now property owners paying property tax for that service would be charged extra if a Medavac was needed. According to Mr. Peek, over the years the road maintenance issue had been brought up on many occasions. The borough did allude to the fact that there was a pipeline easement although everyone knows the easement was only for use by the owners of the easement.

Moving on to the location of the property, Mr. Peek explained it was more than 20 miles away from the nearest road and no borough access was provided or maintained. Referencing why the 2009 tax increase was not appealed, he explained the cost for the appeal would have been higher than the actual tax amount. Mr. Peek believes the valuation was excessive because the assessments did not take into consideration how much of the property was actually wetlands. The borough sold the land with a statement that each property was an approximate number of acres. Mr. Peek referred to the comparables shown on pages 2 through 8 of the Appellants evidence to show the variation on price per acre for parcels in the area, noting that the borough owned parcels were assessed substantially lower per acre. In closing, Mr. Peek said the land was originally sold by the borough with the understanding each lot was guaranteed to have a building site on it and that hardly any value was attributed to total acreage.

Board Member Belluomini asked if all of the parcels were purchased in 2009, and Mr. Peek replied that he had been buying them over the last 20 years. Board Member Tauriainen referred to page 1 of the Appellants evidence and asked for clarification regarding the proposed column. Mr. Peek said when he originally spoke to the Assessor; those were the proposed lower numbers from the 2007 assessment.

KPB ASSESSOR'S ARGUMENT & EVIDENCE

Paul Knight, KPB Lead Appraiser stated that all land values for neighborhood 180, which included Gray Cliff and Moose Point recreational subdivisions and the subject parcels, were modeled

and converted to the new CAMA system. The land in this area was originally valued when the subdivision was created more than 30 years ago. A cursory review of the land was done in 2009, and comparables with available sales indicated they were undervalued. This generated the 20 percent increase to all land in the area and brought the values closer to market value until a more comprehensive analysis could be done. Review of vacant, single parcel sales established a base rate of \$2,200 per acre.

Mr. Knight said that originally ten sales were used to establish the model. Sales with improvements or significant influences were not used as they could distort the base value. Model values were compared to the sales prices which showed a mean and median ratio of 99 percent and 96 percent. Ten sales, all less than 15 acres, and three sales of parcels that were 15 acres or larger were used. The sales data for the larger parcels indicated that beyond a certain point, extra acreage added a smaller incremental value. Parcels over 15 acres were valued at a discounted rate of \$220 per acre.

Mr. Knight also said that listing prices are not used to establish assessment values; however, they are used as a gauge to insure new values were not higher than the listing price. Statistical analysis showed the 2011 modeled land values were within an acceptable range. The properties were designed and were assessed for a site value. The borough owned properties were never designed to be on the market as they were undevelopable; therefore, they were given a nominal value. The model did reflect that there was no access, and no utilities. This was based on a site value, as people were not buying acreage; they were buying a place to build a cabin.

Board Member Belluomini asked if over the counter sales were used in the sales ratio studies. Mr. Knight said they would be if they were current; however, there were not any over the counter sales in the last four or five years. Ms. Belluomini asked when an area was remodeled and assessed if the borough owned properties in the area were also remodeled and assessed. Mr. Knight said all parcels that were available for sales should be valued the same way. The comparables used by the Appellant were valued differently because they were 100 percent undevelopable and never designed to be sold. Ms. Belluomini asked if there were borough owned properties that were never intended for sell or 100 percent wetlands, why was that information not available to the public? Mr. Knight said a different model was used for the borough owned land as it was not developable. Ms. Belluomini referred to the comparable sales used by the Assessor, and asked if the percentage of wetlands on those properties were considered when valuing the land. Mr. Knight said yes he had, and the larger parcels of land were going to have a larger percentage of wetlands, that's when he noticed that people were not paying significantly more for the larger acre parcels. That's why anything over 15 acres was valued at a reduced rate.

Board Member Tauriainen referred to page 22 and asked for clarification of the S/C column. Mr. Knight said they were the sales codes. C and V were vacant land sales, Q was a sale with an improvement on it, and A was multiple parcel sales. Mr. Tauriainen asked if 92 percent was the average ration, and Mr. Knight said 92 percent was the median ration.

APPELLANT'S REBUTTAL

Appellant Peek said the 2011 model of comparables were also used in the 2008 comparables, and it was understood that older sales data was used as there were not enough current sales. The 2006 through 2008 sales were used to increase the assessment values in 2009, and then they had to be used again for 2011 to have enough sales to create a model. He questioned why, once the data was used, why would it be used again? One of the listings used by the Assessor had been for sale for over six years. Another was completely surrounded by swamp. Mr. Peek has no objection to a base rate of \$2,200 for good land; however, there was an objection to giving an equal value to swamp land which could not be developed. Wetlands should be valued at a lower rate. When the land was purchased, the option to buy only good land was not given. You had to purchase the poorer wetlands with the good land. Mr. Peek said the assessor's valuation method results is an excessive value.

There were no questions from the Board.

ASSESSOR'S REBUTTAL

Mr. Knight stated that three years of sales data were needed to gather enough data to generate a model. He added sales were not used randomly; rather, all available sales were used and that the sales data available supported the assessed values.

Mr. Knight requested the Board of Equalization uphold the value recommended based on the following:

1. Land sales analysis supported the 2011 assessment level; and
2. The land model was applied uniformly and equitably.

Mr. Knight recommended the following land values:

- Parcel 025-455-03; Land Value \$12,500
- Parcel 025-455-01; Land Value \$12,300
- Parcel 025-451-05; Land Value \$11,600
- Parcel 025-451-07; Land Value \$12,400
- Parcel 025-454-03; Land Value \$11,500
- Parcel 025-454-04; Land Value \$12,400
- Parcel 025-454-06; Land Value \$11,000
- Parcel 025-454-09; Land Value \$12,300
- Parcel 025-455-02; Land Value \$12,300
- Parcel 025-455-14; Land Value \$11,500
- Parcel 025-455-15; Land Value \$11,500

- Parcel 025-455-16; Land Value \$ 9,600
- Parcel 025-455-17; Land Value \$ 8,900

Board Member Tauriainen asked if each 10 acre parcel would be assessed at the same value, even if one had more dry land than the other. Mr. Knight said the rate established was a site value rate, designed to reflect that most of the property was wet. Mr. Tauriainen asked if a 10 acre parcel that was mostly wet would have sold at a lower priced because of the sales ratio. Mr. Knight said that was not happening, the land was selling for the site value, not the size.

Board Member Wiley asked if the subject parcels were in a fire or road service area, and Mr. Knight said no.

APPELLANT'S SUR-REBUTTAL

Appellant Peek stated that the property was in the Nikiski Fire Service Area, and the Road Service Area. There were technically more comparables before the increased assessment in 2009 than there were after 2009. Nothing could be done on the swamp portion of the land, so how could it be valued at \$2,200 per acre.

Chair Glick asked for clarification regarding the service area taxes to the property. Mr. Peek replied that no matter where you lived within the borough the Road and Emergency Service taxes were applicable. Chair Glick asked if each parcel had a buildable site, and Mr. Peek said yes.

Board Member Wiley asked if the property was actually in an area where the tax was greater than what applied in the Road Service. Mr. Peek said it was his understanding that the property was in the Nikiski Senior Service Area and Nikiski Fire Service Area, and both were generating a higher tax rate.

DECISION

Alaska law requires that property be assessed at its full and true value as of January 1 of the assessment year.¹ The full and true value is the estimated price that the property would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer both conversant with the property and with prevailing general price levels.²

The burden of proof is on the Appellant.³ The only grounds for the Board to adjust the assessment are proof of unequal, excessive, improper, or under valuation, based on facts proven at the

1 AS 29.45.110.

2 AS 29.45.110.

3 KP.B 5.12.060(P); AS 29.45.210(b).

appeal hearing.⁴ The Board has jurisdiction to review the Assessor's valuation of property; the Alaska Superior Court is the proper venue for disputes over taxability⁵

After hearing the testimony of Appellant and the Assessing Department, and reviewing the evidence presented, the Board, by unanimous vote of 5 yes and 0 no, upheld the Assessor's recommended 2011 assessed valuations for all parcels listed in Case No. 2011-109 for the following reasons:

1. The appellant had not shifted the burden of proof.
2. The Appellant's argument regarding wetlands did not prove the assessment was excessive, unequal or improper.
3. The Appellant's argument regarding tax code areas did not prove excessive, unequal or improper.
4. The sales ratio study provided by the Assessing Department was very well done, and proved the assessed value was not excessive, unequal or improper.

NOTICE OF RIGHT TO APPEAL

In accordance with Alaska Rules of Procedure and KPB 5.12.060(S), the Appellants and the Assessor have thirty (30) days from the date of this decision to file an appeal with the Superior Court of the State of Alaska at Kenai.

Dated:

July 18, 2011

Betty J. Glick
Betty J. Glick, Chair

ATTEST:

John Blankenship
John Blankenship, MMC
Borough Clerk



⁴ KPB 5.12.060(P); AS 29.45.210(b).
⁵ KPB 5.12.045.