

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>BOULDER COUNTRY CLUB,</p> <p>v.</p> <p>Respondent:</p> <p>BOULDER COUNTY BOARD OF COMMISSIONERS.</p>	<p>▲</p>
<p>Attorney for the Petitioner:</p> <p>Name: William A. McLain, Esq. Address: 3962 South Olive Street Denver, Colorado 80237-2038 Phone Number: (303) 759-0087 E-mail: wamclain@aol.com Attorney Reg. No.: 6941</p>	<p>Docket Number: 39361</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on January 25, 2002, Claudia D. Klein and Karen E. Hart presiding. Petitioner was represented by William A. McLain, Esq. Respondent was represented by Robert R. Gunning, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

BLK 14, FOUNTAIN GREENS; PARCEL F & PT PARCEL I, GUNBARREL GREEN; N ½ OUTLOT Z EVERGREEN; SW 4 NW 4 12-IN-70; PARCELS A, B LESS STRIP, C, D, E & TRI NW CORNER LOT 1 BLK 23 PARCEL F LESS PT TO ISLAND GRN RPLT B ALL IN GUNBARREL GREEN; PARCEL I LESS PARTS TO EST VIEW; S ½ OUTLOT Z EVERGREEN (Boulder County Schedule Nos. 0031861, 0031867, 0031870, 0038035, 0038038, 0068179, 0068925)

Petitioner is requesting an abatement/refund of taxes on the subject property sufficient to set its tax year 2000 value equal to the value set for the 1999 tax year. The subject property is classified as recreational property. The subject property is used as a golf course country club.

ISSUES:

Petitioner:

Petitioner contends that the subject property should be valued the same in tax year 2000 as it was for the tax year 1999. The 1999 value, \$5,700,000, having been set by stipulation with the Respondent. The Petitioner contends that the disparity between the two years' values is erroneous or illegal.

Respondent:

Respondent contends that the petition should be denied as a matter of law because the Petitioner filed a protest under § 39-5-122, C.R.S. (2001) concerning the subject property's 2000 value, \$7,433,900.00, and received an adverse determination. Because the Petitioner did not pursue further review of that determination, it may not now maintain a petition for abatement or refund under § 39-10-114, C.R.S. (2001). According to the Respondent, the general rule provides that a taxpayer may file either a protest or an abatement for the alleged overvaluation for the 2000 tax year but not both. Two exceptions exist: where the tax is levied erroneously or illegally. The Respondent contends that neither exception applies.

FINDINGS OF FACT:

1. The parties entered and submitted a stipulation of facts, Petitioner's Exhibit B. It is dated January 25, 2002 and the Board adopts it as the Board's findings of fact in this matter.
2. The Board takes administrative notice of the fact that tax year 1999 was a re-valuation year for ad valorem property tax purposes.

CONCLUSIONS:

1. This matter may be determined on the law. Subparagraph 39-1-104(10.2)(a), C.R.S. (2001) provides in relevant part as follows:

Except as otherwise provided in subsection (12) of this section, beginning with the property tax year which commences January 1, 1989, a reassessment cycle shall be instituted with each cycle consisting of two full calendar years. At the beginning of each reassessment cycle, the level of value to be used during the reassessment cycle in the determination of actual value of real

property in any county of the state as reflected in the abstract of assessment for each year in the reassessment cycle shall advance by two years over what was used in the previous reassessment cycle;

2. An exception to subparagraph 39-1-104(10.2)(a) exists. Under subparagraph 39-1-104(10.2)(b), C.R.S. (2001), the value of property during the intervening year may be appropriately adjusted to take into account any defined unusual conditions. The parties have agreed that no unusual conditions exist on or in the subject property and so the subparagraph 39-1-104(10.2)(b) exception does not apply.

3. The focus of the issue is on the consequences of the filing of a protest to challenge the value of property for the intervening year. If the re-assessment year's value is less than the intervening year's value and a protest has been filed to challenge the intervening year's value but later abandoned, may the taxpayer still obtain review of the intervening year's value by filing a petition for abatement or refund?

4. Subparagraph 39-10-114(1)(a)(I)(A), C.R.S. (2001) provides in relevant part as follows:

Except as otherwise provided in sub-subparagraphs (D) and (E) of this subparagraph (I), if taxes have been levied erroneously or illegally, whether due to erroneous valuation for assessment, irregularity in levying, clerical error, or overvaluation, the treasurer shall report the amount thereof to the board of county commissioners, which shall proceed to abate such taxes in the manner provided by law. The assessor shall make such report if the assessor discovers that taxes have been levied erroneously or illegally. [Emphasis added.]

5. However, subparagraph 39-10-114(1)(a)(I)(D), C.R.S. (2001) provides in relevant part as follows:

No abatement or refund of taxes shall be made based upon the ground of overvaluation of property if an objection or protest to such valuation has been made and a notice of determination has been mailed to the taxpayer pursuant to section 39-5-122; [Emphasis added.]

6. Subparagraph 39-10-114(1)(a)(I)(D) is unequivocal. A petition for abatement or refund of taxes based on overvaluation must be denied if it is preceded by a protest of the same overvaluation and the determination of the protest has been sent to the taxpayer.

7. Neither party cites any case law containing the same procedural fact pattern the Board faces today guiding the outcome here. None of the cases cited and none that the Board has discovered concern a taxpayer that filed a protest that it abandoned or otherwise did not pursue followed by a petition for abatement or refund for the same tax year. Thus, the Board is left with an important question of first impression.

8. Here, the Petitioner expressly states that the values of the subject property for the two tax years should be equalized. Significantly, the “tax” is not alleged to be in error or otherwise illegal. The “value” is alleged to be in error or illegal. Thus, the petition falls squarely within the prohibition of subparagraph 39-10-114(1)(a)(I)(D).

9. The Petitioner filed a timely protest to challenge the valuation of the subject property for the 2000 property tax year. A notice of determination of the protest has been mailed to the taxpayer, Respondent’s Exhibit 1.

10. If the Petitioner had preserved its right to challenge the valuation for the 2000 tax year by filing a petition with the Board after the Respondent denied it relief, the Petitioner could challenge the valuation for the 2000 tax year based upon the 1999 stipulation. Alternatively, if the Petitioner had not filed a timely protest or filed no protest at all, again, the Petitioner could file a petition for abatement or refund. However, because neither of these actions were taken, the Board must enter an order denying the petition.

ORDER:

The petition for abatement or refund is denied.

APPEAL:

Petitioner may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

If the Board recommends that this decision is a matter of statewide concern, or if it results in a significant decrease in the total valuation of the county, Respondent may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

If the Board does not make the aforementioned recommendation or result or Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

DATED and MAILED this 20th day of March, 2002.

BOARD OF ASSESSMENT APPEALS

Claudia D. Klein
Claudia D. Klein

Karen E. Hart
Karen E. Hart

This decision was put on the record

MAR 19 2002

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

Diane Von Dollen
Diane Von Dollen



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