

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioners:</p> <p>L MAR, LLC AND ADLP TABLE MESA,</p> <p>v.</p> <p>Respondent:</p> <p>BOULDER COUNTY BOARD OF EQUALIZATION.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: William A. McLain, Esq. Address: 3962 S. Olive Street Denver, Colorado 80237 Phone Number: (303) 759-0087 E-mail: wamclain@comcast.net Attorney Reg. No.: 6941</p>	<p>Docket Numbers: 44490 and 44492</p>
<p>ORDER ON MOTIONS TO DISMISS</p>	

THESE MATTERS were heard by the Board of Assessment Appeals on March 16, 2005, Karen E. Hart and Sondra W. Mercier presiding. Petitioners were represented by William A. McLain, Esq. Respondent was represented by Michael A. Koertje, Esq. Respondent moved to dismiss the above-captioned appeals citing the Board's lack of jurisdiction.

FINDINGS OF FACT:

1. Petitioner's agent, Todd Stevens with Stevens & Associates, filed the subject appeals with the Boulder County Board of Equalization on September 13, 2004. However, as Mr. Stevens failed to provide adequate proof of agency with the initial filing, Respondent did not consider the appeal petitions valid. Although Maraya Brooks, Appeals Coordinator for Respondent, made repeated requests for the appropriate letters of authorization, Mr. Stevens failed to comply. In a letter dated October 5, 2004 (Respondent's Exhibit 1), Mr. Koertje advised Mr. Stevens that, "Although not required to do so, the BOE will allow you to perfect your appeals if you file proper letters of agency by October 12, 2004. If the letters of agency have not reached the Appeals Coordinator by that date,

these petitions will not be scheduled for hearing before the BOE.”

2. Mr. Stevens submitted letters of agency to Respondent on October 6, 2004. However, as documented in Respondent’s Exhibit 3, the names on the letters of agency showed no specific connection to the owners of record.

3. On October 12, 2004, Ms. Brooks advised Mr. Stevens that, “The agency for L Mar LLC (R0111102) and ADLP Table Mesa LLC (R0106253) are being rejected. The companies listed in the leases are completely different from the owners of record. In addition, one of the leases expired 8 years ago.”

4. In a letter dated October 22, 2004, Respondent advised Mr. Stevens that the appeals had been canceled, as adequate proof of agency had not been submitted.

CONCLUSIONS OF LAW:

1. The Board of Assessment Appeals (BAA) may hear appeals from decisions of County Boards of Equalization (BOE). § 39-2-125(1)(c), C.R.S. (2004). The BAA considers the BOE’s valuation of property de novo. § 39-8-108(1), C.R.S. (2004). See also, D.C. Burns Realty and Trust v. Jefferson County Bd. of County Comm’rs, 849 P.2d 900, 903 (Colo. App. 1992) (BAA authorized to conduct de novo evidentiary proceedings on merits). The BOE did not reach the merits of these appeals, but determined that Mr. Stevens lacked standing to pursue the appeals, thereby depriving the BOE of subject matter jurisdiction.

2. The BAA may also hear appeals from decisions of County Assessors in the event the BOE fails to respond timely to an appeal properly filed by a taxpayer. § 39-2-125(1)(e). It is not evident that these appeals were properly filed on behalf of the subject owners of record.

3. In all cases, the BAA is not the forum exercising original jurisdiction. Instead, it reviews matters first considered, in most cases, by County Boards of Equalization.

4. Based on the facts and arguments presented by the parties, the BAA concludes that Mr. Stevens failed to establish standing to pursue these appeals before the BOE. An appeal pursued by a person lacking authority from the entity that has the right to pursue that appeal is subject to dismissal for lack of standing. Traxler v. Board of Trustees, 701 P.2d 607, 609 (Colo. App., 1984).

5. The Board finds that Respondent’s decision to effectively reject the petitions for lack of standing was appropriate under the particular facts of these cases. As noted by the Respondent, it is essential that property owners affected by appeals actually authorize the petitions allegedly filed on their behalf. The BAA, therefore, does not reach the merits of the property valuation appeals, as Respondent properly dismissed the appeals to the BOE due to Mr. Stevens’ failure to establish authority to pursue these appeals.

ORDER:

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Respondent's motions are granted. The appeals are dismissed.

APPEAL:

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

If Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 30 days from the date of this decision.

DATED and MAILED this 13th day of June 2005.

BOARD OF ASSESSMENT APPEALS

Karen E. Hart
Karen E. Hart

Sondra W. Mercier
Sondra W. Mercier

This decision was put on the record

JUN 13 2005

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

Penny S. Lowenthal
Penny S. Lowenthal

