

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>MICHAEL D. AND JOANN J. HOWELL,</p> <p>v.</p> <p>Respondent:</p> <p>ARCHULETA COUNTY BOARD OF COMMISSIONERS.</p>	<p>Docket No.: 54673</p>
<p>ORDER</p>	

THE BOARD OF ASSESSMENT APPEALS heard arguments on Respondent’s Motion to Dismiss August 19, 2010, Karen E. Hart and Sondra W. Mercier presiding. Petitioners appeared pro se. Respondent was represented by Todd M. Starr, Esq. Petitioners are protesting the tax year 2009 valuation of the subject property.

The subject property is Archuleta County Schedule No. 588713200037.

Respondent contends that Petitioners failed to meet the thirty day deadline for filing their petition to the Board required under Section 39-8-108(1), C.R.S. Respondent’s decision, denying Petitioners’ protest, is dated November 18, 2009. The certificate of service on Petitioners’ petition indicates the petition was sent February 16, 2010.

Petitioner, Ms. JoAnn Howell, testified that she did not receive a copy of Respondent’s decision until December 18, 2009. Ms. Howell presented letters from Petitioners to the Archuleta County Commissioners’ office referencing that she had not received a copy of the decision.

According to *Utah Motel Associates v. Denver County Board of Commissioners*, 844 P.2d 1290, 1293 (Colo.App. 1992) citing *Denver v. East Jefferson County Sanitation District*, 771 P.2d 16 (Colo. App. 1988), “A letter properly mailed is presumed received by its addressee. However, when an addressee denies receiving a letter, the binding effect of the presumption ends, and the trier of fact is left to decide the issue based upon the weight of the evidence.”

The Board finds that Petitioners presented sufficient probative evidence and testimony to indicate that she did not receive notice from Respondent regarding the denial of their protest until December 18, 2009.

However, Petitioners' petition to the Board was dated February 16, 2010 and was received by the Board on February 22, 2010. The petition was not filed within thirty days of the date Petitioners received notice of Respondent's denial; therefore, Petitioners failed to meet the revised thirty day deadline for filing their petition to the Board required under Section 39-8-108(1), C.R.S. Therefore, the Board grants Respondent's Motion to Dismiss.

ORDER:

The petition is dismissed.

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 8th day of September 2010.

BOARD OF ASSESSMENT APPEALS

Karen E Hart

Karen E. Hart

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.

H. Flannery

Heather Flannery

