

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>ASPEN SKIING COMPANY LLC,</p> <p>v.</p> <p>Respondent:</p> <p>PITKIN COUNTY BOARD OF COMMISSIONERS.</p>	<p>Docket No.: 54720</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on December 2, 2011, Diane M. DeVries and Lyle D. Hansen presiding. Petitioner was represented by F. Brittin Clayton, III, Esq. Respondent was represented by Christopher G. Seldin, Esq. Petitioner is appealing Respondent’s denial of Petitioner’s abatement petition for the 2007 tax year. The parties have stipulated to the valuation of the subject properties for the 2008 tax year.

The subject properties are described as follows:

Pitkin County Schedule Nos. R004556 and R004557

Petitioner filed a protest with the Pitkin County Assessor concerning the assessor’s 2007 valuation of the subject properties. In July of 2007, Petitioner and the Pitkin County Assessor signed written stipulations for the 2007 valuation of the subject properties. The stipulated values for 2007 agreed to by Petitioner and the Pitkin County Assessor were \$3,276,000.00 for schedule number R004556 and \$1,872,000.00 for schedule number R004557. The Pitkin County Assessor applied these 2007 values to the 2008 tax year. Petitioner did not file a protest for the 2008 tax year.

In 2009, Petitioner filed a Petition for Abatement or Refund of Taxes with Respondent for the 2007 and 2008 tax years for the subject properties. Respondent denied the petition, and Petitioner filed this appeal with the Board of Assessment Appeals. The petition filed with the Board of Assessment Appeals states the reason for the appeal as “erroneous valuation of assessment was made. The site has minimal development potential.”

The parties entered into a stipulation for the valuation of the subject properties for the 2008 tax year. The actual values agreed to by the parties for the 2008 tax year are \$12,700.00 for schedule number R004556 and \$7,300.00 for schedule number R004557.

Respondent filed a motion to dismiss with respect to Petitioner's appeal of the 2007 tax year asserting that the Board of Assessment Appeals lacks jurisdiction to hear this appeal. The motion to dismiss also argues that the stipulation entered into between Petitioner and the Pitkin County Assessor is binding on Petitioner. Further, Respondent contends that the abatement petition is barred by Section 39-10-114(1)(a)(I)(D), C.R.S.

Petitioner filed a cross motion for summary judgment with respect to Petitioner's appeal of the 2007 tax year asserting that the Board has inherent authority to dispense with an evidentiary hearing when it is unnecessary because one party or the other is entitled to judgment as a matter of law.

The Board concludes that it has jurisdiction to hear this appeal pursuant to Section 39-2-125(f), C.R.S. which states that the Board of Assessment Appeals has a duty to, "hear appeals from decisions of boards of county commissioners filed not later than thirty days after the entry of any such decision when a claim for refund or abatement of taxes is denied in full or in part." The Board finds that Petitioner filed an appeal with the Board within thirty days after the entry of Respondent's decision denying Petitioner's claim for refund or abatement of taxes. Respondent's denial of Petitioner's claim for refund or abatement of taxes occurred on February 17, 2010. Petitioner filed its appeal with the Board on March 8, 2010.

The Board concludes that Section 39-10-114(1)(a)(I)(D), C.R.S. bars the abatement petition to the extent it is based on arguments of overvaluation. The Board finds that Petitioner previously protested the 2007 actual value of the subject properties pursuant to Section 39-5-122, C.R.S. Section 39-10-114(1)(a)(I)(D), C.R.S. provides in pertinent part:

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...

The Board also concludes that Section 39-10-114(1)(a)(I)(D), C.R.S. does not bar the abatement petition to the extent it is based on arguments of erroneous valuation for assessment. Where a taxpayer's petition for abatement is based upon erroneous valuation for assessment, which is a legal issue, rather than overvaluation, which is a factual issue, the taxpayer's petition for abatement and refund is not precluded by Section 39-10-114(1)(a)(I)(D), C.R.S. *See Boulder Country Club v. Boulder County Bd. of Comm'rs*, 97 P.3d 119 (Colo. App. 2003).

Petitioner argues that the 2007 stipulation executed by the parties must be set aside as a matter of law. Petitioner cites the *Boulder Country Club* case in support of this argument. In the *Boulder Country Club* case, the taxpayer filed a petition for abatement and refund regarding the property's 2000 valuation. The petition for abatement was based on the fact that the property's stipulated actual value for the tax year 1999 was \$5,700,000.00. Then in tax year 2000, the Boulder County assessor set the actual value of the property at \$7,433,900.00. The Court ruled that "[t]he valuation of a taxpayer's property for both years in the reassessment cycle should be the same, absent statutory exceptions." *Boulder Country Club*, 97 P.3d at 120, citing *Cherry Hills Country Club v. Bd. of County Comm'rs*, 832 P.2d 1105, 1109 (Colo.App.1992).

The *Boulder Country Club* case is distinguishable from the present case. In the *Boulder Country Club* case, the taxpayer stipulated to a value for the property for the 1999 tax year. The parties were later in a dispute as to the value of the property for 2000. In the dispute for the year 2000, the taxpayer correctly cited legal authority in support of the proposition that assessors are generally required to value a property the same for both years of a reassessment cycle. The Court agreed.

In the *Boulder Country Club* case, the parties were contesting the valuation for the tax year 2000. There was not a stipulation to the value of the property for the tax year 2000, and the Court did not rule that Section 39-1-104, C.R.S. could be used to set aside a stipulated valuation.

In the present case, Petitioner is seeking to use Section 39-1-104, C.R.S. as a device to set aside a stipulation. As that was not the situation in the *Boulder Country Club* case, the *Boulder Country Club* case does not support the position of Petitioner.

In deciding the *Boulder Country Club* case, the Court of Appeals relied on *Cherry Hills Country Club v. Bd. of County Comm'rs*, 832 P.2d 1105 (Colo.App.1992) as authority. In the *Cherry Hills* case, the taxpayer brought one case in the District Court appealing the Board of Equalization valuation of the taxpayer's property for both 1989 and 1990. As to the 1989 base tax year, the Board of Equalization valued the taxpayer's land at \$9,400,000.00 and for 1990 gave a value of \$6,500.00.00.

The *Cherry Hills* case is distinguishable from the present case. In the *Cherry Hills* case, the valuation for both tax years was the subject of an active dispute. Neither tax year was resolved with a stipulation. Furthermore, the parties agreed that the valuation should be the same for both tax years. Also, the *Cherry Hills* case was a protest case unlike the present case. Thus, the *Cherry Hills* case does not support Petitioner's argument in the present case.

As further grounds for its petition, Petitioner argues that the assessor failed to classify the property as open space for tax year 2007. The Board concludes that this argument involves factual determinations and is based on the ground of overvaluation. Accordingly, Section 39-10-114(1)(a)(I)(D), C.R.S. bars the abatement petition to the extent it is based on this argument.

Furthermore, Petitioner alleges that by entering into the later stipulation in 2008, the assessor implicitly agreed that the same value should apply for 2007. The Board finds that the unambiguous

language of the 2008 stipulation reflects the parties' intent to enter into a stipulation concerning the 2008 year alone. The Board will not imply contractual terms that are inconsistent with the clear language of the stipulation.

Finally, Petitioner argues that the Board should exercise equitable powers to relieve Petitioner from the 2007 stipulation in the interest of justice. The Board concludes that equitable relief is not available to Petitioner in this matter.

The Board concludes that 2007 stipulation executed by Petitioner and the Pitkin County Assessor is binding on Petitioner. The Colorado Supreme Court has ruled on the binding nature of stipulations. The Court has ruled that "[a] party may stipulate away valuable rights provided it is not in violation of public policy." *USI Props. E., Inc. v. Simpson*, 938 P.2d 168,173 (Colo.1997). "A party's participation in a stipulation incorporated into a decree precludes that party from advancing legal contentions contrary to the plain and unambiguous terms contained therein." *Id.* at 173. "We recognize that stipulations are a form of judicial admission which are binding on the parties who make them." *Id.* at 175. The Board finds that no public policy is violated by the parties' 2007 stipulation.

ORDER:

The petition is denied.

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 for assessment of the county wherein the property is located, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provision 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 when Respondent alleges procedural errors or errors of law by the Board.

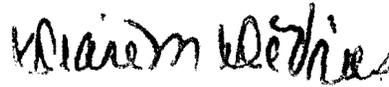
If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation for assessment of the county in which the

property is located, Respondent may petition the Court of Appeals for judicial review of such questions.

Section 39-10-114.5(2), C.R.S.

DATED and MAILED this 23rd day of February, 2012.

BOARD OF ASSESSMENT APPEALS

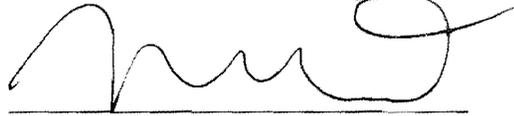


Diane M. DeVries



Lyle D. Hansen

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



Milla Crichton

