

<p>309RD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>MARK HOROWITZ,</p> <p>v.</p> <p>Respondent:</p> <p>LARIMER COUNTY BOARD OF COMMISSIONERS.</p>	<p>Docket No.: 55309</p>
<p>ORDER ON MOTION TO DISMISS</p>	

THE BOARD OF ASSESSMENT APPEALS (BAA) received Respondent’s Motion to Dismiss on July 23, 2010. The Board received a Rebuttal to Respondent’s Motion to Dismiss from Petitioner on August 18, 2010. The Board received a Supplement to Response to Motion to Dismiss from Counsel to Petitioner on August 23, 2010.

This matter was heard by the Board of Assessment Appeals on August 30, 2010, Louesa Maricle and Sondra W. Mercier presiding. Petitioner was represented by Mark W. Gerganoff, Esq. Respondent was represented by Linda Connors, Esq. Petitioner is requesting an abatement/refund of taxes on subject property for tax year 2009.

Subject property is described as follows:

**2006 Westview Road, Fort Collins, Colorado
Larimer County Schedule No. 98364-06-007**

A Notice of Determination (NOD) dated June 30, 2009 was sent to Petitioner indicating the value of land and improvements for tax year 2009 of \$194,000.00. On July 8, 2009, Petitioner filed an appeal to the County Board of Equalization for a reduction in value to \$177,000.00. Petitioner’s appeal was denied by the County Board of Equalization, in a letter dated and mailed on August 12, 2009. On February 18, 2010, Petitioner filed a Petition for Abatement or Refund of Taxes for tax year 2009. The February 18, 2010 petition challenged the classification of the subject as vacant land. The Board of County Commissioners denied the petition citing res judicata.

Respondent contends that the current petition before the BAA represents a second challenge to an overvaluation claim that has already been made. Respondent cites Section 39-10-114(1)(a)(I)(D), C.R.S., which states “[n]o 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.”

Respondent contends that the case before the BAA involves factual determinations and that the issue is one of “overvaluation,” which had been previously addressed through the protest procedure. Respondent argues that the Colorado Supreme Court held that the term “erroneous valuation” cannot be based on factual determinations. *Boulder Country Club v. Boulder County Board of Commissioners*, 97 P.3d 119, 124 (Colo. 2003). Respondent further contends that because the case before the BAA involves factual determinations, it represents issues of “overvaluation,” not “erroneous valuation.”

Petitioner contends that his case before the BAA is based on erroneous valuation in that it was incorrectly classified as vacant when, in fact, development was underway for residential use. Petitioner contends that the petition before the BAA is based upon legal issues and is not precluded by Section 39-10-114(1)(a)(I)(D), C.R.S. Petitioner cites *Boulder Country Club v. Boulder County Board of Commissioners* as allowing the petition before the BAA based on three legal issues: 1) Due Process, 2) Mifeseance by the County Assessor, and 3) Erroneous Valuation for Assessment and Illegal Assessment Rate. *Id.* Petitioner argues that the NOV is ambiguous regarding the classification of the subject as “Land and Improvements” and that it did not clearly say “Vacant land” as it was in fact classified. Petitioner also contends that the Larimer County Assessor’s Office failed to conduct a review of the building permits filed by the end of the calendar year to determine classification between vacant land and residential improved land. Petitioner contends that his property was erroneously valued for assessment as vacant land, causing an illegal assessment rate to be applied to the subject property.

The Colorado Court of Appeals states “if, as here, the reclassification issue is totally dependent upon a factual determination, i.e., the actual use of the property at the time the taxes are levied, we view that as an issue of overvaluation.” *Wylar/Pebble Creek Ranch v. Colorado Board of Assessment Appeals*, 883 P.2d 597, 601 (Colo. App. 1994).

ORDER:

The Board finds that Petitioner’s petition for abatement/refund of taxes challenging the classification of the subject property is dependent upon factual determinations and is therefore an issue of “overvaluation” based on *Wylar/Pebble Creek Ranch v. Colorado Board of Assessment Appeals*. Petitioner is statutorily barred from bringing this petition for abatement for tax year 2009, as Petitioner had previously filed a valuation appeal for the same tax year. Section 39-10-114(1)(a)(I)(D), C.R.S. provides that “[n]o 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 grants Respondent's Motion to Dismiss.

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 19 day of November 2010.

BOARD OF ASSESSMENT APPEALS

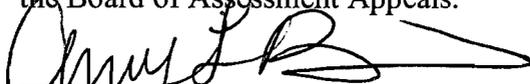


Louesa Maricle



Sondra W. Mercier

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



Amy Bruins