BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 60527
Petitioner: **TRAER CREEK PLAZA LLC,** v. Respondent: **EAGLE COUNTY BOARD OF COMMISSIONERS.**	

ORDER ON MOTION TO DISMISS

THIS MATTER came before the Board of Assessment Appeals on September 13, 2012 on Respondent's Motion to Dismiss, Diane M. DeVries, MaryKay Kelley and James R. Meurer presiding. Petitioner was represented by Dimitri Adloff, Esq. Christina Hooper, Esq. appeared on behalf of Respondent.

The subject property consists of a commercial office and retail building, known as the Traer Creek Plaza building. Besides the rentable office and retail space, the Plaza building contains a two-level underground parking garage. The subject is legally described as Lot 2, Village at Avon Filing 1, and identified by Eagle County Schedule Number R053313.

1.

In its previous appeal concerning the subject property (Docket No. 48088), which was filed on August 29, 2007, Petitioner challenged the Eagle County's 2007 valuation of the subject on the basis that "[t]he valuation includes the parking garage which is subject to a[n] easement agreement with the Traer Creek Metro District. The parking garage should not be included in the valuation." Before this matter was set for a hearing, however, the parties entered into a stipulation as to the subject's 2007 value. The stipulation included a provision concerning the valuation of the parking garage. Specifically, the parties agreed to exclude the value of the parking garage from the 2007 valuation of the subject provided that Petitioner conveys the parking garage to the Traer Creek Metropolitan District and records the conveyance by April 1, 2009. The parties further stipulated that in the event the conveyance did not occur by April 1, 2009, the value of the subject property would include the value of the parking garage. The Board issued an Order approving the stipulation on September 10, 2008.

On March 31, 2009, Petitioner filed a Motion for Hearing Concerning Appeal for Tax Year 2007 (Docket No. 48088), informing the Board that Petitioner was unable to record the conveyance of the parking garage to the Trier Creek Metropolitan District by the April 1, 2009 due date, as outlined in the stipulation. Respondent opposed Petitioner's Motion and the Board heard the parties' arguments on the matter on June 4, 2009. At the conclusion of the hearing, the Board issued a ruling denying Petitioner's Motion.

In the current abatement appeal, which was filed with the Board on April 4, 2012, Petitioner is challenging the 2007 and 2008 valuation of the subject property. Once again, Petitioner is seeking a determination by the Board that the underground parking facility of the subject property should be excluded from the valuation of the subject. Petitioner argues that the valuation of the subject improperly includes the parking structure which is, according to Petitioner a "property exempt from taxation pursuant to Art. X, Sec. 4, Colo. Const. and C.R.S. Sec. 39-3-105."

2.

Respondent argues that Petitioner is precluded from appealing the County's decision to include the value of the parking garage in the 2007 valuation of the subject by the doctrine of res judicata which bars re-litigation of matters that were already resolved at earlier proceedings. Respondent points out that Petitioner makes essentially the same assertion in its 2012 petition that it made in the 2007 petition regarding Eagle County's inclusion of the underground parking garage in the valuation of the subject property. According to Respondent, because Petitioner's 2007 claim was already resolved by the Board on the stipulation of the parties, Petitioner's appeal concerning 2007 valuation of the subject is barred by the doctrine of res judicata.

Further, Respondent argues that Petitioner's appeal for both 2007 and 2008 tax years fails as a matter of law pursuant to the unit assessment rule that provides that all interests in a unit of real property must be assessed together as a whole to the owner of the fee interest in the property. Respondent points out that as of the relevant assessment dates, January 1 of 2007 and 2008, and to date, the parking garage has not been subdivided from the remainder of the Plaza building and has not been conveyed to the Traer Creek Metropolitan District; Petitioner remains the record owner of the Plaza building and the parking garage. According to Respondent, because the parking garage cannot be separately assessed from the remainder of the Plaza building absent a subdivision and subsequent conveyance, the subject property must be treated as a single unit for the property assessment and taxation purposes.

Finally, Respondent cites Section 39-10-114 (1)(a)(I)(D) and claims that Petitioner's appeal should be denied as the subject's value for tax year 2008, an intervening year, must remain the same as the 2007 valuation of the subject, which was the reappraisal year. Petitioner states that absent an "unusual condition," the subject's value must remain the same for both years of the 2007-2008 reassessment cycle.

In response to Respondent's arguments, Petitioner contends that the 2007 and 2008 taxes were levied erroneously and illegally in violation of Article X, Section 4 of the Colorado Constitution and Section 39-3-105, C.R.S., both of which provide that property owned by a political

subdivision of the state is exempt from taxation. According to Petitioner, in December of 2004, Petitioner and the Traer Creek Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado, executed a Parking Facility Easement Agreement, a Development Agreement, and a Common Easement Agreement, pursuant to which, among other things, Petitioner granted the Traer Creek Metropolitan District an easement which allowed the District to construct, operate and maintain the subject's parking garage. Petitioner states that although Petitioner still owns the subject property, the Traer Creek Metropolitan District holds non-exclusive easements over the parking garage area of the subject. Accordingly, Petitioner contends that, by virtue of holding the easements over the subject parking garage area, the said parking garage is the property of the Traer Creek Metropolitan District and is therefore statutorily and constitutionally exempt from taxation.

Petitioner also argues the doctrine of res judicata does not preclude the appealing of the issue of the parking garage for tax year 2007 because the 2007 stipulation preserved the parties' rights to appeal by including the following clause: ". . . neither party will waive any rights, claims, or defenses as they may relate to bringing an abatement action associated with this parcel only in the event the conveyance has not occurred within the timeline set forth herein . . ." Thus, Petitioner argues that express language in the stipulation preserved Petitioner's right to pursue this abatement action. And finally, Petitioner contends that the unit assessment rule is inapplicable when ownership of land and improvements is split between a private entity and the government.

3.

"[T]he 'owner' of the property is responsible for property taxes regardless of how various property rights may have been pledged or exchanged . . ." *See Denver v. Bd. of Assessment Appeals*, 848 P.2d 355, 360 (Colo. 1993). It has been an undisputed fact that, as of the relevant assessment dates of January 1, 2007 and January 1, 2008, Petitioner has been and still remains the sole record owner of the Traer Creek Plaza along with the building's underground parking structure. As the owner of the subject, Petitioner is responsible for paying the underlying property taxes associated with the subject.

Further, because "the property is assessed to the owner only," it makes no difference that the ownership of the subject is qualified or limited by, such as in this case, an easement. *Bd. Assessment Appeals v. City and County of Denver*, 829 P.2d 1319 (Colo. App. 1991). Pursuant to the unit assessment rule, all interests in a unit of real property must be assessed together as an entirety to the owner of the fee. *Denver v. Bd. of Assessment Appeals*, 848 P.2d 355, 359 (Colo. 1993). Based on the evidence presented, the Board finds that although the easement agreements convey substantial property and use rights to the Traer Creek Metropolitan District, the ownership of the parking structure has not been severed from the Plaza building and the title for the garage has not been conveyed to the Traer Creek Metropolitan District.

Similarly, an easement interest in property is separate and distinct from an ownership interest in property, *Wright v. Horse Creek Ranches*, 697 P.2d 38, 387 (Colo. 1985), thus, the Board is not convinced that the Traer Creek Metropolitan District should be treated for tax purposes as the "owner" of the parking garage simply because Petitioner and the Traer Creek Metropolitan District

entered into the series of easement agreements. Because the Traer Creek Metropolitan District does not own the subject's garage structure, neither the Colorado Constitution nor Section 39-3-105, C.R.S. exempts the garage from taxation.

The Board further finds that the doctrine of res judicata is inapplicable where, as here, the parties reserved a future right to bring an abatement petition by the express terms of their settlement agreement. And finally, the Board finds that, under the facts presented here, Section 39-10-114 (1)(a)(I)(D), C.R.S. does not prevent Petitioner from challenging the value of the subject regardless of whether the protest relates to the reassessment or the intervening tax year.

ORDER:

Respondent's Motion to Dismiss is hereby granted.

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 25th day of September, 2012.

BOARD OF ASSESSMENT APPEALS

Diane M. DeVries

MaryKay Kelley

James R. Meurer

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

Milla Crichton

STATE OF COLORADO SEAL BOARD OF ASSESSMENT APPEALS