

**BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO**
1313 Sherman Street, Room 315
Denver, Colorado 80203

Docket No.: 60659

Petitioner:

RICHARD B. QUIGLEY,

v.

Respondent:

EAGLE COUNTY BOARD OF COMMISSIONERS.

ORDER ON RESPONDENT'S MOTION TO DISMISS

THIS MATTER was heard by the Board of Assessment Appeals on March 4, 2013, James R. Meurer and Brooke B. Leer presiding. Petitioner appeared pro se. Respondent was represented by Christina Hooper, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for tax year 2011.

Subject property is described as follows:

35 Powell Court, Edwards, Colorado
Eagle County Schedule No.: **R049661**

The subject property is a 3.549-acre vacant lot located in Eagle County's Cordillera Subdivision.

I. Procedural Background

On March 4, 2013, the Board of Assessment Appeals opened the hearing in this matter. At the outset of the hearing, Respondent moved for a dismissal of Petitioner's appeal on the basis stated in Respondent's Motion to Dismiss which was filed with the Board of Assessment Appeals on or about January 29, 2013. At the hearing, it became apparent that the Board of Assessment Appeals did not have Respondent's Motion to Dismiss at its disposal. The Board permitted Respondent to present the arguments underlying Respondent's Motion to Dismiss. The Board also permitted Petitioner to briefly respond to Respondent's arguments.

After hearing to the parties' arguments, the Board decided to continue the hearing allowing Respondent to re-submit its Motion to Dismiss to the Board by no later than March 7,

2013. Petitioner was given until March 15, 2013 to file a response to Respondent's Motion to Dismiss. The Board informed the parties that an Order will be issued on Respondent's Motion to Dismiss. The Board advised the parties that in the event the Board denies Respondent's Motion to Dismiss, this matter will be set for a new hearing.

II. Respondent's Motion to Dismiss

During the 2011 property tax protest period, Petitioner appealed the Assessor's valuation of the subject to the Eagle County Assessor. On June 21, 2011, a Notice of Determination was issued to Petitioner pursuant to Section 39-5-122, C.R.S. denying Petitioner's appeal.

Petitioner appealed the Assessor's valuation to the Eagle County Board of Equalization arguing that Assessor's time adjustment was improper. The CBOE denied the petition on July 26, 2011. Petitioner did not appeal the CBOE decision.

On March 1, 2012, Petitioner filed a petition for abatement with the Eagle County Board of Commissioners. Eagle County determined that Petitioner's appeal was based on the ground of overvaluation and therefore denied Petitioner's petition for abatement for lack of standing pursuant to Section 39-10-114(1)(a)(1)(D), C.R.S.

On July 7, 2012, Petitioner appealed Eagle County's decision to the BAA. This appeal is now before the Board.

Respondent argues that Petitioner's abatement petition to the BAA should be dismissed pursuant to Section 39-10-114(1)(a)(1)(D), C.R.S., which provides that:

No abatement 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 points out that Petitioner's argument related to Eagle County's application of time adjustment is based on the ground of overvaluation. According to Respondent, an appraiser's determination of appropriate time trending factors is a valuation issue because it involves factual determination requiring appraisal judgment and is not a question of law. Respondent cited *Boulder County Club v. Boulder County Bd. of Comm'rs*, 97 P.3d 122-23 (Colo. App. 2003); *Wylar/Pebble Creek Ranch v. Colo. Bd. of Assessment Appeals*, 883 P.2d 597, 600 (Colo. App. 1994) and 2 *Assessor's Reference Library* Section V at 5.15. Respondent also quoted the Court of Appeal's decision previously issued in Mr. Quigley's case, namely, *Richard B. Quigley v. Eagle County Board of Commissioners*, dated August 20, 2012, which stated that "[t]he decisions concerning the degree of comparability of a sale and any adjustments to be made in using it are questions of fact for the Board to decide."

Accordingly, Respondent concluded that since Petitioner already protested the value of the subject property through the protest and adjustment process and Petitioner's claims to the

BAA for abatement are based on the ground of overvaluation, Petitioner's abatement claims are barred by Section 39-10-114(1)(a)(I)(D), C.R.S., and should be dismissed.

III. Petitioner's Arguments

Petitioner filed a written response to Respondent's Motion to Dismiss on March 11, 2013. Petitioner argues that his Petition to the BAA is not based on overvaluation, but on erroneous and/or illegal valuation for assessment. Petitioner cited Section 39-10-114(1)(a)(1)(A), C.R.S., which allows for the abatement/refund of taxes when:

[I]f taxes have been levied erroneously or illegally, whether due to erroneous valuation for assessment, irregularity in levying, clerical error, or overvaluation, the treasurer shall report the amount thereof to the board of county commissioners, which shall proceed to abate such taxes in the manner provided by law.

Petitioner argues that Respondent erroneously and/or illegally valued the subject.

First, Petitioner states that Respondent failed to comply with the *Land Valuation Manual* when time trend factors were established for the period from November 1, 2007 to June 30, 2008. According to Petitioner, the 0.0% time trend factor for this 8-month period was arbitrary and not supported by a sufficient number of qualified/verified property sales. Because that arbitrary 0.0% time trend factor was used in the calculation of the value of the subject as of June 30, 2010, any such value was in violation of the *Land Valuation Manual* and resulted in erroneous value for assessment.

Second, Petitioner contends that Respondent failed to correct the time trend factor errors once sufficient sales data became available during the period from July 1, 2008 to July 1, 2010. Petitioner states that once sales data from July 1, 2008 thru June 30, 2010 was available, it became clear that the use of the arbitrary 0.0% time trend factor for the 8 month period from November 1, 2007 to June 30, 2008 was incorrect. According to Petitioner, the actual change in property values over this 8-month period was about 36.4%. Petitioner states that Eagle County has used the erroneous value derived without incorporating the "8-month cliff" correction to reach their \$191,250 value. According to Petitioner, had Eagle County properly corrected for their "8-month cliff" error, the value of the subject would have been \$117,650.

Third, Petitioner argues that Respondent failed to apply adjustments to comparables in a consistent and uniform fashion to all Cordillera vacant land. According to Petitioner, Eagle County uses an adjustment factor of \$80,000 to \$120,000 when a property has a public road on three sides. Petitioner points out that the subject has a public road on three sides and yet County applied no such "road influence" adjustment on their comparable analysis dated June 4, 2012. According to Petitioner, had such "road influence" adjustment been made, a correct valuation of the subject would have been \$111,250 and not the \$191,250 determined by Respondent.

III. Conclusion

After careful review of the documents submitted by the parties in this case, the Board finds that this appeal is barred by Section 39-10-114(1)(a)(I)(D), C.R.S. Petitioner appealed the Assessor's Valuation of the subject to the Eagle County Assessor and received a Notice of Determination pursuant to Section 39-5-122, C.R.S. 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. Where a taxpayer's petition for abatement is based on overvaluation, which is a factual issue, rather than erroneous or illegal valuation, which are legal issues, the taxpayer's petition for abatement and refund is precluded by Section 39-10-114(1)(A)(I)(D), C.R.S. *Boulder County Club v. Boulder County Bd. of Comm'rs*, 97 P.3d 122-23 (Colo. App. 2003).

The Board was persuaded that Petitioner's appeal to the BAA is based entirely on the overvaluation arguments. The Board was convinced by Respondent's arguments that appraiser's determination of appropriate time trending factors is a valuation issue because it involves factual determination requiring appraisal judgment and is not a question of law. Similarly, Petitioner's argument as to Respondent's alleged failure to apply the "road influence" adjustment in a consistent and uniform fashion also involves a factual determination. All of the issues that Petitioner brings up in support of his BAA petition involve factual determination. Accordingly, Petitioner's petition to the BAA is based on overvaluation arguments which is not permissible per Section 39-10-114(1)(a)(I)(D), C.R.S.

IV. Order

The Board is without jurisdiction to hear Petitioner's appeal.

This matter is hereby 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 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 8th day of April, 2013.



BOARD OF ASSESSMENT APPEALS

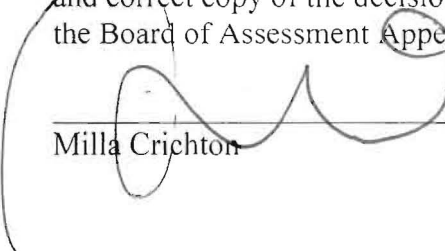


James R. Meurer



Brooke B. Leer

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



Milla Crichton