

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>ELECTRONIC DATA SYSTEM CORPORATION,</p> <p>v.</p> <p>Respondent:</p> <p>PROPERTY TAX ADMINISTRATOR</p>	<p>Docket No.: 49061</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on June 2, 2008, Sondra W. Mercier and MaryKay Kelley presiding. Petitioner was represented by Mark W. Gerganoff, Esq. Respondent was represented by Robert H. Dodd, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for tax year 2005.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**833 South Boulder Road, Louisville, Colorado
(Boulder County Schedule No. R0035497; PTA File No. 07-07-035)**

The subject property is commercial real estate. The Boulder County Assessor assigned an actual value of \$11,884,200.00 for tax year 2005. Petitioner is requesting a value of \$9,493,000.00.

In 2005, Petitioner protested the 2005 valuation of \$11,884,200.00 and was denied by the Boulder County Assessor. Taxes were paid.

In 2006, the then current property owner petitioned the Board protesting the value assigned for tax year 2006. Prior to hearing, the assigned value of \$11,884,200.00 was reduced to a stipulated value of \$9,493,000.00 as approved by both parties to that appeal.

In 2007, Petitioner filed a petition for abatement or refund of taxes, requesting application of the 2006 stipulated value of \$9,493,000.00 to tax year 2005. Petitioner's abatement petition claimed

erroneous valuation. The petition was granted by the Boulder County Board of Commissioners. Since the abatement/refund was over \$1,000.00, it was sent to Respondent for review and denied at that level.

Transfer of ownership in May of 2006 has no effect on the outcome of this appeal. Respondent does not allege changed or unusual conditions on the subject property between the assessment dates of tax years 2005 and 2006.

This matter is before the Board on Petitioner's Motion for Summary Judgment. "Summary judgment is appropriate when the pleadings and supporting documentation demonstrate that no genuine issue of material fact exists and that the moving party is entitled to summary judgment as a matter of law." *West Elk Ranch LLC v. United States*, 65 P.3d 479, 481 (Colo. 2002). "A material fact is a fact that will affect the outcome of the case." *Sender v. Powell*, 902 P.2d 947, 950 (Colo.App. 1995).

Neither party disputes the material facts affecting the outcome of this appeal as summarized above; therefore there is no genuine issue of material fact. The Board must determine whether Petitioner is entitled to judgment as a matter of law.

Petitioner's abatement petition claimed erroneous valuation, referencing Colorado Revised Statutes ("C.R.S.") § 39-1-114(1)(a)(I)(A) which states in part:

Except as otherwise provided . . . if 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.

Respondent argues that the basis for this petition is overvaluation, that a valuation appeal had been denied previously, and that the petition should be denied under C.R.S. § 39-10-114(1)(a)(I)(D) which states, "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"

Petitioner cites *Boulder Country Club v. Boulder County Board of Commissioners*, 97 P.3d 119 (Colo.App. 2003). The taxpayer in *Boulder Country Club* was asking for application of the stipulated value for tax year 1999 (reappraisal year) to tax year 2000 (intervening year), even though a protest was previously filed for tax year 2000. The court found that taxpayer's petition was based upon an erroneous valuation for assessment, and was therefore not precluded under C.R.S. § 39-10-114(1)(a)(I)(D).

Respondent argues that application of the subject property's value for the 2006 intervening year to the 2005 reappraisal year renders *Boulder Country Club* distinguishable and inapplicable. Petitioner argues that the court in *Boulder Country Club* did not specifically limit the decision's application to intervening years or reassessment years. Petitioner cites *Cherry Hills Country Club v. Board of County Commissioners*, 832 P.2d 1105 (Colo.App. 1992), which requires that "The

valuation of a taxpayer's property for both years in the reassessment cycle should be the same, absent statutory exceptions." *Boulder County Club*, 97 P.3d at 119, citing *Cherry Hills County Club*, 832, P.2d at 1109.

Respondent argues this case is more closely in line with *Yale Investments, Inc. v. Property Tax Administrator*, 897 P.2d 890 (Colo.App. 1995) where the court upheld denying an abatement petition for the 1990 tax year and granting the petition for the 1989 tax year, because 1990 had been previously protested. The Board does not agree with Respondent's comparison with *Yale Investments*. "The *Yale* division concluded that an abatement for the tax year 1989 did not render the 1990 tax illegal or erroneous because the 1990 abatement petition was specifically based on overvaluation. The division held that the 1990 abatement petition was statutorily barred because the taxpayer had previously filed a protest and adjustment appeal based on an overvaluation." *Boulder County Club*, 97 P.3d at 121. Petitioner's petition for abatement on the subject property claims erroneous valuation for assessment, therefore *Yale Investments* is inapplicable.

The value on the subject property should be the same for both tax years 2005 and 2006. The Board finds there is no distinguishable difference between applying a value assigned to the reappraisal year and a value assigned to the intervening year in an abatement petition based upon a claim of erroneous valuation for assessment. Therefore Petitioner's petition for abatement is permissible under *Boulder Country Club*, and should be granted.

Petitioner is entitled to judgment as a matter of law. The Board grants Petitioner's Motion for Summary Judgment; the petition is granted.

Respondent requested that should the Board grant Petitioner's motion, the Board find that the case involves a matter of statewide concern. The Board does not agree, and denies Respondent's request.

ORDER:

Respondent is ordered to cause an abatement/refund to Petitioner, based on a 2005 actual value for the subject property of \$9,493,000.00.

The Boulder County Assessor is directed to change his records accordingly.

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 C.R.S. § 24-4-106(11) (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 C.R.S. § 24-4-106(11) (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).

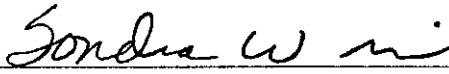
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law when Respondent alleges procedural errors or errors of law by the Board.

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.

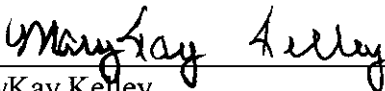
C.R.S. § 39-10-114.5(2) (2007).

DATED and MAILED this 2nd day of July 2008.

BOARD OF ASSESSMENT APPEALS



Sondra W. Mercier

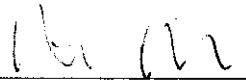


MaryKay Kelley

This decision was put on the record

JUL 02 2008

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



Heather Heinlein

