

<p><b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p><b>HIGH COUNTRY FINISHING, INC.,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>JEFFERSON COUNTY BOARD OF COMMISSIONERS.</b></p>	<p><b>Docket No.: 55273</b></p>
<p><b>ORDER ON MOTION TO DISMISS AND CROSS-MOTION FOR SUMMARY JUDGMENT</b></p>	

**THESE MATTERS** were heard by the Board of Assessment Appeals on May 31, 2011, Sondra W. Mercier and Gregg Near presiding. Petitioner was represented by Mark W. Gerganoff, Esq. Respondent was represented by David Wunderlich, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for tax year 2007.

The Board received a stipulation from the parties on April 26, 2011, which, among other things, stipulated that between tax years 2007 and 2008, there were no unusual conditions or changes to the subject property affecting its value.

Subject property is described as follows:

**30705 Bryant Drive, Evergreen, Colorado  
Jefferson County Schedule No. 424282**

The subject property is commercial real estate. Petitioner is requesting a value of \$1,100,000.00 for tax year 2007; Respondent assigned an actual value of \$1,348,900.00.

Petitioner filed a protest of the 2007 value of the subject property, \$1,348,900.00, with the Jefferson County Assessor’s Office. This protest was denied, and Petitioner did not appeal this decision with the County Board of Equalization. For tax year 2008, Petitioner protested the assigned value of the subject property, \$1,348,900.00, and was given a reduction, which placed the property value at \$1,100,000.00.

With the Board, Petitioner timely filed an abatement for tax year 2007, citing the following reasoning for its appeal: “2007 & 2008 should be the same as adjusted value for

2008.” See *Boulder Country Club v. BOCC*; see *Cherry Hills Country Club v. BOCC*.” Pet’r Pet. pg. 1.

This matter is before the Board on Respondent’s Motion to Dismiss and Petitioner’s Cross-Motion for Summary Judgment. The Board will first examine the merits of awarding 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).

Respondent argues that Petitioner did not timely file its Cross-Motion for Summary Judgment, so the Board cannot grant such relief. The Board disagrees. While Board Rule 28(b) provides that non-procedural motions may not be filed less than 10 days before the hearing, the Board received Petitioner’s Cross-Motion for Summary Judgment on April 26, 2011, which was more than 10 days before the hearing. Therefore, Petitioner’s Cross-Motion was submitted timely.

Petitioner argues that the basis for the petition is erroneous valuation for assessment, as the 2007 tax year value should be the same as that for 2008. According to Petitioner, it is entitled to summary judgment on this ground. The parties stipulated that between tax years 2007 and 2008, there were no unusual conditions or changes to the subject property affecting its value.

In contrast, Respondent contends that the basis for the petition is overvaluation. According to Respondent, the petition should be denied pursuant to Section 39-10-114(1)(a)(I)(D), C.R.S. because Petitioner previously filed a protest based on valuation for the subject property for tax year 2007. 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 . . . ”

In *Boulder Country Club v. Boulder County Bd. of Commissioners*, 97 P.3d 119 (Colo. App. 2003), the taxpayer requested that the stipulated value for tax year 1999 (reappraisal year) be applied 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 not precluded by Section 39-10-114(1)(a)(I)(D), C.R.S.

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 the denial of an abatement petition for the 1990 tax year and granted the petition for the 1989 tax year, because 1990 had been protested previously.

The Board disagrees. As quoted in *Boulder Country Club*:

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.

The Board finds that this matter is more analogous to *Boulder Country Club* than it is to *Yale Investments*. Unlike the facts in *Yale Investments* and similar to those in *Boulder Country Club*, Petitioner has not claimed that its basis for abatement was overvaluation. Petitioner has repeatedly claimed, in its motions, briefs, and at the hearing, that the basis for its claim was erroneous valuation because tax years 2007 and 2008 are different values.

As stipulated, there were no unusual circumstances affecting the subject property, so pursuant to the case law in *Cherry Hills*, tax years 2007 and 2008 must be the same. Therefore, summary judgment should be entered in favor of Petitioner.

As a result of the Board's finding that the basis for Petitioner's abatement was erroneous valuation, Respondent's Motion to Dismiss is denied because Section 39-10-114(1)(a)(I)(D), C.R.S. does not apply.

**ORDER:**

Respondent is ordered to cause an abatement/refund to Petitioner based on a 2007 actual value for the subject property of \$1,100,000.00.

The Jefferson County Assessor is directed to change his/her 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 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.

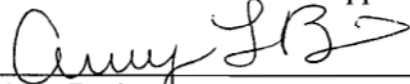
If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation for assessment of the county in which the property is located, Respondent may petition the Court of Appeals for judicial review of such questions.

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

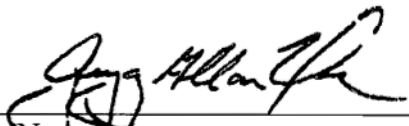
DATED/MAILED this 24 day of June 2011.

**BOARD OF ASSESSMENT APPEALS**

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

  
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Amy Bruins

  
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Sondra W. Mercier

  
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Gregg Near

