

**BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO**

1313 Sherman Street, Room 315
Denver, Colorado 80203

Docket No.: 61979

Petitioner:

THOMAS C. OXLEY,

v.

Respondent:

**ARAPAHOE COUNTY BOARD OF
COMMISSIONERS.**

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on August 14, 2013, Diane M. DeVries and Brook B. Leer presiding. Petitioner Thomas C. Oxley appeared pro se. Respondent was represented by George Rosenberg, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for the 2011 tax year.

The subject property is described as follows:

**4715 S. Ogden St.
Englewood, CO 80113
Arapahoe County Schedule No. 2077-11-3-04-008**

On or about May 1, 2011, Petitioner received a Notice of Valuation issued by the Arapahoe County Assessor's Office pertaining to the 2011 valuation of the subject. The Assessor valued the subject at \$3,118,100 for the 2011 tax year. Petitioner filed a timely on-line appeal of the valuation with Arapahoe County Assessor's Office. On or about June 23, 2011, Arapahoe County Assessor's Office issued a Notice of Determination, denying Petitioner's appeal. The Notice of Determination included specific instruction as to the deadline for filing of the protest: "**The deadline for filing real property appeals is July 15.**"

On August 10, 2012, Petitioner filed a Petition for Abatement or Refund of Taxes for tax year 2011 based upon the ground of overvaluation of the subject property with Arapahoe County Board of Commissioners. The Board of Commissioners denied the petition on October 20, 2012 for lack of jurisdiction. The Commissioners' Office determined that it lacked jurisdiction because

“[a] protest was filed for the year in which this petition asks for consideration based on overvaluation.” Section 39-10-114(1)(a)(I)(D), C.R.S.

On February 7, 2013, Petitioner again filed for abatement of his 2011 property taxes with Arapahoe County Commissioners’ Office. On April 9, 2011, Arapahoe County Commissioners’ Office again denied Petitioner’s appeal on the exact same grounds as Petitioner’s previous appeal.

Following the second denial from Arapahoe County Board of Commissioners, Petitioner, on April 30, 2013, filed an appeal with the Board of Assessment Appeals, requesting an abatement or refund of taxes on the subject property for the 2011 tax year.

On June 13, 2013, Respondent filed Respondent’s Motion to Dismiss requesting the Board to dismiss Petitioner’s appeal pursuant to Section 39-10-114(1)(a)(I)(D), C.R.S., which states in relevant part:

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 pursuant to section 39-5-122...

At the August 14, 2013 hearing before the Board of Assessment Appeals, Mr. Rosenberg on behalf of Respondent argued that Petitioner has protested the valuation of the subject property to Arapahoe County Assessor and a Notice of Determination was mailed to him pursuant to Section 39-5-122, C.R.S. Having received the Assessor’s Notice of Determination, Petitioner did not appeal to the County Board of Equalization, abandoning his appeal. Instead, Petitioner filed abatement petitions for the same 2011 tax year, first in August, 2012 and second in February, 2013. Both of Petitioner’s abatement petitions were denied for lack of jurisdiction pursuant to Section 39-10-114(1)(a)(I)(D), C.R.S. Mr. Rosenberg argued that because Petitioner’s appeal to the BAA is premised on the basis of overvaluation, so too, it must be denied for lack of subject matter jurisdiction pursuant to Section 39-10-114(1)(a)(I)(D), C.R.S.

Petitioner, Mr. Oxley, contended that the County has overvalued the subject property by erroneously attributing the home’s garage space to the overall finished square footage of the subject. According to Petitioner, substantial amount of the home’s square footage is within the garage; the County mistakenly added square footage of the home’s living area to the garage square footage, and valued the subject by comparing it to 13,000-foot homes where the square footage does not include garage space.

Further, Petitioner testified that he did not protest the Assessor’s Notice of Determination to Arapahoe County Board of Equalization because he relied on the erroneous information provided by Arapahoe County that instructed Petitioner to not file such appeal with the Board of Equalization but instead to pursue an abatement appeal through the Board of Commissioners. Petitioner stated that he simply followed the County’s advice and that County is being unjustly enriched by his tax payment.

The Board concludes that it does not have jurisdiction to hear this appeal pursuant to Section 39-10-114(1)(a)(I)(D), C.R.S. The testimony before the Board was undisputed that in June of 2011, Petitioner received a Notice of Determination issued by Arapahoe County Assessor's Office. Petitioner did not protest the Assessor's Notice of Determination to the Board of Equalization by the July 15th deadline. The Board also finds that Petitioner's appeal to the Board is based on overvaluation because the County's use of a correct square footage in valuing the subject is a factual issue. See *Boulder Country Club v. Boulder County Bd. of Comm'rs*, 97 P.3d 119 (Colo. App. 2003) (where a taxpayer's petition for abatement is based upon overvaluation, which is a factual issue, the taxpayer's petition for abatement and refund is precluded by Section 39-10-114(1)(a)(I)(D), C.R.S.). Accordingly, Petitioner's appeal is barred by Section 39-10-114(1)(a)(I)(D), C.R.S.

ORDER:

The petition is 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 27th day of August, 2013.

BOARD OF ASSESSMENT APPEALS

Diane M. DeVries

Diane M. DeVries

Brooke B. Leer

Brooke B. Leer

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

Milla Lishchuk

Milla Lishchuk

