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| <p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>DR. HOWARD BEALL,</p> <p>v.</p> <p>Respondent:</p> <p>BOULDER COUNTY BOARD OF EQUALIZATION.</p> | <p>Docket No.: 73893</p> |
| <p>ORDER DISMISSING APPEAL</p> | |

THIS MATTER was heard by the Board of Assessment Appeals on September 4, 2018, Sondra W. Mercier and MaryKay Kelley presiding. Petitioner appeared *pro se*. Respondent was represented by Michael A. Koerje, Esq., also appearing by phone. Petitioner is protesting the 2017 actual value of the subject property.

Background

According to Petitioner’s Petition filed with the Board on December 5, 2017, the actual value assigned to the subject property by the Boulder County Board of Equalization for tax year 2017 was “0.” Petitioner’s estimate of the subject’s value for tax year 2017 is \$750,000.

Respondent filed a Motion to Dismiss on March 22, 2018. Petitioner did not file a response to Respondent’s Motion. The hearing on September 4, 2018 was limited to the arguments pertaining to Respondent’s Motion to Dismiss.

Evidence Presented Before the Board

Respondent argues that Petitioner’s appeal should be dismissed pursuant to Section 39-8-108(5)(a), C.R.S, which states that the Board of Assessment Appeals may not increase the subject’s value from the value previously established by the county board of equalization (“The valuation shall not be adjusted to a value higher than the valuation set by the county board of equalization pursuant to section 39-8-107. . .”).

The only exception which would allow the Board of Assessment Appeals to increase the county board of equalization's value is correction of errors to account for omitted property. *See* Section 39-8-108(5)(a), C.R.S. Respondent contends that the statutory exception for omitted property does not apply in this case because the subject has not been "omitted" as contemplated by the statute. According to Respondent, the subject property was not "omitted" because it was listed on the Assessor's tax rolls and valued. The Boulder County Board of Equalization valued the subject at zero due to the subject's uncertain boundaries and unclear title.

In response, Petitioner contends that the subject property is an "omitted" property because Respondent incorrectly identified the subject's address as 511 Main Street, Lyons, CO instead of 507 Main Street, Lyons, CO. According to Petitioner, a portion of the subject parcel was sold to Colorado Department of Transportation for over \$37,000. Petitioner states that the address at 511 Main Street is occupied by a business. Petitioner also testified that three surveyors conducted surveys on the subject and that appraiser who appraised the subject for the Colorado Department of Transportation determined that the subject's value exceeded \$500,000. According to Petitioner, there is a legal action pertaining to the subject parcel currently pending in Federal Court.

After presenting his case to the Board and during the Board's questioning, Petitioner left the hearing and did not return despite the Board's urging Petitioner to remain until the conclusion of the hearing. The Board adjourned the hearing after Petitioner's departure.

The Board's Findings

"Omitted property" as contemplated by Section 39-5-125, C.R.S. consists of any taxable property, such as personal property, land, an improvement, or both land and improvement, that is not listed on the current assessment roll. *See* Assessors' Reference Library, Vol. 2 at 3.20.

According to the evidence presented at the hearing, the subject property is listed on the current assessment roll. Therefore, the Board finds that the subject property does not meet the statutory definition of "omitted property." Because the subject parcel has not been omitted from the 2017 assessment roll, the Board is not permitted, pursuant to Section 39-8-108(5)(a), C.R.S. to increase the subject's value from "0" previously determined by the Boulder County Board of Equalization.

Moreover, an administrative agency such as the BAA may only exercise authority granted to it by statute. Section 39-2-125 grants the BAA authority to hear property tax appeals from county boards of equalization and boards of county commissioners. But, nothing in section 39-2-125 gives the BAA authority to adjudicate Petitioner's allegations as to the errors in the subject's address. Correcting this error is outside the authority of the BAA.

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-nine 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 of the respondent county, 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-nine 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 within thirty days of such decision 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 of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

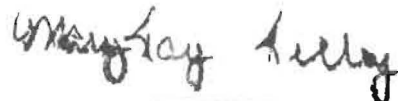
Section 39-8-108(2), C.R.S.

DATED and MAILED this 16th day of October, 2018.

BOARD OF ASSESSMENT APPEALS

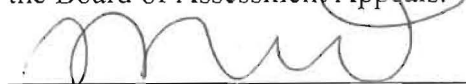


Sondra W. Mercier



MaryKay Kelley

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



Milla Lishchuk