

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 79091
Petitioner: WILLIAM H. HOLBERG, v. Respondent: CLEAR CREEK COUNTY BOARD OF COUNTY COMMISSIONERS.	
FINAL AGENCY ORDER	

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on January 6, 2021, Samuel Forsyth and John DeRungs presiding. Petitioner, William H. Holberg, appeared pro se. Respondent, the Clear Creek County Board of County Commissioners, was represented by Peter Lichtman, Esq. Petitioner appeals the Respondent’s denial of his abatement and refund petition for tax year 2018.

EXHIBITS

The Board admitted into evidence Petitioner’s Exhibit A, B, C and D, and Respondent’s Exhibit 1, 2, 3, 4, 5, and 6.

FACTS AND ARGUMENT

This case concerns Mr. Holberg’s appeal of the special assessments collected by Clear Creek County on two vacant lots located in the St. Mary’s subdivision of Clear Creek County – lot 629 U4 (county account number R015497) and lot 635 U4 (county account number R005056). Mr. Holberg acquired both lots in a tax lien sale in 2019. He became the owner of lot 629 via a Treasurer’s Deed recorded May 14, 2019, and the owner of lot 635 via a Treasurer’s Deed recorded June 18, 2019.

At the time Mr. Holberg purchased the subject property, the lots were subject to liens held by St. Mary’s Glacier Water and Sanitation District, pursuant to 32-1-1001(1)(j) of the Special District Act. The St. Mary’s Glacier Water and Sanitation District is a special district organized and operating pursuant to the Special District Act. (Exhibit 6, p. 50 of 123.) The District is authorized to impose fees, rates, tolls, penalties and charges for services, programs and facilities it

furnishes. (Exhibit 6, p. 50 of 123.) The Statements of Lien were recorded December 7, 2018. The Statements of Lien state that the amount due under it may have been certified to Clear Creek County “to be collected and paid over by the treasurer of Clear Creek County in the same manner as taxes are authorized to be collected and paid over pursuant to § 39-10-107, C.R.S.” (Exhibit 5, p. 56 of 89 (CCC0071); Exhibit 6, p. 51 of 123 (CCC0154).

Following his purchase of the lots, Mr. Holberg received a Statement of Taxes Due for tax year 2018 from Clear Creek County for each lot, totaling \$10,592.03 for lot 629 and \$11,019.37 for lot 635. (Exhibit D.) The Statements of Taxes Due included and were mainly comprised of the St Mary’s Water and Sanitation District’s Special Assessment amounts. The Statement of Taxes Due for lot 629 contained a bill for property taxes of \$118.12, with the remainder of the \$10,592.03 being comprised of a \$7,872.46 special assessment amount, a 30% Treasurer collection fee (also denominated as a “Special Assessment”) and interest. (Exhibit D, p. 2.) The Statement of Taxes due for lot 635 also contained a bill for property taxes of \$118.12, with the rest of the \$11,019.37 comprised of an \$8,193.77 special assessment, a collection fee, and interest. (Exhibit D, p. 1.)

Mr. Holberg paid the Statement of Taxes Due but then filed a petition for abatement and refund. Mr. Holberg did not contest the valuation of the subject lots, and did not in his abatement and refund petition to the Clear Creek County Assessor, or before the Board, make any argument concerning the valuation or assessment of his property for property tax purposes. His appeal solely concerns his assertions that Clear Creek County improperly billed him for the St. Mary’s Water and Sanitation District Special Assessments. Mr. Holberg argued that the Special Assessments contained in the 2018 Statements of Taxes Due included outstanding water tap fees and sewer fees that had accrued before he was the owner of the property, and that the County improperly combined these fees into a lump sum that was billed to him after he became the owner of the lots. He contended the assessments were improper because the County did not follow statutory assessment procedures in billing them. Specifically, Mr. Holberg asserted the County did not follow the mandated certification procedures described in the Special District Act at sections 32-1-1101 and 32-2-1006(6), C.R.S. (Exhibit A, p. 2.) He characterized his argument as one of due process. Mr. Holberg requested a full refund of the amount paid under the Statement of Taxes Due: \$21,611.40.

The Respondent presented the testimony of Carol Lee, the Clear Creek County Treasurer. Ms. Lee testified that special assessments are not property taxes. She explained her statutory obligation to collect liens certified by special districts. She stated she had no authority, and nor did the County Assessor, to question a recorded special assessment. Ms. Lee stated that Mr. Holberg’s appeal of the \$118.12 in property taxes (or, the Board infers, the underlying value, classification, and mill levy applied to the property leading to those taxes) would properly be before the Assessor.

Respondent’s counsel argued that abatement of special assessments is not legally permissible. He explained that the role of the County Treasurer is to act on a special district certification by adding it to the tax bill. He contended the Board of County Commissioners had no authority to abate special assessments certified to the Treasurer by a special district. (Likewise, Mr. Holberg testified that at his hearing before the Board of County Commissioners, he was informed this matter was outside of their authority.) Mr. Lichtman contended this Board does not have authority to order the abatement of the special assessments, since they are not taxes.

FINDINGS AND CONCLUSIONS

The general assembly authorized the formation of the Board of Assessment Appeals and established its jurisdiction in Title 39 of the Colorado Revised Statutes. In enacting Title 39, the general assembly declared its purpose to be:

To exercise the authority granted in section 3 of article X of the state constitution wherein it is provided, among other things, that “the actual value of all real and personal property not exempt from taxation under this article shall be determined under general laws, which shall prescribe such methods and regulations as shall secure just and equalized valuations for assessment of all real and personal property not exempt from taxation under this article”. It further declares that it intends to fix the percentage of such determined actual value at which all such property shall be assessed for taxation.

§ 39-1-101, C.R.S.

The authority granted in the referenced section 3 of article X of the state constitution concerns the levying of property tax upon real and personal property, and the just and equalized valuation determinations of that property for assessment, based on appraisals. Under the provisions of Title 39, real property is appraised and assessed by county assessors. *See* § 39-1-103, C.R.S. A taxpayer may then appeal that appraisal and ad valorem property tax assessment under procedures also set forth in Title 39.

Mr. Holberg’s abatement and refund petition to the Clear Creek County Board of County Commissioners allowed their consideration of whether his “taxes were levied erroneously or illegally, whether due to erroneous valuation for assessment, irregularity in levying, clerical error, or overvaluation....” § 39-10-114(1)(a)(I)(A), C.R.S. The Board of Assessment Appeals has statutorily conferred jurisdiction over appeals from decisions of boards of county commissioners when a claim for refund or abatement of taxes is denied in full or in part. § 39-2-125, C.R.S.

However, the Board concludes that the appeal of the St. Mary’s Water and Sanitation District special assessments is not properly the subject of an abatement and refund petition under section 39-10-114, and resultantly, the Board further finds that it has no jurisdiction in this appeal.

Title 39 concerns “Taxation,” and Articles 1 through 14 of Title 39 specifically concern “Property Tax.” The “taxes” referred to in section 39-10-114(1)(a)(I)(A), C.R.S, that are properly the subject of an abatement and refund petition, are ad valorem property taxes in an amount calculated by the county assessor based on the value of the subject property, the property’s classification, and the applicable mill levies. In this case, that amount was \$118.12 for each lot at issue. However, Mr. Holberg did not contend that the County levied these property taxes erroneously or illegally – his arguments addressed only the special district assessments billed to him by the Treasurer.

The Special District Act, found in Title 32, is a separate statute than the one governing property taxes. The Special District Act governs special assessments and empowers special

districts to levy and collect “ad valorem taxes” to provide services to “serve a public use.” §§ 32-1-102(1), 1101, C.R.S. Although billed and collected in the same manner as property taxes, a special assessment is a different type of tax than the ad valorem property tax calculated by county assessors and levied under Title 39. The Colorado Supreme Court has concluded that the word “tax,” used in section 3 of article X of the state constitution, which Title 39 refers as its originating authority, does not include special assessments. *City of Denver v. Knowles*, 17 Colo. 204 (1892); *Zelinger v. City and County of Denver*, 724 P.2d 1356 (Colo. 1986). Special assessments are “charges imposed for the purpose of financing local improvements.” *Zelinger*, 724 P.2d at 1358. Special assessments are not imposed by counties under Title 39, and the constitutional provisions from which Title 39 originates specifically exclude special assessments from the definition of property tax governed by Title 39.

Therefore, the Board finds that an appeal of a special assessment does not constitute grounds for abatement of taxes under Title 39, and that the Board’s power to order taxes abated under section 39-10-114 does not extend to the special assessments here under appeal.

ORDER

The appeal is **DISMISSED** for lack of jurisdiction.

APPEAL RIGHTS

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.

See § 39-8-108(2), C.R.S. (rights to appeal a tax protest petition); *see also* § 39-10-114.5(2), C.R.S. (rights to appeal on an abatement petition).

DATED and MAILED this 17th day of August, 2021.

BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:



Samuel Forsyth

Concurring Board Member:



John DeRungs

*Concurring without modification
pursuant to § 39-2-127(2), C.R.S.*



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



Casie Stokes