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Prospect 34, LLC v. Gunnison County Board of County Commissioners

Colorado Court of Appeals, Div. III - November 5, 2015 - P.3d - 2015 WL 6746441 - 2015 COA 160

Reserve Metropolitan District No. 2 (RMD2) is a special district located entirely within the town of Mt. Crested Butte (Town) in Gunnison County. RMD2's service plan — a document statutorily required to organize a special district — states that RMD2's mill levy "shall not exceed 50 mills, subject to Gallagher Adjustments," and that any levy beyond 50 mills requires Town approval.

By 2013, the mill levy totaled 52.676 mills, including the Gallagher Adjustment of 2.676 mills. Then the RMD2 board approved certifying to the BOCC 55.676 mills, 3.000 mills in excess of the cap in the 2000 service plan. Although the maximum mill levy provision in the service plan had never been increased, the BOCC levied 55.676 mills on December 21, 2012.

The Town council protested the mill levy increase, noting that it "does not consent to any increase above 50 mills 'gallagherized' in the mill levy…." The Town sued in Gunnison County Court to enjoin the excess mill levy and for a declaratory judgment that the excess mill levy was void. The court denied the council's motion for summary judgment on this issue. That action remains pending.

When RMD2 taxed Prospect Development Company, Inc., and Prospect 34, LLC (together, Prospect) at a higher rate, Prospect petitioned the Gunnison County Board of County Commissioners (BOCC) to abate the excess taxes. After the BOCC denied the petition, Prospect appealed to the Board of Assessment Appeals (BAA). The BAA did not independently examine the legality of the excess mill levy. Instead, it relied sonly on the County Court's denial of summary judgment to conclude that the 3.000 mills were levied legally. Prospect appealed.

Section 39–10–114(1)(a)(I)(A) provides, as relevant here:

[I]f 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.

Thus, the court was was obligated to examine if an excess mill levy

The Court of Appeals concluded that section 39–10–114(1)(a)(I)(A) provided a statutory basis for Prospect to challenge the excess mill levy before the BAA, the BAA had authority to decide whether the excess mill levy was illegal, the BAA abused its discretion by instead relying on an order denying summary judgment as making a final determination, and the excess mill levy was illegal.

The Court reversed the BAA's decision and remanded for the BAA to order the BOCC to grant the petition and abate the excess taxes.

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