



# Arapahoe County

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Relay Colorado 711

## Board Summary Report

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**File #:** 21-307

**Agenda Date:** 4/13/2021

**Agenda #:** 5.h.

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**To:** Board of County Commissioners

**Through:** Sue Sandstrom, Treasurer

**Prepared By:**

Monica Kovaci, Senior Assistant County Attorney

**Subject:**

A resolution to cancel property taxes for parcels with incorrect ownership records

**Purpose and Request:**

The Assessor and Treasurer Offices request the cancellation of property taxes for nine parcels that have had incorrect ownership records, amounting to a total tax of \$7,738.05. The parcels described in the attached exhibit involve property that is deemed “common elements” under the terms of applicable recorded condominium and other common interest community Declarations, ownership should be placed in the name of the respective HOAs, and therefore these parcels are to be deemed exempt from taxation.

The Board held a study session on the matter on March 29, 2021 and approved placing the item on consent agenda.

**Background and Discussion:** When a new community is developed under the Colorado Common Interest Ownership Act, the developers often record community Declarations, which establish covenants, restrictions, and the parcels for the community and also specify any portions of real property that are to be “common elements” owned by the homeowner association for use by all property owners within the community. As the community is developed over time, the developers record various amendments to the Declarations further defining the various elements of the property as a whole. These Declarations are often lengthy and difficult to decipher and at times result in the Assessor records showing inaccurate ownership to parcels that should be classified as “common element” and titled in the name of the homeowners’ association, and therefore be exempt from taxation.

Under the Colorado Common Interest Ownership Act, C.R.S. §§ 38-33.3-101, *et seq.*, “A common interest

community may be created pursuant to this article only by recording a declaration executed in the same manner as a deed and, in a cooperative, by conveying the real estate subject to that declaration to the association.” C.R.S. § 38-33.3-201(1). In accordance with the statute, the recording of the declaration operates as a deed conveying ownership of the real property as a “common element” to the applicable homeowner or condominium owner association. Upon the recording of the declaration, and along with its conveyance of the real estate as a common element, the Assessor’s ownership records should have reflected the associations as the owner of these real property parcels, wherein the “common element” property itself would be exempt from taxation.

Pursuant to C.R.S. § 39-5-125(2), the Treasurer may correct errors in the assessment roll at any time after the tax warrant has come into her hands. *See* C.R.S. § 38-11-107 (it is the treasurer’s duty to omit from sale the tax liens on all lots erroneously assessed). In addition, “if 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.” C.R.S. § 39-10-114(1)(a).

The ownership for the subject parcels has been corrected and it is requested that the Board cancel the taxes for the nine parcels with a total tax amount of \$7,738.05.

**Alternatives:** N/A. This is a corrective measure to clean up Assessor and Treasurer records.

**Fiscal Impact:** It is requested the Board approve cancellation of the property taxes for the nine parcels identified in the attached exhibit totaling a tax amount of \$7,738.05, which if collected, would have been disbursed to multiple taxing authorities, including Arapahoe County.

**Alignment with Strategic Plan:**

- ☐ Be fiscally sustainable
- ☒ Provide essential and mandated service
- ☒ Be community focused

**Concurrence:** The Assessor’s Office concurs with this request.

**Resolution:** Attach a copy of the draft resolution.