AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

AgendaTitle:
Petition for Abatement or Refund of Taxes; M3B, LLC; Lot C-2, Prospect at Mt. Crested Butte Phase I, #612761

Action Requested: Other Abatement Petition Hearing

Parties to the Agreement: M3B LLC

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:
M3B is petitioning for an abatement of 2012 taxes on the grounds of illegal levying by Reserve Metro District #2.

Fiscal Impact: None

Submitted by: William Spicer **Submitter's Email Address:** wspicer@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 4/19/2014

County Attorney Review: (●) Required ( ) Not Required

Comments:

db or at will attend any hearing. ok db 4/10/14

Reviewed by: Discharge Date: 4/18/2014 Certificate of Insurance Required

Yes ( ) No (●)

County Manager Review:

Comments:

Reviewed by: GUNCOUNTY1\mbirnie Discharge Date: 4/21/2014

( ) Consent Agenda (●) Regular Agenda ( ) Worksession Time Allotted: 15 minutes

Agenda Date: 5/6/2014 Follow Up Agenda Date:

Revised April 2013

Seter & Vander Wall, P.C.
ATTORNEYS AT LAW

KIM J. SETER
BARBARA T. VANDER WALL
JEFFREY E. ERB
ELIZABETH A. DAUER
COLIN B. MIELKE
JENNIFER M. WASCAK

September 18, 2013

RECEIVED
SEP 19 2013
BY: pm 9-18-13

Gunnison County Assessor
221 North Wisconsin Street, Suite A
Gunnison CO 81230

Re: Petition for Abatement or Refund of Taxes

Dear County Assessor:

Enclosed herewith is the Petition for Abatement or Refund of Taxes for M3B, LLC / Lot C-2 Prospect at Mt. Crested Butte Phase 1 #612761.

Thank you for your attention.

Sincerely,

SETER & VANDER WALL, P.C.

Cheryll M. Warnimont
Administrative Assistant

Enclosure
/cmw

cc: Elizabeth Dauer, w/o enc.

{00075059}

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PETITION FOR ABATEMENT OR REFUND OF TAXES

County:_____

Date Received 9/19/13 (see attached letter)
(Use Assessor's or Commissioners' Date Stamp)

Section I: Petitioner, please complete Section I only.

Date: 9/16/13
Month Day Year

R042004

Petitioner's Name: M3B, LLC

Petitioner's Mailing Address: C/o Seter + VanderWall, P.C. 7400 E. Orchard Rd. Ste. 3300
Greenwood Village CO 80111
City or Town State Zip Code

SCHEDULE OR PARCEL NUMBER(S)	PROPERTY ADDRESS OR LEGAL DESCRIPTION OF PROPERTY
3177-241-01-010	Lot C-2 PROSPECT AT MT CRESTED BUTTE PHASE 1 #612761

Petitioner requests an abatement or refund of the appropriate taxes and states that the taxes assessed against the above property for the property tax year 2012 are incorrect for the following reasons: (Briefly describe why the taxes have been levied erroneously or illegally, whether due to erroneous valuation, irregularity in levying, clerical error, or overvaluation. Attach additional sheets if necessary.)

See attached narrative.

Petitioner's estimate of value: $_____ (_____)
Value Year

I declare, under penalty of perjury in the second degree, that this petition, together with any accompanying exhibits or statements, has been prepared or examined by me, and to the best of my knowledge, information, and belief, is true, correct, and complete.

_____ Daytime Phone Number (_____)
Petitioner's Signature

By _____ Daytime Phone Number (303) 770-2700
Agent's Signature*

***Letter of agency must be attached when petition is submitted by an agent.**

If the Board of County Commissioners, pursuant to § 39-10-114(1), C.R.S., or the Property Tax Administrator, pursuant to § 39-2-116, C.R.S., denies the petition for refund or abatement of taxes in whole or in part, the Petitioner may appeal to the Board of Assessment Appeals pursuant to the provisions of § 39-2-125, C.R.S., within thirty days of the entry of any such decision, § 39-10-114.5(1), C.R.S.

Section II: **Assessor's Recommendation**
(For Assessor's Use Only)

Tax Year _____

	Actual	Assessed	Tax
Original			
Corrected			
Abate/Refund			

☐ **Assessor recommends approval as outlined above.**

If the request for abatement is based upon the grounds of overvaluation, no abatement or refund of taxes shall be made if an objection or protest to such valuation has been filed and a Notice of Determination has been mailed to the taxpayer, § 39-10-114(1)(a)(I)(D), C.R.S.

Tax year: _____ **Protest?** ☐ **No** ☐ **Yes (If a protest was filed, please attach a copy of the NOD.)**

☑ **Assessor recommends denial for the following reason(s):**

LEVIES ARE CERTIFIED TO THE ASSESSOR BY THE BOARD OF COUNTY COMMISSIONERS §39-1-111(2) C.R.S.

Assessor's or Deputy Assessor's Signature

15-DPT-AR No. 920-66/11

FOR ASSESSORS AND COUNTY COMMISSIONERS USE ONLY
(Section III or Section IV must be completed)

Every petition for abatement or refund filed pursuant to § 39-10-114, C.R.S. shall be acted upon pursuant to the provisions of this section by the Board of County Commissioners or the Assessor, as appropriate, within six months of the date of filing such petition, § 39-1-113(1.7), C.R.S.

Section III: **Written Mutual Agreement of Assessor and Petitioner**
(Only for abatements up to $10,000)

The Commissioners of _____ County authorize the Assessor by Resolution No. _____ to review petitions for abatement or refund and to settle by written mutual agreement any such petition for abatement or refund in an amount of $10,000 or less per tract, parcel, or lot of land or per schedule of personal property, in accordance with § 39-1-113(1.5), C.R.S.

The Assessor and Petitioner mutually agree to the values and tax abatement/refund of:

Tax Year _____

	Actual	Assessed	Tax
Original	_____	_____	_____
Corrected	_____	_____	_____
Abate/Refund	_____	_____	_____

Note: The total tax amount does not include accrued interest, penalties, and fees associated with late and/or delinquent tax payments, if applicable. Please contact the County Treasurer for full payment information.

_____ _____
Petitioner's Signature **Date**

_____ _____
Assessor's or Deputy Assessor's Signature **Date**

Section IV: **Decision of the County Commissioners**
(Must be completed if Section III does not apply)

WHEREAS, the County Commissioners of _____ County, State of Colorado, at a duly and lawfully called regular meeting held on _____/_____/_____, at which meeting there were present the following members:
Month Day Year

_____

_____

with notice of such meeting and an opportunity to be present having been given to the Petitioner and the Assessor of said County and Assessor _____ ***(being present--not present)*** and
Name

Petitioner _____ (***being present--not present***), and WHEREAS, the said
Name

County Commissioners have carefully considered the within petition, and are fully advised in relation thereto, NOW BE IT RESOLVED that the Board ***(agrees--does not agree)*** with the recommendation of the Assessor, and that the petition be ***(approved--approved in part--denied)*** with an abatement/refund as follows:

_____	_____	_____
Year	Assessed Value	Taxes Abate/Refund

_____
Chairperson of the Board of County Commissioners' Signature

I, _____ County Clerk and Ex-Officio Clerk of the Board of County Commissioners in and for the aforementioned county, do hereby certify that the above and foregoing order is truly copied from the record of the proceedings of the Board of County Commissioners.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said County

this _____ day of _____, _____.
Month Year

_____
County Clerk's or Deputy County Clerk's Signature

Note: Abatements greater than $10,000 per schedule, per year, must be submitted in duplicate to the Property Tax Administrator for review.

Section V: **Action of the Property Tax Administrator**
(For all abatements greater than $10,000)

The action of the Board of County Commissioners, relative to this petition, is hereby
☐ Approved ☐ Approved in part $_____ ☐ Denied for the following reason(s):

_____ _____ _____
Secretary's Signature Property Tax Administrator's Signature Date

15-DPT-AR No. 920-66/11

Seter & Vander Wall, P.C.
ATTORNEYS AT LAW

KIM J. SETER
BARBARA T. VANDER WALL
JACQUELINE C. MURPHY
JEFFREY E. ERB
ELIZABETH A. DAUER

September 16, 2013

Gunnison County Assessor
221 North Wisconsin Street, Suite A
Gunnison, CO 81230

Re: Letter of Agency

Dear County Assessor:

This letter is to provide authorization for Seter & Vander Wall, P.C. to file a Petition for Abatement and act as an agent, as authorized by Russell Mills, Manager, M3B, LLC.

A Petition for Abatement will be filed regarding the following platted lot owned by M3B, LLC:

LOT C-2 PROSPECT AT MT CRESTED BUTTE PHASE 1 #612761

Please contact me should you have any questions, comments, or concerns.

Sincerely,

SETER & VANDER WALL, P.C.

Elizabeth Dauer

Elizabeth A. Dauer

APPROVED AND CONSENTED TO:

M3B, LLC, a Florida Limited Liability Company

By: Russell Mills

Russell Mills, Manager

{00055500}

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Seter & Vander Wall, P.C.
ATTORNEYS AT LAW

KIM J. SETER
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JACQUELINE C. MURPHY
JEFFREY E. ERB
ELIZABETH A. DAUER

September 16, 2013

Gunnison County Assessor
221 North Wisconsin Street, Suite A
Gunnison, CO 81230

Re: Narrative Explaining the Levy of Illegal Tax

Dear County Assessor:

This letter constitutes M3B, LLC's narrative explaining the levy of an illegal tax that is the subject of the Petition for Abatement.

On August 15, 2000, Reserve Metropolitan District No. 2 (the "District") was formed according to the terms of a Consolidated Service Plan, approved by the Town of Mt. Crested Butte (the "Town") that delegated its limited powers as a local government.

The Consolidated Service Plan provides that "the mill levy imposed by the Districts shall not exceed 50 mills, subject to "Gallagher adjustments," and the total mill levy for improvements and services proposed for the Reserve is expected to be approximately 50 mills, which may not be exceeded except upon approval of the Town."

The mill levy authorized by the Service Plan for 2012 taxes was 52.676 according to the District's draft budget calculated by Eric Weaver, District Administrator and certified public accountant.

On December 10, 2012, the Board of Directors of the District voted to surpass the cap of 52.676 mills and levy three additional mills to pay operating expenses. These additional mills violated the terms of the Consolidated Service Plan by exceeding the mill levy cap and the authority of the District.

Contrary to the terms of the Consolidated Service Plan, the District failed to obtain the consent of the Town of Mt. Crested Butte for a mill levy in excess of the 50 mill cap adjusted for the Gallagher Amendment. The failure to obtain Town consent per the terms of the Consolidated Service Plan renders the tax illegal because the District did not have the legal authority to levy the tax. The District was acting beyond the scope of its powers granted in the Consolidated Service Plan.

On January 15, 2013, The Town Council enacted Resolution No. 1, Series 2013. The Resolution states "The Town Council of the Town of Mt. Crested Butte did not consent to any increase in the District's mill levy for 2013 in advance of the presentation of proposed mill levies by District No. 2 to the Board of County Commissioners." Moreover, the Town Council stated that the "Town Council of the Town of Mt. Crested Butte does not consent to any increase above

{00055491}

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50 mills "gallagherized" in the mill levy to be imposed within District No. 1 or District No. 2 in 2013."

The additional mills were erroneous in their entirety and illegal due to an irregularity in levying. The levy was imposed without authority of law in violation of the terms of the Consolidated Service Plan. The Consolidated Service Plan sets the limits by which a special district may act and the actions of the District go beyond the parameters of the Consolidated Service Plan, which specifically proscribe a mill levy in excess of 50 mills. This deviation renders the District's tax null and void because the District does not have the power to unilaterally exceed the taxation caps in the Consolidated Service Plan. Finally, the excess mill levy was certified without Town approval, and the tax has since been formally disapproved through a Town resolution.

Thus, M3B, LLC requests a tax abatement in the form of relief from payment of any excess levy over 52.676 mills. A county is liable to one who pays taxes imposed without the authority of law. *See Spaulding Mfg. Co. v. Bd. Of Comm'rs*, 63 Colo. 438, 168 P. 34 (1917).

Sincerely,

SETER & VANDER WALL, P.C.

Elizabeth Dauer

Elizabeth A. Dauer

TOWN OF MT. CRESTED BUTTE
RESOLUTION NO. 1
SERIES 2013

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MT. CRESTED BUTTE, COLORADO, REGARDING 2013 MILL LEVY CERTIFICATION FOR RESERVE METROPOLITAN DISTRICT NO. 1 AND RESERVE METROPOLITAN DISTRICT NO. 2

WHEREAS, Reserve Metropolitan District No. 1 and Reserve Metropolitan District No. 2 (hereinafter "District No. 1" and "District No. 2"), were formed in 2000 pursuant to C.R.S. 32-1-101, et. seq. (Special District Act), and;

WHEREAS, a Consolidated Service Plan for District No. 1 and District No. 2 was submitted by the Districts in accordance with the terms of the Act; and

WHEREAS, the Town Council of the Town of Mt. Crested Butte approved the Consolidated Service Plan for District No. 1 and District No. 2, on August 15, 2000; and

WHEREAS, Section II.B, paragraph 11.d of the Consolidated Service Plan requires Town consent for the imposition of any mill levy imposed within District No. 1 and District No. 2 in excess of 50 mills, subject to "Gallagher Adjustments" described in Section VI of the Consolidated Service Plan; and

WHEREAS, District No. 2 presented a 2013 mill levy certification to the Gunnison County Board of County Commissioners ("BOCC"), by which a levy of 52.676 mills would be imposed for General Obligation Bonds and Interest, and a separate levy of 3 mills would be imposed for General Operating Expenses; and

WHEREAS, on December 21, 2012, the BOCC certified the 2013 mill levies proposed by District No. 2 to the Gunnison County Assessor; and

WHEREAS, the Town has not considered the implications of Article X, Section 20 of the Colorado State Constitution (TABOR), as it relates to the above mill levy certifications; and

WHEREAS, the consent of the Town was not sought by either District No. 1 or District No. 2 prior to presentation of the mill levies to the BOCC.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MT. CRESTED BUTTE, COLORADO:

The Town Council of the Town of Mt. Crested Butte did not consent to any increase in the Districts' mill levy for 2013 in advance of the presentation of the proposed mill levies by District No. 2 to the BOCC.

EXHIBIT A

The Town Council of the Town of Mt. Crested Butte does not consent to any increase above 50 mills "gallagherized" in the mill levy to be imposed within District No. 1 or District No. 2 in 2013.

INTRODUCED, READ AND ADOPTED at a regular meeting of the Town Council of the Town of Mt. Crested Butte on the 15th day of January, 2013.

TOWN OF MT. CRESTED BUTTE, COLORADO

By: William Buck, Mayor

Attest:

By: Jill Lindros, Town Clerk

Gunnison County
COLORADO

Gunnison County Administration
Phone: (970) 641–0248 • Fax: (970) 641–3061
www.GunnisonCounty.org

April 29, 2014

M3B LLC
c/o Seter & Vander Wall, P.C.
7400 E. Orchard Rd.
Greenwood Village, CO 80111

Schedule Number: R042004
Legal Description: LOT C-2 PROSPECT AT MT CRESTED BUTTE PHASE 1 #612761

Dear Property Owner,

The Gunnison County Board of County Commissioners will hear the above referenced petition for abatement or refund of taxes on **May 06, 2014** at **9:35 am**. The hearing will be held in the Planning Commission meeting room, located in the Blackstock building at 221 N. Wisconsin, Gunnison, CO 81230. Please read the following information carefully: You may appear before the Board in person, via telephone conference call, appear with your representative, or have your representative appear on your behalf.

Please contact us at (970) 641-7600 or blucero@gunnisoncounty.org prior to the hearing date to make a special request for a phone conference, if needed.

Sincerely,

Bobbie Lucero
Administrative Assistant

Cc: Gunnison County Assessor's Office