

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>DANIEL T. BUSCH AND LBD LLC,</p> <p>v.</p> <p>Respondent:</p> <p>ADAMS COUNTY BOARD OF COMMISSIONERS.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: William A. McLain, Esq. Address: 3962 S. Olive Street Denver, Colorado 80237 Phone Number: (303) 759-0087 Attorney Reg. No.: 6941</p>	<p>Docket Number: 37889</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on July 26, 2003, Debra A. Baumbach and MaryKay Kelley presiding. Petitioner was represented by William A. McLain, Esq. Respondent was represented by Jennifer Wascak Leslie, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for tax years 1997 and 1998.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**1661 East 77th Avenue, Denver, Colorado
(Adams County Schedule Nos. 1719-35-1-00-032 and 1719-35-1-00-056)**

The subject property consists of a wholesale greenhouse operation on approximately 10 acres in south central Adams County.

ISSUES:

Petitioner:

Petitioner contends that the subject property was overvalued for tax years 1997 and 1998. Boilers, fans, drip systems, and water curtains are greenhouse fixtures related to the operation of a business and are considered to be personal property that should not be included in the cost approach. Comparable land sales should be based on their agricultural use before and after sale.

Respondent:

Respondent contends that the subject property was valued correctly based on the cost approach. Boilers, fans, drip systems, and water curtains are inherent fixtures in the greenhouse buildings and are considered real property. Comparable land sales should be selected for similarity in size and proximity to the subject regardless of their classification.

FINDINGS OF FACT:

1. The subject property is a collection of greenhouses and service buildings for a wholesale geranium business. The site is classified as "other agricultural," pursuant to C.R.S. 39-1-102 (1.6) (b). The various buildings were built between 1960 and 1986 with steel frame exteriors; glass and fiberglass walls; and glass, polyethylene, and fiberglass roofs. They are warmed by natural gas boilers, cooled by large fans and water curtains, and irrigated by drip systems. Petitioner and Respondent reported different measurements, and the buildings are numbered differently in their exhibits.

2. Neither Petitioner nor Respondent presented a market approach. Only one sale was identified, which neither party considered representative of the marketplace.

3. Petitioner's witness, Mr. Ronald C. Sandstrom, testified that the boiler, fans, irrigation system and water curtains are considered fixtures related to the business of growing plants. In *Del Mesa Farms v. the Board of Equalization of Montrose County* (956 P.2d 661 (Colo App. 1998) the courts found that items related to the operation of a business constitute personal property and should not be taxed as real property.

4. Mr. Sandstrom presented the following indicators of value:

Cost:	\$716,000.00
Income:	\$613,000.00

5. Mr. Sandstrom presented a cost approach to derive a value of \$716,000.00. He estimated the total building area to be 246,555 square feet with six greenhouses and three service buildings. Each building was calculated separately and is detailed in Petitioner's Exhibit A.

Marshall & Swift's basic cost figures include lighting and water service but not boilers, fans, irrigation systems, or water curtains.

6. Based on 11 land sales included in Petitioner's cost approach, Mr. Sandstrom estimated that the subject land should be valued at \$2,100.00 per acre. He selected the land sales because of their agricultural use prior to and after their sales. Eight of Petitioner's land sales are located in Adams County and three are located in Weld County. They ranged in sales price from \$1,295.00 per acre to \$2,427.00 per acre, and in size from 35.13 to 307 acres.

7. Mr. Sandstrom presented an income approach to derive a value of \$613,000.00. He reviewed greenhouse leases ranging from \$.21 to \$.45 per square foot to arrive at a rental rate of \$.36 per square foot and used a vacancy rate of 5% and expenses of 4%, which included a 1% management fee and 3% replacement reserve. He applied a capitalization rate of 12% to the net income of \$73,552.00.

8. Petitioner is requesting an actual value of \$664,500.00 for the subject property for tax years 1997 and 1998.

9. Respondent's witness, Mr. John Schaul, a Registered Appraiser with the Adams County Assessor's Office, estimated the total building area to be 232,452 square feet with five greenhouses and two service buildings. The value of each building was calculated separately and is detailed in Respondent's Exhibit 1.

10. Mr. Schaul testified that the boiler, fans, drip systems, and water curtains are integral fixtures in the greenhouses and are considered real estate. He testified that the 1998 Del Mesa Farms decision involved a poultry farm with agricultural classification and does not apply to the subject's "other agricultural" classification. Also, the greenhouse is used commercially, not agriculturally. He also contends that it is prejudicial to apply case law retroactively.

11. Mr. Schaul presented an indicated value of \$1,195,760.00 for the subject property based on the cost approach, which includes \$1,111,178.00 for the improvements. Heating, cooling, irrigation systems and all related fixtures are included in the real property calculations.

12. Mr. Schaul presented four vacant land sales to estimate a value of \$20,000.00 per acre for the subject site. The sales range in price per acre from \$20,000.00 to \$30,185.00 and in size from 4 to 23.1 acres. Mr. Schaul testified that Respondent's land sales were selected based on similarity in size and proximity to the subject; he did not use Petitioner's land sales due to their larger size. Mr. Schaul testified that the Assessor's Reference Library's requirement that comparable sales be agriculturally classified applies only to the market approach.

13. Mr. Schaul did not prepare an income approach for the following reasons: uniqueness and functionality of the subject property; uncertainty of lease data; numerous variables such as heat and water; and the seasonal aspect of the business.

14. Respondent assigned an actual value of \$1,195,759.00 to the subject property for tax years 1997 and 1998.

CONCLUSIONS:

1. Petitioner presented sufficient probative evidence and testimony to prove that the subject property was valued incorrectly for tax years 1997 and 1998.

2. The *Del Mesa Farms v. Montrose County Board of Equalization* decision did not establish a new rule of law, it clarified existing law. Therefore, any argument relative to its retroactivity is moot.

3. The court's findings in *Del Mesa Farms* are applicable to all property classifications, not solely to agricultural properties. Mechanical systems necessary for the operation of a building that are typically included in the construction of improvements should be included in the cost approach to value. However, the Board finds that the subject's boilers, exhaust fans, humidity drip pads, and water systems are fixtures necessary for the business of growing plants and should not be included in the cost approach as they are considered personal property rather than real property.

4. The Board agrees with Petitioner's interpretation of C.R.S. 39-1-102 (1.6) (b) and the Assessor's Reference Library pages 2.17 and 5.23, which state that comparable land sales should have been used agriculturally both before and after sale. The Board finds Petitioner's \$2,100.00 per acre land value appropriate.

5. Based on all of the evidence and testimony presented, the Board concluded that the actual value of the subject property should be reduced to \$716,000.00 for tax years 1997 and 1998, with \$20,998.00 allocated to land and \$695,002.00 allocated to improvements.

ORDER:

Respondent is ordered to cause an abatement/refund to Petitioner based on an actual value of \$716,000.00 for tax years 1997 and 1998.

The Adams County Assessor is directed to change his/her records accordingly.

APPEAL:

Petitioner may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

In addition, if the decision of the Board is against the Respondent, the Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law when the Respondent alleges procedural errors or errors of law by the Board of Assessment Appeals.

If the Board recommends that this decision is a matter of statewide concern, or if it results in a significant decrease in the total valuation of the county, Respondent may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

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 for assessment of the county in which the property is located, the Respondent may petition the Court of Appeals for judicial review of such questions with 45 days from the date of this decision.

DATED and MAILED this 23rd day of November 2004.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach
Debra A. Baumbach

MaryKay Kelley
MaryKay Kelley

This decision was put on the record

NOV 23 2004

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

Penny S. Lowenthal
Penny S. Lowenthal



<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>BUSCH GREENHOUSES (DANIEL T. BUSCH & LBD LLC),</p> <p>v.</p> <p>Respondent:</p> <p>ADAMS COUNTY BOARD OF COMMISSIONERS.</p>	<p>Docket No.: 37889</p>
<p>ORDER ON REMAND</p>	

THIS MATTER was heard by the Board of Assessment Appeals on October 15, 2007, as a continuation from August 27, 2007, Debra A. Baumbach and Sondra W. Mercier presiding. Petitioner was represented by William A. McLain, Esq. Respondent was represented by Jennifer M. Wascak, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for tax years 1997 and 1998.

This matter is on remand to the Board after entry of the Court of Appeals decision in *Busch Greenhouses v. Adams County Board of County Commissioners*, Case Number 05CA0028. The Court of Appeals ordered new valuation proceedings consistent with the Court’s decision in *S. T. Spano Greenhouses, Inc.*, Case Number 05CA0300. The new proceedings are “so that the BAA may apply page 5.26 of the ARL manual, together with pages 2.17 and 6.32, to determine which comparable sales of other agricultural property are most similar to the subject in size, location, and present use and to weight the probative value of that evidence.”

On November 23, 2004, the Board determined the value of improvements located on the subject property to be \$695,002.00 for tax years 1997 and 1998. The only issue of this hearing is the value of the subject property’s land under an “other agricultural” classification.

PROPERTY DESCRIPTION:

Subject property is described as follows:

1661 East 77th Avenue, Denver, Colorado
(Adams County Schedule Nos. 1719-35-1-00-032 & 1719-35-1-00-056)

The subject property is a 10 acre site with greenhouse structures. Classification is “other agricultural” property, also known as “agribusiness.”

Petitioner is requesting a land value of \$21,000.00 or \$2,100.00 per acre. Respondent presented an indicated land value of \$200,000.00 or \$20,000.00 per acre.

Petitioner’s Comparable Sales: Petitioner presented seven Adams County land sales and six sales from Jefferson County. Petitioner eliminated Adams County Sales 6 and 7 from consideration.

The Adams County sales occurred between February and May 1996. They ranged in size from 35.13 to 74.58 acres. Sales prices ranged from \$1,295.00 to \$2,279.00 per acre. All were zoned for agricultural use. Petitioner contends that all could be used for greenhouse development. All are larger than the subject, with no specific adjustment made for size. Petitioner provided very limited information regarding these sales.

Sale 1 (43.4 acres) sold April 1996 for \$80,000.00 or \$1,931.00 per acre. It is located at 152nd Avenue and Powhaton, approximately 19 miles northeast of the subject. Respondent’s witness testified that this site was used as a vacant dryland farm. The Board gave no weight to this sale because this is considered an “agricultural” use.

Sale 2 (38.16 acres) sold February 1996 for \$49,400.00 or \$1,295.00 per acre. This sale is located at 152nd Avenue and Lanewood, approximately 22 miles northeast of the subject. Respondent’s witness testified that a new single-family home has been built on this site, with no “other agricultural” use built. The Board gave no weight to this sale because it does not fall within the definition of “other agricultural.”

Sale 3 (45.72 acres) sold May 1996 for \$68,500.00 or \$1,535.00 per acre. It is located 20 miles northeast of the subject at 160th Avenue, East of Powhaton. Respondent’s witness testified that this was an “agricultural” sale and the site was used for grazing. The Board gave no weight to this sale because it does not fall within the definition of “other agricultural.”

Sale 4 (74.58 acres) sold February 1996 for \$112,000.00 or \$1,501.00 per acre. It is located nearest to the subject out of Petitioner’s comparable sales, approximately five miles north/northeast of the subject on Riverdale Road north of 104th. Respondent’s witness testified that this parcel had been subdivided, with a custom home on one site and two sites remaining vacant. As this is not an “other agricultural” use, the Board gave no weight to this sale.

Sale 5 (35.13 acres) sold March 1996 for \$80,500.00 or \$2,279.00 per acre. It is located 23 miles east of the subject, at 88th Avenue, west of Imboden. Respondent's witness testified that this sale is located in eastern Colorado and remains vacant as dry farm land. The Board gave no weight to this sale because it does not fall within the definition of "other agricultural."

Petitioner presented six sales located in Jefferson County. These sales occurred between August 1994 and March 1996. Sales prices ranged from \$6,370.00 to \$10,059.00 per acre and in size from 8.0 to 44.25 acres. All were classified "agricultural" at the time of sale.

Sales 1, 3, 4 and 5 were classified "agricultural" at the time of sale, and were not used for "other agricultural" purposes before or after the sale. The Board gave no weight to these sales as they do not fall within the definition of "other agricultural" use.

Sale 2 (11.303 acres) sold January 1995 for \$6,370.00 per acre. This property was used for cattle grazing prior to the sale, with a riding arena constructed following the sale. It is located 14 miles west of the subject at 9430 Indiana. The Board is convinced that this property was purchased for and falls within the definition of "other agricultural" use.

Sale 6 (11.93 acres) sold March 1996 for \$10,059.00 per acre. It is located 14 miles west of the subject at the southeast corner of 96th and Indiana. This site was vacant land prior to the sale and was used as a landscape business and tree farm after the sale, which is classified as "other agricultural" use.

Sales 2 and 6 indicate an average selling price of \$8,215.00 per acre. Petitioner contends that based on paired sales analysis of industrial sales, the Jefferson County sales should be reduced by 75% for location compared to the subject. The Board does not agree that comparison to industrial sales gives an accurate representation of "other agricultural" property sales and therefore did not apply Petitioner's reduction.

Respondent's Comparable Sales: Respondent presented seven comparable sales, located in both Adams and Jefferson Counties, ranging in size from 4 to 33.24 acres and in price from \$20,000.00 to \$55,424.00 per acre. The sales occurred between January 1994 and May 1996.

Sale 1 (28.51 acres) sold November 1994 for \$800,000.00. This sale is located at 13847 Washington Street in Broomfield, estimated at 8 to 10 miles from the subject. This sale included a single-family residence and greenhouse improvements at the time of sale. Only 10 acres were considered usable for agribusiness improvement, with the remaining 18.51 acres subject to seasonal flooding. The flood prone portion of the site was valued at \$2,500.00 per acre and deducted from the total sales price. Also deducted was \$55,000.00 for the single-family residence, \$400,000.00 for greenhouse improvements, and \$100,000.00 for water stock of 2.9 shares in Farmers Reservoir and Irrigation Stock. Respondent calculated contributory land value for the 10 acres at \$25,000.00 per acre. While this sale can be classified as "other agricultural" use both before and after the sale, significant subjective adjustments make this a less reliable sale. Therefore, the Board gave this sale no weight.

Sale 2 (33.24 acres) sold February 1996 for \$23,526.00 per acre. This sale is located an estimated 10 to 15 miles from the subject at 5100 McIntyre Street in Jefferson County. The grantee in this sale leased the property prior to purchase. The site was used as a nursery both before and after the sale. The buyer assembled with other parcels and established Green Acres Nursery. The Board was convinced that this sale falls within the definition of “other agricultural” use.

Sale 3 (4.222 acres) sold December 1994 for approximately \$55,424.00 per acre, after extraction of \$116,000.00 from the total purchase price for single-family improvements. This sale is located an estimated 10 to 15 miles from the subject at 8945 West 52nd Avenue in Jefferson County. The grantee leased a portion of this property prior to purchase. Temporary greenhouse structures were placed on the site following purchase. Petitioner contends that the highest and best use of this site is for multifamily residential. The Board was not convinced that adequate consideration was given to adjustments for potential future development and assemblage value, therefore the Board gave no weight to this sale.

Sale 4 (23.1 acres) sold January 1994 for \$23,246.00 per acre. This sale is located within blocks of the subject. This property was vacant land prior to the sale and was purchased for expansion of existing greenhouse operations. Petitioner contends that the price of this sale was heavily influenced by the existence of gravel on the property and that the property was not placed on the open market. The Board was not convinced by the testimony from Petitioner’s witness, and finds that the sale can be used as a comparable. This Board was convinced that this site falls within the definition of “other agricultural” use.

Sale 5 (8.77 acres) sold March 1994 for \$22,805.00 per acre. This sale is located adjacent to the subject. It was a vacant site that was used by Busch Greenhouses after the sale for storage of bedding materials and expanded greenhouse operations. There was conflicting testimony from Petitioner’s witness concerning whether the site was used for greenhouse operations; no greenhouse equipment was stored on the property, and there is a residence on the property. However, the Board agrees with Respondent and was convinced that this site falls within the definition of “other agricultural” use.

Sale 6 (4 acres) sold May 1996 for \$20,000.00 per acre. This sale is located within four blocks of the subject. This site was an irrigated vegetable truck farm prior to the sale, with warehouses built on the site three years after the purchase. The Board gave no weight to this sale because the property was not used as “other agricultural” either before or after the sale.

Sale 7 (21.10 acres) sold June 1995 for \$30,185.00 per acre. This property is located approximately five miles from the subject. This site was used for storage of decorative landscape rock, garden supplies, and animal products prior to the sale. Petitioner testified that this site is zoned commercial, is located in a highly industrial area, and has been redeveloped since the sale. The apparent use after the sale was not “other agricultural;” therefore, the Board gave no weight to this sale.

Respondent placed the greatest reliance on the value indicated by Sales 1 to 3 as they were believed to best satisfy the remand instructions from the court.

Conclusions

The Board gave consideration to the following sales:

<u>Petitioner's sales</u>			<u>Respondent's sales</u>		
(Jefferson County sales)			#2	\$23,526.00/acre	33.24 acres
#2	\$6,370.00/acre	11.303 acres	#4	\$23,246.00/acre	23.1 acres
#6	\$10,059.00/acre	11.93 acres	#5	\$22,805.00/acre	8.77 acres

The Board was convinced that Respondent's Sale 2 provided the best indication of value for a site that could be classified as "other agricultural" use both before and after the sale. While this sale is located in Jefferson County, Respondent's Sales 4 and 5, located near the subject property, which can be classified as "other agricultural" use after the sale, provide a similar level of value. Additionally, Respondent's Sale 5 was close in total size to the subject property. The value indicated by Respondent, at \$20,000.00 per acre, or \$200,000.00 is reasonable.

Combining the land value conclusion from above with the value of the improvements determined in the Board's Order dated November 23, 2004, the subject property should be valued for tax years 1997 and 1998 as follows:

Improvements	\$695,002.00
Land	<u>\$200,000.00</u>
Total	\$895,002.00

ORDER:

Respondent is ordered to cause an abatement/refund to Petitioner based on 1997 and 1998 actual value of \$895,002.00 for the subject property.

The Adams County Assessor is directed to change his records accordingly.

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 Colorado Revised Statutes ("CRS") section 24-4-106(11) (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five 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 for assessment of the county wherein the property is located, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provision of CRS section 24-4-106(11) (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five 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 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 for assessment of the county in which the property is located, Respondent may petition the Court of Appeals for judicial review of such questions.

Colo. Rev. Stat. § 39-10-114.5(2) (2007).

DATED and MAILED this 13th day of March 2008.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach
Debra A. Baumbach

This decision was put on the record

Sondra W. Mercier
Sondra W. Mercier

MAR 13 2008

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

Heather Heinlein
Heather Heinlein

