

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	
<hr/> Petitioner: WELBY GARDENS, v. Respondent: ADAMS COUNTY BOARD OF COMMISSIONERS.	
Attorney or Party Without Attorney for the Petitioner: Name: William A. McLain, Esq. Address: 3962 S. Olive Street Denver, Colorado 80237 Phone Number: (303) 759-0087 Attorney Reg. No.: 6941	Docket Numbers: 37891 and 37892
ORDER	

THIS MATTER was heard by the Board of Assessment Appeals on July 27, 2004, Judge Nuechter, Karen E. Hart and Sondra W. Mercier presiding. Petitioner was represented by William A. McLain, Esq. Respondent was represented by Jennifer Wascak Leslie, Esq. Petitioner is requesting a refund/abatement of taxes on the subject property for tax year 1997 and 1998.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**2761 E. 74th Avenue, Denver, Colorado
(Adams County Schedule Nos. 1719-363-04-001, 1719-363-04-002 and
1719-363-00-069)**

The subject property consists of a wholesale greenhouse operation on 32.772 acres.

ISSUES:

Petitioner:

Petitioner contends that the subject property was overvalued for tax years 1997 and 1998, as personal property was included and the land was valued incorrectly. The Petitioner contends that 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 continued agricultural use, both before and after sale.

Respondent:

Respondent contends that the subject properties were valued correctly based on the cost approach. The Respondent has included the cost of boilers, fans, drip systems, and water curtains as real property, as they are believed to be inherent fixtures in the greenhouse buildings. Comparable land sales were selected for similarity in size and proximity to the subject regardless of classification.

FINDINGS OF FACT:

1. The subject property includes a collection of greenhouses, service buildings and irrigated agricultural land, identified as three separate parcels. A majority of the site is classified as "other agricultural," pursuant to C.R.S. 39-1-102 (1.6) (b). The structures were built between 1963 and 1994 and vary in construction: steel or pipe frame structures; fiberglass, metal or quonset walls; and polyethylene, fiberglass or metal roofing.

2. Petitioner's first witness, Mr. Al Gerace, President of Welby Gardens Company, testified that the primary purpose of the boiler, fans, irrigation system and water curtains is to regulate the temperature for the purpose of growing plants.

3. Petitioner's second witness, Mr. Ronald C. Sandstrom, presented the following indicators of value:

Cost:	\$1,193,500.00
Income:	\$1,120,000.00

4. Mr. Sandstrom estimated the total building area to be 469,371 square feet. Using Marshall & Swift's cost information, the witness calculated individual building costs as detailed in Petitioner's Exhibit B. Basic costs were adjusted for height, perimeter measurement, current cost multiplier, local multiplier and special features such as space heaters, concrete or polyethylene roofing.

5. Mr. Sandstrom valued approximately 22 acres of "other agricultural" land at \$2,100.00 per acre based on his analysis of four sales shown within Petitioner's Exhibit B, and seven additional sales that were outlined in his testimony. He further testified that, consistent with Division of Property Tax recommendations, his comparable land sales were used for agricultural purposes before and after the sale.

6. Like the Respondent, Mr. Sandstrom valued 10 acres of the property as irrigated farmland at \$430.00 per acre. The 0.70 acres classified as retail was valued at \$2.00 per square foot. Although Petitioner and Respondent agree on the per square foot value, the parties disagree as to the size of the retail site.

7. Mr. Sandstrom presented an income approach with a value of \$1,120,000.00. He analyzed six greenhouse leases with rental rates ranging from \$0.21 to \$0.53 per square foot to arrive at a rental rate for the subject property of \$0.36 per square foot. Mr. Sandstrom used a vacancy rate of 5 percent, a management fee of 4 percent and reserves at \$0.03 per square foot to arrive at a net income of \$140,022.00. This amount was capitalized at 12 percent to indicate a value of \$1,120,000.00.

8. Mr. Sandstrom testified that, because of limited greenhouse sales, the market approach was not utilized.

9. Under cross-examination, Mr. Sandstrom testified that he did not include the cost of boilers, fans, irrigation system and water curtains in his cost approach pursuant to the decision rendered by the Colorado Court of Appeals in *Del Mesa Farms v. The Board of Equalization of Montrose County* (956 P.2d 661 (Colo App. 1998)).

10. Petitioner is requesting a total actual value of \$1,193,500.00 for the subject property for tax years 1997 and 1998.

11. Respondent's witness, Mr. John Schaul, a Registered Appraiser with the Adams County Assessor's Office, presented a value of \$2,001,144.00 for Schedule Numbers 1719-36-3-04-001 and 1719-36-3-04-002 based on the cost approach, and a value of \$9,000.00 for Schedule Number 1719-36-3-00-069 based on the market approach. Mr. Schaul testified that many of the items that the Petitioner claims are personal property are believed to be utility to the building, such as the heating and ventilation sources.

12. As indicated in Respondent's Exhibit 3, Mr. Schaul analyzed four land sales for comparison with the "other agricultural" portion of the subject and four sales of retail development sites. The agricultural land sales ranged in price from \$20,000.00 to \$30,185.00 per acre and in size from 4 acres to 23.1 acres. He valued 21.095 acres of the subject's "other agricultural" land at \$20,000.00 per acre. Mr. Schaul testified that only one of the sales used was agricultural, while the remaining comparables were not agricultural use. Location was the primary variable he considered in selecting comparable sales. He further testified that he would not consider the Petitioner's land sales to be comparable because they were extremely large parcels in areas considered to be rural.

13. Mr. Schaul valued 1.568 acres of land classified as retail at \$2.00 per square foot. He was in agreement with the Petitioner in valuing the 10 acres of Class II Irrigated land at \$430.00 per acre.

14. As detailed in Respondent's Exhibit 3, Mr. Schaul relied on Marshall Valuation Service in estimating the cost of the structures. Base costs were adjusted for heating, cost multiplier, roof type and owner construction. Mr. Schaul added the cost of exhaust fans, cooling, drip systems, boiler, water system and service piping. He concluded to a total value of \$2,010,144.00 for the subject under the cost approach.

15. Respondent assigned an actual value of \$2,119,242.00 to the subject property for tax years 1997 and 1998, but is recommending a reduction in value to \$2,010,144.00.

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 Board agrees with the Petitioner that the court's findings in *Del Mesa Farms v Montrose County Board of Equalization* 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.

3. 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 support that comparable land sales should have been used agriculturally both before and after sale. The Board notes that neither the Petitioner nor the Respondent specifically identified any of the land sales used for comparison as "other agricultural" in use. However, within testimony, the Respondent indicated that three of the four sales presented for comparison were not agricultural in use and represented vacant or redevelopment sites. Consequently, the Board finds the Petitioner's use of agricultural land sales to be more appropriate, indicating a value of \$2,100.00 per acre for the "other agricultural" portion of the subject.

4. The Board finds that the Petitioner's individual building and site measurements and classification of use were supported in both testimony and exhibits. Based on all of the evidence and testimony presented, the Board concluded that the actual value of the subject parcels should be reduced and allocated as follows:

Schedule Number	Land	Improvements	Total
1719-363-00-069	\$220.00	\$1,080.00	\$1,300.00
1719-363-04-001	\$28,460.00	\$590,440.00	\$618,900.00
1719-363-04-002	\$82,950.00	\$490,350.00	\$573,300.00

ORDER:

Respondent is ordered to cause an abatement/refund to Petitioner, based on 1997 and 1998 actual values as shown:

Schedule Number	Total
1719-363-00-069	\$1,300.00
1719-363-04-001	\$618,900.00
1719-363-04-002	\$573,300.00

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 26th day of January 2005.


BOARD OF ASSESSMENT APPEALS



Judge Nuechter



Karen E. Hart

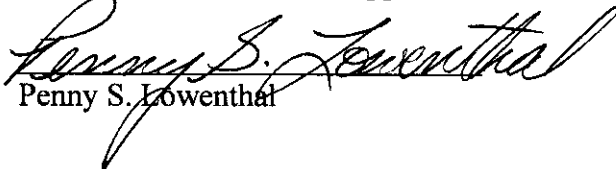


Sondra Mercier

This decision was put on the record

JAN 26 2005

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



Penny S. Lowenthal



**BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO**

1313 Sherman Street, Room 315
Denver, Colorado 80203

**Docket No.: 37891 &
37892**

Petitioner:

**WELBY GARDENS
(WELBY GARDENS CO),**

v.

Respondent:

ADAMS COUNTY BOARD OF COMMISSIONERS.

ORDER ON REMAND

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.

The Board consolidated docket numbers 37891 and 37892.

This matter is on remand to the Board after entry of the Court of Appeals in Welby Gardens v. Adams County Board of Commissioners, Case Number 05CA0440. 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 January 26, 2005, the Board determined the value of improvements located on the subject property to be \$1,081,870.00 and the value of the retail and agricultural land of the subject property to be \$65,284.00 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:

**2761 E. 74th Avenue, Denver, CO
(Adams County Schedule Nos. 1719-363-04-001, 1719-363-04-002,
& 1719-363-00-069)**

The subject property includes three parcels with approximately 32.772 acres. All parcels include greenhouse or garden center structures. At issue is the value of 22.072 acres of “other agricultural” property, also known as “agribusiness.” The remaining land area is classified for retail use or as Irrigated Class II land.

Petitioner is requesting a land value of \$46,350.00 for 22.072 acres or \$2,100.00 per acre. Respondent presented an indicated land value of \$421,900.00 for 21.095 acres 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 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 comparable sale is the subject property. It 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/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, which can be classified as "other agricultural" use after the sale, provide a similar level of value. Additionally, Respondent's Sale 4 was the sale of the subject property. The value per acre indicated by Respondent, at \$20,000.00 per acre, is reasonable. The Board concludes to an "other agricultural" land value of \$441,440.00.

Combining the land value conclusion with the value of the improvements determined in the Board's Order dated January 26, 2005, the subject property should be valued for tax years 1997 and 1998 as follows:

Improvements	\$1,081,870.00
"Other Agricultural" Land	\$ 441,440.00
Retail and Irrigated Class II Land	<u>\$ 65,284.00</u>
Total	\$1,588,594.00

ORDER:

Respondent is ordered to cause an abatement/refund to Petitioner based on 1997 and 1998 actual value of \$1,588,594.00 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

MAR 13 2008

Sondra W. Mercier
Sondra W. Mercier

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

Heather Heinlein
Heather Heinlein

