

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>S.T. SPANO GREENHOUSES, INC.,</p> <p>v.</p> <p>Respondent:</p> <p>JEFFERSON 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 Numbers: 37991 and 40977</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on November 4, 2004, Karen E. Hart and MaryKay Kelley presiding. Petitioner was represented by William McLain, Esq. Respondent was represented by Martin McKinney, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for tax year 1998 (Docket No. 37991) and for tax years 1999 and 2000 (Docket No. 40977).

PROPERTY DESCRIPTION:

Subject property is described as follows:

**5190 Marshall Street, Arvada, Colorado
(Jefferson County Schedule No. 086824)**

The subject property consists of greenhouses and support buildings on 3.970 acres.

ISSUES:

Petitioner:

Petitioner contends that the subject’s land was overvalued and that economic obsolescence should be deducted from the cost approach.

Respondent:

Respondent contends that the actual value of the subject property is correct based on the cost approach.

FINDINGS OF FACT:

1. The subject property is a collection of greenhouses and support buildings built between 1957 and the late 1980’s or early 1990’s for the purpose of growing carnations. The property is classified as “other agricultural,” pursuant to C.R.S. 39-1-102 (1.6) (b).

2. Neither Petitioner nor Respondent presented market or income approaches due to a lack of sold and rental data.

3. Petitioner's witness, Ronald C. Sandstrom of F & S Tax Consultants, presented cost approaches to derive the following values:

<u>Tax Year 1998</u>		<u>Tax Years 1999 and 2000</u>	
Land	\$ 9,925.00	Land	\$ 9,925.00
Residence	8,784.00	Residence	10,417.00
Greenhouse/Support Buildings	155,354.00	Greenhouse/Support Buildings	154,380.00
Economic Obsolescence	<u>- 93,212.00</u>	Economic Obsolescence	<u>- 61,752.00</u>
Indicated Value	\$ 80,851.00	Indicated Value	\$ 82,094.00

4. Mr. Sandstrom testified that the source of his cost figures was Marshall Valuation Service. He calculated the residential portion of the equipment shed at 50% of the Low Cost Class D figures.

5. Mr. Sandstrom applied economic obsolescence due to loss of the cut-flower business to South America and Mexico and to an overall decline in the local greenhouse business. Based on the information contained in Petitioner’s Exhibit A, page 15 and Addendum D, he estimated 60% depreciation or \$93,212.00 for tax year 1998 and \$92,628.00 for tax years 1999 and 2000.

6. Mr. Sandstrom presented 12 land sales to estimate a land value of \$2,500.00 per acre for all tax years. He selected the land sales based on agricultural use before and after sale as set forth in Volume III of the Assessor's Reference Library, pages 2.17 and 5.23. The sales ranged in size from 35.13 acres to 307 acres, and in price from \$49,400.00 to 745,000.00 or \$1,295.00 per acre to \$2,460.00 per acre. He concluded at the high end of the range.

7. Petitioner is requesting a 1998 actual value of \$80,851.00 and a 1999 and 2000 actual value of \$82,094.00.

8. Respondent's witness, Brenda L. Fearn, a Certified General Appraiser with the Jefferson County Assessor's Office, presented the following values:

<u>Tax Year 1998</u>		<u>Tax Years 1999 and 2000</u>	
Residential Land	\$ 4,580.00	Residential Land	\$ 4,400.00
Commercial Land	177,250.00	Commercial Land	170,280.00
Residence	15,810.00	Residence	15,320.00
Greenhouse/Support Buildings	<u>137,640.00</u>	Greenhouse/Support Buildings	<u>141,240.00</u>
Indicated Value	\$335,280.00	Indicated Value	\$331,240.00

9. Ms. Fearn testified that because Cole-Layer-Trumble cost data for the base periods were no longer available when she prepared the appraisal in October 2004, she factored data from June 30, 2000, backwards. Acknowledging that this method is neither conventional nor accepted in the appraisal community, the Respondent agreed to stipulate to the Petitioner's values for the commercial improvements before economic obsolescence: \$155,354.00 for tax year 1998 and \$154,380.00 for tax years 1999 and 2000.

10. Ms. Fearn testified that because the market approach is required for residential improvements, she identified sales for the 576 square foot residential portion of one of the buildings and concluded to a value of \$20,930.00 for tax year 1998 and \$19,720.00 for tax years 1999 and 2000. However, the indicated values derived from the market approach were based on sales of single-family detached houses located on residential lots. She concluded to a residential value of \$15,810.00 for tax year 1998 and a residential value of \$15,320.00 for tax years 1999 and 2000 based on the cost approach.

11. Ms. Fearn testified that she did not apply an adjustment for economic obsolescence because market data is neither reliable nor valid.

12. Ms. Fearn testified that her selection of land sales included small unplatted acreages zoned A1 or A2. She presented four land sales to estimate a value of \$45,800.00 per acre for tax year 1998. The land sales ranged in price from \$23,533.00 per acre to \$68,457.00 per acre, and in size from 2.575 acres to 33.23 acres. She presented six land sales to estimate a value of \$47,700.00 per acre for tax years 1999 and 2000. The land sales ranged in price from \$23,500.00 per acre to \$87,100.00 per acre, and in size from 2.336 acres to 41.864 acres.

13. Respondent assigned an actual value of \$348,510.00, but is recommending a reduction in value to \$335,280.00 for tax year 1998. Respondent assigned an actual value of \$308,990.00 for tax years 1999 and 2000.

CONCLUSIONS:

1. Petitioner presented sufficient probative evidence and testimony to prove that valuations of the subject property for tax years 1998, 1999 and 2000 were incorrect.

2. The Board finds that comparable land sales should have been used agriculturally both before and after sale. Petitioner's estimate of \$2,500.00 per acre is supported by the comparable land sales presented and calculates to a total land value of \$9,925.00 for each tax year.

3. Respondent stipulated to Petitioner's commercial improvement values by the cost approach prior to the adjustment for economic obsolescence: \$155,354.00 for tax year 1998 and \$154,380.00 for tax years 1999 and 2000.

4. Pursuant to Colorado Revised Statutes, residential properties must be valued based on the market approach. For the residential portion of the subject property, Petitioner derived a value of \$8,784.00 for tax year 1998 and a value of \$10,417.00 based on the cost approach. Respondent analyzed comparable sales to determine a value for the residential portion of the subject property, yet neither the Respondent nor the Board had any confidence in the resulting indicated values. Respondent's comparables are stand-alone single-family residences located on residential lots and both the land and the improvements are included in the sales prices. Using Respondent's comparable sales and a standard 3:1 land to building ratio, the Board extracted the portion of the sales prices attributable to improvements. The resulting adjusted improvement prices ranged from \$41,700.00 to \$68,089.00 for tax year 1998 and from \$54,112.00 to \$72,930.00 for tax years 1999 and 2000. The Board then applied a 75% adjustment for functional obsolescence, resulting in improvement prices ranging from \$10,425.00 to \$17,022.00 for tax year 1998 and from \$13,528.00 to \$18,232.00 for tax years 1999 and 2000. The Board concluded to a residential improvement value of \$10,425.00 for tax year 1998, and \$13,528.00 for tax years 1999 and 2000.

5. Although Petitioner contends that the cut-flower segment of the greenhouse business has experienced a negative economic impact, the Board is not convinced that sufficient market data exists to support an adjustment for economic obsolescence.

6. Based on all of the evidence and testimony presented, the Board concluded that the value of the subject property should be reduced as follows:

<u>Tax Year 1998</u>		<u>Tax Years 1999 and 2000</u>	
Land	\$ 9,925.00	Land	\$ 9,925.00
Commercial Improvements	155,354.00	Commercial Improvements	154,380.00
Residential Improvement	<u>10,425.00</u>	Residential Improvement	<u>13,528.00</u>
Total	\$175,704.00	Total	\$177,833.00

ORDER:

Respondent is ordered to cause an abatement/refund to Petitioner, based on a 1998 actual value of \$175,704.00 and a 1999 and 2000 actual value of \$177,833.00.

The Jefferson 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 December 2004.

BOARD OF ASSESSMENT APPEALS

Karen E Hart

Karen E. Hart

MaryKay Kelley

MaryKay Kelley

This decision was put on the record

DEC 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



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

1313 Sherman Street, Room 315
Denver, Colorado 80203

**Docket Nos.:
37991 & 40977**

Petitioner:

S.T. SPANO GREENHOUSES, INC.

v.

Respondent:

**JEFFERSON COUNTY BOARD OF
COMMISSIONERS.**

ORDER ON REMAND

THIS MATTER was heard by the Board of Assessment Appeals on August 28, 2007, Karen E. Hart and MaryKay Kelley presiding. Petitioner was represented by William A. McLain, Esq. Respondent was represented by Writer Mott, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for tax years 1998, 1999, and 2000.

The Board consolidated Docket Nos. 37991 and 40977.

This matter is on remand to the Board after entry of the Court of Appeals decision in Jefferson County Board of Commissioners v. S.T. Spano Greenhouses, Inc., Case Number 05CA0300. The Court of Appeals ordered new valuation proceedings “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 weigh the probative value of that evidence.”

On December 23, 2004, the Board determined the values of commercial improvements located on the subject property to be \$155,354.00 for tax year 1998 and \$154,380.00 for years 1999 and 2000, and the values for residential improvements to be \$10,425.00 for tax year 1998 and \$13,528.00 for tax years 1999 and 2000. 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:

**5190 Marshall Street, Arvada, Colorado
Jefferson County Schedule No. 086824**

The subject property consists of greenhouses and support buildings on 3.970 acres.

1998 Tax Year (Docket No. 37991)

Petitioner is requesting a land value of \$31,760.00 or \$8,000.00 per acre. Respondent assigned a land value of \$119,100.00 or \$30,000.00 per acre. Respondent presented an indicated value of \$181,830.00 or \$45,801.00 per acre.

Petitioner’s Comparable Sales: Petitioner presented six land sales within the extended five-year base period ending June 30, 1996 ranging in sales price 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 because they do not fall within the definition of “other agricultural.”

Sale 2 (11.303 acres) sold 1/19/95 for \$6,370.00 per acre. This property was vacant with “agricultural” classification at the time of sale. A horse boarding facility was built following the sale during the base period. Neither party was aware of any development potential. 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 3/27/96 for \$10,059.00 per acre. Classified “agricultural” at the time of sale, it was used as a landscaping business and later as a tree nursery. Respondent’s witness testified that developers had no interest in this property due to a floodplain running through it. The Board is convinced that this property was purchased for and falls within the definition of “other agricultural” use.

Respondent’s Comparable Sales: Respondent presented five land sales within the extended five-year base period ranging in sales price from \$23,526.00 to \$120,853.00 per acre and in size from 2.111 to 33.24 acres. All were classified “other agricultural” at time of sale.

Sale 1 (2.111 acres) sold 6/10/92 for \$41,213.00 per acre. The price per acre was after deductions for greenhouse improvements that may or may not have included heating and cooling systems, fans, louvers, and utilities. Respondent’s witness testified that greenhouse use continued after the sale. Motivation for this sale is unknown. The Board is convinced that this property falls within the definition of “other agricultural” use.

Sale 2 (4.222 acres) sold 12/27/94 for \$55,424.00 per acre. The price per acre was after a deduction for the residential improvement. The property is across the street from the purchaser, Echter's Garden Center, and was leased prior to sale by Echter's for additional greenhouse parking and storage. Quonset-type hoop greenhouse structures were installed after the purchase. Respondent's witness testified that the property was put on the open market by the seller and that the sales price was determined by appraisals from both parties. Petitioner's witness contends that the purchaser's appraisal was based on highest and best use for potential residential use. The Board is convinced, due to proximity of the two properties and infill development in the area, that the purchaser's motivation was development potential with greenhouse support as an interim use. The Board gave no weight to this sale because it does not fall within the definition of "other agricultural."

Sale 3 (33.24 acres) sold 2/2/96 for \$23,526.00 per acre. The land, used as a nursery before and throughout the base period, was purchased by the owner of the adjoining Green Acres Nursery. The Board is convinced that this sale falls within the definition of "other agricultural" use.

Sale 4 (13.681 acres) sold 2/8/96 for \$25,583.00 per acre. Prior to sale, this property was used for horse boarding. The Board is convinced, through Respondent's testimony and evidence, that the intent for the sale was commercial redevelopment in the Westwoods Shopping Center. The Board gave no weight to this sale because it does not fall within the definition of "other agricultural."

Sale 5 (5.999 acres) sold 3/1/96 for \$120,853.00 per acre. Prior to sale, this property was used for horse boarding, and after the sale it was a tree nursery. However, the Board was convinced by testimony and evidence from Respondent's witness that the impetus for sale and future potential use was development. The Board gave no weight to this sale because it does not fall within the definition of "other agricultural."

The Board considered the following remaining sales:

<u>Petitioner's sales</u>			<u>Respondent's sales</u>		
# 2	\$ 6,370.00/acre	11.303 acres	#1	\$41,213.00/acre	2.111 acres
# 6	\$10,059.00/acre	11.93 acres	#3	\$23,526.00/acre	33.24 acres

Respondent's Sale 1 is given less weight due to questionable value assigned to the improvements and unknown motivation for purchase. The Board did not apply time adjustments because Respondent's time trending was based upon data which included residential lots, large non-platted tracts of land, and commercial and industrial parcels. The Board finds the locations of the remaining sales are comparable to the subject property. All of the three remaining comparables are much larger in size than the subject property, and sale prices tend to be higher per acre for smaller sized parcels. Therefore, the Board concludes to a value from the upper end of the range at \$23,000.00 per acre.

1999 and 2000 Tax Years (Docket No. 40977)

Petitioner is requesting a land value of \$31,760.00 or \$8,000.00 per acre. Respondent assigned a land value of \$174,680.00 or \$44,000 per acre.

Petitioner's Comparable Sales: Petitioner presented nine land sales within the extended five-year base period ending June 30, 1998 ranging in sales price from \$6,370.00 to \$10,059.00 per acre and in size from 8.0 to 228.07 acres. All were classified "agricultural" at the time of sale.

Sales 1, 3, 4, 5, 8, and 9 were "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 because they do not fall within the definition of "other agricultural."

Sale 2 (11.303 acres) sold 1/19/95 for \$6,370.00 per acre. This property was vacant with "agricultural" classification at the time of sale, and a horse boarding facility was built following the sale during the base period. Neither party was aware of any development potential. 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 3/27/96 for \$10,059.00 per acre. Classified "agricultural" at the time of sale, it was used as a landscaping business and later as a tree nursery. Respondent's witness testified that developers had no interest in this property due to a floodplain running through it. The Board is convinced that this property was purchased for and falls within the definition of "other agricultural" use.

Sale 7 (228.07 acres) sold 11/08/96 for \$8,251.00 per acre. The Board gave no weight to this sale due to its "agricultural" classification and the purchaser's probable intent for future residential development.

Respondent's Comparable Sales: Respondent presented seven land sales within the extended five-year base period ranging in sales price from \$23,526.00 to \$120,853.00 per acre and in size from 3.765 to 41.864 acres. All but one were classified "other agricultural" at the time of sale.

Sales 1, 3, and 4 are the same as Sales 2, 4, and 5 presented by Respondent for the 1998 tax year. As previously discussed the Board gave no weight to these sales because the Board finds the properties do not fall within the definition of "other agricultural."

Sale 2 (33.24 acres) sold 2/2/96 for \$23,526.00 per acre. The land, used as a nursery before and throughout the base period, was purchased by the owner of the adjoining Green Acres Nursery. The Board is convinced that this sale falls within the definition of "other agricultural" use.

Sale 5 (3.765 acres) sold 8/2/96 for \$39,841 per acre. It was used commercially prior to sale, and a retail greenhouse was built after the sale; the remainder being unbuildable due to an underground water conduit. The Board is convinced that the site was used commercially and gave no weight to this sale as it does not fall within the definition of "other agricultural" use.

Sale 6 (41.864 acres) sold 3/19/97 for \$33,599.00 per acre. Its northern section was a commercial greenhouse prior to sale and the remainder was used for grazing, most of it within a floodplain. Its purchase by the City of Arvada is not considered an arm's-length transaction and the Board disqualified it as a government agency purchase. 3 *Assessor's Reference Library: Land Valuation Manual* 3.20 (1999).

Sale 7 (11.477 acres) sold 12/18/97 for \$87,131.00 per acre. Non-operating greenhouses were present at time of sale. The Board is convinced by testimony and evidence that the impetus for sale and future potential use were development. The Board gave no weight to this sale because it does not fall within the definition of "other agricultural."

The Board considered the following remaining sales:

<u>Petitioner's sales</u>			<u>Respondent's sales</u>		
# 2	\$ 6,370.00/acre	11.303 acres	# 2	\$23,526.00/acre	33.24 acres
# 6	\$10,059.00/acre	11.93 acres			

The Board did not apply time adjustments because Respondent's time trending was based upon data which included residential lots, large non-platted tracts of land, and commercial and industrial parcels. The Board finds the locations of the remaining sales are comparable to the subject property. All of the three remaining comparables are much larger in size than the subject property, and sale prices tend to be higher per acre for smaller sized parcels. Therefore, the Board concludes to a land value from the upper end of the range at \$23,000.00 per acre.

Conclusions

Petitioner presented sufficient probative evidence and testimony to prove that land values for tax years 1998, 1999, and 2000 were incorrect.

Combining the land value conclusions for each tax year listed above with the value of improvements determined in the Board's order dated December 23, 2004, the subject property should be valued as follows:

	<u>1998</u>	<u>1999/2000</u>
Land	\$ 91,310.00	\$ 91,310.00
Commercial Improvements	\$155,354.00	\$154,380.00
Residential Improvements	\$ 10,425.00	\$ 13,528.00
Total	\$257,089.00	\$259,218.00

ORDER:

Respondent is ordered to cause an abatement/refund to Petitioner based on a 1998 actual value of \$257,089.00, and a 1999 and 2000 actual value of \$259,218.00 for the subject property.

The Jefferson 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

Karen E Hart
Karen E. Hart

MaryKay Kelley
MaryKay Kelley

This decision was put on the record

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

