BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203 Petitioner: **VELDKAMP'S, INC.,** v. Respondent: **JEFFERSON 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 Number: 38038**
ORDER	

THIS MATTER was heard by the Board of Assessment Appeals on February 2, 2005, 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 years 1999 and 2000.

PROPERTY DESCRIPTION:

Subject property is described as follows:

17201 West 64th Avenue, Arvada, Colorado
(Jefferson County Schedule No. 424905)

The subject property consists of 7.721 acres leased for grazing and 17 acres with greenhouses and support buildings built between 1970 and 1982 for growing cut flowers.

ISSUES:

Petitioner:

Petitioner contends that both the land and greenhouse improvements for the 17-acre site were overvalued for tax years 1999 and 2000.

Respondent:

Respondent contends that the subject's 17 acres and improvements were undervalued for tax years 1999 and 2000, due to the omission of two structures and incorrect data regarding the subject property's physical characteristics.

FINDINGS OF FACT:

1. The parties stipulated to a value of $309.00 for the 7.721 acres of land classified as "agricultural" and used for grazing. The value of the 17-acre parcel classified as "other agricultural" with greenhouse improvements is disputed.

2. Greenhouse improvements include permanent greenhouses, Quonset style or minutemen greenhouses, warehouse and shipping structures, storage and office space.

3. Petitioner's witness, Ronald Sandstrom with F&S Tax Consultants, testified that he valued the 17-acre parcel using comparable sales of agricultural land, citing Volume 3, page 2.17 of the Assessor's Reference Library (ARL): "'Other agricultural' lands, which are sometimes referred to as agribusiness properties when improvements are built, are primarily bought as income producing properties. As required by 39-1-102(1.6)(b) C.R.S., the actual value of this type of land is to be based on the three approaches to value, including market value established using sales of comparable agricultural lands. . ."

4. Mr. Sandstrom presented a value of $2,500.00 per acre or $42,500.00 for the 17 acres classified as "other agricultural." Because there were no agricultural land sales in Jefferson County, he presented eight land sales in Adams County and five in Weld County, all of which were used agriculturally. The land sales ranged in size from 35.13 acres to 307 acres and in price from $1,295.00 per acre to $2,460.00 per acre. He concluded at the upper end of the range to a value of $2,500.00 per acre.

5. Mr. Sandstrom testified that the Respondent's Land Sale 1 is not a valid comparable because it was an estate sale. Pursuant to Volume 3, page 3.20 of the ARL, sales to settle an estate are considered non-qualifying sales. Furthermore, it was not exposed to the open market, a necessary component of "Market Value" as defined in the Appraisal Institute's The Appraisal of Real Estate (Twelfth Edition) and by the Uniform Standards of Professional Appraisal Practice. He testified that Respondent's Sale 2 was invalid because part of it involved an assemblage by an existing greenhouse operation and part of it sold for a premium price, as its highest and best use was determined to be

residential development. Mr. Sandstrom testified that Respondent's Sale 3 was sold to an existing greenhouse operation and was not exposed to the open market. Respondent's Sale 4 was not used for agricultural purposes and was vacant at purchase.

6. Mr. Sandstrom testified that the greenhouse improvements and support structures had a total rounded replacement cost new less physical depreciation of $471,860.00. Mr. Sandstrom used the "average steel frame" cost figures contained in the November 1996 issue of Marshall and Swift. He adjusted the cost figures forward to June 1998 and applied a local multiplier provided by the Division of Property Taxation. The Quonset hut or "minutemen" structures, buildings 3 and 4, were estimated at a considerably lower price per square foot because they were easily assembled by greenhouse employees rather than by professional contractors. No adjustments were made for heating or water systems, which he testified were tied to the business and considered personal property. Depreciation for physical deterioration was based on the effective ages of the individual buildings.

7. Petitioner requested an actual value of $514,669.00 for the subject property for tax years 1999 and 2000 based on the stipulated value of $309.00 for the 7.721 acres of agriculturally-classified land, a land value of $42,500.00 for the 17 acres classified as "other agricultural," and $471,860.00 for improvements.

8. Respondent's witness, Ms. Brenda Fearn, a Certified General Appraiser with the Jefferson County Assessor's Office, based the value of the subject's 17 acres on sales of agri-business properties. She referenced a May 19, 1983, memo from the Property Tax Administrator stating that value must be "based on the actual use of the property on the assessment date" and that "comparison of sales of similar agri-business properties must be used in the market approach".

9. Ms. Fearn presented a land value of $35,000.00 per acre for the 17 acres classified as "other agricultural." She presented Respondent's Sales 1 through 4, which range in size from .962 acres to 33.24 acres and in time-adjusted price per acre from $27,802.00 to $66,473.00. She testified that Respondent's Sales 1 and 2 were both leased by greenhouses prior to sale and were purchased by greenhouse owners. Respondent's Sale 3 was purchased by an existing greenhouse owner. Respondent's Sale 4 was classified as vacant, had no improvements at time of sale, and purchasers thereafter built a retail garden center. She concluded to a land value for the 17 acres of $595,000.00.

10. Ms. Fearn testified that none of Petitioner's land sales were classified as "other agricultural" or used for agribusiness as defined by the Division of Property Taxation's 1983 memo.

11. Ms. Fearn testified that the Assessor's original actual value of $475,190.00 for greenhouse improvements was erroneously underestimated for the following reasons: the age of some of the structures was incorrect; two structures were omitted from the calculations; construction quality was incorrect; effective ages were too low; and physical depreciation was too high. Omitted property included a 2,988 square foot warehouse, a 2,186 square foot utility building, and overhead doors. She changed construction quality from average to good and changed the physical deprecation rate, correcting the improvement value to $1,284,691.00. She did not know if cost figures from the

Cole-Layer-Trumble cost manual included personal property such as water coolers, heating, and fans or what the depreciation rate was.

12. Respondent assigned an actual value of $1,070,499.00 to the subject property for tax years 1999 and 2000 based on a value of $309.00 for the 7.721 acres of agriculturally-classified land, a land value of $595,000.00 for the 17 acres classified as "other agricultural," and $475,190.00 for improvements.

CONCLUSIONS:

1. Petitioner presented sufficient probative evidence and testimony to prove that the valuation of the subject property for tax years 1999 and 2000 was incorrect.

2. The Board agrees with Petitioner's interpretation of C.R.S. 39-1-102(1.6)(b) and finds that Volume 3, pages 2.17 and 5.23 of the Assessor's Reference Library take precedence over a 1983 memo from the Property Tax Administrator that has not been incorporated into the ARL. Volume 3, Page 2.17 of the ARL clearly states:

> ". . .the actual value of this type of land is to be based on the three approaches to value, including market value established using sales of comparable agricultural lands.

The Board is convinced that the underlined words were intentionally emphasized and should not be disregarded. The ARL definition of agricultural land includes present use as a farm or ranch as well as farm or ranch use for the previous two years, and this precludes comparisons of sales other than those with an agricultural classification.

3. The Board is not convinced that Respondent's Sales 1, 2, and 3 were exposed to the open market. Sale 4 was not used for agricultural or other agricultural purposes.

4. The Board finds Petitioner's cost approach for improvements more persuasive than Respondent's. The Petitioner presented cost data from Marshall Swift, calculated physical depreciation, and omitted personal property. The Respondent made significant changes in construction quality from the Assessor's original Cole-Layer-Trumble calculations, could not determine a depreciation rate, and did not know if personal property was included.

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

Stipulated land value for 7.721 acres classified as "agricultural"	$ 309.00
Land value of 17 acres classified as "other agricultural"	$ 42,500.00
Improvements on the 17 acres	$471,860.00
Total	$514,669.00

ORDER:

Respondent is ordered to cause an abatement/refund to Petitioner, based on a 1999/2000 actual value for the subject property of $514,669.00.

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 6th day of April 2005.

BOARD OF ASSESSMENT APPEALS

Karen E. Hart

MaryKay Kelley

This decision was put on the record

APR 0 5 2005

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

Penny S. Lowenthal

STATE OF COLORADO SEAL BOARD OF ASSESSMENT APPEALS

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BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203 _____ Petitioner: **VELDKAMP'S INC,** v. Respondent: **JEFFERSON COUNTY BOARD OF COMMISSIONERS.**	**Docket Nos.:** **38038, 41009, & 41220**

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 1999, 2000, 2001, and 2002.

The Board consolidated Docket Nos. 38038, 41009, and 41220.

This matter is on remand to the Board after entry of the Court of Appeals decision in Veldkamp's, Inc. v. Jefferson County Board of Commissioners, Case Number 05CA0980. 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 weigh the probative value of that evidence."

On April 6, 2005, the Board determined the value of improvements located on the subject property to be $471,860.00 for tax years 1999 and 2000 and the stipulated land value for 7.721 acres classified as "agricultural" to be $309.00 for the same tax years. On April 27, 2005, the Board issued an Amended Order determining value of the improvements to be $463,830.00 for tax years 2001 and 2002. 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:

17201 West 64th Avenue, Arvada, Colorado
Jefferson County Schedule No. 424905

For tax years 1999 and 2000 the subject property consisted of 7.721 acres leased for grazing and 17 acres with greenhouses and support buildings built between 1970 and 1982 for growing cut flowers. For tax years 2001 and 2002 the full 24.721 acres were used for greenhouses and support buildings.

1999 and 2000 Tax Years (Docket No. 38038)

Petitioner is requesting a land value of $136,000.00 or $8,000.00 per acre. Respondent assigned a land value of $595,309.00 or $35,000.00 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 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, 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.

Sale 1 (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 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 3 (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 4 (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."

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:

Petitioner's sales			Respondent's sales		
# 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 differ in size from the subject property, and sale prices tend to be higher per acre for smaller sized parcels. Therefore, the Board concludes to a land value near the upper end of the range at $20,000.00 per acre.

2001 and 2002 Tax Years (Docket Nos. 41009 and 41220)

Petitioner is requesting a land value of $205,350.00 or $8,300.00 per acre. Respondent assigned a land value of $1,236,050.00 or $50,000.00 per acre. Respondent presented an indicated value of $989,000.00 or $40,006.00 per acre.

Petitioner's Comparable Sales: Petitioner presented seven land sales within the extended five-year base period ending June 30, 2000 ranging in sales price from $6,875.00 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 3, 4, 5, 8, and 9 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 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 was presented by Petitioner as Sale 7 for the 1999/2000 tax year. As previously discussed, the Board gave no weight to this sale because it does not fall within the definition of "other agricultural" and because of the purchaser's probable intent for future residential development.

Respondent's Comparable Sales: Respondent presented twelve land sales within the extended five-year base period ranging in sales price from $20,000.00 to $120,853.00 per acre and in size from 2.159 to 41.864 acres. All but one were classified "other agricultural" at time of sale.

Sale 1 (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.

Sales 2, 3, 4, 5, and 6 are the same as Sales 3, 4, 5, 6, and 7 presented by Respondent for tax year 1999/2000. As previously discussed, the Board gave no weight to these sales because they do not fall within the definition of "other agricultural."

Sale 7 (5 acres) sold 7/27/98 for $20,000 per acre. Located in the mountains west of the metropolitan area, it was used for horse breeding from 1995 through 1998 and as a vineyard beginning in 2000. Respondent's witness testified that probable intent was future residential use with an on-site business. Additionally, the parcel is not conducive to a similar greenhouse use as the subject. The Board gave no weight to this sale because it does not fall within the definition of "other agricultural."

Sale 8 (4.895 acres) sold 10/19/98 for $53,115.00 per acre. Portable greenhouses were located on the site prior to sale and have been deducted from the sales price. Respondent's witness testified that the intent of this purchase was continued greenhouse use, and additional greenhouses were built after the sale. A small house was converted for use as an office that operated seasonally. The Board gave no weight to this transaction; because of the retail nature of the property, it does not qualify as "other agricultural."

Sale 9 (33.309 acres) sold 3/15/99 for $24,999.00 per acre. Classified "agricultural" prior to sale, the property was used for grazing. Following the sale, it was a wild horse rescue facility considered by Respondent's witness to be "agribusiness." Petitioner's witness testified that no horses were visible, that the surrounding area was being developed residentially, and that this property was purchased as an investment. Petitioner's argument was convincing. The Board gave no weight to this sale because it does not fall within the definition of "other agricultural."

Sale 10 (2.159 acres) sold 12/13/99 for $106,068.00 per acre. This property was a nursery and tree farm before and after sale. Petitioner's witness contended that it was located within a developing commercial area and was purchased as an investment. Petitioner's argument was convincing and is supported by the high sales price per acre. The Board gave no weight to this sale because it does not fall within the definition of "other agricultural."

Sale 11 (10.906 acres) sold 12/30/99 for $43,554.00 per acre. This property was used for horse boarding before and after the sale. Improvements were minimal and assigned no value. Petitioner's witness contended that the property was in a developing industrial area and that the purchase was speculative. Petitioner's argument was convincing and is supported by the high sales price per acre. The Board gave no weight to this sale because it does not fall within the definition of "other agricultural."

Sale 12 (4.975 acres) sold 3/22/00 for $110,553.00 per acre. Prior to the sale, one section of the property was used for training and selling horses and another for growing trees in pots. Following the sale, a house was built and the land used for grazing cattle. Respondent's witness argued that use following the sale was agricultural. Petitioner's witness argued that it was purchased for residential development. The Board agrees with Petitioner and does not consider use after sale to be "other agricultural." 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:

Petitioner's sales			Respondent's sales		
# 6	$10,059.00/acre	11.93 acres	# 1	$23,526.00/acre	33.24 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. Both of the remaining comparables differ in size from the subject property and sale prices tend to be higher per acre for smaller sized parcels. Therefore, the Board concludes to a land value near the upper end of the range at $20,000.00 per acre.

Conclusions

Petitioner presented sufficient probative evidence and testimony to prove that land values for tax years 1999, 2000, 2001, and 2002 were incorrect.

Combining the land value conclusions for each tax year listed above with the value of improvements determined in the Board's Orders dated April 6, 2005 and April 27, 2005, the subject property should be valued as follows:

	1999/2000	2001/2002
Improvements	$ 471,860.00	$ 463,830.00
"Other Ag" Land	$ 340,000.00	$ 494,420.00
"Ag" Land	$ 309.00	n/a
Total	$ 812,169.00	$ 958,250.00

ORDER:

Respondent is ordered to cause an abatement/refund to Petitioner based on 1999 and 2000 actual value of $812,169.00, and 2001 and 2002 actual value of $958,250.00 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 1 3 2008

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

Heather Heinlein

STATE OF COLORADO SEAL BOARD OF ASSESSMENT APPEALS

38038, 41009 & 41220