

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 76682
Petitioner: WELBY GARDENS CO, v. Respondent: ADAMS COUNTY BOARD OF COUNTY COMMISSIONERS.	
FINAL AGENCY ORDER	

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on October 1, 2020, Diane DeVries and Valerie Bartell presiding. Petitioner was represented by Thomas E. Downey, Jr. Esq. with Downey & Associates, P.C. Respondent was represented by Meredith P. Van Horn, Assistant County Attorney for Adams County. Petitioner appeals the actual value of the subject property for tax years 2017 and 2018.

EXHIBITS

The Board admitted into evidence Petitioner’s Exhibit 1 and Respondent’s Exhibits A, B and C.

DESCRIPTION OF THE SUBJECT PROPERTY

The subject is comprised of three separate taxable parcels, two of which are adjacent and share an address:

Address: 2761 East 74th Avenue, Denver, CO 80229
County Schedule No’s.: R0071176 and R0071177

Address: 6700 Washington Street, Denver, CO 80229
County Schedule No.: R0115906

The subject property's actual value, as assigned by the County Board of County Commissioners ("BCC's") below, as requested by Petitioner, and as recommended by Respondent, are:

Parcel R0071176:

BCC's Assigned Value:	\$2,847,295
Petitioner's Requested Value:	\$ 615,507
Respondent's Recommended Value:	\$1,598,970
Board's Concluded Value:	\$ 656,892

Parcel R0071177:

BCC's Assigned Value:	\$1,288,200
Petitioner's Requested Value:	\$ 591,639
Respondent's Recommended Value:	\$ 750,064
Board's Concluded Value:	\$ 601,207

Parcel R0115906:

BCC's Assigned Value:	\$1,020,240
Petitioner's Requested Value:	\$ 247,724
Respondent's Recommended Value:	\$ 693,442
Board's Concluded Value:	\$ 508,579

BURDEN OF PROOF AND STANDARD OF REVIEW

In a proceeding before this Board, the taxpayer has the burden of proof to establish, by a preponderance of the evidence, that the County's valuation is incorrect. *Bd. of Assessment Appeals v. Sampson*, 105 P.3d 198, 204 (Colo. 2005). Proof by a preponderance of the evidence means that the evidence of a circumstance or occurrence preponderates over, or outweighs, the evidence to the contrary. *Mile High Cab, Inc. v. Colorado Public Utilities Comm'n*, 302 P.3d 241, 246 (Colo. 2013). The evaluation of the credibility of the witnesses and the weight, probative value, and sufficiency of all of the evidence are matters solely within the fact-finding province of this Board, whose decisions in such matters may not be displaced on appeal by a reviewing court. *Gyurman v. Weld Cty. Bd. of Equalization*, 851 P.2d 307, 310 (Colo. App. 1993). The determination of the degree of comparability of land sales and the weight to be given to the various physical characteristics of the property are questions of fact for the Board to decide. *Golden Gate Dev. Co. v. Gilpin Cty. Bd. of Equalization*, 856 P.2d 72, 73 (Colo. App. 1993).

The Board reviews every case de novo. See *Bd. of Assessment Appeals v. Valley Country Club*, 792 P.2d 299, 301 (Colo. 1990). In general, the de novo proceeding before the Board "is commonly understood as a new trial of an entire controversy." *Sampson*, 105 P.3d at 203. Thus, any evidence that was presented or could have been presented in the County proceeding may be presented to this Board for a new and separate determination. *Id.* However, the Board may not impose a valuation on the property in excess of that set by the County. § 39-8-108(5)(a), C.R.S.

APPLICABLE LAW AND AUTHORITATIVE SOURCES

The subject property is classified as “other agricultural property,” per statutory direction. § 39-1-102(1.6)(b), C.R.S. It must be valued using appropriate consideration of the three approaches to appraisal – the market, income, and cost approaches. *Id.*

Comparison of sales of similar agribusiness properties must be used in the market approach. If the income approach is used to value this land, the income must be established based on a use similar to the actual use of the subject.

Land in the “all other agriculture property” subclass is not valued on the earning capacity of the land. Instead, it is valued by consideration of the three approaches to value based on its actual use on the assessment date. Generally, this means land in this classification is valued by sales of similar tracts of land which were purchased for similar purposes. The comparable sales should be as similar to the subject as possible in size, location, and present use.

3 Div. of Prop. Taxation, Dep’t of Local Affairs, Assessors’ Reference Library Ch. 5, at 5.23, 5.29 (rev. Jan. 2021); see *Jefferson Cty. Bd. of Cty. Comm’rs v. S.T. Spano Greenhouses, Inc.*, 155 P.3d 422 (Colo. App. 2006).

“The cost approach involves adding the estimated value of the land to the current cost of constructing a reproduction or replacement for the improvements and then subtracting the amount of depreciation.” *S.T. Spano Greenhouses, Inc.*, 155 P.3d at 425.

FINDINGS AND CONCLUSIONS

The subject property is comprised of three separate parcels, each parcel with multiple structures in place for a greenhouse business. Parcel R0071176 and R0071177 are adjacent to each other, and Parcel R0115906 – the Washington Street parcel – is located about a mile and a half away.

Petitioner offered the expert testimony of Ron Sandstrom, who prepared a Restricted Report containing valuation data (Exhibit 1). Respondent offered the expert testimony of Jeremy Maldonado, who presented an opinion of value for the two adjacent parcels in a Summary Report admitted as Exhibit A. Mr. Maldonado presented an opinion of value for the Washington Street property in a separate Summary Report, admitted as Exhibit B.

Both Mr. Sandstrom and Mr. Maldonado relied on the cost approach to determine the value for the subject. The sales comparison approach was not utilized due to limited greenhouse sales, nor was the income approach utilized, due to the fact that greenhouse properties are typically not leased in the market area. The Board concurs with reliance on the cost approach, given the unique attributes of the subject, including multiple buildings with varying construction types and ages; as well as limited greenhouse sales and leases in the subject’s market.

The Board first considers the parties' calculations of land value. Mr. Sandstrom's appraisal reported the land value as follows:

R0071176 - \$11,304.28 per acre

R0071177 - \$20,000.00 per acre

R0115906 - \$20,000.00 per acre

Mr. Sandstrom argued that all three parcels should be valued at a consistent rate of \$20,000 per acre for land the county classifies as "Other Ag Land." Parcel R0071176 includes 10 acres classified as "Ag Land," valued at \$1,304.20 per acre, thus bringing the overall land value down to an average of \$11,304.28 per acre. Mr. Sandstrom further contended that since all three properties are used in tandem as one greenhouse business, valuing the parcels at the same rate is necessary. Mr. Sandstrom opined that the three parcels serve as one unit, and so all three land parcels should be treated similarly in terms of underlying land value.

Mr. Maldonado's appraisals outlined the land values as follows:

R0071176 - \$11,304.28 per acre

R0071177 - \$17,190.45 per acre

R0115906 - \$75,000.00 per acre

Mr. Maldonado also provided a separate analysis of comparable land sales, admitted as Exhibit C. Mr. Maldonado selected similar comparable land sales for adjacent parcels R0071176 and R0071177, and a different set of sales for parcel R0115906 – the Washington Street property. The sales for the Washington Street property indicated a higher value per acre.

The Board does not concur with the Petitioner's assertion that all three parcels should have a similar underlying land value simply due to their synchronous use as a greenhouse business. It does not seem reasonable that different land parcels with varying attributes and sizes in different locations take on a similar underlying land value solely based upon the fact that the parcels share common ownership or a similar land use. Instead, land classified as "all other agriculture property" must be valued for ad valorem purposes by consideration of market data – sales of similar tracts of land, which were purchased for similar purposes. Mr. Maldonado provided market data supporting his assigned land values.

Therefore, the Board determines the Petitioner has not shown the underlying land values assigned by the County are incorrect.

The second matter is to determine if the Petitioner has shown that the value of the improvements set by the Board of County Commissioners were incorrect.

Mr. Sandstrom's appraisal included detailed cost estimates of the on-site improvements for all three parcels. The physical characteristics of each building were determined by an on-site inspection, and cost estimates were derived from Marshall & Swift Valuation Service's cost manual. Estimates for physical depreciation were also estimated from depreciation tables in Marshall & Swift Valuation Service's cost manual. Lastly, an amount for functional obsolescence of 10 percent was deducted from the cost of the improvements. Mr. Sandstrom described the functional obsolescence of 10 percent to be due to the locational feature of the three parcels; that is, parcel R0115906 is not adjacent to parcels R0071176 and R0071177 and therefore in the operation of the greenhouse business it is necessary to drive merchandise between the sites.

Mr. Maldonado's Summary Reports also included detailed cost estimates of the on-site improvements for all three parcels. Mr. Maldonado testified that he did not perform an on-site inspection, and instead assessor records were relied upon for the physical characteristics of each building. Cost estimates were also obtained from Marshall & Swift Valuation Service's cost manual, and estimates for depreciation were also applied. No deduction for functional obsolescence was made.

The Board concludes Mr. Sandstrom's physical inspection of improvements to have resulted in a more credible description and valuation of the improvements. The improvements are unique, and multiple physical inspections are likely necessary to understand the physical characteristics of the improvements.

However, the Board finds rationale behind Mr. Sandstrom's application of functional obsolescence of 10 percent is due to a business decision to operate all three parcels in tandem as one business unit, and not due to functional obsolescence of any one specific property. "Functional obsolescence" may be defined as "[t]he impairment of the functional capacity of a property according to market tastes and standards." Appraisal Institute, *The Dictionary of Real Estate Appraisal*, 5th ed. (2010). While parcels R0071176 and R0071177 are adjacent land parcels, and have been used synchronously as one greenhouse business for some time, parcel R0115906 – the Washington Street parcel – was acquired later in time by Welby Gardens, and it existed for some time as a standalone greenhouse business. In fact, Mr. Sandstrom testified that although there was sufficient room for expansion of the business on parcels R0071176 and R0071177, the business decision was made to purchase parcel R0115906 instead, as it was a ready-to-go existing greenhouse. The evidence does not support the application of a reduction in value for functional obsolescence.

Therefore, with the exception of the 10 percent discount for functional obsolescence, the Board concurs with Petitioner's estimates of the cost of the building improvements as follows:

R0071176: \$413,850

R0071177: \$409,310

R0115906: \$177,004

Having found that the County's valuation of the subject land is correct, but that the

County's valuation of the subject improvements are incorrect, the Board finds the value of the subject parcels to be as follows:

R0071176	Land Value	\$243,042
	Improvements Value	\$413,850
	Total	\$656,892

R0771177	Land Value	\$191,897
	Improvements Value	\$409,310
	Total	\$601,207

R0115906	Land Value	\$331,575
	Improvements Value	\$177,004
	Total	\$508,579

The Board finds that Petitioner has met its burden of proving that the valuation of the subject for tax year 2019 is incorrect.

ORDER

The petition is **GRANTED**. The Respondent is ordered to reduce the 2017 and 2018 actual value of the subject parcels as follows: R0771176 shall be reduced to \$656,892; R0771177 shall be reduced to \$601,207; and R0115906 shall be reduced to \$508,579. The Adams County Assessor's Office is directed to change its records accordingly.

APPEAL RIGHTS

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 Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine 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 of the respondent county, may petition the Court of Appeals for judicial

review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine 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 within thirty days of such decision 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 of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

See § 39-8-108(2), C.R.S. (rights to appeal a tax protest petition); see also § 39-10-114.5(2), C.R.S. (rights to appeal on an abatement petition).

DATED and MAILED this 18th day of March, 2021.

BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:



Valerie C. Bartell

Concurring Board Member:

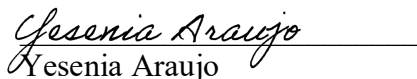


Diane M. DeVries

*Concurring without modification
pursuant to § 39-2-127(2), C.R.S.*



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



Yesenia Araujo