BOARD OF ASSESSMENT APPEALS
STATE OF COLORADO
Docket Numbers 35693, 35753, & 35754

ORDER

WELBY GARDENS CO.,

Petitioner,

vs.

ADAMS COUNTY BOARD OF EQUALIZATION,

Respondent.

THIS MATTER was heard by the Board of Assessment Appeals on December 18, 2000, Karen E. Hart, Mark R. Linné and Harry J. Fuller presiding. The Petitioner was represented by William McLain, Esq. Respondent was represented by Jennifer W. Leslie, Esq. A motion was granted to consolidate the above cited three docket numbers.

PROPERTY DESCRIPTION:

Subject properties are described as follows:

LOT 1 WELBY GARDEN CENTER SUB AMD PLAT
(Adams County Schedule No. 1719-363-04-001)(Docket No. 35693)

LOT 2 WELBY GARDEN CENTER SUB AMD PLAT
(Adams County Schedule No. 1719-363-04-002)(Docket No. 35753)

E 1/3 OF THAT PORT NW4 SW4 SEC 36 COM 12 FT W AND 27 FT N OF MIDDLE QTR SEC COR POST SD SW4 TH N 138 FT TH W 998 FT TH S 138 FT TH E 98 FT TO POB 36/2/68
(Adams County Schedule No. 1719-363-00-069)(Docket No. 35754)

Petitioner is protesting the 1999 actual value of the subject properties: 3 parcels comprising 491,870 square feet of greenhouse on a total of 32.772 acres.

ISSUES:

Petitioner:

Petitioner contends that the subject properties ought to be classified and valued as agricultural land. They contend the same language that classifies a poultry house as agriculture ought to apply to a greenhouse use. They contend the land under the greenhouses ought to be classified and valued as agricultural and the personal property involved in the greenhouse operation ought to be exempt.

Respondent:

Respondent contends that the subject properties have been properly classified and valued as commercial land and improvements. They contend that the subjects are "other agricultural" and do not qualify as an agricultural use.

FINDINGS OF FACT:

1. Petitioner's witness, Mr. Greg Domenico, Farmer, described his agricultural pursuits on site. He testified that he produces both conventional and organic products. He addressed an agricultural lease on a 15-acre portion of the Petitioner's land. He testified that it is situated on the north side of the subject. He testified that his father signed the lease in 1993. The witness personally has done the "tractor" work on the 15 acres. The land has "canal irrigation" provided from the Lower Clear Creek Ditch. He testified that the owner owns shares in the ditch. The witness testified he produces only organic vegetables on site: primarily winter squash and pie pumpkins. The first crop was planted in 1994, and the acreage has been productive since January of 1995.

2. Under cross-examination, the witness admitted the harvested crops are not used in conjunction with the greenhouse.

3. Mr. Al Gerace, a 25-year employee of Welby Gardens, gave a brief history of the operation. The area was used as a truck farm until 1980, when it was converted to greenhouse use. The subjects were acquired in 1993, and immediately leased to the Domenicos. He testified that there are 10 acres of greenhouses and greenhouse support lands. There are approximately 8,000 square feet of retail space in one greenhouse. There are 1,500 square feet of retail support space. He testified that roughly 2% of gross sales are retail sales, with the balance being wholesale (82%) and to a second retail site in Denver. He testified the greenhouse produces vegetables, flowers, and "fruiting" plant starts. He testified that seeds are turned into plants. There are no cut flowers produced on site. He testified that the plants are produced to generate profits.

4. The witness testified that Greenhouses F and C were purchased pre-base year. Greenhouse F was salvaged from Commerce City. Greenhouse C was purchased for $ .59 per square foot during 1976. He testified his employees are classified as “agricultural labor” by the state. The retail employees are not agricultural and are paid overtime wages. Not one of his employees is a licensed contractor. He testified that all of the greenhouse buildings were constructed by family and farm labor. Only the “soil building” was contractor constructed. He testified that Building L cost $5.00 per square foot to build. It had additional venting that A through J did not have. Buildings M and N did not have the additional venting and cost $4.04 per square foot to build. He testified that fiberglass roofs cost $1.00 per square foot and the “poly” roof costs less than $.15 per square foot to construct. He testified that using grower help results in a 40% labor savings.

5. The witness testified that 60% of the product is grown from seed. The balance comes from vegetative plantings from rooted mother plants.

6. The witness described the watering systems, fans, swamp coolers, and heaters that allow year round production. He testified that the plants are fertilized through the watering system. The soluble fertilizer is injected through the water.

7. The witness addressed the building permit for Greenhouses M and N. He testified that the permit covered the entire building costs. Each greenhouse was just under an acre (43,560 square feet). He testified the permit process involved submitting a plot plan. Both greenhouses had a stated construction value of $375,000.00.

8. The witness testified the Colorado Department of Agriculture inspects the subject properties twice a year.

9. Under cross-examination, the witness reiterated that $40.00 per acre accurately reflects market rent on the leased 15 acres. He admitted that there is no soil from the subject site used in the greenhouse operation. He reiterated the building permit building area of 38,808 square feet is incorrect. He admitted there is a swimming pool on site for employee use.

10. Under redirect the witness reiterated that no subject soil is used. The 4,000 cubic yards of soil required for the greenhouse operation would cause the soil to be mined on site. He admitted the swimming pool is 50 feet long.

11. The Petitioner’s third witness, Mr. Ronald Sandstrom, Agent, presented the following indicator of value:

Cost: $1,283,148.00

12. The Petitioner's witness did not present an indicated value from the market or income approaches. He contends that the agricultural nature of the subject properties precludes the determination of a market or income approach to value.

13. Petitioner's witness presented a cost approach to derive a market-adjusted cost value for the subject property of $1,283,148.00.

14. Land value was determined from the agricultural earning capacity of the land. He believes the subjects conform to the agricultural definition of a "farm" as set forth in Colorado Revised Statute. He researched the county's values for Class II - flood irrigated land (Class 4117). Comparable agricultural properties carried a $452.00 per acre value. The agricultural land value was assigned to the entire parcel. He testified the retail area is ancillary and supports the agricultural use.

15. The greenhouses were valued using the Marshall Swift Valuation Service. He explained the valuation of each building. Replacement costs were determined based on the quality of construction. Adjustments were made for square feet of concrete, building height, perimeter, whether or not there is a polyethylene roof, whether or not it is self constructed, a current cost multiplier and a local cost multiplier. He noted square footage differences and quality differences with the Respondent. He took a 30% adjustment for self-constructed structures and a 25% adjustment for a polyethylene roof. Additionally, Greenhouse "I" was adjusted 5% for an open curtain wall. The witness did not value any equipment that was determined to be personal property involved with the greenhouse operation. This includes such items as heating, cooling, and water spray systems. Depreciation was determined from the Marshall & Swift tables and deducted. No value was assigned the swimming pool. The witness maintains there is a 96' x 40' garage on 1719-36-3-04-002 that is not on the tax rolls.

15. The witness utilized the actual costs of the soil Building (O) in determining value.

16. Petitioner is requesting a 1999 actual value of $1,283,148.00 for all three subject properties.

17. Respondent's witness, Mr. John Schaul, a Registered Appraiser with the Adams County Assessor's Office, presented the following indicators of value:

Market:	$2,856,140.00
Cost:	$2,856,140.00

18. Based on the market approach, Respondent's witness presented an indicated value of $2,856,140.00 for the subject properties.

19. Respondent's witness presented three comparables representing a total of five sales. Four of the sales were either pre-base year or post-base year and were objected to. The objection was sustained. The remaining sale occurred on October 10, 1994 for $447,000.00. A greenhouse of 25,452 square feet was sold along with a 23.15 acre site. The sale included a 2,744 square foot single-family residence built in 1974.

20. Respondent's witness used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of $2,856,140.00.

21. Land value was determined from the market approach to value. Two comparable sales were admitted and analyzed. They ranged in sales price from $200,000.00 to $537,000.00 and in size from 8.77 to 23.1 acres. The first sale is the sale of the subjects in January of 1994. The unadjusted sales price was $23,246.00 per acre.

22. Respondent's witness used the Marshall Swift Valuation Service. The older improvements found on Lot 2 do not include adjustments for boiler heat, concrete, irrigation system or vents. These older improvements are fully depreciated. They were adjusted for the poly roofs. The newer improvements found on Lot 1 (Greenhouses L, M, and N) do have this adjustment to value. A cost multiplier of 1.04% was applied to the replacement costs new.

23. The witness disagrees with Mr. Sandstrom's cost approach concerning Greenhouses B and C. He disagrees with the use of local and current cost adjustments in the valuation of Building O.

24. Under cross-examination, the witness admitted to applying boiler heat to Greenhouses L, M, and N. He explained the 1.04% as being the mean of all five classes of improvements. He admitted that his sale at 9830 Isabelle Road in Boulder included a single-family residence. He admitted that his Land Sale #2 included two homes. He testified that he assumed the building department inserted the improvement area on the building permit issued November 23,1993.

25. Mr. David Wheelock, Certified General Appraiser and an official with the I.A.A.O. in Illinois, was called as the second witness for the Petitioner. He answered a series of questions concerning his responsibilities with the Division of Property Taxation. He testified to varied and numerous responsibilities in the assessment field, involving both real and personal property. A primary function was the development of classification procedures for all classes of property. He developed the classification and valuation procedures of agricultural land for ad valorem purposes. He testified that he was responsible for the classification codes for agricultural property from 1969 to 1993. He addressed Senate Bill 6 (1983) as it related to the "other agricultural" property classification of greenhouses. Formerly, greenhouses had been abstracted as commercial property. He emphasized the statutory definition of a "farm" as it relates to the soil capability or productivity of the land. There is no soil capability for a greenhouse. The greenhouse product does not come from the subject soil. The wholesale/retail operation of a greenhouse has no relation to the subject soil. A typical greenhouse operation does not conform to the landlord/tenant relationship that is found in the agricultural formula. He disagreed with the classification of the subject land as agricultural. He testified that "amateur workmanship" would better be reflected as a function of workmanship and depreciation. He characterized the subject as being primarily "good" workmanship.

26. Under cross-examination, the witness admitted the greenhouse product does not originate from the subject soil. He testified there are special soils utilized that do not originate from the subject soil. He was asked a series of questions concerning the linkage between a poultry operation and a greenhouse operation.

27. Mr. Gerace was recalled as a rebuttal witness concerning Greenhouses M and N. He testified there was one plot plan filed and one permit issued for M and N. He testified that he placed the $375,000.00 cost of work on the permit.

28. Respondent assigned an actual value of $2,905,150.00 to the three subject properties for tax year 1999.

CONCLUSIONS:

1. Petitioner presented sufficient probative evidence and testimony to prove that the subject properties were incorrectly classified and valued for tax year 1999. The Board is convinced that based on Morning Fresh Farms, Inc. v. Weld County Board of Equalization, 794 P2d 1073 (1990), there is no material difference between a chicken, sitting on wooden slats and producing an egg for profit, and a greenhouse plant, placed on wooden slats, producing a horticultural product for profit.

2. The Board has carefully considered all admitted evidence and testimony and has adjusted the subject value. We are convinced the subject ought to be classified and valued as agricultural land and improvements. We have placed the greatest weight on the cost approach as prepared by Mr. Sandstrom, with some modifications. We have endorsed the agricultural land value on all but the retail sales area. This 30,492 square foot sales area (.7 of an acre) will retain the commercial classification and remain at the assigned ($2.00 per square foot) land value. The balance of the acreage will be adjusted to the $452.00 per acre agricultural land value. Additionally, the Board has revised Mr. Sandstrom's "self-constructed" adjustment in the cost approach from 30% to 25%. We are convinced that such an adjustment is warranted, but at the lower end of the adjustment range. We endorse the Petitioner's current and local cost multipliers. We find the Respondent's use of the mean of all five greenhouse classes as too speculative. Each of the schedule numbers has been recalculated and the values appear below.

3. The incorrect valuation results from the subject property being misclassified. The proper valuation is a function of the proper classification.

4. Property classified as agricultural land is not valued using the market, cost and income approaches. The constitution prescribes the valuation method as follows: "the actual value of agricultural land, as defined by law, shall be determined solely by consideration of the earning or productive capacity of such lands capitalized at a rate as prescribed by law." Colo. Const. Art. X, subsection (1)(a); also subsection 39-1-103(5)(a), C.R.S. (2000) ("The actual value of agricultural lands, exclusive of building improvements thereon, shall be determined by consideration of the earning or

productive capacity of such lands during a reasonable period of time, capitalized at a rate of thirteen percent"); contrast subsection 39-1-104(1), C.R.S. (2000) (non-residential property and certain other property valued at 29 percent of actual value) and subsection 39-1-104(1.5), C.R.S. (2000) (residential real property valued at 21 percent of actual value).

5. The Petitioner contends that the subject property constitutes a "farm" as defined subsection 39-1-102(3.5), C.R.S. (2000). The Board agrees.

6. "Farm" means:

> a parcel of land which is used to produce agricultural products that originate from the land's productivity for the primary purpose of obtaining a monetary profit.

Subsection 39-1-102(3.5), C.R.S. (2000).

7. In turn, "agricultural and livestock products" means:

> plant or animal products in a raw or unprocessed state that are derived from the science and art of agriculture, regardless of the use of the product after its sale and regardless of the entity that purchases the product. "Agriculture," for the purposes of this subsection (1.1), means farming, ranching, animal husbandry, and horticulture.

Subsection 39-1-102(1.1), C.R.S. (2000), emphasis added; also Morning Fresh Farms, Inc. v. Weld County Board of Equalization, 794 P.2d 1073 (1990).

8. "Horticulture" has no statutory definition. It is therefore appropriate for the Board to give the word its common meaning. § 2-4-101, C.R.S. (2000). The courts often rely on dictionary definitions to find the common meaning of a word. For example Rocky Mountain Hosp. and Medical Service v. Mariani, 916 P.2d 519, 528 (Colo. 1996) (court cites dictionary definition of word "refuse"); Stoorman v. Greenwood Trust Co., 888 P.2d 289, 292 (Colo.App. 1994) (court cites dictionary definition of word "interest").

8. The dictionary definition of "horticulture" is

> [t]he cultivation of a garden; the science and art of cultivating flowers, herbs, shrubs, fruits, and garden vegetables.

New Webster's Dictionary, at p. 728 (1975).

9. The subject property is used for the purposes of cultivation of a garden; or the science and art of cultivating flowers, herbs, shrubs, fruits, or garden vegetables for the primary purpose of obtaining a monetary profit. Such purposes constitute horticulture.

10. A contrary conclusion may be reached by relying on the Division of Property Taxation's Assessors Reference Library. However, for the reasons that follow, the Board rejects that conclusion.

11. "Agribusiness" for property tax purposes is defined to mean property that does not meet the definition of farm or ranch. 2 Assessors Reference Library at p. 6.29 (12/97). Such property is classified as "all other agricultural property" and it is valued under all three approaches to value, identified above. Id.

12. The types of property within the all-other-agricultural-property classification are listed in the Assessors Reference Library. "Greenhouses" are on the list. 2 Assessors Reference Library at 6.32 (1/84).

13. Thus, according to the Assessors Reference Library, the Petitioner's greenhouses are classified as all other agricultural property -- not as a farm. Under such a classification, the subject property would not enjoy the benefit of the lower valuation method. However, this conclusion is at odds with the statute as discussed above.

14. "Farms" within the meaning of subsection 39-1-102(3.5) means agricultural and livestock products which, in turn, specifically includes "horticulture", the Assessors Reference Library notwithstanding. The Assessors Reference Library interpretation of how the subject property should be classified should be rejected to the extent it conflicts with the statute. Huddleston v. Grand County Bd. of Equalization, 913 P.2d 15, 17 (Colo. 1996) (although manual statutory interpretations are binding on assessors, they are not binding on court). Such a conflict exists here. The Board favors the statute.

15. The Board concluded that the 1999 actual value of the subject properties should be reduced on Schedule No. 1719-36-3-00-069 (Docket No. 35754) to $1,138.00, with $47.00 allocated to land and $1,091.00 allocated to improvements. The 1999 value on Schedule No. 1719-36-3-04-001 (Docket No. 35693) should be reduced to $900,589.00, with $9,721.00 allocated to land and $890,868.00 allocated to improvements. The 1999 value on Schedule No. 1719-36-3-04-002 (Docket No. 35753) should be reduced to $548,032.00, with $65,713.00 allocated to land and $482,319.00 allocated to improvements.

ORDER:

Respondent is ordered to reduce the 1999 actual value of the subject property on Schedule No. 1719-36-3-00-069 (Docket No. 35754) to $1,138.00, with $47.00 allocated to land and $1,091.00 allocated to improvements. The 1999 value on Schedule No. 1719-36-3-04-001 (Docket No. 35693) should be reduced to $900,589.00, with $9,721.00 allocated to land and $890,868.00 allocated to improvements. The 1999 value on Schedule No. 1719-36-3-04-002 (Docket No. 35753) should be reduced to $548,032.00, with $65,713.00 allocated to land and $482,319.00 allocated to improvements.

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

APPEAL:

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

If Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 30 days from the date of this decision.

DATED and MAILED this 19th day of January, 2001.

BOARD OF ASSESSMENT APPEALS

Karen E. Hart

Karen E. Hart

Mark R. Linné

Mark R. Linné

Harry J. Fuller

Harry J. Fuller

This decision was put on the record

JAN 19 2001.

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

Diane Von Dollen

Diane Von Dollen 35693.01

STATE OF COLORADO SEAL BOARD OF ASSESSMENT APPEALS

BOARD OF ASSESSMENT APPEALS, **STATE OF COLORADO** 1313 Sherman Street, Room 315 Denver, Colorado 80203 _____ Petitioner: **WELBY GARDENS COMPANY,** v. Respondent: **ADAMS COUNTY BOARD OF EQUALIZATION.**	
Attorney or Party Without Attorney for the Petitioner: Name: William A. McLain Address: 3962 South Olive Street Denver, Colorado 80237-2038 Phone Number: (303) 759-0087 Attorney Reg. No.: 6941	**Docket Numbers:** **35693, 35753, 35754**

ORDER ON REMAND FROM COURT OF APPEALS
01CA0307

THIS MATTER is on remand to the Board of Assessment Appeals after entry of the Supreme Court's decision on Case No. 02SC415. The Supreme Court affirmed the Court of Appeals judgment. The Court of Appeals Opinion on Case No. 01CA0307 reversed the action of the Board of Assessment Appeals. The Court of Appeals concluded that the subject property is not a farm under § 39-1-102 (3.5) and thus may not be classified and valued as agricultural for property tax purposes.

ORDER:

The Respondent is ordered to reclassify the subject property for tax year 1999 as set forth in the Court of Appeals Opinion.

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

DATED and MAILED this 17th day of July, 2003.

BOARD OF ASSESSMENT APPEALS

Karen E. Hart

Karen E. Hart

Debra A. Baumbach

Debra A. Baumbach

This decision was put on the record

JUL 16 2003

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

STATE OF COLORADO
SEAL
BOARD OF ASSESSMENT APPEALS

STATE OF COLORADO
COURT OF APPEALS

2 East Fourteenth Avenue, Suite 300
Denver, Colorado 80203
(303) 837-3785

M A N D A T E

Court of Appeals No. 2001CA0307
Colorado Board of Assessment Appeals Nos. 35693, 35753 & 35754

Welby Gardens Company,

Petitioner-Appellee,

and

Colorado Board of Assessment Appeals

Appellee,

v.

Adams County Board of Equalization,

Respondent-Appellant.

THIS CAUSE came to be heard on appeal from the Colorado Board of Assessment Appeals, was argued by counsel, opinion issued and judgment entered. Petition for Certiorari was applied for and granted in the Colorado Supreme Court. An opinion was issued by the Supreme Court on June 23, 2003, in which the judgment of the Court of Appeals was affirmed.

WHEREFORE IT IS ORDERED, that the order of the Colorado Board of Assessment Appeals is reversed. Jurisdiction of this cause is now returned to the Colorado Board of Equalization.

WITNESS, the HONORABLE JANICE B. DAVIDSON, Chief Judge of the Colorado Court of Appeals, this 14th day of July 2003.

JOHN P. DOERNER
Clerk of the Court

COPIES MAILED TO
COUNSEL OF RECORD
Tri. Ct. Judge Tri. Ct. Clerk
AND Bd. of Assessment
ON 7-14-03
BY
COLORADO COURT OF APPEALS

COLORADO COURT OF APPEALS

Court of Appeals No. 01CA0307
Colorado Board of Assessment Appeals Nos. 35693, 35753 & 35754

Welby Gardens Company,

Petitioner-Appellee,

and

Colorado Board of Assessment Appeals,

Appellee,

v.

Adams County Board of Equalization,

Respondent-Appellant.

ORDER REVERSED

Division V
Opinion by JUDGE KAPELKE
Vogt and Erickson*, JJ., concur

January 3, 2002

William A. McLain, P.C., William A. McLain, Denver, Colorado, for Petitioner-Appellee

No Appearance for Appellee

James D. Robinson, Adams County Attorney, Jennifer Wascak Leslie, Assistant County Attorney, Brighton, Colorado, for Respondent-Appellant

*Sitting by assignment of the Chief Justice under provisions of Colo. Const. art. VI, § 5(3), and § 24-51-1105, C.R.S. 2001.

In this property tax case, respondent, Adams County Board of Equalization (the County), appeals the order of the Board of Assessment Appeals (BAA) determining that certain real property owned by the taxpayer, Welby Gardens Company, should be classified and valued as agricultural land for purposes of ad valorem taxation. We reverse.

The property at issue (the Property) consists of two parcels of land in Adams County, which are primarily used for greenhouses and greenhouse support buildings, including an 8000-square-foot retail garden center and a public parking area. A third parcel, which is leased to a third party and used for growing agricultural crops, is not involved in this appeal.

Taxpayer produces vegetables, flowers, and fruiting plant starts. Most of the products are grown in containers in the greenhouses; however, taxpayer also has a test field of approximately three acres in which plants are grown in the ground. Taxpayer generally does not use the soil from the Property for the greenhouse containers. The environment of the greenhouses is regulated using water systems, humidity pads, fans, and heaters. The plants are primarily sold at wholesale; however, some sales are made at the on-site retail center (which is classified as commercial) and at another retail outlet.

For the tax year 1999, the Adams County Assessor's Office classified and valued the Property as commercial land and improvements. Taxpayer appealed to the Board of Assessment Appeals (BAA). Relying on Morning Fresh Farms, Inc. v. Weld County Board of Equalization, 794 P.2d 1073 (Colo. App. 1990), the BAA ruled that the Property should be classified as agricultural.

I.

The County contends that the BAA's statutory interpretation is contrary to the plain language and intent of the Colorado statutes and that the BAA therefore erred in determining that the Property should be classified as agricultural land. We agree.

Findings of fact of the BAA are entitled to deference unless they are unsupported by competent evidence or reflect a failure to abide by the statutory scheme for property tax assessment. Bd. of Assessment Appeals v. E.E. Sonnenberg & Sons, Inc., 797 P.2d 27 (Colo. 1990). However, a reviewing court is not bound by the BAA's interpretation of law where it is inconsistent with the clear language of the statute or legislative intent. Douglas County Bd. of Equalization v. Clarke, 921 P.2d 717 (Colo. 1996).

Agricultural land in Colorado receives favorable ad valorem tax treatment, calculated on the basis of the earning or productive capacity of the land. Colo. Const. art. X, § 3(1)(a); § 39-1-103(5)(a), C.R.S. 2001. As relevant here, "agricultural land" is defined as "[a] parcel of land . . . that was used the previous two years and presently is used as a farm or ranch." Section 39-1-102(1.6)(a), C.R.S. 2001.

At issue here is the definition of "farm." Section 39-1-102(3.5), C.R.S. 2001, defines a "farm" as "a parcel of land which is used to produce agricultural products that originate from the land's productivity for the primary purpose of obtaining a monetary profit." "Agricultural and livestock products" are defined in 39-1-102(1.1), C.R.S. 2001, as:

> plant or animal products in a raw or unprocessed state that are derived from the science and art of agriculture, regardless of the use of the product after its sale and regardless of the entity that purchases the product. "Agriculture", for the purposes of this subsection (1.1), means farming, ranching, animal husbandry, and horticulture.

The BAA, relying on the dictionary definition of "horticulture," determined that the Property is a farm because it is a parcel of land that produces agricultural products, including products derived from horticulture, for the primary purpose of obtaining a monetary profit. Thus, the BAA ruled

that the Property is agricultural land and should be assessed as such.

The County urges that this finding is contrary to the plain language of § 39-1-102(3.5), which requires that the agricultural products "originate from the land's productivity." This language, the County argues, requires a showing that the agricultural products have some connection with the land or soil itself. Because the products here are grown in fully enclosed, environmentally controlled buildings, and in soil obtained from outside sources, the County maintains that they bear no relationship to the land and that the BAA's ruling therefore violates the language and purpose of the statute. We agree.

A reviewing court must construe and apply a statute in accordance with the legislative intent. To determine that intent, we look primarily to the language of the statute itself, and when the statutory language is plain, it must be applied as written and "should not be subjected to a strained or forced interpretation." Boulder County Bd. of Equalization v. M.D.C. Constr. Co., 830 P.2d 975, 980 (Colo. 1992). Further, each word and phrase must be given effect, using the commonly accepted meanings. San Miguel County Bd. of Equalization v. Telluride Co., 947 P.2d 1381 (Colo. 1997).

According to the plain language of § 39-1-102(3.5), to qualify as a farm, a property must produce agricultural products "that originate from the land's productivity." This requirement is consistent with the constitutional mandate that agricultural land be valued "solely by consideration of the earning or productive capacity of such lands capitalized by a rate as prescribed by law." Colo. Const. art. X, § 3(1)(a). We agree with the County that this language requires that there be some relationship between the agricultural products and the productive capacity of the parcel of land. Where, as here, the land serves only to provide a site for a greenhouse operation, the products involved do not originate from the productivity of the land on which the greenhouses are located.

The BAA relied on Morning Fresh Farms, supra, for its decision. In that case, the plaintiff sought a personal property tax exemption for certain equipment used in its egg production facilities. A division of this court held that a forty-acre portion of the land that included buildings housing hens and egg handling equipment could fall within the definition of a farm under § 39-1-102(3.5). The egg production and hen replacement facilities were entirely self-contained, and none of the hens ever touched the ground. The division held, nevertheless, that there was nothing in the statutory definition

of a farm that would exclude this portion of the property from being classified as a farm, and that the equipment thus could be exempt from personal property taxation as "agricultural equipment which is used on a farm or ranch in the production of agricultural products." Morning Fresh Farms, Inc. v. Weld County Bd. of Equalization, supra, 794 P.2d at 1075.

In following Morning Fresh Farms, the BAA here stated that "there is no material difference between a chicken sitting on wooden slats and producing an egg for profit, and a greenhouse plant, placed on wooden slats, producing a horticultural product for profit."

We conclude, however, that the facts in Morning Fresh Farms are distinguishable from those here. There, the egg production facility involved a 40-acre portion of an 800-acre farm on which corn, wheat, and alfalfa were grown. Some of the feed for the chickens was grown on the farm. Here, the Property is not a part of a larger agricultural property, but, rather, is itself primarily used for a commercial enterprise. We do not read the Morning Fresh Farms opinion as holding that property can be classified as agricultural even if there is no relationship between the agricultural product and the productivity of the land. However, to the extent that the opinion can be read to so hold, we conclude that it fails to give meaning to all the plain

language of the statute, and we would therefore decline to follow it.

Because the agricultural products produced on the Property here do not originate from the land's productivity, as required by the plain language of the statute, we conclude that the Property is not a farm under § 39-1-102(3.5) and thus may not be classified and valued as agricultural for property tax purposes.

II.

The County also argues that the BAA erred by failing to give deference to the Property Tax Administrator's interpretation of § 39-1-102(1.6)(a), as codified in the Assessors Reference Library. However, because we conclude that the BAA's interpretation is contrary to the plain language of the statute, we need not address the issue.

The order of the BAA is reversed.

JUDGE VOGT and JUSTICE ERICKSON concur.

COLORADO COURT OF APPEALS

Court of Appeals No. 01CA0307
Colorado Board of Assessment Appeals Nos. 35693, 35753 & 35754

Welby Gardens Company,

Petitioner-Appellee,

and

Colorado Board of Assessment Appeals,

Appellee,

v.

Adams County Board of Equalization,

Respondent-Appellant.

ORDER REVERSED

Division V
Opinion by JUDGE KAPELKE
Vogt and Erickson*, JJ., concur

Opinion Modified, and As Modified,
Petition for Rehearing DENIED

January 3, 2002

William A. McLain, P.C., William A. McLain, Denver, Colorado, for Petitioner-Appellee

No Appearance for Appellee

James D. Robinson, Adams County Attorney, Jennifer Wascak Leslie, Assistant County Attorney, Brighton, Colorado, for Respondent-Appellant

*Sitting by assignment of the Chief Justice under provisions of Colo. Const. art. VI, § 5(3), and § 24-51-1105, C.R.S. 2001.

OPINION is modified as follows:

Page 1, line 12 currently reads:

growing agriculture crops, is not involved in this appeal.

Opinion is modified to read:

growing agriculture crops, is now conceded by the County to be agricultural land.

In this property tax case, respondent, Adams County Board of Equalization (the County), appeals the order of the Board of Assessment Appeals (BAA) determining that certain real property owned by the taxpayer, Welby Gardens Company, should be classified and valued as agricultural land for purposes of ad valorem taxation. We reverse.

The property at issue (the Property) consists of two parcels of land in Adams County, which are primarily used for greenhouses and greenhouse support buildings, including an 8000-square-foot retail garden center and a public parking area. A third parcel, which is leased to a third party and used for growing agricultural crops, is now conceded by the County to be agricultural land.

Taxpayer produces vegetables, flowers, and fruiting plant starts. Most of the products are grown in containers in the greenhouses; however, taxpayer also has a test field of approximately three acres in which plants are grown in the ground. Taxpayer generally does not use the soil from the Property for the greenhouse containers. The environment of the greenhouses is regulated using water systems, humidity pads, fans, and heaters. The plants are primarily sold at wholesale; however, some sales are made at the on-site retail center (which is classified as commercial) and at another retail outlet.

SUPREME COURT, STATE OF COLORADO Two East 14th Avenue Denver, Colorado 80203 CERTIORARI TO THE COURT OF APPEALS NO. 01CA307 Colorado Board of Assessment Appeals Nos. 35693, 35753 & 35754	Case No.02SC415

Petitioner:

WELBY GARDENS,

v.

Respondents:

ADAMS COUNTY BOARD OF EQUALIZATION; BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO.

MANDATE

This cause having been brought to this court on a writ of certiorari to the Colorado Court of Appeals to review the judgment of said court, and having been heretofore argued by counsel and submitted to the consideration and judgment of the court, and now being sufficiently advised in the premises,

IT IS ORDERED and adjudged that the judgment of the court of appeals is affirmed.

NOW THEREFORE, jurisdiction of this cause is returned to the Court of Appeals.

WITNESS, the HONORABLE MARY J. MULLARKEY, Chief Justice of our Supreme Court and the Seal thereof, affixed at my office in the City and County of Denver, this 9th day of July 2003.

MAC V. DANFORD
Clerk of the Supreme Court

Deputy Clerk