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| <p><b>BOARD OF ASSESSMENT APPEALS,<br/>STATE OF COLORADO</b><br/>1313 Sherman Street, Room 315<br/>Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p><b>NICOLAAS KLAVER,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>JEFFERSON COUNTY BOARD OF<br/>COMMISSIONERS.</b></p> | <p><b>Docket Numbers:<br/>37987, 40129, 41212</b></p> |
| <p><b>ORDER</b></p>                                                                                                                                                                                                                                                           |                                                       |

**THIS MATTER** was heard by the Board of Assessment Appeals on November 3, 2004 and April 27, 2005, Debra A. Baumbach and Rebecca Hawkins presiding. Petitioner was represented by William A. McClain, 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, 2000, 2001 and 2002.

**PROPERTY DESCRIPTION:**

Subject property is described as follows:

**9501 W. 71<sup>st</sup> Avenue, Arvada, Colorado  
Jefferson County Schedule No. 073064**

The subject property consisted of approximately 48,120 square feet of greenhouse structures and a 542 square foot shed located on 2.009 acres of land. The mobile home located on the subject property is considered personal property and is not part of this appeal.

## **ISSUES:**

### **Petitioner:**

Petitioner contends that the subject property was overvalued, as the land, currently classified as commercial, should be classified as agricultural and valued accordingly. In addition, an adjustment for economic obsolescence should be applied due to the decline in the cut flower industry.

### **Respondent:**

Respondent contends that the subject property was correctly valued using the cost approach. The subject property does not qualify for agricultural classification, and no evidence exists to support economic obsolescence.

## **FINDINGS OF FACT:**

1. Docket Numbers 37987, 40129 and 41212 were consolidated for the purpose of this hearing.
2. Mr. Nicolaas Klaver, owner of the subject property, testified that he grew flowers both directly in the ground and in aboveground benches. Due to a high incidence of disease in flowers planted directly in the ground, most of the flowers were grown in aboveground benches. The soil used in the benches was sterilized to kill fungus and the sterilization process was repeated before each crop was planted.
3. Mr. Klaver testified that the greenhouse industry has changed dramatically in the last 15 to 18 years. Many carnation growers went out of business and some switched to growing bedding plants. Competition from imports drastically affected the cut flower industry.
4. Under cross-examination, Mr. Klaver testified that he purchased peat moss to add to the soil, but the soil used in the benches came from the subject property.
5. Petitioner's witness, Mr. Ronald Sandstrom with F&S Tax Consultants, presented the following indicators of value based on the cost approach:

|                 | <u>Agricultural Classification</u> |                  |                  |
|-----------------|------------------------------------|------------------|------------------|
|                 | <u>1998</u>                        | <u>1999/2000</u> | <u>2001/2002</u> |
| Land            | \$ 1,342.00                        | \$ 1,569.00      | \$ 1,553.00      |
| Improvements    | <u>39,278.00</u>                   | <u>38,173.00</u> | <u>30,509.00</u> |
| Indicated Value | \$40,620.00                        | \$39,742.00      | \$32,062.00      |

Other Agricultural Classification

|                 | <u>1998</u>      | <u>1999/2000</u> | <u>2001/2002</u> |
|-----------------|------------------|------------------|------------------|
| Land            | \$ 5,022.00      | \$ 5,022.00      | \$ 5,022.00      |
| Improvements    | <u>39,278.00</u> | <u>38,173.00</u> | <u>30,509.00</u> |
| Indicated Value | \$44,300.00      | \$43,195.00      | \$35,531.00      |

6. Mr. Sandstrom testified that Petitioner's use of the subject property's soil in the growing benches creates a nexus between the agricultural or horticultural product and the soil, the standard for agricultural classification set by the Supreme Court in *Welby Gardens v. Adams County Board of Commissioners*. Mr. Sandstrom testified that the subject property also meets the definition of farmland as contained in the Assessor's Reference Library, Volume II, Section VI, and Page 32.

7. Mr. Sandstrom testified he could not find any land sales in Jefferson County similar to the subject in size with agricultural production before and after the sale. For purposes of establishing land value based on an "other agricultural" classification, Mr. Sandstrom presented 14 land sales located in Adams County and Weld County. The land sales ranged from 35 acres to 278.93 acres in size, and from \$1,187.00 per acre to \$2,460.00 per acre in price. He concluded to a land value of \$2,500.00 per acre, for a total "other agricultural" land value of \$5,022.00.

8. Mr. Sandstrom testified that the greenhouse improvements, built in 1962, were constructed of metal pipe with polycarbonate roofs, sidewalls and gable ends and are considered to be of average quality. He valued the improvements using the Marshall & Swift Valuation Service for May 1993 and November 1996. Mr. Sandstrom applied a height adjustment because most greenhouses have 10-foot ceilings whereas the subject greenhouses had 9-foot ceilings. Based on a report by the Greenhouse Growers Association, Mr. Sandstrom applied a 60% adjustment for economic obsolescence.

9. Petitioner is requesting that the actual value of the subject property be reduced as follows:

Agricultural Classification

|                 | <u>1998</u>      | <u>1999/2000</u> | <u>2001/2002</u> |
|-----------------|------------------|------------------|------------------|
| Land            | \$ 1,342.00      | \$ 1,569.00      | \$ 1,553.00      |
| Improvements    | <u>39,278.00</u> | <u>38,173.00</u> | <u>30,509.00</u> |
| Indicated Value | \$40,620.00      | \$39,742.00      | \$32,062.00      |

Other Agricultural Classification

|                 | <u>1998</u>      | <u>1999/2000</u> | <u>2001/2002</u> |
|-----------------|------------------|------------------|------------------|
| Land            | \$ 5,022.00      | \$ 5,022.00      | \$ 5,022.00      |
| Improvements    | <u>39,278.00</u> | <u>38,173.00</u> | <u>30,509.00</u> |
| Indicated Value | \$44,300.00      | \$43,195.00      | \$35,531.00      |

10. Respondent's witness, Ms. Brenda Fearn, an appraiser with the Jefferson County Assessor's Office, presented the following indicators of value based on the cost approach:

|              | <u>1998</u>         | <u>1999/2000</u>    | <u>2001/2002</u>    |
|--------------|---------------------|---------------------|---------------------|
| Land:        |                     |                     |                     |
| Residential  | \$ 2,734.00         | \$ 2,626.00         | \$ 2,984.00         |
| Commercial   | 89,276.00           | 85,774.00           | 97,466.00           |
| Improvements | <u>\$ 67,060.00</u> | <u>\$ 71,600.00</u> | <u>\$ 76,210.00</u> |
| Total Value: | \$159,070.00        | \$160,000.00        | \$176,660.00        |

11. Respondent's land values were based on sales of vacant land, agricultural and agribusiness properties located in Jefferson County and in Douglas County.

12. Ms. Fearn testified that the greenhouse ceiling height was 10 feet. When she inspected the subject property, she did not see any plants grown directly in the ground. She believes it is appropriate to value the land as a commercial property as it is an agribusiness versus an agricultural property.

13. Ms. Fearn testified that the figures used in Respondent's cost approach were derived from the 2001 and 2002 Cole-Layer-Trumble (CLT) and then time factored backwards. She considered the improvements to be 80% depreciated. She believes the subject improvements have exceeded the Marshall and Swift Cost Service stated life. She testified that the majority of the total value for this property is in the land as opposed to the improvements. Land in Jefferson County is at a premium when compared to rural areas.

14. Ms. Fearn testified that she did not rely on the values indicated by the market or income approaches.

15. Ms. Fearn testified that Petitioner's comparable land sales are not similar to the subject in location, size, and use or utility. They are large parcels used for agricultural production that are located in remote areas. The adjustments necessary to bring the sales in line with the subject property would equal 75% to 80%. These percentages are outside acceptable appraisal practice.

16. Respondent assigned actual values to the subject property as follows:

|                      | <u>1998</u>  | <u>1999/2000</u> | <u>2001/2002</u> |
|----------------------|--------------|------------------|------------------|
| Total Assigned Value | \$229,970.00 | \$139,440.00     | \$176,660.00     |

## **CONCLUSIONS:**

1. Sufficient probative evidence and testimony was presented to prove that the valuations for the subject property for tax years 1998, 1999, 2000, 2001, and 2002 were incorrect.

2. The Board finds insufficient evidence to change the classification of the subject property to agricultural. The Board could give little weight to Petitioner’s argument that the soil contained in the benches creates a nexus with the land. The Board determined that the sterilization process alters the composition of the soil, resulting in a processed growing medium.

3. The Board finds that comparable land sales should have been used agriculturally both before and after the sale. Therefore, the Board finds that the subject’s 2.009 acres of “other agricultural” land should be valued at \$2,500.00 per acre for a total land value of \$5,022.00.

4. Respondent’s cost approach does not follow acceptable appraisal practice. The Board gave no weight to Respondent’s methodology in utilizing current cost factors and time trending backwards. Based upon testimony from both parties regarding the overall quality and condition of the improvements, the Board determined that the Respondent’s depreciation rate of 80% should be applied to the improvements.

5. The Board found no evidence to support the economic obsolescence factor used by the Petitioner. No adequate sales or other supporting data was presented to derive an appropriate adjustment for economic obsolescence.

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

|                    | <u>1998</u>        | <u>1999/2000</u> | <u>2001/2002</u> |
|--------------------|--------------------|------------------|------------------|
| Land               | \$ 5,022.00        | \$ 5,022.00      | \$ 5,022.00      |
| Improvements       | <u>\$78,556.00</u> | <u>76,346.00</u> | <u>50,160.00</u> |
| Total Actual Value | \$83,578.00        | \$81,368.00      | \$55,632.00      |

**ORDER:**

Respondent is ordered to cause an abatement/refund to Petitioner, based on the values stated in Conclusion 6 above.

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.

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 make the aforementioned recommendation or result of Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

**DATED and MAILED** this 1<sup>st</sup> day of July 2005.

**BOARD OF ASSESSMENT APPEALS**

*Debra A. Baumbach*

Debra A. Baumbach

*Rebecca Hawkins*

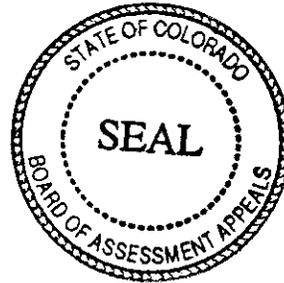
Rebecca A. Hawkins

This decision was put on the record

**JUN 30 2005**

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



|                                                                                                                                                                                                                                                                               |                                                                 |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------|
| <p><b>BOARD OF ASSESSMENT APPEALS,<br/>STATE OF COLORADO</b><br/>1313 Sherman Street, Room 315<br/>Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p><b>NICOLAAS KLAVER,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>JEFFERSON COUNTY BOARD OF<br/>COMMISSIONERS.</b></p> | <p><b>Docket Nos.:</b><br/><b>37987, 40129, &amp; 41212</b></p> |
| <p><b>ORDER ON REMAND</b></p>                                                                                                                                                                                                                                                 |                                                                 |

**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, 2000, 2001, and 2002.

The Board consolidated Docket Nos. 37987, 40129, and 41212.

This matter is on remand to the Board after entry of the Court of Appeals decision in Nicolaas Klaver v. Jefferson County Board of Commissioners, Case Number 05CA1582. 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 July 1, 2005, the Board determined the value of improvements located on the subject property to be \$78,556.00 for tax year 1998, \$76,346.00 for tax years 1999 and 2000, and \$50,160.00 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:

**9501 West 71<sup>st</sup> Avenue, Arvada, Colorado 80004**  
**Jefferson County Schedule No. 073064**

The subject property is a 2.009-acre site with greenhouse structures. Classification is “other agricultural” property, also known as “agribusiness.”

### **1998 Tax Year (Docket No. 37987)**

Petitioner is requesting a land value of \$16,072.00 or \$8,000.00 per acre. Respondent assigned a land value of \$92,010.00 or \$45,800.00 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. 40129)**

Petitioner is requesting a land value of \$16,072.00 or \$8,000.00 per acre. Respondent assigned a land value of \$81,956.00 or \$40,800 per acre. Respondent presented an indicated land value of \$88,400.00 or \$44,000.00 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.

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.

**2001 and 2002 Tax Years (Docket No. 41212)**

Petitioner is requesting a land value of \$16,675.00 or \$8,300.00 per acre. Respondent assigned a land value of \$100,450.00 or \$50,000.00 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.

Sale 2 and 3 are the same as Sales 4 and 5 presented by Respondent for tax year 1998. Sales 4, 5, and 6 are the same as Sales 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:

| <u>Petitioner’s sales</u> |                  |             | <u>Respondent’s sales</u> |                  |             |
|---------------------------|------------------|-------------|---------------------------|------------------|-------------|
| # 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 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, 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 Order dated July 1, 2005, the subject property should be valued as follows:

|              | <u>1998</u>  | <u>1999/2000</u> | <u>2001/2002</u> |
|--------------|--------------|------------------|------------------|
| Improvements | \$78,556.00  | \$76,346.00      | \$50,160.00      |
| Land         | \$46,207.00  | \$46,207.00      | \$46,207.00      |
| Total        | \$124,763.00 | \$122,553.00     | \$96,367.00      |

**ORDER:**

Respondent is ordered to cause an abatement/refund to Petitioner based on 1998 actual value of \$124,763.00, 1999 and 2000 actual value of \$122,553.00, and 2001 and 2002 actual value of \$96,367.00 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 13<sup>th</sup> 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

