

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

1313 Sherman Street, Room 315
Denver, Colorado 80203

**Docket Nos.: 44660,
44686, 44687, 44688,
44689, 44690, 44691,
44700, 44816, 44931 &
46437**

Petitioner:

**HYDROTROPICS CORP., GARY AND SUE
WILSON, S.T. SPANO GREENHOUSES INC.,
JEROL NOVACEK, HYDROTROPICS INC.,
MICHAEL GIAMBROCCO, DON LEE BROWN,
CAROL AND GARY HOWARD, VELDKAMPS
REAL ESTATE, INC., and PLANTASTIC
VENTURES,**

v.

Respondent:

**JEFFERSON COUNTY BOARD OF
COMMISSIONERS.**

ORDER

THIS MATTER was heard by the Board of Assessment Appeals, James R. Meurer and MaryKay Kelley presiding. Petitioners were represented by William A. McLain, Esq. Respondent was represented by Writer Mott, Esq., James Burgess, Esq., and Martin E. McKinney, Esq. Petitioners are requesting an abatement/refund of taxes on the subject properties for tax years 2003 and 2004.

The following Docket Nos. were consolidated for purposes of the hearing: 44816 (Veldkamps Real Estate, Inc.), 44700 (Carol and Gary Howard), 44660 (Hydrotropics Corp.), 44689 (Hydrotropics Inc.), 44690 (Michael Giambrocco), 44686 and 44931 (Gary and Sue Wilson), 44688 (Jerol Novacek), 44687 (S. T. Spano Greenhouses Inc.), 44691 (Don Lee Brown), and 46437 (Plantastic Ventures). Hearing dates were: January 8, 9, 12, and 14; February 2 and 12; and May 8, 2009.

Property Description:

Docket No. 44660 (Hydrotropics Corp.) the subject property is described as follows:

**14022 West 54th Avenue, Arvada, Colorado
(Jefferson County Schedule No. 073409)**

The subject property consists of six acres (5.638 agribusiness and 0.362 agricultural) with improvements: greenhouse, office area, detached garage, and utility building.

Respondent assigned an actual value of \$483,830.00 for tax year 2003, \$336,000.00 (\$56,000.00 per acre) for land and \$147,830.00 for improvements, and \$463,760.00 for tax year 2004. Petitioner is requesting a value of \$216,664.00 for each tax year: \$129,674.00 (\$23,000 per acre) for the agribusiness land, \$200.00 for the agricultural land, and \$86,790.00 for the improvements.

The parties stipulated to a value for the improvements of \$115,000.00.

Docket No. 44686 (Gary and Sue Wilson) the subject property is described as follows:

**4315 Van Gordon Street, Wheat Ridge, Colorado
(Jefferson County Schedule No. 043729)**

The subject property consists of 1.253 acres with greenhouse improvements.

Respondent assigned an actual value of \$126,970.00 for each tax year 2003 and 2004: \$70,170.00 (\$56,000.00 per acre) for land and \$56,800.00 for improvements. Petitioners are requesting a value of \$59,224.00: \$28,819.00 (\$23,000.00 per acre) for land and \$30,405.00 for improvements.

The parties stipulated to a value of \$43,600.00 for the improvements.

Docket No. 44687 (S. T. Spano Greenhouses, Inc.) the subject property is described as follows:

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

The subject property consists of 3.970 acres with residential and greenhouse improvements.

Respondent assigned an actual value for the subject property of \$405,010.00 for each tax year 2003 and 2004: \$222,320.00 (\$56,000.00 per acre) for the land and \$182,690.00 for the improvements. Petitioner is requesting a value of \$186,865.00: \$91,310.00 (\$23,000.00 per acre) for the land and \$95,555.00 for the improvements.

The parties stipulated to a value of \$142,500.00 for the improvements (\$119,500.00 for the greenhouse, \$8,000.00 for the boiler house, and \$15,000.00 for the residential improvements).

Docket No. 44688 (Jerol Novacek) the subject property is described as follows:

**2635 Youngfield Street, Golden, Colorado
(Jefferson County Schedule No. 030582)**

The subject property consists of 2.798 acres: 1.721 vacant acres used for grazing and classified as agricultural and 1.077 acres with residential and greenhouse improvements.

Respondent assigned an actual value of \$177,540.00 for the subject property for each tax year 2003 and 2004: \$70.00 for 1.721 acres of agriculturally-classified land; \$60,380.00 for 1.077 acres (\$56,000.00 per acre) classified as "other agricultural"; \$69,320.00 for residential improvements; and \$47,840.00 for agribusiness improvements.

Petitioner is requesting a value of \$142,001.00 for the subject property for each tax year 2003 and 2004: \$70.00 for 1.721 acres of land classified as agricultural; \$69,320.00 for the residential improvements; \$47,840.00 for the agribusiness improvements; and \$24,771.00 for 1.077 acres of remaining land (\$23,000.00 per acre).

The parties stipulated to values for the agriculturally-classified land, \$70.00 for 1.721 acres, and for the agribusiness improvements, \$47,840.00.

Docket No. 44689 (Hydrotropics Inc.) the subject property is described as follows:

**12085 West 52nd Avenue, Wheat Ridge, Colorado
(Jefferson County Schedule No. 110039)**

The subject property consists of 4.095 acres with improvements: greenhouse and residence.

Respondent assigned an actual value of \$325,910.00 for each tax year 2003 and 2004: \$229,320.00 (\$56,000.00 per acre) for land and \$96,590.00 for improvements. Petitioner is requesting a value of \$150,320.00 for each tax years: \$94,185.00 (\$23,000 per acre) for land and \$56,135.00 for the improvements.

The parties stipulated to a value for the improvements of \$73,100.00 (\$63,100.00 for the greenhouse improvement and \$10,000.00 for the residence).

Docket No. 44690 (Michael Giambrocco) the subject property is described as follows:

**7610, 7650, 7670 Alkire Street, Arvada, Colorado
(Jefferson County Schedule Nos. 057790, 208402, 057792 and 131650)**

The subject property consists of 10.809 acres with the following improvements: two residences with garages, one detached garage, four greenhouses, a bunkhouse, and a utility building.

Petitioner withdrew Schedule No. 131650, which consists of 3 vacant acres. The Board accepts Petitioner's withdrawal. Remaining acreage is 7.809.

During tax year 2004, a change in tax districts occurred, resulting in dissection of Schedule No. 057790 and creation of Schedule No. 208402. Notices of Valuation did not reflect Schedule No. 208402. The parties stipulated to the Board having jurisdiction over Schedule No. 208402. The Board concurs.

Schedule Nos. 057790, 057792, and 208402, encompassing 7.809 acres, were addressed in the hearing. Respondent assigned a value of \$1,129,080.00 for tax year 2003 (\$760,420.00 for Schedule No. 057790 and \$368,660.00 for Schedule No. 057792) and \$761,060.00 for tax year 2004 (\$392,400.00 for Schedule No. 057790 and \$368,660.00 for Schedule Nos. 057792 and 208402). Petitioner is requesting values of \$705,006.00 for each tax year 2003 and 2004.

Docket No. 44691 (Don Lee Brown) the subject property is described as follows:

**7290 Kipling Street, Arvada, Colorado
(Jefferson County Schedule No. 037557)**

The subject property consists of 5.121 acres with one greenhouse and a utility building.

Respondent assigned an actual value of \$383,160.00 for each tax year 2003 and 2004: \$286,780.00 (\$56,000.00 per acre) for the land and \$96,380.00 for the improvements. Petitioner is requesting a value of \$190,606.00: \$117,783.00 (\$23,000.00 per acre) for the land and \$72,823.00 for the improvements.

The parties stipulated to an actual value for the improvements of \$84,600.00.

Docket No. 44700 (Carol and Gary Howard) the subject property is described as follows:

**10795 West 72nd Avenue
(Jefferson County Schedule No. 057679)**

The subject property consists of residential and greenhouse improvements on a 6.350-acre site.

Respondent assigned an actual value of \$719,240.00 for each tax year 2003 and 2004: \$355,600.00 (\$56,000.00 per acre) for land and \$363,640.00 for improvements (\$52,840.00 for the residence and \$310,800.00 for the agribusiness structures).

Petitioners are requesting a value of \$328,586.00 for each tax year: \$156,546.00 for land and \$172,040.00 for improvements.

Docket No. 44816 (Veldkamps Real Estate, Inc.) the subject property is described as follows:

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

The subject property consists of greenhouse improvements on a 24.721-acre site.

Respondent assigned an actual value of \$2,363,860.00 for each tax year 2003 and 2004. Petitioner is requesting an actual value of \$942,392.00 for each tax year.

Docket No. 44931 (Gary and Sue Wilson) the subject property is described as follows:

**4970 Howell Street, Golden, Colorado
(Jefferson County Schedule No. 065625)**

The subject property consists of 1.490 acres with greenhouse improvements.

Respondent assigned an actual value of \$104,700.00 for each tax year 2003 and 2004: \$83,440.00 (\$56,000.00 per acre) for land and \$21,260.00 for improvements. Petitioners are requesting a value of \$34,270.00 (\$23,000 per acre) for land for each tax year.

The parties stipulated to a value for the improvements of \$21,260.00.

Docket No. 46437 (Plantastic Ventures) the subject property is described as follows:

| | | |
|---|--------------------|----------------------------|
| 9181 West 51st Avenue, Arvada, Colorado | 6.634 acres | Schedule No. 003822 |
| 8945 West 52nd Avenue, Arvada, Colorado | 4.222 acres | Schedule No. 003810 |
| 8951 West 52nd Avenue, Arvada, Colorado | 0.980 acres | Schedule No. 003816 |
| 9170 West 52nd Avenue, Arvada, Colorado | 1.966 acres | Schedule No. 003824 |

Respondent assigned an actual value of \$1,323,710.00 for each tax year 2003 and 2004 (land at \$56,000.00 per acre):

| | <u>Land</u> | <u>Improvements</u> | <u>Total</u> |
|---------------------|--------------|---------------------|--------------|
| Schedule No. 003810 | \$236,430.00 | \$110,600.00 | \$347,030.00 |
| Schedule No. 003816 | \$ 54,880.00 | n/a | \$ 54,880.00 |
| Schedule No. 003822 | \$371,500.00 | \$395,750.00 | \$767,250.00 |
| Schedule No. 003824 | \$110,100.00 | \$144,450.00 | \$254,550.00 |

Petitioner is requesting an actual value of \$748,414.00 for each tax year (land at \$23,000.00 per acre):

| | <u>Land</u> | <u>Improvements</u> | <u>Total</u> |
|---------------------|--------------|---------------------|--------------|
| Schedule No. 003810 | \$ 97,106.00 | \$110,814.00 | \$207,920.00 |
| Schedule No. 003816 | \$ 22,540.00 | n/a | \$ 22,540.00 |
| Schedule No. 003822 | \$152,582.00 | \$215,944.00 | \$368,526.00 |
| Schedule No. 003824 | \$ 45,218.00 | \$104,210.00 | \$149,428.00 |

Residential Improvements:

In Docket Nos. 44688, 44690, 44700, and 46437, Petitioners are not contesting the residential value assigned by Respondent based on the cost approach. Petitioners are requesting to withdraw those portions of the above referenced appeals. Respondent contends Petitioners cannot withdraw a portion of a schedule number.

Section 39-8-108(5)(a), C.R.S. prevents the Board from ordering a total value higher than the total value assigned to the subject property by Respondent. However, a party may only seek review of the total value, and not the component parts of the total. *See Cherne v. Bd. of Equalization*, 885 P.2d 258, 259 (Colo.App. 1994). Therefore, the Board will not limit this matter to a review of specific components of the subject property. Further, residential property must be valued using the market approach to value. Section 39-1-103(5)(a), C.R.S.

In Docket Nos. 44690, 44700, and 46437, Respondent presented comparable sales to indicate a value for the residential improvements. Respondent adjusted the comparable sales for differences, subtracted the estimated land values, and concluded to values per square foot. The

Board notes that absolute individual ownership rights were inherent in the sales prices of Respondent's comparable sales. The subjects' residential improvements, however, are not stand-alone properties, lacks these rights, and cannot be sold independently. Respondent's comparable sales are stand-alone properties and related adjustments should be made.

Greenhouse Improvements:

In Docket Nos. 44690, 44700, 44816, and 46437, Respondent's cost approach was based on Cole-Layer-Trumble ("CLT") costs. Respondent's witness considered this source to be a more accurate reflection of cost but was unable to define what components were included in the figures (personal property, height/perimeter, for example).

Petitioners' cost approach was based on the Marshall & Swift Cost Handbook. Height and perimeter adjustments, cost multipliers, and depreciation were applied. The Board places greater reliance on the Marshall & Swift cost data, because it is well defined and supportable: it includes labor, materials and certain other overhead expenses.

In Docket No. 44690, Greenhouse 3 on the subject property, Petitioners' witness reported that 11,560 square feet of the original 24,389 square feet were destroyed in a March 2003 snowstorm, leaving 12,829 square feet of usable space. Jefferson County was not notified of the damage, and Respondent's calculations reflected the original square footage. The Board is convinced the assessor was not notified of the destruction caused by the March 2003 snowstorm until after taxes were levied for both tax years 2003 and 2004. Therefore the Board finds that Petitioners' failure to notify was a waiver of a proportionate valuation. Section 39-5-117, C.R.S.

Land Value:

Respondent assigned, Respondent indicated, and Petitioners requested actual agribusiness land values for tax years 2003 and 2004 as follows:

| <u>Petitioner</u> | <u>Acres</u> | <u>Respondent Assigned</u> | <u>Respondent Indicated</u> | <u>Petitioner Requested</u> |
|-------------------|--------------|----------------------------|-----------------------------|-----------------------------|
| Giambrocco | 7.809 | \$56,000 | \$86,000 | \$20,000 |
| Veldkamps | 24.721 | \$44,000 | \$44,000 | \$20,000 |
| Hydrotopics | 5.638 | \$56,000 | \$86,000 | \$23,000 |
| Hydrotopics | 4.095 | \$56,000 | \$86,000 | \$23,000 |
| Wilson | 1.253 | \$56,000 | \$86,000 | \$23,000 |
| Wilson | 1.490 | \$56,000 | \$86,000 | \$23,000 |
| Spano | 3.970 | \$56,000 | \$86,000 | \$23,000 |
| Novacek | 1.077 | \$56,000 | \$86,000 | \$23,000 |
| Brown | 5.121 | \$56,000 | \$86,000 | \$23,000 |
| Plantastic | 13.802 | \$56,000 | \$86,000 | \$23,000 |
| Howard | 6.350 | \$56,000 | \$86,000 | \$23,000 |

Petitioners, unable to identify any agribusiness land sales within the five-year sales period permitted by Section 39-1-104, C.R.S., are requesting the same value conclusion by the Board from greenhouses cases for tax years 2001 and 2002: \$23,000.00 for parcels less than ten acres and \$20,000.00 for parcels more than ten acres. The Board's previous value conclusion was based on sales outside the five-year window for tax years 2003 and 2004 (ending June 30, 1997). *See* Section 39-1-104(10.2)(d), C.R.S.

Respondent presented land values based on the market approach. Seven comparable land sales were presented ranging from 2.159 to 36.464 acres and in sales price per acre from \$20,000.00 to \$106,068.00.

The Board concludes Sales 1, 2, 3, 5, and 6 are not comparable for the following reasons: (1) Sale 1 had uses dissimilar to greenhouses; (2) Sale 3 carried other-than-agribusiness classification; and (3) Sales 2, 3, 5, and 6 were purchased for speculative reasons.

The remaining two, Sales 4 and 7, are as follows.

Vacant Land Sale No. 4, a 1,224-square-foot house with basement built in 1973 on 2.36 acres, was purchased on November 12, 2009 for \$439,000.00. Agricultural classification was assigned when a tree farm was established (in-ground trees were planted initially and replaced with above-ground balled trees). Petitioners argue that this sale is not comparable because there is an absence of agribusiness classification and the property has a sloping terrain which is unsuitable for greenhouse construction. Respondent's witness testified that Comparable Sale 4 has a value of \$92,797.00 per acre based on a \$220,000.00 extraction for the residential improvement. The value of the residence was estimated by the purchaser and supported by comparison to surrounding homes averaging \$180.00 per square foot.

The Board questions the comparability of Respondent's Comparable Sale 4 because: (1) the classification is not agribusiness; (2) the Board is not convinced that the sloping site could support greenhouse structures; (3) Respondent did not apply a depreciated cost approach or market data in the extraction process; (4) a speculative purchase cannot be disproved; and (5) \$92,797.00 per acre appears high and suggests further motive for purchase.

Vacant Land Sale No. 7 is 36.464 acres and was purchased for \$1,409,200.00 on August 6, 2001. According to Respondent, Comparable Sale 7, classified agricultural at time of sale, was used for grazing horses and cattle through 2003. The purchaser re-platted the acreage for a residential subdivision and sold it in 2003 for approximately \$3,600,000.00 (\$98,728.00 per acre). The Board cannot overlook the obvious speculative nature of the original purchase and does not consider it comparable to the subject site.

Respondent presented four improved greenhouse sales. The Board places no reliance on any of these sales because: (1) the improvements were neither adequately described nor was personal property identified; (2) appropriate methods for the extraction process were not applied; and (3) speculation for future development is suspected for some of the sales.

Both parties recognized that limited agribusiness land sales data was available in Jefferson County during the extended base period. The Board reminds the parties that under Section 39-1-104(10.2)(d), C.R.S., it may only consider comparables within the five-year period immediately prior to July 1 immediately preceding the assessment date. If comparable agribusiness land sales are not available within this time period within Jefferson County, the Board suggests that comparable sales located outside of Jefferson County be considered.

Conclusion:

Pursuant to Colorado law, a protesting taxpayer has the burden to prove that the assessor's valuation is incorrect by a preponderance of the evidence in a *de novo* proceeding before this Board. *Bd. of Assessment Appeals v. Sampson*, 105 P.3d 198, 204 (Colo. 2005). A taxpayer is not required to demonstrate an alternate valuation. *Sampson* at 207.

In this case, Petitioners have proven by a preponderance of the evidence that Respondent's valuation is incorrect. None of the comparable land sales provided by Respondent in support of its land valuation are persuasive. The Board is not persuaded by Respondent's cost approach for the greenhouse improvements based on CLT costs which were not supported. The Board is also not persuaded by Respondent's market approach for the residential improvements, with no adjustment made for comparison to sales with absolute ownership rights.

Petitioners, however, have not provided this Board with a valid alternate valuation. For this reason, the Board remands this matter back to Jefferson County to find an accurate assessment. Jefferson County is charged with the duty of assessing properties in the first instance. *See Sampson*, 105 P.3d at 208.

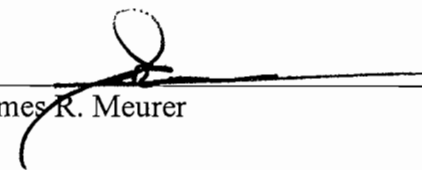
ORDER:

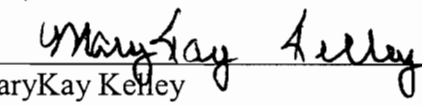
IT IS THEREFORE ORDERED that this case be remanded back to Jefferson County who is charged with finding an accurate assessment within 30 days of the date of this Order.

Petitioners may, if Petitioners so choose, appeal Jefferson County's assessment on remand to the Board within 30 days of the date of the assessment.


DATED and MAILED this 17th day of September 2009.

BOARD OF ASSESSMENT APPEALS


James R. Meurer


MaryKay Kelley

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


Heather Flannery

