BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 78471
Petitioner: **TAGAWA GREENHOUSES INC,** v. Respondent: **JEFFERSON COUNTY BOARD OF EQUALIZATION.**	
INTERIM AGENCY ORDER	

THIS MATTER was heard by the Board of Assessment Appeals ("Board") on December 3, 2020, Diane DeVries and John DeRungs presiding. Attorney Thomas E. Downey Jr., Esq. appeared on behalf of the Petitioner. Respondent was represented by Rachel Bender, Esq. Petitioner protests the actual value of the subject property for tax year 2019.

EXHIBITS

The Board admitted into evidence Petitioner's Exhibits 1 and 2 and Respondent's Exhibits A and B.

DESCRIPTION OF THE SUBJECT PROPERTY

14780 West 52nd Avenue, Arvada, CO 80002
County Schedule No. 300035202

and

5150 Indiana Street, Arvada, CO 80002
County Schedule No. 300035094

The subject property is two contiguous tracts of 12.564 acres of "other agricultural" land improved with numerous greenhouse buildings, and approximately half an acre of land improved with low quality structures classified as residential property. The over 333,300 SF of greenhouses were reportedly built almost fifty years ago and now are used to grow bedding plants for the owner's nursery business. The subject property's actual value, as assigned by the County Board of Equalization ("CBOE") below and as requested by Petitioner, are:

County Schedule No. 300035202	$ 759,181
County Schedule No. 300035094	1,475,922
CBOE's Assigned Value:	$2,235,103

County Schedule No. 300035202:	$ 462,366
County Schedule No. 300035094:	804,450
Petitioner's Requested Value:	$1,266,816

BURDEN OF PROOF AND STANDARD OF REVIEW

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

The Board reviews every case de novo. *See Bd. of Assessment Appeals v. Valley Country Club*, 792 P.2d 299, 301 (Colo. 1990). In general, the de novo proceeding before the Board "is commonly understood as a new trial of an entire controversy." *Sampson*, 105 P.3d at 203. Thus, any evidence that was presented or could have been presented in the county board of equalization (CBOE) proceeding may be presented to this Board for a new and separate determination. *Id*. However, in this appeal, the Board may not impose a valuation on the property in excess of that set by the CBOE. § 39-8-108(5)(a), C.R.S. (2020).

APPLICABLE LAW AND AUTHORITATIVE SOURCES

The greenhouse portion of the subject property is classified as "other agricultural property," under the relevant property tax statute, section 39-1-102(1.6)(b), C.R.S. It must be valued using appropriate consideration of the three approaches to appraisal – the market, income, and cost approaches. *Id*. A division of the Court of Appeals considered the appropriate valuation method for "other agricultural property" under the cost approach in *Jefferson County Board of County Commissioners v. S.T. Spano Greenhouses, Inc.*, 155 P.3d 422 (Colo. App. 2006). "The cost approach involves adding the estimated value of the land to the current cost of constructing a reproduction or replacement for the improvements and then subtracting the amount of depreciation." *Id.* at 425. The *Spano* decision interpreted provisions of the ARL to "require the land component of other agricultural property to be valued on comparable sales of other agricultural land that is as similar as possible to the subject land in size, location, and present use."

Id. at 426. The ARL currently provides the following guidance on the valuation of "other agricultural property":

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

3 Div. of Prop. Taxation, Dep't of Local Affairs, Assessors' Reference Library Ch. 5, at 5.23, 5.29 (rev. Jan. 2021).

For property taxation purposes, the value of residential properties must be determined solely by the market approach to appraisal. *See* Colo. Const. art. X, § 20(8)(c); § 39-1-103(5)(a), C.R.S. The market approach relies on comparable sales, as required under section 39-1-103(8)(a)(I), C.R.S., which states:

> Use of the market approach shall require a representative body of sales, including sales by a lender or government, sufficient to set a pattern, and appraisals shall reflect due consideration of the degree of comparability of sales, including the extent of similarities and dissimilarities among properties that are compared for assessment purposes.

To identify comparable sales, county assessors are required to collect and analyze sales that occurred within the 18-month period prior to July 1 immediately preceding the assessment date. § 39-1-104(10.2)(d), C.R.S. For tax year 2019, this 18-month period ends on June 30 of 2018. *See id.* If sufficient comparable sales are not available during this 18-month period to adequately appraise the property, then the assessor may use sales that occurred in preceding 6-month increments for a total maximum period of 5 years. *Id.*

ARGUMENTS

Petitioner's expert witness, Ron Sandstrom, represented Petitioner before and after his time as Jefferson County Assessor as a tax agent and was familiar with the subject property. Mr. Sandstrom largely accepted and adopted the estimate reached for the residences by Respondent (although he deviated by reducing the value of the residences in close proximity to the greenhouses). Like the Respondent, used the Cost Approach to value the remaining land, greenhouses and agribusiness site improvements.

In this case, Mr. Sandstrom objected to the County's use of an extractive method of valuing the land component using "other agricultural sales" with improvements. He cited his reliance on the *Spano* decision, which he stated held that "other agricultural" land value should be determined on the sales of "other agricultural" *vacant* land, similar in size, location and use. Relying on the instruction of the Appraisal Institute's Appraisal of Real Estate, Mr. Sandstrom testified that it would be appropriate to extract land value for "other agricultural land" from the sales of "improved

other agricultural land" only if the improvements on the sales were minor or new.

Mr. Sandstrom testified that during the relevant base period and extended base period, there were no sales of vacant other agricultural land. As a result, in the absence of compelling evidence from applicable sales of vacant other agricultural land, he advocated reliance on historical stipulated values, applied for most of the preceding decade by the County.

Mr. Sandstrom also testified that the circumstances surrounding Respondent's Land Sale 1 should disqualify this sale from consideration. This was the 2013 sale of a property located at 17201 W. 64th Ave, owned by Welby Gardens, whose adjusted sale price was closest to Respondent's concluded value.

Mr. Sandstrom derived and an estimation of useful life and replacement costs for each of the subject's agribusiness improvements through use of the Marshall & Swift Valuation Service's Cost Manual. He made adjustments to account for the subject improvements' particular characteristics. He adopted a depreciation rate of 80%.

Mr. Sandstrom applied a 10% functional obsolescence adjustment on the basis that the existence of multiple greenhouse buildings required significant movement between them, whereas if the operation was contained in a single building, there would be less movement required from one building to another. Mr. Sandstrom testified that there would be a reduced business cost in constructing one greenhouse instead of multiple. If one were replacing them today, he expanded, one would eliminate the multiple structures and make it a single structure.

Respondent's expert witness, Tammy Crowley, agreed that there were limited sales of "other agricultural land" available for consideration. As a result, she used an extraction method to derive residual land value from the sales of improved "other agricultural" land. She testified this is the historical method of valuing "other agricultural" land in the Assessor's Office. In addition, she testified she discussed this methodology with the DPT, who agreed it was proper. Ms. Crowley's extraction calculations did not include an explanation of how she determined improvement value. She agreed that the extraction technique is most applicable when the value of the improvements is minimal.

Ms. Crowley valued the subject improvements through use of an online Marshall & Swift calculator, which is different than the published cost manual. She testified that while the cost manual provides averages, the online version uses computerized interpolation and more exact information based on the parameters of the specific information at issue. She testified that use of the online calculator allows for use of data more comparable to the subject's greenhouses, for instance, more similar in size. She requested but was denied more information from Marshall & Swift on the specifics of the calculations, on the basis that it is a proprietary algorithm. Like Mr. Sandstrom, she employed a depreciation rate of 80% for the greenhouse improvements.

Ms. Crowley questioned Mr. Sandstrom's definition and valuation of certain greenhouse improvements as Quonset huts. She testified they were actually straight wall greenhouses, and that the property owner confirmed this fact. The replacement cost of Quonset huts is lower than straight wall greenhouses. (Exhibit A, pp. 30-31, 61.)

FINDINGS AND CONCLUSIONS

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

The Board concludes that the *Spano* decision does not require that *vacant* other agricultural land sales be used to value other agricultural land; it requires "the land component of other agricultural property to be valued on comparable sales of other agricultural land that is as similar as possible to the subject land in size, location, and present use." *S.T. Spano Greehouses Inc.*, 155 P.3d at 426. This is restated by the ARL as "similar tracts of land which were purchased for similar purposes." 3 Div. of Prop. Taxation, Dep't of Local Affairs, Assessors' Reference Library Ch. 5, at 5.23, 5.29 (rev. Jan. 2021). The extraction valuation method for properties classified as "other agricultural" is not prohibited by law.

Nevertheless, the Board finds Ms. Crowley's applied extraction valuation method is problematic, given the facts of this case. "[T]he land component of other agricultural property must be valued based on comparable sales of other agricultural land that are as similar as possible to the subject in size, location and present use." *S.T. Spano Greenhouses, Inc.*, 155 P.3d at 426. Ms. Crowley attempted to comply with this direction by extracting the value of improvements from four sales of improved "other agricultural" properties. However, because Ms. Crowley's extraction calculations included no explanation of how she determined improvement value, the Board finds the resulting value conclusion lacking. While she agreed that the extraction technique is most applicable when the value of the improvements is small, the absence of any evidence showing the improvement values leads the Board to question the applicability of the extraction technique to her chosen comparables. In addition, the parties agreed that depreciation is high for subject – 80% – leading to a concern about the utility of the extraction method. The Board agrees with the Appraisal Institute's Appraisal of Real Estate that it would be appropriate to extract land value for "other agricultural land" from the sales of "improved other agricultural land" if the improvements on the sales were minor or new.

The Board is precluded from considering the 2013 sale of the property located at 17201 W. 64th Ave, owned by Welby Gardens, as indicative of value for the subject property, given that it was residential sale, not an other agricultural property sale. *See S.T. Spano Greehouses, Inc.* 155 P.3d at 426. Even if the Board could consider it, the evidence indicated finds the sale was not an arm's-length sale and not indicative of market value. Its indication of value came from sales of residential subdivision development land only, and as a result overstated the subject's land value.

In addition, the Board finds Mr. Sandstrom's replacement costs, sourced from the Marshall & Swift Valuation Services Cost Manual, produced a more reliable conclusion of value for the greenhouse improvements than was arrived at by Ms. Crowley's use of the online Marshall & Swift calculator. The Board finds the basic cost data used by Ms. Crowley is less reliable than that used by Mr. Sandstrom, because it is undefined, unknown, and unavailable for analysis. Mr. Sandstrom provided cost calculations he was able to explain and which were available for the Board's analysis. His replacement costs were significantly (almost 40%) lower than Ms. Crowley's, casting doubt on the online calculations. The Board finds the replacement costs sourced

from the Marshall & Swift Valuation Services Cost Manual produced a more testable and reliable conclusion of value for the greenhouse improvements.

Regarding Mr. Sandstrom's possible mischaracterization of some improvements as Quonset huts instead of straight wall greenhouses, Respondent did not calculate how this would increase the valuation, and the Board is unable to determine the possible impact from the record.

The Board also finds Mr. Sandstrom's application of a functional obsolescence adjustment was supported. "Functional obsolescence" may be defined as "[t]he impairment of the functional capacity of a property according to market tastes and standards." Appraisal Institute, The Dictionary of Real Estate Appraisal, 5th ed. (2010). The Board accepts Mr. Sandstrom's testimony that the subject property is functionally impaired by the existence of multiple greenhouses, where current market tastes and standards have trended toward preference toward a single structure.

Although the Board has found that Petitioner met its burden of showing that the assigned value for tax year 2019 is incorrect, the Board cannot determine the taxable market value of the subject property from the record. The Board is satisfied by the testimony of Mr. Sandstrom and Ms. Crowley that neither appraiser was aware of any recent comparable sales of "other agricultural land," whether vacant or improved with greenhouses. With urbanization, the Board recognizes how increasingly difficult it is to find properties of this size and use classified as "other agricultural" properties, let alone ones that have sold, making it exceptionally difficult to support current estimates of value. However, in the absence of truly supportable land sales, or extracted land value evidence, the Board cannot arrive at a value. The Board declines to adopt the last agreed-to land value, as it does not amount to the market data from within the base period which the Board may properly consider as evidence of value.

Accordingly, this matter will be remanded consistent with the direction given by the Colorado Supreme Court in its opinion in *Board of Assessment Appeals v. Sampson*:

> While the BAA members' expertise enables them to determine from the evidence presented by the taxpayer whether the county's valuation is incorrect, the taxpayer's evidence may or may not be sufficient to further establish the subject property's value for tax purposes. Thus, the BAA may properly remand the matter for an accurate assessment by the county, which is charged with the duty of assessing properties in accordance with the statutory mandate in the first instance.

Board of Assessment Appeals v. Sampson, 105 P.3d 198, 208 (Colo. 2005).

ORDER

The case is **REMANDED** to the Jefferson County Assessor's Office for a new assessment for tax year 2019.

The Assessor's Office shall undertake a new appraisal of the subject property. The Assessor's Office shall value the land component of the subject based on comparable sales of other agricultural land that is as similar as possible to the subject land in size, location, and present use,

in accordance with the *Spano* decision and the Board's above findings and conclusions. If extraction calculations are performed to reach land value, they should include explanation of how improvement value was determined, and data regarding the size and age of the improvement. The Assessor's Office is encouraged to exclude grow houses from consideration as comparable land sales, as they are known outliers in terms of their high lease rates and high income producing potential. The Assessor's Office' new appraisal may quantify and present how many total "other agricultural" sales occurred in the base period, to provide the Board and Petitioner with information about the scope of the available data. The Assessor's Office shall use the improvement value presented by Petitioner at hearing.

Respondent shall provide the new assessment to Petitioner and the Board of Assessment Appeals no later than **June 4, 2021**. If Petitioner disagrees with the new value determined, they shall file notice with the Board by no later than **July 2, 2021**. Upon receipt of such notice, the Board will set this matter for a new evidentiary hearing to determine the value of the subject property. If no notice is received by the above date, the Board will consider the adjusted value accepted by Petitioner, and will issue a summary written final agency order based on Respondent's adjusted value.

In lieu of a new assessment, Respondent may file a fully executed stipulation by **June 4, 2021**.

The Board retains jurisdiction in this matter, pending its determination of the subject property's valuation for tax year 2019.

DATED and MAILED this 6th day of May, 2021.

BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:

John DeRungs

Concurring Board Member:

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

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

Yesenia Araujo
Yesenia Araujo