

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>FUND VIII AND FUND IX ASSOCIATES ET AL,</p> <p>v.</p> <p>Respondent:</p> <p>BROOMFIELD COUNTY BOARD OF EQUALIZATION.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Mark W. Gerganoff Address: 29025D Upper Bear Creek Road Evergreen, Colorado 80437 Phone Number: (303) 674-6955 E-mail: fandfpc@aol.com Attorney Reg. No.: 13240</p>	<p>Docket Number: 42084</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on April 16, 2004, Karen E. Hart, Steffen A. Brown, and MaryKay Kelley presiding. Petitioner was represented by Tami Yellico, Esq. Respondent was represented by Mark W. Gerganoff, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**305 Interlocken Parkway, Broomfield, Colorado 80021
Broomfield County Schedule No. 1575-330-13-001**

Petitioner is protesting the 2003 actual value of the subject property, a two-story office building built in 1996 and located on 4.268 acres in the Interlocken Technology Park near the

intersection of the Denver-Boulder Turnpike and the new Northwest Parkway. The 963-acre Interlocken Technology Park includes the Omni Interlocken Resort Hotel with conference facilities and a 27-hole championship golf course. It is bordered by the new Flatirons Crossing Mall and Flatirons Marketplace Shopping Center. Gross building size per Petitioner is 51,378 square feet and per Respondent is 50,742 square feet. Both report net rentable area as 49,460 square feet. Exterior construction is brick. The sole tenant is Cirrus Logic with a long-term triple net (NNN) lease expiring in 2012 with two five-year options to renew.

ISSUES:

Petitioner:

Petitioner contends that the economy was experiencing an economic downturn during the base period and that the tenant, Cirrus Logic, was in a precarious financial situation, had physically vacated 50% of the building, experienced stock price drops, and was a non-creditworthy tenant. Petitioner contends that these facts were not considered in Respondent's value estimation.

Respondent:

Respondent contends that value was based on standard approaches to value, not on the business value of Cirrus Logic, and that rent was paid in full during the base period. A valid lease, expiring in 2012 with two five-year options, remains in effect.

FINDINGS OF FACT:

1. Petitioner's witness, Todd Stevens, a Register Appraiser, presented the following indicators of value:

Market:	\$3,853,350.00
Cost:	\$3,908,798.00
Income:	\$2,331,768.00

2. Based on the market approach, Petitioner's witness presented an indicated value of \$3,853,350.00 for the subject property.

3. Mr. Stevens presented four comparable sales in Exhibit A ranging in sales price from \$1,850,00.00 to \$10,395,845.00 and in size from 20,700 to 93,000 square feet. After adjustments were made, the sales ranged from \$1,202,463.00 to \$7,425,120.00.

4. Mr. Stevens testified that Petitioner's Comparable Sale 1 was built in 1994 across the turnpike in Broomfield and was adjusted for 37% occupancy and larger size. Comparable Sale 2 was built in 1998 and was adjusted for its superior location near Inverness and DTC, 100% occupancy, less finished area, expansion potential, and its larger size. Comparable Sale 3 was built

in 1992 near the subject in Interlocken and was adjusted for oversupply and decreased demand, 100% occupancy, and for excess land. Mr. Stevens testified that this sale was not given any weight due to California purchasers reportedly having overpaid. Comparable Sale 4 was built in 2002 in a small business park near South Wadsworth and Highway 285 and was adjusted for oversupply and decreased demand, golf course location, age, and 100% occupancy by a Class A tenant. Mr. Stevens testified that overall adjustments were negative and indicated a \$75.00 per square foot value or \$3,853,350.00.

5. Petitioner's witness presented a cost approach to derive a market-adjusted cost value for the subject property of \$1,298,962.00.

6. Mr. Stevens presented two land sales in Exhibit A, Sale 1 selling for \$3,086,400.00 in July 2001 and Sale 2 for \$12,657,397.00 in June 1999. Both carried negative time adjustments for their early base period sale dates, negative location adjustments for their superior Omni Interlocken Resort Golf Club sites, negative physical adjustments for their platted, engineered and rough-graded sites, and positive size adjustments for their 6.7 acre and 26.4 acre sites, respectively, which Mr. Stevens testified sell for less per square foot than the subject's smaller 4.26 acres. Adjusted prices per square foot were \$6.72 and \$6.71 with an indicated value per square foot estimated at \$7.00 and valued at \$1,298,962.00.

7. Mr. Stevens testified that he used the Marshall and Swift Cost Calculator Cost Approach based on 1996 cost figures. He estimated 12% physical depreciation based on an effective age of six years with an estimated 50-year life. He applied 35% economic depreciation, citing Costar research that vacancy in the immediate area rose from 21.8% the second quarter of 2001 to 44% the second quarter of 2002. He also testified to Frederick Ross research that the Northwest sub market was 34.75% vacant and to four sales of buildings from \$40.00 to \$95.44 per square foot. In cross examination, he testified that vacancy rates referred to lease vacancies, that Northwest sub market boundaries were I-25 on the east, Colfax Avenue on the south, and South Boulder Road on the north and included all classes of buildings, and that three of the building sales occurred outside the base period in 2003.

8. Mr. Stevens testified that he chose average quality construction to calculate a basic cost of \$98.71 per square foot, adding \$1.73 per square foot for the sprinkler system plus various multipliers to arrive at a replacement cost new of \$96.94 per square foot, plus an elevator and factored the costs to June 30, 2002. Following depreciation, he added his land cost of \$1,298.962.00 and parking space cost of \$126,217.23 for a total depreciated cost of \$3,908.797.58.

9. Petitioner's witness presented an income approach to derive a value of \$2,331,768.00 for the subject property.

10. Mr. Stevens testified to a long-term NNN lease at \$14.85 per square foot. He also testified to base rates of seven comparable leases in the area from \$9.00 to \$13.76 per square foot NNN. Following adjustments for location, size, age and physical features and with consideration given to the current lease in place, an \$11.00 per square foot NNN lease rate was estimated.

11. Mr. Stevens used \$5.50 per square foot for common area maintenance. He used a

35% vacancy rate based on Costar's reporting a 44% vacancy the second quarter of 2002 and Ross Research Study reporting a 2002 midyear northwest suburban vacancy of 34.75%. On cross examination, he testified that the Costar northwest boundaries ranged from Colfax Avenue to South Boulder Road and eastward to I-25, that the Ross Research Study data included Class A, B, and C buildings and that this range factored into the competitiveness of the market. Neither report was included in Petitioner's exhibits. He used a 3% management fee, 3.015% property taxes, and 5% reserves and replacements to arrive at a Net Operating Income (NOI) of \$326,788.00. Mr. Stevens used a capitalization rate of 11% derived from market sales and the Integra Realty Resources Survey, both shown in Petitioner's Exhibit A, plus 3.015% for property taxes, totaling a 14.0146% cap rate and indicating a value of \$2,331,768.00 based on the income approach.

12. Mr. Stevens testified that he placed greatest weight on the income approach and less on the market approach because he did not consider the market sales truly comparable. The cost approach was not considered due to the amount of depreciation.

13. Mr. Stevens testified that Cirrus Logic had vacated 50% of the property as of the assessment date and is currently in a precarious financial situation. The surrounding area, primarily office and research and development, is currently 44% vacant, and an adjacent building is 100% vacant. Mr. Stevens testified that these conditions were known at the time of assessment and would have been known to an investor. On cross examination, Mr. Stevens testified that the building was 100% leased during the base period by Cirrus Logic and that rent was paid throughout this time period.

14. Petitioner is requesting a 2003 actual value of \$2,600,000.00 for the subject property.

15. Respondent's witness, John W. Storb III, a Certified General Appraiser with the Broomfield County Assessor's Office, presented the following indicators of value:

Market:	\$6,775,000.00
Cost:	\$6,403,670.00
Income:	\$6,150,000.00

16. Based on the market approach, Respondent's witness presented an indicated value of \$6,303,620.00 for the subject property.

17. Respondent's witness presented four comparable sales ranging in sales price from \$4,400,000.00 to \$10,395,845.00 and in size from 35,000 to 68,850 square feet. After adjustments, the sales ranged from \$4,620,000.00 to \$9,356,026.50.

18. Mr. Storb testified that all sales were time trended to June 30, 2002. Sale 1, built in 1993 in Interlocken, was purchased by a California-based firm wanting to move office space from Boulder to Broomfield. The price included the option to build an additional 20,000 square feet. It carried adjustments for excessive land, age, annual income from existing rooftop antennas, and deferred maintenance. Sale 2, built in 2002 in Englewood, carried adjustments for its one-story elevation considered more efficient to rent and for age. Sale 3, a multi-tenant building built in 1997 in Westminster, was adjusted for an inferior location. Sale 4, a multi-tenant building built in 1993 in

Englewood, was adjusted for a superior Inverness location, its inferior three-story elevation, and age. Sale 1, with an adjusted sales price per square foot of \$134.79, was given greater weight because it is a single tenant building in the same office park near the subject. Sale 2, with an adjusted sales price per square foot of \$135.89, was given greater weight because it is a single tenant building purchased with an almost identical lease rate and term. Sales 3 and 4 were not given weight because of their multi-tenant leases. Mr. Storb concluded to a value of \$133.50 per square foot for 50,742 square feet or \$6,775,000.00.

19. Respondent's witness used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of \$6,403,670.00.

20. Mr. Storb presented seven land sales in or near Interlocken ranging in size from 1.687 acres to 166.365 acres and from \$3.50 per square foot for a 51-acre parcel to \$12.01 per square foot for an 11.908-acre parcel. The value for the subject 4.26-acre site is estimated at \$7.00 per square foot or \$1,298,960.00.

21. Mr. Storb testified that he used published cost tables to arrive at an estimated value for improvements of \$5,104,710.00, land value of \$1,298,960.00, and a total value of \$6,403,670.00

22. Respondent's witness used the income approach to derive a value of \$6,150,000.00 for the subject property.

23. Mr. Storb, in his income approach based on the actual lease, testified that the subject was under a 15 year NNN lease to Cirrus logic from 1997 to 2012 for the entire building and that the lease rate was \$13.60 per square foot for 49,460 square feet until April 30, 2002, at which time it became \$14.85 until April 30, 2007, and then \$16.34 until April 30, 2012. Based on the actual lease rental rate of \$13.60 per square foot and additional income of \$22,257.00, potential gross income was \$694,913.00. He used a 5% vacancy and collection loss and total expenses of \$50,173.00 to arrive at a net operating income (NOI) of \$609,995.00. A 9.5% capitalization rate plus a .15% effective tax rate totaling 9.65% was used for a final value of \$6,321,188.00.

24. Mr. Storb, in his income approach based on market rent, testified that five Class B rental comparables, located within a five-mile radius and presented in Exhibit 3, ranged from \$13.00 to \$16.00 per square foot, from 5,500 to 35,000 square feet, and reconciled to \$14.00 per square foot. On cross examination, he testified that the data contained in Respondent's Exhibit 3 was provided by a confidential source and that he did not have access to the leases. His vacancy rate for the subject's Class B building was based predominantly on the Broomfield Economic Development Corporation report, Exhibit 2, in which a 10.5% rate was delineated after removing Class A buildings, which he considered non comparable. He testified that rates were higher in the subject's immediate area, thus reconciling at 20%. He used 8% for total expenses, a 10.5% capitalization rate plus .60% effective tax rate for a final capitalization rate of 11.10%, and an estimated final value at \$4,591,314.00.

25. Because the subject property is encumbered by a long-term lease, Mr. Storb weighted the income approach based on the actual lease to arrive at an indicated value of \$6,150,000.00.

26. Respondent's witness gave most weight to the market approach, testifying that the

income approach does not reflect the May 2002 10% increase in the base rate of the lease and that the cost approach is seldom used to value existing properties. Mr. Storb concluded to a value of \$6,650,000.00 for the subject property.

27. An actual value of \$6,303,620.00 was assigned to the subject property for tax year 2003.

CONCLUSIONS:

1. Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2003 valuation of the subject property was incorrect.

2. Both Petitioner and Respondent agree that the subject property was fully leased by Cirrus Logic throughout the base period although not 100% physically occupied. The Board notes that although Cirrus Logic may have been in a precarious financial position on the assessment date, it has made all payments on its lease and the lease has not been broken.

3. The Board has reviewed lease comparables presented by both parties, all located within several miles of the subject, Petitioner's estimate being \$11.00 per square foot based on a range from \$9.00 to \$13.76 and Respondent's estimate being \$14.00 per square foot based on a range from \$13.00 to \$16.00. Actual rent for sixteen of the eighteen months of the base period was \$13.60, which the Board notes is within the range of both parties' estimates and thus is well supported.

4. The Board is convinced of a 20% market vacancy rate by Respondent, whose evidence and testimony was specific to Broomfield in contrast to Petitioner's wide research area.

5. Both Petitioner and Respondent estimated expenses at 8%.

6. A capitalization rate range was estimated by the Petitioner to be 9% to 11% and by Respondent to be 9.5% to 11%. The Board concluded to a capitalization rate of 10.5%, which was supported by both parties. A tax rate is not applied because the tax burden was that of the tenant.

7. The Board calculated an income value of \$4,680,333.00, which is supported by the actual rent, market vacancy and collection loss, market-delineated expenses, and a market capitalization rate.

8. The Board agrees with both Petitioner and Respondent that the cost approach carries no weight in the subject property's value estimation.

9. The Board has analyzed both parties' market approaches. Petitioner did not consider his market sales truly comparable and did not rely on the market approach in his final reconciliation. Respondent assigns most weight to the market approach in his final reconciliation. The Board believes that the market approach should be weighed but acknowledges the scarcity of sales in the Broomfield area, the only one being the May 5, 2002, sale of 1 International Court in the subject's office park for \$5,700,000.00 and used by both Petitioner and Respondent with final adjusted values of \$5,642,870.80 and \$5,483,796.36, respectively. Although one sale does not make a market, it should be noted that Petitioner's market value of \$3,853,350.00 and Respondent's market value of \$6,775,000.00 bracket the adjusted values of 1 International Court, a mid-point being \$5,550,000.00.

10. The Board determined an income value of \$4,680,333.00 and a market value of \$5,550,000.00 with a final value reconciled at \$5,000,000.00.

11 After careful consideration of all of the testimony and evidence presented, the Board has concluded that the 2003 actual value of the subject property should be reduced to \$5,000,000.00.

ORDER:

Respondent is ordered to reduce the 2003 actual value of the subject property to \$5,000,000.00.

The Broomfield 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 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.