BOARD OF ASSESSMENT APPEALS, **STATE OF COLORADO** 1313 Sherman Street, Room 315 Denver, Colorado 80203 Petitioner: **STEPHAN GAVIT/ACCUTRONICS,** v. Respondent: **JEFFERSON COUNTY BOARD OF COMMISSIONERS.**	
Attorney or Party Without Attorney for the Petitioner: Name: William McLain, Esq. Address: 3962 S. Olive St. Denver, Colorado 80237 Phone Number: (303) 759-0087 Attorney Reg. No.: 6941	**Docket Number: 41164**

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on December 17, 2003, Steffen A. Brown and Karen E. Hart presiding. Petitioner was represented by William McLain, Esq. Respondent was represented by Eugene Mei, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

10488 and 10658 West Centennial Road, Littleton, Colorado
(Jefferson County Schedule Nos. 150598 and 150601)

Petitioner is requesting an abatement/refund of taxes on the subject property for tax year 2001. The subject property consists of two parcel numbers. Parcel No. 150601 is vacant land and consists of 2.36 acres. Parcel No.150598 consists of a 98,107 square foot manufacturing building built in 1982, situated on a 5.98-acre tract of land, and located off of West Centennial Road in Littleton, Colorado.

ISSUES:

Petitioner:

Petitioner contends that the improved parcel of the subject property has been overvalued. There is no dispute regarding the vacant land parcel. Respondent has overstated the rental rate in the income approach. The market approach supports Petitioner's requested value.

Respondent:

Respondent contends that the subject property has been properly valued based on the income approach. Petitioner's lease comparables are not located in Jefferson County, are older leases and older properties. Both parties agree with the vacant land value. Both parties relied on the income approach; the primary point of contention is the application of the income approach. Relevant information is from the property next door to the subject and the subject lease, which was not considered by Petitioner. The current subject property lease is a long-term market equivalent lease.

FINDINGS OF FACT:

1. Petitioner's witness, Mr. Todd Stevens, President of Stevens & Associates Cost Reduction Specialists, Inc. and a Registered Appraiser, presented the following indicators of value:

Market:	$3,335,638.00
Income:	$3,054,958.00

2. Mr. Stevens testified that the subject property is a single-tenant property built in 1982. It consists of 98,107 square feet of gross rentable area. The original office area consisted of 8,000 square feet and is now part of the manufacturing area. The two lots consist of 260,488 square feet and 102,801 square feet. The property is located near Kipling and C-470. The neighborhood mix is houses, office buildings and a couple of warehouse buildings.

3. Mr. Stevens testified that there are four dock-high doors and a drive-in door in the rear of the subject. The property has an overabundance of office space, which is not being used. The hallways are twice the size needed; they are super-adequate. Several offices have been converted to tool and die, deburr, and assembly areas. There is a small area of the office that is subleased due to the excess office space, but he believes that the subject property should still be considered a single-tenant building due to its configuration.

4. Based on the market approach, Petitioner's witness presented an indicated value of

$3,335,638.00 for the subject property.

5. Petitioner's witness presented four comparable sales ranging in sales price from $1,350,000.00 to $2,670,000.00 and in size from 38,236 to 95,263 square feet. After adjustments were made, the sales ranged from $29.20 to $42.37 per square foot.

6. Mr. Stevens located two properties that sold in the current base period and two from the extended base period. The properties were similar in size and all were adjusted for time. All had superior locations as compared to the subject. All of the properties were older than the subject. Sale 4 was vacant at the time of sale, receiving an upward adjustment for economic characteristics. All of the sales received an adjustment for land-to-building ratios due to the subject's excess land and land-to-building ratio of 3.7:1. He correlated to a value of $34.00 per square foot, including the excess land, for a market value of $3,335,638.00.

7. Petitioner's witness did not present a cost approach due to the difficulty of determining depreciation due to the subject's age.

8. Petitioner's witness presented an income approach to derive a value of $3,083,854.00 for the subject property.

9. Mr. Stevens testified that he used 95,163 square feet of net rentable area at the subject property. He looked for buildings of similar size and found five leases for manufacturing space; most were located in the northern and northeastern part of Denver along I-25 and I-70. He chose these sales due to size and the fact that they are manufacturing properties.

10. Mr. Stevens testified that the building across the street from the subject is rented at $2.75 per square foot triple net (NNN), which he confirmed with the property owners. The tenant will be moving out and the asking rent is $4.80 per square foot, considerably higher than the current lease. The building address is 10368 West Centennial. The comparable's clear height ceiling is 24 foot versus the subject's 18-foot ceilings. He did not use the subject lease as it is set by and entered into by Mr. Gavit; it was signed by Mr. Gavit as lessor and lessee. It is a long-term lease and cannot be assigned without written agreement by both parties.

11. Mr. Stevens testified that he used a $3.75 per square foot rental rate. The comparable leases ranged from $3.12 to $4.75 per square foot. Lease 5 is a new building that was built in 1999 and is a 10-year lease. There were no similarly sized buildings in the immediate area of the subject; the subject property is not located in a popular industrial park. There is another industrial development behind the subject that has struggled as well.

12. Mr. Stevens testified that his survey indicated a $1.11 to $2.40 common area maintenance (CAM) expense. He used $1.30 for CAM expenses, 5% vacancy rate, 3% management fee, and 10% operating expenses. He added in the CAM income and deducted the CAM expense. He used an overall capitalization rate of 12.63%, which included the tax load. He arrived at a

capitalized value of $2,683,958.00 and added Respondent's $399,896.00 value for the excess land, Schedule No. 150601, for a total property value for both parcels of $3,083,854.00.

13. For his correlation, Mr. Stevens testified that he gave no consideration to the cost approach, used the market approach to set the upper limit of value, and gave the greatest consideration to the income approach, as this is the approach most relied upon by investors. He correlated to a value of $3,200,000.00, or $32.60 per square foot.

14. Mr. Stevens testified that the largest difference with Respondent's appraisal is in the lease rent in the income approach; Respondent only considered the asking rent rather than the actual lease rate. Asking rents should not be used; they may or may not achieve their asking rent. Negotiated market rates should be used, based on actual contract rents. Respondent did not include a CAM charge in their analysis. CAM is a good indicator of expenses that may or may not be passed on to tenants. Respondent used the same base capitalization rate, but did not load the taxes into the overall capitalization rate. His approach is approved by the Division of Property Taxation as shown in the Assessor's Reference Library (ARL).

15. Regarding Respondent's Exhibit 1, page 25(A1), Mr. Stevens testified that the graph shows estimated gross rent, which is asking rates, not actual rent. It is a new building, has a 24-foot ceiling height, is multi-tenant, and has 14 drive-in doors. The interior office finish is superior to the subject. It is located off of Santa Fe Boulevard, a main industrial corridor. Single-tenant properties rent for a lower price per square foot than multi-tenant properties.

16. The property shown on page 27 of Respondent's Exhibit 1 is located next door to the subject. The ceiling height is 24 feet. The property shown on page 28 is a new building with 22-foot ceiling height, 40-foot column spacing, seven drive-thru doors, six loading docks, is multi-tenant, and has high-grade interior office finish. The property shown on page 30 is an office warehouse facility, multi-tenant, has 14-foot ceilings, 10 drive-thru doors, is two separate buildings, and is located near Hampden and Wadsworth, near the central business district. The property shown on page 32 is estimated gross rent, multi-tenant, has 14-foot ceilings, 12 loading docks, and is located just off of Santa Fe.

17. Mr. Stevens testified that the only property submitted by Respondent that he considers comparable to the subject is the property located next door. The subject property should be compared to similarly aged, single-tenant manufacturing facilities.

18. Mr. Stevens pointed out that Respondent's Exhibit 3A, the subject property lease, was signed by Stephan Gavit for all parties. Paragraph 26 states that the lease may not be assigned or delegated without obtaining the written consent of the other party. Regarding Respondent's Exhibit 3D, the lease rate is $4.75 per square foot, which is an asking rate. A lease executed in January 2000 was for $3.15 per square foot. Respondent's Exhibit 3E has an asking rate of $4.75 per square foot, is a new building, and in May 2000, he confirmed that the actual lease rate was $4.75. Respondent's Exhibit 3B is a sale Mr. Stevens also used. Respondent used this sale to derive a time-trend. The initial sale on April 30, 1996 was an internal transaction. The actual sale occurred on June 2, 1999.

Respondent's Exhibit 3B does not support Respondent's time-trending factor. Respondent's Exhibit 3-C is beyond the base year, and should not be used to support Respondent's time-trending factor.

19. Mr. Stevens testified that he determined $3.75 per square foot was an appropriate market rental rate for the subject property due to its age, ceiling height, and office interior finish.

20. Under cross-examination, Mr. Stevens testified that the vacant lot is 102,801 square feet of raw land and that there is nothing on the property. It has no functioning relationship to the manufacturing facility. He included it as excess land as it was part of his consulting assignment. He agrees with Respondent's value of the vacant lot. The table shown on Petitioner's Exhibit A, page 14, includes the vacant land parcel. He used approximately 6% per year time adjustment for market conditions during the base period. The subject property's sale was a 1031 exchange and he is not sure of the particulars of the sale. He used 1% per year for his building age adjustment, maxing out at 10%. The subject property's land-to-building ratio is 2.66 without the excess land parcel. The lease provides for annual increases and will not be less than the initial lease rate. Typically, leases signed by the same party are not market leases. The subject property's lease is not an arms-length transaction. The initial lease is for a 20-year period, with two 20-year lease renewal options. Three of his lease comparables have three-year terms; two of the comparable leases have 10-year terms. The subject's sub-lease is a market lease; the rental rate is $15.25 per square foot gross rent for office space only.

21. Petitioner is requesting a total 2001 actual value of $3,200,000.00 for the subject properties, broken down as follows:

Schedule Number	Value
150598	$2,788,800.00
150601	$ 411,200.00

22. Respondent's witness, Ms. Brenda L. Fearn, a Certified General Appraiser with the Jefferson County Assessor's Office, presented the following indicators of value:

Market:	$4,395,960.00 to $5,372,840.00
Income:	$4,893,600.00

23. Ms. Fearn testified that Respondent's Exhibit 2 is the vacant land appraisal. Her value conclusion is $411,200.00, and the assigned value is $400,920.00.

24. Respondent's Exhibit 1 is for the improved parcel only. The property was transferred in 1996 to Stephan Gavit and was a completed 1031 transaction.

25. Based on the market approach, Respondent's witness presented an indicated value range of $4,395,960.00 to $5,372,840.00 for the subject property.

26. Respondent's witness did not present specific comparable sales for the subject property. Three lists of improved industrial property sales that occurred from 1999 to 2001 were submitted as support for the market value range presented. Information regarding an additional non-

Jefferson County sale was also submitted. No adjustments were made to any of the sales.

27. Ms. Fearn testified that there are not many sales of properties that are similar in size to the subject. She went back to sales that occurred in 1996 and used the market approach to determine a range of value for a reasonableness test.

28. Respondent's witness did not present a cost value for the subject property, due to the age of the improvement and functional issues requiring unsupportable depreciation allowances.

29. Respondent's witness used the income approach to derive a value of $4,893,600.00 for the subject property.

30. Ms. Fearn testified that her rentable area of 95,953 square feet recognizes the unusable areas of the subject, such as the extra wide hallways. She asked the general manager if the lease was market rent; he indicated that Mr. Stephan Gavit is not the same as Accutronics; he is not the sole owner of Accutronics. The general manager also said that they did their best to develop a market rent at the time of the lease. She received a copy of the lease on December 10, 2003. The field inspection was late in November. She confirmed the sublet area of 3,770 square feet, which is now expanded, but the rental rate is the same.

31. Ms. Fearn testified that the income comparable located on page 25 of Respondent's Exhibit 1 is slightly smaller than the subject and rented for $8.40 per square foot. It is newer and superior as compared to the subject property and would command superior rents. The subject is located in the southwest corridor, C-470 market, as is this comparable property. Page 27 of Respondent's Exhibit 1 shows the property located next door to the subject property. It is currently available for lease. Ms. Fearn contacted the leasing agent; it was rented at $4.80 per square foot NNN. The interior differs from the subject property; it is extremely dated. A large portion of the property is warehouse, not manufacturing. It would not be adaptable to another user, and thus, is substantially inferior to the subject. The property shown on page 28 was rented at $8.40 per square foot and is a superior rental comparable. The rents are bracketed between $4.80 to $8.40 per square foot. The comparable shown on page 30 has two buildings, which allows for multiple tenants.

32. Page A-10 in the Addendum of Respondent's Exhibit 1 is a rental survey conducted by the assessor's office. Ms. Fearn testified as to the different rental rates for the various areas. Addendum B is a capitalization rate survey conducted by the assessor. She determined a rental rate for the subject property at $6.00 per square foot and a vacancy rate of 5%. Property taxes are not loaded into the capitalization rate when NNN leases are involved. She arrived at an income approach value of $4,893,600.00, which is lower than the assigned value.

33. Ms. Fearn testified that she believes the subject property's lease is a market lease, as verified by the general manager.

34. Regarding Petitioner's Exhibit A, Ms. Fearn testified that she would not use Petitioner' comparables as a location adjustment could not be documented. She did not apply a time trend to her market sales. Regarding Petitioner's income analysis, Petitioner used gross rent as opposed to NNN that the Respondent's used. They agree on vacancy and do not agree on expenses;

there should be no reserve expense and no property tax loaded capitalization rate when based on NNN leases. Respondent's Exhibit 3D, which is Petitioner's lease comparable 1, indicated that the rent was $4.75 per square foot, not $3.15 as reported by Petitioner. Regarding Exhibit 3E, Petitioner's lease 5, the building was comparable to the subject in size, but was a newer building than the subject and it is a DIA location; she is not sure that the rent amount is accurate.

35. Ms Fearn testified that both parties agree that the industrial market was appreciating during the base year and that the property sold in 1995, which was verified as a good sale, and to now say it is worth less on June 30, 2000 is a big red flag.

36. During cross-examination, Ms. Fearn testified that she spoke to the General Manager of Accutronics, Mr. Don Weinstock. She did not ask if Mr. Gavit had controlling interest in Accutronics. She gave heavy reliance to the actual lease. Her CoStar representative said that the estimated gross rent on graphs such as the one shown on page 25 of Respondent's Exhibit 1 reflect actual rent. She did not independently verify the operating expenses and taxes as reported by CoStar.

37. Respondent assigned a total actual value of $5,404,420.00 to the subject properties for tax year 2001, with the following breakdown:

Schedule Number	Actual Value
150601	$ 400,920.00
150598	$5,003,500.00

38. Respondent is recommending a reduction in actual value for Schedule No. 150598 to $4,893,600.00.

39. In rebuttal, Mr. Stevens testified that he does not believe that Mr. Weinstock thought the lease was market. Mr. Stevens' CoStar representative stated that the Comps information is estimated and are asking rates not confirmed actual lease data. The April 30, 1996 sale of 601 West 50th Avenue was not an arms-length transaction.

CONCLUSIONS:

1. Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2001 valuation of the subject property was incorrect.

2. There was no dispute of the assigned value for Schedule No. 150601 and the Board affirms the assigned value of $400,920.00.

3. Regarding Schedule No. 150598, neither party used the cost approach and the Board agrees that the cost approach would not be insightful for the subject property.

4. Regarding the market approach, Respondent did not prepare a market approach value conclusion and used mass appraisal data to determine a value range. The Board notes that no

adjustments were made to the sales data presented by Respondent, and the sales data was therefore given little weight by the Board. Petitioner's Sales 2 and 3 are smaller and are older properties than the subject. Comparable Sales 1 and 4 are more similar in age and size to the subject property. Petitioner's witness prepared a sales comparison grid, utilizing qualitative adjustments and gave some testimony as to his adjustment computations, but there was insufficient evidence presented to support the final adjusted prices per square foot. The Board therefore gave lesser weight to this approach to value.

5. Both parties prepared an income approach to value for the subject property, though both parties pointed out deficiencies in each other's reports. Regarding Respondent's reliance on the actual subject property lease, the Board was not convinced that the lease was an arms-length market transaction. Mr. Gavit signed for both entities and it is clear that he has at least some interest in both companies; there was insufficient evidence for the Board to determine whether each entity is autonomous. While considered, the Board gave less weight to the subject property's actual lease. As to the sub-lease, this lease is for office area only and would not be helpful in determining an overall lease rate for the subject, which is primarily comprised of industrial/warehouse space.

6. The Board notes that the primary differences between the two income approaches presented lies within the rental rates and the capitalization rates; the total expense deductions are similar. Regarding the capitalization rate, the Board agrees with Respondent that if a property is valued on a triple net (NNN) basis, no tax load should be added to the capitalization rate, as the property owner has no property tax expense. The Board affirms Respondent's capitalization rate of 10%.

7. The Board was unable to determine, due to the conflicting testimony, as to whether the rents in the CoStar data presented by Respondent were in fact actual rents and not asking rents. The Board has carefully examined all of the income rental data presented, and determined that the subject property rental rate should be $4.75 per rentable square foot. This rate comes from the high end of the confirmed rents testified to or presented by Petitioner's and Respondent's witnesses, considering the subject property's condition, age, size and location. The Board recalculated Respondent's income approach using a $4.75 per square foot rental rate.

8. The Board concluded that the 2001 actual value of the subject property, Schedule No. 150598, should be reduced to $3,754,160.00.

ORDER:

Respondent is ordered to cause an abatement/refund to Petitioner, based on a 2001 actual value for the subject property, Schedule No. 150598, of $3,754,160.00.

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

APPEAL:

APPEAL:

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

In addition, if the decision of the Board is against the Respondent, the Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law when the Respondent alleges procedural errors or errors of law by the Board of Assessment Appeals.

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 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, the Respondent may petition the Court of Appeals for judicial review of such questions with 45 days from the date of this decision.

DATED and MAILED this 9th day of February, 2004.

BOARD OF ASSESSMENT APPEALS

Steffen A. Brown

Karen E. Hart

STATE OF COLORADO
SEAL
BOARD OF ASSESSMENT APPEALS

This decision was put on the record

FEB 0 9 2004

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

Penny S. Lowenthal

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