STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL

Palace Sports & Entertainment, Inc.,
Petitioner,

v — MTT Docket No. 300519

City of Auburn Hills,
Respondent.

Tribunal Judge Presiding
Kimbal R. Smith III

ORDER DENYING PETITIONER'S MOTION FOR LEAVE TO FILE RESPONSE TO RESPONDENT'S EXCEPTIONS TO THE APRIL 2, 2009 PROPOSED OPINION AND JUDGMENT

FINAL OPINION AND JUDGMENT

Administrative Law Judge John S. Gilbreath conducted a hearing in this case on May 1, 2007, and issued a Proposed Opinion and Judgment on April 2, 2009. The Proposed Opinion and Judgment provided, in pertinent part, "[t]he parties have 20 days from the date of entry of this Proposed Opinion to notify the Tribunal in writing if they do not agree with the Proposed Opinion and why they do not agree. The exceptions are limited to the evidence submitted prior to or at the hearing and any matter addressed in the Proposed Opinion."

Respondent filed exceptions to the Proposed Opinion and Judgment on April 21, 2009. In support of its exceptions, Respondent states:

a. "The Proposed Opinion and Judgment fails to recognize the Stipulation of Facts entered into between the parties, which Stipulation was entered into evidence."

b. "The Proposed Opinion and Judgment fails to state the original assessed and taxable value of the subject property for the tax years at issue, . . . [and] [t]his should be corrected with the original assessed and taxable values being stated within the Opinion and Judgment as follows:

Tax Year	AV	TV
2003	$44,612,840	$25,375,000
2004	$41,795,500	$25,958,620
2005	$41,540,050	$26,555,660
2006	$48,000,000	$29,368,990

c. "The Proposed Opinion and Judgment goes beyond the issues of the case and inappropriately makes true cash value determinations for tax years 2004, 2005 and 2006. The determinations as to tax years 2004, 2005, and 2006 were limited by agreement of the parties to a determination of taxable values only. The Stipulation of Facts . . . states in part . . . that, '[t]his case involves Petitioner's appeal of the true cash value, assessed value and taxable value for the 2003 tax year and the Petitioner's appeal of the taxable values for the 2004, 2005, and 2006 tax years of Petitioner's real property and improvements in the City of Auburn Hills, Oakland County, Michigan, said property having tax identification number 14-02-300-021.'"

d. "Furthermore, the Proposed Opinion and Judgment fails to add to taxable value the additions to the property for tax year 2006, as agreed to in . . . the Stipulation, which states, '[t]he additions established for tax years 2004 through 2006 are not in dispute and are to be used to conclude the lawful taxable values of the subject property for tax years 2004 through 2006.'"

e. "As such, the Proposed Opinion and Judgment value conclusions should be corrected to include taxable value increases as mandated by law for tax years 2004 (CPI 1.023), 2005 (CPI 1.023) and 2006 (CPI 1.033), and the taxable value increase for the addition in 2006 of $1,937,000, as follows:

Tax Year	TCV	SEV	AV	TV
2003	$46,000,000	$23,000,000	$23,000,000	$23,000,000
2004	$83,591,000	$41,795,500	$41,795,500	$23,529,000
2005	$83,080,100	$41,540,050	$41,540,050	$24,070,167
2006	$96,000,000	$48,000,000	$48,000,000	$26,801,482

f. "The Proposed Opinion and Judgment is also flawed because it failed to address the issue of the value of the additional buildings other than the Arena on the subject property. The subject property includes two other buildings which are not necessary to the operation of the Palace as a sports, or concert, venue, and which do not provide rental income. . . . The value of these two other buildings is not part of the income stream accounted for in the discounted cash flow analysis accepted in the Proposed Opinion and Judgment, and therefore, they are being omitted from taxation. The value for these two other buildings should be added to the value determined for the Arena as a result of the discounted cash flow analysis."

g. "Furthermore, the Proposed Opinion and Judgment . . . failed to make a determination as to when naming rights to the arena should be included in the analysis."

h. "The Proposed Opinion and Judgment incorrectly states on page 4 that in Petitioner's appraisal, 'the three basic appraisal approaches - - the cost approach, the sales comparison approach and the income approach - - were accounted for,' and on page 25 that 'Petitioner valued the subject property utilizing all three approaches to value . . .' In fact, Petitioner's valuation disclosure failed to come to a conclusion utilizing the sales comparison approach."

i. "Due to the differing methodologies between the party's appraisers, just as to the income approach, and because this property is admittedly a special purpose property with either no, or a very limited, market, the Proposed Opinion and Judgment should have analyzed the value of the property utilizing the cost approach to value. See

Clark Equipment Company v Township of Leoni, 113 Mich App 778, 783-786; 318 NW2d 586 (1982)."

j. "Additionally, the Proposed Opinion and Judgment, page 37, third paragraph should have 'Bennett' replaced with 'Barrett.' This same error is found on page 36, 3rd line from the bottom of the page."

k. "Respondent, City of Auburn Hills respectfully requests that this Honorable Tribunal enter a Final Judgment amending the Proposed Opinion and Judgment with the needed corrections noted in these Exceptions, and that the Tribunal grant such other and further relief as it deems appropriate."

Petitioner has filed exceptions to the Proposed Opinion and Judgment on April 22, 2009. In support of its exceptions, Petitioner states:

a. "[T]his filing sets forth three specific exceptions that are directly applicable to values concluded [in the Proposed Opinion and Judgment.] The first exception relates to the Proposed O & J's legally erroneous failure to account for property taxes in concluding to TCV using the income approach. The second exception relates to the Proposed O & J's unlawful inclusion of value attributable to an NBA user of the subject property. The third exception relates to the Proposed O & J's concluded SEV, AV and TV each exceeding 50% of TCV. However, the third exception becomes moot if either of the first two Proposed O & J errors is corrected."

b. "[T]he Proposed [Opinion and Judgment's] discounting of cash flows was erroneous. Because the property tax capitalization rate of 2.2% was not added to the 11% when discounting the projected cash flows (estimated before deductions for property taxes), the Proposed [Opinion and Judgment's] concluded TCV, p. 35, fn. 5, grossly overstates value and constitutes both error of law and the adoption of wrong principles. In short, because property taxes are an expense that must be accounted for in a discounted cash flow analysis, but in the Proposed [Opinion and Judgment] were not, even accepting all of the other premises in the Proposed [Opinion and Judgment], its concluded TCV is grossly overstated. The correctly concluded TCV, by adding 2.2% to account for the property tax factor and accepting everything else in the Proposed [Opinion and Judgment], is $37,258,769, . . . Any such revision in TCV requires corresponding reductions in SEV, AV, and TV."

c. "This case also involves a fundamental legal issue that Petitioner raised in its post trial briefs but is not addressed in the Proposed [Opinion and Judgment.] Applicable law prohibits the subject property's TCV from being enhanced based on its use by a National Basketball Association (NBA) team. Yet, undisputedly, this is exactly what the Proposed [Opinion and Judgment] did. This is very significant because (although both parties presented evidence of the subject property's value with an NBA team user) the valuation witnesses for both parties agree that the subject property's TCV, without such a value enhancement, is $27 million, i.e. less than $30 million . . ."

d. "[T]here is nothing in the General Property Tax Act ('GPTA') that authorizes assessment based on use value. Nor is there express language authorizing TCV to be determined on that basis. Furthermore, an MTT valuation and assessment of the subject property on that basis would violate the uniformity clause of the Michigan Constitution (art. 9, § 3)."

e. "Respondent may assess only real and tangible personal property based on its usual selling price. . . . The Michigan Constitution (art. 9, § 3) restricts GPTA assessments to real and tangible personal property. It does not permit taxation of intangible assets . . . *Michigan Bell Tel Co v. Department Of* Treasury, 445 Mich 470 . . . The Michigan Supreme Court's recognition that intangible property is excluded from GPTA taxable was recently repeated by the MTT in *County of Wayne, et al v Michigan State Tax Comm'n, et al*, 11 MTT 452 (April, 2002), the so-called 'utility multiplier' case. . . . Based on the foregoing, it is clear that the value in the Proposed [Opinion and Judgment] attributed to the subject property based on its use by the Pistons or another NBA team, as distinguished from use by other users in general, constitutes an intangible asset, and as a matter of law cannot be included in the TCV of the subject property."

f. "[T]he Michigan Supreme Court in *Rose Bldg Co v Independence Twp*, 436 Mich 620, 640-41 (1990) held: 'The Constitution requires assessments to be made on property at its cash value. This means not only what may be put to valuable uses, but what has a recognizable pecuniary value inherent in itself, and not enhanced or diminished according to the person who owns or uses it.' Value attributed to the subject property based on its use by the Pistons or other NBA team is not inherent in the subject property, but rather an enhancement in value based on who uses it. There is nothing inherent in the subject property that includes its use by an NBA team. The Proposed [Opinion and Judgment's] TCV premium in value attributable to an NBA team user constitutes error of law."

g. "Under Michigan law a property's 'usual selling price,' *i.e.*, its value-in-exchange, is the only legal basis for GPTA assessment (MCL 211.27). . . . [T]he Court held in *Safran Printing Co v Detroit*, 88 Mich App 376, 383 (1979), lv den, 411 Mich 880 (1981), that property is to be valued based on its usual selling price, not the use by the owner, even where the value to the owner was much greater than its value-in-exchange: [A]ttributing value to the property over what it could command in the market place due to its use . . . imposes a 'use tax,' not an *ad valorem* property tax.' Clearly, use value is not the lawful standard of valuation in Michigan. The statutorily required lawful standard of 'usual selling price' of tangible property (MCL 211.27) is true cash (market) value, *i.e.*, what a typical buyer would pay for the property [sic] in an arm's length market transaction, not enhanced by who owns or uses the property. Yet, the Proposed [Opinion and Judgment] violates this legal standard."

h. "The concept that two identical properties must have the same assessment based on the same TCV is incorporated into the uniformity requirements of the first two sentences of art. IX, § 3 of the Michigan Constitution. '[T]wo identical properties, one built at a time when interest rates are high and the other when interest rates are low will have vastly disparate estimates of value under [the rejected approach]. Thus, it . . . violates the constitutional mandate of uniformity in real property taxation.' *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 493 (1991). Substitute 'where one property is used by the Pistons or another NBA team' for 'one built at a time when interest rates are high' and 'another property used by other sports teams or entertainment' for 'the other when interest rates are low' and the illegality of a concluded to value of the subject property for GPTA purposes based on the property's use by the Pistons or other NBA team is apparent."

i. "The Proposed [Opinion and Judgment's] concluded TCV . . . was $45,313,363.32. The concluded SEV, AV and TV in the Proposed [Opinion and Judgment] . . . however, are each $23,000,000. Because the $23,000,000 amount exceeds 50% of TCV, the proposed SEV, AV and TV are illegally excessive under Article IX, Section 3 of the Michigan Constitution of 1963 and MCL 211.27."

On April 24, 2009, Petitioner filed a Motion for Leave to File Response to Respondent's Exceptions to the April 2, 2009 Proposed Opinion and Judgment. In its Motion, Petitioner states:

a. "Petitioner's Response is limited to the issues directly raised in Respondent's Exceptions. . . . [F]or foregoing reasons, Petitioner respectfully requests that the Tribunal GRANT this Motion for Leave To File Response To Respondent's Exceptions To The April 2, 2009 Proposed Opinion And Judgment, enter the Proposed Order attached hereto as Exhibit 2, and accept for filing Petitioner's Response To Respondent's Exceptions To The April 2, 2009 Proposed Opinion And Judgment, which is attached hereto as Exhibit 1."

b. "In Response to Respondent's Exceptions to the April [2], 2009 Proposed Opinion and Judgment, Petitioner says: Petitioner concurs with paragraph 1-4, but disagrees with Respondent's revised amounts in paragraph 5 for reasons set forth in Petitioner's Exceptions."

c. "Respondent wrongly claims, 'the value of these two other buildings is not part of the income stream accounted for in the discounted cash flow analysis accepted in the Proposed Opinion and Judgment, and therefore they are being omitted from taxation.' However, there is competent, material and substantial evidence in the record that both ancillary buildings were necessary to support the SRR projected cash flows, and therefore, are necessarily included in the Proposed [Opinion and Judgment] value conclusion by discounting those cash flows to present value."

d. "Respondent wrongly claims, 'there was no supporting evidence that it would take a year to sell the naming rights to the Palace.' However, there is competent, material and substantial evidence in the record for the expectation that it would take a year to secure a naming rights contract. Cummins projected naming rights revenue for a corporate sponsor to name the building. . . . Cummins was qualified as an expert. . . . Respondent has no basis to complain about the Proposed [Opinion and Judgment's] reliance on projected naming rights revenue that is [sic] more favorable to it than its own projections."

e. "With respect to paragraph 9, . . . [t]here is no legal authority that requires a cost approach be used to value the subject property, especially where, as here, the appraisers for both parties relied on the income approach to conclude the value."

f. "Petitioner does not dispute the erroneous references alleged in paragraph 10. Thus, as the Proposed [Opinion and Judgment] states, correcting the error, p. 37: 'Respondent's and in particular Mr. Barrett's information was less persuasive.'"

On May 5, 2009, Respondent filed a response to Petitioner's Motion for Leave to File Response to Respondent's Exceptions to the April 2, 2009 Proposed Opinion and Judgment. In support of its opposition, Respondent states:

a. "Petitioner's Motion is made without authority allowing the relief requested."

b. "This case has been extensively briefed, and Petitioner's derivative arguments should not be considered. However, should the Tribunal determine that Petitioner be permitted to file a response to Respondent's Exceptions, then the same relief should be afforded to Respondent."

c. "The Petitioner's complaint as to not tax loading the capitalization rate should be disregarded unless the Tribunal is willing to reanalyze the entire approach. There are a lot of issues with the income and expenses utilized by Mr. Cummins. It is suggested that if the Tribunal feels inclined to reanalyze the methodology used, then all of the issues and errors with the income approach, and in particular the allocation of income and expenses, set forth in Respondent's Post Trial Brief, page 42 through 54, and Response to Petitioner's Post Trial Brief, page 41 through 55, need to be considered."

d. "The Petitioner's Exception #2 supports invalidating Petitioner's valuation methodology. Petitioner, via its 'Exception #2,' argues extensively that the subject property should be valued at a value less than what Petitioner's own appraisal determined."

e. "The Tribunal concluded to a true cash value of $46 million . . ., and not $45,313,363.32 as Petitioner states. The Tribunal went through the machinations of performing a discounted cash flow analysis, and determined that rounding up to the nearest million dollars resulted in a fair approximation of true cash value. Therefore, Petitioner's argument that the taxable value conclusion is invalid as being in excess of one half of the concluded true cash value is without merit."

A party filing a response to exceptions is not required to file a Motion for Leave to File a Response as long as the response is submitted with 14 days after service of the exception. See TTR 348. As such, Petitioner's Motion is unnecessary. Therefore, Petitioner's

Response to Respondent's Exceptions is considered properly filed and will be taken into consideration in the determination of this Final Order and Judgment.

On April 24, 2009, Petitioner filed a response to Respondent's April 21, 2009 Exceptions. In its Response, Petitioner contends that:

a. "Petitioner concurs with paragraph 1-4, but disagrees with Respondent's revised amounts in paragraph 5 for reasons set forth in Petitioner's Exceptions."

b. "In paragraph 6, Respondent sets forth claims with no record support. More specifically, Respondent wrongly claims, 'the value of these two other buildings is not part of the income stream accounted for in the discounted cash flow analysis accepted in the Proposed Opinion and Judgment, and therefore they are being omitted from taxation.' However, there is competent, material and substantial evidence in the record that both ancillary buildings were necessary to support the SRR projected cash flows and, therefore, are necessarily included in the Proposed O & J value conclusion by discounting those cash flows to present value."

c. "In paragraph 7, Respondent again sets forth claims with no record support. . . . [T]here is competent, material and substantial evidence in the record for the expectation that it would take a year to secure a naming rights contract. Cummins projected naming rights revenue for a corporate sponsor to name the building."

d. "With respect to page 8, SRR performed a sales analysis, but did not conclude to a specific value using the sales comparison approach."

e. "With response to paragraph 9, the Proposed O & J addresses why the income approach was used to conclude [the] TCV.

f. "Petitioner does not dispute the erroneous references alleged in paragraph 10."

The Tribunal, having given due consideration to the file in the above-captioned case, finds:

1. The Administrative Law Judge properly considered the testimony and evidence submitted in the rendering of the Proposed Opinion and Judgment. However, the Administrative Law Judge erred in his conclusion of the subject property's true cash, state equalized, and taxable values for the tax years at question. Further, the Tribunal finds that some of the parties' exceptions are merited and the Tribunal will explain each individually.

2. First, the Administrative Law Judge properly made his own finding of fact; however, he failed to take into consideration the Joint Stipulation of Uncontroverted Facts, filed on April 6, 2007. The parties stipulated to the following facts:

   a. "This case involves the Petitioner's appeal of the true cash value, assessed value and taxable value for the 2003 tax year and the Petitioner's appeal of the taxable values for the 2004, 2005 and 2006 tax years of the Petitioner's real property and improvements in the City of Auburn Hills, Oakland County, Michigan, said property having tax identification number 14-02-300-021. The subject property is located in Auburn Hills, Michigan, which is northwest of Detroit."

b. "The Petitioner's property having tax identification number 14-02-300-021, hereinafter referred to as the 'Petitioner's property', has a 2003 assessed value on the roll of $44,612,840 and a 2003 taxable value on the roll of $25,375,000."

c. "The Petitioner's property has a 2004 assessed value on the roll of $41,795,500 and a 2004 taxable value on the roll of $25,958,620."

d. "The Petitioner's property has a 2005 assessed value on the roll of $41,540,050 and a 2005 taxable value on the roll of $26,555,660."

e. "The Petitioner's property has a 2006 assessed value on the roll of $48,000,000 and a 2006 taxable value on the roll of $29,368,990."

f. "The Petitioner's property is an irregularly shaped parcel of property located along Lapeer Road (M-24) just north of the I-75 freeway and the Petitioner's parcel of property has an area of approximately 103.14 acres or approximately 4,492,778 square feet."

g. "Located on the Petitioner's parcel of property is the Palace of Auburn Hills which includes an office addition attached to the southwest portion of said arena, a separate training facility building, including indoor tennis court, located on the western edge of the Petitioner's parcel of property and the Harmon garage building."

h. "The Palace of Auburn Hills was constructed between 1986 and 1988, the attached office addition was constructed in 1996, the training facility was constructed in 1994, and the Harmon garage was built in approximately 1974. The construction of the subject arena was completed in 1988."

i. "The largest portion of the Petitioner's property, that being approximately 97 acres, is zoned I-2, General Industrial Zoning, as same is defined by the City of Auburn Hills Zoning Ordinance and the training facility and the area generally surrounding the training facility is zoned T&R (Technology and Research), as the same is defined by the City of Auburn Hills Zoning Ordinance."

j. "The Palace of Auburn Hills has a total seating capacity of approximately 22,076 seats and has approximately 180 luxury suites. The training facility includes a practice court, training room, locker room, offices, media room and an indoor clay tennis court."

k. "The Petitioner's property is owned by the Petitioner, Palace Sports & Entertainment, Inc., and one of the principal owners of Palace Sports & Entertainment, Inc. is

William Davidson."

l. "One of the primary tenants and occupants of the Palace of Auburn Hills is the Detroit Pistons Basketball Co., which team is a franchise of the National Basketball Association and which team is principally owned by William Davidson. The Detroit Pistons Basketball Co. plays 41 regular season games at the Palace of Auburn Hills and utilizes the Palace of Auburn Hills arena and its associated facilities for its team headquarters, team offices, team practices and other general team purposes. In addition, the Detroit Shock Basketball Team, which team is a franchise of the Women's National basketball Association, plays several games each year at the Palace of Auburn Hills."

m. "Palace of Auburn Hills holds several other events each year besides the Detroit Pistons and/or Detroit Shock basketball games, which other events include, but are not limited to, concerts and circuses."

n. "The Petitioner's property is bounded by Lapeer Road, Harmon Road and a transition road leading to the I-75 freeway and there are four vehicular entrances to the site, two from Lapeer Road, one from Harmon Road and one from the transition road, which is open for major events."

o. "Located north of the Petitioner's property across Harmon Road is a landfill. Located east of the subject property across Lapeer Road is a miscellaneous variety of commercial uses, including a restaurant and small industrial properties. Located south of the subject property is the [] business loop/ramp for the I-75 freeway. Located west of the subject property is a T&R zoned office park. Located immediately west of the subject property is the headquarters of Guardian Industries, which is a glass maker and automotive supplier controlled by William Davidson, who is one of the owners of the Detroit Pistons and the Petitioner, Palace Sports & Entertainment, Inc."

p. "It is important in the income approach valuation to distinguish between team revenues and expense and those of the arena owner and the difference between projected team cash flow and arena owner cash flow."

q. "The subject property is subject to taxation under the General Property Tax Act."

r. "The additions established for tax years 2004 through 2006 are not in dispute and are to be used to conclude the lawful taxable values of the subject property for tax years 2004 through 2006."

s. "The additions established for tax years 2004 through 2006 are not in dispute and are to be used to conclude the lawful taxable values of the subject property for tax years 2004 through 2006."

t. "Respondent has no objection to the admission of Petitioner's Proposed Exhibits P-1, P-2, P-3, P-5, P-6, P-8, P-9, P-10, P-12, P-13, P-14, P-15, P-16, and P-17."

u. "Petitioner has no objection to the admission [of] Respondent's proposed Exhibits R-1, R-5, R-10, R-167, and R-168."

3. The Administrative Law Judge erroneously included the true cash, state equalized and taxable values for the 2005 and 2006 tax years. Petitioner filed a Motion to Amend on May 27, 2004. The Motion explicitly requests that the 2004 state equalized and taxable values be added to the petition. The Tribunal granted Petitioner's Motion on February 16, 2005 and therefore the Administrative Law Judge correctly included the true cash, state equalized and taxable values for the 2004 tax year. However, Petitioner's Motions to Amend, to add the 2005 and 2006 tax years, filed on April 22, 2005 and April 27, 2006, respectively, specifically state that the taxable values for the subject property are erroneous and should be added to the petition for the 2005 and 2006 tax years. As such, the Administrative Law Judge mistakenly added the true cash and state equalized values to the petition, when in fact Petitioner only requested the taxable value be added to the petition for the 2005 and 2006 tax years. The Tribunal finds that the 2005 and 2006 true cash and state equalized values shall be altered to reflect the original assessment on Respondent's tax roll.

4. The Administrative Law Judge erred in not taking the addition to the property for the 2006 tax year into consideration in determining the subject property's taxable value. As such, the Tribunal finds that the 2006 tax year's taxable value should reflect an addition in the amount of $1,937,000.

5. The Tribunal finds that the Administrative Law Judge properly adopted Petitioner's Discounted Cash Flow Analysis as the most persuasive indicator of the subject property's value. Further, the Administrative Law Judge properly found that the overall discount rate to be utilized in the discounted cash flow method should be 11%. However, Petitioner contends in its exceptions that the Judge's 11% discount rate fails to take property taxes into account. The Tribunal finds this argument merited and a property tax capitalization factor of 2.2% should be added to the 11% discount rate. As such, the Tribunal's determination of the true cash value for the 2003 and 2004 tax years shall be revised to reflect a discount rate of 13.2%. The correct true cash value for the 2003 and 2004 tax years is $38,000,000.

6. Petitioner contends that "[t]he Proposed [Opinion and Judgment's] TCV premium in value attributable to an NBA team user constitutes error of law." Although it is true that the Michigan Constitution art. 9, § 3 distinguishes tax valuations of tangible from intangible property, such distinction is irrelevant to the dispute before this Tribunal. MCL 211.27(1) states, in pertinent part, "'true cash value' means the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale. . . . In determining the true cash value, the assessor shall also consider the advantages and disadvantages of

location; quality of soil; zoning; *existing use*; present economic income of structures, including farm structures; present economic income of land if the land is being farmed or otherwise put to *income producing use*." (Emphasis added.) The Pistons' use of the subject property is one of the property's income producing uses and not an intangible asset. As one of its income producing uses, the value of the Pistons' use or its contribution to the subject property's production of income is value inherent in the subject property and not "enhanced according to the person who uses it" as Petitioner contends. Therefore, Petitioner's contention that "[t]he value attributable to the Pistons or any other NBA franchise as a user of the subject property is not inherent in the subject property and also illegally reflects value enhanced according to the person who uses it" is flawed. Further, although Petitioner contends that the evidence proves that the subject property's true cash value is $27,000,000, this amount values the subject property as if an NBA team does not utilize the facilities. However, the fact that the Pistons use the subject property is a large component of the income production of the subject property. The purported value that is added by the Piston's use of the property is merely value attributed to the subject property due to its existing income-producing use.

7. Respondent's exceptions also allege that the Administrative Law Judge failed to address the issue of the value of the additional buildings other than the Arena and Respondent's exceptions contend that the Judge failed to make a determination as to when naming rights to the arena should be included in the analysis. The Tribunal finds that the Administrative Law Judge made findings of fact that the Tribunal will not disturb. The Administrative Law Judge found Respondent's appraisal less persuasive than the evidence presented and developed by Petitioner. As such, the Tribunal is unwilling to disrupt the Judge's findings that Petitioner's analysis regarding the two additional buildings and naming rights were therefore most persuasive.

8. In addition, the Administrative Law Judge did not err in determining the discounted cash flow methodology was the best indicator of the subject property's value. More specifically, when the Administrative Law Judge found that "the income streams derived by Petitioner are the least subjective and better provide a basis for determining the market value of the subject property using the discounted cash flow method," he correctly weighed the evidence submitted by Petitioner to accurately apply the evidence in determining the true cash value of the subject property.

9. The Tribunal finds that there is a typographical error in the Proposed Opinion and Judgment that shall be modified. This error is, however, de minimus and has no impact on the Final Judgment. The following modifications shall be made to the Proposed Opinion and Judgment:

   a. The Proposed Opinion and Judgment, page 36, 3rd line from the bottom of the page and 37, third paragraph's reference to the name "Bennett" should be replaced with "Barrett."

10. Given the above, Petitioner and Respondent have each shown good cause to justify the modifying of the Proposed Opinion and Judgment. See MCL 205.762.

11. The true cash, state equalized, and taxable values for the subject property are as follows:

Parcel Number: 14-02-300-021

Year	TCV	SEV	TV
2003	$ 38,000,000	$ 19,000,000	$ 19,000,000
2004	$ 38,000,000	$ 19,000,000	$ 19,000,000
2005	$ 83,080,100	$ 41,540,050	$ 19,437,000
2006	$ 96,000,000	$ 48,000,000	$ 22,015,421[1]

12. As such, the Tribunal modifies the Proposed Opinion and Judgment to reflect the above and adopts the modified Proposed Opinion and Judgment as the Tribunal's Final Opinion and Judgment in this case. *See* MCL 205.726. The Tribunal also incorporates by reference the Findings of Fact and Conclusions of Law contained in the Proposed Opinion and Judgment, as modified by this Final Opinion and Judgment.

IT IS SO ORDERED.

IT IS FURTHER ORDERED that Petitioner's Motion for Leave to File Response to Respondent's Exceptions to the April 2, 2009 Proposed Opinion and Judgment is DENIED.

IT IS FURTHER ORDERED that the property's assessed and taxable values for the tax years at issue shall be as set forth in this Final Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally shown in this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by the Final Opinion and Judgment within 28 days of the entry of the Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period

[1] The 2006 TV reflects the 2005 TV increased by the 2006 inflation rate multiplier and $1,937,000 of additions from tax year 2005 the parties stipulated to in their Joint Stipulation of Uncontroverted Facts, filed on April 6, 2007.

prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2002 at the rate of 2.78% for calendar year 2003, (ii) after December 31, 2003, at the rate of 2.16% for calendar year 2004, (iii) after December 31, 2004, at the rate of 2.07% for calendar year 2005, (iv) after December 31, 2005, at the rate of 3.66% for calendar year 2006, (v) after December 31, 2006, at the rate of 5.42% for calendar year 2007, (vi) after December 31, 2007, at the rate of 5.81% for calendar year 2008, and (vii) after December 31, 2008, at the rate of 3.31% for calendar year 2009.

MICHIGAN TAX TRIBUNAL

Entered: August 26, 2009 By: Kimbal R. Smith III
sms

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STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL

Palace Sports & Entertainment, Inc.,
Petitioner,

v MTT Docket No. 300519

City of Auburn Hills, Administrative Law Judge Presiding
Respondent. John S. Gilbreath, Jr.

PROPOSED OPINION AND JUDGMENT

INTRODUCTION

This real property tax valuation case came before the Michigan Tax Tribunal for hearing beginning on Tuesday, May 1, 2007, in Lansing, Michigan. Michael B. Shapiro and Daniel L. Stanley, Attorneys at Law, represented Petitioner, Palace Sports & Entertainment, Inc., hereinafter referred to as PSE. Derk W. Beckerleg and Stephanie Simon Morita, Attorneys at Law, represented Respondent, City of Auburn Hills.

At issue is the true cash value of the subject property, known as “The Palace of Auburn Hills” or “The Palace.” The Palace is a multi-use entertainment venue located in the City of Auburn Hills. It is home to several professional sports teams. The tax years at issue are 2003, 2004, 2005 and 2006. In this proceeding, AV refers to assessed value, SEV refers to state equalized value, TV refers to taxable value, and TCV refers to true cash value. The property is classified for taxation purposes as Commercial Real property. The average level of assessment in effect for the subject property's classification for each tax year in question is 50%.

Each party offered testimony and documentary evidence. Petitioner's Exhibits P-1 through P-3, P-5, P-6, P-8 through P-10, and P-12 through P-17 were admitted into evidence.[2] Respondent's Exhibits R-1, R-5, R-10, R167 and R-168 were admitted into evidence.[3] Each party filed a post-hearing brief.

Based on the findings of fact and conclusions of law, the Tribunal relies on the discounted cash flow method. The Tribunal concludes that the true cash value and revised assessments of the subject property are as follows:

2003

ID Number	TCV	SEV	AV	TV
14-02-300-021	$46,000,000	$23,000,000	$23,000,000	$23,000,000

2004

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[2] Petitioner's exhibits consist of the following:

Exhibit 1	Petitioner's Appraisal of the Subject Property.
Exhibit 2	Confidential attachments to Exhibit 1.
Exhibit 3	Property Record Cards for the Subject Property.
Exhibit 5	Photographs of the Subject Property.
Exhibit 6	NCREIF Index for 2002-2003.
Exhibit 7	3rd Quarter 2002 and 1st Quarter 2003 Korpacz survey for national full service lodging.
Exhibit 8	Relevant pages of Korpacz survey for the 4th Quarter of 2002.
Exhibit 9	2000 Blue Ribbon Panel on Baseball Economics.
Exhibit 10	Relevant pages from Ibbotson Associates publications.
Exhibit 12	Photographs of the Subject Property.
Exhibit 13	Oakland County Equalization Forms for the Years at Issue.
Exhibit 14	Discovery Response.
Exhibit 15	2003 Personal Property Tax Bill.
Exhibit 16	2003 Personal Property Statement.
Exhibit 17	Relevant Pages to Marshall's Valuation Service.

[3] Respondent's exhibits consist of the following:

Exhibit 1	Respondent's Appraisal of the Palace of Auburn Hills.
Exhibit 5	Objections to a Portion of Petitioner's April 27, 2004, First Set of Interrogatories And Requests for Production of Documents to Respondent.
Exhibit 10	Aerial Map of the Subject Property.
Exhibit 28	Rezoning Letter.
Exhibit 167	Chart Showing Full-Service Gross Lease and Triple Net Lease.
Exhibit 168	Chart Pertaining to Cost of Occupancy/Market Rent.

ID Number	TCV	SEV	AV	TV
14-02-300-021	$46,000,000	$23,000,000	$23,000,000	$23,000,000

2005

ID Number	TCV	SEV	AV	TV
14-02-300-021	$46,000,000	$23,000,000	$23,000,000	$23,000,000

2006

ID Number	TCV	SEV	AV	TV
14-02-300-021	$46,000,000	$23,000,000	$23,000,000	$23,000,000

PROCEDURAL HISTORY

The 2003 property tax assessments were based on Respondent's estimate of the TCV of the subject property as of December 31, 2002. Petitioner appeared before the March 2003 Board of Review for the City of Auburn Hills to protest the TCV, SEV, AV, and TV values for the subject property. The Board of Review denied the relief requested and affirmed the tax assessments. On June 25, 2003, Petitioner filed a Petition with the Tribunal alleging that Respondent erred in its assessment of true cash value, state equalized value, assessed value, and taxable value for the 2003 tax year. Respondent filed a timely answer. The Tribunal granted Petitioner's motions to amend its original Petition to add subsequent tax years 2004, 2005, and 2006.

PARTIES' CONTENTIONS OF ASSESSED AND TRUE CASH VALUE

Petitioner contends that the property is assessed in excess of 50% of its true cash value and that the actual state equalized values, assessed values, taxable values and true cash values for the tax years 2003, 2004, 2005, and 2006 are as follows:

2003

ID Number	TCV	SEV	AV	TV
14-02-300-021	$30,000,000	$15,000,000	$15,000,000	$15,000,000

2004

ID Number	TCV	SEV	AV	TV
14-02-300-021	$30,000,000	$15,000,000	$15,000,000	$15,000,000

2005

ID Number	TCV	SEV	AV	TV

14-02-300-021	$30,000,000	$15,000,000	$15,000,000	$15,000,000

2006

ID Number	TCV	SEV	AV	TV
14-02-300-021	$30,000,000	$15,000,000	$15,000,000	$15,000,000

Respondent contends that the property is assessed at 50% of its true cash value and that the state equalized values, assessed values, taxable values and true cash values for tax years 2003, 2004, 2005, and 2006 are as follows:

2003

ID Number	TCV	SEV	AV	TV
14-02-300-021	$87,000,000	$43,500,000	$43,500,000	$43,500,000

2004

ID Number	TCV	SEV	AV	TV
14-02-300-021	$87,000,000	$43,500,000	$43,500,000	$43,500,000

2005

ID Number	TCV	SEV	AV	TV
14-02-300-021	$87,000,000	$43,500,000	$43,500,000	$43,500,000

2006

ID Number	TCV	SEV	AV	TV
14-02-300-021	$87,000,000	$43,500,000	$43,500,000	$43,500,000

PETITIONER'S EVIDENCE, APPRAISAL AND EXPERT TESTIMONY

APPRAISAL EVIDENCE

Petitioner submitted an appraisal valuing the subject property as of December 31, 2002, December 31, 2003, December 31, 2004, and December 31, 2005. The appraisal was prepared by Daniel Tomlinson, MAI, with assistance from a business valuation expert, Timothy Cummins. In the appraisal, the three basic appraisal approaches--the cost approach, the sales comparison approach and the income approach--were accounted for. Petitioner claims that the true cash value should be based on the income capitalization method described in the appraisal report.

TRIAL TESTIMONY

Five witnesses were sworn and testified for Petitioner: **Thomas S. Wilson,** President and CEO of PSE; **Kristin Frisbie**, assistant controller for PSE; **Timothy Cummins**; **Daniel Tomlinson**, MAI; and **Hall B. Heaton**.

As background for the appraisal, testimony was provided by **Thomas S. Wilson**. Mr. Wilson testified that he has a bachelor's degree in business from Wayne State University. He worked in sales for the Los Angeles Kings, the Los Angeles Lakers, and the Forum before he returned to Michigan.

Mr. Wilson has been employed by PSE for nineteen years, and the Detroit Pistons basketball team for twenty-nine years. He started as the sales director and he has held the position of President and CEO of PSE for the past eighteen years. Mr. Wilson testified that Petitioner as of 2002 was the owner of The Palace. Petitioner also held the leasehold rights to an arena in Tampa, FL; ownership of the Tampa Bay Lightning hockey team; a small interest in the Tampa Bay Storm football team; the Detroit Fury arena football team; DTE Amphitheater in Clarkston, MI; and the leasehold rights or management contract to Meadowbrook Music Theater.

Mr. Wilson testified that arena operation is not a passive investment. He stated that the operation includes multiple business operations. These include the leasing of suites and sale of suites for different event users; the sale of advertising and sponsorships; and the arrangements for the sale of concessions, novelties and parking operations. Additional operations include the contracting and the making of arrangements for uses of the arena. This includes promotional activities. Continued promotion and use is important to increase revenue. The revenue for an event is typically shared between the arena owner and arena user such as a team or a performer.

Tom Wilson testified that between 1998 and 2002, The Palace was used for 159-186 events/shows per year. Those events/shows included use by the Detroit Pistons, the Detroit Shock of the WNBA, and other sports teams. Each year most of the events at The Palace were a combination of concerts, family and other shows, not for sporting events. The average paid attendance per event is higher for Pistons' games than for any other Palace user category (P-1, Exhibit F).

Mr. Wilson stated that competition in the marketplace comes in two broad forms: competition for the events and competition for the attendees. Venues that compete with The Palace include Joe Louis Arena, Ford Field, Comerica Park, Breslin Center, the Pontiac

Silverdome, Cobo Hall, Fox Theater, the casinos in Detroit and Mt. Pleasant, and vacation venues “up north.” Although the Palace is able to book many local concerts, competition from other venues for concerts and other shows forces down the margins that can be achieved.

Mr. Wilson testified that the arena business or business associated exclusively with The Palace is generally not a lucrative business with very little profit being made by an arena. As an example, Mr. Wilson explained that when Barbara Streisand performed at The Palace for three nights in the early nineties, her ticket prices were the highest The Palace had ever charged. Ms. Streisand made $7,000,000 while The Palace netted $25,000. This process of sharing revenues was the same for sporting and non-sporting events, but Mr. Wilson explained that The Palace was fortunate to retain most of those revenues from Pistons events.

Mr. Wilson testified that the key for maintaining an arena is the need to keep “people in the seats.” While this may mean that a particular event, such as the Michigan State High School Association’s high school basketball tournament, may not generate seat revenue, it may generate revenue from concessions and parking. This is a universal reality of all arena ownership.

As for The Palace as a structure, Mr. Wilson testified that there are functional deficiencies with respect to its configuration. He stated that there is only one concourse circling the interior of the arena, which limits concession points. There are foundation poles located in the middle of the concourse, which impede traffic flow and capacity. The two-body loading bay is uncovered out-of-doors and does not allow unloading directly onto the arena floor, resulting in excess labor and associated set-up costs for events booked at the venue.

Additionally, there are stairs that must be taken to get into the building from the parking areas. Because of this configuration, upon entering the arena proper from the concourse, a patron must walk up or down stairs to get to the various seating levels.

Also, because of the high water table on the property, several problems have developed, such as the sewer system sinking, and water bubbling up through the parking lot concrete throughout the year.

As of December 31, 2002, Mr. Wilson explained the replacement reserve allowance for the property is estimated to be between two and a half to four million dollars. He stated that this figure ends up being higher because there is something always going wrong.

On cross-examination, Respondent questioned Mr. Wilson about Petitioner’s above-market licensing agreement with the Detroit Pistons. Mr. Wilson stated that the typical arrangement between a sports team and an arena is that virtually all revenues, suites, advertising, parts of concessions, and parking go to the club or sports team. In Petitioner's case, virtually all of these revenues, except a portion of the seat revenues, are retained by the arena.

Respondent also focused attention on the trends that were relied upon in Petitioner's discounted cash flow analysis. Petitioner's analysis stated that the existence of several other venues negatively impacted or at least increased competition with respect to attendance, but Mr. Wilson testified that Petitioner had made no report to quantify the exact amount of impact. Mr. Wilson further explained that the number of events that The Palace holds has no correlation with the bottom line; "your profit is not really there."

When asked why Petitioner would spend $22 million on an addition for a building Petitioner says is worth $30 million, Mr. Wilson explained the expenditures were made to "make the thing function." Because of the functional obsolescence of the building, Petitioner found it necessary to create enough room so customers would remain on site to eat rather than leaving because of the cramped quarters.

Also Mr. Wilson testified that the most important requirement for any similar arena venue is to do whatever they can in terms of promotion "to keep the doors open" in order to maximize revenues from primarily concessions and parking.

Petitioner next called **Kristin Frisbie**, assistant controller of financial reporting for Petitioner, to testify on the financial reports listed as Exhibit A (PSE Historic Income Statements), Exhibit B (The Palace Historic Income Statements), and Exhibit E (The Palace of Auburn Hills' Expenses Allocation Analysis). The data from these documents was used in Petitioner's Exhibit 1 (Petitioner's Appraisal of the Subject Property).

Ms. Frisbie testified that she has a bachelor's degree in accounting and that she is a certified public accountant. She has been a CPA for nine years. Upon graduation from college she worked at the accounting firm of Coopers & Lybrand, first as an associate on their auditing staff and then from 1996 to 1998, as a senior associate in the company's financial services advisory group. In 1999, she began her employment with Petitioner and she is currently the assistant controller for financial reporting.

Ms. Frisbie stated that she prepares and/or reviews Petitioner's income and expense statements monthly. She also specifically performs monthly reviews and analysis of all the statements of all Petitioner's companies. Exhibit A shows the operating revenues and expenses of PSE Michigan operations. Exhibit B shows all operating revenues and expenses as recorded in the general ledger for The Palace. Exhibit E shows the summary of findings from Exhibits A and B, the methodology used to allocate the expenses among each of Petitioner's venues and teams, and, finally, total expenses for the subject property.

Ms. Frisbie testified that she allocated operating revenues and expenses from PSE to The Palace. Allocation of expenses were based on actual expenses, percentage of revenues used for those specifically unidentified expenses, seasonal opinion, number of events, management estimates, relative advertising revenue, and relative restaurant sales.

Ms. Frisbie furthered explained that with regard to an invoice identified to a specific venue an allocation would be made to that venue. Unidentified invoices would be defaulted to The Palace or allocated on a percentage basis, this percentage being based on revenues.

Ms. Frisbie stated that she and the chief financial officer for Petitioner, John O'Reilly, went through the general ledger each line item, line by line, to determine the most appropriate way to allocate the expenses to the venues and teams owned by Petitioner. The results were included in the Exhibits A, B and C.

After Mr. Wilson and Ms. Frisbie testified, Petitioner then called **Timothy Cummins**. Mr. Cummins is the Managing Director in charge of the Chicago office of Stout Risius Ross Inc. (hereinafter referred to as SRR). SRR is a corporate finance financial advisory firm. As part of its services it provides valuation and financial opinions. Mr. Cummins is responsible for all the valuation assignments produced at the Chicago office and for all the sports-related appraisals produced by any of the firm's offices**.** It was noted on cross-examination that Mr. Cummins has no certifications or licenses in real estate or business valuations, such as an MAI designation.

Mr. Cummins testified that he received a bachelor's degree in business administration from the University of Notre Dame in South Bend, Indiana and a Masters of Business Administration degree in financing and accounting from the University of Chicago. He worked for seven years in the accounting firm of PricewaterhouseCoopers in its corporate value consulting group. Some of his worked included the valuation of sports venues. He was recruited to SRR.

Mr. Cummins has been an appraiser for thirteen years, and has been involved in valuing arenas for approximately twelve years. These venues include hockey and basketball arenas, and baseball and football stadiums. Mr. Cummins was certified as an expert for the valuation of business enterprises, operating arenas, and sports franchises.

Mr. Cummins testified he assisted in the preparation of the appraisals filed in this case. He visited the site on many occasions, both to assess the structure and its utility, and also in conjunction with revenue materials provided by PSE.

He determined the highest and best use of the subject property is as its use as an arena.

In determining a market value, he relied upon an income approach, specifically, a discounted cash flow, which he used in developing a business enterprise valuation conclusion. The projected cash flows are based on market revenues before deductions for federal income taxes and property taxes. The market revenues are based upon the existing revenues.

Mr. Cummins testified that there are factors relevant to the valuation of the business enterprise that owns The Palace. These factors include population characteristic, the general environment of location, new and existing venues as competition, and the existence and record of professional, amateur, and collegiate sports teams.

Mr. Cummins stated that there are areas of functional inutility of The Palace, which impact value as well. These include the physical configuration of the facility with its smaller concourse and the lack of loading docks. Additions have been made in an attempt to ameliorate some of these problems.

As for the development of the elements of the discounted cash flow, Mr. Cummins summarized the projections for various revenue and expense line items for the operation of the subject property. As to Exhibit V (Discounted Cash Flow Method-Summary Conclusion), the exhibit includes the cash flow for remaining years of the useful life of the structure and the reversionary cash flow at the ends of the subject's useful life. Two types of cash flows were determined. The first type was the projected cash flow from the continued operation of The Palace amounting to $12,308,000. The second type is the reversionary value of $12,675,000 for the land at the end of the The Palace's useful life. The reversionary land value consisted of $9,000,000 as of the date of valuation "less expected demolition costs, and that net amount grown at an inflationary rate until the expected end of the useful life of the facility." Mr. Cummins then made an explanation of how the value of personal property was computed for the Palace. The sum after the deduction of the personal property and intangible personal property was $30,000,000 using this method.

Mr. Cummins testified as to the exhibits in the appraisals, those being Exhibit C-P and their relationship to the final business enterprise value as found in Exhibit U. Exhibit C (the event summary schedule for the previous years 1998 through 2002), and the other exhibits show summaries of events, ticket sales, additional information on gross and net revenue amounts generated from concessions, novelties, parking, and restaurant management. Exhibit F is the per event average information derived from Exhibit C, translated into historical per event basis and then calculated on a weighted average of those historical statistics. Exhibit G is Mr. Cummins projections of the per event assumption for the statistics from Exhibit F.

Exhibit D is an analysis of nine arm's-length lease agreements from other NBA teams. Coupled with P-1-139, which is a summary of the terms from each of the license agreements, Exhibit D shows trends of revenue sharing based on arm's-length lease agreements between NBA teams and the venues they use. Exhibit H shows the revenue allocation based upon the lease or license agreements in place for The Palace, as well as revenue based on analysis of the arm's-length allocations from Exhibit D.

Exhibit J is Mr. Cummins' detailed calculation of the event rental income estimate that flows to line 1 of Exhibit U on the projected income streams. Exhibit K is Cummins' calculation of the concessions revenue the Palace could expect to generate and keep as the owner and operator of the Palace under market based arrangements, and shown on line 2 of Exhibit U. Exhibit L is a calculation of anticipated net parking revenue and shown on line 3 of Exhibit U. Exhibit M is projections of the net novelty revenue which can be expected based upon market based agreements with licensees or tenants and shown on line 4 of Exhibit U. Exhibit N is an analysis of Palace Restaurant Management Group's historical results and an anticipated projection of revenue, shown in line 5 of Exhibit U.

Exhibit O is an analysis of anticipated suite revenue shown on line 12 of Exhibit U. Exhibit P is both an analysis of historical and a three-percent growth projection of anticipated advertising revenue, and shown on line 13 of Exhibit U. Exhibit Q is a naming rights agreement analysis and the projection of revenue from this is shown on line 14 of Exhibit U. Exhibit R shows the projected revenue from market rent of The Palace office space and shown on line 15 of Exhibit U. Exhibit S shows historical and projected revenues from royalty, studio and other revenue and is expressed on line 16 of Exhibit U.

Mr. Cummins was asked to explain his process for calculating and projecting expenses as shown on lines 7 to 9 and 19 through 27 of Exhibit U. Mr. Cummins did so, returning to the correlation of the exhibits as stated above**.** Exhibit I is an analysis of the useful life of NBA facilities. It shows the average NBA facility's useful life is 22 years and the median is 24 years. Mr. Cummins concluded to a useful life of 30 years for The Palace.

Mr. Cummins testified as to how he determined the discount rate. He explained that because the cash flow used was before federal income tax, it was imperative to use a before federal income tax discount rate. Furthermore, he stated that because an owner or operator of the Palace would expect to pay property tax, the discount rate must be tax adjusted to reflect that responsibility. He concluded to a discount rate of 14.8% and added a property tax adjustment of 2.2%, for a total discount rate of 17%.

Mr. Cummins testified that since market information for NBA and NHL type arenas was hard to come by, he tried to find forward-looking estimates of return requirements for properties most similar economically to a property like the Palace. He determined that The Palace was most similar economically to a full-service hotel.

Mr. Cummins stated that both The Palace and a full-service hotel rely primarily on some form of rental income. Both have food service operations, and both are going concerns and are reliant on the underlying real property, tangible personal property, and intangible personal property to generate the cash flows estimated that are generated by the operation of such an asset. Based on this belief, Cummins used Korpacz Real Estate Investor Survey to aid in researching expected rates of return for full-service hotels. Korpacz Real Estate Investor Survey stated the internal rate of return for full-service hotels was between 11.5% and 15%.

Mr. Cummins ultimately concluded to 14.8% based on the belief that operating an arena held more risk than operating an institutional full-service hotel. In his opinion, the risk comes from a heavy dependence upon the on-court performance of potential licensees or tenants, the possibility of those tenants departing to another venue, and the ability to attract entertainment acts and events over local competition. He used this rate as his discount rate in capitalizing his income stream and reversion value to reach his final market value using the income approach.

Next, Mr. Cummins explained Petitioner's "version of a cost approach based upon the cost of improvements to The Palace of Auburn Hills." Mr. Cummins stated that the total historical cost computed to $83,479,025 based on information provided from the city assessor, as well as information from Petitioner from improvements made after 1988. The effective reproduction costs were determined to be $123,410,910. Depreciation percentage information was drawn from his sales comparison approach. However, Mr. Cummins stated that the cost approach is not as reliable an indication of value because of the large amount of depreciation applied.

As to the sales comparison approach Mr. Cummins testified that he reviewed sales made from 1997 to the end of 2002. According to Mr. Cummins, he was unable to identify any sale transaction that included the sale of a stand-alone arena with a major league tenant with sufficient financial disclosure to make a meaningful comparison. Therefore, he did not ultimately rely upon an indication of value in the sales comparison approach to reach a final value for the subject property.

On cross-examination Mr. Cummins stated that the license agreement between PSE and the Pistons was not market as of the valuation date, thus Mr. Cummins went to the market to determine appropriate license terms. However, Mr. Cummins did not do the same for Palace expenses. Mr. Cummins explained that he did not compare operations of many other arenas to verify the expenses because, in his opinion, the actual expenses for The Palace did not seem unreasonable.

Also on cross-examination, Mr. Cummins was asked why, rather than valuing PSE as an entire entity in accordance with Internal Revenue Ruling 59-60, he simply valued The Palace. Mr. Cummins stated he would have performed the valuation under that method if that was what he had been asked to do, but he was asked to value The Palace. Mr. Cummins stated further that the information from Palace Sports and Entertainment was relied upon to do the valuation of the Palace, but SRR was not asked to value PSE as an entity, or all of its ventures. Mr. Cummins stated that in his valuation process he was trying to start with a value for the going concern value of The Palace. From this point he then estimated the value of the non-real property assets of The Palace. These were subtracted from the going concern value to provide a value of the real property value of the Palace for a prospective purchaser of the Palace.

Respondent's attorney also pointed out that Mr. Cummins made no adjustments to market leases between the different arenas on Exhibit D. Mr. Cummins stated, however, that Exhibit D is simply a statement of the facts as it relates to those leases that were in place. It was also pointed out that although SRR's sales comparison did not come to a conclusion of value, the purpose of that valuation was as a check of the income approach.

Respondent's attorney then compared the Korpacz information of full-service hotels to the Palace. It was noted that as of the valuation date, the Pistons had two years remaining on its right to occupy The Palace and then an option to extend for five years. The average lease term for suites at The Palace is three to five years. A hotel deals on a night-to-night basis with its clients.

Petitioner then called **Daniel Tomlinson**, MAI (Member of the Appraisal Institute) and managing director in the real estate group for SRR. Mr. Tomlinson was offered and certified as an expert in the valuation of real property. Mr. Tomlinson provided support and collaboration to Mr. Cummins in valuing the property primarily pertaining to the cost approach and other factors within the appraisal, such as the office revenue projections.

Mr. Tomlinson appraised the property as zoned I-2, but stated that if the subject property were all zoned T&R, it would have increased the unit rate slightly. Mr. Tomlinson concluded to a highest and best use of the property as vacant to be "development of industrial uses," and the highest and best use of the subject property as improved as its existing use.

Mr. Tomlinson then discussed his land comparables. Mr. Tomlinson explained his comparable land sales through Exhibit Z and P1-118. Mr. Tomlinson concluded that there was a range from $1.25 per square foot to a high of $2.29 per square foot, with an average of $1.87. Mr. Tomlinson felt the subject parcel would command a price of two dollars per square foot, indicating a fair market value of $9 million as of the valuation date.

Mr. Tomlinson next addressed the land value less demolition cost. Mr. Tomlinson looked at Marshall Valuation Service, Section 96 for February 2003, and concluded the Palace would be a class B structure. Mr. Tomlinson noted that the Palace is 600,000 square feet and could possibly be imploded for demolition purposes. Mr. Tomlinson concluded to a demolition cost of $1.1 million.

Mr. Tomlinson also explained his approach to valuing the Palace's class C resort liquor license. Mr. Tomlinson spoke with Steve Dornbos for assistance. Mr. Dornbos has been involved in over 600 liquor license transactions. It was stated that Resort licenses will tend to sell for $70,000, but the Palace license is nontransferable. Because it would pass with the transfer of the property, Mr. Tomlinson concluded that $50,000 would be an appropriate value for the liquor license.

As stated on page 2 of Exhibit R used in Mr. Cummins' analysis, Mr. Tomlinson concluded to a market rent of $15 per square foot based upon the gross and net lease terms stated in a market rent survey. Mr. Tomlinson then multiplied the total 42,900 square feet of office area times the $15 per square foot market rent to show potential rental revenue of $643,500. Mr. Tomlinson then multiplied the potential rental revenue to the 40 percent of excess office space to conclude to the $257,000 total office rent generated by the Palace.

Hall B. Heaton was called as a rebuttal witness to refute the discount rate as determined by Respondent's expert Timothy Lowe. Mr. Heaton is a finance professor at Brigham Young University and teaches, at the master's level, a course on the proper selection and application of discount rates.

Mr. Heaton testified that he believed Mr. Lowe's analysis of the business information was not competent. Mr. Heaton stated there are five problems with Mr. Lowe's use of the Ibbotson Associates data. Heaton testified that the first problem was that the wrong time-frame was used. Using the wrong date of the material changed the correct percentage from 9.24 in 2003 to the incorrect percentage of 7.80 in 2004.

Mr. Heaton testified his second problem was that the data is on an after-tax basis, and to use it for pre-tax cash flows, an adjustment is necessary. Mr. Heaton testified that the 9.24 percent after-tax rate indicates a pre-tax rate in excess of 14 percent. Heaton stated his third problem was with the adjustment for size. The Ibbotson data shows that a firm in the smallest decile (a statistical term), which is at or smaller than $104 million in 2002, has a size premium of 5.67 percent.

Mr. Heaton's fourth problem was with the liquidity of the property. Mr. Heaton stated that information from Ibbotson comes from publicly traded common stock that is easy to buy and sell, where the subject property is not easy to buy and sell, and therefore requires a liquidity premium.

Mr. Heaton's fifth problem was that Mr. Lowe compared the weighted average cost from Ibbotson with the Korpacz report and the Blue Ribbon report. Mr. Heaton believed that there is not enough information in these reports to know what one is comparing.

On cross-examination, Mr. Heaton testified that he used the corporate tax rate of 35 percent for federal income tax in his equation to adjust the 9.24 percent after-tax cash flows Mr. Lowe used to the equivalent 14 plus percent pre-tax rate.

RESPONDENT'S EVIDENCE, APPRAISAL AND EXPERT TESTIMONY

APPRAISAL EVIDENCE

Respondent submitted an appraisal valuing the subject property as of December 31, 2002, December 31, 2003, December 31, 2004, and December 31, 2005. The appraisal was prepared by Timothy Ralph Lowe, MAI, with input from their business value expert, Daniel Barrett.

TRIAL TESTIMONY

Two witnesses were sworn and testified for Respondent: **Daniel Barrett**, and **Timothy Lowe**, MAI.

Respondent's case was initiated through the testimony of **Daniel Barrett**, the founder of and consultant with Barrett Sports Group, LLC. Mr. Barrett was qualified as an expert in the analysis and evaluation of sports teams, sports franchises, sports arenas and public assembly facilities, as well as in the economics, development and financing of the same.

Mr. Barrett testified that he received a bachelor's degree in economics from UCLA and a Masters of Business Administration in financing and real estate from the University of Southern California. He explained that over time he had accumulated data regarding a number of the National Basketball Association (NBA) franchises to augment his general expertise in evaluating sports franchises. He performed analyses to determine the feasibility of the located sports franchises in certain areas of the country.

Upon direct-examination, Mr. Barrett explained that he collaborated with Timothy Ralph Lowe, MAI. He prepared a market analysis of sports franchises. This analysis was done in order to allocate revenues and expenses between a team and a building when an organization owns and controls several businesses. Ultimately, this analysis leads to a better understanding of market rents.

Mr. Barrett said that it is necessary to look at the economics of the NBA to understand the risk on a going forward basis for an investor as well as to develop assumptions to be used in an income approach. This is true in spite of the fact that the team may only be one of the uses of the facility. Mr. Barrett opined that if one does not understand the economics of the NBA, how the economics relates to the team, and how the team and the arena interact, it is not possible to understand how to allocate revenues and expenses.

Mr. Barrett's evaluation included a review of the collective bargaining agreement reached after the 1998-99 season between the NBA teams and the league basketball players. He concluded that the agreement was good and it added stability to the NBA. A league-wide television agreement likewise adds stability.

Mr. Barrett also reviewed the overall stability of the NBA by analyzing individual team performance and overall attendance, revenue sharing and merchandising, media contracts, revenues in general, and current trends in arena construction. Mr. Barrett stated that as of December 31, 2002, the Palace was still competitive with other arenas in regard to revenue generating capabilities, "number of events, attendance, et cetera."

Mr. Barrett explained that the impact of the approximately $57 million improvements made to the Palace positively impacted revenue generation, operational issues, and repair and maintenance. Mr. Barrett explained that even with the deficiencies testified to by earlier witnesses, The Palace was still clearly competitive, particularly from a revenue generating standpoint.

Mr. Barrett testified that there is reference material written on arena development and economics, which state that there is a relationship between the team and the arena, and that you cannot extract one from the other. Mr. Barrett stated that the team's performance can drive revenues, but there are other factors that impact the overall enterprise including the market size, the corporate base, and competition. Mr. Barrett explained that the economics of not having a major league tenant in a sports entertainment facility are significantly different to arenas with major league tenants because those arenas without major league tenants are unable to generate the same revenues from premium seating and advertising.

As far as valuing the subject property, Mr. Barrett discussed three different analyses regarding the income approach: "the equivalent performance analysis based on team average," "equivalent performance analysis based on Pistons performance," and a "traditional cash flow analysis." The "equivalent performance analysis based on team average" is used to determine what the market rent or occupancy cost is for a team. It is based upon the structure of the relationship between the team and the arena: the lease and the overall investment.

The “equivalent performance analysis based on Pistons performance” is akin to the previous approach. The Pistons assumptions or lease terms and actual performance are applied to the lease terms of other teams being looked at.

The “traditional cash flow method” was used from an investor’s point of view. Mr. Barrett explained that three approaches were used as checks on each other, and to make sure that assumptions made were reasonable.

Mr. Barrett testified that while doing his analysis in the “equivalent performance analysis based on team average,” the expense information provided by PSE was deemed not reasonable or reliable. This conclusion was based on a combination of factors, but mostly from industry knowledge reviewing financial statements and operating information for approximately 26 NBA and NHL arenas. Mr. Barrett testified that, in his opinion, no arena has operating expenses of $51 million or anywhere close to that number. Mr. Barrett concluded that average operating expenses for an NBA arena were approximately $10 million.

Mr. Barrett testified that another factor that had to be analyzed generally is revenue sharing between the team and the venue. Mr. Barrett stated generally that there was a fifty percent sharing of the $2 million revenue for naming rights. The areas of concessions, novelties, advertising, parking, luxury suites, and club seats also fall under revenue sharing between the team and the venue. Mr. Barrett testified that in addition to expense reimbursements paid by the team, the teams also pay some direct expenses including game day expenses, annual operating expenses, and capital repairs and replacement. Mr. Barrett also stated that team up-front investments were treated as pre-paid rent because this is how these components are generally treated.

Mr. Barrett discussed background information offered in Respondent’s appraisal regarding NBA attendance, ticket prices, total event attendance, and total events of comparable arenas. Mr. Barrett explained that although he could have simply stated the background figures in generalities, from his own personal experience and knowledge, he felt that putting the graphs together in the appraisal would give the information more credibility.

Mr. Barrett next explained staffing and services typically provided by an arena owner. After listing a typical scenario for an arena, Mr. Barrett explained why there are differences in this area from one arena to the next. Compared to other facilities, Mr. Barrett opined that The Palace figures for salary, wages, and benefits expenses did not seem reasonable. The same process of looking at arenas generally was also followed in looking at utility expenses, general and administrative overhead costs, supplies and materials, insurance, marketing and advertising, and game day expenses. Mr. Barrett also cumulated the expense information and accounted for property taxes and came to the conclusion that The Palace expenses were too high and unreasonable by industry standards.

Mr. Barrett testified about the equivalent performance analysis based on team average performance income approach. He stated that this approach is what he and Mr. Lowe would generally use to develop reasonable assumptions about an NBA single tenant arena. The information to develop these assumptions came from information from the earlier mentioned charts, from other buildings, and from 18 years experience in the business. Mr. Barrett explained that the assumptions were not NBA averages, but assumptions based on what would be reasonable for The Palace.

Mr. Barrett was then asked about the development of the discount rate used in Respondent's appraisal. Mr. Barrett stated that although Mr. Lowe concluded to the final value, Mr. Barrett did participate in developing that conclusion. Mr. Barrett testified that many sources were used including NBA Cost of Capital, 2000 Blue Ribbon Panel on Baseball Economics, Ibbotson Associates, Mr. Barrett's and Mr. Lowe's own opinions as to an expectation of return, risks, and other factors. Mr. Barrett testified that Mr. Lowe concluded to a discount rate of ten percent, and that he agreed with that conclusion.

Mr. Barrett also testified that he did not think that a discount rate for an arena should be based on full-service hotel properties for several reasons, but mainly because the two properties were too dissimilar. Arenas have long-term team tenants and customers, advertisers and sponsors, and there are long-term naming rights. Mr. Barrett stated that an arena has contractually obligated income, which provides security and stability. Under this income analysis, a value of $72,600,000 was ultimately achieved.

Mr. Barrett testified as to the second income approach, which was based on the actual performance of the Detroit Pistons. The assumptions for this approach used Pistons performance as opposed to market average expectations. Respondents, however, did not used Pistons operating expenses, club seats, parking, and capital repairs because they did not find that information reliable. Under this approach, a value of $79,800,000 was concluded to.

Mr. Barrett testified to the third income approach – a traditional cash flow analysis. He state that he and Mr. Lowe developed assumptions for many of the factors based on industry knowledge and from portions of the information provided by Petitioner. Allocations of some revenue were made between the arena and the team, while other revenue was kept by the arena or the team alone. For operating expenses, he and Mr. Lowe considered the benchmarking information they had: other arenas, multi-tenant buildings and a single-tenant building, and made an assumption of a market rate operating expense number and then “bumped it up” 50% over what they thought a typical building would operate at in the Detroit marketplace. Under this approach, a value of $86,900,000 was concluded to.

For the sales comparison approach, Mr. Barrett’s contribution was to identified, compiled, and verified information from comparable arenas/franchises. Mr. Barrett identified eight transactions he felt were comparable to the subject property. The comparables were chosen because they were stand-alone facilities. Team arena transactions were considered, but not included in the comparison. Mr. Barrett testified that Petitioner’s comparables were not appropriate because they were all NHL transactions. Mr. Barrett testified that NHL teams, buildings, and economics are quite different from the economics of the NBA, and the resulting economics of the buildings in which they play are also different.

Mr. Barrett testified that he contributed little to the cost approach.

Mr. Barrett stated that he believed the Pistons would stay in The Palace if it sold because relocation alternatives are very limited. Mr. Barrett continued by saying that if the Pistons left The Palace, another NBA team would occupy the building because of the revenue generated out of The Palace.

Respondent next called **Timothy Ralph Lowe,** MAI, CRE, FRICS (Fellow, Royal Institution of Chartered Surveyors), and founder of Waronzof Associates, a real estate consulting and valuation firm. Mr. Lowe was a Director in the Real Estate Consulting and Litigation Practice with Deloitte & Touche in Los Angeles, and earlier, a Vice President and Chief Appraiser with Arthur Gimmy International in San Francisco. Mr. Lowe is a designated member of the Appraisal Institute (MAI) and is a member of The Counselors of Real Estate (CRE). Mr. Lowe was offered and certified as an expert in the valuation of real property.

Mr. Lowe stated that he believed there is sufficient data for one to appropriately conclude to a reliable estimate of value through each of the three main approaches, even though it is common to not have enough information to develop some approaches for special purpose properties.

Mr. Lowe testified that Respondent's appraisal focused on NBA arenas because the subject is this type of property. Mr. Lowe concluded to a highest and best use as vacant as a technology and research use, which in turn dictated the land comparables used. Mr. Lowe also concluded that the existing use was the highest and best use as improved. Mr. Lowe added that he believed that modification or alteration to The Palace is not necessary for The Palace to remain competitive or financially feasible.

Mr. Lowe stated he believed the effective age of The Palace to be 10 years, effective age of the office addition to be 6 years, effective age of the training facility to be 8 years, and the effective age of the Harmon Road garage to be 15 years. In terms of functionality and competitiveness, Mr. Lowe stated that The Palace still meets a modern standard. Mr. Lowe concluded that there was insufficient evidence of functional problems that would result in impairment to the net operating income or productivity of the property.

Mr. Lowe stated that a cost approach was developed in the appraisal. Mr. Lowe referred to the Palace as two buildings and one economic unit because of the office addition having an atypically large amount of office space. Mr. Lowe testified that he ultimately concluded that the office space is serviceable, that it produces its full value, and he does not believe there is any obsolescence that should be charged against that portion of the arena. Mr. Lowe also stated he did not make any functional obsolescence adjustments to reflect any expectation of revenue deficiency.

Mr. Lowe explained that the cost approach method constituted an estimation of land value made from the sales comparison approach coupled with the depreciated improvements costs. The costs are calculated and depreciated for physical wear and tear. An additional deduction is made for obsolescence associated with public investment.

Mr. Lowe testified that the construction costs came from two sources. The first approach used costs and adjustments from comparable NBA arenas and concluded to a cost new per seat of $9,750. The second approach used Marshall & Swift Valuation Service, which resulted in a cost per seat of $6,901. In reconciling the two cost indicators, Mr. Lowe stated that he rejected the Marshall indication because it is not reliable for special purpose properties. He also stated the Marshall Service is routinely on the low side and Mr. Lowe believed the comparable cost data was very good. Mr. Lowe then testified to an estimate of replacement cost of $215 million as of December 31, 2002 and $220 million as of December 31, 2003.

Mr. Lowe also stated that cost analysis was performed on the ancillary buildings on the subject property using Marshall. Costs concluded to for the training facility, office atrium, and the Harmon Road garage were $16,984,000 for 2002 and $17,691,000 for 2003. Finally, Mr. Lowe stated that total replacement cost for the subject property improvements, the arena and the ancillary buildings were concluded to be $231,984,000 on December 31, 2002 and $237,691,000 on December 31, 2003.

Mr. Lowe testified that physical depreciation was estimated for the subject improvements using Marshall Valuation. Mr. Lowe stated that the estimated physical depreciation for the arena was 21 percent, 16 percent for the training facility, and 26 percent for the Harmon Road garage. The total deducted physical depreciation came to $47,889,940. Mr. Lowe also testified that he concluded that functional obsolescence did not exist. Mr. Lowe stated the measure of functional obsolescence is shown in an income producing property if there is impairment to net income. Mr. Lowe further stated that he believed there is no clear evidence that the net income for the property is really impaired, and absent that evidence, functional obsolescence in a material amount does not exist.

Mr. Lowe then testified relative to the external obsolescence of public-private partnerships. Mr. Lowe testified that the only way that public investment can be properly dealt with in the context of appraising a property is to treat the public investment as a form of obsolescence. Mr. Lowe testified that the value of this form of external obsolescence was derived from information of stadium projects across the country and was reflected as a function of the public contribution. Mr. Lowe ultimately concluded to external obsolescence of $110,000,000 and deducted this from the replacement cost new for the subject property.

In conclusion, Mr. Lowe testified that in his cost approach he took the replacement cost new for the arena, the excess portion of the office building, the training facility and the Harmon Road garage; deducted physical depreciation; made no deduction for functional obsolescence; deducted for external obsolescence; added the contributory value of site improvements; and added the value of the land vacant. Mr. Lowe then concluded to an indicated value, rounded to $98,800,000 using this approach.

Mr. Lowe testified that he used seven arenas and eight sales compiled by Mr. Barrett in the sales comparison approach. From this information, Mr. Lowe testified that he then made adjustments to make the comparables as much like the subject property as he could. Adjustments were made for inflation, physical condition and age, seating, team presence, bankruptcy at time of sale, fee interest, ancillary buildings, and market conditions. After making adjustments, Mr. Lowe concluded that a range from $66 million to $95 million emerged. From this approach, Mr. Lowe testified that he concluded to a value of $90 million for the subject property.

Mr. Lowe next valued the subject property using the income capitalization approach. Mr. Lowe stated that there were three separate income analyses performed in the income approach referring to Mr. Barrett's work. Ultimately, he used a discounted cash flow method basis on the materials developed by Mr. Barrett. To use this method he needed to develop a discount rate. Mr. Lowe stated that he considered Ibbotson, Korpacz, NCREIF (National Council of Real Estate Investment Fiduciaries), the 2000 Blue Ribbon panel on baseball economics, as well as interest rate ranges provided by banks. Mr. Lowe testified that he gave the most weight to the 2000 Blue Ribbon panel because it most similarly dealt with the issues at hand. Mr. Lowe stated that he felt a discount rate based on full-service hotel lodging properties was not appropriate for a sports facility because an arena has long-term leases, contracts with teams and advertisers, and seat and suite holders. Mr. Lowe also felt it is inappropriate because any kind of professional sports investment where the dominant style of ownership of the arena is in conjunction with the team is dominated by the expectations of the sports franchise as the fundamental source of return of investment. Mr. Lowe testified that he concluded to a 10% discount rate.

Mr. Lowe further testified that in developing his discounted cash flow he determined a typical life for the subject arena to be thirty years but stated that there are not good clues from the marketplace as to how long this next generation of arenas will survive. Mr. Lowe stated he indicated the subject property had an effective age of ten years, and a remaining economic life of twenty years. Mr. Lowe also stated that he concluded to a reversion value of the subject property to be $20,551,000 at the end of the twenty year period.

Mr. Lowe also briefly explained his income approaches. Mr. Lowe provided values based upon the equivalent performance analysis based upon team averages approach, equivalent performance analysis based on Pistons team performance approach, and the traditional cash flow approach. Each approach added the contributory value of the ancillary improvements to the total value. In reconciling the three approaches, Mr. Lowe testified that the equivalent performance analysis based on Pistons team performance approach best reflected the sum of influences on the subject property. And the value reached in that approach was $94,040,000.

Mr. Lowe then explained his final reconciliation in concluding to a final value for the subject property. Mr. Lowe stated he gave most weight to the income approach because it allowed him to deal with the income patterns that he anticipated in the subject property, and it is the approach that a financial investor or probable buyer would use in considering acquisition. Mr. Lowe then testified that his ultimate indicated true cash value of the subject property as of December 31, 2002 was $87 million.

On cross-examination, Petitioner's attorney questioned Mr. Lowe on his discount rate. Mr. Lowe testified that the 2000 Blue Ribbon panel was based on sales of clubs and interests in venues. Mr. Lowe also stated that he had no knowledge of the arrangements between the baseball clubs and the venue for any team listed in the 2000 Blue Ribbon panel. Mr. Lowe also admitted that he used the 2004 edition of Ibbotson and not the 2002 edition, and that the weighted average cost of capital reported by Ibbotson in 2002 is significantly higher than the rate used from 2004. Mr. Lowe also admitted that Ibbotson reported historical returns and not expected returns, as well as after income tax rates.

Mr. Lowe was asked about his opinion as to the difference in valuing an arena with an NBA team and an arena without an NBA team. Mr. Lowe testified that there is a $40 million to $60 million difference between an arena with an NBA team and an arena without an NBA team. As an example, Lowe testified that the market value of the Corel Center in Ottawa, Canada would be worth $40 million to $60 million more if there was an NBA team present at that arena. Lowe further stated that the subject arena's market value would change from $87 million to approximately $27 million if the NBA team were to leave the Palace.

Mr. Lowe also testified on cross-examination that in his sales comparison approach, none of the comparable sales constituted the conveyance of a fee simple interest. Mr. Lowe testified that in his appraisal, he concluded the subject property would be sold for fee simple interest and all leases would become market rent. Mr. Lowe asked about the impact of market and above market rent in leases and licenses on the sale price. Mr. Lowe testified that in some comparables, he did not know if there was a lease in hand at the time of sale, and furthermore, if there was a lease, if it reflected market terms. When asked about the adjustments in the sales comparison approach, Mr. Lowe did not know or did not recall what information he used to make those adjustments.

FINDINGS OF FACT[4]

The subject property consists of the real property with improvements that include an arena and ancillary buildings. The arena, known as the Palace of Auburn Hills ("The Palace"), is located in Auburn Hills, Oakland County, Michigan and has been the home for all relevant times hereto of the National Basketball Association team, the Detroit Pistons.

Construction of the subject arena was completed in 1988. The expected total useful life of an arena is thirty years. The subject site is located near Lapeer Road and I-75.

The Palace's arena seating capacity is approximately 22,000. The Palace includes 180 suites on three levels – 80 of the suites are located "in the rafters." The Palace's lower level suites are located 16 rows off the floor and the middle level suites are located 24 rows off the floor.

The Palace is used for sporting events and other events, such as concerts. The Palace competes with other venues for both events and attendees. Competition historically and currently comes from Joe Louis Arena, Ford Field, Comerica Park, Breslin Center, the Pontiac Silverdome, Cobo Hall, Fox Theater and the casinos in Detroit, Mt. Pleasant and "up north".

As of December 31, 2002, The Palace was one of the oldest arenas used by an NBA team. While it was considered to be state of the art at its inception, more recent arenas have been designed to improve pedestrian movement, with more spacious concourses, to allow for the possibility to capture greater revenue. Nevertheless, The Palace remains competitive or financially feasible.

As constructed in 1988, the office space in The Palace was inadequate for operating The Palace. In 1996, Petitioner constructed an atrium to provide better access for patrons entering the arena. Also in 1996, Petitioner constructed an office area addition to not only provide adequate office space to The Palace, but additional office space for Petitioner's use in other

[4] This section is a "concise, separate, statement of facts" within the meaning of MCL 205.751; and, unless stated otherwise, the matters stated or summarized are "findings of fact" within the meaning of 1969 PA 306, MCL 24.285.

business operations. The subject site also includes a 42,496 square foot training or practice facility and a 4,900 square foot Harmon Road garage storage area and lounge for use by Palace parking staff. The impact of these improvements made to The Palace has positively affected revenue generation, operational issues, and repair and maintenance.

In its current configuration, The Palace does have functional deficiencies. There is only one concourse circling the interior of the arena, which limits concession points. There are foundation poles located in the middle of the concourse, which impede traffic flow and capacity. The two-body loading bay is uncovered out-of-doors and does not allow unloading directly onto the arena floor. This fact results in excess labor and associated set-up costs for events booked at the venue. Newer arenas have six to eight loading bays to allow trucks access to the arena floor. Additionally, the high water table on the property creates several problems, such as the sewer system sinking, and water bubbling up through the parking lot concrete throughout the year.

The Palace generates revenue from ticket/event sales, the sale of concessions, parking and office rental. The Palace has a lease arrangement with two basketball franchises, the Detroit Pistons of the NBA and the Detroit Shock, of the WNBA. The Palace has not sold naming rights.

Petitioner valued the subject property utilizing the three approaches to value with the most reliance placed upon a variation of the income capitalization known as the discounted cash flow method. This method requires the determination and duration of the income streams, as well as the quantity and timing of a reversion value, discounting each to its present value through the use of a specified yield rate. The evidentiary support for the valuation conclusion derived from the actual revenue and expenses. These evolved from monthly income and expense statements for PSE from which allocations of each were made to The Palace.

The development of the discounted cash flow conclusion was based on an analysis of the operation of the subject property from 1998 through 2002. This included a review of events, ticket sales, concession, parking novelties and all sources of revenue. Included in the analysis was review of arm's-length lease agreements from other NBA teams. This showed trends of revenue sharing based on arm's-length lease agreements between NBA teams and the venues they use.

As for the discount rate, Petitioner concluded that market information for NBA and NHL type arenas was scarce. Petitioner concluded that The Palace was most similar economically to a full-service hotel because both types of property rely primarily on some form of rental income. Based on this belief, Petitioner used Korpacz Real Estate Investor Survey to aid in researching expected rates of return for full-service hotels. Korpacz Real Estate Investor Survey stated the internal rate of return for full-service hotels was between 11.5% and 15%.

Ultimately, Petitioner used to 14.8% rate based on the belief that operating an arena held more risk than operating an institutional full-service hotel. The risk came from a heavy dependence upon the on-court performance of potential licensees or tenants, the possibility of those tenants such as the Detroit Pistons departing to another venue, and the ability to attract entertainment acts and events over local competition.

In fact, minimizing this risk, arenas such as The Palace have long-term team tenants and customers, advertisers and sponsors, and the potential long term naming rights and the contractually obligated income derived from this source. All these factors provide security and stability and reduce the risk of the investment.

Respondent also valued the property using all three approaches. The evidentiary basis for all three was a comparative market analysis of sports franchises. This analysis was done in order to allocate revenues and expenses between a team and its arenas. Additionally, Respondent analyzed the economics of the NBA to understand the risk of going forward for an investor and to understand how to allocate revenues and expenses. This data was flawed because it was based on franchises having differing configurations and characteristics associated with the relationship between the arenas and the associated teams. This led adjustments based on industry presumptions rather than on hard statistics. While the general nature of this analysis could be very useful in negotiating the purchase of a sports franchise, it has less utility in valuing a sports arena because it lacks specificity.

For these reasons, The Tribunal finds the valuation methodology that is the most reliable indicator of the property's true cash value for the tax years at issue is Petitioner's discounted cash flow with adjustments made to the discount rate to reflect the existence of fixed long term revenue generation.

CONCLUSIONS OF LAW

The assessment of real and personal property in Michigan is governed by the constitutional standard that property shall not be assessed in excess of 50% of its true cash value, as equalized, and that increases in the taxable value are limited by statutorily determined general price increases, adjusted for additions and losses. Michigan Constitution of 1963, Article IX, Sec. 3.

As used in the General Property Tax Act, “true cash value” means the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale. MCL 211.27(1).

A proceeding before the Tax Tribunal is original, independent, and de novo. MCL 205.735(1). “The petitioner has the burden of establishing the true cash value of the property.” MCL 205.737(3); MCL 211.27(1); *Meadowlands Limited Dividend Housing Ass’n v City of Holland*, 437 Mich 473, 483-484; 473 NW2d 363 (1991). “This burden encompasses two separate concepts: (1) the burden of persuasion, which does not shift during the course of the hearing; and (2) the burden of going forward with the evidence, which may shift to the opposing party.” *Jones and Laughlin Steel Corp v City of Warren*, 193 Mich App 348; 483 NW2d 416 (1992), citing: *Kar v Hogan*, 399 Mich 529, 539-540; 251 NW2d 77 (1976); *Holy Spirit Ass’n for the Unification of World Christianity v Dept of Treasury*, 131 Mich App 743, 752; 347 NW2d 707 (1984).

“True cash value” is synonymous with “fair market value.” *CAF Investment Co v State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974). The Michigan Supreme Court, in *Meadowlanes*, *supra*, held that the goal of the assessment process is to determine “the usual selling price for a given piece of property.” In determining a property’s true cash value or fair market value, Michigan courts and the Tribunal recognize the three traditional valuation approaches as reliable evidence of value. See *Antisdale v Galesburg*, 420 Mich 265; 362 NW2d 632 (1984). These three approaches are the capitalization of income approach, the sales comparison or market approach, and the cost-less-depreciation approach. *Meadowlanes*, at 484-485; *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170; 141 NW2d 699 (1966), aff’d 380 Mich 390 (1968); *Antisdale*, at 276. The Tribunal is under a duty to apply its own expertise to the facts of the case to determine the appropriate method of arriving at the true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances. *Antisdale*, at 277.

Pursuant to MCL 205.737(1), the Tribunal must find a property’s true cash value in determining a lawful property assessment. *Alhi Development Co v Orion Twp*, 110 Mich App

764, 767; 314 NW2d 479 (1981). The Tribunal may not automatically accept a respondent's assessment but must make its own finding of fact and arrive at a legally supportable true cash value. *Pinelake Housing Cooperative v Ann Arbor*, 159 Mich App 208, 220; 406 NW2d 832 (1987); *Consolidated Aluminum Corp v Richmond Twp*, 88 Mich App 229, 232-233; 276 NW2d 566 (1979). The Tribunal is not bound to accept either of the parties' theories of valuation. *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 377 NW2d 908 (1985). The Tribunal may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination. *Meadowlanes*, at 485-486; *Wolverine Tower Associates v City of Ann Arbor*, 96 Mich App 780; 293 NW2d 669 (1980); *Tatham* v *City of Birmingham*, 119 Mich App 583, 597; 326 NW2d 568 (1982).

As to the conduct of a hearing, when determining whether to admit testimony, the fundamental inquiry of the Tribunal is whether the information will "assist the trier of fact to understand the evidence or to determine a fact at issue." *Bass Pro Outdoor World v Auburn Hills*, MTT Docket No. 275731 (2003).

The subject property is owned by Petitioner, Palace Sports & Entertainment, Inc. Palace Sports and Entertainment, Inc. offers entertainment services. At the time of this hearing, Petitioner owned and operated three entertainment venues all located within the southeast Michigan area: DTE Energy Music Theatre, The Palace of Auburn Hills, and Meadow Brook Music Festival.

The Palace of Auburn Hills, simply refered to as The Palace, is a sports and entertainment venue in Auburn Hills, Michigan, a suburb of Detroit, Michigan. The Palace opened in 1988; it is the home of the Detroit Pistons of the NBA and, since 1998, has also hosted the Detroit Shock of the WNBA.

The Palace was built in 1988 entirely from private funding. It was built to house the Detroit Pistons. Since that time it has housed a professional hockey team, Detroit Vipers, and a professional women's basketball team, the Detroit Shock. At the time it was built, the structure was considered to be "state of the art." The architectural design of the Palace, which includes multiple tiers of private suites, has been used as a design basis for many other professional sports arenas. Additionally, it provided more superior sight lines than did older similar facilities and other amenities such as on-site parking and larger concourses allowing for easier mobility. Over the years office space has been added to allow for another source of potential revenue. To date, despite the identification of various deficiencies, The Palace still remains competitive with other competing venues and is still financially viable.

Multi-purpose arenas such as the Palace exist all over the world. In the United States such venues are typically located in larger population centers and on college campuses. The designs are not universal and the architecture may take on different characteristics depending on the funding available, the types of uses anticipated and the character of the surrounding buildings. As defined in Appraisal Institute, *The Dictionary of Real Estate Appraisal*, (4th ed, 2002) a sports arena is "[a] large-scale venue designed to stage athletic competitions before large audiences." A sports arena is not a prevalent land use within a specific geographic such as southeast Michigan. Tom Wilson, the CEO of Petitioner, testified that there are two such arenas in southeast Michigan and two others if one considers venues at the University of Michigan in Ann Arbor, Michigan, and Michigan State University in Lansing, Michigan. Because of the uniqueness of these structures, their value is dependent on their use or uses and the purpose for which they were built. Mr. Barrett testified that the Conseco Fieldhouse in Indianapolis, Indiana, was built not only to house a professional basketball team but to house basketball-related activities given that the State of Indiana is considered to be one of the cradles of the sport of basketball.

As stated, a sports arena is designed to attract people and by extension in many cases to generate revenue from a variety of sources, including ticket sales, concessions and parking. The Palace was built originally for such a reason and, as a consequence, this particular venue would plausibly attract buyers if sold because of its investment potential. Nevertheless, as Mr. Barrett testified, not all arenas are sold for this reason exclusively and while income generation is important, there are other reasons why an arena may be bought or sold. Mr. Barrett testified that in many instances an arena is sold as part of a package, as in the sale of a professional sports franchise where coincidentally the owner of the franchise owns the arena. Ultimately, income is important if for no other reason than to defray costs of the operation of the arena.

When valuing the subject property three valuation methods approaches are available: the income capitalization approach, the sales approach, and the cost-less-depreciation approach. Generally, "[a]ny property that generates income can be valued using the income capitalization approach." Appraisal Institute, *The Appraisal of Real Estate* 472, (12th ed, 2001) Furthermore, "[w]hen more than one approach to value is used to develop an opinion of value for an income-producing property, the value indication produced by the income capitalization approach might be given more weight than that of the other approaches." *Supra.* This opinion has been endorsed by Michigan courts. See *Northwood Apartments v Royal Oak*, 98 Mich App 721; 296 NW2d 639 (1980).

As for the sales comparison approach, its utility is more for properties "that are bought and sold regularly" and "[w]hen the data is available, this is the most straightforward and simple way to explain and support a value opinion." *The Appraisal of Real Estate* at 419. Finally, as to the cost approach it is "particularly important when a lack of market activity limits the usefulness of the sales comparison approach and when the properties to be apprised—e.g., single family residences—are not amenable to valuation by the income capitalization approach." *Supra* at 353-354.

Both valuation teams addressed the three basic approaches to value and, ultimately, each acknowledged the primary importance of the income capitalization approach to their opinions of value. The income capitalization approach is a "systematic valuation process" used to analyze a "property's capacity to generate future benefits and capitalizes the income into an indication of present value." *The Appraisal of Real Estate* at 417. The analysis is dependent upon the development of a capitalization rate which is defined as "[a]ny rate used to convert income into value." See Appraisal Institute, *The Dictionary of Real Estate Appraisal*, (4th ed, 2002). These rates may be "derived from comparable sales" Appraisal Institute, *The Appraisal of Real Estate* 531, (12th ed, 2001), which are often published in investment publications such as Korpacz Real Estate Investor Survey.

With respect to the income analysis, both parties relied upon a specific variation known as the discounted cash flow (DCF) analysis. A DCF is a "procedure in which a discount rate is applied to a set of projected income streams and a reversion." See Appraisal Institute, *The Dictionary of Real Estate Appraisal*, (4th ed, 2002). These sets of projections are typically for a sum of years or a "holding period," which is defined as the "term of ownership of an investment."[5]

[5] In Appraisal Institute, *The Appraisal of Real Estate* 550-551, (12th ed, 2001), the DCF is described in detail as follows:

> Discounting is a general term used to describe the process of converting future cash flows into present value. . . . An investor seeks a total return that exceeds the

Each party developed income streams with each basing their conclusions on different source material. Petitioner relied upon actual earning and expenses, while Respondent relied upon the analysis of what are best described as comparable franchises. In either case, both referred to a process of allocation. As for Petitioner, the allocation was performed by accountants who worked off Petitioner's general ledger of revenue and expense line items, line by line, to determine the most appropriate way to allocate the expenses to the various venues and teams owned by Petitioner. The amount of allocation was based on actual expenses, percentage of revenues used for those specifically unidentified expenses, seasonal opinion, number of events, management estimates, relative advertising revenue, and relative restaurant sales. With regard to an invoice identified to a specific venue, an allocation would be made to that venue. Unidentified invoices would be defaulted to The Palace or allocated on a percentage basis, the percentage being based on revenues.

Respondent worked off data from seven franchises and eight sales. Adjustments were made for inflation, physical condition and age, seating, team presence, bankruptcy at time of sale, fee interest, ancillary buildings, and market conditions. A further analysis involved the allocation of expenses and revenues between components of the enterprise. Nevertheless, what was not sufficiently accounted for, except in general terms, was the type relationship between the owner of the arena and the sports franchise or teams. The hearing was replete with testimony

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amount invested. The present value of a prospective benefit must be less than its expected future benefits. A future payment is discounted to present value by calculating the amount that, if invested today, would grow with compound interest at a satisfactory rate to equal the future payment. In other words, discounting of a future benefit uses the reciprocal of the growth of compound interest. The standard formula for discounting future value to present value is

$$\text{Present value} = \frac{\text{Future value}}{(1+\text{i})^{\text{n}}}$$

where *i* is the rate of return on capital per period (or the discount rate) that will satisfy the investor and *n* is the number of periods that the payment will be deferred. If a series of future payments is expected, each payment is discounted with the standard formula, and the present value of the payments is the sum of all the present values. The yield formula is expressed as

$$PV = \frac{CF}{1+Y} + \frac{CF}{(1+Y)^2} + \frac{CF}{(1+Y)^3} + \ldots \frac{CF}{(1+Y)^n}$$

where *PV* + present value; *CF* + cash flow for the period specified; *Y* = the appropriate periodic rate; and *n* = the number of the periods in the projection. This standard discounting procedure is the foundation of all present value calculations.

regarding the unique nature of a franchise/team to an arena. An example was the case of the The Palace's lease agreement with the Detroit Pistons. Testimony was provided that showed that The Palace retained a greater percentage of revenues as compared to other franchises. In the case of the Conseco Fieldhouse in Indianapolis, the structure was built with public financing yet the only revenue retained by the city was from parking. It was clear from this testimony that arrangements were brokered between teams, franchises and municipalities to meet the unique needs of the various participants. The difficulty arises in the quantification of the distinguishing features of these arrangements so as to afford a meaningful level of comparison. Without this, a greater degree of subjective and speculative analysis exists. By contrast, Petitioner by relying upon the existing lease agreements and the existing revenues as sources of income generation data was able, in the Tribunal's opinion, to calculate a less subjective determination of prospective benefits. The data was, in the end, more persuasive and for these reasons, the Tribunal concludes that the income streams derived by Petitioner are the least subjective and better provide a basis for determining the market value of the subject property using the discounted cash flow method.

The cash flow is just one part of the equation. The next consideration is the determination of a discount rate. For Petitioner, Mr. Cummins concluded to a discount rate of 14.8% and added a property tax adjustment of 2.2%, for a total discount rate of 17%. Mr. Cummins testified that given the scarcity of market information that would enable the extraction of rates, he looked at estimated rate of return requirements for properties most similar economically to The Palace and in this regard he determined that The Palace was most similar economically to a full-service hotel. He concluded that both rely primarily on some form of rental income. Both have food service operations. Both are going concerns and are reliant on the underlying real property, tangible personal property, and intangible personal property to generate the estimated cash flows to be generated by operation of such assets. Based on this belief, Mr. Cummins used <u>Korpacz Real Estate Investor Survey</u>, an authoritative source for capitalization and discount rates for real estate investors, to aid in determining the expected rates of return for full-service hotels. <u>Korpacz Real Estate Investor Survey</u> stated the internal rate of return for full-service hotels was between 11.5% and 15%.

Mr. Cummins ultimately concluded to a 14.8% based rate on the belief that operating an arena held more risk than operating an institutional full-service hotel. The risk came from a heavy dependence upon the on-court performance of potential licensees or tenants, the possibility of those tenants departing to another venue, and the ability to attract entertainment acts and events over local competition.

Nevertheless, as the facts show, The Palace has long-term team tenants and customers, advertisers and sponsors, and the potential of long term naming rights. The contractually obligated income associated with tenants alone provides security and stability. Furthermore, while the facility itself has some distracting features, the evidence does not suggest that it has lost complete utility, meaning that it still has the capability of competing with similar types of arenas to attract additional income from sources other than basketball games. These factors reduce the risk of the investment and, as a consequence, suggest that the rate should be from the lower part of the range if not lower.

As for Respondent, Mr. Lowe stated that he considered Ibbotson, Korpacz, NCREIF (National Council of Real Estate Investment Fiduciaries), the 2000 Blue Ribbon panel on baseball economics, as well as interest rate ranges provided by banks. Mr. Lowe testified that he gave the most weight to the 2000 Blue Ribbon panel because it most similarly dealt with the issues at hand. Mr. Lowe stated that he felt a discount rate based on full-service hotel lodging properties was not appropriate for a sports facility because an arena has long-term leases, contracts with teams and advertisers, and seat and suite holders. Mr. Lowe also felt it is inappropriate because any kind of professional sports investment where the dominant style of ownership of the arena is in conjunction with the team is dominated by the expectations of the sports franchise as the fundamental source of return of investment. Mr. Lowe testified that he concluded to a 10% overall discount rate.

Implicit to any potential real estate transaction is the playing off of the countervailing perspective of each party against the other. Simply, the potential seller is looking to maximize the gain and the buyer is looking to reduce the value as much as possible. Each participant will look to market data to tease out legitimate material to support their respective negotiating perspective. The Blue Ribbon material, albeit associated with professional baseball stadiums, is complementary with a basketball arena inasmuch as there are typically in each a uniform number of game dates that provide revenue, as well as special events and other activities such as high school tournaments that spin off revenue from concessions or parking. All of these activities fulfill the function of a stadium, as described by Mr. Wilson, of keeping the bodies in the seats.

By contrast a full service hotel does not have "game days," and, as such, a hotel does not have a specific base of reliable income. Also, hotels will rarely, if ever, have the equivalent of a "sell-out." This means that the risk urged by Petitioner is not as high as argued, if the hotel paradigm for rates is used. The rate should fall below the low end and should be complemented by the Blue Ribbon material. This reflects the perspective of each position of those potentially involved in a transaction associated with a sports arena, namely that the seller is seeking a profit and the buyer is seeking to minimize the risk by reducing the initial financial exposure.

While the testimony of Mr. Heaton was used to discredit some of the sources relied upon by Mr. Lowe, the 10% rate, in the opinion of the Tribunal, has utility because the rate reflects a degree of risk consistent with the constancy of the existing revenue stream a buyer of The Palace could anticipate. Nevertheless, the age of The Palace and the associated increased expenditures associated with maintenance is a factor a buyer would consider. Taking all these various factors into consideration, the Tribunal concludes that the overall discount rate should be 11%.

Applying this discount rate to Petitioner's income streams and reversion value, the Tribunal concludes the true cash value of the subject property is $46,000,000 for the years at issue.[6]

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[6] Using the income and projected income of PSE as provided by SRR's appraisal and an 11% discount rate, and applying these to the formula referred to above the following value results:

YR		11%
1	$1,447,000.00	$1,303,603.75
2	$4,631,000.00	$3,758,621.48
3	$5,439,000.00	$3,976,947.85
4	$6,304,000.00	$4,152,640.22
5	$7,171,000.00	$4,255,637.12
6	$7,327,000.00	$3,917,314.61
7	$7,487,000.00	$3,606,173.45
8	$7,652,000.00	$3,320,401.75
9	$7,822,000.00	$3,057,815.35
10	$7,997,000.00	$2,816,415.45
11	$10,260,000.00	$3,255,323.58
12	$10,552,000.00	$3,016,194.23
13	$10,852,000.00	$2,794,541.93
14	$11,660,000.00	$2,705,061.70
15	$11,980,000.00	$2,503,867.92
16	$12,308,000.00	$2,317,497.94
LV	$15,000,000.00	$2,824,380.00
	SUM	$53,582,438.32

Evidentiary Issues

Tax Tribunal Rule (TTR) 205.1252 requires that in a Tax Tribunal case each party shall file a "valuation disclosure." A valuation disclosure is defined in TTR 205.1101(m) as "documentary or other tangible evidence in a property tax appeal which a party relies upon in support of the party's contention as to the true cash value of the subject property." Both parties complied with this rule.

It should be noted that both parties raised numerous evidentiary issues at the hearing addressing such concerns as hearsay evidence, the processes used in developing their respective valuation disclosures, or the use of source materials. While there is a question as to whether the strict application of the Rules of Evidence applies to a Tribunal hearing, it should be noted that both valuation teams provided a "scope of work" in their respective appraisal. The "scope of work"[7] defines the extent of the research that goes into the preparation of the appraisal. All the valuation experts, out of necessity, have exposure to a variety of source materials and custodians of source materials, including other persons knowledgeable in the area of sports franchises, real estate agents, and appraisers as borne out by their testimony. To preclude reference to the professional conversations that naturally evolve because of a best evidence theory would greatly inhibit the flow of evidence during a hearing. This is particularly true when the conversations and sharing of information occurred naturally out of the business of each expert and had been solicited to help each refine their opinions. For that reason, throughout the hearing objections

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-	PSE Tangible pp	
+	pp for DTE, etc	
-	palace tang pp	$45,363,363.32
-	Intang prop ass.	$45,313,363.32
=	ROUNDED	$46,000,000.00

[7] Scope of work is defined in Appraisal Institute, *The Dictionary of Real Estate Appraisal*, (*4th ed, 2002)* as:

> The amount and type of information researched and the analysis applied in an assignment. Scope of work includes, but is not limited to, the following:
> - The degree to which the property is inspected or identified;
> - The extent of research into physical or economic factors that could affect the property;
> - The extent of data research; and
> - The type and extent of analysis applied to arrive at opinions or conclusions.

were dealt with as they arose so as to not inhibit the flow of relevant information. And after a review of the transcripts, the Tribunal finds that the exclusion or acceptance of evidence has not materially affected the opinions of the experts or the Tribunal in rendering this decision.

Finally, much is made by both parties as to the various decisions, assumptions and opinions made by each party's valuation expert and the competence of these conclusions. The issues stem from professional standards requirements. Both Mr. Tomlinson and Mr. Lowe are well credentialed. Both have obtained an MAI designation from the Appraisal Institute. Both prepared appraisals in procedural compliance with Appraisal Institute standards. Each relied upon the expertise of other professionals within the scope of their information gathering. Mr. Tomlinson relied upon Mr. Cummins, who had obtained appropriate business-related degrees from esteemed universities. The same can be said for Mr. Lowe, who relied upon Mr. Bennett, who was likewise credentialed. Ms. Frisbee is by training a certified public accountant and worked at a major accounting firm before she became employed by Petitioner.

All of these witnesses put in the requisite time needed to obtain professional designations and each professional was able to testify intelligently about the material they contributed to their respective assignments. In short, the Tribunal heard from two teams of experts who understood the nuances associated with appraisal methodology. Their work product was competent and well thought out. Each team accounted for the three methods of valuation. Each concluded that a prospective buyer would most likely value the subject property using the discounted cash flow methodology. Neither presented a body of material that was inherently erroneous.

Finally, each side asked that their expert valuation witnesses[8] be qualified as an expert to give expert opinions. After voir dire, the witnesses were so qualified and allowed to testify as experts in their area of expertise. This was done consistent with MCR 702, which states:

> If the court determines that scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise if (1) the testimony is based on sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

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[8] For Petitioner the experts were Mr. Tomlinson and Mr. Cummins and for Respondent the experts were Mr. Barrett and Mr. Lowe.

Nevertheless, in the end, Respondent's and in particular Mr. Bennett's information was the least persuasive. He testified to the usefulness of his body of materials in helping to broker transactions of sports franchises, which may or may not have included a transfer of a stadium. For that purpose, this material and Mr. Bennett are most likely invaluable, but within the context of determining the value of a stadium, the information was too generalized and not as pointed as to the actual income generated by the subject property and to this extent it was less persuasive than the evidence presented and developed by Petitioner.

In the end, the difference between the two teams of experts was not in what they were trying to achieve and the methods employed, but rather in the quality of the body of evidence each team chose to use in reaching an end result. To this end, both parties complied with Michigan Tax Tribunal Rules 205.1101(m) and 205.1252, and they both in earnest provided "documentary or other tangible evidence," which, coupled with their professional judgment, assisted the Tribunal in determining the true cash value of the subject property.

In conclusion, the parties complied with the appropriate Tribunal, court and professional rules necessary to present a case. Both parties advocated strongly, and the result rested ultimately on the persuasiveness or the lack of persuasiveness of the evidence that each side presented.

CONCLUSION

Based on the findings of fact and conclusions of law, the Tribunal concludes that Petitioner has met the burden of proof as described above to the extent that its methodology and the income stream generated by the subject property is deemed to be the most accurate for determining the property's true cash value. But the Tribunal concludes that Petitioner's discount rate does not reflect the economic issues that exist in this case. Therefore, the Tribunal has selected, as is its prerogative, a discount rate from the evidence presented that better reflects those issues analyzed above and therefore the values are as listed below:

2003

ID Number	TCV	SEV	AV	TV
14-02-300-021	$46,000,000	$23,000,000	$23,000,000	$23,000,000

2004

ID Number	TCV	SEV	AV	TV
14-02-300-021	$46,000,000	$23,000,000	$23,000,000	$23,000,000

2005

ID Number	TCV	SEV	AV	TV
14-02-300-021	$46,000,000	$23,000,000	$23,000,000	$23,000,000

2006

ID Number	TCV	SEV	AV	TV
14-02-300-021	$46,000,000	$23,000,000	$23,000,000	$23,000,000

JUDGMENT

IT IS ORDERED that the property's assessed and taxable values for the tax years at issue are as set forth in the *Summary of Judgment* and *Conclusions of Law* sections of this Proposed Opinion and Judgment unless modified by the Tribunal in the Final Opinion and Judgment.

Entered by Chief Clerk: April 1, 2009

By: John S. Gilbreath, Jr., Administrative Law Judge

This Proposed Opinion and Judgment ("Proposed Opinion") was prepared by the State Office of Administrative Hearings and Rules. The parties have 20 days from date of entry of this Proposed Opinion to notify the Tribunal in writing if they do not agree with the Proposed Opinion and why they do not agree (i.e., exceptions). After the expiration of the 20-day time period, the Tribunal will review the Proposed Opinion and consider the exceptions, if any, and:

a. Adopt the Proposed Opinion as a Final Decision.
b. Modify the Proposed Opinion and adopt it as a Final Decision.
c. Order a rehearing or take such other action as is necessary and appropriate.

The exceptions are limited to the evidence submitted prior to or at the hearing and any matter addressed in the Proposed Opinion. There is no fee for the filing of exceptions. A copy of a party's written exceptions must be sent to the opposing party.