

STATE OF MICHIGAN
COURT OF APPEALS

PALACE SPORTS & ENTERTAINMENT, INC.,
Petitioner-Appellee,

UNPUBLISHED
June 21, 2012

v

No. 294051
Tax Tribunal
LC No. 00-300519

CITY OF AUBURN HILLS,
Respondent-Appellant.

PALACE SPORTS & ENTERTAINMENT, INC.,
Petitioner-Appellant,

v

No. 294185
Tax Tribunal
LC No. 00-300519

CITY OF AUBURN HILLS,
Respondent-Appellee.

Before: BORRELLO, P.J., and O'CONNELL and TALBOT, JJ.

PER CURIAM.

These consolidated appeals involve real property tax assessments for the 2003, 2004, 2005, and 2006 tax years. Petitioner, Palace Sports & Entertainment, Inc., petitioned the Tax Tribunal for relief from assessments made by respondent City of Auburn Hills. In Docket No. 294051, the city appeals as of right from the Tax Tribunal's judgment establishing the true cash values, state equalized values, and taxable values for the property for the 2003, 2004, 2005, and 2006 tax years. In Docket No. 294185, petitioner appeals as of right from the same order. We affirm in part, reverse in part, and remand to the tribunal for further proceedings.

I. DOCKET NO. 294051

A. 2004 – 2006 TAXABLE VALUES

The city first asserts that the values reached by the Tax Tribunal for the 2004, 2005, and 2006 tax years ignored a stipulation by the parties. Whether the Tax Tribunal disregarded a clear and unambiguous factual stipulation by the parties is a legal question. See *In re Nestorovski*

Estate, 283 Mich App 177, 183; 769 NW2d 720 (2009). The first paragraph of the parties' joint stipulation of facts sets forth the parameters of their dispute:

1. 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

The proposed opinion entered by the hearing referee did not incorporate the content of the first stipulation paragraph.

In the final opinion and judgment, the Tax Tribunal observed that the proposed opinion ignored paragraph one of the parties' stipulation. The Tax Tribunal ultimately ordered the following valuations of the Palace property for the tax years in dispute:

<u>Year</u>	<u>True cash value</u>	<u>State equalized value</u>	<u>Taxable value</u>
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
<u>2006</u>	<u>\$96,000,000</u>	<u>\$48,000,000</u>	<u>\$22,015,421¹</u>

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.

On appeal, the city disputes only the numbers in the taxable value column of the Tax Tribunal's concluded values. Petitioner and the city agree that the Tax Tribunal neglected to increase the 2004 taxable value of the Palace property in conformity with MCL 211.27a(2). The parties further agree in part concerning the taxable values that the Tax Tribunal should have ordered for the subsequent tax years at issue: for 2004, a \$19,437,000 taxable value; for 2005, a \$19,884,000 taxable value; and for 2006, a \$22,477,225 or \$24,477,275 taxable value. Because the Tax Tribunal neglected to increase the Palace property's taxable values beginning in 2004, and thus entered incorrect taxable values for the 2005 and 2006 tax years, we remand to the tax tribunal for correction of the 2004-2006 taxable values.

B. TAX TRIBUNAL'S FINDINGS

The city next contends that the Tax Tribunal made inadequate findings in several respects. The Michigan Supreme Court summarized as follows the applicable standards governing review of Tax Tribunal rulings:

The standard of review for Tax Tribunal cases is multifaceted. Where fraud is not claimed, this Court reviews the tribunal's decision for misapplication of the law or adoption of a wrong principle. We deem the tribunal's factual

findings conclusive if they are supported by competent, material, and substantial evidence on the whole record. . . . Const 1963, art 6, § 28 [*Wexford Med Group v City of Cadillac*, 474 Mich 192, 201; 713 NW2d 734 (2006) (internal quotation and some citations omitted).]

The substantial evidence standard signifies a level reaching “more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence. Failure to base a decision on competent, material, and substantial evidence constitutes an error of law requiring reversal.” *Leahy v Orion Twp*, 269 Mich App 527, 529-530; 711 NW2d 438 (2006) (internal quotation and citation omitted).

“But when statutory interpretation is involved, this Court reviews the tribunal’s decision de novo. . . .” *Wexford Med Group*, 474 Mich at 202. “Proper construction of a statute begins by reviewing the text of the statute at issue; if the language is unambiguous, it is presumed that the Legislature intended the meaning plainly expressed, and judicial construction of the statute is not permitted.” *President Inn Props, LLC v Grand Rapids*, 291 Mich App 625, 632; 806 NW2d 342 (2011) (internal quotation and citation omitted).

1. SEPARATE BUILDINGS AND FACILITIES

The city complains that the Tax Tribunal, “while making a finding of value for the arena, . . . [failed] to also value the practice facility or the Harmon garage [used by Palace parking employees], . . . which are separate freestanding buildings also located on the . . . property.” The hearing referee scrupulously recounted in his proposed opinion the testimony and evidence presented at the hearing, including petitioner’s evidence concerning the historical “gross and net revenue amounts generated from . . . parking,” and the “calculation of anticipated net parking revenue.” The proposed opinion contained several pages of factual findings, mentioning that “[t]he . . . site . . . 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,” and that these improvements had “positively affected revenue generation, operational issues, and repair and maintenance.” The hearing referee also found that “[t]he Palace generates revenue from ticket/event sales, the sale of concessions, parking, and office rental.” In the conclusion of the proposed opinion, the hearing referee reiterated that “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 hearing referee ultimately opined that the Stout Risius Ross (SRR) appraisal, “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” than respondent’s appraisal.

In summary, the hearing referee took into account the Palace practice facility and parking office and the potential income streams derived from these buildings, and the referee’s findings have competent, material, and substantial support in the evidentiary record. See *Wexford Med Group*, 474 Mich at 201.

2. NAMING RIGHTS

The city next avers that the Tax Tribunal neglected to “include an explicit statement as to when naming rights to the arena should have been included in the income stream.” The SRR appraisal commissioned by petitioner noted that the Palace could earn an additional \$2 million a year in the event it entered an agreement with an entity that desired to name the arena. Timothy Cummins, an expert “in the valuation of business enterprises[,] operating arenas and sports franchises” who worked for SRR, opined that the Palace, which did not have a naming rights agreement in place as of December 31, 2002, could enter an agreement during 2003 and begin receiving the \$2 million naming rights in 2004. The SRR appraisal’s projections of income for its discounted cash flow analysis attributed \$2 million to the Palace annually after 2003. The city’s appraisal’s “discounted cash flow analysis” likewise included annual naming rights income for the Palace, beginning with \$900,000 in 2003 and increasing annually by approximately four percent.¹

Within the proposed opinion’s summary of the parties’ evidence, the hearing referee expressly referenced that “Exhibit Q [in the SRR appraisal] is a naming rights agreement analysis and the projection of revenue from this is shown on line 14 of Exhibit U,” and testimony by Daniel Barrett, the city’s sports arena and sports team valuation expert, that “generally . . . there was a fifty percent sharing of the \$2 million revenue for naming rights” “between the team and the venue.” In the hearing referee’s findings of fact, he mentioned that “[t]he Palace has not sold naming rights.” In the proposed opinion’s conclusions of law, the hearing referee explained 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.”

In summary, the hearing referee recognized the parties’ distinct naming rights valuations and selected the naming rights valuation contained in the SRR appraisal. Cummins’s testimony and the naming rights information in the SRR appraisal constituted competent, material, and substantial evidence supporting the hearing referee’s naming rights conclusion. See *Wexford Med Group*, 474 Mich at 201.

3. DISCOUNT RATE

The city next submits that the Tax Tribunal inadequately explained the basis for its decision to alter the hearing referee’s calculation of a discount rate applicable to the income valuation of the Palace. The hearing referee recounted in his proposed opinion the parties’ evidence with respect to the discounted cash flow income valuation approach, including Cummins’s explanation that the cash flows used in this approach “are based on market revenues before deductions for federal income taxes and property taxes.” Cummins’s testimony and a chart accompanying the SRR appraisal identified the “Tax-Adjusted Discount Rate” for federal income taxes and state real estate taxes as 2.2%. The proposed opinion also discussed the factors going into the parties’ discount rate calculations and ultimately set the appropriate rate at 11%. Although the proposed opinion’s conclusions of law mentioned the evidence regarding “a

¹ The discounted cash flow summary in the city’s appraisal encompassed a 20-year period from 2003 to 2022. The value of the 2022 naming rights for the Palace reached \$1,896,000.

property tax adjustment [to the discount rate] of 2.2%,” the referee did not incorporate any taxation discount into the final discount rate.

In the final opinion and judgment, the Tax Tribunal recognized that “the [hearing referee’s] 11% discount rate fail[ed] to take property taxes into account.” The tribunal thus added “a property tax capitalization factor of 2.2% . . . to the 11% discount rate.” In summary, the Tax Tribunal explained the basis for its revision of the discount rate, and the record contains competent, material, and substantial support for the tribunal’s revision. See *Wexford Med Group*, 474 Mich at 201.

4. CASH FLOW VALUATION

The city next complains that the Tax Tribunal neglected to alter or question “the Palace’s own self-serving income and expense statements where the evidence showed they were not realistic and overtly skewed net income downward.” However, the hearing referee detailed in the proposed opinion the testimony by certified public accountant Kristin Frisbie, petitioner’s assistant controller of financial reporting, concerning her preparation of monthly income and expense statements for the Palace and other entities operated by petitioner, her review of historic income and expense statements of the Palace and petitioner’s other entities, and her recent efforts to ensure the proper allocation of unidentified expense items “to the venues and teams owned by Petitioner.” The proposed opinion observed that the SRR discounted cash flow valuation of the Palace property “derived from the actual revenue and expenses” that “evolved from monthly income and expense statements for [petitioner] from which allocations of each were made to The Palace.” In the proposed opinion’s findings of fact and conclusions of law, the hearing referee deemed less speculative and more accurately reflecting the unique nature of the Pistons-Palace rental arrangement, the actual income and expense data that the SRR analyzed.

In summary, the hearing referee adequately explained why he viewed petitioner’s income and expense statements a good basis for the SRR’s discounted cash flow valuation, and the referee’s conclusion found support in competent, material, and substantial evidence of record. See *Wexford Med Group*, 474 Mich at 201.

5. LAND REVERSION VALUE

The city lastly suggests that the Tax Tribunal did not “make a finding of fact as to the validity of the differing [reversion] value conclusions for the land.” In the proposed opinion’s summary of the parties’ evidence, the hearing referee encapsulated the testimony and evidence supplied by each party’s licensed real estate appraiser. Later, in the proposed opinion’s factual findings, the hearing referee stated that “the discounted cash flow method” for valuing the Palace took into account the “duration of the income streams, as well as the quantity and timing of a [land] reversion value, discounting each to its present value through the use of a specified yield rate.” At the close of the hearing referee’s conclusions of law, he observed, “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.” The referee elaborated in a footnote concerning “the income and projected income of [petitioner] as provided by SRR’s appraisal and an 11% discount rate” for each year between 2003 and 2018, and the end of the

building's useful life in petitioner's view, together with a \$15,000,000 land reversion value in 2018, which the referee discounted to \$2,824,380. (*Id.* at 35 n 5).

In summary, the parties agree that (1) petitioner's evidence, including real estate appraiser Daniel Tomlinson's testimony and the SRR appraisal exhibit V (a summary of the Palace property's discounted cash flow valuation through December 31, 2018, the cessation of the Palace's useful life as predicted by petitioner), established a \$12,675,000 net land reversion value on December 31, 2018; while (2) the city's appraisal estimated that the land reversion value at the end of 2022 would amount to \$20,551,000. We conclude that the hearing referee fairly and properly selected a land reversion value of \$15,000,000 on December 31, 2018, a value squarely between the parties' estimates, and that the referee's assignment of a land reversion value finds competent, material, and substantial support in the record. See *Wexford Med Group*, 474 Mich at 201.

C. TRUE CASH VALUE

The city further contends that the Tax Tribunal "committed an error of law and the adoption of wrong principles when it relied on the value of publicly-owned arenas to value the Palace of Auburn Hills, . . . a privately-owned arena."

1. DEFINITION

"True cash value" is a constitutional term used in Const 1963, art 9, § 3":

"The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxes levied for school operating purposes. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed . . . ; and for a system of equalization of assessments."

The statutory definition of "true cash value," provided by MCL 211.27(1), is "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 a private sale," as opposed to an auction or forced sale. [*Huron Ridge, LP v Ypsilanti Twp*, 275 Mich App 23, 27-28; 737 NW2d 187 (2007).]

In MCL 211.27(1), the Legislature supplied further direction concerning the ascertainment of true cash value:

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.]

As this Court has observed regarding true cash value:

On the basis of this broad statutory definition, our Supreme Court has determined that “true cash value” is synonymous with “fair market value.” *CAF Investment Co v State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974). Therefore, the assessment must reflect the probable price that a willing buyer and a willing seller would arrive at through arm’s length negotiation.

. . . Our Supreme Court recognizes certain appraisal methods, including the income method used in this case, as the traditionally favored methods of calculating a property’s true cash value. [*Huron Ridge, LP*, 275 Mich App at 28 (citation omitted).]

“In calculating value, actual expenses and income may be used. However, such is not necessarily required. *Market data pertaining to income and expenses may be used when such results in a more accurate determination of TCV.*” *First City Corp v Lansing*, 153 Mich App 106, 116; 395 NW2d 26 (1986) (emphasis added, one citation omitted), citing, *inter alia*, MCL 211.27(4).

The terms of MCL 211.27(4) envision in pertinent part as follows:

As used in subsection (1), “present economic income” means for leased or rented property the ordinary, general, and usual economic return realized from the lease or rental of property negotiated under current, contemporary conditions between parties equally knowledgeable and familiar with real estate values. The actual income generated by the lease or rental of property is not the controlling indicator of its true cash value in all cases. [Emphasis added.]

2. MARKET RENT

The parties’ business and sports arena or franchise valuation experts, Cummins and Daniel Barrett, appraised the value of the Palace property in part on the basis of the Detroit Pistons’ lease of the Palace property. As a component of their income approaches to valuing the Pistons-Palace lease, Cummins and Barrett reviewed other NBA market arrangements between arenas and teams. In the SRR appraisal’s income valuation, it detailed the significance of considering NBA team-arena owner lease terms in other markets and how the terms of the Pistons-Palace lease agreement differed from the usual market agreements. The hearing referee’s comprehensive proposed opinion examined all the evidence the parties submitted relevant to their formulations of a discounted cash-flow analysis of the Palace property, including the information regarding other NBA franchise agreements with their arenas.

In short, to value prospective Palace rent from the Detroit Pistons at a market rate, the SRR appraisal took into account available information regarding license or rental agreements derived from other NBA markets. The clear and unambiguous language of MCL 211.27(4) endorses this consideration of market rent information: “‘present economic income’ [in MCL 211.27(1)] means for leased or rented property the ordinary, general, and usual economic return realized from the lease or rental of property negotiated under current, contemporary conditions between parties equally knowledgeable and familiar with real estate values.” The caveat in the next sentence of MCL 211.27(4), “The actual income generated by the lease or rental of property

is not the controlling indicator of its true cash value in all cases,” applies in this case involving the unusual Pistons-Palace lease terms. Furthermore, our review of the wealth of information pertinent to the SRR appraisal, most of which the hearing referee referenced in the proposed opinion, makes clear that the other NBA market rent information constituted but one of many income analysis components that went into the SRR appraisal. We conclude that the city’s contention that the Tax Tribunal in any respect improperly “relied on the value of publicly-owned arenas to value the Palace of Auburn Hills, . . . a privately-owned arena,” lacks merit.

3. CUMMINS BUSINESS VALUATION

The city finally challenges the Tax Tribunal’s adoption of petitioner’s “discounted cash flow analysis . . . prepared by Mr. Cummins,” on the basis that he “was not qualified at trial as an appraiser,” and that the admission of evidence prepared by Cummins “runs afoul of MRE 702 and is an abuse of discretion and a clear error of law[.]” Because Cummins’s testimony amply established his “knowledge, skill, experience, training, or education” in valuing business enterprises and sports arenas, MRE 702, the hearing referee did not misapply the law or adopt a wrong principle by considering the business valuation prepared by Cummins. See *Wexford Med Group*, 474 Mich at 201. Moreover, Cummins played no part in the appraisal of the Palace real estate, a function delegated to a qualified and certified appraiser of real property. In summary, the city’s challenge to Cummins’s expertise and capacity for participating in the SRR appraisal also lacks merit.

II. DOCKET NO. 294185

Petitioner sets forth related claims regarding the invalidity and unconstitutionality of the city’s assessment of the Palace property, on the basis that the assessment took into account the property’s occupancy by the Detroit Pistons. Petitioner also suggests that no evidence established that the highest and best use of the Palace property included the tenancy of an NBA team.

“[T]o determine true cash value, the property must be assessed at its highest and best use.” *Huron Ridge, LP*, 275 Mich App at 33. “This concept recognizes that the use to which a prospective buyer would put the property will influence the price that the buyer would be willing to pay for it.” *Great Lakes Div of Nat’l Steel Corp v City of Ecorse*, 227 Mich App 379, 408; 576 NW2d 667 (1998). Our reading of the parties’ appraisals reveals agreement that the current usage of the Palace property as an arena constituted the property’s highest and best use as developed. The SRR appraisal accepted that as of the valuation date “various tenants or licensees ranging from professional and collegiate sports teams [primarily the NBA’s Detroit Pistons] to music and theatrical performers to corporate groups” “utilized [the property] for short periods of time,” and that the highest and best use of the property “as improved is . . . use of the existing improvements as an arena, same as its existing use.” The city’s appraisal similarly concluded that “[s]ince the arena appears viable and profitable at our valuation dates, and is likely worth substantially more than the value of the underlying land, as if vacant, . . . the existing improvements represent the highest and best use of the site, as improved.”

In conformity with the plain language comprising the penultimate sentence of MCL 211.27(1), the city’s assessor had to “consider the . . . existing use” of the Palace property when

“determining the true cash value.” Because the existing use of the Palace for the tax year ending December 31, 2002, involved the arena’s occupancy by the Detroit Pistons, other professional sports teams and entertainment shows, the clear and unambiguous language of MCL 211.27(1) obligated the city’s assessor to consider these existing uses when calculating his assessment for the 2003 tax year. See *Lionel Trains, Inc v Chesterfield Twp*, 224 Mich App 350, 352; 568 NW2d 685 (1997) (citing MCL 211.27, the Court rejected the petitioner’s “claim that under the law the use of . . . [personal] property may not be considered when determining true cash value”), *Fairplains Twp v Montcalm Co Bd of Comm’rs*, 214 Mich App 365, 379; 542 NW2d 897 (1995) (after quoting the mandatory assessment factors in the next to last sentence of MCL 211.27(1), this Court observed that “[t]he inclusion of these factors indicates that the Legislature recognized that use may influence value”), and *Safran Printing Co v Detroit*, 88 Mich App 376, 382; 276 NW2d 602 (1979) (“[n]ormally, existing use may be indicative of the use to which a potential buyer would put the property and is, therefore, relevant to the fair market value of the property.”).

Additionally, MCL 211.27(1) directs an assessor to “consider the . . . present economic income of structures . . . [and] present economic income of land if the land is being . . . put to income producing use” Because the Palace’s income as of December 31, 2002, derived in significant measure from the Detroit Pistons’ lease of the arena, the Tax Tribunal properly took into account the Pistons’ residency at the Palace for “present economic income” purposes as well. MCL 211.27(1); see also *Southfield Western, Inc v City of Southfield*, 146 Mich App 585, 589-590; 382 NW2d 187 (1985) (the Court noted that MCL 211.27(1) envisioned that “an assessor is to consider the existing use of the land [a hotel business], the income generated by any structures on the land and income generated by any other income-producing use,” and concluded that “the tribunal properly considered petitioner’s hotel business in evaluating the true cash value of the underlying property since the business increased the market value of that property”).

Petitioner also crafts two arguments grounded in Const 1963, art 9, § 3. Petitioner first maintains that the attribution of value to the Palace on the basis of “its use by the Pistons, as distinguished from use by any other users in general, constitutes an intangible asset, and cannot be lawfully included in the TCV[.]” This argument is premised on the initial sentence of art 9, § 3: “The legislature shall provide for the uniform general ad valorem taxation of *real and tangible personal property* not exempt by law[.]” (Emphasis added.) However, in *Meadowlanes Ltd Dividend Housing Ass’n v City of Holland*, 437 Mich 473, 495-496; 473 NW2d 636 (1991), our Supreme Court discussed the extent to which assessors could consider the impact of intangible factors on the value of real property:

In *Antisdale* [*v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984)], this Court addressed the true cash value of property similar to the Meadowlanes housing complex and focused on the legislative definition of true cash value in MCL 211.27(1) We noted that that statute lists a number of value-influencing factors such as zoning and location that should be considered when determining the “usual selling price” of real property. In particular, we recognized that *although these factors are intangibles, and not taxable in and of themselves, they can increase or decrease the value of property*. We concluded that tax shelter benefits are also value-influencing factors and, although

intangibles, should be reflected in the assessment process to the extent that they increase or decrease the value of the subject real property.

* * *

As clarified above, the subsidy is not taxed in and of itself. *It is merely an intangible value influencer to be considered in the valuation and assessment process in the same manner as tax benefits, location, zoning, and other intangible valuable influences.* [Emphasis added.]

See also *Huron Ridge, LP*, 275 Mich App at 43 (“[i]n Michigan, intangibles are not taxable in and of themselves, but they may be taken into account for purposes of assessing the value of tangible property under the General Property Tax Act”). Because the clear terms of MCL 211.27(4) authorize an assessor to consider “present economic income” derived from “leased or rented property,” the Tax Tribunal properly took into account Palace income derived from the Pistons’ lease of the property, which the SRR appraisal and the city’s appraisal agreed influenced the value of petitioner’s property.

Turning lastly to petitioner’s complaint that a Palace assessment taking into consideration its use by the Pistons violates constitutional uniformity requirements, the Michigan Supreme Court in *Edward Rose Bldg Co v Independence Twp*, 436 Mich 620, 640; 462 NW2d 325 (1990), noted the following uniformity in assessment principles:

The Michigan Constitution mandates not only that property must be assessed at a uniform fifty percent of true cash value, but also that the ad valorem taxation itself be uniform. Const 1963, art 9, § 3. It is well established that the concept of uniformity requires uniformity not only in the rate of taxation, but also in the mode of assessment. The “controlling principle is one of equal treatment of similarly situated taxpayers.” *Armco Steel Corp v Dep’t of Treasury*, 419 Mich 582, 592; 358 NW2d 839 (1984).

This Court has applied standards governing equal protection issues to uniformity of taxation questions arising under Const 1963, art 9, § 3:

“As a practical matter, there is no discernible difference between the equal protection guarantee and the Uniform Taxation Clause, Const 1963, art 9, § 3, which requires uniformity in the general ad valorem taxation of real and personal property Both require that some rational basis for a disputed classification must be shown to exist. A rational basis shall be found to exist if any set of facts reasonably can be conceived to justify the alleged discrimination.” [*Taylor Commons v City of Taylor*, 249 Mich App 619, 627; 644 NW2d 773 (2002), quoting *Syntex Laboratories v Dep’t of Treasury*, 233 Mich App 286, 290; 590 NW2d 612 (1998).]

A rational basis supports a valuation of the Palace by the city assessor that takes into consideration revenues received from the Detroit Pistons. Ample evidence reflects that the property’s highest and best use involved its current use as an arena that hosted the Pistons, other sports teams, and entertainment events, and that the Palace received significant income from its

lease agreement with the Pistons. The Tax Tribunal properly considered the property's existing uses and its rental income pursuant to MCL 211.27(1) and (4).

Petitioner quotes *Edward Rose Bldg Co*, 436 Mich 620, and cites several other cases in support of its contention that the Tax Tribunal violated uniformity considerations by considering the Pistons' tenancy at the Palace in appraising the property. Petitioner points to the following passage in *Edward Rose Bldg Co*, 436 Mich at 640-641:

“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.*” [Quoting *Washtenaw Co v State Tax Comm*, 422 Mich 346, 370 n 4; 373 NW2d 697 (1985), in turn quoting *Perry v Big Rapids*, 67 Mich 146, 147; 34 NW 530 (1887) (emphasis in *Washtenaw Co*).]

None of the authorities referenced by petitioner warrant reversal of the Tax Tribunal's appraisal in this case: (1) the facts of *Edward Rose Bldg Co* have no bearing on this case because the only legal issues that the Supreme Court discussed in *Edward Rose Bldg Co* focused on the impropriety of the Tax Tribunal's group valuation of “vacant improved subdivision lots owned by petitioner . . . utilizing a wholesale discount,” *id.* at 624-625; (2) in *Washtenaw Co*, 422 Mich 346, another factually distinguishable decision, our Supreme Court condemned the Tax Tribunal for taking into account when valuing real property “the effect of land contracts and other ‘creatively financed’ transactions on ‘true cash value’ . . . and . . . a ‘trending’ factor to the data base of sales-ratio studies in order to more accurately pinpoint the ‘true cash value’ of property on ‘the tax day,’” *id.* at 350, and quoted in a footnote a discussion of the genesis of the “cash value” concept in Michigan, *id.* at 370 n 4; (3) in *Hudson Motor Car Co v Detroit*, 282 Mich 69; 275 NW 770 (1937), another case having no bearing on the present circumstances, a taxpayer who had paid personal property taxes under protest appealed the city's assessment, and in the course of the Supreme Court's decision, *id.* at 77, it quoted the definition of “cash value” taken from *Perry*, 67 Mich 146; and (4) *Perry* itself involved a Big Rapids resident who appealed the city's assessment of “the contents of his office,” including “certain abstract books referring to land titles in Mecosta county,” 67 Mich at 147, and thus also is distinguishable from this case.

Affirmed in part, reversed in part, and remanded to the Tax Tribunal for adjustment of the 2004, 2005, and 2006 taxable values pursuant to MCL 211.27a(2). We do not retain jurisdiction.

/s/ Stephen L. Borrello

/s/ Peter D. O'Connell

/s/ Michael J. Talbot