

County of Santa Clara

Office of the Clerk of the Board of Supervisors

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November 28, 2018

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Santa Clara County Office of the Assessor
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RE: Forty Niners SC Stadium Co LLC
Appeal Nos. 15.0278, 15.0279, 15.0280 and 15.0281

After a review of the testimony and consideration of all exhibits, the Board directs the Assessor to record the following values for StadCo's possessory interest, for the following dates.

	August 2, 2014	January 1, 2015
Land	\$35,580,251	\$35,580,251
Improvements	\$444,950,479	\$444,950,479

Applicant is directed to prepare proposed findings and to provide an electronic copy of the proposed findings to the Assessor's representative and to the Clerk of the Board within 45 days of the date of this letter. The Clerk of the Board will forward a copy of the proposed findings to the AAB and its counsel.

Within 45 days after receiving the proposed findings prepared by Applicant, the Assessor's office shall submit its objections and/or response, if any, by providing an electronic copy of its objections and/or response, if any, to the Applicant's representative and to the Clerk of the Board. The Clerk of the Board will forward a copy to the AAB and its counsel. The AAB will then direct its counsel in preparing the final findings.

If Applicant desires to withdraw its request for findings, the AAB will grant that request. If the Applicant desires to withdraw its request for findings, it shall promptly so notify the Clerk of the Board and shall simultaneously provide a copy of that notice to the Assessor's office. The Clerk of the Board will forward a copy to the AAB and its counsel. If Applicant withdraws its request

for findings, the Assessor's Office shall promptly notify the Clerk of the Board and the Applicant as to whether or not the Assessor's Office is requesting Findings. In the event that the Assessor's Office requests findings, the time-period for Applicant to submit the proposed findings will run from the date of the Assessor's notification.

Valuation Approach

The Cost Approach is the preferred approach to value when neither reliable sales data nor income data is available. The Cost Approach is particularly relevant for new construction, or property that does not suffer from obsolescence or depreciation. With regard to a possessory interest valuation, the cost approach is often used when improvements are constructed by the possessor.

The subject is a Special Purpose Limited Market property. On the lien date the improvements are new, unique, and constructed by the possessor. Accordingly the Cost Approach is the best indication of value for the subject.

The Stadium Rent was to be set at an amount that, when combined with all other SCSA revenue from the Stadium, would provide SCSA with sufficient revenue to pay its expenses and debt service for the year in which the deficit was projected to be its greatest.

The respective parties attempted to bracket the subject's base rent within a wide range of other Stadiums across the Country, applying a number of significant adjustments. This effort was complicated by the financial structure and partnership arrangements in the construction and operation of the respective stadiums; these arrangements are unique to each stadium and the adjustments employed did not result in a convincing argument of market rent for the subject. Because a reasonable estimate of market rent does not result from the respective analyses, no emphasis is placed on the Income Approach.

Direct Costs

Select offsets are applied against the total project costs outlined in the KPMG Cost Segregation Study. While the parties employed slightly different versions of this study, the cost offsets outlined below reference the 14 page study dated May 2016 and illustrated in Applicant's Exhibits 8 & 72. While the parties largely agreed to the costs that should be excluded, the differences are determined as outlined in the following table. For example, the original cost offset for offsites of \$13,362,533 (Applicant's Exhibit 27) is reduced by \$1,665,009 for nine items within the KPMG study that are considered to be part of the stadium construction. Accordingly, the offset for offsites totals \$11,697,524.

		Adjusted Costs	Adjusted Cost Offsets	Subtotals	Reference
Total Project Costs				\$1,345,955,758	Applicant's Exhibit 27 page 1
Cost Offsets					
	StadCo Personal Property		\$316,746,127		Applicant's Exhibit 27 page 1
	Manco Personal Property		\$5,613,728		Applicant's Exhibit 27 page 1
	Candlestick Termination Cost		\$5,423,484		Applicant's Exhibit 27 page 1
	Yahoo Parking Lot Improvements		\$6,698,077		Applicant's Exhibit 27 page 1
	TechMart Pre-Sale Space TI's		\$1,713,397		Applicant's Exhibit 27 page 1
	Golf Course Improvements		\$3,956,391		Applicant's Exhibit 27 page 1
	Great America Theme Park Rights/Easement		\$12,500,000		Applicant's Exhibit 27 page 1
	Other Appurtenant Easements		\$250,000		Applicant's Exhibit 27 page 1
	Election / Pre-zoning Costs		\$7,589,257		Applicant's Exhibit 27 page 1
	Offsites	\$13,362,533			Applicant's Exhibit 27 Tab 10
	SCVWD Easement ATT Fiber optic Relocation	(\$118,401)			Assessor Exhibit EL page 27 - KPMG Study Line 66
	SVP Joint Trench Fiber optic Relocation	(\$283,499)			Assessor Exhibit EL page 27 - KPMG Study Line 67
	SVP Joint Trench Fiber optic Relocation	(\$293,429)			Assessor Exhibit EL page 27 - KPMG Study Line 69
	Expedite Site work	(\$2,246)			Assessor Exhibit EL page 27 - KPMG Study Line 72
	Levee Path Maintenance	(\$35,835)			Assessor Exhibit EL page 27 - KPMG Study Line 74
	Landscape Projects	(\$18,017)			Assessor Exhibit EL page 27 - KPMG Study Line 169
	AECOM Transportation Management Consultants	(\$854,188)			Assessor Exhibit EL page 27 - KPMG Study Line 171
	AECOM Traffic Management/Engineering	(\$8,544)			Assessor Exhibit EL page 27 - KPMG Study Line 175
	AECOM Parking Engineering	(\$50,850)			Assessor Exhibit EL page 27 - KPMG Study Line 176
	Net Offsites		\$11,697,524		
	EIR		\$725,826		Applicant's Exhibit 27 page 1
	Legal Fees Related to Election, EIR & Entitlements		\$6,340,499		Applicant's Exhibit 27 page 1
	Project Re-Financing Costs	\$56,102,882			Applicant's Exhibit 27 page 1
	Construction Financing	(\$19,771,763)			Applicant's Exhibit 8 - KPMG Study Line 426
	Net Project Re-Financing Costs		\$36,331,119		
	Stadium Authority Sub loan Capitalized Interest		\$19,656,951		Applicant's Exhibit 27 page 1
	General Contractor Early Completion Incentive		\$5,000,000		Applicant's Exhibit 27 page 1
	Publicly-Owned Personal Property		\$8,170,595		Applicant's Exhibit 27 page 1
	Public Safety Training	\$1,370,656			Applicant's Exhibit 27 page 1
	Other Appurtenant Easements	(\$250,000)			Applicant's Exhibit 27 Tab 8
	Net Public Safety Training		\$1,120,656		Applicant's Exhibit 27 page 1
	Pre-Opening Event / Business Expense		\$1,230,031		Applicant's Exhibit 27 page 1
	Work Not-In-Place - DOV		\$25,298,686		Applicant's Exhibit 27 page 1
Total Offsets				\$476,062,348	
Net Cost				\$869,892,410	
Cost Escalator of 2.3%				\$20,007,548	
Direct Costs				\$889,900,958	

Cost Escalator

Testimony taken from Mr. MacNeil stated that projects such as the subject would incorporate built-in cost escalators to account for increases in cost over the development period.

Accordingly, a cost escalator from the beginning of the development period would overstate the cost for the subject. Applicant's Exhibit 71 demonstrates a rather consistent outlay of expense over the construction period, indicating a mid-point cost escalator would be appropriate to adjust all of the construction costs to the lien date. The best evidence of a cost escalator would be 2.3%, reported by Marshall & Swift Valuation Service, for the final 50% of the construction period (Applicant's Exhibit 67 page 41).

Depreciation

Mr. MacNeil testified with regard to areas where he believes costs savings could have been realized with no loss in functional utility. Mr. MacNeil cited 11 areas where he argued that cost savings could have been realized (Exhibit 60 Tab 4 page 1). The Board was not persuaded by Mr. MacNeil's line of reasoning.

- Under cross examination Mr. MacNeil testified that each of these improvements evolved over a number of years from weekly design meetings with approximately 30 people comprising architects, salespeople and stadium operations people (Transcript - Page 2249 Line 20). Conversely, Mr. MacNeil's opinion that select improvements could have been eliminated, downsized or completed with lower quality finishes is based on his personal observation rather than on any study (Transcript - Page 2264 Line 19). The more compelling observation is that the "committee of 30" believed that the design was optimized.
- Mr. MacNeil confirmed previous testimony that the availability of favorable financing determined the timing of the stadium development and that the parties had full knowledge that the costs would increase as a result of this decision study (Transcript - Page 2264 Line 19).
- Costs for both the artwork and interior buildout of StadCo's exclusive use areas are included on the unsecured roll and are not part of this appeal.
- There is no evidence to suggest the SCSA would have been in favor of a lower quality stadium with smaller seats and dead space within the building envelop.
- Even if Mr. MacNeil's testimony was taken at face value, none of the information would have been available to owner or occupant on the lien date.

Accordingly, as of the lien date, the subject improvements do not suffer from any physical, functional or economic obsolescence.

Term of Possession

Having considered all the evidence and taking all factors into consideration, coincident with the ground lease, a possessory term of 40 years is reflected for the subject.

Land Value

The highest and best use of the land, as if vacant, must be a legally permissible use (one of the four components of the highest and best use). Accordingly, the use must be consistent with the General Plan for the site. The subject carries a Regional Commercial General Plan Designation with a maximum FAR of 0.60 to 1.

The considerably talented expert witnesses for both the Applicant and Assessor put forth land sale comparables in a variety of formats over the course of the hearing that resulted in quite disparate unit value conclusions. The respective sale comparables, adjustments and overall analysis suffered on cross examination. Consequently, the adjusted land sale prices submitted by the parties for the subject were not considered to be the best evidence of market value for the subject site.

The Assessor's expert valued the land under the assumption that a prospective buyer would compensate the seller for a land use that would require a General Plan amendment which would afford a significantly higher density than what is legally permissible. The Board respectfully disagrees with this assumption. Notwithstanding the risks involved and the logistical constraints of such a development on the subject site, if the comparables were adjusted to reflect the necessary additional expense to provide onsite parking for such an intense development, the resulting adjusted unit value would not support the maximally productive use of the land if vacant.

The applicant presented three comparables reflecting a "sports or recreational use" (Applicant's Exhibit 47 page 106) and continued to defend the analysis despite introducing other comparables at the end of the hearing. The concluded unit value (\$28 per square foot of land area for the fee and \$15.09 per square foot of land area for the contribution to the possessory interest) does not support the maximally productive use of the land if vacant.

The ground lessor and ground lessee retained an outside consultant to determine fair market rent for the subject land. This outside consulting firm reviewed 50 sales transactions, eventually focusing on 7 land sales that best represented their opinion of value for the subject. The comparable on which the neutral party placed the greatest emphasis carried an FAR that was just under the maximum FAR afforded by the General Plan for the subject. The ground lessor and ground lessee adopted the consultant's recommendation which became the basis for the ground lease revenue and concomitant discount rates.

Both the applicant and assessor had ample opportunity to present just one witness or affidavit explaining why the ground rent, identified as market rent in the contract, was believed to be something other than market rent agreed to by the sophisticated principals that were party to the transaction, yet failed to do so. The resulting cash flow includes the fixed ground rent stipulated in the ground lease, the additional performance based rent and the Santa Clara Youth Program Fee. Contrary to testimony, Section 8.2 of the ground lease clearly delineates the Santa Clara Youth Program Fee as "Additional Rent" paid by the lessee to the City.

	Base Rent	Performance Rent	Youth Program Fee
Year 1	180,000	1,666,667	156,667
Year 2	215,000	2,557,500	235,000
Year 3	250,000	2,608,625	235,000
Year 4	285,000	2,657,416	235,000
Year 5	320,000	2,709,914	235,000
Year 6	355,000	2,784,161	235,000
Year 7	390,000	2,820,203	235,000
Year 8	425,000	2,878,083	235,000
Year 9	460,000	2,937,848	235,000
Year 10	495,000	2,999,544	235,000
Year 11	1,000,000	2,828,220	235,000
Year 12	1,000,000	2,911,428	235,000
Year 13	1,000,000	2,998,711	235,000
Year 14	1,000,000	3,084,129	235,000
Year 15	1,000,000	3,173,732	235,000
Year 16	1,100,000	3,215,575	235,000
Year 17	1,100,000	3,309,715	235,000
Year 18	1,100,000	3,406,207	235,000
Year 19	1,100,000	3,505,113	235,000
Year 20	1,100,000	3,606,490	235,000
Year 21	1,200,000	3,660,403	235,000
Year 22	1,200,000	3,766,913	235,000
Year 23	1,200,000	3,876,086	235,000
Year 24	1,200,000	3,987,988	235,000
Year 25	1,200,000	4,102,687	235,000
Year 26	1,300,000	4,170,255	235,000
Year 27	1,300,000	4,290,761	235,000
Year 28	1,300,000	4,414,280	235,000
Year 29	1,300,000	4,540,887	235,000
Year 30	1,300,000	4,670,659	235,000
Year 31	1,400,000	4,753,676	235,000
Year 32	1,400,000	4,890,018	235,000
Year 33	1,400,000	5,029,768	235,000
Year 34	1,400,000	5,173,012	235,000
Year 35	1,400,000	5,319,838	235,000
Year 36	1,500,000	5,420,333	235,000
Year 37	1,500,000	5,574,592	235,000
Year 38	1,500,000	5,732,707	235,000
Year 39	1,500,000	5,894,774	235,000
Year 40	1,500,000	6,060,894	235,000
Discount Rate	6%	10%	6%
Component Value	\$11,347,395	\$28,854,502	\$3,461,980
Overall Land Value			\$43,663,877

The sandwich lease eliminates potential error due to adjustments to the comparables presented and rebutted by the respective expert witnesses, for size, location, lot configuration, development rights, off sites and parking rights.

Because the ground lease accurately reflects the value of the possessory interest, there is no need to estimate a reversion.

Taking all factors into consideration, the present value of the income realized by the ground lease is the best evidence in the record for the land value component of the possessory interest.

Market Conditions Adjustment

Because the agreement was ratified two years prior to the lien date, a market conditions adjustment is warranted. The subsequent amendments to the ground lease are entirely unrelated to the original agreement between the parties with regard to the figures in the preceding table. Based on testimony on the appropriate adjustment for time (Applicant’s Exhibit 47 Page 104) a 20% upward adjustment is appropriate to account for changes in market conditions over time.

Additional Costs for a Developable Site

Select costs that were excluded from the direct cost estimate are added to the resulting land value in order to reflect the total cost of a developable site. Contrary to statements made in the Assessor’s closing brief and reply brief, the two appurtenant easements in favor of the subject were ratified on January 1, 2012; the memorandum from Keyser Marston Associates Inc. to the Santa Clara City Council was dated February 24th 2012. The easements and analysis not only predate the ground lease, but are fully incorporated into both the contract and the aforementioned rent analysis; accordingly, the easements are not included as additional costs.

Overall Land Value		\$43,663,877	
Market Conditions Adjustment (20%)		\$8,732,775	
Election / Pre-zoning Costs	\$7,589,257		
Offsites	\$11,697,524		
EIR	\$725,826		
Legal Fees	\$6,340,499		
Total Additional Costs		\$18,763,849	
Indicated Land Value			\$71,160,502
Indicated Land Value psf Land			\$72.92

Allocation

In order to determine the proper allocation for StadCo's value of the right to possession, the Board considered both the rights afforded each party in the Stadium lease and the relative right to utilize the subject improvements.

Property Tax Rule 21(e)(2)(B) states:

If a possessor's property use is limited to specified time periods (e.g., certain hours of the day or certain days of the week) or is shared with other possessors, the value determined by the cost approach **shall be reasonably allocated to each possessor in a manner that reflects each possessor's proportionate value of the right to possession.**

Shared or limited rights of possession reduce the value of a possessory interest - Vanguard Car Rental USA, Inc. v. City of San Mateo (2010) 181 Cal.App.4th 1316.

For purposes of subdivision, concurrent use of real property demonstrating a primary or prevailing right also includes alternating uses of the same real property by more than one party, such as the case when certain premises are used by a professional basketball team on certain days of each week while a professional hockey team uses the same premises on certain other days (Assessor's Handbook 510 Page 9).

The lease between the SCSA and StadCo basically divides the number of days during which each party has a right to possession of the property during the course of a year equally (50% to StadCo and 50% to the SCSA); however, determining the value of StadCo's possessory interest, expressed as a percentage of the value established by the Cost Approach, is not as simple as merely counting the days that StadCo has a right to use the property.

The Assessor assigns all, or substantially all, the value of possession of the property to StadCo, and argues that the SCSA interest has only a de minimus value. The Assessor argues by analogy that the Stadium property is like a ski resort where the right of possession during the ski season has a value vastly greater than possession during summer non-skiing months. Thus, the Assessor argues, an allocation based only on each party's total time of possession fails to reflect the relative value of days during the football season (StadCo days - as opposed to the days in the off season retained by SCSA).

This analogy has a certain appeal. The property is, after all, a football stadium. But the evidence tells a different story. First, the SCSA has the right to use the stadium for events large and small, a right it has vigorously exercised. Second, the SCSA and its constituent members (especially the City of Santa Clara) have reasonably expected an increase in value of its other properties due to proximity to the stadium. Third, the level of effort expended by the SCSA and its constituent members to build the stadium in Santa Clara and firmly negotiate the SCSA uses is ample evidence that they believed the presence of the stadium for all its intended uses would have a significant value to their community beyond any direct financial return.

Thus, we conclude that the Assessor's 100% allocation to StadCo is incorrect. We also conclude that there is insufficient evidence in the record to allocate value by analyzing the relative profitability of the respective uses by StadCo and the SCSA. The Assessor presented a good deal of evidence that the 49er ran a profitable enterprise using the stadium for football purposes, something the Assessor says the SCSA failed to do using the property for its purposes. But, we conclude that this evidence (much of which has been controverted by StadCo) is fatally flawed.

StadCo revenues are clearly and substantially informed by the StadCo/49er's "enterprise" value; a value driven by StadCo/49ers business operations rather than the real estate. We note that although parsing the enterprise value from income driven solely by the real estate is theoretically possible, no such evidence has been offered.

Conversely, StadCo has attempted to parse the stadium core and shell between its exclusive use and common areas, meticulously summed up the days of actual use by each party, summarized major stadium wide uses by both parties, adopted a factor weighing the numerous partial uses by SCSA, and based on this accounting, concluded that that StadCo should be allocated 100% of their exclusive use areas and only 40% of the value of the total possessory interest shared by StadCo and SCSA.

This approach has a certain appeal. It has an appearance of precision, and it looks not to the contractual days of right to possession, but to the history of the days of actual possession; an apparently more empirical inquiry. But, essentially StadCo is arguing that we should allocate value to StadCo based on frequency of use. We conclude that frequency of use alone is an inadequate measure of relative value. Although we have rejected the Assessor's 100% allocation of value to StadCo, we have not forgotten that this is, after all, a football stadium and absent the football stadium the shell and core areas occupied for StadCo's exclusive use have no contributory value; the allocation must be attributed to the aggregate improvements. Common sense dictates that StadCo's use of this football stadium does not have a lesser value than SCSA's non-football uses. We find that the record does not contain evidence adequate to support StadCo's allocation of value based essentially on historical data regarding days of use. The facility was available for use 50% of the time by Stadco and 50% of the time by SCSA; their respective actual use is a measure of their business acumen and relates to enterprise value, not real property value.

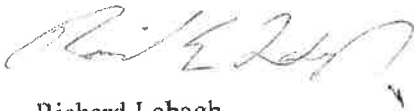
The Stadium Lease incorporates the following rights and attributes:

- The Lease Year is divided into 2 seasons. Tenant season (StadCo) is 6 months, and SCSA season is 6 months (Lease, Sections 1.2.1 and 1.2.2)
- StadCo has primary scheduling rights for usage during Tenant season, and SCSA has primary scheduling rights for usage during SCSA season. (Lease, Section 4.9: Event Scheduling Procedures)

- Parties jointly license Concession Rights. Concession revenue is StadCo revenue during NFL Events; Concession revenue is SCSA revenue during non-NFL events. (Lease, Section 7.3: Concessions)
- StadCo receives Suite License Revenues; SCSA receives SBL Revenues. (Lease, Sections 13.2 and 12.4, respectively)
- StadCo receives advertising rights; SCSA receives naming rights. (Lease, Section 15: Stadium Signage, Advertising and Sponsorships)
- Each party is responsible for managing and operating parking for its own events. (Lease, Section 7.4: Stadium Parking)
- Stadium expenses are shared. (Lease, Section 8.3.1)

We are persuaded that the lease between StadCo and the SCSA was nothing if not an arm's length transaction concluded after lengthy negotiations with both parties highly motivated and well represented. We note that in the end each party had the right to possess the property for an equal number of days. We find, based on our reading of the lease as a whole, and in light of the apparently balanced bundle of rights reserved to each party, that the fully realized intent of the parties to the lease was to obtain rights of a balanced and equal value for each party in the shared spaces in the property. Thus, we find that StadCo's possessory interest is equal to 50% of the value concluded by the Cost Approach.

Sincerely,



Richard Labagh
Assessment Appeals Board I

Cc: Charmaine G. Yu, Coblenz Patch Duffy & Bass LLP
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