

After squabbling for years over the tax value of Nationwide Arena, the insurance company and the Columbus schools finally sat down to talk.

The Settlement

Ten years ago—after voters soundly rejected public financing of a Downtown arena—it took Columbus business leaders only about 10 days to hammer out private financing for a \$165 million sports and entertainment showplace. Later named Nationwide Arena, the state-of-the-art venue not only secured a National Hockey League franchise for Columbus, but stimulated enormous development in the swank Arena District.

The arena and the Arena District have been hugely successful—on that much,

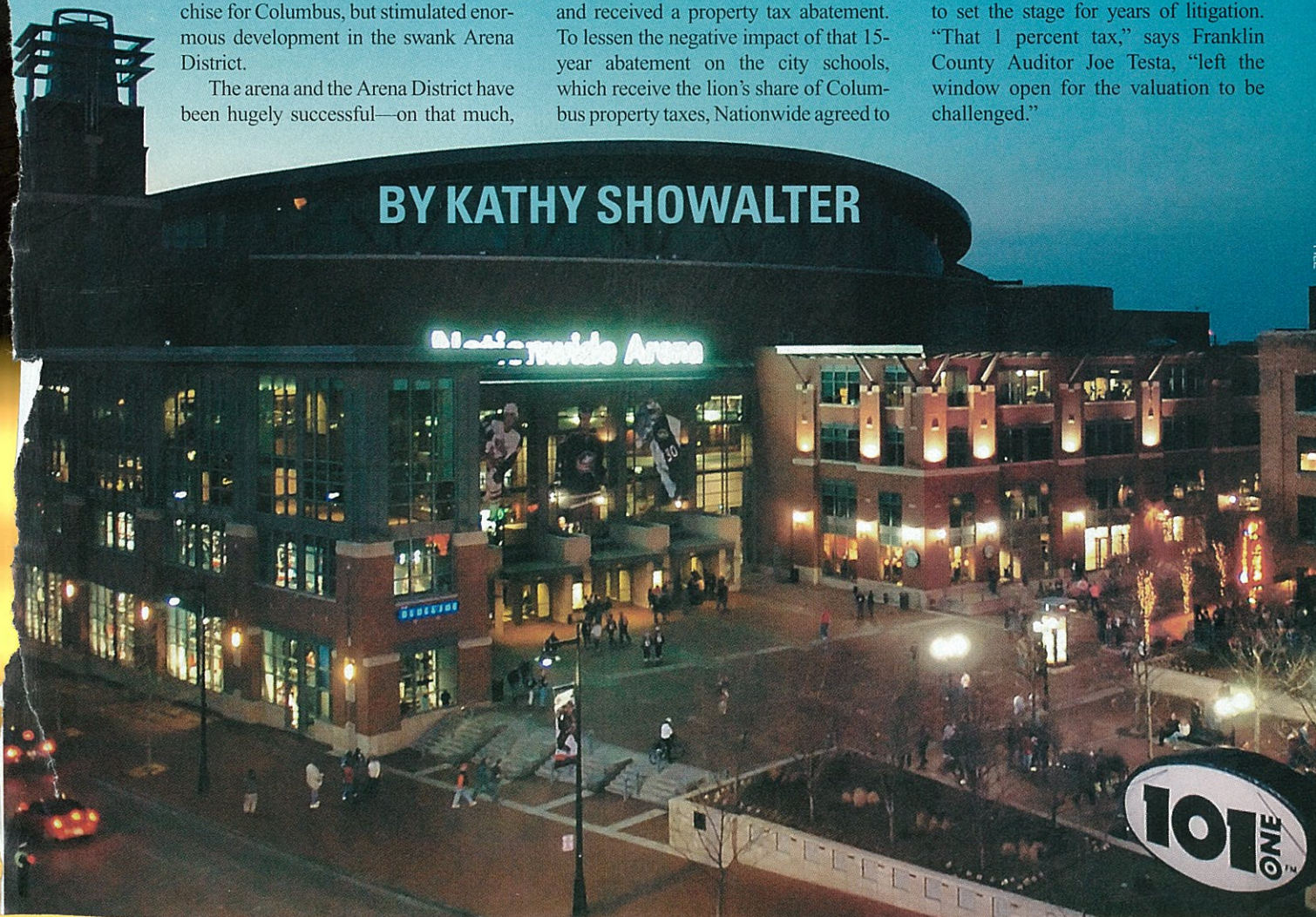
everyone agrees. All big development projects come with wrinkles, though, and in this case, one of those wrinkles triggered a long-running legal dispute between Nationwide, the arena's principal financial backer, and the Columbus City School District.

Like many other Columbus developers, Nationwide Arena's owners sought and received a property tax abatement. To lessen the negative impact of that 15-year abatement on the city schools, which receive the lion's share of Columbus property taxes, Nationwide agreed to

make cash payments to the schools in lieu of taxes. The district, in turn, agreed not to oppose the abatement.

In order to ensure there would be ongoing tax appraisals on which to base calculation of Nationwide's "payments in lieu," the abatement was set at 99 percent, rather than 100 percent. It seemed like a good plan, but it turned out to set the stage for years of litigation. "That 1 percent tax," says Franklin County Auditor Joe Testa, "left the window open for the valuation to be challenged."

BY KATHY SHOWALTER



Ultimately, the battle over how much the arena was worth wound up in the Franklin County Court of Common Pleas. After squabbling for the better part of a decade, the school board, the arena owners and the city finally shook hands late in 2007 on a settlement that will base future payments not on what the arena is *worth*, but on what it *earns*.

Value vs. Revenue

The Nationwide Arena tax valuation settlement agreement was hammered out chiefly by attorneys representing the Columbus City School District and Nationwide. The school board approved the settlement Dec. 4; Columbus City Council signed off Jan. 14.

The agreement pragmatically sidesteps the very complex issue that led the school district to file suit in the first place: the arena's real estate valuation for tax purposes. Instead, the schools' payments from the arena owners will be based on how much business Nationwide Arena generates through 2015, the year that tax abatement expires.

Barring an unanticipated financial disaster such as the departure of the city's NHL team, the Columbus Blue Jackets, the settlement guarantees Nationwide will pay the schools at least \$1 million annually. The payments likely will be higher if the arena continues to do well.

Although the settlement itself is relatively straightforward, Thomas W. Hill, the Kegler, Brown, Hill & Ritter lawyer hired to represent the district, says the negotiations required to reach that agreement were "long and complex." The Columbus schools paid Hill's firm \$500,000 over the course of the lawsuit, filed in 2004.

"People worked very hard to bring this to closure without further costs and risks to everyone," Hill says. "Our intent always was to try and resolve the matter as cost-effectively and successfully as we could."

Nationwide executives declined to be interviewed. "Typically we do not discuss litigation process," wrote Nationwide's corporate media relations manager, Eric Hardgrove, in an e-mail.

In the same message, Hardgrove did offer a brief explanation for Nationwide's decision to contest the arena's tax valuation. "As the law provides, the Arena should be taxed on the basis of its market value," Hardgrove wrote. "National experts and information available from other cities confirmed Nationwide's position that the Arena's proposed real estate tax valuation substantially exceeded its market value. Accordingly, Nationwide exercised its right to appeal the Board of Revision decision on the valuation."

Nationwide's lawyer in the case, John Zeiger, presiding partner of Zeiger, Tigges & Little, offered little comment beyond a statement that Nationwide has always supported



The settlement calls for Nationwide Arena's owners to pay at least \$1 million annually to Columbus schools from ticket surcharges and income taxes.

Columbus schools. Zeiger did not respond to questions about his firm's billings in the lawsuit, but Kegler Brown's Hill estimates that Zeiger's fees exceeded \$500,000. "His firm charges more than ours," Hill says.

Wide Swings

Did the lawyers earn their money? Columbus

attorney Jeff Cabot, a member of the Columbus school board until his term expired Dec. 31 following a failed bid for re-election, says the two sides started out so far apart and some of the issues were so complex that reaching agreement was a daunting challenge. "It was tough," Cabot says, "and the swings [between valuations] were so wide."

Because Nationwide's promised payments in lieu of abated taxes originally were pegged to the arena's tax valuation, those swings were critical. Nationwide Arena was built in 2000 for \$165 million—or \$150 million to \$155 million if you accept the cost on the Nationwide Realty Investors Web site. Testa's office initially valued the arena at \$129 million, con-

siderably lower than the construction cost.

Nationwide appealed Testa's valuation to the Franklin County Board of Revision, but that turned out to be a tactical mistake. The board wound up agreeing with the Columbus schools that Testa's valuation had been too low, rather than too high. The arena, opined the board of revision, actually was worth \$156 million.

Nationwide went to court, arguing the arena's true value was more like \$46 million. This time the insurance company found a receptive listener in Common Pleas Judge Charles Schneider, who eventually ruled the proper valuation was just \$44 million—more than 70 percent less than the board of revision's valuation.

Why the huge discrepancies? Arenas, it seems, aren't like cars or three-bedroom homes. There aren't enough of them to establish an "Arena Blue Book" of values, and they don't change hands often enough to compile a list of comparable sales. "Valuing an arena is hard and very expensive," Hill says. "Most arenas around the country are owned by tax-exempt organizations—cities or counties that are exempt from taxes. . . . This is a unique piece of real estate. It's not like a house on Walnut Street where seven other houses have been sold in the past year, so you can make comparisons."

There is one similarity between an arena

and a new car, though. Each loses a big chunk of its value as soon as it's purchased. Consider a judicial opinion on why the Tampa Bay Ice Palace, built in 1996 for \$150 million, was fairly valued at only \$24.5 million just three years later.

"[C]ostly and recently built facilities are greatly devalued when they are sold," the court decision reads. "The stark reality of this perverse economic market is that sports franchises, even chronically losing ones, sell for millions and millions of dollars, while beautiful facilities that house their teams' home games are sold for a fraction of their cost."

Schneider's decision put the Columbus schools in a difficult spot. The district could have appealed the \$44 million valuation, but there was no guarantee that a higher court would disagree with Schneider's ruling. Meanwhile the schools would continue running up big legal bills, and Nationwide was certain to keep challenging Testa's triennial revaluations of the arena, piling litigation upon litigation.

"We began having conversations and discussion about a better way to do this," Cabot said at the Dec. 4 school board meeting. "Even though we've been to the [county] auditor, the board of revision and common pleas court, with this great difference in valuation, nobody really expects this to be decided by

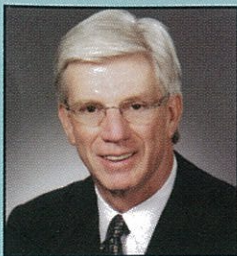
anybody less than the Ohio Supreme Court. There's a good deal of litigation in front of us, no matter who wins."

A New Formula

With no prospect of reaching agreement on the arena's value, Nationwide, the school district and the city decided it made sense to peg both past and future "payments in lieu" to revenue, rather than market price. Specifically, the litigants agreed to fund the payments through surcharges on tickets to hockey games and other arena events, plus half of the 2 percent city income tax paid by hockey players, entertainers and others who earn income from the arena.

"The deal decouples payments to the school district from the valuation of the arena, which is difficult to do and will get only more difficult over time," Cabot said in December. Instead, the schools' payments will be "tied to the revenue the arena generates through events that go on and people who earn their paychecks from working there."

In addition to future annual payments of at least \$1 million, the agreement stipulates that Nationwide will make a lump sum payment of \$3.3 million to settle the dispute over past years' payments. "This settlement removes the risk of litigation for each one of those three-year [valuation] periods going forward,"



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Cabot said. “It also gives us what is most likely an increasing revenue stream tied to revenues and taxes, instead of what would most likely be a decreasing revenue stream based on the fact that arenas lose value over time.”

The schools’ minimum annual payments can drop below \$1 million only if arena business is so bad that revenue from ticket surcharges and city income tax falls below \$750,000. Nationwide’s liability to make up the difference is limited to \$250,000.

Cabot told the board the only event that might whack arena revenue that badly would be the Blue Jackets’ leaving Columbus before 2015. “If the hockey team goes away, the value of the arena drops precipitously,” Cabot said, so the schools would lose out no matter what formula was used to determine payments.

Terry Boyd, president of the Columbus school board and chairman of the graduate business studies division at Franklin University, says there’s more upside than downside for the schools in the new formula. “It’s possible to get more” than \$1 million annually, Boyd says, “how much more we don’t know, if business increases.”

Friendly Adversaries

After years of costly litigation, there’s often animosity between the opposing parties. In this case, however, Nationwide and the Columbus schools seem to have agreed to shake hands and resolve their differences amicably.

Though some people compare the schools’ fight to David fighting Goliath, Boyd says that was never the case. “Nationwide has been a decent partner all along,” he says, citing the insurance company’s sponsorship of school recognition programs and Nationwide’s role in collecting data for the district. “Frankly, I’m happy that the decision makers

back then generated an idea that allowed Nationwide Arena to be constructed."

Nationwide is a huge financial supporter of the Columbus schools, with a 2007 property tax bill (payable in 2008) of almost \$4 million. And many of the new office and commercial buildings, condos and apartments that have sprung up in the Arena District as a direct result of the arena's construction are now paying their own property taxes to the school district.

"Nationwide Arena serves as a major private sector investment, generating business, retail and entertainment activities that play an integral role in an economically healthy, vibrant downtown," wrote Nationwide's Hardgrove in his e-mail. "And as we have said throughout, Nationwide remains committed to a fair settlement that will have a very positive, far reaching effect on the continued growth and revitalization of downtown Columbus. Nationwide has a strong history of supporting the Columbus City Schools by engaging in programs such as Project Mentor. Nationwide believes this settlement is consistent with our history and looks forward to continuing this partnership in the future."

Even when a sports facility produces no tax revenue, it may be an important economic engine. Bill Hudnut, a senior resident fellow with the Urban Land Institute in Washington, D.C., was mayor of Indianapolis when that city built an \$80 million stadium to attract the Indianapolis Colts—a facility that is now being replaced to keep the Colts in town. That stadium, publicly owned, pays no property tax and has no appraised value. But Hudnut believes its true value exceeds anything an economist—or an auditor—can quantify.

"Between the time that we started building the arena, like 1982, and when the Colts came to town in 1984, we had already booked \$184 million of new convention business into the stadium," Hudnut says. Moreover, Indianapolis saw new restaurants and hotels, more jobs and big hikes in sales tax and income tax receipts. "Those are all things a pure economist has difficulty measuring," Hudnut says. "It's fortunate for Columbus to have [Nationwide Arena], and at \$1 million, the schools got a good deal."

Hudnut may be right, but Boyd still thinks the district might have been better off—and avoided years of litigation—if some key definitions had been spelled out when Nationwide was making its first "payment in lieu of taxes" commitment. Chalk that up as a lesson learned. "I would want to know the definition of being made whole," Boyd says. "I would want and expect an agreed minimum and a suggested ceiling for payment. I would want to know where the district stood with regard to payment from any venue and have that in a contract." ♦

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