Sports Facility Renovation Boom & A Lawyer's Ethical Responsibilities

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Ethical Issues in Sports & Entertainment

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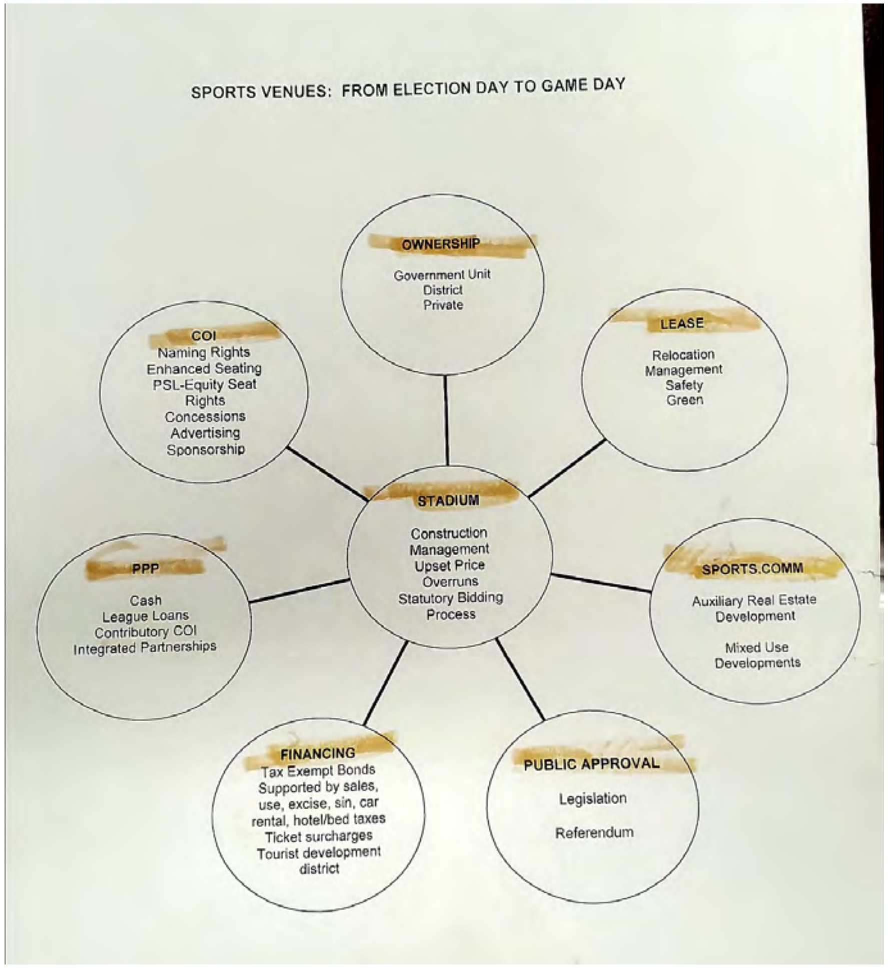
Table of Contents

Sports Venues: From Election Day to Game Day



MLB Stadiums are some of the largest public investments in state funding.

TEAM NAME	STADIUM NAME	OPENING YEAR	FACILITY COST (MILLIONS)	% PUBLIC FINANCING
Florida Marlins	New Marlins Ballpark	2012	645	76
Minnesota Twins	Target Field	2010	544	72
New York Mets	Citi Field	2009	860	19
New York Yankees	Yankee Stadium	2009	1,500	32
Washington Nationals	Nationals Park	2008	611	100
St. Louis Cardinals	Busch Stadium	2006	365	12
Philadelphia Phillies	Citizens Bank Park	2004	346	50
San Diego Padres	PETCO Park	2004	285	57
Cincinnati Reds	Great American Ball Bark	2003	291	96
Milwaukee Brewers	Miller Park	2001	414	75
Pittsburgh Pirates	PNC Park	2001	237	70
Detroit Tigers	Comerica Park	2000	361	32
Houston Astros	Minute Maid Park	2000	265	68
San Francisco Giants	AT&T Park	2000	325	0
Seattle Mariners	Safeco Field	1999	517	66
Arizona Diamondbacks	Chase Field	1998	354	67
Atlanta Braves	Turner Field	1996	235	100
Colorado Rockies	Coors Field	1995	215	78
Cleveland Indians	Progressive Field	1994	175	48
Texas Rangers	Rangers Ballpark at Arlington	1994	191	71
Baltimore Orioles	Oriole Park at Camden Yards	1992	110	96
Chicago White Sox	U.S. Cellular Field	1991	167	100
Tampa Bay Rays	Tropicana Field	1990	138	100
			Total Estimated Cost (Millions) = 9151	Average Public Participation. = 65%

Iconic Urban Landmarks

- Most MLB Stadiums are iconic urban landmarks and represent various kinds of architectural design concepts. (Boston Red Sox, Chicago Cubs, Milwaukee Brewers)

Principal Owners and Team Acquisition Amounts

Team	Owner	Year	Amount
Arizona Diamondbacks	Kenneth Kendrick, et al.	2004	$238M
Atlanta Braves	Liberty Media	2007	$1270M
Baltimore Orioles	John Angelos	1993	$173M
Boston Red Sox	John Henry and Tom Werner	2002	$380M
Chicago Cubs	Tom Ricketts	2009	$845M
Chicago White Sox	Jerry Reinsdorf	1981	$20M
Cincinnati Reds	Robert Castellini	2005	$270M
Cleveland Indians	Larry Dolan	2000	$323M
Colorado Rockies	Charles and Richard Monfort	1992	$95M
Detroit Tigers	Chris Ilitch	2017	$82M
Houston Astros	Jim Crane	2011	$610M
Kansas City Royals	John Sherman	2019	$1B
Los Angeles Angels	Arturo Moreno	2003	$184M
Los Angeles Dodgers	Mark Walter, Magic Johnson, et al.	2012	$2.15B
Miami Marlins	Bruce Sherman	2017	$1.2B

Principal Owners and Team Acquisition Amounts

Milwaukee Brewers	Mark Attanasio	2005	$223M
Minnesota Twins	Jim Pohlad	2009	$44M
New York Mets	Steven Cohen	2020	$2.4B
New York Yankees	Hal Steinbrenner	2009	$10B
Oakland Athletics	John Fisher	2005	$180M
Philadelphia Phillies	Dave Montgomery	1981	$30M
Pittsburgh Pirates	Robert Nutting	1996	$92M
St. Louis Cardinals	William DeWitt, Jr.	1995	$150M
San Diego Padres	Ron Fowler	2012	$800M
San Francisco Giants	Sue Burns and Peter Magowan	1992	$100M
Seattle Mariners	First Avenue Entertainment, LLLP	2016	$1.4B
Tampa Bay Devil Rays	Stuart Sternberg	2004	$200M
Texas Rangers	Ray Davis	2010	$593M
Toronto Blue Jays	Edward Rogers	2008	$137M
Washington Nationals	Mark Lerner	2018	$450M

Forbes MLB’s Most Valuable Teams 2023

- New York Yankees, $7.1B
- Los Angeles Dodgers, $4.8B
- Boston Red Sox, $4.5B
- Chicago Cubs, $4.1B
- San Francisco Giants, $3.7B
- New York Mets, $2.9B
- Los Angeles Angels, $2.7B
- Atlanta Braves, $2.6B
- Philadelphia Phillies, $2.575B
- St. Louis Cardinals, $2.55B

- Houston Astros, $2.25B
- Texas Rangers, $2.225B
- Seattle Mariners, $2.22B
- Toronto Blue Jays, $2.1B
- Chicago White Sox, $2.05B
- Washington Nationals, $2B
- San Diego Padres, $1.75B
- Baltimore Orioles, $1.7B
- Milwaukee Brewers, $1.6B
- Colorado Rockies, $1.475B

Lease Summary for Colorado Rockies

- Team Owner: Charlie and Dick Monfort
- FACILITY: Coors Field Facility
- Year Built: 1995
- Ownership: Denver Metropolitan Major League Baseball Stadium District
- TYPE OF FINANCING: The legislature created the Denver Metropolitan Major League Baseball Stadium District in the six counties surrounding Denver. The district issued bonds and levied a one-tenth of 1% sales tax within the six-county area to fund the stadium. The tax remains in place until the bonds are paid off in about 10 years. The Rockies contributed $53 million.
- TITLE OF AGREEMENT: Amended and Restated Lease and Management Agreement by and between Denver Metropolitan Major League Baseball Stadium District and Colorado Rockies Baseball Club, Ltd. TERM OF AGREEMENT: 22 years, with an effective date on or before April 6, 1995. The Rockies have the option of extending the term for three consecutive five-year extensions. –Article 3, pgs. 10-11

- RENT: No annual rent, but team is responsible for all costs. Team also reimburses the day-to-day operating expenses of the Stadium District, and shares revenue with the Stadium District based on ticket sales and parking.
- Article 4.2 – Payments to the District In addition to being responsible for all costs associated with the repair, maintenance and operation, use and ownership of the leased premises, the Partnership (Colorado Rockies Baseball Club), is required to reimburse the District for day-to-day operating expenses in excess of the designated tax revenues, but not to exceed $150,000 per year. –pgs. 13-15
- The District is also entitled to share attendance revenues based on the following: (1) Twenty-five cents ($ .25) is paid by the Partnership per MLB game attendee in excess of 2.25M up to 2.5M per year; (2) Fifty cents ($ .50) per attendee in excess of 2.5M up to 3M per year; and (3) One dollar ($1.00) per attendee in excess of 3M per year. The Partnership shall report attendance upon a turnstile count. –pg. 16 Parking revenue is shared with 80% going to the Partnership and 20% going to the District for all events during the term of the agreement. –pg. 17

Lease Summary for Colorado Rockies, cont.

- NON-RELOCATON / RETENTION CLAUSE:
- Article 13 – Relocation of Team "The Partnership acknowledges that the District will be irreparably harmed by the relocation of the Team to a location other than the Leased Premises during the Term of this Agreement. Accordingly, the Partnership agrees as follows:
  - (a) The District does not have an adequate remedy at law for breach of this Article XIII.
  - (b) . . . [T]he Partnership shall not apply to the National League for approval to allow the Team to play any Major League Baseball [Home] Game anywhere other than in the Stadium during the Term.
  - (c) The Partnership recognizes that the Stadium is being constructed, the sales tax was imposed, and the bonds were issued solely to bring the Team and the franchise to the District, and agrees that in the event of a violation of this Article XIII, the District shall, without posting any bond, be entitled to seek and obtain an injunction from the District Court of the City and County of Denver, Colorado, or any other court of competent jurisdiction, to enjoin any violation of this Article XIII. Additionally, the District shall have the right to enforce any breach . . . through specific performance as provided in this Agreement." –pg. 79
  - Source: Marquette University Law School Sports Facility Reports

Sources of Funding

- Public Contributions
- General Sales and Use Taxes
- Possessory Interest Taxes
- Tourist Development Taxes
- Restaurant Sales Taxes
- Excise/Sin Tax (Liquor, Tobacco)
- Car Rental Tax
- Hotel/Bed/Accommodation Tax
- Abatement of Certain Taxes
- License Plates
- Suite Tax
- Infrastructure Contributions
- Rent Credits
- Utility Taxes
- Real Estate and Personal Property Taxes
- Ticket Surcharges
- Lottery and Gaming Revenues
- Non-Tax Fees (Liquor Sale Permits, etc.)
- General Appropriations – General Fund
- Income and Local Taxes
- Direct Subsidies of Operating Costs
- Admission Tax
- Grants
- Parking Tax
- Exemption from city, county, state sales taxes on purchase of construction materials, fixtures and equipment

Additional Sources of Funding

- Facility Revenue Streams
  - Luxury Suites
  - Club Suites
  - Parking
  - Ticket Sales
  - Advertising
  - Naming Rights
  - Novelties – Merchandise
  - Pouring Rights
  - Concessions
  - Sponsorships
  - Food and Beverage Serving Rights
  - Premium Restaurant Rights
  - Sponsorship Packages
  - Lease Arrangements
  - Hall or Wall of Fame
  - Tours
  - Commemorative Bricks
  - Other Events

- Private Equity Contributions
  - Owner's Contribution – Cash
  - NFL's G-4 Bylaw Loan Program
  - Guarantees
  - Contractually Obligated Income
  - Concessionaires, Management Companies and Service Providers equity contributions
  - Business Community Contributions
  - Charitable Contributions
  - Unique partnerships with energy, telecommunications, and internet companies – exclusive rights
  - Personal Seat Licenses – Equity Seat Rights
  - Private Financing – Bank Loans
  - Percentage of profits if team sold

MLB Debt Limitations

- The MLB does have debt limit guidelines. Teams are not supposed to have debt more than eight times operating income (earnings before interest, taxes, depreciation and amortization), or 12 times for teams with new stadiums. But there is lots of wiggle room (see page 240 of the collective bargaining agreement), and the Mets have exceeded MLB's debt guideline before. (Source: Forbes.com)

MLB Ownership Rule Change

- MLB ownership bylaw change permits the sale of minority interest of teams through the utilization of private equity investments.
- For instance, private equity firm Arctos Sports Partners has added to its portfolio by investing in multiple MLB teams, according to Sportico. Those teams include stakes in the Los Angeles Dodgers, Chicago Cubs, San Francisco Giants, San Diego Padres, Houston Astros and Boston Red Sox.
- A single private equity firm can own up to 15% of all MLB teams.

Costs of Stadiums Today

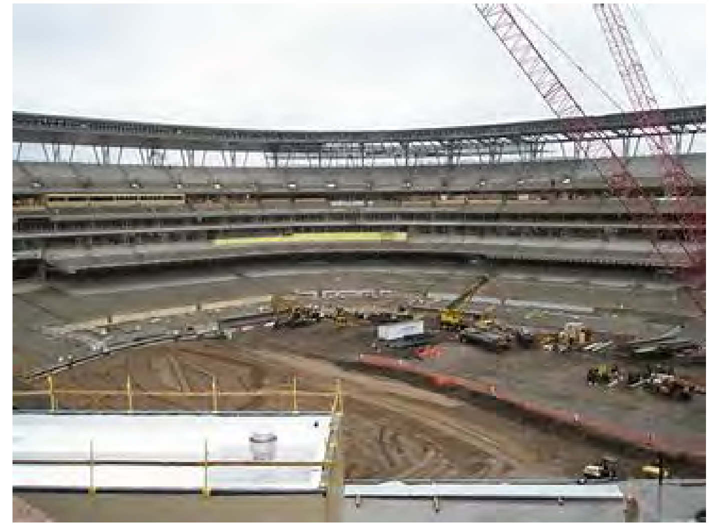
- Truist Park: Braves Owners, Liberty Media, allotted $672M for Truist Park. The stadium was constructed in a public-private partnership for $622 million. Cobb-Marietta Coliseum & Exhibit Hall Authority issued up to $397 million in bonds for the project. The County raised an additional $14 million from transportation taxes and $10 million cash from businesses in the Cumberland Community Improvement District. The Braves contributed the remaining money for the park, and will spend $181 million over 30 years to help pay off the County's bonds on the project.
- Globe Life Field: The project cost approximately $1.2 billion. The master agreement for the public-private partnership called for a 50/50 split between the Texas Rangers and the City of Arlington The City capped its financial contribution at $500M.

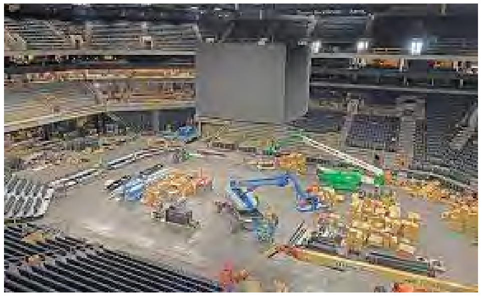
Sports.comm

- Sports facility development is nothing more than another form of real estate development.
- Many sports facilities are built in core urban areas that are blighted and are in need of renewal projects.
- Sports facilities attract people, and people enjoy living near sports facilities which results in the generation of residential development along with the creation of other service and commercial needs and opportunities.
- Sports facilities should be the anchor tenant for development districts, a sports.comm, where people live, work, socialize, eat, become educated, shop and congregate.
- Mixed use developments surrounding stadiums will normally include residential development, hotels, auxiliary and entertainment development, services establishments, retail outlets, office space, and potentially some corporate headquarters.
- Sports facility should be part of a planned community
- The planned or happenstance created by sports districts and all benefits associated with them should help ameliorate the controversy surrounding taxpayer support for sports facilities.
- It may be that which goes on outside the stadium is more important than what goes on inside.
- Examples: Titletown in Green Bay, Wisconsin; the Deer District in Milwaukee, Wisconsin

Stadium Mania

- The 1990s through 2010 was known as the Stadium Boom – Stadium Mania – in Major League Baseball ("MLB").
- There is a return to yesteryear. A nostalgic appreciation of the past. The abolition of the multipurpose stadium, a stadium that was interactive with its surrounding environs.
- Over a 20 year period, 20 new MLB ballparks would be constructed almost all of them designed by HOK, now called Populous.
- The retro ballparks came with their own signature sites and set them apart from one another (Retro Movement).
- Fans at the new ballparks sat closer to the field than ever before and at angles more appropriately directed towards the action.
- The public chipped in well over half of the financing of these new MLB ballparks.





The Renovation Boom

Approximately 51% of venues from the NBA, NFL, and MLB were built before the year 2000. So, plenty of renovations or newly constructed venues are on the immediate horizon. As a matter of fact, as leases expire some experts estimate that up to $20 billion will be spent over the next decade in building stadiums, ballparks, or arenas, or in renovations to them. The financing for many of these facilities in the form of bonds have been defeased and leases are coming to an end, including the options to extend. Governmental units and team owners are now faced with upgrading those facilities with capital improvements to maintain the stadium in competition with others in the MLB. The extent of those capital improvements, who pays for those capital improvements, and the extension of the leasehold agreement to the future are going to be key issues that will have to be addressed by team owners and governmental units. What capital improvements are to be made to maintain the facility as a first-class facility or a facility that must be in the top “x” percentage of facilities in the MLB to maintain its state-of-the-art status, will become an issue. Increased requirements of the league to update the facilities for purposes of not only fan safety, but of fan experience, will also be part of the capital improvement equation. Many of these facilities are publicly funded, are results of public-private partnerships, and in few instances are privately funded. In any event, the key questions will be what capital improvements are required, who is to pay, and what is the mechanism, whether it will be a joint venture, as to how payment is to be achieved. Questions will be asked as to whether capital improvements verses a newly constructed venue is in the best interest of the community and the team owner for keeping the team at home and extending the lease into the future.

In many instances, pursuant to the leasehold agreements of the public entity and teams, capital reserve accounts were required to be contributed to plan for these future undertakings. Unfortunately, in some instances what has been reserved will not be financially complete enough to undertake the costs of the improvements that the stadium may need in the future. We will also be running into different estimates of what needs to be improved based upon the interpretation of what standard may have been in the prior lease. I can see instances where the team’s estimation and report of improvements may far exceed that of the public entity given the estimated future costs via the reserve fund. All of this results in future decisions to be made, where the money comes from and keeping the team at home.

The Renovation Boom, continued

What follows is a chart detailing construction dates for stadiums that might feel the effects of the Renovation Boom:

Team	Stadium	City	Date
Blue Jays	Rogers Centre	Toronto	1989
Devil Rays	Tropicana Field	St. Petersburg	1990
White Sox	Guaranteed Rate Field	Chicago	1991
Orioles	Camden Yards	Baltimore	1992
Indians	Progressive Field	Cleveland	1994
Rockies	Coors Field	Denver	1995
Diamondbacks	Chase Field	Phoenix	1998
Mariners	T-Mobile Park	Seattle	1999
Giants	Oracle Park	San Francisco	2000
Astros	Minute Made Park	Houston	2000
Tigers	Comerica Park	Detroit	2000
Pirates	PNC Park	Pittsburgh	2001
Brewers	American Family Field	Milwaukee	2001

Source: Jeff Goldberg, MLB Ballparks, From Oldest to Newest, BALLPARKDIGEST.COM, Mar. 31, 2017, https://ballparkdigest.com/2017/03/31/mlb-ballparks-from-oldest-to-newest/.

Competent Representation

- Competent Representation is defined by the Wisconsin Supreme Court rules Ch. 20:1.1 as requiring the legal knowledge, skill, thoroughness and preparation reasonably necessary for representation.
- "In many instances, the required proficiency is that of a general practitioner… The required attention and preparation are determined in part by what is at stake… Complex transactions ordinarily require more elaborate treatment." Comment on Wisconsin SCR 20:1.1.

Competency

The sports facility development lawyer is the ultimate general practitioner:

- MLB Leases
- Term and Extension provisions
- Capital Improvements – Reserve Accounts
- Leasehold Obligations for Maintenance, Capital Repairs and Capital Improvements
- Renovation Boom – Comparable Circumstances
- Funding Techniques for Lease Extension and Capital Improvements
- League Relocation Policies
- Political Climate – Sports Pork
- Tax Sunset Dates
- Non-relocation Agreements
- League Constitution
- Stadium Ranking Clauses
- Legality of Public Funding
- Facility Assessments Reports

Comparable Circumstances

For purposes of comparison, several MLB stadiums have undergone the Renovation Boom process including the Cleveland (Indians) Guardians, Baltimore Orioles, Arizona Diamondbacks, Colorado Rockies, Houston Astros, Seattle Mariners, Toronto Blue Jays, Atlanta Braves, Los Angeles Angels, Oakland, and Tampa Bay. For informational purposes, I will undertake to chronical what happened in each of these venues.

Cleveland Guardians
(formerly known as the Cleveland Indians)

a) The stadium known as Progressive Field, and formerly known as Jacobs Field, was opened in 1994. The stadium is owned by Cuyahoga County. The original Lease was dated September 15, 2008 and had a term of 20 years without any options. The original Lease has language regarding Capital Repair Funds for which Gateway, the Lessor, shall establish and maintain an account, the purposes of which shall be to accumulate funds to pay the costs of Capital Repairs for which Gateway is financially responsible. City of Cleveland, Cuyahoga County, and Gateway Economic Corporation of Greater Cleveland entered into a new agreement for the extension of the Leasehold Agreement and a strategic funding approach with respect to ballpark improvements in September of 2022.

b) Lease Extension: A new 15 year lease commencing January 1, 2022 and ending December 31, 2036. According to one report, the lease will also contain one vesting option of ten years, which could take the lease through 2046.

c) Assessment: Facilities Condition Assessment (FCA) prepared by Gateway Consultants with respect to capital improvements to act as a guide for the next twenty years.

d) Ballpark Improvement Fund: Funding 2/3rds of the contributions toward the improvement fund solely dedicated to the modernization of the ballpark (Ballpark Improvement Fund) provided by governmental units. The Team shall pay Gateway Operating expenses for Team maintenance, additional Team rent, property taxes and share of Ballpark Improvement Fund costs which is equal to about 1/3rd of the contribution.

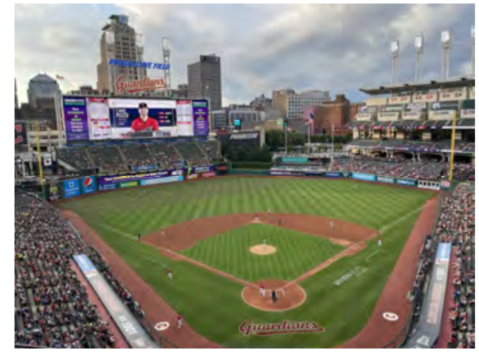
e) Quid Pro Quo: Gateway is to convey a Gateway Development parcel to the Team in exchange for a purchase price of $2 million for which the purchase price therefor, i.e. sales proceeds, are to be put into the Ballpark Improvement Fund.

f) Ballpark Improvement Fund: Has projects and a timeline, and any cost overruns are agreed to be paid for by the Team to the Ballpark Improvement Fund.

g) Public Contribution: Finally, the governmental contribution is pursuant to a Cooperative Agreement by and between the City of Cleveland, Cuyahoga County, and the Gateway Economic Development Corporation utilizing funding sources such as Sports Facility Reserve, parking garage revenue, 50% of Guardians' Admissions Tax, garage naming rights, bed tax increments, sin tax, general fund, to name a few.

h) The new Cleveland Lease was not available for review and some of the information was taken from reports and from term sheets and agreements between governmental units.

Cleveland Guardians



a) There will be a significant number of renovations to Progressive Field.

b) A total of $202.5 million in renovations will be added to the stadium.

c) $135 million of the above sum will be contributed by Cleveland, Cuyahoga County, and the State of Ohio.

d) The Guardians will pay the remaining $67.5 million.

e) This fund going toward renovations is contingent on the team honoring a new lease that runs through 2036.

Arizona Diamondbacks

a) The stadium, Chase Field formerly known as Bank One Ballpark was opened in 1998 and is owned by Maricopa County Stadium District. The original Lease included a 30-year term with two additional 5-year renewal periods at the team's option.

b) Lease Extension: The lease has not been extended and expires on January 1, 2028.

c) Facility Assessment Reports: Several. 2011-TRK Assessment concluded $147 million in repairs and improvements would be needed through January 1, 2028. A facilities assessment report was also commissioned by the District in 2013 which identified $185 million in repairs and maintenance.

d) Although the lease provides for a reserve account, there were insufficient reserve funds for the projected costs of capital repairs which was the responsibility of the District.

e) Lawsuit: After 4 years of negotiations, in March of 2016 the Team requested to be released from their lease with no results. The Diamondbacks commenced a lawsuit in January of 2017. The Diamondbacks essentially sought a termination of their lease by virtue of a breach therefor by the District.

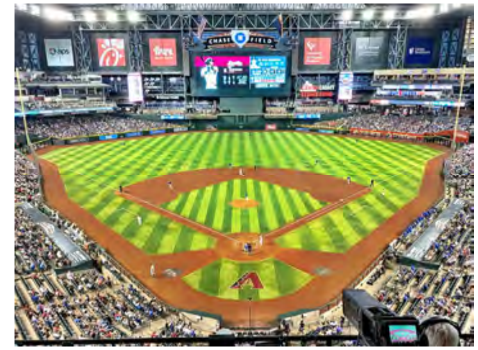
f) Arbitration-MOU: The case ultimately went to arbitration and an MOU, i.e. an agreement to resolve the lawsuit, was executed and approved approximately in May of 2018. The MOU is a "simplified agreement" that restructured the lease and is produced in its entirety in this Memorandum. The District was excused from further funding of reserves. The MOU gave to the Team management control, including the booking of non-baseball events, and provided for a relocation option including leaving Chase Field and terminating the lease.

g) New Legislation: In 2021, the Arizona legislature approved House Bill 2835 permitting the Diamondbacks to place up to a 9% sales tax on anything sold at the ballpark. The proceeds of the sales tax would be used to fund repairs and improvements. A revenue bond would be issued and 80% of the monies received from the tax would go towards improvements and the other 20% the Diamondbacks would be liable for. No action has been taken with respect to initiating the sales tax or the relocation request.

h) Essentially, the Diamondbacks' situation is in a state of further determination, i.e., refurbishment of Chase Field and taking advantage of the legislation that was recently passed, relocation to another site in the Phoenix area, or relocation to another city.

i) See, Kent Somers, Love it or leave it? Diamondbacks must make decision about Chase Field, ARIZONA REPUBLIC, Aug. 19, 2022, https://www.azcentral.com/story/sports/mlb/diamondbacks/2022/08/19/arizona-diamondbacks-must-make-decision-chase-field/7836655001/.

Arizona Diamondbacks



a) Diamondbacks are not close to extending their lease at Chase Field, which expires in 2027.

b) The Organization is continuing to weigh its options, contemplating whether to renovate Chase Field or build a completely new ballpark. The Team hopes to have a final answer this summer.

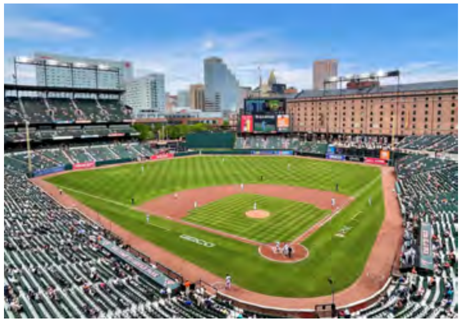
c) Team president and CEO Derrick Hall said that the organization is willing to invest hundreds of millions of dollars in the ballpark to stay in downtown Phoenix.

d) Team's hope is to use the stadium to generate more revenue that could increase the team's payroll and add to paying for a renovated Chase Field or a completely new ballpark.

e) Even with a new stadium, the team wants to stay in Maricopa County.

f) Property taxes funded the current stadium, but this might not be an option for a renovation or new ballpark.

Baltimore Orioles



a) Orioles Park at Camden Yards was opened in 1992 and is owned by the Maryland Stadium Authority.

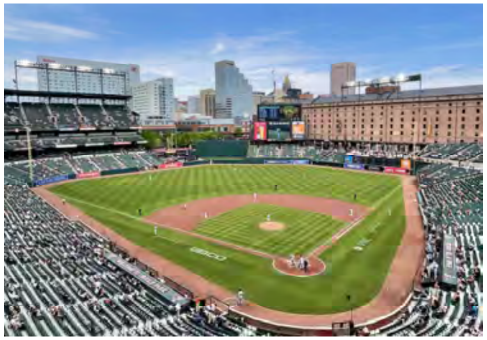
b) Lease Extension: Original lease commenced April 1, 1992 and was to expire at the end of 2021. The parties agreed to a lease extension for two years through 2023 with the club retaining the right to exercise a one-time five year extension by February of 2023.

c) Improvement Fund: The Improvement Fund was to be funded by the owner of the facility, the Maryland Sports Authority.

d) Funding: The funding of the necessary improvements for Camden Yards for the future was accomplished through legislation in 2022 which increased the allowable bond debt for stadium projects from $235 million to $1.2 billion and would require the Team to sign leases for as long as it takes to defease the bonds. Bond debt is defeased through state lottery proceeds. Up to $600 million in outstanding debt would be allowed for projects at each clubs' stadium (Baltimore Orioles and Baltimore Ravens) at any given time.

e) Legislation: The Legislation was recently passed (2022) as H.B. 897, and there is no further update on a lease extension or new lease, other than a commitment by Team Owners to stay in Baltimore and the State of Maryland to fund improvements to Camden Yards.

Baltimore Orioles



a) Original lease began in 1992 when Camden Yards was completed and ran for 30 years.

b) Two-year extension was agreed upon before the lease's expiration in 2021. This served as a stop-gap before a long-term lease could be agreed upon.

c) Orioles turned down a five-year extension of their current lease with the Maryland Stadium Authority.

d) Ultimately, the Orioles do not want to follow in the footsteps of the Baltimore Colts, who abruptly moved to Indianapolis in 1984.

e) Orioles may want a deal of ten to fifteen years and hopes to have it in place before this season's All-Star Game.

f) Negotiations are at a standstill right now because the Orioles' owner and his sons are locked in a legal battle allegedly involving the possible sale and relocation of the team.

Colorado Rockies

a) The facility, Coors Field, opened in 1995 and is owned by the Denver Metropolitan Major League Baseball Stadium District. The original Lease had a term of 22 years with the Effective Date on or before April 6, 1995. The Rockies have the option of extending the term for three consecutive 5-year extensions.

b) Lease Extension: The lease was extended from March 31, 2017 pursuant to a new agreement in 2017 and ends thirty years later on March 31, 2047 with the Rockies having three options to extend for five-year terms.

c) Funding Capital Improvements: The Rockies' rent was raised to $2.5 million annually, which consists of $1 million for rent and $1.5 million for the Capital Improvement Fund.

d) Facility Assessment Report: Yes. Approximate cost of capital improvements is $200M.

e) Quid pro quo: The Rockies and the District will enter into a 99-year ground lease for the west parking lot on a payment schedule. All payments, which are front end loaded, will be paid by the District into the Capital Improvements Fund. The combination of the increase in rent and the long-term lease on an adjacent piece of land will be the payment for the capital improvements and repairs.

Houston Astros

a) The stadium, Minute Maid Park previously known as the Ballpark at Union Station or Astros Field, opened in 2000 with a term of 30-years. The owner of the facility is the Harris County-Houston Sports Authority.

b) Lease Extension: The lease was supposed to expire in March of 2030 but has been extended through 2050 pursuant to a First Omnibus Amendment to the Leasehold Agreement dated as of April 1, 2018.

c) Funding: The funding of capital repairs will be through a set aside of the increased rent that the Astros are paying to the Harris County-Houston Sports Authority and as previously referenced the Sports Authority must obtain sufficient funding by December 31, 2030, in order to fund the improvements that are necessary for the Stadium.

d) Further Funding: The Sports Authority must obtain sufficient funding in order to maintain the stadium in a first-class condition prior to December 31, 2030 in order to fund the improvements that are necessary for the stadium from one of several sources including increasing the motor vehicle rental tax, hotel occupancy tax, etc.

Seattle Mariners

a) The stadium, T-Mobile Park formerly known as Safeco Field, opened in 1999. The owner of the facility is the Washington State Major League Baseball Stadium Public Facilities District. The original Lease was for a term of 20-years with five 3-year maximum renewal options.

b) Lease Extension: In 2018, Seattle Mariners agreed to a lease extension of 25 years which would extend the lease term until 2049 which includes provisions for two 3-year options.

c) Facility Assessment Report: Provided by Populous and identified $385 million in capital improvements to basic ballpark infrastructure that will be necessary over the next 25 years.

d) SRC Clause: The lease requires Mariners to meet an applicable standard of operating, maintaining and improving Safeco Field in a first class manner comparable to the top 1/3rd of MLB ballparks.

e) CapEx Fund: CapEx Funds have been created from the taxes on admissions and parking for ballpark events that are contributed. Revenue sharing pursuant to the lease, entitled to the District, would be contributed to the CapEx fund.

f) Funding of CapEx Fund: Mariners will contribute $100M to a new CapEx Fund at a rate of $3.25M per year with CPI escalation. Taxes collected from admissions and parking for ballpark events by the Mariners will be contributed to the CapEx Fund. Over the life of the Lease, 80% of the costs of capital expenditures, operations, and maintenance will be paid by the Mariners through direct contributions to the CapEx Fund and taxes generated by ballpark events.

Toronto Blue Jays

a) The stadium originally opened in 1989 and was originally called the Sky Dome, now known as Rogers Centre. The privately owned stadium was purchased by Rogers Communication in 2005.

b) The owners have decided to improve the stadium at their own cost.

c) The Blue Jays unveiled details of a $300M multi-phase renovation in July of 2022 which will be completed over the next two to three off-seasons.

Atlanta Braves

a) Moved from Turner Field and entered into new lease in Cobb County.

b) The new stadium, Truist Park formerly known as SunTrust Park, opened in 2017. The owner of the stadium is the Cobb-Marietta Coliseum and Exhibit Hall Authority.

c) Has provisions relative to a Capital Maintenance Fund: wherein the team and the county parties agreed to establish a capital maintenance fund for capital maintenance and repairs for stadium and Authority parking to make equal contributions to the fund and to each be responsive on an equal 50/50 basis for all capital improvements and all capital maintenance and repairs needed from time to time.

d) Leasehold Agreement contains an Option to Purchase and right of first refusal with respect to the county's interest in the stadium to the team.

Tampa Bay Rays

a) The stadium known as Tropicana Field, and formerly known as Florida Suncoast Dome and ThunderDome, was opened to the public in 1990 at a cost of $138 million. The stadium is owned by the City of St. Petersburg, FL. The original lease began in April of 1995 and expires at the end of the 2027 MLB season.

b) Lease Extension: The lease has not been extended and expires at the conclusion of the 2027 MLB season.

c) Capital Account: A portion of ticket sales is paid to the City by the Club during each term of which $0.50 for each Ticket Stub Collected for any baseball or non-baseball event and $0.25 in addition to the $0.50 if the Ticket Stubs Collected during the regular season MLB home games exceeds 3,300,000.

d) Capital Improvements: Capital Account is used for repair and renewal projects of the stadium. The Club is solely responsible for costs. The Club is expected to contribute $700,000 annually, totaling $4,200,000 for six consecutive years until the eleventh year of the Active Management Term.

e) Non-Relocation/Retention Clause: No specific reference to a non-relocation clause is present in the agreement. However, if the Club fails to continue with any payments subject to the Ticket Stub Funds and/or payments to the Capital Account, the City has the right ”to seek and obtain an injunction or decree of specific performance or an equitable remedy from a court of competent jurisdiction to enjoin or remedy any violation of the Agreement.”

f) New Stadium Proposal: Club has submitted a proposal to build a new domed ballpark. If approved, Rays hope to move into new stadium by 2028. The Rays are currently working with a well-known Populous architectural firm regarding the construction and design of the new stadium. Further, discussions have amplified regarding the Rays staying in St. Petersburg, rendering their stay in the area more likely than not.

Oakland Athletics

a) The stadium known as the RingCentral Coliseum, formerly known as the Oakland Coliseum, was opened to the public in 1966. Originally home to the Raiders of the NFL when they were in Oakland from 1966 to 1981 and 1995 to 2019, this stadium was built in hopes to attract a big-league baseball team to Oakland. In 1968, the Oakland A's arrived.

b) Lease Extension: The lease has not been extended and expires at the conclusion of the 2024 MLB season.

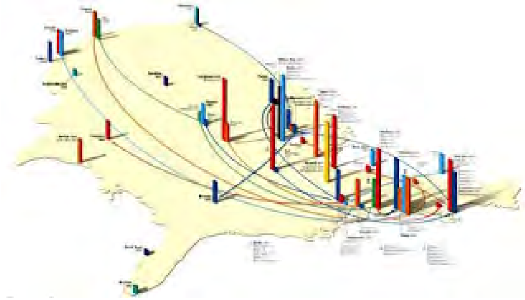
c) Capital Improvements: The Licensor (Oakland-Alameda County Coliseum Authority) is obligated to provide $1,000,000 per year of the Term for a "Stadium Maintenance Fund". The "Stadium Maintenance Fund" is used for the Licensor's Maintenance and Repairs required.

d) Retention: Neither party is permitted to assign or transfer any of its rights or obligations without prior written consent of the other Party.

e) New Stadium Proposal: While MLB Commissioner Rob Manfred stated he is not optimistic about the chances of a new Oakland A's ballpark, the VP of Baseball Operations for Oakland is. While the organization is flirting with moving to Las Vegas, NV, Oakland has raised $320 million in federal and state funds for upgrades toward building a new stadium. As of now, negotiations are ongoing for construction and design of a new stadium.

f) Nonetheless, the city of Las Vegas has given "full support" to potentially move the A's from Oakland to Las Vegas. There have been extensive discussions about where in Las Vegas the A's could play, particularly building a new stadium in the northern strip of the city. Even the president of Resorts World Las Vegas, a prominent hotel in the city, pinpointed a certain site where the A's could be located and emphasized the potential positive impact the A's could have on the Strip properties and the Las Vegas community.

Relocation in Major League Baseball



Franchise relocation in Major League Baseball (MLB) has been, at times, a common occurrence. In the twenty-year period between 1953 and 1972, ten MLB teams changed their home cities.

- 1953 - the Boston Braves relocated to Milwaukee;
- 1954 - the St. Louis Browns relocated to Baltimore, becoming the Baltimore Orioles;
- 1955 - the Philadelphia Athletics relocated to Kansas City;
- 1958 - the Brooklyn Dodgers relocated to Los Angeles;
- 1958 - the New York Giants relocated to San Francisco;
- 1961 - the Washington Senators relocated to Minneapolis-St. Paul, becoming the Minnesota Twins;
- 1966 - the Milwaukee Braves relocated to Atlanta;
- 1968 - the Kansas City Athletics relocated to Oakland;
- 1970 - the Seattle Pilots relocated to Milwaukee, becoming the Milwaukee Brewers;
- 1972 - the Washington Senators relocated to Arlington, Texas, becoming the Texas Rangers.

Relocation in Major League Baseball, Continued

However, in the fifty years since 1972, only one MLB franchise has relocated. In recent hearings before the Senate Judiciary Committee relative to the Baseball Anti-Trust Exemption, Commissioner Manfred indicated that "in the same period, fourteen NBA, ten NFL, and nine NHL franchises have relocated. MLB differs from other professional sports leagues because MLB Anti-Trust Exemption allows it to enforce a rigorous process that ensures that club relocation is carefully considered and vetted." Manfred indicated that the Anti-Trust Exemption was responsible for MLB franchise location stability.

A portion of the credit for this increased franchise stability can be assigned to the emergence of "non-relocation agreements" between MLB franchises and the cities they call home.

MLB Constitution

Major League Constitution means the Major League Constitution adopted by the Major League Baseball Clubs (which amended and superseded the Major League Agreement dated January 1, 1975, the Agreement in re Major League's Central Fund dated as of December 8, 1983 as amended, and the respective Constitutions of the former American and National Leagues, Professional Baseball Clubs):

The MLB Constitution regulates the acquisition of a controlling interest in an MLB franchise. Article 5 of the MLB Constitution requires the approval of three-fourths (3/4ths) of the Major League Clubs (Teams) to approve the sale or transfer of controlling interest in any Club. Article 5 also indicates that the vote of three-fourths (3/4ths) of Major League Clubs shall be required for the approval of any of the following:

1. Expansion by the addition of a new Club or Clubs or contraction by the subtraction of a Club or Clubs;
2. The sale or transfer of a control interest in any Club; provide, however, that a majority vote of all Major League Clubs shall be sufficient to approve any such sale or transfer occurring upon the death of an owner to a spouse or one or more lineal descendants. For purposes hereof, the term "control" shall mean the possession by the transferee, directly or indirectly, of the power or authority to influence substantially the management policies of the Club. A sale or transfer of a non-control interest in any Club shall require only the approval of the Commissioner;

MLB Constitution, continued

3. The relocation of any Major League Club;
4. Any change from the present form of three-division play in either League (e.g., two-division or four-division play);
5. The realignment of one or more Clubs into a different division(s) or into the other League; provided, however, that no Club may be moved to a different division or to the other League without its consent;
6. Any provision affecting the sharing by the Major League Clubs of revenues from any source;
7. Any provision amending this Constitution, except as specifically provided elsewhere in this Constitution; or
8. The involuntary termination of the rights, privileges and properties of a Major League Club pursuant to the procedures of Article VIII hereof.

Article 7 of the MLB Constitution establishes the MLB Constitution as superseding any conflicting provisions of any other agreement of which any Major League Club is a party.

The MLB Constitution also gives the MLB Commissioner the power to take actions that are in the best interest of baseball. Such actions could preclude a Club from moving from one location to another. I was not able to obtain the most current copy of the MLB Constitution and utilized secondary sources in order to piece together the information as herein contained.

Stadium Ranking Clauses

State-of-the-Art Facility Clauses or Stadium Ranking Clauses (hereinafter referred to as “SRC Clauses”) are quite popular in sports facility leases today. SRC clauses, also known as “keeping up with the Jones” clauses, are a unique agreement where the governmental unit promises to maintain a top-of-the-line sports venue in comparison with other venues in that league, or else the sports franchise is free to terminate its lease and relocate with minimal, if any, consequences.

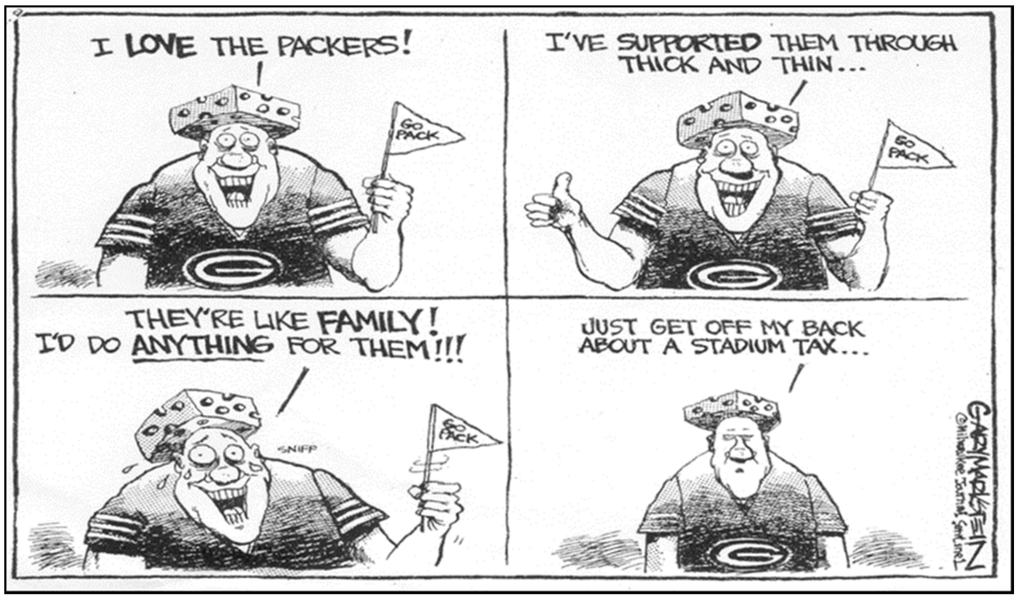
Examples of Stadium Ranking Clauses

- Necessary Improvements are required to keep the Stadium Complex on par with the replacement components and upgraded facilities in use in at least eighty (80%) percent of all Major League Baseball stadiums.
- Landlord shall make and perform all Major Capital Repairs [and Improvements] in a safe and first-class manner, and in a manner that is consistent with the repair and improvement standards of Major League Baseball facilities that can reasonably be said to fall within the "top" thirty percent (30%) of all such facilities, when such facilities are rated or ranked according to the quality with which they are repaired and improved.

Financing Capital Improvements Some Alternatives

1. Jock Tax
2. Super TIF
3. Surcharges
4. Naming Rights
5. Shared Ownership
6. Quid Pro Quo
7. Gambling
8. Cooperative Agreement
9. Public-Private Partnership
10. Team Purchasing Stadium Project

SCR 20: 4.1.
Truthfulness in Statements to Others



In the course of representing a client a lawyer shall not knowingly:

(a) make a false statement of material fact or law to a third person; or

(b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

Financing Capital Improvements
Legality of Public Funding

The public funding of sports facilities through tax dollars has been upheld and meets the public purposes doctrine. In the Libertarian Party of Wisconsin, et al. vs. the State of Wisconsin, et al, Wisconsin Supreme Court Decision No. 95-3114-OA filed April 9, 1996, the Supreme Court found that

- [t]he purpose of the Stadium Act is to promote the welfare and prosperity of this state by maintaining and increasing the career and job opportunities of its citizens and by protecting and enhancing the tax base on which state and local governments depend upon. It is clear that the community as a whole will benefit from the expenditures of these public funds. Creation of new jobs is of vital importance to the State of Wisconsin and economic development is a proper function of our government.

In the case entitled County of Erie vs. Kerr, 49 A.D.2d 174 (N.Y. App. Div. 1975), the Court decided that

- [t]he Legislature declared that the use and occupation of such a stadium was deemed to be in the public interest and for the benefit of the people of the county and for the "improvement of their health, education, welfare, recreation, well-being and prosperity, for the promotion of competitive sports for your and the prevention of juvenile delinquency, and for the advancement and improvement of trade, industry, science, agriculture and commerce, and [they] are hereby declared to be public purposes for which county moneys may be appropriated and expended.

Therefore, the funding of improvements by a public entity of a stadium has been declared for a public purpose and is legal and enforceable.

Stadium Debate – Municipal Entitlement Fee

- To obtain and maintain sports franchises in any community, governmental units will be required to pay a municipal entitlement or franchise fee.
- A municipal entitlement or franchise fee is a public (taxpayer's) investment in the form of tax dollars to obtain or maintain a sports franchise.
- A municipal entitlement or franchise fee is usually in the form of the public's participation in the creation or renovation of a team's sports facility.
- While the economic benefits generated by sports venues are debatable, the "psychic income" is not, in that new or renovated sports venues fulfill public purposes, produce new tax revenues and media exposure for teams and cities.

Stadium Debate – True Economic Cost of Stadium Financing

- Bond cost principal
- Interest on bonds
- Capital and maintenance costs
- Infrastructure
- The cost of property tax exemption
- Federal exemption on interest earned from stadium bonds
- State tax exemption on interest earned on stadium bonds
- Sales tax exemption or materials, to name a few
- Sports facility development is a costly undertaking.

Whenever there is a request for public funding of stadiums or renovations there is always a public debate referred to as “The Stadium Debate.” There are strong feelings on both sides as to the value that a stadium brings to a community utilizing taxpayer dollars. Here are some of the arguments that you will hear with respect to the utilization of the use of public dollars to fund capital improvements at American Family Field:

- Sporting facilities financed largely with public dollars (sports pork) are nothing more than a form of public subsidy to benefit private owners and players.
- Public money is converted to private profit.
- Government units throughout the country are mortgaging their future to the sports industry.
- Publicly financed sports facilities over play the actual bottom line and economic impact of dollar flow to the community.
- Stadium proponents always overstate the effectiveness of a stadium as an economic development engine.
- Stadiums, most facilities, simply represent a transference of dollars from one entertainment source to another.
- Facilities do not pay for themselves, nor do they act as economic engines.
- Sports facilities result in a generation of annual benefits that are less than the taxpayers’ actual cost to create and maintain the facility.
- Taxpayers are holding the bag when a facility becomes physically obsolete, economically obsolete, or truly is beyond rehabilitation.
- Public funding of sports facilities only increases capitalized value of team or cash flow of the enterprise.

Sports Pork

Sports Pork, continued

The people who take this position are referred to as naysayers. However, there are people on the other side who strongly believe that public funding is necessary for a community. What follows are the arguments made for the use of public funding as made by proponents:

- Entertainment value;
- Community pride;
- Business location decisions;
- Value of media exposure;
- Economic impact;
- Fiscal impacts;
- Stimulus to real estate development
  - Sports.comm;
- Big League; and
- Psychic Income.

Conclusion

1. The practice of law in the area of sports facility development is the ultimate in general practice as it involves a multitude of areas of legal specialties.
2. Sports is part of the American Dream and part of our daily lives and the industry has grown exponentially and in its complexity. There is a need for competent and ethical legal help.
3. A new facility project, such as the arena the Milwaukee Bucks have undertaken, can uplift and change the face of a city.
4. Stadiums and arenas are some of the largest public-private partnerships, and the public working with private capital is a necessity in order to get these projects accomplished.
5. There will always be a stadium debate and there are two sides to the story and the truth must be told.
6. Stadiums that are 15-30 years old would be in need of maintenance, capital repairs, or capital improvements.
7. In many instances, the tax that initially supported the bonds that paid for the stadium have been defeased in full. Many governmental units have been left with the issue of capital improvements without having a continuing tax to pay for it.
8. Capital improvements are the result of ‘wear and tear,’ league requirements, and stadium ranking clauses.
9. These stadiums that are part of this presentation give a good indication of the various means in which solutions have been proposed relative to payment of present and future capital improvements.
10. But one thing is for certain, and that is the public will share substantially in those costs.

Thank you

- Thank you to Daniel Potter, a third-year law student at Marquette University Law School, for his assistance in preparing this presentation.