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Sports Facility Financing and Development Trends in the United States

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SPORTS FACILITY FINANCING AND DEVELOPMENT TRENDS IN THE UNITED STATES*

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INTRODUCTION

This article addresses six trends in the United States with respect to sports facility development:

1. *A Sure Thing is Never a Sure Thing*. Lawsuits are now part of the stadium game. Approval is no longer the final obstacle. Opponents have found a new vehicle to attack facility construction even after financing has been approved – lawsuits. Lawsuits have been filed in many cities attacking the necessity of having a referendum, the ability of the municipality to issue bonds, and whether financial assistance can be provided to private parties. The challenges have been made on every conceivable ground from constitutional issues to local ordinance law.

2. *State of the Art Facility - A Continual Redefinition*. Every new building that comes online is advertised as being more extravagant and more profitable than its predecessor. Each new venue is cutting edge. A state-of-the-art facility is fan-friendly and user-friendly, and provides a sporting, entertainment, and shopping experience for the

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I acted as moderator for the September 25, 2003 panel on *Sports Facility Financing, Development and Safety*, relative to the International Sports Law and Business in the 21st Century conference hosted by the National Sports Law Institute at Marquette University Law School and The International Association of Sports Law. The other panelists - which included Michael Cramer - *Revenue Generation and Auxiliary Real Estate Development*, Michael Siebold and Dr. Angela Klingmuller - *Sports Facility Financing and Development Trends in Europe and Germany*, and Richard Weiss - *Bond Financing for Sports Facilities* – made such excellent presentations that there was little or no time for me to present facility trends in the United States.

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consumer.

3. *Please Don't Go.* The battle between the Metropolitan Sports Facilities Commission and Major League Baseball and the Minnesota Twins may have given new meaning to non-relocation agreements and the typical landlord-tenant relationship. Non-relocation agreements may be the most hotly negotiated subject in leases today.

4. *The Boom in Sports Venues Has Shifted.* With most of the major league facilities either renovated or new, the secondary market and college facilities seem to be the place where all the action is. As a matter of fact, new or renovated college facilities have resulted in a collegiate facilities arms race.

5. *It Takes a Village to Build a Sports Facility.* Sports facility development is really real estate development. There is evidence in both major and secondary cities that the creation of sports facilities will either have a Master Plan or rippling effect of creating real estate and economic development in the surrounds of the facility. A Sports.Comm integrates the sports facility into a larger mixed-use community.

6. *New Economics.* With the advent of enhanced seating, sports has priced most of America out of the marketplace.

What follows is a discussion of these trends and issues.

I. "A SURE THING IS NEVER A SURE THING"

Obtaining approval for a sports facility financing plan is difficult at best. Every community that has constructed or renovated a sports facility has witnessed the acrimony. Debate rages amongst politicians, team owners, economists, media, and the general public. Special interest groups join, or are created, on both sides of the debate. Teams focus most of their efforts on obtaining approval of the financing plan. The prevailing logic is that once the financing plan is approved, the debate is over, and the facility will be built.

Approval is no longer the final obstacle, however. Opponents have found a new vehicle to attack facility construction even after the financing has been approved - lawsuits. Lawsuits have been filed in many cities. The necessity of having a referendum, the ability to issue bonds, and financial assistance to private parties are among the legal issues that have been addressed. Challenges have been made on every conceivable ground from constitutional issues to local ordinance law.

Lawsuits are nothing new to proposed stadiums and arenas. Court challenges have occurred in many locations across the country. After Pinellas County approved a financing agreement for a dome in St. Petersburg, Florida, opponents challenged the plan on statutory and constitutional grounds.[1] The opponents claimed the agreement levied a tourist tax inappropriately and was passed in private meetings contrary to the Florida Sunshine Law.[2] Opponents also claimed the agreement required a referendum[3] and violated the equal protection clause of the Florida Constitution. The Supreme Court of Florida upheld the agreement on all four challenges.[4] The Florida Sunshine Law was not violated because the financing agreement complied with subsequent statutes and amendments.[5] The Florida Constitution did not require a referendum and no Equal Protection violation existed.[6]

Opponents in Florida were not deterred by the Supreme Court of Florida's decision. The stadium plan for Raymond James Stadium in Tampa, Florida levied a surtax to pay for bonds necessary to finance the stadium. The plan was approved by referendum. An area taxpayer challenged the financing for the stadium on grounds that it violated the Florida Constitution.[7] The contention was that the Florida Constitution would be violated[8] because the county, city, and Tampa Stadium Authority (TSA) would incur debt, impose a tax, and pledge public credit to aid a corporation.[9] The Supreme Court of Florida held the stadium plan was valid because the stadium served a "public purpose."[10]

The Supreme Court of Washington used similar reasoning for a similar challenge.[11] Opponents claimed the financing plan for a new baseball stadium (Safeco Field) for the Seattle Mariners violated the Constitution of the State of Washington.[12] The plan was challenged on four grounds:

1. The lease between the Mariners and the public facilities district was an "unconstitutional gift of public monies to a private organization."[13]

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1. Rowe v. Pinellas Sports Auth., 461 So. 2d 72 (Fla. 1984).
2. FLA. STAT. ch. 286.011(1) (1983); *Rowe*, 461 So. 2d 7 at 74, 75.
3. FLA. CONST. Art. VII, § 12.
4. *Rowe*, 461 So. 2d 72.
5. *Id.* at 74-75.
6. *Id.* at 78.
7. Poe v. Hillsborough County, 695 So. 2d 672, 674 (Fla. 1997).
8. FLA. CONST. Art. VII, § 10(c).
9. *Poe*, 695 So. 2d at 675.
10. *Id.* at 676
11. King County v. Taxpayers of King County, 949 P.2d 1260 (Wash. 1997).
12. WASH. CONST. Art. VIII §§ 5, 7.
13. *King County*, 949 P.2d at 1262.

2. The taxes would not be constitutionally imposed and properly collected.[14]

3. Legislative authority was unconstitutionally delegated to the public facilities district.[15]

4. The plan required a special referendum because King County would incur debt greater than 1.5% of the total land value.[16]

As part of the appeal, King County sought declaratory judgment validating the bonds. The court upheld the financing plan and validated the bonds.[17] On the first and third challenges, the court stated that the stadium construction served a "valid public purpose" and an "incidental benefit to a private organization" would not invalidate the plan.[18] The court held all provisions of the Constitution of the State of Washington were complied with in regard to the taxes imposed and collected. The court also decided the county could finance the plan without a special referendum because the debt was within the limit of 1.5% of the assessed property value.[19]

Marylanders for Sports Sanity sued to force a referendum for the financing plan for Oriole Park at Camden Yards in Baltimore, Maryland.[20] The opponents argued that the Constitution of the State of Maryland required a referendum for "any act of the General Assembly."[21] The Maryland Court of Appeals held that opponents could not force a referendum because the enactments that involved the Maryland Stadium Authority were "an appropriation for maintaining State Government," which was exempted from referenda.[22]

The Libertarian Party challenged the Stadium Act[23] that created a stadium district as part of the plan for Miller Park, a baseball stadium for the Milwaukee Brewers.[24] The party claimed the Stadium Act violated the Constitution of the State of Wisconsin on five grounds:

1. The act was a special or private tax law because it was imposed on

14. *Id.*
15. *Id.*
16. *Id.* at 1272.
17. *Id.* at 1263.
18. *King County*, 949 P.2d at 1266.
19. *Id.* at 1274.
20. Kelly v. Marylanders For Sports Sanity, Inc., 530 A.2d 245, 245 (Md. Ct. App. 1987).
21. *Id.*
22. *Id.* at 250
23. 1995 WIS. ALS 56.
24. Libertarian Party v. State, 546 N.W.2d 424 (Wis. 1996).

five counties.[25]

2. The act permitted the contracting of state debt without a public purpose.[26]

3. The act violated the internal improvements clause, which forbade the state from engaging in internal improvements (construction benefiting private organizations) without a pledge of land by the organization.[27]

4. The act violated the municipal debt limitation, which required the state to have enough revenue to repay the interest on a debt.[28]

5. The act pledged state credit to a private organization (the Brewers).[29]

The Supreme Court of Wisconsin upheld the Stadium Act against all five challenges.[30] The tax did not violate the Constitution because it followed specific criteria that were required to impose a limited tax.[31] As in all other jurisdictions, the court held a stadium served a valid public purpose and was not an internal improvement.[32] Because the plan contained enough revenue from the imposition of a sales tax and the security in the stadium, the municipal debt limitation was not violated.[33] Finally, the court held that an allowable subsidy was given to the Brewers and not state credit.[34]

As all of these examples show, municipalities and sports authorities have won nearly every case filed against them. Lawsuits are still being filed, however. Opponents now have a new tactic: file repeated lawsuits in an effort to delay and increase costs, with the hope of canceling the construction.

This technique is best illustrated in San Diego. Opponents of the San Diego Padres' new baseball stadium have filed sixteen lawsuits. Like other lawsuits in this area, the stadium plan has been challenged on every possible legal ground. Also like the other lawsuits, the opponents have lost. The City of San Diego and the Padres are winning battles, but are losing the war. Stadium construction was halted when temporary funds were depleted. The

25. WIS. CONST. Art. IV, §§ 31, 32.
26. WIS. CONST. Art. VIII, §§ 4, 7(2).
27. Id. § 10.
28. WIS. CONST. Art. XI, § 3(3).
29. WIS. CONST. Art. VIII, § 3.
30. *Libertarian Party,* 546 N.W.2d at 424.
31. *Id.* at 431.
32. *Id.* at 433-35.
33. *Id.* at 436-38.
34. *Id.* at 438-40.

project has been delayed for fifteen months. The San Diego Union-Tribune referred to the lawsuits as "legal guerrilla warfare."[35] No one has formulated an estimate of the total cost to the taxpayers of San Diego, but the development of the entire East Village area was delayed. The Union-Tribune stated that the delays "cost the taxpayers and the Padres millions of dollars."[36]

The City of San Diego wanted to sell bonds as authorized in the stadium legislation after the temporary financing was depleted. Because of the uncertainty of the pending lawsuits, no financial company was willing to underwrite the bonds. The City finally reached an agreement with Merrill Lynch to sell bonds on February 15, 2002.[37] Bonds have been sold, but the City will lose approximately $3 million per year because the bonds are being sold with a qualified opinion.[38] The City and the Padres hope the matter is resolved, but still fear further litigation. To discourage any new lawsuits, the Padres sued a San Diego attorney responsible for sixteen lawsuits for malicious prosecution, seeking compensatory and punitive damages.[39] While malicious prosecution is historically difficult to prove, in December of 2003 the court of appeals held that the attorney who brought the actions was not absolutely privileged to file the underlying actions.[40] The owners, however, failed to make requisite showing of lack of probable cause in support of two of three of the malicious prosecution claims, but evidence was sufficient in one malicious prosecution claim to establish a prima facie case of improper motive.[41]

Opponents in other cities have observed the results in San Diego and have followed suit. In Memphis, a trial court ruled the financing arrangement for the construction of the new NBA arena was unconstitutional.[42] A group of taxpayers led by the plaintiff, Duncan E. Ragsdale, claimed the financing plan unconstitutionally[43] pledged state credit to a private organization.[44] The Tennessee Court of Appeals overruled the trial court because revenue rather

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35. *On the Move Again; Ballpark Project Crosses Biggest Hurdle*, S.D. UNION-TRIB., Feb. 18, 2002, at B6.

36. *Id.*

37. *Id.*

38. DAVID Walters, *What's a Clean Legal Bond Opinion Worth? $3 Million a Year*, BLOOMBERG NEWS, Dec. 4, 2001.

39. Alex Roth, *Padres hit Back, Sue Henderson in Ballpark Fight*, S.D. UNION-TRIB., Jan. 9, 2002, at A1.

40. Padres, L.P. v. Henderson, 8 Cal. Rptr. 3d 584, 588 (Ct. App. 4th Dist. 2003).

41. *Id.* at 605.

42. Ragsdale v. City of Memphis, 70 S.W.3d 56 (Tenn. Ct. App. 2001).

43. TENN. CONST. Art. II, § 29.

44. *Ragsdale*, 70 S.W.3d at 56.

than credit was pledged and the arena fell within an exception for "public purpose."[45] Despite their failure in the lawsuit, opponents succeeded in delaying the project.

In Chicago, two groups, the Friends of the Parks and the Landmarks Preservation Council of Illinois, had filed a lawsuit to stop the planned renovation of Soldier Field.[46] The groups claimed that the renovation project "illegally uses public money for a private project and violates the Public Trust Act, which limits the use of public lands to public purposes."[47] On February 21, 2003, the Supreme Court of Illinois upheld the lower court decision of April 25, 2002, granted summary judgment to the defendants and dismissed the action.[48]

Sports facilities are not unique to major markets. Likewise, lawsuits are not unique to major markets. The City of Everett, Washington is in the process of building an arena for a minor league hockey team. Members of a citizens group called Citizens for a Better Arena (CBA) filed a voter initiative, which would require a referendum to relocate the arena.[49] While the City of Everett contemplated the referendum, the Everett Public Facilities District (District) made a pre-emptive strike by suing the city to prevent the referendum for site relocation.[50] The District also sued CBA to prevent any actions that could result in delays.[51] The City is literally caught in the middle of the fight between the District and CBA. The District was created by the City to administer the arena construction. Since they are both government entities, taxpayers are paying both sides' legal costs. Everett has spent nearly $13 million on arena construction.[52] Neither the District nor the City wants to incur delays or cancel the project. The arena is viewed as vital to a downtown revitalization plan. Any lawsuits will delay the revitalization and increase costs the City cannot afford.[53]

The delays in San Diego and Chicago have inspired, and will continue to inspire, stadium opponents throughout the country. The stadium plans are so

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45. *Id.*

46. *Stadium Foes Seek Documents*, CHI. BUS., Feb. 6, 2002, *available at* www.chicagobusiness.com/cgi-bin/news.pl?id=4501.

47. *Id.*

48. Friends of the Parks v. Chi. Park Dist., 786 N.E.2d 161 (Ill. 2003).

49. *Everett Arena Dispute Lands in Court*, HERALDNET, *at* http://www.heraldnet.com/stories/02/3/1/15235857.CFM (Mar. 1, 2002).

50. *Id.*

51. *Id.*

52. *City Council Overturns Event Center Initiative*, HERALDNET, *at* http://www.heraldnet.com/Stories/02/3/7/15266481.cfm (Mar. 7, 2002).

53. *Id.*

complex, involve so many jurisdictions, and so many legal issues that issue and claim preclusion are not applicable. Municipalities and sports authorities have won, and will continue to win, the same litigation that has been decided in other jurisdictions. For stadium opponents, winning is not necessary for victory. Delays lead to increased costs for teams and municipalities. Thus far teams have incurred financial loss, but every project has continued. Opponents have been unable to cause enough delays to terminate a stadium plan, yet. The court challenges are having an additional negative impact. The cost of litigation and costs from delays are adding to stadium and arena costs. Municipalities and stadium authorities will most likely seek declaratory judgment before commencing with facility construction. This extra step will only increase costs. Taxpayers will spend more money. The groups opposing stadiums are thus costing citizens more money while not preventing construction. Stadium opponents have created a situation where everyone including teams, municipalities, and citizens lose.

Even after the stadium is built, public money spent, and the team occupies its new home, there is no guaranty of "peace." The Cincinnati Bengals moved into their new $458 million Paul Brown Stadium in 2000. The stadium was built in part with money from a county sales tax hike.[54] Residents had been angry that overruns greatly inflated the cost of the stadium and the Bengals continued to lose after they moved in for the 2000 season. The Bengals have not had a winning season since 1990 and have compiled the NFL's worst record over the last thirteen years. Plaintiff Carrie Davis has alleged that "the NFL violated federal anti-trust provisions by using its monopoly to extort new stadiums at highly favorable lease terms from communities. . . . The bottom line is the NFL lied not just to the Hamilton County residents but to numerous communities across the country to make taxpayers fund a private enterprise." Davis said, "They gave us wrong information to twist our arms into paying for a stadium."[55] The lawsuit claims that the Bengals and the NFL have violated the lease for the team's taxpayer-financed stadium with poor play since it opened. The plaintiff claims that the quid pro quo for a publicly financed stadium was fielding a competitive team.[56] The Bengals' lawyer, Robert Stachler, has said to the judge in the case, "They're asking you to find as a matter of law that the Bengals had some implied contractual obligation to win a certain number of games."[57] The original plaintiff in the case, Hamilton

54. Joe Kay, *Federal judge upholds lawsuit challenging NFL*, ASSOC. PRESS, Feb. 9, 2004.

55. *Id.*

56. John Nolan, *Bengals: Taxpayer Lawsuit Without Merit*, ASSOC. PRESS, Jan. 30, 2003.

57. John Nolan, *NFL, Bengals Ask Dismissal of Lawsuit Over Stadium Lease*, ASSOC. PRESS, *available at* http://theintelligencer.net.

County Commissioner Todd Portune, has claimed that the Bengals failed to field a competitive team and therefore should renegotiate its lease terms. The lawsuit also names twenty-four other NFL franchises, accusing them of fraud, civil conspiracy, anti-trust violations, and breach of contract.[58] Portune's lawyer, Robert Furnier, has argued that the Bengals had claimed they needed a new stadium that produced more revenue in order to remain competitive among NFL teams in an era of player free agency, but the county had a right to expect an economic return for providing the Bengals with a new stadium.[59] Furnier further claims that the NFL is liable in the lawsuit because it conspired with its teams not to release financial information that would support the demands of the Bengals and others for new publicly financed stadiums.[60] The lawsuit against the Bengals is aimed at recovering up to $200 million to offset what some see as a lopsided stadium lease by reducing the taxpayers' obligation for the $458 million project.[61] Hamilton County has now asked a federal district court to join the lawsuit as a party plaintiff. Even those who question the use of public funds for the public financing of sports venues have questioned the integrity of the case. Andrew Zimbalist, a Smith College economist, has said "It doesn't strike me . . . as a real strong case."[62]

In November of 2003, Ulice Payne, Jr., Milwaukee Brewer team president, left the team shortly after "he went public with his reservations about further trimming the team's payroll by 25%."[63] Payne's departure, and further reducing an already reduced payroll, "brought the Club a chorus of criticism for its failure to meet its promise of building a better ball club through a new stadium."[64] The basis for the publicly financed stadium was a promise of higher payrolls and a better record. Miller Park opened in 2001 and the Brewers' payroll has declined in the last two seasons and the Club has not had a winning season since 1992.

After Payne's departure, several state lawmakers called for a full-fledged public audit. Assembly Speaker John Guard and State Representative Bob Ziegelbaur have asked the Brewers to allow an audit of the team by the non-

58. Nolan, *supra* note 56.

59. *Id.*

60. Kay, *supra* note 54.

61. Shawn Ley, *New Developments in Lawsuit Against Bengals, at* http://www.wcpo.com (Sept. 11, 2003).

62. Nolan, *supra* note 57.

63. Arnie Stapleton, *Restricted Audits on Brewers to Commence*, ASSOC. PRESS, USA TODAY, Jan. 31, 2004, *available at* http://www.usatoday.com/sports/baseball/nl/brewers/2004-01-31-brewers-audit_x.htm.

64. *Id.*

partisan Legislative Audit Bureau.[65] The politicians claim that "wholesale cuts in player payroll have raised legitimate concerns about whether the Brewers ownership shares the taxpayers' commitment to quality Major League Baseball in Milwaukee."[66]

> [W]hen the stadium was first proposed, 'the Brewers entered into a bargain with the taxpaying public. In return for public support of the stadium project, the Brewers promised to aggressively pursue excellence. Recent events have significantly eroded public confidence in the ability and even willingness of the team ownership to live up to its part of the bargain.[67]

"In another move, State Senate Majority Leader Mary Panzer . . . said she had asked staffers at the Legislative Audit Bureau to review what tax exemptions the Brewers have under state law."[68]

Tommy Thompson, a strong supporter of the Miller Park financing package and former Governor of the State of Wisconsin, stated that:

> The Brewers made it clear that if we built a modern state-of-the-art stadium it would provide them with the resources to field a winning baseball team. . . . The taxpayers stepped up, built the stadium, and kept Wisconsin a major league state—yet the Brewers have not upgraded the quality of their team and now they are apparently cutting their payroll further. The Brewers need to put an end to the games. They need to invest in a winning team.[69]

While the contractual agreements between the Brewers and the Stadium District does not provide for public disclosure of financial information, the Brewers have agreed to disclose their financial records in hope of restoring public trust. The Wisconsin Legislative Audit Bureau and the Metropolitan Milwaukee Association of Commerce will conduct separate reviews of the Club's finances. [70] Rick Schlesinger, the Brewer's executive vice president in charge of business operations, has said that this is unprecedented on several levels. "I'm not aware of any professional sports team that's agreed to [the] level of scrutiny . . . . [T]he Legislative Audit Bureau usually audits state

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65. Assoc. Press, *Brewers Audit Requested*, MANITOWOC HERALD TIMES REP., Nov. 20, 2003, *available at* http://www.wisinfo.com/heraldtimes/news/archive/local/_13291118.shtml (last visited Sept. 9, 2004).

66. *Id.*

67. *Id.*

68. *Id.*

69. Don Walker & Tom Haudricourt, *Legislators Want to Audit Brewers*, MILWAUKEE J. SENTINEL, Nov. 12, 2003, 1A.

70. Stapleton, *supra* note 63.

agencies. It's not in the habit of reviewing private enterprises."[71]

The audit to be undertaken by the Legislative Audit Bureau has several restrictions including:

> [(1)] expenses and revenues [will not] be itemized but instead lumped into broad categories[; (2)] the local revenue category will include money taken in from tickets, concessions, parking and suites but [will not] list specific amounts from each[; (3)] specific salaries [will not] be disclosed, although the report will show whether salaries are on par with major league averages[; (4)] specific owner's ownership percentages [will not] be disclosed, although their identities will be reported[; and (5)] specific terms and conditions of partners or other related parties' loans to the Brewers won't be disclosed.[72]

To add fuel to the controversy surrounding public financing of sports facilities, a study by researchers at the University of Dayton, released in March of 2004, concluded that large public subsidies for the construction of major league baseball stadiums are unnecessary.[73] Economic professors Mark Poitras and Larry Hadley examined thirteen stadiums built between 1989 and 2001 and concluded that the teams could probably recover all or nearly all of the cost of construction if the ballparks were built with private money instead of taxpayers' money.[74] "The bottom line is that these new stadiums generate sufficient revenues to pay for themselves," Hadley said.[75] If a stadium pays for itself entirely, that should be sufficient motivation for the owners to build it. While other economists are questioning some of the assumptions in the report, the issue of publicly funded sports facilities will continue to be a hotly debated topic.

II. "STATE-OF-THE-ART FACILITY – A CONTINUAL RE-DEFINITION"

Once upon a time, not all that long ago, sports arenas and stadiums were expected only to be functional. Clean, safe, good view of the game and reasonable lines at the concession stands. They were often ugly buildings, surrounded by acres of pavement. You parked your car, cheered for your team and went home. But over the last decade, that's all changed. Today, sports venues must have glass-enclosed luxury suites, premier seating, retractable

71. *Id.*

72. *Id.*

73. Marc Poitras & Larry Hadley, *Do New Major League Ballparks Pay for Themselves?*, *at* http://www.sba.udayton.edu/research/working_papers/wp6.pdf (last visited Oct. 4, 2004).

74. *Id.*

75. *Id.*

roofs, restaurants and microbreweries, and private clubs. You have structures such as Los Angeles' new Staples Center, which is a $375 million "entertainment experience.... The building itself has become the star of the show."[76]

A re-definition of "state-of-the-art facilities" will continue to evolve as new facilities are built. Dennis Howard, a professor at the University of Oregon's Warsaw Sports Marketing Center, has referred to it as, "it's sort of become like a sports version of the arms race. Every new building that comes on line is advertised as being more extravagant and more profitable.... [T]hese venues are expected to be cutting edge."[77]

One thing is common to the definition of "state-of-the-art facility" - new sports facilities are fan friendly, user friendly, and create not only a sporting but entertainment experience for the consumer. Today's state-of-the-art facilities do have some common characteristics.

Let's use as an example of the Great American Ballpark, the new home of the Cincinnati Reds which opened in April 2003 at an approximate cost of $346.22 million.

Stadium construction:	$291.0 million
Parking garage:	$15.18 million
Miscellaneous costs:	$10.18 million
Cinergy Field modification*:	$9.40 million
Crosley Plaza:	$8.35 million
Cinergy Field demolition:	$7.13 million
Site work and infrastructure:	$3.76 million
Crosley Plaza modification**:	$1.22 million
TOTAL:	**$346.22 MILLION**[78]

1. *A corporate name to identify with.* The Great American Ballpark is named after Great American Insurance Companies who will pay $75 million over 30 years for having its name on the new ballpark.[79]

2. *One-sport-only facility.* The Great American Ballpark will be a

76. Mark Emmons, *New Arena Era Need for New Income Spurts Sport Team Owners to Seek State-of-the-art Facilities*, ORANGE COUNTY REG., Oct. 22, 1999, at D12.

77. *Id.*

78. Cincinnati Reds Baseball, *New Stadium Information, Coming Soon to Cincinnati Riverfront*, *at* http://www.cincinnatireds.com.

79. MARTIN GREENBERG, THE STADIUM GAME 582 (2d ed. 2000).

baseball only stadium, unlike Cinergy Field.[80]

3. A downtown or near downtown location. [81]

4. References to the past throughout the ballpark and within its architecture.

> The exterior façade of the ballpark will be brick with a cast stone base and details. The major structure will be painted steel. The brick is about baseball parks, their tradition, and a strong reference to the brick architecture of Cincinnati. The cast stone provides a strong base and references the images of the Roebling Suspension Bridge. The steel structure is synonymous with the historic baseball parks and with the brick facades evokes the romance of timeless ballpark imagery. The main entry for most fans will be through a plaza at Second and Main. Crosley Field Terrace inspired the design of the plaza. A familiar baseball phrase will be posted along one of the buildings fronting Second Street, perhaps "rounding third and heading for home," the signature sign-off of Cincinnati broadcaster Joe Nuxhall. At the intersection of Second and Main Streets will be the opening to Crosley Field Terrace, a point most fans will pass through before entering the ballpark. A statue of Crosley Field-era players will also dot the landscape. Grass in the terrace will be sloped at the same incline as the Crosley outfield. Special lighting will illuminate the player statues, stone benches and a 60-foot stone sculpture meant to depict the romance of the game. As you enter the ballpark, there are two large mosaic panels. One will be an older era team with the Roebling Bridge in the background; and the other will be the Big Red Machine with Cinergy (Riverfront) Stadium in the background. Located on the top of the main scoreboard will be replica of the Longines clock from Crosley Field.[82]

5. *The inclusion of a hall of fame, wall of fame, or museum of interest.* The Reds Hall of Fame will be one of the largest in baseball with room for a variety of permanent and traveling exhibits, and encompassing approximately 21,000 square feet. The Hall of Fame will be a year round facility and may be connected to the ballpark with an overhead bridge wall that will allow easy ballpark access for tours and van access.[83]

6. *Huge concourses.* At Great American Ball Park there is more

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80. *Id.*

81. *Id.*

82. Cincinnati Reds Baseball, *supra* note 78.

83. GREENBERG, *supra* note 79, at 582-83.

concourse area with field views than at Jacobs, Coors or the ballpark at Arlington. You can walk around the field level of the ballpark with views from most concourse areas to the field, and in right field the concourse has open views to the Ohio River. Most main concourses at the new ballpark will be forty feet plus in width as compared to twenty feet at Cinergy.[84]

7. *Increased concession areas.* Great American Ball Park will have an increased number of concession areas and a wider variety of menu options. Currently at Cinergy there is one concession window for every 300 fans. At Great American that number will be one concession window for every 180 fans or an over 60% increase in the number of concession areas.[85]

8. *Increased number of restrooms.* Another improvement to Great American Ball Park will be the number and location of restrooms. For men there will be approximately 30% more restroom fixtures than at Cinergy. For women that percentage increases to 50%. In addition, there will be several family restroom facilities located around the ballpark.[86]

9. *Increased fan movement.* At Great American Ball Park in order to help move fans throughout the ballpark, there will be many more escalators and elevators than at Cinergy Field. Over nine public elevators will serve the ballpark as compared to only one service-type attended elevator at Cinergy. Escalators will be located at both the first and third base sides of the ballpark and will accommodate many more fans than those at Cinergy.[87]

10. *Luxury seating.* Great American Ball Park will have 61 suites and approximately 300 premium seats at the field level behind home plate, which will be about ten feet closer to the field than the closest seats at Cinergy Field. Another 800 to 1,000 premium seats will be immediately above those seats, which will be referred to as the "red seats." Great American Ballpark will have over 83% of all seats on the baseline side of the field, unlike Cinergy, which has over 30% of the seats in the outfield.[88]

11. *Theme restaurant over field.* Great American Ball Park will have a theme restaurant over left field with views of the playing field, the river, and northern Kentucky. This kind of amenity will be used year round for not only baseball but for wedding receptions and other events.[89]

12. *Modern technologically oriented scoreboard.* The scoreboard area will be significantly larger than at Cinergy and closer to the field. The video

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84. *Id.* at 583.

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

board will be a 20mm Saco Smartvision board, 30% larger than the scoreboard at Cinergy. The board is state-of-the-art and is better than those currently being used in new ballparks. The matrix (information) board will be larger and will allow for continuous display of statistics and line scores. Several other scoreboards will be installed throughout the ballpark and will allow for all fans to have visual access to a scoreboard and pitcher information. An out-of-town scoreboard will be installed in the left field wall and will allow for other games to be viewed and displayed at the same time and continuously.[90]

13. *A stadium for all seasons.* Great American Ball Park will not be domed or contain a retractable roof. However, Miller Park, the new home of the Milwaukee Brewers, will be a traditional ballpark reflecting local architecture. The new stadium will have a retractable dome roof to protect against the cool weather in Wisconsin during the spring and fall. The $50 million, 7-panel retractable roof will open or close like a fan in about ten minutes.[91]

14. *Facilities and 21st century technology.* Twenty-first century media technology in the form of broadcasting games in many foreign languages providing HDTV and digital technology, the Internet and interactive technology will have not only an impact on how sports facilities look, but how they operate.[92]

15. *Amenities.* The sports facility of tomorrow will continue to have and create new amenities to make certain that the sports facility is fan and family friendly, which will include clubs, restaurants, food courts, arcades, playgrounds, swimming areas, novelty shops, and whatever the creative mind of tomorrow will determine makes fans more apt to come to the facility.[93]

16. *Revenue Generators.* Now that the owners and facility districts have determined that venues are the new Taj Mahal's packed with cash flow potential, facility districts and the owners will continue to figure out how to tap into lucrative revenue streams that increase the bottom line. Revenue streams in the form of increased signage, sponsorship, parking and the like will continue to fuel an unprecedented building boom in the sporting world.[94]

Three new or recently renovated football stadiums have opened within the last several years, including Lincoln Financial Field, Philadelphia; Lambeau Field, Green Bay; and Soldier Field, Chicago.[95] What follows are

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90. *Id.*
91. *Id.*
92. *Id.*
93. *Id.*
94. Emmons, *supra* note 76, at D12.
95. *2003 Facilities Special Report*, STREET & SMITH'S SPORTS BUS. J., Dec. 29, 2003

comparisons of the stadiums before and after renovation or construction. What is certain is that a new state-of-the-art football facility includes more enhanced seating, more points of sale, and more retail space, all for purposes of producing more revenue.

LAMBEAU FIELD[96]

	POST-RENOVATION	PRE-RENOVATION
GENERAL SEATS	71,500	60,789
CLUB SEATS, INDOOR	3,000	1,920
CLUB SEATS, OUTDOOR	3,200	0
SUITES	174	198
POINTS OF SALE	More than 340*	84
ADA WHEELCHAIR POSITIONS	571	26
MAIN TEAM RETAIL STORE	11,500 square feet	1,800 square feet
TOTAL SPACE (EXCLUDING THE FIELD)	1.6 million square feet	650,000 square feet

*Excluding portable stations

Note: The stadium's original 198 suites and 1,920 club seats were demolished and replaced with new ones.

SOLDIER FIELD[97]

	NEW SOLDIER FIELD	OLD SOLDIER FIELD
SEATING CAPACITY	62,575	66,944
LUXURY SUITES	133 w/ability to expand to142	116

96. *Id.* at 55.
97. *Id.* at 57.

TOTAL PEOPLE IN AVERAGE SUITE	20	16
CLUB SEATS	8,657	0
CLUB ESCALATORS	4	0
TOTAL CLUB AREA	100,000 square feet	0
SUITE SQUARE FOOTAGE	380	100
VIDEO REPLAY BOARDS (SIZE)	2 (23 ft. x 82 ft.)	0
FIXED CONCESSION STANDS	67	12
PERMANENT POINTS OF SALE	207	96
REST ROOMS	58	Not Available
PARKING SPACES	5,100	4,100

LINCOLN FINANCIAL FIELD[98]

	LINCOLN FINANCIAL	VETERANS STADIUM
COST	$512 million	$63 million
SEATING CAPACITY	68,532	65,352
DISTANCE: FRONT ROW TO SIDELINES	60 feet	120 feet
PCT. OF SEATS ALONG SIDELINES	66%	33%
LUXURY SUITES	172	89
LUXURY SUITE SEATS	3,040	1,210

98. *Id.* at 54.

CLUB SEATS	10,828	0
CLUB LOUNGES	2	0
ADA WHEELCHAIR POSITIONS	685	256
PARKING SPACES	22,000	16,000
POINTS OF SALE (INCLUDING PORTABLES)	308	84
NOVELTY LOCATIONS	22	10
VIDEO SCREENS (SIZE	3 (2 at 27 x 96 ft; 1 at 14 x 25 ft)	1 (31 x 42 ft.)
MEN'S RESTROOM FACILITIES	1 fixture for every 58 seats	1 fixture for every 319 seats

III. "PLEASE DON'T GO"[99]

By the start of the 2003 season, 77% of Major League Baseball (MLB) teams will have received new or substantially renovated facilities since 1986. Baseball stadiums are a very costly public investment and are largely financed through public subsidy. Financing these projects normally occurs through the creation of a stadium or statutory authority and the issuance of bonds. These bonds are supported through increased sales and use taxes, tourist development taxes, sin taxes, car rental taxes, hotel and bed accommodation taxes, ticket surcharges, and contractually obligated income.

In order to fully reap the benefits of a new stadium, facility leasehold agreements of today involve a contractual and financial partnership between the facility owner and team. The team typically seeks to obtain management control of the facility and as much contractually obligated income as possible. In return, government officials require assurances that the team will remain and play its games throughout the term of the lease. These assurances take the form of no-relocation and liquidated damage leasehold clauses explicitly recognizing that although the leasehold obligations of the parties can be

99. This section of the article is taken from Martin Greenberg & David Kleinmann, *Please Don't go: How the Twins Were Forced to Play the 2002 Season in the Metrodome*, FOR THE RECORD, July-Sept. 2002, at 5.

measured and valued, the totality of the economic, financial, civic and social benefits to the public from the presence the team playing its home games in the city, cannot be precisely quantified. An analysis of those clauses and the remedies associated with relocation are evidenced in the case of *Metropolitan Sports Facilities Commission vs. Minnesota Twins Partnership.*[100]

On November 6, 2001, amid reports that MLB intended to eliminate the Minnesota Twins (Twins) by buying and then folding the franchise (contraction), the Metropolitan Sports Facilities Commission (Commission) brought a declaratory judgment action seeking specific performance of the Use Agreement between the Commission and the Twins and an injunction preventing MLB from interfering with the Commission's contractual relationship with the team.[101] On November 16, 2001, the Hennepin County District Court granted the Commission a temporary injunction.[102] On January 22, 2002, the Court of Appeals of Minnesota upheld the Hennepin County District Court's decision.[103] This was a victory for the Commission as it ensured that the Minnesota Twins would play the 2002 season in the Hubert H. Humphrey Metrodome (Metrodome).[104]

The court of appeals found that it was not an abuse of discretion for the district court to temporarily enjoin the Twins from breaking their one-year Use Agreement nor to enjoin MLB from interfering with the Commission's contractual relationship with the Twins, because irreparable harm would result if the Twins breached their promise to play their home games for the 2002 season at the Metrodome.[105]

The court of appeals favored the Commission as the contractual relationship between the Twins and the Commission was not a typical landlord and tenant relationship.[106] The court gave several reasons why the harm suffered by the Commission was an intangible loss to the community and not merely lost concessions and advertising revenues: (1) the Twins paid no rent for their eighty-one home games nor for year-round use of locker and office space; (2) the stated purpose for building and operating the Metrodome was to attract major league sports franchises to play at the Metrodome for the enjoyment of fans; (3) the Metrodome was financed by legislation that authorized the issuance of bonds and a collection of taxes; (4) the Metrodome

100. 638 N.W.2d 214 (Minn. Ct. App. 2002).

101. *Id.* at 219-20.

102. *Id.* at 220.

103. *Id.* at 218.

104. *Id.* at 226.

105. *Id.* at 221

106. *Id.*

was generally exempted from taxation as it was used for public, governmental and municipal purposes; and (5) legislation was enacted to exempt the Metrodome from property taxes.[107]

IV. "A GREATER RELATIONSHIP"

A Broader Impact

The court of appeals' holding has a broader impact for baseball teams. The court indicated that although a landlord/tenant relationship exists through the use of a lease or use agreement, the relationship between the landlord and tenant is much greater than that created by a commercial lease. The reasons the nature of the relationship between a team and the governmental entity that owns the facility is more than strictly a landlord/tenant relationship are as follows:

1. A baseball franchise is a valuable and limited right that is controlled entirely by MLB. The Supreme Court has ruled that MLB is exempt from antitrust laws. The application of the antitrust exemption to team relocation is ambiguous. However, MLB has been able to prevent franchise relocation (the last relocation was in 1972) where other sports leagues that are subject to antitrust laws have failed.[108]

2. The value of having a sports franchise is greater than simply the rent paid or revenues produced and paid to the landlord. A baseball franchise creates local identity, national press, media exposure, entertainment value, community pride, business location decisions, and economic and fiscal impacts. A baseball franchise is a community asset that is sometimes difficult to monetarily assess and may provide to a community greater non-economic benefits than economic. The value of the franchise is in its name, associated with its city, and its obligation to retain its franchise in the community and play baseball games at the facility.[109]

3. Sports facilities are largely paid for with public dollars. Generally, a government unit will issue tax-exempt or taxable bonds to pay for the facility that is supported by some form of tax, whether it be a property tax, sales tax, use tax, or sin tax. Because of the cost of the

107. *Id.*.

108. *See id.* at 224.

109. *Id.* at 224-25.

facilities, the public exposure is often great in dollar value.[110]

4. Despite most of the financing being provided by the public sector, the team is normally given management control of the facility during the season and normally retains not only operating responsibility, but most of the revenues produced by the facility during the season. The "keys are handed over" to the team, and the team retains management control. Skeptics question whether the public receives an equivalent economic benefit to justify the public dollar expense in creating the facility.[111]

5. The ownership of the facility is usually in a governmental unit, i.e. a stadium district or authority. The district or authority is created to not only construct the facility, but to retain ownership. Because of its governmental status, financing is normally obtained through tax-exempt bonds at government rates. In addition, because ownership is in a governmental unit, no real estate taxes are paid on the facility. In essence, then, by virtue of the creation of the facility, the team, i.e. the tenant, obtains the benefits of government credit.[112]

Why? A Greater Relationship

1. A baseball franchise is a very limited right with very limited territorial restrictions, and there have essentially been few, if any, relocations.

Baseball's antitrust exemption allows MLB more control over its franchises than other sports organizations. MLB is an exclusive "club." Officially, MLB is an unincorporated association comprised of thirty franchises. MLB has control over admission of new members to the "club"; i.e., expansion teams or any changes in "club membership"; i.e., relocation or sales of teams.

In baseball's first sixty years, no new franchises were granted, and the number of teams remained constant at sixteen. The 1960's can be best characterized as the decade of expansion as eight teams were added. Since 1969, only six teams have been added. Although there are more franchises than ever before, the total number remains small and most teams are situated in major metropolitan markets.

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110. See generally, *id. at 224*

111. *Id.*

112. *Id.*

The cost of acquiring an expansion team has risen dramatically since 1961. In addition to the franchise fee, team owners are required to outlay cash for equipment, facilities, establishing a minor league system, scouts, coaches, and front office personnel to name a few. Diamondbacks owner Jerry Colangelo estimates that the total investment for the Diamondbacks exceeded $350 million.[113]

MAJOR LEAGUE BASEBALL EXPANSION 1961-1998[114]

TEAM	YEAR	FEE PAID (MILLIONS)
Los Angeles Angels	1961	$2.1
Washington Senators	1961	$2.1
Houston Colt .45's	1962	$1.85
New York Mets	1962	$1.8
Kansas City Royals	1969	$5.5
Seattle Pilots	1969	$5.55
Seattle Mariners	1977	$6.25
Toronto Blue Jays	1977	$7.00
Colorado Rockies	1993	$95
Florida Marlins	1993	$95
Arizona Diamondbacks	1998	$130
Tampa Bay Devil Rays	1998	$130

Purchasing a team is also becoming increasingly more costly. The most recent reported purchase prices of MLB teams are shown below:

RECENT SALES OF MAJOR LEAGUE BASEBALL TEAMS[115]

TEAM	YEAR PURCHASED	PURCHASE PRICE (MILLIONS)
Boston Red Sox*'	2002	$700
Florida Marlins	2002	$158
New York Mets	2002	$391
Montreal Expos	2002	$120

113. Chuck Johnson, *D'backs Face Cloudy* Future, USA TODAY, Nov. 5, 2001, at C1.

114. MARTIN GREENBERG & JAMES T. GRAY, SPORTS LAW PRACTICE 1110-11 (2d. ed. 1998).

115. National Sports Law Institute of Marquette University Law School (NSLI), *Sports Facility Reports*, Vol. 3, No. 1. (2002), *at* http://www.marquette.edu/law/sports/sfr/mlb.pdf.

Kansas City Royals	2000	$96
Cleveland Indians	2000	$323
Toronto Blue Jays	2000	$140
Anaheim Angels	2000	$140
Cincinnati Reds	1999	$183
Los Angeles Dodgers	1998	$311
Texas Rangers	1998	$250

*Included 80% of NESN (Regional Sports Network)

The April 26, 2004 edition of *Forbes* magazine estimated the value of the top fifteen baseball franchises as follows: [116]

TEAM/ OWNER (YEAR PURCHASED)	VALUE (millions)
NEW YORK YANKEES /G. Steinbrenner ('73)	$832
BOSTON RED SOX / J. Henry, T. Werner ('02)	$533
NEW YORK METS / F. Wilpon ('02)	$442
LOS ANGELES DODGERS /F. McCourt ('04)	$399
SEATTLE MARINERS / H. Yamauchi ('92)	$396
ATLANTA BRAVES /AOL Time Warner ('76)	$374
SAN FRANCISCO GIANTS / P. Magowan, H. Burns ('92)	$368
CHICAGO CUBS / Tribune Company ('81)	$358
HOUSTON ASTROS / R. McLane ('92)	$320
ST. LOUIS CARDINALS / Wm. DeWitt, Jr. ('95)	$314
TEXAS RANGERS / T. Hicks ('98)	$306
BALTIMORE ORIOLES / P. Angelos ('93)	$296
CLEVELAND INDIANS / L. Dolan ('00)	$292
COLORADO ROCKIES / J. McMorris, C. Monfort ('92)	$285
PHILADELPHIA PHILLIES / B. Giles, D. Montgomery ('81)	$281

Baseball franchises are given the right to operate a team in a specific geographical territory. Major League Rule 52(a)(1) grants MLB teams "protected territorial rights to a specific geographic area, called a home territory."[117] "Home territory" is defined in Major League Rule 52 (b)(1)(D) as " the boundary lines of an entire county or counties (or parish or Canadian division or district)."[118] Major League Rule 52(a)(4) and (d)(1) prohibits other teams from "playing home games within or fifteen miles from the boundary of

116. Nathan Vardi, *The Richest Baseball Teams*, FORBES MAG., Apr. 26, 2004, at 70

117. OFFICIAL RULES OF MAJOR LEAGUE BASEBALL § 52(a)(1).

118. *Id.* § 52(b)(1)(D).

any major or minor league club."[119] For example, the Baltimore Orioles control both the Baltimore and Washington D.C. markets. Orioles' owner Peter Angelos would require a large payment to release the Washington D.C. market to another ownership group.

Unlike other professional sports organizations, MLB is exempt from federal antitrust laws.[120] Because of the antitrust exemption, MLB has been able to prevent team relocation where other leagues have failed. Consequently, baseball teams have become the most difficult franchises to obtain. As the chart below shows, no MLB team has moved since 1972 when the Washington Senators moved to Arlington, Texas, and became the Texas Rangers.

MLB, NBA, NFL, AND NHL FRANCHISE RELOCATIONS SINCE 1970[121]

TEAM	LEAGUE	YEAR	FROM	TO	NEW NAME
Pilots	MLB	1970	Seattle, WA	Milwaukee, WI	Brewers
Senators	MLB	1972	Washington, DC	Arlington, TX	Rangers
Bullets	NBA	1973	Baltimore, MD	Landover, MD	
Scouts	NHL	1976	Kansas City, MO	Denver, CO	Rockies
Jazz	NBA	1979	New Orleans, LA	Salt Lake City,UT	
Flames	NHL	1980	Atlanta, GA	Calgary, Alberta	
Raiders	NFL	1982	Oakland, CA	Los Angeles, CA	
Rockies	NHL	1982	Denver, CO	East Rutherford, NJ	NJ Devils
Colts	NFL	1984	Baltimore, MD	Indianapolis, IN	
Clippers	NBA	1984	San Diego, CA	Los Angeles, CA	
Kings	NBA	1985	Kansas City, MO	Sacramento, CA	
Cardinals	NFL	1987	St. Louis, MO	Phoenix, AZ	
North Stars	NHL	1993	Minneapolis, MN	Dallas, TX	Stars
Nordiquest	NHL	1995	Quebec City	Denver, CO	Avalanche
Raiders	NFL	1995	Los Angeles, CA	Oakland, CA	
Rams	NFL	1995	Anaheim, CA	St. Louis, MO	
Browns	NFL	1996	Cleveland, OH	Baltimore, MD	Ravens
Jets	NHL	1996	Winnipeg. Manitoba	Phoenix, AZ	Coyotes
Whalers	NHL	1997	Hartford, CT	Raleigh, NC	Hurricanes
Oilers	NFL	1998	Houston, TX	Nashville, TN	Titans
Grizzlies	NBA	2001	Vancouver, BC	Memphis, TN	
Hornets	NBA	2002	Charlotte, NC	New Orleans, LA	

119. *Id.* §§ 52(a)(4), 52(d)(1).

120. *See* Fed. Baseball Club of Balt., Inc. v. Nat'l League of Prof'l Baseball Clubs, 259 U.S. 200 (1922); Toolson v. N. Y. Yankees, 346 U.S. 917 (1953); Flood v. Kuhn, 407 U.S. 258 (1972).

121. GREENBERG, *supra* note 79, at 412.

Baseball's federal antitrust exemption has been established in three cases by the Supreme Court of the United States. In 1922 in *Federal Baseball Club of Baltimore,* the Supreme Court held that baseball was not subject to antitrust laws because it was not interstate commerce.[122] In *Toolson,* the Court reaffirmed the antitrust exemption because Congress undertook no legislation to overturn the exemption for thirty-one years.[123] Finally, the Court upheld the exemption in 1972 despite calling it an "aberration" in *Flood v. Kuhn.*[124]

The "trilogy" of cases dealt directly with baseball's antitrust exemption as it related to labor issues. The question of whether the exemption applies to franchise relocation has not conclusively been answered.[125] When the State of Wisconsin sued the Milwaukee Braves to prevent the team from moving to Atlanta, the Supreme Court of Wisconsin held that although the relocation did violate Wisconsin's antitrust laws, federal policy (MLB's antitrust exemption) preempted Wisconsin law.[126] In *Piazza v. Major League Baseball, Inc.*,[127] the Federal District Court in the Eastern District of Pennsylvania refused to grant a motion for summary judgment and speculated that baseball's attempt to prevent the San Francisco Giants from relocating could violate federal antitrust laws.[128]

Today, MLB does have a policy limiting a team's ability to move. The team must obtain approval of 75% of the major league teams.[129] Although the application of MLB's antitrust exemption to franchise relocation has never conclusively been clarified, the exemption's existence may in and of itself have prevented relocation. MLB can make a decision to prevent team relocation. The team would then have to sue to challenge the exemption. In other sports leagues, such as the National Football League and the National Basketball Association, in cases such as *Los Angeles Memorial Coliseum v. National Football League*[130] and *National Basketball Association v. SDC Basketball Club, Inc.*,[131] courts have ruled league policies preventing relocation are violations of antitrust law.[132] Some contend that MLB's

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122. *Fed. Baseball Club of Balt.*, 259 U.S. at 200.

123. *Toolson,* 346 U.S. at 917.

124. *Flood,* 407 U.S. at 258.

125. Jeffrey Gordon, *Baseball's Antitrust Exemption and Franchise Relocation: Can a Team Move?*, 26 FORDHAM URB. L.J. 1201, 1213-18 (Apr. 1999).

126. State v. Milwaukee Braves., Inc., 144 N.W.2d 1 (Wis. 1966).

127. 831 F. Supp. 420 (E.D. Penn. 1993).

128. *Id.* at 429-31.

129. Gordon, *supra* note 125, at 1214.

130. 726 F.2d 1381 (9th Cir. 1984).

131. 815 F.2d 562 (9th Cir. 1987).

132. L. A. Mem'l Coliseum, 726 F.2d at 1381; SDC Basketball Club, Inc, 815 F.2d at 562.

antitrust exemption has become a tool to prevent franchise relocation.

MLB teams are valuable territorial assets. MLB has exercised control over expansion, relocation, and approval of team sales. MLB's antitrust exemption allows more control than other professional sports leagues. The difficulty in acquiring a team coupled with the value of the team to the community has caused communities to invest substantial amounts of money and effort to maintain or bring a team to their community.

2. A local franchise is a very visible, intangible asset.

The economic benefit to a community from building and committing public dollars to a sports facility has been debated extensively, but never answered conclusively. Economists and facility opponents have challenged the direct and indirect monetary benefits that teams have suggested benefit the community by virtue of the team's presence. Consequently, facility proponents and team owners have not only trumpeted direct and indirect economic benefits, but also the concept of "intangible benefits" or "psychic income." "Psychic income" can best be defined as having the benefit and prestige of a team in a community and a quality of life that its citizenry enjoys by virtue of a team playing in its community. Having a MLB team makes the community "Major League."

Sports teams are not the only ones who rely on intangible benefits. Many courts have used this concept as a legal basis to uphold legislation for public financing of sports facilities when challenged. In *Lifteau v. Metropolitan Sports Facilities Commission*,[133] the Supreme Court of Minnesota held, "The acquisition or construction of a stadium to be used in part by one or more professional sports teams constitutes a public purpose for which public expenditures could be legally undertaken."[134]

Legislation to finance facilities has been challenged in numerous jurisdictions. In nearly all of those cases, the legislation has been upheld. One of the first cases in which a court acknowledged "intangible benefits" was *City of New York v. New York Jets Football Club, Inc.*[135] The Jets played their home games at Shea Stadium in New York. Because of scheduling conflicts with the Mets, the Jets wanted to play two games in the Meadowlands in East Rutherford, New Jersey.

The court ruled for the City of New York, largely because of the "intangible benefits" the City experienced from the Jets playing in Shea

133. 270 N.W.2d 749 (Minn. 1978).

134. *Id.* at 753-54.

135. 90 Misc. 2d 311 (S.C. N.Y. 1977).

Stadium.[136] The court further held that:

> The City was not authorized to construct the stadium for the lease money consideration. The City, as a corporate body, has not, will not, or was it intended to make a profit from stadium rental. It is the City as a community, "the people of the City" to quote the statute, . . . who are here threatened with irreparable injury.[137]

The Court noted that intangible benefits to the community were specifically defined in the legislation that created Shea Stadium.

> [Construction of the stadium is] for the benefit of the people of the city and for the improvement of their health, welfare, recreation and prosperity, for the promotion of competitive sports for youth and the prevention of juvenile delinquency, and for the improvement of trade and commerce, and are hereby declared to be public purposes.[138]

In 1983, in *City of New York v. New York Yankees*,[139] another New York State trial court enjoined the New York Yankees from agreeing to play home games in Denver, in violation of a lease term requiring the team to play all home games in Yankee Stadium.[140] Finding that the threatened relocation of games would cause irreparable injury to New York City, the court waxed poetic when it wrote:

> [M]uch more is at stake than merely the loss of direct and indirect revenue to the City.
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> * * *
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> The Yankee pin stripes belong to New York like Central Park, like the Statue of Liberty, like the Metropolitan Museum of Art, like the Metropolitan Opera, like the Stock Exchange, like the lights of Broadway, etc. Collectively they are "The Big Apple." Any loss represents a diminution of the quality of life here; a blow to the City's standing at the top, however narcissistic that perception may be.[141]

The court of appeals in the Twins case rendered a nearly identical holding, "with no rent being collected, the major benefit that the Commission receives under the Use Agreement is the Twins' promise to play baseball at the

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136. *Id.*

137. *Id.* at 315.

138. NEW YORK CITY, ADMIN. CODE, ch. 729, § 532-15.0 (1961).

139. 117 Misc. 2d 332 (S.C. N.Y. 1983).

140. *Id.*

141. *Id.* at 336-37.

Metrodome."[142]

In *Poe v. Hillsborough County*,[143] a taxpayer sued to prevent the construction of a new stadium in Tampa, Florida on the grounds that public money was being used to benefit a private party. The Supreme Court of Florida held that the stadium served a "paramount public purpose," and the benefits to private parties were incidental.[144] "[T]he Buccaneers instill civic pride and camaraderie into the community and . . . the Buccaneer games and other stadium events also serve a commendable public purpose by enhancing the community image on a nationwide basis and providing recreation, entertainment, and cultural activities to its citizens."[145] In *Libertarian Party of Wisconsin v. State of Wisconsin*,[146] the Supreme Court of Wisconsin made a similar ruling when the financing for a new baseball stadium was challenged when it stated the stadium constituted a "public purpose."[147]

In the Twins case, the court of appeals voiced its agreement with the district court regarding the benefits to the community:

> The court (1) cited the role of baseball as a tradition and as a national pastime, the history of the Twins in Minnesota for some 40 years, including two World Series championships, the role of Twins legends who have bettered the community by their volunteer work with children, and the availability of Twins games as affordable family entertainment; (2) noted that private buildings had been condemned to build the Metrodome; (3) found that the welfare, recreation, prestige, prosperity, trade, and commerce of the people of the community are at stake; and (4) ruled that the vital public trust outweighs any private interest.[148]

3. A sports franchise often receives subsidies from state and local taxpayers.

Sports facilities have become increasingly important components in the public finance market, causing the public financing of sports facilities to receive significant attention. Many state and local governments are using subsidization and tax exemption to retain or lure sports franchises to their communities. There has been an increase in the number of financing projects

142. *Metro. Sports Facilities Comm'n*, 638 N.W.2d at 214.
143. 695 So. 2d at 679.
144. *Id.*
145. *Id.* at 678-79.
146. 546 N.W.2d 424.
147. *Id.*
148. *Metro. Sports Facilities Comm'n*, 638 N.W.2d at 222-23.

for stadiums and arenas as communities plan to build or renovate new state-of-the-art facilities for professional franchises. It has been estimated that new stadium and arena construction costs approximated $500 million in the 1960s, $1.5 billion in the 1970s, and $1.5 billion in the 1980s.[149] During the 1990's there have been seventy-seven major-league facility lease re-negotiations, renovations or new venues built for professional football, baseball, basketball, and hockey at an approximate cost of $12 billion.[150]

Cities have also offered "sweetheart deals" to lure teams. Some of the lease concessions offered by publicly owned sports facilities to professional franchises include reduced and deferred lease payments, tax abatements, condemnation of property, management control, as well as most of the income from enhanced seating, parking, food and concession sales, and stadium advertising.[151] Cities have also guaranteed minimum ticket sales to a franchise, reimbursed teams for financial obligations to its former city incurred by breaching the lease agreement, paid league relocation fees, and constructed new practice facilities in order to attract or retain a professional sports franchise.[152]

The Rams moved from Anaheim, California, to St. Louis, Missouri, in 1995. To lure the Rams from Los Angeles, St. Louis provided a new $ 260 million TWA Dome (now Edward Jones Dome).[153] The City received a rental of $ 250,000 per year, plus 25% of the stadium advertising, and was responsible for 50% of the stadium's operational costs.[154] The team receives 75% of the naming rights for the Dome. In addition, St. Louis (1) reimbursed the Rams for lost revenue in southern California; (2) sold $70 million in seat licenses; (3) guaranteed a three-year sellout of sky boxes and luxury seats; (4) guaranteed ticket sales of 85% of the Dome capacity for the next fifteen years; (5) paid off $28 million in debt owed to the Rams' Anaheim, California stadium; (6) paid a $29 million relocation fee to the National Football League and a $10 million settlement with the League; and (7) built a $12.5 million practice complex for the Rams.[155]

In 2000, New Orleans Saints owner Tom Benson claimed that the team's

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149. JAMES QUIRK & RODNEY D. FORT, PAY DIRT: THE BUSINESS OF PROFESSIONAL TEAM SPORTS 136 (1999).

150. *Id.*

151. *Id.*

152. *Id.*

153. Jon Morgan, *More Pro Teams Getting New, Rich Leases on Life, Baltimore Joins Trend in Lucrative Stadium*, BALT. SUN, Mar. 9, 1996, at C1.

154. *Id.*

155. *Id.*

home stadium, the Superdome, was outdated. Benson claimed that for the team to remain competitive, the Saints needed a new stadium, or he would be forced to relocate. In 2001, the City of New Orleans reached a ten-year agreement with the Saints for $186 million.[156] The city also agreed to pay the team a subsidy of $15 million per year to make up for lesser revenues generated by the outdated Superdome.[157] Even with the city subsidy, the team has the option of moving after the 2004 season if it pays the city a liquidated damages amount.[158]

A public-private partnership is now the cornerstone of sports facility construction or renovation. The franchise, the local government, and community and business interests provide financing, capital, or contributions for the construction or renovation of a new facility. The governmental unit issues bonds supported by a specific revenue source such as:[159]

General Sales and Use Taxes	Tourist Developmental Taxes
Restaurant Sales Taxes	Excise/Sin Tax
Car Rental Tax	Possessory Interest Taxes
Real Estate Taxes	Ticket Surcharges
Lottery & Gaming Revenues	Utility Taxes
Hotel/Bed/Accommodations Tax	Resort Taxes

While the public contribution for a new facility is generated through taxes, team contributions normally include direct cash payments; loans (bank or league); guarantees; contractually-obligated income; contributions from concessionaires, management companies and other service providers; business, charitable, and community contributions; personal seat licenses; and private financing. What follows is a depiction of baseball stadiums built since 1982 and the cost and percentage of public dollars used to build the facilities.

RECENT MLB BALLPARK OPENINGS AND PERCENTAGE OF PUBLIC FINANCING[160]

156. Don Hammack, *Saints Solution Goes On*, SUN HERALD, May 23, 2004, *available at* http://www.sunherald.com/mld/thesunherald/8735220.htm.

157. *Id.*

158. *Id.*

159. GREENBERG, supra note 79, at 171.

160. *Petco Park Hits A Dinger with Design*, STREET & SMITH'S SPORTS BUS. J., Apr. 26-May 2, 2004, at 21.

TEAM	STADIUM	TOTAL PROJECT COST(MILLIONS)	YEAR BUILT	% PUBLICLY FINANCED
St. Louis Cardinals	Cardinals Stadium	$346	2006	60.1
San Diego Padres	Petco Park	$474	2004	63.5
Philadelphia Phillies	Citizens Bank Park	$460	2004	49.6
Cincinnati Reds	Great American Ballpark	$352.6	2003	76.0
Milwaukee Brewers	Miller Park	$423.3	2001	77.5
Pittsburgh Pirates	PNC Park	$277.2	2001	81.8
Detroit Tigers	Comerica Park	$326.5	2000	38.3
Houston Astros	Minute Maid Field	$270.0	2000	68.1
San Francisco Giants	SBC Park	$359.1	2000	3.0
Seattle Mariners	Safeco Field	$600.7	1999	69.7
Arizona Diamondbacks	Bank One Ballpark	$407.0	1998	71.5
Atlanta Braves	Turner Field	$274.4	1997	0.0
Colorado Rockies	Coors Field	$264.4	1995	78.1
Texas Rangers	Ballpark at Arlington	$241.5	1994	84.3
Cleveland Indians	Jacobs Field	$221.3	1994	100.0
Baltimore Orioles	Oriole Park at Camden Yards	$313.9	1992	93.6
TOTAL		$5.612 BILLION	16	62.4%

Based on these and other examples, the public generally pays approximately 80% of the cost for a new baseball facility and approximately 70% of the cost for a new football facility. The public contribution is substantial in either case. Since communities do not receive much direct financial benefit from the large investment, the return may be largely non-monetary; i.e., the team playing home games in the facility.

4. Despite large public financing, sport franchises retain most of the revenues and generally control the stadium.

Like other tenants, MLB teams have a lease or use agreement for the stadium in which their home games are played. Every sports facility lease agreement contains use and exclusivity provisions. Usually the team is the operator/manager of the stadium for baseball events and even, in some cases, non-baseball events. As such, the team can negotiate and select the concessionaire(s), stadium sponsors, and food and drink suppliers. While in many of the current leases the team will retain most of the revenue generated from ticket sales, concessions, advertising, signage, merchandise, enhanced seating, parking, and naming rights, the teams are also responsible for operating and maintenance costs and normally share in the payment for capital improvements. Rent is usually very low in relationship to the capital expenditures the municipality has undertaken in order to construct the facility.

Stadium proponents claim rental payments must be low to insure the tax-exempt status of municipal bonds used to fund facility construction. Municipal bonds are more attractive to investors because of their tax-exempt status. The Internal Revenue Code of 1986 established rules for selling tax-exempt municipal bonds for sports facilities.[161] The IRS Code established a "Private Use/Private Activities Test" that states no more than 10% of the principal or interest can be used to secure any interest or payment used in a non-governmental trade or derived from payments from a non-governmental entity.[162]

What follows are analyses of some of the newer baseball leases for Comerica Park, PNC Park, Safeco Field, Minute Maid Field, and Miller Park. These leases clearly indicate that the team retains most of the revenues. The team, however, participates in maintenance and capital improvements.

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161. GREENBERG, *supra* note 79, at 159-60.

162. *Id.*

COMERICA PARK, DETROIT TIGERS[163]

BUILT	4/2000
LEASE DATE	08/20/1998
COST	$260,000,000
RENT	Tigers are calling this a "sub-lease" from the Detroit Downtown Development Authority (DDA); in reality, the Team is more of a joint owner since it will contribute $145,000,000 to the costs of construction; Team gives 50,000 tickets away each year to low-income kids; Team "tiffs" certain ad valorem taxes attributable to its use of the stadium into a maintenance fund and will also contribute (after six years) $300,000 per year into capital improvements
TERM	35 years with six 10-year extension options
GATE	Team gets 100% except for Public-sponsored non-MLB events
CONCESSIONS	Team gets 100% except, again, for certain Public-sponsored non-MLB events
ADVERTISING	Team gets 100%
NAMING RIGHTS	Team gets 100%
ENHANCED SEATING	Team gets 100%
NON-GAME EVENTS	For Team-sponsored MLB and non-MLB events, Team gets 100% of everything; for Public-sponsored civic, charitable, or cultural events, Public gets all broadcast fees (if any), net revenues from gate, and a percentage of parking and concessions agreed upon with the Team on a case-by-case basis
MAINTENANCE	Team's responsibility; however, this may be largely off-set by annual contributions of ad valorem taxes attributable to Team's use of stadium that are "tiffed" into an operational and maintenance fund; the DDA must approve disbursements from this fund
CAPITAL IMPROVEMENTS	Shared responsibility; Public makes $250,000 yearly contribution into major repair and replacement funds; Team (after first six years) makes $300,000 yearly contribution into same fund; if capital improvements exceed amounts in this fund, both parties must agree on a way to pay for them

163. NSLI, *supra* note 115.

PARKING	Team gets 100%; but Team pays $20,000,000 to public in partial consideration for right to operate and manage parking in complex

PNC PARK, PITTSBURGH PIRATES[164]

BUILT	1999-2001
COST ESTIMATE	$209,000,000 (site clearance and off-site infrastructure borne by public)
COST BREAKDOWN:	$40,000,000 paid as follows: $40,000,000 paid as follows: Cash Upfront: $8,500,000 Cash Upfront: $8,500,000 Annual Payments: $2,900,000 for 29.5 years {financed by 5% ticket surcharge and naming rights agreement with PNC} Annual Payments: $2,900,000 for 29.5 years {financed by 5% ticket surcharge and naming rights agreement with PNC}
PUBLIC	$169,000,000 paid from a variety of sources including RAD Countywide 1% Sales Tax
CITY TAX REVENUES	5% Amusement Tax on gate; 31% Parking Tax; 1% Player Payroll Tax; 2 mills Mercantile Tax on retail sales; 6 mill Business Privilege Tax on Pirates, contractors, services, etc.
RENT	$100,000 per year base rent; plus 5-10% of excess gate (see below); plus 5% of excess concessions (see below); plus 15% of selected non-MLB net revenues
TERM	29.5 years
GATE	Team gets 100% (net of 5% Amusement Tax and 5% ticket surcharge) up to $44,500,000; 95% up to $52,500,000; 90% thereafter

164. *Id.*

CONCESSIONS	Team gets 100% up to certain caps (42% aggregate gross concession revenue) i.e., after paying concessionaire; and/or $9.00 per capita adjusted yearly by CPI) for all games and Team-sponsored non-MLB events; Public gets concessions at up to ten Local or State-sponsored non-MLB events per year
ADVERTISING	Team gets 100% In-Stadium; 100% of outside marquee
NAMING RIGHTS	Team gets 100% of $30,000,000 over 20 years
ENHANCED SEATING	Team gets 100% of luxury suites, club seats, and PSLs
NON-GAME EVENTS	At Team-sponsored non-MLB events, Team gets 85% of gate (net of 5% amusement Tax and 5% ticket surcharge), public gets 15%, Team gets 100% of concessions, advertising, broadcasting, merchandising, rentals, additional revenues from playoff games, etc. Public to get 100% of 5% ticket surcharge but this will probably go to Capital Reserve Fund; At Public-sponsored non-MLB events (five per year reserved for Authority and five for State) public gets net revenues from the gate and concessions
MAINTENANCE	Team pays 100% routine maintenance, utility costs, insurance
CAPITAL IMPROVEMENTS	Capital Reserve Fund started with $3,000,000 from public bonds, augmented by 5% ticket surcharge proceeds to the extent they exceed $1,500,000 in any year, up to $375,000 (adjusted yearly by CPI); public pays for any other repairs or improvements that exceed amounts in Capital Reserve Fund
PARKING	Still in negotiations; Team wants net full year revenues from parcel on Federal & Canal; net game day revenues from new parking garage and various surrounding lots

SAFECO FIELD, SEATTLE MARINERS[165]

BUILT	1997/1998
LEASE DATE	12/23/96
COST	$498,000,000

165. *Id.*

RENT	Base rent of $700,000 per year adjusted annually by CPI; plus a "profit sharing" plan under which Public receives 10% "net income" less "cumulative net loss" pursuant to a very detailed formula
TERM	22 years with three 5-year extension options
GATE	Team gets 100% net of 5% admissions tax and 5% surcharge on "gross ticket revenues" (paid into capital fund)
CONCESSIONS	Team gets 100%
ADVERTISING	Team gets 100%
NAMING RIGHTS	Team gets 100%
ENHANCED SEATING	Team gets 100%
NON-GAME EVENTS	Team gets 100% for all non-MLB events (except for limited number of events scheduled by Public with revenue shared on case-by-case basis)
MAINTENANCE	Team's responsibility
CAPITAL IMPROVEMENTS	Team's responsibility partially funded by 5% gross ticket revenues surcharge and partially by Public through excess revenues from admissions tax (if any arise after mandated bond payments)
PARKING	Public agrees to provide parking garage (minimum 1,525 spaces) and surface lot (165 spaces); Team operates and retains all parking revenues subject to possible obligation to use parking revenues to make parking bond payments (for costs of construction), but only if 5% admissions tax proceeds prove inadequate for this

MINUTE MAID FIELD, HOUSTON ASTROS[166]

OPENING	3/2000
MEMORANDUM OF AGREEMENT DATE	11/05/1997
COST	$230,000,000
RENT	$4,600,000 per year ($3,400,000 base rent plus $1,200,000 royalty under licensing agreement) may be paid from future dedicated revenue streams (example, naming rights) yet to be specified; also possible credits against future admissions taxes or parking taxes
TERM	30 years with two 5-year extension options

166. *Id.*

GATE	Team gets 100% (less possible future admissions taxes, however, these could be credited against Team's rent)
CONCESSIONS	Team gets 100%
ADVERTISING	Team gets 100%
NAMING RIGHTS	Team gets 100%
ENHANCED SEATING	Team gets 100%
NON-GAME EVENTS	Yet to be specified
MAINTENANCE	Team's responsibility
CAPITAL IMPROVEMENTS	Team's responsibility; Team makes annual contribution of $2,500,000 into "capital fund" for this (but these payments could, like rent, could be off-set by future admission tax and parking tax revenues)
PARKING	Team gets 100%

MILLER PARK, MILWAUKEE BREWERS[167]

CONSTRUCTION DATE	10/1996
OPENING	2001
LEASE DATE	12/31/96
COST	$322,000,000
RENT	Base rent to equal 10% of the public's annual bond debt service, less any taxes paid by licensees of skyboxes; lease schedule calculates this to be $900,000 in each of the first ten years, and $1,200,000 in each of the second ten years
TERM	30 years with five 2-year extension options
GATE	Team gets 100%
CONCESSIONS	Team gets 100%
ADVERTISING	Team gets 100%
NAMING RIGHTS	Team gets 100%
ENHANCED SEATING	Team gets 100%
NON-GAME EVENTS	Team schedules all non-MLB events, subject to public's approval, and retains non-game event revenues

167. *Id.*

MAINTENANCE	Team's responsibility, but the public makes yearly contribution to the team of the lesser of 64% of "annual actual maintenance costs" or $3,850,000, and the team is allowed to include its base rent and its $300,000 annual contribution for capital improvements in "annual actual maintenance costs"; net result of all this could be total public responsibility for maintenance in many of the years during the term of the lease
CAPITAL IMPROVEMENTS	Public puts $700,000 per year and team puts $300,000 per year into "segregated reserve fund" for capital improvements; beyond this, the public is responsible for all major repairs and improvements
PARKING	Lease is silent on specific parking provisions, but it seems that team would retain all revenues from any lots or garages on the Ballpark site.

Under the current lease terms, the Twins pay no rent. The Twins are required to share only 35% of concessions revenue and 25% of advertising revenue with the Commission. It is estimated that the Commission will receive only $500,000 in total revenue in 2002. The Minnesota Court of Appeals clearly relied on the Twins paying no rent and sharing minimal revenue with the Commission as evidence that the relationship exceeded that of landlord and tenant. Because the Commission received relatively little revenue, the Court held that "the major benefit that the Commission receives under the Use Agreement is the Twins' promise to play baseball at the Metrodome."[168]

5. Ownership of the facility is usually in a district, allowing for no real estate tax payments and financing through tax-exempt bonds at governmental rates.

Most legislation for the construction and financing of a sports facility creates a new governmental entity specifically to administer and own the facility. The entity is usually called a stadium "district" or "authority" (referred to as "District" in this section). Because the District is smaller in size than the municipal or county government and its sole focus is the facility, the District can be more responsive and efficient. Teams also benefit from the Districts. The District will often sell the bonds to fund the facility

168. *Metro. Sports Facilities Comm'n*, 638 N.W.2d at 219.

construction. Because the District is a governmental entity, the bonds are normally tax-exempt. Normally the District and the team do not have to pay real estate taxes because ownership of the facility is in a governmental unit.

The recent explosion in the construction of new sports facilities has focused increased attention on municipal bonds as a means to finance the projects. Municipal bonds are debt obligations issued by states, cities, counties, and other governmental entities to raise money to build projects for the public good, such as sports facilities. Not all municipal bonds are tax-exempt from both federal and state taxes. There is an entirely separate market of municipal issues that are taxable at the federal level, but still offer a state, and often local, tax exemption on interest paid to residents of the state of issuance.

The tax-exempt status of municipal bonds used to finance the construction of sports facilities is attractive. The bonds often have the pledge of government credit and require the payment of a lower rate of interest.

A survey of recent tax-exempt municipal bond financings of sports stadiums illustrated how government units accomplished their goals within the bounds of the tax law. For example, the City of Baltimore and the State of Maryland issued $86 million worth of tax-exempt bonds to finance their new football stadium and will pay the debt service on these bonds entirely with non-stadium revenue generated from a state lottery fund dedicated to sports. The debt service for Baltimore's baseball stadium is also paid through a sports lottery. Similarly, the debt service for Coors Field in Denver and Jacobs Field in Cleveland is funded through a six-county general sales tax increase of one-tenth of 1% and a half-cent "sin tax" increase on tobacco and liquor, respectively. Generally, the sources of debt service funding are designed to shift the tax payment to nonresidents of the city where the stadium is being built.

Most MLB teams are located in large markets. Newer stadiums are often built in the downtown area or other prime or redevelopment areas of the city. If those stadiums would be on the property tax rolls, the tax liabilities would be sizeable. However, government entities own sports facilities, and therefore no real estate taxes are being paid.

The Minnesota Court of Appeals noted the tax status of the Metrodome in its holding in *Metropolitan Sports Facilities Commission v. Minnesota Twins*, by noting that "it [The Metrodome] was generally exempted from taxation. The court has upheld legislation that was later enacted exempting the Metrodome from property taxation."[169]

169. *Id.* at 224.

SELECTED FINANCING EXAMPLES[170]

TEAM	STADIUM	YEAR	FACILITY FINANCING
Arizona Diamondbacks	Bank One Ballpark	1998	The Maricopa County Stadium District provided $238M for the construction through a .25% increase in the county sales tax. In addition, the Stadium District issued $15M in bonds that will be paid off with stadium generated revenue. The remainder was paid through private financing, including a naming rights deal worth $66M over thirty years ago.
Cleveland Indians	Jacobs Field	1994	Built as part of a city sports complex that was funded both publicly and privately. The Gateway Economic Development Corp. issued $117M in bonds backed by voter approved county-wide sin taxes on alcohol ($3/gal on liquor and $0.16/gal on beer) and cigarettes (4.5 cents/pack) for fifteen years. They also issued $31M in stadium revenue bonds. $20M was from early seat sales.
Detroit Tigers	Comerica Park	2000	The Tigers contributed $145M, with the remaining $115M being publicly financed through a 2% rental car tax, a 1% hotel tax, and casino revenue. Comerica Bank paid $66M over thirty years for naming rights.
Houston Astros	Enron Field n/k/a Minutes Maid Park	2000	Financed through a team payment valued at $53M ; Private investors contributed $35M and $180M of public financing came from a 2% hotel tax and a 5% rental car tax.

170. GREENBERG, *supra* note 79, at 186-87.

Milwaukee Brewers	Miller Park	2001	Brewers are contributing $90M for the stadium structure. State of Wisconsin is contributing $160M through a five county, one-tenth of a cent sales tax increase. The $72M infrastructure costs are split as follows: $18M each from the city and county, with $36M from the state. Miller Brewing paid $41M for 20 years for the naming rights.
Minnesota Twins	Metrodome	1982	Financed through the sale of $55M in revenue bonds, a hotel and liquor tax that raised $15.8 million, and a Metro liquor tax that raised $8M. The City of Minneapolis spent $4M on the infrastructure costs. The remaining costs were financed with $13M in interest earned on the bonds and $7M from the Vikings and Twins for auxiliary facilities.
Pittsburgh Pirates	PNC Park	2001	The Pirates contributed $40M to the projects. The remaining amount will come from the state, county, and city as part of an $809M sports facilities/convention center financing proposal that includes a new stadium for the Steelers.
Seattle Mariners	Safeco Field	1999	The Mariners contributed $145M including $ 100M in cost overruns. The public's share is capped at $ 372M. Washington State contribution: .017% sales tax credit, proceeds from the sale of sports lottery scratch games ($3 million a year guaranteed), and proceeds from the sale of commemorative ballpark license plates. King County: .5% sales tax on food and beverages in King County restaurants, taverns and bars; 2% sales tax on rental car rates in King County, 5% admission tax on events at the new ballpark.

Cincinnati Reds	Great American Ball Park	2004	82% Public. The $290M project originally called for the Reds to contribute $30M up front toward construction, $10M at groundbreaking and $10M when the venue is completed. Rent will amount of $2.5M annually for nine years, and then one dollar per year for the remaining 21years of the 30-year lease. However, because of the rising costs of this project the team has agreed to expand its lease in the facility to 35 years. The county will pay most of the cost using proceeds from the half-cent sales tax increase voters approved in 1996.
Philadelphia Phillies	Citizens Bank Park	2004	$172M from Phillies plus cost overruns; $85M from the State of Pennsylvania; $89M from the City of Philadelphia; $2M loan from the Delaware River Port Authority; $112M in site work with cost shared by the City and the Phillies.
San Diego Padres	Petco Stadium	2004	$206M from the City of San Diego financed through tax free municipal bonds and funded by hotel tax revenue; $74M from Center City Development Corporation (City Downtown Redevelopment Agency) funded by additional property tax revenue; $21M from San Diego Unified Port District; $173M from the Padres.

Non-Relocation Clauses

To prevent premature relocation, the modern trend in sports facility leases is for the insertion of specific language to eliminate or hinder a team's ability to move. Sports venue leases currently employ "no-relocation/no-move" clauses to protect lessors, communities and fans. Normally, a non-relocation clause prevents movement for the term of the lease. The lessor reserves the remedy of injunctive relief or specific performance in the case of a breach by a lessee. Often leases contain specific language that stadium construction was undertaken as consideration for the team playing in the stadium for the lease term.

The lease by and between the Maryland Stadium Authority (MSA) and the Orioles, Inc. (the "Orioles") was one of the first leases to contain a "no relocation-no move" clause. Since the Orioles' lease, non-relocation clauses appear in almost all of the newest baseball leases. Each new lease attempts to improve the language of the prior leases. As such, "no relocation-no move" clauses have become more detailed and are sometimes separate agreements.

Another option available to municipalities seeking to prevent relocation is a liquidated damage clause, which can be separate from or combined with a "no-relocation-no move" clause. Liquidated damage clauses specify the amount a team will owe to the municipality if the team relocates or cuts short its lease during the lease agreement. Normally, the amount is commensurate with the cost of the stadium construction and decreases yearly as the stadium ages.

Baltimore Orioles

The Orioles began playing in Oriole Park at Camden Yards in 1992. The lease agreement between the MSA and the Orioles contains Article XX "No Relocation." Article XX states that the Orioles will not relocate during the term of the lease agreement as "consideration" for the construction of the ballpark.[171] The Orioles are forbidden from relocating the team or playing post-season games in any other location.[172] The sale, assignment, or transfer of the team is not permitted unless all of the obligations of the lease are assumed, including the relocation prohibitions.[173] The MSA can use any remedy available at law or equity, including specific performance.[174]

Colorado Rockies

The Rockies began playing in Coors Field in 1995. The lease agreement between the Stadium District ("District") and The Rockies contains Article XIII "Relocation of Team." Article XIII states that the District will be "irreparably harmed" by the relocation of the team, and the District does not

171. *AGREEMENT REGARDING ORIOLE PARK AT CAMDEN YARDS BETWEEN THE MARYLAND STADIUM AUTHORITY AND THE ORIOLES, INC.*, SEPTEMBER 2, 1992, Art. XX, at 139 (1992).

172. *Id.*

173. *Id.*

174. *Id.*

have "an adequate remedy at law for breach."[175] The Rockies are prohibited from applying to the National League for approval for the team to play anywhere besides Coors Field.[176] The Rockies acknowledge that the stadium was constructed, the sales tax was imposed, and bonds were issued "solely" to bring the Rockies to the District.[177] The team agrees that the District can obtain an injunction without posting a bond to prevent the Rockies from relocating.[178] The District is also entitled to pursue the remedy of specific performance.[179]

Houston Astros

The Astros began playing in Minute Maid (then Enron) Park in 2000. The Astros signed a Non-Relocation Agreement with the Harris County-Houston Sports Authority ("Authority"). The agreement contains a "Covenant to Play" in the stadium. Relocation, attempted relocation, failure to play in the stadium, obtaining or attempting to obtain Major League Baseball's permission to relocate, third-party relocation negotiations, and bankruptcy are prohibited by this agreement.[180] The agreement gives the Authority four remedies:

1. Injunctive or declaratory relief, including specific performance.
2. Liquidated damages of $ 250,000,000.00 that decrease every five years
3. Termination of the Non-Relocation Agreement.
4. All other remedies available at law or equity.[181]

Seattle Mariners

The Mariners began playing in Safeco Field in 2000. The Lease does not have a section solely dedicated to relocation. The lease does contain a section that entitles the Public Facilities District to specific enforcement. The parties (the Team and District) agree that:

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175. *AMENDED AND RESTATED LEASE AND MANAGEMENT AGREEMENT BY AND BETWEEN DENVER METROPOLITAN MAJOR LEAGUE BASEBALL STADIUM DISTRICT AND COLORADO ROCKIES BASEBALL CLUB, LTD.*, MARCH 30, 1995, art. XIII, at 79 (1995).

176. *Id.*

177. *Id.*

178. *Id.*

179. *Id.*

180. *NON-RELOCATION AGREEMENT BY AND BETWEEN HARRIS COUNTY SPORTS AUTHORITY AND HOUSTON MCLANE COMPANY, INC D/B/A HOUSTON ASTROS BASEBALL CLUB*, 1998 (1998).

181. *Id.*

1. Playing games at Safeco Field is a "unique and valuable consideration which cannot be replaced by the payment of money and is the essence of the bargain."

2. The stadium was constructed to secure Major League Baseball for the area and the economic benefits produced from Major League Baseball for the entire term of the lease.

3. The entire area "could not adequately or properly be compensated in damages" if the team relocated.

4. The uncertainty regarding a potential departure would cause "irreparable, non-measurable harm to the District and citizens"

5. The District is entitled to injunctive relief without posting any bond, specific performance, termination, and all other remedies at law or equity.[182]

Milwaukee Brewers

The Brewers moved into Miller Park in 2001. The Brewers signed a Non-Relocation Agreement with the Southeast Wisconsin Professional Baseball Park District ("District"). The Brewers acknowledge that the State of Wisconsin agreed to finance the stadium and infrastructure to keep the Brewers in the City of Milwaukee. The Brewers acknowledge that the District will be "irreparably harmed" by relocation and will have "no adequate remedy at law."[183] The Brewers are prohibited from contract, agreement, or application that could result in relocation. The Brewers consent to a "temporary restraining order, together with preliminary and permanent injunction" without a bond.[184] The District can also terminate agreements to which the Brewers are a party.

Pittsburgh Pirates

The Pirates began playing in PNC Park in 2001. Article 8.2 of the lease is entitled "Covenant Not to Relocate." The Pirates agree not to relocate or initiate discussions that might result in relocation. Article 8.3 of the lease is entitled "Unique Nature of Agreement." The Pirates agree that relocation will

182. *BALLPARK OPERATIONS AND LEASE AGREEMENT BETWEEN THE WASHINGTON STATE MAJOR LEAGUE BASEBALL STADIUM PUBLIC FACILITIES DISTRICT AND THE BASEBALL CLUB OF SEATTLE, LLP*, DEC. 23, 1996, art. XIX, at 78-81 (1996).

183. GREENBERG, *supra* note 79, at 415-16.

184. *Id.*

result in "immediate and irreparable harm." Thus, the Sports & Exhibition Authority of Pittsburgh and Allegheny County is entitled to injunctive relief or specific performance without bond. The Pirates waive the defense that damages can be adequately compensated. The Authority can pursue all other remedies at law, but the maximum damages cannot exceed an amount specified in a separate loan agreement.

St. Louis Cardinals

The St. Louis Cardinals had signed a *Project Construction, Financing and Operation Agreement* with the City of St. Louis to play in a new stadium as part of an extensive project called "Ballpark Village." The financing legislation for "Ballpark Village" was rejected by the State of Missouri's Legislature. The agreement that the Cardinals signed contained one of the most onerous relocation clauses in professional sports. Section 12.3 of the *Project Construction Financing and Operating Agreement* states that both parties acknowledge and agree that:

1. The Ballpark Project is being constructed and the Ballpark Project Bonds are being issued to enable the Cardinals to play their Home Games in the Ballpark.
2. The Agreement is intended to "ensure" the Cardinals will not relocate.
3. "Particular and highly unique circumstances" have given rise to the Agreement.
4. The Public will be "immediately, uniquely, and irreparably harmed" by any violation of the Agreement.
5. Monetary damages cannot be calculated in the event the Cardinals breach the Agreement.
6. The Public Participants do not have an adequate remedy at law for a breach by the Cardinals.
7. The "economic, financial, civic, and social benefits" to the Public Participants are great and are not quantifiable.
8. The Public Participants are therefore entitled to one, but not both, of two remedies at law:
    i.Injunctive relief, specific performance, or any other preliminary or permanent equitable relief.
    ii.Liquidated Damages equal to the proceeds of Ballpark Project Bonds for the first year. Each year the amount is to be reduced by 1/35.[185]

185. *PROJECT CONSTRUCTION, FINANCING AND OPERATION AGREEMENT*, ST. LOUIS CARDINALS

CITY	STADIUM	YEAR OPENED	COST (MILLIONS)	PERCENTAGE PUBLICALLY FINANCED	NON-RELOCATION CLAUSE
Baltimore	Camden Yards	1992	$210	96%	All remedies available at law or equity, including specific performance and injunctive relief No waiver of defenses or rights by Orioles.
Denver	Coors Field	1995	$215	75%	Team acknowledges: the District will suffer "irreparable harm", and does not have an adequate remedy at law Team recognized the construction, tax, and bonds were issued solely for the Team to play in the District. District is entitled to seek an injunction and specific performance without bond.
Houston	Minute Maid Park	2000	$250	68%	Non-Relocation Agreement Signed between Team and County Relocation, Attempted Relocation, Failure to Play in Stadium, MLB Permission to relocate, third party negotiations, and bankruptcy all constitute "Event of Default". Four Remedies Available 1. Injunctive or Declaratory relief including, without limitation, specific performance 2. Liquidated Damages: 1998 2003 $ 250,000,000 2003-2008 $ 200,000,000 2008-2013 $ 150,000,000 2013-2018 $ 125,000,000 2018-2023 $ 100,000,000 2023- $ 75,000,000 3. Terminate Agreement 4. Exercise any and all other remedies available to at law or equity

MAJOR LEAGUE BASEBALL CLUB, § 12.3 (2002).

Milwaukee	Miller Park	2001	$393	77%	Non-Relocation Agreement Signed between Team and District Terms: "Baseball beneficial to the State," State agreed to Infrastructure and "Stadium Agreement" as inducement for team to play in the State, "Irreparably Harmed by Relocation," No adequate remedy at law, "Team hereby consents to the entry of, a temporary restraining order, together with preliminary and permanent injunction." Without Bond. District can Terminate agreement
Pittsburgh	PNC Stadium	2001	$260	82%	Team acknowledges the new stadium is a "material inducement" for team to play in Pittsburgh. Team acknowledges "unique nature" of agreement and irreparable harm. Authority entitled to specific performance without bond. Team waives right to assert the defense that there is adequate monetary compensation. Authority can assert any other claim at law or equity.
Seattle	Safeco Field	2000	$517	76%	Failure to comply with agreement (includes default by relocation) would result in "immediate and irreparable damage". No adequate remedy at law. and all other remedies.[186]

Newer leases in Major League Baseball have non-relocation clauses; some coupled with liquidated damages as well. These leases specify equitable remedies such as specific performance and injunction as appropriate action to maintain the team at home. By virtue of the public input and commitment into the construction, ownership, and financing of sports facilities, any attempted franchise carpet-bagging will immediately, uniquely, and irreparably harm the community/public. Monetary damages cannot be calculated, estimated, or

186. GREENBERG, *supra* note 79, at 414-18.

ascertained with any certainty with respect to the loss of the psychic income and intangible benefits to a community. "The substantial out-of-pocket costs of public subsidization spent on local sports [venues] generally exceed the objectively quantifiable economic benefits to the community . . . . Therefore, the 'benefit of the bargain' that the community actually [has] in exchange for its . . . subsidy" is the covenant that the team remains at home.[187] As a result, the community does not have an adequate remedy of law. Therefore, communities should be entitled to injunctive relief, specific performance or any other preliminary or permanent type of equitable relief. That is not to say that the lease should not be coupled with an alternative; i.e., a liquidated damage amount specified in the lease in the event of relocation if the parties agree. A liquidated damages provision would protect both the community and the team. A team that legitimately cannot survive in the community should have a reasonable way out of its lease. To insure that the team is not carpet-bagging, specific triggering devices should be included in the lease. The triggering devices could be a function of revenue, attendance, the team's financial position, or a combination of these factors.

Sports teams have engaged in franchise free agency by moving or threatening to move the teams to cities with better sweetheart deals. This type of conduct has created a "seller's market." By selecting the best available offer, a team can enhance a franchise's profitability and capitalized value at taxpayer expense. As long as the public continues to subsidize state-of-the-art facilities, non-relocation clauses are essential to stop the game of musical chairs. "Courts have suggested that a stadium lease is the most effective means of protecting a community's investment in the playing facility that houses a professional franchise."[188]

A publicly owned facility has a symbiotic relationship with its host city. The franchise benefits from public funds spent in connection with the construction and subsidization of the facility, and the community benefits from the team playing in the community as a unique form of entertainment that is irreplaceable if lost. Economic benefits from hosting a sports franchise are difficult to determine and are probably too speculative to recover as contract damages. A professional sports franchise is a unique community asset that cannot be readily replaced. Courts will not have much difficulty in finding "irreparable harm to the 'welfare, recreation, prestige, prosperity, and trade and

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187. Matthew Mitten & Bruce Burton, *Professional Sports Franchise Relocations From Private Law and Public Law Perspectives: Balancing Marketplace Competition, League Autonomy, and the Need for A Level Playing Field*, 56 MD. L. REV. 57, 60 (1997).

188. *Id.* at 71.

commerce' of the city's residents," by virtue of loss of a sports franchise.[189]

6. Conclusion

The holding of the Minnesota Court of Appeals could have a significant impact on sports franchises and "franchise free agency." Although the case was not decided on its merits, other courts could apply the same reasoning to prevent a local sports franchise from relocating. The court held that a team could be prevented from relocating if the relocation violated the lease agreement for the facility. The court stated "the relationship between the Twins and the Commission is not a typical landlord-tenant relationship, but instead provides the state, citizens, and fans with substantial non-monetary benefits."[190] Monetary damages would not be an adequate remedy for the breach of the lease by the team.[191] The potential impacts from the Minnesota Court of Appeals decision are:

> Sports facility leases are not typical commercial leases. As such, monetary considerations are not the benefit received by the facility owner; instead, the benefit of the bargain was the team's promise to play its home games at the stadium for the duration of the lease.
>
> Teams being prevented from relocating even if they are willing to pay damages.
>
> The recognition that merely allowing a facility landlord to recover contract damages for the premature loss of a team does not provide adequate compensation for the lost benefit of the bargain in providing the public financial inducements necessary to attract and retain a sports franchise, as value of such benefits is virtually impossible to quantify and, therefore, not recoverable for a team owner's breach of contract.
>
> MLB or other professional sports leagues facing tortuous interference claims.
>
> Liquidated damage provisions being essential for teams in order to escape their leases.

Because the relationship between a community and a sports franchise is greater than that of a landlord and a tenant, the lease agreements must be "greater," also. To ensure that "psychic income" can be used in the future to

189. *Id.*

190. *Metro. Sports Facilities Comm'n*, 638 N.W.2d at 221.

191. *Id.*

prevent relocation, communities have put specific language, which outlines the non-monetary benefits and uniqueness of the relationship in the lease with the team. Newer leases also grant the community the right to injunctive relief and specific performance. The Minnesota Court of Appeals holding suggests that a community with a well-written non-relocation clause in its lease agreement with a sports franchise can prevent a team from relocating. If a team needs to relocate for legitimate reasons, the lease should contain a liquidated damages clause with specific events that would allow the team to "buy-out" of the lease.

IV. "THE BOOM IN SPORTS VENUES HAS SHIFTED"[192]

2003 marked another busy year for the opening of new and renovated sports venues in North America. The total construction costs for major league, minor league, and collegiate facilities were $1.456 billion.[193] Most of us would think that the bulk of the dollars went to the major league facilities, but in reality, $959 million came from college and minor league new facilities and/or major renovations.[194] While major league stadiums continue to open their doors, the trend for new or renovated venues have shifted to the college and minor league level.

Planned facility spending in 2003 dropped to a three-year low of $5.4 billion. Forty-five new construction or renovation projects were underway in 2003 and only ten facilities began construction at the NFL, NBA, MLB, and NHL level compared to sixteen facilities in 2002 and thirteen facilities in 2001. Seven out of the ten venues are open or are scheduled to be open by April of 2004, leaving only three venues for 2004 and on.[195] The main reason is that the Big Four team sports are slowly gravitating toward a fully mature market. Seventy-two percent of facilities in the four major leagues have been built since 1990. Of the four major leagues' 121 professional franchises, 74 teams are either playing in 64 facilities built since 1990 or currently constructing new facilities.[196]

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192. This section of the article is taken from Martin Greenberg, *Facilities Arms Race*, FOR THE RECORD, April/May 2001, at 4. Where necessary, some information has been cited back to this original source.

193. *College, Minors Drink Bulk of $1.5B Arena Tab*, STREET & SMITH'S SPORTS BUS. J., Nov. 24-30, 2003, at 37.

194. *Id.*

195. *Facilities Spending Drops to $5.4B, Hits 3-year Low*, STREET & SMITH'S SPORTS BUS. J., Apr. 14-20, 2003, at 41.

196. *Id.*

College Facilities Arms Race

Institutions of higher learning are experiencing an unprecedented boom in the creation of new and renovation of old sports facilities. While fans have become accustomed to flashy stadiums and arenas in the professional ranks, collegiate programs have quietly been spending billions of dollars on their own new sports venues. Over $4 billion was spent on collegiate athletic facilities in the 1990's.[197] Further statistics demonstrate this trend:

1. Nearly three dozen schools across the country have either recently completed or are in the midst of sports facility projects, creating approximately 305,000 new seats.[198]

2. Ten of the [fifteen] Division 1-A schools that averaged 75,000 fans or more for a football game over the past four seasons have engaged in stadium expansion.[199]

3. Nine out of twelve schools in the Big 12 conference have already undergone facility renovations.[200]

The situation at Penn State University is a representative example. Penn State's Beaver Stadium has gone through 7 expansions since it opened in 1960, doubling its size. When the expansions are completed, the stadium will reach a capacity of 104,000, making it the second-largest stadium in the nation.[201] Other examples of college construction for both stadiums and arenas include:

COLLEGE CONSTRUCTION[202]

SCHOOL	FACILITY	COST - MILLIONS	COMPLETI ON DATE
Univ. Southern California	10,258 seat arena	$70	2006
St. Louis Univ.	13,000 seat arena	$70	2005

197. Greenberg, *supra* note 192, at 4.

198. *Id.*

199. *Id.*

200. *Id.*

201. *Id.*

202. *On Deck-Venues in Development*, RSV FAX, Jan. 7, 2004.

Univ. of Oregon	15,000 seat arena	$130	2006
Univ. of Virginia	15,000 seat arena-John Paul Jones Arena	$130	2006
Gonzaga Univ.	6,000 seat basketball arena	$23	2004

FOOTBALL STADIUM UPGRADES[203]

SCHOOL	COST-MILLIONS	COMPLETION DATE
Michigan State Univ.	$61	2005
Univ. of Nebraska	$49	2006
Univ. of Oklahoma	$34	2006
Oklahoma State Univ.	$86	2004
Univ. of Wisconsin	$99.7	2004

In the midst of this construction, many worry that the race to build the best stadium or arena is obscuring the mission of colleges and universities, which should be to educate students. However, others point out that this facilities arms race has a positive impact on both new student enrollment and alumni support of an institution.[204]

The Nature of the "Race"

The college building boom has mimicked the proliferation of new major and minor league sports facilities in the 1990's, when approximately eighty major league and seventy minor league facilities were built or renovated.[205]

The college market has also mirrored the professional level in the types of amenities that have been found in these new facilities. These amenities

203. *Id.*

204. Greenberg, *supra* note 192, at 4.

205. *Id.*

include club seats and luxury suites, increased capacity, improved concession areas, branded food areas, improved practice facilities, parking garages, modern locker room and training facilities, athletic administration and support buildings, state-of-the-art scoreboard and video equipment, Walk of Fames and Hall of Fames, and auxiliary real estate development. All of these create new revenue streams that benefit more than just the athletic department.

As at the professional level, projects are often undertaken as part of a larger capital plan and are actually accomplished in stages. Schools are not just focusing the building boom on the traditionally big revenue sport, football. Instead, money is being put into hockey arenas, soccer fields, swimming complexes and training facilities.

The proliferation of college sports facilities has been referred to as part of the "athletics arms race." In 1997, sports law professor Gary Roberts told Congress that colleges are involved in an arms race or "mentality in which bigger is always seen as better. It creates a never-ending, upward-spiraling need for more revenues in order to beat the other guy."[206]

This has also led to concern from college administrators. In his 2001 convention address, NCAA President Cedric Dempsey said that academic institutions must put the brakes on the explosive growth in college sports, and recently he has forecast a looming "financial fall" in college sports because of the arms race.[207] Miles Brand, president of Indiana University - Bloomington, said,

> I am a strong believer that inter-collegiate athletics can increase pride in the institution, strengthen ties to alumni, students, faculty, and the broader community, and provide educational opportunities to some students who might not otherwise have a chance to earn a degree, but I also worry that those positive aspects are being overshadowed in pursuit of increased sport-related revenue. University athletic programs run the risk of becoming captives of commercialism and the entertainment culture. Universities must be judged by their achievement as academic institutions, not as sports franchises.[208]

However, few can deny that the increased revenue from new stadiums and arenas helps increase the profile of the university. For example, television exposure, which often follows stadium renovation or construction, helps schools attract not only the best athletes, but also strong faculty and a growing

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206. *Id.*

207. Cedric Dempsey, *2001 NCAA Convention Address*, Jan. 7, 2001, *available at* http://www.ncaa.org/convention/2001/address.html (last visited Sept. 9, 2004).

208. *Id.*

general enrollment. This positioning of the school's name in the media is one of the crucial functions of an athletic program.

Why the Race is Run

The collegiate venue may be the newfound revenue source that can augment or compliment bowl, cable television and ticket revenue. Colleges have followed professional teams and realized that club seats, personal seat licenses, luxury suites, naming rights, integrated sponsorships and unprecedented corporate alliances are just as appealing sources of revenue. In many instances, collegiate facilities are physically and functionally obsolete, antiquated, potentially unsafe, and in need of substantial renovation or even replacement. Storied venues with historic significance just simply do not meet the demands of corporate America, the media and the new breed of fan.

Effective stadium design can actually contribute to a venue's financial success in ways previously unimagined. A general contractor, architect, or facility manager may be as important as a coach in luring top recruits to a campus. The physical act of construction may be symbolic to recruits in the form of a financial commitment to the continuation and development of the athletic program. The investment in state-of-the-art facilities may also enable potential recruits to attain their full athletic potential by providing the best athletic equipment for training and developing their skills. If a school does not have a state-of-the-art facility that is competitive with other universities, it is not going to be able to recruit the quality of athlete necessary to win.

Traditional values such as competition, loyalty, cooperation, and teamwork are still a major part of college athletics, but college sport today has become just as much about bowl games, alumni support, endowments, gate receipts, and cable TV contracts. The failure to win can cause swindling attendance, shrinking contributions, turnover in the coaching staff, and lead students to turn down scholarships.

Winning also translates into increased revenues. Estimated per-team payouts for 2003 Bowl appearances have skyrocketed.

BOWL PAYOUTS[209]

Bowl	Million per team
Outback	$2.0
Capital One (formerly Citrus Bowl)	5.125
Rose	$13.5
Orange	$13.5
Cotton	$3.0
Fiesta	$13.5
Sugar	$13.5

These bowls pump millions into athletic programs each year. The expansion number of Bowls played and the purses offered have been determining factors in the quest for revenues and exposure. There were twenty-eight Bowl games in 2003-2004 with a total of $202 million paid to universities. Thirteen Bowl games pay less than $1 million, but more than the minimum of $750,000 that is required by the NCAA.[210] Eleven Bowls pay between $1 million to $2 million. BCS Bowl games pay between $14 million and $17 million depending upon who has the championship that year. Twenty-one Bowls have corporate names attached to them.[211]

Another factor is the increasing popularity of sports such as football, leading to a demand for better and newer facilities to maintain and create a new fan base.

NCAA 2003 Division I-A football attracted more than 35 million fans for the 2003-2004 season.[212] Total attendance is up 701,382 from the prior year.[213] Twenty-one Division I-A teams for the 2003-2004 season averaged more than 70,000 in attendance.[214]

209. *2003 NCAA Bowl Payouts*, *at* http://www.sportsfansofamerica.com/links/football/college/bowls/2003.htm (last visited Sept. 4, 2004).

210. *Id.*

211. *Id.*

212. *2003 NCAA Football Attendance, NCAA Official Statistics*, *at* http://www.ncaa.org/stats/football/attendance/2003/2003footballattendance.pdf (last visited Oct. 1, 2004).

213. *Id.*

214. *Id.*

2003 DIVISION 1-A HOME FOOTBALL ATTENDANCE - 70,000 OR MORE[215]

Rank / School	Average Attendance
1 Michigan	110,918
2 Penn State	105,629
3 Tennessee	105,038
4 Ohio State	104,870
5 Georgia	92,058
6 LSU	90,974
7 Florida	90,177
8 Auburn	85,203
9 Texas	83,339
10 Oklahoma	83,202
11 Florida State	83,149
12 Alabama	82,388
13 South Carolina	80,844
14 Notre Dame	80,795
15 Wisconsin	78,486
16 Southern California	77,804
17 Nebraska	77,754
18 Texas A&M	76,243
19 Clemson	76,079
20 Michigan State	72,830
21 Washington	71,906

215. *Id.*

TOTAL ATTENDANCE 2003[216]

Div. 1-A Teams:	32,850,270
Including Neutral Sites & Bowl Games:	35,085,646
Div. I-AA Teams:	5,200,384
Including Neutral Sites & Championship Games:	6,070,116

Profitable football programs, which lead to bigger and better sports venues, can also underwrite non-revenue and women's sports. According to the director of the NCAA study, Daniel L. Fulks, the difference between I-A programs that show profits and those that do not can be attributed to seating capacity and revenue sharing within conferences.[217]

Some universities use new stadiums as a means to move up the division ladder. For instance, Alabama State may soon become the first historically black college to join college football's top level, Division I-A. The school's $70 million stadium proposal includes naming rights for the stadium, playing field, and a National Black Sports Hall of Fame and Museum that would be housed in the stadium.[218]

The growth of college hockey from a regional to national sport may also give rise to further growth in facility construction for colleges without major football and basketball programs. Hockey may provide a relatively inexpensive vehicle for marketing an athletic program. Today there are 20% more Division I hockey teams than there were eight years ago, and two new conferences. There are now six conferences with a total of sixty schools that participate in Division I-A Hockey.[219]

A perfect example in college hockey is Colorado College. Despite a student population of only 1,950, the school went to two NCAA Frozen Fours in the 90s, and hosts powerhouse schools such as Michigan State, Minnesota, and Wisconsin.[220] A Western College Hockey Association (WCHA) charter member since 1959, the college is building the new World Arena, which will

216. *Id.*

217. Daniel L. Fulks, *Revenues and Expenses of Division I and II Intercollegiate Athletic Programs- Financial Trends and Relationships* (NCAA, 1999).

218. Gary T. Brown, *News and Features-Notes*, NCAA NEWS, June 5, 2000, *available at* http://www.ncaa.org/news/2000/20000605/active/3712n22.html.

219. NCAA, *Conferences and Schools*, NCAA SPORTS.COM, Jan. 1, 2002, at http://www.ncaasports.com/ icehockey/mens/story/arc_story/9711.

220. Luke DeCock, *The Growth of College Hockey-Hockey seeks national focus*, THE GAZETTE, Feb. 5, 2000.

have an increased seating capacity from 3,829 to 7,343, doubling ticket revenues.[221] Colorado College is not the only school to follow suit in the WCHA. Four other colleges have built new arenas in the past few years, and North Dakota recently completed a $50 million, 11,000-seat arena.[222]

Naming rights deals have played a significant role in this progress. The University of Louisville named its new $63 million football facility Papa John's Cardinal Stadium after the pizza chain paid approximately $5 million for the naming rights.[223] The 42,000-seat facility also includes a Brown & Williamson Club built with a $3 million contribution from the tobacco company.[224]

Penn State's athletic facilities are now decorated with logos for Pepsi, Unimart, AT&T, Hershey Foods, Nike, Mellon Bank, and Toyota, among others. A huge new electronic scoreboard towering over the north end zone of Beaver Stadium is being paid for with corporate advertising.

By 2000, approximately fifteen colleges had corporate naming rights deals for their arenas and stadiums. As long as the sponsorships are perceived as merely supporting the athletic programs, without implying that the advertising has some negative impact on the education at these schools, little damage is done to the respective school's reputation as an institution of higher learning.

COLLEGE NAMING RIGHTS AGREEMENTS[225]

UNIVERSITY	STADIUM/ARENA	YEAR	TERM	CORPORATE SPONSOR	FUNDS ($)M
Arizona State Univ.	Wells Fargo Arena	1998	10	Wells Fargo	5.0
Fresno State Univ.	Save Mart Center	2003	20	Save Mart Co.	40.0
Marquette Univ.	US Cellular Arena	1999	6	US Cellular Corp.	2.0
North Dakota Univ.	First National Bank Center	N/A	20	First National Bank	7.2

221. *Id.*

222. *Id.*

223. Janet Graham, *Louisville Ready to Open 'Miracle' Stadium*, KENT. POST, Sept., 2, 1998, at 7K.

224. *Id.*

225. GREENBERG, *supra* note 79, at 327.

Ohio State Univ.[226]	Value City Arena at the Schottenstein Center	1998	N/A	Value City	12.5[227]
Oregon State Univ.	Reser Stadium	1999	10	Al Reser	5.0
San Diego State Univ.[228]	Cox Pavilion	1997	10	Cox Communications	7.9
Syracuse Univ.	Carrier Dome	1980	N/A	Carrier Air-conditioning	2.75
Texas Tech Univ.	United Spirit Arena	1999	N/A	United Airlines	10.0
Univ. of Louisville[229]	Papa John's Cardinal Stad.	1998	10	Papa John's Pizza	5.0
Univ. of Maryland	Comcast Center	2002	25	Comcast Corp.	20.0
Univ. of Miami (FL)	Ryder Center	2002	N/A	Ryder Systems, Inc.	9.0
Univ. of Minnesota-Mankato	Midwest Wireless Center at Mankato	N/A	20	Midwest Wireless	6.0
Univ. of Washington	Seafirst Arena at Hec Edmundson Pavilion	2000	10	Seafirst Bank	9.0
Univ. of Wisconsin-Green Bay	Resch Center	2002	N/A	Resch	4.8

Enhanced seating has also been responsible for the acceleration in facility development. A good example is the arena at Ohio State University called the Schottenstein Center. Named after Jerome Schottenstein, the founder of the Value City discount retail chain, the center was built for $110 million and contains forty-six luxury boxes.[230] The suites sell for $45,000 to $65,000 per

226. *NCAA Division 1-A Football and Basketball Facility Naming-Rights Deals*, STREET & SMITH'S SPORTS BUS. J., Dec. 29-Jan. 4, 2003, at 14.

227. *Id.*

228. *Id.*

229. *Id.*

230. Gilbert M. Gaul & Frank Fitzpatrick, *On Campus, an Edifice Complex- Football and*

year, with a 5-year commitment. Moreover, to purchase club seats for Ohio State basketball, a fan must pay a $15,000 seat-licensing fee, commit to forty years worth of tickets, and pay an annual $2,000 maintenance fee.

Universities may also be using new facilities to bring sport back to the campus. Southern Methodist University (SMU) averages 18,000 fans a game at the Cotton Bowl, leaving a 70,000-seat stadium virtually empty.[231] The new Gerald J. Ford Stadium, a 32,000-seat facility on the SMU campus, includes twenty-two suites that rent on a three to five-year basis for $25,000 per year plus tickets and refreshments, a stadium club, a glass-enclosed area on the west side of the field which provides 550 theater-style seats that go for $75 per game, and most importantly, SMU will control all revenues at the stadium.[232]

Where Is the Money Coming From?

Colleges and universities throughout the nation have raised staggering amounts of money to construct new sports facilities, or to refurbish and modernize existing venues. In many instances, the money is coming from the state or other governmental units, land donations, material donations, charitable donations, and vendor contributions. In other instances, students are assessed specific fees that are dedicated to repayment of facility debt. A final option is to dedicate revenues generated from new construction or renovation to the repayment of bonds in the form of contractually obligated income.

The Building Will Continue.

The ultimate question in the facilities arms race is whether the construction of sports venues improves or damages the reputation of a college or university.

There is little doubt that universities benefit from the construction of new sports facilities. While some may question the appropriateness of spending money on such facilities instead of academics, the reality is that successful sports programs in attractive buildings raise alumni awareness about the school. As a result, alumni donors are more likely to keep the institution in mind for donations toward academic programs if the sports programs are flourishing.

Basketball Teams are Under Constant Pressure to Succeed, Not Only on the Court and on the Field but at the Box Office, PHILA. INQUIRER, Sept. 12, 2000, at A01.

231. Richard Alm, *Stadium a Selling Point for SMU*, DALLAS MORNING NEWS, Apr. 22, 2000, at 1F.

232. *Id.*

At the same time, new facilities bring enhanced media coverage, which increases the number of applications that a college or university receives from prospective students around the country. Sports programs in venues with positive revenue streams, such as a successful college football or basketball program, can more readily cover the cost of non-revenue sports and expanded athletic programs for women.

There is also a substantial positive intangible aspect associated with new sports facilities that cannot be ignored. The general enthusiasm surrounding a successful sports program is an important part of creating a positive atmosphere on college campuses around the country. It is hard to deny that the presence of 100,000 fans at a University of Michigan football game can create a general sense of excitement about the school. The same can be said for dozens of programs throughout the country.

It is clear that colleges and universities must be aware of the potential animosity that can arise between student athletes and the rest of the university community when millions are funneled into athletic venues while academics suffer. Schools also run a risk when they begin to sell substantial advertising in sports venues.

Yet, for generations universities have built sports programs because they foster school spirit and community involvement. The economic landscape has changed over time and new sports venues are now required to maintain those qualities on the college campus. A university does not sacrifice its primary educational mission just by building a new sports venue. In fact, many would argue that the mission is actually enhanced when a new stadium or arena is complete.

In the end, regardless of whether administrators, fans, and athletes support or oppose the construction of new sports venues on college campuses, the reality is that construction will continue. The revenue and fundraising potential that new facilities offer to those schools is just too much to pass up.

V. "IT TAKES A VILLAGE TO BUILD A SPORTS FACILITY"

Sports facility development is really real estate development. A sports facility complex is nothing more than a building that leases space for entertainment and sports venue users (team matches, rodeo, monster truck rallies, concerts, shows, etc.).

To obtain and maintain sports franchises in any community, major or secondary, governmental units will be required to pay a municipal entitlement or franchise fee. A municipal entitlement or franchise fee is the public (taxpayer's) investment in the form of tax dollars to obtain or maintain a sports franchise.

While the economic benefits generated by sports venues are debatable, the "psychic income" is not. New or renovated sports venues create architectural landmarks, fulfill public purposes, and produce new tax revenues and media exposure for teams and cities.

In most communities, the building or renovation of a sports venue has created happenstance real estate and economic development surrounding the venue. This piecemeal building leads to "Concentric Circles" of development surrounding the sports venue.

Whether sports venues jump start real estate development or whether real estate has already occurred and is further augmented by the construction or renovation of the sports venue, there is enough concrete evidence in both major and secondary cities that the creation of sports facilities will have a rippling effect of creating real estate and economic development in the surrounds of the facility.

That which surrounds the renovated or newly constructed facility may be the most tangible of economic benefits that sports facilities produce. In a community, it may convert the image of a league, team, or its owner from tax vulture into long-term visionary.

Moreover, a newly constructed venue can bring complete renewal and revitalization of blighted areas, environmentally hazardous sites, aged communities, or downtown areas.

The key is to plan the development. Imagine an area surrounding the new or renovated sports facility where those Concentric Circles are not happenstance, rather, they are a Master Planned Sports and Entertainment Facility: A Sports.Comm.

A Sports.Comm would involve private entrepreneurs working in concert with local municipalities and its planners to guarantee a planned community integrating the sports venue and surrounding community to generate tangible benefits and a return on the taxpayer's investment.

A Sports.Comm contemplates a blend of land uses, mixed uses that integrates the sports facility with neighborhood needs including condos, apartments, offices, hotels, restaurants, sports bars, shopping areas, theaters, museums, libraries, parking structures, green areas and public spaces, and neighborhood services.

The ultimate goal of a Sports.Comm is the creation of a destination place, a new way of life, and an economic and real estate rejuvenation of an area.

The environment or ingredients necessary in order to create a Sports.Comm include:

- Need or desire for new or renovated venue(s) (existence of sub-standard venue 15+ years old);

- A municipality which sees a sports facility as the centerpiece for real estate development;
- Current use of surrounding area. Blighted, environmentally impacted, or underdeveloped areas are preferable;
- Availability and willingness of local government to utilize tax incremental financing;
- Availability of public funding, ample bonding capacity, availability of special tax levies or excess capacity from current levels, economic development resources, etc.
- Market demand for premium seating and corporate base to support sponsorships and naming rights;
- Existence of poorly managed teams that are losing money or no teams currently in the market;
- Availability of publicly-owned or acquired properties that have strong site characteristics and strong potential of adjacent development
    - Potential of acquiring development rights on adjacent parcels
    - Adjacent to public infrastructure (transit, roads, parking, etc.)
- Sufficient surrounding area to accommodate auxiliary development;
- Availability of land and assemblage possibilities;
- Condemnation power (quick take) of the City to deliver surrounding land;
- Flexible zoning laws to allow for multi-use development and density;
- Potential of college team(s) supplementing pro team anchor tenant(s);
- A cooperative municipality that is willing to provide incentives, including:
    - Roadway and infrastructure construction
    - Beautification
    - Enhancements
    - Utilities
    - Parking
    - Leasing of property developed
    - Tax abatement

- o Condemnation and assistance with assemblage of land purchases
- o Reduction of impact fees
- o Expedited permitting and approval
- o Waiver of various development requirements
- o Creating mixed use zoning

Some of America's deteriorating inner cities have provided the perfect testing ground for real estate development in conjunction with sports facility development. Some new downtown sports facilities have had a major positive economic impact on local and surrounding areas. Cleveland, Baltimore, Denver, and Detroit are some of the pioneers in using sports facilities to redevelop previously downtrodden areas. These redevelopments are leading examples of how sports and entertainment facilities can be used to resurrect communities and spark an economic boom.[233]

A. *Baltimore.* Baltimore's Camden Yards was the first ballpark to be utilized as a magnet for urban development.[234] Before Camden Yards, residents of Baltimore had no reason to go downtown. The strategic placement of the stadium downtown has brought people and businesses like bars, restaurants, and retail shopping back into the city. This flock of people and new businesses produced a resurrection of Baltimore's Inner Harbor area.[235] The Citizens of Baltimore are now going downtown to do their shopping and dining, and to enjoy the other cultural events that make urban life special.

B. *Cleveland.* In Cleveland, planners strategically located Jacob's Field and Gund Arena to stimulate economic growth and development. Cleveland, however, did not see the same intense level of success that occurred in Baltimore and Denver because they had already started on a plan for redevelopment before the stadium was built.[236] Although Cleveland has not incorporated the stadiums into the surrounding neighborhood as much as in other cities, Jacob's Field and Gund Arena did help to jumpstart more

233. *Report on the Mayor's Task Force, Economic Impacts and Social Benefits of the Padres, at* http://www.padres.com/ballpark/mtf/mtf1/V1.html.

234. *Id.*

235. *Id.*

236. Jim McCartney, *In the Right Community, New Ballpark can be Boon,* PIONEER PLANET, Nov. 17, 1996, *available at* http://www.pioneerplanet.com/archieve/newstadium/dox/coor1117.htm.

development in the surrounding "Gateway" area.[237] They have used some of this new commercial development to draw additional residential and business tenants to the upper floors of buildings. The addition of Cleveland Browns Stadium, which is located near the Rock & Roll Hall of Fame, will further attract business to the area.

C. *Denver.* The redevelopment of Denver's Lower Downtown ("LoDo") district was based on the success that occurred in Baltimore and Cleveland. An immediate result of the downtown location of Coors Field has been a population increase, and a swell in the number of area businesses.[238] People now live in and use the area around the stadium that was once a run-down warehouse district. A study by the St. Paul Area Chamber of Commerce illustrates the economic impact of Denver's Coors Field on the LoDo area:[239]

- Eighteen new restaurants opened
- Population in the area has nearly doubled
- The residential base of LoDo is approximately 3,000 units with another 1,600 units expected
- Downtown Denver Partnership Inc. estimates the direct and indirect impact in downtown at over $200 million (when including increases in related sales and new jobs at area restaurants, stores and hotels)

D. *Detroit.* Detroit's Comerica Park was built with the hope of following the success that Denver had with Coors Field. Although the older Tiger stadium was in the city, it was not downtown. It was built in 1912 and did not have any of the modern day amenities that make stadiums into enormous revenue generators. The new ballpark has helped stimulate renovation of surrounding buildings like the prestigious Detroit Athletic Club.[240] It has also helped to attract new business to the area like restaurants, nightclubs, movie theaters, and there are plans for a casino and entertainment complex. The new football stadium, Ford Field, which will be home to the Lions, is being built just east of Comerica Park and will provide yet another surge into the local economy.[241] This use of a sports facility as an anchor in redevelopment has

237. *Id.*

238. *Report*, *supra* note 233.

239. *Id.*

240. Jeff Houck, *Urban Revival, Tiger's New $300 Million Ballpark Key to City's Future*, April 10, 2000, *at* http://www.foxsportsbiz.com.

241. Raad Cawthon, *Detroit Banks on Central Stadium,* PHILA. INQUIRER, May 29, 2000, at A01.

already begun to bring back life to a once derelict city.

Only a handful of projects such as the ones afore-referenced have delivered as advertised and pumped life either into downtowns that were dead or in disrepair. But according to the SportsBusiness Journal article *Pipe Dream or Pay Dirt? Sports-Driven Projects a Tough Sell,* "most developments have failed outright, underachieved or only recently begun to stir after several years of slumber. While many of those projects generate enough tax revenue to justify the cost to build them, few have proved to be the anchors that development-hungry communities had hoped for."[242] "Ballpark financiers have learned the hard way that while a sports facility may add to quality of life and drive traffic on game nights, it typically is not, by itself, an impetus to build hotels, condominiums, or offices. The sports projects that have come together most quickly have been integrated into communities rather than dropped into the middle of them and expected to swim on their own."[243]

> Tom Hicks, owner of the Texas Rangers and Dallas Stars, planned massive development projects around both the Ballpark at Arlington and American Airlines Center. Neither has come together as originally planned. "Built as the centerpiece to a proposed 270-acre development, the [B]allpark [at Arlington] languished alone in an open, highway-side stretch between Dallas and Fort Worth until 2004 when Siemens moved about 700 employees into a 230,000 square foot complex that is split between a three-story office building and a one-story research building."[244] When the "American Airlines Center opened in Dallas in 2001, Hicks and former Mavericks owner Ross Perot, Jr. [created] Victory, a 72-acre mixed-use development plan that would connect the downtown area utilizing the [American Airlines A]rena as the centerpiece with office towers, residents, [and other real estate development] filling in around it." Victory recently began to show signs of energy with the announcement that the upscale "W" hotel chain would open a high-rise adjacent to the arena.[245]
>
> "Nationwide Arena, which opened in September 2000 as home to the NHL's Columbus Blue Jackets, is among the few examples of a sports facility combined with real estate development that actually worked according to plan," said Bill Rhoda, principal with CSL Consulting of

242. *Pipe Dream or Pay Dirt? Sports Driven Projects a Tough Sell,* STREET & SMITH'S SPORTS BUS. J., Mar. 15-21, 2004, at 19.

243. *Id.* at 21.

244. *Id.* at 20-21.

245. *Id.* at 21.

Dallas, a firm that develops business plans for arenas and stadiums.[246]

In 1998, two years before the arena opened, Nationwide Realty Investors created a master plan to use its own property and acquire other land to build 1.5 million square feet of office and retail space. The total $500 million Arena District plan included the $150 million arena.[247]

"Six years later, the 95-acre Arena District has produced solid results," said Brian Ellis, president and CEO of Nationwide Realty Investors. "Development to date has amounted to $519 million, with 1.1 million square feet completed or scheduled to be completed by the end of 2004. The occupancy rate is 85 percent."[248]

The current Arena District projects are a $28 million, 165,000-square-foot office building opening in November [2004] and two buildings containing 98 condominiums scheduled to open [in spring of 2005,] with a 1,000-vehicle garage under construction to support those structures.[249]

The Eye Center, an eye surgery building staffed by 30 ophthalmologists, opens in 2005. Nationwide Realty Investors may add 200 more condos than the 350 originally planned for the Arena District.[250]

And there's more. City and county officials are discussing the possibility of relocating the Class AAA Columbus Clippers to a new ballpark within the Arena District. The minor league facility would join two other entertainment attractions in the district that were not part of the original master plan but now play key roles, the eight-screen Arena Grand Theater operated by AMC and PromoWest Pavilion, a 4,000-seat indoor/outdoor concert venue.[251]

246. *Id.* at 20.

247. *Id.*

248. *Id.*

249. *Id.*

250. *Id.*

251. *Id.*

ARENA DISTRICT[252]

District Size:	75 acres
Location:	Downtown Columbus, Ohio. Bounded by North High Street to the east, Neil Avenue to the west, Spring Street to the south and railroad tracks to the north
Land Uses	Nationwise Arena: 685,000 square feet Commercial Space: 1.5 million square footage of office, retail and entertainment Residential Units Approximately 500 units
Adjacent Areas	The District is within walking distance of other downtown attractions: ·Columbus Convention Center - currently expanding and ranked among "25 Most Active Convention Centers in North America." It accommodates 1.5 million visitors a year. ·The Short North - an arts and entertainment area featuring galleries and shops. ·The North Market - an historic public market with quality food vendors. ·Scioto River - flows through Columbus, and is just south of the Arena District. ·Ohio's Center of Science and Industry (COSI) - science, technology, history and more come alive in this interactive, architecturally-unique museum.
Master Plan	Myers Schmalenberger/MSI of Columbus in collaboration with Sasaki and Associates of Boston, Heinlein Schrock Stearns and NBBJ.

252. The Arena District-Downtown Columbus, *at* http://www.arenadistrict.com/districtnews.html?page=facts.

Developer	Nationwide Realty Investors with the Dispatch Printing Company. Nationwide Realty Investors (NRI) is the real estate development affiliate of Nationwide, a Fortune 500 company and the leading provider of diversified insurance and financial services. NRI is active throughout the United States with a diverse portfolio of office, retail, hotels and luxury apartments.
Unique Features	Class A Office Buildings with varying architectural designs that incorporate brick and glass. To date, eight buildings have been completed, all include Class A office space with first floor retail opportunities. A six-story, 165,000 square footage of office building will be completed November 2004, and a five-story medical facility, The Eye Center, will be completed in 2005. Entertainment venues include the Arena Grand Theatre, an eight-screen theatre that features balcony seating; the PromoWest Pavilion, an indoor/outdoor performance hall, and the Nationwide Arena, home to the Columbus Blue Jackets and the Columbus Destroyers. The CoreComm Ice Haus is an attached ice rink that host team practices and offers public skating. In addition, Arena District Television or ADTV, a giant outdoor video board, lights up the district with music videos, film shorts, Arena District information and advertising. Restaurants in the Arena District: BD"s, Mongolian Barbeque, Buca di Beppo Italian Restaurant, Gordon Biersch Brewery Restaurant, Chipotle Mexican Grill, Max & Erma"s, Starbucks, O"Shaughnessy"s Public House, Ben & Jerry"s Scoop Shop, Red Star Tavern and Ted"s Montana Grill. Two nightclubs, the Frog Bear & Wild Boar Bar and Fat Eddie"s offer nightly entertainment as well as food. Residential projects include Arena Crossing on Front Street, a 252-unit project slated to open summer 2004, and the Arena District Condominiums, a 98-unit project that is scheduled to open spring 2005.

	Green space including McFerson Commons, a three-acre park with the historic Union Station Arch, along with outdoor plazas located at the east and west Arena entrances, provide public gathering sites and space for outdoor entertainment. Nationwide Boulevard a tree-lined brick street acting as a pedestrian-friendly, commercial spine through the District. Parking, both covered and surface, is abundant. There are 15,000 spaces, within a 5- to 10-minute walk. The Arena District also offers convenient street access and 5-minute access to all major freeway systems.

Steve Ellman, owner of the NHL Phoenix Coyotes, left downtown Phoenix to christen a new facility in Glendale, Arizona. In December 2003, the publicly owned Glendale Arena was opened as the new home of the Phoenix Coyotes. The Glendale Arena will be one of the anchors of a 450-acre planned use development known as Westgate City Center, located in Glendale, Arizona, the western gateway to metropolitan Phoenix at the intersection of Route 101 and Glendale Avenue.[253] Westgate City Center is a six million square feet mixed-use development including retail, entertainment, office, hotel, and residential use.[254] The first phase of Westgate City Center will encompass 450,000 square feet of office, retail, and entertainment space. New tenants in the first phase of the project include Lowe's Cineplex, a Virgin Megastore, a restaurant operated by the Mastro Group, a Taifoon restaurant, Martini Ranch nightclub, and two more high-concept restaurants to be built by Fox Restaurant concepts.[255]

"I'm building a city with 6.5 million square feet," said Steve Ellman, co-owner of the NHL's Phoenix Coyotes. "It's a 10-year project. It's basically planned as a real estate development with an arena stuck in the middle. We went out in the middle of where Phoenix is growing and we're building a destination totally different from an in-fill. There is nothing across the street. We divided the property to create 'across the street.'"[256]

Glendale Mayor Elaine Scruggs has said that the first 1.6 million square

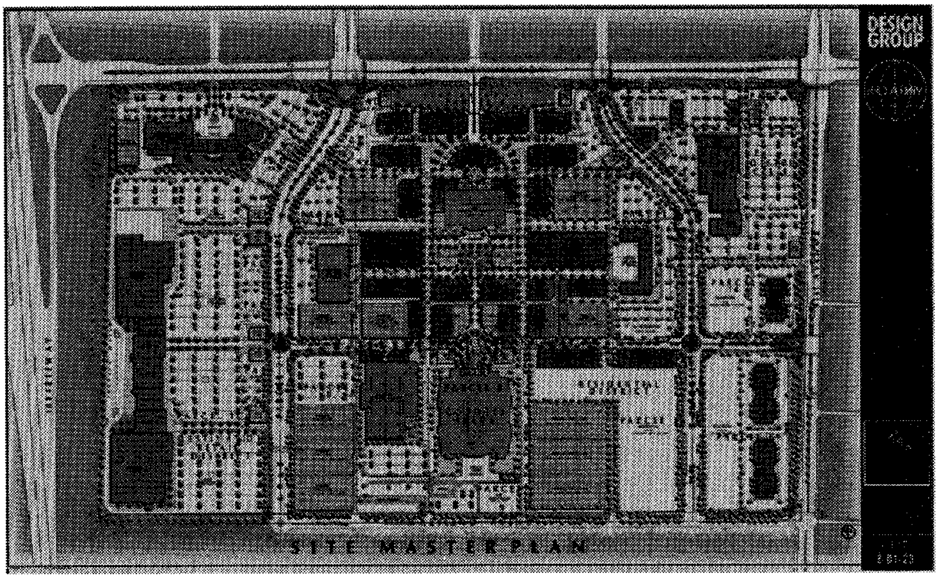
253. *Pipe Dream or Pay Dirt?*, *supra* note 242, at 22.

254. *Id.*

255. The Ellman Companies, *Westgate Retail Project*, *at* http://www.ellmanco.com/projects.php (last visited Sept. 4, 2004).

256. *Pipe Dream or Pay Dirt?*, *supra* note 242, at 23.

feet of mixed-use development will generate enough tax dollars to pay off the city's bond debt and produce a minimum of $100 million in additional revenue over a thirty-year period.[257]



What follows, according to Street & Smith's SportsBusiness Journal, is a list of current sports venues tied into real estate projects:[258]

Location-Name	Primary Tenant	Estimated Project Cost	Other Development
Big Beaver, PA Pittsburgh-area horse racing track	Thoroughbred Racing	$500 million	Upscale townhouses, retail, casino
Charlotte, NCA Bobcats Arena	NBA Charlotte Bobcats	$265 million*	Retail, restaurants, light rail

257. City of Glendale, AZ, *Approved Master Plan-NHL Coyotes Project*, *at* http://www.ci.glendale.az.us/Coyotes/Approved-Master-Plan.cfm (last visited Sept. 4, 2004).

258. *Pipe Dream or Pay Dirt?*, *supra* note 242, at 23.

Corpus Christi, TX Corpus Christi Arena Whataburger Field	CHL, Corpus Christi Rayz, Texas A&M-Corpus Christi men's and women's basketball Class AA Round Rock Express relocating	$87 (combined)	Convention center expansion, streetcar line
Cudahy, WI Powerade Iceport	North American Hockey League expansion team	$72 million	Hotel, bank, Walgreen's, Applebee's Neighborhood Bar & Grill
Frisco, TX Frisco Stadium	MLS Burn	$65 million*	Housing, government offices, retail
Glendale, AZ Cardinals Multipurpose Facility	NFL Arizona Cardinals	$365 million*	Hotel, retail, restaurants
Greensboro, NC Greensboro Stadium	Class A Greensboro Bats	$61 million	Transportation center, theater, housing, museum, park
Houston, TX Houston Super Speedway	Motorsports	$300 million	Conference center, hotel, golf course
Manchester, NH Manchester Stadium	Class AA Manchester Fisher Cats	$60 million - $155 million	Condominiums, hotel, power plant, retail and restaurants
Memphis, TN FedEx Forum	NBA Memphis Grizzlies, University of Memphis men's basketball	$250 million*	Retail, restaurants, public transportation
Nashville, TN First Tennessee Field	Class AAA Nashville Sounds	$80 million	Housing, retail, government and private business
San Diego, CA Petco Park	MLB San Diego Padres	$1 billion	Housing, retail, hotels, park, restaurants

Springfield, MO Hammons Field	Southwest Missouri State University baseball	$32 million (Est. cost for construction only)	Hotel, retail, restaurants
St. Louis, MO Cardinals Stadium	MLB St. Louis Cardinals	$646 million	Retail, restaurants
Yonkers, NY Yonkers Stadium	Atlantic League expansion team	$41 million	Retail, restaurants
Youngstown, PA Youngstown Arena	TBD	$70 million	Convention center, hotel, retail

VI. "NEW ECONOMICS"

New sports facilities have engendered new economics - fewer seats, more expensive seats, and a catering to corporate America. Has the unprecedented boom in sports facilities changed the economic scope of games and how they are watched? Will the masses only, in the future, be able to afford either free TV or paid TV as their means of watching games? Whatever your opinion, the general effect of new sports facilities has been an increase in ticket prices from the ticket prices of the old facility.

One commentator has stated:

> Sports stadiums have traditionally held a sacred place in American culture. This has changed in the last quarter century. The new stadiums are impersonal and lack many of the qualities that endeared their ancestors to us. The old stadiums were the last bastions of true democracy in America, places like Ebbets Field, where the future CEO of IBM might have sat next to the future CEO of Chuck's Plumbing. These were the first civic centers of America, providing places for people to gather and enjoy community and sport. People from a myriad of different backgrounds came together to celebrate and play. And so was born the classic stadium. These early, almost magical, places helped to define the new and now hallowed American values of hard work, teamwork, loyalty, and eventually tradition. The buildings had souls and effused colorful memories of heroes and glory days gone by.[259]

While their place in American culture is still ingrained, stadiums do

259. Alexander F. Grau, *Where Have You Gone Joe DiMaggio and Where are the Stadiums You Played in?*, *at* http://www.georgetown.edu/sfs/programs/stia/students/graua.htm (last visited Sept. 8, 2004).

not retain the same significance they once did. They have instead matured into hollow structure devoid of the soul that at one time so perfectly characterized their predecessors. The present structures may resemble their ancestors in outward appearance, but inside they conjure up only the faintest recollections of the great American stadiums. Stadiums have grown tremendously from their humble beginnings, but they have now become over-grown, lifeless structures that litter American cities from coast to coast. They are no longer the meeting places of America. The CEO of IBM would never sit next to the CEO of Apple, let alone some plumber. The synergy of the stadium has been lost. The world of sports unites only along its own caste system. The people in the nosebleed section only relate to each other. There is no way for a fan in row 150, who earns $5.25 an hour, to relate to an athlete, who makes $5.25 a year (in millions), or the CEOs in their catered luxury boxes.[260]

While lacking these basic qualities that make a stadium worthwhile, the structures have endured. And how! They have become monuments to affluence, offering every service and good imaginable. People no longer come for the community or even the game. Who wants to watch the game when there are so many other interesting things to do? The focus of the mass gatherings has shifted from the entertainment of the community to the entertainment of the individual.[261]

Andrew Zimbalist, Professor of Economics at Smith College has said:

Higher tickets prices in the 1990s, however, have had more to do with the gentrification of stadiums than the increasing popularity of the sports themselves. On average, new facilities built in the last decade have been financed with approximately two-thirds of the money coming from public coffers. The public money, in turn, generally comes from sales taxes or lottery funds—revenue sources that disproportionately burden lower-income groups. Since the incremental benefits from the new facilities go mostly to the high income and corporate fans (not to mention to the team owner and the players), it makes more sense to finance construction out of ticket (user) taxes or PSLs than out of general sales levies. With monopoly sports leagues, fans will pay one way or the other.[262]

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260. *Id.*

261. *Id.*

262. Andrew Zimbalist, *Economics 100: Higher Ticket Prices Not Caused By Payroll*, STREET &

Steve Kelley, columnist for the *Seattle Times*, recently commented on ticket price hikes for Safeco Field:

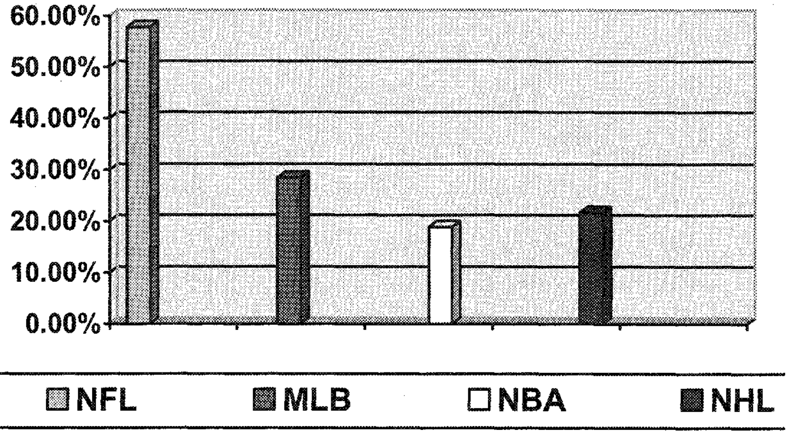
> The Mariners say they need the money to compete with upper-tier teams like Atlanta, the Yankees and the Mets. Haven't we heard that one before? Remember when they told us all they needed was a new stadium with its lush luxury-suite income to complete for a pennant? Now they are asking $32 for an infield terrace seat and $27 for a field box seat. Now almost every seat is priced like a luxury suite. Remember when baseball was a bargain? And you thought, with the farewell of former CEO Ellis, this might be a kinder, gentler organization. It will cost you $32 instead of $28 for a box seat to a game with the Minnesota Twins next season. You have to pay $18 instead of $16 for an outfield reserved seat for that Kansas City Royals' game you absolutely can't miss. The only seats that stay the same are the $5 center-field bleachers. There are only 1,837 of them. Welcome to Y2K, the Mariner way. The Mariners got their pleasure palace; now they want your disposable income. What happens next year? 'Give us your firstborn and we'll get you a closer.' The nerve of these money-grubbing, soulless leeches.[263]

The following chart, as provided by Price Waterhouse & Cooper, indicates that teams moving to new facilities have realized a significant increase in ticket prices:

SMITH'S SPORTS BUS. J., July 10-16, 2000, at 46.

263. Steve Kelley, *Price Hike a Mariner Brushback for Fans*, SEATTLE TIMES, Oct. 20, 1999, at D1.

IMPACT OF NEW FACILITY ON TICKET PRICES[264]



In the NBA, Atlanta, Denver, Indiana, L.A. Clippers, L.A. Lakers and Toronto Raptors are playing in new facilities for the 1999-2000 season. What follows is a chart that compares the average ticket cost for the 1998-1999 season (in the old facility) and the 1999-2000 average ticket cost in the new facility:[265]

Team	1999-2000 Average Ticket	1998-1999 Average Ticket	Tickets % Change
L.A. LAKERS	$81.89	$51.11	60.2%
L.A. CLIPPERS	$43.89	$31.75	38.2%
INDIANA	$48.39	$43.36	11.6%
ATLANTA	$45.75	$36.79	24.4%
MIAMI	$46.57	$36.55	27.4%
TORONTO	$42.76	$26.17	63.4%
DENVER	$38.34	$30.53	25.6%

Similar increases have occurred in baseball. For example, Seattle, Detroit, Houston and San Francisco opened in new facilities for the 2000 season. What follows is a comparison of average ticket prices for the 1999 versus

264. Provided by PricewaterhouseCoopers.

265. Team Marketing Report, *1999-2000 National Basketball Association Fan Cost Index*, *at* http://tmr.nelix.com/resources.asp (last visited Oct. 5, 2004).

2000 seasons because of those teams changing facilities:[266]

TEAM	2000 Average Ticket	1999 Average Ticket	Tickets % Change
SEATTLE	$23.43	$19.01	23.3%
DETROIT	$24.83	$12.23	103.0%
HOUSTON	$20.01	$13.30	50.4%
SAN FRANCISCO	$21.24	$12.12	75.2%

The Milwaukee Brewers opened in Miller Park in April of 2001. What follows is a comparison of prices of individual game tickets for 2000 at County Stadium versus individual game tickets for 2001 at Miller Park.[267]

266. Team Marketing Report, *2000 Major League Baseball Fan Cost Index*, *at* http://tmr.nelix.com/resources.asp (last visited Oct. 5, 2004).

267. Information provided by the Milwaukee Brewers Baseball Club.

COUNTY STADIUM TICKET PRICES - 2000		**MILLER PARK** TICKET PRICES - 2001	
SECTION	INDIVIDUAL GAME	SECTION	INDIVIDUAL GAME
Mezzanine Diamond Box	$28	Field Diamond Box	$50
		Field Infield Box	$32
Diamond Box	$28	Field Outfield Box	$27
Lower Box	$20	Loge Diamond Box	$27
		Loge Infield Box	$23
Lower Grandstand	$16	Loge Outfield Box	$20
Upper Box	$14	Club Infield Box	$32
		Club Outfield Box	$24
Upper Grandstand	$8	Terrace Infield Box	$16
		Terrace Outfield Box	$14
		Terrace Reserved	$10
General Admission	$7		
Bleacher	$5	Field Bleachers	$10
		Loge Bleachers	$ 6
		Club Bleachers	$ 6
		Terrace Bleachers	$ 5

The National Football League has seen a rise in average ticket price as well, with the opening of new facilities in Green Bay and Philadelphia. At Philadelphia's Lincoln Financial Field, average ticket prices for individual games are at $55-70, up from $45-55 the year before the new stadium was built. In Green Bay, where historic Lambeau Field has undergone significant renovations, individual game tickets have increased from the $46-59 range to $50-63.

Team Marketing Report each year publishes a Fan Cost Index. The Fan Cost Index (FCI) is the cost of attendance for a family of four includes two adult average price tickets; two child average price tickets; four small soft drinks; two small beers, four hot dogs; two programs; parking; and two adult-size caps. What follows is a comparison of the FCI for 2002-2003 and the year that the FCI was first published, i.e. 1991-1992.

MLB League Average (2003)[268]

Avg. Ticket: $18.69 (+2.84%)

FCI: $148.66 (+3.29%)

When the MLB Fan Cost Index was first published in 1991, the average ticket cost was $9.14. The FCI was $79.41

NBA League Average (2003-2004)[269]

Avg. Ticket: $44.68 (+1.6%)

FCI: $261.26 (+ 1.8%)

When the NBA FCI was first published in 1991-1992, the average ticket cost was $22.52. The FCI was $141.91.

NFL League Average (2003)[270]

Avg. Ticket: $52.95 (+ 5.8%)

FCI: $317.01 (+ 7.5%)

When the NFL FCI was first published in 1991, the average ticket cost was $25.21. The FCI was $151.33.

NHL League Average (2003-2004)[271]

Avg. Ticket: $43.57 (+1.6%)

FCI: $253.65 (+2.8%)

Is American sport becoming inaccessible to the most important element of the game? Is the future of stadiums a staged audience because middle class Americans can't afford access to the game? Is the fan experiencing wallet hemorrhaging? Are major sports simply a game of the rich? With the march

268. Team Marketing Report, *2003 Major League Baseball Fan Cost Index*, *at* http://tmr.nelix.com/resources.asp (last visited Oct. 5, 2004).

269. Team Marketing Report, *2003-2004 National Basketball Association Fan Cost Index*, *at* http://tmr.nelix.com/resources.asp (last visited Oct. 5, 2004).

270. Team Marketing Report, *2003 National Football League Fan Cost Index*, *at* http://tmr.nelix.com/resources.asp (last visited Oct. 5, 2004).

271. Team Marketing Report, *2003-2004 National Hockey League Fan Cost Index*, *at* http://tmr.nelix.com/resources.asp (last visited Oct. 5, 2004).

to build new and better facilities, suddenly those best seats for the average fan have become club seats, luxury boxes, and personal seat licenses. Yes, new sports facilities have engendered new economics - fewer seats, more expensive seats, and a catering to corporate America. In addition, new facilities have created increased ticket prices for the consumer, approximately a 60% increase in the NFL, a 30% increase in major league baseball, and a 20% increase in the NBA. Moreover, where is the fan represented in all of this? Unfortunately, while there are representatives from union and management at the bargaining table, nobody represents the typical bleacher bum. Will future fans only be able to afford either free TV or pay TV as their means of watching games? In addition, will fans become the victims, not just of corporate greed, but also of their own bankrupt values? That its players, managers and agents are paid more than teachers, nurses and poets because the public - and that's you and me - puts it's wallet where its values are. On the other hand, is the American sport product still the best entertainment value for its dollar regardless of the cost?