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Publicly Financed Sports Facilities: Are They Economically Justifiable? A Case Study of the Los Angeles Staples Center

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**PUBLICLY FINANCED SPORTS FACILITIES: ARE THEY
ECONOMICALLY JUSTIFIABLE? A CASE STUDY OF THE
LOS ANGELES STAPLES CENTER**

MATTHEW J. PARLOW*

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I. INTRODUCTION

The United States has experienced a construction boom for new sports arenas and stadiums.¹ Industry experts estimate more than seven billion dollars will be spent on new sports facilities by the year 2006.² Much of that money will be paid for by local and state governments. As Roger G. Noll and Andrew Zimbalist, two prominent economists who have extensively researched and critiqued the public funding of new sports facilities, point out, "[t]he average subsidy from a host city to its sports team will likely exceed \$10 million per year."³

¹ Roger G. Noll & Andrew Zimbalist, *Sports, Jobs, and Taxes: The Real Connection*, in SPORTS, JOBS, & TAXES: THE ECONOMIC IMPACT OF SPORTS TEAMS AND STADIUMS 494 (Roger G. Noll & Andrew Zimbalist, eds., 1997). In the Fall of 1998, voters approved new sports facilities in Denver and San Diego. Peggy Lowe & Julia Martinez, *Broncos Win on a Tuesday as Stadium Gains Approval*, DENVER POST, Nov. 4, 1998, at A1; Ed Grancy, *Stadium Vote Means No Conflict After '01*, SAN DIEGO UNION-TRIBUNE, Nov. 5, 1998, at D7. In 1999, eleven major-league sports arenas, baseball stadiums, and football stadiums opened – the most in one year in the history of the United States. Tony Perry, *What Staples Center Could Do for L.A.*, L.A. TIMES MAGAZINE, Oct. 10, 1999, at 50.

² Noll & Zimbalist, *supra* note 1. The proposed baseball stadium for the New York Yankees sought by owner George Steinbrenner has an estimated starting cost of one billion dollars. Frank del Olmo, *Let's Put Some Ice on Stadium Fever; Pricey Proposals for New Parks in N.Y., San Diego, and L.A. Could Bankrupt Cities*, L.A. TIMES, Oct. 25, 1998, at M5.

³ Noll & Zimbalist, *supra* note 1. Yearly subsidies may actually more than double this amount. In the unsuccessful proposed deal between the New England Patriots and the state of Connecticut for a

With all of this money at stake, advocates of new sports facilities are charged with the task of convincing government officials, as well as the public at large, of the benefits of building new sports arenas or stadiums, particularly as they are often heavily subsidized by the government. Subsidy proponents often contend that sports facilities are good investments because they generate positive net economic benefits for local communities. For example, the advocates for a new football stadium in San Francisco used the slogan *Build the Stadium – Create the Jobs* to urge support for the publicly subsidized stadium.⁴ In the case of the San Francisco stadium, advocates for the new facility argued the deal would bring substantial benefits to the city through increased spending and jobs, particularly in an economically depressed part of the city.⁵ Moreover, these proponents claimed the new revenues from sales and other taxes would pay the interest on the municipal bonds, thus making the deal *costless* to the city.⁶

The rhetoric used to defend the public financing of new sports facilities in any major city is pretty standard. The alleged benefits fall into three main arguments. First, new sports facilities are claimed to create new jobs, derived from people who attend and spend money at the new facility and other activities and locations nearby.⁷ Second, a team or important sporting event brings prestige to the municipality, making it a *major league city*, which garners free publicity and attracts new businesses in the process.⁸ Finally, proponents claim that additional tax revenues and lease payments suffice to offset these public subsidies and make publicly financed facilities good investments.⁹

Until 1960, most sports arenas and stadiums were privately owned. However, publicly financed sports facilities are not a new phenomenon. The Los Angeles Memorial Coliseum, Municipal Stadium in Cleveland, and Memorial Stadium in Baltimore were all publicly financed.¹⁰ Stadium and arena ownership changed when major league professional sports became a national, rather than a regional, phenomenon.¹¹ The process of relocation

new football stadium, the state's yearly payment on the bond issuance for the new stadium would have totaled \$25 million for thirty years. Tina Cassidy, *Stadium Deal Seen Debt-Heavy Initially*, BOSTON GLOBE, Nov. 24, 1998, at A1.

⁴ Edward Epstein, *Key Questions on Stadium Deal: Here Are Some Answers, but 49ers Scramble Specifics*, S.F. CHRONICLE, Apr. 10, 1997, at A1.

⁵ *Id.*

⁶ *Id.*

⁷ Noll & Zimbalist, *supra* note 1, at 2.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* In 1997, the number of franchises in major league sports was 113. *Id.* at 5. Until the recent phenomenon of team expansion and relocation, the vast majority of major league sports teams were located in California and the New England area.

and expansion enabled many cities to become prospective cites for new major league sports teams. This opportunity, in turn, led to competition among cities to provide subsidies for new sports facilities to draw these teams to their respective jurisdictions.

This paper seeks to evaluate this burgeoning area of public policy and attempt to answer the difficult question: "Are publicly financed sports facilities economically justifiable?" Part II will delve into the benefits of publicly financed sports arenas and stadiums. This section will explain why cities subsidize sports facilities, in hopes of improving job creation, tourism, and downtown redevelopment in the region. Part III will flesh out the structuring of these financial deals. This section will analyze the difference between public and private financing; how the 1986 Tax Reform Act affected municipal and state bonds are; and the different sources of revenue that make up the deals, such as new taxes, the naming rights on the new sports facility, new seating sales, and commercial licensing agreements. Part IV will present the objective criteria used to evaluate these financial deals. Part V will detail the criticisms levied against publicly financed sports facilities. This section will critique the uncertainty of revenue forecasts, the faulty assumptions underlying the conclusion that one of these deals is *self-financed*, the sources of error in these financial plans, and the concept of a *better public investment*. Moreover, Part V will provide two examples of new sports facility financial deals that are or would have been bad investment projects for their host cities: the Edward Jones Dome in St. Louis (formerly the Trans-World Dome) and the unsuccessful proposed football stadium for the New England Patriots in Hartford. Part VI will present two successful publicly financed sporting facilities, in Baltimore and Cleveland, and highlight the characteristics of these deals that make them justifiable. Finally, Part VII will offer a case study: the Staples Center in Los Angeles. This section will explain the details of the financial deal between the City of Los Angeles and the L.A. Arena Development Company, LLC, the developer of the project. Moreover, this section will evaluate the deal and explain why the Staples Center is a justifiable public investment for the City of Los Angeles. Through methodological analysis, the answer to the aforementioned question becomes clear: On the whole, publicly financed sports facilities are rarely justifiable for municipalities or other government entities. However, in certain circumstances, as is the case with the Staples Center in Los Angeles, financial deals can be structured with favorable benefits to both the team and the respective government entity to justify public investment in a new sports arena or stadium.

II. BENEFITS: WHY CITIES SUBSIDIZE NEW SPORTS FACILITIES

A. Introduction

The relocation of existing major league sports teams, and the new expansion teams arising in the National Football League (NFL), Major League Baseball (MLB), the National Basketball Association (NBA), and the National Hockey League (NHL), have invigorated competition between cities to draw major league sports teams to their respective cities. This incidence allows teams to be selective in choosing a location and play cities off of one another until they attain the most favorable deal on a new sports facility. Consequently, teams remain passive players, calculating the long-term effects of various locations and looking to augment their profits and increase their franchise value.

With the economic advantages associated with sports teams, cities look to justify subsidizing new sports facilities through benefits which they reap from a team's presence. This justification becomes more important when considering public opinion polls demonstrate on a city, county, and statewide level, the overwhelming opposition to new sports facilities subsidies by the majority of taxpayers.¹² However, to understand the benefits derived from new publicly financed sports facilities, one must understand the motivation behind the competition between cities for new sports franchises and subsequent subsidization of new sports arenas and stadiums. Cities subsidize new sports facilities for three main reasons. First, major league sports teams cannot afford to pay for a new sports arena or stadium. Second, cities believe that major league sports teams give the city a *major league image*, which parlays into more publicity for the city and an interest from businesses for relocation. Third, municipalities believe that these sports facilities are an engine for local economic development, particularly in efforts to revitalize an economically depressed area of the city.¹³

B. Sports Teams Cannot Afford to Finance a New Facility

Major league sports teams do not have sufficient revenues from their own sources and resources to pay for investments in new sports arenas and

¹² Steven T. Khalil, *New Stadium? The Republicans Sell Out*, DETROIT NEWS, June 23, 1995, at E1. See also Raymond Keating, *Taxpayers Lose in Stadium Socialism*, ORLANDO BUSINESS JOURNAL, June 21, 1996, at 1 (citing a national poll by Media Research and Communications which found that eighty percent of Americans oppose the use of their tax dollars for new sports facilities).

¹³ See *infra* text accompanying notes 35-37.

stadiums. These sports franchises are too small and have too small a profit margin to pay for the full cost of a \$200 million, or more, facility.¹⁴ If a new sports facility was not subsidized, the interest and amortization for the new sports arena or stadium would be approximately 10% of the construction costs, including site acquisition and clearance.¹⁵ This debt payment would be too expensive for a franchise to afford with the anticipation of making the investment profitable. Therefore, local and state governments must bear some, if not all, of the costs of building a new sports arena or stadium.

1. THE MAJOR LEAGUE IMAGE

Cities also seek sports franchises to acquire or retain a *major league* image. A perfect example of this phenomenon arose when the Milwaukee Brewers demanded a new baseball stadium with the threat of relocation. Gerald Schwerm, Director of Public Works and Development, and Brigid Sullivan, Director of Parks, Recreation and Culture, wrote to the Milwaukee County Board explaining how important the Brewers were to not only the county, but to the entire state.¹⁶ While acknowledging the approximately \$200 million that the Brewers brought to the county, Schwerm and Sullivan noted that “[p]erhaps the greater and more important benefit of having the Brewers in Milwaukee County, however, is that their presence stamps Milwaukee as a ‘Major League’ city. . . .”¹⁷ Schwerm and Sullivan also noted a subsequent psychological benefit that citizens of Milwaukee gained from such a distinction: Distinguishing Milwaukee as a “Major League” city “affect[s] not only the way people around the county (and in a surprisingly large part of the world) view Milwaukee, but also the way Milwaukeeans view ourselves.”¹⁸ Cities, therefore, seek this *major league* status not only for economic reasons

¹⁴ Noll & Zimbalist, *supra* note 1, at 495. The situation with the unsuccessful proposed football stadium in Hartford for the New England Patriots demonstrates this principle. Robert Kraft, owner of the Patriots, wanted to keep his team in Massachusetts, but the state and local governments there refused to subsidize a new facility to a degree where Kraft's contribution would be affordable and the investment profitable to the franchise. Given the unyielding position he faced, Kraft considered offers from other cities and entered into an agreement with the State of Connecticut which would not have cost him any out-of-pocket expense. Tom Condon, *Kraft Can Be Thankful For Pats Deal: Should We?*, HARTFORD COURANT, Nov. 26, 1998, at A3 (explaining that Kraft would have had to pay \$200 million of his own money to build a new stadium in Massachusetts, while he would not have had to spend any money on the \$350 million stadium in Hartford).

¹⁵ Noll & Zimbalist, *supra* note 1, at 28.

¹⁶ Letter from Gerald Schwerm, Director of Public Works and Development, and Brigid Sullivan, Director of Parks, Recreation and Culture, to David F. Schulz, Milwaukee County Executive, and F. Thomas Avent, Chairman of the Milwaukee County Board (Apr. 9, 1989) (on file with author).

¹⁷ *Id.*

¹⁸ *Id.*

such as attracting new businesses, but also for the psychological benefit produced by the presence of a major league sports team.

2. WHY TEAMS MOVE

Before 1984, the relocation of a major league sports franchise to a new city was nearly unthinkable. However, two cases, *Los Angeles Memorial Coliseum Commission v. NFL*¹⁹ and *NFL v. Oakland Raiders, Ltd.*,²⁰ widened the rights of individual franchises to move from one city to another, despite the league's objections. With relocation a more viable option for teams, and with MLB and the NFL expanding, intense competition between cities to acquire or retain sports franchises has generated unprecedented levels of municipal and state spending.²¹

With such options, sports teams can look to relocate with two simple goals in mind: to augment their profits and to increase their franchise value.²² New sports facilities can benefit team owners by dramatically increasing franchise values.²³ In fact, disparities between sports teams' values are related more to arena or stadium revenue than to the geographic market size in which the team plays.²⁴ For example, the Baltimore Orioles' franchise increased its value by 27%, up to \$164 million, through the profitable operation of Camden Yards, which was built in 1992.²⁵ Since new stadiums maximize team profits and thus overall value, small to mid-size cities that were not previously considered *major league* have become sites of profitable business opportunities for sports franchises.²⁶ Except for a few large,

¹⁹ LA Memorial Coliseum Comm'n v. NFL, 726 F.2d 1381 (9th Cir. 1984).

²⁰ NFL v. Oakland Raiders, Ltd., 469 U.S. 990 (1984).

²¹ John Riley, *Fields of Green, Pricey Palaces a Bonanza for Team Owners, Players*, ARIZONA REPUBLIC, Sept. 15, 1996, at H1.

²² Antitrust Implications of Sports Franchise Relocation: Hearings on Professional Sports Franchise Relocation – Antitrust Implications Before the House Comm. on the Judiciary, 104th Cong. 149-54 (1996) (written testimony of Andrew Zimbalist, Smith College Economist).

²³ Michael K. Ozanian, *Sports Stocks and Bonds*, FIN. WORLD, May 20, 1996, at 42. In fact, Gerald Scully, a professor at the University of Texas and author of *THE BUSINESS OF MAJOR LEAGUE BASEBALL*, estimates that a new baseball stadium adds between \$50 million and \$75 million in created value to the franchise. Larry Stone, *Mariners at a Crossroads: Will Stadium Revenue Improve Team?*, SEATTLE TIMES, July 5, 1998, at D1.

²⁴ Ozanian, *supra* note 23, at 42. This fact is accentuated in the NFL. NFL teams derive a lower proportion of revenues from regular ticket sales and more from television rights and licensing than teams in other sports. Noll & Zimbalist, *supra* note 1, at 496. This difference, coupled with the NFL's extensive revenue sharing, leads NFL franchises to maximize components of their stadium revenue that are not shared and thus enable them to increase the value of their respective franchises.

²⁵ Michael K. Ozanian, *Suite Deals: Why New Stadiums Are Shaking Up the Pecking Order of Sports Franchises*, FIN. WORLD, May 9, 1995, at 53.

²⁶ Adam Safir, *If You Build It, They Will Come: The Politics of Financing Sports Stadium Construction*,

lucrative markets, like New York and Los Angeles, competing cities are likely to be reasonably similar in their attractiveness as a sports market.²⁷ This fact is, in part, due to new stadium technology, such as luxury suites and elaborate concessions, which allows demographically lesser cities – such as Charlotte, Jacksonville, and Nashville – to be competitive against larger cities.²⁸ This parity amongst potential suitor locales and the fervor to obtain the aforementioned *major league* status has even caused cities, such as St. Louis, to build a publicly financed facility before a major league sports team had been secured to occupy it.²⁹

3. CITIES' GOALS FOR NEW SPORTS FACILITIES

With the significant price tags on new sports facilities, often upwards of \$400 million to \$500 million, municipalities building new sports arenas or stadiums must convince their constituents of the benefits derived from these new sports facilities. New sports facility proponents often claim a new stadium or arena is self-financing, meaning that the rent paid plus the taxes collected will be sufficient to cover the city's expenditures.³⁰ Advocates for new sports facilities also argue new stadiums or arenas will bring substantial economic benefits to a city through increased spending and jobs, particularly in economically depressed parts of the city.³¹ This belief has influenced cities to plan major redevelopment projects, mostly focusing on downtown areas, with the new sports arena or stadium as the cornerstone.

For more than forty years, leaders of most central cities have watched with frustration the growth of suburbs and the subsequent dispersion away from downtown areas.³² This movement of production, manufacturing, and service industries, coupled with the development of extensive recreational and retail centers miles from downtown areas, has created different commuting patterns and multinucleated urban centers.³³ By using new

13 J.L. & POL. 937, 938 (1997).

²⁷ Roger G. Noll & Andrew Zimbalist, *The Economic Impact of Sports Teams and Facilities*, in SPORTS, JOBS, & TAXES: THE ECONOMIC IMPACT OF SPORTS TEAMS AND STADIUMS, *supra* note 1, at 83.

²⁸ Noll & Zimbalist, *supra* note 1, at 495.

²⁹ Mike Reilly, *A Leap of Faith . . . Sales Pitch for Stadium Omitted Key Details*, ST. LOUIS POST-DISPATCH, June 24, 1990, at B1.

³⁰ Noll & Zimbalist, *supra* note 1, at 14; *but see infra* text accompanying note 141.

³¹ Noll & Zimbalist, *supra* note 1, at 1.

³² Mark S. Rosentraub, *Stadiums and Urban Space*, in SPORTS, JOBS, & TAXES: THE ECONOMIC IMPACT OF SPORTS TEAMS AND STADIUMS, *supra* note 1, at 178.

³³ *Id.*

sports facilities as a way to spur redevelopment in downtown areas, city leaders hope to reverse or retard the effects of suburbanization.³⁴

The primary objective in building a new sports arena or stadium in a downtown area is to attract large crowds to the area to underscore its vitality, centrality, and potential for additional economic activity and development.³⁵ Civic leaders hope that these crowds will then encourage investment in related entertainment facilities such as restaurants, bars, and retail outlets. Such economic and social activity, it is argued, will then attract corporations back to the downtown area, to fight lagging occupancy rates in downtown office complexes.

A secondary objective to this approach to downtown redevelopment is that people from outside of the region, either tourists or those in the city on business, might visit the downtown area because of the presence of a team or an event at the new facility.³⁶ This type of plan focuses less heavily on the team, but rather on recreational business, such as national and international competitions, concerts, meetings, and conventions that compliment the sports team's draw to tourists and residents of the city to the downtown area.³⁷ This influx of visitors to the various events will theoretically bring new money to the region and the city. Advocates of such an approach argue this occurrence will spur further development in the downtown area, thus creating more jobs, and will provide a greater tax base to reimburse the city for its expenditures on the new sports facility.

III. HOW THE NEW SPORTS FACILITY DEALS ARE FINANCED

A. Introduction

Building a new sports facility is an expensive endeavor. The average cost of six sports facilities built between 1995 and 1996 exceed \$150 million,

³⁴ *Id.* at 179.

³⁵ *Id.* at 180. Cities which have attempted such downtown redevelopment projects include Baltimore, Denver, St. Louis, Phoenix, and Cleveland. See text accompanying *infra* notes 158-165 & 201-229. Of interest is the new type of urban development concepts that civic leaders have formulated in attempting to battle the effects of suburbanization. New sports facilities in downtown Cleveland, Baltimore, and Denver have departed from the traditional urban development model of automobile-inspired designs and locations. See Robert A. Baade & Allen R. Sanderson, *The Employment Effect of Teams and Sports Facilities*, in *SPORTS, JOBS, & TAXES: THE ECONOMIC IMPACT OF SPORTS TEAMS AND STADIUMS*, *supra* note 1, at 95 (explaining that these more synergistic urban stadium plans seem to promote economic development beyond that experienced by facilities shaped by automotive imperatives).

³⁶ Rosentraub, *supra* note 32, at 181.

³⁷ *Id.*

while new stadiums for football or baseball cost \$200 million or more.³⁸ With these hefty price tags come equally significant and complex financing deals. This section will explain the developments of these deals, the issue of whether a deal is public or private, how the 1986 Tax Reform Act affects that decision, and the sources of revenue which ultimately pay for the construction and maintenance of a new sports facility.

B. *The Initial Stages of a Financing Deal*

The initial stages of a new sports facility financing deal usually include various studies, soil samples, and surveys undertaken to assess the risk of the project and any potential conflicts with the surrounding economy that could endanger the project after construction begins.³⁹ Moreover, the interested parties – usually an investment group and a municipal government – commission a preacquisition study which addresses the impact the project will have on the surrounding area.⁴⁰ This type of study includes a check of zoning requirements and restrictions on the land upon which the new sports facility will be built. Moreover, the study will assess the expected growth in the area, access to transportation or main highway arteries, public parking, suitability of locale to prospective tenants, current and prospective buildings in the area, and the overall personality of the vicinity.⁴¹

Once these formalities conclude, the development of a new sports facility proceeds in three stages. First, the site is acquired and the existing facilities that are unusable for the new sports facility are destroyed.⁴² Second, the new sports facility and its supporting infrastructure, such as sewer link-ups, utility connections, parking, and transportation access, are built.⁴³ Finally, the repair, maintenance, and operation activities are undertaken to support events in the new facility.⁴⁴ This process of building a new sports facility, from the initial formalities to the three stages of building development, is extremely

³⁸ KENNETH L. SHROPSHIRE, *THE SPORTS FRANCHISE GAME: CITIES IN PURSUIT OF SPORTS FRANCHISES, EVENTS, STADIUMS, AND ARENAS 2* (1995).

³⁹ J. BAGBY, *REAL ESTATE FINANCING DESK BOOK 84-92* (1990). This book provides an examination of the step-by-step process of financing commercial real estate projects.

⁴⁰ *Id.* at 86. Zoning data will ensure that the selected site can be used for its intended purpose, while assessing the potential water, sewer, and utility costs.

⁴¹ *Id.*

⁴² Noll & Zimbalist, *supra* note 1, at 7. In some cases, businesses will be forced to move to make room for the new sports facility and its adjoining redevelopment. See Mike Swift, *Steam Plant Stands in Way of Stadium: Talks on Relocation Described as Difficult*, HARTFORD COURANT, Nov. 27, 1998, at A1 (explaining that CTG Resources, Inc., a steam plant, would have been forced to relocate because of the proposed football stadium and other redevelopment projects in downtown Hartford).

⁴³ Noll & Zimbalist, *supra* note 1, at 7.

⁴⁴ *Id.*

time-consuming and costly. These costs must be paid by either the private investment group, often the team owners, or the sponsoring city.

C. Public or Private Financing?

1. WHO PAYS FOR WHAT

A new sports facility is considered publicly financed if it is paid for and managed by a local government authority. Conversely, a new sports facility is considered private when the team owners pay for said expenses. The standard new sports facility financial plan divides expenditures into three components: those to be financed by various forms of up-front payments such as pouring rights, naming rights, and special seat licensing; those to be paid for by the team owners out-of-pocket or financed by a loan; and those initially paid for either by the budget of the local government or the sale of bonds.⁴⁵

Standard practice dictates the local government pays for most, if not all, of the site preparation.⁴⁶ In most cases, the government will not need to pay anything for the acquisition of the land because it typically already owns it.⁴⁷ Direct construction costs are often shared by both the team and the municipality.⁴⁸ Once the new sports arena or stadium is built, the lease terms regarding the sharing of stadium or arena revenues, the defrayal of operating and maintenance costs, and the responsibility for management of the new facility differ substantially from city to city and team to team.⁴⁹

While the team owners pay for their share of the costs of building a new sports facility either in cash or through loans, cities pay for their expenditures in much more complex ways. To pay for its share, a local municipality will rely on a combination of rents, taxes, and fees on activities related to the new arena or stadium.⁵⁰ In addition, a city will often impose other added taxes – unrelated to the new sports facility – and will cut public services to pay for the expenditures for which it is responsible.

⁴⁵ *Id.* at 12. Note that the use of bonds simply spreads the city's payment over a number of years rather than concentrating the payment during the period of construction.

⁴⁶ *Id.* at 7.

⁴⁷ *Id.* However, while this dedication of land for the new sports facility does not require any cash payment, the site still has monetary value. New sports facility financing deals rarely attribute any monetary number to the land in such instances, but the value of the land can be determined in the approximate selling amount it might command if sold for another development purpose.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.* at 6.

2. TWO EXAMPLES: PHOENIX AND SEATTLE

Two recent sports facilities and their respective host cities demonstrate the way in which modern-day sports facilities are paid for: Bank One Ballpark in Phoenix Safeco Field in Seattle. In Phoenix, the financial deal for the \$346 million Bank One Ballpark was closed before the city had secured a team to play in the new stadium.⁵¹ Maricopa County, which hosts both the City of Phoenix and the Bank One Ballpark, agreed to pay for \$253 million worth of the deal through a quarter-cent sales tax.⁵² In addition to the quarter-cent sales tax, Maricopa County receives 5% of the revenue from the sales of luxury suites and club seats, plus \$325,000 for the naming rights on the facility.⁵³ The private investment group, led by Jerry Coangelo, the owner of the Arizona Diamondbacks, is required to pay the estimated \$140 million in stadium maintenance for the next thirty years.⁵⁴ However, to offset this cost, the investment group retains all remaining baseball revenue from tickets, skyboxes, parking, and concession.⁵⁵

In Seattle, the King County Public Facilities District oversaw the construction of Safeco Field, which opened on July 15, 1999. Safeco Field cost \$517.6 million to build, with the King County Public Facilities District receiving \$340 million in public financing to help build the stadium.⁵⁶ The State of Washington helps service this bond issue with a credit of .017% of existing sales tax revenues generated in King County, a scratch-off sports theme lottery game, and the sale of specialized commemorative license plates.⁵⁷ King County also helps service the bonds with a 0.5% sales tax increase on food and beverages, a 2% increase on the county's rental car tax,

⁵¹ *Expansion Efforts Had Many Twists*, PHOENIX GAZETTE, Mar. 10, 1995, at B4.

⁵² *Tax for D'Backs' Stadium Surpassing Expectations*, ARIZONA DAILY STAR, May 1, 1996, at D7. This money was contingent, at the time, on Jerry Coangelo's acquisition of an expansion franchise, which turned out to be the Arizona Diamondbacks. The other part of this contingent agreement was Maricopa County's guarantee that attendance at baseball games would total between one million and two and a half million people a year.

⁵³ David Schwartz and Eric Miller, *County Gets a New Deal on Baseball Plan Would Cap Sales-Tax Outlay at \$238 Million*, ARIZONA REPUBLIC, Feb. 12, 1994, at A1.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Mike Lewis, *Taxpayers Off Hook for Safeco Field: Mariners Drop Attempt to Recoup Cost Overruns from the Public*, SEATTLE POST-INTELLIGENCER, Feb. 16, 2001, at B1.

⁵⁷ Joseph Turner, et al., *Legislature '95: The Stadium Session - Legislature Approves Ballpark Deal, But King County May Not Go Along*, MORNING NEWS TRIBUNE (LEWISTON), Oct. 15, 1995, at A1.

and a 5% admissions tax on stadium tickets.⁵⁸ The team owners of the Seattle Mariners paid \$75 million for the construction of their new stadium.⁵⁹

Safeco Field has turned out to be a success for both the respective government entities and the Seattle Mariners. The King County Council recently voted to refinance \$240 million in bonds in 2003 to take advantage of lower interest rates, possibly saving taxpayers up to \$11 million.⁶⁰ Moreover, the taxes levied to pay the County's debt service payments have garnered approximately \$20 million more than expected, allowing the County to pay down its bond debt more quickly.⁶¹ On the other hand, the Seattle Mariners have reaped substantial benefits from Safeco Field. With its first full season in Safeco Field, the Mariners reported a net income of \$14.26 million for the 2000 MLB season.⁶² The Mariners invested such profits into increasing their payroll, which has led to two consecutive post-season playoff series and a MLB record 116 wins in the 2001 season.⁶³ In addition, the value of the Mariner franchise has increased from \$107 million in 1997, to \$236 million in 1999 due, in large part, to the building of Safeco Field.⁶⁴

Both of these examples demonstrate how private investment groups and local and state governments can cooperate to jointly fund a new sports facility. Although the team owners in both cases contributed millions of dollars, both of these deals, like most sports facility financing deals in the country, would be considered public because the majority of the financing in both cases was done by local and state governments.

⁵⁸ *Id.*

⁵⁹ Mike Lewis, *Taxpayers Off Hook for Safeco Field: Mariners Drop Attempt to Recoup Cost Overruns from the Public*, SEATTLE POST-INTELLIGENCER, Feb. 17, 2001, at B1. The cost overruns totaled more than \$100 million on Safeco Field. The Mariners had sought to recoup this money from local taxpayers, but agreed to drop such efforts in return for the right to pursue legal claims against the designer and builders of the stadium.

⁶⁰ Margaret Taus, *Safeco Field Taxes May End Three Years Early*, SEATTLE POST-INTELLIGENCER, Apr. 2, 2002, at B6.

⁶¹ *Id.*

⁶² Angelo Bruscas, *Safeco Field Yields \$14M Profit for M's: Team Says Money was Used to Increase Payroll to \$80M*, SEATTLE POST-INTELLIGENCER, Mar. 8, 2001, at D1. This net income stood as a stark contrast to the 1994-1997 Major League Baseball seasons when the Mariners reported substantial losses – up to \$28 million a year.

⁶³ *Id.*

⁶⁴ Alan Snel, *Safeco Field Will Make M's a Valued member of Major League Baseball*, SEATTLE POST-INTELLIGENCER, July 2, 1999, at A1.

D. *The Effects of the Tax Reform Act of 1986*⁶⁵

1. THE IMPETUS FOR PUBLIC FINANCING

As aforementioned, sports teams cannot afford to privately finance a new sports facility.⁶⁶ More importantly, the Tax Reform Act of 1986 produces a scenario where the only viable financing deal for a new sports facility requires the local municipality to fund most, if not all, of the project through tax-exempt bonds.⁶⁷ In fact, the present value of a federal revenue loss on \$225 million worth of tax-exempt bonds is between \$47 million and \$94 million, depending on the interest rate differential.⁶⁸ In this regard, financing a new sports arena through taxable bonds adds significant debt to an already expensive project. Therefore, as this section will more explicitly detail, the revisions in the tax code provide a disincentive for private financing and a clear incentive for public financing of new sports facilities.

2. A PRECURSOR: THE DEFICIT REDUCTION ACT OF 1984

Prior to 1984, to aid sports franchises in financing multi-million dollar sports arenas and stadiums, state and local governments would issue municipal debt to raise funds necessary for construction of the new facility.⁶⁹ Since sports franchises were not financially able to issue debt of this size at an affordable interest rate, municipal debt was an attractive option because it was tax-exempt. However, when the Deficit Reduction Act of 1984 took effect, two provisions affected the municipal financing of new sports facilities. First, the Act limited states in the number of overall Industrial Development Bonds issued within a calendar year.⁷⁰ Second, the Act prohibited the use of Industrial Development Bonds to acquire land, existing property, or certain enumerated types of facilities.⁷¹ These provisions

⁶⁵ Tax Reform Act of 1986 (P.L. 99-514).

⁶⁶ See *supra* text accompanying notes 14-15.

⁶⁷ See generally GENERAL EXPLANATION OF THE TAX REFORM ACT OF 1986, H.R. DOC. NO. 3838 (1st Sess. 1986).

⁶⁸ DENNIS ZIMMERMAN, *THE PRIVATE USE OF TAX-EXEMPT BONDS: CONTROLLING PUBLIC SUBSIDY OF PRIVATE ACTIVITIES*, at chap. 2 (1991).

⁶⁹ John D. Finerty, Jr., *Subverting the Internal Revenue Code in the "Game" of Sports Stadium Financing*, 1 MARQ. SPORTS L.J. 301, 305 (1991).

⁷⁰ Thomas, *Special Report: An Analysis of the New Industrial Development Bond Rules*, TAX NOTES, Apr. 13, 1984, at 694.

⁷¹ *Id.* at 692.

significantly restricted, but did not entirely eliminate, tax-exempt sports facility financing. However, this Act was a harbinger of what types of restrictions the 1986 Tax Reform Act would place on such financing options.

3. THE TAX REFORM ACT OF 1986 AND TAX-EXEMPT BOND FINANCING

The Tax Reform Act of 1986 significantly altered the way in which cities and private investment groups financed new sports arenas and stadiums. The Act removed sports facilities from the federal exemption list, which had allowed proceeds from Industrial Development Bonds to be used for sports arena and stadium developments and remain tax-exempt to investors.⁷² As one tax expert noted, the Act "raised significant new barriers to the use of tax-exempt debt for public and private purposes, and will change the face of public finance. . . ."⁷³

The Act contained several provisions that affected tax-exempt bonds for public sports facilities in three different ways. First, under Section 141 of the Internal Revenue Code, as amended by the Tax Reform Act of 1986, a sports facility's qualification for tax-exempt *private activity bonds* is subject to both the *private business use test* and the *private security or payment test*.⁷⁴ Under the *use test*, a bond issue fails to be tax-exempt if "more than 10% of the proceeds of the issue are to be used for any private business use."⁷⁵ A bond issue fails under the *payment test*, if "more than 10% of the proceeds of such issue is . . . directly or indirectly secured by any interest in property used or to be used for a private business use, or payments in respect of such property."⁷⁶ A new sports facility may only fail one of these tests in order to receive tax-exempt bonds for financing a new sports arena or stadium.⁷⁷

Private sports teams will almost always fail the 10% tests because the teams usually use more than 10% of the new sports facility's services and receive more than 10% of the proceeds from such bond issuances. Therefore, in order to be tax-exempt, new sports arena or stadium bond issues must be structured so that no more than 10% of the debt is secured by

⁷² Finerty, *supra* note 69, at 308-09.

⁷³ Uhlfelder, *1986 Act Will Change the Face of Public Financing*, TAX NOTES, Nov. 1986.

⁷⁴ I.R.C. § 141(a) (1994).

⁷⁵ I.R.C. § 141(b)(1) (1994).

⁷⁶ I.R.C. § 141(b)(2) (1994).

⁷⁷ DENNIS ZIMMERMAN, CONGRESSIONAL RESEARCH SERVICE, TAX-EXEMPT BONDS AND THE ECONOMICS OF PROFESSIONAL SPORTS STADIUMS 5 (1996). Private sports teams almost always fail the private-business test because teams usually use more than 10% of a sports facility's services. Therefore, in order to be tax-exempt, the stadium bond issues must be structured so that no more than 10% of the debt is secured by the stadium itself. *Id.*

the sports franchise. Moreover, since cities will most often pass both of the 10% tests, they are forced to secure the tax-exempt bonds. Therefore, to make a new sports facility financially viable, cities must service at least 90% of the federally tax-exempt debt in order to enter into such deals with these sports franchises.

Another important change that affected tax-exempt bond financing of new sports arenas was the removal of sports facilities from the exemption list. This list had allowed said facilities to exceed the two aforementioned 10% tests.⁷⁸ The final provision which affected sports facility financing was the limitation on the total volume of most tax-exempt private-activity bonds for exempt facilities that could be issued by all political jurisdictions in a state.⁷⁹

Two new sports facility deals demonstrate the effects of the Tax Reform Act of 1986 on financing such projects. The new Milwaukee baseball stadium, Miller Park, opened in 2001 and was financed through a \$160 million tax-exempt bond issue, a \$40 million capital contribution from the team owners, and a \$50 million loan from the state financed through taxable debt.⁸⁰ The tax-exempt bond issue will be paid by a five county regional sales tax of .001%.⁸¹ The other example demonstrates the detrimental effects the Tax Reform Act of 1986 can have on municipalities. In St. Louis, the State of Missouri, the County of St. Louis, and the City of St. Louis wholly financed the \$258 million dollar Edward Jones Dome through a series of bonds.⁸² The debt payments totaling \$10 million a year over thirty years, plus

⁷⁸ Dennis Zimmerman, *Subsidizing Stadiums: Who Benefits and Who Pays*, in *SPORTS, JOBS, & TAXES: THE ECONOMIC IMPACT OF SPORTS TEAMS AND STADIUMS*, *supra* note 1, at 136. Prior to the Tax Reform Act of 1986, sports facilities, convention halls, and parking facilities were all considered private activities appropriate for tax-exempt financing.

⁷⁹ I.R.C. §§ 141-2, 146 (1994). This limitation capped bond issuance at the greater of \$50 per resident or \$150 million total. Of interest are the legal challenges to the issuance of tax-exempt bonds for new sports facilities. For example, one former city mayor, William F. Poe of the City of Tampa, filed suit seeking to enjoin the city from constructing a new stadium financed by a tax-exempt bond issuance for the Tampa Bay Buccaneers. See *Poe v. Hillsborough County*, 695 So. 2d 672 (Fla. 1997). Poe defended his position by pointing to the Florida State Constitution, which prohibits lending public credit to aid a private corporation. See FLA. CONST. art. VII, § 10(c). However, the Florida Supreme Court unanimously upheld the use of public funds to finance the new stadium, ruling that such funding did not violate the Florida State Constitution. *Poe*, 695 So. 2d at 675-79. The Court expressed sympathy for Poe's argument that the financial deal was "too sweet" for the Buccaneers, but pointed out that a remedy for such a situation would be at the ballot box. *Id.* See also Rodney Fort, *Direct Democracy and the Stadium Mess*, in *SPORTS, JOBS, & TAXES: THE ECONOMIC IMPACT OF SPORTS TEAMS AND STADIUMS*, *supra* note 1, at 146-177 (detailing the processes, both through referendum and legislative approval, of validating sports facility financial deals).

⁸⁰ Zimmerman, *supra* note 78, at 137.

⁸¹ *Id.*

⁸² Reilly, *supra* note 29, at B1.

the various governmental contributions to the stadiums preservation fund, makes the total government contribution for the stadium \$720 million.⁸³ The St. Louis deal demonstrates how the provisions of the Tax Reform Act of 1986 handicap local and state governments in entering into agreements to finance.

Since local and state governments must wholly or partially finance new sports facilities through tax-exempt bonds to make a new sports arena or stadium affordable, the impetus for team owners to pay out-of-pocket for such a facility lessens in comparison.⁸⁴ If the difference between the interest rate of taxable and tax-exempt bonds is within 5%, the taxable debt would be a viable source of funds for a team owner.⁸⁵ However, since such a situation is rare, and since local and state governments are eager to offer economically attractive deals to sports teams to relocate to their jurisdiction, most new sports facility deals are financed partially, if not in whole, by tax-exempt bonds. This standard model for financing such deals, therefore, puts cities at an alarming disadvantage in the deal-making process, particularly in terms of up-front expenditures.

E. Sources of Revenue Within New Sports Facility Deals

1. OVERVIEW AND HISTORY OF SPORTS FACILITY REVENUE

While the local and state government, and in most cases the team owners, front hundreds of millions of dollars for the new sports facilities, these financial deals also contain provisions for both parties to receive reimbursement, and often enhancement, revenue for their respective investments. The history and metamorphosis of sports arena and stadium revenue production helps decipher the current revenue structures set out by these financial deals. During the 1950's, most teams' revenues came from inside the sports arena or stadium. Primarily, these revenues consisted almost entirely of ticket sales, with minor supplements from concessions, publications, and advertising within the facility.⁸⁶ This lopsided revenue base changed in the 1960's as revenues from broadcasting surpassed revenues produced inside the sports arena or stadium.⁸⁷ The 1970's saw the rise of league-sharing and collective bargaining agreements, which focused their

⁸³ *Id.*

⁸⁴ This situation is further magnified when set in the context of the current fervor and competition between cities to attract major league sports teams. See text accompanying *supra* notes 12-36.

⁸⁵ Uhlfelder, *supra* note 73.

⁸⁶ Noll & Zimbalist, *supra* note 1, at 8.

⁸⁷ *Id.*

efforts on generating revenues from broadcasting and ticket sales.⁸⁸ However, in the 1980's, there was a rapid growth in revenues from other sources. For example, a new emphasis was placed on concessions, which through a greater sophistication in quantity and quality of products, drew greater revenues.⁸⁹ This evolution of sports arena and stadium revenue culminated in the 1990's with a diverse base of revenue sources from which these financial deals can draw: taxes, naming rights, special seating opportunities, and commercial licensing agreements.

2. TAXES

One way in which local and state governments pay for the bond issuance for a new sports facility is through taxes. These financial deals often include one or a combination of three forms of taxes: property taxes, in-stadium taxes, and taxes collected outside the stadium. First, in some cases, the owners of the sports team pay a form of property tax for the new sports arena or stadium.⁹⁰ Second, inside the stadium, two different forms of taxes exist. One is the tax revenue from the local and state sales taxes applicable to concessions.⁹¹ The other tax is often in the form of a special tax on ticket sales, which are often earmarked in these financial agreements for things such as construction costs.⁹² Third, some financial plans attribute to the new sports arena or stadium tax revenues collected outside of the facility. To the extent that new sports arenas and stadiums generate new business in the surrounding area, some financial plans also attribute projected tax revenues from these off-site locations to the new facility in terms of revenue generation for the local or state government.⁹³ This type of revenue is called tax increment financing, which is often used as evidence to the claim that new sports facilities will have no expected net cost to a particular city. However, many financial plans contain new tax bases from outside the stadium which create revenue to reimburse the city, county, or state government for its bond issuance. These type of taxes come in the form of

⁸⁸ *Id.*

⁸⁹ *Id.* By nature, each sport creates a physical limit to the number of good seats that can be created in a new sports facility. Therefore, due to the ideal arena or stadium size, concessions, special seating arrangements, and commercial licensing agreements have accounted for a growing percentage of revenues in sports facility financing. *Id.* at 17-18.

⁹⁰ *Id.* at 13. This money does not constitute a rental payment, which some financial deals include.

⁹¹ *Id.* at 14.

⁹² *Id.* The Metrodome in Minneapolis is funded, in part, by a 10% ticket tax. See Zimmerman, *supra* note 78, at 124.

⁹³ Noll & Zimbalist, *supra* note 1, at 14.

state lottery taxes,⁹⁴ special sales taxes,⁹⁵ alcohol and tobacco taxes,⁹⁶ and car rental taxes,⁹⁷ to name but a few. These three general forms of tax revenue enable the local and state governments to collect substantial revenue to offset the debt incurred from their bond issuance.

3. NAMING RIGHTS

A supplemental source of revenue, earmarked for the team or the city, is the sale or lease of a facility's name. A business will pay either a yearly or one-time sum for the naming rights to a new, or in some cases, an already existing, facility. As of 1998, forty-one arenas and stadiums had naming rights contracts.⁹⁸ One of the first naming rights contracts was a twenty-five year, \$1.5 million agreement signed in 1973 between the Buffalo-based maker of Coffee Rich non-dairy creamer and Erie County, New York.⁹⁹ In comparison, demonstrating the development of naming rights revenue, Staples, Inc., signed a twenty year, \$116 million contract with the L.A. Arena Development Company, LLC, to put its name on the new home of the NBA's Los Angeles Lakers and Los Angeles Clippers, as well as the NHL's Los Angeles Kings.¹⁰⁰ The naming rights phenomenon has clearly developed into a significant source of revenue in new sports facility financial deals.

This source of revenue is utilized by major league facilities as well as colleges and universities. For example, in Syracuse, New York, the Carrier Corporation, a residential heating and air conditioning unit manufacturer, secured the name of the Carrier Dome of Syracuse University for \$2.75

⁹⁴ The State of Maryland uses state lottery taxes to repay the debt on Camden Yards. *Id.* The State of Washington services its bond issuance, in part, through a scratch-off lottery game. See Safir, *supra* note 26, at 950.

⁹⁵ Special sales taxes are sources of additional revenue for the Alamo Dome in San Antonio, Coors Field in Denver, Arlington Park in Texas, and the Bank One Ballpark in Arizona. See Noll & Zimbalist, *supra* note 1, at 14. King County funds Safeco Field through a half-cent sales tax on food and beverages. See Safir, *supra* note 26, at 950.

⁹⁶ Alcohol and tobacco taxes are generating revenue for the City of Cleveland to pay back debt for Jacobs Field. See Noll & Zimbalist, *supra* note 1, at 14. Also, the City of Minneapolis receives revenue from a two percent sales tax on liquor sales to repay its debt on the Metrodome. See Zimmerman, *supra* note 78, at 124.

⁹⁷ Car rental taxes are creating revenue for the City of Phoenix to repay its investment in the America West Arena. Noll & Zimbalist, *supra* note 1, at 14. Also, King County added a two percent increase on its rental car tax to pay back debt for Safeco Field. See Safir, *supra* note 26, at 950.

⁹⁸ Rich Westhead, *Companies Play the Name Game at Sport Stadiums*, L.A. DAILY NEWS, Jan. 20, 1998, at B9.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

million.¹⁰¹ In major league sports, Fleet Bank, in 1995, signed a fifteen year, \$30 million contract to name the FleetCenter in Boston.¹⁰² Under the terms of the financing arrangement for the Bank One Ballpark in Arizona, Maricopa County is guaranteed \$325,000 a year from income generated for the naming rights of the new ballpark.¹⁰³ Other recent naming rights arrangements which have taken place in correlation with new major league sports facilities are Coors Field in Denver, the Arco Arena in Sacramento, the United Center in Chicago, the Target Center Arena in Minneapolis, the America West Arena in Phoenix, the Delta Center in Salt Lake City, and the Bank One Ballpark in Arizona.¹⁰⁴ Naming rights, therefore, are clearly a viable and potentially substantial source of revenue in new sports facility financial agreements.

4. SPECIAL SEATING REVENUE

Another source of revenue used to pay for a new sports arena or stadium is that gained from special seating arrangements like Personal Seat Licenses (PSLs) luxury boxes. PSLs seat leases allow customers to pay a fixed fee to obtain the right to purchase season tickets.¹⁰⁵ This type of special seating arrangement first began in 1971 to help finance the opening of Texas Stadium in Dallas.¹⁰⁶ Sold as *seat options*, these PSLs garnered between \$300 and \$1,000 per seat.¹⁰⁷ Contemporary PSLs emerged in 1993 in Charlotte, where the Carolina Panthers raised \$150 million through the sale of PSLs ranging from \$600 to \$5400.¹⁰⁸ Besides being an additional source of revenue

¹⁰¹ D. PETERSON, CONVENTION CENTERS, STADIUMS AND ARENAS 48 (1989).

¹⁰² Westhead, *supra* note 98, at B9.

¹⁰³ Schwartz & Miller, *supra* note 53, at A1.

¹⁰⁴ Noll & Zimbalist, *supra* note 1, at 37-49. The renaming of existing arenas for the purposes of additional revenue has almost become prominent in major league sports. Examples of this occurrence are the Continental Airlines Arena in New Jersey, the Great Western Forum in Los Angeles, Qualcomm Stadium in San Diego, and 3-Com Park in San Francisco.

¹⁰⁵ *Id.* at 20. PSLs can be perpetual, as they will be for the Pacific Bell Park in San Francisco, or, as more commonly the case, for fixed periods of time, like the ten year life of PSLs in the Oakland Coliseum. See Edward Epstein and John King, *Handshake in Ballpark Lease/Giants to Pay \$1.2 Million Annual Rent*, S.F. CHRONICLE, Dec. 17, 1996, at A17; Renee Koury, *How Raiders Deal Went Sour*, SAN JOSE MERCURY NEWS, Feb. 21, 1997, at A28.

¹⁰⁶ *Inside the Ownership of Professional Team Sports*, (Chicago: Team Marketing Report 1997), at 60.

¹⁰⁷ *Id.*

¹⁰⁸ Noll & Zimbalist, *supra* note 1, at 20. The City of St. Louis also raised \$70 million for relocation fees for the St. Louis Rams by charging between \$250 and \$4500 per PSL. While many new stadium deals include PSLs as part of the revenue consideration for either the team or the city, some have been successful while others have failed. In Charlotte, the sale of PSLs met the \$150 million goal. However, in Oakland, the city and county governments lose \$40 million a year because the PSL sales

for either the team or the local and state governments, PSLs do not count against the aforementioned 10% tests that apply in determining whether or not the bond issuance for financing the new sports facility will be tax-exempt or not.¹⁰⁹ Therefore, a team or city can receive up-front fees in the form of PSL sales that enable the new sports facility to retain its tax-exempt status for the bonds used to fund its construction.

The other form of special seating that produces significant revenue for a new sports facility deal is the luxury suite. This type of special seating can be analogized to hotel rooms within a sports arena or stadium. Luxury suites provide the lease holder with amenities such as parking passes, private elevators, a bathroom, a wetbar, a television, a refrigerator, an ice machine, food and beverage service, and additional outdoor seating.¹¹⁰ Leases on such luxury suites usually cost between \$50,000 to \$200,000 a year for a seven to ten year period.¹¹¹ The revenue generated from the sale of luxury suites, often designated for the team rather than the city in most financial deals on new sports facilities, can total millions of dollars per year. This significant amount of revenue, like PSLs, does not count against the 10% tests, thus keeping the bond issuance tax-exempt for the particular sports facility.

5. COMMERCIAL LICENSING ARRANGEMENTS

One final area of revenue in new sports facility financial deals is commercial licensing agreements, mainly in the form of concessions and marketing opportunities. Teams or local governments derive revenue from concessions in one of three ways: charging royalties based on sales, charging a fixed fee not based on sales, or a combination of the two.¹¹² The benefit of a fixed fee is that it provides the team or the city with more up-front money. However, concessionaires are less willing to commit to larger up front fees.¹¹³ Royalty-based arrangements provide greater financial incentives for the team or the city, but they provide the investor – the city or the team – with less up-front funds.¹¹⁴ Therefore, many concession agreements combine the two to maximize the benefits of both arrangements. This situation allows for the

reached only \$58.9 million, well short of the anticipated \$99 million they expected.

¹⁰⁹ *Id.* at 21.

¹¹⁰ S. Byers, *Skyboxes: A Hot Ticket*, CHARLOTTE BUS. J., May 28, 1990, at 1.

¹¹¹ *Id.*

¹¹² Noll & Zimbalist, *supra* note 1, at 18.

¹¹³ *Id.* In considering these types of agreements, concessionaires evaluate the potential for the team to attract spectators. The more successful the team, the higher the value of the concession agreement. This situation actually provides an incentive for the owners of the team to field the strongest team possible, if economically viable, to maximize revenue derived from their concession agreement.

¹¹⁴ *Id.*

team or city to receive up-front fees, which helps defray the initial cost of the new sports facility, while also gaining the potential for greater revenue through the royalty facet of the concession agreement.

The marketing opportunities that produce revenue for the team or the city arise in two main areas: broadcasting and product licensing agreements. Local broadcasting is usually sponsored by national firms in product fields such as beer, gas, and automobiles.¹¹⁵ Product licensing agreements, whether sold by a league or a team, are usually made with national manufacturers of consumer products like clothing, athletic gear, soda, and beer.¹¹⁶ These income-generating sources have grown in their percentage of sports arena and stadium revenue. For example, these two areas of commercial licensing agreements constitute more than half of the revenue in the NFL and more than \$10 million per team in MLB.¹¹⁷ Therefore, careful attention is paid to both of these factors in the fleshing out of new sports facility financial agreements.

IV. OBJECTIVE METHODS OF EVALUATING THESE FINANCIAL DEALS

A. Overview

Current research has failed, thus far, to construct a model that can accurately predict the economic contribution of professional sports and their facilities to a city.¹¹⁸ Therefore, to evaluate new sports facilities' financial deals, and thus answer the question originally presented at the beginning of this Article, one must piece together objective criteria from experts in the field in order to offer as comprehensive an analysis and answer as possible. Such criteria arises in analyzing whether a sports team and facility make a net positive contribution to the economic development of the city and provide the best possible investment opportunity for the municipality.

B. *The Cost/Benefit Analysis of a New Sports Facility*

To ascertain whether or not a sports facility is an economically justifiable public investment, one must decipher whether or not the sports arena or stadium produces net benefits. To determine if the sports facility produces a net benefit, one must add the consumption value of the team and facility

¹¹⁵ Noll & Zimbalist, *supra* note 27, at 71.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ Baade & Sanderson, *supra* note 35, at 98.

to the city with the increase in local economic development.¹¹⁹ The consumption value arises in three components: attendance, broadcasting, and the externality value of having a major league sports team. Local economic development can be measured through the increase in sales to people from outside the city as well as through job creation in the area. This figure, or *determination*, if one considers unquantifiable factors, derived from the consumption value and the local economic development must be weighed against the annual cost of the stadium – debt payments and operating costs – and the environmental, congestion, and public safety costs associated with the project in order to conclude whether or not net benefits are created by the new facility.¹²⁰

In determining the consumption value and the local economic development, both direct benefits and indirect benefits must be considered. Direct benefits include any incremental consumer surplus from all the consumption activities produced by the new sports facility – games, broadcasts, and concession products that are more than the goods and services that were previously consumed.¹²¹ Indirect benefits include all the consumption that takes place outside of the new sports facility.¹²² Job creation can arise as both a direct and an indirect benefit. Some jobs may be created through the building of a new sports facility; these jobs would be considered direct benefits. Other jobs may be created through the expansion of the local economy due to the existence of the major league sports team and the new sports arena or stadium. However, a major consideration in regard to job

¹¹⁹ Noll & Zimbalist, *supra* note 27, at 74.

¹²⁰ *Id.*

¹²¹ *Id.* at 58. This figure is dependent on the number of non-city residents who attend and spend money at the games. *Id.* at 69.

¹²² *Id.* As one industry expert noted, the key to measuring a new sports facility's economic benefits to the city is the assessment of the "spending increase associated with the stadium." Zimmerman, *supra* note 77, at 13-14. This observation embodies the hope of many city officials that this type of economic activity will help revitalize a city's downtown area. Downtown revitalization is another way in which to measure the effectiveness of a sports facility as an economic impetus for the city. The success of such revitalization projects, as well as the determination for indirect benefits, originate from the team and facility's success in attracting tourists and in selling broadcasting and licensing rights to national firms. Noll & Zimmerman, *supra* note 26, at 68. The more people and subsequent spending imported to the area, the greater the actual economic impact of the new sports facility for the city. In this regard, a new sports arena or stadium which hosts games in a regionally isolated team, like the Colorado Rockies baseball team, is preferable because studies show that such a facility will attract fans from greater distances than one in a saturated market like New England. Baade & Sanderson, *supra* note 35, at 95. This outside interest creates the type of external spending which the aforementioned formula values in judging the economic benefit of a new sports facility.

growth is determining whether an increase in aggregate spending on city goods and services must accompany, and indeed spur, this job creation.¹²³

Economists view these direct and indirect benefits generated by the new sports facility as spending that would not have occurred in the city but for the existence of the new sports arena or stadium.¹²⁴ However, in determining the effect of the direct and indirect benefits on the city, one must subtract from that figure the concessions that may have been produced elsewhere, as well as a significant portions of the salaries to players, executives, and facility workers, many of whom live elsewhere and thus only spend a portion locally.¹²⁵ This counterbalancing provides a realistic determination of how the new sports facility brings additional economic benefits, if any at all, to a city.

C. Sports Facility as the Best Possible Municipal Investment

Other economists claim that a new sports facility should not be judged by the actual financial costs to the local government, but rather by *opportunity cost* of the investment.¹²⁶ Simply said, if the sports facility created greater benefits than other investment options, either financially or in terms of social service needs, than it would pass the *opportunity cost* test. However, if other investments, such as unemployment insurance, schools, or parks are more attractive choices, then these economists would consider the new sports arena or stadium as an undesirable investment.¹²⁷

Under this rationale, public investment in a new sports arena or stadium can be worthwhile in only three circumstances. First, society may have unemployed resources that can be used most productively through employment opportunities affiliated with the new sports facility.¹²⁸ Second, if the city is at full employment, it may be spending too little on investment

¹²³ Baade & Sanderson, *supra* note 35, at 95. Moreover, the extent to which jobs are created varies with the degree to which the metropolitan or regional economy is operating near its productive capacity and with the level of unemployment in the city. Some industry experts claim that if there are other development projects which could, for example, employ the same construction workers that are building the new sports facility, then those jobs should not be considered as new job creation. If the jobs created by the new sports arena or stadium would merely displace jobs that another project would have provided if it had been initiated, then the sports facility project cannot be credited with these jobs. *Id.* at 94.

¹²⁴ *Antitrust Issues in Relocation of Professional Sports Franchises: Hearings: Hearings Before Subcomm. on Antitrust, Bus. Rights, and Competition of the Senate Comm. on the Judiciary*, 104th Cong. 117 (1995) (statement of Robert A. Baade).

¹²⁵ Noll & Zimbalist, *supra* note 27, at 68.

¹²⁶ *Id.* at 60.

¹²⁷ *Id.* at 60-2.

¹²⁸ *Id.* at 62.

in relation to current consumption. This underinvestment, however, will only justify subsidizing a new sports facility if the capital markets do a poor job at financing some form of viable private investments.¹²⁹ Finally, the economic benefits derived from the new sports facility will have to exceed those by other feasible investments.¹³⁰ If the investment in a new public sports facility meets one of these three caveats, then, according to Noll and Zimbalist, the project would be justifiable.

D. Other Evaluative Considerations

Two other factors play an important role in determining whether or not new sports facilities are economically justifiable for cities. First, the "occupancy rate" and hours of operation are extremely important to the role that a new sports arena or stadium will play in spurring economic activity, particularly in a city's downtown area.¹³¹ The more calendar days a sports arena or stadium hosts events, the more likely the facility will have a positive effect on the local economy. In this regard, sports arenas that host basketball or hockey teams or baseball stadiums are more viable municipal investments than a stadium devoted to an NFL team because of the number of games that the different sports teams will play in their respective facilities. Moreover, the types of supplemental events that beget the generation of new net economic gain for a city, such as concerts, political conventions, and trade shows, are more conducive to these sports arenas than larger, often outdoor, stadiums.

The other element which relates to the evaluation of the benefit of a new sports facility for a city is the use of the facility for both repetitive events, such as regular season home games, and less frequent occurrences, like playoff games, Super Bowls, and periodic political conventions.¹³² A balance between these two types of events provide a constant and diversified entertainment and activity base to draw a consistent and affluent crowd to the sports facility and its surrounding commercial area. In terms of downtown revitalization efforts and the goals of economic development for a local area in general, cities aim for such a balance to help them justify their expenditures on a new sports facility.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ Baade & Sanderson, *supra* note 35, at 96.

¹³² *Id.*

V. CRITICISMS AGAINST PUBLICLY FINANCED SPORTS FACILITIES

A. Introduction

Using the evaluative standards detailed above, many critics claim that a new sports facility is a bad investment for a city. Opponents to such facilities posit that the public financing of a new sports arena or stadium absorbs scarce government funds that could be used for either tax reductions or programs having a greater social or economic benefit.¹³³ Criticisms of new sports facilities fall into four main categories: the uncertainty of revenue forecasts, a major faulty assumption upon which the conclusion that the deal is self-financed is based, sources of errors in the financial plans, and the new sports facility as a poor investment.

B. Uncertainty of Revenue Forecasts

Financial deals for new sports facilities factor in a projected dollar amount attributable to sales taxes, ticket taxes, and rent payments. This anticipated sum is often used as evidence that the deal's investors, most often the city or state government, will recoup its up-front expenditures. However, these projected sources of revenue beget uncertainty, particularly because their propriety relies heavily on the popularity of the team. For example, if a financial plan assumes that a new sports arena or stadium will cause a permanent, substantial increase in rent and tax collections – as most deals often do – it is implicitly expecting the facility to generate a nontransitory increase in attendance. As evidence shows, this is a dangerous and often unfounded assumption to make.

Historical evidence demonstrates that attendance does increase after the initial opening of a new sports facility.¹³⁴ However, after the fervor created by the new stadium quells, attendance stabilizes and often decreases. As Noll and Zimbalist point out, there is a way to counteract this phenomenon. With better attendance comes greater revenue collections and thus improved financial positions.¹³⁵ Team owners can then reinvest this money into fielding better teams, which can then prolong the attendance boom. A problem, however, arises if all teams were to build new sports facilities. This

¹³³ Noll & Zimbalist, *supra* note 27, at 55.

¹³⁴ *Id.* at 16. The novelty effect of a new sports arena or stadium, as shown in Jacobs Field in Cleveland and Coors Field in Denver, increases attendance for what critics call the "honeymoon period."

¹³⁵ *Id.*

hypothetical raises an important issue. All teams cannot win games and thereby all increase their attendance.¹³⁶ The system of attendance boosting relies upon a team's success at the expense of other team's success and thus popularity. Therefore, as other sports arenas and stadiums open and other teams improve, attendance and revenue for teams with previously new sports facilities will gradually decline.¹³⁷ This likely occurrence, experts predict, will have two significant effects. First, due to this inevitable decline, the projected dollar amounts from sales taxes, ticket taxes, and rent payments that increase over the lifetime of the new sports facility will be inaccurate and mislead city officials and ultimately the taxpayers, the true investors in such financing deals.¹³⁸ Second, since this attendance effect is cyclical, after twenty or thirty years, if not sooner, teams will most likely seek new sports facilities to reinvigorate the attendance and thus revenue boom associated with the opening of a new sports arena or stadium.¹³⁹ A more realistic revenue estimation in these financial plans, Noll and Zimbalist posit, would exhibit an initial increase, but then a general decline in revenues associated with the new sports facility.¹⁴⁰

C. A Major Faulty Assumption: A Self-Financing Deal

Almost all new sports facility financial deals conclude that the new sports arena or stadium will be completely self-financed and will cost taxpayers nothing after reimbursement revenue is collected from the sources previously detailed in Part II. However, these same plans make the same faulty assumption in making their revenue projections which lead to this assertion: that the site upon which the new sports facility will be built has a zero opportunity cost and would have housed no other development project had the new sports arena or stadium not been built.¹⁴¹ These financial plans attribute no value or worth to the site, usually owned by the city or state, and thus provides an inaccurate starting point in determining the costs and benefits to both the team and the government. This faulty assumption, then, does not attribute the benefit of this site to the team – and thus a cost for the city or state – nor does it juxtapose the value of this investment as opposed to other possible projects which could have been undertaken on the same

¹³⁶ *Id.* at 17.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.* This misrepresentation becomes especially significant in evaluating a new sports facility as the best possible investment opportunity for a municipality. See text accompanying *infra* notes 168-71.

site. Critics such as Noll and Zimbalist claim that this faulty assumption – ignoring or excluding such information and considerations – conveys a misperception that these deals are self-financed.

D. Sources of Errors in the Financial Plans

1. OVERVIEW

New sports facility proponents often claim that revenue generated from rent, taxes, and the other sources mentioned in Part II, will be sufficient to cover a city's expenditures. However, independent scholarship has concluded that studies that claim substantial economic contributions to local and regional economies from sports teams and new facilities have systematically exaggerated their real contribution.¹⁴² When a new sports facility is proposed in a city, the city and the team contract consulting firms to determine what the effect of the team and new facility will be. These firms often conclude that the sports team and its new facility will produce substantial, positive economic impacts for the city.¹⁴³ Yet, their analyses are often fraught with significant methodological problems. First, these studies often overstate the extent to which the new sports facility attracts tourists and people who do not live within city limits.¹⁴⁴ Second, these studies also confuse new spending with spending that is diverted from other local entertainment activities.¹⁴⁵

¹⁴² See Robert A. Baade and Allen R. Sanderson, *Cities Under Siege: How the Changing Financial Structure of Professional Sports is Putting Cities at Risk and What to Do About It*, in 2 *ADVANCES IN THE ECONOMICS OF SPORTS* 77-114 (Wallace Hendricks, ed. 1997); Mark S. Rosentraub, et al., *Sport and Downtown Development Strategy: If You Build It, Will Jobs Come?*, 16 *J. OF URBAN AFFAIRS*, 228-39 (1994). Part of the reason for advancement of the illusion that a new sports facility provides great public benefit may come from the lopsided advertising spending in this debate. In San Francisco, proponents of the new stadium outspent their opponents at a ratio of twenty-five to one, while in Seattle, advocates for the new baseball stadium for the MLB's Mariners outspent their opponents at a ratio of more than twenty to one. Phillip J. Trounstine & Brandon Bailey, *Strategy: Funds, Fees, Foot Soldiers Combined to Give 49ers Win in Overtime*, *SAN JOSE MERCURY NEWS*, June 5, 1997, at A20; Carlo Caracciolo, *Plenty Share Blame for the Stadium Debacle*, *SEATTLE POST-INTELLIGENCER*, June 28, 1997, at A5.

¹⁴³ Keating, *supra* note 12, at 1. Of interest is the fact that these same studies often exclude or ignore some of the natural downsides of these new sports facilities, such as an increase in local congestion, pollution, as well as in the local crime rate. Noll & Zimbalist, *supra* note 27, at 67. These effects add extra costs to the city which, ironically, for which these economic impact studies do not account.

¹⁴⁴ Noll & Zimbalist, *supra* note 27, at 68.

¹⁴⁵ *Id.* at 496.

2. OVERSTATING THE SPORTS TEAM'S ABILITY TO ATTRACT NONRESIDENTS

These commissioned economic impact studies often attribute all spending by out-of-town visitors to the team and its new sports facility regardless of the motive for their visit or whether or not they attended a game.¹⁴⁶ Part of the problem with determining an accurate figure for this consideration is that ticket sales are rarely made public, and therefore these consulting firms find it difficult to know how many nonresidents attended a particular game. More importantly, though, the significance of sports teams and facilities attracting tourism, according to some experts, is declining.¹⁴⁷ Until recently, sports teams used to be primarily concentrated in two main areas: California and New England. However, major league sports have been expanding to smaller markets.¹⁴⁸ The result is that a higher fraction of the population now has a local team and thus tourists have less of an impetus to attend a major league sporting event in a different city.¹⁴⁹ Therefore, the extent to which these economic impact studies overestimate the effects of a sports team and its new facility can skew the objective determination of the strength of the financial deal for the city.

3. CONFUSING NEW SPENDING WITH DIVERTED ENTERTAINMENT SPENDING

These economic impact studies also attribute the spending on the sporting events and associated businesses as "new" money to the city. The most obvious error in such an assertion arises in the case of a new sports facility replacing an old one in the same city. A new replacement facility, as economists Robert A. Baade and Allen R. Sanderson point out, does not lead to the expansion of the local economy, but rather maintains economic activity at or near its former level.¹⁵⁰ Therefore, such facilities do not generate any "new" revenue, as many of these economic impact studies assert, but cost hundreds of millions to maintain a certain level of economic activity related to sporting events.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 70.

¹⁴⁸ See text accompanying *supra* note 11.

¹⁴⁹ Noll & Zimbalist, *supra* note 27, at 70. Therefore, a larger percent of attendance now comes from local residents in the form of season ticket sales.

¹⁵⁰ Baade & Sanderson, *supra* note 35, at 95.

Moreover, many economists point out that money spent on sports would have otherwise been spent on other leisure and entertainment activities.¹⁵¹ While construction workers and fans who live outside the area of the sports facility increase the patronage to bars, restaurants and parking lots in the area, this activity is merely a substitution for economic activity in another part of the city. This substitution effect, therefore, does not create any new net income for the city and its businesses that would not have existed but for the presence of the sports team and its facility.

One of the few economic impact reports which actually acknowledged this fact stated:

Adjustments must also be made to direct spending to reflect the fact that *much* of the economic activity associated with the Colts would likely impact the area economy in another form had the NFL game no taken place . . . an individual attending an NFL game at the RCA Dome may instead go to a movie had the Colt's franchise not hosted a game.¹⁵²

Therefore, to present such revenue as *unique* or *new* money for the city, according to the aforementioned experts, would be disingenuous and inaccurate in calculating the effects, namely the benefits, of the sports team and its new facility on the local area.

E. *New Sports Facilities as Poor Investments*

1. BAD AS PRIVATE INVESTMENTS

Experts agree that new sports facilities are rarely the best possible investment option for a city.¹⁵³ One reason for this view is that new sports arenas or stadiums are rarely seen as attractive private investments, particularly for two reasons. First, new sports facilities do not generate enough revenue to improve the profitability of the team and pay for itself.¹⁵⁴ Second, if a new sports facility were not subsidized, the interest and amortization for the new sports arena or stadium would be approximately

¹⁵¹ Baade & Sanderson, *supra* note 35, at 96.

¹⁵² COOPERS & LYBRAND, ECONOMIC AND FISCAL IMPACT ANALYSIS OF THE INDIANAPOLIS COLTS, A REPORT PREPARED FOR THE CAPITAL IMPROVEMENT BOARD, COUNTY OF MARION (INDIANA) 3 (May 30, 1996).

¹⁵³ Noll & Zimbalist, *supra* note 1, at 28.

¹⁵⁴ *Id.* Due to this situation, governments, in most cases, find it difficult to find a combination of rents, fees, taxes, and other revenue to pay for a new sports facility.

10% of the construction costs, including site acquisition and clearance.¹⁵⁵ This debt payment would be too expensive for any private investor, namely a sports team, to afford with the anticipation of making the investment profitable.

No individual sport would generate the incremental revenue kept by a team to be sufficient to pay for a new sports facility, except for in two potential scenarios. First, a dual-purpose basketball and hockey facility could conceivably pay for itself.¹⁵⁶ In the sports, game revenues are not shared; therefore, the home team keeps this revenue. Moreover, such a facility can be used for other events like trade shows, circuses, and concerts. The second potentially viable option is that of an expansion team.¹⁵⁷ Since baseline revenues for an expansion team are zero, the revenues gained by the new sports arena or stadium are entirely a gain to the team.

2. DOWNTOWN REVITALIZATION

Proponents of new sports facilities claim that new businesses are more likely to relocate to a city with a major league sports franchise. However, critics do not raise the issue of whether sports teams make a city more attractive for corporate executives. Rather, they question whether or not the most effective way to spend \$200 million or more with the goal of attracting new businesses is to build a new sports facility with which to attract a new major league sports team.¹⁵⁸ However, this question relates to a bigger issue of new sports facility investments as an impetus for downtown revitalization.

The systematic decline to decentralization of economic activity and suburbanization of urban life is well documented.¹⁵⁹ Many cities, like Baltimore, Phoenix, and St. Louis, have built new sports facilities in their respective downtown areas in hopes of retarding, if not reversing, such trends.¹⁶⁰ These cities hope that people attending games will purchase goods and service and thus bring economic prosperity to their respective downtown areas. However, in contrast to cities that did not build downtown sports facilities, the experience of cities with these assets is not encouraging. For example, from 1985-1995, the population in cities that built new sports

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* at 73.

¹⁵⁹ Konrad Stahl, *Theories of Urban Business Location*, in, 2 HANDBOOK OF REGIONAL AND URBAN ECONOMICS, 759-820 (Edwin S. Mills, ed. 1987); Mahlon Straszheim, *The Theory of Urban Residential Location*, in 2 HANDBOOK OF REGIONAL AND URBAN ECONOMICS, *supra*, at 717-58.

¹⁶⁰ DENNIS ZIMMERMAN, *TAX-EXEMPT BONDS AND THE ECONOMICS OF PROFESSIONAL SPORTS STADIUMS* 15 (1996).

facilities declined more than those which did not.¹⁶¹ Moreover, both types of cities also experienced the same decrease in job levels during this period.¹⁶²

In addition, new sports facilities have not historically provided a resurgence in local economic activity. Research of approximately fifty cities and their activities for the past thirty-five years demonstrates that local communities are not likely to benefit perceptibly from the construction and existence of a new sports facility.¹⁶³ In fact, such efforts often yield little, if any, profits. For example, Phoenix is getting between a 1-2% return rate on the \$253 million taxpayer investment in Bank One Ballpark.¹⁶⁴ Moreover, experts posit that, in most cases, sports teams and facilities produce a very small scale of economic activity and therefore cannot reverse the aforementioned decentralization of residential and business activity that plagues most cities' downtown areas.¹⁶⁵ Therefore, because new sports facilities, for the most part, have little success in revitalizing a city's downtown area or generating new profits in this region, critics condemn the downtown revitalization investment model of using a new sports facility to spur economic growth.

3. INEFFICIENT JOB CREATION

While advocates of new sports facilities point to job creation as an attribute to the public investment, evidence exists that creating jobs in this manner is actually inefficient and costly. For example, although Bank One Ballpark in Arizona created four hundred new jobs, the project cost \$280 million, averaging \$700,000 per job.¹⁶⁶ Critics point out the obvious: This return on such an investment is quite expensive. Moreover, to aggravate this situation, economic impact studies tend to overestimate the number of jobs

¹⁶¹ Rosentraub, *supra* note 32, at 205.

¹⁶² *Id.* Indianapolis had a slightly different experience than other cities with new sports facilities. While other similarly-situated cities experienced job decreases of 27.7% during the decade spanning 1985-1995, Indianapolis only experienced a 26.6% decline. Stahl, *supra* note 159, at 772. Two reasons may explain this phenomenon. First, Indianapolis focused on amateur sporting events rather than strictly on professional sports. Second, the city balanced their urban redevelopment plan with more than merely a new sports facility. Nevertheless, even Indianapolis, with its alternative model of downtown revitalization, could only modestly retard the effects of suburbanization.

¹⁶³ Robert Baade & Alan Sanderson, *Field of Fantasies*, INTELLECTUAL AMMUNITION, Mar./Apr. 1996, at 1.

¹⁶⁴ Baade, *supra* note 124, at 117.

¹⁶⁵ Robert A. Baade, *Professional Sports as Catalysts for Metropolitan Economic Development*, 18 J. OF URBAN AFFAIRS, 1-17 (1996); Mark S. Rosentraub, *Does the Emperor Have New Clothes? A Reply to Robert Baade*, 18 J. OF URBAN AFFAIRS, 23-31 (1996). For examples of successful downtown revitalization efforts featuring a new sports facility, see text accompanying *infra* notes 202-29.

¹⁶⁶ Noll & Zimbalist, *supra* note 1, at 498.

that will be created. For example, in Jacksonville, the team asserted that it would create three thousand new jobs.¹⁶⁷ However, a report later adjusted this number to approximately one tenth of the previous estimate.¹⁶⁸

Furthermore, sports facility investments reap fewer jobs than other types of public investments. An example of this arises in Maryland. The Maryland Department of Business and Economic Development estimated that the new football stadiums for the Baltimore Ravens would create 1,394 new jobs at a cost of \$127,000 per job.¹⁶⁹ However, Maryland's Sunny Day Fund created or retained 5,200 jobs, costing taxpayers just \$6,250 per job.¹⁷⁰ As this example shows, other types of public investments can create more jobs at less of a cost than investing in a new public sports facility.

Moreover, the types of jobs that new sports facilities create tend to be low-wage, part-time, and seasonal.¹⁷¹ As economist Andrew Zimbalist points out, sports teams employ between fifty and one hundred and twenty full-time employees, along with several hundred low-skill and low-wage part-time and temporary jobs.¹⁷² With the majority of the jobs created by new sports facilities being low-wage and part-time, critics lambaste such an option as ineffective for true job creation and economic growth. To this same end, these facts help explain why sports teams and new facilities do not induce the same magnitude of economic activity as other types of public investments.

¹⁶⁷ Erle Norton, *Football at Any Cost: One City's Mad Chase for an NFL Franchise*, WALL ST. J., Oct. 13, 1993, at A1.

¹⁶⁸ Baade, *supra* note 165, at 17. Such job creation figures often stem from excessive optimism that increased sports generated revenues necessarily correspond to an expansion of the local economy. See Baade & Sanderson, *supra* note 35, at 93. However, the demand for labor derives from the demand for goods and services. If a new sports facility does not correlate with an increase in new net spending, new jobs will not be created. See text accompanying *supra* notes 123-25.

¹⁶⁹ Zimmerman, *supra* note 78, at 122. Note that economically inefficient public subsidies for job creation are not limited to sports facility. Local and state governments subsidize many private businesses in order to spur job growth in a particular area. For example, the State of Alabama bid \$300 million in 1993 to secure the first Mercedes-Benz AG auto plant in the United States. This public investment was projected to create 1,500 jobs, translating to \$200,000 per job created. However, more recent analyses have concluded that the new plant has created less than 1,000 jobs. Baade & Sanderson, *supra* note 35, at 101. This type of government subsidy was equally, if not more, economically inefficient in terms of job creation than the football stadium in Baltimore.

¹⁷⁰ Zimmerman, *supra* note 78, at 123.

¹⁷¹ *An Analysis of Trends in the Market for Professional Sports Teams and Stadiums: Separating Myth From Reality, Before the Senate Judiciary Comm.*, 104th Cong. (1995) (testimony of Robert A. Baade).

¹⁷² *Antitrust Implications of Sports Franchise Relocation: Hearings on Professional Sports Franchise Relocation-Antitrust Implications Before the House Comm. on the Judiciary*, 104th Cong. (1996) (written testimony of Andrew Zimbalist) at 5.

4. BETTER INVESTMENT OPTIONS

With all of the rhetoric about the economic benefits of a new sports facility, a leading expert points out that major league sports teams represent a very small portion of the economies of the cities in which they are located.¹⁷³ However, the tax expenditures for a new sports facility often represent a significant portion of city and state budgets.¹⁷⁴ In addition, in terms of determining the best possible investment option for a city, many critics of new sports facilities argue for a *public consumption* approach to evaluate such deals.¹⁷⁵ In this regard, a new sports facility would be judged against a new park, zoo, or school in terms of deciding whether or not this new sports arena or stadium is the best possible investment – both economically and socially – for the city. Several studies indicate that cities could benefit more through other investment and development options.¹⁷⁶ As economist Dennis Zimmerman pointed out, “[t]here are a lot more productive things that state and local governments could have done with this money.”¹⁷⁷ Moreover, from a “public consumption” standpoint, critics of new sports facilities point out that ticket prices for major league sporting events have risen to the point where many local residents cannot afford to take advantage of the new facility.¹⁷⁸ In this regard, a new sports facility would provide access to fewer people in the city than a park or a school. Therefore critics decry new sports facilities as inefficient public investments that fail to offer more attractive benefits than socially integral projects.

F. Examples of Bad Sports Facility Investment Deals

1. OVERVIEW

The Edward Jones Dome in St. Louis and the unsuccessful proposed football stadium for the New England Patriots in Hartford provide two examples of new sports facilities that are or would have been bad investments

¹⁷³ Zimbalist, *supra* note 22. New sports facilities also have a minimal effect on the number of new jobs created in the city. See text accompanying *supra* notes 166–72.

¹⁷⁴ *Id.*

¹⁷⁵ Jay Weiner, *Professional Sports' True Value is Not Economic*, STAR TRIBUNE, Oct. 22, 1995, at C10.

¹⁷⁶ Leslie Wayne, *Picking Up the Tab for Fields of Dreams; Taxpayers Build Stadium; Owners Cash In*, N.Y. TIMES, July 27, 1996, at 39.

¹⁷⁷ *Id.*

¹⁷⁸ Safir, *supra* note 26, at 954.

for their respective cities.¹⁷⁹ In St. Louis, the three levels of government involved in the deal with the Rams do not collect enough yearly or up-front revenue from the team or other sources to cover their debt payments. From an investment standpoint, this financial deal could not generate enough revenue to cover its expenses, much less create new revenue for the city. In both cases, the respective government authorities do not or would not receive a break-even investment, much less an economic boom for their cities. On the other hand, the major league sports teams involved receive or would have received significant amounts of money from various sources of revenue, ones that in similar deals in other cities are shared with the host city.

2. THE EDWARD JONES DOME IN ST. LOUIS

The \$258 million Edward Jones Dome was financed before St. Louis even secured a major league sports team to play in it.¹⁸⁰ The stadium was wholly financed by a series of bonds issued by the State of Missouri, the County of St. Louis, and the City of St. Louis.¹⁸¹ However, the governments' financial obligation did not end there. The three levels of government also committed to pay \$4 million a year over a thirty-year period to the stadium's "Asset Preservation Fund."¹⁸² The total governmental obligation, then, for the construction of the stadium plus the over thirty-year life of the supplemental financial agreement, reaches \$720 million dollars.¹⁸³

With such a hefty financial commitment, the city might hope to recoup some of its expenditures through one of the revenue generating sources detailed in Part III. However, the revenue-sharing facet of the financial agreement between the three governments and the Rams is lopsided in favor of the team. The agreement provides for the Rams to receive all \$74 million generated by the sale of PSLs, 100% of the revenue generated by the dome's 122 suites and 6,200 club seats, and 75% of the stadium's advertising

¹⁷⁹ There are just two of the many sports facility investment deals which are unfavorable to their respective host cities. Others include the Bank One Ballpark in Phoenix and the Oakland Alameda Coliseum (renovated in 1996).

¹⁸⁰ Reilly, *supra* note 29, at B1. The city eventually reached an agreement with the then Los Angeles Rams to relocate to St. Louis and play in the new stadium.

¹⁸¹ St. Louis Regional Convention and Sports Complex Authority, *A History of the Dome*, ST. LOUIS-POST DISPATCH, Nov. 5, 1996 at 16. The state issued fifty percent of the bonds, while the county and city each issued twenty-five percent.

¹⁸² *Id.*

¹⁸³ Debt payments of \$20 million a year for thirty years equals \$600 million. The \$4 million contribution a year for thirty years to the "Asset Preservation Fund" equals \$120 million. \$600 million plus \$120 million equals \$720 million for the thirty year period.

revenue.¹⁸⁴ The city, county, and state governments, on the other hand, only collectively receive \$250,000 in annual rent, an estimated \$1 million in annual admission taxes, and 25% of the stadium's advertising revenue.¹⁸⁵ This deal provides tremendous financial benefits for the Rams, enabling them to maximize profits and thus improve the worth of the franchise. Such profitability has allowed the Rams to increase their payroll and thus improve the team – with the team playing in the Super Bowl in 2000 and 2002. However, the deal costs the taxpayers hundreds of millions of dollars, while providing a minuscule amount of return revenue which does not even constitute 10% of the governments' yearly expenditures on the new stadium. In this case, despite the success of the Rams, the Edward Jones Dome in St. Louis was clearly a bad investment for the taxpayers.

3. THE HARTFORD FOOTBALL STADIUM

a. *Introduction*

Even though the unsuccessful proposed football stadium in Hartford for the New England Patriots was part of a more than one billion dollar redevelopment project seeking to revitalize Hartford's downtown area, the deal presented a bad investment for the State of Connecticut. Stadium supporters claimed that the project would be "revenue neutral," but an analysis of the proposed financial deal between Robert Kraft, the owner of the Patriots, and the State of Connecticut, refuted this assertion.¹⁸⁶ Under the proposed agreement, the Patriots would have grossed more than \$90 million from the stadium. However, the stadium would not have received up-front funding from the team. Moreover, the state would also have paid Kraft additional money above and beyond the cost of the stadium if the franchise did not gross certain anticipated revenue from special seat licenses. The agreement also did not account for extra infrastructure costs which that would have likely stemmed from the stadium and for which the state would have had to pay. Therefore, the proposed agreement offered tremendous

¹⁸⁴ Josh Gotthelf, *Rams' Frontiere, Shaw Scratching Carnahan's Back*, ST. LOUIS BUS. J., Feb. 1, 1996, at A1.

¹⁸⁵ Louis J. Rose, *Golden Lease If NFL OKs Rams' Move, Club Can Expect Nearly Double Money Coming From the Gates Alone*, ST. LOUIS POST-DISPATCH, Mar. 12, 1995, at B1.

¹⁸⁶ Christopher Keating, *Lawmakers Prepare to Crunch Numbers on Stadium Proposal*, HARTFORD COURANT, Nov. 21, 1998, at A1. See also Stephen Ohlemacher & Dan Haar, *Taxpayers' Bill \$257 Million?*, HARTFORD COURANT, Dec. 10, 1998, at 1 (citing a report by the State of Connecticut General Assembly's Office of Fiscal Analysis that concluded that the proposed football stadium would have created a \$257 million deficit for the State).

benefits for the Patriots, while presenting the state with only minimal potential gains, with the likelihood of significant financial debt related to the stadium.

b. *Collecting Insufficient Revenue to Pay for the Yearly Debt*

Under the proposed agreement, the state would have paid for the entire \$375 million stadium project, including infrastructure improvements and parking.¹⁸⁷ Over a thirty year period, the state's yearly debt payment would have been \$25 million.¹⁸⁸ The problem with this enormous debt payment is that the state did not anticipate initially generating enough revenue from the stadium to cover this financial obligation. To help finance the deal, the state expected to collect \$15.6 million in annual revenue from the operation of the stadium and various revenue attributable to the stadium.¹⁸⁹ The state claimed, however, that while at first the direct tax revenues generated by the stadium would have only covered half of the annual debt payments, over the thirty year life of the deal, these revenues would have more than paid for the cost.¹⁹⁰ Yet, as detailed in Part V, economic impact studies often overestimate the attendance-generated revenue because these studies do not account for the natural drop in attendance that occurs over the life of a stadium.¹⁹¹ Therefore, while an independent study by KPMG Peat Marwick estimated

¹⁸⁷ Gregg Krupa, *Major Conn. Firms Cool on Buying Pats Luxury Boxes: Sales of Premium Seating a Key to Financing of \$280M Stadium Deal*, BOSTON GLOBE, Nov. 26, 1998, at A76.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.* The in-stadium revenue would have come largely from a 10% ticket tax. The high-end seating would have generated \$4.5 million, while the general seating would have garnered the state \$2.7 million a year. The state would have also received revenue from sales tax on concessions, novelties sold in the stadium, parking at the stadium, and stadium advertising. These different revenue sources would have garnered the state \$15.6 million in the initial years, with a projected 6% increase per year. However, the state would have also received revenue not accounted for in the stadium's financial deal through the University of Connecticut football team games, international soccer matches, concerts, and tax revenues from new restaurants, hotels, and parking lots. Cassidy, *supra* note 3, at A1. See also Roger Catlin, *New Stadium Could Be Big Concerts' Home Too*, HARTFORD COURANT, Nov. 21, 1998, at A10 (detailing the potential revenue created by concerts which otherwise would most likely go to a venue outside of Connecticut). Nevertheless, all of this revenue would most likely still have fallen short of covering the state's cost until more than a decade into the life of the stadium.

¹⁹⁰ Christopher Keating & Matthew Daley, *Study: Hartford Just Right for NFL Team*, HARTFORD COURANT, Dec. 2, 1998, at A1 (citing an independent study concluded by KPMG Peat Marwick which reported that the state would have made a \$3.2 million total profit over the thirty year life of the stadium). The study also notes that the stadium would have helped to generate local economic activity sufficient to create 2,700 new private-sector jobs within the first year and 3,200 within the first five years of the stadium's existence.

¹⁹¹ See text accompanying *supra* notes 134-40.

that the stadium would have grossed \$3.2 million in total profits for the thirty year life of the stadium, experts posit that the projections are based on inflated, unrealistic numbers. If this history of overestimation applied to the Hartford stadium, then the state would have never been able to cover its expenditures on the investment. Moreover, even if stadium-related revenue would have increased at a projected 6% per year, the state would have faced a deficit in the yearly debt payment until the twelfth year of the projected life of the stadium.¹⁹² This situation provided great financial burdens on the state balanced only by the unfounded hope that the revenue generation would have continued to increase by 6% over the life of the stadium and thus finally show a profit for the state to compensate for said initial deficits.

c. *The Premium Seating Guarantee: A Potential Loss for the State*

The state also faced another potential financial loss. The proposed stadium deal allocated all revenue generated by the sale of the facility's premium seating options to the team.¹⁹³ A provision in the deal guaranteed the Patriots the total potential generated revenue from these seating options. If the luxury suites and club seats did not sell-out entirely, the state would have been forced to pay the Patriots up to \$17.5 million dollars a year for this guaranteed subsidy.¹⁹⁴ What was possibly most troubling about this situation was that preliminary indications pointed to the likelihood that the stadium would not have sold all of these special seating options.¹⁹⁵ Without significant support from corporate Connecticut, the state and the taxpayers would have had to cover an additional financial burden for the stadium, the only sports facility proposed for the NFL that included taxpayer money for

¹⁹² Cassidy, *supra* note 3, at A1. The State was considering using \$100 million from its 1997-98 fiscal year surplus as a down payment for the proposed stadium. This would have lessened the State's yearly debt service payment and increased the likelihood that the State would have covered its expenditures and possibly made money off of the investment over the life of the stadium. Christopher Keating & Matthew Daly, *New Numbers Mean Quicker Profits, Officials Say*, HARTFORD COURANT, Dec. 11, 1998, at 1 (citing new projections from Governor John G. Rowland and other Connecticut legislators that estimated a \$260 million savings over a thirty year period if the State used the \$100 million as a down payment).

¹⁹³ Daly, *supra* note 192, at A1. The luxury suites – priced at \$100,000 apiece and thus ranking them among the most expensive in the country – would have earned \$12.5 million a year if they were all leased. Likewise, if all leased, the club seats would have generated \$30 million a year.

¹⁹⁴ Mike Swift & Tom Pulco, *Suite Success Key To Stadium: Stadium Package a Suite Deal If Corporate Sponsors Don't Fill Luxury Suites, State Pays Kraft the Difference*, HARTFORD COURANT, Nov. 24, 1998, at A1.

¹⁹⁵ Krupa, *supra* note 187, at A76. Interviews conducted by the HARTFORD COURANT with more than a dozen of Connecticut's top companies revealed little immediate interest in the luxury suites. In fact, as of November 26, 1998, only two of the luxury suites had received preliminary commitments.

the purchase of luxury boxes and club seats. Therefore, the state, in addition to the \$25 million yearly debt payments, may have had to subsidize special seating options for a Patriots team which would have spent nothing on the construction or maintenance of the stadium.

d. *The Related Expenses Left Unaccounted for in the Agreement*

Finally, the financial plan did not account for the added expense and strain the new stadium and subsequent downtown redevelopment projects would have had on Hartford municipal services such as traffic control, fire and police protection, and litter clean-up.¹⁹⁶ Moreover, other expensive infrastructure considerations might have also arisen. For example, the state's Capital City Economic Development Authority had begun planning a \$65 million program to add another five thousand parking spaces to accommodate the influx of fans and shoppers to the revitalized downtown area.¹⁹⁷ In addition, the Patriots might have asked the state or the city to develop a mass transit system in downtown Hartford.¹⁹⁸ Therefore, there might have been substantial extra costs to the city and state that were not accounted for in the financial deal. These added expenses increased the amount of necessary stadium-generated revenue that the state would have had to raise in order to at the very least meet its debt payments, if not profit from the stadium.

e. *Conclusion*

The Patriots' owner sought to keep the team in Massachusetts and was willing to pay \$200 million to build a new stadium there.¹⁹⁹ Yet, instead of striking a deal that was beneficial to both the state and the Patriots, the State of Connecticut entered into an initial deal with the Patriots that imposed heavy financial burdens. On the other hand, the aforementioned independent study conservatively estimated that the stadium would have generated more than \$90 million in gross revenue for the Patriots.²⁰⁰ In fact,

¹⁹⁶ Tom Puleo & Carolyn Moreau, *Patriots' Relocation No Freebie for City Stadium Would Demand Police, Fire Services*, HARTFORD COURANT, Nov. 25, 1998, at A1.

¹⁹⁷ Mike Swift & Tom Puleo, *Now City Needs Game Plan Planners Scrounge Parking Places to Prevent Football Fan Gridlock*, HARTFORD COURANT, Nov. 21, 1998, at A1.

¹⁹⁸ *Id.*

¹⁹⁹ Condon, *supra* note 14, at A3.

²⁰⁰ Mike Swift, *The \$100 Million Man?: Stadium Deal Would Make Kraft's Patriots One of the League's Riches Franchises*, HARTFORD COURANT, Dec. 2, 1998, at A1. Revenue will be generated from general admission ticket sales; the sale of luxury suites and club seats; concessions, parking, advertising, and in-

several economists in this field say that the proposed stadium deal appeared to be among the most lucrative ever made by a government to an NFL owner.²⁰¹ The benefits reaped from this deal would have made the Patriots the fourth most valuable franchise in the NFL.

These benefits for the franchise hold even further importance when one realizes how one-sided the deal was. The Patriots would not have contributed any up-front money to the deal, but rather would have reaped the aforementioned benefits through various revenue sources. The Patriots' sole financial obligation detailed in this agreement was the cost of operating the stadium. The state, on the other hand, had only the hope that the optimistic in-stadium revenue projections would have come to fruition and thus paid for the extensive costs of the stadium. However, this occurrence did not seem likely. Instead, the state would likely have fallen significantly short of its debt payment for at least the first ten years of the stadium. Also, the state may have had to subsidize the Patriots for the special seating options which went unsold each year. Finally, extra infrastructure costs would have added to the state's already hefty financial burden. Given that the stadium would have been wholly funded by the state, and that the financial deal almost ensured the state of lingering debt for more than a decade to come, if it became profitable or self-sustaining at all, this proposed stadium was clearly a bad investment for the State of Connecticut and its taxpayers.

VI. SUCCESSFUL SPORTS FACILITY INVESTMENTS

A. Overview

While many experts of sports facility financing claim that municipal sports arenas and stadiums are bad economic deals for cities, two new sports facilities have transcended this conventional rule: Baltimore's Camden Yards Baseball Park and Jacobs Field in Cleveland.²⁰² These two sports facilities share three attributes in common which lead experts to praise these endeavors as worth investments for municipalities. First, both financial deals provide for a fair split of stadium revenues to enable the city to cover its debt payments and for the team to improve its profits and thus the worth of the franchise. Second, in each city, the new sports facility has been successful in

stadium merchandise; and stadium naming rights.

²⁰¹ Smith and Puleo, *supra* note 197, at A1.

²⁰² One caveat to bear in mind with the forthcoming analyses is that both stadiums have been open for only a short period of time, less than ten years in both cases. Therefore, the benefits of these stadiums may fall susceptible to the "honeymoon effect" in attendance that new sports facilities experience. See text accompanying *supra* notes 146-49.

spurring economic growth and creating new jobs. Finally, both cities have been successful in revitalizing their respective downtown areas through the development of the new stadium and other projects.

B. Baltimore's Camden Yards Baseball Park

The \$200 million baseball stadium for the Baltimore Orioles was built and financed by the Maryland Stadium Authority (MSA). While financial deals where the local or state government provides all of the up-front expenditures are often considered by critics to be undesirable, the MSA structured a deal that allows for the ballpark to be profitable for the city. The MSA receives revenue from a number of different sources to cover its debt payment and overhead. The Orioles pay \$6 million a year in rent.²⁰³ The MSA also receives \$5 million in the form of incremental admission tax receipts.²⁰⁴ Extra revenue is also created through the 10% of luxury suite rentals, signage, and club seat revenues which the MSA receives.²⁰⁵ The MSA's debt payment and overhead total \$20 million a year.²⁰⁶ However, the aforementioned revenue, plus revenue gained from parking and new taxes generated from new economic growth in the area, help the MSA meet their financial obligations. Moreover, the real internal rate of return on the stadium is 7.75%, a significant figure considering that Phoenix's rate of return on its new baseball stadium is between 1-2%.²⁰⁷

A key to the MSA's ability to meet its yearly financial responsibilities is the expansion of the Baltimore economy because of the new sports facility. Average attendance during the last five years has grown from 29,458 to 45,034.²⁰⁸ This increase in the number of people attending games and subsequently spending money in the downtown Baltimore area has spurred economic growth. In fact, the out-of-state expenditures have translated into five hundred and seventy-five new jobs for the Baltimore downtown area.²⁰⁹ This economic prosperity is due, in large part, to the new sports facility and the Orioles has helped Baltimore with its downtown resurgence.

²⁰³ Bruce W. Hamilton & Peter Kahn, *Baltimore's Camden Yards*, in *SPORTS, JOBS, & TAXES: THE ECONOMIC IMPACT OF SPORTS TEAMS AND STADIUMS*, *supra* note 1, at 259.

²⁰⁴ *Id.* The admissions tax is 10% of the overall gate receipts.

²⁰⁵ Noll & Zimbalist, *supra* note 1, at 31.

²⁰⁶ Hamilton & Kahn, *supra* note 203, at 257.

²⁰⁷ *Id.* at 258; Baade, *supra* note 124, at 117.

²⁰⁸ Hamilton & Kahn, *supra* note 203, at 245. Forty-six percent of fans attending Baltimore Orioles' games reside outside of Baltimore, while 31%—included in this 46%—actually live outside of the state. As mentioned in Part III, the influx of fans from outside of the metropolitan area create new net revenue to the city, both in terms of income for businesses and taxes for the city.

²⁰⁹ *Id.* at 257.

In addition, the stadium financial deal is equally as favorable to the Orioles. The total stadium revenue, most of which the Orioles keep, has increased by approximately \$25.5 million.²¹⁰ This new revenue increases the value of the Orioles' franchise and allows the Orioles to do what they could not do at their former home, Memorial Stadium: spend competitively on their team. In fact, since their move to Camden Yards, the payroll for the Orioles' roster has risen approximately the same as their net revenue increase, \$22 million.²¹¹ These benefits all come at the cost to the Orioles of only \$6 million in rent and 10% of in-stadium revenues.

Therefore, as experts point out, the new Camden Yards baseball stadium has produced the proverbial win-win situation. The revenue generated, both inside and outside the stadium, allows the MSA to cover its expenses while also enabling the Orioles to increase their profits and the value of their franchise. Moreover, the new sports facility has revitalized Baltimore's downtown through new net economic benefits.

C. Cleveland's Gateway Project

1. INTRODUCTION

Approximately a decade ago, downtown Cleveland was a ponderous relic with a decaying and dying core.²¹² However, the building of two new sports facilities – Gund Arena, home of the Cleveland Cavaliers, and Jacobs Field, which hosts the Cleveland Indians – coupled with other development projects, has rejuvenated downtown Cleveland. These sports facilities are the crown jewels of the downtown revitalization project, spurring significant new economic activity in the city. Moreover, experts have hailed both the financial deals as successes because the two sports facilities provide benefits for both the teams and the city.

²¹⁰ *Id.* Gate receipts increased by \$13.2 million over the first four years of the stadium. Stadium revenues, which include seventy-two luxury boxes, club seats, and signage, increased by an average of \$12.3 million over the same period of time.

²¹¹ *Id.* at 259.

²¹² Ziona Austrian & Mark S. Rosentraub, *Cleveland's Gateway to the Future*, in *SPORTS, JOBS, & TAXES: THE ECONOMIC IMPACT OF SPORTS TEAMS AND STADIUMS*, *supra* note 1, at 355.

2. PUBLIC AND PRIVATE FINANCING: BENEFITS FOR BOTH SIDES

The Gateway Project provided for both public and private financing for the two new sports facilities. While the initial estimate for the cost of the two facilities was \$343.5 million, the final cost totaled \$467 million.²¹³ However, even with this significant price tag for the project, the teams and the city found a balanced financing agreement.²¹⁴ The total private investment totaled \$174 million dollars and came from sources such as sales from the luxury seats, a donation from a non-profit business organization supported by the city's leading businesses called Cleveland Tomorrow, property loans, and interest earnings. Also, to help cover the escalating costs of the construction, the Indians spent an additional \$20 million on the project.²¹⁵

The city paid the difference between the private investment and the costs of the Gateway Project through the issuance of bonds.²¹⁶ The city will pay the debt service through two sources: revenues generated from a "sin tax" and through innovative rental agreements with the teams.²¹⁷ The rental agreements for both the Indians and the Cavaliers provide additional revenue bases for the city that are directly tied to attendance.²¹⁸ The rent paid by the Cavaliers comes in three forms. First, the city receives 27.5% of the luxury suite revenue.²¹⁹ Second, the city garners 48% of the club seat revenue.²²⁰ Finally, the city receives seventy-five cents per ticket in excess of 1.85 and 2.5 million tickets, and one dollar per ticket in excess of 2.5 million tickets.²²¹ This ticket revenue garnered by the city is estimated at \$1.175 million per year through the year 2004.²²² The rent paid by the Indians comes only in the form of revenue generated by ticket sales. The city receives seventy-five

²¹³ *Id.* at 360-62. The goals of the Gateway Project were three-fold. First, the city sought to retain the Indians, who were threatening to leave. Second, the city wanted to bring the Cavaliers back to the downtown area. Finally, Cleveland's political and business leaders hoped that the presence of the two teams and the new facilities would lead to more growth of the city's downtown area. *Id.* at 358.

²¹⁴ At first there were disagreements between the two parties regarding paying the difference between the original estimate for the facilities and the ultimate cost. However, the two sides finally came to an agreement as to how to cover the extra expenditures. *See id.* at 363-65.

²¹⁵ *Id.* at 364. This sum mitigated the future rental payments that the Indians will pay in the future.

²¹⁶ *Id.*

²¹⁷ *Id.* at 360-65. The "sin tax," applied to alcohol and cigarettes, is expected to gross \$169.5 million over the life of the agreement.

²¹⁸ *Id.* at 364.

²¹⁹ Noll & Zimbalist, *supra* note 1, at 37.

²²⁰ *Id.*

²²¹ *Id.* These ticket thresholds apply to both basketball and non-basketball events.

²²² Austrian & Rosentraub, *supra* note 212, at 364.

cents per ticket sold after 1.85 million paid admissions, one dollar between 2.25 and 2.5 million attendance, and \$1.25 per ticket for attendance above 2.5 million.²²³ The present value of this ticket revenue is \$63.5 million for the city.²²⁴ These creative solutions to covering the excess expenditures ensure that the city will not lose money on the investment. Just as the city benefits, so do the two sports teams. Both the Indians and the Cavaliers will receive the revenue from all parking, signage, concessions, and luxury and seat revenues.²²⁵ This revenue help increase each teams' profitability and the value of their respective franchise.

3. CLEVELAND'S DOWNTOWN REVITALIZATION

Beyond the mutual benefits reaped by both the city and the Indians and Cavaliers as detailed above, perhaps the most significant benefit realized is the revitalization of Cleveland's downtown area. The two new sports facilities are complemented with other development projects: a theater district, large corporate headquarters, two shopping malls, numerous restaurants and clubs, a museum district, and several apartment and condominium complexes.²²⁶ These various attractions draw large number of crowds to a once desolate downtown.

In fact, the excitement created by this rejuvenated downtown area has actually translated into tangible economic benefits. From 1992-1995, there was a net increase in the number of businesses established in the downtown area.²²⁷ During 1996 alone, an additional thirteen restaurants were opened, occupying one hundred thousand square feet in the Gateway area.²²⁸ These business have also created new jobs. Within the three years after construction was initiated on the two sports facilities, the downtown area created 1,251 new jobs, in addition to the 1,779 jobs that had been created prior to the building of the two facilities.²²⁹

Since 1991, in addition to the two new sports facilities, more than \$700 million has been spent on other major development projects downtown. Cleveland also ensured that its redevelopment goals would be realized by also improving the downtown area's infrastructure: streets, sidewalks, lighting,

²²³ Noll & Zimbalist, *supra* note 1, at 32, 36.

²²⁴ Austrian & Rosentraub, *supra* note 212, at 365.

²²⁵ *Id.*

²²⁶ *Id.* at 356-57.

²²⁷ *Id.* at 379.

²²⁸ *Id.* at 380. Most of these restaurants are a direct result of Jacobs Field and Gund Arena.

²²⁹ *Id.* at 379.

landscaping, and signage.²³⁰ This holistic approach to downtown redevelopment has led to great economic success for the city and local businesses.

VII. LOS ANGELES' STAPLES CENTER

A. Introduction

On October 31, 1997, the Los Angeles City Council approved the Disposition and Development Agreement ("DDA") between the L.A. Arena Development Company, LLC ("Developer"), and the City of Los Angeles ("City") to build a new sports arena in downtown Los Angeles, later named the Staples Center.²³¹ The agreement to build the Staples Center, which opened in October 1999 at a cost of approximately \$375 million, marked the culmination of more than two years of planning and negotiation between the Developer and the City. With this agreement, the City lured the NBA's Los Angeles Lakers and the NHL's Los Angeles Kings from their former home at the Great Western Forum in Inglewood, California, to the new location within City limits.²³² In approving this deal, which committed public funds to the construction of the Staples Center, the City hoped to revitalize the South Park neighborhood of downtown Los Angeles by spurring economic investment, development, and growth in the area. Moreover, in stark contrast to the Motion of Understanding ("MOU") entered into by both parties nearly ten months earlier, the DDA embodied a financially favorable deal for the City, particularly in light of the objective standards by which such agreements are judged. In fact, given the absence of financial risk associated with the investment, coupled with the potential for significant economic gains, the City set a new standard for new sports facility financing deals which offered important, substantive benefits to both parties.

²³⁰ *Id.* at 380.

²³¹ Disposition and Development Agreement By and Between the City of Los Angeles and the L.A. Arena Development Company, LLC (Oct. 31, 1997) (on file with author) [hereinafter *Disposition and Development Agreement*]. I will refer to the new sports arena as the Staples Center when speaking about the facility both before and after its naming for consistency and clarity.

²³² *See id.* at § 16.1(a) (stating that the Lakers and Kings will "play Substantially All Home Games at an arena to be constructed by the Developer for a period of 25 years following construction thereof...."). The NBA's Los Angeles Clippers later signed a six year lease to play their home games in the new arena as well. Steve Springer, *Clippers to Join Kings, Lakers in New Arena: Donald Sterling's NBA Team Agrees to a Six-Year Pact to Play in the Downtown Staples Center When It Opens Next Year*, L.A. TIMES, Apr. 17, 1998, at B1.

B. Revitalizing Downtown Los Angeles: A New Sports Arena

1. THE SOUTH PARK AREA OF DOWNTOWN LOS ANGELES

The South Park neighborhood which hosts the Staples Center, “[was] blighted and in need of economic revitalization.”²³³ The seventy block area of downtown Los Angeles was marked by empty parking lots, boarded-up warehouses, and “For Lease” signs which adorned most office buildings in the neighborhood.²³⁴ Twenty-five percent of this area, which one local reporter described as “predominantly sleepy and often seedy,” was comprised of parking lots, while another 25% of the land remained vacant and undeveloped.²³⁵ Moreover, although 90% of the 270 apartments were rented, much of the ground retail space was empty.²³⁶ Given these dilapidated conditions in South Park, City officials sought to revitalize the area.

2. SPURRING ECONOMIC DEVELOPMENT

City officials saw the opportunity to revitalize this area of downtown Los Angeles with the Staples Center, which hosts basketball and hockey games, as well as concerts and other events. On January 15, 1997, the City Council, with a thirteen to two vote, entered into an initial agreement with the Developer to construct this new facility. The City Council defended this action by pointing to its governmental duty to encourage economic development of this kind.²³⁷ This commitment to revitalizing downtown Los

²³³ Los Angeles Arena Motion of Understanding By and Between the City of Los Angeles and the L.A. Arena Development Company (Jan. 15, 1997) (on file with author) [hereinafter *Los Angeles Arena Motion of Understanding*].

²³⁴ Larry Gordon, *Hopes and Goals Downtown: Merchants Say Proposed Sports Arena Next to Convention Center Would Bring an Economic Boon, But Some Critics Wonder How Much It Would Help the Depressed Area*, L.A. TIMES, Sept. 2, 1996, at B1.

²³⁵ Jesus Sanchez, *California: News and Insight on Business in the Golden State Heard on the Beat/Real Estate Courting Change Sports Arena Raises Hope for Revitalizing Downtown's South Side*, L.A. TIMES, Apr. 30, 1998, at D2; see also Gordon, *supra* note 234, at B1.

²³⁶ Gordon, *supra* note 234, at B1. The population of South Park was only one third of the 15,000 called for in city plans. City officials anticipate an increase in population with the projected economic boon that the new sports arena will spur.

²³⁷ See *Disposition and Development Agreement*, *supra* note 231, at § 1.10 (stating that encouraging economic development that creates or retains jobs and income for the City “[i]s a valid and important public and municipal purpose”); *Development Agreement By and Between the City of Los Angeles and the L.A. Arena Development Company, LLC* (Oct. 23, 1997) (draft date) (on file with author) [hereinafter *Development Agreement*], at § 2.1 (citing the State Enabling Statute, § 65864, which authorizes cities to enter to enter into binding development agreements with private parties).

Angeles was explicitly stated in the DDA, which detailed both the City's and Developer's goal of eliminating blight in and redeveloping the South Park area "in a manner that will encourage redevelopment in surrounding areas" as well.²³⁸

Proponents of the Staples Center, from City officials to local business leaders, envisioned that the arena would be an important first phase in the development of the downtown area into a hive of sports and entertainment related shops and restaurants.²³⁹ By attracting more visitors to the downtown area, the Staples Center and subsequent development projects will generate increased economic activity that will hopefully revive the impoverished, stagnant neighborhood. These other development projects will include "Hotel, Retail, Dining and Entertainment facilities in the vicinity of the Arena."²⁴⁰ These developments will be designed to enhance the pedestrian environment, by establishing retail and other active space fronting Figueroa Street and linking to other areas north and south along the street.²⁴¹

A key to the success of the downtown redevelopment plan will be the use and expansion of the currently underbooked and heavily subsidized Los Angeles Convention Center. The agreement between the City and the Developer explicitly calls for the identification of and development of *shared use* opportunities between the Convention Center and the Staples Center.²⁴² These "shared use" opportunities, City officials anticipate, will bring more events to the Convention Center, which will subsequently bring new income to the City and defray the cost of the Convention Center. To accommodate this projected new business, the Convention Center will need to expand. The agreement between the City and the Developer calls for a 250,000 square foot expansion, bringing the Convention Center's usable space to 1,000,000 total square feet.²⁴³ As stated in the agreement, the Convention Center and its expansion is of "vital importance" to the "success and vitality of the downtown area."²⁴⁴

The building of the Staples Center, the expansion of the Convention Center, and the other development projects will create what developers and

²³⁸ *Disposition and Development Agreement*, *supra* note 231, at § 1.11.

²³⁹ Jean Merl, *Council Endorses Deal to Build Sports Arena Downtown: Lopsided Vote Commits City Funds and Land to Projects. Wachs and Holden Criticize Move*, L.A. TIMES, Jan. 16, 1997, at B1.

²⁴⁰ *Disposition and Development Agreement*, *supra* note 231, at § 1.8. These development projects, the City anticipates, will create new jobs in the City and contribute additional spending and output to the City's economy. *See id.*, at §§ 3.1, 3.2.

²⁴¹ *Id.*

²⁴² *Id.* at § 8.7.

²⁴³ *Los Angeles Arena Motion of Understanding*, *supra* note 233, at § 7.16.

²⁴⁴ *Id.*

designers call a "Times Square West."²⁴⁵ The thirty-five acre district surrounding the Staples Center will have hotels, movie theaters, theme restaurants, and a sports museum.²⁴⁶ Electronic billboards, video screens in the sidewalks, ice skating rinks, and even a tower like that in New York on which a glittery globe could descend at midnight on New Year's Eve are being considered as further entertainment attractions.²⁴⁷ This new entertainment mecca in Los Angeles will compete with local municipalities such as Santa Monica, Pasadena, and Universal City which also boast highly lucrative entertainment, shopping, and tourist centers.²⁴⁸ This vision for downtown revitalization depends, in large part, upon the success of the Staples Center.

3. DESIGN OF THE NEW SPORTS ARENA

With the Staples Center being the cornerstone of this downtown revitalization project, the City and the Developer took great care in planning the schematics and design of the facility. The two parties planned "a first class, state-of-the-art sports and entertainment facility for the exhibition of professional hockey and basketball, concerts and other events. . . ."²⁴⁹ The Staples Center has approximately 20,000 seats when configured for basketball, 160 luxury suites, 2,476 club seats, and 750,000 square feet of gross area.²⁵⁰ Also, the Staples Center houses approximately 100,000 square feet of ancillary retail, dining, and entertainment facilities, 50,000 square feet of office space for administrative use by the Developer and the professional sports teams, a practice basketball facility, and other such facilities.²⁵¹ The agreement between the Developer and the City stipulates that the design of the Staples Center would be "architecturally compatible with and which complements the facade of the Convention Center."²⁵² This architectural coherence and continuance lends itself to the overall downtown redevelopment plan detailed above. Moreover, as will be discussed *infra*, the

²⁴⁵ Larry Gordon, *Sports Arena Previews Unveiled Downtown: Conceptual Looks Stress Hip Times Square Ambiance of Hotels, Theaters, and Restaurants*, L.A. TIMES, Feb. 21, 1997, at B1.

²⁴⁶ *Id.*

²⁴⁷ *Id.*

²⁴⁸ Gordon, *supra* note 234, at B1.

²⁴⁹ *Disposition and Development Agreement*, *supra* note 231, at § 1.5.

²⁵⁰ *Id.* See also David Wharton, *Staples Center Will Contain Many Perks for Upscale Clientele that is Unique to Los Angeles*, L.A. TIMES, June 27, 1999, at D1.

²⁵¹ *Los Angeles Arena Motion of Understanding*, *supra* note 233, at §§ 8.2(c)(i)-(iv). The agreement further allows for uses of the facility consistent with that of other sports arenas and for all other lawful purposes permitted by law other than adult entertainment businesses.

²⁵² *Id.* at § 4.5.1.

design of the Staples Center allows for the mutual maximization of economic benefits for the City and the Developer.

C. Costs and Responsibilities

1. INTRODUCTION

This section will discuss the responsibilities and general costs associated with the project and to whom they are delegated within the agreement. The actual costs and exact details of the financial deal will be fleshed out in sections D and E, which analyze the MOU and the DDA respectively. The following two sections, instead, explain which party is responsible for the different processes necessary to bring the project to fruition.

2. FOR THE DEVELOPER

The Developer was responsible for the construction of the Staples Center. The agreement between the parties stipulated that the Developer "shall at its sole cost and expense (except as otherwise provided in the DDA) develop and construct the arena. . . ."²⁵³ This general overarching responsibility divided itself into areas such as the development, planning, design, construction, and operation of the project. The Developer's responsibility began with the demolition of existing structures on the Staples Center site.²⁵⁴ This event coincided with another important undertaking for which the Developer was responsible: the environmental investigation and remediation with respect to hazardous substances that were introduced at the Staples Center site.²⁵⁵ In conjunction with the construction of the Staples Center, the Developer also met all of the permit and development conditions imposed by city and state laws, rules, and ordinances.²⁵⁶ Moreover, the actual construction of the arena begot other responsibilities such as the costs of project and project-related signage, on-site and off-site costs related to construction, utility relocation, the mitigation required by the Environmental Impact Report, and the use and costs of private consultants.²⁵⁷ Once the Staples Center was constructed, the Developer remained responsible for the

²⁵³ Arena Ground Lease By and Between the City of Los Angeles and the L.A. Arena Development Company, LLC (Oct. 13, 1997) (draft date) (on file with author). For details of the financial contribution of the City, see *infra* text accompanying notes 260-66.

²⁵⁴ Rick Orlov, *Razing of Arena Site OK'D*, L.A. DAILY NEWS, Jan. 21, 1998, at N3.

²⁵⁵ *Los Angeles Arena Motion of Understanding*, *supra* note 233, at § 8.2.2.

²⁵⁶ *Id.* at § 5.1.2.

²⁵⁷ *Id.*

maintenance, improvements, and repairs to the facility.²⁵⁸ Finally, the Developer was responsible for cooperating with any defense against litigation in regard to the Staples Center.²⁵⁹ Most of these responsibilities are customarily the obligations of the developer or owner in new sports facility agreements.

3. FOR THE CITY

The City's responsibilities came in two forms: financial and governmental. The City provided public money to the construction of the new arena and also performed some proprietary and governmental roles in the process.²⁶⁰ In terms of preparing the site for construction, the City oversaw all residential relocations and the relocation of the Los Angelitos Children's Center.²⁶¹ Next, related to the actual building of the facility, the City did "everything legally within its powers to further the project."²⁶² This type of assistance included aiding the Developer in attaining various entitlements, easements, and other approvals. These City obligations paralleled those taken by other cities in similar new sports facility agreements.

D. *The MOU: The Original, Less Favorable Agreement*

The Developer and the City entered into an initial agreement - the MOU - to build the \$200 million arena on January 15, 1997.²⁶³ The City initially pledged \$70.5 million in public funds to the project.²⁶⁴ The yearly debt service on this financial commitment would have been \$6.8 million.²⁶⁵ Over the twenty-seven year period the deal, the City's costs, with interest,

²⁵⁸ *Disposition and Development Agreement*, *supra* note 231, at § 11.2.

²⁵⁹ *Id.* at § 17.6. In fact, this stipulation called for the Developer to advance and reimburse the City for all reasonable costs incurred in defending the litigation.

²⁶⁰ Jean Merl, *Sports Arena Plan Approved by City Panel Development: Council Could Vote on Controversial Project as Soon as Wednesday. Revenues Are Expected - But Not Guaranteed*, L.A. TIMES, Jan. 14, 1997, at B3.

²⁶¹ *Los Angeles Arena Motion of Understanding*, *supra* note 233, at § 5.2.2.

²⁶² *Id.* at § 2.1.

²⁶³ Merl, *supra* note 239, at B1.

²⁶⁴ *Id.* Of the \$70.5 million, \$63 million was earmarked to acquire and prepare the arena site, and \$7.5 million was set aside for the residential relocation, relocation of the Los Angelitos Children's Center, and administrative costs.

²⁶⁵ Rick Henderson, *Here's a Deal We Can Afford to Refuse Sports Arena: Public Money Shouldn't Be Spent on Fat Cats Who Expect Huge Profits*, L.A. TIMES, June 11, 1997, at B7.

would have been \$180 million.²⁶⁶ Moreover, the City agreed to lease the site of the Staples Center for one dollar a year and donate other properties necessary for the project to the Developer.²⁶⁷

Under the MOU, all of the tax flows from the project were earmarked for the repayment of the City's debt.²⁶⁸ The tax revenue would have come from a variety of different sources: admissions fee, City parking tax, and construction sales tax. The agreement provided for the City to charge admissions fees for a period of twenty-five years. The City could assess a ticket tax designed to produce \$3.5 million per year in revenue.²⁶⁹ If the yearly estimated rate produced a deficit or a surplus, the MOU provided for an estimate for the next year to bring the yearly average to the designated \$3.5 million amount.²⁷⁰ Another provision ensured that if the particular admissions fee arrangement detailed in the MOU were invalidated by a court order, the City would be allowed to impose an alternative admissions or entertainment tax on its patrons.²⁷¹ If this tax or fee were subsequently invalidated, the Developer promised to reimburse the City \$1.75 million for lost anticipated revenue from an admissions fee.²⁷² However, this promise was not guaranteed by a third party. The City would also have collected revenue from parking taxes imposed on all parking facilities servicing and located near the Staples Center.²⁷³ Likewise, the City would receive 100% of the construction sales tax.²⁷⁴ These sources of projected-generated tax revenue, the City anticipated, would cover the \$136.5 million risk facing the City in regard to its debt service.²⁷⁵

The City would also receive additional benefits from the creations of new jobs. A study commissioned by the Los Angeles Convention and Visitors Bureau projected that arena project would create 710 permanent jobs, plus 514 jobs indirectly dependent on arena activities.²⁷⁶ However, the

²⁶⁶ OFFICE OF COUNCILMAN JOEL WACHS, COMPARISON OF NEW PROPOSAL TO EXISTING MOU DEAL AND THE DEVELOPER'S AUGUST 1997 'GUARANTY' PROPOSAL 1 (Oct. 8, 1997) [hereinafter *Comparison of New Proposal*].

²⁶⁷ *Id.*

²⁶⁸ *Id.*

²⁶⁹ *Los Angeles Arena Memorandum of Understanding, supra* note 233, at § 12.1.1.

²⁷⁰ *Id.* at § 12.1.2.

²⁷¹ *Id.*

²⁷² *Id.* at § 12.1.6. This promise constituted the only guarantee offered by the Developer in the MOU.

²⁷³ *Id.* at § 9.8.

²⁷⁴ *Comparison of New Proposal, supra* note 267, at 1.

²⁷⁵ Merl, *supra* note 239, at B1. As aforementioned, the City's yearly debt service would have been \$6.8 million. With the \$1.75 million "guarantee" from the Developer, the yearly City risk would be \$5.05 million. Over a twenty-five year period, the total City risk would equal \$136.5 million.

²⁷⁶ Gordon, *supra* note 234, at B1. The authors of this study, EY Kenneth Leventhal Real Estate

Developer did not commit to any job-incentive programs. The Developer promised, however, to employ women and minorities in at least 25% of arena-related jobs.²⁷⁷

The MOU deal mirrored many agreements between other professional sports teams and their respective host cities. First, the City would have donated millions of dollars worth of property to the Developer without compensation. Further, like most of other cities entering into such agreements, the City would have been faced with much financial uncertainty in regard to debt service payments and projected tax revenue. Although the City hoped that the new tax revenue would cover its debt service, without a significant guarantee from the Developer, an invalidated admissions fee or less revenue than projected would have left the City with up to \$5.05 million in yearly debt. Moreover, the new tax revenue created by the Staples Center would have been wholly earmarked for repaying the debt service. In this regard, the City's investment would not have returned any additional revenue from the project to the City. The City's only tangible benefits would have been the potential to revitalize downtown and the creation of more than a thousand potential new jobs. However, this uncertainty, coupled with the potential for millions of dollars worth of debt a year, made this a financially undesirable deal for the City.

E. *The DDA: Setting a New Standard*

1. BACKGROUND

After the City Council approved the MOU, the City and the Developer entered into nine months of negotiations to finalize an agreement to build the Staples Center. Councilman Joel Wachs, a critic of the agreement under the MOU, called for a public discussion regarding the Staples Center to gain leverage in seeking a better financial deal with the Developer.²⁷⁸ The City Council subsequently made public certain aspects of the agreement.²⁷⁹ The public responded negatively to the MOU, which provided few financial benefits to the City. The City, in turn, used this public sentiment to negotiate more favorable terms for the final agreement. The result was the

Group, acknowledged that these figures may have also included many jobs already in existence at the Great Western Forum in Inglewood. Moreover, the authors conceded that many of these jobs, like cotton candy vendors, would be near minimum wage.

²⁷⁷ Merl, *supra* note 239, at B1.

²⁷⁸ Ted Rohrlich, *Wachs Stiffens Proposal for Vote on Arena*, L.A. TIMES, Sept. 12, 1997, at B3.

²⁷⁹ Jodi Wilgoren, *Arena Builders Ready to Offer Debt Guarantee: Developers Promise to Pick Up Tab for \$70 Million in City Bonds, Sources Say*, L.A. TIMES, Aug. 22, 1997, at A1.

DDA, which provided a more favorable financial deal for the City than the MOU had provided. The more favorable provisions in the DDA arose in a decrease in the City's contribution, an increase in revenues and benefits for the City, and a guarantee from the Developer which ensured that the City will, at the very least, receive enough revenue to meet its yearly debt service. The DDA, therefore, resulted in a model sports facility financial agreement which provides the Developer with significant benefits while offering the City the potential for financial gains without any risk of debt – a situation unmatched by other sports facility financial deals.

2. THE CITY'S FINANCIAL OBLIGATION

Under the new agreement, the City still pledged public funds to the project. This financial contribution was used to acquire and prepare the Staples Center site, to pay for all residential relocations, and to relocate the Los Angelitos Children's Center.²⁸⁰ However, while the MOU called for a City financial contribution totaling \$70.5 million, the DDA reduced the borrowed funds advanced by the City to \$58.5 million.²⁸¹ The City's yearly debt service payment subsequently decreased from \$6.8 million to \$4.9 million.²⁸² Therefore, the DDA reduced both the City's yearly and total financial obligation.

3. THE CITY'S REVENUE SOURCES

As detailed by the "Development Agreement" between the City and the Developer, the City receives revenue from many of the same sources as under the MOU: admissions fee, parking revenues, and revenues directly and indirectly garnered from property taxes, sales taxes, business license taxes, utility taxes, and taxes attributable to arena-related business activities.²⁸³ However, unlike the MOU, the DDA allocates all of the revenue from these

²⁸⁰ *Disposition and Development Agreement*, *supra* note 231, at § 3.2(f).

²⁸¹ Gap Funding Agreement By and Between the City of Los Angeles and L.A. Arena Development Company, LLC (Oct. 13, 1997) (draft date) (on file with author) [hereinafter *Gap Funding Agreement*].

²⁸² *Comparison of New Proposal*, *supra* note 267, at 1.

²⁸³ *Disposition and Development Agreement*, *supra* note 231, at § 3.1.3.3. The City also receives a net annual rent of one dollar payable in advance and prepaid for the entire term of the agreement for the lease on the arena site. *Arena Ground Lease*, *supra* note 253, at § 6.1. Similar to the MOU, the DDA provides for an admissions fee assessed to arena ticket sales at a rate to average \$3.5 million for a twenty-five year period. *Disposition and Development Agreement*, *supra* note 231, at §§ 3.3.1-3.3.3.

taxes to the City.²⁸⁴ Moreover, revenue from property, parking, business licenses, sales, and utility taxes are not used to repay the City's debt service.²⁸⁵ This revenue, instead, constitutes new revenue from the City for whatever use City officials see fit. A conservative estimate of this revenue totals a \$73.6 million value to the City over the twenty-five year life of the agreement.²⁸⁶ The City, therefore, is guaranteed a tangible financial return on its investment.

Two other additional revenue sources, not included in the MOU, also make the deal more favorable to the City. First, the Los Angeles Community Redevelopment Agency agreed to contribute \$12 million to the project for the cost of certain public improvements.²⁸⁷ This amount lessened the City's contribution to the Staples Center from \$70.5 million to \$58.5 million. Second, the DDA requires the Developer to purchase the City-owned Olympic properties necessary for the development project. The MOU had provided for the transference of these properties from the City to the Developer without any compensation, as is custom in most sport facility financial deals.²⁸⁸ Under the DDA, however, the Developer paid the City \$4.8 million – the actual cost to acquire these properties.²⁸⁹ This revenue, unaccounted for in terms of being a cost or benefit in the MOU, added to the money gained by the City in excess of its debt service payments.

4. JOB INCENTIVE PROGRAM

Another benefit claimed by the City in the DDA is a concrete commitment on the part of the Developer to implement a job incentive program like that used by DreamWorks SKG in their agreement with the City and the State of California.²⁹⁰ This program has created an estimated eight hundred new jobs directly related to the Staples Center.²⁹¹ The quantifiable value for the City of this job incentive program is approximately

²⁸⁴ *Comparison of New Proposal, supra* note 266, at 1. Under the DDA, the Developer gives up all claims to anticipated tax receipts.

²⁸⁵ *Id.*

²⁸⁶ *Id.*

²⁸⁷ *Id.* This contribution was consistent with the Community Redevelopment Agency's mission to redevelop blighted areas. As § 1.6 of the DDA points out, the Community Development Agency "[i]s a public body, corporate and politic, formed and existing under Chapter 2 of the Community Redevelopment Law of the State of California."

²⁸⁸ See text accompanying *supra* note 140.

²⁸⁹ *Comparison of New Proposal, supra* note 266, at 1.

²⁹⁰ *Id.* at 2.

²⁹¹ *Id.*

\$2.7 million.²⁹² In addition, further job creation is expected through the aforementioned development projects related to the Staples Center.

The DDA also provides for training and other opportunity-producing programs for local residents. As the DDA states, the City and the Developer are "committed to extending to residents of the City of Los Angeles the employment and economic opportunities expected to result from the development and operation of the Project."²⁹³ Under the terms of the agreement, the Developer implemented a voluntary minority and women business enterprise program and workforce utilization program.²⁹⁴ Finally, in terms of all construction jobs related to the Staples Center, the Developer paid and ensured that all sub-contractors paid "prevailing wages" as determined pursuant to the provisions of Section 1770 of the California Labor Code.²⁹⁵ These additional provisions benefited the City because of the significant opportunities they provided local residents.

5. GAP FUNDING AGREEMENT

The crown jewel of the DDA, however, is the Developer's personal guarantee that loans of any City funds will be repaid for the Staples Center. If the admissions fees plus incremental parking revenue does not repay the City's yearly debt service, the Developer will repay the difference.²⁹⁶ This unqualified, unconditional promise to pay any remaining debt attributable to the City is backed by an irrevocable letter of credit issued by a financial institution with a net worth of more than one billion dollars.²⁹⁷ This agreement protects the City from any financial losses by reducing the City's debt service to zero. This inimitable provision in the DDA alleviates any financial risk for the City, while at the same time providing the City with the opportunity to reap financial benefits if the Staples Center is successful.

²⁹² *Id.*

²⁹³ *Disposition and Development Agreement, supra* note 231, at § 13.2. In particular, the City and the Developer will target the three mile radius around the arena site in providing such opportunities to residents of the City.

²⁹⁴ *Id.* at § 9.11. The purpose of this program is to assist local minority-owned businesses and women-owned businesses in participating in the economic opportunities associated with the development and operation of the arena, both on-site and off-site. Moreover, the Developer will work with the City's Community Development Department in the Entrepreneurial Program and its Business Assistance Center Program in furthering these goals. *Id.* at § 13.2(a).

²⁹⁵ *Id.* at § 9.12.

²⁹⁶ *A Summary of Development Across Los Angeles County Community: Los Angeles City Council OKs Final Details of Sports Arena*, L.A. TIMES, Mar. 21, 1998, at B2.

²⁹⁷ *Gap Funding Agreement, supra* note 281, at § 3.9(a)(i).

6. THE DEVELOPER'S BENEFITS

While the DDA provided significant benefits for the City, it did not do so to the detriment of the Developer. With as economically sound a financial agreement as the City negotiated, the Developer receives equally beneficial, if not better, provisions. The DDA granted the naming rights of the facility to the Developer, who signed a twenty year, \$116 million agreement with Staples, Inc., to name the Staples Center.²⁹⁸ Also, the Developer receives the revenue from the sale of the 160 luxury suites, leased at prices ranging from \$197,000 to \$307,5000 a year; the 2,476 club seats, starting at \$12,995; and other ticket sales, including memberships to the Grand Reserve Club – a private restaurant and lounge – with a yearly fee of \$10,500.²⁹⁹ The Developer also entered into sponsorship deals with ten corporations, each paying approximately \$2 to \$3 million a year, for rights to display advertisements.³⁰⁰ Parking revenues for the Developer garner approximately \$9.6 million per year.³⁰¹ Finally, the Developer generates revenue from various commercial licensing agreements. These revenue sources will substantially increase the profits of the teams and will subsequently increase the values of the respective franchises. For example, the Staples Center increased the value of the Los Angeles Lakers by approximately \$100 million.³⁰²

F. *Why the Staples Center is Economically Justifiable*

1. THE DDA IMPROVES THE ORIGINAL AGREEMENT IN THE MOU

The financial agreement originally set out in the MOU was similar to most new sports facility deals around the country. The provisions of the MOU were more favorable than the deals in Hartford and St. Louis because the City would not have had to pay for the construction of the entire stadium and would have received reasonable amounts of revenue to cover at least part

²⁹⁸ Westhead, *supra* note 98, at B9.

²⁹⁹ *Disposition and Development Agreement*, *supra* note 231, at § 1.5. There were no luxury suites in the Kings' and Lakers' former home, the Great Western Forum. The Clippers gain revenue from the two luxury suites in their former facility, the Los Angeles Memorial Sports Arena. See also Wharton, *supra* note 250, at D1.

³⁰⁰ *A Year and a Half After Groundbreaking, a Sports Palace Emerges in the Heart of Downtown*, L.A. TIMES MAGAZINE, Oct. 10, 1999, at 48.

³⁰¹ *Id.*

³⁰² Steve Springer and Larry Stewart, *L.A.'s Leading Man*, L.A. TIMES, June 15, 2001, at D1.

of its debt payment. However, applying the objective standards as set out in Part IV of this Article, the MOU was not an economically justifiable investment for the City. First, although the City devoted a smaller percentage and a smaller total contribution to the Staples Center compared to many others such deals, there was uncertainty as to whether the taxes would cover the City's debt payment. Moreover, all of the tax revenue earmarked for the City would have been used to pay off the City's debt on the Staples Center. If these sources of tax revenue failed to meet the yearly debt payment, the City would have had to supplement their payment through money taken from the City's general fund. This amount had the potential to be as expensive as \$5.05 million per year. Second, as is the case with most new sports facility agreements, the City was not receiving any form of compensation for the properties transferred to the Developer for construction purposes. These properties are worth approximately \$4.8 million dollars. Finally, the MOU provided no meaningful or substantive guarantees for substantial revenue sources nor a job incentive program which sought to aid the residents of the local community. All of these considerations could have cost the City more than \$185 million.³⁰³

The DDA, in contrast, provided the City with what Councilman Joel Wachs called "the best arena proposal ever negotiated in the United States."³⁰⁴ Many different aspects of the agreement made this deal a good investment for the City. First, the City's contribution to the Staples Center, \$58.5 million, is proportionally one of the lowest amounts ever given to a private developer from a city. Second, the City repays its already small yearly debt service payment, \$4.9 million, through revenue from admissions and incremental parking taxes. If these two sources of revenue do not cover this yearly amount, the Developer will pay the difference with its own funds. This guarantee reduces the City's debt service to zero and alleviates any financial risk for the City. This provision also ensures that the Staples Center will pay for itself. The value to the City of this provision alone is approximately \$62.9 million. Third, the City also garners revenue from other sources such as property taxes, sales taxes, business license taxes, utility taxes, and taxes attributable to arena-related business activities. The City does not use this revenue to repay its debt service, but rather use these excess funds for whatever purpose it deems necessary. This revenue, which will span a twenty-five year period, embodies a return on the City's investment in the Staples Center – something nearly no other new sports facility deal can boast. As Keith Comrie, the City's former Chief Administrative Officer,

³⁰³ JOEL WACHS, STATEMENT OF COUNCILMAN JOEL WACHS, RE: PROPOSED DOWNTOWN ARENA, 1 (Oct. 7, 1997).

³⁰⁴ *Id.*

confidently boasted: “[T]he city will make a profit off [the Staples Center].”³⁰⁵ The conservative estimate for the value of this provision is \$73.6 million. Fourth, the City received from the Developer the actual worth of the properties used in the Staples Center development: \$4.8 million. This provision in the agreement is rare in such financial plans. Finally, the jobs incentive program provides jobs for local residents – a \$2.7 million value for the City. These new provisions save the City more than \$126 million from the agreement set forth in the MOU.³⁰⁶ Moreover, these facets of the agreement, many of them unique to new sports facility financial plans, provide a stark contrast to the traditional model for such deals, which often put tremendous financial demands on cities without room for much potential benefit.

2. PROVIDING A GOOD INVESTMENT OPPORTUNITY

The Staples Center also provides a good investment opportunity for the City in light of some of the criteria set out in Part IV. First, since Los Angeles lured the Lakers and Kings away from Inglewood, most, if not all, of the jobs and the spectator spending in the downtown area will constitute new net income for the City.³⁰⁷ While many of the jobs created will be ones currently in existence in Inglewood, they will now be within City limits and, per the jobs incentive program, will be targeted for local Los Angeles residents. These will be “new” jobs for the City. Also, the spending associated with arena-related events will shift from Inglewood and its businesses to downtown Los Angeles and its businesses. Therefore, this spending, for the most part, will constitute new net spending in the City, not just displacement entertainment revenue as many critics point out most financial plans incorrectly attribute to the new sports arena or stadium.³⁰⁸

³⁰⁵ *A Summary of Development Across Los Angeles County Community: Los Angeles City Council OKs Final Details of Sports Arena*, *supra* note 296, at B2.

³⁰⁶ *Comparison of New Proposal*, *supra* note 266, at 2.

³⁰⁷ This fact does not imply that all successful new sports facilities are the product of a zero-sum game. The economic benefits that one city receives are not merely the ones lost by another municipality. In the Staples Center example, Los Angeles is not benefiting solely at the cost of Inglewood. Los Angeles’ long-term vision for the South Park neighborhood includes additional economic growth spurred by the new arena, which is in addition to the jobs and spectator spending diverted from Inglewood. Moreover, successful new sports arenas and stadiums can arise where a municipality is granted an expansion franchise, rather than hosting a team that left its former city.

³⁰⁸ See text accompanying *supra* notes 150-52. This spending in the redeveloped downtown area would still be considered new net income to the City if it were displacement entertainment spending because the main entertainment locales in the Southern California area – Pasadena, Universal City, and Santa Monica – are all outside City limits. Therefore, the subsequent tax revenue and job creation created by this spending would be considered “new” benefits to the City.

Second, related to this first point, the Los Angeles plan for redeveloping its downtown area mirrors those successful revitalization efforts in Cleveland and Baltimore.³⁰⁹ The City has taken a holistic approach as these other cities did. The redevelopment plan focuses on building around the Staples Center.³¹⁰ Hotels, restaurants, and other retail and entertainment businesses will eventually accompany the Staples Center. In fact, on September 5, 2001, the Los Angeles City Council approved the second phase of development around the Staples Center.³¹¹ Moreover, the City recently renovated the Convention Center, which will also draw events and thus new business to the downtown area. Also, other major development projects not related to the Staples Center, but considered as part of the larger plan to redevelop downtown Los Angeles, will likely attract tourists and people outside of the City to the area. Three development projects – the new Catholic Cathedral, the Disney Hall concert center, and the potential refurbishing of the Los Angeles Memorial Coliseum in anticipation of attracting a new NFL franchise – will help provide other attractions, as Cleveland and Baltimore offered, to draw a new influx of people to the downtown area.

Finally, the Staples Center meets the occupancy rate and diversified entertainment and activity base that are usually related to successful new sports facilities.³¹² As aforementioned, new sports facilities which host hockey and basketball games are more successful than football stadiums because of the greater number of regular season games, between the two sports, which occur each year. The frequency of these games draws more people to the downtown area, increasing spending and tax revenue in the targeted redevelopment area. In fact, Staples Center hosts approximately 280 events per year.³¹³

³⁰⁹ See text accompanying *supra* notes 203-30.

³¹⁰ The Staples Center has already received to awards for helping to revitalize the South Park area of downtown Los Angeles. The arena received the 2001 Skyline Award which is awarded to efforts that preserve, develop or better utilize “the land resources of the Los Angeles metropolitan area.” *Staples Center Honored for Revitalizing Efforts*, L.A. TIMES, Apr. 24, 2001, at C9. The Downtown Breakfast Club, which annually ranks the best and worst downtown Los Angeles real estate, honored Staples Center with a special award for its revitalization efforts. *Breakfast Club Honors Library, Staples Center*, L.A. TIMES, Apr. 25, 2000, at C13.

³¹¹ *Los Angeles Staples Center Area Rezoned to Further Builders' Grand Plan Development*, L.A. TIMES, Sept. 5, 2001, at B3. Noting the economic benefits to both the City, the developers, and the local community, Councilmember Eric Garcetti stated, “[t]his agreement really begins to chip away at the idea that economic prosperity and social justice cannot go hand in hand . . . [w]e showed today that we can put those together.”

³¹² See text accompanying *supra* notes 131-32.

³¹³ Jesus Sanchez and Matea Gold, *Site for Proposed Stadium in Limbo*, L.A. TIMES, Mar. 23, 2002, at B1.

Another factor that relates to this notion is the diversification of the entertainment and activity offered at a new sports facility. The more successful sport facilities, as previously detailed, are those which have the capacity to draw alternative, supplemental events such as concerts, political conventions, trade shows, and the like. These types of events, like the regular season games, draw tourists and fans to the downtown area at different times of the year. This continuity of sporting events and other attractions provides an incentive for businesses to relocate or originate in the downtown area – another key to such revitalization efforts. The Staples Center in downtown Los Angeles embodies these characteristics. First, the Staples Center hosts the Lakers, Clippers, and Kings. Therefore, the Staples Center will have three teams' regular season home games from November through May. The arena also hosts the WNBA's Los Angeles Sparks and the Arena Football League's Los Angeles Avengers during the summertime. Most sports arenas of similar size host either one or two major league sports teams. Moreover, because of its configuration and location, the Staples Center draws concerts, political conventions, trade shows, and other types of supplemental entertainment events.³¹⁴ For example, the Staples Center hosted the 2000 Democratic National Convention, the Pacific 10 Tournament, the NHL All-Star Game, the U.S. Figure Skating Championships, the Powerade Indoor Games (formerly the L.A. Indoor Track and Field Championships), the 2000 Grammy Awards, boxing events such as Oscar de la Hoya vs. Shane Mosley, and multiple concerts. These attributes further increase the Staples Center's likelihood for success in terms of generating tax revenue for the City and helping to revitalize the downtown area.

These different aspects of the financial plan demonstrate not only why the City benefits from the Staples Center, but also how the deal overcomes traditional problems, as detailed in Part V, that face cities in these deals. First, the gap-funding agreement ensures that there will be no uncertainty in revenue forecasts from the agreement. Whether or not the revenue from the admissions fee and parking taxes cover the City's yearly debt service payment, the gap funding agreement ensures that the City will meet its financial obligation through the Developer's guarantee. Moreover, since repayment on the City's contribution to the Staples Center is guaranteed by

³¹⁴ In fact, the Staples Center is among the two finalists to host the Democratic National Convention in 2000. Jim Newton & Robert Shogan, *L.A. Named Finalist for Democratic Convention: Philadelphia's Elimination Boosts City's Chances – So Does Number of Electoral Votes*, 54, L.A. TIMES, Nov. 13, 1998, at B3. Also, in Los Angeles, most large concerts not held in stadiums are hosted at the Great Western Forum, the former home of the Lakers and Kings. Given the new amenities of the Staples Center, these concert events would likely be held in the new facility, rather than at the Forum.

the Developer, the deal is truly self-financed. The Developer is paying the majority of the Staples Center's costs, and what the City contributes will be repaid through revenue from the admissions fee and parking taxes and/or through the Developer's guarantee. Second, most often economic impact reports related to new sports facilities overstate an arena's ability to attract tourists, and thus new net spending, to the downtown area. Two points counter this criticism when applied to the Staples Center. First, the jobs and spectator spending were drawn from Inglewood to downtown Los Angeles, constituting a new net economic gain for the City. Second, the City has a large fan base on which to draw. Los Angeles County alone has a population of more than twelve million people, 70% of which live outside City limits. As detailed in Part V, to derive greater new net tax revenues, a city must be able to attract fans and tourists living outside the area to the sporting and other events at the new facility. No other NBA basketball team or NHL hockey team plays within L.A. County besides those teams under contract to play at the Staples Center.³¹⁵ Therefore, the fan base in both sports can extend far outside of city limits, thus drawing new net spending to the City. This point also refutes the common criticism of new sports facility deals that they confuse new spending with spending diverted from other activities within the city. Moreover, the sports teams' home games and the supplemental entertainment activities held at the Staples Center, as economists have pointed out, are likely to provide a continuous influx of tourists and fans to the downtown area – a key to the City's revitalization efforts. Therefore, by providing substantive solutions to the criticisms levied on new sports facilities, the City has negotiated for itself an economically justifiable financial plan in building the Staples Center.

VIII. CONCLUSION

The answer to the initial question posed at the beginning of this paper, "Are publicly financed sports facilities economically justifiable?" is "yes," but with a realistic framework in which to judge these types of financial deals. Many new sports facility deals, like that in St. Louis, and that unsuccessfully proposed Hartford, do not provide the respective host cities with sufficient revenue to meet their financial obligations. Therefore, cities should seek to collect, at the very least, enough revenue from the new sports facility to meet their debt service payments and up-front expenditures. Such a deal may not be the best possible municipal investment – on a social or economic level –

³¹⁵ The NHL's Mighty Ducks play in the City of Anaheim in Orange County, but they are not considered competitors for the Kings in terms of drawing fans from Los Angeles. The closest NBA basketball team to Los Angeles, besides the Lakers and Clippers, is the Golden State Warriors in Oakland.

but if a city negotiates a financial agreement that provides it with this revenue, the deal should be considered economically justifiable. A city should also seek to gain further economic benefits in addition to the tax revenue raised to pay its up-front expenditures. These benefits can arise in the form of job creation, new businesses, downtown revitalization, and additional tax revenue gained by the city in excess of that used to repay its debt service payments. The greater these economic benefits to the city, the more justifiable the public financing of such sports facilities.

The Los Angeles Staples Center provides a quintessential example of how a city can negotiate an economically justifiable sports facility agreement. The City's deal provided a reasonable up-front expenditure that it will be able to repay through tax revenue from admissions and parking taxes and the Developer's guarantee. The City also received fair market value for the property used in the arena development. Moreover, the City receives millions of dollars as a return on its investment in the form of other tax revenue collected by the City but not used to repay its debt service. In addition, projections for job creation and downtown revitalization look promising. These economic benefits and lack of financial risk give the City a deal that is not only justifiable, but should be a model for future new sports arenas and stadiums. Unfortunately, the negotiation strategies of Los Angeles have thus far been for naught. The unsuccessful proposed football stadium in Hartford demonstrated that local and state governments are still too willing to negotiate one-sided, economically detrimental new sports facility financial deals. However, until cities follow the lead of Los Angeles officials in negotiating favorable financial deals, or agreements which at the very least cover the city's expenditures, local and state governments will be at the mercy of franchises looking to obtain the best deal possible. With this current culture pervading sports facility financing deals, cities and states will continue to negotiate agreements that are not economically justifiable for the taxpayers or the governments.

