

Going for It on Fourth and Long: Gambling Public Funds on a New Vikings Stadium

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GOING FOR IT ON FOURTH AND LONG: GAMBLING PUBLIC FUNDS ON A NEW VIKINGS STADIUM

THEODORE J PATTON*◇±

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INTRODUCTION

We are bearing witness to the second largest fleecing of public funds in a generation: sports stadiums.¹ As Ken Belson poignantly wrote, stadiums

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◇ The author is a private attorney in Minneapolis and the views expressed herein do not represent those of his clients, colleagues, or firm.

± This article would not have been possible without the support of my wife, Elizabeth; the comments of my friend, Joshua Strom; and the encouragement and professionalism of *The University of St. Thomas Journal of Law and Public Policy*.

1. Undoubtedly, this generation's largest fleecing was the Troubled Asset Relief Program coupled with the American Recovery and Reinvestment Act. See Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343, 122 Stat. 3765 (2008) (codified as amended in

built with public funds are “the gift[s] that keep on taking.”² Nationwide, sports franchises are extracting taxpayer funding for the construction of state-of-the-art stadiums filled with luxurious amenities and gourmet food.³ Owners have proven very effective at coercing state and local officials to provide them with new stadiums by threatening to move their franchises to other cities.⁴ Owners promise that new stadiums will spur economic growth by providing jobs, an influx of capital, and quality of life benefits.⁵ After all, professional leagues constitute a monopoly with far fewer teams than the number of cities that desire them. Publicly financed sports stadiums, however, are “a public investment in real capital. As such, the rules for sensible public investment apply to stadium finance as much as they apply to public provision of highways, schools, and airports.”⁶ Namely, do the owners’ promises of economic development provide a worthwhile return on government subsidies and what, if any, are the alternatives?⁷ This article will examine those questions in the context of the new Minnesota Vikings (“Vikings”) stadium.

BACKGROUND

A. The Rise of the Publicly Funded Sports Cathedral

Since the American Civil War, sports have played an increasingly prominent role in American public life. Some scholars have even argued that sports represent a “civil religion” in American culture. Frank Ferreri, a theology professor at the University of South Florida, wrote that sports, “as an American cultural institution, serve as a meaning-giving agency that can shape individual and community identities, offer a systematic method for interpreting morality, and provide an avenue through which to experience sacredness.”⁸ Similar to the identification of European cities by their awe-

scattered sections of 12 U.S.C.); American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) (codified as amended in scattered sections of 6 U.S.C., 26 U.S.C., 19 U.S.C., 42 U.S.C., 47 U.S.C.).

2. Ken Belson, *As Stadiums Vanish, Their Debt Lives On*, N.Y. TIMES, Sept. 7, 2010, http://www.nytimes.com/2010/09/08/sports/08stadium.html?pagewanted=all&_r=0.

3. Pat Garofalo & Travis Waldron, *If You Build It, They Might Not Come: The Risky Economics of Sports Stadiums*, THE ATLANTIC, Sept. 7, 2012, www.theatlantic.com/business/archive/2012/09/if-you-build-it-they-might-not-come-the-risky-economics-of-sports-stadiums/260900/.

4. Dennis Coates & Brad R. Humphreys, *The Stadium Gambit and Local Economic Development*, 23 ECON. DEV. POL’Y 15, 16 (2000).

5. Christopher Diedrich, *Homefield Economics: The Public Financing of Stadiums*, 4 POL’Y MATTERS J. 22, 22 (2007).

6. Coates & Humphreys, *supra* note 4, at 17.

7. ROBERT A. BAADE, THE HEARTLAND INST., NO. 62 STADIUMS, PROFESSIONAL SPORTS, AND ECONOMIC DEVELOPMENT: ASSESSING THE REALITY 1 (1994).

8. Frank Ferreri, *Sports and the American Sacred: What are the Limits of Civil Religion?*

inspiring cathedrals from the Middle Ages, the modern sports stadium has supplanted the ancient cathedral “as the most visible and recognizable structure in many communities.”⁹ Until the 1960s, however, professional sports stadiums were quite spartan in design and largely funded by the private sector.¹⁰ In fact, only five of the major league sports facilities built prior to World War II were paid for in whole or in part by public funds.¹¹ At the time, public works were defined as “bridges, roads, sewers and so on: basic infrastructure that was used by all and was unlikely to be built by the private sector.”¹² As professional sports pursued expansion, cities began providing franchises with “sweetheart deals”—often centered around state-of-the-art facilities—to lure them from other places in what is becoming sports-franchise roulette.¹³ By 2012, 125 of the 140 teams in the five largest professional leagues were playing in stadiums “constructed or significantly refurbished since 1990.”¹⁴ Construction costs of the 125 stadiums totaled more than \$30 billion with a majority of the cost being borne by the public.¹⁵

B. *A Brief History of Minnesota’s Sports Facilities*

As a result of interest from other cities, Minnesota has been on the defensive in an attempt to maintain its status as “one of only six metropolitan areas with franchises in all four pro[fe]ssional] sports leagues.”¹⁶ Up until the early 1990s, however, it seemed highly improbable that any of Minnesota’s teams would be lured to another city because the state had, what were considered to be at the time, state-of-the-art sports facilities.¹⁷ For example, the Metrodome—constructed to serve as home to the Minnesota Vikings and Minnesota Twins—was opened in 1982.¹⁸ The Metrodome cost \$55 million to construct and was largely publicly funded through an increase in hotel, food, and alcohol taxes.¹⁹ The Target Center—home to the Minnesota

Graduate School Theses and Dissertations, 25 (2004), <http://scholarcommons.usf.edu/cgi/viewcontent.cgi?article=2031&context=etd>.

9. ROBERT C. TRUMPCOUR, *THE NEW CATHEDRALS: POLITICS AND MEDIA IN THE HISTORY OF STADIUM CONSTRUCTION 2* (2006).

10. Belson, *supra* note 2.

11. Adam M. Zaretsky, *Should Cities Pay for Sports Facilities?*, *THE REGIONAL ECONOMIST*, Apr. 2001, at 6.

12. Belson, *supra* note 2.

13. *Id.*

14. Robert A. Baade & Victor A. Matheson, *Financing Professional Sports Facilities 3* (Coll. of the Holy Cross, Dep’t of Econ. Faculty Research Series, Working Paper No. 11-02, 2011).

15. *Id.*

16. NEIL DEMAUSE & JOANNA CAGAN, *FIELD OF SCHEMES: HOW THE GREAT STADIUM SWINDLE TURNS PUBLIC MONEY INTO PRIVATE PROFIT 166* (Univ. of Neb. Press rev. and expanded ed. 2008).

17. *Id.*

18. *Id.*

19. *Id.*

Timberwolves—opened in 1990.²⁰ The stadium was constructed for a total cost of \$104 million.²¹ The owners of the Timberwolves paid \$81 million and the remainder was publicly funded.²² The North Stars—Minnesota’s National Hockey League (“NHL”) team—played at the Metropolitan Sports Center (the “Met Center”).²³ While older than the Metrodome and the Target Center, the Met Center was revered in Minnesota.²⁴ The 16,000 person arena sold out even for state high school hockey tournaments.²⁵ Minnesota’s dedication to the Met Center reflected Minnesota’s passion for hockey; in Minnesota, hockey is a way of life. Reality set in when the North Stars unexpectedly left town. The team’s relocation to Dallas was announced on March 10, 1993.²⁶ The team’s owner, Norm Green, considered relocating to the Target Center, but ultimately chose Dallas as it provided “a better economic situation.”²⁷

C. Minnesota’s Response to Sports-Franchise Roulette

Following the relocation of the North Stars to Dallas, there was an undercurrent of panic regarding Minnesota’s remaining professional sports teams. The tension was palpable and resulted in a public spending binge. The state could have reportedly kept the North Stars for \$17 million in facility upgrades.²⁸ Instead, public outrage over the loss of the North Stars resulted in taxpayers spending more than \$130 million for an expansion franchise—the Minnesota Wild—six years later.²⁹ In order to house the Wild, the Minnesota Legislature approved a \$65 million loan to the City of St. Paul, and the City of St. Paul issued an additional \$72.7 million in bonds.³⁰ Fifteen years after St. Paul broke ground on the Wild’s arena (the Xcel Energy Center), the state forgave most of the remaining \$32.7 million loan balance owed by the City of St. Paul.³¹ Unfortunately for Minnesota taxpayers, the North Star’s departure was only the beginning.³² Construction of the Wild’s

20. *Id.*

21. DEMAUSE & CAGAN, *supra* note 16, at 166.

22. *Id.*

23. *Id.*

24. See JAY WEINER, STADIUM GAMES: FIFTY YEARS OF BIG LEAGUE GREED AND BUSH LEAGUE BOONDOGGLES 158 (Univ. of Minn. Press 2000) (calling the Met Center a “hallowed temple for many Minnesota puckheads”).

25. Leigh Montville, *Spleen for Green: Norm Green is Reviled in Minnesota for his Decision to Move the North Stars South*, SPORTS ILLUSTRATED, Apr. 19, 1993, at 36, 37.

26. *Id.* at 36.

27. *Id.*

28. Diedrich, *supra* note 5, at 25.

29. Kevin Duchscher, *St. Paul Wins Forgiveness of Xcel Arena Loan*, STAR TRIBUNE, May 22, 2013, at B2.

30. *Id.*

31. *Id.*

32. DEMAUSE & CAGAN, *supra* note 16, at 166 (indicating that the Metrodome and Target Center did rely on some public funding, but the difference is scale).

arena—at great public expense—opened Pandora’s Box and set a precedent for the owners of Minnesota’s other professional sports franchises.

After the Timberwolves failed to convince the North Stars to relocate to the Target Center, the Timberwolves’ ownership announced that they were moving the franchise to New Orleans in 1994, unless the City of Minneapolis agreed to purchase the arena.³³ The City of Minneapolis balked and funded a \$74 million purchase of the stadium with a combination of sales and property tax increases.³⁴ Once the city’s purchase of the Target Center was complete, the Timberwolves’ ownership sold the team for \$88.5 million, “turning a 172 percent five-year profit on their original \$32.5 million investment.”³⁵ The “Target Center bailout” did not resonate well with Minneapolis residents, and approximately \$55 million remains outstanding.³⁶

In 1996, Minnesota Twins owner Carl Pohlad, who witnessed the corporate welfare provided to the Minnesota Wild and Minnesota Timberwolves, unsurprisingly announced that his team needed a new stadium.³⁷ Pohlad argued that the Twins were “second-class citizens” in the Metrodome, because the Vikings controlled the Metrodome’s luxury-suite revenue and the multipurpose stadium was configured “more for football than for baseball.”³⁸ Pohlad threatened to opt out of the Twins’ lease in the Metrodome “if a new stadium [was] not in the works by 1998.”³⁹ While the Twins demands for a new stadium went unanswered for nearly a decade, Hennepin County succumbed in 2006 and issued sales tax revenue bonds in the amount of \$350 million—two-thirds of the new stadium’s total cost of \$545 million.⁴⁰ Hennepin County, with state approval, levied a sales tax of 0.15 percent in order to cover the cost of the bonds.⁴¹ According to Forbes, Target Field increased the value of the Minnesota Twins to \$405 million, a bump of 25 percent.⁴² Again, like the Timberwolves ownership in the 1990s, the Twins ownership received a substantial amount of equity from their new stadium. In exchange, Minnesota taxpayers will pay an estimated \$1.085 billion plus interest for new and renovated sports stadiums, including the new

33. *Id.* at 167.

34. *Id.* at 169-70.

35. *Id.*

36. Maya Rao, *Target Center Deal Bound to a Mistake*, STAR TRIBUNE (Feb. 2, 2012), <http://www.startribune.com/local/minneapolis/138536309.html>.

37. DEMAUSE & CAGAN, *supra* note 16, at 171.

38. *Id.*

39. *Id.*

40. Mark Yost, *If They Build It, You Will Pay*, WALL ST. J. (Apr. 13, 2010), <http://online.wsj.com/article/SB10001424052702304017404575165760977036190.html>.

41. Rochelle Olson, *Hennepin County Taxpayers on Track to Pay Ballpark Off Early*, STAR TRIBUNE (Dec. 29, 2012), <http://www.startribune.com/local/minneapolis/185120531.html>.

42. Doug Grow, *Target Field/Sales Tax Combo Providing a Financial Home Run for Hennepin County and Minneapolis*, MINNPOST (Oct. 5, 2010), <http://www.minnpost.com/politics-policy/2010/10/target-fieldsales-tax-combo-providing-financial-home-run-hennepin-county-and>.

Vikings stadium, discussed *infra*.

III. THE NEW VIKINGS STADIUM

Minnesota residents were strongly divided regarding a public subsidy package for the funding of a new Vikings stadium. According to three polls taken by the Minneapolis Star Tribune, a majority of Minnesota residents were consistently opposed “to using public subsidies for the new stadium.”⁴³ The opposition is somewhat surprising considering the Vikings have spent more than \$3 million in a statewide lobbying effort since 2005.⁴⁴ The opposition partly reflected the fact that, at the time, Minnesota faced a projected \$1.1 billion budget shortfall for the 2014–2015 biennium; thus, many stadium opponents questioned why public funds should be used to subsidize the Vikings ownership.⁴⁵ State Senator John Marty (DFL-Roseville), a vocal opponent of a public subsidy package for the new stadium, argued that “a taxpayer subsidy [for] a 64,000-seat stadium would amount to \$45 per seat per game, including preseason games, for the next 30 years.”⁴⁶

Proponents argue that a new Vikings stadium will result in significant economic development.⁴⁷ Those pitching the stadium claim that “local establishments will see a rise in game day sales of \$145 million; jobs will be created, including 1,600 in construction worth \$300 million . . . ; tax revenues will increase \$26 million; [and] property values will rise”⁴⁸ Unfortunately, these types of economic benefits represent the standard argument purported by the owners of professional franchises, but the evidence does not support their claims. The benefits of publicly funded stadiums are largely divided amongst team owners and players with taxpayers bearing most of the risk.⁴⁹

After much debate, the state and its local partner, the City of

43. Mike Ozanian, *Minnesota Vikings Stadium Advocates Using Bogus Poll*, FORBES (Mar. 31, 2012), <http://www.forbes.com/sites/mikeozanian/2012/03/31/minnesota-advocates-push-stadium-deal-using-bogus-poll/>. In the fall of 2010, the poll found that 21 percent were in favor and 75 percent opposed. *Id.* By spring 2012, the gap narrowed, but 56 percent remained opposed. *Id.* While Minnesota residents were consistently opposed to public financing of a new Vikings stadium, 65 percent of respondents answered that it was either “very important” or “somewhat important” for the Vikings to remain in Minnesota. *Id.* These poll results show the struggle between Minnesota residents not wanting to provide corporate welfare and, at the same time, not wanting to lose their teams.

44. *Id.*

45. Ozanian, *supra* note 43.

46. Tara Bannow, *Experts Debate How to Fund New Vikings Stadium*, STAR TRIBUNE, Mar. 31, 2011, available at <http://www.startribune.com/sports/vikings/118958469.html>.

47. Ilya Shapiro, *Politicians and Team Owners Snooker Sports Fans and Taxpayers*, HUFFINGTON POST (May 22, 2012), http://www.huffingtonpost.com/ilya-shapiro/sports-stadiums-taxes_b_1537177.html.

48. *Id.*

49. *Id.*

Minneapolis, approved a subsidy package for a new Vikings stadium to be built near the site of the Metrodome in downtown Minneapolis.⁵⁰ The cost of the new stadium is estimated to be \$975 million with a projected opening date of fall 2016. The Minnesota House of Representatives approved the appropriation in a close, but bipartisan, vote of 71-60.⁵¹ The Minnesota Senate approved the appropriation with an even closer margin of 36-30.⁵² On May 14, 2012, Minnesota Governor Mark Dayton (DFL) signed the Vikings stadium bill into law.⁵³ The state's passage of the Vikings stadium bill attempted to ensure that the bill would conquer its final political obstacle in the Minneapolis City Council, because the bill included language that nullified a provision in the Minneapolis City Charter requiring voter approval for any stadium subsidy of \$10 million or more.⁵⁴ Surprisingly, despite the state's passage of a bill that nullified the applicable charter provision, the Minneapolis City Council remained bitterly divided over the proposed stadium, its location, and the city's portion of the stadium's estimated cost.⁵⁵ Council members opposed to the stadium bill argued that the measure should be voted on by Minneapolis residents.⁵⁶ Ultimately, the stadium squeaked by the Minneapolis City Council on a razor-thin 7-6 vote and in the process "made a decades-long commitment to subsidizing professional sports. . . ."⁵⁷

The costs associated with the new Vikings stadium is divided between initial construction costs and facility operating costs during the agreed-upon 30-year lease. Of the nearly \$1 billion stadium construction cost, the state agreed to pay \$348 million and the city agreed to pay an additional \$150

50. See Appendix A for a visual comparison of the Metrodome and the new Vikings stadium.

51. Of the 71 yeas, 38 were democrats and 33 were republicans. Of the nay votes, 21 were democrats and 39 were republicans. *House, Senate Votes on Vikings Stadium*, STAR TRIBUNE (May 10, 2012), <http://www.startribune.com/politics/statelocal/151027285.html>.

52. Of the 36 yeas, 21 were democrats and 15 were republicans. Of the nay votes, 8 were democrats and 22 were republicans. *Id.*

53. Mike Kaszuba, *Dayton Cheered—and Heckled—as He Signs Vikings Stadium Bill*, STAR TRIBUNE (May 14, 2012), <http://www.startribune.com/politics/statelocal/151405495.html>.

54. Eric Roper, *Final Stadium Bill Nullifies Key Section of City Charter*, STAR TRIBUNE (May 10, 2012), <http://www.startribune.com/local/blogs/150950835.html>, [hereinafter Roper, *Nullifies City Charter*].

55. Eric Roper, *Vikings Stadium Clears Final Hurdle*, STAR TRIBUNE, May 25, 2012, at A1 [hereinafter Roper, *Clears Final Hurdle*].

56. *Id.* at A9.

57. *Id.* at A1. As part of the City of Minneapolis' participation in paying for the new Vikings stadium, the Target Center—home to the Minnesota Timberwolves—was also allocated (approximately) \$100 million for renovations. *Id.* The final renovation cost and the amount of public funding continue to fluctuate. Initially, the City of Minneapolis agreed to pay two-thirds of the Target Center's renovation costs, but unilaterally lowered that proportion to one-half. Kyle Potter, *Target Center Renovation Delayed Over Cost Disputes*, MINNEAPOLIS/ST. PAUL BUS. J. (Nov. 28, 2012), <http://www.bizjournals.com/twincities/news/2012/11/28/target-center-renovations-delayed.html>. In November 2012, the city announced that it expected the Timberwolves to match the city's investment dollar for dollar. *Id.* The Target Center renovation was expected to begin in May 2013, but the project is delayed until the parties can negotiate the final renovation cost. *Id.*

million.⁵⁸ With respect to facility operating costs, the City of Minneapolis agreed to pay nearly \$200 million for expenses and improvements during the term of the lease.⁵⁹ These operating costs “will be on a sliding scale, starting at \$6.5 million in 2021 and climbing to \$13 million by 2046.”⁶⁰ The Vikings agreed to pay \$477 million for construction “plus another \$390 million for operating expenses and capital improvements over the 30-year lease.”⁶¹ When completed, the new Vikings stadium will be the fourth most expensive stadium in National Football League (“NFL”) history.⁶²

The new Vikings stadium will be funded through the issuance of stadium bonds and an extension of existing revenue streams. The state is issuing stadium bonds to cover its portion of the construction costs.⁶³ Annual debt service on the bonds is estimated to be \$34 million.⁶⁴ The state planned to cover its annual debt service through new revenue generated by electronic forms of “charitable gambling,” known as “e-gaming.”⁶⁵ Minnesota estimated that e-gaming would generate \$35 million in tax revenue annually.⁶⁶ Unfortunately, that estimate has been reduced to only \$1.7 million in 2013 due to the limited number of electronic devices that have been installed.⁶⁷ The state estimated that a total of 2,500 devices would be installed, but only 234 are operational as of May 14, 2013.⁶⁸ In order to offset this shortfall, the Minnesota Legislature passed a bill that redirects a one-time cigarette excise tax “on current tobacco inventory” and closes a corporate income tax loop-hole.⁶⁹ When accounting for interest over the life of the agreement, the city will spend an estimated \$678 million, or an average of

58. Mark Peters & Jack Nicas, *Minnesota Vikings Set to Get New Stadium*, WALL ST. J., May 11, 2012, at B6.

59. Doug Grow, *Vikings Stadium Funding Plans—Their Strengths and Weaknesses*, MINNPOST (May 2, 2012), <http://www.minnpost.com/politics-policy/2012/05/vikings-stadium-funding-plans-%E2%80%94-their-strengths-and-weaknesses>.

60. *Id.*

61. Peters & Nicas, *supra* note 58, at B6.

62. *Id.*

63. Bill Salisbury & Doug Belden, *As New Vikings Stadium Takes Shape, State Funding Still Squishy*, ST. PAUL PIONEER PRESS (May 14, 2013), http://www.twincities.com/ci_23243275/vikings-stadiums-design-unveiled-how-fill-funding-gap.

64. *Id.*

65. *Id.*; see Minn. Stat. § 349 (2013) (legalizing specified forms of gambling that result in expenditures (“charitable contributions”) to various entities and organizations, such as nonprofits, the United States, the state of Minnesota, and any political subdivision of Minnesota) [hereinafter “Charitable Gambling Statute”].

66. Salisbury & Belden, *supra* note 63.

67. *Id.*

68. *Id.*

69. Tim Nelson, *Dayton Administration Unveils ‘Secret’ Stadium Finance Plan*, MPR NEWS (May 16, 2013), <http://blogs.mprnews.org/stadium-watch/2013/05/16/dayton-administration-unveils-secret-stadium-finance-plan/>.

\$22.6 million annually.⁷⁰ Minneapolis is funding its portion of the stadium through the extension of a three percent sales tax collected by the state on Minneapolis' restaurants, liquor sales, and hotels until 2046.⁷¹ The state and city will need to continue generating this level of additional revenue in order to cover the costs of the stadium for the next several decades.⁷²

IV. ANALYSIS

A. Recent History: Defining the Problem

For a multitude of reasons, it does not make economic sense for taxpayers to absorb a significant portion of the cost for a new Vikings stadium (or any other stadium). First, public funding of stadiums results in large equity gains for owners and salaries for players. One study found that new stadiums provide increases of: (1) team profits by \$11 million annually; (2) players payroll by \$14 million annually; and (3) team value by an average of \$90 million.⁷³ A study performed by the Cato Institute found that 55 percent of the gains from subsidies to professional sports teams go to players and 45 percent to owners.⁷⁴ The owners of the Vikings bought the team for \$600 million in 2005.⁷⁵ By 2012, Forbes appraised the team at \$796 million, which is expected to rise significantly once the new stadium is constructed.⁷⁶

Second, new stadiums have negligible economic benefits. Again, the Vikings argued that local establishments will see a rise in game day sales, jobs will be created, tax revenues will increase, and property values will rise.⁷⁷ The evidence does not support these claims.⁷⁸ A study of 37 metropolitan areas found that the "overall [economic] impact [of professional

70. See Roper, *Clears Final Hurdle*, *supra* note 55, at A9.

71. See *id.*

72. It is important to note the obvious: these funding streams only address the revenue necessary to pay off the new Vikings stadium. It does not include Hennepin County's annual debt service of nearly \$26 million for Target Field. Duchschere, *supra* note 29, at B2. It includes neither the \$55 million owed by the City of Minneapolis for the Target Center nor the additional \$50 million in public funds necessary to renovate the Target Center. *Id.* It also does not include the \$56.8 million still owed by the City of St. Paul for the Xcel Energy Center. *Id.*

73. Craig A. Depken, Anderson Sports Performance Lecture at the Univ. of Tex. at Arlington, *The Economics of Sports Arenas: A Property Rights Approach* (Apr. 16, 2003).

74. Shapiro, *supra* note 47.

75. *Id.*

76. *Id.*

77. *Id.*

78. See BAADE, *supra* note 7, at 12 (economist Robert Baade studied 48 cities over a 30-year period and concluded that, of the 32 cities where there was a change in the number of sports teams, 30 showed "no significant relationship between the presence of the teams real, trend adjusted, per-capita personal income growth."); *Id.* at 15 (of the 30 cities where there was a change in the number of stadiums ten years old or less, 27 cities showed "no significant relationship between the presence of a stadium and real, trend-adjusted, per-capita personal income growth. In all three of the remaining cases, the presence of a sports stadium was significantly negative.").

sports teams] is negative.”⁷⁹ One of the alleged economic benefits of stadium construction is the creation of jobs.⁸⁰ With respect to construction, the new Vikings stadium is expected to create 700 full-time jobs for a period of three years.⁸¹ With respect to operation, stadiums require relatively few employees and the jobs that are created are generally low-wage, temporary positions.⁸² Creation of temporary and low-wage jobs is not what the public should be subsidizing.

Third, the cost of a state-of-the-art stadium far outweighs its benefits. In fact, independent findings on the economic impact of stadiums have “uniformly found that there is no statistically significant positive correlation between sports facility construction and economic development.”⁸³ The Kansas City Federal Reserve Bank found that between 1994 and 2001 “a typical baseball or football stadium costs taxpayers \$188 million while generating only \$40 million in long-term benefits . . .”⁸⁴ With respect to tax revenues, cities often ignore the fact that stadiums generate almost zero *new* revenue.⁸⁵ Stadiums generate new revenue in three ways: (1) people from outside the area spend funds in and around the stadium; (2) the stadium results in area residents choosing to spend more on entertainment locally; or (3) “the funds keep turning over locally, thereby ‘creating’ new spending.”⁸⁶ Sports fans are limited by the same budgetary constraints as any other household. If fans decide to attend a sporting event, then that household has less money to spend on other forms of entertainment.⁸⁷ Studies also indicate that stadiums do not increase tourism (enticing people from outside the area to come spend money in the area) or spur entrepreneurship (helping funds turn over locally to create new spending).⁸⁸ Hence, stadiums generate

79. Coates & Humphreys, *supra* note 4, at 19.

80. John Marty, *Why Public Funding for a Vikings Stadium Doesn't Make Sense*, MPR NEWS (May 1, 2012), <http://minnesota.publicradio.org/display/web/2012/05/01/john-marty>.

81. *Id.*

82. Dennis Coates & Brad R. Humphreys, *The Effect of Professional Sports on the Earnings of Individuals: Evidence from Microeconomic Data 7–8* (Univ. of Md. at Balt. Cnty., Working Paper No. 03–104, 2003) [hereinafter *The Effect of Professional Sports*].

83. John Siegfried & Andrew Zimbalist, *The Economics of Sports Facilities and Their Communities*, 14 J. OF ECON. PERSP., 95, 103 (2000). *But cf.* *The Effect of Professional Sports*, *supra* note 82, at 8 (finding only retail employees earn higher wages per year as a result of the presence of professional sports facilities).

84. Jordan Rappaport & Chad Wilkerson, *What are the Benefits of Hosting a Major League Sports Franchise?*, 86 ECON. REV., 55, 68–69 (2001).

85. Zaretsky, *supra* note 11, at 7.

86. *Id.*

87. *Id.*

88. John F. Zipp, *Spring Training*, in *SPORTS, JOBS, AND TAXES: THE ECONOMIC IMPACT OF SPORTS TEAMS AND STADIUMS* 427, 429–30, 446–48 (Roger G. Noll & Andrew Zimbalist, eds., Brookings Inst. Press, 1997). (presenting a detailed analysis of the economic impact of baseball spring training programs in Florida); Siegfried & Zimbalist, *supra* note 83, at 107–09.

minimal, if any, new revenue.⁸⁹

Fourth, new stadiums do not improve team attendance long-term. Studies show that only new baseball stadiums result in increased attendance initially, and even then, the “novelty” dissipates within a few seasons.⁹⁰ Once the novelty of a new stadium wears off, team attendance and profits decrease, which results in the eventual demand of a new or upgraded facility.⁹¹ After all, “[i]t is a buyers’ [sic] market for professional sports franchises looking for [new] facilities.”⁹² The number of teams in any given league is intentionally kept below the number of cities able to support a team.⁹³ The monopolistic characteristics of professional sports leagues and the power of team owners, under league rules, to city hop gives “teams great bargaining leverage” in demanding new stadiums when revenues decline.⁹⁴ This produces a vicious cycle that needs to be broken in Minnesota.

B. Looking to the Future: Determining the Options

There are several options for alleviating the public’s burden of financing new stadium construction. First, professional sports leagues allow teams to relocate in an effort to “attain better stadium deals.”⁹⁵ An almost unrestrained ability to city hop gives franchise owners great bargaining leverage.⁹⁶ If league rules were amended so that moving a franchise was more difficult, then cities would have more leverage at the bargaining table.⁹⁷ This would

89. See Marlys Harris, *Minneapolis’ Downtown East Redevelopment: Where’s Wells Fargo*, MINNPOST (May 15, 2013), <http://www.minnpost.com/cityscape/2013/05/minneapolis-downtown-east-redevelopment-wheres-wells-fargo> (it should be noted that less than 24 hours after the design of the new stadium was unveiled, a \$400 million redevelopment plan for the area surrounding the stadium was announced. The plan calls for two 20-story office towers, 40,000 square feet of retail space, 300 units of housing, 1,700 parking spots, and a park linking the new stadium with the city’s business core. Minneapolis Mayor R.T. Rybak stated that the redevelopment will be paid for by both private funds and general-obligation bonds. While privately funded development could provide economic benefits for Minneapolis, it remains to be seen who will occupy the new space); see Appendix B (a visual comparison of Downtown East with the proposed redevelopment); see Editorial, *Vikings Stadium Design Enlivens Downtown East*, STAR TRIBUNE (May 14, 2013), <http://www.startribune.com/opinion/editorials/207457001.html?page=1&c=y> (Wells Fargo has indicated an interest in the proposed development, but such a move would simply shift an existing business from one building to another and not create new jobs or revenue).

90. BAADE, *supra* note 7, at 13–14.

91. See Tim Nelson, *Xcel Energy Center also Now Eyeing Big Upgrades, Potential Expansion*, MPR NEWS BLOG (May 22, 2013), <http://blogs.mprnews.org/stadium-watch/2013/05/22/xcel-energy-center-also-now-eyeing-big-upgrades-potential-expansion/> (the initiative by the Minnesota Wild to “upgrade” the Xcel Energy Center).

92. Scott A. Jensen, Comment, *Financing Professional Sports Facilities with Federal Tax Subsidies: Is It Sound Tax Policy?*, 10 MARQ. SPORTS L. REV. 425, 427 (2000).

93. JOSEPH L. BAST, THE HEARTLAND INST., NO. 85 SPORTS STADIUM MADNESS: WHY IT STARTED, HOW TO STOP IT 21 (1998).

94. Jensen, *supra* note 92, at 457–58.

95. *Id.*

96. *Id.* at 458.

97. *Id.*

allow cities to pressure teams into putting more skin in the game when it comes time for consideration of a new stadium. Unfortunately, it is highly improbable that a professional sports league would voluntarily curtail its ability to maximize revenue. Thus, Congress would need to pass legislation regulating the movement of sports franchises. While relocation restrictions have previously been proposed in Congress, they have not been adopted, and Minnesota should not rely on federal action—especially considering the partisan climate—to solve the problem.⁹⁸

Second, current league revenue-sharing rules encourage new stadium construction whether by relocation or otherwise.⁹⁹ Successful professional sports franchises share their revenue with less successful or smaller market franchises.¹⁰⁰ This includes revenue generated from merchandise, broadcasting, and ticket sales.¹⁰¹ Teams are allowed, however, to keep all revenue generated from a team's stadium (non-ticket revenue).¹⁰² Non-ticket revenue includes money generated from concessions, signage, advertising, club boxes, and luxury suites.¹⁰³ Therefore, maintaining a stadium with the latest in modern amenities allows teams to maximize revenue under the current revenue-sharing models. If professional sports leagues amended their current revenue-sharing models, then teams would have less incentive to continuously seek new facilities. Akin to a Congressional antitrust exemption, it is unlikely that leagues will amend their current revenue-sharing models, because such models have resulted in teams deriving great benefit from new facilities.

Third, state and local government could take action to prevent public subsidies from supporting new facilities for privately-owned teams.¹⁰⁴ One avenue for accomplishing this prohibition would be for the U.S. Conference of Mayors ("U.S. Mayors") and the National Governors' Association ("NGA") to agree to not use public subsidies for such a purpose.¹⁰⁵ This issue has been raised within both groups, but no action has resulted.¹⁰⁶ One could

98. *Id.* at 459; *see also* Jensen, *supra* note 92, at 459 (both the Sports Antitrust Reform Act of 1996 S. 1767, 104th Cong. and the Professional Sports Franchise Relocation Act of 1998 H.R. 3817, 105th Cong. were aimed at developing a list of criteria that must be satisfied before franchises could relocate. The proposals would have created an antitrust exemption for professional sports franchises); Siegfried & Zimbalist, *supra* note 83, at 112 (another federal approach was proposed by U.S. Senator Daniel Patrick Moynihan (D – N.Y.), who advocated for a bill prohibiting the use of the federal tax exemption on municipal bonds for facilities played in by privately-owned teams. The bill was never passed).

99. BAST, *supra* note 93, at 22.

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.*

104. Siegfried & Zimbalist, *supra* note 83, at 111.

105. *Id.*

106. *Id.*

surmise that no action has resulted due to the limited number of cities impacted by franchise relocation and “[t]hose mayors or governors not facing a threat are not inclined to alienate the professional leagues with whom they have or want a relationship.”¹⁰⁷ Competition amongst cities and states for potential economic development creates too large a temptation; therefore, it is highly improbable that the U.S. Mayors and NGA will reach consensus and take united action on this issue.

V. RECOMMENDATION

A. *Cementing the Relationship Between the Vikings and Minnesota*

At this juncture, readers may question what, if any, options remain for Minnesota’s taxpayers, whom polling consistently found neither wanted to subsidize a new stadium for the Vikings nor lose the team to another city.¹⁰⁸ If a deal providing public subsidies for a new stadium was not reached, Vikings ownership was considering relocating the team to Los Angeles, amongst other cities.¹⁰⁹ Thus, the question remains: how can we balance the public’s distaste for subsidizing private owners with the assurance that the Vikings will remain in Minnesota?

The balance is best struck by challenging NFL rules to allow partial public ownership of the Vikings. While this notion probably appears farfetched, the idea is not new to Minnesota.¹¹⁰ On November 7, 2011, State Representative Phyllis Kahn (DFL – Minneapolis), who is serving her 21st term in the Minnesota Legislature, proposed a stock sale of 70 percent of the Vikings with proceeds going toward the funding of a new stadium.¹¹¹ Unsurprisingly, the Vikings ownership and the NFL, in particular, resisted the proposal.¹¹² Such bold action is necessary, however, to balance the bargaining position between Minnesota taxpayers and their teams. Minnesota has consistently provided a lifeline to its professional sports franchises, so it is only fair that the state receive a more robust return on investment—a return that helps cement its teams in Minnesota.

107. *Id.*

108. Ozanian, *supra* note 43.

109. Ken Belson, *N.F.L. Warns That Vikings Could Move*, N.Y. TIMES (Apr. 19, 2012), http://www.nytimes.com/2012/04/20/sports/football/nfl-warns-that-vikings-could-move.html?_r=0.

110. See Steve Rushin, *Curtains?*, SPORTS ILLUSTRATED, Dec. 22, 1997, at 6 (noting that in 1997, Minnesota Twins owner Carl Pohlad offered to donate the team to a local non-profit foundation).

111. Mike Florio, *Partial Ownership of Vikings Doesn't Mesh With League Rules*, NBCSPORTS.COM (Nov. 7, 2011), <http://profootballtalk.nbcsports.com/2011/11/07/partial-public-ownership-of-vikings-doesnt-mesh-with-league-rules/>.

112. *Id.*

B. League Rules and Antitrust Argument

Each major sports league has adopted rules governing the transfer of team ownership.¹¹³ While the major sports leagues have historically resisted teams going public, their position has softened over the past two decades.¹¹⁴ The NFL has regrettably not followed in the footsteps of Major League Baseball (“MLB”), the NHL, and the National Basketball Association (“NBA”).¹¹⁵ Since 1980, the NFL’s ownership rules have changed several times.¹¹⁶ At present, Article 3.5 of the NFL Constitution prohibits corporate ownership of franchises, and three-quarters of NFL owners must approve all transfers of ownership.¹¹⁷ The NFL also maintains an “uncodified team policy that prohibits public offerings of shares in NFL clubs” and requires that each team maintain a principal owner who, in aggregate with family members, controls 30 percent of the franchise.¹¹⁸ To overcome the NFL’s codified and uncodified restrictions on public ownership, Minnesota should bring a legal challenge against the NFL’s restrictions as constituting a *prima facie*

113. Ryan Schaffer, *A Piece of the Rock (or the Rockets): The Viability of Wide-spread Public Offerings of Professional Sports Franchises*, 5 VA. SPORTS & ENT. L.J. 201, 208 (2006).

114. *Id.* at 223; see also Jorge E. Leal Garrett & Bryan A. Green, *Considerations for Professional Sports Teams Contemplating Going Public*, 31 N. ILL. U. L. REV. 69, 88–92 (2010) (noting that: (1) MLB changed their policy in 1997 to allow teams to distribute 49 percent by public offering; (2) the NHL permits public ownership upon review by the league and so long as one shareholder maintains ultimate control; and (3) the NBA permits a team to sell shares to the public. In 1986, the NBA’s Boston Celtics went public. In 1996, the NHL’s Florida Panthers sold public shares. In 1998, the MLB’s Cleveland Indians publically sold four million shares for \$60 million. The Green Bay Packers remain the NFL’s only publicly owned franchise.).

115. *Id.*

116. Vince Riccio, *Should Struggling NFL Teams Be Allowed Public Ownership?*, BLEACHERREPORT.COM (Aug. 9, 2010), <http://bleacherreport.com/articles/432359-should-struggling-nfl-teams-be-allowed-public-ownership> (“In 1980, the NFL adopted amendments that disallowed teams from having more than 32 owners with a principal owner maintaining at least 30 percent ownership. As team values increased, the NFL further amended its ownership rules to allow owners who had maintained ownership for ten years to control only 20 percent if a family member remains in control of an additional ten percent. In 2009, the NFL amended ownership rules to allow a principal owner to maintain ten percent ownership so long as other family members controlled 20 percent.”).

117. Schaffer, *supra* note 113, at 209; see also Dave Zirin, *Those Non-Profit Packers*, THE NEW YORKER, (Jan. 25, 2011), <http://www.newyorker.com/online/blogs/sportingscene/2011/01/those-non-profit-packers.html> (explaining the success of the Green Bay Packers as a non-profit organization and how Rules 3.2(A) and 3.5 of the NFL Constitution disallows other teams from operating as charitable organizations).

118. Robert Bacon, *Initial Public Offerings and Professional Sports Teams: The Regulations Work, But Are Owners and Investors Listening?*, 10 SETON HALL J. SPORT L. 139, 150 (2000); see generally Kristi Dosh, *Examining NFL’s Tax-Exempt Status*, ESPN.COM (Jun. 4, 2013), http://espn.go.com/nfl/story/_id/9342479/examining-nfl-tax-exempt-status-challenged-us-senator-tom-coburn (the hypocrisy of this position is worth noting. The NFL, which generates an estimated \$9 billion annually, is tax exempt under Section 501(c)(6) of the Internal Revenue Code for operating a trade or industry association. U.S. Senator Tom Coburn (R – Okla.) has proposed an amendment to the Marketplace Fairness Act that would remove the NFL as a tax-exempt organization.).

violation of the Sherman Antitrust Act.¹¹⁹

The primary authority for the contention that the NFL's prohibition of public ownership violates antitrust law is *Sullivan v. National Football League*.¹²⁰ In 1991, the owner of the New England Patriots, William H. Sullivan ("Sullivan"), who wanted to sell 49 percent of the team to the public, sued the NFL.¹²¹ Sullivan argued "that the NFL's policy against public ownership generally restricts competition between clubs for the sale of their ownership interests . . ." ¹²² A jury in the U.S. District Court for the District of Massachusetts ruled in favor of Sullivan and found that the NFL's prohibition on public ownership violated the Sherman Antitrust Act.¹²³ The NFL appealed the ruling and the U.S. Court of Appeals for the First Circuit held that NFL teams *do not constitute a single enterprise* and that actual competition among the teams need not be demonstrated, so long as the potential for competition exists.¹²⁴ The court also noted that the District Court's ruling regarding the existence of "competition between teams for the sale of ownership interests was based on sufficient evidence" and rejected the NFL's claim that Sullivan "failed to prove his injury was caused by [an] alleged antitrust violation."¹²⁵

The First Circuit remanded the case, however, due to prejudicial error, and the parties settled out of court.¹²⁶ It remains the only circuit to have addressed "the issue of whether the NFL policy prohibiting public ownership interests violates . . . the Sherman [Antitrust] Act."¹²⁷ Thus, *Sullivan* is the basis for challenging the NFL's prohibition of public ownership.¹²⁸ Accordingly, Minnesota, utilizing *Sullivan*, should pressure the NFL to accept partial public ownership of the Vikings or risk invalidation of its ownership rules and abandonment of its uncodified ownership policies.

The likelihood of success is increased by the standing of the NFL's only publicly owned franchise—the Green Bay Packers ("Packers"). In 1919,

119. Lynn Reynolds Hartel, *Community-Based Ownership of a National Football League Franchise: The Answer to Relocation and Taxpayer Financing of NFL Teams*, 18 LOY. L.A. ENT. L.J. 589, 592 (1998).

120. *Sullivan v. National Football League*, 34 F.3d 1091 (1st Cir. 1994).

121. *Id.* at 1096; see also Genevieve F. E. Birren, *NFL vs. Sherman Act: How the NFL's Ban on Public Ownership Violates Federal Antitrust Laws* 11 SPORTS LAW. J. 121 (2004), reprinted in THE BUSINESS OF SPORTS 26, 26-30 (Scott Rosner & Kenneth Shropshire ed., 2011).

122. *Sullivan*, 34 F.3d at 1098.

123. *Id.* at 1096.

124. *Id.* at 1098, 1100; see also *Am. Needle Inc. v. Nat'l Football League*, 130 S. Ct. 2201 (2010) (finding that NFL teams do not operate as a single enterprise and thus, are subject to antitrust law).

125. *Sullivan*, 34 F.3d at 1099, 1106.

126. *Id.* at 1091; see generally Frank Litsky, *Billy Sullivan, 86, Founder of Football Patriots, Dies*, N.Y. TIMES, Feb. 24, 1998, at B9. (in 1996, Sullivan and the NFL reached an out-of-court settlement whereby the NFL agreed to pay Sullivan \$11.5 million).

127. Hartel, *supra* note 119, at 606.

128. *Id.*

Curly Lambeau formed the Packers and four years later reorganized the team as a Wisconsin non-profit corporation (the “Packers’ Model”).¹²⁹ Between 1950 and 1997, the Packers had nearly 2,000 shareholders who owned more than 4,600 shares.¹³⁰ Today, more than 100,000 shareholders—over 90 percent of whom live in the Green Bay area—own more than 4 million shares of the team.¹³¹ The Packers’ restated articles of incorporation provide that shareholders may not own more than 200 shares, and the stock pays no dividends.¹³² In addition to public ownership, the Packers’ bylaws require any relocation to be approved by a majority of its shareholders.¹³³ As a result of its ownership structure, the Green Bay area has yet to experience a shakedown for a new stadium or a threat of relocation.¹³⁴ Public ownership of the Packers has provided and will continue to provide great stability for both the Packers and the Green Bay community.¹³⁵

C. *Utilizing a Rival’s Model in Minnesota*

Unbeknownst to many, a bill was introduced in the Minnesota House of Representatives proposing the Packers’ Model as a solution to the Vikings stadium quandary.¹³⁶ State Representative Andrew Falk introduced the bill calling for the establishment of a non-profit corporation responsible for operating and purchasing the Vikings at a “price to be agreed upon” (the “Falk Plan”).¹³⁷ Under the Falk Plan and similar to the Packers’ Model, a Vikings nonprofit corporation (the “Corporation”) would utilize its articles of incorporation to set limits on the number of shares controlled by any one shareholder and issue stock that does not pay dividends. The Corporation would also adopt bylaws requiring any relocation of the Vikings to be approved by a majority of the team’s shareholders.¹³⁸ The author proposes one modification to the Falk Plan. Pursuant to NFL rules, the Wilf family, who currently owns the Vikings, should be allowed to maintain a 30 percent stake in the team and remain the principal owner. A willingness to maintain a principal owner may provide a large enough carrot for the NFL to balk and accept partial public ownership of the Vikings in order to avoid prolonged

129. *Id.* at 593.

130. *Id.* at 594.

131. Zirin, *supra* note 117.

132. Hartel, *supra* note 119, at 594.

133. David Nielsen, *Packer Envy: Green Bay Fans Don’t Have to Worry About Their Team Moving—They Own It*, WASH. TIMES, Dec. 20, 1995, at B1, available at 1995 WLNR 312515.

134. Hartel, *supra* note 119, at 594.

135. *Id.*

136. H.F. 3010, 87th Leg., 2d Sess. (Minn. 2012).

137. *Id.*

138. This plan assumes that, as with the Packers’ Model, a majority of the Corporation’s shareholders are fans of the Vikings who want the Vikings to remain in the Twin Cities and be successful.

litigation.

While the workability of such a proposal is debatable, the Falk Plan would help ensure the long-term viability of the Vikings franchise and provide a competitive advantage to current Vikings' owners. As indicated *supra*, NFL rules restrict the liquidity of team owners.¹³⁹ Owners are restricted by both a limited number of buyers in the marketplace and league ownership rules. Pursuant to current NFL rules, the Vikings' ownership would likely have to sell either majority control of the team or the team in its entirety.¹⁴⁰ The Falk Plan would allow Vikings' ownership to liquidate a percentage of their investment in order to raise the necessary capital to renovate existing facilities or build new facilities.¹⁴¹ The additional capital generated by a partial liquidation could also provide the Vikings with a competitive advantage in attracting top players.¹⁴² Another advantage of the plan, assuming the author-proposed modification *supra*, is that the Vikings' ownership could remain the principal owners of the team. Finally, selling shares of the Vikings' franchise to Vikings' fans should induce fan loyalty and engagement, which may lead to increased attendance, memorabilia sales, and concession revenue.¹⁴³ The advantages provided to the Vikings' owners by the Falk Plan should entice their support, or, at the very least, merit serious consideration.

With respect to Minnesota residents, the Falk Plan would protect primary citizen objectives. The benefits of the plan for residents would be, at a minimum, threefold: (1) a substantial assurance that the Vikings will remain Minnesota's NFL team; (2) a savings of millions of taxpayer dollars in debt service on stadium bonds; and (3) the elimination of a three percent surcharge on hotels, food, and liquor in Minneapolis. These protections are critical for cementing the long-term bond between the Vikings, its fan base, and Minnesota taxpayers.

CONCLUSION

Minnesota must reevaluate the way it approaches professional stadium construction. The Falk Plan provides an opportunity to save Minnesota taxpayers millions of dollars *and* ensure that the Vikings remain in Minnesota. Such an innovative solution provides the best avenue for escaping the current extortion model; thus, the Minnesota Legislature should

139. See discussion *supra* Part V.B (describing the restrictive ownership policies of the NFL).

140. Garrett & Green, *supra* note 114, at 77.

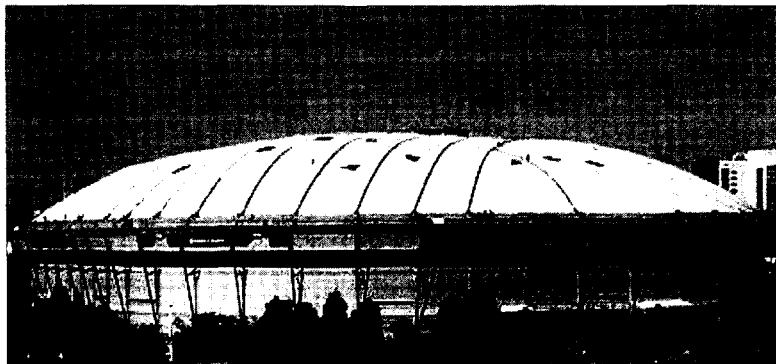
141. *Id.* at 73. For example, an initial public offering ("IPO") of 4 million shares at \$125 per share could raise more than \$498 million, which constitutes the amount necessary to fund what is currently the state and city's portion of the new Vikings stadium. The author proposes four million shares for the IPO based on the number of shares that the Packers have outstanding in a significantly smaller market.

142. *Id.*

143. *Id.* at 80.

reconsider the advantages and stability provided by partial public ownership. W. Edwards Deming once quipped “learning is not compulsory . . . neither is survival.” Minnesota must learn from its recent history of publicly subsidizing professional sports stadiums and break away from the monumental, debt laden stadium arms race. If it does not, future generations of Minnesotans will be saddled with decades of debt, unnecessary taxes that provide nothing except meager short-term gains, and team owners licking their chops for the next sweetheart deal.

Appendix A
Metrodome



New Vikings Stadium



Appendix B

Current Downtown East



Proposed Downtown East Redevelopment



