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Michael T. Flannery

University of Arkansas at Little Rock William H. Bowen School of Law, mxflannery@ualr.edu

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Philadelphia

Michael T. Flannery

Professor of Law, Villanova University,
Villanova, Pennsylvania;
J.D., Catholic University of America;
B.A., University of Delaware.

I. Introduction

PHILADELPHIA IS CURRENTLY BUILDING a baseball stadium for the National League's Phillies that will open in 2004. Because it has not yet been named, it is commonly referred to as New Phillies Park (NPP).¹ The city also is building a football stadium for the National Football League's Eagles, which will open in 2003. Because it too has not yet been named, it has been dubbed New Eagles Stadium (NES). Together, the two projects are expected to cost \$1.3 billion.

Despite the expense and a variety of more pressing social problems (such as the near-bankruptcy of the public school system), Philadelphians are excited at the prospect of a new, "retro-style" baseball stadium. The city's current ballpark—Veterans Stadium (better known as the Vet)—is universally regarded as the nation's worst, and its artificial turf has ruined more than one athlete's career.² But when NPP is completed, its modern design, open-air environment, skyline backdrop, cantilevered seating, grass field, and fan-friendly services and amenities will be second to none. Of course, compared to the Vet, *any* new ballpark in Philadelphia would be paradise.

II. A Rich Tradition

Philadelphia's rich ballpark tradition dates to 1887, when the Phillies moved into Baker Bowl. That wooden structure burned down in 1894 and was quickly replaced by Baker Bowl II—the first stadium to have cantilevered grandstands.

In 1901, the Philadelphia Athletics began playing at Columbia Park, which had been built for \$35,000. The A's abandoned the tiny site in 1909 and relocated to Shibe Park, the earliest steel-and-concrete sports

1. For pictures and a further description of NPP, see *Phillies Ballpark*, at <http://www.ballparks.com/baseball/national/phibpk.htm> (last visited Mar. 22, 2002).

2. For pictures and a further description of the Vet, see *Veterans Stadium*, at <http://www.ballparks.com/baseball/national/vetera.htm> (last visited Mar. 22, 2002).

arena in the United States and the first to offer folding chairs in the grandstands. Even the most hard-nosed baseball fan could not help but marvel at its stately touches, which included a French Renaissance facade, arched windows, and a domed entrance tower (often mistaken for a cathedral). In 1939, Shibe Park became the first American League stadium to host a night game.

The Phillies left Baker Bowl II and began sharing Shibe Park with the A's in 1939, an arrangement that lasted until the A's departed for Kansas City in 1955. Two years earlier, in 1953, Shibe Park had been renamed Connie Mack Stadium in honor of the A's' long-time owner and manager.

Connie Mack Stadium remained the home of the Phillies until 1970 (when the club took up residence at the Vet), and was demolished in 1976 (a church now stands on the site). Asked to describe what it had been like to play there, the late Hall of Famer Richie Ashburn replied:

Connie Mack Stadium had character. It looked like a ballpark. It smelled like a ballpark. It had feeling and a heartbeat, a personality that was all baseball. Players could sit in the clubhouse and see and hear the fans, and you could hear the vendors selling hot dogs and programs. It was a total baseball experience.

In building Veterans Stadium, the city sought neither personality nor heartbeat. Like similar venues in Cincinnati, Pittsburgh, and St. Louis, the Vet was intended to be a fiscally responsible, multi-purpose stadium. In this last respect, at least, the Vet has succeeded, for in addition to the Phillies and Eagles, it is home to the Temple University Owls and the annual Army-Navy football game.

III. New Phillies Park

Although the Vet has room for 66,500 spectators, the crowds have been getting steadily smaller since 1994; last year, the Phillies ranked fourteenth in National League attendance (out of sixteen teams). NPP will seat just 43,000, yet fans are expected to flock to the ballpark and hopes are high that at least some of the additional revenue will be used to field a more competitive team.

A. Features

As of March 2002, NPP had not yet found an official sponsor. When it does, the Phillies are expected to earn a princely sum—possibly as much as \$4 million per year. The Phillies must pay \$170 million of the stadium's \$346 million cost, but are likely to recoup \$100–\$150 million

just from the naming rights deal. The club also will receive money from the stadium's 20,000 parking spaces.

NPP will be state-of-the-art, and the architects include HOK Sport of Kansas City, the acclaimed designers of Camden Yards in Baltimore and Jacobs Field in Cleveland. Like those stadiums, NPP will tastefully blend tradition and novelty while putting fans close to the action. The main concourse will have an airy feel, and segments of the park will be open at street level. The Philadelphia skyline will pierce the outfield.

The Phillies have even gone so far as to hire a Canadian firm to perform baseball trajectory studies. The firm also is conducting tests to determine how snow will accumulate on the structure, whether patrons will feel the wind, and what impact the elements will have on the field's natural grass surface. Indeed, NPP offers all the bells and whistles that are so desperately lacking in the Vet's cold cement confines.

B. Location

Despite its long list of pluses, many Philadelphians are upset over NPP's location. Rather than being set amidst traditional row homes in Center City, NPP will be plopped in the middle of a 21-acre parking lot that is actually closer to New Jersey than City Hall.

Initially, Mayor John F. Street recommended the city's Chinatown section as the most economically viable site that could provide the desired atmosphere. This proposal was immediately opposed by area residents and the team. Moreover, because the site included land that was not owned by the city, it would have cost \$217 million more to build the stadium in Chinatown than where the Vet currently sits—three miles south of downtown Philadelphia. Although the Vet is easy to get to by subway, greater Philadelphia consists of numerous suburban areas that are not fully served by mass transit; thus, many fans attend games by car. Consequently, both NPP and NES require an abundance of parking spaces, something that no downtown location offers.

After months of bickering (coupled with the need for financial restraint), Mayor Street finally abandoned his efforts to build downtown. The city then moved on to the next best urban location: the parking lot of Veterans Stadium.

As compared to the Vet, NPP will have 5,000 more parking spaces but be three blocks farther away from the nearest subway line. Those extra blocks may be enough to keep some fans at home on a hot summer afternoon, especially if ticket prices increase (which seems likely). Another worry is that the location will do nothing to stimulate the down-

town economy. Still others question the value of having a skyline view from home plate when one needs binoculars to see it.

C. *Financing*

With the designs finished and the location selected, all that was left to do by December 2000 was figure out how to pay for NPP and NES. In part, the answer lay in the legal battle that had preceded the building of Veterans Stadium. The Philadelphia City Council had passed an ordinance authorizing a \$25 million loan to help pay for the Vet. This act was challenged by a taxpayer, who sought to block any increase in the city's indebtedness. While the lawsuit was pending, the loan was approved by the city's voters in November 1964. Subsequently, in *Martin v. City of Philadelphia*,³ the Pennsylvania Supreme Court ruled against the plaintiff and held that funding decisions were best left to the city and its voters.

Based on this precedent, in December 2000 the City Council approved a \$1.3 billion package to build NPP and NES, demolish Veterans Stadium, and expand the parking lots around the new stadia. A short time later, in February 2001, the city agreed that its share (\$304 million for construction and \$90 million to maintain and operate NES) would take the form of lease payments to the Philadelphia Authority for Industrial Development (PAID), the entity that will actually own the facilities.

The legality of this arrangement was immediately attacked by a civic group known as the Consumers Education and Protective Association. It insisted the lease payments represented debt, and as such required voter approval because the state constitution limits to \$270 million the amount of debt the City Council can incur on its own. In *Consumers Education and Protective Association v. City of Philadelphia*,⁴ however, this argument was firmly rejected.

According to the court, the debt ceiling did not apply because PAID had been established under the Economic Development Financing Law,⁵ which specifically allows public authorities to borrow money without having to worry about the constitution's debt limits. Moreover, the lease protects the public fisc in two ways: the city's obligations are limited to current revenues and the stadia cannot be sold in the event of a default.

3. 215 A.2d 894 (Pa. 1966).

4. 52 Pa. D. & C.4th 167 (Phila. C.P. 2001).

5. 73 PA. CONSOL. STAT. ANN. § 371 (1993 & Supp. 2001).

In the meantime, another financing problem had arisen. Even with the city's contribution, another \$1 billion was needed. Yet when the teams and the Commonwealth finished calculating their shares, a gap of \$53 million remained.

To help make up the difference, the Commonwealth, which already had committed \$170 million (derived from a rental car tax), agreed to put up another \$10 million. Next, the Delaware River Port Authority provided a \$10 million loan and a \$4 million grant. The City Council followed by increasing parking prices at the stadia, resulting in another \$20 million. Thus, by June 2001, the gap was just \$9 million.

Soon, \$500,000-a-year was found when the expected attendance figures were "reworked." The city then committed another \$4 million from funds previously set aside for other uses. Although this still leaves \$4.5 million unaccounted for, the city and the team are confident that the money will eventually be found.

D. *Bidding Requirements*

At the same time that Philadelphia was arranging new homes for the Phillies and the Eagles, a similar effort was underway in Pittsburgh. Of course, in 2001 the Pirates moved into PNC Park while the Steelers christened Heinz Field. How had Philadelphia fallen so far behind its cross-state rival? Part of the answer lies in the fact that Pittsburgh avoided a protracted debate over where to put its stadia. In addition, Pittsburgh was highly motivated, inasmuch as its teams were threatening to leave unless something was done quickly.

For present purposes, there is an interesting connection between PNC Park and NPP (besides the 350-mile scenic stretch of Pennsylvania Turnpike that physically links the two venues). During the construction of PNC Park, a question arose regarding bidding procedures. The Public Auditorium Authorities Law (PAAL)⁶ requires publicly funded construction projects to be awarded to the lowest responsible bidders. Likewise, the Separations Act (SA)⁷ requires separate contracts for specific types of work, such as plumbing and heating.

The Sports and Exhibition Authority of Pittsburgh and Allegheny County (SEA), which was responsible for awarding bids on PNC Park, obtained public funds by qualifying the stadium as a Redevelopment Assistance Capital Project (RACP). Under the Capital Facilities Debt Enabling Act (CFDEA),⁸ the Commonwealth is authorized to provide

6. 53 PA. CONSOL. STAT. ANN. §§ 23841-23857 (1998).

7. 53 PA. CONSOL. STAT. ANN. § 1003 (1997 & Supp. 2001).

8. 72 PA. CONSOL. STAT. ANN. §§ 3919.101-3919.5102 (Supp. 2001).

large economic development grants to RACPs. The Capital Budget Project Itemization Act (CBPIA)⁹ makes it clear the CFDEA is the sole and exclusive requirement for bidding such construction projects.

The SEA solicited heating and plumbing bids for the project. The solicitation was for separate heating and plumbing bids, as well as a joint bid for both forms of work. Section 318(f) of the CFDEA requires a minimum of three written bids for all general contracted work on RACPs.

In August 1999, Pleasant Hills Construction Company (PHCC) submitted a bid of \$6,154,700 for the plumbing project while Limbach Company submitted two bids—\$15.4 million for the combined plumbing and heating work and \$8.1 million for the separate plumbing contract. When the SEA awarded the combined contract to Limbach, PHCC sought an injunction on the ground the SEA had violated the PAAL by not awarding the contract to the lowest bidder. It further alleged the SEA had violated the SA by awarding a bid for a combined contract.

The SEA responded that because the CBPIA makes the CFDEA the sole bidding procedure for RACPs, it was not required to follow the stricter requirements of either the PAAL or the SA. In August 2001, the Commonwealth Court sided with PHCC in *Pleasant Hills Construction Co. v. Public Auditorium Authority of Pittsburgh*.¹⁰

By the time the court ruled, the Phillies had spent \$16 million on bids and the Eagles had authorized \$112 million in contracts. In addition, both teams had secured private funding that was more than double the amount of public money awarded under the CFDEA and the Phillies were in the final stages of negotiating a contract that would guarantee a maximum price and fast-track construction. Thus, the court's decision threatened to force a rebidding of all contracts and the loss of the guaranteed construction prices upon which the private financing had been conditioned. Given these possibilities, in September 2001 Governor Thomas J. Ridge filed a lawsuit and then submitted an emergency application to the Pennsylvania Supreme Court, which has the statutory right to assume plenary jurisdiction in any matter of "immediate public importance." The complaint contended that the teams were exempt from the court's ruling because they already had made their plans. In November 2001, the Pennsylvania Supreme Court reversed the Com-

9. Act of June 25, 1999 (P.L. 237, No. 35) (approved by Gov. Thomas J. Ridge on June 25, 1999).

10. 782 A.2d 68 (Pa. Commw. Ct.), *rev'd*, 784 A.2d 1277 (Pa. 2001).

monwealth Court and held that the CBPIA is not limited to the solicitation of bids but applies to the entire bidding process.¹¹ As such, the SEA was not required to comply with the PAAL or the SA. More importantly (for by this time PNC Park was already completed), the Phillies and the Eagles, as well as the city and PAID, could now move forward with confidence.

IV. Conclusion

As of March 2002, NPP and NES are on schedule and within budget. But while the city rolls down the road to paradise, debates continue over whether to use non-union contracts, which could reduce costs by as much as 20 percent, and how to meet minority contracting goals (both the Phillies and Eagles agreed to targets of 35 percent for minority-owned businesses, 12 percent for women-owned businesses, and 2 percent for businesses owned by the disabled). Mayor Street has formed an oversight committee to monitor the contracts, and the teams have retained the Greater Philadelphia Urban Affairs Coalition to assist in contacting qualified firms. As such, Philadelphians are confident that these and other road blocks will be overcome. Paradise thus remains in sight, just three miles south of downtown.

11. *Id.*