IMLA

80th Annual Conference

Las Vegas, NV

October 3-7, 2015

"When Professional Sports Come to Town: The City Perspective"

DeWitt F. "Mac" McCarley
Parker, Poe, Adams & Bernstein
Charlotte, NC
macmccarley@parkerpoe.com
704.335.9519

©2015 International Municipal Lawyers Association. This is an informational and educational report distributed by the International Municipal Lawyers Association during its 2015 Annual Conference, held October 3-7, 2015 in Las Vegas, NV. IMLA assumes no responsibility for the policies or positions presented in the report or for the presentation of its contents.

When Professional Sports Come to Town— the City Perspective

Goals of the Parties

1. Economic Development. Cities may see economic development in several ways: the redevelopment of a troubled site or blighted area, a catalyst for development and redevelopment in the surrounding area, a boost to the travel and tourism sector of the local economy, an increase in direct spend in the local economy, a rise in community profile to assist in business recruiting efforts, or an entertainment amenity to attract new residents to the community. Commissioning an economic impact study may help make the case, but the level of criticism leveled at the findings of these studies is intense.

2. Financial goals.

* Invest as little as necessary to obtain the league's and team's commitment
* Avoid spending property tax dollars (avoiding negative citizen reaction)
* Fund city participation with tourism tax revenues to the greatest extent possible
* Use bonds only if there is an identified and reliable repayment source
* The team has to make a reasonable contribution -- "political cover"
* Belief that local corporate underwriting and sponsorships will materialize

3. The Intangibles. Civic pride/branding—an elusive and immeasurable element, but frequently a major driver in the ultimate decision to pursue professional sports.

Site Selection and Acquisition

1. Location. Unique local circumstances will usually drive the criteria and choice of location.

* Desire to redevelop a particular site or area
* City ownership of a suitable parcel or assemblage of land
* At, or specifically not at, the site of a previous sports facility
* Uptown vs Not Uptown (transportation, parking, neighborhood concerns)
* Cost of acquisition

2. Ownership.

* Why would the City want to own the site? Long term control of the project, political cover for spending money on land acquisition, may be

required if bond funds are to be spent on the project, some protection for City investment in the event of a Team bankruptcy or default.

* Why would the City want the Team to own the site? Probability of property tax revenues, may avoid public bidding requirements on project construction, may provide an acceptable vehicle for investment of Team funds.

3. Availability of Development Parcels. Both Team and City may have a desire to see development or redevelopment in the area of the project. The Team may want to share in the development rights for adjacent property as a way to increase their upside financial potential. The City may have chosen the site based on the potential for the project to act as a catalyst for development or redevelopment in the area.

4. Time to Acquire. Timing is always a critical element of any sports deal. If the City doesn't own or control the site, the time to gain control has to be factored into the deal. Environmental site conditions are also important—any contamination adds both unknown cost and time to remediate.

Development Concerns

1. Respective Roles. The Team and the City are likely to compete for control in design, development and construction of the project. The Team may have already engaged a design team and have preliminary sketches of a proposed building, and not want to change design firms. The City will have legitimate concerns about project design and should negotiate hard to be an equal partner in the design of the project. Many of the Team's criteria for design will have to do with revenue generation.

2. Construction Method: Local concerns, state law requirements (bid laws), time available for construction, and Team goals will likely drive the choice among design/build, single prime, traditional bid, construction manager at risk, or Team-led construction of the project. City construction may add time, requirements, and cost to the project, and may not always be in the City's best interest.

3. Building Program:
   * Seating capacity?
   * Single or multi-purpose facility (ice capability in a basketball arena)?
   * Premium seating options
   * Parking: Who builds, who pays, where is it, public or private, who gets the revenue?

4. Infrastructure needed. The Team will always look to the City for infrastructure construction and cost.

5. Zoning. The Team will assume that the City is responsible for this item. Issues to watch out for include sign regulations, special use permit requirements (unpredictable), time required to rezone or amend text, neighborhood opposition, and potential lawsuits.

6. MWBD requirements? A sports project is highly visible, potentially politically controversial, and represents a major investment in the community. There will be intense interest in opportunities for local business participation, small businesses, and minority and women owned business participation. There may be state law or local ordinance requirements that apply to the project when there is public money in it.

Project Budget

1. Sources and Uses.

   * The City's goals will be driven by what revenue sources are available under state law, the amounts that can reasonably be expected to be generated by the identified sources, and the political feasibility of using those sources. Teams will rarely understand (or admit to understanding) any legal, financial or political limitations on City sources of funds.

   * City sources to consider: hospitality taxes (e.g., rental car taxes, prepared food & beverage taxes, hotel/motel occupancy taxes), sales or property tax increment based revenues, sale of surplus property, bonds.

   * The Team will assume that some sources/revenues are theirs and theirs alone: ticket revenues, premium seat and suite rental revenues, naming rights, sponsorships, advertising, concessions, pouring rights, food and beverage, and broadcast rights. Parking revenues may be on the table for discussion, depending largely on which party owns or controls the parking sites.

   * Team payments or contributions. The City will expect some financial participation by the Team. Options for structuring that participation: upfront capital contribution to construction cost, Team rent for the term of the deal, shared revenues out of operations.

2. What will the project cost? Which party is responsible?

   * Estimates are only estimates. The difficulty from the City side is matching up estimated revenues from likely City sources, with the City's committed participation to the cost of the project. The City will want to

estimate the revenues conservatively, and the project expenses on the high side, to avoid a shortfall situation. A major negotiating goal of the City should be to have the team take ALL responsibility for construction cost overruns. A straightforward way to achieve that is to put a hard cap on City financial participation.

Financing Plan

1. Bonds? If the bonds require a vote, both the City and the Team will be hesitant to go that route. A referendum adds significant time (delay), uncertainty, and cost. Neither side should want those risks.

2. Source of funds for servicing debt. Whatever method of financing the City choses, there is likely to be debt requiring a dedicated source of funds for repayment. The City will want to make sure the selected source is sufficiently reliable and predictable to provide the chosen level of coverage. Best choices: traditional taxes with revenue history and predictable growth rate, and guaranteed payments from the Team. Riskier choices: new taxes with no history of returns. Worst choice: share of revenues from the operations of the project.
3. Maintenance and repairs. the City needs to negotiate a fund and funding mechanism for maintenance and repairs, especially if the facility is city-owned. Funding for this reserve might come from savings in construction (rare), joint contributions from project or operating revenues, or growth in tax revenues dedicated to the project.

Non-relocation

("Play or Pay") A critical term in any sports deal with city participation has to be an iron-clad non-relocation provision. Typical structure is a covenant for the Team to play its home games in the constructed project for the term of the agreement, and to pay liquidated damages if they breach and leave. The measure of damages, from the City's perspective, is usually the declining amount of debt on the facility. An additional issue is what guarantee backs the Team's pledge to make the payment if they leave; the City should negotiate for a source of payment, guarantor, or security interest sufficient to make the pledged payment.

Operation

1. Control. The Team will demand control of the operations of the facility, and the City is probably going to want to agree. If the Team is carrying the financial risk of operations, and is controlling the lion's share of operating revenues, there is no reason for the City to want to be in charge. The City may want audit rights, or inspection rights, to make sure the Team is living up to financial and operating commitments.

2. Downside risk/Upside participation? Occasionally, a City will be willing to trade acceptance of downside financial risk for a share of upside participation. The risks are high, the rewards unpredictable, and the political cost of being wrong is very negative.

3. "Public Use." Almost every City will insist on a certain number of days or events being set aside for public use or city-sponsored events. This might include public school graduations, youth league championships, large assemblies, or conventions. Despite being almost universally requested and included in the deals, the public use days are rarely used. Advice: don't spend too much negotiating capital on getting public use agreements.

Miscellaneous

1. Public Participation. Elected officials may insist on a significant public information and public participation process in the negotiation and/or approval of the final agreement. The Team will resist. The process may be necessary for political cover for the elected officials, but it will be pure torture for the Team representatives who are unfamiliar with and unaccustomed to the rough and tumble nature of public participation.

2. The Value of Time—"start of 20XX season." Almost every deal will quickly zero in on an anticipated completion of construction which will be tied to the beginning of a specific sports season. If a league has already awarded or given approval for a franchise, this will be absolutely true. From the City side, beware of guaranteeing project completion in time for a specific season, or agreeing to any sort of penalty or guarantee for failing to make the date.

3. Planning for Litigation.

   * Consider litigation as a possibility and plan for it from the beginning. When making choices on sites, funding mechanisms, vehicles for city participation in the deal, or business arrangements between the City and the Team, make conscious choices that will reduce the possibility of litigation or the risk associated with the City position.

   * In calculating time, consider the possibility of litigation and the impact that would have on the agreed schedules and City responsibilities. Don't guarantee any time sensitive matters without considering the possibility of litigation and delay.

   * Consider making the final resolution of any litigation a condition precedent to City obligations.

4. Naming Rights—"what's in a name?" Cities always worry that the name chosen for the arena or stadium will have a negative connotation and reflect poorly on the City. Common fears of an unacceptable naming rights partner are gambling interests, health or feminine hygiene product manufacturers, and sexually oriented businesses. Teams will usually accept a clause prohibiting certain categories of businesses and/or a requirement for City approval, not to be unreasonably withheld.

5. City name in Team name. Many cities negotiate an agreement that the Team name will include the name of the City and that the City name will be on the jerseys of players.

6. City Suite. Most cities want a suite in the facility, at no charge except for consumed food and beverage. There are political risks for the City on either side of this decision: if the City doesn't get a suite, some will criticize the City for spending millions but getting nothing of value in the finished project; on the other hand, if the City does get a suite, some will criticize the elected officials for using the City's millions to get free access to sporting and entertainment events. You can't win—circumstances will be different in every community.

7. On-site Owner. On the assumption that the franchise will be more successful if the owner (or a substantial contingent of the owners) is local, some communities will want to negotiate a provision for a provision of local ownership or ownership resident in the community. Advice: Not necessary. The Team will have all the financial incentive they need to make the franchise a success without this.

DeWitt F. "Mac" McCarley
Parker, Poe, Adams & Bernstein
Charlotte, NC
macmccarley@parkerpoe.com
704.335.9519