

# AMERICAN CITIES HELD HOSTAGE: PUBLIC STADIUMS and PRO SPORTS FRANCHISES

*“Safe at home” OR “caught in a run down”?*

- BBVA Compass Stadium -



- Marlins Park Stadium -



- U.S. Bank Stadium -



- Lincoln Financial Field -



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## Introduction

This presentation examines the ethical and legal aspects of the public financing of sports stadiums primarily for the economic advantage of major sports teams.



These stadiums are presented to the public as providing vast public good, including:

- increased employment
- economic stimulus
- a greater public image for the host city



*However, analysis by multiple authors indicates these new stadiums, several now exceeding \$1 Billion in construction costs, do little to help communities or lower income citizens.*



## Section I

Review reports about the economic impact of such stadiums.

## Section II

Analyze some recent major sports stadium financing deals.

## Section III

Examine several tools used by stadium proponents to provide financing and avoid legal challenges, including:

- tax exempt public bonds*
- condemnation of private lands* and
- anti-trust exemptions for major sports teams.*

## Section IV

Examine possible strategies that might be adopted to prevent the abuse of American cities by major sports teams.

## Conclusion

Provide suggestions for future research and analysis.

## Section I

### **Reported Economic Impact of Major Sports Stadiums**

The strong trend today is that team owners persuade or threaten their way into stadiums - largely built at public expense.

First, owners promise that new stadiums will be required to keep a current pro sports team or attract a new team.

Next, team owners argue the economic benefits of the stadiums to the community will exceed the substantial costs involved.

One factor that may be driving up the cost of such facilities is the addition of amusement park-like attractions.



An interesting aspect to the publicly-financed “*boom*” is the impact on team finances.

Not surprisingly, a study of the impact of new stadiums on NFL teams revealed these teams garnered substantial increases in revenue and franchise value.





An even more intriguing aspect is the use of a special-purpose facility versus a larger, multi-use facility.

In search of an explanation for how publicly-financed stadiums expanded at a time when economic and other data did not support it, a sociological analysis suggested it was due to the *behind-the-scenes* support of corporate executives.

CEOs of major corporations find it easier to recruit high-level executives to a city with major sports teams.

One article suggests using the “*leverage*” of a team into the fabric of community life will create a value to the community that may not be evident from economic analysis.



## Section II

### **Review of Several Recent Pro Sports Stadiums**

We will explore in more detail  
three recent examples  
of publicly-subsidized professional sports stadiums.

#### **1. 2012 - Houston Dynamos**

Banco Bilbao Vizcaya Argentaria (BBVA) Compass Stadium  
a.k.a “*Dynamo Stadium*” - Houston, TX

#### **2. 2012 - Miami Marlins**

Marlins Park Stadium – Miami, FL

#### **3. 2016 - Minnesota Vikings**

U.S. Bank Stadium – Minneapolis, MN

Dynamo Stadium was financed with 37% public funding as part of the \$100M price tag.

**In a 2013 “*Impact Report*”:**

*Taxpayers provided the direct subsidies invested in the project via local, state or federal government programs.*



Interestingly, public support for the Dynamo Stadium project, Marlins Park Stadium ***AND*** U.S. Bank Stadium were not put to a public vote.

In 2008, the Dade County Florida Commissioners voted \$347M in public funds be allocated to construct Marlins Park stadium.



Former NFL owner, Norm Braman, sued to prevent the use of public funds to finance the stadium on the grounds it violated the Florida constitution, since the stadium primarily benefitted a private entity.

As of June 2015, the Marlins have been unable to sell the rights to their stadium name.



The *coup de gras* may be the 2013 Securities and Exchange Commission filing of a Federal District Court suit against the City of Miami and its Budget Director, Michael Boudreaux, for securities fraud in the manipulation of the city's finances making it appear more financially stable when selling bonds to the public.



## Politicians Reaping Big Bucks



(courtesy of Miami Marlins photographer Robert Vignon)

Commissioners Bruno Barreiro, Esteban Bovo, Jose "Pepe" Diaz and Dennis Moss, and former County George Burgess. From Miami: Commissioners Frank Carollo, Wifredo "Willy" Gort and Francis Suarez, former Mayor Manny Diaz, former Commissioners Angel Gonzalez and Joe Sanchez, and former City Manager Pete Hernandez. And Marlins owner Jeffrey Loria and president David Samson, of course.

## Politicians Reaping Big Bucks

Among the three teams highlighted, the politicians behind the Miami Marlins' Stadium were found to have received 'kickbacks' in the form of campaign contributions from interested parties:

*"A New Times review has found that the former county commission chairman (Bruno Barreiro), whose district includes Little Havana and the site for the new park...*



## Politicians Reaping Big Bucks

*took almost \$40,000 in donations in 2008*  
*— one in every six dollars of his total take — from firms with an interest in bidding on the project.*

*What's more, over the next two years, the same interests continued to feed other key stadium deal backers.*

*Among these opportunists there was: Trigam LLC, Parsons, Skanska, Thunder Electrical, and others.*

## Politicians Reaping Big Bucks

*The Munilla family, a finalist to build the \$94M garage project (for the stadium), donated \$6,500.*

*A number of the companies that gave Barreiro cash later earned lucrative contracts to build the park;*

*they include H&J Foundation, Contex Construction, and John J. Kirlin Enterprises.” (Elfrink, 2011)*



## Politicians Reaping Big Bucks

Barreiro hadn't always been a best friend to the construction industry. In 2004, when he raised \$63,000 for re-election, less than \$1,000 came from the builders and contractors.

*"Of course there's a connection between these donations and Barreiro's role in shepherding through this deal,"* says Norman Braman, the auto magnate who bankrolled (mayor of Miami-Dade County Carlos) Alvarez's recall.

## Politicians Reaping Big Bucks

*"You think it's just a coincidence? That's how this county commission operates. Special interests buy candidates votes and then get a piece of the pie."*

Almost as curious was the cash flow of Barreiro's colleague Joe Martinez. He was the key vote to hire — without normal bidding — a group called Hunt/Moss to oversee construction. (Elfrink, 2011)



## Politicians Reaping Big Bucks

During the year before the vote, Martinez took \$500 checks — the maximum amount individuals can give — from a litany of Moss & Associates' top execs, including three vice presidents and the legal counsel.

Martinez voted against the stadium, but for Hunt/Moss. Why the flip-flop? "*I was against the stadium funding,*" he told *New Times*. "*But Hunt/Moss... seemed very qualified to me.*"

## Politicians Reaping Big Bucks

Marlins owner Jeffrey Loria and president David Samson personally kicked in \$50,000 to keep him in office, Hunt/Moss added \$5,000, and a laundry list of other stadium builders gave more than \$73,000 (Elfrink, 2011).

Authors Delaney & Eckstein call “*this power exercised behind the scenes rather than in the more visible political arena: extraordinary politics.*”



## Politicians Reaping Big Bucks

Further, they add, “*Lobbyists often operate in this realm when they try to influence social policy without public knowledge of their activities.*

*Sport teams and other businesses might try to influence stadium debates by inviting politicians to ballpark luxury boxes, contributing to political campaigns, financially supporting certain policy initiatives, (etc.)...” (Delaney & Eckstein, 2003).*

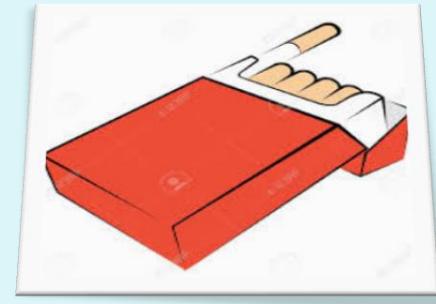
U.S. Bank Stadium's current price tag is in excess of \$1B.

The public share of this amount will be \$498M - \$150M paid by the City of Minneapolis, \$384M paid by the State of Minnesota.



The State's share will come from gambling revenues and a one-time cigarette inventory tax.

These taxes could have been earmarked for healthcare and housing for the poor and elderly and for education.



As with Marlins Stadium, a former Minneapolis mayoral candidate filed suit to block the sale of bonds used to build the U.S. Bank stadium.

The outcome of this was the court's rejection to the challenge.



Public financial subsidizing for all three projects was not put to a public vote.

Since 2000, a troublesome trend for stadium financing deals has been their approval by political bodies *without a public vote*.



Since 2005, *without ANY form of voter approval*, more than 30 stadium projects, representing nearly 90% of all stadium development, have been allocated over \$8.5B in public funds.

Kellison and Mondello refer to this phenomenon as “*civic paternalism*.” If voters disapprove, politicians think they know better and the outcome will justify disregard of the voters.

## Section III

### Legal and Legislative “Enablers” of Public Professional Sports Stadiums

The 1996 Tax Reform Act changed the rules to allow public-purpose bonds to continue to be exempt, but defined multiple categories that would be subject to different rules that, in some cases, will make some or all of the income taxable.

“Private Activity Bonds” are those now relevant to financing sports stadiums.

For any tax exemption at all, at least 95% of bond sale funds must go to the stated intended purpose of their sale.



For optimal value, municipal bonds can be held by higher tax bracket private investors. If public agencies issuing these bonds use tax proceeds from other sources, e.g., a hotel tax, then such revenue can be used to make up the difference without making the bonds taxable.



Estimating the magnitude of this tax subsidy  
(based on data compiled by Bloomberg for 2,700 securities): tax exemptions on interest paid by municipal bonds issued for sports structures cost the U.S. Treasury \$146M per year.



Since 1986, over the life of the \$17T of exempt debt issued to build stadiums (the last of which expires 2047), taxpayer subsidies to bondholders will total \$4B.



## Use of Public Condemnation Power to Build Stadiums for Private Benefit

U.S. Supreme Court's 2005 decision: *Kelo v. City of New London (CT)*

The Supreme Court permitted the City of New London use of eminent domain for a solely economic taking.

*Kelo addressed the “important question of when eminent domain may constitutionally be used to take property for projects that are not publicly owned and operated facilities.”*

The public outcry following the *Kelo* decision was based largely on articles from sources such as *The Economist*, which ran a column with the language:

“Americans *used* to believe that their constitution protected private property” and “the Supreme Court has left homeowners in a state of uncertainty.”



## As of June 2015:

- 28 federal court decisions have followed *Kelo*
- 126 have cited it and
- 9 opinions have distinguished their cases from *Kelo*

Of the decisions that distinguished themselves from *Kelo*, two stand out by virtue of their analysis contrasting *Kelo* with their respective issues.

## **Fideicomiso de la Tierra del Cano Martin Pena v. Fortuno**

in which the plaintiff claimed if title to their lands were reinvested to public agencies,

*“those agencies could not be trusted to carry out the public purposes embodied to Law 489.”*

## **Rumber v. District of Columbia**

in which the plaintiffs

*“contend that the defendants are unauthorized to exercise eminent domain and that the plaintiffs will be injured if and when the defendants exercise eminent domain over the properties.”*

## **Section IV**

### **Proposed Solutions to Free American Cities from “Sport Extortion”**

- 1- Make bonds for predominantly private uses fully taxable at the federal level.**
- 2- Remove all anti-trust protections for professional sports.**
- 3- Create and lead a major campaign to further educate the public on the fallacy that building or subsidizing a major sports stadium with public funds will contribute to local economies.**

- 4- Enact post-*Kelo* legislation in states that have not already done so.
- 5- Restructure the “*rule of reason*” into categorical analysis that allows for predictable anti-trust law application.

- 6- Encourage community ownership, including calling for media investigation of the claims of “*benefits*,” which may be another key in reversing “sport extortion.”

**Finally:**

Utilize and act in concert with the “Mayors Professional Sports Alliance” to agree not to accede to sports extortion.

## **CONCLUSION:**

***For future research:***

Each stadium project being built, processed or proposed should be subjected to rigorous economic analysis.

Promises of financial gain and community employment opportunities should be held to the highest standards of independent review.

Legal scholars should perform a detailed analysis of judicial decisions in major, anti-trust and eminent domain cases and ensure their findings are publicized to the bench and Congress.