

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR MIAMI-
DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 08-03787 CA 15

NORMAN BRAMAN, *et al.*,

Plaintiffs,

vs.

MIAMI-DADE COUNTY, *et al.*,

Defendants.

AMENDED ORDER (COUNT IV)

Plaintiffs Norman Braman and Braman-Liebowitz Associates #2 (“Plaintiff”) filed this action against the above captioned Defendants seeking a declaration invalidating local governmental actions and agreements concerning the construction of a Miami-Dade County-owned stadium for use by the Florida Marlins (“Marlins”), a privately owned major league baseball team. As a result of pretrial rulings, four claims were left for trial. The only count for consideration in this order is Count IV that alleges that Miami-Dade County’s (the “County”), approval of a Global Interlocal Agreement (“GIA”) and a Baseball Stadium Agreement (“BSA”) violated Article VII, Section 10 of the Florida Constitution because the baseball stadium does not serve a paramount public purpose. Plaintiff’s claim in Count V-- that the GIA violates Article VII, Section 12 of the Florida Constitution -- has been deferred in anticipation of a ruling by the Florida Supreme Court in *Strand v. Escambia County*, 2007 WL 2492294 (Fla. Sept. 28, 2007)

(motion for rehearing pending) and related cases. Counts VI and VII were dismissed by the Court at the close of the Plaintiff's case.¹

FINDINGS OF FACT

In public meetings spanning at least five years, the Miami-Dade County Commission (the "Commission"), has pursued building a publicly owned baseball stadium to be operated by the Marlins. Those meetings took place on: (1) November 4, 2003; (2) May 11, 2004; (3) November 30, 2004; (4) March 1, 2005; (5) December 8, 2005; (6) March 6, 2007; (7) May 17, 2007; (8) June 5, 2007; (9) September 25, 2007; (10) October 16, 2007; and (11) October 30, 2007. In these meetings, either the Commission or a Commission committee: (1) discussed funding sources for a stadium and adopted resolutions to make available convention development tax ("CDT"), tourist development tax ("TDT"), professional sports franchise facilities tax ("PST"),² and 2004 GOB revenues; (2) directed the County Manager to explore funding and location alternatives; and (3) approved proposed cooperation agreements and preliminary terms, including the BSA and a 2005 Memorandum of Understanding between the County, the City of Miami (the "City"), and the Marlins. Many factors related to the public funding of professional sports facilities were addressed, including (a) statutory limitations on the use of various tax revenue streams; (b) budgetary capacity and alternative projects that already were or could be funded with tourist tax revenues; (c) potential for funding by the State of Florida; (d) potential for urban planning and redevelopment; (e) potential of the stadium to serve

¹Count VI alleged that the County breached a contractual obligation to the holders of 1997 bonds when it pledged Convention Development Tax to the building of a baseball stadium. Count VII alleged that the County's reallocation of \$50 million in 2004 general obligation bonds violated County Commission Resolution No. R-913-04 and Article VII, Section 12 of the Florida Constitution. The Court's findings of fact and conclusions of law relating to the dismissal of Counts VI and VII are set forth in the record and will not be addressed in this Order.

² CDT, TDT, and PST revenues, which are collected on transient rentals such as hotel rooms and known as "tourist" or "bed taxes," are statutorily restricted to such things as the development of convention centers and stadiums, and cannot be used for general County services. *See* §§ 125.0104, 212.0305, 212.20, and 288.1162, Fla. Stat. (2007).

as an economic catalyst; and (f) the importance of retaining Major League Baseball (“MLB”) as an amenity in Miami. In furtherance of these factors, public officials conducted budgetary analyses, prepared economic studies and papers, researched and visited other cities and sites, reviewed and analyzed data pertaining to the construction of other stadiums and worked in conjunction with consultants. Except for one recent study analyzing the economic impact of construction of the stadium at issue in this case, none of these studies addressed the economic impact of the stadium sought to be built in the current economic environment at the designated site of construction in Little Havana on the site of the former Orange Bowl.

On December 31, 2007, the Commission, the City, the Southeast Overtown Park West CRA and the Omni CRA³ entered into the GIA, which specifically references and contemplates the execution of the BSA. The GIA was approved at an open public meeting where citizens were given the opportunity to speak. The GIA provides for the financing of a baseball stadium, as well as other projects including the already-built Performing Arts Center (“PAC”); affordable housing; a port access tunnel; a museum park; a streetcar project; and a major league soccer stadium. These projects are seen as investments that will help continue to fuel growth in the urban core and provide amenities to encourage people to live closer to where they work.

Accordingly, while no one project referenced in the GIA is contingent on the development of the other project, the purpose of the GIA is to provide funding for major projects designed to revitalize the urban core of Miami-Dade County.⁴ Although the Marlins are not a

³ CRA refers to a Community Redevelopment Agency. The purpose of a CRA is to stimulate growth and redevelopment in blighted and neglected areas through the use of tax increment financing or “TIF” money—ad valorem tax dollars—to stimulate the economy.

⁴ In Paragraph 6 of the GIA, the local governments found that the baseball project:

[O]ffers the perfect opportunity to combine professional baseball with the New Orange Bowl at a completely redeveloped Orange Bowl site with parking, retail, entertainment and related amenities. A major league

party to the GIA, Marlins' President David Samson ("Samson"), ratified the GIA by signing it with regard to the provisions contained in Paragraph 10. Paragraph 10 provides pertinent part:

Condition Subsequent: The County, the City and the Florida Marlins, L.P. (the "Team") agree that the funding commitments to the PAC, as set forth in this Agreement and in the First Amendment to the Omni CRA Interlocal, and to the New Orange Bowl, as contemplated herein, shall be void unless a binding agreement for the Baseball Project (the "Baseball Stadium Agreement") is executed...

Paragraph 3(a) of the GIA requires the Omni CRA to remit additional tax increment financing ("TIF") revenues to the County, up to a maximum of \$25 million annually, to pay the debt service on the County's outstanding bonds and/or loans towards the construction of the PAC, a completed project that suffered substantial cost overruns. In Paragraph 3(a) of the GIA, the County acknowledged that these funds from the Omni CRA are necessary to provide the County's contributions to the baseball project. Paragraph 4 of the GIA sets forth that the additional funds from the Omni CRA will permit the County to release additional sufficient TDT and CDT dollars, previously used to finance the debt on the PAC. The constitutionality of using or committing TIF monies without a referendum has been deferred pending a ruling by the Supreme Court in *Strand* and related cases.

baseball team will benefit the entire community and region, by, among other things, creating jobs and attracting tourism, providing both a direct and indirect increase in tax revenue. The Baseball Project will serve as an engine for economic development creating 250 full time and 2,000 part time jobs. In addition, construction of the project is expected to generate approximately 1,700 high paying jobs during the construction period of approximately 29 months...

[T]hese parking structures are necessary and will benefit the entire community by supporting the economic development created by the aforementioned uses of the Orange Bowl site.

Prior to the execution of both the BSA and the GIA, on October 16, 2007, the Commission adopted Resolution R-1173-07, wherein it authorized the County Mayor Carlos Alvarez to negotiate a baseball stadium agreement among the County, the City and the Marlins. Thereafter, County Manager George Burgess, as designee of Mayor Alvarez, entered into negotiations with the City and the Marlins that ultimately resulted in the BSA. The Commission approved and adopted the BSA at a public meeting held on February 21, 2008. At the hearing, the Commission heard brief testimony from, *inter alia*, City Mayor Manny Diaz, Mayor Carlos Alvarez, County Manager Burgess, the County Manager from the City of Miami, the Mayor of Hialeah, representatives from the Beacon Council⁵ and the Greater Miami Chamber of Commerce⁶ (the “Chamber”), citizens for and against the BSA, Plaintiff’s attorney, President of MLB Bob DuPuy (“DuPuy”) and Samson.

The transcript of the Commission meeting contains competent substantial evidence to support the Commission’s approval of the BSA, notwithstanding the fact that it is unclear from the record precisely which materials were provided to the Commissioners for consideration prior to the Commission meeting on February 21, 2008. Moreover, it is apparent from statements by the Commissioners that they were asked to review materials and meet with County Manager Burgess the weekend before the meeting and had very little opportunity to thoroughly review the materials provided.

The BSA provides for the construction of a \$515 million dollar state-of-the art, retractable roof baseball stadium to seat 37,000 on the site of the recently demolished Orange Bowl Stadium in Little Havana. The proposed stadium would serve as the new home for the

⁵The role of the Beacon Council is to recruit new-to-market businesses to Miami Dade County, help existing businesses expand and market the County’s business assets. The Beacon Council is the County’s official economic development organization.

⁶The Chamber of Commerce represents 2,500 businesses in Miami-Dade County and boasts 5,500 members.

Marlins, one of 30 major league baseball teams. The agreement stipulates that at least 81-regular season home games will be played in the stadium. Since 1993, the Marlins have been based in Miami and leased and played in Dolphin Stadium, an open-air stadium in northern Miami-Dade County. Evidence at trial indicated that the Marlins' lease will expire at the end of the 2010 season.

The Marlins won the world championships in 1997 and 2003 and, as of the date of trial, were having a successful 2008 season. Nonetheless, the Marlins, for many years, have consistently ranked at the bottom or near the bottom of all MLB teams in attendance. This is the case despite the fact that the Marlins are the seventh most watched team on television. The financial condition of the Marlins is unknown to anyone except the Marlins and MLB. Plaintiff testified that the Marlins approached him several years ago about investing in a new stadium. Plaintiff claims that at that time the Marlins told Plaintiff that the team was approximately \$163 million dollars in debt. According to Samson, the team has publically stated its intention to relocate if a new baseball stadium is not acquired in the near future. To this end, the Marlins have engaged in preliminary discussions with other cities concerning the possibility of relocation.

The threat of relocation has been the subject of much discussion and animosity in Miami and Tallahassee for many years. Despite the Marlins stated intent to relocate, however, the team has not yet applied for permission to relocate as required by MLB. Nonetheless, DuPuy, who is supportive of the BSA, warned the Commission that "the failure to move forward on the BSA ... is a death knell for baseball [in Miami]." This Court has no reason to doubt the Marlins' intent to relocate if they do not obtain funding to build a state of the art retractable roof stadium. As a result of the potential termination of the lease agreement at Dolphin Stadium, the professed need

for a stadium designed specifically for baseball, and a joint effort by the County and City to entice the Marlins to remain in Miami-Dade County, the parties agreed to the terms of the BSA.

As stated, the BSA, executed on March 3, 2008, requires the Marlins to construct and operate a 37,000-seat retractable-roof stadium on the Orange Bowl site. The stadium will be a “green” environmentally friendly stadium. DuPuy testified before the Commission that MLB is committed to the construction of a LEEDs certified stadium and that MLB would match team and public contributions towards developing a LEEDs certified stadium. Construction of the stadium is budgeted at \$515 million. Stadium construction is set to begin in November 2008 and be completed in time for the April 2011 opening day of the baseball season. The County will own the stadium, and the Marlins will operate it for a term of 35 years. The funding for the construction of the stadium will be provided as follows:

- (a) \$55 million in general obligation bonds (\$50 million to fund construction costs, the remainder to pay issuing costs);
- (b) \$75 million in CDT bonds (\$60 million to fund construction costs, the remainder to pay issuing costs and fund a cash debt service reserve fund);
- (c) \$105 million in TDT bonds (\$88 million to fund construction costs, the remainder to pay issuing costs and fund a cash debt service reserve fund);
- (d) \$325 in PST bonds (\$184 million to fund construction costs, the remainder to refund other outstanding bonds, to pay issuing costs and fund a cash debt service reserve fund);
- (e) \$155 million contributed by the Marlins, \$35 million of that amount to be lent to them by the County from PST monies;
- (f) \$13 million from the City of Miami (the “City”), not inclusive of the value of the land located in the City and valued at \$30 million or the cost of a \$94 million parking garage that will be built by the City at the site. The City also expended \$10 million to raze the Orange Bowl.

Thus, the total amount the County is raising to fund stadium construction costs through *ad valorem* and *non-ad valorem* financed bonds is \$382 million. The \$50 million in general

obligation bonds has already been voted on by the public and approved by the Commission.⁷ Eighty-seven percent of funds being used to pay for the stadium will come from “tourist” or “bed taxes” paid primarily by transients. Specifically, the County intends to use \$297 million of non-*ad valorem* tourist tax revenues: \$60 million from CDT revenues; \$88 million from TDT revenues; and \$149 million from PST revenues. CDT, TDT, and PST revenues are tourist taxes collected on transient rentals, such as hotels and other temporary lodging. The Florida Legislature has limited the use of these taxes exclusively to the development of convention centers, stadiums and similar projects. *See* §§ 125.0104, 212.0305, 212.20, and 288.1162, Fla. Stat. (2007). The Court is mindful of the fact that if stadium construction costs run over, or if the Marlins can not meet their obligations pursuant to the BSA, it may be necessary for the County to expend general revenues used to fund essential services in the County in order to make up any shortfalls. Such a contingency is speculative, however, and may not be considered by the Court.

In addition to the financing and general revenue terms, other terms in the 100-page BSA include:

- The Marlins agreed to change their name to the “Miami Marlins”;
- The Marlins agreed to discontinue any effort to relocate the franchise for the term of 35 years and to play their 81 regular season home games and post-season games at the stadium;

⁷ At a public hearing on December 18, 2007, the Commission considered a proposal to reallocate \$50 million in 2004 GOB funds, previously recommended for Orange Bowl renovations to the development of a publicly owned baseball stadium on the same site. After hearing from members of the public, the Commission found that the renovation of the Orange Bowl, a seventy-one-year-old stadium, would require a substantial investment to refurbish and would not be prudent given the loss of the University of Miami as a tenant. The Commission had express authority to reallocate the 2004 GOB proceeds pursuant to Section 10 of Resolution No. R-913-04. The Commission also concluded that reallocation of the 2004 GOB proceeds to the proposed County-owned baseball stadium on the same site was within the scope of the electorate-approved referendum to issue the 2004 bonds. The Building Better Communities Citizens Advisory Committee favorably recommended this reallocation on October 15, 2007. The Airport and Tourism Committee, a committee comprising a subset of county commissioners, considered the item on October 30, 2007. The Commission then adopted Resolution No. R-1371-07 approving the reallocation.

- The Marlins are to provide 81,000 game tickets priced at no more than \$15 per ticket throughout the season;
- The Marlins are to provide 5,000 complimentary tickets each season for local youth charities and underprivileged children;
- The stadium will have 3,000 club seats; 60 private suites; concession, entertainment, and retail areas; fixtures; furnishings; and equipment features and amenities comparable to other recently constructed MLB stadiums such as San Diego, St. Louis, Philadelphia, Pittsburgh, and Milwaukee;
- To encourage development around the stadium, the City and the County will implement a series of public infrastructure improvements to the area, such as the building and improvement of roads and the upgrading and relocation of utilities;
- The Marlins will pay for *all* cost overruns, without limitation, not caused by the County or City, and will provide a line of credit of at least \$20 million to fund such overruns;
- The County and City will have the right to use the stadium for 16 days each year for community events. The Marlins, however, may veto the use of the stadium because of event conflicts or for any purpose that the team deems incompatible with the MLB's public image or other sponsorships, or an event deemed to present a risk of damage to the playing field;
- One suite per game shall be designated for public or charitable use;
- The Marlins are responsible for maintenance, repairs, and operations of the stadium. They are also responsible for purchasing all insurance policies for the stadium;
- The Marlins will retain all revenues from all team and non-team events, including ticket sales; the sale of broadcast rights; the sale of concessions, memorabilia or other products and services; marketing, advertising or other promotional revenues; suite licenses; stadium naming rights which could be as valuable as \$2 million per year; and any assignment, lease or licensing of the stadium itself. The Marlins will provide their concessionaires for community events;
- The Marlins will remit to the County \$2.3 million per year over a 30 year period. This corresponds to the \$35 million being lent to the Marlins to construct the stadium. While the County may use these rent payments to service the \$35 million debt owed by the Marlins, it is not required to do so;⁸

⁸ Much discussion at trial centered around whether the \$2.3 million should be considered rent or the repayment of the loan that the County is making to the Marlins. There is no question that the payment of \$2.3 million over 30 years corresponds to the amount of the loan. Accordingly, Plaintiff argues that the Marlins are getting full use of the

- To the extent that the Marlins are required to pay *ad valorem* property taxes on the stadium, those monies will be set-off from the Marlins obligations to the County;
- The County and the Marlins will each contribute \$750,000 per year to a Capital Reserve Fund for improvements at the stadium; the City will contribute \$250,000;
- The Marlins are required to develop a substantial community benefits package that shall include numerous promotional and charitable activities for South Florida's youth;
- The Marlins shall participate in MLB's program designed to create opportunities for minority and women-owned businesses to participate in procurement activities for the stadium;
- The County and City are entitled to a share of the net proceeds of a sale of a controlling share of the franchise within the first five years of the execution of the BSA;
- The labor pool for construction of the stadium will be fairly representative of the community;
- The Marlins will consult with the City of Homestead and MLB to study the feasibility of renovating the Homestead Baseball Complex for use by Miami-Dade Big League Baseball, Inc., along with either an MLB spring training team or a minor-league baseball team;
- MLB has committed to work with officials to develop a Youth Baseball Academy, contemplated to be located in the City of Hialeah;
- The stadium will provide the community access to "Jewel Events," such as the MLB All-Star Week, which includes the All-Star Game and the Home-Run Derby; MLB Playoffs; the World Series; and the World Baseball Classic, where MLB hosts an Olympic-style World Championship tournament every four years among each of the major baseball playing countries from around the world; and
- For each of the 81 home game dates, the Marlins must also pay the City \$10 for each of the available 5,750 parking spaces. This price per space escalates over the 35-year-life of the BSA, providing total revenues to the City of approximately \$200 million dollars. The Marlins are permitted to resell the spaces and retain any net revenue they receive. The City will receive additional parking revenues from a 15 percent parking surcharge applicable to events other than the 81 home games, to be split between the City and the Marlins.

stadium rent free. While the evidence appears to support this contention, the Court does not find it relevant to its analysis as will be explained more fully below.

The BSA contemplates subsequent execution of several stadium-related agreements, including a Non-Relocation Agreement, Assurance Agreement, Management Agreement, and a Construction Administration Agreement, provided all are approved by the City and the County. These agreements will set forth additional rights, obligations and terms between the parties.

The Court listened to several days of testimony from economists, marketing experts, public officials, representatives of the Chamber of Commerce and the Beacon Council and County and City officials and employees. The testimony was designed to convince the Court that building a stadium for the Marlins at the site of the former Orange Bowl in the City of Miami would satisfy a paramount public purpose consistent with Article VII, Section 10 of the Florida Constitution. The Plaintiff's testimony focused on the lack of economic impact studies undertaken by the County or the City prior to approving the building of the stadium on the site of the Orange Bowl in Little Havana, as well as parsing the various components of the deal in order to glean the relative benefits to the Marlins versus the public. Underlying the Plaintiff's case is the lack of information about the Marlins' financial condition and the failure of the Marlins to tender any *pro formas* (that is, projections over time for income, employment and attendance at the proposed ballpark), so that accurate economic impact studies could be undertaken. Indeed, it is undisputed that the County has no idea whether or not the Marlins can satisfy any of their obligations under the BSA or whether or not the new stadium will encourage increased attendance and ticket sales.

For its part, the County introduced two economic impact studies. One was undertaken in 2001, and does not consider conditions relevant to this stadium as the study is out-dated and focused on three potential sites not ultimately chosen for the stadium. The second study was undertaken in May 2008, and focused on the benefits to the County from constructing the

stadium over a 29-month period. While the County felt compelled to offer these studies, its primary argument centers around the intangible or external benefits that the stadium will produce, such as civic pride, social cohesion, environmentally sound recreation for the community, tourism -- especially in connection with “jewel events”, and inducements for businesses considering relocation to Miami.

While it is not necessary to lay out the expert and lay testimony at length, the Court will examine the testimony by topic in order to make findings of fact:

1. The Revitalization of Little Havana: The evidence presented at trial established that the County has never performed (nor commissioned) an economic analysis, study or impact analysis with regards to the economic benefits to the community as a result of having a baseball stadium located in Little Havana. Several experts testified as to what effect the construction of a “stand-alone” stadium would have on the revitalization of an area. The site for the new stadium, while in the vicinity of the Miami urban core, is not within walking distance of that core or contiguous to other entertainment clusters. The area is surrounded by working class and low income housing. While prior studies undertaken by the County’s expert, Dr. Antonio Villamil,⁹ indicated a positive economic impact from the building of a stadium in the urban core contiguous to entertainment clusters, these studies are admittedly outdated and can not be extrapolated to this project. Significantly, the prior study explicitly cautioned against building a stadium on a site not contiguous to the urban core and surrounded by residences such as is the case with the

⁹ Dr. Antonio Villamil is the former Director of Florida’s Office of Tourism, Trade and Economic Development. He also served as Undersecretary of Commerce of the United States. Along with Dr. Robert Cruz, the County’s Chief Economist, Dr. Villamil authored or participated in two studies relating to building a stadium for the Marlins in Miami-Dade County. The last of these studies was authored in 2001. In the 2001 study, Dr. Villamil examined the economic impact of stadium construction on three different sites: the Miami Arena, the Miami River and Bicentennial Park. At the time, Bicentennial Park was viewed as the optimal site for construction because of its connection to other entertainment clusters.

present site. Nonetheless, Dr. Villamil opines, without evidence to support his contention, that a new 21st century stadium in Little Havana would have a positive impact on revitalization of the area. The national studies equating stadiums with economic revitalization are mixed, but seem to indicate that, in most instances, stadiums spur revitalization when they are contiguous with other public amenities and entertainment clusters. Ultimately, Dr. Villamil reluctantly agreed with this analysis that is supported by testimony from the Plaintiff's expert Dr. Phillip Porter.

Dr. Porter, an expert in Sport's Economics,¹⁰ testified that a stadium that is open only five percent of the time will not stimulate economic activity in Little Havana. According to his research, stadiums do not generate business because the usual amenities drawn to an entertainment venue are self-contained in a stadium, i.e., internal dining, souvenirs and concessions. Dr. Porter testified that stadiums are usually built in poorer communities and after time, the community does not flourish due to the presence of a stadium. As support, Dr. Porter relies on a study he undertook of Tropicana Field built in Tampa for the Tampa Rays. Tropicana Stadium was built within the last 15 years in a primarily industrial area. Fifteen years later, the area remains mostly abandoned. Contrary to this view, testimony was provided by Mr. Nero, President of the Beacon Council for 12 years, who previously served as Jacksonville Deputy Mayor for Economic Development. As Deputy Mayor, Mr. Nero coordinated all economic development activities for the city, and was a member of the negotiating team that put together the stadium lease agreement between the city and the Jacksonville Jaguars, a National Football League team. Mr. Nero was directly involved in the public financing components of the development of the stadium. That stadium was built in the middle of an industrial area that now

¹⁰ Dr. Porter holds a Ph.D. in economics from Texas A & M University. He is a professor of economics and the Director for the Center of Economic Policy and Analysis at the University of South Florida.

has been redeveloped as part of a comprehensive redevelopment plan that came after the stadium was financed and approved, and has been a catalyst for public investments and private sector investment. Mr. Nero found that the stadium served as a catalyst for physical change in the area immediately surrounding the stadium and that the stadium changed the way in which both residents and non-residents view Jacksonville.

In this case, the Marlin stadium will be built on only 13 acres of a 40 acre area that would otherwise lay fallow. If the proper zoning is obtained, and development plans are undertaken, revitalization may occur in the immediate area and beyond, to include a soccer stadium, retail shops, restaurants and hotels. This is speculative, however, as there are no present plans to develop the area and there is no information as to whether businesses are willing to locate to or invest in the Little Havana area in the event a stadium were built there.

2. General Economic Benefits: The only economic study that the County undertook was an in-house analysis performed by the County's Economic Policy Coordinator and Chief Economist, Dr. Robert Cruz. The analysis was undertaken employing the well-recognized IMPLAN methodology.¹¹ This analysis examined the economic impact that construction of the stadium would have on the economy over a 29 month construction period. The analysis entitled the "Economic Impact of Construction Spending on Three Special Redevelopment Projects: The Marlins Ballpark, Museum Park, and the Port Access Tunnel" dated May 23, 2008, showed that the construction of the \$515 million baseball stadium and a \$94 million parking structure would generate (i) \$357.2 million of labor compensation (wages, salaries and employer provided fringe benefits); (ii) total employment on an average annual basis of almost 3,300 jobs; (iii) gross

¹¹ This methodology recognizes the inter-industry linkages that occur through the economy and is widely accepted by economists in the industry. "IMPLAN" and models like it are used by State agencies, local Government agencies, the Federal Government, and consultants that work in this area.

economic output of \$816 million; and (iv) County gross domestic product of \$455 million. The 3,300 jobs created by the construction of a County-owned baseball stadium were deemed significant by the expert given the current recessionary environment. Keeping in mind that the benefits are short term, the Court has no reason to disregard the findings in the study.

The more long term economic benefits on Miami-Dade County are difficult to assess and speculative, at best, since no concrete evidence was offered by the County to assess long term economic impact on the County. And, the Court does not find the testimony of Dr. Porter conclusive. Dr. Porter researches the economic impact of sports facilities and sporting events on the local economy. Dr. Porter has studied 13 stadiums nationwide and concluded that only four garnered a positive impact for the local community, while the remaining nine actually had a negative economic impact according to the sales tax data. Dr. Porter uses sales tax data to make conclusions regarding sporting events as a whole, and jewel events in particular (Super Bowls, World Series and All Star games etc). The data captures the sales tax generated around the period surrounding the construction of a stadium and the weeks surrounding a jewel event. Dr. Porter finds that there is no more collection of sales tax, i.e., spending, surrounding the construction of stadiums. While Dr. Porter concedes that the construction of a stadium will provide development and construction employment, he testified that once the stadium is operational, these jobs end. In this regard, Dr. Porter opined that most laborers for the retractable roof stadium will not be from the community, as the labor will require highly specialized laborers brought in from other states.

According to Dr. Porter's research, the stadium will also not generate tourism because of the additional taxes hotels will charge to offset the TDT tax levy. Dr. Porter states that due to increased hotel room rates, tourists will bypass Miami for other cities. With regard to jewel

events, Dr. Porter's research unveils that the tourism influx for a big sporting event has an overall negative or insignificant impact due to the spike in hotel prices and the tendency of hotels to empty out guests immediately before a big sporting event to make room for sports guests. Lastly, Dr. Porter concludes that any additional media exposure will provide intangible, not economic benefits, and adds that the exposure may be negative as in the cases of Tampa and Jacksonville.

The County offered testimony from Michael Casinelli, a marketing researcher and analyzer who collects and analyzes data about how people use particular products. In the 1980s, Mr. Casinelli performed an economic impact study of a football bowl game. He surveyed tourists at the bowl game to determine their spending habits. Since 1980, Mr. Casinelli has conducted 35-40 surveys relating to sporting events including PGAs, Superbowls, NBA, NHC and NCAA and March Madness. According to his research, many people visit the city but do not attend the sporting event when a jewel event is held. Based on his research, this type of tourism has a positive economic impact on the local community. Mr. Casinelli testified that when a jewel event is held, many companies host corporate parties that benefit the economy as a result of the catering and transportation these events generate. According to one study of an All Star game in Texas, the economic impact projection was \$40 million. Mr. Casinelli cannot confirm that his estimates were realized, however, as the Texan government did not supply (nor did he request), the hard data after the event was held.

Finally, Frank Nero, President and CEO of the Beacon Council, a non-profit agency charged with recruiting and retaining businesses in Miami-Dade County, testified that the Beacon Council relies on professional sports team presence to recruit, expand and retain businesses. Although businesses do not come to a city solely for sports, businesses look for a

package of amenities of which major league teams are a consideration, in addition to the more primary considerations of good schools, affordable housing and safety. According to Mr. Nero, Miami would lose its credibility in the business world if the Marlins left South Florida, although he has no surveys to support this contention. The sentiment regarding the attraction of business opportunities to Miami as a result of the presence of the Marlins was echoed by the Chamber.

Economic forecasting, even with hard data, is a speculative endeavor. The Court can make no findings as to whether a baseball stadium will encourage businesses to relocate to Miami as testified to by the Beacon Council, increase jobs long term, promote the image of Miami as a world class city and, thereby, spur tourism, or increase sales tax revenues, even for jewel events such as a World Series. However, all of these issues are “fairly debatable” and depend on a plethora of variables.

3. Recreation, Civic Pride and Social Cohesion: Social cohesion and civic pride are difficult concepts to quantify. Nonetheless, this common theme ran through the testimony of the County’s experts as well as the representatives from the Beacon Council and the Chamber. The concept was perhaps best summed up by Mayor Alvarez:

The question that I hear often asked is: Why should government be involved in the building of stadiums? And it’s a fair public policy debate. The way I see it is that we’re not building a stadium for the Marlins, we’re building a stadium for Miami-Dade County residents. Just like museums, parks, and beaches, professional sports are an important part of our community fabric. A stadium will not only contribute to our economy, but [sic] our quality of life. For children, for tourists, professional sports bring people of all walks of life together.

This theme was reiterated by County Manager Burgess and Mayor Diaz. Baseball was referred to in the testimony as an “icon” event; an “intangible feeling” people have of being associated

with a team that won the World Series, the loss of which would “be a shot to the ego” and engender a “loss of prestige” and “credibility.”

The Plaintiff argues that not only is civic pride and social cohesion difficult to quantify but, in fact, a poll shows that 56% of a segment of the population (super voters) are opposed to the building of the stadium with hotel tax dollars. Moreover, Marlins attendance remains the lowest in MLB despite two World Series wins and this year’s excellent season for the Marlins. There is no evidence in the record that the building of a stadium in Little Havana will increase attendance and, thereby, promote social cohesion. Simply put, no one will know whether a new retractable roof stadium will increase attendance at the stadium until it is built. Similarly, no one can predict how the Marlins will perform and whether the County will celebrate more World Series wins with them. According to Dr. Porter, while stadiums contribute an additional quality of life amenity, a new baseball stadium in Miami would not positively affect the quality of life because of the full menu of amenities Miami already offers. According to the theory of “diminishing marginal utility,” the overall impact and significance of each entertainment outlet declines as soon as another entertainment or recreational activity is added to a city. Dr. Porter does concede, however, that a retractable roof dome stadium will be a unique public entertainment and recreational facility attraction for Miami and the State of Florida.

4. Building a world class city: Perhaps the most compelling argument, but not the argument most focused on at trial, is the baseball stadium as part of a mix of amenities that will contribute to qualifying Miami as a world class city. In adopting the GIA, the County and the City made a determination that in order to revitalize Miami-Dade County and build it into a world class city, numerous projects would be undertaken over the next 20 years. While no one project is dependent on the other, the package as a whole defines the vision. County Manager

Burgess summed up the opinions of the Beacon Council, Dr. Villamil, the Chamber and Mayor Diaz in advocating for the stadium as follows:

Great cities—and this is something that I think government has to care about—invest in significant public infrastructure. They have the amenities that make them great international cities. Miami-Dade County and the City of Miami’s focus isn’t to compete, with no disrespect intended, with Wichita or Des Moines. Our focus is international.... I’m not suggesting that a ballpark in a vacuum is going to drive investment decisions, family relocation decision, quality of life decisions for business. But I will submit to you that major metropolitan areas that have cultural facilities like performing arts centers, that have locations, venues for professional sports, that have great park systems, that have an array of different public amenities, they are the cities that are our future. We’re talking about investments that we collectively believe make sense for the future of this region. This isn’t a decision about tomorrow. This is a decision about ten and twenty years from now. These are investments that we believe stand the test of time. Is there risk in public decisions? Are there risks in public investments? There always are, but there’s greater risk in staying still and doing nothing.

Subscribing to this urban vision, 18 new stadiums since 1992 were constructed, are under construction, or are in the pre-construction stage in cities throughout the nation. Most have been constructed with large contributions of public funds and with significant streams of revenue, including naming rights, concession income and other valuable assets given to the sports franchise. County Manager Burgess testified that the County attempted to negotiate its deal in a manner that was competitive and consistent with how other jurisdictions approach such negotiations so as not to be at a competitive disadvantage.

CONCLUSIONS OF LAW

In Count IV of the Complaint, Plaintiffs seek declaratory and equitable relief declaring that the issuance of bonds totaling \$347 million dollars (\$382 million if the \$35 million loan is really the payment of rent), payable from both *ad valorem* taxes (already approved by the voters) and *non-ad valorem* tax revenues (CDT and TDT monies that can only be used for entertainment

related projects, including stadiums, and PST monies that can only be used for sports facilities), violates Art. VII, Section 10 of the Florida Constitution.

Article VII, § 10 of the Florida Constitution, “Pledging Credit” provides, in pertinent part,

Neither the state nor any county...municipality, special district, or agency of any of them, shall become a joint owner with, or stockholder of, or give, lend or use its taxing power or credit to aid any corporation, association, partnership or person.

This constitutional provision is not violated if the taxing power or credit lent satisfies a public purpose for nonrecourse bonds and a paramount public purpose for recourse bonds. *Sebring Airport Auth. v. McIntyre*, 783 So. 2d 238, 249 (Fla. 2001). In this case the County is both lending its taxing power and issuing recourse bonds. Therefore, the construction and use of the stadium must satisfy a paramount public purpose. The issue for this Court is not the popularity of the project or the public acceptance of the activity, or even the pleasure derived from the activity, but whether the Commission violated the Florida Constitution in lending its credit and taxing powers for the building of the stadium.

While this case is not a classic bond validation case, the Plaintiff has brought this case in the same guise that such cases are typically brought into court by the State Attorney to challenge the constitutionality of a bond issue in a particular jurisdiction. Accordingly, the burden is on the Plaintiff to prove that the project benefiting from the issuance of the bonds fails to serve a paramount public purpose. *See, e.g., State v. Osceola County*, 752 So. 2d 530, 539 (Fla. 1999) (holding that the State, as bond challenger in bond validation action, had burden to show that a county project “fail[ed] to serve a paramount public purpose”). The Court’s scope of review is correspondingly limited to three questions: whether the public body has the authority to issue the bonds; whether the purpose of the obligation is legal; and whether the bond issuance complies

with the requirements of law. *Boschen v. City of Clearwater*, 777 So. 2d 958, 962 (Fla. 2001). Moreover, “[l]egislative declarations of public purpose are presumed valid and should be considered correct unless patently erroneous.” *Panama City Beach Cmty. Redev. Agency v. State*, 831 So. 2d 662, 665 (Fla. 2002). In *Panama City Beach*, the court explained:

[T]he decisions of this Court ... clearly mandate that trial courts must maintain a very deferential standard of review when testing the validity of statutorily authorized revenue bonds Generally, legislative declarations of public purpose are presumed valid and should be considered correct unless patently erroneous. Moreover, the wisdom or desirability of a bond issue is not a matter for our consideration. Indeed, we have recognized that so long as the Legislature does not exceed its constitutional authority, our review of legislative declarations is limited.

Additionally, questions concerning the financial and economic feasibility of a proposed plan are to be resolved at the executive or administrative level and are beyond the scope of judicial review in a validation proceeding. Thus, only where the legislative determinations and conclusions are clearly erroneous should a court refuse to validate the bond issue.

Id. See also *Boschen v. City of Clearwater*, 777 So. 2d at 966-67 (unless clearly erroneous and violating the constitution, legislative declarations of public purpose are presumed valid and review of legislative declarations and findings are limited).¹² While the legislature cannot simply label its actions valid and, thereby, make them so, it is enough that the record before the legislative body makes the issue “fairly debatable.” *Panama City*, 831 So. 2d at 665. See also *Wald v. Sarasota County Health Facilities Auth.*, 360 So. 2d 763, 770 (Fla. 1978).

¹²We recognize that “legislative bodies have broad discretion in determining what measures are necessary in order to protect the public health, safety, and general welfare.” More importantly, this Court will not interfere with the City's exercise of discretion by second-guessing its judgment. Indeed, “[w]e are charged only with gauging the legality of the undertaking though conceivably a project might be as ill-advised as it is legal.” *Boschen*, 777 So. 2d at 967 (citations omitted).

Numerous other cases in Florida agree that great deference should be shown to legislative findings of public purpose. *See, e.g., Northern Palm Beach County Water Control Dist. v. State*, 604 So. 2d 440, 442 (Fla. 1992) (“This court has stated that a legislative declaration of public purpose is presumed to be valid, and should be deemed correct unless so clearly erroneous as to be beyond the power of the legislature.”); *State v. Hous. Fin. Auth. of Polk County*, 376 So. 2d 1158, 1160 (Fla. 1979) (“What constitutes a public purpose is, in the first instance, a question for the legislature to determine, and its opinion should be given great weight. A legislative declaration of public purpose is presumed to be valid, and should be deemed correct unless so clearly erroneous as to be beyond the power of the legislature.”); *State v. Daytona Beach Racing and Recreational Facilities Dist.*, 89 So. 2d 34, 37 (Fla. 1956) (“Since the Legislature determined that public purpose would be served, we should not find to the contrary unless it be found the Legislature was not just and reasonable or was arbitrary.”).

Plaintiffs argue that the presumption of correctness generally afforded legislative determinations of public purpose does not apply to projects supported with recourse bonds and that the Court should apply a strict scrutiny analysis when determining whether the County is violating Article VII, Section 10. This contention by the Plaintiff is not supported by the law. The principal case upon which Plaintiff relies for his contention that the Court should not afford a legislative finding great deference is *Sebring Airport Auth.*, 783 So. 2d 238. The court in *Sebring* was very explicit, however, in pointing out that bond validation cases implicate a different section of the constitution than tax-exemption cases and require a different analysis. *Id.* at 247. Plaintiff also relies on *North Florida Women's Health and Counseling Services, Inc. v. State*, 866 So. 2d 612 (Fla. 2003), and advocates that the Court examine the Commission’s findings in this case in a similar fashion to the examination undertaken by the court in that case

involving the fundamental right to privacy. In *North Florida Women's Health*, the court used strict scrutiny to examine the State's stated compelling interest justifying the statute. In contrast, this case involves the most deferential standard of review, under which legislative determinations of public purpose and facts are presumed correct and entitled to deference unless clearly erroneous.

Accordingly, while this Court is not simply a rubber stamp for the findings of the Commission, the Court, pursuant to case law, must give deference to the Commission as long as it has competent substantial evidence for its decision and has not violated Article VII, Section 10 of the Florida Constitution. While "paramount public purpose" for recourse bonds is different than "public purpose" for nonrecourse bonds for purposes of defining the purpose of the activity, the distinction should not affect the deference that a court gives to legislative determinations and findings.

There are ample legislative findings in the evidence adduced at trial for a finding by this Court that the retention of the Marlins in Miami and the building of a stadium constitute a paramount public purpose. These findings are reflected in the language of the ordinance for the future TDT and PST bonds to fund the baseball stadium:

WHEREAS ["sports stadiums"] ... provide recreation and entertainment to the citizens of the County and enhance tourism in the County and the acquisition, construction, renovation, expansion, improving and equipping of such facilities serves a valid public and County purpose, whether such facilities are owned by the County itself or by local governmental bodies located within the County[.]

Similarly, the State Legislature has determined:

[1] that the location of professional sports franchises in the state represents nonpolluting economic development for the state and promotes tourism and recreation, improves the prosperity and

welfare of the state and its citizens, and such public purposes implement the governmental purposes under the State Constitution of providing for the health, safety and welfare of the people,

[2] other states have recognized that attracting and keeping professional sports franchises produces both immediate benefits to the state and local area through the construction of an appropriate sports facility and long-term benefits in terms of economic growth and development in and around the facility, and the Legislature recognizes such benefits to the state ...

[3] significant levels of resources are necessary to attract professional sports franchises to the state and to be competitive with other states, and

[4] ...that although the funding necessary to attract professional sports franchises to the state is primarily the responsibility of local areas interested in development, such development produces a significant benefit to the state as a whole and is an appropriate public purpose for the expenditure of state funds,

Chapter 88-226, Laws of Florida. The State has also found that “existing professional sports franchises provide Florida communities with a source of recreation and contribute to civic pride, and ... such existing professional sports franchises provide jobs and enhance economic development and well-being for the citizens of Florida.” Chapter 95-304, Laws of Florida. The Florida Supreme Court has relied on these legislative declarations in upholding the use of public bond funds for a private convention facility. In *State v. Osceola County*, 752 So. 2d at 535, the court noted that Chapter 88-226 and Chapter 95-304 demonstrate “the legislature’s fervid interest in attracting professional sports franchises for the purpose of inducing non-polluting economic development, promoting tourism and recreation, and improving the prosperity and welfare of the state and its citizens. Further, through the enacting law, the legislature recognized that constructing sports facilities, as a means for attracting and keeping such franchises, will provide immediate benefits to the state and local areas.”

The County and City made similar legislative findings with respect to the proposed Marlins stadium. Both determined that the stadium would be in the best interest of the County and the City, and would serve the public purpose of providing entertainment and recreation to the local community. In approving the stadium, the Commission and the City concluded that it would (i) improve the quality of life for the citizens of the County and City; (ii) benefit their convention, tourism, and entertainment industries and the local economy; (iii) encourage the growth of cultural, tourism, economic development and entertainment opportunities; and (iv) become an integral part of the revitalization and resurgence of the downtown area of the City and a prominent symbol of the vibrancy of the County and City.

These findings—both those of the State regarding sports facilities in general and those of the City and County regarding the Marlin’s stadium in particular—clearly make a determination that the building of stadiums for major league teams satisfies a paramount public purpose. These legislative findings are entitled to substantial weight, are presumed correct, and may be rejected only if they are “patently erroneous” or violate the Florida Constitution.

The Court’s analysis does not end here. Rather, this Court must determine whether the purpose of the stadium not only satisfies a paramount public purpose but whether the benefits to a private entity, i.e., the Marlins, are merely incidental. *See, e.g., Osceola County*, 752 So. 2d at 535; *Poe v. Hillsborough County*, 695 So. 2d 672, 675 (Fla. 1997); *Northern Palm Beach County Water Control Dist.*, 604 So. 2d at 441-42; *Wald*, 360 So. 2d at 763.

The Florida Supreme Court has not separated the paramount public purpose analysis from the incidental benefits analysis. They are intertwined and inform each other. A reading of the cases in this area suggests that the question of incidental private benefits informs the question of whether a particular project serves a paramount public purpose – and vice-versa. Put another

way, benefits to a private party that are not merely incidental to the project's purpose will negate the project's paramount public purpose. As the Florida Supreme Court has stated:

Running throughout this Court's decision on paramount public purpose is a consistent theme. It is that there is required a paramount public purpose with only an incidental private benefit. If there is only an incidental benefit to a private party, then the bonds will be validated since the private benefits "are not so substantial as to tarnish the public character" of the project. If, however, the benefits to a private party are themselves the paramount purpose of a project, then the bonds will not be validated even if the public gains something therefrom.

Orange Cty. Indust. Devel. Authority v. State, 427 So. 2d 174, 179 (Fla. 1983) (citations omitted) (quoting *State v. City of Miami*, 379 So. 2d 651, 653 (Fla.1980)); See also *State v. JEA*, 789 So. 2d 268, 272-73 (Fla. 2001) ("an incidental private benefit is not sufficient to negate the public character of the project.").

The instant controversy is certainly not a case of first impression in Florida. Florida courts routinely consider whether the public funding of a wide array of projects, ranging from, *inter alia*, broadcasting facilities¹³ to water and sewer system expansions¹⁴ to port facilities¹⁵ to convention centers and hotels,¹⁶ violate the constitutional prohibition of lending taxing power and credit to private entities. Similarly, the consideration of whether public funding for the construction or renovation of sports facilities or stadiums satisfies a paramount public purpose is also not a novel concept to Florida courts or courts in other jurisdictions. In fact, since the mid 1900s, courts have considered whether the construction or renovation of stadiums or sports facilities, using public taxing power or credit, encroaches on constitutional provisions. In more

¹³ *State v. City of Jacksonville*, 50 So. 2d 532 (Fla. 1951); *Orange Cty. Indust. Devel. Authority v. State*, 427 So. 2d 174 (Fla. 1983).

¹⁴ *Zedek v. Indian Trace Community Development District*, 428 So. 2d 647 (Fla. 1983).

¹⁵ *State v. Manatee County Port Authority*, 193 So. 2d 162 (Fla. 1966).

¹⁶ *State v. Osceola Cty*, 752 So. 2d 530 (Fla. 1999); *City of West Palm Beach v. State*, 113 So. 2d 374 (Fla. 1959); *State v. Osceola County Indus. Dev. Auth.*, 424 So. 2d 739 (Fla. 1982).

recent years, presumably with increased entertainment value, world-wide interest and capital generated from sporting events, courts throughout the country more regularly address whether the use of public funds to build or improve stadiums for privately owned sports teams satisfies a paramount public purpose with only incidental benefits to the private entity.

An exhaustive review of case law in Florida pertaining to the expenditure of public monies to aid private entities is not necessary. Rather, there exists in Florida a body of case law emanating from our Supreme Court and addressing the use of public monies for sports stadiums and other recreational facilities. As recently as 1997, in a case strikingly similar to the instant case, the Florida Supreme Court considered whether a stadium leased upon lucrative terms to a private football team served a paramount public purpose. *Poe v. Hillsborough County*, 695 So. 2d 672 (Fla. 1997). In *Poe*, the Tampa Bay Buccaneers, an NFL football team, considered Tampa its home for 21 years. The owner of the team publicly expressed that in order to remain financially competitive with other NFL teams, the team needed to acquire a new stadium with state of the art amenities including luxury suites and club seats, etc. According to the owner, the team would seek to relocate to another city without the approval of a new stadium. At no time, however, did the owner submit a relocation application to the NFL. Thereafter, the City of Tampa, Hillsborough County, the Tampa Sports Authority (“TSA”) and the team began negotiations and subsequently reached an agreement to construct a new stadium. Under the various agreements, the parties agreed to construct a new 65,000 seat community stadium at a cost of \$168.5 million, financed by bonds paid for with tourist taxes and a half penny sales tax approved by the voters. All insurance, management and upkeep was the responsibility of the County. In addition, the County agreed to build a \$12 million training facility to be used by the team. Under the terms of the agreements, the team would utilize the stadium for 30 years and

pay a total of \$3.5 million in rent. The TSA would receive \$1.93 million annually from a surcharge on tickets for team games and other stadium events, and 50 percent of all revenues from non-team events beyond the first \$2 million in proceeds from these events that accrued to the team. According to the expert economist, the quantifiable economic benefit to the County could range from \$83 million to \$183 million in addition to in excess of \$300 million from a Super Bowl to be held in the new stadium.

The court in *Poe* also heard testimony relating to the more intangible, non-economic benefits from the proposed project. The public nature of the football stadium was bolstered by the testimony of the Mayor of Tampa, the county administrator, and the president of the Chamber of Commerce who testified that the presence of the team would provide a benefit to the Tampa economy as a result of the national media exposure, which would in turn attract tourists and new businesses to the area. According to the evidence presented, without the presence of the NFL team, the local community would find it more difficult to compete for new business with other cities with professional football teams. Moreover, the stadium would host more than 40 designated community events including other professional sporting games, college, high school and bowl games and concerts. The trial court reasoned that although economic forecasting is not an exact science, the stadium project and continued presence of the team would have a positive economic impact on the local community that would far exceed the cost of the new stadium over time. The trial court also found that the stadium project would instill civic pride and camaraderie, enhance the community's image and provide recreation, entertainment and cultural activities to the citizens of the area. Based on the foregoing, the court reasoned that the project, in and of itself, served a paramount public purpose. *Id.* at 678.

Notwithstanding the lower court's finding that the stadium satisfied a paramount public purpose, it refused to validate the bonds because of a single component of the deal that the court determined militated in favor of the private benefit to the team, i.e., the granting to the team of the first \$2 million in net revenues from non-team events. *Id.* at 674. On appeal, the Florida Supreme Court classified the football stadium project as a recreational facility in accordance with previously decided cases. *Id.* at 676. In applying the rules of prior decisions considering the public nature of recreational facilities, including *Daytona Beach Racing & Recreational Facilities*, 89 So. 2d 34 (Fla. 1956), the court determined that the purpose of the football stadium was both to increase trade by attracting tourists and to provide recreation for the citizens of the District. *Id.* at 676, citing *State v. City of Daytona Beach*, 160 Fla. 13 (1948); *State v. City of Jacksonville*, 53 So. 2d 306 (Fla. 1951); *State v. City of Pensacola*, 43 So. 2d 340 (Fla. 1949). The court in *Poe* explicitly warned trial courts not “[to] micromanage the arms-length business negotiations between the parties by striking discrete portions of a complex arrangement...which as a whole the court candidly finds to be substantially beneficial to the public.” *Id.* at 679.

In discussing paramount public purpose, the court specifically held that in determining whether a sports facility serves a paramount public purpose, the fact that a private business will benefit economically is not the central inquiry:

The mere fact that someone engaged in private business for private gain will be benefited by every public improvement undertaken by the government or a governmental agency, should not and does not deprive such improvement of its public character or detract from the fact that it primarily serves a public purpose. An incidental use or benefit which may be of some private benefit is not the proper test in determining whether or not the project is for a public purpose.

Id. at 677 (quoting *State v. Bd. of Control*, 66 So. 2d 209, 210 (Fla. 1953)).

Indeed, the two other Florida Supreme Court cases quoted at length by the *Poe* court and upon which it heavily relied strongly indicate that public economic benefit is not the focus of paramount public purpose analysis in sports facility related cases. In *State v. Daytona Beach Racing & Recreational Facilities District*, 89 So. 2d 34 (Fla. 1956), a taxpayer filed suit alleging that a bond issue to construct a speedway was invalid. The private corporation and the District split the time each would have access to the facility. The court focused instead on other public benefits:

The corporation would conduct automobile racing events of international interest, as well as other attractions. Tourism, both as between the areas of our State and as between the States of this Nation, is a competitive business. The sand and the sun and the water are not sufficient to attract those seeking a vacation and recreation. Entertainment must be offered. Even ignoring its use by the District for periods aggregating one-half the year, or more, for other recreational and educational purposes for the public, the facility in question, considering the uses to which it will be adopted and their expected effect on the public welfare, is ... a valid public purpose ...

[T]he purpose of the facility is both to increase trade by attracting tourists and to provide recreation for the citizens of the District.

A case involving the Daytona Beach Speedway came before the court again when the agreement between the District and the Speedway corporation was amended to give the corporation exclusive use of the speedway all year. *Daytona Beach Racing & Recreational Facilities Dist. v. Paul*, 179 So. 2d 349 (Fla. 1965). Even though the corporation had paid nothing toward construction, would realize millions in profits, and now had exclusive year-round use of the speedway, the court found that the bonds issued for the speedway's construction *still* served a paramount public purpose. The court explained:

The new and existing lease reduced the District's rights to the facility to a three-month period each year, with further provision

the Speedway corporation could, if it desired, pre-empt the three months for speedway racing purposes. But as we have seen, the revising of the lease did not detract from the predominantly public purpose of the facility, which was the successful operation of the Speedway itself, pure and simple, as a tourist and business attraction to the area—a unique facility in the state which harmonized with customs of the City of Daytona Beach where automobile racing was conducted along the beach of the Atlantic Ocean opposite the city for many years past.

Id. at 355.

Other Florida cases similarly approve the use of public funds without any showing of public economic benefit. In *Orange County Civic Facility v. State*, 286 So. 2d 193 (Fla. 1973), the court approved the use of public funds to enlarge the Tangerine Bowl based only on the hope of attracting a National Football League team. Similarly, in *Rowe v. Pinellas Sports Authority*, 461 So. 2d 72 (Fla. 1984), and in *State v. Tampa Sports Authority*, 188 So. 2d 795 (Fla. 1966), the court approved the use of public funds to construct stadiums in Pinellas County and Tampa, respectively, even though no team was immediately available to use them. *See also Miami Dolphins, Ltd. v. Metropolitan Dade County*, 394 So. 2d 981 (Fla. 1981) (approving public funds to improve the Orange Bowl) and *Rolling Oaks Homeowner's Association v. Dade County*, 492 So. 2d 686 (Fla. 3d DCA 1986) (court approved the use of public property for construction of a new sports stadium complex to be used by the Miami Dolphins). Based on these cases, it appears well settled in Florida that sports and recreation facilities serve a paramount public purpose “pure and simple,” even if they do not produce a substantial economic benefit to the local community and even if a private entity stands to benefit from the deal. *Daytona Beach Racing & Recreational Facilities*, 179 So. 2d at 355.

The same is true in cases involving public expenditures on facilities other than stadiums, where public entertainment and/or tourism are implicated. For example, in *State v. Reedy Creek*

Imp. Dist., 216 So. 2d 202 (Fla. 1968), the court held that millions of dollars of bonds issued to develop land primarily for the benefit Walt Disney World, were valid because they served a public purpose simply by developing and encouraging tourism. The court dismissed Disney's substantial private financial benefit as no more than "incidental" to this legitimate public purpose. *Id.* at 206. Applying the same reasoning in *State v. Osceola County Indus. Dev. Auth.*, 424 So. 2d 739 (Fla. 1982), the Supreme Court validated bonds to finance the construction of a privately owned Days Inn, even though all profits from the hotel would go to the private hotel owner. And in *State v. Osceola County*, 752 So. 2d 530, the court relying on *Poe* and *Daytona Beach Racing & Recreational Facilities Dist.*, found that a convention center that was part of a multi-phase complex, including a hotel, expo center, retail stores and parking facilities satisfied a paramount public purpose. *Id.* at 532. In *State v. Osceola County*, the convention center was funded by the levy of a one percent tourist tax that went to funding the renovation of a sports stadium first and the convention center second. The convention center was to be built by a private entity, sold to the county and managed by the private entity. All revenues from the operation of the convention center were to be retained by the private operating entity. *Id.* The court found that the convention center would promote the economy of the County and the State, develop tourist related business activities, thereby increasing employment and promote the county as "a player in the context of business meetings." *Id.* at 533. Moreover, the court found that the convention center would provide a forum for recreational, educational and entertainment related activities. *Id.* at 539.

Similar to the trend in Florida, courts across the country have consistently held that sports stadiums serve a paramount public purpose. *See Ragsdale v. City of Memphis*, 70 S.W. 3d 56, 72 (Tenn. Ct. App. 2001) (relying on *Poe*, the court held that construction of a new arena for the

Memphis Grizzlies, an NBA team, served a public purpose, notwithstanding the substantial financial benefits it provided to the team);¹⁷ *Friends of the Parks v. Chicago Park Dist.*, 786 N.E. 2d 161, 170 (Ill. 2003) (“[t]he public[’s use of] a fully renovated, multiuse stadium ... do[es] not violate the public trust doctrine, even though the Bears will also benefit from the completed project); *Clean v. State*, 130 Wash. 2d 782, 797 (Wash. 1997) (sports stadium in city arguably provides jobs, recreation and promotes economic development and tourism and, therefore, serves a public purpose); *Libertarian Party of Wisconsin v. State*, 546 N.W. 2d 424, 434-35 (Wis. 1996) (providing recreation serves a public purpose and is a matter for the legislature); *Kelly v. Marylanders for Sports Sanity, Inc.*, 530 A. 2d 245, 259 (Md. App. 1987) (sports stadiums serve public recreational purposes and are a legitimate governmental objective); *Lifteau v. Metro. Sports Facility Comm’n*, 270 N.W. 2d 749, 753-54 (Minn. 1978) (recreation and entertainment is primary purpose of building a stadium not economic development);¹⁸

¹⁷ The court explained that “public purpose” goes far beyond mere economics:

If a well governed city were to confine its governmental functions merely to the task of assuring survival, if it were to do nothing but provide ‘basic services’ for an animal survival, it would be a city without parks, swimming pools, zoo, baseball diamonds, football gridirons and playgrounds for children. Such a city would be a dreary city indeed. As man cannot live by bread alone, a city cannot endure on cement, asphalt and pipes alone. A city must have a municipal spirit beyond its physical properties, it must be alive with an esprit de corps, its personality must be such that visitors-both business and tourist-are attracted to the city, pleased by it and wish to return to it. That personality must be one to which the population contributes by mass participation in activities identified with that city.

Ragsdale v. City of Memphis, 70 S.W.3d 56, at 73-74, quoting *Conrad v. Pittsburgh*, 218 A.2d 906, 914 (1966) (J. Musmanno concurring).

¹⁸ In *Lifteau* the court explained:

[W]e may take judicial notice of the important part that professional sports plays in our social life. ... [E]conomic development is not the primary purpose of building a new stadium; it is rather entertainment and recreation purposes which predominate. Nonetheless, a stadium will provide temporary and permanent jobs as well as some benefits to businesses in the area. We are not persuaded by plaintiff’s argument that the law is a bad law because it benefits indirectly some private individuals or corporations; that it is economically unsound; that stadia all over the country have experienced cost overruns; and that the new stadium, if built, will prove to be a “loser” from a revenue standpoint. These arguments are proper arguments to be made to the legislature, or to

Martin v. City of Philadelphia, 215 A. 2d 894, 898-99 (PA. 1966) (baseball and football require a large stadium and whether it is wise to build one is a legislative determination).

Indeed, only two courts in the country have held that the building of sports facilities do not satisfy a paramount public purpose. See *In Re Opinion of Justices*, 250 N.E. 2d 547 (Mass. 1969) and *Brandes v. City of Deerfield Beach*, 186 So. 2d 6 (Fla. 1966). In *Brandes*, the Court held that the construction of a spring training facility for minor league baseball and exhibition major league games did not serve a paramount public purpose. *Brandes* is easily distinguished from more recent decisions involving the public construction of major league stadiums. First, the *Brandes* case was decided in 1966 when there were no legislative declarations by the state that the construction of a sports facility served a public purpose. Moreover, the sports facility in *Brandes* served an out-of-state sports team providing them with a spring training facility for exhibition games and minor league baseball games. In this case, the stadium will serve as the home of the Miami Marlins for at least 81 games each season. See also *Clean v. State*, 928 P. 2d at 1060 (*Brandes* “did not reject the argument that development of a public stadium as a home for professional sports teams serves a public purpose. [Rather] the Florida Supreme Court ... emphasized that the primary purpose of the proposed facility was to provide a ‘training’ facility for a single team and that opportunities for spectators were only incidental.”); *Lifteau v. Metro. Sports Facilities Comm’n*, 270 N.W. 2d at 753 n.5 (in distinguishing *Brandes*, court opined that “[t]he public interest in spring training games of a single team is obviously less than the public interest in a multi-purpose stadium to be used for professional (regular season and post season)

the Commission itself. ... Decisions such as these are economic matters and political decisions to be made by legislative bodies, not the courts.

and nonprofessional athletic events and nonathletic events”). In *Opinion of the Justices*, 250 N.E. 2d at 560, the court, in an advisory opinion, found that while a sports stadium could satisfy a public purpose and could be financed with public funding, the stadium at issue could not be financed with public money because the standards governing user fees were inadequate. This case is hardly precedent upon which this Court should rely.

Accordingly, courts have held nearly uniformly¹⁹ that it is a proper public purpose for governments to build stadiums, arenas and similar venues for major league sports teams even if they are used and controlled by those teams.²⁰ While the holdings of courts from other

¹⁹ Both *Lifteau*, 270 N.W. 2d 749, and *Libertarian Party*, 546 N.W. 2d 424, reviewed the case law nationwide and concluded that out of the scores of cases considering the issue, only two found a stadium not to serve a public purpose.

²⁰ See also *Goldstein v. Pataki*, 516 F. 3d 50, 52 (2d Cir. 2008) (holding that condemnation of land to construct an arena for the New Jersey Nets basketball team served a public purpose, notwithstanding the substantial financial benefit to the privately owned team); *S.E. Land Develop. Ass’n v. District of Columbia*, 2005 WL 3211458 (D.C.D.C. 2005) (construction of stadium completely at public expense for the purpose of attracting a baseball team served a public purpose); *In Re Spectrum Arena, Inc.*, 330 F.Supp. 125, 127 (E.D.Pa.1971) (holding that the “[Philadelphia] Spectrum serves a public purpose similar to that served by the Philadelphia Veteran’s [MLB] Stadium—providing a place for athletic events. However, since the Spectrum is enclosed it is better suited than the Veteran’s Stadium for the providing of year round additional cultural and entertainment events.”); *City of Anaheim v. Michel*, 259 Cal.App.2d 835, 839 (Cal.App.1968) (affirming use by City of land for MLB stadium and parking because “the acquisition, construction and operation of a stadium by a county or city represents a legitimate public purpose”); *Ginsberg v. City & County of Denver*, 436 P.2d 685 (Colo. 1968) (acquisition of a sports stadium by city served a public purpose); *Moschenross v. St. Louis County*, 188 S.W. 3d 13, 22 (Mo. Ct. App. 2006) (construction of stadium for St. Louis Cardinals baseball team served a public purpose even though team benefited financially); *Rice v. Ashcroft*, 831 S.W.2d 206 (Mo. Ct. App. 1991) (holding that taxpayers failed in their burden to demonstrate that there was no public purpose associated with the construction of a covered stadium and supporting facilities in downtown St. Louis); *New Jersey Sports & Exposition Auth. v. McCrane*, 292 A.2d 580, 598 (N.J. Super. Ct. Law Div. 1971) (N.J. 1972) (“the view that the construction and maintenance of stadiums and related facilities constitutes a public purpose has received virtually universal approval in most jurisdictions.”); *County of Erie v. Kerr*, 373 N.Y.S.2d 913 (N.Y. App. Div. 1975) (purpose of publicly-owned professional football stadium, i.e., to provide the residents of Erie County the benefit of a first-class recreational, sports and cultural facility, was a public purpose, regardless of team’s private profit motive); *Murphy v. Erie County*, 268 N.E.2d 771, 774 (N.Y. 1971) (stadium used exclusively by private party still has a public purpose, “for it is evident that the county’s residents will be obtaining the full benefit for which the stadium is intended, the ability to view sporting events and cultural activities, regardless of the identity of the party operating the stadium”); *Peacock v. Shinn*, 533 S.E.2d 842, 847 (N.C. App. 2000) (holding that basketball arena is a public purpose, even though it may not be *necessary*, and even though it benefits a private actor); *Bazell v. City of Cincinnati*, 233 N.E.2d 864 (Ohio 1968) (rejecting an action by taxpayers to enjoin a city from expending funds to construct a sports facility); *Cohen v. City of Philadelphia*, 806 A.2d 905 (Pa. Commw. Ct. 2002) (holding construction of stadium for Philadelphia Eagles football team served a public purpose, notwithstanding the substantial private financial benefit to the team); *Citizens for More Important Things v. King County*, 932 P.2d 135 (Wash. 1997) (holding ordinance authorizing issuance of note for preconstruction costs of baseball stadium was for public purpose).

jurisdictions are not determinative of the issue for this Court, these cases are certainly instructive to the Court in deciding an issue of great public importance to Miami-Dade County and the State of Florida.

As mentioned, the Plaintiff urges the Court not to rubber stamp the Legislative findings of the Florida State Legislature or the Miami-Dade County Commission as pertaining to the recreational, civic and entertainment value of retaining professional sports teams in general in Florida and the Marlins in particular in Miami. Yet, the Supreme Court of Florida, in concert with courts around the country, has already consistently held that the legislative determinations concerning the tangible and intangible benefits of retaining professional sports in Florida satisfy a paramount public purpose with only incidental private benefit. Moreover, this Court has examined the components of the deal in *Poe* and can see no real distinction between *Poe* and this case. In fact, the negotiated deal in this case is in some respects more favorable to the County than the deal was in *Poe*, where the team contributed no money to the building of the stadium and had no responsibility for cost overruns, management or insurance. The Court need not, however, perform such a comparison because the law in Florida is clear that retaining a professional baseball team in Miami satisfies a paramount public purpose and that the terms of the negotiated deal are not a subject for this Court's scrutiny.²¹ *Poe*, 695 So. 2d at 678. As stated in *Daytona Beach Racing and Rec. Fac. Dist. v. Paul*, 179 So. 2d at 355, the "predominately public purpose" [of the speedway] was the successful operation of the Speedway itself."

While the Court agrees with Plaintiff that the Marlins are getting what amounts to a "sweet deal," this is, put bluntly, not the business of this Court. Moreover, while this Court shares the

²¹ For this reason the Court declines to examine whether the \$2.3 million dollars per year that that the team is paying to the County constitutes rent or repayment of the loan.

concerns of Plaintiff that the Marlins may not be able to honor their financial obligations, this again, is beyond the purview of this Court in analyzing paramount public purpose. *See Panama City Beach*, 831 So. 2d at 665 (“questions concerning the financial and economic feasibility” of the stadium “are to be resolved at the executive or administrative level and are beyond the scope of judicial review.”) Rather, if the public and the Plaintiff believe that their lawmakers have made imprudent or unwise decisions then they should make their feelings known to their elected officials at the ballot box.

Evidence concerning the revitalization of Little Havana, the effect on tourism resulting from jewel events and national broadcasting, the entertainment value of the stadium and its effect on civic pride and social cohesion, the ability of the stadium to retain and induce businesses to reside in South Florida are all issues of great debate. The Plaintiff has failed to meet its burden and, therefore, failed to convince this Court that such determinations by the Commission and the witnesses at trial are not, at least, “fairly debatable.” Indeed, the *Poe* court, and every other court around the country, has accepted as credible testimony regarding the intangible benefits of retaining professional sports in the community. *See Reedy Creek Improvement Dist.*, 216 So. 2d at 205 (while evidence presented to the court was not conclusive, the court gave weight to less tangible evidence to include legislative findings of general welfare and recreation). Moreover, the building of the stadium utilizes land that would otherwise lay bare, and the City of Miami (part of Miami-Dade County), will collect at least \$200 million in parking revenues over the course of the Marlins’ lease. While it is speculative to opine on what might occur in the excess acreage surrounding the stadium, it is just as reasonable to believe that businesses will come into the area immediately surrounding the stadium as to believe that they will not.

It is true that the County has failed to perform any recent studies addressing the long term economic impact of building a Marlins stadium in Little Havana. *cf. Poe*, 695 So. 2d at 678 (stadium would benefit the local economy by contributing between \$83 and \$183 million per year and bringing \$300 million into the economy with the promise of a Super Bowl). It is also true that the Marlins have failed to tender any *pro formas* to the County in order to assist in such an analysis. Moreover, the Court agrees with Plaintiff that while construction of the stadium will create an employment boost to our recessionary-like local economy, such effect would endure over a 29-month period only and would necessarily result from any large scale construction project. At least one case in Florida has rejected the creation of jobs as a basis for finding a paramount public purpose. *See Jacksonville Port Authority*, 204 So. 2d at 885, n. 9 (Fla. 1967) (the alleviation of unemployment and the creation of economic development is not adequate to transform a project with a primary private purpose into a project with a paramount public purpose). While crediting the testimony of Dr. Cruz, the Court is not influenced by his testimony in reaching its conclusions.

The Court does credit evidence that the Marlins are required to pay \$10 per space for all parking spaces for all stadium events, even if the spaces are not actually used. This is estimated to produce \$200 million in revenues to the City over the term of the lease. Finally, the County is entitled to a share of the net proceeds of any sale of a controlling share of the franchise within the first five years of the execution of the BSA. While these economic benefits may be small, the Court does not find the lack of testimony regarding more substantial long term concrete economic benefits fatal to the County's case.

In sum, the BSA serves to insure that the Marlins remain in Miami for 35 years in the same way that the agreement in *Poe* assured that the Tampa Bay Buccaneers would remain in Tampa.

Previously, the Marlins had repeatedly explored moving to other cities. Regardless of how likely such a move actually is or was, it is certainly reasonable for County officials to believe the Marlins might leave Florida that without the BSA. It is also reasonable for them to believe that if the Marlins left, the County's reputation and image would suffer. The County seeks to improve the experience of attending a baseball game for its residents and visitors. Residents (and tourists) will now have the pleasure of attending baseball games and other events in a modern stadium comparable to those in other major league cities. The retractable roof stadium is one of two in Florida. Rather than have to cope with the vagaries of South Florida rain, heat and humidity, spectators can attend games confident that the retractable roof will protect them from inclement weather. Will this increase attendance at the games? The Court can no more answer this question than the County's witnesses can. Indeed, one of the County's witnesses opined that the only way to know if the stadium will increase attendance is to "build the stadium."

The evidence further shows that by building the stadium, the County seeks to improve civic pride and camaraderie. In changing their name from the Florida Marlins to the Miami Marlins, both the City of Miami, the largest city in the County, and the County will benefit with respect to branding and image building. As Mayor Alvarez told the County Commission, "[T]hat publicity you can't put a price tag on. It's a good global public relations coup for us every time the name is mentioned." From a charitable perspective, the agreement requires the Marlins to contribute to the community. For example, they are required to provide 81,000 low-priced tickets, offer one suite a game for public and/or charitable use, develop a substantial community benefits package, and help develop a youth baseball league. The Marlins will allow the County and/or the City to host 16 events per year at the stadium, subject to Marlins veto, and will provide their concessionaires for the events.

Finally, the stadium is part of a vision for Miami-Dade County that has been adopted by elected officials in both Miami-Dade County and the City of Miami. While the stadium is not contingent on other projects, it is part of a plan for Miami designed to revitalize the urban core. To this end, the GIA envisions constructing a stadium, a museum in Bicentennial Park, a port tunnel, a streetcar, a soccer field and housing. Elected officials have made a decision that in order to transform Miami into a world class city conducive to business and tourism and improve the quality of life for its citizens, the City and County, over the next 20 years, will necessarily undertake an ambitious program requiring the expenditure of considerable resources creating amenities and entertainment in the downtown and surrounding areas. This Court cannot judge whether this is a wise or realistic decision or if it will, in fact, ever come to fruition. The Court cannot make a decision that the use of tourist and convention tax dollars and sports franchise tax dollars can be better used to fund other tourist related or entertainment related projects. Nor can the Court speculate that such an ambitious program may ultimately necessitate the expenditure of general revenue monies and, consequently, curtail vital services for the community. Rather, the Court can only determine whether the stadium as part of a long- range vision for Miami, as adopted by the Commission, satisfies a paramount public purpose with only an incidental private benefit. The answer to that question is clearly, yes. *See, e.g., Reedy Creek Improvement Dist.*, 216 So. 2d at 205 (proposed project part of an “integrated plan or workings” of the district and together all “related improvements are essentially and primarily directed toward encouraging and developing tourism and recreation” for the benefit of the citizens and visitors to the state.).

The Court is well aware that the building of the Marlin stadium is a contentious and emotional issue in Miami-Dade County. The Court is also aware that the citizens of the county are passionately committed to their respective beliefs regarding the wisdom of building the

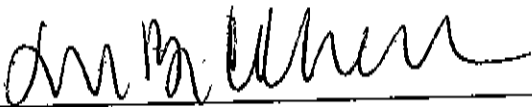
stadium with public monies. Moreover, the Court is well aware that more citizens may be opposed to the building of the stadium, even to retain the Marlins in Miami, than in favor of building the stadium. These considerations, however, may not sway this Court. The job of this Court is to examine the facts and apply those facts to the law. The law in Florida is abundantly clear and this Court, as a trial court, is bound by that law.

Accordingly, with respect to Count IV, the Court finds that the County's decision to construct a publicly owned baseball stadium to be operated by the Florida Marlins serves a paramount public purpose within the meaning of Article VII, Section 10 of the Florida Constitution, and Plaintiff's application for declaratory and injunctive relief as to Count IV as set forth in the Second Amended Complaint and other amendments is DENIED.

With respect to Count V, the Court reserves ruling on this claim until after September 15, 2008, in anticipation of a ruling by the Florida Supreme Court in *Strand v. Escambia County*, 2007 WL 2492294 (Fla. Sept. 28, 2007) (motion for rehearing pending) and related cases.

DONE and ORDERED in chambers at Miami, Miami-Dade County, Florida, this 20th day of November, 2008.

JUDGE JERI B. COHEN



Jeri Beth Cohen
Circuit Court Judge

Copies furnished to all counsel of record.