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Fla. Puts New Spin On Public Stadium Financing

By **Liz Hoffman**

Law360, New York (September 16, 2013, 5:02 PM ET) -- A new idea in public stadium financing comes from Orlando, Fla., where a county official wants something in exchange for helping to bring a soccer team to town: a share in the upside.

Orange County Commissioner Peter Clarke is happy to have the county play a role in lining up the $155 million it will take to build a stadium and pay the Major League Soccer franchise fee. He just wants to make sure the county gets something for its money.

Clarke is proposing that Orange County be a full partner in the team, contributing about $20 million toward the franchise fee and stadium — about a 13 percent stake, using total expected costs — and sharing in revenues. If the team is later sold or recapitalized, the county would get a split of the proceeds.

“People are tired of seeing the team owners get rich and the county get a hearty handshake and a 'thank you,'” Clarke said in an interview. “If soccer takes off here the way people think it will, taxpayers should get something back.”

Clarke's idea taps into a growing frustration — backed up by several academic studies — that municipalities generally have very little to show for their support of professional sports teams.

Cities and counties issue hundreds of millions of dollars in tax-exempt bonds and toss in other goodies, such as new zoning regulations and free public land or infrastructure, in the hopes of creating a new tax base.

But it often fails to pan out. New York City, for example, approved the new Barclays Center because it was to include a huge retail, residential and commercial development in Brooklyn. So far, though, most of Atlantic Yards only exists on paper, despite direct city subsidies worth at least $179 million and tax-exempt bond status worth far more.

And long-term effects on jobs and tourism consistently fail to materialize. A study published last year found no correlation between hosting an NBA team and average incomes. Instead of bringing in new dollars, sports teams and their shiny new homes may simply siphon off spending from other local draws, the study concluded.

Where upside actually does exist — the value of the franchise — local governments get cut out. The value of the average NFL and MLB team has more than tripled since 2000, according to Forbes. But municipalities see none of that increase, either on paper or when teams are sold.

Orlando's own history with the Magic, its NBA franchise, is a good example. Orange County and the city paid $110 million for the original Orlando arena in 1989. In 2010, when the team demanded a new venue, the county issued $470 million in bonds backed by a special hotel tax to cover the construction cost, while the team contributed $50 million.

In return, the Magic — now the 14th most-valuable NBA franchise, valued at $470 million, according to Forbes — has spent about $25 million to build five rec centers in the area.

“All that taxpayer money out there, and if the team up and left tomorrow, we'd get nothing in return,” Clarke said. “There needs to be a shift in how these things are financed.”

His plan has some kinks. For one, Florida law appears to block municipalities from direct investments such as this. And Orlando's situation is further complicated slightly by Major League Soccer's structure. The league owns all the teams and sells franchising rights, acting more like McDonald Corp. than its NFL, NBA, MLB and NHL peers.

Clarke says Orange County could get the same benefits through contracts, without an equity stake.

The only comparable setup in professional sports is the Green Bay Packers, which have been owned since the 1950s by the citizens of Green Bay, Wis. The setup has been credited with keeping the team in Green Bay, the smallest city with an NFL franchise.

Experts say state laws such as Florida's have limited similar arrangements. So has wariness from the leagues themselves, which aren't wild about the disclosures that come along with public ownership, said Irwin Raij, who heads the sports industry practice at Foley & Lardner LLP.

Still, the idea is intriguing in an era where professional sports teams regularly hold their host governments hostage for new stadiums. Clarke's plan has earned some accolades from the sports media — Deadspin, a popular sports blog, called it “the best idea for stadium financing we've ever heard” — and finance lawyers say it's worth considering.

“It seems like a not-at-all surprising reaction to the general complaint we hear, which is that there's an imbalance between the benefits sports teams are getting from new stadiums and the benefits that the local governments actually realize,” said David Narefsky of Mayer Brown LLP. “There's a real push for more direct upside.”

The counter-argument, of course, is that it's risky. The service on bonds is a far more dependable source of revenue than profits from tickets, hot dogs and T-shirts. And as a full partner, Orange County could be on the hook for any budget gaps, Raij said.

“Equity owners get capital calls when there are problems,” Raij said. “Everyone talks about what big business sports is and how everyone is just rolling in money, but there are huge risks.”

Raij said there are other, less risky ways for local governments frustrated with the status quo to demand more. Smart planning for co-development, as seen in San Francisco's AT&T Park or Petco Park in San Diego, can better ensure that the tax base grows alongside team revenues, he said.

More subtle favors can help private companies raise the necessary financing on their own, too. The city of Chicago agreed to waive restrictions on outfield signage, a change the Cubs say will bring in new advertising revenue that can be leveraged to pay for upgrades to Wrigley Field. Of course, that requires a burdensome regulation in the first place, which may not exist everywhere.

And stiff relocation penalties, which require teams to reimburse municipalities if they move before the end of the contract, can help protect cities from any downside. The state of New York, for example, in a recent agreement with the NFL's Buffalo Bills, got the team to agree to stay in Buffalo for 10 years, or else pay a $400 million penalty. The Florida Marlins are locked into staying in Miami until the debt from their new stadium is retired.

“There are better ways to protect the community interest without taking on equity risk,” Raij said. “The end goal is, I think, a good one. You just have to think about how to get there, and that's a local question that requires creativity.”

--Editing by John Quinn and Chris Yates.

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