Why Minor League Baseball Has Real Estate Developers and Local Governments Singing, "Take Me Out to the Ballgame"

By Mac McCarley and Laura Goode

Minor league baseball has become major league business for a collection of cities large and small across North Carolina. At the heart of every minor league ballpark project is a commercial real estate deal: a building, on a budget, on a schedule, with agreed building elements, and an agreed quality standard. What has changed in recent years is that there is also now an economic development deal.

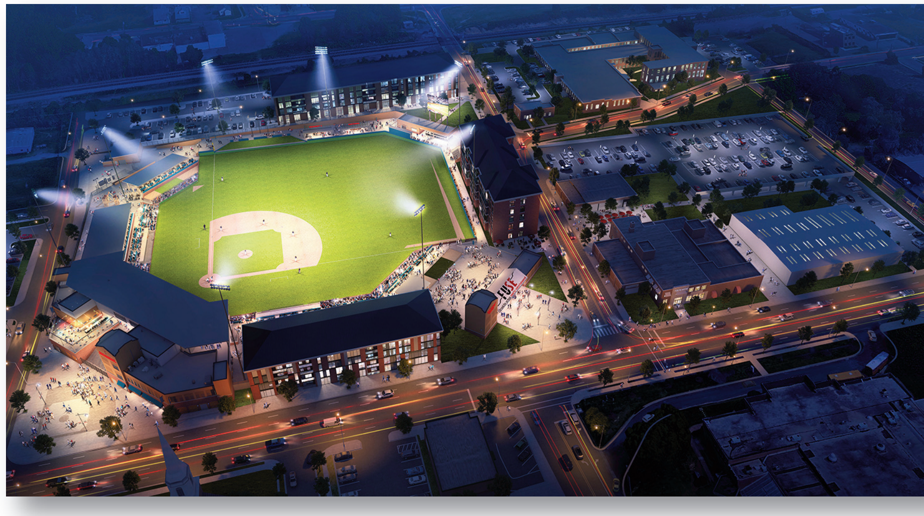
Rendering of a ballpark in Kannapolis.

Many potential team owners are first and foremost real estate developers. Their business plan is to break even on minor league baseball, and to make a profit developing or redeveloping the surrounding property. As you can imagine, that suits local governments just fine. (While we focus on baseball in this article, the concepts we discuss generally apply to any sports facility.)

The Impact of COVID-19

There's no sugarcoating it: the COVID-19 pandemic resulted in an awful 2020 season for minor league sports, like other industries centered around large public gatherings. However, with the rollout of multiple widely available and highly effective vaccines, data evidencing lower transmission risks in outdoor settings, and the lifting of most restrictions, it looks like blue skies are ahead for minor league ballparks. Outdoor ballparks in warm climates (see: North Carolina) seem to be perfectly positioned to address the large pent-up demand for safe entertainment outside of the house. This will apply both for ballgames and for the variety of other outdoor events these venues can host. Indeed, preliminary data from multiple North Carolina minor league ballparks show strong attendance for the 2021 season. Take the Kannapolis Cannon Ballers, who played the first game in their new ballpark in May. It took them only a third of this season to surpass their total attendance numbers from their last full season in the old ballpark.

However, game and event attendance aside, the real profit driver for minor league ballparks is the real estate play—and real estate development around ballparks is charging ahead. Interest rates for construction loans are at record lows. While development took a pause in the early days of the pandemic (along with the rest of the economy), and supply shortages have increased prices, there has been no slowdown in much of the state's real estate industry since last summer.



Rendering of a ballpark in Gastonia.

Why Ballparks Can Be a Good Deal for Developers

So what makes minor league baseball attractive to a commercial real estate developer? Let's start with free land, which is often how the deals are structured with local governments. That's because if the ballpark drives development and economic activity in the surrounding area, it increases tax values and creates new jobs, all of which bring more revenue into local coffers. It's a win-win as long as the developer meets the standards in the economic development agreement, which usually include developing the property within five years and increasing the local tax revenue over a longer period of time. (More on those details later.)

Developers are also getting in on the ground floor of what could become some of the most valuable property in an area. They are not only getting to manage the ballpark and get all the high-profile benefits of that, but they also often develop the property around it that turns into apartments, brewpubs, and other mixed-use space. Additionally, if they partner with the local government on the overall plan, that makes it much easier to navigate zoning, which can be a significant challenge for other types of development. Reducing the time, costs, risks, and uncertainties tied to land use and zoning are huge benefits for developers. Further, the developer-turned-team-owner gains a new line of revenue through sponsorships. And since the local government acts as a partner in making the area feel like the new exciting place to be, the developer essentially gets free advertising for their other developments around the stadium.

Why Ballparks Can Be a Good Deal for Local Governments

Local governments have seen ballparks drive economic development in several ways. These include the redevelopment of a troubled site or blighted area, a catalyst for development and redevelopment in the surrounding area, a boost to the travel and tourism sector of their local economy, an increase in direct spending in the local economy, a rise in community profile to assist in business recruiting efforts, and a new entertainment amenity to attract new residents to the community.

Where local governments want to put a new ballpark is different for every city. Most are now either in or right around downtown areas. High Point and Gastonia's minor league ballparks, for example, are in urban redevelopment neighborhoods right beside downtowns, while the new one in Kannapolis is in downtown. In each case, the plan was to completely revitalize the area with a mix of entertainment, residential, and retail development, as you can see in the renderings included with this article.

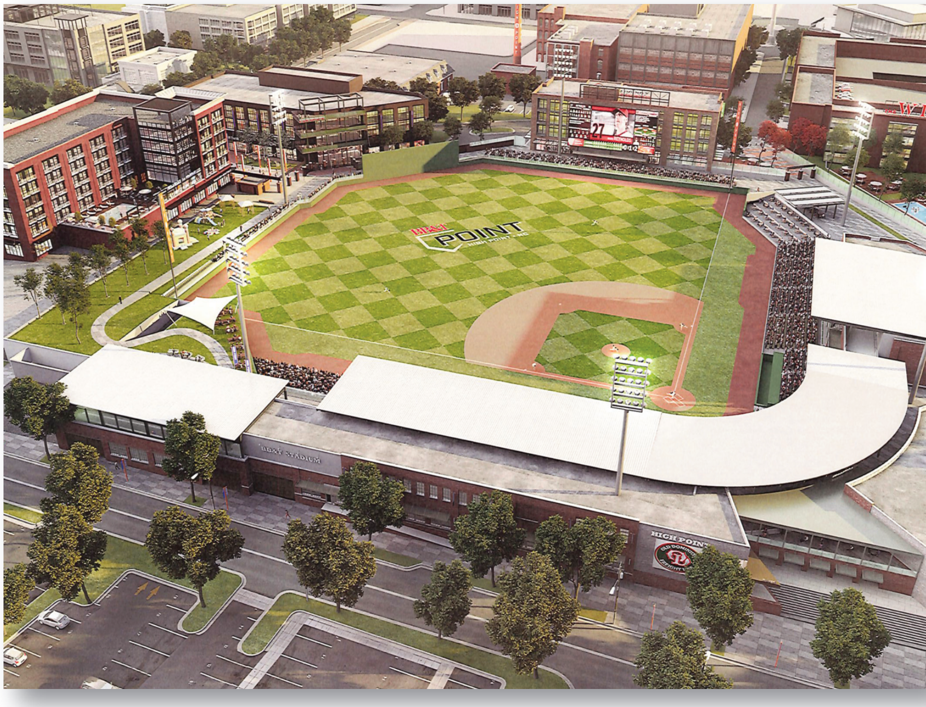
While all three are in different stages of development, there is already significant new investment happening around each. That happened with Charlotte, Durham, and Fayetteville's minor league ballparks as well. In addition to this upside, local governments can structure the deals to limit downside risks and protect themselves from the team moving to another town, as we'll detail below.

The Four Major Issues in Ballpark Deals

Now that we have walked through the "why" of building ballparks, let's turn to the "how," which is where lawyers primarily come in. Most minor league baseball developments involve negotiating four major issues.

1. Sources and Use of Money—The local government's goals will be driven by what revenue sources are available under state law, the amounts that can reasonably be expected to be generated by the identified sources, and the political feasibility of using those sources. In North Carolina, the typical sources are hospitality taxes (i.e., rental car taxes, prepared food and beverage taxes, hotel/motel occupancy taxes), sales or property tax increment based revenues, sales of surplus property, and borrowed funds. However, in considering a borrowing by the city, both the city and the developer will be hesitant to consider general obligation bonds that require a vote of the people. A bond referendum adds significant time, costs, and uncertainty to the deal, and experience has shown that votes on sports facility deals are not a good bet.

The local government will expect the developer to contribute to the initial costs as well, such as by upfront capital contribution toward construction cost, rent for the term of the deal, or shared revenues out of operations. On that last point though, the devel-



Rendering of a ballpark in High Point.

oper-turned-team-owner wants or expects sole control of most sources of team-generated revenue: ticket sales, suite rentals, naming rights, sponsorships, advertisements, and food and beverage sales. Sharing of parking revenues may be an area on the table for negotiation, especially if the city owns the parking lots.

Another key issue is paying for maintenance and repairs. The team owner normally pays for day-to-day maintenance, almost like a typical landlord/tenant situation. The local government will want a reliable capital expenditure fund that it can use to update the stadium over the years, both so that residents keep going and the team doesn't get tempted to find a new home. A scoreboard alone can cost $1 million or more, and every team wants one that's bigger and can do more stuff (make sound, shoot fire, pop out the mascot) than every other ballpark's. It's important that both sides are happy with what's earmarked for those kinds of improvements. Funding might come from savings in construction (rare), joint contributions from project or operating revenues, or growth in tax revenues dedicated to the project.

2. The Building Program (i.e., the Ballpark)—The team owner and the local government are likely to compete for control in the design, development, and construction of the project. Team owners will focus much of their design on revenue generation, including banquet space, themed bars and food concessions, premium seating options, and adaptability for concerts and other purposes. They may engage their own design firm and not want to change. They will also want to get every parcel that's available adjacent to the ballpark for additional development.

The local government will have legitimate concerns about project design and negotiate hard to be an equal partner in this area. The city will want a sustainable building with low maintenance and repair costs. Both sides will be in agreement on one aspect of the building program: complying with the requirements of whatever league the team will join. It is essential to take this into consideration before construction, as making adjustments midstream will add costs and delays. Either the developer or the local government can lead construction of the project. But local government construction may add time, requirements, and cost to the project, so it may not always be in the municipality's best interest. On the other hand, local government contracting for the construction may yield sales tax rebates on procurement of building materials along with furniture, fixtures and equipment (FF&E). Unique local concerns, state law requirements such as bid laws, and how much time is available will drive the choices for construction. Both sides will agree that the drop dead date for completion has to be in time for the start of a designated upcoming season about 18 to 24 months away.

3. The Use and Operating Agreement—The local government usually owns the stadium, but the developer/team owner demands control of its operations, and the local government is probably going to agree. If the team owner is carrying the financial risk of operations and controlling the lion's share of operating revenues, there is no reason for the local government to want to be in charge. It may want audit or inspection rights to make sure the team is living up to its commitments, though.

Here are two examples of provisions that are almost always part of the back-and-forth for that agreement: public use and non-relocation. With public use, the two sides will work through how many days to reserve for local government-sponsored events such as graduations or conventions. While this is almost universally requested and included, the public use days, ironically, tend not to get much use. Non-relocation, on the other hand, is one of the biggest issues in the whole deal. Think of it as "play or pay."

Local governments will want a guarantee that the team isn't going anywhere before the construction debt is paid off. The ballpark won't produce much revenue if it's empty. The team owners don't want to commit to anything more than they have to so they can keep the door open for a bigger, better deal five to ten years down the road, either with the same local government or a different one. The typical structure is for the team to play its home games in the ballpark for the term of the agreement or else pay liquidated damages. The length of the agreement and the amount of damages can be the subject of intense negotiations.

Outside of non-relocation, the basic tenet of the use and operating agreement is that if the team makes money, it keeps it. And if it loses money, it owns the loss. Very rarely will a local government be willing to trade acceptance of downside financial risk for a share of upside participation. The risks of participating in an operating loss for a local government are high, the rewards unpredictable, and the political cost of being wrong is extremely negative. Besides, the city limiting its downside risk creates incentives that are a fundamental part of the strategy here: it encourages the developer to want to have another way to make money, which is now why minor league ballparks are an economic development play.

4. The (New) Economic Development Deal—Stadiums have become an expensive proposition over the past five years. Most minor league ballparks today cost roughly $40 to $50 million. If the local government is going to handle the bulk of that cost, it does not want to also own the downside operating risk. Hence the use and operating agreement described above, and the developer/team owner looking for every possible way to make money off the facility.

That means hosting concerts, business conferences, wedding receptions—anything and everything possible in the ballpark. It also means developing apartments, retail, bars and restaurants, and other money-makers around the ballpark. The local government plans to cheer it all on as tax values increase and sales tax revenues rise.

This part of the deal is memorialized in an economic development agreement authorized under North Carolina General Statute 158-7.1. That statute allows local governments to incentivize private enterprises with land, buildings, infrastructure, or other assistance in return for driving economic development. It also lays out required terms and procedures for adopting a formal agreement. These include holding a public hearing on the agreement, requiring the developer to finish construction within five years, and laying out how the local government would "claw back" property or other money if the agreement is breached. (The non-relocation provision is typically mentioned in the economic development agreement, too.) The agreement also includes a projection for how the benefits to the local government will outweigh the costs, including through new jobs and higher local tax revenues, and over what time frame. Essentially, the economic development agreement lays out the master plan for how the deal will spur growth in the area.

Conclusion

Real estate developers and local governments are charging ahead with redevelopment around minor league ballparks in several North Carolina cities. The increase in the cost of stadiums in recent years has in fact contributed to why they are used as an economic development play: the local governments prefer a structure that protects them from downside risk, and in turn, the developer/team owner wants to drive activity in and around the ballpark as much as possible. Although negotiating certain provisions can get sticky and heated, minor league ballparks can end up as strong examples of win-win development—a home run, so to speak. (And the crowd goes wild!) ■

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