

Riverfront Development – the Hamilton County Way: **An Auditor’s Eye View**

Given the recent decision of the majority of the County Commission to join a lawsuit against the Cincinnati Bengals and the National Football League, this seems an appropriate time to review the events that have led to this from the point of view of the County’s Chief Fiscal Officer.

As County Auditor, I have seen a series of fateful decisions over the past nine years by County Commissions with respect to the Bengals and Riverfront Development.

First, ignoring the advice from me and the County Prosecutor, the Commission refused to create a Stadium Authority to negotiate leases with the teams, oversee construction of the facilities, and manage the assets once constructed.

I know of no other major stadium project anywhere that was not built by a broad-based Stadium Authority. But our County Commission decided to go it alone. They wanted all the glory. Bad move.

They retained a band of high-priced, largely out-of-town, consultants and the work began. The Chicago law firm of Rudnick and Wolfe was chosen to negotiate the Bengals’ lease. Their take for work related to the riverfront was nearly six hundred thousand dollars.

Then, Public Financial Management of Philadelphia and Cleveland was brought in as the financial advisor to the County. They created a model and projected a three percent (3%) annual growth in sales tax revenue for thirty years. This was billed as “conservative” because annual growth in sales tax revenue had been averaging five percent (5%).

Since 1995, the county has paid just over one and three-quarter million dollars to this firm which, apparently, had an inadequate appreciation that there has always been a natural ebb and flow in economic affairs. Or, even worse, simply gave the county a rosy scenario which told them what they wanted to hear.

I volunteered at the time that the projections were unrealistic and overly optimistic. I said three percent annually might not be possible if the economy slowed down.

The Commissioners disregarded my warnings. I was summarily dismissed by then Commissioner Bob Bedinghaus as “Chicken Little”.

Since the turn of the century and the slowdown – predicted by those of us who never expected the high tech, dot-com boom of the ‘nineties would continue forever – the stadium sales tax revenues have been up 1.79 percent in 2000, down 2.63 percent in 2001, up about 2 percent in 2002 and essentially flat last year.

What this means is the stadium sales tax revenue was just over sixty million dollars last year, about the same as it was in 2000. If the predicted three percent (3%) annual growth occurred and compounded the revenue last year would have been over sixty-six million dollars.

So the result of our expensive “financial consultant’s” projections is that we now are six million dollars behind. What is important is that we will have to do much better than three percent annually to have any hope of “catching up” with the projections.

Look at it this way: if you lose fifty percent in a stock investment, it has to double in value just to get you even. The same principle applies to a thirty-year bond issue.

If we don’t “catch up” something has to give. It won’t be the bondholders. The only “give” is the property tax rollback, a promise that helped to earn the approval of over sixty percent (60%) of the voters. The amount of this reduction has been slowly eroding anyhow, and is now down to about a three and three-quarters percent reduction from the four and a half percent where it started in 1998.

The projections were exceedingly optimistic. Once the stadiums were well along we began hearing more and more about “the Banks”, sort of an elitist amalgam of high-priced condos and upscale retail between the stadiums that some feel should be built with even more taxpayer money.

Never mind that part of the original stadium pitch was that the public investment in them would “jump start” private investment on the riverfront. It looks like all they have jump started is more demands for taxpayer money. Or maybe, just maybe, the free market has said “no” to more retail downtown.

When I asked where the money for “the Banks” was coming from, I was told there would be lots of extra money from the stadium sales tax to fund this dream. Think again. The “extra money” is not there, nor will it be any time soon.

My efforts to get the ad hoc “in-a-hurry-bunch” to slow down long enough to hire a construction auditor for Paul Brown Stadium were also ignored. In fact the standard

American Institute of Architects' language in the construction contracts was not included.

Some suggested it was purposely deleted by the County so it would not delay the construction that had been promised to be completed on a "fast track".

An independent construction auditor would have provided a safeguard and helped protect the County throughout the entire process. An independent construction auditor might have cost \$150,000 to \$200,000 a year during construction. That's pretty inexpensive insurance. The county didn't get it.

Instead we got fifty million dollars or so in cost overruns.

We know about those overruns because we paid for them. We have also paid PriceWaterhouseCoopers from New York City after the fact for forensic accounting services to learn even more about them.

The Commissioners learned enough to hire another law firm. This time they went to Indianapolis to engage the firm of Ice Miller in another legal quest.

So we have an Indianapolis firm working for the past three years to assist the County in seeking to recover damages from the Los Angeles firm that was chosen to design and assist with the building of Paul Brown Stadium.

So far we've paid this out-of-town law firm almost one and a quarter million dollars, and under the terms of the county's insurance arrangement we've also paid the architect's law firm up to a quarter of a million dollars. That's right. We've paid for lawyers on both sides of the same action!

Meanwhile, back at the Riverfront, Cincinnati law firms, most notably Vorys Sater, were retained to assist with real estate matters in assembling the sites needed for redevelopment and related riverfront matters. So far, they've received over four and a quarter million dollars for their work since 1997 and there's no end in sight.

Along the way Bob Bedinghaus was defeated. Former Commissioner Tom Neyer decided not to run for re-election, effectively leaving the Commission. Incumbent Commission President John Dowlin lost a Republican primary. So all the Commissioners that made so many of these fateful decisions are soon to be history. But the beat goes on.

The county administration has again recommended that Public Financial Management be retained as the county's financial advisor. Rudnick and Wolfe was used a second time...to negotiate the Reds' lease. The Vorys Sater and Ice Miller bills arrive in my office with regularity. They are big. And, like the hits on WSAI, they just keep on comin'.

Just yesterday I learned that the county had retained the firm of Frost, Brown and Todd to assist the previously hired firm of Markovits and Griewe to negotiate the contingency deal with Waite, Schneider, Bayless and Chesley as well as the firm Furnier and Thomas. Folks, it's time to get a grip.

Instead of just stadiums, we also got lawyers. From coast-to-coast. I'll bet the voters didn't realize they were getting an attorney's permanent employment project when they decided to try and keep our major league teams here and allow them to try and be competitive.

Despite all of their self-inflicted wounds, the county, rather than holding responsible their own experts and administrators, are off to court to stick it to the one entity that seemed to have represented their own interest well in all of this. . . the Cincinnati Bengals.

There are two critical questions to ask:

Does anyone really believe that if the Bengals had been in the Super Bowl last year or the sales tax revenue had been as good as the “experts” projected the politicians would be suing the Bengals?

Are the people the County Commission is trying to hold accountable really the ones to blame?

It is disturbing to contemplate the prospect that every county and local governing body in the state might be able to hire lawyers “on a contingency basis” and file lawsuits against any individual or entity they wish.

If this is true, the possibilities for abuse and political retaliation are infinite. Those targeted will have to go to great expense to defend themselves. Who becomes the “bully” then?

State law says that County Prosecutors serve as counsel to County officials. That includes the County Commission. I’m not an attorney but I know of no authority in state law that allows elected officials to engage in the kind of legal bounty hunting suggested by this action.

That is just another aspect to this issue which could tie up county government for months, perhaps even years as the Commission continues to engage attorneys in this truly exceptional process. There has already been a taxpayer’s suit filed to further complicate the situation.

Good luck to them in this high risk gamble. If the Commission is right, the return to taxpayers could be significant. If they are wrong, the costs will be extraordinary, both in attorney’s fees and perhaps, a major league team headed somewhere where they are not made the scapegoat for others’ errors.

Dusty Rhodes
Rotary Club of Cincinnati
April 1, 2004