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Field of Dreams: Is the Movie Site's Commercialization a Dream Plan With Significant Benefits or a Nightmare Script With Crippling Effects?

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FIELD OF DREAMS: IS THE MOVIE SITE'S COMMERCIALIZATION A DREAM PLAN WITH SIGNIFICANT BENEFITS OR A NIGHTMARE SCRIPT WITH CRIPPLING EFFECTS?

By Michael J. McGraw†

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I. INTRODUCTION

While some claim that baseball is no longer America’s “National Pastime,” it is difficult to assert that any other sport breeds more nostalgia than baseball.¹ Perhaps the best exemplification of this is the 1989 movie *Field of Dreams*, in which an Iowa farmer builds a base-

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He would like to thank his wife, Molly, and daughter, Sunday, and all of his family for their constant love and support, and Professor Kenneth Gray for his dedicated guidance and instruction throughout law school.

1. See Allen R. Sanderson, *In Defense of New Sports Stadiums, Ballparks, and Arenas*, 10 MARQ. SPORTS L. REV. 173, 183 (2000).

ball field on his farmland only to later discover that the spirits of early twentieth century baseball players emerge from the cornfields to play baseball.² Unlike virtually any piece of property in American film history, the field constructed for the movie has remained intact, continually attracting thousands of visitors each year,³ and has hosted congressional delegations, presidential candidates, celebrity games, and fantasy camps.⁴

What began as a benign conversion of farmland into a movie prop has become a contentious situation for various parties claiming a multitude of interests in the land. This quarrel's manifestation has included split ownership of the field itself between two families and their conflicting viewpoints on the site's commercialization,⁵ the sale of the property to commercial developers with hopes of constructing a sports complex on the land,⁶ the use of public funds to help subsidize the project,⁷ the site's commercial rezoning, and the development agreement forged between the private investors and local government to build the complex.⁸

This Comment will detail the field's powerful attraction, discuss and analyze the applicable zoning laws and governing case law associated with comparable property disputes in relation to the present facts, praise the use of tax rebates to help subsidize the project, and assert that the public sector could have established even further requirements for the private business to meet before receiving such substantial public funds.

II. HISTORY AND BACKGROUND

A. *Background of "Field of Dreams"*

Field of Dreams, based on a book written by W.P. Kinsella,⁹ featured an impressive cast consisting of Kevin Costner, James Earl Jones, Burt Lancaster, and Ray Liotta.¹⁰ Costner's character, Ray

2. See *FIELD OF DREAMS* (Universal Pictures 1989).

3. See Zillow, *The Home Featured in 'Field of Dreams,'* *FORBES* (Aug. 23, 2012), <http://www.forbes.com/sites/zillow/2012/08/23/the-home-featured-in-field-of-dreams/>.

4. *Id.*

5. See Richard Jerome, *Neighbors Throw One Another Curves in Dispute Over the Real Field of Dreams*, *PEOPLE* (Aug. 30, 1999), <http://www.people.com/people/archive/article/0,,20129067,00.html>.

6. See Zillow, *supra* note 3.

7. See Lynn Campbell, *Panel OKs Tax Plan to Help "Field of Dreams" Site*, *OMAHA WORLD HERALD* (Mar. 22, 2012), <http://www.omaha.com/article/20120322/NEWS01/703229913>.

8. See Brenden West, *Area Residents Take Action Versus Dyersville City Council*, *DYERSVILLE COMMERCIAL* (Sept. 6, 2012), http://www.dyersvillecommercial.com/news/area-residents-take-legal-action-versus-dyersville-city-council/article_2eabe90a-f83d-11e1-8279-0019bb30f31a.html.

9. *Game Program*, *FIELD OF DREAMS MOVIE SITE*, <http://www.fodmoviesite.com/game-program> (last visited Sept. 26, 2012).

10. *FIELD OF DREAMS*, *supra* note 2.

Kinsella, was a farmer who, after hearing voices instructing him to do so, constructed a baseball field on his farmland out of blind faith that it was to serve an elevated purpose.¹¹ Although not everyone could see them, members of the banned 1919 Chicago White Sox,¹² including “Shoeless” Joe Jackson, appeared out of the cornfields to play baseball on the meticulous, picturesque field outside of Kinsella’s family farmhouse.¹³ What transpired was a journey that took Kinsella cross-country traveling to bring a defamed author and young, aspiring baseball player back to Kinsella’s baseball field in Iowa.¹⁴ Similar to the 1919 Chicago White Sox, both the author and young ballplayer received cherished opportunities for redemption solely because of Kinsella’s baseball field.¹⁵

In what proved to be a prophetic statement regarding the actual movie site, Terence Mann, James Earl Jones’s character, provided a timeless discourse to Ray Kinsella, regarding the attraction of Kinsella’s field: “[P]eople will come . . . they’ll come to Iowa for reasons they can’t even fathom . . . people will most definitely come.”¹⁶

Although Jones’s scripted speech referred to the field Costner’s character built in the movie, it became symbolic of what transpired at the actual movie site, with the first visitor arriving at the field on May 5, 1989,¹⁷ the same day as the film’s widespread domestic release date.¹⁸ Indicative of its resonance among the American public, the film grossed \$64 million at the box office, becoming the highest grossing baseball movie up to that point,¹⁹ was nominated for three Academy Awards, including “Best Picture,”²⁰ and the field itself instantly became an inimitable piece of land in American cinematic history.

B. *Background of the Movie Site Property*

The movie site property is located in Dyersville, Iowa, which has a population of about 4,000 people.²¹ The Lansing family originally

11. *Id.*

12. Jerome, *supra* note 5 (discussing how the 1919 Chicago White Sox were banned from baseball for allegedly conspiring to throw the World Series for money).

13. FIELD OF DREAMS, *supra* note 2.

14. *Id.*

15. *Id.*

16. *Id.*

17. *The Film*, FIELD OF DREAMS MOVIE SITE, <http://www.fodmoviesite.com/the-film> (last visited Sept. 26, 2012).

18. *Field of Dreams*, IMDB, <http://www.imdb.com/title/tt0097351/> (last visited Sept. 26, 2012).

19. Tom Verducci, *Field of Dreams*, SPORTS ILLUSTRATED (July 13, 2009), available at <http://lib-ezproxy.tamu.edu:2048/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=a9h&AN=43007624&site=ehost-live>.

20. *Awards, Field of Dreams*, IMDB, <http://www.imdb.com/title/tt0097351/awards> (last visited Sept. 26, 2012).

21. Associated Press, *‘Field of Dreams’ Neighbors Worried About Development Proposal*, THE GAZETTE (Mar. 14, 2012), <http://thegazette.com/2012/03/14/field-of-dreams-neighbors-worried-about-development-proposal/>.

bought the 300-acre property in 1906 but later sold 133 acres of the tract to Al and Rita Ameskamp in 1967.²² In preparation for filming, Universal Studios modified the interior of the Lansing farmhouse to fit the necessary filming equipment, extended the porch to wrap around the house, and built the baseball field in only three days.²³

In the process of building the field, a peculiarity resulted that might not have seemed significant at the time but later proved to be consequential: the baseball field was split between the Lansing's land and the Ameskamp's land.²⁴ Don Lansing owned the farmhouse, all of the baseball diamond except third base, and all of right field; the Ameskamp's owned third base, most of center field, and the cornfield beyond the outfield.²⁵ Initially, this division did not present any serious concerns, with Al Ameskamp plowing his side of the field immediately after the film's shooting ended; however, Don Lansing kept his portion of the field intact following the movie's production.²⁶ But as film-watchers and baseball fans started visiting the field, to the number of 60,000 people per year,²⁷ contention arose between the landowners.²⁸

Don Lansing married Becky Lansing in 1995,²⁹ and an assortment of competing ideas regarding the attraction's preservation and commercialization ensued between the Lansings and Ameskamp's, with both sides taking inconsistent positions at times.³⁰ The families' conflict continued for about a decade until the Lansings bought out the Ameskamp's portion of the movie site in 2008.³¹

With the Lansings in solitary control of the movie site's land and its subsequent rezoning back to agricultural,³² the couple decided to put the property up for sale in 2010 for \$5.4 million.³³ In late 2011, Denise and Mike Stillman, Chicago-area residents, agreed to a sales contract for the purchase of the property, totaling 193 acres.³⁴ The Stillmans agreed to purchase the property with plans of having their company,

22. Jerome, *supra* note 5.

23. *The Film*, *supra* note 17.

24. *See* Jerome, *supra* note 5.

25. *Id.*

26. *See id.*

27. Zillow, *supra* note 3.

28. *See* Jerome, *supra* note 5.

29. *Id.* (Becky and Don Lansing met when Becky traveled to the field as a visitor, with Don later proposing to her on the infield).

30. *See* Brenden West, *Monetizing the Field: Then and Now*, DYERSVILLE COMMERCIAL (Feb. 29, 2012), http://www.dyersvillecommercial.com/news/top_news/monetizing-the-field-then-and-now/article_d5a51004-62e4-11e1-9c00-001a4bcf6878.html.

31. *See id.*

32. *See id.*

33. Zillow, *supra* note 3.

34. Josh Jorgenson, *Field of Dreams Sold*, DYERSVILLE COMMERCIAL (Nov. 2, 2011), http://www.dyersvillecommercial.com/news/top_news/field-of-dreams-sold/article_dced67ec-0553-11e1-b9d5-001a4bcf6878.html; Kyle Munson, 'Field of Dreams' Site Sells for \$3.4 million, USA TODAY (Jan. 4, 2013, 1:53 PM), <http://www.usato>

Go the Distance Baseball, LLC (“Go the Distance Baseball”), develop the property as “All-Star Ballpark Heaven,” a premiere youth sports complex, while keeping the actual field and farmhouse from the movie virtually untouched.³⁵

C. *Go the Distance Baseball’s Quest for Funding and Approval for All-Star Ballpark Heaven*

Almost immediately after agreeing in principal on a sale price to purchase the field and surrounding property, the Stillmans began work on garnering goodwill with the local community and politicians in an effort to have their support.³⁶ With an estimated price tag of \$38 million and a projected start date of late 2012,³⁷ All-Star Ballpark Heaven faced an aggressive timeline with significant cost barriers. To appeal to investors, the Stillmans decided to aggressively pursue acquisition of public funds to facilitate subsidization of their plan.³⁸ The Stillmans were hopeful they would receive public assistance to back a portion of the significant initial expense, thus increasing their appeal to any potential investors.³⁹ The sales agreement for the property was finalized in the fall of 2011,⁴⁰ and by December 2011 the Stillmans had already traveled to the state’s capital in Des Moines during a pre-legislative period to meet with local and state political leaders, including Iowa Governor Terry Branstad, to lobby for political support.⁴¹

As the Stillmans attempted to acquire public funding, two feasibility studies were commissioned regarding the plan: the Strategic Economics Group of Des Moines, Iowa conducted one of the studies⁴² and the

day.com/story/gameon/2013/01/04/field-of-dreams-sells-34-million-wade-boggs-iowa/1809609/ (the sale was officially closed in early 2013 for \$3.4M).

35. See *id.*; Zillow, *supra* note 3.

36. See Jorgenson, *supra* note 34 (explaining the Stillmans immediate plans to visit Dyersville and garner support); *Elected Officials Rally for State Support of Field of Dreams Preservation and Ballpark Heaven Project*, DYERSVILLE COMMERCIAL (Dec. 29, 2011), http://www.dyersvillecommercial.com/news/top_news/elected-officials-rally-for-state-support-of-field-of-dreams/article_1e5989be-3276-11e1-899a-0019bb30f31a.html [hereinafter *Field of Dreams Preservation*] (detailing the Stillmans interactions with local politicians in hopes of seeking support in legislative sessions).

37. *Field of Dreams Preservation*, *supra* note 36.

38. See *id.*

39. See Brenden West, *Governor Signs Ballpark Heaven Rebate Bill*, DYERSVILLE COMMERCIAL (Apr. 19, 2012), http://www.dyersvillecommercial.com/news/top_news/governor-signs-ballpark-heaven-rebate-bill/article_a1586e00-8a5c-11e1-9ce8-0019bb30f31a.html.

40. Jorgenson, *supra* note 34.

41. *Field of Dreams Preservation*, *supra* note 36.

42. Karla Thompson & Jacque Rahe, *One Thing is Certain . . . Changes are Inevitable*, DYERSVILLE COMMERCIAL (Feb. 22, 2012), http://www.dyersvillecommercial.com/opinion/guest_opinion/one-thing-is-certain-changes-are-inevitable/article_47cd0754-5d6d-11e1-a337-001a4bcf6878.html (discussing how the Strategic Economics Group of Des Moines study was commissioned by the following: Dyersville Area Chamber of Commerce, Dubuque Convention & Visitor’s Bureau, Greater Dubuque Development Corporation, and a grant from Alliant Energy).

Sports Facilities Advisory conducted the other.⁴³ The Strategic Economics Group provided a comprehensive impact study of the project, analyzing job creation, tax revenue, and monies accruing to service industries.⁴⁴ The study considered the impact on the property's six surrounding counties⁴⁵ and concluded that the site would attract approximately 1,500 families to the area each week,⁴⁶ create 1,200 full-time equivalent jobs by its fourth year,⁴⁷ generate \$25 million in labor by its eighth year,⁴⁸ and raise \$4.2 million and \$2.2 million in annual increases in state and local taxes, respectively.⁴⁹ Negatively, the study detailed travel logistics with the area's location, noting that the site is seventy-two miles from the closest airport in Cedar Rapids and has no railroad to service the area.⁵⁰

The Sports Facilities Advisory study endorsed the legitimacy of the project, while also recognizing the plan's pros and cons.⁵¹ The study specifically praised the project's inclusion of softball fields, a unique feature from similar sports complexes on the East Coast, but it expressed parallel reservations to the Strategic Economic Group's study over the remote location of Dyersville and recommended suspending plans for the indoor facilities pending the success of the outdoor fields.⁵²

As local city council and the Stillmans conducted and released these feasibility studies, state and local politicians debated the validity and appropriateness of public funding for the project.⁵³ Dyersville's district state politicians, Senator Tom Hancock and Representative Steve Lukan, sponsored a bill to the state legislature that would give Go the Distance Baseball a sales tax rebate, collected solely from sales tax revenue generated at the All-Star Ballpark Heaven facility, to offset the cost of construction while providing no upfront public funding.⁵⁴

On March 21, 2012, the Iowa House Ways and Means Committee approved a sales tax rebate of \$16.5 million over a ten-year period (by

43. *Id.* (discussing how the Stillmans commissioned the Sports Facility Advisory, which is a company that specializes in sports complex construction and tourism).

44. *See generally* Mike Lipsman & Harvey Seigelman, *All-Star Ballpark Heaven: Economic and Fiscal Impact Study—A Two-Phased Development Plan*, STRATEGIC ECONOMICS GROUP (Feb. 2012), <http://www.economicsgroup.com/reports/ASBH.pdf>.

45. *Id.* at 3 (explaining that the six surrounding counties include: Buchanan, Clayton, Delaware, Dubuque, Jackson, and Jones Counties).

46. *Id.*

47. *Id.*

48. *Id.*

49. Lipsman & Seigelman, *supra* note 44, at 3.

50. *Id.* at 5.

51. *See* Brenden West, *Stillmans Release Feasibility Study Findings*, DYERSVILLE COMMERCIAL (Apr. 10, 2012), http://www.dyersvillecommercial.com/news/top_news/stillmans-release-feasibility-study-findings/article_0913d6c8-8356-11e1-bd9e-0019bb30f31a.html.

52. *Id.*

53. *See* Thompson & Rahe, *supra* note 42.

54. *Id.*

a 19-6 vote), but it prescribed specific stipulations before doing so: (1) the construction must take place within 2012; (2) the cost of the project must be at least \$38 million; and (3) the majority of investors must reside in Iowa.⁵⁵ The Iowa House of Representatives (by a 53-41 vote) and the Iowa Senate (by a 34-14 vote) subsequently passed the bill,⁵⁶ and on April 19, 2012, Governor Terry Branstad officially signed the bill as final approval for the rebate.⁵⁷

In addition to the back-end state rebate, the Stillmans attempted to acquire upfront financial backing from Dubuque County, which would allow the Stillmans to take low-rate, tax-exempt federal Midwestern Disaster Relief bonds to market; however, the Dubuque County Board of Supervisors rejected this request.⁵⁸ With the assistance of Northwestern University Professor Mike Thiesen, a municipal finance specialist, the Stillmans formally presented a plan to repay the county with interest over a thirty-year span in exchange for financial backing of the bonds, which would further strengthen the investment group's standing.⁵⁹ Despite indicating its support for the project, the county refused to provide any upfront funding, citing its concerns over taking a financial risk on a private business even though Go the Distance Baseball committed to repay the county with interest.⁶⁰

55. Brenden West, *Ballpark Heaven One Step Closer to Tax Break*, DYERSVILLE COMMERCIAL (Mar. 22, 2012), http://www.dyersvillecommercial.com/news/top_news/ballpark-heaven-one-step-closer-to-tax-break/article_17f05d64-742a-11e1-bf08-001a4bcf6878.html; see, e.g., Campbell, *supra* note 7.

56. James Lynch, *Field of Dreams Tax Rebate Headed to Governor's Desk*, GAZETTE (Apr. 4, 2012), <http://thegazette.com/2012/04/04/field-of-dreams-tax-rebate-headed-to-governor/>.

57. Brenden West, *Bill Meets Governor Approval*, DYERSVILLE COMMERCIAL (Apr. 25, 2012), http://www.dyersvillecommercial.com/news/top_news/bill-meets-governor-approval-exclusive-video/article_a92359cc-8ed7-11e1-bf14-0019bb30f31a.html.

58. See Brenden West, *Supervisors Reject Stillmans' Funding Request*, DYERSVILLE COMMERCIAL (Oct. 24, 2012), http://www.dyersvillecommercial.com/news/supervisors-reject-stillmans-funding-request/article_ce0c318e-1de6-11e2-a4a1-0019bb30f31a.html (discussing how the Midwestern Area Disaster bonds carried an expiration date of December 31, 2012, and the Stillmans cited the uncertainty of whether the United States Congress would extend the bonds beyond this date); *Id.* (explaining that the bonds were issued by the Iowa Finance Authority earlier in 2012); Matt Muilenburg, *RAAC Asks Court to Dismiss Lawsuit*, DYERSVILLE COMMERCIAL (Nov. 15, 2012), http://www.dyersvillecommercial.com/news/raac-asks-court-to-dismiss-lawsuit/article_609d0260-2f6e-11e2-832a-001a4bcf6878.html.

59. West, *supra* note 58 (explaining that the Stillmans and Thiesen presented a proposal to the Dubuque County Board of Supervisors that predicted a positive cash flow of \$8.9M by 2019); *Id.* (explaining that Mike Stillman stated it was Go the Distance Baseball's "due diligence" to pursue such public funding, saying, "We would be doing a disservice to the area and the investors if we didn't at least pursue this."); *Id.*

60. *Id.* (explaining that if All-Star Ballpark Heaven became a complete failure and Go the Distance Baseball would be unable to repay Dubuque County, the county estimated its risk at \$750,000 per year); *Id.* (explaining that Dubuque County Board Supervisor Wayne Demmer stated, "We've never given money—that I know of—to any private entities anywhere.").

In addition to seeking state and county funding, Go the Distance Baseball's main interaction involved coordinating with Dyersville City Council ("Council"), because any council or board in Iowa has authority to determine regulations, restrictions, and usage of any property under council control as long as it promotes the health, safety, morals, or general welfare of its constituents.⁶¹ The first step of the process required annexation of specific Dubuque County property into City of Dyersville property for the purposes of rezoning the land.⁶² To facilitate such a result, five property owners voluntarily annexed their land from Dubuque County property to City of Dyersville property,⁶³ an action Council approved on July 2, 2012 (by a 4-1 vote).⁶⁴ As the property now came under the City of Dyersville's jurisdiction, this annexation formally allowed Council to consider the rezoning issue.⁶⁵

Per Iowa statute, a council has the authority to appoint a zoning commission, which then subsequently makes recommendations to the council for its determinative vote.⁶⁶ Zoning commissions in Iowa essentially serve as the recommending entity while the council itself has legislative control.⁶⁷ Following this annexation, the Dyersville Planning and Zoning Commission ("Commission") approved a proposal (by an 8-0 vote) to rezone the site and surrounding property from A-1 "Rural Restricted District" to C-2 "Commercial District."⁶⁸ As part of the vote, the Commission agreed to a 200-foot buffer on three sides of the property to provide surrounding farmers with protective rights.⁶⁹

61. See IOWA CODE ANN. § 414.1 (West, Westlaw through 2012 Reg. Sess.).

62. See West, *supra* note 30.

63. Brenden West, *Council Approves Voluntary Annexation*, DYERSVILLE COMMERCIAL (July 3, 2012), http://www.dyersvillecommercial.com/news/top_news/council-approves-voluntary-annexation/article_58c31c24-c4ab-11e1-8632-001a4bcf6878.html (clarifying that the property owners were Don and Becky Lansing, Gerald and Alice Deutmeyer, John and Nicole Rahe, Keith and Jacque Rahe, and Dorothy Meyer).

64. *Id.* (explaining that Councilmember Molly Evers was the lone dissenter).

65. See Lauren DeWitt, *Dyersville City Council Approves Annexation of Field of Dreams*, Gazette (July 2, 2012), <http://thegazette.com/2012/07/02/dyersville-city-council-approves-annexation-of-field-of-dreams/>.

66. IOWA CODE ANN. § 414.6 (West, Westlaw through 2012 Reg. Sess.); see IOWA CODE ANN. § 335.8 (West, Westlaw through 2012 Reg. Sess.) (providing same power to county boards).

67. *Little v. Winborn*, 518 N.W.2d 384, 386 (Iowa 1994).

68. Matt Muilenburg, *P & Z Commission Casts Unanimous Thumbs Up*, DYERSVILLE COMMERCIAL (July 11, 2012), http://www.dyersvillecommercial.com/news/top_news/p-z-commission-casts-unanimous-thumbs-up/article_d56b707a-cb5c-11e1-9d98-0019bb30f31a.html; see DYERSVILLE, IOWA, ZONING REGULATIONS, ORDINANCE 165.21, 615-16 (City of Dyersville through 2011) http://www.cityofdyersville.com/City-AdServ/Ordinances/2011/Chapter165_Zoning_Regulations.pdf.

69. Muilenburg, *supra* note 68.

The next step required Council approval of the rezoning.⁷⁰ Following its assessment of the Commission's recommendation, on August 6, 2012, Council approved the rezoning of the site from A-1 to C-2 (by a 4-1 vote).⁷¹

With the sales tax rebate from the state solidified along with Council's rezoning approval, the Stillmans and Go the Distance Baseball still faced two significant hurdles: Council's approval of a development plan and securing investors for the project. Regarding approval of a development plan, Iowa law requires that land regulations must be made in agreement with a comprehensive plan that is "designed to preserve the availability of agricultural lands"⁷²

Facing this level of scrutiny, an agreement with Council was met with resistance and skepticism.⁷³ Despite this opposition, on September 4, 2012, Go the Distance Baseball and Council came to an agreement on a development plan for the All-Star Ballpark Heaven project.⁷⁴ The agreement stipulated that Go the Distance Baseball must fund \$3 million for water and sewer infrastructure for the land and complete the entire project by 2018.⁷⁵ In return, the City of Dyersville would make incremental tax financing rebates to Go the Distance Baseball, totaling a potential maximum of \$5.13 million over fifteen years, which, similar to the state's sales tax rebate, would be solely dependent upon revenue generated from the business itself and would not include any upfront public funding.⁷⁶ Notwithstanding Councilmember Molly Evers's lone dissenting vote on the development agreement,⁷⁷ the overwhelming Council approval *seemed* to mark the end of an almost year-long political lobbying process and allow the Stillmans to focus on gathering investors, finalizing the purchase of the property, and beginning construction.⁷⁸

70. See IOWA CODE ANN. § 414.6 (explaining that council cannot hold a zoning hearing until it receives the zoning commission's final report).

71. *Council Approves Rezoning*, DYERSVILLE COMMERCIAL (Aug. 6, 2012), http://www.dyersvillecommercial.com/news/top_news/council-approves-rezoning/article_e561f7ce-e029-11e1-a1b6-001a4bcf6878.html (explaining that Molly Evers was again the lone council dissenter).

72. IOWA CODE ANN. § 414.3 (West, Westlaw through 2012 Reg. Sess.).

73. See Matt Muilenburg, *Council Signs Development Agreement*, DYERSVILLE COMMERCIAL (Sept. 5, 2012), http://www.dyersvillecommercial.com/news/council-signs-development-agreement/article_37a83478-f76b-11e1-9d0f-0019bb30f31a.html (referencing councilmember Molly Evers' concerns over the agreement).

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. *But see* West, *supra* note 8 (detailing area residents filing of a writ of certiorari against the Dyersville City Council and Dyersville Mayor Jim Heavens) (emphasis added); *see generally* Muilenburg, *supra* note 73 (demonstrating the strong support from Council for the development project); *Field of Dreams Preservation*, *supra* note 36 (describing the Stillmans' efforts to acquire public funding and attract investors for the project).

While these political elements were occurring, the Stillmans worked to attract investors for All-Star Ballpark Heaven.⁷⁹ In what would become a trend of recruiting well-known baseball names, the first big-name investor to join the group was Des Moines, Iowa, native and Tampa Bay Rays pitcher, Jeremy Hellickson.⁸⁰ The Stillmans subsequently announced associations, including instructional clinics at the new complex, with the following current or former Chicago White Sox players, coaches, and employees: Chris Sale, Don Cooper, Ron Kittle, and well-known groundskeeper, Roger Bossard.⁸¹ Also, two big-name investors who later joined were Hall-of-Famer Wade Boggs and actor Matthew Perry.⁸² Pertaining to corporate investors and sponsors, Dubuque-based Conlon Construction agreed to join the investment team *and* serve as the development project's contractor,⁸³ and Franklin (the official batting glove supplier to Major League Baseball) agreed to officially sponsor All-Star Ballpark Heaven's first season.⁸⁴

D. *Growing Opposition to All-Star Ballpark Heaven*

Despite the success of the Stillmans' plans to move forward with All-Star Ballpark Heaven, there was a steady and growing opposition to their project, which manifested into legal action.⁸⁵ Vocal opposition began to surface at Council's meeting on February 20, 2012, where local residents expressed their concerns about the develop-

79. See, e.g., Brenden West, *Ballpark Gets Major League Investor*, DYERSVILLE COMMERCIAL (Mar. 2, 2012), http://www.dyersvillecommercial.com/news/top_news/ballpark-heaven-gets-major-league-investor/article_eb0a0f9a-649b-11e1-a09e-001a4bcf6878.html.

80. *Id.*

81. See Brenden West, *Progress Continues for Local Projects*, DYERSVILLE COMMERCIAL (Aug. 15, 2012), http://www.dyersvillecommercial.com/news/top_news/progress-continues-for-local-projects/article_cd0aa9e0-e6e7-11e1-9644-0019bb30f31a.html; Matt Muilenburg, *Hall of Famer Wade Boggs Joins Ballpark Heaven as Investor*, DYERSVILLE COMMERCIAL (Sept. 26, 2012), http://www.dyersvillecommercial.com/news/top_news/hall-of-famer-wade-boggs-joins-ballpark-heaven-as-investor/article_f35b1746-083f-11e2-bc91-001a4bcf6878.html.

82. Muilenburg, *supra* note 81; Philliana Ng, *Matthew Perry Joins as Investor in 'Field of Dreams' Ballpark*, THE HOLLYWOOD REPORTER (Feb. 6, 2013, 10:45 AM), <http://www.hollywoodreporter.com/news/matthew-perry-field-dreams-ballpark-418767>.

83. *Conlon on Board for Ballpark Heaven*, DYERSVILLE COMMERCIAL (Aug. 29, 2012), http://www.dyersvillecommercial.com/news/top_news/conlon-on-board-for-ballpark-heaven/article_7891c258-f1dd-11e1-a500-001a4bcf6878.html (emphasis added).

84. Matt Muilenburg, *Go the Distance Baseball Announces First Corporate Sponsor*, DYERSVILLE COMMERCIAL (Sept. 27, 2012), http://www.dyersvillecommercial.com/news/go-the-distance-baseball-announces-first-corporate-sponsor/article_a178918c-08b3-11e2-9e8e-001a4bcf6878.html.

85. See, e.g., Brenden West, *Ballpark Protestors Seek Judicial Review*, DYERSVILLE COMMERCIAL (Sept. 12, 2012), http://www.dyersvillecommercial.com/news/ballpark-protesters-seek-judicial-review/article_396735a2-fce3-11e1-91df-001a4bcf6878.html.

ment.⁸⁶ Among the numerous issues raised were traffic congestion, water run-off, construction of hotels, gas stations, and restaurants, land erosion, and a general incredulity regarding the supposed positive economic impact to the area.⁸⁷

This resistance was not limited to residents who feared a direct impact on their land and privacy.⁸⁸ As the bill worked its way through the House Ways and Means Committee, it met opposition from lawmakers opposed to allocating any variation of public monies to the project.⁸⁹ Representative Dave Jacoby expressed apprehension over the sales tax rebate influencing future projects petitioning for similar treatment, and Chairman Tom Sands believed the Iowa legislature needed parameters to curtail this sort of incentive program.⁹⁰

Locally in Dyersville, Molly Evers continued to be Council's lone dissenter throughout the voting process.⁹¹ At the hearing—in which Council and Go the Distance Baseball ultimately consummated the development agreement—Evers questioned Denise Stillman by asking her to evaluate the fairness in having a “multi, multi-million dollar private enterprise . . . on the shoulders of the average Dyersville taxpayer.”⁹²

Following Council's agreement to the development plan with Go the Distance Baseball on September 4, 2012, local residents took legal action in attempt to stop the agreement and rezoning.⁹³ Twenty-four plaintiffs (“Petitioners”),⁹⁴ including a private agricultural company, filed for a writ of certiorari against Council members⁹⁵ and Dyersville Mayor Jim Heavens.⁹⁶ The Petitioners also asked the Iowa District Court in Dubuque County for a request of stay and injunction against

86. Brenden West, *Field of Dreams: The Other Side of the Story*, DYERSVILLE COMMERCIAL (Feb. 22, 2012), http://www.dyersvillecommercial.com/news/top_news/field-of-dreams-the-other-side-of-the-story/article_b5dfd2e8-5d69-11e1-923d-001a4bcf6878.html.

87. *Id.*

88. Aaron Hepker, *House Panel Approves Field of Dreams Tax Rebate Plan*, KCRG (Mar. 21, 2012, 6:47 PM), <http://www.kcrg.com/news/local/House-Panel-Approves-Field-of-Dreams-Sales-Tax-Rebate-Plan-143736756.html> (referencing political concern over the development plan).

89. *Id.*

90. *Id.*

91. *Council Approves Rezoning*, *supra* note 71 (explaining that Evers cast the lone dissenting vote against the rezoning of the property); Muilenburg, *supra* note 73 (explaining that Evers cast the lone dissenting vote against development agreement with Go the Distance).

92. Muilenburg, *supra* note 73.

93. *See* West, *supra* note 8.

94. Residential & Agric. Advisory Comm., LLC v. Dyersville City Council, No. 13–0015, 2013 WL 5951191, at *1 (Iowa Ct. App. Nov. 6, 2013).

95. The council members were Mike English, Mark Bretibach, Robert Platz, Molly Evers, and Dan Willenborg. *Id.*

96. *Id.*

the Council and Mayor.⁹⁷ Chief among the Petitioners' seventeen complaints⁹⁸ were the following: (1) Council violated ordinances by not making "written findings and conclusions" on a factual and legal basis; (2) Council conducted itself "illegally and arbitrarily" by rezoning the property from agricultural to commercial; (3) Council "failed to consider the impact of the development"; (4) Council violated open meeting laws of Iowa; (5) Council neglected concerns of traffic and agricultural effects; and (6) Council acted without regard to the "moral and general welfare" of the citizens.⁹⁹

Go the Distance Baseball, although not named as a defendant in the suit, also became involved in the legal battle.¹⁰⁰ Go the Distance Baseball filed a petition for intervention on September 19, 2012 against the Petitioners.¹⁰¹ In filing the petition, Go the Distance Baseball sought to ensure protection of its interests in the legal dispute.¹⁰² Go the Distance Baseball denied eight of the Petitioners' seventeen allegations, specifically opposing the assertion that Council violated Iowa law and local ordinances in rezoning the property from commercial to agricultural and the allegation that the project would result in "irreparable harm."¹⁰³ Go the Distance Baseball petitioned the Iowa District Court in Dubuque County to dismiss the Petitioners' writ of certiorari and any other petitions against the project.¹⁰⁴

On September 25, 2012, District Judge Tom Bitter conducted a hearing concerning the legal dispute.¹⁰⁵ After receiving additional information from Council and the mayor, along with hearing comments from the Lansings' attorney regarding the \$4 million proposed sales price that the Lansings stood to lose, Judge Bitter initially held off on issuing a ruling, temporarily leaving everyone with various levels of uncertainty.¹⁰⁶ Following a review of this additional information, on October 9, 2012, Bitter affirmed Council's rezoning of the property,

97. *Id*; see IOWA CODE ANN. § 414.15 (West 2012) (provides any person or taxpayer the opportunity to file a writ of certiorari if he or she believes he or she has been aggrieved by a zoning adjustment board's decision).

98. Matt Muilenburg, *Go the Distance Baseball Files Petition Against Opposition*, DYERSVILLE COMMERCIAL (Sept. 24, 2012), http://www.dyersvillecommercial.com/news/go-the-distance-baseball-files-petition-against-opposition/article_eca79c2a-066f-11e2-aab9-001a4bcf6878.html.

99. West, *supra* note 8.

100. See Muilenburg, *supra* note 98.

101. *Id*; see IOWA R. CIV. P. 1.407 ("Unless parties' vested interests are already represented in a court matter, persons or entities have an intervention by right when they have a claim in the matter and the disposition can 'impair or impede' their interest.").

102. Muilenburg, *supra* note 98.

103. *Id*.

104. *Id*.

105. Matt Muilenburg, *Ballpark Heaven Court Case Ongoing*, DYERSVILLE COMMERCIAL (Sept. 26, 2012), http://www.dyersvillecommercial.com/news/ballpark-heaven-court-case-ongoing/article_ef445288-07e2-11e2-aa6f-0019bb30f31a.html.

106. *Id*.

thus denying the Petitioners' writ of certiorari.¹⁰⁷ The Residential and Agricultural Advisory Committee ("RAAC") subsequently won an appeal of the district court's denial of the Petitioners' writ of certiorari—with the Iowa Court of Appeals determining that the district court made a ruling on the merits without the opportunity for discovery.¹⁰⁸

To further protect its interests in the project, on October 12, 2012, Go the Distance Baseball filed suit against the RAAC, seeking litigation cost reimbursement, punitive damages, and any other relief the court would deem "just and appropriate under the circumstances."¹⁰⁹ The Stillmans claimed intentional interference with contracts associated with All-Star Ballpark Heaven, including the purchase agreement to buy the Lansings' property, the state legislature sales tax rebate, and the federal Midwest bond allocation.¹¹⁰ The Stillmans also alleged Wayne and Sharon Ameskamp distributed pamphlets under churchgoers' windshields, urging area residents to fight the development project.¹¹¹ Go the Distance Baseball specifically claimed these communications were "false and defamatory," "made with actual malice," consisted of "willful and wanton conduct," and were "a proximate cause of damages to [Go the Distance Baseball],"¹¹² but Go the Distance Baseball and RAAC ultimately agreed to dismiss their claims against each other.¹¹³

107. Matt Muilenburg, *Judge Denies Writ: Ballpark to Proceed*, DYERSVILLE COMMERCIAL (Oct. 10, 2012), http://www.dyersvillecommercial.com/news/judge-denies-writ-ballpark-to-proceed/article_2e743140-12e6-11e2-8767-0019bb30f31a.html.

108. Residential & Agric. Advisory Comm., LLC v. Dyersville City Council, No. 13-0015, 2013 WL 5951191, at *1, *6 (Iowa Ct. App. Nov. 6, 2013). A trial date in the district court has been set for February 16, 2015. *RAAC v. Dyersville Trial Set for February*, DYERSVILLE COMMERCIAL (Aug. 20, 2014), http://www.dyersvillecommercial.com/news/raac-vs-dyersville-trial-set-for-february/article_1d0f9886-27f7-11e4-a346-001a4bcf6878.html?success=2.

109. Matt Muilenburg, *Stillmans File Suit Against Opposition*, DYERSVILLE COMMERCIAL (Oct. 15, 2012), http://www.dyersvillecommercial.com/news/stillmans-file-lawsuit-against-opposition/article_20200906-1710-11e2-914a-0019bb30f31a.html (discussing the Residential and Agricultural Advisory Committee, LLC, which consists of more than twenty Dyersville area citizens who were involved in the district court suit against Dyersville City Council in hopes of reversing the rezoning of the *Field of Dreams* property); *Id.* (regarding Go the Distance's filing suit, Denise Stillman stated, "We want to make sure [All-Star Ballpark Heaven] goes forward for Dyersville and for greater Eastern Iowa. This is one of the best ways we can do to protect it to make sure it does happen."); *Id.*

110. *Id.*

111. *Id.*

112. *Id.*

113. *Legal Claims Between FOD Owners, Neighbors Dismissed*, DYERSVILLE COMMERCIAL (Dec. 22, 2013), http://www.dyersvillecommercial.com/news/legal-claims-between-fod-owners-neighbors-dismissed/article_6bd8d7f8-690b-11e3-ae3f-001a4bcf6878.html.

E. *Background of Property and Zoning Law*

The sanctity of property in American history has its foundation entrenched in the Fifth Amendment of the United States Constitution, which protects citizens from deprivation of life, liberty, or property, without due process of law.¹¹⁴ In 1926, the United States Supreme Court ruled on the constitutionality of zoning ordinances and regulations in the landmark case *Village of Euclid v. Ambler Realty Company*.¹¹⁵ In this case, the Court established the standard for the protection and deference to local municipalities in determining zoning issues by declaring, "We have nothing to do with the question of the wisdom or good policy of municipal ordinances."¹¹⁶ In discussing municipal power to create zoning regulations, the Court stated that municipal rulings must find their justification in the general police power given by the states for the good of public welfare.¹¹⁷ For any regulation to be unconstitutional, it must be "clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare."¹¹⁸

Following the Court's established deference to state and local governmental bodies' zoning decisions, the United States Court of Appeals for the Eighth Circuit declared that federal courts will not interfere with properly executed state power established for the good of the general welfare.¹¹⁹ Conforming to these federal decisions, the Iowa Supreme Court has repeatedly ruled in alignment with a strong deference to local council or board rulings in zoning matters.¹²⁰ Barring an unreasonable decision, the Iowa Supreme Court will not substitute its judgment for those of local boards or councils.¹²¹ The Iowa Supreme Court recognizes the positive impact of zoning ordinances and treats these issues under the general theory that "the division of cities into zoned district [sic] has contributed to the welfare of the communities;"¹²² and it has upheld zoning rulings and regulations as valid discretionary measures taken by municipalities under the police power afforded to them by the state to effectuate "health, safety, morals, or the general welfare" of the citizens and community.¹²³

In accordance with Iowa statute, local zoning commissions must make recommendations to county boards or city councils that they are under no legal obligation to adopt.¹²⁴ Once the council or board re-

114. See U.S. CONST. amend. V.

115. *Vill. of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926).

116. *Id.* at 394.

117. *Id.* at 387.

118. *Id.* at 394.

119. See *McMachon v. Dubuque*, 255 F.2d 154, 160 (8th Cir. 1958).

120. See, e.g., *Keller v. Council Bluffs*, 66 N.W.2d 113, 116-17 (Iowa 1954).

121. *Perkins v. Bd. of Supervisors*, 636 N.W.2d 58, 67 (Iowa 2001).

122. *Keller*, 66 N.W.2d at 119.

123. *Id.* at 116.

124. *Little v. Winborn*, 518 N.W.2d 384, 386-87 (Iowa 1994).

ceives the zoning commission's recommendation, there must be a public hearing at which citizens have an opportunity to be heard.¹²⁵ Iowa defines an open session as a "meeting to which all members have public access,"¹²⁶ and the purpose of this requirement is to promote transparency regarding governmental bodies' decision-making rationale.¹²⁷ This hearing does not have to be held in a formal evidentiary setting; rather, it can be a "comment-argument" hearing to aid the appropriate deciding board in gathering information.¹²⁸

Once county boards or city councils establish a zoning regulation, this decision carries a strong presumption of validity that is difficult to overcome.¹²⁹ As the Iowa Supreme Court detailed in *Neuzil v. Iowa City*,¹³⁰ as long as the zoning ordinance is "facially valid" and its reasonableness is "fairly debatable," the decision of the local board must stand.¹³¹ A zoning regulation or ordinance is "facially valid" if it has any substantive relationship to the "public health, comfort, safety, and welfare, including the maintenance of property values."¹³² For the "fairly debatable" standard, a court will not overrule a board or county's determination if there is any basis for reasonable minds to differ on the zoning regulation at hand,¹³³ i.e., the regulation is valid if there is an opportunity for two different opinions.¹³⁴ Once a board establishes a zoning regulation, the board has flexibility to amend the regulation as it deems necessary.¹³⁵

In further support of this strong presumption of validity of a council or board's zoning determination, the Iowa Supreme Court held there is no balancing test that must be utilized in which the public good is

125. IOWA CODE ANN. § 414.4 (West, Westlaw through 2012 Reg. Sess.).

126. IOWA CODE ANN. § 21.2 (West, Westlaw through 2012 Reg. Sess.).

127. *See id.* § 21.1.

128. *Montgomery v. Bremer Cnty. Bd. of Supervisors*, 299 N.W.2d 687, 693 (Iowa 1980).

129. *See Perkins v. Bd. of Supervisors*, 636 N.W.2d 58, 67 (Iowa 2001).

130. *Neuzil v. City of Iowa*, 451 N.W.2d 159, 163 (Iowa 1990).

131. *Id.* at 163.

132. *Id.* at 164.

133. *Molo Oil Co. v. Dubuque*, 692 N.W.2d 686, 691 (Iowa 2005); *see also Anderson v. Jester*, 221 N.W. 354, 356, 358 (Iowa 1928) (describing the use of the "fairly debatable" standard as the measuring test having its roots all the way back to the first case the Iowa Supreme Court heard concerning municipal zoning law ordinances).

134. *Shriver v. City of Okoboji*, 567 N.W.2d 397, 401 (Iowa 1997).

135. *Neuzil v. City of Iowa*, 451 N.W.2d 159, 165 (Iowa 1990) (contrasting Iowa zoning amendment law with the "Maryland Rule," in which a zoning ordinance can only be changed to correct an error or due to a certain change in conditions); *see Keller v. City of Council Bluffs*, 66 N.W.2d 113, 116 (Iowa 1954) ("We are of the opinion the governing body of a municipality may amend its zoning ordinances any time it deems circumstances and conditions warrant such action . . ."); *contra* *Nw. Merch. Terminal, Inc. v. O'Rourke*, 60 A.2d 743, 752 (Md. Ct. App. 1948) (declaring it is "arbitrary and an unreasonable exercise of power" to amend zoning ordinances unless there is "appreciable danger to the public health, comfort, safety, or welfare to be feared from [the original zoning ordinance's] exercise.").

balanced against potential harm.¹³⁶ Although recognizing that zoning decisions naturally lead to hardships for certain individuals,¹³⁷ the court significantly noted that it is not concerned about individual hardships in any particular case, but its sole focus is on the general purpose of the ordinance.¹³⁸ Further decreasing the chance of a reversal of a board's zoning decision, the burden to prove the invalidity and unreasonableness of the zoning decision rests with the person or entity claiming its invalidity.¹³⁹ As a legal means to dispute a zoning decision, an opposing party can file a writ of certiorari if it feels a board or council has acted illegally or exceeded its jurisdiction in enacting the regulation in question.¹⁴⁰

Perhaps there is no more applicable case to the *Field of Dreams* property issue than *Fox v. Polk County Board of Supervisors*,¹⁴¹ which reached the Iowa Supreme Court as the result of residents challenging the county board's decision to rezone property for the development of a softball field complex.¹⁴² The Polk County Board of Supervisors voted to rezone an area of predominantly agricultural land to enable construction of a softball field complex on land donated to the county by a local family.¹⁴³ Certain residents of the area strongly opposed the rezoning due to concerns such as increased traffic and noise, declines in property value, and other general safety concerns.¹⁴⁴ These residents filed a writ of certiorari to overrule the board's zoning decision and construction of the softball complex.¹⁴⁵ The district court denied the writ, upholding the board's decision, and the Iowa Supreme Court affirmed the rezoning.¹⁴⁶ In reaching its decision, the Iowa Supreme Court applied the "fairly debatable" standard and found no error in the district court's ruling that the rezoning would provide park facilities to the area, preserve large areas of open space, and create a buffer area between residential and commercial areas.¹⁴⁷

While there are *many* holdings in which Iowa courts upheld the "fairly debatable" standard, the cases are sparse in which courts have reversed local zoning regulations. The only major decisions that over-

136. See *F.H. Uelner Precision Tools & Dies, Inc. v. City of Dubuque*, 190 N.W.2d 465, 468 (Iowa 1971), *overruled by Molo*, 692 N.W.2d 686, 691.

137. See *Keller*, 66 N.W.2d at 119 (*quoting* *Eaton v. Sweeney*, 177 N.E. 412, 414 (N.Y. Ct. App. 1931)).

138. See *Boardman v. Davis*, 3 N.W.2d 608, 610 (Iowa 1942).

139. See *Anderson v. Cedar Rapids*, 168 N.W.2d 739, 742 (Iowa 1969).

140. IOWA R. CIV. P. 1.1401; see also *Montgomery*, 299 N.W.2d at 692; *Fox v. Polk Cnty. Bd. of Supervisors*, 569 N.W.2d 503, 508 (Iowa 1997).

141. *Fox*, 569 N.W.2d at 503.

142. *Id.* at 505.

143. *Id.* at 505-07.

144. *Id.* at 506.

145. *Id.*

146. *Fox*, 569 N.W.2d at 507, 509.

147. *Id.* at 508.

rule zoning regulations dealt with the concept of “spot zoning.”¹⁴⁸ In *Little*,¹⁴⁹ the Davenport Shooting Association requested the Scott County Zoning and Planning Association to rezone 223 acres of property so the association could construct buildings for a shooting range club.¹⁵⁰ Surrounding property owners objected to the rezoning, expressing concerns over the effect on livestock, the noise of the shooting range, and the risk of fire hazards from buildings.¹⁵¹ The Scott County Board of Supervisors approved the rezoning of the property, leading to surrounding property owners petitioning the district court for a writ of certiorari, which resulted in the district court ruling the rezoning invalid.¹⁵²

While affirming the district court’s ultimate rejection of the rezoning, the Iowa Supreme Court ruled that spot zoning existed because the subject property would have different use restrictions than surrounding land.¹⁵³ In its next step, the court ruled that the spot zoning was illegal because the rezoning had no relation to the public safety, health, morals, or welfare of the community, as the property owners were the only community members who would receive any benefit from the rezoning.¹⁵⁴ In addition, the court determined there was no reasonable basis for rezoning this specific property, as it had no unique characteristics that distinguished it from any of the surrounding properties.¹⁵⁵ Finally, the court held that rezoning of the property would contravene the Scott County Comprehensive Zoning Plan, which identified protecting agricultural land from scattered development as a main objective.¹⁵⁶

III. ANALYSIS

This section will first examine the Petitioners’ main points of contentions surrounding Go the Distance Baseball and Council’s decision to rezone the *Field of Dreams* movie site property in anticipation of constructing a youth sports complex. Then, this section will distin-

148. See, e.g., *Little v. Winborn*, 518 N.W.2d 384, 389 (Iowa 1994); *Keppy v. Ehlers*, 253 N.W.2d 1021, 1024 (Iowa 1962); but see *Jaffe v. Davenport*, 179 N.W.2d 554, 559 (Iowa 1970).

149. *Little*, 518 N.W.2d at 388.

150. *Id.* at 385.

151. *Id.*

152. *Id.* at 386 (establishing that the district court, however, did not discuss the issue of spot zoning, ruling instead that the rezoning was invalid due to failure to comply with two procedural requirements: (1) the zoning commission did not recommend the Davenport Shooting Association’s rezoning petition to the Scott County Board of Supervisors prior to its vote, and (2) the Scott County Board of Supervisors essentially granted consent of a shooting range without following the appropriate statutory procedures required for approval of such a facility); *Id.*

153. *Id.* at 388.

154. *Little*, 518 N.W.2d at 388.

155. *Id.*

156. *Id.*

guish those facts from the situation presented in *Little v. Winborn*¹⁵⁷ and compare the similarities to *Fox v. Polk County Board of Supervisors*.¹⁵⁸ Next, this section will discuss why the interaction between Go the Distance Baseball and the local and state governmental bodies of Iowa created an innovative plan that, although an impressive accomplishment in public and private collaboration, could have expanded its requirements of the private business. This section will then propose a model plan for any future attempts of private business and government funding a plan that benefits both private business and the general welfare of the community.

A. *Examination of Petitioners' Contentions and
Application to Iowa Law*

The Petitioners presented seventeen complaints to the Dubuque County District Court against Council and Mayor Jim Heavens.¹⁵⁹ While District Court Judge Ritter denied the Petitioners' equitable request and upheld the rezoning during the first hearing,¹⁶⁰ in analyzing the paramount claim regarding the arbitrary nature of the Council's actions with the rezoning of the property, it would appear on the surface that the Petitioners faced a difficult path to reverse the zoning decision.

In evaluating a claim of arbitrary board action with zoning, the discussion will focus on the "fairly debatable" standard established and utilized by the Iowa Supreme Court since 1928, when it first encountered a municipal zoning issue in *Anderson v. Jester*.¹⁶¹ As long as a zoning ordinance is "facially valid" and its reasonableness is "fairly debatable," it will not be reversed.¹⁶² As stated, a zoning regulation is "facially valid" if it has any substantive relationship to the "public health, comfort, safety, and welfare, including the maintenance of property values,"¹⁶³ and courts will not reverse a local zoning determination as long as reasonable minds can differ on the zoning decision;¹⁶⁴ in other words, the regulation is valid if there is an opportunity for two logical, dissimilar opinions.¹⁶⁵

There is little dispute that the zoning regulation changing the site to commercial property for the construction of the youth sports complex is facially valid, as it bears a strong relationship to the public welfare. As a facility supported by predictions of increased tax revenue and job

157. *Id.* at 384.

158. *Fox v. Polk Cnty. Bd. of Supervisors*, 569 N.W.2d 503, 503 (Iowa 1997).

159. Muilenburg, *supra* note 98.

160. Muilenburg, *supra* note 107.

161. *Anderson v. Jester*, 221 N.W. 354, 356, 358 (Iowa 1928).

162. *Neuzil v. City of Iowa*, 451 N.W.2d 159, 163 (Iowa 1990).

163. *Id.* at 164.

164. *Molo Oil Co. v. City of Dubuque*, 692 N.W.2d 686, 691 (Iowa 2005).

165. *See id.*

growth,¹⁶⁶ with potential numbers of 1,200 full-time equivalent jobs, \$25 million in labor income, and \$4.2 million and \$2.2 million in annual state and local tax increases, respectively, by 2017, the public should experience a substantial positive impact.¹⁶⁷

The Iowa Supreme Court has upheld the “fairly debatable” standard as a lenient standard to measure the reasonableness of a zoning board’s determination.¹⁶⁸ The court has made clear that a decision will not be reversed as long as there is room for two reasonable opinions.¹⁶⁹ While opposition to the development has raised legitimate concerns such as agricultural demise, traffic, and pollution,¹⁷⁰ the counter argument is that the project will have a positive impact on the community and transcend a small farming town to an economically-productive attraction.¹⁷¹ With the zoning regulation having the necessary qualification of a “facially valid” ordinance and satisfying the “fairly debatable” test with the existence of two differing yet reasonable opinions, it would appear that the Dubuque District Court will still ultimately uphold the rezoning based on these established merits.

B. *Distinguishing “Field of Dreams” Property Development Plan from “Little v. Winborn”*

The overwhelming majority of cases in which Iowa courts have reviewed board or council decisions regarding zoning have consistently revealed their strong deference to local governing bodies’ decisions.¹⁷² While many cases represent affirmations of local decisions, an examination of one of the few cases, *Little v. Winborn*,¹⁷³ in which the Iowa judicial system reversed a local board’s decision, will demonstrate its disparate circumstances from the *Field of Dreams* situation.

As detailed, *Little* concerned a shooting association successfully petitioning a county zoning board to rezone property for construction of buildings for a recreational club,¹⁷⁴ causing surrounding property owners to file a writ of certiorari contending, among other concerns, that the rezoning was illegal spot zoning.¹⁷⁵ In ruling the spot zoning illegal, the court stated the property owners would be the sole beneficiaries of the rezoned property, the property had no unique characteristics to support a reasonable basis for the rezoning, and the rezoning contravened the local government’s established plan, which identified

166. See Lipsman & Seigelman, *supra* note 44, at 3; West, *supra* note 51.

167. Lipsman & Seigelman, *supra* note 44, at 3.

168. See *Molo Oil Co.*, 692 N.W.2d at 691.

169. *Id.*

170. See, e.g., Zillow, *supra* note 3.

171. See Thompson & Rahe, *supra* note 42.

172. See, e.g., *Perkins v. Bd. of Supervisors*, 636 N.W.2d 58, 67 (Iowa 2001).

173. *Little v. Winborn*, 518 N.W.2d 384 (Iowa 1994).

174. *Id.* at 385–86.

175. *Id.* at 386.

protecting agricultural land from development as a primary objective.¹⁷⁶

In juxtaposing *Little* with the Dyersville rezoning and development issue, it is apparent that vast contrasts exist. Although *Little* reversed the county board's rezoning decision,¹⁷⁷ the Dyersville petitioners never raised spot zoning as an issue.¹⁷⁸ Additionally, the rezoning of the property at the movie site will benefit youths from around the county by providing a place for teams, coaches, and families to travel and experience the emanating positives of playing softball and baseball. Conceding that the Stillmans and their investors initiated this business enterprise to earn profits, as does virtually every business initiator, studies support this project as providing ample rewards and a positive impact on the local economy.¹⁷⁹

Moreover, the movie site is a unique piece of land. Very few, if any, areas of land have been developed solely for a movie but consistently attract thousands of visitors more than two decades after its construction.¹⁸⁰ The unique quality of the land makes it an attractive place to rezone to commercial and allow for the construction of the youth complex, as building the complex on any other ordinary piece of land would not have the same attraction as this landmark property. Finally, the Dyersville City Zoning Regulations themselves indicate, among other things, the purpose of the zoning ordinances is to endorse the general welfare and "encourage the most appropriate use of land."¹⁸¹

C. *Analogizing "Field of Dreams" Property Development Plan with "Fox v. Polk County Board of Supervisors"*

While the facts of the *Field of Dreams* property contrast to *Little*, they closely align with the Iowa Supreme Court case of *Fox v. Polk County Board of Supervisors*.¹⁸² As referenced earlier, the *Fox* petitioners challenged a county board's decision to rezone property for the construction of a softball field complex.¹⁸³ Among the main concerns of the opposing residents were increased traffic and noise, declining property value, and general safety apprehensions.¹⁸⁴ The residents subsequently filed a writ of certiorari to overrule the zoning decision and the construction of the softball complex, but the court

176. *Id.* at 388.

177. *Id.* at 389.

178. *But see* West, *supra* note 8.

179. *See* Lipsman & Seigelman, *supra* note 44, at 3.

180. *See, e.g.*, Zillow, *supra* note 3.

181. DYERSVILLE, IOWA, ZONING REGULATIONS, ORDINANCE 165.02, 601 (City of Dyersville through 2011) http://www.cityofdyersville.com/CityAdServ/Ordinances/2011/Chapter165_Zoning_Regulations.pdf.

182. *Fox*, 569 N.W.2d 503 (Iowa 1997).

183. *Id.* at 505.

184. *Id.* at 506.

applied the “fairly debatable” standard to uphold the rezoning, and affirmed the county board’s decision.¹⁸⁵

There are transparent similarities between the two cases based solely on the comparable land development projects (i.e., the rezoning of agricultural land for development of youth sports complexes).¹⁸⁶ Also, similar to the Dyersville petitioners’ opposition of the rezoning and development of the complex due to agricultural and traffic concerns,¹⁸⁷ the petitioners in *Fox* cited mirroring concerns among their complaints.¹⁸⁸ Similarly, the Dyersville petitioners claimed that Council acted “illegally and arbitrarily” in rezoning the property,¹⁸⁹ much like the petitioners in *Fox* alleged that the board’s rezoning of the property for the softball complex was “arbitrary, capricious, illegal, erroneous, an abuse of discretion, and contrary to law.”¹⁹⁰

D. *The Development Plan of All-Star Ballpark Heaven is an Innovative Plan of Interaction Between Private Investors and Political Officials but Could Have Gone Further in its Requirements from the Private Sector*

Although there has been opposition to All-Star Ballpark Heaven,¹⁹¹ a diametric viewpoint on the development plan *should* prevail: The interaction between the private investors and political bodies, specifically the manner in which public funds were allocated while creating a revenue-generating, positive attraction for the community, should be lauded as an innovative model. While there are several impressive elements to the plan, this section will propose that the plan had room for even further expansion regarding its requirements from the private investors due to the extensive amount of public funding at issue.

Encumbering any new business venture is the arduous task of securing the requisite financing to initiate the business, especially when the initial cost of the venture is \$38 million.¹⁹² With attracting investors as an essential element to their business plan,¹⁹³ the Stillmans aggressively pursued acquisition of public funds to increase the project’s appeal to potential investors.¹⁹⁴ The ideal scenario for Go the Distance Baseball would have been to receive unconditional upfront public funding, thus reducing the amount required from private funding. This strategy raises the frequently polarizing policy question of the validity of using public funds for a private development project in

185. *Id.* at 508.

186. *See id.* at 505; *Council Approves Rezoning*, *supra* note 71.

187. *West*, *supra* note 86.

188. *Fox*, 569 N.W.2d at 506.

189. *West*, *supra* note 8.

190. *Fox*, 569 N.W.2d at 508.

191. *West*, *supra* note 86.

192. *See Field of Dreams Preservation*, *supra* note 36.

193. *See West*, *supra* note 57.

194. *See Field of Dreams Preservation*, *supra* note 36.

which the private investors themselves are the primary financial beneficiaries. Deliberations such as these are pervasive throughout many industries; however, public funding for professional sports facilities is one particular industry in which this public financing approach has been prevalent.¹⁹⁵

Instead of giving upfront public funding from the state, the Iowa legislature created an alternative plan to provide state subsidies to Go the Distance Baseball.¹⁹⁶ The legislature structured a bill in which Go the Distance Baseball would receive back-end public funding, meaning the private development group would receive a sales tax credit predicated upon the success of the business itself (i.e., the sales tax revenue generated from the facility).¹⁹⁷ As summarized by New Vienna Representative Steve Lukan, “[Go the Distance Baseball] [has] to generate the revenue. They have to generate foot traffic, or they don’t create sales tax This actually forces them to make the investments and to be profitable before there’s any sales tax rebate.”¹⁹⁸

Although the argument can be made that the lack of upfront public funding, consequently resulting in the need for more private investment, could be a detriment to investors, Go the Distance Baseball viewed the sales tax rebate as an invaluable instrument in attracting investors.¹⁹⁹ With the growing list of investors announced, including prominent names,²⁰⁰ this legislative approach has not shown signs of being a significant impediment to Go the Distance Baseball securing investors.

In another component of the requirements to receive the sales tax rebate, the Iowa legislature added an aspect aimed at keeping potential investment money within the state by requiring at least 51% of All-Star Ballpark Heaven investors to reside in Iowa.²⁰¹ The result of this directive has been visible with the Stillmans’ announcement of Des Moines native Jeremy Hellickson as an investor,²⁰² and the announcement of Dubuque-based Conlon Construction as an investor and contractor of the project.²⁰³ Without this legislative requirement, the Stillmans might have looked outside the local area for a contractor.

195. See generally Irwin A. Kishner & David R. Hoffman, *The Benefits of Public and Private Cooperation in Financing Professional Sports Stadiums*, 28 ENT. AND SPORTS LAW 20 (2010).

196. See Campbell, *supra* note 7.

197. *Id.* (detailed earlier in the comment, the agreement will provide \$16.5 million in sales tax credits over a ten-year period to Go the Distance Baseball, with the credited money coming directly from the sales tax generated at the sports complex); Zillow, *supra* note 3.

198. Campbell, *supra* note 7.

199. See West, *supra* note 57.

200. See, e.g., Muilenburg, *supra* note 81.

201. See West, *supra* note 55.

202. See West, *supra* note 79.

203. See Conlon on Board for Ballpark Heaven, *supra* note 83.

Following the lead established by the state legislature, Council worked with Go the Distance Baseball to create an equivalent agreement.²⁰⁴ Recognizing the need for substantial infrastructure costs for the facility, Go the Distance Baseball agreed to pay the water and sewer costs instead of the City of Dyersville.²⁰⁵ In return, Dyersville agreed to provide tax rebates based 100% on the revenue generated from the business.²⁰⁶ This agreement thus avoided upfront public funding, instead requiring the private investors of All-Star Ballpark Heaven to pay for the water and sewer infrastructure needed for the City of Dyersville to extend these utilities out to the site, while giving back-end public rebates dependent solely on the business' generated tax revenue.

While this plan exudes many positive, innovative qualities, this Comment asserts that the public sector should have required additional concessions from Go the Distance Baseball. With the significant amount of public financing potentially being provided to the private developer, there needed to be even more assurances that there is extremely minimal risk to public funds. While the format of the public subsidies being contingent on sales tax generated at the facility itself is the ideal method to provide back-end public funding, the private investor should have been mandated to pay for the *entire* infrastructure costs that might be associated with this plan, not just the water and sewer costs. The government should have stipulated that the private developer would be responsible for *all* infrastructure costs required to construct the facility, including unforeseen expenditures during the development stages.

In addition, not only should the developer pay for the *entire* upfront infrastructure and development cost, the back-end sales tax rebate should be dependent on more than a simple majority of the private investors residing in Iowa. While the plan devised by the Iowa state government was a commendable progression to help ensure significant dollars do not leave the state, they should have taken the additional step and required *more* than just a simple majority of the private investors to reside in Iowa. By the legislature stating that at least 51% of investors needed to be local, the risk is that the business will simply meet that minimum requirement of just 51%, a simple majority, which this Comment contends is not enough.

Instead, the legislature should have detailed a specific number, perhaps three-quarters, of indigenous investors as a prerequisite for the funding. This model would allow for a recycling of financial resources

204. See Muilenburg, *supra* note 73.

205. *Id.* (explaining that Go the Distance Baseball, LLC agreed to pay the \$3 million water and sewer infrastructure cost for the facility).

206. *Id.* (explaining that the City of Dyersville agreed to provide a total of \$5.13 million over fifteen years to Go the Distance Baseball, LLC as part of this tax rebate agreement).

within the state — a fair exchange in return for the state providing a significant financial contribution to private development. Not only would this help to retain money in the state, it could possibly help heal some of the contentiousness existing between the community and the developers by showing that Go the Distance Baseball is committed to not just the project, but also to local long-term growth and financial stability.

It could be argued that these increased requirements could detract private business from developing in a particular state; however, the trade-off would be that with these increased requirements would come increased tax rebate dollars that could potentially negate all of the private upfront development costs. The rationale behind these increased requirements is not to detract business, but rather to minimize any risk of irresponsible upfront spending of public funds. The Iowa legislature could have declared that it would rebate the *entire* cost of the venture over an extended period of time from sales tax generated by the private development, as this money would be dependent upon the success of the business itself and create minimal risk to public funding.

IV. CONCLUSION

There is no disputing the attachment so many feel toward the *Field of Dreams* property, which has led to divisive viewpoints on how best to preserve the property while maximizing its economic potential. This polarizing topic has resulted in legal battles over issues such as zoning, contract interference, and defamation, among others.²⁰⁷

This Comment uses the framework provided by the *Field of Dreams* development plan to propose a model plan that encompasses the following components: (1) private business funding the *entire* upfront cost of development; (2) private business funding the *entire* upfront infrastructure cost of the development; (3) substantial state and local subsidies, up to the entire cost of the project, provided on a back-end, sales tax rebate basis, *wholly* dependent on revenue generated from the business itself; and (4) state and local subsidies dependent upon a significant *specific* percentage — not just a simple majority — of the business investors residing *in* the state.

In essence, public subsidies can and should be available to private investors, but only on a back-end contingency basis where there is minimal risk associated with the public funds. The risk inherent with the development has to be heavily tilted toward the private sector, as discretionary public funds cannot be susceptible to such endangerment. However, as long as the project proves to be successful — benefiting the private sector *and* the general welfare — the government should rebate the private developers with tax money generated by the facility itself.

207. See *id*; Muilenburg, *supra* note 109.