

Understanding Community Benefit Agreements: Opportunities and Traps for Developers, Municipalities and Community Organizations

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I. Introduction: What are Community Benefits Agreements?

A Community Benefits Agreement (CBA) is a private contract negotiated between a prospective developer and community representatives. In essence, the CBA specifies the benefits that the developer will provide to the community in exchange for the community's support of its proposed development. A promise of community support may be especially useful to a developer seeking government subsidies or project approvals.²

CBAs are generally negotiated between coalitions of community groups that often include labor, environmental, and religious organizations. Many CBA provisions are inspired by social justice issues; common CBA benefits are living-wage provisions, first source {local} hiring plans, guarantees that developments will include low-income housing in their plans and assurances of minority hiring minimums.³ Because the agreements are negotiated between community coalitions and interested developers, the benefits can be tailored to meet specific community needs, such as the need for parks, day care centers or job training facilities.⁴

The flexibility of the CBA has also spilled over into the process by which these agreements are negotiated. Negotiations may be initiated by a developer or by a community coalition, or in some cases they may be encouraged by city officials. Negotiations for the community are generally undertaken by representatives of individual community groups, but they may also involve local government officials.⁵ Often, public input also plays an important role in determining community goals.

After a CBA has been completed, it will in some cases be incorporated into a development agreement made between the developer and the municipality as part of the planning process.⁶ This ensures a certain measure of transparency and also permits the

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² JULIAN GROSS, COMMUNITY BENEFITS AGREEMENTS: MAKING DEVELOPMENT PROJECTS ACCOUNTABLE 9-10 (Good Jobs First 2005), available at <http://www.goodjobsfirst.org/pdf/cba2005final.pdf>.

³ Id. at 10-11.

⁴ Id. The parties involved in creating the LAX airport CBA, for example, agreed that LAX would fund sound-proofing in nearby schools and residences. See n.28, *infra*.

⁵ In at least one case, A CBA is being negotiated by a Local Development Corporation created by the municipal authorities.

⁶ A development agreement is a contract negotiated between a local government planning agency and a developer. In these agreements, the developer agrees to provide certain benefits to the public or to restrict the use of the land. In exchange, the local government promises to freeze the current zoning and land use laws for a certain period of time, assuring that the development's construction will not be interrupted or

government, as well as coalition members, to enforce the agreement. However, because most states do not authorize local governments to enter into development agreements,⁷ many CBAs will be enforceable only by the contracting community groups.⁷

CBAs are considered by their supporters to be powerful tools for assuring that communities' needs will not be neglected by large developers. Many developers also support the negotiating process as a method by which to obtain community support and thereby avoid government refusal of their projects. CBAs have been negotiated in relation to nearly 50 development projects cities across the country.⁸

II. Accounting for the Growing Interest in Community Benefit Agreements

Proponents of Community Benefits Agreements cite to several trends for the growing interest in this practice: urban redevelopment and reinvestment in the face of shrinking federal aid provided to cities, the evolution of the smart growth movement and increased public concern for developer accountability. According to the Neighborhood Funders Group Study published in 2005, eight out of the 10 largest cities in the U.S. experienced population increases during the 1990s for the first time in decades and the growth rate is expected to accelerate over the next twenty years.⁹ Urban scholars have coined the phrase "the back to city movement", and attribute it to an increased number of baby boomers looking to downsize and live closer to work, the post 1960s generation perception that an urban lifestyle is preferable,¹⁰ and an influx of Asian and Latin American immigrants relocating in urban neighborhoods.¹¹ There are a growing number of urban centers where space limitation or geographic boundaries have created expansion barriers and have the resulting need for redevelopment of already populated areas; CBAs allow for community participation in the redevelopment process so that specified needs can be addressed.¹²

While there is resurgence in urban center growth, this comes at a time when federal aid to cities has been in a long slow decline. Fear of further reductions in funding for Community Development Block Grants and concern about future federal support levels for public housing and Section 8 rent-subsidy vouchers has created increased interest in developing effective public-private partnerships to meet low-income housing needs.¹³ Though city and county governments have planning departments, many

stopped. See generally Michael H. Crew, *Development Agreements after Nollan v. California Coastal Commission*, 22 URB. LAW 23, 27-31 (1990).

⁷ GROSS, *supra* note 2, at 11.

⁸ Harold Meyerson, *No Justice, No Growth; How Los Angeles is making big-time developers create decent jobs*, The American Prospect (Nov. 2006).

⁹ Greg LeRoy and Anna Purinton, *Neighborhood Funders Group, Community Benefit Agreements: Making Sure Urban Redevelopment Benefits Everyone*, at 19 (2005)

¹⁰ Meyerson, at 19.

¹¹ Julian Gross, Greg LeRoy, and Madeline Janis-Aparicio, *Community Benefit Agreements: Making Development Projects Accountable*, at 4 (2005).

¹² Greg LeRoy and Anna Purinton, *Neighborhood Funders Group, Community Benefit Agreements: Making Sure Urban Redevelopment Benefits Everyone*, at 19 (2005).

¹³ Ibid, at 19

emphasize “processing permits and other land use applications” and act as facilitators in the private development process rather than take a leadership role.¹⁴ Critics hold that substantial tax incentives or subsidies are provided to developers to support new job creation, but pin community hopes upon the “ripple effect” and have too little control over the job opportunities created.¹⁵ Billions of dollars of taxpayer monies have been funneled into Economic Development projects, but standards for urban redevelopment and developer accountability remain inconsistent, as such many projects produce “mixed results” for the existing communities.¹⁶ Inner-city gentrification, creation of low-wage dead end jobs lacking health benefits, and the loss of affordable housing frequently occur.¹⁷ In April 2005, the New York City Council’s Select Committee on Community Development held a series of hearings due to concerns “that despite recent economic development activity and community development efforts, thousands of City residents living in distressed New York City neighborhoods, still continue to experience high levels of concentrated poverty, joblessness, poor health outcomes and low educational achievement.”¹⁸ In testimony supporting the use of CBAs, the representative from the Pratt Institute Center for Community and Environmental Development stated, “The City’s community development efforts have often been separate from the larger economic development strategy which largely consisted of tax breaks, subsidies and large scale projects ... Today’s community development needs to embrace new strategies to insure that the City’s economic development investments create truly shared prosperity, not with lip service to job creation, but with sustained and significant efforts.”¹⁹

The Smart Growth Movement, with its emphasis on development guided by “equity, economy, and the environment,” is credited with the evolution of Community Benefit Agreements.²⁰ As Smart Growth matured, key advocates realized the need to expand their focus beyond urban sprawl and the environment and to include policy concerns related to the creation of livable cities with living wage jobs.²¹ “The community benefits movement gives Smart Growth advocates a set of concrete policy tools to advance these outcomes in ways that can be measured: e.g., how many thousands of affordable housing units have been built, how many tens of thousands of living wage jobs have been guaranteed, and how many millions of dollars have been redirected towards community services.”²²

III. Examples of CBAs

¹⁴ Julian Gross, Greg LeRoy, and Madeline Janis-Aparicio, *Community Benefit Agreements: Making Development Projects Accountable*, at 4 (2005)

¹⁵ Ibid, at 4.

¹⁶ Ibid, at 4.

¹⁷ Ibid, at 4.

¹⁸ Marcel Van Ooyen, Legislative Director, *NYC Oversight: Linking New York City Economic Development Policies and Programs to Community Development Strategies. Briefing Paper of the Infrastructure Division*, May 16th (2005)

¹⁹ Ibid

²⁰ Julian Gross, Greg LeRoy, and Madeline Janis-Aparicio, *Community Benefit Agreements: Making Development Projects Accountable*, at 4 (2005)

²¹ Ibid, at 4.

²² Ibid, at 4.

A. California

The first CBA was negotiated in 1998 in relation to the planned development of the Hollywood and Highland Center, now home to the Kodak Theater, which hosts the annual Oscar ceremonies.²³ The development, which includes more than 4,000 theater seats, several parking lots and hotels, and 1.2 million square feet of retail space was projected to cost \$388 million.²⁴ The eight and a half acre project understandably sparked concerns among Hollywood residents and business owners, including fears of increased traffic and congestion, possible environmental effects, increased crime and impacts on the city's aesthetics.²⁵ However, with the help of Los Angeles Councilwoman Jackie Goldberg and the Los Angeles Alliance for a New Economy (LAANE), the developer struck a deal: in exchange for community support, the developer offered to finance traffic improvements, ensure that workers at the Center would be paid a living-wage and to implement a first-source hiring plan and a policy of union-neutrality.²⁶ The deal, though, was not one-sided; community support of the development also helped the developer to obtain \$90 million in subsidies from the city.²⁷ By most accounts the project has been a success: in addition to revitalizing Hollywood Boulevard, nearly 70% of the initial employees hired at the complex were recruited from the immediate area and about half of the permanent positions provide living-wages.²⁸

The success of the Hollywood and Highland CBA was followed in 2001 by the completion of the first full fledged CBA. This CBA concerned the Los Angeles Staple Center, a sports arena that is home to several professional teams, including the Los Angeles Lakers.²⁹ Community residents had suffered a blow when the developer failed to provide orally promised benefits after the completion of the project's first phase.³⁰ The CBA model was hoped to provide assurances of the developer's responsibility in relation to the development of a sports and entertainment complex surrounding the previously constructed arena, a project affecting a twenty-seven acre parcel and including two hotels, a 7,000-seat theater, a 250,000 square foot expansion of the convention center, two apartment buildings and a retail complex. Negotiations were held between the developer and the Figuera Corridor Coalition for Economic Justice, which represented more than thirty community organizations, including environmental groups, church

²³ Id.

²⁴ Greg Goldin, *Mall-ywood*, LA WEEKLY, Dec. 18, 1998, at 30.

²⁵ Id.; see Jonathan Darr, Letter to the Editor, *Proposed Complex in Hollywood*, THE LOS ANGELES TIMES, Apr. 12, 1998, at M-4.

²⁶ Goldin, *supra* note 9; Laura Wolf-Powers, *Building in Good Jobs: Linking Economic and Workforce Development with Real Estate-Led Economic Development* 18 (Dec. 2006), available at http://www.nycetc.org/pdf/Building_in_Good_Jobs_Report_12_06.pdf.

²⁷ Wolf-Powers, *supra* note 11, at 18.

²⁸ Id.

²⁹ Good Jobs First, Community Benefits Agreements Victories, http://www.goodjobsfirst.org/accountable_development/community_benefit_vic.cfm (last visited Mar. 14, 2007) [hereinafter Community Benefits Agreements Victories].

³⁰ Union groups had obtained promises of union-neutrality and living-wage benefits, but the developers refused to implement them after receiving the variances and subsidies from the city. The community had been further affected by the displacement of more than 250 residents, mostly low-income, and by the increase in traffic, noise and parking problems. Id.

groups, health organizations and immigrants' and tenants' rights supporters. Strategic Action for a Just Economy (SAJE) and LAANE were also involved in the negotiating process, which lasted over nine months, providing organizational and political support to the coalition and community members.³¹

The spectre of broad community opposition to the project, which required significant land use variances and city subsidies, provided the community with the necessary leverage to negotiate a comprehensive CBA. The completed agreement states that its purposes are to "provide publicly accessible park space, open space, and recreational facilities; target employment opportunities to residents in the vicinity of the Figueroa Corridor; provide permanent affordable housing; provide basic services needed by the Figueroa Corridor community; and address issues of traffic, parking, and public safety."³² The CBA also included reporting requirements and established an Advisory Committee to monitor and enforce the agreement and to maintain a dialogue between the developer and the Coalition.³³ The CBA was also incorporated into the development agreement between the developer and the city's Community Redevelopment Agency, making it enforceable by the city as well as by the contracting community groups.³⁴ Although the first phase of the "L.A. Live" sports and entertainment complex will not open until mid-2007,³⁵ several aspects of the CBA were implemented shortly after its completion, including the establishment of a residential parking permit program and the distribution of seed money for the construction of affordable housing.³⁶

³¹ Id.

³² Id; Staples Center Community Benefits Agreement, at section I, *available at* <http://saje.net/publications/communitybenefits.pdf>. More specifically, the developer agreed to the following provisions:

- To provide at least \$1,000,000 for the creation or improvement of parks and recreational facilities;
- To provide \$25,000 per year for a term of five years for the creation of a permit parking program;
- To comply with the city's living wage ordinance and to make all reasonable efforts to reach the goal of ensuring that 70% of the jobs created by the project pay a living wage;
- To give priority hiring to persons displaced by the project and to low income individuals residing within three miles of the project;
- To coordinate job training programs with community groups;
- To provide \$100,000 in seed money for the creation of the First Source Referral System;
- To set aside 20% of the residential units constructed within the project as affordable-housing and to provide \$650,000 in interest-free loans to non-profit housing developers for the creation of additional affordable housing;
- And to cooperate with the Coalition to establish an Advisory Committee to assist with the implementation and enforcement of the agreement.

Id.

Additionally, the developer signed separate card check/neutrality agreements with five union organizations.

See Community Benefits Agreements Victories, *supra* note 14.

³³ Staples Center Community Benefits Agreement, *supra* note 17, at section XI.

³⁴ Community Benefits Agreements Victories, *supra* note 14.

³⁵ Glenn F. Bunting, *A Denver Billionaire's Invisible Hand; Industrialist Philip Anschutz, intensely private and focused beyond belief, is quietly changing the face of downtown Los Angeles*, THE LOS ANGELES TIMES, Jul. 23, 2006, at A-1.

³⁶ Community Benefits Agreements Victories, *supra* note 14.

Another Los Angeles CBA demonstrates the flexibility and adaptability of this method of negotiating. In December, 2004, the Los Angeles City Council approved the agreement reached between Los Angeles World Airports (LAWA), the public administrator of LAX airport, and a coalition of twenty-two community groups concerning an \$11 billion airport expansion.³⁷ Among the coalition's members were two local school districts and organizations representing community, religious, environmental and labor interests.³⁸ In addition to provisions covering job training and first-source hiring for community residents and living-wage requirements,³⁹ the CBA also devotes substantial resources toward mitigating the environmental impacts of the airport. The airport is thus required to provide more than \$8.5 million annually for the soundproofing of local schools, city buildings, places of worship and homes⁴⁰ and to fund studies on air quality and community health.⁴¹ Additionally, the CBA requires LAX to implement a number of environmental controls, including the electrification of passenger gates and cargo areas (to reduce the need for engine idling), emissions reductions and the conversion of airport vehicles to alternative fuels.⁴² While the provisions of the LAX CBA are notable for their specificity to the project, the CBA also clearly requires LAWA to incorporate CBA provisions into all new and revised airport contracts, lease agreements, and licensing or permitting agreements, thus ensuring the translation of the requirements to entities other than LAWA operating at LAX.⁴³

In September 2005, a broad coalition of 27 housing, labor, community, environmental, and religious groups called ACCORD (A Community Coalition for Responsible Development) entered into the first CBA in San Diego with developer JMI/Lennar. The CBA set out a range of community benefits to be provided as part of a large, multi-use project to be built adjacent to the new downtown baseball stadium,

³⁷ Sheila Muto, *Residents have their say on LAX expansion plans*, THE WALL STREET JOURNAL, Dec. 15, 2004. Although the Federal Aviation Administration initially expressed concern that the CBA might conflict with a federal law requiring the use of airport revenue to be aviation-related, it has recently abandoned its opposition to the program. Dan Laidman, *FAA changes course on airport-related jobs*, COPELY NEWS SERVICE, Dec. 13, 2006.

³⁸ *The LAX Coalition and the CBA*, STAKEHOLDER CONNECTION (LAX/Los Angeles World Airports), Volume 1, Issue 2, http://www.laxmasterplan.org/stakeholder/pdf/Newsletter_Vol1_Issues2_only.pdf (providing a complete list of the CBA signatories).

³⁹ LAX Community Benefits Agreement, at sections V-VI, IV, available at http://www.laane.org/docs/policy/cbas/LAX_CBA.pdf. The CBA also establishes a program to encourage the involvement of women and minority owned businesses. Id. at section XIII.

⁴⁰ Id. at section III. The "Aircraft Noise Mitigation Program" also requires LAX to limit nighttime departures. The noise mitigation concessions were seen as an especially important aspect of the CBA to local schools, many of which had boarded up their windows in attempts to avoid the noise. As one community activist explained, "[g]enerations [of students] have come and gone through school here with rattling windows, teachers they couldn't hear, and no natural light in their classroom experience...." Daniel B. Wood, *In Los Angeles, a unique plan to dull the roar of jets*, THE CHRISTIAN SCIENCE MONITOR, Dec. 21, 2004.

⁴¹ LAX Community Benefits Agreement, *supra* note 24, at sections VII-VIII.

⁴² Id. at section X.

⁴³ Id. at section V(A). For example, LAWA has recently required area hotels to reduce the number of airport shuttle trips made daily in order to comply with the CBA's air quality provisions. Thomas Winfrey, *LAX Requires Hotels to Consolidate Courtesy Shuttle Trips to Improve Air Quality, Reduce Traffic Congestion*, MARKET WIRE, Dec. 4, 2006.

PETCO Park, home of the San Diego Padres. The San Diego City Council approved the project in October 2005. CBA benefits include:⁴⁴

- The Ball Park Village CBA included environment-friendly requirements that the developer meet LEED green building standards for the development; and
- Use of bio-diesel fuel for all diesel construction equipment on site;
- Good-faith efforts to include “bird-friendly” structural elements, such as non-reflective windows;
- Mitigation, monitoring and reporting programs to reduce pollution during construction.
- Living wages for developer and service contractor employees;
- “a local hiring program for construction employees, permanent employees, and service workers at the project”;
- “responsible contracting requirements”;
- “\$1.5 million for job training of local residents”;
- “affordable housing creation that exceeded city requirements”, with 75% of affordable housing created to be 2 or 3 bedroom units.
- “Commitment to attract a grocery store operator who pays living wages and benefits”;
- “\$100,000 in funding for a gentrification study of the impact of downtown development on surrounding communities; and”
- “\$50,000 in funding for arts, youth, and culture services in the surrounding communities.”⁴⁵

Other CBAs to have been completed in California include agreements concerning the San Jose CIM project, and the Sunquest, Noho Commons and Marlton Square developments in Los Angeles.⁴⁶

While the CBA negotiating process in California has generally proceeded within the development agreement framework, involving community groups, organizing groups and local officials, the process of developing CBAs in other areas of the country has proved to be more varied.

B. New York City

The first New York CBA was completed in 2005 in relation to the \$3.5 billion development of the Atlantic Yards arena, future home to the Nets basketball team, and an attached residential and office complex to be made up of several high-rise buildings.⁴⁷

⁴⁴ Center on Policy Initiatives, [Issue Areas](#) » [Responsible Development](#) » [Community Benefits Agreements](#) » [Ballpark Village Project](#), <http://www.onlinecpi.org/article.php?list=type&type=131>

⁴⁵ The Partnership for Working Families, [Policies & Tools](#) » [Community Benefit Agreements](#) » [CBAs Currently In Effect](#), <http://www.communitybenefits.org/article.php?id=575>

⁴⁶ The Partnership for Working Families, [CBAs Currently In Effect](#), <http://www.communitybenefits.org/article.php?list=type&type=46> (last visited Mar. 14, 2007).

⁴⁷ Deborah Kolben, *Ratner Touts Net gains to nabe*, NEW YORK DAILY NEWS, June 28, 2005.

The agreement was negotiated by eight community groups⁴⁸ and was based on the Staples Center CBA. It includes affordable housing,⁴⁹ living wage, first source and minority hiring provisions,⁵⁰ and it also offers the perks of free basketball tickets for neighborhood residents and the construction of a daycare center.⁵¹ Reaction to the agreement has not been completely positive, however. First, unlike the agreements reached in California, the Atlantic Yards CBA is not incorporated into a development agreement with the city, making enforcement possibly more difficult. Secondly, concerns have been raised in relation to the propriety of the CBA negotiating process. It has been suggested the eight-member coalition did not adequately represent the needs of the Brooklyn community,⁵² and critics have pointed out that several of the coalition members will receive funds from the developer, Forest City Ratner, as part of the deal.⁵³ Given that the Atlantic Yards project will ultimately receive more than \$200 million in state and city funds, it has even been suggested that the CBA is inherently undemocratic in its exclusion of the broader New York City and state community.⁵⁴

⁴⁸ The groups involved in the negotiations were the All-Faith Council of Brooklyn, the Association of Community Organizations for Reform Now (ACORN), Brooklyn United for Innovative Local Development (BUILD), the Downtown Brooklyn Educational Consortium, the Downtown Brooklyn Neighborhood Alliance, the First Atlantic Terminal Housing Committee, the New York State Association of Minority Contractors and the Public Housing Communities. Atlantic Yards Community Benefits Agreement, <http://www.atlanticyards.com/html/community/cba.html> (last visited Mar. 14, 2007).

⁴⁹ The development will include 1,350 low-moderate income and 900 middle-income apartments. Matthew Schuerman, *The C.B.A. Tourney*, NEW YORK OBSERVER/THE REAL ESTATE, Feb. 21, 2006, available at <http://therealestate.observer.com/2006/02/the-cba-tourney.html> (last visited Mar. 14, 2007) [hereinafter *The C.B.A. Tourney*].

⁵⁰ The developer has promised to use “good faith” in order to award 35% of the construction jobs to minority contractors and to create a job training program for local workers. Id.

⁵¹ Kolben, *supra* note 30.

⁵² In addition to the fact that only eight groups participated in the negotiations, it has been pointed out that several of the groups were created just prior to or during the negotiations. Furthermore, critics have suggested that some of the community groups may not be experienced enough to properly administer the CBA’s provisions. *The C.B.A. Tourney*, *supra* note 32. At least one community group has been particularly vehement in criticizing the Atlantic Yards CBA, calling it “a sham and a fraud that reaches new lows in killing community participation[.]” Press Release, Develop Don’t Destroy Brooklyn, Ratner “Community Benefits Agreement” (CBA) is DOA And Brooklyn Community Board Chairs Helped Kill It (Nov. 18, 2004), available at <http://dddb.net/php/press/pdfs/111804CBAdoa.pdf>.

⁵³ Ratner has reportedly distributed \$275,000 to three of the community group signatories, and is expected to award additional contracts to another signatory to market affordable housing. *The C.B.A. Tourney*, *supra* note 32.

⁵⁴ As the former president of New York City’s Economic Development Corporation explained, “If the public is putting money into the project and the developer is allocating that money in private deals with the community, it is not government setting the priorities. Generally speaking, it is city taxpayer dollars that are being spent in not necessarily high priority areas....It shouldn’t be some local community groups making these decisions. It should be a cross-section of the community and city government.” Matthew Schuerman, *The C.B.A. at Atlantic Yards: But Is It Legal?*, NEW YORK OBSERVER/THE REAL ESTATE, available at <http://therealestate.observer.com/2006/03/the-cba-at-atlantic-yards-but-is-it-legal.html> (last visited Mar. 14, 2006) [hereinafter *But Is It Legal?*]. Julian Gross, the Legal Director of California Partnership for Working Families and author of COMMUNITY BENEFITS AGREEMENTS: MAKING DEVELOPMENT PROJECTS ACCOUNTABLE, *supra* n. 1, responded to the charge that CBAs are undemocratic by noting that the argument:

is uninformed and somewhat ironic. Any agreement between community groups and a developer regarding particulars of a development project has to be acceptable to the local government, or the project won’t get

Criticism has also been aimed at the other New York City CBAs. For example, the 2006 CBA concerning the Bronx Terminal Market⁵⁵ has been faulted for not involving any grassroots community organizations.⁵⁶ While the agreement does include a number of valuable community benefits, the developer will only be fined \$60,000 for failing to comply with the CBA, weakening the value of the CBA in the eyes of many stakeholders.⁵⁷ Critics have also drawn attention to the subtleties of some of the contract's provisions: the amount of retail space reserved for local retailers makes up only a minimal portion of the mall's square footage; and the living wage and minority hiring provisions are not expressly enforceable as to the developer's tenants.⁵⁸ Finally, community groups have criticized the negotiation process for being neither transparent nor inclusive. Although eighteen groups representing various interests were selected by the Borough President to participate in the process, they were given only about a month to prepare a draft CBA and were not given any assistance in the process. Evidently, this resulted in many of the community groups having little influence in the actual negotiations.⁵⁹ When the organizations received copies of the completed CBA the morning of the council vote to approve the development plans, only three of them signed the agreement. At least seven organizations refused to sign the CBA.⁶⁰

The Yankee Stadium CBA, completed in 2006, has also faced criticism. The agreement, to begin with, was made between the Yankees, the Bronx Borough President and the Bronx Delegation of the New York City Council; it was not negotiated or signed by any community groups. One of the agreement's most controversial provisions is the trust fund that it created to be administered by "an individual of prominence" through distributions to local nonprofit groups.⁶¹ Because the fund's trustee will be appointed by

approved. A CBA is simply the community groups saying: if we have legal assurance that it's a project we like, we'll support it; if not, we won't. What could be more democratic than that?

Id.

⁵⁵ The Gateway Center at the Bronx Terminal Market is a retail development that will replace the Bronx Terminal Market, which was located on city-owned land and housed a number of local retailers, many of whom were ethnic food vendors. In arranging to purchase the land from the city, the developer obtained tax exemptions and also benefited from the city's agreement to pay for the demolition of the old market, guarantee loans and help pay to relocate the market's vendors. Matthew Schuerman, *Battle of the Bronx Looms For Mom-and-Pop Crusader*, THE NEW YORK OBSERVER, Nov. 14, 2005, pg. 13. The developer, however, touted the complex as "replac[ing] a dilapidated eyesore" and providing increased shopping opportunities for Bronx residents. Letter to the Editor, Glenn Goldstein, Executive Vice President, Related Retail Corporation, The New York Observer, Nov. 21, 2005. Most of the old market's merchants opposed the development, and after a heated controversy, including litigation, they were finally forced to accept aid provided by the city and the developer for their relocation.

⁵⁶ See Jimmy Vielkind, *How to Mediate Manhattanville: A New Negotiating Partner Is Born*, CITY LIMITS WEEKLY, Dec. 4, 2006, available at

http://www.citylimits.org/content/articles/viewarticle.cfm?article_id=3223 (last visited Mar. 14, 2007).

⁵⁷ Heather Haddon, *Terminal Market Deal Criticized*, NORWOOD NEWS (Feb.-Mar. 2006), available at <http://www.bronxmall.com/norwoodnews/past/022306/news/N60223page1.html>.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Bronx County Participation and Labor Force Mitigation and Community Benefits Program Related to the Construction of the New Yankee Stadium, at section VIII, available at

the same elected officials responsible for the CBA, it has been referred to as a “slush fund” by critics who fear that funding will not be distributed impartially.⁶² The Yankee Stadium CBA has also been criticized due to the fact that the development will eliminate more than twenty acres of parks, leaving the city to pay for their replacement in addition to the subsidies already being given to the project.⁶³

It is probably fair to say that the New York CBAs have been criticized more than necessary. While they may not have satisfied all of the groups and individuals involved, New York City has not benefited from the strong presence of community organizing groups of the type that has helped to ensure the success of CBAs in California. Furthermore, New York State does not authorize development agreements, which provide a framework for local governments to participate in CBA negotiations.⁶⁴ Quite the opposite is true; local officials in New York City have, until recently, been discouraged from allowing community benefits to influence land use decisions for fear of distorting the planning and review process.⁶⁵ In a 1988 report that continues to reflect the issues surrounding community benefits, the New York City Bar Association cautioned that:

The ad hoc payment of money or services in return for favorable government action also adversely affects the decision-making process. In egregious cases, the decision maker is corrupted. In less egregious cases, satisfying the wish list for a borough president, community board or a mayor enhances the recipient’s political power. The decision-maker may accept the project in order to get the unrelated amenities, when perhaps it should be voted down. Thus integrity is eroded, of the government in general and of the zoning laws and land use regulations in particular.⁶⁶

The opposition to CBAs in New York may be at least partly attributed to these fears. This may also explain the lack of praise for the New York CBAs (other than by developers, and occasionally by elected officials); while they may not be as

<http://therealestate.observer.com/Yankees%20CBA%20Copy.doc>. The Yankee Stadium CBA also contains provisions more common to CBAs, such as a 25% local hiring goal and funds for job training. *See Id.*

⁶² Matthew Schuerman, *The Yankees’ \$700,000 Play: ‘It Is Not A Shakedown.’*, New York Observer, Apr. 10, 2006, at 10, *available at* http://www.observer.com/20060410/20060410_Matthew_Schuerman_finance_financialpress.asp [hereinafter *The Yankees’ \$700,000 Play*].

⁶³ *Id.*

⁶⁴ *See Gross, supra* note 1, at 9-10, 13.

⁶⁵ This stance grew out of a trend of the late 1980s of developers buying off community groups in order to get endorsements for their projects. *The Yankees’ \$700,000 Play, supra* note 45. After these practices were made public, the New York City Bar Association issued an influential report in 1988 recommending that any community amenities provided by a developer be reasonably related to the project. Under this approach, benefits such as off-site parks were known to be rejected as interfering with the propriety of the development process, and developers largely stopped offering these sorts of community amenities. *Id.*; *see Terry Pristin, In Major Projects, Agreeing Not to Disagree*, THE NEW YORK TIMES, June 14, 2006, at C6.

⁶⁶ Matthew Schuerman, *C.B.A.’s: Coming to a Bar Near You*, New York Observer/The Real Estate, Jan. 13, 2006 (quoting “The Record of the Association of the Bar of the City of New York,” Vol. 3, No.6 (1988)), *available at* <http://therealestate.observer.com/2006/01/cbas-coming-to-a-bar-near-you.html>.

comprehensive as desired, the CBAs do provide community amenities that might not have otherwise been obtained.

Still, the city's response to these recent CBAs has not helped to resolve how CBAs should be conducted in New York. Previous New York City mayors Rudy Giuliani and Ed Koch both criticized CBA-like arrangements as distorting the planning process through buying off opponents.⁶⁷ While Mayor Bloomberg originally supported the Atlantic Yards CBA, he seemed to change his opinion of them when he charged a CBA relating to the new Mets stadium as constituting "a ransom."⁶⁸ And while the city has supported the projects being developed under the CBAs, it has not expressed any policies as to how the agreements should be negotiated.

CBA supporters are hoping, though, that a new agreement concerning Columbia University's expansion into West Harlem will provide a better model for future New York CBAs. The city and Mayor Bloomberg have been especially supportive of this CBA, providing funds and technical assistance for the negotiating process. While the city is not expressly claiming that this CBA should serve as a model for future developments, it has recognized that CBAs are likely to become more prevalent in the future.⁶⁹ And if the negotiators are successful in creating a CBA, it is likely that it will, in fact, influence future CBAs within New York City, as the negotiating processes being used are more transparent and inclusive than previous efforts.⁷⁰

The process of developing a CBA in relation to the Columbia expansion⁷¹ has been markedly different than the other New York CBAs from the start. Rather than being driven primarily by the developers or elected officials, County Board 9 authorized the creation of a local development corporation (LDC) to be composed of appointed community leaders who represent a broad range of constituents.⁷² Although the

⁶⁷ Erik Engquist, *Developers deal-making escalates; Community benefits agreements become costly as Bloomberg endorses concept*, CRAIN'S NEW YORK BUSINESS, Mar. 27, 2006.

⁶⁸ Bryan Virasami, *No 'ransom' for developers?: Mayor says stadium deals not opportunity for people looking to grab some dollars; locals voice concerns*, NEWSDAY, Apr. 7, 2006. As Jesse Masyr, a land use attorney who worked on the Bronx Terminal Market deal has noted, "I keep hearing that the Mayor is going to come out against C.B.A.'s, but by the time we get rid of C.B.A.'s, we will have made them official." Matthew Schuerman, *The CBA is Dead, Long Live the CBA*, NEW YORK OBSERVER/THE REAL ESTATE, Feb. 27, 2006, available at <http://therealestate.observer.com/2006/09/the-cba-is-dead-long-live-the-cba.html>. Confirming his suspicions, Mr. Masyr was recently appointed by the city to represent the community groups involved in negotiating the Columbia University CBA. Matthew Schuerman, *Mr. Bollinger's Battle*, NEW YORK OBSERVER, Feb. 19, 2007, at 48 [hereinafter *Mr. Bollingers' Battle*].

⁶⁹ *Mr. Bollingers' Battle*, *supra* note 51. The City appointed the attorney who represented the developer in the Bronx Terminal Market CBA to work pro bono for the Columbia LDC, and the City's Economic Development Corporation has contributed \$350,000 to pay for a mediator and other expenses. *Id.*

⁷⁰ See Vielkind, *supra* note 39.

⁷¹ Columbia University hopes to develop seventeen acres in West Harlem, sometimes referred to as Manhattanville. Most of the land is already owned by either Columbia or the city, but Columbia may have to request eminent domain proceedings to obtain the remaining portions. *See generally Mr. Bollingers' Battle*, *supra* note 51.

⁷² *Id.* The LDC's mission is to "win support of and leverag[e] the community-base planning of Community Board 9, provide an organizational structure to focus community input in order to negotiate and monitor a community benefits agreement with developers of large scale developments in Community District 9 in a

Community Board originally intended that the LDC would not include any elected officials, after the LDC's first meeting it revised this decision, but only after analyzing the conflicts of interest present among the elected officials who will hold voting positions on the board.⁷³ Public meetings began September, 2006 and have continued on a weekly basis with working groups devoted to housing, business and economic development, employment, education, historic preservation, community facilities and social services, arts and culture, environmental stewardship, transportation, research and laboratory activities and green spaces.⁷⁴ Negotiations with Columbia representatives began in January, 2007, and are being facilitated by a mediator paid for by the city's Economic Development Corporation.⁷⁵

C. Other notable CBAs

In Connecticut, a CBA concerning Yale University's construction of new cancer center was reached in 2006. The community was represented by CORD (Community Organized for Responsible Development), a coalition of twenty-two community groups, faith-based organizations and local unions.⁷⁶ The CBA also received support from the city, which used the California CBAs as a model when the Board of Alderman passed a resolution encouraging the hospital to enter into the agreement.⁷⁷ Provisions included in the CBA relate to affordable housing, job training and local hiring, traffic and parking,

manner that is both transparent and accountable to the West Harlem community...." Transcript, West Harlem Development Corporation, Community Forum, Sep. 30, 2006, at 8, available at http://www.westharlemldc.org/uploads/transcript_093006.pdf. Currently, the LDC's board is composed of twenty members, including representatives nominated by the Housing Development Fund Corporations Coalition and the Manhattanville Area Consortium of Business and representatives for community-based organizations, specific residential developments, tenant associations, area homeowners, faith-based organizations, arts and cultural organizations and commercial property owners. Government officials included on the board include the Manhattan Borough Director of Land Use, Planning and Development and representatives of a U.S. Congressman, three State Assemblymen and two New York City Council Members. West Harlem Local Development Corporation, Board Members, http://www.westharlemldc.org/Board_Members.html (last visited Mar. 14, 2007).

⁷³ *Mr. Bollingers' Battle*, *supra* note 51. As one of the LDC's board members explained, "[i]t was absolutely clear to us...that if we didn't include [elected officials] on the board as voting members, that we would be doing so at our own peril[.]" Id.

⁷⁴ See West Harlem Local Development Corporation, Working Groups, http://www.westharlemldc.org/Community_Benefits_Agreement.html (last visited Mar. 14, 2007).

⁷⁵ Matthew Schuerman, *Columbia Expansion Negotiations to Begin*, NEW YORK OBSERVER/THE REAL ESTATE, Jan. 18, 2007, available at <http://therealestate.observer.com/2007/01/columbia-expansion-negotiations-to-begin.html>. Community Board 9 has indicated that any CBA will have to address affordable housing, job creation and training, and access to new facilities. Vielkind, *supra* note 39.

⁷⁶ See generally Connecticut Center for a New Economy, Our Community Benefits Agreement with Yale-New Haven Hospital, <http://www.ctneweconomy.org/CORD.html> (last visited Mar. 14, 2007)

⁷⁷ The Board of Aldermen passed a resolution in 2004 strongly encouraging developers to enter into CBAs and promising that the city of New Haven would take "such efforts into account when considering projects for approval." Joel Lang, *The Fight to Cure a Community's Ills; How an Innovative Alliance Forced Yale-New Haven Hospital to Help its Impoverished Neighborhood as Part of a Plan for a New Cancer Center*, THE HARTFORD COURANT, May 21, 2006; see also Angela Carter, *Hill residents asked about needs*, THE NEW HAVEN REGISTER, Aug. 6, 2004.

union organizing rights and environmental issues.⁷⁸ One of the more unique aspects of the Yale-New Haven CBA is that the hospital also agreed to fund outreach programs that will provide medical care to uninsured children and children suffering from asthma.⁷⁹

A 2005 Milwaukee CBA known as the Park East Redevelopment Compact (PERC) was the first CBA to be implemented through legislation rather than through negotiations between the community and the developer.⁸⁰ The agreement arose when 64 acres of land in downtown Milwaukee became available after a highway spur was torn down. Because parts of the land were owned by the city, the county, and various private developers, the Good Jobs and Livable Neighborhood Commission could not undertake negotiations with a single prospective developer. Rather, the Coalition hoped to have its CBA incorporated into the city's Park East Redevelopment Plan.⁸¹ The Common Council, however, failed to adopt the CBA, with some "suggest[ing] that there were better ways to meet community needs, while others argued that it 'was bad public policy' that would put Milwaukee 'at a greater competitive disadvantage with the suburbs.'"⁸² Despite this setback by the city, however, the PERC was later passed by the County Board.⁸³ The CBA, under this legislation, applies to sixteen acres of county lands and requires developers to provide living wages for construction jobs, to incorporate green design elements into constructions and to implement job training programs. The PERC also requires the county to provide for affordable housing and to contribute to various community programs, such as those to train and find placements for minority workers. Additionally, the PERC set up a Community and Economic Development Fund to be financed by land sales. The fund is to support the Community Advisory Board, which will oversee and monitor the PERC.⁸⁴

In Minneapolis, a 2006 CBA has demonstrated that these agreements need not be limited to physical developments. The agreement was developed in relation to the creation of a city-wide wi-fi network. As a concession to city council members that wanted the network to be publicly operated, supporters of the public-private option that eventually prevailed agreed that the city would adopt a CBA designed to minimize the digital divide.⁸⁵ As explained by the Digital Inclusion Task Force, which was created to

⁷⁸ Connecticut Center for a New Economy, <http://www.ctneweconomy.org/cbavictorypdf.jpg> (last visited Mar. 14, 2007). Specifically, the hospital agreed to provide \$1.2 million toward affordable housing, to hire five hundred local residents within a five year period and to establish a job training program for job advancement. A separate Project Labor Agreement set local and minority hiring goals for the development's construction jobs. Id.

⁷⁹ Lang, *supra* note 60.

⁸⁰ Brenda Parker, University of Wisconsin-Madison, *This Land is Our Land: The Battle for a Community Benefits Agreement in Milwaukee* 1 (May 2005) (report prepared in collaboration with the Good Jobs and Livable Neighborhoods Coalition), available at <http://www.laborstudies.wayne.edu/power/downloads/Parkeast.pdf>.

⁸¹ Id. at 1-3.

⁸² Id. at 4.

⁸³ Although the County Executive vetoed the adoption of the PERC, the County Board was able to override the veto. Id. at 5.

⁸⁴ Id.

⁸⁵ Steve Alexander, *Minneapolis council Oks citywide Wi-Fi plan*, THE STAR TRIBUNE (Minneapolis, MN), Feb. 25, 2006, at 1D.

make recommendations to the city council, “[the] ‘Digital Inclusion’ community benefits agreement is designed to expand technology access and literacy opportunities for Minneapolis’ low-income residents and other underserved populations....”⁸⁶ The Task Force worked with community groups to develop the CBA and it has recommended that the wi-fi vendor be required to comply with the city’s living wage ordinance, that it provide both subscription-based services and free wi-fi service financed by advertisements, and that it will put 7% of its gross revenues into a Digital Inclusion Fund.⁸⁷ Organizers in Chicago are working on negotiating a similar digital access CBA.⁸⁸

The Gates Rubber Company redevelopment project in Denver was the subject of a CBA finalized in 2006.⁸⁹ Located on a fifty-acre brownfield in downtown Denver, the developer plans to demolish the abandoned rubber plant and clean up the site. In its place, an eight million square foot residential and retail center will be built.⁹⁰ A coalition of community and labor groups was organized by the Front Range Economic Strategy Center (FRESC) to participate in the negotiations, which lasted for more than three years.⁹¹ Among the provisions of the agreement are benefits related to affordable housing, living wages for construction jobs, first-source hiring and continued communication between the developer and the community concerning the site’s clean-up. The developer also agreed not to allow any big-box stores to be included in the redevelopment. In exchange for these benefits, the developer was supported by the community in seeking \$126 million in city subsidies.⁹² During the negotiation process, it became clear that contaminants from the site had leached into neighboring areas. Because of this, members of the coalition formed the Voluntary Cleanup Advisory Board, and with the developer’s help, they tested neighborhoods adjacent to the factory for environmental contamination. The developer also agreed to make documents related to the site’s cleanup available to residents at a local library.⁹³

Community groups around the country have picked up on the CBA trend. Organizations in Albany (NY),⁹⁴ Atlanta,⁹⁵ Charleston (SC),⁹⁶ Miami,⁹⁷ New Orleans⁹⁸

⁸⁶ WIRELESS MINNEAPOLIS DIGITAL INCLUSION TASK FORCE, FINAL REPORT 9 (July 2006), available at <http://www.digitalaccess.org/documents/MDITF%20complete.pdf>.

⁸⁷ Id. at 3-4.

⁸⁸ See Chicago Digital Access Alliance, <http://www.digitalaccessalliance.org/> (last visited Mar. 14, 2005).

⁸⁹ See generally Front Range Economic Strategy Center, The Campaign for Responsible Development, http://www.fresc.org/index.cfm?zone=/unionactive/private_view_page.cfm&page=The20Campaign20for20Responsible20Development (last visited Mar. 14, 2007).

⁹⁰ Tory Read, Front Range Economic Strategy Center, *The Gates Cherokee Redevelopment Project: “A huge step forward for low-income people in Denver”* 6, available at <http://www.fresc.org/Docs/Publications/Cherokee-Gates%20Denver%20Casey%20Foundation%20Profile.pdf>

⁹¹ Id. at 2. The coalition is one of the most broad-based to have yet concluded a CBA; it included fifty-five community groups. Id. at 11.

⁹² Id. at 2-3.

⁹³ Id. at 14.

⁹⁴ See Community Benefits Proposal, <http://www.ariseorg.net/cba10-15-05.html> (last visited Mar. 14, 2007); see also Michael DeMasi, *Neighborhood groups seek benefit package from convention center developer*, THE BUSINESS REVIEW (Albany, NY), Jan. 30, 2006, available at <http://www.bizjournals.com/albany/stories/2006/01/30/daily4.html>.

and Seattle,⁹⁹ for example, have completed CBAs or are currently trying to initiate negotiations.

III. Practical Problems with CBAs

CBAs have proven to be effective tools for many communities hoping to require developers to provide amenities to the neighborhoods that they affect. However, negotiating a CBA may not be appropriate in all situations.¹⁰⁰

For a CBA to be fair and effective, it is necessary that the community negotiating the CBA have adequate leverage to obtain meaningful promises from a developer. In some situations, a developer's need to locate the project in specific place or the possibility of obtaining significant public subsidies will provide a large amount of leverage to community groups. As the executive director of the Los Angeles Community Redevelopment Agency has remarked, CBAs "work best when there is substantial agency money invested, when they're big projects, and when they're in hot markets or emerging markets."¹⁰¹ When these elements are missing, CBAs are often criticized as creating development barriers that encourage developers to simply find other, less costly, locations.

Even with the leverage created by public subsidies and prime locations, a community's interests must still be supported by a broad-based coalition of community groups in order for the coalition to retain its leverage and political capital.¹⁰² Bad precedent and publicity may be created by coalitions that are poorly organized and that do not accurately represent the interests of most of the community stakeholders.¹⁰³ The same is true of coalitions that obtain weak benefits. The "divide and conquer" techniques used by developers to balkanize coalitions also require community groups to be united and to have coherent goals. Otherwise, a developer may attempt to appease some community groups without meeting others' needs. Developers in this situation often

⁹⁵ See Atlanta City Council Approves BeltLine Tax Allocation District, City Newsbytes, Nov. 8, 2005, available at http://www.atlantaga.gov/media/citynewsbytes_110805.aspx.

⁹⁶ See *Community Benefits Agreements*, THE CHARLESTON BUSINESS JOURNAL, Apr. 18, 2005, available at http://www.charlestonbusiness.com/pub/11_8/news/4353-1.html.

⁹⁷ See Tides Foundation, Bridging the Economic Divide, <http://www.tidesfoundation.org/services-strategies/tides-initiatives/bridging-the-economic-divide/bed-strategies-in-action/index.html> (last visited Mar. 14, 2007).

⁹⁸ See Pico National Network, *Using Community Benefits Agreements to rebuild in New Orleans*, Sep. 21, 2006, <http://www.piconetwork.org/news/page.jsp?itemID=30402650> (last visited Mar. 14, 2007).

⁹⁹ See Real Change News.org, Say Yes to Responsible Development, http://www.realchangenews.org/2006/2006_11_29/firstthingsfirst.html (last visited Mar. 14, 2007)

¹⁰⁰ See Madeline Janis-Aparicio and Roxana Tynan, *Power in Numbers: Community Benefits Agreements and the Power of Coalition Building*, Shelterforce Online (Nov.-Dec. 2005), available at http://www.laane.org/pressroom/stories/community_benefits/cbNovDec2005shelterforce.html.

¹⁰¹ See Meyerson, *supra* note 7.

¹⁰² See Janis-Aparicio, *supra* note 83.

¹⁰³ GROSS, *supra* note 1, at 22-23.

spend less on CBA provisions while still being able to spin their projects as being community-supported.¹⁰⁴

Building broad-based and united coalitions, however, is not a simple task. The organizational needs required by such coalitions are often daunting to community groups experienced mainly in promoting their own campaigns, and determining and prioritizing the goals shared among diverse community groups may lead to conflicts among constituents supporting different goals.¹⁰⁵

Assuming that a broad-based coalition is formed to contract a CBA with developers, the negotiation process may also raise practical problems for communities. Where a coalition is inexperienced in creating CBAs, for example, it may need guidance as to the types of benefits that it can receive. The funding required to conduct research for CBA provisions and to pay for legal counsel may also inhibit the negotiating process.¹⁰⁶ Furthermore, most CBAs include monitoring and enforcement provisions that require coalitions to engage in future activities related to the CBA; and for coalitions that formed for the specific purpose of negotiating a CBA, continuing this energy into monitoring and enforcement may be difficult.

IV. Legal Issues Related to CBAs

The validity and enforceability of CBAs has yet to be tested in court, but some lawyers have expressed concerns that the agreements will not hold up.

Chief among the questions as to the validity of CBAs is whether community groups provide any real consideration for these contracts. While supporters argue that a coalition's promise to support a development before land use authorities constitutes sufficient consideration, others have argued that such promises may be considered insufficient when compared to the extensive benefits offered by developers.¹⁰⁷ Under contract theory, though, which does not generally inquire into the adequacy of

¹⁰⁴ Id. at 22; see also Suzette Parmley, *Trump the best known city casino-game player*, THE PHILADELPHIA INQUIRER, Dec. 15, 2006 (describing how Donald Trump “pulled five or six ‘marginal’ groups away from the Multi-Community Alliance...and, through deceptive marketing, made it appear as if the entire alliance embraced the project”).

¹⁰⁵ GROSS, *supra* note 1, at 22-23. Conflicting community interests are well illustrated by a CBA that was negotiated between Chicago community groups and Wal-Mart. With unemployment being a significant problem for the South Side neighborhoods involved, many stakeholders did not want to oppose the development at all. Wal-Mart may have contributed to escalating these tensions by its apparent acts of goodwill toward the community – it donated money to the NAACP and gave calculators to a local high school. See Anmol Chaddha, *Good for the ‘hood’? Wal-Mart is touting not just lower prices but racial equity in its push for expansion into poor, urban communities*, Colorlines Magazine (June 2005).

¹⁰⁶ GROSS, *supra* note 1, at 23.

¹⁰⁷ At a New York panel on CBAs, for example, William Valletta, former general counsel for the New York City planning department asked: “What is the community giving up in order to take part in the agreement? Presumably, they can’t sell their vote on their participation in democracy.” *But Is it Legal?*, *supra* note 37.

consideration, promises not to oppose developments are likely to be deemed supported by consideration.¹⁰⁸

Questions have also been raised as to who can enforce a CBA's provisions. Because contract law generally permits only contract signatories to enforce its provisions, CBA supporters have encouraged coalitions to require each community group to separately sign CBAs. Otherwise, the dissolution of a coalition or the inability to define the coalition's agents may prevent a CBA from being enforceable.¹⁰⁹ Where local governments are authorized to enter into development agreements, CBA supporters highly encourage that CBAs be incorporated into these agreements so that they can be enforced by local governments as well.¹¹⁰ Whether or not individual community members will be considered third-party beneficiaries capable of enforcing CBAs has not been widely discussed.

Enforceability questions may also concern which parties are bound by developers' promises. Many CBAs contain language indicating an intent that a CBA's provisions will be binding upon the development's future tenants, contractors or buyers. If a CBA does not require these future parties to sign the CBA or a similar agreement with the developer, community groups need to ensure that the contract language used is clear and specific enough to impose these requirements.¹¹¹

Because the process of negotiating CBAs often involves local governments or elected officials, CBAs may also raise legal issues related to the propriety of planning process. Development agreements may provide a framework for incorporating CBAs into this process, but most states do not authorize local governments to enter into these agreements.¹¹² In these states, as in New York, CBAs may be criticized for distorting the planning process. Some opponents have gone so far as to characterize CBAs as "extortion."¹¹³ The history of exactions law in the United States, which generally prohibits local governments from requiring developers to provide benefits not substantially related to the development project, may also provide support to CBA opponents.¹¹⁴ Even without invoking exactions, though, CBAs created through a process involving significant contributions by local officials are likely to raise questions about

¹⁰⁸ 17A Am. Jur. 2d, Contracts §124.

¹⁰⁹ GROSS, *supra* note 1, at 23-24.

¹¹⁰ Id. at 72.

¹¹¹ See id. at 71.

¹¹² See Shelby D. Green, *Development Agreements: Bargained-for Zoning that is Neither Illegal Contract nor Conditional Zoning*, 33 CAP. U.L. REV. 383, 395 (2004).

¹¹³ Mr. Bollingers' Battle, *supra* note 51.

¹¹⁴ See Judith Welch Wegner, *Moving Toward the Bargaining Table: Contract Zoning, Development Agreements, and the Theoretical Foundations of Government Land Use Deals*, 65 N.C.L. REV. 957, 999-1000 (noting that the purposes of many development agreements, to provide infrastructure and other public benefits, may "arguably [be] above and beyond that which a local government could exact under the police power). Whether CBA provisions constitute exactions, however, is dependent on the local government being significantly involved in developing the CBA, and on the provisions not sharing a sufficient nexus with the project. See Dolan v. City of Tigard, 512 U.S. 374 (1994); Nolan v. California Coastal Commission, 483 U.S. 825 (1987).

conflicts of interests. In these situations, care must be taken that CBA negotiators are not too involved with planning or other political decisions.

At the same time, though, local governments may be faulted for not involving themselves enough in CBA negotiations. Under this view, some argue that local governments should ensure that negotiating teams accurately represent community interests.¹¹⁵ This may be achieved by a local government facilitating the creation of a CBA bargaining team, as happened in relation to the Columbia University CBA,¹¹⁶ or by the local government's willingness to take a CBA's comprehensiveness into account when evaluating it during the land use planning process.

V. Checklist of Issues to Review in Considering the Use of CBAs

What follows is a checklist to use in identifying the issues that should be considered as CBAs are contemplated by developers and by community groups. The benefits and remedies are typically items that are all “on the table” when negotiating the agreement. In addition, depending upon whether the government is a party to the agreement and/or is assigned responsibilities under the agreement, the threshold question of whether state statutory authority exists for such involvement is critical.

Parties:

Developer obligations

Community coalition obligation

Individual agency obligations

Is the municipality a party to the agreement?

Who has the authority to speak for or sign for each party?

Benefits:

What are the benefits to all involved parties?

Is a needs assessment or study required (relevant to environmental benefits)?

What is the scope of the developer's responsibility or financial obligation?

When does it begin and how long does it last for?

Does the obligation transfer to subsequent project owners, or other third parties such as sub-contractors or on-site vendors?

What is the implementation process?

What is the implementation timeline?

Will an individual agency or a committee be responsible for the oversight?

How will the process be monitored?

How often will reports be made?

Is there a process to amend the terms of the benefit or program?

Remedies:

¹¹⁵ See Mr. Bollingers' Battle, *supra* note 51.

¹¹⁶ See *infra* pp. 9-10.

What constitutes a breach on the part of the developer?
What constitutes a breach on the part of the community?
What are the remedies in the event of a breach?
Are the remedies specific to each benefit?
What type of notice is required before relief is sought?
Will the right to request specific performance be included?
Is equitable relief permitted in the event of an irreparable injury?
Who is responsible for attorney's fees in the event of a court action?
Will the other clauses of a CBA remain in effect in the event of a breach?
Are there any intended third-party beneficiaries?

VI. Sample Provisions in Existing CBAs

There is of course, no magic formula in terms of content of the CBAs since each agreement is a individually negotiated deal based on a number of unique factors presented in each community. At times, personalities of the parties may also play a role, as will level of trust, community needs and scale of the proposed project. Appended to this paper is a comparison of provisions of the following five select CBAs: Atlantic Yards (NY), Staples Center (CA), Ballpark Village (CA), Marlton Square (CA), and LAX (CA).

VII. Conclusion

While CBAs represent an opportunity to accomplish redevelopment projects in a manner that achieves social equity and engages all community stakeholders in the project with an eye towards designing a process and product that can be win-win for communities, myriad legal issues are present for all involved participants. Land Use attorneys can expect to begin to hear more about these types of agreements, and may be called upon more to help negotiate and development a CBA for interested clients. Although the projects highlighted in this paper are substantial in scope, much smaller and perhaps simpler CBAs are likely to start appearing in mid-sized and smaller communities across the country.