Understanding Community Benefits Agreements

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CBAs have both opportunities and traps for developers, municipalities, and community organizations.

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. Julian Gross, Greg LeRoy and Madeline Janis-Aparicio, *Community Benefits Agreements: Making Development Projects Accountable*, *at* 9-10 (Good Jobs First 2005), available at http://www.goodjobsfirst.org/pdf/cba2005final.pdf.

CBAs are generally negotiated by 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, and assurances of minority hiring minimums. *Id.* at 10-11. 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, daycare centers, or job training facilities. *Id.* The parties involved in creating the

LAX airport CBA, for example, agreed that LAX would fund sound-proofing in nearby schools and residences.

The flexibility of CBAs is reflected in how they are negotiated. Negotiations may be initiated by a developer, 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. 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. (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 stopped. *See generally* David L. Callies & Julie Tappendorf, *Unconstitutional Land Development Conditions and the Development Agreement Solution: Bargaining for Public Facilities After Nollan and Dolan*, 51 Case W. Res. L. Rev. 663 (2001).) This ensures a certain measure of transparency and also permits the government, as well as coalition members, to enforce the agreement. However, because most states do not authorize local governments to enter into development agreements, many CBAs will be enforceable only by the contracting community groups. *See* Gross et al., supra, at 11.

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 dozens of development projects in cities across the country. *See* Community Benefits Agreements Blog, http://communitybenefits.blogspot.com; and Harold Meyerson, *No Justice, No Growth: How Los Angeles is Making Big-Time Developers Create Decent Jobs,* The American Prospect (Oct. 22, 2006), available at www.prospect.org/cs/articles?article=no_justice_no_growth.

THE GROWING INTEREST IN CBAs • Proponents of CBAs cite to several trends for the growing interest in them: urban redevelopment and reinvestment in the face of shrinking federal aid, 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 United States experienced population increases during the 1990s for the first time in decades and the growth rate is expected to accelerate over the next 20 years. Greg LeRoy and Anna Purinton, Neighborhood Funders Group, *Community Benefit Agreements: Ensuring That Urban Redevelopment Benefits Everyone,* at 19 (2005), available at www.nfg.org/publications/community_benefits_agreements.pdf. 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, and an influx of Asian and Latin American immigrants relocating in urban neighborhoods. Meyerson, supra; *see also* Gross et al., supra, at 4. There are a growing number of urban centers where space limitations or geographic boundaries have created expansion barriers and have resulted in the need for redevelopment of already populated areas; CBAs allow for community participation in the redevelopment process so that specified needs can be addressed. LeRoy and Purinton, supra.

Resurgence In Urban Center Growth

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 have created increased interest in developing effective public-private partnerships to meet low-income housing needs. *Id.* at 17. Though city and county governments have planning departments, many emphasize "processing of permits and other land use applications" and act as facilitators in the private development process rather than take a leadership role. Gross et al., supra, at 4. 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. *Id.* Billions of dollars of taxpayer monies have been funneled into economic development projects, but standards for urban redevelopment and developer accountability remain inconsistent, and as such, many projects produce mixed results for the existing communities. *Id.* Inner-city gentrification, the creation of low-wage dead-end jobs lacking health benefits, and the loss of affordable housing frequently occur. *Id.* 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." 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 16, 2005, available at http://webdocs.nyccouncil.info/attachments/66242.htm?CFID=1779550&CFTOKEN=23654057. In testimony supporting the use of CBAs, a representative from the Pratt Institute Center for Community and Environmental Development stated, "[New York] 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." *Id.*

Smart Growth

The Smart Growth Movement, with its emphasis on development guided by "equity, economy, and the environment," is credited with the evolution of CBAs. Gross et al., supra, at 4. 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. *Id.* at 5. Additionally, "[t]he 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." *Id.*

CALIFORNIA CBAs • 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. *Id.* 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. Greg

Goldin, *Mall-ywood,* LA Weekly, Dec. 18, 1998, at 30. 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. *Id.* 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 implement a first-source hiring plan and a policy of union neutrality. Goldin, supra; 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. 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. Wolf-Powers, supra, at 18. By most accounts, the project has been a success: in addition to revitalizing Hollywood Boulevard, nearly 70 percent of the initial employees hired at the complex were recruited from the immediate area and about half of the permanent positions provide living wages. *Id.*

Staples Center

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 Staples Center, a sports arena that is home to several professional teams, including the Los Angeles Lakers. 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*). Community residents had suffered a blow when the developer failed to provide orally promised benefits after the completion of the project's first phase. (Union groups had obtained promises of union neutrality and living wage benefits, but the developers refused to implement them after receiving 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.) 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 27-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 30 community organizations, including environmental groups, church groups, health organizations and immigrants' and tenants' rights supporters. Strategic Actions 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. *Id.*

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." *Id.;* Staples Center Community Benefits Agreement, at section I, available at www.saje.net (go to "articles and publications" under "quick links" and then scroll to "LA Sports and Entertainment District Agreement"). More specifically, the developer agreed to the following provisions:

- To provide at least $1 million 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 percent 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 percent 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.

Staples Center Community Benefit Agreement, supra. Additionally, the developer signed separate card check/neutrality agreements with five union organizations. See *Community Benefits Agreements Victories,* supra. 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. Staples Center Community Benefits Agreement, supra, at section XI. 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. *Community Benefits Agreements Victories,* supra. 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. *Id.*

LAX Airport Expansion

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 22 community groups concerning an $11 billion airport expansion. 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 abandoned its opposition to the program. Dan Laidman, *FAA Changes Course On Airport-Related Jobs,* Copley News Service, Dec. 13, 2006.) Among the coalition's members were two local school districts and organizations representing community, religious, environmental, and labor interests. 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). In addition to provisions covering job training and first-source hiring for community residents and living-wage requirements, the CBA also devotes substantial resources to mitigating the environmental impacts of the airport. LAX Community Benefits Agreement, at sections V-VIII, 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. The airport is required to provide more than $8.5 million annually for the soundproofing of local schools, city buildings, places of worship, and homes (*id*. at section III) and to fund studies on air quality and community health. *Id.* 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. *Id.* at section X. Although 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. *Id.* at section V(A). For example, LAWA has 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.

San Diego Ballpark Village

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, PETCO Park, home of the San Diego Padres. Center on Policy Initiatives, *Ballpark Village Project—Ballpark Village Sets New Standard for Affordable Housing and Jobs In San Diego*, available at http://www.onlinecpi.org/article.php?list=type&type=131. The San Diego City Council approved the project in October 2005. CBA benefits include:

- That the developer meet LEED green building standards for the development;
- Use of biodiesel 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 obligations going beyond the city's requirements," with 75 percent of affordable housing created to be two- or three-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."

The Partnership for Working Families, Policies & Tools » Community Benefit Agreements » CBAs Currently In Effect, http://www.communitybenefits.org/article.php?id=575. 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. More information about these CBAs is available on the Community Benefits Agreement Blog, http://communitybenefits.blogspot.com. 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.

CBAs IN NEW YORK CITY • The first New York CBA was completed in 2005 in relation to the $4 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. Deborah Kolben, *Ratner Touts Net Gains To Nabe,* New York Daily News, June 28, 2005. The agreement was negotiated by eight community groups and was based on the Staples Center CBA. It includes affordable housing, living wage, first-source, and minority hiring provisions, a commitment to construct a daycare center, and the perks of free basketball tickets for neighborhood residents. Kolben, supra. 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, 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. *See* Matthew Shuerman, *The C.B.A. Tourney,* New York Observer, Feb. 21, 2006, available at http://www.observer.com/node/34258. Given that the Atlantic Yards project will ultimately receive more than $300 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. Matthew Schuerman, *The C.B.A. at Atlantic Yards: But Is It Legal?* New York Observer, March 14, 2006, available at http://www.observer.com/node/34377 (Mar. 14, 2006).

Bronx Terminal Market

The 2006 CBA concerning the Bronx Terminal Market contains a number of valuable community benefits, but it has nevertheless been faulted for several reasons. *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). Critics have 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. *Heather Haddon, Terminal Market Deal Criticized,* Norwood News (Feb. - Mar. 2006), available at http://bronxmall.com/norwoodnews/past/022306/news/N60223page1.html. Additionally, community groups have criticized the negotiation process for being neither transparent nor inclusive. Although 18 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. *Id.* 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. *Id.*

Yankee Stadium CBA

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. 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 http://goodjobsny.org/Yankees_deal.htm. Because the fund's trustee will be appointed by the same elected officials responsible for the CBA, it has been referred to as a "slush fund" by critics who fear that funding will be not be distributed impartially. Matthew Schuerman, *The Yankees' $700,000 Play: "It Is Not A Shakedown"* New York Observer, Apr. 9, 2006, 10, available at www.observer.com/node/38670 (hereinafter *The Yankees' $700,000 Play*). The Yankee Stadium CBA has also been criticized due to the fact that the development will eliminate more than 20 acres of parks, leaving the city to pay for their replacement in addition to the subsidies already being given to the project. *Id.*

Columbia University

CBA supporters were hoping that an agreement concerning Columbia University's expansion into West Harlem would 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. Matthew Schuerman, *Mr. Bollinger's Battle,* New York Observer, Feb. 18, 2007, available at www.observer.com/node/36744 (hereinafter *Mr. Bollinger's Battle*).

The process of developing a CBA in relation to the Columbia expansion 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 representing a broad range of constituents. *See generally Mr. Bollingers' Battle,* supra; transcript, West Harlem Development Corporation, Community Forum, Sep. 30, 2006, at 8, available at http://www.westharlemldc.org/uploads/transcript_093006.pdf. Although the 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 would hold voting positions on the board. *Mr. Bollinger's Battle,* supra. Public meetings began in September, 2006 and 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. *See* West Harlem Local Development Corporation, Working Groups, http://www.westharlemldc.org/Community_Benefits_Agreement.html (last visited Mar. 14, 2007). Negotiations with Columbia representatives began in January 2007, and are being facilitated by a mediator paid for by the city's Economic Development Corporation. Matthew Schuerman, *Columbia Expansion Negotiations to Begin,* New York Observer, Jan. 18, 2007, available at http://therealestate.observer.com/2007/01/columbiaexpansion-negotiations-to-begin.html.

The situation took a turn for the worse in November 2007 when three members of the LDC resigned. They cited conflicts of interest among the elected officials on the board and complained that there was a lack of transparency in the negotiations. Two other members resigned shortly thereafter, claiming that there had been misrepresentations and secrecy. As a result of these resignations, the LDC was left with 15 members, seven of whom were elected officials. Daniel Amzallag, *Three Members Resign from LDC,* The Columbia Spectator, November 29, 2007, available at http://www.columbiaspectator.com/?q=node/28368; Daniel Amzallag, *Community Benefits Agreement will Include School, Funds for Affordable Housing,* The Columbia Spectator, Dec. 20, 2007, available at http://www.columbiaspectator.com/node/28615. In spite of these troubles, a memorandum of understanding was completed in December 2007 just in time for the City Council to approve of the expansion plan and Columbia's request for rezoning. The agreement commits Columbia to providing $150 million in benefits, including $30 million for a university-run public school, $20 million of in-kind services, $20 million for affordable housing, and $4 million for legal aid. But the bulk of the money, $76 million, was set aside for as-yet undetermined community programs to be implemented over the next 12 years. The agreement has been described as "one-and-a-half non-legally binding pages," and criticism has been directed at the LDC for rushing the CBA process and punting the specifics of the agreement to a later date. Daniel Amzallag, *Community Benefits Specifics Remain Up in the Air*, The Columbia Spectator, Jan. 22, 2008, available at http://www.columbiaspectator.com/node/28669.

Is The Criticism Fair?

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. *See* Gross et al., supra, at 9-10, 13. Quite the opposite is true; local officials in New York City have, at least until recently, been discouraged from allowing community benefits to influence land use decisions for fear of distorting the planning and review process. *The Yankees' $700,000 Play,* supra; *see also* Terry Pristin, *In Major Projects, Agreeing Not to Disagree,* The New York Times, June 14, 2006, at C6. 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."

Matthew Schuerman, *C.B.A.'s: Coming to a Bar Near You,* New York Observer, Jan. 13, 2006 (quoting The Record of the Association of the Bar of the City of New York, Vol. 43, No.6 (1988)), available at http://www.observer.com/node/34098. 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). However, while they may not be as comprehensive as desired, it should be remembered that 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. While the city has recently supported the projects being developed under CBAs, it has not expressed any policies as to how the agreements should be negotiated in the future.

OTHER NOTABLE CBAs • Some other notable CBAs include the following.

Yale University

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 22 community groups, faith-based organizations, and local unions. *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). 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. 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. Provisions included in the CBA relate to affordable housing, job training and local hiring, traffic and parking, union organizing rights, and environmental issues. 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 500 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.* 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. Lang, supra.

Milwaukee Park East Redevelopment Compact CBA

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. 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. 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. *Id.* at 1-3. 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.'" *Id.* at 4. Despite this setback by the city, however, the PERC was later passed by the County Board. (Although the County Executive vetoed the adoption of the PERC, the County Board was able to override the veto. *Id.* at 5.) The CBA, under this legislation, applies to 16 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. *Id.*

Minneapolis

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. Steve Alexander, *Minneapolis Council OKs Citywide Wi-Fi Plan,* The Star Tribune (Minneapolis), Feb. 25, 2006, at 1D. As explained by the Digital Inclusion Task Force, which was created to 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…." Wireless Minneapolis Digital Inclusion Task Force, Final Report 9 (July 2006), available at http://www.digitalaccess.org/documents/MDITF%20complete.pdf. 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 seven percent of its gross revenues into a Digital Inclusion Fund. *Id.* at 3-4.

Gates Rubber Company CBA Denver

The Gates Rubber Company redevelopment project in Denver was the subject of a CBA finalized in 2006. *See generally* Front Range Economic Strategy Center, *The Campaign for Responsible Development,* http://fresc.org/article.php?list=type=12 (last visited Mar. 14, 2007). Located on a 50-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. Tory Read, Front Range Economic Strategy Center, *The Gates Cherokee Redevelopment Project: "A Huge Step Forward for Low-Income People in Denver"* at 6, available at http://fresc.org/downloads/Gates%20Report%20.pdf. 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. *Id.* at 2. 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. *Id.* at 2-3. 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. *Id.* at 14.

Local CBAs

Community groups around the country have picked up on the CBA trend. Organizations in the following areas have completed CBAs or are currently trying to initiate negotiations:

- Albany (New York). *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;

- Atlanta. *See Atlanta City Council Approves BeltLine Tax Allocation District,* City Newsbytes, Nov. 8, 2005, available at http://www.atlantaga.gov/media/citynewsbytes_110805.aspx;
- Camden (New Jersey). *See* Cramer Hill Community Development Corporation, *Community Benefits for Cramer Hill,* http://www.cramerhill-cdc.org/community_benefits_for_cramer_hill.htm;
- Charleston (South Carolina). *See Community Benefits Agreements,* The Charleston Business Journal, Apr. 18, 2005, available at http://www.charlestonbusiness.com/pub/11_8/news/4353-1.html;
- Miami. *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);
- Minneapolis/St. Paul. *See* The Alliance for Metropolitan Stability, *Community Benefits Agreements: A Growing Movement in Minnesota* (2008), available at http://www.metrostability.org/UserFiles/File/CBAREPORT.pdf;
- New Orleans. *See* Pico National Network, *Using Community Benefits Agreements to Rebuild in New Orleans,* Sept. 21, 2006, http://www.piconetwork.org/news/page.jsp?itemID=30402650; *see also* Jaime Guillet, *Historic Lincoln Beach needs approval from New Orleans for new era*, New Orleans City Business, Jan. 15, 2008, available at http://findarticles.com/p/articles/mi_qn4200/is_20080115/ai_n21199980;
- Philadelphia. *See* SugarHouse, Community Benefits Agreement, http://www.sugarhousecasino.com/benefits/index.php; see also Community Benefits Agreement Blog, *The SugarHouse Capaign aign,* http://communitybenefits.blogspot.com/2008/04/sugarhouse-campaign.html;
- Pittsburgh. *See* Pittsburgh United, One Hill CBA Coalition, http://www.pittsburghunited.org/campaigns_OneHill.php#; see also Community Benefits Agreements Blog, http://communitybenefits.blogspot.com/search/label/one%20hill;
- Seattle. *See* Real Change News.org, *Say Yes to Responsible Development,* http://www.realchangenews.org/2006/2006_11_29/firstthingsfirst.html;
- Yonkers (New York). *See* Ernie Garcia, *Yonkers community alliance to draft community benefits agreement with downtown developer*, LoHud.com, Mar. 24, 2008, http://www.lohud.com/apps/pbcs.dll/article?AID=/20080324/NEWS02/803240343/-1/FEEDBACK.

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. *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.

Community Leverage

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." *See* Meyerson, supra. 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 for the coalition to retain its leverage and political capital. *See* Janis-Aparicio and Tynan, supra. 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. Gross et al., supra, at 22-23. 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 spend less on CBA provisions while still being able to spin their projects as being community-supported. *Id.* at 22; *see also* Suzette Parmley, *Trump The Best Known City Casino-Game Player*, The Philadelphia Inquirer, Dec. 15, 2006 at A1 (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").

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. Gross et al., supra, at 22-23.

Negotiations

Assuming that a broad-based coalition is formed to contract a CBA with developers, the negotiation process may also raise practical problems for communities. When 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. *Id.* 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.

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.

Is There Consideration?

Chief among the questions as to the validity of CBAs is whether community groups provide any real consideration for these contracts. Although 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. (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.) Under contract theory, though, which does not generally inquire into the adequacy of consideration, promises not to oppose developments are likely to be deemed supported by consideration. 17A Am. Jur. 2d, Contracts §124 (2004).

Enforceability

Questions have also been raised about 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. Gross et al., supra, at 23-24. When local governments are authorized to enter into development agreements, CBA supporters encourage that CBAs be incorporated into these agreements so that they can be enforced by local governments as well. *Id.* at 72. Whether or not individual community members will be considered third-party beneficiaries capable of enforcing CBAs has not been widely discussed, but a number of CBAs include provisions expressly disallowing claims by third parties.

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. *Id.* at 71.

Are Local Officials Too Close To The Process?

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. 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." *Mr. Bollinger's Battle,* supra. The history of exactions law in the United States, which generally prohibits local governments from requiring developers to provide benefits not substantially related the development project, may also provide support to CBA opponents. *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 (1987) (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); *Nollan v. California Coastal Commission,* 483 U.S. 825 (1987).

Even without invoking exactions, though, CBAs created through a process involving significant contributions by local officials are likely to raise questions about 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. *See Mr. Bollinger's Battle,* supra. 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, or by the local government's willingness to take a CBA's comprehensiveness into account when evaluating it during the land use planning process.

CONCLUSION • While CBAs represent an opportunity to accomplish redevelopment projects in a way that achieves social equity and encourages all stakeholders in the project to have an eye toward a win-win for both the developers and 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 often to help negotiate and develop CBAs for interested clients. Although the projects highlighted in this article are substantial in scope, much smaller and perhaps simpler CBAs are likely to start appearing in mid-sized and smaller communities across the country.

PRACTICE CHECKLIST FOR
Understanding Community Benefits Agreements

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 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?
__Does the obligation transfer to subsequent project owners, or other third parties such as subcontractors 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:

__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 attorneys' 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?