

The Sleeping Giant: Community Benefit Agreements and Urban Development

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COMMUNITY BENEFIT AGREEMENTS (CBAs) are one of the most powerful tools that community groups have to shape development projects. CBAs have been used in large, highly subsidized urban economic development projects including Los Angeles International (LAX) Airport, the Staples Center, and Yankee Stadium; and the use of CBAs will likely expand to smaller-scale development projects in the future. This article presents an investigative pilot study of CBA advocacy groups, the negotiation process, land use regulatory issues, and a survey on the nature and composition of community stakeholders negotiating CBAs with developers in the United States. To this author's knowledge, this paper presents the first survey research investigating CBAs.¹

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1. Several notable CBAs are currently in effect: Atlanta Beltline CBA (Atlanta, 2005: Light rail track around the city, appropriate redevelopment; creation of a tax allocation district whose revenue will fund redevelopment area improvements), <http://communitybenefits.blogspot.com/2008/05/atlanta-beltline-community-benefits.html> (last visited Aug. 24, 2012); Atlantic Yards CBA (Brooklyn, 2005: Stadium construction for New Jersey Nets, office and retail space, housing; emphasis on oversight of project areas by certain community groups); Ballpark Village CBA (San Diego, 2005: Office and retail space, housing; addresses environmental commitments, employment, housing, and other community needs), <http://www.scribd.com/doc/31432536/Atlantic-Yards-Community-Benefits-Agreement-CBA> (last visited Aug. 24, 2012); CIM Project CBA (San Jose, 2003: Construction of retail and entertainment complex; provisions for various community benefits including affordable housing and construction effects mitigation), <http://www.communitybenefits.org/downloads/CIM%20CBA.pdf> (last visited Aug. 24, 2012); Clean Energy Pilot Program CBA (Portland, 2009: Upgrading city homes to be more energy-efficient; emphasis on equitable contracting and hiring), http://www.iscvt.org/resources/documents/portland_CWA.pdf (last visited Aug. 24, 2012); Columbia University CBA (New York City, 2007: Construction of new facilities; funding of community services and amenities, creation of benefits fund), <http://www.columbia.edu/cu/gca/pdf-files/CBAAgreement.pdf> (last visited Aug. 24, 2012); Gates-Cherokee CBA (Denver, 2003: Demolition and redevelopment of abandoned rubber plant on brownfields area into retail space and housing; emphasis on local and equitable hiring, with various other community benefits), <http://amy.m.lavine.googlepages.com/ColoradoCBAFRESContract.pdf> (last visited Aug. 24,

I. An Overview of CBAs

Citizen participation in public affairs holds a sacrosanct status in U.S. political culture. Citizen involvement in land use and development issues is perceived as a good in and of itself and as part of the philosophic tradition of democracy.² From a Hamiltonian perspective, how-

2012); The Gateway Center at Bronx Terminal Market CBA (New York City, 2006: Redevelopment of existing Bronx market/mall; emphasis on equitable contracting and hiring, and inclusion of disadvantaged businesses), <http://www.momandpopnyc.com/memos/terminalmarket/FinalCBA.pdf> (last visited Aug. 24, 2012); Hollywood & Vine—Mixed Use Development Project CBA (Los Angeles, 2004: Redevelopment and construction of housing, hotel, retail, and/or parking spaces; emphasis on equitable and local hiring and worker benefits, with other community benefits), <http://www.comptroller.nyc.gov/bureaus/opm/pba/pdf/HollywoodVineCBA.pdf> (last visited Aug. 24, 2012); Hunters Point CBA (San Francisco, 2008: Redevelopment of brownfields military base into housing, retail space, research buildings, and a stadium for the San Francisco 49ers; emphasis on affordable housing and equitable and local hiring), <http://www.communitybenefits.org/downloads/Bayview%20Hunters%20Point%20CBA.pdf> (last visited Aug. 24, 2012); LAX CBA (Los Angeles, 2004: Construction of new airport facilities; emphasis on pollution and noise control to protect community health, as well as equitable hiring), <http://communitybenefits.org/downloads/LAX%20Community%20Benefits%20Agreement.pdf> (last visited Aug. 24, 2012); Lorenzo Project CBA (Los Angeles, 2011: Privately-funded development of housing and retail space; provisions for various community benefits, notably a community health clinic and services), http://www.juliangross.net/docs/CBA/Lorenzo_Agreement.pdf (last visited Aug. 24, 2012); Minneapolis Digital Inclusion CBA (Minneapolis, 2006: Citywide Wi-Fi provider; includes various locations where access is free or available at a low cost, and contributions to a digital inclusion fund), http://pffhyper.com/DI/CBA_MPLS.pdf (last visited Aug. 24, 2012); NoHo Commons CBA (Los Angeles, 2001: Construction of housing and retail and office space; emphasis on equitable hiring), <http://www.communitybenefits.org/downloads/NoHo%20CBA.pdf> (last visited Aug. 24, 2012); Penguins Arena—One Hill CBA (Pittsburgh, 2008: Stadium construction for the Pittsburgh Penguins and area redevelopment; emphasis on community amenities and services, as well as design review), <http://www.communitybenefits.org/downloads/Hill%20District%20CBA.pdf> (last visited Aug. 24, 2012); Peninsula Compost Co. CBA (Wilmington, DE, 2007: Construction of a food composting facility in the city; emphasis on equitable hiring and contracting, as well as minimizing inconvenience to local residents), http://docs.google.com/Doc?id=dg97n44w_0gtm6vt77 (last visited Aug. 24, 2012); Riverside Plaza CBA (Minneapolis, 2010: Renovation of apartment complex; emphasis on sustainable development and aesthetics), http://www.leadership.umn.edu/student_initiatives/chance/documents/RPRP_final_6.13.2011.pdf (last visited Aug. 24, 2012); Staples Center CBA (Los Angeles, 2001: Construction of sports/entertainment complex; provides various community benefits including affordable housing and relocation assistance, equitable hiring and contracting, and parks and recreation space), <http://www.communitybenefits.org/downloads/Los%20Angeles%20Sports%20and%20Entertainment%20District%20Project.pdf> (last visited Aug. 24, 2012); Yale New Haven CBA (New Haven, 2006: Construction of new cancer facility adjacent to hospital; emphasis on community inclusion via job training, community health outreach, economic development funding, and other programs), <http://www.communitybenefits.org/downloads/Yale-New%20Haven%20Hospital%20CBA.pdf> (last visited Aug. 24, 2012); Yankee Stadium CBA (New York City, 2006: Construction of stadium for New York Yankees; emphasis on including disadvantaged businesses), <http://communitybenefits.blogspot.com/2008/01/yankee-stadium-cba.html> (last visited Aug. 24, 2012).

2. See Diane Day, *Citizen Participation in the Planning Process: An Essentially Contested Concept?*, 11 J. OF PLAN. LITERATURE 421, 421 (1997).

ever, citizen participation can be problematic, owing to the view that the “masses” contribution to decision-making is constrained because of lack of knowledge and skill.³ The dual perspective on the value of citizen participation in public decision making will always be present and debated. This debate can be summed up with the statement that citizen participation in public decision-making is a “little like eating spinach: no one is against it in principle because it is good for you.”⁴ The polemics debating the merits of citizen participation in land use issues is robust and has developed in parallel within the context of our social imperatives.

Community benefit agreements are emerging and powerful tools that have enhanced the role of citizen participation in economic development decision-making. The development of CBAs has slowly occurred with the involvement of foundations, labor unions, and CBA coalition advocacy groups.⁵ Generally, CBAs establish a process for developers to include community objectives as part of a development. They are legally binding contracts between developers and CBA coalitions.⁶ Once the CBAs are negotiated, developers then approach the issues of regulatory applications, reviews, and approvals.⁷

The CBA process is generally simple. A developer enters into a private contract, usually with a coalition of community, faith-based, or special interest groups in exchange for their support, cooperation, or forbearance regarding the proposed development.⁸ CBAs are generally negotiated with the assistance of a national or regional advocacy group(s) knowledgeable about the development process, development

3. ALEXANDER HAMILTON, *Speech on the Constitutional Convention on a Plan of Government*, in SELECTED WRITINGS AND SPEECHES OF ALEXANDER HAMILTON 108 (Morton J. Frisch ed., 1985). “All communities divide themselves into the few and the many. The first are the rich and well born; the other the mass of the people. The voice of the people has been said to be the voice of God; and however generally this maxim has been quoted and believed, it is not true in fact. The people are turbulent and changing; they seldom judge or determine right. Give therefore to the first class a distinct, permanent share in government. They will check the unsteadiness of the second.”

4. See Sherry R. Arnstein, *A Ladder of Citizen Participation*, 35 J. OF THE AM. INST. OF PLANNERS 216 (1969).

5. See Patricia E. Salkin & Amy Lavine, *Understanding Community Benefits Agreements: Equitable Development, Social Justice and Other Considerations for Developers, Municipalities and Community Organizations*, 26 UCLA J. ENVTL. L. & POL'Y 292 (2008).

6. See Larissa Larsen, *The Pursuit of Responsible Development: Addressing Anticipated Benefits and Unwanted Burdens through Community Benefit Agreements* 3, 6 (Univ. of Mich. Ctr. for Local, State, & Urban Policy, Working Paper No. 9, 2009).

7. *Id.*

8. See Vicki Been, *Community Benefits Agreements: A New Local Government Tool or Another Variation on the Exactions Theme?* (Furman Ctr. for Real Estate and Urban Policy, New York University, Working Paper, 2010).

law, organizing, community needs, and the CBA process.⁹ In some cases, CBA objectives of the community are incorporated into development agreements between the local units of government and the developers.¹⁰

CBAs can require any of several developer actions, from the use of local contractors¹¹ to the monitoring of long-term community objectives¹² outlined in the CBAs. The advantage to the developer of a having a CBA in place is that the developer can usually accelerate the entitlement process and obtain public subsidies, zoning changes, and use variances.¹³ Developers argue that development impacts have been vetted with the community and, through the CBA, community issues have been addressed.¹⁴ As opposed to community concerns being addressed through a municipal development agency's negotiations with a developer, the CBA process places community groups in direct negotiations with developers regarding the project and project amenities.¹⁵

CBAs lie outside the traditional process of obtaining development entitlements from local regulatory bodies. The existing literature on CBAs generally addresses specific developments, legal issues, advocacy issues, planning/regulatory issues, and organizing practices.¹⁶ There is insufficient evidence, however, "either empirical or anecdotal, to evaluate whether CBAs are a net benefit to the parties" and communities involved.¹⁷ In order to address this lack of evidence, this study investigates the composition, goals, and views of the community stakeholders and special interest groups that have been involved in past CBAs.

9. *Id.*

10. See JULIAN GROSS, GREG LEROY & MADELINE JANIS-APARICIO, *COMMUNITY BENEFITS AGREEMENTS: MAKING DEVELOPMENT PROJECTS ACCOUNTABLE* 10 (2002).

11. Hollywood and Vine CBA, (Los Angeles, 2004), available at <http://www.comptroller.nyc.gov/bureaus/opm/pba/pdf/HollywoodVineCBA.pdf>; see also Yale New Haven CBA, *supra* note 1; CIM Project CBA (San Jose), *supra* note 1.

12. THE PARTNERSHIP FOR WORKING FAMILIES, *COMMUNITY BENEFITS: PRACTICAL TOOLS FOR PROACTIVE DEVELOPMENT* 3, <http://www.communitybenefits.org/downloads/CB%20Tools%20for%20Proactive%20Development.pdf>.

13. See UC BERKELEY HEALTH IMPACT GROUP, *OAK TO NINTH AVENUE HEALTH IMPACT ASSESSMENT* (2006), <http://ehs.sph.berkeley.edu/hia/O2N.HIA.FullDraft.pdf>.

14. See *id.*

15. GREG LEROY & ANNA PURINTON, *NEIGHBORHOOD FUNDERS GRP., COMMUNITY BENEFITS AGREEMENTS: ENSURING THAT URBAN REDEVELOPMENT BENEFITS EVERYONE* 17 (2005).

16. See Laura Wolf-Powers, *Community Benefits Agreements and Local Government: A Review of Recent Evidence*, 76 J. AM. PLAN. ASS'N 141 (2010).

17. ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, *LAND USE COMMITTEE, THE ROLE OF COMMUNITY BENEFIT AGREEMENTS IN NEW YORK CITY'S LAND USE PROCESS* 1-2 (2010).

It is important to understand CBAs not only because of their potential impact on community stakeholder and developer interaction, but also because of their potential impact on development regulatory decision-making. In the United States, local development officials mediate the relationships between business controls of development economic functions and public controls of development incentives and approvals.¹⁸ In an era of rapid change in development capital flows, mortgage foreclosure, sprawl, taxation, transformation to a service-based economy, public transit, growth controls, and greater public participation in development decision-making, local development officials face numerous challenges. These challenges are made additionally complex by the emergence of CBAs. CBAs, which lie outside traditional development processes and laws involved in public approvals and subsidy awards, present greater complexity for development and elected officials. The continuum of policy-intervention strategies that have traditionally included exactions, incentive zoning, and private-public development, have become more complex with community benefit agreements.¹⁹

Table I on page 832–33 presents common CBA project components or development processes that address community goals. These include Type I–CBA goals addressing area conditions, Type II–CBA goals addressing the development process and Type III–CBA goals addressing long-term development issues. The selection basis for these components and required processes evaluated is their level of frequency in CBAs.

Type IV–CBA coalitions sometimes identify overall goals such as environmental justice, social justice, and racial equality. The basis for the broader goals of environmental and social justice is that some community groups dovetail required CBA processes and physical demands for a development project with the broader context of racial, economic, environmental, or social equity objectives. A CBA is a focal point at which community groups can add broader social and economic issues to the bargaining process. Development approvals, therefore, are contingent upon not only the physical aspects of the project and the development process but also upon broader community needs.

18. RICHARD B. PEISER & DAVID HAMILTON, *PROFESSIONAL REAL ESTATE DEVELOPMENT* 387 (3d ed. 2012).

19. Lynne B. Sagalyn, *Public/Private Development: Lessons From History, Research, and Practice*, 73 J. OF THE AM. PLAN. ASS'N 7, 9 (2007).

Table I: Community Goals in Community Benefit Agreements

Type I CBA Goals Addressing Area Conditions	Type II CBA Goals for Addressing the Development Process	Type III CBA Goals Addressing Long-Term Community Issues	Type IV CBA Goals Addressing Comprehensive Social or Economic Issues
Low-income rental housing	Local, living wage jobs for construction	Living wage employment	Environmental justice
Accessibility	Union construction jobs	Space set-asides for retail and commercial uses	Social justice
Affordable homeownership	Job training programs	Restrictions of big box retail	Fighting poverty
Space set-asides for community and non-profit centers such as child care centers or grocery stores	Technical assistance for local contractors	Funding for libraries, schools, and community organizations	Racial equality
Developer funding of community organizations	Affirmative action contracting	Construction of parks, open space, and community recreational facilities	
Social services or assessment	Green building principles and practices	Green building operations	
Public complaint hotline	Support for displaced residents and businesses	Community input on the selection of tenants	
Environmental clean-up	First source or targeted hiring for construction	Mitigation of traffic congestion	
Brownfields development	Design review	First source targeting hiring	
Public safety	Monitoring CBA compliance		
Homeownership grants			
Low-interest home loans			

(Continued)

Table I (*Continued*)

Type I	Type II	Type III	Type IV
CBA Goals Addressing Area Conditions	CBA Goals for Addressing the Development Process	CBA Goals Addressing Long-Term Community Issues	CBA Goals Addressing Comprehensive Social or Economic Issues
Noise and air pollution mitigation			
Neighborhood clean-up			
Racial equality			
Transit accessibility			
Space for local businesses and adequate parking			
Transit-oriented development			

II. The Polemics of CBAs

The existing body of literature on CBAs can be divided into three basic fields: (1) CBA advocacy and support literature that has been developed and distributed by national and regional citizen empowerment organizations;²⁰ (2) legal literature that encompasses contractual and enforcement issues surrounding CBAs and the legality of developer exaction fees; and (3) literature addressing regulatory and land use issues of government control and approval. The advocacy and support literature generally addresses CBA benefits and resources, and organizing and negotiation processes for citizen groups and CBA coalitions. This literature promotes the use of CBAs by community stakeholders.²¹ The legal literature addresses community input to development decision-making, CBA agreement legitimacy, agreement form, negotiation process, and community relations. The CBA regulatory and land use literature addresses how local units of government obtain community input in the development process and how CBAs perform as a method of integrating community concerns in the development

20. The most active groups include the Partnership for Working Families (<http://www.communitybenefits.org/section.php?id=170>), Good Jobs First (<http://www.goodjobsfirst.org/>), Center for Policy Initiatives (<http://onlinecpi.org/>), and the Alliance for Metropolitan Stability (<http://www.metrostability.org/>).

21. *Id.*

process. The following discussion delves deeper into the existing analysis from each perspective.

A. CBA Advocacy Perspective

The vast majority of information on CBAs has been written and distributed by national and regional citizen empowerment organizations in order to advocate CBA benefits and encourage neighborhood and citizen-based groups to use CBAs as tools to integrate citizen needs into proposed developments.²² Community law centers at law schools also play a role in the development of CBA information and in providing legal assistance to CBA coalitions.²³ Additionally, labor unions (AFL-CIO) have played a significant role in introducing and advancing the use of CBAs.²⁴ CBAs span sector boundaries in those traditionally discrete areas of services or actions—housing, transportation, employment, training, environmental, and construction—that are brought together in a coalition negotiating with project developers.²⁵

The diverse CBA stakeholder base enables comprehensive community initiatives to connect development strategies and activities across community groups.²⁶ The coordination of CBA negotiations is facilitated by a coalition, supporting integrated social, economic, and physical change views. Community groups have little broad-based membership, are underfunded, and have little power, except power “derived from their militancy and their ability to apply pressure through direct action.”²⁷ In an economic context, a regression analysis found that low-income areas are more likely to mobilize against growth than high-income ones.²⁸ The need to control growth stems

22. See PARTNERSHIP FOR WORKING FAMILIES AND THE SPIN PROJECT, WORDS THAT WORK: COMMUNICATIONS MESSAGING FOR COMMUNITY BENEFITS AGREEMENTS (2007).

23. See, e.g., Makeda Zulu-Gillespie, *UNP Community Affairs Committee Brief* (University Northside Partnership, Minneapolis, MN) (drafting of a community benefit agreement by William Mitchell College of Law).

24. See Louise Simmons & Scott Harding, *Community-Labor Coalitions for Progressive Change*, 24 J. WORKPLACE BEHAV. HEALTH 99, 103 (2009).

25. See Virginia Parks & Dorian Warren, *Labor-Community Partnerships for Economic Justice: The Politics and Practice of Economic Justice: Community Benefits Agreements as Tactic of the New Accountable Development Movement*, 17 J. COMMUNITY PRAC. 88, 94-95 (2009).

26. William Sites et al., *Reframing Community Practice for the 21st Century: Multiple Traditions, Multiple Challenges*, 19 J. OF URB. AFF. 519, 523 (2007).

27. ERIC SHRAGGE, *Community Economic Development: Conflicts and Visions, in COMMUNITY ECONOMIC DEVELOPMENT: IN SEARCH OF EMPOWERMENT* 1, 4 (Eric Shragge ed. 1997).

28. Mai Thi Nguyen, *Why do Communities Mobilize Against Growth: Community Status, Metropolitan Hierarchy, or Strategic Interaction*, 31 J. OF URB. AFF. 25, 37 (2009).

from the pattern of choosing low-income communities as locations for “noxious land uses.”²⁹ The power of CBA coalitions comes from the political leverage acquired in the planning process of economic and urban growth programs because community actors can delay the project approvals or zoning variances.³⁰ The development of CBAs reflects a proactive engagement strategy that in many cases has replaced a reactive and damage-control posture characterizing past developer versus citizen controversies.³¹ As part of the growth in CBAs and misuse of the term, Gross provided a more concrete definition of a CBA as a legally binding contract or set of related contracts setting forth a range of community benefits regarding a development project, and that the process includes substantial community involvement.³² CBAs involve a single development, they are legally enforceable, and address a range of community interests.

CBA coalitions have embedded in their campaigns a shared general focus on reshaping development decision-making.³³ The basis for this is that development projects require community support and often public subsidies.³⁴ The decision to award one or both is a political one and clearly a juncture of power for community groups. Development decisions encompass many local challenges in social, human services, employment, transportation, community economic health, and land use issues. Local public policy and subsidy decisions are economically controlled at the points of project approval and public land use and subsidy concessions. These decisions include: developer tax abatements, project subsidies, zoning changes and land use approvals, government contracts, workforce and social service program support, and eminent domain powers.³⁵ Each public decision provides a forum

29. *Id.* at 27.

30. Parks & Warren, *supra* note 25, at 97-98.

31. Julian Gross, “Community Benefits Agreements,” *BUILDING HEALTHY COMMUNITIES: A GUIDE TO COMMUNITY ECONOMIC DEVELOPMENT FOR ADVOCATES, LAWYERS, AND POLICYMAKERS* 192 (Roger A. Clay, Jr. & Susan R. Jones, eds., 1st ed. 2009).

32. See Julian Gross, *Community Benefits Agreements: Definitions, Values, and Legal Enforceability*, 17 *J. AFFORDABLE HOUS. & CMTY. DEV. L.* 35, 39-41 (2008).

33. See Good Jobs First, *Community Benefits Agreement Victories, Accountable Development Campaign Victories & Thomas A. Musil, Regulation of Real Estate Development Through the Use of Community Benefit Agreements: An Examination of Development Regulatory Control and Community Environmental Justice Goals*, Paper presented at the Annual Meeting of the American Real Estate Society April 2012.

34. Gross, *supra* note 32, 37-38.

35. For CBAs involving property assemblage or transportation oriented development, eminent domain powers are critical and valuable. See Brian D. Feinstein & Ashley Allen, *Community Benefit Agreements with Transit Agencies: Neighborhood Change Along Boston’s Rail Lines and a Legal Strategy for Addressing Gentrification*, 38 *TRANSP. L.J.* 85 (2011).

for community representation and input into development projects. By involving a national or regional CBA organizer or negotiator in a development, local groups such as community development corporations or neighborhood associations can bridge the day-to-day and door-to-door work, and better sustain a constituency that generates greater support for community objectives.³⁶

The Partnership for Working Families (Partnership), Good Jobs First, Center on Policy Initiatives, and the Anne E. Casey Foundation are prominent national organizations advancing the use of CBAs. These organizations advance the dissemination of knowledge on CBAs and how community groups can use CBAs to meet community goals.³⁷ The most active national organization promoting CBAs is the Partnership, which has constructed a national network of 20 partners. The motivations and goals of CBA organizing campaigns are multifaceted. Through CBAs and campaigns to challenge development policy and practices, the goals are for community stakeholders to better understand the development process, establish policies that increase developer accountability and government transparency, create opportunities for meaningful community participation, link economic development to residents' well-being by seeking to attach standards to all subsidized development, and organize on a national level to advance these goals.³⁸ The CBAs that have been negotiated have resulted in the creation of affordable housing, open space, aesthetic improvements, traffic control, greater community involvement in project planning, and community oversight of projects. From an economic perspective, the CBAs resulted in minority and targeted hiring, trade skills training, green development, and community clinics.

36. Jacqueline Leavitt, *Linking Housing to Community Economic Development with Community Benefits Agreements: The Case of The Figueroa Corridor Coalition for Economic Justice*, JOBS AND ECONOMIC DEVELOPMENT IN MINORITY COMMUNITIES 257, 271 (Paul Ong & Anastasia Loukaitou-Sideris eds., 1st ed. 2006); see also Randy Stoecker, *Understanding the Development-Organizing Dialectic*, 25 J. OF URB. AFF. 494, 494-98 (2003).

37. See The Partnership for Working Families: Our Publications, COMMUNITYBENEFITS.ORG, <http://www.communitybenefits.org/section.php?id=217> (last visited Aug. 23, 2012) (provides an extensive list of publications on CBAs by the Partnership).

38. Jennifer Steffel Johnson, *The Tracking Toolbox: A Resource for Understanding Your City's Development Process and Making it Work Better for Workers, Neighborhoods and Communities*, 4-5 (The Partnership For Working Families, 2010), available at http://www.communitybenefits.org/downloads/0510_Dev_tracking_manual.f.pdf; see also Sara Zimmerman, *New Orleans' Development Process: A Guide for Advocates and Communities*, 12 (Gulf Coast Accountable Rebuilding Project: A Project of Partnership for Working Families, 2007), available at https://www.communitybenefits.org/downloads/New_Orleans_Development_Process.pdf.

B. *Legal Perspective*

The legal literature on CBAs addresses issues of democratic principles, such as the exclusion of broader community issues in CBAs, in addition to constitutional safeguards, and tests of CBAs as contracts.³⁹ To a much lesser extent, the political nature of development decision-making is also explored in the CBA literature. The literature on the political nature of development decision-making is generally confined to various individual examples of development controversies illustrating either the political strength of community coalitions or how development agreements negotiated by local land use officials limit the involvement of community coalitions.⁴⁰ The political literature addressing the local power dynamics of CBAs can be found in project case studies written by CBA advocacy groups and through an array of local and community-based newspaper accounts of specific developments in which CBAs were negotiated.⁴¹

The arguments for CBAs embody a range of views advancing equity and justice. While they are not in the mainstay of CBA advocacy literature, federal and state legislation and executive orders require government support for the active role of communities of color and low-income communities in economic development projects involving federal support.⁴² Environmental justice is the overall mandate for active citizen participation in the project or development process. Executive Order 12898 states, “[E]ach Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. . . .”⁴³

Federal transit programs are highly active in promoting environmental justice within their programs. The Federal Highway Adminis-

39. See Gross, *supra* note 31, at 192.

40. See Steven P. Frank, *Yes in My Backyard: Developers, Government and Committees Working Together Through Development Agreements and Community Benefit Agreements*, 42 IND. L. REV. 227 (2009).

41. See, e.g., Terry Pristin, *Community Pacts Questioned in the Zoning Process*, N.Y. TIMES, April 28, 2010, at B8, available at http://www.nytimes.com/2010/04/28/realestate/commercial/28cba.html?_r=1&adxnnl=1&pagewanted=all&adxnnlx=1345330353-acKhyHPAAIaFxlsD+CMI5Q.

42. See, e.g., Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000E (1964); National Environmental Policy Act, 42 U.S.C. § 4321 (1969); Exec. Order No. 12898, 59 Fed. Reg. 7,629 (Feb. 11, 1994).

43. Exec. Order No. 12898, 59 Fed. Reg. 7,629 at 7,632-32 (Feb. 11, 1994).

tration defines environmental justice with three fundamental program principles:

1. "Avoid, minimize, or mitigate disproportionately high and adverse human health and environmental effects, including social and economic effects, on minority populations and low-income populations.
2. Ensure the full and fair participation by all potentially affected communities in the transportation decision-making process.
3. Prevent the denial of, reduction in, or significant delay in the receipt of benefits by minority and low-income populations."⁴⁴

Much like diverse goals of CBA coalitions, the interpretations of the concept of justice are far ranging. Within the literature on economic justice, however, there is a distinct component that explores the relationship between economic justice principles and economic development. At least two authors have connected the relationships of zoning, health, and economic justice and noted that because zoning changes are made through a political process, the potential for abuse exists.⁴⁵ DePass advanced the argument for the greater integration of brownfield revitalization activities and how communities can leverage brownfield redevelopment projects to achieve community benefits in other areas.⁴⁶ Similarly, Agyeman and Evans also observed the theoretical compatibility between the environmental justice and sustainability movements.⁴⁷ Harner, Warner, and Pierce cited the extensive activities of researchers and policymakers to construct urban environmental justice indices to advance the public dialogue on ethical and political issues that could be undertaken with standardized measures.⁴⁸

CBAs are relatively new, and case law has only indirectly referenced CBAs and has not provided any analysis of CBA legality and

44. U.S. DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION, ENVIRONMENTAL JUSTICE EMERGING TRENDS AND BEST PRACTICES GUIDEBOOK, available at http://www.fhwa.dot.gov/environment/environmental_justice/resources/guidebook/guidebook00.cfm.

45. See Juliana Maantay, *Zoning Law, Health, and Environmental Justice: What's the Connection?*, 30 J. MED. & L. 572 (2002); see also Sariyah S. Buchanan, *Why Marginalized Communities Should Use Community Benefit Agreements as a Tool for Environmental Justice: Urban Renewal and Brownfield Redevelopment in Philadelphia, Pennsylvania*, 29 TEMP. J. SCI. TECH. & ENVTL. L. 31 (2010).

46. Michelle DePass, *Brownfields as a Tool for the Rejuvenation of Land and Community*, 11 LOC. ENV'T 601, 604 (2006).

47. See Julian Agyeman & Tom Evans, *Toward Just Sustainability in Urban Communities*, 590 ANNALS AM. ACAD. OF POL. & SOC. SCI. 35, 40 (2003).

48. See John Harner et al., *Urban Environmental Justice Indices*, 54 PROF. GEOGRAPHER 318, 322 (2002).

enforceability.⁴⁹ Indeed, there is limited statutory or regulatory authority for CBAs, and there are many potential legal issues that might arise in litigation should a CBA be challenged in court.⁵⁰ In the context of zoning and exactions law, development exactions must be directly related to the impacts caused by the development.⁵¹ Other aspects regarding the enforceability of CBAs, however, rest in contract law and land use planning law.

CBAs are often criticized because they are negotiated from a limited community perspective because they represent only the views of the CBA coalition and do not reflect the needs of the broader community.⁵² Commentators noted the concerns of the former president of New York City's Economic Development Corporation about the undemocratic nature of the CBA by its exclusion of the broader state and local community.⁵³ Similarly, the Yankee Stadium CBA, completed in 2006, faced criticisms of excluding broader community issues from the CBA. Perhaps more importantly, the CBA dispute in New York City has stalled projects as a result of extended controversy and ill will of the stakeholders.⁵⁴

To address the conflict between the immediate community affected by development and the broader community, the Association of the Bar of the City of New York was asked to review possible guidelines to the City of New York's Uniform Land Use Review Procedure. The Bar Association's review resulted in a 49-page report, *The Role of Amenities in the Land Use Process*.⁵⁵ The report was based on the committee's investigation, including four days of public hearings,

49. Steven P. Frank, *Yes in My Backyard: Developers, Government and Communities Working Together Through Development Agreements and Community Benefit Agreements*, 42 IND. L. REV. 227, 250 (2009).

50. Patricia E. Salkin, *Community Benefits Agreements: Opportunities and Traps for Developers, Municipalities, and Community Organizations*, 59 J. OF THE AM. PLAN. ASS'N 3, 7 (2007), available at <http://www.governmentlaw.org/files/CBAs.pdf>.

51. See *Dolan v. City of Tigard*, 512 U.S. 374, 391 (1994) (adopting the "rough proportionality" test for exactions).

52. Patricia E. Salkin, *Community Benefits Agreements: Opportunities and Traps for Developers, Municipalities, and Community Organizations*, 59 J. AM. PLAN. ASS'N 3, 4 (2007), available at <http://www.governmentlaw.org/files/CBAs.pdf>.

53. *Id.*

54. See, e.g., Norman Oder, *Brutally Weird: Top Lawyer at Firm That Represents Forest City Ratner in Atlantic Yards Cases Denounces Community Benefit Agreements*, ATLANTIC YARDS REPORT (July 7, 2010), <http://atlanticyardsreport.blogspot.com/2010/07/brutally-weird-top-lawyer-at-firm-that.html>.

55. ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, THE SPECIAL COMMITTEE ON THE ROLE OF AMENITIES IN THE LAND USE PROCESS, *THE ROLE OF AMENITIES IN THE LAND USE PROCESS* (1988), available at <http://www.nycbar.org/pdf/report/RoleofAmenitiesinTheLandUseProcess.pdf>.

and identified the major issue as whether negotiated amenities should be limited to the project or directed to broader community needs. This 1988 Bar Association report concluded that:

At first blush it appears useful to require developers to meet community needs by providing amenities of various sorts in return for project approvals, in a city chronically short of funds for public purposes, the practice of requiring them to build amenities unrelated to the needs created by their project has undesirable consequences for government and should be discontinued.

Requirements to provide amenities unrelated to project needs at bottom constitute taxes, which are not levied evenhandedly on the basis of neutral principles but are required from developers on a case by case basis. The ad hoc requirements cast government in an unjust and therefore untenable role.

Such a practice also tends to undercut the decision making process. Government decision makers can be induced to approve projects in order to obtain amenities unrelated to the project's needs, rather than from an examination of projects solely on their merits. The use of such amenities thus tends to have a distorting effect on decision making.⁵⁶

The New York City Bar noted that CBAs may give the neighborhoods a more meaningful role in the development process than the current Uniform Land Use Review Procedure (ULURP), which has been criticized as having a limited impact as a result of the few financial resources of neighborhood groups and the difficulty of planning.⁵⁷ New York City's ULURP was established as a standardized procedure where land use applications would have greater public review and comment.⁵⁸ The Charter also established that the participants in the ULURP review process are the Department of City Planning and the City Planning Commission, community boards, the borough presidents, the borough boards, the City Council, and the mayor.⁵⁹ Additionally, the New York City Bar Association noted that CBAs expand the role of neighborhoods in the development process, provide for neighborhoods to control some benefits of development, and establish the format for neighborhoods to address other issues not related to the development.⁶⁰

It would be both inaccurate and unfair to cast CBAs in the light and with the limitations identified in the New York City Bar Association report. Widman addressed the role of community sponsored plans in New York City and conceded that city input is needed to ensure that

56. *Id.* at 7-8.

57. ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, *supra* note 17, at 32-33.

58. *Id.* at 32.

59. *Id.* at 32-33.

60. *See id.* at 35-37.

citywide agendas are not undermined. Widman identified disputes in land use decision-making among planners, lawyers, policy makers, and the community in the following ways:

This dispute pits urban economics and democracy against one another as, at best, incompatible. Urban economists favoring a cost-benefit approach to land use decision-making argue that this methodology is more efficient than focusing on public interest concerns because, at bottom, the primary social good is economic efficiency, not subjective notions of values. These scholars contend that public participation itself is inefficient.

Public interest advocates respond that economic equations do not encourage democracy, and restricting policy guidance to economic factors limits the options available to decision-makers. These theorists argue that land use decisions are ethical in nature, and that economics should not play any role. This argument is commonly based on recognition of the deleterious and undemocratic effects that asymmetrical market forces have on land use.⁶¹

Community concerns can also be compromised by public/private partnership agreements. Public/private development partnerships, negotiated between a city representative and a developer, also bypass the traditional planning approval processes but often do not involve significant public participation.⁶² The traditional public planning process afforded at least a semblance of public participation, but public/private partnerships have undermined even that modicum of citizen input by fostering direct and private communication between developers and public officials over a wide and flexible array of land use and development options.⁶³ Bezdek noted:

The eclipse of traditional land use planning procedures by cities' wholehearted embrace of development agreements and similar bilateral negotiated approaches leaves next to no room for the public. State enabling statutes eliminate substantive restrictions that previously applied to negotiations between cities and developers, in order to provide exceptional bargaining flexibility. Public participation is perfunctory and futile: [B]y design it is too little and too late, disproportionate to the complexity of the undertaking and to the preferential access of bidding developers. The negotiated processes of most states utilizing development agreements are not covered by due process requirements of a public hearing, findings of fact, or prohibitions on ex parte communications between developer applicants and local officials. As a consequence, current procedures allow officials to relegate affected community members to after-the-fact comments, the timing of which precludes meaningful exchanges of information between the public and local government officials.⁶⁴

61. Amy Widman, *Replacing Politics with Democracy: A Proposal for Community Planning in New York City and Beyond*, 11 J.L. & POL'Y 135, 137-38 (2002).

62. *See id.* at 192-93.

63. David A. Marcello, *Community Benefit Agreements: New Vehicle for Investment in America's Neighborhoods*, 39 URB. LAW. 657, 661 (2007).

64. Barbara L. Bezdek, *To Attain "The Just Rewards of So Much Struggle": Local-Resident Equity Participation in Urban Revitalization*, 35 HOFSTRA L. REV. 37, 59 (2006).

CBA's are a relatively new development practice that has only been used in about 30 projects in the United States,⁶⁵ leaving many questions to be identified and resolved. The idea of a paradox existing in the use of CBA's as a method of public participation in the development process in contrast to existing development processes is not insurmountable. Indeed, many issues of land use regulation are by their nature and by the nature of the parties involved old friends of the courts. Adding to this propensity for litigation is the fact that property is one of the most regulated activities at the municipal level.⁶⁶ CBA's pose constitutional issues (due process and equal protection), contract issues (whether consideration is provided by community groups and who has standing to enforce a CBA), and property law issues (regarding how CBA's fit into the land use regulation and planning processes).⁶⁷

C. *Land Use Regulation Perspective*

The issue of how CBA's fit into existing local and state land use polices and decision-making is unknown. At best, CBA's "are generating conceptual confusion and political controversy," and the existing literature "[provides] only limited information to planners who encounter [CBA's]." ⁶⁸ This confusion and lack of direction should not be unexpected. CBA's reflect diverse development contexts, community needs, developer concessions, and community coalition dynamics. Perhaps most of all, CBA's are the result of a negotiated process where any accountability mechanism requires the analysis of benefits, performance standards, penalties for noncompliance, monitoring, and disclosure on an individual basis.⁶⁹ Development often occurs in short lived upward real estate cycles but faces the constraint imposed by development agreements which are complex and difficult to negotiate.⁷⁰

The questions of should and how CBA's ought to be regulated is complex and hinges on the definition of "community." Community needs and expectations of a new development can be met in many ways. A CBA could be negotiated through a network of community groups providing input to a legally defined "community" group

65. See *supra* note 1.

66. *But cf.* Musil, *supra* note 33, at 13.

67. See Bezdek, *supra* note 64, at 59; Menno Van der Veen & Willem K. Korthals Altes, *Strategic Urban Projects in Amsterdam and New York: Incomplete Contracts and Good Faith in Different Legal Systems*, 46 URB. STUD. 947, 947-49 (2009); Rachel Weber, *Do Better Contracts Make Better Economic Development Incentives?*, 68 J. AM. PLAN. ASS'N 43, 45, 51 (2002).

68. Wolf-Powers, *supra* note 16, at 141.

69. Weber, *supra* note 67, at 45-48.

70. Van der Veen & Altes, *supra* note 67, at 947-48.

responsible for negotiating with the developer. The definition of “[c]ommunity in the twenty-first century seems to be everywhere and nowhere”—that it “has been lost and found, and rediscovered over the years with disturbing regularity.”⁷¹ Indeed, the definition of “community” in areas of professional practice often creates a disconnection from practical or theoretical models of community, creating a “*communitas in absentia*, which seems to be the hallmark of congeries of professionals who do applied work in urban environments but do not see their work connected to the ‘community.’”⁷² CBAs give citizens a more meaningful role in the development approvals than existing land use processes provide. Community participation is no longer limited to certain components of the development process.⁷³

Local economic and development officials are responsible for mediating the needs of citizens and those of the developers. CBAs present additional challenges from those of traditional development processes and public/private partnerships because they are independent of local government, but often require local government involvement and support. In a 2009 study involving 27 CBAs, nine involved only the CBA coalition and the developer.⁷⁴ Eleven, while initially negotiated between a CBA coalition and a developer, were later merged into a city/developer development agreement, and in seven cases a finalized CBA was not achieved between the CBA coalition and the developer.⁷⁵ The 2009 study of 27 CBAs noted that there were additional CBAs in which government administrators blocked the CBAs by not lending institutional support.⁷⁶

Only a few cities have CBA regulations. The City of Washington, D.C., in response to the growing number of CBAs, has eliminated the traditional planned unit development planning process in favor of a three-tier development review process to address municipal Planned Unit Development (PUD) Evaluation Standards.⁷⁷ The three-tier process signals a major paradigm shift on issues of zoning density, community involvement, public benefits, planning review processes,

71. William Sites et al., *Reframing Community Practice for the 21st Century: Multiple Traditions, Multiple Challenges*, 29 J. URB. AFF. 519, 519 (2007).

72. *Id.* at 520.

73. Been, *supra* note 8.

74. Laura Wolf-Powers, *Community Benefits Agreements and Local Government: A Review of Recent Evidence*, 76 J. AM. PLAN. ASS'N 141, 144 (2010).

75. Michael Neibauer, *D.C. Considers Overhauling the Way it Handles Planned Unit Developments*, WASH. BUS. J., <http://www.bizjournals.com/washington/stories/2010/10/11/story17.html?page=all> (last visited Aug. 23, 2012).

76. D.C. MUN. REGS. tit. 11 § 2403.9 (2006).

77. *See id.*

and enforcement.⁷⁸ The Washington, D.C., change in land use regulation provides a new method to balance the relationship between public benefits and project amenities with developer subsidies and zoning changes.⁷⁹ Additionally, rather than the developer negotiating with a community group for a CBA, the proposed development's public contributions would be replaced with a list of specific and measurable public benefits. Washington D.C.'s new development evaluation standards include a review of public benefits in relation to the city's comprehensive plan, the public value of project amenities, public incentives, and potential adverse effects of the development.⁸⁰

On a larger scale, perhaps as a result of project scope, costs, and the contentiousness between community groups and planning agencies, the City of New York has proposed more detailed city policies for CBAs. The 58-page report, "Recommendations of the Task Force on Public Benefit Agreements" noted that CBAs and the negotiations preceding "them have become lightning rods for controversy."⁸¹ Against a bulwark of political reality, the task force recognized that CBAs would not disappear. The task force recommendations were based on a process of accountability, fairness, transparency, and enforceability.

The New York City Public Benefits Task Force recommendations included the encouragement of community participation and the sharing of information about proposed development projects.⁸² The report called for the use of third-party research and support staff to assist the community with project and benefit analysis, the establishment of metrics evaluating the balance or relationship among public benefits, public subsidies, and the size of the project, using clear terms and timelines for benefit implementation, incorporating benefit agreements into development regulatory agreements with the City of New York to assure agreement enforceability, monitoring developer performance, and providing information to the community regarding public benefits.⁸³

The most valuable and insightful point made in the task force report is not in the group's approach to the study of public benefit principles nor specific recommendations for changes to city processes evaluating

78. Michael Neibauer, *Wal-Mart, D.C. strike community benefits deal*, WASH. BUS. J., <http://www.bizjournals.com/washington/blog/2011/11/wal-mart-dc-strike-community.html?page=all> (last visited Aug. 23, 2012).

79. ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, *supra* note 17, at 29.

80. See ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, *supra* note 17, at 1.

81. Press Release PR 10-09-090, Office of the New York City Comptroller, Recommendations of the Task Force on Public Benefit Agreements 5 (Sep. 29, 2010), <http://www.comptroller.nyc.gov/bureaus/opm/pba/pdf/Task-Force-Report-Final.pdf>.

82. *Id.* at 8.

83. See *id.* at 24.

public benefits. The task force report put a clear focus on recognition of the fact that past city development policies and procedures fell short of adequately obtaining community input on development decisions.⁸⁴ The most important part of the New York City Task Force recommendations is the definition of the “community.”⁸⁵

III. Summary of Research Study of Community Participants in CBAs

The survey data collected for this article⁸⁶ presents a comprehensive view of community group participation in CBAs and represents the only survey data on community stakeholder groups involved in CBA coalitions. As more information is obtained about the CBA process and community stakeholders, planning and zoning officials, politicians, and developers will have a better understanding of the community they serve. This understanding will hopefully engender greater communication between the parties, better project design and operations, better community wide benefits, better development efficiency and a host of project specific outcomes. More importantly, development decision-making will reflect the greater social outcomes of distributive decision-making, fair decision-making procedures and broader economic impacts.

84. *See id.* at 33.

85. *See id.* at 20.

86. The email addresses of 225 people, who participated as community group members involved with CBA coalitions between 2000 and 2010, were identified through news article reports and internet records. The survey was emailed to CBA community group members four times between June of 2010 and February of 2011. Additionally, a link to the survey was placed on a community benefits agreement web site/blog sponsored by the Government Law Center at the Albany Law School in New York. The web site is a comprehensive CBA site and is the first site that will emerge in a CBA topic web search. Of the 225 people surveyed, 37 responded (16.4%) completing the full or selective parts of the survey. There was a mixed item non-response to the survey, so statistical tests are difficult and the survey response data is listed in order of importance. The survey was administered using a Qualtrics survey platform which assured confidentiality, could be completed in parts allowing respondents ongoing survey access, and included open-ended responses to questions. Additionally, survey respondents were promised a copy of the survey results if they provided their email address at the end of the survey.

The survey contained 18 questions. Seven questions were directed to the respondents' CBA involvement, their organizational goals, how they obtained CBA information, other CBA coalition groups involved, project costs, and amount of public subsidies included in the development. Ten questions involved seven-point Likert Scales to assess the respondents' perception of the degree of importance, effectiveness, difficulty, or usefulness of CBA characteristics. These questions addressed community motivations for seeking a CBA, development training needs, how the CBA improved the development process, level of local, regional, and national group involvement in CBA negotiations, points of difficulty in CBA negotiation, CBA enforcement concerns, sources of community group power, developer benefits associated with CBAs, and CBA shortcomings. Each question allowed for up to three open ended responses which could be added and also rated by the respondent. The final question asked respondents to make any comments they wished on CBAs on the survey.

A. CBA Involvement of Respondents

About half of the respondents were involved in providing research and assisting in CBA negotiations with the developer. Slightly more than one-third of respondents were directly involved with negotiations and, surprisingly, only about one-fourth of the respondents were in a leadership position (president, manager, or director) with a local community organization. This likely indicates that community group members volunteer to take on the role of research or CBA negotiation support rather than the responsibility for CBA negotiation falling to an established organizational leader.

B. Community Goals

Forty percent of the respondents represented neighborhood level organizations. The objective of the respective organizations overwhelming was directed to fighting poverty. Slightly less than half of the respondents, the second largest category, indicated that their goals embraced forms of community organizing directed to diverse community needs. Forty percent of the respondents indicated economic development as an objective. Goals such as minority employment, smart growth, and environmental issues followed in importance. Table II provides a ranking of community goals in the CBA process.

Table II: Ranking of Community Goals in CBAs

1. Economic justice	15. Brownfield remediation
2. Local living wage jobs	16. Union construction jobs
3. Job training programs	17. Construction of parks/open space
4. Job training	18. Mitigation of traffic congestion
5. First source/targeted hiring	19. Affirmative action contracting
6. Displacement of residents	20. Restrictions of big box retail development
7. Racial equality	21. Space set asides for retail or commercial construction of community recreational facilities
8. Displacement of local businesses	22. Creating adequate parking
9. Design review	23. Green building requirements
10. Low income rental housing	24. Space set asides for child care centers
11. Affordable homeownership	25. Developer funding of community organizations
12. Community input on selection of tenants	
13. Neighborhood cleanup	
14. Space set asides for community or non-profit centers	

C. Community Motivations for Seeking a CBA

Survey respondents indicated an overwhelming preference for community goals associated with broader long-term community issues. This area of community goals was identified in Table I as Type III and Type IV goals addressing long-term community issues. The two highest community motivations in negotiating CBAs reflect economic justice and local living-wage jobs. The importance of broader community goals is reflected in the first five response categories and then, beginning with the displacement of residents, moves into the physical dimension of development.

D. Views on How CBAs Improve the Development Process

Survey participants did not demonstrate uniform ratings of how CBAs improve the development process. Indeed, with the exception of the assurance of zoning changes for the project, the responses had high levels of variance. The responses to this question in the survey betray the community activism in the CBA and organizing literature that promotes the benefits of CBAs. Respondents clearly did not strongly agree on the specifics of how CBAs improve development. The open-ended responses to this question included the requirement for living wages and the use of local labor and services in the development process.

Table III: Ranking of Ways that CBAs Improve the Development Process

-
1. Increases public participation on development outcomes
 2. Enables project to reflect citizen and area needs
 3. Makes a project reflect community visions
 4. Provides direct community input on project development
 5. Provides for the monitoring of development outcomes
 6. Provides developer accountability for public subsidies
 7. Assures political support
 8. Enables the community to evaluate community benefits from multiple developers
 9. Assures zoning changes
 10. Saves time on regulatory approvals
 11. Enables project to meet market demands
 12. Saves time
-

E. *Points of Difficulty in CBA Negotiations*

The areas of difficulty in negotiating CBAs identified by survey respondents are led by the need and cost for legal expertise and challenges of local organizing. The legal complexity of CBAs and the need for knowledgeable attorneys is underscored by national CBA support groups, community law projects in law schools, and information on CBA legal issues used to educate attorneys. For example, the Partnership for Working Families has developed a CBA Law Center to address CBA legal concerns. Survey respondents indicated that, in addition to the legal complexity, other challenging issues included the negotiation of CBAs and how to research a proposed project. Other areas of difficulty interwoven with the survey responses on negotiation difficulty addressed how to organize and conduct meetings and how to develop and maintain community group alliances. Open-ended responses to this question included concerns about a lack of formal process to negotiate CBAs, lack of structure for public involvement, difficulty of preset timelines for CBA negotiations, and an overall weak structural process for CBA negotiation.

Table IV: Ranking of Difficult Areas in CBA Negotiations

1. Finding a knowledgeable attorney
2. Organizing area residents
3. Conducting public meetings
4. Lack of information on how to negotiate a CBA
5. Cost of legal fees
6. Conducting research on the proposed project
7. Identification of community benefits from the development
8. Developing alliances with community groups
9. Maintaining cohesion among the community groups
10. Having CBA meet city requirements or regulations
11. Tension in CBA coalition
12. Conflict of interest issues
13. Inadequate time to prepare for negotiations
14. No real process for CBA negotiations was pre-defined
15. Actual negotiation with developer
16. CBA negotiating team excluded some community group(s)
17. Lack of local government involvement in the process

(Continued)

Table IV (Continued)

18. Lack of local government support
 19. Identification of possible loopholes in the CBA
 20. Working with public officials
 21. Evaluating negotiation trade-offs
 22. Narrow organizational focus of some community groups
 23. Developer reluctance to negotiate seriously
 24. Legal complexity of CBA
 25. Lack of cost benefit analysis
 26. Lack of municipal government support for CBA
 27. Lack of formal public hearings for CBA process
-

F. CBA Enforcement Concerns

The enforcement of CBAs is at the heart of the effectiveness of the agreement. While there is an initial role for CBAs during project design and construction, the long-term contribution of a project to community needs ultimately rests with how the parties operate under the CBA. The survey respondents demonstrated a high degree of variance in CBA enforcement concerns. Perhaps the most elusive component to a CBA is structuring the long-term performance metrics and measuring these for future performance.

G. Sources of Community Group Power in CBA Negotiations

Similar to the large amount of variance in the respondents' concerns about CBA enforcement, the respondents' views on sources of community power were equally ambiguous. This may likely be explained by community groups' lack of knowledge about CBA negotiations, the development process, and understanding of developer needs.

H. Developer Benefits Associated with CBAs

There is no question that the respondents recognized the benefits of a CBA flowing to project developers. CBAs enhance the developers' prospects for timely project approval and political support. Issues regarding project controversy, subsidies, risk of litigation, and zoning changes displayed a high degree of variance. This can likely be explained as a function of diverse project pathways of survey respondents.

I. *CBA Shortcomings*

Issues of community identification in CBA negotiation are at the forefront of the shortcomings identified by survey respondents. Issues of CBA benefit measurement and community representation showed low levels of variance. Questions surrounding the definition of “community” and the ultimate recipient of CBA benefits dominated the issues of community representation. The allocation of CBA benefits is at the heart of the questions surrounding CBA legitimacy and effective regulatory structure.

J. *Value of Public Subsidies*

Survey respondents were well aware of the role subsidies play in making projects attractive to the development community. Clearly, public subsidies significantly enhance developer cash flow and reduce developer risk. With a significant level of subsidies, CBAs also can be supported by the developer. A significant amount of variance was present in responses on council member support, elimination of litigation, cost effectiveness of providing community benefits, and zoning changes. While it is logical to conclude that public subsidies for a project manifest themselves in easier zoning changes, obtaining financing, and regulatory and political support, it does not necessarily follow that other developer or project needs will be automatic or easily obtained.

IV. The Future Use of CBAs

The information obtained by this research on local level stakeholder groups involved with CBAs demonstrates several insights. The analogy that CBAs are a “sleeping giant” as a force shaping development projects is supported not only by the national and regional organizing forces, diverse foundation support, and availability of CBA education materials, but also by the recognition of the value of CBAs by the community stakeholders surveyed in this study. The high survey rat-

Table V: Ranking of CBA Shortcomings

1. CBA benefits should be measured on both a municipal and neighborhood level
 2. CBAs do not always represent the majority of the community
 3. Conflict of interest issues for some community groups participating in CBAs
 4. No required procedures for CBA negotiation
 5. CBAs sometimes may not reflect sound land use planning and land use regulations
 6. Community groups’ lack of accountability to citizens
-

ings of economic justice and living wage jobs as community goals, community organizing, and CBA enforcement as the most important training needs, survey respondent views that CBAs improve development process, and the recognition by the survey respondents that developer needs for political and subsidy support via a CBA, are all compelling reasons to project growth in the use of CBAs.

The stakeholder groups are local and grassroots in nature and reflect the concomitant expertise and knowledge limitations. Issues of development and regulatory practices are rarely encountered by local stakeholder groups. CBAs are relatively new and complex for citizen groups to address without adequate technical and legal support. Further, CBAs are both time consuming and challenging. While local stakeholder groups have organization goals that are broad and long-term in nature, reflecting themes of social justice and equality, developers think and negotiate in smaller project increments. Mastering the development process begins with the process of disaggregation of the development's physical, financial, and political components. This research demonstrates the need of community stakeholders to better understand development processes and the individual components involved. The expertise of national and regional level CBA resources was not recognized or utilized by most of the survey respondents.

V. Conclusion

The concept of a CBA is relatively straightforward. The mechanics and community stakeholder interrelationships with developers and municipalities are complex. Negotiation of CBAs does not usually include the involvement of local government staff, and regulatory structures for CBAs are just now emerging. Consequently, the process of CBA negotiation and enforcement is an uncertain one. It is clear from the overall high degree of variance in many of the survey question responses that community stakeholders view CBAs as a step-by-step rather than a comprehensive process. That is to say that the high degree of variance in the importance of CBA issues stems not from project variances, community group development needs, or community social needs, but from a myopic perception of the overall CBA process by local stakeholder groups. Indeed, CBAs are relatively new, processes do not exist, community needs vary, and stakeholder interests are significant and public investment substantial—all contributing to stakeholder uncertainty and controversy.

