

Rethinking Community Benefits Agreements

By

Rebecca Economos

Bachelor of Arts in Sociology

Bowdoin College

Brunswick, ME (2006)

Submitted to the Department of Urban Studies and Planning  
in partial fulfillment of the requirements for the degree of

Master in City Planning

at the

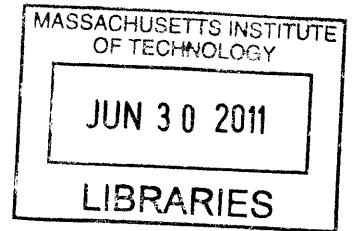
MASSACHUSETTS INSTITUTE OF TECHNOLOGY

June 2011

© Rebecca Economos. All Rights Reserved

The author hereby grants to MIT the permission to reproduce and to distribute  
publicly paper and electronic copies of the thesis document in whole or in part.

**ARCHIVES**



Author \_\_\_\_\_

*[Handwritten signature]*

Department of Urban Studies and Planning  
May 19, 2011

Certified by \_\_\_\_\_

*[Handwritten signature]*

Professor Lawrence Susskind  
Department of Urban Studies and Planning  
Thesis Supervisor

Accepted by \_\_\_\_\_

*[Handwritten signature]*

Professor Joseph Ferreira  
Committee Chair  
Department of Urban Studies and Planning

# Acknowledgments

I owe sincere thanks and gratitude to many people for their continuous help and support throughout my thesis, including:

Larry Susskind, for his steady and supportive thesis advisement;  
Karl Seidman, for being my reader and providing wonderful guidance during my time at DUSP and for future endeavors;

Sandy Wallford and Kirsten Greco, for words of encouragement;  
Duncan Kincaid, for giving me the technology to stay at DUSP;  
Peter Cohn, for ongoing library assistance and support;

Danny Yadegar and Yonah Freemark, for patiently teaching me InDesign;  
Stephanie Stern and Aspasia Xypolia, for taking the time to read and edit my thesis while also writing their own;

Pamela Sisk and Marilyn Levine at the MIT Writing Center, for endless support on issues ranging from developing a topic to editing my final draft;

Dedicated individuals in NYC who participated in interviews;

Josh Winter, for pushing me to write about this topic and for challenging my ideas;

My family for their constant support;

Jason Karp, for everything from thesis proofreading to moral support to washing the dinner dishes when it was really my turn to do so.

# Rethinking Community Benefits Agreements

by

Rebecca Economos

Submitted to the Department of Urban Studies and Planning  
on May 19, 2011 in Partial Fulfillment of the  
Requirements for the Degree of Master of City Planning

## ABSTRACT

### Rethinking Community Benefits Agreements

Across the United States, conflicts often erupt when large-scale real estate development projects are proposed and executed in low-income neighborhoods of large cities. Communities increasingly ask for benefits to offset negative impacts caused by new development. These requests often take the form of negotiated contracts called Community Benefits Agreements (CBAs). CBAs are the subject of some debate, especially as regards their effectiveness, legality, and fairness. Community groups, developers, and city officials all have different views on this topic. In this thesis, the CBA debate is examined in light of five New York City-based case studies involving controversial benefits negotiations. While CBAs can lead to greater benefits for some communities, the ad hoc nature of the agreements and the ways in which they are negotiated pose serious risks. I offer a new process for managing public benefits negotiations.

Thesis Supervisor: Lawrence Susskind

Title: Ford Professor of Urban and Environmental Planning

# Table of Contents

Acronyms and Abbreviations.....	5
Introduction.....	6
<b>I. Brief History of Local Economic Development.....</b>	<b>10</b>
Flight to the Suburbs.....	11
Changes in Federal Funding Patterns.....	11
A Shift to Private Funding.....	12
Public-Private Partnerships.....	13
Development Impact on Low-Income Communities.....	15
The Role of Planners.....	16
<b>II. Legal Framework &amp; Types of Benefits.....</b>	<b>18</b>
Exactions.....	18
Linkage Programs.....	19
Community Benefits Agreements.....	21
Land Use Planning in NYC: a Brief Overview.....	24
Uniform Land Use Review Procedure: Background and Critique.....	24
<b>III. New York City Case Studies.....</b>	<b>27</b>
Introduction.....	27
Bronx Terminal Market.....	29
Kingsbridge Armory.....	35
Yankee Stadium.....	40
East 125 <sup>th</sup> St.....	45
Columbia University Expansion.....	51
Project Matrix.....	58
<b>IV. Major Findings.....</b>	<b>60</b>
Findings Summary.....	64
<b>V. A New Model.....</b>	<b>67</b>
Appendix.....	80
Works Cited.....	81

## **Acronyms and Abbreviations**

BOEDC: Bronx Overall Economic Development Corporation

CBA: community benefits agreements

CBO: Community-based organization

CPC: City Planning Commission

DCP: Department of City Planning

KARA: Kingsbridge Armory Redevelopment Authority

NYCEDC: New York City Economic Development Corporation

SSB: Sustainable South Bronx

ULURP: Uniform Land Use Review Procedure

## Introduction

Across the United States, conflicts often erupt when large-scale urban real estate development projects are proposed. The stakeholders involved – residents, municipal officials, and private developers – all have different and competing interests. While city governments work hard to entice private investment through subsidies and land swaps, low income residents fear that they will either be forced out by gentrification or bear an unfair burden of the impacts of development, while reaping little of the economic benefit created. Indeed, it seems as though with every large-scale development project there are questions about whether or not low-income neighborhoods will truly benefit from new development, or if the breaks that are being given to developers are justifiable.

This conflict between low-income neighborhoods and city government, as well as low-income neighborhoods with developers, over the allocation of development benefits has raised questions about the most appropriate format for conducting public benefits negotiations, and particularly the question of who represents the interests of low-income neighborhoods when such deals are formulated. Municipal land use decisions are typically the product of a standard legal process involving public hearings as well as

other opportunities for community input, such as formal and informal meetings, on both the development program (land use of the site) and its associated benefits. City staff expect feedback – if not pointed questioning and outright disagreement – from community groups, as well as elected officials, business interests, and other members of the public and government involved with the municipal land use review process. Many community groups, however, feel that the standard procedure excludes their interests, and that the current approach leaves them with either no place at the negotiating table, too few benefits, or both.

As a result of this exclusion, over the past 15 years community groups and advocates in many parts of the United States have advocated a new approach to public benefits negotiations commonly called community benefits agreements (CBAs)<sup>1</sup>. CBAs are a contract between a coalition of residents or community groups and developers delineating the steps that both agree to take to ensure that residents likely to be negatively affected by a proposed development will benefit in appropriate ways. In most places, a signed CBA is

---

<sup>1</sup> For excellent overviews of CBAs, see “Community Benefits Agreements: Definitions, Values, and Legal Enforceability” by Julian Gross, “Community Benefits Agreements: Making Development Projects Accountable”, a report published by Good Jobs First and the California Partnership for Working Families, or University of Albany Law Professor Amy Levine’s excellent blog, [www.communitybenefitsblogspot.com](http://www.communitybenefitsblogspot.com).

assumed to be binding on all parties to the agreement in the same way that an agreement between a municipality and a developer is binding on both sides (although the legal basis for binding commitments is not always clear and there is no enabling legislation that sets precedent for CBAs). Community groups often negotiate CBAs directly with developers, asking for the things they feel are owed to their communities to offset negative impacts, apart from what city, county, state and federal laws and regulations might require (Gross, LeRoy, Janis-Aparicio, First, & Families, 2002). Since perceptions of what a neighborhood or community needs – including compensation to offset adverse development impacts – vary from place to place, the benefits requested by community groups in different cities can be quite different.

Benefits agreements – in particular their impact, role, and legality – are the center of a growing national debate. Given the tensions displayed among stakeholders in the press, literature, and in my research, my central questions are: do CBAs truly address issues of fairness, community representation, fiscal accountability and feasibility of benefit delivery in the eyes of all stakeholders? Or are they one more exaction placed on developers? Are municipalities simply giving away too much to developers in hopes of attracting any new development (and the tax revenue

involved) and, in doing so, ignoring the needs of neighborhoods that have not seen significant improvement in decades? How could a benefits negotiation process be better managed?

These questions lie at the core of the CBA debate, and raise further serious questions about the role of public officials and municipal planners. As urban development becomes more private sector oriented and more project-based, are municipal economic development planners caught in an inherent conflict of interest? How can long term comprehensive planning that accounts for economic growth, and the needs of communities impacted by individual development projects that help spur growth, be managed simultaneously? As cities' reliance on private investment grows or remains, their perceived bias towards private developers over the needs of communities encourages community advocates to directly negotiate with developers – despite municipal fears that community involvement and demands could jeopardize development projects. The questions raised about the best way for negotiations to be fair, representative of the community, fiscally accountable, and feasible are paramount.

A small body of literature examines CBAs, especially in relation to the most contentious urban development projects. Community organizations advocating

for CBAs have established a set of report formats to guide others in the CBA formation process. Julian Gross' 2005 seminal report, "Community Benefits Agreements: Making Development Projects Accountable" was the first written by a community organization, and is referenced by many blogs, websites, articles, and community groups as the best guide for how to conduct a CBA. In addition to providing a backdrop for local economic development, Gross' report chronicles the story of the Staples Center CBA in Los Angeles, widely known as the first CBA in the United States. Similar playbooks with recommendations for CBAs exist elsewhere; for example, the University of Michigan's "Recommendations to a Guide for a Community Benefits Agreement" to address benefits and negotiations around a particular local development project. A handful of academics, including Laura Wolf-Powers at the University of Pennsylvania and Amy Levine at the University of Albany School of Law, have published articles on CBAs that examine their legal and statutory legitimacy. Levine additionally maintains a regular blog that chronicles CBA negotiations across the United States, linking to many articles in the popular press. In New York City, the New York Bar Association released a report questioning whether or not CBAs are constitutional and whether they are illegal exactions. The NYC Comptrollers' Office responded by convening a Task

Force that issued a report recommending that the City develop set standards to guide the negotiation of future CBAs in the city. There are a handful of graduate student theses that examine CBAs, but the literature remains underdeveloped given the seriousness of the debate over if and how benefits should be provided.

This thesis seeks to contribute to this small but growing body of literature. I am particularly interested in understanding the implications of the debate around public benefits for the current practice of urban land use planning. Due to changes in federal funding for urban development projects, many municipal governments focus primarily on attracting private investment to spur economic growth, leaving existing low-income neighborhoods feeling neglected or that the city has sold them out to private investment. In some instances, the intense fights over development projects have caused developers to walk away.

While the existing literature provides a strong foundation for understanding the key issues involved with CBAs, it does not offer concrete ideas about how to resolve the current tension between neighborhoods and municipalities over how public benefits are defined and allocated. I propose a better model that promotes more sustainable and fairer negotiations for all stakeholders involved.



Any new model must take account of the context in which the current debate is taking place. Thus, the first chapter of this thesis seeks to understand the history of local economic development and municipal dependence on the private investment. Chapter two explores the legal history of benefits agreements from formalized exactions to the rise of ad hoc CBAs today. Taken together, these chapters set the context in which the current debate must be understood. Chapter three presents the challenges and opportunities of benefits negotiations in New York City and reports on five case studies of past and current projects involving benefits negotiations in that city. Chapter four draws lessons from New York City's experience and presents major findings across the cases. Chapter five proposes a better framework for benefits negotiations; it imagines an institutionalized system of representative, fiscally accountable, and feasible benefits determinations and negotiations that could be implemented relatively easily in most major American cities. Providing primary research via the case studies and a proposal for a new model is important, as this thesis helps fill a gap in the literature by chronicling several of the cases for the first time, and to address key questions surrounding CBAs.

## I. A Brief History of Local Economic Development as it Relates to CBAs

The debate and controversy around public benefits associated with development in low-income communities is not new, but rather, has evolved over time in response to how development and its review process is conducted and how public benefits have been provided to low-income communities. The benefits negotiation process itself has become increasingly controversial in recent years, and involves a range of stakeholders including community groups, advocates, elected officials, municipalities, and developers. Before delving into the specifics of Community Benefits Agreements (CBAs), we need to ask why community groups believe so fervently that direct negotiations between residents and developers are necessary to supplement traditional forms of taxation and administrative oversight by elected and appointed officials. Public hearings and related forms of public review and comment precede most municipal decisions about development. Why are these no longer sufficient (if they ever were) to ensure that neighborhoods get their “fair share” of development benefits and are compensated for whatever disproportionate costs they bear on behalf of the rest of the city? In fact, in some municipalities, developers are urged or

required to make direct (linkage) payments to the city or to set aside affordable housing units without any requirement that a CBA be negotiated directly with residents.<sup>1</sup> Why is this not enough, and if it is enough, why aren’t linkage programs more prevalent? Why do some community groups strive for CBAs?

The answers are complex, and deeply rooted in the history of local urban economic development and urban poverty in the United States. Historically, disadvantaged communities have had few means available to them to ensure that they benefit from new development, and poor communities have been at high risk of displacement by new real estate investment (Bornstein, 2007). Unless there is an election pending, low-income urban communities lack the political leverage required to ensure that they get a “fair share” of the tax revenue or jobs created by new development (Grogan, 2000). This next section provides an overview of municipal strategies for development, with a focus on how funding patterns impact those strategies.

---

1 For further reading on linkage programs, see HUD’s report “Making Connections: A Study of Employment Linkage Programs” by Frieda Molina and “Survey of Linkage Programs in Other US Cities with Comparisons to Boston” prepared by the Boston Redevelopment Authority.

## Flight to the Suburbs

Development policies and funding decisions since the 1960s are particularly important to understand the public benefits debate today. Following urban renewal efforts in the 1960s, federal funds to directly support urban improvements managed by municipalities declined significantly (Wolf-Powers, 2005). This is due in large part to the significant plunge in inner city population from the 1970s-1980s.<sup>2</sup> Flight from cities was led by the middle class who sought to avoid the crumbling infrastructure of older cities, instead embracing the lower-cost amenities of the suburbs that catered to “a middle-class consumer taste for detached houses, larger lots, and (at least among whites) homogeneous racial and ethnic environments” (Grogan, 2000). Jobs and businesses also fled to the suburbs, following a desirable workforce and similar amenities of cheaper land and newer infrastructure. Poorer households and residents remained in cities, resulting in a significant concentration of poverty in cities (Grogan, 2000). Grogan notes that “this leaves the largely minority poor not only stranded in crumbling inner cities, but more and more isolated from the employment that might help them

<sup>2</sup> In his book on Urban Revitalization, Paul Grogan writes “the same death rattle seemed to be sounding at once from central cities all over the country. More than half the nation’s 100 largest cities shrank in the 1980s: Gary, Indiana lost nearly one quarter of its population, Philadelphia lost 100,000 people, Detroit lost 175,000, and Chicago nearly a quarter of a million” (Grogan 2000).

rebuild or move.” This dramatic shift of population and business concentration led to the declining impact of cities on federal policies and funding decisions (Grogan, 2000) as federal dollars tend to follow business interests.

## Changes in Federal Funding Patterns

Many cities experienced recession in the 1970s, forcing them to eliminate programming. The recession was compounded by the federal government’s slow withdrawal of funding for physical urban redevelopment (Wolf-Powers, 2005). Fainstein explains that “major development efforts faltered as cities were thrown entirely on their own resources for putting together a project” (Fainstein, 2009) following the decline in federal funding. In the 1980s, the Reagan administration aimed to cut additional federal funds for domestic agendas, instead encouraging private sector property development and urban investment (Wolf-Powers, 2005). With few resources to invest in urban areas and a lack of federal support for enhancing neighborhood leadership (following the elimination of the Model Cities Program<sup>3</sup>),

<sup>3</sup> The Model Cities Program, in existence from 1966-1974, “created a new program at the Department of Housing and Urban Development (HUD) intended to improve coordination of existing urban programs and provide additional funds for local plans. The program’s goals emphasized comprehensive planning, involving not just rebuilding but also rehabilitation, social service delivery, and citizen participation” (<http://www.encyclopedia.chicagohistory.org/pages/832.html>). It operated in select cities, and is thought to have ended before it made significant impact on the

municipalities were left with few federally supported options to sustain and promote urban redevelopment, physical or economic, in low-income neighborhoods<sup>4</sup>.

### A Shift to Private Funding

Because of the withdrawal of federal funding, private sector investment became an increasingly important municipal redevelopment strategy. In more recent years, municipalities have employed competitive strategies to attract businesses and private investment into cities that ideally bring jobs, modern technology, and an increased tax base. Cities face a number of challenges when competing for private investment as compared to suburban or rural areas. With comparably less to offer than the suburbs in terms of open space, developable land, and other amenities, city governments tend to use the resources they have to attract and negotiate with private sector businesses, including access to

---

community level.

<sup>4</sup> In response, cities have pursued a range of economic development strategies to promote growth and redevelopment. Local community based organizations, called Community Development Corporations (CDCs), focus on specific local development projects ranging from affordable housing to retail and commercial development (Grogan 2000). Many cities support these community-led development efforts through partnership efforts or policy and funding support through CDBG. While the CDC movement is an important factor for urban redevelopment and increased economic activity, the projects led by CDCs do not tend to be as controversial in development plans, scale, funding, or community representation, and as such will not be the focus of discussion in this thesis.

public funds such as public subsidies, tax abatements, fee waivers, complementary direct investment (Bornstein, 2007), low-interest loans and other regulatory relief (Fainstein, 2009), zoning concession, loans, the use of eminent domain (Altshuler, 2003), as well as access to parcels of land made available through land assembly and swaps (Fainstein, 2009). Municipalities use these incentives “to entice private developers to make large front-end investments in property acquisition as well as construction” (Fainstein, 2009). Indeed, many municipalities have embraced privately funded large-scale development projects<sup>5</sup> as a strategy for commercial development and city-building, ranging from office parks to hotels, from stadiums to retail centers (Altshuler, 2003; Bornstein, 2007). When aimed at a specific location, these projects drive investment and bring resources to redevelop a neighborhood while promoting commercial and economic development. Cities stood to gain from renewed development activity and the benefits that brings such as tax revenue and revitalization, and private developers stood to gain increased revenues (Bornstein, 2007).

---

<sup>5</sup> The literature broadly defines mega-projects or large-scale projects, and includes a wide range of development: stadiums, hotels, office parks, mixed-use developments, housing complexes. In the sources cited in this section, there are no references to the size (square footage), project cost, or subsidies that could help define what makes a project a “mega-project” or “large-scale project.”

## Public-Private Partnerships

By the 1980s and throughout the 1990s, business attraction strategies evolved into more formal public-private partnerships between municipalities and private sector businesses, and became the primary means of spurring investment in cities. In many U.S. cities, these public-private partnerships had led to commercial and mixed-use mega-projects, where public subsidies and other regulatory relief entice private investment (Fainstein, 2009; Gross, et al., 2002; Krumholtz, 1999). Bornstein points out that the “cost and complexity of large-scale projects, as well as prevailing political attitudes...have meant that many new ‘public’ facilities have been pursued in partnership with the private sector.”

By the late 1990s governments at all levels were spending upwards of \$50 billion annually on public-private partnership programs, demonstrating an increasing reliance on those relationships to spur economic development (Gross, et al., 2002). Large-scale projects became a primary development tool of cities, despite evidence that says they do not generate overall public benefits and that the benefits created do not trickle down to all residents. Additionally, these projects are increasingly financed with public money (Bornstein, 2007; Gross, et al., 2002). For example, the recent New York Yankee Stadium constructed in the Bronx was a \$1.5 billion project – financed in part by

\$300 million in public city subsidies, \$942 million in tax-exempt bonds issued by the local Industrial Development Authority, and an additional \$259 million in tax-exempt bonds issued later on, totally \$1.5 billion of investment. The new stadium was constructed, in part, on former parkland assembled by the City and given to the Yankees for development. Without such deep support from the public sector, the Yankees were threatening to leave the Bronx. Local elected officials and the City claim that the new stadium is a huge boon for the Bronx, as it brings hundreds of new jobs and will generate millions of tourism dollars, while the Yankees were able to build a project on public land with municipal support. Yet, neighborhood interests around benefits – for better jobs, access to and replacement of valuable parkland and recreational sites, and involvement in the neighborhood development process – were ignored. Similar large-scale projects have gone up around the country in cities seeking a catalytic real estate project to provoke investment and growth, and often without consideration of neighborhood interests or recognition that the benefits from large-scale projects do not trickle down to benefit all residents. This inequity angers community groups advocating for local interests.

Large scale, private-public real estate initiatives often involve dedicating enormous resources to a single project,

which raises questions about the purpose, use, and accountability of public subsidies. Given the predominance of projects fueled by private investment, municipal economic development has evolved into a state of dependence on public-private partnerships. Sizable portions of municipal budgets including grants and tax levy dollars are dedicated to these larger projects, leveraging subsidies to court private investment. This often results in complex land packages, financing schemes, and tax incentives that raises questions of legality and accountability as to how public money is being spent (Krumholtz, 1999). Does the public benefit, or the private developer?

In exchange for public subsidies, developers and businesses typically promise public benefits of various kinds to a community or the city as a whole. Some community groups question the realization of these benefits. For example, in NYC, the Industrial Development Authority provides subsidies to businesses for relocation and expansion; in return, businesses promise to guarantee a number of new jobs, improve street and building conditions, or contribute to other public amenities (NYCEDC, 2011). Over time, critics and watchdogs fear the relationship between private developers and public officials involved in these partnerships has become murky, and accusations of backroom deals have become more pronounced. Exactly what are public

subsidies generating, and what is being provided (to whom) in return? For cities desperate to spur private investment after lengthy periods of stagnation or decline in some neighborhoods, an expanding tax base and firm growth seems desirable. Deciding, however, what to offer a specific developer and what to request in exchange requires more than just a straightforward cost-benefit analysis. NYC, for example, faces corporations laying off thousands of workers after promising to generate new jobs, raising questions regarding the time period over which short-term public subsidies do or do not contribute to the city's welfare, or the well-being of particular communities or segments of the population over the long haul.

Place-based development strategies, like large-scale project development, have not been restricted to traditional downtown commercial districts, which complicates the public benefits debate. As public-private partnerships grew in prominence in the 1990s, inner cities were benefitting from the movement of young professionals back to urban areas from the suburbs after a period of avoidance and white flight. These newcomers settled at the edges of lower income communities bordering on well-defined neighborhoods. "Urban regimes, anxious to maintain their image...seeing only limited development opportunities in old central business districts, attempted to direct growth to

parts of their cities that had previously been viewed as marginal. Thus, the focus of regeneration moved to areas outside the old urban core” (Fainstein, 2009). This gentrification coincided with developers shifting their focus to formerly neglected and underdeveloped neighborhoods; cities welcomed these new urban investments. Developers sought, and continue to seek, development opportunities in areas where land prices are low. Leveraging city-owned land, cities are prepared to give investors a helping hand by providing access to available, underdeveloped land and neighborhoods (Wolf-Powers, 2005).

### **Development Impact on Low-income Communities**

While new development in underinvested areas beyond central districts is touted as a driver of economic development, the positive benefits of development do not necessarily ‘trickle down’ to all residents. The allure of new jobs, retail outlets, enhancement of certain city services, and an increased tax base are all attractive, but large-scale projects do not necessarily benefit those in greatest need (Gross, et al., 2002). In fact, projects like luxury hotels and malls are unaffordable for low-income consumers, and provide low-wage jobs. The jobs created by the new Yankee Stadium are estimated to pay an “average starting wage for non-managerial workers [of] \$9.19 an hour, and that median wages for stadium workers are \$10.50 an hour”

(Fiscal Policy Institute, 2010). Indeed, promises of a rising tide of economic prosperity as a result of a large-scale project like Yankee Stadium did not ring true; the wage rates paid for stadium workers are too low to make a real difference to low-income residents. In her study of several mega-project developments and their associated benefits agreements, Bornstein found that “the benefits [are] presumed rather than carefully analyzed or subjected to public deliberation” (Bornstein, 2007). The negative impacts of new developments on low-income neighborhoods are well documented. Disamenities include but are not limited to displacement of individuals and businesses to provide space for new construction, increased air and noise pollution and traffic, changes to non-residential uses (Bornstein, 2007). Despite large private investments into neighborhoods that may have little economic activity, left alone, large scale real estate projects do not necessarily spur economic development, create new jobs for unemployed urban residents, or generate the net increases promised to fund other city service issues (Gross, et al., 2002). Given the infusion of millions of public dollars into new development projects, poor neighborhoods and their advocates are increasingly asking why new investment cannot benefit those most in need.

Particularly in neighborhoods with high levels of historical disinvestment, the call for more responsible, equitable development grows louder. These neighborhoods are using what leverage they have in the development approval process to advocate for targeted benefits including job training, educational opportunities, access to new jobs, a guarantee of living wages, environmental improvements, creation of more community parks and open space, building of and access to grocery stores, day care and senior citizen centers, dedicated community meeting space, improved transportation connectivity, preference for local retailers, and the like (Gross, et al., 2002; Wolf-Powers, 2010). Developers and municipalities often disagree with what impacted neighborhoods feel would be a reasonable share of the benefits of new development and, as a result, many development projects have become extremely contentious. Developers, municipalities, and the advocates of low-income neighborhoods jockey to distribute the benefits of new development.

### **The Role of Planners**

Municipalities continue to employ property-based development strategies to attract private investment, and the debate over public benefits continues to this day. This practice of “property-led development,” as opposed to more holistic, long-term neighborhood planning, elicits very different reactions among professional

planners. Indeed, the people vs. place debate is central to urban redevelopment strategy.<sup>6</sup> Supporters of property-led development make a pragmatic argument: their goal is to support struggling cities and neighborhoods in the short term in any way they can, mostly through large-scale physical commercial developments. They describe “land use planners and development officials as local heroes, navigating among disparate interest groups to make possible the land deals that result in revenue-generating and amenity-creating development” (Wolf-Powers, 2005).

On the other hand, critics of this pragmatic view of planning believe that “urban officials with the power to regulate development and land use have been enlisted to produce a socio-spatial structure that supports the aims of property capitalists” (Wolf-Powers, 2005) without regard to the negative impacts of speculation, displacement, and gentrification on poor and middle-class residents. Wolf-Powers suggests that planners involved in property-led development are stuck in a structural dilemma, since this approach to urban development does not allow for comprehensive planning. Moreover, it continues to drive real estate development, making traditional comprehensive planning less likely. Either way, critics of

---

<sup>6</sup> For an overview of the literature surrounding this debate, see Karl Seidman’s Inner City Commercial Revitalization Literature Review.



the current process ask “whether, despite planners’ public-minded intentions, the essence of the profession is betrayed when the ideal of comprehensive planning is supplanted by a ‘project-based’ model that closely tracks practice in the for-profit sector” (Wolf-Powers, 2005). Critics of place-based planning argue that the needs of residents are ignored, perpetuating further cycles of poverty (Seidman). This raises serious questions as to the role of urban planners in development projects and associated benefits, and may lead poor communities and their advocates to wonder if they can trust city planners to have communities’ interests as a top priority.

## II. Legal Framework and Types of Benefits Programs

Benefits negotiations around commercial real estate and economic development projects have been debated and addressed across the country as questions of equitable development have come to the forefront. The types of debates, programs, and agreements have varied and changed over the past few decades, ranging from municipal-driven institutionalized exactions to community-driven ad hoc Community Benefits Agreements (CBAs) and political negotiations today. This chapter reviews the most relevant discussions, programs, and decisions around benefits negotiations and the roots of community advocacy for these benefits. It gives an overview of the legal structure around benefits, contrasts institutionalized exaction programs with CBAs, and focuses the current debate on CBAs. Furthermore, it aims to provide a historical framework and platform of past benefits negotiations against which a new model and current initiatives can be evaluated.

### Exactions

Throughout time, municipalities have required landowners or developers to give something back to the city when those landowners wish to make a change to their land. This aspect of takings law, called exactions, “encompasses a variety of concessions that municipalities extract

from landowners who wish to change the use of their land, such as impact fees, the provision of services, restrictions on land use, and dedications of land” (Kendall, 1995). Exactions strive to mitigate negative impacts that development imposes upon a community. In an examination of exactions as a municipal tool for receiving benefits, Kendall and Ryan note that exactions are a “relatively inexpensive way to regulate and obtain land” (Kendall, 1995), especially since it generally does not require compensation. Exactions have been a valuable tool for local governments.

The practice of taking exactions from landowners has been contested up to the Supreme Court level. Two important cases have set precedent for benefits negotiations around development and limitations for the use of exactions. In *Nollan v. California Coastal Commission* (Nollan), the decision sets a precedent that “requires that there be an ‘essential nexus’ between the purpose of that exaction and the purpose that would be served by prohibiting the proposed development” (Kendall, 1995). This means that the benefit exacted must address an impact directly caused by the new development. For example, construction of new dwelling units will likely increase the number of children attending local schools, so there is a nexus between the addition of new housing and increasing public school capacity. An increase in dwelling units does not necessarily impact

noxious uses of surrounding development sites, so an exaction for a community health center would not be considered a nexus. A second Supreme Court decision, *Dolan v. City of Tigard* (*Dolan*), sets a precedent that “further requires that the exaction imposed be roughly proportional to the projects impact of the proposed development” (Kendall, 1995). Thus, if five new dwelling units were built, it would be disproportionate to require a developer to build an addition to a school. Taken together, *Nollan* and *Dolan* provide the legal foundation of benefits negotiations that still exist today when considering exactions upon developers.

### **Institutionalized Approach: Linkage Programs**

Some cities have pursued linkage programs as another attempt to address benefits, codifying the desire of some municipal governments to pursue complementary or alternative strategies to development and systematized benefits redistribution. Linkage programs are a form of institutionalized exaction that requires a developer to provide pre-determined benefits in order to obtain various real estate development approvals. Such programs are standard practice in several US cities including Boston MA, Cambridge MA, Berkeley CA, and Portland OR. Cities with linkage programs tend to be strong market cities, giving those municipalities leeway to exact fees from developers while

still maintaining a competitive real estate environment.

Different cities exact different benefits or fees from developers depending on program design. Boston’s linkage program uses development controls as a leverage point, and “requires that developers of large-scale commercial, retail, hotel, or institutional structures seeking zoning relief pay an exaction to construct affordable housing off-site” (Avault, 2000). Fees can be paid to a Neighborhood Housing Trust over a period of 7-12 years, allowing developers an opportunity to pay the exaction from operating funds generated by new construction, though many pay the fee at the start of construction (Avault, 2000). Employment linkage programs are an approach to connecting urban job seekers to employment opportunities created by new development in a program managed in part by local government. Employment linkage and workforce programs use “the lever of development incentives (loans, tax abatements, zoning variances, land assembly, etc.) to capture job opportunities created for unemployed residents...[giving] targeted communities priority information and access to the job opportunities created as the result of public incentives” (Molina, 1998). These first-source hiring programs require development tenants to give certain communities priority access to both information and hiring opportunities in

exchange for development incentives provided by local government. Cities use exactions to fund programming as they see fit.

Linkage programs have growing support as a meaningful exaction that addresses community needs in a controlled and lasting way. A 1998 report by the Center for Community Change states that if the local government embeds community benefits into its policies and programs, they have staying power, greater legitimacy, and increased support as compared to ad hoc benefits requests. For example, in both Portland, OR and Berkeley, CA, local governments have included workforce development policies into their broader economic development agendas. This centralized institutionalization helps ensure that the benefits will be delivered, and that they will not change with shifting political administrations (Molina, 1998). Program longevity can be supported by commitment and leadership at several levels – local government, program staff, and public officials, all who might believe in the importance between connecting economic development and poverty alleviation. Additionally, Molina notes that “community support must be broad and committed enough to enable the program to survive municipal administrations and volatile economic conditions,” further ensuring longevity (Molina, 1998).

The origins of linkage programs share similar roots with the advocacy agendas that comprise the CBA movement today. Boston’s linkage program grew from large-scale community involvement and a champion in a City Councilor turned Mayor, and prides itself on its core belief that “growth can be facilitated by expanding participatory and redistributive public policies and that within the structural limits that constrain urban policymaking” (Dreier, 1991). The program likely would not have had traction without the myriad community groups, neighborhood associations, and progressive advocacy organizations that formed a coalition to fight for it (Dreier, 1991), as well as the political and municipal support to enact it. An examination of the Boston Linkage program published by the Duke University School of Law found that the program meets the criteria of both Nollan and Dolan, and therefore can be mandated as an exaction (Kayden, 1987).

Despite the success of existing linkage programs, surprisingly few cities in the US maintain such programs. This may be due to fear of negative perceptions on economic growth or creating a hostile development environment, existing markets for housing creation or job training, or simply a lack of political will directed toward redistributive benefits (Avault, 2000). It is also likely a function of strong vs. weak market cities; municipal governments operating in weak

markets do not have the leverage to impose exactions of any type on developers, while those in strong market cities may do so more readily. Other critics argue that “linkage is no more than a cynically veiled effort to tax one segment of society to another while the getting is good” (Kayden, 1987).

In cities without linkage programs, the process of benefit redistribution can be entirely undefined. Cities may be hands-on negotiators and facilitators of discussions among community advocates and developers, or alternately can be removed from the process or even dissuade developers and community groups from interacting for fear a private investment deal will fall through. In these cities, CBA agreements may act as a stand-in to determine redistributive policies when the government does not take action, or can be a tool for government and community groups to command benefits from developers.

### **Ad Hoc Approach: Community Benefits Agreements**

Given the small number of cities with linkage programs and the great number of development projects around which public benefits controversies arise, many communities around the country are using the latest tool to negotiate for benefits: community benefits agreements (CBAs). By the most common definition, CBAs are contracts between coalitions

of community groups and developers delineating the steps that both agree to take to ensure that residents likely to be affected by new development will benefit in appropriate and positive ways (Gross, et al., 2002). Community groups sometimes negotiate CBAs directly with developers<sup>1</sup>, asking for the benefits they feel are owed to their community, apart from what cities, counties, state and federal laws and regulations might require. Since perceptions of what a neighborhood or a community needs, and what it might feel it is entitled to by way of compensation to offset development impacts, vary from place to place, the benefits requested by community organizations – even in the same city – can be quite different. In most places, the presumption is that signed CBAs are binding on both the developer and the community, although the legal basis for binding commitments is not always clear<sup>2</sup>; some contracts are explicit, while others employ vague language that leaves uncertainty as to what commitments are binding for whom. Some community benefit agreements also include explicit enforcement and monitoring mechanisms (Gross, et al., 2002). In many instances,

---

1 A 2010 report by the NYC Comptrollers’ Office, “Recommendations of the Task Force on Public Benefits Agreements,” notes the existence of 27 CBAs to date.

2 For further discussion of the legal questions surrounding CBAs, see “Community Benefits Agreements: Opportunities and Traps for Developers, Municipalities, and Community Organizations” by Patricia Salkin which provides analysis on CBA’s legal challenges.

CBAs are ad hoc agreements created outside of regulated government policy.

In some parts of the country, local economic development offices are trying to use CBAs to target private investments in low-income, marginalized communities<sup>3</sup>, while in other places such as NYC, local governments strive to avoid CBAs altogether. Advocates of CBAs, including a range of community activists and associations, local government officials, and some developers, believe that CBAs provide an effective means of redistributing at least

a portion of the benefits that private developers realize when they do “the public’s business.” In contrast to the standard situation in which developers negotiate solely with regulatory agencies and city officials for permission to build, CBAs require developers (if they are willing to come to the table) to pursue parallel conversations with the residents most likely to be adversely affected by whatever is being proposed,

supporting the belief that greater social justice may be achieved when CBAs are negotiated properly (Gross et al). Critics of CBAs, on the other hand, note that CBAs are unregulated negotiations between

<sup>3</sup> The Staples Center CBA in Los Angeles included full support of municipal and elected officials, as did Minneapolis officials who partnered with community groups to create a CBA for digital inclusion of wireless technology for communities without Internet access.

wide varieties of possible stakeholders. There are no guarantees that CBAs will be negotiated properly, or that community groups can achieve their social justice goals (Been, 2010).

The benefits of CBAs, for the community, developers and cities, are well documented by academics, lawyers, and community advocates alike. In the 2002 report “Community Benefits Agreements: Making Development Projects Accountable,” benefits are described from

Goal	Outcome
Inclusiveness	Representation of affected community
Enforceability	Ability to hold developers to commitments
Transparency	Monitoring and reporting on project outcomes
Coalition-building	Strengthening alliances among community groups
Efficiency	Avoid project delay through earlier negotiations
Clarity of outcomes	Ability to demonstrate benefit delivery

the community’s perspective and are analyzed using the following criteria:

In her detailed analysis on CBAs, land use lawyer and real estate professor Vicki Been notes that community groups also argue that CBAs allow them to fully participate in a process that addresses elements of development projects that are typically excluded from standard land-use planning

processes, particularly since in some cities like New York City, the standard land-use review process gives the community an advisory role only. CBAs also benefit communities by allowing a forum to address issues excluded from land use processes, such as wage levels or local hiring, which relate to development and growth but are not typically managed by municipalities. CBAs bestow benefits upon developers too. Community groups agree to support the project, increasing the chances that project will gain necessary city approvals, and decreasing the likelihood that community groups will fight the development in court. Been also details benefits for local officials, including an ability to bypass the legal constraints of Nolan and Dollan to achieve greater exactions. To a certain extent, CBAs let city officials off the hook, as they can distance themselves from extreme community demands in order to maintain good relations with developers (Been, 2010).

Advocates of CBAs note that for a CBA agreement to succeed, special attention must be paid to three points:

- The perceived legitimacy of community representatives who sit at the negotiating table with the developer
- The ability of the community coalition and the developer to hold each other to their commitments
- Effective implementation of the agreements reached.

Achieving these points has many challenges. Salkin highlights the importance of a strong coalition, noting that a developer could attempt to divide a coalition by meeting the needs and interests of one group and excluding others, and further notes that a coalition formed to manage CBA negotiations may experience challenges when asked to manage implementation and monitoring (Salkin, 2007). Been contends that there is no way of knowing which community representatives negotiating are truly representative of community interests as they are not elected or appointed to do so, which leads to an inability to hold representatives accountable for negotiation outcomes (Been, 2010). “Making Development Accountable” details additional challenges, such as differences in opinions over benefits provisions (developers and communities wanting different things), legal expenses (employing an attorney to create a legally enforceable document), and coalition politics (internal challenges among community groups) (Gross, et al., 2002). Been further argues that because CBAs negotiations are conducted outside of legal requirements and procedures, CBAs may be entered into privately and may in fact exclude affected community groups (Been, 2010). The role of municipalities also differs depending on the strength of that city’s market position, and its relative ability to ask for benefits.

The ad hoc nature of CBAs may also create development insecurity, as criteria are determined on a case-by-case basis. These challenges can all impact the success of CBAs.

The debate over CBAs – whether they are legal, provide adequate representation, or help achieve holistic development – will continue as long as communities seek CBAs in cities that lack institutionalized exaction policies. The literature examining institutionalized redistributive exactions such as linkage is extensive, while that focusing on CBAs is nascent and tends to take either a strictly community advocacy or highly legal approach. In order to better understand the challenges and opportunities of CBAs and their ad hoc nature, it is imperative to examine a variety of projects and their associated agreements to consider if the CBA is the best model for managing benefits in cities without exaction policies. Furthermore, careful analysis of such projects can inform the role that planners may take in future development projects when balancing the role of private development with the needs of community groups.

### **Land Use Planning in NYC: a Brief Overview**

The next chapter provides a detailed case analysis of five development projects in NYC that have CBAs or other benefits negotiations associated with them in order

to draw lessons applicable to the general CBA debate. Before diving into the cases, it is important to understand the land use planning process in NYC to which community groups react with demands for CBAs. To put the cases that follow in context, this section provides a brief overview of NYC's land use planning process, with perspectives from the NYC Economic Development Corporation, the city's quasi-public redevelopment authority.

### **Uniform Land Use Review Procedure (ULURP): Background and Critique**

In most municipalities, the land use approvals process is highly regulated with a prescribed procedure regarding development. In NYC, the process is known as the Uniform Land Use Review Procedure (ULURP). ULURP was created to establish organized community participation in the land use review process in the 1960s-70s, and granted local community boards<sup>4</sup> an advisory voice in the review process. Several development actions are accountable to the ULURP process, including, but not limited to, disposition of city-owned property, urban renewal processes, site selection for capital

<sup>4</sup> The NYC Department of City Planning's website notes: "The city is now divided into 59 community districts, each represented by a Community Board with up to 50 members who live or work within the district. Board members, who serve without pay, are appointed by the Borough President, half on the recommendation of local City Council members" <http://www.nyc.gov/html/dcp/html/luproc/ulpro.shtml>



projects, and zoning district amendments (Planning, 2011).

If ULURP is required, the entity or developer seeking a land use change files an application with the Department of City Planning (DCP) who grants an approval. Within 60 days of this approval, the Community Board holds a public hearing and recommends action on the project.

Next, the Borough President<sup>5</sup> reviews and produces a written recommendation about the project within 30 days of receiving the Community Board's recommendation; both of these recommendations are advisory to DCP and the City Council and not binding. Within 60 days of receiving the Borough President's recommendation, the City Planning Commission (CPC) holds a public hearing and reviews the proposed project. If the CPC votes against the project, ULURP is terminated and the project cannot move forward; if CPC approves the project, it may move to the City Council for review. The City Council does not automatically review all projects going through ULURP, though due to the political nature of development projects in NYC, it reviews many of them. Before the City Council vote, there is a 50-day

<sup>5</sup> The role of Borough President includes responsibilities for land use, direct control over a portion of municipal capital and expense budgets, improving quality of life, and representing his/her borough to the city agencies. See the websites of any current NYC Borough Presidents for a detailed overview of their respective activities and active projects.

review period, including a public hearing. Then the City Council votes by majority to either reject, approve with modifications, or approve the project. The City Council's decision is final. Some projects proceed to Mayoral approval. If the Mayor chooses to veto a Council vote, the Council can override the Mayor's opinion with a 2/3 vote (Planning, 2011).

ULURP provides two primary avenues for community input and involvement during which advocates and opponents may express their beliefs: input during the public hearings held at each stage of the process and advocacy of elected City Council members. In addition, city entities are taking additional steps to gain public input. Tom McKnight, Senior Vice President of Development at the NYCEDC, notes "there is increasingly a larger effort spent on getting, engaging with stakeholders earlier and often...every project involves an outreach process where you're trying to take the temperature of stakeholders and get feedback" (McKnight, 2010). He further explains that the NYCEDC has an open door policy, and that "if someone has an issue, we talk about it. If there is a way to adapt that project to respond to the concern and make it better, great, and if there's not, there's not" (McKnight, 2010). He stresses the importance of including community advocates early in the process. McKnight also indicated that the Mayor's Office increasingly engages communities with

regard to their concerns over development in later stages of the process. Where the NYCEDC focuses on outreach prior to ULURP and related more specifically to land use, City Hall conducts outreach on a wider range of issues. City-led outreach complements the areas of public inclusion in ULURP (McKnight, 2010).

Regardless of these opportunities for involvement, community groups still strive for CBAs because they feel that their elected officials do not represent their interests, or that the opportunities for involvement in ULURP are insufficient. Individuals working at NYCEDC have a variety of opinions as to why this is. McKnight points out that “the official ULURP process was created for inclusion, and I think that a Community Board should be representative of – it should be the resource and voice of the community” (McKnight, 2010) but also understands that a Community Board representative may not be representative of the demographic of its district, which may contribute to community backlash. Joshua Winter, Director of the Center for Economic Transformation in the Strategic Planning Department at the NYCEDC, believes that community groups advocate for CBAs outside of the ULURP process because of self-interest and a desire to benefit financially from CBAs (Winter, 2010). By contrast, John Choe, Director of Policy and Research at the NYC Comptroller’s Office,

points out that community feedback solicited during the ULURP process occurs much too late to change anything fundamental in a project short of the developer withdrawing their application and incurring delays and other costs. This contributes to community groups striving for CBAs, as the early outreach described by McKnight may not be enough (Choe, 2010).

While the process described is specific to NYC, it is reasonable to believe that other municipalities have clear land use regulations and procedures that could be similarly analyzed to understand the points at which community groups can or cannot get involved. This would provide an important framework for analyzing CBAs in other municipalities.

### III. New York City Case Studies

In New York City (NYC), public benefits agreements and negotiations, sometimes manifested as CBAs, have become a fairly common method for community advocacy groups to gain some development benefits for the most underinvested communities and, simultaneously, for elected officials to negotiate with developers. NYC provides an interesting and timely context through which to examine and evaluate the current state of CBAs, and to evaluate the impact of CBAs as a tool for urban redevelopment and planning practice. It is the only city outside of Los Angeles (home of the first CBA) with multiple CBAs in effect. Each NYC benefits agreement has been structured differently, so there are several models to examine. One of the reasons CBAs in NYC have taken different forms is that Mayor Bloomberg (2001-present)(C. o. N. York, 2011) has shifted significantly from initially supporting CBAs to now strongly opposing them, thereby dramatically changing the role of local government.

NYC is currently embroiled in debate and struggle over CBAs; the New York State Bar Association has come out opposing CBAs in their current state (NYBA, 2010), while some of the most prominent community groups continue to fight for them. The NYC Comptroller's Office formed a committee to review CBAs in NYC, and in 2010 recommended comprehensive

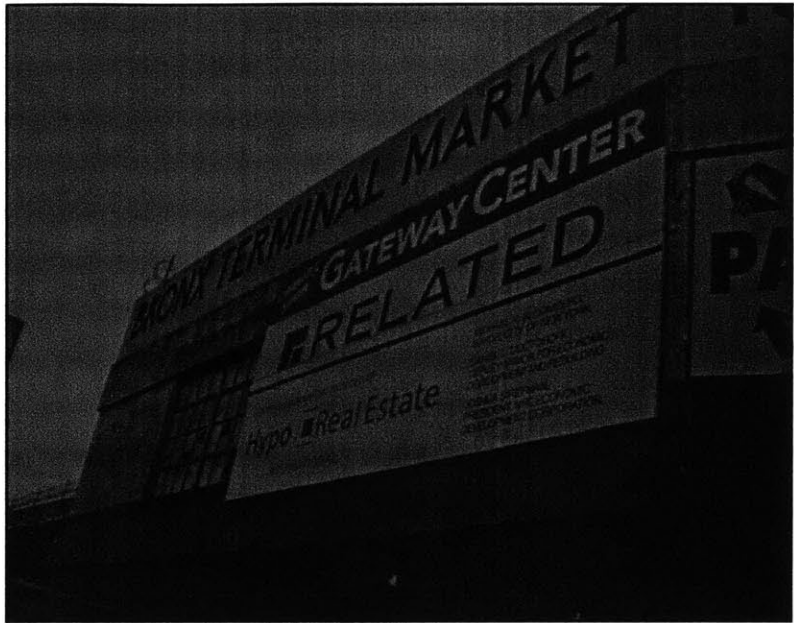
changes to city policy (Comptroller, 2010). Additional hands-on research on this topic—particularly at a juncture when the City is open to policy and program suggestions – could significantly change government approach to public benefits agreements and negotiation processes. The majority of research and publication on CBAs has been conducted by and for advocacy groups seeking to craft CBAs, with the exception of a recent article highlighting how practitioners can consider CBAs as part of their work (Wolf-Powers, 2010).

This chapter presents a detailed case study analysis of five major real estate development projects in NYC. Projects range from new mixed-use development to redevelopment of existing structures, from a stadium to a sizable university expansion. Case examples were selected using six criteria: being known for involving intense public benefits negotiations or fights, including public money (subsidies) in the project, being relatively large (either involving many hundreds of thousands of dollars or significant square footage), threatening serious impacts on the surrounding community, including of some type of benefits agreement, and my ability as a researcher to access information related to each project. For each case study example, this chapter presents a brief project synopsis, followed by a description of the negotiation process, a review of the interests represented,

an analysis of the benefits requested, an overview of the end product and implementation arrangements, and a list of the fiscal accountability measures that were imposed. Each of these projects has been researched online, by review of public documents, and when possible, through interviews with individuals from the city, community groups, or developers involved directly with the project.

## A. The Bronx Gateway Terminal Market (BTM) (2006)

The BTM redevelopment negotiations were something of a sham. There was inadequate representation of key community interests and little or no fiscal accountability or implementation measures. The case raises serious questions of legitimacy and fairness around a benefits document that was ultimately signed between the developer, elected officials, and a few community groups.



### Synopsis

The mall development plan, including displacement of existing businesses and disputes around public benefits, made the BTM a controversial project. The BTM was originally a market center in the South Bronx constructed in the 1920s. Over time, the market became known for its ethnic food vendors, most of them small businesses. The market was mired in litigation between the landlord and the tenants over needed repairs; by some accounts, the property had become blighted (Berger, 2009). In 2004, the Related Companies (Related), a prominent NYC real estate developer, acquired a lease from the NYCEDC for the BTM site. Related knew that the project was going to be controversial from the start

since 200 employees at the existing site were likely to lose their jobs. In 2006, Related's development proposal – construction of a mall of nearly 1 million square feet – was approved by the City Council (Lavine, 2009). The project ultimately cost \$500M, and received subsidies from the City via tax breaks. The City also paid for demolition of the existing structures (Berger, 2009). The Bronx Overall Economic Development Corporation (BOEDC), the Borough President's quasi-public economic development agency focused on the Bronx's development, decided to pursue a CBA as a way of deriving maximum benefits from the BTM development for Bronx residents. For many stakeholders, including community groups, local elected officials and city representatives, the BTM represented a huge investment in the

South Bronx – a neighborhood undergoing slow reinvestment after decades of disinvestment, unemployment, and hard times (Craytor, 2011).

*Related's lawyer, Jesse Masyr described the existing market conditions: "We had a particular sensitivity to BTM because we knew we were going to create a significant uproar. The market, whatever you want to say of it, was somewhat functioning. It was decrepit... the first day we went to the site, I was standing there with either the captain or the lieutenant of the police department, and he looks at me and says 'blow it up' as he's standing there. But there were 200 employees there and it was, I felt, going to be a controversial issue" (Jesse Masyr, real estate and land use lawyer).*

### **Representation**

Despite an initial nod in the direction of inclusion and community representation, Community Based Organizations (CBOs) were ultimately excluded from negotiations due to political influence, and there were not able to represent their own interests, raising concerns about legitimacy and accountability in the benefits negotiation. Miquela Craytor, economic development director of BOEDC at the time of the project, determined that building a community coalition to negotiate benefits with Related would be a viable option, and realized that representation of community groups would be a critical element of the process (Craytor, 2011). Related also realized that

community benefits would be necessary to help assuage the controversy over evicting current BTM tenants prior to demolition, and approached the Borough President's office to propose a CBA (Masyr, 2010). The BOEDC moved forward to convene a group of community groups to discuss possible community benefits. Environmentalists, workforce activists, faith groups, and others participated in smaller committees to address individual topics, such as jobs and public health. Craytor believed these groups represented the community, though no comparison to demographics was officially conducted (Craytor, 2011).

Despite BOEDC's public portrayal that there was broad and deep representation of community interests, some community groups and Related acknowledged that the BOEDC (on behalf of the Borough President) had decided which groups should be involved rather than convening a truly broad spectrum of groups who represented the widest variety of community interests (Craytor, 2011; Masyr, 2010).

*In hindsight, Craytor notes that she "didn't realize that they [BOEDC leadership] essentially were trying to handpick groups that would legitimize the process and not get in the way, and that had some legitimacy and support toward the Borough President, and in short, they were trying to handpick the right groups so they would get the right coverage and that*

*the project would get through without anyone stopping the developer because the Borough President wanted the development to move forward. What trumped everything else was getting the project done” (Miquela Craytor, Sustainable South Bronx Executive Director).*

### **Process**

According to stakeholders on all sides, the process was a sham. The group broke into committees to address benefits by topic and develop a list of requests, after which it employed the services of pro-bono lawyer Gavin Kearney to work with Craytor to craft a legal document along the lines of a successful California CBAs (Craytor, 2011). The group of community stakeholders thought they would be negotiating directly with Related. A representative from the Borough President’s office who was participating in the discussions was secretly reporting back to Related. Related and the Borough President were concurrently meeting about the possibility of a CBA and what it might involve. Their discussions were entirely separate from the community meetings (Craytor, 2011).

Well into the process, a Bronx-based environmental justice group called Sustainable South Bronx (SSB) realized that elected officials were not going to allow community groups to speak for themselves or negotiate on their own behalf, and “that the community groups around the table were not truly empowered in the way that

they thought they were”(Craytor, 2011). SSB alerted the other community groups, and the BOEDC consequently removed SSB from the task force and refused them access to future negotiations. In the interim, BOEDC and Related met, and Related proposed its own version of a CBA without speaking to the community groups or reviewing the CBA it had in mind. Related ultimately negotiated benefits through the Borough President’s office, though Craytor was able to raise many of the points generated by community groups and two representatives from the initial community task force were included.

*Masyr reports that he “basically negotiated with the elected officials...I mean there were community groups, but bullshit, Bronx Terminal Market was negotiated with elected officials...at Bronx Terminal Market, we didn’t really have a community coalition. I negotiated that deal with the BP and the City Council who... were very much at odds” (Jesse Masyr, real estate and land use lawyer).*

*Craytor has similar recollections: “the people that were actually empowered with the position to negotiate wasn’t the community. It was really the elected officials who took info from the community, but the community wasn’t really the ones across the table from Related, the developer” (Miquela Craytor, Sustainable South Bronx Executive Director).*

## **Benefits**

The community task force created a robust list of requests including the community benefits it felt were most important. These included business development services (contracts, mentoring, space for small businesses), \$3M for local hiring and job training (first source hiring), environmental provisions (particularly around polluted air), and other provisions (no Wal-Mart, pedestrian scale design features, protections/amenities for a buyer shopping club, below market rent childcare, meeting space for Community Board 4) (Lavine, 2009).

## **End Product and Implementation**

The end product and the mechanisms to ensure implementation generated further questions about legitimacy, accountability, potential enforcement, and fairness. In 2006, an agreement discussing benefits provisions was signed between Related and BOEDC. Only 3 of the 18 CBOs originally involved in the preliminary task force signed it; the rest abstained. The document states that it is a Community Benefits Agreement signed between the Developer and "the Coalition," which is defined only as the organizations signing the document ("Gateway Center at Bronx Terminal Market Community Benefits Agreement," 2006). The contract requires Related to provide regular reports of benefit provisions to the Coalition. It states that Related must make good faith efforts to

fulfill its obligations. If the Coalition thinks Related has defaulted on the agreement, it can demand arbitration or take other legal action. Ultimately, if Related does not fulfill its obligations, it must pay the Coalition up to \$600,000 in damages. The Coalition, for its part, must provide oversight of all benefits activities and report to the community at large. The developer is not responsible for ensuring that the Coalition or any partner organizations fulfill their responsibilities ("Gateway Center at Bronx Terminal Market Community Benefits Agreement," 2006).

With respect to benefits, the contract includes aspirational goals with few numbers and no means of enforcement. Contract language provides loopholes. For example, "In order to improve the impact of the project on employment of the members of the Priority Areas, the Developer will encourage and use reasonable efforts to participate with local unions and community based organizations and educational institutions" for training services ("Gateway Center at Bronx Terminal Market Community Benefits Agreement," 2006). Language such as 'use reasonable efforts' and 'encourage' do not mandate implementation.



## Finances

### *Subsidies*

According to Good Jobs NY<sup>1</sup>, Related received \$133.93 million in subsidies, including \$7 million in Industrial Development Authority benefits through a mortgage recording tax exemption, \$109.63 million in property tax abatement, \$6.09 million in sales tax exemption, \$7.1 million in capital contribution for demolition, and \$4.1 million for relocation payments (G. J. N. York). The large amounts of subsidies provided contribute to some community members' belief that the developer should be able to make benefits payments, given the amount of funds the developer was receiving from the City writ large.

### *Fiscal accountability*

Since the BTM CBA was signed in 2006, there have been charges of fiscal impropriety involving BOEDC, including a disagreement over who would receive the funds. Ultimately it was agreed that the funds would go to the Borough President through BOEDC, but that the executive director of benefits administration would be appointed by the City Council. There was no discussion of how funds would ultimately be administered, or how benefits such as job training and hiring provisions would be implemented. Many of the community groups involved were

dependent on the Borough President for funding, and it was unclear which organizations would ultimately receive funds to implement benefits programming (Masyr, 2010).

Numerous charges have been investigated regarding fiscal monitoring and accountability of funds at BOEDC. "In July 2009, a lawsuit was filed by the CBA Administrator charging the Bronx Overall Economic Development Corporation (BOEDC) with diverting \$1.6 million promised in the CBA for job development towards BOEDC salaries. The Bronx Borough President initiated an investigation September 2009, which determined that BOEDC had used the funds for payroll expenses for its Fast Track program" (Agreements, 2010).

*Masyr says that the contract itself lends itself to havoc around fiscal accountability: "If you look at the BTM CBA, you'll see a clause that... makes no sense at all. We agreed to \$3M in funding. We the developer, were the sole party who would decide what to do with \$3M dollars. Why would you let a developer be responsible? I could have made that check out to anybody" (Jesse Masyr, real estate and land use lawyer).*

*"How do you spend the money in an intelligent manner? What happened in the Bronx is a good example – nobody stole the money, but it wasn't spent on what it was supposed to be spent on" (Masyr, 2010)*

---

<sup>1</sup> Good Jobs NY is an organization jointly staffed by the non-partisan research and analysis organizations Good Jobs First and the Fiscal Policy Institute.

### **Resulting questions**

The public benefits negotiations that occurred at BTM raise several important questions: how could the process have been structured so that all the relevant community groups were really involved, and the developer and the city were held accountable for living up to the agreements that were made? What is the appropriate role of elected officials vs. community organizations in CBA negotiations, and how should a developer interact with each? From a management perspective, is there a better way to manage a CBA negotiation process?

## B. Kingsbridge Armory (2006-2009)

The Kingsbridge Armory public benefits negotiations involved a strong community coalition that represented a wide range of community voices in a process pushing for a CBA focused on the issue of “living wages.” Living

wages in this scenario means an hourly wage that a working adult needs to earn to pay for basic needs such as housing, food, transportation, and clothing. It differs from minimum wage and involves a wage rate that covers real costs.<sup>1</sup> The project ultimately died at the City Council vote, the conclusion of ULURP, and subsequently, no benefits agreement was ever executed.

### Synopsis

The Kingsbridge Armory is a 575,000 square foot landmark building that comprises an entire city block in the Northwest Bronx in one of the poorest census tracts in New York City. The Armory was largely abandoned after the National Guard ceased operations



there in 1993 (Mogilevich, 2010). The building is located in Education Mile, an area that includes the Bronx High School of Science, Monroe College, and Lehman College (Judd, 2008). The controversial development proposal included converting the Armory into a mall with other mixed-use development (Lavine, 2008b). The developer, Related (the same developer of the Bronx Terminal Market), proposed building ‘The Shops at the Armory,’ a mall with “destination anchor retail development, coupled with specialty and local retail, restaurants, a cinema and community space. Other proposed features include a recreational facility, catering and banquet space, outdoor open space with a seasonal farmers’ market and café, and parking for 400 cars” (NYCEDC, 2008). According to Related, the redevelopment would have created 1,800 construction

<sup>1</sup> For an interesting overview of more recent living wage campaigns and debate, see [http://www.nytimes.com/2006/01/15/magazine/15wage.html?pagewanted=3&\\_r=1](http://www.nytimes.com/2006/01/15/magazine/15wage.html?pagewanted=3&_r=1)

jobs and 2,000 permanent jobs. Reports indicate that Related intended to invest approximately \$310 million to acquire and redevelop the Armory (NYCEDC, 2008).

A coalition of community groups incubated at the Northwest Bronx Community and Clergy Coalition (NWBCCC) called the Kingsbridge Armory Redevelopment Alliance (KARA) pushed for a CBA based on a variety of principles, including living wage jobs and community space (Pilgrim Hunter). In 2009, Bronx Borough President Diaz and KARA presented a draft CBA to Related. The developers' representatives declared, "a living wage clause would be a 'deal killer'" (PlanNYC, 2010b). In response, Diaz declared that he would only support the project if a CBA containing such a clause were signed. The project moved forward to the City Council without a CBA included. In December 2009, the City Council voted against the proposal 45-1, representing the first time in Bloomberg's administration that the Council disapproved a development project. Council members cited traffic and parking concerns, in addition to the absence of a living wage provision. In March 2010, Diaz named a task force to work on moving forward with the Armory redevelopment (PlanNYC, 2010b).

### **Process**

Negotiations initially involved collaboration between the City and KARA

to prepare an RFP to which prospective developers would have to respond. Once a developer was selected, negotiations around public benefits ground to a halt as the developer and the Coalition reached loggerheads. Although the Coalition did not meet its goal of putting a CBA in place, it succeeded in forming a strong coalition that was ultimately pleased that the project was halted. This type of strong community network turns out to be central to all successful CBA negotiations examined in this thesis.

The City (City Hall and the NYCEDC) was aware that from the start KARA wanted a CBA, but that was not something the administration was willing to support at that time. Thus, the City decided instead to push towards an extensive, upfront community engagement process that would allow the RFP, developer selection process, and ultimately the project, to reflect community concerns but not empower direct community involvement in a CBA negotiation (Wambua). Community representatives, including KARA, participated in a task force with the NYCEDC to write the project RFP, which prescribed a retail center development. Three proposals were ultimately received (Pilgrim Hunter). Related was selected to be the developer, and task force meetings continued throughout ULURP to negotiate and discuss various benefits as well as site use and development. In hindsight,

both KARA leadership and Related's legal representation note that KARA was fundamentally opposed to the proposed development, meaning the living wage debate was directly linked to the proposed use, not just the associated benefits.

In partnership with the Borough President, KARA ultimately proposed a CBA that included a variety of requests, including a mandatory living wage provision that Related rejected. The City made it clear that although they were supportive of community involvement, they would not support a CBA. KARA would not settle for anything less than a CBA. The project collapsed when it was voted down at the City Council, the first time a real estate project shepherded by Bloomberg's administration was unsuccessful. The City ceased further efforts to produce a new development plan. The Borough President's office convened a new task force in 2010 to lead the redevelopment process; the task force includes KARA, former Comptroller Ned Regan, Steven McInnis, political director for the New York City District Council of Carpenters, Majora Carter (founder of Sustainable South Bronx), the chair of Bronx Community Board 7, Jack Kittle, political director of District Council 9, Council Member Cabrera, the new Senator elect, a Steven M. Safyer, MD, President and CEO of Montefiore Medical Center, the president of the BOEDC, the CEO of a Partnership for New York,

Jack Rosen, Chief Executive of Rosen Partners LLC and a representative from educational institutions (“Diaz announce new Kingsbridge Armory Task Force,” 2010; Pilgrim-Hunter, 2010). The city administration is not involved; Borough President Diaz states that he invited EDC president Seth Pinsky to join the task force; Pinsky declined (Kratz, 2010).

*“As a developer, I don't care. It's costing me x, and once I've acknowledged the cost, I've spent the money. So that's why I'm nervous talking about Kingsbridge as a community benefits agreements. I think it's a better example of the process and why the process matters and when you fuck with it, why you pay the price” (Jesse Masyr, real estate and land use lawyer).*

### **Representation**

The depth and breadth of KARA's coalition was impressive, earning it the support of Bronx elected officials. The initial project task force, convened by the City, included the NYCEDC, City Hall, a State Assembly representative, BOEDC, the Borough President's office, the Community Board, and KARA. KARA created the broadest coalition it could after studying many successful CBAs, particularly the original flagship agreements in California. The broader the coalition the more leverage they would have over the negotiations. KARA included unions, clergy, CBOs, local elected officials, schools, and others (Pilgrim-Hunter, 2010). Ultimately, the

Borough President supported the coalition, which gave KARA credibility with the City Council.

*“We included everyone we could to circumvent interference in our being able to negotiate. We had unions, our clergy, CBOs, local electeds supporting us; we had schools – a very, very broad coalition. One of the things that Related didn’t anticipate...was the coalition” (Desiree Pilgrim Hunter, community advocate).*

### **Benefits**

KARA views the Armory as a potential multi-use building that could address numerous problems plaguing the Bronx: affordable recreation to address obesity and public health concerns, jobs with good salaries to tackle un/underemployment, technical training programs to develop a skilled workforce, a connection to schools since Bronx schools are overcrowded (and the Armory sits on Education mile), and community meeting space since the Armory is the “fulcrum” of the community - it is the center of Kingsbridge Heights, and given its size, could be a central resource (Pilgrim-Hunter, 2010). KARA’s platform also included requests for space for non-profit cultural institutions, retailers that serve the community while also preserving the market for existing businesses outside the armory, environmental protection, the ability for workers to freely join a union, safe union construction jobs, and a living wage that provides dignity for workers

(KARA, 2011).

These ideas were derived from a charrette that KARA hosted. Living wages and first source hiring were two of the fundamental community asks, particularly since KARA was not entirely supportive of the mall development (“Campaigns and Programs: Redeveloping the Kingsbridge Armory,” 2011; Pilgrim-Hunter, 2010). The group also demanded environmental and safety improvements given the likely increase in vehicular traffic. For many of these issues, KARA and its members consulted with field experts from local or national CBOs to inform their asks and decision making (Pilgrim-Hunter, 2010).

*“In exchange [for the negative impacts], they were putting in what I call a poverty wage center, a Wal-mart in sheep’s clothing...1200 part time, low-wage no-benefit jobs. The issue there is now you’ve sentenced the next generation of kids into poverty” (Desiree Pilgrim Hunter, community advocate).*

*“Who was driving living wages? The retail workers union, and everybody drank the Kool-aid – KARA, other trade unions, of course we want living wages – you sound like an evil person if you are against it” (Jesse Masyr, real estate and land use lawyer).*

*“They wanted us to say that we would make our tenant pay a rate inconsistent with all their other facilities, and we said no from day one. We won’t do it, we can’t do, it renders the*

*project unfinancible to us” (Jesse Masyr, real estate and land use lawyer).*

### **Resulting questions**

The benefits negotiations and challenges at Kingsbridge Armory raise several important questions: how should the City work with a coalition of community organizations, and what role can and should community groups play in formulating a development project? Can the City’s outreach process prior to Uniform Land Use and Review Process be sufficient to address benefits concerns and development programming? How can the balance of power between the City and Borough President be addressed with respect to negotiating CBA? What are the long-term impacts that a CBA could have in NYC?

## C. Yankee Stadium (2006)

The benefits negotiations and agreement associated with Yankee Stadium have been reported to be illegitimate, unaccountable, and unenforceable by press, academic blogs, Bronx-based community organizations, and community advocates. No community groups were involved, and the final agreement is hardly responsive to the project's negative impacts.

### Synopsis

The New York Yankees' (the Yankees) new stadium, along with three nearby parking garages (with nearly 5,000 spaces), 1 block north of their former location at East 161<sup>st</sup> St and River Avenue in the Bronx, has been highly controversial since it was proposed in 2004 (PlanNYC, 2010c). The new stadium and parking garages were constructed on public parkland (Good Jobs NY Insider Baseball) in the middle of popular and highly used Macombs Dam and Mulally parks (News, 2006). By 2005, the New York State legislature had moved to de-map the two parks on which the Yankees proposed to build. De-mapping means permitting a zoning change that



Macombs Dam Park, July 2006 (NYC Parks Advocates)



Macombs Dam Park, July 2008 (NYC Parks Advocates)

allows for alternative uses. This decision allowed the project to move forward into the seven-month long Uniform Land Use Review Process (ULURP). In November 2005, "Community Board 4 recommended that the project be rejected, largely on grounds that excessive public funding [was being provided] and inadequate replacements for lost parkland. Despite growing opposition, the City Planning Commission unanimously endorsed the project the following February" (PlanNYC,



2010c). The Yankees threatened to leave the city if they were not granted significant subsidies (Press, 2008), and the City was willing to support the Yankees at the perceived cost of Bronx residents.

Community opposition, primarily led by non-profit watchdog group NYC Parks Advocate, was driven by feelings that the proposed replacement parks were highly inadequate. These replacement parks were to be “scattered on separate parcels, including the tops of parking garages. The new recreational spaces would be closer to the highway and train tracks and an additional five-minute to half-hour walk from where people live. Most of the trees would be cut down. The new stadium would go directly in the middle of the community’s current park, next to a residential area” (Schwartz, 2006). This was a huge concern to the mostly black and Hispanic community, which suffers the highest asthma and obesity rates in the city, but the “lowest ratio of parkland to 1,000 residents” (Schwartz, 2006).

### **Representation**

This project is known for its exclusion of community groups and local input. In 2006, the Yankees signed a CBA with former Borough President Adolfo Carrion, and Council members Maria Baez (who is no longer in office), Joel Rivera and Maria Del Carmen Arroyo (known as the Bronx Delegation) (Cilberto, 2010).

The agreement was negotiated without any participation of community groups, including those active in speaking out around the parks and public health issues, and was perceived as highly illegitimate by community groups, advocates, academics, and land use lawyers (PlanNYC, 2010c).

### **Process**

Information about the negotiating process is largely unavailable, and former elected officials involved are unwilling to speak about it. Popular press repeatedly highlights criticism of the CBA, and states that an agreement was signed without discussion of the negotiating process. The opaque process leads to questions of legitimacy and the accountability of the officials involved.

### **Benefits**

Community groups, for example, Sustainable South Bronx and NYC Park Advocates, raised benefits concerns directly related to the project. Primary issues raised by opposing groups included parks (rehabilitation and new areas to replace 20 acres of parkland used for the stadium) (Lavine, 2008c), traffic and environmental mitigation, and concern over fiscal accountability regarding the use of public funds (PlanNYC, 2010d). The final agreement committed the Yankees to the following provisions that do not reflect most of these community concerns: funds to Bronx community organizations

(\$800,000/year from 2006-2046, put into a trust fund), \$100,000 of equipment and 15,000 ticket donations to Bronx groups (PlanNYC, 2010c), 25% of construction jobs for Bronx residents, 25% of stadium contracting to Bronx firms (Wolf-Powers, 2010). \$10M was contributed toward new parks (est. total cost is \$115M) (PlanNYC, 2010d). The misalignment between requested benefits, which focus on negative impacts such as traffic and health concerns, and benefits provided, such as Yankees tickets and sports equipment, demonstrate the lack of community input into the process. In addition, strong fiscal accountability measures were not put into place.

*"I was almost offended that they were going to sign it. You have the poorest borough in the city, and this is what you are contemplating signing with the richest team? Are you kidding me?" (Miquela Craytor, Sustainable South Bronx Executive Director).*

*"Yankee stadium was not really a CBA, it was more a statement of charitable intent" (Jesse Masyr, real estate and land use lawyer).*

### **End Product and Implementation**

The commitments made in the contract, and the implementation of those commitments, have been fraught with controversy. The contract itself, signed in 2006, includes agreements made between the developer and the Bronx Coalition of local elected

officials, without the involvement of any community organizations. The contract notes the appointment of a Program Administrator whose role is to implement and monitor benefits commitment, with \$450,000 per year to cover staff and program costs. The Administrator's responsibilities largely include outreach, business improvement district management (to improve commercial districts), MWBE certification (to help minority and women owned businesses become certified as such, therefore making them eligible to receive certain contracts), technical assistance, information provision, mentoring, monitoring and reporting. The contract closes with a statement that the Yankees are held to this contract by the Courts of New York State ("Yankee Stadium Community Benefits Agreement," 2006).

The established Community Benefits trust fund is to be administered by an appointee and advisory board of elected officials involved with the benefits negotiations (Lavine, 2008c) - the same officials who signed the benefits agreement. "Community groups denied a role in the process claimed that this amounted to a "slush fund" that would be doled out to politically favored causes" (PlanNYC, 2010c). In 2008, the media highlighted community outrage, as the Yankees had not made CBA payments as promised and already were arrears by \$1M. A representative of the benefits advisory panel (a group that

many community members and the press doubt existed) stated that disbursement of funds would begin the next month, and that they would be concentrated in the community board districts most impacted by the development (Meminger, 2008). An independent monitor (an individual) is reported to be overseeing local hiring and contracting (Wolf-Powers, 2010), though this is difficult to confirm.

*“Yankee Stadium [CBA] is horrific, it was bad on all accounts, there was no accountability, there was no connection to the job piece... there’s no way to make the Yankees basically follow through on these promises, there’s no transparency of how they are reaching their numbers or what they constitute as hiring and job numbers” (Miquela Craytor, Sustainable South Bronx Executive Director)*

## **Finances**

### *Subsidies*

The project cost an estimated \$1.5B. A variety of subsidies were provided by multiple sources. City subsidies totaled \$300M (Pesca, 2009); while the “IDA [Industrial Development Authority] issued \$942M in tax-exempt bonds... plus an additional \$370.9M in bonds in 2009 – \$259M of which are tax-exempt” (PlanNYC, 2010d). There has been continued controversy with regard to fiscal accountability both over provision of subsidies as well as opaque and impartial channels of fund management” (PlanNYC,

2010c). There was considerable feeling that the City bent over backwards to keep the Yankees in NYC at significant cost and possible illegal dealings. In a Congressional panel hearing related to the investigation over inappropriate subsidy provision, NYC officials stated that “they didn’t do anything improper in shepherding through \$1.3 billion in financing for a new Yankee Stadium, but the assurances did little to mollify the congressman who is investigating the deal. At issue was a six-fold increase in the city’s assessed value of the land, to around \$200 million. Rep. Dennis Kucinich, an Ohio Democrat, suggested the reason was to make it easier to get tax-exempt bonds to pay for the construction of the ballpark in the South Bronx” (Press, 2008). The City and the Yankees maintain that nothing was done illegally, while critics believe that the subsidies are questionable.

With respect to the benefits fund, reports indicate that although the Yankees have met their obligations to pay into the fund, the charity has been continuously ensnared in ongoing controversy. In 2008-2009, press and reports like PlanNYC from NYU’s Furman Center on Real Estate question whether or not the fund administrator, managed by Michael Drezin, had actually dispersed any of the funds to community groups. PlanNYC further notes that information about the fund’s operations, disbursement patterns, and

follow through are unavailable (PlanNYC, 2010d). Problems continued into 2009 when Drezin was fired after claiming that the Yankee's first payment was deposited in a non-interest bearing account at a bank founded by the community benefits fund's chairman. As of 2010, the two parties were still in litigation, though there is no recent information available as to the status of the controversy, or who replaced Drezin (Wolf-Powers, 2010).

*"...there was a big pot of money that was going to some subgroup that was going to be handpicked by elected officials. Can you make it even more obvious that this is your slush fund for electeds?" (Miquela Craytor, Sustainable South Bronx Executive Director).*

### **Resulting questions**

The Yankees Stadium benefits negotiations raise several critical questions: should it be mandatory that community groups be included in negotiating community benefits agreements? Who should monitor operations and funds related to benefits agreements, and what structures or rules should be put in place to ensure fiscal accountability and transparency? In instances when community groups feel that elected officials are not representing their needs, what recourse do they have? Should benefits agreements be permitted to provide a kitty of money, rather than ensuring that specific actions are taken?

## D. East 125<sup>th</sup> St. Mixed Media Development (2006-2008)

The East 125<sup>th</sup> Street Mixed Media Development project provides a unique example of a negotiations process convened by the City that maintained a goal of substantial community representation and continued community involvement. A community task force helped write the project RFP, and the ultimate contract between the City and the development team included the promise of various benefits; no separate CBA was signed.

### Synopsis

The East Harlem Media/Entertainment/Cultural Center (East Harlem M/E/C) is a mixed use redevelopment on approximately 6 acres, comprised of three parcels bounded by Second and Third Avenues and 125<sup>th</sup> and 127<sup>th</sup> Streets, as well as a small parcel on the corner of 125<sup>th</sup> St and Third Avenue (NYCEDC, 2007). After a city-led planning process for the project site failed in 2005, the City partnered with a community task force, comprised of the local Council member (Mark-Viverito) and community organizations, to form a development project that met City desires and local community needs. The Community Board and local organizations initially asked for a CBA; City Hall countered by supporting the organization of the task force to work through community issues and needs. The group

ultimately conceived of, proposed, and approved a redevelopment of “1.7-million-square-foot project includes office and retail space, a small hotel, a cultural center, open space and 800 apartments, 600 of which will be set aside for families with low and moderate incomes” (Bagli, 2008). There will additionally be a cinema, media center, open space and plaza (Arak, 2010). The project has been heralded in the press, City Hall, elected officials, and local community groups as being a better, community-driven process that incorporates community benefits and needs. However, there has been some controversy with regard to use of eminent domain, as the City initially only owned 82% of the mostly vacant parcels and negotiated with private owners for the remaining property (Bagli, 2008).

### Representation

Local community groups had previously defeated a city proposal for this site in 2005, following which City Hall reached out to Council member Mark-Viverito and the Community Board to develop a task force that would address local concerns and reformulate the project (Bagli, 2008). According to East Harlem Preservation, a local organization, and the NYCEDC, the East 125<sup>th</sup> St. Taskforce members included representatives of the following community organizations: Office of the Manhattan Borough President, City Council, Manhattan Community Board 11,

AK Houses, Harlem Neighborhood Block Association, Homeowners Association of East Harlem, Jackie Robinson Houses Tenant Association, PS 30 Parent Association, East 127th Street Block Association, Boriken Health Center, Youth Action Program & Homes, WE ACT for Environmental Justice, Housing Here and Now, as well as project leads from City Hall and the NYCEDC (NYCEDC, 2007). George Sarkissian, District Manager of Community Board 11, confirmed this wide representation, and noted that although a few groups dropped off the task force during its two years of meetings prior to selecting a developer, he still felt it was representative of the community (Sarkissian, 2011).

*“In the instance of East 125<sup>th</sup> St, which was a very protracted negotiation process, what happened was...upon discussions with the CB and the Council person, we asked them to put together a representative panel of individuals that would serve as a task force that could be directly engaged. Of course they would be a part, and it would also give seats at the table for a broad cross section – non-profits, principals, interested parties – so they did this very effectively. They went out and put together a task force that was really extensive” (Matt Wambua, former Senior Policy Advisor to the Mayor).*

*“The task force was created; they met with EDC several times to talk about what they wanted to*

*see built through this development and it became really clear to EDC that what the community wanted and that what the [developers] selected by the previous administration were willing to do were two very different things so they de-designated them. They started a brand new RFP process. So all of these elements that were coming out of this initial conversation with the task force, which was at this point pretty grassroots...came into the RFP development, which is pretty key, and it was a community driven process” (George Sarkissian, District Manager of CB 11).*

### **Process**

Starting in 2006, the East 125<sup>th</sup> St. task force met every other week for two years to specify development principles, project goals, and community benefits before ULURP, with a goal of developing a project RFP that reflected the communities needs, desires, and was financially feasible (NYCEDC, 2007; Sarkissian, 2011; Wambua, 2010). This process occurred largely prior to ULURP, as City Hall’s goal was to ensure that negotiations were conducted prior to ULURP and to avoid CBA discussions at all costs. Thus, they wanted to make sure the project RFP included the community’s expectations and needs. The final RFP that was released by the EDC highlights the community planning process and involvement of the Task Force in detail on page 2, and continues to refer to Task Force involvement throughout the document (NYCEDC, 2006; Sarkissian, 2011).

The meetings were facilitated by City Hall advisor Matt Wambua and an EDC Senior Project Manager. The Community Board District Manager notes that Wambua's involvement was critical, as he provided official representation from the Mayor's office as well as a commitment to and deep understanding of working with community groups (Sarkissian)<sup>1</sup>. The Taskforce reviewed project proposals, and ultimately selected the development team and approved the project over the course of a second year of meetings (NYCEDC, 2007; Sarkissian, 2011; Wambua, 2010). Most groups remained involved throughout the negotiations. Council member Mark-Viverito is quoted in several media sources as saying "This is a model for how planning and economic development should be done in the future...we have produced a project that is in tune with the community" (Bagli, 2008).

While the community planning process, including the RFP development, developer selection, and ultimate agreement, is regarded by most stakeholders as being

<sup>1</sup> When asked about City Hall's involvement in the process, CB11 District Manager George Sarkissian notes that Matt Wambua was involved in... "...every conversation! I wouldn't say every conversation actually, the task force would meet and identified various elements of the project and took them one by one. We'd have a meeting about housing, and we'd create what we'd call 'elements of consensus' – points that we thought were elements that needed to be included in the project, and then we'd meet with EDC to get EDC's take on them, do a little back and forth, and create some sort of compromise" (Sarkissian).

exemplary, George Sarkissian notes concern about the final week of the process. Immediately prior to the City Council vote, community benefits had still not been finalized or agreed to, and final negotiations ultimately took place between the Council member and the developer; the task force was excluded from the final stages of the negotiation process and felt like the process had been taken over (Sarkissian, 2011).

*"In many respects...the negotiations were before ULURP in order to better formulate the general benefits that were going to be [included] but also with the expectations that they would be ongoing through ULURP...the intent of my projects was always to create a longer build up time that allowed for more substantive negotiation so that the project truly reflected community need" (Matt Wambua, former Senior Policy Advisor to the Mayor)*

*"I think what often happens is that in these community benefits agreements is that an RFP is released by a municipality, a development team is selected, and THEN the development team comes to the community and it's like you are chipping away at the edges....if you were in on it before hand and upfront and determined [what you wanted] you wouldn't even need this conversation. That part of the process worked well. The community task force working to develop a very detailed RFP – that part was great. After that, getting these folks together to meet regular and review proposals works great,*

*as long as they get to select a development team and negotiate a set of community benefits with them, and I think that was what was missing in this process” (George Sarkissian, CB11 District Manager).*

### **Benefits**

The Task Force asked for a wide range of benefits, including 700 affordable housing units set aside, a local hiring provision that included prevailing wages and a labor peace agreement as well as 100 apprenticeship positions to create union slots for East Harlem residents, below market rate space for local businesses (60% of market rate for space greater than 1,200 square feet, 10% of gross annual sales for space less than 1,200 square feet), locally owned and controlled cultural space including a proscenium stage theater, a small black box theater, and a digital arts space with fit out funded by the developer, publically accessible open space (Office of Communications, 2008), continued local involvement in the development process, no use of eminent domain, and information about impacts on health and local services (Lieber, 2008; NYCEDC, 2007; Sarkissian, 2011).

Wambua notes that the City did not put any preconditions on what could or could not be asked for, and that the group was willing to consider everything, using cost, feasibility, and whether the underlying requested benefit related to the property and the project as filtering criteria

(Wambua, 2010). Over the span of two years, the task force considered all of the benefits listed above, using the internal expertise of the group to help inform their decisions (Sarkissian).

*“What we did was try to constitute the task force with two different types of folks. One were folks from the community that represented other people, like tenant associations and local churches and stuff like that. The other groups were local CBOs that had that kind of expertise. We had someone from WEAct to talk about the environmental issues; we had somebody from Housing Here and Now, Julie Miles, who had the housing piece down. We had somebody from the health community...to talk about the health concerns. We tried to find expertise to include in the task force so that when we were talking to the city, we had that expertise on hand at the negotiation” (George Sarkissian, CB11 District Manager).*

### **End Product and Implementation**

An addendum to the final development agreement called the Points of Agreement, signed by the City Council Speaker, included 30,000 square feet of dedicated community and cultural space which will be managed and operated by a local non-profit group with ownership interests. It further included more than 600 affordable housing units, a public plaza, new office and retail space, a hotel, 50,000 sq ft dedicated to local retail, a targeted workforce program run in partnership with the Department of



Small Business Services, arts and cultural facility, technical assistance program for businesses in CB11 district (in part through a \$10M investment fund<sup>1</sup>), and sustainable design (Lieber, 2008; NYCEDC, 2007). The project is slated to achieve a Silver LEED certification. There were no separate benefits agreements; all commitments are included in the development agreement, and involve commitments from the City (and its agencies), the developer, and community groups.

While many of the key issues raised by the community task force were included in the RFP and in the Points of Agreement, analysis by Community Board 11 indicates that there were several points omitted, including local apprenticeship positions and prevailing wages, first source (local) hiring from the community, local hiring targets included in tenant leases, the exact below-market rate formula for local retail rentals, and construction of cultural theater space, and no use of eminent domain (Sarkissian, 2008). The Council member and task force may still have an opportunity to negotiate and develop these benefits with the developer, but they were not included in the official contract.

The development project stalled due to the market crash, and experienced further delays because the primary project partner went bankrupt. The project has since been phased; construction began on the

smallest of the three parcels with plans to build the larger parcels in the future. The exact timeline is unclear. Sarkissian notes that Council member Mark-Viverito has reconvened the task force, which has met six or seven times since summer of 2010 to discuss implementation plans. During these meetings, the task force reviewed the Points of Agreement as well as the Remaining Elements to be Negotiated. The group decided that local hiring should be the first task at hand, since construction will generate job opportunities. So far, the developer has met with the task force to discuss local hiring and appears amenable, though no program has been officially established as of early April 2011 (Sarkissian, 2011).

*“City says no more CBAs, and then they put out the RFP for 125<sup>th</sup> St and 2<sup>nd</sup> Ave, and sewn into the RFP...is CBA. So what they are really saying is no more CBA...but the underlying issues in CBA are still there. We’ve just co-opted them. You’ve got to do job training, you’ve got to do set asides, you got to build so much space that’s not economical and then give it away, what’s the difference?” The difference is that 1) you don’t write a check, and 2) you don’t negotiate with “them” [community groups]... haven’t they just said that all the issues with CBA are now just part of the project?” (Jesse Masyr, real estate and land use lawyer)*

## **Finances**

The total project cost totals \$700M (NYCEDC, 2007); Phase I is \$23 million (combination of developer equity and HPD, the State Department of Housing and Community Renewal, the City Council, and NYSERDA) (Drummer, 2010).

## **Resulting questions**

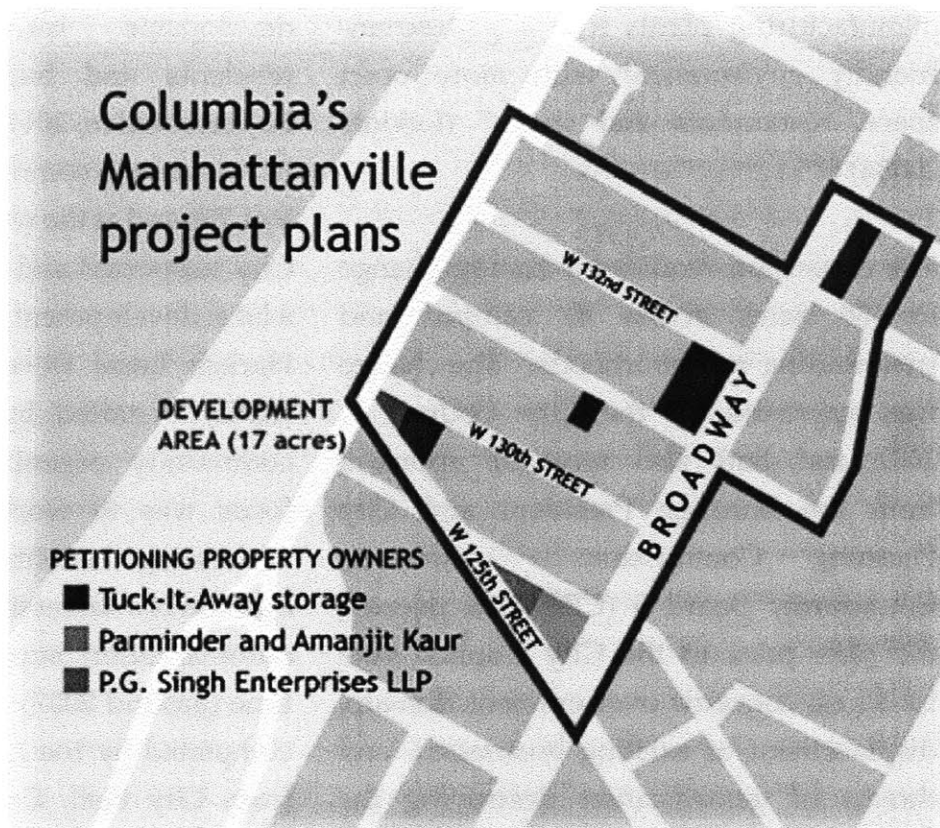
The East Harlem project raises several questions: is the process model used for this project (with the City as convener) one that works and can be replicated for other projects? Were the methods and metrics of representation accurate, such that community groups feel they were included? Do benefits have a better chance of being implemented if they are tasked to city agencies as opposed to community groups? What impact does the support of City Hall have on securing community benefits, regardless of the form of the final contract?

## E. Columbia University Expansion

Columbia University's expansion throughout West Harlem, and the resulting expectation of a CBA from both the City and community, resulted in a unique process for benefits negotiations. A local development corporation (LDC) was formed, and while issues of community representation and nexus of benefits were addressed, the case raises questions about fiscal accountability and the role of the City in CBA negotiations.

### Synopsis

Columbia University (Columbia) is a prominent educational institution in northern Manhattan in the neighborhoods of Morningside Heights and Manhattanville. Facing pressure of a growing student body and a need to expand its facilities to keep pace with its competitor Ivy league universities, Columbia proposed a 15-20 year expansion plan to the City. The plan proposes expanding the campus



footprint by building 6.8 million square feet of “classrooms, research facilities, administration, housing, and parking. The proposed expansion will include redeveloping 17-acres in a neighborhood called Manhattanville from W. 125th to W. 133rd (between Broadway and 12th Avenue) just north of Columbia’s existing 36-acre campus” (PlanNYC, 2010a). The expansion is estimated to cost \$6.3B across two fifteen-year phases, with Phase I concluding in 2015 and Phase II concluding by 2030 (PlanNYC, 2010a). Columbia notes employment projections of 6,000 new job opportunities, and the transformation of “a shabby enclave of auto-repair shops, warehouses, and small

manufacturing plants into a pedestrian-friendly environment with more open space, restaurants and shops” (Lavine, 2008a).

The expansion required a zoning change for 35 acres across its campus and surrounding neighborhoods. The change was approved by the City Council in 2007 and had also received approval from the Borough President and City Planning Commission. However, Community Board 9 (CB9) had rejected the plan prior to the City Council vote based on concerns over eminent domain, displacement of existing businesses, and threats of gentrification destroying the affordability of the neighborhood. CB9 had previously collaborated with the Pratt Center for Community Development to create a 197-a plan (a local land use plan) for West Harlem. CB9’s proposal took into account land use as well as related impacts of land use decisions, and submitted the plan to City Planning in 1997 (Community Representative, 2011). Two years later, Columbia submitted a 197-c land use plan to City Planning that involved “significant residential and community facility expansion exclusively for use by the University. The CPC and the City Council simultaneously approved both Columbia’s proposal and CB 9’s 197-a plan, despite the contradictions posed by the divergent plans” (PlanNYC, 2010a) such as essentially privatizing remaining

developable land and displacing residents and businesses (Community Representative, 2011).

In response to community concerns voiced by CB9, and at the request of Columbia, the City supported and funded the creation of a local development corporation – the West Harlem Local Development Corporation (LDC) – staffed by a representation of community organizations. The LDC’s focus was to work with Columbia on addressing benefits needs and ensure creation of a successful CBA; the Bloomberg administration supported CBAs at that time (around 2007). After significant work completed by the LDC and with support from City Hall, Columbia and the LDC entered into a MOU around community benefits totaling \$150 million (Community Representative, 2011).

### **Representation**

This project is unique in its creation of a LDC with appointed community leaders slated to represent a wide range of interests (Lavine, 2008a). The local Community Board initially designed the LDC to solely include community leaders, and to exclude elected officials. A community member closely involved with the entire process notes that a wide range of groups were on the board, including housing advocates, economic development interests, arts and culture, and more. The Community Board advertised the LDC creation and CBA process through local

newspapers and CBOs in attempts to draw in the widest range of groups (Community Representative, 2011). At the first meeting the LDC chose to include elected officials going forward, as there was great interest in the project from elected officials (Community Representative). In hindsight, press reports indicate that inclusion of local elected officials “would prove to be detrimental to the process...as perceptions arose that they were not representing the true interests of the community and that they were inappropriately controlling negotiations” (Lavine, 2008a). Members of the LDC, however, have characterized the elected officials’ involvement as “having too many hands in the pot” and have observed that while the elected officials could sometimes move benefits conversations forward, they often did so without the LDC, thus leaving out the range of groups represented on the LDC board (Community Representative, 2011). Land use lawyer Jesse Masyr, appointed by the City to advise the LDC, expressed concerns over a process that involves the elected officials who will vote on the project negotiating the project, particularly when funds are concerned (Masyr, 2010).

A community member involved in the entire process states how difficult true representation was, and how building consensus internally – particularly over whether or not to move forward with a CBA if Columbia would not cease its efforts to

pursue eminent domain – was challenging. A few groups dropped off the board after the LDC voted to move forward to pursue a CBA because they solely wanted to stop Columbia from using eminent domain, while the rest of the LDC believed that the project was going to go through and wanted to negotiate a CBA (Community Representative, 2011).

*“The problem was that – a lot of them were very smart and informed – here cometh the problem. How did they form this organization? It was an attempt to be democratic...and so they sort of held these workshops to decide. Set up all of these different kinds of groups that should be presented. Preservationists. Tenants. Landlords. Commercial tenants. Commercial landlords...anyone who could possibly want to be here, and then we’ll have a sort of Athenian town hall meeting, and then all of the commercial tenants you go over there in the room and you pick a guy who will be on the board, and landlords, you pick a guy so we had this hodge-podge of people...the education person was a kindergarten teacher” (Jesse Masyr, real estate and land use lawyer).*

*“Then you have the other piece of the equation which is how do you get community representatives to come out and elect a representative for their interests who is committed to reporting back to them...it sounds very simple on paper but then when you try to execute it it’s a little difficult” (Community Representative).*

## Process

The LDC was started in 2006 with the encouragement of the Bloomberg administration, which provided funds, technical assistance, and later in the process, a mediator (Community Representative, 2011; Wambua, 2010). Weekly public meetings started in September 2006, with working group committees divided by interest around topics including “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” (Lavine, 2008a). City Hall policy advisor Matt Wambua and lawyer Jesse Masyr were present at all meetings. Masyr notes that initially, the negotiations with Columbia were friendly as the university thought it would be a straightforward process, but it ended up being highly contentious. A community member involved with the negotiations confirms this, noting that for a long time, Columbia refused to divulge how much money they were willing to spend on community benefits. Once the LDC had compiled a list of benefits and totaled up the projected costs, Columbia realized that the process could cost them up to \$500 million, which is when Columbia started leaning more towards giving a much lower sum of money and making it clear that they were more willing to write

a check than agree to a CBA involving behavioral commitments (Community Representative, 2011; Masyr, 2010).

Up until the night before the City Council vote in 2008, Columbia was still refusing to sign a CBA. Politics gave the LDC a final piece of leverage: the Public Authority Control Board (comprised of votes from the assembly member, senator, and governor) needed to approve the project for it to move forward, and they committed to voting down the project unless Columbia signed a CBA (Community Representative, 2011; Masyr, 2010).

In the eleventh hour, the LDC’s lawyers told Columbia that the LDC would not sign Columbia’s proposed Memorandum of Understanding (MOU) unless Columbia committed to signing a detailed CBA. Columbia ultimately signed a MOU with the LDC for \$150 million to fund benefits in 2008 the night before the vote, and signed a detailed CBA in 2009 with commitments far beyond donating money (Masyr, 2010).

*“There were a couple of things going on. What the LDC did was they incorporated committees – there was a committee on housing, a committee on economic development, arts and culture, and then invited members who were not members of the LDC to participate and come up with what are the ideas, what do we want, and what are the priorities” (Community Representative).*

## Benefits

The LDC operated through a set of topic-based committees, each with the goal of developing specific benefits targets and deliverables. Community members involved in the negotiations note that Columbia was reluctant to disclose the amount of money they were willing to spend, or what types of benefits they were willing to fund. The two sides, the LDC and Columbia, were negotiating in circles up until the night before the City Council vote, when Columbia presented a Memorandum of Understanding to the LDC with their proposal for benefits funds. Ultimately, Columbia signed this MOU with the LDC that provided \$150 million of funds and in-kind services to the LDC in lieu of a more specific community benefits agreement that details community use, local hiring provisions, or other topics commonly found in CBAs (Community Representative, 2011). The MOU states that Columbia will provide a

\$100 million financial commitment, a demonstration community public school in CD9 for a value of \$30 million, as well as in-kind services for a value of \$20 million. Of the \$100 million, \$24 million will fund an Affordable Housing Fund and related benefits...the balance, \$76 million, will be paid over a 12-year period into a Benefits Fund and will be allocated by the WHLDC (the LDC) across the series of CBA priorities (Kovaleff, 2008).

The MOU indicates that a more specific CBA would be developed at a later date, and leaves the LDC with the power and responsibility for allocating funds across benefit priorities that were not specifically negotiated previously, as Columbia would write a check and have fulfilled the majority of its commitments (Kovaleff, 2008).

A community member explained that the figure of \$150 million was carefully derived. The LDC examined CBAs around the country, and noted that the value of CBAs trend towards 1% of total project costs. The LDC made the argument that the Columbia Expansion is unique when compared to those projects: first, Columbia's plan would effectively absorb the remaining developable property in West Harlem, and second, the development aims to serve Columbia and its students specifically; the general public would likely be excluded from using the land given to the expansion. Thus, the LDC expected higher than 1% of project costs to be dedicated to the CBA. With regard to the specific funding allocations articulated in the MOU, this community member noted that the provision for the affordable housing fund was negotiated solely by the Borough President in meetings that excluded the LDC (Community Representative, 2011).

Following the MOU, a CBA was fully developed and signed between Columbia and the WHDC. This CBA details

benefits far beyond a dollar figure, and involves commitments on a wide range of topics including but not limited to a community school, affordable housing, fundraising, bulk purchasing programs, day care, legal services, living wages, local hiring, construction training, business development and assistance, job training, education (pre-school to college), environmental stewardship, subway improvements, arts and culture, community facilities, and historic preservation (Masyr, 2010; West Harlem Community Benefits Agreement, 2009).

*“We had all these topics, and they were all legitimate topics of discussion that we wanted to negotiate with Columbia, but the people who were heading it were not experts, so when it came to affordable housing, they didn’t have an affordable housing expert on the board” (Jesse Masyr, real estate and land use lawyer).*

*“We were going through these discussions and negotiations and the specifics without putting dollar figures on it. And then we were getting closer and closer to the scheduled date for the vote on the Columbia Rezoning – the City Council vote – and the night before the City Council vote the LDC got a proposal [from Columbia] \$75M cash, \$25M in-kind services, and these other things that Columbia just through into the pot just to make it appealing, i.e. the Teachers College Demonstration school... Columbia’s just throwing stuff in to get to a \$150M number” (Community Representative).*

## **End Product and Implementation**

In early 2011, a community representative indicated that the LDC (West Harlem Local Development Corporation) has been dissolved, and a new entity called the West Harlem Development Corporation formed. The role of the new organization is to determine implementation mechanisms for the points of agreement in the CBA, and to disburse the grant funds provided by Columbia. The representative noted that forming a new group is critical to implementation, as the grassroots organizing skills necessary for forming a coalition and negotiating benefits is very different from implementation, which requires legal, accounting, and real estate skills. The group has recently convened (Community Representative, 2010). As of April 2011, the previous legal team has not been involved in this process (Masyr, 2011).

*“That’s why the Columbia CBA is really a check. It’s a big check, but it’s a just a check, and I think a lot of it had to do with is that from the beginning we didn’t have the expert talent at the table to say what Columbia should do. CBAs to me break into two categories of effort. One is behavioral and the other is monetary. You get a lot more out of behavioral than you do out of monetary” (Jesse Masyr, real estate and land use lawyer).*



## **Resulting Questions**

This case study raises further questions: why would a developer or property owner assume that CBAs are the correct route to take? Why are community groups often at odds with elected officials about what the neighborhood's development priorities are? What is the right role for elected officials to take in CBA negotiations processes? Did the presence of legal counsel benefit the community groups in their advocacy for benefits? Does the official formation of a community entity support CBA negotiations and achieve community outcomes?

Project	Project description	Stakeholders	Finances	Community asks
Bronx Gateway Terminal Market	31-acre former food market in the Southwest Bronx; purchased by Related Co in 2004. A 913,000 sq. ft mall was completed in 2009.	Developer, Bronx political leaders, BOEDC, some CBOs on task force (but not involved in negotiations)	\$500M project; City offered tax breaks and paid for demolition	Business development (contracts, mentoring, space for small businesses); local hiring and job training with specific goals (first source hiring); environmental provisions; other provisions (no Wal-Mart, pedestrian scale design features, protections/amenities for a buyer shopping club, below market rent childcare, meeting space for CB4)
Yankee Stadium	Construction of new stadium 1 block north of former stadium in the Bronx	Yankees, no community groups, Levine, Borough President Adolfo Carrion, Council members Maria Baez, Joel Rivera and Maria Del Carmen Arroyo	Project cost of \$1.5B; city subsidies of \$300M; IDA issued tax-exempt bonds (\$942 million) to the Yankees, plus additional \$370.9 million in bonds in 2009 – \$259 million of which are tax-exempt	Parks (rehabilitation and new to replace 20 acres of parkland used for new stadium), traffic and environmental mitigation, and concern over fiscal accountability of public funds
Kingsbridge Armory	Proposed redevelopment of a 575,000 sq ft former armory into a mall with other mixed-use development in the Bronx	NYCEDC, City Hall, KARA, State Assembly rep, BOEDC, Borough president's office, Community Board	\$18M state/federal tax breaks from IDA, \$13.8M city subsidies, 75% discount on cost of property (\$5M instead of 20)	Living wage jobs, first source hiring, affordable community recreation center, union protection for jobs, environmental remediation, Labor Peace agreement
East 125 <sup>th</sup> St Media, Entertainment and Cultural Center	Redevelopment of six acres (2 million square feet of commercial space) into retail, media, restaurants, cinema, open space and affordable housing in East Harlem.	CB11, NYCEDC, Councilmember Mark-Viverito, Community task force (including CBOs and residents) involved in RFP/selection process, City Hall (Mayor's Office)	Total project cost=\$700M, Phase I is \$23 million (combination of developer equity and HPD, the State Department of Housing and Community Renewal, the City Council, and NYSERDA)	Affordable housing, local hiring provision, below market rate space for businesses, cultural space, open space, promoting arts and culture, local involvement in the development process, information about impacts on health and local services
Columbia University Expansion	16-18 new educational buildings around Columbia's West Harlem campus	A local LDC comprised of CBOs, local elected officials, businesses, was formed to negotiate with developer.	Total project cost is est. \$6B	Broad range, including affordable housing, cultural space, public health accommodations, business assistance, workforce training and assistance, childcare services, involvement in development process, provision that Columbia employees would live outside of district.

Project	Benefits determined	CBA signed?	Outcomes as of 12/2010
Bronx Gateway Terminal Market	Business development (contracts, mentoring, space for small businesses); \$3M for local hiring and job training (first source hiring); environmental provisions; other provisions (no Wal-Mart, pedestrian scale design features, protections/amenities for a buyer shopping club, below market rent childcare, meeting space for CB4)	CBA signed between Related Co. and BOEDC in 2006; only 3 of 18 CBOs involved in task force signed agreement.	Project constructed and completed. Some hiring of Bronx residents achieved and funds for workforce and apprenticeship training provided; BOEDC accused of misusing funds; job training and hire programs underway.
Yankee Stadium	2006 agreement providing \$28 million trust for the Bronx, free tickets and sports equipment for duration of the 40-year lease. Yankees contributed \$10M to new parks (est. total cost is \$115M). The trust fund is to be administered by an appointee of an elected official involved with the benefits negotiations	CBA signed among the Yankees, former Borough President Adolfo Carrion, and the Bronx Delegation of the City Council. Local community groups were excluded.	As of March 2010, it was unclear if any of the funds promised were paid to local non-profits. No funds were dispersed until 2008, and it is unclear whom funds were given to. In July 2010, local activists from the South Bronx Coalition publicly asked about the funds, with no response from the Yankees.
Kingsbridge Armory	Project stalled; City Council blocked over living wage. Borough president managing separate initiative; KARA still active.	No agreement.	N/A.
East 125 <sup>th</sup> St Media, Entertainment and Cultural Center	Agreement negotiated addressing community asks, including affordable housing set-asides, 50,000 sq ft dedicated to local retail, targeted workforce program, arts and cultural facility, technical assistance program for businesses in CB11 district, sustainable design, and public spaces; \$10M investment fund to assist local businesses	No CBA, but benefits negotiations agreed upon through the task force members, Councilmember, Borough President, and the City. Contract language is similar to a CBA.	Due to market challenges, the project has been stalled and broken into five phases. Construction began in May 2010
Columbia University Expansion	MOU was signed in which Columbia agreed to provide \$150M toward benefits, including \$30M for a public school, \$20M for affordable housing, \$20M for in-kind services, \$4M for legal services, and \$76M for TBD uses	CBA signed between the LDC and Columbia.	As of April 2011, funds have not been disbursed by the LDC, which is resuming meetings to plan CBA implementation.

## IV. Major Findings

While these five case studies differ in geography, key stakeholders, and negotiating processes, we can begin to draw preliminary conclusions across the cases to help inform and understand the web of public benefits negotiations in NYC. Taking a step back, it is easy to understand why there is such debate and confusion about CBAs. Do they help community groups advocate for their interests and gain benefits? Do they push developers away from cities? Are there important elements across these NYC cases that can be drawn out to imagine a better community benefits negotiation process for all stakeholders involved – communities, the city, and developers? Are CBAs the best way for municipalities to manage community benefits? Moving forward, is there a better process for benefits negotiations in NYC? The cases shed light on these questions, and highlight these major findings:

**None of the processes or final agreements described in this thesis follow the classic CBA model** in the sense that a coalition of community organizations did not drive negotiations with the developer, with the exception of the Kingsbridge Armory, although that project did not come to fruition. The agreements at Yankee Stadium and the Bronx Terminal Market were negotiated with elected officials. The City convened Columbia

University's negotiations, and although it included a community coalition that determined many benefits in the resulting CBA document, the process also included heavy involvement from elected officials. East 125<sup>th</sup> Street looks and feels closest to many of the flagship CBAs in California with respect to its process and document outcome, but differs in that the community groups negotiating were convened by the City and Elected officials rather than from their own organizing efforts. Another main premise of CBAs – the ability of a community coalition to hold developers accountable and visa versa – is absent from most of these agreements.

**Through negotiations conducted outside of the required land use process, communities obtained more benefits than they would have otherwise received.** Regardless of negotiation process, style, or level of community involvement, communities in every case received more benefits than they would have without entering into negotiations. The task forces participating in the negotiations at Columbia and East 125<sup>th</sup> St. may be deemed most successful at obtaining the breadth and depth of benefits those groups initially wanted, but the communities at BTM and Yankee Stadium also received promises of benefits. According to organizers at Kingsbridge Armory, halting the project as it was planned is a benefit, as they can now create a new plan to utilize that building.

**The ad hoc nature of the CBA negotiations and execution process generated uncertainty for stakeholders.** A more systemized process helped assuage these concerns. At BTM and Yankee Stadium, community groups, a development lawyer, and city representatives all note the uncertainty around benefits negotiations at those projects. There was inherent risk for all parties, and confusion and dismay from community groups when they were cut out of negotiations. The processes at Columbia and East 125<sup>th</sup> St. gave comfort to community groups and city officials who knew what the process was and how they would be involved.

**Developers were willing to enter into CBAs and willing to offer large sums of money.** This is true regardless of how the process was managed, and indicates that the developer is willing to work with a variety of stakeholders (either the city (East 125<sup>th</sup> St), community coalitions (Columbia), or elected officials (BTM, Yankee Stadium)). This finding contradicts the beliefs of some city planning staff that developers are unwilling to negotiate or pay for benefits.

**The absence of community representation prevented some CBAs from meeting community interests, while direct representation of community groups was central to ensuring the CBA process was responsive to community interests**

**in other cases.** The Yankee Stadium case indicates that CBAs do not always include community requests. While the BTM CBA does include some benefits requested by community groups, community members involved with that process argue that it does not meet all of their interests. Conversely, aspects of Columbia University and East 125<sup>th</sup> Street show that CBAs do support community interests. Indeed, the process at East 125<sup>th</sup> Street seems to address stakeholder concerns across the board, where the community task force wrote the RFP in partnership with the City, as well as for the community coalition at Kingsbridge Armory until the issue of living wage came into conflict with the primary site use. Community involvement prior to developer selection or construction allows for a more meaningful dialogue and opportunity for debate and research before the project development or permitting process starts, and allows both the City and community groups to get their ideas and perspectives on the table. Community involvement through a task force can also establish a framework and partnership for working together during future processes related to the development.

**The involvement of elected officials complicates negotiations and raises questions about representation, fiscal accountability, and legitimacy.** ULURP is inherently political; approval of the Council is essential to a project moving forward,

and a Borough President's influence can alter development decisions for years to come. Elected officials' involvement and power incents a developer to cater to the desires and direction of those politicians. While an argument can be made that their constituents elected these officials, community advocates argue that officials do not always represent their needs. Indeed, the cases highlighted demonstrate the confusion and distrust that arises when elected officials become involved with or takeover negotiations. With Yankee Stadium and Bronx Terminal Market, suspicions and concerns over fiscal accountability and the creation of slush funds – or the funding of an organization run by the friend of an elected official – were rampant. In the case of Columbia University, several community organizations left the LDC and ceased involvement in negotiations after elected officials became involved, raising questions of legitimacy and representation, and community members involved throughout note the confusion of having so many stakeholders involved who are connected to funds. With East 125<sup>th</sup> St., elected officials participated on the negotiations task force, and ultimately brokered the benefits agreement with the developer. For this project, community interests were largely represented by the elected officials, though the task force felt excluded from the final negotiations. At Kingsbridge Armory, a strong community coalition benefited from the support of

elected officials, though City officials believe the elected officials disrupted the land use planning process.

**The community involvement process – from initial project outreach through negotiations – differed in each case.** With the Bronx Terminal Market and Yankee Stadium, community groups were either informally consulted or entirely excluded, and negotiations proceeded between the developer and elected officials. Purposeful community exclusion left community groups organizing separately and unsuccessfully (Yankee Stadium) or under the pretenses of inclusion (Bronx Terminal Market). At Bronx Terminal Market, community groups were involved via elected officials, not through the City's outreach process prior to ULURP. For East 125<sup>th</sup> St, series of regular, organized meetings gave strong structure to a complex process of research and negotiations, including both the community groups and the city in conversations about benefits before the developer was even part of the process. At Columbia University, the City and local Community Board selected which community organizations would be appointed to the local development board.

**When given a chance to participate, community groups developed their benefits requests in roughly similar ways.** With the exception of Yankee Stadium, which did not involve the community in

its negotiations and CBA creation process, the other four case study examples each developed its list of benefits requests by utilizing similar methodology. Namely, the group involved self-selected and divided themselves by claimed interest or expertise around topical issues such as affordable housing, public health, community space, etc. At Kingsbridge Armory, through years of process, KARA consulted with a variety of topic experts in the field to gain insight on their requested benefits. Community negotiators at other projects did not necessarily consult with experts due to time and process constraints. At East 125<sup>th</sup> St., feasibility of implementation and connection to the project (the nexus argument) were guiding parameters to determining benefit requests as well, largely due to the presence of City officials in the process. For Columbia University, the WHLDC broke into smaller working groups by issue and expertise. Data and a systematic research method into necessary benefits and their relation to the project were not strong factors into most of the case studies.

**None of the final contracts contains strong enforcement language or implementation plans.** Across all cases (except Kingsbridge) that included variations of benefits agreements, contract language around benefits is largely unspecific with respect to implementation of the components necessary to ensure benefits delivery. In

each instance, the developer must make “best faith efforts” to achieve “goals”. For example, with respect to workforce development benefits and a First Source Hiring referral system in the Bronx Terminal Market contract, it states “the Developer will commit to strongly encourage and facilitate employers to use the First Source Referral system by maximizing the accessibility and ease of use of the system” (“Gateway Center at Bronx Terminal Market Community Benefits Agreement,” 2006). While there are some more detailed references to hiring goals and targets, the contract provides significant loopholes that allow developers – and for that matter, community groups – wiggle room to avoid actually meeting their obligations. Without strong provisions for enforcement or implementation, community groups and other stakeholders do not have a means to ensure that negotiated benefits will actually be delivered.

**While the amount of public subsidy in each case varied, public perception of the developer’s ability to give back benefits to the community was constant.** Project costs, and the amount of public subsidies provided, differed in each case. While there appears to be no direct link between the amount of subsidies provided and the dollar amount of benefits provided, there is a perception that developers receiving large amounts of public funding should be able to pay for benefits.

**Benefits negotiations took a significant amount of time for all parties involved.** From a process and project management perspective, the benefits negotiations processes across all cases (except Yankees Stadium, for which there is no information available on this subject) took an exorbitant amount of time. KARA organized and did research for years in preparation for negotiations, while City Hall and the EDC worked concurrently for years conducting site studies, releasing RFPs, and managing the developer selection process. Both the City and KARA invested substantive time into meeting with Related. In the processes at East 125<sup>th</sup> St., Columbia University, and BTM, those directly involved with the negotiations report meeting for 4-10 hours on a regular basis, often weekly or every other week, for 1-3 years. These time estimates do not include preparatory research, follow up with constituents and supervisors, individual group planning meetings, or travel time. A back of the envelope calculation for Columbia University Expansion shows that a conservative estimate for Jesse Masyr, the land use lawyer representing the LDC, spent over 900 hours on meetings and negotiations for the project. Time for community groups and city representatives is likely higher.

**Mayoral policies shape the structure of all public agreements.** The Bloomberg administration –which initially supported

CBAs – changed course and no longer supports benefits negotiations that are conducted or managed outside of the City’s process. Columbia University’s negotiation and agreement process was funded and supported by City Hall, in part because Columbia is such an important institution and stakeholder in NYC, but also because City Hall policy advisors supported CBAs generally at that time. Conversely, East 125<sup>th</sup> Street reflected an administration that wanted to avoid CBAs at all costs, and instead enshrine benefits discussions and commitments within the City’s process. At Kingsbridge Armory, the Mayor remained opposed to CBAs, and related benefits issues ultimately killed the project at a City Council vote. Mayor Bloomberg’s reputation as a bottom-line driven business mogul who is friends with developers over community groups supports his actions that seek to spur private investment in NYC while avoiding CBAs.

An administration with a different perspective, for example, one that maintains a different relationship with community groups and toward developers, or that is inclined toward inclusive negotiations processes, could completely alter the outcomes of these projects.

## **Findings Summary**

The cases documented here demonstrate that while CBA negotiations were to some



extent successful in obtaining benefits for communities, the problems and risk associated with an ad hoc, unregulated process far outweigh the benefits. In essence, the cases have defined good policy in a negative way: while CBAs are good in theory, they are not an effective mechanism for benefits negotiation and delivery without well-defined process parameters that address the role of stakeholders, and a structured, formal implementation mechanism. The cases reveal that in order for a CBA negotiation to be successful, it must include the following factors: legal basis, consistent application, provision for legitimate community representation, a structured implementation, fiscal accountability, and open dialogue among stakeholders.

The NYC cases articulate why each of these factors is critical to achieving the goal of redistributing benefits to those most negatively impacted by development: Because they have no legal basis, CBAs lack rules and regulations specifying who should be involved or how implementation will occur. The lack of legal structure hurt efforts in two cases in NYC, as developers and elected officials brokered deals that excluded community representatives; there was nothing to prevent this from happening.

Additionally, ad hoc processes lead to inconsistent applications of CBAs in NYC, such that in each case, the roles of stakeholders, the amount of money developers provided, and implementation mechanisms differed. The lack of clear process creates confusion on all sides about what can be expected during negotiations, especially for community groups working on separate projects that are in communication with each other as they seek 'best practices.' The rules of the game change from project to project and negotiation to negotiation.

The cases believed to have the best benefits outcomes had the strongest mechanism of community representation and involvement. Provisions for community representation in a consistent, legitimate fashion are essential to project legitimacy, connection of benefits to community need, and fair negotiations. The NYC cases lacking community representation are the least respected by stakeholders, and are more likely to involve legal grievances.

Without clear accounting mechanisms and rules around which community groups or organizations receive benefits funding, fiscal accountability became a significant problem. Creating and managing a system to collect and deliver funds is an essential factor in benefits negotiations, as without it, political deals and ineffectual funds disbursement can strangle benefits delivery or lead to lawsuits as was demonstrated in several cases in NYC.

An open dialogue and platform for communication is a critical factor in CBAs, particularly the more successful NYC cases. The forum for ongoing conversation provides an opportunity for all stakeholders to present of ideas, challenges, and opportunities.

While the case studies highlight five projects in NYC, the major findings highlight essential factors for public benefits negotiations in any U.S. city. The challenges and opportunities are not unique to NYC, and contain implications for all stakeholders seeking to address and improve public benefits negotiations. In order for these case studies to be most useful in considering the effectiveness of CBAs and in improving benefits negotiations, we must consider how to take the lessons learned from NYC and incorporate them into a better model that has national application.

## V. Conclusion

CBA and negotiated public benefits are the latest attempt to go beyond traditional land use regulations and address the broader public interest, in both NYC and elsewhere in the country. The NYC cases illustrate that CBAs do not always accomplish their intended goals. In fact, my analysis of the five case studies demonstrates that public benefits negotiations often go off track. They get caught up in accusations of illegitimacy, failure to ensure fair representation, misuse of public funds, and questionable political wheeling and dealing. It is also clear, however, that CBAs can provide a platform for substantive discussions about public benefits, which can benefit all three types of stakeholders: community groups, who otherwise may be excluded; developers, who question why they are required to pay money above and beyond the taxes that everyone else is expected to pay, and cities, which walk a fine line between these two groups. I believe that the successes, challenges, and opportunities highlighted by the NYC cases provide a basis for rethinking ways that CBAs can be more useful to municipalities throughout the United States.

My most important finding is that public benefits negotiations should move beyond ad hoc exchanges to a more organized, mandated process. Ad hoc processes are inherently risky and unfair for all parties.

Developers are uncertain about the amount of time involved and the amount of money they will be expected to pay, and are concerned about public perception. For community groups, CBAs generate opportunities for involvement in decisions that affect them, but often, exclude them when others co-opt the process. They can lead to a host of challenges for municipalities trying to balance private investment with serving their poorest residents and protecting municipal assets. However, without an alternative process to address public benefits around development projects, community groups will continue to fight for CBAs, developers will continue to fund them, and municipalities will continue to be caught in the middle, often missing opportunities to steer the process toward better outcomes.

### A New Model

#### *Critical Elements*

A new, regulated process specifically addressing public benefits is necessary for NYC and many other municipalities as long as private investment into large-scale projects continues. This section details the critical elements of a new process, while the following final section presents ideas for managing and implementing the new process in conjunction with existing land use approvals processes. A new process for benefits negotiations should include six key components: first, community inclusion in the RFP or project visioning process;

second, establishment of formal exactions; third, community representation; fourth, community impact analysis; fifth, fiscal accountability; and sixth, structured implementation mechanisms. Taken together, these components address the bulk of concerns raised by all stakeholders and provide the best route for successful benefits negotiations.

### **Community inclusion**

The first component of a new public benefits negotiation process involves community inclusion in the city-led project visioning and RFP creation process. The municipal entity leading planning and development efforts should convene a working group of community, city, and elected official stakeholders interested in participating in a visioning process around a particular large-scale development project. A working group comprised of stakeholders gives the city an opportunity to include local elected officials as well as a range of community groups. From the start, a collaborative format creates a partnership between the city and the community, which may reduce community opposition toward the city and also allows space for dialogue. In their analysis of communication challenges in multi-stakeholder negotiations, Fisher and Ury note that the three biggest problems are that opposing sides may not be talking to each other, that sides may not hear each other, and that misunderstandings occur. They prescribe preventative actions such

as building working relationships and facing problems together (Fisher & Ury, 1991), which supports the notion of upfront community inclusion and a collaborative working group. Proactive inclusion could promote better communication and decision making in the benefits negotiation process.

A working group format allows the city to present its vision for development and solicit meaningful feedback. In many municipalities, city-led presentations already exist in the standard land use planning process, though they typically take the form of a large public presentation and subsequent feedback from attendees in the form of two-minute speeches. By comparison, working groups create forums for dialogue and follow up. The working group convened by the city can complement the existing public process and work together to address areas of concern or opportunity, and could range from design and site use to a variety of community benefits and their implementation. While the idea of a collaborative process between city staff and community groups may initially cause individuals on both sides to hesitate, each of these stakeholders is already spending more and more time trying to communicate with the other (McKnight, 2010). Furthermore, CBAs involve countless hours of negotiation, research and follow up that can detain the development process. Working

collaboratively to address issues of joint concern proactively creates opportunities to address questions before they become public controversies. Experts in multi-stakeholder processes who specialize in complex negotiations note the chance to avoid lawsuits later on in the development process that can cause extensive and costly development delays if collaborative dialogue is held, an aspect that should interest all stakeholders involved.

The benefits of community inclusion extend to developers as well. Project RFPs written in partnership with the community will include community concerns and expectations. This prominent inclusion sets a clear expectation that the community will be involved in the process, and demonstrates that the benefits proposed have been endorsed by the city. When bidding on the project, developers know that they are expected to address public benefits in their proposals, and can trust that fundamental elements of the project, such as design and site use, have already been reviewed and vetted by the community and city alike. With this knowledge of community expectations, developers are assured that there will be fewer clashes with community groups along the way, including lawsuits in backlash to development proposals. Additionally, knowing what benefits cities expect to be included in the project can help developers determine project costs; this should

also assuage city staff concerns about scaring away developers during benefits negotiations.

### **Formal Exactions**

In hot markets around the country, developers are willing to put large sums of money toward CBAs to allay community concerns and smooth the path to a successful development. In many cities where CBAs are enacted, there are no formulas or standards as to the amount developers are required to pay. Nor are there regulations to ensure fiscal accountability and good implementation once a developer releases funds.

Existing CBAs are a red flag alerting the municipality that they must create new policies to manage benefits funding. New policies should evolve through the development and implementation of a formal exaction that applies to certain development projects. This exaction could be based on a variety of factors, including the project's costs and profit, size of the project, amount of subsidies received, project community impact, and other relevant factors. Such calculations will help make certain that a city is competitive in terms of its real estate market and value of development and exacting funds within a reasonable limit.

Exacted community benefits funds could be placed into an escrow account or

community benefits fund associated with the related project. In order to guarantee that the funds are disbursed and matched to community needs discovered by the Community Impact Analysis (described later in this chapter), the City should manage the fund and work with the working group that created the RFP to determine fund allocation. The fund manager should be a city staff member rather than an elected official or community representative. This separation will help avoid mishaps and questions of illegitimacy raised when a community organization or elected official receives funds that they helped negotiate. Fund allocation could involve contracts for services or targeted city service provisions.

Setting an exaction around community benefits gives all stakeholders alike a new level of control. Municipalities and community groups can regulate the funds disbursed by developers through CBAs, and ensure that proper accountability measures and proper reporting are employed. Developers gain certainty over funding expectations, and can make more accurate projections of total development costs. Additionally, since exacted fees will go into an escrow account or benefits fund associated with the related project, the developer does not have to be involved with determining the fiscal allocations to individual benefits needs. Developers would welcome this increased efficiency and straightforward conclusion to a

development project.

### **Representation**

For every municipal-led large-scale development project, representatives from the community should participate via the processes discussed under community inclusion – but the question of how representation takes place must be specifically addressed. Representatives should come from many different types of community groups who have a demonstrated history and connection to the community. If the city is convening a working group, it should be their responsibility to conduct outreach to community groups. Local elected officials may be able to assist. Another valid option is hiring a third party neutral facilitator to conduct an assessment of the community and help determine who should be at the table. A neutral facilitator, someone not affiliated with any of the stakeholders and not impacted by negotiation outcomes, can provide legitimacy to determining who should be involved. Having adequate representation will assure all stakeholders that public engagement will be meaningful and more accurate than an ad hoc process. Impartially selected representatives should help prevent outcry or lawsuits later on in the process. Broad representation also creates a means of capturing the indigenous knowledge that exists in communities, which can be exploited to the benefit of all stakeholders.

Municipalities can also work to develop baseline criteria to determine community representation. City staff in NYC raised concerns about whether citywide or national advocacy groups should be at the table along with local groups, a concern that might exist in any municipality. The role of local vs. broader community groups will likely change from project to project depending on what local needs and assets exist. City agencies that regularly partner with organizations in neighborhoods across cities can assist with this challenge. While there may always be questions about which groups should be included, developing this type of framework gives stakeholders a better place to start, and avoids handpicked representatives at the negotiating table. Baseline criteria could include proximity to the development site or area of impact, involvement in the community, or expertise and involvement with the issues and benefits discussion at hand.

### **Community Impact Analysis**

Similar to an environmental impact statement (EIS), a community impact analysis should be developed to both quantitatively and qualitatively determine a development's impacts on a neighborhood or community. A Community Impact Analysis would involve researching all aspects of community impact, both positive and negative, including those points typically raised by community groups such

as impact on affordable housing, public health, and workforce development. The process would be managed by the city and completed in partnership with the aforementioned working group.

Creating a system for conducting this analysis addresses several concerns from different stakeholders. A Community Impact Analysis provides community groups assurance that their concerns will be reviewed in a thorough process with adequate resources, as opposed to research conducted by community volunteers that may not have the background expertise or resources to do so. If community groups have issue expertise, this process ensures that their knowledge can be put to good use. Standardized analysis allows developers an opportunity to critically examine and understand the total impact their project presents, and provides a framework through which to examine community concerns and determines their relevancy to a project. This type of broader impact analysis further gives the city a role in benefits determination and negotiations, and allows the city the means to manage exorbitant demands a community group might make of a developer. Detailed analysis also allows examination into the positive impacts of a project that may be overlooked in a process that exclusively focuses on negative benefits.

Furthermore, a centralized analysis process will help manage the benefits funds and potential overlap of benefits when several projects are being constructed in the same or nearby neighborhoods. The data collected in the Community Impact Analysis will generate the source of community “needs” that could be addressed by funds provided through the exaction. For example, the data might show that the community impacted by new development suffers from unemployment and would benefit from education, training, and connection to jobs created by new development, or that public health concerns such as obesity are paramount in an impacted neighborhood and that open space promoting healthy lifestyles could be a benefit connected to new development. The analysis can also help determine what should be funded in the instance that two nearby projects exact fees for benefits. For example, if workforce development benefits or space for community groups are already being provided by one project, funds from a second, nearby project may be spent on another community need.

### **Fiscal accountability**

A transparent method for receiving and disbursing benefits funds should be established as part of a new process. As described earlier in the section on establishing formal exactions, funds should be put into an escrow account or pre-established community benefits fund

that is overseen by a city staff member. The working group, in partnership with the city, should allocate funds to address the key areas of need and opportunity as identified by the community impact analysis. For instance, if the analysis indicates that a development will result in increased housing prices and this is the highest priority of the task force, funds should be allocated to support affordable housing development rather than other uses.

Community representatives participating in the working group should not automatically receive funds for their organizations, and similarly, elected officials should not be allowed to direct funds. Rather, there should be a contracting process by which funds are allocated to the organizations and groups best able to provide necessary services. This process should be managed by the fund administrator with the working group. Efficient and effective distribution of benefits should be the primary goal of the fund administrator.

### **Implementation**

An institutionalized process with a working group, sound representation, and provisions for fiscal accountability is only as good as the process’ implementation mechanism. This premise is closely tied to fiscal accountability and community impact analysis, but goes beyond research and funding management to detail



exactly how benefits will be delivered. For example, analysis may show high unemployment rates in the neighborhood where a new, job-generating project will be built. The working group may decide to allocate funds for workforce development programming. Yet, recognizing who will be providing those programs and services and determining the feasibility of implementation is a critical component of a new process. If local service providers do not exist to deliver necessary benefits, then deciding a benefit dependent on that service is useless without creating an implementation plan. The implementation plan should be the road map to ensure that agreed upon benefits will be delivered. An implementation plan can address existing gaps in service delivery that impact benefits, and can help direct benefits funds to the places that will have the most impact. For example, funds may be allocated toward a city-run program or bringing in an outside service provider. The working group should develop a long-term project plan that addresses service delivery with respect to the benefits deemed most necessary. A plan should detail measures of success, milestones, monitoring, and oversight.

Taken together, these six components of a new process address many concerns about benefits negotiation raised by stakeholders on all sides. However, the new process will only succeed with a clear management plan

that delineates a timeframe for action and roles and responsibilities. This final section illustrates how a new process should be managed in conjunction with current land use development and approval processes, and articulates how the six critical elements outlined previously will be included for success.

# Current Process

	Formal Actions	Adhoc Outreach	CBA's	Timeline
Project Fomation/ Scoping	City evalutes city-owned land	City-led outreach to elected officials and select organizations	Community groups may organize	Varies
	City conducts research and analysis; develops project vision	City-led outreach to elected officials and select organizations	Community groups may organize	Varies
	RFP development and release	TBD	Community groups may organize; City may be involved	1-3 months
Developer Selection	Developers submit proposals; city reviews	City meets with concerned community groups	Community groups may negotiate with developers; ongoing meetings with City	1-3 months
	Developer selection; certify into ULURP	Adhoc interactions with community groups	Community groups continue negotiations with developers and City	1 day
ULURP	Developer submits application to DCP	Adhoc interactions with community groups	Community groups lobby developers and City; CBA text developed	Varies
	Community Board hearing and advisory recommendation	Public community hearing	Community groups continue to push for CBA; lobby Community Boards	Up to 60 days
	Review by elected officials and advisory recommendation	Adhoc interactions with community groups	Community groups lobby elected officials	Up to 30 days
	CPC hearing and review	Adhoc interactions with community groups	Community groups may organize and lobby; City may be involved	Up to 60 days
	City Council review and vote	Public community hearing and adhoc interactions	Community groups lobby City Council; City involved	Up to 50 days
Certification/ Construction	City manages project certification; continues to meet with developer during construction	Adhoc interactions with community groups	Community groups may negotiate and execute CBA with developers; City may be involved	Construction Period

# New Model

	Formal Actions	Community Engagement	Timeline
Project Formation/ Scoping	City evaluates city-owned land	Working group formed with help of neutral facilitator	Varies
	City conducts research and analysis; develops project vision	Community impact analysis; working group develops initial list of requested benefits	Varies
	RFP development and release	Working group helps write RFP; benefits included in RFP. Working group updates constituents	1-3 months
Developer Selection	Developers submit proposals; city reviews	Working group participates in developer selection; revises community impact analysis based on proposed site use and Pro Forma	1-3 months
	Developer selection; certify into ULURP	Working group meets with developer	1 day
ULURP	Developer submits application to DCP	Working group meets periodically. Implementation plan formed	Varies
	Community Board hearing and advisory recommendation	Working group presents at hearing and to Community Board along with the developer	Up to 60 days
	Review by elected officials and advisory recommendation	Working group presents to elected officials along with developer	Up to 30 days
	CPC hearing and review	Working group presents at hearing and to CPC; benefits fund infrastructure determined	Up to 60 days
	City Council review and vote	Working group presents to Council and at hearing	Up to 50 days
Certification/ Construction	City manages project certification; continues to meet with developer during construction	Developer makes exaction payment to benefits fund; aspects of implementation plan begin. Working group meets as needed	Construction Period

## Process Management

In many municipalities, the existing land use approvals process for disposition of city-owned land involves the steps and timeframes articulated in the diagram on page 74 labeled 'Current Process.' While this diagram is based on the timeframes and steps in NYC's approvals process and reflects a strong Mayor system, it can be altered to illustrate the process in any city. As shown in the 'Current Process,' a city's land use process may have several rounds of reviews by different stakeholder groups (elected officials, a formal community council or board, the City Council), which likely includes a handful of public meetings. Municipal planning staff complete varying levels of ad hoc outreach to community groups outside of required interactions, and also host meetings with groups or individuals as requested. The last column generally describes the CBA process in relation to an existing land use approvals process. The column demonstrates the ambiguity of the CBA process, the uncertainty over when and how community groups interact with developers or the city, and the lack of control or clarity over the process.

A new process, involving the elements described in full in the previous section of this chapter, could be managed to include early involvement of community groups in a manner that supports existing approval processes. As described in the diagram on

page 75 labeled 'New Model,' an improved process could be designed and managed to address the needs and interests of communities impacted by development while simultaneously attending to a city's goals and ultimate plans for development and investment. Additionally, the 'New Model' includes time and methods for including the six critical elements (representation, formal exactions, etc.) that will speak to and solve many of the problems associated with CBAs and other ad hoc benefits negotiations to date.

The 'New Model' hinges upon strong collaboration between a municipality and the working group of stakeholders through the entire development process. Collaboration begins during project formation and scoping, when certain factors will trigger the decision to form a working group. Specifications of which factors require a working group could include the size of a building, cost, subsidies provided, likely impact, anticipated and/or community backlash. For example, if the project is XY square footage or is projected to require YZ in subsidies, the collaborative process will be mandated. The triggering factors will vary city to city; the size of a project in Albany that dwarfs the landscape may be of little notice in New York City, and formulas for subsidies and other incentives change across city and state lines. Regardless, if warranted, the working group should be

formed during the project formation stage to encourage maximum dialogue from the very beginning, thus creating an inclusive and proactive process. As described in the 'New Model' diagram, collaboration continues throughout the approvals process and after the development project is approved.

### **Challenges to the New Model**

While a new model involving formalized exactions and working groups may ultimately create a better model for benefits negotiations, it is not without challenges and critiques.

*Weak market cities.* It is reasonable to think that exactions for community benefits may not work in weak market cities where the market is not as favorable and there is little leeway to ask developers to pay additional money. In these cases, it may be difficult to negotiate ad hoc CBAs as well. In weak market cities, it is still worthwhile for cities to partner with community groups to develop a shared vision for development and its associated benefits, as this can help cities maximize private investment to benefit all residents. For example, a weak market city may not have fiscal leverage, but can offer developers marketing assistance and community support for projects.

*Lack of civic involvement.* There are neighborhoods that lack strong civic

involvement and active community groups, meaning that there are few if any community representatives to participate in a working group. While lack of community representatives to collaborate with means that the working group model will not function as strongly to start, there are other methods of gauging input and interest from a community to hear their voice in a proactive way. Deliberative polling, a method by which the city or a hired consultant calls a representative cross section of a neighborhood based on demographics, can collect important information about community vision and perspective, though it limits dialogue and community members may not know all of the public benefits or other development elements that are on the table for negotiation. Developing neighborhood councils or other forms of informal neighborhood groups that could eventually generate involvement in a collaborative working group is another option. Lastly, in conjunction with polling, the city could work with a community's elected officials. While the case studies in this thesis showed that elected officials did not always negotiate with their constituents' interests at the forefront, communities still received more benefits than when nobody was involved.

*Cost of exaction.* Despite the fact that developers have been willing to pay for ad hoc community benefits funds in the past in

NYC and elsewhere in the country, formal exactions bring direct and indirect costs to a municipality (program management and operation) and direct costs to developers (the exaction itself). While the New Model articulates how these time and dollar costs will ultimately be less than payments made into an unregulated benefits system, stakeholders may still harbor concerns about paying formal exactions due to costs.

*Interests of the City (convener vs. member of working group).* City government maintains a number of interests in development projects – to bring private investment to cities, to manage growth, to follow legal processes and regulations, and to provide services and goods to its residents. Some community groups raise concerns over the role of the City in the ‘New Model;’ if it is the City’s ultimate interests to ensure that development moves forward, how can we be sure that the working group will be empowered to actively influence and be involved with negotiations or decision making processes? A possible solution is to hire a neutral facilitator not only to assess which community groups or stakeholders should be part of the working group, but also to manage the working group meetings and process. Separating process management into a new role could also allow the City to be an active player in the negotiations if desired, rather than attempting to play a more neutral role. Another possible solution is to give the

working a vote in the ULURP process, although many of the prospective working group stakeholders conduct advisory votes and recommendations.

*Interests of elected officials.* Although elected officials will be members of the working group, and therefore be actively involved in negotiations, there is a chance that at the 11<sup>th</sup> hour, an elected official (particularly a City Councilor) may act in his/her own accord. At the point of the City Council vote in NYC (or the final deciding vote in another municipality), a City Councilor could make a last minute change or concession to the negotiated plan. Ideally, the new process would prevent this from happening, as the elected official should be able to openly advocate and negotiate on behalf of his/her constituents throughout the entire process and would have little need for a last minute change.

## **Conclusion**

There are sometimes critiques like those described here of institutionalized processes that require partnerships across municipalities, developers, and communities to systemically address benefits as part of a holistic development process. Some neighborhoods do not have active community groups; some municipalities lack the political will of leadership to enter into formal conversations about benefits outside the land use process. Community groups

may believe that a more institutionalized process forces them to give up community power and the ability to organize, and may feel that they can no longer fight for benefits on their own. Developers, on the other hand, may prefer to simply cut a check to whoever is making demands in the loudest voice, and avoid a year of meetings around benefits. Cities, whether large or small, may experience anxiety about ceding control to a task force or blended stakeholder group in order to make decisions. The list of potential criticisms is extensive.

Despite these potential oppositions, it is clear that negative project impacts will continue to generate attention for the foreseeable future. Without a strong alternative to CBAs, the problems I have highlighted will persist, and all parties involved will continue to miss opportunities to gain more benefits. City governments will continue to use incentives to draw private investment and development into their cities. The stated goal of most public service agencies is to improve the livelihood of constituents and communities. Therefore, it would be irresponsible for cities to make economic development decisions enticing private development at the expense of communities when a system could be employed to address these concerns. The current recession in the real estate market gives stakeholders with vested interests a chance to step back and consider the

possibility of an improved benefits negotiations process that can be used as the market rebounds and development projects resume. This new model provides a way to address development projects in a broader, deeper and more comprehensive manner.

## Appendix A

List of interviews:

Vicki Been, NYU Law

Deborah Carney, NYC Department of City Planning

John Choe, NYC Comptroller's Office

Miquela Craytor, Sustainable South Bronx (formerly of BOEDC)

Alyssa Katz, Pratt Center for Community Development

Gavin Kearny, New York Public Lawyers

Jesse Masyr, Wachtel & Masyr LLP

Tom McKnight, NYCEDC

Timothy Mitchell, Antioch Baptist Church

Daniel Mule, Columbia University Law Student (formerly NYCEDC)

Jessica Pavone, NYCEDC

Desiree Pilgrim-Hunter, NWBCCC

Jennifer Sun, NYCEDC

Matthew Wambua, HPD (formerly of the Mayor's Office)

Matthew White, NYC Department of Small Business Services

Joshua Winter, NYCEDC

Community Representative (confidential)



## Works Cited

- Agreements, T. F. o. P. B. (2010). Recommendations of the Task Force on Public Benefit Agreements: Presented to City Comptroller John C. Liu. New York City: Comptrollers' Office.
- Altshuler, A. L., David. (2003). Mega-projects: the changing politics of urban public investment. Washington, DC: The Brookings Institute.
- Arak, J. (2010, October 20, 2010). East Harlem Megaproject Cannot Be Stopped. Curbed NYC, p. 1. Retrieved from [http://ny.curbed.com/archives/2010/10/20/east\\_harlem\\_megaproject\\_cannot\\_be\\_stopped.php](http://ny.curbed.com/archives/2010/10/20/east_harlem_megaproject_cannot_be_stopped.php)
- Avault, J., Geoff Lewis, & Robert Consalvo. (2000). Survey of Linkage Programs in Other U.S. Cities with Comparisons to Boston. Boston: Boston Redevelopment Authority.
- Background New York City Living Wage Ordinance. (2011, 2011). Retrieved March 16, 2011, 2011, from <http://www.livingwagencity.org/pagedetail.php?id=15>
- Bagli, C. (2008, October 7, 2008). Council Clears Way for \$700 Million Complex in Harlem. New York Times. Retrieved from [http://www.nytimes.com/2008/10/08/nyregion/08develop.html?\\_r=1](http://www.nytimes.com/2008/10/08/nyregion/08develop.html?_r=1)
- Been, V. (2010). Community Benefits Agreements: A New Local Government Tool or Another Variation on the Exactions Theme? [Law Review]. University of Chicago Law Review, 31.
- Berger, J. (2009, September 4, 2009). Exhilaration as Giant Mall Springs Up in a Strike Against Blight. New York Times. Retrieved from [http://www.nytimes.com/2009/09/05/nyregion/05metjournal.html?\\_r=4](http://www.nytimes.com/2009/09/05/nyregion/05metjournal.html?_r=4)
- Bornstein, L. (2007). Community Responses to Mega-Projects. Campaigns and Programs: Redeveloping the Kingsbridge Armory. (2011). Retrieved April 15, 2011, 2011, from <http://www.northwestbronx.org/redevelopkingsbridge.html>
- Choe, J. (2010). Interview. New York City.
- Cilberto, G. (2010, July 21, 2010). Activists Say Yankees Not Living Up to Their End of Agreement; Lawsuit May Follow. Bronx News Network. Retrieved from <http://www.bronxnewsnetwork.org/2010/07/activists-say-yankees-not-living-up-to.html>
- Community Representative. (2011). Interview (Anonymous interview with community representative from West Harlem ed.). New York City.
- Comptroller, N. (2010). Task Force Recommends Comprehensive Citywide Approach to Public Benefits Agreements. Retrieved October 15, 2010, 2010
- Craytor, M. (2011). Personal interview. New York City.
- Cruikshank, J., L. Susskind. (2006). Breaking Robert's Rules. New York, New York: Oxford University Press.
- Diaz announce new Kingsbridge Armory Task Force. (2010). Retrieved April 15, 2011, 2011, from <http://therealdeal.com/newyork/articles/bronx-borough-president-ruben-diaz-announces-new-kingsbridge-armory-redevelopment-task-force>
- Dolnick, S. (2009, December 14, 2009). Voting 45-1, Council Rejects \$310 Million Plan for Mall at Bronx Amory. New York Times, p. 1. Retrieved from [Works Cited](http://www.ny-</a></p></div><div data-bbox=)

- times.com/2009/12/15/nyregion/15armory.html
- Dreier, P. a. B. E. (1991). Downtown Development and Urban Reform: The Politics of Boston's Linkage Policy. *Urban Affairs Review*, 26, 21.
- Drummer, R. (2010, May 17, 2010). In The Pipeline: CoStar Development and Construction News for May 16-22. CoStar Group Online. Retrieved from <http://www.costar.com/News/Article/In-The-Pipeline-CoStar-Development-and-Construction-News-for-May-16-22/120257>
- Fainstein, S. (2009). Mega-projects in New York, London and Amsterdam. [Journal]. *International Journal of Urban and Regional Research*, 18.
- Fiscal Policy Institute, G. J. N. Y., & National Employment Law Project. (2010). An Overview of Job Quality and Discretionary Economic Development Subsidies in New York City. New York City: Fiscal Policy Institute.
- Gateway Center at Bronx Terminal Market Community Benefits Agreement (2006).
- Grogan, P. (200). *Comeback Cities: A Blueprint for Urban Neighborhood Revival*. Boulder: Westview Press.
- Grogan, P. (2000). *Comeback Cities: A Blueprint for Urban Neighborhood Revival*. Boulder: Westview Press.
- Gross, J., LeRoy, G., Janis-Aparicio, M., First, G. J., & Families, C. P. f. W. (2002). *Community benefits agreements: Making development projects accountable: Good Jobs First*.
- Institute, D. M. (2010). Kingsbridge Armory Fact Sheet. Retrieved November 15, 2010, 2010, from [http://www.drummajorinstitute.org/pdfs/Final\\_Kingsbridge\\_Fact\\_Sheet.pdf](http://www.drummajorinstitute.org/pdfs/Final_Kingsbridge_Fact_Sheet.pdf)
- Judd, N. C. (2008, July 31, 2008). Judge halts blasting at reservoir. *The Riverdale Press*, p. 2. Retrieved from <http://www.riverdalepress.com/stories/Judge-halts-blasting-at-reservoir,37903>
- KARA. (2011). The KARA Platform. Retrieved April 15, 2011, 2011, from <http://www.ourarmory.org/pagedetail.php?id=20>
- Kayden, J. a. R. P. (1987). Linkage Ordinances and Traditional Exactions Analysis: The Connection between Office Development and Housing. *Law and Contemporary Problems*, 50(1), 127-137.
- Kendall, D. J. R. (1995). "Paying" for Change: Using Eminent Domain to Secure Exactions and Sidestep Nollan and Dolon. *Virginia Law Review*, 81(7), 1801-1879.
- Kovaleff, T. P. J. (2008). Memorandum of Understanding (MOU between Columbia University and the WHLDC). New York City: West Harlem Local Development Corporation.
- Kratz, A. (2010, March 22, 2010). New Kingsbridge Armory Task Force, A Team of 'Heavy Hitters' Diaz Says. *Bronx News Network*. Retrieved from <http://www.bronxnewsnetwork.org/2010/03/new-kingsbridge-armory-task-force-team.html>
- Krumholtz, N. (1999). Equitable Approaches to Local Economic Development. *Policy Studies Journal*, 27(1), 83-95.
- Lavine, A. (2008a, December 11, 2010). Columbia Expansion CBA. Blog posted to <http://communitybenefits.blogspot.com/2008/01/with-atlantic-yards-and-yankee-stadium.html>
- Lavine, A. (2008b, December 1, 2010). Kingsbridge Armory CBA Campaign [Online blog

- post about Kingsbridge CBA campaign]. Blog posted to <http://communitybenefits.blogspot.com/2008/04/kingsbridge-armory-cba-campaign.html>
- Lavine, A. (2008c, January 15, 2011). Yankee Stadium CBA. Blog posted to <http://communitybenefits.blogspot.com/2008/01/yankee-stadium-cba.html>
- Lavine, A. (2009, March 15, 2011). The Gateway Center at Bronx Terminal Market CBA [Online blog posting]. <http://communitybenefits.blogspot.com/2009/08/gateway-center-at-bronx-terminal-market.html>
- Lieber, R. (2008). Points of Agreement. In H. M. Mark-Viverito (Ed.) (pp. 8). New York City: The City of New York Office of the Mayor.
- Masyr, J. (2010). Personal Interview.
- McKnight, T. (2010). Interview (Personal Interview with Tom McKnight ed.). New York City.
- Meminger, D. (2008, March 26, 2008). Bronx Awaits Community Benefits From New Stadium Construction. NY1. Retrieved from <http://www.ny1.com/?SecID=1000&ArID=79780>
- Mogilevich, M. (2010). Kingsbridge Armory. Places That Matter Retrieved December 4, 2010, 2010, from <http://www.placematters.net/node/1279>
- Molina, F. (1998). Making Connections: A Study of Employment Linkage Programs. Washington DC: Center for Community Change.
- News, N. (2006, January 24, 2006). Bronx Residents Spar Over Removal of Parkland at New Yankee Stadium Site. NY1 News. Retrieved from <http://www.ny1.com/?ArID=56562&SecID=1000>
- NYBA. (2010). Community Benefits Agreements: NYC Should Establish Policy. 44th Street Notes Retrieved 10/15/10, 2010
- NYCEDC. (2006). East 125th St. Request for Proposals. New York City: NYCEDC.
- NYCEDC. (2007). 125th St. East Harlem. In NYCEDC (Ed.), NYCEDC (pp. 2). New York City: NYCEDC.
- NYCEDC. (2008). NYCEDC Announce Developer and Development Plan for Kingsbridge Armory in the Bronx. Press Room Retrieved December 1, 2010, 2010, from <http://www.nycedc.com/PressRoom/PressReleases/Pages/Plan%20for%20Kingsbridge%20Armory.aspx>
- NYCEDC. (2011). NYC Industrial Development Authority. Retrieved April 15, 2011, 2011, from <http://www.nycedc.com/FinancingIncentives/NYCIDA/Pages/NYCIDA.aspx>
- Office of Communications, N. C. (2008, October 7, 2008). Embracing New York City's Waterways, Council Votes on Long-term Waterfront Planning Legislation. Retrieved December 11, 2010, 2010, from [http://council.nyc.gov/html/releases/pres-tated\\_10\\_07\\_08.shtml](http://council.nyc.gov/html/releases/pres-tated_10_07_08.shtml)
- Pesca, M. (2009, April 16, 2009). New Yankee Stadium Makes Its Debut. NPR online. Retrieved from <http://www.npr.org/templates/story/story.php?storyId=103183528>
- Pilgrim-Hunter, D. (2010). Personal Interview. New York City.
- Planning, N. D. o. C. (2011, 2011). The Uniform Land Use Review Procedure (ULURP). Retrieved April 23, 2011, 2011, from <http://www.nyc.gov/html/dcp/html/luproc/ulpro.shtml>

- PlanNYC. (2010a, December 11, 2010). Columbia University Expansion [Online blog of NYC real estate and planning]. <http://www.plannyc.org/taxonomy/term/689>
- PlanNYC. (2010b, December 1, 2010). Community Benefits Agreements [Online blog and newsource sponsored by NYU's Furman Center for Real Estate and Urban Policy]. <http://www.plannyc.org/taxonomy/term/1012>
- PlanNYC. (2010c). Uncategorized (Yankee Stadium). Retrieved December 10, 2010, from <http://www.plannyc.org/taxonomy/term/680%20on%202/3/>
- PlanNYC. (2010d, February 11, 2011). Yankee Stadium Construction [Online blog chronicling NYC real estate and planning. ]. Blog posted to <http://www.plannyc.org/taxonomy/term/680>
- Press, A. (2008, October 26, 2008). NYC officials deny cooking books for Yankee Stadium at congressional hearing. ESPN sports online Retrieved from <http://sports.espn.go.com/mlb/news/story?id=3662987>
- Salkin, P. (2007). Community Benefits Agreements: Opportunities and Traps for Developers, Municipalities, and Community Organizations. *American Planning Association Planning & Environmental Law*, 59(11), 5.
- Sarkissian, G. (2008). East 125th Street Development Remaining Elements to be Negotiated. Unpublished Internal document. Borough of Manhattan Community Board Eleven.
- Sarkissian, G. (2011). Interview. New York City.
- Schwartz, A. (2006, March 2006). Yankee Stadium Parkland Swap. *Gotham Gazette*. Retrieved from <http://www.gothamgazette.com/article/parks/20060321/14/1795>
- Seidman, K. Inner City Commercial Revitalization: A Literature Review.
- Wambua, M. (2010). Interview. New York City.
- West Harlem Community Benefits Agreement. (2009). New York City: WHLDC and Columbia University.
- Winter, J. (2010). Interview. New York City.
- Wolf-Powers, L. (2005). Up-Zoning New York City's Mixed Use Neighborhoods: Property-Led Economic Development and the Anatomy of a Planning Dilemma. *Journal of Planning Education and Research*, 24(4), 14.
- Wolf-Powers, L. (2010). Community Benefits Agreements and Local Government: A Review of Recent Evidence. *Journal of the American Planning Association*, 76(2), 19.
- Yankee Stadium Community Benefits Agreement (2006).
- York, C. o. N. (2011). Biography. Retrieved April 23, 2011, 2011, from <http://www.nyc.gov/portal/site/nycgov/menuitem.e985cf5219821bc3f7393cd401c789a0/>
- York, G. J. N. Gateway Center at Bronx Terminal Market. Retrieved March 15, 2011, 2011, from [http://www.goodjobsny.org/BTM\\_news.htm](http://www.goodjobsny.org/BTM_news.htm)