Considerations for Community Groups on how to Successfully Negotiate a Community Benefits Agreement: Lessons Learned at the Shipyard, San Francisco

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Abstract

Community Benefit Agreements (CBAs) are a new tool that enable community groups to enter into a legally binding contract with developers, most commonly as a means to obtain a community benefits package in exchange for support of the developers’ project. Such a contract can be a way of ensuring new developments respect and benefit local communities. The legal recourse available to both parties if the other does not follow through on their commitments is one of the most significant and innovative aspects of a CBA. However, often times the public is uninformed about the usefulness of CBAs and community groups may not have enough resources at their disposal to effectively enter into CBA negotiations with a private developer. The Shipyard project in San Francisco showcases how certain conditions can have a significant impact on the feasibility of a CBA for a community, and the chances that a collation of community groups might have in successfully negotiating one.

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Executive Summary

Community Benefit Agreements (CBAs) are a new tool that enables community groups to enter into a legally binding contract with developers, most commonly as a means to obtain a community benefits package in exchange for support of the developers project. Such a contract can be a way of ensuring new developments respect and benefit local communities. CBAs give a community coalition the opportunity to pursue specific benefits that they feel to be most critical and to potentially achieve a higher level of benefits than that which is being asked for by the city. The legal recourse available to both parties if the other does not follow through on their commitments is one of the most significant and innovative aspects of a CBA. However, often times the public is uninformed about the usefulness of CBAs and community groups may not have enough resources to effectively enter into CBA negotiations with a private developer.

Conditions under which a developer will have a significant interest in entering into a CBA with community partners, or feel pressure to negotiate a CBA, include:

- a strong real-estate market
- a significant public subsidy associated with the project
- the potential for community opposition to disrupt the project

To successfully negotiate a CBA, typically a number of community groups come together to form a coalition. This allows for a larger constituency base and a pooling of resources. This coalition should:

- be well organized,
- have a large constituency,
- have adequate political leverage, and
- be able to reach common priorities and goals

The example of the San Francisco Ship Yard’s demonstrates that a CBA can be successfully negotiated in an environment of a strong real estate market, with significant public subsidies having been granted to the project, and with a very high potential for the public to disrupt the project. Although the community coalition was faced with a short timeline in which to finalize the agreement because of a referendum vote, the group’s ability to recognize the sort of opportunity offered by something such as a public vote was critical for the community groups’ efforts to find ways of entering into CBA negotiations with a private developer. The Shipyard project showcases how certain conditions can have a significant impact on the feasibility of a CBA for a community, and the chances that a collation of community groups might have in successfully negotiating one.
**Synthèse**

Les accords sur les avantages pour la collectivité (CBAs) sont de nouveaux outils qui permettent aux groupes communautaires de conclure un contrat juridiquement contraignant avec des promoteurs. En général, la communauté donne son appui aux projets de développement en échange d’avantages pour la communauté. Un tel contrat peut assurer que les projets de développement respectent et avantagent les communautés locales. Ces ententes donnent à la coalition communautaire l’occasion de poursuivre les avantages particuliers qu’elle juge les plus importants et d’en tirer plus d’avantages que ne réclame la ville. Ce que ces ententes ont d’innovateur et de significatif, c’est qu’elles permettent aux deux parties de disposer du recours légal si l’une d’elles ne respecte pas l’entente. Cependant, malgré la valeur qu’un tel outil puisse apporter à la communauté, le public demeure souvent ignorant de son utilité d’une part, et d’autre part il se peut que les groupes communautaires n’aient pas les moyens d’entamer des négociations avec un promoteur privé.

Les conditions qui peuvent inciter le promoteur privé à entamer une entente avec des partenaires communautaires, ou se sentir acculer à négocier une entente, comprennent les suivantes:

- Le marché immobilier est vigoureux
- Le projet bénéficie d’une importante subvention publique
- Il se peut que la communauté perturbe le projet en s’y opposant

Pour réussir à négocier une entente, un nombre de groupes se réunit pour former une coalition, ce qui leur assure une base plus vaste et permet la mise en commun de ressources. La coalition devrait:

- Être bien organisée
- Représenter un grand nombre de personnes
- Avoir un poids politique suffisant
- Être capable d’établir des priorités et des buts communs

L’exemple du chantier naval de San Francisco montre qu’on peut réussir à négocier une telle entente, lorsque le marché immobilier est vigoureux, que le projet bénéficie d’importantes subventions publiques, et que l’opposition publique pourrait bien perturber le projet. Vu que le référendum approchait, la coalition était confrontée à un délai très court pour finaliser l’entente. Elle a su, néanmoins, profiter de l’occasion que lui donnait le vote publique pour trouver des moyens de faire un accord sur les avantages pour la collectivité avec un promoteur privé. Le projet du chantier naval de San Francisco
montre que certaines conditions peuvent avoir des conséquences importantes sur la faisabilité d’un accord dans votre communauté et sur la probabilité qu’une coalition réussisse à faire un accord.
Introduction

When a large scale project is announced for your neighbourhood or community, it can be difficult to know how to feel about the incoming development. Such a project can hold the promise of new jobs and economic activity, the invigoration of currently underutilized space, and the aesthetic improvement of the area. However, these developments can also represent a multitude of uncertainties: will the new jobs and economic activity benefit local residents? Will local market prices rise, making the area unaffordable for current residents? When facing such a project, and the advantages and disadvantages associated with it, community groups across North America have started to ask this question: how can development in my neighbourhood move forward while also respecting and benefitting the local community?

In the early 2000’s a new tool emerged in urban redevelopment practice in the United States which works to offer a solution to that very question: the community benefits agreement (CBA). A CBA is a legally binding contract entered into by the developer of a project and a coalition of community groups (Gross et al.). Typically, such a contract commits a developer to a certain community benefits package in exchange for support of their project by a partnership of community groups. This tool has been used in numerous redevelopment projects across the United States, a large portion of which have been located in California. Unfortunately, the public is usually uninformed about this potentially helpful and powerful tool. In addition, community groups often lack the resources and organizing capability necessary to enter into CBA negotiations with a private developer. This brief paper offers an over view of conditions that may help ensure a successful CBA negotiation, with examples from The Shipyard project in San Francisco providing real life illustrations of the negotiation process.
Why choose a CBA for a project in your community?

A community benefits agreement gives a community coalition the opportunity to pursue specific benefits that they feel to be most critical to the community and to potentially achieve a higher level of benefits than that which is being asked for by the city. Although benefits vary from project to project, CBAs tend to include the main issues of: affordable housing, the creation of a fund for use by the community, benefits regarding employment (job training, local/first source hiring, and living wage ordinances), improvements to local transportation infrastructure, the construction of public amenities or facilities (such as parks and meeting space), and improvements to the ecological environment (Knapp and Hollander). A CBA can allow a coalition of community groups to narrow in on the issues they feel are most important and ensure that the developer is held accountable to them.

The legal recourse available to both parties if the other does not follow through on their commitments is one of the most significant and innovative aspects of a CBA. The development agreement usually entered into by a private developer and the city is a legally binding document that can only be amended if both parties consent to it. However, these amendments do often occur, resulting in changes to the original benefit commitments. With a CBA, the coalition of community groups must agree to amendments that the developer wishes to make, therefore ensuring that benefits do not erode as complications occur and cost estimates change.

Conditions for a successful CBA negotiation

The process of pursuing a CBA can appear complicated and onerous for community groups, especially in the face of developers which often seem to have unlimited resources available for dealing with such demands. It is true that negotiating a CBA requires a certain level of organization and resources on the part of interested community groups and that if certain conditions are in place they will help these groups successfully navigate the process.

First, there is a general situational environment which will make a developer more conducive to entering into a CBA (although these elements are essentially out of the hands of community groups). If the following conditions are in place, there will be greater pressure for a developer to consider entering into a CBA (Wolf-Powers):

• a strong real-estate market
• significant public subsidy associated with the project
Negotiating a Community Benefits Agreement

• the potential for community opposition to disrupt the project

A strong real-estate market provides an adequate financial incentive for the developer to enter negotiations with community groups and substantial public subsidy introduces a moral imperative for the developer to be more accountable to the wider community. A situation in which the public might be able to disrupt the project occurs when there is a discretionary public vote, in which politics and the level of popular support play a critical role. Typically required with large scale projects, zoning changes, land sales, subsidies, and infrastructure support are some examples of issues which would require a public vote. Entering into a CBA guarantees the developer committed support from the constituents of the coalition of community groups.

Typically, a number of community groups come together to form a coalition in order to negotiate a CBA. This allows for a larger constituency base and a pooling of resources. In order to successfully negotiate a CBA, this coalition should:
• be well organized,
• have a significantly large constituency,
• have adequate political leverage, and
• be able to reach common priorities and goals.

If a developer is to negotiate with a coalition of community groups, they are more likely to listen to and consider their needs if they are presented in a well-organized manner. The size of the group’s constituency is critical because it directly responds to the amount of public support that the group is able to guarantee the developer. It is also helpful if the constituency is diverse in the larger groups it represents (ethnically, politically, economically, and geographically). The size and range of the constituency affects the amount of political leverage that the coalition will be able to exercise; it has been argued that political leverage is the main power source for the community coalition in the CBA negotiation process (Baxamusa) . Political leverage will also be accrued through the involvement of politically powerful groups, such as labour unions. The groups which constitute the coalition must also present a unified set of goals to the developer; disaccord amongst the groups will diminish their leverage in the negotiation process.
The Shipyard Project, San Francisco

On a site over 700 acres in size, the development company Lennar Corporation envisions a grand scale redevelopment project named The Shipyard. This large, waterfront, brownfield redevelopment project will bring in a mix of land uses to a site that currently houses a decommissioned naval port site, a state park, and the soon to be disused Candlestick Park stadium. The project is planned to include 12,000 new homes, 326 acres of parks and open space, 3,150,000 square feet of office space, 885,000 square feet of retail space, and 100,000 square feet of community facilities. The site is incredibly complex, and the project is fiercely political.

Located in the neighbourhood of Bayview Hunters Point (BVHP), The Shipyard also has the potential to bring to the area’s residents long needed services, local jobs, green space, and stronger connections (economically and physically) to the rest of San Francisco. BVHP is a marginalized community characterized by lower income worker households and suffers from problems such high unemployment rates, violence, and drug use. As The Shipyard project has moved forward, the question of how this project might affect or benefit that surrounding community has become an issue of utmost importance, inciting the efforts and passions of numerous groups. In 2008, a coalition of community groups working under the name Alliance for District 10 (AD10) negotiated and entered into a CBA with Lennar regarding The Shipyard project.

The CBA has achieved significant benefits commitments from Lennar, two central commitments are the construction of affordable housing (at levels higher than those originally negotiated by the City, and with a more aggressive timeline) and the development of a better job economy through policies such as local hire and living wage. The negotiation of these benefits occurred in the environment of a strong real estate market (San Francisco has some of the highest housing prices in North America, although the market in BVHP is weaker than the city as a whole), with significant public subsidies having been granted to the project, and with a very high potential for the public to disrupt the project. The public had power over Lennar in the form of two ballot propositions which were going to a vote and had the potential to be deal breakers for the project. Prop G was a ballot initiative which would allow for the zoning changes that Lennar required in order to move forward, and Prop F, would have required the project to have 50% affordable housing (seen as a deal breaker by Lennar as it would have seriously undermined the financial feasibility of the project). Public on these two issues was critical for Lennar to be able to move forward with the project.
Although these conditions granted AD10 considerable political leverage to bring to the negotiation table, they also produced a less than optimal situation in which to move forward. Once negotiations started, there was only three short months in which to finalize the agreement before Props G and F would go to vote. This resulted in an extremely rushed timeline, which ultimately led some groups to feel that the CBA was not drafted as well as it could have been and that some language was not as tight or as effective as it may have been. Although the short timeline was not ideal, the coalition of community groups had to act within that timeframe otherwise their political leverage would have practically disappeared after the public vote. Being able to recognize the sort of opportunity offered by something such as a public vote is critical for community groups to be able to find ways of entering into CBA negotiations with a private developer.

AD10 is comprised of three community groups, each with substantially large constituencies and varying backgrounds. During negotiations each group had something to bring to the table and their strength was substantially improved by joining forces. These groups offered the developer access to different constituencies which amounted to a larger group of potential supporters, and helped each other in the negotiation process. For example, because of their experience in dealing with unions and labour disputes, the San Francisco Labor Council (SFLC) was more familiar with hard-ball negotiation tactics and did not shy away from the late nights and heated discussions which took place during the drafting of the agreement. This possibly led to greater benefits achievements for the community.

The Shipyard project showcases how certain conditions can have a significant impact on how feasible a CBA might be for your community, and the chances that a collation of community groups might have in successfully negotiating one. Each development project is unique and any number of characteristics or issues can play a role in how open a developer will be to sitting down at the table with the community. However, in order to increase the likelihood of a successful CBA negotiation the community collation must be unified, organized, and take advantage of all conditions that may help increase their political leverage.
References


