QUICKNOTES

Planning fundamentals for public officials and engaged citizens

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Community Benefits Agreements

New infill and redevelopment projects often bring substantial economic benefits to host communities. For especially large or complicated projects these potential benefits may motivate local governments to offer economic development incentives. However, without careful consideration of the impact of new development on existing communities, there is a risk that the benefits of large-scale development projects will be inequitably distributed. One of the most promising tools for addressing equity concerns associated with new development is the community benefits agreement (CBA).

CBAs are legally enforceable contracts between developers and resident groups or coalitions directly affected by a specific development project. These agreements detail multiple benefits—such as local hiring goals, living wage requirements, job training programs, and affordable housing requirements—that the developer will provide to the community. In turn, the community groups or coalitions involved agree to support the project.

History

The CBA concept emerged first in California in the 1990s, and the Staples Center CBA in Los Angeles, which was completed in 2001, is often considered to be the first example of a successful CBA. This CBA was the result of negotiations between the developers of the Staples Center and a coalition of 29 community groups and five labor unions called the Figueroa Corridor Coalition for Economic Justice. The agreement included provisions for community parks and recreation facilities, affordable housing units, local hiring, and the establishment of an advisory committee for the monitoring and implementation of the CBA. The Los Angeles Redevelopment Authority incorporated this CBA into the development agreement for the project, and implementation continues today.

Most commentators agree that in order for a particular agreement to qualify as a CBA it must be legally enforceable and related to a specific development project. Furthermore, it must address multiple benefits and be the result of extensive community involvement. Although CBAs have not become commonplace, there are dozens of successful examples across the United States since the early 2000s.

The Goal of Community Benefits Agreements

CBAs have the basic goal of increasing inclusiveness and accountability through a legally enforceable mechanism. Because they are negotiated agreements directly between community groups or coalitions and developers, the CBA process allows for another level of community involvement and engagement and provides a vehicle to address the concerns of the community groups and stakeholders who will be disproportionately affected by a development. CBAs can also increase accountability of both developers and local governments. Large development projects often promise positive benefits to the community while relying on public subsidies, such as tax incentives. Having a CBA in place can help communities ensure that these benefits are realized and that community groups have a voice in how community resources are used to support development.

With these underlying goals, individual CBAs differ in the specific community benefits addressed based on the needs of the individual community. CBAs should include clearly defined benefits to the community, time frames for achieving these community benefits, and provisions for monitoring and evaluation to ensure accountability.

Roles for Local Officials

Typically, the developer and one or more representative community groups sign a CBA before a project begins the development review process. Nevertheless, there are several ways local officials can support

The Staples Center in Los Angeles was developed under one of the earliest (and most successful) community benefits agreements. [Credit: Prayitno/ CC-by-2.0 (tinyurl.com/orj6wbe)]

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CBAs. While there are potential legal problems associated with the local government acting as a direct negotiator, local officials have opportunities to play valuable support roles by sharing information about development proposals, providing forums for developers and community stakeholders to exchange ideas, and incorporating community benefits provisions into development agreements. Beyond this, local officials can be explicit about using evidence of community support as a criterion for discretionary approvals or economic development subsidies. And in cases where the local government is acting as the developer, local officials may be heavily involved in all stages of the CBA process.

Benefits, Considerations, and Concerns

CBAs address a broad range of issues that may benefit the community. Common benefits include local hiring requirements, job training programs, affordable housing requirements, and provision of community facilities. But they may also include green building, green site design, or environmental remediation requirements. Some of these, such as new community facilities, primarily benefit residents in immediate proximity to the project site; others, including local hiring and affordable housing, can have communitywide implications. While CBAs can be quite effective at addressing site-specific development impacts, greater benefits or efficiencies may be achieved through a broader or more coordinated approach that addresses equity issues at the community scale.

The decisions in *Nollan v. California Coastal Commission* and *Dolan v. City of Tigard* require local governments to demonstrate that development exactions have an "essential nexus" to the project and are roughly proportional to the projects impacts. Because CBAs are agreements between developers and community groups, they may include benefits beyond what a local government could require. However, if a local government is directly involved in negotiating the agreement, there is a risk that courts may invalidate specific provisions of a CBA as unconstitutional exactions.

Finally, enforcement of CBAs can be challenging. Clear provisions for breach of contract have not been established. In states with development agreement statutes, local governments generally include the CBA in the development agreement, which allows the local government to enforce the CBA. While they are legally enforceable contracts, enforcement takes both time and money. Additionally, CBAs are often a private contract between a developer and the community groups or coalitions that have signed it, which means that community coalitions needs the capacity and resources to pursue enforcement. Should a coalition dissolve, for example, the CBA may not be enforceable if the groups that comprised the coalition were not also signatories.

Conclusions

Community Benefits Agreements can be a useful tool for community groups, developers, and local governments. They can help communities ensure that they are receiving benefits related to or in tandem with new development, including local jobs, affordable housing, and community facilities. Community groups also may be able to negotiate more than what the local government would have been able to require. In turn, they benefit developers. The community groups involved agree to support the project, which provides the developer with assurances that they will not encounter community opposition that could derail a project once the review process has started. Finally, CBAs have benefits for local governments, as CBAs can be used to both facilitate community engagement in the development process and to provide accountability for public investments in economic development.

FURTHER READING

1. Published by the American Planning Association

Goodman, Aaron. 2014. "Community Benefits Agreements (CBA'S)." *Michigan Planner*, September/October. Available at tinyurl.com/hcckjd8.

Miranne, Kristine. 2014. "Community Benefits Agreements: The Way to Good Jobs." *Michigan Planner*, September/October. Available at tinyurl.com/hcckjd8.

2. Other Resources

Been, Vicky. 2010. "Community Benefits Agreements: A New Local Government Tool or Another Variation on the Exaction Theme?" Furman Center for Real Estate and Urban Policy Working Paper. Available at tinyurl.com/z2bt4w5.

Lavine, Amy. 2009. "Legal and Contractual Issues of Community Benefits Agreements." *Planning and Zoning Law Report*, June. Available at tinyurl.com/zjj6dtt.

Musil, Thomas Allen. 2012. "The Sleeping Giant: Community Benefit Agreements and Urban Development." *Urban Lawyer*, 44(4): 827–851. Available at tinyurl.com/nfhgn9u.