

Community Benefit Agreements: Round Table Discussion

September 26, 2017

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Community Benefit Agreements

What is a Community Benefits Agreement?

- A Community Benefits Agreement (“CBA”) is a private contract signed by community groups and a real estate developer that requires the developer to provide specific amenities and/or mitigations to the local community or neighborhood.
- These agreements exchange a negotiated body of benefits to the community for community support for the development project.
- The CBA arose from the need for communities to have a means of extracting mitigations from development projects when they are excluded from development agreements between municipalities and developers.

Community Benefit Agreements

Pros and Cons

- Pros
 - CBAs make the development process inherently more transparent by involving community groups early in the decision-making process.
 - CBAs encourage the creation and maintenance of alliances between community groups that might have remained siloed but for their shared interest in the development project.

- Cons
 - The cost of drafting and enforcing a CBA creates an added expense for both developers and community groups as attorneys most likely will need to be involved.
 - CBAs with weak enforcement provisions or scant benefits tend to set poor precedents as some developers look to these types of agreements to set the upper limit of what they will be willing to accept.

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Best Practices

- Be as specific as possible in defining terms, rights, and responsibilities.
 - Avoid phrases like “work towards” and “best efforts.” Make sure to specify timelines and desired, measurable outcomes.
- Ensure that the signatories to the CBA are sufficiently representative of the community.
 - An unrepresentative coalition of community groups that sign on to a CBA will not aid the developer’s goal of showing strong community support and limiting opposition to the proposed project.
- Local governments should not make the execution of a CBA a condition of any land use permits.
 - Such conditions have been invalidated by the U.S. Supreme Court.
 - Additionally, substantial scholarship indicates that municipalities should not enforce privately negotiated CBAs or incorporate them into their development agreements as this practice may not survive judicial scrutiny.

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Examples

- **New Port Covington Community Benefits Agreement**
 - New Port Covington is the site of approximately 250 acres of undeveloped land located on the South Baltimore peninsula. The project is valued at \$5.5 billion. The community benefits agreement anticipates numerous developer contributions toward education, workforce development and open space, including:
 - \$7,680,000 for after-school, summer programming, and other educational and city-wide priorities,
 - \$10,000,000 over five years for city-wide workforce development, education, and youth empowerment programming, and
 - Space provided at the New Port Covington site for a neighborhood art cooperative space at reduced rates.
 - <http://www.baltimoresun.com/news/opinion/readersrespond/bal-port-covington-memorandum-of-understanding-20160912-htmlstory.html>

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Examples

- **Oakland Army Base Community Benefits Agreement**
 - The Oakland Army Base Project was the site of the former military base operated by the U.S. Army until 1999. The project site is to be redeveloped into a modern logistics center, shifting the transportation of goods from trucks to trains. The project is valued at \$1.2 billion. Community benefits include:
 - A jobs center in West Oakland purpose built to be a resource for contractors, employers and job seekers during the construction and operations phases of development,
 - Improved roadway safety and traffic relief on local streets and highways,
 - A minimum of 50% local contracting for construction jobs and new permanent jobs,
 - The establishment of a community trust fund, and
 - The designation of a long-term Community Facilities District to maintain publicly funded public improvements.
 - <http://juliangross.net/oakland-army-base.html>

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Examples

- **Atlantic Yards/Pacific Park Community Benefits Agreement**
 - Atlantic Yards was the planned development site of a new arena for the New Jersey Jets and residential, office, and retail buildings in New York City. The project is valued at \$6 billion. The community benefits agreement for the project covered workforce development, housing, and community amenities and included:
 - Developers sponsoring an annual job fair,
 - 50% of housing units at the Project being made affordable to low- and moderate-income families,
 - Six acres of open space to be used by the public free of charge, including plazas, fountains, lawns, etc.; and
 - Development of four schools in the surrounding community as well as appropriate after-school programs.
 - http://thedbna.org/wp-content/uploads/ATLANTIC_YARDS_CBA-copy.pdf

Community Benefit Agreements

Useful Links

- Julian Gross, Greg LeRoy, and Madeline Janis-Aparicio, *Community Benefit Agreements: Making Development Projects Accountable*. <http://www.goodjobsfirst.org/sites/default/files/docs/pdf/cba2005final.pdf>
- Filush, Alexandria, *Best Practices in Negotiating and Drafting Community Benefits Agreements*. (2014), https://www.law.uchicago.edu/files/file/housing_initiative_clinic_briefs_-_best_practices_in_negotiating_and_drafting_community_benefits_agreements.pdf
- Sheikh, Naved, *Community Benefits Agreements: Can Private Contracts Replace Public Responsibility?*, (2008), <http://www.lawschool.cornell.edu/research/JLPP/upload/Sheikh.pdf>