



# Do Community Benefits Agreements Benefit Communities?

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Fifteen years into their use, community benefits agreements have revolutionized the land-use approval process for large, public-private economic development projects. Now, developers and coalitions representing low-income communities can settle their disputes directly, outside of formal approval processes.

Community benefits agreement (CBA) campaigns have become commonplace nationwide as a way to address income inequality in poor neighborhoods. A CBA is a contract between a coalition of community groups and a developer in which the developer agrees to provide a slate of economic benefits in exchange for the coalition's promise not to oppose the development project. The CBA movement has its roots in the early 2000s with the efforts of community coalitions to secure living wages, local hiring, and green building requirements for low-income communities that traditionally have been left out of the development planning process for their own neighborhoods. The CBA negotiated around the development of L.A. Live, a large entertainment complex in Los Angeles in 2001, is considered the first major CBA benefiting low-income communities.

While CBAs can be a valuable tool for low-income communities facing development in their neighborhoods, some concerns remain about who truly benefits from these agreements. Criticism of CBAs tends to focus on either (1) instances where coalitions are formed specifically to negotiate CBAs and may not be fully representative of differing viewpoints, inclusive, and accountable or (2) projects where local government is involved in the negotiation and execution of an agreement. These criticisms, however, are misguided. First, coalitions formed specifically to sign CBAs are not representative of community interests, and agreements signed with such groups should not be called CBAs. Second, when government actors are running land-use approval processes, which could include a CBA negotiation, and attempt to add government officials as parties to the agreement, the U.S. Constitution protects developers from the government setting certain conditions on the approvals being granted.

Unfortunately, much of this discussion about CBAs has shifted focus away from the key participants: the coalitions of community groups representing low-income workers and residents, often in communities of color. It is important for these communities to know how CBAs can help protect and serve their interests around development planning and to understand the elements that make a CBA successful. The Kingsbridge National Ice Center case example below demonstrates that CBAs can and do benefit communities when the coalitions involved represent diverse community viewpoints and when such coalitions can be held accountable by the broader community itself.<sup>1</sup>

### The Kingsbridge National Ice Center CBA

The Kingsbridge case began with plans to repurpose an empty armory building. Built in 1917 for military practice purposes, the Kingsbridge Armory contains a massive 180,000-square-foot drill hall with an uninterrupted span of structural steel and no internal support columns. The armory was turned over to the City of New York in the 1990s and largely abandoned. Meanwhile, in anticipation of the armory being shifted to city ownership, the Kingsbridge Armory Redevelopment Alliance (KARA) was formed in the late 1980s to unite various community stakeholders around a goal of ensuring that the economic benefits of any armory redevelopment stayed in the community. KARA was organized and staffed by the Northwest Bronx Community and Clergy Coalition, a community-organizing group founded in 1974.

In 2008, the City of New York selected a development firm, the Related Companies, to redevelop the armory into a shopping mall. KARA leaders, along with attorneys representing them pro bono, met with Related officials to negotiate a CBA focused on spreading economic benefits across community stakeholders. Included in the CBA terms was a living-wage provision in which all employees, including those in both construction and permanent operations roles, would be paid above the state minimum wage at the time. Since Related was unwilling to agree to this higher wage, negotiations fell apart. KARA then lobbied the New York City Council, which voted almost unanimously against the Related shopping-mall project and subsequently passed a living-wage law raising wages for city-funded projects.

In 2012, a new group of developers, KNIC Partners, proposed the Kingsbridge National Ice Center, a plan to redevelop the armory

into the largest ice sports facility in the world. The ice center developers openly agreed to pay living wages and approached KARA leaders to discuss which economic benefits could be shared with community members. This approach differed from the previous, more confrontational negotiation with Related. KARA, now working with a new group of pro bono lawyers, and the ice center team negotiated many key terms, eventually reaching an agreement acceptable to both parties after months of meetings.<sup>2</sup> Although government officials were not party to the CBA, city officials monitored the negotiations carefully and were watchful for any individual interests improperly influencing the terms of the CBA. For instance, a local council member demanded that the developer pay a significant amount of funding to a charity with which he was associated in exchange for his support; however, KNIC Partners rejected his demand.<sup>3</sup>

In the end, the Kingsbridge National Ice Center CBA included the following shared benefits:

- **Developer contributions directly benefiting the community.** Contributions included the following:
  - ◇ \$8 million toward the build-out of approximately 52,000 square feet of community space used in any way KARA agrees upon
  - ◇ \$1 million per year for in-kind access to ice center facilities, including discounted rates for schoolchildren who receive free school lunch
  - ◇ 1 percent of annual gross ice-rink rental revenue up to \$25 million, plus 2 percent of any revenue above \$25 million for community uses
- **Local hiring, training, and living wages.** A majority of employees hired for operations, and at least 25 percent of all employees, must be local residents who were formerly incarcerated or are currently unemployed or underemployed. These employees must be paid living wages, defined in 2013 as at least \$10 per hour with benefits or \$11.50 per hour without benefits, indexed to inflation.
- **Local procurement.** A local-procurement plan was established in which a majority of all needed goods and services for the development and operation of the ice center would be sourced from local businesses and minority- and women-owned businesses in the Bronx.
- **Greening the project.** The developers pledged to attain a LEED (Leadership in Energy and Environmental Design) certification of silver or higher for the renovation of the armory, incentivize public transportation use, mitigate pollution and ensure healthy indoor air quality, provide or reserve green space accounting for 20 percent of the whole project site, and provide \$10,000 per year to train local residents in skills required for work with alternative-energy-generation systems.
- **Technical assistance and mentoring.** The developers will provide a mentoring and assistance program to small businesses near the project and encourage procurement opportunities.
- **New school construction.** If selected to develop an adjoining property, the ice center team agreed to apply for approval to develop a surrounding area for the building of a school.
- **Community involvement.** A working group of community representatives agreed to assist with the implementation of the CBA, address environmental concerns, and facilitate ongoing dialogue with the developers.

The Kingsbridge National Ice Center project, which was approved in 2013, has faced some challenges moving forward, but none of them have been related thus far to the CBA. Currently, following a series of lawsuits, the developers are negotiating with the City of New York to receive a lease granting them site control over the property.

It took significant time and effort—17 years of community organizing and dozens of hours of legal assistance from community economic-development attorneys on the coalition side, and an equal amount of work on the part of the developers—to arrive at a CBA. Enforcing the terms over the next 99 years (the duration of the agreement) will also take consistent, ongoing effort and work. On balance, the inclusion of a community coalition in making decisions about the allocation of economic benefits among community stakeholders is very powerful. Given the representativeness of the coalition—25 organizations were signatories—the CBA has the potential to benefit future generations of Bronx residents.

## What is playing out in Somerville mirrors to some extent what happened in Kingsbridge: a coalition of community groups demanded a right to negotiate directly with a developer for the shared benefits of a given development.

Consensus among the involved parties indicated that KARA effectively represented community residents' interests in sharing the economic benefits of the armory's redevelopment. The office of Bronx borough president Reuben Diaz Jr. acknowledged KARA among other community stakeholders and elected officials during the 2008 CBA negotiation.<sup>4</sup> A key question going forward, keeping in mind that the coalitions are unelected, is whether community coalitions should be the *exclusive* representative of community stakeholders. To be enforceable, CBAs must be established between coalitions and developers; government officials cannot commit their offices to enforcing future conditions, and government is limited by the Supreme Court in what conditions it can apply. Thus, when elected officials are unable or unwilling to require developers of large projects to provide shared economic benefits, CBAs negotiated with representative and inclusive community coalitions can play a powerful role.

### **CBA Campaigns Addressing Needs of Low-Income Communities in New England**

CBA campaigns to spread the economic benefits of development among low-income communities are also taking hold in New England. In December 2014, the Somerville Redevelopment Authority and Union Square Station Associates entered into an agreement for a major development project that would include a community-driven

planning process and a CBA.<sup>5</sup> The planning process was to include public workshops, public design charrettes, community reviews in several languages, and ultimately a neighborhood plan for the seven-block redevelopment.<sup>6</sup> To facilitate the CBA negotiation, the Somerville mayor hired a real estate consulting firm, LOCUS, to conduct outreach and involve the community.<sup>7</sup>

Yet almost immediately, some community members questioned the role of outside consultants in negotiating and enforcing community benefits during the 30 or so years over which the redevelopment would occur.<sup>8</sup> There is a difference between a consultant helping to facilitate a process and a lawyer representing a community coalition in negotiations: the consultant might be more interested in moving the process along quickly, whereas the attorney must represent the interests of the coalition. One Somerville community coalition, Union United, has called for direct negotiations between the developer and the community to arrive at a CBA that the coalition can enforce.<sup>9</sup> Members of Union United petitioned for a public hearing before the Somerville Board of Aldermen on the displacement of longtime residents and affordable housing, developed a YouTube video explaining the CBA negotiation process, and organized to have their voice heard.<sup>10</sup>

What is playing out in Somerville mirrors to some extent what happened in Kingsbridge: a coalition of community groups demanded a right to negotiate directly with a developer for the shared benefits of a given development. The Union United coalition is comprised of 17 individual groups and appears to be inclusive and representative of varying community interests, and the group states that it is continuing to organize. As the coalition hopes to avoid the displacement of longtime residents and affordable housing, it seems that the community has something to gain in a CBA. Government seems willing to hear the coalition's concerns and has been generally supportive of a CBA, though it remains to be seen how the process will ultimately unfold in the long run.

Elsewhere, in Maine, the Somerset County Commissioners recently approved a wind farm tax-abatement district after the developer agreed to pay an annual per-turbine fee for the next several years as a part of a CBA. In addition, the county approved a tax-increment-financing district, which would allow the county to collect a portion of future property-tax increases and also allow the developer to pay lower future property taxes. The turbine fees can be used however the county commissioners decide.<sup>11</sup>

The Maine wind turbine CBA is somewhat different from the CBA examples mentioned above. Here, the process did not involve a direct contract between a community coalition and a developer; instead, the agreement is between the developer and the county government. However, while different from the Kingsbridge National Ice Center and Somerville examples, this CBA does show an alternative legal mechanism through which to share economic benefits in rural areas. In this rural area of Maine, where there are fewer residents in the voting public, elected officials are directly accountable for how they spend the wind turbine contributions.

### **Conclusion**

So, do community benefits agreements benefit communities? Based on the Kingsbridge National Ice Center CBA case study, the an-

swer is yes: CBAs can benefit communities when an inclusive and representative community coalition negotiates with a developer to reach a binding CBA without government as a party to the agreement. Although it is an open question at the moment whether the Kingsbridge National Ice Center will be developed and the terms of the CBA executed, the model for community coalition involvement and negotiation with a developer is a powerful one that has the potential for significant impact. There are many other CBA campaign examples that show how communities are working to share economic benefits and avoid displacement of neighborhood residents.

A CBA does require a lot of time and resources to address just one particular development. As noted above, the Kingsbridge CBA took 17 years, countless community-organizing hours, and hundreds of hours of attorney time. Given the time it takes to negotiate a CBA, it is unlikely that CBAs will solve every land-use problem, but studying them can yield useful data. For instance, in a survey of 225 CBA participants, respondents ranked “increases in public participation on development outcomes” as the number one way that CBAs improve the development process.<sup>12</sup> Perhaps participation in a CBA negotiation process increases interest among the public to participate in development processes and other issues affecting their neighborhoods more generally. Increased interest in local development is especially useful in low-income communities, where residents typically are less likely to participate in government processes.

Without CBAs, what alternative solutions can ensure accountable development with shared economic benefits? It is possible that local governments can include affordable housing requirements, for instance, or other terms in the rezoning of particular areas. However, because of court rulings that set a precedent complicating those efforts, some terms may be found to be unconstitutional in a court challenge. Further, local government is unlikely to push for minimum affordable-housing requirements in the absence of community groups calling for such terms, and developers are unlikely to provide benefits like affordable housing unless required by government to do so.

Therefore, even with its lengthy and arduous process and time frame, in cases where such work is possible, a representative and enforceable CBA may be one of the most effective tools now available to communities looking to share the benefits from development in their neighborhoods.

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## Endnotes

- <sup>1</sup> Edward W. De Barbieri, “Do Community Benefits Agreements Benefit Communities?” *Cardozo Law Review* 37, no. 5 (2016): 1773–1825, <http://www.cardozolawreview.com/content/37-5/DE%20BARBIERI.37.5.pdf>.
- <sup>2</sup> The author was a member of the legal team that represented the KARA coalition in the negotiating and drafting of the Kingsbridge National Ice Center CBA. *Exhibit A: Community Benefits Program* (New York: Northwest Bronx Community and Clergy Coalition, 2013), <http://northwestbronx.org/wp-content/uploads/2015/08/Exhibit-A-Community-Benefits-Program-1-1.pdf>.

- <sup>3</sup> Winnie Hu, “Scrutiny Over Bronx Councilman’s Demands for Ice Center Plan,” *New York Times*, November 21, 2013, <http://www.nytimes.com/2013/11/22/nyregion/scrutiny-over-bronx-councilmans-demands-for-ice-center-plan.html>.
- <sup>4</sup> Bronx Borough President Reuben Diaz Jr., “Statement from Bronx Borough President Reuben Diaz Jr. Re: Kingsbridge Armory Community Benefits Agreement,” news release, August 18, 2009, <http://bronxboropres.nyc.gov/press/releases/2009-08-18.html>.
- <sup>5</sup> City of Somerville, “Developer Signs Union Sq. Planning Process and Timeline,” news release, December 8, 2014, <http://www.somervillema.gov/news/developer-signs-union-sq-planning-process-timeline>.
- <sup>6</sup> *Ibid.*
- <sup>7</sup> “Introduction of New Player to CBA Negotiations for Union Square Raises Questions,” Somerville Community Access Television Channel 3, August 11, 2015, <http://www.scatsomerville.org/news/introduction-of-new-player-to-cba-negotiations-for-union-square-raises-questions/>.
- <sup>8</sup> Dan Atkinson, “Confusion, Deliberation in Benefits Planning for Union Square,” *Somerville Journal*, January 21, 2016, <http://somerville.wickedlocal.com/news/20160121/confusion-deliberation-in-benefits-planning-for-union-square>.
- <sup>9</sup> “About Us,” Union United, <http://unionunitedsomerville.com/about-us/>, accessed January 26, 2017.
- <sup>10</sup> Erin Tiernan, “Union Square Residents Demand Seat at Negotiating Table,” *Somerville Journal*, October 5, 2016, [http://somerville.wickedlocal.com/news/20161005/union-square-residents-demand-seat-at-negotiating-table](http://somerville.wickedlocal.com/news/20161005/union-square-residents-demand-seat-at-negotiating-table;); “Video: Preventing Displacement with a Community Benefits Agreement,” Union United, <http://unionunitedsomerville.com/cba-video/>; Vanessa Nason, “Hearing Called for Union Square Redevelopment,” *Boston Globe*, November 9, 2016, <https://www.bostonglobe.com/metro/regionals/north/2016/11/09/hearing-called-for-union-square-redevelopment/BU6EpxNVcVXCuIetrmvoZM/story.html>.
- <sup>11</sup> Rachel Ohm, “Somerset County Approves Wind Farm TIF District,” *CentralMaine.com*, December 23, 2014, <http://www.centralmaine.com/2014/12/22/somerset-county-approves-wind-farm-tif-district>.
- <sup>12</sup> Thomas A. Musil, “The Sleeping Giant: Community Benefit Agreements and Urban Development,” *Urban Lawyer* 44, no. 4 (2012): 827, 847.

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