



## Housing Initiative Clinic Briefs

### **Best Practices in Negotiating and Drafting Community Benefits Agreements**

By Alexandria Filush, '14  
March 2014

---

#### **I. INTRODUCTION**

An economic venture's success is typically measured by its profitability. Accordingly, a good development plan involves anticipating future contingencies that could impede profitability and addressing them from the start. In the case of large-scale economic development projects, however, communities in which such projects are located may face long-term negative consequences if developers consider only profitability when designing and executing a plan for development. For instance, though community members and business owners may welcome some aspects of a major development project in their neighborhood, they may also have legitimate concerns about displacement of local residents through gentrification, increased traffic problems, noise, and pollution, whether the project create jobs for local residents, and if so, whether those jobs will pay a living wage. Yet, developers typically do not have an incentive to address or ameliorate a project's impact on the surrounding community if failure to do so will not affect their bottom line. And local governments, though they are charged with shaping development and land use patterns, do not necessarily make decisions about proposed development projects based on the specific interests of the surrounding community. When local governments decide to grant land use permits or development subsidies, they are constrained by constitutional requirements, they may not have the information necessary to assess the costs and

benefits of proposed projects to the community, they may not employ consistent standards to evaluate the costs and benefits of a proposed development project, and they may rely too heavily on developers' projections about community impact or job creation.<sup>1</sup>

Thus, although large-scale economic development projects impact communities in significant ways, the typical planning and execution of a development project may involve little or no direct communication between the developer and the community. Instead, all developer commitments are generally negotiated between the developer and the city and memorialized in the development agreement. Since community members are not party to the development agreement, they have no contractual right to enforce the developer's commitments under that agreement—even if those commitments are meant to benefit the community.<sup>2</sup>

Community Benefits Agreements ("CBAs") have grown out of this situation as a way for communities to advocate for their interests through direct negotiation with developers, agree upon mutually beneficial commitments, and create a mechanism for enforcing those commitments. A CBA is private contract between a developer and community representatives that specifies the benefits the developer will provide to the community in exchange for community support for a development project.<sup>3</sup> CBAs have been used with increasing frequency over the past fifteen years across the United States and are likely to become even more popular with time. The ultimate goal of this paper is provide information and guidance for community groups interested in negotiating a CBA with a developer. To accomplish this goal, I will 1) briefly outline the basics and background of CBAs, 2) describe the legal issues attorneys and community leaders may encounter when negotiating and drafting CBAs, and 3) outline best practices for addressing these issues.

## **II. BACKGROUND: THE COMMUNITY BENEFITS AGREEMENT**

### **A. What is a Community Benefits Agreement?**

A Community Benefits Agreement is a private contract between community groups and a developer, under which the developer agrees to provide specified community benefits as part of completing and operating a proposed development project in exchange for community support of the project.<sup>4</sup> CBAs have required developers to provide such community benefits as local hiring programs, affordable housing, payment of living wages to employees, funds for job training, parks or open space, and environmental benefits and mitigations.<sup>5</sup> Developers often agree to provide such benefits because community support of a proposed development can be helpful in obtaining government subsidies, necessary permits, or other timely project approvals.<sup>6</sup> Thus, CBAs typically enumerate specific types of support that the relevant community groups agree to provide. Such support obligations can include explicit, affirmative support efforts (e.g., attending hearings and providing testimony, writing support letters, or expressing support through various forms of media), quiet acquiescence to the project, and releases of administrative and/or specified legal claims that could arise in relation to the project.<sup>7</sup>

CBAs are narrowly tailored to the relevant community and project. CBA negotiations have been initiated by developers, community groups, and, in some cases, local officials or regulatory authorities.<sup>8</sup> Because CBAs are private contracts, CBAs both memorialize the mutually beneficial objectives settled upon in negotiations and serve as an enforcement mechanism to hold both sides accountable for their promised performance.<sup>9</sup>

### **B. The Modern CBA Movement**

The CBA movement began in 1998 in California, when plans were in the works for a large entertainment and retail complex near such Hollywood landmarks as the Walk of Fame and TCL Chinese Theatre (formerly Grauman's Chinese Theatre and Mann's Chinese Theatre).<sup>10</sup> The complex was slated to include 1.2 million square feet of retail space, several parking lots, movie theaters, and hotels, and the Dolby Theatre (previously the Kodak Theatre), now annual host of the Academy Awards.<sup>11</sup> Concerns about how the proposed complex would impact the environment, traffic congestion, and crime rates prompted a Los Angeles Councilwoman and the Los Angeles Alliance for a New Economy ("LAANE") to bring the project's developer and community groups together to negotiate a CBA. In exchange for the community support needed to help secure subsidies from the city, the developer agreed to fund traffic improvements, pay living wages to workers employed at the center, implement a plan to use the community as a "first source" for new hires, and adopt a policy of union neutrality.<sup>12</sup> Implementation of the CBA was largely successful: the complex hired almost 70% of its initial employees from the surrounding community, provided living wages for nearly 50% of its permanent positions, and served to revitalize Hollywood Boulevard.<sup>13</sup>

The success of the Hollywood and Highland Center CBA led to negotiation of the Staples Center CBA in 2001, another CBA involving LAANE. The Staples Center CBA involved the development of the Los Angeles Sports and Entertainment District, a \$4.2 billion complex adjacent to the Staples Center, home to the Los Angeles Lakers. The Staples Center CBA is viewed by some as the "first full-fledged" CBA.<sup>14</sup> There were high stakes involved for the developers: they needed land use variances and \$150 million in city subsidies that could easily be threatened by strong community opposition.<sup>15</sup> As a result, the affected communities obtained benefits under the Staples Center CBA that were even broader than those provided in connection

with the Hollywood and Highland Center. In addition to maintaining 70% of the 5,500 jobs generated by the project as "living wage" jobs and adopting a "first source" hiring plan, the developers' coalition agreed to provide funding for an assessment of community park and recreation needs, construct 100-160 affordable housing units, provide interest-free loans to nonprofit housing developers for additional affordable housing units, provide funding for a residential permit parking program, and create a committee tasked with monitoring implementation of the CBA and enforcement of its terms.<sup>16</sup> As was the case with the Hollywood and Highlands CBA, implementation of the Staples Center CBA has generally been successful.<sup>17</sup>

Since completion of the Staples Center CBA, use of CBAs has spread across California (San Diego, San Jose, Oakland, San Francisco, and Santa Rosa),<sup>18</sup> the country, and other parts of the world. As of 2008, community groups had initiated negotiations or completed CBAs in New York City, Albany, and Syracuse (New York),<sup>19</sup> Minneapolis—Saint Paul (Minnesota),<sup>20</sup> Chicago,<sup>21</sup> New Haven,<sup>22</sup> Milwaukee,<sup>23</sup> Denver,<sup>24</sup> Pittsburgh,<sup>25</sup> Washington, D.C.,<sup>26</sup> Camden (New Jersey),<sup>27</sup> New Orleans,<sup>28</sup> Atlanta,<sup>29</sup> Charleston (South Carolina),<sup>30</sup> Miami,<sup>31</sup> Seattle,<sup>32</sup> Wilmington (Delaware),<sup>33</sup> Toronto (Ontario, Canada),<sup>34</sup> and Dublin (Ireland).<sup>35</sup>

The swift and widespread adoption of CBAs that has taken place over the past fifteen years suggests that CBAs are only going to increase in popularity as a tool for shaping development and land use patterns. If that is the case, then attorneys and community leaders who may become involved in negotiating and drafting CBAs must be familiar with and prepared to address legal issues that may come up in the process.

### **III. LEGAL ISSUES AND BEST PRACTICES IN CBA NEGOTIATION AND DRAFTING**

CBAs are private contracts. As a result, the main legal concern for lawyers and community groups involved in negotiating and drafting CBAs is enforceability. Enforceability

of CBAs has not been squarely addressed in state and federal courts.<sup>36</sup> Thus, while there are certain measures advocates can and should take to make enforceability more likely, considerable uncertainty exists as to what remedies—if any—community groups could obtain in the event of a developer's breach. That is not to say, however, that careful negotiation and drafting of a CBA would be a wasted effort. As CBAs are used with increasing frequency, there is an increased likelihood that their terms will be tested in court. Additionally, even an unenforceable CBA may be valuable, since developers who refuse to fulfill their obligations under a CBA may incur significant reputational damage that could harm their ability to obtain future government subsidies and land use permits. Advocates should, therefore, aim to produce CBAs that will be respected under state contract law and clearly communicate the benefits and obligations to which the contract parties have agreed.

Some best practices for accomplishing these goals include: 1) preventing or minimizing the degree to which land use approval is made contingent on the formation of a CBA; 2) ensuring that the CBA is supported by valid consideration by agreeing to, for instance, forbear from pursuing any legal claims that could block the development at issue; 3) avoiding unnecessary vagueness issues by drafting specific, detailed promises that are accompanied by timelines and monitoring requirements; and 4) ensuring that the parties involved in negotiating and drafting the CBA are accountable to and representative of the impacted community and its interests.

#### **A. Government Involvement**

One factor that can make a CBA's enforceability less likely is if land use approval from the local government is conditioned upon the CBA's successful negotiation and execution.<sup>37</sup> This might seem counterintuitive, since community groups typically derive whatever leverage

they have at the negotiating table from the land use approvals and government subsidies developers need in order to move forward with a proposed development project. Developers know, after all, that elected local officials are more likely to approve and subsidize projects with broad community support than unpopular projects that could harm them at the polls. It would be unwise, however, for CBA advocates to attempt to encourage or use local government influence as a means for getting a developer to negotiate.

When land use permits are explicitly or implicitly conditioned upon the successful negotiation and execution of a CBA, the benefits provided under the CBA are at risk of being deemed unenforceable exactions. An exaction is a "condition[]" that a local government imposes on a developer in return for the local government agreeing to allow a land use that it otherwise could prohibit."<sup>38</sup> Under the Supreme Court's decisions in *Nollan v. California Coastal Commission*, 483 U.S. 825, 837 (1987) and *Dolan v. City of Tigard*, 512 U.S. 374, 391 (1994) (collectively, "*Nollan-Dolan*"), municipalities may not condition land use approvals on the exaction of certain public benefits unless certain requirements are met or just compensation is given to the property owner. First, there must be a legitimate state interest that would allow the local government to deny the proposed land use.<sup>39</sup> Second, if the government possesses the requisite interest, there must be an "essential nexus" between this legitimate state interest and the condition or exaction being imposed on the developer.<sup>40</sup> Finally, the condition or exaction must be "roughly proportional" to the projected impacts of the proposed development.<sup>41</sup> An exaction of a public benefit that does not meet these requirements likely constitutes a taking that would require "just compensation" under the Takings Clause of the Fifth Amendment, as incorporated against the states by the Fourteenth Amendment.

In *Nollan*, California beachfront property owners appealed a decision by the California Court of Appeal that it did not constitute a taking when the California Coastal Commission conditioned its grant of a coastal development permit on the property owners' recordation of a public easement across a portion of their property.<sup>42</sup> The Supreme Court reversed, holding that the permit condition did constitute a taking for which the Commission needed to provide just compensation to the property owners.<sup>43</sup> The court agreed with the Commission's view that "a permit condition that serves the same legitimate police-purpose as a refusal to issue the permit should not be found to be a taking if the refusal to issue the permit would not constitute a taking."<sup>44</sup> The court noted, however, that when a permit condition *does not* serve the same legitimate police-purpose as a refusal to issue a permit, the "essential nexus" has not been met, and the condition is no longer "a valid regulation of land use but 'an out-and-out plan of extortion.'"<sup>45</sup>

In *Dolan*, the Supreme Court reaffirmed *Nollan* and answered a question *Nollan* left open: once the "essential nexus" has been met (i.e., when the "permit condition serves the same legitimate police-purpose as a refusal to issue the permit"<sup>46</sup>), "what is the required degree of connection between the exaction[. . . and the projected impacts of the proposed development]"<sup>47</sup> *Dolan* involved petitioner Florence Dolan, a business owner in Tigard, Oregon who challenged municipal code provisions that conditioned approval of a redevelopment permit on her agreement to allow a portion of her property to be used for flood control, a recreational easement, and traffic improvements.<sup>48</sup> The Oregon Supreme Court ruled that the permit conditions did not constitute an unconstitutional taking.

The Supreme Court reversed and remanded, holding that the Fifth Amendment requires "rough proportionality" between permit conditions and the community or environmental impact

of the proposed development.<sup>49</sup> In applying this standard, cities are not required to engage in a "precise mathematical calculation," but "must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development."<sup>50</sup> In the petitioner's case, the court concluded that the city had not met its burden of demonstrating that the recreational easement and traffic improvement permit conditions were reasonably related to the projected impact of the petitioner's proposed development.<sup>51</sup> As a result, the permit conditions constituted an unconstitutional taking that could not be imposed without just compensation.<sup>52</sup>

Thus, the "essential nexus" and "rough proportionality" requirements in *Nollan-Dolan* constrain the degree of influence government officials can have over the negotiation and execution of CBAs and create risks that may negate the value of government influence in bringing developers to the bargaining table. The most serious risk that arises when government officials condition land use approvals on execution of a CBA is the risk that the CBA will be challenged and deemed an unenforceable, unconstitutional taking under *Nollan-Dolan*. Another serious but perhaps less obvious risk, though, is that government involvement may limit the scope of benefits provided under a CBA. It is in a local government's interests to pass the cost of community benefits on to developers, but having to pay "just compensation" under the Fifth Amendment and *Nollan-Dolan* would defeat the cost-saving purpose altogether. As a result, government officials have the incentive to push developers to negotiate CBAs, but also to limit the benefits provided under CBAs to those that would be considered permissible under *Nollan-Dolan*. In this sense, community groups may be better positioned both to negotiate an enforceable CBA and to obtain broader, more comprehensive benefits if they engage in negotiations that are free from government influence or involvement. Note that government

influence or involvement includes documentation and enforcement of a CBA: under the "entanglement exception" to the State Action Doctrine, CBAs that are incorporated into the development agreement to provide for local government monitoring or enforcement of the CBA may fall within the ambit of *Nollan-Dolan* even if the CBA was initiated and negotiated entirely by private actors.<sup>53</sup>

Where attorneys and community leaders *can* look to the government for some helpful influence, however, is in the process through which developers obtain economic development subsidies. According to Professor Vicki Been, "[w]hen a local government chooses to provide subsidies to developers, it is free to condition those subsidies in any way it thinks appropriate (subject to general prohibitions on discrimination, corruption, and so on). Developers who object to the conditions imposed are free to decline to be involved in the project[ or] simply forego the subsidies."<sup>54</sup> This relative freedom to condition receipt of subsidies on negotiation of a CBA is complicated only by the difficulty of separating a grant of economic development subsidies from land use review. Economic development subsidies often require "transfers of a local government's land or the use of eminent domain to assemble land, and will almost always involve a rezoning or other land use approval."<sup>55</sup> As a result, when a developer is seeking both land use approval and subsidies, attorneys and community leaders negotiating a CBA should look for safeguards (or encourage local officials to adopt safeguards) to protect the land use process from inappropriate influence. Local officials can do this by "mak[ing] clear that, to the extent possible, the CBA will be considered only in the decision whether and to whom to award the subsidy, not in any decision relating to land use approvals for specific projects."<sup>56</sup>

## **B. Consideration**

Another issue that could impact the enforceability of a CBA is whether the CBA represents a bargained-for exchange—whether the agreement is supported by consideration. CBAs generally specify the support obligations community groups must perform in exchange for the benefits the developer has agreed to provide. In most cases, this should suffice as evidence of consideration (courts do not generally inquire into the adequacy of consideration).<sup>57</sup> Consideration could be called into question, however, in cases in which community support was not necessary for the developer to obtain the relevant land use approvals and subsidies.<sup>58</sup> Such a situation might suggest that a true bargained-for exchange did not take place—that the developer did not seek the community's support in exchange for the benefits provided under the CBA.<sup>59</sup>

To address situations of this nature and other situations in which consideration may be called into question, attorneys and community leaders should incorporate into the CBA an agreement not to bring legal actions to block the development.<sup>60</sup> An agreement not to bring legal action constitutes forbearance of a right to a legal claim, and thus qualifies as valid consideration under the Restatement (Second) of Contracts § 74(2) (1981) ("The execution of a written instrument surrendering a claim or defense by one who is under no duty to execute it is consideration if the execution of the written instrument is bargained for even though he is not asserting the claim or defense and believes that no valid claim or defense exists."). To ward against consideration challenges, attorneys and community leaders should seek to incorporate forbearance of legal claims into CBAs whenever possible.<sup>61</sup>

### **C. Vagueness in Drafting**

Another problem that could lead to enforceability problems is vagueness in drafting. This problem arises when a CBA is drafted in aspirational terms that do not clearly describe what each side is promising. In the CBA negotiated in connection with the Brooklyn Nets arena in

New York City (known as the "Atlantic Yards CBA"), for instance, the agreement included noncommittal phrases like "the developers agree to work towards the creation of a [h]igh [s]chool," and stated that the developer would provide space for a community health center "at rent and terms to be agreed upon."<sup>62</sup> According to Professor Been, other CBAs have left out such terms as "the timeframe for commitments to be fulfilled, who will monitor performance, how and when information on performance will be made available, and what will happen if the commitment is not fulfilled."<sup>63</sup> Leaving out specifics and using vague or noncommittal language makes monitoring and enforcement even more costly than they are to begin with (particularly for community groups that may be short on human and financial resources). Thus, attorneys and community leaders should strive to include specific, detailed promises with accompanying timelines and monitoring and enforcement provisions in every CBA.

Additionally, since CBAs are typically negotiated on the community side by a coalition of community groups, CBAs should specifically identify which coalition members are parties and define their rights and responsibilities. This is important because coalitions of community groups are generally not incorporated (and therefore have not established bylaws or formal procedures for voting), and the ways in which an unincorporated association's legal responsibilities apply to its members are not necessarily clear and vary from state to state.<sup>64</sup> According to CBA expert Julian Gross, "[g]iven the scope of financial and practical commitments at issue in CBAs, and the lengthy implementation period, precisely defining rights and responsibilities is crucial."<sup>65</sup> Thus, most CBAs take the approach of "includ[ing] as parties solely the individual organizations comprising the coalition, even though they negotiated through a unified coalition structure," since this "avoids the legal uncertainty that would arise from utilizing an unincorporated association as a party."<sup>66</sup>

Also worth noting is that requirements of a CBA are likely to implicate parties beyond just the community groups and the developer. Other parties who may have implementation responsibilities under a CBA may include:

- New development entities that come into a project to work with, or replace, the original developer[;]
- Parties to whom the original developer sells parcels of the property[;]
- Management companies responsible for leasing, contracting, and other aspects of project operation[;]
- Tenants renting space within the project[; and]
- Construction contractors or service contractors retained by developers, subsequent landowners, tenants, or other contractors.<sup>67</sup>

Due to the difficulties associated with implementing and enforcing a CBA when many parties responsible for implementation have joined the project after CBA negotiations have ended and do not have working relationships with the community groups party to the CBA, clarity in the CBA is essential.<sup>68</sup> Gross suggests that "CBAs contain clear language delineating which responsibilities flow to which entities, and what contractual steps are necessary on the part of the original developer to ensure that all relevant parties take on their obligations in an enforceable manner."<sup>69</sup>

#### **D. Community Representation**

Another common problem that arises in the context of CBAs is that, by the time negotiations are underway, the group negotiating for the community either does not actually represent the community and its interests or cannot advocate effectively for those interests.<sup>70</sup> This is more a problem of accountability than enforceability. Because private CBA negotiations are not subject to regulations or safeguards that ensure equal access, representativeness, or

transparency, developers are free to choose among community groups for their negotiating partner and simply ignore those with whom they do not want to deal.<sup>71</sup> This is problematic because developers may choose to deal with community groups that demand less robust and comprehensive benefits than other, more representative groups, allowing developers to create an image of community support without truly engaging in a process to mitigate the impacts their development may have on the community.<sup>72</sup> Even when the parties negotiating the CBA are representative of the community, though, a successful result is not guaranteed: the parties may not have the experience, skills, or resources necessary to reach an agreement that truly addresses the development's potential impacts and serves the community's interests.<sup>73</sup> Additionally, those community members who speak for the community but also stand to benefit from the CBA in question may have conflicts of interest.

When a CBA suffers from one or more of the above representation-related problems, it is more likely that the CBA will face increased public scrutiny and opposition. While the spotlight of increased public scrutiny may have the positive side effect of holding the developer accountable for its commitments under the CBA, the delay and negative media attention that generally accompany public opposition (after the developer has already invested time and resources into negotiating a CBA) may deter developers from bothering with CBAs at all.

One potential solution to these representational issues is for CBA proponents to form a coalition of community organizations to advocate for and negotiate the CBA. Consolidating the resources of a variety of community organizations makes it more likely that the CBA will be negotiated by community members with the requisite knowledge and experience, negotiations will be informed by the advice of legal professionals, and the CBA will ultimately represent a variety of community interests. Additionally, if a coalition of organizations is advocating for

a CBA, it will be more difficult for a developer to publicly justify dealing with just a single organization of its choosing, and the coalition will have a larger number of community members and supporters to raise awareness about the development and its activities than a single organization.<sup>74</sup> In the CBA context, "there are no safeguards in place other than those the groups [involved] impose upon themselves."<sup>75</sup> While negotiating a CBA as a coalition will not necessarily eliminate all representation problems, the inherent safeguards produced by coalition-building are certainly better than none at all.

## VI. CONCLUSION

Though large-scale development projects can be beneficial for blighted communities, the often disruptive and transformative nature of such developments can also impose serious costs on community residents. CBAs are useful mechanisms for ensuring that developers, rather than residents, bear these costs. Since courts have not yet squarely tested the enforceability of CBAs, however, CBA advocates must take certain precautions when negotiating CBAs with developers. In general, CBA advocates should avoid local government influence and involvement in the CBA process, ensure that their agreement is supported by valid consideration by agreeing to forbear on legal claims, require inclusion of specific obligations and corresponding timelines and monitoring provisions in the agreement, and negotiate with a coalition of experienced community advocates who represent the interests of the impacted community. As CBAs continue to increase in popularity, they will eventually be tested by courts. In the meantime, though, advocates can build on the experiences and accomplishments of others. CBA advocates interested in negotiating a CBA with a developer should therefore look to successfully negotiated CBAs for similar developments for guidance, but as long as advocates account for the legal

issues discussed in this paper, they should feel free to experiment and improve upon such CBAs by negotiating for even more robust and comprehensive benefits for their communities.

---

<sup>1</sup> See Julian Gross, Greg LeRoy, and Madeline Janis-Aparicio, *Community Benefits Agreements: Making Development Projects Accountable 4* (Good Jobs First and the California Partnership for Working Families, May 2005), online at <http://www.goodjobsfirst.org/publications/community-benefits-agreements-making-development-projects-accountable>.

<sup>2</sup> See *id.* at 12.

<sup>3</sup> Patricia E. Salkin, Amy Lavine, Understanding Community Benefits Agreements: Equitable Development, Social Justice and Other Considerations for Developers, Municipalities and Community Organizations, 26 UCLA J. Envtl. L. & Pol'y 291, 293 (2008)

<sup>4</sup> See Gross, *supra* note 1, at 9.

<sup>5</sup> Julian Gross, "Community Benefits Agreements 216-17 (chapter in *Building Healthy Communities: A Guide to Community Economic Development for Advocates, Lawyers, and Policymakers*; a publication of the Forum on Affordable Housing & Community Development of the American Bar Association, 2009), online at [http://juliangross.net/docs/Gross\\_CBA\\_chapter.pdf](http://juliangross.net/docs/Gross_CBA_chapter.pdf).

<sup>6</sup> See *id.*

<sup>7</sup> See *id.* at 217.

<sup>8</sup> Vicki Been, Community Benefits Agreements: A New Local Government Tool or Another Variation on the Exactions Theme?, 77 U. Chi. L. Rev. 5, 7 (2010)

<sup>9</sup> See Gross, *supra* note 1, at 9.

<sup>10</sup> See Clickable Map of the New Hollywood & Highland Project in Hollywood, California, <http://www.seeing-stars.com/Landmarks/HollywoodAndHighlandMap.shtml> (last visited Mar. 7, 2014).

<sup>11</sup> Patricia Salkin and Amy Lavine, Negotiating for Social Justice and the Promise of Community Benefits Agreements: Case Studies of Current and Developing Agreements, 17 J. of Affordable Housing & Community Dev. L. 113, 116 (2008); see also Clickable Map of the New Hollywood & Highland Project in Hollywood, *supra* note 10.

<sup>12</sup> See Salkin & Lavine, *supra* note 3, at 301.

<sup>13</sup> See Salkin & Lavine, *supra* note 11.

<sup>14</sup> See Been, *supra* note 8, at 8; see Salkin & Lavine, *supra* note 3, at 302.

<sup>15</sup> See Been, *supra* note 8, at 8.

<sup>16</sup> See *id.* at 9.

<sup>17</sup> See Salkin & Lavine, *supra* note 3, at 301-04.

<sup>18</sup> See *id.* at 300-08, 318.

<sup>19</sup> See *id.* at 308-18.

<sup>20</sup> See *id.* at 318.

<sup>21</sup> Community groups on the South Side of Chicago worked towards negotiating a CBA that—had Chicago been awarded the 2016 Summer Olympic Games—would have provided for affordable housing and first-source hiring for those living near the site of the Olympic Village and Stadium. As Rio de Janeiro, Brazil, was selected for the 2016 Summer Games in 2009, this CBA was never completed. See Angela Caputo, *Chicago 2016 Benefits Agreement a "Good*

---

*Start*", PROGRESS ILLINOIS BLOG (Mar 27, 2009), <http://www.progressillinois.com/2009/3/27/benefits-agreement-good-start>; *see also* 2016 Olympics and Chicago Neighborhoods, *Olympics Fact Sheet*, CHICAGO REHAB NETWORK (2008), <http://www.chicagorehab.org/resources/docs/policy/olympics/crnolympicsandneighborhoods.pdf>.

<sup>22</sup> *See* Salkin & Lavine, *supra* note 11, at 125.

<sup>23</sup> *See id.* at 126.

<sup>24</sup> *See id.* at 126-27.

<sup>25</sup> *See id.* at 127-28.

<sup>26</sup> *See id.* at 128.

<sup>27</sup> *See id.* at 128-29.

<sup>28</sup> *See id.* at 129.

<sup>29</sup> *See* Salkin & Lavine, *supra* note 3, at 318.

<sup>30</sup> *See id.*

<sup>31</sup> *See id.*

<sup>32</sup> *See id.*

<sup>33</sup> *See id.*

<sup>34</sup> *See id.* at 319.

<sup>35</sup> *See id.*

<sup>36</sup> *See* Been, *supra* note 8, at 30.

<sup>37</sup> *See id.* at 27.

<sup>38</sup> *See id.* at 13.

<sup>39</sup> *See* *Nollan v. California Coastal Commission*, 483 U.S. 825, 836 (1987).

<sup>40</sup> *See id.*

<sup>41</sup> *See* *Dolan v. City of Tigard*, 512 U.S. 374, 391 (1994).

<sup>42</sup> *See* *Nollan*, 483 U.S. at 827.

<sup>43</sup> *See id.* at 841-42.

<sup>44</sup> *Id.* at 836.

<sup>45</sup> *Id.* at 837 (quoting *J.E.D. Associates, Inc. v. Atkinson*, 432 A.2d 12, 14-15 (1981)).

<sup>46</sup> *Id.* at 836.

<sup>47</sup> *Id.* at 377.

<sup>48</sup> *See* *Dolan*, 512 U.S. at 377.

<sup>49</sup> *Id.* at 391.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at 394-96.

<sup>52</sup> *Id.* at 396.

<sup>53</sup> *See* Michael L. Nadler, [The Constitutionality of Community Benefits Agreements: Addressing the Exactions Problem](#), 43 Urb. Law. 587, 607 (2011).

<sup>54</sup> Been, *supra* note 8, at 34.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at 34-35.

<sup>57</sup> *See* Salkin & Lavine, *supra* note 3, at 324-25.

<sup>58</sup> *See id.*

<sup>59</sup> *See* Restatement (Second) of Contracts § 71 (1981) ("To constitute consideration, a performance or a return promise must be bargained for. . . . A performance or return promise is

---

bargained for if it is sought by the promisor in exchange for his promise and is given by the promisee in exchange for that promise.")

<sup>60</sup> See Salkin & Lavine, *supra* note 3, at 325.

<sup>61</sup> See *id.*

<sup>62</sup> Been, *supra* note 8, at 29-30.

<sup>63</sup> *Id.* at 30.

<sup>64</sup> See Gross, *supra* note 5, at 221.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at 220.

<sup>68</sup> See *id.*

<sup>69</sup> *Id.*

<sup>70</sup> See Been, *supra* note 8, at 21.

<sup>71</sup> See *id.* at 21-22.

<sup>72</sup> See *id.* at 24.

<sup>73</sup> See *id.* at 24-25.

<sup>74</sup> See Gross, *supra* note 1, at 22.

<sup>75</sup> Been, *supra* note 8, at 24.