The Greatest Mall There Never Was: Assessing the Failed Attempt to Build the New Haven Galleria

Jeremy Kutner
The Greatest Mall There Never Was: Assessing the Failed Attempt to Build the New Haven Galleria

By Jeremy Kutner
5/1/2012
For Prof. Robert Ellickson
# Table of Contents

Introduction...........................................................................................................................................................................2  

**Part I: The History of New Haven’s Relationship With Malls and Downtown Shopping** ..........4  
  Early History: Privately Financed Major Downtown Shopping Malls .........................................................4  
  The Urban Renewal Age: The First Public Attempts to Build a Mall Downtown ..............................................5  
  A New Downtown Mall: Moving Beyond Chapel Square .................................................................................9  

**Part II: The Attempted Development of the Long Wharf New Haven Galleria** .........................12  
  How the City Selected the Developer and Secured the Site ........................................................................12  
  The RFQ Process: How the City Winnowed Down Potential Developers .................................................16  
  The Proposals: What Various Developers Hoped to Build at Long Wharf ............................................21  
  Public Lobbying to Clear Land: How the City Persuaded the Post Office to Move ................................26  
  How Developers Proposed to Link the Mall and the Downtown Core .....................................................27  
  The Fight Over State Public Subsidies ..............................................................................................................29  
  Tax Increment Financing As the Primary Means of Securing Money to Build the Mall ................................30  
  The State Legislative Battle Over Public Funding ..........................................................................................33  
  The Fight for Approvals .................................................................................................................................39  
  The Developers and the City Conclude a Development Agreement .......................................................40  
  Buying Off Downtown: $25 Million in Bond Financing to Help the Core ..................................................41  
  The Public Relations Fight Over the Mall’s Impact on Downtown ..............................................................42  
  The Battle Returns to the Statehouse, and Westfield Launches a Legal Offensive .................................49  
  Did Mall Have No Significant Impact on State Economics or the Environment? .....................................50  
  The Death of the Mall ........................................................................................................................................57  
  Moving On: What the City Did After the Mall Project Imploded ........................................................................59  

**Part III: Comparison With The Providence Place Mall** .................................................................60  

**Part IV: Evaluating the New Haven Galleria** ..................................................................................65  
  Cost-Benefit Analysis of the Mall Project ....................................................................................................65  
  Cost-Benefit Analysis of the Process of Mall Construction ........................................................................76  
  Procedural Justice Evaluation .......................................................................................................................81  
  Vertical Equity Evaluation ............................................................................................................................83  

**Part V: Conclusion** .....................................................................................................................................................84  

Appendix .............................................................................................................................................................................86
In late 1995, a dream that had fixated New Haven’s leadership since the 1960’s was coming to an end. Long buffeted by a population and wealth exodus to the suburbs, leaders had looked to a glitzy downtown shopping mall to draw people, and their money, back to the city. Downtown was remade to accommodate retail heavy hitters: Macy’s, Malley’s, and the Chapel Square Mall. But it wasn’t working. Macy’s was gone. Chapel Square was hemorrhaging tenants. And so, after decades of public effort to make large-scale retail work downtown, the city’s mayor was ready to write the idea’s obituary: “[New Haven mayor John] DeStefano said he has been working since summer on ‘defining the role of the downtown for the future.’ In that time, the mayor said, he has come to believe that having a large shopping mall downtown is probably no longer feasible.”

Yet what happened next took just about everyone by surprise. Instead of giving up the retailing ghost, DeStefano announced plans for a $500 million upscale shopping paradise, a brand new suburban-style mall, just outside the downtown core and subsidized with $85 million in public money, at the confluence of the three highways that intersected the city. “Hailed as the salvation of a city too long becalmed in the economic doldrums,” the New Haven Galleria project promised to remake Connecticut’s retail landscape and return a bounty of jobs and new tax revenue to a suffering urban center. It also launched one of the most protracted and expensive land use fights in New Haven’s history, sparked a lobbying, legal, and public relations war that pitted the city’s downtown core against the city’s leadership, and ended in complete failure. Or, at least, that’s the way it seemed at the time. In the years since the Galleria’s demise, almost all of the key players who worked for half a decade to bring the project to fruition have

---

2 Interview with Matthew Nemerson, former Director of the New Haven Chamber of Commerce, (discussing New Haven Galleria conception and approval process).
forsaken it as misconceived, oversold, or potentially ruinous. DeStefano himself, during his failed campaign for Governor of Connecticut in 2006, said that trying to build the mall was the biggest mistake of his career. How this economic miracle that nearly transformed a city morphed into a historical pariah, and whether the now-maligned megamall would have actually benefitted the city as whole, is the subject of this analysis.

This paper will assess the New Haven Galleria project from the perspectives of cost-benefit, democratic accountability, and vertical equity to arrive at a conclusion as to whether the city’s decision-making apparatus functioned as it should have, and whether lessons can be learned for future transformative development projects. Pitched as a revenue and job creation engine for the city, the Galleria project was actually a marked departure from the city’s previous visions for stimulating economic development. This sudden emergence of new urban priorities was not, however, the result of sober planning and strategic evolution; instead, it came into existence because of chance political considerations. As a result, New Haven found its resources and political capital at the mercy of a few key players it lacked the ability, despite strong attempts, to control. When the project failed, this ad hoc system of political decision-making left a key city asset in control of New Haven’s dedicated rival, eventually yielding a replacement project, a large IKEA furniture store, that is moderately productive but a far cry from the economic promise of the Galleria mall. Given the extremely toxic war that was waged over the Galleria, and the relative recovery of downtown New Haven in the years following the mall project’s collapse, initial cost-benefit considerations would seem to indicate that the mall was folly from the start and that the city is much better off without it. Close examination, however, reveals that the project might indeed have delivered on its initial promises to the betterment of

---

the city, and would certainly have worked to the advantage of the city’s economically
disadvantaged population. But poorly executed political strategy, and poorly conceived political
overtures, such as a promised $25 million bond issue aimed at mitigating the negative effects of
the proposed mall on downtown, ended up with the city achieving few of its original goals and
sacrificing a unique development opportunity. It also seriously undermined the legitimacy of city
officials to claim they spoke on behalf of, and worked in the interest of, the community at large.

This paper will proceed in several parts. Part I will briefly trace New Haven’s history of
attempts foster large-scale downtown retail entities as a key method of economic development.
Part II will trace the narrative history of the New Haven Galleria project and will seek to
highlight the decisional calculus that drove the project forward and eventually led to its
abandonment. Part III will offer a brief comparison with the Providence Place Mall, a moderately
successful downtown mall project in Providence, Rhode Island that shared many of the same
goals, but differed in important respects from the New Haven Galleria. Part IV will offer an
assessment of the mall project from cost-benefit, democratic accountability, and vertical equity
perspectives and attempt to limn lessons for how cities can better structure decision making over
large, transformative development projects. Part V will conclude.

Part I: The History of New Haven’s Relationship With Malls and Downtown Shopping

Early History: Privately Financed Major Downtown Shopping Malls

Like many northeastern cities, New Haven once boasted a robust downtown retail
environment, anchored by large department stores.5 From the late 1800s until the post-World
War II period, these retail giants, Gamble-Desmond, Edward Malley, and Shartenberg-Robinson,
formed the focal point of New Haven’s commercial life, and were located adjacent to

5 DOUGLAS RAE, CITY: URBANISM AT ITS END, 96 (2003).
government buildings and the New Haven Green at the heart of downtown. Though operating as distinct economic entities within New Haven’s downtown street grid, “The big department stores like Gamble-Desmond worked as ‘anchors’ in close association with an endless variety of small enterprise.” The department store block alone, at its height, also contained over a hundred other firms, benefitting from the attractive power of the large stores. Still, the fruits of this agglomeration of retail and commerce were concentrated to a relatively small area. “The downtown core was in a sense the center of centered development. Business administration, and commerce at several levels (from specialty retailing up), were concentrated in a tiny area. They were located in the same area as city government, and close to the court system.”

The post-war period was less kind to New Haven’s downtown retail environment. For a series of reasons well-chronicled elsewhere, and not solely attributable to post-war government policies or urban renewal efforts, much of the city’s affluent, white population decamped for the suburbs, while relatively poorer African-Americans and Latino residents moved in, in lesser numbers. As succinctly, if dramatically, explained by one commentator: “Businesses fled the city. Vacancy rates increased and rents fell. Maintenance suffered, and sections of the city became blighted.” The effect on New Haven’s established retail offerings was profound. In 1953, Gamble-Desmond closed its doors.

The Urban Renewal Age: The First Public Attempts to Build a Mall Downtown

What followed during the administration of Mayor Richard Lee was one of the most ambitious series of urban renewal projects in the nation. Lee favored large-scale slum clearance

---

6 Id.
7 Id. at 97.
8 Id.
9 Id. at 99.
10 Id. at 342.
12 Rae, supra note 5, at 343.
and construction campaigns that emphasized a rebuilding of the city from its core. Central to these revitalization plans was the Church Street Redevelopment Project, which sought to radically transform downtown into a modern commercial district. The project involved “rebuilding downtown around a three-block commercial complex with two major department stores, an attached two-block-long fifteen-hundred-car garage…a modern three-hundred room hotel, new up-to-date office space, and the Chapel Square Mall bordering on the historic New Haven Green.” The centerpiece Chapel Square Mall sought to turn the former site of New Haven’s old-fashioned department stores into the heart of a new, indoor mall adjacent to a newly-constructed highway. With New Haven re-solidified as a “thriving retail center,” planners thought, they could avoid further hollowing-out of the city center.

Intended to both replicate the shopping attractiveness of suburban malls and leverage the urban connections to a nearby hotel and downtown business area, the Chapel Square Mall ended up as an odd product of hybrid design. The two anchor stores, the long-time New Haven fixture Malley’s, and the newcomer Macy’s, were located one right behind the other, with Malley’s agreeing to give up its prominent location facing the New Haven Green to make way for the nationally-recognized Macy’s chain. It was, in other words, a suburban mall shoehorned into an urban street grid, with less than ideal results. For many critics, suburban-style retailing downtown was both inappropriate and doomed to failure. “The New Haven urban renewer’s unwavering vision for saving downtown by putting suburban-style, department-store-dominated retail at the center ignored – and ultimately destroyed – the true base of New Haven commerce,

---

15 Id.
16 Id.
17 Id.
the small shops that an observer at the time noted were often loyally ‘supported by particular ethnic and racial groups.’”

The revitalization effort proved unable to stem the tide of retail sweeping out to the suburbs. Douglas Rae observes that while the overall trend of outward retain movement from the city’s downtown core showed little signs of abating, the urban renewal effort to construct a new downtown mall itself had the accidental effect of accelerating the loss of viable downtown retail establishments:

Urban renewal would take out the premises of rivals Malley’s and Shartenberg’s, as well as hundreds of smaller, more specialized retailers. It would also remove nearly all of the single-room occupancy hotels in the downtown area, and it would destroy one of the most intensive small retailing stretches in the city when Gregson’s Alley was razed. Perhaps forty clothing stores, catering to different budgets and sensibilities, were lost. Little restaurants and delis perished in large numbers…The construction and destruction of central space discouraged [Central Business District] shopping, as did the loss of all the major department stores, at least temporarily. While much of the lost business fabric was tired and often frankly second-rate, the nuance and variegation of urban shopping that went out with the bathwater was a genuine loss. Indeed, the historical value of retailing to neighborhood life has never depended on the newness or even the spiffiness of its storefronts.19

The new Chapel Square Mall did, in fact, perform reasonably well for a brief period.20 But new developments in areas outside the city began to erode the Chapel Square Mall’s competitive edge.21 The Connecticut Post Mall in nearby Milford, Connecticut, which would come to play an outsized role in the New Haven Galleria battle, opened its doors in 1960.22 The Meriden Mall opened in 1971.23 Malley’s at the Chapel Square Mall closed its doors in 1982, after 129 years in business.24

---

18 Id. at 88.
19 Rae, supra note 5, at 343-4.
21 Rae, supra note 5, at 345.
22 Debra Hazel, Fresh Start: New owners to transform long-troubled Chapel Square Mall, reviving key New Haven location with new retailers, restaurants, SHOPPING CENTERS TODAY, July 2003.
23 Id.
24 Id.
New Haven itself was clearly suffering financial setbacks. Its grand list declined annually from 1995-2000, and in 1996, when the mall was proposed, almost half of the city’s revenues came from intergovernmental transfers to supplement weak local property taxes.\textsuperscript{25} Retail sales had declined 29% between 1987 and 1997, and the city’s poverty rate was three times the state average.\textsuperscript{26} These problems were coupled with ongoing population and job loss (losing 16 percent of in-city jobs from 1988 to 1998), although the same period saw a significant amount of downtown investment, and an increase in per capita income.\textsuperscript{27}

New Haven, of course, was aware of these looming challenges, but had few resources at its disposal to turn its major downtown retailing asset into a sustainable regional attraction, particularly given the design flaws of the Chapel Square Mall. Emblematic of this fight for retail dominance, and one that would prove eerily familiar during the New Haven Galleria debates, was an attempt by North Haven, New Haven’s neighbor, to construct a suburban enclosed mall near the city in 1985. Fearful of competition with its own struggling mall, New Haven hired outside legal help to organize opposition to the project and convince the Army Corps of Engineers to deny permits for the project based on the Clean Water Act and the National Environmental Policy Act of 1969.\textsuperscript{28} New Haven succeeded in persuading the Army Corps of Engineers to consider the “urban decay” that might result from the mall’s construction, and the developers were denied a necessary permit for construction.\textsuperscript{29} Though the Army Corp’s decision

\begin{footnotesize}
\begin{enumerate}
\item Id.
\item Id.; See also Terry Tondro, Fragments of Regionalism: State and Regional Planning in Connecticut At Century’s End, 73 St. John’s L. Rev. 1123, 1131-35 (1999).
\end{enumerate}
\end{footnotesize}
was ultimately remanded for reconsideration by a federal district court, the damage had already been done, and the mall was stopped.\footnote{Id.}

\textit{A New Downtown Mall: Moving Beyond Chapel Square}

While New Haven’s downtown retail mall fortunes continued to decline, the city’s victory in North Haven afforded city officials an additional chance to inject new life into the project. This initially took the form of a $28.7 million renovation effort (including nearly $5 million in public subsidy), but eventually gave way to plans to build another, bigger mall in the same location.\footnote{Bass, supra note 20, at 90-91.} In the period from 1984-5, the Rouse Corporation, the original developers of the Connecticut Post Mall, sold their interest to the Westfield Corporation and attempted to renovate and re-lease the Chapel Square Mall.\footnote{Hazel, supra note 22.} The more prominently placed Macy’s held on a few years longer, but it, too, closed in 1993.\footnote{Solomon, supra note 13, at 291; See also Hazel, supra note 22. Macy’s departure was not taken lightly. The state offered $2 million in subsidies to Macy’s to persuade them to stay. Macy’s in fact took over $800,000, before pulling out anyway.} Sales at the Chapel Square Mall plummeted by a third. By 1994, the mall had no anchors at all.\footnote{Solomon, supra note 13, at 291.}

In the midst of Chapel Square’s retailing free-fall, the city engaged the Taubman Corporation, a prominent developer, to investigate starting from scratch with a downtown luxury mall.\footnote{Id.} The plan that resulted was ambitious, and involved constructing a deck over the Route 34 highway stub that had bisected the city since the urban renewal era.\footnote{Interview with John DeStefano, mayor of New Haven, Conn. (discussing the New Haven Galleria development process).} Costs, however, proved prohibitive, and Taubman pulled out. Estimates from the time pegged the expected amount of public subsidy at over $100 million.\footnote{New Haven Register, Planned mall would fill shopping void, NEW HAVEN REG., Sept. 15, 1996.} New Haven’s ambitions, however, were not without
consequence. David Cordish, the developer of an adjacent mall project, the Omni Hotel (itself an attempt to rescue a previous, failed attempt to build a revitalized downtown hotel) had signed an agreement with New Haven giving him the option of buying the Chapel Square Mall if he completed the hotel project.38 The city, however, reneged on its agreement, and litigation ended with a $3 million settlement with Cordish in 2002.39

After Taubman’s failure, another suitor approached the city, interested in the possibility of an upscale, downtown mall. The developer, New England Development, spent months examining the possibility beginning in 1994.40 In a letter to the city outlining its intentions in December 1994, New England Development (NED) wrote, “Unlike past proposals, we believe a regional shopping center should front on the New Haven Green and blend in with other retail uses on adjoining streets. We do not see the need to build a deck over Route 34. The goal should be to integrate the shopping center with, not isolate it from, the surrounding city streetscape.”41 The city and NED entered into an exclusive development agreement for the downtown site, with NED expecting to give the city a final answer on its financing situation and intentions on May 15, 1995.42

According to NED Vice-President Bill Cronin, however, it eventually became apparent that the prospect for a downtown mall was prohibitively expensive. “You’d have to demolish the buildings, acquire land, and then you’d have to get the infrastructure so people could come from

38 Hazel, supra note 22
39 Id.; Letter from John DeStefano, Mayor of New Haven, Conn. to David Cordish, Chairman, The Cordish Company (Jan. 6, 1995) (on file with author).
40 Interview with William Cronin, Senior Vice President, New England Development; Letter from Stephen Karp, CEO, New England Development, to John DeStefano, Mayor of New Haven, Conn. (Dec. 8, 1994) (on file with author).
41 Id.
different directions.”

Despite the efforts of the Church Street redevelopment project under Mayor Lee to make the Chapel Square Mall more suburban-friendly with adjacent parking decks immediately off of the Route 34 highway, NED concluded that the accessibility of a downtown site to the suburban shoppers who would, in large part, be the target of this new project, would prove too problematic as well.

What was clear from the surprising level of developer interest in a downtown New Haven shopping mall, however, was the fact that developers felt there was a significant opportunity to make a great deal of money from a regional shopping mall in the New Haven area. This all despite the fact that the idea of high-end shopping, targeted at suburbanites, had so far failed to spark an economic renaissance in the city center, much less the city as a whole. The effort to create economic momentum through mall construction even had a derisive local name, “Shartenberg Syndrome” (named after one of the original, beloved New Haven downtown department stores). Still, the developers kept coming. According to NED’s Bill Cronin, “At the time we were doing the project there was a specific need for regional shopping centers,” and, despite the presence of nearby suburban competition, Connecticut had significant room for new mall construction. In 2000, the manager of the Brass Mill Center Mall, a competing mall in Waterbury, Connecticut, was quoted as saying, “We’re one of the few states that isn’t” over-malled, adding, “With the possible addition in New Haven, maybe there is an opportunity for one more.”

As far as the developers were concerned, however, the actual location of the mall in a downtown area was far from ideal, but negotiations centered on the downtown site because that

---

43 Interview with William Cronin, supra note 40.
44 Id.
45 Paul Bass, Shartenberg Syndrome, R.I.P., NEW HAVEN ADVOCATE, Nov. 6, 1997. “The department store was an unfortunate symbol for that longing. It was, in part, Shartenberg Syndrome that made city politicians spend more than 30 years seeking downtown department stores as anchors for urban renewal. They tried to re-create the past.”
46 Interview with William Cronin, supra note 40.
is where the city of New Haven offered its support in the complicated arenas of permitting and site acquisition.48 New Haven’s mayor, it seems, had a change of heart. By March of 1996, less than a year after learning of NED’s decision to not develop the Chapel Square site, in spite of the possibility of development interest from David Cordish, and lacking any sort of plan for the Chapel Square Mall the city had championed for over 30 years, the city issued a Request For Qualifications for a huge new regional mall on a brand-new site: Long Wharf.49

II. The Attempted Development of the Long Wharf New Haven Galleria

How the City Selected the Developer and Secured the Site

The Long Wharf area that would eventually serve as the site of the proposed mall itself had a unique history tied to New Haven’s economic fortunes. Originally the site of an actual wharf into the Long Island Sound (New Haven had to build an extra-long dock to allow ships to avoid the exceedingly shallow water nearer shore), Long Wharf served a critical economic role for the city, which depended heavily on manufacturing and receiving and distributing finished goods and raw materials.50 The proposed mall site was, for most of New Haven’s history, effectively under water. In the mid-20th Century, long after New Haven had lost its role as a port city, planners filled in the Long Wharf site to serve as a platform for the newly-proposed interstate highway system.51

Ever since the Lee administration, New Haven’s focus had been on retaining and upgrading the retail offerings of the downtown core. This effort was a strategic choice rooted in a particular place: the placement of a revitalized shopping complex on the site of New Haven’s

---

48 Id.
49 City of New Haven, REQUEST FOR DEVELOPMENT QUALIFICATIONS: PROPOSED NEW HAVEN HARBOR/LONG WHARF REGIONAL RETAIL DEVELOPMENT PROJECT, Mar. 10, 1996.
50 Rae, supra note 5, 43-44.
traditional retailing center, leaders believed, would revitalize the city directly in the most
geographically significant way possible, stem population loss, and advertise the city as an
attractive place to relocate businesses.52 It was not one primarily couched in terms of generalized
job growth and expanded tax revenues that could be spent in other parts of the city on useful
projects.

Yet the idea for a mall project on the Long Wharf site was, from the outset, touted
primarily for its promised benefits to the city’s underlying tax base, as well as its potential to
produce jobs via construction and via newly-created stores.53 “The project will generate millions
of dollars in property, sales, corporate income tax and personal income tax revenues to the City
of New Haven and the state of Connecticut.” 54

The chief architects of the mall project that would dominate New Haven’s agenda for five
years disagree about how, exactly, the idea for a full-blown, million-square-foot mall next to
New Haven’s highway interchange came about. According to the eventual developers of the site,
NED, the Long Wharf location was a natural extension of the due diligence the company had
done when preparing its own bid for a rebuild of the Chapel Square Mall immediately
downtown. According to Bill Cronin, his company’s primary concern for a New Haven-based
project – getting shoppers to and from a new shopping center – could easily be addressed by
leveraging the intersection of the I-95 and I-91 freeways. “From a distribution standpoint it was
how many people could you get to the site quickly.” He added that in shopping center
development “that’s the name of the game.”

---

52 Cohen, supra note 14, at 85.
53 Press Release, Office of the Mayor of New Haven, Conn., Mayor Announces Development Team To Develop
Harborside Mall, Sept. 9, 1996 (on file with author).
54 Id.
According to NED, knowing that the Chapel Square Mall site was proving impractical from a financial standpoint, the company moved pro-actively to secure option contracts with the property owners along the I-95 Long Wharf corridor.\textsuperscript{55} The developer’s interest in the site was further piqued by the surprisingly low number of property owners that controlled the land that could eventually become a site for a mall,\textsuperscript{56} a historical accident produced by the fact that the Long Wharf land was only recently created as fill to serve the interstate highways, and the fact that New Haven’s harbor front properties primarily served as industrial sites or food distribution areas.\textsuperscript{57} Interest was further fueled by rumors that the landmark Pirelli building, the headquarters of the struggling tire manufacturer that sat along the side of I-95, was being offered up for sale. This effort to actively secure contracts proved successful, and by early 1996 NED had signed at least one option for land that would be critical for potential mall construction.\textsuperscript{58}

According to John DeStefano, New Haven’s mayor, the decision to focus on the Long Wharf site, as opposed to the downtown mall he had strongly advocated for previously, was the result of a chance political decision by the Republican Governor of Connecticut, John Rowland, to attract urban support by offering substantial bond money to Connecticut’s major urban centers.\textsuperscript{59} The prospect of tens of millions of dollars in state financing was seen as a remarkable opportunity for New Haven, and prompted a shift in focus to a more readily deployable, economically more secure plan than the city’s beleaguered downtown mall.\textsuperscript{60} “If Hartford was going to get something we were going to have a chance to get something. It’s like when you’re

\begin{itemize}
\item \textsuperscript{55} Interview with Hugh Manke, Principal, Updike, Kelly & Spellacy and lawyer for New England Development (discussing legal landscape of the New Haven Galleria development process).
\item \textsuperscript{56} Id.
\item \textsuperscript{57} Historic Resources Inventory, \textit{supra}, note 51.
\item \textsuperscript{58} Interview with Hugh Manke, \textit{supra} note 55.
\item \textsuperscript{59} Interview with John DeStefano, \textit{supra}, note 36.
\item \textsuperscript{60} Id. Indeed, the other projects included in this gubernatorial cash offer dwarfed the mall project proposed by New Haven. The other originally intended recipients included a redevelopment project in Bridgeport called Steelpointe Harbor and one in Hartford called Adriaen’s Landing, both of which were due to receive substantially larger sums of state aid.
\end{itemize}
in a family and one of the brothers or sisters get something, gets a new bike, maybe you can get a new bike. So it was just perceived political opportunity.” Before the close of 1995, DeStefano was speculating publically about a Long Wharf mall site.  

It is important to note that, as of 1995, the city had effectively no control over the properties that would make up the Long Wharf site. Key parcels included the Pirelli Building, several industrial firms, and a federal post office, none of which the city owned and at least one of which, the post office, was beyond the city’s powers of eminent domain.  

The public speculation about a Long Wharf mall took many by surprise, none more so than the membership of the New Haven Chamber of Commerce, which had spent years working to support the reinvigoration of the Chapel Square Mall. The city’s decision to back a mall at Long Wharf, of course, directly conflicted with retail mall expansion downtown, greatly decreasing the possibility of attracting anchor stores to the mall, and saddling the Chamber of Commerce, which had a deep interest in the Chapel Square Mall, with an asset unlikely to increase in value. Indeed, the city’s Chamber was reluctant to back the idea at first since members believed that the tax and job revenue promised by a Long Wharf mall project could be achieved downtown, with additional location benefits for the city’s Central Business District. In a testament more to the attractive power of being seen as working with, not against, the mayor, than to a decision as to the underlying merits of the project, the Chamber decided to back the Long Wharf project, despite the direct conflict of interest.

61 Id.
63 Interview with Hugh Manke, supra note 55.
64 Interview with Matthew Nemerson, then-head of the New Haven Chamber of Commerce, supra, note 2.
65 Id.
66 Id.
The RFQ Process: How the City Winnowed Down Potential Developers

In March of 1996, the city announced a Request for Qualifications for the Long Wharf site. The 5-page request, which would ultimately yield a developer for a project that would swell to $500 million, was relatively light on specific visions for the Long Wharf site. The RFQ outlined the project’s goals as follows: “The City’s goal is to intensify the mix of uses in the harbor front area with a combination of retail, marina, office and light industrial uses, that takes maximum advantage of the location of a key transportation note where I-91, I-95 and Route 34 meet – here in New Haven.” The city expressed a desire for a 1 million square foot mall, based on studies conducted for the city, ostensibly for the construction of the downtown mall, in 1991.

Section V of the RFQ outlined a desire for a Community Development Plan of “Linkage” between the proposed mall site and downtown, a topic that would become the focus of intense controversy later on. Specifically, the RFQ noted, “Two areas to be considered are: 1) City’s interest in developing harbor-front tourist attractions at Long Wharf, including small public museums and interpretive centers, and a marina at the Maritime Center; and 2) expanding the arts, entertainment and education themes downtown, which are considered central to its revitalization.” The phrasing of the RFQ reflects some of the internally contradictory aspects of developing a mall outside of the core New Haven downtown location. Indeed, city leaders saw the mall project as a potential means of, perhaps, achieving a newer, larger goal: reconnecting New Haven proper with its waterfront, which had been commercially cut off from the city ever since the construction of the freeways that created the Long Wharf building site to begin with.

---

67 REQUEST FOR DEVELOPMENT QUALIFICATIONS, supra, note 49.
68 Id.
69 Id.; I was unable to locate copies of this study.
70 Id.
71 Id.
But it also reflected an understanding that the benefits of a mall at Long Wharf did not present obvious benefits to New Haven’s downtown, and would certainly be subject to public criticism for abandoning New Haven’s core in the hopes of a tax payout.

For NED, however, the RFQ was a shot across the bow. Indeed, having already locked up at least one key option contract on an important parcel on the site of the potential mall, and given its investments, with the city, in researching retail options thus far, NED hoped to continue its exclusive negotiation relationship with the city regarding the downtown mall and begin planning work for the Long Wharf mall.\textsuperscript{72} NED interpreted the RFQ as the city’s attempt to wrest control of the project back from them, perhaps because NED had acted before the city’s Economic Development director, and perennial local dealmaker Sal Brancati, could solidify the site contracts himself.\textsuperscript{73} Certainly going public with a proposal for a site that no one fully controlled, and that obviously promised a great deal of value to the developers, could significantly drive up land acquisition prices.\textsuperscript{74} This concern was further elaborated by David Cordish, developer of the Omni Hotel downtown, adjacent to the Chapel Square Mall. Going public with the Long Wharf Mall plan, he told the \textit{New Haven Register}, would seriously undermine efforts to bring retailers downtown, a situation made worse by the fact that prohibitively expensive land acquisition costs for the Long Wharf site would mean the Long Wharf Mall would never get off the ground, leaving the city without forward momentum on retail projects for years to come.\textsuperscript{75}

According to DeStefano, the struggle for control of the project itself was never really an issue. Absent positive efforts by the government to designate the Long Wharf site a Planned Development District, work to rezone the area to allow for large scale construction, and bring its

\textsuperscript{72} Interview with Hugh Manke, \textit{supra} note 55.  
\textsuperscript{73} Id.  
\textsuperscript{74} Id.  
political influence to bear on moving the post office, no large scale project could have moved forward, ensuring the city a prominent place at the table. Yet the city’s means of moving forward was certainly deliberate. Despite the size and transformative potential of the imagined mall project, the city elected to move forward with a more generalized RFQ process as opposed to a more specific Request for Proposals, which would have forced developers to submit fully realized development plans to the city. By choosing to proceed with an RFQ, the city reasoned, it could focus its attention more on the financial strength of the potential development teams, and not get sidetracked by aesthetically more attractive projects that may have emerged from lesser-known developers and attracted considerable popular support. The move would also allow the city greater voice in shaping the future project, which would not be written in stone with a fully developed proposal. The city targeted ten prominent mall developers, and solicited them directly. Five other developers who were not contacted directly also asked for information about applying.

The RFQ outlined several criteria for selection of the preferred developer: the overall merits of the proposal, the consistency with the development objectives outlined in the RFQ, the feasibility of the project, and the experience and financial capability of the developer and the development team members. Though the vague RFQ process ensured the city flexibility in ultimately choosing a developer, it also led to a wide range of responses from developers – artificially winnowing the pool of potential suitors before anyone had a chance to develop detailed plans. In all, ten developers responded to the RFQ, only seven of which responded with

76 Interview with John DeStefano, supra note 36.
77 Interview with Sal Brancati, former Director of Economic Development for the city of New Haven.
78 Id.
79 Id.
80 Id.
81 Mark Zaretsky, 10 line up to build new mall, NEW HAVEN REG., May 2, 1996
82 REQUEST FOR DEVELOPMENT QUALIFICATIONS, supra, note 49.
sufficient material to merit review. The limitations of this selection process were immediately apparent, and the invited selection committee, comprised of prominent local business leaders and city officials, could find little to differentiate the proposals. Though many of the initial scoring sheets used by the committee are now lost, one remaining example is instructive. In a letter to Sal Brancati, Barbara Johnson, a bank executive, said that the financial information and history of prior projects information supplied by the developers was nearly indistinguishable. Indeed, “the only areas I felt differentiated the projects were the ‘linkages.’ The three top candidates all understood the type and extent of linkages that will be necessary and recognize the need for a larger scale redevelopment effort. However, none were able to make a firm commitment to those other ‘sites’ or to paying for the basic linkage to connect the mall and other areas of the city.”

Comments from another member of the selection panel, F. Patrick McFadden, Jr., another bank executive, suggesting how the city should question the proposed developers, likewise highlight both the centrality of the concept of adequate “linkages” to downtown in selecting a developer, while simultaneously showcasing how the city itself had few thoughts on how this could be accomplished:

In constructing a realistic vision for what has been considered to be New Haven’s traditional Downtown is currently one of the most critical issues to be confronted by New Haven. It is precisely because of this non-traditional thinking of locating a major retail mall outside of the traditional Downtown and in close proximity of a major highway intersection that there is significant developer interest in the proposed site.

Five developers were chosen for a second round interview: NED, General Growth Properties, Commonwealth Development Group, Urban Retail Group, and Fusco Corp., a local

---

83 City of New Haven, REQUEST FOR DEVELOPMENT QUALIFICATIONS RANKINGS SHEET (on file with author).
84 Letter from Barbara Johnson, Senior Vice-President, People’s United Bank and member of the Long Wharf RFQ evaluation committee to Sal Brancati, former Director of Economic Development for the City of New Haven (June 3, 1996).
85 Id.
86 Letter from F. Patrick McFadden, former President and CEO of the Bank of New Haven and member of the Long Wharf RFQ evaluation committee (June 7, 1996).
New Haven corporation. According to one participant in the selection committee, however, the initial decision to cull developers to five was not the key decision made by the group. Instead, the true divide was over whether to grant development rights to one of the other applicants, Westfield Corp., the owners of the Connecticut Post Mall, a direct potential competitor. While some harbored doubts that a victorious Westfield would actually build a mall to compete with one of their own properties, others reasoned that Westfield would be incentivized to both develop a unique, and profitable high end mall, and would not be in a position to engage in obstructionist litigation that might delay the project. In the end, Westfield was not invited to a second round interview. The entire RFQ process, including the selection of developers, took place without consultation with the New Haven Board of Aldermen.

The developers competed primarily over prior experience, project economics calculations, and the depth of the project’s linkages to downtown. On July 1, 1996, one of the selected second-round developers, Commonwealth Development Group, wrote a letter to Sal Brancati addressing these principle concerns. The project, for instance, promised construction of a mall without public subsidy, provided a land acquisition cost of under $25 million. In terms of downtown “linkages,” the company proposed to develop a multi-screen theater on the site of the former Macy’s department store building downtown, and a shuttle bus network and joint marketing campaigns to knit together the mall with downtown. Still, the developer acknowledged the practical disconnect between the two sites, despite the city’s insistence.

“While recognizing the realities of the Long Wharf site’s physical separation from the

---

87 Mark Zaretsky, *Candidates to build mall pared to 5*, NEW HAVEN REG., June 14, 1996.
88 Interview with Matthew Nemerson, *supra* note 2.
89 *Id.*
90 Zaretsky, *Candidates to build mall pared to 5, supra* note 87.
91 Interview with Sal Brancati, *supra* note 77.
92 Letter from John Bersani, Partner, Commonwealth Development Group, to Sal Brancati, former Director of Economic Development for the City of New Haven (July 1, 1996).
downtown, we continue to believe that a number of measures can be taken cooperatively to successfully link the project with downtown New Haven.”

The letter also hints at another major point of distinction in the selection of developers. The letter mentions Commonwealth’s “unique relationship with Nordstrom’s,” and upscale department store, as a key reason to select their firm. In fact, while this point is somewhat buried in Commonwealth’s letter, the strength of a developer’s relationship with this one particular department store factored heavily in the city’s selection of a developer, and would end up playing a key role in providing feasible financial justifications for the success of the project.

**The Proposals: What Various Developers Hoped to Build at Long Wharf**

Central to the city’s vision for a mall site was the necessity of creating an “upscale” project that would draw in shoppers from a wide area. Though New Haven itself lacked extensive mall retail, surrounding areas were certainly not devoid of shopping opportunities, so the project was intended to rely on unique draws. And none was more unique, or more insisted upon, than Nordstrom’s. As one of the key lawyers associated with the eventual project described it, “Nordstrom’s was the golden goose.”

One anonymous source from the developer selection committee told the *New Haven Register* that the developer’s proposed mix of tenants was key to selection. “People didn’t want a ‘Sears mall,’” the source said. In a memo to top staffers in 1997, Mayor DeStefano forwarded a recent New York Times article on the retailing success and customer service focus of Nordstrom’s, noting, “I strongly believe that we should insist on them as an anchor.”

---

93 Id.
94 Id.
95 Interview with Hugh Manke, *supra*, note 55; See also Memorandum from John DeStefano, Mayor of the City of New Haven to Walt Esdaile, Sal Brancati, and Karyn Gilvarg (forwarding New York Times article on Nordstrom’s corporate success and observing “I strongly believe that we should insist on them as an anchor”) (May 15, 1997).
96 Mark Zaretsky, *City narrows mall developers to 3*, New Haven Reg., July 9, 1996.
97 Memorandum from John DeStefano, *supra*, note 95.
NED’s proposal was the most polished. Like Commonwealth, NED promised a mix of prominent department stores – four in total – that would include names like Macy’s, Filene’s, and Nordstrom’s.98 Interestingly, the developer’s focus on exclusive high-end retailing was not yet solidified – they identified Sears as one of the possible anchor tenants.99 In addition to the mall, NED promised further development of a “waterfront marketplace” along the site of the actual wharf by the water, which would accommodate a restaurant, local produce stores, and “construction of a gazebo where visitors might pause to watch a passing ship or feed a persistent seagull.”100 The company also promised a shuttle bus system to ferry customers downtown, and development of the Macy’s/Malley’s site downtown as an entertainment complex.101

Fusco’s bid called for construction of a 1.1 million square foot, $124 million mall with four department store anchors. It’s “Harbor Center at Long Wharf” also detailed many of the same downtown linkages ideas outlined in the NED proposal, including shuttle service, redevelopment of the Malley’s block, a fishing pier, a future waterfront hotel, and participation in ongoing New Haven development programs.102

Of the initial developers, only NED, Fusco, and Commonwealth advanced past the initial round.103 In September of 1996, the city made a surprising announcement: instead of picking the best of the three finalists, it instead selected both NED and Fusco, engineering a partnership that would assure a fundamental role for Fusco, a prominent local corporation and key political supporter of John DeStefano.104 While some observers objected to the seeming quid pro quo that

98 NEW ENGLAND DEVELOPMENT, PROPOSAL FOR THE MARKETPLACE AT LONG WHARF, Section 7 (1996).
99 Id.
100 Id.
101 Id.
102 FUSCO CORPORATION, PROPOSAL FOR HARBOR CENTER AT LONG WHARF (1996).
103 Id.
104 Mark Zaretsky, Fusco to join Mass. Firm in mall project, NEW HAVEN REG., Sept. 8, 1996. “The Fusco Corp., which lobbied strongly to be the developer for the mall, is New Haven’s leading developer and a longtime supporter of both the city and the officials who run it.”
underlay the decision to include Fusco, a far smaller and less experienced development company
than NED, the mayor remains unapologetic about his decision, noting that assuring that
construction jobs went to a local firm with local employees was an example of laudable civic
advocacy, not corruption. That the selection of Fusco was based primarily on political
considerations – including the desire to have a local company with ties to a local workforce to
benefit from construction money – was no secret, and was seen as an understandable part of the
job of a local mayor assuring local benefits from a massive construction project. NED was not
amused by the arrangement – it had its own experienced construction team and had no desire to
forge a new relationship with an untested outside firm with political ties to the mayor. In the
end, however, the necessity of maintaining municipal support for the mall project overrode these
commendations. “It was at first a forced marriage – we had to get [Fusco] involved or not have the
city’s support… but as it turned out we had a close relationship.” Sources at the time pegged
Fusco’s stake in the project at 24 percent, which left NED comfortably in charge of directing the
project, alleviating concerns. This partnership was later cemented as a limited liability
corporation: Long Wharf Galleria LLC.

The year 1996 also saw the first projections of the supposed benefits of a million-square-
foot suburban-style mall in New Haven. The developers claimed the mall would create 2,200
full-time jobs, and would generate $2.6 million in annual taxes to the city, with $9 million in new
sales taxes going to the state. At the time of selection, the amount of public subsidy
anticipated by the project was not clear, and reports from the time indicate that during its pitch to

105 Interview with John DeStefano, supra, note 36.
106 Interview with Matthew Nemerson, supra, note 2.
107 Interview with William Cronin, supra, note 40.
108 Id.
109 Mark Zaretsky, It’s a GO for new mall, NEW HAVEN REG., Sept. 10, 1996
110 New Haven Register, Planned mall would fill shopping void, supra, note 37.
the city, NED indicated that no public subsidy would be needed at all.111 Expected construction cost was around $100 million, a number that would increase to $120 to 140 million by mid-September, and would soon increase five-fold.112 Additionally, the mayor announced that the mall development project on Long Wharf would also include redevelopment of the vacant Macy’s building that is part of the Chapel Square Mall complex.113 The proposed mall would include four anchor department stores, and 150 smaller shops.

Within days of New Haven’s announcement of the winning proposal, Westfield Corp., one of the original respondents to the RFQ, previewed its willingness to vocally oppose the project. The company hired a development firm to come up with alternative plans for New Haven’s downtown, and, according to DeStefano, tried to directly dissuade likely Long Wharf mall anchor tenants from locating in New Haven.114 The rancor didn’t take long to emerge, with DeStefano labeling the company “despicable.”115 Westfield’s CEO, Richard Green, described the Long Wharf mall as the “triple death-nail in New Haven’s coffin” because of its potential negative effect on downtown businesses.116

Both NED and Westfield were large, experienced mall developers with experience negotiating extensive public relations and legal fights over large projects. NED, founded in 1978 is a prominent developer in the northeast. As of 2012, the company had developed, according to its promotional materials, over 50 million square feet of retail and commercial space, projects

111 Id.; Mark Zaretsky, *This mall will fly, experts predict*, NEW HAVEN REG., Sept. 15, 1996. “When New England Development President and CEO Stephen Karp made his pitch, ‘he thought he could do it without any public subsidy,’ said Matthew Nemerson, president of the Greater New Haven Chamber of Commerce. At the time of the announcement, DeStefano said the only subsidies he anticipates would be for infrastructure improvements and, if necessary, to help clean up the 60-acre site, which is filled-in land.”


113 Mark Zaretsky, *It’s a GO for new mall*, NEW HAVEN REG., Sept. 10, 1996


115 Id.

116 Mark Zaretsky, *Mall owner has its own plans*, NEW HAVEN REG., Sept. 18, 1996.
that include traditional enclosed malls, power centers, and hotels. In 2006, Boston Magazine included the company’s CEO, Stephen Karp, on its list of the 50 wealthiest Bostonians, ranking him eighth with an estimated net worth of $1.6 billion following a decision to sell much of the company’s portfolio.

Westfield is and was an even larger player in the shopping center development market. The company, headquartered in Australia, currently operates 118 shopping centers, with a combined value of $61.7 billion. The company’s American holdings, according to its most recent annual report, top $15.3 billion. Neither company was a stranger to extended battles over mall approvals – contemporaneous with the Long Wharf development discussions, Westfield was engaged in a similar fight (this time, as the developer hoping to build the project) in St. Louis. NED, in 1990, completed construction of the CambridgeSide Galleria, an upscale mall that had been in the planning stages for a decade.

By the end of 1996, NED had nearing completion of an option with the owners of the Pirelli building, and had begun negotiations with key department store tenants, especially Nordstrom’s, who initially demanded $20 million in subsidy to ensure their placement in the mall. Estimates of job and tax revenue benefits to the city began to tick upwards as well. By mid-1997, developers were projecting 2,200 full-time jobs, 600 construction jobs, $13 million in city and state taxes, including $2.1 million in annual real estate taxes. It took another eight

120 Id.
123 Mark Zaretsky, _City mall may be bigger than planned_, NEW HAVEN REG., April 11, 1007.
months, until August of 1997, for NED to finally secure an agreement with the owners of the Pirelli building, removing one of the main barriers to construction.\textsuperscript{124,125}

*Public Lobbying to Clear Land: How the City Persuaded the Post Office to Move*

As NED attempted to secure the land necessary for construction, the city was trying to make good on its obligation to relocate the post office from its site on Long Wharf to some other location outside of the planned development area. Despite early confidence that relocation of the post office would prove easy, the city faced unexpected resistance from postal officials, who expressed little desire to move from their present, convenient location. This prompted DeStefano to enlist New Haven’s Congressional delegation, a group that included Senator Chris Dodd, Senator Joe Lieberman, and Representative Rosa DeLauro.\textsuperscript{126} It appears that the Congressional delegation quickly came to support the Long Wharf Mall, despite the prospects of intrastate competition with Westfield’s properties. Billed as a job-creating project, the mall proved politically attractive, and according to lobbyists at the time, it seems that New Haven officials were able to secure support by moving quickly and forcefully before Westfield was able to mount an effective counter-lobbying campaign.\textsuperscript{127} The post office’s reaction to this Congressional pressure was initially quite hostile. In a letter to Sal Brancati, Jo Saunders, Connecticut District Manager for the United States Postal Service explained, “I write to clear up any misunderstandings by again stating: We are not interested in selling the main post office in

\begin{footnotes}
\item[124] Mark Zaretsky, *City mall is still a good bet*, NEW HAVEN REG., 9-14-97
\item[125] Efforts to secure the land for the mall, complicated by the very public agenda of NED’s real estate undertakings, also coincided with city efforts to bolster connections between downtown and the harbor area near where the Long Wharf mall would be located. These proposals ran a wide gamut, from buying and demolishing the old Malley’s department store building, to sinking a portion of I-95 to allow easier access to the New Haven harbor.
\item[127] Interview with Patrick Sullivan, Managing Partner, Sullivan & LeShane, and chief lobbyist for Westfield.
\end{footnotes}
City officials applied continued pressure, but selection of alternate locations for a post office moved slowly, and postal officials continued to resist relocation efforts, which would see postal operations spread around several sites, and saw little reason why they should be enlisted in local economic redevelopment efforts. Pressure from the congressional delegation, however, eventually led to compromise, and the city, the postal service, and NED signed a Memorandum of Understanding in July 1997 outlining a desire for relocation.

While a now-motivated Postal Service began approving the outlines of a deal to move the postal site—a decision spurred by considerations of the necessity of upcoming renovations on the Long Wharf postal site that was estimated to cost between $12 and $14 million, finalizing the deal proved far more difficult. By March of 1999, over two years after the city selected NED as the lead developer, the Inspector General of the Postal Service had yet to sign off on a deal. Eager to accelerate the process, NED had agreed to build three new postal buildings, at a cost of $28 million, in exchange for an $8.8 million payment from the Postal Service. By this point, however, opposition to the mall, spearheaded by rival mall developer Westfield Corp., had coalesced. A 1999 public meeting to discuss the merits of the post office deal with NED drew a rancorous crowd, and Westfield’s lawyers filed two Freedom of Information Act lawsuits to force the release of documents surrounding the decision to relocate the postal buildings.

The Long Wharf Mall and Downtown: How Developers Proposed to Link the Mall and the Core

---

128 Letter from Jo Saunders, supra, note 126.
129 Mark Zaretsky, Firelli question could be moot, NEW HAVEN REG., DEC. 26, 1997.
130 MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES POSTAL SERVICE, NED LONG WHARF, LLC, AND THE CITY OF NEW HAVEN, CONNECTICUT, July 17, 1997.; See also New Haven Advocate, Signed, Sealed, and Delivered, NEW HAVEN ADVOCATE, Feb. 17, 2000 (outlining the behind-the-scenes lobbying that underlay the post office’s decision to relocate. The article was based on documents obtained under the Freedom of Information Act request by Westfield’s lawyers in preparation for a lawsuit against the Postal Service.
131 Mark Zaretsky, Postal move reaction mixed; Inspector general asked to study relocation, NEW HAVEN REG., March 18, 1999
132 Id.
133 Id.
Though in public statements New Haven’s mayor claimed that the Long Wharf site was complementary to downtown, it was clear from the outset that the mall itself was a suburban creature. Plans, which fluctuated over the course of the planning process, called for a 1.3 million square foot enclosed regional mall, surrounded by parking, consisting of four anchor department stores and 150 smaller specialty shops.\(^\text{135}\) It was also clear which anchor tenants NED had in mind: Nordstrom’s, Macy’s, Filene’s, and Lord & Taylor, of which Nordstrom’s was intended to be the key draw.\(^\text{136}\) Nordstrom’s had only recently entered the Connecticut market, and the nearest store locations were either in New York, or on the other end of Connecticut. Planned changes to the I-95 and I-91 interchange would have provided direct freeway access to the mall itself.

Central to city officials plans for the site, however, were “linkages” to downtown New Haven. According to Sal Brancati, for example, even the diversion of five percent of mall shoppers to downtown New Haven for, for example, dinner or a show, would create a significant economic boost for the city.\(^\text{137}\) These linkages consisted primarily of a planned shuttle bus network that would loop from the mall to downtown New Haven, promotional space for the city at the mall itself, a Retail Academy that would train local workers for positions at the mall, a developer pledge to strive for stores at the mall to hire at least 35% local workers (NED pledged that its own local staff would comprise 50% local workers), child care services – particularly aimed at single mothers, and contributions to a downtown marketing campaign.\(^\text{138}\) Though the city actually undertook feasibility studies for a mall shuttle system, and had specific quotes about

---

\(^\text{135}\) DEVELOPMENT AGREEMENT BETWEEN CITY OF NEW HAVEN, CONNECTICUT AND LONG WHARF GALLERIA, LLC, Oct. 20, 1999 (On file with author).
\(^\text{136}\) Interview with William Cronin, \textit{supra}, note 40.
\(^\text{137}\) Interview with Sal Brancati, \textit{supra}, note 77.
pricing, the principal decision-makers now admit they were skeptical anyone would actually use
the shuttle to explore New Haven’s entertainment offerings after a day of shopping at the mall,
and admit there was a possibility that more in-city residents would use transportation options to
ease their own access to the mall, rather than facilitate out-of-towners to explore downtown.\textsuperscript{139}

However, developers did make one key concession aimed at preserving the uniqueness of
downtown: the developers agreed not to build entertainment venues, like a movie theater, on the
mall site, to encourage people to visit New Haven’s cultural offerings.\textsuperscript{140}

Whether or not people would actually come downtown after shopping remained a matter
of conjecture rather than educated guess: no surveys were completed or studies done to justify
the shuttle service. For the developers, maintaining a separation between the mall and downtown
New Haven was, in fact, essential to economic success. Safety is a paramount concern for
suburban shoppers, and the developer’s public relations team sought to assure neighboring
constituencies that the mall did not, in fact, mean interaction with downtown New Haven.\textsuperscript{141}

\textit{The Fight Over State Public Subsidies}

In NED’s initial meetings with the city, it claimed that extensive public subsidy would
probably not be necessary to complete the Long Wharf mall project.\textsuperscript{142} This calculus quickly
changed, particularly as the cost of the project itself began to rise. By early 1997, New Haven

\begin{footnotesize}
\begin{enumerate}
\item Development Agreement Between City of New Haven, Connecticut and Long Wharf Galleria, LLC, \textit{supra}, note 135.
\item Interview with Jonathan Pelto, former lobbyist at Impact Strategies and lobbyist for New England Development.
\item Mark Zaretsky; Gregory B. Hladky, \textit{This mall will fly, experts predict}, NEW HAVEN REG., Sept. 15, 1996. “When New England Development President and CEO Stephen Karp made his pitch, “he thought he could do it without any public subsidy,” said Matthew Nemerson, president of the Greater New Haven Chamber of Commerce. At the time of the announcement, DeStefano said the only subsidies he anticipates would be for infrastructure improvements and, if necessary, to help clean up the 60-acre site, which is filled-in land. He pointed out later, however, that the last mall approved in Connecticut, in Waterbury, received $25 million from the state and $5 million in federal subsidies. “I guess I'm saying that I expect that something will be needed for traffic improvement,” DeStefano said. “I have a sense, however, that this is clearly not anywhere near the level for Taubman.”
\end{enumerate}
\end{footnotesize}
was actively seeking $25 million in state bond money for highway construction to link
downtown with the proposed Long Wharf site.\textsuperscript{143} The money was a slice of a much large
bonding package urged by Governor Rowland. Surprisingly, however, this initial attempt to
secure bond money failed, and New Haven was sent back to the legislative drawing board to
drum up additional public cash to subsidize the Long Wharf project.\textsuperscript{144} Officials at the time cited
the lack of federal subsidy contributions for the project as the chief reason for reticence in
granting the Long Wharf bonding money.\textsuperscript{145}

By the following year, New Haven was asking for $60 million in state money in the form
of tax increment financing bonds, as well as transportation, urban development, and
environmental grants, and began an effort to encourage legislative support for such bonding.\textsuperscript{146}

\textit{Tax Increment Financing As the Primary Means of Securing Money to Build the Mall}

The question of the proper source of funding for the mall project was far from obvious
for the officials involved, and over the course of the discussions several different sources were
considered. Most prominent for city officials and the developer was a call for state Tax
Increment Financing bonding. This choice of funding mechanisms, however, had several
consequences that were important to the future development of the mall project.

Since California pioneered the use of a municipal funding mechanism called Tax
Increment Financing in the 1950s, this method has come to dominate local means of paying for
new development projects.\textsuperscript{147} In general, TIF involves the issuance of bonds by a government
entity to pay for a development project. This bond money is then repaid by the increase in tax

\textsuperscript{143} Gregory Hladky, \textit{Hard Bargaining to start on who gets bonding pie}, NEW HAVEN REG., April 26, 1997.
\textsuperscript{144} Id.
\textsuperscript{145} Gregory Hladky, Lolita Baldor, \textit{No state cash pledged for downtown, mall link}, NEW HAVEN REG., June 22,
1997.
\textsuperscript{146} New Haven Register, \textit{State should grant money for mall}, NEW HAVEN REG., Apr. 26, 1998.
\textsuperscript{147} Richard Biffault, \textit{The Most Popular Tool: Tax Increment Financing and the Political Economy of Local
revenue that results from the newly-completed project, revenue that can come from increases in property taxes, sales taxes, or some other form of assessment.

Connecticut state law provides for two distinct avenues for TIF financing. At the state level, the legislature can approve the issuance of bonds from the state Connecticut Development Authority (CDA). Under CGS Sec. 32-285, the state legislature can approve CDA TIF bonds for projects that promise significant economic benefits and will be financially self-sufficient. Unlike most local TIF bonds, the Connecticut state CDA TIF bonds are repaid, in the case of a mall project, through the increased sales tax revenue developers expect. The CDA must make an independent appraisal of the project’s worthiness as a self-sustainable economic venture, but state TIF bonding for a major construction project also triggers an environmental impact review under the Connecticut Environmental Policy Act. It was this type of TIF financing that the city of New Haven initially sought for the Long Wharf project. The actual amount of money sought, and the source of the funds themselves, however, varied with time. As a result of negotiations with the governor’s staff, the city came to expect $60 million in state financing, with $32 million coming from an unspecified mix of transportation and urban development grants, and $28 million from state sales tax TIF bonds, which would come online during the third year of the project. City officials estimated total repayment of state financing within 4.2 years. The source of the $32 million apparently remained vague to all involved. On May 1, 1998, John DeStefano

---

149 Id.; Connecticut General Statutes Sec. 32-285.
151 Connecticut General Statutes Sec. 32-285.
152 Id.
153 Letter from Peter Ellef, former co-chief of staff to Connecticut Governor John Rowland, to John DeStefano, Mayor of New Haven (June 4, 1998) (on file with author).
wrote to his development team to outline the state of the financing plan.\textsuperscript{154} Acknowledging that only some of the costs associated with the Long Wharf project were eligible for state financing help (traffic, parking, site, and environmental costs would be covered, as opposed to guarantees the developers planned to offer anchor tenants) he indicated his understanding was city receipt of $10 million during the first year of the project from unspecified monies from the Department of Transportation and Department of Energy and Environmental Protection, $10-15 million from the same source in year two, along with $10 million of funds from the Urban Act (Conn. Gen. Stat. § 4-66) and $28 million in state TIF funding in year three.\textsuperscript{155} This timeline shifted as support for immediate grants to New Haven ebbed. The plan for disbursement of TIF funds was accelerated and phased in, allowing negotiators more time to drum up inchoate grant funding from various sources.\textsuperscript{156} Later still, the city began to target the Connecticut Department of Economic and Community Development, not the DOT or the DEP, for the elusive $32 million in unspecified funding.\textsuperscript{157}

However, a second, distinct source is also available for TIF financing in Connecticut. Authorized by Conn. Gen. Stat. § 8-134, individual municipalities, not the state, can issue their own TIF bonds within areas covered by a municipal redevelopment plan.\textsuperscript{158} These municipal TIFs are generally repaid, in the case of construction projects, through property tax increases on the value of the project being improved.\textsuperscript{159} For smaller projects, municipalities can also engage in TIF financing without having to issue bonds: municipalities simply set aside incremental

\textsuperscript{154} Memorandum from John DeStefano, Mayor of New Haven, to Long Wharf Galleria development team members, Re: Mall Funding (May 1, 1998) (on file with author).
\textsuperscript{155} \textit{Id.}; Conn. Gen. Stat. § 4-66.
\textsuperscript{156} Letter from Peter Ellef, \textit{supra}, note 153.
\textsuperscript{157} \textit{City of New Haven, Long Wharf Galleria Funding Timeline} (on file with author).
\textsuperscript{158} Conn. Gen. Stat. § 8-134.
\textsuperscript{159} \textit{Id.}
increases in property taxes until they are able to finance the improvements themselves.  

Municipally-issued TIF bonds are not subject to state legislative ratification (although a state agency must approve some aspects of the development plan), and are generally limited by the municipality’s bond rating and appetite for debt. New Haven chose this type of TIF funding for its $25 million in downtown-specific development efforts, but had to debate whether to issue General Obligation Bonds, which would implicate the city’s treasury but result in lower interest payments, or special obligation TIF bonds tied to the project itself, which would result in higher interest rates. Despite the lack of state approval necessary for this local bond issue, the process is not an entirely straightforward one. An analysis for the city put together by a local law firm outline 13 distinct steps necessary for the local bond issuance, ranging from Preparation of a Project Plan to authorization by the Board of Aldermen to adopt the financing plan.

The State Legislative Battle Over Public Funding

New Haven’s local newspaper, the New Haven Register, was unequivocal in its support for seeking state financing: “There is no obvious pitfall to the city’s aid request for the mall. The state and aid [sic] would be recovered in less than seven years from the new tax revenues. The aid would come from already existing bonding money. The policy goal would be met of strengthening inner cities by encouraging private investment. And the mall, whose developers are investing $350 million, seems certain of success.” City officials actively lobbied the state, seeking the $60 million, which required legislative approval. According to Chris DePino, a

---


161 New Haven, at the time, had around $260 million in outstanding bond indebtedness, and officials were wary of taking on too much more debt.


163 Id.

164 Mark Zaretsky, Funding for city mall faces question, NEW HAVEN REG., April 29, 1998.
state representative for New Haven, who was part of the lobbying delegation, there was initially little resistance from state legislators for funding the New Haven requests. “State support came together from political advocacy,” he said. “It was the best single development idea that New Haven had in years. It was a brilliant idea. It was going to create a lot of commerce and a lot of jobs.”

But opposition soon formed, primarily from local mayors representing cities, like Milford, that contained competing malls. These mayors, backed by Westfield, argued that the state was giving the Long Wharf mall a competitive advantage by subsidizing their commercial efforts. Governor Rowland objected to this categorization, arguing that the subsidies were for indirect benefits, like highway construction. In a strategic move, the city dropped plans to seek approval for all $60 million at once – instead they sought the money in two tranches.

Approval came soon after, with the state general assembly approving $28 million in special state funding for the Long Wharf mall, and creating a path forward for obtaining an additional $32 million. The vote reflected Rep. DePino’s initial optimism: approval in the state general assembly was 145-5, and Senate approval was 31-4.

New Haven’s funding success, of course, was not alone. In what DeStefano himself describes as a clear attempt to win over urban constituencies ahead of a mayoral election, Governor Rowland also helped shepherd though over $300 million in development money for Hartford’s downtown, and $120 million in special financing for a harbor front project in Bridgeport called Steel Point, chiefly in the form of state-backed TIF bonds. The political nature of these funding approvals was not lost on observers. “Democrats have given up on

---

165 Interview with Christopher DePino, former Connecticut State Representative for New Haven.
166 Christopher Keating, Tax Agreement Reached, HARTFORD COURANT, May 1, 1998.
167 Id.
168 Id.
170 Id.
171 Id.
172 Id.
electing [the democratic candidate for governor]. Instead, they’re pushing Rowland for all the money they can – giving him a chance in return to swipe votes in democratic cities. That’s why Hartford, Bridgeport and New Haven rushed requests ranging up to $350 million (Hartford’s) for huge economic development projects. That’s why Rowland, once upon a time the candidate of fiscal conservatism and anti-urban prejudices, has rushed to embrace them.”

The $28 million in state bonding aid for Long Wharf, however, came with important caveats. The money came in the form of Tax Increment Financing, a funding scheme that allows developers to pay back financing money with sales tax revenues. Such funding also carries additional obligations to demonstrate that the state funding will actually bring in new tax revenue by attracting sales lost to other states or generating sales in Connecticut that wouldn’t have occurred otherwise. Such approval hinged on the outcome of a report provided by DeLoitte & Touche, a national accounting firm. The approval process required NED to submit copious documents to the state in order to prove that the mall project would not simply shift Connecticut dollars around the state, with no net benefit. It was, however, the first time that such economic impact information would be submitted to a public entity – over two years after New Haven announced its support for the project.

For Westfield, the mall’s chief opponent, the relatively easy approval process for the $28 million in state TIF financing for the mall was something of a wakeup call. According to Jon Pelto, a former state legislator and lobbyist who was brought in by New Haven to manage the public relations fight that was brewing against Westfield, “The mistake Westfield made was it did not spend a lot of time getting organized…It was a huge tactical mistake, by the time they

174 William Harahan, Allies wanted for mall fight, NEW HAVEN REG., July 17, 1998; See also Briffault, supra, note 147.; See also Conn Gen. Stat. Chap. 130.
175 Id.; Mark Zaretsky, Long Wharf site awaits approval for funds, NEW HAVEN REG., Oct. 1 1998.
176 Id.
realized they had to shift the debate into New Haven, the statewide battles were already over, they missed their window.”177 The popularity of the project within New Haven itself, mixed with strong bipartisan gubernatorial support (Rowland, a Republican, was aiding DeStefano, a Democrat) prevented the emergence of clear political fault lines.178 This observation is supported by Westfield’s chief lobbyist, Patrick Sullivan, who was brought in after the state legislature had already approved the $28 million in TIF money and created a relatively easy pathway for obtaining the additional $32 million.179 “This was Gov. Rowland’s initiative and he was popular. Westfield came to it late, a lot of times that’s what happens. After the horse is out of the barn, it’s hard to catch it and throw it back in.”180

What emerged instead was a multi-pronged public relations and lobbying effort, bankrolled by Westfield, which attempted to remove sizeable local support for the mall project as well as delay construction past the point of economic viability.181 “The concept is to throw up as many roadblocks as you can because time is money in the development game…we were raising legal challenges, raising political challenges, raising intellectual challenges, that’s the ballgame.”

At the state level, Westfield continued to press its opposition to the $28 million in public subsidy already approved by the state legislature, having allied itself with state legislators from areas home to competing malls, notably Milford.182 This primarily took the form of an attempt to recall the original authorizing legislation, something made possible by the fact that New Haven was still awaiting the outcome of a state-commissioned study into whether the projected new

177 Interview with Jonathan Pelto, supra, note 141.
178 Id.
179 Patrick Sullivan is managing partner of the prominent Hartford-based lobbying firm Sullivan & LeShane. A long-time political strategist, he has been active in a wide variety of political campaigns and commercial lobbying efforts since the early 1980s.
180 Interview with Patrick Sullivan, supra, note 127.
181 Id.
182 Gregory Hladky, Union, City Officials Lobby For Mall, NEW HAVEN REG., May 14, 1999.
sales tax generated by the mall came from sales to out-of-state shoppers or from the cannibalization of existing Connecticut retail sales.\textsuperscript{183} New Haven officials met with Gov. Rowland to ensure continued support for the already-authorized money, and were convinced that legislative support remained strong.\textsuperscript{184} Despite assurances, opposition to the mall among state legislators was vigorous, and anti-mall legislators threatened to delay legislative business unless lengthy debate on the merits of the mall itself took place.\textsuperscript{185} When it became clear that, despite an energetic lobbying campaign, the state legislature was unlikely to repeal mall funding, mall opponents made an interesting offer: they would drop their opposition at the state level in exchange for a referendum vote within the city of New Haven itself on the merits of the mall.\textsuperscript{186} This offer was rejected but did highlight an interesting fact from the perspective of local accountability: nearly three years after first issuing its RFQ for a megamall that could radically transform the New Haven economy, only a single New Haven government committee had yet to take a vote on the merits of the proposal.\textsuperscript{187}

Still, state lobbying persisted, unsuccessfully. In June of 1999, a repeal vote was defeated 89-59 in the State House of Representatives – a decisive defeat but a marked difference from the 145-5 vote of the year before.\textsuperscript{188} Legislators opposed to the project cited potential detrimental impact the mall could have on existing retail sites, including downtown New Haven, while supporters cited either the importance of a strengthened New Haven to the regional economy or loyalty to gubernatorial priorities.\textsuperscript{189} Nearly a year later, anti-mall legislators tried again, introducing an amendment to a bill that would have required new legislative studies of mall

\textsuperscript{183} Id. \\
\textsuperscript{184} Id. \\
\textsuperscript{185} Id. \\
\textsuperscript{186} Id. \\
\textsuperscript{187} Id. \\
\textsuperscript{188} Gregory Hladky, \textit{Mall Wars: Leaders reject opponents' compromise offer}, NEW HAVEN REG., June 8, 1999. \\
\textsuperscript{189} Id.
financing approved two years prior.\textsuperscript{190} This effort, too, failed, with the sponsoring legislator actually withdrawing the amendments from consideration, before a vote, after 45 minutes of debate.\textsuperscript{191} The Milford legislator who backed the amendments acknowledged at the time that the idea for the amendments, as well as the decision to withdraw the amendments, came at the behest of Westfield’s chief lawyer, Ronald Cohen of New Haven, who favored pursuing the goal of stopping the mall in the courts, where uncovered information might turn public opinion.\textsuperscript{192} That anti-mall legislators actually shied away from a final public vote on the public subsidy, struck some observers as cynical proof that Westfield’s sole interest was delay, regardless of the cost to themselves or other interested parties.\textsuperscript{193}

Though total figures for the amount spent on lobbying efforts at the state level remain private, some information on the extent of the lobbying campaigns was released at the time. According to public figures obtained by newspapers at the time, the anti-mall lobbying effort cost Westfield $1.3 million, with an additional $500,000 paid towards political contributions at the state and federal level.\textsuperscript{194} An additional $1 million was spent on local advertising campaigns.\textsuperscript{195} NED was said to have spent $260,000.\textsuperscript{196} But insiders at the time claim that the actual amounts spent were significantly higher.\textsuperscript{197} Jon Pelto puts the figure for Westfield at close to $2.5 million on the first round of voting alone, with a total of $5-7 million spent on advertising

\textsuperscript{190} Gregory Hladky, \textit{Mall opponents retreat; Milford legislator pulls amendment before House vote}, NEW HAVEN REG., March 30, 2000.
\textsuperscript{191} Id.
\textsuperscript{192} Id.; Ronald Cohen was the local head of Westfield’s legal efforts. Mr. Cohen has passed away and his law firm, Tyler, Cooper & Alcorn has since disbanded. I was unable to reach any of the Westfield-employed lawyers involved with the Long Wharf mall project.
\textsuperscript{193} Id.
\textsuperscript{194} Gregory Hladky, Christopher Hoffman, \textit{Money talks in mall war; Rivals spread cash to sway lawmakers}, NEW HAVEN REG., Feb. 20, 2000.
\textsuperscript{195} Id.
\textsuperscript{196} Id.
\textsuperscript{197} Interview with Jonathan Pelto, \textit{supra}, note 141.
to influence legislators and voters. “Westfield had an advertising campaign unlike any that there had been or any that there has been since.”

The Fight for Approvals

A path forward for state subsidy for mall construction, of course, was not the only component necessary for successful completion of the mall. Local officials needed a wide range of further approvals, from regional planning officials to the local Board of Aldermen. After obtaining state legislative approval for $28 million in Tax Increment Financing, the city was forced to turn its development plans over to a regional planning entity called the South Central Regional Planning Commission, a relatively obscure group composed of regional planning officials from the towns and cities surrounding New Haven. Intended to be apolitical, the Commission’s sole relevant function related to the Long Wharf mall proposal was to determine whether the mall was in line with a regional plan adopted by the member communities. The regional plan, however, had not been updated since 1968. While the plan provides for dense development around New Haven, the antiquated specifics of the plan itself allowed room for mall opponents to argue that changed conditions meant approval of the mall proposal would violate the spirit, if not the letter, of the 1968 document. Opponents chiefly cited worries about increased traffic, along with intense commercial competition between the new proposed mall and existing malls. Indeed, New Haven, fearing it would actually lose the vote before the commission, withdrew its application to engaged in several weeks of intense lobbying to ensure
The Commission finally approved the mall plan by a vote of 11-4 on Dec. 10, 1998.

Approval, however, did not end the matter. Alleging that the Commission spent an inadequate amount of time (90 minutes) actually considering the Municipal Development Plan submitted by New Haven for approval, and arguing that the Commission failed to properly analyze how the proposed mall project would actually impact surrounding communities, Westfield’s Milford-based mall sued the Commission, trying to force reconsideration of the issue. When this case was dismissed for lack of standing, Westfield financed the city of Milford to sue the Commission itself for similar reasons. This suit was likewise dismissed for lack of standing, in part, because the actual merits of the development plan itself would be evaluated by the state Department of Economic and Community Development at a later date.

The Developers and the City Conclude a Development Agreement

Following approval of the Regional Planning Commission, city officials turned their attention to finalizing a development agreement with NED, and subsequently securing local approval for the plan. The two and a half years between the city’s selection of NED as a developer and the concluding of the development agreement saw a few major changes: the $100 million project had ballooned to $492 million, supported by $60 million in state bond financing and $25 million in local tax increment financing. Additionally, the city seems to have pursued authorization of another $25 million bond to finance portions of mall construction. However, this
$25 million was not explicitly referenced by city officials and does not seem to have been included in any major calculations. Its inclusion, however, is detailed in John DeStefano’s Affidavit in a lawsuit brought in 2000.\(^{210}\) The size of the mall, too, had increased, to 1.3 million square feet, anchored by four department stores and including 150 smaller retail shops. At the beginning of the city approval process, the expected benefits from the mall project had increased as well, to 3,100 expected construction jobs (up from 600), 3,000 permanent jobs in the mall itself (up from around 2,000), $5.1 million in new property taxes and $700,000 in personal property taxes. The start of the local approval process also marked a declaration of war between Westfield (which had already bankrolled state lobbying efforts and lawsuits) and NED – with William McCabe, one of three partners in charge of NED announcing at the press conference celebrating completion of the development agreement that he would fight Westfield until “hell freezes over.”\(^{211}\)

\textit{Buying Off Downtown: City Hall Proposes $25 Million in Bond Financing to Help the Core}

Already the typically bureaucratic fight over subsidy approvals had spilled into the New Haven streets in unprecedented ways. As criticism of the proposed Long Wharf mall began to emerge from opponents who highlighted the possible negative effects of a new mall on New Haven’s already existing downtown retail stores, DeStefano introduced plans for a new subsidy - $25 million in TIF financing focused exclusively on bolstering downtown businesses.\(^{212}\) This money would not be related to mall construction – rather, it would be set aside for a wide array of local initiatives including local high-risk loans for local businesses, a downtown marketing

\(^{210}\) DeStefano Affidavit, Stewart Hutchings, et. al. v. Dept. of Economic and Community Development and Office of Policy Management, CV00-0597095S (March 30, 2000). “City has authorized the issuance of twenty-five million ($25,000,000.00) dollars in bonds, the proceeds of which will support the development of MALL and provide an additional twenty-five million ($25,000,000.00) dollars to protect the downtown and neighborhood businesses from the potential adverse impact of MALL for a total of fifty million ($50,000,000.00) dollars.”

\(^{211}\) Id.

\(^{212}\) Mark Zaretsky, Mall funds may boost downtown, NEW HAVEN REG., Nov. 12, 1998.
plan, and a façade improvement plan. Originally intended as state-issued TIF financing, the city ultimately decided to issue local TIF bonds itself, ostensibly to avoid further political debate and avoid justifying how downtown funds related at all to mall construction. Indeed, the $25 million would be financed the same way that the $28 million in state-approved TIF money would be financed: from tax proceeds from the mall. However, these local bonds would be paid from local property taxes generated by the mall (not sales taxes that go to the state). In effect, the city, in what can only be described as a plainly political move to secure additional support from downtown retailers who were beginning to question the merits of the mall project, was creating a kind of dedicated downtown trust fund, funneling dollars that would go to the city generally to support specific downtown activities.

The Public Relations Fight Over the Mall’s Impact on Downtown

This unique arrangement was prompted by a quickly-accelerating public relations campaign within New Haven itself to maintain local support for the project. According to Westfield’s lobbyist, Patrick Sullivan, the opposition strategy entailed organizing New Haven’s downtown merchants against the project, extending support to local environmentalists worried about traffic, air pollution, water pollution, and waste, and general advertising geared at the general population. “I was well thought out, it was strategic, it involved both the media and the legislative process. We hit it hard from every direction to be successful.”

Central to the debate over the mall in New Haven was the degree to which a new mall on the edge of downtown would sap business from already existing downtown businesses. DeStefano anticipated this line of critique as early as 1997, when, in his State of the City address, he acknowledged the objection, but reasoned that downtown’s store offerings were unique and

\[213\] Id.
\[214\] Interview with Patrick Sullivan, supra, note 127.
\[215\] Id.
wouldn’t compete with a proposed mall, and further added that, “if properly executed … [the mall] will serve as the vital link between our traditional downtown of nine squares and our city's great asset, the harbor.” As the effort to build a major suburban-style mall on the outer edge of New Haven’s downtown entered its third year, no one actually knew the answer to this central question. What studies existed were known only to the developer and the initial studies suggesting room for a regional mall project downtown were conducted in 1991 and do not seem to have been a part of the public debate. As a result, the battle over whether the mall would be good or bad for downtown New Haven was primarily one of optics and suggestion.

In April of 1999, John Isaacs, the local owner of a shoe store located in downtown New Haven, became the face of downtown resistance, holding a press conference and presenting a petition in favor of scrapping the mall. He argued that the mall would destroy his business, and that an urban strategy that focused attention outside the symbolic and geographic heart of the city would stymie redevelopment efforts. But Isaacs was not alone. As part of Westfield’s overall multi-prong mall opposition strategy, the company had made local rabble-rousing a key tool of opposition. This took many forms, but primarily advertisements, direct mailings, and public relations efforts spearheaded by a newly-created group called Save Our Downtowns Alliance, funded by Westfield, which sought to coordinate these efforts. This strategy came to include Westfield’s providing of financing for individuals, like Isaacs, to file their own lawsuits against NED.

---

216 Mark Zaretsky, Aldermen may soon get vote on mall, NEW HAVEN REG., Feb. 4, 1997.
218 Id.
219 Tina Kelley, In New Haven, Not Your Usual Mall Battle, N.Y. TIMES, Oct. 23, 1999. SODA made no attempt to hide Westfield’s involvement with the group. Indeed, the group’s director, Lisa Cowell, later took a job with Westfield as a Vice President of Government Relations, a post she holds today.
220 Letter from Steven Ecker, Partner, Cowdery, Ecker, & Murphy, LLC, and lawyer representing Dan Isaacs and others, to (on file with author).
NED, in turn, waged its own public relations war. Jon Pelto, who spearheaded these efforts, noted the two sides pursued different strategies. While Westfield and SODA concentrated their efforts on organizing downtown merchants into a unified voice against the project, NED focused on other communities: unionized workers and churches in areas most likely to benefit from the construction and retail jobs created by the mall construction, and nearby suburban women who would be most likely to be attracted to a new, safe, and clean mall right on the edge of New Haven, with easy access to the highway system.\(^{221}\) “It was a very sophisticated campaign. Everything was driven by opinion research, identifying sub-constituencies on down. We gave different messages to different sub-constituencies. It is how campaigns like that are supposed to be done. It was very profitable and rewarding but it was made clear that if you do it right you could sell anything. This mall was a perfect example.”\(^{222}\)

Central to these efforts was a quiet effort to split the downtown business community that was beginning to coalesce as a vocal opposition group to the mall project, fueled by genuine concern on the part of business owners and aided by extensive funding from Westfield.\(^{223}\) NED approached individual business owners to offer them discounted locations in the soon-to-be-built mall itself, hoping that as owners’ personal financial insecurities were lessened, so would their opposition. This tactic is corroborated by an angry letter sent by DeStefano to Steven Karp at NED in July of 1998. “I hope you will recognize how important it is that we maintain a healthy center city. As I attempt to reassure the downtown merchants and property owners that they have a future here, it does not help to have your staff talking to them about moving to the mall.”\(^{224}\)

\(^{221}\) Interview with Jonathan Pelto, supra note 141.
\(^{222}\) Id.
\(^{223}\) Interview with Jonathan Pelto, supra note 141; Interview with Patrick Sullivan, supra, note 127; Interview with Steven Ecker, Partner, Cowdery, Ecker, & Murphey, LLC, and lawyer representing Dan Isaacs and others.
\(^{224}\) Letter from John DeStefano, Mayor of New Haven, Conn., to Stephen Karp, CEO, New England Development (July 8, 1999) (on file with author).
However underhanded, the tactics appeared to work – Aldermanic disapproval of the project remained low, and there were few local obstacles to continued development.

The city, too, developed a sophisticated public relations strategy to sell the mall idea and counter. The creation of the strategy reflected acknowledgement that “the City of New Haven continues to be an easy target for the mall’s primary and secondary opponents, the Westfield Corporation and the political leadership of the Town of Milford.”

This strategy also involved enlisting the help of institutional players in New Haven, including Yale University, to try and present a united front to state officials and prevent the project’s subsidy money from becoming jeopardized. Yale officials helped lobby state officials for state bond money for the mall, and in early 2000 DeStefano contacted Yale’s Vice President for New Haven and State Affairs, and former executive for a major mall developer, Bruce Alexander, to persuade Yale’s president to back the pro-mall public relations expert. DeStefano’s letter hints at the fault lines emerging in the public debate over the mall: “We would like to release President Levin’s letter to the press as well as arrange an interview with you with the Hartford Courant. We are launching a public relations effort to show that there is more to the Mall story and that Yale University, among others, strongly supports the city’s plans. One of the main points we have been trying to make is that we are devoting as much of our city’s resources to planning and developing downtown New Haven as we have to the Mall at Longwharf [sic].”

Much like the New Haven Chamber of Commerce, which had long devoted itself to a downtown-centered strategy for New Haven’s redevelopment but became a consistent advocate for the mall project, in part, in loyalty to the mayor, so too did Yale decide to publically back a

---

226 Id.
mall project it suspected would prove a mixed blessing for the city.227 “We supported the mall publically as a civic matter.”228 Long Wharf, in Alexander’s opinion, was a “natural” spot for a mall, and nearby upscale merchandizing at Nordstrom’s could have had a beneficial impact on the city, but the overall effect on New Haven was less clear.

Locally, these public relations battles did little to dent local government support for the mall project. The Municipal Development Plan for the mall was quickly adopted unanimously by the city’s Development Commission,229 and the City Plan Commission approved the Development Agreement signed with the developers, despite the presence of significant opposition at the public hearing.230 Acknowledging rising public anxiety over the mall, the Board of Aldermen, when they took up consideration of the development agreement in June of 1999, conducted three public hearings to accommodate interest.231 Aldermen and members of the public expressed a wide array of concerns at the public meetings, ranging from allegations of impropriety in using city funds to conduct a public relations campaign in favor of the mall to prescient questions about what protections, if any, existed for the project if key anchor tenants, namely Nordstrom’s, decided to pull out of the project.232 Questions submitted by Aldermen in advance of the meeting address a similar range of concerns, notably eliciting an answer from city officials that public subsidy for the project would be paid off within 6 years, and that even discounting payments set aside for repayment of the $25 million city TIF project, the city stood

227 Interview with Bruce Alexander, Yale Vice President and Director for New Haven and State Affairs.; See also, Gladys Alcedo, Support for mall coming from Yale, NEW HAVEN REG., March 13, 2000.
228 Interview with Bruce Alexander, supra, note 226.
230 Mark Zaretsky, Mall plan clears hurdle; boisterous 4-hour hearing draws 150, NEW HAVEN REG., April 15, 1999
231 Mark Zaretsky, Aldermen to test waters on mall, NEW HAVEN REG., June 1, 1999.
232 Mark Zaretsky, Mall questions abound; Officials want assurances from developer, NEW HAVEN REG., June 2, 1999. The city’s answer to this question, according to the minutes of the Aldermanic meeting: “Sal Brancati submitted a letter from New England Development stating the commitment of the department stores of Filene’s, Nordstrom’s, Macy’s, and Lord & Taylor. He noted that until the local approvals and state approvals are in place the commitment is to the developer and the developer is committed to the city to provide these stores. He noted that the City has not expended any money from any of our accounts for this project yet. He stated that if in fact Nordstrom’s doesn’t come the development agreement gives us protection in that there must be a store equivalent to Nordstrom’s.
to collect nearly $2 million per year in property taxes. In the questions, Sal Brancati acknowledges that as of June 1999, no study concerning the possible impact of the new mall on downtown New Haven had been completed or contemplated. This became a key element of disagreement in the third Board of Alderman meeting, with “incredulous” questions directed at Sal Brancati asking why the city chose to proceed without examining possible effects of the mall on the city. Subsequent public meetings highlighted a broader array of concerns, including possible environmental and traffic impacts of the new construction project.

Much of the city’s information about the economic effects of the mall came either from the developer or from a commissioned economic impact study by a consulting firm in April 1998. This study, commissioned by the city but rarely referenced directly, concluded the mall would generate 2,600 construction jobs, $21 million in annual state sales tax, $4 million in one-time building permit fees, 2,800 retailing jobs, and $4.1 to $4.6 million in annual property tax revenues. Using the measurements of this study, these numbers are relatively low, given that the study contemplated only three anchor tenants. The study concluded that one-third of the total sales generated by the mall would be from revenue currently “leaking” out of Connecticut via out of state sales, internet and mail ordering, and other sources, making a net positive sales

233 SAL BRANCATI., OFFICE OF ECONOMIC DEVELOPMENT AND CITY OF NEW HAVEN, QUESTIONS REGARDING PLANNED GALLERIA AT LONG WHARF, RESPONSE TO QUESTIONS SUBMITTED BY THE BOARD OF ALDERMEN, June 10, 1999 (on file with author).
234 Id.
236 Mark Zaretsky, Westfield plays pollution card; Developer to address environmental issues, NEW HAVEN REG., June 18, 1999.
237 ABELES, PHILLIPS, PREISS, AND SHAPIRO, INC., ECONOMIC IMPACT STUDY FOR A PROPOSED REGIONAL MALL IN THE CITY OF NEW HAVEN, CONNECTICUT, April 1998 (on file with author).
238 Id.
239 Id.
generation of $120 million. The study predicted growth in this amount because of the “type and quality of mall anchor and satellite stores.”

The Board of Aldermen provisionally approved the mall development agreement soon after, and gave final approval a month later, with a 23-3 vote. In the end, the most contentious area for approval was an effort by some Aldermen to force city officials to articulate with greater specificity how it planned to spend the $25 million in TIF funding geared towards downtown improvement but paid for with property taxes from the mall. A month later, Westfield filed suit against the City Plan Commission and the Board of Aldermen, alleging that the City Plan Commission and the Board of Aldermen “acted illegally, arbitrarily and in abuse of discretion, the former in recommending approval of, and the latter in approving, the subject application and plans and amending the ordinance accordingly,” and improperly denied Westfield intervenor status at the meetings to introduce environmental evidence. The Connecticut Superior Court later ruled that the company had standing to challenge the denial of its intervenor status, but it does not appear that the case proceeded after the denial of the Motion to Dismiss. The city formally signed the development agreement with the developers on Oct. 21, 1999. Other city approvals would follow, such as approvals for zoning changes, but none would be as contentious as the development agreement debate.

240 Id.
241 Id.
242 Mark Zaretsky, Mall backers expect study to give ‘OK’, NEW HAVEN REG., July 1, 1999.
243 Mark Zaretsky, Mall gets city approval; Board votes 23-3 to OK development, NEW HAVEN REG., August 3, 1999.
244 Id. “City Director of Business Development Salvatore J. Brancati Jr. conceded that ‘we have not articulated exactly how (the $25 million) would be spent,’ but said that failure to approve any portion of it would ‘send a very negative message to some of the neighborhoods.’”
246 Id.
247 DEVELOPMENT AGREEMENT BETWEEN CITY OF NEW HAVEN, CONNECTICUT AND LONG WHARF GALLERIA, LLC, supra, note 135.
248 Mark Zaretsky, Mall zoning applications go to city panel tonight, NEW HAVEN REG., Sept. 22, 1999.
The Battle Returns to the Statehouse, and Westfield Launches a Legal Offensive

With the city’s development agreement with the developers concluded, the focus of the mall debate shifted back to the fight for state subsidy. Having obtained legislative approval for $28 million in TIF funds, and assurances that $32 million more in transportation-related funding could come via grants that did not require subsequent legislative approval, the development team needed approval from at least three key sources: from the state Traffic Commission (which gave unanimous approval to the project,249 from the Connecticut Development Authority (which retained control over disbursement of the $28 million in TIF funding and required a formal finding that the project would draw economic activity from out of state or prevent Connecticut residents from “leaking” their purchases out of state), and from the Department of Economic and Community Development (which was tasked with finding whether or not the mall project would have no significant impact on the state’s environmental and economic situation).250 The Connecticut Development Authority announced that it would delay its decision until the Department of Economic and Community Development finalized its Finding of No Significant Impact.251

The type of approvals remaining highlighted two key facts: first, no studies had yet been completed definitively showing the actual economic impact of the mall (figures touted by city

249 Mark Zaretsky, Mall traffic plan wins key approval: Competitor vows to fight $23 million in Long Wharf work, NEW HAVEN REG., Sept. 28, 1999. Westfield’s lawyer vowed to sue over the approval, and soon followed through. In September of 2000, a Connecticut superior court judge ruled that the Connecticut Post Mall had standing to “assert that the traffic plan for the mall submitted to the Commission is a design that should not have been approved because that plan is reasonably likely to impair the public trust in natural resources.” The Connecticut Post Limited Partnership v. State Traffic Commission et al., 2000 Conn. Super. LEXIS 2516 (CT. Supr. Ct. 2000).

250 Approval documents, Mark Zaretsky, Reviews may jeopardize mall funds; Developer warns anchor contracts could be in peril, NEW HAVEN REG., Oct. 22, 1999.

251 Id.
officials up until this point were provided primarily by the developer), and second, the length of the approval process was beginning to threaten the viability of the project itself.  

*The Contentious Fight to Show the Mall Would Have No Significant Impact on State Economics or the Environment*

The first of these facts soon came to play a significant role in the ongoing mall debate. The Department of Economic and Community Development was responsible for implementing the provisions of the Connecticut Environmental Policy Act, which required environmental review of state projects (including those funded by the state via bonds) that met certain development criteria. This Act mandated that a mall project like the New Haven Galleria be evaluated under either an Environmental Impact Evaluation (EIE), or, in certain circumstances, under a Finding of No Significant Impact (FONSI) that would declare a project free of major environmental or economic impacts on the state. The FONSI, however, is a faster and less in-depth review than an EIE, making it preferable to developers. What is clear is that instead of an EIE, state officials conducted a FONSI process for the New Haven Galleria (interestingly, the state revised CEPA in 2002 to eliminate the FONSI language, which would presumably have made the New Haven Galleria subject to an EIE). The decision to evaluate the New Haven Galleria project under the FONSI criteria itself proved controversial (and, not surprisingly, the subject of another Westfield lawsuit), particularly when facts emerged that the decision to avoid an EIE was steered, in part, by Governor Rowland’s special counsel. 

---

252 *Id.*; Interview with John DeStefano, *supra* note 77.
254 *Id.*
The preliminary FONSI decision, issued in 1999, found no significant environmental or economic impact caused by the mall site, leading officials to believe that final approval was assured. As the draft FONSI was put up for public comment, several omissions were highlighted, most notably the absence of an economic study examining the actual effects of the mall on downtown New Haven – the subject of much of the public rancor surrounding the project itself. It was this omission that would provide the largest public relations battle faced by the developers to date, and was in significant ways responsible for the ultimate unraveling of the entire Galleria project.

To accomplish the economic analysis necessary for the final FONSI report, the Department of Economic and Community Development outsourced work to an analysis firm called the Connecticut Economic Resource Center, which performed an 8-part economic analysis. One key component of this analysis was a “gravity study” evaluating the potential impact of the mall on downtown New Haven retail stores. The Connecticut Economic Resource Center outsourced this analysis to a firm in Wisconsin, called Matrix Research, which was headed by geographers at the University of Wisconsin.

The study, when it emerged, was explosive. It found significant losses to existing retail areas, including a 28.65% loss for the Central Business District of New Haven, and a 16.77% decline for Westfield’s Connecticut Post Mall in Milford. The report’s conclusions offered little comfort to city officials supporting the project: “The insertion of a shopping ‘destination’ as large as the Galleria at Long Wharf if bound to have a significant impact on consumer spending

---

257 Interview with Jeffrey Blodgett, former Vice-President of the Connecticut Economic Resource Center; CONNECTICUT DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT, FINDING OF NO SIGNIFICANT IMPACT, supra, note 25; Interview with Brady Foust, Professor Emeritus of Geography, University of Wisconsin at Eau Claire and former Partner, Matrix Research, LLC, author of the original Long Wharf Galleria gravity study.
258 Interview with Brady Foust, supra, note 256; Daniel Jones and David Harr, ‘Cannibal’ effect predicted for mall; Report reverses 1999 findings, HARTFORD COURANT, Feb. 22, 2000.
patterns in the market. Historically, malls have often had the greatest impact on traditional ‘downtowns.’ This will be compounded in New Haven because the Galleria at Long Wharf is so close to the Central Business District.”260 The report further argued “It is highly unlikely that this mall’s presence will draw significant numbers of people from outside the New Haven market area. It will merely redistribute existing spending dollars.”261 Perhaps most alarmingly for project defenders, the report also concluded that, “The new mall…will obviously cannibalize from existing operations.”262

The report – which was a draft of a final report that would accompany seven other economic analyses, which in turn would comprise one section of the final FONSI determination, set off a public relations firestorm. City officials rushed to discredit or deflect the report, while mall opponents seized on the numbers – the first publically available figures that actually speculated about how the mall would affect downtown New Haven – to further discredit the project.

The city’s public relations effort, outlined in press conference preparation notes and other documents, sought to present the study as overly simplistic.263 A gravity analysis, a relatively crude by often-relied-upon measurement device, primarily calculates the effect of new retail opportunities based on the square footage of retail available at certain distances from a given point.264 To the extent possible, the studies differentiate based on type of store (luxury vs. non-luxury, for example) to eliminate overlap. Some of these calculations were included here, but the computation was minimal, both because researchers did not see great difference between the types of stores that existed in downtown New Haven and those that are typical of a mall, but also

260 Id. at 8.
261 Id.
262 Id.
because mall developers did not actually know what stores would actually be in the finished mall.\textsuperscript{265} In particular, city officials said that researchers underestimated the “gravity” pull of New Haven’s unique downtown, which contains several entertainment venues and Yale University, which would be a particularly strong pull, and because the study underestimated the amount of “leakage” sales that would be captured by the new mall, the only high-end shopping experience in nearby areas.\textsuperscript{266} Officials also pointed to the long-awaited Deloitte & Touche report as evidence that new business, rather than just cannibalized existing business, would be generated by the mall. The Deloitte report was commissioned by the state to evaluate whether the $28 million in state TIF bonds would be paid off with money drawn in from outside areas.\textsuperscript{267} The Deloitte report, according to city notes about the report itself, found the mall would generate $27 million in sales revenue from new tourism, people coming to the state because of the attraction of the mall offerings, and would capture $90 million in “leakage” sales.\textsuperscript{268}

The release of the report also brought about public relations efforts from state officials, including the Commissioner of the Department of Economic and Community Development. He announced that the Matrix model was flawed and that a revised analysis would be offered in the FONSI.\textsuperscript{269} Researchers for the subcontractor who had originally commissioned the study indeed undertook a revised analysis. Dale Shannon, who ran that revised analysis, said the initial study was over-simplified.\textsuperscript{270} “It was incredibly simple and superficial.” Shannon said the original model failed to properly input store type, and discounted the “gravitational” effects of New

\begin{footnotes}
\item[265] Id.
\item[266] CITY OF NEW HAVEN, MALL PRESS CONFERENCE OUTLINE, supra note 262.
\item[267] Id. I was unable to find the actual study and the state department that commissioned the report has destroyed their copy because funding never actually went through.
\item[268] Id.
\item[269] Gregory Hladky, Negative mall report flawed, state claims, NEW HAVEN REG., Feb. 23, 2000. “In a letter to state officials Tuesday, [Connecticut Economic Resource Center Vice-President Jeffrey] Blodgett cited four technical problems in the Matrix study, including using incorrect economic formulas, and double counting some economic factors such as entertainment, which isn't part of the Long Wharf mall.”
\item[270] Interview with Dale Shannon, supra, note 263.
\end{footnotes}
Haven’s downtown, but also said that gravity models carry inherent imprecision. “These models are good approximations of reality” but are not “hardcore science.”271 The New Haven Register, the city’s chief media outlet and a continuing supporter of the mall project (and likely beneficiary of future mall advertising efforts), dismissed the negative discussion surrounding the study as a “publicity stunt.”272 The Wisconsin-based professor who compiled the original gravity study maintains that the original research disputes the newspaper’s characterizations. “Politics trumped the mathematical realities.”273

At any rate, the revised gravity model, when it emerged, did not actually differ all that much from the original analysis, concluding that the New Haven Central Business District would lose between 22.7 and 21.96 percent of sales, with Westfield’s Milford mall losing between 14.3 and 11.83 percent. For the Central Business District, this amounted to a loss of between $37 million and $50 million per year. Westfield’s mall stood to lose between $29 and $39 million per year.

The state Department of Economic and Community Development issued its FONSI finding, which included the gravity study, in early March, concluding that the project as a whole would benefit the state and New Haven.274 The economic analysis provided eight separate measurements, ranging from the gravity study to examination of job growth for both New Haven and the state as a whole, sales tax increases, and return on investment for the state’s $60 million in subsidy funds. The report found that, depending on how much the new mall actually drew in spending dollars from outside Connecticut, between 414 and 2,049 new jobs would be created,

271 Id.
272 New Haven Register, Mall study deeply flawed, NEW HAVEN REG., Feb. 27, 2000
273 Interview with Brady Foust, supra, note 257.
274 CONNECTICUT DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT, FINDING OF NO SIGNIFICANT IMPACT, supra, note 25; Gregory Hladky; Chris Hoffman; Gladys Alcedo, State gives mall go ahead; Galleria to create hundreds of jobs, key report says, NEW HAVEN REG., March 10, 2000.
with a significant portion of existing employment shifting from other Connecticut areas to New Haven. The report also concluded that over a 20 year period, the state would lose between $19 and $40 million dollars but that this would be offset with a $39.5 million net fiscal impact on New Haven, which would see monetary increases from property taxes, building permit fees, and revenue payments. The report also took pains to include factors that would mitigate the strains of sales losses to New Haven’s downtown, highlighting various downtown improvement projects, the creation of a strategic marketing plan for downtown, local jobs created by the mall itself, and the $25 million city TIF bond geared towards local projects. While the study concludes that these projects will both help downtown and serve as additional reasons to recommend the mall project, it does not quantify their effects.

The FONSI conclusions set off another round of litigation. Charging that the differences between the draft FONSI and the final FONSI were so great as to have effectively served as a new report, the plaintiffs, three New Haven residents, including downtown shoe store owner and mall opposition leader John Isaacs, argued that state law required a new public hearing on the merits of the FONSI ruling. This lawsuit was financed by Westfield.

This suit, which ultimately sparked a series of events that would culminate in the abandonment of the mall project itself, sought to highlight the differences between the initial draft FONSI and the final FONSI report, and focused in particular on economic and environmental issues. The plaintiff’s commissioned yet another study, by an outside economic analysis firm, to evaluate the FONSI economic study. This new study concluded that the

---

275 Id.
276 Id.
277 Id.
278 Interview with Steven Ecker, supra, note 222.
279 Letter from Steven Ecker, Partner, Cowdery, Ecker, & Murphy, LLC, and lawyer representing Dan Isaacs and others, to (on file with author)
negative economic impacts of the proposed mall were worse than predicted, that most of the job
growth figures came during the construction phase of the project, and that the mall was actually
unlikely to draw in any new business from outside Connecticut. In support of this last
conclusion, the new study’s author argued that the New Haven Galleria’s store mix was
insufficiently unique to draw in new shoppers, which New Haven was too centrally located in
New Haven to effectively draw out of state shoppers, and that traffic at the highway junction
near the mall would discourage shopping. These conclusions were not based on any additional
surveys or studies.

Whatever the merits of the fusillade of studies that emerged in a relatively short period of
time, a Superior Court judge agreed with the plaintiff’s that enough new information had been
proposed to merit a new public hearing. That hearing, broken up into several sessions because
of the number of interested parties, took place in June, and was a raucous affair, with yelling,
booming, and volleying of accusations. For the New Haven Register, the vitriolic public debate
was a sign more of corporate influence in the democratic process than on the merits of the mall
itself. “The New Haven mall has become a special case for regulatory nitpicking on everything
from the public records law to the micrograms of nitrous oxide emitted by each potential mall
shopper’s car. The legislature exempted Hartford's massive downtown renewal from this

---

280 NATIONAL ECONOMIC RESEARCH ASSOCIATES, EVALUATION OF THE ECONOMIC IMPACTS OF PROPOSED
DEVELOPMENT OF THE GALLERIA AT LONG WHARF IN NEW HAVEN, CONNECTICUT, July 2000 (on file with author).
This study was commissioned by the law firm of Cowdery, Ecker & Murphy, LLC as part of litigation aimed at
proving the FONSI differed significantly from the draft FONSI.
281 Id.
282 Id.
LEXIS 977 (CT. Supr. Ct. 2000). The Court further held: “Compared with possible economic losses to the city and
the developer, there are claims of large economic losses to existing businesses in New Haven and in other regions
should the mall be constructed. The serious environmental problems and economic impact revealed by the studies
must be considered together with the benefits of evaluation and comment by the public. The possible environmental
detriments to the public may, in the long run, be more costly to the city of New Haven, the state and the public than
the claimed losses to the city of New Haven by any delay occasioned by following the statutory scheme.”
284 Gladys Alcedo; Angela Carter, 2nd mall hearing a case of déjà vu; About 200 show up, NEW HAVEN REG., June 6,
2000.
environmental review. But not New Haven.285

Frustrated at the overall pace of the mall approval effort, and hampered by Westfield-funded litigation efforts (the total number of lawsuits, which included battles over the Freedom of Information Act, would swell to at least 15), NED, under the title of Long Wharf Galleria, LLC, and the city of New Haven filed their own lawsuit against Westfield, arguing that Westfield violated Connecticut antitrust laws in trying to preserve a competitive monopoly. The complaint alleged, in addition to the steady stream of lawsuits Westfield had filed or funded, that the company itself had tried to short-circuit the development project directly, including a $50 million offer to the city to fund downtown development if the mall was abandoned.286

While the lawsuits dragged on, the delay was beginning to have an effect on the mall’s prospects for success in more tangible ways. Most critically, anchor tenants, particularly Nordstrom’s, began to sense uncertainty in the pace of regulatory approval. This unease coincided with a corporate strategy reassessment within Nordstrom’s itself, resulting in a cutback in expansion plans. Yet at the end of November, 2000, NED was making public statements to the effect that Nordstrom’s was still committed to the project.287 Second, the city was beginning to suffer in other ways, as Gov. Rowland decided to withhold other bond funds from New Haven until the mall funding issue had been resolved, a process that had already taken two years.288

Then, almost as suddenly as the effort to build a mall in Long Wharf began in 1996, DeStefano announced in mid-December that the mall project was over.

The Death of the Mall

286 Christopher Hoffman, City, mall developers strike back; Anti-trust lawsuit filed against Westfield, NEW HAVEN REG., Aug. 4, 2000.
288 Christopher Hoffman, Support for mall eroding? Looney believes other projects may be hurt by ongoing fight, NEW HAVEN REG, July 24, 2000.
The decision to end the four year battle to build the mall came quickly, surprising all but the mayor’s closest inner circle. Judi Schieffle, the deputy director of the city’s Economic Development department, said “It was a big surprise to me…I was basically told the project wasn’t going forward by the mayor shortly before the press announcement.”289 According to DeStefano, the reason for the decision to end the mall was clear: Nordstrom’s had pulled out.290 Without the one anchor that was clearly distinct from other malls in the area, the rationale that underlay the project began to crumble, and the uncertainty created by the range of lawsuits filed by Westfield made fighting on behalf of a more run-of-the-mill mall less palatable.291

According to NED’s Bill Cronin, Westfield’s abuse of the legal system in filing more than a dozen lawsuits was the ultimate undoing of the project, which he was convinced would ultimately have been built with minimal difficulty.292 While developers often face litigation, he said Connecticut presented a unique arena in which lawsuits could continue on indefinitely, with new suits arising from every agency decision, making long term planning difficult.293 For Patrick Sullivan, Westfield’s lobbyist, Westfield’s multi-prong strategy simply overwhelmed an unprepared city. “DeStefano is smart and strategic, and they had a really good lobbying firm on the other side. I just think that we just threw so much at them. I don’t think they were ready for it.”

The decision to exit the project came quickly. Once Nordstrom’s troubles became clear, NED began the process of figuring out what to do with its newly acquired property in New Haven, namely, the site of the Pirelli building. Ironically, there was only one logical buyer:

289 Interview with Judith Scheiffele, former Deputy Director for Economic Development for the City of New Haven, Conn.
290 Interview with John DeStefano, supra, note 36.
291 Id.
292 Interview with William Cronin, supra, note 40.
293 Id.
Westfield. \textsuperscript{294} Eager to unload the property quickly and acknowledging that Westfield would probably cut them some economic slack, NED and Westfield negotiated a sale, at above-market prices (around $25 million), stipulated that no mall could be built on the site, and NED exited New Haven. \textsuperscript{295} The deal was in the works for several months, even while the mayor and the developer were expressing public support for the plan. DeStefano was kept in the dark until the deal was finalized. \textsuperscript{296} NED’s Steven Karp said at the time, “We would have loved to have built it…But when it became clear that Nordstrom was looking at its entire corporate strategy, I started talking with [Westfield].” At the time, DeStefano estimated that NED had spent nearly $37 million in preparations for the mall’s development, and was on pace to spend millions more in legal fees related to the fight. \textsuperscript{297}

\textit{Moving On: What the City Did After the Mall Project Imploded}

The city, however, was quick to see a silver lining. Having been promised $60 million in state subsidy for the mall project, officials proposed a wish list of other projects, many unrelated to economic development, to use the same amount of money. These proposals included $25 million for relocation of the Long Wharf theater downtown, $10 million to convert the Chapel Square mall into a retail and convention center, $10 million to repair the New Haven Coliseum to respond to competition from nearby Indian casinos, and $7 million for affordable housing projects. \textsuperscript{298} Few if any of these proposals would actually be implemented.

Two years later, the future of Long Wharf began to take shape, as Westfield began negotiations with IKEA, a large furniture retailer. Convinced that IKEA posed no threat to its

\textsuperscript{294} Interview with William Cronin, \textit{supra} note 40; Interview with Sal Brancati, \textit{supra} note 77.
\textsuperscript{295} Id.
\textsuperscript{296} Luther Termille, \textit{Mall fallout; The day after: Nordstrom’s problems played key role in failure of Galleria plan}, \textit{NEW HAVEN REG.}, Dec. 14, 2000.
\textsuperscript{298} Christopher Hoffman, Joseph Straw, \textit{The day after; Project’s death leads to fresh opportunities}, \textit{NEW HAVEN REG.}, Dec. 14, 2000.
mall properties, Westfield sold IKEA the Pirelli site, for $19.75 million, and a speedy approvals process saw IKEA open its doors in 2004. Presented at the time as a means of following up on the Galleria vision of developing New Haven’s waterfront, IKEA has, so far, failed to inspire commercial or residential projects nearby. Initial estimates saw the IKEA project generating $1 million a year in additional property taxes for the city, without need for public subsidy.

III. Comparison: The Providence Place Mall

While the New Haven Galleria’s planned placement on the edge of a downtown area is unique and makes direct comparisons with other sites difficult, a similarly sized mall built in Providence, Rhode Island at about the same time offers some useful parallels for an analysis of the potential wisdom of building the Galleria site.

Opened in 1999, the Providence Place Mall is a $500 million, 1.3 million-square-foot regional enclosed shopping center geared towards upscale shoppers near Providence, Rhode Island, and built at the intersection of three major highways. The Providence Place Mall was originally developed by the Conroy Development Corporation, which was among the initial respondents to New Haven’s Long Wharf RFQ. The project, however, was finished by another developer, Commonwealth Development Group, which was actually a finalist in New Haven’s Long Wharf RFQ process. Unlike the New Haven Galleria, the Providence Place mall was built in the heart of Providence’s downtown, but the malls shared a similar strategy and intended tenant mix. The mall contains three major anchor stores – Nordstrom’s, Macy’s, and J.C.

---

302 Id.
303 Id.
304 Id.
Penney’s (which replaced Lord & Taylor), and 175 smaller shops. The Providence Place Mall relied heavily on the attractive power of a Nordstrom’s department store as an anchor tenant to both communicate the upscale nature of the project, and attract shoppers from outside the region. Both were intended to capture a large degree of retail sales “leakage” flowing to other states, and both incorporated innovative social mechanisms, such as a retail training program, that attempted to deliver direct benefits to city residents. Both also received extensive public subsidies, which would be justified by increases in property and sales taxes generated by the new mall. Additionally, both were intended to spur further development, and actually aid the functioning of other downtown businesses either through direct spillover effects, or monetary transfers.

Extremely controversial during the planning phase, the Providence Place mall received a large amount of public subsidy, totaling $205 million: $136 million in city property-tax breaks over 30 years, a state sales-tax rebate worth $71.8 million, and $40.8 million in revenue note obligations, with the sales tax rebate money going towards payment of bondholders. At the time of construction, 66% of statewide voters opposed the deal. According to public officials and the developer, this public investment would be justified by sales tax and income tax revenue for the state generated by new shopping opportunities created by the mall, and the public benefit of a revitalized downtown Providence. Public officials predicted the mall would return

\[^{305}\text{id.}\]
\[^{306}\text{Paul Grimaldi, Natick Mall is hoping Nordstrom will bring the same cachet it's given to Providence Place, PROVIDENCE JOURNAL, June 6, 2004.}\]
\[^{307}\text{West and Orr, supra, note 300.}\]
\[^{308}\text{Paul Grimaldi, Anchoring downtown – Providence Place mall, where sales top estimates, draw shoppers and development, PROVIDENCE JOURNAL, April 17, 2005.}\]
\[^{309}\text{West and Orr, supra, note 300.}\]
\[^{310}\text{The original developer, incidentally, also tendered a response to New Haven’s RFQ for what would become the New Haven Galleria site.}\]
\[^{311}\text{Paul Grimaldi, Anchoring downtown – Providence Place mall, where sales top estimates, draw shoppers and development, PROVIDENCE JOURNAL, April 17, 2005.}\]
$109 million in new taxes within 20 years,\textsuperscript{312} and that 40 to 56 percent of the spending money would be new to the state.\textsuperscript{313} This figure was made possible by the fact that Providence sits near the border of Rhode Island and Massachusetts, making sales capture from a neighboring state a far more likely prospect than in the case of New Haven.

They also, at first, predicted direct job creation in the form of 3,000 construction jobs, and 2,400 retail-related jobs.\textsuperscript{314} This number climbed to 2,840 jobs, with 1,590 of them new to the state.\textsuperscript{315} Slightly more information than usual is actually available about the Providence Place mall because, as a condition of receiving substantial public subsidy, the mall was required to make public its annual sales tax payment to the state, a gauge of the overall success of the mall development.\textsuperscript{316} The developer further commented that the mall was “geared toward the high-income shopper within a 40-mile radius.”\textsuperscript{317}

Despite promises of revenue growth and urban revitalization, the Providence Place mall struggled in its early years. A survey study performed on the mall in 2000 showed some significant gaps between developer promises and the mall’s actual benefits to Providence. While the new mall did indeed attract many new shoppers, by 2000, 2,300 to 2,400 jobs were created, 400 off the high-water mark predicted by the developer. A more stark disparity came in the context of construction jobs, where only 1,650 of an expected 3,000 jobs were actually created.\textsuperscript{318} Early sales figures were also behind projections, but the mall was succeeding in attracting significant numbers of new shoppers.\textsuperscript{319}

\textsuperscript{312} West and Orr, \textit{supra}, note 300.
\textsuperscript{313} \textit{Id.}
\textsuperscript{314} \textit{Id.}
\textsuperscript{315} \textit{Id.}
\textsuperscript{316} \textit{Id.}
\textsuperscript{317} \textit{Id.}
\textsuperscript{318} \textit{Id.}
\textsuperscript{319} \textit{Id.}
The type of shopper actually attracted to the mall was slightly different than what was expected. Visitors to the mall tended to be poorer, and drawn from minority populations more than the overall demographics of Providence itself.\textsuperscript{320} Nearly 60 percent of shoppers had family incomes of $50,000 or less, with only 13 percent of frequent mall shoppers reporting an income of $100,000 or more.\textsuperscript{321} Still, some success was reported in attracting shoppers to leave the mall and patronize other downtown establishments.\textsuperscript{322}

For NED’s Bill Cronin, Providence Place’s slow growth in its early years serves as a cautionary tale. Despite the new construction and lavish subsidies, the mall struggled for years, offering proof that “you can’t force feed into a market.”\textsuperscript{323} He added “Providence was a maturing market, a smallish market. The demographics were thin, though they had a high per capita income. The only thing they had going for them, there was no other Nordstrom’s within miles.”\textsuperscript{324} These problems were compounded by a confusing site design, a product, Cronin said, most likely born of the mall’s downtown location, and something that would have been avoided at the Galleria.

These early mixed results, however, generally gave way to a pervasive sense that the mall had, in fact, substantively achieved its originally goals. Sales tax revenue began to climb, and the mall met sales tax revenue projections ahead of schedule.\textsuperscript{325} The mall, a local newspaper reported, “produced strong revenues throughout the decade” with non-anchor stores earning an

\begin{footnotes}
\item[320] Id.
\item[321] Id.
\item[322] Id.
\item[323] Interview with William Cronin, supra note 40.
\item[324] Id.
\item[325] Paul Grimaldi, Mall revenue boosts Rhode Island coffers, PROVIDENCE JOURNAL, Jan. 27, 2008.
\end{footnotes}
average of $450 per square foot.\textsuperscript{326} This continued even during a recession, with sales tax receipts reaching between $12.1 million and $14.2 million every year since 2007.\textsuperscript{327}

Developers attributed much of this success to the attractive power of Nordstrom’s. Indeed the mall’s new owner attempted to spearhead a radical upgrade of another of its mall properties into a regional mall servicing upper income shoppers. Central to this strategy was the attraction of Nordstrom’s, which, the developer said, would serve to differentiate the mall from competitors.\textsuperscript{328} This turnaround was made possible by the fact that the Nordstrom corporate reorganization that, in part, killed the mall project in New Haven, had by 2004 worked itself out. Members of the original Nordstrom family had retaken control of the company, rapidly boosting the company’s performance and realigning the corporate expansion strategy.\textsuperscript{329} The mall’s slow-growth success suggests that New Haven indeed might have benefitted from the presence of Nordstrom’s, and was a victim of unfortunate timing.

The mall’s developmental effect on downtown is harder to measure. While some new downtown construction followed the mall, the mall also helped slow the redevelopment of other parts of the city.\textsuperscript{330} Development of a popular park in downtown Providence, however, has helped spur additional development as well. “Sales at the mall exceed estimates that its critics once considered unrealistic and developments are crowding around the mall, hoping to feed off the activity there.”\textsuperscript{331} Growth, however, slowed during the recent recession, with vacancy rates

\textsuperscript{328} Paul Grimaldi, \textit{Natick Mall is hoping Nordstrom will bring the same cachet it's given to Providence Place}, PROVIDENCE JOURNAL, June 6, 2004.
\textsuperscript{329} Id.
\textsuperscript{330} Donna Paul, \textit{Providence begins to see its future around the corner}, PROVIDENCE JOURNAL, Feb. 27, 2008.
\textsuperscript{331} Paul Grimaldi, \textit{Anchoring downtown – Providence Place mall, where sales top estimates, draw shoppers and development}, PROVIDENCE JOURNAL, April 17, 2005.
climbing. Still, the mall remains some distance away from returning to the public money sufficient to cover the extent of public subsidies. Providence, for its part, has yet to see any real income boost, as it waived property taxes on the site.

IV. Evaluating the New Haven Galleria

Cost-Benefit Analysis of the Mall Project

Deciding whether a massive development project like the planned New Haven Galleria would have been a success is a notoriously difficult question, and one that envelops a number of subsidiary questions necessary for an answer. Namely, what is meant by success: tax revenue from an individual project, tax base expansion for the city as a whole, aesthetic splendor, job creation, future reaction in the nearby market by private developers, equitable distribution of social goods, symbolic pride, all compete, among other factors, to determine whether a given project was worth the investment of public resources and time. These various factors are coupled with the fact that city governments, operating as facilitators and engines of development efforts have a relatively limited array of tools at their disposal to engineer desired public benefit outcomes, assuming that the desired public benefit can be articulated clearly in the first place. This difficulty is neatly summed up by one prominent commentator, who observes, “The central negotiating task for the public sector is to translate its policy goals into fair and feasible business terms and conditions under which it will secure the public-benefit package.” Successful negotiation, then, presupposes a clear goal.

The New Haven Galleria project was characterized by both remarkable consistency on the part of the city and chief developer in articulating the tangible public benefits of the mall

332 Paul Grimaldi, Heavy borrowing crippled mall owner, PROVIDENCE JOURNAL, April 21, 2009.
project, and, simultaneously, striking disagreements and incoherence in defining what city goals those public benefits would serve. Specifically, the city and NED promised a steadily increasing amount of property tax revenue for the city, as well as construction and retail job creation that would produce positive economic ripple effects. Further, the city would enhance its battered public image – city officials insisted on including the words “New Haven” in the name of the mall itself, as though association of the city with a glittering new development would alter pervasive negative stereotypes about the city among suburbanites – paving the way for future development interest.334 Yet what parts of the city, and which citizens, would actually benefit from development was less clear. This is seen most clearly in the public discussion regarding the effect of the mall on downtown New Haven, where the city argued both that tax benefits from the mall overrode possible negative effects downtown and also argued that at least $25 million in benefits from the mall itself must be used to bolster that same affected territory.

Evaluating the Long Wharf Mall project in terms of tax revenue generated against public expenditure outlays or the opportunity costs of embarking on such a large project (usually to the exclusion of others) offers one means of coming to a conclusion as to the overall worth of the New Haven Galleria, but it is not the only method of doing so. Whether or not such a project made sense for the city must, in part, be measured against the effect of the project on the city as a whole, such as in terms of increased and broadened tax base throughout the city. As one commentator offers, “The value of a law to a jurisdiction can be judged by the extent to which it either raises short-run housing prices and lowers short-run wages or raises the long-run, aggregate value of residential land in that jurisdiction.”335 If the project might have been

334 Interview with Sal Brancati, supra note 77.
expected to draw additional residents to the city, for instance, or attract additional workers, some tangible proof of the vitality of the project might become visible.

While such land value spillover effects are impossible to measure here, as the project was never completed, the modest impact of the IKEA furniture store that came to occupy much of the mall site on surrounding developments offers little reason to believe the mall would have raised property values throughout New Haven. Indeed, the mall, and IKEA, are relatively isolated from the rest of the city and from complementary buildings. The lower wage mall jobs might indeed have encouraged in-migration to New Haven to take advantage of employment opportunities, but such movements would likely result in only modest land value growth. So far, there has been little movement towards the creation of large-scale retailers near the IKEA site, which might trigger further investment and land value increase. Indeed, New Haven is itself afraid of such a possibility, warning in its most recent Comprehensive Plan (completed before IKEA was constructed) that IKEAs presence threatened to lead to “radical conversion of land use on Sargent Drive [that] could destabilize the area and potentially lower the number of living wage employment opportunities in the area.”

While total employment numbers created by a mall project would have been greater, it seems unlikely that property values throughout the city would rise as a result of the mall’s presence by attracting new workers and residents eager to benefit from the new development.

Additionally, the public encountered a number of costs associated with the mall project. Most obviously, financing for the project entailed extensive public subsidy. While developers initially projected no need for public subsidy, and a total project cost of around $100 million, most of the mall debate was spurred by city attempts to convince the state to offer $60 million in

336 CITY OF NEW HAVEN, COMPREHENSIVE PLAN OF DEVELOPMENT, Section V, 10 (October 15, 2003) (on file with author).
funding, a deal that eventually encompassed $28 million in state sales tax TIF funds and a promised $32 million in transportation-related grants. For New Haven, this was money that did not require much local approval, and it was primarily a gubernatorial gift from John Rowland, who was eager to increase his appeal on urban-related issues. Such off-book financing was seen as essential to the project.337

The state subsidy, however, was far from costless. In advocating for state mall funding, the city and NED triggered a wide array of state processes for approval and evaluation of the proposed mall project. These approvals, ranging from passage of the original state authorization bill to approval from a Regional Planning Commission, the state Department of Economic and Community Development, the state Economic Development Agency, and the state Traffic Commission, among others, required extensive investment of city time and resources in lobbying efforts, efforts that included the expenditure of political capital to convince local stakeholders, such as Yale University and the New Haven Chamber of Commerce, to support the broader lobbying effort. Bolstered by a strong political delegation, and support from the governor, New Haven’s city officials laid the groundwork for approval at all stages of the process, and at no time actually faced the possibility of rejection. Major policymakers and observers of the project are universal in their assessment that absent the outside actions of city officials, NED, Westfield, and Nordstrom’s, the level of political support the project enjoyed would have guaranteed that the project would actually had been constructed.338

337 FRIEDEN & SAGALYN, “Off-budget financing was one of the keys to the success of downtown revitalization. From the beginning it made the high cost of redevelopment a manageable issue in city politics by presenting the bill to someone other than the average taxpayer. After Washington cut renewal funds loose from specific projects in 1974 and encouraged each city to set its own community development priorities, mayors faced strong pressures to scatter their money across the city in order to do something for every district. Off-budget financing came to the rescue once more; it helped the mayors continue pouring resources into expensive projects by diffusing their cost over time and removing them from the annual competition for community development funds.”
338 Interview with John DeStefano, supra, note 36; Interview with Sal Brancati, supra, note 77; Interview with Matthew Nemerson, supra, note 2; Interview with Patrick Sullivan, supra, note 127.
In addition to the $60 million in state subsidy, New Haven voluntarily took on an additional cost: $25 million in city-funded TIF bonds aimed at promoting development downtown. This money was primarily earmarked for a high-risk loan program, which would, theoretically, allow for the growth and expansion of local businesses in the shadow of the larger, and presumably more successful, mall on the edge of downtown. Unlike most TIF funding efforts, however, this bond money was not intended to be financed by the downtown projects it supported – rather, the city proposed dedicating a portion of the expected increase in property taxes from the Galleria project to pay for the bonding. This maneuver effectively allowed city officials to set up a dedicated stream of downtown funding from money that would otherwise be deposited directly into the city’s general fund – an effort that, inevitably, shortchanges legislative prerogatives in other areas of the city, and that was certainly distinct from the arguments by some involved in the pro-mall campaign that funds generated by the mall would help fund educational needs in the city.339

The four years the city devoted to shepherding the New Haven Galleria project also meant that other development projects were sidetracked in the interim. Most notably, developers in charge of the Chapel Square Mall reported that the planned arrival of a region mall on the edge of downtown made attracting retailers to the Chapel Square site significantly more difficult. A sense of the city’s development priorities for use of the $60 million in state subsidies following the collapse of the New Haven Galleria deal also offers some window into the opportunity costs involved in supporting the Galleria project. Most of the city’s development wish list involved direct downtown investment - $25 million for relocation of the Long Wharf Theater to bolster New Haven’s downtown offerings, $10 million for structural improvements to the New Haven Coliseum (which was demolished in 2007) to allow the site to compete with

339 Interview with Jonathan Pelto, supra, note 141.
Indian casinos in other parts of the state, $10 million for a Chapel Square conversion project, and $7 million for affordable housing projects, among other ventures. The degree to which these projects would have directly generated revenue is far from clear as they were not carried out, but their selection suggests a heavy focus on building the attractiveness of downtown New Haven as a unique destination as the city’s main goal. While the New Haven Galleria project might, over time, have generated more than $60 million in investment downtown via city spending from funds generated by mall property taxes, and while $25 million had been set aside, via the city’s TIF bond, for downtown development efforts, the promised state funding might have been better spent on downtown development directly.

Compounding the effect of projects sidetracked because of municipal focus elsewhere and a dedication of public subsidy money to the Long Wharf Mall project (to the exclusion of other projects) is the generalized atmosphere of uncertainty the battle over the large-scale mall project caused. While it is hard to know how many retailers might have considered moving operations to downtown New Haven during the period of mall planning, some mall opponents, most notably developer David Cordish, argued that downtown revitalization efforts would necessarily stall during this period. The declining fortunes of the Chapel Square Mall downtown mitigates at least some of the concerns that robust new arrivals would have flocked downtown, but the uncertainty, at the very least, made such moves significantly less likely to happen.

These costs, however, must be balanced against the promised benefits of the mall project, which would primarily have resulted from an increase in jobs and revenue generated from property and sales taxes on the mall itself. The sophistication of the mall project itself, the intense fighting from NED’s competitors, the lessons of the Providence Place Mall, and the bevy of economic studies performed on the project suggest that the New Haven Galleria was well
positioned to meet its sales goals. For the city of New Haven, property tax increases, as well as building and permitting fees were calculated to have a net present value of about $39.5 million.\textsuperscript{340} Personal property tax increases would hover around $700,000 per year. This never-contradicted finding suggests that New Haven’s downtown TIF bond would indeed have been fully funded by mall construction, an undeniable direct benefit to the city, albeit one that was hastily conceived for mainly political reasons.

Calculating the benefits promised by increased jobs from the mall is a trickier endeavor. While developer estimates pegged the number of new retail-related jobs created by the mall at around 3,000, this figure seems overly optimistic. New Haven County’s increase in jobs could only really be estimated to a reasonable range, depending on the ability of the mall itself to actually draw in business from outside of Connecticut, or from shoppers who would spend money in other ways, such as via the internet or catalogues. As a result, New Haven County’s (not just the city) actual retail job benefit could range anywhere from 1,300 to 2,900 jobs, depending on the optimism of projections. A significant portion of these jobs would be transferred from neighboring locations, whose own shopping centers would see a decrease in business as the Galleria expanded. The Providence Place comparison suggests that a mall with a Nordstrom’s can indeed draw shoppers from outside the state – developers there reported nearly half of mall revenue came from newly captured spending – up to a range of about 35 miles. New Haven’s geographic placement relatively far from state borders suggests some difficulty in replicating this area of the Providence Place Mall’s success.

Further, it is relatively hard to estimate how much unmet latent demand for additional shopping opportunities there were in the region, though there is little reason to suspect that the

\textsuperscript{340} \textit{Connecticut Department of Economic and Community Development, Finding of No Significant Impact}, \textit{supra}, note 25, at Section 1.8.
developer’s original calculation that fully one-third of mall sales would be “new sales” approaches the correct calculation. As a result, it seems reasonable to predict the Galleria’s job generation potential towards the middle range of economic modeling predictions, lessening the financial appeal of the mall from the height of booster rhetoric but still allowing for significant job growth. How much of that job growth would directly benefit New Haven itself also elides easy prediction. NED’s pledge to hire 50% of its local work force from among New Haven residents extended only to its own employees, not the vast majority of mall workers, who would be employed by the owners of the individual stores doing business inside. Indeed, while developer pledged to encourage all incoming stores to hire at least 35% of their staff from New Haven, this encouragement contained no enforcement mechanism. While the construction of a retail academy within the mall itself to train local workers does speak to a continued commitment on the part of the developer to hire local workers, similar efforts in the Providence Place Mall, while successful, involved small numbers of workers and were unlikely to expand quickly.341 Job growth would inevitably benefit local New Haven workers, though far less than 1,000 local workers would likely benefit, a subsidy rate of $50,000 to $60,000 per worker, far higher than the worker’s expected annual salaries.

A further benefit is surely the number of construction jobs created. This number has been challenged the least, and it is certain that local construction workers would see a significant positive benefit from the construction project. One cautionary note, however, is that such calculations tend to reflect the total number of labor-hours needed to complete the project, not the actual number of benefitting workers, meaning that the pool of benefitted individuals is likely to be smaller than the numbers quoted by the developers. A comparison with the Providence Place mall shows the basis for this worry – there, where developers promised nearly 3,000

construction jobs, the actual project saw the hiring of only 1,650 – a significant number, but far less than original estimates. In addition, these construction jobs are necessarily temporary in nature, meaning that job benefits from the building process would spike within the roughly two-year construction phase, and then would not be replaced.

Perhaps the greatest question over the extent of the mall’s benefits to the city is the fraught debate over the effect the mall would have on downtown New Haven itself. For Bill Cronin, of NED, the worries over downtown business effects were overblown rhetoric. For Cronin, the stores proposed for the mall were aimed at a far richer clientele than the existing businesses within the downtown, a fact not accounted for in the gravity modeling. He points to difference in the rent structure between the mall ($40 per square foot) and downtown ($8-10 per square foot), and dismisses claims of direct competition with downtown offerings. “It’s a different marketplace…a different type of store entirely; we were not talking about quality shopping in downtown [at the time].” While Cronin is doubtless correct that the store mixes of downtown and the mall were not the same, construction of the mall had the potential to lock existing store types in place downtown, preventing the downtown rise in store quality seen by the late 2000s in the form of trendy restaurants and higher-end national chain stores like Urban Outfitters, by directing such growth to the mall itself.

Providence Place presents an interesting parallel. While Providence Place, like the New Haven Galleria, was anchored primarily by Nordstrom’s, later success allowed for changes to more upscale stores like Tiffany’s and Apple. Such growth was certainly possible in the New Haven Galleria, although it is unlikely that the initial store mix would have differed so significantly from downtown as to have had no effect on retail spending in the New Haven core.

The most generous gravity analysis completed by independent analysts, which comprised a

---

342 West and Orr, supra, note 300.
FONSI finding recommending development of the mall, placed sales declines between $37 million and $50 million per year, declines of between 18 and 23 percent. The expected economic benefits of city officials’ downtown redevelopment efforts, including the $25 million bond issue, remained more speculative.

City attempts to construct a shuttle system to direct mall shoppers to New Haven’s downtown offerings seem unlikely to have succeeded. Though relatively low operating cost and high potential rewards existed even if a fraction of mall shoppers ventured downtown argues in favor of the downtown-boosting potential of the mall, all major stakeholders agree that no research existed indication that such a plan would work, and all now agree that utilization rates would have been small. DeStefano points to the small numbers of shoppers visiting IKEA who venture downtown as proof of the error of his original vision.343

Less clear is the degree to which a downtown loss of business, more than compensated for with a growth of sales business at the mall, located within New Haven, should actually matter to calculating whether or not New Haven should have gone forward with the mall project. A slightly economically weaker downtown would have been partially offset by property tax revenues from the mall that could benefit other parts of the city. Further, competition may have spurred innovation in store mix downtown, but depressed downtown wages, a lack, at the time, of extensive downtown housing options make such an outcome unlikely.

As a job creation and tax generation venture, New Haven would have benefitted from the revenue stream generated by the mall. However, this benefit was smaller than claimed at the time, both because of the probably difficulty of the mall in generating completely new retail revenue from outside the state (or from internal “leakage”) and because state subsidization money could probably have been put to more immediate, and more effectual use in other projects.

343 Interview with John DeStefano, supra, note 36.
that would have benefitted New Haven residents. The mall too would have been a markedly productive and intensive use of a highly-trafficked area.

Whether the mall would have remained profitable over the long term is another question entirely. Enclosed mall construction across the country has effectively ceased as consumer shopping habits switch to different kinds of shopping centers.\textsuperscript{344} Regional malls have suffered increasing vacancies although examples like Providence Place remain relatively profitable.

However, if the city’s goal was to revitalize downtown New Haven – which is indicated by the city’s decision to dedicate over half of the expected monetary benefit of the mall to downtown-benefitting projects, the mall was a clearly inefficient way of accomplishing that end. The mall would have sapped downtown strength to generate funds to funnel back into downtown, a wasteful loop.

The city, of course, could not fully predict the extent to which Westfield’s opposition to the project would extend to the political, public, and legal realms, and it is hard to blame the city for failing to consider these costs fully when electing to back the project. The sheer multitude of lawsuits suggests a state legal system ripe for abuse in the project development context, but, in truth, only a small number of these lawsuits actually posed some threat to the approval process. The one lawsuit that posed a serious threat, which caused a judge to order the state to reopen its FONSI process because of the weight of new information used to justify the state’s finding, resulted from a lack of planning and a desire to accelerate the approval process on the part of the Governor, the mayor, and NED. While it is possible to argue that environmental impact statements are an unnecessary drag on development efforts in any case, mall supporters could

\textsuperscript{344} See Vanessa Parlette and Deborah Cowen, \textit{Dead Malls: Suburban Activism, Local Spaces, Global Logistics}, 35 \textit{INT’L J. OF URBAN AND REGIONAL RESEARCH} 794, 802 (2011). “Suburban malls have to a large extent been cast as a redundant urban form, similar to the postwar suburbs in general. Big-box corporations clearly encapsulate an enormous shift in retail power and dominance....”
have weakened legal arguments against them with greater research performed ahead of applying that would have more clearly justified the mall’s financial benefits.

These criticisms do not necessarily mean that the business that eventually replaced the planned mall, IKEA, is necessarily better for New Haven. While Bruce Alexander of Yale points out that IKEA accomplished the same goals as the mall – higher property taxes and job creation – without diversion of public subsidy to the project and without negative retail effects on downtown, the furniture store is a far less intensive use of a highly trafficked location than the mall would have been. Job numbers and tax numbers are fractions of those expected to be generated by the mall, and the store has failed to generate private market development around the site. While the site clearly offers more benefits to New Haven than an empty lot anchored by the Pirelli building, more intensive use of the space could have had greater positive economic effects.

Perhaps worse from the standpoint of the city is that a process the city worked hard to control, the city failed to plan adequately for the demise or abandonment of the project. The city, at the end, found itself cut out of the final decision-making efforts concerning the sale of the Pirelli property to Westfield, meaning that this valuable property was sold to the one company most interested in assuring a less than optimally economically beneficial use of the site. While Westfield is of course a rational economic actor, it had demonstrated a willingness to spend large sums of money to prioritize the primacy of its shopping malls in nearby cities. The sale meant that assembly of a larger site was no longer feasible, effectively ending larger redevelopment efforts that might connect downtown New Haven closer, possibly, to other areas of the city nearer the waterfront.

*Cost-Benefit Analysis of the Process of Mall Construction*
New Haven’s attempt to facilitate the construction of a massive mall in Long Wharf marked not only a change in urban strategy toward the development of the city’s downtown, but also a shift in the degree of city involvement with directing development of the city’s retailing options. New Haven’s early dominant retailers – the large department stores – resulted primarily from growth and expansion fueled by individual entrepreneurs using private capital.345

The relationship of private shopping center developers with the city changed dramatically with the economic decline of New Haven’s downtown and the arrival of centralized urban planning that saw city officials attempt to lure outside developers to complete the Chapel Square Mall Project, as outlined above.346 As the prospects for a revived downtown mall floundered in the early 1990s, however, and attention began to move towards the more economically viable Long Wharf site, NED began to revive some of the independent land acquisition work practiced by the Shartenberg Company almost eighty years prior – negotiating directly with property owners to secure the necessary site for a large-scale construction project.

Yet much in the relationship between developer and city had changed in the ensuing time frame. Even if NED had succeeded in surreptitiously locking up much of the land necessary for construction of a large-scale mall it was still dependent on the city for a host of approvals ranging from zoning changes to development plan submissions. Further, developers required city lobbying to encourage the Post Office to relocate and free up developable land. And most importantly, city support was necessary to secure the nearly $60 million in state subsidies that

345 For a general account of the early development of the Shartenberg Department Store in New Haven, see Jeremy Kutner, The Accidental Success of Connecticut’s Largest Housing Development: 360 State Street In New Haven (2010). Student Prize Papers. Paper 74. http://digitalcommons.law.yale.edu/ylspps_papers/74. “Though the Bennett family still owned the land under the department store when the new building was constructed, the Shartenberg & Robinson Company was busy acquiring adjacent land, including the purchase of a store containing a neighborhood wholesale smoked meat business in 1909 to allow for store expansion.”

developers contended were necessary to make the project a reality, money that was billed as directly necessary to make the developer’s bottom line make sense and money that was presumably necessary to anchor private funding for the larger construction costs.

The city further complicated the market-based nature of development of the Long Wharf site by, instead of simply working with first-mover NED to ease its approval process, electing to issue its own RFQ on land that it did not own or control, effectively setting up an auction for city support moving the post office and securing state monies. This process, of course, took place before the city had significant insight into the degree of public subsidy it would be obligating itself to seek on behalf of the developer, or any realistic sense of the capital – both political and monetary – it would have to expend defending the mall project against detractors ranging from downtown businessmen to the well-financed Westfield opposition. Indeed, NED’s initial financial projections for constructing the mall predicted no need to subsidization assistance at all and little perception of city influence over the development process.

In issuing its RFQ, the city assumed greater responsibility for the future viability of the project, and based its developer selection decision on a mix of factors, which included the financial wherewithal of the development firms, as well as assessments of how well the firms incorporated city priorities for “linkages” to downtown. These considerations seem, from the documents that still exist and the relatively hazy recollections of participants, to have had less to do with minimizing city action or involvement with securing subsidization money than with overall compatibility with other city priorities. What is less clear is whether these city priorities justified distorting the market such that only a city anointed developer could emerge as the winner. This limits of this thinking is most clear in the selection of Fusco, which resulted from
chiefly political concerns that did not clearly benefit the residents of New Haven by returning to them a more productive and efficient mall.

It is not, however, immediately clear that the costs of extensive city involvement in the Long Wharf development process – insertion of public rather than market priorities at the potential expense of lost efficiency, over encouragement of application for public subsidies by rent-seeking developers secure in a monopoly on city resources, entanglement of the project with extensive regulatory approvals, outweighed the benefits of encouraging otherwise unprofitable development through guarantees of public support.

The costs of this city-dominated development process are perhaps most easily quantifiable. City insertion into this ostensibly private-market interaction meant that the most motivated developers might not have ended up with access to the site itself. In forcing developers to conform to city demands, and city priorities in exchange for support on the project, resources that might have been better spent turning the proposed mall into a more attractive and productive economic resource were instead spent placating local constituencies, and building out mall features, such as transportation links, that added to the cost of the project with an unsure return.

It is also the case, however, that city involvement, which carried with it a looming threat of eminent domain, meant that there was less concern that an economic spoiler, such as a motivated Westfield, could have secured some of the land in question early in the process and prevented any meaningful development at all.

City involvement certainly increased the likelihood that the developer would both ask for and receive public subsidy for construction of the mall itself. The total amount sought, $60 million (the additional $25 million in city TIF funds were primarily aimed at appeasing local political constituencies, and cannot fairly be attributed to the developers intended construction
costs) ostensibly related to costs related to changes to public infrastructure, such as the realignment of freeway off-ramps. Yet it is clear that not all of the $60 million was in the strictest sense necessary to ensure the project itself was profitable. NED clearly had millions of dollars at its disposal to pursue expensive lobbying, legal, and public relations campaigns to support the mall proposal, and was in negotiations to over tens of millions more to secure the presence of specific anchor tenants, most notably Nordstrom’s. It is also unclear if, absent subsidy, the project would have been a financial success and was therefore a worthwhile project to begin with.

Moreover, encouragement to avoid the seeking of substantial amounts of public money would have significantly expedited the project (assuming NED would still have wanted to proceed) by exempting it from many of the state review procedures that provided fodder for Westfield lawsuits. Easy encouragement of subsidization certainly resulted in a longer approval process as well – even without Westfield’s lawsuits the project required signoffs from local, state and regional authorities in order to obtain public money.

Public investment in the Long Wharf project via a selection process that placed the city at the center of development decisions might best be justified if there is some public good, or some unaccounted for negative externality, that a private market actor could not reasonably be expected to provide or counter. This is most understandable in the developer claims for assistance reconfiguring the public highways to better suit development. If, for example, the developer might expect reasonable economic spillover effects, infrastructure changes that would benefit an entire area, rather than the development alone might merit public assistance to overcome a collective action problem and return land to a developable state.
Further, public investment might be justified if some public good resulting from mall construction actually outweighed that investment. City involvement in the selection of the developer might help assure that, for example, a site design that maximized the boost to the city’s overall image was the one selected. However true this benefit might have been, it is certainly hard to quantify, and one that is dependent on the success of the underlying project itself, a project that might have had more chance to survive and thrive absent extensive public meddling at the outset.

On balance, the Long Wharf Mall presents a unique scenario because assemblage of the land necessary to build the kind of mall developers envisioned necessitated a unique kind of public involvement, most centrally to move the post office and persuade state authorities to allow for the modification of state highways. It does not, however, appear to be the case that this necessary public support necessitated the degree of public oversight over the project that indeed took place. In asserting its control, the city allowed developers with a certain kind of political savvy a chance to succeed that may or may not have reflected the economic fundamentals of the mall proposals they actually supported. The city may, in the end, have chosen the most economically responsible developer and development plan, but severing these developers from the rigors of a purer market meant overreliance on subsidy, and a predictable increase in delay in construction – delay that, in part, proved to be the project’s undoing.

Procedural Justice Evaluation

While the potential economic outcome of the mall is less certain, the mall development process laid bare extreme deficiencies in the democratic process governing use of the site.

At the beginning of the project, the mayor pivoted from a longstanding commitment to revitalizing downtown via retail development to build a mall at Long Wharf. This move not only
disregarded the input of outside constituencies, it took even the mayor’s strongest supporters by surprise, leading, for instance, the Chamber of Commerce and Yale to argue against what they felt were the city’s best interests. By the mayor’s own admission, the mall development effort was spurred by the possibility of easily obtained state bond money, money that did not bear any particular relation to the economic needs of the city, and that were tied to building projects, which were more politically beneficial.347

The mayor’s decision to support a mall at Long Wharf evolved quickly into a decision to issue a Request for Qualifications for the site. Importantly, at the time of the RFQ the city was not in control of the properties likely to be involved, and the decision was brought about in the absence of marketing studies, guidance from the Board of Aldermen, or support from the developers the city was working with on various downtown projects at the time. Perhaps fearful that NED would secure additional option contracts on likely mall properties, the RFQ served to reassert city control over the project, likely driving up the cost of acquisition and pledging a future course of action long before the city had investigated whether such a large project was practical or feasible. Adding to the unilateral nature of the RFQ decision, the city insisted on pairing NED with the Fusco Corporation, a politically-connected local developer that possessed no special expertise for constructing the project. While the inclusion of Fusco likely eased the state approval process for the mall itself due to its in-state influence among legislators, the move also raised serious doubts about the propriety of the developer selection process.348

The mayor’s desire to personally guide the project through rapid approval meant that the mayor and NED were able to secure land, begin negotiating with the post office for relocation to another site, lobby the state legislature for approval for bonding money, submit a development

---

347 Interview with Patrick Sullivan, supra, note 127; Interview with John DeStefano, supra, note 36.
348 Interview with Jonathan Pelto, supra, note 141.
plan to a regional planning commission and engage in widespread publicity efforts before any city agency had voted on or approved the project. When approval finally came, despite acknowledgement that no studies had been conducted to assess the effect of the new mall on New Haven itself, the development approval process was well underway. While the Board clearly possessed the means of stopping the project, it was certainly not armed with the full array of data normally useful in making such a complicated municipal decision.

Compounding this relatively non-participatory process was the mayor’s decision, amidst rising public opposition (funded in large part by Westfield), to issue a $25 million TIF bond for relatively unspecified downtown investments. While many commentators have lamented the relatively anti-democratic nature of off-book TIF financing, the mayor’s decision to leverage the mall’s property tax increases to fund downtown efforts, turned the normal TIF framework on its head, and effectively allowed the mayor to dictate use of the general fund absent approval from the Board of Aldermen. Whether or not this move ultimately would have benefitted the city, it presents a troubling rewiring of the mechanisms of city spending, particularly when previous and future downtown development efforts emphasized elements different than those that would be funded by the $25 million bond.

Vertical Equity Evaluation

Examination of this project under the lens of vertical equity also suggests significant missteps on the part of the city. Not everyone had equal access to the levers of power, and not every constituency would benefit equally. Most prominent is the decision to prioritize the inclusion of Fusco in the mall development team. Financially unnecessary and needlessly provocative of an outside developer, the decision was not rooted in the efficiency needs of the

349 See Biffault, supra, note 147, 66-67. “TIF enables local governments to pursue what is often the principal local development goal – increased tax base – while avoiding the political and legal limits on increased local taxation.”
project. While it is going too far to say that the decision reflected a means of political pandering, it certainly prioritized a particular developer over others in the RFQ process. This decision probably did little to jeopardize the project itself, but it certainly reflects an inherent bias in the New Haven development process, potentially chilling future development interest from outside firms.

In terms of the expected beneficiaries of the mall’s generative largesse, it is hard to say that the city, as a whole, would benefit greatly. While the city may rightfully claim that the inclusion of Fusco ensured that some development money remained “local” to the New Haven area, this wealth distribution favored, primarily, a corporation and its executives with already extensive assets. The next most benefitted group is local construction workers, who would enjoy a brief period of heightened employment, and low skilled workers who could most directly benefit from the new jobs. Most at risk were local downtown business owners, who faced a collective 20% loss in local sales. Some of these individuals would have avoided such losses by relocating to the mall itself, but it is unclear how many of them would have benefitted in that way. Certainly, NED, in its attempt to shore up support for the mall project, made specific promises to specific communities, a strategy that did not necessarily reflect the best interests of the city as a whole.

V. Conclusion

The failed Long Wharf Galleria project was one of the most complicated, rancorous, and divisive development efforts in New Haven’s recent history. In many ways the city was caught between, and buffeted by, the self interest of two private companies whose financial resources dwarfed those the city could bring to bear to assert its interests. Yet while many bemoan the ease with which the legal system was subverted to serve the delaying interests of Westfield,
reflections on the wisdom of the project itself are perhaps more appropriately centered on the appropriateness of the key decision points driving the project itself. Indeed, Mayor DeStefano regards the entire episode as a large mistake, though, perhaps, for the wrong reason. While it seems clear that the mall would have significantly, and negatively, affected downtown businesses, it is less clear that it would have killed all efforts to revive or evolve downtown in the future. More troubling is the ease with which city priorities were altered and subverted, and how little input the public had in determining the future direct of their city. Most glaring is the $25 million bond issued by New Haven, a self-imposed public subsidy aimed to mitigate the negative effects of the product of another public subsidy, the mall itself. Moves such as this suggest a need for a more deliberate development process in the city, to ensure that development projects match municipal priorities, and that public support is registered before the massive inertia of a state approval process kicks in.

In the end, New Haven ended up with eight lost years and an IKEA furniture store on the outer edge of its downtown. The major players have shaken off the dust of the battle and have moved on, glad to have the benefit of at least some job creation and new tax revenue. It is hard to argue, however, that marks the most productive use of highly visible, and highly desirable land at the gateway to an increasingly dynamic city.
Appendix

II. Rendering of Marketplace at Long Wharf from initial New England Development response to Request for Qualifications including part of proposed shuttle route
III. Rendering of proposed shuttle bus route from initial New England Development response to Request for Qualifications
IV. Overall site map from State Department of Economic and Community Development
Finding of No Significant Impact
V. Rendering of proposed mall site from Fusco Corporation’s initial response to the City of New Haven’s Request for Qualifications