Community Benefits Agreements in a Union City: How The Structure of CBAs May Result in Inefficient, Unfair Land Use Decisions

Steven M. Seigel
Yale Law School, steven.seigel@yale.edu

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Community Benefits Agreements in a Union City:
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Steven M. Seigel

Community benefits agreements (CBAs) are hailed by land use reform advocates as an effective, flexible, inclusive tool for making land use decision-making processes more responsive to traditionally underserved communities. Using the power of community organizing to gain leverage over developers as they navigate zoning and other regulatory chokepoints, CBAs allow traditionally disorganized residents and businesses to extract benefits and conditions directly from developers. This value capture process, reformists argue, helps reduce the negative impact of diffuse economic and social externalities that either cannot or will not be mitigated by the traditional land use regulatory apparatus.

The reformist narrative, however, fails to account for the overriding strength of one particular subset of participating interest groups—that of organized labor—in leading the charge for community benefits. Those interests, this paper argues, often wield disproportionate power in the informal negotiations underlying the formation of a CBA, and have structured CBAs so as to avoid the preemptive effects of federal labor law. In so doing, labor’s preeminent interests may undermine the very goals of efficiency, inclusion, and equity in distribution of developers’ rents that CBAs purport to advance.

This paper evaluates this claim by telling the story of one particular deal in New Haven: a CBA negotiated in advance of a public land sale to an independent charter school management organization. By analyzing the deal against both the historical development of CBAs and the normative criteria against which scholars have evaluated other land use controls, this paper aims to shed light on whether the structural incentives built into CBAs may underserve interests that the existing regulatory regime is designed to protect.

* J.D. Candidate, Yale Law School, 2014; B.A. Williams College, 2004. This paper was written as part of Prof. Robert C. Ellickon’s seminar, the Urban Legal History of New Haven, in the spring of 2013.
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Appendix A - 580 Dixwell Land Disposition Agreement, Exhibit B (Community Benefits Agreement)
INTRODUCTION

For over 40 years, the Martin Luther King Elementary School sat on a flat, 5.6 acre plot of land on the West side of Dixwell Avenue in New Haven’s Newhallville neighborhood.\(^1\) Squat and rectangular, the school was but one example of the functionalist preference in 1960s school design, the unbroken lines of a solid brick façade interrupted only by a thick rainbow stripe upon which black and white portraits of historic black leaders are framed by circles of fading white paint.

Originally constructed in 1968,\(^2\) but unoccupied for years, the school has been called an “eyesore” by Brenda Foskey-Cyrus,\(^3\) one of Newhallville’s two alderwomen,

\(^1\) Melissa Bailey, City Plans To Sell MLK School To Amistad, NEW HAVEN INDEP. (June 15, 2012).
taking its place alongside numerous other shuttered public and commercial institutions along the main avenue of the once-vibrant “Harlem of New Haven.”\(^4\) Gone is the Q-House community center, a mere half mile south on Dixwell avenue from the MLK school.\(^5\) Gone, too, is Bob’s Market, a formerly vibrant marketplace and community gathering point, which stood less than two blocks from MLK’s front doors but closed in the 1980s.\(^6\) Newhallville’s grand avenue, instead, has become an epicenter of violence in the city. Crime data from 2000-2009 shows Newhallville suffered the largest absolute number of violent crimes during that period, and ranked seventh out of New Haven’s 29 census tracts for violent crime per capita.\(^7\)

Well over ten years ago, the City of New Haven viewed school construction projects as one critical method of promoting neighborhood revitalization, singling out several schools in Newhallville along the Dixwell Avenue corridor for renovation or demolition and new construction.\(^8\) A decade later in 2012, another school revitalization opportunity was presented to the neighborhood in the form of Achievement First—a not-for-profit, New Haven-based charter school network. Seeking to alleviate space constraints and improve the facilities of its Amistad High School in the Hill

\(3\) Bailey, supra note 1.

\(4\) Elizabeth Mills Brown, NEW HAVEN, A GUIDE TO ARCHITECTURE AND URBAN DESIGN 169 (1976).

\(5\) Q-House closed its doors in 2003 following a declaration of chapter 7 bankruptcy. See Mary E. O’Leary, Q House Buyout Plan Gives Group a Chance, New Haven Register (June 2, 2009).


\(7\) MARIO GARCIA, NEW HAVEN PUBLIC HEALTH DEPARTMENT, CREATING A HEALTHY AND SAFE CITY: THE IMPACT OF VIOLENCE IN NEW HAVEN app. 4 at 2 (2011). The data show that during the 2000-2009 period, 1,412 violent crimes were reported in Newhallville, which maps onto only one census tract (1415). \(Id.\) Although other neighborhoods such as The Hill and Fair Haven revealed greater incidence of violent crime in total, those neighborhoods comprised multiple census tracts. \(Id.\)

\(8\) See CITY OF NEW HAVEN, CITY PLAN DEPARTMENT, COMPREHENSIVE PLAN, SECTION IV-HOUSING AND NEIGHBORHOOD PLANNING at 15-16 (2002). The plan specifically identifies Newhallville’s Jackie Robinson school and Lincoln-Basset schools—both a stones’ throw from 580 Dixwell Avenue—as key targets for revitalization, noting that “[a]s a city of neighborhoods, each residential area has distinct qualities that form a foundation for redevelopment. In particular, the school construction program provides an unparalleled opportunity to link neighborhood revitalization with the public school system.” \(Id.\)
neighborhood across town, Achievement First saw promise in constructing a new school on the City-owned plot where MLK then stood. A new facility at 580 Dixwell would meet the needs of its growing student body while maintaining the school’s ties to underserved, economically-depressed neighborhoods within New Haven’s borders. Now, at the end of 2013, the MLK school has been reduced to a pile of rubble, to be replaced shortly with a brand new, independently-owned and operated $35-million high school that will serve 550 students: the new, improved, Amistad Academy, funded entirely by state grants and private donations.\(^9\)

But the road to redevelopment for Amistad Academy was not free of speed bumps. And the deceptively simple act of buying the parcel at 580 Dixwell revealed a host of treacherous political and legislative shoals, each of which threatened to scuttle the deal from the outset unless Achievement First was willing to relinquish substantial control over not only its use of the land, but also the way in which it chose to operate its own school.

The negotiations that ultimately allowed Achievement First to build at 580 Dixwell tell a complex story of influence politics in which a particular subset of interest groups used community-organizing power to influence local government regulatory decisions and gain concessions from the developer. This process underscores the ascendant authority of organized labor in New Haven and highlights the waning influence of the once-dominant political force of the Dixwell clergy. More significantly, the outcome of the negotiations, crystalizing into one of New Haven’s most recent iteration of a community benefits agreement (CBA), offers lessons that illustrate both the potential benefits and tangible downsides of informal land use power-brokerage—negotiations

\(^9\) See discussion infra Part III.
which technically take place outside the narrow confines of “formal” land use regulatory processes, but which nevertheless control both the means and the ends of local land use debates.

This paper sets out to tell the story of the negotiations surrounding the sale of 580 Dixwell. And in so doing it aims to describe and critique the emerging complexities surrounding the use of CBAs, both in New Haven and elsewhere across the country. Community groups have increasingly promoted the use of CBAs as a tool to force developers to internalize negative externalities that are not accounted for in local land use decision processes. Yet the current literature (and the cases studied therein) fail to accurately describe the CBA as a tool intentionally created by, and structured specifically to be useful for, a particular special interest: organized labor. Furthermore, the literature fails to evaluate the appropriateness of CBAs against the context of specific variables particular to a given land use decision—such as the type of land use action at issue and the identities of the parties in interest. Thus, while CBAs may yield clear advantages for communities seeking to make commercial redevelopment decisions more responsive to local needs, CBAs may also result in deleterious consequences, such as under protecting interests traditionally served by land use controls, or making more costly the provision of public or quasi-public goods.

10 The majority of the literature surrounding CBAs depicts organized labor as merely one group among many potential interest groups, including environmentalists, religious groups, housing advocates, anti-poverty advocates, and low-income residential and commercial neighbors. See, e.g., Patricia E. Salkin & Amy Lavine, Understanding Community Benefits Agreements: Equitable Development, Social Justice and Other Considerations for Developers, Municipalities and Community Organizations, 26 UCLA J. ENV. L. & POL’Y 291, 305 (2008). One scholar, Benjamin Sachs, has recognized CBAs as one of several tools that labor may rely on to undertake what he describes as “tripartite lawmaking,” allowing labor interests to gain leverage and influence labor policy without running afoul of federal labor laws. See discussion infra Part IV.C.II; infra note 132. Sachs analyzes the CBA from the perspective of what role it can play in crafting labor law at the local level. Although Sachs describes some of the collateral risks associated with this private ordering—as occurs with CBAs—his analysis is circumscribed, reserving for future study how severe these risks might be. This paper uses Sachs’ analysis to show that CBAs are structured peculiarly with labor interests in mind. See discussion infra part IV.C.
In addition, because CBAs are negotiated in the shadow of government, free from the strictures of mandatory public oversight, important questions of transparency and representation must be addressed. Unions’ intentional strategy of using CBAs to evade the strictures of a highly preclusive federal labor law regime, for instance, raises the specter that unions’ advantages in community organizing may overwhelm a process aimed at resolving local issues—not because labor has any vested interest in the land-related impacts of the development itself, but because the process serves the instrumental end of circumventing federal law. The prevalence of labor interests that infused the Newhallville CBA negotiation reflects the muscular political power of new union-affiliated politicians in New Haven, and perhaps suggests a need for enhanced scrutiny when the boundaries between private negotiations and public approval processes begin to dissolve.

The paper proceeds in five parts. Part I describes community benefit agreements generally and provides a historical account of their emergence, situating the CBA as one tool designed to serve the objectives of a progressive urban movement. Part II portrays the rise of CBAs within New Haven, set against the shifting dynamics of political power as it transferred from machine politicians to an emergent class of labor-backed legislators. Part III tells the story of the CBA negotiated as part of the City of New Haven’s sale of the Martin Luther King school to Achievement First. Part IV undertakes a normative evaluation of this particular CBA, offering observations applicable to the use of CBAs more generally. Part V concludes.
I. **INCOME INEQUALITY, THE NEW ACCOUNTABLE DEVELOPMENT MOVEMENT, AND THE EMERGENCE OF COMMUNITY BENEFITS AGREEMENTS**

The history of contemporary, progressive economic advocacy movements helps elucidate the redistributive impulses underlying community benefits agreements. Situating the emergence of CBAs within this broader movement helps identify the social and economic forces that prompted this innovation, and reveals the CBA as less of a tool.
designed to re-shape land use regulation than as one of several tactic aimed at achieving broader social and economic outcomes.

A. Income Inequality and the Accountable Development Movement

Localized income inequality is a modern fact of life in Connecticut. Once one of the most egalitarian states in the country (in terms of income distribution), over the past thirty years Connecticut is now at the leading edge of income disparity in the United States, despite the fact that Connecticut’s per capita income is one of the highest in the United States. By reference to the Gini coefficient, which provides a rough measure of the inequality of income distribution, Connecticut is second only to New York as the most unequal state, based on 2011 census estimates. A joint study by the Connecticut Voices for Children and Connecticut Association for Human Services reports that, over the past thirty years, Connecticut’s income disparity has increased at a rate faster than any other state in the country.

Within New Haven, wealth and income inequality are pervasive and tangible at the neighborhood level. The city comprises a veritable hodge-podge of higher, middle,

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12 See Bettina H. Aten et. al, Real Personal Income and Regional Price Parities for States and Metropolitan Areas 2007-2011, in U.S. DEPARTMENT OF COMMERCE, BUREAU OF ECONOMIC ANALYSIS, SURVEY OF CURRENT BUSINESS 91 (2013). Part of the disparity may be attributable to the rise of New York City commuter communities along the “gold coast” of southern Connecticut, such as Greenwich, Stamford, Westport and New Canaan, as well with the growing investment industry situated outside of Wall Street. See Osman Kilic, Quinnipiac University School of Business, Alternative Investment Institute, State of Connecticut and the Hedge Fund Industry (2013); Kenneth R. Gosselin, Gold Coast Slips But Maintains Huge National Wealth Lead, HARTFORD COURANT (Aug. 9, 2010).
13 Gibson & Kauffman, supra note 11 at 7.
14 Id. at 8.
15 Income inequality in New Haven is by no means a modern phenomenon; rich and poor neighborhoods within the city have existed for centuries. For instance, Floyd Shumway and Richard Hegel contrast the aristocratic quality of Hillhouse Avenue with the working class neighborhoods that sprung up around the Orange Street axis. See, e.g., Floyd Shumway & Richard Hegel, New Haven in 1884, 30 J. NEW HAVEN COL. HIST. SOC’Y 1 (No. 2, Winter 1984). New Haven historian and urban scholar Douglas Rae also
and lower income neighborhoods,\textsuperscript{16} reflecting a national trend of urban disequilibrium that has varyingly been attributed to the effects of a globalized economy on urban environments, increasing stratification of income returns among high- and low-skilled workforces, and the attraction of unskilled immigrant workforce to urban economies.\textsuperscript{17} Wealth disparity in Connecticut writ large is highly correlated with the demographic profiles of state residents,\textsuperscript{18} and income disparity among white and minority families in New Haven appears to follow this trend.\textsuperscript{19}

Although academics and policymakers tend to agree that national economic inequality has the potential to yield deleterious effects,\textsuperscript{20} some disagreement remains

\textsuperscript{16}Neighborhoods classified as high income include East Rock, East Shore, Prospect Hill, and Westville. Low income neighborhoods include Dixwell, Dwight, FairHaven, Hill, Newhallville, West River, and West Rock. See Community Foundation for Greater New Haven, Understanding the Greater New Haven Region Through Data 14, 15, 24 (2012).

\textsuperscript{17}See, e.g., Saskia Sassen, The Global City: Introducing a Concept, Brown Journal of World Affairs 38 (Winter/Spring 2005); Edward Glaeser et al., Harvard University Kennedy School of Government, Taubman Center for State and Local Government, Urban Inequality 1 (March 2009). In Connecticut specifically, economists and policy advocates have also focused on the effects of substantial losses in the manufacturing sector from the 1990s until today, as well as growth in the entrepreneurial sector—such as hedge funds and private equity firms. See Rob Varnon, Connecticut Income Disparity Grows, CTPOST.COM (Nov. 15, 2012).

\textsuperscript{18}See Joachim Hero, Connecticut Family Asset and Opportunity Scorecard, Connecticut Voices for Children (2009). The Scorecard evaluated the median net worth of households as the sum attributable to any individual older than 15, less liabilities. Id. at 3 n.3. Assets included financial assets as well as equity in real property. Id. Hero reports that the median overall net worth of Connecticut households in 2009 was $147,266—well above the national median of $88,803. However, the median does not capture the substantial disparity between white-headed households (reported at a median net worth of $195,771) and minority-headed households (reported as $3,000). Id.

\textsuperscript{19}See Urban Apartheid: A Report on the Status Of Minority Affairs in the Greater New Haven Area 10, NAACP, Greater New Haven Branch (March, 2013). The NAACP report provides longitudinal family incomes disaggregated by race, with median incomes in 2009-2011 for white, black, and Hispanic families at $77,443; $37,547; and $29,400 respectively.

\textsuperscript{20}See, e.g., Thomas Piketty & Emmanuel Saez, Income Inequality in The United States, 1913-1998, 118 Q. J. ECON. 1 (2003) (observing the dramatic widening of income disparity in the United States over the course of the twentieth century); Torsten Persson & Guido Tabellini, Is Inequality Harmful for Growth? 84 AM. ECON. REV. 600, 607 (1994) ( theorizing that highly stratified economics correlate with slow economic growth because these countries tend to seek redistribution of wealth through progressive tax structures, thereby increasing tax rates and disincentivizing investment); Alberto Alesina & Dani Rodrik, Distributive Politics and Economic Growth, 109 Q. J. ECON. 465, 481 (1994) (finding that countries with high income inequality have, conversely, lower investment in capital).
regarding the effects of localized inequality. Nevertheless, many progressive advocates reject a pure wealth-maximizing approach to economics, and view income inequality (whether local or national) as unambiguously harmful, advocating a range of social policies to equalize wealth and reduce the gap between rich and poor. While academics have noted the challenges associated with redistributive economic policies at the local level—namely, that the ease of migration of both individuals and firms in local economies (i.e., suburban flight and “mobile capital”) places practical limits on local governments attempting to implement redistributive or progressive policies—reformists have continued to seek out both formal and informal tools that help reduce the income gap in local communities.

Although the American anti-poverty movement has existed since at least the 1960s, a new wave of activism began in the 1990s to address poverty through wage reforms. Beginning with a grassroots campaign to pass a living wage bill in Baltimore,

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21 See, e.g., Richard H. McAdams, Economic Costs of Inequality 2010 U. CHI. LEGAL F. 23 (2010); Clayton P. Gillette, Local Redistribution, Living Wage Ordinances, and Judicial Intervention, 101 NW. U. L. REV. 1057, 1058 (2007); Kristin Forbes, A Reassessment of the Relationship Between Inequality and Growth, 90 AM. ECON. REV. 869 (2000); Glaeser, supra note 17 at 7 (describing studies suggesting that local income inequality might benefit the poor by offering good employers, strong role-models, or encouraging the wealthy to contribute more to low income causes as a result of geographic proximity).


24 See Richard Schragger, Reviving Urban Liberalism, 7 HARV. L. & POL’Y REV. 901, 916, 925 (2013) (describing local ordinances that create effective bans on big box retailers as one mechanism of shifting power to low wage earners); Resources, PARTNERSHIP FOR WORKING FAMILIES, http://www.forworkingfamilies.org/resources/tools (listing tools that advocacy groups have used to develop “strong and equitable urban economies”).

25 See, e.g., ECONOMIC REPORT OF THE PRESIDENT FOR 1964 14 (declaring a “War on Poverty”).
Maryland in 1994, a broad coalition of union locals, church congregations, affordable housing advocates, and other progressive nonprofits began a targeted campaign of economic and social justice reforms at the local level.26 Eschewing the glacial pace of federal or international policy changes, and decidedly pessimistic about the prospects of achieving reform through collective bargaining,27 activists leveraged networks of community organizers and grassroots groups to initiate a nation-wide movement of localized change—all designed to secure greater opportunities, amenities, and subsidies for local, low-income residents and employers.28

Particular areas of local politics proved receptive to these advocacy efforts—specifically, advocacy aimed at leveraging the power of local government as an instrument for regulating private capital and the workers employed thereby.29 One of the more salient tools for achieving this goal—the community benefits agreement (CBA)—has recently emerged as a favored tool used by advocates to achieve site- or employer-specific redistributive policies in local communities. Coupling redistributive economic policy objectives with a reformist vision for more participatory local redevelopment politics, the “New Accountable Development Movement” has led the charge in promoting the use of CBAs to achieve two primary goals: (1) achieving the equitable

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27 See, e.g., Benjamin I. Sachs, *Labor Law Renewal*, 1 HARV. L. & POL’Y REV. 375 (2007) (describing the decentralization of labor law due, in part, to the inefficacy of federal labor law and policy); Chris Tilly, *Living wage laws in the United States: The dynamics of a growing movement*, in *THREATS AND OPPORTUNITIES IN CONTENTIOUS POLITICS* (Maria Kousis & Charles Tilly, eds., 2005) (“Crippled by employer resistance that rendered the National Labor Relations Act largely ineffective, unions were losing most organizing drives… To many, local government appeared to offer the most promising opportunities for pro-worker action.”).

28 See supra note 24.

redistribution of resources by regulating wages and employment policies on an employer-by-employer basis; and (2) giving greater voice and influence to marginalized or politically disadvantaged community-members in shaping the (re)development dialogue—as it pertains to both the economic and physical consequences of a given redevelopment project.30

B. Anatomy of a CBA

At its most basic, a CBA is nothing more than a contract, the purpose of which is to guarantee local (and vocal) political support for—or a promise not to oppose—a developer’s proposed land use plan as it wends its way through the local land use regulatory process.31 To one side of the contract sits the developer—typically a large, commercial developer, backed by private capital. To the other sits, in theory, the “community”—though in practice this “community” tends to comprise a coalition of local grassroots organizations, which is frequently organized by labor-affiliate groups with substantial experience in grassroots coalition-building.32 The agreement normally contains a set of conditions that the developer will agree to in advance of official municipal regulatory decision-points like zoning approvals, land sales, or the allocation of municipal subsidies.

31 See Vicki Been, Community Benefits Agreements: A New Local Government Tool or Another Variation on the Exactions Theme? 77 U. CHI. L. REV. 5, 7 (2010) [hereinafter CBAs].
32 In the case of the Newhallville CBA, this organization took the form of the Connecticut Center for a New Economy (CCNE). See discussion infra Part II. The organization that led the charge for the first recorded CBA was the Los Angeles Alliance for a New Economy (LAANE), see Patricia E. Salkin & Amy Lavine, supra note 10 at 304-06. The Atlantic Yards CBA in Brooklyn, NY, was negotiated largely by the New York chapter of the now-defunct Association of Community Organizations for Reform Now (ACORN), alongside the Brooklyn United for Innovative Local Development (BUILD) and the Downtown Brooklyn Advisory and Oversight Committee (DBAOC). See Been, supra note 31 at 23.
In exchange for these concessions, the community, in turn, agrees to either support or eschew opposition for the proposed project.\(^\text{33}\) Although the public hearing processes (and the court of public opinion more broadly) associated with land use regulation have almost always offered members of the affected community a chance to register their opinion of a given project, the CBA provides strength in numbers. It leverages the power of community organizing to secure a specific set of commitments that may or may not be possible to extract by individuals participating as individuals in land use processes.\(^\text{34}\)

1. **Common Types of Benefits**

Although the coalition of interested parties may vary from project to project, a relatively common set of conditions appear in many of the most well-documented CBA processes.\(^\text{35}\) One grouping of conditions concerns the hiring and employment policies of either the developer’s construction contractors or the businesses arising out of the development. For the permanent businesses, this may include prevailing or living wage requirements,\(^\text{36}\) card check and neutrality agreements,\(^\text{37}\) mandatory benefits programs,\(^\text{38}\)

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\(^\text{33}\) *E.g.*, Been, *supra* note 31 at 5; Foster & Glick, *supra* note 30 at 2010.

\(^\text{34}\) See Parks & Warren, *supra* note 26 at 90; Salkin & Lavine, *supra* note 10 at 295-96.


\(^\text{36}\) Gates-Cherokee CBA (Denver, CO); Dearborn Street CBA (Seattle, WA); Ballpark Village CBA (San Diego, CA); CIM Project CBA (San Jose, CA). The Partnership for Working Families website maintains a relatively thorough compilation of CBAs currently in effect. *See Policy & Tools: Community Benefits Agreements and Policies In Effect*, PARTNERSHIP FOR WORKING FAMILIES, http://www.forworkingfamilies.org/page/policy-tools-community-benefits-agreements-and-policies-effect (last visited Dec. 10, 2013). *See also* THE PUBLIC LAW CENTER, SUMMARY AND INDEX OF COMMUNITY BENEFIT AGREEMENTS (2011) (summarizing the benefits and conditions included in 18 CBAs) [hereinafter:
diversity quotas, or local hire provisions such as hiring quotas for a particular geographic or economically-disadvantaged group. The developer’s own contractors may also be held to similar requirements, and CBAs have frequently demanded that developers comply with state or municipal “responsible contracting” laws and ordinances—normally applicable only to public sector contractors—which prohibit developers from contracting with businesses that have previously violated public works, labor, or occupational health and safety laws.

A second set of conditions are analogous to those required for developers to secure certain land use approvals or permits—such as bid requirements for city-issued RFPs for land sales, impact fees, or concessions granted as part of a conditional zoning

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**SUMMARY OF CBAS.** Unless otherwise noted, all provisions of the CBAs referred to in this section are documented on the Partnership for Working Families website.

37 “Card check” is a method of certifying a union that bypasses the typical secret-ballot election process overseen by the National Labor Relations Board. Under card check, unions rely on union “authoriziation” cards that an employee signs signaling his or her consent to union representation. See Paul C. Weiler, Promises to Keep: Securing Workers’ Rights to Self-Organization Under the NLRA, 96 HARV. L. REV. 1769, 1806 (1983). Once the union secures a majority of card signatures from the targeted workforce, the union is automatically certified. Id. Neutrality agreements are commitments by the employer to remain neutral during a union organizing campaign. Neutrality Agreements and Card Check Recognition: Prospects for Changing Paradigms, 90 IOWA L. REV. 819, 821 (2005). CBAs that have provided some form of either or both types of agreements include: Hill District CBA (Pittsburgh, PA); Yale-New Haven Hospital CBA (New Haven, CT); Bayview Hunters Point CBA (San Francisco, CA); Sugar House CBA (Philadelphia, PA), see SUMMARY OF CBAS supra note 36 at 30. The neutrality and card check agreement was not included as a formal element of the CBA in the case of Yale-New Haven. See infra note 332. The Dearborn Street CBA (Seattle, WA) also included labor neutrality and card check; but presumably is not included on the Partnership for Working Families website as the project went bankrupt. A copy of the document, however, is available at: http://juliangross.net/docs/CBA/Dearborn_Street_Agreement.pdf.

38 Staples Center CBA (Los Angeles, CA); NoHo Commons CBA (Los Angeles, CA); Lorenzo Project CBA (Los Angeles, CA).

39 LAX Airport CBA (Los Angeles, CA); Newhallville-Amistad CBA (New Haven, CT). The Newhallville-Amistad CBA is detailed in Part III infra.

40 Hill District CBA (Pittsburgh, PA); Bayview-Hunters Point CBA (San Francisco, CA); Yale New Haven CBA (New Haven, CT); Gates-Cherokee CBA (Denver, CO).

41 Ballpark Village CBA (San Diego, CA); LAX Airport CBA (Los Angeles, CA); Staples Center CBA (Los Angeles, CA); NoHo Commons CBA (Los Angeles, CA). For an example of the application of responsible contracting ordinances or laws, see NEW YORK STATE PROCUREMENT BULLETIN, BEST PRACTICES FOR DETERMINING VENDOR RESPONSIBILITY 5 (2009)
scheme. These conditions traditionally address concerns of local residents or area businesses that may be affected by a new, large development in the area. For instance, with regards to housing, a CBA may include agreements to provide a set number of affordable-, family-, or senior-housing units. Alternately, a developer might commit to providing permanent, affordable housing in the nearby area to low-income residents displaced by the development. Local small businesses might also receive set-asides for a certain percentage of the resulting retail space, or rental subsidies to help defray the cost of relocation. Additionally, agreements may require commitments from the developer to provide—or make good faith efforts to secure—specific amenities or community services, such as grocery stores, child-care centers, parks, schools, or community centers. These facilities may be provided directly by the developer, or may come in the form of grants or assistance to public entities or local community groups. Additionally, some CBAs have secured benefits that appear identical to those that might be required as part of a conditional use permit, such as funds to assist in creating

43 Almost all CBAs contain such provisions. E.g., Bayview Hunters Point CBA (San Francisco, CA); Gates-Cherokee CBA (Denver, CO); Oak to 9th CBA (Oakland, CA).
44 Staples Center CBA (Los Angeles, CA).
45 CIM Project CBA (San Jose, CA); Atlantic Yards CBA (New York, NY).
46 Dearborn Street CBA (Seattle, WA) (see supra note 37).
47 Ballpark Village CBA (San Diego, CA); Hill District CBA (Pittsburgh, PA).
48 CIM Project CBA (San Jose, CA).
49 Staples Center CBA (Los Angeles, CA); The Gateway Center at Bronx Terminal Market CBA (New York, NY) (see SUMMARY OF CBAS supra note 36 at 22).
50 Atlantic Yards CBA (New York, NY).
51 Marlton Square CBA (Los Angeles, CA); Dearborn Street CBA (see supra note 37); Minneapolis Digital Inclusion CBA (Minneapolis, MN) (see SUMMARY OF CBAS supra note 36 at 19).
52 Kingsbridge Armory CBA (New York, NY); Yale-New Haven CBA (New Haven, CT); Columbia Expansion CBA (New York, NY) (see SUMMARY OF CBAS supra note 36 at 26).
additional parking for residents, or a commitment of funds to help the city create a residential permit parking program.

A third set of conditions relate to what I will call “tertiary” or “hook” benefits: conditions which neither directly mitigate the effect of a given development on area businesses or residence, nor serve the redistributive economic policy goals of wage and employment commitments. These benefits help to broaden the coalition of interest groups by sharing value captured by the CBA process to potentially agnostic organizations.

They take a variety of forms, from environmental guarantees that extend beyond basic remediation requirements (such as LEED certification for new construction or other green building requirements, limitations on diesel vehicle idling, or more extensive remediation standards) to policies aimed at excluding specific types of businesses (such as permanent bans on leases to payday lenders and pawn shops). Many CBAs also include cash grants or other financial commitments to support a hodgepodge of social causes: guaranteeing funding for social outreach coordinators to address the problems of asthma and uninsured children, contributions to urban youth development programs, funding for economic impact studies or master planning

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53 Peninsula Compost Company CBA (Wilmington, DE) (see SUMMARY OF CBAS supra note 36 at 37).
54 Staples Center CBA (Los Angeles, CA); Hollywood and Highlands CBA (Los Angeles, CA).
55 Ballpark Village CBA (San Diego, CA); Hill District CBA (Pittsburgh, PA).
56 LAX Airport CBA (Los Angeles, CA); Atlantic Yards CBA (New York, NY); Harrison Neighborhood CBA (Minneapolis, MN) (see SUMMARY OF CBAS supra note 36 at 43).
57 Ballpark Village CBA (San Diego, CA).
58 LAX Airport CBA (Los Angeles, CA); SunQuest CBA (Los Angeles, CA); Atlantic Yards CBA (New York, NY).
59 Dearborn Street CBA (Seattle, WA) (see supra note 37).
60 Yale-New Haven CBA (New Haven, CT).
61 Yale New Haven CBA (New Haven, CT); Newhallville-Amistad CBA. See discussion infra Part III.
processes, or funding to finance neighborhood improvement projects. One CBA even contained a commitment by the developer not to oppose an anti-formula retail ordinance (otherwise known as an anti-big-box or anti-Wal-Mart ordinance).

2. Public and Private CBAs

CBAs are by definition non-governmental contracts, insofar as the developer is one party and an unspecified group of actors—typically a coalition—constitutes the other. These “private” CBAs stand conceptually in contrast with “public” CBAs, which one scholar has defined as “community benefits commitments set forth solely in a development agreement, but resulting from a broadly inclusive, focused process.” This binary distinction between “private” and “public” CBAs belies many of the peculiarities involved from agreement to agreement, and does not reflect the myriad ways in which government may be involved in their formulation.

Nevertheless, CBA proponents have broadcast a clear preference for “private” CBAs, going so far as to exclude from the definition any agreement that involves government ratification. The concern with whether the agreement is “public” or

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62 Hill District CBA (Pittsburgh, PA); Ballpark Village (San Jose, CA).
63 Sunquest CBA (Los Angeles, CA).
64 Dearborn Street CBA (Seattle, WA) (see supra note 37).
66 In the case of the Newhallville-Amistad CBA, two members of the New Haven Board of Aldermen were included as signatories to the final agreement. It is not clear, however, whether they signed the agreement in their official or individual capacity.
67 See, e.g., Gross, supra note 65 at 45; David A. Marcello, Community Benefit Agreements: New Vehicle for Investment in America’s Neighborhoods, 39 Urb. Law. 657, 660-61 (2007) (contrasting CBAs with development agreements, which he labels as public-private partnerships, and noting that “CBAs …are
“private” stems from three impulses: control over enforcement; concerns about voidability based on unconstitutional exactions; and concerns about the preemptive force of federal labor law.

First, proponents advocate for private CBAs as a way to ensure the commitments may be enforced by its beneficiaries, rather than relying on the local government to police the contours of the document.68 One of the largest organizers of CBAs, the Los Angeles Alliance for a New Economy (LAANE), proposed shifting to a wholly private CBA model after noting dissatisfaction with the development agreement model. Because these “public” benefits were negotiated directly between the developer and the city, beneficiary groups were unable to resort to court enforcement when the city proved either unable or unwilling to satisfactorily enforce the contract.69 Furthermore, as one CBA scholar has observed, once the developer clears any regulatory approval processes with the support of a community coalition, the coalition’s influence is substantially diminished.70 The city’s desire to maintain cooperative relationships with large developers, combined with high turnover in both elected and civil service, reduces incentives to exact strict enforcement.71 In addition, when beneficiary groups are not include as signatories, local governments may have the prerogative to modify the development agreement later in time with the consent of the developer, bypassing the wishes of the beneficiary groups.72

68 See Gross, supra note 65 at 46.
69 Cummings, Mobilization Lawyering, supra note 30 at 319.
70 Gross, supra note 65 at 47-48.
71 Id.
Second, CBA advocates remain concerned that public ratification of the agreement may render the agreement vulnerable to attack as an unconstitutional exaction. Although encouraging participation of democratically elected officials may bolster the accountability and legitimacy of the negotiation process, by excluding government officials entirely, the negotiating coalition may secure a broader range of benefits that will not risk triggering constitutional scrutiny.

Third, where the negotiations involve labor-related commitments like neutrality and card check agreements, the “private” nature of the contract is essential to avoid the preemptive force of federal labor law. Under federal labor law, district courts are able to enforce contracts in which unions and employers agree to specific provisions that would otherwise be governed by federal statutes—including agreements by the developer to remain neutral during union organizing campaigns, and provisions through which the employer will automatically recognize the union (without a secret ballot vote) if the union shows that a majority of employees have signed cards agreeing to be represented by the union. However, these agreements must be private; local government

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73 See Been, supra note 31 at 27-28. Been observes that, depending on the specific structure of the CBA and the degree of involvement by government officials, CBAs could be declared unconstitutional based on the existing constitutional doctrine. The implications of these doctrines—crystallized in Nollan v. California Coastal Commission, 483 U.S. 825 (1987), and Dolan v. City of Tigard, 512 U.S. 374 (1994)—are discussed in Part IV.B infra. See infra note 287 and accompany text. See also Michael L. Nadler, The Constitutionality of Community Benefits Agreements: Addressing the Exactions Problem, 43 URB. LAW. 587, 605 (2011) (proposing that courts use the state action doctrine to determine whether a CBA should be shielded from scrutiny under Nollan and Dolan).

74 See Nadler, supra note 73 at 625 (“communities [face an] unappealing choice between having their interests represented by government officials who can be held accountable via the democratic process but whose participation will require all of the community benefits to comply with the “essential nexus” and “rough proportionality” tests, or excluding such officials from the negotiation process in the hopes that the potential for community benefits that would be excluded by Nollan and Dolan outweighs the risks of having negotiators who do not answer directly to the community.”).

75 See discussion infra part IV.C.2.

76 See, e.g., Hotel & Rest. Employees Union Local 217 v. J.P. Morgan Hotel, 996 F.2d 561, 565 (2d Cir. 1993); Georgetown Hotel v. NLRB, 835 F.2d 1467, 1470-71 (D.C.Cir.1987).
involvement in shaping the rules governing union organizing is precluded by federal labor law.\footnote{See discussion infra Part IV.C.2.}

These three impulses provide a strong incentive for negotiating coalitions to prioritize private agreements over the model envisioned by development agreements and similar public-private partnerships.

\section*{C. The Emergence of CBAs and the Role of Labor-Related Advocacy}

Although most scholars cite the 2001 Los Angeles Staples Center agreement as the Magna Carta of the modern CBA movement,\footnote{See, e.g., William Ho, \textit{Community Benefits Agreements: An Evolution in Public Benefits Negotiation Process}, 17 J. AFFORDABLE HOUS. & CMTY. DEV. L. 7, 19-20 (2008); Schragger, supra note 23 at 509.} the innovation of gathering broad interest group constituencies to exact promises from large urban employers is not new. Beginning in Los Angeles in the 1980s, labor groups devised innovative strategies designed to apply pressure outside of the confines of the National Labor Relations Act.\footnote{See \textit{Katherine Stone & Scott Cummings, Labor Activism in Local Politics}, in \textit{THE IDEA OF LABOUR LAW} 277 (GUY DAVIDOV & BRIAN LANGILLE, EDs., 2011).}

One of the first iterations of the modern labor-community alliance—the Labor/Community Coalition to Keep GM Van Nuys Open—formed in response to a threatened plant shutdown by General Motors in the Van Nuys neighborhood of Los Angeles in 1981.\footnote{See \textit{ERIC MANN, PLAYBOOK FOR PROGRESSIVES:16 QUALITIES OF THE SUCCESSFUL ORGANIZER} (2011).} The United Auto Workers (UAW) Local 645 sought partnerships with a variety of grassroots organizations, churches, academics, and activists—particularly in the Latino community (many of whom worked at the plant)—to express vocal opposition to the closing and threaten a boycott if the plans went through.\footnote{\textit{Id.}, see also Eric Mann, \textit{Radical Social Movements and the Responsibility of Progressive Intellectuals}, 32 LOY. L.A. L. REV. 761, 764 (1999).} The initial Coalition solidified into a permanent organization, the Labor/Community Strategy
Center (LCSC), which organized events and demonstrations throughout the 1980s to maintain pressure on GM, managing to keep the plant open for 10 years longer than the closing date announced by GM.  

The Van Nuys strategy served as a model in the 1990s, when the dwindling manufacturing base and increasing tendency of corporations to source cheap labor from abroad convinced advocates to re-think the targets of organizing efforts, honing in on industries and sectors that were less likely to withdraw from the local economy. Two leaders within the Hotel Employees and Restaurant Employees Union (HERE) helped form a new organization called the Tourism Industry Development Council (TIDC)—a labor/community coalition that advocated for benefits ranging from employer-specific advocacy to lobbying for a municipal living wage ordinance. In contrast with the Van Nuys strategy of the 1980s, TIDC focused its organizing efforts on so-called “sticky” industries—i.e., sectors in which it was difficult, if not impossible, to outsource labor inputs or automate work functions: retail stores, hotels, restaurants, hospitals, construction, and janitorial services.

After changing its name to the Los Angeles Alliance for a New Economy (LAANE) in the late 1990s, the group set its sights on large urban development projects, leveraging the influence of its organizing capacity to secure concessions from private developers across the city in exchange for support in public permitting processes. For

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83 See Katherine V.W. Stone, Globalization and the Middle Class, UCLA Institute for Research on Labor and Employment, Working Paper (December 2012); Schragger, supra note 23 at 484 (noting that “[w]hile potentially painful, plant closings, the movement of manufacturing to the South or overseas, the movement of persons out of old, cold cities to new, warm ones, or out of cities into suburbs, are unavoidable consequences of relatively open economic markets.”).
instance, in exchange for support from its 60-member coalition, LAANE helped Universal Studies secure construction and zoning permits before the Los Angeles City Council and the County Board of Supervisors. In return, LAANE secured an agreement that all jobs would comply with the city’s living wage ordinance. A similar negotiating tactic helped LAANE secure analogous concessions from TrizecHahn Development Corporation in its redevelopment of eight and a half acres at the corner of Hollywood Boulevard and Highland Avenue.

By the time the first “private” CBAs arrived on the scene in 2001, LAANE had already developed clear strategies for gaining leverage in land use regulatory controls—LAANE, would serve as the behind-the-scenes coordinator, generating momentum for and organizing grassroots, geographically-specific coalitions that would ultimately serve as the lead negotiators with the private developers. In the case of the Staples Center CBA, for instance, LAANE led the process of gathering the lead negotiating coalition.

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87 At the time, the Los Angeles living wage ordinance applied only to municipal employees and contractors. See Los Angeles Admin. Code § 10.37.1 (1998).
88 See Greg Goldin, Mallywood: Can David Malmuth’s Urban Destination Entertainment Center Save the Boulevard? L.A. WEEKLY (Dec. 16, 1998). Armed with the backing of Los Angeles city councilwoman Jackie Goldberg, LAANE proposed compliance with the living wage ordinance for the complex’s security and service personnel, a local-source hiring plan, and a neutrality agreement for the on-site hotel, in exchange for Goldberg’s support for the project before not only city council meetings, but also zoning board hearings. See id.; Laura Wolf-Powers, BUILDING IN GOOD JOBS: LINKING ECONOMIC AND WORKFORCE DEVELOPMENT WITH REAL-ESTATE LED ECONOMIC DEVELOPMENT 18 (2006). One observer noticed that the developers were pleasantly surprised with the living wage demand as a condition of support for their development agreement, noting that it would cost a “relative pittance” in comparison with the traditional city-driven concessions of “traffic mitigation, height restrictions, [and] parking.” See Goldin.
LAANE built a 30-member coalition, called the Figueroa Corridor Coalition for Economic Justice, to oversee negotiations.

This strategy—of creating issue-specific coalitions—served as the model for new organizing efforts in the rest of the country. And it set the foundation for the emergence of CBAs in New Haven when a nascent labor affiliate group, the Connecticut Center for a New Economy (CCNE), began—with help from LAANE—its efforts to organize Yale New Haven Hospital. The history of CBAs will be discussed in greater depth below. But to fully appreciate the merger of community organizing with traditional land use regulation, it is important to explore the unique political and legal background of urban redevelopment and labor in New Haven.

II. **Politics and Urban Land Use in New Haven**

Although CBAs are a phenomenon of recent vintage, the issue of community engagement in (and the struggle for control over) urban redevelopment has been a longstanding and contentious concern in modern New Haven, sitting at the confluence of two major trends in its urban history. First, the indignities suffered by disempowered minority residents, many of whom who were systematically excluded from participation in the urban renewal process, led to a rising demand for greater community engagement in the politics and policy-making of urban land use, economic development, and poverty reduction. Second, the rise of Yale as the leading employer of a deindustrializing town

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90 See Cummings, *supra* note 30 at 61.
91 See *infra* note 136.
92 Joel Lang, *How An Innovative Alliance Forced Yale-new Haven Hospital To Help Its Impoverished Neighborhood As Part Of A Plan For A New Cancer Center*, THE HARTFORD COURANT (May 21, 2006).
93 For an excellent account of the rise of community-based resistance to centrally-planned urban development in New Haven throughout the 1960s, see MANDI ISAACS JACKSON, MODEL CITY BLUES: URBAN SPACE AND ORGANIZED RESISTANCE IN NEW HAVEN (2008). As of 2012, Jackson was employed as
offered a larger target for once-dormant union organizers. The renewed growth of the labor movement in New Haven throughout the 1980s and 1990s was propelled, in part, by the expansion of the collective bargaining agenda to include a broader platform of activism that incorporated the concerns of non-union employees and local residents. This so-called “social movement unionism” resulted not only in resounding wins for the labor movement across a range of employment sectors, but also culminated in the infusion of labor-backed political candidates into the New Haven Board of Alderman.

A. Urban Renewal and Its Backlash

Beginning in the 1950s, New Haven experienced a conflation of social and economic trends that were in no ways unique in urban centers across the United States: deindustrialization; white flight (spurred by the expansion of the interstate highway system and affordable mortgages for WWII veterans); the dilapidation of affordable housing stock; and the gradual erosion of the urban center. The suburban exodus of mostly white, middle class urban residents left city centers bereft of economic vitality, and urban poverty began to climb precipitously, spawning efforts at the local, state, and federal level to identify solutions to the problem of urban decline. The Housing Act of 1949, designed to “advance[] the growth, wealth, and security of the Nation,” offered federal subsidies to subnational governments to appropriate, demolish, and rebuild “slums and blighted areas” in order to make way for the redevelopment of urban

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95 See Unions “Kick Ass” In Primaries, NEW HAVEN INDEP. (Sep. 13, 2011).
96 RAE, supra note 15 at 361-67.
communities and the expansion of public housing. Inevitably, slum clearance involved the displacement of large numbers of slum dwellers, most of whom, at the time, were non-white. Because the statutory grants gave substantial discretion to local authorities in deciding where, when, and how to proceed with urban renewal grants, minority residents had few opportunities to redress the myriad grievances arising out of implementation of federal urban renewal monies.

Urban Renewal in New Haven was no exception; to the contrary, under the auspices of Mayor Dick Lee, New Haven became the largest per-capita beneficiary of federal urban renewal dollars, carrying some seven large-scale clearance projects, and, in the process, displacing approximately 8,000 households. Local citizens, dissatisfied with the highly centralized process by which urban renewal projects were undertaken, developed new models of grassroots civic participation, aiming to counteract the exclusion that engendered wide-spread resistance to New Haven’s urban redevelopment.

B. Union-led Coalition-Building Takes Root

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100 Id. at 265-66.
103 See JACKSON, supra note 93 at 152-60. The distrust, frustration, and anger arising from socially dissociative policies was felt quite acutely in New Haven’s poorest neighborhoods. The riots in 1967 in New Haven’s Hill neighborhood illustrated and magnified this distrust, and underscored the need to shift tactics to develop a model of citizen participation that more accurately reflected the social fabric of the affected neighborhoods. Id. at 147-58; 152.
Proceeding in parallel, New Haven’s labor movement saw tremendous advantages in developing a more diverse, pro-poor coalition of community groups as it struggled to renegotiate union contract terms with the city’s largest employer: Yale University.\textsuperscript{104} HERE Local 34, representing clerical and technical workers, and Local 35, representing service and maintenance workers, had struggled to unionize Yale University workforces for decades.\textsuperscript{105} In 1985, with substantial support from Local 35, Local 34 signed its first contract with Yale after a 10-week strike.\textsuperscript{106} The following year both locals signed contracts through joint negotiations.\textsuperscript{107}

A decade later, Responding to the University’s attempts to reduce wages, cut benefits, and roll back union control,\textsuperscript{108} the Federation of University Employees (which included HERE Locals 34 and 35) initiated a strike in 1996, seeking to scuttle the University’s aggressive anti-labor proposals, including a commitment to refrain from subcontracting out to dining hall employees.\textsuperscript{109} After ten weeks of strikes, it became clear that “striking alone would not win [the] battle,” and that organized labor needed to


\textsuperscript{106} Id. at 367.


\textsuperscript{108} See Gordon Lafer, \textit{Land and Labor in the Post-Industrial University Town: Remaking Social Geography}, 22 POLITICAL GEOGRAPHY 89, 110 (2003); Dorian T. Warren & Cathy Cohen, \textit{Organizing at the Intersection of Labor and Civil Rights: A Case Study of New Haven}, 2 U. PA. J. LAB. & EMP. L. 629, 641 (2000). Lafer recites numerous allegations of aggressive management-side labor practices, including workforce segmentation, limiting the hours a part-time employee could work so as to avoid contractually-mandated health benefits, and increasing the incidence of subcontracting and hiring of independent contractors. Warren and Cohen corroborate these allegations in their account of the 1996 negotiations, where the authors’ interviews contended that Yale planned to contract out 600 union jobs to a non-union subcontractor. \textit{Id.} at 640.

find allies outside of the narrow class of concerned employees.\textsuperscript{110} A broader coalition of community advocates was needed.

Yet the historical insularity and racial hierarchies within New Haven’s union leadership\textsuperscript{111} presented a problem as locals 34 and 35 attempted to recruit broader support from New Haven residents. Although New Haven’s labor groups had long organized substantial portions of blue-collar workers, union leadership remained predominantly white,\textsuperscript{112} and had failed to forge relationships with the increasingly concentrated minority communities of New Haven.\textsuperscript{113} Faced with the prospect of enduring strikes, one of Local 34’s emerging organizers, Andrea van den Heever (then Cole), was tasked with building alliances between the union locals and grassroots community groups across the city.\textsuperscript{114} As a white South African émigré who had, during the 1980s, established herself as a bridge-builder during the anti-apartheid movement, van den Heever had garnered trust and support from diverse members of New Haven’s minority communities in organizing efforts during the 1980s.\textsuperscript{115} Van den Heever had partially exhausted her social capital with New Haven community groups during labor contract renegotiations in 1989 and 1992, during which she had managed to secure community support, but had, for a variety

\textsuperscript{110} Warren & Cohen, supra note 108 at 640-41.
\textsuperscript{111} See Williams & Smith, supra note 104 at 67-68.
\textsuperscript{112} See RAE, supra note 15 at 414.
\textsuperscript{113} See Chris Rhomberg & Louise Simmons, Race, Labor, and Urban Community, in RACE AND LABOR MATTERS IN THE NEW U.S. ECONOMY 151 (MANNING MARABLE ET AL. EDs., 2006).
\textsuperscript{115} See Warren & Cohen, supra note 108 at 639; Lang, supra note 92 at 1.
of reasons (including thin staffing and limited resources within the unions) failed to deliver reciprocal commitments.116

During the 1996 strike, van den Heever worked to develop a more robust grassroots machine. Using a computerized mapping program, the unions identified union-members’ residences and established neighborhood organizing committees that held meetings to draw out the narrative of the effect of a failed contract renegotiation. By asking union members to present their struggles before family, friends, neighbors, politicians, and members of the clergy, the locals identified a mechanism to ensure the struggles of individual workers resonated in the broader community context.117

Shifting from an internally focused organizing strategy towards an outward-facing, popular appeal proved critical. The union sought to situate employees within their neighborhoods and communities,118 drawing strong support from powerful ecclesiastical, civic, and political groups such as the local chapter of the NAACP.119 A critical ally in this struggle—and a group that would reappear in a much different posture during the Newhallville controversy—was the Greater New Haven Clergy Association, led by the well-known and politically powerful Rev. Boise Kimber. In late November, Rev. Kimber released a vitriolic statement condemning Yale’s position;120 in mid-December, the momentum of the movement against Yale had gone national, culminating

116 See Warren & Cohen, supra note 108 at 639-40 (noting that van den Heever encountered resentment due to the “absence of the union” during the periods between contract negotiations, and that a job training program conceptualized by the union to meet community needs had failed to address the true objectives of community-members, which was a jobs pipeline into Yale, which had historically hired few New Haven residents).
117 See id. at 641.
118 See id.
119 See Lafer, supra note 108 at 112.
120 See id. at 89 (“Yale has been engaged in a vicious attack on the working families in our community…this enormously wealthy and powerful institution will go to any lengths, break any law, in its effort to crush the will of…our fellow citizens.”).
in a 300-person demonstration attended by John Sweeney (then President of the AFL-CIO), the president of the New Haven NAACP, and the Secretary of the State of Connecticut. Before the end of the year, negotiations were complete, with Yale agreeing to forego its plan to subcontract dining hall employees.

Thenceforth, van den Heever’s innovation of building reciprocal labor-community partnerships would become a centerpiece of labor organizing strategies in New Haven. Drawing on lessons from the 1996 Yale campaign, in 1997 and 1998 van den Heever played a key role in organizing community resistance to help enforce a neutrality agreement embedded in a development between the City and prominent real estate developer David Cordish. The success of both campaigns led van den Heever in 2000 to institutionalize the labor-community partnership model in the form of the

121 Id. at 112; Waren & Cohen, supra note 108 at 641.
122 See Rabinovitz, supra note 109.
123 See Warren & Cohen, supra note 108 at 643-53. Cordish sought to renovate the faded, defunct, and then-bankrupt Park Plaza hotel in downtown New Haven, promising to create 250 jobs and generate a quarter million dollars in taxes per year in exchange for a $17 million redevelopment subsidy. See Joseph Blocher, Note, Private Business as Public Good: Hotel Development and Kelo, 24 YALE L. & POL’Y REV. 363, 387 (2006). HERE Local 217, which formerly represented workers at the Park Plaza, held a seat at the table during the initial negotiations with New Haven and Cordish, and had sought several commitments from Cordish—such as a neutrality agreement and a local jobs training program—that the union believed were in the interests of both future workers and the community at large. See Warren & Cohen at 645. Non-labor activists such as the NAACP, however, took note of a clause within the development agreement that committed the city to relocate several bus routes near the new hotel. Perceiving the rerouting as grounded in racist and classist motives—namely, to buffer out lower class residents from the hotel’s immediate vicinity—local community groups mobilized without the support of the unions. Id. at 646. Worried that vocal support of the community movement’s fight over the bus routes might jeopardize the neutrality agreement with the hotel, Local 271 remained conspicuously absent from the dialogue, instead waiting until city reached a compromise agreement with Cordish, and only thereafter diving in to form a collaborative coalition to direct the implementation of the jobs training program to ensure it met community expectations. Id. Nevertheless, labor’s concerted support to leverage its negotiating power over the training program yielded great benefits when the hotel attempted to evade its prior commitment to guarantee a neutrality agreement. Id. at 650. Local 217 managed to garner broad community support for the neutrality agreement, forming a powerful coalition that used a number of political levers—from protests and strikes to letter-writing campaigns—to wear down the hotel’s resistance to union organizing. After an eight-month battle, the hotel and Local 217 settled, with the union granting a no-strike/no-lockout commitment in exchange for the hotel’s implementation of the neutrality agreement. Id. at 651-52.
Connecticut Center for a New Economy (CCNE), which was established as a permanent adjunct organization to UNITE-HERE local affiliates 34 and 35 in downtown New Haven. In its mission statement, CCNE broadly aspires to reduce income inequality, build power, and combat economic, social, and racial injustice in Connecticut; however, an article co-written by the chairwoman of CCNE’s board of Directors states clearly that CCNE’s primary objective is to reduce income inequality in New Haven and, more recently, Hartford.

C. New Haven’s First Community Benefits Agreement

In 2004, CCNE had the opportunity to merge its unique approach to “social movement unionism” with the tactical innovation of CBA emerging out of its “sister organization” in Los Angeles, LAANE. Six years earlier, District 1199 of the New Haven Health Care Employees Union (now part of the SEIU umbrella) had begun a drive to organize approximately 1,800 hospital service employees in the Yale-New Haven Hospital. The union recognition and certification campaign was wholly governed by the standard organizing rules prescribed by the NLRA—namely, obtaining the signatures

125 In 2004, HERE merged with a partner labor organization UNITE (formerly the Union of Needletrades, Industrial, and Textile Employees) to form UNITE-HERE. See UNITE-HERE Historical Timeline, UNITEHERE!, http://www.unitehere.org/about/history.php.
126 CCNE and Locals 34 and 35 reside in the same office building at 425 College Street, New Haven. When the author visited CCNE to speak to its representatives, the door of CCNE was closed, with a sign on it reading “Deliver All Main to CCNE to Second Floor Receptionist.” The second floor receptionist is the receptionist for UNITE-HERE Locals 34 and 35.
129 Rhomberg & Simmons, supra note 113 at 161; see Sumanth Gopinath, Yale University Working Group on Globalization and Culture, Community Organizing and Economic Development in the University-Hospital City 12 (2005).
130 Garrett Condon, Yale Finds Itself In Fight Over Cancer Center, HARTFORD COURANT (May 22, 2005).
of 30% of the potential workforce, followed by a majority vote for unionization in a secret ballot election overseen by the NLRB.\textsuperscript{131} For years, the organizing campaign had simmered between District 1199 and the hospital, turning into a bitter and acrimonious fight in the early 2000s.\textsuperscript{132}

During the early months of 2004, after hearing whispers that the Hospital was planning to announce a new major development proposal, CCNE convened a community meeting at the Sacred Heart Church in the Hill neighborhood of the city that included organizers, church leaders, and labor-backed aldermen.\textsuperscript{133} CCNE realized it had an opportunity to use the city’s forthcoming permitting and zoning processes as leverage in its unionization campaign.\textsuperscript{134} Seeing a chance to organize a showing of community force against the hospital—and perhaps at Yale and its expansive land acquisition plans more generally—CCNE developed several concrete action plans to build a powerful campaign. Immediately after the meeting at the church, the attending alders introduced a non-binding resolution before the full Board that recognized and recommended community benefits agreements as a sound tool for responsible development.\textsuperscript{135} In late May, CCNE flew in a member of LAANE from Los Angeles to make a presentation before the Board about the advantages of CBAs.\textsuperscript{136} The Board passed the resolution several weeks thereafter, including language stating that the City would “take [efforts by the developer

\begin{footnotesize}
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\item \textsuperscript{131} See § 9(a) of NLRA; see also CONGRESSIONAL RESEARCH SERVICE, LABOR UNION CERTIFICATION PROCEDURES: USE OF SECRET BALLOTS AND CARD CHECKS 8-9, Report No. RL32930 (January 12, 2009).
\item \textsuperscript{132} See Benjamin I. Sachs, Despite Preemption: Making Labor Law in Cities and States, 124 HARV. L. REV. 1153, 1174-75 (2011).
\item \textsuperscript{133} Gopinath, supra note 129 at 14.
\item \textsuperscript{134} See Simmons & Luce, supra note 137 at 101.
\item \textsuperscript{135} Gopinath, supra note 129 at 19.
\item \textsuperscript{136} Id. at 13 n.52, 19 (noting that LAANE officer Roxana Tynan presented a history of LAANE’s organizing efforts at a public hearing before the New Haven Board of Aldermen on May 26, 2004).
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to create a CBA into account when considering projects for approval and presentation.”

In addition, beginning in June and continuing throughout the remainder of the year, CCNE began the process of building a cohesive coalition of neighborhood groups. Channeling her previous experience with the Omni Hotel and the 1996 Yale strike, van den Heever once again focused her efforts on recruiting powerful civic leaders, members of the clergy, and civil rights activists—a profile strikingly similar to the coalitions formed by HERE in the mid to late 1990s. The resulting coalition, called Community Organized for Responsible Development (CORD), set about going door-to-door in the target neighborhoods, conducting citizen surveys and aggregating common grievances.

Through this process, CORD developed a broad array of “community” demands that would need to be met, else the coalition would use its lobbying muscle to delay the permitting approvals the hospital needed to break ground in 2005. When the hospital finally made its formal announcement on November 30, 2004 that it planned to construct a $430 million cancer center in New Haven’s impoverished “Hill” neighborhood, CCNE was ready to hit the ground running.

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137 CITY OF NEW HAVEN BD. OF ALDERMEN, RESOLUTION ENCOURAGING DEVELOPERS TO ENTER INTO COMMUNITY BENEFITS AGREEMENTS (July 6, 2004) (on file with author). See also Rhomberg & Simmons, supra note 113 at 161; Louise Simmons & Stephanie Luce, Community Benefits Agreements: Lessons from New Haven, 12 WORKINGUSA 97, 101 (2009).

138 Simmons & Luce, supra note 137 at 101. Drawing on an interview with one of CCNE’s lead organizers for the New-Haven CBA effort, the authors noted that CCNE organizing staff “used a power point that showed how coalition building worked in Los Angeles to bring churches, unions, housing groups, and others together.” Id. Many of the organizations that CCNE lobbied to join CORD had already participated with CCNE in other campaigns, and thus “it was a natural next step for most of these groups to join CORD, as they were already involved in CCNE.” Id.

139 Gopinath, supra note 129 at 20. Gopinath notes that 800 citizens were surveyed, representing approximately 10% of the total population of the Hill neighborhood in which the cancer center would be built.

140 See id. at 102-03.

141 Neil Katsuyama, Hospital to Construct Cancer Center, YALE DAILY NEWS (Dec. 1, 2004).
CORD recognized that its success would hinge upon its ability to serve as a power broker for recurring and essential grievances of neighborhood residents. Parking and traffic patterns proved a recurring topic—with many local residents already angry over hospital staff occupying street parking spaces in residential zones—along with concerns over lead contamination from building demolition.\textsuperscript{142} Drawing from the 800 surveys it collected, CORD crafted a set of proposed benefits that would need to be met before CORD would give its seal of approval to the project. Some of the proposed benefits met the needs of neighboring residents (such as traffic and parking restrictions). Some were designed to garner broader support within the New Haven community (such as job training programs, local hiring commitments, and a program designed to grant affordable and free care to low income residents). And one provision—negotiated separately from the development agreement—was tailor-made for District 1199: an “Election Principles Agreement” that departed from the standard NLRA secret ballot election process and created an environment more hospitable to organizing efforts.\textsuperscript{143}

Over the course of a year and a half, CORD and the hospital did battle, with CORD growing its membership base and the hospital continuing to speak out against the coalition’s proposed demands. With echoes of the 1996 strike against Yale, CORD and CCNE cultivated a tremendously public collective action campaign against the hospital, mobilizing citizens and celebrities to stand in solidarity against a hospital administration

\textsuperscript{142}Gopinath, supra note 129 at 20.
\textsuperscript{143}See Sachs, Despite Preemption, supra note 132 at 1178-79. The agreement included a series of rules that diverged from NLRA guidelines, including: (a) prohibitions on the hospital initiating one-on-one conversations with workers related to unionization; (b) providing organizers access to hospital property; (c) a commitment by both parties to disseminate only “accurate and factual information about their respective positions”; and (d) referring all disputes regarding organizing efforts to private arbitration, waiving any right to NLRB adjudication. \textit{Id.}
that had been painted as anti-poor, anti-union, and anti-community.144 Ultimately, the hospital’s CEO Joseph Zaccagnino resigned, and the new hospital leadership entered negotiations with CORD, ultimately settling on a package of benefits—valued at $5 million—that included concessions for the community, the city, and the union.145

D. From Grassroots to Control of City Hall

The unions’ success with the cancer center offered concrete proof that CCNE’s tactical approach—grassroots, neighborhood-focused organizing and broad based coalitions—could offer tangible results. The ensuing years allowed the unions to further test and refine their strategy. UNITE HERE leveraged its grassroots network in support of Barack Obama’s first presidential campaign in 2007 and 2008.146 In 2010, the Locals 34 and 35 reactivated its organizing team for the Connecticut gubernatorial race, prompting an astonishing rate of turnout for democratic candidate Dan Malloy.147 That same year also marked the lowest margin by which incumbent Mayor John DeStefano won reelection.148

The ascendant political prowess of the unions prompted labor to make an aggressive push to take city hall, displacing many of the alders who were perceived to be part of DeStefano’s political machine.149 In the 2011 democratic primaries for the Board of Aldermen, the unions endorsed a slate of new aldermanic candidates but refused to make a mayoral endorsement, notwithstanding DeStefano’s historical support for

144 See Gopinath, supra note 129 at 22.
145 Id. at 23.
146 Nick DeFiesta, UNITE HERE?, YALE DAILY NEWS (Nov. 1, 2013).
147 Melissa Bailey & Michelle Turner, A New Machine Swung Into Action, NEW HAVEN INDEP. (Nov. 4, 2010).
148 Nick DeFiesta, City Evaluates DeStefano Era, Looks Beyond, YALE DAILY NEWS (Sept. 25, 2012).
149 Jake Blumgart, A Union-Remade City, IN THESE TIMES (Sept. 18, 2013).
organized labor.\textsuperscript{150} Due in part to a crowded field of mayoral challengers, DeStefano was less able to lend support to the candidates he favored for the Board.\textsuperscript{151} The union-backed candidates won 17 out of 18 contested races, allowing them to form a supermajority sufficient to override a mayoral veto.\textsuperscript{152} And despite an attempt to upset union dominance in 2013,\textsuperscript{153} Labor once again solidified its primacy in aldermanic politics, cementing in place its “supermajority” powers for another two years.\textsuperscript{154} Two of the union-backed alders—Brenda Foskey-Cyrus (Ward 21) and Delphine Clyburn (Ward 20)—came to play a central role as the drama over 580 Dixwell unfolded.

III. THE FIGHT OVER 580 DIXWELL AVENUE

On December 17, 2012 the Board of Alderman unanimously agreed to sell the parcel of land known as 580 Dixwell Avenue to Achievement First\textsuperscript{155} for a purchase price of $1.5 million.\textsuperscript{156} In many ways, the story of 580 Dixwell—known best as the site of the Martin Luther King School—begins in 1995, when Mayor John DeStefano leveraged substantial quantities of state aid to rebuild New Haven’s public schools. For nearly twenty-five years, not a single school in New Haven had been built, rebuilt, or

\textsuperscript{151} DeFiesta, supra note 146
\textsuperscript{152} Melissa Bailey, \textit{Primaries Put Labor to the Test}, NEW HAVEN INDEP. (Sep. 9, 2011); Blumgart, supra note 149. An aldermanic override of a mayoral veto requires a special meeting by the Board and a vote to override the veto by a supermajority (two-thirds) of all aldermen. \textit{See NEW HAVEN, CONN., CODE OF ORDINANCES}, tit. 1, Art. V, § 12(b) (Municode 2013).
\textsuperscript{154} Thomas MacMillan & Cora Lewis, \textit{Labor Takes 8 of 10 Aldermanic Races}, NEW HAVEN INDEP. (Sep. 11, 2013).
\textsuperscript{155} The parcel was sold to Elm City College Preparatory, Inc. (ECCP), which operates as a distinct legal entity under the aegis of Achievement First, a charter-school management organization based in New Haven, CT.
\textsuperscript{156} CITY OF NEW HAVEN, BOARD OF ALDERMAN, ORDER AUTHORIZING THE MAYOR OF THE CITY OF NEW HAVEN TO EXECUTE AND DELIVER A QUIT CLAIM DEED, LAND DISPOSITION AGREEMENT, AND ANY AND ALL OTHER DOCUMENTS NECESSARY TO SELL THE PROPERTY KNOWN AS 580 DIXWELL AVENUE, NEW HAVEN, CT TO ELM CITY COLLEGE PREPARATORY, INC., Order No. LM-2012-0318 (Dec. 17, 2012) [hereinafter 580 DIXWELL LAND DISPOSITION AGREEMENT].
significantly renovated. With support from a major influx of state grants for school construction, Mayor DeStefano developed a school construction plan that aimed to demolish and reconstruct or renovate all of New Haven’s public schools—topping up funding shortfalls with proceeds from the sale of the city’s delinquent tax liens. The MLK School, however intact, would not see the benefits of school construction financing, and in 2010 the school closed its doors permanently. By the end of 2012, Mayor DeStefano’s $1.5 billion program had touched forty schools throughout New Haven, with an additional six in the pipeline. The physical achievements of the program were undeniably impressive, but the guts of an underperforming public school system remained, offering poor performance across a range of school metrics, from high dropout and low graduation rates to major deficiencies in substantive educational metrics. In 2009, the Mayor kicked off a new school reform initiative aiming to close the achievement gap between New Haven Public Schools (NHPS) and public schools across the rest of the state.

Ten years earlier, owing in part to the passage in 1996 of a charter school enabling act in the state legislature, Amistad Academy was founded as one of the first

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157 See Melinda Tuhus, The View From: New Haven: Schools Looking for Spot on Renovation List, N.Y. TIMES (Nov. 16, 1997) (“A survey conducted by the New Haven Board of Education found that of its 42 school buildings, 73 percent are at least 25 years old, and 41 percent are more than 50 years old.”)
158 Prompted by the landmark 1996 Connecticut school desegregation case, Sheff v. O’Neill, 238 Conn. 1, 678 A.2d 1267 (1996), and a subsequent settlement agreement prompted by a second lawsuit by the plaintiffs in 200, the state undertook the responsibility for financing 95% of the costs of new magnet school construction across the state. See, e.g., OFFICE OF LEGISLATIVE RESEARCH, STATE FUNDING FOR INTERDISTRICT MAGNET SCHOOLS, Rep. No. 2010-R-0399 (Oct. 5, 2010). New Haven schools are “non-Sheff” schools because the do not fall into the regions covered by the settlement agreement. Id.
159 See Tuhus, supra note 157.
160 See Bailey, supra note 1.
161 See CITY OF NEW HAVEN, CITYWIDE SCHOOL BUILDING COMMITTEE, CITYWIDE SCHOOL CONSTRUCTION PROGRAM COMPREHENSIVE FACILITIES PLAN UPDATE 3-5 (March 8, 2012).
162 See Melissa Bailey, Graduation Rate Inches Up, NEW HAVEN INDEP. (Jan. 10, 2012).
163 Melissa Bailey, Report: City Students Not Ready for College, NEW HAVEN INDEP. (Nov. 16, 2011).
164 See CONN. GEN. STAT. ANN. § 10-66aa-mm (West 2013).
public charter schools in New Haven.\(^\text{165}\) The founders went on to create Achievement First in 2003 as a separate 501(c)(3) charter management organization, dedicated to creating high-performing public schools in Connecticut and, eventually, New York and Rhode Island. Four Achievement First schools were operational in New Haven by 2006, with consistently high enrollment demands from area parents.\(^\text{166}\) By 2012, Achievement First’s high school, Amistad Academy, had over 300 students, and desperately needed new space to accommodate current students and offer spaces to new students rising through the organization’s lower and middle schools.\(^\text{167}\) In addition, its current location lacked sports facilities, which was an essential ingredient for the school’s future expansion plans.\(^\text{168}\)

Several years prior to the controversy at 580 Dixwell, Achievement First narrowly escaped a similar neighborhood battle when it undertook to consolidate its elementary and middle school academies into the recently shuttered Timothy Dwight Elementary School.\(^\text{169}\) The school had closed in the spring of 2008,\(^\text{170}\) and immediately thereafter the Board of Education transferred the property to the city to determine its ultimate disposition.\(^\text{171}\) By November, the city announced its intention to sell the property, and in

\(^{166}\) See ELM CITY COLLEGE PREPARATORY INC., ANNUAL REPORT 2011-2012, at 7-8 [hereinafter AMISTAD ANNUAL REPORT].
\(^{167}\) See Bailey, supra note 1 (a spokesperson for Achievement First declared, “[w]e’ve been busting at the seams” at the Prince Street site).
\(^{168}\) See Interview with Reshma Singh, Vice President of External Relations, Achievement First (Apr. 24, 2013).
\(^{169}\) See Thomas MacMillan, Amistad Eyes Dwight School, NEW HAVEN INDEP. (Feb. 9, 2009)
\(^{170}\) See Staff, Dwight School Graduates—Itself, NEW HAVEN INDEP. (June 23, 2008).
\(^{171}\) See MacMillan, supra note 169.
early 2009 news reports surfaced indicating that Achievement First had entered
equations with the city to purchase the school.  

Dwight residents and community leaders were taken by surprise. Before the
school had closed, Dwight residents believed they would have an opportunity to convert
the school into a local community center. Alarmed by the city’s change of heart and
the swiftness with which it entered negotiations with Achievement First, two local
leaders (Florita Gillespie, the neighborhood’s management team leader, and Dwight
alderwoman Gina Calder) publicly contemplated a lawsuit to scuttle the deal.

Although a lawsuit was never filed, Gillespie and Calder used their leverage to guarantee
residents’ access to the facilities for community events. More controversially, they
successfully secured a commitment from Achievement First that some neighborhood
children would be given priority in the student placement lottery, requiring the school to
secure a legislative modification to change its admissions policies.

Id.

When, in 2007, the New Haven Board of Education revealed that the Dwight School would close and all
students would be transferred to the Augusta Lewis Troup School several blocks to the West, community
leaders in Dwight hoped they would have time to devise a plan to convert the school into a community
center. Because New Haven School Superintendent Reginald Mayo indicated that the Dwight building
would remain open and would be used as a swing space for NHPS, neighborhood leaders believed they had
time to develop proposals and secure financing for the project. See Paul Bass, 102 Layoffs Loom, NEW
HAVEN INDEP. (May 8, 2008); Nick Vinocur, Dwight Architects Forecast Green Future, NEW HAVEN INDEP. (Jul. 30, 2007).

Due in part to the complicated proprietary history of the Dwight School, the claim was not unfounded.
A local community development corporation had helped renovate the Dwight School in the late 1990s.
With assistance from a substantial federal grant, the CDC in partnership with Yale University used the
federal funds to construct a 500-person auditorium that served both school and community needs. See Yale
University, Yale Bulletin & Calendar, Yale, City and Neighborhood Collaborate to Create Addition for
Dwight School (May 4, 2001). The CDC subsequently gifted the school to the New Haven Board of
Education, contingent upon the community’s ability to use the auditorium and the Dwight Neighborhood
Management Team’s access to offices in the new addition. See MacMillan, supra note 169.

At the time, such a concession appeared impossible; Achievement First CEO Dacia Toll told concerned
neighbors that the city dictated the admissions policies for charter schools, and that at that time geographic
preferences were not included in the admissions policies. Id. However, the school lobbied the Connecticut
state legislature to pass legislation designating Amistad as a “neighborhood” school, which would allow
them to take geographic preference into account. See Alan Appel, Amistad Tries to Do Better By Dwight,
NEW HAVEN INDEP. (Jan. 11, 2012).
The same year that Achievement First negotiated the purchase of the Dwight School, it initiated a search for a new location for its Amistad High School. In addition to its space constraints, the school was divided between two buildings and split across a busy New Haven street. As part of its search, Achievement First identified several key criteria for its permanent home, including sufficient acreage to house approximately 75,000 square feet of building space, adequate parking for staff, faculty, and visitors, and a sports field. In addition, the site had to meet all architectural, engineering and education space specifications and site eligibility criteria for Connecticut school construction grants.

In 2010, the state made permanent the “charter school facility grant” program, which provides financial assistance for charter school capital projects. In years prior, charters had been limited to school financing of up to $500,000, and only recently had the state piloted the elimination of the $500,000 cap on facilities grants. In 2011, contingent upon meeting the eligibility criteria and submission of a final grant application, the state legislature conditionally approved a state grant of $24 million, totaling 68.93% of the $35 million total that Achievement First anticipated spending on the project. The remaining $11 million would be the responsibility of Achievement First, which planned to secure private donations to make up the deficit.

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176 Interview with Reshma Singh (Apr. 2012), supra note 168.
177 Id.
180 See LOCAL INITIATIVES SUPPORT CORPORATION, 2010 CHARTER SCHOOL FACILITY FINANCE LANDSCAPE 34 (June 2010).
182 See 580 DIXWELL LAND DISPOSITION AGREEMENT, ATTACHMENT B, supra note 156 (detailing the financing of the project, along with a development schedule, breakdown of costs, and the proposed rehabilitation plan).
Achievement First considered numerous sites, but the MLK School fit the necessary criteria and offered a central location for area students, as many as 27% of whom lived in the Newhallville/Dixwell community. On April 30, 2012, Mayor DeStefano sent a letter to Achievement First CEO, Dacia Toll, indicating the Mayor’s intent to work with Achievement First to negotiate a price and, with final ratification by the Board of Alderman, sell the parcel.

Dispositions of public property in New Haven, including surplus school property, typically follow one of four processes overseen by the city’s Livable City Initiative: (a) by development competition; (b) by programmatic disposition; (c) by negotiated sale; or (d) by general disposition. The delegated function of land disposition offers the city an expedited mechanism for tackling a range of land disposition procedures, ranging from the minimally contentious (such as the sale of sliver lots and adjacent tax foreclosures) to the highly visible and frequently controversial development agreements, some of which involve subsidized sales and tax abatements. The Board of Alderman initiated the sale of 580 Dixwell through the Livable City Initiative, but determined the land disposition

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183 Including: 34 Level Street; 240 Winthrop Avenue; 280 Goffe Street; 26 & 36 River Street; 49 Prince & 22 Gold Street; 169 Davenport; 915 Ella Grasso Boulevard; 130 Leeder Hill Road, Hamden; Blake Street Center; State Street Star Supply Co.; 91 Shelton Avenue; and 370 James Street.

184 Interview with Reshma Singh (Apr. 2012), supra note 168.

185 See NEW HAVEN, CONN., CODE OF ORDINANCES, tit. III, Art. IV, § 21-9; 21-22 (“The bureau is authorized to engage in...(2) acquisition and disposition of real estate, on behalf of the City of New Haven, by all methods permitted by law [...] Property so acquired shall be disposed of in accordance with the land disposition guidelines approved by the board of aldermen on December 1, 1997, as amended from time to time, and in a manner consistent with applicable law.”)

186 CITY OF NEW HAVEN, BOARD OF ALDERMAN, GUIDELINES FOR THE DISPOSITION OF CITY OWNED PROPERTY 3 (2009) (on file with author). A development competition is typically reserved for parcels that “are of significant public and/or neighborhood interest” and thus warrant competitive sale processes. Id. at 4. Programmatic dispositions are used for properties acquired by the City through a “Board of Aldermen-approved Redevelopment Plan and/or Municipal Development Plan.” Id. at 5. Negotiated sales—the process used for the sale of 580 Dixwell—are used for properties acquired through tax or mortgage foreclosure or surplus property, such as properties transferred to the city by the Board of Education. See id. And finally, general disposition refers to all other disposition agreements not falling into the above three categories. Id. at 6.

187 For a valuable and detailed description of one competitive land disposition process in New Haven, see Jeremy Kutner, supra note 42 at 13-15.
approval would occur instead by general municipal ordinance later in 2012, bypassing the strictures of the City’s *Land Disposition Guidelines* and reverting to the City’s standard, chartered procedure for enacting ordinances and resolutions.  

Under this process, the proposed disposition agreement was first to be drafted by the Livable City Initiative. Second, the City Plan Commission would offer its advisory approval of the proposed agreement (in this case, the “Order Authorizing the Mayor of the City of New Haven to Execute and Deliver a Quit Claim Deed, Land Disposition Agreement, and Any and All Other Documents Necessary to Sell the Property Known as 580 Dixwell Avenue”) and forward it to the Board for its consideration as an ordinance. Third, upon receipt of the agreement, the board would forward the proposal to the relevant sub-committee—here, the Community Development Committee (CDC)—for public hearing and committee approval. Presuming at least a majority approval by the voting members of the CDC, the matter would be then forwarded to the full Board for a “first reading” of the ordinance, a “second reading,” and then a final vote. Following aldermanic approval, the mayor may then execute the contract of sale with the purchaser.

Following the Mayor’s letter of intent guaranteeing exclusivity of negotiations, Achievement First and the city’s Livable City Initiative agreed to a negotiation process to arrive at the final sale price. Achievement First and the city would each commission an appraisal to value the land. Achievement First would then prepare an environmental appraisal...
due diligence report and commission several environmental studies to project the costs of any necessary environmental remediation. This included asbestos removal, and, because the parcel housed a gas station from the 1920s to the 1950s, the site would need to be cleared of any remaining toxins, such as polychlorinated biphenyl (PCB).193 The final price would result from the highest appraisal, less an aggregate estimate of all environmental remediation costs.194

After completing the three independent appraisals (two paid for by Achievement First, one by the City), two independent estimates of PCB removal (paid for by Achievement First), and two assessments for asbestos removal (paid for by Achievement First), the final breakdown of the sales price was proposed as follows:195

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<table>
<thead>
<tr>
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<tbody>
<tr>
<td>Highest appraised value</td>
<td>$2,135,000</td>
</tr>
<tr>
<td>Estimated cost of PCB removal</td>
<td>($555,000)</td>
</tr>
<tr>
<td>Estimated cost of Asbestos removal</td>
<td>($80,000)</td>
</tr>
<tr>
<td><strong>Final sale price</strong></td>
<td><strong>$1,500,000</strong></td>
</tr>
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</table>

The negotiations proceeded smoothly as they wended their way through the technocratic processes overseen by the Livable City Initiative and the Office of the City Plan. The Livable City Initiative adopted the proposed budget into its recommendation of sale,196 which the City Plan Commission approved unanimously.197

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193 See Bailey, supra note 1.
194 See Testimony of Erik Johnson, supra note 192.
195 Email from Reshma Singh, Vice President of External Relations, Achievement First (Apr. 29, 2013). Ultimately, three appraisals were commissioned—the city’s appraised value was the highest, coming in at $2,135,000 (the Estrada appraisal). Those commissioned by Achievement First were substantially lower, at $1,850,000 (the Amodio appraisal) and $1,700,000 (the Michaud appraisal) respectively. In addition, two separate firms provided independent cost estimates of the PCB removal, and Achievement First obtained a separate cost estimate for asbestos removal: First PCB cost estimate $840,000 (prepared by ALTA Environmental). Second PCB cost estimate: between $400,000 and $500,000 (prepared by Fuss & O’Neill). Asbestos abatement estimate shows total cost at $79,470 (memorandum from Northstar to Alta Environmental).
196 See CITY OF NEW HAVEN, LIVABLE CITY INITIATIVE, PROPERTY DIVISION, ACQUISITION/DISPOSITION SUMMARY SHEET FOR 580 DIXWELL AVENUE (Sept. 21, 2012) [attached to legislative master file LM-2012-0318].
The parallel processes before the Board of Alderman, however, took a different turn when Achievement First sought political support for their proposal. In approaching the Newhallville negotiations, Achievement First benefitted from its experience in negotiating its move to the Dwight school. Community access to space and geographic preferences for neighborhood youth proved crucial in the former deal, and it was predictable that analogous requests would issue from the community once again.\textsuperscript{198}

But the Dwight deal was different. For starters, because the Dwight school was an elementary school; not only was it was feasible for Achievement First to modify its admission lottery through legislation, but it also made sense operationally.\textsuperscript{199} Achievement First’s high school, in contrast, was built grade by grade, building its upper levels each year with students who had already been schooled in Achievement First’s curriculum and pedagogical method. The school wanted its high school students to have passed through its lower level “feeder schools” as a prerequisite.\textsuperscript{200} In addition, it would have to amend its working agreement with New Haven Public Schools—who runs the lottery for charter admissions on behalf of Achievement First.\textsuperscript{201}

More significantly, the Dwight deal took place in 2009, two years before the political balance of the Board had shifted. Both of Newhallville’s alders—Brenda Foskey-Cyrus (Ward 21) and Delphine Clyburn (Ward 20)—formed part of the union-

\textsuperscript{197} Karyn Gilvarg, Executive Director of the City Plan Department formally adopted an advisory approval, recommending the City Plan Commission approve the land disposition agreement based on the $1.5 million purchase price negotiated by the Livable City Initiative. \textit{See CITY OF NEW HAVEN, CITY PLAN COMMISSION ADVISORY REPORT RE: 580 DIXWELL AVENUE} (Oct. 17, 2012). The proposal was unanimously approved by all City Plan commissioners. \textit{See Thomas MacMillan, Wrecking Ball Closes In On MLK School, NEW HAVEN INDEP.} (Oct. 22, 2012).

\textsuperscript{198} \textit{See supra} notes 173-78 and accompanying text.

\textsuperscript{199} \textit{See id.}

\textsuperscript{200} \textit{See interview with Reshma Singh (Apr. 2012), supra note 168.}

\textsuperscript{201} \textit{See interview with Reshma Singh, Vice President of External Relations, Achievement First} (Oct. 15, 2013).
backed slate elected to the Board in 2011. Delphine Clyburn, a group home worker, worked as a steward of Service Employees International Union (SEIU) Local 1199. Brenda Foskey-Cyrus was not affiliated with the unions directly, but received financial support for her election in 2011. Both alderwomen defeated candidates endorsed by DeStefano and backed by Rev. Boise Kimber. And both alders’ support would be essential in guaranteeing a “yes” vote on the sale before the full Board. Foskey-Cyrus chaired the Board of Aldermen’s CDC, whose approval was required before the matter could come before the full Board for a vote. And because the school’s future neighbors on the northern side of West Hazel Street fell within Ward 20, Alderwoman’s Clyburn support was critical, too.

Achievement First made the first move in early 2012, reaching out to the alders to let them know of their intentions, and to establish a channel of communication. At that point the alders began canvassing the neighborhood. Over the course of the summer, Ms. Foskey-Cyrus contends that she began went door to door to discuss the proposed sale and collect any concerns of neighborhood landowners. Once she “got a feel for the way the neighbors responded,” she began discussing the matter with her fellow alders on
the CDC, and brought the matter to the attention of Newhallville’s community management team (CMT)—a volunteer organization that gathers voices from area residents and businesses.\textsuperscript{210}

Negotiations remained fluid throughout October and November. Achievement First had clearly garnered sufficient trust from the alders that they were wiling to support them through their first administrative hurdle. On October 17, the alders endorsed the plan as it came before the City Plan Commission, which unanimously approved the proposal.\textsuperscript{211} But between that approval and Achievement First’s second administrative hurdle—a request for a special exception before the Board of Zoning appeals—the tenor of the conversation shifted.

Throughout October, Achievement First attempted to schedule meetings with the alders for the purpose of discussing the deal and addressing concerns of the constituents of Wards 20 and 21.\textsuperscript{212} The meetings were intended to serve as broad forums for consolidating neighborhood input, but numerous unidentified individuals arrived at the meeting with no introduction of who they were, why they were there, or whom they represented: they “just showed up.”\textsuperscript{213} From these meetings it became clear that student slots and community access were not the only sticking points for negotiated benefits.\textsuperscript{214}

In response, Achievement First made a highly public announcement at the end of the month, staking out a position for what benefits it portrayed to be fair, practicable, and

\textsuperscript{210} The CMT’s monthly meetings offer a regular, open forum for soliciting local input on pressing issues within the neighborhood, such as policing updates and land developments. See Newhallville Community Management Team, http://newhallvillecmt.blogspot.com/ (last visited Oct. 7, 2013).

\textsuperscript{211} See CITY PLAN COMM’N ADVISORY REP., supra note 219; Allan Appel & Melissa Bailey, MLK-Amistad Sale Gets A Unanimous Thumbs Up, NEW HAVEN INDEPENDENT (Nov. 30, 2012) (“The project sailed through the City Plan Commission with the help of Newhallville neighbors and Alderwomen Foskey-Cyrus and Clyburn.”).

\textsuperscript{212} Interview with Reshma Singh (Apr. 2012), supra note 169.

\textsuperscript{213} Id.

\textsuperscript{214} The author was unable to confirm the content of the provisions proposed at these informal meetings.
responsive to community input. Based on questions posed to Achievement First by community members at a CMT meeting on October 23, Achievement First prepared a public response that included a summary of its proposed benefits: (a) community access to indoor facilities and the athletic field; (b) a commitment that the $35 million construction program would meet hiring quotas for employing local, minority and female workers; and (c) approximately 11,000 hours of community service per year by Amistad students—much of which would be in service of the local community.215

Striking what could be perceived as an indignant note, the release stated that the revitalization of the MLK School is, in and of itself, a community benefit that “will beautify the block, reduce criminal activity on the property, and provide a safe space for community use.”216 Furthermore, 313 students who attended Achievement First schools in New Haven live in Wards 20 and 21, and “[h]aving their school so close to home is a benefit for those students and their families.”217 Notably absent from this proposal were any references to geographic preferences for neighborhood students, as well as any mention of a labor neutrality and card check agreement for certain segments of the staff.

Shortly thereafter, on November 13 Achievement First appeared before the Board of Zoning Appeals,218 but this time they received considerably less enthusiasm from the alders. Achievement First sought a special exception for a reduced number of parking spaces (138 spaces were required by zoning; Achievement First sought to reduce that figure to 100), as well as several variances for exterior signage and the construction of a three story building in a RM-2 zone, which only permits one story school construction as

215 See Achievement First, AF Responses to Community Questions Received on October 23, 2012 Newhallville Management Team Meeting (Oct. 25, 2012) [on file with author].
216 Id.
217 Id.
218 See CITY OF NEW HAVEN, BOARD OF ZONING APPEALS, AGENDA 1471 (Nov. 13, 2012).
During the hearing, one member of the BZA asked Achievement First directly about the community benefits agreement; Achievement First responded that they were “moving along in good faith.” The alders, though present at the hearing (sitting at the back of the room), remained substantially more circumspect than in the presentation before the City Plan Commission: neither testified before the BZA on Achievement First’s behalf.

Just as the public displays between the alders and Achievement First were cooling, a new stumbling block appeared in the path of the school in the form of the New Haven Clergy. Rev. Boise Kimber, former president of the Greater New Haven Clergy Association (a coalition partner of CCNE in its fight over the Yale-New Haven Cancer Center), along with GNHCA’s current President, Rev. James Newman, publicly attacked Achievement First, the two alders, and members of the negotiating committee for a negotiation process that the two alleged was both closed and lacking in transparency. Both individuals lead congregations in the immediate vicinity of the school: Rev. Kimber’s New Cavalry Baptist Church sits directly across Dixwell Avenue from the MLK plot; Rev. Newman serves as the pastor at the New Freedom Missionary Baptist Church at 280 Starr Street, one block to the east of 580 Dixwell.

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221 Id. Both alders declined to comment specifically on the matter. Id. Delphine Clyburn noted, however: “[w]e came to listen tonight.” Id. The BZA approved the parking exception, conditional on the prohibition of student parking, see CITY PLAN COMM’N ADVISORY REP., supra note 219 at 2, and referred the remaining variance requests to the City Plan Commission for further review.  
Reverends Kimber and Newman attended the November 13 hearings at the BZA, along with several congregants, to address concerns related specifically to the traffic- and parking-related impacts of the project.\textsuperscript{224} In addition to those practical complaints, Kimber asserted that neither Achievement First nor the alders had consulted him, and that, given the size of the project, their failure to reach out to the affected residents and churches should be cause for concern.\textsuperscript{225} The GNHCA’s objections to the purported lack of transparency and a failure of the ostensibly collaborative negotiation process to proactively solicit input from those most affected by the project became a sticking point for the pastors.\textsuperscript{226}

At this point, public information related to the scope of the CBA came to a standstill. Media reported four public sticking points, but no drafts of the CBA had been

\textsuperscript{224} See MacMillan, \textit{supra} note 220.
\textsuperscript{225} See \textit{CITY PLAN COMM’N ADVISORY REP.}, \textit{supra} note 219 at 1 (Nov. 20, 2012).
circulated. The reported sticking points were: (1) wage-related provisions for workers’; (2) a labor neutrality and card-check agreement; (3) a commitment by Achievement First to invest in Newhallville youth enrichment programs; and (4) enrollment slots for neighborhood students.

No information on the deal became public until the next meeting before the CDC on November 29. At that meeting, Achievement First offered a series of commitments that extended past its October proposal. In addition to diversity quotas for the construction labor, Achievement First committed to working with the City’s Commission on Equal Opportunity to increase the diversity of its permanent workforce. It also proposed a partnership with New Haven Works, a non-profit jobs training, workforce development, and certification organization built with emphatic support by local unions.

The alders’ comments remained vague and non-committal, suggesting through their emphasis on good neighborhood jobs that a final deal had yet to arrive. Reverends Kimber and Newman also testified, accusing the alderwomen of failing to notify them of the community meetings, and reiterating concerns about the lack of transparency and exclusion from the meetings. On motion by Ms. Foskey-Cyrus, the CDC unanimously approved the disposition agreement, setting the stage for a “first reading” before the full Board on December 3.

227 See MacMillan, supra note 220.
228 Id.
229 See CITY OF NEW HAVEN, BOARD OF ALDERMEN, COMMUNITY DEVELOPMENT COMMITTEE MEETING MINUTES (Nov. 29, 2012) [hereinafter CDC NOV. 29 MINUTES].
230 Id.; see also Harold Meyerson, The New New Haven, THE AMERICAN PROSPECT (May 23, 2013) (describing New Haven Works as a “small-scale version of the successful employer-funded job-training and certification program that UNITE HERE runs for prospective hotel employees in Las Vegas.”).
231 CDC NOV. 29 MINUTES, supra note 229.
But by the time December 3 rolled around something had gone awry. Instead of placing the matter before the Board for consideration, Ms. Foskey-Cyrus— with minimal explanation— moved to send the project back to the CDC.\textsuperscript{232} “We are still negotiating a community benefits agreement with Achievement First,” she noted; the deal had not been finalized. Her justification for re-committing the matter to the CDC was reportedly related to the price set by the Livable City Initiative— specifically, a differential of $1.3 million between the $1.5 million sales price arrived at by LCI and the 2011 assessed value of $2.8 million. People wanted to know “why LCI came up with an assessment different that the property developer says it’s worth.”\textsuperscript{233} Though not noted by Ms. Foskey-Cyrus, the issue of the sales price differential had been explained repeatedly with both alders in attendance— including merely five days prior when it had been presented before the CDC on November 29.\textsuperscript{234} The Board approved the motion unanimously, and the matter would be delayed until it reconvened on December 17.\textsuperscript{235}

Interpreting Foskey-Cyrus’s move as presenting an opening for additional community input, the following day Rev. Newman issued a press release commending the alderwomen for:

> leading the Board of Aldermen to opening the [...] sale to more transparency. Sending the proposed sales agreement back to the [CDC] for additional discussion will eventually lead to a better Community Benefits Agreement (CBA) that will benefit all parties involved; the neighbors in that community, the city administration, Achievement First, and most of all, the students who will attend that institution.\textsuperscript{236}

\textsuperscript{232} Testimony of Alderwoman Brenda Foskey Cyrus, CITY OF NEW HAVEN, BOARD OF ALDERMAN, HEARING (Dec 3, 2012) [hereinafter BD. OF ALDERMAN HEARING DEC. 3].
\textsuperscript{233} Id.
\textsuperscript{234} CDC NOV. 29 MINUTES, supra note 229 at 3 (documenting that Erik Johnson, Director of the Livable City Initiative, and other LCI staff discussed the appraisal process, explained why it did not rely on the $2.8 million tax assessment, and explained that the cost of environmental remediation would be deducted from the highest appraisal value).  
\textsuperscript{235} BD. OF ALDERMAN HEARING DEC. 3, supra note 232.
No doubt anticipating that the statement would help insure the clergy’s involvement in the final negotiation process, Rev. Newman articulated a set of requests that he contended were for the benefit of his congregants and local residents (see below table):

<table>
<thead>
<tr>
<th>Benefits Proposed by the Greater New Haven Clergy Association(^{237})</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1. Residential Parking</strong>: due to increased parking demands on neighborhood, AF would agree to pay for permit parking for the next 30 years for all residents on streets bordering the school.</td>
</tr>
<tr>
<td><strong>2. Timing of School Activities</strong>: AF would guarantee that school and after-school activities would be scheduled, monitored and supervised as to not interfere with the peace and tranquility of the neighbors.</td>
</tr>
<tr>
<td><strong>3. Garbage Receptacles</strong>: AF would commit to installing stylish and neighborhood friendly garbage receptacles on the site.</td>
</tr>
<tr>
<td><strong>4. Lighting</strong>: AF would guarantee that lighting as a result of the size and placement of the school will not interfere with the peace and tranquility of the neighbors.</td>
</tr>
<tr>
<td><strong>5. Public Use of Facilities</strong>: AF would allow use of the school parking facilities on evening and weekends for community groups and businesses in the area, along with a written plan for how the use of the proposed sports field and community room is managed.</td>
</tr>
<tr>
<td><strong>6. Privacy Fences</strong>: AF would offer to install privacy fences for all immediate neighbors.</td>
</tr>
</tbody>
</table>

Rev. Newman’s optimism proved illusory, however, as the negotiating committee convened a private, closed-door meeting on December 5.\(^{238}\) Included in the meeting, in addition to the alders and Achievement First, were CCNE and members of union locals (UNITE-HERE and AFSCME, the American Federation of State, County and Municipal Employees); the clergymen were not invited.\(^{239}\)

Aware that the meeting was taking place at the Lincoln-Basset school, Rev. Newman attempted to join notwithstanding his lack of an invitation.\(^{240}\) Upon his arrival at the school, the pastor was barred from entry by another clergyman (and co-founder of both CCNE and CORD), Rev. Scott Marks.\(^{241}\) Several other individuals and a reporter

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\(^{237}\) See id.
\(^{239}\) See id.; Interview with Rev. Newman, supra note 226.
\(^{240}\) Interview with Rev. Newman, supra note 226.
\(^{241}\) Id.
were also barred from the meeting. Although Rev. Newman attempted to look through the window of the door to see who was in attendance, Rev. Marks blocked his view.

Shortly after the December 5 closed-door session, Rev. Newman issued another press release, offering a stinging rebuke of the furtive negotiations from which he was excluded. Asserting that the “mystery behind all of the clandestine closed-to-the-public meetings is that the union funded Connecticut Center for a New Economy (CCNE),” Reverend Newman railed against what he called a “mugging” that served only to benefit the Achievement First and the union-backed aldermen, and once again demanded a transparent and open negotiating process.

But the clergy’s protests, vociferous as they were, fell on deaf ears; the December 5 meeting marked the conclusive end of the community benefits agreement negotiations, even though the agreement had yet to be made public. On December 17, following brief remarks by the Livable City Initiative (once again addressing how the city arrived at the $1.5 million sales price), Achievement First, and Ms. Foskey-Cyrus, the matter was put to a vote—first before the CDC, which unanimously approved the agreement, and secondly before the full board, which also approved the LDA unanimously. The final copy of the “win win” community benefits agreement, as described by Ms. Foskey-Cyrus, was distributed publicly. With the exception of the request for community access,

242 Id.
243 Id. The author contacted Bob Proto, President of the New Haven Central Labor Council and UNITE-HERE Local 35 to determine if he was also present at the meeting. Proto did not respond to requests for comment.
245 Id. An independent news report by the New Haven Independent corroborates Mr. Newman’s assertion that the meeting included Achievement First, AFSCME, UNITE-HERE, CCNE, Foskey-Cyrus and Clyburn, and the members of the Newhallville management team. See Bass, supra note 238.
246 See id.
none of the benefits requested by Rev. Newman and the Greater New Haven Clergy Association were included in the final CBA:

<table>
<thead>
<tr>
<th>Final CBA as Approved and Incorporated into Final Land Disposition Agreement (LDA)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1. Permanent Jobs:</strong> AF agrees to partner with New Haven Works (NHW) to recruit, train, &amp; place New Haven residents into positions at AF schools (including, but not limited to the new high-school). Jobs program will last for five years.</td>
</tr>
<tr>
<td><strong>2. Construction Jobs:</strong> AF commits to supervise its construction contractors and subcontractors to ensure compliance with state grant quota requirements for minorities, women, ex-felons, and local New Haven residents.</td>
</tr>
<tr>
<td><strong>3. Student Access:</strong> A commitment of 10 spaces for new 9th grade students who have not attended AF feeder schools.</td>
</tr>
<tr>
<td><strong>4. Staff Diversity, Recruitment, and Retention:</strong> A commitment to retaining, engaging, and promoting black, Latino, and multi-racial staff, as well as first-generation college graduates.</td>
</tr>
<tr>
<td><strong>5. Community Access to Space:</strong> A commitment by Achievement First, once the final construction plans for the school are in place (including specific amenities), to provide a list of usable areas, which will include, at a minimum, the gym and athletic field. AF will also grant access to the Newhallville Management Team, the Ward 20 and 21 Political Committees (of any affiliation) and other eligible community organizations, and will remain a public polling location.</td>
</tr>
<tr>
<td><strong>6. Murals:</strong> A commitment to establish a work of art “that pays tribute to civil rights leaders as the former MLK side does” that will be visible from the street.</td>
</tr>
<tr>
<td><strong>7. General Provisions:</strong> (a) granting the City and the Board of Aldermen the right to request a court order requiring Achievement First to comply with the provisions of the CBA; (b) providing that CCNE will conduct annual performance reviews of Achievement First’s compliance with the agreement; and (c) a severability clause, providing that any provision is severable from the agreement if deemed void, invalid, or unenforceable by a court.</td>
</tr>
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</table>

But the agreements signed in ink neglected to include two provisions, which were arguably two of the most contentious and costly commitments agreed to by Achievement First:

| Two Additional Agreements Not Included in or Incorporated into the LDA |

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247 See 580 DIXWELL LAND DISPOSITION AGREEMENT, Exhibit B supra note 156.
248 The CBA includes specific commitments by Achievement First to “tactical targets,” which include: “(a) 30% of finalist candidates identify as Black, Latino, Multi-racial, or first-generation college graduates at [AF] New Haven schools (teachers and leaders); (b) No difference in matriculation rate for Black and Latino candidates versus overall matriculation rate; (c) 5% increase over last year in applications from Black, Latino, and multi-racial teachers and leaders for 2013-2014 and an additional 5% increase for 2014-2015.” See 580 DIXWELL LAND DISPOSITION AGREEMENT, Exhibit B supra note 156.
8. Labor Neutrality and Card Check Agreement. Achievement First committed to a neutral organizing process, based on card-check recognition, for unionization of cafeteria and security workers.²⁵⁰

9. Grant for Youth Enrichment Program. In a separate agreement, Achievement First committed to contribute $150,000 to support youth enrichment programs for the benefit of neighborhood youth, with funding allocation decisions to be made by a six-member committee (three members to be chosen by Achievement First, three chosen by alders Foskey-Cyrus and Clyburn). The Community Foundation For Greater New Haven serves as the fiduciary.²⁵¹

Neither agreement was released publicly; neither was included—as was the “public” version of the CBA—in the final land disposition agreement signed by the Board.

In the wake of the negotiations, Rev. Newman dropped his promise to pursue alternative routes of dissent.²⁵² When asked whether he had considered trying to negotiated his own CBA for his constituents, he said no, but added, “I’m hopeful that there will be some new alderman in this next election that will look more after the community.”²⁵³

IV. NORMATIVE EVALUATION OF COMMUNITY BENEFITS AGREEMENTS

CBA proponents often highlight three salient features of CBAs that render them superior to the status quo of government-managed land use controls. First, because of its flexibility, a CBA permits a wider range of interests to influence the allocation of burdens and benefits of land use decisions, and a wider range of solutions that can be crafted specifically to meet the needs of the interested participants. The decisional outcomes

²⁴⁹ Although the labor neutrality agreement and $150,000 cash grant were not included in the final CBA appended to the land disposition agreement, for purposes of simplicity, any references to the Newhallville CBA include all of the conditions negotiated during the meeting on December 3, 2012, which includes the labor agreement and the $150,000 grant for “youth enrichment.” See Thomas MacMillan, It’s A Deal—& A Sale, NEW HAVEN INDEP. (Dec. 18, 2012).
²⁵⁰ See id.
²⁵¹ See id.
²⁵³ Id.
may thus yield a more efficient allocation of resources.\footnote{See Alejandro E. Camacho, Community Benefits Agreements: A Symptom, Not the Antidote, of Bilateral Land Use Regulation, 78 Brook. L. Rev. 355, 360 (2013); Matthew Raffol, Community Benefits Agreements in the Political Economy of Urban Development, in UNIVERSITY OF CHICAGO, SCHOOL OF SOCIAL SERVICE ADMINISTRATION, ADVOCATES’ FORUM 28, 35-36 (2012). Cf. Daniel P. Selmi, The Contract Transformation in Land Use Regulation, 63 STAN. L. REV. 591, 624-25 (2011) (portraying flexible deal-making as one method of promoting allocative efficiency); accord David A. Dana, The New “Contractarian” Paradigm in Environmental Regulation, 2000 U. ILL. L. REV. 35, 51 (2000).} A second stated advantage is that CBAs create a more deliberative, participatory process that gives a voice to traditionally disempowered community members.\footnote{See Murtaza H. Baxamusa, Empowering Communities Through Deliberation, 27 J. PLAN. EDUC. & RES. 261, 261-63 (2008); GROSS ET AL., MAKING DEVELOPMENT PROJECTS MORE ACCOUNTABLE, supra note 89 at 21-22.} The participation afforded to citizens under a CBA, therefore, may be procedurally superior to the regulatory apparatus.\footnote{Patricia E. Salkin & Amy Lavine, Community Benefits Agreements and Comprehensive Planning: Balancing Community Empowerment and the Police Power, 18 J.L. & POL’Y 157, 213 (2009) (“When CBAs are negotiated by broad based, inclusive coalitions that are truly representative of community interests, and such agreements result in a community planning vision that dramatically differs from the existing traditional comprehensive plan and implementing regulations for the area, it indicates that existing governmental planning processes may be inadequate, and the most appropriate action for a local government to take may be to reform the way that it plans.”).} A third advantage is that CBAs may also offer a more equitable distribution of the costs and benefits of a development project, particularly when the project takes place in a historically disadvantaged community.\footnote{Id. (“A CBA that is negotiated by a historically disempowered community for a development that will have significant negative impacts will advance equity and fairness goals, rather than inhibit them.”)}

This section evaluates these claims against the normative standards of efficiency, procedural fairness, and distributive justice. Although each CBA is highly context dependent, I argue that the structural peculiarities of the CBA embed certain biases that may result in both inefficient and unfair outcomes. In addition, it is important to disaggregate the notion of “community,” identifying likely participants to determine whether there may be patterns of frequent winners and losers in the wake of a struggle over valuable concessions captured by the CBA process.

\textit{A. An Introductory Note on Land Sales}

\footnote{Id. (“A CBA that is negotiated by a historically disempowered community for a development that will have significant negative impacts will advance equity and fairness goals, rather than inhibit them.”)}
Before proceeding to a normative analysis of the Newhallville-Amistad CBA, a cautionary note is in order. Unlike most CBAs, the Newhallville-Amistad CBA was negotiated as part of a public land disposition process, rather than as part of a land use regulation process like a zoning application or a development agreement. While both regimes deal with land in the abstract, the immediate goal of land sales and land use controls appear at first glance not to be intimately connected.

If the prototypical concern of land use regulation concerns the apportionment of power between private landowners and government bodies to determine how land should be used, a public land disposition serves only to complicate this analysis by adding additional fiscal and economic factors.

On one axis stands the role of the city as a guardian of the public fisc. By negotiating a sales price for a given asset, the city seeks to maximize the returns on investment that the public stands to gain by virtue of privatization or sale. In that sense it is no different from the disposition of other surplus property—used computers, excess machinery, and the like. But of course the sale of land is in no way like the sale of moveable property or an investment interest; to the contrary, urban land is a unique possession, encumbered both by the existing parameters that zoning laws will place on the buyer, and by the fact that privatization necessarily divests the city of some control over a formerly public space. As a result, the city does not act in a vacuum of wealth

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258 See Ellickson & Been, supra note 42 at 31.
259 See M.A. Qadeer, The Nature of Urban Land, 40 Am. J. of Econ. & Sociology 165, 167, 180 (1981) (arguing that urban land should be treated as a public good, and that disposition of public land must protect urban dwellers’ interests by paying particular attention to land’s social utility). Of course, not all publicly owned land or facilities are inherently “public,” in the sense of a community resource, useable by all. Parks, courthouses, and plazas may be thought of the quintessential public space, whereas schools, public transit systems, and subsidized housing may be thought of as semi-public, limiting or foreclosing access on terms established by government policy. Nevertheless, some theorists within the “right to the city”
maximization alone; rather, the city must balance its fiscal interests against a wider range of social and other economic interests that may be advanced by choosing among a variety of potentially productive uses for the parcel.\textsuperscript{260}

A second axis relates to the proposed use of the land as a function of both immediate and broader citywide interests. A multitude of uses may be possible (depending, of course, on the existing zoning code, market forces, and the availability of subsidies)—from private factories and industrial sites to mixed-use, commercial, and residential functions, to public or quasi-public uses like schools, public parks, and hospitals. The specifics of the proposed use will largely shape the public’s response, both in the immediate neighborhood (as the neighborhood residents will be most directly affected by a change in the status quo, whether positive or negative) and in the community at large. Zoning laws have traditionally been characterized as addressing the former set of interests, helping allocate the benefits and burdens of the proposed development and determine the extent to which changes in the status quo will require offsetting by the developer.\textsuperscript{261} As to both sets of interests, the city acts in a role most analogous to a site-specific city planner. By deciding which purchaser will be allowed to buy the relevant parcel contingent on the proposed use, the city may seek to maximize the

\textsuperscript{260}See Qadeer, supra note 259 at 174 (noting that urban land is both a “utility” good and a “commercial” good—uses which may conflict with each other, as the most socially useful result may not produce the highest profit and vice versa).

net social benefits by balancing the interest of the immediate neighborhood, the city at large, and potentially even future taxpayers.\textsuperscript{262}

New Haven is not anomalous in this regard, sitting at the intersection of these two axes by seeking to maximize both fiscal gain and social utility in disposing of public property. Structurally, and in the abstract, the city has delegated these responsibilities among various administrative and legislative bodies, including the Board of Education (recommending land for surplus status), the Livable City Initiative (overseeing negotiations on price); the City Plan Commission (providing advisory input on planning considerations); and the Board of Alderman (final ratification and approval).\textsuperscript{263}

The complexity of the land sale process—added, as it is, on top of an additional bundle of concerns associated with land regulation—may appear to underscore the uniqueness of the Newhallville-Amistad CBA in contrast with CBAs that have taken place in the context of development agreements or zoning applications. This might signal that the Newhallville deal is a poor vehicle for analyzing the normative contributions of the CBA instrument as a whole.

Conceding the differences between land disposition and land regulation, it would nevertheless be a mistake to view the two regimes as wholly distinct. Obviously, a city sells land with the expectation that it will be used for some purpose that differs from its

\textsuperscript{262} As an example of highly detailed, state-mandated planning requirements that require forward-looking assessments, Wyoming requires the any school district, prior to disposing of surplus school property, propose the disposition to a statewide School Facilities Department that will evaluate the proposed lease or sale in reference to each school district’s school facilities plan. See WYO. STAT. ANN. § 21-15-123 (West 2013).

\textsuperscript{263} See discussion infra Part III. Practically speaking, however, in the context of 580 Dixwell, the potential policy-based complexity of the process was truncated when the project was partially pre-ordained by Mayor DeStafano, who signaled his intent to sell the land to Amistad before the technocrats had a chance to review any concrete plans. See Shahid Abdul-Karim, supra note 191. While the sale of a public school plot to a privately-managed, non-profit charter school management organization appears a logical plan for the disposition of 580 Dixwell, DeStefano’s letter effectively delimited the city’s ability to consider issues beyond (a) price; and (b) the neighborhood-level changes associated with the new development.
present state. The participants in the land sale process invariably take into account the vagaries and peculiarities of the zoning scheme in advance of negotiating a land deal, anticipating that the property as sold will, with sufficient probability, be put to a use permitted by the existing zoning code.

Although each decision point seeks to advance a specific objective, the participants likely understand these decision points to be steps in the larger development enterprise, proceeding from point A (the status quo) to point B (a completed development project). It is reasonable to assume that both the developer and the community negotiators recognize that the CBA is a one-shot deal; if the CBA cannot guarantee support for the project throughout all stages of the land disposition and zoning process, it would be a worthless guarantee for the developer indeed. The possibility that a second, third, or fourth CBA might need to be negotiated with different interest groups in order to secure one particular component of an overall development project (such as a special exception or a construction permit) would dramatically decrease the predictability of the project from the outset. This, in turn, would undermine the value of the CBA for the developer, and would eliminate much of the leverage that community groups possess in extracting benefits at the outset. Without the ability to promise the developer a resounding voice of support for the project, a community coalition brings very little to the table that cannot be replicated by the developer itself.

As a result, the savvy community coalition will seek to interject at the decision point at which they have the greatest power of leverage, rather than picking and choosing among the various types of land use decisions based on the substance of the issue in
Ultimately, the fact that the Newhalleville-Amistad CBA was negotiated in advance of the land sale, rather than in advance of zoning decisions taking place concurrent with the sale process, appears to be of limited consequence.

B. Allocative Efficiency

One method of evaluating the relative benefit of the CBA is to consider it in the context of economic efficiency—specifically, whether the deal resulted in an optimal development outcome for all parties involved. Land use regulations in their modern instantiations seek to resolve a particular problem posed by a theory of Coasian bargaining—namely, that the transaction costs and collective action failures associated with negotiating over the price of a proposed development project require some form of government participation to oversee the allocation of development rights. The “problem” that land use regulation seeks to solve is, at root, one of reducing the externalities associated with nuisance based on incompatible land uses. This theory has been challenged by numerous scholars, who question the validity of the underlying assumption regarding the value proposition of technocratic, political, or judicial oversight.

264 Julian Gross has proposed an elemental definition of CBAs under which a CBA must only, by definition, concern a “single development project.” Gross, supra note 65 at 40. Gross defines this atomistic, project-based focus in contrast with the idea of advocating for “single-issue policies that cover a range of projects.” Id. However, Gross excludes from his definition any requirement that the CBA be tied to a specific sub-approval within the overall land deal. Rather, the CBA covers the project as a whole.

265 See, e.g., William A. Fischel, The Economics of Zoning Laws: A Property Rights Approach to American Land Use Controls 72 (1985) (defining zoning as a “collective community entitlement” [hereinafter Fischel, Economics of Zoning Laws]; id. at 82-103 (examining the question of community entitlements and Coasian bargaining, managed through the zoning process, through the example of a pulp mill seeking to gain development rights in a given community).

266 See, e.g., Village of Euclid v. Ambler Realty Co., 272 U.S. 365, 388 (1926) (“[T]he question whether the power exists to forbid the erection of a building of a particular kind or for a particular use, like the question whether a particular thing is a nuisance, is to be determined, not by an abstract consideration of the building or of the thing considered apart, but by considering it in connection with the circumstances and the locality. A nuisance may be merely a right thing in the wrong place, like a pig in the parlor instead of the barnyard. If the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control.”) (internal citations omitted); Ronald H. Coase, The Problem of Social Cost, 3 J.L. & ECON. 1, 2 (1960).
of land use transactions. And the idea that the nuisance-reduction model remains a valid theoretical foundation for land use controls appears increasingly suspect, as more theorists have noted the rapidity with which the “safety valve” of variances and exceptions to neutral regulations have been employed in land use decisions.

Nevertheless, the management theory of using local government to reduce transaction costs, maximize positive externalities, and reach optimal allocation of development rights may serve as a useful evaluative framework to determine whether the CBA as an instrument serves or detracts from such ends.

Efficiency analysis, of course, presents innumerable challenges, not the least of which is the impossibility of quantifying with precision the multitude of costs and benefits achieved by a given decision (whether as felt by the developer, the neighbor, the community at large, or the city) in comparison with the status quo. Nevertheless, the negotiation itself offers hints at the relative weight of various preferences of many of the deal’s participants, allowing for a more careful examination of whether the deal as a whole represented an optimal outcome.

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268 See ELICKSON & BEEN, supra note 42 at 294-296 (citing research by Richard Babcock and Eric Steele, among others, who agree with the empirical observation but disagree as to its significance).
269 See FISCHER, ECONOMICS OF ZONING LAWS, supra note 265; cf. Karkkainen, supra note 261 at 64-78 (1994).
270 This paper refers to efficiency in Kaldor-Hicks, rather than Pareto, terms. In other words, the tool may be deemed “efficient” for Kaldor-Hicks purposes if there is a net positive spread between benefits and costs. A Pareto efficient outcome, in contrast, would be defined by a scenario in which at least one party is made better off but no parties are made worse off as a result of the transaction. See ELICKSON & BEEN, supra note 42 at 96 (noting economists’ preference for Pareto efficiency and recognizing that most policymakers defer to Kaldor-Hicks criteria, particularly when compensation for losers in a land use outcome is hard to arrange).
The fact that the deal was signed at all would appear to weigh heavily in favor of the CBA as a negotiating tool. At least in theory—and according to its own representations—Achievement First made clear its willingness to consider other land parcels, albeit only within the jurisdiction of New Haven. Land use and local government theorists have long considered the salience of “exit” as a key constraint on local government decision-makers, with some theorists viewing mobility as a signal of dissatisfaction and willingness to invest in other local land markets. The inference to be drawn from a successfully negotiated deal, then, is that the developer signaled a preference to pay all costs associated with the deal-making rather than picking up and moving elsewhere.

But the mere possibility of exit does not guarantee that signing a deal in fact signals the most preferential outcome. First, as previously noted, the proponents of CBAs have deliberately targeted their organizing efforts towards a specific subset of sectors—“sticky” industries—that by definition are geographically constrained. The Yale-New Haven Cancer Center CBA, for instance, evinced a deliberate choice on behalf of CCNE and its coalition partners to target an employer unable to benefit from interjurisdictional competition. It seems obvious, too, that part of the strategy of negotiating a CBA with Achievement First was the understanding that the developer was necessarily constrained in its choices. Achievement First was not hoping to start a new school in any of the

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271 See Camacho, supra note 254 at 364 (“the very existence of the CBA itself is evidence that every party believed it was better off with an agreement than without one.”).
272 See supra note 183.
273 See Vicki Been, “Exit” As a Constraint on Land Use Exactions: Rethinking the Unconstitutional Conditions Doctrine, 91 Colum. L. Rev. 473, 476 (1991) [hereinafter Exit] (summarizing arguments suggesting that a “primary source of discipline in the market” is a developer’s ability to “buy” its services from other jurisdictions); WILLIAM A. FISCHEL, THE HOMEVOTER HYPOTHESIS 1-18 (2001) (arguing that because local government policies are capitalized into home values, local government decision-makers will craft policy choices that maximize homeowners’ willingness to remain in their jurisdiction).
274 See discussion supra Part II.C.
surrounding suburban school districts; rather, it merely hoping to resituate its flagship from one facility within New Haven to another. That it elected to pursue negotiations with the alderwomen and CCNE, rather than seek alternative sites, may simply have reflected a belief that they were likely to encounter a CBA regardless of which neighborhood they selected as their preferred site.

At the same time, however, even the threat of a potential exit may have tempered the negotiations from the other parties to the CBA, forcing alders and other community leaders to evaluate the ramifications of the deal falling through. When comparing the status quo and proposed uses from the perspective of neighbors and community members, it is difficult to imagine a concentrated majority of voices preferring a defunct “eyesore” of a school (used only as a polling site) to a fully active one, even if there were no explicit provisions for community use. That the project would offer both short term and full time job opportunities, too—regardless of the prospect of a labor neutrality agreement—would likely have counseled the participating community members against pushing negotiations with Achievement First to a breaking point.

In addition, the possibility of exit should have weighed on the minds of the lead alderwomen, who would risk losing a buyer and foregoing the immediate fiscal gain of $1.5 million if Achievement First backed out of the deal. The threat of deadweight loss resulting from a failed deal, in other words, should temper the negotiations in the mind of a savvy politician, given the sizeable sums involved. Not only would she risk alienating the community members who viewed them as fair intermediaries; she may also risk

275 By law, Amistad Academy draws its student body from the New Haven public school lottery system. See AMISTAD ANNUAL REPORT, supra note 166 at 6; CONN. GEN. STAT. ANN. § 10-66bb (West 2013).

276 Although CBA proponents generally target “sticky” industries that are less likely to relocate to other jurisdictions, see discussion supra part II.C, there may nevertheless remain an element of intrajurisdictional competition among neighborhoods.
losses in political clout among the Board and within the Mayor’s office, as both bodies indicated their interest in consummating the sale.

A structural aspect of CBAs also militates in favor of optimal resource allocation: the incentive placed on negotiating coalitions to gather substantial data on neighborhood preferences. If outcomes can be optimized by reducing informational transaction costs—e.g, those costs associated with gathering information about the economic exchanges involved in a given deal—a process that improves information collection can ostensibly benefit allocative efficiency. As one scholar has pointed out, to the extent land use regulation is intended to protect current home values and consumer surplus, the most effective way to capture such information for land use decision-makers is through direct participation by residents themselves.

Without the substantial backing of a broad swath of the relevant community, a coalition seeking to negotiate a CBA with a developer lacks the necessary leverage to compel participation. This leverage requirement, in turn, depends on the ability of community organizers to mobilize diverse constituencies and coalesce a unified negotiating platform. As Andrea van den Heever learned through her experience as a labor organizer in the 1990s, building and maintaining community coalitions requires a concerted and continuous effort by organizers to not only establish relationships, but to offer promises of tangible benefits that will resonate with grassroots and community-

277 See Karkkainen, supra note 261 at 84 (arguing that an ideal, participatory model of zoning would decrease the disproportionate influence of the concentrated interest groups—in other words, the Olsonian paradigm—towards one that more closely approximates a “median voter” model that is ostensibly more representative of neighborhood preferences).
278 See FISCHEL, ECONOMICS OF ZONING LAWS, supra note 265 at 94.
279 Karkkainen, supra note 261 at 83-84.
280 See discussion supra Parts II.B and II.C.
based organizations. During the Yale-New Haven Cancer Center negotiations, CCNE assisted its community coalition (CORD) to develop and administer an extensive survey of neighborhood residents. Armed with personal digital assistants, CORD organizers conducted weeks of door-to-door interviews, collecting extensive survey data from approximately 800 area residents.

Similarly, alderwoman Foskey Cyrus conducted a more low tech, informal door-to-door survey during the course of the Newhallville-Amistad negotiations to get a “feel for the way the neighbors responded” to the proposed development. The process of proactively gathering and aggregating neighborhood preferences, therefore, may identify salient sources of aggravation or concern shared by large portions of the relevant community.

Expansive as the information collection process may be—motivated by the prospect of greater leverage—the process is in no way constrained to limit the information gathered to economic information. To the contrary, CBA negotiating coalitions have solicited neighborhood “preferences” relating to concerns that extend far beyond the standard trade-off inquiries related to land use concerns, such as impacts on home values, traffic, or the aesthetic impact of the proposed development. In the case of the CORD surveys in 2004, interviewers asked the survey participants not only about

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281 See id.
282 See Gopinath, supra note 129 at 19-20
283 Interview with Brenda Foskey-Cyrus, supra note 208.
284 Compare Fischel, ECONOMICS OF ZONING LAWS, supra note 265 at 83-86 (depicting economic valuations associated with a proposed development through the framework of nuisance); with Patricia E. Salkin, Amy Lavine, Understanding Community Benefits Agreements: Equitable Development, Social Justice and Other Considerations for Developers, Municipalities and Community Organizations, 26 UCLA J. ENVTL. L. & POL’y 291, 294 (2008) (noting that “[m]any CBA provisions are inspired by social justice concerns and desires of the coalition, including such things as: living-wage requirements, ‘first source’ (i.e. local) hiring and job training programs, minority hiring minimums, guarantees that developments will include low-income and affordable housing, environmental remediation requirements, and funding for community services and programs.”).
their views on standard nuisance-like impacts (e.g., traffic and parking), but also about their views on whether or not hospital employees should be unionized, as well as how they perceived the hospital’s medical debt collection practices. Likewise, given the Newhallville-Amistad provisions relating to labor neutrality and workforce development funding, one can surmise that the organizers in Newhallville took a similarly expansive approach to gathering community preferences related to the ultimate outcome of the project.

It is useful in this regard to compare a CBA negotiating coalition’s freedom to carry out wide-ranging and expansive information-collection with the constraints imposed on other land use bodies. For instance, the information collection process in individualized land use decisions will typically be circumscribed by either the ultra vires principle or the Constitutionally-rooted exactions doctrine. The former limits the criteria that zoning and other administrative bodies may rely on when reaching a land use decision. The latter, often referred to as “nexus” and “proportionality” requirements, limit local governments’ imposition of exactions without a tight fit between the concessions required by the developer and the impacts caused by the development.

Decisions made by legislative bodies are certainly less circumscribed (albeit not wholly

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285 See Gopinath, supra note 129 at 19-20.

286 The ultra vires doctrine is closely related to non-delegation principle; a court will accord greater scrutiny to administrative decisions based on delegated authorities than they will to legislative decisions made by a democratically accountable political body. See ELICKSON & BEEN, supra note 42 at 300. See also Neighborhood Action Grp. v. Cnty. of Calaveras, 156 Cal. App. 3d 1176, 203 Cal. Rptr. 401 (Ct. App. 1984) (holding a local permitting entity’s issuance of a conditional use permit to be ultra vires because the entity failed to ensure the CUP was consistent with the town’s comprehensive plan); Dinsmore Dev., Co., Inc. v. Cherokee Cnty., 260 Ga. 727, 728 (1990) (requiring the legislature to provide objective standards by which the administrative body may properly grant or deny a special exception).

unconstrained). And the coalitions negotiating CBAs—at this point at least—are wholly untethered from any judicial scrutiny to ensure the decision-making process adheres to criteria and standards elaborated in a given state’s enabling land use legislation.289

These judicial constraints may properly be thought to restrict land use decision-makers not only in the substantive decisions that they reach, but also the information that they rely on to justify such decisions. In the context of CBA negotiations, the expansiveness of information collection may certainly allow a coalition to derive deep consensus on a set of issues from among a broader array of possible land-related concerns. But the effect of this consensus may very well frustrate and overwhelm landowners or property users who would be more acutely affected by a change in the status quo.

CBA observers have realized that the tool carries with it two primary risks in this regard that are effectively two sides of the same coin: first, that the tool may be exploited by developers, who may seek to confer benefits on a hand-picked (and persuasive) set of community groups while marginalizing project opponents;290 and second, that the negotiating coalition’s selected interests are not representative of the interests of the broader community.291 As related to allocative efficiency, however, these criticisms miss a more significant point, which is that because negotiating coalitions are unconstrained in

289 See Gross, supra note 65 at 47 (noting that the “typical private CBA does not implicate the laws that constrain local governments” given that the CBA does not involve government action).
290 See Gross (id. definitions, values) at 37.
291 See Been, CBAs supra note 31 at 23.
their information collection process, they may very well capture points of agreement that are highly representative of the broader community, but drown out highly-valued preferences of a smaller subset of community members—typically those of adjacent property owners.292

In this sense, then, the ultimate efficiency of the outcome (still speaking in Kaldor-Hicks terms) may turn on the ability of decision-makers to accurately capture the distinct variations in price that particular neighbors may feel about the project. A neighbor who is adjacent to the school, for instance, may view the change in the status quo as a decidedly negative outcome, absent remedial actions on the part of the city or the developer. The proposal offered by the Greater New Haven Clergy Association (GNHCA) fits the mold; all of the organization’s proposed conditions consisted of focused, specific requests that almost exclusively sought to remediate the disutility of the development on its proximate neighbors: parking demands; limits on the timing of school activities (so as to ensure the “peace and tranquility” of the neighborhood), additional garbage cans, limitations on lighting, privacy fences, and public access to school facilities.293 With the exception of public access, none of these requested conditions would inure to the benefit of the community outside of a very small geographic radius. In contrast, the CBA that was ultimately signed included no remedial measures for

292 Note that this problem can be conceived of as the inverse of the standard “Olsonian” framework, under which concentrated interests groups, like adjacent neighbors, may overwhelm the preferences of more diffuse consumer groups who are less immediately affected by a given decision. See MANCUR OLSON, THE LOGIC OF COLLECTIVE ACTION 1-18 (1965); Roderick J. Hills, Jr. & David N. Schleicher, Balancing the “Zoning Budget”, 62 CASE W. RES. L. REV. 81, 86 (2011) (defining proximally neighbors as the “paradigmatic ‘Olsonian interest group’”) [hereinafter Balancing the Zoning Budget].
293 See GNHCA Dec. 11 Press Release, supra note 244.
proximate neighbors, with almost all of the benefits flowing either to the wider Newhallville neighborhood or the community of New Haven at large. 294

Assuming, for a moment, that the GNHCA’s proposal accurately represents the preferences of all adjacent neighbors, the deal should go through only if (a) the developer is willing to compensate the neighbors for the disutility of the development (either by remediating the externalities or by offering a direct contribution as compensation); or (b) the utility gains felt by the broader neighbors outweigh the disutility experienced by the immediate neighbors. While it may be feasible for the developer to meet both sets of demands, the developer will likely seek to cabin its costs by preferencing a deal that will maximize gains (reducing the risk of non-approval by ensuring the widest and most vocal support in favor of the project) with the lowest cost (e.g., the payments or contributions necessary to secure such support).

An optimistic take on the CBA is that it may help grease the wheels in bypassing the traditional Olsonian public choice concern over tyranny of the minority. Under the standard Olsonian model, a small, vocal, self-interested minority group has not only the wherewithal to protest an adverse land decision, but often succeeds in doing so, owing to the collective-action failures associated with gathering positive community voices within the broader community. 295 The minoritarian preference may, in turn, result in inefficient outcomes. 296 By remedying the collective action failure of the broader community, the

294 See 580 DIXWELL LAND DISPOSITION AGREEMENT, Exhibit B supra note 156.
295 See, e.g., Hills & Schleicher, Balancing the Zoning Budget, supra note 292 at 92 (illustrating the stereotypical differences between the well-situated homeowners and the “theoretical, distant” beneficiaries of development).
CBA effectively counters the often-decisive influence of minority voices in forestalling efficient development outcomes.297

But if the more diffuse preferences of the broader community are priced at a minimal value and the adjacent neighbors’ preferences are priced high, it may well be the case that the CBA allows for approval of a project where total costs exceed total benefits.298 The developer would certainly be paying a price for receiving development approval, but the price paid would not accurately capture the marginal social costs of the development on those most directly affected by it.299 Contrary to the dysfunctional portrait of zoning decisions as being disproportionately controlled by the tyranny of a highly vocal, mobilized, and self-interested minority—which, due to NIMBYism or other reasons, tends to inhibit efficient outcomes by stifling development, or shift the social costs to more disorganized interest groups300—the CBA process appears vulnerable to the criticism that it disproportionately drowns out such important voices, erasing what would

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297 In the case of 580 Dixwell, if the GNHCA’s proposal serves to guide our understanding of the concentrated preferences of the minority, it may very well be that the “tyranny” of the majority may not have foreclosed development completely, but rather would have required particular compensation as a condition of support—compensation that, but for the CBA, may have been easily forthcoming from Achievement First. The plot was, after all, already a school—and it would be hard to believe that adjacent neighbors would so vastly prefer the status quo over the proposed use. Cf. Neil K. Komesar, Law’s Limits: The Rule Of Law And The Supply And Demands Of Rights 73 (2001).

298 See T. Nicolaus Tideman, Integrating Land-Value Taxation with the Internalization of Spatial Externalities, 66 LAND ECON. 341, 348-52 (1990) [hereinafter Integrating Land-Value Taxation]. Some have levied similar accusations over the participation of then-councilman Bill de Blasio in the multi-million dollar CBA negotiated as part of the Atlantic Yards development in Brooklyn, New York. One of the leaders of a community group opposed to the development expressed that de Blasio “never criticized the deeply flawed process that gifted a complete zoning override and 22 acres of valuable Brooklyn real estate to a single developer without any vote or any bidding process.” See Dana Rubenstein, Bill de Blasio, Development Pragmatist, CAPITAL (Aug 30, 2013). Rubenstein notes that the developer’s promise to provide union-construction jobs and 2,000 units of below-market housing was what secured de Blasio’s support, notwithstanding substantial neighborhood opposition to the project. Id.

300 See, e.g., Hills & Schleicher, Balancing the Zoning Budget, supra note 292 at 92-93; Karkkainen, supra note 261 at 56-57.
otherwise be reasonable demands for compensation in the service of gaining rents for a more diffuse constituency of voters.

Several scholars who have studied direct voter participation in zoning processes have noted the challenges associated with weighting the preferences (influenced by the perceived costs) of different community constituencies in the zoning process. Nicolaus Tideman, for instance, proposed a vote-weighting system tied loosely to a given voter’s geographic proximity to a proposed development. 301 Tideman recognized that when a broad community of individuals participates in site-specific land use decisions, there is a decided risk of inefficient outcomes when the majority of participants favor the use, but the adjacent landowners most acutely experience the costs of the project’s externalities with limited compensation based on the amenities produced by the project. 302

In the case of the Newhallville-Amistad CBA, the process was designed specifically to draw out broad consensus on what types of benefits the project should offer, but with little regard to the immediate impact of the projects on those most likely to experience a discrepancy between, on one hand, the amenities produced by the project along with the benefits secured by the CBA, and on the other, the direct externalities experienced as a result of being located close to the school. Thus, while the CBA information collection process may be adept at capturing the most salient points of

301 See Integrating Land Value Taxation, at 353. Tideman proposes two possible methods of improving on the “majority rule” default option in land use regulation: (a) weighted voting (with weighting based on the projected discrepancy between the presumed benefits and presumed costs that each neighbor would receive as a result of the project); and (b) a demand-revealing process, which would force neighbors to generate a price they would be willing to pay to either have the development approved or rejected (with whatever side wins having to pay the promised sum). As Professor Dan Tarlock has noted with regards to Tideman’s weighting proposal, “the beauty of the Tideman solution is that the appealing democratic idea of consent ordinances, in which people directly express their preferences, can be combined with efficiency promoting constraints to insure that voting schemes do not simply become an occasion for one group to shift the costs of amenity production to another group.” See Tarlock, supra note 296 at 44 (commenting specifically on the first iteration of this concept in Tideman’s unpublished Ph.D. dissertation).

302 See id. at 350.
agreement among a large number of community members, it appears a poor vehicle for sorting and ranking the price preferences associated with both benefits and externalities. A community may appear unified in its support for demanding a living wage guarantee from a developer. But without pricing and aggregating that preference, and ranking it against the prices placed on the project’s disutility, the CBA process may bias widely-shared preferences (regardless of price) over narrow (but highly valued) preferences related to parking mitigation, use restrictions, or requirements that the school install and manage trash receptacles. In terms of transaction costs, this eases the costs associated with the former constituency, while increasing the friction associated with the latter.

Surely, the allegations levied by the GNHCA—that the group was physically barred from participation in the final negotiations—only adds to the concern that the ultimate agreement may not have resulted in an efficient allocation of development rights. For although the incentives of the CBA require broad participation, the CBA is not effectively designed to assess, balance, or mediate between competing neighborhood preferences when only a fixed amount of benefits may be extracted from a developer. In the end, however, the GNHCA tempered its obstreperousness, and while Rev. Boise Kimber vocally registered his dissent during the final hearing before the Board of Alderman, the GNHCA—for whatever reason—decided not to seek additional concessions from Achievement First, either by attempting to negotiate a side-deal, or by seeking its very own CBA on behalf of a constituency not well-represented in the deal brokered by CCNE and the two Newhallville alderwomen.304

C. Procedural Fairness

303 See GNHCA Dec. 11 Press Release, supra note 244.
For several weeks now we have been warning that the process to sell the vacant Martin Luther King School on Dixwell Avenue was an anti-democratic closed process that essentially shut out the people most affected by the sale, the neighbors who live adjacent to the site. […] The mystery behind all of the clandestine closed-to-the-public meetings is that the union funded Connecticut Center for a New Economy (CCNE) has been running the show since the summer. Achievement First, the unions AFSCME and UNITE HERE, and Alderwomen Fosky-Cyrus and Clyburn were all there behind the closed and union guarded doors. There has been no sign of the neighbors.305

The anger and vitriol of the GNHCA in the wake of the December 5 meetings between Achievement First and the negotiating coalition pointedly captures the concern that many scholars have voiced regarding the possibility of process-based failures in the course of negotiating a CBA. Specifically, that the private nature of the agreement limits the ability of outside bodies to oversee and regulate on not only the “what” but the “how” of the negotiation process. That CBAs may, in practice, fail to adhere to the objective ideals of transparency, inclusiveness of participation, and representativeness in negotiations, has been one of the instrument’s most well documented criticisms.306 Julian Gross, a major champion of CBAs, has gone so far as to propose a definition of CBAs that “would limit its use to describing agreements that reflect the essential values of past CBAs: inclusiveness and accountability.”307 Although Gross proposes that any “agreement or document that does not replicate these key attributes…should not gain

305 GNHCA Dec. 11 Press Release, supra note 244.
307 Gross, supra note 65 at 36. Gross writes that “encouraging careful use of the term CBA is much more than an abstract, academic effort. As is vividly illustrated by recent New York processes [e.g., the Bronx Terminal Market CBA, the Yankee Stadium agreement, and the Columbia University agreement], the CBA concept is at risk of being co-opted and utilized to develop support for controversial projects, without providing the independent legal enforcement rights and community engagement that are hallmarks of successful CBAs.” Id.
credibility from association with them,“ the reality is that there exists, at this stage, no external mechanism to ensure that CBAs adequately adhere to these ideals. Nevertheless, champions of CBAs continue to extol their virtues as flexible, participatory, and inclusive land use devices that improve upon the government-run status quo. 

Because CBAs (a) have been engineered specifically to avoid the preemptive force of the National Labor Relations Act, and, as a result (b) entrust private coalitions with the authority to enforce the agreement, they are uniquely situated to receive all the upside benefits of judicial review (contract enforcement) while avoiding any downside risk of judicial review (no process-based review of private contract negotiations). In short, linguistic constraints may, at this point, be the only method of ensuring CBAs are negotiated without derogating from the values guaranteed by an administrative process checked by judicial review. While CBAs may offer certain participatory advantages over the standard regulatory analogues, the Newhallville-Amistad CBA illustrates how process values may also be undermined by the methods through which negotiating committees gain and maintain leverage over developers.

1. Process Values

Where a government, by its decision, seeks to impose land-related costs on property owners on a parcel-by-parcel basis, the Supreme Court has demanded certain minimum procedural guarantees to satisfy the demands of Constitutional due process.

Two analogous property tax decisions in the early part of the 20th century framed the

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309 See, e.g., Marcello, supra note 67 (“CBA negotiations can restore a measure of balance [in the public planning process] by empowering the community to participate meaningfully in the planning process through a direct dialogue with developers”).

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Court’s approach to procedural due process, articulating a framework through which procedural guarantees increase in inverse relationship with the granularity of a particular government decision-making process. In *Londoner v. Denver*, the Court held that due process entitled property owners disputing a particular tax assessment not only to notice and an opportunity to submit objections in writing, but also an opportunity to be heard in some form of individuated adjudicatory process. In contrast, where a tax assessment was levied equally upon all property owners within a municipality, as in *Bi-Metallic Investment Co. v. State Bd. of Equalization*, the due process clause did not furnish all individuals with a constitutional guarantee of a right to be heard in matters “in which all are equally concerned.”

Translating these rough contours of procedural due process into the particularities of land use regulation, scholars have understood several important interests to be buttressed by process-based requirements. In addition to helping facilitate an

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311. *Id.* at 385-86.
312. 239 U.S. 441 (1915).
313. *Id.* at 445. The Court in *Bi-Metallic* contrasts its decision in *Londoner*, noting that in that case “a relatively small number of persons was concerned, who were exceptionally affected, in each case upon individual grounds, and it was held that they had a right to a hearing.” *Id.* at 446. Note that what process is due may shift depending on whether the decision-making is characterized as “legislative,” “adjudicative,” or “quasi-judicial” in character. See Ellickson & Been, *supra* note 42 at 358 (describing different jurisdictional approaches to extending cross-examination rights for participants in zoning hearings).
314. Over the ensuing century, the Court filled out the meat of the procedural due process analysis, identifying specific indicators that the Court viewed as suggestive of reasonable or reliable decision-making. At its core, this included “notice and opportunity for hearing appropriate to the nature of the case.” *Cleveland Bd. of Ed. v. Loudermill*, 470 U.S. 532, 542 (1985) (“An essential principle of due process is that a deprivation of life, liberty, or property ‘be preceded by notice and opportunity for hearing appropriate to the nature of the case.’”) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950)). The constitutional floor of due process appeared to require, at a minimum, adequate notice, *see Mathews v. Eldridge*, 424 U.S. 319, 348 (1976), appropriate timing of the hearing, *see Armstrong v. Manzo*, 380 U.S. 545, 552 (1965), and impartiality of the decision maker, *see Goldberg v. Kelly*, 397 U.S. 254, 271 (1970). However, *Mathews* altered the method by which due process requirements would be evaluated by pitting the individual’s interest in a particular entitlement against the public interest in accurate adjudication and the administrative costs of such accuracy, along with the likelihood of erroneous deprivations of the given interest that might be effected with inadequate procedural guarantees. *Mathews*, 424 U.S. at 335.
efficient outcome, process values also regard as significant the representational and dignitary interests of both landowners and interested neighbors.\(^{315}\) Impressing upon citizens a sense that the decision has been achieved in a fair manner, process increases the political legitimacy of the body issuing the decision and increases the acceptability of the result.\(^{316}\) In some circumstances, states have written specific procedural requirements into state and local zoning acts that exceed the constitutional floor of due process.\(^{317}\) And numerous local ordinances specify the procedures and criteria by which more flexible land use decisions—such as development agreements and conditional zoning schemes—are to be finalized.\(^{318}\)

Professors Mandelker and Tarlock argue that judicial review of the procedural guarantees present in any given decision may serve as a reliable criterion for gauging the “reasonableness” of that decision.\(^{319}\) Specifically, a “process-based approach” to judicial review of local land use decisions may help “ensure that decision makers do the two things that are most likely to suffer in community politics: careful consideration of the relationship between individual decisions and the future form and composition of the community and particular attention to voices most likely to be ignored in the

\(^{315}\) *Developments in the Law—Zoning and Procedural Due Process*, 91 Harv. L. Rev. 1502, 1505 (1978) (“The representational function…relates due process directly to the substantive rules of decision by promoting debate over the merits and correct interpretation of the rules themselves, [whereas…] the dignity function is not concerned with the individual's right to argue for a different outcome in his particular case. Instead, participation is required because human dignity mandates consultation with an individual prior to taking any action vitally affecting his interests.”)


\(^{317}\) See Ellickson & Been, *supra* note 42 at 358.


representative government.” Where citizens perceive their interests are at stake, expressing those preferences—either directly in the form of testimony at hearings, or indirectly through the ballot box—is an act at the core of democratic processes.

Whether CBAs enhance, detract from, or otherwise furnish process values analogous to those provided under a government-supervised regulatory process may help inform the evaluation of CBAs as a tool designed to achieve responsible development outcomes. But before undertaking such an analysis, a brief dicussion into federal labor law and the engineering of CBAs is in order.

2. Labor Law and the Structural Incentives of CBAs

Two attributes of modern labor law—namely, an incredibly broad federal preemption scheme, and labor law’s sanctioning of (and willingness to enforce) private ordering between labor and management—have both motivated and made feasible several of the innovative leverage and bargaining strategies of the modern labor movement. The breadth of federal labor preemption as interpreted by the Supreme Court has effectively barred all but the most minute of state and municipal experimentation in the area of labor-management relations. Labor scholars have long condemned this

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320 Id. In practice, many regulatory decisions are highly discretionary and frequently unpredictable, which has resulted in numerous calls for procedural reforms in state zoning legislation. See, e.g., Daniel R. Mandelker, Model Legislation for Land Use Decisions, 35 URB. L. AW. 635, 635 (2003).
321 See Been, CBAs supra note 31 at 21 (discussing the importance of democratic electoral politics as an important check on the accountability of local decision makers).
322 For an analysis of whether CBAs promote efficient land use decisions, see discussion supra Part IV.B.
324 See Sachs, supra note 132 at 1164-69; Robert Rachal, Machinists Preemption Under the NLRA: A Powerful Tool to Protect an Employer’s Freedom to Bargain, 58 LA. L. REV. 1065, 1066-67 (1998). There are three primary zones of preemption under federal labor law. First, Garmon preemption grants exclusive jurisdiction to the National Labor Relations Board (NLRB) to hear disputes over “unfair labor practices”
state of affairs, noting that the expansiveness of federal preemption has curtailed progressive local solutions to a failed federal labor regime—a regime that insufficiently protects collective bargaining rights and, more recently, has failed to keep pace with the shifting dynamics of an increasingly knowledge-driven economy.\textsuperscript{325}

In response to these perceived failures, unions developed the concept of “comprehensive” or “corporate” campaigns, seeking to link particular union organizing goals with policy goals or reform objectives of interest to a broader community outside of the immediate workforce.\textsuperscript{326} The union first identifies ways in which a target employer might be subject to control by external regulatory forces—for instance, workplace safety issues, environmental compliance, or compliance with permitting or zoning laws. By forming alliances with a particular coalition of interested activists, the union exerts


\textsuperscript{325} \textit{See} Benjamin I. Sachs, \textit{Labor Law Renewal}, 1 HARV. L. & POL’Y REV. 375, 376-77 (2007). Sachs describes the innovations of the modern labor movement as resulting from an inflexible, rigid, and ossified legal regime that blocks the traditional methods of collective bargaining. \textit{Id.} at 377. One of the new forms of labor law, he argues, is through private negotiated agreements, \textit{id.} at 380-82, which he believes are “[o]ften (inaccurately) grouped together under the moniker of ‘neutrality and card check agreements,’” \textit{id.} at 378.

\textsuperscript{326} \textit{See, e.g., CHARLES R. PERRY, UNION CORPORATE CAMPAIGNS} (1987); \textit{JASON WILLIAM COULTER, THE THEORY AND PRACTICE OF UNION CORPORATE CAMPAIGNS} (1997) (unpublished dissertation); Charlotte Garden, \textit{Labor Values Are First Amendment Values: Why Union Comprehensive Campaigns Are Protected Speech}, 79 FORDHAM L. REV. 2617, 2621-23 (2011); Herbert R. Northrup & Charles H. Steen, \textit{Union “Corporate Campaigns” as Blackmail: The RICO Battle at Bayou Steel}, 22 HARV. J.L. & PUB. POL’Y 771 (1999). Garden describes three particular ways in which these campaigns differ from traditional labor organizing tactics: “[f]irst, they move the locus of the dispute from the plant floor or the picket line out into the community and sometimes across state and national borders. Second, they involve both labor unions and other community, religious, and activist organizations and thus rally a broad base of support that goes beyond labor’s immediate constituency. Third, they move away from traditional labor rhetoric and include the concerns of the civil rights, environmental, and consumer protection movements, among others, which sometimes conveys the impression that those organizations—and not the labor union—are the driving force behind the various rallies, press releases, and other campaign events.” \textit{Garden}, 79 FORDHAM L. REV. at 2622.
pressure on such regulatory bodies to increase scrutiny on the employer. As labor scholar James Brudney has observed, the union thus “either on its own or with its allies, seeks to exert regulatory pressure on the target company by advocating for or initiating agency action addressed to actual or reasonably believed company violations of federal occupational safety, environmental, or securities laws, and of state or local zoning laws.”

To gain leverage, the labor groups make clear their willingness to abandon or relent in their advocacy efforts, contingent upon the employer’s willingness to participate in a private agreement with the union—typically requiring the employer to agree to a method of organizing that departs from the NLRA-sanctioned method of secret ballot elections supervised by the NRLB. Provided the pressure is sufficient to entice the employer to capitulate, any private agreement negotiated between the union and employer is binding and enforceable in federal court under section 301 of the Labor Management Relations Act (LMRA). Such agreements, however, must remain

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328 See Brudney (RICO), supra note 327 at 743-44 (observing that in addition to its advocacy and pressure strategies, “the union signals that the campaign need not continue if the company acquiesces to the union’s labor relations objectives—to enter a neutrality agreement setting ground rules for an organizing drive, to recognize the union once it has obtained a card majority, or to return to the table to bargain for an extension or modification of existing collective bargaining arrangements.”). Neutrality agreements—private agreements made between a union and the employer—generally stipulate (a) that the employer will remain “neutral” during a union organizing campaign; (b) that the employer will refrain from demanding NRLB supervision of the campaign; and (c) that the employer will recognize the union if a simple majority of the union employees sign a card authorizing the union to negotiate on the employee’s behalf. Compare Brudney, supra note 37 (arguing in favor of neutrality and card check on both normative and legal grounds); and Benjamin I. Sachs, Enabling Employee Choice: A Structural Approach to the Rules of Union Organizing, 123 HARV. L. REV. 655 (2010); with Cynthia Estlund, Freeing Employee Choice: The Case For Secrecy In Union Organizing And Voting, 123 HARV. L. REV. FORUM 10, 15-20 (2010) (elaborating on and discussing concerns raised by critics of card check that indicate the “cajoling” of individual employees at the moment of signing an authorization card may pose issues associated with employee’s freedom to choose whether or not to support union organizing efforts).  
exclusively private—and any participation by a state or local government body in the agreement risks the possibility that, if litigated, the agreement may be preempted as an impermissible interference by state and local authorities on the exclusive field of federal labor law.\(^{330}\)

Community Benefits Agreements are merely one species within the broader genus of corporate campaigns. Motivated by a need to circumvent the ossified federal labor regime, unions focus on the chokepoint of land use permitting and rezoning processes, leveraging their ability to mobilize either mass support for or mass protest against an employer’s desired land use proposal to secure a collateral benefit: more favorable rules with which to engage in union organizing.\(^{331}\) From a structural perspective, CBA proponents have crafted the instrument to dodge the federal labor law preemption regime.

By making clear that one subset of the union’s conditions are a necessary predicate for union support (namely, a private agreement defining the rules of a particular union organizing effort), but excluding such sub-agreements from the four corners of the

\(^{330}\) See supra note 324 and accompanying text. It is worth noting, too, that under recent NLRB precedent, a public charter may, like a private employer, be governed by the provisions of the NLRA and LMRA. See Chi. Math. & Sci. Acad. Charter Sch., Inc., 359 N.L.R.B. 41 (Dec. 14, 2012) (holding that a public charter school, operated by a charter management organization, was not a political subdivision or instrumentality under the NLRA). As such, the provisions of federal labor laws that sanction private ordering may apply with equal force to public charter schools. The precedential value of this decision, however, has been called into question by the D.C. Circuit’s recent opinion in Noel Canning v. N.L.R.B., 705 F.3d 490 (D.C. Cir. 2013) cert. granted, 133 S. Ct. 2861 (U.S. 2013).

\(^{331}\) See Sachs, supra note 132 at 1179-80 (describing community benefits agreements as “tripartite” labor lawmakering, through which unions leverage the “benefit” of a regulatory decision favorable to the employer in exchange for a private union-employer agreement on union organizing); Gross, supra note 65 at 38 (noting that “community groups have only one real source of leverage in CBA negotiations: their ability to publicly support or oppose a proposed project.”).
CBA itself, unions achieve two key objectives. First, the union-employer agreement enforceable under section 301 of the LMRA. Second, the agreement is not voidable on grounds of federal preemption. In addition, the growing trend of “private” CBAs (as opposed to rolling the negotiated benefits into public development agreements) enables the negotiating coalition, rather than the local government, to leverage the enforcement power of courts to police the agreements for any breach by the developer. Uniquely, a CBA enables a union to evade judicial review of the mechanisms used to negotiate a CBA, while nevertheless using the threat of judicial review—on behalf of the broad set of CBA beneficiaries—to ensure enforcement of the terms of the CBA itself.

3. The Newhallville-Amistad CBA and Process Values

The Newhallville-Amistad negotiations—along with the controversy that clouded the CBA’s conclusion—illustrate both the advantages and structural risks that CBAs may pose to “process-values.” Of course, many of the factors present in this particular negotiation are context dependent, such as the domination of labor-backed politicians in New Haven’s board of aldermen, and the fact that alderwoman representing the affected ward also happened to serve as head of the relevant aldermanic subcommittee. Nevertheless, the shape and trajectory of the negotiations are sufficiently filled in to evaluate whether, in fact, “the CBA negotiation process helps to address [the problems of seeking and responding to community input, particularly for marginalized communities]

332 See Sachs, supra note 132 at 1203 n.260 (noting that, in the case of the Yale-New Haven Cancer Center agreement, the development agreement negotiated with the city “was silent with respect to the union-employer agreement on organizing rights,” and that, similarly, the Hollywood and Highland Development Agreement specifically enumerated the benefit commitments that would flow from developer to the community, but excluded any discussion of the negotiated card check and neutrality commitments).
333 See Meyerson, supra note 229; Paul Bass, For New Majority, Campaign’s Just Beginning, NEW HAVEN INDEP. (Nov. 25, 2011) (reporting that Brenda Foskey-Cyrus and Delphine Clyburn were two out of 18 successful candidates for aldermanic seats backed by UNITE-HERE locals 34 and 35).
334 See supra Part III.
by providing a forum for many interests in an affected community to be addressed through real, substantive, detailed negotiations a process not remotely replicated in public hearings or through the media.”

From the perspective of community engagement, it can hardly be doubted that the additional meetings organized by the Newhallville alderwomen—in concert with CCNE and Achievement First—augmented the nominal notice and hearing requirements mandated by New Haven’s municipal charter for enacting municipal orders. Over the six-month period leading up to the December 17, 2012 vote before the Board of Aldermen, alderwomen Foskey-Cyrus and Clyburn admirably canvassed the neighborhood, not only soliciting individual feedback on the nature of the project, but also encouraging individuals to show up to Community Management Team meetings in which the broad outlines of the CBA began to take shape. Because a coalition’s influence depends on its ability to gather and organize a broad swath of community voices, the proactive nature of these solicitations portends well for ensuring all potential adverse effects of the development are raised, aired, and discussed within a

335 Gross, supra note 65 at 38 (noting that “laws concerning public notice and participation are sometimes poorly enforced, and official public hearings are often held during the workday”); see also Camacho, supra note 254 at 360 (discussing the inadequacy of the current “bilateral negotiation process” between developers and local governments, and its failure to legitimate land use decisions by involving a broader set of affected stakeholders).

336 See NEW HAVEN, CONN., CODE OF ORDINANCES, tit. 1, Art. IX., § 41 (Municode 2013) (“All ordinances shall be submitted to the board of aldermen, referred to and reported by a suitable committee after public hearing, printed in the journal for a first reading, and enacted upon second reading which shall take place at least one week after the first reading. The second reading of ordinances cannot be waived or dispensed with. All other measures (resolutions, votes, orders) shall follow the same procedure for legislative action as ordinances, except that, upon unanimous consent, immediate action may be taken, or upon receipt of a special message from the mayor declaring that the measure is of an emergency nature and that immediate action is necessary, the second reading may take place upon the same day as the original reading, and the printing of the same dispensed with.”).

337 Interview with Reshma Singh (Oct. 2013), supra note 201; interview with Brenday Foskey-Cyrus, supra note 208.

338 See, e.g., Gross, supra note 65 at 38; Frank, supra note 308 at 253-54.
broader community of stakeholders—especially those voices not well represented by
minortitarian special interests.339

Nevertheless, several red flags were raised during the course of the negotiations
over 580 Dixwell, casting doubt on the perceived fairness, representativeness, and
transparency of the bargaining process. First and foremost, arguably one of the
fundamental conditions proffered by labor interests was excluded from the agreement:
the labor neutrality and card check agreement for security and cafeteria workers.340 As
was the case with the Yale-New Haven Cancer Center CBA, a core concession required
by labor interests to secure their support was eliminated from the document
formalizing—for public consumption and comment—the scope of the agreement.341 The
mere fact of its exclusion, even if motivated predominantly by the goal of avoiding
NLRA preemption,342 undermines the claim that the CBA negotiation process either
improves upon or replicates analogous transparency requirements demanded by
governmental processes. To make matters worse, the school’s agreement to grant
$150,000 in support of “youth enrichment” programs—arguably one of the costliest
elements of the deal—was similarly excluded from the final, public LDA. Finally, public

339 See supra note 288 and accompanying text. But see Musil, supra note 35 at 847 (analyzing results of a
survey of community members who had previously participated in a CBA between 2000 and 2010, noting
that “[s]urvey participants did not demonstrate uniform ratings of how CBAs improve the development
process” and that, “with the exception of the assurance of zoning changes for the project, the responses had
high levels of variance. The responses to this question in the survey betray the community activism in the
CBA and organizing literature that promotes the benefits of CBAs. Respondents clearly did not strongly
agree on the specifics of how CBAs improve development.”) Nevertheless, when asked how CBAs
improve the development process, respondents most frequently answered: “increases public participation
on development outcomes.” Id.
340 See MacMillan, supra note 250 (reporting that “custodial and cafeteria workers will be unionized” at the
new school as part of the deal); Interview with Reshma Singh (Oct. 15, 2012), supra note 201 (confirming
the existence of the neutrality and card check agreement); 580 DIXWELL LAND DISPOSITION AGREEMENT,
supra note 156 (the formal documents filed with the municipality make no mention of the neutrality and
card check agreement).
341 See Sachs, supra note 132; note 332 and accompanying text.
342 See supra note 332 and accompanying text.
copies of the agreement were not available until December 17, well after the deal had been solidified among the negotiating parties. 343

From the perspective of transparency ex post, unless a particular condition is included in the final CBA (which in this case was appended as an annex to the land disposition agreement), its existence is effectively written out of the public record. For CBAs that are sanctioned or otherwise approved by public officials, any such omission is problematic. Electoral consequences that may flow from a given alder’s vote on the land disposition agreement is likely to be evaluated only by what is in the record; deals that are only “informally” part of the CBA negotiations—existing merely in the penumbras of the final product—provide no assistance for voters seeking to hold government officials to account for their policy choices.

Additionally, the disappearance of these conditions undermines transparency ex ante by making it appear that these conditions are not part of the comprehensive package. By making clear to the developer that these conditions are, in effect, the table ante necessary to begin negotiations, the interest groups supporting these conditions make them non-negotiable sub silentio. Unlike the other benefits that are publicly documented, any debate over the inclusion or exclusion of these specific benefits in the final package is unlikely to be held in any truly public setting.

A second, and related, concern is the representativeness of the negotiating committee—both during the negotiations and after the fact. The final negotiating committee for the “public” elements of the CBA comprised eight signatories—two of whom were the alders from Ward 20 and 21, with the remainder consisting of individuals

343 See supra notes 238-247 and accompanying text.
who were “members of the community.” News reports, however, indicated that other individuals who were not signatories to the agreement played a key role in the negotiations. For instance, Barbara Vereen, an organizer for UNITE-HERE Local 34 and volunteer for CCNE reported to media shortly after the final meeting on December 3, 2012, that she had been a continuous presence throughout the six months of negotiations. Yet her name is conspicuously absent from any of the public documents contained within the LDA. Additionally, while CCNE sought to minimize its role in negotiations, a CCNE staff member eventually confirmed in a written statement that CCNE was involved in the negotiations, but only because Achievement First refused to sign a CBA with an unincorporated organization. Whether this justification was true at the time, neither CCNE (as a corporate entity) nor any member of CCNE was included as a signatory to the executed CBA appended to the disposition agreement.

Whether or not the negotiations were compromised by the participation of individuals with overt interests in a particular outcome, the omission of these individuals from the public record has clear risks. As has been noted by courts scrutinizing land use

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344 Interview with Brenda Foskey-Cyrus, supra note 208; 580 DIXWELL LAND DISPOSITION AGREEMENT, supra note 156.
346 See Bass, supra note 245.
347 See Achievement First and Newhallville Are Showing Our City How Development Can Benefit Everyone, CONNECTICUT CENTER FOR A NEW ECONOMY (Dec. 19, 2012) (depicting the agreement as being negotiated between Achievement First and the “Newhallville community,” and reporting only that CCNE “will review the agreement annually and provide a written report to the parties”).
348 See Thomas MacMillan, Zoners Advance MLK-Amistad Sale, NEW HAVEN INDEP. (Dec. 12, 2013). In a statement emailed to the New Haven Independent, Renae Reese, Director of CCNE, confirmed that:

the organizing committee members from Newhallville (called Newhallville Rising) approached the CT Center for a New Economy (CCNE) to be their partner in the process of negotiating a Community Benefits Agreement (CBA) with Achievement First. The reach out came because Achievement First indicated to Newhallville Rising that since they were an unincorporated group, Achievement First would not be able to sign a CBA with them but only with an incorporated organization. We have been at the table ever since. CCNE is a 501(c)(3) not-for-profit organization.

Id.
deal-making by public officials, where participants in a decision-making process purport to represent a broad community, the appearance of reciprocal benefits between negotiating parties conveys the abandonment of independent representation for a broader constituency. Furthermore, the decision to stay out of the public eye makes scrutiny of the process far more difficult; if the public signatories are not the ones responsible for the outcome, to whom are dissatisfied citizens supposed to complain?

Scholar Vicki Been has observed that in part because they are private, CBAs have no mechanism to ensure that the signatories are representative of the impacted constituencies. The harm is particularized, however, when the CBA negotiators convey the patina of representativeness but the underlying reality is far different. If the CBA process is viewed by the ultimate decision makers—in this case, the Board of

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349 For example, the Supreme Court of North Carolina, in reviewing the practice of conditional or contract zoning, noted that such reciprocal bargains “[are] objectionable because [they] represent[] an abandonment on the part of the zoning authority of its duty to exercise independent judgment in making zoning decisions.” Chrismon v. Guilford Cnty., 370 S.E.2d 579, 593 (N.C. 1988). See also Wegner, supra note 318.

350 Of course, a valid response to this concern is that the CBA need not be the only private agreement negotiated with the developer. Julian Gross notes that “the existence of a coalition trying to negotiate a CBA does not prevent other community interests or representatives from themselves making their views known, or even negotiating with the developer as well; there should be no official designation of certain groups as the only valid community representatives.” Gross, supra note 65 at 38. The assertion that other groups may simply negotiate on their own behalf, however, belies the contention that the CBA process is wholly representative of community interests. If the CBA is represented by only a subset of interests, the negotiating coalition should be transparent that such is the case. In addition, Gross’s contention ignores the collateral consequences of economic waste—i.e., the costs of developing a parallel negotiating infrastructure. Furthermore, he overlooks the structural disadvantages faced by such non-represented groups. If the value added by groups like CCNE and LAANE is to remedy the traditional collective action problems by furnishing a community organizing infrastructure, any non-represented group will be at a distinct advantage unless it is similarly armed with grassroots organizing capabilities. Thus, while dissatisfied groups are of course at liberty to pursue their own negotiations, without the grassroots infrastructure necessary to offer a tangible benefit to developers, such attempts are likely to be unsuccessful.

351 See Been, CBAs supra note 31 at 23-24.

352 Lance Freeman, Atlantic Yards and the Perils of Community Benefit Agreements, PLANETIZEN CONTRIBUTOR BLOG (May 7, 2007), online at https://www.planetizen.com/node/24335 (last visited Dec. 3, 2013, 2009) (“If the signatories to the CBA were simply viewed as another interest group, that might be ok. But the CBA is being presented as illustrative of the development’s community input. Public officials are posing for pictures with the developer and signatories to the CBA, giving the impression that the community had significant input into the planning Atlantic Yards. This is not necessarily the case.”); see Rubenstien, supra note 299.
Alderman—as a proxy for public planning and negotiation, the CBA might well bypass public mechanisms designed to ensure that no community voice is omitted from consideration. And in the case of the Newhallville CBA, allegations by Rev. Newman that he was forcibly excluded from participating in closed-door sessions casts additional doubt on any claim that the negotiating committee was truly representative of community interests.

Finally, that the absent or silent negotiators are aligned with labor’s objective of using CBAs to trade public support for union concessions only deepens the concerns of representativeness, transparency, and accountability for the ultimate outcome. Scholar Benjamin Sachs has noted that the model of “tripartite” lawmaking raises the specter of “a politics of indirection.” Specifically, labor advocates, unable to alter local labor rules because of federal preemption, re-channel what would otherwise be direct advocacy into the politics of zoning and permitting. This raises two particular concerns—first, such indirection undermines the democratic foundations of civic participation. Second, the incursion of labor politics on unrelated areas of law—here, the laws associated with land sale and regulation—results in opaque logrolling that renders legislators less accountable for their horse-trading.

While the CBA negotiations undeniably offered a breadth of consultative opportunities with members of the community that exceeded those mandated by law, the unapologetic exclusion of apparently representative community groups (namely, the

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353 See GNHCA Dec. 11 Press Release, supra note 244.
354 See Sachs, Despite Preemption, supra note 132 at 1207.
355 Id.
356 Id. at 1208.
357 Id. at 1209 (noting that “[w]ith labor lawmaking under preemption…only one part of the legislative deal takes place inside the legislature, and thus only one piece of the deal is transparent to constituents.”).
GNHCA), along with the agenda-setting role played by labor and labor-affiliated organizations, casts doubt on the procedural fairness of the CBA process. Ultimately, several important elements of the CBA were omitted from public record: the neutrality and card check agreement, the $150,000 grant commitment, and the names of influential negotiators with particular interests. Whether these omissions embody a tactical decision by labor advocates to avoid the preemptive force of the NLRA, or simply a strategy to ensure the negotiating committee appeared wholly representative of the community, much doubt remains as to the legitimacy of both the final outcome and the process by which it was obtained. This raises concerns not only of the steamrolling of the proprietary and dignitary interests of individual landowners, but also that no mechanisms currently exist to ensure the CBA matches or exceeds the procedural guarantees provided by a public regulatory scheme.

D. Distributive Consequences – The Horizontal (In)equity of CBAs

Responsible development advocates, in addition to portraying CBAs as procedurally superior to the standard regulatory apparatuses, also claim that CBAs offer a more distributively just outcome than the regulatory status quo. Countering the position that redevelopment itself is a community benefit by virtue of the additional taxes raised and services provided by the new project, CBA advocates highlight the distributional consequences that such projects might have on affected neighborhoods. In many cases, this may include both residential and retail displacement (affecting low-
income tenants and replacing higher wage jobs with low wage work), the conversion of public spaces, and other disruptive socio-cultural factors that may harm the neighborhood.\footnote{See, e.g., id. at 222, Ken Jacobs, \textit{Raising the Bar: The Hunters Point Shipyard and Candlestick Point Development Community Benefits Agreement}, University of California, Berkeley, Center For Labor Research And Education Issue Brief 3-4 (2012); Cummings, \textit{supra} note 30 at 67.} For many CBAs, where the target development concerns a city wide amenity such as a stadium, an airport, or large retail complexes, developers and consumers may benefit substantially from the project without internalizing costs that fall disproportionately on the immediately affected community.\footnote{See Wolf-Powers, \textit{supra} note 359 at 219.}

The redistributive aims of CBAs may be portrayed most clearly under the rubric of vertical equity.\footnote{In this way, CBAs have been analogized to exactions—a government-imposed requirement that developers provide funds or in-kind grants or dedications in exchange for permitting rights. \textit{See, e.g.}, Been, \textit{CBAs supra} note 31; Been, \textit{Exit supra} note 273 (noting that, among other uses, “exactions may be used either to redistribute wealth from the developer or its customer to others, or to prevent the developer from appropriating wealth created by the activities of local government. A community may impose exactions as a means of capturing part of the developer’s profit…. [or] a community may use exactions to recapture from the developer part of the value added to land by improvements financed by the community.”). This paper will not undertake an assessment of the vertical equity considerations of CBAs, and limits its exploration to only those issues of distribution among similarly-situated parties.} Yet the fact that CBA negotiations involve competition for benefits among specific interest groups raises the question of whether the CBA also promotes the interests of horizontal equity—that is, whether like groups are treated alike in this particular competition over how to allocate developer surplus once captured.\footnote{See id.; ELICKSON & BEEN, \textit{supra} note 42 at 628; Robert C. Ellickson, \textit{Suburban Growth Controls: An Economic and Legal Analysis}, 36 \textit{YALE L.J.} 385, 415 (1977) (portraying horizontal fairness as “requiring a person to bear a loss [when] he should be able to perceive that a general policy of refusing compensation to people in his situation is likely to promote the welfare of people like him in the long run.”).} As was the case with allocative efficiency, the structure of the CBA prioritizes the interests of constituencies who are most capable of influencing local land use decisions.\footnote{See \textit{supra} notes 292-295 and accompanying text.} Extrapolating from the case of 580 Dixwell, the CBA mechanism does not guarantee a horizontally equitable outcome between neighbors, particularly when groups seeking to
mitigate a project’s negative externalities compete for resources with groups seeking to promote redistributive aims.

Comparing the benefits package that ultimately prevailed with the package proposed by the GNHCA helps illustrate this conflict. The GNHCA proposal dealt almost exclusively with externality mitigation: privacy fences, time limitations related to lighting and noise, a residential permit parking system, garbage cans, and the like. In contrast, the prevailing package contained no mitigation benefits (with the exception of the provision requiring Achievement First to build a mural to honor the civil rights leaders portrayed on the original building). Ultimately, the latter set of interests won out, and despite public excoriation by Reverend Newman, the GNHCA elected not to push its agenda once the CBA had been signed.365

Fundamentally, the CBA as an instrument is normatively agnostic: the particular benefits that may be requested during a given negotiation will likely reflect the composition of the organizations advocating for its passage. I have argued, of course, that labor interests tend to predominate the landscape of current CBAs—and that their advantages as a form of “tripartite lawmaking” that escapes the preemptive force of federal labor law motivate their use by labor advocates nation-wide. But labor need not be the driving interest motivating the formation of a community coalition. However, because CBAs are valuable only when they can assure the developer of either (a) vocal community support, or (b) substantial forbearance from a potentially vocal opponent, when interests compete over the precise composition of benefits, the group that can assure the broadest support will be most attractive to the developer. Furthermore, whichever interest group has a mobilization advantage—as is often the case with labor

interests that possess community-organizing infrastructure—may be more likely to prevail in such a competition.

This problem is easily illustrated by imagining a developer who comes to the table with a budget of $100,000 to spend on community benefits.\textsuperscript{366} Three different interests groups propose three different benefits packages that are priced equally at $50,000. Package “A” consists of labor-related conditions, such as wage floors and neutrality and card check agreements. Package “B” consists of redistributive benefits, such as affordable housing guarantees and grant commitments to local youth organizations. Package C consists of nuisance-reduction measures, such as those described by the GNHCA’s proposed benefits package. If, as discussed above, the interests backing Package “A” make clear that their package is non-negotiable,\textsuperscript{367} the coalition will be forced to choose between packages “B” and “C”. Under the structural incentives of the CBA, the developer will prefer whichever package will guarantee the most support. If the interests behind Package “A” control the mobilizing and organizing infrastructure, they have the capacity to direct the process by which “B” is selected over “C” or vice versa. Fundamentally, “B” and “C” are interchangeable, and the give and take of the negotiation process will determine which group prevails.

A wrinkle arises when considering whether package A, B, or C in isolation would be permitted under the alternative land use regulatory process. Under this lens, Package “A” is impermissible under federal labor law.\textsuperscript{368} Package B would potentially fail under the Supreme Court’s \textit{Nollan/Dolan} jurisprudence for ensuring exactions are calibrated to

\textsuperscript{366} The hypothetical assumes that the $100,000 budget represents the threshold at which the developer’s surplus becomes too small to justify the investment.

\textsuperscript{367} See supra Part IV.C.3.

\textsuperscript{368} See supra Part IV.C.2.
offset development impacts.\textsuperscript{369} Package C, however, would likely fall comfortably within the zone of permissible conditions that may be imposed upon developers in exchange for permitting rights. These observations are not meant to suggest that any particular set of these benefits is more or less normatively superior based on their compliance (or lack thereof) with existing law.

However, to the extent that Package “C” proponents are unable to secure benefits that would likely be granted under the current regulatory regime, the results are inequitable. Under the current rules, there are few rights to redistributive benefits, but numerous rights possessed associated with mitigating the negative externalities of development. Thus, a CBA may promote horizontal inequity when non-rights holders obtain benefits at the expense of individuals who, in fact, have a right to compensation under the current allocation of property rules.

Horizontal equity may also be examined from the perspective of the developer, and under this rubric the mechanism appears quite fair. Here, too, the CBA proves to be normatively agnostic: CBA proponents have not identified “appropriate” and “inappropriate” targets of CBAs. Rather, they seek specific outcomes, regardless of the identity of the developer. That Achievement First was targeted suggests that CBAs do, in fact, treat all developers alike, and do not discriminate on the basis of corporate structure, motive, or service provided.\textsuperscript{370} Of course, the tool is flexible, and thus the identity of the developer may, play a role in determining whether a CBA is sought in the first place. Charter school detractors, for instance, may view the CBA as offering the collateral

\textsuperscript{369} See supra note 287 and accompanying text.
\textsuperscript{370} The Yale-New Haven Cancer Center CBA also supports the idea that CBA advocates seek particular outcomes—such as wage minimums, community contributions, or labor agreements—rather than targeting the identity of the developer.
advantage of placing an additional tax on independent charters. But without analyzing the data to see whether patterns of identity-motivated action does, in fact, occur, such motives are at this stage speculative at best.

E. A Coda: on Politics and Land Use Regulation in a Union City

Although helpful as an analytic framework, the normative evaluations discussed above come into sharper relief when presented against the backdrop of New Haven’s current political landscape. The current alignment of interests between the politically-dominant UNITE-HERE Locals 34 and 35, the union-backed members of New Haven’s Board of Aldermen, and the union-supported Mayor elect, Toni Harp, reflects a dramatically different political landscape for New Haven that may further undermine the purported participatory benefits of CBAs.371

A decade earlier, New Haven mayoral and aldermanic politics were fluid and dynamic, requiring alliances between key members of New Haven’s socio-cultural sub-communities. John DeStefano, serving as Mayor for twenty years beginning in 1994, formed bonds with key power brokers like Rev. Boise Kimber, an influential leader and clergyman within the black community372 and the Fuscos, a wealthy family within the Italian community.373 And as CCNE founder and union organizer Andrea van den Heever discovered, politics in 1990s New Haven required broad-based coalitions that were able to garner support from the powerful—but stratified—leadership of disparate communities within the city. Justice Alito, in his concurrence in the firefighters’

371 See Mary O’Leary, Toni Harp Winner in New Haven Mayoral Race, NEW HAVEN REGISTER (Nov. 5, 2013); Mary O’Leary, Labor Unions Back Toni Harp for New Haven Mayor, NEW HAVEN REGISTER (June 14, 2013); Meyerson, supra note 229.
372 See Paul Bass, Was He the Culprit? NEW HAVEN INDEP. (June 29, 2009).
discrimination case, *Ricci v. DeStafano*,\(^{374}\) went so far as to highlight Kimber’s role as “a politically powerful New Haven pastor and a self-professed ‘kingmaker.’”\(^{375}\)

By 2011, the scales had shifted dramatically. Dissatisfied with the comfortable relationship between the Board and the mayor’s office, union leaders funded challengers in fifteen different aldermanic seats, winning a veto-proof supermajority that allowed the Board to play a more aggressive role in setting the political agenda for New Haven.\(^{376}\)

Comparing the negotiations surrounding the Omni Hotel Development Agreement\(^{377}\) and the Yale-New Haven Hospital CBA\(^{378}\) with the negotiations over the Newhallville CBA, it seems clear that the nature of development-oriented, coalition-based advocacy has changed. In the case of the former, to build momentum for their advocacy platform, the unions required the assistance of a broad range of community groups, including the black clergy, civil rights and housing advocates, and other social justice organizations. The political quid pro quos offered mutual benefit and encouraged a broad-based, participatory process.

But CCNE and its funders have played the long game, cultivating a deep set of community ties that have since obviated the need to involve other purported power-brokers in city politics. The alleged steamrolling of GNHCA by CCNE over the 580 Dixwell negotiations revealed the limited value CCNE placed on securing the support of the black clergy.

With a veto-proof supermajority on the Board, the need for logrolling diminishes along with the need to maintain a broad set of alliances to advance a particular interest

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\(^{374}\) 557 U.S. 557 (2009).

\(^{375}\) *Id.* at 598 (Alito, J., concurring).


\(^{377}\) *See supra* note 123.

\(^{378}\) *See supra* notes 130-145 and accompanying text.
group’s political agenda. As demonstrated by Alderwoman Brenda Foskey-Cyrus’s last-minute decision to send the agreement back to the Community Development Committee—allowing a last-minute, closed-door session to iron out the contours of the CBA—the current political leaders are able to set the priorities and terms of these negotiations as they see fit.\textsuperscript{379} In the case of this union city, therefore, the chance that the Board will scrutinize the terms of a labor-backed CBA appear similarly unlikely.

V. CONCLUSION

The Newhallville-Amistad deal is but one iteration of a community benefits agreement, negotiated in a very specific political and historical context. As this paper has discussed, CBAs may take many forms—whether public or private, singular or multiple, transparent or opaque. There are, at present, few limitations or guidelines for determining how and under what circumstances CBAs should be used to supplement or circumvent the existing system of land use controls in any particular locality.

This dynamism is one of the chief virtues of the CBA, for it helps to erase the clear, but often arbitrary, lines determining what categories of benefits a locality may demand as a condition of granting development rights. And as CBA advocates have clearly articulated, the tool helps disrupt entrenched power dynamics in existing mechanisms of urban governance, giving greater power and control to disadvantaged classes of individuals who are often unable to make land use law work to their benefit.

But the salubrious effects of this instrument should not be overemphasized in order to obscure the risks that CBA bargaining—unconstrained by judicial or

\textsuperscript{379} Of course, politics are notoriously unstable. A backlash to the union supermajority has taken shape in the form of “Take Back New Haven,” a slate of democratic candidates aiming to challenge the new machine politics that have taken over New Haven since 2011. See, e.g., Paul Bass, New Slate Targets Labor “Machine”, NEW HAVEN INDEP. (June 30, 2013).
administrative review—may pose. A close look into the negotiating process underlying the Newhallville-Amistad CBA illuminates many of the concerns raised by land use scholars who remain cautious, albeit optimistic, about the potential this tool holds for future development projects. Because there are, at present, no legal mechanisms to scrutinize the process, the negotiations are prone to risk of capture by powerful interest groups. And I have placed great emphasis in this paper on the role that organized labor plays in biasing not only the content of the benefits themselves but also the structure the agreements take.380

As a result, the commendable goals of transparency, inclusiveness, and equity may be lost in service of particular pre-determined outcomes. When the needs of these powerful interests can motivate a developer to meet the needs of the broader community, so much the better. But such a claim, I believe, raises more questions than it answers. Who, in fact, constitutes the relevant “community”? Should all members be entitled to share in the developer’s surplus? Recognizing that resources are limited, which members of this community should be given priority over others if there is a conflict? And, finally, who should decide?

Because they are so new, localities are only beginning to grapple with how to manage these instruments. Some have argued for regulation, asking cities to re-exert control over the freewheeling negotiations of wholly private dealmaking.381 But by re-inserting government into the process, such regulation may well undermine the efficiency

380 Whether or not this is true, empirically, remains an open question. Any answers may help further our understanding of whether CBAs have vitality independent of these interests.
381 See, e.g., Michael A. Cardozo, Reflections on the 1989 Charter Revisions, 58 N.Y.L. SCH. L. REV. 85, 93 (2014) (suggesting that the New York City Charter Revision Commission might consider demanding all CBAs be incorporated into existing formal structures like the Uniform Land Use Review Procedure (ULURP), regulating their subject matter, or limiting the participation of city officials in their public capacities); David Schleicher, City Unplanning, 122 Yale L.J. 1670, 1707 (2013) (describing efforts in New York to solicit input by advisory neighborhood bodies as part of the ULURP process).
gains that this flexible tool provides. Others have suggested taking advantage of the free-market, using freedom of contract to insure the integrity of the process by way of a CBA “operating agreement.” Recourse to neoliberal correctives may help mitigate the current shortfalls of this mechanism, but there is no way to guarantee that such best practices will always be followed. Finally, some have advocated for eliminating the ability of land use decision makers to consider CBAs in reaching their decisions, even if an outright ban on CBAs is impractical.

At a minimum, the emergent popularity of these instruments should suggest discomfort with the existing regulatory regime. And it may well be that innovations in our current methods of land use controls may offer the best solution for addressing the concerns of disadvantaged groups without the concurrent risks that land use law has long sought to mitigate.

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382 See Marcello, supra note 67 at 663-64 (discussing the example of a CBA in New Orleans whereby coalition members, by executing an operating agreement, agreed to be bound to specific principles that minimized conflicts of interest, reduced the chance for side-deals, and a guarantee of transparency).

383 New York City Bar Association, The Role of Community Benefit Agreements in New York City’s Land Use Process (March 8, 2010) available at http://www.nycbar.org/pdf/report/uploads/20071844-TheRoleofCommunityBenefitAgreementsinNYCLandUseProcess.pdf (“It is our recommendation that the City announce that it will not consider CBAs in making its determinations in the land use process, will give no “credit” to developers for benefits they have provided through CBAs, and will play no role in encouraging, monitoring or enforcing the agreements. To the extent that the City wishes to consider CBAs outside of the land use process, such as in its decisions to grant subsidies or contracts to developers pursuant to its economic development program, it should set forth clear standards that a CBA must meet in order to be considered.”).
APPENDIX A

580 Dixwell Land Disposition Agreement, Exhibit B (Community Benefits Agreement)
COMMUNITY BENEFITS AGREEMENT

I. PURPOSE

The purpose of this Community Benefits Agreement is to provide for a coordinated effort between the Newhallville Community and Achievement First to maximize the benefits of the construction of a new high school at the site of the former Martin Luther King, Jr. High School at 580 Dixwell Avenue in New Haven. This Community Benefits Agreement agreed to by the Parties includes provisions for access to jobs for New Haven residents, increased access to AF Amistad High School, improvements to recruitment and retention of minority teachers, resources to the Newhallville community for youth enrichment programs, community access to the school, and community input on the design of the building.

II. JOBS

Achievement First commits to partnering with New Haven Works (NHW) to recruit, train and place New Haven residents into new positions that may become available in all Achievement First New Haven schools, including the newly constructed high school. As part of this partnership, AF will work specifically with New Haven Works (NHW) to identify and recruit potential teachers from underrepresented groups (Black, Latino, Multi-Racial, and first generation college graduates). Together, they shall work with the state’s universities to enhance recruitment efforts of candidates from underrepresented groups. This partnership will last for five years. At the end of that term, the partnership will be re-evaluated by both parties.

During the period of construction, Achievement First agrees to hold their Construction Manager (CM) and subcontractors accountable for achieving the goals for employing minorities, women, New Haven residents, apprentices (1st and 2nd year), and ex-felons. AF shall do this by holding monthly reporting meetings with the CM in which the CM will disclose its project employment data and that of all of its subcontractors. AF will then hold meetings every other month to share this data with Alderwomen Foskey-Cyrus and Clyburn and the Newhallville Management Team.

III. STUDENT ACCESS

Achievement First will offer ten seats in its 9th grade class to New Haven public school students (with an agreement for Achievement First and the Board of Aldermen to discuss and make recommendations after five years) who have not attended one of Achievement First’s middle schools through the New Haven Schools of Choice lottery. The new lottery-admissions students will be offered seats at Achievement First Amistad High School for the first school year that the high school is in the new facility.

IV. STAFF DIVERSITY, RECRUITMENT AND RETENTION

As part of Achievement First’s overall Diversity and Inclusiveness Initiative, Achievement First shall commit to the retention, engagement, and promotion of candidates who are Black, Latino and Multi-racial, and first generation college graduates. AF commits to the following tactical goals through this initiative:
a. 30% of finalist candidates identify as Black, Latino, Multi-racial, or first generation college graduates at their New Haven schools (teachers and leaders).
b. No difference in matriculation rate for Black and Latino candidates versus overall matriculation rate.¹
c. 5% increase over last year in applications from Black, Latino, and multi-racial teachers and leaders for 2013-14 and an additional 5% increase for 2014-2015.

VI. COMMUNITY ACCESS TO SPACE
Certain areas of the Premises will be available for community use when such areas are not being used by the School or AF. Because design and construction of the Premises is not yet complete, and the School does not know what amenities will be available on the Premises, the School will provide a list of the Usable Areas to the Alderperson for the ward in which the School is located. These Usable Areas will, at a minimum, include the gymnasium and the outdoor athletic field. The kitchen will not be considered a Usable Area due to sanitation requirements and liability concerns. All use of the Premises by Community Users shall be subject to applicable laws and school rules, regulations and policies, and, when appropriate, reasonable insurance and/or security protection.

Achievement First agrees to grant access to space to invest in community engagement in Newhallville. The Newhallville Management Team, the Wards 20 and 21 Political Committees of any political affiliation, and other community organizations shall have access to space in the newly constructed high school. Eligible Users are non-profit or other community organizations that have a primary address in New Haven, or an individual with a primary address in New Haven that desires to use the school for the benefit of the New Haven community and whose membership and/or mission is not inconsistent with legitimate concerns for the safety of students at the school. Such access shall be free of charge and include:
• A space able to hold up to 100 people when AF or the school is not using it.
• A conference room that holds up to eight people. Newhallville Leadership will have priority over Achievement First and/or the school for the usage of this conference room even during school hours.
• Full access to outdoor fields and the gymnasium when not in use by AF or the school, subject to reasonable limitations for facilities maintenance and seasonal or weather limitations.
• Parking in the schools’ parking lot for the usage specified during non-school hours and on the weekends when no Achievement First or school events are taking place.
• Usage of the schools parking lot by neighborhood entities during non-school hours and weekends.
• Access for high-risk events shall require a certificate of insurance in a reasonable amount unless determined to be unnecessary by Achievement First in its reasonable discretion.

¹ Matriculation rate is defined as the percentage of candidates who begin to work at Achievement First after receiving an official offer.
If there are more than four community events in a given year that require security, significant prep or clean up expenses (e.g., expenses in excess of $2,000 per event), Achievement First will have the right to charge for additional events only to recoup the costs of such security expenses, preparation and clean up.

Achievement First will create a summary of allowable and prohibited uses of the school to guide community use. A collaborative process will be used to determine the process for how community requests are granted. This process will include a building application, a reasonable timeline for making space requests of Achievement First or the school and allowing Achievement First and the school to prioritize community requests, and when appropriate, the required insurance coverage.

Additionally, the building will continue to be available as a voting and polling site for the Newhallville and Dixwell communities as it has in previous years.

VI. PHYSICALITY
AF agrees to establish a work of art that pays tribute to civil rights leaders as the former MLK site does. This piece shall be visible from the street. AF agrees to work with the Design Advisory Committee to advise the design of the artwork as long as a meeting of this committee can be arranged by January 15, 2013.

VII. GENERAL PROVISIONS
A. Enforcement Clause. The City of New Haven or The Board of Aldermen has the right to ask for a court order requiring Achievement First to honor the commitments contained in this agreement for as long as Achievement First is the operator of the AF Amistad High School.
B. Review Clause. The CT Center for a New Economy (CCNE) will review the agreement annually and provide a written report of that review to the Parties, the Board of Aldermen, and the City of New Haven.
C. Severability Clause. If any term, provision, covenant, or condition of this Community Benefits Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall continue in full force and effect.
D. Material Terms. All provisions and attachments of this Community Benefits Agreement are material terms of this Community Benefits Agreement.

ACHIEVEMENT FIRST, INC.

By: [Signature]
Title: Co-Founder & CEO
Date: December 17, 2012
NEWHALLVILLE RESIDENT MEMBERS OF THE NEGOTIATING COMMITTEE

Brenda Foskey-Cyrus  Date: 12-17-12
Delphine Clyburn  Date: 12-17-12
Jeffie Frazier  Date: 12-17-12
Geneva Pollock  Date: December 19, 2012
Oscar Havyarimana  Date: 12-17-12
Dennis Grimes  Date: 12-17-12
Tracy Martin  Date: 12-17-12
Sharon McCray  Date: 12-17-12

May 14, 2013 11:07A
RONALD SMITH
CITY CLERK
CITY OF NEW HAVEN