

To: **Somerville City Council, OSPCD**

From: Bill Valletta (Brickbottom resident)*

Date: 11 September 2022

Subject: **Citizen Comment on the Proposed Amendment of Ordinance #2018-10, concerning Community Benefits Agreements (CBA) and Neighborhood Councils (Agenda #214069)**

Introduction and Summary

I have read with interest the draft Amended Ordinance, proposed for Somerville Code Article IX, Section 7-220, which re-defines Community Benefits Agreements (CBA) and authorizes city recognition of Neighborhood Councils to negotiate such agreements. I have also listened to the meeting of 14 July 2022, discussing the shortcomings of the existing text. Because of its original focus on Union Square redevelopment, Ordinance #2018-10 is proving to be inapplicable to other neighborhoods and projects in the city today.

In order to understand the reasons for this limited applicability of the CBA mechanism and determine whether an amended Ordinance is needed, I have undertaken a detailed analysis of the existing Ordinance #2018-10, its origins and intended outcomes, its practical application at Union Square, its current status and the proposed new text. I am presenting this data and review to the City Council in a three section report, consisting of:

- (1) Summary and Findings
- (2) Main Report (analysis of each finding)
- (3) Appendices (substantiating data and statistics)

The following are the findings and summary conclusions of my report:

Finding 1: The concept of CBA was introduced to Somerville in 2015/2016 as an alternative methodology of neighborhood-level organization and citizen participation in planning and development project review.

Finding 2: As substantiating evidence for the CBA proposal, the advocates pointed to a list of projects in other cities and states that were using the method. This evidence, however, was incomplete and somewhat distorted and thus created an exaggerated picture of the legal strength and status, and usefulness of the method.

Finding 3: The city's own legal staff clarified Massachusetts law and recognized in it limits and weaknesses of CBA. They wrote the draft Ordinance #2018-10 ambiguously in order to avoid defining the Neighborhood Council as an agency with delegated city authority. They left out any reference to the CBA as a binding contractual or regulatory instrument, enforceable under city powers.

Finding 4: After adoption of Ordinance #2018-10, its application at Union Square gave rise to problems of interpretation and process. When these were worked out, they created a method of Neighborhood Council and CBA that was highly complex and time-consuming.

Finding 5: Simultaneously, the work of revising the Zoning Ordinance of 2019 became another source of clarification of status, substance and process of the Neighborhood Council and CBA

Finding 6: The final products of the process – the Union Square CBA and two similar agreements in Boynton Yards – contain a variety of useful elements, which refine and clarify some public benefits. However, the substantive results are more modest than the exaggerated claims made by the advocates and the CBA retain a fundamental ambiguity of status and enforceability.

Finding 6: Beyond Union Square (covering Boynton Yards), no other Somerville neighborhoods are using the CBA methods. Probably, the time, effort and complexity do not justify the potential results, which can be accomplished using the other simpler methods of conditional development.

Finding 7: The proposed Amendment to Ordinance #2018-10 does not respond effectively to the legal and practical problems detailed above. It does not solve the problem of the method's irrelevance and weak potential in other zones.

The experience at Union Square, Boynton Yards and in other cities has offered Somerville citizens, business entrepreneurs and advocates the choice of using a methodology, drawn from collective bargaining, as a way to participate in planning and development review. It is an alternative to the other methods of citizen participation, which mirror processes like legislative review, mediation or comprehensive planning.

The CBA process, under the existing Ordinance #2018-10, has been complex and time-consuming, requiring focused attention of citizens and access to leadership and technical skills. It has yielded agreements with many promises, written in the language of contracts, planning jargon and regulatory conditionality and covering multiple issues of public needs and visionary goals. The success of the model at Union Square and Boynton has occurred so far in the context of a strong economy and real estate market, including a steady flow of investment and competition for skilled labor in the construction trades and other technology sectors.

By contrast, in other cities, where weaker economic conditions have occurred, there can be found a record of failed promises, failed projects, developer/community and intra-community conflicts, adverse court rulings, and public disillusion.

Today in Somerville several neighborhoods (smaller than Union Square) are now facing more modest redevelopment projects in a likely future of weaker economic and real-estate market conditions. Nevertheless, the CBA advocates invite them to take on the burdens of Neighborhood Council formation, developer negotiation, self-discipline to avoid conflicts, and sustained future monitoring and oversight in order to gain only the ambiguous status of CBA promises.

What are the new elements of the amended Ordinance #2018-10 that might change this balance of a burdensome process for a weak outcome? We do not find them in the revised text. There is no resolution of the fundamental problem of the contractual/regulatory status of the CBA. Nothing in it will more strongly require the members of a Neighborhood Council to adhere to rules of transparency, conflicts of interest, ethics, accounting or audit. The complicated model of non-profit membership group organization is not simplified; instead the new text layers on more steps of “democratic” process – vetting, balloting, social media surveying, general membership reporting, periodic City Council reporting, etc.

For most neighborhoods in the city, the routine, alternative instruments of conditioned zoning, developer covenants and standard urban redevelopment agreements will provide the same outcomes with much less aggravation.

Trying to fix the weaknesses of Ordinance #2018-10 appears to be a futile activity that will simply pump up citizens’ expectations and lead to disappointment in the future. The City Council should reject this text and ask the staff to prepare a new version with a few simple paragraphs -- if a neighborhood wants to use the Neighborhood Council and CBA methods, they may create a standard not-for-profit entity and they must clearly understand that any resulting agreement with a developer will have limited legal status and no municipal regulatory force.

*Note: The author of this study has been a resident of Brickbottom for 24 years and is retired after a 40 years as an Urban Planner, Land Use and Municipal Law specialist.

Memorandum: The Proposed Amendment of Ordinance #2018-10, concerning Community Benefits Agreements (CBA) and Neighborhood Councils

By Bill Valletta, Brickbottom resident
11 October 2022

Finding 1: The CBA was introduced to Somerville in 2015/2016 as an alternative methodology of neighborhood-level organization and citizen participation in development project review.

The concept of a Community Benefits Agreement (CBA), negotiated by a Neighborhood Council, was introduced to Somerville when the city contracted with *LOCUS* consulting group to assist with planning for Union Square.¹ The city had already tried a variety of methods of public engagement and regulatory/contractual instruments for project approvals and these had provided some useful community benefits. (See Appendix 1 below) But their outcomes were considered by advocates and political leaders to fall short in three ways:

- They often did not allow the residents, enterprises and workers, most impacted by a development, to fully define the needs and preferences and to control key elements of the development “deals.”
- They did not capture for the public a sufficient portion of the property value gains or profits of development, even though it was the city planning, zoning and other public actions that made these gains and profits possible.
- The contributions and amenities that were realized from developers often did not get directed to the highest priority needs but went to programs and priorities set by city agencies, or to groups/contractors in other neighborhoods or sectors.

In order to remedy these perceived shortcomings, the new method of community participation was drawn from the labor law process of collective bargaining. It contrasted with the traditional planning/regulatory methods, which were adaptations of legislative process (expert studies, public hearings); of adversarial court process and mediation; or of political and electoral decision-making (polls and surveys, rallies, etc.) Key features of the new method would be:

- Creating a Neighborhood Council, open to membership by all persons in an impacted zone without discrimination, and vesting the negotiating responsibility in a team, elected from among the members;
- Formulating and signing with the developer a legally-binding instrument – the CBA – which the Neighborhood Council would have the power to itself monitor and enforce, independently of and in addition to the city’s regulatory powers.

¹ The coalition of groups and citizens, called *Union United*, was assisted by two national advocacy consulting entities – LOCUS: Responsible Real Estate Developers and Investors of Washington DC and the Sugar Law Center, based in Detroit. They were working under grant funding from the Barr Foundation of Boston.

At first, the proponents sought to draft a Zoning amendment, requiring any developer/applicant for a Consolidated Development Permit to negotiate a “binding CBA with an independent, representative community group.”² Then the discussion shifted to an Ordinance that would rest on the city’s urban renewal, subsidy and “deal making” powers in addition to zoning. Within either framework, however, the concept had an inherent legal paradox:

On the one hand, it would require the city to “delegate” or “recognize” the Neighborhood Council as a negotiating party with the project developer, separately from the city agencies and with less formal constraints of standard zoning/planning process. The Neighborhood Council would be free of such constraints as constitutional law “nexus” and various state-law rules of accountability – open meetings and records, board member conflicts of interest, etc.

On the other hand, the CBA was to be binding instrument, through which the developer’s promises would become enforceable under private contract law by the Neighborhood Council itself and also by city regulatory actions and court claims. Ideally, the agreed conditions and commitments could also be made to “run with the land” or the chain of control and thus cover successor owners, lessees and tenants in the future.

Finding 2: As substantiating evidence for their CBA proposal, the advocates pointed to a list of projects in other cities and states that were using the method. However, this evidence was incomplete and somewhat distorted and, thus, it exaggerated the strength, status and usefulness of the CBA method.

The consulting entity *LOCUS* and the advocacy group *Union United* were the primary groups that urged the Somerville Board of Alderman to enact a CBA Ordinance. An important part of their advocacy was the assertion that CBA’s had been successfully negotiated and enacted in 50 other cities around the country.³ They backed this claim with reports that made reference to development projects, which at the time were in various stages of planning, permitting or construction. (See Appendix 2 below) They also cited a draft CBA Ordinance that was then awaiting referendum ballot in Detroit. (See Appendix 3 below)

In the planning and legal studies at the time, there were warnings about the potential legal problems and practical weaknesses of the CBA mechanism.⁴ There is no evidence in the local public record that the Somerville Aldermen questioned the status of the model projects – whether their “success stories” were true or whether they were similar in size, building types, urban

² See Somerville Board of Aldermen Land Use Committee 26 October 2016 agenda #201843, and public testimony in favor of CBA, 29 November 2016 (#202235) 10 November 2016.

³ See Union Square Neighborhood Council Board (22 March 2018), *Community Input for a Community Benefits Agreement in Union Square*, submitted to the Somerville City Council, 28 June 2018 (Agenda Item #206293).

⁴ See, in particular, the American Planning Association (December 2015), *Community Benefits Agreements*, PAS Quicknotes, No. 59, www.planning.org/publications/document/9007654. See also Edward J Collins Center for Public Management at UMass (May 2013), *Understanding and Crafting Development Agreements in Massachusetts*, http://scholarworks.umb.edu/cpm_pubs. See also New York City Bar Association (March 2010), *The Role of Community Benefit Agreements in New York City’s Land Use Process*, report no 20071844, www.nycbar.org

character or legal context to Somerville. If they had sought assistance, the Somerville Aldermen would have understood that the projects around the country were highly variable in their factual circumstances.⁵ Few matched the model of a two-party contractual CBA document. Fewer involved an analogous “collective bargaining” method or a Neighborhood Council with delegated or recognized authority from a city. In addition, in several of the pertinent cities and states, the courts were interpreting strictly the limits of municipal jurisdiction and rejecting the status of local groups as agents to create binding agreements or to enforce such documents.⁶

This lack of relevance of the comparative projects and other city regulations can be seen more clearly today, when more time has passed. Only a small number of the projects cited in 2015/2016 have been built and fewer have fulfilled the terms and conditions of the developer promises. (See Appendix 2 below) Similarly, the Detroit Ordinance has proven to be very different in its content and application from the Somerville Ordinance. (See Appendix 3 below)

The intellectual substantiation for Neighborhood Councils and CBA is revealed to be very weak and the national experience provides no guidance about how to fix the problems of Ordinance #2018-10.

Finding 3: Ordinance #2018-10 was drafted with deliberate ambiguity in order to avoid confrontation between Massachusetts law and the claims of independent status for a Neighborhood Council, still cloaked with municipal regulatory authority

The process of drafting, deliberating and approving Ordinance #2018-10 took over 18 months, from October 2016 to June 2018, and the text was presented in three separate versions. But despite this long period of evolution and discussion, the Aldermen were not able to resolve the fundamental contradiction between the city’s constrained ability to delegate its regulatory authority and the neighborhood groups’ claims to an independent role, cloaked with city powers. In the end, the Board of Aldermen made a choice of deliberate ambiguity.

The first draft CBA Ordinance (April 2017)

The first draft, prepared by the Somerville City Solicitor’s Office, proposed a two-tiered structure with a network of Neighborhood Councils or alternative Neighborhood Advisory Committees, overseen by a city-wide Community Benefits Committee.⁷ Each Neighborhood Council would be created by the initiative of local citizens and groups and structured as a “democratic organization” or not-for-profit corporation. The organizers would undertake a multi-step process of vetting and voting and then request “recognition” from the City Council as the entity to represent the neighborhood and communicate its needs and priorities. Its activities

⁵ The meeting minutes of the Board of Aldermen, Legislative Affairs and Committee of the Whole, and the Redevelopment Authority Board, reveal no questions about the evidence from other cities.

⁶ This author was involved in litigation in the 1980’s and early 1990’s in New York, which decided against several independent and sub-city entities, which tried to create binding developer agreements under city supervision and potential liability.

⁷ This draft ordinance was submitted to the Board of Aldermen for consideration on 13 April 2017 (Agenda item #203098). It was discussed at multiple meetings of the Legislative Affairs Committee in 2017 and 2018 but was not adopted and its text was finally removed from the calendar of the City Council on 27 June 2019.

would include surveys and studies, participation in planning and project reviews, and negotiation with developers.

In the absence of a citizen-initiated Neighborhood Council in a zone, the mayor could appoint a Neighborhood Advisory Committee, which would identify needs and report priorities to the Community Benefits Committee but would not negotiate with developers.

To oversee these neighborhood units, a city-wide Community Benefits Committee was proposed with nine-members, to be appointed by a nominating committee after solicitation of citizen resumes.⁸ It would evaluate the choices of programs to be funded and receive any money that a developer would pay in as community benefits. Payments would go into a Community Benefits Stabilization Fund, which the Committee would divide -- with 60% earmarked for mitigations, improvements or amenities in the directly impacted zone. The other 40% would go into a consolidated sub-fund to be disbursed to groups and projects in all neighborhoods by a competitive grant mechanism.

Weaknesses of the first draft text

By limiting its content to structures and functions, the first draft finessed all of the fundamental questions of legal status and subject-matter jurisdiction. Its text contained no definition or mention of a Community Benefits Agreement. It tacitly assumed that in-kind community benefits and money commitments would be determined in a negotiating process outside the purview of the ordinance. The Community Benefits Committee would oversee the definition of local priorities and receive and distribute money whenever and however it might come in.

The Assistant City Solicitor explained the five reasons for this hands-off approach in an May 2017 opinion letter to the Board of Aldermen.⁹ First, under Massachusetts law, forcing a developer to sign a CBA could be an unlawful delegation of the city's zoning and planning powers because any requirements imposed on a private owner must be the outcome of the procedures and rules, defined in state law and the zoning ordinance. Second, an independent negotiating party might try to impose obligations on a development that would fall outside the subject matter jurisdiction of zoning and planning or might violate the constitutional law standard of "nexus" of required mitigations to public harm. Third, the city could not give discretionary decision-making authority to any group, not bound to the rules of transparency and accountability that covered all city boards and agencies. Fourth, members of a Neighborhood Council might have conflicts of interest but would not be subject to the disciplines of state conflicts and ethics laws. Fifth, allowing multiple independent groups to determine public needs and their mitigations or compensations could distort the city's budget and program priorities or inequitably concentrate benefits in the few neighborhoods, undergoing development, leaving behind other zones and groups with higher priority needs.

⁸ The nine-member committee structure was based on the already-existing Community Preservation Act process that used a similar committee to receive and prioritize grant requests from neighborhoods and groups. See Legislative Affairs Committee testimony, 20 April 2017 (Agenda Item #203098)

⁹ Interoffice Memo of Somerville Solicitor to Board of Aldermen, 15 May 2017, presented to the Legislative Affairs Committee 1 June 2017 (Agenda #203098)

The alternative text submitted by Sugar Law Center (June 2017)

The first draft ordinance and City Solicitor’s opinion drew a highly negative reaction from the advocates. The *Sugar Law Center* submitted to the Board of Alderman an alternative draft with four mechanisms that intended to boost the status of a Neighborhood Council and CBA without directly confronting the legal obstacles:

- It limited applicability of a CBA mandate to “High Impact Development Projects” of large scale and complexity;¹⁰
- It required each developer of such a large project to engage in a “good faith negotiation” with the pertinent Neighborhood Council for the purpose of entering into a legally enforceable Community Benefits Agreement;
- It listed in the ordinance a series of issues that the negotiation would have to cover, including social and economic impacts, which were not usually encompassed by zoning and planning.
- It provided for the inclusion in any CBA of a clause, naming the City as a Third Party Beneficiary. (Presumably, this would give incentive for city agencies to monitor and to initiate enforcement if non-compliance occurred.)
- Finally, in response to potential problems of Neighborhood Council conflicts of interest accountability, the draft included procedures for vetting council members and officers and keeping full and transparent records of deliberations.

These mechanisms presumably would enhance the leverage of the Neighborhood Council in two ways: Procedurally, they guaranteed the Neighborhood Council the role of a party-in-interest and, implicitly, gave them a period of time and unobstructed access to the developer, who could not ignore their questions and demands. In substance, by listing the issues to be covered and applying the process only to larger-scale projects, the proposed draft would provide a stronger argument for “nexus” (by a legislative finding that these issues were of local importance).

The *Sugar Law* draft was cautious not to assert too strongly a claim of legal status for the Neighborhood Council or CBA that might contradict Massachusetts law. It thus left unanswered the questions: How would the city agencies back up the Neighborhood Council if a developer stalled or refused to reach an agreement? Would the agencies withhold development permits or stall the reviews? Would they investigate whether the “good faith” standard had been met? If a CBA were signed but later the developer did not perform, would the city agencies join in or initiate enforcement actions?

Board of Aldermen deliberations

Alongside the submission of their alternative draft Ordinance, the advocates pressed the Board of Aldermen to “designate” or “recognize” a Union Square Neighborhood Council.¹¹ At

¹⁰ See Sugar Law Center, submission to the Somerville Board of Aldermen, presented at the meeting of the Legislative Matters Committee 1 June 2017 (Agenda item #203098).

this point, the Aldermen asked for another opinion letter from the city Corporation Counsel, clarifying what would be the legal impact of such an action by the Board.¹² The letter, delivered in August 2017, characterized the basic problem as: whether the Neighborhood Council would be a “public body” or a “private entity.” It assumed that the Neighborhood Council would want to self-organize as an independent, non-profit organization to gain legal status and create a contractually binding agreement with the developer. If the Board of Aldermen adopted an act of designation or recognition, this could transform the Neighborhood Council into a “public body” and thus require it to meet all the procedural rules or transparency and accountability, all the rules of ethics and conflicts of interest, and all the standards of substantive jurisdiction that bind all other city agencies.

The Special counsel concluded that these legal restraints as a public body “may ultimately restrict the ability of a neighborhood council to accomplish its goals.”

Through the fall of 2017, the Board of Aldermen awkwardly tried to reconcile the inconsistent legal categories.¹³ Their discussions made clear the desire to accommodate the claims of the neighborhood groups for an independent negotiating role. But they still wanted to offer support and a cloak of municipal authorization. By January, 2018, the Union Square Neighborhood Council group was pressing the Board for action on its request for recognition and the city Special Counsel issued a third opinion letter, which repeated the key points of her earlier letters in somewhat more detail:

- In the absence of an Ordinance, the Board lacked any mechanisms by which to take action;
- Depending on the wording of the ordinance and the nature of the designated role it would assign to the Neighborhood Council, the status as a public body or a private body would be determined;
- If the ordinance and act of recognition described the neighborhood Council with any governmental functions other than advisory, this could restrict the subject matter of its negotiations with the developer.

The second city draft Ordinance (April 2018)

The Law Department submitted the revised draft of Ordinance #2018-10 to the Board of Aldermen on 4 April 2018. It omitted the city-wide Community Benefits Committee but added a definition of the Community Benefits Agreement as the “written agreement negotiated by and between a neighborhood council and a developer to mitigate development impacts in a specific neighborhood...” (Sec. 7-220). It remained silent on the method of negotiation and the status or content of any CBA. But it spelled out in more detail the process by which the Mayor and Board

¹¹ See testimony and discussions of the City Council Legislative Matters Committee and Committee of the Whole: 4 May 2017, 1 June 2017, 6 July 2017, 31 August 2017, and 16 November 2017 and 1 February 2018 (Agenda item #203098)

¹² Letter of Special Counsel McGettigan to members of the Board of Aldermen, 29 August 2017, found in minutes of the Legislative Affairs Committee, 31 August 2017 (Agenda Item #203098)

¹³ See Somerville Board of Aldermen, Legislative Affairs Committee (Agenda item #203098), minutes of meetings of 6 July 2017, 31 August 2017, 5 October 2017, 16 November 2017, 7 December 2017, 18 January 2018, 1 February 2018.

of Aldermen would designate the Neighborhood Council “as the negotiating entity for a community benefits agreement...” (Sec. 7-222)

Ordinance #2018-10 was thus finalized with deliberate ambiguity, intended not to restrain the Neighborhood Council with “public body” status, but at the same time, to imply or offer a veneer of city “recognition” to their status. The Board of Aldermen adopted this text as Ordinance #2018-10 at its meeting of 28 June 2018 (Agenda Items #206161 and #206244).

Finding 4: In applying Ordinance #2018-10 to the Union Square project its ambiguities had to be addressed with practical solutions.

As soon as they adopted Ordinance #2018-10 the Board of Aldermen moved forward quickly with a vote to “designate” the Union Square Neighborhood Council.¹⁴ Subsequently these negotiations took more than a year to reach an agreed upon CBA “term sheet” in August 2019, which was then ratified by vote of the Neighborhood Council members in September 2019.¹⁵

Complexities in the set up and functions of the Union Square Neighborhood Council

During the months of negotiations, representatives of the Neighborhood Council appeared at several meetings of the Somerville Redevelopment Authority to make the argument that all city agencies should refrain from issuing approvals or entitlements to the developer until the community agreement was reached. Two specific actions were thus delayed:

- The signature by the Redevelopment Authority director (as landholder) on the application forms to initiate Planning Board review of the site design;¹⁶
- Redevelopment Authority sign-off to enable the developer to contract with an engineering-architect firm for site design work.¹⁷

A contrary position was taken by the city Solicitor, who put on the record several statements, clarifying the separate administrative and contractual responsibilities of the city agencies. The Planning Board had jurisdiction to consider questions of site and project design when considering special permits or variances. The Redevelopment Authority only had responsibilities for acts under municipal contract, property management and finance laws. It would be impermissible to co-mingle these powers and subordinate their exercise to the policy and strategy choices of the Neighborhood Council.

¹⁴ The vote was taken at the Meeting of the Board of Aldermen on 12 July 2018 (Agenda Item #206293).

¹⁵ See Minutes of the Somerville Redevelopment Authority of 5 September and 19 October 2019. These Minutes suggest that a City Council public hearing on the “term sheet” was expected prior to its ratification vote, but there is no record that this took place and the vote of Neighborhood Council members was announced on 28 September 2019, www.somerville.wicked.local

¹⁶ See Minutes of the Somerville Redevelopment Authority 15 November 2018.

¹⁷ See Minutes of the Somerville Redevelopment Authority, 7 March 2019. In this instance, the community representatives demanded that consent be withheld until the developer would agree to underground parking (rather than an above ground garage).

This confusion over roles revealed how Ordinance #2018-10 (absent the city-wide Community Benefits Committee) had left the Neighborhood Council without supervision or guidance. As the neighborhood group pushed to assert its role and test its political influence, it fell to the Redevelopment Authority, the Solicitor's Office and OSPCD staff to impose guardrails. The process certainly did not fulfill the theoretical expectation that community empowerment would lead to speedier, harmonious and insightful development review.

It is important to recognize that, throughout this process the Union Square developer did not resist cooperation with the Neighborhood Council or challenge its status as a negotiating partner. So the issues of its legal and regulatory status were not faced in an adversarial context.

It is also important to note that, elsewhere in Massachusetts and around the US, a body of case law, interpreting the issues has continued to evolve in disputes over the status and enforceability of developer commitments. Most of the court rulings are affirming and reinforcing the interpretations, which the Somerville City Solicitor and Special Counsel offered in their memos in 2017. (See Appendix 7 below)

Finding 5: The revised Zoning Ordinance of 2019 became another source of clarification of the status, substance and process of the Neighborhood Council and CBA

Draft texts of the revised Zoning Ordinance were under review during the same time period (2015-2019) and the city's planning and legal staff tried carefully to coordinate the zoning with the CBA process, without pushing beyond the limits of the enabling laws. The resulting Zoning Ordinance of December 2019 contained five elements that clarified the role of a Neighborhood Council and implicitly supported negotiations of CBA. These five provisions were the following:

- The zoning required certain developer/applicants to schedule and carry out neighborhood meetings during the conceptual design stage of their projects -- prior to submitting plans to Inspection Services and applications to the Planning Board or ZBA. (SZO 15.1.3.) These meetings were to be organized with the pertinent Ward Councilor and with any Neighborhood Council designated for the zone. (SZO 15.1.3.b.viii)
- The zoning text did not explicitly state that a CBA must be negotiated and agreed. But the city planning staff was required to prepare meeting minutes and report on the results, including the issues identified and proposals for changes and mitigations. (SZO 15.1.3.b.xii) This material was then to be published as part of the public record.
- When the Planning Board or ZBA later would approve a discretionary or administrative permit, the text specified that the board could attach conditions to its Decision. (SZO 15.2.1.f; 15.3.2.f; 15.3.1.f ...) These conditions would ensure compliance with the required findings; they would have "nexus" to the potential impacts and be proportional as mitigations or compensations. By implication, any CBA would be considered or accepted by the board as substantiation for zoning conditions.

- If a project was large-scale and required a Master Plan Special Permit, then the zoning text was explicit about the responsibilities of the Planning Board to fix conditions. The board would require the applicant to provide for “infrastructure mitigation, transportation mitigation and community impact mitigation...” (SZO Section 15.2.2.f) Again, by implication, a CBA would help fulfill or substantiate these required conditions.
- Finally, when a permit with conditions was approved by the Planning Board or ZBA and the resulting certificate of zoning compliance was issued, the applicant/developer was required to record it in the county land registry or Land Court along with a copy of the decision with the conditions. (SZO 15.1.11) This would presumably facilitate future monitoring and enforcement and bind successor owners, lessees, tenants, etc.

These carefully worded clauses in the zoning text followed the interpretation of city agencies’ jurisdiction, which the city Solicitor had spelled out. The zoning offered the structure and mechanism for mutual engagement -- the neighborhood meetings -- but it did not fix their form and content or mandate the outcome of a finished CBA. This left the parties free to discuss and agree on any promises or obligations, even those that might lie outside city jurisdiction. If a CBA was produced, then the Planning Board or ZBA could incorporate into its own decision as many of the community-defined benefits as would meet its “nexus” standard and simply not mention others.

Other new Zoning Ordinance provisions expanded the application of CBA defined benefits

In addition to the clauses (noted above) that accommodated and encouraged CBA negotiations, other changes in the 2019 zoning made certain developer commitments mandatory and thus diminished the need for, and importance of, a CBA.

In this context, we can read the record of Union Square CBA activity in 2015-2019 as a process of experimentation, in which certain CBA promises were expected to be the stepping stones from which the same requirements would expand by new zoning text and ordinances to other zones and sectors. Then Somerville’s positive experiences would inform and encourage policy changes at regional, state and national levels.¹⁸ Examples of developer promises, made in the Union Square CBA, that were then incorporated into the 2019 Somerville Zoning Ordinance are the following:

- Imposition of the jobs linkage fee on any commercial development over 30,000 ft2 (SZO Art. 12.2.3)
- Higher percentages of green spaces and civic spaces as part of the Master Planned Development and required dedication of public rights of way or entry (SZO Art. 8.4.7)
- Compliance with LEED standards for building energy efficiency (SZO Art. 8.4.8 and Art. 10.10.1)

¹⁸ This process of “experimental city” policy formation was cited favorably by Mayor Curtatone in his Inaugural Address of 1 January 2020. The pertinent quote can be found in Appendix 1, below.

Of course, as more of these experimental standards become incorporated into the zoning ordinance, building codes or design guidelines, there is a diminishing need and justification for citizens to create Neighborhood Councils and negotiate CBA. Routine process will deliver the community benefits that are expected.

Finding 5: The final product of the process – the Union Square CBA – contained useful elements that refine and clarify the public benefits. However, it retained the fundamental ambiguity of status and enforceability.

In order to judge the potential advantages and feasibility of the CBA as an instrument for projects in other zones, it is necessary to consider carefully the content of the Union Square CBA and to ask the following questions:

What were the benefits and promises achieved in the CBA in total value and range of subject-matter?

Of the total, which were elements of design, mitigations or improvements that had been stated in the earlier city/developer agreements, but were detailed or adjusted in the CBA to neighborhood-level conditions and preferences?

Which elements were new commitments by the developer that expanded the earlier-agreed benefits? Which were new types of benefits, outside the traditional jurisdiction of the city agencies? Which were new technologies or methods that had not yet been adopted in city policies or regulations?

Of all the new or expanded elements, which were subsequently adopted into the Zoning Ordinance of 2019 or other city regulations and, therefore, can now be secured without neighborhood negotiations and a CBA?

As the project has moved forward, which promised actions and commitments have encountered practical difficulties of changed conditions?

The outcome of the analysis would be a determination of the extra value, scale or content of the benefits achieved by collective bargaining, compared to the benefits achieved by zoning and regulatory mandates and city agency negotiations. Would similar extra benefits be sufficient to justify citizens' time and effort in other zones?

Distinguishing the elements of the city “deal” from the extra elements in the CBA

To begin this analysis, we first look at the ways that pertinent parties in the CBA negotiations have described the goals and outcomes of the CBA in the local press and public reports. Two examples in the following paragraphs illustrate the major claims, while other quotations are found in Appendix 4, below. We then continue with a detailed review of the full text of the Union Square CBA, compared to the Development Covenant, in Appendix 5.

Mayor Curtatone, Report on the US2 deal

Source: Somerville PATCH (5 April 2017)

- Total \$112 million community benefits
- Total \$445 million tax revenue over 30 years
- City responsibility \$94 million infrastructure
- If approve by May 31, then U2 pays \$19.2 million to total the \$112 of zoning, payments and fees
- Breakdown: of the \$112 million
 - \$55.6 mill affordable housing creation
 - \$20.5 mill building permit fees and future phase contributions
 - \$5.5 mill Green Line – contribution to the city’s \$50 million total
 - \$7.7 mill infrastructure – water, sewer, Union Square redesign
 - \$5.0 mill open space
 - \$1.7 mill job program for residents training
 - 5% commercial space arts
 - Additional community benefits
 - Cost of land from Somerville Redevelopment - \$9.3 million
 - Additional open space (66% more than original plan) of which 70% will be high quality parks, playgrounds and plazas

In 2021, a spokesman for the advocacy group, *Union United*, made the following summary of the outcome of the CBA negotiations, citing a few of the most important extra elements:

- We’ve proven it’s possible to change developers’ plans to minimize displacement by organizing to win a Community Benefits Agreement. Development typically extracts value from our community and a CBA is a tool to push back against that. Our CBA with US2 won many things that will protect our community – priorities determined and negotiated by the community. These include:
- 129 additional units of affordable housing units, including a doubling of the commitment to family size units;
 - Local hiring commitments and higher than minimum wages;
 - \$2 million for workforce training;
 - Union friendly general contractors;
 - Higher sustainability standards, green and open space, support for the arts.¹⁹

These contrasting statements highlight the different perspectives in three ways: First, the mayor’s list focuses on the dollar values of the benefits categories, while the advocacy group emphasizes the policy/political shift – the ability of a neighborhood to push back against the economic force of developers.

Second, the items in the mayor’s list are almost all tangible, physical improvements or payments. Their fulfillment can be determined by numerical measurement. By contrast, the five items in the CBA would require different methods of monitoring and measurement. Two items are previously city-secured elements that appear to be expanded in volume or value – 129 more units of affordable housing and \$2 million for workforce training (compared to \$1.7 million for

¹⁹ See DIG Boston (11 June 2021), *Union United Shares “Development without Displacement,”* <https://digboston.com>

job training in the Mayor's list). Two developer's promises to try to recruit and hire local and minority workers and encourage higher wage and unionized labor would require access to internal corporate data.²⁰ The final item is the incorporation of experimental and sustainable technologies in design and construction.

Third, in the mayor's list, the community benefits were not assigned a value, presumably because they had not yet been negotiated. However, the Developer Covenant had already fixed their basis at the rate of \$1.60 per gross square foot of built space. This would calculate in total to \$3.7 million if the full project build-out were achieved.²¹ This was 3% of the total in the mayor's outline.

Detailed assessment of the CBA "deal" in money terms

Using these preliminary calculations as the basis for comparison, our analysis in Appendix 5 does not find any difference in total aggregate value of the developer commitments under the city documents, compared with the CBA. Instead, the multiple money commitments and in-kind work and services that the CBA describes are, essentially, a detailing and adjustment of the payments and commitments, already fixed by the city.

This finding is not surprising because in the industry there are well established models of project financing that carefully balance of expected project costs against revenues in the context of the cycles of market demand and interest rates. In these formulas, the components of public-related development costs are adjusted by the tax discounts, subsidies and credit guarantees that the city/state can offer. If there is to be a transfer of city-owned land or assets, the property price may be negotiable in order to offset the burdens of mitigations, improvements and amenities. Discretionary zoning actions can boost development potential or gain bonuses, increasing property values and future revenues.²²

There is nothing evident in the public record to show that the Union Square CBA has altered in any significant way the total balance of costs, revenues or value gains for the developer or has secured a larger share of community benefits as part of the total city deal. This reality is acknowledged in the CBA. It appears in paragraph 11 of the Section headed Workforce:

(11) This term sheet lists some existing obligations that are required under zoning or other approvals, but most of the items herein are new developer obligations for the benefit of the community. The new monetary commitments in this term sheet will be credited towards US2's community benefits contribution under the development covenant as outlined on Exhibit A, attached hereto. Furthermore, as an additional benefit to the community, US2 is committing herein to pay community benefits obligations on the timing indicated herein even if the pace of development has not generated an equivalent amount of Community

²⁰ The difficulty of obtaining this kind of data for public review has been discussed with frustration by the members of the Somerville Jobs Creation and Retention Trust. See for example, minutes of the Trust meeting 20 September 2022.

²¹ See Appendix to the Report accepted by the Union Square Neighborhood Council Board (22 March 2018), *Community Input for a Community Benefits Agreement in Union Square*; www.somervillema.gov/sites/default/files/1_CBA%20Report%202022%20March%202018.pdf

²² The pertinent paragraphs that describe the Union Square balance of developer costs against zoning potential are in the Master Land Disposition Agreement of 2 May 2017, Chapter II.C (pages 9 and 10).

Benefits Contribution monies. US2 will receive credit for future projects for any contributions paid in advance.²³

What does this carefully parsed statement actually say? First, the developer appears to agree that new benefits and money commitments, beyond the earlier city-defined categories and amounts, are appropriately asked for and granted in the CBA. However, the developer expects to be given a credit for these against its previously-agreed total monetary payments. Second, the developer is agreeing that the CBA can change or accelerate the timing of payments, even if the original timing was tied to particular stages of permitting or construction completion.

Based on this language and the apparent practice (described below), we may conclude that the CBA has allowed money to be shifted somewhat from the city's categorical priorities to the Neighborhood Council's categorical priorities, but no new money obligations beyond the totals of the developer's commitments to the city have been secured.

This is not a criticism of the cooperative work done by the developer and the local citizens and groups. The various elements of housing, open space, environment, labor and wage programs, etc., have clarified how monies and in-kind contributions may best meet local needs and preferences. What can be criticized are the exaggerated claims of the superiority of the neighborhood negotiating method over city agency methods. For example, the preamble language of the CBA is overblown:

US2 shares USNC's vision of Union Square ... US2 commits that the USQ Project... will be the most community-responsive project that Somerville has ever seen, setting the bar for future development in the city.²⁴

The complexities of valuation and money transfers in CBA implementation

With the CBA in place, there have arisen several questions of practical implementation of the valuation and money transfer clauses:

- How are payments from the developer to be received and then disbursed to the recipient programs, grantees or contractors?
- Are all such payments expected to flow through city accounts and allocation processes? Or does the CBA authorize payments that may go in a Neighborhood Council account or directly to designated consultants or programs?

As noted above, Ordinance 2018-10 left these questions unanswered after removal of the city-wide Community Benefits Committee from the text. Because of this omission, an attempt was made in March 2020 to revive the idea of the city-wide Community Benefits Committee and amend Ordinance #2018-10 to put it back in along with a similar 60% quota reserved for the specific neighborhood impacted.²⁵ Several discussions on this proposal took place in the

²³ See the "term sheet" of the CBA, submitted to the City Council on 13 August 2019 (at page 5).

²⁴ Union Square CBA, Preamble paragraph, quoted from the term sheet submitted to the City Council 13 August 2019.

²⁵ Draft Amendment submitted by City Solicitor to City Council on 11 Mar. 2020; Agenda Item #209919.

Legislative Affairs Committee in May and October 2020, at which Council members repeated the same concerns that had been discussed back in 2017. That is, the need to “level the playing field” of access to developer-contributed funds for mitigations and amenities, so that these benefits would not be concentrated only in the neighborhoods undergoing redevelopment. Balancing this concern, however, was the idea that the ordinance intended to give each Neighborhood Council the power to negotiate for its particular needs and this community status should be protected, particularly at Union Square where the CBA was already formulated and signed. The issue was not resolved and no action on the proposed amendment was taken.

In practice so far, payments received from the Union Square developer and the first payments from Boynton Yards have gone to the city Finance Department, which has then applied its standard mechanisms of accounts management, appropriations and disbursement. The Union Square developer payments required under the earlier Master Development Agreement, and its payments for the Green Line and for affordable housing linkage have gone into the pertinent stabilization fund accounts.²⁶ Similarly, in June 2017, when US2 made the first pre-payment for community benefits -- \$214,000 -- the Finance Department created a new *Union Square Stabilization Account* to receive the funds. This money was then held in escrow until the issuance of the first building permit. Then disbursements began from the account, with each request for funding placed on the City Council calendar for appropriation, following the usual procedures. The flow in and out is shown in the following Table:

Union Square Community Benefits Stabilization Fund

Sources: US2 Report on Status of Union Square Revitalization Project (09/15/2021); Somerville City Council Finance Committee meeting minutes

Date	Pay in	Cumulative	Pay out	Balance	Source/comment
03/29/2018	214,000			214,000	Reference made to first payment held in escrow
06/30/2020				214,000	Finance Dept. City Annual Finance Report
07/22/2020			100,000		Disburse for Career Navigation/Placement
07/22/2020			70,000		Disburse for Small Business Liaison
09/10/2020					City Council authorize disbursements CC#201441
12/31/2020				214,292*	Finance Dept. Annual Finance Report
04/---/2021	253,000	467,000			20-50 Prospect St building permit pre-condition
09/23/2021			123,000		Disburse for Somerville Land Trust, CC#212031
09/23/2021			30,000		Disburse for Somerville Cares, CC#212031
01/---/2022	155,000	622,000			10 Prospect St building permit
Anticipated TOTAL		\$3,600,000			

*Note that although the authorization was made in July, the \$140,000 disbursement was not yet recorded in the calendar year-end Finance Department Report.

The movement of monies appears to be on track, following the prediction made to the City Council in March 2018 that \$1 million would likely be received by the first year of project completion.²⁷ The Cumulative column on the table above confirms \$622,000, received so far. There is also evidence that the Union Square Neighborhood Council is fully supportive of the

²⁶ See for example, Board of Aldermen meeting 11 December 2014, Agenda #198161, receiving the first \$211,225 payment into the Union Square Stabilization Fund, intended for master planning and legal assistance for the Redevelopment Authority.

²⁷ Somerville Board of Aldermen, Legislative Matters Committee, Minutes of 29 March 2018 (Agenda Item #205201).

city's financial management and is not asserting any independent responsibility for funds control.²⁸

Despite this public record, however, the issue of money management is not fully resolved. Neither the Ordinance #2018-10 nor the CBA text states clearly that the standard city accounting and appropriation process must apply or that direct payments are prohibited. Thus it remains possible that, in the future, abuses of money handling could occur. In particular, the CBA in several places directs the developer to fund or participate in the programs of specific vendors/consultants. These named entities appear to be not-for-profits or companies, which have existing contracts or program relationships with the city -- so we can presume that they previously underwent competitive procurement or vetting, as the laws require. In practice, the transfers of money to these entities have been done by City Council appropriations from the stabilization fund. So far, problems have been avoided but this is not fixed for the future.²⁹

Fulfillment of non-monetary developer commitments

For purposes of evaluation of performance and effectiveness, the non-monetary commitments made in the CBA fall into two categories: (i) those that are design or physical elements and can be measured by checking plans and "as built" conditions; and (ii) those that require developer participation in various programs or experimental activities and thus may depend on changeable factors or conditions. For most of the items in the second category, the CBA text states the developer's responsibilities in contingent terms – that is, promises to undertake "best efforts" or to take actions "to the extent practicable."

The public record does not provide a steady and systematic accounting of how and whether the developer is making progress in fulfilling each of its promises. But evidence can be gleaned and assembled from sporadic sources. For example, the developer has provided update reports periodically to the Somerville Redevelopment Authority. A compilation of these is the following:³⁰

- Quarterly meetings between US2 and the Neighborhood Council to discuss implementation have been taking place since April 2020;
- US2 and its contractors hosted a Job fair in April 2021;
- US2 organized Learning Labs at high school during 2020;
- US2 quarterly meetings have been held with the Small Business Construction Task Force in order to assist with COVID response;
- The developer has worked with the City Council to adjust the zoning rules on affordable housing (which previously prohibited the concentration of more than 50% of a project's

²⁸ The Union Square Neighborhood Council was registered as a not-for-profit in the Commonwealth Corporations Registry in 2018, by 2022 it has not filed any financial documents with the Commonwealth Attorney General, which would be required if it were soliciting or receiving funds. Second, when the City Council was asked to appropriate \$123,000 from the stabilization fund to help establish the city-wide Community Land Trust, the Neighborhood Council leadership sent a letter of support.

²⁹ Reference can be made to the several instances of abuses involving the Boston Redevelopment Authority (2014/2015 audits); its successor the BPDA (then-Councilmember Wu's report on abuses 2019); and the *Boston Calling* scandals and litigation under Mayor Walsh's office.

³⁰ See Minutes of the Somerville Redevelopment Authority, 15 September 2021 and 20 October 2021.

total affordable units on one parcel). The adjustment was made to allow the acceleration of construction of a larger number of affordable units on parcel D4.3 in the first construction phase.

- The developer has been working with the city economic development office to insure that workers, employed by the vacating tenant, Royal Hospitality, can be relocated within Somerville or nearby.

Looking carefully at this list, it is difficult to recognize anything underway at Union Square that goes beyond normal regional business practices. Quarterly meetings, job fairs, support for a learning lab, small business relief in COVID – these are standard programs, which the city of Somerville is supporting through various city funds, grants and linkage fees; and which are common in other cities and industry sectors.

One item on this list that was an effort to go beyond the routine standard was the developer's promise to accelerate the delivery of affordable units by purchasing parcel D4.3 and arranging to site on it a 100% affordable housing project. The goal was to have a substantially larger number of units available to avert displacement of local renters at the critical time of opening of the Green Line station and occupancy of the D2 commercial and market-residential buildings.

This well-intentioned activity was thwarted by practical realities and contradictions. There were delays and complexities in doing a deal for the land and involving a specialized non-profit housing developer with funding from multiple sources. In addition, the City Council had previously imposed on the D4 parcels a prohibition on starting any residential development until a quota of commercial space was under construction. (This regulation was enacted at a time when the Aldermen feared that demand for housing would crowd out non-residential demand.)

Another example of how changed circumstances have nullified the intentions of the CBA can be seen in the developer's promises to support activities of job training and career counseling. The CBA named programs that were, in 2019, directing their client workers and small business entrepreneurs into the sectors of food services and retail trade, expecting these to be growth sectors.³¹ COVID eliminated many jobs and employers in these sectors.³²

The update reports to the Redevelopment Authority suggest that some resources from the developer were redirected into the city COVID relief small business loan programs, but no precise explanation or numbers have appeared in the public record. The developer has made timely payments of its linkage fees into the Jobs Creation and Retention Trust, just as other developers have done and, following the minutes of the Trust Fund meetings, there has been overall process of adjustment and re-consideration of training and support programs post-COVID. The Union Square project participation in these activities appears to be helpful but routine, and there is no evidence that its actions have led to any superior results.

³¹ See the Massachusetts quarterly employment statistical dataset – ES202.

³² See website of the First Source program of the Somerville Community Development Corporation, which on August 31, 2020 received \$100,000 grant from US2

A similar picture of routine participation appears to be the result of the developer’s promises to use best efforts to incorporate fair labor and diversity mechanisms into its own hiring, contracting and project management. It agreed to work with and support certain not-for-profit entities engaged in these activities and also to encourage its tenants and contractors to similarly engage. There has as yet been no update report about what has been done.

The regional business press has published reports and studies of the efforts of companies, labor unions, and activist groups to advance diversity, equity and fair labor standards.³³ They have highlighted a variety of programs and initiatives, but with generally disappointing results. The numbers of minority workers in the design and construction trades have increased only incrementally, despite the booming economy and strong competition for skilled workers. Several companies and specific projects have been noted for their stronger efforts and results.³⁴ But, so far, the business press has not mentioned Union Square or any Somerville entities as examples of strong or significant results. Again, Union Square appears to be following routine regional practice. At the meeting of the Somerville Jobs Creation and Retention Trust on 20 September 2022, the members discussed the difficulty of obtaining information from companies about local hiring and recruitment and fair labor practices.

Finding 6: Beyond Union Square and Boynton Yards, no other Somerville neighborhoods are using the CBA methods.

By mid-2022, two more CBA have been negotiated and signed by the Union Square Neighborhood Council with developers in Boynton Yards – MPSP#2020-002 (101-153 South Street) and PZ #21-009 (Boynton Gateway). Elsewhere in Somerville, however, no other groups have organized neighborhood councils or undertaken the negotiation of a CBA.

This situation was cited by the City Council members when considering the draft Amendment to Ordinance #2018-10 on 14 July 2022. Council member Ewen-Campen said that its primary purpose is to regularize the process of creating Neighborhood Councils and to make them workable in other zones. He suggested that there is interest in Gilman Square, which the City Council members want to encourage.³⁵

In order to explain the difficulty of expanding CBA, it is helpful to look at the 13 neighborhood-level plans that Somerville OSPCD has prepared and compare several factors that likely influence the applicability of the CBA methods:

Table 6: Neighborhood plans adopted and underway in Somerville

Date	Areas covered			Existing units			Anticipated new		
	Plan	Acre	Popula.	Dwelling	Non-res	Non-res/ft2	Dwellings	Non-res	Jobs

³³ See Boston Business Journal (20 July 2022), *Contracts for diverse Boston businesses jumped almost \$100 million in 2021*; and (4 August 2022), *Venture capital Funding for Black Enterprises in Massachusetts*. See also D. Kohl and L. Kepner (18 Oct 2021), *Boston Struggles to Boost Minority, Female Labor Force in Construction*, WGBH News, www.wgbh.org/news/local-news/2021/10/18/

³⁴ See K.Thomson, (12 August 2022), *Major Boston developer Suffolk Construction works to expand diversity on job sites*, WCVB News, www.wcvb.com/article/boston-developer-expanding-diversity-on-the-job.

³⁵ City Council, Minutes of the meeting of 14 July 2022 (Agenda item #29079)

2004	Assembly Square		-0-	-0-			1,750 du	?? mill ft2	6,000
<i>Station area planning process</i>									
2014	Gilman Square	125	5,612	2,176	--	--	92 du	50,000 ft2	
2014	Lowell Street	125	4,286	2,045	66	70,000	64 du	15,000 ft2	
2015	Winter Hill	295	12,640	5,208	78	452,000			
2016	Union Square	385	13,685	5,937	191	--	1,319 du	4.2 million ft2	15,465
	Boynton Yards	39					1,030 du		
2017	Ball and Magoun	--	4,800*	--	142	--	102 du	75,000 ft2	--
<i>Somerville by Design process</i>									
2019	Davis Square	--	6,400*	--	--	720,000 off	90 lots infill potential		--
2013	Brickbottom & Inner Belt	140	750*	135*	29*	397,000*	2,500 du	3.5 to 6.0 million ft2	15,100
				224*	45*	1,872,000*			
2019	Brickbott/McGrath	80	350	257			-?-	-?-	-?-
2021	East Somerville	--	--	--	--	--	--	--	--
<i>Somer Voice process</i>									
2022	Brickbottom	22	240	157	29	357,000	--	--	--
2022	Assembly Square	145	--	1,500	--	1.3 million	2,500 du	6.1 mill ft2	--

**Note: the numbers in italics are taken from sources other than the OSPCD neighborhood plans*

The chart shows significantly different conditions, which may be read as a confirmation of the theory, stated in Somer Vision, that every neighborhood is “unique.” More likely, it suggests that the CBA process is too complex and ambiguous in outcome to justify its use in zones that differ from Union Square.

First, the geographic size and numbers of existing residents, workers and businesses would be the most important factors for sustained community engagement. Second, the number of existing jobs and businesses that are under threat of displacement would affect the urgency and fervor of people’s engagement. Third, the scale and character of the expected future development also would be a motivating factor but with less predictability -- some see a threat of gentrification while others see opportunities to profit.

Comparing these factors, the success of Neighborhood Council organizing at Union Square is understandable – the zone population was over 10,000 to start and 4 million square feet of new built space is expected. By contrast, Winter Hill has a similar population but expects to add only about a half-million square feet of infill construction. Winter Hill has created a Civic Advisory Committee that does not claim independent negotiating status.³⁶ Residents of Brickbottom have been urged by their neighbors in Union Square to organize and seek CBA, but the zone has only 250 residents and people do not feel a looming threat of displacement or overwhelming scale of redevelopment. (See additional comparative analysis of Somerville development zones in Appendix 6 below)

Finding 7: The proposed Amendment to Ordinance #2018-10 is unlikely to respond effectively to the legal and practical problems detailed above.

What are the proposed changes to the text of Ordinance #2018-10, which are expected to remedy limitations and make the method applicable in more zones? In order to answer the

³⁶ See the Somerville Redevelopment Authority meeting of 22 July 2020 and the Memorandum of Understanding between the SRA the City Council, presented at the SRA meeting of 17 March 2021. The Winter Hill CAC held its first meeting in February 2022 and its attention is focused on the 2.8 acre, four parcel site, which was earlier proposed for Urban Renewal acquisition but is now under normal zoning review as a private development.

question, the following analysis compares the new draft text with existing text and discusses the likely impacts.

Sec. 7-220: A new preamble paragraph

The draft text begins its first section: *Purpose and Definitions* with a new paragraph stating four purposes. Typically in municipal legislation such a preamble is intended to add weight and clarify the findings of public need. If a question of constitutional “nexus” or statutory jurisdiction were to arise, these clauses would offer evidence that the City Council had given due consideration to needs and appropriate remedies and mitigations. .

2018 text	2022 amended text
Community Benefits Neighborhood Council Somerville Code Article IX; section 7-220	Neighborhood Council Recognition Policy and Community Benefits
7-220 (7-171) Definitions	7-220 Purpose and Definitions
	The purpose of this article is: 1-Promote improved communication between neighborhood councils and City government by providing a standardized recognition policy’ 2-Encourage widened public engagement with City government, especially land use decisions, by facilitating formation of neighborhood councils; 3-Assist with meeting the varied needs of diverse communities, while not limiting the rights of any other person, including non-recognized neighborhood groups, to offer their input on the City’s decision-making processes; and 4-Facilitate a transparent community benefits negotiation process for development projects within neighborhoods represented by a recognized neighborhood council

These new statements of purpose are written in broadly aspirational terms and do not signify any change in the content or process of the ordinance. It remains an ordinance about the organization and functioning of neighborhood councils as instruments of community participation in land use and planning. It does not mandate actions by any property owner or applicant for permits or subsidies. It does not require the creation or signature of a CBA. It only intends to standardize, assist or facilitate Neighborhood Councils and CBA activities if communities want to pursue them.

The preamble language continues the ambiguity in the Ordinance, avoiding any direct answers to the questions of legal status of a Neighborhood Council and binding force of a CBA. Its unstated expectation is that each Neighborhood Council will be able to advance its agenda and defend its actions effectively without being defined as a public body and without being delegated any municipal authority. The test of this Amendment, therefore, can only be whether its multiple small clarifications will make the “collective bargaining” method a more attractive and easier alternative for citizen participation than the other methods of city agency-led deal making and conditionality.

Will each neighborhood group be able to follow the rules and sequence of actions in a more logical, step-by-step way? Will it be able to assemble data and make a record that can then prove its adherence to the standards of “democratic” process, inclusiveness, equity and non-discrimination? Will it be able to engage enough volunteers with sufficient capabilities to organize and negotiate effectively, and then sustain interest over time? The neighborhood group will gain at the end only the same ambiguous, un-proven status of a CBA, but since the process will be less complex and confusing, on balance the effort might be worth it.

Sec. 7-220: Definitions

The definition section in the new version continues to highlight the terms *community benefits*, *community benefits agreement*, *community benefits fund* and *community benefits stabilization fund*. It revises the meaning of *neighborhood council* and adds a new defined term of *recognized neighborhood council*.

2018 text	Draft 2022 text
Sec. 7-220 Definitions	Sec. 7-220 definitions
Community benefits mean programs or services that directly benefit residents ... human services, arts, cultural, sustainability, public health, preventing or mitigating displacement, housing, educational, other areas community enrichment	Community benefits mean programs or services that directly benefit residents ... human services, arts, cultural, sustainability, public health, preventing or mitigating displacement, housing, educational, other areas community enrichment
Community benefits agreement ... a written agreement negotiated by and between a designated neighborhood council and a developer ... to mitigate development impacts in a specific neighborhood...	Community benefits agreement ... a written agreement negotiated by and between a recognized neighborhood council and a developer ... to mitigate development impacts in a specific neighborhood...
Community benefits fund shall mean monies offered to and received by the city in connection with an agreement...	Community benefits funds shall mean monies offered to and received by the city in connection with any agreements entered into with the city or otherwise by which funds are given to and held by the city to be expended for community benefits and other related purposes.
Community benefits stabilization fund shall mean any fund created ... for the specific purpose of funding community benefits and other related programs. Such fund shall be created by the City Council under GL. Chapter 40 Sec.5 and expenditures therefrom shall be appropriated in accordance therewith.	Community benefits stabilization fund shall mean any fund created by the city council for the specific purpose of funding community benefits and other related programs. Such funds shall be created by the city council pursuant to GL Chapter 40 Sec. 5, and expenditures therefrom shall be appropriated in accordance therewith.
Funds allocated for community benefits in a specific neighborhood shall be deposited into a neighborhood-specific community benefits stabilization fund sub-account.	Funds allocated to mitigate development impacts in a specific neighborhood shall be deposited into a neighborhood-specific community benefits stabilization fund sub-account.
Neighborhood council shall mean an open, inclusive transparent and duly democratic, non-profit organization representing a particular Somerville neighborhood	Neighborhood council shall mean a voluntary organization, council, or association, formed by property owners, residents, workers and tenants within a specified geographic boundary within the city.
--	Recognized neighborhood council shall mean a neighborhood council that meets the criteria set

	forth in section 7-221 and has been designated by the city council according to the process set forth in section 7-222
--	--

These changes in the definition paragraphs appear intended to better organize the placement and to clarify other clauses in the text. For example, the earlier language, defining *neighborhood council*, was moved up to the preamble section and a new definition of a *recognized neighborhood council* provides the lead in to the procedures on council recognition found below.

Certain small changes should be noted. First, the word “designated” neighborhood council is changed to “recognized” neighborhood council in the definition of *community benefits agreement*. This reinforces the idea that the city is not delegating any municipal powers to the group but still wants to enhance its status.

Second, in the new definition of *neighborhood council* the words “non-profit organization” have been replaced by the less specific phrase of “voluntary organization, council or association, formed by property owners, residents, workers and tenants...” This might mean that the organizing group will not have to incorporate and pay the fees to register as a not-for-profit under state law. However, later in Section 7-221(1), the words “non-profit organization” reappear. Further down, in Sec. 7-221(4), the Neighborhood Council is required to follow a procedure of annual reporting to the City Council that is very similar to the state non-profit annual reports.

Third, the *neighborhood council* definition now states its spatial jurisdiction as a “specified geographic boundary...” rather than “a particular Somerville neighborhood...”

Other phrases that remain unchanged in these definitions also remain unclear. For example, the text preserves two separate definitions of *community benefits funds* and *community benefits stabilization funds*. The same language, pertinent to the stabilization fund, is repeated in Section 7-256 but there is no other reference in the Ordinance to community benefits funds generically – thus it is unclear why a definition of this term is needed.

Retaining the generic *community benefits funds* phrase suggests that there can be alternative transfers of money by a developer either: (i) to the city into the defined stabilization accounts or (ii) paid “otherwise” to a non-municipal group or consultant. Because it would be a conflict of interest for a Neighborhood Council officer or member to receive payments under (b), the Ordinance itself cannot acknowledge or authorize any such separate payments. Presumably this unobtrusive little “otherwise” will shield the city from liability if there are abuses of money dealing.

7-221: Criteria for the formation and recognition of a Neighborhood Council

As adopted in 2018, the Ordinance text did not contain detailed rules or procedures for the formation of a Neighborhood Council, or the fulfillment of its required standards of “open, inclusive and duly-democratic” process. This left the Union Square project to improvise with consultants’ guidance. It was a long, complex, confusing and sometimes internally contentious

process. Citizens in other Somerville neighborhoods, who watched from outside, understandably would be reluctant to replicate the experience.³⁷

The new text, therefore, attempts to detail and clarify the actions, required to become a recognized Neighborhood Council. Ideally, they would add up to a chronology of practical steps, which groups with limited resources, time and talent could follow. But this ideal of standardization and simplification has not been achieved.

Sec. 7-221 Designation qualifications	Sec. 7-221 Recognition qualifications
A neighborhood council shall:	In order to be designated as a recognized neighborhood council by the city council, a neighborhood council shall:
<ul style="list-style-type: none"> • Be an open, inclusive and duly democratic non-profit organization 	<p>1-Be an open, inclusive and duly democratic non-profit organization. A neighborhood council will be deemed to satisfy this standard when they meet the following criteria:</p> <p>(A) The geographic boundaries of a recognized neighborhood council shall be reasonable and a description and map of the neighborhood included within the bylaws. The boundaries of separate neighborhood councils must not overlap, and there may be no more than one neighborhood council per bounded area.</p> <p>(B) Membership shall be open to all adult persons residing within the boundaries, or who owns a place of business, or works or attends school within the boundaries of the neighborhood. Membership shall not be limited by race, creed, religion, color, gender identity, sexual orientation, age, heritage, national origin or income. A neighborhood council shall make a good faith effort to have its membership distributed throughout the neighborhood and all members must be eligible to hold any officer position within the council.</p> <p>(C) The bylaws shall expressly identify the process of succession when an officer steps down voluntarily or is removed, how vacant positions shall be filled.</p> <p>(D) The bylaws shall clearly identify how membership and voting rights are established. Only those persons within the boundaries of the neighborhood who have affirmatively joined the council may be counted as members.</p> <p>(E) Payment of dues may not be a prerequisite of membership or voting rights...</p> <p>(F) The council shall hold at least one regularly scheduled meeting of the general membership</p>

³⁷ This author has attended at least four meetings at which emissaries from the Union Square groups have urged Brickbottom residents to follow their lead. Our general reaction has been: Why do we need the aggravation of a Neighborhood Council when the normal city zoning and planning procedures seem sufficient?

	per year and make good faith efforts to provide notice of all meetings two weeks in advance...
<ul style="list-style-type: none"> • Be organized with a corporate purpose to maintain and improve the health, safety and welfare of all Somerville residents, ... 	2-Be organized with a corporate purpose to maintain and improve the health, safety and welfare of all residents, within the neighborhood council's boundaries, with special attention given to the members of the community for whom quality of life and permanence in the community may be harder to attain, including environmental justice populations and residents facing mobility, age and or other personal and family challenges;
<ul style="list-style-type: none"> • Make special efforts to seek out and listen to a broad array of community opinions with regard to policy and practices. 	<i>Sentence removed</i>
<ul style="list-style-type: none"> • Observe all laws, regulation sand commonly held ethical standards, including recusal of any member who may have a direct or indirect conflict of interest... 	Observe all laws, regulation sand commonly held ethical standards, including recusal of any member who may have a direct or indirect conflict of interest...

This first set of criteria – 1(A) to 1(F) -- cover the process of creating the organization. They combine the typical actions, which any group must take to become a non-profit, with additional “good faith” steps to draw in all social groups in the zone. The only non-typical element of organizing is the rule forbidding the charging of dues. What remains unclear is whether these steps require that each Neighborhood Council will follow fully the state law to become a registered not-for-profit corporation and a charitable entity, able to receive donations and grants and responsible for annual accounting.³⁸

The language of these paragraphs leaves to future interpretation the following elements of organizational process:

- The geographic zone boundaries must be “reasonable.” Presumably a draft map will be submitted with the application to the City Council for recognition. City staff, probably the planners, will review it and apply some planning practice criteria – such as (i) a compact group of city blocks that are interrelated by factors of urban design and function, or (ii) an area that correspond to zoning district boundaries; or (iii) a “walkable” zone or “transit-oriented” zone within a quarter-mile or 10 minute walk.³⁹
- In order to show that a “good faith effort” will be made to insure membership that is “distributed through the neighborhood...” the group will, presumably, keep data on numbers of members who have joined from each block or sub-area and on which members are businesses, resident owners, resident tenants, students, etc. If there is an

³⁸ See Massachusetts Regulations 950 CMR Sec. 106.

³⁹ This issue of how to set the zones was controversial in Union Square; see J. Deschaines, *Opinions shared on Community Benefits Committee and Neighborhood Councils*, Somerville TIMES (19 July 2017) reporting on the Board of Aldermen hearing. Comparison can be made to Boston, which has platted the boundaries of 23 neighborhood districts on the Boston Zoning Map. These lines fix the jurisdictions of the Impact Advisory Groups that review social and environmental mitigations for Large Scale projects (Article 80 B, Boston Zoning Code).

obvious omission of some sub-group, further information on the unsuccessful efforts made to engage with these people/businesses will be needed.

- Referenda or survey data of membership ideas and preferences appear to be favored methods to achieve the required orderly, democratic decision-making. The open question will be the level of sophistication of data gathering and analytic technology that the group will be able to assemble and use, consistently with volunteer capabilities.

The combination of all these factors – geographic delineation, open membership, broad participation, and exclusive representative of all -- will require leadership skills among the Neighborhood Council organizers as well as some money.⁴⁰ Likely, the involvement of a contracted consultant or advocacy group will be necessary. Thus the absence of any statement about financial responsibilities and procurement seems to be an error. Perhaps the Ordinance simply assumes that state law on non-profits already covers this.

Two questions of financial support for organizing remain unanswered: (i) whether monies can transfer from a developer to the Neighborhood Council organizers without flowing through the city stabilization fund and (ii) whether city budget funding or support services for community organization can be offered. Direct city budget appropriations would undoubtedly compromise its “independent” status but using off-budget gimmicks may create more problems.

Finally, the requirements that the by-laws will spell out rules on voting, elections and succession of officers, membership votes, and annual meetings -- all imply that the Neighborhood Council will continue to function over time. Presumably, it will negotiate CBA with future developers and participate in other city policy-formulation, planning and program development activities. However, only a few of the city’s neighborhoods are expected to have a long term series of new projects.⁴¹ And even the transformative zones with the highest “build out” capacity will redevelop sporadically as real estate demand surges and wanes. Sustaining a Neighborhood Council through periods of low development pressure will present a challenge.

7-221(4) Annual reporting to the city for accountability

2018 version	2022 Version 7-221 (4)
--	4. Submit to the city council an annual report, within 60 days of their regularly scheduled annual meeting of the general membership, containing at minimum: (A) The number of members for the previous year, (B) Two designated points of contact who shall receive notices from the city ... (C) Names, addresses, phone numbers .. of current officers... (D) An updated copy of by-laws... (E) The results of all votes taken during the past year.

⁴⁰ At Union Square, tension arose during the organizing period between the parties representing the businesses and those representing residential owners and tenants; see J. Deschaines, Somerville TIMES (19 July 2017) *ibid*.

⁴¹ The development potential (spatial and economic) of zones in the city were calculated and predicted in the KF Seidman (March 2013), *Somerville Linkage Fee Nexus Study*.

As discussed above the original Ordinance did not make completely clear whether a Neighborhood Council would form and register itself as a non-profit corporation under Massachusetts law, in which case it would be subject to annual reporting requirements. This version continues the ambiguity by containing this new paragraph, which requires a similar annual accounting to be made to the Somerville City Council.

2018 text	2022 text
7-222 Designation process	7-222 Recognition process
<p>At such time as a Neighborhood Council seeks to be designated as a recognized Neighborhood Council, it shall submit to the mayor and the city council the following:</p> <ol style="list-style-type: none"> (1) Copies of all organizational documents, including records of votes; (2) A list of its elected board members showing all community affiliations or those members; (3) A map delineating the neighborhood represented by the Neighborhood Council; (4) Such other materials evidencing the council’s commitment to the principles of inclusivity, transparency, and participatory democracy, including its efforts to seek out and listen to a broad array of community opinions with regard to policy and practices ... (5) Affidavits, signed by each Neighborhood Council board member covenanting that each signatory shall observe all laws, regulation sand commonly held ethical standards, including recusal of any member who may have a conflict of interest... Each signatory whall acknowledge that failure to observe such laws, regulations, and standards may result in revocation of the council’s designation as a recognized Neighborhood Council 	<p>At such time as a Neighborhood Council seeks to be designated as a recognized Neighborhood Council, it shall submit to the mayor and the city council the following:</p> <ol style="list-style-type: none"> (1) Copies of all organizational documents, including records of votes; (2) A list of its elected board members showing all community affiliations or those members; (3) A map delineating the neighborhood represented by the Neighborhood Council; (4) Such other materials evidencing the council’s commitment to the principles of inclusivity, transparency, and participatory democracy, including its efforts to seek out and listen to a broad array of community opinions with regard to policy and practices ... (5) Affidavits, signed by each Neighborhood Council board member covenanting that each signatory shall observe all laws, regulation sand commonly held ethical standards, including recusal of any member who may have a conflict of interest... Each signatory shall acknowledge that failure to observe such laws, regulations, and standards may result in revocation of the council’s designation as a recognized Neighborhood Council
<p>Upon receipt of such filings the city council shall hold a public hearing to consider the council’s request for designation as a recognized neighborhood council. The city council may approve the ...request by a ¾ vote after reviewing all submissions of the council and any testimony, oral and written from the public hearing ... Upon a favorable vote the city council shall communicate the neighborhood Council designation as the appropriate negotiating entity for a Community Benefits Agreement to the mayor and the council’s officers.</p>	<p>Upon receipt of such filings the city council shall hold a public hearing to consider the council’s request for designation as a recognized neighborhood council. The city council may approve the ...request by a ¾ vote after reviewing all submissions of the council and any testimony, oral and written from the public hearing ... Upon a favorable vote the city council shall communicate the neighborhood Council designation as a recognized Neighborhood Council to the mayor and the council’s officers.</p>
7-174 Revocation of designation	7-223 Revocation of recognition
The board of Aldermen may also revoke by a 2/3 vote a neighborhood council designation as the	The City Council may also revoke by a 2/3 vote a neighborhood council designation as a recognized

<p>negotiating entity for a CBA after notice and public hearing , for good cause ... including without limitation based on written allegations of:</p> <ul style="list-style-type: none"> (a) A violation of law, regulation or commonly held ethical standard, including the failure of a member having a conflict of interest ... to recuse (b) A failure to act in accordance with the neighborhood council's own organizational documents; (c) A failure to comply with the requirements of subpara 2-172(a) above 	<p>Neighborhood Council after notice and public hearing for good cause as determined by the city council, including without limitation based on the receipt of written allegations of a failure to comply with the requirements of section 7-221, or a failure to act in accordance with the Neighborhood Council's own organizational documents.</p>
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There has been no change of substantive significance made in the provisions detailing the process of seeking the recognition of a Neighborhood Council or the documentation that must be submitted. The process of assembling documents and resolving issues likely will require organizational skill and some professional guidance for the group that is initiating the actions. At Union Square, it took almost two years to accomplish these tasks and people and resources were drawn from a zone of over 10,000 residents, business and interest groups. Does it seem realistic that in smaller zones a similar level of organization can be mobilized and sustained?

Sec. 7-224 Responsibilities of recognized neighborhood councils

Two entirely new sections have been added in the draft amended Ordinance, which are intended to describe the functions and subject-matter of Neighborhood Councils, once they have gained recognition.

2018 text	7-224 Responsibilities of recognized neighborhoods
--	<p>Recognized neighborhood councils shall:</p> <ul style="list-style-type: none"> (1) Establish and follow a clear method for reporting to the City accurate reflections of the neighborhood's position. When a recognized neighborhood council presents its official position on an issue to the City, it shall be prepared to identify whether the decision was reached by the board, a poll of the general membership, or by a vote of the members at a meeting of the general membership. (2) Notice the city council of general membership meetings at least five business days in advance (3) Make special efforts to seek out and listen to a broad array of community options with regards to policy and practices that may affect the neighborhood and its residents (4) By interaction with their members, residents and the city, strive to engage with the community a land use planning, protect the environment, and promote the community welfare (5) Make efforts to foster communication between the recognized neighborhood council and city government on plans, proposals, activities affecting their area (6) Use best efforts to inform members and other eligible participants in their neighborhood council boundary of current issues, and to inform themselves of the needs and desires of the neighborhood (7) Strive for productive resolution of conflicts between residents of the neighborhood and proponents of development projects, including, but not limited to thorough the negotiation of community benefits agreements <p>(b) In addition to the above responsibilities, a recognized neighborhood council</p>

	<p>may:</p> <p>(1) submit to the city proposals and request for projects or activities needed in their neighborhood areas</p> <p>Designate representatives to appear before the city council at public hearings or subject to sponsorship by a city counselor, on matters that affect their area.</p>
	<p>7-225 Community benefits agreement negotiations</p> <p>(a) A recognized neighborhood council shall be the designated representative of the interests of the neighborhood in the negotiation of a community benefits agreement with any developer whose project impacts the area within the council’s boundaries.</p> <p>(b) In the event a development project impacts on an area that falls within the boundaries of two or more recognized neighborhood councils, the affected councils shall work as a unit to represent their areas...</p>

Much of the text of Section 7-224 is unusual for inclusion in an Ordinance, because it is so imprecise and aspirational, with words such as “make special efforts...” and “strive for...” Standard methods of Ordinance drafting have always favored succinct statements that define authority or responsibilities and have, measurable and legal consequences. The first two items -- (1) requiring disclosure of the method of formulating a position by vote or poll, and (2) the notification to the City Council of meeting schedules – are appropriate and could stay in the text. The other clauses should be removed and put into a guidance manual or memo.

Section 7-256: Stabilization fund

2018 version	2022 version
<p>7-175 / 7-256 Stabilization fund</p> <p>There is hereby created a Community Benefits Stabilization Fund into which all monies received by the city for the purpose of funding community benefits shall be deposited. Funds to be expended for the benefit of a particular neighborhood shall be held in a neighborhood-specific sub-fund. Any expenditure from such Community Benefits Stabilization Fund or sub-fund shall be appropriated by vote of the Board of Aldermen</p>	<p>7-256 Stabilization fund</p> <p>There is hereby created a Community Benefits Stabilization Fund into which all monies received by the city for the purpose of funding community benefits shall be deposited. Funds to be expended for the benefit of a particular neighborhood shall be held in a neighborhood-specific sub-fund. Any expenditure from such Community Benefits Stabilization Fund or sub-fund shall be appropriated by vote of the City Council.</p>

The final paragraph of the Ordinance is the act that has created the Community Benefits Stabilization Fund and authorizes its division in sub-funds earmarked for specific neighborhood level projects. Retaining the same language has resulted in a deviation of the Ordinance language from established practice because the city has not set up a general or city-wide Stabilization Fund with sub-funds. Instead, it has established several individual stabilization funds, including the Union Square Stabilization Fund, a Boynton Yards stabilization fund, and others. The City Council has made appropriations directly from the funds, without requiring their co-mingling or distribution through some balanced neighborhood equity mechanism.

Summary of the text analysis

When all of the refinements and changes to the text are aggregated, it is difficult to read this new text as a more practical process that will prove attractive for other, smaller neighborhoods in Somerville. Rather than simplification, the ordinance has gained more long-

winded verbiage, out of proportion to the limited legal and administrative results that the CBA might gain. Rather than improvement, the multiple clauses appear to create an illusion of importance and gravity to the activities of “exclusively” representing the neighborhood and “negotiating” with developers.

The City Council should reject this text. It should repeal the ordinance as an interesting experiment that is no longer needed. Or, at most, it should draft a new version that reduces Ordinance #2018-10 to a few simple paragraphs, making it clear that if a neighborhood wants to use the Neighborhood Council and CBA forms, they can do this, but with clear understanding that the outcome will have limited legal and regulatory effect.

Appendices

Appendix 1: Alternative methods of public engagement and regulatory/contractual instruments used in Somerville

Method	Instruments	Examples
<i>Area-wide spatial, design and urban functional planning</i>		
Traditional comprehensive planning: draft plans prepared by city staff with consultants presented to public at hearings and workshops leading to zoning text and urban renewal proposals	City-wide comprehensive plan Urban renewal plans Planned Unit Developments in zoning	North Point Assembly Square (2004-2010)
Vision planning: collaborative work of citizens and groups with city staff and consultants at workshops, <i>charettes</i> , committees, etc.; SWOT analysis	City-wide vision plan Station area plans Neighborhood and corridor plans Special zoning districts	Somer Vision (2012) Gilman Square (2014) Lowell Street (2014) Winter Hill (2017) Ball/McGoun Squares (
Somerville-by-Design: refined vision planning for neighborhoods, collaborative citizen/group work with city staff and consultants; workshops; crowdsourcing and poll surveys;	Neighborhood plans and framework plans Design guidelines Overlay zoning districts	Brickbottom/Innerbelt (2014) Brickbottom/McGrath (2019) Davis Square (2020)
Somer Voice: refined visionary planning method for virtual communications, crowdsourcing, social media surveys and polls, virtual meetings	??	Brickbottom Small Area (2021) Gilman Square (2022) East Somerville (2022)
Experimental city – community values governance		
<i>Development project reviews and permitting</i>		
Traditional zoning and urban renewal: Mail notice to abutters within 300 feet; and general notice to citizens to present testimony at public hearings (SZO 1990, Art. 5)	Special permits and variances with conditions Master developer agreements Land disposition agreements BID, DIF ...	
Planned Unit Development: pre-submission of preliminary master plan with notice to abutters within 500 feet; subsequent submission of final special permit application and review (SZO 1990, Art. 6.4)	PUD Master Plan special permit with conditions Priority Development process A.Sq. Design Review Committee Deed restrictions or covenants	Assembly Square PUD (2006)
Mediation: adversary legal process between developer and abutting neighbors	Terms of settlement embodied in special permit conditions or developer covenant	181-197 Washington Street (2015)
Coordinated Development Plan: three-party collaboration of developer team, city staff/consultants, impact area citizens and groups; <i>charette</i>	Citizens Advisory Council Coordinated Development Special Permit Developer covenants	Union Square (2014/2015)
Community Benefits – two-party negotiations, suing collective bargaining model between developer and designated or recognized neighborhood council	Neighborhood Council Community Benefits Agreement	Union Square (2018-2019) Boynton Yards (2020) Boynton Yards (2022)
Master Planned Development –		SZO Art. 8.3 Boynton Yards Union Square East XMBLY Middlesex Ave

Policy Statements describing the goals of citizen engagement

Comprehensive planning

Comprehensive planning is challenging for a city government. Governments frequently work in the present, responding to existing demands ... Since critical functions are handled by specialized departments, attempts to

think long term are often limited to one specific subject: education, sewer service, public safety, ... Comprehensive planning is all about balance. It helps residents and public officials to think about transportation, housing, public services, open spaces and economic development simultaneously, while assuring that public policy is sensitive to all needs and opportunities, both today and tomorrow.

What is Somer Vision?

Somer Vision is our vision to make Somerville an even more exceptional place to live, work, plan and raise a family. ... It documents three years of shared learning between residents, the business community, nonprofit groups and public officials. It is based on a series of research reports ... the Trend Reports [which] assembled the best information ... Residents asked for the facts and after the Trends reports were completed, a series of ten open community workshops were held to discuss the statistics and their implications for our city's future.

Source: Somer Vision (2012) at pages 7 and 8

Station area planning

...the best results can be generated when informed residents collaborate with public officials to establish a vision for the future. ...using a series of transparent and collaborative steps:

- Identification of strengths and weaknesses, assets and opportunities (SWOT),
- Identification of examples of future conditions that match community values,
- Collaboration with the project team to develop a wide variety of potential interventions,

Critique of design and policy proposals, refinement of certain concepts and deletion of unsatisfactory concepts, and development of a plan document...

Source: Gilman Square Station Area Plan (February 2014) at page 6

Somerville by Design

Somer Vision calls for design based area plans for each neighborhood, station area and commercial corridor across the city. These plans focus at a level of detail that is not possible in a city wide plan. They also help to inform the city wide zoning overhaul. In the past, planning has too often relied on a model of decide, announce and defend, where consultants decide about the future of a community, present it in a meeting to the public and seek to defend their position. Somerville's neighborhood plans are unique in the way they engage the community. They are built on a collaborative process in which community participants, city staff and consultants work together to identify and prioritize policies and development strategies. The Somerville by Design process flips traditional planning on its head with a focus on outreach, dialogue, decide and implement. The process involves interactive meetings and quick feedback loops; ideas and plans that are constantly refined to reflect community input.

www.somervillebydesign.com/neighborhoods/

Neighborhood Meeting

Purpose

a(i) To provide the public with an opportunity to review a conceptual design proposal and identify and discuss issues and potential impacts with the applicant prior to the development of more detailed schematic design proposals

a(ii) To provide the public with an opportunity to review a chosen schematic design plan and identify and discuss issues and potential impacts with the applicant prior to submittal of a development review application

a(iii) Neighborhood meetings are required during the schematic design process to promote the submittal of a development review application that is more responsive to community concerns, expedite the review process, and to lessen the cost of development review by reducing continuances and appeals.

Source: Somerville Zoning Ordinance Art. 15.1.3

Experimental city

While campaigning ... I heard more and more from residents about big picture issues that go beyond our borders. They felt their concerns are not being addressed at federal and state levels, so they're turning to local government. ... Residents don't want us just to provide core services, they also want us to defend our community values ... an

existential climate threat, a transportation system that's in chaos, and a regional housing crisis that is spinning out of control ... people dying from overdoses and a federal government that's targeting our immigrant residents.
Source: 2020 Inaugural Address of Mayor Curtatone, 6 January 2020

Appendix 2: Analysis of the examples of Community Benefits Agreements around the US

In the planning literature, several articles and reports on CBA cite 1998 as the starting point for their use and the advocates and researchers have issued lists of projects from that date in to show the effectiveness of the CBA methods.⁴² Some of the studies have tried to determine the economic, social, or political circumstances that can explain their successful formulation. For a few of the cases, there have been update reviews after a period of years, reporting on how CBA terms and conditions have been fulfilled and whether the expected community benefits have been realized.⁴³ These accumulated data and analyses offer lessons for Somerville today.

In the tables, shown below, we have organized the data on 34 CBA, drawn primarily from the advocacy reports that were circulated in Somerville in 2016/2017. We show, first, their classification by legal status (as two-party or three-party agreements and as contracts, dispositions of public properties, conditions of zoning permits, etc.). Second, we distinguish them by their content (provisions related to recruitment and hiring, living wage commitments, payments into affordable housing or other community benefit funds, etc.). Third, we note any information from contemporary news articles, real estate market reports or advertisements that shows what has happened with the projects since 2017.

As expected, the update information reveals that some projects have stalled or failed, while others have progressed and their CBA terms and conditions are being fulfilled. In some cities, the community groups that led the CBA negotiations are still active and involved with new developments. In other cities, neighborhood controversies or scandals have arisen. In still others it appears that local citizen interest has faded away.

By organizing this data categorically and comparatively, we have identified certain factors of project type, scale and CBA structure and content, which appear to support successful and sustained CBA. We have also found factors that appear to lead to failure or disappointment.

Table 2A.1: Five projects with CBA in New England

Source: Akibode(2017); DeBarbieri (2017);

Project	Planning area or Community District			Project			CBA status
	Area acres	Area popula.	Area planned or potential develop	Acre	Res. D.U	Non-res. ft2	Signing date 2022 status
Union Square Redevelopment Plan				15.7	998	1.46 mill	--
Union Square D parcels (US2)				2.9	450	190,000	2018
	Legal actions needed: Redevelopment plan approval; land consolidation and re-subdivision (as D parcels); master developer designation, parcel dispositions; zoning coordinated development special permit; site plan reviews, individual building special permits						In construction Status of payments and obligations
	CBA terms:						

⁴² See <https://communitybenefits.blogspot.com>, which contains a compendium of data and articles on CBA, published up to 2010. It lists 28 projects in nine states as the then-current group of CBA's in effect." See also DeBarbieri, E.W. (2017), "Do Community Benefits Agreements Benefit Communities?" *Cardozo Law Review* Vol. 37, No. 5. See also American Planning Association (2015), *Community Benefits Agreements*, Quicknotes no. 59; www.planning.org/publications/document/9007654.

⁴³ See Federal Reserve Bank of Boston, www.bostonfed.org/publications/communities-and-banking/2017/spring/; MAPC, www.mapc.org/wp-content/uploads/2017/11/Community-Benefits-Agreements.pdf; Akibode, C.S. (2017), *Overview of Community Benefit Agreements and status in Detroit*, Michigan State University Center for Community and Economic Development, <https://ced.msu.edu/upload/CBAreportFinal.pdf>.

						unknown??
MIT University Park, Cambridge Master Plan PUD #152				27	531 DU; 1.3 mill office/lab;	1988 Finished 2016
	Assemblage of vacant former industrial parcels by MIT, redevelopment for lease to private, for-profit enterprises					
	Community Benefit terms are defined and commitments made in the landholder (MIT) Declaration of Covenants, unilateral legal commitments that have been recorded in the land registry to bind the lessees and sub-tenants . The commitments have encompassed requirements fulfilled during the construction period – provision of 155 units (24%) of affordable housing, design and built park and other landscaped open spaces; issuance and approval of Traffic Mitigation Plan with construction of garages and rights of way. Other commitments require on-going MIT and lessee activities – shuttle buses for employees as part of Traffic Mitigation, maintenance of park and open spaces allowing public use.					
Somerset County Wind Farm, Maine	Windmills on 25 mile ridge zone					2011
	TIF Agreement signed by county administrator, not community groups					Original signatory developer sold out; expected county revenue far below expectation
	State legislation adopted to authorize CBA between wind-farm developers and the host communities					
	CBA subject matter must be support for local economic development, natural resource conservation, tourism or energy cost reduction Labor force and wage provisions are not included Signatory is the municipal, county or Indian tribal administration					
Robbinston, Maine, Liquefied Natural Gas Terminal				80	LNG port facility	2007
	Legal actions: town referendum in favor of the project; opposed by Canadian neighbor municipalities					Project did not proceed
	County Economic Trust Fund payments, goal of 5% suppliers for local contractors; 60% local recruitment of full time workforce; construction job training; road repair; school system contribution					
Yale-New Haven Hospital expansion				136	800 dorm units, lab and class buildings	2009
	Legal actions needed: City-owned property disposition; rezoning; tax exemption and PILOT; CBA defined and authorized as voluntary hospital contract form by state legislation (CGS 19a-127k)					Campus in construction; CBA programs underway
	CBA: Free/subsidized access to care for local residents (\$412 mill – in kind); Healthcare professions education/training programs (\$97 mill – in kind); Good health education programs (\$13 mill – in kind; \$2 mill contracted); Donations to affordable housing/economic development (\$3.4 mill); hire 500 area residents over 5 years Groups: Connecticut Center for a New Economy; City of New Haven Ward 2 Councillor					

In this New England table, the two Maine projects have involved siting permits for electric power and gas transmission lines. Both were under regulatory jurisdiction of the US Department of Energy and were thus required to undergo a review of environmental justice and social equity impacts, following the *Guide to Advancing Opportunities for Benefits through Energy Project Development*.⁴⁴ The New Haven example arose under the authority of a state law -- the Connecticut law On Environmental Justice and Storage of Asbestos -- which required a benefits agreement to be negotiated and signed between the municipality and developer.⁴⁵ Thus, these cases were analogous to the Massachusetts laws on casino and cannabis facility siting, requiring “host community agreements” rather than CBA between developers and non-city organizations.

The MIT project arose in an urban-renewal style master plan development. However, because MIT was the landowner (without involvement of the Cambridge Redevelopment Authority), the pertinent legal instrument was a unilateral Declaration of Covenants – not a two-party agreement with the city or a neighborhood group. The city, MIT and the lessee-project construction firm (Forrest City) did sign a three-party document of *Design Guidelines*, which imposed various architectural and landscape details during the period of construction. There was also a *Maintenance Agreement* for up-keep and repair of the

⁴⁴ See US Department of Energy Office of Minority Business and Economic Development, www.energy.gov/sites/default/files/2017/09/f36/CBA%20Resources%20Guide.pdf

⁴⁵ Connecticut Public Act #2008-94.

public spaces and rights of way. It was a two-party contract between the lessee (Forest City) and the city, which has had a 15 year period of validity.

Similar to these New England examples, the cases cited by the advocates from around the US show the factors that are distinct from the CBA model, which they are supposed to substantiate. The data is organized in three additional tables, as follow:

Table 2A.2: New York City Examples

Source: www.communitybenefits.blogspot.com

Kingsbridge Bronx/CB#7		155,000		5	600,000 -- 700,000	2015
	Legal actions needed: Disposition of city-owned historic armory building; Redevelopment Plan approval (first shopping mall; second, ice-rink/retail)					First project rejected by City Council; Second project not financed
	CBA: quota 25% of construction workers and 51% non-construction workers at project be local with rifts priority to underemployed; \$8 million to NfP controlled community improvement fund; grant program for local small business; green building measures; community access to ice rinks; living wages for all project employees Group: Kingsbridge Armory Redevelopment Alliance (KARA)					
Columbia U. West Harlem /CB#9	240	46,500		17	6.8 million mix	May 2009
	Legal actions needed: Rezoning for education use; tax-exempt classification and PILOT;					Campus and affordable housing in construction
	CBA terms: (25 year term agreement) provides for: \$76 million total of funding including: \$20 million housing fund and \$4 million legal aid for displaced tenants; \$20 million in-kind education/campus amenities use; \$300,000 transition funding for Local Dev. Corp. creation;					
Atlantic Yards, Brooklyn mixed-use development with sports arena	285	155,000		22	6,430 1.1 mill plus arena	2005
	Legal actions needed: Empire State Development Authority project (urban renewal power exempt from city zoning/planning and city taxation)					Part built Afford housing and amenities not built Strong gentrification
	CBA terms:					
Bronx Terminal Gateway Center warehouse conversion to retail				16.5	1.3 mill retail 250 room hotel	Completed 2009
	Legal actions needed: Change of use and disposition of city-owned warehouses and prison; rezoning;					
Yankee Stadium				28	Billion \$ stadium	2006
	Legal actions needed	Parkland de-certification and privatization; tax exemptions; state bond financing; and state controlled land use process			Controversy over politician control; payments delayed years; 2019 audit found scandal	
	CBA terms: \$800,000 per year to distribute among community groups, plus \$100,000 per year other sports equipment and game tickets to Bronx recreation groups Groups: Not signed by community groups but by Borough President and Community Board officers					

Table 2A.3: Two other East Coast projects

Source: www.communitybenefitsblogspot.com

Port Covington Baltimore	235		18 million mix use	60	7,500 DU 3.0 mill non-resid.	2016
	Legal actions needed	Former railroad yards and industrial, rezoned owned by Port Authority and other private; Redevelopment Plan approval; Rezoning for mix use; Metro transit stop construction; Tax-increment financing (state authority);				Phase 1 construction began 2019; Two changes of project corporate control; New financing to restart in 2021; Coalition expanded and receiving grant
	CBA terms	CBA: three-party agreement with mayor, community groups and developer; Total benefits calculated at \$135 million: including \$39 million over 30 years to six community organizations; \$25 million workforce development; \$10 million small business loans; (balance CBA value against \$2.3 billion TIF debt and tax diversion). Community profit sharing for school funding and affordable housing South Baltimore 7 Coalition receives monies and redirects as macro and				

		micro grants to community organizations: example in 2022, grant \$125,000 for 15 rehab affordable DU				monies in year increments; 2021 audit finds jobs promise not realized
	CBA Audit (2021)	Jobs expected to come from project not realized – companies moving into the district came from Baltimore downtown; financing fell behind; https://baltimorebrew.com/2021/05/13/ and https://baltimorebrew.com/2021/05/25/				
Duke Plan – Shaw District/ Howard Theater Sub-district Washington DC	480	17,600	1,000 DU 100,000 retail Offices	2.1	125 DU, 170,000 office; 600 seat theater	2005
	Legal Actions	Development Framework Plan, rezoning				Some projects realized; One DC active as advocacy organization
	CBA terms	CBA: subsidy for affordable housing, first source hiring, job taining, community development fund				

Table 2A.4: Examples from California and Other States

Source: <https://communitybenefits.blogspot.com/2009/08/>

				Status of CBA
Atlanta Beltline	Atlanta	2005	Redevelopment Plan with 6,500 acre TAX increment financing district (TAD) lands along 22 mile transit loop; Housing Trust Fund with tax increment proceeds to create 5,600 DU with citizen engagement framework created by city council and Affordable Housing Advisory Board	\$26.4 mill revenue 2021; incremental realization of LOOP project over years but completion delay to 2030
Ballpark Village	San Diego	2005	7 acre, 3.2 million ft2 mix use adjacent to stadium. Components were 720 DU; 300,000 ft2 office; 58,000 ft2 retail; hotel; convention center expansion; CBA kept with 163 affordable DU and living-wage commitments	Original project failed; revived in 2013; 634 DU built 2018
Gates Cherokee	Denver	2006	50 acre former industrial; 8 million ft2 residential and retail	Developer failed in 2009; re-plan begun 2015
Grand Avenue	Los Angeles	2007	16 acre, 3.6 million mixed use with 2,600 DU and retail, large park, adjacent to concert hall and museums	Incremental realization up to 2022
Hollywood/Highland	Los Angeles	1998	1.2 million retail and 4,000 seat theater; tourism and entertainment center CBA with living-wage and first-source hiring	Incremental built parts, with park and land trust payments made; retail failing in 2020 – plan convert to offices
Hollywood/Vine	Los Angeles	2004	4.6 acre mixed use 500 DU, hotel and retail	
Staple Center	Los Angeles	2001	Added to Hollywood/Highland; Figureroa Corridor Coalition for economic Justice – living wage, local hiring, affordable housing	
Hunters Point	San Francisco	2008	500 acre former naval yard in zone of 33,000 people; proposal for 10,500 DU, baseball stadium, 3.7 million office and retail; Groups: ACORN, San Francisco Labor Council CBA: affordable units 32% of project plus \$27 million housing assistance funds; \$8.5 million job training funds; local recruitment and hiring program	Environmental cleanup delayed; anti-gentrification campaign
LAX Airport expand	Los Angeles		\$11 billion expansion project, anticipating 2028 Olympics	Approval of airport expansion in 2021
Longfellow Station	Minneapolis	2008	Abandoned mill demolished to re-develop for 180 DU (39% affordable) and 10,000 ft2 retail. Private development with only city planning conditional use permit. CBA by community council.	Project failed CBA not renewed by new developer Community council remains active
Marlton Square	Los Angeles	2002	22 acre residential and retail, 180 DU plus elderly housing	Bankrupt in 2008
Milwaukee Park East	Milwaukee	2005	16 acres county land within 64 acre renewal zone, mixed use plan with sports arena, CBA by legislation, CBA: Milwaukee City Code mandates CBA as a Redevelopment Compact, binding constituent parcels of urban renewal zone. CBA covers labor and wage	Multiple projects complete

			conditions, job training during the construction period	
Minneapolis Digital Inclusion		2006	CBA linked to fiber optic wi-fi network installation, city contract to subsidize Anticipated \$10 million (5% company profits from private subscribers) over 10 years to be distributed as grants to groups for digital access and literacy for poor;	Initial year payments up to \$500,000 but payments stopped in 2010 – profits not sufficient
NoHo Commons	Los Angeles	2001	Single project, 500,000 ft2 with office, retail and 278 loft residence units; \$44 million city subsidies	Built
Oak to Ninth	Oakland	2006	64-acre waterfront owned by Port of Oakland with 3,000 DU, other commercial and retail 2013 Berkeley study signatory was city Labor provisions CBA: Community groups signed cooperation agreement with Redevelopment Agency (later reformed when agency dissolved in 2012) 15% affordable units	Failed 2011 New project 2016, phases in progress;
Oakland Army Base	Oakland	2012	\$800 million redevelopment of warehouse facilities with \$300 million public funding City-signed lease disposition and development agreement: local recruitment and hiring program, living wage commitment, limitation on use of temporary workers, Group: Revive Oakland coalition was not a signatory	
The Hill and Penguins Arena	Pittsburgh PA	2008	28-acre area redevelopment; One Hill CBA coalition New master plan proposal in 2019: 2.5 million ft2 mixed CBA: district committee to control master plan \$2 million for supermarket; fair-wage commitment; first source hiring preference; recreation center	Supermarket and other public projects built incrementally; new bank hq. start in 2021; CBA coalition became CDC
Peninsula Compost	Wilmington, Delaware	2008	25 acre site with 20,000 ft2 organic waste composting	Facility closed; area redevelopment plan underway in 2022
San Jose CIM	San Jose	2003	Residential, retail, entertainment with \$40 mill subsidies	2008 in construction
South Dearborn St. (Little Saigon)	Seattle	2008	10 acre; 500 DU and retail big box CBA included fair wage standards by construction contractors, affordable housing, sustainable construction; small business assistance	2006-2008 negotiate Project failed 2009
Sugar House Casino (Fishtown)	Philadelphia	2008	22 acre former industrial, 330,000 entertainment complex – two phase construction: 2010 and 2016 built Penn Treaty Special Services District	SS District in operation
SunQuest Indus.Park	Los Angeles	2001	33 acre industrial park mix use redevelopment plan with city subsidy for environmental remediation CBA: first source hiring, fair wage commitment, youth center and neighborhood improvement fund	Project failed 2008
Facebook Estate	Palo Alto and Menlo Park	2016	57 acre campus, zoning amendment to expand office/lab use in general plan with 2.3 mill office/lab; 4,500 DU CBA: \$20 mill payment - \$18.5 mill to housing trust (city Below Market Rate Housing Fund) Tenant assistance fund and low income units STEM jobs training	Plan adopted with subsequent rezoning. Tenant assistance fund in operation; housing trust money paid – annual program grants
West Grand Blvd Cardinal Warehouse	Detroit	2014	West Grand Boulevard	

Categorical classifications of the 34 projects

This analysis organizes all 34 projects in the tables above, dividing their data into three categories of project scale, legal status of the controlling developer, and the required municipal actions. It co-relates these factors to the information on current status of the projects and the CBA's.

Table 2A.5: Categorical classification of the projects

	Scale		Control		Municipal actions		2022 status	
	Large scale	One Build	Public Institu	Private develop	Tax/Urb Renew	Zoning only	Project construction	CBA in force
<i>Somerville</i>								
Union Square	X			X	X		In construction	Started
<i>Other New England</i>								
MIT University Park	X		X		X		Built	Fulfilled
Somerset ME energy	X		X				Partial built	Partial fulfill
Robbinston ME LNG	X			X			Not built	--
Yale New Haven	X		X		X		Built	Fulfilled
<i>New York City</i>								
Kingsbridge		X	X		X		Failed	--
*Columbia Univ	X		X		X		Progressing	Operating
Atlantic Yards	X		X		X		Incomplete	Controversy
Bronx Gateway	X		X		X		Financial difficulty	Unclear
Yankee Stadium	X		X		X		Completed	Operating/disputes
<i>East coast</i>								
Compost Wlmington		X		X			Facility closed	--
Sugar House, Phila.		X		X			Built	Operating
The Hill, Pittsburgh	X		X	X	X		Slow incremental	Operating
Covington, Baltimore	X			X	X		Started	Operating
Duke Plan, DC	X		X	X	X		Incremental	Operating
*Atlanta Beltline	Infra		X		X		Progressing	Operating
<i>California</i>								
San Diego Ballpark	X		X	X	X		Revived/part built	Part fulfilled
Grand Ave. LA	X			X	X		Part built	Afford housing fulfilled but controversy over gentrification
Hollywood/Highland	X			X			Part built	
Hollywood/Vine	X			X			Built	
Staple Center, LA	X		X				Built	
Sun Quest Park, L.A.	X			X	X		Failed	--
LAX Airport	X		X				In construction	Unclear
Hunters Point S.F.	X		X		X		Delay	Unclear
Marlton Square L.A.	X						Failed	--
NoHo Commons L.A.		X		X	X		Built	Unclear
Oak-to-9 th , Oakland	X				X		Delayed/revised	Unclear
Facebook, Menlo Park	X			X		X	Rezoning adopted	Monies paid/grants
San Jose CIM	X				X		Failed	--
GatesCherokee Denver	X			X	X		Failed – new plan	--
So.Dearborn St. Seattle		X		X		X	Project failed	--
<i>Midwest</i>								
Longfellow Station Mn		X		X		X	Failed/revised	Not in force
Digital Inclusion, MN	Infra		X		X		Fiber optic	Partly fulfilled
*Park East Milwaukee	X		X	X	X		Substantially built	Operating
H. Ford Health, Detroit		X		X				
34	26 + 2	6	17	18	22	3		
TOTAL projects	Large Scale	One Build	Public Institu	Private develop	Tax/Urb Renew	Zoning only	2022 Project status	2022 CBA status

Factor 1 -- Project scale: Of the 34 total projects, 26 are large scale, multiple-building developments; 6 are single buildings; and 2 are large-area infrastructure networks (one with adjacent nodes of development).

Built and occupied projects: Of the 26 large scale projects, 7 have been built and occupied over five to twenty years and of these, 4 appear to have fulfilled their major CBA commitments (including payments to housing trust funds and community improvement funds, and programs of recruitment and local hiring during construction).

Delayed or controversial fulfillment of conditions: Another 3 of the built projects have encountered controversy or delay in fulfilling their CBA conditions. For example, at Yankee Stadium, monies were paid through the Bronx borough administration, but controversy arose about the non-profits that ultimately received the funding because they were located some distance from the impacted low-income neighborhoods adjacent to the stadium site.

Projects moving forward: There are 11 of the 26 large scale projects, which today are in construction at various phases and, for 7 of these, their CBA terms are partly fulfilled and not in controversy. Another 4 projects that are in construction have run into delays and controversies with CBA fulfillment. In particular, the Atlantic Yards project in Brooklyn has completed its stadium and office building components during 17 years but has never built the promised affordable housing.⁴⁶

Stalled or failed projects: Among the large scale project, 8 have not moved forward or have failed. For these projects, the signatory developer appears to be gone and the CBA is a nullity, or there remains a legal question of whether its status will be revived if a new project plan emerges.

Small projects: Of the 6 single building projects, only one has been successfully completed and occupied by 2022 and its CBA appears to remain in force. This project is the Philadelphia area casino, which has a community agreement, analogous to a Massachusetts “host community agreement” under the state gambling law, rather than a locally-initiated CBA.

Factor 2 -- Developer entity that is party to the CBA: Among the individual building projects, 5 of the CBA-signatory parties were private developers/landowners. Only one, in the Bronx, was a public, state-owned Redevelopment Corporation. Of the other 28 large scale and infrastructure projects, three types of development entities were involved as CBA signatories:

- 3 universities and 3 utility companies;
- 8 public institutions, including state/city airport, sports arena and area redevelopment authorities; and
- 18 private developer, landholder or construction companies;
- 3 multiple public/private entities, holding different parcels -- for these, the information is unclear regarding who signed the CBA.

Because the utility companies and universities are long-established institutions with stable income and investment planning, it is not surprising that the 6 projects, being developed by these entities, are among those moving forward and fulfilling their CBA obligations without controversy.

The picture is different for the public redevelopment entities, which are vulnerable to changes in market demand, finance, budget constraints, and variable public support. Of the 8 development authority projects, all have progressed with construction but 6 record controversy or lack of information about whether CBA conditions were or are being fulfilled.

⁴⁶ The anticipated profits and value gains from the completed project elements have been far below projections at Atlantic Yards, while construction costs have risen. Meanwhile gentrification of downtown Brooklyn has forced out most of the population, originally expected to gain the CBA benefits. Citation.....

Even more variable has been the performance of the private developments, which are strongly impacted by market and financial variability. Private entities routinely sell out unfinished projects or re-organize, so that the signatory legal entity to the CBA is soon out of the picture and the status of the instrument depends on whether its terms and conditions are effectively transferred to successor owners/tenants, contractors or management entities. Thus among the 18 developer projects, 7 projects have failed and 4 have been delayed or built incrementally with resulting lack of clarity or controversy about the CBA obligations.

Factor 3 -- Actions of the city/state needed for project: Among the 34 projects, only 3 involved simply the permits or approvals under zoning or planning. Two of these three were smaller-scale single building projects and neither has moved forward with construction. The third was the large-scale Facebook campus in Menlo Park that required rezoning and city permits and has successfully moved forward and fulfilled its CBA.

All of the other 31 projects required multiple state and city legal actions, including urban renewal, eminent domain or other acquisitions and transfers of public property; public debt, finance, tax exemption or subsidies; along with zoning/planning approvals. Certain projects were based on specific state legislation that included the CBA or host community agreement as a condition – including the Philadelphia area casino, the Connecticut Yale hospital/campus expansion, and the Minneapolis fiber optic cable project.

These different classifications of underlying authority have impacted the CBA status both legally and practically in several ways.

First, when the projects involve the transfers of valuable land or facilities, or tax, debt or subsidies, the community benefits in the CBA can be seen as part of the economic and contractual “deal.” The developer’s costs and obligations get balanced with the land price or levels of finance/debt/tax subsidy. This gives the CBA a strong contractual basis for future enforcement of the obligations, even if they may lie beyond the standard subject jurisdiction of the city, as regulator.⁴⁷

Second, when urban renewal, redevelopment, eminent domain and transfers of public lands are involved, there is established legal precedent for requiring the conditions of the CBA to be recorded on the land records and to run in the “chain of title” to bind future successors and tenants.

By contrast, if the only legal actions involved are standard zoning or planning permits under the city’s land use and health/safety/welfare regulatory powers, the CBA must stand on the weaker foundation of “nexus” or impacts and mitigation. CBA provisions that require a developer to recruit and hire locally, and offer fair wages and labor conditions are generally interpreted as beyond the jurisdiction of the city and of questionable enforcement by non-city groups.⁴⁸

Factor 4 -- One-party, two-party or three-party instruments: It must be noted that, given the variety of state laws and municipal practice, many of the listed projects do not fall within the same definition of a CBA, which would apply in Massachusetts and the Somerville ordinance. These would be the CBA that are negotiated and signed as two-party agreements (developer enterprise and a not-for-profit community group). Their specific form and status (without a city agent signature) seems to be needed in order to

⁴⁷ In some states, express authority to impose on a developer such requirements as local hiring, fair wages and a quota of job creation in exchange for the tax benefit or debt/finance subsidy.

⁴⁸ The Boston Calling case and other court rulings against the Walsh administration in Boston make clear the problems inherent in trying to impose and enforce these types of conditions.

allow certain developer commitments, which are outside the jurisdiction of the city and its zoning/planning powers – in particular, labor and wage-related activities.⁴⁹

The project data from around the US shows a variety of one-party, two-party and three-party contractual and regulatory documents, which cover a broad range of developer promises.

Two-party community group/developer	City/state officer signatory with developer	Three-party instrument
Somerville Union Square MASS	Somerset Wind Farm ME	MIT Sydney Street Design Guidelines
Kingsbridge Bronx NY	Yale New Haven Hospital, CT	
Atlantic Yards, Brooklyn NY	MIT Sydney Maintenance agreement	Two-party community group with city/state agency
Bronx Gateway NY		
Columbia Univ. West Harlem, NYC	Yankee Stadium, Bronx NYC	LAX Airport CAL
Duke Plan, Shaw, Washington DC	Oak to Ninth, Oakland CAL	
Peninsula Compost, Wilmington, DEL		Unilateral instrument or conditioned approval
Hunters Point, San Francisco CAL		
Ballpark Village San Diego CAL		Robbinston LNG ME
NOHO Commons, Los Angeles CAL		Atlanta Beltline GA
SunQuest, Los Angeles CAL		Park East, Milwaukee WIS
Marlton Square, Los Angeles CAL		Digital Inclusion, Minneapolis MINN
Hollywood and Vine, Los Angeles CAL		MIT Sydney Street Covenants
Gates-Cherokee, Denver COLO		
Longfellow Station, Minneapolis MINN		
South Dearborn, Seattle WASH		

Factor 5 -- Developer/community contractual relation: In order to avoid or compensate for the legal weakness of any CBA that arises only under the limited zoning/planning jurisdiction of the city, the advocates have argued an alternative contractual law theory – that is, that the developer gains valuable consideration from the promise of the signatory community groups to refrain from opposing and delaying its permit applications. This can result in a speedier process, fewer costly revisions of architect/engineer plans, and the marketing advantage of harmonious community support and publicity. However, there does not appear to be any record of court interpretation of this legal theory in an actual case.

In fact, the evidence seems contradictory. In this compilation of the 34 projects, the timelines for permitting and process in most examples stretch far beyond the standard in nearly every case. In the Boston region, the typical zoning/planning review process takes about 18 months to two years within a total of four to five years from initial project concept and design planning to occupancy permit. The 34 projects had their starts in three periods (1999-2004), (pre-2008/2009 recession) and (post-recession 2014-2016). Of those that have moved forward, almost all have involved eight to ten years and several have stretched to 15 and 17 years. In Somerville, Union Square was in land use review for 55 months rather than the standard 18 to 24 months.

Factor 6 -- Monitoring and enforceability: It remains unclear whether any group has been successful in enforcing CBA conditions against a non-complying developer or successor owner/tenant.⁵⁰ There are a few articles in the literature that call attention to efforts by local groups to persuade their cities to take

⁴⁹ See, for example, the Boston Calling case in which aides for Mayor Walsh attempted to gain hiring and labor conditions commitments from entertainment enterprises, who were seeking permits for open-air concerts in city parks. Their demands were found to be outside their authority as city employees and they were initially indicted and convicted for extortion (later dismissed) because of the alleged strong arm tactics they employed. See www.wgbh.org/news/local-news/2019/07/22/explaining-the-revived-boston-calling-case.

⁵⁰ One New York Court has held that a neighborhood group, signatory to a CBA, could not force by court order its town administration to take enforcement actions against a non-complying developer. *Lennon v. Seneca Meadows*, 46 Misc3d 1215(A), (January 2015)

such enforcement actions and several of these raise the question of “third party standing” as the legal basis.⁵¹

⁵¹ See, for example, a post, entitled: *New Haven community group asks city to enforce CBA*, (27 May 2010), <https://communitybenefits.blogspot.com>. In New York City, a county level court has dismissed the suit of a local restaurant in a zone, covered by a CBA between the university/developer and the Community Board. The business claimed damages from construction noise and disruption as a third-party beneficiary of the CBA; *Enoteca v. New York University*, 2013 NY Misc (Lexis) 6465 (New York County Supreme Court May 2013), reargued 2013 NY Misc Lexis 4366. Similarly, the tenants of residential buildings that were losing their rent control as a result of the ending of low-income housing restrictions, were held to lack standing as third-party beneficiaries of the Restrictive Covenant terms imposed by the state in the Mitchell-Lama tax-subsidy bond programs; *Branch v. Riverside Park Community, LLC*, 24 Misc3d 1226(A) (New York County Supreme Court 10 July 2009; and *Mendel v. Henry Phipps Plaza*, 27 AD3d 375, 813 NYS2d 66 (NY First Department Appellate Court 2006)

Appendix 2: Experience of the City of Detroit

The most extensive and comprehensive program of community benefits agreements has been carried out in Detroit under an Ordinance, adopted in 2016. This legislation and the subsequent experience of the city, approving 12 large-scale projects during five years, illustrates what appears to be a workable mechanism within limited parameters of legal status. All the information cited in this Appendix is drawn from the Detroit City Planning Department website: <https://detroitmi.gov/departments/planning-and-development-department/deisgn-and-development-innovation/>.

Table 3A.1: City of Detroit Community Benefits Ordinance
Detroit Code of Ordinances # 2021-4, Chapter 12, Article VIII

The Ordinance was first adopted by Charter Referendum in November 2016 and was then amended in 2021 by vote of the City Council
12-8-2 Definitions – community benefits provision means the agreement made between the planning director and the developer that raises the issues raised by the Neighborhood Advisory Council --Enforcement Committee means committee led by the corporation council and reps of planning department, Human Rights, Legislative Policy, and a member of the Neighborhood Advisory council
12-8-3 When a Tier 1 project received by planning department, the planning director schedules not less than five meetings , subsequent to creation of a Neighborhood Advisory committee in the impact area... work with ward counselor and one of the at large, to insure notice to citizens... (b) Neighborhood Advisory Council – planning director will accept nominations from any person... select nine members ... two selected by residents of the impact area; four members selected by the planning director with preference to persons directly impacted, one member each selected by the council members, (c) ... information to be supplied... (d) ... planning director arranges meetings between developer and the committee... (e) ... planning director issues the Community Benefits Report ... itemized list of concerns and a method for addressing each of the concerns or why a particular concern not being addressed...
(5) ... the planning director works with the city council to assure to the max extent, that all approvals required may be considered simultaneously and subject to one approval vote... (f) Development agreement ... made between the developer and the city shall include a Community Benefits Provision ... (f)(1)a: enforcement mechanisms for failure to adhere include ... clawback of city-provided benefits, revocation of land transfers, or land sales, debarment provisions and proportionate penalites and fees... (f)(2) the developer shall not be required to enter into any agreement with other parties than the city ... (f)(3) the developer may voluntarily enter into any contract or agreement related to the Tier 1 project that does not pose a conflict of interest with the city...
(g) Enforcement: (b)(2) the enforcement committee shall provide a biannual compliance report tyo the city council and the neighborhood advisory council for the time period stated (3) the planning director set up annual meeting between developer and the Advisory committee to discuss status of the Tier 1 project during time period identified ... highly complex procedure to determine whether enforcement necessary...
12-8-5 City Council can waive the whole process

Analysis of the Detroit Ordinance

The Ordinance was first adopted by City Charter Referendum in November 2016 and amended by the Detroit City Council in 2021 with a series of clarifying details. The law requires the following:

- Its provisions apply to any “Tier 1” project of \$75 million investment or more, which will require either transfers of city-owned land/property worth \$1 million or more or tax abatements of \$1 million or more.
- Whenever a developer submits a proposed Tier 1 project, the planning director first must appoint a Neighborhood Advisory Council of nine representatives from the impact area, who are to work with the developer to identify appropriate community benefits.
- A series of not less than five meetings and information reviews take place at which the needs and concerns of the residents are identified and various solutions and commitments of the developer are defined to mitigate and improve the area. In practice, the meeting cycle concludes with the Neighborhood Advisory Council issuing a letter of support for the list of community benefits.
- The planning department then drafts the identified community benefits into a “developer agreement” that is incorporated as the “Community Benefits Provision” of the foundational agreement between the city and the developer.
- Subsequent to the project approval, an Enforcement Committee is organized, which joins representatives of the Neighborhood Advisory Council with city legal and planning staff members, who must monitor compliance as the project is built, and who report to the City Council twice a year on the progress.
- If the developer fails to fulfill its commitments during the period of development, then the Ordinance allows enforcement by fines, withdrawal of permits or tax benefits, or “claw-back” of subsidies already given.

The “agreement” that emerges as the product of this process is not specified in form or legal status. It does not have to be a written, contractual document and it does not have to be signed by the two parties (developer and city officer).⁵² Instead, the ordinance only requires the city planning staff to prepare a report on the process and content of the neighborhood meetings and to write the “Community Benefits Provision,” which is included as part of the conditions or as an attachment to the foundational document --tax exemption, subsidy grant, urban renewal designation, public property sale or transfer, etc.

The processes of CBA formulation, monitoring and enforcement in Detroit

The text of the Detroit Ordinance and dozens of planning reports on the neighborhood meetings and follow-up monitoring of CBA show that the legal force of the ordinance is directed toward insuring compliance with the process of community/developer dialogue (not the content or outcome). At the stage of project approval, it mandates the creation of the Neighborhood Advisory Council, the holding or meetings, transparent recording of their content, final recording of the identified issues, needs and mitigations/solutions. The law does not authorize or mandate the parties to create a CBA document with binding mutual city/developer obligations or developer/community obligations or with definition of any community or neighbor “rights,” enforceable against the developer or the city.

If there is a resulting CBA, then in the post-approval stage, the Ordinance authorizes the creation of an Enforcement Committee, which sends a neighborhood council representative to join the pertinent city legal and planning staff, who are monitoring the compliance during project development. Together they devise a strategy of enforcement, following the basic laws. The goal is transparency and community influence on the city actors, not the creation of an independent citizen, neighbor or “community” rights.

⁵² The Legislative Policy Division of the Detroit City Council issued a progress report on implementation of the Ordinance in October 2020, in which it made clear that none of the six developments, approved to that date, had a separate, signed CBA document. <https://detroitmi.gov/sites/detroitmi.localhost/files/2020-10>.

Additional fundamental and limiting elements of the Detroit CBA

- The text of the Ordinance strongly implies that the linkage and substantiation for the community benefits arise out of the state or city's legal powers of public property management/disposition; of economic development support through subsidies or tax exemptions; and of urban renewal. If a project only requires regulatory zoning or planning approvals, the CBA mandate does not apply under this ordinance.
- As a result of this origin of authority, it can be assumed that any CBA will be limited in time to the period of project construction (or final fulfillment of the urban renewal or tax obligations). Therefore, the ordinance imposes no requirement to register any document in the land records. There is no expectation that a CBA can or will bind any future successor owner, lessee or occupant of the project or the land.
- Similarly, the text of the Ordinance implies that neither the Neighborhood Advisory Committee nor the Enforcement Committee will continue in existence beyond the periods of construction or tax/grant compliance. There is also no expectation that the Neighborhood Advisory Committee will become a permanent neighborhood organization, set up as an NGO or as a subsidiary municipal committee under mayoral, council or city planning authority. It is not authorized to get involved in other projects.
- The Ordinance expressly states that the developer "shall not be required to enter into a legally binding agreement with any individual or organization other than the City..." However, there is a separate clause that says that the developer "... may voluntarily enter into any contract or agreement related to the project that does not pose a conflict of interest for the city..." While this appears to leave the door open for an aggressive community organization to achieve its own CBA, outside the ordinance, there is no evidence in the records posted on the City of Detroit website, that any such voluntary agreements have been created since 2016.

Responsibilities of the Detroit Planning Department

The Detroit planning department has provided the City Council with several update reports on its activities in implementing the ordinance.⁵³ In a public Presentation in August 2020, the following "fast facts" were shown:

- 10 projects were completed between 2017 and mid-2020, but concentrated only in the center city zone;
- For these 10 projects, a total of 68 community meetings were held. Each meeting required a planning department report.
- Over 1,000 citizens attended the meetings, and 101 residents served on the Neighborhood Advisory Committees.
- Generally, the five mandated community meetings required an average of ten weeks per project. Several projects stretched beyond this timing with additional meetings.
- The results of the process were developer commitments, including contributions to youth training, workforce development, affordable housing, and open space/recreation improvements.

⁵³ See Detroit Planning and Development Department website, [https://detroitmi.gov/departments/planning-and-development-department/design-and-development-innovation/...](https://detroitmi.gov/departments/planning-and-development-department/design-and-development-innovation/)

In February 2022, the Director of Civil Rights and Inclusion issued the biannual report on the progress and compliance of the Detroit Community Benefits Agreements, citing 11 projects that were in the enforcement phase. It reported that all of the commitments, which were subject to monitoring, were on track. These involved 23 to 63 commitments per project for 11 projects. Of these several hundred items, only 1 showed a problem issue.

The administrative and budget implications of the CB Ordinance on the Planning Department can be seen in the context of the overall department headcount and budgets. In recent years, the Detroit Planning Department has had a total employee count of 42 and a total budget of budget of about \$8 million per year. Half the staff of planners is covered by city budget funding (\$3.5 million) and another half is supported by block grant and other revenue. In order to administer the CB Ordinance and coordinate all the reporting and meeting activities for the 12 covered projects, the department hired a full-time planner in 2018.

Projects approved and monitored under the Detroit Ordinance

The website of the Detroit City Planning Department contains a large volume of detailed information about 11 projects that have been approved subject to Community Benefits Agreements since 2016 (and one more that is being reviewed and negotiated in 2022). Following the “Tier 1” definition in the Ordinance, all of the projects are large redevelopments on lands, which have been under control of the city, state or public institutions. Almost all involve one or more large vacant buildings – previously schools, hospitals, factories or warehouses -- along with surrounding parcels of abandoned houses. Private developers are re-purposing or re-building the large sites along with revival, removal or improvements on the surrounding parcels.

The CBA’s, therefore, contain the same types of developer commitments, including additional affordable dwelling units (beyond the 15% required), improvements and dedicated public use of open spaces; recruitment of local workers and contractors during the stages of construction; contributions to job training, youth education and recreation programs; energy efficient building systems.

Table 3A.2: List of Detroit Projects with CBA

Cass and York Lot 1 and Fisher Building (2018) 1.8 acre site with \$80 million city and state tax abatement ... Dwelling units and 556 parking garage
Michigan Central Station – ongoing 02/02/22 – 38 of 43 commitments on track
Henry Ford Health and the Pistons (2017) \$50 million Rehab and sports medicine complex, --\$1.65 million local park rehabilitation payment
Lafayette West (5.2 acre residential campus for 318 dwelling units; brownfield redevelopment --notify neighbors of traffic closures --window cleaning of adjacent buildings --report on hazardous waste --NAC recommend pest control contractor --safety lighting plan 02/02/22 – 45 of 55 commitments on track
Wigle --commit to add 1.5 acres green space within 12 minute walk --Public access to open space --public design process for park --\$50,000 to CCNDC for community space improvement --deeper affordability for rental units --restore street grid block pattern

<p>--support art in park --access retail options through local broker --Motor City Match (NGO) to identify retail tenants 51% local contractors for onstruction to extent possible Storm water mitigation Enterprise green communities Double pane windows, energy efficiency 02/02/22 – 16 of 23 commitments on track</p>
<p>Detroit Psitons --\$2.5 million for outdoor basketball courts around city \$100,000 workforce training City Resident Employment plan Annual youth jobs with Pistons Community access to practice facility Two youth basketball programs per year 200,000 free tickets per season</p>
<p>Herman Keifer Hospital (2018) Adaptive reuse of hospital and school buildings for commercial use 38-acre site -- \$100 million --housing stabilization and affordable units – abandoned houses surrounding the hospital site --local hiring and contracting --vacant land improvement covering 375 vacant lots with 20% vacant houses rehabilitated with local housing groups -- open space and recreation --public events on the campyus 02/02/22 – 10 of 12 commitments on track</p>
<p>Free Press Building</p>
<p>Hudsons 02/02/22 – 15 of 19 commitments on track,</p>
<p>Book Tower/Monroe 3,500 residential units of which 20% affordable Fiar Housing provisions imposed on all lessees Construction impact and traffic notifications Traffic and linkage to transit station during construction Rehabilitate façade of nearby historic theater Hiring and contracting local workers and firms in compliance with Ordinance Public plaza, rooftop planting, Low flow plumbing and low energy, LED lighting Report 2/2/2022 – 12 of 20 commitments on-track</p>
<p>Cass and York Lot 1 and Fisher Building == ongoing</p>
<p>Michigan Central Station – ongoing 02/02/22 – 38 of 43 commitments on track</p>
<p>Lafayette West: --notify neighbors of traffic closures --window cleaning of adjacent buidlings --report on hazardous waste --NAC recommend pest control contractor --safety lighting plan 02/02/22 – 45 of 55 ommitments on track</p>
<p>Wigle --commit to add 1.5 acres green space within 12 minute walk --Public access to open space --public design process for park --\$50,000 to CCNDC for community space improvement --deeper affordability for rental units --restore street grid block pattern --support art in park --access retail options through local broker --Motor City Match (NGO) to identify retail tenants 51% local contractors for onstruction to extent possible Storm water mitigation Enterprise green communities Double pane windows, energy efficiency 02/02/22 – 16 of 23 commitments on track</p>

<p>Detroit Pistons --\$2.5 million for outdoor basketball courts around city \$100,000 workforce training City Resident Employment plan Annual youth jobs with Pistons Community access to practice facility Two youth basketball programs per year 200,000 free tickets per season</p>
<p>Herman Keifer 02/02/22 – 10 of 12 commitments on track</p>
<p>Free Press Building</p>
<p>Hudsons 02/02/22 – 15 of 19 commitments on track,</p>
<p>Book Tower/Monroe 3,500 residential units of which 20% affordable Fiar Housing provisions imposed on all lessees Construction impact and traffic notifications Traffic and linkage to transit station during construction Rehabilitate façade of nearby historic theater Hiring and contracting local workers and firms in compliance with Ordinance Public plaza, rooftop planting, Low flow plumbing and low energy, LED lighting Report 2/2/2022 – 12 of 20 commitments on-track</p>

Appendix 4: Additional reports listing community benefits sought and secured at Union Square

In trying to answer the question of the extra community benefits achieved by the Union Square CBA, the deliberate ambiguity of Ordinance #2018-10 becomes highlighted. The Ordinance required no fixed standards or methods of monitoring and measurement, and no periodic reporting, audit or accountability from the parties to the CBA. Thus, the public records of update, evaluation and progress are diverse and inconsistent, and several appear self-interested and self-aggrandizing.

Table 4A.1: LOCUS (April 2016)

Source: Somerville Union Square Strategic and Community Benefits Plan

The working group identified the following key priorities and action items:
Economic Development
1. Attract and retain employees
2. Develop and maintain a high quality workforce
3. Promote economic development of local and independent businesses
Housing
4. Ensure the greatest level of housing preservation and production for extremely low income up to 170% AMI
5. Provide a good mix of housing that is attainable and will accommodate families and senior needs
6. Promote home ownership and rental housing alternatives
7. Ensure proper management functions are kept in the hands of local stakeholders
8. Streamline and ensure accountability of tenant and homebuyer marketing and selection policies and procedures for attainable housing options
9. Gain long term community control of a percentage of land to be redeveloped for family friendly housing development
Green and Open Space
10. Maintain a higher percentage of open space in Union Square (30-34%)
11. Access to the needed acreage for recreation
12. Promote better surface management and green infrastructure
13. Create design standards and guidelines for open space and public realm
Civic Space
14. A meeting space for individuals and groups; performance and recreational space; community living room with free Wi-Fi; pickup/drop off for items requested from Minuteman Library
15. A Welcome Center in the GLX Station
16. Affordable daycare
17. Shared retail space with shared amenities
18. Community kitchen and café that serves as an incubator for food startups
19. Dedicated teen space with programs targeted to teens
20. A new location for SCATV
21. A branch library ...
22. Recreational center with basketball court, locker room, and spaces for yoga and other classes
23. Small business incubator with job/career center training center
24. Health clinic providing affordable treatment options
Parking and Mobility
(18 items)
Smart City Infrastructure
(13 items)
Climate Change
(8 items)
Place management Organization
(7 items)

This was a strategic planning document, intended to encourage the widest-possible scope of citizen interest and motivation, and participation by groups with funding. It assumed that, as the process would go forward, the limits of legal scope and jurisdiction and of practical feasibility and cost would all be

sorted out. The interaction of all the factors would induce community members to coalesce around the items that they would consider to have the highest priority and most need. The final result would be a CBA with maximum community support and satisfaction.

Table 4A.2: City of Somerville OSPCD (October 2016)

Source: Letter of Planning Director to Board of Aldermen, 16 Oct 2016 (Communication #1062)

Planning Division staff reviewed the LOCUS report and incorporated any recommendations that could be legally incorporated in a zoning ordinance, that reflected Somer Vision and Neighborhood Plan goals and that are technically achievable ... These include:

- a. 20% inclusionary zoning
- b. Linkage to affordable housing,
- c. A portion of spaces provided for arts and maker uses
- d. Creation of design standards and guidelines for public realm
- e. Establishing a Mobility Management Association
- f. Ensuring that parking is central and shared
- g. Incorporating parking maximums
- h. Providing significant bike parking

Creating better streets

Table 4A.3: List of benefits published by Alderman Neiderganger

Source: Somerville News Weekly 13 June 2017, Ward 5 Developments... Why I Voted for Union Square Zoning

- An estimated 5,000 permanent jobs
- 4,000 construction jobs with hiring preference for Somerville residents and veterans
- 900 housing units including 180 (20%) affordable and between 30 and 90 three-bedroom units
- 2.5 acres of new high quality parks and plazas
- Ambitious requirements for sustainability standards LEED
- \$5.5 million offset costs of GLX
- \$6.6 million for Somerville Affordable Housing Trust Fund
- \$4.6 million offset costs for water, sewer and roadway infrastructure
- \$3.7 million for Community Benefits Fund
- \$2 million additional future phase contributions
- \$2 million for workforce training
- 69,000 ft2 artists and creative uses
- \$17 million building permit fees
- \$4.1 million in payments tied to infiltration and inflow storm drainage
- \$450 estimated tax revenue over 30 years.

Work to do: formulate the CBA ... to determine whether the Mayor or Neighborhood Councils have the power to decide on distribution of the \$3.7 million that US2 will contribute over 20 years. The Mayor was wrong to take all of US2 financial contributions for the Administrations priorities leaving (according to US2) no money to pay out in community benefits negotiations. ... In addition there are many non-monetary contributions that developers can make... such as low cost office and retail space, job training, jobs for residents... and advice for local businesses...

Table 4A.4: City Council Legislative Affairs Committee (March 29, 2018)

Estimate that combined public and community benefits would total \$3.9 million of which \$1 million would “likely” be realized in first year #205201

This estimate of the amount of community benefits was proffered in the discussion of the City Council Committee. Its precise source does not appear in the minutes of the meeting.

Appendix 5: Analysis of the Content of the Union Square CBA

The text that is reviewed below is the “Term Sheet” of the Union Square CBA, which was submitted to the City Council by the two parties – US2 and the Neighborhood Council on 13 August 2019.⁵⁴ The method for its evaluation is comparative analysis – its terms are compared directly to corresponding text of the Developer Covenant, signed by the Mayor and US2 in 2017 and reference is also made to relevant clauses of the Land Disposition Agreement between the Somerville Redevelopment Authority and US2 and to the conditions, attached to the Union Square Coordinated Development Special Permit.

Preamble

Developer Covenant 06/08/2017	Community Benefits Agreement term sheet 08/13/2019
US2 and the City covenant: 1. Contributions framework: The parties desire to outline a framework for contributions and public benefits to be provided by US2	US2 shares USNC’s vision of Union Square ... US2 commits that the USQ Project... will be the most community-responsive project that Somerville has ever seen, setting the bar for future development in the city.

The introductory language to the Developer Covenant uses wording that is typical of a routine contractual document, while the CBA overstates its own importance as the model for all future development process in the city. The clauses that describe the anticipated content and status of the CBA do not appear at the beginning of either document, but they are presented in the following segment of the chart. Both are drawn from different sections – they are parallel in content but not in placement in the text.

Content and status of the CBA

<p>c. Community Benefits Agreement Negotiations</p> <p>US2 agrees to negotiate in good faith a Community Benefits Agreement with the Union Square neighborhood council ... when such council has been duly formed and recognized in accordance with the city’s Community Benefits Committee Ordinance... and to participate in any mediation process if requested...</p> <p>The CBA shall set forth the agreements of the parties thereto on matters allowable under applicable law and not otherwise included in Union Square district Zoning or in this Covenant, which may include but not be limited to:</p>	<p>Workforce</p> <p>(11) This term sheet lists some existing obligations that are required under zoning or other approvals, but most of the items herein are new developer obligations for the benefit of the community</p>
<p>--(i) fostering the creation of new jobs ...</p> <p>--(ii) maintaining and promoting local businesses with a focus on minimizing displacement ...</p> <p>--(iii) creating multi-functional Civic Spaces,</p> <p>--(iv) providing open technologies, connectivity and</p>	<p>(chapter headings of the CBA)</p> <p>Housing</p> <p>Workforce</p> <p>Small and Sustainable Business</p> <p>Sustainability</p>

⁵⁴ See www.unionsquareneighborhoodcouncil.org/images/docs/190825-US2-%20toUSNC%20Negotiating This version was subsequently circulated among the membership of the Neighborhood Council and was subject to the vote of ratification.

policies to support a shared civic innovation platform, -- --(v) improving quality of life by bolstering social capital and community resilience, and --(vi) preventing displacement of low-income people; --(vii) such other matters as the parties may agree upon.	Green and Open Space Arts and Creative Economy Parking and Traffic Civic Space USNC Support and Monitoring and Compliance
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The promise made by the developer in the Developer Covenant was “to negotiate in good faith” a CBA, which would contain:

...agreements of the parties thereto on matters allowable under applicable law and not otherwise included in the Union Square District Zoning or in this Covenant...

This general characterization of content was followed by a list of six topics plus an open-ended category of “such other matters as the parties may agree...”

By contrast, the CBA describes itself as partly a restatement of the developer obligations already committed, but as mostly “... new developer obligations for the benefit of the community.” The scope of its subject-matter content can be seen by listing the chapter headings and these are compared to the list in the Covenant. Most of the categories overlap, but the wording in the Developer Covenant is more abstract – for example, item (iv) mentions “policies to support a shared innovation platform,” and (v) reads: “improving quality of life by bolstering social capital and community resilience.” These jargon phrases do not re-appear in the CBA, which is much more prosaic in identifying housing, traffic, small business and similar practical problems as the issues.

Neither the Developer Covenant nor the CBA is explicit about the legal relationships or status that the CBA is expected to establish. The final two sections of the CBA are headed *USNC Support and Monitoring and Compliance*, which imply both a contractual law relation between the parties and a regulatory role for the Neighborhood Council. In contrast, the Developer Covenant contains 22 sections (paragraphs 8 through 26) covering five pages of text, which detail its legal status vis-a-vis the city agencies and other future subordinate, successor or contractual parties.

Payments by the developer

The section of the Developer Covenant, entitled “Public benefits payments,” does not have a parallel section in the CBA but one paragraph (#11) from its fourth section, entitled “Workforce,” is quoted to show the contrasting ideas of the money obligations.

Developer Covenant	CBA term sheet
<p>2. Public benefits payments:</p> <p>a. GLX Contribution -- \$2.40 per square foot of development and future phases towards city’s Green Line (excluding sq. feet of parking) ... this fee adjusted annually by CPI beginning on date of special permit approval or June 30, 2018 whichever is earlier ... pay 50% on date of issuance of each building permit and 50% at C of O</p> <p>b. Contribution towards Offsite Infrastructure -- \$2.00 per square foot – in addition to cost of Inflow and Infiltration infrastructure required as environmental</p>	<p>Workforce (11) This term sheet lists some existing obligations that are required under zoning or other approvals, but most of the items herein are new developer obligations for the benefit of the community. The new monetary commitments in this term sheet will be credited towards US2’s community benefits contribution under the development covenant as outlined on Exhibit A... Furthermore, as additional benefit to the community US2 is committing herein to pay community benefits obligations on the timing indicated herein even if the pace of development has not generated an equivalent amount of Community Benefits Contribution monies.</p>

<p>mitigation ... annual adjustment ... this contribution may be made in kind as streetscape elements with verification of the cost of these in kind ...</p>	<p>US2 will receive credit for future projects for any contributions paid in advance.</p>
<p>3. Community benefits:</p> <ul style="list-style-type: none"> a. Without limiting US2 obligations under Mass laws and Redevelopment land disposition agreement, US2 shall contribute \$1.60 per square foot ... in order to ensure that US revitalization and redevelopment can address additional community needs. For purposes of calculating... the square footage of structured parking... shall be excluded. The fee per square foot of the Community Benefits Contribution shall be adjusted annually by the change in CPI ...and shall be paid as follows: : <ul style="list-style-type: none"> i. With respect to first building -- deposit 33% of CBC into escrow on date of approval of USOD zoning by Board Aldermen and release when building permit is issued for first building Second 33% on issuance of building permit and final 33% on certificate occupancy for first building ii. With respect to ... Future Phases – 50% on building permit and 50% on C of O <p>...Contributions shall be deposited into the stabilization fund to be created ... to be disbursed for purposes and in amounts determined by the Community Benefits Committee, as guided by the Neighborhood Council, as hereinafter defined and approved by the Board of Aldermen. Such purposes may include but not be limited to: (i) fostering the creation of new jobs ... (ii) maintaining and promoting local businesses with a focus on minimizing displacement ... (iii) creating multi-functional Civic Spaces, (iv) providing open technologies, connectivity and policies to support a shared civic innovation platform, (v) improving quality of life by bolstering social capital and community resilience, and (vi) preventing displacement of low-income people in Union Square resulting from Speculation and development.</p>	
<p>4. Future Phase Contribution:</p> <ul style="list-style-type: none"> a. ... US2 contribute \$2.00 per square foot for future phase ... 50% at building permit and 50% at certificate of occupancy ... 	

The Developer Covenant lists the series of payments that the developer will make (based on per square foot calculations of built space) at specific stages of permitting and construction. These are repeated (with some added detail) from the earlier Land Disposition Agreement. In the Land Disposition Agreement, however, these developer payments were placed into the framework of the overall “deal” with the city – in balance with the land purchase price due to the Somerville Redevelopment Authority as well as other arrangements of municipal debt financing and subsidies.

In this context, the phrasing in paragraph #11 of the CBA must be recognized as a delicate and deliberately ambiguous wording that has avoided significantly upsetting the balance of costs and value transactions in the overall “deal.” Thus paragraph #11 says first that most of the items in the CBA are new developer obligations (going beyond what the city was able to secure). But at the same time, the money obligations it imposes will be credited toward the total amounts already fixed in the Developer Covenant.

Thus, the CBA cannot be understood as significant victory of the “community” in getting the developer to disgorge more of its profits. Instead, the CBA shifts around or details the purposes and destinations of the payments, rather than imposing new costs to the development.

One key point of difference between the Developer Covenant and the CBA -- the Developer Covenant described the method by which money would be received by the city into the Community Benefits Stabilization Fund and then disbursed under control of the city-wide Community Benefits Committee. This was the proposed mechanism in the first draft of the Ordinance in 2017. By 2019 when the CBA was finalized, the second draft of Ordinance #2018-10 had been adopted without this committee.

Housing

The Developer Covenant did not contain any language on the linkage and in-kind contributions to be made by the developer for affordable housing since these were already defined by the Zoning Ordinance and would be fixed in the Coordinated Development Special Permit. The CBA made reference to these obligations in paragraph (1) of the Housing section and added the further clauses to adjust and refine the details of these obligations. Overall, the section focused on the primary concerns of the existing lack of family-sized units in the housing stock and expected further decline as a result of displacement.

Covenant 2017	CBA 2019
...	<p>Housing</p> <p>The USQ project will contribute nearly 1,000 new affordable and market housing units to the Union Square neighborhood, helping to alleviate the burden of demand for housing that is not met by current supply and creating permanent affordable housing alternatives across a range of income levels and unit types.</p> <p>1) In addition to construction 90 affordable units across three income tiers on D2 and contributing approximately \$1,480,000 in housing linkage fees for D2, US2 has proposed the following program to accelerate development of affordable housing units:</p> <ul style="list-style-type: none"> a. US2 will use commercial reasonable efforts to execute a transaction with an affordable housing developer ... to construct approximately 51 units of housing on D4.3 including approximately 39 affordable units .., The D4.3 project will endeavor to deliver the units as close to the opening of the GLX station as practicable. ... estimates that D4.3 will be ready for occupancy in 2022... b. The D4.3 project will be designed to... create more family housing ... and for housing across a range of incomes... as envisioned, more than 65% of the

	<p>inclusionary units within D4.3 will have a minimum of two bedrooms.</p> <p>c. US2 and the affordable housing developer will collaborate to obtain required approvals to permit the accelerated housing program...as part of the planning ... the parties will work ..to ensure the future of the Concord Avenue Community Gardens.</p> <p>d. In order to fund construction of the D4.3 project, the following sources of funds are anticipated...(i) US2 will acquire the site for not exceeding \$5.25 million and will contribute the site; the D2.1 housing linkage payment will be invested... (iii) the D4.3 Community Benefits Contribution and Future Phase contribution will be reinvested... (iv) US2 will provide a \$2.4 million zero-interest loan to be repaid out of the first linkage payments from future phases... ...29 affordable housing units will be credited toward US2 future affordable housing obligations..., provided that no individual future project may have less than 10% affordable units...</p> <p>2) In addition to the affordable housing commitments, US2 will provide eight (8) future market rate units as “workforce housing” priced between 120% and 140% area median income. Each unit... will be two-bedroom units. Implementation of this commitment will be monitored by the Somerville Office of Housing Stability.</p> <p>3) 5% of the residential units in the project will be designed for adapt to needs of disabled.</p> <p>4) 30% of all inclusionary units on D2 will have two-bedrooms.</p>
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The CBA Housing section opened with a restatement of the estimated total of 1,000 housing units for the whole project on all the D parcels. It then re-focused to the initial phase of D2 parcel development, for which an estimated 90 units of affordable housing and linkage payment of \$1.4 million was fixed by the Coordinated Development Special Permit.⁵⁵

Paragraph (1) provided a mechanism for accelerating the schedule of delivery of affordable housing units in order to have units available when the GLX station would be opened. This would best mitigate the impact of growing residential demand. Specifically, the developer promised to “use commercially reasonable efforts to execute a transaction with an affordable housing developer ...” to construct 51 units on the D4.3 parcel (apart from the D2 project site where 90 units would be built).

After 2019, it appeared that the developer did make some attempts to acquire D4.3 by direct purchase and sign a deal with an affordable housing construction company, who could take advantage of subsidies and programs. This scenario did not work out in reality because of the complexities of site acquisition, subsidy and financing, as well as a glitch in the zoning on the D4.3 parcel. The zoning required a delay in the start of housing before commercial development would be underway. This phasing mandate reflected a past policy of the Board of Aldermen, who had been worried that residential demand would crowd out job-creating commercial projects. The zoning thwarted the opposite policy of accelerating housing delivery and thus has illustrated how the CBA is a weak tool to effectuate the change of city policies – however obsolete they may be.

In paragraph (2) the developer made a promise to provide eight units of “workforce” housing, which would not count as part of the affordable units, but would be among the 340 market rate units. Each would have at least 2 bedrooms and be rented with a modest subsidy. In paragraphs 3 and 4, the developer also agreed to insure that 5% of all units would be designed for adaptability for disabled tenants, and 30% of the affordable units would have at least two bedrooms.

⁵⁵ The 90 units were 20% of the aggregate number in the two residential buildings with 363 units on D2-3 and 87 units on D2-2, as permitted in the special permit.

These three developer commitments can be recognized as modest incremental improvements to the standard requirements of affordability and thus may be pointed to as a successful adjustment of the housing benefits to achieve community concerns. Their practical fulfillment will be seen when the D2 residential buildings are complete and offered on the market.

Providing jobs, fair wages and improved opportunities for Somerville workers

The paragraphs of the CBA that describe developer commitments to adhere to fair labor standards and provide job opportunities for local workers are particular sections of the CBA that distinguish it as an instrument of independent community action. They are the output that has been sought by the labor, workforce and equity advocates, among the organizers of the Union Square Neighborhood Council, and they are the elements of subject-matter that most clearly lie beyond the regulatory jurisdiction of the city.

Developer Covenant 2017	CBA 2019
<p>a. Hiring Somerville Residents and Veterans</p> <p>When hiring workers for available positions for the various construction trades required to undertake development ... of the project, US2 shall instruct the contractor and subcontractors to use best efforts to hire workers for those positions as follows:</p> <p>...first, residents of the city of Somerville who are qualified to perform the work to which the employment relates;</p> <p>... second, veterans as defined in MDL ... who are qualified ...</p> <p>...and third, if workers cannot be obtained in sufficient numbers from the prior two categories, then to other qualified workers.</p> <p>US2 will work cooperatively with public service providers and community based organizations in support of workforce development efforts and local employment initiatives.</p>	<p>Workforce:</p> <p>... The workforce commitments described below are minimum standards for all Phases through the lifetime of the project.</p> <p>(1) US2 recognizes the preference for union labor, and shares desire to avoid exploitive practices and include meaningful participation by contractors and subcontractors using union labor...with respect to each project it undertakes,</p> <p>US2 will solicit bids from a mix of contractors, but will always include at least one contractor who uses predominantly union labor, and will work with such contractors to achieve competitive pricing... with the goal of maximizing union participation. US2 and its contractors will offer opportunities for a variety of subcontractors to participate in project construction through an open bidding process that includes union and non-union contractors...</p> <ol style="list-style-type: none"> a. ... no contracts to any contractor or sub-contractor ... debarred in Mass from public work b. Due diligence to make sure that this is complied with c. Comply with all workers compensation insurance and all employment laws – proper classification of employees, wage minimum, overtime and tax withholding... d. Keep and provide to US2 a list of all subcontractors and make available to interested parties for inspection, for purposes of determining compliance... <p>(2) US2 hire staff member with role of Community and Workforce Development Officer...</p> <p>(3) Memo of agreement with Unite Here Local 26 for card check neutrality</p>

b. Jobs Linkage

As a commitment to the working residents of the greater Union Square Area, US2 agrees to pay a jobs linkage fee of \$1.40 per gross square foot of commercial development for the Project, exclusive of three footage for structured parking ...and such jobs linkage fee ...shall be payable contemporaneously with the payment of any housing linkage fee...

...For future phases US2 agrees to pay the jobs linkage fee at the rate and within the time frames established by any Jobs Linkage Fee Ordinance...

- (4) Goal that majority of all new construction hires be ... Somerville residents and reflect diversity... .. instruct contractor and subcontractors to use best efforts to hire workers with preference ... Somerville residents, veterans, women and minorities qualified, then other qualified... For every project, hold at least 2 job fairs
- (5) Instruct contractors and subs to hire at least 20% Somerville residents, 20% qualified minorities, 8% women... .. share monthly reports with USNC
- (6) Pay directly hired workers of US2 \$2.25 per hour higher than state minimum wage...
- (7) 5 year collaboration with Somerville High School Center for Career and Technical... job training and internships...

- (8) In addition to the jobs linkage contributions from the Project, US2 will fund a workforce development fund of \$1.5 million administered by the City Somerville Jobs Creation and Retention Trust... The fund will support skills training and recruitment of local job-seekers in Union Square. US2 will fund this amount as follows: (i) \$75,000/year for three years beginning on the date of building permits for D2 buildings... and (ii) thereafter \$0.85 per ft2 Project building after D2 shall be paid into the workforce development fund (50% payable at permit and 50% at occupancy) until the total of \$1.5 million has been contributed.

- (9) In order to expand Somerville's and Union Square's workforce development resources and infrastructure, US2 will support wages and benefits for a staff person at Somerville Community Corporation's First Source program for a period of five (5) years at a total contribution not to exceed \$100,000 per year. This staff person will support the mission of First Source while prioritizing working with Union Square residents and businesses. ... The

	<p>program connects job seekers with the skills, training and education ram... not exceed \$100,000 per year</p> <p>(10) In order to encourage permanent employers to hire locally, US2 will encourage USQ commercial employers to participate in the First Source program. After lease signing, US2 will invite representatives from each commercial employer to a meeting with First Source representatives to discuss program involvement. During USQ project development, US2 will provide a representative that will participate on the First Source Employer Advisory Council ... US2 will also encourage permanent employers to advertise job opportunities to the local jobs database that is being developed by the City of Somerville... and notifying First Source.</p>
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In the Developer Covenant, the city secured from the developer a promise to "... use best efforts ..." in its programs of recruitment and hiring, to give preference to local Somerville residents and veterans and to work cooperatively with local workforce development and job-opportunity groups or services.

The CBA, by contrast, set forth a list of practical actions that the developer promised or was encouraged to take to achieve the goals of local job opportunity and local preference. They may be understood in four sub-categories:

- Efforts of the developer and its direct sub-contractors to recruit and hire Somerville residents with focus on minority-group, veteran and women workers;
- Working with certain named and other local groups that can identify and provide training and career-skills preparation to job candidates;
- Offering wages and programs of job-skills development to employees once they are hired;
- Securing commitments from future contractors and lessees/tenants to carry forward the same programs of hiring and job training;

The developer made no promises to fulfill a quota; to offer jobs to any particular group or type of candidates; or to limit its contracting to enterprises that use union labor. But it did promise to follow certain methods of bidding, procurement, recruitment and hiring, which other companies have used around the region to insure a diverse labor force and fair wages. In this context, therefore, the CBA can be understood as another framework in which to encourage this developer to participate with Somerville labor groups.

One key element of these paragraphs is that they commit the developer to deal with specific not-for-profit entities. This would usually not be permitted in a city regulatory document, since municipal law requires open competitive bids for procurement and grants funding. In addition, the named entities appear to be groups that are themselves members of the Neighborhood Council or linked with individual members – susceptible to possible conflicts of interest.

By mid-2022, however, there is no information in the public record about the progress of compliance by the developer to these promises and no information whether Somerville residents generally and members of minority groups have a higher representation than usual among the occupational

categories of workers at the Union Square job site.⁵⁶ The developer did report to the Somerville Redevelopment Authority in September 2021 on the fulfillment of three of these commitments:

- CBA accomplishments cited in update report, 15 September 2021:
 - Jobs fair: Careers in Construction with US2 and its contractors in April 2020
 - Learning lab at High School Career and Tech Education program
 - Small Business construction Task Force meetings quarterly

Jobs Linkage fee and job training contribution

At the time of the signing of the Development Covenant, the city was considering an amendment to the Zoning Ordinance that would add a jobs linkage fee to the existing requirement of a housing linkage fee.⁵⁷ The Union Square developer agreed to pay \$1.40 per square foot during the first phase with revision at future phases. The CBA in paragraph (8) calculated an aggregate payment of \$1.5 million to be paid into the Jobs Creation and Retention Trust fund. In December 2019, with the adoption of the revised Zoning Ordinance, the jobs linkage requirement became applicable to all commercial projects over 15,000 ft² of built space (SZO Sec. 12.3(c)). With the added inflation adjustments, the fee in 2022 has risen to \$2.46 per ft².

Jobs Creation and Retention Trust Projects that paid in fees up to November 2021

<i>Projects paid in fees up to November 2021</i>		
DivCo West blocks J/K	\$286,782	
DivCo West blocks E/F	497,570	
FRIT	150,000	
DLJ Capital	323,850	
YEM Somerville Ave	103,136	
<i>Projects paid in fees after November 2021</i>		
Boynton Yards 101 South St	322,000	12/21
Prospect Street #10	233,958	01/22
515 Somerville Ave Cambria Hotel pushes funds on had to \$179,000		06/22

The first payment from Union Square is recorded at \$233,958 received by the city in January 2022.

Small and Sustainable Business

The paragraphs of the CBA that detail the developer’s support for small businesses include six actions. There is no corresponding language in the developer covenant.

Covenant 2017	CBA 2019
...	<p>Small and Sustainable Business</p> <p>... promoting the small, independent and sustainable businesses that form Union Square’s unique character...</p> <p>(1) US2 commits during initial and subsequent lease-up of retail spaces that it owns... will proactively market retail spaces to Sustainable Retail businesses ... that qualify as High</p>

⁵⁶ Recent regional level studies continue to lament the fact that the construction trades in Boston and its suburbs have made little progress in adding black workers to their ranks and while Hispanic workers have grown in numbers, the higher paid and more skilled trades remain with the lowest levels of minority workers. See WGBH radio (1 August 2022) *Boston construction sites still have very few Black workers. Who’s to blame for that?* www.wgbh.org/news/

⁵⁷ See Somerville Board of Aldermen, Land Use Committee (6 December 2017), Agenda Item #204399.

	<p>Road Employers by the American Sustainable Business Council ... These businesses have championed sustainable business principles, practices and policies that reinforce a sustainable, resilient and prosperous economy including ... providing family friendly benefits, paying a living and fair wage, investing in employee growth and development, cultivating inclusion, governing fairly , engaging with the community , managing the supply chain responsibly, driving environmental sustainability and promoting health and saafety...</p> <ul style="list-style-type: none"> (2) The first 25,000 ft2 of ground floor retail that qualify as Sustainable Retail... will receive an additional \$15 per ft2 of sustainable business allowance... to start their operation in Union Square. (3) For 5 years, US2 will support wages and benefits for a staff person at Union Square Main Streets to assist local businesses, selected through a joint hiring process with US2 and USMS, at a total contribution not to exceed \$70,000 per year. This person will be responsible for helping existing and new small businesses to navigate the regulatory processes for permits and licenses, negotiate leases, develop business plans, and achieve High Road employer status... (4) For Existing Businesses US2 will propose and negotiate in good faith a plan to identify space for their businesses within the redevelopment, to relocate said business ... and to execute a lease... by mutual agreement. Businesses that are relocated will receive a relocation payment of \$25 per ft2 of existing building area that the business can utilize to start up ... at the new location. <i>This relocation assistance applies to ... six local businesses located on the D Blocks. They are named in the CBA text.</i> (5) During construction US2 will pay for pay for signage and cosmetic improvements, including planting and wayfinding to mitigate the impact on local businesses. (6) US2 will convene a Construction Impact Mitigation Task Force, to include representatives from Union Square Main Streets, city departments, and US2 to meet regularly during construction and to develop and implement strategies to mitigate construction impacts on local businesses...
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For many years, economic development professionals in government agencies, non-profits, charitable entities, and corporations have used a variety of small business support mechanisms – technical assistance, credits and start-up subsidies, relocation and marketing assistance. Any small business in Somerville today can ask for help from a dozen or more such programs.

The Union Square CBA added another mechanism of participation in the “Green Economy” movement as a way to provide support and call attention to any small business that would locate in Union Square. These actions presumably were intended to accomplish the Jane Jacobs theory of a neighborhood filled with friendly, independent and socially-conscious entrepreneurs. The developer committed to pursue two categories of actions.

First, when attracting new retail and service enterprise tenants to its commercial spaces, it would “proactively market” its storefront spaces to enterprises, qualifying as *High Road Employers* under the standards of the American Sustainable Business Council. If any such qualified businesses were found, they would be offered a \$15/ft2 start-up expense allowance against their rent.

Second, the developer committed to actions that would encourage and support the retention in the neighborhood of six existing businesses that would be be displaced as demolition of older buildings on the D blocks took place. The developer committed to work with these businesses to include suitable space for them in the new project built space, and they would be offered a \$25/ft2 relocation allowance upon signing a lease. The effectiveness of these mechanisms and payments will be tested in 2023 when the buildings of Phase 1 (D.2 blocks) are completed.

To carry out the tasks of outreach and qualification for these benefits, the developer agreed to pay for the time and effort of an economic development staff person at the Union Square Main Streets offices. The first \$70,000 payment was transferred from the stabilization fund in July 2020, but there is no record of a 2021 or 2022 appropriation. The staff member does appear to be on the payroll at Union Square Main Streets.

Two additional requirements that the developer has undertaken during the period of construction are (i) the responsibility to post proper signs and other directional information to insure that customers of the existing businesses can conveniently and safely access the buildings without obstruction, and (ii) quarterly meetings with Union Square Main Streets and other neighborhood and city representatives to coordinate and monitor activities to minimize disruption of business operations in the zone. US2 has provided to the Redevelopment Authority on a quarterly basis about these activities.

CBA accomplishments reported to Somerville Redevelopment Authority, 15 September 2021:	
○	US2 pre funded the Community Benefits fund and supported hiring of the US Main Streets Small Business Liaison \$70,000 and supported Somerville Community Development Corp initiated during the pandemic \$100,000
○	Learning lab at High School Career and Tech Education program
○	Small Business construction Task Force meetings quarterly
○	COVID response small business and events Fluff festival Holiday Stroll, Somerville Museum
●	May 2022 – local place-making experts to elevate Uniquely Union
●	Promote local businesses and minimize small business displacement
●	Provide open technologies, connectivity for shared civic innovation platform
●	Bolstering social capital and community resilience

In June 2022, Union Square Main Streets announced that its newsletter, *All things Union* was now under the sponsorship of USQ funding

Into 2022, the emergence of the city and regional economy from COVID still remains incomplete overall.⁵⁸ The sub-sectors of minority-owned businesses will continue to face additional stress.⁵⁹ In this context, therefore, the kinds of optimistic, Green Energy movement strategies, embodied in the CBA, appear unrealistic as a response. They may be accepted as an accurate prediction for the particular circumstances of the Union Square neighborhood, but they do not appear to be applicable to any of the other smaller, more routine retail/service zones of Somerville.

Sustainability

In the CBA, the jargon term of “sustainability” was employed to categorize a group of 11 activities of project design, engineering and infrastructure and building performance standards.

Covenant 2017	CBA 2019
...	US2 is committed to developing a sustainable, healthy community for present and future generations (1) US2 will build all buildings greater than 50,000 ft2 within the Master Development area to a LEED Gold certifiable standard and all buildings smaller than 50,000 ft2 to a LEED Silver certifiable

⁵⁸ See Federal Reserve Bank Small Business (February 2022), *Small Business Credit Survey – 2022 Report on Employer Firms*, www.fedsmb.org/survey/2022/report-on-employer-firms.

⁵⁹ See Morsberger, C. (16 March 2021) *Black-Owned Small Businesses in Boston Find Ways to Persevere through Pandemic*, www.bostonpoliticalreview.org/post/black-owned-small-businesses-in-boston... This report noted that from a starting number of 40,000 small businesses in the city of Boston in 2019, half were lost in 2020/2021 and the black-owned business sub-sector had shrunk to 335 units post COVID.

	<p>standard. During the design process for each project, US2 will further charge its architects with identifying and testing the feasibility of additional innovative methods...including Net Zero Carbon, Living Building or <i>PassivHaus</i> concepts</p> <ol style="list-style-type: none"> (2) D4.3 will be developed as Passive House demonstration project to reduce the GHG impact and help establish a market for Passive House in Massachusetts (3) US2 will review un-programmed project roof areas as potential areas to realize the sustainability goals ...incorporate green roof areas on the top of the D2 parking structure in order to mitigate urban heat island effects... also include a blue roof as part of its stormwater management program. (4) To encourage the use of Green Vehicles ... the commercial parking in the Project will include 191 spaces ... <ol style="list-style-type: none"> a. 38 electric vehicle charging parking spaces b. 38 electric vehicle ready parking spaces c. 72 spaces will be preferred parking for low emitting fuel efficient vehicles d. 29 spaces will be carpool parking spaces before 9 am e. 14 spaces will be car sharing (5) US2 will incorporate stormwater detention and infiltration where feasible and practicable ... to reduce the rate and volume of stormwater discharge... will also be considered for re-use on site for irrigation or other purposes where appropriate and practicable (6) US2 will contract with a qualified resource to ensure that 100% of energy consumed ... is from green power, carbon offsets or renewable energy... (7) US2 will study the feasibility of renewable energy sources for each building phase and will outline a pathway to net zero emissions ... designs will not preclude retrofitting or conversion to building systems that eliminate fossil fuel... (8) All roof areas will be designed and constructed to be solar ready... A minimum of 40,000 ft2 will be set aside for Photo Voltaic fields that can be installed in the future... (9) US2 will evaluate water conservation measures for possible incorporations into the project design, including high efficiency plumbing and harvesting rainwater for use in irrigation ... (10) In order to reduce urban heat island effects, US2 will install new landscaping and large trees to new civic spaces that expand the urban tree canopy... specify cool paving in many site areas... cool roof membranes (11) On the D2 block US2 will incorporate tower design elements to mitigate collision risks to birds.
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The developer pledged to incorporate into its building and site designs and construction as many of these sustainability features as “practicable” or “feasible.” They appeared to be a list of technologies, which were experimental or in early stages of adoption in the market and the construction trades. As seen elsewhere in the CBA, some of the items in this list were already in discussion in 2017/2018 and incorporated into the Zoning Ordinance of 2019 -- in particular the LEED standards for commercial/research buildings.⁶⁰

The CBA explicitly described as its goals: “to influence ... technical progress” and “help establish a market ... in Massachusetts.” Thus, for these elements the definition of “community benefits” expanded beyond the original concept of neighborhood mitigations and improvements. It set a broad political goal to use local municipal power to achieve national and humanity-wide goals. The Neighborhood Council thus appeared to see its role as vanguard representative for future generations.

The length and variety of the list of sustainability issues also went far beyond what was normal in Somerville policy and practice. Any local citizen, who regularly attended zoning and planning meetings would be accustomed to hearing local citizens complain about on-street parking, traffic noise, bike lanes, dead street trees, and rats – rather than the array of highly technical and jargon-described issues in this list. What is *PassiveHaus* and why was it a particular concern to home-owners on Merriam and Linden Streets?

It seems clear that this part of the CBA was written to follow the agenda of national advocacy groups, rather than to clarify Somerville and Union Square specific environmental problems. Of course,

⁶⁰ See SZO Articles...

it was appropriate for various advocacy groups to engage in local discourse and urge a developer to use a particular project as a model for new technologies and methods. However, to insert this complex agenda of experimentation into a modest quasi-legal instrument of sub-municipal citizen action, strained credibility. In reality, the city agencies would not have the capacity and expertise to oversee and force compliance with these technical and experimental standards in the absence of state code guidance. Thus, in the CBA text itself, the promises made by the developer to incorporate sustainability were contingent and tentative. It would be an error to envision an environmental Oz on 15 acres of Somerville territory.

Green and Open Spaces

In the section on *Green and Open Spaces*, the CBA returned to subject matter that is standard in municipal zoning and planning practice.

Developer Covenant	CBA term sheet
<p>v. Neighborhood Park and Civic Space</p> <p>a) Following completion of the Neighborhood Park required by Section 6.7.6.A. in the Union Square Overlay Zoning, US2 shall convey in fee said Neighborhood Park (together with all improvements ...) to the City at no cost to the City. ... the city shall have full ownership and responsibility for the Neighborhood Park, including without limitation responsibility for repairs and maintenance thereof.</p> <p>b) Following completion of all development proposed for parcels D1 and D2 and the Civic Spaces to be provided on said parcels ... US2 shall convey such Civic Spaces (together with all improvements ...) in fee to the City at no cost to the City, subject to reserved easements for ... (1) maintenance and repair of such Civic Spaces by US2 or its designee... (2) Control by US2 or its designee of programming within such spaces... and (3) provision of seating and outdoor space adjacent to retail uses ... subject to receipt of applicable licenses.</p>	<p>Green and Open Space</p> <p>The USQ Project will provide a network of more than 3.5 acres of vibrant, new green and open spaces and public realm areas in Union Square that will promote healthy living, improve local access to green space and serve multiple purposes...</p> <p>(1) US2 will pursue amendment to the CDSP that increases the number of neighborhood parks from 1 to 3 as follows:</p> <ul style="list-style-type: none"> a. A 27,000 ft² neighborhood park will be included on D1.2 as planned in the CDSP b. If the city amends the Union Square Zoning to allow five stories on D7.1, US2 will redesign D&.2 to add a second Neighborhood Park ... by increasing the size of the green space to approximately 10,000 ft² and designing the space in accordance with Neighborhood Park civic space standards c. In response to community requests to increase the size of open space on D2, ... provide civic space on D2 that is removed from Prospect Street and to increase connectivity to the portion of the neighborhood to the east of D2, US2 will create a new Neighborhood Park on D2.4 of approximately 10,000 ft² <p>(2) US2 will increase the total civic space in the project from 110,141 to 115,141 ft²</p> <p>(3) US2 commits to planting a majority of native plants... and will avail itself of community expertise to meet this obligation.</p> <p>US2 will contract with a landscape architect for design of the green and open space ... and will require the architect to provide copies of the landscape drawings to the Urban Forestry Committee for their review and comment...</p>

Item c – the promise to enlarge the open space on D2 – has been fulfilled by the application PB#2019-05, which created the civic space for 10-50 Prospect Street. This application increased the size of the open space adjacent to the MBTA station from 15,100 ft² to 21,369 ft². It was approved August 22, 2019. The space will serve as a plaza through which pedestrians will pass and may sit with areas of greenery and trees. It is not an active recreation space.

The promise to re-design the D7 open space into a more generous park space has not yet been undertaken. There is no evidence that D7 rezoning has been applied for and no proposal for the development on the two parcels in question has yet been seen.

Arts funding and dedicated built space

Arts and Creative Economy:

US2 shares USNC’s commitment to fostering the arts and creative economy in Union Square. The US2 project will add more than 70,000 ft2 of arts and creative enterprise space in the neighborhood that will serve a variety of users.

- (1) US2 will include public arts framework infrastructure within 4 civic space locations to be selected in cooperation with USNC and the Somerville Arts Council
- (2) For five years US2 will commit to funding \$25,000 a year to underwrite public art installation and performances... of which 70% will be in the form of grants directly to Somerville artists, awarded through a process determined by the Somerville Arts Council. The balance may be allocated to the Somerville Arts Council to support events and festivals... in Union Square
- (3) US2 will provide 10% of the inclusionary housing units as artist and creative live-work units that will be restricted to artists certified in accordance with the Somerville Arts Council standard... these units ... will be located in clusters of 4 or more units

In the D2 residential development, US2 will designate a prominent indoor common space as a rotating gallery...

Artists live/work housing – in 2022 Arts Council lists only 13 units at two addresses, does not yet include any units at Union Square. Union Square will presumably add 18 units (10% when completed all and perhaps 8 or 9 units when first phase of D2 development is complete in 2023

Did they make the payments \$25,000? This amount does not show up on the disbursements column in the Stabilization Fund, but it is possible that the payments were made directly to the Arts Council.

Parking and Traffic Mitigation Measures

Parking and traffic

The USQ project will be a transit-oriented development tht embraces multi-modal transporatation for Union Square’s residents, employees and visitors and promotes walking, biking and transit-riding over driving.

- (1) The D2 project will enhance ... GLX by providing a drop-off area for the Ride para-transit program, ADA access to and from the station platform and the sidewalk, and an MBTA break room ...
- (2) ... US2 will provide bicycle parking and storage facilities for 120 bicycles near the MBTA entrance
- (3) ... continue efforts to coordinate with the City, MBTA and GLX to incorporate an MBTA elevator into the station area that will provide better accessibility to the MBTA service area to the south of the station ... US2 is willing to modify its civic space design to accommodate the MBTA elevator ... an accompanying stair ... an easement for the elevator ... and to fund an equitable share of the cost of construction of the elevator...
- (4) For all new residential lease agreements, US2 will encourage membership to a car-sharing service and will fund up to \$30 of the initiation fee for each lease ...
- (5) US2 has joined the MBTA “Perq” program and as part of its leases to companies with more than 50 employees, S2 shall require the lessee to participate in the PERq program... or alternative pre-tax options for MBTA passes ...

US2 will monitor traffic volumes of the D Block development once a year for 5 years ... and issue a report ... with recommendations as to additional or enhanced traffic mitigating measures... within six months of occupancy of D2, US2 will provide City with \$20,000 to obtain additional monitoring and to assess traffic operations ...

For any project as large as Union Square, the city regulations and zoning practice already impose an elaborate program of traffic mitigation and mobility management planning. These measures fit into the routine functioning of the city’s Mobility and Traffic divisions. The CBA appropriately details and adjusts these to the particular situation of the parcels and their interrelation with the MBTA station.

Indoor Civic Space

Civic space:

US2 believes that a welcoming and inclusive indoor civic space will encourage neighborhood cohesion and community engagement ...

- (1) US2 will make a meeting space available for community groups and programs ... a *schedule of days and hours*... The indoor space will be located on the second or third floor of D2 easily accessible through ground level access, will have access to kitchen facilities and free wireless internet and will include appropriate furnishings. ... approximately 1,000 ft2 located with the D2 co-working space, ... furnished to be flexible in use. US2 shall provide regular cleaning and maintenance... clean-up after large community events shall be the responsibility of the event host and may require a deposit... The interim indoor community space will be provided ... until a permanent indoor civic space has been opened or for five years, whichever is sooner.

In order to realize a permanent indoor civic space as contemplated in the DCSP, US2 shall make a reasonable effort to negotiate and execute a lease with the YMCA within the D1-2 project (site adjacent to the 27,000 ft2 neighborhood park).

The interim community space has been available in the US2 offices and co-working space storefront at 31 Union Square. Because of the COVID pandemic, its functioning was disrupted, therefore, it is not possible to judge today whether the concept remains viable or whether there will be sustained community interest in using the space. Generally, the outlook for co-working appears to be strong in the post-COVID economy. The linkage of the sporadically-used community space with routinely occupied co-working space also has been a successful concept at some co-working facilities elsewhere in the region. But other community meeting or “gathering” spaces in past projects seem to be rarely used and over time have become unattractive, abandoned-looking spaces.⁶¹

Clauses related to legal status, monitoring and enforcement

a. CBA negotiation	<p>USNC Support: USNC and US2 hope that this term sheet and the CBA will lead to a long-term cooperative partnership to revitalize Union Square. Many of US2’s obligations set out above will require approvals for the City boards and departments, and US2 expects that USNC will be instrumental in obtaining such approvals. Further, US@ and USNC acknowledge that the obligations of US2 under this benefits program are contingent upon receipt of all building permits for the first phase of the project -- D2.</p> <p>Monitoring and compliance: The CBA shall include provisions regarding monitoring and compliance substantially similar to those provisions in Exhibit B</p>
b. Unencumbered development rights	
c. Notice to Mortgagees	
d. Challenges to Union Square Overlay Zoning	
e. Default/Cure	
f. Disputes	
g. Notices	
h. Certificates	
i. Successors and assigns	
j. Warranties	
k. Time of the essence	
l. US Overlay Zoning	
m. No Limitation on City Authority	
n. Force Majeure	
o. Termination	
p. Counterparts	
q. Governing law	
r. Other projects	
s.	
t. Definition of Consumer Price Index	
<p>u. Development Phasing</p> <p>... neither US2 nor any Parcel Developer will commence construction of any residential buildings on any Disposition Parcel except ... the Project or the Warren blocks if it will provide a portion of the affordable housing component ... until after US2 has completed construction of the office/lab phase of the Project and commenced construction on another</p>	

⁶¹ The ground floor community meeting space in the 75 Middlesex Ave, warehouse facing the Kensington plaza is particularly dreary; and even in the heart of “vibrant” Kendall Square, the Cambridge cultural center was closed in 2021 because no one ever went in there.

commercial building on another Disposition Parcel ...	
v. Neighborhood Park and Civic Space	
...	
w. City requirements	
x. Amendment	

The comparison shows how the Development Covenant contained over twenty sections that defined in detail the legal relationships between the city and the developer and the ways in which the terms and commitments of the developer would be monitored and enforced over time.

By contrast the CBA had two paragraphs. First, there was a statement of a commitment by the Neighborhood Council to provide support and assistance to the developer in the various city procedures of planning and zoning approval and permitting. This clause was expected to provide the “valuable consideration” that contract law would require in order to balance the commitments of the developer. Presumably this would give the CBA status as a contract and the Neighborhood Council standing as the contracting party to claim legal protection if the developer failed to perform on any of its commitments.

The second paragraph linked to an Exhibit B, which described an elaborate series of steps of mutual cooperation in monitoring and enforcement of the CBA terms. The primary element was the creation of a seven-member CBA Implementation Committee, charged with monitoring the commitments during the period of 30 years. The developer agreed to meet quarterly with this group and to share information and planning. If there were to be a complaint of non-compliance the process provided for a notice to cure and subsequent mediation, and it left open the possibility of court challenge.

One final element of Exhibit B was language that had been drawn from standard real property contract documents, stating that the terms and conditions would be binding on agents, assigns and successors in interest. Presumably, therefore, any construction sub-contractor, and any future lessees and tenants of the developer would be bound to the terms of the CBA.

**Update on Community Benefits at Union Square
Report to the Somerville Redevelopment Authority presented by US2**

Status of Union Square Revitalization Project
15 September 2021

<p>Community Benefits Implementation</p> <ul style="list-style-type: none"> • US2 and USNC have held quarterly meetings since April 2020 • CBA accomplishments: <ul style="list-style-type: none"> ○ US2 pre funded the Community Benefits fund and supported hiring of the US Main Streets Small Business Liaison \$70,000 and supported Somerville Community Development Corp initiated during the pandemic \$100,000 ○ \$467,000 paid into the CB stabilization fund ○ Careers in Construction with US2 and its contractors jobs fair in April 2020 ○ Learning lab at High School Career and Tech Education program ○ Small Business construction Task Force meetings quarterly ○ COVID response small business and events Fluff festival Holiday Stroll, Somerville Museum • May 2022 – local place-making experts to elevate Uniquely Union • April 2022 public elevator to T station • For T station –= US2 committed \$6 million and recently created access ways to new station plus employee break room, bicycle parking • Installed 290,000 gallon storm water retention tank • January 2022, additional \$155,000 to Community Benefits fund payment on receipt of building permit for D21 (10 Prospect site) raise to total \$622,000, total commitment over course of project will be \$3.6 million • April 2021 contribution to fund with building permit for 20-50 Prospect Street, bringing total to \$467,000:
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- Expected disburse funds for:
- Foster create new jobs
 - Promote local businesses and minimize small business displacement
 - Create multi-functional civic spaces
 - Provide open technologies, connectivity for shared civic innovation platform
 - Bolstering social capital and community resilience
 - Prevent displace low income people resulting from speculation and development.
- Community Benefits are subset of reported \$100 million of benefits including:
- 3.6 acres of open space with 3 parks and 11 civic spaces
 - LEED Gold
 - Commercial development estimate 5,000 new jobs
 - Construction jobs hiring priority
 - 1,000 new housing units of which 200 permanently affordable, \$10.9 million linkage payment
 - 74,000 ft2 arts space
- Mobility plan with 60% non-auto mode share commitment

Union Square short-term debt

Source: City of Somerville FY2021 Annual Comprehensive Financial Report (page 67)

Purpose	Due date	Balance 06/30/20	Issued/(redeemed)	Balance 06/30/21
Somerville Ave Streetscape	06/04/21	6,091,858	(6,091,858)	--
Improvements work	06/03/22	--	8,380,000	8,380,000
Redevelop Auth. acquire D parcels	06/04/21	8,914,509	(8,914,509)	--
Union Square Revitalization Plan	06/04/21	2,706,966	(2,706,966)	--
Union Sq. Street/Plaza design	06/03/22	--	320,000	320,000

This chart records the status of the city’s short term bond issues to fund Union Square related actions. In particular the acquisition of the D parcels is shown as a borrowing short-term of \$8.9 million for the purchase and the subsequent retirement of the bonds by June 2021. The chronology indicates that US2 made its payments for the parcels at (or around the time) of the closing on 1 January 2021, and the payment was used to retire the short-term bonds.

Will parts of the Somerville Streetscape Improvements and the Union Square Street/Plaza design fund of \$320,000 ultimately be reimbursed by US2 payments?

Boynton Yards Community Benefits Agreement

The developers of the multi-building complex at 101 and 153 South Street in Boynton Yards conducted negotiations with the Union Square Neighborhood Council during five months and completed a Community Benefits Agreement in December 2020. It accompanied the application for Master Plan Special Permit, MPSP#2020-002, granted by the Planning Board on 4 February 2021. The outline of its main terms and conditions has been published on the development project website.

Boynton Yards Community Benefits

www.boyntonyards.com

<p>Economic benefits:</p> <ul style="list-style-type: none"> • \$30 million combined community benefits • \$15 million annual real estate taxes • \$13.5 million Affordable Housing Trust • 3.25 million to Green Line
<p>Open Space:</p> <ul style="list-style-type: none"> • 3.5 acres public realm • 53,523 ft2 streets and sidewalks

58,000 ft2 civic space (20%) 3 million gallon storm water tank
Additional community benefits <ul style="list-style-type: none"> • LEED Platinum • 800 construction jobs • 4,000 permanent jobs • Passive house living (335 DU) • 20% affordable housing units (66 units) • Underground parking open to public

One news article has reported that the Neighborhood Council originally pressed the Boynton Yards developer for a higher affordable housing to compensate for displacement. The developer did not agree but was willing to include language in the CBA that the issue can be reopened later at the time when the subordinate housing building special permits are submitted.⁶²

⁶² A. Thompson (14 April 2021), *At Boynton Yards Somerville's First lab building to be finished this summer*, Somerville Journal, www.wickedlocal.com

Appendix 6: Projects and Plans in other zones of Somerville

The lack of applicability of the Neighborhood Council and CBA model to other zones and projects around Somerville can be seen in more detail in the following comparison of two groups of recent projects: (i) six projects under the jurisdiction of Somerville Redevelopment Authority, and (ii) three projects, needing only zoning master plan or site plan approvals.

Table 6A.1: Projects involving the Somerville Redevelopment Authority

Project	Size	Non-res. ft2	Res. units	Developer conditionality and citizen engagement
Union Square (US2)	17 acres	1.5 million	1,000 DU	Master Developer Designation agreement -- SRA Developer Covenant – unilateral Land Disposition Agreement – city, SRA Zoning CD special permit PB #2017-21 Community Benefits Agreement – neighborhood council
Assembly Square (FRIT)	56 acres	2.8 mill off. 527,000 ret.	1,843 DU	Land Disposition Agreement – SRA/state Development Covenant – unilateral Easement agreement with long term maintenance – city Zoning PUD-PMP #2006-59R2 (2014)
Assembly Block 11 (Partners site)	11 acres	874,000 Off/lab	--	<i>All the above in Assembly Square FRIT plus:</i> PILOT agreement – city Community Services Understanding memo Zoning special permit PB#2014-17
Boynton Yards (DLJ Master Plan)	6.8 acres	985,000 Off/lab	350 DU	Land Disposition Agreement (minor site) – SRA Development Covenant – city (01/21/2021) Master Plan special permit – MSPS #2020-002P&Z#21-097 Community Benefits Agreement
Winter Hill 399 Broadway	2.8 acres	25,000	282 DU	Urban Renewal Plan Zoning (<i>not yet filed July 2022</i>) Civic Advisory Committee
90 Washington St (Police facility)	4 acres			Part of site will redevelop with city police and fire facility and public open space; part will be disposed to private development, most likely housing in MR-5 scale Land disposition and developer covenant Zoning site plan approval Public Listening Sessions

Table 6A.2: Projects involving only Zoning actions

Project	Size	Non-res. ft2	Res. units	Developer conditionality and citizen engagement
5 Middlesex Ave (XMBLY – PUD)	9.4 acres	1.5 mill	496 DU	Zoning PUD PB #2018-07 Developer Covenant -- city Long Term Maintenance Agreement – city
74 Middlesex Ave (Assembly Edge)	1.1 acre	498,000 ft2	--	Zoning MPSP #2020-0162 Developer Covenant – city Land Disposition and Maintenance Agreement open sapce
28 Chestnut/28 Fitchburg	1.6 acre	200,000 ft2	--	Zoning P&Z #21-006, #21-007 (ZBA) Development Covenant Private street easement – neighbor owner

In these tables the column entitled *Developer Conditionality and Citizen Engagement* lists for each project the various instruments by which the developer conditions are defined and made binding, and the structural method of citizen participation chosen. The different citizen engagement methods do not appear to follow any pattern of correlation to zone size or population, or to the scale or types of anticipated development. Instead, the methods used in each project appear to be the result of opportunistic factors.

For example, at the 90 Washington Street site, the city has acquired 4 acres as a demonstration urban renewal project. It will later subdivide this land, keeping public ownership of part for a police/fire facility and disposing of the remainder for private development. A project of this size and type would be covered by the CBA process in Detroit and it is similar in status to the 6 acre Boynton Yards development, made subject to a CBA. Why then has the city chosen only an informal process of Public Listening Sessions – rather than encouraging the formation of a Neighborhood Council?

Appendix 7: An Update Legal Opinion on the Status of a Neighborhood Council and CBA

As early as 2010, all of the pertinent legal issues of Neighborhood Council and CBA status and enforceability were defined and under debate in the several states where the first CBA experiments had been under way. In particular, in New York City the participation of city Community Boards and non-city neighborhood organizations in negotiating with developers (with or without other municipal officers) had given rise to a number of court proceedings and city Corporation Counsel opinions. These rulings generally held that state law and the New York City Charter and Zoning Resolution defined the roles of neighborhood-scale entities as advisory only, with no power to bind private property owners or permit applicants to land use conditions and no standing to enforce regulatory or municipal contractual requirements.⁶³

By 2017, when the Somerville Board of Aldermen faced the same questions, there was no comparable Massachusetts case law or interpretations, because no other town or city in the Commonwealth had experimented with CBA. Nevertheless, the city’s lawyers had a body of related case law on zoning, urban renewal and city permitting/licensing from which to draw. They provided the Board of Aldermen with two opinion letters, dated 15 May 2017 and 29 August 2017.⁶⁴

The May 2017 letter made the following key points:

First, under Massachusetts law, forcing a developer to sign a CBA could be an unlawful delegation of the city’s zoning and planning powers because any regulatory requirements imposed on a private owner would have to be the outcome of the procedures and rules, defined in state law and the zoning ordinance.

Second, an independent negotiating party might try to impose obligations on a development that would fall outside the subject matter jurisdiction of zoning and planning or might violate the constitutional law standard of “nexus” of required mitigations to public harm.

Third, the city could not give discretionary decision-making authority to any group, not bound to the rules of transparency and accountability that covered the regular city boards and agencies.

Fourth, members of an independent Neighborhood Council might have conflicts of interest but would not be subject to the disciplines of state conflicts and ethics laws.

Fifth, allowing multiple independent groups to determine public needs and their mitigations or compensations could distort the city’s budget and program priorities or inequitably concentrate benefits in the few neighborhoods, undergoing development, leaving behind other zones and groups that might have higher priority needs.

⁶³ See Been, V. (2015), *Community Benefits Agreements: A New Local Government Tool or Another Variation on the Exactions Theme?*, New York University School of Law, Furman Center for Real Estate and Urban Policy, Working Paper 2010; https://furmancenter.org/publications/Community_Benefits_Agreements_Working_Paper.pdf. See also, New York

⁶⁴ Interoffice Memo of Somerville Solicitor to Board of Aldermen, 15 May 2017, presented to the Legislative Affairs Committee 1 June 2017 and Interoffice Memorandum of Special Counsel McGettigan to the Board of Aldermen, 29 August 2017 (Legislative Affairs Committee, Agenda #203098).

The August letter characterized the fundamental issue as the choice of whether to create the Neighborhood Council as a “public body” or as a “private entity.” As a public body the Neighborhood council would be limited in the scope and content of its subject jurisdiction, following the constitutional principle that developer exactions must have a substantial nexus to the impacts of the project and provide a proportional mitigation or balancing benefits. Similarly, the delegation of municipal powers of enforcement or control of funds to the Neighborhood council would require the organization and its membership to be subject to all statutory ethical, conflicts of interest and budget/accounting and procurement rules and procedures.

Another key limitation imposed by Massachusetts law was the Anti-Aid Act, which prohibited municipality from transferring public funds and assets to private and non-profit groups (through procedures other than the normal competitive procurement and contracting, and budget/appropriation mechanisms.

, *Boston Betterment Trust Corp. v. Boston Redevelopment Authority*, 438 Mass 57, 77 NE2d 812, 2002 Mass LEXIS 794 (31 October 2002). A City Council member, state representative, state senator and a BRA director all signed a Memorandum of Understanding requiring a developer to contribute community benefits. The Commonwealth Supreme Judicial Court held the document unenforceable because these signatories were all subordinate members of city boards, who had no power individually to bind the city. Binding developer commitments could only be the result of the zoning process and a 2/3 vote of all BRA members. See also, *Day v. BRG 161 South Huntington*, 2013 Mass Superior Court LEXIS 227, (Suffolk County Superior Court 16 May 2013). The Jamaica Plans Neighborhood Council had no standing to challenge a variance, granted by the ZBA, which is the city-authorized board with decision-making authority. The Neighborhood Council is only an advisory body.

One change in strategy adopted by the national CBA advocates has been to re-characterize the CBA activity as a mechanism of re-directing the economic development benefits of development to low-income communities. Oddly, one 2017 study from Albany Law School has cited the Somerville Union Square/LOCUS initiative as an example.⁶⁵ The article characterizes the Union Square as a “low income community” despite its and appears to equate its population with that of Kingsbridge, the Bronx, where another community-initiated CBA process involving redevelopment of a city-owned former state-owned armory building was underway in 2017. The Kingsbridge project has since failed.

The problem pointed out

It must be noted that neither contract law nor real property transfer or registry law has been applied to a CBA in Massachusetts. Elsewhere in the state and around the US there have been cases involving similar instruments of purported community empowerment, in which the courts have refused to give neighborhood groups standing or independent status to enforce zoning and regulatory conditions.⁶⁶

⁶⁵ DeBarbieri E.W. (2017), *Do Community Benefits Agreements Benefit Communities?* Albany Law School

⁶⁶ See for example, *Boston Betterment Trust Corp. v. Boston Redevelopment Authority*, 438 Mass 57, 77 NE2d 812, 2002 Mass LEXIS 794 (31 October 2002). A City Council member, state representative, state senator and a BRA director all signed a Memorandum of Understanding requiring a developer to contribute community benefits. The Commonwealth Supreme Judicial Court held the document unenforceable because these signatories were all subordinate members of city boards, who had no power individually to bind the city. Binding developer commitments could only be the result of the zoning process and a 2/3 vote of all BRA members. See also, *Day v. BRG 161 South Huntington*, 2013 Mass Superior Court LEXIS 227, (Suffolk County Superior Court 16 May 2013).

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