

Building Opportunities for Business Inner City Society

Negotiating Benefits

Lessons Learned from Negotiating the Vancouver Olympic Village CBA

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1. Introduction

This report was prepared for Building Opportunities for Business Inner City Society (BOB) as an addendum to an earlier report, Building on Success: an Evaluation of the Community Benefits Agreement for the Vancouver Olympic Village Site¹, which focused on the implementation of the terms of this agreement rather than its negotiation. The BOB board felt it was important to further explore how this CBA (community benefits agreement) was conceived and negotiated in order that any lessons learned from that experience could be carried forward and inform future development projects.

1.1. Methodology

Several key individuals involved in or close to the negotiation of this CBA were interviewed for this report. In addition, published papers and a blog² on CBAs across North America were reviewed to better understand the larger development context in which agreements such as the Olympic Village CBA fall. Unfortunately, efforts to include a key player from the City of Vancouver at the formation of this agreement were not successful.

1.2. Context

On September 24, 2007, after a protracted period of negotiations that lasted over a year, a Community Benefits Agreement (CBA) was signed for the development of the Olympic Village Site in Southeast False Creek. This agreement followed the signing of a Development Agreement between the City and the Developer in August 2006.

The CBA, signed by Millennium Southeast False Creek Properties Ltd. (Millennium), the City of Vancouver, and BOB, spelled out several commitments to deliver direct benefits to Vancouver's inner-city residents and businesses: it secured \$750,000 in funds from the developer to support construction training for residents, a commitment to hire 100 residents on the Olympic Village site during the construction period, and a target of \$15million in procurement from local businesses.

This agreement was hailed as a landmark development agreement for Vancouver: it focused on investing in local people, training, jobs, and businesses rather than on more standard public amenities (i.e. park space, community facilities, etc.). However, the process of negotiations left some community groups feeling dissatisfied with the final agreement and even disinterested in its subsequent implementation. At least some of this relates to the negotiation process itself. This paper seeks to identify those issues to ensure that future agreements are more widely supported.

As time went by, it seemed the City's attention to this agreement also waned. This may have been due to the sudden departure of a key architect and facilitator of the agreement for the City of Vancouver. His

¹ June 2009.

² <http://communitybenefits.blogspot.com/>

departure was tied to the political fallout of the financing woes which plagued the City and Millennium in 2008/2009 --- which together with looming Olympic deadlines took all of Millennium's attention³.

Despite dissipating energy around the agreement itself, BOB continued to work with partners to coordinate the implementation phase to good result. In the end, well over 100 people were trained and employed in construction jobs and more than \$40million dollars in goods and services procured from inner-city businesses⁴.

2. Lessons Learned

Looking back, many factors were at play that may explain some residual dissatisfaction with the CBA or the sense that more community benefits could have been secured from this development opportunity. These observations or lessons learned are explored here.

2.1. Origin of the Agreement

Unlike many CBAs created when coalitions of community groups organize against a proposed large-scale development project and demand that local benefits accrue, the Olympic Village CBA came more from the top down than the bottom up.

The CBA's origin can be traced back to the inner-city commitments enshrined in both the Vancouver Agreement⁵ (2000) signed by all three levels of government and in the Inner-City Inclusivity Commitment (2003)⁶ adopted by the Vancouver 2010 Olympic Bid Corporation and subsequently VANOC. When the City invited developers to bid on the build out and purchase of the Olympic Village Site, they outlined in broad terms the types of community benefits they expected to see flow from the project and encouraged bidders to build these generously into their proposals. Nathan Edelson and Jody Andrews from the City of Vancouver spearheaded this initiative with support from Council.

When Millennium Southeast False Creek Developments won the bid process on the strength of their overall bid as well as their community commitments, these benefits were then formally worked into a Development Agreement signed between the developer and the City. Once the Development Agreement was signed, the City turned its attention to the community to develop a CBA that would detail the specific benefits to be delivered. However, the general parameters of these benefits had already been largely pre-determined in the Development Agreement language.

2.2. Development Agreement Before CBA

One of the cautions you see in the CBA literature, is that CBAs must precede Development Agreements to have any real teeth or hope of implementation.

³ In recent months, interest at the City has increased, with attention now focused on opportunities for the Northeast False Creek development site.

⁴ Spending as of January 2009.

⁵ <http://www.vancouveragreement.ca>

⁶ http://www.vancouver2010.com/dl/00/12/30/commitmentstatement-en_56d-Zr.pdf

“A CBA is negotiated between the community groups and the developer before the development agreement is executed by the developer and government. The development agreement negotiations may be going on while the CBA is also being negotiated, but the CBA needs to be finalized first.”⁷⁷

The reason for this is that by signing the CBA first, it increases the leverage of the community to negotiate meaningful and tailored benefits and ensures agreement terms are inexorably tied to development approvals. In this case, the City and developer were under real pressures due to unmoveable Olympic timelines to expedite the Development Agreement and get shovels in the ground. Furthermore, there was no guiding City process in place to dictate when CBAs are negotiated and signed vis-à-vis Development Agreements. Nonetheless, that expedited process may have come at the cost of the community’s genuine involvement in determining benefits from this CBA.

2.3. Community Representation

Another issue, somewhat related to the CBA being perceived as an initiative from “above” or “outside” the community, is the fact that BOB was handpicked as the community entity to co-negotiate the CBA in the Development Agreement. This approach is somewhat at odds with CBAs in other jurisdictions, where coalitions of community groups strategically align themselves or form a new organization specifically to advocate and then negotiate these agreements on behalf of key community entities and constituents. In this way, multiple organizations share responsibility for the design, negotiation, implementation and success or failure of these agreements.

BOB was created in 2005 as an initiative of the Vancouver Agreement to fill a gap in the inner-city non-profit and development communities. The purpose of the organization was to focus on “revitalization of the inner-city without displacement.” So while BOB was very much an organization designed to champion development opportunities for the inner-city, it was a young organization whose very creation had caused tensions in the community around funding and roles and was seen as displacing or replacing other organizations altogether.

Unfortunately, these tensions lingered during the CBA negotiation phase. While consistent efforts were made by BOB’s Board, staff and negotiator to engage community groups at various points in the negotiation phase of the CBA, the perception was that the agreement terms were already preset with limited opportunity for influence. A coalition of community groups, Fast Track to Employment Coalition, continues to advise and demand accountability on the CBA implementation.

2.4. BOB – A New Organization in Transition

As mentioned earlier, like most young organizations, BOB was experiencing significant growing pains during its early days which coincided with the CBA negotiation period. These included a change in CEO

⁷⁷ Gross, p. 10

mid-negotiations, turnover of key staff, and a new Board finding its feet. This lack of stability at the organizational level may have created a gap in consistency, direction and vision in the negotiations.

Early on, BOB had recruited a negotiator, Maurice Albert, to help navigate the discussions. While his presence offered consistency at the table, by the time the negotiations were finalized, very few people inside BOB – whether on staff or at the Board level, had any consistent picture or deep ownership of the CBA agreement. BOB Director Hendrik Hoekema who had stepped up to support the negotiations when BOB’s CEO was hired away, fought hard to shape the agreement but also felt frustrated by the realization that only so much movement was possible on the terms which, from his perspective, had largely been pre-determined by the City and Millennium.

2.5. Leverage, Strategic Positioning

Without a doubt, BOB and Millennium were miles apart when the CBA negotiations began to move in earnest. BOB’s community and technical advisors recommended \$5million in funding to support training and several hundred jobs over the build out and occupation stages of the Olympic Village site.

Millennium’s starting position was reportedly \$100,000. Obviously with a gap like this, tensions on both sides quickly mounted. Eventually, after three months of consistent discussions and the go-between role played by Jody Andrews, an agreement was reached for \$750,000 for training, 100 jobs⁸, and \$15million in local procurement. As the BOB negotiator put it, “everyone was equally unhappy” with the outcome: in short, an acceptable compromise between the parties had been reached.

However, BOB’s negotiator also felt that BOB had missed a strategic opportunity with these negotiations. He observed that the BOB board played a cautious, patient approach to the CBA while waiting for the City to conclude its Development Agreement with Millennium and in the months that followed. He suggests that this period before the Development Agreement was signed was a key opportunity for BOB and community advocates to be aggressive and make very clear to the City and the Developer the risks of not seriously engaging the community early on. It was his view that by not playing this risk card up front, the negotiations on the CBA became long and protracted, showed very little movement for months on end, and saw a disengaged developer (and City) at the table.

This observation reflects BOB Board representative Hendrik Hoekema’s perception that when he stepped into the negotiation discussions in February 2007, that the community had “no real leverage” and ultimately “no way not to sign onto” the final agreement.

⁸ Intentionally, the number of jobs sought from this agreement was kept relatively low. This was done to ensure workers were well received on the jobsite (i.e. not resented by overwhelmed contracting companies), to ensure an unfair burden was not placed on the developers and encouraging their uptake of this development model, and to ensure enough qualified residents could be recruited and trained for the jobs within the short development timeframe. Many more indirect jobs for inner-city residents were expected to flow from procurement contracts with key suppliers. No real tracking has been done to determine how many additional inner-city jobs were created through procurement contracts.

2.6. Developer Engagement

Without a doubt, the CBA discussions between BOB, the City and the Developer took much longer than expected and were difficult to build momentum around. In part, this was reportedly due to the fact that a Development Agreement was to be signed first before any serious CBA discussions began⁹. Millennium also admits to having no experience negotiating CBAs, and was genuinely surprised by the high expectations of the community. In addition to this inexperience, negotiating the CBA was likely not seen as a top priority for the company which was also experiencing financing woes, a very tight development timeline, and the unique hurdles involved with building out a leased development site.

Regardless of why, the result was that Millennium was increasingly perceived as a disinterested and disengaged party to the agreement discussions. In the end, a combination of factors saw the discussions move forward toward an agreement: BOB's Board and new CEO, Shirley Chan, became more involved and insistent on meaningful engagement; Jody Andrews assumed a facilitative role to bring Millennium, and in particular Millennium's president Sharam Malek, to the table; and time colluded to force all parties to a quick agreement to ensure employment opportunities could be realized in the short building phase that was already getting underway.

2.7. Agreement Language

When discussing the CBA Evaluation report¹⁰ with Maurice Albert, he pointed out that the intent of the \$15million procurement target was not really about the volume of inner-city business contracts but about local employment creation through major procurement contracts. Unfortunately, while this may have been the primary intent of the procurement clause, it was not written into the agreement, and certainly has not been accounted for by the developer.

This example points to a major issue with the final negotiated document. Much of the language in the document is soft –Millennium will encourage its contractors, sub-trades, and future commercial tenants to hire and procure goods locally, but does not bind them to do so¹¹. There is not an accounting or reporting mechanism described to monitor performance against these goals. The result is that there is no transparent way to account for the extent to which some of the agreement terms have been pursued or realized.

Apparently, the language in the agreement was deliberately soft to give Millennium and the City the legal and practical flexibility they required to implement its terms. For instance, Millennium was simply unwilling to agree to terms that would require it to lease to an unknown future commercial tenant (i.e. in 2011) that would commit to hiring 'x' number of people from the inner-city. However, this vague language when coupled with the revolving door of people at BOB and the City involved in the agreement negotiations, has meant that those who understand the original unwritten "spirit" or "intent" of the

⁹ This information came from BOB's negotiator Maurice Albert.

¹⁰ Peachey, Karen. 2009. Building on Success: an Evaluation of the Community Benefits Agreement for the Vancouver Olympic Village Site. Prepared for: BOB.

¹¹ With the exception of detailed hiring targets for ITC and Metrocan.

agreement, are not the same people now responsible for implementing and monitoring the agreement. It is difficult to ask for accountability when you have not been party to the background discussions and there is no clear language enshrined in the agreement itself. Clearer, stronger, and more exacting agreement language is one of the only tools communities have to hold developers accountable in these agreements.

2.8. Project by Project Approach to CBAs

Certainly one of the challenges faced by all three parties to this CBA was the fact that these agreements are not yet the norm for the developers, the City, or community groups. This CBA was one of only a handful of such benefits agreements that have been formally tied to development projects around the Lower Mainland.

When agreements like this are negotiated on a project by project basis (and often only when community groups insist on them), it puts enormous burden upon already stretched community organizations to be one step ahead of the development process and to have quick and sustained access to the financial, human and time resources required to influence the process. In the long run, this approach is not sustainable for local groups nor is it likely to deliver the local benefits that could otherwise accompany urban growth.

“As effective as community groups have been in negotiating recent CBAs, project-by-project negotiations are not an ideal approach. Community groups should not have to identify upcoming projects, mobilize coalitions, and fight the same battles over and over again. In the long run, such an approach is too resource-intensive to be effective for anything but the largest and most prominent projects. Many smaller subsidized projects will inevitably go forward without appropriate community development.”¹²

Because of this, the notion of “institutionalizing” community benefits agreements in city policies that create minimum standards on jobs, housing and neighbourhood services is being pursued by groups in several cities across North America¹³. The idea is that CBAs or community benefits will become a required part of every large or publicly funded development project. Los Angeles, for instance, has created a requirement for developers to produce a community context report prior to development approvals that looks at the range of impacts on the community from a proposed development¹⁴.

While the City of Vancouver does not currently have city-wide policies in place that require community benefits be tied to development approvals, they continue to quietly seek opportunities for such agreements and to build language into some contract agreements supporting local hiring, procurement, etc.¹⁵ This is done carefully with ongoing concerns about the legality of tying local procurement and

¹² Gross, p. 75.

¹³ Ibid, p. 6.

¹⁴ Ibid, p. 78.

¹⁵ Interview with Robin Petri, Southeast False Creek Project Office, City of Vancouver, May 2009.

hiring to development contracts (i.e. NAFTA concerns). Even without policies in place, however, the Olympic Village CBA demonstrates that with creative and energetic supporters within City hall, CBAs and local benefits can be negotiated.

Recently, at BOB's urging, Councillor Geoff Meggs put forth a motion that was approved by Council that the ODP for Northeast False Creek (NEFC) be amended to include a requirement for local procurement in line with the obligations imposed on the developer for the Olympic Village to support businesses and job creation in the Downtown Eastside¹⁶. BOB has since been invited to present the Olympic Village CBA as a Case Study to the four property owners of NEFC. This suggests a renewed interest in CBAs at the City and the opportunity for shaping many more such agreements in the future.

3. Recommendations

Hindsight makes it easier to look at the negotiation process for the Olympic Village CBA and identify where opportunities may have been missed or the process may have been less than perfect. However, the true value of reflecting on the past is that it also provides solid insight into how to negotiate and shape such agreements in the future. Key recommendations that emerged from this review and complement the recommendations in the earlier report¹⁷ are summarized below.

3.1. Tell the Story

The Olympic Village CBA was a landmark agreement for Vancouver and will become a benchmark against which other CBAs in and around the city (and arguably across Canada and North America) are developed. The story of this agreement, its successes and challenges should be shared widely to cultivate and inspire discussion on the role CBAs can play in the sustainable and just build out of our cities. BOB, the inner city community, the City of Vancouver and Millennium each own a piece of that story and can all learn and benefit immensely from its retelling.

3.2. Build on Success

Ask the students, trainers, and employers who participated in the employment program attached to the Olympic Village CBA, and they will tell you the agreement delivered profoundly positive local benefits. Millennium—whose initial approach to the CBA negotiations may have appeared half-hearted—has become a supporter of this development model and a willing advocate of it to the development community. BOB and a coalition of community advisors have collectively gained experience in shepherding the negotiation and implementation phases of agreements such as these. While this CBA may not have been “perfect”, it represents a significant foray into the nexus where the interests of residents, the City and a developer can coalesce. This need not be a one-off experiment, but the first of

¹⁶ <http://vancouver.ca/ctyclerk/cclerk/20091105/documents/penv1.pdf>

¹⁷ See: Karen Peachey. 2009. Building on Success: an Evaluation of the Community Benefits Agreement for the Vancouver Olympic Village Site. Prepared for BOB.

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many increasingly stronger negotiated CBAs. BOB is a natural advocate for more CBAs in Vancouver's inner-city.

3.3. Engage the City of Vancouver

The City of Vancouver played an important role in the origination and signing of this CBA and will continue to play a key role in determining when and if more CBAs are required to be signed in the future. Currently, there is not a consistent policy approach in place at the City with respect to community benefits. Working with supportive Councillors, the City Manager's Office and engaging functional areas at the City such as planning, social development, development services, engineering, real estate, legal, parks, etc., in detailed CBA policy discussions may create opportunities to move from a project-by-project approach to a more institutionalized or standardized CBA development model at the City of Vancouver. City plans to integrate CBAs into the development of Northeast False Creek presents a great opportunity to continue refining this development tool. Green Strathcona and Green City present other opportunities.

3.4. Engage the Other Levels of Government

Any public development project, be it social housing, urban infrastructure, schools or parks, can have CBAs tied to them. BOB has already made efforts to work with BC Housing to secure local benefits from social housing construction. Continued efforts by BOB to target public development projects, negotiate CBAs, and tie agreements to program resources provided through various levels of government will help to establish CBAs as the new norm and expectation with all levels of government.

3.5. Continue to Engage the Development Community

Developers looking at projects in the inner city may be very interested to learn more about the Olympic Village site CBA, especially from another developer's perspective. Millennium has expressed interest in speaking on the CBA to the Urban Development Institute. Similarly, Millennium's subcontractor, Metrocan, is a strong champion of the model. BOB could play a facilitative role to see this opportunity realized, and then build from it – bringing information and awareness to other property owners actively developing projects in the inner city.

3.6. Engage and Organize the Community

Through its mandate as an organization that focuses on "revitalization without displacement", BOB is well positioned to continue championing and organizing strong negotiated CBAs. Other groups such as BladeRunners, the Portland Hotel Society, and United We Can are similarly well-positioned, connected, experienced, and organized to negotiate innovative CBA terms. BOB's efforts could be strengthened through collaboration with these organizations.

Other inner-city groups may not have as clear a mandate to put time, energy and resources into what can be a protracted and expensive process. But these same groups may be very interested in informing

and defining the terms of these agreements. Strength going forward will depend on BOB's ability to rally the support and maintain the engagement of a bigger network or coalition of community organizations, business and individuals that support BOB's role as a key advocate and negotiator of these agreements.

3.7. Be Strategic, Target Opportunities

While the Olympic Village Site and Southeast False Creek is one of the most significant development projects in the inner-city in recent years, it is certainly not the only one. Regularly, observers lament the fact that other key development sites such as the Woodward's Building¹⁸ or the Convention Centre¹⁹ could have also had more substantive CBAs attached had the community managed to position itself more strategically. Going forward, this kind of systematic targeting of development projects in and around the inner-city will enable CBAs to become a creative and flexible tool that can deliver tailored and diverse opportunities to inner-city communities. The key is to be proactive, define the community's terms and expectations up front, and to flex some muscle (backed up by strong community support) when necessary.

3.8. Refine Agreements

When it comes to negotiating, drafting, and signing off on CBAs, the more detailed and specific the language around the developers' commitments, the better. Strong and detailed CBAs hold parties accountable, have defined measurable performance targets and indicators, are time limited, and provide for transparent and regular reporting and communications. Without these, community organizations have little recourse to secure commitments or monitor results. Tying CBAs directly to Development Agreements provides a greater degree of accountability to the community. Conditions to extend the life of these agreements beyond the development or construction phase should be sought to encourage future owners, leases, tenants, etc. to continue supporting inner city initiatives.

3.9. Look Elsewhere, Learn

CBAs come in many shapes and sizes – and are often not even discussed as “community benefits agreements” at all. There is much to learn from other jurisdictions such as Los Angeles, New York, Toronto and even here in Vancouver (i.e. Edgewater Casino). Some cities are working toward integrating community benefits into standard development approval processes. This kind of experimentation elsewhere is invaluable knowledge that can help inspire local negotiations and discussions. Involving academic institutions like SFU (i.e. CED Program, City Program) or UBC (i.e. School of Community and Regional Planning, Sauder School of Business) may enable BOB and the inner-city community to gain ready access to the wealth of information out there and to work with an academic partner to develop solutions and strategies unique to the Vancouver development context.

¹⁸ BladeRunners was able to tie training and construction jobs to this redevelopment project.

¹⁹ Efforts were made by the City of Vancouver to tie community benefits to the Convention Centre project, but strong resistance was encountered due to significant cost overruns and a lack of established policy and practice for CBAs in the City of Vancouver.

4. References

- Gross, Julian with Greg LeRoy and Madeline Janis-Aparicio. 2005. Community Benefits Agreements: Making Development Projects Accountable. Good Jobs First and the California Partnership for Working Families.
- Leroy, Greg and Anna Purinton. August 2005. Community Benefits Agreements: Ensuring that Urban Redevelopment Benefits Everyone. Neighbourhood Funders Group.
- North Sky Consulting. January 12, 2006. Benefits Agreements and the Olympic Village. Prepared for the City of Vancouver.
- Peachey, Karen. June 2009. Building on Success: an Evaluation of the Community Benefits Agreement for the Vancouver Olympic Village Site. Prepared for Building Opportunities for Business Inner City Society (BOBICS).
- Salkin, Patricia E. and Amy Lavine. 2008. Understanding Community Benefits Agreements: Equitable Development, Social Justice and Other Considerations for Developers, Municipalities and Community Organizations. Journal of Environmental Law, Vol. 26:291.
- Vancouver Agreement. October 2004. Vancouver Agreement Economic Revitalization Plan.