



ABBREVIATIONS

CBA	community benefit agreement
CBC	community benefits coalition
CTE	career and technical education
FAQs	frequently asked questions
GNA	good neighbor agreement
LAWA	Los Angeles World Airports
LAX	Los Angeles Airport
NIMBY	Not in My Back Yard
PPP	public–private partnership
TPLC	The Public Law Center (Tulane University)
WED	Workforce and Economic Development





EXECUTIVE SUMMARY

The emergence of community benefit agreements (CBAs) coincided roughly with the dawn of a new millennium. Their relatively recent arrival may mean that some members of the career and technical education (CTE) community are unfamiliar with this new urban planning and development tool. That would be unfortunate—CBAs are likely to be with us for some time to come, and they hold considerable potential for advancing the goals of CTE proponents. This article explores potential linkages between the two programs—beginning first with a few words of introduction about CBAs.

Community benefit agreements are legally binding contracts that secure private-sector funding for improvements within neighborhoods affected by proposed real estate developments. A community coalition engages area residents in identifying community needs that become the subject of negotiations between developers and community groups. In a successful CBA negotiation, developers provide concessions in exchange for the community coalition’s support of the project.

CBAs have provided a variety of benefits, such as the construction of parks and recreational facilities, provision of affordable housing, and support for local workforce development through work placements or apprenticeships that lead to employment for area residents.

This paper will help state and local policymakers understand the potential use of CBAs to support the delivery of high-quality CTE services in schools and colleges serving their surrounding communities. CBAs can serve as a potent tool for delivering comprehensive CTE programs that benefit a broad population of resident youths and adults. This desired outcome can be accomplished only if those charged with negotiating CBAs understand the benefits of well-designed CTE programs—and the importance of engaging CTE educators from the secondary and postsecondary levels in planning discussions.

The paper is organized as a series of frequently asked questions (FAQs) about CBAs and their corresponding answers. FAQs address the distinguishing characteristics of CBAs, their potential benefits, key considerations in structuring these agreements, and “internal” and “external” impediments to successful CBA negotiations. The conclusion considers how CBA advocates and CTE proponents might work together on a common agenda of strengthening neighborhoods and how their collaboration should recognize and respect the distinctive expertise of each partner.

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COMMUNITY BENEFIT AGREEMENTS: THE WHAT AND THE WHY

Community benefit agreements (CBAs) are legally binding contracts. They secure private-sector funding for improvements within a neighborhood that will be significantly—and perhaps adversely—affected by a proposed real estate development. Area needs are identified by a community coalition, which may conduct “visioning” sessions with area residents (Moore, Longo, and Palmer 1999, 557). Those needs become the subject of negotiations between developers and community groups that are members of and represented by the coalition. In a successful CBA negotiation, developers provide concessions in exchange for the community coalition’s support of the project, thereby enlisting the aid of local residents who will be most directly affected by the project.

CBAs have leveraged corporate funds or in-kind donations for a variety of beneficial purposes, such as the construction of parks and recreational facilities or the provision of affordable housing. In some instances, CBAs have been used to support local workforce development goals—for example, by providing work placements or apprenticeships that lead to employment for area residents, including school-age youths and unemployed adults.

CBAs have not yet been applied as effectively as they might be to support career and technical education (CTE). Used well, CBAs can advance CTE programming within a neighborhood and offer opportunities for area residents to advance beyond entry-level employment or low-skill jobs. Ideally, CBAs might serve as a vehicle for funding high-quality CTE programs that equip youths and adults with the academic knowledge and technical skills necessary to find gainful employment in a sustainable career.

This paper provides information that may help state and local policymakers understand the potential use of CBAs to support the delivery of high-quality CTE services in schools and colleges serving the surrounding community. CBAs can serve as a potent tool for delivering comprehensive CTE programs that benefit a broad population of resident youths and adults. This desired outcome can only be accomplished if those charged with negotiating CBAs understand the benefits of well-designed CTE programs—and the importance of engaging CTE educators from the secondary and postsecondary levels in planning discussions.





This paper poses a series of frequently asked questions (FAQs) about CBAs. They are:

- What is a CBA?
- What types of benefits do CBAs provide?
- How are CBAs negotiated?
- What do developers get out of a CBA?

FAQs explore the unique features of CBAs that distinguish them from other land-use devices in the following questions, as well as some of the “internal” and “external” impediments to successful CBA negotiations:

- How do CBAs differ from traditional devices in land-use disputes?
- What are the obstacles to a successful CBA negotiation?

The FAQs also answer the following questions relating to how CBAs and CTE can enable and support each other:

- What is the link between CBAs and CTE?
- What can CTE do for CBAs?

The conclusion considers how CBA advocates and CTE proponents might work together on a common agenda of strengthening neighborhoods and how their collaboration should recognize and respect the distinctive expertise of each community.

To provide context for what might otherwise be an exclusively conceptual description, two case studies are provided. One is drawn from events experienced at The Public Law Center (TPLC) of Tulane Law School, which represented a coalition of community members in negotiations with Home Depot. The other case study, of CBA negotiations in Wilmington, Delaware (available as a video on TPLC’s website),¹ gives a balanced overview of the CBA negotiating process from start to finish as viewed from the perspectives of the developer, a community coalition, and the principal public official involved (a district councilmember).

Following next, in a question-and-answer format, are “Just the FAQs” about how and why CBAs are relevant to CTE.

¹See <http://www.law.tulane.edu/tlscenters/PublicLawCenter/index.aspx?id=17553>.

WHAT IS A CBA?



A CBA is a legally enforceable contract that promises to deliver specified benefits for the community or for a particular neighborhood.

A CBA embodies all of the commitments made by two parties in a written agreement (referred to in legal terms as a “bilateral contract”), usually between a developer and a community

coalition that represents the interests of neighborhood residents whose lives will likely be impacted by the proposed development. These commitments are binding and enforceable in a court of law (although most CBAs provide for alternative means of dispute resolution short of litigation).² The duration of the CBA is fixed in accordance with the terms specified in the contract. Some CBAs may expire when the developer has completed delivery of all promised benefits; others may continue for an indefinite period; still others may remain in force only for limited enforcement purposes, as when the agreement provides for mediation or arbitration in resolving disputes.

² For a summary of 18 CBAs and appendices regarding multiple other CBA negotiations, see the “Summary and Index of Community Benefit Agreements” (TPLC Summary of CBAs) on TPLC’s website at http://www.law.tulane.edu/uploadedFiles/Institutes_and_Centers/Public_Law_Center/Summary%20and%20Index%20of%20Community%20Benefit%20Agreements.pdf. Most CBAs referred to in the text or in footnotes can be found at this website.



because they won't deliver the community support needed to get the project approved and therefore won't produce the revenue stream that's essential to fund benefits under the CBA. For example, see TPLC's summary of CBAs prepared by The Public Law Center (2011) regarding the CBA for New York: Atlantic Yards, which was "widely viewed as the result of developer manipulation and community coalition dismemberment. Many of the community groups were weak and some were designed solely as a façade to negotiate the CBA without pressuring the developer too heavily. One community group even received a \$5 million donation from the developer to oppose some of the provisions of the CBA, which some have considered undeniable corruption."

NIMBY ACTIVISTS

CBA negotiations are no place for the implacable opponents of a project. "Not in my backyard" may be an entirely legitimate response to some projects that are so threatening and destructive as to be beyond the pale, for example, where a neighborhood organization announces its implacable opposition to the establishment of a waste transfer station within its residential community. NIMBY opposition is simply not conducive to the "agreements" that are central in CBA negotiations. CBAs align the interests of developers and neighborhood residents, who thereafter share a common commitment to completion of the proposed development, since benefits only flow to the community if an "agreement" enables the project to come to fruition. NIMBY-like opposition would consider the CBA a "sell-out" of neighborhood interests, regardless of how many benefits it promised to deliver. Here again, CTE proponents would be wise to pay close attention to their alliances and avoid joining up with the forces of intractable opposition. Dealing with intractable NIMBY opponents is a waste of time because they will never support a CBA; they do not want to see the project go forward—and without the project, there will be no project revenues to fund CTE benefits.



WHAT ARE THE OBSTACLES TO A SUCCESSFUL CBA NEGOTIATION?

Potential pitfalls are plentiful in the path toward a successful CBA negotiation. Executive branch officials who recruit developers to invest in their cities may view CBA negotiations as an unwelcome speed bump on the road to economic development.²³ CBA proponents could encounter resistance from a district councilmember for the same reason—an intense desire to claim success for economic development within the district; or, damaging in its own way, the councilmember might want to assert control over the CBA negotiations in order to claim credit for any benefits flowing to the community. A developer might resist entering negotiations or fail to see a link between community concerns and the proposed project.²⁴ The CBC might even suffer self-inflicted wounds, losing neighborhood solidarity and seeing the community fracture into fighting factions under the pressures of negotiating an acceptable agreement for area residents.

Conflict of interest is one of the most predictable (and perhaps inevitable) challenges faced by CBCs at some point in their negotiations. These conflicts may be either “internal” to the coalition or “external” among key public officials, who often hold the power to facilitate or subvert CBA negotiations. CBCs can establish prohibitions and procedures to deal effectively with the former type of conflict. Regarding the latter, they can be vigilant but not omniscient, as hard experience has demonstrated.

²³ “Unfortunately, local officials often treat public participation as if it obstructs or provides only marginal benefits to the decision process, rather than embracing it as an essential element of decisionmaking” (Camacho 2005, 38).

²⁴ A developer wanted Denver’s Urban Renewal Authority to declare a brownfields site blighted, creating an urban renewal district that would qualify for financial redevelopment incentives, but community activists opposed the request until the developer agreed to invest in the neighborhood (Couch 2003, C3). Denver’s Planning Board delayed a decision because it regarded the project plans as “incomplete.” After three years of negotiations among city officials, the developer, and the community, the developer accepted in February 2006 a CBA that included commitments on affordable housing, wages and benefits, local hiring, neighborhood cleanup activities, and controls on big-box development. See <http://fresc.org/about-us/accomplishments/> (accessed November 15, 2014).



INTERNAL CONFLICTS

The following CBC operating principles²⁵ bind CBC members to observe multiple protections against their own conflicts of interest:

- A member who seeks or may receive a direct benefit from the proposed CBA may not serve on the negotiating team.
- A member may not act individually to negotiate with the developer.
- A member may not work for or derive any benefit from the developer for a period of one year after execution of the CBA.
- Disagreements with other coalition members will not be aired publicly.
- A member may not speak out individually against a project under CBA negotiations without first resigning from the coalition.
- Questions or concerns about implementation of the operating agreement and operating principles will be brought to an ethics committee for resolution (see Marcello 2007, 664).

The operating principles serve not only to protect the coalition and its members from potential conflicts of interest; they also promote harmonious relationships among coalition members.

CTE proponents are not bound by the same ethical strictures that apply to CBC members. As noted above, CTE representatives will usually not be at the negotiating table and will generally play a behind-the-scenes role as advisers to the negotiating team. Even if CTE proponents become part of a CBA negotiation, their role will most often be to provide technical assistance. They likely will not serve as members of the CBC and therefore will not be required to sign either the operating agreement or the operating principles. Nonetheless, CTE proponents would best serve their own interests and those of the coalition by conducting themselves in accordance with the foregoing ethical principles. Everyone who participates in the implementation of a CBA should speak exclusively through the coalition and not directly to the developer; otherwise, the power of the community coalition will be diminished and the community benefits will not be forthcoming.

²⁵ See the link to “CBC Operating Agreement and Principles” on TPLC’s website at <http://www.law.tulane.edu/tlscenters/PublicLawCenter/index.aspx?id=3906> (accessed November 15, 2014).



EXTERNAL CONFLICTS

CBA advocates have no defense against external conflicts of interest, except perhaps eternal vigilance—and that will not always prove sufficient.

In the case study cited previously, the Central City CBC's initial communications with Home Depot were encouraging. A company vice president travelled from headquarters in Atlanta to meet with the CBC negotiating team in October 2006 and at the end of the meeting invited the CBC to submit its proposal for a CBA. The CBC's letter went out in November and included among its proposals a local high school internship. Local counsel for Home Depot repeatedly assured the CBC that the home office was considering its requests, but those assurances never converted into action. Home Depot's counteroffer, when it arrived in early January 2007, was disappointing.

CBA negotiations finally came to an unhappy end at a meeting in 2007. There CBC members, two members of the city council, the mayor's economic development leader, and two Home Depot executives from Atlanta convened to attempt a last-minute agreement before the council considered a motion to relinquish the city's control over streets underlying the proposed building site. The motion was essential for the project to go forward. The district councilmember spoke strongly in favor of a CBA. Home Depot executives were guarded in their response, neither embracing nor rejecting the proposition. But the mayor's representative expressed the administration's strong opposition to a CBA and cautioned the district councilmember that her support for a CBA could put the entire project at risk (Russell 2012). Ultimately, the district councilmember settled for a commitment from Home Depot to work with her toward delivering some benefits to the community, and in return she let the motion go forward for approval. That meeting effectively ended meaningful negotiations, and a CBA never did materialize.

The mayor at this time was C. Ray Nagin, who later became the first mayor of New Orleans to be convicted and sentenced to prison—for wrongdoing directly related to the CBA negotiations with Home Depot.²⁶ Convicted on 20 of 21 counts, he received a 10-year sentence that began in September 2014. According to the indictment and the evidence presented at trial, Nagin called Home Depot's chief executive, Frank Blake, during the CBA negotiations, and his message essentially was, "Don't be bothered by those community

²⁶ See <http://www.cnbcprime.com/american-greed/episode/ray-nagin-new-orleans-shakedown/>.



advocates. I can take care of that problem.”²⁷ Concurrently with these damaging communications to Home Depot, he and his sons were pleading with the company for an exclusive countertop installation contract with their jointly owned company. Months later, after final city approvals enabled Home Depot to begin construction, the company did award the contract to the Nagin family’s business.

This subtext of the mayor’s self-interest was unknown to CBA advocates during their negotiations with Home Depot. Outside observers cannot know how significantly it contributed to the demise of those negotiations, nor can the CBC say, even with the benefit of hindsight, how it might have done business differently to counter the undermining influence of a hostile public official’s private comments to Home Depot. The only recourse for such wrongdoing may be after-the-fact criminal prosecution or an ethics investigation,²⁸ too late to save an embattled CBA negotiation. CBCs can deal effectively with the potential for “internal” conflicts of interest, but they may be powerless to detect or prevent malign influences generated by an “external” conflict.

²⁷ Russell (2013) summarized the mayor’s wrongdoing on the Home Depot project as follows:
 “Using his political stroke to help kill a “community benefits agreement” that would have required Home Depot to hire a certain number of residents from the surrounding neighborhood, and pay them above-market rates, at the retailer’s new Central City store. The indictment charges that in return for mayor’s help, the Nagin family’s granite firm—Stone Age LLC—received a “coveted” contract to be the exclusive granite installer for four Home Depot stores in the New Orleans area. The indictment does not name Home Depot, referring to the company as “major retail corporation.”

²⁸ The Louisiana Board of Ethics has jurisdiction over noncriminal ethical violations under Louisiana Revised Statutes 42: 1101, et seq., and it did launch an investigation of Nagin, which was put on hold pending the outcome of his federal trial.



WHAT IS THE LINK BETWEEN CBAs AND CTE?

One of the most obvious links between CBAs and CTE may be the potential for money from developers to fund CTE programs. CBAs can foster CTE by providing an income stream of supporting revenue that extends the benefits of CTE courses of study to under-resourced neighborhood residents. CBA funding can also be used to purchase CTE instructional equipment and supplies. Money need not be the only benefit, however; institutional arrangements between businesses and CTE providers afford another rich opportunity for community gains.

CBAs are typically negotiated between community coalitions and businesses that want to locate within a community. The proximity of these businesses to educational facilities in the community opens the possibility for student work-based learning placements structured as part of regular school programming. Working with educators, businesses may be able to create a range of workplace experiences for students and instructors that provide authentic learning experiences aligned with the school curriculum. A well-formulated CBA would connect workplace opportunities with classroom curriculum to provide a more robust learning experience, where work experiences complement or reinforce CTE programming.

What might CBA negotiators seek from developers in support of CTE curriculum innovations? They might expect employers to join with CTE educators—secondary and postsecondary—in building out rigorous CTE programming that provides students with opportunities to gain both college and career readiness skills. This collaboration could also yield workplace exposure that helps high schools understand the range of careers available to them (e.g., in sales, accounting, management, distribution, and logistics). Young adults in postsecondary education might have the opportunity to apply skills as part of an internship (paid or unpaid) integrated into their coursework. Faculty might also engage in discussions with employers to gain firsthand understanding of the types of skills expected of their students.

In addition to curricular connections, CBA negotiations could be used to gain marketplace support for CTE programming. For example, employers might provide an employment preference for students enrolling in secondary or postsecondary CTE programming, or they might extend a hiring preference to those completing a recognized CTE program of study.



Businesses could arrange for donations of obsolete equipment to schools or could agree to the use of workplace equipment for instruction, saving schools and colleges the expense of continually investing in high-end capital infrastructure to keep programs current.

Community members constitute a logical and readily-available target population for the benefits of CTE programming. All students enrolling in CTE programs would benefit from the development of a CBA, but in practice the limited resources available may make it necessary to restrict program involvement by community members. In order to protect against any appearance of favoritism in opening access to the CTE programs, the CBA should establish a sound procedure for selecting CTE participants from among community members. A first step might entail developing a needs assessment to identify those most likely to benefit from program supports and then identifying objective selection criteria administered by independent CTE professionals to admit a target population of community members as students.

Collaboration between CBA negotiators and CTE educators on selection procedures and other aspects of the CBA would be entirely consistent with the *Programs of Study Design Framework*,²⁹ prepared by the Office of Career, Technical, and Adult Education, which promotes “partnerships” as “central” to design, implementation, and maintenance of CTE programs of study. CBAs can serve as an excellent vehicle for building the recommended “ongoing relationships among education, business, and other community stakeholders.” By their very nature, CBAs also produce “written memoranda of understanding that elaborate the roles and responsibilities of partnership members.” CTE proponents might consider CBA negotiations as a means of linking “into existing initiatives that promote workforce and economic development” (U.S. Department of Education 2014).

²⁹ See <http://cte.ed.gov/nationalinitiatives/rposdesignframework.cfm/> (accessed November 10, 2015).



WHAT CAN CTE DO FOR CBAs?

CTE experts can help the parties to a CBA secure the most “bang for their buck” in designing and delivering an important community benefit—CTE for community residents.

The typical actors in a CBA negotiation (e.g., business executives, community members, transactional lawyers) are poorly equipped to design or deliver CTE; they need the guidance of CTE professionals. When the Central City CBC sought an “earn while you learn” afterschool internship for area high school students at the proposed Home Depot, advocates were only capable of stating their interest conceptually. If called upon to define with more specificity the particulars of such a program, they would have been hard put to do so because they lacked the requisite expertise.

The most efficient use of resources in designing and delivering CBA-based educational benefits would be to tap into existing expertise among CTE professionals. Their track record of educational outcomes will lend credence to CBC requests for a commitment of resources from the developer during the front-end negotiations. Providing in the CBA for collection of valid and reliable data on the implementation of CTE programs will give both the developer-investor and the community-beneficiaries comfort after the fact that the money is being well spent, based on quantifiable results.

Putting CTE into the mix also strengthens the hand of CBCs by bringing to the negotiating table a stable interest group with established links to public officials—as opposed to the sometimes ad hoc nature of CBCs that arise out of the exigencies of a particular project and may have no continuing existence beyond the CBA negotiations. By inviting secondary schools, career and technical education centers, community college institutions, and other CTE providers to play a role as stakeholders in the CBA negotiations, community representatives can diversify their coalition of supporters working for a successful outcome.





CONCLUSION

Community advocates and career and technical education (CTE) educators share a common agenda—to address the needs of an under-resourced population in ways that bring enduring benefit and that strengthen the overall social fabric within which the client population lives and works. Everyone has an interest in strengthening the neighborhoods surrounding expensive new developments, including developers, community members, public officials, and the city as a whole that will enjoy the benefit of new revenues derived from the development. Community benefit agreements (CBAs that fund CTE programs or provide workplace learning opportunities for neighborhood residents living near a proposed new development can often be tied into career opportunities connected with the new project. CBA-CTE collaboration holds great promise in making the most of these opportunities to strengthen neighborhoods.

CBA organizers and CTE professionals each possess distinctive expertise within their respective fields. They need to respect those lines of division and accept the guidance of partners working within their own areas of expertise as they forge collaborative working relationships.

CBA and CTE advocates would be wise to build productive working relationships with public officials and public bodies *before* CBA negotiations. They also need to educate the press, the public, the civic sector, and the business community about their respective programs, and to do as much of this educational work as possible before launching CBA negotiations.

These educational efforts may need to reframe how economic development is understood among the press, public officials, and some business executives. If “economic development” is perceived exclusively in terms of “new” development—new businesses lured into a community or new construction—public officials are liable to adopt a hostile attitude toward CBAs. This would impose additional costs on new developers and might thereby impede the decision to invest in a new community. This paper argues for a paradigm shift in perceptions: Economic development should be more broadly understood in terms of human capital investment and community strengthening. Well-formulated CBAs that align with and reinforce existing CTE programming will contribute to increased postsecondary enrollment and improved workforce development—outcomes that ultimately strengthen both the community and new (or existing) firms in the community.



Economic development can and should mean far more than just “new” business. Economic development means sustainable development that protects and enhances the long-term viability of cities and neighborhoods (Salkin 2002). When a developer accepts local hiring preferences and agrees to pay project employees a living wage with benefits, the developer’s commitments mean economic development for area merchants, who benefit from the multiplier effect of increased buying power among area residents. And when a CBA includes CTE instructional opportunities for neighborhood residents and their children, the entire community derives multiple, long-term rewards that can be measured in social stability and increased earnings power from this investment in the future.





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