

CONTEXT AND STRATEGY FOR LOCAL HOUSING INITIATIVES:
THE BOSTON LINKAGE PROGRAM

by

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ABSTRACT

The use of impact fees imposed on downtown office and commercial development to help finance construction of housing affordable to low- and moderate- income urban residents emerged in the 1980's as a major local housing policy in selected cities, including San Francisco and Boston. During the development boom of the 1980's, programs based on these fees generated and disbursed substantial local subsidies for the construction of affordable housing units. These programs are viewed as politically important to city administrations and urban planning and redevelopment authorities, and the funds generated are considered by non-profit developers, community-based housing activists and others as a critical source of project finance for affordable housing developments.

Both the economic and political environments have changed substantially in the ten years since the linkage programs were enacted. These changes, along with the potential for legal challenges, present risks for the programs. The objective of this thesis is to examine the impact of these changing circumstances on the linkage program in Boston. How have these changed circumstances impacted the structure, financing and objectives of these programs? What is the outlook for the Boston linkage program in a changed real estate market? What strategies have been implemented or are available to local officials and non-profit developers to assure continued funding of the linkage program?

Thesis Supervisor: Prof. Langley Keyes
Title: Professor of Urban Studies

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This is dedicated to them and to my mother, Mrs. Eloise M. Poston, and to the memory of my father, Dr. Paul L. Poston.

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Chapter 1. Introduction and Statement of the Problem

In the 1980's, a number of municipalities in the U.S. instituted new policies which defined a more activist and progressive role for local government in the housing field. These policies yielded a set of programs, generally referred to as "linkage", which imposed fees on commercial development to help finance affordable housing projects. Linkage policies emerged as a response of selected local governments to a perceived imbalance between the pace of commercial development in the downtown core and the declining availability of housing affordable to low- and moderate-income urban residents. Principal U. S. cities implementing these linkage programs are Boston, Massachusetts and San Francisco, California.

Cities enacting linkage programs share certain common characteristics. A robust commercial development sector is fundamental, as it is this climate which both creates the conditions requiring the programs and generates fees used to help create new affordable housing. Second, there must exist a critical need for such housing. This need may be indicated by low vacancy rates; physical deterioration of an aging housing stock; rising property values; and housing costs rising faster than incomes, particularly low incomes. It is these circumstances which constitute the need for the programs and which also foster the political climate necessary for passage of the programs (Keating, 1986a).

Third, there must be an organized, sophisticated housing activist and non-profit development community which promotes the program concept. This core is essential for placing the need for the programs on the political agenda and in producing housing under program auspices. Finally, there must be

sufficient political will among elected officials, and votes among the electorate, to support enactment of the programs. Whether formally initiated by amendment to the zoning code or by referendum, creation of the programs is fundamentally a political act.

Why is Linkage Important?

Linkage has become in the last decade both a source of revenue for cash-strapped municipal governments and a politically popular, although highly controversial, policy instrument. As a result, programs based on the San Francisco and Boston models have been developed and implemented in several urban areas, such as Santa Monica, Seattle and Princeton N.J. (Keating, 1986a; Gallogly, 1987). Such programs have also been the source of contentious debate and have eventually been rejected in other localities, including Chicago and Cambridge, Massachusetts (Keating, 1986).

The use of this off-budget source of public finance has attracted considerable attention in the development community because of its potential impact on new commercial and affordable housing development projects. Commercial developers, housing activists, local officials and real estate lawyers are all vitally concerned with how the programs are implemented for both economic and political reasons. To private commercial developers, linkage payments are often viewed as a tax on new development, which drive up project costs, increasing finance charges and rents, while driving down land values and rendering new projects uncompetitive with existing buildings or alternative sites not subject to the same requirements (Porter, 1988). To non-profit developers of affordable housing and other housing advocates, linkage funds are considered a crucial source of gap financing, that have taken on increasing importance as federal and state subsidies available for affordable

housing projects have diminished. To local politicians in municipalities where housing affordability has emerged as a significant political issue and where there is a well-organized activist core focused on this issue, linkage has assumed substantive importance as a policy matter.

Linkage has also garnered attention in the legal and planning communities because of its implications for land use regulation and the planning process¹. While the application of housing-commercial development linkage programs may be limited to selected U.S. cities, these programs continue to spawn debate and study in both academic and development circles. Linkage programs pose legal, political, financial and other challenges for commercial development. They also face similar challenges as a source of municipal finance, gap financing for affordable housing projects and social policy. These programs have, and will continue to have, an impact on urban development in the 1990's and beyond.

Statement of the Problem

At its core, linkage is a policy instrument of local government designed to address the issue of housing affordability. The programs seek to implement this social policy by identifying a new source of revenue and directing that revenue to write down the construction costs for new or rehabilitated housing units. This form of subsidy, combined with other local, state and Federal resources, has helped create and maintain thousands of housing units affordable to low- and moderate-income urban residents over the last decade (Keating, 1986a; Goetz, 1989; BRA, 1989).

1. See, for example, the Journal of the American Planning Association, Volume 54, Number 1, Spring, 1988, for proceedings of a symposium held on linkage programs.

In Boston, the linkage investment of about \$24 million over 5 years has been a small but significant part of a total investment of nearly \$250 million in mixed-income housing in Boston. This investment has served primarily households with incomes at or below metropolitan area median income (BRA, 1989).

Linkage funds have not by any means replaced or supplanted other forms of government intervention in housing markets. At best, program funds supplement state and other resources for affordable housing. Nor do the funds generated through the program represent a financially significant element of the total City budget (in Boston, annual developer payments under the program constitute only about 0.2%-0.5% of annual City expenditures)². However, the impact of this revenue source extends beyond the financial leverage realized, and is more than merely symbolic. The program is an important source of political capital for the City administration, and is a key local investment in what might be termed the social infrastructure.

A principal thrust of the City's overall shelter policy has been the preservation and promotion of housing affordable to low- and moderate-income households (Drier and Ehrlich, 1991). The linkage program has been a central component of this local housing policy; and it has been crucial to specific policy objectives of the Boston Redevelopment Authority (BRA), the

2. Estimate based on \$1 billion annual city budget (excluding school system budget) and \$2 million annual developer payments. Developer payments under the linkage program are revenue to the Neighborhood Housing Trust, a trust fund established by the City, and are not considered part of general City revenues.

city agency that regulates the development process and which plays a key role in administering the Boston linkage program. Despite its success in generating new housing opportunities, this key policy instrument is flawed in several important respects. These flaws are primarily structural in nature, and could place this important program at risk. This risk exposure has the potential to undermine the success of the program over the long term.

The sources of risk to the program are threefold. The first of these may be termed legal risk. This risk parameter stems from the regulatory nature of the program and its foundation in the municipal zoning code. The linkage program originates from a set of municipal zoning practices, called development exactions, concerning which an extensive body of case law has been developed primarily at the state court level. However, more recent decisions by the U.S. Supreme Court have begun to transform the standards established by the lower courts. Linkage has yet to be measured by these new and changing standards. To date, the Boston program is one of the few similar programs to have been subjected to legal challenge. That challenge was turned back on procedural, not substantive, grounds (Garrity, 1986; Gallogly, 1987). Although the matter has not been pursued further in the courts, the basis of the challenge, and of the program, remains unresolved.

Some steps were taken following the suit to correct substantive deficiencies in the program, including an express authorization from the state legislature for the required zoning code amendments³. Although the Boston program has

3. The Massachusetts enabling statute contains language under its inclusionary zoning provisions authorizing local actions such as the linkage program. Zoning in the City of Boston, however, is enabled under a separate act. See Andrew and Merriam, 1988; and Gallogly, 1987.

operated for several years without legal challenge, the fact that the issues raised in the earlier suit were not resolved raises the possibility that other suits may be filed at a later date (Garrity, 1986).

The second source of risk to the program stems from its origin as a response of elected officials to certain economic and political conditions. The program was created, is sustained and is used in a political context, to achieve political objectives. Changes in the conditions or context which gave rise to the program will result in changes to, or possibly the demise of, the program.

The Boston linkage program, while the legacy of one mayoralty, has operated entirely under only one city administration. This administration has been characterized as sympathetic to the issues and needs of low-income housing; yet the management of the linkage program, particularly in its early years, was subject to criticism from the housing activist community. These circumstances indicate the need for independent monitoring of the program. They also raise questions of how the linkage program will fare politically after the term of the administration which has operated it exclusively. These factors characterize the political risk which the program faces.

The third, and most current, source of risk to the program is economic risk. The program depends almost exclusively on large-scale commercial development as its revenue source. Since the late 1980's, the pace of new development in Boston has slowed substantially. Only one major project is scheduled to come on line between 1992 and 1996 (BRA, 1991). While several other large projects are proposed, the timing of their entries on the market is uncertain. The uncertain future of these projects creates volatility in the

dedicated revenue stream on which the City relies for its principal housing creation initiative.

These sources of programmatic risk - legal, political and economic - present different kinds of challenges and require different kinds of responses. In the design of and revisions to the Boston linkage program, efforts have been made to mitigate certain aspects of these risk factors. Nonetheless, the Boston program is still subject to significant risk exposure. To the extent that the Boston program will be sustainable over the long term and represents a model for other municipal programs linking commercial development with that of affordable housing, these risk factors must be recognized and understood.

Overview

This thesis seeks to explore these factors and related questions concerning linkage programs as they currently function in selected U.S. real estate markets. The thesis stems from a more general understanding of the basis and structure of linkage programs, but will focus primarily on the programmatic experience of Boston, Massachusetts. The exploration of these issues begins with an understanding of the legal and regulatory contexts within which linkage programs are structured. The examination of the literature concerning the legal and regulatory basis for development exactions will lead to brief consideration of the political and economic contexts within which exactions are imposed. The evolution of linkage policies in the 1980's as a new form of development exaction will be described.

This contextual background provides a basis for more detailed consideration of the genesis, structure, operation and performance of the Boston linkage

program. Though not a critical evaluation, this examination of the Boston program will focus on the conditions under which that city's linkage program was promulgated and highlight the potential impact of such programs on production of affordable housing and commercial development. These impacts will be more clearly illustrated through a brief case study of the use of linkage funds as gap financing for a mixed-income housing production program sponsored by the Boston Redevelopment Authority, the quasi-independent planning and regulatory agency which provides certain administrative services in support of the City's linkage program. The case study will be used to illustrate the relative importance of linkage as a source of project finance for affordable housing projects.

The final chapters will consider how the outlook for downtown development in Boston will impact the achievement of the linkage program's goals. The strategic responses of the City administration and housing activists who are most concerned with advancing the affordable housing agenda will be considered.

Chapter 2. The Lineage of Linkage Programs: A Literature Review

In spite of the degree of controversy which enactment of linkage programs has engendered, there is a relatively limited body of literature pertaining to this subject. This reflects the relatively recent emergence of such programs, but may also be indicative of the limitations on their applications in other urban contexts. The literature which exists on linkage programs directly has been developed primarily in two sources: in the professional journals on planning and public policy; and in the popular press around specific events in the development and implementation of the programs. In addition, there is a small but substantial body of material, both in case law and law journals, bearing on the questions posed by municipalities requiring cash or in-kind contributions from new development as a condition of regulatory approval. Few of the linkage programs currently operating have been subjected to extensive challenge in the courts. As a consequence, case law concerning fundamental constitutional issues raised by linking commercial development and the need for affordable housing has not been written yet to any great extent. These issues have nonetheless been of concern to lawyers and legal scholars who focus on real estate law and municipal finance (See Babcock, et. al., 1987; Major, 1987; Henning, 1990).

Planning professionals and policy specialists have given attention to the issues raised by linkage programs. The use of such programs to support affordable housing and other social policy objectives is a fairly recent manifestation of the regulatory power of local authorities over land use. Because linkage programs have been perceived as an innovation in local land

use regulation, they have been the subject of study and debate in the planning literature (See Frank and Rhodes, 1987; Goetz, 1989; Huffman, et. al, 1988).

The origins and foundations of linkage programs have been considered generally from the perspective of local government's power to regulate land use through zoning and other regulatory devices. In part, this derives from a municipal finance perspective and involves local government's concern with the ability to finance essential public services, a portion of the demand for which is created by new development. (Smith, 1987; Alterman, 1988).

This view has been extended by the debate over local housing policy. A fundamental concern here is with the adverse affects of racial and economic discrimination on society, and with how land use regulation may exacerbate or be used to address these important issues (Mallach, 1984; Alterman, 1988). Analysis and critique of linkage programs has focused on the use of zoning as a tool of municipal finance and housing policy. In addition to the control exercised under zoning, municipalities also use their regulatory powers to leverage community benefits by negotiation with prospective developers.

The municipal finance issue stems from the practice of local government requiring new development to bear its associated infrastructure costs. This practice is known generally as development exactions. Typical examples of these exactions are requirements that commercial developers set aside land within a subdivision for schools or provide connections to water and sewer systems. As an alternative to dedications, developers have been required to make in-lieu cash payments enabling municipal government to finance capital improvements or public services without strict reliance on the property tax or general obligation bonds. Exactions shift the burden of

financing capital improvements to those most directly benefitting and are designed to assist the community as a whole to absorb the consequences of new development.

Frank and Rhodes, in their introduction to the volume Development Exactions (Frank and Rhodes, 1987), defined exactions as "development regulations that require a builder or developer to give something to the city or county... or regulations requiring something be turned over to a common maintenance entity...", such as a homeowners' association. They included in this definition mandatory land dedications, cash payments in-lieu of land, facility donations, impact fees, impact taxes and linkage payments to support affordable housing programs. As is evident from the Frank and Rhodes definition, the term exactions covers a broad range of policy instruments. Among these there are some quite clear distinctions, as between a land dedication and cash payment. Distinction between some of these instruments, however, is more subtle, as between an impact fee and impact tax⁴. It is further evident that these development regulations give municipalities broad power over new development, with important implications for landowners, developers, existing residents and the tenants or residents of new commercial or residential projects. Figure 1 serves to illustrate the relationship between linkage programs and more widely used and recognized forms of exactions.

4. Under a land dedication, a developer conveys to the municipality a parcel or parcels for a specific purpose, e.g. schools. Cash payments may be permitted in-lieu of the dedication, or charged as a fee or tax. An impact fee is assessed under the regulatory powers of the municipality. Levying of a tax generally requires express authorization from the state legislature. See Heyman and Gilhool (1964) and Smith (1987) for more on these distinctions.

Linkage programs have also been considered in the context of how zoning regulations are used to achieve other local policy objectives, specifically concerning residential development, as opposed to use of the regulations as revenue generating mechanisms. This view, though not as widely subscribed in the literature, describes housing-commercial development linkage programs as stemming from more recent innovations in land use regulation, particularly inclusionary zoning programs (see Mallach, 1984; Merriam, et. al., 1985). Inclusionary zoning emerged as a regulatory tool to combat racial discrimination enforced through suburban zoning requirements in the 1960's and 1970's (Mallach, 1984). A summary of this view is presented in Figure 2.

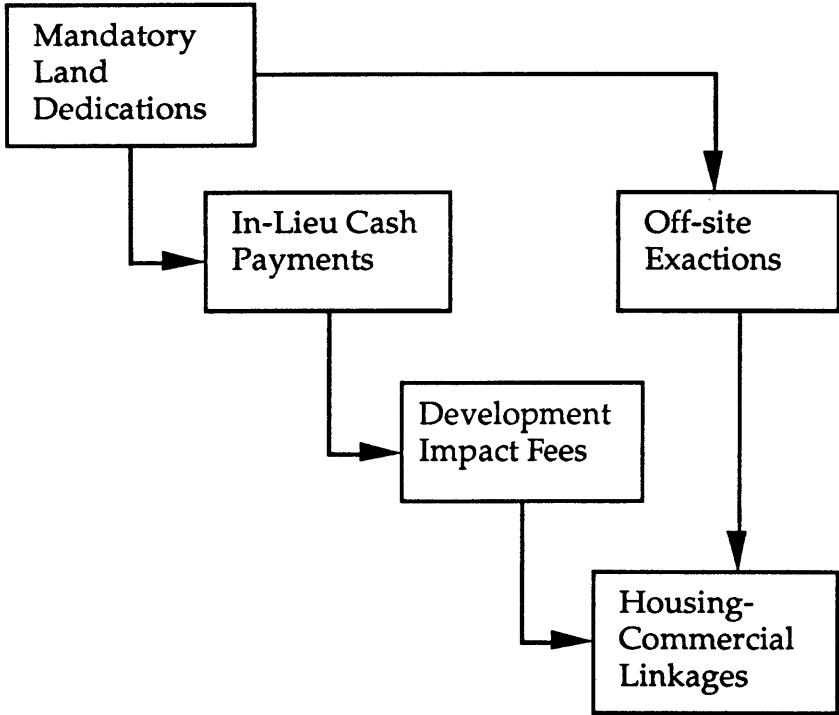


Figure 1. Relationship of Development Exactions to Housing-Commercial Linkage Programs

The traditional exactions view of linkage programs focuses on the nature of the programs as a public finance mechanism used by municipalities to generate local revenue. This view also implicitly compares the types of public benefits derived from traditional exactions policies, e.g. infrastructure improvements, with a new concept of public benefits, i.e., affordable housing. Considering linkage programs in the context of inclusionary zoning incorporates issues of social justice and equity in the debate. Inclusionary zoning requirements, however, have primarily addressed this issue in suburban residential development which, through minimum lot size or other regulatory artifice, seeks to exclude more affordable housing options. Inclusionary zoning schema have been imposed with less frequency on commercial development as a requirement to contribute to or provide housing to the low and moderate income. However, the application of inclusionary zoning in downtown areas provides additional mechanisms to address housing needs of low- and moderate-income urban residents.

Other forms of linkage between commercial development and community needs, including housing, have been proposed and implemented in some cities. These linkages have been implemented through other zoning mechanisms, such as incentive zoning and allocation of density bonuses. Negotiations between local regulators and private developers often serve as the basis for these linkages. Some commentators have suggested that such negotiations may achieve more benefits for a community than a formula-based approach by providing a more flexible and a more defensible basis for attaining the objectives of a linkage program (Susskind and McMahon 1988).

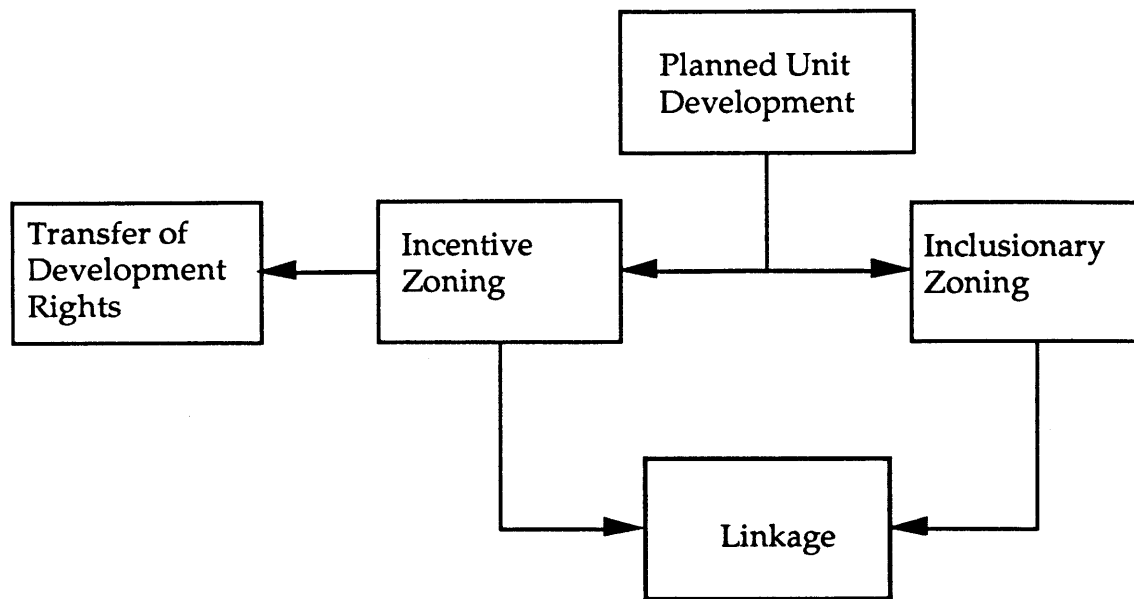


Figure 2. Relationship of Housing-Commercial Linkage Programs to Other Forms of Land Use Regulation

[Adapted from Bosselman (1985)]

Development Exactions: An Historic and Regulatory Context

A fundamental change in land use regulation in the U.S. occurred with the introduction of zoning as a tool with which local governments could shape and control the character of land use. Prior to adoption of zoning regulations, which became widespread in the 1920's, municipalities had primarily exercised control over uses through the application of nuisance law. The landmark *Village of Euclid vs. Ambler Realty* decision in 1926 set the stage for a number of subsequent court decisions which transformed the basis of local regulation of land use from nuisance principles to the exercise of the police power. It is this constitutional principle under which government is empowered to act to protect the health, safety, morals and general welfare of the public.

Much of the controversy surrounding development exactions generally and, by implication, linkage programs is whether the regulations under which such programs are promulgated are properly within the police power of local government (Smith, 1987). In addition, imposition of development exactions raises several fundamental constitutional issues. These concern equal protection under the law; due process; taking of private property; and just compensation (Heyman and Gilhool, 1964). To the extent that linkage programs are, because of their controversial nature, subject to legal challenge, these issues are critical.

As a tool of subdivision regulation, development exactions initially consisted of compulsory improvements required only on-site. These improvements included, for example, dedications of land for street construction. These early land dedications were of benefit to the developer, as the assumption by the municipality of responsibility for maintenance and repair expenses relieved the developer of these costs.

Two types of regulation later emerged for off-site improvements. These included capacity charges, e.g. requirements that water and sewer lines have sufficient excess capacity to accommodate growth; and requirements to construct improvements outside the subdivision, such as widening an abutting street (Smith, 1987).

Some subdivisions because of size, location or other considerations, were unable to make land dedications sufficient for needed public improvements. In these cases, cash payments in-lieu of dedications were employed as an alternative mechanism. This approach was applied where available land was too small or otherwise inappropriate to meet anticipated needs.

A new class of exactions, called impact fees, was later introduced as a mechanism by which municipalities could help finance the cost of growth. These fees were distinguished from the cash-in-lieu of land dedication approach in that the fee was not tied to the acquisition of land for the purpose of building roads or sewer lines (see Appendix 1). Stroud defines these fees as consisting of:

a cash payment...usually calculated on the basis of the development's impact on specific public facilities such as roads, parks, or drainage. The community earmarks the payment to be used for expanding the capacity of the specific facility (Stroud, 1987).

Since their introduction, exactions of all types have been the subject of legal challenges. To date, linkage programs have not been challenged extensively in the courts. The constitutional and legal bases of other types of exactions provide an understanding of how linkage programs are structured and how legal challenges to the programs may occur in the future.

Legal Basis for Exactions

Heyman and Gilhool (1964), in their article on the constitutional basis for subdivision exactions, make clear the fundamental bases for the analysis of development exactions as regulatory tools; that is, whether the ability of local government to require exactions derives from the police power or the power to tax. This distinction provides the basis for understanding how local governments are empowered to require exactions generally, and linkage programs specifically.

One of the central questions raised in numerous court cases challenging the land use regulations of local and state governments has been whether the

exercise of the police power is reasonable. Smith (1987) notes that state authorizing statutes under which local governments have required land dedications have been upheld on constitutional grounds if they are shown to be reasonably related to the achievement of legitimate governmental objectives founded in the public welfare, and therefore within the police power of the state. This reasonableness test was articulated by the Supreme Court in *Associated Home Builders vs City of Walnut Creek* (Smith, 1987).

Heyman and Gilhool identify four principles on which the courts have based decisions in land use cases concerning the proper exercise of the police power. These include whether a given regulation is arbitrary, confiscatory, discriminatory, or constitutes a taking of private property.

Land dedications for streets, sewers, and other infrastructure are generally upheld in the courts, so long as they have not been found to be arbitrary, confiscatory or discriminatory. Dedications of land (e.g., for streets) have also not been deemed as taking of private property so long as "...there is some rational relation between the needs normally generated by a use and the conditions imposed on a use..." (Heyman and Gilhool, 1964).

Land dedications for school and park sites and imposition of fees to finance the acquisition of such sites introduced new principles for measuring the legality of exactions. A case in the Illinois Supreme Court, *Rosen vs Village of Downers Grove*, introduced the notion that costs "specifically and uniquely attributable" to a subdivision may be required to be borne by the subdivision. A subsequent case, *Pioneer Trust and Savings Bank vs Village of Mount Prospect*, citing *Rosen*, raised this notion to the level of constitutional principle (Snyder, 1985). The case of *Gulest vs the Town of Newburg* also

required that exactions directly benefit the subdivision to which they are related. This represented a departure from the conventional police power analysis (Connors and High, 1987).

The Florida court, in *Wald Corporation vs. Metropolitan Dade County* articulated the rational nexus test, which further requires that there be a connection between the exaction required and the benefits received by those who bear the burden of the exaction (Smith, 1987). The Wisconsin court, in *Jordan v. Menomonee Falls*, is also credited with first applying the rational nexus test (Snyder, 1985; Gallogly, 1987). The development of this test stems from the work of Heyman and Gilhool cited above. Stroud (1985) observes that the rational nexus test is a cost accounting approach used to balance local government's revenue needs against the private developers cost concern. The purpose of the test is to ensure that public benefits for which the public would ordinarily pay are not unfairly imposed on new development (Major, 1987).

These land use decisions have primarily been the province of the state courts. The U.S. Supreme Court rendered a recent decision which may set a new standard for land use regulation, and which has implications for linkage programs. In overturning a land dedication upheld by the lower courts, the Supreme Court in *Nollan vs. California Coastal Commission* articulated as a new standard that a land use regulation must "substantially advance a legitimate state interest". Andrew and Merriam note that the *Nollan* decision has implications for linkage programs in that there must be "sufficient evidence in the record of the required nexus between the need advanced and the proposed prohibitions, exactions and conditions" which accompany a linkage program (Andrew and Merriam, 1988).

The thrust of these principal court decisions has been that there must be a clear relationship demonstrated between the requirements imposed on new development and the costs which new development creates for the community. The standards which these decisions have established have been fairly inflexible, as in the “strictly and uniquely attributable” test; or have required precision in the allocation of costs imposed, as in the use of cost accounting techniques which underlie the development of the rational nexus test. The newer “substantially advances” test of *Nollan* may constitute a new, more rigid constitutional standard which a linkage program must meet.

Considering linkage programs as an exaction on commercial development requires that the design of the programs meets these crucial tests of legal validity. In particular, program design must be prepared to specifically address the question of the affect of commercial development on housing availability and affordability. The focus of this design consideration may need to be at the project level, demonstrating how a particular project impacts the community and how the mitigation measure offsets those specific impacts.

Development exactions came to prominence as a regulatory tool in the context of residential development, where their principal application was in financing infrastructure. They had not been considered as an instrument of local housing policy until the advent of linkage programs.

Zoning regulations have, however, been used in other contexts as instruments of housing policy. Inclusionary zoning is an example of this application which, in its basic goals and objectives, is closely associated with development of programs linking housing and commercial development.

Inclusionary Zoning and Linkage Programs

Inclusionary zoning programs and the ordinances on which they are based are a relatively recent innovation in land use planning and practice. Like development exactions, they developed primarily in a suburban context, but their focus is not so much on the provision of public services but with the composition of the community. The goal of such programs is to increase housing opportunities for the low- and moderate-income of all races in all communities (See Appendix 2).

Inclusionary housing programs have been instituted in a number of states. Local governments in New Jersey and California have been leaders in enacting these programs, but they have been applied in other states as well, including Massachusetts. These programs were instituted in response to a practice in certain suburban communities of using zoning regulation to maintain the homogeneous character of the community. By imposing restrictions on lot size (and therefore house price), housing design (restricting lower cost design or multi-family structures) or other forms of growth control, zoning regulations were used for the sole purpose of excluding racial or ethnic minorities and lower income households (Mallach, 1984).

Legal Basis for Inclusionary Zoning

Inclusionary housing programs and ordinances must pass the same constitutional muster as development exactions. Inclusionary zoning ordinances, properly authorized, derive from the police power and government's legitimate interest in the community's general welfare (Mallach, 1984). Mandelker observes that the principal objections to inclusionary ordinances are, as with development exactions, based on

constitutional questions of substantive due process and taking of property without just compensation (Mandelker, 1985).

The due process objection to inclusionary zoning is based on the argument that it is designed to achieve socioeconomic, rather than physical objectives. Mallach dismisses this objection, citing the most significant legal decision on inclusionary housing, *Southern Burlington County NAACP vs. Township of Mt. Laurel*, where the New Jersey Supreme Court argued that zoning, as a rule, has either a socioeconomic impact or motivation (Mallach, 1984).

Mandelker sees *Mt. Laurel* applying to commercial development:

Office development in downtown areas can affect the housing market by removing housing units from the housing stock, and by creating employment opportunities for lower income households who need housing close to where they work. An inclusionary zoning ordinance that requires office developers to include lower-income housing units in their projects, or to pay in lieu fees to the municipality to help meet the lower income housing needs their projects generate, is a proper use of the zoning power. (Mandelker, 1985).

Inclusionary zoning has not been treated as an exaction by the courts.

Mandelker (1985) notes that the “purpose served by inclusionary zoning is new, but it falls in the family of land-use controls that regulate the use to which land is put. “ Bosselman comments that this analysis fails to recognize that courts have required, at minimum, that a reasonable relationship be shown between requirements imposed on new developments and the needs they create (Bosselman, 1985b). Inclusionary programs, including linkage, if challenged in court, may need to meet this crucial test.

Development Rights and Community Benefits: Other Linkages

Out of the land use regulatory process have emerged other tools to accomplish goals similar to those achieved through development exactions

and inclusionary zoning. These tools are also derived from the control which municipalities exert over land use through zoning, and are used to obtain a wide range of community benefits, including, in some circumstances, construction of or contributions toward affordable housing. How the tools are applied depends on factors such as the economic climate driving development and the ability of local officials to negotiate effective deals. These tools include incentive zoning and negotiated development.

Incentive Zoning

Under incentive zoning, a local regulator may permit a developer to exceed established height limits or development densities set forth in the zoning code where this approval is conditioned on the provision of certain community betterments. This policy was used extensively in New York and other cities in the 1950's and 1960's to obtain public amenities, such as open space ⁵. Density bonuses have also been used as an incentive for residential developers to include low- or moderate- income housing under inclusionary zoning schemes (Mallach, 1984). In the commercial development context, it does not appear that the awarding of density bonuses or other incentives has been used on a widespread basis to promote affordable housing or other goals.

Negotiated Development

Negotiated development is a process in which the regulating authority places everything 'on the table'. It is important to distinguish exactions of the type defined by Frank and Rhodes (1987) from other contributions required of developers, and specifically to distinguish linkage programs from other

5. William H. Whyte, in his book City critiques the results of incentive zoning for this purpose.

policies with similar effects. For example, as Keating (1986b) points out, density bonuses may be conditioned on provision of amenities or, in some cases, construction of affordable housing. Often the nature of the amenities sought or obtained are not determined by any fixed criteria. These negotiated linkages differ from the programmatic ones in their case-by-case application.

Other Forms of Linkage

Local authorities may link development activity with other requirements of a commercial developer. In Boston, for example, a policy emerged at about the same time as the linkage program requiring a percentage of jobs created during a project's construction phase be awarded to Boston residents, minorities and women. The policy is enforced under municipal ordinance.

Other contributions or community benefits may be required of developers. Examples of such contributions, in addition to the linkage payment for affordable housing projects in Boston, include payments for improvements to a public park, widening of streets and sidewalks, payments for archaeological studies at the construction site, an outreach and education program for local youth, and construction of facilities for public services, to name a few⁶.

These contributions are also often negotiated on a case-by-case basis. Their scope, the types of benefits received and the costs to the community and the developer can vary widely. The value of benefits to the community depends largely on the relative negotiating skills of public officials and private developers.

6. Anonymous personal interviews.

The West Coast Experience

Formal programs linking commercial development with the housing needs of low- and moderate-income communities emerged first on the West Coast. Major (1987) credits the City of Palo Alto, California, with formulating the first such program in 1980, in response to a development proposal by one of the city's largest corporations. In 1981, the City of Santa Monica, in Southern California, instituted a program requiring commercial developments to pay impact mitigation fees to be used for affordable housing development and open space as well (Keating, 1986a). Perhaps the most well-known program was instituted in San Francisco in 1980 (Gruen, 1985; Keating, 1986a; Goetz, 1989). The San Francisco program was initially targeted to increasing housing production generally, and later toward affordable housing in particular. In addition, the City of San Francisco imposes transit impact and other fees on new development.

The basis for the San Francisco program was originally derived from the California Environmental Quality Control Act, with provision of housing required to mitigate the adverse impacts of commercial development on the socioeconomic environment. This program rationale may have been borrowed from legislation proposed (but not enacted) in Massachusetts which would have required large-scale development to undertake impact mitigation measures. In any event, the cross-fertilization of ideas between the West and East coasts led to consideration of the San Francisco approach to linking downtown and neighborhood development and adoption of a similar model in Boston.

The literature on development exactions and inclusionary zoning provides a number of guide posts for the proper design of programs linking commercial development with affordable housing. The tests of validity established in case law on development exactions make clear the importance of empirical evidence demonstrating the need for affordable housing created by new development activity. Without such evidence, it is doubtful that a linkage program would survive if challenged in court.

Inclusionary zoning, under which local authorities use their zoning powers to help preserve and create affordable housing opportunities, may serve successfully as a basis for a linkage program. However, such programs must meet similar constitutional tests as development exactions.

The impact of the Supreme Court decision in *Nollan* has not yet been measured on linkage programs. It remains to be seen whether municipal efforts to promote affordable housing through imposition of linkage fees “substantially advances” a legitimate state interest. This uncertainty, as well as the need to design programs to meet more established constitutional tests of validity, poses an element of legal risk in the design and operation of linkage programs.

Chapter 3. The Boston Linkage Program

Boston was one of the first U.S. cities to enact a program linking commercial development and neighborhood needs, and it has pursued the program with vigor since it was proposed officially in 1983. While the program concept as implemented in Boston drew from the earlier experiences on the West Coast, there are aspects of the program which are unique to the political and economic climate in Boston.

An Overview of the Boston Linkage Program

The Boston linkage program was created as a result of the fortuitous, though perhaps troubling, confluence of a political watershed and divergent economic trends: the election, after 16 years, of a new mayor; and the persistence of poverty amidst the continued economic growth of the City. The sophisticated community of local housing activists was organized to make linkage a political issue; a slate of local progressive candidates likely to support a linkage proposal was about to come to power; the City had weathered the economic recession of 1981-82, and real estate values and development activity, particularly downtown, were accelerating rapidly.

At the same time, there was a desperate need for lower cost housing. Selected indicators serve to characterize the magnitude of the problem. The waiting list at the Boston Housing Authority exceeded 6000 households in a city of only 540,000 (Advisory Group, 1983). The City of Boston median income in 1980 was among the lowest of the 50 major U.S. cities. Median rents in Boston in the mid-1980's were among the highest in the country (BRA, 1983; Gallogly, 1987). Conditions were right in 1983 for positive action on a linkage proposal.

The Politics of Linkage in Boston

In 1983, Kevin White, Mayor of Boston since 1967, announced that he would not be a candidate for reelection. White's tenure had seen turbulence and controversy, innovation and, at one brief juncture, a brush with national politics. White had initially been elected as a reformer, bringing new vision and new direction to a city that had become a victim of the prosperity of its suburbs. His regime had presided over successful efforts at downtown revitalization, among the most publicized of which was the enormously popular Faneuil Hall Marketplace. Yet it was also under his administration that the struggle for desegregation of the public schools resulted in the exacerbation of racial tensions and the imposition of court orders over daily operation for the nation's oldest school system. The local public housing authority was also operating under receivership and the city's finances were decimated, a result in part of the tax-cutting Proposition 2 1/2. At the end of his four terms, White was also leaving office under the cloud of federal and other investigations probing his activities and those of his close associates. The political stage was set for a marked change of direction in city government.

The field of announced candidates to succeed White was initially crowded, but by the end of the primary election season it had narrowed to two principal contenders: Melvin H. King, a former state representative who espoused a progressive political agenda; and Raymond Flynn, a City Councillor who cast himself in the populist tradition. The succession of either of these two to the mayoralty all but guaranteed dramatically new direction, including action on a linkage proposal.

King, who had unsuccessfully run against White four years earlier, had solid progressive credentials. A former youth worker and head of the Boston chapter of the Urban League, he had long been active in local politics espousing a broadly inclusionary philosophy. The preservation and promotion of affordable housing was a principal focus of his work. Among his legislative accomplishments during his tenure in the state legislature were sponsorship of bills to create a community development finance agency, which provides seed money and short-term lending to locally-based community development corporations. King had also filed a bill (H-5236) in 1979 which adapted the environmental regulatory approach of impact assessment to urban development, requiring preparation and approval of Neighborhood Impact Statements for new development. Local officials and prospective developers would have been required to assess displacement and other adverse effects of major state or city actions, including issuance of zoning variances, implementation of urban renewal programs, or other actions; and to implement impact mitigation measures. This was one of the first legislative attempts in Massachusetts to link new development with community needs.

A native of South Boston, Flynn also had an extensive record in local politics including serving terms in the Massachusetts House of Representatives as well as on the Boston City Council.

The campaigns of both candidates adopted a distinct neighborhood, as opposed to downtown, orientation. In this regard, the positions of both candidates on the linkage question were similar. Both candidates supported enactment and implementation of a linkage program emphasizing use of the

funds for low- and moderate-income housing. Both candidates supported a per-square-foot charge for most commercial development, although with some minor differences (e.g., how non-profit institutions such as hospitals and universities would meet the obligation). Both candidates also supported adoption of an inclusionary zoning policy, under which new market-rate housing development would be required to include units affordable to low- and moderate-income households.

Underscoring local interest in creation of a linkage program, Bruce Bolling, a City Councillor, had proposed in March of 1983 a Home Rule petition authorizing an Office/Housing Production Program modeled on the San Francisco program of the same name. The resolution was adopted unanimously by the City Council. This backdrop - a long-time mayor allied with downtown business interests leaving office under a cloud; a pair of contenders to succeed him both strongly supporting the concept of linkage; and broad-based support for the program concept in city government - created a political climate conducive to creation of a program linking commercial development and affordable housing.

The Mayor's Advisory Group

Acknowledging the will of the City Council and recognizing that the outcome of the mayoral election would likely result in enactment of a linkage proposal, Kevin White acted in the waning days of his administration to shape the new policy. In June of 1983, he appointed a commission composed of business and development interests, elected and appointed city officials and selected housing activists, with a charge to evaluate the feasibility of alternative linkage proposals and to present an action recommendation.

The Majority Recommendation

Following a process of study, internal debate, and a series of public hearings at which various experts and community interests presented testimony, the Advisory Group issued its report to the Mayor. In summary, their recommendation was:

[T]hat the linkage program be implemented city-wide and that new construction and substantial rehabilitation projects of more than 100,000 square feet in the aggregate be subject to the requirements of the program...The majority of the Advisory Group recommends that the developer contribute a fee of \$5.00 per square foot. To mitigate the impact of this fee on project feasibility...the Advisory Group recommends that this contribution be paid over 12 years, beginning at the time of the granting of the certificate of occupancy or 24 months after granting the building permit, whichever occurs first. (Advisory Group, 1983).

The Advisory Group further recommended that the program be enacted through an amendment to the zoning code. This amendment would create a Development Impact District and require that projects needing zoning relief which exceeded the 100,000 square-foot threshold would pay the \$5.00 per square foot impact fee over 12 years.

The Dissenting Opinion

Two members of the Group issued a dissenting recommendation to the Mayor (Achtenberg and Wallis, 1983). In this dissent, they articulated some of the weaknesses of the Commission's recommendation. One consequence of the 12-year payment term was to reduce the contribution on a present value basis. The approach therefore minimized the funds available at any time to support affordable housing projects, which the fund was designed to achieve. Also, the wording in the recommendation did not restrict the uses of the

fund to subsidizing affordable housing development. Achtenberg and Wallis felt that the fund should be used particularly for the benefit of low-, as opposed to moderate- income households.

The Changing of the Guard: The 1983 Mayoral Election

In an election replete with issues - including jobs, race, crime, and education to name a few - linkage emerged as one of the key issues, although there was general consensus among the candidates that a program would be adopted. In an outcome clearly divided along racial lines, Flynn won the 1983 mayoral election. While the changes to the zoning code promulgating the linkage program were issued by the out-going White Administration, it would be the responsibility of the new mayor to implement the program.

Drier and Ehrlich (1991) note that the adoption of the linkage program, along with a number of similar initiatives, is indicative of a new order in urban politics, in which "non-elites" participate in development policy decision-making. They argue that development policy can be shaped in a democratic process, and use the linkage to illustrate how policy-making in Boston has been influenced by broader citizen participation. Their focus is on the importance of a governing regime which fosters, and is receptive to, such participation. However, housing activists working outside the administration have played an important role in the linkage program in Boston.

The Boston Linkage Action Coalition

Outside of the official structures, a group of housing activists organized to shape the terms of the debate on the linkage question. This group, called the Boston Linkage Action Coalition, was composed of tenant organizations, housing advocates, organizers and others concerned with the issue. Through

a strategy of attendance and testimony at public hearings, public pressure and use of the media, the Coalition focused public attention on the need for up-front payment of the fee, on the financial consequences for their constituents of deferring payment over a longer term, and on the issues of community representation and accountability of the Neighborhood Housing Trust, which would be empowered with distributing funds collected under the program.

The Coalition also challenged the City on the criteria used to award linkage funds. The specific concern was whether funds were being used to increase the stock of affordable units or were being directed to subsidize market rate units and for-profit developers (Reinert, 1986b; Boston Linkage Action Coalition, 1987). As a result of this scrutiny, the bulk of linkage funds are directed to non-profit development organizations, and one of the chief yardsticks used to measure the success of the program is the percentage of affordable units created through linkage grant awards.

The involvement of the Coalition in setting the terms of the debate on the substance and implementation of the linkage program highlights the underlying political nature of the program. It also clearly indicates the potential problems which may arise with a program such as this, even when administered by an ostensibly sympathetic local government. An open political process for programs such as linkage may be administratively inefficient, but it is essential to ensure adherence to program objectives.

The Legal Challenge: The *Bonan* Decision

The Boston program was subject to a legal challenge in 1985, one of the few linkage programs to be so challenged. Although the case was decided in favor of the plaintiff in the lower court, the decision was overturned on appeal,

largely on procedural grounds. In rendering its decision on appeal, the Supreme Judicial Court did not resolve the substantive question of the legality of the program. It can therefore be said that no linkage program has yet withstood a legal challenge on its merits.

The facts in this case, *Bonan vs. City of Boston*, involved the Massachusetts General Hospital, an operating subsidiary of the General Hospital Corporation, seeking approvals to expand, with the scale of the proposed project meeting threshold criteria to invoke the linkage requirement. In response to this application, a Boston developer, one of whose projects is in proximity to the Hospital, sued on the basis that the size of the payments due under the linkage program biases decision-making on zoning or other relief. The lower court accepted this argument, ruling that the enabling act did not authorize the zoning amendment and that the variance granted the Hospital was invalid (Gallogly, 1987). However, the decision was overturned on appeal on the basis that the developer had no standing to bring suit before the Court (Connors and High, 1987).

While this procedural victory ensured the continuation of the linkage program, it failed to settle any of the fundamental questions concerning the legal basis for the program.

The challenge brought under *Bonan* identified a key weakness in the structure of the Boston program. At the outset, political expediency dictated that the program be promulgated through a change to the zoning code (Achtenberg, 1985). As a result of the inclusionary zoning debate in Massachusetts, there is language in the general enabling statute which can be interpreted to permit fees such as that proposed under the linkage program.

was passed for the City of Boston in 1956; zoning in the City was therefore authorized under legislation distinct from that governing the rest of the state (Gallogly, 1987). The inclusionary language present in the general statute was not also separately inserted into the enabling statute for Boston. As a result, the need for a home rule petition, which had been thought a potential impediment in the development of the program, emerged as a key to the ability of the program to withstand any subsequent legal challenge.

In response, a home rule petition was filed in the state legislature amending the enabling act for Boston. The language in this petition specifically and expressly authorized the City of Boston Zoning Commission to:

Adopt zoning regulations or amendments thereto for the purpose of mitigating the effects of new large-scale commercial real estate development on the health and welfare of low- and moderate-income residents of Boston due to the unavailability of affordable housing in the City of Boston (M.G.L. Acts of 1986, Chapter 371).

The statute specifically authorizes the City to adopt a program in the form currently used, including imposition of fees based on floor area for the purposes of creating affordable housing and jobs training programs.

The Structure and Organization of the Boston Program

The fundamental features of the organization of the Boston linkage program are: (i) its regulatory basis under the zoning code; (ii) the use of the Neighborhood Housing Trust as the intermediary for receipt of payments and distribution of funds; and (iii) the roles which the Boston Redevelopment Authority (BRA) plays in administering the funds, including the contractual relationship with commercial developers. As noted above, in light of the legal challenge which the program faced, the City also sought and has been

granted express authorization for the zoning code amendments under which the program is legally constituted.

Original Zoning Requirement

The recommendation of the Mayor's Advisory Group served as the basis for an amendment to the zoning code for the City of Boston, which was promulgated on December 29, 1983. This code amendment, Article 26-Development Impact Projects, invoked the City's police power to promote the public health, safety, convenience and welfare as its authority and stated as its purpose to "increase the availability of low- and moderate-income housing by requiring developers ...to make a development impact payment to the Neighborhood Housing Trust or to contribute to the creation of low- and moderate-income housing" (Boston Zoning Commission, 1983).

Article 26

Article 26 defined a "Development Impact Project" based on the 100,000 square-foot threshold in the Advisory Group's recommendation. Section 26-3 of the amendment required that no "variance, conditional use permit, exception or zoning map or text amendment" shall be granted for a development impact project unless the applicant had entered an agreement to pay the development impact project fee for each square foot of gross floor area above the 100,000 square foot threshold (Boston Zoning Commission, 1983).

The article also created as an alternative to cash payment a Housing Creation Exaction, under which a developer could build low- and moderate-income housing units at a cost equal to the amount of the payment exaction.

The article empowered the Boston Redevelopment Authority and the Neighborhood Housing Trust to administer the program. The BRA, as the city's lead planning agency, already had substantial regulatory control over new development. This new responsibility, however, formalized the link between public benefits which the agency typically sought to extract from large projects, and neighborhood-based development, which the agency had funded in the past largely through Federal programs such as the Urban Development Action Grant and Community Development Block Grant programs. Because of the explicit language in the article concerning use of the funds for low- and moderate-income housing, the Zoning Code now required the City and the BRA to be active in the affordable housing field in new ways.

Revised Program

With the development climate in Boston continuing to prosper through the mid-1980's, there were renewed calls for an increase in the amount of the linkage fee required of Development Impact Projects. Fueling this debate was the fact that regulations concerning the distribution of the funds received under Article 26 were mired in City Council debate well after the establishment of the program. While a major political hurdle had been passed with enactment of linkage, there still remained obstacles to its effective implementation.

Amendments to Article 26

In 1986, two text amendments were filed to Article 26 of the Zoning Code, which formally enacted the linkage program. The first of these amendments, Article 26A, had a significant impact on the rate at which impact fees were paid in to the Housing Trust. The original language, patterned after the

distributed payments over a period of twelve years. The amended schedule enacted under Article 26A required the payments to be made over seven years. The amendment further required that the first payment be made at issuance of the building permit, rather than at the certificate of occupancy stage (Boston Zoning Commission, 1986a).

In addition to this compression of the time schedule of payments, the second of the two amendments also established a new requirement: the amount of the fee imposed on Development Impact Projects was increased by \$1.00 per square foot, with the additional fee targeted to the Neighborhood Jobs Trust for the purpose of expanding or creating jobs training programs. This payment was required over a two-year period dating from the issuance of the building permit (Boston Zoning Commission, 1986b).

Neighborhood Housing Trust

The vehicle for the administration of funds for the Boston linkage program is the Neighborhood Housing Trust. This trust fund was created by act of the City Council in 1986. It is authorized to receive funds required of new commercial and institutional developments under Article 26A and committed through Development Impact Project agreements with the BRA.

Housing trusts are charitable organizations typically created by state or local government (though trusts are also established by non-profit corporations) to serve as financial intermediaries for affordable housing projects. Housing trusts are usually structured to provide a dedicated revenue stream for this purpose; that is, revenue which is not dependent on appropriation or other legislative action. Revenue streams for housing trusts can include sources such as fees, tax levies, investments or other sources which are earmarked

specifically for the purposes of the trust, and which are not part of the general revenue stream of the governmental unit or other entity establishing the trust (Brooks, 1988).

Creation and Membership

The ordinance creating the Neighborhood Housing Trust was enacted in 1986, three years after the linkage program was launched. The purpose of the Trust, stated in the Declaration of Trust filed with the ordinance, is to mitigate:

...the extent to which Boston's low- and moderate-income households are unable to afford decent, safe and sanitary housing within the City of Boston. Towards that end, the Trust shall help to create and retain the supply of affordable housing for low- and moderate-income residents... (Neighborhood Housing Trust, 1987).

The Declaration defines "low- and moderate-income households" based on the Federal Department of Housing and Urban Development guidelines of not more than 80% of the Boston Standard Metropolitan Statistical Area median income. Moderate- to middle-income households, defined as 80% to 120% of median income, may also benefit from projects supported by the Trust.

The Trust is composed of a five-member Board of Trustees appointed by the Mayor, and including as *ex officio* members the President of the Boston City Council and the Collector-Treasurer for the City. The Collector-Treasurer serves in addition as the Managing Trustee for the Trust.

Rules and Regulations

The rules and regulations of the Trust, adopted in 1987, set forth important administrative considerations for the Trust, addressing issues such as procedures for collection and distribution of funds, and also describe the

important working relationship between the Trust and the Redevelopment Authority.

Payment of linkage funds, as stipulated in the zoning amendment, are a condition for issuance of a building permit and certificate of occupancy. Thus, the Trust, through the Inspectional Services Department which issues the permits and certificates, has significant leverage over the commercial developments subject to the ordinance.

Linkage funds are awarded to support affordable housing projects, based on responses to requests for proposals issued to non-profit developers, in the form of cash grants. Housing creation proposals are also used as a basis for distribution of funds. Under this option, a commercial developer may dedicate the linkage funds to a specific affordable housing project.

Roles of the Boston Redevelopment Authority

The Boston Redevelopment Authority plays a number of crucial roles in implementing the housing linkage program. In its role as the City's lead agency for planning, zoning and development regulation, the BRA also engages developers in negotiations on other public benefits in addition to the housing contribution or creation required under the linkage program.

The requirements of Article 26A of the Zoning Code define certain roles which the BRA plays in the program. Specifically, the Article requires that:

The person or persons making application for a variance, conditional use permit, exception or zoning map or text amendment...pursuant to a Development Impact Project Plan shall also have entered into an agreement with the [Boston Redevelopment] Authority to make a Development Impact Project Contribution (Boston Zoning Commission, 1986a).

The Authority exercises broad controls over the scope of development activity in the city. In rendering decisions on developer designations, size and scale of projects, it determines which proposed projects meet threshold requirements as Development Impact Projects. Under the Code, the Authority executes contracts with developers of impact projects. These contracts generate the revenue stream for the Housing Trust. The Authority also influences allocation decisions of the Trust through representation of BRA staff on the Board of Trustees for the Neighborhood Housing Trust.

Through its planning, designation and related powers, the BRA also makes substantive decisions concerning affordable housing projects which qualify for linkage funds granted by the Trust. Linkage funds represent a financing mechanism by which the administration, acting through the Authority, achieves its neighborhood housing and related development objectives. The case study of the South End Neighborhood Housing Initiative, discussed below, represents an example of such policy implementation, and illustrates how linkage funds are used to close gaps in financing for affordable housing projects. Finally, the BRA provides certain administrative support to the Trust, such as monitoring compliance with the Development Impact Project Agreements.

Development Impact Project Agreement

The Development Impact Project Agreement is the vehicle by which funds from qualifying projects are brought under binding obligation. These agreements provide a contractual basis for the housing payment contribution of each project. Execution of the agreements is a requirement of the Zoning Code if a variance, conditional or special permit, or other consideration is

sought by a commercial developer. The executed contracts represent in effect an asset of the Trust. These contracts have proved key in securing both the long-term revenue stream for the Trust and in providing short-term project financing as well.

Performance of the Boston Linkage Program, 1985-1990

Since its inception, the linkage program has contributed to the creation of an estimated 3000 housing units in Boston, of which approximately 70% are, according to the BRA, affordable to low- and moderate-income households (BRA, 1989). The program has represented one among a variety of subsidy sources used by non-profit developers in the financing of both new construction and rehabilitation of existing properties.

Due to both structural and administrative problems, the program was slow to yield initial results. Several early reviews of the program noted that, while there was a substantial volume of commitments from Development Impact Projects, there was a lack of progress in channeling funds toward housing production. By mid-1985, fully 18 months into the new program, the City had, according to the Boston Globe, received linkage pledges totalling \$40 million, but the Housing Trust had not yet been established and no payments from Development Impact Projects had yet been received (Quill, 1985). This early performance record was due to both the structure of the program, which required phased payments over a period of years, and administrative delays in establishing the Housing Trust and promulgating guidelines for distribution of funds. By 1987, these sources of delay had been substantially resolved, and initial linkage funds were allocated to specific neighborhood projects.

Number of Development Impact Agreements Executed

The Development Impact Project (DIP) agreement is the vehicle through which linkage funds are committed by contributing developments. Under the Zoning Code, these agreements are executed between the BRA and developers of projects seeking zoning relief which triggers the requirements of Article 26A. By 1988, a total of 38 projects met the threshold criteria established in Code. Of these, 19 projects were downtown, 6 were in the Back Bay (a mixed residential-commercial district abutting downtown), 5 were hospital projects located in the Longwood Medical Area, 3 were located in Charlestown, and 5 were sited in other parts of the city. Approximately half the projects outside of downtown and the Back Bay were owned by institutions, including both universities and hospitals (BRA, 1988).

In 1989, 15 DIP agreements were executed, the largest number in any year. In addition, DIP agreements for the parcel-to-parcel linkage program were also executed in 1989⁷. Execution of DIP agreements slowed in 1990, reflecting changes in the level of development activity. The total number of commitments through 1990 was 62. Of the executed agreements, 34 projects had begun making payments by 1990, indicating that building permits had been issued and the projects were going forward. Table 1 lists commercial and institutional projects actively contributing to the Trust through 1990.

7. Parcel-to-parcel linkage is a program designed to stimulate development in other parts of the City and participation of minority-owned business in development activity. The program requires developers of selected downtown parcels to establish partnerships with minority-owned firms and also develop parcels outside of downtown. See Hum (1987) for a critical analysis of this program.

Table 1. Boston Linkage Program: Active Development Impact Project Commitments, 1990.

Project	Type	Net Area* (000 s.f.)	Committed '(\$000)	Received** '(\$000)	Completed %
1 Heritage on the Garden	p	157	\$445	\$111	25%
2 500 Boylston	p	620	\$2,975	\$744	25%
3 222 Berkeley St.	p	423	\$2,525	\$210	8%
4 360 Newbury St.	p	130	\$74	\$42	57%
5 733-751 Boylston St.	p	NA	\$60	\$34	57%
6 116 Huntington Ave.	p	215	\$764	see note	
7 75 State St.	p	750	\$3,075	\$1,025	33%
8 Rowes Wharf	p	354	\$2,141	\$714	33%
9 International Place -I	p	1,100	\$5,066	\$1,689	33%
10 International Place -II	p	657	\$3,092	\$258	8%
11 150-160 Federal St.	p	485	\$3,565	\$546	15%
12 75-101 Federal St.	p	484	\$2,325	\$581	25%
13 99 Summer St.	p	249	\$807	\$336	42%
14 20 Custom House St.	p	136	\$220	\$126	57%
15 745 Atlantic Ave.	p	168	\$329	\$188	57%
16 101 Merrimack St.	p	159	\$329	\$27	8%
17 101 Arch St.	p	405	\$1,480	\$370	25%
18 125 Summer St.	p	447	\$1,744	\$997	57%
19 73 Tremont St.	p	238	\$913	\$391	43%
20 125 High St.	p	1,333	\$6,377	\$2,733	43%
21 15 New Chardon St.	p	NA	\$206	\$88	43%
22 Children's Hospital	np	NA	\$930	\$53	6%
23 Brigham and Women's	np	NA	\$22	\$7	34%
24 Boston College	np	NA	\$322	\$81	25%
25 Harvard Medical School	np	NA	\$73	\$30	41%
26 Boston University	np	NA	\$153	\$38	25%
27 CNY Bldg. 33, 34, 38, 39	p	193	\$577	\$192	33%
28 CNY Bldg. 149	p	650	\$2,712	\$904	33%
29 Schraffts	p	600	\$429	\$121	28%
30 Mass. General Hospital	np	NA	\$1,447	\$241	17%
31 Deaconess Hospital	np	NA	\$769	\$64	8%
32 Ingalls Building	p	142	\$198	\$66	33%
33 Children's Research	np	NA	\$214	\$53	25%
34 Northeastern Univ.	np	NA	\$590	\$49	8%
Total		10,095	\$46,948	\$13,111	28%

* Office and retail area only.

** Estimate, based on scheduled payment.

p= private developer; np = non-profit institution;
CNY= Charlestown Navy Yard; NA= Not available.

Note: Linkage credit for garage as project foundation. See text, pp. 48-49.

Source:

Boston Redevelopment Authority;
Spaulding & Slye Office Report, July 1990.

Figure 3 illustrates the relative growth in the number of DIPs executed and active since 1984. The figure indicates, particularly at the outset of the program, the lag between signing of agreements and payments to the Trust. The figure also indicates fairly strong growth in the number of agreements signed. The growth in the number of DIP agreements executed indicates an apparent strategy to contain the linkage exposure of proposed projects. Multiple agreements are signed for these large projects, phasing payment obligations as stages of the projects come on-line.

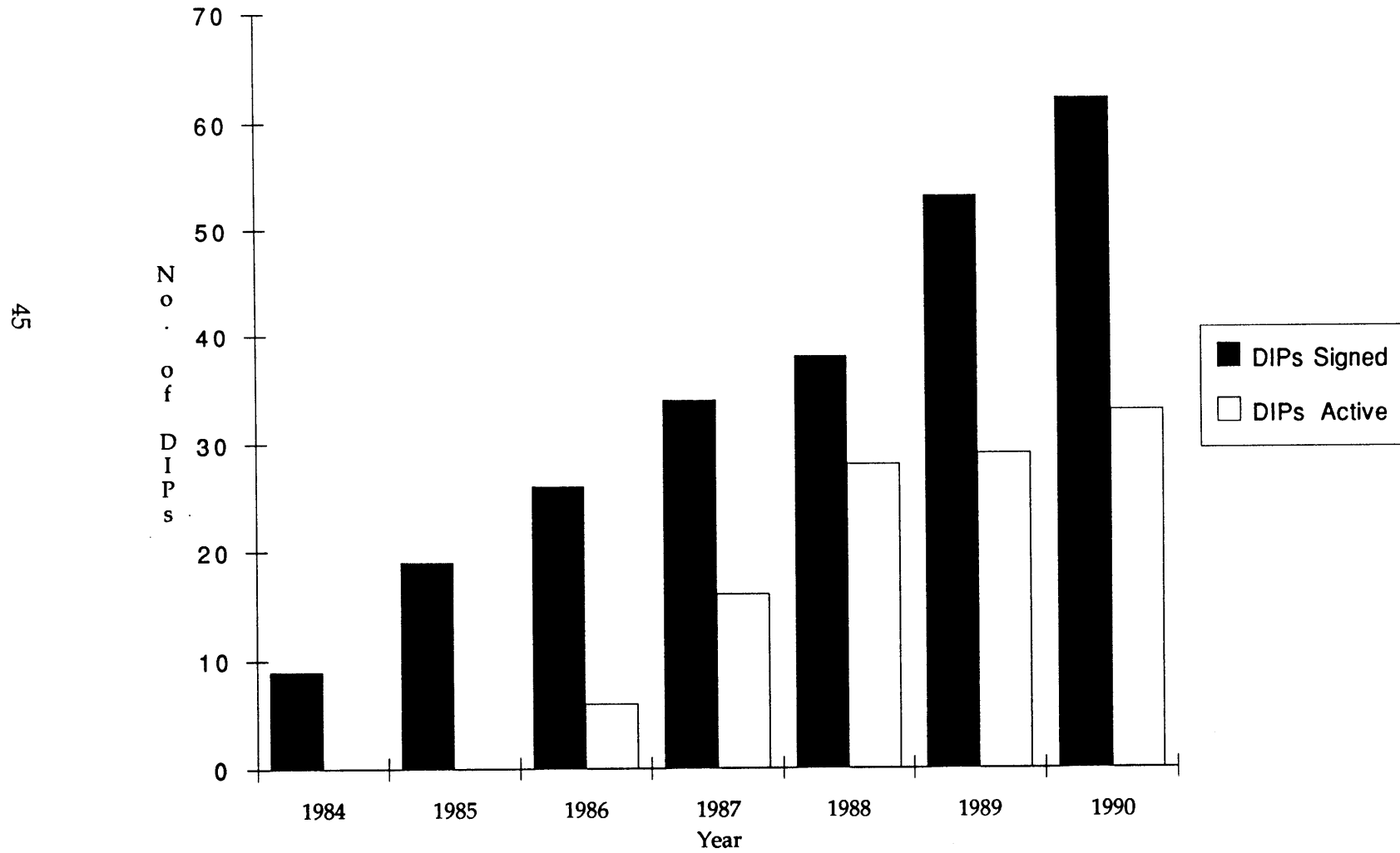
The phasing of large projects accounted for nine of the 15 agreements executed in 1989. Of the 28 DIP agreements signed but inactive as of 1990, phases of five projects account for 18 agreements, representing 64% of the pool of inactive agreements. This is in contrast to DIPs executed before 1989, where phases of three projects accounted for only six out of 34 DIPs, or only 17% of the active agreements.

Before 1989, the portfolio of DIP agreements was diversified across a range of projects. While the number of DIP agreements has increased, responsibility for future linkage payments is concentrated among a small group of projects. The future reliance of the program on a limited number of very large projects poses risks for the security of the anticipated revenue stream.

A small number of developers have reportedly accelerated payments under the agreements, pre-paying the housing contribution in advance of the contractual requirement. However, the 1990 financial statements for the Trust noted that two developers with DIP agreements in place filed for bankruptcy during that fiscal year, indicating one impact of the slowdown in Boston real estate development activity on the program.

Figure 3. Development Impact Project Agreements Signed and Active

1984-1990



Source: Boston Redevelopment Authority

Commitments Received

Through 1989, the development impact projects had committed over \$45 million in linkage funds for affordable housing and jobs training programs. The additional projects brought under agreement in 1989 raised commitments to the Housing Trust by \$30 million, to a total of \$76 million. The 1990 commitments added another \$22 million, for a total commitment of \$98 million. This total represents the nominal value of all housing contributions obligated under Development Impact Project agreements executed through 1990.

The ability of the Trust to realize this volume of contributions depends on a number of factors. Project economics, design development or other considerations may reduce the scale of approved projects, thereby reducing the DIP obligation. More important, however, is the issue of whether proposed projects obtain financing and move forward to construction. As noted above, only about half the DIP agreements signed have resulted in contributions actually paid into the Trust or otherwise directed to affordable housing production programs. Some projects with DIPs signed as early as 1986 had not started construction activity as of 1991. In addition, as noted above, future revenues to the Trust, based on agreements executed, depend heavily on a limited number of large projects.

This circumstance has significantly altered the risk profile for the program. In earlier years, the revenue stream to the Trust was diversified to the extent that it was supported by a relatively large number of distinct projects, of which a only few committed contributions in excess of \$5 million. Currently, DIP agreements not yet contributing are characterized by concentration

among a relatively small group of projects. The five projects which account for almost two-thirds of the inactive agreements also represent 78% of the linkage funds committed under these agreements. Four of the five projects are each committed to contribute more than \$6 million to the Trust, under two or more separate agreements. One project alone has committed to linkage payments exceeding \$14 million. Failure of these projects to proceed, or delays in start-up of key phases, would adversely impact the program and its projected cash flow.

It is important to draw a distinction between commitments and funds available to the Trust for award to affordable housing projects. Because of the structure of the Development Impact Project Agreements, which phase payment of the developer contributions over a period of years, receipts of the Trust in any one year have been limited to less than \$2 million per year⁸ (Neighborhood Housing Trust, 1990). Table 1, above, also indicates the amount of scheduled payments through 1990 for active DIP agreements. Development Impact Projects with active agreements were scheduled to have paid in a total of approximately \$13 million to the Trust through 1990. This represents about 30% of the commitment for these projects, or about 13% of the total commitment from all projects.

Funds Allocated

Selection of recipients of linkage funds and firm funding commitments to projects began in 1987. In that year, the BRA reported commitment of approximately \$17 million in linkage funds to 13 projects (BRA, 1988).

8. Neighborhood Housing Trust Fund Financial Statements and Auditor's Report, 1987 and subsequent years.

Subsequent funding rounds in 1988 and 1989 resulted in commitments of an additional \$11 million, for a total of \$23 million in 3 years. [Note: this total excludes a commitment of \$5 million in linkage funds to the \$200 million Harbor Point project. This commitment was used as collateral to secure other financing and was subsequently released for commitment elsewhere.] Table 2 lists projects receiving linkage awards by amount received.

On a per-project basis, the average linkage award is about \$740,000. Linkage contributions to projects have ranged between \$40,000 and \$3.3 million. The average amount of linkage assistance per unit is about \$8300. Linkage awards have represented between a low of 1% and a high of 40% of the total development cost of projects assisted. This range of financial support indicates the extent to which linkage disbursements may be used to achieve policy objectives through particular projects (Reinert, 1990).

Most linkage funds are awarded as capital grants to help finance construction and other development costs of affordable housing projects. The program has, in specific instances, involved creative forms of fund allocation. On the Tent City project, the BRA structured a complex ground lease, with air rights assigned to a non-profit developer for construction of a housing complex. This project used as its foundation an underground garage built by a commercial developer, which was also designated developer of a nearby parcel at 116 Huntington Avenue, as part of the negotiations⁹. The linkage commitment for the office building constructed on this parcel was satisfied by

9. Anonymous personal interview

Table 2.
Boston Linkage Program: Number of Units Created and Funds Expended through October, 1989

Project	No. Units	TDC '(\$000)	Linkage	
			'(\$000)	% of TDC
1734 Washington Lodging	33	\$2,102	\$270	13%
438 Warren Lodging	21	\$1,180	\$255	22%
6-24 E. Concord	40	\$3,697	\$284	8%
669 Walk Hill	10	\$475	\$150	32%
Back of the Hill Rowhouses	165	\$20,000	\$900	5%
Bowditch School	45	\$4,555	\$685	15%
Bowdoin St. Lodging	122	\$4,448	\$850	19%
Brooks School Cooperative	57	\$8,780	\$1,246	14%
Brown-Dawson Coop	60	\$9,104	\$975	11%
Casa Esperanza	25	\$514	\$84	16%
Charlestown Townhouses	32	\$3,800	\$421	11%
Dacia Residence	29	\$4,059	\$949	23%
Dawson Langely Apts.	59	\$6,000	\$40	1%
E. Berkeley St. Condo.	35	\$4,300	\$1,860	43%
Fountain Hill Sq., Phase I	40	\$4,000	\$275	7%
Granite Properties	937	\$72,000	\$3,300	5%
Habitat Houseraising	11	\$777	\$88	11%
Infill Collaborative	84	\$9,000	\$370	4%
John Boyle O'Reilly School	32	\$2,502	\$305	12%
Langham Court	84	\$13,500	\$2,308	17%
Lithgow Block	31	\$5,382	\$1,100	20%
Low Cost Housing	73	\$4,308	\$350	8%
Lower Roxbury Coop	70	\$6,209	\$400	6%
Msgr. Lyons Housing	10	\$950	\$220	23%
Navy Yard Row Houses	50	\$6,000	\$210	4%
Parcel P-2A	42	NA	\$650	NA
Parmelee Court	74	\$11,857	\$1,057	9%
Roxbury Corners Co-op	54	\$11,400	\$1,175	10%
Southwest Crossing	12	\$1,600	\$150	9%
Taino Towers	27	\$4,505	\$500	11%
Tent City	271	\$33,000	\$760	2%
Urban Edge	211	NA	\$750	NA
Waterford Place	40	\$7,500	\$1,700	23%
Totals	2,886	\$267,504	\$24,637	9%

* Totals do not include a commitment of \$5 million to the Harbor Point project as interim collateral.

TDC = Total Development Cost

Source: Boston Redevelopment Authority

the construction cost savings for the affordable housing project realized by using the garage as the foundation (BRA, 1988).

Other creative fund allocations include, as noted above, using linkage funds to collateralize a letter of credit for the large rental housing development at Harbor Point, which has an affordable component. These funds were reportedly later released for use on other projects (BRA, 1989).

Units Created

The BRA estimates that the linkage program assisted in financing the creation of approximately 2800 units of housing in 35 separate developments between 1987 and 1989 (BRA, 1989). This represents an average annual production rate of approximately 930 units. These units comprised a mix of rental and owner occupied units, including single-room occupancy units, condominiums and cooperative apartments. Units affordable to families of low- and moderate-income account for the bulk of projects assisted by the linkage program. The BRA estimates that these units account for approximately 80% of the total assisted (BRA, 1989). [Note: these totals exclude the 1300 unit Harbor Point project, 25% of which are affordable.]

Linkage funds contributed to affordable housing projects appear to have served primarily a leveraging role. The magnitude of grant-making from the Trust since the first grants in 1987 has been relatively small compared to the total cost of developing the housing which linkage funds are intended to assist. The approximately \$24 million¹⁰ granted through 1990 represents about

10. The BRA reports approximately \$29 million in linkage cash grants and housing creation awards. This total includes a \$5 million loan to the Harbor Point project used to collateralize a

9% of total development costs for the projects receiving linkage funds. While a relatively small financial contribution to completion of these projects, linkage funds have served a more significant role as a the one of city government's principal contributions to creating new housing.

Before implementation of the linkage program, there were few studies estimating the demand for housing as a result of office development in Boston. The Boston Redevelopment Authority issued a study in 1983, which estimated demand for 3800 housing units per year between 1980 and 1990. Downtown office employment was expected to generate demand for over 1200 units per year, with moderately-priced housing representing about 60% of this sector total, or about 726 units (BRA, 1983).

Since the program began, no formal evaluation of its results has been published. Kayden and Pollard, based on a limited survey of downtown office workers and using BRA data on employment and demand for office space and housing, derived what they refer to as an indicative demand estimate of 123 units annually for the period 1976 to 1984 (Kayden and Pollard, 1987). This level of estimated demand was attributed directly to increased office employment, and did not take into account any indirect or non-office employment.

Based on these estimates of demand, it appears that the linkage program has contributed to meeting the need for affordable housing units in the City. A potential weakness of the program, however, is the lack of a careful, rigorous analysis of the extent to which the funds generated and expended have

mortgage obligation. These funds were later reportedly released for use on other projects, and are not included in the total reported above.

satisfied a need created by downtown development. In the absence of such a study, the program has failed to conclusively establish the nexus on which it will be judged in any court challenge. The need to correct this defect has been identified by several authors (see, for example, Andrew 1988; Gallogly, 1987).

The examination of the Boston linkage program highlights the political nature of the program. The Boston program was initiated as a result of a political process: the retirement of the old mayor under pressure to enact a program and the election of a new mayor publicly committed to the concept of linkage. These political circumstances were essential for the creation of the program. In withstanding the legal challenge under *Bonan*, the program also survived a major political obstacle: obtaining express authorization from the legislature for the zoning amendments which embody the linkage program. This authorization was vital to the ability of the program to survive future challenges.

As illustrated by the involvement of the Boston Linkage Action Coalition in the early stages of the program, even under an administration predisposed to linkage, there is a need for continuing scrutiny by the public to ensure that program objectives are attained. The principal institutions which administer the linkage program in Boston - the Redevelopment Authority and Housing Trust - are creations of City government and are policy instruments of the mayor. As such, they are subject to the vagaries of mayoral politics. This creates an element of political risk for the program. The linkage program in Boston has been obtaining commitments for seven years and disbursing funds for four years under one administration. It is uncertain how the program will be sustained under a different political climate.

Chapter 4. Linkage and the South End Neighborhood Housing Initiative: A Case Study

This section provides a closer examination of how the linkage program has been applied to the creation of new units of affordable housing. In addition, consideration is given to how the program affects and is perceived by developers in the non-profit sector, who are the recipients of linkage funds; and by commercial developers who are required to make the contributions. The basis for this examination is a housing creation program sponsored by the Boston Redevelopment Authority called the South End Neighborhood Housing Initiative (SENHI).

This program is unique because it represents one of the larger scale efforts by the BRA to produce housing on a program basis. The effort is illustrative of how linkage can be used to leverage other public and private investment in affordable housing projects.

Background on SENHI

The South End is a racially and economically diverse neighborhood located in close proximity to downtown Boston. The neighborhood had been subject to powerful political and economic forces over a period of decades which had profoundly changed the makeup of residents and the composition of the housing stock. Among these influences was the urban renewal plan of the 1960's, under which the City came into control of substantial landholdings in the neighborhood. The promise of urban renewal for the South End, here as elsewhere, went unfulfilled, with the result that land and buildings owned there by the City remained vacant and undeveloped for nearly 20 years.

In the 1970's and early 1980's, gentrification contributed to the changing character of the neighborhood, as the features of its Victorian-era housing stock and close proximity to the Back Bay and Downtown business districts were attractive to a more affluent, largely white, influx of new residents. Condominium conversions reduced the stock of rental units and rising property values were translated into increased housing costs for the poorer, largely minority, segments of the community. The problem of displacement created by these two forces had its greatest impact on renters and elderly homeowners.

The construction of a new subway line made obsolete an old elevated railway which cut down Washington Street, one of the main thoroughfares through the South End. The demolition of the elevated line created significant new development opportunities along the Washington Street corridor. The BRA, through its overall control of the development process and its holding of a number of parcels along and adjacent to Washington Street, was in a powerful position to control the shape of new development in this area. In 1986, City government, acting through the BRA, began a process of disposing of certain of its real assets in the neighborhood under a program it called the South End Neighborhood Housing Initiative.

The initial public proposal for this disposition process focused, as the name of the program implied, on housing creation. The BRA proposed in public hearings that at least one-third of the units built be affordable to low- and moderate-income households. This proposal drew sharp reaction from the neighborhood's sizable - and vocal - activist community. On the one hand, residents involved in the local community development corporations, social

service agencies and other housing activists decried the proposal as an insufficient response of local government to displacement (some of which was caused directly by government action) and the crisis in affordable housing which was evident in the neighborhood. They also maintained that a disposition process that created primarily market-rate housing was an inappropriate use of publicly-held land for private, profit-making purposes. On the other hand, some homeowner associations were concerned about the introduction of more subsidized housing into the community. Publicly, representatives of the BRA emphasized that the proposed program called for a minimum of one-third affordable units, with development proposals projecting a higher percentage of affordable units considered on their merits. Public officials also expressed reservations about the availability of deep subsidies for a larger affordability requirement.

Through a process of public debate and negotiation, a compromise set of program guidelines was adopted. These guidelines required that one-third of the units created be affordable to persons with low incomes (defined as 50% or less than Metropolitan Boston median income), one-third to moderate income (defined as 80% or less than median income) and one-third of the units available at market rates (BRA, 1990). In addition, the program also gave preference to community-based non-profit developers and minority-owned development firms.

Adoption of these guidelines added significantly to the number of new affordable units in the South End. Development proposals for seven sites were selected, with plans for approximately 350 units of mixed income housing. Of these, 138 units were developed in two limited-equity cooperative projects; 62 condominium units were constructed in two projects;

114 rental units were built or are presently under development in two projects; and 33 single-room occupancy units were provided in one project. The program also required substantial public involvement in financing specific projects.

Financing Affordable Housing Projects in Boston

Both the public sector and the non-profit development community in Massachusetts have been very active and highly sophisticated in crafting solutions to the problem of how to finance affordable housing projects. In the wake of Federal cutbacks in subsidized housing, the Commonwealth of Massachusetts adopted a more aggressive posture in promoting and providing subsidies for these projects. The Massachusetts Housing Finance Agency (MHFA), a quasi-public organization with independent capacity to issue bonds and notes, provides both construction lending and permanent financing for projects such as those proposed for the South End. The Executive Office of Communities and Development, the state agency with overall responsibility for public housing and other public efforts in subsidized housing, administers a variety of programs supporting affordable housing. These include both operating subsidy and direct payment programs similar to the Federal Section 8 subsidy, and a variety of loan and grant programs. The success of the SENHI program depended very much on the availability of funds from these public and quasi-public sources.

Few sources of Federal subsidy for affordable housing projects remain. Under the Section 8 program, individuals qualifying on the basis of income may receive rental assistance up to a specified percentage of the "fair market rent" for a given area. This subsidy source may constitute a significant component of project revenue and can assist in obtaining both debt and equity financing

for projects serving households under the program. In addition to Section 8, the other major source of Federal assistance for privately-held projects is the low-income tax credit available to qualified investors. The credit enables projects to syndicate tax losses to the investor limited partners, generating a source of equity financing. Non-profit developments in Massachusetts have been quite active and successful in utilizing tax credit syndication to finance projects.

In addition to these sources of state and Federal assistance, the City, through the BRA, has some resources available to help finance its projects. These include discretionary funds which may be applied as loans or grants. The value of land holdings is a major consideration in financing any project. As a public entity with significant land holdings, the BRA has discretion in its land disposition objectives. The agency may use ground leases or sales of land, not only to realize the best return on the public asset, but also to achieve certain public policy goals.

The Role of Linkage in the SENHI Projects

Linkage played a key role in financing construction of the nearly 350 units created through the South End Neighborhood Housing Initiative. The estimated total development costs for all projects in the Initiative was \$53 million. Of this, \$21.6 million was contributed by the City from a combination of Community Development Block Grant funds; land disposition, grants and loans from the BRA; and linkage funds. Approximately \$6.5 million in linkage funds were committed to the projects, representing about 30% of the total public commitment. These funds also represented 12% of the estimated total development costs for the projects (BRA, 1990).

The importance of linkage as a source of gap financing is best illustrated by examining how these funds were utilized in specific projects.

Case Number 1: Roxbury Corners Cooperative. The Roxbury Corners Cooperative is a 54-unit syndicated limited equity cooperative, one of two cooperative projects built under the auspices of the SENHI program. The United South End/Lower Roxbury Community Development Corporation sponsored the project and served as interim managing general partner of the limited partnership formed as the owner/developer. The project combines new construction with rehabilitation of two existing buildings, and incorporates street-front commercial, community and open space and parking in its design.

Financing of this project was complex, and required significant infusions of both public resources and private capital. The total development cost of \$11.4 million was comprised of eight different debt and equity sources. An analysis of the financing structure of the project indicates local government's critical role in making projects such as Roxbury Corners a reality.

The Massachusetts Housing Finance Agency provided construction and permanent financing for the project. State programs, including the Section 707, Rental Development Assistance Loan and State Housing Assistance for Rental Production programs, provided operating subsidy. The Federal Section 8 program provided rental subsidy for low-income residents. Projected income to the project, including Federal and state rental subsidies supported a mortgage of approximately \$5.8 million. This created a significant gap, with a need for substantial equity to close the project. Indirect Federal assistance through syndication of low-income tax credits was one source of equity,

providing a contribution of \$1.4 million. State assistance available to help close the equity gap was small but included a \$320,000 grant from the Executive Office of Communities and Development under the Housing Innovation Fund. The non-profit developer's contribution of overhead and fee was substantial, at about \$2.2 million. The gap remaining was almost as large, at \$1.6 million.

Local resources were used to close this gap. These consisted of the value of the land, at approximately \$350,000; a \$150,000 grant from the BRA; and \$1.175 million in linkage funds. The linkage contribution was the principal source of gap financing for this project, and represented 20% of the total equity of \$5.6 million.

The linkage contribution was critical to closing the financing gap in this affordable housing project. With limited commitment of capital resources from other levels of government, the ability of local government to help fill this gap becomes key. Because of its limited revenue sources and focus on providing municipal service and stimulating local economic development, local government is not in the most favorable position to provide on-going operating subsidies to projects. This has been the historic, and more appropriate, role for Federal and state government. Through its zoning and related powers, however, local government can successfully apply its resources to leverage completion of otherwise financially marginal projects. This leverage can be applied, moreover, to obtain socially beneficial ends. This is the effect of the use of linkage funds at the Roxbury Corners Cooperative.

However, Roxbury Corners also illustrates some potential risks of the linkage program as a financing source. One way in which the linkage program operates is by forming a financial relationship between a for-profit development and a non-profit housing enterprise. This was the linkage structure for the Roxbury Corners project. At the time of substantial completion of Roxbury Corners, however, the for-profit developer had not yet initiated payments under the DIP agreement¹¹. It is unclear at this writing how the linkage contribution was handled in closing Roxbury Corners, whether through other funds available to the Trust or by the City extending bridge financing to the project until the DIP is activated.

In such circumstances, the risk to the City and developers of affordable housing projects, of course, is that there is an extended delay in activating the linkage payment. In this particular instance, the affordable housing project proceeded, most likely because of the ability of the City to bridge the linkage commitment with other instruments. It is questionable, however, whether this is a viable strategy for all projects.

Case 2. Taino Towers Condominium. The Taino Towers condominiums were constructed within the shell of a former church which burned out and had been vacant for over a decade. The project is comprised of 27 mixed-income owner-occupied condominium units, and includes a small amount of street-front commercial space. Three of the nine units reserved for low-income households were sold to the Boston Housing Authority, which leases the units to income-qualifying tenants. The project was developed by

11. Anonymous personal interviews.

Inquilinos Boriquas en Accion, a local community development corporation with extensive experience in developing tenant-controlled rental housing.

Financing for this project, though smaller than Roxbury Crossing, was nearly as complex. Total development costs for the project were approximately \$4.5 million, including site acquisition, construction costs, and other development costs. The development budget also required eight separate sources.

Significant differences between the two projects were in the form of ownership (cooperative versus condominium). The construction loan obtained by the developers was planned to be taken out over time as permanent loans were obtained by buyers of the units. Table 3 summarizes sources of funds for development of this project.

A construction loan at \$3.5 million was obtained from MHFA. Additional subordinated debt to cover construction-related expenses was obtained from two other sources. These included the Community Development Finance Corporation, a quasi-public entity which provides short-term lending to stimulate economic development activity in Massachusetts, and the Local Initiative Support Corporation, a national organization which provides grants, loans and other assistance to community-based affordable housing efforts. These sources, along with the developer's fee and a \$60,000 grant from the BRA, constituted the principal sources of debt and equity financing for the project. Combined, they represented approximately \$3.6 million, substantially less than the estimated construction cost.

The initial gap between total development costs and available debt and equity financing for the project was about \$1.4 million. A number of strategies, including restructuring the financing, changes in sale and rental of parking

Table 3.
Taino Towers Condominiums Sources of Funds

<i>Sources of Funds for Development Period</i>	(\$)	% of TDC
Primary Construction Loan	\$3,135,000	70%
Equity and Subordinated Debt		
Developer's Fee	\$73,442	2%
Gap Financing	\$812,000	18%
BRA Recoverable Grant	\$60,000	1%
Subordinated Loans (1)	\$413,652	9%
Total Equity	<u>\$1,359,094</u>	30%
Total Sources for Development	<u>\$4,494,094</u>	100%
<i>Sources of Funds for Gap Financing</i>		
Neighborhood Housing Trust	\$500,000	11%
Urgent Needs Funds: BRA/PFD	\$262,500	6%
IBA Fundraising	<u>\$50,000</u>	1%
Total Sources for Gap Financing	<u>\$812,500</u>	18%
<i>Sources of Funds for Repaying Construction Loans</i>		
Constructions Loans		
Primary Construction Loans	\$3,135,000	
Subordinated Loans	<u>\$413,652</u>	
Total Construction Loans	<u>\$3,548,652</u>	
Sources for Repayment		
Permanent Loans: Residential	\$2,682,088	
Permanent Loans: Commercial	\$790,875	
Cash Down Payments	\$309,663	
Proceeds from Sale of Parking Spaces to IBA	\$25,000	
less Sales Commissions and Closing Costs	<u>(\$135,531)</u>	
Total Sources for Repayment	<u>\$3,672,095</u>	

(1) Subordinated loans from Community Development Finance Corp. and Local Initiatives Support Corp.

BRA = Boston Redevelopment Authority
PFD = City of Boston Public Facilities Dept.
IBA = Inquilinos Boricuas en Accion

Source: Inquilinos Boricuas en Accion

spaces, reduced land carry and fund raising, were employed to reduce the gap. When these strategies were exhausted, the remaining gap in project financing was still over \$800,000.

This gap was filled primarily from two sources. One source was 'urgent need' funds available to the City's Public Facilities Department under the Community Development Block Grant program. This accounted for \$262,000. A linkage grant from the Neighborhood Housing Trust provided \$500,000. The balance was raised by the developer through fund raising at private foundations.

The critical role of linkage funds is also evident in this project. As a percentage of equity and subordinated debt, linkage represented more than one-third of the total. Linkage also represented more than 60% of the total City resources committed to the project, including both grants and loans¹².

Taino Towers is an innovative project which provides a home ownership opportunity to urban residents for whom this opportunity would otherwise not exist. The ability of the developer to close the significant financing gap on the project, which averaged over \$45,000 per affordable unit, depended heavily on the availability of local resources. Linkage, though providing a small piece of the total development cost, constituted a critical component of the gap financing.

12. Land was carried in the project pro forma at no cost. Including this line item (valued at \$9.63 per square foot, as in other similar projects) would have increased the total development cost, and the amount of the City's contribution to project equity, by approximately \$125,000.

The urban renewal process had adverse consequences for the South End, including displacement of long time residents. By providing home-ownership opportunities to an economically and ethnically diverse group, the South End Neighborhood Housing Initiative has helped to preserve the character of the community while making a significant improvement in the quality of the housing stock. The ability of the developers of Roxbury Corners and Taino Towers to realize the affordability objectives of their constituents depended critically on implementing creative financial strategies to reduce the gap; and on the availability of local subsidies, particularly linkage funds.

The projects also indicate some of the economic risk inherent in the linkage program. Delays in projects contributing linkage funds, for economic or other reasons, adversely affects affordable housing projects which rely on linkage grants. Mitigation strategies for this situation include bridge financing from other City resources. This can be applied successfully in specific projects, but may not be a satisfactory long-term solution.

Chapter 5. Planning for Survival: The Boston Linkage Program in the 1990's

Since its formal proposal in 1983 and since it began to produce housing in 1987, the Boston linkage program has, to a degree, become institutionalized. The characteristics of that process of institutionalization include making the program a centerpiece of local housing and related policies; establishing the Housing Trust as a vehicle for collection and distribution of linkage funds; and associating the program with construction of over 3000 units of housing. As a result of this process, the commercial development community has come to look upon the linkage program as part of the political landscape and the payments required under the program as a cost of doing business downtown. Non-profit developers have looked to linkage funds as an important source of gap financing for their projects. Linkage has become an accepted part of the development vocabulary in Boston (Achtenberg, 1985; Hernandez, 1989).

Internal and external pressures have resulted in some changes to and adaptations of the program. Specific authorization for the program was obtained from the state legislature through an amendment to the zoning enabling act. This change, a partial response to some of the issues raised in the lower court decision of the *Bonan* suit, was essential to make the Zoning Code amendments in which the program is embodied binding and enforceable. It has strengthened the ability of the program to withstand future legal challenges.

Reduction of the time period over which linkage funds are paid in to the Housing Trust was a response to external political pressure concerning the slow start of program operations and the need of the City administration to

show results with the program. This change made more funds available more quickly by increasing the present value of the developer obligation, as well as expanding the scope of the program by incorporating the jobs training obligation.

These types of changes represented primarily refinements and extensions of the original program concept. The authorizing legislation was instituted to correct a fundamental defect in the original program design. This particular change was clearly required to ensure the survival of the program. The principal focus of the changes in the program during its first years of operation were directed towards creating the necessary institutions, such as the Neighborhood Housing Trust, and achieving production. In the 1990's, however, there was a shift towards identifying and implementing strategic options for the program. Packaging the Developer Impact Project agreements for sale to investors was one such strategic response. This activity facilitated achievement of some program and policy objectives; it also indicates the need for pursuing other strategies to ensure the continued achievement of those objectives.

Capitalization of the Trust

The length of time over which linkage funds are paid into the Trust had been an issue since the inception of the program. The dissenting members of the 1983 Advisory Commission had argued for an up-front payment (Achtenberg and Wallis, 1983; Achtenberg, 1985) as had the Boston Linkage Action Coalition. The Zoning Text Amendment in 1987 was in part a response to the need to increase the level of program funding by compressing the amortization period from 12 to 7 years. Even though this change substantially increased the present value of the DIP agreement contributions, the amount

of assistance the Trust could provide to affordable housing projects at any one time was limited by the relatively small amount of annual receipts.

The Declaration of the Trust creating the Boston Neighborhood Housing Trust permits the Trustees:

...To borrow money for such periods, at such rates of interest and upon such terms as the trustees consider advisable, and as security for such loans to mortgage or pledge any real or personal property with or without power of sale; ...

To execute and deliver deeds, assignments, transfers, mortgages, pledges, leases, covenants, contracts, promissory notes, releases, and all other instruments necessary, proper or incident to any transaction in which they engage for the accomplishment of the purposes of this Trust...(Neighborhood Housing Trust, 1986).

Under this provision of the Declaration, the Trust in 1989 issued Promissory Notes to public and private institutional investors to capitalize the anticipated future income of the Trust. These investors included the Metropolitan Life Insurance Company, the Prudential Insurance Co. and the Massachusetts Industrial Finance Agency. These notes yielded approximately \$11 million to the Trust¹³. Payment of the debt service on the notes is through the linkage payments contracted under the DIP agreements¹⁴. The agreements used to secure the notes had a contracted value of approximately \$20 million, including payments made before the notes were issued in late 1989. Interest rates on these notes are approximately 9.5%. Escrow accounts

13. The Prudential Insurance Co. has also agreed to purchase cash flow from its own DIP agreements for redevelopment of its Back Bay office/retail complex, in effect prepaying its linkage obligation for that project.

14. Neighborhood Housing Trust Fund Financial Statement and Auditor's Report, June 30, 1990 and June 30, 1989. See Note 8.

were established as part of the transactions to provide additional security for the notes. These escrows are earmarked for legal defense in the event that the linkage program is challenged in court; and in the event of default by the a developer contracted to make contributions under the DIP.

This financing arrangements had benefits for both the investors and the City. According to one investor source, the return realized on the investment compared favorably with other social investments of the institution, with which the DIP contracts are most comparable. The return was also reportedly in line with the weighted average return of the overall investment portfolio¹⁵.

The source of funds generated by sale of the DIP agreements proved critical to the financing of local housing efforts in 1990. The Neighborhood Housing Trust received income from DIP agreements of approximately \$2.5 million in that fiscal year. Total awards of the Fund in fiscal year 1990 exceeded \$9.5 million. These awards were financed largely through the issuance of the Promissory Notes. The South End Neighborhood Housing Initiative, which utilized a total of \$6.5 million in linkage funds, was the major beneficiary of the acceleration of receipts to the Trust Fund realized through the investor agreements. The ambitious production schedule achieved in SENHI through capitalization of anticipated housing contributions argues quite forcefully for the efficacy of similar strategies to increase resources available to the Trust.

The ability of the Trust to access funds in this manner has significant short-run benefits. First, it provides greater flexibility, in that the Trust is no longer

15. Anonymous personal interview.

dependent solely on annual revenues from the developer housing contributions to finance its activities. Financing Trust contributions in this way provides capability for better cash flow management. It was the flexibility obtained through borrowing against DIP proceeds that, in part, enabled the City to meet its commitment on filling the financial gap for the SENHI projects. Second, it permits short-run increases in production through the availability of funds when needed. The production schedule realized on the SENHI projects was, again in part, a function of the timely availability of linkage funds, which permitted projects to close and construction to proceed.

In addition to financing the activities of the Trust through sale of the DIP agreements, the City has apparently also internally financed linkage program operations through bridge lending from other City resources against DIP proceeds. The extent of this activity is not readily discerned from the financial statements of the Trust, as this internal bridge lending is not treated as a liability of the Trust. However, comparison of reported linkage grants with actual audited balance sheets and statements of income and expenditure show some significant discrepancies. For example, the reported 1987 expenditures for housing creation and cash grants, as noted above, exceeded \$17 million. As shown in Table 4, total income to the Trust from housing contribution grants and other sources in that year was only about \$700,000¹⁶. Total Fund balances in 1987 were about \$1.8 million while the nominal value of DIP agreements which became active in 1986 and 1987 stood at about \$1.7 million.

16. The financial statements of the Trust were reported on a calendar year basis for 1987. Beginning in 1989, the Trust's statements were reported on a fiscal year basis to correspond with financial reporting for the City as a whole. The reporting basis for the Housing Creation awards and linkage cash grants for 1987 is assumed to also be on a calendar year basis.

Table 4.
Neighborhood Housing Trust Revenue and Expense, 1987-1990.

	1987	1988	1989	1990
Revenue				
Housing Contribution	\$701,320	\$653,295	\$781,787	\$2,593,003
Interest	\$33,192	\$136,096	\$109,238	\$465,308
Other (1)	\$0	\$22,297	\$0	\$10,000
Total	\$734,512	\$811,688	\$891,025	\$3,068,311
Expense				
Administrative	\$2,914	\$3,633	\$2,670	\$5,875
Housing Grants (2)	\$0	\$544,620	\$537,197	\$9,547,247
Management Fees	\$0	\$0	\$4,559	\$6,237
Bad Debt Expense (3)	\$0	\$0	\$0	\$106,295
Other	\$0	\$7,060	\$0	\$0
Total	\$2,914	\$555,313	\$544,426	\$9,665,654
Excess (Deficit)	\$731,598	\$256,375	\$346,599	(\$6,597,343)

Notes:

1. Other 1988 revenue included fund transfer from Public Facilities Department.
2. Housing grants in 1990 financed through issuance of \$10.5 million in Promissory Notes to Metropolitan Life Insurance Co. and Prudential Life Insurance Co.
3. Two developers filed for bankruptcy in Fiscal 1990. Bad Debt Expense represents an allowance for these doubtful accounts.

Source:

Neighborhood Housing Trust Fund Financial Statements and Auditor's Report.
 1987 and subsequent years.

These differences might be accounted for by distributions to the linkage recipient projects over a period of years or, as is more likely, by the City capitalizing the value of DIP cash flow through internal resources.

The problem with this internal linkage project financing, however, is that it competes with other City operating and capital requirements for scarce public resources. Introducing the sale of DIP agreements to institutional investors frees up these resources for other uses and provides a secured source of project funds. This source is, however, not without its costs. Transactions costs for closing the deals and the costs of default and legal challenge escrows, even if not deducted directly from the DIP agreement payments, offset the financial benefits received from monetizing, in present value terms, the stream of future linkage payments. Moreover, to the extent that the discount rate used to calculate the present value of the income stream is greater than actual inflation over the DIP contract period, the value of the contracts to the City, in real terms, is reduced. These costs, compared to the benefits of current access to linkage funds, are small.

On balance, capitalization of the DIP agreements appears to be an effective strategy which both improves cash flow and results in increased housing production. [It should be noted that similar results might have been achieved by requiring payment of the linkage fee up front.] However, with expiration of executed and active DIP agreements resulting in diminishing revenues to the Trust, there are fewer opportunities to replicate this strategy over the next several years. Compounding this problem is the likelihood that proposed projects will be delayed into the mid-1990's, with few DIPs becoming active before then. This situation will result in less revenue for the Trust, and the

need for City officials to look to other sources to finance local housing initiatives.

Commercial Development in Boston in the 1990's: The Outlook

Because the Neighborhood Housing Trust is dependent on DIP agreement payments as its principal revenue source, future income to the fund is dependent on the pace of commercial development in Boston. A number of major projects have been proposed for which DIP agreements have been executed; it is unclear at this time when - or if - some of these projects will proceed. Of the 62 DIP agreements executed, there are currently 27 for which payments have not yet begun. These agreements represent the anticipated future income to the Trust. This income is dependent on a recovery in the market for office and commercial space and availability of financing for these large-scale projects.

In light of the current and continuing slump, the Boston Redevelopment Authority is cautiously optimistic about the future of the downtown office market. Class A office vacancy rates at year end 1990 were in the range of approximately 15%. Though less than the national average of about 17%, this level of vacancy and the slow rate of absorption have been sufficient to grind new construction activity to a halt. Only one major project is scheduled to come on-line in 1992, and construction activity is not expected in the BRA estimates to resume with any vigor until the mid 1990's. Assuming virtually no new construction in that time period, absorption of existing space is expected in the BRA forecast to reduce vacancies to the range of 4% to 6% by 1996. A somewhat more optimistic forecast, assuming increased economic activity inducing three large projects to go forward, projects vacancy rates in the range of 9% to 11% for the same time frame (BRA, 1991).

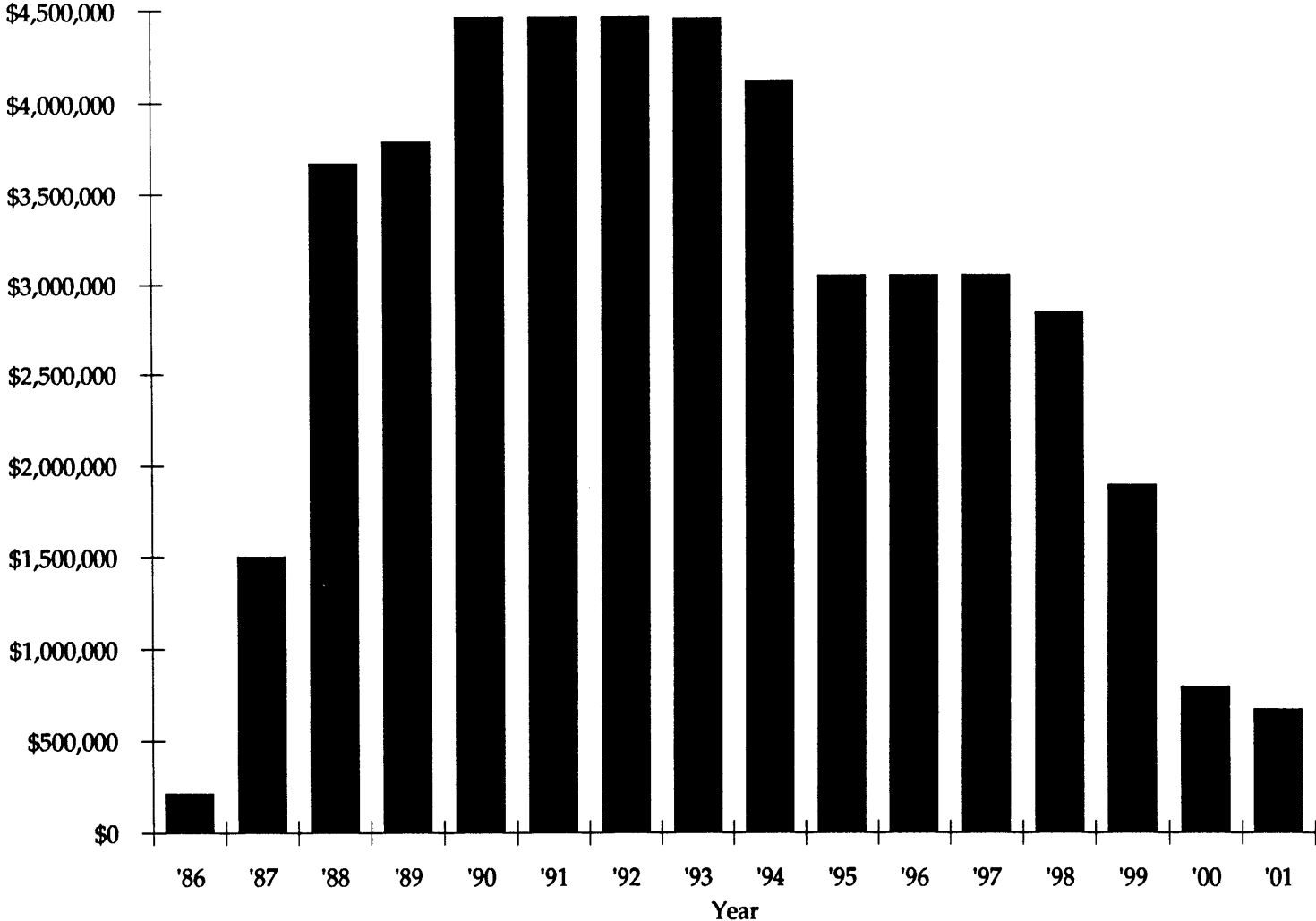
Implications of Development Forecasts for the Linkage Program

The future of the linkage program depends primarily on the outlook for large-scale commercial development, from which program funds are derived. Bleak near-term prospects for new development adversely impact the short-term ability of the program to achieve its objectives. This problem is illustrated in Figure 4, which depicts declining revenue from existing active DIPs through their respective expirations. This scenario corresponds roughly to the BRA estimate of no new additions of Class A office space by 1996. Assuming a two to three year time period between execution of new DIP agreements and when payments under those agreements begins (which approximates the current elapsed time for first payments under existing DIPs), this would result in no new revenue to the Trust from linkage payments until the year 2000 or beyond.

An alternative scenario projects linkage revenues if all existing but inactive DIP agreements begin generating revenue between 1991 and 1997. This scenario, shown in Figure 5, does not project any new project approvals in this time frame, but is based on currently planned projects with executed DIP agreements going forward. Under this scenario, revenues to the Trust grow until about 1994 before tailing off through the end of the decade.

Both scenarios illustrate graphically the reliance of the linkage program on an uncertain and volatile revenue source. The DIP agreements are only as good as the projects on which they are based. If the development climate does not support the projects, revenues to the Trust are adversely impacted. An irony of this outcome is that the diminished economic activity which delays or cancels proposed commercial development is also associated with reduced

Figure 4. Development Impact Project Agreement Payments: 1986-2001



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Source: Boston Redevelopment Authority

employment and real personal income, and with an increased need for affordable housing.

As the City relies on the linkage program to help finance its affordable housing initiatives, the issue of how to deal with the declining revenue stream assumes increasing importance. As a result, there is a need to identify alternative strategies for funding the activities of the Housing Trust.

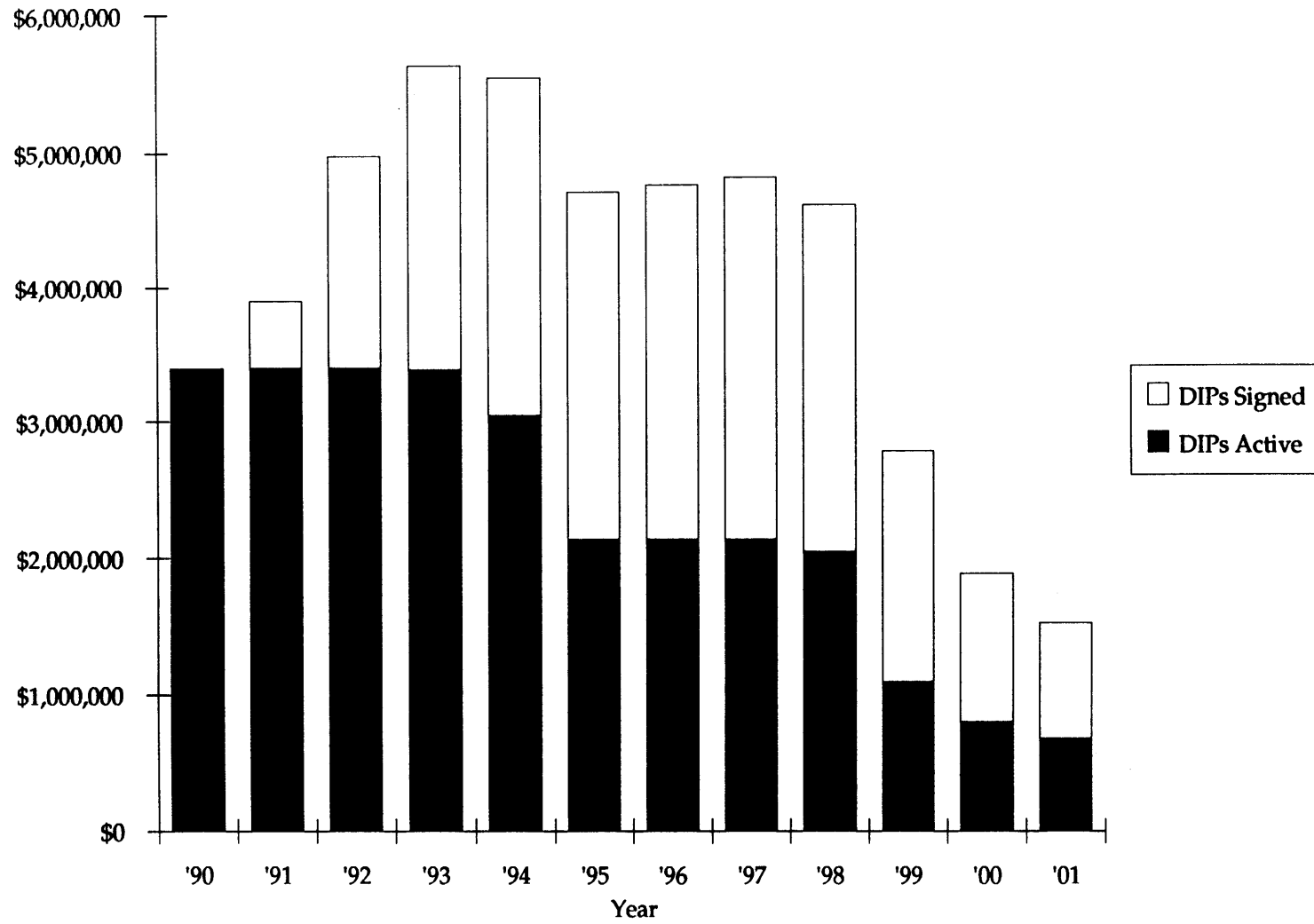
A number of alternatives are available to diversify the income sources of the linkage program. One approach would be to build an element of self-sufficiency into the program. Linkage funds are currently awarded as cash grants to affordable housing projects, yet they constitute a form of equity to the projects. An alternative would be to treat the awards as low- or no-interest subordinated loans to the projects. Incorporating flexible pay-back provisions would still help to provide the financial assistance that projects require, but also enable the program to further leverage linkage funds received.

Another alternative is to diversify Trust revenue sources. Housing Trusts in other states use a variety of sources, including bond programs, property taxes, real estate transfer taxes and fees, interest on real estate escrow accounts and other sources (Tegeler, 1985; Brooks, 1988). These other sources, while tied to the overall level of real estate activity, represent a more diverse group of project types and activities. A benefit of this approach would be reduced reliance on commercial development activity alone to fund the Trust.

Difficulties in accessing these sources include the need to obtain legislative authorization to impose any new tax or fee. In Massachusetts, the tax-cutting Proposition 2 1/2 limits the ability of cities to impose increases in property taxes without voter approval. There may also be legal difficulties with

Figure 5. Projected Linkage Revenue, 1990-2001

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dedicating a general revenue source to a specific purpose, such as funding the Trust. While these potential political and legal difficulties are great, there are substantial benefits to diversifying the Trust's revenue sources, including potentially increased resources to achieve the objectives of the linkage program and the City's housing policy.

Chapter 6. Conclusions

The Boston linkage program has been successful as a local government initiative to assist in production of affordable housing. Though a small part of the total subsidy required to meet the goals of serving primarily households below 120% of median income, the program has accounted for a portion of the capital subsidy required. Along with land cost write-downs and grants generated from local revenues or the remnants of Federal revenue-sharing programs, linkage has constituted a major financial resource of the City used to implement its housing program. The linkage program has served as a centerpiece of that housing program.

For non-profit developers, linkage is an important factor in the overall project subsidy equation. The projects which linkage supports are primarily assisted by operating subsidies from the Federal and state governments; employ mortgage financing at favorable interest rates from the Massachusetts Housing Finance Agency; and utilize Federal low-income tax credit syndications and other sources of debt and equity financing. Yet linkage is still often required to close gaps between the costs of development and debt service and operating costs the projects can reasonably bear. The diminution of state assistance to help close these gaps makes local initiatives such as the linkage program even more critical to meet the housing needs of low- and moderate-income residents.

The outlook for the program in the 1990's is clouded, however. Growth in commercial development activity, which sustains the program through Development Impact Project contributions, has slowed considerably. The prospects for improvement in this sector depend on increased demand for

space in the service industries - finance, insurance, personal and professional services, and retail services. When these sectors will show recovery is uncertain. The long lead-times for project approvals, design review, and the beginning of new construction mean that revenues to the Housing Trust will in all likelihood decline through the middle, and quite possibly the end, of the decade. This circumstance is a consequence of the Trust relying exclusively on linkage payments as its sole revenue source.

Capitalization of future payment streams represents one strategy to improve cash flow to the Trust in the short term. Given the structure of the program, the ability to utilize this form of financing future activity, however, depends on generating a continuing series of active DIP agreements which can be packaged and sold to investors. Without new active agreements, or investors willing to assume more risk on executed but inactive agreements, the declining number of active agreements will limit the extent to which this strategy can be implemented.

Alternative strategies for financing the activities of the Trust should be pursued. In particular, diversification of revenue sources should be considered as an approach to mitigating the risk associated with downturns in large-scale commercial development activity. Additional revenue sources, many of which would require express authorization from the state legislature, should be considered.

The program is also exposed to legal risks, as the issues raised in the *Bonan* suit were never fully resolved. Legislative authorization for the program was obtained, but there is very little published material which examines carefully the relationship between commercial development and the need for

affordable housing. Any future legal challenge to the program is likely to exploit this issue. Any strategy for program survival must include a research effort focusing on this issue.

The replication of the Boston linkage program may be limited by the unique economic and political characteristics required to enact and sustain such a program. Like San Francisco's program, the Boston program has served as a model for other cities considering a similar pro-active, locally-based approach to housing issues. How the Boston program survives the downturn in real estate development activity, and the strategies employed to achieve program objectives in that climate, can make the Boston linkage program an even more effective model in the future.

Appendices

Appendix 1. Types of Development Impact Fees: A Summary

Some of the principal uses to which development impact fees have been applied include extension and capacity expansion of existing infrastructure; new construction to provide essential public services; and provision of public amenities.

infrastructure development

Water and sewer system expansion is a fairly common example of the application of development impact fees. This application of fees has emerged as a local governmental response to cuts in federal assistance for this purpose. The fees are used to extend water and sewer lines in a subdivision off-site to connect with the system serving the municipality as a whole (Stroud, 1988).

public facilities

There is a long history of the use of exactions and development impact fees for land acquisition earmarked for public schools. Courts in Washington and New York upheld land dedications for this purpose (Stroud, 1988). The courts have also upheld in-lieu payments for providing educational facilities.

amenities

Because there are no generally accepted standards for community needs for park and recreation facilities, development impact fees for this purpose are subject to successful challenge. In examining the reasonableness of a fee for this purpose, the courts typically consider issues such as the amount of spending for recreational facilities, the location of the proposed facilities, and whether or not funds are specifically earmarked for this purpose (Stroud, 1988).

municipal services

The use of development impact fees for providing public services becomes more problematic. The courts generally view the provision of public safety services as a "duty which government owes the general public" (Stroud, 1988). When challenged, fees for the purpose of providing public safety services have not been upheld as a legitimate application of regulatory power. In Boston, City government, with specific legislative authority, attempted to impose a fee on new large-scale developments for the purpose of providing augmented fire service availability. The court invalidated the exaction and held that this was neither a user fee nor a regulatory fee under the police power, since it "paid both for possible services and to maintain facilities that were used to provide essential services to the general public." (Connors, 1987).

Appendix 2. Inclusionary Zoning: An Historical Perspective

Wallach distinguishes between an inclusionary zoning ordinance as a regulatory tool, and an inclusionary housing program, which is based on an ordinance. He defines an inclusionary zoning ordinance as one:

...under which prospective developers are required by a municipality or county to provide, as a condition of approval, or alternatively, are given incentives to provide, low- and moderate-income housing as a part of, or in conjunction with, their proposed development projects. (Wallach, 1984).

Inclusionary housing programs are somewhat more encompassing. They utilize the ordinance, along with other measures such as tax-exempt financing, to enforce and support program activity.

Inclusionary Zoning as Housing Policy

The concept of inclusionary zoning emerged as a policy alternative because of the use of zoning as an exclusionary mechanism. The roots of this practice, Wallach notes, date back to principles established in the landmark *Euclid* decision, which established as permissible the segregation of uses. The extension of Euclidean zoning to separate not just land uses but classes of people based on socioeconomic status or as pretense for racial discrimination violates, the proponents of inclusionary zoning argue, fundamental American democratic ideals.

Wallach posits inclusionary zoning as an alternative to the filtering process, by which the housing needs of lower income households are met by the used housing of the higher income 'filtering down' as new construction satisfies demand from this sector of the population. Among the limitations of the filtering process cited are the proportion of substandard units as a result of

physical deterioration; both inter- and intra-regional variation in value of existing, as opposed to newly constructed homes; and the need for new construction to accommodate housing demand as a result of economic growth, particularly for households at or near median income. Housing units affordable to those in this income category may be bid up as a result of immigration associated with economic growth creating increased housing demand, and therefore higher house prices (Wallach, 1984). From a policy perspective, Wallach views inclusionary housing programs as an effective means for producing new, decent and affordable housing for households at or below median income.

In addition to a production vehicle for new affordable housing, Wallach views racial and economic integration as the major policy feature of inclusionary programs. While acknowledging that, in this society, the proposition of racial and economic integration is not universally accepted, he argues that it is sufficiently accepted as a principle of law that question of how to achieve this goal is paramount. He notes that "one sees few vehicles capable of fostering meaningful residential integration unrelated to inclusionary housing programs" (Wallach, 1984).

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